

GC1g16

80,1932

CANADIAN
LAW
LIBRARY

3

IN THE PRIVY COUNCIL.
No. 78 of 1931.

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

Between

LADY DAVIS (Dame Eleanor Curran) and
MORTIMER BARNET DAVIS - (Plaintiffs) Appellants

and

THE RIGHT HONOURABLE LORD SHAUGH-
NESSY (William James Shaughnessy) and
ALEXANDER M. REAPER - (Defendants)

and

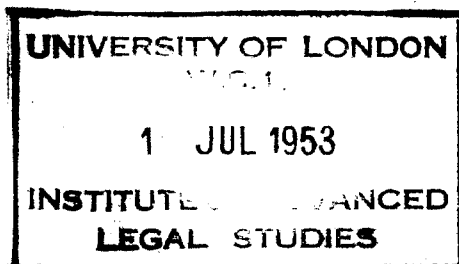
THE FEDERATION OF JEWISH PHILAN-
THROPIES OF MONTREAL - (Mis-en-cause) Respondents.

BOOK 3

containing Vol. 4 (pp. 1-313) - - Evidence.
Vol. 5 (pp. 314-633) - - Evidence continued.
Vol. 6 (pp. 634-945) - - Evidence continued.

Lawrence Jones & Co.,
Lloyd's Building,
Leadenhall Street,
London, E.C.3.
Solicitors for the Appellants.

Linklaters & Paines,
2, Bond Court,
Walbrook,
London, E.C.4.
Solicitors for the Respondents.



30368

UNIVERSITY OF LONDON
W.C.1.
1 - JUL 1968
INSTITUTE OF ADVANCED
LEGAL STUDIES

CANADIAN
LAW
LIBRARY

CONTENTS OF RECORD.

(For General Index see Vols. 1 and 11.)

BOOK 1.

Vol. 1 (pp. 1-147) - - Pleadings.

BOOK 2.

Vol. 1 (pp. 148-280) - - Exhibits.
Vol. 2 (pp. 281-630) - - Exhibits continued.
Vol. 3 (pp. 631-990) - - Exhibits concluded.

BOOK 3.

Vol. 4 (pp. 1-313) - - Evidence.
Vol. 5 (pp. 314-633) - - Evidence continued.
Vol. 6 (pp. 634-945) - - Evidence continued.

BOOK 4.

Vol. 7 (pp. 946-1256) - - Evidence continued.
Vol. 8 (pp. 1257-1575) - - Evidence continued.
Vol. 9 (pp. 1576-1913) - - Evidence continued.

BOOK 5.

Vol. 10 (pp. 1914-2248) - - Evidence continued.
Vol. 11 (pp. 2249-2466) - - Evidence concluded.

BOOK 6.

Vol. 11 (pp. 2467-2677) - - Judgment and Notes of
Trial Judge, &c.; Judg-
ment and Reasons of
Court of King's Bench;
Subsequent proceedings
relating to Appeal to
Privy Council.

BOOK 7.

Factums and Synopsis.

INSTITUTE OF ADVANCED
LEGAL STUDIES,
25, RUSSELL SQUARE,
LONDON,
W.C.1.

PART III — ADMISSIONS

Admission of the parties of certain facts which occurred on and between March 21st and 31st, 1930, both inclusive, and of the correspondence in connection therewith.

10

Plaintiffs and defendants HEREBY ADMIT the following facts, as also the correspondence in connection therewith, that is to say:—

1. On Friday, March 21st, 1930, at 4 p.m., there were received from the Canadian Bank of Commerce, Montreal, the following letters as addressed:—

20 (a) A letter dated March 21st, 1930, addressed to defendant Shaughnessy, copy whereof is produced and filed as Plaintiffs' Exhibit P-129;

(b) A letter dated March 21st, 1930, addressed to Sir Mortimer Davis, Inc., copy whereof is produced and filed as Plaintiffs' Exhibit P-130.

2. On Saturday, March 22nd, 1930, there were received the following letters, as addressed:—

30

(a) A letter dated March 21st, 1930, from the Canadian Bank of Commerce, Montreal, addressed to Sir Mortimer Davis, Inc., copy whereof is produced and filed as Plaintiffs' Exhibit P-131;

(b) A letter dated March 21st, 1930, from the New York Agency of said Bank, addressed to Sir Mortimer Davis, Inc., copy whereof is produced and filed as Plaintiffs' Exhibit P-132.

40 3. On Saturday, March 22nd, 1930, about 12.45 p.m., Defendants' Counsel advised Plaintiffs' Counsel of the receipt from said Bank of the four letters above referred to; and on the same day, about 1.45 p.m., sent to W. K. McKeown, K.C., copies of the same under cover of a letter addressed to the latter dated March 22nd, 1930, copy whereof is produced and filed as Plaintiffs' Exhibit P-133.

4. On Saturday, March 22nd, 1930, W. K. McKeown, K.C.,

wrote Meredith & Co. a letter, copy whereof is produced and filed as Plaintiffs' Exhibit P-134.

5.—On Saturday, March 22nd, 1930, defendant Shaughnessy wrote said Bank a letter, copy whereof is produced and filed as Plaintiffs' Exhibit P-135.

6. On Monday, March 24th, 1930, defendant Shaughnessy received from said Bank a letter, bearing the same date, copy whereof
10 is produced and filed as Plaintiffs' Exhibit P-136.

7. On Monday, March 24th, 1930, Counsel for the parties attended before the Hon. Mr. Justice Surveyer, sitting in Chambers, *in camera*, to discuss the situation arising out of said Bank's demands set out in its letters, Exhibits P-129, P-130, P-131 and P-132, and in the course of the discussion Counsel for defendants exhibited a copy of the letter of March 22nd, 1930, from defendant Shaughnessy to said Bank (Exhibit P-135), and the said Bank's reply thereto, dated March 24th, 1930 (Exhibit P-136), and following further discussion,
20 the Hon. Mr. Justice Surveyer ordered that the trial be adjourned to Tuesday, March 25th, 1930, and directed the parties to reappear before him in Chambers at 10 a.m. on that date, and suggested that a representative of said Bank should also be in attendance.

8. On Monday, March 24th, 1930, plaintiffs caused a subpoena *duces tecum* to be served upon P. C. Stevenson, Montreal Manager of said Bank, requiring him to attend in the Chambers of the Hon. Mr. Justice Surveyer on Tuesday, March 25th, 1930, and to have with him all documents of hypothecation signed by Sir Mortimer
30 Davis, Inc., Canadian Industrial Alcohol Co., Ltd., or subsidiaries of the latter, including Consolidated Distilleries, Ltd.

9. On Monday, March 24th, 1930, W. K. McKeown, K.C., wrote defendants Shaughnessy and Reaper letters, copies whereof are produced and filed as Plaintiffs' Exhibits P-137.

10. On Tuesday, March 25th, 1930, Counsel for the parties again attended before the Hon. Mr. Justice Surveyer, sitting in Chambers, *in camera*, to further discuss the situation arising out of
40 the demands of said Bank, when there were also present Sir John Aird, President of the said Bank, and Mr. Gibson, Assistant General Manager from the Head Office of said Bank, and also P. C. Stevenson, Manager of the Montreal Branch of said Bank, together with George H. Cassels, K.C., of Blake, Lash, Anglin & Cassels, Toronto, Solicitors of the Head Office of said Bank, and J. T. Hackett, K.C., of Foster, Place, Hackett, Mulvena, Hackett & Foster, Solicitors of the said Bank at Montreal.

After hearing Sir John Aird as also Counsel for the Bank, and for the plaintiffs and defendants, the Hon. Mr. Justice Surveyer ordered that the trial be further adjourned to Wednesday, March 26th, 1930, and directed that the parties reappear in his Chambers at that time.

11. On Tuesday, March 25th, 1930, defendant Shaughnessy, after conferences with said Bank, wrote said Bank a letter bearing the same date (copy whereof is incorporated in Exhibit P-138 hereinafter referred to).

12. On Wednesday, March 26th, 1930, by arrangement between the parties, the Hon. Mr. Justice Surveyer ordered that the trial be further adjourned to Thursday, March 27th, 1930, and directed the parties to reappear before him in Chambers at 10 a.m. on that date.

13. On Wednesday, March 26th, 1930, defendant Shaughnessy received from said Bank a letter bearing the same date (copy whereof is incorporated in Exhibit P-138 hereinafter referred to).

14. On Thursday, March 27th, 1930, by arrangement between the parties, the Hon. Mr. Justice Surveyer ordered that the trial be further adjourned to Friday, March 28th, 1930, and directed the parties to reappear before him in Chambers at 10 a.m. on that date.

15. On Thursday, March 27th, 1930, Meredith & Co. wrote W. K. McKeown, K.C., a letter (delivered about 3 p.m.) incorporating therein the letter from defendant Shaughnessy of Tuesday, March 25th, 1930, to said Bank, and the reply of the letter of Wednesday, March 26th, 1930, copy of the letter of Meredith & Co. being produced and filed as Plaintiffs' Exhibit P-138.

16. On Friday, March 28th, 1930, by arrangement between the parties, the Hon. Mr. Justice Surveyer ordered that the trial be further adjourned to Monday, March 31st, 1930, and directed the parties to reappear before him in Chambers at 10 a.m. on that date.

17. On Friday, March 28th, 1930, at 11.30 a.m., a conference took place between Counsel for the parties at which the proposals of said Bank set out in its letter to defendant Shaughnessy of March 26th, 1930, Exhibit P-138, were discussed.

18. On Saturday, March 29th, 1930, W. K. McKeown, K.C., wrote Meredith & Co. a letter, delivered about 1 p.m., copy whereof is produced and filed as Plaintiffs' Exhibit P-139.

19. On Monday, March 31st, 1930, Counsel for the parties attended before the Hon. Mr. Justice Surveyer, sitting in Chambers, *in camera*, when the present admission and the Exhibits P-129 to P-139 (both inclusive) therein referred to were filed of record.

Defendants agree to the foregoing admission only under reserve of their general objection already made that all evidence of facts occurring after the service of the action herein is illegal and irrelevant.

10

The whole under reserve of the right of all parties hereto to make evidence with regard to the Exhibits above referred to if deemed expedient.

The present admission shall be noted in the *Proces Verbal* and entered at length in the stenographer's transcript of the evidence and proceedings at the trial.

20

MONTREAL, March 31st, 1930.

(Signed) W. K. McKEOWN,
Attorney for Plaintiffs.

(Signed) MEREDITH, HOLDEN, HEWARD & HOLDEN,
Attorneys for Defendants.

30

40

LORD SHAUGHNESSY (*on Discovery for Plaintiffs, on Petition for Sequestration*), Examination-in-Chief.

PART IV — DEPOSITIONS

DEPOSITIONS ON DISCOVERY ON BEHALF OF PLAINTIFFS

10 On this 30th day of January, A.D. 1930, personally came and appeared

RIGHT HONOURABLE LORD SHAUGHNESSY,

of the City of Montreal, one of the defendants in the above-entitled cause, called as a witness on behalf of plaintiffs, on discovery, having been first duly sworn, doth depose and say:

Examined by Mr. McKeown, K.C., Counsel for Plaintiffs:

20 Mr. Holden, K.C.: Counsel for the defendants object to the present examination on discovery, upon the ground that discovery does not lie upon such a proceeding as the petition for sequestration, and the deposition of Lord Shaughnessy and of Mr. Reaper, the defendants, is given under reserve of that objection; and the counsel for defendants further point out that the two subpoenas on discovery were served on Lord Shaughnessy and Mr. Reaper at 20 minutes to five o'clock last evening, 29th January, 1930, for appearance at Court this morning at 10.30. They have not had an opportunity to get ready and to bring along all the documents asked for, 30 except Nos. 2, 3, 12 and 13, which will be produced under reserve of the above objection; nor have defendants' attorneys had an opportunity themselves, or their counsel, to consider the relevancy of the other documents and records asked for, nor to advise defendants thereon.

Mr. McKeown, K.C.: Plaintiffs through their counsel protest against the entry of the foregoing declaration in the present deposition, being unauthorized by law and irregular, and indicate to the 40 Court that notices of the present examination on discovery were served upon the defendants' counsel on January 29th, prior to noon.

Mr. Holden, K.C.: Without any *duces tecum*. Counsel evidently misunderstood the nature of my remarks, which refer to the *duces tecum*, with 25 elaborate demands being served at 5.30 last evening.

By Mr. McKeown, K.C.:

LORD SHAUGHNESSY (*on Discovery for Plaintiffs, on Petition for Sequestration*), *Examination-in-Chief*.

Q.—Will you exhibit such paper writings as you have brought with you, in obedience to the subpoena on discovery?

A.—Yes, I will.

Q.—Just let me see them.

A.—Yes. I have brought with me—

10 Q.—Just wait a moment. Answer the question as an ordinary witness.

A.—Do you want me to answer the question or not?

Q.—I asked you to show them to me. That is all I asked you. You have shown them to me.

20 A.—And my answer to that question is yes, I have brought the documents asked for under paragraphs 2, 3, 12 and 13, namely the Minutes of Executors' meeting of April 25th, 1928; a complete list of furniture referred to in said subpoena; the Minute Books of Sir Mortimer Davis Incorporated, and a copy of Notice to shareholders of the Meeting of Sir Mortimer Davis Incorporated, the Annual Meeting of Sir Mortimer Davis Incorporated, held in December, 1928, and I furnish these as requested. I might add, as to the other documents, in the time which I had after service of the subpoena, it was quite impossible to get and produce.

Q.—In taking up the various items to which you have just referred, in order, the first which you exhibit is the Minute Book of the Estate of the late Sir Mortimer Davis, containing the original Minutes of the Meeting of Executors, of April 25th, 1928?

A.—Yes.

30 Q.—When were those Minutes transcribed and entered in that book in regard to the fact that the meeting was fixed, and purports to have been held on April 25th, 1928?

A.—I could not answer that, because I did not transcribe them.

Q.—You signed them?

A.—I signed them.

Q.—Having regard to the fact that the Meeting purports to have been held on April 25th, 1928, can you not tell me from memory when those Minutes were transcribed?

40 A. As far as I know, immediately after the Meeting, as far as I can remember.

Q.—The next paper writing you have exhibited is a list of furniture belonging to the Estate, removed by you to the premises occupied by yourself and your family. Will you produce this list and mark it as Exhibit P-24 on Discovery?

A.—Yes.

Q.—One dining room table is mentioned, with two arm chairs and ten ordinary chairs. Were they part of the set?

LORD SHAUGHNESSY (*on Discovery for Plaintiffs, on Petition for Sequestration*), *Examination-in-Chief*.

A.—Yes, dining room set.

Q.—Circassian walnut?

A.—They are walnut. I do not know whether they are Circassian or not.

Q.—Did they match the panelling of the room from which they were taken?

10 A.—How do you mean, from which they were taken?

Q.—From Sir Mortimer Davis' home?

A.—I don't think that room is panelled. I am not sure; I don't think so. I am not sure. I would not swear to that.

Q.—There are two further chairs referred to. What are they?

A.—They were just small mahogany chairs.

Q.—That is the extent of the furniture?

A.—There is a footstool. It is really more than a footstool. It is a larger stool than that. It is not small but—

20 Mr. Campbell, K.C.: With my learned friends' permission, may we identify the article in question as being what is referred to as a tabouret in paragraph so and so?

The Witness: What I would say is that it is a stool. I would not say it is a tabouret, because it is a small table. It is designated as a tabouret. It is really a little bigger than a footstool. That is the best way to describe it.

30 By Mr. McKeown, K.C.:

Q.—Is it an ottoman?

A.—No, it is not as big as that. It is about two feet square; something like that; a little more than two feet. It is a stool two and one-half feet square.

Mr. Campbell, K.C.: I just want to refer to it as being referred to as a tabouret in paragraph 65.

40 By Mr. McKeown, K.C.:

Q.—You also exhibit the Minute Book of Sir Mortimer Davis, Incorporated?

A.—Yes.

Q.—You also exhibit, as to item 13 of the subpoena duces tecum, carbon copy of a letter addressed to Lady Davis under date of

LORD SHAUGHNESSY (*on Discovery for Plaintiffs, on Petition for Sequestration*), *Examination-in-Chief*.

December 26th, 1928, referring to the Annual Meeting of the Company to be held on the 31st of the same month at 11 A.M.?

A.—Yes.

Q.—Will you produce this, to be marked P-25 on Discovery?

A.—Yes.

10 Q.—A note, with an entry in red ink, "Copy sent to Lord Shaughnessy, Estate Sir Mortimer P. Davis." Is it to your knowledge also that the notice was received by you?

A.—I think so. I would not be sure. It probably was.

Q.—Was any notice given to the other registered shareholders as to the Annual Meeting, to Mr. Waddell or Mr. McLean?

A.—Yes, notice was given to them all.

Q.—McLean and Marler?

20 A.—In answer to that, Mr. Marler had withdrawn at that time and given a proxy for his stock. I am not sure that the notice was sent to him. Mr. Reaper would tell you that better than I can because he sent them.

Q.—You are quite sure notice was sent to Mr. Waddell?

A.—Yes.

Q.—H. P. McLean?

A.—That I don't know.

Q.—Was this notice sent by registered mail?

A.—Mr. Reaper sent them all. I really could not tell you.

30 Q.—Now we have exhausted what you have produced. Taking up the others: monthly statements were prepared and sent to Sir Mortimer Davis of his private affairs during his lifetime, were they not?

A.—I believe monthly statements were sent to him for some period. I am not sure for how long.

Q.—Immediately preceding his death?

A.—I think he got monthly statements, yes. Mr. Reaper could tell you that better than I could.

Q.—The same as to the Incorporated Company?

A.—I think so, yes.

40 Q.—Will you, upon the closing of this examination, make searches for copies of these monthly statements for the years 1928 and 1929, and send the same to your counsel, to be exhibited to plaintiffs' attorneys, insofar as they exist?

A.—Yes.

Q.—As to the item 4 of the subpoena, you were asked to produce the vouchers for all payments made and debited to automobile expenses in the years 1928 and 1929. Will you have these vouchers looked up and handed to your counsel for the same purpose?

LORD SHAUGHNESSY (*on Discovery for Plaintiffs, on Petition for Sequestration*), *Examination-in-Chief*.

A.—If such things exist, Mr. McKeown, I will be glad to, but I don't believe there were any automobile expenses charged to the Estate. In this particular automobile, I don't know.

Q.—Automobile expenses generally.

A.—Yes, I will. I will do that. I did not know what you meant. Yes, I will do that. I thought you were referring to a special automobile.

Q.—You had been in correspondence with the Department of the Provincial Treasurer either at Quebec or the local collector here, in connection with Succession Duties?

A.—We have had some correspondence.

Q.—Will you produce that correspondence?

A.—Yes.

Q.—Item Number 7: list of donations.

A.—Are you skipping Number 6?

Q.—Succession Dues is Number 5 on this list.

A.—These were a list of donations made, paid out of the Estate funds since Sir Mortimer's death.

Q.—Will you prepare a compilation of the same and hand them to your counsel for the same purpose?

A.—Yes.

Q.—As to item Number 7 of the subpoena, Correspondence in connection with the sale of the Pine Avenue and Ste. Agathe properties, there has been correspondence?

A.—Yes.

Q.—Have you any correspondence with Senator Raymond?

A.—No correspondence.

Q.—Have you had interviews?

A.—I had interviews with him.

Q.—Ewing and Ewing?

A.—No correspondence.

Q.—But you did notify Lady Davis as to the interviews with Senator Raymond?

A.—We also informed her about the interviews with Ewing and Ewing.

Q.—The correspondence between the Estate's executors and an intending purchaser or lessee?

A.—There is none whatever. I think I am right in saying that.

Q.—What the duces tecum asked for is correspondence between prospective purchasers and tenants.

A.—I don't think there is any. If there is we will produce it.

Q.—The next item, Number 8, refers to correspondence, agree-

LORD SHAUGHNESSY (*on Discovery for Plaintiffs, on Petition for Sequestration*), *Examination-in-Chief*.

ments, negotiations in connections with Asbestos shares. Did you have any correspondence?

A.—I don't think so.

Q.—Did you have any correspondence with O'Brien and Williams?

10 A.—No.

Q.—Did you have any correspondence with them as to Asbestos shares?

A.—Not to my knowledge.

Q.—Any other brokerage house? McCuaig Brothers; C. J. McCuaig?

20 A.—I know what you mean now. A large quantity of the Asbestos preferred stock, at the time of turning over of the Consolidated and the Federal Asbestos Company, and which was received in payment for those properties, was hypothecated to the Canadian Bank of Commerce with other securities of the Asbestos Corporation, securing advances made to clear these properties of liabilities prior to turning them over to the new Corporation.

Q.—What was the Corporation?

A.—The present amalgamation. The preferred stock referred to was sold.

By Mr. Holden, K.C.:

30 Q.—This is all before Sir Mortimer's death?

A.—Yes. Was sold to McCuaig Brothers from time to time. Then they would buy a certain number of shares and take an option on further shares, and then exercise their option and purchase such further shares, and I believe they purchased the whole of the preferred stock at the price of \$85 a share.

Q.—Did these shares belong to Sir Mortimer Davis?

A.—They belonged really to the Bank. No, they belonged to the Consolidated Asbestos.

40 By Mr. Campbell, K.C.:

Q.—And were part of the consideration they received for turning over the properties?

A.—Yes. You might say there may be some correspondence on this. If so we will file it.

By Mr. McKeown, K.C.:

LORD SHAUGHNESSY (*on Discovery for Plaintiffs, on Petition for Sequestration*), *Examination-in-Chief*.

Q.—Is it not true that the shares of the Consolidated Asbestos Company, held by the Incorporated Company, are being carried on the books at \$600,000?

A.—Yes, I think they are.

10 Q.—And that group of shares you have just been referring to, the shares originally held through the Consolidated Company, they would represent Sir Mortimer Davis Incorporated proportion of these shares, through shares of the Consolidated Asbestos?

A.—Yes.

Q.—In connection with that same matter, McCuaig Brothers, have you any correspondence dealing with the matter of the common shares held in the same way?

A.—No. We never dealt with McCuaig in common shares.

Q.—Who did you deal with?

20 A.—We did not deal with anybody. There were no common shares, to my knowledge. Mr. Reaper knows the record better than I do.

Q.—As to item Number 9, Correspondence, agreements, paper writings in connection with offers, part of the negotiations for the sale of Alcohol shares?

A.—Whatever correspondence there is on that we will look up and file.

Q.—I wish you would exhibit it.

A.—Whatever you like. We will prepare it and give it to counsel.

30 Q.—My idea is to have the various documents submitted by you to your counsel and by them to us, so we might judge whether we require them in the record or not. You have been asked to produce correspondence between yourself and Mr. Joseph since June 18th, 1929. Have you any correspondence??

A.—There is some correspondence.

Q.—Will you have that looked up and forwarded to your counsel the same way as the other?

A.—Yes.

Q.—The same with Colonel Gaudette, item Number 11?

40 A.—Yes.

Q.—As to item Number 14, which seems, to some extent, overlapping possibly item Number 1, will you take in these two items together, and get out the statements so far as they exist, as asked for, and send them to your counsel?

A.—Yes.

Q.—Item Number 15 of the subpoena asks for the production of a statement of all loans or advances of money to you from the

LORD SHAUGHNESSY (on Discovery for Plaintiffs, on Petition for Sequestration), Examination-in-Chief.

funds of the Incorporated Company since the death of Sir Mortimer Davis, whether the same has been repaid or whether the same appears still to be outstanding. You have not prepared it?

A.—No.

Q.—Will you prepare it and forward it?

A.—Yes.

10 Q.—Apart from the item of \$50,000, two items in connection with McNish Alcohol stock and the \$10,000, and the \$4,250 in connection with the Marler shares, were there other items of loans made to you by the Corporation during the period between Sir Mortimer's death and this date?

A.—I would just like to qualify your question, that I do not admit all you said were loans. Subject to that, no, no other loans.

Q.—There were no loans made and repaid which did not pass over the end of the fiscal year?

A.—No, I don't think so.

20 Q.—Will you have an examination made in that behalf and if there are any additional matters of that kind, include them in the statement to be furnished under item Number 15?

A.—Yes.

Q.—Will you also have looked up the original cheques, \$10,000, if the whole matter was by one single item, or any other cheques given to make up the amount in connection with the loan of that sum, and also the cheque, if any, of the Incorporated Company for \$4,250, concerning the Marler stock, and send those cheques to your counsel for the purpose I suggested as to the other items?

30 A.—Yes.

Q.—As to item Number 17, will you produce the cheque there asked for, being a cheque dated about September 25th, 1929, to your order, for the balance then standing at the credit of Marler and McLean, Trustees?

A.—If there is such a cheque, yes, I will.

Q.—I understand from Mr. Reaper, in his examination on behalf of the Incorporated Company, as Garnishee in the other suit, that such a cheque had been given.

40 A.—Well, then, it will be looked up.

Q.—You will have it looked up and forwarded to your counsel?

A.—Yes.

Q.—Taking up item Number 18, will you have a statement prepared as requested under that item respecting the amount paid to the Cadillac Coal Company up to date?

A.—Yes.

LORD SHAUGHNESSY (*on Discovery for Plaintiffs, on Petition for Sequestration*), *Examination-in-Chief.*

Q.—Have you got any monthly or annual statements from Jannison Company Limited?

A.—I don't think so.

Q.—Where can we get it?

A.—We could probably get it from Jannison.

Q.—Where is he at present? In Montreal?

10 A.—He is not here at present. He will be back next week. He is travelling in Ontario somewhere.

Q.—Does he maintain an office here?

A.—Yes.

Q.—Where?

A.—In the Canada Cement Building.

Q.—Is that office open daily?

A.—I suppose so.

Q.—And that is the office of the company?

20 A.—Of his company.

Q.—Item Number 20: will you prepare a statement of the amounts expended since March, 1928, on coal lands other than Cadillac coal, oil lands, leases on nickel property, etc.?

A.—Yes.

Q.—The next item, Number 21: donations by the Incorporated Company since March, 1928. Will you prepare such a list of donations?

A.—Yes.

30 Q.—Will you also deliver to your counsel for submission to Plaintiffs' attorneys the monthly statements submitted by you to the directors of the Alcohol Company for the year 1929?

Mr. Holden: That we are going to consider.

By Mr. McKeown, K.C.:

Q.—What is the correct title of the so-called McNish concern?

A.—Robert McNish and Company Limited.

Q.—That is a Scotch incorporation?

40 A.—A Scotch Company.

Q.—With its head office where?

A.—In London.

Q.—I understand the share capital of that company is owned by Alcohol?

A.—Not all.

Q.—Ninety per cent of it?

A.—Ninety per cent.

LORD SHAUGHNESSY (*on Discovery for Plaintiffs, on Petition for Sequestration*), *Examination-in-Chief*.

Q.—It is a firm of blenders?

A.—Blenders and bottlers.

Q.—They are not distillers?

A.—No.

Q.—An old established firm?

A.—Yes.

10 Q.—They have an issue of debenture stock of one million pounds?

A.—Four million and something.

Q.—Which is guaranteed, as to capital and interest, by Alcohol?

By Mr. Campbell, K.C.:

Q.—When you speak of four million, is that dollars?

A.—Yes, four million and something dollars.

20 By Mr. McKeown, K.C.:

Q.—Is the issue in dollars?

A.—It is in dollars.

Q.—Those debentures are listed somewhere?

A.—On the Montreal Stock Exchange.

Q.—The main exchange?

A.—Yes.

Q.—Since when, approximately?

30 A.—I think they were called for listing about six months ago; somewhere about that. Subject to verification, it was about that time.

Q.—Will you produce the annual or monthly statements of the McNish concern for 1927, 1928, and 1929?

A.—I would say it is a matter for the McNish Company. I cannot produce it.

Q.—You have copies?

A.—I don't know about that.

40 Mr. Campbell, K.C.: Subject to the advice of counsel and subject to the fact we have the documents, we will consider whether you get them or not.

By Mr. McKeown, K.C.:

Q.—Will you also produce, as asked for by Item 24, the report made by you to the directors of the Alcohol Company concerning McNish, on your return from England in June, 1929?

A.—If such a report exists, I will, subject to the same reserve.

LORD SHAUGHNESSY (*on Discovery for Plaintiffs, on Petition for Sequestration*), *Examination-in-Chief*.

Q.—Did you make a report?

A.—I don't think so; not a written one.

Q.—Did you make a verbal report?

A.—I think I did say something verbally, yes.

10 Q.—How long had you been in England on that occasion, on that trip?

A.—Do you mean the last one, June 1929? I went over in March and came back in June.

Q.—Was your business there largely in connection with the McNish matter?

A.—Yes, a good deal of it.

Q.—They maintain offices not only in London but in Paris?

A.—They have an office in Paris.

20 Q.—Can you tell me in a general way what the condition of that McNish Company is at the present time, in the matter of surplus or deficit?

A.—I think I would have to look at the statement very carefully before I swear on that.

Mr. Holden, K.C.: Objected to as illegal.

Objection reserved in the absence of a Judge.

By Mr. McKeown, K.C.:

Q.—And also subject to the advice of your counsel?

A.—Yes.

30 Q.—Subject to the advice of your counsel and being able to find the McNish statements, will you send them to your counsel, to be exhibited to Plaintiffs' attorneys?

A.—Yes, subject to legal objections, and so on.

Q.—Will you also have compiled and handed to your counsel, to be exhibited to Plaintiffs' attorneys, statement of insurance presently carried on the stock of spirits owned by the Alcohol Company and its subsidiaries?

A.—Subject to legal objection.

40 Q.—You know in a general way what it amounts to?

A.—In a general way.

Q.—What does it amount to?

A.—I would not like to give that generally. I have a general idea.

Q.—Put it in excess of \$40,000,000?

A.—I think so.

And further deponent saith not.

ALEX. M. REAPER (on Discovery for Plaintiffs), Examination-in-Chief.

On this 20th day of February, A.D. 1930, personally came and appeared

ALEXANDER M. REAPER,

10 of the City of Montreal, Secretary-Treasurer, aged 53 years, called as a witness on behalf of plaintiffs, on discovery, having been first duly sworn, doth depose and say:

Examined by Mr. McKeown, K.C., Counsel for Plaintiffs:

Q.—You are one of the defendants in this case, Mr. Reaper?

A.—Yes.

Q.—As set out in the action, you are one of the co-executors of the will of the late Sir Mortimer Davis?

20 A.—Yes.

Q.—You are also a director, vice-president and secretary-treasurer of Sir Mortimer Davis Incorporated?

A.—Yes.

Q.—You are at present a director of the Alcohol Company?

A.—Yes.

Q.—You only joined that Board, I understand, quite recently?

A.—That is right.

Q.—When? In January?

A.—In December.

30 Q.—After the Annual Meeting was adjourned?

A.—Yes.

Q.—Who is Mrs. E. O'Grady, whose name appears here in connection with the accounts of Sir Mortimer Davis' Estate?

A.—Mrs. O'Grady was an old lady to whom Sir Mortimer had been making an allowance prior to his death.

Q.—Where does she reside?

A.—On St. Denis Street; 3962, I think.

Q.—Montreal?

A.—Yes.

40 Q.—Is she a widow lady?

A.—Yes.

Q.—The allowance, I think, was \$20 a week?

A.—Yes, \$20 a week.

Q.—Her name is not mentioned in the will?

A.—Not mentioned in the will, no, sir.

Q.—Was the idea that the Executors were continuing the allowance which had been made by Sir Mortimer before his death?

ALEX. M. REAPER (on Discovery for Plaintiffs), Examination-in-Chief.

A.—Sir Mortimer Davis Incorporated—the Directors agreed to keep that on.

Q.—Is that paid by Sir Mortimer Davis Incorporated?

A.—Yes.

Q.—She had never been an employee of the company, had she?

A.—Not as far as I know. I think she had been an old servant of Sir Mortimer's, something of that sort. She is an old lady, over
10 80 years of age.

Q.—In his home?

A.—Yes.

Q.—How did she happen to become an annuitant in the estate?

A.—She was not mentioned in the will, and the Company Directors thought they would carry her on rather than see her suffer.

Q.—In other words, they thought they had perhaps greater discretion as Directors of the Company than as Executors of the will?

A.—Yes.

Q.—I notice this \$20 a week appears to have been intermittent.
20 Was it paid continuously?

A.—It has been paid continuously. She has always been paid for the month on the first Saturday in the month, and she is paid according to the number of Saturdays in the month. It comes to \$20 a week.

Q.—\$1,040 a year?

A.—Yes.

Q.—Was that paid ordinarily from the funds of the Estate?

A.—There is only one month was paid by the Estate.

Q.—That is the first month?
30

A.—That is the first month. That was before we had received the will, and the payments which Sir Mortimer had been making on the first of each month had been continued.

Q.—Was there a Mrs. Paula Davis who had been receiving some money from Sir Mortimer before his death, the wife of Melvin Davis? Do you remember she had been receiving some money?

A.—Yes, she had.

Q.—Prior to Sir Mortimer's death?

A.—Yes.

Q.—Here the money also appears to have been coupled with
40 Mrs. O'Grady for the first month or so.

A.—Yes, all who had been receiving payments on the first of each month got them on the first of the month after Sir Mortimer's death.

Q.—Month to month, debited to the estate?

A.—Debited to the Estate.

ALEX. M. REAPER (on Discovery for Plaintiffs), Examination-in-Chief.

Q.—After that month you continued Mrs. O'Grady's payments from the Company. Did you continue Mrs. Paula Davis'?

A.—No.

Q.—There had been no further payments?

A.—No.

Q.—Was she in the same position as Mrs. O'Grady? Had she been a recipient prior to Sir Mortimer's death?

10 A.—Yes, for a short time, I think.

Q.—But the Directors did not in her case take over the continuation of the payments as they did for Mrs. O'Grady?

A.—No.

Q.—By the subpoena served upon you in this matter, Item Number 1, you were asked to produce all letters, cables and/or other communications whatsoever received by you from Lady Davis since the death of Sir Mortimer Davis. Will you show me what you produce?

20 Mr. Holden, K.C.: Anything you want produced or kept, we would rather make copies.

The Witness: Yes. There is an enclosure with one of those letters.

(The witness exhibits various paper writings, correspondence, etc., which he brought to Court, referred to in the preceding question.)

30 By Mr. McKeown, K.C.:

Q.—By Item 2 of the subpoena you were asked to produce all letters, cables and/or other communications whatsoever sent or addressed by you either as a person or as an officer of Sir Mortimer Davis Incorporated to Lady Davis; also enclosures which accompanied such letters, cables, or other communications. Will you exhibit to me such documents?

40 A.—Yes. (Witness exhibits documents to counsel.) There was this other statement as well (exhibiting statement).

Q.—Amongst the correspondence and enclosures which you have exhibited in answer to my question bearing upon Item 2 of the subpoena duces tecum, there is a copy of a statement of the Estate Sir Mortimer Davis as at March 22nd, 1928. Can you tell me on what date and in what manner this copy of this statement was sent to Lady Davis?

ALEX. M. REAPER (on Discovery for Plaintiffs), Examination-in-Chief.

A.—I think that statement was handed to Lady Davis by Lord Shaughnessy when he was in Europe, in the summer of 1928.

Q.—Do you know personally? That is your impression?

A.—That is my impression.

Q.—You have no record of having sent a copy by mail?

A.—No. I gave him one to take with him on that occasion. It was the statement as near as we could make it up to that date.

10 Q.—In what month did Lord Shaughnessy sail for Europe?

A.—July.

Q.—He was away until when?

A.—The 1st of October.

Q.—This would be the statement you had made up before his departure?

A.—Yes.

Q.—Now, by Item 2 of the subpoena, you were—

20 A.—Excuse me: there was also given to Lady Davis, or she got a statement, one of the monthly statements of April, 1929, of the Incorporated Company, and the statement of the Estate as of date May 31s, 1929.

Q.—Made up by the auditors?

A.—No made up by us. That is the one you have filed in the record.

Q.—Referring to your last answer, the monthly statement of Sir Mortimer Davis Incorporated as of April, 1929, would be the statement produced during the examination of Lady Davis in this case as Exhibit D-30? That is the statement of April 30th, 1929?

30 A.—Yes.

Q.—And the further statement to which you have just referred of the affairs of the Estate as of date May 31st, 1929, is the statement referred to in the declaration as Exhibit Number 6?

A.—Yes.

By Mr. Holden, K.C.:

Q.—Are you talking of the statement of the Estate?

A.—The statement of the Estate.

40

Mr. McKeown, K.C.: Just to identify it.

By Mr. McKeown, K.C.:

Q.—By item Number 3 of the subpoena duces tecum you were asked to bring with you all deeds, indentures or conveyances of trust delivered to secure any issue of bonds, debentures or notes of Cadil-

ALEX. M. REAPER (on Discovery for Plaintiffs), Examination-in-Chief.

lac Coal Company, as also any copies of such deeds. Is there any trust deed?

A.—No, these are in course of preparation.

Q.—When was Cadillac Coal incorporated?

A.—I have not got the exact date.

Q.—What firm of solicitors incorporated it?

10 A.—Meredith, Holden, Heward and Holden. It started to operate as from October 16th, 1928, but the incorporation only took place a little time after that.

Q.—There was an exchange of letters in connection with Cadillac Coal and an agreement under date February 4th, 1929?

A.—Yes.

Q.—Had the Company been incorporated then?

A.—Yes.

20 Q.—Provision is made in that agreement for the creation of certain twenty-year first mortgage seven per cent. gold bonds of the Company?

A.—Yes.

Q.—\$50,000 of those bonds were to be delivered to Sir Mortimer Davis Incorporated as part of the consideration?

A.—Yes.

Q.—Have they ever received the bonds?

A.—Not yet.

Q.—They were also to have security upon further bonds for any advances?

A.—They are to be delivered as soon as the bonds are issued.

30 Q.—You understand it is the sense of the agreement that the bonds were to be given as collateral for further advances?

A.—Yes.

Q.—Do I understand no trust mortgage or conveyance has been executed?

A.—No, not completed yet.

Q.—What are the assets upon which those bonds are to be secured?

A.—A property known as the Federal Mine and the mining rights of the Standard Mine.

40 Q.—Transferred in by Donaldson?

A.—Yes.

Q.—What has been the occasion of the delay?

A.—There was not any special hurry for that, because they do not start to bear interest until January 1, 1930.

Q.—Where was that provided for? Has the property, formerly known as Federal Coal, been transferred, deeded over to Cadillac Coal, conveyed to them?

ALEX. M. REAPER (*on Discovery for Plaintiffs*), Examination-in-Chief.

A.—There has been an agreement signed.

Q.—Has the title been vested in Cadillac Coal?

A.—I think not.

Q.—Has Donaldson transferred into Cadillac Coal such mining rights as he held?

A.—Yes.

10 Q.—Have you received any stock certificates for Cadillac Coal?
A.—Yes, we have.

Q.—When did you get them?

A.—They are dated 24th February, 1929.

Q.—I ask you when you got them.

A.—I cannot tell exactly.

Q.—I know, but you are the Secretary of the Company. You ought to know. I don't. When did you first get those?

A.—I would have to check that up. I cannot tell you offhand.

20 Q.—I will take it to the best of your memory. You know whether it was last week or last January.

A.—I think it would be about April, 1929.

Q.—That is, 90,000 shares, including the qualifying shares of the Directors?

A.—Yes.

Q.—What date have you got? April, 1929?

A.—Yes.

30 Q.—By Item 5 of the subpoena you were asked to produce all the guarantees and undertakings by Sir Mortimer Davis Incorporated in favour of Cadillac Coal; "any bank, corporation, persons, respecting the present or future deficits of Cadillac Coal"?

A.—We have not got anything on that. The Guarantee is with the Bank. They hold it.

Q.—There has been exhibited, in connection with Lord Shaughnessy's recent examination on discovery, in connection with the petition for sequestration, a statement showing the actual advances to January 31st, 1930, to the Cadillac Coal, or for its account, \$114,117.40. There is also a note here "Guarantee to cover bank loan of \$80,000; guarantee to cover bank; guarantee to Cadillac Coal under Wages Security Act, Alberta \$20,000;" total \$214,117.40.

40 A.—Yes.

Q.—You have no security for that guarantee?

A.—No.

Q.—Is that guarantee limited to \$80,000? .

A.—Yes.

Q.—Is the second guarantee limited to \$20,000?

A.—Yes. As a matter of fact, their guarantee against that is only \$15,000 instead of \$20,000.

ALEX. M. REAPER (on Discovery for Plaintiffs), Examination-in-Chief.

Q.—Is there any personal liability against that item of \$20,000? Is that a floating liability?

A.—That Wages Guarantee Act means the government exacts that guarantee in case of the Company's getting into difficulties, not being able to pay its employees.

Q.—As to the \$80,000, what is the present liability to the Bank under that loan?

10 A.—Just about that amount.

Q.—There are quite a variety of guarantees under that contract. Can you give me any segregation, heading, under which those advances and those guarantees have been given in connection with Cadillac Coal?

A.—No, I could not, not now.

Q.—As far as Sir Mortimer Davis Incorporated is concerned, in your accounting system, is the whole thing represented in bulk?

A.—Yes.

20 Q.—Now under your agreement, there were specific things, limited amounts. For instance, Sir Mortimer Davis Incorporated was to advance an amount not exceeding \$15,000, to be used to improve the operating conditions there?

A.—Yes.

Q.—Do you know what amount was advanced under that clause of the agreement?

A.—We did not keep the amounts separate. We simply advanced to meet the requirements.

30 Q.—There was a limit under that item of \$15,000 you were to advance?

A.—Yes.

Q.—That amount was to be repaid to Sir Mortimer Davis from time to time out of profits of the Cadillac Coal Company, to the extent less than the profits. Has there ever been anything repaid on that?

A.—To the extent of the profits of the Cadillac Mine.

Q.—To the extent of the profits of the Company. Has there been anything repaid?

A.—No.

40 Q.—Clause 2 of the contract was that Sir Mortimer Davis Incorporated agreed to advance a further sum not to exceed \$50,000 for the purpose of equipment of the properties and other properties of the Cadillac Coal, with machinery and apparatus, with a view to the development of 200 tons, at least 200 tons per day. Can you tell me what part of that advance has been made?

A.—No, we did not keep them separate.

Q.—You had a further obligation, to advance from time to time

ALEX. M. REAPER (on Discovery for Plaintiffs), Examination-in-Chief.

by way of loan for such work as may be necessary — that is an unlimited amount. Can you tell me how much has been advanced there?

A.—No, everything is included in the one item.

Q.—All these advances were to be secured by the delivery of the collateral security, seven per cent gold bonds, to the amount equal to the advances. You have told me you did not receive the bonds?

10 A.—They are to be delivered when issued.

Q.—In the meantime that Company is operating in some shape or form?

A.—Yes.

Q.—Have you got a balance sheet of that Company?

A.—No, the auditors are working on that now.

Q.—Have you ever seen a balance sheet of the Company since it has been incorporated?

A.—No, there has not been any balance sheet.

20 Q.—Have any steps been taken to prevent ordinary unsecured creditors having priority over these secured bonds?

A.—No.

Q.—Under this agreement Sir Mortimer Davis Incorporated was to investigate and if considered advisable, acquire certain sections of the coal lands, 31 and 32, Township 10, Range 21, West of the Fourth Meridian. Do you know whether those properties were ever investigated?

A.—Yes, they were investigated.

Q.—Were they acquired?

30 A.—No, not acquired.

Q.—Have they been definitely and finally abandoned?

A.—Yes.

Q.—In any event, your contract was that you would investigate them and acquire them, transfer them to the Cadillac Coal for \$100,000, the face value of these bonds?

A.—Yes, if we considered the work done on them warranted their being taken up.

Q.—You abandoned them, decided to abandon them?

A.—Yes.

40 Q.—Have you notified the Cadillac Coal formally to that effect?

A.—Yes.

Q.—In what way?

A.—Just after the examination.

Q.—When was this examination?

A.—In the spring of 1929.

Q.—Was that the time they decided to abandon them?

A.—Just after the examination.

ALEX. M. REAPER (on Discovery for Plaintiffs), Examination-in-Chief.

Q.—Who are the present officers of Cadillac Coal? ?

A.—Lord Shaughnessy, President; T. P. Cochrane, Vice-President.

Q.—He is an employee of your Company?

A.—Yes. I have been acting as Secretary-Treasurer. Howard Poillon, New York.

10 Q.—Is he an engineer?

A.—Yes.

Q.—Is he employed by your Company?

A.—He is Consulting Engineer for us.

Q.—He is not on salary?

A.—He has a retainer.

Q.—From Sir Mortimer Davis Incorporated?

A.—Yes.

Q.—Who are the other Directors?

A.—C. S. Donaldson.

20 Q.—That is the chap who turned in the other property?

A.—Yes, the manager at the mine.

Q.—Where are those mines situated?

A.—The Federal is close to Lethbridge, just across the river; and the other is about 11 or 12 miles from that, at a place named Shaughnessy.

Q.—Who are the bankers?

A.—Canadian Bank of Commerce.

Q.—Where is the banking done?

A.—Lethbridge.

30 Q.—This chap, Donaldson, turned over certain rights in coal areas, known as Sections 29 and 30, Township 10, Range 21, west of the Fourth Meridian, near Lethbridge, whatever right and title he had. What were those? Just leases?

A.—Leases.

Q.—Leases from the government, or were they purchased under option? What were the obligations attaching to that particular block, Section 29 and 30, do you know?

40 A.—Offhand I could not say. There was a certain royalty, a small royalty, in connection with some of those, with one. I think in connection with one. I am not sure about the other.

Q.—In connection with one there was a royalty, payable to the government?

A.—Payable to the former owners. It was payable to the former holder of the sections.

Q.—Were there any dues payable to the government, operating dues?

ALEX. M. REAPER (on Discovery for Plaintiffs), Examination-in-Chief.

A.—Offhand I would just like to say I am not certain. I have not looked those up recently.

Q.—Section 29: is that the one obtained under agreement with Elvin Kessler by Donaldson?

A.—Yes.

Q.—Is that the one the royalties are due on?

A.—I would have to check that up. I could not give the information offhand.

Q.—There is the second section obtained apparently by Donaldson from the two people named Peet and Freeman. Does that enable you to identify one from the other?

A.—No, not offhand.

Q.—You have told us there was a royalty attached to one of the properties. What was the obligation attaching to the other?

A.—I would have to look it up. I could not say offhand.

Q.—Was there a balance of sale on it?

A.—I think not.

Q.—You must be familiar with those things.

A.—I could get the information. I have not got it here.

Q.—Have you got agreements and titles such as they are of Donaldson, concerning the different properties?

A.—They are all with the solicitors, in connection with the preparation of the Trust Deeds.

Q.—Will you have those looked up or direct your solicitors to exhibit to Counsel for Plaintiffs the agreements showing the obligations attaching to those properties at the time Donaldson transferred them in to Cadillac Coal?

A.—Yes.

Q.—You have told me, I think, you had no Annual Statement thus far for Cadillac Coal. Have you brought with you any monthly statement?

A.—No.

Q.—Have there been any made up?

A.—No, there has not been one so far because the Cadillac property has been only operating since about the middle of November, 1929. It only went into production then.

Q.—You have no monthly statements you can produce?

A.—No.

Q.—Have you any Profit and Loss Account?

A.—No, not complete.

Q.—Have you any at all, complete or incomplete? Has there been any attempt to make a Profit and Loss Account?

A.—No. The auditors are completing the statement now.

Q.—Have you brought with you the original Minutes of the

ALEX. M. REAPER (on Discovery for Plaintiffs), Examination-in-Chief.

Meeting of Executors? You were asked to bring with you the pay cheques of Sir Mortimer Davis Incorporated covering items for automobile expenses.

A.—I understand there was a voucher. There are no cheques of Sir Mortimer Davis Incorporated. They are the Estate cheques. I thought your first two items referred to vouchers and your second referred to cheques. You have the vouchers. \$322 is the Estate
10 item, as also \$61.

Q.—Will you be kind enough to hand your solicitor to be exhibited to Counsel for Plaintiff, the cheques of the Estate concerned in the item of \$322.72, auto expenses; also the additional item of \$61.71, to the order of Robert Howard and Company Limited?

A.—Yes.

Q.—These vouchers, in connection with the item of the Estate, \$322.72, you are perfectly familiar with them personally? They have been handled by you?

A.—Yes. I exhibit the receipted invoice, Robert Howard and
20 Company, covering insurance on a 1913 Rolls-Royce touring car, as under date March 13th, 1927, for fire and theft, amounting to \$3,600, and \$50 for some adjustments, as shown.

Q.—Would you say whether that is the open touring car owned by Sir Mortimer Davis at the time of his death?

A.—Yes.

Q.—And that item, as appears, was repaid on May 16th, 1928?

A.—Yes.

Q.—From the funds of the Estate?

A.—From the funds of the Estate.
30

Q.—I see some invoices here from the National Electric Company Limited under date April 4th and May 21st; three on May 21st, for one Hart Battery, 12 volts, wet storage, \$3.50. Do you know what car that battery was for?

A.—I am not sure. I think possibly some of the bills may belong to that car.

Q.—There appear to be three invoices for similar amounts, one in April, and three on the 21st of May.

A.—That particular one belongs to the Stutz.

40 By. Mr. Holden, K.C.:

Q.—That first one is 1927?

A.—Yes. Two of them are 1927. There is only one item, \$3.50,
1928.

Q.—What date is that?

A.—May 21st, 1928, \$3.50.

ALEX. M. REAPER (on Discovery for Plaintiffs), Examination-in-Chief.

Q.—Mr. McKeown asked what car? Do you know what car?

A.—I am not sure. I think that might be the Rolls car. I think it is.

By Mr. McKeown, K.C.:

10 Q.—Now you have drawn my attention to the fact, I notice of the four invoices which I show you, two of them appear to have been in May, 1927?

A.—No.

Q.—Now as to the other two, they are for 1928?

A.—Yes. The first, April 4th, covers the Stutz car.

Q.—The second, May 21st, one Hart battery, without mentioning any car, would you say that covers the Rolls?

A.—No. It might.

Q.—There were only these two cars in the garage?

20 A.—That is all.

Q.—That item of \$3.50 was paid from the funds of the Estate?

A.—Yes.

Q.—I now exhibit to you a further invoice of Robert Howard and Company Limited under date March 27th, 1929, premium for fire and theft on Rolls-Royce car valued at \$2,000, premium \$35.

A.—Subject to some adjustments, as shown.

Q.—Say whether that refers to the Rolls-Royce owned by Sir Mortimer Davis at the time of his death?

A.—Yes.

30 Q.—Was that paid from the funds of the Estate?

A.—Yes.

Q.—Among the data exhibited by Lord Shaughnessy in connection with his examination on discovery, upon the issues as joined in the sequestration petition, he has exhibited through Counsel a list of vouchers going to make up this item of \$322.72 for automobile expenses, which includes an item under December 31st to Robert Howard and Company Limited for liability insurance on Rolls-Royce, \$125.74. Is the invoice which I now exhibit to you of Robert Howard and Company the invoice referring to that item?

40 A.—Yes. The first item on it is.

Q.—Does that invoice which you have just identified refer to public liability insurance on the car which was owned by Sir Mortimer at the time of his death?

A.—Yes.

Q.—And that was paid from the funds of the Estate?

A.—Yes.

Q.—Finally, among these vouchers I find a statement of Robert

ALEX. M. REAPER (on Discovery for Plaintiffs), Examination-in-Chief.

Howard and Company Limited dated September 27th, 1929, and which includes, under date May 22nd—I presume 1929—Rolls-Royce touring, through Lloyds, \$127.70. Would you say whether that item covers public liability upon the Rolls-Royce car in question for the year 1929?

A.—Yes. You will note there is a credit on that.

10 Q.—You will note that there is a credit under date of September 12th, the cancellation of that policy?

A.—Yes.

Q.—The first item referred to would be for public liability insurance?

A.—Liability insurance.

Q.—Liability insurance upon this car in question?

A.—Yes.

Q.—And that item, less the credit, was paid out of the funds of the Estate?

20 A.—Yes, the net amount, \$61.71.

Q.—Will you produce as a single exhibit, to be marked P-26, the vouchers which we have just reviewed together in connection with the automobile expenses being as follows:

Robert Howard and Company, \$49.30.

National Electric Company Limited, \$3.50.

Robert Howard and Company Limited, Item \$125.74

“ 34.60

“ 127.70

30 Net \$61.71

Now, under item 9-C of the subpoena you are asked to produce the cheques from Sir Mortimer Davis Incorporated going to make up an aggregate item of \$4,684.22, repaid under date September 29th, 1928. Will you say whether these cheques correspond with the list you have just produced?

A.—Yes.

Q.—There is a cheque for each item?

A.—Yes.

40 Q.—Will you note the first 13 of these cheques bear Lord Shaughnessy's signature as Vice-President, as also your signature as Secretary-Treasurer, and that the remaining cheques have been signed by you as Director, and by the Assistant-Secretary of Sir Mortimer Davis Incorporated?

A.—Yes.

Q.—There are 33 cheques in all. Will you produce as P-27 a list

ALEX. M. REAPER (on Discovery for Plaintiffs), Examination-in-Chief.

of the cheques which have just been reviewed, 33 in number? Retain these cheques to be exhibited at the trial.

A.—Yes, I do.

Q.—Will you now exhibit to me, if you please, the cheques of Sir Mortimer Davis Incorporated, aggregating \$2,875.82, included in the item repaid as under date August 31st, 1929?

A.—I might say there is no cheque for the last item.

10 Q.—It is lost?

A.—No, it is not lost. We have not got it.

Q.—There would be 32 cheques then?

A.—I exhibit 32 cheques, which cover all the items in the statement except the last one.

Q.—Which was an adjustment?

A.—It was a deduction the Alcohol Company made in one of our bills, which probably should have been taken on Lord Shaughnessy's account, and we simply charged it to him and gave them credit.

20 Q.—Will you note 23 of these cheques have been signed by Lord Shaughnessy, as President, and by yourself as Secretary-Treasurer, upon the funds of Sir Mortimer Davis Incorporated, and that the nine remaining cheques have been signed by you as Vice-President and by the Assistant Secretary of the Company?

A.—I find there are 24 signed by Lord Shaughnessy as President, and myself as Secretary-Treasurer, and eight which have been signed by myself as Vice-President, and by the Assistant Secretary.

30 Q.—Will you produce as Exhibit P-28 a list of these cheques, and retain the cheques, to be exhibited at the trial?

A.—Yes.

Q.—The next item asks for the production of the original fire, theft, liability, collision policies, affecting the Rolls-Royce automobile owned by Sir Mortimer Davis at the time of his death? Show me what you have brought in that connection.

A.—The policy which was cancelled, of course, on which the rebate was got, is not there. There is a letter showing it has been cancelled.

40 Q.—Will you produce as Exhibit P-29 the policy of Lloyds dated April 18th, 1928, covering fire, theft, etc., for one year from March 27th, 1928?

A.—I do.

Q.—I see by this policy the automobile insured is entered as being a 1913 Rolls-Royce?

A.—My information is that the Rolls-Royce car in question was a 1914, but in any event, this policy was intended to cover the only car which Sir Mortimer had at the time of his death.

ALEX. M. REAPER (on Discovery for Plaintiffs), Examination-in-Chief.

Q.—It was an open touring Rolls-Royce car?

A.—Yes.

Q.—Here in Montreal?

A.—Yes.

Q.—And it is valued at \$3,600?

A.—According to that policy.

10 Q.—Do you know if an application was made for that insurance,
an application form on behalf of—

A.—There probably was.

By. Mr. Holden, K.C.:

Q.—That would probably be in his lifetime, the application?

A.—The application for insurance, no, not for this policy. We make a new one each time, but whether the agent always insists on getting it I am not sure. I don't think they always do.

20 By Mr. McKeown, K.C.:

Q.—Will you please produce as Exhibit P-30 the policy issued by Lloyds under date May 6th, 1929, covering fire and theft, in which the value of the car is entered at \$2,000, and say whether it affects this same car?

A.—This is the policy which is in effect now. That is the policy which is now in effect.

30 By. Mr. Holden, K.C.:

Q.—Do you mean you would rather file a copy? It will be in the record here.

A.—Yes.

Q.—This is the policy in force. I think it would be better to get a copy from Howard. This is the policy in force. It might be lost in Court here and that kind of thing.

40 (By consent of the parties, in lieu of the original policy, a copy will be produced, under the same number.)

By Mr. McKeown, K.C.:

Q.—Will you now examine further the policy by Lloyds, issued under date June 28th, 1928, covering liability insurance upon the Rolls-Royce touring car, and say whether this policy applies to the car which we have been referring to?

ALEX. M. REAPER (on Discovery for Plaintiffs), Examination-in-Chief.

A.—Yes.

Q.—It belonged to the late Sir Mortimer Davis at the time of his death?

A.—Yes.

Q.—Will you please produce this as Plaintiffs' Exhibit P-31?

A.—Yes.

10 Q.—That is the policy for liability insurance upon that car which was in force during the year 1929, and which was cancelled under date September 12th, 1929?

A.—I have not got the policy. I exhibit a letter from Robert Howard and Company Limited showing the cancellation of the policy in question, letter of September 17th.

Q.—Will you produce this letter as Exhibit P-32?

A.—Yes.

20 Q.—Now, you have been asked, under item 11 of the subpoena, to produce the original cheques of the Executors of the Estate of the late Sir Mortimer Davis, to the order of Honourable H. M. Marler, \$85,000 and \$15,000, dated on or about December 4th, 1928. Have you brought those cheques?

A.—Yes. There is another one—Sir Mortimer Davis Incorporated cheque. I exhibit cheque for \$85,000 of the Executors, dated December 4th, 1928, on the Canadian Bank of Commerce, to the order of H. M. Marler, and also a cheque of the Incorporated Company of the same date, to the order of Honourable Mr. Marler.

Q.—Will you produce these cheques as Exhibits P-33 and 34?

A.—Yes, I will.

30 Q.—This cheque of \$85,000 was given to Honourable Mr. Marler in payment of 500 shares of the Incorporated Company at \$170 a share, and the cheque of \$15,000 was given to Honourable Mr. Marler for what?

A.—In connection with Trustee's fees.

Q.—Trustee's fees under what? Not under the Will.

A.—No, under some deed or trust donations.

Q.—Have you got any correspondence with Honourable Mr. Marler in connection with transactions represented by these two cheques?

40 A.—I am not sure. I will have to look that up.

Q.—Will you be good enough to look that up and hand the same to your counsel, to be exhibited to counsel for plaintiffs either today or tomorrow?

A.—Yes.

Q.—You were asked to bring the Journal, Cash Book, Ledgers, Stock Book, Stock Registers, Transfer Books, Stock Certificate Books

ALEX. M. REAPER (on Discovery for Plaintiffs), Examination-in-Chief.

of Sir Mortimer Davis Incorporated. Will you exhibit to me what you have here in that respect?

A.—Yes.

Q.—You might first let me see the Stock Register. Is that a combination register?

A.—Yes.

10 By Mr. Holden, K.C.:

Q.—That is the Stock Ledger you are showing him there?

A.—That is the Stock Ledger, yes.

By Mr. McKeown, K.C.:

Q.—This book which you have exhibited, apart from containing a list of Directors and Shareholders, the Stock Ledger or Register, also contains the transfer to the Company of stock and serial notes?

20 A.—Yes.

Q.—These serial notes, under the by-law, are transferable only on the books of the Company. Is that right? Would you say there is a clause in the by-law that all notes had to be registered, both as to principal and interest in the books to be kept by the Company for that purpose, and that all payments on account of principal and interest should be made by cheque to the order of the registered owner of the notes?

A.—Yes.

30 Q.—Have you got any Transfer Register for notes other than the book you have exhibited here?

A.—No. There is a part here in this book. There are the notes (indicating in book).

By Mr. Holden, K.C.:

Q.—Is Mr. McKeown right that only the transfers are found in here, but there is also a register of holders of notes, the same as for the stock?

40 A.—Yes.

By Mr. McKeown, K.C.:

Q.—Let us take up the actual transfers of notes entered in this volume. First of all I draw your attention to Transfer Number 1 of \$3,000,000 of notes from Sir Mortimer B. Davis to M. B. Davis, J. B. Woodall, H. M. Marler, J. R. Douglas, Trustees, under date October

ALEX. M. REAPER (on Discovery for Plaintiffs), Examination-in-Chief.

21, 1922. The next is number 2, \$210,000; H. M. Marler, H. B. McLean, to J. D. Woodall, under date 30th July, 1923?

A.—Yes.

Q.—The next is number 3, transfer of \$100,000 from Sir Mortimer B. Davis to H. M. Marler, H. B. McLean, under date November 5th, 1924?

A.—Yes.

10 Q.—Number 4 is in blank?

A.—Yes.

Q.—Could you tell me what number 4 is left in blank for?

A.—I don't know. There is no special reason.

Q.—Number 5. It is the next and last transfer—is a transfer purporting to be \$156,500 of notes from H. M. Marler, H. B. McLean, to Lord Shaughnessy under date September 20th, 1929?

A.—Yes.

Q.—It is the last transfer?

A.—Yes.

20 Q.—Those are the only transfers concerning notes, of which you have transfers signed, among the archives. Is that right?

A.—There have been some other transfers, but the notes were simply turned in for cancellation.

Q.—Have you got with you your book of notes? Those notes have been engraved, lithographed?

A.—Yes.

30 Q.—These notes carry no Power of Attorney on the bank, and the practice is to have the transferor attend at the office of the Company and sign the transfer back?

A.—In some cases. That has not been done. We simply got the certificates. The old certificates were turned in and a new one issued and the transfer made.

Q.—You retain the notes which have been surrendered back. I suppose you have them?

A.—We have them at the office there.

Q.—Have you any transfer actually in the archives of the Company affecting the 500 so-called Marler shares which were paid for by the cheque of the Estate for \$85,000 on December 4th, 1928?

40 A.—No. We have the endorsed certificates, which are practically the same.

Q.—They are only Powers of Attorney?

A.—No, they are really transfers.

Q.—Have you got them with you?

A.—Not those certificates. I have the certificate book which shows—

Q.—Will you hand to your counsel the certificate covering the

ALEX. M. REAPER (on Discovery for Plaintiffs), Examination-in-Chief.

500 so-called Marler shares which were purchased and paid for by the cheque of the Executors for \$85,000, on December 4th, 1928, in order that this cancelled certificate may be exhibited to the counsel for the plaintiffs?

A.—Yes.

Q.—On the 4th of May, 1928, it would appear that a share of Sir Mortimer Davis Incorporated, formerly registered in the name of
10 M. B. Davis Junior, was transferred to Lady Davis?

A.—Yes.

Q.—Was the certificate delivered to Lady Davis or was it retained by the Company?

A.—She endorsed it and it was retained by the Company. Lady Davis endorsed it and it is retained by the Company.

Q.—Will you let me see the Journal and Cash Book of the Company?

A.—The Journal, or both one or other?

Q.—Both.

20 A.—Here is the Cash Book.

(Witness exhibits Cash Book to Counsel.)

Q.—Also your Ledger. Show me Lord Shaughnessy's account in which this item, September 30th, 1929, \$4,684.22 is shown?

A.—That was not carried in a separate account, but in our general Accounts Receivable. It was not carried in a separate account with Lord Shaughnessy, but in our ordinary Accounts Receivable,
30 and the different items are shown here and can be easily checked up on the list.

Q.—Is that a Suspense Account?

A.—No, it is regular Accounts Receivable.

Q.—They are all bulked together?

A.—They are all carried under one total, but the details are given.

Q.—In other words, there are in this Accounts Receivable, other items?

A.—That is it. There is a cheque (indicating in account) under
40 date 29th September, 1928, page 330 of the Ledger, of the Incorporated Company, showing the payment of \$4,684.22 by Lord Shaughnessy to the Company.

Q.—Show me, if you please, in the Ledger, the account into which are extended items which I notice occur for salaries for Lord Shaughnessy?

A.—They are posted in the Ledger in total each month.

Q.—From the Journal?

ALEX. M. REAPER (on Discovery for Plaintiffs), Examination-in-Chief.

A.—No, direct from the Cash Book. You will notice there is one column for salaries, and the total is posted. The individual items are not posted.

Q.—Are these the drawings or the credits (indicating in account?

A.—These are the total salaries at the end of each month, posted from the Cash Book.

10 Q.—As drawn during that month and as paid during that month?

A.—Yes.

Q.—The amount is at the foot of the column in which it is posted?

A.—That is it.

Q.—Will you verify between July 11th and September 29th, 1928, the period during which the indebtedness of \$4,684.22 by Lord Shaughnessy to the Incorporated Company was accumulating? As shown by P-27, Lord Shaughnessy withdrew each month the sum of
20 \$1,666.66 for his salary?

A.—Yes.

Q.—Will you equally verify between the dates April 2nd and August 31st, 1929, the period during which the indebtedness of Lord Shaughnessy to the Incorporated Company of \$2,875.82 was accumulating and standing, as shown by P-28? Lord Shaughnessy, in each of these months, withdrew month by month the salary appearing in the books, \$2,083.33?

A.—Yes.

30 Q.—Now I notice two items, Mr. Reaper, the first as shown on page 51 of the Cash Book under date September 29th, 1928, Lord Shaughnessy, \$4,684.22, and the other on page 125 of the Cash Book under date August 21st, 1929, Lord Shaughnessy, \$2,875.82. Will you show me where those two items went into your bank account, the bank account of the Company?

A.—I can get you copies of the deposit receipts.

Q.—If those cheques were received by you on those dates, what would be the ordinary course, if they were deposited in the Bank? What record would you make in your book to show those cheques
40 had been deposited in the Bank?

A.—I don't make any entry in the Cash Book to show that.

Q.—In the Ledger do you keep a record of your transactions through your bank account?

A.—No.

Q.—How do you keep track of it?

A.—With your bank statements, the bank book, the pass book.

Q.—How do you check your bank?

ALEX. M. REAPER (*on Discovery for Plaintiffs*), *Examination-in-Chief*.

A.—With your pass book.

Q.—Have you got the pass book?

A.—Not here.

Q.—Have you a regular pass book for deposits? The pass book would not show it.

A.—It would probably be included with others.

10 Q.—Have you anything in your records which would show when these cheques were deposited and cashed?

A.—Yes.

Q.—What?

A.—A copy of the deposit slips.

Q.—Have you obtained from Lord Shaughnessy the particular cheques covering the items to which I have just referred?

A.—I did, yes.

Q.—Are they the two cheques, one for \$4,684.22 and the other for \$2,875.82, which correspond to the two amounts mentioned?

A.—Yes.

20 Q.—Will you produce these cheques as P-35 and 36?

A.—Yes.

Q.—Look at the first of these cheques, P-35 for \$4,684.22, which is supposed to cover an item received by Sir Mortimer Davis Incorporated under date September 29th, 1928. I notice the cheque is not dated until October 4th. Do you realize that?

A.—Yes.

Q.—What is the explanation? Did he give a post-dated cheque?

30 in. A.—No, the Cash Book was not closed up when the cheque came in. It was put in just at the end of the month.

Q.—Do you realize that is the end of your fiscal year that this entry was made?

A.—It does happen to be, yes.

Q.—You did not find any significance about that coincidence, that this cheque is entered on September 29th, 1928, which is the day before the end of your fiscal year, and the check-up by your auditors and the fact that the cheque is dated October 4th, 1928.

A.—Lord Shaughnessy had been in Europe. He just got back about the 1st or 2nd of October and he gave me the cheque.

40 Q.—You ante-dated the entry, is that it?

A.—That is it, yes.

Q.—Do you know what date he got back?

A.—It was about the 1st or 2nd, possibly. It was just into the month.

Q.—That is quite remarkable, but how do you account for the fact the same thing occurred a year later? On page 125, under date August 31st, 1929, a receipt is shown from Lord Shaughnessy under

ALEX. M. REAPER (on Discovery for Plaintiffs), Examination-in-Chief.

that date for \$2,875.82, and the cheque which you have exhibited is dated 4th September for that amount. He was not away at that time?

A.—No, he was not.

Q.—How do you account for that? Did you accept a post-dated cheque?

A.—No.

Q.—Did you ante-date the entries in the book?

10 A.—I put it in to close the book.

Q.—Does that correspond with the date Price Waterhouse and Company made their interim inspection of the books for Lady Davis?

A.—That was the date.

Q.—Is the receipt of Lord Shaughnessy's cheque and the incident to which I have just drawn your attention anything more than a coincidence?

A.—No.

Q.—You were also asked to bring the inventory of assets, moveable and immoveable, of the Estate of Sir Mortimer Davis made following his death?

A.—I brought the inventory which we had. I have here an inventory of the furniture and effects on Pine Avenue. I have an inventory of the furniture and effects, farm implements at Ste. Agathe. I have an inventory of the villa at Cannes.

Q.—Is that all?

A.—And an inventory of the jewelry which was turned over to Mr. Mortimer Davis.

Q.—Now have you got with you the Minutes of the Executors?

30 A.—Yes.

Q.—Will you look at the entry of the Minutes of the Meeting of Executors, April 25th, 1928, in the book which you have exhibited here. That Meeting was supposed to be held at 3:30 P.M. When were those Minutes transcribed?

A.—Within a day or so after, I should think.

Q.—Have you any recollection?

A.—Yes, that is my recollection.

Q.—Within a day or so. Where were they signed?

A.—I think they were signed at the hotel.

40 Q.—Were you present when they were signed?

A.—No.

Q.—In any event, they were not transcribed and signed while the Directors were there?

A.—No.

Q.—Your recollection is they were signed a few days later by Lady Davis at the hotel?

A.—Yes.

ALEX. M. REAPER (on Discovery for Plaintiffs), Examination-in-Chief.

Q.—You don't remember being there present?

A.—No.

Q.—The other Minutes have not been signed by Lady Davis?

A.—No.

Q.—Let me see the Minutes of the Incorporated Company?

(Witness exhibits Minutes to Counsel.)

10

Q.—I draw your attention especially to the Minutes of the Meeting of the 18th of October. There were only three subjects dealt with, apparently—oil leases, St. James Street property, and donations?

A.—Yes.

Q.—Going over the exhibits which were prepared in connection with Lord Shaughnessy's examination the other day I do not seem to find any Trial Balance for January and February, 1928. Were there Trial Balances for those months?

20 A.—I will look them up. I think there is one. I think I remember the January one.

Q.—1928.

A.—Yes. I think Lady Davis the other day admitted she had that one.

Q.—Will you notice in any event there are no Trial Balances after June, 1929?

A.—No. There were none prepared. No, just Trial Balances, but not a statement prepared. They are not in statement form.

30 Q.—There were no Trial Balances continued in that form after June, 1929?

A.—No.

Q.—I find there is no statement of revenue for March, 1928. You know the statement annexed to the Trial Balance?

A.—I don't think I could find a copy of that.

Q.—I find no Trial Balance or revenue statement for September, 1928?

A.—That is the annual Balance Sheet.

40 Q.—I notice, in carrying forward the figures from August, 1929, to September, there seems to be no statement as between the Estate and the Company for January, 1930. Has that been made up?

A.—A statement, no. No, I don't see any. There is not any. There has not been any made up yet.

Q.—Would you explain to me the transfer from August 31st, here, to September 1st, of the balance brought forward into the next statement, being a statement between the Company and the Estate at August 31st and September 1st, 1929?

A.—The difference of \$176.38? There is an item on the state-

ALEX. M. REAPER (on Discovery for Plaintiffs), Examination-in-Chief.

ment dated October 10th, 1929, \$176.78, which really belongs to the August period.

Q.—You say no statement for January, 1930, has been prepared?

A.—No.

Q.—I notice the Bamberger statement, starting February, 1929, running down to and including March, 1928—you did not make them after that date?

10 A.—Those were memorandums for Sir Mortimer. They were not continued after his death.

Q.—When was that stock taken from Bamberger's to the Canadian Bank of Commerce, approximately?

A.—I should think about the beginning of these Estates. The statement, I think, will show it.

Q.—In the course of last summer?

A.—Yes. It was probably around August. It is in one of the Estate accounts; August, 1929, about that time.

20 Q.—There would have been a liability to the Bamberger's standing since May, 1928, of something over \$200,000?

A.—Yes.

Q.—All that time it was subject to fluctuation on the New York rate, and interest rates which, at times, were quite high?

A.—Yes.

Q.—The quantity of stock was amply sufficient to secure the loan, as was afterwards done through the bank at ordinary bank rates?

30 A.—Yes, but we did not know when we might sell that stock. We did not move it before.

Q.—I notice in the accounts of 1927 Sir Mortimer appears to have disposed of about a million dollars in Imperial Tobacco shares.

A.—I beg your pardon?

Q.—Between March 10th and August 8th, 1927, Sir Mortimer appears to have disposed of about a million dollars worth of Imperial Tobacco shares?

A.—Yes.

Q.—I notice there seems to have been a special account used for that for a certain period?

40 A.—Yes.

Q.—And the proceeds of the sale of those shares appear to have gone to reduce demand notes from time to time existing at the Canadian Bank of Commerce?

A.—To reduce the Bank indebtedness of Sir Mortimer.

Q.—Do you know in what way Sir Mortimer received the funds left at the Bank? I notice the Bank funds fluctuated. They are

. ALEX. M. REAPER (on Discovery for Plaintiffs), Examination-in-Chief.

reduced from time to time by the proceeds from the sale of that stock.

A.—Yes.

Q.—Do you know in what way Sir Mortimer received the amount represented by the demand notes? What caused the notes to fluctuate?

A.—The notes fluctuated as payments were made on account.

10 Q.—When payments were made on account they were not going up from \$400,000 to \$600,000. It must be that Sir Mortimer received more funds from the Bank, notwithstanding the sale of the stock. Do you understand what I mean?

A.—Not quite. He used to draw cheques on the Bank.

By Mr. Holden, K.C.:

Q.—And they would let him overdraw?

20 A.—Yes. There were two demand notes, one in the personal account for \$400,000, and another in the special account for \$600,000, and both of these notes were reduced from time to time with the proceeds of the sale of the Imperial Tobacco Company during his lifetime.

By Mr. McKeown, K.C.:

Q.—Show me the Cash Book a minute. That would be the Cash Book of the Estate?

30 A.—I have not got the Cash Book of the Estate.

Q.—Have you got any account books of the Estate here at all?

A.—No.

Q.—Will you prepare from your books and records in your possession a statement of the income of Sir Mortimer Davis during the years 1925, 1926 and 1927, or the withdrawals by him?

A.—From the Incorporated Company?

Q.—Withdrawals from the Incorporated Company and other items of income as shown by the records in your possession.

A.—Of his?

40 Q.—Yes, of his, that went through your records.

A.—You mean regarding his personal accounts as well?

Q.—Yes.

A.—Because I did not have anything to do with them until towards the end of 1926.

Q.—Well, from that time on.

A.—Yes.

ALEX. M. REAPER (on Discovery for Plaintiffs), Examination-in-Chief.

Q.—Did I understand you to say that you had only been identified with Sir Mortimer from 1926 forward?

A.—Oh, no, but that is when I did look after some of his personal affairs, from then on.

Q.—Who looked after them before that, do you know?

A.—Well, I don't think he had—Miss Dunne looked after them prior to that.

10 Q.—I think that will be all, but I should like to see the other exhibits in the meantime.

(The further examination of the present witness was suspended by the plaintiffs, pending production of the several documents to which reference has been made and which are to be communicated to counsel for the plaintiffs through counsel for the defense.)

20 And further for the present deponent saith not.

30

40

LORD SHAUGHNESSY (on Discovery for Plaintiffs), Examination-in-Chief.

On this 20th day of February, A.D. 1930, personally came and appeared

RIGHT HONOURABLE LORD SHAUGHNESSY

10 called as a witness on behalf of plaintiffs on Discovery, having been first duly sworn, doth depose and say:

Examined by Mr. McKeown, K.C., Counsel for Plaintiffs:

Q.—You are one of the defendants in this case?

A.—Yes.

Q.—You have been present during Mr. Reaper's examination on discovery this morning?

A.—Yes.

20 Q.—You also have been asked to produce all letters, cables, or other communications which you received from Lady Davis. Will you exhibit to me what you have brought?

A.—I think they are all together. Here they are. (Witness hands document to counsel.)

Q.—Will you also tell me what you produce in answer to item Number 2 of the subpoena in connection with copies of letters sent to Lady Davis? Did you keep copies of all letters sent to Lady Davis?

A.—I did, most of them. There were some I wrote in longhand I did not keep copies of. I think there are a few you have.

30 Q.—Did you retain all the letters from Lady Davis?

A.—Yes, they were filed.

Q.—Even if they were personal letters?

A.—Yes. I think I have one letter at home amongst those that is not a personal letter, addressed to my house. I will produce that. It is in a file on my desk at home.

Q.—Do you remember the personal letter you speak of?

A.—I don't think it is of any importance. I don't think there is any business in it. I think it is more personal.

Q.—You might send it down.

40 A.—I will, yes.

Q.—You were asked to produce all letters you received from Sir Mortimer Davis, written in January, 1928. Have you got them?

A.—Yes.

Q.—Now I would like you to produce these two letters of the 3rd and 19th of January 1928 from the late Sir Mortimer Davis to yourself, to be filed as Exhibits 37 and 38. You were also asked to

LORD SHAUGHNESSY (*on Discovery for Plaintiffs*), *Examination-in-Chief*.

produce here monthly statements submitted to the Directors of Alcohol for the year 1927?

By Mr. Holden, K.C.:

10 Q.—On behalf of defendants we object to the production of the items mentioned in paragraphs 17, 18, 19 and 20 of the subpoena *duces tecum*, as these documents are confidential documents that were prepared for the Directors of that Company, which is not a party in this suit, and that because it would not be to that Company's interest to produce such documents in Court.

Objection reserved in the absence of a Judge.

By Mr. McKeown, K.C.:

20 Q.—You have also been asked to produce by the subpoena the annual and monthly reports and statements and Profit and Loss accounts of the so-called McNish concern for the years 1927, 1928 and 1929.

Mr. Holden, K.C.: The objection covers that item too.

Objection reserved in the absence of a Judge.

By Mr. McKeown, K.C.:

30 Q.—You have also been asked to produce the report to the directors of the Alcohol Company re the McNish Company, made by you to the Directors of the Alcohol Company upon your return from England in June, 1929.

Mr. Holden, K.C.: My objection covers that also.

Objection reserved in the absence of a Judge.

40 By Mr. McKeown, K.C.:

Q.—Also a statement of insurance carried by the Alcohol Company and its subsidiaries on the stock of spirits.

Mr. Holden, K.C.: My objection covers that question too.

Objection reserved in the absence of a Judge.

LORD SHAUGHNESSY (*on Discovery for Plaintiffs*), *Examination-in-Chief*.

By Mr. McKeown, K.C.:

Q.—Have you brought with you, as required by item 16, any annual or monthly report or statement or Profit and Loss Account with Jennison Company Limited?

A.—No.

10 Q.—Have you ever seen it?

A.—No.

Q.—Has there been any issued?

A.—No, not to me.

Q.—Do you know of any report having been prepared and submitted?

A.—I do not know.

Q.—Where is Jennison?

A.—He lives in Montreal.

Q.—Is he a resident here in Montreal?

20 A.—Yes.

Q.—Where does he reside?

A.—I think he resides at the Acadia Apartments. I am not sure of that. One of those, the Acadia or the Chateau out on Sherbrooke Street.

Q.—Do you remember having met Lady Davis in London shortly before she sailed, in May 1929?

A.—Yes.

Q.—Did you dine with her?

A.—Yes.

30 Q.—She was only in London a few days at that time?

A.—She was in London from Sunday evening until Tuesday morning.

Q.—What evening was it you dined with her?

A.—Monday evening I dined with her. I lunched with her Monday and dined with her Monday evening.

Q.—What date would that be that she arrived in London?

A.—May 12th, as far as I can remember, and sailed on the 14th.

Q.—This would be the night of the 13th?

A.—Yes.

40 Q.—Where did you dine with her?

A.—At the Embassy Club.

Q.—Just you and her?

A.—No, there were two others, a man called Aldao and my wife.

Q.—On what date did you leave London to return to Montreal on that occasion?

A.—On that visit?

Q.—Yes.

LORD SHAUGHNESSY (*on Discovery for Plaintiffs*), *Examination-in-Chief*.

A.—I left the 1st of June.

Q.—Did you come the Canadian way?

A.—Yes.

Q.—When did you get in here?

A.—I got in here on the 8th of June.

Q.—Quebec?

A.—At Quebec.

10 Q.—Do you remember that Lady Davis dined at your home shortly after your arrival?

A.—Yes, she did.

Q.—Can you fix the date of that?

A.—It was a Sunday evening, I think, the first time. She dined twice.

Q.—Would that be the first Sunday after your return?

A.—I don't remember whether it was the first one or not.

Q.—Was the first time she dined there a Sunday?

A.—Yes.

20 Q.—That would be either the first or second Sunday after your return?

A.—Probably, yes.

Q.—Who was present? Your immediate family?

A.—Just my wife and myself, I think.

Mr. McKeown, K.C.: Now, Mr. Holden, I am sorry but I have to press for these statements. You and I shall have to go and have words with the Judge.

30 And further deponent saith not.

ALEX. M. REAPER (on further Discovery for Pltffs.), Examination-in-Chief.

On this 28th day of February, A.D. 1930, personally came and appeared

ALEXANDER M. REAPER,

10 of the City of Montreal, Secretary-Treasurer, recalled to continue his examination on discovery, commenced February 20th, 1929, having been previously sworn, doth depose and say:

Examined by Mr. McKeown, K.C., Counsel for Plaintiffs:

Q.—Have you here with you the books of account of the Estate?

A.—Yes.

Q.—In what form are these books? What do you keep? What system?

20 A.—Cash Book, Ledger, Journal, a sub-division of the ledger showing revenue accounts.

Q.—These books I suppose were opened following the death of Sir Mortimer Davis, based primarily on the provisions of the will?

A.—Yes.

Q.—And the inventories afterwards made?

A.—Yes.

Q.—Just let me see the ledger. Show me if you please the accounts of the legatees that have been opened.

A.—The annuitants?

30 Q.—The legatees generally, either annuitants or legatees such as the hospitals.

(Witness exhibits a section of the Ledger entitled "Liabilities." Looking at page 8 he says that the legacies and cash there entered are still outstanding with the exception of four items which have been ticked off, being for servants, \$3,800; Howard Clark, \$1,000; M. B. Davis, Junior, jewellery, \$18,667.50; Lady Davis, cash, \$255.98.)

40 Q.—Have any special accounts been opened for these legatees in the accounting system?

A.—Not separate from anything else.

Q.—Nothing has been paid on account of the other legacies apart from those you have mentioned?

A.—No.

Q.—As these accounts are carried by the Estate, is any interest allowed or credited to these legatees, in any part of these accounts?

ALEX. M. REAPER (on further Discovery for Pltffs.), Examination-in-Chief.

A.—No, not on those.

Q.—We have had before us page 8, the section of the ledger entitled “ Liabilities,” and this particular page being entitled “ Legacies, etc.”?

A.—Yes.

Q.—Have you in your ledger here an account for fees of Executors?

10 A.—You mean referring now to credits or charges?

Q.—The credits and charges?

A.—Here is the charge.

(Witness indicates the section of the Ledger entitled “ Revenue Disbursements,” page 12, entitled “ Trustees’ and Executors’ fees.”)

Q.—Are there any withdrawals of fees shown on this page 12?

A.—Those that accrued. There has been nothing paid yet.

Q.—Since the opening of the Estate?

A.—No.

20 Q.—And these accrue annually at the rate of \$5,000?

A.—Yes.

Q.—The \$15,000 item for Mr. Marler, it was advanced on account of fees to the Trustees under Deeds of Donation?

A.—Yes.

Q.—It had nothing to do with the will?

A.—No, it had nothing to do with the will.

Q.—The cheque was actually drawn on the incorporated Company?

30 A.—It was. But charged to the Estate.

Q.—Where does it appear in the Ledger? You have referred me to the section of the Ledger entitled “ Stocks ” and to page 28, being the account opened in the name of H. M. Marler.

A.—Yes.

Q.—This item refers to \$85,000?

A.—No, it is \$15,000.

Q.—What was the purpose of this? To be paid out of the Estate or giving a cheque of the Incorporated Company?

40 A.—The idea was, I think, so the transaction would be distinct, the payment for his stock and the Trustees’ fees.

Q.—Could you not equally well have issued a second cheque to the Executors for \$15,000?

A.—Yes.

Q.—You don’t know of any other reason?

A.—No.

Q.—The Estate was in funds at that time, was it?

ALEX. M. REAPER (on further Discovery for Pltffs.), Examination-in-Chief.

A.—No, we had to get our funds from Sir Mortimer Davis Incorporated.

Q.—For both items?

A.—Yes.

Q.—Did the Estate have a bank overdraft at that time?

A.—It was just about running even. We were putting in money as it was required to cover the account.

10 Q.—This \$15,000 item, as far as the Estate books are concerned, is only a cross entry?

A.—It is one of those Trust funds, as regards the Estate.

Q.—Let me see your Accounts Receivable. Is this account now before us, being contained in the section of the Ledger entitled "Sundry Accounts," page 20, entitled "Accounts Receivable," the only accounts receivable which has been opened in the books of the Estate since Sir Mortimer's death?

20 A.—You might say there is an account of J. F. Kandalaft, of Paris. It was a balance he had on hand at that date, part of which is still outstanding.

Q.—Apart from the Kandalaft account, were there any other Accounts Receivable?

A.—Yes, there is one here.

Q.—Mr. Hersey, page 16?

30 A.—Yes. There is an item here against Lady Davis, \$1,165.79. I might say in preparing the statement, this amount was really applied against the Executors' fees. The net amount simply shows as due the Executors. There is one item charged, \$1,100—I mean there might be some question about it. I will try to get it straightened out. I am trying to have it straightened out with Kadalraft now.

Q.—It is shown as a payment which had been made to Lady Davis' account?

A.—Lady Davis has asked us to get some particulars about it. We are trying to get it. The other balance is a small item.

Q.—Is this account in the section of the Ledger entitled "Sundry Accounts" page 12, as shown in the name of Sir Mortimer Davis Incorporated, the account where advances received by the Estate from the incorporated Company are recorded?

40 A.—Yes.

Q.—And interest is debited on this account in the books of the Estate in favour of the incorporated Company?

A.—Yes, credited.

Q.—To get one point cleared up beyond any question, will you please again refer to the section of the Ledger entitled "Liabilities," at page 8, being the account opened for legacies, and tell me again whether there is any separate account in the books of the Estate,

ALEX. M. REAPER (on further Discovery for Pltffs.), Examination-in-Chief.

anywhere opened in the name of these beneficiaries by way of legacies for fixed amounts, including hospitals?

A.—No, these are the hospitals. (Indicating.) There are no other separate accounts for that item.

Q.—That is the Cash Book that you now have before you, which is from J. F. Dawson Limited, with their stock number “ V.X. 7638,” a number of some description on the second inner page—1124-
10 300, the original Cash Book opened for the Estate?

A.—Yes.

Q.—Opened by you under the direction of the auditors?

A.—No. Myself first.

Q.—This book which I have just referred to contains all the entries of cash in and out for the Estate?

A.—Yes.

Q.—Now, have you got an account of General Expenses, to carry on the Estate, in the Ledger?

20 A.—Yes.

(Witness indicates in the section of the Ledger entitled “ Revenue Disbursements,” at page 10 of the account, entitled “ General Expenses ” and adds that the same indicates the revenue expenses.)

A.—This is revenue general expenses.

Q.—What further accounts have you got for expenses of the Estate in the Ledger?

30 A.—Apart from that, what have I in the way of general expenses?

Q.—Expenses of operating.

A.—Here is Revenue Expenses.

(The witness indicates the section of the Ledger entitled “ Revenue Disbursements,” beginning with the account of annuities.)

Q.—Under this section the expenses in connection with each of the properties of the Estate are kept under separate headings?

A.—Yes.

40 Q.—Have you got any accounts opened in the books of the Estate in the name of Lord Shaughnessy?

A.—No. It just appears under those legacies.

Q.—The legacies are on the page you refer to, but no special one?

A.—No, no special one.

Q.—In fact, there are no accounts for any of the legatées?

ALEX. M. REAPER (on further Discovery for Pltffs.), Examination-in-Chief.

A.—No. His amount is shown in that \$405,000. There were some general capital expenses.

(The witness indicates in the section of the Ledger entitled “Estates,” Estate Expense Account, page 1, entitled “Estate Expenses.”)

10 A.—It is shown there as a capital expense. That is why it is separate from the other.

Q.—Now, will you show me for a minute the Cash Book and Ledger of the Incorporated Company?

A.—The Cash Book and Ledger of the Incorporated Company?

Q.—Yes. Will you look at page 76 of the Cash Book of the Incorporated Company open for part of the month of January, 1929, at the entry corresponding with cheque number 2428, Lord Shaughnessy, \$10,000.

A.—Yes.

20 Q.—Show me where that is extended in the ledger of the Company?

A.—It is in the General Accounts Receivable, entered on page 330 of the Ledger, under date January 5th, 1929.

Q.—How much more of that sort of thing, of advances to Lord Shaughnessy from the funds of the Incorporated Company have found their way into the Accounts Receivable?

A.—Only those you have been given previously.

Q.—Only those, the list of which has been filed as Exhibits?

30 A.—Yes.

Q.—You are quite certain of that?

A.—Yes.

Q.—There is no account opened in the books of the Incorporated Company in the name of Lord Shaughnessy, showing transactions of that nature?

A.—Yes, there was an account open; more than one account with him.

Q.—I mean since the death of Sir Mortimer Davis. I don't care what happened before.

40 A.—Not since the death of Sir Mortimer Davis.

Q.—Now, incidentally, what is the present standing of the Jennison matter, which is brought to my mind by an entry I see here?

A.—Simply that we hold \$50,000 of preferred stock in his company, and 500 shares of common stock.

Q.—Have you seen Jennison lately?

A.—Yes, I saw him a few days ago.

Q.—Who are the officers of the Jennison Company?

ALEX. M. REAPER (on further Discovery for Pltffs.), Examination-in-Chief.

A.—Mr. Jennison is President.

Q.—Who is the Vice-President?

A.—Mr. McAvity.

Q.—Who are the directors?

A.—Lord Shaughnessy and myself and another.

10 Q.—Have you had any Meeting of that Company or the Board of Directors?

A.—No.

Q.—Have you had a Meeting of that Company or its Board of Directors?

A.—No, I think not.

Q.—Not that you attended?

A.—No, not that I attended.

Q.—Have you got the certificates of that preferred stock here?

A.—Yes.

Q.—Will you show them to me?

20 A.—Yes.

(Witness exhibits certificate Number 1 of Jennison and Company Limited, covering 500 preference shares, registered in the name of Sir Mortimer Davis Incorporated; also certificates Numbers 1, 5, and 6 covering 498, 1, and 1, common shares in favour of Sir Mortimer Davis Incorporated, Lord Shaughnessy and Alexander M. Reaper respectively.)

30 Q.—These certificates are all issued in the month of January, 1929?

A.—Yes, sir.

Q.—The preference shares have a par value of \$100?

A.—Yes.

Q.—Carrying 6 per cent cumulative preference dividend?

A.—Yes.

Q.—From the six months period last preceding the issue of the stock?

40 A.—Yes, as, when and if declared by the Board of Directors. The condition endorsed on the back of the preference share certificate reads:

“ 1. The holders of said preference shares shall be entitled to, and shall receive half-yearly, on the 1st days of July and January, in each year, as, when and if declared by the Board of Directors dividends cumulative from July 1st, 1928, or from the half yearly dividend day next preceding the date of issue, or from the date of issue, if it be half-yearly dividend day, on

ALEX. M. REAPER (on further Discovery for Pltffs.), Examination-in-Chief.

the amount paid up on their shares at the rate of six per cent per annum, but no more, out of and from surplus of net profits of the Company (being monies properly applicable to the payment of dividends) in preference but not with priority over any payment of dividends upon common shares of the Company.”

10 Q.—Now, a meeting of the Incorporated Company’s directors, if I remember well, appears to have been held on December 31st, 1928, at which certain bonuses were authorized?

A.—Yes.

Q.—I would not say “certain bonuses,” but a bonus to Lord Shaughnessy was authorized?

A.—Yes.

Q.—Was that bonus paid?

A.—The bonus was paid.

Q.—Show me the entry in the book covering the payment?

20 (Witness indicates at page 62 of the Cash Book, against cheque Number 2331, under date November 6th, 1928, an entry reading “Sal. A/C, Lord Shaughnessy bonus, \$5,000.”)

Now, that bonus paid out under date November 6th, 1928, \$5,000, is the bonus dealt with for the first time by the Board under date December 31st, 1928. Is that right?

A.—It was approved by the Board on that date, yes.

30 Q.—Will you show me Lord Shaughnessy’s salary account, if he had one?

A.—No. He explained the other day his salary account is not shown separately. The totals of the salary account are posted each month from cash, but his payments appear in the column.

Q.—This particular item we have been discussing, that is, the payment made by cheque Number 2331 under date November 6th, 1928, for bonus, is not extended into the salary column, although entered as against “Salary Account.” Where was it extended to?

40 A.—That item is posted separately in a small account in the Ledger.

Q.—Show it to me in the Ledger.

A.—Yes.

Q.—I asked Lord Shaughnessy on a former occasion to produce the notices which were sent out of the annual Meeting of the Incorporated Company held on December 31st, 1928. He produced a copy of a letter dated 26th December, 1928, addressed to Lady Davis in France, bearing your initial. Was that letter mailed to Lady Davis?

ALEX. M. REAPER (on further Discovery for Pltffs.), Examination-in-Chief.

A.—Yes, mailed.

Q.—Who else got notices of that annual Meeting?

A.—Lady Davis, Mr. Waddell. I think there is a note there, “Estate.”

Q.—It says “Copy sent to Lord Shaughnessy re Estate Sir Mortimer Davis”?

A.—Yes.

10 Q.—Are you sure Mr. Waddell was sent a copy?

A.—Yes, I have the copy on my file.

Q.—Was he in Montreal at the time?

A.—I think not.

Q.—Did you send notices to Mr. H. B. McLean?

A.—No.

Q.—Or to Mr. Marler at that time?

A.—No, Mr. Marler had given Power of Attorney to Lord Shaughnessy.

Q.—To vote his stock?

20 A.—Yes.

Q.—But you did not, in point of fact, send him a notice? The notices were only sent to those people mentioned?

A.—And Mr. Waddell.

Q.—Did you carry any insurance on the moveables, furniture in the Pine Avenue house?

A.—Yes.

Q.—For what amount?

A.—Around approximately \$300,000. I could get you the figures.

Q.—I don't mean the building. I mean the contents.

30 A.—There is on the contents. I will have to get the information.

Q.—You might get me the amount of insurance on the building and the amount of insurance on the contents in the Pine Avenue house?

A.—Yes.

And further deponent saith not.

LORD SHAUGHNESSY (*on further Discovery for Plaintiffs*), *Exam.-in-Chief*.

On this 28th day of February, A.D. 1930, personally came and appeared

RIGHT HONOURABLE LORD SHAUGHNESSY

10 of the City of Montreal, President, Industrial Alcohol Company, called as a witness on behalf of Plaintiffs on Discovery, having been previously sworn, doth depose and say:

Examined by Mr. McKeown, K.C., Counsel for Plaintiffs:

Q.—The other day when your examination was suspended there was certain correspondence, copies of correspondence to be produced, all of which, I think, has been handed to me today by Mr. Reaper.

A.—I think so.

20 Q.—There was a letter which you had from Lady Davis, which you were to produce. Have you got it here?

Mr. Holden, K.C.: Lord Shaughnessy gave me that yesterday, a letter from Lady Davis to him.

The Witness: Yes. This is on file. It was an isolated letter. I have it at home.

By Mr. McKeown, K.C.:

30 Q.—Have you got private files of Sir Mortimer Davis, kept by him during his lifetime in connection with his personal affairs?

A.—I think we have.

Q.—Extending back how far?

A.—It should go back very far, because when Sir Mortimer Davis' affairs were turned over to Mr. Reaper from Miss Dunne, all his files were sent here. They go back very far. We have them in the vault.

40 Q.—Will you be good enough to have looked up and bring to Court with you on Monday the vouchers from Hayden and Company, New York, covering work, materials, equipment of furniture supplied by them and installed in the Pine Avenue house?

A.—Yes.

Q.—Either at the time the house was built or at such time as the dining room may have been repanelled and refurnished?

A.—I will do that.

Q.—Speaking of the Ste. Agathe property—Mr. Hyde has

LORD SHAUGHNESSY (*on further Discovery for Plaintiffs*), *Exam.-in-Chief*.

handed me some correspondence which he had with you in the month of March, 1929, concerning a lease of that property by M. B. Davis Junior. Do you remember the incident?

A.—Yes, I do.

Q.—Do you remember that M. B. Davis, one of the plaintiffs, desired to rent that property?

10 A.—Yes, I remember Mr. Hyde communicating with me about it, but we had had a discussion with Mr. Joseph, who had the property in hand some time before, about some client of his that thought of renting it.

Q.—Do you remember the client's name?

A.—I don't think I do. I think Mr. Joseph spoke to me about it and we considered it, and we figured the renting of the property might not be desirable from the point of view of sale.

Q.—Do you remember what Mr. Joseph's client at that time was offering?

20 A.—No, I don't remember any figure being mentioned. He asked me if the property was for rent, and I discussed it with him and with Mr. Reaper, and my opinion was it was a bad thing to rent the property; it might interfere with the sale of it, and inasmuch as we had made that decision in connection with the client of Mr. Joseph, it seemed difficult to accede to Mr. Davis' request to rent it. I think I did say to Mr. Hyde over the phone, if Mr. Davis came up here probably the Executors would not object to him going up there some time or something like that.

30 Q.—But Mr. Davis' proposition was one on which he was to pay rent?

A.—Unquestionably it was; precisely.

Q.—Apart from the offers of Mr. Joseph's client, whose name we have not got for the moment, and Mr. M. B. Davis, did you receive other requisitions for the renting of that property?

A.—Not for the rental, no; not that I can remember offhand. We had some deals about the purchase and sale.

Q.—Was there any proposition to lease in connection with the options for sales and purchases?

40 A.—Yes, I think there was one. Senator Raymond made an offer on the property, and I think—no, he made a straight offer. I know of none. He made a straight offer to purchase. He did not suggest rental at all.

Q.—You suggest no one offered an option of lease, with the privilege of sale?

A.—No. It was a straight purchase proposition.

Q.—I said to Mr. Holden that I intended to ask you to exhibit

LORD SHAUGHNESSY (*on further Discovery for Plaintiffs*), *Exam.-in-Chief*.

to me 196 $\frac{1}{2}$ -1,000 notes of the Incorporated Company, and the certificate covering 2,401 shares of the Incorporated Company.

A.—2,400 I have. The one share is a qualification share, held in the records of the Company.

Q.—What you exhibit is the 20-year six per cent serial note of Sir Mortimer Davis Incorporated, for \$196,500, Numbers 11,082-11,278 $\frac{1}{2}$, payable to Lord Shaughnessy, according to its term?

10 A.—Yes.

Q.—Secondly, certificate 029, Sir Mortimer Davis Incorporated, dated September 20th, 1929, covering 2,400 shares in favour of Lord Shaughnessy?

A.—Yes.

Q.—It is not endorsed?

A.—No.

Q.—Will you exhibit to me, please, copies of your Income Tax returns for the year 1917, and forward.

A.—Yes.

20 Q.—Will you bring them?

A.—I will be glad to get them.

Q.—Will you bring them to Court on Monday?

A.—Yes.

Q.—In the correspondence exhibited by Mr. Reaper in connection with the purchase of Mr. Marler's stock, I see a reference to a further letter from Mr. Marler to yourself, in his letter to you of November 6th, to a further communication which he sent to you in the way of a personal note at that time. Did you run across that in your correspondence?

30 A.—I did not, no. I thought all the correspondence was there. That is all we had in the file. I do not know of any other.

Q.—That is all you found?

A.—I am sure that is all I got.

And further deponent saith not.

WM. GODSALL (*for Plaintiffs*), *Examination-in-Chief*.

PLAINTIFFS' EVIDENCE AT TRIAL

On this 3rd day of March, 1930, personally came and appeared

WILLIAM GODSALL

10 of the City of Montreal (3579 Peel Street), caretaker, aged 54 years, called as a witness on behalf of plaintiffs, having been first duly sworn, doth depose and say:

Examined by Mr. McKeown, K.C., Counsel for Plaintiffs:

Q.—Mr. Goodsall, you were in the employ of the late Sir Mortimer Davis?

A.—Yes.

20 Q.—For how many years?

A.—22, up to the present.

Q.—Are you the William Godsall mentioned in the Will of the late Sir Mortimer Davis?

A.—Yes.

Q.—Both as to paragraph or article 8, in the matter of the legacy of \$2,000, and in paragraph 9 as to an annuity to yourself and to your wife?

A.—Yes, I believe so.

30 Q.—I will ask you, have you received your payment of your legacy of \$2,000?

A.—No.

Q.—Did you ever have any conversation with respect to that with Lord Shaughnessy?

A.—Well, with Mr. Reaper; not with Lord Shaughnessy.

Q.—When was that?

A.—The last time would be about——

Q.—Tell us when the first time was?

A.—The first time would be in May, 1928.

Q.—Following the death of Sir Mortimer Davis?

40 A.—Yes, just after.

Q.—What was said at that time?

A.—A remark was passed to me that he would be able to pay me that—Mr. Reaper passed the remark to me that they would very likely be able to pay the legacy in the course of a few weeks. That was some time in May the remark was passed.

Q.—Did you have any further conversation with either of the defendants about the payment of the legacies?

WM. GODSALL (for Plaintiffs), Examination-in-Chief.

A.—Yes. Mr. Reaper, again, I think about October or November.

Q.—The same year?

A.—Yes.

Q.—What was said at that time?

A.—I brought the subject up and he said it took quite a long while to straighten out the matter, but it would be paid then. I never
10 said anything more about it after that.

Q.—He said it would be paid then?

A.—No. He said it took quite a long time to straighten matters out, but it would very likely take upwards of a year.

Q.—As to the annuity, you have remained in the employ of the Estate?

A.—Yes.

Q.—And are still there?

A.—Yes.

Q.—In what position were you employed by Sir Mortimer Davis
20 when you first went there?

A.—Coachman, at first.

Q.—Did you, at any time thereafter, take up any different duties?

A.—Yes, chauffeur since 1913.

Q.—Can you tell us what cars Sir Mortimer Davis owned at the time of his death here in Montreal?

A.—Just one Rolls touring; a Rolls-Royce touring car.

Q.—What model was it?

A.—1914.
30

Q.—Do you know whether Sir Mortimer Davis bought that car new?

A.—No, second-hand.

Q.—When?

A.—1916.

Q.—What was paid for it, do you know?

A.—Approximately \$9,000, or just inside \$9,000.

Q.—After Sir Mortimer bought that car in 1916, was it in constant use here in Montreal up to the time of his death?

A.—Yes, summer use, but it went around one winter.
40

Q.—What winter would that be?

A.—I would have to look back about that. It is six or seven years ago.

Q.—What condition of repair was the car kept in?

A.—First class.

Q.—At any time since it was acquired, were there any structural changes made in it, or major repairs?

WM. GODSALL (*for Plaintiffs*), Examination-in-Chief.

A.—Yes, there was—when the car was bought it had a touring top. I think it had a Victoria top put on it six or seven years ago.

Q.—Apart from the top, was there any other change made?

A.—There was some engine work done about four years ago; reboring new piston; cylinders rebored; no other work but engine work, except the car was painted.

10 Q.—Tell me again what the work was to the engine?

A.—New pistons rebored.

Q.—Where was that work done?

A.—Springfield.

Q.—Massachusetts.

A.—Yes.

Q.—Were you acting as chauffeur at that time?

A.—Yes, I took it down and brought it back.

Q.—Is that where the Rolls-Royce factory is situated?

A.—Yes, that is their American manufactory.

20 Q.—Do you know what those repairs cost?

A.—No, I am afraid I don't. I would not know. I don't really remember. Around \$1,000. I would not exactly—no, I don't know.

Q.—Let us fix the date as well as we can.

A.—The year the car went back to Springfield?

Q.—We are reminded Sir Mortimer died in 1928.

A.—The date could be found by the receipted bill, I think, but it is very likely five years.

Q.—Your impression is it would be five years this spring?

A.—1925, yes.

30 Q.—Following those repairs, in what condition was the car?

A.—It would be in A-1 condition then.

Q.—How much use was made of that car? To what extent was the car used during Sir Mortimer's lifetime?

A.—It was not used very much the last two or three summers, and when the work was done at Springfield it might have done possibly 5,000 miles.

Q.—That would be the summers of 1925, 1926 and 1927?

A.—Yes, three summers. It was not used very much the last summer, because Sir Mortimer was only here for just a few weeks.

40 Q.—In 1927?

A.—Yes.

Q.—That was the last summer he was alive?

A.—Yes; 10,000 miles, I think, would be the limit.

Q.—You drove his car?

A.—Not all the time. There was another chauffeur drove it besides myself.

Q.—You can speak from personal knowledge as to its condition?

WM. GODSALL (for Plaintiffs), Examination-in-Chief.

A.—Yes, I kept it in condition; I know the car was all right.

Q.—Who looked after the car in the garage?

A.—Myself, and another chauffeur besides myself, but I did all the adjusting, keeping everything all right.

10 Q.—You know now what you have told us about that car. First of all, let me ask you in what condition was that car at the time of Sir Mortimer's death?

A.—Mechanically, the car would be in first class condition.

Q.—In your opinion, and from the experience that you have given us, what was that car worth at the time of Sir Mortimer's death?

A.—Two years ago, I should think you would get about \$3,000 for it then, but I just give my opinion.

Q.—Equally from your opinion, was there anything required to be done to the car?

20 A.—Yes, it really needed—the wheels are not modern; the wheels are old-type wheels. There is no self-starter on it. To modernize the car it would really need a thousand dollars spent on it. Cars were worth more money than they are today.

Q.—In your opinion, it would take a thousand dollars to modernize it two years ago, to put a new top on it, the wheels and a self-starter?

A.—Yes.

Q.—If that had been done, in your opinion how much use could be got out of the car thereafter?

30 A.—It would be good for 50,000 miles anyway, with the actual reboring; it would be actually good for 50,000 miles anyway.

Q.—Following Sir Mortimer's death did that car remain in the place of residence on Pine Avenue?

A.—Yes, it was still in the garage after that; yes.

Q.—Do you remember any incident that occurred in connection with that car following the funeral here?

A.—Nothing, only it went to Lord Shaughnessy's house.

Q.—When was that?

A.—That would be in May, around the middle of May.

Q.—May, 1928?

40 A.—May, 1928.

Q.—Under what circumstances did it go to Lord Shaughnessy's house?

A.—I drove Lord Shaughnessy with the car on Saturday. Lord Shaughnessy said he would take the car and keep it himself. He thought he would prefer to keep it himself than a stranger to get the car. That was the remark that was passed.

Q.—You are repeating his words?

WM. GODSALL (*for Plaintiffs*), *Examination-in-Chief*.

A.—I am repeating his words as far as I remember.

Q.—That he would take it himself rather than have a stranger get it?

A.—Yes.

Q.—How did it come you drove him that afternoon?

A.—Lord Shaughnessy asked me if I was not driving if I would drive him that afternoon. I just drove and turned the car over to his
10 chauffeur afterwards.

Q.—Lord Shaughnessy went with you in the car at that time?

A.—Yes.

Q.—Under his instructions you left it at his garage on Peel Street?

A.—Yes.

Q.—And you walked home, is that it?

A.—Yes.

Q.—Following this incident of the Saturday afternoon, was the car afterwards returned, that is, the year 1928, to Pine Avenue?

20 A.—No.

Q.—Do you know what became of the car the balance of 1928?

A.—Well, it was in Lord Shaughnessy's garage.

Q.—It was kept in Lord Shaughnessy's garage?

A.—Yes.

Q.—Did you see that car on the streets of Montreal in the year 1928?

A.—I saw it being used, yes.

Q.—To what extent?

30 A.—Well, the only time I saw it was going up and down to the office. I often saw it going up and down to his office. The summer would not be very long. Lord Shaughnessy would be away.

Q.—To whose office?

A.—The Cement Building. I just saw it around the streets.

Q.—That is the Cement Building, in which Lord Shaughnessy's office is situated, and was then?

A.—Yes.

Q.—Do you know what other car Lord Shaughnessy had at that time?

40 A.—Well, since he had another Rolls-Royce, I believe. He had two other cars in the garage.

Q.—Speaking of the Rolls, what model was it?

A.—Lord Shaughnessy's Rolls? I would say it was 1913.

Q.—Was it an open car or a closed car?

A.—Closed car.

Q.—In 1929 where was the car? I mean the open car of which you spoke first?

WM. GODSALL (for Plaintiffs), Examination-in-Chief.

A.—Well, it would be at Lord Shaughnessy's place until it came back to the Peel Street garage in September, 1929?

Q.—In September, 1929?

A.—Yes.

Q.—What time in September?

A.—I think perhaps the second week in September; around the first of September. I don't remember the date, but it may have been
10 possibly the second week of September.

Q.—Do you remember whether Lord Shaughnessy was in town or not?

A.—No, I understood he was going west on a trip with the C.P.R. or something. I just understand that, you know.

Q.—You say the car came back?

A.—Yes, it was returned then.

Q.—Were you notified when the car was returned, in advance?

A.—No.

Q.—What was the first thing you discovered about the car being
20 back?

A.—I was not there when it came back. It was outside the garage door and I telephoned down to Lord Shaughnessy's man. I asked him what reason it was back for. He said it was brought back to the garage. I thought it had come back for storage.

Q.—You thought it had come back for storage?

A.—That was my impression, and I did not think he knew any better.

Q.—When you first saw the car, where was it?

A.—Outside the garage door; he could not put it in; there was
30 no one there.

Q.—There was no one in attendance with the car?

A.—No.

Q.—You had no previous notice it was being returned?

A.—No.

Q.—In what condition was it when it was returned?

A.—It was just practically the same as when it went away. It was just put in the garage. I did not know anything about the actual condition of it as far as that is concerned.

Q.—You are speaking of the engine, I presume?
40

A.—It would be just back in the garage. I was not a mechanic. There was no difference, as far as that was concerned.

Q.—Did you notice anything in the condition of the tires?

A.—They were not very good when they went away. They are not corded tires. They would naturally blow out with old age.

Q.—In what condition was it when you found it in 1929, in September?

WM. GODSALL (for Plaintiffs), Examination-in-Chief.

A.—They were all flat. They might be blown out. There was no air in any of them.

Q.—Did you examine the car with care after it was returned?

A.—No.

Q.—And the car is still there?

A.—Yes.

10 Q.—Do I understand you correctly, Mr. Godsall, to say that from the time that car went away early in May, 1928, until you found it outside the garage in September, 1929, it was never back?

A.—No.

Q.—Did you notice anything about the license on that car?

A.—Well, it came back—when it came back last year it had no last year's license on it. It was a 1928 license. There was no 1929 license on it.

Q.—Do you not remember the number?

20 A.—No, I do not. No, I did not take that. I guess I could get it. I thought you had it.

Q.—I know that, but I want to get it from you. Do you think if I gave you the license number you could recall it?

A.—I might. I don't know that I could or not.

Q.—I suggest to you the number is H-8289.

Mr. Holden, K.C.: It is hardly fair to Mr. Godsall.

Mr. McKeown, K.C.: If you cannot do it, very well. I only want to suggest it to him.

30 Mr. Campbell, K.C.: Has the number of the license any relevancy?

Mr. McKeown, K.C.: Very much.

Mr. Holden, K.C.: You mean the present license is still on it?

The Witness: 1928 plates are still on it.

40 By Mr. McKeown, K.C.:

Q.—I suggest to you the number of that plate to which we have been referring is H-8289.

A.—I know there are two 8s in it, but I would not swear that is the number.

Q.—I just want to ask you again as to the initial removal of that car in 1928. Is there anything which would enable you, if you cannot

WM. GODSALL (for Plaintiffs), Examination-in-Chief.

give us the day of the month, to fix the time by some circumstances, when the car was taken?

A.—Yes, I would say somewhere around the 10th or 12th of May. If Saturday came around the 10th or 12th of May it would be that Saturday.

Q.—Why do you say that Saturday?

A.—It was eight or ten days before the 24th of May.

10 Q.—Was Lady Davis in Montreal at that time?

A.—Lady Davis went away, I think, the week Lord Shaughnessy had the car, the Saturday following; whenever Lady Davis sailed.

Q.—Lady Davis sailed on the Saturday before Lord Shaughnessy took the car?

A.—Yes. I think that is how I remember it, something like that.

Q.—I think you have explained that your present engagement is as caretaker of the Pine Avenue, Sir Mortimer's former residence in the city?

A.—Yes.

20 Q.—Since Sir Mortimer's death, has any furniture been removed from that house?

A.—Yes, there have been two or three small lots removed. There is some furniture gone, yes.

Q.—From what rooms has that furniture been removed?

A.—Well, the dining room furniture is removed. Well, there are two or three odd pieces of furniture moved from various parts of the house.

30 Q.—Let us speak of the dining room furniture. What is the nature of the room from which it is removed, the woodwork?

A.—Circassian work, I understand. I understand it was Mr. Finlay, the architect.

Q.—Is it a panelled room?

A.—Panelled to the ceiling.

Q.—You say the dining room furniture is removed? What did it consist of, the furniture that was taken?

A.—A table and twelve chairs; two arm chairs and, I think, small chairs.

Q.—What wood?

40 A.—The same wood as the room, Circassian walnut, I understand there. Mr. Finlay will be able to verify.

Q.—That is in your opinion?

A.—Yes.

Q.—Can you tell me anything of the upholstery?

A.—Yes; the tapestry around the window; drapes and tapestry around the window.

Q.—The same material?

WM. GODSALL (for Plaintiffs), Examination-in-Chief.

A.—Yes.

Q.—Was there anything in the way of furniture left in the room after the table and chairs were taken out.

A.—Consoles that had been built in against the panel.

Q.—How many?

A.—Two.

Q.—Two shelves or tables?

10 A.—Yes.

Q.—Built into the wall?

A.—Yes.

Q.—You have told us that was removed. Who removed it?

A.—The furniture?

A.—Lord Shaughnessy sent a carter up. I gave them to him.

Q.—Before that incident, had Lord Shaughnessy been upon the premises?

20 A.—No, he just come up and saw the furniture on Saturday and sent a carter up on Monday for them.

Q.—Let us start to fix the date. When would that be?

A.—It would be in October, 1928.

Q.—The fore part or the latter part?

A.—The latter part.

Q.—Do I understand you to say Lord Shaughnessy visited the premises before the carter came to take it away?

A.—Yes, he came to see the furniture.

Q.—Was he in your company?

A.—Yes.

30 Q.—Did you visit the dining room with him?

A.—Yes.

Q.—Did he say anything to you about the idea of removing the furniture.

A.—Yes, I understood he was having the dining room furniture, yes.

Q.—What did he say?

A.—He told me he would send a carter up to get the furniture to take to his house on Monday morning.

Q.—You say there were consoles left there?

40 A.—Yes.

Q.—Could you tell me anything about the consoles?

A.—They are built in the wall. If they had been possibly loose, I would understand they were part of the dining room furniture, but the way they are built into the panel they are in the woodwork, and therefore they could not be removed without destroying the woodwork.

WM. GODSALL (*for Plaintiffs*), *Examination-in-Chief*.

Q.—Did Lord Shaughnessy on that occasion examine the consoles?

A.—Yes.

Q.—In what respect.

A.—To see if they stood against the wall. If they stood against the wall they would be part of the furniture, but they were built into the panel and they remained there.

10 Q.—These consoles built into the wall have artificial legs?

A.—They are built into the wall down the panels.

Q.—In turn, did they match the table and chairs?

A.—The tops are some kind of marble. They do not really match the table and chairs as far as that is concerned. They kind of matched the wood on the sideboards.

Q.—You have told us the dining room furniture was removed. Was there any other furniture removed?

20 A.—There were two arm chairs there up in the hall. I think two Chippendale chairs, a stool for the big hall; those three besides the dining room furniture; two odd chairs and a stool. The stool from the main hall and the chairs from the bedroom hall upstairs. They are really two chairs of a set, of the Chippendale hall set.

Q.—In one of the upper halls?

A.—Yes.

Q.—What remained of that set?

A.—There is a lounge and one or two stools, I think a long stool and two small stools and a bench.

30 Q.—As to the stool which was taken, that was taken from the lower hall?

A.—Yes.

Q.—Is that an odd stool?

A.—Yes.

Q.—What wood was the stool?

A.—I think they were oak; the hall was oak. That is all oak. That would be oak. All the furniture is oak. I think the stool would be oak too.

Q.—When was the Chippendale furniture and this stool from the lower hall removed?

40 A.—The same time the dining room furniture; altogether.

Q.—On the Saturday previous, were you with Lord Shaughnessy to survey the dining room furniture? Did Lord Shaughnessy go into any other part of the house?

A.—No, only the dining room, the hall; nowhere else.

Q.—When, if at any time, did Lord Shaughnessy intimate to you his intention to take the Chippendale furniture and the stool in the hall?

WM. GODSALL (*for Plaintiffs*), *Examination-in-Chief*.

A.—The same time as the dining room furniture; no other time.

Q.—Do I understand you correctly to say on the Monday following the carter arrived and the furniture was taken to Lord Shaughnessy's residence?

A.—Yes.

Q.—Lord Shaughnessy only lived a few doors from Sir Mortimer Davis' home?

10 A.—Yes, a few yards down the street.

Q.—From your experience and from what Lord Shaughnessy said in connection with the furniture on that Saturday afternoon, will you tell us how it came about he was to remove the furniture?

A.—As far as I could understand, he did not say anything about why he was taking the furniture. I presume some of the furniture was for sale, and he was taking the furniture on account of it being for sale. That was my impression.

Q.—Your impression was he was buying the furniture?

20 A.—That was my impression.

Q.—What did he say in that connection, which gave you that impression?

A.—I don't know whether Lord Shaughnessy said anything at all about it. He said he was having the furniture down to his house. I know some of the furniture had been sold and I just presumed he was buying it.

Q.—Do you know anything about a silver rose bowl?

30 Mr. Campbell, K.C.: This is the first we have heard of it. Is that the bowl in the office of the Company?

Mr. McKeown, K.C.: I don't know where it is.

Mr. Campbell, K.C.: There are many interesting details in this case, but surely we have enough. My learned friend has already taken nearly an hour of the time of this Court to prove a series of facts admitted by the pleadings and covered by the deposition on discovery. At the present rate of progress we will be here a month.

40 Mr. Geoffrion, K.C.: It is a question whether it is alleged or not.

Mr. Campbell, K.C.: This is the first we have heard of the rose bowl.

Mr. McKeown, K.C.: Paragraph 32. No particulars were asked.

WM. GODSALL (for Plaintiffs), Examination-in-Chief.

Mr. Campbell, K.C.: It just shows the folly of trying to proceed with undue celerity in this case.

The Court: If you think I will remove Lord Shaughnessy because he took an ornament—

10 Mr. Geoffrion, K.C.: It is cumulative.

The Witness: I think that that should be a loving cup. It is not a rose bowl, if it is the item you are thinking of; that is what I would call it.

By Mr. McKeown, K.C.:

Q.—Explain about it, anyway.

20 A.—I understand you are referring to a silver loving cup with an inscription, which was given to Sir Mortimer and Lady Davis when he was knighted, but it was at Ste. Agathe. Lord Shaughnessy had me bring it down from Ste. Agathe, so I presume it should not be sold up there and it was in his office, but it is a silver loving cup.

Q.—In any event, Lord Shaughnessy gave you instructions to have that—

A.—Mr. Reaper usually gave me any instructions. Anyway, it comes from Lord Shaughnessy.

Q.—Do you remember anything in that particular?

A.—Yes.

30 Q.—What did he say?

A.—To bring this cup down from Ste. Agathe and deliver it to Lord Shaughnessy's house.

Q.—Did you make a special trip from Montreal to Ste. Agathe to get that?

A.—I made a special trip for Mr. Mortimer Davis's guns that had been shipped from France, and some things. I really did not go there for that. I went for the guns and I brought that down with the guns.

Q.—You brought it to Lord Shaughnessy's house?

40 A.—Yes.

Q.—You have not seen it since?

A.—No.

Q.—What date would that be?

A.—About the second week in June, 1928.

Q.—How many furnaces are there operated in the Pine Avenue premises?

A.—Three at present.

WM. GODSALL (*for Plaintiffs*), *Examination-in-Chief*.

Q.—Three furnaces?

A.—Yes, three for the house and one for the conservatory.

Mr. Holden, K.C.: Might we object on the record. We do respectfully submit that this is not legal evidence now submitted under the pleadings.

10 The Court: Objection reserved.

By Mr. McKeown, K.C.:

Q.—You have spoken of a conservatory. What were the contents of that conservatory at the time of Sir Mortimer's death?

A.—I would not know. You would have to ask the gardener that. There is the gardener. He is in the Court room. I would not know.

20 Q.—Do you know anything about the offers which have been made for the purchase of these plants?

A.—Yes, there have been some offers made for the orchids. There have been one or two offers made for these.

Q.—Do you know how many orchids there were originally?

A.—Originally, years ago, there were around 800 and something.

Q.—About how many years ago?

A.—About five years ago there would be 850.

Q.—How many at the time of Sir Mortimer's death?

A.—283. They came to take the number.

30 Mr. Holden, K.C.: The same objection. There is nothing about orchids. We are not accused of taking the orchids. Is he proposing to make evidence of having taken the orchids? We are accused of a great many things but not that particular one.

The Court: Objection reserved.

By Mr. McKeown, K. C.:

40 Q.—I will suspend it for the moment. I will suspend that question of the conservatory.

The Court: I don't think you have examined Lord Shaughnessy on the orchids. You have at page 4 or 5 of his discovery practically all that has been said by this witness this morning; I mean as to the incident of the furniture removed.

WM. GODSALL (for Plaintiffs), Examination-in-Chief.

By Mr. McKeown, K.C.:

Q.—The paragraph I had in mind is 88-C, the Defendant's administration of the premises—the furniture, equipment, the conservatories, comprised in the Pine Avenue property; valuable tropical and other plants which should have been sold in the spring of 1928.

10 Do you know anything about whether those were valuable plants?

A.—They were valuable when they were put in. I don't know anything about the value of orchids. I don't think they are very valuable at present. They have not been for the last year or two.

Q.—Will you tell us in any event what has recently been offered for these orchids?

A.—There was an offer from the City of Montreal for \$240, that is, leaving some that were really no good; for the whole lot, \$240 or \$250 from the City of Montreal for all the orchids, and an offer from
20 the City of Westmount for \$240 for about 150.

Q.—Was there any further offer?

A.—There was an offer of a dollar a head about three weeks ago.

Q.—When were those offers made by the City and by Westmount?

A.—In the summer; this last summer, 1929, but the City offer was about two weeks ago.

Q.—You have a gardener in attendance there?

A.—Yes.

30 Q.—Do his duties consist in looking after anything but the conservatory?

A.—He does the furnaces and looks after the conservatories.

By the Court:

Q.—Is that all he does?

A.—Yes, sir.

By Mr. McKeown, K.C.:

40 Q.—Do you know what his wages are?

A.—\$100 a month, and a house, of course.

Q.—And a house?

A.—Yes, dwelling.

Q.—Do you know what coal is used to run that conservatory?

A.—Just the conservatory without the house, or and the house?

Q.—Yes, start with——

WM. GODSALL (*for Plaintiffs*), *Examination-in-Chief*.

A.—Everything together, about 90 tons for the season.

Q.—Can you tell us what proportion is burnt for the conservatory?

A.—The conservatory furnace would not burn possibly more than 15 or 18 tons. That is approximately.

Q.—What are your wages as caretaker?

A.—\$125.

10 Q.—And a house?

A.—Yes.

Q.—The house is unoccupied?

A.—Yes, it is unoccupied.

Q.—What is the appearance of the front door?

A.—There is a storm door on it; ordinary door, which is closed; yes, a front door.

Q.—Does that obscure the whole front door?

A.—Yes, it obscures the front door.

20 Q.—Would it be fair to say it gives the appearance of the front door being boarded?

A.—Yes, that has always been the appearance. It has been there for 20 years.

By the Court:

Q.—Was it there during the lifetime of Sir Mortimer Davis?

A.—Yes.

30 By Mr. McKeown, K.C.:

Q.—Was it used when Sir Mortimer was in town?

A.—It was used when he was in England.

Q.—Was that storm door on the house when Sir Mortimer Davis was here?

A.—No.

Q.—What has there been in the way of signs to announce to anybody that property was for sale?

40 A.—Joseph put up signs. He was the only party put up signs since the place was for sale. Those are the only signs that were put up, by Henry Joseph and Company.

Q.—They were put up on the green?

A.—On the grass; one on Pine Avenue and one on Peel Street.

Q.—Were they removed in 1929?

A.—Yes.

Q.—Is there anything on that property to indicate to the passer-by that it is for sale?

WM. GODSALL (for Plaintiffs), Examination-in-Chief.

A.—No, not at present.

Q.—Did you see the signs taken down?

A.—No, I did not see them actually removed, no.

Q.—What garage space have you got there? For how many cars?

A.—There is floor space for about six cars, that is counting the coach garage. The garage will hold four and the coach house holds two.

10 Q.—Is there any of that space rented, by way of garage?

A.—Yes.

Q.—For how much?

A.—Space for two cars, one dead and one live storage.

Q.—What is paid for the dead storage?

A.—That I really don't know. That is done in the office.

Mr. Campbell, K.C.: What bearing has that on this controversy? Are we going to spend the morning finding out what is received for dead or live storage?

20

By Mr. McKeown, K.C.:

Q.—How long have they been under rental?

A.—Since November last year.

No cross-examination.

And further deponent saith not.

30

40

WM. GODSALL (*re-called for Plaintiffs*), *Examination-in-Chief*.

On this third day of March, in the year of our Lord one thousand nine hundred and thirty, personally came and reappeared

WILLIAM GODSALL

10 a witness already examined, now recalled on behalf of plaintiffs, who being duly sworn doth depose and say as follows:

Examined by Mr. W. K. McKeown, K.C., of Counsel for Plaintiffs:

Q.—Mr. Godsall, since the adjournment, have you had occasion to verify the number of the license plate on the touring car of the late Sir Mortimer Davis to which you referred in your evidence?

A.—Yes.

Q.—Will you give the Court the number of the plate?

20 A.—Those are my figures.

Q.—Will you just read it. What is the license number?

A.—License for 1928, H-8289, Quebec license.

By the Court:

Q.—I understand there was no license for the following year?

A.—No.

By Mr. McKeown:

30 Q.—Can you verify that the number which you have given is the same number as that upon the application for license, Exhibit P-39, produced here this morning?

A.—Yes.

Q.—I don't know whether it has come out yet in the evidence, but is the house, speaking generally, still furnished?

A.—Yes. There are one or two small pieces gone, but it is practically furnished.

Q.—I mean the bedroom furniture?

40 A.—There is just one small bedroom, the bed of which is gone out. There is one small guest room that a single bed has gone.

Q.—And the furniture in the drawing room was intact?

A.—Yes, that is intact.

Q.—How many bedrooms are there?

A.—You mean the master bedrooms?

Q.—Yes.

WM. GODSALL (*re-called for Plaintiffs*), *Examination-in-Chief*.

A.—You do not mean the servants' bedrooms? There are five guest bedrooms.

Q.—And they are all furnished?

A.—Well, not the one. The bedroom furniture is out of one.

Q.—The others are?

A.—Yes. There are really six bedrooms. I am making a mistake. There are two on the top flat and four down below, six bedrooms.

10 Q.—The house is viewed, I take it, by prospective customers?

A.—When someone wants to see it the office notifies me. If anybody wants to see it, I show them the house on notification from the office, not without.

Cross-Examined by Mr. A. R. Holden, K.C., of Counsel for Defendants:

Q.—Do you know that shortly before his death, Sir Mortimer Davis had the furniture from his own bedroom on Pine Avenue sent to Europe?

A.—Yes, it was.

20 Q.—Do you remember when that was?

A.—Well, I think it was shipped in January.

Q.—Of 1928?

A.—Yes, it would get to France in February.

Q.—He died the following month?

A.—Yes, in March.

Q.—That has not been refurnished, I suppose?

A.—Oh, no.

Q.—That was his own bedroom?

30 A.—That was his own personal bedroom furniture, yes.

And further deponent saith not.

LOUIS JACQUES (*for Plaintiffs*), *Examination-in-Chief*.

On this 3rd day of March, 1930, personally came and appeared

LOUIS A. JACQUES

of the City of Montreal, aged 68 years, Chief of Police Provincial
10 Revenue, called as a witness on behalf of Plaintiffs, having been first
duly sworn, doth depose and say:

Examined by Mr. McKeown, K.C., Counsel for Plaintiffs:

Q.—You attend here today in obedience to a subpoena served
on Oscar Senecal, the collector of provincial revenue at Montreal?

A.—Yes.

Q.—That subpoena required Mr. Senecal to produce before Your
20 Lordship the original application made in the summer of 1928 for
the registration of an automobile for which license H-8289 was issued
by the Treasurer's Department. Have you brought with you the
original application made for the issue of that license, and if so, will
you exhibit it to His Lordship?

A.—You have it in your hands there. Yes, I exhibit it.

Q.—Will you produce a copy or photograph of this exhibit as
Plaintiff's Exhibit P-39?

A.—Yes.

Q.—This application bears date June 1st, 1928. I make that
30 point because the photograph is very indistinct.

Mr. Geoffrion, K.C.: You better read it into the deposition.

By Mr. McKeown, K.C.:

Q.—Do you notice that?

A.—Yes.

Q.—And this application reads:

40 "Motor Vehicle Service, Quebec. Lord Shaughnessy, resi-
dence Montreal, Number 3549 Peel Street; owner of the
motor vehicle herein below described, applies for the regis-
tration thereof for the current year.

Type: Touring.

Make: Rolls-Royce.

Makers' Number: 36-M.A.

Engine No.: 337.

Gasoline: 6 cylinders; 4-seater.

LOUIS JACQUES (for Plaintiffs), Examination-in-Chief.

Number of Vehicle:

Model, 1914.

Vehicle purchased from Sir Mortimer Davis Estate, 516
Pine Avenue.

Pleasure Vehicle.

10 I, the undersigned, being duly sworn, do declare and say the
information and answers given in the above application are
true to the best of my knowledge and belief, and I have
signed

Shaughnessy.

Sworn before me June 1st,

George A. McNamee,
Justice of the Peace."

20 The Defendants admit the signature of the Defendant Shaugh-
nessy to Exhibit P-39.

And I now return to you the original which you have exhibited
to His Lordship and would ask you to verify and file the photograph
thereof as P-39. Will you verify that the photograph which I show
you is a photograph of the original which you have exhibited?

A.—To the best of my knowledge it is.

By the Court:

30 Q.—In whose name is that car registered now?

A.—The same car? I could not say, Your Lordship. The appli-
cation says "Shaughnessy."

Q.—That is for the year 1928?

A.—Yes.

Q.—For the present year?

A.—I don't know, I am sure. I don't know.

Q.—Is that part of the information you were going to bring
here?

40 A.—No, I was not given any such information.

Mr. Bercovitch, K.C.: Mr. Godsall said there was no license for
1929.

The Court: The license expired in 1929?

The Witness: Yes.

LOUIS JACQUES (for Plaintiffs), Examination-in-Chief.

By Mr. McKeown, K.C.:

Q.—You might give the license period covered by this application, Exhibit P-39. When did that period start and when did it terminate?

A.—It started in 1928 and terminated in 1929.

Q.—At what month and what date?

10 A.—Started on the 1st of June, 1928, and ended on the last day of March following.

Q.—1929?

A.—Yes.

Q.—When you say it started on the 1st of June, 1928, you mean that is the date the application was signed, dated?

A.—Yes.

Q.—The license period began, I take it, on the 1st of April, to run to the last of March, 1929?

A.—Yes.

20

By the Court:

Q.—You don't know whether that license has been renewed or in whose name?

A.—I don't know.

No cross-examination.

30 And further deponent saith not.

40

MRS. GRACE JOLLY AWBREY (for Plaintiffs), Examination-in-Chief.

On this 3rd day of March, 1930, personally came and appeared

GRACE JOLLY

of Ste. Agathe, P.Q., wife of Ernest Awbrey, aged 32 years, called
as a witness on behalf of Plaintiffs, having been first duly sworn,
10 doth depose and say:

Examined by Mr. McKeown, K.C., Counsel for Plaintiffs:

Q.—Mrs. Awbrey, I understand you and your husband are employed on the estate of Sir Mortimer Davis at Ste. Agathe?

A.—Yes.

Q.—In what capacity?

A.—Caretakers, seeing after the house in general.

Q.—How long have you and your husband been employed in
20 that capacity?

A.—Six years come 1st of May.

Q.—So that you were there before the death of Sir Mortimer Davis?

A.—Yes.

Q.—What other employees are there apart from your husband and yourself?

A.—Mr. Thibeault and Mr. Hussereaux.

Q.—Of what does that property consist?

A.—Seven cottages. There is a farm besides the big house.

30 Q.—There is the big house, seven cottages and the farm?

A.—Yes.

Q.—Do you know the extent of the property?

A.—No.

Q.—In acres?

A.—No, I do not.

Q.—Do you know that there are any private lakes on the property?

A.—Yes, there are two.

40 A.—Yes, there are two.

Q.—Does that property front another lake?

A.—There is a public lake at the back.

Q.—What lake is that?

A.—Ste. Agathe Lake.

Q.—Since Sir Mortimer Davis' death in March, 1928, has the large house been occupied, open and occupied?

A.—Yes.

MRS. GRACE JOLLY AWBREY (for Plaintiffs), Examination-in-Chief.

Q.—Who was the first to arrive there?

A.—Mr. and Mrs. Cochrane.

Q.—About what time did they first come there?

A.—The end of July.

Q.—1928?.

A.—Yes.

Q.—How long were they there?

10 A.—Just for a week-end.

Q.—Coming there on a holiday only?

A.—Until Monday morning.

Q.—And the big house was opened up with them?

A.—Yes.

Q.—Were they alone?

A.—One week-end. They came two weeks, one after the other.

Q.—The first week were they alone?

A.—No.

Q.—Who was with them?

20 A.—Mr. and Mrs. Kenneth Mappin.

Q.—Had they any maids with them?

A.—No.

Q.—They used the house on these two occasions?

A.—Yes.

Q.—Did you look after the domestic matters for them?

A.—Yes.

Q.—What was the next occupation of that house in 1928?

A.—Mr. and Mrs. Lauster.

30 Q.—When did they come?

A.—The end of August.

Q.—Who made up that party? Who were the people?

Mr. Campbell, K.C.: How can that help His Lordship? We say it can be of no help to Your Lordship.

Mr. McKeown, K.C.: We say Lord Shaughnessy used it for himself and his friends. While he proposed to rent it we say it is highly improper.

40 The Court: I don't see much harm in occupying it if people pay their expenses.

The Witness: Mr. and Mrs. Hart and Mr. and Mrs. McLean.

By Mr. McKeown, K.C.:

MRS. GRACE JOLLY AWBREY (for Plaintiffs), Examination-in-Chief.

Q.—There were six in that party?

A.—They came two week-ends. Once there were four and once there were six.

Q.—The first week-end who came?

A.—Mr. and Mrs. Frank Hart and Mr. and Mrs. Lauster.

Q.—When did they arrive and when did they leave?

A.—Just came Friday until Monday morning, or Sunday; I am
10 not sure which.

Q.—The week following they came too, with Mr. and Mrs.
McLean?

A.—Yes.

Q.—Did they bring any maids with them?

A.—No.

Q.—You looked after that?

A.—Yes.

Q.—That would be in August, 1928?

A.—Yes.

20 Q.—They used the large house?

A.—Yes.

Q.—What was the next occupation of these premises?

A.—Lord Shaughnessy came a week-end.

Q.—In the year 1928?

A.—Yes.

Q.—Who made up that party?

A.—Mr. and Mrs. Redmond and their child; two visitors and
two children.

30 Q.—Any maids?

A.—Yes, one maid and one nurse.

Q.—What was the next occupation of the house?

A.—A week-end before Christmas.

Q.—Who was there then?

A.—Mr. and Mrs. Cochrane.

Q.—Following that?

A.—Lord and Lady Shaughnessy for New Year's.

Q.—Let us speak of the Cochranes. How long did they stay?

A.—Just for a week-end.

40 Q.—Referring to the incident when Lord and Lady Shaughnessy
arrived, were they alone?

A.—Just with their own children and one visitor.

Q.—Did they have any maids with them?

A.—Yes, two maids and two nurses.

Q.—When did that visit start?

A.—They came there the day following Christmas or the day
before.

MRS. GRACE JOLLY AWBREY (*for Plaintiffs*), *Examination-in-Chief.*

Q.—When did they leave?

A.—Lord and Lady Shaughnessy stayed over for the New Year's week-end.

Q.—They came the day following Christmas?

A.—Yes.

Q.—Did they stay for New Year's?

A.—Yes, just for the New Year.

10 Q.—Did they leave the day after, or did they stay for that week-end?

A.—No, just one week-end.

Q.—Do I understand from the day after Christmas to the day after New Year's?

A.—Yes.

Q.—Did Lord and Lady Shaughnessy then return to Montreal?

A.—Yes.

Q.—What became of the rest of the family?

20 A.—They stayed until the opening of school in January.

Q.—Did the maids remain with them?

A.—No, just the two nurses.

Q.—Let us take if we can the period from the time that party arrived, on the day following Christmas, to the day the children returned, how long would that be?

A.—I think they went back on the 10th of January.

Q.—What was the next occasion on which the large house was used?

A.—The 24th, another week-end.

30 Q.—1929?

A.—Yes.

Q.—Who were there?

A.—Mr. and Mrs. Cochrane.

Q.—Just for the week-end?

A.—Yes.

Q.—Then following that?

A.—Then Mr. and Mrs. Cochrane came twice or three times that summer but I don't remember what day or what date, but during the summer.

40 Q.—During the summer of 1929?

A.—Yes.

Q.—And the last time was what?

A.—The 10th of July, 1929.

Q.—And since that?

A.—We have had nobody at all.

Q.—On the occasion of these visits and the opening up of the big

MRS. GRACE JOLLY AWBREY (*for Plaintiffs*), *Examination-in-Chief.*

house you have spoken of, where did the food and so forth come from? Where was it supplied from?

A.—When Lady Shaughnessy would come down she would bring all her stuff down from the city, except the stuff we ran out of, we would get in the village.

Q.—You have a farm there?

A.—Yes.

10 Q.—Did that farm contribute in any way to those household effects?

A.—Yes, eggs, butter, vegetables and chickens, if we had any.

Q.—Do they have sheep on that farm?

A.—Yes.

Q.—As far as the farm produce was concerned, do I understand that was supplied for each of these visits from the farm?

A.—Yes.

Q.—What did you do with the big house between visits?

20 A.—Well, I just got it ready for the next lot that were likely to come.

Q.—Do you live in the big house?

A.—Yes, I live in the big house.

Q.—The house is heated?

A.—Oh yes, all the winter.

Q.—Now I think you said that apart from the large house there were seven cottages?

A.—Yes.

Q.—Are any of these cottages occupied?

30 A.—Mr. Hussereaux and Mr. Thibault live in one.

Q.—They have each a cottage?

A.—Yes.

Q.—They are married men with families?

A.—Yes.

Q.—That would leave us with five cottages. Are any of these cottages occupied?

A.—Mr. Marchand has one in the summer.

Q.—Is he employed on the premises?

40 A.—Well, he spends part of the summer up there, but I don't know anything else.

Q.—Is he in any manner in charge?

A.—Well he sees after the place and the farm in general.

Q.—Tell us in brief what Thibault's duties are.

A.—Well, he is a farmer.

Q.—And Hussereaux?

A.—He is assistant to him.

Q.—How many cows do you have on the premises?

MRS. GRACE JOLLY AWBREY (for Plaintiffs), Examination-in-Chief.

- A.—There are three cows.
Q.—How many horses?
A.—Two.
Q.—They have some sheep?
A.—Yes.
Q.—How many?
A.—I couldn't tell you.
10 Q.—Any chickens?
A.—Yes, lots of chickens.
Q.—How many?
A.—I could not tell you at all.
Q.—Is there any sign displayed on that property at the present time to show the property is for sale?
A.—No.
Q.—Would you tell His Lordship, in a word, where the road leads to upon which this property has its outlet?
A.—It is on the road to Manitou.
20 Q.—Does that road lead to the new C.P.R. hotel?
A.—I could not tell you at all.
Q.—Is there anything displayed upon the property to show it is for sale?
A.—No.
Q.—Was there at any time a sign there?
A.—Yes.
Q.—What happened to it?
A.—It was taken away.
30 Q.—When was it put there, and when was it removed?
A.—I don't know exactly when it was put there, but it was removed at the end of the summer, or beginning of the summer.
Q.—What summer?
A.—This summer just past.
Q.—1929?
A.—1929.
Q.—And had it been there during the winter previous?
A.—I don't remember. I cannot remember that.
Q.—Do you remember the name of the agent, if any, that was
40 displayed on that sign?
A.—Mr. Joseph.
Q.—Henry Joseph and Company?
A.—Yes.
Q.—Did you receive callers to view that property after Sir Mortimer died, while the sign was up?
A.—Yes.
Q.—Many?

MRS. GRACE JOLLY AWBREY (*for Plaintiffs*), *Cross-Examination.*

A.—The first summer we did. Of course, the sign was not up then, but afterwards we had orders not to let anybody in to see the property without an order.

Q.—Who were those orders from?

A.—I think it was from Mr. Reaper.

Q.—Not to let anybody in without an order?

10 A.—Without a written note.

Q.—A written order?

A.—Yes.

Q.—And did you have callers come there that you turned away under those orders?

A.—No, not under the order. We did not have many come after that.

Q.—But did people come whom you did not allow to see the property because you had orders not to show it?

A.—Yes, that is right.

20 Q.—And your instructions were not to let anybody see the property unless they had a written order?

A.—That is right.

Q.—If they came without an order they did not see it?

A.—No, that is true.

Q.—Did I ask you about your wages?

A.—Yes.

Q.—How much are your wages?

A.—One hundred dollars.

Q.—One hundred dollars a month?

30 A.—Yes. That is for the two of us.

Q.—In addition to that, what else do you receive?

A.—We have our meals and vegetables.

Q.—And your house and lodging?

A.—Oh, yes.

Q.—What about the heating and lighting? Do you pay that?

A.—Oh, no, not in the big house.

Q.—You had electric light there?

A.—Yes.

Q.—And you have not anything to do with that?

40 A.—No.

Cross-Examined by Mr. A. R. Holden, K.C., of Counsel for Defendants:

Q.—Am I right that Mrs. Kaufman is a niece of the late Sir Mortimer Davis?

A.—Yes.

MRS. GRACE JOLLY AWBREY (for Plaintiffs), Re-Examination.

Q.—Was it you or Mr. Awbrey who sent the accounts to Lord Shaughnessy for the farm produce that is used by you in the kitchen during his visits there?

A.—No. That is done on the farm. We had nothing to do with that.

Q.—They send the accounts to Lord Shaughnessy in the city?

A.—Yes.

10 Q.—For whatever he had used off the farm for his party during his visit?

A.—Yes.

Mr. McKeown: That seems to be evidence by Mr. Holden. He makes an affirmative statement. I do not think the witness has said that at all.

Mr. Holden: I am satisfied with the question.

20 Re-Examined by Mr. McKeown, K.C., of Counsel for Plaintiffs:

Q.—Do you know where Mr. Cochrane is employed?

A.—No, I could not tell you at all.

Q.—Do you know what Mr. Lauster does?

A.—No.

Q.—Mr. Holden has asked you something about accounts for farm produce. Do you keep the accounts?

A.—No.

30 Q.—Do you send any accounts?

A.—No.

Q.—Who keeps the accounts?

A.—Mr. Thibault at the farm.

And further deponent saith not.

ROBERT FINDLAY (for Plaintiffs), Examination-in-Chief.

On this third day of March, in the year of our Lord one thousand nine hundred and thirty, personally came and appeared

ROBERT FINDLAY

10 of the City of Montreal, residing at 1188 Phillips Place, architect, aged seventy-one years, a witness produced on behalf of the plaintiffs, who being duly sworn doth depose and say as follows:

Examined by Mr. George H. Montgomery, K.C., of Counsel for Plaintiffs:

Q.—You have been practicing your profession as an architect in the City of Montreal for a number of years?

A.—Quite a number.

20 Q.—And without wishing you to state your qualifications, you have built some of the many very important residences in the City of Montreal, have you not?

A.—Yes.

Q.—Among others, you were the architect for the Davis house on Pine Avenue?

A.—Yes.

Q.—And I suppose you are, consequently, quite familiar with the house and its finish?

A.—I am very familiar with it.

30 Q.—Do you recall in particular the dining room?

A.—Yes.

Q.—How is that finished?

A.—In Circassian walnut to the ceiling.

Q.—Is it an expensively finished house?

A.—Yes. At that time it was one of the costliest houses going up.

Q.—When you say at that time, about when was it built?

A.—About 1908. Tenders were called in 1907.

Q.—Where was this panelling built?

A.—In New York.

40 Q.—It was not done by any local contractor here?

A.—No.

Q.—Was it done in New York and specially designed for the house?

A.—Yes.

Q.—Have you the plans?

A.—I have the plans.

ROBERT FINDLAY (for Plaintiffs), Examination-in-Chief.

Q.—I do not think I will ask you to file them, but you may perhaps exhibit the plans and photograph?

A.—Yes.

Q.—What are you now exhibiting, Mr. Findlay?

A.—Plans of the dining room—woodwork of the dining room.

10 Mr. Montgomery: I do not want to encumber the record use-
lessly. The only object in filing them would be to show the very
elaborate scheme of the dining room and furniture to match, the very
elaborate panelling. Perhaps we might file just one instead of the
whole set of them.

Mr. Montgomery:

Q.—Will you file as Exhibit P-40 a blueprint illustrating the
panelling on the walls, and as Exhibit P-41 a photograph of one
20 corner of the room showing the panelling on the side?

A.—Yes.

Q.—You say that was all done in Circassian walnut?

A.—Circassian walnut.

Q.—And specially made in New York?

A.—Specially made in New York.

Q.—What about the furniture?

A.—The furniture was made in New York City.

Q.—In the photograph I see something apparently affixed to the
panelling, what is that?

30 A.—Console tables.

Q.—What are they?

A.—They are taking the place of the ordinary sideboard. There
is no sideboard in the place.

Q.—Are they permanently fixed to the panelling?

A.—Oh, yes, absolutely.

Q.—What material are they made of?

A.—Circassian walnut.

Q.—With marble tops?

A.—With marble tops.

40 Q.—What about the balance of the dining room furniture?
Where was that made?

A.—In New York.

Q.—By the same people who made the panelling?

A.—I understand so. I have nothing in my records to show
where the chairs were made, but I presume they were made by the
same people.

Q.—Of what material were the dining room and chairs made?

ROBERT FINDLAY (for Plaintiffs), Examination-in-Chief.

A.—Circassian walnut.

Q.—The same as the panelling?

A.—The same as the panelling.

Q.—What about the coverings of the chairs? Were they made to correspond with anything in the room?

A.—There is no doubt the curtaining material would have to match it. Everything would have been selected, carpeting and curtains, everything would have to be taken into consideration when
10 arranging for it.

Q.—And in a dining room in a house such as this, all those fixtures would have to be considered a part of the whole thing?

A.—In one uniform whole.

Q.—One uniform scheme?

A.—Sure.

Q.—Do you recall how many dining room chairs there were?

A.—At the time I did the house, I cannot recall how many chairs
20 were there at that time, but today there are ten chairs. I have seen today ten side chairs, two arm chairs and one table.

Q.—You were permitted to see them this morning?

A.—Yes.

Q.—In Lord Shaughnessy's own house?

A.—Yes.

Q.—Have you seen the dining room since the furniture was removed?

A.—Yes, I have.

Q.—Is it left bare?

A.—The carpet is there; the brackets upon the walls, electric
30 brackets are upon the walls yet.

Q.—And the curtains?

A.—The carpet was on the floor, and the curtains up. I think the cotton curtains were up on the windows.

Q.—Were a purchaser found for that house, obviously the dining room would have to be refurnished?

A.—Yes.

Q.—Could you give us any idea as to the replacement value of that furniture?

A.—Not very closely.
40

Q.—Can you give us a range?

A.—Between three and four thousand dollars.

Q.—Apart from any wear and tear to the coverings incidental to the use, was the furniture in a good state of preservation?

A.—The furniture was in a very good state of preservation. The tapestry, however, was slightly worn on the edges. That very readily happens.

ROBERT FINDLAY (for Plaintiffs), Cross-Examination.

Cross-Examined by Mr. A. R. Holden, K.C., of Counsel for Defendants:

Q.—When was the furniture made?

A.—It must have been in the year 1908, I should think.

Q.—You do not know definitely?

10 A.—Oh, no, nothing in connection with the furniture went through my hands. All other details came through my hands.

Q.—You think it was in 1908?

A.—1908. The tenders for the panelling were called in 1907 to 1908.

Q.—Did you notice the condition of the surface of the table?

A.—In very good condition.

Q.—Did you notice it?

A.—Yes, I did.

20 Q.—There were no cigarette holes burned in it, or anything of that kind?

A.—I did not notice anything.

Q.—Did you look at it closely and carefully?

A.—Oh, just in a casual way.

Q.—Just casually?

A.—Yes.

Q.—And the same thing applies to the chairs?

A.—The same thing applies to the chairs, yes.

Q.—You looked at them casually?

30 A.—Well, we turned them over and made a careful examination of them.

Q.—Did you carefully examine the table?

A.—What I thought was a careful examination.

Q.—And you cannot say whether there are any cigarette holes burned in the table?

A.—No.

Q.—You talked about replacement value. What would you say about sale value if it had to be sold? What would they bring? Are you in a position to say?

A.—No, I am not.

40 Q.—You are not in a position to say?

A.—No.

And further deponent saith not.

S. B. GREEN (for Plaintiffs), Examination-in-Chief.

On this third day of March, in the year of our Lord one thousand nine hundred and thirty, personally came and appeared

STANLEY BARNES GREEN

10 of the city of New York, in the State of New York, residing at 745 East 53rd Street, said city, designer, aged forty-one years, a witness produced on behalf of the plaintiffs, who being duly sworn doth depose and say as follows:

Examined by Mr. George H. Montgomery, K.C., of Counsel for Plaintiffs:

Q.—With what firm are you connected, Mr. Green?

A.—The Hayden Company.

20 Mr. Findlay who has just been examined?

A.—Yes.

Q.—And the firm which did the panelling and provided the table and chairs for the residence of the late Sir Mortimer B. Davis on Pine Avenue?

A.—The panelling, yes, I know for certain. The furniture I cannot say for certain.

Q.—Are you acquainted with the panelling? Have you seen it at different times?

30 A.—I have seen the panelling, not very recently, but some-time ago.

Q.—Of what material is it?

A.—It is Circassian walnut.

Q.—Will you look at the blueprint and photograph which have just been filed as Exhibits P-40 and P-41 and say if that is the panelling which your firm designed?

A.—That is it.

Q.—I will take it that it is not what you call cheap stuff?

A.—It is very good work.

40 Q.—Your firm does a very high grade class of work, does it not, especially for high class residences such as that of the late Sir Mortimer Davis?

A.—Residential work is our principal business.

Q.—I understand that you were permitted to see the dining room, chairs and table which were removed from the residence of the late Sir Mortimer Davis to that of Lord Shaughnessy?

A.—Yes.

S. B. GREEN (for Plaintiffs), Examination-in-Chief.

Q.—You saw them this morning?

A.—Yes.

Q.—Did you examine them?

A.—Yes.

Q.—In what condition did you find them?

A.—In very good condition considering the number of years they have been made.

10 Q.—In your qualification, to what have you particular reference? To the woodwork or to the coverings?

A.—To the woodwork; the coverings, well, they are in fair condition considering.

Q.—I understand that you have not been able to find the records of the original cost either of the panelling or the consoles or the chairs?

A.—The cost of the panelling I think we have. For the consoles and chairs we have not.

20 Q.—What was the cost of the panelling?

A.—I don't know offhand. I have not any figures at all.

Q.—Can you assist us with an estimate as to the replacement value of the dining room, table, and the two arm chairs, and the ten side chairs?

A.—To replace the table would be about a thousand dollars, the side chairs about one hundred and seventy-five dollars each.

Q.—Is that covered?

A.—No, that is in calico.

By the Court:

30 Q.—One hundred and seventy-five dollars each?

A.—Each.

By Mr. Montgomery:

Q.—Without the covering?

A.—Without the covering, and the arm chairs perhaps two hundred and seventy-five dollars each.

Q.—Are you now giving us New York prices, what they would be before being shipped here?

40 A.—Yes.

Q.—And to that would have to be added freight and duty?

A.—Yes.

Q.—You are familiar with residences of that class, and how they are customarily treated, are you not?

A.—Yes.

Q.—To one purchasing the house at the present time, would it

S. B. GREEN (for Plaintiffs), Examination-in-Chief.

be necessary to have furniture of that kind made up to match or go with the panelling which is installed there?

Mr. Campbell: Please do not lead. Surely, that is in extremely leading form.

Mr. Montgomery: I can go through a multitude of questions
10 and get the result. I am trying to hurry it up to please you.

Witness: Well, people who would own such a residence, would, as a rule, wish to furnish it in that way; a house that is decorated and furnished in a certain taste and with a certain degree of extravagance is usually done in that way.

By Mr. Montgomery:

Q.—Have you added together the figures for the ten chairs, the
20 two arm chairs and the table?

A.—Yes. It comes to a little over three thousand dollars.

Q.—Thirty-three hundred dollars?

A.—Yes, that would be about it.

Q.—And that is apart from the covering entirely?

A.—That is apart from the covering entirely.

Q.—Even if you assume it had to be all recovered?

A.—Yes.

By the Court:

30 Q.—How much would you put for the recovering?

A.—About sixty or sixty-five dollars a chair.

By Mr. Montgomery:

Q.—You did not examine some Chippendale chairs and a settee
which had been referred to?

A.—I did not.

Q.—You were not shown them?

A.—No.

40

By the Court:

Q.—What would the duty be?

A.—I think it is twenty per cent.

No cross-examination.

And further deponent saith not.

S. B. GREEN (recalled for Plaintiffs), Examination-in-Chief.

On this third day of March, in the year of our Lord one thousand nine hundred and thirty, personally came and reappeared

STANLEY BARNES GREEN

10 a witness already examined, now recalled on behalf of plaintiffs, who being duly sworn doth depose and say as follows:

Examined by Mr. George H. Montgomery, K.C., of Counsel for Plaintiffs:

Q.—When you examined the dining room table this morning, did you observe any cigarette burns?

A.—I did not.

20 Q.—Had there been any serious damage done to the table in that way, do you think you would have noticed it?

A.—If it had been seriously damaged, I should probably have noticed it. As I say, it seemed to me, considering the years it has been made, in very fair condition.

Q.—Assuming that there were cigarette burns in the table, are they matters which frequently occur?

A.—Oh, yes.

Q.—And are they easily remedied?

A.—Yes.

30 Q.—That is, I suppose, part of your daily work in New York almost, to fix up damage of that kind?

A.—It very frequently happens. It can be rectified.

By the Court:

Q.—Could that work be done here, or would it have to be done in New York?

A.—Oh, no. Most competent polishers would undertake that work.

40 No cross-examination.

And further deponent saith not.

JOHN CARMODY (for Plaintiffs), Examination-in-Chief.

On this third day of March, in the year of our Lord one thousand nine hundred and thirty, personally came and appeared

JOHN CARMODY

10 of the City of Montreal, residing at 5342 Durocher Street, insurance broker, aged thirty-two years, a witness produced on behalf of the plaintiffs, who being duly sworn doth depose and say as follows:

Examined by Mr. W. K. McKeown, K.C., of Counsel for Plaintiffs:

Q.—Mr. Carmody, what is your occupation?

A.—I am connected with Robert Howard and Company, Insurance Brokers.

Q.—And have been for how long?

20 A.—Thirteen years.

Q.—Will you look at the policy already filed in the record as P-29, issued in favor of Sir Mortimer B. Davis, and say whether that policy was issued through your office?

A.—Yes, sir, it was.

Q.—The policy is dated the 18th of April, 1928. That would be the date that you would issue the binder?

A.—Yes, issue the binder.

Q.—Or issue the policy?

A.—Issue the binder.

30 Q.—Have you in Court the binders?

A.—I have copies of the binders.

Q.—What would happen to the originals?

A.—The originals would be sent to the assured.

Q.—In the matter of policies by Lloyds, is it the practice to receive an application for the policy before the binder of the policy is issued?

A.—It is the practice at the present time.

Q.—Was it the practice in 1928?

A.—No, I do not think it was the practice then.

40 Q.—Have you any application for the policy I have just exhibited to you, P-29?

A.—No, I have not.

Q.—Would it be a verbal application or would it likely be a renewal?

A.—It was a renewal from year to year.

Q.—Will you tell me upon what authority the value of the touring car covered by that policy is fixed at thirty-six hundred dollars?

JOHN CARMODY (for Plaintiffs), Examination-in-Chief.

A.—I do not know just where we got the authority. I guess we have had this car insured from the time Sir Mortimer Davis bought it, and we depreciated it so much ourselves each year.

Q.—And that car was insured throughout the year beginning April, 1928, for thirty-six hundred dollars?

A.—Yes.

Q.—Against what?

10 A.—Against the risks of fire, theft and transportation.

Q.—Is that a valued policy in the event of which the car being lost the amount would be paid?

A.—Well, there is nothing to show in the policy that is a valued policy, but I think it is understood between the assured and our office that it would be a valued policy.

Q.—Did your office issue a policy for fire and theft upon the same car in the year 1929?

A.—Yes, sir.

Q.—If so, will you verify that it is the policy P-30?

20 A.—Yes, sir.

Q.—I notice the valuation in the policy for 1929 is two thousand dollars?

A.—That is right.

Q.—Would that have accounted for the depreciation from year to year that you have spoken of?

A.—Yes, exactly.

Q.—In the year 1928, was there insurance carried upon that car against public liability so-called?

30 A.—Yes

Q.—Will you now look at the policy P-31, and say whether that policy was issued through your office?

A.—Yes, that policy was issued through the office.

Q.—The policy in this instance reads in favor of the Estate Sir Mortimer B. Davis?

A.—That is right.

Q.—Will you verify if this policy, Exhibit P-30, is also issued in favor of the Estate of Sir Mortimer B. Davis?

A.—That is right.

40 Q.—Just to make this perfectly plain: The policy, P-31, which is the Liability Policy, which I have exhibited to you, issued by Lloyds, through your office, covered the period from the 22nd of May, 1928, to 22nd of May, 1929, and runs in favor of the Estate of Sir Mortimer B. Davis?

A.—That is right.

Q.—Can you tell me whether the Liability Insurance was continued on that car in the year 1929?

JOHN CARMODY (for Plaintiffs), Cross-Examination.

A.—Yes, it was continued from May 22nd until the same date in September, 1929.

Q.—I exhibit to you statement of December 27th, 1929, forming part of Exhibit D-26 already filed with reference to a Rolls-Royce 1913 car, an item is shown under date of May 22nd for \$127.70, is that the premium on that Liability Policy for the year beginning 1929?

10 A.—Yes, that is right.

Q.—I notice another entry on the same statement under date September 12th, policy cancelled, 1913, Rolls Royce touring, Lloyds, and credit given. Is that the same policy?

A.—Exactly.

Q.—So that that policy was in force against Public Liability from the 22nd of May . . .

A.—From the 22nd of May, 1929, until . . .

Q.—Take the whole thing?

A.—Public Liability, Public Damage and Collision.

20 Q.—You are wrong. It was in force from May 22nd, 1928, until the 12th day of September, 1929?

A.—That is right—not this particular policy. This policy expired on May 22nd of 1929. Another policy was issued on May 22nd, 1929, until September, 1929.

Q.—In other words, there was in your office as representing Lloyds, insurance on that car against Public Liability during this period from the 22nd of May, 1928, to the 12th of September, 1929?

A.—That is right.

30 Q.—When it was cancelled?

A.—That is right.

Q.—Show me the order for the cancellation of that insurance?

A.—It was just done verbally.

Q.—You have no record to show where you got the instructions to cancel that insurance which coincides with the return of the car?

A.—No, we have no instructions in writing. We would just take it; it would be verbally.

Q.—Do you good peope up in the Canada Cement Building cancel policies on request?

40 A.—Yes, we do.

Q.—Will you verify that the copy of policy now shown you and marked P-30, which we offer to replace with the original, is a copy of that policy?

A.—Yes.

Cross-Examined by Mr. George A. Campbell, K.C., of Counsel for Defendants:

JOHN CARMODY (for Plaintiffs), Cross-Examination.

Q.—Just to make it quite clear, will you verify that under all these policies of insurance, the Assured was at all times either Sir Mortimer Davis, Sir Mortimer B. Davis or his Estate?

A.—Yes, that is right.

And further deponent saith not.

10

20

30

40

WILDE THIBAUT (for Plaintiffs), Examination-in-Chief.

L'an mil neuf cent trente, le troisième jour de mars, a comparu :

WILDE THIBAUT,

cultivateur, de Ste-Agathe, âgé de trente-trois ans ;

- 10 Témoin produit de la part des demandeurs ;
 Lequel, après serment prêté sur les Saints Evangiles, dépose
 et dit :
 Je ne suis pas intéressé dans l'évènement de ce procès ;
 Je ne suis ni parent, ni allié, ni au service d'aucune des parties
 en cette cause.

Interrogé par Me Aime Geoffrion, C.R., Conseil des Demandeurs :

- 20 Q.—Pour qui travaillez-vous à Ste-Agathe?
 R.—Je suis né là et j'ai toujours travaillé là.
 Q.—Pour qui travaillez-vous?
 R.—Pour Sir Mortimer Davis.
 Q.—Depuis combien de temps?
 R.—Ça va faire onze ans le quatorze (14) de mai.
 Q.—Comme cultivateur?
 R.—Oui.
 Q.—En charge de sa ferme?
 R.—Je n'ai pas toujours été en charge, je suis en charge seule-
30 ment depuis trois ans, il y a eu trois ans le premier novembre.
 Q.—Avant cela, vous étiez assistant?
 R.—Avant cela, j'étais assistant.
 Q.—Maintenant, vous êtes logé là, dans l'un des cottages?
 R.—Je suis logé, chauffé, éclairé.
 Q.—Vous êtes marié?
 R.—Oui.
 Q.—Vous avez des enfants?
 R.—Oui.
 Q.—Combien?
40 R.—Six.
 Q.—Vous vivez dans un cottage, vous, votre femme et vos
 enfants?
 R.—Oui, monsieur.
 Q.—Pour avoir soin de la ferme, êtes-vous seul?
 R.—Non, j'ai des hommes avec moi. Dans le moment, j'en ai
 un ; en été, j'en ai suivant les besoins des travaux.

WILDE THIBAULT (for Plaintiffs), Examination-in-Chief.

- Q.—Commençons par le premier. Comment s'appelle le premier?
- R.—Hussereault.
- Q.—Celui-là, vous l'avez tout le temps, toute l'année?
- R.—Oui.
- Q.—Lui aussi est dans un cottage?
- R.—Oui.
- 10 Q.—Marié?
- R.—Marié, un enfant.
- Q.—Quelle est l'étendue de la propriété?
- R.—Il serait difficile pour moi de vous le dire exactement.
- Q.—A peu près?
- R.—A peu près quinze cents (1500) acres, de quinze cents à deux milles acres.
- Q.—Êtes-vous en tête ou y a-t-il quelqu'un au-dessus de vous en rapport avec la conduite de cette ferme?
- 20 R.—Depuis que Sir Mortimer est mort, ç'a toujours été M. Marchand qui a été en tête.
- Q.—Depuis la mort de Sir Mortimer?
- R.—Oui.
- Q.—Avant cela?
- R.—Avant cela, c'était Sir Mortimer Davis qui me donnait des ordres, et quelquefois aussi M. Marchand.
- Q.—Avant sa mort, Sir Mortimer Davis vous donnait des ordres lui-même?
- R.—Oui.
- 30 Q.—Et quelquefois aussi M. Marchand?
- R.—Oui.
- Q.—Aujourd'hui, M. Marchand conduit tout?
- R.—Oui.
- Q.—Où est-il, M. Marchand?
- R.—Maintenant, il est à Montréal. L'été dernier, il est venu passer cinq mois,—à peu près, je ne peux pas dire exactement—à peu près cinq mois, ou six mois.
- Q.—Et l'été d'avant?
- R.—L'été d'avant aussi, il est venu à peu près le même temps.
- 40 Q.—Il va passer là à peu près cinq mois par année?
- R.—Oui.
- Q.—C'est lui qui conduit?
- R.—Oui, depuis deux ans.
- Q.—Depuis deux ans, c'est lui qui conduit la ferme, et vous après lui, et Hussereault après vous?
- R.—Oui.
- Q.—Il vit dans un cottage, lui aussi, quand il est là?

WILDE THIBAUT (*for Plaintiffs*), *Examination-in-Chief.*

- R.—Oui.
Q.—Maintenant, les trois employés dont il vient d'être question sont, naturellement, nourris, logés, éclairés et chauffés?
R.—Oui.
Q.—Sur la ferme?
R.—Oui.
10 Q.—A part leur salaire?
R.—A part leur salaire.
Q.—Vous connaissez votre salaire à vous?
R.—Oui.
Q.—Combien?
R.—Quatre-vingt-dix piastres (\$90) par mois.
Q.—Hussereault?
R.—Soixante-dix piastres (\$70).
Q.—Quant à M. Marchand, vous ne le savez pas?
R.—Je ne sais pas.
20 Q.—C'est M. Marchand qui tient les comptes, je suppose?
R.—Oui.
Q.—Est-ce qu'il y a des serres, à part de la ferme?
R.—On a une serre pour les fleurs et on a une serre pour les fruits.
Q.—La serre pour les fleurs et la serre pour les fruits sont encore exploitées?
R.—Oui.
Q.—Comme la ferme?
R.—Oui.
30 Q.—Comme avant la mort de Sir Mortimer?
R.—Oui.
Q.—Il n'y a pas de changements?
R.—Il n'y a pas de changements.
Q.—A part cela, il y a la grande maison pour la famille?
R.—Oui.
Q.—Ça ne vous regarde pas, cela, vous?
R.—Non, je n'ai pas d'affaire à la grande maison.
Q.—Qu'est-ce que vous produisez, sur cette ferme-là? c'est une grande ferme? du foin, combien?
40 R.—Dans le foin, je ne peux pas dire exactement. On peut avoir eu dans les vingt-cinq à trente voyages, l'année dernière. Mettons de quinze à dix-huit tonnes.
Q.—De quinze à dix-huit tonnes de foin?
R.—Oui.
Q.—Faites-vous autre chose que du foin?
R.—On a de l'avoine.
Q.—Combien?

WILDE THIBAUT (for Plaintiffs), Examination-in-Chief.

R.—Il y a deux ans, on en a eu cent poches; l'an dernier, cent vingt-quatre.

Q.—Maintenant, une partie de ce que vous produisez est mangé sur la propriété, par les animaux?

R.—Par les animaux.

Q.—Et par le monde?

10 R.—Dans les légumes, ces choses-là.

Q.—Y a-t-il quelque chose que vous vendez?

R.—On vend le surplus, dans les œufs, le beurre, la crème et différentes autre choses qu'on a de trop et qu'on vend.

Q.—Vous ne savez pas combien vous vendez?

R.—Moi, je ne peux pas le dire exactement. Je pense que M. Marchand pourra vous donner tous les chiffres.

Q.—Vendez-vous beaucoup?

R.—C'est malaisé à vous dire.

20 Q.—Pendant les travaux d'été sur la ferme, à part les trois hommes que vous avez mentionnés, y a-t-il eu d'autres hommes qui ont travaillé sur la ferme?

R.—Oui.

Q.—Combien?

R.—Cela dépend des besoins; une escousse, on en a quatre, ou cinq, une escousse on en a eu jusqu'à six, et même sept, à peu près.

Q.—De quelles années parlez-vous?

R.—A peu près deux ans, deux étés, de mil neuf cent vingt-huit et mil neuf cent vingt-neuf (1928 et 1929).

Q.—Vous avez été de cinq à sept hommes?

30 R.—Oui.

Q.—Cela varie?

R.—Oui.

Q.—Pendant combien de mois, cinq ou six mois?

R.—Oui, cinq ou six mois. C'est à peu près cela. Il y a des escousses où on est peut-être quatre, cela varie pas mal.

Q.—Et vous produisez dix-huit (18) tonnes de foin, une centaine de sacs d'avoine?

R.—Oui.

Q.—Autre chose?

40 R.—On a des patates.

Q.—Combien de patates?

R.—Autour de cent poches.

(Me A. R. Holden, C.R., avocat des défendeurs, déclare ne pas avoir de questions à poser au témoin).

(Et le déposant ne dit rien de plus).

LOUIS J. MARCHAND (*for Plaintiffs*), *Examination-in-Chief*.

L'an mil neuf cent trente, le troisième jour de mars, a comparu:

LOUIS JOSEPH MARCHAND,

comptable, demeurant au numéro 7 Avenue Monkland, à Montréal,
âgé de quarante-deux ans;

10

Témoin produit de la part des demandeurs;

Lequel, après serment prêté sur les Saints Evangiles, dépose et dit:

Je ne suis pas intéressé dans l'évènement de ce procès;
Je ne suis ni parent, ni allié à aucune des parties en cette cause.

20 Interrogé par Me Aime Geoffrion, C.R., Conseil des Demandeurs:

Q.—Monsieur Marchand, vous avez été depuis plusieurs années à l'emploi de Sir Mortimer Davis, et ensuite de sa succession comme, je dirais, surintendant de sa ferme, l'été?

R.—Je suis depuis quinze ans à l'emploi de Sir Mortimer.

Q.—Le témoin précédent, M. Thibault, vien de nous dire que depuis quelques années vous aller passer les étés à Ste-Agathe et que vous surveillez les travaux de la ferme? C'est cela, n'est-pas?

R.—Justement.

30 Q.—Il nous a dit que c'est vous qui tenez les livres?

R.—C'est moi.

Q.—Avez-vous un état montrant ce que la ferme rapporte?

R.—J'ai les livres ici.

Q.—Peut-on les voir?

R.—Certainement.

Q.—D'une façon générale, êtes-vous capable de nous dire si la ferme coûte de l'argent?

R.—Elle coûte de l'argent.

Q.—Tous les ans?

40 R.—Elle a toujours coûté de l'argent.

Q.—Beaucoup d'argent par année?

R.—Oui.

Q.—Ça arrive à tout le monde?

R.—Cela arrive à tous ceux qui ont des fermes comme celle que Sir Mortimer Davis avait. Ça coûte moins, depuis quelques années, en mil neuf vingt (1920) il en a vendu la plus grande partie.

Q.—Prenons les deux dernières années, tâchez de mettre cela

LOUIS J. MARCHAND (*for Plaintiffs*), *Cross-Examination*.

aussi court que possible. Pour mil neuf cent vingt-neuf et mil neuf cent vingt-huit (1929 et 1928) avez-vous le bilan?

R.—J'ai les derniers rapports pour mil neuf cent vingt-neuf (1929).

Q.—L'avez-vous rendu aux exécuteurs?

R.—Oui, ils l'ont.

Q.—Quel est votre salaire, quel est le salaire que l'on vous paie?

10 R.—Là-bas, je ne suis pas à salaire.

Q.—On vous donne un bonus par année?

R.—Oui.

Q.—Avez-vous objection à le dire?

R.—Deux cents dollars (\$200) de bonus par année.

Q.—Et vous passez l'été dans une des maisons?

R.—Oui; Sir Mortimer m'a donné la permission d'occuper un cottage.

Q.—Et vous êtes nourri?

20 R.—Oui.

Contre-interrogé par Me A. R. Holden, C.R., avocat des Défendeurs:

Q.—On a dit à la Cour que c'est vous qui envoyiez à Lord Shaughnessy les œufs, et tout cela, que l'on a mangés pendant qu'il faisait des visites à la maison à Ste-Agathe?

R.—Certainement.

Q.—C'était vous qui voyiez à cela?

R.—Oui.

30 Q.—Y a-t-il des memorandum de cela dans les livres? Est-ce que cela était entré dans les livres?

R.—C'est entré dans les livres, oui.—Ce que Lord Shaughnessy a consommé durant ses séjours à Ste-Agathe?

Q.—Oui.

R.—Oui, justement.

Q.—Et pour tout le monde qui est allé là depuis la mort de Sir Mortimer, vous faisiez cela pour chacun d'eux?

R.—Pour tous.

40 Q.—C'est-à-dire que vos comptes montreraient tous les produits de la ferme consommés par les visiteurs?

R.—Oui.

Re-interrogé par Me Aime Geoffrion, C.R., Conseil des Demandeurs:

Q.—Comment cela se faisait-il? qui vous faisait rapport?

R.—C'était Thibault qui avait les livres de records, les records des ventes.

LOUIS J. MARCHAND (*for Plaintiffs*), *Re-Examination* .

Q.—Supposons que je serais arrivé là, moi, comme invité pour le “ week-end ” à la maison de feu Sir Mortimer; y aurait-il eu une comptabilité du nombre d’œufs, etc., que j’aurais consommé?

R.—Oui. Tout ce qui est livré à la grande maison est entré et chargé à qui de droit.

Q.—Pour la grande maison?

R.—Non, pour chaque particulier qui a visité la maison de Sir
10 Mortimer depuis sa mort.

Q.—Madame Aubrey recevait-elle des produits de la ferme pour elle-même?

R.—Oui.

Q.—Elle avait droit à cela pour elle-même?

R.—C’est-à-dire, les légumes et le lait.

Q.—Les légumes et le lait n’étaient pas chargés?

R.—A elle?

Q.—Oui.

R.—Non.
20

Q.—Vous chargiez la succession pour l’opération de la résidence?

R.—La ferme charge à la succession les légumes et le lait envoyé à la maison.

Q.—Même à Madame Aubrey pour elle-même?

R.—Oui.

Q.—Pour la famille de madame Aubrey aussi?

R.—Oui.

Q.—Maintenant, est-ce qu’il y avait une distinction faite entre
30 ce qui était envoyé à madame Aubrey à la grande maison et ce qui était envoyé à la grande maison pour les visiteurs?

R.—Oui.

Q.—Qui disait cela, qui faisait la différence?

R.—Ceux qui occupaient la maison recevaient un compte.

Par le Juge:

Q.—Le montant des comptes ne vous était pas remboursé à vous?

R.—Ils étaient remboursés à la ferme. C’était M. Thibault qui
40 entraînait cela dans son livre de Caisse, et cet argent-là était déposé à la banque.

Par Me Holden:

Q.—Les comptes que vous avez rendus à Lord Shaughnessy pour

LOUIS J. MARCHAND (for Plaintiffs), Re-Examination .

les fins de semaines qu'il est allé passer là, est-ce qu'ils ont été payés par Lord Shaughnessy?

R.—Ils ont été payés par Lord Shaughnessy.

Par Me Geoffrion :

Q.—A vous?

10 R.—Oui. C'a été envoyé à moi par chèque, et j'ai fait remise à Ste-Agathe, et les records de cela sont dans les livres.

Q.—Il y avait un compte spécial pour la ferme?

R.—Oui, pour tous les produits qu'ils obtenaient de la ferme. C'a toujours été comme ça.

Par Me Holden :

Q.—Quand vous dites que vous en chargiez une partie à la succession, je comprends que ça n'était que pour les Aubrey?

20 R.—Oui, justement. Cela était entré séparément et on recevait un compte séparé, à la fin du mois.

Par Me Geoffrion :

Q.—Receviez-vous deux chèques ou un seul chèque pour les dépenses de la maison?

R.—Cela était chargé à l'opération de la résidence. Tous les produits qui sont pris à la ferme sont chargés à la résidence, pour l'opération de la résidence.

30 Q.—Vous tenez un compte séparé pour la ferme?

R.—Oui.

(Et le déposant ne dit rien de plus).

THOS. GILLESPIE (for Plaintiffs), Examination-in-Chief.

On this third day of March, in the year of Our Lord one thousand nine hundred and thirty, personally came and appeared

THOMAS GILLESPIE,

10 of the City and District of Montreal, gardener, aged 56 years, a witness produced and examined on behalf of the Plaintiffs, who, being duly sworn, deposes as follows:

Examined by Mr. McKeown, K.C., of Counsel for Plaintiffs:

Q.—You have given your occupation as gardener?

A.—Yes.

Q.—Where do you live?

A.—3581 Peel Street, Montreal.

20 Q.—Is that on the property of Sir Mortimer Davis, at the corner of Pine Avenue and Peel Street?

A.—Yes.

Q.—How long have you been employed there?

A.—I have been there twice. I was there for four years, and I came back again four years ago last September.

Q.—When were you first engaged there?

A.—I was there for four years. I left in 1909, I think it was; and I left the year the war started.

Q.—1914?

30 A.—Yes. Then I came back again.

Q.—You were there four years before the start of the war?

A.—Yes.

Q.—And came back again four years ago?

A.—Yes.

Q.—What are your duties there?

A.—Looking after the plants, and looking after the grounds outside, and looking after the fires, the snow and so on.

Q.—How much were you paid for that? What was your salary?

A.—\$100.00 a month.

40 Q.—Are you married?

A.—Yes.

Q.—And you and your family live on the property?

A.—Yes.

Q.—You have a house, in addition to the \$100.00 a month?

A.—Yes.

Q.—Is that house lighted and heated at your expense, or at the expense of the Estate?

THOS. GILLESPIE (for Plaintiffs), Examination-in-Chief.

A.—At the expense of the Estate.

Q.—And your duties consist in looking after the conservatories?

A.—The greenhouse, and the fires, and the grounds outside.

Q.—How many greenhouses are there?

A.—There is a greenhouse I think about 38 feet square and about 18 feet high in the centre. Then there is a conservatory at the house which just goes right around the end. I do not know the
10 size of it.

Q.—Since Sir Mortimer's death have the flowers been kept on as they were before he died?

A.—Yes, just the same.

Q.—Your duties have been the same since as they were before?

A.—Yes.

Q.—Are you a connoisseur in orchards?

A.—Yes, I know how to look after them and all that sort of
thing.

Q.—Sir Mortimer was quite a fancier of orchids?
20

A.—Yes.

Q.—Do you know anything about the value of orchid plants?

A.—Yes.

Q.—Can you tell us anything of the original cost of those plants?

A.—When they are buying orchids in like that they buy new varieties and they are very expensive, but if you have them to sell in a year or two they are very cheap.

Q.—When you say "expensive" how much do you mean per plant?

A.—Anywhere from \$50.00 to \$100.00, on an average. Of
30 course you can get orchids from \$2.00 to \$3.00 right up.

Q.—Do you suggest to His Lordship the outside price for any of those orchids was \$100.00 a plant?

A.—Oh, yes.

Q.—Not more than that?

A.—No, it would not be more than that.

Q.—How many orchids were left there at the time of Sir Mortimer's death?

A.—There were around 340 when I went there.

Q.—And, Sir Mortimer died a couple of years afterwards?
40

A.—Yes.

Q.—What was the condition at that time?

A.—They were doing some repairs to the greenhouse—the Imperial Tobacco. The heating between the walls from the furnace room up to the greenhouse had been eaten away by the rust, and they had to put it in new. Then they painted the pipes around and destroyed a lot of the orchids, also other flowers.

THOS. GILLESPIE (*for Plaintiffs*), *Examination-in-Chief*.

Q.—When was this?

A.—The next year after I went there.

Q.—Before Sir Mortimer died?

A.—Yes.

Q.—At the time of Sir Mortimer's death (two years ago this month) how many orchids were there?

10 A.—Some of them got pretty badly burned by the acids off the pipes. They kept alive a little while, but they kept gradually dying off.

Q.—As a matter of fact, did not some of your orchids take first prize at the recent Horticultural Show?

A.—Yes. There were a few of them more hardy than the others—they would stand more.

Q.—Were you in Court when Mr. Godsell gave evidence this morning in regard to the offers made for orchids?

A.—Yes.

20 Q.—Are you in a position to confirm his evidence?

A.—Yes.

Q.—That you were offered something like \$250.00 for the whole of them?

A.—Yes.

Q.—What other plants did you have there besides orchids?

A.—Palms, and ferns, and different things—cyclamen, and so on.

Q.—What becomes of the cut flowers, if I may refer to them in that way?

30 A.—There are no cut flowers at present, as we had no bulbs this year. We generally used to get bulbs in.

Q.—Did you put bulbs in in 1928 and 1929?

A.—None for two years.

Q.—You had no outside flowers?

A.—In the summertime, yes. We grew them from seed. We had no bulbs—no tulips, or hyacinths, or daffodils, or anything like that.

Q.—There is no revenue of any sort from the conservatory?

A.—No.

40 Q.—What becomes of the flowers?

A.—I just grow them there to keep the place nice, that is all. There are a lot of them annuals, of course, and when they are done flowering they are thrown out.

Q.—After they bloom they are thrown away?

A.—Yes. Of course, it is keeping the place up by keeping always a few flowers around. I plant outside the same thing.

THOS. GILLESPIE (*for Plaintiffs*), *Cross-Examination.*

Q.—So your evidence as the gardener in charge is that the flowers are allowed to bloom, and are then cast away?

A.—Yes. I got no orders to do anything else with them.

Q.—You have no instructions to do anything else with them?

A.—No.

10 Cross-examined by Mr. Campbell, K.C., of Counsel for Defendants:

Q.—Do you maintain a sufficient number of blooms in the conservatory and the greenhouse to give an appearance to the place?

A.—Yes.

Q.—With the flowers you have is it a more attractive looking house than it would be if those greenhouses and conservatories were cleared out and empty?

A.—Yes.

20 Q.—In the same way, in the summer do you maintain the bloom to make the grounds attractive?

A.—Yes.

Q.—And, do you keep the grass cut for the purpose of maintaining the appearance of the property?

A.—Yes.

Q.—Is it necessary for the maintenance of a property of this kind, in this climate, to keep the furnaces going through the winter?

30 A.—We have to keep the furnaces going for the plants, for both the greenhouse and the conservatory. We also have to keep the furnace going for the house, but not so hot as if people were living in it—just to keep the frost out.

Q.—Is it not necessary in this climate of ours to keep heat in the house, although it may not be occupied?

A.—Yes.

Q.—Including the conservatory?

A.—Yes.

By Mr. McKeown:

40 Q.—Can you give me an estimate of the quantity of coal that is used there? I think Mr. Godsell said ninety tons. Would you agree with that?

A.—Yes.

By the Court:

Q.—For the whole property?

A.—Yes.

THOS. GILLESPIE (for Plaintiffs), Cross-Examination.

By Mr. McKeown:

Q.—Including the conservatory?

A.—Two furnaces in the house, one for the conservatory, two down below, and a jacket heater.

Q.—How many furnaces have you?

A.—There are five furnaces going.

10 Q.—How many for the main house proper, outside of the conservatories?

A.—Two for the house, to keep the frost out; and one small furnace for the conservatory.

Q.—What about the greenhouse?

A.—There is a furnace for the greenhouse, and a furnace to heat Mr. Godsell's house, my house, and the garage.

Q.—That is all one hook-up from one furnace?

A.—Yes. There is also a small jacket heater as well.

20 Q.—Where is it operated from?

A.—From the furnace room where the other two are.

Q.—That is, the furnaces for the house?

A.—For the greenhouse and the garage.

By Mr. Campbell:

Q.—Is the ninety tons of coal the actual quantity used as the furnaces are being run now when the house is unoccupied, or is it the quantity that would be used if the house was occupied?

30 A.—If the house was occupied it would be a lot more than that.

Q.—Ninety tons is the quantity used running on the reduced furnaces?

A.—Yes. It would be perhaps one hundred and thirty tons if it was running full.

And further deponent saith not.

HERBERT B. McLEAN (for Plaintiffs), Examination-in-Chief.

On this third day of March, in the year of Our Lord one thousand nine hundred and thirty personally came and appeared

HERBERT B. McLEAN,

10 of the City and District of Montreal, Notary Public, aged 42 years, a witness produced and examined on behalf of the Plaintiffs, who, being duly sworn, deposes as follows:

Examined by Mr. McKeown, K.C., of Counsel for Plaintiffs:

Q.—You are a practising Notary, and a member of the notarial firm of Marler & Marler?

A.—I am.

Q.—And, you have been for a number of years?

A.—Yes.

20 Q.—You are the Herbert B. McLean referred to in these proceedings as one of the Trustees?

Mr. Campbell: Are we not now going beyond that portion of the case to which your Lordship indicated we should restrict ourselves?

His Lordship: I do not know, yet.

30 Mr. Campbell: I want to be sure we are making the objection at the proper time. As I understand it we are not at this stage going into any evidence bearing on the Actions on the contract, or any evidence that might apply to the Actions on the contract.

Mr. McKeown: If His Lordship thinks that part had better be suspended until we come to the stage where the Court would feel better able to deal with the matter of uniting the contracts, we can do so. Of course, it is inherently part of our case.

40 His Lordship: I thought we might spend these two or three days discussing the matter of the Rolls Royce, the blooming of the flowers in the conservatory and so on.

Mr. Geoffrion: We are endeavoring to get rid of our short witnesses.

Mr. Campbell: Do I understand this evidence now being offered

HERBERT B. McLEAN (for Plaintiffs), Examination-in-Chief.

will not in any event apply to the contract cases? Evidently my learned friend Mr. McKeown thinks it is of some importance in the main Action—the Action to remove the Executors, but I imagine it will also be used in the contract cases.

10 Mr. McKeown: If your Lordship's thought is that matters touching upon the contract should be suspended for the time being, without being abandoned, we are quite prepared to follow the suggestion.

His Lordship: I can perfectly well see that Mr. McLean's evidence might be used in one of the other cases, while in the main bearing on Action No. 62130.

20 Mr. Campbell: Perhaps it would be better to suspend Mr. McLean's evidence until His Lordship has ruled on the question which is open.

Mr. McKeown: I am quite willing to do that.

And the further examination of the witness is suspended.

And further for the present deponent saith not.

30

40

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

On this third day of March, in the year of Our Lord one thousand nine hundred and thirty, personally came and appeared

ALEXANDER M. REAPER

10 of the City and District of Montreal, Secretary Treasurer, aged 53 years, a witness produced and examined on behalf of the Plaintiffs, who, being duly sworn, deposes as follows:

Examined by Mr. McKeown, K.C., of Counsel for Plaintiffs:

Q.—You are one of the Executors and Trustees of the Will of the late Sir Mortimer Davis, jointly with Lord Shaughnessy and Lady Davis?

A.—Yes.

20 Q.—And you have been acting as such since the death of Sir Mortimer, in March, 1928?

A.—Yes.

Q.—Before the death of Sir Mortimer you had been, I think, in the employ of Sir Mortimer Davis, Incorporated?

A.—Yes.

Q.—In what capacity?

A.—As Secretary Treasurer.

Q.—Were you an officer in any of the subsidiary companies in which Sir Mortimer Davis, Incorporated, was largely interested?

30 A.—No.

Q.—Your position was simply that of Secretary Treasurer of Sir Mortimer Davis, Incorporated?

A.—Yes.

Q.—Who looked after the accounting end of Sir Mortimer Davis' private affairs, outside of his Corporations?

A.—I looked after them from about the fall of 1926.

Q.—When were you first connected with either Sir Mortimer Davis personally or Sir Mortimer Davis, Incorporated?

40 A.—I have been connected with companies with which Sir Mortimer Davis has been connected since about 1906.

Q.—Were those the Asbestos Companies?

A.—Yes, and various other Companies before that.

Q.—What would you say was the earliest date you had direct connection either with Sir Mortimer Davis' private affairs, or Sir Mortimer Davis, Incorporated?

A.—Sir Mortimer Davis, Incorporated, from about February,

ALEX. M. REAPER (*for Plaintiffs*), *Examination-in-Chief.*

1926; his personal affairs, from about the fall—August or September—of the same year.

Q.—Before that you were connected with other Companies in which Sir Mortimer was interested?

A.—Yes; in which he was interested or controlled.

Q.—At present you are a Director, Vice-President and Secretary-Treasurer of the Incorporated Company?

10 A.—Yes.

Q.—Do you own the share of stock upon which you are qualified as a Director, or does it belong to the Estate Sir Mortimer Davis?

A.—It belongs to the Estate of Sir Mortimer Davis.

Q.—You personally have not five cents worth of interest, and do not pretend to have, in Sir Mortimer Davis, Incorporated?

A.—I do not have any stock. I have an interest.

Q.—But, you have no interest through the stock?

A.—No.

20 Q.—Are you familiar with the stockholdings of Lord Shaughnessy in Sir Mortimer Davis, Incorporated, at the present time, and from its incorporation forward?

A.—Yes.

Q.—Have you the stock ledger here?

A.—I have it outside in the car.

Q.—You went there in 1926. How many shares stood in the name of Lord Shaughnessy at that time?

30 Mr. Campbell: We are coming up against the same difficulty. It is understood this evidence is only availing in the action to unseat the Executors, and, that being so, I have no objection. If, however, it has any bearing on the other case I think it should be suspended.

Mr. McKeown: But, we cannot have the case reconstructed and revamped to suit my learned friend. I do not intend to traverse into that part of the declaration which is in controversy in the other case, but these are facts entirely outside of that.

40 Mr. Campbell: I do not want to object, as long as it is only to avail in the action to remove the Executors.

By Mr. McKeown (continuing):

Q.—You went there in 1926. How many shares stood in the name of Lord Shaughnessy at that time?

A.—One share.

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

Q.—Was Lord Shaughnessy or Sir Mortimer Davis the owner of that share?

A.—Sir Mortimer Davis.

Q.—And I take it the certificate covering that share is today endorsed by Lord Shaughnessy, and is in possession of the Executors for the Estate. Is that right?

A.—Yes.

10 Q.—And that is the share upon which Lord Shaughnessy qualified as a Director of this Company up to what time?

A.—September 17th, 1929.

Q.—Up to the month of September last?

A.—Yes.

Q.—What was the outstanding capital, in shares, of Sir Mortimer Davis, Incorporated, at the time of Sir Mortimer's death?

A.—50,000 shares.

Q.—How many shares were at that time in the name of J. B. Waddell?

20 A.—2,500.

Q.—And is it the same number now?

A.—There are 2,525 now.

Q.—On the date of Sir Mortimer's death, March 22nd, 1928, with 50,000 shares outstanding, and 2,500 shares in the name of Mr. Waddell, who owned the other 47,500 shares?

A.—The Estate Sir Mortimer B. Davis. Then there were 2,375 shares in the name of Hon. H. M. Marler and Mr. McLean as Trustees.

30 Q.—And who else?

A.—The Estate owned the balance. There were 500 shares in the name of Hon. H. M. Marler.

Q.—That would mean 44,625 shares belonged to Sir Mortimer personally, and were registered in his name?

A.—I think that is right. I have not checked the figures, but that is approximately right.

Q.—2,500 shares were in the name of Mr. Waddell?

A.—Yes.

Q.—500 shares in the name of Mr. Marler?

40 A.—Yes.

Q.—And 2,375 shares in the name of H. M. Marler and H. B. McLean?

A.—Yes.

Q.—Following the death of Sir Mortimer, Lady Davis became registered holder of a share of stock which formerly stood in the name of the other plaintiff, M. B. Davis, Junior. Can you tell me from memory upon what date the transfer of that share was made?

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

A.—I think May 4th, 1928.

Q.—Was the transfer actually made that day on the books of the Company, or was it put through later as under that date?

A.—I think it was actually made then.

Q.—What was the purpose of transferring that share from M. B. Davis, Junior, to Lady Davis at that time?

10 A.—So that she could be qualified, or would be qualified, to become a Director.

Q.—Who were the Directors of Sir Mortimer Davis, Incorporated, at the time of Sir Mortimer's death?

A.—Lord Shaughnessy, the Hon. H. M. Marler, and myself.

Q.—Mr. Marler had not been named an Executor under the Will?

A.—No.

Q.—Lord Shaughnessy and yourself, with Lady Davis, had been so named?

20 A.—Yes.

Q.—I suggest to you that the object of transferring that share from the name of M. B. Davis, Junior, to Lady Davis on May 4th, 1928, was for the purpose of qualifying Lady Davis at once as a Director along with her two co-Executors, Lord Shaughnessy and yourself?

A.—No, I did not understand that. It was done at the first Shareholders' Meeting.

By Mr. Campbell:

30 Q.—After that date?

A.—After that date.

By Mr. McKeown (continuing):

Q.—Did you make any overtures to the third Director, Mr. Marler, at that time to resign in favor of Lady Davis, your co-Executor?

A.—I did not.

40 Q.—It never occurred to you?

A.—No.

By the Court:

Q.—Were there only three Directors?

A.—Three to five, to be arranged at each Annual Meeting.

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

Q.—And there were only three as long as Sir Mortimer Davis lived?

A.—At different times there occasionally had been more. I think there had been four on some occasions. I am not sure if there were five at one time.

By Mr. McKeown (continuing):

10

Q.—Will you identify as having been supplied by you to Counsel for the plaintiffs, and file as Exhibit P-42, a copy of the By-laws of Sir Mortimer Davis, Incorporated, Nos. 1 to 36, also Special By-law “A,” copy of Resolution passed by the Board of Directors on October 1st, 1924, and copy of By-law “B,” and will you identify these By-laws as being true copies of the By-laws of Sir Mortimer Davis, Incorporated?

A.—Yes.

20 Q.—Under By-law 17 there was a very convenient method of replacing Directors, in the event of resignation. You notice the vacancy if authorized, and the replacement also? “C—If by notice in writing to the Company he resigns his office” the seat has become vacant?

A.—Yes.

Q.—As far as you know, when Lady Davis was qualified as a Shareholder no suggestion was made to Mr. Marler to resign and be replaced by Lady Davis?

A.—No. I did not make any suggestion to him.

30 - Q.—Did you ever discuss it with Lord Shaughnessy?

A.—No.

By the Court:

Q.—As a matter of fact, did Mr. Marler remain on the Board?

A.—He did, until the next Annual Meeting.

Q.—That is from 1928 on?

A.—From 1928, yes. He resigned just before the Annual Meeting in December, 1928.

40 Q.—Did he act as a Director from May, 1928, to December, 1928?

A.—Yes.

Q.—So, there were four Directors?

A.—No. There were three Directors: Lord Shaughnessy, Mr. Marler and myself.

Q.—Lady Davis was not a Director?

A.—No.

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

By Mr. McKeown:

Q.—I would ask you to verify from your Minute Book the fact that Mr. Marler, from the time of the death of Sir Mortimer Davis in March, 1928, up to the time his resignation went into effect in December, 1928, had never attended a Meeting of the Board?

A.—No.

10 Q.—He attended no Meetings during that interim?

A.—No. There were only two formal Meetings, passing Resolutions regarding real estate.

Q.—Was Mr. Marler given any notice of the holding of those Meetings of Directors in that period?

A.—I do not recall it.

Q.—You have not any notices, or waivers of notices as to the Meetings of Directors, which you can exhibit to His Lordship, which were held between the death of Sir Mortimer Davis in March, 1928, and the time Mr. Marler left the Board in December of the same
20 year?

A.—No, I have not.

Q.—Up to the time Mr. Marler left the Board was it your practice to give any notices of Directors' Meetings, or would you just hold them with Lord Shaughnessy?

A.—No. Mr. Marler has been at Meetings a couple of times.

Q.—But, I am not asking you that question. Up to the time Mr. Marler left the Board was it your practice to give any notices of Directors' Meetings, or would you just hold them with Lord Shaughnessy?
30

Witness: From Sir Mortimer's death till the end?

Counsel: Yes. You did not give any notices?

A.—No. If there were notices at any time they were given over the telephone as a rule.

Q.—There were no written notices, and you do not know of any notices?

A.—No.

40 Q.—And Mr. Marler did not attend the Meetings, and you have no waivers?

A.—That is it.

By the Court:

Q.—Had he attended the Meetings during the lifetime of Sir Mortimer Davis?

ALEX. M. REAPER (*for Plaintiffs*), *Examination-in-Chief*.

A.—Yes.

By Mr. McKeown (continuing):

Q.—In point of fact from the time of Sir Mortimer's death Mr. Marler was not the Notary of the Estate, was he?

A.—No.

10 Q.—Another Notary, Mr. Phillips, was the Notary?

A.—Yes.

Q.—Sir Mortimer Davis, Incorporated, as you know (and I think it is common ground) owns the share control in Canadian Industrial Alcohol, Limited?

A.—Yes.

Q.—And did own it at the time of Sir Mortimer's death?

A.—Yes.

Q.—And for some years before that?

20 A.—Yes.

Q.—Lord Shaughnessy is President of Canadian Industrial Alcohol, Limited?

A.—Yes.

Q.—At the Meetings he has attended since the death of Sir Mortimer Davis, and at which he was elected a Director, has he voted for the election of the slate, including himself, the share control owned by Sir Mortimer Davis, Incorporated, in Canadian Industrial Alcohol, Limited?

A.—I presume so.

30 Q.—Have you any moral doubt of it?

A.—No.

Q.—And all the combination of the so-called independent shareholders of Canadian Industrial Alcohol, Limited, could not prevent Lord Shaughnessy under these conditions from becoming a Director of the Company?

Mr. Campbell: I think that is an expression of academic opinion which your Lordship can decide as well as the witness. The question is not relevant. If the Estate had the control obviously they could
40 vote the control.

Mr. McKeown: We cover the point in an allegation and you deny it.

By Mr. McKeown (continuing):

Q.—Prior to the death of Sir Mortimer Davis he kept in pretty

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

close touch, did he not, with the affairs of Sir Mortimer Davis, Incorporated?

A.—We kept him fairly well advised, yes.

Q.—By letter and by cable?

A.—Yes, both, I think.

Q.—I am speaking now of the occasions when he was not personally in Montreal?

10 A.—Yes.

Q.—Even while he was abroad he kept in constant touch with Sir Mortimer Davis, Incorporated?

A.—We were always in communication, more or less.

Q.—Either by letter or by cable?

A.—Yes.

Q.—You also kept in pretty close touch with Sir Mortimer, did you not? I am not now speaking of the Incorporated Company.

A.—Yes, fairly close.

20 Q.—In particular, did you not every month send him detailed statements of the affairs of Sir Mortimer Davis, Incorporated?

A.—Yes.

Q.—And detailed statements of his own affairs?

A.—Yes.

Q.—In the minutest detail?

A.—Fairly minute.

Q.—Did they not show every item minutely?

A.—Not exactly, but they were quite complete.

30 Q.—Will you produce, as Exhibit P-43, the statements which were sent to Sir Mortimer Davis for the months of January, February and March, 1928, concerning his own affairs and those of the Incorporated Company? There may not be a statement to the end of March, because Sir Mortimer died in March.

A.—And there may not be for February either.

Q.—Then, let us say for January and February.

A.—Very well.

40 Q.—Have you in your possession a document dated September 17th, 1924, purporting to be a contract between Lord Shaughnessy and the Incorporated Company, in which Messrs. Hon. Herbert M. Marler and H. B. McLean, Notaries of Sir Mortimer Davis, intervened? Have you the original of that document?

A.—Yes.

Q.—Will you produce it?

A.—I have not it here, but I will take a note of it. I think a copy of it has been filed.

Mr. McKeown: We had not an authentic copy.

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

Mr. Campbell: I have not examined the copies of any of the Exhibits, but we are quite prepared to accept them subject to verification as to their accuracy.

By Mr. Campbell:

10 Q.—Will you bring the original and have it compared with the copy which is in Court?

A.—Yes, I will do that.

Mr. Campbell: And, subject to verification, we will admit the copy.

By Mr. McKeown (continuing):

20 Q.—Have you in your possession a letter of October 15th, 1924, referring to that contract?

Mr. Holden: These three documents are my learned friend's Exhibits Nos. 13, 14 and 15, and we are prepared to make the same admission for the three of them. We are prepared to have them admitted subject to verification.

Mr. McKeown: We have never seen the originals, and I would like to have them exhibited.

30 By Mr. Campbell:

Q.—Will you please bring them tomorrow, Mr. Reaper?

A.—Yes, I will.

By Mr. McKeown:

Q.—The last Exhibit to which reference has been made, Exhibit No. 15, is some form of contract or agreement executed under date May 5th, 1928. Have you that document here?

40 A.—No, not here. It is with the agreements.

Q.—Where?

A.—At the office.

Q.—Will you please bring the original tomorrow?

A.—I will.

Q.—Exhibit No. 15, being the agreement of May 5th, 1928, purporting to be made between Sir Mortimer Davis, Incorporated, represented by Lord Shaughnessy and yourself, says you are duly

ALEX. M. REAPER (*for Plaintiffs*), *Examination-in-Chief.*

authorized. Is there any authority in the Minutes of Sir Mortimer Davis, Incorporated, authorizing the execution of that document, Exhibit No. 15?

A.—There is no Minute with reference to it, no.

Q.—Jointly as first parties, and named the Executors and Trustees of the last Will of Sir Mortimer Davis, parties of the first part; and Lord Shaughnessy, party of the second part. Do you remember
10 that document?

A.—Yes.

Q.—It bears your signature as Secretary-Treasurer, and also as an Executor?

A.—Yes.

Q.—I am instructed that you had signed that document as the first signer in both capacities. Is that true?

A.—I do not just recall the order of signature. It is possible.

Q.—Were you present when Lady Davis signed that document?

A.—No.
20

Q.—Who drafted that document, and who suggested it? Where did it emanate from?

A.—It was drafted by Lord Shaughnessy.

Q.—It purports to have been executed under date May 5th, 1928. Would that be the date it was signed?

A.—That was the date it was signed, yes.

Q.—How long before that date was it drawn?

A.—Just about that time, as far as I know.

Q.—You are right in the same office with Lord Shaughnessy, are
30 you not?

A.—Yes.

Q.—And you have always been on very close and intimate terms with him?

A.—Yes.

Q.—Did Lord Shaughnessy discuss the subject with you before placing this document before you for signature?

A.—I think it had been spoken about; probably a day or so before.

Q.—Did you participate in the drafting of the document?
40

A.—No.

Q.—Who did?

A.—I think he drew it himself.

Q.—That is, Lord Shaughnessy?

A.—Yes.

Q.—And brought it in to you for signature?

A.—It was discussed, and after it was written out it was brought for signature, yes.

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

Q.—Lord Shaughnessy is a party to that document, as Vice-President of Sir Mortimer Davis, Incorporated, and as a Trustee of the Estate, according to its terms?

A.—Yes.

Q.—You know nothing of the circumstances under which Lady Davis affixed her signature to it?

A.—No. I understood the matter had been discussed with her
10 before that.

Q.—I would like you to appreciate from first to last that what you understand has nothing to do with this case. I only want evidence of what you know.

You know nothing of the circumstances under which Lady Davis affixed her signature to it?

A.—No.

And the further examination of the witness is continued to
20 Tuesday, March 4th, at 10.30 o'clock in the forenoon.

And further for the present deponent saith not.

30

40

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

MORNING SESSION, MARCH 4th, 1930

And on this fourth day of March, in the year of our Lord one thousand nine hundred and thirty, personally came and appeared

ALEXANDER M. REAPER

10

and his examination-in-chief was continued by Mr. W. K. McKeown, K.C., as follows:

By Mr. McKeown:

Q.—In the course of your evidence yesterday, Mr. Reaper, reference was made to the statements prepared by you and forwarded to the late Sir Mortimer Davis?

20 A.—Yes.

Q.—In the months of January and February, 1928, in the matter of Sir Mortimer's personal affairs, as in the matter of the Incorporated Company?

A.—Yes.

Q.—I now present to you the Exhibit to which reference was made at that time, which are filed together as one Exhibit, and already marked P-43, and would ask you to say whether the sheets comprising Exhibit P-43 were prepared by you, and sent to the late Sir Mortimer Davis in the months preceding his death?

30 A.—Yes.

Q.—The several statements comprised in this Exhibit P-43 appear, while dated in February, to reach back into December and January, but could you tell me whether these are the statements for the month of February, or would they include the statement for January?

40 A.—The first sheet, the one giving particulars of Sir Mortimer's account with the Incorporated Company, is for the month of January, 1928; the second sheet is explanatory of some of the items on the first sheet for the month of January, 1928; the third sheet is a statement of the personal cash account of Sir Mortimer Davis for the month of February, 1928; the fourth sheet is a memorandum of Sir Mortimer's account with Bamberger Brothers, New York, showing February, and the position of the securities they held at the end of that month.

Q.—In passing, Bamberger Brothers is a firm of stock brokers in New York with whom Sir Mortimer carried securities on margin at the time of his death?

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

A.—Yes.

10 The fifth sheet is a summary of the cash account of Sir Mortimer Davis Incorporated for the month of February, 1928; the sixth and seventh sheets are memorandums of receipts and accrued revenue for the month of January, 1928, and of the disbursements and accrued charges for the same months, these amounts so shown accounting for the differences shown by the last two sheets, which is a trial balance as at January 31st, 1928, showing the comparison with the trial balance at the 31st of December, 1927, and the differences between the two shown in the last column.

Q.—Black and red?

A.—Black and red, representing whether they were increases or decreases.

Q.—Shown in black and red?

A.—Yes.

Q.—The two last sheets are really one document?

20 A.—The two last sheets are really one document, one showing the assets and the other the liabilities.

Q.—Was it the practice during Sir Mortimer's lifetime to send him each month statements concerning his personal affairs similar to those included in Exhibit P-43?

A.—Yes.

Q.—And was it equally the practice prior to Sir Mortimer's death to send him month by month statements, trial balances, etc., concerning the Incorporated Company, as included in the Exhibit P-43?

30 A.—Yes.

Q.—Do I understand that you identify the sheets in this document, Exhibit P-43, as having been prepared by yourself?

A.—Yes.

Q.—Following Sir Mortimer's death, were statements prepared month by month similar to Exhibit P-43?

A.—For the most part, for a certain time.

Q.—What do you mean by that?

A.—I mean, I think we carried him on until about July, 1929.

Q.—Until July of 1929?

40 A.—Yes.

Q.—What did you carry on? Full statements similar to these contained in Exhibit P-43?

A.—No, nothing of the Estate. There were monthly records.

Q.—Before taking up the Estate: as to the Incorporated Company, did you maintain these trial balances?

A.—Yes.

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

Q.—Statements similar to the sheets contained in P-43 which you have said refer to the Company?

A.—I got them up to June, 1929, I think.

Q.—Lady Davis was abroad?

A.—Yes.

Q.—She was residing in France during that time?

A.—Most of the time.

10 Q.—Did you send her month by month copies of statements concerning the Incorporated Company, similar to those contained in P-43?

A.—No.

By the Court:

Q.—Did she ask for them?

A.—No.

20 By Mr. McKeown:

Q.—As to the Estate, were statements similar to the statements contained in P-43 relating to Sir Mortimer's personal affairs maintained for the Estate month by month, after his death?

A.—No.

30 Q.—At the adjournment yesterday, you were speaking of the contract of September 17th, 1924, the letter of October 15th, 1924, and the modification of May 5th, 1928. I think you told us that you first became connected in active charge of matters in the spring of 1926 of the Incorporated Company?

A.—Yes.

Q.—And of Sir Mortimer's affairs in the fall of that year?

A.—Yes.

Q.—Looking at the letter of the 15th of October, 1924, the second paragraph, the letter being addressed to Lord Shaughnessy by the Incorporated Company, and the memorandum of approval at the bottom by Lord Shaughnessy, the second paragraph reads:

40 “ It is understood that any remuneration which you may receive as a Director of this Company (meaning Sir Mortimer Davis Incorporated) or any remuneration paid to you for services as a Director of any other company in which this Company is largely interested, will be paid in by you to this Company and not retained by you personally ”?

A.—Yes.

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

Q.—With that clause in mind, the next paragraph excepts certain Corporations which were named there?

A.—Yes.

Q.—From the time that you became connected with the Company, was Lord Shaughnessy at that time a Director and officer of the Alcohol Company?

A.—Yes.

10 Q.—Was he President at that time?

A.—Yes. Since I have been there he has been President. He has been President since I have been with the Incorporated Company.

By the Court:

Q.—Since what date?

A.—Since December, 1925.

20 By Mr. McKeown:

Q.—From that time on, up to May 5th, 1928, had Lord Shaughnessy turned into the Incorporated Company his fees and whatever he received for services from the Alcohol Company?

A.—His fees as a Director.

Q.—But not any remuneration as an official?

A.—No.

By the Court:

30 Q.—What difference do you make between the two?

A.—One is Directors' fees. What he got as a salary was not turned in.

By the Court:

Q.—Did he get a salary of \$25,000, and was that increased by a bonus of \$5,000?

40 A.—Not from the Incorporated Company, but as an officer of the Alcohol Company, he did.

By Mr. McKeown:

Q.—Just speaking on that subject: do you know what his official salary was as President of the Alcohol Company?

Mr. Holden: The letter my learned friend refers to is a letter

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

from the Incorporated Company, and the Companies it refers to, of course, do not include the Incorporated Company.

Mr. McKeown: We do not suggest anything of the kind.

Mr. Holden: The letter is from the Incorporated Company to Lord Shaughnessy and refers to other companies.

10

By Mr. McKeown:

Q.—Do you know what his official salary was as President of the Alcohol Company?

A.—I think it was \$25,000.

Mr. Campbell: We have no particular objection to this question being answered, but I submit it is irrelevant, and we object to it as irrelevant because, under the Agreement as read, Lord Shaughnessy was not accountable to Sir Mortimer Davis Incorporated for his salary as President of the Alcohol Company; he was accountable for any salary he got as a Director.

20

His Lordship: It will be a question as to the interpretation of this Agreement.

Mr. McKeown: Because here, he was supposed to give his whole time.

30

His Lordship: I am called upon to interpret the Agreement.

Mr. Campbell: I just want my objection noted, as to the relevancy.

By Mr. McKeown:

Q.—His official salary was \$25,000?

A.—Yes.

Q.—Was Lord Shaughnessy, in addition to that, receiving remuneration as a Director of the Alcohol Company?

40

A.—Yes.

Q.—How much?

A.—\$500 a year, which was turned into the Incorporated Company.

Q.—Was Lord Shaughnessy a director also of such Corporations as Consolidated Asbestos?

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

A.—Yes.

Q.—That is a company controlled entirely by Sir Mortimer Davis Incorporated?

A.—Yes.

Q.—Did he receive any salary or directors' fees in connection with that company?

A.—No.

10 Q.—Were any paid to anyone?

A.—No.

Q.—Was it an immediate subsidiary of Sir Mortimer Davis Incorporated?

A.—They controlled it.

Q.—Was Lord Shaughnessy a director or officer of any other companies following October 15th, 1924, in which the Incorporated Company was largely interested, other than the four companies named in the Exhibit No. 14, that is, the letter of the 15th of October, 1924?

20 A.—From 1926 he was a director of the Asbestos Corporation Limited.

Q.—And in that connection, I presume, he received fees as director?

A.—He received directors' fees which were turned into the Incorporated Company.

Q.—Did he hold any official or any executive position in connection with the Asbestos Corporation at that time?

30 A.—He was a director in the beginning, and later, I think, was made Vice-President.

Q.—Without remuneration?

A.—Without remuneration, as far as I know.

Q.—In any event, nothing was turned in?

A.—No.

Q.—Will you tell His Lordship to what amount the advances made in the form of loans by the Incorporated Company to the Estate have amounted to, and of which mention is made in paragraph 54 of the Declaration, of the sum of \$941,649.32?

40 A.—The amount of advances by the Incorporated Company to the Estate to December 31st, 1929, amounted to \$962,018.31.

Q.—Has the amount not been brought up to date in the account now before you?

A.—There is only interest to be added since, and one item of \$198.00.

Q.—At what rate of interest is the Estate debited by the Incorporated Company's account on that advance?

A.—Six per cent.

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

Q.—No dividends or other form of distribution of revenue of the Incorporated Company since the death of Sir Mortimer Davis has been declared or paid?

A.—No.

Q.—Will you tell His Lordship how much the operating profit of the Incorporated Company was, for the year ending September 30th, 1928, the year in which Sir Mortimer died?

10 A.—The operating profit is shown as \$454,705.72.

Q.—And for the same period profits on Investment, and profits on Insurance policies, how much additional did they amount to?

A.—\$308,497.62.

Q.—Making a total of how much?

A.—\$763,203.34.

Q.—You have been given these figures from a copy of the Auditor's report prepared by Price, Waterhouse & Company, as of date September 30th, 1928?

20 A.—Yes.

Q.—And in the General Statement of the Company's affairs, as of that date, is it not true that the whole sum which you have mentioned, \$763,203.34, is carried to the credit of surplus account as being profits for the year ending September 30th, 1928?

A.—Yes.

Q.—In addition to that profit, and the amount which we have referred to for the year, the same statement shows, does it not, a surplus as of the beginning of that year, September 30th, 1927, of \$799,146.54 additional?

30 A.—Yes.

Q.—And the combined surplus and profits as of September 30th, 1928, was \$1,562,349.88?

A.—Yes.

Q.—The Incorporated Company as of the date we have just reviewed, September 30th, 1928, was in a fairly liquid position, was it not in the way of accounts receivable, first of all, cash in bank \$172,055.85?

A.—Yes.

Q.—And call loans outstanding at that time of how much?

40 A.—\$880,000.00.

Q.—Combining together a million dollars of cash on hand, and call loans on the street which could have been got in at short notice?

A.—Yes.

Q.—And up to September 30th, 1928, how much had been advanced by way of loans to the Estate?

A.—\$230,368.27.

Q.—And interest?

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

A.—That is including interest.

Q.—Will you tell His Lordship what the profits of Sir Mortimer Davis Incorporated were for the year ending September 30th, 1929, with reference to Plaintiffs' Exhibit No. 10?

A.—\$711,910.71.

Q.—As of that date, can you tell me how much the advances to the Estate had amounted to as of September 30th, 1929?

10 A.—\$941,649.32.

Q.—No dividends had been declared by the Company, and the Estate was paying interest on that advance at six per cent?

A.—Yes.

Q.—Something like at the rate of about \$60,000.00 per annum in round figures?

A.—It would not be quite that.

Q.—It would be on that sum?

A.—On that sum, yes.

20 Q.—Lord Shaughnessy and yourself received the letters which were sent to you on behalf of Lady Davis, dated November 21st, 1929, being Exhibit No. 12, whereby you were both called upon by her to relinquish the offices of Executors and Trustees of the Estate, as also the offices held in Sir Mortimer Davis Incorporated, and in all corporations under its control, including Canadian Industrial Alcohol, and with an intimation that if this was not done, proceedings would be taken?

A.—Yes.

30 Q.—Then on the 4th of December, a notice calling a Directors' meeting of the Incorporated Company, being Exhibit No. 20, was sent out under your signature, calling a meeting for December 9th, 1929 (I am reading from the Exhibit) for the purpose of considering the Company's financial affairs, and the advisability of declaring a dividend of 21 per cent to the shareholders of record September 30th last?

A.—Yes.

Q.—And before that meeting was held, an amended notice was sent out for the same meeting under your signature, under date December 6th, being Exhibit No. 21?

40 A.—Yes

Q.—And by this amended notice there is this clause:

“ Notice is also given that the Directors will be asked to consider the propriety of reducing the capital in the Company to such extent as may be necessary to enable the Executors of the Estate of the late Sir Mortimer B. Davis, to repay to the Company all amounts advanced by the Company and expended

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

by the Executors on account of capital indebtedness of the Estate and to provide for certain future requirements of the Executors and capital account.”

This was an amended notice for the same meeting?

A.—Yes.

10 Q.—The meeting was fixed for December 9th, and was ad-
journed from time to time and did not take place?

A.—Yes.

Q.—Just to clear up a point as we go along: In connection with donations from the Estate since Sir Mortimer’s death of course, do I understand they were limited to matters to which Sir Mortimer had given his consent or had committed himself before his death?

A.—Yes.

Q.—That is quite right?

A.—Yes.

20 Q.—The payments were made to what amount after his death?

A.—We paid \$2,500.00 on account of a contribution which he had made to that joint hospital campaign. There is still a balance of \$5,000.00 due on that, and we have made payments, or accepted liability in connection with the Y.M.H.A. building for approximately \$310,000.00.

Q.—You refer to the Young Men’s Hebrew Association of Montreal?

A.—Yes.

30 Q.—Speaking of that Institution, I understand Sir Mortimer purchased a piece of land, and then undertook to put up a building, is that your understanding?

A.—I think it was all undertaken at the same time. The land was purchased first.

By the Court:

Q.—Is that the building on Mount Royal Avenue?

A.—Yes.

40 By Mr. McKeown:

Q.—Was there any authority in writing, or any deed, or anything of that kind at that time, or was it just a verbal arrangement?

A.—It was a verbal arrangement.

Q.—What has that building and that project cost Sir Mortimer and the Estate to date?

A.—About \$420,000.00.

ALEX. M. REAPER (*for Plaintiffs*), *Examination-in-Chief*.

Q.—Of which, how much has been disbursed since Sir Mortimer's death?

A.—About \$310,000.00.

Q.—There is no reference to that in the Will is there, or no authority?

A.—No, there is no reference to it in the Will. It had been arranged before that.

10 Q.—The Executors have gone on, and not only acquired the land and built the building, but have equipped it, have they not?

A.—It was equipped, yes.

By the Court:

Q.—Was the land bought before Sir Mortimer's death?

A.—Yes.

20 By the Court:

Q.—The land was purchased, if I understand well, in the name of the Incorporated Company?

A.—It was held in the name of the Incorporated Company, but payments were made by them and charged to Sir Mortimer's account.

By the Court:

30 Q.—Had Sir Mortimer made any promises to the Young Men's Hebrew Association?

A.—At a meeting in 1926, at a complimentary dinner which had been given to him, he agreed to put up this building at that time. He appointed a certain Committee, comprising several members of the Jewish community, to act with Lord Shaughnessy in that connection, and they were to look around and secure a site, and they looked around for the most part of a year, and when Sir Mortimer returned in 1927, they discussed the matter again with him, explained that they could not get the land for the price that they had
40 originally thought they could, and I think some details in regard to the building were discussed with him, and he agreed to supplement the original amount, or to undertake to erect the building.

By the Court:

Q.—Was that all verbal?

A.—That was all verbal, yes.

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

By the Court:

Q.—So, is everything paid in connection with that building?

10 A.—There is a small balance yet to be paid of perhaps five or six thousand dollars, a balance of Architect's fees and some balances on one or two of the building contracts which has not been finally adjusted, but that is included in the amount of \$310,000.00 which I said has been paid by the Estate, or committed for.

By the Court:

Q.—How is it that this matter was pressed to a conclusion while other legacies apparently were unpaid?

A.—I think the reason for that was, that a very large portion was equipped, and plans had been prepared.

20 By the Court:

Q.—Were the plans prepared in Sir Mortimer's lifetime?

A.—I do not think they were quite completed. I think certain plans had been discussed with him and the Committee and probably with the Architects.

By Mr. McKeown:

30 Q.—And that was the other payment in the form of bonus— those would be the two?

A.—Those were all, yes.

Q.—At the time of Sir Mortimer's death, Lord Shaughnessy appeared on the books on the Incorporated Company as a debtor for a loan of \$50,000.00?

A.—Yes.

Q.—Did the Incorporated Company hold any note from Lord Shaughnessy for that?

A.—No.

40 Q.—There was no acknowledgment in any form at all whatever?

A.—No acknowledgment.

Q.—No obligation?

A.—Except the endorsed cheque.

Mr. Campbell: There was a Resolution adopted at that meeting.

By Mr. McKeown:

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

Q.—Could you say, on the suggestion of Mr. Campbell, that there was a Resolution passed dealing with that \$50,000.00 loan?

A.—Yes, there is.

Q.—Perhaps you could turn it up for us?

A.—It was in the fall of 1927, I think.

Q.—You might turn it up?

(The witness does so.)

10 Q.—You have indicated to Counsel a Minute entered in the Minutes of the Directors of Sir Mortimer Davis Incorporated under date January 25th, 1927, at page 189, which reads as follows:

“ Loan to Lord Shaughnessy. It was reported with the approval of Sir Mortimer Davis a loan of \$50,000.00 had been made to Lord Shaughnessy with interest at six per cent per annum.”

20 That is the only record concerning the loan in question which you had in your possession?

A.—Yes.

By the Court:

Q.—Was Lord Shaughnessy present at that meeting?

A.—Yes.

Mr. Campbell: The Minutes are signed at that meeting.

30 By the Court:

Q.—Was Sir Mortimer present?

A.—No.

Mr. Campbell: Those present were Lord Shaughnessy, Mr. Marler and Sir Mortimer B. Davis.

Witness: It is signed.

40 Mr. McKeown: There is no question, my Lord, about that loan having been made. We allege it ourselves.

By Mr. McKeown:

Q.—As to the interest upon that loan, following the death of

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

Sir Mortimer, did Lord Shaughnessy maintain or pay the interest upon that loan, or any interest prior to September, 1929?

A.—No. The interest was accrued.

Q.—It was accumulated?

A.—Accumulated, yes.

Q.—Accumulated for a six months period?

A.—Six months period.

10

Q.—At six per cent?

A.—At six per cent.

Q.—And nothing paid on account of interest?

A.—No, not until the final settlement.

Q.—There was a further loan due, at the time of Sir Mortimer's death, by Lord Shaughnessy in the capital sum of \$13,500.00, which had been made during Sir Mortimer's lifetime. Did the Company hold a note for that?

A.—No, they did not hold a note. They held three thousand McNeish Debentures as collateral.

20

Q.—Was there any Resolution authorizing that loan or fixing the rate of interest?

A.—No, I think not.

Q.—What was the rate of interest which was debited?

A.—Six per cent.

Q.—Six per cent computed twice a year, is that it?

A.—No. In this case it was figured monthly.

Q.—And the interest on the loan was offset by the interest received in McNeish Debentures?

30

A.—Yes.

Q.—What is the par value of those Debentures?

A.—Five dollars.

Q.—Do you know that they depreciated in market value very considerably?

A.—They have, yes.

Q.—To what amount? Those McNeish Debentures are quoted on the Montreal Stock Exchange?

A.—They are listed now.

Q.—And what do they sell at?

40

A.—I do not know exactly. I think, approximately, \$3.50 or \$3.60.

Q.—Well, at \$3.50 they would have a gross value of \$10,500 against this loan of \$13,500?

A.—Yes.

Q.—In addition to the loans which you have just reviewed, there was a further loan of the capital sum of \$7,248.72, secured upon some

ALEX. M. REAPER (*for Plaintiffs*), *Examination-in-Chief.*

Alcohol shares. Is that the capital amount which I have just given you?

A.—I think it was \$7,500.00 originally.

Q.—In what way has the amount come down?

A.—Interest was charged on that in the same way as with the McNeish loan, but the dividends on the 375 shares of B Alcohol stock had been credited against the account.

10 Q.—And exceeded the interest on the loan?

A.—And exceeded the interest on the loan.

Q.—As to those 375 shares of Alcohol B stock, what is the current market quotation for them?

Mr. Campbell: I object to this question as irrelevant.

Mr. McKeown: He may take it very generally. He is the Defendant.

20 Objection reserved.

A.—I think they are about eight or nine dollars.

By Mr. McKeown:

Q.—Take it as good measure, ten dollars, that would make the value of the collateral \$3,750.00 against a loan which stands at something about \$7,000.00?

30 A.—Yes.

Q.—Is that right?

A.—That is right.

Q.—These two loans which we have just referred to, the so-called McNeish loan of \$13,500.00, and the Alcohol loan of originally \$7,500.00 are still unpaid on your books, are they not?

A.—Yes.

Q.—It is alleged in paragraph 71 of the Declaration that on a date of which the Plaintiffs are not aware, at the time of the institution of the suit, Lord Shaughnessy had withdrawn the funds of the Incorporated Company to a further sum of \$10,000.00 under the guise of another loan, sometime after September 30th, 1928. Was there such a loan or was there such a debit to Lord Shaughnessy?

A.—\$10,000.00, yes.

Q.—Did the Incorporated Company hold his note for that?

A.—No, it was an open account.

Q.—Was there any authority from the Directors to make any such advance to Lord Shaughnessy?

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

A.—There was no Resolution.

Q.—Was that treated in a manner as to interest, the same as the other loans, that is, on the basis of six per cent figured semi-annually?

A.—Semi-annually, yes.

Q.—Just exactly what is entered in the books of the Incorporated Company concerning that advance of money?

10 A.—Just that it is charged up to Lord Shaughnessy and interest accumulated on it. That it was deducted, when settlement was made with him on September 17th.

Mr. McKeown: I think, My Lord, if we are going to keep this part of the record clear of the Deed, the last part of the witness' answer should be struck out.

Mr. Campbell: Your Lordship has to try the issue in this action. My learned friends are relying on the facts of this loan, as a matter of criticism against Lord Shaughnessy. There is no doubt about the facts. The loan is charged against Lord Shaughnessy in the books, and when September 17th, 1929, arrived it was settled with all the other outstanding obligations, except these two about which there was a special arrangement.

His Lordship: The part of the answer that you refer to is that according to your contention, that loan was settled on September 17th, 1929?

30 Mr. Campbell: Exactly.

His Lordship: When the Deed, the annulment of which is sought was passed?

Mr. Campbell: It is passed five years before—I am not asking Your Lorship at this minute to say that we are right or wrong, but it seems to me the witness should be allowed to complete his answer.

40 His Lordship: Let the answer remain.

By Mr. McKeown:

Q.—On this \$10,000,000 item there was no collateral paid?

A.—No collateral.

His Lordship: The so-called settlement of the \$10,000?

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

Mr. McKeown: But that is not collateral.

Mr. Campbell: It may not be collateral, but it is security. If our position is sound it is obviously security.

By Mr. McKeown:

10 Q.—I would like to ask you to produce as Exhibit P-44, cheque of the Incorporated Company under which the \$10,000 to which we have just been referring, went out from the funds of the Incorporated Company to Lord Shaughnessy, being a cheque dated January 7th, 1929, on the Canadian Bank of Commerce, to the order of Lord Shaughnessy, signed by Lord Shaughnessy as President and by yourself as Secretary-Treasurer, and endorsed for deposit to the credit of Lord Shaughnessy by yourself as Secretary. Do you identify that as being the cheque under which that sum of money was paid out?

A.—Yes.

20 Q.—I notice the endorsement on that cheque, Lord Shaughnessy, A. M. Reaper, Secretary. Do you hold a Power of Attorney from Lord Shaughnessy?

A.—No. It was deposited to his credit. It did not require anything.

Q.—Just formally all it required was a rubber stamp?

A.—Exactly.

30 Q.—Up to the month of September, 1929,—this advance was in January of the same year, was any interest paid by Lord Shaughnessy of this particular item of \$10,000?

A.—No, it just accrued until settlement.

Q.—Apart from the loans which have just been reviewed, and advances and withdrawals of money, there has been produced on Discovery a statement as Exhibit P-27, of withdrawals by Lord Shaughnessy, between July 11th, 1928, and September of the same year, amounting to \$4,684.22?

A.—Yes.

Q.—Have you with you in Court the cheques which you exhibited the other day?

40 A.—Yes.

Q.—Will you now produce as one Exhibit, P-45, thirty-three cheques of Sir Mortimer Davis Incorporated, corresponding with the items on the Exhibit P-27?

A.—Thirty-three cheques, yes.

Q.—You will note that the first thirteen of those cheques are signed by Lord Shaughnessy as President of the Incorporated Company, as also by yourself?

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

A.—Yes.

Q.—And the remaining twenty are signed by you and by H. M. Walmsley, Assistant Secretary of the Company?

A.—Yes.

Q.—Some of these items are relatively small in amount, and others up as high as \$2,700.00 and \$2,800.00?

10 A.—One item.

Q.—Can you tell His Lordship generally what the small items refer to?

A.—They were household items Lord Shaughnessy paid during his absence in Europe.

Q.—Household items?

A.—Most of them employees.

Q.—You mean domestics employed at his home on Peel Street?

A.—Yes.

Q.—Chauffeur?

20 A.—Chauffeur included.

Q.—That would account for the majority of the smaller items ?

A.—Yes.

Q.—And then there is a larger item to the Receiver-General of Canada, Income Tax, \$2,800.00 which speaks for itself ?

A.—Yes.

By the Court:

Q.—Was that paid during Lord Shaughnessy's absence?

30 A.—It was

By Mr. McKeown:

Q.—I think it has also been stated in your evidence that apart from these payments covered by P-27 to domestics and this other item for Income Tax, Lord Shaughnessy's salary was paid to him month to month notwithstanding his absence, is that right?

A.—Regular cheques were issued.

Q.—What became of them?

40 A.—They were passed to his account.

Q.—Here in Montreal?

A.—Yes.

Q.—Under his instructions?

A.—Yes.

By the Court:

ALEX. M. REAPER (*for Plaintiffs*), *Examination-in-Chief*.

Q.—How long was Lord Shaughnessy absent in Europe?

A.—About three months I think.

By Mr. McKeown:

Q.—I take it that the amounts mentioned in Exhibit P-27 were not deducted from the salary cheques, the salary cheques were for
10 full amount?

A.—They were. He gave a cheque in payment.

Q.—You say you did not hold a Power of Attorney from Lord Shaughnessy?

A.—No.

Q.—Did his Secretary hold a Power of Attorney?

A.—No.

Q.—He had not left a Power of Attorney?

A.—No, not so far as I know.

Q.—Can you say what date Lord Shaughnessy left for Europe
20 in 1928?

A.—I think it was about July 9th.

Q.—Do you know what that item, July 11th, C.P.R. \$215.00 is?

A.—I think that is in connection with transportation which had to be adjusted at the last minute.

Q.—That is, his passage?

A.—No. That is only part of it.

Q.—Part of the passage money?

A.—Part of it. I think there was some mix-up, and certain
30 tickets were only delivered to him at the train the morning he left.

Q.—Thirteen of these cheques are signed by Lord Shaughnessy. I take it he must have signed them before he left?

A.—Yes.

Q.—With instructions to you to use them?

A.—He had signed some cheques before he left, yes.

Q.—And did he give you instructions to use them for the purpose mentioned in P-27?

A.—No, they were for general purposes.

Q.—Do you want his Lordship to understand that you made all
40 those disbursements shown in P-27 for household expenses of Lord Shaughnessy without any prior understanding with him that you were to do that?

A.—Oh, I had an understanding, yes.

Q.—He had told you to do it?

A.—Yes, certainly.

Q.—The end of the fiscal year of the Company was September 30th, 1928?

ALEX. M. REAPER (*for Plaintiffs*), *Examination-in-Chief*.

A.—Yes.

Q.—And an entry is made under date September 29th of a credit as of payment of the amount of those advances in the sum of \$4,684.22?

Mr. Campbell:—I object to this, my Lord. I do not think we should repeat all this, except for a very obvious purpose, and not an
10 important purpose.

By Mr. McKeown:

Q.—Do you say that the cheque exhibited to you, marked P-35, is the cheque referred to in the credit of September 29th, 1928, covering those items?

A.—It is.

Q.—The date of the cheque is October 4th, 1928, and it was paid to the bank on October 5th?
20

A.—Yes.

Q.—In the following year, 1929, certain further advances of funds were received by Lord Shaughnessy from the Incorporated Company between April 2nd and June 30th, amounting to \$2,875.82 of which a memorandum has already been filed as Exhibit P-28. Will you produce the cheques covering the payments of those items?

A.—The cheques cover all except the last item.

Q.—Will you produce these cheques, being thirty-two in number, as Plaintiffs Exhibit P-46?
30

A.—Yes.

His Lordship : Amounting to how much?

Mr. McKeown : \$2,875.82.

By Mr. McKeown:

Q.—The items on the statement P-28 appear, for the greater part, to be relatively small amounts. Are we to take it that these
40 again refer to domestics and employees of Lord Shaughnessy's household?

A.—They do.

Q.—And during the period when he was absent from Montreal?

A.—Yes.

Q.—I note further a couple of other items, Bruno Country Club, \$210.00, and Bank of Montreal for Mrs. Redmond, \$1,400.00. For the purposes of the record, who is Mrs. Redmond?

ALEX. M. REAPER (*for Plaintiffs*), *Examination-in-Chief.*

A.—Lord Shaughnessy's sister.

Q.—Will you also note that the first twenty-one of the cheques in the Exhibit P-46, are signed by Lord Shaughnessy as President of the Incorporated Company?

A.—The first twenty-three and the last one.

Q.—All of the cheques are signed by you?

A.—All of them are signed by me.

10 Q.—And the eight which do not bear Lord Shaughnessy's signature, and which have been signed by you, are also signed by H. M. Walmsley, Assistant Secretary-Treasurer of the Company?

A.—Yes, sir.

Q.—May we take it, however, that these cheques which bear Lord Shaughnessy's signature had been signed by him and left with you?

A.—They were left with me, yes.

Q.—He signed other cheques apart from those I take it?

A.—Yes.

20 Q.—To be used for other purposes?

A.—Yes.

Q.—May we take it also that it was by his directions that you completed these cheques and delivered them for the purposes of his private accounts?

A.—Yes.

By the Court :

30 Q.—Lord Shaughnessy was in Europe during part of that period?

A.—Yes, during all the period.

By the Court :

Q.—When did he sail?

A.—I think towards the end of March, and he came back about the 8th of June.

40 By Mr. McKeown :

Q.—I note by the same statement, Exhibit P-28, that under date of August 31st, a credit of the full amount of the statement, \$2,875.82 is entered?

Mr. Campbell : I make the same objection. This is all proved

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

and there is no contestation in the pleadings. We admit it by our pleadings. It is all true.

Objection reserved.

A.—Yes.

10 By Mr. McKeown :

Q.—Will you identify the cheque already produced as P-36 as being the cheques received by you as Secretary of the Company in connection with the credit which appears there?

A.—It is.

Q.—And this cheque is dated September 4th, 1929?

A.—Yes.

Q.—And cleared the following day?

A.—Yes.

20 Q.—In connection with these advances set out in these two exhibits, P-27 and P-28, was any interest debited to Lord Shaughnessy or paid?

A.—No.

Q.—Do I take it, however, that during the period covered by the Exhibit P-28 that is, from April to August 31st the salary cheques of Lord Shaughnessy were regularly issued?

A.—They were regularly issued.

Q.—And for the full amount?

30 A.—For the full amount.

Q.—These amounts are not deducted?

A.—No.

Q.—I think you said in answer to his Lordship that Lord Shaughnessy returned to Montreal early in June, 1929.

A.—Yes.

Q.—And was here continually from that time on to the 31st of August?

A.—For the most part.

40 Q.—Is it to your knowledge that on the 31st of August a special audit of the books had been demanded by Lady Davis?

A.—Yes.

Q.—Through the firm of Auditors, Price-Waterhouse?

A.—Yes.

Q.—Will you be good enough to take the Minute book and turn up the meeting of the Directors and Shareholders held under date December 31st, 1928?

A.—Yes, sir.

ALEX. M. REAPER (*for Plaintiffs*), Examination-in-Chief.

Q.—On that date what is the first meeting held?

A.—The first is a meeting of Directors at 10.30 in the morning.

Q.—Let us deal with that one before we go any further. Who was present at that meeting?

A.—Lord Shaughnessy and myself.

Q.—At that time, was the Honorable Mr. Marler a Director of the Company?

10 A.—He was a Director, yes, but he had given a Power of Attorney to Lord Shaughnessy to vote his stock at this meeting—not a Shareholders' meeting. The Shareholders' meeting was to come immediately after this Directors' meeting.

Mr. Campbell : Mr. Marler's resignation was on the table.

By Mr. McKeown :

Q.—Was Mr. Marler there?

20 A.—He was not.

Q.—Was he sent a notice of the meeting?

A.—No.

Q.—Was any waiver signed by Mr. Marler?

A.—No.

Mr. Campbell: I submit that this line of questioning creates a false impression. Mr. Marler's resignation was on the table. Why should my learned friend try and insinuate that there was something irregular or improper in the proceedings.

30 Mr. McKeown: This is a very special meeting.

Objection reserved.

Witness: After the death of Sir Mortimer, there were only two meetings of the Company, both formal meetings to pass Resolution regarding the transfer of some real estate, which Resolution being sent to us by Mr. Marler's office to be recorded.

40 By Mr. McKeown:

Q.—Let us get back to the subject. Do you find a Minute there reading as follows:

“Bonus to Lord Shaughnessy of \$5,000.00 for the year 1927 as had been arranged with Sir Mortimer Davis.”
had been paid, which action was approved?

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

A.—Yes.

Q.—When were those funds disbursed to Lord Shaughnessy, on what date?

A.—I think they were in the fall of 1927, but apparently had not been recorded in the Minutes.

Q.—Will you be good enough to verify that fact from your cash book?

10 A.—It was on December 2nd, 1927.

Q.—What is the entry?

A.—This is the ledger entry, December 2nd: “Lord Shaughnessy bonus on salary account \$5,000.00.”

Q.—And there was no Resolution authorizing that in 1927, either before or after it was paid out, and the first Resolution concerning it was entered in the Minutes of the meeting of December 31st, 1929, is that right?

A.—It had not been recorded in the Minutes previously.

20 Q.—Then, after dealing with some further matters, the persons present resolved themselves from the Directors’ meeting into the Shareholders’ meeting?

A.—The Shareholders’ meeting came immediately after.

Q.—Who were actually present at that Shareholders’ meeting?

A.—Lord Shaughnessy and myself.

Q.—Just the two of you?

A.—That is all.

30 Q.—Lord Shaughnessy is also entered as proxy for the Estate of Sir Mortimer Davis of its holdings of shares, and of the Honourable Mr. Marler, is that right?

A.—We were both registered as representing the Estate, recorded, and Lord Shaughnessy had a proxy from Mr. Marler.

Q.—Personally?

A.—Yes.

Q.—At this meeting of Shareholders, the election of Directors for the ensuing year purports to show that the Directors elected were Lord Shaughnessy, Lady Davis and yourself?

A.—Yes.

40 Q.—And that is the first occasion upon which Lady Davis had become a Director of Sir Mortimer Davis Incorporated?

A.—Yes.

Q.—Then, that Shareholders’ meeting proceeded to resolve itself into a Directors’ meeting?

A.—Yes.

Q.—And of which you and Lord Shaughnessy were the only two individuals present?

A.—Yes.

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

Q.—That is on the same day at 11.30 a.m.?

A.—Yes.

Q.—And at that meeting after electing the officers of the Com-
pany for the ensuing year, Lord Shaughnessy, President, yourself
Vice-President and Secretary-Treasurer, and H. M. Wamsley,
Assistant Secretary-Treasurer, you proceeded to put through a Reso-
lution, then, it was reported that “Bonus as had been arranged with
10 Sir Mortimer Davis for \$5,000.00 had been paid Lord Shaughnessy
for the year 1928, which action was approved”?

A.—Yes.

Q.—That entry is there?

A.—That entry is there.

Q.—On what date was that disbursement of \$5,00 made to Lord
Shaughnessy?

A.—November 6th, 1928.

Q.—Some six or seven weeks prior to the passing of the Resolu-
tion?

20 A.—Yes.

Q.—Did you sign a cheque for the payment of the money?

A.—I think so. The bonus was always paid to him between
the end of the fiscal year, September 30th, and December 31st.

Q.—The next resolution adopted at the second Directors' Meet-
ing of December 31st was that in place of paying an annual bonus
to Lord Shaughnessy that he be placed on a straight salary basis of
\$25,000 per annum, payable monthly, commencing from January 1st,
1929. Do you find that?

30 A.—Yes.

Q.—What had been the salary of Lord Shaughnessy prior to the
passing of the Minute to which we have just referred, from Incorporated Company?

A.—\$20,000, with a bonus. He got a bonus then, which practi-
cally made it the same amount of \$25,000.

Q.—At this time the Will had come into force, and under the
Will what was Lord Shaughnessy receiving as Executor and Trustee?

A.—The Will specified \$5,000 per annum, which has accrued
in the accounts of the Estate. He has not been paid anything on it
40 yet.

Q.—The next item refers to yourself, and reads:

“The Chairman suggested that in view of the increased re-
sponsibility and work incidental to the death of Sir
Mortimer the salary of Mr. A. M. Reaper be made \$10,000
per annum, to commence from January 1st, 1929.”

Do you see that in the Minute?

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

A.—Yes.

Q.—What had your salary been up to that time?

A.—\$7,500.00.

Q.—How long had it been \$7,500.00?

A.—Since October, 1926.

Q.—There was no bonus in your case?

A.—No.

10 Q.—I take it you and Lord Shaughnessy must have chatted over this thing before the formal opening of this Directors' Meeting of December 31st? You must have chatted over the subject matter of the increase of salaries to yourselves?

A.—No. If I talked with him we did not consider any increase at all. It was considered only a change in form.

Q.—Had you spoken to him before?

A.—No.

20 Q.—Had you spoken to him about an increase, or had he spoken to you about it?

A.—No, not until the Meeting.

Q.—Not until the moment of sitting down at the Meeting had there been any consideration of the matter?

A.—I think not.

Q.—How certain are you of that?

A.—I am very sure of it.

By the Court:

30 Q.—So, it was decided on December 31st, 1928?

A.—Yes.

Q.—Who had the idea first; you or Lord Shaughnessy?

A.—As I say, when I talked with Lord Shaughnessy we did not consider the increase, which was a nominal increase in salary, but the total of \$25,000 represented the total he had been receiving previously in the way of salary and bonus. It simply represented a change in form.

Q.—Was that bonus voted with the assent of Sir Mortimer Davis in 1927?

40 A.—Yes. He had arranged it that year.

By Mr. McKeown (continuing) :

Q.—Do you know that from your personal knowledge? Do you mean Lord Shaughnessy had arranged it?

A.—Sir Mortimer. It appeared in any statements sent to Sir Mortimer. The item of the bonus appeared clearly.

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

Q.—Not for the year 1928?

A.—No. His Lordship referred to 1927.

By Mr. Campbell :

Q.—And, all previous years?

10 A.—And, all previous years, yes.

By Mr. McKeown (continuing) :

Q.—Remember, if you please, that we are asking you to speak from your personal knowledge; not from what you were told by Lord Shaughnessy.

A.—I understand.

20 Q.—What personal knowledge have you of any authority from Sir Mortimer Davis to pay a bonus to Lord Shaughnessy in the year 1928?

Witness: From Sir Mortimer?

Counsel : Yes.

A.—I have not any; only he had been paid previously the same amount.

30 Q.—Now let us come to the year 1927. What personal knowledge have you emanating from Sir Mortimer Davis that he authorized any bonus for 1927?

A.—Nothing, only that it had been paid previously, and it was shown in the statement we had sent him and no comment was made about it.

Q.—Before it was paid you had no authority or direction from Sir Mortimer to pay it?

A.—Not directly, no.

Q.—Within the next seven days following those increases of December 31st, 1928, this \$10,000 was drawn out by Lord Shaughnessy, under Exhibit P-44?

40 A.—Yes.

Q.—According to you that had nothing to do with the bonus, or the increase of salary, or anything of the kind? It was a separate transaction—another \$10,000?

A.—A separate transaction.

Q.—Inasmuch as you have just said to His Lordship that this came as a bolt from the blue at the Meeting of the Directors held at 11.30 a.m., December 31st, 1928, you could not have possibly referred

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

the subject to Lady Davis, I take it, before giving these bonuses out or increasing Lord Shaughnessy's salary?

A.—No.

Q.—Lady Davis had been elected a Director at the Annual Meeting at few minutes before?

A.—Yes.

Q.—And, the increases were made practically instanter?

10 A.—Yes.

Q.—And, in her absence?

A.—Yes.

By the Court :

Q.—When was it first decided to make Lady Davis a Director of the Company?

20 A.—The understanding had been made when she was here in May. A certificate had been made out for her at that time, which she had endorsed and left with us for the Company to be used when the Meeting came along.

By Mr. Campbell:

Q.—Do you remember when Lady Davis left for Europe on that occasion?

A.—I think she left Montreal on May 5th, and sailed from New York on the 12th.

30 By the Court:

Q.—That was the day she signed the power of attorney; May 5th?

A.—Yes.

By Mr. McKeown, continuing,

40 Q.—Will you identify, and file as Plaintiffs' Exhibit P-47, copies of the Minutes of the three Meetings of Directors of the Incorporated Company and Shareholders, held under date December 31st, 1928, to which you have just referred in your evidence?

A.—Yes.

Q.—Will you verify that these copies have been prepared under your personal instructions, and that they are true copies of the originals?

A.—Yes, I will do that.

ALEX. M. REAPER (*for Plaintiffs*), *Examination-in-Chief*.

Mr. Campbell: They will be filed subject to verification.

By Mr. McKeown, continuing,

10 Q.—I think you have already, on discovery, identified the statement Plaintiffs Exhibit No. 6 of the Estate of Sir Mortimer Davis as of May 31st, 1929, which I now show you, as having been prepared by you as at the date mentioned?

A.—Yes.

Q.—In order to clear up the point: the annual remuneration or indemnity provided by the Will, to which you have referred, in connection with Lord Shaughnessy's salaries and the \$5,000, also applied to you?

A.—In the same way, yes.

20 Q.—So, at the time you got this increase, on December 31st, 1928, from \$7,500 to \$10,000, the \$5,000 to you for services as an Executor was in force?

A.—Was in force, yes. It has not been paid yet.

Q.—Would there have been any inconvenience about drawing cheques to the order of either Lord Shaughnessy or yourself in the matter of that salary?

A.—No, but it was thought better to leave those matters stand until the affairs of the Estate were in better shape, or more nearly settled up.

Q.—And, in the same way, the same honorarium has accrued in favor of Lady Davis?

30 A.—In the same way.

Q.—Nothing has been paid to her in that respect?

A.—No.

Q.—In connection with the Pine Avenue property, can you tell His Lordship at what amount that property was carried by Sir Mortimer Davis in his accounts prior to his death?

A.—He had given me a valuation of \$400,000 to put on it.

Q.—What is the municipal valuation of that property?

A.—It is assessed for \$170,000.

Q.—Do you know the superficies of the land?

40 A.—Approximately 31,000 square feet.

Q.—And, we have had some description of the house from Mr. Findlay, the architect, yesterday—that at the time it was built it was one of the most costly houses erected in Montreal?

A.—I do not know about that.

Q.—And that it has been well maintained?

A.—It has been well maintained.

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

Q.—What was the value put upon that property for the purpose of Succession Duties?

A.—I think they increased it to \$198,000.

Q.—What is the revenue from that property at the present time?

A.—There is no revenue, except there have been a couple of motor cars in the garage since the fall.

10 By the Court:

Q.—It does not carry itself?

A.—Oh, no.

Mr. Campbell: That is common ground, Your Lordship.

By Mr. McKeown (continuing):

20 Q.—What do the carrying charges on that property amount to?

A.—In the statement of August 31st, 1929, of the Estate, the expense of Pine Avenue from the date of Sir Mortimer's death, March 22nd, 1928, up to August 31st, 1929, had been \$14,304.27.

Q.—And that takes no account of any interest on the investment?

A.—No.

Q.—It represents, I take it, taxes, insurance, and repairs?

A.—Yes.

Q.—And salaries?

30 A.—It includes salaries. It includes everything except interest.

Q.—Can you give us from your ledger the amount to which that item has increased up to the present time?

A.—No. I could give you the additions up to the end of November.

Q.—Is that the last statement you have?

A.—Yes, that is the last statement I have.

Q.—What was the figure at the end of November?

A.—It had been increased in the following two months by about \$2,600.00, but that is a little higher than the average rate.

40 Q.—In other words, the outlay on Pine Avenue has been increased from \$14,304.27 up to approximately what figure?

A.—To about \$17,500, up to the end of November.

Q.—In round figures, since Sir Mortimer's death and up to the end of November the outlay on Pine Avenue has been about \$17,500?

A.—About that, yes.

Q.—Speaking of that same property, at one time there were "For Sale" signs on it?

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

A.—There were, yes.

Q.—And they were removed?

A.—Yes.

Q.—By whose instructions?

A.—We had decided to have them removed.

Q.—Lord Shaughnessy and you?

10 A.—Yes.

Q.—At what date?

A.—I believe about some time in June, 1929.

Q.—Since that time has there been any “ For Sale ” sign on the property?

A.—No.

Q.—Was the “ For Sale ” sign taken off the Ste. Agathe property at the same time?

A.—Yes.

20 Q.—Both those properties had been in the hands of the real estate firm of Henry Joseph & Company?

A.—Not exclusively.

Q.—But, they had been in their hands?

A.—Yes.

Q.—And Henry Joseph & Company had signs on both properties?

A.—Yes.

Q.—Mr. Joseph ceased to be a Director of Canadian Industrial Alcohol, Limited, just about that time, did he not?

30 A.—I do not know the exact date. Just about that time, I think. I have not the date.

Q.—I notice Defendants’ Exhibit D-8, which is a copy of the resignation of Mr. Joseph as a Director of the Alcohol Company, is dated June 12th, 1929?

A.—Yes.

Q.—Was that coincident with the ordering down of the Joseph signs? I show you a copy of a letter dated July 25th, 1929, addressed to the Estate Sir Mortimer Davis, by Henry Joseph & Company, in the following terms:

40 “ As our real estate is not listed with any agent or agency exclusively, we are at liberty to consider any offer which might be brought before us, and are of opinion that our interests would be best served if there were no ‘ For Sale ’ signs displayed. We would, therefore, be obliged if you would kindly have the signs which you now have up at the residence corner of Pine Avenue

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

and Peel Street and Ste. Agathe removed at your earliest convenience.

Estate Sir Mortimer Davis,

Shaughnessy,
Executor.”

10 Was that letter sent to Henry Joseph & Company on the date it bears?

A.—Yes.

Q.—Will you produce a copy of this letter as Exhibit P-48?

A.—Yes.

Q.—Have any other signs been placed upon the property?

A.—No.

Q.—Since the death of Sir Mortimer there have been no signs at all on that property except the Joseph sign?

A.—Yes.

20 Q.—And the same applies to Ste. Agathe?

A.—Yes.

Q.—And the removal of the sign is covered by the letter?

A.—Yes.

Q.—Just to complete the matter of the signs, will you take communication of the copy of letter from Henry Joseph & Company, dated June 28th, 1928, and the copy of your reply dated June 29th, 1928, with reference to the placing of signs by Henry Joseph & Company upon the Ste. Agathe property; and will you file these copies as Exhibit P-49?

30 A.—Yes.

Q.—These copies were supplied by yourself?

A.—Yes.

Q.—Reference is made in the letter of June 28th to the Ste. Agathe property: “We are sending a ‘For Sale’ sign to Ste. Agathe on Saturday. Will you please ask your man there to have it erected in some conspicuous part of the property,” and your reply reads: “We are in receipt of your favor of the 28th, advising you are sending a sign to Ste. Agathe. Our man there has been advised of this, and will see that it is put up in a conspicuous position.” Was it at

40 that time the sign was put up on Pine Avenue?

A.—I really do not know.

(And it being 12.45 o'clock the further examination of the witness is continued until 2.30 o'clock in the afternoon.)

And further for the present deponent saith not.

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

RECESS

(And at 2.30 o'clock P.M. the Court resumed session.)

10 Mr. McKeown: Before continuing with the examination of Mr. Reaper may I say a word. I have been endeavoring to procure service of a subpoena upon Mr. Clarke S. Jennison, a witness whose name appears in the Pleadings and in the Discoveries. I sent a subpoena for service on Saturday, but through some misunderstanding the subpoena was not served at Mr. Jennison's office. I sent a bailiff again today to make service, and he was advised Mr. Jennison is not in town, and under my instructions he changed the subpoena for the person to whom it was addressed in order that we might get some information which would enable us to locate Mr. Jennison, and he served it upon Miss Workman, returnable at 2.15 this afternoon. I would like to know if Miss Workman is here.

20

Mr. Holden: She told me a subpoena had been served upon her, and I said that of course she would have to come. I was informed Mr. Jennison is in Toronto on important business of his own. I do not know when he will be back.

30 His Lordship: I am quite sure we will not absolutely require Mr. Jennison this afternoon. There are other witnesses to keep us busy, and you might possibly take advantage of the holiday tomorrow to make thorough investigation and try to locate him.

Mr. McKeown: The information given to the bailiff was that Mr. Jennison was in Northern Ontario, and they did not know when he would be back.

His Lordship: I quite understand that you cannot close your case without (although perhaps you might be better without him). He will have to be heard either for one side or the other.

40 Mr. George B. Foster: Miss Workman's subpoena was only served at eleven o'clock this morning, and she is entitled to twelve hours' notice.

Mr. Campbell: Can she find out where Mr. Jennison is?

Mr. Foster: I am appearing for Mr. Jennison and Miss Workman. This subpoena was served at eleven o'clock this morning.

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

His Lordship: Of course the notice is too short.

Mr. Foster: Mr. Jennison is in Toronto, and has been communicated with. He is coming down tonight and he will be here for the next sitting of the Court. He has been in Toronto since Christmas.

10

ALEXANDER M. REAPER, already sworn, reappeared and his testimony was continued as follows:

By Mr. McKeown, K.C.:

Q.—Replying to His Lordship this morning in connection with the statements which were not prepared following Sir Mortimer's death, and the fact that Lady Davis had not requested any—do you remember that?

20

A.—Yes.

Q.—Were any statements sent Lady Davis by either Lord Shaughnessy or yourself prior to the arrival of Lady Davis in Montreal in May last?

A.—Yes.

Q.—Have you any well defined idea of what was sent to Lady Davis?

A.—Yes. She was sent a statement of the Estate as at March 22nd, 1928, as nearly as it could be made up. The matter was taken up with Lord Shaughnessy when he went to Europe in the summer of 1928.

30

Q.—Are you quite sure of that?

A.—Yes, that is my recollection of it.

Q.—Can you identify the statement now shown you, marked Exhibit P-50, being entitled "Estate Sir Mortimer Davis, statements as at March 22nd, 1928" as the statement to which you refer as having been delivered to Lady Davis in Europe during the summer of 1928?

A.—Yes.

40 Q.—Is this statement Exhibit P-50 a document prepared by yourself and under your personal direction?

A.—Yes.

Q.—What further statement was sent?

A.—The audited statement of the Incorporated Company as at September 30th, 1928.

Q.—When was that sent, and how?

A.—It was sent by mail, in December, 1928.

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

Q.—Will you look at the report of accounts of Sir Mortimer Davis, Incorporated, as of date September 30th, 1928, prepared by Price Waterhouse & Company, and the report to the President and Directors under date November 29th, 1928, and say whether that is the statement to which you have just referred?

A.—Yes, this is the statement.

Q.—Will you file this statement as Exhibit P-51?

10 A.—Yes.

Q.—Apart from these statements Exhibits P-50 and P-51 were any statements sent to Lady Davis prior to her arrival in Montreal in June, 1929?

A.—No.

Q.—Upon the arrival of Lady Davis in Montreal, or shortly afterwards, she did ask you for statements?

A.—Shortly after her arrival, when she came in the first time, we discussed certain statements, and I prepared one for her then. The one we were discussing was typed and given to her.

20 Q.—Was that of the Estate, or of the Company?

A.—Of the Estate.

Q.—As of what date?

A.—May 31st, 1929.

Q.—That would be the statement already filed as Plaintiffs' Exhibit No. 6?

A.—Yes.

30 Q.—There were also delivered to Lady Davis the auditor's statements both of the Estate and the Company made up to August 31st, 1929?

A.—Made up to August 31st, 1929.

Q.—Those are Exhibits Nos. 8 and 9?

A.—Yes.

Q.—On what date were the auditor's statements Exhibits 8 and 9 delivered to Lady Davis?

A.—On October 7th, 1929.

Q.—There was a further statement of the Company, as of date September 30th, 1929, delivered also?

A.—Yes.

40 Q.—Which would be Exhibit No. 10?

A.—Yes.

Q.—When was this statement Exhibit No. 10 delivered?

A.—I think it was on November 18th.

Q.—And it was three days after the receipt of this statement Exhibit No. 10 (that is, November 21st) that Lady Davis' Counsel communicated with Lord Shaughnessy and yourself on the question of the resignation?

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

A.—Yes.

Lady Davis also received the monthly statement, I think, for the month of April, of the Incorporated Company.

By Mr. Campbell:

10 Q.—That is April, 1929?

A.—Yes.

By Mr. McKeown (continuing):

Q.—That was the statement she received at the office of the Company when she called?

A.—Yes.

20 Q.—Just to get the matter quite clear: the statement of April 30th, 1929, of the Incorporated Company had not been mailed or forwarded to her?

A.—No.

Q.—On the contrary, rather, it was picked up by her in error off a desk when she was waiting to discuss some matter with Lord Shaughnessy and yourself?

A.—Yes.

Q.—It was not an act of the Executors, Lord Shaughnessy and yourself, in any sense in sending that statement to Lady Davis?

30 A.—No. The statement was lying on the desk when Lady Davis came in to discuss the statement of September 30th, 1928, with Lord Shaughnessy. He had this other statement there at the time, and he asked her if there were any other statements or anything she wanted to discuss then. She said no. In picking up the statements, apparently she picked this up with the others.

Q.—You said there was no request by Lady Davis for statements. I just want to draw your attention to the letter forwarded by Lady Davis to Lord Shaughnessy under date August 23rd, 1929, forming part of Exhibit No. 7.

40 Mr. Campbell: I do not think that was exactly what the witness said. I think my learned friend is putting a wrong interpretation on what the witness said. He did not say that Lady Davis had not asked for statements since August, 1929. We have very good reason to know she has asked for a great many things since then. The statement of the witness was in answer to a question by the Court whether Lady Davis had asked for monthly statements similar to those Sir Mortimer had received.

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

Witness: I understood your previous enquiry referred to the date before her arrival back in Montreal in June, 1929.

By Mr. McKeown (continued):

Q.—In this letter to which I have just alluded, which Lady Davis wrote to Lord Shaughnessy under date August 23rd, 1929, do
10 you remember she specifically asked for monthly statements:

“ In order that you may make proper arrangements, I wish to advise you that in future I shall require a properly audited monthly balance sheet, forwarded with supporting figures, as is usually submitted to Directors . . . ”

That is as to the Incorporated Company.

20 “ I wish an audited statement of Sir Mortimer B. Davis’ Estate to proceed immediately, and I shall want an audited monthly statement of all transactions for the account of the Estate . . . ”

After the letter of August 23rd, 1929, and at any time up to the institution of this suit, January 16th, 1930, had any monthly statements been prepared by Lord Shaughnessy or yourself and forwarded to Lady Davis?

30 A.—Not at that time. They were preparing those other statements that were asked for as of August 31st, and the Annual Statement of the Incorporated Company as at September 30th.

Q.—But, those were general statements for the whole year. Were any monthly statements in detail ever sent to Lady Davis after her request of August 23rd, 1929?

A.—No.

Q.—Coming back to the Pine Avenue house for a moment. Do you know of the orchids which were in the conservatory of that house?

A.—I know there are some there.

40 Q.—Do you know what they cost?

A.—No.

Q.—What was the value of the Ste. Agathe property as carried in the accounts of Sir Mortimer Davis at the time of his death?

A.—Before his death he gave me a figure of \$100,000 to set it up at.

Q.—What was the municipal valuation of that property?

A.—I am not sure. I think about \$63,000.

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

Q.—What was the value of that property for the purpose of Succession Duties as accepted by the Government?

A.—That same figure: about \$63,000.

Q.—\$63,350.00, to be precise?

A.—Yes, \$63,350.00.

10 By Mr. Montgomery:

Q.—That would be the municipal valuation also?

A.—Yes.

By Mr. McKeown (continuing):

Q.—What are the carrying charges of that Ste. Agathe property—I mean the property combined with the farm?

20 A.—From March 22nd, 1928, to August 31st, 1929, the carrying charges of that property were \$12,782.60.

Q.—For a period of about seventeen months?

A.—Yes, about seventeen months.

Q.—Can you tell me what they have amounted to up to date?

A.—I can tell you up to November. Approximately \$14,200.00.

By the Court:

Q.—In addition to the \$12,782.60?

A.—No, altogether. The total up to the end of November, 1929.

30 By Mr. McKeown (continuing):

Q.—Did you have a system of bookkeeping in connection with that property, whereby the cost of operating the farm is segregated from the operation or carrying on of the rest of the property?

A.—No. Mr. Marchand has been attending to that.

Q.—Can you tell us the proportion of the loss from the operation of that farm?

A.—Not without referring to the statements.

40 Q.—I take it the farm is operated at a loss?

A.—Oh, yes.

Q.—Is there any revenue whatsoever from that Ste. Agathe property taken as a whole?

A.—Any revenue received has been deducted in arriving at these amounts.

Q.—These amounts represent the net loss for carrying the property?

ALEX. M. REAPER (*for Plaintiffs*), Examination-in-Chief.

A.—Yes.

Q.—Do they include taxes?

A.—They include taxes.

Q.—And wages?

A.—Yes.

10 Q.—And it has got up to the sum of between \$14,000 and \$15,000 up to the end of November, 1929?

A.—Yes.

Q.—In eighteen months?

A.—In about twenty months.

Q.—You have not been able to negotiate a sale of that property yet?

A.—No.

Q.—Am I correctly informed that the best offer you have had for it up to date is \$45,000?

A.—Yes, that is the best offer.

20 Q.—That offer was from Senator Raymond?

A.—Yes.

Q.—Do you know Senator Raymond wished to rent that property?

A.—I do not just recall that.

Q.—You do not recall Senator Raymond made an offer to rent the property?

A.—I do not recall it, no.

Q.—Who was in touch with Senator Raymond in regard to this?

A.—Lord Shaughnessy wrote the letters to him.

30 Q.—I mean, apart from that. Senator Raymond was on the property, and he and Mrs. Raymond went over it.

A.—It is quite possible.

Q.—Do you not know it?

A.—Yes, I do.

By Mr. Campbell:

Q.—That is, you were told?

A.—I was told, yes.

40 By Mr. McKeown (continuing):

Q.—Did you see Senator Raymond, or speak to him about it?

A.—No.

Q.—Your knowledge of the matter comes from Lord Shaughnessy?

A.—Yes.

ALEX. M. REAPER (*for Plaintiffs*), *Examination-in-Chief*.

Q.—I put it to you that Senator Raymond wanted to rent that property?

A.—I do not know of it.

Q.—And you never heard of it?

A.—No.

Q.—Do you swear you never heard of it?

10 A.—I cannot recall hearing anything of it.

Q.—Can you not give me a more definite answer than that?

A.—I do not know of any such offer.

Q.—And do you want the Court to understand you never heard of it?

A.—I never heard of it.

Q.—You never heard of any offer by Senator Raymond to rent that Ste. Agathe property?

A.—I do not recollect anything like that.

20 Q.—Can you not be a little more precise and a little more definite in the matter?

Mr. Campbell: I do not know how the witness can be expected to be more precise. He has said a dozen times that he does not recollect.

By Mr. McKeown (continuing):

Q.—What is your definite answer? I do not care particularly what you say, but say something definitely one way or the other?

30 A.—I do not recollect anything of it.

Q.—Will you swear you have not heard, through Lord Shaughnessy or other persons, that Senator Raymond wished to rent that Ste. Agathe property?

A.—That is my recollection, yes. I have not heard anything of it. I do not remember it.

Q.—You will not go any further than that? You will not undertake to deny you ever heard such a suggestion?

A.—I do not remember ever hearing such a suggestion.

40 By the Court:

Q.—Did Lord Shaughnessy ever consult you on the advisability of renting that property to Senator Raymond or anyone else?

A.—Yes. The matter of renting was discussed, and it was thought advisable not to rent it while it was for sale.

Q.—That was the conclusion you came to?

A.—That was the conclusion we came to.

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

Q.—And whether Senator Raymond made an offer to rent it or not does not matter, because it would have been turned down anyhow?

A.—Well, I think so.

Q.—You did not discuss the price, or anything?

A.—The rental; no, there was never any price of rental discussed.

10 By Mr. McKeown (continuing):

Q.—Am I to take it that you and Lord Shaughnessy had definitely reached the conclusion that the property would not be rented to anybody?

A.—That was our opinion: that it was inadvisable to rent it.

Q.—Did you refuse offers from other persons apart from Senator Raymond to rent that property?

A.—I do not think there ever was any other direct offer. Some people may have asked if it was for rent.

20 Q.—Do you not know of Mr. R. O. Johnston, stock broker, enquiring through Henry Joseph & Company whether the property could be rented in the winter of 1928-29?

A.—I do not remember. I do not know.

Q.—You never heard of such a thing?

A.—I do not know about it.

Q.—You never heard of it?

A.—Not that I recollect.

30 Q.—Will you please tell me the names of the persons you do recollect about? Because there seems to have been something more definite at some stage about a proposal to rent it prior to your deciding you would not rent it.

A.—There was nothing, as far as I know. There may have been some enquiries through real estate agents and so on.

Q.—Who enquired through the real estate agents?

A.—I do not recollect just now. There were numerous calls, but they were only casual enquiries.

Q.—If it could be rented?

A.—If it could be rented.

40 Q.—And you say that happened on numerous occasions?

A.—On a few occasions.

Q.—Can you tell me the names of the real estate agents through whom those enquiries came?

A.—No, I do not think I could.

Q.—Can you tell me the names of the prospective tenants?

A.—The only one I clearly recollect was a young Mr. Davis.

Q.—Sir Mortimer Davis' son?

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

A.—No. The son of Mr. J. T. Davis. He wanted to know if the place was to rent, because he thought his mother would like to go up there for a month or two one winter.

Q.—What was the answer given on that occasion?

A.—That we would consider a proposition to buy, but we did not think we would care to rent.

10 Q.—What winter was that? Was it this present winter, 1929-1930, or was it the winter of 1928-1929?

A.—It must have been the winter of 1928-1929. Just about the spring, or the fall, or the end of the year.

Q.—You say the spring, or the fall, or the end of the year. What is your recollection as to the date that enquiry was made? What year?

A.—1928.

Q.—Do you mean the end of the calendar year 1928—December?

A.—Yes.

20 Q.—Who was in occupation of that property just at that time—at the end of December, 1928?

A.—No one.

Q.—Who was actually living in the house at the end of December, 1928?

A.—The caretaker, as usual. Lord Shaughnessy happened to be there for the week-end.

Q.—Was it while Lord Shaughnessy was in the house this enquiry came, to the best of your recollection?

A.—No.

30 Q.—When was it?

A.—I cannot tell to a few days; but I am quite sure it was not when he was up there.

Q.—It was just at that time, however?

A.—I cannot just recall the exact date this man came to see me, but I think it was around then.

Q.—And there was a definite decision by Lord Shaughnessy and you at that time that the place would not be rented to anybody?

A.—That was what we thought best.

40 Q.—Did you ever refer that subject to Lady Davis, your co-Executrix?

A.—No, I do not think so.

Q.—Let us come back for a moment to the Meetings of the Incorporated Company since Lady Davis arrived back in Canada. Meetings have been held since the early part of June last, and by referring to the Minute Book I see Meetings of the Board of the Incorporated Company appear to have been held on June 13th, June

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

27th, and August 4th, 1929. You knew Lady Davis was in Montreal at that time, did you not?

A.—She was here then.

Q.—Meetings were held on those dates?

A.—Yes.

Q.—Was any notice of those Meetings sent to Lady Davis?

A.—No.

10 Q.—In paragraph 65 of her Declaration Lady Davis complains bitterly that she never could get any information about the McNish Company. Did you ever volunteer any information to Lady Davis?

A.—She never asked me for any.

Q.—She never asked you for any information about McNish?

A.—No.

Q.—Did she ever in your presence ask Lord Shaughnessy for any information about McNish?

A.—No.

20 Q.—Was McNish ever discussed in your hearing?

A.—I do not remember.

Q.—Do you know of any reason why Lady Davis should not have been given information about McNish?

A.—No, I do not know of any.

Q.—Is the McNish Company owned for 90% of its stock by Canadian Industrial Alcohol, Limited?

A.—Yes.

30 Q.—And is this Incorporated Company the owner of some two and a quarter million or two and a half million dollars of the debentures of the McNish Company?

A.—About that.

Q.—And those McNish debentures are pledged to the Canadian Bank of Commerce, New York, against a loan just now?

A.—Yes.

Q.—Over three and a half million dollars?

A.—No.

Q.—How much?

A.—About two and a quarter million, I think, on that loan.

40 Q.—Can you give me any reason why Lady Davis should not have been given information about the McNish Company by either yourself or Lord Shaughnessy? Is there any reason that you can suggest to His Lordship?

A.—I understood Lord Shaughnessy did give her information about McNish.

Q.—Will you please answer the question. Can you think of any reason why she should not have information?

A.—No.

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

Q.—And you say you did not give Lady Davis any information about McNish because she did not ask you. Is that right?

A.—Yes.

Q.—Speaking of the Canadian Bank of Commerce loan to the Incorporated Company: will you show me the last statement you have prepared of the affairs of the Incorporated Company?

A.—I have not a copy of it.

10 Q.—Is there any statement after September 30th, 1929, the end of the fiscal year?

A.—Yes, there was one on December 31st, 1929.

Q.—Would that be the statement I now show you, and which I produce and mark as Exhibit P-52?

A.—Yes.

Q.—This is the statement of the Incorporated Company as at December 31st, 1929?

A.—Yes.

20 Q.—The Canadian Bank of Commerce loan is shown here as \$3,231,373.85?

A.—Yes.

Q.—Is that loan here in Montreal, or in New York?

A.—Montreal and New York.

Q.—And the assets of the Incorporated Company have been hypothecated to the Bank as security for that loan up to the present time?

A.—There are McNish debentures.

Q.—How many?

30 A.—I think the figure is a little over 500,000.

Q.—500,000 McNish debentures at par?

By the Court:

Q.—That is \$2,500,000?

A.—They are \$5.00 par value.

By Mr. Montgomery:

40 Q.—His Lordship asks is it \$2,500,000 par value?

A.—Yes.

There are also 160,000 shares of Alcohol "A" stock.

By the Court:

Q.—How much are those shares worth today?

A.—About \$10.00, I think.

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

By Mr. McKeown, continued:

Q.—That is, the Alcohol shares have a market value of \$10.00?

A.—Yes.

Q.—And, as you have already told us, the McNish debentures are quoted at about \$3.50 each?

A.—Yes.

10 Q.—Which would give for the Alcohol shares \$1,600,000; and for the McNish debentures \$1,750,000?

A.—Yes.

Q.—Altogether assets of the Company to the extent of \$3,350,000 are under hypothecation as security for this loan to the Bank?

A.—Yes.

Q.—Now, you had mentioned a little earlier in your examination an amount of approximately two and one-quarter million dollars in connection with a bank loan?

A.—Yes.

20 Q.—Actually \$2,251,076.50, which was the New York loan shown in the Exhibit of Plaintiff Number 9, being the statement of the Incorporated Company as of date August 31st, 1929?

A.—Yes.

Q.—As against that loan there was then under hypothecation at the Bank at New York \$494,426, McNish debentures, plus \$6,000 more, \$6,391 further debentures?

A.—Yes.

30 Q.—In addition to that, as shown by the statement Exhibit Number 9, to which I just referred, you owed, or the Incorporated Company owed the Bank of Montreal \$982,237.30, against which was hypothecated 60,000 ordinary shares of Alcohol?

A.—Yes.

Q.—It is those two loans together which were then \$3,213,073.85 that are represented by the figures in the statement, Exhibit P-52, where the figures appear at exactly the same, the interest having been maintained in the meantime?

A.—Yes.

40 Q.—The difference is, since that time, August 31, 1929, up to the time of the statement, December 31, 1929, \$100,000 of additional Alcohol shares have been added to hypothecation?

A.—Yes.

Q.—In other words, securities of the value, at present current market prices, of \$1,000,000 additional have been put under hypothecation?

A.—Yes.

Q.—In the statement of the affairs of the Estate, Exhibit Num-

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

ber 8, prepared by the auditors, Price, Waterhouse and Company, the statement in general is as from August 31st, 1929, and the first sheet of that Exhibit is a statement, is it not, of the condition of the Estate at the time of Sir Mortimer Davis' death?

A.—Yes.

10 Q.—And that is the statement which is reproduced among the printed Exhibits of the Plaintiff as Exhibit Number 2?

A.—Yes.

Q.—In other words, the printed copy now before you in the file of printed Exhibits of the Plaintiff is a copy of the first page of the Auditors' report of the Estate under date August 31st, 1929?

A.—Yes.

Q.—Now in this statement made by the auditors of the condition of this Estate at the time Sir Mortimer died, the capital surplus of the Estate before providing for legacies, bequests, funeral expenses and succession duties is shown as \$7,619,531.07?

20 A.—Yes.

Q.—Now the investments of the Estate at that time in the Incorporated Company, as shown by Exhibit Number 7 of the report of the Auditors of August 31st, 1929, Exhibit Number 8, is shown at \$7,586,250?

A.—\$7,586,250, yes.

30 Q.—In other words, the investment of the Estate in the Incorporated Company as at the time of Sir Mortimer Davis' death as shown by Price, Waterhouse Company statement almost equalled the total surplus in the Estate; the surplus in the Estate being \$7,619,531.07 before providing for legacies, bequests, funeral expenses, and succession duties, and the investment of the Estate as at that date in the Incorporated Company is shown in the same statement, on Exhibit Number 8, annexed to the statement, at \$7,586,250. Is that right?

A.—Yes, that is right.

Q.—The shares of the Incorporated Company, for the purpose of the figures which I have just given you has been taken at \$170 a share?

40 A.—Yes.

Q.—To establish those figures of \$170 a share, I take it the Alcohol stock was taken in at that time at \$20 a share?

A.—Yes.

Q.—You know since Sir Mortimer died that that Alcohol "A" has sold as high as \$50 and the Alcohol "B" at \$47 and better?

A.—Yes.

ALEX. M. REAPER (*for Plaintiffs*), *Examination-in-Chief*.

Mr. Campbell, K.C.: It is immaterial to prove these figures. They should be proved in the proper way.

Mr. McKeown, K.C.: There is no better way than an admission.

10 Mr. Campbell, K.C.: I submit the admission is unfair to the witness.

The Court: I think you can cross-examine him.

By Mr. McKeown, K.C.:

20 Q.—Now, just for round figures, if we put the whole of that stock as at \$40—I know it will have to be kept in mind that there were some 55,000 odd shares of “B” which were only selling at \$47 at the high—and 449,100 shares of “A.” Taking 30 points on there, \$550,020. Taking 30 points difference between the book value as entered at \$20 a share and the market at \$50, it would represent an increase in the assets of the Incorporated Company as at the market value of \$16,500,000?

A.—Yes, had it been possible to sell that quantity of the stock at that price.

Q.—You did not try to sell it. I am not even asking you that.

30 Mr. Campbell, K.C.: As a matter of arithmetic that is quite correct.

By Mr. McKeown, K.C.:

Q.—Taking the same shares, the same quantity of shares, leaving aside for the moment the fact that the executors bought some shares since, but taking the original figures as at the time of Sir Mortimer’s death, that stock which sold as high at \$50 for the “A” and \$47 for the “B” stock upon which you have given His Lordship figures as \$10 for the “A” and \$7 or \$8 for the “B”?

40 A.—I figure \$10 I think for the “B.”

Q.—Taking it at \$10, there is a shrinkage of 40 points, over \$22,000,000 in the market value of that stock since Sir Mortimer Davis died. You know the figures we have been talking about are not the figures at the bottom of the break last November. Is it not true on that occasion the stock went to 5?

A.—Yes, a few shares.

Q.—I only have asked you that question so it will not be thought

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

these figures are the low result of that break. Do you remember where the "A" stock was before the break?

A.—In price?

Q.—Yes.

A.—No, I cannot.

Q.—I suggest to you it was around \$13 or \$14 a share?

A.—That is probably right.

10 Q.—Is that subject to correction?

Mr. Campbell, K.C.: I think the witness is entitled to verify his record.

By Mr. McKeown, K.C.:

Q.—The stock was down at least in that vicinity, \$13 or \$14 before the break?

A.—I think that is possibly right.

20 Q.—And had been steadily declining since last spring?

A.—Yes.

Mr. Campbell, K.C.: My memorandum gives the high for the "A" stock for September, 1929, as $23\frac{1}{2}$, and the low at $17\frac{1}{2}$.

Mr. McKeown, K.C.: Give us the October.

Mr. Campbell, K.C.: October was the time of the break. The bad break was in October, and the high was $20\frac{3}{4}$ and the low 13.

30 Mr. McKeown, K.C.: Let us have the time of the break?

Mr. Campbell, K.C.: The \$5 was in October.

Mr. McKeown, K.C.: What was the high that month?

Mr. Campbell, K.C.: The high for October was 19; the low 5 for the "A." "B," high 15, and the low 10; September $23\frac{1}{2}$ high; $17\frac{1}{2}$ low, for "A." $20\frac{3}{4}$ high, and 17 low for "B."

40 By Mr. McKeown, K.C.:

Q.—Just bringing you to a conclusion of the figures over which I have been taking you, taking the shrinkage of \$22,000,000 plus the actual surplus as shown, of something over \$7,000,000, would put the surplus of this Estate before payment of succession duties and legacies somewhere in the vicinity of \$29,000,000 or \$30,000,000?

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

A.—That \$22,000,000 applies to the Incorporated Company, not to the Estate.

Q.—That is true in a measure, but to the extent of the shareholders there would not be that much additional interest coming to the Estate, but even taking that 10 per cent for the time being, the figures would be upwards of \$27,000,000. That is the surplus?

A.—About that, yes.

10 Q.—Will you now look at the section, Exhibit Number 6, statement of the Estate as of date May 31st, 1929, and which you have told the Court you prepared and delivered to Lady Davis after she arrived in Canada, and tell us what the gross revenue of that Estate was under the administration of Lord Shaughnessy and yourself from May 22nd, 1928, until May 31st, the next year, 1929?

A.—The revenue shown is \$113,100.42.

Q.—And the figures which you have just given His Lordship, \$113,100.42, are gross revenue of the whole estate? Is that right? Is that exactly what it means, or does that mean something else?

20 A.—That is without any dividends from Sir Mortimer Davis Incorporated.

Q.—You never got any dividends from Sir Mortimer Davis Incorporated. Does this statement mean what it says, that the gross revenue for the 14 months from the 22nd of March, 1928, to May 31st, 1929, from the whole of that Estate, which we have established in evidence as \$27,000,000, are \$113,100.42?

A.—Yes, that is all that was received.

30 Q.—In that item of \$113,100 you have an item in here “Liggett and Meyers Tobacco Company, \$49,000.”

A.—Yes.

Q.—That is dividends on some 10,000 shares of the Liggett and Meyers Tobacco Company, which were in a speculative brokerage account in New York at the time Sir Mortimer died?

A.—But not all of it was with them; \$7,400.

Q.—If those shares had been liquidated, used to pay the liabilities of the Estate, that would have been an item out of the receipts, that \$49,000?

40 A.—On the other hand, the interest on the Liggett and Meyers charges are charged in expenses.

Q.—I am talking about as affecting gross. If the Liggett and Meyers shares had been sold following Sir Mortimer's death, that same \$113,000 gross would be \$64,000 gross in the Estate? That is right? If it does not mean that, what else does it mean?

A.—Yes, that is right.

Q.—In the same period, as suggested by His Lordship, you had

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

to pay the annuities, you had to pay the operating and carrying charges?

A.—Yes.

Q.—And other charges chargeable to revenue?

A.—Yes.

10 Q.—What revenue deficit was that Estate running to in the first 14 months following Sir Mortimer's death, according to the statement which I present to you?

A.—\$381,205.29.

Mr. Campbell, K.C.: Revenue deficit, \$381,205.29, of which \$168,000.00 is for interest on liabilities of the Estate, including Quebec Succession Duties for \$1,300,000. They were not disbursed. They were items estimated. I suggest the proper figure is the actual deficit on the figure \$213,225.33.

20 By Mr. McKeown, K.C.:

Q.—In this same statement, Exhibit Number 6, which primarily was made as an accounting, I suppose, of the Executors for the first 14 months of their stewardship, you made an estimate of what was going to happen under the administration for the succeeding 12 months?

A.—Not exactly.

30 Q.—I would ask you what this statement means, the statement on the same Exhibit, the fourth sheet, which is headed "Estate Sir Mortimer Davis, Estimated Revenue Account for one year." Did that mean for one year from the date of the statement?

A.—It was just approximately what the results would be under the conditions, for one year.

Q.—Do you really mean what you say, in any one year would be the results which are shown on that sheet, or did you mean the next 12 months, for the succeeding statement?

A.—No, it was not for the next 12 months.

40 Q.—I don't care which way you have it, but have it your own way. In any event, whatever it was intended to be, is it not true that this shows that the gross anticipated revenues of that Estate were fixed by you at \$112,066.60?

A.—Without anything from Sir Mortimer Davis in the way of dividends.

Q.—Let us not talk about that. It has not arrived yet. You did not credit any item for dividends coming forward from Sir Mortimer Davis Incorporated in that statement?

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

A.—No, but it was mentioned in this statement before any dividend had been figured.

Q.—That again would include an item of dividends of the McNish Company at \$58,000; it again, I suppose, includes the Bamberger and Liggett and Meyers stock?

A.—Yes.

10 Q.—That item is \$49,000, assuming the dividend is the same?

A.—Yes.

Q.—If you take off the Liggett and Meyers dividend stock then the gross revenue would have been for that period as anticipated by that statement, \$83,000?

A.—On that basis, yes.

Q.—How did you expect with gross revenues of \$112,000 for the next 12 months to pay the annuities and carrying charges and to take care of your deficits already accumulated, \$381,205, for the first 14 months?

20 A.—It was expected the differences in revenue would be taken care of by a declaration of dividend from Sir Mortimer Davis Incorporated.

Q.—You tell us that is the way you expected to take care of it?

A.—Yes.

Q.—Explain what you mean by showing a new deficit, “Balance to be provided for \$374,933.46 for the next 12 months.”

30 A.—It was not done with that purpose. It was done to show how we were discussing at that time the situation of the Incorporated Company for the year ending December 30th, 1928, which showed an operating profit of something like \$450,000.

Q.—None of which was declared?

A.—This statement was drawn up for the purpose of showing that difficulty, to show why no dividend could be declared from the Incorporated Company, more than sufficient to take care of this amount.

Q.—In point of fact, no dividend was declared?

A.—No.

Q.—Let us say a word or two about the Succession Duties: Sir Mortimer was buried here in Montreal; his body was brought here?

40 A.—Yes.

Q.—And the funeral was towards the latter part of April?

A.—I think so, yes.

Q.—I wanted to ask you this—the thought which came to me—the accounts and the business affairs of Sir Mortimer, during his lifetime and up to the very time of his death, were in your charge as far as the accountancy was concerned?

A.—Yes, his affairs here in Canada.

ALEX. M. REAPER (*for Plaintiffs*), *Examination-in-Chief.*

Q.—Were they not kept right up to the minute?

A.—Yes.

Q.—As evidenced by the statement which you have exhibited this morning, and which has been filed. The statement was only forwarded monthly to him?

A.—Yes.

10 Q.—Not only of the Incorporated Company but of his personal affairs too?

A.—Yes.

Q.—By Lady Davis' letter to you or to Lord Shaughnessy of August 15th, she asked you for very full and very complete statements of every asset of the Estate, and of the Incorporated Company as at the time of the death and what occurred to it afterwards?

A.—Of the Estate, yes.

Q.—And those statements were prepared by Price, Waterhouse, no doubt, under your direction and with your assistance?

A.—Yes.

20 Q.—And they did include, and do cover every piece of property of whatsoever nature and kind the same was, and existed at the time of Sir Mortimer's death. They are set out at length in the statement of the Estate of August 31st, 1929, Plaintiff's Exhibit Number 8?

A.—Yes.

Q.—Were you aware that under the Succession Duties Act there was a period allowed, I think, of four months, in which to file the terms?

30 A.—Yes. I have forgotten the period. Certain delays were given.

Q.—Did Lord Shaughnessy and yourself, as the Executors here in Montreal, carry out the requirement of the Act in the matter of preparing the return for the Succession Duties during that fixed period?

A.—No, they were not quite completed at that time.

Q.—On the contrary, you made application by petition to the Government, to extend that delay in August, did you not?

A.—Yes.

Q.—And that application was refused?

40 A.—Yes.

Q.—Have you got a copy of that application?

A.—I think Mr. Phillips made the application; I am not sure. I might have a copy.

Q.—Did you make a supporting affidavit?

A.—Yes.

Q.—Was it to your knowledge that the petition in question was forwarded to the Collector of Succession Duties at Montreal under

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

cover of a letter dated August 12th, 1928, from Mr. Phillips to the Collector, of which a copy was sent to you, marked "For Mr. Reaper"?

A.—Mr. Phillips sent me a copy.

Q.—Of which I produce a copy as Exhibit P-53?

A.—Yes.

10 Q.—Have you got a copy of the letter in which you ask for the additional delay of six months?

A.—I am not sure.

Q.—Will you procure from Mr. Phillips, who is the Notary of the Estate at present, a copy of the petition he forwarded at that

A.—Yes.
time?

Q.—Do you remember you made an affidavit in support of it?

A.—Yes.

20 Q.—We will have that and we will mark it as Exhibit P-54. The letter reads:

" August 12th.

Collector, Succession Duties,
Court House,
St. Gabriel Street,
Montreal.

Dear Sir:

30 Re Estate Sir Mortimer Davis.

I beg to enclose herewith the petition to the Honourable Provincial Secretary with affidavit attached, asking for a further delay of six months to file declaration of assets and liabilities, and shall be obliged if you will forward it to the proper quarter.

E. H. PHILLIPS."

40 And Mr. Reaper has told us he made a supporting affidavit. Did you, in point of fact, make a return to the Department of the Provincial Treasurer in connection with the Estate, under date 14th September, 1928, and if so, can you identify the copy of letter forwarded through Mr. Phillips to the Collector under date September 14th, and the accompanying preliminary statement of assets therein referred to, and which will be produced together as Exhibit P-55?

A.—Yes, that is it.

The Court: Is there a return to the government?

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

Mr. McKeown, K.C.: It was addressed to the Collector, re Estate Davis.

By Mr. McKeown, K.C.:

10 Q.—Now, some further return was made by you in connection with the Succession Duties, I take it, shortly afterwards, as shown by a document which I now exhibit to you and mark P-56. Give an explanation about that.

A.—This was a list of annuitants and bequests which I think was sent with the statement P-55, and followed later by a declaration giving the occupation and addresses of these parties.

20 Q.—Now, the date of the last communication which I have exhibited to you, P-56, appears to be September 24th, 1928. The next letter that I see in the file is a letter dated January 7th, 1929, addressed to you from the Collector here, Mr. Senecal, evidently introducing to you Mr. Rivet, a member of the staff.

Mr. Geoffrion, K.C.: You better get the original file.

30 The Witness: Yes, that was the next one in connection with the Estate. There had been quite considerable correspondence in connection with some insurance policies in favour of the Incorporated Company and the Alcohol Company outside of that. You have it attached with the copies I sent you. I gave you two files; the lower part, fastened together, I think, takes care of that, with a big fastener down at the bottom.

By Mr. Campbell, K.C.:

Q.—What about the correspondence?

A.—I have some of it here. There are some letters here too.

By Mr. McKeown, K.C.:

4 Q.—Have you more than one letter between those two dates, that is, September 24th, 1928 and January 7th, 1929, which refer to the Incorporated Company or to the Estate?

A.—This other file of letters refers to insurances.

Q.—Are there between those dates quite a Number of them, between those dates?

A.—Yes.

Q.—I only seem to have one letter.

A.—You have a copy of them all.

ALEX. M. REAPER (*for Plaintiffs*), *Examination-in-Chief*.

Q.—In 1928?

Th Court: Is it a question of Succession Duties, or any other subject?

10 Mr. McKeown, K.C.: Among the assets which Sir Mortimer Davis transferred, he transferred his life insurance to the Corporation. Of course it matured by his death, and there was some question of realizing on that both in favour of the Industrial Alcohol and the Incorporated Company.

By Mr. McKeown, K.C.:

20 Q.—What I am asking Mr. Reaper is whether between those two dates, the date of the supplementary return, Exhibit P-56, and the letter, which is the 24th of September, 1928, and the next letter I see on the file before me, January 7th, 1929, a letter to him, to Mr. Reaper, through Mr. Senecal, whether there was any intervening correspondence between those two dates?

A.—Nothing outside. Nothing in connection with the Estate.

By Mr. Campbell, K.C.:

Q.—Are you speaking as to the correspondence conducted by yourself?

30 A.—Yes. I don't think there was much with Mr. Phillips about that.

By Mr. McKeown, K.C.:

40 Q.—Speaking of the policies, for the purpose of the record, Sir Mortimer had transferred his life insurance which he was carrying at the time of his death, to the Incorporated Company and Canadian Industrial Alcohol; his policies were run into those two companies under transfer, and the maturing of these policies, due to his death, was a question which was taken up by the Incorporated Company for the policies running in its favour, with the Provincial Treasurer; whether the releases satisfied the Insurance Company, they were really taken up by the Estate—

A.—We had no claim on these policies.

Q.—You mean the Estate had no claim on the policies, and the sole beneficiary was either the Incorporated Company or the Alcohol Company?

ALEX. M. REAPER (*for Plaintiffs*), *Examination-in-Chief*.

A.—Yes.

Q.—Those Companies had to get releases under the Succession Duties Act and satisfy the Insurance Company?

A.—Yes.

Q.—So far as the Estate is concerned, was there any letter sent or received in connection with the Estate between the 24th of September 1928 and the 7th of January, 1929?
10

A.—No.

Q.—Did you do anything in that period, or did Lord Shaughnessy to your knowledge do anything in that period to accelerate these Succession Duties insofar as the Estate was concerned?

A.—I think we had a discussion with Mr. Begin in his office here.

Q.—Are you quite sure it took place at that time?

A.—It was at the time we discussed some insurance matters.

Q.—It would not be the discussion in the letter after the 14th of September, under which that preliminary return was sent in?
20

A.—No, I should think it would be about the end of October. We went to see him about insurance matters primarily, but he brought up Succession Duties in question.

The Court: Mr. Justice Coderre is willing to relieve me in the Practice Court on Thursday and Friday and the following week he will take it in my stead, and I will replace him some other week, so we can go right ahead with the case if we can find a room.

30 Mr. McKeown, K.C.: We will leave it to Mr. Geoffrion to find a room, if he can find a room.

By the Court:

Q.—Did Lady Davis call at the office of the Company on her return from Europe in May or June, 1929, before Lord Shaughnessy's return?

A.—No.

Q.—She returned to Canada, if I am well informed, at least a week ahead of Lord Shaughnessy?
40

A.—I think only two or three days, if I remember right.

Mr. McKeown, K.C.: I think on that point Lady Davis had arrived in New York, but had remained in New York and had not come on here because Lord Shaughnessy had not arrived. I think she was in Montreal before he arrived.

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

The Witness: Two or three days, I think.

By the Court:

Q.—Why was she not notified of meetings that took place of the Davis Company on the 12th or 13th of June?

A.—I think they were very formal meetings.

10 Q.—Were the meetings of the 27th of June and the 4th of August formal meetings?

A.—I think they were all formal meetings.

Whereupon an adjournment was taken until 10.30 o'clock A.M., Thursday, March 6th, 1930.

20

30

40

ALEX. M. REAPER (*for Plaintiffs*), *Examination-in-Chief.*

And on this sixth day of March, in the year of Our Lord one thousand nine hundred and thirty, personally came and reappeared the said witness,

ALEXANDER M. REAPER,

10 and his evidence was continued as follows:

By Mr. McKeown, K.C.:

Q.—At the adjournment on Tuesday you were being questioned in connection with the correspondence exchanged between the Executors of the Estate and the Succession Duties Department in connection both as to duties payable by the Estate and the matter of the insurance policies upon Sir Mortimer's life which had been transferred to the Incorporated Company and to Canadian Industrial Alcohol. Can you tell me the amount of the insurance in which the Incorporated Company was interested?

Witness: At the time of Sir Mortimer's death?

Counsel: Yes.

A.—\$185,000.00.

Q.—And, as to the other item: the Industrial Alcohol Com-

30 pany?

A.—\$160,000.00.

Q.—Have you been able to find any letters exchanged between the Succession Duties Department and the Executors, between September, 1928, and January 7th, 1929, concerning the duties upon the Estate?

A.—No.

Q.—And, during that period had you taken any steps to accelerate the matter?

A.—In the interval I had seen Mr. Begin.

Q.—Once?

40 A.—Once, if not oftener. I had seen him once in any case.

Q.—What steps did the Executors take following the funeral at the end of April and up to about the middle of August when they applied for the six months extension towards making their return upon the Succession Duties?

A.—We were just getting the data together, and we had to get some other information from France.

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

Q.—In point of fact, Lord Shaughnessy absented himself from Montreal from some time in June until the end of September, 1928?

A.—Some time in July, I think, until the beginning of October.

Q.—What did he do before he left for Europe, between the end of April and the middle of July, towards accelerating the putting in of that return to the Succession Duties Department?

10 A.—I do not know that there was anything more than just getting the figures together.

Q.—But, you have told us Sir Mortimer's affairs and those of the Incorporated Company were kept right up to the minute, and were in that condition at the time of his death. There could not have been very much work in gathering the information together under those circumstances?

A.—There was a little about arriving at a certain proportion for some of the assets.

20 Q.—But, the assets were not very many. They are all shown in detail by the exhibit to which reference has already been made—those are the statements of the auditors, Exhibits Nos. 8 and 9, one being for the Estate, and the other for the Incorporated Company. Every asset of every nature and kind is shown in detail in those statements?

A.—Yes. Those are August 31st.

Q.—The Exhibits to which I refer are Exhibits 8 and 9, the auditors' statements, prepared later on at the request of Lady Davis.

30 I am speaking only of the detail of the property held and reportable on the Succession Duties: this is contained and is set out in detail in Exhibit No. 8.

A.—Yes. This is a statement of August 31st, 1929.

Q.—You had made up, and according to your evidence I think Lord Shaughnessy had taken with him to Europe, a statement of the Estate as of date March 22nd, 1928 (the date of Sir Mortimer's death)—Exhibit P-50?

A.—Yes.

Q.—That had been prepared evidently before the middle of July?

40 A.—Yes, it had.

Q.—About a month later—in the middle of August—you made an application for six months further delay?

A.—Yes.

Q.—Which was refused?

A.—Which was refused.

Q.—Then you made a preliminary return some time about the middle of September?

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

A.—Yes.

Q.—Then came this interrugnum from that time, when nothing was done except the one interview to which you have referred, until January 7th, 1929, when this letter, copy of which is filed as Exhibit P-57 was received by you? The letter reading:

10 “PROVINCIAL REVENUE OFFICE,
REVENUE DISTRICT OF MONTREAL.

445 St. Gabriel Street.

Montreal, January 7th, 1928.

Mr. A. M. Reaper,
Secretary Treasurer,
Sir Mortimer Davis, Incorporated,
Montreal.

20 Dear Sir:—

Mr. Eugene Rivard, Advocate, is a member of our staff. Will you please let him have the information and documents asked for by our office.

Oscar Senecal.

The bearer is Mr. Rivard.”

Do you remember receiving that letter?

A.—Yes.

30 Q.—I take it Mr. Rivard called upon you, and handed the letter to you?

A.—Yes, he did.

In connection with that statement as of March 22nd, I may call your attention to the fact that it was not quite complete. There were certain assets in France which were not shown on it, and it was for that reason we were holding off the return to the Succession Duties Department.

By the Court:

40 Q.—Were those reasons mentioned in the Petition to the Collector of Succession Duties?

A.—Yes, your Lordship.

By Mr. McKeown, K.C., continuing:

Q.—Have you a copy of the Petition?

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

A.—I have a carbon copy, which I got from Mr. Phillips.

By the Court:

Q.—During the months of June and July who was in Montreal representing the Estate?

A.—I was.

10 Q.—Were you here all the time?

A.—Yes.

Q.—You did not leave the city at all?

A.—No.

By Mr. McKeown, K.C., continuing:

Q.—Will you file, as Exhibit P-54, a copy of the Petition to the Provincial Treasurer, made under your own name as Executor and supported by your affidavit?

20 A.—Yes.

Q.—So far as concerned the property in France, Sir Mortimer Davis had French Counsel acting for him there?

A.—Yes.

Q.—Was there anything to prevent you from getting in touch with Sir Mortimer's legal representatives there and obtaining the information which afterwards was obtained?

A.—We were in touch with him, but it took quite some time to get the final returns. As a matter of fact, they did not come until April, 1929.

30 Q.—Lord Shaughnessy had been over there for a period of two months: that is from the middle of July until the end of September, 1928?

A.—Yes.

Q.—Finally, when you made the provisional return, in September, 1928, you did so without having the information concerning the French assets, or some of them?

A.—Yes. After receiving word that they would not grant the extension we saw Mr. Nicol and he asked us to file such return as we could and supplement it later.

40 Q.—From the time of the letter of January 7th, 1929, addressed to you by Mr. Senecal, introducing Mr. Rivard (Exhibit P-57) until the month of May following, there was some exchange of correspondence between the Executors and the Department in connection with the various items contained in the return?

A.—Yes.

Q.—I do not know if we need encumber the record for the

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

moment with that correspondence, but I now show you a copy of the statement dated Montreal, May 14th, 1929, which purports to be a compilation of figures in connection with the payment of Succession Duties and establishing an amount of \$1,314,209.04 as being due, with interest at 5% from July 22nd, 1928. Did you receive the original of this document which I now exhibit to you?

A.—Yes.

10 There is another item as well.

Q.—I would ask you to exhibit to the Court the document received by the Executors from the Succession Duties Office, dated May 14th, 1929, and to which I have just referred, and I would ask you to produce a copy of it as Exhibit P-58.

(The document in question is exhibited, and a copy is produced as Exhibit P-58.)

20 Q.—You stated a moment ago that the amount which I mentioned to you was not the full amount, but that there was an additional amount. Will you just explain what it is? I take it you refer to an amount of \$33,047.27, which is contained on the third sheet?

A.—Yes.

Q.—What is that?

A.—Court fees—seizin taxes, they call it.

Q.—Is this a sur-tax on non-residents?

Mr. Campbell: It is the tax under the other Statute.

30 By Mr. McKeown, K.C.:

Q.—I notice they use the words “ Court fees.” It is included in the amount which would be payable under the Succession Duties?

A.—It would have to be added to the amount.

Q.—And that amount is also included upon the Exhibit which has been filed?

A.—Yes.

40 Q.—Did the Executors communicate with the Succession Duties Department upon receipt of the statement Exhibit P-58?

A.—Yes, sir.

Q.—Under what date?

A.—Almost immediately after receipt of that letter I called at the office here to see if I could get any explanation as to how they had arrived at their figures. They had made changes from the return which we had put in, and I called to get information as to how those figures were arrived at.

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

By the Court:

Q.—You called at the office of the Collector of Succession Duties?

A.—Here, yes.

Q.—Whom did you see?

A.—The accountant, Mr. Lazure I think.

10

By Mr. McKeown, K.C., continued:

Q.—Did you get any information from Mr. Lazure?

A.—He said the figures which he had received had come from Quebec, and that he had only started to make the statement from a certain point. He gave me such information as he could, but he said he had no authority to give full details without the authority of the Comptroller, and suggested that I communicate with Quebec and ask that they give that authorization to him.

20

Q.—Did you write Quebec?

A.—Yes, I wrote Quebec on May 18th.

Q.—Will you please Exhibit the letter?

A.—I have a copy of the letter here.

Q.—Will you file a copy of this letter as Exhibit P-59?

A.—Yes.

Q.—Will you produce and mark as Exhibit P-60 the reply received from Mr. Rivard, addressed to you, dated May 25th, 1929?

A.—Yes.

30

Q.—Did you receive a further letter from the Succession Duties Department giving the detail of the changes which had been made by the Department for the purpose of the Return; and, if so, will you say whether the letter copy of which I now show you and file as Exhibit P-61, dated May 30th, 1929, signed by Mr. Rivard, is a copy of the letter received?

A.—That is the letter received. But, still lacking in giving full information.

40 Q.—Following the letter Exhibit P-61, dated May 30th, 1929, there was some further exchange of correspondence concerning certain minor items of the return?

A.—There was. There were also several interviews. I made a trip to Quebec specially to discuss the matter with the Department.

Q.—When was that.

A.—In August. At the end of August.

Q.—In any event, on December 14th, 1929, you or the Executors received a statement and notice from the Department requiring payment of \$1,314,209.04 for Succession Duties within thirty days?

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

A.—Yes.

Q.—This letter, on the stationery of the Succession Duties Department, is addressed to Lady Davis, The Honorable Lord Shaughnessy, and Mr. A. M. Reaper?

A.—Yes.

Q.—Will you file, as Exhibit P-62, a copy of the demand to which I have just drawn your attention?

10

A.—Yes.

Q.—The next letter I see in the file purports to be a letter addressed to the Estate under date January 29th, 1930, signed by Oscar Senecal, Collector of Provincial Revenue, a copy of which I will ask you to produce as Exhibit P-63.

Mr. Campbell: I do not mind this going in, but it is subsequent to the institution of the Action. If it goes in I think perhaps what was done after that must also be established.

20

His Lordship: I would be glad to know whether the duties have been paid or not.

Mr. McKeown: We are coming to that, my Lord. It is not our fault if the evidence has to come after the Action.

Mr. Campbell: As a matter of fact, this was after Action brought.

30

His Lordship: I would be interested to know if the duties were paid.

Mr. McKeown: They were not, your Lordship.

Mr. Campbell: We are not satisfied on what we owe, but we have made a payment on account.

By Mr. McKeown, continuing:

40

Q.—You will file a copy of this letter as Exhibit P-63?

A.—Yes.

Q.—This letter reads:

“Your name appears on the list of arrears which is prepared to be transmitted to the Attorney of this office for collection. The amount of the tax due is \$1,314,209.04, with interest since the 22nd July, 1928. By sending your cheque pay-

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

able to the order of the Hon. The Provincial Treasurer for the above amount on or before 3rd February next you will thereby avoid the unnecessary costs of a suit.

Yours truly,

10 Oscar Senecal,
Collector Provincial Revenue.”

A.—Yes.

Q.—The next letter I see on the file, and a copy of which I will ask you to produce as Exhibit P-64, is dated February 8th, 1930, on the stationery of the Collector of Provincial Revenue, Montreal, addressed to the Estate Sir Mortimer B. Davis; reading as follows:

20 “ We have been instructed by the Honorable the Provincial Treasurer to ask you the immediate payment of the sum of \$1,314,209.04, with interest since the 22nd July, 1928, due for Succession Duties. If the amount is not paid at my office on or before Wednesday, 12th instant, I will take legal proceedings against you to enforce that claim.

Yours truly,

Oscar Senecal,
Collector Provincial Revenue.”

30 Did you receive that letter?

A.—I received that letter. But there were yet a number of items totalling a considerable amount to be adjusted with the Department.

Q.—Following the receipt of the letter of February 8th, 1930, Exhibit P-64, did you receive an intimation that it was the intention of the Government to demand double Succession Duties from the Estate because of their failure to pay in accordance with the Statute?

A.—They did not intimate it to me.

Q.—Did you ever hear of that before?

40 A.—No, I did not hear of it.

Q.—Did you hear of it from Lord Shaughnessy?

A.—No, I did not hear of it.

Q.—Please do not look at Lord Shaughnessy. Look at me.

A.—I have not looked at him yet.

Mr. Holden: I submit my learned friend's tactics are not cor-

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

rect. The witness is looking straight at the Counsel, who says "Do not look at Lord Shaughnessy. Look at me."

Mr. McKeown: He was looking in that direction, Mr. Holden; and if you cannot see as far as the witness box, I can.

10 By Mr. McKeown, continuing:

Q.—Now, let us get this thing straightened out—

Mr. Campbell: What interest is it to this Court whether my learned friend procured or did not procure threats? The Government wanted its money.

Mr. McKeown: Do you suggest I made any threats?

20 Mr. Campbell: No, I do not. I suggest I did not procure the threats either, and there was nothing to them. There was no legal foundation for the threats, and my learned friend knows it.

Mr. McKeown: I think we can judge the amount of pressure that was required to be brought upon these Executors to pay anything for those Succession Duties.

Mr. Campbell: We had considerable difficulty.

30 Mr. McKeown: The Official Stenographer and the Press are taking all this down, and the statement is entirely for outside purposes.

Mr. Campbell: And, it is not the only one made for that purpose.

By Mr. McKeown, continuing:

40 Q.—I put it to you, Mr. Reaper, that you know there was an intimation received from the Government of this Province that they proposed to demand double Succession Duties from this Estate?

A.—No, I did not know the Government had made any such suggestion.

Q.—Did you hear that any member or official of the Government had made that intimation?

A.—No.

Q.—You never heard of such an intimation until this minute?

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

A.—No, I did not hear any intimation from the Government?

Q.—Then, from whom did you hear it?

A.—I do not know. It may have been suggested it was a possibility.

Q.—Suggested by whom?

A.—Our lawyers may have said something about it, but nothing definite.

10 Q.—There must have been some discussion. There cannot be a lot of smoke without some fire. What did you hear? Tell us frankly what there is to this thing.

Mr. Campbell: Is the witness to be cross-examined as to the conferences he may have had with his Counsel in reference to this? We are now dealing with matters that happened weeks after this case was instituted.

20 His Lordship: This is an action to remove the Executors, and no fact of commission or omission is indifferent if the root of it was before the institution of the action. I think the question is pertinent.

Mr. Campbell: Then we will have to have the whole story told.

Mr. McKeown: That is exactly what we are trying to accomplish.

Mr. Campbell: But I do not think this witness can tell it.

30 Mr. McKeown: Then there are other means of getting the story in.

Witness: All I remember is I think Mr. Campbell suggested there might be a possible claim for the double duties; but at that time he had not looked over our file, and he did not know the full circumstances. That is all I know of it.

40 Mr. Campbell: Is it right to say Mr. Campbell said there might be, or that somebody had intimated a claim might be made? I do not want it put forward that I suggested at any time the Government had any basis for such a claim, because I never made such a statement and never thought such a thing. I think it all goes to show my objection was well taken. Surely the witness should not be cross-examined about his conferences with Counsel in connection with the case.

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

Mr. McKeown: I did not know where the information was obtained from.

Mr. Campbell: I am not sure you did not have some reasonable reason to believe.

I suggest references to those conferences of the witness with his Counsel are illegal and should not be of record.

10

Mr. Montgomery: Perhaps it would be simpler to admit a threat to collect double duty was made.

Mr. Campbell: To which no seriousness was attached by Counsel on either side.

Mr. McKeown: Speak for yourself, Mr. Campbell.

Mr. Campbell: The suggestion that the Government wanted its money, and as a means of getting something suggested it would be wise to make a payment on account, and use that upon which to base a possible demand for double duty was something for which I could never find any legal justification.

20

Mr. McKeown: We will look at the Statute, and let it go at that.

Mr. Campbell: If it is in the Statute we will cite it. I have not been able to find it.

30

Mr. McKeown: Inasmuch as Mr. Campbell's statement is of record, I take it that will suffice upon the point.

40

Mr. Campbell: If it is of any importance we will bring the officials of the Government. I may say I attach no importance to it. I understood the threats were not made seriously, and I did not take them seriously, and they were not communicated seriously to my learned friends on the other side; and they know it—or to the Executors. It was never communicated to the Executors as a serious affair.

Mr. McKeown: We will leave the matter of threats to be judged by themselves. Is it put forward that we even made suggestions?

Mr. Campbell: I submit the whole thing is irrelevant and illegal, and should not be in the record. Conversations I had with my law partner, who happens to be Provincial Treasurer, are not proper

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

subjects for examination in this record, any more than conversations had with departmental officials or with Counsel on the other side. I submit it is all illegal, and has no business in the record. If the penalty was incurred under the Statute, my learned friends have the Statute and do not require any suggestion from any official of the Government. We do not want to know what went on in the minds of the Government, and should there be any suggestion of that we
10 will have to examine all the members of the Government and the Cabinet. It is of no interest to this case that a member of the Government happened to be in the embarrassing position of being my law partner and I happened to be in the embarrassing position of being associated with this case.

All this has no business in the records.

His Lordship: But, now that we have gone this far, I would like to know how they acted, if they acted at all. What interests me is whether anything has been paid to the Government as Succession
20 Duties, and, if so, how much; and what delay was given to make the payments, and how much, if anything, has been lost by the Estate by reason of the fact the payment was delayed a year and a half.

Mr. Campbell: That, I agree, is quite right.

By Mr. McKeown (continuing):

Q.—Following the receipt of the letter from the Collector,
30 Exhibit P-64, dated February 8th, in which payment of the full amount was demanded within four days—that is “Before the 12th instant,” do you know as an Executor of this Estate what efforts were made to satisfy the demand contained in that letter?

A.—Yes, the matter was taken up between Counsel, I think, for both sides, and arrangements made to provide for a payment.

Q.—You do not suggest Counsel for plaintiffs were in touch in any manner with the authorities with respect to the demand for payment of that sum of money within four days?

40 His Lordship: Lady Davis is an Executor?

Mr. McKeown: Yes, Your Lordship, but we were not.

By Mr. McKeown (continuing):

Q.—You do not suggest Counsel for plaintiffs were in touch in

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

any manner with the authorities with respect to the demand for payment of that sum of money within four days?

A.—No.

Q.—On the contrary, it was your own Counsel who communicated with the representatives of the Government in that connection?

A.—With the representatives of the Government.

10 Q.—And, as far as your knowledge upon the subject goes, what was the result? Did the Government insist upon payment within four days, and was the amount paid—if not, what happened?

A.—There was an arrangement made to pay \$600,000 on account.

Q.—What was the Government's first demand? Did they agree immediately to the \$600,000?

A.—As far as I know, they did. I have no knowledge of anything different.

Q.—It is not to your knowledge they wanted \$1,000,000 first?

A.—No.

20 Q.—Then \$750,000?

A.—I never heard of it.

Q.—And then finally agreed to accept \$600,000 on account?

A.—I never heard of it.

Q.—You know that?

A.—I know the \$600,000 was arranged, but I do not know of anything else in connection with it.

Q.—Do you know what delay, if any, has been obtained for the payment of the balance?

30 A.—I do not know a definite time has been arranged.

Q.—As far as you know, there is no definite time?

A.—No definite time.

Q.—Was the Estate in funds with which to pay even \$600,000 on the Succession Duties?

A.—No, not at that time.

Q.—In what form and from what source was the money which went to satisfy the Succession Duties raised?

A.—We arranged to sell securities—some Liggett & Myers stock which we had—to provide the money.

40 Q.—When you say “we” do you mean the Executors acting for the Estate, and are you referring to Liggett & Myers stock held directly by the Estate?

A.—Held directly by the Estate, yes.

Q.—Apart from that source of ready funds, had the Executors any money with which to meet this modified demand of \$600,000 when this letter Exhibit P-64 was received from the Government on February 6th, 1930?

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

A.—Not at that time.

Q.—At that time was there an overdraft at the Bank by the Executors?

A.—Yes.

Q.—How much?

A.—About \$88,000, I think.

Q.—Was there a Bank loan?

10 A.—There was a Bank loan, of an additional \$215,000.00.

Q.—Altogether you owed the Bank over \$300,000?

A.—Slightly over \$300,000, yes.

Q.—And, if I am not mistaken, you had part of those Liggett & Myers shares hypothecated to the Bank?

A.—7,400 of them.

Q.—Hypothecated to the Bank as security for the loan to the Executors?

A.—Yes.

20 Q.—What was the exact number of Liggett & Myers shares?

A.—Between "A" and "B" stock together, 9,820 shares.

Q.—Do you remember the number of "A" and the number of "B"?

A.—3,300 "A" and 6,520 "B".

Q.—The Liggett & Myers shares are listed on the New York Stock Exchange?

A.—Yes.

Q.—Liggett & Myers is a large Tobacco Company operating throughout the United States?

30 A.—Yes.

Q.—Those shares were owned by Sir Mortimer Davis personally at the time of his death, were they not?

A.—Yes, they were.

Q.—And, for the greater part, were being carried by him on margin with the brokerage firm of Bamberger Brothers, New York?

A.—Yes.

Q.—What was the debit balance in Bamberger Brothers' account at the time of Sir Mortimer's death?

40 A.—It is shown in the statement of the Estate. At the time of Sir Mortimer's death the balance due Bamberger Brothers was \$1,348,391.77, as per page 1 of Exhibit No. 8.

Q.—And also as per Exhibit No. 2?

A.—Yes.

Q.—How much of this Liggett & Myers stock did Bamberger Brothers hold as collateral for that sum of \$1,348,391.77?

A.—7,400 shares; 6,100, I think, of "B" and 1,300 of "A".

Q.—Not 3,300?

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

A.—No. The other 2,400 were held here in the Bank.

Q.—Sir Mortimer also held securities in Tobacco Products Corporation?

A.—Yes.

Q.—5,000 shares?

A.—I think 5,000 shares, yes.

10 Q.—Which, at the value entered in Sir Mortimer's death, \$111.00, amounted to \$555,000.00?

A.—Yes.

Q.—And 6,000 shares of Victor Talking Machine, which at \$85.00 at that time represented an additional \$510,000.00?

A.—Yes. Those were also held.

Q.—Then they sold a part of the Liggett & Myers stocks to which you have just referred, the prices for both classes at that time being \$108.00?

A.—\$108.00, yes.

20 Q.—The Victor Talking Machine shares and the Tobacco Products shares were sold out of that account?

A.—Yes.

Q.—When?

A.—I think about the end of April or May, 1928.

Q.—Have you the books of the Estate here? I would like to have the exact date, because it may be of some importance.

A.—The Tobacco Products stock was sold during May.

Q.—Can you tell me the date?

30 A.—I have not the actual dates. In making the entry I took it from Bamberger's statement at the end of the month.

Q.—But the entries would be posted from something?

A.—Taken from Bamberger's accounts. I have not the exact dates here.

Q.—Could you verify the dates for us?

A.—I could, yes. It was during May, 1928.

Q.—Both the Tobacco Products stock and the Victor Talking Machine stock were sold in May?

A.—Yes.

Q.—And you will look up the dates for us?

40 A.—Yes, I will.

Q.—What did they realize?

A.—The Tobacco Products realized \$565,862.50; the Victor Talking Machine stock realized \$539,647.50.

Q.—This is shown by Plaintiffs' Exhibit No. 8, statement "VII"?

A.—Yes.

Q.—So the fact is that this statement of account of Sir Mor-

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

timer Davis was closed as to the two items in question, but kept open on the item of Liggett & Myers?

A.—Yes.

Q.—Your attention has been drawn to the fact that the Liggett & Myers price is entered as \$108.00?

A.—Yes.

10 Q.—Is it to your knowledge that that stock depreciated in value on the Exchange transactions as low as \$80.00?

A.—It has, yes.

Q.—On two occasions?

A.—I am not just sure how often. I think it went to around that figure.

Q.—You must have followed the quotations on that stock pretty closely?

A.—Fairly closely, yes.

20 Q.—Just to make it perhaps easier to check up; in the big drop last fall it went to \$80.00, did it not?

A.—I do not know exactly, but I know it has gone to that figure?

Q.—I put it to you that before that drop it had been down to \$80.00?

A.—Possibly.

Q.—That would represent a loss to this Estate——

Witness (interrupting): Which did not happen.

30 Mr. Campbell: Surely my learned friend is not entitled to put it that way. If Liggett & Myers went down to \$80.00, a lot of other stocks went with it; but following that they came up again. The Liggett & Myers stock was not sold at \$80.00, and my submission is my learned friend's questions are illegal and irrelevant. Whether while the Estate holds a particular stock it goes down to a certain figure, and subsequently recovers, in company with other stocks, is surely not chargeable to the Executors.

His Lordship: Did the Estate make a loss?

40 Mr. Campbell: No, my Lord.

Mr. McKeown: We say that those stocks being speculative and held on margin they should have been sold in the same way as the others were sold. They were not sold, and they went down into the trough of the sea.

Mr. Campbell: And came up again.

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

Mr. McKeown: They went down to \$80.00, and back to over \$100.00. They were still held, and went down to \$80.00 again last fall. The point I want to make is that after having run the gauntlet for practically two years they had to be sacrificed and dumped in one day, and they have gone up very considerably since.

10 Mr. Campbell: I do not think that is material at all in this case. They were sold with the concurrence of my learned friend's client.

Mr. McKeown: They were sold because they had to be sold to prevent the carrying out of the threats of the Government. They had to be sold to meet the liability of this Estate on the Succession Duties.

20 His Lordship: I would be interested in knowing how the stock fluctuated—the ups and downs of the stock.

By Mr. McKeown (continuing):

30 Q.—I asked you if before the drop last fall this stock had not dropped to \$80.00, and you said “possibly”. I started to ask you “That would represent a loss to this Estate . . .” and you interrupted by saying “Which did not happen”. Now, if you will be kind enough to wait for my question, I will wait for your answer. I say that drop to \$80.00 upon the 9,820 shares (taking the price at which those shares stood at the time of Sir Mortimer's death—\$108.00) to the cheapest to which we have referred, \$80.00—28 points—would represent a depreciation of approximately \$275,000 in those shares. Will you verify that?

Mr. Campbell: That may be perfectly accurate as a matter of arithmetic, but is it a proper question to put to the witness?

His Lordship: But it is not the duty of the Court to resolve itself into a system of accountancy.

40 Mr. Campbell: It seems to me we are spending a great deal of unnecessary time on this particular item. The shares were not sold, and the potential losses were not incurred.

Mr. McKeown: After having put us in peril it does not lie in your mouth to say that.

ALEX. M. REAPER (*for Plaintiffs*), *Examination-in-Chief*.

Mr. Campbell: And I suggest we got you out of it by weeping.

Witness: Your calculation is correct.

By Mr. McKeown (continuing):

10 Q.—There was a slight variation that had come about in Liggett & Myers quotations between the original figures we have been discussing and those which obtained on the day the stock was actually sold, in this connection: that there had been rights declared to the holders of those shares, and by the time the shares were sold they were ex-rights, and the rights were sold apart from the stock itself; and also there was a \$2.00 dividend on each share, and the stock was ex-dividend at the time the sale was made?

A.—Right.

Q.—The whole 9,820 shares were sold?

20 A.—The whole 9,820 shares were sold.

Q.—And the whole 9,820 rights were sold?

A.—Yes.

Q.—Can you give us the average price realized for the stock proper?

A.—Yes.

30 Mr. Campbell: In order that we may protect our rights in this record, I renew my objection to all this evidence of the events that happened long after the institution of the proceedings. How can they justify it after the institution of these proceedings? The plaintiffs must either stand or fall as at the time they took their proceedings. It is not a matter that I am afraid of the answer that may be given by the witness, but my submission to Your Lordship is that this line of examination is utterly illegal. We have been hearing evidence of events that have happened since the institution of the action, many of them by arrangement between Counsel on both sides, and I wish Your Lordship to note I renew my objection to the admission of evidence subsequent to the institution of the proceedings.

40 The Court: It seems to me, under the allegations of the Declaration as they read that, at the time of Sir Mortimer's death, the Liggett and Myer shares were listed at 108, and they were not paid for in full. Bamberger Brothers had a claim.

Mr. Campbell, K.C.: That is where Your Lordship is in error. They were taken out of the Bamberger account away back.

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

The Court: Just recently.

Mr. Campbell, K.C.: They were not in the Bamberger account at the time the shares were sold.

10 The Court: Those shares were listed at 108, not paid in full at the time of the death of Sir Mortimer Davis, on which there was interest being paid. What I am interested in knowing is whether 108 was a good price at that time to sell the shares at.

Mr. McKeown, K.C.: It was the New York market quotation.

20 The Court: I am interested in knowing whether Mr. Reaper knows how they stood all the time he was associated with Sir Mortimer Davis in 1926, and whether it would have been a proper thing to sell them then, and wipe out the liabilities. There were the Bamberger and the others.

(Last question read.)

The Witness: Including the rights.

By Mr. McKeown, K.C.:

Q.—No, not including the rights.

30 A.—I have not got them separately. The average for the whole lot, including rights, was \$106.07.

Q.—The rights all sold at \$13.50?

A.—13-1/8th, less commission; 13 is near enough.

Q.—Do these figures, 106.07, represent the average price for the 9,820 shares, based upon the price of the sale of each lot before deduction of commission and tax?

A.—This is not after commission was deducted; net after commission, and exclusive of dividend on the New York Exchange, which she received on the payment, exclusive of dividend.

40 By Mr. Campbell, K.C.:

Q.—This is exclusive of dividend. The dividend has to be added?

A.—Yes.

By Mr. McKeown, K.C.:

Q.—In other words, what you have been giving us is the net amount of each sale, net on its face?

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

A.—Yes.

Q.—The dividend was \$2.00 a share?

Q.—So that that would put the stock at from \$106.07 as includ-

A.—Yes.

ing the rights, to \$108.07. Is that it?

Q.—So that the stock realized, including rights and dividend,
\$108.07?

10 A.—Yes.

Q.—Tell His Lordship, if you please, at what time that stock
was taken away from the Bambergers?

A.—In August.

Q.—Of what year?

A.—1929.

Q.—Now, you know from your experience in such matters that
from time to time there is a very high ruling rate of interest in
New York?

20 A.—At times, yes.

Q.—There has been within the past two years?

A.—There has been, yes.

Q.—What would you say was the peak of that?

A.—Between 9 per cent and 10 per cent.

Q.—And the interest charged daily varied daily, according to
the quotations for money?

A.—There is the brokerage adjusted once a month on the basis
of what the interest has been during the month.

Q.—Each day?

30 A.—Yes, and they fix a straight rate for the month.

Q.—In other words, that 10 per cent was at the rate of 10 per
cent for that month?

A.—Yes.

Q.—If it fluctuated from 15 and went down to the average, it
would be fixed according as the rate fluctuated and applied day by
day?

A.—That is what I understand.

Q.—On such debit balance in that Bamberger account?

40 A.—That is right, whatever it was, collectable and charged when
the rates were high.

Q.—Whether they were high or low they charged the interest?

A.—The interest was adjusted on whatever the rates were.

Q.—Do you know what the rate of interest was on that stock?

A.—One per cent quarterly, with a bonus of one per cent; five
per cent altogether. They declared a bonus of one per cent, making
a five per cent cash dividend.

Q.—There is the equivalent of a dividend of one per cent?

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

A.—Yes.

Q.—In addition to that, there is a bonus of one per cent, which, added to the four, makes five per cent. Do you know whether it was paid in the last two years?

A.—It has been.

10 Q.—This \$2.00 dividend you have been referring to in connection with the sale represents a quarterly dividend of one dollar, plus an annual bonus of one dollar per share?

A.—Yes.

Q.—That is where the \$2.00 comes from?

A.—Yes.

Q.—But the maximum on that stock is five per cent?

A.—The maximum on that stock is five per cent, cash dividend.

Q.—And the interest rate on the debit balance, you suggested a rate as high, at the peak, as 10 per cent.

A.—It fluctuated from probably five up to ten per cent.

20 Q.—Coming back to the sale of the shares, did you take this demand from the Provincial Treasurer as being a serious matter, this threat of suit within a few days?

A.—We expected it was urgent we pay \$600,000.

Q.—And if that was not done the entry of the suit as intimated accordingly would come about?

A.—We had his letter to that effect.

Q.—Can you tell His Lordship whether the Liggett and Myers shares as dealt in on the New York Stock Exchange is a very large issue?

30 A.—The market was narrow for it. As a general thing it was fairly narrow.

Q.—You had virtually 10,000 shares of this stock "A" and "B" within \$108?

A.—Yes.

Q.—That stock has also an equal number of rights, 9,820 shares "A" and "B"?

A.—Yes.

Q.—9,820 shares were actually sold in two days, were they not? Practically the whole of the stock sold the first day?

40 A.—Nearly so, yes.

Q.—And were absorbed to yield prices which you have given us?

A.—Yes.

Q.—Do you know where the stock has gone since?

A.—Since sold?

Q.—Has it gone up or down?

Mr. Campbell, K.C.: I renew my objection. These shares were

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

10 sold by concurrence with the plaintiffs and they realized a particular price. What has happened to them, to that stock since, I submit is utterly illegal. I must repeat again my objection. If we take stock sold in the last few days, are we going to come back in a month from now and find out what has happened to it, whether it has gone up or down, and I submit it is quite illegal to go into what has happened to the Liggett and Myers stock, since it was sold by common consent; and I ask Your Lordship to rule on my objection. I cannot see how it can justify the plaintiffs' action as brought to go into this kind of evidence as to what has happened in the last few days.

The Court: Here is an Estate that had to carry all the responsibility and I will allow the question.

Mr. Campbell, K.C.: I have a further objection that if the evidence is important, My Lord, it is not the proper way to prove it.

20 Mr. McKeown, K.C.: Have you got any admission out of any witness of mine? I am sure Mr. Reaper has been very much interested in following that stock just as we have been.

Mr. Campbell, K.C.: It is not the proper way to make the evidence.

(To which ruling of the Court defendants' Counsel respectfully excepted.)

30 By Mr. McKeown, K.C.:

Q.—Can you give us the precise dates of the sales, for the purpose of the record?

A.—No, I have not got them here. The dates I have here are the dates of the payment.

Q.—Do you remember that money was required for a Monday, ultimately?

A.—Yes.

40 Q.—Would your file refresh your memory, when I draw your attention to the fact that the 17th of February was a Monday?

A.—The first lot, I think, was sold either on the 12th or 13th, and returns were made for them on the 15th.

Q.—What do you mean by the first lot?

A.—I mean the lots sold the first day.

Q.—Have you got the figures of the shares?

A.—No.

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

Q.—Was it not enormously the largest part?

A.—It was a large part. We sent you details of that.

Q.—You have the sold notes?

A.—Yes.

Q.—Will you prepare a memorandum, to be filed in the record as Exhibit P-65?

10 A.—Yes.

The Court: You spoke of something to be filed as P-65, and you did not file it. I think you wandered away from the regular order. You said there was one more document in connection with the Succession Duty matter. You called it P-63 and asked your question and forgot all about it. If there is such a document you want filed you better put it in as P-65.

20 Mr. McKeown, K.C.: If we make this P-65, I don't think it will overlap. I intended to refer to this final letter, but it should have been prefaced by something.

The Court: Are you filing it?

Mr. McKeown, K.C.: I have not come to it yet.

The Court: Well, make it P-65.

30 Mr. McKeown, K.C.: We will make it P-65. We won't use P-65 for the present.

The Witness: The larger block of shares were sold on the 13th; paid for on the 15th, and the balance sold on the 14th, paid for on the 18th.

By Mr. McKeown, K.C.:

Q.—Can you tell us the number of shares which were sold on the 13th?

40 A.—Yes. On the first day 800 shares of common, 6,520 "B" shares; 9,820 rights.

Q.—That is on the same day, the 13th?

A.—Yes.

Q.—The following day, the 14th, what was sold?

A.—2,500 shares, the balance of the "A" stock.

Q.—You said that the shares have since advanced in price?

A.—Yes.

ALEX. M. REAPER (*for Plaintiffs*), *Examination-in-Chief*.

Q.—That is the quotation on the shares proper, on the rights?

A.—Yes.

Q.—Which, combined together with the \$2.00 dividend, and compared with your figure of 108.07, would show the difference in points per share of the advance?

A.—I think approximately 12 points.

10 Mr. Campbell, K.C.: What are you talking about now? The increase?

The Witness: In other words, I think the rights were selling around 16, and the stock around 104.

By Mr. McKeown, K.C.:

20 Q.—Your suggestion is that the advance has been equivalent to 12 points per share. That is to say, you take the rights at 16 and the stock at 104, which gives 120, against 108 originally?

A.—Yes.

Q.—That is 12 points, and, as applied to the 9,820 shares, represents an advance of \$117,840 over what was realized for the stock sold under the conditions under which—

30 Mr. Campbell, K.C.: I remove my objection. The plaintiffs are claiming so far until this morning that we did not sell this Liggett and Myers stock long ago. Now they are beginning to complain we sold it too soon. The whole claim in their action as taken is that it should have been sold at 108 following that. As a matter of fact it was sold at 108.

The Court: Even in the light of these figures, the present figures of 120, it might be contended it would have been wise to sell it at 108. There was interest running both ways, and the Bamberger Brothers—

40 Mr. Campbell, K.C.: My submission is there is no complaint in the pleadings we sold these things too soon. The complaint is we sold them too long after. Now they are offering evidence to show we sold them too soon, and if we sold out long after we would make a profit.

Mr. Montgomery, K.C.: The point is they had to be sold by forced sale in a narrow market, and since they have gone up.

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

By Mr. McKeown, K.C.:

Q.—Will you, for the purpose of the record, prepare and file as Exhibit P-65 a copy of the letter of the Estate to the Collector of Provincial Revenue of the 17th of February, 1930, forwarding the cheque of the Executors for \$600,000 to apply on the Succession Duty. We have not any copy of that. You will have to make one.

10 A.—Yes.

By Mr. Campbell, K.C.:

Q.—Will you make a copy for me, too, Mr. Reaper?

A.—Yes.

Mr. McKeown, K.C.: I think that will be all for that branch of the Succession Duty. I think, as far as I can see, it will conclude the evidence on that particular branch.

20

(Whereupon an adjournment was taken until 2:30 o'clock P.M. of the same day, March 6th, 1930.)

March 6th, 1930,
2.30 o'clock P.M.

ALEXANDER M. REAPER

30 reappeared and continued his evidence as follows, in chief:

The Court: I have just been informed by the Prothonotary we will be able to have the old Criminal Court Room Monday, Tuesday and Wednesday of next week, Room 12.

By Mr. McKeown, K.C.:

Q.—Just one question further about the Succession Duties. Will you give His Lordship the amount of interest charges accumulated upon that item of Succession Duties since you have carried the item in the books of the Estate?

A.—You will notice that again applies to interest. Will you take that amount?

Q.—I beg your pardon?

A.—In giving the receipt for the \$600,000, they took the interest off.

40

ALEX. M. REAPER (*for Plaintiffs*), Examination-in-Chief.

Q.—You have the original file, have you not?

A.—Yes.

(Witness hands file to Counsel.)

10 Q.—You have now drawn attention to the official receipt received by the Executors from the Succession Duties Department under date February 17th, 1930, covering the payment of \$600,000, to which reference was made this morning. Is that right?

A.—Yes.

Q.—And that receipt shows that the Government has appropriated to interest the sum of \$102,436.29, and the balance of the \$600,000, that is \$497,563.71 towards the reduction of the Succession Duties.

A.—Yes.

20 Q.—Now will you verify that the Plaintiffs' Exhibit Number 3 correctly sets out the legacies payable under the will in cash, amounting to \$411,000?

A.—Yes.

Q.—Have any of these legacies been actually paid to the legatees?

A.—As regards the first item of \$5,000, \$3,800 was paid. That was considered in full of that amount.

Q.—When was that payment made?

A.—Do you want the exact date?

Q.—When, approximately?

30 A.—About May or June, 1928.

Q.—Now, have any others been paid?

A.—The item of Howard Clark was paid; at least, it was applied against a contra account. He owed a little more than that amount, and he was allowed this amount against it.

Q.—Clark compensated against an indebtedness of \$1,000?

A.—Yes.

Q.—The other legacies, as indicated upon Exhibit P-3, will stand on the books of the Estate as being due for the full amount?

A.—Yes.

40 Q.—Which, while we are on the subject, includes the legacy of \$1,000 to Lord Shaughnessy?

By the Court:

Q.—Is that paid?

A.—No, sir.

ALEX. M. REAPER (*for Plaintiffs*), Examination-in-Chief.

By Mr. McKeown, K.C.:

Q.—It stands unpaid for the full amount?

A.—Yes.

Q.—On the books of the Estate?

A.—Yes.

10 Q.—As to the four legacies of \$100,000 each, the General Hospital, the Notre Dame Hospital, the Young Men's Hebrew Association and the Jewish Philanthropies, nothing has been paid?

A.—Nothing has been paid.

Q.—Is the Estate crediting the interest to these institutions on these legacies?

A.—No.

Q.—The same as to the unpaid legacies in favour of Mr. Godsall, Mr. Allan and the others, the smaller legacies?

A.—Yes, the same way.

20 Q.—There were existing at the time of Sir Mortimer Davis' death, certain donations or trust funds which he had created during his lifetime which amounted to \$1,500,000?

A.—Yes.

Q.—Those are the donations shown by the statement, Plaintiffs' Exhibit Number 8, at the section marked Exhibit 1-X, Exhibit 8 being the Price-Waterhouse statement of the affairs of the Estate as of August 31st, 1929?

30 A.—Yes, this statement showing that the total amount of these contracts and obligations as at the death of Sir Mortimer, had been \$1,700,000, and the balance, August 31st, \$1,500,000.

Q.—I ask you now to verify that the balance of \$1,500,000, as shown by the statement you have before you, refers to the three donations mentioned in paragraph 86 of the declaration, that is to say, the marriage contract of October 20th, 1927, in favor of Dame H. M. Meyer, \$100,000, the other donation of October 26th, 1927, H. M. Marler et al., \$200,000; deed of donation, August 31st, 1923, Lord Shaughnessy and others, \$200,000—those are the donations and trust deeds which are carried in the statement together at \$1,500,000?

40 A.—Yes.

Q.—I take it that the Executors treated these three donations in question as liabilities of Sir Mortimer at the time of the death, and as liabilities of the Estate?

A.—Yes.

Q.—Are these donations, donations referred to in Mr. Rivard's letters to you, whereby it appears that the government insisted upon collecting Succession Duties upon donations entered as liabilities?

ALEX. M. REAPER (*for Plaintiffs*), *Examination-in-Chief.*

A.—Yes, they treated as bequests the whole three of them; as a matter of fact, the whole four.

Q.—Have the Executors appropriated interest aside out of the funds of the Estate, the capital sums of these three remaining donations, amounting to \$1,500,000?

A.—No.

10 Q.—Neither in the form of securities or transfers of funds in respect of any of these three?

A.—No.

Q.—Take the first donation: donation of October 20th, 1897, marriage contract in favour of Dame H. M. Meyer—who are the trustees under that deed?

A.—The Royal Trust Company, Lord Shaughnessy and myself.

Q.—Yourself?

A.—Yes.

Q.—Lord Shaughnessy, the Defendant in this case?

20 A.—Yes.

Q.—Was Lord Shaughnessy, the Defendant in this case, the original trustee, or was it his father?

A.—No, there were no trustees. The trustees had not been appointed at the time of Sir Mortimer's death.

Q.—When were the trustees appointed?

A.—Later on, by family council, Lady Davis appointing one.

By the Court:

30 Q.—Were Trustees appointed with the marriage contract of Sir Mortimer Davis?

Mr. McKeown, K.C.: It was done under these terms. I think there was some provision.

The Witness: Trustees have since been appointed.

By Mr. McKeown, K.C.:

40 Q.—Can you tell me how long after Sir Mortimer's death Trustees were named under that trust deed?

A.—I think probably about August, 1928. I have not the exact date.

Q.—It was subject to an opinion which you had taken upon the subject from the firm of Meredith and Company?

A.—Yes.

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

Mr. Holden, K.C.: Have you a copy of it? I don't remember that.

Mr. McKeown, K.C.: I have a copy of that opinion in my hand. I think it is dated 25th of May, 1928, and I think it had already come out in evidence that Lord Shaughnessy left for Europe about the middle of June or about the 1st of July.

10

The Witness: Yes.

By Mr. McKeown, K.C.:

Q.—1928?

A.—Yes.

Q.—Was that done before he went?

A.—No.

20 Q.—Was it done in his absence.?

A.—I think so.

Q.—Your recollection is it was in the month of August, 1928?

A.—Yes.

Q.—By notarial deed?

A.—Done before E. W. H. Phillips, Notary.

By Mr. Holden, K.C.:

30 Q.—Before family council?

A.—Family council. Lady Davis had the right to appoint one, and the Executors of the Estate two.

By Mr. McKeown, K.C.:

Q.—The Plaintiff will produce as Exhibit P-66 copy of the marriage contract, October 20th, 1897, in favour of Dame H. M. Meyer, and as Exhibit P-67 a copy of the Notarial appointment of Trustees.

4 Have the Executors received a demand of payment from the Royal Trust Company in connection with the capital or interest, whatever it is, upon the donation you have just been referring to?

Mr. Campbell, K.C.; Unless my learned friend will limit his question up to the time of the institution of the proceedings in this case, I object again. Surely we are not going to try all sorts of things that may have happened since the action was brought. Plaintiffs' action may be good or bad, but as at the time that it was taken,

ALEX. M. REAPER (for Plaintiff). Examination-in-Chief.

and we again respectfully submit they ought not to be allowed to go into the proof of facts of that happened since.

The Court: What happened since is simply the continuation of what happened before. It is very hard to draw a line.

10 Mr. McKeown, K.C.: These two Defendants were appointed Trustees, and I wish to show they have not carried out their duties in that respect, and a demand was made, and they have been threatened with suit.

Mr. Campbell, K.C.: As long as it was made up to the time you took your action I have no objection. If it was not made up to the time you took your action, I have an objection.

The Court: Objection reserved.

20 To which ruling of the Court the Defendants respectfully excepted.

The Witness: We have received the demand, yes.

By Mr. McKeown, K.C.:

Q.—A demand, you say, from the Royal Trust?

A.—Yes.

30 Q.—How far back?

A.—I don't remember. I think it is recently. They have made inquiries at different times, but I think the last—you might call it the demand, was quite recently.

Q.—This recent demand was a threat of suit?

A.—I don't think it was from the Royal Trust. I think we had a letter from the secretary of Lady Davis in Paris, calling attention that this had not been paid, and they might be compelled to place the matter in the hands of their counsel, Mr. Geoffrion.

Q.—You mean Lady Henrietta Davis?

40 A.—Yes.

Q.—Did you get your mail?

A.—No, I did not.

Q.—And the Royal Trust before that had been making what you call inquiries about that?

A.—Yes.

Q.—And the inquiries were inquiries for payment?

A.—They were inquiries. They had not pressed the matter.

ALEX. M. REAPER (for Plaintiff), Examination-in-Chief.

Q.—The second donation of October 26th, 1921, of \$200,000, as being included in those to which you have referred, in opening this afternoon—has the capital of that donation been set aside?

A.—No.

Q.—Are the Trustees still the original Trustees, Honourable H. M. Marler, and J. B. Waddell, under that deed?

A.—Yes, they still are. I understand Mr. Marler has resigned.

10 Q.—Has he resigned or offered to resign?

A.—Well, I think he has signed a document to that effect. It has not been finally completed.

Mr. Montgomery, K.C.: He has attempted to resign.

By Mr. McKeown, K.C.:

20 Q.—Copy of the donation of October 26th, 1921, will be filed as Exhibit P-68.

Then as to the third donation of August 1st, 1923, to Lady Davis and M. B. Davis, Junior, and H. M. Marler, \$1,200,000, has any capital appropriation been put aside to meet that amount?

A.—Not yet.

Q.—Who are the Trustees under that donation at the present time?

A.—I think they are mentioned on this.

Q.—Originally apparently they were Lord Shaughnessy, Mortimer Davis, Junior, and H. M. Marler.

30 A.—I think it still remains that way.

Q.—It still remains?

A.—I think so.

Q.—Is that another deed in which Mr. Marler attempted to resign?

A.—Yes.

Q.—An uncompleted deed of resignation has been signed by Mr. Marler?

A.—Yes.

40 Q.—That was a matter arranged by Lord Shaughnessy, yourself, and Mr. Marler, or was that all by Lord Shaughnessy alone?

A.—I knew about it.

Q.—A copy of the deed of donation of August 1st, 1923, will be filed as Exhibit P-69. Is interest accumulating and running against the Estate on these three donations of \$1,500,000?

A.—Yes.

Q.—From the date of Sir Mortimer's death?

A.—Yes.

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

Q.—At what rate?

A.—Six per cent.

Q.—Will you tell me what that accumulated interest to date is?

A.—Not to date. You have the figures on the statement.

Q.—Whatever it amounted to as of August 31st, 1929, Exhibit P-8 will show that.

10 A.—August 31st, 1929, accrued, as is shown, the net balance, \$118,202.77; \$10,000 having been paid on account.

Q.—The Exhibit to which you have just been referring is Exhibit Number 8,, Price-Waterhouse's statement, August 31st, 1929?

A.—Yes.

Q.—Since the death of Sir Mortimer Davis, what efforts have been made, if any, by Lord Shaughnessy and yourself to sell the Alcohol "B" stock held at that time, amounting to some 61,980 shares?

20 A.—About some 6,000 shares were sold; that was all. The market then gradually began to decline and we did not offer any more.

Q.—You did not offer any more?

A.—No.

Q.—You say you sold how many shares?

A.—6,000, I think.

Q.—Do you see any indication of that in the Price-Waterhouse report, of the affairs of the Incorporated Company, as of August 31st, 1929?

A.—No, it will appear in the reduced statement, September 30th, 1928, Exhibit P-51.

30 Mr. Campbell, K.C.: These shares were held by the Company, not by the Estate, Mr. McKeown.

Mr. McKeown, K.C.: Yes.

By Mr. Campbell, K.C.:

Q.—The Alcohol shares were held by the Company, not by the Estate?

40 A.—By the Company, yes.

By Mr. McKeown, K.C.:

Q.—To get this thing cleared up, these "B" shares of Alcohol were non-voting shares?

A.—Yes.

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

Q.—And they were issued to the original shareholders in some proportion to the holding of the old stock?

A.—Yes.

Q.—Do you remember when those shares were delivered to the shareholders, and when the Incorporated Company got delivery of their “B” stock?

A.—March 1st, 1928.

10 Q.—The same month in which Sir Mortimer died?

A.—Yes.

Q.—And that is how it comes about that the schedule, Exhibit “C”, forming part of Exhibit P-51, shows no “B” stock on hand at the beginning of the period, which is September 30th, 1927?

A.—That is not the reason.

Q.—Shows the purchase during the year by the Company of 61,980 shares, and that there were on hand at the end of the year 55,920?

20 Q.—What was the purpose of creating “B” stock of Alcohol?

A.—So that an offering could be made to the shareholders at less than the market price, and I think also with the idea that these shares could eventually be sold.

Q.—Could be sold without endangering the control, which was held by Sir Mortimer Davis through his Incorporated Company at that time?

A.—Yes.

Q.—That “B” stock was brought out; it was delivered at the beginning of March, 1928?

30 A.—Yes.

Q.—That was some time after the McNish debentures had come out?

A.—Yes, they had come on on November 15th, the previous year.

Q.—The year 1927?

A.—Yes.

Q.—Was not the plan that this “B” stock was to be sold, and the proceeds to pay the McNish loan?

A.—No.

40 Q.—Do you suggest the “B” stock was to be held?

A.—It was to be sold, but there was no set price set on it, nor no set time for the disposal.

Q.—But it was to be sold?

A.—That was the intention.

Q.—That formed no necessary part of the holdings of the Incorporated Company in Alcohol, to retain the control?

A.—No.

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

Q.—You understood from the time the plan of the “B” stock was evolved and carried out, this “B” stock was to be handled and sold by the Incorporated Company?

A.—Yes, eventually.

Q.—You told us about getting delivery of the “B” stock in March, 1928. There were some 6,000 shares sold?

A.—Yes.

10 Q.—What were the dates of these sales?

A.—Between April 20th and May 10th, 1928.

Q.—You got rid of how many?

A.—6,060.

Q.—Is that number that you have given us, 6,060, the total sales which were made from the holdings of the Incorporated Company, or is that the net amount, having regard to the purchases and sales of “B” stock in that period?

20 A.—I think these were all sales. I don’t think there were any purchases in that period. There might have been a few; there were very few.

Q.—There might have been some purchases and some sales, leaving these figures?

A.—Yes.

Q.—What was the trend of the market between those dates, April 20th and May 10th, 1928, on Alcohol “B”?

A.—We got from 40 to 45½ for those shares we sold.

Q.—Did you consider that a good price?

A.—Fair price.

30 Q.—Satisfactory?

A.—Yes.

Q.—What efforts were made after May 10th, 1928, to liquidate any further part of the “B” stock?

A.—No special effort after that date. The market, I think, started to decline and there was very little market for “B” stock.

Q.—No special effort was made?

A.—No.

40 Q.—Do you know of any opportunities which offered after that date to dispose of the “B” stock, either on the market or otherwise?

A.—I don’t know of any direct offer.

Q.—You don’t know of any direct offer?

A.—No.

Q.—Do you know of any direct proposals, direct or indirect proposals of that kind?

A.—Yes. I think there was one discussion, as far as I know.

Q.—In which you participated?

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

A.—No, I did not participate.

Q.—Who was it with?

A.—I think Mr. Williams, of O'Brien and Williams, spoke to Lord Shaughnessy something about it; a tentative proposition. There was not anything definite, as I understand it.

Q.—Did you get your information in that connection from Lord Shaughnessy?

10 A.—I did.

Q.—On what date was that?

A.—I should imagine it was probably before he went to Europe, in the summer of 1928.

Q.—Have you fixed that date definitely yet, the date of his departure?

A.—Around the 9th or 10th, somewhere, or July.

Q.—What did Lord Shaughnessy report to you as being his conversation with Mr. Williams?

20 A.—I understood there was some tentative propositions, that he spoke about getting—wanted to see if he could get some stock, but I understand at a price below the market.

Q.—At a price below the market?

A.—Yes.

Q.—In any event, what was the quantity of stock you understood he was negotiating for?

A.—I don't know that the quantity was mentioned.

Q.—Do you think I could refresh your memory if I suggested something?

30 A.—It might.

Q.—Was it 40,000 shares of the "B"?

A.—I am not quite certain about the quantity.

Q.—You could not then tell us?

A.—I am not sure about it. I would not be sure.

Q.—As to the price, you have no present recollection?

A.—No.

Q.—Apart from your understanding, were there any other efforts made as far as you know towards unloading the "B" stock?

A.—I don't know of any.

40 By the Court:

Q.—Was that stock listed?

A.—Yes.

By Mr. McKeown, K.C.:

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

Q.—Listed on the Montreal Stock Exchange?

A.—Yes.

Q.—Do you know of any conversation repeated to you concerning that stock in which the name of McDougall and Cowans was mentioned?

A.—I don't remember of any.

Q.—No. You don't remember hearing of any?

10

A.—No.

Q.—You did not have any conversation?

A.—No.

Q.—In reply to His Lordship's question you said the stock was listed on the Montreal Exchange. It is listed on the Toronto Exchange, too, is it not?

A.—I don't think so. There may be some sales there, but I don't think it is listed there.

Q.—How could there be any sales if it was not listed?

A.—Sometimes there are sales without the stock being listed.

20

Q.—However, you don't know anyway?

A.—No.

Q.—McNish Debenture, I think it has come out in evidence are listed in New York.

A.—No.

Q.—On the Montreal Exchange?

A.—On the Montreal Exchange.

Q.—Before we take up the McNish Debenture: How did you get along in 1929 with the B Stock? Did you sell any.

30

A.—No.

Q.—Did you buy any?

A.—I think a few shares were bought.

Q.—Can you tell me whether, during 1929, the only transaction in the Incorporated Company in the B Stock, was the purchase of the 160 shares shown on Plaintiffs' Exhibit number 9, Exhibit C, Price, Waterhouse, of August, 1929?

A.—Yes.

Q.—Can you tell me again whether those figures are net after purchase and sales, or simply purchases?

40

A.—I believe there were a few sales. I think that is the only purchase, I would not be sure.

Q.—When were they bought?

A.—I have not got the dates. I could not say.

Q.—Approximately?

A.—I can get the record here if you wish, if you want it exact.

Q.—Oh yes?

A.—Those were bought on November 8th, 1929.

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

Q.—At what price?

A.—\$38.00 to \$39.00.

Q.—Did you give us the price of the B in the present quotation?

A.—I gave it to you yesterday at ten dollars.

Q.—What was the actual market for it?

10 A.—Well, I have not seen the quotations yesterday or today. I think they are eight or nine dollars.

Q.—Let us go then to the McNish Debentures: McNish you say is listed on the Montreal Stock Exchange?

A.—Yes.

Q.—When was it first listed?

A.—October, 1929.

Q.—Is it supposed to be the practice, to be of assistance to market securities, to have them listed on recognized Stock Exchanges? Is that one mode to help distribute them?

20 A.—I think so.

Q.—McNish Debentures have been out since when?

A.—November 15th, 1928.

Q.—1928?

A.—1927.

Q.—The McNish Corporation comes directly under, and is administered from the offices of the Alcohol Company in Montreal, is it not?

A.—Yes.

30 Q.—Is Lord Shaughnessy a Director of the McNish Corporation?

A.—I think so.

Q.—What is his official capacity?

A.—I am not sure, outside of being a Director. I would not be sure.

Q.—Is he President?

A.—I am not certain now.

Q.—In any event the Executive Officers are here, in the Canada Cement Building?

A.—No, I think not; in England.

40 Q.—What was there to prevent the listing of the McNish shares on the Montreal Stock Exchange immediately following the death of Sir Mortimer, in March, 1928?

A.—I understand it was some legal matters that required attention, and the regulations of the Exchange in order to get suitable certificates and so on, that would meet the requirements of both the London and the Montreal Stock Exchanges.

Q.—Was that a matter of getting our lithographed certificates?

ALEX. M. REAPER (*for Plaintiffs*), *Examination-in-Chief*.

A.—I don't know the details. That was looked after in the offices of the Alcohol Company.

Q.—And when did that objection first present itself?

A.—I don't know. I think it had been going on from about the issue or right after the issue.

Q.—That is, the question of getting out certificates which would be satisfactory to Montreal and London had been on the tapis from
10 November, 1927, until November of 1929, before it was cleared up. Is that right?

A.—Well, I think that was before all matters were cleared up.

Q.—And Lord Shaughnessy had been in England on two occasions for several months, between those two periods?

A.—Yes.

By the Court:

Q.—For that purpose?

20 A.—Oh, not on that purpose specially. He may have discussed it.

By Mr. McKeown::

Q.—At least, he would have had an opportunity while there of taking it up for anything you know?

A.—Oh, I think so.

Q.—During the period up to say the 1st of October, 1929 (I am
30 taking this as a matter of record) the Stock Market was on an upward trend, was it not?

A.—Until when?

Q.—Until to say, October 1st of 1929?

A.—No. I think it had started to go down before that.

Q.—When?

A.—I cannot just recollect.

Q.—I am not speaking of any stocks in particular; I am speaking of the whole trend of the market. If you don't know, you can say
so?

40 A.—Well, I could not say definitely.

Q.—What day did you give me for the listing of the McNish Debentures?

A.—I think it was the 17th of October, 1929.

Q.—Was that before or after the break?

A.—I think that was after the break.

Q.—The market at that time was pretty well shot all around?

A.—It was not very good at that time.

ALEX. M. REAPER (for Plaintiff). Examination-in-Chief.

Q.—Do you know of any effort made to sell McNish Debentures en bloc?

A.—No.

Q.—Did you ever make an effort to sell them by single transaction?

A.—No. We sold a few at one time on account of Mr. Mortimer Davis.

10 Q.—Did you ever approach any of the financial houses or distributing mediums with the proposal to take those McNish Debentures off your hands?

A.—No, I think not.

Q.—What were you waiting for exactly with these Debentures?

A.—We were waiting to some extent for the listing.

Q.—Oh, you were waiting for the listing?

A.—We were waiting for the listing, and to see what the price would be.

20 Q.—Was there any organization arranged to take care of the markets, to support it?

A.—Not that I know.

Q.—You were just going to take the odd chance to have them listed, and see what happened, is that it?

A.—We had not decided to sell any at that time; we had not decided to sell any during that interval.

30 Q.—What was your condition of mind upon that subject from the time Sir Mortimer died, or from March, 1928, until listing took place in the fall of 1929? Was it in statu quo: Did you just remain where you were? Is that it?

A.—Well, had there been a good market for them we might have done something. There was really no market. There were a few shares sold from time to time.

Q.—But all during that period they were not listed?

A.—Not during that period, they were not listed.

Q.—And you were waiting for the listing?

A.—Yes, probably.

Q.—You say probably. What else was there apart from that?

40 A.—Well, as I said, had there been any kind of market we might have considered something, but there was no market.

Q.—You did not receive any proposal to take them en bloc, and you did not go out to look for a purchaser en bloc?

A.—No.

Q.—Those McNish Debentures are guaranteed as to principal and interest, are they not, by the Alcohol Company?

A.—They are.

Q.—They are twenty-year Debentures?

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

A.—Yes.

Q.—Have you got a copy of the Trust Deed securing them?

A.—No. The Alcohol Company would have that.

Q.—Do you personally know anything about the shares of the McNish Company?

A.—No, not very much, just in a general way.

10 Q.—In your capacity of Executor of the Estate of Sir Mortimer Davis, have you received any financial reports of statements of the McNish Company?

A.—I have seen occasional statements.

Q.—Have you got any?

A.—No.

Q.—Are there any in the possession of the Executors, in their archives?

A.—No, I think not.

20 Q.—There are none that you can produce as an Executor today from anything you directly control as an Executor?

A.—No.

Q.—Either from reports of that Company or financial statements?

A.—No.

Q.—You say you have seen a statement?

A.—I think I have seen one—yes, I have.

Q.—You are absolutely competent to judge of a statement. First of all, let me ask you when you last saw a statement with regard to McNish?

30 A.—Not very long ago.

Q.—But that does not mean anything to me. When?

A.—Probably two or three weeks ago.

Q.—What date was that statement?

A.—I saw several. I do not just recall as to what the dates were of them.

Q.—See if you can recall the date of the most recent one that came under your attention?

40 A.—Well, I could not really specify the date. I think they were drawn up to last fall. There was one up to last fall.

Q.—Do you know when the fiscal year of the McNish Company ends?

A.—I think it is in September, but I am not quite certain.

Q.—Do you wish it to be understood that you saw a statement purporting to be a financial statement of the McNish Company?

A.—I would not say that—in a casual way. I did not go into the thing very minutely.

ALEX. M. REAPER (*for Plaintiffs*), *Examination-in-Chief*.

Q.—You did not go into it minutely. Will you tell his Lordship why you did not go into it minutely, in view of the fact that you are an Executor of the Estate, and the Estate is very much interested in Alcohol, and therefore in McNish?

A.—Well, as I say, I have seen it in a general way. I knew about the situation.

10 Q.—What is the situation?

A.—As regards McNish?

Q.—Yes.

A.—They are operating at the present time.

Mr. Campbell:—I object, my Lord, to any evidence made by the witness in the box with respect to the affairs of this McNish Company. The witness is not an officer or Director, or in any way connected with it. He happens to be an Executor of the Estate, who owns certain shares in the Company, which in turn
20 owns certain of these Debentures.

There are a great many other interests involved in these McNish Debentures, and while it may be interesting to the Court to hear the difficulties between the present Plaintiffs and present Defendants, we must have some regard to the fact that a great many other interests may be affected one way or another by this kind of evidence.

It is our submission that it is not necessary or relevant to the
30 decision of this case, which is now before the Court, to go into the details of the business of the McNish Company, or any of these other Companies, which are extremely remotely connected with this immediate trouble. Incalculable harm may be done. There are a great many thousand people who are also involved and interested in this. There are upwards of over six thousand shareholders of Alcohol. I do not know if the witness is in a position to say, but whatever it may be, it seems to me it is not relevant to this case, and may do a great deal of harm to a great number of
40 people who are not at all interested in this litigation and who should not be injuriously affected by reason of this, and in my submission all evidence bearing on the affairs of McNish is not relevant to this controversy, and I ask your Lordship to exclude it. I object to it as illegal and irrelevant.

Mr. McKeown:—May it please your Lordship, this case rises to about one of its highest points at this stage. Lady Davis is the Co-Executrix of this Estate and Co-Director of the Incorporated

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

Company, the Estate having its ownership through the Incorporated Company owns the control of Alcohol, and Alcohol owns 90 per cent. of the McNish Company, and we charge that from first to last this McNish matter, amongst others, has been absolutely kept from Lady Davis. It may all be very well for these two Executors, when they are out of Court, and there is no issue, no litigation, to take that stand, but I think it is a little bit too
10 much of a good thing when we exercise our legal rights, come to Court, and make these allegations, on which they join issue, and we come before your Lordship and ask your Lordship to order the information which we have been deprived of and then are met by the answer there are six thousand innocent people—I am pretty sure they are all innocent, that are going to be affected if this information comes out.

The only issue before your Lordship is the issue between the present Plaintiffs and the present Defendants, and we set up the
20 interest of the Estate through the Incorporated Company, and Alcohol, in the McNish situation, and we say we have been deprived of that information and now, when we want it, it is only coming to us in a secondary manner here, but it is going to be a direct head-on issue at a later stage, and now my learned friend stands up and invokes the rights of six thousand people who are not here and he cannot suggest any other reason why this information should not be given. I think if we deal with the four people to this litigation we will do pretty well, and leave the other five
30 thousand nine hundred and ninety-six people to look out for themselves, and my suggestion to your Lordship is that they will be glad to get the information as we will, let the chips fall where they may.

Mr. Campbell:—As to the matter of giving information to Plaintiffs, I am instructed that in all probability the Plaintiffs know more about this particular situation than the Defendants. If they do not, we will be glad to put at their private disposal all information that is at our disposal, and we will be glad to exchange information on this subject, but my submission is it is not relevant
40 to the merits of this case and I object to it.

His Lordship:—It does not seem to be apropos of the question I have in mind, but I would like to find out whether I am wrong.

Mr. Campbell:—My submission is that this is in regard to the McNish Company and the private business of the McNish Company is not a matter of controversy before this Court and is not relevant

ALEX. M. REAPER (*for Plaintiffs*), *Examination-in-Chief*.

to this issue, and as I have already stated, may do a great deal of possible harm, both to the Estate, if it is interested, and to the extent of its interest and also to a great many people who are not parties or interested in this litigation and as far as the question of information is concerned, if my learned friend wants any information we have got, he can have it for the asking, and we will be glad to exchange information.

10

Mr. McKeown:—We have no information about the McNish Company and we want it, and we have not been able to get it and that is one of the complaints that we state we have absolutely and systematically been kept in the dark upon this, as upon a great many other things. It is one of the foundations upon which we base our suit, and we have not been able to find out, and when the evidence is complete, your Lordship will understand better even than we do now the manner in which Lady Davis' rights have been trampled on in the matter of getting information.

20

We have here one of the Defendants who knows all about it, he has seen the statement. On Discovery these Defendants were examined and asked to produce this statement and they refused to produce it, and the matter was suspended to be taken up at the trial. We would be deprived of an important part of our case if we were not allowed to go into this. The only sound legal argument they could present would be that it was irrelevant. It is not irrelevant. It is in issue, and bringing in six thousand other people to their rescue is certainly not any ground for withholding this information, and does not make it irrelevant.

30

His Lordship:—If I am right in my understanding that the Davis Estate controls 95 per cent of the Incorporated Company, and if the Incorporated Company controls the Alcohol Company and the Alcohol Company controls the McNish Company, without deciding the question, it seems to me that it is not impertinent to ask the Executor of this Company to tell us what he knows about the McNish Company which is directly controlled by the Estate. It seems to me the question is pertinent, if it is only to test his memory.

40

Mr. Campbell:—I respectfully submit to your Lordship's ruling.

By Mr. McKeown:

Q.—Now will you answer that question?

A.—Well, I understand that the McNish Company up to, I think, the end of September last, showed a deficit of one million

ALEX. M. REAPER (*for Plaintiffs*), *Examination-in-Chief*.

dollars, largely made up of advertising to develop or make known certain brands, and the interest on these Debentures, the advertising might be considered to some extent a deferred charge other than loss.

Q.—You would hardly put the interest in that category?

A.—No, I do not say the interest.

Q.—How much of it is interest, and how much of it is advertising?

10 A.—I think the advertising would be practically half of the amount. The interest would be about \$300,000 roughly. It may be a little less.

Q.—Do you know where we can procure a copy of the last financial statement of the McNish Company, and of the profit and loss account?

A.—It could be had from the Alcohol Company. I think they have them.

Q.—You tell me as an Executor you have not any?

A.—No, I have not any.

20 Q.—Could you explain to his Lordship how it comes about, when carrying out your duties as Executor that you have not made it your business to get one and to be thoroughly informed on the subject?

A.—I have not made it my business to get statements of every subsidiary company.

Q.—But this subsidiary Company is getting into a little abnormal position don't you think?

30 A.—Well, I don't know. I think Sir Mortimer expected it would run at a loss.

Mr. McKeown: I ask that that be struck out, what Sir Mortimer expected.

By Mr. McKeown::

40 Q.—I asked you the simple question, if you have anything to suggest to His Lordship why you have not made it your business as an Executor, to find out all about that McNish situation, and to have a statement?

A.—As I say, I knew of the situation in a general way. I did not think it necessary to have these statements of the Company. It could be had at any time it was required.

Q.—It could be had?

A.—Yes.

Q.—From whom?

A.—From the officers of the Alcohol Company.

ALEX. M. REAPER (*for Plaintiffs*), *Examination-in-Chief*.

Q.—These figures which you have given us of one million dollars, is that approximate, or is it a guess, or is that precise?

A.—It is very nearly correct.

Q.—How long has this condition with regard to the McNish Company been going on in the way of piling up deficits?

A.—I think it has been going on that way from the beginning—
10 I would say, from about September or from the fall of 1927 when it was acquired by the Alcohol Company.

Q.—It is rather difficult without the statement before us, and I would ask, if the obtaining of the statement is such a very simple and formal matter, to possess yourself of one of those statements and bring it with you tomorrow morning?

Mr. Campbell: I submit that if my learned friend wants these statements, and if they are in possession of the officers, the proper officers to produce those statements are the officers of the Alcohol
20 Company. The witness in the box is neither a Director nor an Officer of the McNish Company, and I presume has no right of access; nor is he a shareholder and he would not have any right of access to any of those papers.

Mr. McKeown: It is already on the record that the witness in the box is a Director of Alcohol and is a Shareholder of Alcohol and has access just as much as any Alcohol Official, to the statement I asked him for, plus the fact that he is an Executor, and it is business
30 over and above everything else to be informed on that subject.

His Lordship: If he can produce it, he will do so; if not, you can get it from other sources.

Mr. McKeown: I will suspend any further examination of Mr. Reaper upon that McNish statement until we have it before the Court, as, while I am sure Mr. Reaper will give it to the best of his recollection, it would be a dangerous source of expedient.

By Mr. McKeown:

40 Q.—Now, let us go to another branch of this matter. Lord Shaughnessy has been a Director of the Asbestos Corporation for how many years?

A.—Four years I think.

Q.—Was he a Director since the formation of the new Company?

A.—Yes.

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

Q.—Is it to your knowledge that he has been in constant attendance at meetings when not abroad?

A.—I think so, for the most part.

Q.—And no doubt kept himself fairly well informed as to the affairs of the Asbestos Corporation?

A.—I think so.

Q.—Did you say he was Vice-President?

10 A.—I think he is now, yes.

Q.—Were you with the Sir Mortimer Davis Company Incorporated at the time of the so-called Asbestos merger?

A.—Yes, just immediately after.

Q.—Among other properties absorbed by the Merger, was Consolidated Asbestos, Limited, and I think, Federal Asbestos?

A.—Yes.

Q.—Was Federal Asbestos a subsidiary of Consolidated Asbestos?

A.—Yes.

20 Q.—So that would explain why, in the list of assets of the Incorporated Company contained in the Price, Waterhouse statement of August, 1929, Exhibit No 9, there is no reference to Federal Asbestos in the way of assets?

A.—Yes.

Q.—In connection with the Asbestos Merger, when did you say that took place?

A.—In January, 1926.

30 Q.—In connection with that Asbestos Merger, were the physical assets of Consolidated Asbestos sold to the new Company?

A.—Yes.

Q.—And included in those assets would be the stock of the Federal Asbestos Company?

A.—No, the stock of the Federal Asbestos Company was not included.

Q.—The physical assets then of Federal Asbestos were sold direct?

A.—Yes.

Q.—To the Merger?

40 A.—Yes.

Q.—What percentage of the stock of the Consolidated Asbestos Company was owned by Sir Mortimer Davis Incorporated?

A.—Approximately 70 per cent.

Q.—What was the nature of the securities of Consolidated Asbestos—of Common Stock? I mean the original securities of Consolidated Asbestos?

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

A.—There was a certain number of bonds outstanding in common stock.

Q.—Did Sir Mortimer Davis Incorporated own any of the bonds of Consolidated Asbestos?

A.—I think they had a few bonds.

Q.—And the rest, I take it, would be 37,185 shares?

A.—37,185 shares.

10 Q.—As shown in the statement of August, 1929?

A.—Yes.

Q.—As shown by Plaintiffs' Exhibit No. 9?

A.—Yes.

Q.—I think we may take it that the Incorporated Company did not own any of the shares of the Federal Asbestos Company, is that right?

A.—No. They were held by Consolidated Asbestos.

20 Q.—The 37,185 shares of Consolidated Asbestos are entered on the Exhibit No. 9 in the Investments of the Incorporated Company at \$609,000.00, is that right?

A.—That is right.

Q.—Can you tell us what securities Consolidated Asbestos received for the sale of its assets made to the Merger?

A.—They received \$191,000.00 of bonds of Asbestos Corporation Limited.

Q.—Are those the six per cent General Mortgage Bonds?

A.—General Mortgage Bonds, yes; 13,446 shares of Preferred Stock and 36,500 shares of Common Stock.

30 Q.—Can you tell me what Federal Asbestos received?

A.—Federal Asbestos received \$48,000 of Bonds, General Mortgage Bonds also; 3,498 shares of Preferred and 7,500 shares of Common Stock.

Q.—Who are the Directors of Consolidated Asbestos?

A.—Lord Shaughnessy—

Q.—Is he President?

40 A.—No, he is just a director. G. S. Stover was President, but he has resigned; J. B. Waddell was Vice-President; Henry Joseph was on the Board; Hugh A. Allan, Howard Poilan, and, I think, Mr. Mortimer Davis and Mr. Samuel Davis.

Q.—That would make eight Directors?

A.—Including Lord Shaughnessy?

Q.—Yes?

A.—I think that is about right.

Q.—All of those names, except possibly Mr. Stover and Mr. Allan are the nominees of Sir Mortimer Davis Incorporated, are they

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

not, that is to say, Lord Shaughnessy, J. B. Waddell, Henry Joseph, Howard Poilan, M. B. Davis, jr., and Sam Davis?

A.—Yes.

Q.—Are you the Secretary-Treasurer of Consolidated Asbestos?

A.—Yes.

Q.—Are the Officers of Consolidated Asbestos also the Officers of Federal Asbestos?

10 A.—No. The Officers of Federal Asbestos were Mr. C. J. Stover who has resigned, J. B. Waddell, C. M. McCrae who has since died, Honorable Mr. Marler and myself.

Q.—Five Directors?

A.—Yes.

Q.—And of those five, are we to take it that Mr. Waddell, Mr. Marler and yourself, were the nominees of the interests of the Incorporated Company?

A.—Yes.

20 Q.—What became of the \$191,000 of six per cent Bonds received by the Consolidated Asbestos Company?

A.—They were sold, and the proceeds pledged against the liabilities of the Company. I might say that when these assets were sold to the Asbestos Corporation, they had to be turned over free and clear of all encumbrances.

Q.—There was some indebtedness to the bank?

A.—So in order to do that, there was a loan secured from the Bank of \$1,625,000.

Q.—Secured upon what?

30 A.—Secured upon the securities received, and they also at that time had a guarantee from Sir Mortimer Davis Incorporated.

Q.—Was the indebtedness to which you have referred the indebtedness of Consolidated Asbestos to the Bank?

A.—Yes.

Q.—The Corporation itself?

A.—Yes.

Q.—And what was the amount you mention?

A.—\$1,625,000.

40 Q.—The \$191,000 of Bonds were sold, I take it, and the proceeds turned in to reduce the loan?

A.—Right.

Q.—Do you know what they yielded, what they were sold at?

A.—They brought about \$181,987.75, an average of about 95.28.

Q.—The whole of the Bonds were sold?

A.—The whole of the Bonds were sold.

Q.—What happened to the 13,446 Preferred?

A.—They were also all sold.

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

Q.—The Consolidated Asbestos sold the whole of its Preference Stock?

A.—Yes.

Q.—That is, 13,446 shares?

A.—Yes.

Q.—At what price?

A.—\$1,146,008.18. They averaged about 85.23.

10 Q.—Per share?

A.—Yes.

Q.—What became of the Common?

A.—10,700 shares were sold, also applied against the Bank indebtedness.

Q.—What did they yield?

A.—\$331,664.83.

Q.—And that would leave 25,800 shares of Common?

A.—25,800 shares of Common still held.

20 Q.—What did that Common yield?

A.—Just about 31 on an average.

Q.—These amounts which you have given us, the yields from the sale of the Bonds, Preferred and part of the Common, exceeded, did it not, the amount of the loan?

A.—Well, the difference was made up, of course, by interest paid over the amount of interest received on the Bonds, and dividends on the Preferred Stock.

30 Q.—Do I take it then, that the yield from the sales as made of the securities held by Consolidated Asbestos, just balanced the loan?

A.—Just balanced the loan.

Q.—Can you tell us the period over which the \$191,000 of Bonds were sold?

A.—From April 26th, 1927, to December 3rd, 1927.

Q.—As to the Preferred?

A.—From December 18th, 1926, to June 14th, 1927.

Q.—And the Common?

A.—From September 8th, 1927, to January 31st, 1928.

40 Q.—What happened to the securities received by Federal Asbestos, the first Bonds of \$48,000?

A.—There are only \$2,000 of those that have been sold.

Q.—There are \$46,000 on hand?

A.—There are \$46,000 on hand.

Q.—What about the Preferred?

A.—The Preferred, 3,498 shares were all sold.

Q.—What did they yield?

A.—\$302,553.32.

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

Q.—What did they average?

A.—\$86.49.

Q.—I forgot to ask you what those Bonds brought?

A.—They brought \$1,673.00, that is \$83.65. It was really \$84.00 less commission.

Q.—And what about the 7,500 shares of Common?

10 A.—4,005 shares were sold for \$123,339.65, an average of about \$30.79.

Q.—When was that sale made?

A.—The Common?

Q.—Yes.

A.—From September 30th—

Q.—Just a moment. We will take it the other way. Will you please give us the date of the sale of the Bonds?

A.—In March, 1929.

Q.—The Preferred?

20 A.—From June 14th to July 27th, 1927.

Q.—And the Common?

A.—And the Common from September 30th, 1927, to February 1st, 1928.

His Lordship: With the exception of two thousand six per cent. General Mortgage Bonds all those other Asbestos securities were sold during Sir Mortimer's lifetime?

30 Witness: I would say those moneys were applied against the loan to the Bank for the Federal stock. Their loan to the Bank was \$465,000.

By Mr. McKeown:

Q.—Which is now reduced to \$46,000?

A.—To about \$46,000.

40 Q.—It has been remarked by his Lordship, with the exception of the two thousand six per cent. General Mortgage Bonds which had been received by the Federal Asbestos Company, and which was sold in March, 1929, all of those other Asbestos securities were sold during Sir Mortimer's lifetime?

A.—Yes.

Q.—And realized the prices which you have given us?

A.—Yes.

Q.—At one time was not the Incorporated Company the guarantor to the Bank of the indebtedness of those Companies?

A.—Yes.

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

Q.—Both of them?

A.—Yes, both of them.

Q.—That would be for the full amount of \$1,625,000?

A.—At one time for the full amount.

Q.—Of the Consolidated Company?

A.—Yes.

Q.—And how much additional for the Federal?

10 A.—For the full amount in the beginning.

Q.—How much for the Federal?

A.—The Federal amounted to \$465,000. They were guarantors for the full amount at one time. It was later reduced.

By Mr. Campbell:

Q.—Is that in addition to the collateral?

A.—That is in addition to the collateral.

20 By Mr. McKeown:

Q.—Was there \$1,600,000 due by the Consolidated Company guaranteed by the Incorporated Company?

A.—Yes.

Q.—And there was another sale of \$400,000 odd taken up by the Federal also guaranteed by the Incorporated Company?

A.—Yes.

30 Q.—So the Incorporated Company was guarantor for over \$2,000,000?

A.—Yes.

Q.—For which the Bank was holding these securities?

A.—Yes.

Q.—The whole of the Consolidated indebtedness was paid off?

A.—Yes.

Q.—And there remained 25,800 shares of Common for the shareholders?

A.—Yes.

40 Q.—As to the Federal Company, the indebtedness has been paid off except \$46,000?

A.—Yes.

Q.—Which the Incorporated Company is still liable for to the Bank, is that right?

A.—There is a guarantee still.

By the Court:

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

Q.—Are there any shares or bonds of the Federal?

A.—Yes, they hold \$46,000 of Bonds of the Asbestos Corporation and 31,095 shares of Common Stock.

By the Court:

Q.—That is, coming from the Federal Company?

10 A.—That is coming from the Federal Company.

By the Court:

Q.—And how does that compare with the indebtedness of \$46,000?

20 A.—Well, it is rather difficult to say today. The securities of the Asbestos Corporation are very low in price, but the carrying does not really amount to anything today. The Bonds of the Asbestos Corporation carry six per cent, and the Bank loan was six per cent so that it is even.

By Mr. McKeown:

Q.—Never mind the carrying for the time being. Those Bonds which were sold for the account of the Federal Company in March, 1929, you got \$83.65 for those?

A.—Yes.

30 Q.—What had been the high since Sir Mortimer Davis died, of those bonds?

A.—I could not tell you offhand.

Q.—Don't you remember they were up around ninety-six?

A.—I think possibly around that price.

Q.—What has been the low on those bonds?

A.—I don't know. I think they have been as low as forty or fifty.

Q.—Have they not been as low as about twenty?

A.—I don't know.

Q.—You do not know the low?

40 A.—No, I don't know the low.

Q.—In any event, there has been a very, very heavy depreciation on those bonds since Sir Mortimer's death?

A.—There has, yes.

Q.—And as to the remaining Common on hand, 3,495 shares, they went down to the lowly position of one dollar in the break, did they not?

A.—No, I do not think so.

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

Q.—Now they are selling at less than three dollars a share?

A.—Well, about two dollars and fifty cents or three dollars.

Q.—The other Common shares sold out in February, 1928, realized \$30.79?

A.—Yes.

Q.—So there is a depreciation of something in the vicinity of 28 points on the residue of Common held by Federal, that is, 3,495 shares?

A.—Yes.

Q.—You told us that Consolidated still has on hand for the account of its shareholders 25,800 shares of Common?

A.—Yes.

Q.—And the Incorporated Company owns 70 per cent. of the stock?

A.—Yes.

Q.—On the distribution of those securities, or, on the realization of the securities, what number of shares would be attributed to the Incorporated Company out of that block of 25,800 Common Shares of the present Asbestos Corporation?

A.—A little over 18,000—18,000 to make that calculation.

Q.—Are there any other liabilities outstanding except to shareholders, as far as Consolidated Asbestos is concerned?

A.—They owe less than a thousand dollars today.

Q.—So that the Incorporated Company is really interested in 18,060 shares of the Common Stock of Asbestos through its holdings of Common Stock of Consolidated?

A.—Yes.

Q.—And in addition to that, the Incorporated Company owns 5,000 shares of Common direct?

A.—5,000 shares of Common.

Q.—Of the Asbestos Corporation?

A.—Yes.

By Mr. Campbell:

Q.—Held by the Company?

A.—Held by the Company.

By Mr. McKeown:

Q.—There are 23,060 shares in which the Incorporated Company is directly and indirectly interested?

A.—Yes.

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

Q.—That is a stock you say is selling at slightly under three dollars a share?

A.—Yes.

Q.—Three dollars a share, \$69,180 is that right?

A.—Yes.

Q.—And is that the same stock that has been sold since Sir Mortimer's death and on which the Succession Duties office has made up and charged you Succession Duties at \$31.25 a share?

10 A.—They have shown it on the statement at \$31.25, but they made a mistake.

Q.—I am not speaking of any particular block, I am speaking of Asbestos Common stock?

A.—I understood you were making reference to the Succession Duties figure?

Q.—Yes, I am asking you whether the Common Stock of Asbestos Corporation for which you have been billed for Succession Duties has been credited to the Incorporated Company as an asset at \$31.25 a share?

20

By Mr. Campbell:

Q.—In valuing the Incorporated Company's assets, did they take the Asbestos Company's holdings at that price?

A.—They did.

By Mr. McKeown:

Q.—So that the present price of three dollars is something a little less than ten per cent of the price upon which you have been billed for Succession Duties?

30

A.—Yes.

Q.—And the value of the 23,060 shares of which we have spoken, at \$69,180, present quotation, was worth over \$700,000 at market value since Sir Mortimer died, or at the time of his death, and you have been billed for Succession Duties on it at that price?

A.—Yes.

Q.—What efforts have you made to dispose of the holdings direct and indirect in which the Estate is interested, through the Incorporated Company?

40

A.—We have not made any efforts to sell those. I always intended to hold them for a time.

Q.—You intended to hold them?

A.—Yes. It has always been the intention.

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

Q.—It was always your intention from the time you took office as an Officer to hold the securities for a time at least?

A.—Yes.

Q.—And the result of holding them to the present time is that over ninety per cent of them have depreciated over ninety per cent in value?

A.—That is the market situation.

10 Q.—Is it not a little more than a market situation? Is it not a physical condition of the Asbestos Company and its mines at Thetford and Asbestos?

A.—I cannot just say how far that applies

Q.—Did you ever inquire as to what the cause was?

A.—I know something of it.

Q.—Let us go a little further. You have been in the Asbestos industry for a long time, have you not?

A.—Quite a while.

20 Q.—How many years?

A.—Since 1909.

Q.—Lord Shaughnessy has been connected with the present Asbestos Corporation during the period which you have already mentioned?

A.—Yes.

Q.—And before that, did he have any connection with Consolidated Asbestos before the Merger?

A.—Yes.

Q.—Was he an Officer of that Company?

30 A.—He was a Director.

Q.—So that between the two of you, you should have had a pretty good knowledge of the subject of Asbestos and the Asbestos industry?

A.—Yes.

40 Q.—Did it or did it not impress you, as you viewed the picture with which you were confronted when you first took office, that you have to practice economy and retrenchment in administering the affairs of the Estate and of the Company, to meet the obvious obligations and liabilities at that time, or were you of the view that there was no occasion for any such consideration, or that the contrary course might safely be pursued?

A.—No. I understood that as far as the Incorporated Company was concerned it should run on much the same as before. I thought we might be a little more conservative on some lines.

Q.—Your thought was that the Incorporated Company should be run after Sir Mortimer's death, in the same way that it had been run before, and you proceeded to so carry it on, is that it?

ALEX. M. REAPER (*for Plaintiffs*), *Examination-in-Chief*.

A.—Yes.

Q.—What was your thought about the Estate? Did you have any notion of retrenchment and economy in that department as being a proper guide or Polar Star to keep in view?

A.—Yes, I did.

Q.—That must have been the reason why provision apparently was made and no payments carried out in large part of the debts of the late Sir Mortimer Davis, or the Succession Duties or legacies. Was that a part of carrying out the thought of economy, or what was it?

A.—No. The payments of legacies could not be carried out until we had made settlements with the Succession Duties Department.

Q.—Where did you get that idea from?

A.—I understand that is the condition regarding Succession Duties.

Q.—But you never dreamt that. Someone must have told you. You must have seen it. Give us some information where we may locate it and trace it up and see if it so?

Mr. Campbell: Suppose you read the Succession Duties Act to him.

Mr. McKeown: Never mind, just let the witness answer.

Witness: I understand that is covered by the Succession Duties Act.

By Mr. McKeown:

Q.—Don't you think that that being the case, it would have been up to you to accelerate the early decision by the Succession Duties Department of the matter of succession duties?

A.—I think we have, about as far as we could reasonably be expected to.

Q.—You think you have accelerated that as fast as you could reasonably have been expected to. If the condition had come about that you had not been able to agree on the matter with the Provincial Treasurer, then everybody would have had to stand waiting in line, is that it?

Mr. Campbell: I think after all, my learned friend is taking us into fairly deep water. As to what the Succession Duties Act means we will try and discuss with your Lordship when the time comes, but

ALEX. M. REAPER (*for Plaintiffs*), Examination-in-Chief.

to ask the witness in the box what his opinion is, I do not think the witness can be expected to state.

Mr. McKeown: I will withdraw the question.

By Mr. McKeown:

10 Q.—Well, you have given us a reason, and if you have any other reason now is the time to give it. You have given us as a reason for not paying the debts, not paying the legacies, that the Succession Duties had not been arranged?

Mr. Campbell: He did not give as a reason, not paying the debts.

Witness: The debts have been paid.

20 By Mr. McKeown:

Q.—Some of them have not been paid? Those which have not been paid we will put it that way. In practice you do not seem to have adhered entirely to the proposition that you could not make any disbursements until the Succession Duties had been paid, because you appear to have paid the Annuities at least, and also a very very important amount to the Young Men's Hebrew Association?

30 A.—Well, that was considered as a liability as before death, not as a legacy.

Q.—What about the Trusts which were in the same category, as being liabilities?

A.—One has been paid.

Q.—The other, amounting to a million and a half? They were not paid?

A.—No, they were not paid.

Q.—They were not even appropriated for?

A.—They have not been, no.

Q.—They have stood there on the debit side that is all?

40 A.—Yes.

By Mr. Campbell:

Q.—Which donation was paid?

A.—The marriage contract.

Mr. McKeown: Allow me to examine my own witness. I don't

ALEX. M. REAPER (*for Plaintiffs*), *Examination-in-Chief*.

want any interjections. You will have every opportunity to make a note. Try to keep it in mind. If you don't, I will try to remind you.

By Mr. McKeown:

10 Q.—Did you ever hear that there was such a thing possible as to apply to the Department of the Provincial Treasurer pending discussions of questions as to the Duties to be collected to release assets of the Estates of deceased persons from time to time, to grant certificates in that sense?

A.—We have done that.

Q.—Did you ever apply for any here?

A.—As a matter of fact, we did. We applied for certificates in connection with this insurance.

Q.—And you got them too, they were granted?

A.—No. We only got one granted.

20 Q.—Did you apply for release of the rights of the Crown, Provincial rights in the matter of Succession Duties in these Leggett and Meyer shares before they were sold?

A.—No.

Q.—In the financial picture of the Incorporated Company, you have already said that no dividends had been declared, or other distributions made since Sir Mortimer's death to the Estate, as shareholder, and without prejudice to the larger question of the matter, will you identify the three cheques which I now show you and produce as one Exhibit, marked P-70, all being drawn on the Canadian
30 Bank of Commerce by Sir Mortimer Davis Incorporated, the first cheque dated September 24th, 1929, to the order of Redpath and Company, for \$15,885, signed A. M. Reaper, Vice-President, and H. M. Walmsley, Assistant Secretary-Treasurer, endorsed for deposit in the Royal Bank to the account of Redpath and Company, and cleared on September 24th, 1929; the second dated September 25th, 1929, drawn on the Canadian Bank of Commerce to the order of Lord Shaughnessy for \$124,848.63, signed Sir Mortimer Davis Incorporated by A. M. Reaper, Vice-President, and H. M. Walmsley, Assistant Secretary-Treasurer, and endorsed for deposit only to the credit of
40 Lord Shaughnessy, A. M. Reaper, Secretary; and the third dated September 25th, 1929, drawn on the Canadian Bank of Commerce, to the order of Redpath and Company, for \$3,890, and signed by Sir Mortimer Davis Incorporated, by A. M. Reaper, Vice-President, and H. M. Walmsley, Assistant Secretary-Treasurer, and endorsed for deposit in the Royal Bank of Canada, Redpath and Company, and cleared on October 4th, and say whether those cheques were used

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

to withdraw the funds in their amounts as mentioned from the bank account of the Incorporated Company?

A.—Yes.

Q.—Two of these cheques, the first and third, are payable to the order of Redpath and Company, that is, the cheque for \$15,885 and \$3,890. Are we to take it that those two cheques were paid out for the benefit of Lord Shaughnessy and debited to him along with
10 the second cheque in the amount of \$124,848.63?

A.—Yes.

Q.—The three cheques which I have just shown you total together \$144,623.63?

A.—Yes.

Q.—Those cheques were withdrawn on the dates mentioned, that is, September 24th and 25th by arrangement with Lord Shaughnessy before his departure for the West at the beginning of the month of September last?

A.—Yes.

Q.—And they were debited against and in connection with the credit appearing on the books of the Company in the name of the Honorable H. M. Marler and H. B. McLean, Trustees, is that right?

A.—That is right.

Q.—Is that the way the account reads in your books?

A.—What happened there . . .

Q.—Is that the way the account reads?

Mr. Holden:—Let the witness answer.

30 Mr. McKeown:—I want an answer to my question.

Witness:—Not exactly in that order, but that is what happened. They were not debited against it. What actually happened was, the account was at the credit of Messrs. Marler and McLean, Trustees—they were transferred to Lord Shaughnessy's account.

By Mr. McKeown:

40 Q.—And these cheques were debited . . .

A.—These cheques were debited against that account.

By Mr. Campbell:

Q.—As of what date did the transfer take place?

A.—As of this date, September 25, 1929. At the same time the

ALEX. M. REAPER (*for Plaintiffs*), *Examination-in-Chief*.

other two loans of \$50,000 and \$10,000 to Lord Shaughnessy were also charged up against that credit.

Q.—Part of the general adjustment?

A.—Yes.

10 Mr. Holden:—Under the contract—my learned friend should have the whole story.

Mr. McKeown:—I got it from Mr. Campbell's suggestion. We are all perfectly aware of that part of the case.

Mr. Holden:—My learned friend was aware of it, and he did not bring it out.

Mr. McKeown:—I brought it out at the suggestion of your associate counsel.

20 His Lordship:—Just as a deed of gift . . .

Mr. Campbell:—Whether it is a deed of gift or not, whatever it is the statement took place under and in virtue of that agreement.

By the Court:

Q.—How long was Lord Shaughnessy absent?

A.—From September 5th to October 5th.

30 Mr. Campbell:—We may be right and we may be wrong, but we still believe that we are right. I take it your Lordship has not finally designated it as a deed of gift.

His Lordship:—I mean, that is the way it was given to him.

Mr. Campbell: We do not quite join in that designation.

Mr. McKeown: It is not chose jugee against it yet.

40 By Mr. McKeown:

Q.—The point I want to make Mr. Reaper is this, that the disbursement of that sum of \$144,623.63 is reflected by the increase of the bank overdraft, \$80,844.93, in the Auditor's statement of August 31st, 1929, or beginning of September; the same item at the end of the month, 30 days later, September 30th, 1929, the Auditor's state-

ALEX. M. REAPER (*for Plaintiffs*), *Examination-in-Chief*.

ment, Exhibit No. 10 of Plaintiff, where the overdraft has jumped up to \$205,825.04, has it not?

A.—Yes, but there was cash revenues coming in during the following month to offset that.

Q.—You say there was cash revenue coming in in the following month, but for the month of September in which you, by direction of Lord Shaughnessy, in his absence withdrew from the Incorporated
10 Company this amount of \$644,626.63—

Mr. Holden: May it please your Lordship, I object to my learned friend misstating the situation. “Withdrew from the Incorporated Company” is not the case at all. The Incorporated Company owed a debt which it paid a few days late, but was paying the debt accrued on the 17th of September, 1929. I submit we have the right to object, and we do object to the statements in these questions, that they not only give a wrong impression to everybody now, but on the record also it will also be likely to give a wrong impression.
20

Mr. McKeown: There is no wrong impression given. Everybody understands what it is. The point of this question is, that here was a Company which started the month of September with an overdraft of \$80,000. These two Defendants did not hesitate during that month, when they did not have the money, to draw out nearly \$150,000 for the benefit of one of them, and thereby increased the debit balance. That is all I want to determine.

30 Mr. Holden: Nothing could be more unfair or misleading. This Company had money which belonged to the Trustee, until they in turn had to transfer it to Lord Shaughnessy, and therefore, it is entirely wrong to misrepresent the situation my learned friend is doing.

Mr Campbell: Do you suggest, Mr. McKeown, that the Incorporated Company was not paying all its debts?

40 Mr. McKeown: Not to the people who were entitled to get it.

Mr. Campbell: The Incorporated Company was paying its debts when they matured.

Mr. Geoffrion: It is a debt under the agreement.

His Lordship: It seems to me the facts are these, that under a

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

certain agreement there is a certain amount due to Lord Shaughnessy, and in September, 1929, the Incorporated Company undertook to pay him the whole or part of this amount

Mr. McKeown: The whole amount according to him.

10 His Lordship: The whole amount, and in order to pay that amount they drew on the bank.

Mr. Campbell: But the date of payment was the date of payment provided in the contract.

Mr. Geoffrion: It is not paid yet.

Mr. McKeown: That is all there is to it.

20 His Lordship: They maintained their contract.

Mr. McKeown: The Company did not have the funds available to meet the liability even when it was due.

Witness: No, that is not the answer. I would not say that.

By Mr. McKeown:

30 Q.—That is the question?
A.—Oh, that is the question, excuse me.
Q.—And for the purpose of providing the funds was forced to further overdraw its bank account?
A.—Yes, the bank account was further overdrawn for that purpose, but that was not an unusual proceeding. It was a frequent occurrence to overdraw at the bank.

By Mr. Campbell:

40 Q.—It was not the first time you had been overdrawn?
A.—No.

And it now being 5 p.m., the further examination of this witness was adjourned until Friday, the seventh day of March instant, at ten-thirty a.m.

And further for the present deponent saith not.

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

MORNING SESSION

March 7th, 1930, 10:30 A.M.

10 ALEXANDER M. REAPER reappeared and continued his evidence as follows (in chief):

By Mr. McKeown, K.C.:

Q.—Yesterday, Mr. Reaper, we reviewed together the holdings of the Incorporated Company, the Alcohol “ B ” shares. Let us take the position of the “ A ” stock. Can you give me the number of shares of “ A ” stock held by the Incorporated Company, Alcohol “ A ”?

A.—Let me see the balance sheet.
(Balance sheet handed to witness.)

20 Q.—At the time of Sir Mortimer’s death?

A.—This would not give it. The one before this 1928 one.

Mr. Campbell, K.C.: Exhibit 8 would have it.

Mr. McKeown, K.C.: For 1928?

Mr. Campbell, K.C.: It would be in the Company statement.

30 The Witness: On the 31st of March, 1928, the holding would be 496,340 shares.

By Mr. McKeown, K.C.:

Q.—What statement is that, Mr. Reaper?

A.—That is taken from P-51, statement of September 30th, 1928. It is arrived at by taking the stock as at September 30th, 1927, and adding what was purchased up to March 31st, 1,637 shares, making a total of 496,340 shares.

40 By Mr. McKeown, K.C.:

Q.—Can you give us the total outstanding “ A ” shares, that is, shares outstanding from the Treasury of the Alcohol Company?

A.—969,480 shares.

Q.—In any event, the holdings of the Incorporated Company

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

in "A" shares of the Alcohol Company exceeded 50 per cent of the outstanding "A" stock of the Alcohol Company?

A.—Yes.

Q.—By what surplus? Upwards of 10,000 shares?

A.—About 11,600 shares.

Q.—While there were two classes of stock of the Alcohol Company, "A" and "B", the "B" stock had no vote?

10 A.—No.

Q.—So that it was the control of the "A" stock which was required to be preserved in order to keep control of the Alcohol Company?

A.—Yes.

Q.—As you say, at the approximate date of Sir Mortimer's death, March 31st, 1928, the Incorporated Company already had control of the Alcohol Company by its then holdings, 496,340 "A" shares of Alcohol?

A.—Yes.

20 Q.—You said something about having bought some Alcohol "A" shares. How many shares have since been acquired of that "A" stock by the Incorporated Company?

A.—Up to date?

Q.—Up to date, yes.

A.—There are actually 40 shares less today.

Q.—40 shares less?

A.—Yes.

Q.—Will you take first the statement—

30 By the Court:

Q.—That is, your holdings in the Alcohol Company have decreased by 40 shares?

A.—Have been reduced by 40 shares since March 31st, 1928.

By Mr. McKeown, K.C.:

40 Q.—I did not ask you that question at all. I asked you how many shares were bought?

A.—I beg your pardon. I thought you asked me how many shares had been increased.

Q.—Tell us how many "A" shares you bought?

A.—2,200 shares were bought.

By Mr. Campbell, K.C.:

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

Q.—What exhibit is that?

A.—Exhibit Number 9, Mr. Campbell.

By the Court:

Q.—You have bought 2,200 and sold 2,240?

A.—Yes.

10

By Mr. McKeown, K.C.:

Q.—Are you in or out on that series of transactions?

A.—For the 2,240 shares which were sold, net sales, we received \$98,143.43; for the 2,200 shares which were purchased we paid \$68,666.24.

By the Court:

20

Q.—A profit of how much?

Mr. Campbell, K.C.: About \$43,000.

The Witness: About \$30,000. It was approximately \$30,000. \$68,000 against \$98,000.

Mr. Montgomery, K.C.: You are out 40 shares.

30 By Mr. Campbell, K.C.:

Q.—Does that cover the whole period?

Mr. McKeown, K.C.: I don't want any interruptions, if you please.

Mr. Campbell, K.C.: I want to find out what period that covers in the trading.

40 Mr. Montgomery, K.C.: Apparently you sold on the first period and bought on the second.

By Mr. McKeown, K.C.:

Q.—Now, in the year ending September 30th, 1928, how many shares of Alcohol "A" were sold?

A.—At the end or only for that whole year?

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

Q.—Yes.

A.—Not subdivided between the time of Sir Mortimer's death.

Q.—Taking from March to September 30th.

A.—From the 31st of March to the 30th of September, you want the shares sold or bought?

Q.—Yes, the number of shares sold.

A.—There were sold 2,500 and bought 260, making the net 2,240.

10

By Mr. Campbell, K.C.:

Q.—Is that at page 3?

A.—Page 3 of Exhibit 51.

By Mr. McKeown, K.C.:

Q.—You have told us you started the period with 496,340 shares of "A"?

20

A.—Yes.

Q.—And when you got to the end of your own fiscal year, on the 30th of September, 1928, you had 2,240 shares less. Is that right?

A.—Yes.

Q.—In other words, you had 494,100 shares of "A"?

A.—That is September 30th, 1928; yes.

Q.—And you still amply had control?

A.—Yes.

Q.—When you say open balance there was a difference of what? 40 shares?

30

A.—40 shares.

Q.—Does that mean that after September 30th, 1928, you bought 2,200 more "A" shares?

A.—Yes.

Q.—Tell us what you paid for the shares you bought?

A.—The 2,200 shares?

Q.—The 2,200 shares which were bought; what was the average price you paid for that stock?

A.—About \$31.21 average.

40

Q.—\$31.21 average?

A.—Yes, 2,200 shares; \$68,666.

Q.—What is that "A" stock selling for now?

A.—Ten cents.

Q.—Ten cents? Ten dollars, if you please.

A.—Ten dollars. Excuse me.

Q.—And the ten being high, what would be the low for the recent two or three weeks? Eight to ten? Is that a fair proposition?

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

A.—In the last few days I think it probably ran from eight to ten; before that it was around ten.

Q.—For the purposes of this demonstration, ten ought to do. Let us take ten. How much does the loss represent in dollars?

Mr. Campbell, K.C.: I object to that. It is a matter of arithmetic which is not necessary for the witness to answer. The shares
10 have not been sold and the loss has not been incurred.

Mr. McKeown, K.C.: If they had been it would have been worse.

Mr. Campbell, K.C.: Surely my learned friend cannot succeed or fail because stock varies two or three points in a day. Whether you are going to take the particular price would depend on the particular hour of the particular day you selected. It seems to me it
20 cannot possibly help this Court or be relevant to a case to ask the witness to calculate what would have been the paper loss that would have been sustained if the particular shares had been sold at a particular price. It is a hypothetical question and I object to the question as illegal.

Mr. Holden, K.C.: May I add this: my learned friend for the plaintiff, I know, does not want to be unfair, but it is unfair when the resulting transaction was a profit of over \$30,000 to put into questions that are reported in the press, and that are bound to be
30 public knowledge the question of what would be the loss, when we know there was not any loss, and it is not fair and it is improper.

Mr. McKeown, K.C.: My Lord, these are the facts: first of all we allege specifically they were speculating in this "A" stock uselessly and unnecessarily, where they had control and have taken a loss of \$40,000. I have no quarrel with my learned friend for having sold part of that stock in the early days when they got a fair price for it, and did not endanger the loss of control. What I am finding fault with is since the 30th of September, 1928, without any reason,
40 at least where they had it controlled and locked up, they have taken a loss of \$45,000 in the process.

Mr. Campbell, K.C.: That is what I object to. My learned friend is putting an entirely wrong inquiry on that into the question. We made a profit of \$30,000 and he says we made a loss of \$40,000. He is taking for granted we have sold those shares and made a loss of \$40,000. It is not so.

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

Mr. McKeown, K.C.: If they were sold the price would probably have been less.

Mr. Campbell, K.C.: By the time you get through with this lawsuit the loss may be more still. The defendants did not bring these proceedings.

10 Mr. McKeown, K.C.: We were forced to bring them and we will leave it to the Court to say who is responsible for bringing them. I submit I am entitled to the evidence.

Mr. Holden, K.C.: It is the form of the questions that are improper.

(Last question read as follows):

20 Q.—For the purposes of this demonstration ten ought to do. Let us take ten. How much does the loss represent in dollars?

Mr. Campbell, K.C.: That is what I object to.

Mr. McKeown, K.C.: I will take out the word “loss” and put in the word “depreciation”. I think my learned friend is technically right on the word “loss” too. I will yield on that, and pray yield to “depreciation”.

30 Mr. Campbell, K.C.: If you will add the word “arithmetical depreciation” I will be better pleased still.

Mr. Montgomery, K.C.: I am afraid it is more than arithmetic, Mr. Campbell.

By Mr. McKeown, K.C.:

Q.—What does it represent in dollars?

A.—\$46,666.

40 Q.—That is to say, that the transactions with Lord Shaughnessy and yourself in “A” stock since October 1st, 1928, have resulted in a depreciation on your purchases of \$46,666. Is that right?

A.—Yes.

Q.—How much capital has been locked up in these purchases? What did you pay for these shares, in which the funds of the Incorporated Company have been invested?

A.—That has been given: \$68,666.24.

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

Mr. Holden, K.C.: May I submit it is all of a piece, and I contend it is not proper. My learned friend points in his display manner——

Mr. McKeown, K.C.: What do you mean by “ display manner ”?

10 Mr. Holden, K.C.: I mean what I say.

Mr. McKeown, K.C.: Let us throw these aside, your remarks; they are addressed to the press and I have tolerated them as far as I could.

20 Mr. Holden, K.C.: My learned friend has been questioning one witness who has been in office two years, and he says “ How much has been locked up in the purchase ”, when \$30,000 has been made as a profit on their purchase and sale. It is not fair and not useful to take one particular period and deal with it by itself, whatever his reasons or processes are, to put the question “ How much has been locked up ”? when, as a fact, the funds have been increased upon the deal as a whole by a substantial sum, as the evidence shows. That is a fact.

By the Court:

Q.—When were those purchases made?

A.—During May and June of 1929.

30 Q.—All of them?

A.—Yes.

Q.—Did you have to borrow money to make these purchases?

A.—I think not.

By Mr. McKeown, K.C.:

Q.—Those purchases were by the Incorporated Company?

A.—Yes.

40 Q.—And at that time they owed the Canadian Bank of Commerce \$3,250,000?

A.—Yes, they owed them that on loans.

Q.—Recently, in order to secure these selfsame loans, the Directors of the Incorporated Company have had to hypothecate a further \$100,000 of this Alcohol “ A ” stock?

A.—Yes.

Q.—What do you know about a loan of \$10,000 made to Mr. Clark S. Jennison by the Incorporated Company?

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

A.—There was a loan made for that amount.

Q.—When was it made?

A.—The exact date of the loan? It was made on May 28th, 1928.

Q.—Were you familiar with the circumstances under which that loan was made and the security supplied?

A.—Yes, there was a letter to that effect covering it.

10 Q.—There was a letter at that time?

A.—In May, 1928; yes.

Q.—Have you got the file in connection with the Jennison matter?

A.—No, I have not got it.

Q.—Can you give us for the moment the purport of the letter?

A.—Yes. There was an advance of \$10,000 secured by 500 shares of the Jennison Company Limited. The loan was for six months. We had a right at any time during that period to purchase shares

20 for the amount stated or to get payment of the loan at maturity.

Q.—You have got the original of that letter?

Q.—Will you have it brought down here, please, and in the

meantime we will call it Exhibit 71?

A.—Yes.

Q.—Would it be the same date as the loan?

A.—Most likely.

Q.—Letter of May 28th, 1928?

A.—Yes.

Q.—Re Jennison \$10,000 loan?

30 A.—Yes.

By the Court:

Q.—Since when had there been negotiations with Jennison when you made him that loan?

A.—Previous to this?

Q.—Yes.

A.—I think just before that.

Q.—Is he a new acquaintance?

40 A.—Comparatively, yes.

Q.—Had he been in your office discussing business before the month of May?

A.—Oh, yes.

Q.—Was he discussing business with you during the lifetime of Sir Mortimer Davis?

A.—Well, he has discussed matter more with Lord Shaughnessy than me in this matter; I do not know for how long previous. It

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

seems to me that he had known him before Sir Mortimer's death, but I don't just recall.

By Mr. McKeown, K.C.:

10 Q.—Now you will get that letter, Mr. Reaper, if you please, and produce a copy as P-71?

A.—Yes.

Q.—Do you know anything about the corporation known as Jennison and Company Limited?

A.—Yes.

Q.—Are you a Director of it at the present time?

A.—Yes.

Q.—When did you become a Director?

A.—I think about January, 1929.

Q.—Is Lord Shaughnessy a Director?

20 A.—Lord Shaughnessy is a Director, yes.

Q.—When did he become a Director?

A.—The same time.

Mr. Campbell, K.C.: What was the date?

Mr. McKeown, K.C.: January, 1929.

By Mr. McKeown, K.C.:

30 Q.—At the time of this \$10,000 loan to Jennison in May, 1928, neither you nor Lord Shaughnessy were Directors of the Company?

A.—No.

Q.—What investigation did you make as to the value of the collateral offered as security for that \$10,000 advance, at the time the advance of \$10,000 was made in May, 1928?

A.—I don't know that I made any very special investigation. The matter was handled very much by Lord Shanghnessy at that time.

Q.—Personally did you make any investigation?

40 A.—No.

Q.—What was the nature of the business carried on by this corporation known as Jennison Company Limited?

A.—Company investigations, reports, and consolidations.

Q.—It was a Financial Service proposition, was it?

A.—Yes, largely that, I think.

Q.—It was not a trading company or a security company, or any such company, along those lines, was it?

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

A.—No.

Q.—Did you know of any tangible assets that Jennison and Company Limited had at the time the \$10,000 was loaned on the security of 500 shares of the Jennison stock?

A.—No. I understood he was working on certain propositions that were good propositions.

10 Q.—As to the physical assets, did you know anything of the physical assets the Jennison Company had?

A.—No, I did not.

Q.—Did you know if they had any physical assets at that time?

A.—I did not know.

Q.—Did you know what consideration was received by the treasury of Jennison and Company for the issue of this stock, which was offered to you as collateral?

A.—Oh, no. No, I don't know how that was handled.

Q.—Did you ever inquire?

20 A.—No, I have not.

Q.—Did you know that that was only half of the stock which was issued? Did you know that there was a thousand shares outstanding of that stock?

A.—Yes.

Q.—And you knew you were only getting half of it as collateral? Is that right?

A.—Yes.

Q.—And that was common stock?

A.—That was common stock.

30 Q.—And you knew of no physical assets behind that thousand shares of the Jennison Company stock?

A.—No.

Q.—And you did not make any inquiry personally, as far as you are concerned?

A.—Personally I did not, no,

Q.—Was the note secured in any manner by endorsement or—

A.—No, I think it was Jennison's personal note.

Q.—Oh! It was his personal note?

A.—Yes, I think so.

40 Q.—I see. Did you know anything of the responsibility of Jennison personally at that time?

A.—No, I did not.

Q.—Now that note, you say, was given on the 28th of May. Was that the date?

A.—Yes, I think that is the date.

Q.—When did it mature?

A.—Six months afterwards, in December.

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

Q.—Have you anything to indicate the date of the maturity of that note?

A.—It matured on December 1st, 1928.

Q.—Was the note paid at maturity?

A.—No.

Q.—What was done?

10 A.—There were certain negotiations going on, I think, at that time, with Mr. Jennison, regarding taking an interest in his Company.

Q.—Taking an interest in his Company? It was proposed the Incorporated Company should purchase an interest in the Jennison Company. Is that it?

A.—Yes.

Q.—Anything in writing in that connection?

A.—Yes, I think there is a letter that covers that also. We have it, I think; a copy of it.

20 Q.—There is a letter in the file?

A.—I think it refers to an earlier letter.

Q.—Have you got the letter dated December 3rd in connection with that Jennison transaction? Have you got it with you?

A.—I think I have a copy here.

(Witness produces letter)

Q.—Let me see it. This is not the letter I mean. There is another letter earlier in December?

A.—I am not sure. I don't think there was. There may be.

Q.—You don't know of any earlier letter?

30 A.—I don't remember any; I will look and see if you want. That is what I had in mind. It is not referred to in that way?

Q.—Will you look at the letter already filed as Plaintiff's Exhibit Number 18, dated January 16th, addressed to C. S. Jennison, and signed by the Incorporated Company, Shaughnessy, President, and at the first paragraph do you notice a reference to the letter of December 3rd?

A.—Yes.

Q.—Which would be the letter to the Incorporated Company from Jennison. Have you that letter?

40 A.—Most likely I have. Yes. That is a letter from Jennison to us.

Q.—That is the letter I was inquiring about.

A.—Yes, I have that letter, I think.

Q.—Will you also file as Exhibit P-72 a copy of letter from Mr. Jennison to the Incorporated Company dated December 3rd, 1928?

A.—Yes.

Q.—When you made the original loan of \$10,000?

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

The Court: You are not filing the answer, December 7th?

Mr. McKeown, K.C.: There is none of December 7th. What we have here is already filed in the record as Exhibit Number 18; the letter dated January 16th, 1929, from the Incorporated Company to Jennison.

10 The Court: I thought you had the letter of December 7th?

Mr. McKeown, K.C.: No. It alludes to that letter of December 3rd. It is Exhibit 18 which alludes to the letter of December 3rd.

By Mr. McKeown, K.C.:

Q.—At that date of making the loan to Mr. Jennison, that you have given us as May 28th, 1928, were you personally in touch with the matter at that time? Were you here in Montreal?

20 A.—Yes.

Q.—That was before Lord Shaughnessy had gone away?

A.—Yes.

Q.—He went away a little later, in the succeeding month?

A.—In July, some time.

Q.—Some time in July?

A.—Yes.

Q.—Did you handle the transaction?

A.—The note came to me, I have no doubt.

30 Q.—Did you receive the collateral?

A.—Yes.

Q.—Was it delivered at the same time the note was?

A.—I think so, yes.

Q.—Are you quite sure of that? I am instructed Jennison and Company was not incorporated at that time, and that its charter was only issued on June 20th, 1928. Have you any recollection as to whether the security was turned over at the time the note was received and the funds disbursed?

40 A.—I think the correspondence in that will show. I don't recall that.

Q.—To bring the matter along to the maturity of the note: as you have said, the note was not taken up at maturity?

A.—No.

Q.—You will have the letter of December 7th, 1928 and in the meantime are we to take it that the transaction ultimately consummated is that shown by Exhibit Number 18, the letter of January

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

16th, 1929, addressed to Mr. Jennison by Lord Shaughnessy, on behalf of the Incorporated Company?

January, 16th, 1929.

C. S. Jennison, Esq.,
c/o Jennison Company Limited,
Montreal.

10 Dear Mr. Jennison:

With reference to our various interviews in connection with the financial company which we propose to operate, and more particularly with reference to your letter in that connection, dated December 3rd, 1928, I beg to advise you that we are agreed to enter into this Company upon the following conditions:

20 We will subscribe and pay for \$50,000 or 500 shares, \$100 each in the six per cent preferred stock of Jennison and Company, it being understood between us that no further preferred stock will be issued and sold without this Company have the first right to purchase the same at par; such payment of \$50,000 to include the \$10,000 already advanced and represented by your note for that amount, together with interest on the same.

30 We will receive 50 per cent or 500 shares of no-par value of the common stock of the Company, an equal amount being retained by you. In payment of the stock you will contribute the uncompleted business now on hand and the responsibility of operation.

For management, you receive a salary of no more than \$20,000 per annum, to be paid by Jennison and Company in any event until such time as it appears that the Company is successful and profitable and able to pay more; this question to be decided by the Directors. We shall be entitled to two Directors on the Board——”

The Court: Are there three or five?

40 Mr. McKeown, K.C.: It is pretty difficult to say.

The Witness: Five, My Lord.

Mr. McKeown, K.C. (continuing reading letter):

“As to the management and operation of the business, we leave that entirely to you, and your organization, subject to our

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

desire at any time to confer with you in connection with same and to give such help by way of advice as may be necessary.

We would also be glad from time to time when the occasion arises to become underwriters in securities which we consider satisfactory when the Company makes an issue.

I think that the foregoing covers the points we discussed.

10

Yours very truly,

SIR MORTIMER DAVIS INCORPORATED,

(Sgd) Shaughnessy,
President.

This letter represents the understanding between Lord Shaughnessy and yourself as Executors, and Jennison?

A.—Yes.

20 Q.—Before signing and delivering this letter, Exhibit Number 18, dated January 16th, 1929, did you make an investigation of the then condition of Jennison and Company with relation to its physical assets, if any?

A.—No, there was nothing.

Q.—You have told us you did not know for what consideration the common stock, 1,000 common shares of Jennison, had been issued. You never inquired about that?

A.—No.

Q.—Do you know today?

30 A.—No, not definitely, no. It was not mentioned in that agreement.

Q.—I notice something which might be a reference to it in the third paragraph of the letter which we have just read, Exhibit Number 18. “You are to contribute the uncompleted business now on hand and the responsibility of operation.” Is that what you understood was behind the shares?

A.—Yes.

Q.—Future services and organization?

A.—Yes.

40 Mr. Campbell, K.C.; That is not quite what the letter says. My learned friend says “uncompleted business now on hand and the responsibility of operation.” My suggestion is the learned counsel should not put the words in his mouth.

By Mr. McKeown, K.C.;

Q.—Do you know what uncompleted business that was, on the 16th of January, 1929?

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

A.—No, not definitely; only in a general way that certain things were —

Q.—If you cannot be specific, be general. Tell us in a general way what it was.

A.—I could not give you any details of it.

Q.—When I ask you to give in a general way you say you cannot give any details. Is that the only answer you can give?

10 A.—That is the only answer I can give.

Q.—Can you give us any kind of inkling?

A.—No.

Q.—In other words, you don't know. Is that frankly the position?

A.—I say there were certain things discussed, but I could not give you details of it now.

Q.—Have you learned since you were a Director of the Company something about it?

20 A.—Simply he was in that line of business. He was carrying on investigations, etc.

Q.—Your Lordship suggested the line of thought. You are a Director of the Jennison Company. Had any meetings of the Board been held since you were appointed?

A.—I think one formal meeting, when the agreement was made.

Q.—Anything transpire at that meeting?

A.—Nothing; only formalities.

Q.—No business discussed, past, present or future?

30 A.—No more than what would be covered in the letters that we—

Q.—Was that a meeting to consummate the understanding set out in the letter?

A.—I think that is practically what it was, and banking resolutions.

Q.—Do you know what the capital structure of Jennison and Company is?

A.—Yes.

Q.—What is it?

40 A.—There is an authorization—authorized capitalization of 1000 preferred shares, of which 500 are issued.

Q.—And a par of what?

A.—A par of \$100.

Q.—In other words, \$100,000 of preference stock authorized, and \$50,000 issued?

A.—Yes.

Q.—Being \$50,000 held by the Incorporated Company?

A.—Yes.

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

Q.—The other \$50,000, as far as you know, is in the Treasury?

A.—Yes.

Q.—And the second \$50,000 is subject to a right of the Incorporated Company to have it offered to them first, before it may be offered anywhere else?

A.—Yes.

10 Q.—Has it been offered to you?

A.—No.

Q.—Now you have spoken of the preferred stock, from which the Incorporated Company parted with \$50,000. Do you know—

Mr. Campbell K.C.: I don't think it is quite an accurate statement. They got the preferred stock but they also got half the common stock of the Company.

Mr. McKeown, K.C.: I won't overlook that.

20 The Court: Did the Company actually spend \$50,000?

Mr. McKeown, K.C.: Jennison or the Incorporated Company?

The Court: The Incorporated Company:

Mr. McKeown, K.C.: Yes, paid it out.

The Court: They paid \$10,000 in May?

30 Mr. McKeown, K.C.: That was deducted from the \$40,000.

The Court: When was the \$40,000 paid?

Mr. McKeown, K.C.: They got not only the common stock, but they got the preferred stock in addition.

The Witness: January 15th, 1929.

40 By the Court:

Q.—Was there any dividend from that preferred stock?

A.—Not yet.

Q.—On what date was that?

A.—January 15th, 1929.

By Mr. McKeown, K.C.:

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

Q.—We have located as far as we may for the present the preferred stock of the Jannison Company, \$50,000 in the preferred and \$50,000 in the Jennison common. That is as far as we know, from the Directors of both Companies. The position of the preferred stock of Jennison and Company is this—the Incorporated Company has purchased and paid \$50,000.

A.—Yes.

10 Q.—And the other \$50,000, so far as you know, is in the Treasury of Jennison and Company unissued?

A.—Yes.

By the Court:

Q.—How many shares are owned by Mr. Jennison personally?

A.—No preferred shares.

20 By Mr. McKeown, K.C.:

Q.—Let us come to the common stock: what did you understand about the capital structure of the common stock of Jennison and Company?

A.—1,000 shares, no par value.

Q.—No par value?

A.—Yes.

30 Q.—Is that stock in or out of the Treasury of Jennison and Company?

A.—It is all issued.

Q.—In connection with taking up the \$50,000 of preferred stock, I understand that you received also 500 of the common?

A.—Yes.

Q.—And the other 500 common was to remain with Jennison?

A.—I understand so, yes.

40 Q.—Can you tell me today whether the transaction which you made, Lord Shaughnessy and yourself, on the 16th of January, 1929, was a transaction for the purchase of that stock from Mr. Jennison personally, or from his corporation, Jennison and Company?

Mr. Campbell, K.C.: Surely that is a matter to be construed by the letter. The document is before the Court. The letter says “We will subscribe and pay for.”

Mr. McKeown, K.C.: We will have no argument. We will let it go at that.

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

By Mr. McKeown, K.C.:

Q.—Have you got the certificates of Jennison and Company?

A.—No.

Q.—I think on discovery they were exhibited?

A.—Yes.

10 Q.—And the clause dealing with the reference to preferential
shareholders was read into the deposition. Your Lordship will find
it there. I just make this remark at this time so it may be located
in its proper order. I think the Court asked a moment ago whether
any dividend had been paid on the preferred?

A.—Not so far.

Q.—Has any annual meeting of the Jennison Company been
held since you purchased that stock?

A.—No, not so far as I know.

20 Q.—And no meetings of Directors except the original meeting
where the transaction was put through which, I suppose, was in
January, 1929. Is that right, as far as you know?

A.—Yes.

Q.—No annual statement of any profit and loss of Jennison and
Company was referred to you as a Director of the Company?

A.—I understand there has not been any prepared.

Q.—And in point of fact, you, as a Director of the Jennison
Company, have not signed any?

A.—No.

Q.—Any auditors, as far as you know?

30 A.—I am not sure what the arrangement about auditors is. It
might be covered by the by-laws.

Q.—Now, what is the market value of that investment in the
Jennison preferred and common shares, covered by this letter and
Exhibit Number 18 presently?

A.—It is not listed. Any sale would have to be a private sale.

Q.—I put it to you that its value is nil. What do you say to
that?

A.—Until we get a statement I would not say that.

40 By the Court:

Q.—What are the assets back of that stock?

A.—Well, as far as I know there is only—there are certain nego-
tiations or work that he is carrying on that may be of value. I don't
know just what the position is of these things.

By Mr. McKeown, K.C.:

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

Q.—Do you mean negotiations carried on by Mr. Jennison in the name of the Company?

A.—Yes.

Q.—Which may be or may not be successful?

A.—Yes.

Q.—Which may bring the Company a commission or may bring it nothing at all?

10 A.—Which may bring considerable. It is hard to tell just what the result may be.

Q.—Do I understand in the meantime out of the \$40,000 or \$50,000 you have subscribed, you are paying Jennison at the rate of \$20,000 a year?

A.—That is paid by the Jennison Company.

Q.—If you wish, the \$50,000 which you put in the Jennison Company are being used at the present time to rent offices and pay at the rate of \$20,000 a year?

20 Mr. Geoffrion, K.C.: \$10,000 had gone before to Jennison.

Mr. McKeown, K.C.: That went to Jennison personally.

Mr. Geoffrion, K.C.: That was a loan to Jennison personally, and he used it for the stock.

The Witness: I have not had any details of just how Jennison has been using that money.

30 By Mr. McKeown, K.C.:

Q.—You have not thought to inquire either in your capacity as a Director of the Jennison Company or as a Director of the Incorporated Company, or as an Executor of Sir Mortimer Davis' Estate?

A.—We were expecting the statement would be forthcoming very shortly.

40 Q.—In answer to His Lordship, when he spoke of what assets were behind the Jennison stock, you said he was doing a certain line of work?

A.—Yes.

Q.—Is that intellectual work, in connection with promotion, and things of that kind?

A.—Things of that sort.

Q.—Which, if successful, might yield financial success, and if failures would be a complete washout. Let us look at the letter and

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

analyze the situation as well as we can from the information now before us. It was clearly understood Jennison was to get a salary of \$20,000 a year. Was there any source from which he could draw that salary except from the proceeds of the money which had been put into the Jennison Company by the Incorporated Company?

A.—Unless he got special fees for investigation.

Q.—Do you know whether he got any fees?

10 A.—I don't know.

Q.—Having regard to the fact that the \$10,000 note, overdue when the letter of the 16th of January, 1929, was written, was to be compensated pro tanto, and having regard to the fact that, I think, the Incorporated Company gave its cheque for something a little less than \$40,000; having regard to the further fact that a year has now elapsed and over since January 16th, 1929, would it not appear from Jennison's salary alone, at least \$20,000 of the money paid in January, 1929, would have been absorbed prima facie, at least.

20 Mr. Campbell, K.C.: The witness has already said he did not know what the earnings of Jennison might have been. I submit that is not the way to prove the fact.

Mr. McKeown, K.C.: I withdraw the question.

By Mr. McKeown, K.C.:

30 Q.—You have exhibited to us the form of statements which were sent to Sir Mortimer during his lifetime concerning his private affairs, and also of the Incorporated Company?

A.—And also of the Incorporated Company.

Q.—Was it also the practice to send to Sir Mortimer statements of the subsidiary companies in which he, through the Incorporated Company, was interested?

A.—No.

Q.—Was it the practice at least, for you to obtain from time to time statements and information concerning the investments of the Incorporated Company during Sir Mortimer's lifetime?

40 A.—In certain cases, I did, yes.

Q.—Was it not the general practice for you to keep yourself thoroughly familiarized and in touch with investments of the Incorporated Company in other companies through obtaining statements of these other corporations?

A.—As far as we could, yes.

Q.—Did you ever make any application to Jennison or to any one for a statement of the Jennison Company?

ALEX. M. REAPER (*for Plaintiffs*), *Examination-in-Chief*.

A.—No.

Q.—In point of fact, as the thing worked out, I see by the final clause of the letter, Exhibit Number 18, of January 16th, 1929, that Lord Shaughnessy expressed a wish to have an opportunity whenever it arose to become underwriters of securities. Were any securities ever offered or any issues ever offered to you for underwriting by Jennison and Company?

10

A.—No.

Q.—Now, another use to which the funds of the Incorporated Company have been put since the death of Sir Mortimer Davis was the purchase for an amount of \$142,500 of 1,500 units and 3,000 Directors' common shares of Investment Foundation Limited?

A.—Yes.

Q.—What was the date of that transaction?

A.—That must have been arranged in March, 1929. Part was paid for—the units were paid for in March and the other shares in April.

20

Q.—Was Lord Shaughnessy a director of this Company, styled Investment Foundation Limited?

A.—Yes.

Q.—Is Mr. Jennison a Director of that Company?

A.—Yes.

Mr. Campbell, K.C.: Would you like a list of the Directors?

30

Mr. McKeown, K.C.: I would not trouble you about that.

By Mr. McKeown, K.C.:

Q.—Are you a Director, Mr. Reaper?

A.—No.

Mr. Campbell, K.C.: I will give you a list if you like.

Mr. McKeown, K.C.: Don't trouble yourself. Just keep it for cross-examination.

40

By Mr. McKeown, K.C.:

Q.—Just explain to His Lordship in a word what this form of purchase, which may be somewhat ambiguous ordinarily, exactly means. The purchase was 1,500 units?

A.—Yes.

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

Q.—And 3,000 Directors' common shares?

A.—Yes.

Q.—What did the units consist of?

A.—1,500—six per cent cumulative.

Q.—What was each unit composed of?

10 A.—One 6% cumulative convertible share of \$50 and one share of common, no par value, with which were option warrants to subscribe for half a share of common for each unit held.

Q.—At how much?

A.—At \$20, up to November 1st, 1933.

Q.—Did I understand you to say that the par value of the preference shares was \$50?

A.—\$50, yes, sir.

Q.—What was the price per unit?

A.—The price we paid was \$65 per unit.

Q.—How many units did you buy?

20 A.—1,500.

Q.—So that in that way, if my figures are correct, you invested \$97,500 in the purchase of these 1,500 units?

A.—Yes.

Q.—Which gave you actually 1,500 preferred shares and 1,500 common?

A.—Yes.

Q.—At a price of \$65 per unit?

A.—Yes. That was less than the issue price.

Q.—What about the 3,000 Directors' common?

30 A.—These were purchased at the rate of \$15 per share, and they also had warrants. I don't know the particulars here, but I think the warrants gave the right to subscribe for an equal number of shares at \$20.

Q.—So that 3,000 Directors' common at \$15 represent a further sum of \$45,000 and which, together with the price of units, made up a sum of \$142,500 as a total investment?

A.—Yes.

Q.—There is no dividend on the common?

A.—Not so far.

40 Q.—It would not be the common or the Directors' common?

A.—Not yet.

Q.—You have 1,500 shares of preference?

A.—Yes.

Q.—At a par value of \$50 each?

A.—Yes.

Q.—In other words, you have \$75,000 of par value preferred stock?

ALEX. M. REAPER (*for Plaintiffs*), *Examination-in-Chief.*

A.—Yes.

Q.—Six per cent?

A.—Yes, six per cent.

Q.—Which is the only return on the total investment for the time being?

A.—Yes.

10 Q.—And works out at a sum of \$4,500?
A.—Yes.

Q.—In other words, for your total investment of \$142,500, the Incorporated Company is receiving a revenue of \$4,500 per annum?

A.—Yes.

Q.—What per cent is that?

A.—Slightly over three per cent.

Q.—Slightly over three per cent.

By the Court:

20 Q.—Did you have to borrow from the Bank to pay that amount?

A.—Not specially. We have an overdraft at the Bank from time to time for small amounts. There was no special banking arrangement had to be made for it, but I could tell you actually if you wish.

Q.—Had the dividends been paid?

A.—The dividends on the preferred have been paid.

By Mr. McKeown, K.C.:

30 Q.—Your bank loan was still in force at the time of this purchase, for the McNish debentures and “ B ” stock?

A.—Yes.

Q.—The Montreal loan also?

A.—The loan was in for the “ B ” stock that was covered by “ A ” shares.

Q.—The loan we have been referring to as \$3,250,000?

A.—Yes.

Q.—What rate of interest were you paying on that?

40 A.—At that time six per cent.

Q.—And this was giving a yield of three per cent?

A.—Yes.

Q.—Are these securities of the Investment Foundation Company listed anywhere?

A.—They are not listed yet.

Q.—Are they readily saleable?

A.—Not at the moment.

ALEX. M. REAPER (*for Plaintiffs*), *Examination-in-Chief*.

Q.—Do you know of any quotation on them at the present time?

A.—No.

By the Court:

Q.—What are the tangible assets of the Investment Founda-
10 tion?

A.—I can file a balance sheet of the Company. They are call
loans and securities of other companies.

Mr. Campbell, K.C.: We have a balance sheet of November
30th of the Investment Company, with upwards of \$3,000,000 per-
fectly good assets.

Mr. McKeown, K.C.: If you want to give the evidence—

20 Mr. Campbell: They might give the evidence. Counsel on both
sides can give the evidence if necessary.

Mr. Campbell, K.C.: The only objection is the impression my
learned friend rightly or wrongly is conveying. This is a perfectly
reputable company, with a very representative list of shareholders.
My only objection is that my learned friend is endeavouring to con-
vey the impression that this \$140,000 has been thrown away. As
far as I know it is as well invested as some. The Montreal Trust
30 Company is on the list of shareholders for a substantial sum, and
the Montreal Light, Heat and Power Company are on the list of
shareholders for a substantial sum.

Mr. Geoffrion, K.C.: As a Trustee.

Mr. Campbell, K.C.: I believe the Montreal Trust is on the
list of shareholders as a Trustee. They should not create false im-
pressions.

40 Mr. McKeown, K.C.: I don't know that we are creating false
impressions. We are putting facts before the Court.

By Mr. McKeown, K.C.:

Q.—Mr. Reaper, you and Lord Shaughnessy share the same
offices?

A.—They are alongside each other, yes.

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

Q.—Are the offices occupied by Lord Shaughnessy and yourself the offices of the Incorporated Company or of Alcohol or of some other corporation?

A.—The offices of Lord Shaughnessy and myself are the offices of Sir Mortimer Davis Incorporated.

10 Q.—Exactly. You have access to all the matters coming in in connection with the Incorporated Company whether connected with Lord Shaughnessy or yourself?

A.—Yes.

Q.—Has Lord Shaughnessy been receiving from the Investment Foundation Company monthly statements issued to the Directors of that Company?

A.—Yes.

Q.—Have you got some of them?

A.—One, I think.

20 Q.—Will you be good enough to exhibit them since October last?

A.—Yes, do you want me to get them for you?

Q.—Yes.

A.—You did not ask before.

Mr. Campbell, K.C.: We have one as at November 30th and one as at January 31st.

Mr. McKeown, K.C.: Let us see the one of November 30th.

30 Mr. Campbell, K.C.: Mr. Geoffrion has it.

Mr. McKeown, K.C.: That is the Annual Report?

Mr. Campbell, K.C.: No, I don't think so. The Annual Meeting is in March or something.

By Mr. McKeown, K.C.:

40 Q.—I would like to ask you to bring this afternoon such Directors' statements as you have concerning Investment Foundation Limited in and since the month of October, 1929, to date.

Mr. Campbell, K.C.: We have offered a statement as of November 30th. If you wish I will put it in now.

Mr. McKeown, K.C.: I am looking for the Directors' statement, because that is what we want. We will give it back to you.

ALEX. M. REAPER (*for Plaintiffs*), *Examination-in-Chief*.

Mr. Campbell, K.C.: You don't propose to file it?

Mr. McKeown, K.C.: We will take it under advisement.

Mr. Campbell, K.C.: If you don't file it, we will.

10 Mr. McKeown, K.C.: Don't scare me, because I am a simple minded man and you might frighten me.

By Mr. McKeown, K.C.:

Q.—Can you tell us whether Lord Shaughnessy owns and holds any securities of this Investment Foundation Limited other than such shares as may have been transferred to him to qualify him to represent the Incorporated Company?

A.—Not so far as I know.

20 Q.—He has no personal investment in this?

A.—Not as far as I know.

Q.—He is on the Board there because of the holdings of the Incorporated Company?

A.—Yes.

Q.—I mean on the Board of the Investment Foundation Company?

A.—Yes.

30 Mr. Campbell, K.C.: Do I understand you are not filing this balance sheet?

Mr. McKeown, K.C.: We are suspending it, Mr. Campbell. We will give it back to you.

Mr. Campbell, K.C.: I am not nervous about getting it back. All I wanted was to get it into the record.

By Mr. McKeown, K.C.:

40 Q.—The Incorporated Company at the time of the death of Sir Mortimer Davis held the title of a coal company known as Federal Coals, was it?

A.—Federal Coals property, yes.

Q.—Had that Company been through Receivership prior to the death of Sir Mortimer Davis?

A.—Yes.

Q.—Where was it located?

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

A.—Near Lethbridge.

Q.—Was it a property which was developed to any extent, do you know?

A.—Fairly well developed, I think.

Q.—Its operations by other interests had resulted in the Company being wound up and the property sold at a liquidator's sale?

A.—Yes, at one time.

10 Q.—How long before the death of Sir Mortimer Davis?

A.—I think around 1920 or 1921.

Q.—Did Sir Mortimer Davis, either on his own account or on behalf of the Incorporated Company, purchase the assets of the defunct concern?

A.—He bought the property, yes.

Q.—Had it been known as the Federal Coal Company?

A.—I think the name was, Federal Coal Company.

Q.—And that was in 1920?

20 A.—Around that time, 1920.

Q.—From around 1920?

A.—Maybe 1921.

Q.—From 1920 to 1921 until the time of the death of Sir Mortimer Davis, in March, 1928, what had been done with the property?

A.—It had been leased for some time.

Q.—Leased under royalty?

A.—Leased under royalty, yes.

Q.—To whom?

30 A.—To a party by the name of C. S. Donaldson, who operated under the name of C. S. Donaldson Coal Company.

Q.—What was the gross revenue of the Incorporated Company from that property per annum up to the time of the death of Sir Mortimer Davis?

A.—Do you want it year by year?

Mr. Montgomery: It is not many years.

By Mr. McKeown:

40

Q.—Give us to 1927?

A.—In 1927 the revenue was \$7,111, total. That is for the year ending September 30th, 1927.

Q.—And what was it in the year ending September 30th, 1928?

A.—\$4,514.52.

Q.—That Coal Company, or that property, is the property shown on Exhibit P-51, the Price, Waterhouse statement of date

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

September 30th, 1928, Exhibit " B " reading " Federal Coal property \$10,000," is that right?

A.—Yes.

Q.—And it was being carried in the books of the Incorporated Company at \$10,000?

A.—Yes. That is the price which had been paid in at the Sheriff's sale.

10 Q.—That is the price which had been paid in for it at Sheriff's sale?

A.—Well, it did not represent any part of the original loss.

Q.—During Sir Mortimer's lifetime, from the time he acquired that property in 1920 or 1921, was it carried on under this system of lease or royalty?

A.—Yes, from 1922 I think it had been carried on that way.

Q.—Did the Incorporated Company since Sir Mortimer's death enter into a transaction for the transfer for that Federal Coal property to the Corporation styled Cadillac Coal Company?

20 A.—Yes.

Q.—With this same man Donaldson who had been previously carrying on the property under royalty?

A.—Yes.

Q.—Will you identify the Agreement entered into between the Incorporated Company and Cadillac Coal Company and C. S. Donaldson, the various letters and agreement filed as Number 19 of the Plaintiff?

A.—Yes.

30 Q.—The exhibits in question bear date January 30th, 1929, as to the letters prescribing for shares, and as to the agreement February 24th, 1929?

A.—Yes.

Q.—So that this transaction, such as it is, appears to have been consummated somewhere between January 30th, 1929, and February 24th, 1929, is that right?

A.—No. I think the arrangement was actually made with Mr. Donaldson previously, but these agreements were made later, on the incorporation of the Company or at that time.

40 Q.—I notice in the course of the agreement it is stated that it will take effect as of date October 16th, 1928?

A.—Yes.

Q.—And that would be the earlier arrangement to which you refer?

A.—Yes.

Q.—When was this Corporation styled Cadillac Coal Company Incorporated?

ALEX. M. REAPER (*for Plaintiffs*), *Examination-in-Chief.*

A.—I do not know the exact date. I should imagine about February 1929.

Q.—It was a Corporation incorporated under the auspices of Lord Shaughnessy and yourself largely, was it?

A.—Yes.

Q.—Through your own Solicitors?

A.—Yes.

10 Q.—Where is the head office of the Company?

A.—Montreal.

Q.—In your own offices?

A.—In our own office.

Q.—And who are the Officers of Cadillac Coal Company?

A.—Lord Shaughnessy is President.

By the Court:

20 Q.—Who is Vice-President?

A.—T. P. Cochrane. I have been acting as Secretary-Treasurer; Mr. Howard Poleon, Mr. C. S. Donaldson.

By Mr. McKeown:

Q.—There are five Directors?

A.—Yes.

30 Q.—Let us review these Directors. Lord Shaughnessy and yourself—Mr. Cochrane is an employee of the Incorporated Company, is he not?

A.—Yes.

Q.—Mr. Poleon is a Consulting Engineer retained or under retainer by the Incorporated Company?

A.—Yes.

Q.—So that apart from Donaldson, the whole of the Directorate are the nominees of the Incorporated Company?

A.—Yes.

Q.—And really employees of the Incorporated Company, or Officers or employees?

40 A.—Not if you consider Mr. Poleon in that capacity as Consulting Engineer.

By Mr. Campbell:

Q.—Mr. Poleon resides in New York?

A.—Mr. Poleon resides in New York.

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

By Mr. McKeown:

Q.—In connection with the Cadillac Coal Company in particular, is not Mr. Poleon's connection with that Company solely under the direction of the Incorporated Company?

A.—Yes.

10 Q.—You gave us some figures a few moments ago for 1927 of \$7,111, and for 1928, \$4,514.52 as being the gross revenue received from Cadillac Coal Company?

A.—No, from the Federal Coal.

Q.—From the Federal Coal for those two years?

A.—Yes.

Q.—Can you give us the net? I think I overlooked that?

A.—The net for these two years would be \$5,832.79.

Q.—For 1927?

A.—For 1927, and \$2,920.17 for 1928.

20 By Mr. Campbell:

Q.—Were those the years it was under lease?

A.—Yes.

By Mr. McKeown:

30 Q.—According to the Agreement, Exhibit No. 19, the Incorporated Company contributed to the Cadillac Coal Company, the so-called Federal Coal property, is that right?

A.—Yes.

Q.—I think I asked you on Discovery if that property had been actually transferred to the Cadillac Coal Company?

A.—There is an agreement so signed. I do not think it has actually been registered.

Q.—But Donaldson's contribution is recited as being the cancellation of his lease from the Federal Coal Company's property. Would that be a lease from the Incorporated Company?

A.—Yes.

40 Q.—And also an assumption of his rights under certain agreements affecting two further sections of coal areas in the vicinity of Lethbridge. Is that right?

A.—Yes.

Q.—Was that Donaldson's contribution?

A.—Yes.

Q.—Have the Donaldson properties been transferred to the Cadillac Coal Company?

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

A.—Agreements have also been signed, and a transfer has been made, I think, of both of them. Final registrations have to be made of them also.

Q.—When were the original Donaldson interests put through?

A.—The first transfer is covered in the same agreement as ours. There is a further transfer of one section on the 30th of November, 1929. This appears to be all I have of record here.

10 Q.—There should be a second property?

A.—There are two sections.

Q.—One has been transferred under date of November 30th, 1929, and the other has not been transferred. Is that the condition?

A.—They are transferred according to this agreement—

Q.—But I mean apart from the agreement?

20 A.—These documents are with our Solicitors. I do not just have the complete details of them. As I understand, from information I obtained on it, that section 30 is transferred by the agreement of February 4th, 1929, but is not intended to register this agreement, but that it would be one of the closing documents in connection with the Bond issue. Registration would be effected at that time.

Q.—Why is it not intended to register?

A.—It would be registered at that time, but not intended to register it now. One of the closing documents in connection with the Bond issue would be a simple form of transfer to take care of it.

Q.—What about the other section?

30 A.—The other section has already been transferred by Donaldson.

Q.—What is the capital structure of the Cadillac Coal Company?

A.—\$500,000; 100,000 shares of five dollars each.

Q.—All one class of stock?

A.—All one class of stock.

Q.—Are there any Bonds?

A.—It is intended to create a Bond issue of \$500,000.

Q.—What form of Bond?

40 A.—Seven per cent, bearing interest from January 1st, 1930. The Trust Deed is in the course of preparation.

Q.—Have those Bonds been created up to the present time?

A.—No.

Q.—And the Trust Deed is being drafted?

A.—Yes.

Mr. Holden: More than that, it is in the lawyer's hands; there are other difficulties which are being encountered in connection with

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

the security. It is not simply a draft of the Trust Deed. There is a good deal more than that.

By Mr. McKeown:

Q.—Under the agreement, Exhibit No. 19, the Incorporated Company was to receive, among other things, \$50,000 of twenty-
10 year First Mortgage Seven Per Cent Bonds which, of course, have not been delivered up to date?

A.—Not up to date.

Q.—And while it is stated that \$450,000 is to be paid to the Company in cash, the Company did not receive anything of the kind in connection with the sale of the property?

A.—It did, yes.

Q.—Well, then, it paid cash for the stock?

A.—Exactly. Cheques were exchanged.

Q.—And when the exchange of cheques was over, how did the
20 Company stand for cash?

A.—In the same position.

Q.—Where it started?

A.—Exactly.

Q.—And had \$450,000 of shares, and had parted with the title of Federal Coal?

Mr. Campbell: You are now speaking of the Incorporated Company?
30

Mr. McKeown: Yes.

By Mr. McKeown:

Q.—Is that right?

A.—Yes, for which they were to get the Bonds.

Q.—And they were to get the Bonds in addition?

A.—Yes.

Q.—As to Mr. Donaldson, he was to get \$100,000 of those
40 Bonds?

A.—Yes.

Q.—And that constituted payment of \$50,000 from him in cash? Was his cash on the same basis as the Incorporated Company? Had he subscribed for shares and contracted to pay for them, and did he then draw out \$50,000 as part of the purchase price of his property? Is that it?

A.—Yes.

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

Q.—I notice by this contract that Sir Mortimer Davis Incorporated undertook to loan the Cadillac Coal Company up to \$15,000 to improve the operating conditions. Has that amount been advanced?

A.—Yes, but we did not treat it as a separate item.

10 Mr. Campbell: I have not been troubling the Court with objections all morning, and I do not particularly press this objection. I only want to call the Court's attention to the fact that this has already been gone over on Discovery, and I do not see any utility in having them repeated. This is the fourth day of this trial, and a great deal of the evidence has been offered to this Court that was all in the day we commenced the trial. My learned friend has added nothing, except publicity, to the record, and I ask Your Lordship to rule on my objection that these facts are already proved and that there is no necessity to again prove them. They are not contested.
20 It is common ground.

Mr. McKeown: We conducted such examination on Discovery as we could, with the information we had available. It was spotted and a disjointed examination. We wish, however, to put before this Court and before any other Court before which this case may happen to go, a sensible record, whereby it will not be incumbent on the Judges of the Court of Appeal to go searching through isolated and disconnected depositions to find, or miss, some of the proof. If we had been in possession of all the information which afterwards was
30 acquired, we might have made the examination on Discovery along complete lines, or not have made it at all. But the examination on Discovery in this case was a true Discovery. It was the kind of Discovery the Code had in anticipation when depositions on Discovery did not form part of the evidence. It would be of little assistance, I think, to the Court to go through the declarations containing a long series of facts such as are involved in this particular case—there are cases where it would be perfectly useless to reassemble the evidence in proper form with the continuity of sequence, as we are endeavoring to do in this case, but in this case, with the scope it
40 covers, I submit that this is really the only sensible way to do it. My learned friend's reference to publicity is handed back to him. He has been indulging in that since the case started. I may not be succeeding as well as could be expected, but I am doing the best to put before this Court, or any other Court, the facts so that the Court will have a minimum of difficulty in its labor in its deliberation. I have only a few questions and only wish to get these facts before Your Lordship which, in our view, are of the highest importance.

ALEX. M. REAPER (*for Plaintiffs*), *Examination-in-Chief*.

(The Court reserves the objection.)

By Mr. McKeown:

Q.—Do you notice that it was repayable under special terms, that is to say, repayable when the earnings of the Cadillac Coal Company permit the same?

10 A.—Yes.

Q.—Then, in addition, the Incorporated Company bound itself to loan to Cadillac Coal an additional sum up to \$50,000 to equip the present and future property?

A.—Yes.

Q.—Can you tell us whether that advance has been made?

A.—Yes.

Q.—In cash?

A.—In cash.

20 Q.—And then in addition to these two the loan to Cadillac Coal Company, an undetermined amount to be used for necessary working capital in addition to the two amounts of \$15,000 and \$50,000, forming together \$65,000, have there been further advances on item number three for working capital?

A.—There have.

Q.—Up to what amount?

A.—It has not been kept separate. I have given you a memorandum of the total advances.

30 Q.—I have not got it conveniently here. You can give it to me from memory?

A.—I think approximately \$114,000 in cash.

Q.—\$114,000 which has gone in there in cash?

A.—That is right.

By Mr. Montgomery:

Q.—Since when?

A.—Since the beginning up to now.

40 By Mr. McKeown:

Q.—If we deduct the first two items of \$15,000 and \$50,000, forming together \$65,000, to be applied as specially noted, it would leave \$49,000 to go towards working capital?

A.—Well, that figuring would give that result, but that was not what actually happened. What actually happened was, that more

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

money had been advanced in connection with the equipment than had been originally planned.

Q.—That is just what I was trying to get at in the first place, when I asked you whether those amounts had been advanced. Now, you want to tell us that more than \$15,000 was advanced for the purposes of improving the operating conditions?

A.—No, improving the operating conditions referred to the Federal property. That was more than sufficient to take care of what was required there.

Q.—So the amount which was exceeded was a \$50,000 item for equipment?

A.—Yes.

Q.—By what amount was \$50,000 exceeded and imputed towards equipment?

A.—I have given it to you. We have the total figure we have advanced up to date approximately, with interest, as \$114,000, which covers everything.

Q.—But I would like to find out for the purposes of this inquiry by how much, in round figures, the \$50,000 specified for additional equipment has been exceeded as against advances for working capital, the third item, in round figures?

A.—There are some other items in that agreement which I will have to take into consideration in arriving at that figure.

Q.—Can you give it to us approximately?

A.—Probably about \$80,000 or \$90,000 additional equipment. In other words, the capacity was increased.

Q.—That is, in place of the original provision of \$50,000 for additional equipment, something like \$130,000 has gone into that item?

A.—Yes.

Q.—While we are on that question, in order to compute the items under which the Incorporated Company was obligated, the Incorporated Company took on an obligation to purchase at cost, which was not determined, two further sections of coal areas, subject to the approval of their own Directors?

A.—There was a price determined, I think. It may not be mentioned there—to purchase at \$70,000 or \$75,000, for which they were to receive \$100,000 worth of bonds.

Mr. Campbell: I object to my learned friend's construction of the agreement as being inaccurate. The agreement is before the Court and speaks for itself. They had the right to investigate.

Mr. McKeown: Do not be alarmed. I only want to eliminate it.

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

(The Court allows the evidence.)

10 Witness: I might just make mention that this item to which you referred of \$75,000 for these two additional sections, the sections were not acquired and the money was not paid, which was partly the reason for increasing the amount on equipment, which had just been given.

 Mr. G. B. Foster (representing Mr. Jennison): I would like to make an application to Your Lordship. The witness Jennison, whom I represent, has been here for three days from Toronto. He is engaged in negotiations up there which are very important to him, and I would ask that he be allowed to return subject to call. I will arrange to have him here at any time the Court desires. I understand the witness who is in the box is not yet finished, and that his cross-examination will take the balance of the day.

20 Mr. Geoffrion: His cross-examination can be held over.

 Mr. Foster: Would Mr. Campbell have any objection to suspend the present witness' examination in order that Mr. Jennison may be heard?

 His Lordship: Could you examine Mr. Jennison this afternoon?

30 Mr. McKeown: I hope we can get round to him as soon as we are finished with Mr. Reaper, subject to Mr. Campbell's cross-examination.

 Mr. Campbell: Mr. Reaper's examination-in-chief has lasted three and a half days already and I cannot finish my cross-examination today.

 Mr. Foster: It is a hardship for this witness to remain here indefinitely and if he could be allowed to return, he could stay a few hours longer.

40 His Lordship: If you wish to take up Mr. Jennison's examination this afternoon and suspend Mr. Reaper, I have no objection.

 Mr. Campbell: Supposing Mr. Foster undertakes to bring him when we need him.

 Mr. Foster: I will undertake to do that.

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

(At this point, it being 1.00 P.M., the Court adjourned until 2.30 P.M.)

AFTERNOON SESSION

10 Mr. McKeown: May it please the Court, before resuming the examination of the witness, I wish to present on behalf of the plaintiffs a motion for the issue of a Commission, Rogatoire, for the purpose of examining Senator Raymond at Palm Beach, Florida. We set up in this motion that the plaintiffs require the evidence of Senator Raymond.

(The motion is presented to the Court.)

20 It is our submission that this property at Ste. Agathe, standing in the name of the Estate, and a very large sum of money, with very heavy carrying charges, that a prospect, Senator Raymond, was found who, after examining the property, made an offer for it, and wished to lease it, and he made further offer to purchase, to which he received no reply. That is not proper administration and we submit that under those conditions the Executors in charge should have leased that property to Senator Raymond. We have endeavored to agree with our learned friends upon the facts to be submitted, and we have not been able to come to any agreement.

30 His Lordship: Is there anything about that on Discovery?

Mr. McKeown: There may be some reference to the purchase.

Mr. Holden: On this motion, may I say this, that while, of course, my learned friend is entitled to make what evidence he considers necessary, we submit, that as my learned friend expects the Senator to be back on or about the 22nd of April (he may be back earlier), and it may be about the time this evidence is completed and the Court and the parties will know better how the record stands. It
40 is a difficult and expensive matter to properly cross-examine the Senator at Palm Beach.

Mr. McKeown: We set up in our motion that the Senator will not return until on or about the 22nd of April, that is, until after Easter. Those are his plans, as I found out. I understand he has taken a house at Palm Beach with members of the Timmins family. They have returned, but he has not returned. We served a subpoena

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

on the Senator last week, presuming he would be here. We regard the Senator's evidence as being important, especially in view of the occupation of the premises by the defendant during that time. It is a question for the Court to ultimately decide on the merits, and we wish to have that proof.

10 Mr. Holden: I do not think my learned friend needs to make an argument on this matter.

Mr. McKeown: I had not completed my argument when you interrupted me.

20 Mr. Holden: I do not oppose my learned friend's desire to make the evidence. All I submit is that Your Lordship will be better able to judge whether an expensive and unsatisfactory Commission is necessary, when the evidence in open Court is completed, and we will see how near we are to the Senator's probable return.

30 Mr. McKeown: Our purpose throughout this case is to expedite the trial as much as possible, and to have as early a judgment and a conclusion of this litigation as possible. My learned friend's suggestion that we should defer getting this evidence until practically six weeks from now, that is after the 22nd of April, is indicative to me of the idea that this case is not going along with the celerity with which we trust it may. No harm will be done to my learned friends by this application. If it turns out the Senator's evidence is useless, then we will probably have to pay the costs of the Commission. The costs of this Application and the Commission will be reserved, and will come before Your Lordship in due course.

We are using all the diligence possible in making this application as we do now, and if my learned friends think the evidence is useless, they need not join in the Commission.

His Lordship: Have you examined Mr. Reaper on the subject?

40 Mr. McKeown: Yes. Your Lordship will remember Mr. Reaper's evidence. He could not recall it.

Mr. Holden: I do not ask anything more than this motion be continued until the end of the evidence in open Court when Your Lordship would be able to decide whether the Commission is necessary, and whether it should be done in this way and to better judge on the merits.

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

Mr. McKeown: I resist the suggestion of my learned friend that this matter should be delayed to that extent. You are asking to have it delayed until the evidence is concluded.

10 Mr. Holden: I do not suggest any special delay. We cannot go down to Palm Beach and be here at the same time. I am suggesting that a decision on the Motion be made.

20 Mr. McKeown: I submit the time is the present. I gave my learned friends communication of this Motion formally before lunch, and I present it now, and if they wish to join in the Commission they may so declare, and if they do not wish to join in it, we will go ahead *ex parte*, but we want to do the *acte* which will come as close to putting Senator Raymond in the box before your Lordship as we can do. We want to make this evidence available for the purpose of the enquete and have it completed in order that it may form part of the evidence upon which your Lordship will decide the case. The interrogatories that accompany the Motion are of a general character.

His Lordship: Have you exhibited them to your opponents?

30 Mr. Holden: May it please the Court, I suggest, at least, that my learned friend's impressions as to the Senator's return should be fortified from a telegram from him or something. I do not know what plans he has. He has an allegation that no doubt he thinks it correct.

His Lordship: In the meantime, the parties can communicate with the Senator by telegram.

Mr. McKeown: We have been in communication with him by telegram, but not on the matter of his return. The information about his return was obtained from his Secretary, Mr. Bernier, by myself; he is my next door neighbor in the building.

40 If this Commission is granted today, it can go down by air mail and can be back at the end of the week.

Mr. Campbell: Do you intend to send Counsel by air mail?

His Lordship: There will be no harm done. The case can stand it.

ALEX. M. REAPER (*for Plaintiffs*), *Examination-in-Chief*.

Mr. McKeown: I think so. I apply for the granting of the Motion?

His Lordship: If Senator Raymond returns before the case is ended, of course, there will be no use for a Commission.

10 Mr. McKeown: We ask for an open Commission. The Commission is not restricted to the interrogatories.

His Lordship: Let me see the interrogatories. Is not the offer to rent the property admitted?

Mr. McKeown: Oh, no.

His Lordship: You do not ask him about that?

20 Mr. McKeown: Yes, I think so, my Lord. We have been in communication with Senator Raymond by wire and we have communicated the wire to my learned friends, but we have not been able to agree on the evidence. That was done yesterday and that is the reason I am making the Motion.

Mr. Holden: You did not agree as to the date of his return.

Mr. McKeown: No, I did not think that was necessary.

30 Mr. Holden: What we submit is, that any evidence that is to be made should be made before your Lordship.

Mr. McKeown: If the Senator is back, of course. My learned friends will have every chance to cross-examine under an open Commission the same as we will have to examine him, equal rights.

40 His Lordship: You can ask that in cross-examination, when he is expected to be back in Montreal. However, I will give you until Monday to look into the matter and to prepare your cross-examination and cross-interrogatories.

And at this point the witness, Mr. Reaper was recalled to the Stand and his further examination-in-chief was continued by Mr. McKeown, K.C. as follows:

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

His Lordship: What about Mr. Jennison's examination?

Mr. McKeown: I have no objection to examine Mr. Jennison, but I would like to conclude Mr. Reaper's examination-in-chief first. It will not be very long.

10 By Mr. McKeown:

Q.—Have you been referring in connection with the purchase of additional land to the contents of the contract, Exhibit No. 19, clause 6 I now show you?

A.—Yes.

Q.—Does that clause make any mention of \$75,000?

A.—No, this does not mention it. The price was either \$70,000 or \$75,000.

Q.—That was an understanding outside the contract?

20 A.—We had an agreement in connection with those two sections for that price, if we take them off and turn them into the Cadillac Coal Company.

Q.—You would have to take \$75,000 cash and take \$100,000 of Cadillac Coal Company Bonds?

A.—Yes.

Q.—But, as you have explained, that part of the transaction was dropped?

A.—Yes.

30 Q.—What security did you hold for the advance of the money which you have already made to Cadillac Coal out of the funds of the Incorporated Company?

A.—We have not anything now, but we are to be given Bonds to cover the advances as collateral.

Q.—When did these advances commence? What is the date the advances begin there? What was the date of the first advance under this arrangement?

A.—Do you want the exact date?

Q.—Well, approximately, if you can give it to us?

40 A.—Approximately, it would be the beginning of November, I should think, 1928.

Q.—That is, several months before this contract was signed, moneys were already being advanced under it, is that right?

A.—It is possible.

Q.—Just take a look. I don't want, "It is possible"?

A.—The first advance we made was in connection with the incorporation fees, between the end of October 1928, and the next. . . .

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

Q.—How much is that?

A.—\$400.00; and the next payment on November 8th was on account of advances.

Q.—How much?

A.—\$2,129.

Q.—What had the advances amounted to at the end of January?

A.—At the end of January?

10 Q.—At the end of December?

A.—The end of December 1928?

Q.—Yes.

A.—\$2,529.

Q.—Just these two items you have given us?

A.—That is all.

By the Court:

20 Q.—To this date?

A.—To this date, cash advances of \$114,000.

By Mr. McKeown:

Q.—Has the Incorporated Company taken on any additional obligations than those specified in the contract, Number 19, for the benefit of the Cadillac Coal Company?

A.—No, not so far. There is only this \$114,000 plus the guarantees.

30 Q.—I do not see anything about guarantees. I do not remember anything about guarantees in this contract. What guarantees are you referring to?

A.—I mean it makes up the amount.

Q.—What are these guarantees? Who are they to and what do they amount to?

A.—\$80,000 to the Canadian Bank of Commerce.

Q.—\$80,000 in addition to the \$114,000?

A.—Yes.

40 Q.—And that to guarantee the Canadian Bank of Commerce for the account of Cadillac Coal?

A.—Yes.

Q.—Has that guarantee been given or used?

A.—Yes, it has.

Q.—In other words, can you tell us the amount of the obligation of Cadillac Coal to the Canadian Bank of Commerce which is subject to the guarantee of the Incorporated Company?

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

A.—Just about the full amount.

Q.—When was this guarantee of \$80,000 given by the Incorporated Company?

A.—I think it was given in November 1929.

Q.—Is there any reference to a guarantee of that kind in the contract?

A.—No.

10 Q.—Was this something additional?

A.—No, it is part of the amount that I mentioned to you this morning.

Q.—These two other items together for the total of how much?

A.—\$194,000.

Q.—And is that the total amount advanced in cash and guaranteed by the Incorporated Company for the account of Cadillac Coal?

20 A.—There is another guarantee. The Bank of Commerce gave a guarantee for the Cadillac Coal under this Workmen's Compensation Act, the Liability Act of Alberta, for \$15,000, and we in turn gave a guarantee to the Bank for \$20,000 to cover that.

Q.—So that in that way the guarantees to the Bank for direct advances to Cadillac Coal, and guarantees under Workmen's Compensation Act of Alberta, together amount to \$100,000?

A.—Yes.

Q.—And taken with the \$114,000 advanced in cash, makes up \$214,000 that the Incorporated Company has either advanced in money or guaranteed for Cadillac Coal today?

30 A.—Yes.

By the Court:

Q.—Have you had any Engineers' reports on that property?

A.—Yes, we have.

By the Court:

40 Q.—Have you any return in money?

A.—No, not yet. The Standard Mine had to be equipped and really only got into full operation about the middle of November.

By the Court:

Q.—When Mr. Donaldson operated the property and gave the Estate \$5,000 and \$3,000 a year, how was he running it?

ALEX. M. REAPER (*for Plaintiffs*), *Examination-in-Chief*.

A.—Simply under a lease, on a royalty basis.

By the Court:

Q.—Did he have to replace all the machinery?

10 A.—That Federal property was not very large, and we made the arrangement with Donaldson of forming the Cadillac Coal Company, another mine was opened up on those other two sections.

By the Court:

Q.—Did they already belong to Sir Mortimer Davis?

A.—No. Those belonged to Donaldson, with what Donaldson put into the Company, and that property had to be developed.

By the Court:

20 Q.—Were those properties which were his both developed together?

A.—We worked them both at the same time, but they are not adjoining properties.

By Mr. McKeown:

30 Q.—Upon which of these properties has the money been spent, the Standard Mine owned by Donaldson, or the Federal Mine formerly owned by the Incorporated Company?

A.—Practically all on the Standard Mine.

Q.—That is, the Donaldson Mine?

A.—Yes.

Q.—In other words, the \$214,000 of the money of the Incorporated Company, and this guarantee has been used to develop the Standard Mine which was Donaldson's property, before the agreement, Exhibit No. 19, came into force, is that it?

A.—Yes. That is now the Cadillac Coal property.

40 Q.—And you have just stated to His Lordship that you have not received any return from the investment?

A.—Not yet. The Standard Mine only got into full operation about the middle of November.

Q.—November 1929?

A.—1929.

Q.—As to the Federal property, is that being worked?

A.—The Federal has done work.

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

Q.—Is it being worked?

A.—Yes.

Q.—Has it been worked continually during the last year and a half?

A.—As they usually work out there.

Q.—What does that mean?

10 A.—That means during the summer months, they usually close down for certain periods.

Q.—They close down in the summer?

A.—They close in the summer.

Q.—For how long?

A.—They start easing off around February to May, and then probably from May to August or the 1st of September they do not do very much.

Q.—They close down?

A.—Yes.

20 Q.—And then, they start again in the fall?

A.—Yes.

Q.—Is that the regular course of mining in Alberta?

A.—Pretty much that way. During the summer months production is lower.

Q.—Have you got any statement of Cadillac Coal?

A.—I have one. I have just been able to get it put together. We were waiting for the figures. We have not the final details yet, but I got some of the information by telegraph.

30 Q.—When did you get that information?

A.—Just within the last day or so.

Q.—But, it is not a complete statement?

A.—It gives the figures, the results, but it has not got the details.

Q.—You have told us as to the \$50,000 Bonds which the Incorporated Company was to receive as part of the purchase price?

A.—Yes.

Q.—And the other Bonds which were to be collateral to the loans have not been received as yet?

A.—No.

40 Q.—By the Incorporated Company?

A.—No. They are to be received when issued.

Q.—And in the meantime the Company is carrying on operations and incurring liabilities and there is not even a Trust Deed made, is that right?

A.—It is not completed yet.

Q.—What security can there be for the time being for the

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

holders of these Bonds under those conditions? Can you suggest any to the Court, as against the ordinary creditors of that concern?

A.—Well, there is not any.

Q.—Will these Bonds when issued, really be First Mortgage Bonds, because it seems to me that all you got a transfer of from Donaldson, were his rights in certain leases?

A.—Yes.

10 Q.—Rights under certain agreements?

A.—That is right.

Q.—Were there any underlying obligations with those agreements?

A.—In some cases, yes.

Q.—What were those underlying obligations?

A.—The rights in section 29 were originally a Crown lease, which Donaldson had acquired at a certain price, or at a certain rate of royalty that has been paid off in full.

20

By the Court:

Q.—How is that?

A.—In other words, Donaldson had got this lease for \$15,000.

By the Court:

Q.—You mean that you gave Donaldson \$15,000 to cancel his lease?

30

A.—No. This is another lease. Donaldson cancelled his lease on the Cadillac Coal property, but the sections which Donaldson turned into the Company, the only lots which Donaldson turned into the Company.

By the Court:

Q.—A Government lease?

40 A.—One of them originally was a Government lease, which had been transferred by him to another party. He had agreed to pay this party \$15,000, or royalty at the rate of fifteen cents per ton; a former arrangement was made that was paid off by \$10,000. It is paid out of this money.

By Mr. McKeown, K.C.:

Q.—It is paid out of this money?

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

A.—Yes.

Q.—That is to say, that out of this \$114,000 cash, \$10,000 of that money was used to free the lots which Donaldson turned into the Company, is that right?

A.—Yes.

Q.—How does that come about? There is no clause in the agreement providing for anything of the kind?

A.—It is one of the conditions.

10 Q.—Or is that the practical interpretation of the agreement, that Donaldson sold you his rights, and Cadillac Coal had to free the land?

A.—He sold us his rights. They either could be carried on on a royalty basis or paid off in full.

Q.—That is section 29?

A.—Yes.

Q.—What about the other section?

A.—And there is a Government royalty of five cents per ton.

Q.—On 29?

20 A.—On 29.

Q.—What about the other section?

A.—That was originally a Government grant which had been eventually turned over to Donaldson. It calls for a royalty at the rate of ten cents per ton, with an open agreement to purchase at any time outright for \$35,000, in which case the royalty ceases.

Q.—Has that royalty been commuted?

A.—No.

30 Q.—And at the present time Cadillac Coal has its choice of putting in \$35,000 to free the section from the royalty, of paying ten cents a ton royalty on the coal?

A.—Yes.

Q.—What is the number of that section?

A.—Section 30.

Q.—Have you got those agreements of sale, or transfers of those leases from the holders immediately prior to Donaldson, and from whom Donaldson received his rights?

A.—All these things are with our Solicitors.

Q.—The members of Mr. Holden's firm are your Solicitors?

40 A.—Yes.

Q.—Well, we would like to see those. Will you please obtain them. Can they be sent to Mr. Holden?

Mr. Holden: I had nothing personally to do with that work. We were looking into the title. I will find out, if my learned friend will let me know just what he wants.

Mr. McKeown: We want the deeds from Donaldson's auteurs so we may know whether those obligations had clauses in them which

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

would forfeit the rights for non-payment, which I presume they must have. Could you telephone for them and have them sent down?

By Mr. McKeown:

10 Q.—In the meantime, speaking from your memory, you have been over those transfers in Mr. Donaldson's favor of the two leases of 1929 and 1930?

A.—Yes, I think so.

Q.—Have you read and examined them carefully?

A.—Yes.

Q.—Do they contain clauses whereby Mr. Donaldson's rights are forfeited for non-payment, or alternately—

20 Mr. Campbell: I object. We are sending for the documents. It seems to me, my Lord, that the witness in the box is being put in an unfair position at all times of trying to reproduce from memory the contents of documents which he is entitled to have before the Court, if they are important. I must say, in my judgment the witness has done extremely well and has enlightened the Court, but it is not fair to the witness to ask him to reproduce from memory the contents of documents.

His Lordship: If he says he can do it.

30 Mr. Campbell: In any event it is not the best evidence, and it is not proper evidence of the contents of the documents when the documents are important and can be produced.

Mr. McKeown: If Mr. Reaper can tell us that, that will end the matter.

Witness: I do not recollect.

Mr. McKeown: Very well, we will suspend it.

40 By the Court:

Q.—Did either Lord Shaughnessy or yourself go and examine that property?

A.—No. Our engineers have done so. We have not examined the property.

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

By the Court:

Q.—When Lord Shaughnessy went out West, did he examine the property?

A.—I do not think he had the opportunity.

10 By Mr. McKeown:

Q.—What has become of the balance of the Bonds, if when and as, issued? Has there been any underwriting of those Bonds?

A.—No.

Q.—No other financing excepting the moneys of the Incorporated Company?

A.—No, not so far.

20 Q.—Let us take up the donations by the Incorporated Company. What amount of moneys have been donated by the Incorporated Company to philanthropies and such matters, since Sir Mortimer's death?

A.—I gave you a list of those. I can give you those figures if you wish.

Mr. Holden: I might state, in answer to my learned friend's request for these title deeds, that some months ago we sent them to the Honourable R. B. Bennett's firm in Alberta, where the properties are situated in order that they should examine the titles and report, and they are still there.

30 By Mr. McKeown:

Q.—Will you answer my question. What is the amount?

A.—The total amount?

A.—Yes.

A.—Since Sir Mortimer's death, \$22,070.

Q.—Will you file a list showing the detail of these items as Exhibit P-73?

A.—That is up to January 31st, 1930.

40 Q.—On the Exhibit which you have just produced as P-73, you have divided the total sum of \$22,070 into two amounts, one of \$8,690

A.—Three amounts.

Q.—Three amounts?

A.—Three amounts.

Q.—\$8,690, \$12,040, and \$340?

A.—Yes.

Q.—What are the classifications there?

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

A.—The first item of \$8,690 represents the payments made from the date of Sir Mortimer's death on March 22nd, 1928, to the end of the Company's year, September 30th, 1928.

The amount of \$12,040 represents the items during the fiscal year ending September 30th, 1929, and the \$340, items from October 1st, 1929, to January 31st, 1930.

10 Q.—How much money has been spent from the funds of the Incorporated Company since the death of Sir Mortimer upon such matters as employing geologists and aviators on oil leases and coal areas other than Cadillac Coal and such matters?

A.—I might just mention that we have not employed any aviator directly, except as a means of transportation into the property. I mean to say, we did not have aviators in our own employ.

Q.—You know the class of investment I am referring to?

A.—Yes.

20 Q.—It is in a special category in your books. What is the amount?

A.—From the time of Sir Mortimer's death until January 30th, \$57,389.22.

Q.—Have you prepared a memorandum showing the distribution of that sum?

A.—I have.

Q.—Will you please file it as Exhibit P-74?

A.—Yes.

30 Q.—I notice that the Exhibit P-74 is divided into five columns; the first column is headed "Paid on Coal lands other than Cadillac Coal various sums totalling \$13,080.71." Where are those coal lands?

A.—In Alberta.

Q.—\$7,700 odd of that amount was paid out in the fiscal year ending September 30th, 1928, on coal lands?

A.—Yes.

Q.—And then, in the fiscal year ending September 30th last, \$6,347?

A.—Yes.

40 Q.—Were those lands held under lease of fee simple or in what way?

A.—Those are lands on which we had options, such as those two lots which are referred to in that Cadillac agreement which were not taken up.

Q.—The two Cadillac lots are not mentioned in there?

A.—But those were not Cadillac lots; they were only intended to be Cadillac lots after we had decided to take them up, which we did not.

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

Q.—In the first column of the Exhibit P-74, are there included moneys which were disbursed from the funds of the Incorporated Company in connection with those two Cadillac lots?

A.—No, but in connection with two lots which are referred to in the Cadillac agreement, which we had a right to take up and turn into the Cadillac Company, if they were proved satisfactory on testing.

10 Q.—Those two which you dropped in the Cadillac transaction included in the disbursements here?

A.—Yes.

Q.—To what extent? The whole amount?

A.—No. I think probably the second amount there.

Q.—That amount of \$6,347?

A.—Yes.

Q.—In what way did the Incorporated Company come in touch with those lots which are abandoned? Did they take an option upon them?

20 A.—No money was put up. We had options, but no money put up on either option.

Q.—What was the money spent on?

A.—For drilling and testing, to prove them up.

Q.—Was that for exploration?

A.—In a way.

Q.—Development work?

A.—No, it was not development work.

Q.—Were they developed properties, or only prospects?

30 A.—No, they were not developed.

Q.—So, the property upon which the money we are now referring to was spent was just simply coal areas or coal lands?

A.—They were coal areas.

Q.—And the drillings disproved the advisability of taking them up?

A.—Yes, the inadvisability of taking them up at the price at which we had the options, and we decided to abandon them.

Q.—And in your judgment after the drilling you decided not to take them up?

40 A.—After the advice of our engineers, yes.

Q.—And therefore, these amounts are a dead loss to the Incorporated Company?

A.—Yes.

Q.—Is that so to the whole extent of \$17,080.71—the total of the first column?

A.—\$13,080.71.

Q.—The total of the first column?

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

A.—Yes.

Q.—A dead loss?

A.—Yes.

Q.—In the next column we come to the oil leases?

A.—Yes.

10 By the Court:

Q.—Was the investment started by Sir Mortimer?

A.—One of those properties which was drilled we had an option on before Sir Mortimer's death; on the other the option was acquired after his death.

By Mr. McKeown, continuing:

20 Q.—How long before Sir Mortimer's death was the option acquired on one of those coal areas?

A.—He died in March. I should imagine those were got in the fall some time.

Q.—When was the drilling done? After Sir Mortimer's death?

A.—Yes.

Q.—To come back to the oil leases, upon which it would appear that the sum of \$34,919.81 has been spent; what has become of the oil leases?

A.—Most of them have been allowed to lapse.

Q.—Most of them have lapsed?

30 A.—Yes.

Q.—How many oil leases did you have altogether?

A.—Almost sixty sections at one time—between fifty and sixty.

Q.—How many since Sir Mortimer died?

A.—We have not added any. We may have taken up two or three sections, but when we did we allowed others to lapse. We did not increase the acreage. The acreage was not increased.

Q.—Did you do any exploration work in the way of drilling on those?

40 A.—No, we did not do that. We had them looked over by our geologist at different times, and our idea was to try to get an operating company to do drilling.

Q.—Who was your geologist?

A.—Mr. Cochrane, and Mr. Poleon.

Q.—Did they both report against attempting development?

A.—They thought it inadvisable to continue. It had not been really intended they were to be developed by ourselves; it was more

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

with the idea of getting other people—getting an operating oil company to do the work.

Q.—You were not successful in that?

A.—No, we have not been successful.

Q.—You told us most of those oil leases have lapsed?

A.—Yes.

10 Q.—Are any of them in force now?

A.—No, I think not.

Q.—Therefore, I take it as far as the Incorporated Company is concerned this \$34,919.81 would be a dead loss?

A.—Yes.

Q.—Let us now look at the next column “Nickel property.” That sounds good. Fortunately the total amount spent is only \$392.00. Is that nickel property still owned by the Incorporated Company?

A.—Yes.

20 Q.—In fee simple?

A.—Yes.

Q.—They have the title to it?

A.—Yes.

Q.—In any event, it is only a matter of \$392.00?

A.—That was simply an examination by Mr. Cochrane.

By the Court:

Q.—Was that property bought by Sir Mortimer?

30 A.—Yes, Your Lordship, that was a property Sir Mortimer had for a long time.

By Mr. McKeown (continuing):

Q.—Since Sir Mortimer’s death have you ever had an offer for the nickel property?

A.—No.

Q.—Did you ever try to get an offer?

40 A.—No. We have, in a way, tried to get some people to make deals on it, but we have not been successful so far.

Q.—Is the nickel property in question a property which adjoins the Froot property of the International Nickel Company?

A.—I am not just sure of its exact location or proximity to the Nickel Company. It is in that vicinity.

Mr. Campbell: I think we will have somebody here who knows

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

more about the nickel property than Mr. Reaper does, and who will inform my learned friend in more detail if he is interested.

By Mr. McKeown (continuing):

Q.—What is the next property, with the Indian name?

10 A.—That was some exploration work in the Chibougamou district.

Q.—Was that something like a voyage of discovery, or is there a property there?

A.—We have a few claims there now, which are still there.

Q.—When were those claims acquired?

A.—This is new work, since Sir Mortimer's death.

Q.—This Chibougamou is new work?

A.—Yes.

20 Q.—How many claims did the Incorporated Company stake, or take over, in that connection?

A.—I do not just remember the exact number.

Q.—Were they taken over from prospectors?

A.—No, they were staked.

Q.—Did you have a man in there?

A.—Yes.

Q.—How did he get into that country?

A.—One trip I think he went in an airplane—in fact, I think both times he went by airplane. One time he came out by canoe.

30 Q.—When was all this?

A.—I should imagine from, say, June or July until October, 1928. That is, probably from the beginning of June until October, 1929.

Q.—That is, right up until a few months ago?

A.—Yes.

Q.—Who was the prospector sent in there?

A.—He was a Mr. Hopper. He was the man actually on the field. He was under the direction of Mr. Cochrane. That was his department.

40 Q.—Was Mr. Cochrane here in Montreal, and Mr. Hopper in the north?

A.—Mr. Cochrane did go in there once to look over what the other man had done. He was giving a good deal of his time to work out in the west.

Q.—When was the last time he made a trip by air up there?

A.—Mr. Hopper was in there for the whole season, from about

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

June, with a few men. Mr. Cochrane went in, I think, about the end of September.

Q.—He went up there in a plane?

A.—Yes.

Q.—How are things getting along up there?

10 Mr. Campbell. Time will tell.

Witness: I have not been there.

By Mr. McKeown (continuing):

Q.—In any event, we know this much about it: that up to the present it has cost the Incorporated Company \$6,995.82?

A.—Yes.

20 Mr. Campbell: We may be able to sell it to you at a great profit.

Mr. McKeown: Not to me. Sell it to Mr. Holden; he has more faith in it than I have.

By Mr. McKeown (continuing):

Q.—When did this start? In June, 1928?

30 A.—June or July, 1928. Mr. Hopper went in for a couple of months or so.

Q.—It is a brand new venture, since Sir Mortimer's death?

A.—It is, in that particular field, although Sir Mortimer had Mr. Poleon looking around in other parts of Quebec and Ontario for several years in the same way.

40 Q.—Will you tell His Lordship where the money came from that was used for these purposes we have reviewed: first, to cover the investment in Alcohol "A" stock, of some \$68,000, purchased since September 30th, 1928; secondly, the Jennison investment of \$50,000; thirdly, the Foundation Investment Corporation, of \$142,500; fourthly, the Cadillac Coal investment, in cash, \$114,000; the donations, \$22,000; and those sundry items for coal lands, oil leases, and so on, of \$59,000. Where did you get the cash? From what source did the cash spent on those matters come?

A.—Sir Mortimer Davis, Incorporated.

Q.—Did it come from the capital assets of Sir Mortimer Davis,

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

Incorporated, or from the revenue of Sir Mortimer Davis, Incorporated?

A.—The items for Industrial Alcohol "A" stock, for the Jennison stock, for the Investment Foundation stock, and the advances to the Cadillac Coal Company, came from capital account. The donations and the sundry items for exploration and other purposes have been charged to operations.

10 Q.—But, I did not ask you to what they had been charged. I asked you the source from which the funds came which were applied to those various items. I do not care to what you have charged them. Where did you get the money from?

A.—From the revenue.

By the Court:

Q.—Did you have to borrow from the Bank in any case?

20 A.—No, not specially.

By Mr. McKeown (continuing):

Q.—You know the By-law which created the serial notes or debentures of Sir Mortimer Davis, Incorporated?

A.—Yes.

Q.—The original amount was, I think, \$5,000,000?

A.—Yes.

30 Q.—Under that By-law, a copy of which is already in the record as Exhibit P-42, it is provided, amongst other things, as follows:

40 " At least \$100,000 aggregate par value of the notes shall be redeemed and paid by the Company on the first of October in each and every year, the first of which payments to be made on the 1st of October, 1920. For the redemption of notes a drawing shall take place in the manner from time to time prescribed by the Directors of the Company. The serial numbers of the notes drawn for redemption shall be indicated in the register kept for that purpose, and notice of the numbers so drawn for redemption shall be sent to the holders of the notes bearing such serial numbers by registered mail or to the last known post office address at least two weeks before the date fixed for payment. From such date fixed for payment all interest on the notes so drawn shall cease, and all notes shall be registered both as to principal and interest in the books to be

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

kept by the Company for that purpose, and all payments on account of principal and interest shall be made by cheque to the order of the registered holder of the notes.”

You know that clause?

A.—Yes.

10 Q.—Is it true, as alleged by Plaintiffs in Paragraph 105 of their Declaration that the redemption of the notes as of date September 30th, 1929, was \$140,000 in arrears?

A.—No, they are not \$140,000 in arrears. There was \$40,000 balance up to that time. The other \$100,000 would be due then.

Q.—Would be due at that time?

A.—Yes.

Q.—Then, at the present time, under that By-law, is the sinking fund or the redemption \$140,000 in arrears?

A.—There is \$140,000 due, yes.

20 Q.—Have the Directors taken any means of carrying out the provisions of that By-law—the holding of a drawing for the redemption of those bonds—up to date, as required by the terms of the By-law which created them?

A.—There has been only one redemption. There was a redemption made at one time which covered them some years in advance.

Q.—But, that did not cover the \$140,000 now in arrears?

A.—No.

Q.—Since those arrears accumulated has any action been taken by the Directors towards their redemption?

A.—Not yet.

30 Q.—Is it not true your auditors, Price, Waterhouse & Company, in their report to the Shareholders accompanying the Annual Statement, drew attention with respect to the failure to redeem the debentures under the provisions of the By-law?

A.—They showed in the report that the payment was due.

Q.—But, I am not speaking of the correct report, or the statement. I am speaking of the comment. Did they comment on the fact?

40 A.—You have the report there. I do not just recall the comment.

Q.—I drew your attention to the following remarks contained in the report of Price, Waterhouse & Company accompanying the Annual Statement of September 30th, 1929 (Page 2):

“ We are appending a list of shareholders of the Company as at September 30th, 1929 (Exhibit B), and also a list of the holders as of that date of the 6% twenty-year serial notes.

ALEX. M. REAPER (*for Plaintiffs*), *Examination-in-Chief*.

Under By-law No. 1 at least \$100,000 aggregate par value of the notes should be redeemed and paid annually by the Company on October 1st, commencing October, 1920. Under this provision \$1,000,000 par value of the notes should have been redeemed by October 1st, 1929, whereas at September 30th, 1929, a total of only \$860,000 had been redeemed."

Do you remember that comment?

10 A.—Yes.

Q.—Following the receipt of the auditors' report drawing attention to the failure to maintain the redemption clause of the By-law creating the serial notes did the Directors take any action to give effect to the By-law and to remedy the situation?

A.—Not yet.

Q.—The Estate is the direct holder of a considerable block of those serial notes? How much, exactly? \$700,000, is it not?

A.—\$703,000.

20 Q.—You know of this \$3,000,000 so-called Davis Trust Fund, made up of \$3,000,000 of those serial notes, set aside by Sir Mortimer Davis during his lifetime under a Deed of Trust?

A.—Yes.

Q.—But, this Deed is not in the position of the other Trust Deeds to which we referred earlier in your evidence, where the capital has not yet been appropriated or set aside. As to the \$3,000,000 so-called Davis Trust, the appropriation has been made and it consists of \$3,000,000 of the serial notes of the Company. Is that right?

A.—Yes.

30 Q.—That appropriation having been made, consisting, as I suggest, of \$3,000,000 of your notes; has the Company been paying and disbursing the interest accruing on those \$3,000,000 serial notes belonging to that Davis Trust Fund?

A.—No. They used to be credited to Sir Mortimer.

Q.—How much interest has accumulated on that \$3,000,000 Trust Fund, and remains unpaid by the Company at this date?

A.—The amount which had accrued at September 30th was \$283,630.90.

40 Q.—What is the amount up to date? Have you made it up?

A.—No.

Q.—What is the latest date to which you have made it up?

A.—I think it is on December 31st statement, which I gave you.

By the Court:

Q.—Roughly \$300,000?

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

A.—It would be more than that. On December 31st the amount was \$332,276.35.

Q.—And that amount is being retained in the Treasury of the Incorporated Company, in so far as the Davis Trust is concerned?

A.—In so far as it is concerned, but there are no payments to be made by that Davis Trust at the present time.

Q.—Who are the Trustees of the Davis Trust Fund?

10 A.—I am not quite sure. I think they are Lord Shaughnessy—Mr. Marler was on it, but I think he has resigned from it—and Lady Davis.

Q.—One of the Plaintiffs?

A.—Yes. And, I think Mr. Mortimer Davis.

Q.—The other Plaintiff?

A.—Yes.

Q.—Will you tell the Court how much the deficit on revenue of the Estate has amounted to since Sir Mortimer's death up to this time, under the administration of the Executors?

20 A.—I have not got that. I think up to the end of November is the last one that is completed.

As at November 30th the revenue expenditures over revenue had amounted to \$529,443.10.

Q.—Is November 30th, 1929, the last date to which you have compiled the figures?

A.—Yes. I have been waiting to get a few things in to complete the December figures.

Q.—What is the approximate debit per month in connection with the requirements of the Estate over revenue?

30 A.—An average, I think, of about \$27,000, or \$28,000 a month.

Q.—So, if we take December, January and February as averaging, for the purpose of these figures, \$27,000 a month, the approximate amount as at March 1st would be about \$81,000 over the figures which you have given us?

A.—Around that.

Q.—Which would make, in round figures ———

A.—(Interrupting). About \$610,000.

Q.—Upon a continuation of this species of administration will you please explain to His Lordship how it will ever be possible to carry out the terms of Sir Mortimer's Will under which the two Plaintiffs in this case were to receive the surplus revenues of the Estate, when we find that for twenty-four months in place of any surplus revenues there is a deficit exceeding half a million dollars?

A.—That will have to be taken care of by dividend from the Incorporated Company.

Q.—Having in the present instance reinvested in the various

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

items which we reviewed this morning and this afternoon the revenues of the Incorporated Company in matters which if they are not total losses appear to be tie-ups. where are the funds to come from to take charge of this deficit, now over \$500,000, in revenue, which must be wiped out before there will be any surplus revenue to distribute to the two Plaintiffs?

10 A.—There are still liquid funds in the Incorporated Company.

By Mr. Campbell:

Q.—Do you need any cash to pay that dividend?

Mr. McKeown: Mr. Campbell, please do not interrupt at this stage.

By Mr. McKeown (continuing):

20 Q.—On the occasion of the recent pressure by the Government, when you had to raise \$600,000, did you sell the most available asset you had—the most easily realizable asset—when the Liggett & Myers shares were disposed of?

A.—Yes.

Q.—Is there any other asset of the same species among the assets of the Estate at the present time?

A.—No.

30 Q.—Is there any source from which this present deficit of over half a million dollars in revenue can be taken care of, and deficits stopped for the future, other than from the Incorporated Company?

A.—No, I think not.

Q.—You have been in office with Lord Shaughnessy for two years?

A.—Almost.

Q.—What plan have you been aiming at since you took office to administer this Estate, and how have you proposed up to now to care for the capital liabilities of the Estate and to produce revenue from the capital assets?

40 A.—It was thought there would have to be a capital distribution.

Q.—Of what?

A.—From the Incorporated Company.

Q.—That has not come about as yet?

A.—Not as yet, no.

Q.—And until after Lady Davis had written both Lord Shaughnessy and yourself demanding your resignations there was no

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

method of making the distribution either in the form of a dividend or a capital distribution?

A.—It had always been intended it would be done.

Q.—Will you please answer my question? I do not care what was intended. I want to know what was done?

A.—It was not done.

10 Q.—If you had declared a dividend where would the money have come from? I mean money brought in from revenue sources since Sir Mortimer's death to the Incorporated Company. Where would the money have come from to pay the difference in dividends as revenue and earnings, in view of the investments and reinvestments which we have reviewed today, and which you told us were taken from the revenue sources of the Company? Where would you have got the money to declare any dividend under those circumstances?

20 Witness: You mean for revenue account?

Counsel: Yes.

A.—As a matter of fact, to cover the deficit on revenue account if a dividend were declared it would only be a case of a bookkeeping entry, because we have advanced the Estate more than the shortage on revenue.

30 Q.—Do you suggest that advancing to the Estate, and putting it in the position of being debtor to the Company (where it would have to repay the amount with interest) is the equivalent of declaring a dividend? If you had declared a dividend in this period, in view of the policy pursued, and taking the revenues of the Company and sinking them into those investments which we have reviewed, where would you have got the money from revenue to pay a dividend?

A.—As I say, if a dividend had been declared to cover the shortage the advances to the Company were more than sufficient to take care of that dividend.

40 Q.—Do not let us bother about that. Tell me, if you please, irrespective of that advance, where would you have got the money with which you could possibly have paid a dividend?

Witness: For this revenue account?

Counsel: Yes.

A.—It would have been quite simple. The cash was available.

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

Q.—Where?

A.—In the Incorporated Company.

Mr. Campbell: I do not know whether the witness understands the purpose of the questions. I do not. The witness has explained he did not need the cash as far as the Executors were concerned, because they had their money by way of advances, and the declaration of a dividend merely would wipe out those advances on the books of the Company. If my learned friend wants to know whether additional cash was necessary for a dividend in excess of the amount of those advances, and where it would come from, my submission is the question is not clear and not intelligible in that sense.

By Mr. McKeown (continuing):

Q.—Then let us make it clear. You have made certain advances by the Incorporated Company to the Executors?

A.—Yes.

Q.—And the money which has been received in that way has been applied by the Executors to capital payments, as also to revenue payments, has it not?

A.—Yes.

Q.—You have a deficit in revenue alone—and I am not speaking of capital deficit—of over \$500,000. Is that right?

A.—Yes.

Q.—What allocation, if any, has been made by the Executors of the moneys coming from the loan from the Incorporated Company, as between revenue and capital of the Estate?

A.—It has not been divided. It has been treated as a loan direct from the Company to the Executors.

Q.—In the books of the Estate?

A.—It has not been separated.

Q.—Will you be good enough to separate it now? Apart from this revenue deficit, amounting to over half a million dollars, which you have now, how much of a capital deficit have you in the Estate?

A.—I am afraid I will have to do some calculating to get the figure for it.

Q.—It is simple enough.

A.—No, I would prefer not to give an answer now without going into the matter.

I do not think I just get the question.

By Mr. Campbell:

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

Q.—Certain items are chargeable to capital, and certain items to revenue, I understand?

A.—Yes. I have only the statement of revenue and expenditure account here.

By Mr. McKeown (continuing):

10 Q.—Your suggested remedy for this situation would be to declare a dividend?

A.—Yes, and

Q.—(Interrupting) That was your suggestion?

Mr. Campbell: The witness said two things: the payment of a dividend, and the distribution of capital. If my learned friend correctly reproduces what the witness said, I have no objection.

20 Witness: And to make a distribution of capital account.

Mr. McKeown: The witness got the wireless.

Mr. Campbell: He had already provided you with the remedy.

By Mr. McKeown (continuing):

Q.—The demand for your resignation was received on or about November 21st, 1929?

30 A.—Yes.

Q.—Up to that time you had done nothing about either a dividend or a distribution of capital assets of the Corporation, had you?

A.—It had not been declared at that time.

Q.—And, in round figures, \$1,000,000 had been advanced to the Estate in the form of a loan?

A.—Yes.

Q.—And you cannot tell me at this stage just how much of that went into capital deficit of the Estate, and how much went into revenue deficit?

40 A.—It would be the difference between the two.

Q.—You have some pretty precise figures, and you will not have any difficulty in telling me the amounts, and I think you will tell them to me now. Will you please look at Plaintiff's Exhibit No. 8, being the statement of the Estate prepared by the Auditors as of August 31st, 1929, and say whether that statement does not show, as of that date, a revenue deficit of \$443,563.76?

A.—Yes.

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

Q.—Are those figures which you are looking at the figures which have now been extended to approximately the sum of \$610,000?

A.—Yes.

10 Q.—Can you enlighten His Lordship as to the position of the capital deficit of the Estate as of date August 31st, 1929, based on the Price Waterhouse statement Exhibit No. 8, from which you took the revenue deficit at that date as \$443,563.76? Can you indicate from this statement how much the capital deficit was on that date?

A.—I do not know if I have just what you intend to get. The deficit on revenue account is shown there as \$443,563.76. The advances by the Incorporated Company on that date were \$937,605.17. Which would indicate that \$494,041.41 of the amount paid by the Incorporated Company had been used on capital account.

20 Q.—These figures you have given in fixing the amount of the deficit in revenue at \$443,563.76, and in fixing the amount of the deficit in capital at \$494,041.41, as of date August 31st, 1929, form together the total amount of \$937,605.17 then entered as being due by the Estate to the Incorporated Company?

A.—Yes.

30 Q.—We have been speaking from Plaintiff's Exhibit No. 8. But, is that quite an accurate position in view of the fact that at the time of Sir Mortimer's death instead of there being an amount of \$937,605.17 due by him to the Company there was at that time at his credit the sum of \$163,340.51, as shown by the first sheet of the same Exhibit? Should you not add together the credit balance of \$163,340.51 at the time of Sir Mortimer's death, and the debit balance of \$937,605.17 at the time the statement was made, August 31st, 1929, to get at the moneys which had been received by the Estate from the Incorporated Company?

A.—To get at the total received.

By Mr. Campbell:

40 Q.—Did the Executors not start a fresh sheet?

A.—Yes. They owed \$163,000 odd.

By Mr. McKeown (continuing):

Q.—Will you please give us the figures, for the record?

A.—\$1,100,945.68.

Q.—Will you subtract from that amount, if you please, the

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

amount of the revenue deficit as at August 31st, 1929, according to the statement Exhibit No. 8, \$443,563.76, and tell me what the difference amounts to?

A.—That would make a difference of \$657,381.92.

10 Q.—Would not these figures represent the capital deficit in the accounts of the Estate as of date August 31st, 1929, rather than the figures you gave of \$449,041.41 by subtracting the revenue deficit from the loan?

A.—No. If that money was due to the Estate by the Incorporated Company it would not make a deficit on revenue—or a deficit on capital revenue.

Q.—What do you say the total indebtedness of the Estate towards the Incorporated Company amounts to according to the last compilation you have?

A.—\$957,212.69, as at November 30th.

20 His Lordship: As at August 31st, 1929?

Mr. McKeown: No, Your Lordship. These are figures for November 30th.

By Mr. McKeown (continuing):

30 Q.—May I invite your attention to the fact that the earnings of the Incorporated Company as at August 31st, 1929, taken only from March 31st, 1928, amounted to \$982,193.58, as shown by the Price, Waterhouse statement, Exhibit No. 9, which is approximately the amount of the total sum advanced at that date by the Incorporated Company to the Estate. Is that right?

A.—Yes.

Q.—The other figures being \$937,605.17?

A.—That is the amount of the advances, yes.

40 Q.—I put it to you this way: had the Directors of the Incorporated Company distributed the revenue earned from the time Sir Mortimer died to August 31st, 1929, this sum of approximately \$900,000 would have gone into the Estate, would it not?

A.—If it had all been declared a dividend, yes.

Q.—And would have equalled, or exceeded, the sum which was put forward in the way of a loan? Is that right?

A.—Yes.

Q.—And once it got into the Estate it would have been available for revenue purposes of the Estate, would it not?

A.—It is not usual for a Company. . . .

ALEX. M. REAPER (*for Plaintiffs*), *Examination-in-Chief*.

Q.—(Interrupting). Answer the question. I do not care what is usual. I put it to you in that way.

Mr. Holden: The witness is entitled to give his answer in a complete way, and I am sure he has shown his willingness to answer in his own way. As soon as he commences to answer he is interrupted and verbally assaulted by my learned friend.

10 Mr. McKeown: We have in the box a trained expert, who understands these matters as well as anyone in the Courtroom. Mr. Reaper is the gentleman who designed this system, and who was responsible for the keeping of the books. He is one of the defendants, and is in a position to give us the information I am seeking, and I do not think he needs any assistance from my learned friend.

Mr. Holden: He can give it to you, and he will if you allow him.

20 Mr. McKeown: I will allow him. God knows I will give him all the chance and assistance I can.

Mr. Campbell: God may know, but we do not.

By Mr. McKeown (continuing):

Q.—Will you please let me have an answer to my last question: Once it got into the Estate it would have been available for
30 revenue purposes of the Estate, would it not?

A.—Yes, had it all been declared in that way.

Q.—And the first consequence of its having arrived in that form as revenue in the Estate would have been there would have been no deficit such as we actually find of \$443,563.76?

A.—There would have been no deficit on revenue account.

Q.—On the contrary, we would have found a surplus in revenue account of almost half a million dollars, would we not?

A.—Yes, it would have been over \$400,000.

40 Q.—There would have been over \$400,000 surplus revenue in that Estate after paying all the items which have been paid for revenue account?

Mr. Campbell: Is this on the supposition the \$982,000 was all distributed?

Witness: Yes.

ALEX. M. REAPER (*for Plaintiffs*), *Examination-in-Chief*.

Mr. McKeown: They have not done what we claim they should have done.

By Mr. McKeown (continuing):

10 Q.—There would have been over \$400,000 surplus revenue in that Estate after paying all the items which have been paid for revenue account?

A.—Yes.

Q.—You were well informed as to the clauses of the Will of Sir Mortimer Davis? You must have been through the document many times?

A.—I have, several times, yes.

Q.—And, you were well informed on Clause No. 13, which reads:

20 “ After providing for the foregoing, then the remainder of the net annual revenues from the then residue of my Estate shall be paid over to the extent of one-half to my said wife, Lady Davis, maiden name Eleanor Curran, during her lifetime, and to the extent of one-half to my said son Mortimer during his lifetime.”

You were well aware of that clause?

A.—Yes, I was.

30 Q.—Whereby the testator had ordered that the surplus revenues of his Estate were to be paid out in that way?

A.—Of his Estate, yes.

Q.—Let us go back for a moment to what you did after you got the notice requiring your resignation. On December 4th there was first sent out this Notice of Meeting of Directors to be held on December 9th, for the purpose of considering the Company's financial affairs and the advisability of declaring a dividend of 21% to the shareholders of record on September 30th last. The notice was sent out in that form, signed by you?

A.—It was amended.

40 Q.—It was sent out originally in that form, signed by you?

A.—Yes.

Q.—Sent out with the full concurrence, and no doubt under the instructions of your co-Executor, Lord Shaughnessy; who knew all about it, did he not?

A.—Yes.

Q.—Had you ever sent a notice of any kind to the Directors of the Incorporated Company since the death of Sir Mortimer up to

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

the time of this wonderful notice of December 4th, 1929? I mean, of course, a notice for Meetings?

A.—Yes. That was the first written notice, I think, but there had been telephone notices before that?

Q.—You say the notice was amended?

A.—Yes.

10 Q.—I will come to that in a moment. In the meantime, will you please tell His Lordship how much a dividend of 21 per cent on the shares owned by the Estate would have amounted to if paid under the proposal set out in the notice, Exhibit No. 20?

A.—About \$946,000.

Q.—Which would have approximately offset the amounts which had been advanced by way of a loan, and which had been used by the Executors for revenue purposes and for capital purposes as we have already reviewed?

A.—Yes.

20 Q.—But, in so far as the Estate was concerned, it would not improve the situation of the plaintiffs, would it, with the major part of the money already tied up in capital expenditure for the Estate? The dividend being declared would not have rendered any money available for distribution to the plaintiffs, would it?

A.—It all depends how it was applied. It would not have left any cash available.

Q.—You would not suggest if it was declared as a dividend that it should not be treated in the Estate as revenue?

A.—If it came as a dividend from revenue.

30 Q.—Seeing that the Incorporated Company had earnings in excess of that amount since Sir Mortimer's death, and seeing that the proposal was one to declare a dividend, would it not obviously be revenue in the hands of the Estate?

A.—To the extent that it was declared from revenue, yes.

Q.—Of course, that did not happen anyway?

A.—No.

Q.—And before anything happened you sent out an amended notice?

A.—Yes.

40 Q.—Which is Exhibit No. 21?

A.—Yes.

Q.—Before we take up the change in the amendment, when, and by whom, had the plan been formulated under which the dividend of 21 per cent was to be declared?

A.—I think in your discussions with our solicitors you had taken exception to advances being made by the Incorporated Company to the Estate, and it was to offset these that this was suggested.

ALEX. M. REAPER (*for Plaintiffs*), Examination-in-Chief.

Q.—I am just asking you, in point of time. You mean after the demand for your resignation?

A.—Yes.

Q.—Let us now come to the amended notice, Exhibit No. 21. According to this there seems to have been some kind of a new proposal, because it says:

10 “ A Meeting will be held for the purpose of considering the
Company’s financial affairs and the advisability of declaring a
dividend at such rate as the Directors may determine to the
Shareholders of record September 30th last; and notice is also
given that the Directors will be asked to consider the propriety
of reducing the capital of the Company to such an extent as
may be necessary to enable the Executors of the Estate of Sir
Mortimer B. Davis to repay to the Company all amounts ad-
vanced by the Company and expended by the Executors on
20 account of capital indebtedness of the Estate, and to provide
for such future requirements of the Estate on capital account.”

When was it decided to make a change from the original plan of the 21 per cent dividend (if it was intended to change it at all)? I draw your attention to the fact that the second notice is dated two days after the first; the first being dated December 4th, and the second being dated December 6th. Do you know when the change was thought out and came about?

A.—At the time, before the notice was sent.

30 Q.—Before the second notice was sent?

A.—Yes.

Q.—Why?

A.—Because we wanted to provide for certain funds for revenue account, and some for capital account.

Q.—If you declared a dividend of 21 per cent, do you not see the indebtedness would have been repaid and the Estate revenue account should have been showing a surplus in the vicinity of \$500,000, or something like that?

40 A.—If it was all taken from surplus there would have been nothing for capital expenditures.

Q.—Do you mean from revenue?

A.—If the dividend was declared solely from revenue account there would be no funds made available for capital expenditures.

Q.—It looks as though that were the original idea with the 21 per cent—to declare it from revenue account?

A.—No, I think not. I think the second notice was just——

Q.—(Interrupting) I am not speaking of the second notice; I

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

am referring to the first notice. Under the first notice was it not the intention to declare the dividend of 21 per cent out of earnings since Sir Mortimer's death?

A.—No, not entirely.

Q.—Is there anything to indicate the contrary?

A.—No. That was why the second notice was sent: to make it more explanatory.

10 Q.—If that was the intention under the first notice, why amend it? If the proposal was that the 21 per cent was to come out of both revenue and capital of the Company (as you now suggest was the intention) why amend it, and speak of reducing the capital?

A.—I think we found it was necessary to do that to get sufficient funds—to get funds for capital account.

20 Q.—In other words, you found that if you put through a dividend of 21 per cent from the revenues of the Company into the revenues of the Estate you would have been in this position: that you would as Executors have used all sums over the revenue deficit, and applied them to capital account, and have no money with which to distribute the surplus revenue to the Estate. Is that not true?

Mr. Holden: I submit that is a wrong statement of the situation.

Witness: I am afraid I do not understand the question. I do not just get it.

30 By Mr. McKeown (continuing):

Q.—You had a revenue deficit of \$400,000?

A.—Yes.

Q.—You would have been getting in about \$950,000?

A.—Yes.

Q.—You would have had about \$500,000, which belonged to the two plaintiffs, to distribute?

A.—Yes.

40 Q.—But you would have no money to distribute? Is not that true? If the dividend of 21 per cent had gone through?

A.—I do not just understand that.

Q.—This Company had earnings, which belonged to revenue account of the Company, to an amount of over \$900,000?

A.—Yes.

Q.—As shown, on August 31st, 1929?

A.—September 30th, 1929.

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

Q.—It is the August statement I am referring to. That is the only statement with which we can check.

A.—That is the Estate account. That is right.

Q.—Let us suppose you proceeded to declaring a dividend of 21 per cent, it would take approximately \$900,000?

A.—No; 21 per cent would have taken \$1,050,000; which was more than that revenue account showed.

10 Q.—You mean by paying the dividend on the shares other than the shares of the Company owned by the Estate?

A.—Yes.

Q.—So, your 21 per cent proposal, according to your figures as they then stood, would have required more earnings than were shown as of date August 31st? But, let me ask you, what had become of the Alcohol dividend paid in October, for the quarterly declaration in September? What did it amount to?

A.—About \$200,000.

20 Q.—I ask you if it is not true that at December 1st, when you sent out that notice for the 21 per cent dividend, there were sufficient earnings of the Incorporated Company from the time of the death of Sir Mortimer to have made up the full amount of the dividend of 21 per cent?

A.—If you were going to use revenue up to the last minute, yes.

Q.—That is the way it is done in many cases. You would have had enough revenue?

A.—Yes.

30 Q.—To pay the dividend on all the stock of the Incorporated Company?

A.—Yes.

Q.—At 21 per cent.

A.—Yes.

Q.—So, that cannot be the reason you shifted to a distribution to capital?

A.—No. Certain amounts were required for revenue account, and certain amounts for capital account.

Q.—Required where? In the Estate?

40 A.—Yes. And in order to get the capital funds it was considered the best method to follow was to make a reduction in the capital.

Q.—When was all that hit upon?

A.—That was decided upon when the matter was taken up and discussed with our solicitors and auditors.

Q.—You mean between December 4th and December 6th, 1929?

A.—Yes.

Q.—Up to that time you had not taken the subject up with a

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

view to working out any particular plan, had you? More than the idea that you would get it out of the Incorporated Company?

A.—We expected the funds would come from the Incorporated Company in the way of capital distribution and revenue.

Q.—When, in point of date, did you intend to declare the dividend? Seeing you had done nothing up to that time had you any fixed intention of declaring a dividend?

10 A.—I think at approximately this period, after we had had the completed balance sheet of the Incorporated Company for the year.

Q.—You had had it for some considerable time before that? Since about the middle of November? You had had the 1928 one for over a year?

A.—The 1928 statement only showed \$250,000 as available for revenue for the Estate.

Q.—You did not declare the dividend?

A.—No.

20 Q.—Under the second notice, Exhibit No. 21, did you have any fixed plan as to what percentage was to be declared out of revenue in the form of a dividend, and what percentage of distribution was to be made from capital assets of the Company?

A.—No. That was to be discussed, considered and decided upon, at the Meeting.

Q.—That was wide open?

A.—Yes.

30 (And it being five o'clock, the further examination of the witness is continued to Monday, March 10th, at 10.30 o'clock in the forenoon.)

And further for the present deponent saith not.

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

MORNING SESSION, MARCH 10TH, 1930.

10 Mr. Holden: On the motion, may it please the Court, to examine Senator Raymond on Commission, we would be satisfied if the Senator made an affidavit of the facts in question, and that affidavit was filed in the record. We do not doubt that he may give his recollection of what occurred, and we will admit, of course, that he would have testified the same thing. We have not any particular cross-examination. Our client's recollection of some of these details are different from what my learned friend understands the Senator would say.

His Lordship: Of course, you have a right to contradict him, as you have the right to contradict any witness.

20 Mr. Holden: : Rather than have the expense of a Commission, we are prepared to agree to the filing, as evidence, of the affidavit of Senator Raymond on the facts in question.

Mr. McKeown: Taken at Palm Beach?

Mr. Holden: Taken at Palm Beach, or anywhere that is convenient.

30 Mr. McKeown: That will be quite satisfactory, my Lord.

His Lordship: I was speaking with Senator Raymond's brother Maxime yesterday and he informed me he did not expect him to return much before the end of April.

Mr. McKeown: I have verified again this morning, that the Senator will not be back before the end of April. If he should return we could still examine him.

40 Mr. Holden: If he should return, I assume if there is anything we want to ask him, we will be at liberty to do so.

His Lordship: Yes. I think you are wise in not adding to the costs.

Mr. McKeown: There have been served, and are being referred to your Lordship from the Practice Court three motions in connec-

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

tion with the ancillary cases. Since the matter was last before your Lordship, a week ago, the pleas of the defendants and parties contesting have been filed. Answers were at once filed and the issues were joined, and the cases are now ready to proceed. In the ordinary course the cases would go upon Mr. Archambault's roll, and at some early or remote date, would ultimately be assigned to some one of the several judges sitting for the district of Montreal, and each of those cases would be started afresh. We urged upon your Lordship
10 a week ago, upon the presentation of the motions joining the cases, the great advisability of not having this litigation extended beyond the minimum confined, and that everything should be done to accelerate an early and definite decision of the contentions of the parties. Had it not been for our Rules of Practice this whole question might very properly, perhaps, have been merged into one case from the beginning, but we felt that the actions were different; the parties to some extent, were not exactly the same, and that we should, under
20 those conditions, adhere to the strict rules of our system of procedure, and that is the reason why four actions in place of one were instituted. The actions were a little different; some were accompanied by conservatory attachments and matters of that kind. The issues have been joined. This case happens to be ready earlier than the other; we made a start in this case under your Lordship's suggestion. We have, as your Lordship will remember, kept away, up to the present, from the issues which overlapped. Those issues which overlap may be concerned basically upon that so-called gift, the Marler stock arising therefrom, in part at least, and the question
30 of these loans which, in turn rotate to some greater or less extent on the validity or invalidity of the so-called gift.

His Lordship: Are they different motions from which you presented last week? Are they of a different nature?

Mr. McKeown: The motions presented last week were to join the cases for trial, and my learned friend objected that the cases were not ready, that they would be deprived of examination on discovery, and certain statutory delays, and to a very great extent they were
40 right.

Under ordinary conditions, we could not have asked your Lordship at that stage to have joined the cases, had it not been that we thought your Lordship had the discretion seeing there were in default to make the terms upon which they might hear such, as would enable the joining of the cases. Those motions were suspended or taken under advisement and are still open.

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

The demand here is not to join the cases. Take, for instance, the action on the gift

His Lordship: Is there any evidence at all on the action on the gift?

10 Mr. McKeown: I think my learned friends on their plea will require it.

Mr. Holden: I may say that Mr. Justice Coderre has referred these two motions to the Chief Justice, and not to your Lordship, and therefore, they are not properly before your Lordship.

20 His Lordship: I do not see why these cases should have been referred to Mr. Justice Coderre at all. I am seized with the litigation and I do not see why any other Judge should be disturbed about them.

Mr. McKeown: I understand from Mr. Hyde, who appeared on these motions in the Practice Court, Mr. Justice Coderre thought inasmuch as he was the one who dealt with them in the first instance, they might be referred to the Chief Justice. I suggested to Mr. Hyde that he appear before the Chief Justice and have them referred to your Lordship.

30 Mr. Hyde: We were referred by Mr. Justice Coderre to the Chief Justice, who referred the matter to your Lordship.

Mr. Holden: Does your Lordship intend to take jurisdiction on this point? The matter of referring the case to your Lordship is quite proper, and we heartily concur therewith, but the question of an early date is either a matter of consent of the parties or of special reason

40 His Lordship: I think I should finish hearing what is proper to this case, that is peculiar to the case, asking for the removal of the Executors, and if, afterwards, there should be anything that is common in the various actions, then perhaps I will undertake to see about it, and reserve it. For instance, take the action to annul the gift. I can perfectly well dismiss the action on the ground that it is not a gift of moveable things, and has nothing to do with the ultimate result of the action to dispossess the Executors. I think we should proceed and the other cases will take care of themselves.

ALEX. M. REAPER (*for Plaintiffs*), *Examination-in-Chief*.

Mr. Holden: Will your Lordship make an entry on the motion for the Commission Rogatoire?

His Lordship: I have written something on the back of the motion which you may, or may not, approve of.

Whereupon Mr. A. M. Reaper was recalled, and his examination-in-chief was continued by Mr. W. K. McKeown, K.C.

10

By Mr. McKeown:

Q.—Mr. Reaper, speaking of the notice sent out on December 4th, 1929, of the Directors' meeting called in the terms of the notice for the purpose of declaring a dividend of 21 per cent to Shareholders of the Incorporated Company, of record, September 30th, 1929, will you tell his Lordship whether that was your idea, or Lord Shaughnessy's, or whether you both agreed on that?

A.—We had both agreed.

20

Q.—Who mooted it? Who was the first one who brought it up?

A.—I think it was brought up in general discussion.

Q.—Between Lord Shaughnessy

A.—And Counsel.

Q.—With Counsel?

A.—I think that only came up later with Counsel.

Q.—Can you tell us, between the two of you, Lord Shaughnessy and yourself, which of you first put that proposal forward?

A.—The proposal was brought forward, I think, between you and Counsel

30

Q.—That is not the question.

A.—And Counsel had raised an objection, or question as to the loan from the Incorporated Company to the Estate, and the idea was to declare a dividend to repay that loan, to offset the loan.

Q.—You realized, I suppose, that if any disaster should happen to befall the Incorporated Company, the Estate would be obliged to repay this \$1,000,000 back to the Company, did you?

A.—No, I do not think we ever thought of that.

Q.—You had not thought of that?

40

A.—No.

Q.—Then, that was not a consideration with you, the fact that the Estate was under the condition of affairs which existed at that time, the debtor of the Incorporated Company, for a million dollars, that did not weigh in your mind at all?

A.—It was, of course, because the Estate was a debtor to the Incorporated Company to that amount; they wanted to get the thing straightened out.

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

Q.—Let us come to the question I first asked you. Whose idea was that, yours, or Lord Shaughnessy's?

A.—It was probably a joint idea.

Q.—But it could not come to you simultaneously. Either you are responsible for the suggestion, or Lord Shaughnessy. Can you tell us which of the two?

10 A.—He might have suggested it in the beginning, but as regards amount or anything of that sort, that would be a matter of discussion and decision.

Q.—Do you think Lord Shaughnessy suggested it in the first instance?

A.—I really do not know. It is possible that the suggestion really emanated from our Solicitor's office.

Q.—After you had received a demand for your resignation, and after the matter had been discussed between Counsel, is that what you mean?

20 A.—Yes.

Q.—Counsel for the parties?

By Mr. Campbell:

Q.—Between Counsel for Plaintiffs and Counsel for Defendants?

A.—Yes.

By Mr. McKeown:

30 Q.—There must have been one time at which that was a definite plan. That must have been the plan when the notice went out, in other words, on December 4th, is that right?

A.—When the first notice went out, yes.

Q.—And you had not anything else in mind when you sent out the notice on December 4th, had you?

A.—No.

Q.—Except a dividend of 21 per cent?

A.—Yes.

40 Q.—Will you tell His Lordship when you changed your mind about the dividend of 21 per cent?

A.—It was intended that that dividend of 21 per cent should be divided between operating profits, or revenue profits of the Company, from March 22nd, 1928, to September 30th, 1929, and partly from profits previous to that date, which would have applied as a capital revenue for the Estate.

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

By Mr. Campbell:

Q.—Capital revenue? Capital receipt?

A.—Capital receipt, that is the proper term.

By Mr. McKeown:

10 Q.—So that was the idea?

A.—That was the idea, yes.

Q.—And that was the idea on the 4th of December when the notice was sent out as to the dividend of 21 per cent?

A.—Yes.

Q.—Do you notice that there is not a word of any such idea in the notice?

A.—Well, that would be explained at the meeting.

20 Q.—In any event, you changed the plan from the 21 per cent dividend, to include at least, the proposal of reducing the capital and making a capital distribution?

A.—Yes.

Q.—When did you make up your mind about that?

A.—Following the first notice, and before the second one was sent out.

Q.—There was not much time in between the two, because the first was on the 4th of December, and the second is dated the 6th of December?

A.—Yes.

30 Q.—Would it be on the 5th or the 6th?

A.—I think possibly on the 5th.

Q.—And what brought about that change of plan?

40 A.—It was when we discussed the matter somewhat further with our Solicitors, and with our Accountants, and it was thought it would be better at that time to provide for additional capital receipts for the Estate, in order to enable them to pay some of the liabilities, and it was considered, in order to do that, it would be better to provide the funds by the capital reduction of the Incorporated Company, and I think there was also the additional reason given for it, that it might be better done that way, to save any question or discussion possibly with the Income Tax Department.

Q.—In any event, the idea of reducing the capital was a brand new idea for both Lord Shaughnessy and yourself, either on the 5th or 6th of December 1929?

A.—Not entirely brand new, but it was brand new as to the time of doing it.

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

Q.—And it was a change, as you have said, to which you resorted after having, the day before, reached a definite decision to declare a dividend of 21 per cent?

A.—Yes. Our first thought was simply to provide certain funds to take care of the indebtedness of the Estate to the Incorporated Company, but it was later thought advisable to go further.

10 Q.—Following out your original plan of 21 per cent dividend, was it part of the plan that the amount would be declared in the form of a dividend which, as to the shares held by the Estate, would offset their then loan of between \$900,000 and \$1,000,000?

A.—Well, partly from revenue and partly from capital.

Q.—But that was the plan?

A.—That was the plan.

Q.—You were not going to transfer any cash at all from the Incorporated Company into the Estate under that plan of 21 per cent dividend, were you?

20 A.—There would have been very little. There might have been a slight adjustment, but not much.

Q.—All that money, nearly a million dollars, which had been loaned in various sums, and from time to time, by the Incorporated Company to the Estate, had come from revenue sources of the Company, had it not?

A.—Our cash accounts were not subdivided to exactly show a revenue and capital.

30 Q.—I put this to you directly, that that loan of approximately a million dollars made by the Incorporated Company to the Estate, came from revenue?

A.—Not entirely. I would not say that it came entirely from revenue.

Q.—Tell us how much of it did not come from the revenues of the Incorporated Company?

Witness: As of what date? As at December?

40 Counsel: Well, as you disbursed the money and loaned it to the Company from the Estate?

A.—Well, I think for the most part we would have had additional liquid resources in the way of cash or call loans to pretty well make up the amount of that revenue account.

Q.—Don't trifle with the thing. You did not change the call loans one dollar, did you, from \$880,000 up to this minute?

A.—They were not changed.

Q.—You did not use the call loans?

ALEX. M. REAPER (*for Plaintiffs*), *Examination-in-Chief*.

A.—No.

Q.—But turned the money over to the Estate?

A.—No, I did not. I did not intend to. . . .

Q.—Well then, be good enough to tell His Lordship where the money came from that was loaned out by the Incorporated Company to the Estate if it did not come from the revenues of the Incorporated Company?

10

A.—It came from the general funds of the Company.

Q.—In particular, did you liquidate any capital sums, or capital assets of the Company, and convert them into cash?

A.—No.

Q.—How then, could the funds have been available if they had not come from revenue?

A.—Call loans could have been called.

Q.—Never mind, you did not do that. Be as frank as you have been all along in this matter. . . .

20

Mr. Campbell: I object to the comment of Counsel. It seems to me that the witness in the box, has been excessively frank, and the answer he is now giving is perfectly frank. My learned friend is trying to entrap the witness into saying that the bank account was ear-marked for two purposes. . . .

Mr. McKeown: It is the same old thing.

30 Mr. Campbell: My submission is that Counsel is unfair to the witness. I suggest that from the previous conduct of the witness he is perfectly fair and the answer that my learned friend seeks to obtain from him, is an impossible answer.

Mr. McKeown: It may be, but the comment, My Lord, is complimentary. I do not think anybody misunderstood it except Mr. Campbell, and I do not think he misunderstood it.

40 Mr. Campbell: I submit that the answer the witness has given you already is a perfectly frank answer and a perfect banking and accounting answer.

Mr. McKeown: I would ask, My Lord, that after this little discussion, the question should be repeated to the witness and he should be required to give an answer.

His Lordship: Answer the question.

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

By Mr. McKeown:

Q.—I will ask the stenographer to repeat the question.

The question was repeated to the witness as follows: “How then, could the funds been available, if they had not come from revenue”?

10 A.—They could have been got by the calling of these loans.

Q.—I don't care anything about that. You did not call the loans, so I will ask you to please exclude that subject. You did lend the money, and I ask you where you got the money, where it came from, if it did not come from the revenues of the Incorporated Company? Can you indicate to His Lordship any capital resources from which that money came? What is your answer?

A.—No, but I say it could have come from the cash.

Q.—I do not ask you if it could have; I ask you where it came from. Did it not come from the revenue?

20 A.—It came from the general funds of the Company.

Q.—Why don't you give me an answer, you are in charge of those books and know them from your own knowledge. Did not the money which was loaned from the Estate to the Incorporated Company come from the revenues of the Incorporated Company?

A.—They did come from the revenue of the Incorporated Company. As I say, there was sufficient cash and call loans practically to make up the amount at the credit of the revenue account.

Q.—Which you did not use?

30 A.—Which we did not use at that time.

Q.—And you told us that your thought was, that when that 21 per cent dividend was operated the Estate would not get a cent in cash?

They would only have their liability crossed off, is that it?

A.—That is right.

Q.—Under this new plan of December 6th, will you explain that to His Lordship, and how that was going to work?

40 A.—In order to provide funds for payment of some of the capital accounts of the Estate, it was thought to reduce the capital of the Company; in other words, the Company would pay off some of its capital stock, but which means the Estate would have a certain amounts of receipts.

Q.—Can you conceive in your own mind any advantage by any such process, when this Company had a capital surplus far in excess of the amount it proposed to distribute? Can you explain to His Lordship any purpose in reducing the capital under those conditions?

A.—As I said, it was not intended to provide funds for other

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

purposes than just the amount which had been advanced to the Estate.

Q.—What other purposes?

A.—That payment of Succession Duties.

Q.—What do you mean? It was going to provide further funds to the Estate for capital charges?

A.—Yes.

10 Q.—In what amount?

A.—That was left for decision at the meeting. It had not been definitely set. The whole situation was going to be discussed and decided at the meeting.

Q.—Do you mean to tell me that Lord Shaughnessy and yourself sat down and prepared the amended notice of the 6th of December whereby you were going to have a distribution of capital assets, and you did not know how much you were going to distribute?

A.—We did not know how much we were going to distribute. We had a suggestion, probably, to make.

20 Q.—What was your suggestion, if you put it that way?

A.—I think it was probably 25 per cent.

Q.—25 per cent of what?

A.—Of the capital of the Incorporated Company.

Q.—Of the capital?

A.—Yes.

Q.—Was that to be a 25 per cent distribution from the Incorporated Company to the Estate, to replace the former 21 per cent?

30 A.—No. It was still intended to declare, or consider, a dividend from revenue, to take care of the amount required to make up the revenue deficit of the Estate, and this other amount was to be made from capital by the reduction.

Q.—The revenue deficit at that time was something upwards of over half a million dollars, was it not, the revenue deficit in the accounts of the Estate, is that right?

A.—Yes.

Q.—So that you were going to declare enough, and at least \$500,000, which would go into the revenue accounts of the Estate?

A.—Yes.

40 Q.—And is that part of the 21 per cent dividend?

A.—Well, I have in the revenue account to take care of the shortage—

Q.—Which I have already indicated to you, at that time, amounted to upwards of half a million dollars?

A.—Yes.

Q.—How many shares did the Estate hold, on the basis of 90 per cent of the capital of the Incorporated Company?

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

Mr. Campbell: As of what date?

Mr. McKeown: As at December.

Witness: Well, I think the Estate held about 45,075 shares.

10 By Mr. McKeown:

Q.—So that would have required a dividend of something like 11 per cent to produce \$500,000—11 or 12 per cent?

A.—About 12 per cent, yes.

Q.—That would have been paid of the original item of 21 per cent, would it not?

A.—Yes, I think so.

Q.—Then, how much were you going to reduce the capital?

A.—Approximately 25 per cent.

20 Q.—How much would that have yielded?

A.—At par it would have given a million and a quarter.

Q.—So that together with distribution, which looks very innocent, under the notice of the 6th of December, was an intimation of the release permanently from the Company of a minimum of \$500,000 under the proposed 12 per cent dividend, and the sum of a million and a quarter under the 25 per cent reduction of capital, is that right?

A.—Yes.

30 Q.—And together, \$1,625,000, which all of a sudden was going to be released from this Corporation to the Estate?

Mr. Campbell: I object to the question as put by Counsel as not being a correct reproduction of what the witness has stated. The witness has not said at any time it was proposed to release this all at once, and moreover the witness has already explained that \$1,000,000 of this money, whatever the distribution was, had already been paid for in advance by the Company to the Executors.

40 Mr. McKeown: We understand all that funny business. That does not mean anything in cash. I think that is a fair question, a summing up of what that quotation means. It means nothing to look at it, until you analyze it.

Mr. Campbell: What I object to is, "All of a sudden".

Mr. McKeown: We will take out the words "All of a sudden",

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

I would not displease you for anything. I thought it was all of a sudden.

The question was repeated to the witness: "And together, \$1,525,000, which was going to be released from this Corporation to the Estate"?

A.—Nearly a million dollars has already been paid.

10 By Mr. McKeown:

Q.—Please do not argue with me. Just answer the question. Leave a little bit to Mr. Campbell.

A.—All right.

Q.—You are quite sure in your own mind that this important change of policy by yourself and Lord Shaughnessy in the matter of making distributions from the Incorporated Company to the Estate arose in these days, in December, and the last one between the 4th and 6th of December?

20 A.—Yes.

Q.—I am sure you have read the Declaration in this case?

A.—Yes.

Q.—And in particular, paragraph 75, to which I now draw your attention:

30 " Paragraph 75: That the plaintiffs specially allege and put in issue that since the abandonment by the defendants of the plan agreed to by them in April, 1928, they have not had and have not now any feasible plan, or workable plan, for meeting the obligations of the Estate and of the Incorporated Company."

Do you remember seeing that allegation?

A.—Yes.

Q.—We have reviewed with you what you did up to December 6th of the proposals as of that time. What is your present plan to solve the financial problems of this Estate under the Incorporated Company?

40 A.—To declare dividends from time to time from the revenue of the Incorporated Company to such amounts as they might reasonably be done from the earnings of that Company, to take care of the revenue expenditures of the Estate, and to provide for the liabilities of the Estate by further capital distributions.

Q.—Is that all?

A.—That is all.

Q.—Let us take up the Estate first. You still owe, in round

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

figures, on behalf of the Estate, \$1,000,000 for Succession Duties, do you not?

A.—About \$800,000.

By Mr. Campbell:

Q.—Is that on the basis of the Government claim?

10 A.—That is on the basis of the Government claim.

Mr. McKeown: I have not raised any very serious question on the record up to date.

Mr. Campbell: I do not want the witness to be entrapped into anything that would bind the Executors in view of the Government claim. On the basis of your claim, I do not object.

By Mr. McKeown:

20 Q.—We will speak in round figures. Upon the basis of the claim as made by the Provincial Government for Succession Duties and interest, is there not a balance outstanding at the present time of upwards of \$800,000?

A.—Approximately \$800,000.

Q.—There is at the present time this liability by the Estate to the Incorporated Company of something in the vicinity of a million dollars?

A.—Yes.

30 Q.—In making these suggestions to you, I am speaking from the Statement of September 30th, 1929, of the Estate, of which a copy will now be filed as Exhibit P-75. The bank overdraft which appears in this Statement, P-75, at \$215,000, has since found its way up to the sum of \$303,000, has it not?

A.—Yes.

Q.—And was paid off from part of the proceeds of the sale of the Liggett and Meyer stock, about the middle of February last?

A.—Yes.

40 Q.—Then, you have an estimated provision of some eleven or twelve thousand dollars for the Young Men's Hebrew Association?

A.—Yes—well, I think it is reduced a little now.

Q.—A further item of the Joint Hospital Campaign, \$5,000?

A.—Yes.

Q.—Is this item right, funeral expenses unpaid for \$34,000?

A.—That item is correct. Some of these items are in dispute and we have now some information in connection with them. I think we can get a substantial reduction on some of those claims.

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

Q.—Have you paid the Synagogue in Montreal for the funeral service of Sir Mortimer?

A.—It has not been adjusted yet.

Q.—Do you mean that you hope to cut down that charge, that you are disputing that charge?

A.—Yes. They originally made a charge of \$5,000.

Q.—How much is it now?

10 A.—There has not been anything definite. There has been a suggestion that the matter be settled at \$1,000. It has not been definitely fixed.

By the Court:

Q.—What was the original charge?

A.—The original charge was \$5,000. We had set a provision of \$1,000 for it in the account

20 By Mr. McKeown:

Q.—You are carrying \$1,000 for it, and have not paid anything?

A.—We have not paid anything yet.

Q.—Is it not true that the Rabbi and the authorities of the Synagogue offered to leave it to Lord Shaughnessy to fix the amount, as I am instructed by Mr. Bercovitch was the case?

30 A.—He handled that matter. I think he had intended that we would eventually settle at around that figure, at a thousand dollars. That is why we made the provision, and I do not think he has settled with them yet.

Q.—Don't you know that the fact is, that the Rabbi or other authorities in connection with the Synagogue put it up to Lord Shaughnessy that they would leave it to him to fix the amount?

A.—I understand he had to take the matter up with them a little further.

Q.—But from the first to the last, including the earliest Statement that the Executors submitted of the affairs of the Estate, the honorarium of the Synagogue was entered at \$1,000?

40 A.—Yes.

Q.—Have you got with you the account kept under the heading of "Funeral Expenses" for the Estate. Have you your ledger here?

A.—Yes, that is all covered in one of these statements.

Q.—Please let me see it. I want to see what is paid and what is not paid. Among these items which are open I see an item open,

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

“Estimate for Monument.” Were there any instructions in the Will as to the matter of the monument?

A.—Offhand I do not know. I think the arrangements for the funeral were left to the Executors, which, I think, covered everything.

10 Q.—But in any event, of the amount which you are carrying for funeral expenses, there is still \$34,439.95 open, unpaid?

A.—Yes.

There is one of these items in question, the largest item, \$25,933.25 there, we have now information which would lead us to believe we will have a substantial reduction.

Q.—Are the other items in controversy?

A.—No, because the Monument is not completed yet. Provision was made for it.

Q.—The Monument is not erected?

A.—No.

20 Q.—But it has been ordered?

A.—It has been ordered.

Q.—When was it ordered?

A.—I do not know the exact date.

Q.—Approximately?

A.—Towards the fall of last year.

Q.—This last fall?

A.—Yes, after Lord Shaughnessy came back from Europe. It was during the summer or early fall.

30 By the Court:

Q.—What is that item of \$25,000 for?

A.—That account has not been settled.

By the Court:

Q.—What does that represent?

A.—That was largely the price of the bronze casket.

40 By Mr. Campbell:

Q.—Where was it ordered?

A.—It was ordered in Paris.

By Mr. McKeown:

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

Q.—If you don't know, don't say, because you might make a mistake.

By Mr. Campbell:

Q.—It was ordered in Europe?

10 A.—Ordered in Europe.

Mr. McKeown: I would not like to leave the Court under the impression that Lady Davis ordered it.

Witness: Nor ordered by the other Executors.

By Mr. McKeown:

Q.—Then, we pass on to sundry accounts payable, \$30,000. You
20 have already dealt with the Succession Duties?

A.—Yes.

Q.—You are still faced with an item of \$1,500,000 under contracts executed by Sir Mortimer during his lifetime, all this within the Estate?

A.—Yes.

Q.—And as I think you told us, the direct assets of the Estate, outside of their interest in the Incorporated Company, are not easily realizable at the present time?

30 A.—They are not easily realizable. They have certain notes of the Incorporated Company.

Q.—Certain notes of the Incorporated Company for \$703,500?

A.—Yes.

Q.—\$703,500 of capital?

A.—Yes, on the Royal Bank of Canada.

By Mr. Campbell:

40 Q.—Is the Royal Bank stock held by the Company or the Estate?

A.—There is some held by the Estate.

By Mr. McKeown:

Q.—Only a few shares? How many shares?

A.—194 shares.

Q.—Of a present market value of about \$60,000?

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

A.—I think so.

Q.—These direct liabilities of the Estate total to something in the vicinity of \$4,000,000. Will you look at this statement, P-75, and will you make an allowance for the reduction of the Succession Duties?

A.—Well, about that.

10 Q.—You needed about \$4,000,000 of real money with which to meet the direct liabilities of the Estate?

A.—Yes.

Q.—And as you have said, such assets as were in the Estate, direct assets, would not be easily liquidated, is that right?

A.—That is right.

Q.—Let us get something a little clearer. Let us look at the assets. I suppose that the real estate entered at \$264,000 includes Pine Avenue, Ste. Agathe and some other properties which we have already reviewed, is that right?

20 A.—Yes, practically those two.

Mr. Campbell: Mr. Reaper, have you a copy of this statement? You had better have a copy. I would like the witness to have a copy of this statement before him when he is answering.

By Mr. McKeown:

30 Q.—The next item among the assets, are the Debentures, Serial Notes of the Incorporated Company for \$703,500. Those are all twenty-year Debentures which may only be anticipated so far as the holder is concerned by drawings, the holder cannot force the payment?

A.—No.

Q.—The Company under the By-law has a right to redeem them at any time?

A.—Yes.

Q.—It never occurred to you to exercise that right and redeem those Debentures?

40 A.—No.

Q.—The next item is, Investment in the Stocks of the Incorporated Company and other Companies carried at \$8,959,186.85. Are those figures accurate?

A.—Yes.

Q.—We will come back to this in a minute. Then, there are some Accounts Receivable amounting to \$17,000 odd?

A.—Yes.

ALEX. M. REAPER (*for Plaintiffs*), *Examination-in-Chief.*

Q.—And including an amount of \$15,000 advanced on account of Trustees' fees under Deeds of Donation?

A.—Yes.

Q.—Who was that advanced to?

A.—To Mr. Marler.

Q.—Whose idea was it to make that advance to Mr. Marler?

10 A.—I think that was arranged between Lord Shaughnessy and Mr. Marler.

Q.—Did you participate in the arrangement?

A.—No.

Q.—That was not a sum of money that was overdue to Mr. Marler?

A.—He was Trustee under certain donations which had been running for some time, and it represented a settlement of the charges under those Deeds.

20 Q.—Let us get that clear. Do you want His Lordship to understand that when that money was paid Mr. Marler, there were arrears of \$15,000 due him under those Trust Deeds?

A.—According to the Trust Deeds, one Trust Deed, he was entitled to remuneration, I think, at the rate of \$2,000 per year, and under another one, a reasonable remuneration.

Q.—How much was overdue at the time that \$15,000 was paid, on the basis of \$2,000 under one Deed, and reasonable remuneration under the other?

30 A.—That one which mentions fees of \$2,000 has run about five years and five months, which, at \$2,000 a year, would be a little over \$11,000.

Q.—And the other one?

A.—The other one had been running a little over eight years.

Q.—And nothing been paid on either of these donations?

A.—No.

Q.—In the way of Trustees' fees?

A.—No.

40 Q.—Had anything been carried in the way of a liability in the books of Sir Mortimer during his lifetime concerning Trustees' fees and those donations?

A.—No.

Q.—Just the one which had been running, you say, five and a half years?

A.—The one of August 1st, 1923, for \$1,200,000.

Q.—Had that one ever been set up? Had appropriation been made for that?

A.—No.

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

Q.—It was only a scrap of paper?

A.—Well no, it was a Deed.

Q.—Had the Trustees ever functioned under that Deed?

A.—Not as far as I know, no. They had signed the Deed.

Q.—Had they ever got possession of any securities or moneys to handle?

A.—No.

10 Q.—Who were the other Trustees under that Deed?

A.—Lord Shaughnessy and Mortimer B. Davis.

Q.—That is to say, Mr. Marler, Lord Shaughnessy and M. B. Davis, Junior?

A.—Yes.

Q.—Were the other Trustees entitled to the same remuneration?

A.—Yes.

Q.—Did the other Trustees, Lord Shaughnessy and M. B. Davis, ever assert any claim to Trustees' fees under the terms of that Deed of Donation?

20 Deed of Donation?

A.—Not that I know of.

Q.—You do not credit them, or carry any liability for them at the present time?

A.—No. That would be for the Trust Fund to attend to that.

Q.—It is payable out of the Trust Fund?

A.—It is payable out of the Trust Fund.

Q.—How did it come about, if it was payable out of the Trust Fund that it was never set up or organized, when the Estate came to pay \$15,000 to Mr. Marler?

30 A.—Mr. Marler wished to resign from these Trusts, and before doing so, he wanted his fees to be adjusted, and it was arranged between him and Lord Shaughnessy that this payment would be made to him.

Q.—Was this prior to the departure of Mr. Marler for the Orient?

A.—Oh yes.

Q.—Immediately prior?

A.—Maybe a few months before.

40 Q.—Give us the date?

A.—I think it was

Q.—I might suggest it was December 4th, 1928?

A.—That is when the payment was made.

Q.—And the arrangement was immediately before that?

A.—Yes.

Q.—Let us take the other Deed which was running wild, as to remuneration. How much was the capital of that Trust Fund?

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

A.—\$200,000.

Q.—Was that ever organized?

A.—No.

Q.—Or appropriated for?

A.—No. It is in the same position as the other.

10 Q.—No securities or money were ever actually turned over to the so-called Trustees?

A.—No.

Q.—Who were the other Trustees under that Deed?

A.—Mr. Marler and Mr. J. B. Waddell.

Q.—Did Mr. Waddell ever assert any claim to any Trustees' fees?

A.—No, not that I know of.

20 Q.—Will you take communication of a copy of Deed of Donation of August 1st, 1923, from Sir Mortimer Barnett Davis to Mortimer B. Davis and others, passed before H. E. Herschorn, Notary, copy of which has already been referred to, and which is now filed as Exhibit P-69, and read to his Lordship the part of Article VII concerning the remuneration to be received by the Trustees under that Deed during the lifetime of Sir Mortimer?

A.—(Witness reading):

30 “During the lifetime of the donor, the Trustee shall serve without remuneration until otherwise and subsequently arranged for by the donor. After the death of the donor each Trustee shall be entitled to the sum of \$2,000 per annum, for his services as such.”

Q.—Well now, Mr. Reaper, is this the donation of \$1,200,000 of which you spoke a few moments ago?

A.—Yes.

Q.—And which you suggested had been in force for five and a half years and carried fixed remuneration to each of the Trustees of \$2,000?

A.—Yes.

40 Q.—Evidently, you were in error as to that?

A.—Well, I think Mr. Marler claimed that his fees should start from the date of the signing of the Deed.

Q.—But you now see that the clause which you have read to his Lordship (and which in perfect fairness to you which I am sure you had forgotten when you gave your earlier evidence), that is the clause upon which the claim of \$11,000 which you have mentioned is based?

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

Mr. Campbell: I do not think that is quite fair. The witness did not say that Mr. Marler claimed \$11,000. He made a calculation, that at \$2,000 a year for five and a half years it would represent \$11,000. He did not say at any time that Mr. Marler allocated \$11,000. The evidence of the witness is, as he has explained, he did not make the arrangement with Mr. Marler, and he has not testified that Mr. Marler allocated that portion of the total amount of
10 that claim, and I object to the question as being an inaccurate reproduction of what the witness has already testified.

Mr. McKeown: I am sure His Lordship will not be misled in any way in the slightest by my unfortunate form of question and I think the question should be allowed.

The Court reserves the objection.

20 By Mr. McKeown: :

Q.—That would have been a somewhat extravagant claim to say the least, in view of the terms of the Deed which you have just read.

A.—That was all discussed with Lord Shaughnessy. I don't know.

Q.—Speaking of the second donation of \$200,000, the donation of October 26th, to which reference has already been made in Exhibit P-68, and of which the copy is now filed, I think you told us that this donation had never been set up, no appropriation of money or
30 securities had ever been made or delivered to the Trustees, nor have they ever functioned as Trustees under this Deed, Exhibit P-68?

A.—No, not as far as I know.

Q.—I see a clause dealing with remuneration, forming part of clause eight, sub-clause F, which reads as follows:

40 “In addition to all other powers vested in Trustees' By-law or Statute, the Trustees shall have the following powers. To employ and pay for such professional or other assistance as they may deem requisite in the discharge of their duties, and to charge and accept a reasonable remuneration for their services.”

You know that clause?

A.—Yes.

Q.—Is that the clause you had in mind, when you said in the earlier stage of your examinations this morning, that as to the second Deed, a reasonable charge was to be made?

ALEX. M. REAPER (*for Plaintiffs*), Examination-in-Chief.

A.—Yes.

Q.—I think you said Mr. Waddell never asserted any claim under this Deed of Donation, P-68?

A.—No, not that I know of.

Q.—And Mr. Marler's claim arose, and was adjusted I suppose, sometime after his nomination to the post in Japan?

10 A.—I think it was before.

Q.—You think it was before?

A.—I think so.

Q.—And that is what the \$15,000 was paid out for?

A.—Yes.

Q.—And it was paid out of the funds of the Estate?

A.—It was paid out of the funds of the Estate.

Q.—And do you concede that at the very most, under these Deeds, it was payable out of the funds in the hands of the Trustees under each Deed?

20 A.—That was my impression. It was a charge against the Trustee.

Q.—You are quite familiar with Lord Shaughnessy's handwriting?

A.—Yes.

Q.—Is the letter already filed as Exhibit D-9 on the stationery of Sir Mortimer Davis Incorporated, Canada Cement Building, Montreal, dated November 7th, 1928, in the handwriting of Lord Shaughnessy, and of which this is a photostat copy?

30 A.—Yes, that is his handwriting.

Q.—This letter is addressed to Lady Davis?

Lord Shaughnessy: Where is the last page of that letter. It is not complete. It is not signed.

Mr. Campbell: Have you found the last page?

Mr. McKeown: No, I have not found it. I wish I could find it. There is quite enough here.

40 Mr. Campbell: As a matter of fact, this is one of our own Exhibits, but at the time it was produced the letter was incomplete. The last page of it, and the signature were missing; I understand, at that time they were not available for production, and I would now like to enquire whether the balance of the letter has been found, and if so, it should be added to the Exhibit.

ALEX. M. REAPER (*for Plaintiffs*), *Examination-in-Chief*.

Mr. McKeown: It was explained to my learned friend at that time that this was one of the few letters which Lady Davis had kept, and that there was a page, evidently the final page which was not attached. Lord Shaughnessy wrote this letter, and perhaps he can tell us what is on the page. We have not been able to find this other page. We will be glad to have Lord Shaughnessy tell us whatever it is. Lady Davis' recollection is, that it was of no importance. It was
10 personal matters, and she has not been able to find it. If she finds it it will be produced.

By Mr. McKeown::

Q.—You say that this Exhibit D-9 is in the handwriting of Lord Shaughnessy?

A.—Yes.

Q.—And the letter, as you can see, is addressed to Lady Davis?

20 A.—Yes.

Q.—Did Lord Shaughnessy show you that letter before he forwarded it to Lady Davis?

A.—No.

Q.—You have read that letter?

A.—Since it has been filed.

Q.—There are a number of subjects taken up in the letter which are not of importance to the examination. I want to read you part of the letter bearing upon this Marler matter. The letter is dated
30 November 7th, 1928:

40 “ My dear Elinor. I cabled you concerning Marler. The situation is that I had a visit from him the other day, when he consulted me as to what action he could take towards Sir Mortimer Davis Incorporated, and the various Trusteeships to which he was appointed. I told him I really thought in the circumstances that he should resign since, as he was no longer interested in Sir Mortimer's affairs as an Executor, and since there was no remuneration to be received in connection with the responsibilities of Trusteeships, he might find it an added burden to act with the Executors. He agreed with me. He stated that if he was to sever his connection entirely, he would like to sell his stock and get clear out. He asked me if any value had been placed on the shares of the Davis Company, and I answered that the Auditors had placed a value of \$170 per share. He was content to accept that value. Now, that value was fixed for Succession Duty purposes, and is consequently

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

very low, and his stock is undoubtedly a bargain at that price, all of which I explained to him, but he still persisted that even though he was losing money he desired to sell, and therefore, I cabled you 'Reaper and I think that it is a very good purchase' quite apart from the fact that we get rid of Marler forever.

10 "Under one of the Trust deeds he is entitled to a remuneration of two thousand dollars per annum, and it may be fair for us to allow him a little additional to compensate for that. We will make it all back and more in the price of the shares.

"I have an undertaking from him to resign from everything if we buy his shares, and I think we should put it through without delay before he changes his mind.

"Philip Meyer and Beatrice Luskarten have sued us for the allowances which Sir Mortimer provided by Deed."

The date of the letter is November 7th, 1928.

20 Q.—Now that you have heard the letter read, does it come back to your mind that Lord Shaughnessy showed you that letter before it was mailed to Lady Davis?

A.—No, he did not show it to me before it was mailed.

Q.—What about the reference he makes to you: that you thought it was a very good purchase? Did you discuss that with Lord Shaughnessy?

A.—Yes.

Q.—Before this letter was sent?

A.—Most likely.

30 Q.—Did you also discuss with Lord Shaughnessy the idea of getting rid of Mr. Marler forever?

A.—There was not any discussion as regards that. It was simply that before Sir Mortimer's death he had practically taken Mr. Marler out of his Will, and also had sort of broken connection.

Q.—Do you suggest that Mr. Marley had been named an Executor in Wills previously made by Sir Mortimer?

A.—I think he was.

Q.—And, of course, he was not named in the final Will?

A.—No.

40 Q.—Do you know who the Executors were? Did you take his place?

A.—I do not know whose place I took. I do not think it was his.

Q.—In any event, your understanding was that Mr. Marler had been named an Executor under the previous Wills?

A.—In the previous Wills, yes.

Q.—What do you think of the accuracy of Lord Shaughnessy's statement in this letter to Lady Davis that the Succession Duties

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

were almost settled and that this should be done by the beginning of December—which meant December, 1928?

A.—I presume all he had in mind was that the preliminary returns had been made and that we would be hearing something from the Department soon. As regards the final settlement I think he was rather optimistic.

10 Q.—So the prospect on November 7th, 1928, (when this letter Exhibit D-9 was written to Lady Davis) was that the Succession Duties were nearly settled and should be done by the beginning of December, according to you?

A.—We had not had anything from the Department at that time. We expected they were making up their statement.

Q.—On November 7th, 1928, did you size up the situation that the Succession Duties were almost settled and that they would be settled by the beginning of December?

A.—No, I would not have liked to have made that claim.

20 Q.—You would not have liked to have taken the responsibility for that statement?

A.—No.

Q.—Is it true, as mentioned in this letter Exhibit D-9, that Lord Shaughnessy had discussed with you the advisability of purchasing Mr. Marler's stock at \$170.00 a share?

A.—Yes.

Q.—Before this letter was written?

A.—I think it must have been.

Q.—And, you agreed on it?

30 A.—Yes.

Q.—Which cost the Estate \$85,000 of its ready funds?

A.—That was what we paid for it.

Q.—How about this item we started on: the \$15,000 of Trustees' fees referred to in the letter Exhibit D-9? Are those the Trustees' fees we have been discussing here this morning?

A.—Yes.

Q.—The Trustees' fees under the Deeds of Donation Exhibit P-68 and P-69?

A.—Yes.

40 Q.—No others?

A.—No others, no.

Q.—Let us get this perfectly fairly to all concerned. Did Mr. Marler come forward and say: "Here I am, and I want to be paid for those Trustees' fees," or was it the suggestion of Lord Shaughnessy and yourself that you would pay him in connection with the purchase of his stock?

A.—I understand the suggestion came from him. As I say he

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

discussed it with Lord Shaughnessy, but I was not present at the interview.

Q.—Would you have considered paying the \$15,000 in connection with Trustees' fees had it not been for the purchase of the stock at that time?

A.—As far as I understand it the fees had nothing to do with the price of the stock.

10 Q.—But the two matters went through simultaneously?

A.—I could not say just how they were discussed.

Q.—Then, let me refresh your memory. The Executors gave the cheque which is filed in this record on the funds of the Estate, in favor of Mr. Marler, for \$85,000?

A.—Yes.

Q.—On December 4th, 1928?

A.—Yes.

20 Q.—And, on the same day the Incorporated Company gave a further cheque to the Hon. Mr. Marler for \$15,000?

A.—Yes.

Q.—Which, I take it, was in payment for those Trustees' fees. Is that right?

A.—Yes.

Q.—And then, as appears by your examination on discovery, by bookkeeping entries or otherwise the Incorporated Company debited the Estate with this \$15,000, and carried the item of \$15,000 into the accounts of the Estate: and there it is today?

A.—Yes.

30 Q.—And, that is what is meant by this item of \$15,000 on the statement Exhibit P-75?

A.—Yes.

Q.—I notice very striking figures next in order. On September 30th, 1929, the Estate had on hand \$130.00 in cash.

A.—That was simply petty cash on hand with some of the caretakers at Ste. Agathe and Pine Avenue.

Q.—Outside of the petty cash with the caretakers at Ste. Agathe and Pine Avenue they did not have any petty cash on hand: is that it?

40 A.—No.

Q.—They had no cash at all, outside of that?

A.—No.

Q.—The next item is made up of accrued interest, thirty-one thousand odd dollars; and insurance unexpired and taxes prepaid, thirty-six hundred odd dollars?

A.—Yes.

Q.—I think I made a mistake a little while ago when I had you

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

fix the debts at \$4,000,000. What about this item in red, revenue deficit at September 30th, 1929, \$463,910.00?

A.—That is included in the amount of \$941,649.32.

Q.—That should not be added?

A.—No.

10 Q.—Am I right in suggesting to you that the only statement available as showing in detail the direct capital assets of the Estate is the Price Waterhouse statement of August 31st, Plaintiffs' Exhibit No. 8?

A.—Yes.

Q.—That is the only statement showing the detail of the property and assets of the Estate?

A.—Yes. The September sheet just shows a slight addition to them, I think.

20 Q.—Coming back to the statement of September 30th, 1929, Exhibit P-75: the large item included in the assets is that of the investment in the shares of the Incorporated and other Companies, entered at \$8,959,186.85, out of total assets of \$9,981,084.98?

A.—Yes.

Q.—And, looking at the detail of that item as shown in the Auditor's statement of the Estate as of date August 31st, 1929, Exhibit No. 8, is it the fact that \$7,662,750.00 represented the value of 45,075 shares of the Incorporated Company at \$170.00 a share; leaving a balance of \$2,318,334.98 of assets of the Estate other than the shares of Sir Mortimer Davis, Incorporated?

A.—\$2,318,334.98, yes.

30 Q.—And of the last figure established is it also true that the Liggett & Myers shares as carried at \$108.00 represented \$1,060,560.00?

A.—Yes.

Q.—Leaving a balance of other assets of \$1,257,774.98?

A.—Yes.

Q.—And which, in turn, includes the item of \$703,500.00 for the serial notes of the Company held by the Estate?

A.—Yes, that is right. They are included.

Q.—You can say they are included?

40 A.—Yes.

Q.—Which would, therefore, boil down the residue assets of the Estate to \$554,274.98?

A.—Yes.

Q.—And of this latter sum, approximately one half or \$264,650.00, was represented in non-productive real estate?

A.—Yes.

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

Q.—Consisting principally of the Pine Avenue and Ste. Agathe properties?

A.—Yes.

By the Court:

Q.—You have stated the shares of Liggett & Myers Company
10 represented a little over \$1,000,000 of the assets of the Estate?

A.—Yes.

Q.—Is that net; or must you deduct from it whatever amount might be due to Bamberger Brothers for the carrying of those shares?

A.—It is taken up in our bank account. We had taken them from Bamberger Brothers, and paid for them by this time.

By Mr. McKeown: continuing,

20 Q.—On September 30th, 1929?

A.—Yes.

By the Court:

Q.—Do you know how much interest you paid on those shares from the time of Sir Mortimer's death until the time you paid up the difference?

30 Mr. Campbell: Your Lordship understands the amount of \$1,000,000 owed was the value of the shares at \$108.00, or at whatever they were carried.

His Lordship: Yes, I understand that.

Witness: The statement of August 31st, 1929, shows that interest on Bamberger's account to that date was \$34,362.04.

By Mr. McKeown:

40 Q.—Beginning at what date?

A.—That would be from the time of Sir Mortimer's death. On the other hand, that would be offset by the dividends which were received: the dividends up to August 31st, 1929, amounted to \$58,920.00.

Q.—Is that on the Bamberger holdings of Liggett & Myers only, or on all the Liggett & Myers stock?

ALEX. M. REAPER (*for Plaintiffs*), *Examination-in-Chief.*

A.—That is on the whole of the Bamberger Brothers' account. There was practically nothing else there.

Q.—You have just mentioned dividends amounting to \$58,920.00. Was that the dividend on the whole of the Liggett & Myers shares?

A.—Yes: all the Liggett & Myers shares.

Q.—All of which were not with Bamberger Brothers?

10 A.—Not all with Bamberger Brothers, no.

By the Court:

Q.—Were the others, which were not with Bamberger Brothers, paid for?

A.—The dividend was paid on the other 2,400. They were sold with the other shares.

Q.—Were the shares that were not with Bamberger Brothers paid in full?

20 A.—Yes.

By Mr. McKeown:

Q.—Were they under hypothecation to the Bank?

A.—No. They had been at one time. They were really at the time of Sir Mortimer's death, but when we paid off the bank balance they were free.

Q.—When was that?

30 A.—After Sir Mortimer's death. There was about \$108,000 or \$111,000 due on them at the time of Sir Mortimer's death.

Q.—When did you pay that off?

A.—Some time afterwards.

Q.—About how long afterwards?

A.—That was paid off in October, 1928.

Q.—Some six or seven months after Sir Mortimer's death?

A.—Yes.

40 Q.—But, whether the Liggett & Myers shares were being carried on margin by Bamberger Brothers or whether they had been used to be hypothecated to a Bank placed them relatively in the same position, did it not?

Witness: In what respect?

Counsel: In the respect that they were not free in the one case or in the other.

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

A.—The 2,400 shares were free after we made that payment.

Q.—Let us not talk about them. Let us talk about the interim between Sir Mortimer's death and the seven months which followed, to October. During the whole of that period those Liggett & Myers shares which were not being carried on margin by Bamberger Brothers were hypothecated to the Bank for loans?

10 A.—Yes. They had been at Sir Mortimer's death.

Q.—What would be the difference whether the money was borrowed from a broker and the shares carried on margin, or the shares hypothecated to the Bank for advances? Both would be subject to interest?

A.—There would be no change during the period they were under hypothecation.

Q.—It would be the same thing?

A.—Yes, during that period.

20 Q.—It would not make any difference whether they were with the Bank or with the brokers?

A.—No.

Q.—Except as to the rate?

A.—Except, possibly, the rate. Of course the interest would depend on the amount of the debit balance.

Q.—As far as Bamberger Brothers were concerned it is already in evidence that that account dragged along at New York rates of interest until last summer, 1929?

A.—It was cleared in August, I think.

Q.—August, 1929?

30 A.—Yes.

By the Court:

Q.—When did you receive the dividends?

A.—Quarterly.

By Mr. McKeown, continuing,

Q.—You paid the interest out of the dividends?

40 A.—The dividends were credited to our account with Bamberger Brothers. On the other shares, with the Bank, the dividends were credited by the Bank.

By the Court:

Q.—Did you give us the amount of interest that had been paid to Bamberger Brothers?

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

A.—\$34,362.04.

Mr. McKeown: I think Your Lordship understands that at the time of Sir Mortimer's death the Bamberger liability was something like \$1,300,000, and the way it was cleared up was that they sold the Victor Talking Machine shares and the Tobacco Products shares for about \$1,100,000, and cut the balance down to approximately
10 \$200,000, which remained there as a loan or a debit balance against the Liggett & Myers shares.

His Lordship: Until the end of August, 1929.

Mr. McKeown: But, that was not all the Liggett & Myer stock.

His Lordship: There were 2,400 shares hypothecated to the Bank, and redeemed in October, 1928.

20 Mr. McKeown: They were first redeemed in October, 1928. They were redeemed last month for the last time.

Witness: The shares which were held by the Bank here were redeemed in October, 1928.

By Mr. McKeown, K.C.:

Q.—Were they rehypothecated to the Bank?

30 A.—No.

Q.—Did not the Bank hold the Liggett & Myers shares when they were sold last month?

A.—Simply for safekeeping. That was mentioned in the letter we sent you.

Q.—I did not appreciate it in that way. What was the security to the Bank for the \$303,000 that was due for overdraft in the middle of last month?

40 A.—For \$215,000, 7,400 shares which came from Bamberger were hypothecated. The other was an overdraft; there was not anything special.

Q.—In the letter I asked specifically Counsel for yourself and Lord Shaughnessy to tell us the whereabouts of the 2,400 shares.

A.—And I think we did.

Q.—You said they were in the Bank?

A.—Yes.

Q.—And now you say they were not under hypothecation?

A.—The 2,400 shares were not under hypothecation.

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

Q.—I did not understand that from the letter.

A.—I think the letter clearly specified that.

10 Q.—Your letter might have clearly specified it, but I do not think the letter I received from your Counsel was quite as clear because it left me under the impression the shares had been hypothecated. In any event, I like it far better as it is, because there is all the greater reason why they should not have been sold when they were free.

Mr. Holden: I am afraid we did not do it to please my learned friend. My recollection is certainly the same as that of the witness in regard to the letter.

And it being 12.45 o'clock, the further examination of the witness is continued until 2.30 o'clock in the afternoon.

20 And further for the present deponeth saith not.

And at 2.30 o'clock in the afternoon personally came and reappeared the said witness,

ALEXANDER M. REAPER

and his evidence was continued, as follows:

30 By Mr. McKeown, K.C.:

Q.—Referring for a moment to the situation in regard to the Liggett & Myers shares. Did you give the amount of interest paid Bamberger Brothers?

A.—Yes.

Q.—What was it?

A.—\$34,362.04.

40 Q.—The Bamberger account started at about \$1,300,000 did it not?

A.—Yes.

Q.—And, you got \$1,100,000 for the Victor Talking Machine and the Tobacco Products stock, did you not?

A.—Yes.

Q.—And you sold this Victor Talking Machine stock and the Tobacco Products stock shortly after Sir Mortimer's death?

A.—Yes.

ALEX. M. REAPER (*for Plaintiffs*), Examination-in-Chief.

Q.—In May, I think?

A.—Yes.

Q.—And that left a balance of \$200,000, in round figures, due Bamberger Brothers?

A.—Yes.

Q.—And, that is what you have paid the \$34,362.04 interest on, is it not?

10 A.—Yes; on the balance of his account.

Q.—Which was something a little over \$200,000?

A.—It would have been a little higher. It was reduced a little by the dividends, and so on. It would have been a little more than that.

Q.—There is no doubt of the fact that this amount of \$34,362.04 you speak of is interest for Bamberger Brothers on the debit balance?

A.—Yes.

20 Q.—And, there is no doubt that debit balance was very little more than \$200,000?

A.—It would be a little more to begin with.

Q.—How long a period is covered by this \$34,362.04 interest?

A.—March 22nd, 1928, to August 31st, 1929.

Q.—That is, about seventeen months?

A.—About.

Q.—How does the interest work out as to rate? \$34,362.04 on a balance of some \$200,000?

A.—We would have to get the exact figure.

30 Q.—Tell it to me in round figures, and be quite generous to yourself.

Mr. Campbell: I think my learned friend is imposing a considerable burden on the witness in asking him to do this in the box. It is a matter of arithmetic, and I do not think the witness should be asked to do it in the box. If my learned friend has it worked out, he may give it to the witness and let the witness check it.

40 Mr. McKeown: If I had it worked out I would have put it to him directly.

His Lordship: Is it not about 10%?

Mr. McKeown: About 1% per month, I think.

Witness: No, I do not think it is as much as that.

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

By Mr. McKeown, K.C.:

Q.—Can you work it out?

A.—The balance due Bamberger Brothers for the Tobacco Products stock and Victor Talking Machine stock we sold was about \$237,000.00, which was gradually reduced up to the time we paid them off, when it amounted to \$215,000, or something like that. The
10 average interest, figuring on that basis, would just be a shade over 9%.

Q.—When you speak about this reduction in the original balance of \$237,000, that would be about May, 1928, would it not?

A.—May, 1928, yes.

Q.—And the \$215,000 to which it had become reduced would mean a period in August, 1929, would it not?

A.—Yes. It actually got down to \$212,000.00.

Q.—Was that what it was when it was paid off?

A.—Yes.

20 Q.—Have you the exact date?

A.—August 12th.

Q.—When you speak about this process of reduction, do you mean that the Bambergers drew the dividends on the whole 7,400 shares at the rate of 5% per annum?

A.—Yes.

Q.—And that is the reason the dividends overtook the interest on the original balance of \$237,000, and reduced it?

A.—Yes.

30 Q.—If it had not been for the dividends from the 7,400 shares carried on margin by Bamberger Brothers, we would just have the straight item of \$34,362.04 to confront us?

A.—Yes.

Q.—And that, you say, represents interest on the balance of two hundred thousand odd dollars at approximately 9% per annum?

A.—No.

40 That calculation would be right on that basis, but I notice here it is not quite the correct situation. That is the total interest paid to Bamberger Brothers from March 22nd, 1928, but I find that the Banberger Brothers' balance of \$1,348,000 was that amount with interest added until the first of May.

Q.—Six weeks?

A.—Approximately six weeks.

Q.—On the other hand, what about the dividends from the Victor Talking Machine and Tobacco Products stocks? You are not taking those into account, are you?

A.—There was one dividend, of \$6,000, that was paid.

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

Q.—On what?

A.—The Victor Talking Machine stock. It was taken up as an accounts receivable at Sir Mortimer's death, to show it was not revenue.

Q.—What about dividends on the Tobacco Products stock?

A.—There were not any.

10 Q.—None in that interim?

A.—There is one item, Tobacco Products scrip, \$805.00; that is all.

Q.—There is a dividend of \$805.00?

By Mr. Campbell:

Q.—In that interval?

A.—That was in January, 1929.

20 To get the correct rate of interest would involve calculation which would take some time to make. If you like, I can figure it out for you.

Q.—Would it be less, or more, than 9%?

A.—It would be less.

Q.—To get this clear to everybody: did not the carrying charges of those Bamberger shares at the rate of interest you had to pay Bamberger exceed absolutely the return on the shares, taken amount for amount?

30 Witness: You mean that the rate of interest was higher than the rate of dividend?

Counsel: Yes.

A.—Yes.

Q.—By from 3% to 4%, anyway?

A.—Yes, for part of the period.

40 Q.—Let us now return to the statement of the Estate as of date September 30th, 1929, Exhibit P-75. I think we agreed this morning that there were liabilities to be met by the Executors, as shown by that statement, of approximately \$4,000,000?

A.—Approximately, yes.

Q.—Which include the item of \$405,000 for legacies payable in cash, which perhaps we did not notice as we went along. The legacies are included in that amount?

A.—They are included in that amount, yes. I think in arriving at that amount you also deducted the payment which was made on Succession Duties. If you were doing that, then the Bank overdraft

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

and loan should also be eliminated, which would make a difference of two hundred thousand odd dollars.

Q.—But, we were leaving the Liggett & Myers stock in.

A.—Oh, well, if you are going to do that, it is all right.

10 Q.—Now, let us come back to the formula you gave us under which this situation was to be met. Do you mean that you proposed to obtain \$4,000,000 for the purposes of meeting the liabilities of the Estate which we have resumed together, and to do that by declaring dividends from time to time from the revenue of the Incorporated Company, while at the same time taking care of the current requirements for revenue of the Estate; and to provide for the capital requirements of the Estate from the capital assets of the Incorporated Company?

Mr. Campbell: I think this question should be divided. It is a double-barreled question, and should be divided.

20 Mr. Montgomery: It is practically a repetition of the answer of the witness.

Mr. Campbell: Then, why put it? If the question is to be put at all my submission is it should be divided into two parts. One part, as I understand it, has to deal with transactions on revenue account, and the other part has to deal with transactions on capital account. My submission is the question should be subdivided, and is not a proper question as it is.

30 By Mr. McKeown, continuing:

40 Q.—Now let us come back to the formula you gave us under which this situation was to be met. Do you mean that you proposed to obtain \$4,000,000 for the purposes of meeting the liabilities of the Estate which we have resumed together, and to do that by declaring dividends from time to time from the revenue of the Incorporated Company, while at the same time taking care of the current requirements for revenue of the Estate; and to provide for the capital requirements of the Estate from the capital assets of the Incorporated Company?

Mr. Campbell: I do not know whether the witness understands the question, but I do not. In any event, I respectfully submit the question is not a correct statement of what has been said by the witness, as I understand what he said. My other objection is it is so confused as to be misleading to the witness.

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

His Lordship: My note of the answer of the witness is this: they planned to declare dividends from time to time from the revenues of the Company. The question I had in mind to ask was how long it would take at that rate if they declared dividends out of the revenues of the company to pay off the Succession Duties, the legacies, and the interest?

10 Mr. Campbell: But, that is not quite what the witness said. Declarations of dividends out of the revenues of the Company were to be items chargeable to revenue account. He suggested the solution of the reduction of capital to take care of the items paid and to be paid chargeable to capital account.

That was the solution the witness offered in his testimony.

His Lordship: What I am interested in knowing is how would the Estate provide for the payment of the Succession Duties, legacies, and interest?
20

Mr. McKeown: And that is what I am trying to have the witness tell Your Lordship, on his formula. I do not believe at all that the days of magic are over.

Mr. Campbell: My submission is that my learned friend by his question is implying these were to be paid out of the revenues of the Company: which the witness did not say.

30 Mr. McKeown: I did not imply anything of the kind. I used the words "Provide for the capital requirements of the Estate from the capital assets of the Company." In any event, I think it might be as well to clear it up by the witness.

By Mr. McKeown, continuing,

Q.—Perhaps it will clear the matter up if you will give us the formula again, and we will all know where we are starting from.

40 A.—To declare dividends from the Incorporated Company as could be reasonably expected from the revenues of the Company to take care of the revenue requirements of the Estate, and to provide for the capital requirements of the Estate by capital distribution in the way of reduction of capital of the Incorporated Company.

Q.—Do you concede that the revenue requirements of the Estate are to be provided for from the revenue sources of the Company?

A.—Yes, to the extent that the revenue of the Company will bear them.

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

Q.—And the capital requirements of the Estate are to be provided for, according to this formula, by a distribution of capital assets of the Company. Is that it?

A.—Not exactly.

Q.—Then, if that is not it exactly, what is it? That is exactly what you said.

10 Mr. Campbell: Capital assets, or the proceeds of capital assets.

Mr. McKeown: Do not be frivolous, Mr. Campbell.

By Mr. McKeown, continuing:

Q.—The capital requirements of the Estate are to be provided for, according to this formula, by a distribution of capital assets of the Company. Is that it?

20 A.—Of the assets of the Company.

Q.—What do you mean by that: if you do not mean capital assets?

A.—It would proctically be capital assets.

Q.—It would not be practically anything else? It could not be anything else: could it?

A.—No.

Q.—According to you, what is this \$4,000,000 that you are short for the time being in the accounts of the Estate? Is it capital requirement, or revenue requirement?

30 A.—On this statement of August 31st . . .

Q.—(interrupting) Please look at the statement of September 30th, 1929, Exhibit P-27, which is the one we have been using as a basis.

A.—On September 30th, there are \$463,910.80 required to take care of revenue account.

Q.—Is there \$4,000,000 in addition to that required for capital account?

A.—No. The \$4,000,000 would be less that.

40 Mr. McKeown: That was the revenue deficit on September 30th, 1929, which, as Mr. Reaper explained this morning, would be included in the \$4,000,000 estimate which we discussed.

By Mr. McKeown, continuing:

Q.—What would that leave?

A.—\$3,536,089.20.

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

Q.—And, what would that figure represent, Capital requirement?

A.—Capital requirement, yes.

Q.—Let us start with the revenue deficit: \$463,910.80. That is the amount which we agreed a day or two ago is presently advanced to a figure in excess of \$500,000?

A.—The revenue, yes.

10 Q.—Where are you going to get the \$500,000 presently required to cover that item, out of the Incorporated Company?

Mr. Campbell: I object to the question insofar as it purports to be a reproduction of the previous testimony given by the witness. My learned friend says "Presently required." It is not presently required—the amount has, in fact, already been paid.

Mr. McKeown: That is simply rubbish.

20 Mr. Campbell: It has been paid by the Incorporated Company, and the Estate stands on the books of the Company . . .

Mr. McKeown (interrupting): This looks to me very much like instructions and assistance to the witness, who is a Defendant in this case and who is an expert and capable accountant who does not need this assistance.

30 Mr. Campbell: The witness needs no assistance, but I object to my learned friend putting his questions in a form which implies that the witness has committed himself to the position stated by my learned friend. My learned friend's reproduction of the testimony of the witness is not an accurate reproduction. If my learned friend purports to sum up what the witness has said he must sum it up correctly and accurately. The witness has explained half a dozen times that that particular item had been paid in advance, and the taking care of it was a matter of bookkeeping entries on the books of the Company.

40 Mr. McKeown: When I put a question to one of the Defendants who is a witness, my learned friend is not to tell him what the answer should be, and he has no more right to make an argument which conveys to everyone in the Courtroom, including the witness, what the suggestion is for the reply. I submit we should have an end to this sort of thing, especially when we are dealing with a witness who is competent on this subject if he is competent on anything, and I ask my learned friend to refrain in future from his

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

interruptions of the nature we have had to put up with. Every time the witness comes to a certain point, my learned friend comes to the rescue.

Mr. Campbell: I will make my objections when I think the questions are objectionable, and I think they are objectionable when my learned friend endeavors to entrap a perfectly honest witness
10 into what he thinks will be a satisfactory answer to him. If my learned friend purports to reproduce the testimony of the witness, my submission is he must reproduce it correctly.

Mr. McKeown: And I have reproduced it correctly.

Mr. Campbell: My submission is you did no such thing. The witness has repeatedly told you that the amount had already been paid.

20 Mr. McKeown: That is just a jeu de mot: pay it by lending a man, and the man has to pay it back.

Mr. Campbell: By crediting his account when you declare your dividend?

Mr. McKeown: It reminds me of an old story that was current in the Townships, of a man giving his note and saying: "Thank God, that debt is paid."

30 Mr. Campbell: If an amount stands at debit on the books, and if a dividend of 10% were declared by the Company, the 10% dividend credited against the amounts already advanced would wipe them out to that extent. It is not a matter of being presently required.

His Lordship: How much would that give to the first Lady Davis?

40 Mr. Campbell: The witness has said it would take care only of the existing debit balance against the Executors on the revenue account. He did not pretend it was going to provide any additional surplus revenue. He never suggested that. He has not dealt with that question at all.

My point is that the question using the words: "Presently required" implies that the witness had stated to my learned friend

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

that this amount of \$463,000 had to be presently provided. As far as providing means payment, it has already been paid.

10 His Lordship: The question I am asking myself is how is it it has not been provided for before. There are over \$1,000,000 Succession Duties, which are paying interest at the rate of \$200,000. There are legacies which are paying interest at a high rate. What is being done to meet those liabilities? That is what I am interested in knowing.

Mr. Campbell: And, that is a perfectly proper subject of investigation. What I object to is that my learned friend implies by his question that the witness has put himself in a particular position which the witness has not done.

His Lordship: If he is misinterpreted he will say so.

20 Mr. Campbell: But it is so unfair to the witness to try to entrap him into a position which is not accurate in connection with his testimony.

His Lordship: A man who can be entrusted with an Estate of \$25,000,000 or so must not be absolutely defenceless.

Mr. Campbell: And I venture to say the witness has shown he is not. If my learned friend will not make indirect attacks.

30 Mr. McKeown: I will make as direct an attack as I know how, and at any time, and on any person as seems to me justified.

By Mr. McKeown, continuing:

Q.—Where are you going to get the \$500,000 presently required to cover that item out of the Incorporated Company?

40 A.—It was intended a dividend would be declared to cover that, which, in turn, when credited on the Estate books would wipe out that deficit on revenue account and at the same time reduce the liability to the Incorporated Company by the same amount.

Q.—And, that process would have the very convenient adjunct of not transferring any real funds to the Executors?

A.—The real funds have been advanced already.

Q.—At 6% per annum?

A.—Yes.

Q.—Compounded monthly?

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

A.—No; I think every six months.

Q.—So that we may understand each other perfectly; looking at the statement of the Estate as of September 30th, 1929, you are now speaking of the item of \$941,649.32?

A.—Yes.

Q.—And of that amount upwards of half a million dollars has been used by the Executors towards capital expenditure in the
10 Estate. Is that right?

A.—The difference between the \$941,649.32 and the \$463,910.80, if you are referring to that date.

Q.—Did we not agree the other day that we would have to add to the \$941,649.32 the accrued balance of one hundred and sixty-two thousand odd dollars existing at Sir Mortimer's death?

A.—No. That is only the amount received. That would add to the amount received: it does not add to the liability.

Q.—In any event, approximately one-half of this advance of
20 \$941,649.32 as it exists at the present moment has been applied by the Executors to the capital requirements of the Estate, has it not?

A.—Yes.

Q.—Of course, up to the present we are dealing entirely with revenue to date. Do you agree with me on that?

A.—Entirely with revenue to date, yes. I presume you are referring to this dividend distribution.

Q.—Let us leave the future revenue for a moment and go to the actual condition of capital requirements of the Estate, which you have placed at \$3,526,089.20. Where will that come from in
30 connection with the Incorporated Company?

A.—In the first place, I think we have to take into consideration what we have left in the Estate.

Q.—What have you left in the Estate?

A.—There are your Liggett & Myers shares which have not been taken into consideration here in full.

Q.—But, the Estate parted with them about the 13th of February last—I hope that was not an unlucky day. What do you mean by saying they must be taken into account?

A.—In arriving at your figure you only take off a reduction of
40 \$600,000 from the liabilities, whereas the Liggett & Myers stock reduced it \$1,040,000, without dividend. The dividend was an additional \$19,000.

Q.—What is the \$4,000,000 made up of, according to your own proposal—looking at the statement of September 30th, 1929?

A.—I take it, the total of the Liability side left a surplus—less \$600,000. The total of the liability side less the surplus shown.

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

Q.—On the formula you have just given you start with a total of \$9,981,084.98 on the liability side. Is that right?

A.—Yes.

Q.—And you deduct the surplus shown, of \$5,323,049.70 and arrive at the figures \$4,658,035.28. Is that correct?

A.—Yes, sir.

Q.—Tell us to what extent those figures should be modified?

10 A.—If you are going to figure the Liggett & Myers stock as against this, you can leave them as they are; but if you are going to make deduction to take care of the payment of the Succession Duties, we have to make that adjustment.

Q.—The Liggett & Myers shares have been sold?

A.—Yes.

Q.—So, we may as well deal with them as being out of the picture, and deal with something real.

20 A.—But, you have to figure on what they took care of in those liabilities: so if you are going to treat that amount of liabilities you might as well treat the whole value of the Liggett & Myers stock.

Q.—Looking at the statement of September 30th, 1929, what items are coming out as a result of the sale of the Liggett & Myers stock?

A.—The Bank loan, \$215,000 has been paid off; also the Bank overdraft of \$12,011. An additional amount besides that was also paid out of it.

Q.—That will not affect this statement?

30 A.—No. Then \$600,000 paid to the Succession Duties Department.

Q.—Anything else?

A.—And there is about \$140,000 left of it in the Bank.

Q.—I take it the item in regard to the Succession Duties is not accurate according to the claim of the Government, is it?

Witness: The \$1,300,000?

Counsel: Yes.

40 A.—That is not the exact amount.

Q.—The claim is more than that?

A.—Yes, but there are other counterclaims against that.

Q.—Be that as it may, in the meantime the claim of the Government is more than \$1,300,000?

A.—It is.

Q.—How much is it?

A.—About \$1,340,000, I think—the total claim. There are a

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

lot of adjustments to which they have agreed, to a considerable amount.

Q.—On the next item, for interest, \$77,000: you know you paid something over \$100,000 for interest?

A.—We have, yes.

Q.—That would make an additional item of \$22,000, in round figures?

10 A.—Yes.

Q.—Together, \$40,000 additional on the Succession Duties and \$22,000 of interest would be an item of \$62,000, which would have to be deducted from this other item you have given that would have to be eliminated by dropping the Liggett & Myers stock?

A.—Yes, but \$140,000 would have to be—

Q.—Supposing we deduct \$22,000 from the \$142,000, how would that suit?

A.—What \$142,000?

Q.—You say there is \$140,000 in the Bank?

20 A.—Yes.

Q.—If you took for the purpose of this inquiry only \$62,000 representing the increase claimed on Succession Duties, and the interest on the Succession Duties, but deducting that from \$140,000 in the Bank, that would leave an item of \$78,000 for further consideration?

A.—Yes.

30 Q.—Having regard to that item last established at \$78,000, the Bank loan at \$215,000, the Bank overdraft \$12,011.39, and put in the full payment of \$600,000 on Succession Duties, what amount would you arrive at?

A.—If we are going to work up a bit to date that way, we should add on another amount.

Q.—Fix these amounts before we go into any new fields.

A.—The total of those means, \$965,011. I have dropped the cents.

Q.—What are the items you have entered?

A.—\$215,000, \$12,011, \$600,000 and \$78,000.

Q.—I make it \$905,011.

40 A.—You are right. Also, if you are going to take in these figures that way, I think, in adjusting Liggett and Myers on the plan you have there, we have really taken care of additional revenue during that period. In other words, instead of \$12,000 for an overdraft to the Bank, we actually paid \$88,000; the additional being represented in additional revenue.

Q.—Against additional revenue expenditure at the same time accrued?

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

A.—Yes.

Q.—You mean the annuities particularly?

A.—On that revenue account.

Q.—And that \$88,000 means nothing more than the ever accruing annuities under the will?

A.—Yes, but it means they are so much closer paid up to date.

10 Q.—Leaving those figures out of the amount we have agreed on, \$905,011.39, is not the next thing to be done to subtract those from the figures which you gave of \$4,638,035.28, being the balance on the liability side after deducting the surplus as shown on the statement of the 30th of September?

A.—Do you want the balance?

A.—Yes.

A.—\$3,753,024.28.

20 Q.—That is to say, looking at the statement September 30th, 1929, Plaintiff's Exhibit P-75, there is a sum of approximately \$3,753,024, to be provided for from the capital assets of the Incorporated Company. Is that right, according to your formula?

A.—No, we have not deducted here—there is the revenue expenses here which have to be deducted from that.

Q.—What revenue expenses?

A.—This revenue deficit.

Q.—The revenue deficit?

A.—Yes.

Q.—If you are going to take the revenue deficit—what are the revenue sources?

30 A.—If a dividend was declared to take care of this amount, \$463,910.80, the revenue deficit, it would reduce the amount of the total by that amount.

Q.—How much should you take off?

A.—If we take off the \$463,000 plus the difference in the Bank loan, \$73,000—

Q.—We will take off the \$463,910.80, being the revenue deficit. What will that establish for us?

A.—\$3,289,113.48.

40 Q.—That is the balance you will arrive at for so-called capital requirements?

A.—Yes.

Q.—I find that is quite right. Now, can you agree with me that that sum has got to be found and provided for from the capital assets of the Incorporated Company being the capital requirements of the Estate?

A.—I think you still have notes of Sir Mortimer Davis Incorporated for \$703,500.

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

Q.—I am not asking you to indicate to me assets which exist. I know about Pine Avenue; I know of the notes which are not due for 20 years. I asked you to establish with me the figures of the capital requirement of the Estate which you said you were going to pay off with the capital distribution of the Incorporated Company.

A.—We did not say we were going to take care of everything with the capital of the Incorporated Company.

10 Q.—We have come to the point concerning \$3,289,113, capital requirement there in the Estate at the present time?

A.—Yes.

Q.—I ask you to take that point although it may cross your own formula. Where are you going to get the money to pay that sum of money and discharge the liabilities of the Estate, what your plan is at present to get it? Never mind the detail or particular; give us the formula. Give us the plan.

20 A.—There were still in the assets of the Estate \$703,500 worth of notes of the Incorporated Company; it also held collateral, some Royal Bank stock, some \$60,000, increase of a capital distribution from the Incorporated Company; the balance of the advances would have been wiped out. There would not have to be any money changed there.

Q.—What is that item in amount? What is that amount?

A.—About \$477,000. It is cash in the Incorporated Company of over \$1,250,000, I think.

Q.—What statements are you looking at?

A.—December 31st.

30 Q.—Never mind December 31st.

A.—You have taken other figures. You should take these too.

Q.—I don't object.

A.—December 31st.

By Mr. Campbell, K.C.:

Q.—That is the Company statement?

A.—Yes.

Q.—That is including the call loans?

40 A.—Yes, cash and call loans.

Mr. McKeown, K.C.: Take a seat, Mr. Campbell. We are going to give you a splendid opportunity to be heard.

Mr. Campbell, K.C.: We will make that P-52. It has not been marked, please.

ALEX. M. REAPER (*for Plaintiffs*), *Examination-in-Chief.*

By Mr. McKeown, K.C.:

Q.—Anything else?

A.—Well, we have, if we wish to use it, about \$400,000 worth of Royal Bank of Canada stock.

A.—Yes.

10 A.—Besides some other smaller things, in addition to our Bank credit; that is without touching anything in the way of any additional shares.

Q.—Let us see about the real things. We have got down to the Royal Bank, \$400,000. What is after that?

A.—I said there was—there might be some smaller items.

Q.—Might be?

A.—There are.

Q.—Well, what are they? What do they amount to?

A.—There is for instance, Anglo-Scottish Amalgamated.

20 Q.—How much is that down for, and what is it?

A.—\$23,630.

Q.—What is that, Mr. Reaper, exactly?

A.—That is an English company.

Q.—What kind of a company?

A.—Trust company, I think.

By Mr. Campbell, K.C.:

Q.—Investment trust?

30 A.—Investment company. There is the Crown Trust Company stock, \$23,000 book value. There is the Imperial Tobacco Company stock.

By Mr. McKeown, K.C.:

Q.—How much?

A.—It has a book value of \$24,300, but I think it would have a market value of \$50,000.

Q.—Is there a market for it?

40 A.—Oh, yes; Imperial Tobacco Company.

By the Court:

Q.—What is the name of the company?

A.—Imperial Tobacco Company.

Q.—It is entered as how much?

A.—\$24,000 but you could get \$50,000 for it.

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

By Mr. McKeown, K.C.:

Q.—What else?

A.—There is Harbens Limited. It has a book value of \$36,188.

Q.—Yes? What else? Anything else?

A.—I think I have given you the wrong figure for that. I think I have given you the wrong figure there. The figure for the
10 last one should be \$24,333.

Q.—Harbens?

A.—Yes.

Q.—\$24,333?

A.—Yes.

Q.—Yes? Anything else around there, in the Miscellaneous Department?

A.—That is outside the Alcohol stock.

Q.—There is the value of these properties when sold, and so on?

A.—There is a value of the properties and so on when sold, Ste.
20 Agathe and Montreal properties.

Q.—Let us stick for the time being to the assets of the Incorporated Company.

A.—Yes.

Q.—We will make the different amounts as you have been giving them to us. Let us review them together and see what they put up. First of all, we are looking for the sum of \$3,289,113 coming to the Estate out of the assets of the Incorporated Company?

A.—And the Estate.

Q.—And the Estate; quite so. We will have to take those in a couple of stages, I guess.

A.—Yes.

Q.—The first item is the Incorporated Company's notes, \$703,500?

A.—Yes.

Q.—Royal Bank stock, approximately \$60,000; those two together would give \$763,500. We will leave those figures for the moment. Then you go into the Incorporated Company's assets and you first speak of the balance of the present loan?

A.—Yes.
40

Q.—Remaining after deducting the revenue deficit of some \$434,000. Can you fit the item there for which you take credit, \$477,000, in round figures, \$477,739?

A.—Yes.

Q.—The next item you say is Cash, Incorporated Company, about \$1,250,000?

A.—Yes.

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

Q.—Then about \$400,000, the value of the Royal Bank stock held by the Incorporated Company?

A.—Yes.

Q.—How much do these items put up, the last four?

A.—The last four only or—

Q.—You have also mentioned the Anglo-Scottish, \$23,630; the Crown Trust, \$23,000; the Imperial Tobacco Company, \$50,000?

10 A.—Yes.

By Mr. Campbell, K.C.:

Q.—Did you put the Crown Trust in at \$23,000?

A.—I said that was the market. I think it is worth more than that today.

Mr. Keown, K.C.: Keep a note of it for cross-examination; otherwise, you won't have anything to cross-examine him about.

20

By Mr. McKeown, K.C.:

Q. Harbens Limited, \$24,333?

A.—Yes.

Q.—Is that the book value?

A.—That is the book value of that, yes.

Q.—What is the market value of it?

A.—I think it should be worth that. It is an English company.

30

By the Court:

Q.—You spoke of \$30,000?

A.—That was a mistake.

By Mr. McKeown, K.C.:

Q.—Have you footed up those items beginning with the item of \$447,739? What do they amount to?

40 A.—Beginning with \$447,739? \$2,218,702.

Q.—Before we begin to put these two stages together, direct assets of the Estate which you have indicated, and the specific assets of the Incorporated Company, the Estate, in the event of a distribution, would not receive 100% of the items going to make up your figures, \$2,218,702? Do you realize that?

A.—Yes.

Q.—Assuming Lord Shaughnessy's position is sound in law and

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

in every other way under the gift in question, there would have to be 10% taken off that amount, which would not reach the Estate, that is for Waddell's stock and the stock claimed by Lord Shaughnessy, so we will shrink that right away \$221,870.

A.—Yes, \$1,996,632.

10 Q.—Let us suppose we add together the indicated assets of the Estate, \$763,500 and the reduced figures, being 90% of the indicated assets of the Incorporated Company, \$1,996,632, we would arrive at the figure \$2,760,132.

A.—That first figure, \$2,218,702 should be \$2,248,702. That would make that figure of \$1,996,000 \$2,028,032.

Q.—I want after the 10% off.

A.—\$2,023,832.

20 Q.—But adding to that figure the figures which you have just given us for the direct assets of the Estate, \$763,500, would give us the gross total of the amount, \$2,787,332 with which to meet the capital requirement of the Estate at \$3,289,113?

A.—Yes, that is without taking any consideration of Alcohol shares.

Q.—It would leave a deficit on your own figures as given here this afternoon of \$501,781?

A.—Yes, to be provided for otherwise.

30 Q.—That is to say, if 100% of the expectations of such a plan as this could be realized, you would still be short in the capital requirement a sum of over \$500,000. Let us look at what these items are, how they are made up: take the first item in the assets of the Estate, \$703,500, those are the serial notes of the Incorporated Company, 20 years serial six per cent. notes, are they?

A.—Yes.

Q.—And which have 10 years to run?

A.—Yes.

Q.—Not quoted or listed anywhere?

A.—No.

Q.—A close corporation?

A.—Yes.

40 Q.—Not secured by any hypothec or mortgage or transfer of assets of the Incorporated Company?

A.—No, not specially, no.

Q.—Existing as an indebtedness *pari passu* with every other claim against the Incorporated Company?

A.—Yes.

Q.—No Trust Deed?

A.—No Trust Deed, no; I don't think so.

Q.—These are the notes which belong to the series which, under

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

the administration of Lord Shaughnessy and yourself of that Company, are already \$140,000 in arrears of the redemption requirement under the bylaw?

A.—Still \$140,000 has to be paid on it.

Q.—They are the same notes upon which, in connection with the Davis Trust Fund, so-called, no interest is being paid by the Company and is being accumulated and piled up, and amounts at the present time to \$332,296.35 as of date December 31, 1927, as shown by Exhibit P-52?

A.—Yes.

Q.—Now, do you know of any market for those notes at the present time, ready available market, where they can be melted and cashed speedily to meet pressing liabilities?

A.—No, I do not know that there is any special market for them unless they can be used against one of the Trust Deeds that have been issued.

20 By Mr. Campbell, K.C.:

Q.—Which Trust Deed?

Mr. McKeown, K.C.: Pray take a note of that, Mr. Campbell.

By Mr. McKeown, K.C.:

Q.—Show us if you please, in any statement you have where this Company has got \$1,250,000 in cash?

A.—There is the statement here, P-52.

Q.—That statement, December 31, 1929. That is Exhibit P-52?

A.—That is Exhibit P-52, yes.

Q.—That shows the cash and interest accrued at \$396,836.66.

Is that right?

A.—Yes.

Q.—Don't you notice you are taking that into account as though it belonged to the capital, for the purpose of the figures we have under discussion. Where did that cash come from?

40 A.—I have treated it as cash.

Q.—Where did it come from and where is it attributable in the accounts of the Incorporated Company?

A.—It would be general funds.

Q.—I know, but don't let us be so general. We want to be more particular about this thing. Did it not come from dividends of Alcohol?

A.—Partly.

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

Q.—Where else did it come from, if it did not come from dividends of Alcohol stock?

A.—It would come from other sources.

Q.—Is it not the fact, Mr. Reaper, that insofar as that item of cash entered at \$396,836.66 in the statement of the Incorporated Company as at December 31st, 1929, Exhibit P-52 came, if not for the whole, for enormously the largest part from revenue sources of the Company?

A.—\$396,000?

Q.—Yes.

A.—Not all of it, no. A considerable part, I think, came from other sources in that period.

Q.—What were the sources?

A.—There was an old claim collected during that interim.

Q.—In that interim an old claim was collected?

A.—Yes.

Q.—What was that?

A.—It is shown on the last sheet, some \$300,000 odd.

Q.—That Mason Valley?

A.—Yes. I think possibly we should have got it if a dividend had been declared. As I have stated, I took credit for the cash dividend from revenue requirement of the Estate, which I have figured for the Estate. This would have taken a dividend of probably \$500,000. That would have left a surplus amount as at that period of \$600,000.

Q.—Let us speak of Mason Valley. Tell us what has happened there, because outside of seeing some reference in the statement we have seen nothing about it.

A.—This was an old claim against Mason Valley for which we held certain stock as collateral; they paid it during this period and it was written off; it was collected.

Q.—Tell us all about all that good fortune. That Mason Valley stock was held by the Incorporated Company?

A.—Yes.

Q.—As a purchase or collateral? As what?

A.—It was created as collateral against the account which had been written off.

Q.—Was it a claim against a concern called Dominion Reduction Company?

A.—It was partly in connection with that. It was more in connection with Mason Valley.

Mr. Campbell, K.C.: I did not get the amount in Mason Valley.

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

The witness: \$360,000 in all.

By Mr. McKeown, K.C.:

Q.—In the statement of the Incorporated Company prepared by the auditors as of date August 31st, 1929, Exhibit Number 9, and the sub-Exhibit "C"—is that Mason Valley stock shown there as an
10 asset of the Incorporated Company?

A.—No. It was treated in here as a collateral against some advances.

Q.—Is not the loan to the Dominion Reduction Company secured by Mason Valley?

A.—Yes.

Q.—What were you carrying the loan at, book value?

A.—\$300,000.

Q.—The loan formerly had been very much larger, had it not?

20 A.—It had been, yes.

Q.—It was a matter of having written it down to these figures, \$300,000 as of date August 31st, 1929?

A.—Yes.

Q.—You had this large block of stock, \$177,000?

A.—Yes.

Q.—5,228 shares?

A.—Yes.

Q.—Of what?

A.—Mason Valley Mines Company.

30 Q.—Of a par value of what?

A.—Five dollars per share; 10 shares of the Steindler Holding Company.

Q.—What do I understand this transaction is, which appears in the December, 1929, statement, in connection with Mason Valley?

A.—It really is that this company was liquidated and paid two dollars per share on this stock.

Q.—That is to say, the Incorporated Company has liquidated the collateral held on the Dominion Reduction Company loan and has realized two dollars per share on the Mason Valley stock?

40 A.—Yes.

Q.—And the gross proceeds, I suppose, the Incorporated Company is entitled to retain, because the loan was much larger than you were carrying?

A.—Yes.

Q.—Did you have any additional stock in addition to that carried by the Estate?

A.—We have 5,228 shares, I think.

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

Q.—This Mason Valley stock shows on an Exhibit, Sub-Exhibit "C," at how much?

A.—\$5,228. It is one dollar per share. We got \$2.00 per share.

Q.—You cleaned out the whole of the Mason Valley stock, as well as what was held by the Estate in ownership as \$5,000 and \$177,000 held as collateral to the Reduction Company's loan?

A.—Yes.

10 Q.—You got two dollars a share for it?

A.—Yes.

Q.—Under what date?

A.—I don't know what date. It is in the accounting period. It was on October 19th, 1929.

Q.—That cleans up the Mason Valley stock?

A.—Yes.

Q.—Did you get any further collateral for the original loan of the Reduction Company?

20 A.—We have ten shares of D. M. Steindler Holding Company.

Q.—That does not sound very much.

A.—It is the total capital stock of the company.

Q.—What is that corporation, if we might pause to inquire?

A.—That is an American corporation which were holding certain securities in some properties here, and they have been carried on to see what could be realized from them. In other words, there was no desire to liquidate them quickly. We carried them on to see if we could not get better results.

30 Q.—How is it now being carried in the books? Have you wiped out the whole of the Dominion Reduction loan on the other side?

A.—No, that Dominion Reduction loan is still carried. There is the collateral of the Steindler Holding Company stock which, probably through time, ought to realize the amount of that loan or very close to it.

Q.—The amount of what loan?

A.—The Dominion Reduction Company.

Q.—I thought this Mason Valley transaction—the collateral rather wiped out the \$300,000 loan?

40 A.—No. That was th collateral, but, as you commented, that loan had originally been higher, and this \$177,000 really applied to the part that had been written off.

Q.—So you took the proceeds of the Mason Valley stock into your accounts without having wiped out the preceding existing loan fixed at \$300,000?

A.—That has not been finally adjusted yet.

Q.—So you got the benefit of the whole of the gross proceeds, the whole of the Mason Valley stock. Is that right?

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

A.—Yes.

Q.—On the other side of the ledger, the loan still continues and stands at \$300,000?

A.—Yes. There has not been any adjustment made of it yet. There is still considerable collateral held against the loan.

10 By the Court:

Q.—Enough to cover the loan?

A.—There may be some slight adjustment. We have not just the exact figures.

Q.—Interest?

A.—It does not carry interest. It is all depending on what we can get out of this collateral.

By Mr. McKeown, K.C.:

20 Q.—Originally what was the amount of the loan?

A.—I think \$826,000 was the original amount of that loan.

Q.—After a certain time you got tired writing up interest on it and wrote it down to the present figure, \$300,000, but did not charge interest thereafter?

A.—Interest has been simply taken as a cross-entry to keep track of it. That is all.

30 Q.—Tell us, equally for the purposes of this inquiry in this connection, how much have you received in dividends on Alcohol since Sir Mortimer died? Has it been a flat even dividend or has it varied?

A.—It has varied. They pay \$1.52 per annum; 38 cents per quarter. In January, 1929, they paid an extra dividend of 25 cents, which carried it up to \$1.79, which would only come one quarter.

Q.—A bonus of 25 cents?

A.—A bonus of 25 cents.

Q.—The regular dividend is \$1.52 per share?

A.—Yes, 38 cents per share per quarter.

40 Q.—And that has been a constant dividend since Sir Mortimer died?

A.—Yes.

Q.—It amounts, in round figures, altogether with the bonus to how much? How much money has come into the coffers of the Incorporated Company from Alcohol dividends since March 22nd, 1928, in round figures? You have had seven dividends, have you not?

A.—Approximately \$1,590,000.

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

Q.—\$1,590,000 has been received for Alcohol dividends since Sir Mortimer died. Would that cover eight regular dividends plus the bonus?

A.—Eight, yes. I added the eighth on.

By the Court:

10 Q.—When is the next dividend due?

A.—April.

Mr. McKeown, K.C.: That is quite a question, My Lord.

Whereupon an adjournment was taken until 10.30 A.M., Tuesday, March 11th, 1930.

20

30

40

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

And on this eleventh day of March, in the year of Our Lord one thousand nine hundred and thirty, personally came and reappeared the said witness,

ALEXANDER M. REAPER,

10 and his examination was continued as follows:

By Mr. McKeown, K.C.:

Q.—At the point from which we digressed to the matter of the Mason Valley shares we were discussing the item which you gave us of cash in the Incorporated Company, \$1,250,000, and in particular the sources from which came the sum of \$396,836.66 entered as cash and interest accrued in the statement of the Company of December 31st, 1929, Exhibit P-52. From that point we have seen
20 the amount which came in from the Mason Valley transaction, about \$360,000; and your attention has been drawn to the further fact that dividends accrued of \$1,590,000 have been received by the Incorporated Company from the Alcohol shares since Sir Mortimer's death?

A.—Yes.

Q.—Let us keep in mind further that the compilation which you gave us of capital assets of the Company realizable to meet the capital requirements of the Estate must exclude, I take it, moneys
30 from revenue sources of the Company. Do you agreed with that?

A.—Not altogether, no.

Q.—At least moneys from revenue sources since the death of Sir Mortimer Davis?

A.—Only to a certain extent.

Q.—I thought we had agreed that those moneys from revenue sources of the Company were open only for revenue requirements of the Estate? Did we not agreed on that?

A.—No, I think not.

Q.—What have you to say on that proposition?

A.—I think the Company was entitled to retain certain reserves
40 on revenue account. It was not expected their total revenue should be paid out in any one year.

Q.—Subject to that restriction, do you agree with the first formula, that the capital requirements of the Estate must be provided for from capital assets of the Company?

A.—I think they would have to be in the Company funds in

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

the way of surplus revenue, not to be used by the Company for whatever purposes they saw fit.

Q.—Do you mean prior to as well as after the death of Sir Mortimer?

A.—At any time, yes.

Q.—As a matter of fact have you not under the direction of your auditors divided the surplus earnings of the Company from a date approximating the death of Sir Mortimer Davis?

A.—Yes.

Q.—Do you suggest that the amount which has been set aside as being earnings of the Company since Sir Mortimer's death could be properly used to pay the capital indebtedness of his Estate at the time of his death?

A.—It could be used by the Company for capital disbursements.

Q.—Capital disbursements of what? Of the Estate?

A.—Of the Company; which they could turn over as a capital payment to the Estate.

Q.—Do you want to be understood as suggesting that a proper course would be to take the earnings of that Company since Sir Mortimer died and turn it around to release capital assets from the Incorporated Company to pay the capital debts of the Estate due at the time of Sir Mortimer's death?

A.—To a certain point. To the amount of such reserve as we considered advisable to carry and until such time as other assets could be realized upon.

Q.—You suggest that until other assets could be realized upon that the revenues and earnings of the Company since Sir Mortimer's death should be released by way of capital distribution to pay the debts of Sir Mortimer at the time of his death?

A.—Yes, to the extent of those revenues over dividends.

Q.—In other words, borrow from the revenues to be released as capital assets of the Company?

A.—I do not know that it would be just borrowing. It would be using the general funds.

Q.—For the purpose of establishing and maintaining your figure of cash at \$1,250,000 I presume you are prepared to resort to this process, if necessary, of using the revenues to make up that capital item of \$1,250,000?

Mr. Campbell: I do not think the witness has spoken of that particular item as being a capital item. He was speaking about the available cash resources of the Company.

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

Mr. Montgomery: Is this an objection, or an argument, or a little coaching of the witness?

Mr. Campbell: I am objecting to the question.

His Lordship: It serves both purposes.

10 Mr. McKeown: If it fails as an objection, it will avail for coaching.

Mr. Campbell: My objection is my learned friend is purporting to reproduce a previous answer of the witness, and is doing it in a way that is inaccurate and unfair to the witness; and I, therefore, object to the question.

20 Mr. McKeown: Yesterday the witness gave us certain figures representing items of capital assets of the Company which he was going to melt down to meet the capital liabilities of the Estate; and he is left half a million dollars short. I am dealing with the items *seriatim*. We have dealt with the notes of the Company, \$700,000, and we have shown why they would not melt very fast. The Royal Bank stock was passed over as being a sound proposition. Then we came to this item of cash, which he said the Incorporated Company had available for a particular purpose, and I just want to know if it was made up of the capital assets which could be released to pay off capital debts of the Estate. The witness mentioned the amount
30 of cash as \$1,250,000. We started to discuss how much of this was real cash—because part of it is not cash at all as yet. We are speaking about what apparently is the real cash, and we want to find out whether it is a capital asset, or whether it is a revenue asset, or whether it is some kind of hybrid between the two. He has given us the new idea that if he did not have the capital asset necessary he would borrow the revenue and use it for capital. I asked whether to maintain or establish his figure of \$1,250,000, which he says was cash, he is prepared to resort to the expedient of using the revenue to implement capital requirements as to that item.

40 I submit the question is perfectly fair, particularly to the man who worked out this plan.

Mr. Campbell: My objection is to the question implying that the witness said this \$1,250,000 (which, as a matter of fact, is nearly \$30,000 less than the item shown on the statement to which my learned friend is referring) was a capital asset of the Company. The witness said no such thing, as I understand his testimony. It is an

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

available resource of the Company, but Mr. Reaper did not say it was necessarily a capital asset.

My objection is as to the way in which my learned friend puts his question. He is implying by his question that the witness has taken a position which, as I understand his testimony, he has not so far taken. Mr. Reaper referred to the sum of \$1,250,000 as an available resource of the Company; whether it is capital or whether
10 it is revenue will be shown by the books of the Company. The Company did not keep separate bank accounts and did not keep separate books for these matters; and I am objecting to the question because of the confusion which will result from its form. My objection is also based on the fact that the question inaccurately reproduces the testimony of the witness.

His Lordship: The question might give rise to confusion in the minds of persons not expert in accounting, but I do not think there
20 is any danger of it causing confusion in the mind of an expert like Mr. Reaper. What might be obscure to one who is not an accountant may be perfectly clear to the witness; just as a proposition of law which may be a very simple matter to a lawyer may be a complicated matter to someone else.

Mr. Campbell: But, that does not meet my objection that my learned friend by the wording of his question may entrap the witness into a position which does not result from the previous testimony he has given. If my learned friend purports to reproduce the previous
30 testimony of the witness and will do so fairly, I have no objection. If he purports to reproduce the testimony and misconstrues it, then I think the question is objectionable.

His Lordship: I think the witness can take care of himself. If there is anything inaccurate in the premises of the question Mr. Reaper will say so. If the premises are wrong, the witness will say so. The question is allowed.

Mr. Campbell, K.C., of Counsel for defendants, respectfully
40 excepts to the ruling of the Court.

By Mr. McKeown (continuing):

Q.—For the purpose of establishing and maintaining your figure of cash at \$1,250,000 I presume you are prepared to resort to this process, if necessary, of using the revenues to make up that capital item of \$1,250,000?

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

A.—Yes; it was intended in making those figures that the balance of revenue over what would have been declared in dividends to take of the revenue deficit of the Estate would have been used for that purpose.

Q.—When you fixed this amount at \$1,250,000 what you intended to mean was, I take it, that there was \$882,649.84 or thereabouts in the way of call loans, and the balance of the item is cash
10 in the Bank at the present time?

A.—Cash at the Bank at that time, yes. We were speaking of December 31st.

Q.—But, I am not speaking of December 31st. You gave those items which I thought were round figures as applicable to the present time, because I had asked you what was your plan to unravel this entanglement.

A.—We were using the statements we had available, and we took the figures as at that period.

Q.—You may have it either way. I am not particularly interested what date it is. Will you tell us whether this item of \$1,-
20 250,000 cash means now, or on December 31st, 1929? Take your choice.

A.—It means on December 31st, 1929.

Q.—The balance in the Bank on December 31st was \$396,836.65. As a matter of pure curiosity on my part what is the balance in the Bank at the present time?

A.—Slightly over \$1,000,000 today, I think. Over \$1,000,000.

30 By Mr. Campbell:

Q.—Cash in Bank?

A.—Cash in Bank.

By Mr. McKeown (continuing):

Q.—As contrasted with this figure of \$396,836.65 cash in Bank on that date?

A.—Yes. The call loans have been changed slightly.

40 Q.—We will not confuse your testimony with the call loans for the time being, because we are going to have a special chapter for them. For the moment we will just deal with the question of cash. Perhaps it would not be a bad idea to clear up things as we go along, and with that in view will you please tell me how much has gone into the Bank account for call loans since December 31st?

A.—\$400,000.00.

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

Q.—As a matter of curiosity, on what date was this done, if it was all done at the same time?

A.—There were two dates.

Q.—What were they?

Witness: Do you want the exact dates?

10 Counsel: Approximately.

Mr. Campbell: In order that we may preserve our rights, I renew my objection to any evidence of facts which may have happened since the service of this Action, January 18th, 1930.

His Lordship: The witness is simply going to give the dates.

20 Mr. Campbell: And I am simply preserving my rights. If the facts the witness proposes to testify to now happened since January 18th, 1930, I submit they are facts upon which evidence cannot be made. I take it the evidence will be admitted under reserve of my objection to its relevancy.

His Lordship: It certainly will not form the basis of my judgment.

Mr. Campbell: Quite so. The Action must be good or bad when taken.

30 Mr. McKeown: In the light of subsequent events, to some extent.

By Mr. McKeown (continuing):

Q.—Will you give me the dates, please?

A.—I think the first payment, \$150,000, was in February; and the \$250,000 about the 6th of March, I think.

Q.—The \$250,000 was paid on March 6th?

40 A.—About March 6th, yes.

Q.—And, can you tell me when the \$150,000 was paid?

A.—I can give you the exact date. It was February 14th.

Q.—Were those loans in each instance loans to a single borrower?

A.—Yes.

Q.—Who was the borrower of the loan that was repaid in February?

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

A.—O'Brien and Williams.

Q.—And, who was the borrower in the other instance?

A.—O'Brien and Williams in both cases.

Q.—Are you able to tell His Lordship how much of that amount of \$396,836.65 mentioned in the December statement came from revenue?

10 A.—No.

Q.—That is the balance of the revenue, plus the amount which came from the Mason Valley shares as of that date, and the general transactions of the Company?

A.—Less general expenses, and so on, yes.

Q.—The balance of the item of cash, so called, of \$1,250,000 was intended to include the call loans of some \$882,000 as of date December 31st, 1929?

A.—Yes.

20 Q.—You have told us that since that time two of the call loans aggregating \$400,000, have been repaid?

A.—Yes.

Q.—Which would leave still outstanding approximately \$482,000 call loans?

A.—\$480,000 actually on call loan. The \$2,000 is interest.

Q.—\$480,000 is the face amount of the loan?

A.—Yes.

Q.—And the odd amount above that is interest?

A.—Yes.

30 Q.—So, there are \$480,000 of call loans, plus interest, still outstanding?

A.—Plus whatever interest may have accrued, yes.

Q.—Who are the borrowers concerned in the \$480,000, and what are the amounts of their borrowings?

A.—Greenshields & Company, \$300,000; Craig, Luther & Irvine, \$100,000; Redpath & Company, \$80,000.

Q.—If I remember well, in one of the auditors' statements—that is the Auditors' Report accompanying the statement of September 30th, 1929, Plaintiffs' Exhibit No. 10, reference is made to the call loans, and it is said:

40

“ Our examination of the books and accounts has covered an inspection of all vouchers covering disbursements, but there are one or two certificates in regard to collateral securing the call loans yet to be received by us.”

Do you remember that?

A.—Yes.

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

Q.—What loans were concerned in that reference?

A.—I do not know which loans were concerned, but I think in the first certificates which had been sent to the Auditors by the brokers they had made a slip, and they had to send them revised.

Q.—What kind of a slip? Too large a loan?

A.—Not in regard to the loan. I think the securities had not
10 been properly reported. They got those other certificates later.

Q.—Do you remember what loans were concerned in that incident, or was there more than one?

A.—Those would be matters between the brokers and the accountants. I do not know the details.

Q.—But it would be something which would have to do with the Incorporated Company, and which would be of interest to the Incorporated Company, because it was the money of the Incorporated Company that was lent?

A.—Those certificates were all got within a few days after that
20 report.

Q.—But surely you never read that item in the report of the Auditors to the Shareholders of this Company and left yourself in the position of not being able to tell us what it concerned? You must know what it concerned?

A.—As I say, I understand in one of the certificates (I think it was the one of O'Brien & Williams, if I remember correctly) in giving the list of the securities which were held to cover those loans they had mixed up the securities that were held at the time they wrote the letter and what had been held at the time the statement
30 was made up. I think it was something of that sort, and they had to send a corrected certificate to the auditors.

Q.—Did not the auditors verify by physical examination of the scrip in your possession what collateral you held?

A.—Yes, they did.

Q.—Did it agree with the certification as made by the borrower—the broker?

A.—It agreed with the corrected certificate, yes.

Q.—In what respect was it wrong at first? Was it short, or long?

A.—I just forget. They had probably put in a little more. I
40 am not sure.

Q.—That is to say, their certificate would show you were holding more securities, in number of shares or whatever it may be, than you actually had possession of?

A.—No, I do not think it would have done that. It might have shown that according to their certificate we were holding more securities as at the date of the certificate than we actually held, but I

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

think not more than we were actually holding at the time the certificate was made. In other words, during the time this report was being prepared there was quite a fluctuation in the market and from time to time we were getting additional collateral to take care of loans. The certificates were quite in order when they were corrected.

10 Q.—This statement is as of date September 30th, 1929, and the report was not delivered until about six weeks later, November 16th, 1929?

A.—Yes.

Q.—Did it take six weeks, and over six weeks, to get that matter straightened out? Because it does not appear to have been straightened out at the time the Report was written, November 16th?

A.—The certificates had only been asked for from the brokers towards the end of the audit.

Q.—You mean shortly prior to November 16th?

A.—Exactly.

20 Q.—That is, shortly prior to the date of the report?

A.—Yes.

Q.—And, it had not been straightened out when the report was delivered?

A.—No, apparently not; but I think it was within the next day or two.

Q.—I suppose that report was intended to cover the actual condition of the loans and the collateral held as of date September 30th?

30 Witness: Which report?

Counsel: The report of the auditors.

A.—Yes. It was just an ordinary certificate that was got.

Q.—But, let us have it perfectly clear. Was the verification of the auditors supposed to be made as to the amount of those loans, and the collateral held, on September 30th, or at the time the report was delivered, on November 16th?

40 A.—The auditors in their investigation always examine the collateral up to the date they are making the examination. But the certificates which they were asking for covered the collateral as at the date September 30th.

Q.—Do you say there was this confusion in connection with the certificates from two brokers?

A.—No; I think it was only O'Brien & Williams, as far as I know. I do not know exactly. It was between the auditors and the brokers.

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

Q.—The report says “There are one or two certificates.” If there were two, it would mean two brokers?

A.—I do not know. O’Brien & Williams is the only one I recall.

Q.—You have explained to His Lordship that after the market fell you called on the brokers to add to their collateral?

A.—We got additional collateral, yes.

10 Q.—Can you tell me the collateral behind each of those various loans?

A.—Not now, no.

Q.—Have you not anything to show?

A.—Not here.

Q.—Where have you it?

A.—At the office.

Q.—Will you please prepare for me a compilation showing the collateral securities held by the Incorporated Company on those loans from the time of Sir Mortimer’s death up to the present time, 20 noting any changes or additions in the collateral?

Mr. Campbell: Will my learned friend limit that to the loans still outstanding?

Mr. McKeown: No, I will not.

Mr. Campbell: Are you interested in the loans that have been repaid?

30 Mr. McKeown: Yes.

Mr. Campbell: There is no allegation that I remember (and I speak subject to correction, because there are so many allegations in the plaintiffs’ very voluminous Declaration) of any criticism of those call loans or of the collateral. I do not object to my learned friend having a list, but why put the witness in the box to the burden of preparing a lengthy list of collateral and loans which have been repaid and which are now in the coffers of the Company?

40 My learned friend is not entitled to anything more than the collateral against the loans still outstanding and unpaid. I do not know how much labor is involved in the preparation of this information, but I submit it is putting an extreme burden upon the witness to prepare it. Of what possible use could information of this character be now? What possible interest can my learned friend have in checking up the fluctuating collateral which had been given against those loans which are now repaid? If Mr. McKeown wishes informa-

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

tion in regard to the collateral on the loans still outstanding, it may be appropriate, but my submission is the witness should not be required to prepare information except in respect of the loans still outstanding.

10 Mr. McKeown: We have general allegations to cover the whole administration of the Estate by these two defendants. We say it is disclosed that through their incompetence, waste, and inability they have put the whole thing into a state of chaos. We have not been asked for any further particulars in matter, and I submit we are entitled to enquire into the whole administration.

It seems to me a most remarkable thing that when this Estate was starving to death for money—when they could not pay the Succession Duties, or the legacies, or anything—those call loans stood there for practically two years, and when this suit was taken we find repayment of over half of them.

20 We have a specific allegation that the money should have been raised to make up the \$4,000,000 they were short by calling the loans. They did not call them, and I submit we are entitled to go into the matter. I also suggest it is not an answer to say they have been paid back. Your Lordship is entitled to light on the question as to whether those loans were properly secured all the time, and whether they could have been paid back at any time.

30 I imagine the collateral remained pretty nearly the same all along, subject, perhaps, to being added to; and the information I seek does not involve much work on the part of the witness. Those are the same loans which have existed since Sir Mortimer's death. It is only a question of the varying of the collateral. I have no doubt Mr. Reaper has the information compiled, and I submit we are entitled to it.

Whether the loans have been repaid or not is only a secondary matter. We are entitled to know why those loans were not called when they should have been, and, as we say, it was agreed they should have been.

40 Mr. Campbell: Where is the allegation covering the fact that it was agreed the loans would be called?

Mr. McKeown: Paragraph 22 of the Declaration:

“ That at the Meeting referred to in the preceding Paragraph defendants agreed with female plaintiffs upon the policy of making provision for the early payment as well of the obliga-

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

tions due by the Testator at the time of his death as of the particular legacies, annuities, and Succession Duties, by making available approximately the sum of \$4,000,000 from the following amongst other sources, to wit:

10 (a) By the liquidation of all securities being carried in a speculative brokerage account by the Testator with Bamberger Brothers, Stock Brokers, of New York City, thereby realizing an equity of approximately \$1,000,000;

(b) By having the Incorporated Company sell 55,920 class B non-voting shares of Canadian Industrial Alcohol Company, Limited, which, at the then market value of \$40.00 per share would have realized approximately \$2,236,800; and

20 (c) By having the Incorporated Company get in the sum of \$880,000 then loaned on call.”

Mr. Campbell: Do you suggest the Minutes of the Meeting to which you refer, signed by your client, show that?

Mr. McKeown: Never mind what I suggest. You asked me where the allegation was, and I suggest I have shown it to you.

The information may not be essential, Your Lordship, but we would like to have it.

30 His Lordship: It may not be very essential, but if it can be procured it might be as well to have it. It would be interesting to know whether and when the collateral was added to or withdrawn.

By Mr. McKeown (continuing):

Q.—It would not be a long or difficult job, would it, Mr. Reaper?

A.—No, it would not be difficult, but it would take a little time.

Q.—There were only four loans. The loans have remained the same?

40 A.—Practically the same; but the collateral has varied.

Q.—I will make the job easier for you. Will you please tell me the variation at periods of two months apart? If there was no variation it will only be a check.

A.—I thought you wanted the actual variations as they took place.

Q.—If it is a shorter process, take your choice: but give us the information in the very best available form.

ALEX. M. REAPER (*for Plaintiffs*), *Examination-in-Chief*.

Mr. Campbell: What is the witness to prepare?

His Lordship: The collateral as far as the paid-off loans are concerned, and the present collateral in regard to existing loans.

10 Mr. McKeown: There are only four loans, and if the collateral did not change for a year there would be no entry to be made.

Mr. Campbell: But, they may have changed every day, or every week, and that is why I do not know what labor may be involved in the witness getting the information you ask for.

Mr. McKeown: Evidently you are one of those happy individuals who never have to borrow money.

20 Mr. Campbell: I understand collateral does change according to the exigencies of the borrower.

Mr. McKeown: And the demands of the lender also.

His Lordship: In any event, we will see what the witness can give us.

By Mr. Campbell:

Q.—Do you understand what you are to prepare?

30 A.—As I understand it, they want the collateral against those loans, showing the variations from the time those loans commenced?

By Mr. McKeown:

Q.—From the time of Sir Mortimer's death.

A.—Very well.

40 (The statement referred to is to be produced as plaintiffs' Exhibit P-76.)

By Mr. McKeown (continuing):

Q.—Can you tell us in general terms what the collateral consists of on the outstanding loan of \$300,000 to Greenshields & Company?

A.—No. They are mostly all securities listed on the Montreal Exchange. Different securities.

ALEX. M. REAPER (*for Plaintiffs*), *Examination-in-Chief.*

Q.—What about the loan of \$100,000 to Craig, Luther & Irvine?

A.—They are in the same position too.

Q.—From memory you cannot give a general summary, but you say they are diversified securities.

A.—Yes.

Q.—What about the security for the loan of \$80,000 to Redpath & Company?

10 A.—Also diversified.

Q.—Is there any Alcohol in any of those loans?

A.—No.

Q.—The next item in your summary was Royal Bank stock, approximated at \$400,000?

A.—Yes.

Q.—Where are the certificates for that stock?

A.—In our office.

Q.—They are not under hypothecation for the account of the obligations of the Estate?

20 A.—No.

Q.—You told me yesterday that the Liggett & Myers shares which were not hypothecated to Bamberger, and which should have been free, were in the Bank?

A.—Yes.

Q.—But not in the Bank as collateral?

A.—No.

Q.—You said they were in the Bank for safekeeping?

30 A.—They had been there on collateral, and they were left there when the loan was paid off.

Q.—Do you suggest those Liggett & Myers shares were not collateral for the overdraft of \$303,000 which was paid off last month?

A.—No, these were not.

Q.—Was there any collateral for that loan?

A.—The other \$215,000 loan was covered by the 7,400 shares of Liggett & Myers stock which came from Bamberger. They probably also would have covered the overdraft as well.

Q.—The item of \$215,000 was covered by the overdraft?

40 A.—The \$88,000 that was shown was the overdraft—making \$303,000.

Q.—Those shares which emanated from Bamberger Brothers were more than sufficient as collateral to cover the \$215,000 fixed loan, and the overdraft, which was \$303,000?

A.—Quite ample. The total was \$303,000.

Q.—That is the total of the fixed amount, \$215,000, and the overdraft, \$88,000?

A.—Yes.

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

Q.—And the shares which came from Bamberger Brothers were sufficient collateral for the purpose of the composite loan and overdraft of \$303,000?

A.—Yes.

Q.—How many shares were there in this block of Liggett & Myers stock which was free?

A.—2,420; 2,000 of “ A ”, or common, shares, and 420 “ B ”.

10 Q.—And you say they were reposing quietly in the Bank?

A.—Yes.

Q.—Without any claim by the Bank upon the shares?

A.—Yes.

Q.—Why did you not keep them with your other collateral or stock such as the Royal Bank?

A.—They had always been in the Bank, and we did not take them out.

Q.—In what Bank?

20 A.—The Canadian Bank of Commerce.

Q.—Which office?

A.—Montreal office.

Q.—Downtown?

A.—They were for account of the Montreal office; I think the collateral was actually held in the New York office.

Q.—Those shares to which you have referred as being in the Bank were physically in New York—the certificates were in New York?

A.—Yes.

30 Q.—Was the stock registered in the name of the Estate?

A.—No, it was in the name of the Bank.

Q.—All the Liggett & Myers shares were, therefore, in the name of the Bank?

A.—Yes.

Q.—So, when you said “ In the Bank ” you did not simply mean that the scrip had been left in the possession of the officials of the Bank; it meant the shares had been transferred on the books of the Liggett & Myers Company to the Canadian Bank of Commerce?

A.—They had always stood that way—those 2,400 shares.

40 Q.—I do not see why, when those shares were free, you did not have them transferred to the names of the Executors of the Estate? Was there any reason for not having done that? That would have been the usual thing to do, would it not?

A.—It might have been. Of course, we always had in mind that eventually those shares would have to be sold when the market got to what was considered a proper price.

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

Q.—But, taking them only at par they were worth a quarter of million dollars?

A.—Yes

Q.—And, you had those securities, worth a quarter of a million dollars, standing in the name of a person who had no claim on them?

A.—They had no claim on them.

10 Mr. Campbell: Do you suggest they were in danger with the Canadian Bank of Commerce, Mr. McKeown?

Mr. McKeown: I do not suggest anything; but I do not think it was very regular.

By Mr. McKeown (continuing):

20 Q.—What kind of Company is the Anglo-Scottish? A Trust Company?

A.—An Investment Trust, I understand.

Q.—\$23,630?

A.—Yes.

Q.—Do you know of any market for that stock?

A.—I think there is a market in England for it.

Q.—Where in England?

A.—I think on the London market.

Q.—Is it listed?

A.—I would not be quite sure about that.

30 Q.—These would be some securities which, I suppose, Sir Mortimer purchased prior to his death?

A.—Shortly before his death, yes.

By the Court:

Q.—Did you take any steps to get rid of it, or to find out whether the market was good for selling it?

A.—No, we have not, so far.

40 By Mr. McKeown (continuing):

Q.—What dividend did that stock pay?

A.—I do not recall just now, but I notice we have a payment of \$1,164.00.

Q.—What period does that cover?

A.—I could not say, offhand.

Q.—Your statement covers seventeen months, does it not?

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

A.—Oh, no. That statement which shows \$1,164.00 covers a period of eleven months.

Q.—Not the statement I have.

A.—The one I have before me says so.

By Mr. Campbell:

10 Q.—That is Exhibit No. 9?

A.—I do not know the number. It is the statement of August 31st, 1929.

By Mr. McKeown (continuing):

Q.—In making up such a statement as this at a broken period would you deal with the dividend as accrued, or only dividends paid?

A.—Only dividends paid.

20 Q.—It could not be a dividend at 6 per cent; it is not sufficient for that, if that is the par value.

A.—I do not just recall what period it covers, or what it is for.

Q.—Do you know when dividends are paid upon this stock?

A.—No, I could not just say offhand.

Q.—You do not know the rate, or the dividend dates.

A.—No, I do not just recall that.

Q.—You do not know how many dividends are paid a year?

A.—No. I would have to look that up.

Q.—Can you not tell me from your ledger?

30 A.—I do not think it shows in the ledger.

Q.—Have you not some kind of general account in your system of bookkeeping which gathers in those dividends as they come through?

A.—It shows the stock, and the receipt of the dividend.

Q.—Does it not show the amounts?

A.—Yes.

Q.—Then, let us see it.

40 A.—It may show the period. I have it here. That payment of \$1,164.00 is a dividend at the rate of 6 per cent per annum, less British Income Tax deduction.

Q.—What would that run, in percentage?

A.—20 per cent.

Q.—What date was that?

A.—That was on December 3rd, 1928, we received the payment. We received another in November, 1929.

Q.—That is not covered in the statement to which we have been referring?

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

A.—No.

Q.—To get at the rate of dividend so far as the Incorporated Company was concerned, would it be the proper formula to take the 6 per cent, deduct 20 per cent from it, which is 1.2 per cent, and you find yourself with a dividend of 4.8 per cent?

A.—Yes.

10 Q.—And the return the Incorporated Company got on that stock was 4.8 per cent?

A.—Yes.

Q.—You never took any steps or made any efforts to sell it, or any enquiry as to a market?

A.—No.

Q.—You do not know where it is listed?

A.—Those shares had been bought by Sir Mortimer just prior to his death.

20 Q.—The next item is Crown Trust Company, \$23,000. That is \$23,000 par value, is it not?

A.—No, not quite.

Q.—There are 200 shares?

A.—200 shares, yes.

Q.—\$23,000 would represent \$115.00 per share?

A.—It is an average of \$115.00, yes.

Q.—Is that cost?

A.—Yes.

Q.—What does that stock pay?

A.—7 per cent.

30 Q.—Are you sure of that?

A.—Yes. It has paid that for some time.

Q.—Is Crown Trust Company stock listed anywhere?

A.—No, I think not. Not that I know of.

Q.—Did you make any effort to sell that Crown Trust stock?

A.—No.

Q.—Never offered it?

A.—No.

Q.—I know of some Trust Companies whose stock is not always as good as what you pay for it.

40 A.—And some are much more valuable, too.

Q.—For the purpose of your compilation you have entered the Imperial Tobacco Stock at \$50,000?

A.—Yes.

Q.—It consists of 5,000 shares?

A.—6,000 shares, really.

Q.—Yes, you are right. 6,000 shares at present. You have been carrying it in the books at \$36,188?

ALEX. M. REAPER (*for Plaintiffs*), *Examination-in-Chief.*

A.—Yes. As a matter of fact I think it would have a value today of over \$60,000.

Q.—Are those shares of a par value of \$5.00, or £1?

A.—\$5.00 par value.

Q.—It is an excellent stock, which pays a pretty fair return?

A.—Yes.

10 Q.—There is plenty of market for that stock in England, at least, if not here?

A.—Yes.

Q.—It never occurred to you to sell it?

A.—No, we have not sold it yet.

Q.—That was an asset which was readily realizable, to the extent, you say, of \$50,000?

A.—Yes; I think you would get \$60,000 or better for it.

By the Court:

20 Q.—You still have it?

A.—Yes.

By Mr. McKeown (continuing):

Q.—The remaining item you gave us was Harbons Limited. Where is that Company?

A.—It is also an English Company.

Q.—What is the nature of the business it carries on?

A.—Artificial silk, I think.

30 Q.—5,000 shares, carried at \$24,333.33—that is par?

A.—Yes. They are preferred shares.

By Mr. Campbell:

Q.—Are they £1 par value?

A.—Yes, £1 shares.

By Mr. McKeown (continuing):

40 Q.—Do you know whether those securities are listed anywhere?

A.—I do not know.

Q.—You never enquired?

A.—No.

Q.—You never made any effort to sell them?

A.—We have not tried to sell them, no.

Q.—You do not know what the market is, or where the market is?

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

A.—No. It is an 8 per cent stock.

Q.—Do you know the general position of the artificial silk industry at the present time?

A.—No, I am not very familiar with it.

Q.—Does that complete the list of the items according to your memorandum?

A.—I think those are the ones we had taken up, yes.

10 Q.—Which entered into the total of \$2,248,702.00 of assets of the Incorporated Company?

A.—I think that is the correct figure.

Mr. Campbell: Are you suggesting they were the only assets?

Mr. McKeown: Everyone within the sound of my voice knows I am taking Mr. Reaper's own statement of what was available. I did not make it up.

20 Mr. Campbell: It is the imputation in your question that I am objecting to.

Mr. McKeown: Why do you not stop worrying about imputations, Mr. Campbell?

Mr. Campbell: It is the imputations that are dangerous. The Company had a great many other assets.

30 Witness: Is that the \$2,248,702, or the \$2,238,000 odd?

By Mr. McKeown:

Q.—Which you conceded would require a shrinkage of 10 per cent?

A.—No. The \$2,023,000 is after the shrinkage.

By Mr. Campbell:

40 Q.—The \$2,248,702 was before the shrinkage?

A.—That is the gross. That is right.

By Mr. McKeown (continuing):

Q.—And those figures are to be shrunk to the extent of 10 per cent to establish the final figure of \$2,023,832 in that connection?

A.—Yes.

ALEX. M. REAPER (*for Plaintiffs*), *Examination-in-Chief.*

Mr. Campbell: Is it an accurate 10 per cent?

Mr. McKeown: In round figures.

By Mr. McKeown (continuing):

10 Q.—At the risk of repetition: that figure, plus the direct capital assets of the Estate (which we have reviewed and fixed at \$763,500) made up the figures which you gave us earlier, \$2,787,332, as representing capital assets available in the Estate and in the Company wherewith to meet the capital requirements of the Estate, which I think we had brought down to the figure of \$3,289,113.48?

A.—Yes.

Q.—And which, in turn, leaves unprovided for something like \$500,000 in the realm of capital liabilities of the Estate?

20 A.—Yes. That might be reduced. There is an item of insurance here, of \$130,000, which might also be available.

Q.—You mean insurance on Sir Mortimer's life?

A.—Yes.

Q.—Payable to the Incorporated Company?

A.—Yes.

Q.—Originally it had been a larger amount?

A.—Yes.

Q.—This is the amount still unpaid?

A.—Still uncollected.

Q.—\$130,000?

30 A.—Yes.

By the Court:

Q.—Was that not paid because the Succession Duties were not settled?

A.—Yes, Your Lordship.

By Mr. McKeown (continuing):

40 Q.—That \$130,000, as you have already explained, was the balance of Sir Mortimer's life insurance which had been transferred to the Incorporated Company?

A.—Yes.

Q.—And which, as suggested by His Lordship, had not been collected because of objections emanating from the Succession Duties Department?

A.—Yes.

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

Q.—You said the amount originally was a larger sum—approximately \$180,000, was it not?

A.—Yes.

Q.—You managed to get in \$50,000 from certain of the Insurance Companies?

A.—Yes.

10 Q.—Did you supply them with a provisional or partial release from the Succession Duties Department?

A.—Yes; we got at least \$50,000.

Q.—Did you apply to the Collector to have the balance of \$130,000 released?

A.—Yes.

Q.—When?

A.—I think we applied for that possibly about August, 1928.

Q.—Did you make any further application?

20 A.—No. They have been wanting to claim Succession Duties on those, and we have never got to a decision on that point—at least, we never got to a settlement.

Q.—From August, 1928, to March, 1930, this question has been left in abeyance with the Succession Duties Department, as to whether or not Succession Duties are properly payable on those policies amounting to \$130,000?

A.—Yes.

Q.—Did you pay any duty on the \$50,000 which was released?

A.—No. They admitted those were not taxable.

30 By the Court:

Q.—Different Companies?

A.—Different Companies. Got by the Incorporated Company in slightly different ways. In that particular case they considered it was not subject to tax; but the others they claimed tax on.

Q.—Is the \$130,000 covered by one policy, or are there several policies?

A.—Two or three policies.

Q.—And all the Companies made the same objection?

40 A.—Not the Companies, the Succession Duties Department. The Companies asked for the release certificate from the Department.

Q.—The Companies refuse to pay until they get that release certificate?

A.—Yes.

By Mr. McKeown (continuing):

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

Q.—And those policies which were released were so released upon the basis accepted by the Succession Duties Department that there was no Succession Duty on them?

A.—Yes.

Q.—And the others, amounting to \$130,000, upon which Succession Duties have been claimed, have remained in that same position since August, 1928?

10 A.—Yes.

Q.—So, you would suggest that, subject to getting the Succession Duties cleared up, there would be \$130,000 to go to further reduce the item of \$500,000 otherwise not provided for?

A.—Yes.

Q.—Did you draw any interest on those policies?

A.—Not having any settlement, I do not really know yet.

Q.—As far as you know, there is no interest payable on this sum of \$130,000 which is affected by the situation we have just reviewed?

20 A.—No. Some pay, some do not. On the \$50,000 policy we did get interest.

Q.—In any event, you are not setting up any interest?

A.—No, we have not set up any.

Q.—When we established our original figures of liabilities as being the difference between the total liability side and the surplus, at \$4,658,035.28 as at August 31st, 1929, there is nothing in there for a claim of income tax by the Dominion Government?

30 A.—No, there is nothing. Certain claims of income tax which had been running back for some time before Sir Mortimer's death, amounting to some \$88,000, were paid up.

Q.—And any further claim is being resisted?

A.—Is being resisted, yes.

Q.—We have seen a little of how the plan which you have suggested to His Lordship as offering a solution of the problems of the Estate and of the Company would work out at this time. Would it be your idea to melt those assets down to the cash figures which you have given us at once?

A.—No, I think not; not at once.

40 Q.—According to you, how long would the process take?

A.—I could hardly say that.

Q.—But it is your plan, and you must have considered it from the point of view of the element of time?

A.—It was understood this proposition would take a certain time to work out, but just how long would be difficult to say.

Q.—Can you give His Lordship some approximation?

A.—No, I could not.

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

Q.—Would it take a year?

A.—I could not make any definite date.

Q.—Would it take two years?

A.—I could not say.

His Lordship: It has taken two years already.

10 Mr. McKeown: I mean from the present time. We know what has occurred in the last two years, and I am trying to anticipate what may happen in the next few years.

By Mr. McKeown (continuing):

Q.—Could you suggest to His Lordship that beyond any question such a plan as you have suggested could be worked out in two years?

20 A.—I could not make any statement as to just the exact time. It would depend a good deal on conditions.

Q.—Therefore, that plan would not offer any immediate relief for the situation, would it?

A.—Yes, to a point that you could get sufficient revenue to take care of any urgent or pressing claims.

Q.—You could get sufficient revenue?

A.—Receipts.

Q.—You have a staggering amount still due for Succession Duties; taking that item alone.

30 A.—A good size amount.

Q.—That is a matter which has been standing almost two years. Do you expect the Government is going to wait indefinitely for that item?

A.—No.

Q.—If they put pressure upon you for the amount where would the cash be realized from under such a demand as you got a few weeks ago to have it for next Wednesday?

A.—With a million and a quarter dollars in cash it would seem it could be provided for.

40 Q.—With a million and a quarter dollars cash in the coffers of the Incorporated Company?

A.—Yes.

Q.—Irrespective of whether that million and a quarter dollars should properly be required for disbursements by the Company as revenue, having regard to the fact that such was its source: because you must remember that you have given us figures of \$1,500,000 as

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

being the Alcohol dividends alone since Sir Mortimer's death, and nothing has been disbursed up to date as revenue by the Company.

Mr. Campbell: Is that quite right?

Mr. McKeown: I think so.

10 Mr. Campbell: I do not. The Company has advanced to the Executors upwards of half a million dollars, which has been disbursed by the Executors on revenue account, which is standing on the books of the Company as a loan—as an advance—and which has been appropriated to revenue purposes. When the bookkeeping entry is made it will be a transaction on revenue account.

I submit the question as put is the kind of question which is not fair to the witness.

20 Mr. McKeown: If you do not mix the Company up with the Estate there will be no haze about it at all. When you are dealing with the Company, deal with the Company alone and there will be no difficulty. It is perfectly plain that money which comes in and which is reported as earnings and profits of the operations of the Company since the death of Sir Mortimer is absolutely available for one purpose only, and that is to go out as dividends.

30 Mr. Campbell: Of course we take issue with my learned friend on that point. If my learned friend is right in his law the situation is quite different from the way we view it. My submission is that my learned friend is absolutely wrong in his law under the Will.

His Lordship: What is your view of the Will?

40 Mr. Campbell: I do not propose to argue it at length for the moment, but there is no provision in the Will which says the Directors of the Incorporated Company were to turn over the net earnings of the Company to the Executors to be disbursed as residuary revenue. The thing would be absurd—it would land this Company in insolvency in no time.

His Lordship: Approximately how much was there in the Estate; or, if you wish, in Sir Mortimer's personal name, which was not merged into the Incorporated Company?

Mr. Campbell: Does Your Lordship mean going back to the formation of the Company?

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

His Lordship: The assets of the Estate, as distinguished from the Company.

Mr. Campbell: At the time of Sir Mortimer's death there was some \$2,000,000 of assets outside the Company. Apart from his holdings in the Incorporated Company there was some \$2,000,000 of other assets.

10

His Lordship: Would that include the Pine Avenue property and the Ste. Agathe property?

Mr. Campbell: There was approximately \$2,000,000 Liggett & Myers shares carried in New York subject to the stock broker's claim, and approximately \$1,000,000 Tobacco Products and Victor Talking Machine.

His Lordship: That is the Estate, as distinguished from the Company?

20

Mr. Campbell: Yes. And of course there were a number of other minor assets of less consequence.

His Lordship: So, there were \$2,000,000 or \$3,000,000 of assets which were part of the Estate and not part of the Company?

Mr. Campbell: Quite so. But the bulk of the Estate consisted of the shares in this Company.

30

His Lordship: The Will said so.

Mr. Campbell: Yes. The Will also contains very precise conditions, in our submission, as to the relations between the Estate and the Company; and that is why we take issue in law on the proposition which I now understand to be that the residuary legatees were entitled to demand that the Directors of the Company pay over to the Executors every dollar shown by the balance sheet as net revenue. I say this is absolutely negated by the precise terms of the Will. and if this proposition were carried out it could only have one result, to land the Incorporated Company in insolvency in a very few years a thing which it is impossible to suppose Sir Mortimer would provide; and we allege the Will itself says the very contrary.

40

Mr. McKeown: Of course all this talk of insolvency is de luxe. The picture of that Incorporated Company was that through its

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

holdings of Alcohol it had a surplus of between \$25,000,000 and \$30,000,000 when these gentlemen took charge, and they have drained every drop of revenue out of that Alcohol asset and have not disbursed a nickel.

10 It is not part of our contention that these Directors of the Company, who happen to be the same individuals who are Trustees, were bound to turn out the last cent, but if they had done so it would never have bankrupted Sir Mortimer Davis, Incorporated, if the Company had been properly handled and administered since Sir Mortimer's death. We do say, however, they were in principle bound to release the earnings of the Company from the coffers of the Incorporated Company through dividends, otherwise the Will is a farce, because under the Will (and this was the only source from which revenue could come) there were annuities running up to something like \$200,000 that have to be provided for——

20 Mr. Campbell: And they have been——

Mr. McKeown: And no source other than the Estate from which they could be provided for.

There was this clause in the Will by which Sir Mortimer ordered that the revenues of his Estate over and above those charges should be divided equally between his widow and his son, and to hold back the dividends would frustrate the whole thing.

30 The reason this situation has been brought about is because of this policy which has been inaugurated and maintained and insisted upon, of substituting a loan for the release into the Estate of dividends which would have to be divided between the two beneficiaries. If this policy were to be carried out the Will of the Testator would be frustrated from beginning to end.

Now, coming back to the question which gave rise to this little digression by Mr. Campbell, I think we should proceed with the examination.

40 Mr. Campbell: Does Your Lordship wish me to answer my learned friend's reference to the situation under the Will?

Mr. McKeown: I answered you, but if you wish to have the last word you may go ahead.

Mr. Campbell: We absolutely take issue at law with the plaintiffs and their Counsel on the proposition which I understand my learned friend has now advanced to Your Lordship that, in effect, the Directors of the Company were obligated by the terms of Sir Mor-

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

timer's Will to turn over all the available revenues of the Company to the plaintiffs to be disbursed as the plaintiffs might see fit.

His Lordship: You challenge that proposition?

Mr. Campbell: Absolutely.

10 His Lordship: What do you substitute for it?

Mr. Campbell: By the precise terms of the Will the beneficiaries are prohibited from interfering in any way with the administration of the affairs of the Company. I would refer Your Lordship more particularly to the provisions of Article 15 of the Will, in which it is stated:

20 "In explanation of this provision of my Will I desire to state that the greater part of my Estate consists of notes or debentures and shares of Sir Mortimer Davis, Incorporated, a Company presently organized under the laws of the Province of Quebec. In this Company is vested the control of several important undertakings, all of which I believe by proper management will greatly increase in value——"

His Lordship: That is, Alcohol and McNish?

30 Mr. Campbell: Primarily Alcohol, McNish, Cadillac Coal, and those other ventures Sir Mortimer was in. It was not called Cadillac Coal at that time.

His Lordship: It is a new-born baby.

Mr. Campbell: It was the offspring of a previous parent. It was called "Federal" I think in Sir Mortimer's lifetime.

40 We are not through with the evidence yet, Your Lordship, and we hope to inform you more completely on that point. Sir Mortimer had very extensive mining interests, in which he believed, rightly or wrongly—he may have been wrong.

His Lordship: Has any money been spent on those mining interests?

Mr. Campbell: Cadillac Coal was one of the mining interests.

Mr. McKeown: All that money has been spent on the Donaldson property.

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

Mr. Campbell (continuing citation of Section 15 of the Will):

“ . . . and thus yield in capital and revenue a great benefit to my Estate.

10 To disturb the organization of this Company would result in a depletion of its resources and would prevent the development of the various undertakings entrusted to its care and to the care of its officers and directors. I, therefore, expressly direct and require that the beneficiaries of this Will shall not disturb by their demands or actions the carrying on of the said Sir Mortimer Davis, Incorporated, in any manner which in the opinion of the Directors of such Company may be prejudicial to its interests.”

20 That is the provision of the Will to which I particularly refer, but there are others to which I might call attention: for instance, this question of the payment of the balance of available revenues is met specifically by the terms of the Will. After providing for all the things that went before, Article 13, which deals with the distribution of the residuary revenues of the Estate, says that after providing for the payment of duties, the payment of debts, the payment of legacies, the payment of annuities—those all have to be provided for before any claim can be put forward by the plaintiffs in respect of their share of the residue; and it is our submission in law that it was the clear duty of the Directors of the Company carefully to nurse this situation along and to restrict the advances on revenue account to
30 such amount as was necessary, at the outset and until the situation had been cleared up.

His Lordship: At the rate you are going, when will the situation be cleared up?

Mr. Campbell: The situation has not been facilitated by what has happened in the last few months.

40 His Lordship: Are you nearer the goal than you were two years ago?

Mr. Campbell, K.C.: Yes. Where a great many things have happened in the last two years for which you are going to charge these Executors with the responsibility. The whole Stock Market history of the world has changed. Surely the defendants are not responsible for that condition! It has involved certain delays and a change of policy. Surely it would be an absurdity to hold the defend-

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

ants in this case responsible for what happened throughout the whole Stock Market world in 1929. The situation requires careful management and careful working out. It is the belief of the defendants and my own personal belief that it can be worked out, and has not been facilitated by what happened in the past few weeks.

10 Our submission is if Lady Davis had come to the meeting of Directors in December and had co-operated with us to help out the situation, instead of taking a lawsuit, we would have been further advanced than we are today.

20 Mr. McKeown, K.C.: That is not the situation, My Lord. Taking up the last point first—after we had troubled to get information and finding everything we did not want to find out from John and Jack, I don't think it was quite the time for us to share the responsibility of these people. They would not receive any assistance from Lady Davis or from anybody she suggested up to that time. However, be that as it may, Mr. Campbell is not serious about that.

Mr. Campbell, K.C.: I am extremely serious about that and I submit that is not putting the whole situation.

The Court: You may possibly put your heads together and avoid this lawsuit continuing.

30 Mr. Campbell, K.C.: Does Your Lordship think it is facilitating or lessening the responsibility with which the Directors have to deal?

The Court: We will have to take the situation as it is.

40 Mr. McKeown, K.C.: It is unfortunate you have to go through this process. The responsibility is not on Lady Davis, and I think before we get through Your Lordship will see there was no alternative whatever, except to allow matters to have gone from bad to worse, and this was the shortest possible course we could have taken. As far as these beneficiaries are prohibited from interfering, I submit that clause which deals with that is subservient to the fundamental clause, that is, in which the Testator said his debts should be paid. How can they construe that this condition can be brought about under conditions as have already been revealed before Your Lordship in the administration of the Estate and the administration of the Company as it went on.

We have the difficulty that the Trustees are also the Executors.

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

Let us suppose we shut our eyes to the fact that these Directors are the same persons who are Executors, and let us suppose we had those Executors doing their duty and they saw this Company administered as this Company has been administered at the beginning and they did not kick out these Executors instanter, they would be bound for their acts, but it is ten times worse when these people are doing it themselves. If we judge what would happen in the future
10 —we say the workings which you were bound to do, which you have not done, you have intensified the omissions by the acts you have done.

I say the provisions of the will on which Your Lordship asked Mr. Campbell to cite his proposal as a remedy, I submit, first of all, the provisions of the will which he cites do not assist in any way. It is just the opposite. Under the conditions existing at the present time and for which we are not responsible, we had no alternative whatsoever, and we exhausted to the very last point every last means
20 to avoid this litigation before we took it.

Mr. Campbell, K.C.: If I might say a word in reply,—

Mr. McKeown, K.C.: Because you must have the last word.

Mr. Campbell, K.C.: At the moment I am entitled to it. No plaintiffs that I have had experience with in some years were ever provided with such complete statements on which to base their claim.

30 Mr. McKeown, K.C.: That is only a statement for the Press and does not answer any allegation. I said Lady Davis came here in June and stayed from June until we took our action in January, trying to get the information on which this action is based.

Mr. Campbell, K.C.: I say that the statement of 1929 prepared by Price, Waterhouse and Company was an extremely complete statement, containing all information which any person might ask, followed by the statement of December 30th of all the statements
40 that have been supplied. My learned friends cannot complain they were not furnished with adequate information to which they were entitled or that any important information was withheld.

Mr. McKeown, K.C.: We will see about that.

Mr. Campbell, K.C.: What really led to this discussion, I think, My Lord, was the direct issue which arose out of the last question

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

to say whether the plaintiffs and Lady Davis were entitled to all the revenue of the Incorporated Company, and the pretension of the defence is that they are entitled to all the light the Incorporated Company can spare, in view of the other demands, sufficient to provide for revenue expense of the Estate in the way of annuities and other obligations on revenue.

10 The Court: Suppose the first Lady Davis took a suit under the legacy, what would be the answer?

 Mr. Campbell, K.C.: If she takes a suit on the marriage contract, the money will be paid. The money is in the coffers of the Company. If my learned friends co-operate we can pay them the money tomorrow, but they are not putting themselves in that position. Anything we do, of course, will be wrong. They put the undivided responsibility on the defendants and the defendants reserve
20 their right of criticism. It is a fairly formidable battery to meet, three counsel and a very competent accountant. I would like to have Lady Davis solve the problems of this Estate as they have arisen, without our becoming subject to criticism.

 Mr. McKeown, K.C.: We will accept your challenge immediately. Let us run that Estate and we will show you immediately. We will give you all the opportunity to criticise that you desire. We will put you where you can criticise us in five minutes if you will
30 kindly resign.

 Mr. Campbell, K.C.: No, we will not do that.

 Mr. McKeown, K.C.: Then you were only fooling me.

By Mr. McKeown, K.C.:

 Q.—I am going to ask you again, after hearing this discussion as well and everything of that kind, whether anything has occurred
40 to you in the meantime which would enable you to tell His Lordship how long your process will require to be worked out, even if you succeed to 100 per cent of your expectations?

 A.—I say at the present time it would be very difficult to make any estimate.

 Q.—I should think it would be. Have you changed in any particular the plan, which was the second plan, of December, 1929, up to this moment, or do you still believe in that plan?

ALEX. M. REAPER (*for Plaintiffs*), *Examination-in-Chief.*

A.—No, I think there has been no change.

Q.—Will you tell His Lordship where you were going to get any money for revenue purposes of the Estate except out of the Incorporated Company for revenue sources for the next 12 months, if you remain in office?

A.—It would practically have to come from there. mostly.

10 Q.—Where will the revenue come from in the event of the Alcohol dividend being cut off, the revenue of the Incorporated Company?

A.—That would change the picture, of course, very considerably.

Q.—How much did this dividend amount to, quarterly?

A.—Approximately \$210,000.

Q.—\$210,000?

A.—Yes.

20 Q.—So that that would be revenue to the extent of \$840,000 which the passing of the Alcohol dividend would deprive the Incorporated Company of?

A.—Yes.

Q.—During the next 12 months?

A.—During the year it would amount to that.

Q.—And with that gone out of the picture, as you say, it would change it very much. Would there be any revenue or funds from revenue in the Incorporated Company to release to be properly used as revenue of the Estate during that period?

30 A.—No, not if this were wiped out. There could be sufficient revenue to cover current charges.

Q.—Had you ever had any prior experience in administering the affairs of an Estate apart from this one?

A.—No.

Q.—It is your first attempt?

A.—Yes.

Q.—Do you know whether Lord Shaughnessy had ever been in charge of an Estate as active Executor prior to taking charge of Sir Mortimer Davis' Estate?

40 A.—I think he has; I think so.

Q.—What estate?

A.—Well, I think he is an Executor in his father's estate.

Q.—Was that not largely in charge of the Royal Trust Company?

A.—I think they are acting in that connection, yes.

Q.—Lord Shaughnessy was one of how many Executors of his father's estate?

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

A.—I don't know.

Q.—Apart from the estate of his late father, do you know of any other estate in which Lord Shaughnessy had ever had any prior experience?

A.—I don't know.

Q.—Have you felt in your own mind any concern as to whether you were making satisfactory progress with this Estate?

10 A.—I thought it could be worked out.

Q.—I mean up to date, as you went along, since March 22nd, 1928, have you in your mind been satisfied with the progress made by this Estate or have you been disappointed?

A.—The conditions under which it existed have made it a little more difficult than we thought it would be at the beginning, but under the circumstances we thought we had been making reasonable progress.

20 Q.—And you cannot give us any estimate as to the future time to be consumed in the process?

A.—No, that would be rather difficult under present conditions.

Q.—The sale of the Alcohol " B " stock shortly after Sir Mortimer's death at market figures, take 40, would have produced about \$2,250,000?

A.—Approximately, yes.

30 Mr. Campbell, K.C.: That is the very kind of question, as a matter of arithmetic. Obviously, if you sell so many shares at \$40 it would yield a certain result, but the implication of these questions is, I submit, utterly unfair to the witness. The implication is that there was a market for the Alcohol shares at that price, and I submit that is utterly unfair. It does not result from the testimony of the witness at all.

40 The Court: If there was a market, surely Mr. Reaper knows it better than you and I. You are perfectly justified in telling me there is no market for the Pine Avenue property now, and there was no market at the time of Sir Mortimer's death. We might agree with you. Mr. Reaper might answer that perfectly, and also that there is no market for the Ste. Agathe property.

Mr. Campbell, K.C.: What is implied in my learned friend's question that the witness has testified, is that the witness referred to the market of \$40.

The Court: Suppose he had asked Mr. Reaper, " Don't you think if you had sold the Pine Avenue property out at the municipal

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

valuation, you could have realized a substantial amount?" Mr. Reaper's answer is "If I could have sold it, no doubt, but it could not be sold." He may say the same thing of Alcohol "B."

Mr. Campbell, K.C.: It is an unfair question, and I object to it.

10 Mr. McKeown, K.C.: There is only one person in the whole world who need be affected by the form of the question and that is His Lordship.

Mr. Campbell, K.C.: I have a right to make objections to questions I think illegal. I object to the question because it purports to reproduce inaccurately in my recollection what the previous testimony was.

20 The Court: We will give Mr. McKeown time to reframe his question.

Whereupon an adjournment was taken until 2.30 o'clock P.M. of the same day, March 11th.

Afternoon Session,
March 11th, 1930, 2:30 P.M.

30 ALEXANDER M. REAPER,

reappeared and continued his evidence as follows (in chief):

By Mr. McKeown, K.C.:

40 Q.—Now, Mr. Reaper, there are a few miscellaneous matters I would like to take up with you before we close this department of the evidence. Can you tell His Lordship, from your knowledge of the affairs of Sir Mortimer Davis Incorporated, whether the allegation even of the declaration is true in the particulars. I would just like to go over with you that allegation, which reads:

"That the late Sir Mortimer Barnet Davis personally subscribed and paid for the whole capital stock of said Incorporated Company."

Is that true?

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

A.—Yes, I think so.

Q.—This is shown by the books of the Incorporated Company?

A.—I think so. I think that is correct.

Q.—No other money ever went into that Company from any source except from Sir Mortimer Davis? Is that true? I mean into the capital stock?

10 A.—No, I think not.

Q.—Now, apart from the matter in controversy, as to the shares claimed by Lord Shaughnessy, amounting to 2,400, I think, is that right?

A.—Yes.

Q.—The only other shareholder of the Company, the only other beneficial interest there is that of Mr. Waddell?

A.—Yes.

Q.—For how many shares?

A.—2,525 shares.

20 Q.—Do you admit Mr. Waddell received these shares without the expenditure by him of any cash?

A.—He received 2,500 of them. The other 25 he—

Q.—How about the first 2,500? What do you say as to these? Were they received without the expenditure by him of cash.

A.—As I understand it, yes.

Q.—And the remaining 25 shares were part of the so-called Marler shares?

A.—Yes.

30 Q.—That is to say Mr. Waddell was debited in the books of the Company at the rate of \$170 a share?

A.—Debited, and the amount deducted from interest payment coming to him.

Q.—Can you go back a little further, to the 500 shares in the name of Mr. Marler? Is it to your knowledge that these shares were received by Mr. Marler without the expenditure by him of any cash?

A.—That is as I understand it, yes.

40 Q.—Is it further to your knowledge that Sir Mortimer Davis had turned over to the Incorporated Company the totality of his assets possessed at that time, other than his residence on Pine Avenue and the Ste. Agathe property?

Mr. Campbell, K.C.: I submit that is not a proper question for the witness. The witness was not an officer of the Company at the time, and this must be a matter of documentary record, and it is not fair to the witness to ask him to reproduce from his memory.

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

The Court: He is the custodian of the documents of the Estate.

Mr. McKeown, K.C.: He is the Secretary of the Company.

10 Mr. Campbell, K.C.: My submission is it is all documentary evidence that has no bearing on the Estate. My submission is that the answer of the witness is not the best evidence, and not proper evidence, and my learned friend should produce the document. My submission is it is not a proper question for the witness.

Mr. McKeown, K.C.: I think any question which is relevant —if he says “yes” it is an admission.

(Question read.)

20 The Witness: I could not just exactly answer as to that. I think he probably did keep out some other things as well.

By Mr. McKeown, K.C.:

Q.—Have you anything in mind?

A.—No, I have not, only the fact that when I started doing his personal accounts for him he had certain other assets than those.

Q.—You have given us that date, I think, as the spring of 1926?

30 A.—The fall of 1926.

Q.—The fall of 1926?

A.—Yes.

Q.—Sir Mortimer’s personal affairs?

A.—Yes.

Q.—What assets did he have at that time outside of the Incorporated Company?

A.—I could not just recall; I think I have given you a statement. If you have it there I could tell you.

40 Q.—Coming down in any event to the assets which remained at the time of his death outside of the shares of the Incorporated Company, outside of real estate, Pine Avenue and Ste. Agathe, and the Liggett and Myers stock, there was not a great deal on hand then, was there?

A.—No, not a great deal. I say there were those tobacco products and Victor talking machine, on which there is a liability.

Q.—Then there were the serial notes in the Company which he had had right along?

ALEX. M. REAPER (*for Plaintiffs*), *Examination-in-Chief*.

A.—Yes.

Q.—What would you say was the outside figure to cover the residue, apart from the shares of the Incorporated Company, Liggett and Myers, and the speculative account of Bamberger's, and the Pine Avenue and Ste. Agathe properties?

10 By Mr. Campbell, K.C.:

Q.—Is that as at death?

A.—I think I have covered all the detail.

By Mr. McKeown, K.C.:

Q.—I would like you to give me an approximate round figure which would indicate there was very little contained in the Estate apart from the major items we have touched upon.

20

Mr. Campbell, K.C.: The assets were about \$2,000,000, against which there was a liability of something. What was the equity in the Bamberger?

Mr. McKeown, K.C.: About \$1,000,000.

Mr. Montgomery, K.C.: Less than \$200,000.

30 The Witness: If you take the assets as at the time of Sir Mortimer's death and deduct the Liggett and Myers stock, Tobacco products, Victor, the shares of Sir Mortimer Davis Incorporated and the notes of Sir Mortimer Davis Incorporated and the balance due by Sir Mortimer Davis Incorporated, we came down to an amount of a little over \$500,000, \$516,000 I think.

By Mr. McKeown, K.C.:

40 Q.—All right. How much of that is productive? What would those items be that go to make up the balance of the \$500,000? Does it include the racing stable?

A.—Yes.

Q.—How much for that?

A.—\$118,200.

Q.—That has been sold?

A.—That has been sold, yes.

Q.—And that was a non-productive asset, I presume?

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

A.—Yes.

Q.—Was that a liability?

A.—That depends how you might look at it.

Q.—Look at it the way it worked out. Was this operation a productive revenue?

10 A.—It cost a little bit to carry it on. We got a little more for the sale of the stable than the inventory value at the beginning.

Q.—What else have you got of the \$500,000 that is productive?

A.—Practically none of that productive.

Q.—Now, as to the Bamberger speculative account, that had only been opened by Sir Mortimer in recent years?

A.—It was operating when I first—in 1926.

Q.—In 1926, but the Company had been in existence since 1921?

A.—The speculative account was Sir Mortimer's personally. It was not the Company's.

20 Q.—I know, but we are talking about what assets were left out-side of those which were put in the Incorporated Company.

A.—Yes.

Q.—Do you know that Sir Mortimer received, by way of bonus, \$1,000,000 in shares from the Imperial Tobacco Company?

A.—I know he received quite a number of shares, yes.

Q.—Did you know that they netted about one million dollars, when sold in London?

A.—Yes.

Q.—It was in the spring and summer of 1927?

30 A.—Yes. Possibly some of them may have been sold in the fall of 1926.

Q.—Is not that the money which went into the Bamberger account?

A.—No, none of that money went into the Bamberger account.

Q.—It went directly into the Canadian Bank of Commerce for an overdraft Sir Mortimer had received from the Canadian Bank of Commerce, the amount and funds which went to create an overdraft?

A.—Yes, I presume he had.

40 Q.—Is it not to your knowledge that the money which went in as margin for the Bamberger account came out of the Canadian Bank of Commerce?

A.—There might have been a small amount, but I think it was very small.

Q.—Very small?

A.—Yes.

Q.—Do you want the Court to understand that the operation

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

of the speculative account in Sir Mortimer's time, with Bamberger Brothers, produced this equity which finally was there, of \$1,000,000 at the time of his death?

A.—I would have to check up on these figures.

Q.—Subject to verification of the figures that is the way the equity was produced, and a small amount paid on margin, increased in value on turning the shares over?

10 A.—I think there was some margin in doing that.

Q.—I don't mean a margin; I mean a profit .

A.—Well, a profit. I could not say what the amount was.

Q.—Have you got any idea what this amount of money was, as having been put into the Bamberger account originally?

A.—Not offhand; I could look it up.

Q.—You know that at the time of Sir Mortimer's death there was an equity there of about \$1,000,000?

A.—No, not quite.

20 Q.—Something in that vicinity?

A.—I think not. I think it was less than that.

Q.—How much less?

A.—I could not say offhand.

Q.—You sold these shares the other day for nearly \$1,000,000?

A.—Over \$1,000,000, yes.

Q.—At the most all you owed Bamberger was something like \$200,000 against that?

A.—\$200,000, yes.

30 Q.—So there was upwards of \$800,000 equity, if the prices were the same at the time of the death as at the time of the sale?

A.—At the time of the sale they would be.

Q.—That would be upwards of \$800,000?

A.—No, because you see that calculation would be right, but the 2,400 shares of that stock was not with Bamberger.

Q.—That does not make any difference. It was free.

A.—It was free, yes, but it had cost money at some time or other. It was not carried in the Bamberger account.

40 Q.—I see. You do know, in any event, Sir Mortimer received from this source, the Imperial Tobacco Company, this amount of approximately \$1,000,000 in 1926 or 1927?

A.—Yes. It was used to pay off the loans of the Bank of Commerce.

Q.—Yes, I know. Now, Mr. Reaper, will you turn up the Minute Book of the Incorporated Company?

A.—Yes.

Q.—Going back, we will say, a year prior to Sir Mortimer's

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

10 death—take it back to March, 1923, Meetings of Directors. Will you just turn over these sheets and verify it Mr. Marler attended the meetings of the Board constantly. Let us begin at page 142 of the Minute Book and see if you can verify for me that Mr. Marler attended the Meetings of the Board from that date up to the time of Sir Mortimer's death, beginning at page 142 and continuing to page 195. He finds, My Lord, he cannot answer my question because it does not appear anybody was at it.

A.—There are only two signatures.

By Mr. Campbell, K.C.:

Q.—Which Meeting was that?

A.—11th of June, 1923. It is signed by Sir Mortimer Davis and by H. B. McLean as Secretary.

20 By Mr. McKeown, K.C.:

Q.—All right for that Meeting. Let us see the next one.

A.—The 3rd of October.

Q.—You don't need to give the dates. Just verify the things.

A.—Oh, I see.

Q.—Only to cover the Minutes between what dates?

A.—11th of June, 1923 and January 16th, 1928.

30 Q.—Did Mr. Marler attend every one of the Directors' and Shareholders' Meetings during that period?

A.—No. Apparently there was a Directors' Meeting on June 25th, 1925, and a Directors' Meeting August 4th, 1925, at which he was not present.

Q.—He attended all the other Meetings?

A.—Yes, apparently.

Q.—Whether they were formal Meetings or Meetings at which the affairs of the Company appear to have been discussed and considered at some length?

A.—Yes, apparently.

40 Q.—Coming back to the question of Mr. Marler's attendance at the Meeting, that Meeting of January 19, 1928, is that the last Meeting of Directors held before Sir Mortimer's death?

A.—Yes.

Q.—You have already told us that Mr. Marler not only did not attend Meetings after Sir Mortimer's death, but also he was not notified, to the best of your knowledge, although he remained a Director until December 31st, 1928. Do you recall that?

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

A.—Yes. As I say, there were only two Meetings in that interim, formal meetings, and before the third Meeting was held his resignation had been approved.

Q.—Now, Mr. Reaper, let us review just one more point: have you anything in the Minutes of the Directors authorizing either the loan of \$10,000 to Jennison or the purchase of \$50,000 of preferred stock of the Jennison Company?

10 A.—There is nothing in the Minute Book. These things were usually put through at the Annual Meeting, just before the Annual Meeting or about that time.

Q.—Do you find anything in the Annual Meetings dealing with Jennison and Company or with Jennison?

A.—There has not been a Meeting since. These proceedings have held up our Meetings.

Q.—That Jennison transaction, you must remember, took its origin in May, 1928. You have had a meeting since then?

20 A.—The loan was at that time.

Q.—Anyway, there is no authority in the Minute Book for either transaction?

A.—There was not.

Q.—There was an Annual Meeting in 1928?

A.—Yes.

Q.—Now, equally, there was nothing in the Minutes authorizing the withdrawal by Lord Shaughnessy in January, 1929, of the sum of \$10,000 from the corporate funds?

A.—There is no Minute to cover that.

30 Q.—Is there anything in the Minutes authorizing the investment of \$142,500 in the securities of Investment Foundation Company?

A.—No, there is no Minute for that yet.

Q.—I think you told us that that investment was made and paid in March and April, 1929?

A.—Yes.

Q.—Is there any Resolution or other entry in the Minute Book authorizing the purchase of the Alcohol "A" shares to the amount of some \$68,000?

40 A.—No.

Q.—In the spring or early winter of 1929?

A.—No.

Q.—Is there any Minute in the Minute Book concerning the transaction of last September under which Lord Shaughnessy withdrew in cash the several sums—

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

Mr. Campbell, K.C.: I speak subject to correction, because we have been at this for a week, but it seems to me that this was gone into by my learned friend before.

The Court: I don't know whether it was asked, whether there was a Resolution to that effect.

10 Mr. Campbell, K.C.: I am under the impression that he did, but however——

The Court: It is a long time ago.

(Question read.)

By Mr. McKeown, K.C. (continuing):

20 Q.—Aggregating \$144,000 odd in connection with the larger item of \$217,000 arising out of the contract of September 17th, 1924?

A.—There is no Minute at that time, no.

Q.—And no Minute authorizing any compensation of the loans of \$50,000 and \$10,000, which were crossed off by compensation in the same connection?

A.—They were charged against——

Q.—Yes, but there is no Minute in the Minute Book of the Directors dealing with that subject at all?

A.—No. It was simply taken off the amount that was to credit.

30 Q.—As to the Cadillac Coal Company matter, you say that went through as under date October, 1928, I think. Is that the right date?

A.—October, 1928. They started operating after that date later.

Q.—And the contract was made retroactive to that date?

A.—Yes.

Q.—Prior to that date, had there been any Resolution passed by the Directors dealing with the subject?

A.—Prior to that date?

40 Q.—Yes?

A.—Prior to what?

Q.—October, 1928.

A.—No. Mention was made in the Minute of December 31st, 1928.

Q.—Was that a Directors' Meeting?

A.—Directors' Meeting, yes.

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

By the Court:

Q.—December 31, 1928?

A.—Yes; Directors' Meeting; prior to the Annual Meeting.

Q.—Is the reference to the Cadillac Coal Company contained
in the Directors' Meeting of December 31st, 1928, at page 198 of
the Minute Book, the only reference in the book to the Cadillac
10 Coal Company?

A.—I think so.

Q.—So that the contract in its final form with Cadillac Coal
Company was not brought before the Directors again before being
signed?

A.—No.

Q.—As a matter of fact at the Meeting you are speaking of,
there was only yourself and Lord Shaughnessy present, I mean the
meeting of December 31st?

20 A.—Yes, Lady Davis was in Europe.

Q.—Will you be good enough to turn up in your Minute Book
to the Minutes of the Directors of August 4th, 1925, dealing with
expenditure of money by the Company or other obligations. Do
you find a Minute in the Meeting of Directors of August 4th, 1925,
dealing with an expenditure of the Company's funds or the incurring
of obligations, and if so, just read it into the record.

The Court: Do you refer to the Incorporated Company?

30 Mr. McKeown, K.C.: Yes.

The Witness: (Reading.)

“ It was moved, seconded, and unanimously resolved THAT
no expenditures would be made by the Company nor obliga-
tions incurred thereby in excess of the amount of \$10,000 with-
out the express consent of Sir Mortimer Davis.”

40 By Mr. McKeown, K.C.:

Q.—Was that Resolution ever rescinded or modified as far as
your knowledge goes?

A.—I don't remember anything.

Q.—What?

A.—I don't remember it. That is before I was with the Com-
pany. I don't remember any rescinding.

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

Q.—Who was present at that Meeting? Let us see the Minutes.

A.—There were present at that Meeting Sir Mortimer B. Davis, J. R. Waddell, Lord Shaughnessy, Mortimer B. Davis.

Q.—By whom are the Minutes signed?

A.—They are signed by J. R. Waddell and Lord Shaughnessy.

Q.—The same date?

A.—August 4th, 1925.

10 Q.—That was almost a year after Lord Shaughnessy had joined the Corporation?

A.—Yes. I might say that was when Mr. Waddell was Vice-President.

Q.—During the course of your examination, I asked you to produce Mr. Jennison's letter of December 3rd, 1928. Have you brought it to Court?

A.—Yes.

20 Q.—Will you now produce it, and mark it as P-72, as already entered in your deposition?

A.—Yes.

Q.—This letter is on the letterhead of Jennison and Company Limited, Canada Cement Building, Montreal?

A.—Yes.

Q.—And is dated December 3rd, 1928?

A.—Yes.

Q.—And reads as follows:

30 “Right Hon. Lord Shaughnessy, K.C., Canada Cement Building, Montreal, Quebec. My dear Lord Shaughnessy: I will not at this time attempt to go into all the details concerning the business scope of the activities of Jennison and Company, as I believe you have on file the suggestions made to you and Sir Mortimer Davis earlier in the year, and from which I have not departed.

40 The measure of the activity of the organization is not entirely that of the invested capital, but rather in the personnel of the organization. In suggesting a capital I am guided primarily by the amount of a cash budget which I think will satisfactorily take care of the operations, and still permit of the maintenance of Bank balances which will provide a standing of substance with the institutions which I wish to have banking relations with.

I would estimate that a twelve months' budget would be approximately as follows:

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

	Rent, stenographic service, telephone, tele- graph, postage, supplies, etc., \$350.00		
	per month, or	\$ 4,200.00	per annum
	Necessary travelling	3,500.00	“ “
	Salary, C. S. Jennison	30,000.00	“ “
	Salary, assistant	12,000.00	“ “
10	Interest on 100,000 preferred stock at 6%	6,000.00	“ “
	Total	\$55,700.00	

There would be in addition to this budget various costs for outside assistance in the examination of properties, which would in most cases be borne by clients, but which, in some cases, would have to be conducted for our own account. It might also be deemed advisable in special cases to make deposits as option on properties which we might wish to acquire. There is business on hand, which, I believe, warrants my statement that a sufficient income will be derived therefrom to absorb the indicated overhead during the coming year.

Jennison and Company has authorized \$100,000 in 6% Preferred Shares and 1000 Shares of Common Stock of no par value. I suggest that you and your associates acquire the Preferred Stock, and that \$90,000 will be placed in the Treasury of the Company, which, together with the \$10,000 previously advanced would be a payment in full for the Preferred Stock at par. As holder of this Preferred Stock you would receive 6% interest on the investment. I would contribute the uncompleted business now on hand and the responsibility of the operation, and as I have contracts which it is possible to consummate and show a profit equal to the capital invested in Preferred Stock, I would suggest that we divide the Common Stock equally, and that in so doing, we would probably arrive at a fair basis for the division of future profits.

The stock of the Corporation is ready for immediate delivery, and I have taken offices adjoining the ones I now occupy on the 7th floor of the Canada Cement Building, as of December 1st, which I think will be adequate for our purposes.

I am appending a list of some of the Companies served or investigated during the last year, in many of which there are opportunities for profitable financing, and which make a valuable basis of information in the industries which they represent.

I would wish to do a moderate amount of advertising for our benefit in order that we may gradually reach out and become known in the field which we expect to serve. As to the Directors

ALEX. M. REAPER (*for Plaintiffs*), *Examination-in-Chief.*

10 of the Company, that is entirely open to your own good judgment as to whether or not you wish to be publicly identified with the operation. As a matter of fact I would not plan on any announcement indicating more than the name of the Company and the purpose which it was trying to serve, confining any information as to those who owned the business to the banking sources that I believe can be cultivated with profit. I have in mind the desirability of opening accounts at both the Bank of Montreal and the Bank of Commerce. I believe that the type of operation we have in mind can be conducted with a minimum of overhead, and that business in which there is a substantial profit can be developed.

I would like to carry a card in some of the papers, both daily and financial, which would indicate that Jennison and Company were "Industrial Managers and Bankers". I think the simpler that we can make the form the better.

20 I shall be glad to discuss with you any further questions of operating detail which may occur to you, but I think that this statement will perhaps furnish you with my idea as to our operation. Faithfully yours. (Signed) C. S. Jennison."

And then, there is appended a list of names which have either been investigated or something or other. The letter states:—"I am appending a list of some of the Companies served or investigated."

Mr. McKeown: Do you want them read, Mr. Campbell?

30 Mr. Campbell: All right, go ahead.

Mr. McKeown: They are as follows:—

40 "George Hall Corporation, Ogdensburg and Montreal; Algonquin Paper Company, Ogdensburg, New York; Century Coal Company, Montreal; The Pedlar People Company, Oshawa, Ontario; Eastern Steel Products, Winnipeg, Manitoba; Western Steel Products, Montreal; Northern Breweries Limited, Sudbury, Ontario; Sudbury Street Railway & Power, Sudbury, Ontario; Gaspé Package Freight Co., Quebec; Automobile Owners Association, Montreal, Melchers Distillery Company Limited, Montreal; Rochester & Pittsburgh Coal Company, New York and Montreal; A. Iselin & Company, New York; A. Beath & Company, Toronto; Dominion Equipment Company, Montreal; Hamilton By-Products Coke Company, Hamilton; Dominion Envelope & Paper Company, Toronto; Wire

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

Bound Box Company, Toronto; Burnett, Dechaux and British American Dry Cleaners, Montreal.”

By Mr. McKeown:

Q.—Before we leave the Jennison matter, there seems to be a statement in the opening paragraph of the Jennison letter of December 3rd, 1928, Exhibit P-72, which would appear to suggest that Mr. Jennison had met Sir Mortimer Davis at some time. I put it to you that Mr. Jennison never saw Sir Mortimer in his life about any such matters referred to in that letter?

A.—I do not think he had discussed with Sir Mortimer, not so far as I know.

Mr. McKeown: Is that conceded, Mr. Campbell?

Mr. Campbell: Yes, he did not.

By Mr. McKeown;

Q.—In connection with the Investment Foundation Corporation, and the Directors statements which you were asked to produce, I have here, I think, the statement which was offered the other day for production, being the Statement of the Company as of November 30th, 1929. Is this the Statement which was in Court the other day?

A.—Yes, I think so.

Q.—This Statement will be produced as Exhibit P-77. According to this Statement, P-77, it would appear that the Company as of date, November 30th, 1929, had a surplus account of \$184,662.65. Do you notice that?

A.—Yes.

Q.—Was that a real surplus? Did it remain, or what became of it? Do you know what became of it?

A.—I think that is all explained in this letter of December 19th, from Mr. Flood, the President, to Lord Shaughnessy, a Director.

Q.—Before we leave the statements of the Investment Foundation Corporation, Exhibit P-77, do you notice a listing of all the securities held by the Company, giving the number of shares, the Corporation concerned, the cost price, the market price in quotations, and the book cost in dollars. Do you see that?

A.—Yes.

Q.—Are you able to say that if the market price of those securities was extended into dollars, that it would not absorb the whole of that surplus, which appears to be entered at \$184,662.65?

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

A.—That is explained in the letter referred to.

Q.—Will you let us have your answer on it as you understand it?

By Mr. Campbell:

Q.—Have you checked the figures Mr. Reaper?

A.—No.

10

By Mr. McKeown:

Q.—You cannot say?

A.—No.

Q.—Is this letter which is now produced, and marked P-78, being a letter from H. C. Flood, President of Investment Foundation Corporation, Limited, to Lord Shaughnessy, of date December 19th, 1929, the letter to which you just made reference a moment ago, as explaining the real position of that apparent surplus?

20

A.—Yes.

Q.—Entered at \$184,662.65 in the Exhibit P-77?

A.—Yes. There is also a letter to the Shareholders of the same date.

This letter reads:

“ Right Honorable Lord Shaughnessy, K.C., Montreal.

I will not read you the whole of the letter, but I will draw your attention to this paragraph:

30

“ Taking market quotations at the close of business on December 14th, and taking reserves and surplus account, our holdings show a depreciation of \$277,000.”

That would be an amount over the amount of the surplus as mentioned in the Exhibit P-77, where it is entered at \$184,662.65?

A.—Yes.

Q.—And over the reserve for dividends of \$20,000 shown on that same statement?

40

A.—I do not think that had anything to do with it.

Q.—Well, what is the reserve?

A.—The reserve which is shown here as surplus, is shown at \$184,662.65.

Q.—Deducting surplus accounts—what are the reserves which are deducted?

A.—I do not know. I do not see any here. That letter probably

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

may cover it. There is no reserve shown on that statement. There is only a surplus account shown.

Q.—The net result of the meaning of the paragraph which I have drawn your attention to in the Exhibit P-78 is, that this Company's surplus and reserve is wiped out, and its capital impaired at market valuation to the extent of \$277,000.00 for the time being, is that right?

10 A.—Yes.

Q.—But not entered in the books?

A.—Which they mention approximately is about 8 per cent.

By Mr. Campbell:

Q.—7½ per cent. Now, is that quite clear?

By Mr. McKeown:

20 Q.—This is at market valuation?

A.—At that time.

Mr. McKeown: That was for the time being. Nobody hopes it goes up more than we do.

Mr. Campbell: You do not suggest the loss was taken or realized. Let us be fair to the Investment Foundation Corporation. They have not made any loss, and it may be a profit.

30 By Mr. McKeown:

Q.—Let us see how it was the month after. That ought to be a pretty good start off. How was it the month after?

A.—Apparently the only change there is, they changed their surplus account, and apparently split it up between reserve and surplus account, the total of the two being about \$167,000.00 at the end of December, 1929.

40 At January 31st, the total of these surplus and reserve accounts, amounts to \$177,000.00.

Q.—\$177,000.00?

A.—Yes.

Q.—When was Sir Mortimer last in Canada before his death?

A.—In the fall of 1927, probably September or October.

Q.—Not later than that?

A.—I think not.

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

Q.—Have you any means available here whereby we could verify that date?

A.—I think so. I would say it was around the end of September, or perhaps about the beginning of October.

By the Court:

10 Q.—What year?

A.—In 1927.

By Mr. McKeown:

Q.—Had Lord Shaughnessy been in Europe in 1927?

A.—Yes, I think so.

Q.—At what time?

A.—During the summer.

20 Q.—What time did he return? Was he here when Sir Mortimer was here?

A.—Yes. He was back before Sir Mortimer.

Q.—And he was not back again before Sir Mortimer died?

A.—No, I do not think so.

Q.—Personally, you never saw Sir Mortimer after he left here?

Witness: In 1927?

Mr. McKeown: In the fall of 1927?

30 A.—No.

Q.—Will you tell his Lordship how much it is costing for overhead of the Incorporated Company per annum at the present time to produce the results which we have explained here during the last few days?

A.—I would say from the statement of September 30th, 1929, it would be approximately \$58,000.

Q.—What page are you looking at?

A.—I arrive at that from Exhibit D.

40 Q.—What does \$58,000 represent?

A.—It represents the total amount shown there of \$73,792.73, less the amount of donation of \$12,040.00, and less an amount of \$3,750.00 from salaries and bonus accounts, that last deduction being for the reason that in that period there was a bonus to Lord Shaughnessy shown of \$5,000.00, which would not come in another accounting period, so I have deducted \$3,750.00 from that to get at what would be the actual for the year.

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

The salary has not been included, but the bonus of \$5,000.00 was also included for a proportion of that for the quarter, which would only be \$1,250.00.

Mr. McKeown: We have not got this.

Witness: We have been dealing with this.

10

Mr. McKeown: We have not got this Exhibit B.

Mr. Campbell: It is in your Exhibit Number 10.

Mr. McKeown: Be careful. You may be right.

Mr. Campbell: It is in my copy.

20

Mr. McKeown: I think we were short-circuited on that.

Mr. Campbell: That is too bad, the only thing we have found yet and you did not know long before we did. Let us be fair to the Auditor. I think it is there, the statement that shows the total, the statement of profit and loss. It is your Exhibit Number 10.

By Mr. Campbell:

Q.—That would be for the calendar year?

30 A.—For the calendar year, for the fiscal year.

By Mr. McKeown:

Q.—That would give about \$58,000.00?

A.—That would give about \$58,000.00.

Q.—\$58,000.00 in other words, per annum?

A.—Per annum.

40 Q.—And I suppose the rate was not any lower for the portion of the previous year, that is, from the 22nd of March to the 30th of September, 1928? Is it approximately the same?

A.—Of the amount for the previous period ending September 30th, 1928, was about \$53,000.00

By Mr. Campbell:

Q.—That is for the financial year ending that date?

A.—That is for the financial year ending that date.

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

By Mr. McKeown:

Q.—This covers the same items which ran in the next year to \$58,000.00?

A.—Yes. Part of it on one occasion was on for the full year, whereas it only had been on for a part the previous year.

10 Q.—And part of the other matter was, that your salary had increased \$2,500.00?

A.—The change in my salary, that accounts for it. Those two amounts make the difference.

Q.—And Lord Shaughnessy's salary had been increased \$5,000.00?

A.—It has only been paid really at the same rate as before, because he had always been paid a bonus of \$5,000.00, so that the amount was the same.

20 Q.—At what rate is this overhead being proceeded with at the present time? \$58,000.00 per annum?

A.—About that, yes.

Q.—In round figures \$5,000.00 a month?

A.—Roughly, yes.

Q.—Does the personnel include Geologists?

A.—Yes, one.

Q.—How much paid the Geologist?

A.—\$5,000.00 a year from the Incorporated Company.

By Mr. Campbell:

30 Q.—Who is that?

A.—T. P. Cochran.

By Mr. McKeown:

Q.—And where is Mr. Cochran at the present time?

A.—At the present time he is probably in Europe, or on his way to South Africa.

40 Q.—On his own private business?

A.—Yes, mostly.

Q.—Entirely?

A.—Well, except for what benefit we might get from the information that he may gather there, but otherwise he is on his own.

Q.—Are you thinking of going to the West Coast of Africa?

A.—No, but that may be an advantage. He may gain some additional information.

Q.—In the meantime, he is on leave, or vacation?

ALEX. M. REAPER (*for Plaintiffs*), *Examination-in-Chief*.

A.—Not exactly. He is on a sort of leave without pay at the moment.

Q.—On leave without pay?

A.—Yes.

Q.—That ought to be a good way to live.

10 By Mr. Campbell:

Q.—What is he doing?

A.—He is going out to Rhodesia to attend a Mining Convention.

By Mr. McKeown:

Q.—And are his expenses paid by himself?

A.—Yes.

20 Q.—He is not paid any salary?

A.—We have allowed him one month's salary. We have continued his salary for one month.

Q.—Is he in charge of the department which operates in Northern Quebec, Chibougamou?

A.—Yes, that was under him.

Q.—I omitted to ask you, was there anything in the form of authority in the minutes, to go into that Chibougamou proposition?

30 A.—I do not think there is anything covered in the Minutes, but Sir Mortimer in previous years had had certain exploration work done there by certain scouts, as you may call them, through Mr. Poleon in other parts of Quebec and Ontario.

Q.—I did not quite gather when you spoke of that venture before exactly what you were after?

A.—Well, a matter of knowledge to see what the district was, and to see whether there were any likely prospects.

Q.—Prospects, in what line?

A.—Minerals. Copper mostly.

Q.—You did not find any?

A.—We got some claims. They have not been developed yet.

40 Q.—I think it came out in the evidence that a trip in, or trip out, had been made by aeroplane as late as last August?

A.—Well, I think September possibly.

Mr. Campbell: We may have another Noranda.

By Mr. McKeown:

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

Q.—Is it a fact that the Incorporated Company presently holds the lease of that entire floor in the Canada Cement Building?

A.—They do.

Q.—For how long a term is that?

A.—It was made for twenty years; I think from 1922.

Q.—And is still in force?

10 A.—It is still in force. It is sublet to subsidiary companies.

Q.—Sublet mostly to the Canadian Industrial Alcohol Company?

A.—To the Alcohol Company, yes.

Q.—And the item which you take into account in the figures which you have given is the portion of the rental which relates to the Incorporated Company, after deducting the returns from the sub-tenants?

A.—Right.

20 Q.—What about this Mr. Poleon, if that approaches anything closely to his name?

A.—He is a Consulting Engineer.

Q.—Has he been consulted about Chibougamou?

A.—Yes.

Q.—Has he been there?

A.—No, he has not been there.

Q.—A long range consultation?

A.—He has consulted with Mr. Cochran in that connection.

Q.—When was Mr. Cochran added to the staff?

30 A.—He was engaged by Sir Mortimer a short time prior to his death, and he commenced with our Company about May, 1928.

Q.—In point of fact, when did he take up his duties?

A.—Just about that time. I think he arrived in Montreal towards the end of April, 1928.

Q.—What kind of contract has Mr. Cochran got with the Company? What is its duration?

A.—There is no special period.

Q.—Month to month?

A.—Month to month.

40 Q.—What has Mr. Cochran been doing in the way of rendering services to the Company since he returned from Chibougamou?

A.—Largely on field work. Chibougamou was under his charge. He has looked over Sudbury properties and so on, and made certain examinations in connection with oil leases and so on, and has given a good deal of his time in connection with the Cadillac Coal Company.

Q.—Now, Mr. Reaper, just one more question on this branch of the case, and we will be through as far as the Incorporated Company

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

is concerned. Are not the books of that Company from first to last in your own handwriting?

A.—Since I have had them in charge.

Q.—You, as one individual, are able to do, and you do all the accounting in connection with the handling of the Incorporated Company, is that right?

A.—Yes.

10 Q.—And the books after all, are fairly simple, and the entries are relatively few?

A.—Yes, comparatively.

Q.—You are able, in addition to the handling of the books of the Incorporated Company, to act as Secretary of a number of other Corporations?

A.—Well, they are not very active Companies.

20 Mr. McKeown: I think, my Lord, this concludes the part of the case, except as to the matters in connection with the gifts, the loans, the Marler stock and Alcohol.

His Lordship: You had better leave these to a subsequent period, and your opponents can begin the cross-examination of Mr. Reaper tomorrow.

Mr. McKeown: This is a part of the case which is very distinct from the other, that is the reason why we endeavoured to concentrate.

30 Mr. Campbell: Does Your Lordship wish us then to cross-examine on so much of the deposition as has so far been given? Is that the idea, leaving the other branches of the case in suspense?

His Lordship: Yes, because the other cases are entirely different. I think we should leave those cases for further adjudication later on.

40 Mr. McKeown: We want to go ahead with the evidence-in-chief in those cases.

Mr. Campbell: Should not my learned friend, then, complete his examination?

Mr. McKeown: I have no objection.

Mr. Campbell: I am taking it for granted now, Your Lordship,

ALEX. M. REAPER (*for Plaintiffs*), *Examination-in-Chief*.

that we are going to proceed to try this particular case in the ordinary way, and the other case will be taken care of when the time comes?

10 His Lordship: If you wish to examine Mr. Reaper tomorrow in case number so and so, in the case of the gift, in case number so and so in something else, I have no objection.

Mr. Campbell: Our position is this, we are not prepared to proceed with the other cases as they have not been referred to Your Lordship for trial. I understand they are before this Court at the moment, but in the ordinary course my learned friend should proceed to complete the deposition of his witness-in-chief.

Mr. McKeown: I am ready to do that.

20 His Lordship: Very well.

(And it being 4.45 P.M., the examination of the witness was adjourned until tomorrow, Wednesday, the 12th day of March instant, at 10.30 A.M.)

And further for the present deponent saith not.

30

MORNING SESSION
March 12th, 1930

ALEXANDER M. REAPER

reappeared and continued his evidence as follows (in chief):

By Mr. McKeown, K.C.:

40 Q.—Mr. Reaper, we will now take up together the matters arising out of the agreement of September 17, 1924. First of all, the Incorporated Company was a party to that agreement?

A.—Yes.

Q.—Have you the original of that agreement in the archives of the Incorporated Company?

A.—Yes.

(Witness hands agreement to Counsel.)

ALEX. M. REAPER (*for Plaintiffs*), *Examination-in-Chief*.

Q.—Will you exhibit the same to the Court?

A.—Yes.

Q.—Will you verify that the agreement in no manner purports to be executed in notarial form?

10 Mr. Campbell, K.C.: I don't know that the witness is a competent expert on that point, my Lord, because a copy of the agreement is in the file, and it is common ground it is executed in the form in which it appears. The proof my learned friend wishes to make is, I submit, a matter of law which the Court will decide.

Mr. McKeown, K.C.: I want to inquire whether the defendants admit that the Exhibit Number 13 is a true copy, is an exact copy of the original now exhibited by the witness.

20 Mr. Campbell, K.C.: We admit it is a true copy, subject to verification. I don't know that it has been compared, but subject to verification we admit the copy filed is a true copy of the original. There is one mistake in the printed copy.

The Witness: There is one signature missing.

30 Mr. Campbell, K.C.: Mr. McLean's signature should have been repeated. We will admit the copy subject to verification and any necessary corrections can be made. As a matter of fact, there are corrections to be made. There are two corrections to be made in the printed copy of the Plaintiffs' Exhibit Number 13, by correcting the signature of Mr. Marler to read "Herbert M. Marler" and by adding immediately below Mr. Marler's signature the signature of H. B. McLean before the signature of Lord Shaughnessy.

The defendants through their Counsel admit that the Agreement Number 13 was executed in counterparts and that all counterparts are exactly the same as the original agreement exhibited by the witness to the Court, and as far as they are aware.

By Mr. McKeown, K.C.:

40 Q.—Will you produce the original which you have exhibited, or do you wish to retain it?

A.—I should like to retain it.

Q.—I think you have already exhibited the letter of the 15th of October, 1924, reading as forming part of that contract of September 17th, 1924.

A.—Yes.

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

Q.—That letter is already in the record as Plaintiffs' Exhibit Number 14?

A.—Yes.

Q.—Now, will you verify that the Plaintiffs' Exhibit Number 14 as in the record is a true copy of the original letter which you are now exhibiting to the Court. I think you can say yes.

10 A.—Yes, subject to adding below the signature of Lord Shaughnessy in figures 14/10/24.

Q.—That addition to which you have just referred was evidently intended to indicate a date of Lord Shaughnessy's acceptance as being October 14th, 1924?

A.—Yes.

Q.—So far as the letter, Exhibit Number 14, is concerned, that letter was not written in counterpart, was it? It was just an exchange of letters between the Incorporated Company and Lord Shaughnessy?

20 A.—That is all, yes.

Q.—The other parties to the original contract of the 17th of September, 1924, Exhibit Number 13, are not mentioned in any manner in the letter of October 15th, Exhibit Number 14?

A.—No.

Q.—In the sense of being parties to the letter?

A.—No.

30 Q.—Now, have you in your possession the original document executed under date May 5th, 1928, copy of which has been filed as Plaintiffs' Exhibit Number 15, and which refers to both the original contract of September 17th, 1924, Exhibit Number 13, and the supplementary letter of October 15th, 1924, Exhibit Number 14?

A.—Yes.

Q.—Will you exhibit to the Court and verify that the copy now in the record, filed as Plaintiffs' Exhibit Number 15, is a true copy of the original which you exhibit?

A.—Yes.

Q.—Mr. Campbell says you must say yes?

A.—Yes.

40 Q.—Was this document of May 5th, 1928, Exhibit Number 15, executed in counterpart or have you got the only original in existence now before you?

A.—I think there was another copy.

Q.—Who got it?

A.—I think Lord Shaughnessy likely has it.

Q.—Lord Shaughnessy got that?

A.—Yes.

ALEX. M. REAPER (*for Plaintiffs*), *Examination-in-Chief*.

Q.—Was it identical in every particular to the original now before you?

A.—It was a carbon copy.

Q.—It was a carbon copy?

A.—Yes.

Q.—I don't know whether the point has already been made, but in any event, at the risk of repetition, is there any Minute in the
10 Minute Book of the Incorporated Company authorizing the execution of this document of May 5th, 1928, Plaintiffs' Exhibit Number 15?

A.—No.

Q.—Following the execution of the contract of September, 1924, Exhibit Number 13, were any of the serial notes of the Company transferred into the name of Marler and McLean?

A.—Yes.

Q.—Have you got your Transfer Book here?

20

A.—Yes.

Mr. Campbell, K.C.: We have for a week now admitted without protest the repetition of a great deal of evidence that was made by my learned friend on discovery, and this particular point that they are now approaching has been gone into most fully. All these particulars are in the record now, and I see no utility in having them all repeated. Your Lordship has already read the depositions on discovery; it may not be news to you.

30 The Court: As far as the evidence goes, I do not think there is any progress this morning at all.

Mr. Campbell, K.C.: My submission is when a fact is once proved by the witness they do not add anything to their case by proving it again.

40 Mr. McKeown, K.C.: That is quite true, as I suggested to Mr. Campbell. The examinations on discovery were made at different occasions from time to time; the subjects were not completed, and this is one form of assembling for the assistance of this Court or any other Court, where it will not be necessary to turn from one deposition to another to find out what has previously taken place. It will only take a few minutes. When the information has been located it does not take very long to put it together, just so there will be proper continuity of this part of the case.

Mr. Campbell, K.C.: Is this the only purpose of the question?

ALEX. M. REAPER (*for Plaintiffs*), *Examination-in-Chief*.

Mr. McKeown, K.C.: No other purpose whatsoever, except the purposes in your mind, and I have not any idea what they might be.

By Mr. McKeown, K.C.:

Q.—Now, the number of notes mentioned in the Agreement of September 17th is 196½-\$1000 notes. Is that right?

10 A.—Yes.

Q.—Is there an entry in your Transfer Book purporting to transfer 196½ of those notes by Sir Mortimer Davis following the execution of the Agreement, Exhibit Number 13?

A.—No. Certificates have actually been issued.

Q.—Answer the question. I cannot get anywhere with this examination if you do not allow me to ask the questions.

20 Mr. Campbell, K.C.: And the witness cannot get very far with the answers if you do not allow him to reply fully.

Mr. McKeown, K.C.: Not on anything except what I am inquiring into. There will be plenty of opportunity for him to go into these other matters. You cannot conduct an examination if the witness is allowed to answer as he wishes. I ask that the answer be struck out. I did not ask anything about certificates.

Mr. Campbell, K.C.: I ask the answer be allowed to remain. The witness has a right to give the whole answer.

30 Mr. McKeown, K.C.: I am talking about the Transfer Book. I don't think Mr. Campbell's objection is made seriously at all.

Mr. Campbell, K.C.: My objection is made seriously because if you will bring out the whole story I have no objection. If you bring evidence as to part of the story and wait until I reach this cross-examination on that point in ten days from now, I have objections.

40 Mr. Montgomery, K.C.: You are pessimistic this morning.

Mr. Campbell, K.C.: At the present rate of progress. I am guessing.

Mr. McKeown, K.C.: I ask the interjection by the witness be struck out. I ask that the words "Certificates have actually been issued" be struck out.

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

The Court: What was the objection?

Mr. McKeown, K.C.: "Certificates were issued." He has the Transfer Book before him. I ask him where they were transferred to the Trustees and if the Trustees made a transfer—if there is a transfer—to transfer 196½ notes. He said "No." I want him to prove what the transfer is of \$100,000. I don't want to go into the period of the certificates. We will come to that. I ask for the transfer and he talks about the certificates. I ask this be struck out for the time being. This witness is in charge; he knows it much better than I do. My learned friend is here to cross-examine him.

Mr. Campbell, K.C.: Will you let me cross-examine immediately on that point if I think you omit anything?

Mr. McKeown, K.C.: I would suggest you proceed in the regular way.

Mr. Campbell, K.C.: That is why I am objecting.
Answer read as follows:

"No. Certificates have actually been issued."

By Mr. McKeown, K.C.:

Q.—That may be argument. I ask these words be struck out.
The Court: All right. I will strike it out and we will have it in cross-examination.

By Mr. McKeown, K.C.:

Q.—What do you find in the way of an entry in your Transfer Book following the date September 17th, 1924, Exhibit Number 13?

A.—I find here an entry under date November 5th.

Q.—November 5th?

A.—Yes.

Q.—What year?

A.—1924.

Q.—Yes; what is it?

A.—Transferring \$100,000.

Q.—Of what?

A.—Of serial notes of Sir Mortimer Davis Incorporated from Sir Mortimer Davis to Honourable H. M. Marler and H. B. McLean.

Q.—Just read the words that are in the Transfer insofar as

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

the transferees are concerned. How is it entered? Read the transfer into the deposition. It is only a few words.

A.—“For value received, I, Sir Mortimer B. Davis, herein acting through my attorney, J. B. Waddell, Montreal, hereby assign and transfer unto Herbert M. Marler and H. B. McLean \$100,000 of the 20-year six per cent notes of Sir Mortimer Davis Incorporated.”

Q.—Read the particulars, not the print.

10 A.—“Upon which \$ per share have been paid, subject to provisions of the act of incorporation, by-laws, rules and regulations of said Company. Witness my hand at Montreal, this 5th day of November, 1924. (Signed) M. B. Davis, per J. B. Waddell, Attorney.”

Q.—Apart from this entry which you just read to the Court, which is actually transfer Number what?

A.—Three.

Q.—Is there any other entry in your Transfer Book transferring notes from Sir Mortimer Davis to Herbert M. Marler and H. B. McLean after the date of this contract or Agreement, September 17th, 1924?

A.—No.

Q.—You said something in answer to my first question about certificates having been issued?

A.—Yes.

Q.—Have you got the Certificate Book here?

A.—Yes.

Q.—Before we look at the Certificate Book, have you got a Register of Notes similar to a Stock Ledger?

30 A.—Yes.

Q.—Is it in the same book?

A.—Yes.

Q.—Will you exhibit to the Court the Ledger or Register kept by the Incorporated Company concerning the serial notes, and in particular the page of the same concerning the notes transferred into the name of Herbert M. Marler and Herbert B. McLean, subsequent to the contract, September 17th, 1924?

A.—I do.

Q.—The first entry made corresponds with the entry in the Transfer Book which you have already read into the record, that is to say, that on November 5th, 1924, notes in the amount of \$100,000 were transferred to those two persons from Sir Mortimer Davis?

A.—Yes.

Q.—What is the next entry shown on this sheet?

A.—September 3rd, 1925, transfer for 96,500 shares from Sir

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

Mortimer B. Davis to the same Trustees, or to the same parties. " Trustees " are not mentioned.

Q.—The final entry is what?

A.—September 20th, 1929, being a transfer from these Trustees to Lord Shaughnessy for \$196,500 of these serial notes.

10 Q.—Will you also let me draw your attention to the heading of this account, this Ledger account or Register, and read it in the record, if you please?

A.—" (Name), Herbert M. Marler and H. B. McLean.
(Address), 120 St. James St., Montreal.
(Occupation), Notaries."

Q.—There is no reference there to these men being Trustees with Lord Shaughnessy, is there?

A.—No, no word " Trustees."

20 Q.—Insofar as concerns the entry, September 3rd, 1925, as shown by the Stock Register or Ledger affecting \$96,500 of these notes from Sir Mortimer B. Davis to Herbert M. Marler and Herbert B. McLean, there is no transfer in your Transfer Book to support that, is there?

A.—No, there is no transfer in the Transfer Book.

Q.—You spoke something about certificates. You don't mean certificates? You mean these notes, do you not?

A.—I mean certificates for these notes. They were sort of formal certificates.

30 Q.—Are they not rather in the form of notes? Will you just exhibit one of those notes? Could we agree, Mr. Campbell, on removing one of those from the book to have it for a specimen for the purpose of the record?

Mr. Campbell, K.C.: Any objection?

Mr. Holden, K.C.: I do not see any objection. Write " Cancelled " across it.

40 Mr. McKeown, K.C.: We will mark it " Specimen," including the stub and the whole works.

Mr. Holden, K.C.: You might print it in red pencil " Cancelled." Put it in red pencil.

Mr. McKeown, K.C.: I have a nice red pencil here. I will do a good job.

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

Mr. Campbell, K.C.: You write a good hand, Mr. McKeown, a large bulky one.

By Mr. McKeown, K.C.:

Q.—Will you produce a specimen as Exhibit Number 79?

A.—I will.

10 Q.—Will you show me the stubs of the notes which were issued as to the serial notes, to Messrs. Marler and McLean, subsequent to September 17th, 1924?

A.—I now exhibit the stub covering the note as to notes Nos. 9383 to 9482, meaning 100 notes of \$1,000 each.

Q.—And aggregating \$100,000?

A.—Yes.

Q.—What date was that issued under?

A.—November 5th, 1924.

20 Q.—And that corresponds with the entry in the Register to which you have referred this morning, of the same amount?

A.—Yes.

Q.—Are there any further stubs indicating the issue of notes to Messrs. Marler and McLean subsequent to the 5th of November, 1924, or indicating a further stub affecting notes Nos. 10,283 to 11,248, covering 96½ notes of \$1,000 each and entered at \$96,500?

A.—Yes.

Q.—Issued to H. M. Marler and H. B. McLean on September 3rd, 1925. Is that right?

30 A.—Yes.

Q.—This again corresponds with the entry in the Register to which your attention has been drawn this morning, in the same amount?

A.—Yes.

Q.—There apparently is an error in the entry as made in your stub, indicating that the same covers notes 10,283 to 11,248, which would represent how many notes?

A.—966; both numbers being inclusive.

Q.—And in turn, would represent \$966,000 of notes?

40 A.—Yes.

Q.—Which is manifestly wrong?

A.—Yes.

Q.—On the contrary, to rectify that I see that a correction has been made in lead pencil replacing the figures 11,248 with the figures 10,378½.

A.—Yes.

ALEX. M. REAPER (*for Plaintiffs*), *Examination-in-Chief*.

Q.—Using the correct figures the stub would indicate that the notes issued called for 96½—\$1,000 notes?

A.—Yes.

Q.—As entered on the stub in words?

A.—Yes.

Q.—And this stub of September 3rd, 1925, corresponds with the entry of the same date in the Register or in the Ledger?

10 A.—Yes.

Q.—In the same amount?

A.—In the same amount.

Mr. Campbell, K.C.: I am asking my learned friend to put in a notation which appears on the bottom of the same stub, because, as I say, I might forget some of these things. Heaven knows when my turn is going to come to cross-examine. It is quite possible I might omit to ask the witness in cross-examination what appeared at the bottom of the stub. I submit this is the proper time to put it in. If he is referring to the stub, let him refer to the whole of the stub, and if my learned friend does not ask him, I suggest I be allowed to ask him as to what appears on the bottom of the stub.

Mr. McKeown, K.C.: It is already in evidence what Mr. Reaper said, as clearly as I think it is possible to make it, that these notes were transferred by Sir Mortimer Davis to these two individuals. That is the whole question here. Who else notes were transferred to running into \$800,000 more, I do not think it is worth while to bother our heads about. If my learned friend thinks the contrary he can take a note and cross-examine when the time comes.

Mr. Campbell, K.C.: What happened is that a certificate for a larger sum of money was outstanding and that that share was split up into two certificates, one for 96½ notes, which went to Mr. Marler and Mr. McLean, and the other to Sir Mortimer Davis, and that is what I am asking my learned friend to establish. I don't want to come back in a week from now to establish it in cross-examination.

40 Mr. McKeown, K.C.: That proves what I said first, you don't understand the first thing about this. I would ask Mr. Reaper to clear it up for your edification.

By Mr. McKeown, K.C.:

Q.—Is it not true that the Note Register and Ledger now before you and from which you have testified this morning shows that the

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

96½ notes of \$1,000 mentioned on the stub under date September 3rd, 1928, were transferred by Sir Mortimer Davis to Messrs. Marler and McLean?

A.—Yes.

Q.—Have you not said so this morning?

A.—Yes. It also says so on the certificates?

10 Q.—It refers to the certificates?

A.—Yes, Sir.

Mr. Campbell, K.C.: Did Your Lordship rule on my application that the witness be allowed to read the rest of the stub into the record?

The Court: Yes.

Mr. McKeown, K.C.: Which stub?

20 Mr. Campbell, K.C.: The stub from which he is speaking.

The Witness: On the bottom of the stub it says:

“ In part replacement of notes 9,583 to 10,282.”

Mr. McKeown, K.C.: Is that all you want?

Mr. Campbell, K.C.: Yes.

30 Mr. McKeown, K.C.: What is coming next?

Mr. Campbell, K.C.: There is nothing coming next so far as I am concerned.

Mr. McKeown, K.C.: If that is where you are leaving it, I will have to come back. That is all.

By Mr. McKeown, K.C.:

40 Q.—Then there is the final entry in your Note Register and Ledger as of September 20th, 1929. Will you exhibit the stub in the Note Certificate Book corresponding with that entry?

A.—Yes.

Q.—What is the date of it?

A.—September 20th, 1929.

Q.—What notes does it cover?

A.—It covers 196½ notes of \$1,000 each, making a total of \$196,500.

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

Q.—Issued in favor of whom?

A.—Issued in favour of Lord Shaughnessy.

Q.—Any notation as to the date the same were received by him?

A.—Received by Lord Shaughnessy October 9th, 1929, and signed for by him.

Q.—Received by Lord Shaughnessy on October 9th, 1929, and signed for by him?

10 A.—Yes.

Q.—What were the numbers of those notes, the serial numbers?

A.—Numbers 11,082 to 11,278½.

Q.—Is there any notation made on the stub?

A.—Yes, there is a note at the bottom reading “ In replacement of certificates in name of Herbert M. Marler and H. B. McLean, 9,383 to 9,482, \$100,000, and from H. M. Marler and H. B. McLean, Certificates 10,283 to 10,378½—\$96,500; making a total of \$196,500.”

20 Q.—Will you turn up the Stock Register and Ledger of the Incorporated Company?

A.—Yes.

Q.—Will you let me see the transfers of shares?

A.—Yes.

Q.—Will you indicate the first transfer of shares made to Messrs. Marler and McLean, following the date of the contract, Exhibit No. 13, September 24th, 1924?

A.—Yes.

Q.—Any number to that transfer?

30 A.—No.

Q.—Will you just read the transfer?

A.—“ For value received, I, Sir Mortimer B. Davis, herein acting through my attorney, J. B. Waddell, of hereby assign and transfer unto Herbert M. Marler and H. B. McLean three thousand two hundred and seventy-five shares of One Hundred (\$100) Dollars each of the capital stock of Sir Mortimer Davis Incorporated, upon which One Hundred (\$100) Dollars per share has been paid, subject to the provisions of its Act of Incorporation and the Bylaws, Rules and Regulations of said Company.

40

Witness my hand at Montreal
this 5th day of November, 1924.

Signed,

M. B. Davis,

per J. B. Waddell,

Attorney.”

ALEX. M. REAPER (*for Plaintiffs*), *Examination-in-Chief*.

Q.—Will you look at the account open in the Stock Ledger and Register of shares of the Incorporated Company into which that transfer has been posted, and tell His Lordship how the account is headed?

A.—Headed “ H. M. Marler and H. B. McLean, Montreal.”

Q.—No reference whatever to the parties being Trustees for anyone, in the heading, is there?

10 A.—No.

Q.—I would like to ask you to file a copy of this sheet which is now before you, and which is the account of H. M. Marler and H. B. McLean in the Stock Register and Ledger of the Incorporated Company as Exhibit P-80?

A.—Yes.

Q.—Beginning with the entries subsequent to September 17th, 1924, what is the first entry there?

A.—October 1st, 1924.

20 Q.—Read it.

A.—“Allotment to _____ as Trustees under agreement with Lord Shaughnessy of the 1,625 shares;” and then carried out “ \$162,500.”

Q.—That entry is made on October 1st, of an allotment of 1,625 shares, over a month before the entry of November 5th, 1928, actually 2,375, transferring the shares to Messrs. Marler and McLean. Is that right?

A.—Yes.

30 Q.—Under the date October 1st, 1924, appears a further entry by purchase in virtue of Bylaw “B,” 1,625 shares, amounting to \$162,500 and the same sum in the credit and debit balance?

A.—Yes.

Q.—Then comes the entry November 5th, 1924, corresponding with the transfer of the same date, which you read into the record?

A.—Yes.

Q.—And then no entry appears to have been made prior to the date of March 30th, 1929, when H. M. Marler purports to have transferred 25 shares to H. M. Marler and H. B. McLean?

40 A.—Yes.

Q.—And the final entry under date September 20th, 1929, when H. M. Marler and H. B. McLean appear to have transferred to Lord Shaughnessy 2,400 shares?

A.—Yes.

Q.—While we are upon the subject, let us look at the account in the Stock Ledger and Register of the Incorporated Company of

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

the Honourable H. M. Marler personally. You now have it before you?

A.—Yes.

Q.—The account is opened in the name of?

A.—H. M. Marler, Notary Public, Montreal.

Q.—Prior to October 1st, 1924, how many shares stood in Mr. Marler's name, according to this account?

10 A.—According to this account?

Q.—Yes.

A.—501 shares.

Q.—What are the entries in this account following October 1st, 1924, or, I will put it another way: will you please file as Exhibit P-81 a copy of the account of the Honourable H. M. Marler in the Stock Ledger and Register of the Incorporated Company, as to the entries on and subsequent to October 1st, 1924; the first is under date October 1st, "Allotment 325 shares, \$32,500." Will you verify that is equivalent to 65% of the holding of shares by Mr. Marler, that is, 500 shares, excluding the single share.

20 A.—Yes, it figures that.

Q.—65%?

A.—65%.

Q.—Now, the next entry is under the same date, October 1st, 1924, "By purchase in virtue of Bylaw B, 325 shares, \$32,500."

A.—\$32,500.

Q.—After that date, there are no entries until March 30th, 1929?

A.—No.

30 Q.—Under which date there purports to be a transfer from Mr. Marler to John Bell Waddell of 25 shares?

A.—Yes.

Q.—And under the same date a further transfer to H. M. Marler and H. B. McLean of 25 shares?

A.—Yes.

Q.—Under the same date a further transfer to the Estate of Sir M. B. Davis of 450 shares?

A.—Yes.

40 Q.—And that closed Mr. Marler's account, except the single share?

A.—Yes.

Q.—Is it to your knowledge that the single share remaining in Mr. Marler's name is owned by the Estate, and that the certificate for the same has been endorsed by Mr. Marler in blank, and is in possession of the Executors?

A.—It is.

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

Q.—Will you turn to the account of Sir Mortimer B. Davis in the stock register and ledger of the Incorporated Company, and tell us how many shares stood in the name of the late Sir Mortimer Davis at and prior to October 1st, 1924?

A.—46,996 shares.

10 Q.—Will you produce as Exhibit P-82, a copy of the account opened in the name of the late Sir Mortimer B. Davis in the ledger and share register of the Incorporated Company?

A.—Yes.

Q.—Will you note the entry under date, October 1st, 1924: “Allotment 28,925 shares,” of the par value of how much?

A.—\$2,892,500.

Q.—And the following entry under the same date—“By purchase in virtue of By-law 28,925 shares, par value \$2,892,500?”

A.—Yes.

20 Q.—The next entry is that of November 5th, 1924: “Transfer to H. M. Marler and H. B. McLean, 2,375 shares,” is that right?

A.—Yes.

Q.—And under the same date, a transfer of one share to Lord Shaughnessy?

A.—Yes.

Q.—Is this last share transferred to Lord Shaughnessy, under date November 5th, 1924, a share in virtue of which he qualified originally as a Director of the Incorporated Company?

A.—Yes.

30 Q.—And, is the certificate for that share endorsed by Lord Shaughnessy, and in the possession of the Executor?

A.—Yes.

Q.—And it is owned by the Estate?

A.—Yes, it is owned by the Estate.

Q.—So that as the matter now stands, there are how many shares of the Incorporated Company standing in the name of the late Sir Mortimer Davis, or his Estate?

40 Mr. Campbell: I will repeat my objection. We have spent this whole morning and as far as I can recall we have not proved one thing that has not been proved before we started. At this rate of progress I do not see how this case will ever stop. My learned friend is putting in these documents, he is filing copies of all these pages, and is asking the witness to read into the record every word that is on the documents he is filing. I submit, my Lord, I have tried to be patient, but I do not think we are bound to have all these facts proved by my learned friend over and over again.

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

His Lordship: It is a virtue, but not an essential point.

Mr. Campbell: My available supply of patience is diminishing. My objection is, that all these facts have already been proved and that they do not require to be re-proved. They are all proved by the Exhibits.

10 Mr. McKeown: Every one of your objections have been without point, as far as I can remember, and you have taken up a great deal of time of the Court by putting in useless objections. This matter has already been ruled upon by your Lordship and I am sure no good purpose is to be served by wasting time with useless objections. I do not want Your Lordship to have to search through this record and through all the documents which have now reached up to the eighties, in order to find something which can be collected as we go along, and put in order, and especially, I do not propose to
20 take any instruction from you, Mr. Campbell, as to how I shall conduct this case.

Mr. Campbell: I am not inviting you to take any instructions from me. I am asking the Court to give you some instructions. You have been very careful of the convenience and comfort of the Court, but I am suggesting that it does not add either to the Court's convenience or to ours to prove facts already proved in this case before we started.

30 Mr. McKeown: My purpose is, to have these facts in succinct order.

His Lordship: If you do not spend more than the rest of the morning on this question, all right.

Mr. McKeown: We would not have spent half the time that we have done if Mr. Campbell could have contained himself.

40 By the Court:

Q.—How many shares are outstanding in the name of Sir Mortimer Davis?

By Mr. McKeown:

Q.—On these books of yours?

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

A.—In the name of Sir Mortimer B. Davis, there are standing 44,620 shares.

Mr. Campbell: There is not any controversy about that.

By Mr. McKeown:

10 Q.—Are there additional shares standing for the benefit of the Estate entered in another way, and what are there?

A.—Well, there are 450 shares standing in the name of the Estate of Sir Mortimer Davis.

Q.—And the last named shares are part of the shares transferred to Mr. Marler?

A.—Yes.

Q.—And together, make up the total of 45,070 shares of the Incorporated Company appearing in the Auditors' Statement as
20 being held by the Estate in the Incorporated Company?

A.—I think the Auditors' statement calls for 45,075.

Q.—We will come to that. The five additional shares include the single share still in the name of Lord Shaughnessy, to which we have made reference?

A.—Yes.

Q.—And which was in your name?

A.—Yes.

Q.—An extra share still in the name of Mr. Marler?

A.—Yes.

30 Q.—A share in the name of Lady Davis?

A.—Yes.

Q.—And a share in the name of H. B. McLean?

A.—Yes.

Q.—And those five shares you can concede to be the property
of the Estate?

A.—Yes.

40 Q.—Will you refer to the Minutes of the meeting of Directors under date October 1st, 1924, in the Minute Book of the Incorporated Company, and verify that the Exhibit of the Plaintiff, Number 16, already produced, is a true extract of the Minutes of that meeting?

Mr. Campbell: It is admitted, subject to verification.

Mr. McKeown: Don't bother me with any admissions. We

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

have had enough of them this morning. You get them in and then want to take them out again.

Mr. Campbell: I ask that the witness be permitted to make a verification during the adjournment.

10 Mr. McKeown: You supplied these copies. I hope they are all right. I did not make them.

Mr. Campbell: I hope they are all right too, and I am ready to admit them subject to verification.

Mr. Holden: May it please the Court might I request that the Court adjourn and my partner and the witness, Mr. Reaper, can verify the prints, that our opponents have made of the Exhibits. We certainly gave them copies, but I see they contain some clerical errors such as, " J. D. Waddell " instead of J. B. Waddell, etc. There is no advantage to Your Lordship and to everyone else sitting here while the verification is being made.

His Lordship: Will you please tell Mr. Reaper what you want him to verify, and we will adjourn now.

And it now being 12.30 P.M. the further examination in chief of the witness was adjourned until 2.30 P.M.

30

AFTERNOON SESSION, MARCH 12TH, 1930

By Mr. McKeown:

Q.—I asked you before the adjournment to refer to the Minutes of Directors under date October 1st, 1924, in the Minute Book of the Incorporated Company, and verify that the Exhibit of the Plaintiff, Number 16 already exhibited, is a true extract of the Minutes of that meeting?

A.—I have done so, and I find that that is so, except as to the last two lines, which is really a foot note.

Q.—Following the meeting of the Directors covered by the Exhibit Number 16 which includes, first, the issue and allotment of 32,500 shares, and second, a By-law reducing the capital stock as stated from \$8,250,000 to \$5,000,000, a meeting of shareholders was

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

held at which both of these matters were confirmed, sanctioned and ratified, is that right?

A.—Yes. By-law B was ratified at that meeting.

Q.—Was the meeting of Shareholders only for the purpose of ratifying By-law B?

A.—Apparently, yes.

10 Q.—The matter of the allotment and distribution of treasury stock was not dealt with by the Shareholders?

A.—No, I do not see any mention of it.

Q.—And then, still later, the Company applied for, and obtained, Supplementary Letters Patent confirming the By-law B, is that right?

A.—Yes.

20 Q.—I would like to draw your attention to the fact that the Exhibit Number 16, copy of the Minutes of the Directors' meeting of October 1st, 1924, names certain Shareholders to whom a certain number of shares totalling 32,500 are issued and allotted?

A.—Yes.

Q.—And there were at that time other Shareholders of the Company whose names do not appear for any allotment, is that right?

A.—Yes, the odd Directors' shares that have been taken under the heading of Sir Mortimer Davis.

Q.—Do you agree with me in a matter of simple arithmetic that upon the outstanding capital of 50,000 shares of the Incorporated Company, the distribution made that day of 32,500 shares was the equivalent of 65 per cent of the outstanding stock?

30 A.—Yes, that is, the allotment was equal to 65 per cent.

Q.—Will you now take communication of the compilation marked P-83, and tell the Court whether you have verified the accuracy of the compilation set out in this Exhibit?

A.—Yes, I have.

Q.—It is correct?

A.—Yes.

40 Q.—The point which I wish to emphasize in particular is, that while the Shareholders H. M. Marler and J. B. Waddell each received a straight 65 per cent of their previous holdings, the combined holdings in the name of Sir Mortimer Davis personally, the five Directors, and the Marler-McLean block of 2,375 shares, totalling 47,000 shares, also received a straight 65 per cent of new shares, that is to say, on the total shares held in the name of Sir Mortimer Davis, the Directors, and Marler and McLean, 47,000 shares, the total allotment of new stock was 30,550 shares, which is 65 per cent of 47,000 shares?

A.—Allotted to Sir Mortimer Davis and Marler and McLean.

ALEX. M. REAPER (*for Plaintiffs*), *Examination-in-Chief*.

Q.—Of which 30,550 shares, 1,625 were allotted to Marler and McLean, and 28,925 to Sir Mortimer Davis, is that right?

A.—Yes.

Q.—Following the allotment of this total number of 32,500 shares, the Company under By-law B, which was passed at the same time, and sanctioned and ratified by Supplementary Letters Patent, repurchased from the Shareholders the whole of this stock aggregating 32,500 shares?

A.—Yes.

His Lordship: That is the stock that was allotted on that date?

Mr. McKeown: Under date October 1st, 1924, my Lord.

His Lordship: Exactly that amount of stock?

Mr. McKeown: Exactly that amount.

20

By Mr. McKeown:

Q.—Following the execution of the Agreement of September 17th, 1924, the Exhibit Number 13, Sir Mortimer Davis, I understand, drew the interest on the \$196,500 Serial Notes, which were referred to in that Agreement, and purporting to be transferred to Marler and McLean?

A.—Yes.

30 Q.—Up to the time of his death?

A.—Up to the time of his death, yes, and the Estate afterwards until September 17th, 1929.

Q.—That was in virtue of the clause of the Agreement that said that all dividends declared on the stock, and all interest paid on the notes, would be payable to Sir Mortimer during the five-year period?

A.—Yes.

Q.—Were all the Shareholders paid off at once in cash for the repurchase of their shares by the Company, or was there an amount in each case carried to the credit of each Shareholder?

40 A.—I think they were carried to the credit of each Shareholder in the first instance. I think Mr. Waddell and Mr. Marler got payment of their proportion very shortly after in cash. Sir Mortimer's amount was placed to the credit of his account, his personal account.

Q.—As between the Company and himself?

A.—As between the Company and himself, yes, and the amount for the shares in the name of Marler and McLean were credited on the books.

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

Q.—Will you just show us the book in which that credit of cash appears, that is, the book of the Incorporated Company?

A.—To which one?

Q.—To Marler and McLean. What is that date?

A.—September 30th, 1924, by distribution from capital surplus \$162,500.

10 Q.—From that time on interest was credited how often, accumulated on that amount?

A.—On the first two years it was put in annually. After that it was put in every six months.

Q.—At what rate?

A.—6 per cent per annum.

Q.—Can you tell me how much that had amounted to by September 17th, 1929, at the end of the five-year period?

Mr. Campbell: Do you mean the interest only?

20 Mr. McKeown: The capital and the interest.

By Mr. McKeown:

Q.—Just approximately?

A.—About \$217,600.

Q.—Should it not be a little more, on account of the capital debit of the Marler stock in December, 1928?

A.—I have added that on to the net.

30 Q.—So that this amount would be practically correct?

A.—That amount includes the 25 shares of Marler stock which was charged back to that account.

Q.—Yes, but would that account not be affected in the matter of interest from the date that the Marler stock was charged up in December, 1928?

A.—That is charged in the interest account. The interest on that was included in the interest account.

Q.—Whose handwriting is that account opened in?

A.—I don't know.

40 Q.—It is not your handwriting?

A.—No.

Q.—It is before your time?

A.—Yes, it is before my time.

Q.—For the purposes of the record, will you tell His Lordship just what the heading of that account is?

A.—“H. M. Marler and H. B. McLean, Trustees under agreement with Lord Shaughnessy, dated September 17th, 1924.”

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

Q.—You do not know whose handwriting that is?

A.—No.

Q.—The account has been continued in your handwriting on the second page?

A.—Yes

10 Q.—Now, Mr. Reaper, will you verify, if you please, that the certificate of September 18th, 1929, addressed to the Honorable H. M. Marler and H. B. McLean by Sir Mortimer Davis Incorporated, and signed “Shaughnessy, President”, forming part of the Exhibit Number 17, is a true copy of the original certificate?

Mr. Campbell: It is admitted subject to verification.

By Mr. McKeown:

20 Q.—Was Lord Shaughnessy in Montreal on the 18th of September, 1929, the date of this certificate?

A.—No.

Q.—Where was he?

A.—He was in the west somewhere.

Q.—Western Canada?

A.—Western Canada, yes.

Q.—When had he left for the west?

A.—On the 5th of September.

Q.—This certificate, of course, had been signed by him personally, had it not?

30 A.—Yes.

Q.—Had it been signed before he left, or was it mailed back to you?

A.—It was signed before he left.

Q.—Then, was the certificate referred to in the contract of September, 1924, Exhibit Number 13, to be issued under the terms of that agreement?

A.—Yes.

Q.—It purports to be a certificate of the Company signed “Sir Mortimer Davis Incorporated, Shaughnessy, President”?

40 A.—Yes.

Q.—Had there been a meeting of the Board of Directors called to authorize the making of delivery of this certificate before it was actually turned over?

A.—No, I think not. I think the Agreement simply called for certificate by the Company.

Q.—But it had not been considered at any Board meeting?

ALEX. M. REAPER (*for Plaintiffs*), Examination-in-Chief.

A.—No, not since the first Minute where the Agreement was mentioned, not in the beginning.

Q.—You are speaking of 1924?

A.—Yes.

Q.—Lady Davis was in Montreal on the 18th of September, 1929?

A.—Yes, I think so.

10 Q.—And was a Director of the Company at that time beyond any question?

A.—Yes.

Q.—And had been, at least, during the whole of 1929?

A.—Oh no—she had been a Director, oh yes, but not in Montreal.

Q.—And she had been in Montreal from the early part of June forward continuously?

A.—Yes.

20 Q.—And she was not consulted in any way prior to the issue and delivery of this certificate?

A.—No.

Q.—That certificate was accompanied by a letter, also forming part of the Exhibit Number 17, bearing the same date, that is, September 18th, 1929, addressed to the Honorable H. M. Marler and H. B. McLean, and purporting to be signed by Lord Shaughnessy. Had that letter been prepared and left with you before Lord Shaughnessy went West?

A.—Yes.

30 Q.—What instructions did you have from Lord Shaughnessy as to the use you were to make of the certificate and letter forming together the Exhibit Number 17?

A.—To have them delivered to Mr. McLean after the 17th.

Q.—After the 17th of September?

A.—Yes, 1929.

Q.—Did you attend in accordance with those instructions at Mr. McLean's office?

40 A.—Well, I phoned him first, and then went down probably a day or so after the 17th, probably the 18th or 19th.

Q.—You mean that you first saw Mr. McLean on the 18th or 19th?

A.—Yes.

Q.—You are sure it was not just on the morning of the 18th, the day after the expiry of the delay?

A.—I may have telephoned him that day, but I think possibly it was the day after, before I actually saw him.

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

Q.—And whether you saw him on the 17th or 18th of September, 1929, you delivered to him the original certificate and letter of which Exhibit No. 17 are copies?

A.—Yes.

Q.—And did you get from Mr. McLean delivery of the share certificates covering the 2,375 shares?

A.—Yes.

10 Q.—That same day at your first interview?

A.—I think so. I think he had them ready when I saw him.

Q.—And did you also get possession from Mr. McLean of the notes covering one hundred and ninety-six and a half, one thousand dollar notes of the Company?

A.—Yes.

Q.—At the same time?

A.—Yes.

Q.—You took them away with you?

20 A.—Yes.

Q.—Mr. Marler at this time was absent from Montreal in Japan?

A.—Yes.

Q.—This covering letter of September 18th from Lord Shaughnessy to the Honourable H. M. Marler and H. B. McLean, after referring to the "Enclosed certificate" proceeds in the second paragraph to inform these gentlemen that, "On September 30th, 1924, after increasing the stock of Sir Mortimer Davis Incorporated, the shares represented by the said increase, were re-purchased by the
30 Company in reduction of capital, and as a result of this transaction you should have been paid on my behalf the sum of \$162,500, which sum, together with interest thereon, would be delivered to me under the same terms and conditions and simultaneously with the notes and shares." When you called upon Mr. McLean, had he been previously informed of any such thing as credit of the \$162,500, or was that news to him?

A.—I don't know that he commented upon it. Mr. Marler may have had information about it. I don't know what Mr. McLean did.

40 Q.—I am speaking of Mr. McLean. I put it to you that Mr. McLean never heard of that \$162,500 until you arrived there with the letter?

A.—That may be.

Q.—Is not that the fact?

A.—Well, I really do not know.

Q.—You were there with them?

A.—I was there with him. I don't remember whether he

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

remarked anything about that or not. Of course, Mr. Marler may have mentioned it to him at some other time.

Q.—Leave Mr. Marler out of the question. We are dealing with Mr. McLean. I put it to you that you became aware through conversation with Mr. McLean, when you delivered this letter and certificate, that he had never heard of the \$162,500 before?

10 A.—He may not have. I do not really remember whether he mentioned he had or not.

Q.—Did you not have a conversation with him, the upshot of which was that he had never heard of the \$162,500 before you appeared with that letter and certificate?

A.—I don't know. He may have said that he had not given very much consideration to that agreement.

Q.—That is not what I am asking you. I ask you, did he not tell you in unmistakable terms that this was the first time that he had heard of this subject of \$162,500?

20 A.—He may have mentioned it. I do not just recall what passed.

Q.—And this letter goes on:—

“ This sum, however, was not paid to you but was credited to you on my behalf in the books of Sir Mortimer Davis Incorporated, and has been carried in that manner since the above date, September 30th, 1924, etc.”

And the letter goes on to state:—

30

“ On December 4th, last, the Shareholders of the Company purchased the interest of the Honourable H. M. Marler and under a transaction there was allotted to you, on my behalf, a number of shares which I was entitled to purchase, namely, 25 shares, the payment for which I have been debited in the books of the Company, and it will be taken into account in the adjustment between the Company and myself. I enclose herewith the stock certificate in that connection with the request that you kindly endorse it and turn it over with the other securities.”

40

I put it to you again, that as to that supposed purchase by Mr. Marler and Mr. McLean, that Mr. McLean told you that he had never heard of it when you brought him this letter and certificate on the 18th of September, 1929?

A.—He had not heard of that.

Q.—You are quite clear on that point?

A.—I am quite clear on that point.

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

Q.—Mr. McLean told you on September 18th, 1929, that up to that moment he had never heard of any purchase by Mr. Marler and himself of the 25 so-called Marler shares, is that right?

A.—Well, I do not really recall whether he put it that way or not, but the letter itself indicates.

10 Q.—Never mind that. You and Mr. McLean were there together, you said a moment ago; at least, I understood you to say that Mr. McLean declared to you he had never heard of this so-called transaction prior to the receipt of the letter. Is that true or not?

A.—It is quite possible he did, but as to just the exact words that were passed I do not know. The letter itself indicates that he had not been advised of it previously.

Q.—Then the letter concludes:—

20 “ I would also request you deliver over all the certificates with notes and shares to A. M. Reaper, Esquire, who is authorized to accept the same on my behalf and give a receipt therefor.”

How did this operate?

A.—He delivered them.

Q.—He gave you the notes and he gave you the share certificates?

A.—Yes.

30 By the Court:

Q.—That was all done in one visit?

A.—That was all done in one visit, and then, Mr. McLean came up the following day or so and signed the transfers on the Company's books.

By Mr. McKeown:

40 Q.—Why all this haste? Is there any reason that you can suggest?

A.—Not that I know of.

Q.—Why Lord Shaughnessy could not have waited until his return from the West? He had only gone West for a short stay?

A.—For about a month.

Q.—Do you know of any reason for the haste to have this happen instantly upon the expiry of the five year period?

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

A.—No, not apart from being that the date was up.

Q.—No explanation why these precautions were taken of leaving these documents post dated before he left?

A.—No.

Q.—In the same connection what happened, in fact, to the \$217,000 which were standing there at the credit of Messrs. Marler and McLean up to the 17th of September, 1929?

10

Witness: What happened?

Mr. McKeown: What happened to it? What became of it?

A.—That balance was transferred to Lord Shaughnessy's account.

Q.—Under what date, and by what authority?

A.—Under date of September 25th.

Q.—Who gave you the instructions to make that transfer?

20

A.—That was our understanding of that account, at September 17th it went to Lord Shaughnessy's credit, or he was entitled to the credit at that time.

Q.—Did Lord Shaughnessy give you instructions before he left for the West, as to what you were to do in the matter of the book-keeping?

A.—Not exactly. He told me what to do as regards the funds.

Q.—About the funds?

A.—Well, I mean the account was to be paid, how to treat it.

Q.—But the first step in the way you handled it, was to take this \$217,000 out of the name of Messrs. Marler and McLean, and put it into the name of Lord Shaughnessy, is that right?

30

A.—Yes.

Q.—The whole amount?

A.—Yes. The amount was credited.

Q.—You did that under date of September 25th?

A.—Yes.

Q.—What became of Lord Shaughnessy's account? Did it remain there?

40

A.—No.

Q.—Is there a cent of it there now?

A.—No.

Q.—Explain to his Lordship exactly what was done from the point that the credit was transferred to Lord Shaughnessy?

A.—The amount was credited to Lord Shaughnessy's account.

Q.—On what date?

A.—On the 25th of September, 1929, and the loan accounts of

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

Lord Shaughnessy for \$50,000, plus interest, and \$10,000 plus interest, was debited against it and cheques were issued to Lord Shaughnessy for the balance, being in three cheques, one for \$15,885 to Redpath and Company for his account; one for \$3,890 to Redpath and Company for his account, and another one for \$124,848.63 to his own order, and deposited in his bank account.

Q.—Is the cheque the same date?

10 A.—On the 25th of September.

Mr. Campbell: I repeat my objection to the repetition of all this evidence and for the additional reason that not only was it proved on Discovery, but it has also been already proved in the course of the testimony of this witness. My learned friend has been so long in his examination in chief now, that I think he is like some of the rest of us, he has forgotten. I have a distinct recollection that not only has that all been covered in the Discovery, but it has been covered in this examination, and I object to it being repeated and the ground of my objection is that it is already covered.

Objection reserved.

By Mr. McKeown:

Q.—The cheques you have referred to just now have already been produced in evidence?

A.—Yes.

30 Mr. Campbell: The whole thing has been explained time and time again.

Mr. McKeown: Don't get excited Mr. Campbell. Try and keep a little cooler than you did this morning.

Mr. Campbell: You don't help me to keep cool.

By Mr. McKeown:

40 Q.—Do you happen to have the Company's cheque book with you?

A.—No.

Mr. Campbell: The cheques have been filed and proved.

Witness: I can give you the dates. The one for \$15,885 was dated the 24th; the other two were dated the 25th.

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

By Mr. McKeown:

Q.—So that one of these cheques was dated before the transfer of the funds were made, is that right?

A.—They were to be made.

Q.—They were to be made, but they had not been given?

10 A.—The cheques had not actually gone through our account at that time. The transfer could have been made at any time after the 17th.

Q.—Leave a little something to argument for my learned friend. I think you added that the largest cheque was deposited to the private and personal account of Lord Shaughnessy?

A.—To Lord Shaughnessy.

Q.—And all this was under his direction before he went West?

A.—As a matter of fact, I think the payment to Redpath he covered by telegraph.

20 Q.—You were there as a Director of this Company, and in sole charge that day, and you were also an Executor of the Estate which was largely interested in that Company. Did it ever occur to you to have insisted upon the payment of those other loans, the McNish loan and the Alcohol loan which were not paid and not secured before you turned over that sum to Lord Shaughnessy?

A.—I did not think it was absolutely necessary.

Q.—You must have realized that you, at least, as an Executor of that Estate, and as a Co-Director of the Company had equal rights with Lord Shaughnessy?

30 A.—Yes.

Q.—It never occurred to you to suggest that he should pay those other loans?

A.—No.

Q.—Was any authority given from the Directors, as a Board, in any shape or form authorizing the disbursement of this sum of money at that time, on the 25th of September?

A.—No. That was simply treated as an Accounts Payable—Accounts Payable in the ordinary way.

40 Q.—And at that time how much was your bank account overdrawn already?

A.—There was a small overdraft at the end of August.

Mr. Campbell: I repeat my objection. My learned friend has gone all over this point.

Mr. McKeown: You don't like it.

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

Mr. Campbell: It is not a question as to whether I like it or not. I do not see why we should have to listen to all this repetition of evidence. I can see no useful purpose in repetition, and I object to this evidence as being a repetition of evidence already made.

Mr. McKeown: I am putting the question in order that this witness may explain if he can, why he allowed that money to go out
10 under those circumstances.

Objection reserved.

By Mr. McKeown:

Q.—These cheques were added to your overdraft at that time?

A.—I cannot just tell exactly. I think so.

Q.—You have your books there?

20 A.—The books won't exactly show that.

His Lordship: The overdraft was \$80,000 and some odd dollars. At the end of the month it was \$203,000. I may be wrong.

Mr. McKeown: Your Lordship may remember far better than I do.

Mr. Campbell: All these financial statements are in the record. That is the best evidence of the fact. The witness in the box
30 cannot add to them or vary them. They are all there, and they have been referred to already, sufficiently even, that nobody can have missed the point.

Witness: There is an increase in the overdraft due in that month of approximately \$125,000.

Mr. McKeown: The overdraft was \$80,000 on the date of August 31st as shown on the Auditors' Statement Number 9, and on the annual statement of September 30th, 1929, Exhibit Number 10,
40 it had been increased to \$205,000. That is approximately what your Lordship has stated.

By Mr. McKeown:

Q.—As to the Marler stock, when did you first become aware that Lord Shaughnessy proposed to purchase Mr. Marler's holdings of shares in the Company?

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

A.—I think it was in November, 1928.

Q.—Did he discuss the matter with you at any length?

A.—It was discussed, yes.

Q.—Did you think it was a good idea?

A.—I thought the purchase was a good one.

10 Q.—The figures spoken of in that connection was \$170 per share was it not?

A.—Yes.

Q.—Which, for the 500 shares, represented a figure of \$85,000?

A.—Yes.

Q.—I do not know whether I have asked you, but did you see the letter which Lord Shaughnessy wrote to Lady Davis concerning the Marler stock before he went away?

A.—No. You asked me that yesterday.

Q.—You do not remember?

A.—I did not see it before.

20 Q.—Did you know that Lord Shaughnessy had sent a cable to Lady Davis relative to the purchase of the Marler stock? Was that sent from the office?

A.—Yes.

His Lordship: Who purchased the stock?

Mr. McKeown: The Estate paid for it

30 Mr. Campbell: The Estate paid for it. Is that your statement, Mr. McKeown?

Mr. McKeown: I say the Estate purchased it. That is our absolute contention from first to last and that is all supported by what happened, and we will deal with it in a moment.

40 Mr. Campbell: The Marler shares were purchased, and the Estate's cheque for the whole amount was originally issued when the Marler shares were issued and as to the 25 shares to Mr. Waddell, and as to 25 shares to the Shaughnessy Trustee account, and in accordance with the By-laws of the Company which called for such distribution.

Mr. McKeown: In accordance with nothing of the kind. The By-Laws call for nothing of the kind.

Mr. Campbell: We will discuss it when the times comes.

ALEX. M. REAPER (*for Plaintiffs*), *Examination-in-Chief*.

Mr. McKeown: The time is now. We are going to discuss it right here.

By Mr. McKeown.

10 Q.—Will you exhibit the cable which was sent by Lord Shaughnessy to Lady Davis concerning the proposed purchase of the Marler stock?

A.—Yes.

Q.—You now exhibit cable which is in code. I cannot fathom the code, but we will use the decode. This cable is dated October 31st, 1928, from Montreal, to Lady Eleanor Davis, in Paris, and the translation reads:—

20 “Marler willing sell his stock of Sir Mortimer Davis Incorporated numbering five hundred shares at price fixed by Auditors, namely, one hundred seventy dollars per share. Under By-laws these must be offered to present shareholders in proportion to their holdings, namely, Estate ninety percent, Waddell five percent, self five percent. We think purchase very advisable and I willing take my proportion. Do you concur?”

Is that signed by Lord Shaughnessy?

A.—Yes.

30 Q.—You know that cable was sent at the time it was forwarded?

A.—Yes.

Q.—Is it true that under the By-laws of the Company those Marler shares must be offered to the present shareholders in proportion to their holdings?

40 Mr. Campbell: The By-laws are filed, and your Lordship will consider what they say and mean. My learned friend is not entitled to ask the witness to construe them. Perhaps by the time we get through the case we will find out what the By-laws mean, but it is a question of law, and, therefore, not a proper question for the witness.

Mr. McKeown: It is purely a question of fact. The witness says he knew of and participated in the sending of the telegram, and our submission is it is absolutely a gross misrepresentation of the fact.

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

Mr. Campbell: The By-law is in the record.

His Lordship: But Counsel may call my attention and the attention of the witness to the particular section which he contends confirms his submission.

10 By Mr. McKeown, continuing,

Q.—Is it true that under the By-laws of the Company those Marler shares must be offered to the present shareholders in proportion to their holdings?

A.—We understood that was covered by By-law No. 31.

Q.—That what was covered?

A.—That the shares had to be first offered to the shareholders.

Q.—What did you understand was covered by By-law No. 32?

20 His Lordship: Of course, we are not going to have the law from Mr. Reaper.

Mr. Campbell: I repeat my objection. I submit your Lordship will construe the By-law. Mr. Reaper has pointed out the By-law upon which he relies, and if he is wrong your Lordship will say so. I submit it is not fair to put questions of law to the witness.

By the Court:

30 Q.—Was that cable sent before Lord Shaughnessy spoke to you about the subject at the time it was brought up in November?

A.—I think it would appear the matter had been brought up a little earlier than I had in mind. I was speaking from memory.

Q.—Did you know of the cable to Lady Davis before it had been sent, or afterwards?

A.—I knew when it was being sent.

By Mr. McKeown:

40 Q.—Probably it was you who put it into code?

A.—No, I do not think it was.

Q.—In any event, you must have seen it before it went?

A.—I knew about it. I may not have exactly seen the message.

Q.—You had been Secretary Treasurer of this Company for quite a number of years, and you must have known of By-Law No. 32 when that cable was sent. This By-Law reads:

ALEX. M. REAPER (*for Plaintiffs*), *Examination-in-Chief*.

“The Directors, if they see fit, may approve of any transfer of any share, and may direct the persons entitled therein to be registered as a shareholder in respect of the share or shares embraced in any such transfer, and such transfer so approved shall be valid and binding notwithstanding the provisions of the preceding By-law.”

10 Did you know there was such a By-law of the Company?

A.—Yes.

Q.—In the face of that how can you justify having participated in the sending of a cablegram to Lady Davis in which it is stated: “Under the By-laws those shares must be offered to the present shareholders.”

Mr. Campbell: I object to the question as illegal Your Lordship will pass upon the construction of the By-laws. There is a long
20 By-law which immediately precedes the one just cited, providing for distribution among the shareholders of the shares of any shareholder wishing to dispose of his shares.

His Lordship: It is in the interest of the Directors that the shares should be offered to the remaining shareholders before being offered to the public, and it does not matter whether it is covered by By-law or something else.

Mr. McKeown: The point was that the Estate was purchas-
30 ing, and purchased and paid for, those shares, and at figures which according to the letter that was written by Lord Shaughnessy to Lady Davis following this cable indicated that the purchase was being made upon very favorable terms. Here were these two Executors of this Estate using the money of the Estate to make a purchase and sending a cablegram which in the light of the By-laws was absolutely misleading. The Estate had a perfect right to buy those shares without any reference to the other shareholders: and the only other shareholder, apart from Lord Shaughnessy, was Mr. Waddell. I think your Lordship can see through it about as easily
40 as you can see through the holes in a ladder.

Mr. Campbell: I object to the form of my learned friend's comment, which, in my submission, is not a proper construction of the By-laws of the Company. By-law 31 states:

“ At any time during the said period the shareholders of the Company, in proportion to their respective hold-

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

ings at the time, shall have the privilege of purchasing the said shares by payment or offer of the price of the same established in the manner above set forth. . . .”

That is as fixed at the last Annual Meeting on the recommendation of finding of the Board.

10 “ And the Directors shall have the privilege during such period of finding a purchaser for any shares not purchased by the shareholders, or any odd lot not susceptible of division among them at the said price. The Directors shall immediately upon receipt of any notice offering shares for sale notify all of the shareholders in writing intimating the number of such shares which each shareholder respectively is entitled to purchase.”

20 Lord Shaughnessy followed that By-law, and in our submission in law quite correctly. In regard to the shares which Hon. Mr. Marler wished to dispose of, and which were to be offered to the other shareholders in proportion to their holdings.

Mr. Waddell took up his, approximately 5 per cent. Lord Shaughnessy took up a corresponding proportion in the name of the Trustees who were then the shareholders of record.

Mr. McKeown: They never heard of it.

30 Mr. Campbell: No, they did not hear of it, but they were Trustees for Lord Shaughnessy.

Mr. McKeown: No, they were not.

Mr. Campbell: They were Trustees under the Shaughnessy agreement. The money came out of Lord Shaughnessy, and came out of the moneys standing at his credit, and was charged against the amount at the credit of the Trustee account, and was one of the payments made from his account when he made his settlement
40 in September, 1929.

Why should my learned friend be at such pains to create the impression that there was anything wrong or irregular about this? Lord Shaughnessy believed (and we submit rightly so) that he had the right to take those shares up, and he took them and paid for them.

My submission to your Lordship is that all these questions are illegal and irrelevant. We are not trying that issue in this case: it

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

is referred to another case, which Your Lordship may be called upon to deal with at some time in the future, but the merits of that case are not, in my submission, relevant to the proceedings now before you.

His Lordship: Even assuming the existence of the By-law, what has it to do with the present issue? If it is said the purchase
10 was not an advisable one, that would be the end of it.

Mr. McKeown: As applied to this case, we allege, amongst other things, that the shares were bought and paid for with the money of the Estate; that they became the property of the Estate; and that Lord Shaughnessy was incapable of becoming the purchaser of them. He could not be the vendor and the purchaser.

His Lordship: They were purchased with the money of the Estate as regards 90 per cent.
20

Mr. McKeown: No. They paid for the whole thing. They gave their cheque for \$85,000.

His Lordship: What about Mr. Waddell?

Mr. McKeown: There were 500 shares, at \$170.00 per share. The Estate gave its cheque for \$85,000, and this cheque is in the record. This cheque was given to Mr. Marler for the full amount.
30 This cheque was given on October 4th. We are not complaining about Mr. Waddell, but so far as Lord Shaughnessy is concerned when he bought those shares he was acting in a fiduciary capacity, with one share in his name which did not belong to him. He was between his interest and his duty. He thought that by this manoeuvre he would add to the shares he would ultimately receive, and he did so by taking shares which were paid for by the Estate, putting them through this account which was not his and in which he had not a cent of direct interest under any conditions, and today he winds up with the shares.

40 That is the reason we have taken one of these ancillary suits to have that transaction set aside on the ground that the shares belong to the Estate and not in any way to Lord Shaughnessy, because, in law, he could not become the purchaser. That is one of the Acts with which we reproach him of having failed to do his duty to this Estate.

If Mr. Marler wanted to sell 500 shares, and the shares were cheap at \$170.00 each, in face of By-law No. 32 Lord Shaughnessy

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

and Mr. Reaper were not entitled even to offer them to Mr. Waddell, but they sent a cablegram to Lady Davis saying that the By-laws provided that those shares must be offered to the shareholders. Surely these acts are significant, and cannot be disregarded.

Even if those shares were really a bargain at \$170.00 Lord Shaughnessy had no right to participate in them when they were paid for with the money of the Estate.

10 I think the correspondence which we expect to introduce will show the price was not \$170.00, but that the price was \$85,000 plus about \$15,000, \$100,000, together with the resignation of Mr. Marler.

All this is of the highest importance, and my learned friend cannot have any valid objection to my questioning in the minutest detail the gentleman who was one of the Executors and who was acting in a fiduciary capacity, selling securities which were bought with the money of the Estate, which I submit is a reprehensible act and that is why we have it in the Declaration.

20 Mr. Campbell: My submission is that in law Lord Shaughnessy was quite correct in what he did. He was the beneficial owner of the number of shares that were accruing to him under his contract with the late Sir Mortimer Davis, which entitled him to take approximately 25 of those Marler shares. Mr. Waddell was in the same position.

30 Under By-law No. 31, those who owned shares were entitled to take the Marler stock in proportion to their then holdings. At the time of this transaction, in the fall of 1928, Lord Shaughnessy by virtue of his four years of service had his vested interests in those shares that were accruing to him at the end of the five year period, and my submission is that the shares when taken were entered on the books of the Company to the Trustees, who would not take delivery of them until the five year period was up, and the price of those shares was charged to the account standing against him.

40 If Lord Shaughnessy's position is good in law (as I submit it is, and as we hope to persuade your Lordship when the time comes) I submit he was perfectly entitled to do what he did, and that his cable to Lady Davis was perfectly well founded in law. But, that is the controversy which your Lordship will have to decide if you try the other case, and it is not the controversy in this case and has no bearing on this case.

Mr. McKeown: To the suggestion of my learned friend that this has nothing to do with the present case all I need do is to refer your Lordship and my learned friend to the paragraphs of the

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

Declaration in which this matter is dealt with in detail. Beginning with Paragraph 48:

“ That on or about December 2nd, 1928. . . . ”

10 Mr. Campbell (interrupting) You do not need to read the paragraph, Mr. McKeown. It is in the record.

Mr. McKeown: I have stood about as much interruption from you, Mr. Campbell, for the last seven days as any mortal man can do and survive. When Counsel is examining an expert witness and is endeavoring to carry the detail of the complex figures which have come into this case over this long period of time it would almost try the patience of Job to continue to endure my learned friend's persistent interruptions.

20 I respectfully take issue with my learned friend when he suggests to your Lordship that his objection should be maintained because the question is irrelevant, as well as the suggestion that we are going to try the issue in the other case. That is just what we anticipated would occur. I submit we should not be in the position that we will have to go into the mass of evidence in support of our allegations in this case and uselessly do it over again on the trial of another issue, and that is exactly why we suggested at the outset that the issues should be joined.

I submit it is sufficient to justify my question that I should be able to indicate to the Court the distinct allegations which cover it.

30 By Mr. McKeown, continuing,

Q.—In the face of By-law 32 how can you justify having participated in the sending of a cablegram to Lady Davis in which it is stated: “Under the By-laws those shares must be offered to the present shareholders?”

40 Mr. Campbell: Of course the opinion of the witness may be better than the opinion of Counsel, but I submit he should not be asked questions of law.

Mr. McKeown: It is not a question of law: it is a question of justification. As His Lordship suggested the other day, a man who has the handling of a twenty-five million dollar Estate should not be defenceless.

Mr. Campbell: And I think Mr. Reaper has shown he is not defenceless.

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

Mr. McKeown: Mr. Reaper has done excellently, and I pay him public tribute of the fact.

Mr. Campbell: And I agree with you.

By Mr. McKeown, continuing,

10 Q.—In the face of By-law 32 how can you justify having participated in the sending of a cablegram to Lady Davis in which it is stated: “Under the By-laws those shares must be offered to the present shareholders?”

A.—It was our opinion that was the way it should be treated.

Q.—Did you discuss By-law No. 32 with Lord Shaughnessy before sending that cable?

A.—No, I do not think we discussed By-law No. 32. I think we had gone over the By-laws generally.

20 By the Court:

Q.—Did you discuss By-law No. 31?

A.—The By-laws generally: and we thought that was the way the matter should be treated.

By Mr. McKeown, continuing:

30 Q.—Looking back, do you not think now that under By-Law No. 32 the Estate could have bought the whole of the 500 shares?

A.—No, I do not think so. I still think we should have submitted it to the shareholders.

Mr. Campbell: Your law is excellent, Mr. Reaper.

By the Court:

Q.—In the meantime Mr. Marler had been paid for his shares?

40 A.—Not at that date. Mr. Marler was not paid for the shares until December 4th. This cablegram was October 31st.

By Mr. McKeown, continuing,

Q.—Will you please tell His Lordship from the cash book of the Estate at what date this species of transaction was put through under which Lord Shaughnessy was to get the 25 shares?

A.—There is no cash book entry for that. It is a journal entry.

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

Q.—What is the date of the journal entry?

A.—In January; but it was charged back as from the date in December, and charged accordingly.

Q.—Will you please tell me the date it is entered in your Journal?

A.—This is January 31st.

10 Q.—Will you just look up your cash book and verify that the money was paid Mr. Marler on December 4th?

A.—I think that is right. The interest was charged up from December 4th.

Q.—I do not know whether I have covered the point, but at the time of the actual purchase from Mr. Marler, December 4th, 1928, had there been any letters exchanged with Lord Shaughnessy in connection with this transaction?

A.—Yes.

Q.—Will you exhibit them to me, if you please?

20 (The Witness Exhibits Three Letters).

Q.—You now exhibit to me three letters, all dated November 6th, 1928, addressed to Lord Shaughnessy, and signed by Mr. Herbert M. Marler?

A.—Yes.

Q.—Copies of which will be produced as a single Exhibit, marked P-84?

A.—Yes.

30 Q.—The first letter reads:

“Dear Lord Shaughnessy:

I am one of the Trustees appointed under the Deeds of Trust hereinafter referred to, namely:

1. Donation made by the late Sir Mortimer B. Davis to H. M. Marler and J. B. Waddell in trust, before H. E. Hershorn, notary, October 26th, 1921;

40 2. Donation made by the late Sir Mortimer B. Davis to Mortimer B. Davis and others as Trustees before E. Cholette, notary, 21st October, 1922;

3. Donation made by the late Sir Mortimer B. Davis to M. B. Davis and others as Trustees before H. E. Hershorn, notary, 1st August, 1923.

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

On your demand I hereby undertake to resign as Trustee under each and every of the said donations and to execute the necessary instruments for that purpose.

Yours very truly,

Herbert M. Marler.

10 The next letter reads:

“Personal

My dear Willie:

I now enclose herewith formal letter offering the 500 shares I hold in Sir Mortimer Davis, Incorporated for sale at the price to be set thereon by the shareholders at the Annual Meeting;

20 B. Power of Attorney in your favor to vote these shares.

I think it is well for you to have, in so far as I am concerned, full control of the situation.

C. Formal letter undertaking to resign as Trustee of the three Trusts on your demand, and to execute all necessary instruments for that purpose.

30 From the above you will, therefore, see that the matter is entirely in your hands.

I am extremely obliged to you for kindness in handling this transaction for me.

As discussed between us, the amount to be paid me will be \$100,000. I would be very greatly obliged to you if the transaction could be completed at your earliest convenience.

40 I am writing you a personal note in addition to this more or less formal communication.

Yours sincerely,

Herbert M. Marler.

P.S.—I will be glad to send you the certificates for these shares whenever you ask me to do so.

H. M. M.”

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

The third letter reads:

“Dear Lord Shaughnessy:

10 In reference to your letter of the 1st November instant:
as you are aware, I am the owner of 500 shares of Sir Mortimer
Davis, Incorporated. I hereby offer those shares for sale at
the value thereof to be established by resolution of the share-
holders to be adopted at the Annual Meeting of the Company.

Yours very truly

H. M. Marler.”

20 You note that those letters are all dated November 6th, 1928,
and I suppose they were delivered to Lord Shaughnessy the same
day or the next day?

A.—Yes, I presume so.

Q.—You had sent the cable several days before—October 31st?

A.—Yes.

His Lordship: Was there a reply to that cable?

Mr. McKeown: Yes, your Lordship. Lady Davis wired ap-
proving the transaction if it was paid for out of capital.

30 By Mr. McKeown (continuing):

Q.—So that the transaction as represented in the cable to Lady
Davis of October 31st, 1929, namely that those 500 shares would be
sold by Mr. Marler at a fixed amount of \$170.00 a share appears
to be fundamentally different from the proposal contained in Mr.
Marler's letters of November 6th in which he says the price is to be
fixed by the shareholders at the Annual Meeting?

A.—That was understood to be \$170.00 a share.

Q.—They were going to fix it at \$170.00?

40 A.—Yes.

Q.—The Annual Meeting of the Company that year was not
held until December 31st?

A.—No, but this figure of \$170,00 had already been arrived at
in connection with Succession Duties, and it was intended the same
figure would be recommended at the Annual Meeting.

Q.—But those letters of Mr. Marler apparently say that you
are to treat the matter of the purchase of the shares and his re-

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

signation as a whole, for which he was to get \$100,000; and we do not anywhere see mention of \$170.00 a share?

A.—But he refers to the value of the shares as being taken at the price put through at the Annual Meeting.

Q.—The price is not mentioned in the letters?

A.—No: it may not be.

10 Q.—There is another letter I would like to see. In Mr. Marler's third letter, of November 6th, 1928, he acknowledges receipt of a letter from Lord Shaughnessy of November 1st. Have you a copy of that letter with you?

A.—No, I do not think so. I am pretty sure I have not.

Mr. McKeown: Perhaps the Defence could supply us with it.

20 Witness: I thought this was altogether, and that was all there was to get out. I do not think there was any other letter looked for. Perhaps it is in the file. I could look for it. I do not think a copy of this other letter was sent you, but I will look for it. I have not thought of it being here.

If I recollect correctly that letter simply outlined to Mr. Marler the procedure which had to be followed under the By-laws. I may be wrong in that, but I do not think so.

In any event, I will look it up.

Q.—You will please look it up, and we will file it as Exhibit P-85?

A.—Very well.

30 (Copy of the Letter in Question is to be Filed as Exhibit P-85.)

By Mr. Holden:

Q.—Some of Lord Shaughnessy's letters were in handwriting. Do you know whether there is a copy of this or not?

A.—That I do not know. I will look and see if I can find it.

40 Mr. Holden: I would not want to be misunderstood from the point of view that a copy of it may not have been made.

By Mr. McKeown (continuing):

Q.—Have you in the archives of the Incorporated Company the agreement between the late Sir Mortimer Davis and the Honorable Mr. Marler concerning the 500 shares which we have been discussing?

A.—No, I never saw anything of that.

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

Mr. McKeown: Perhaps I might enquire from Lord Shaughnessy if there is such an agreement.

Lord Shaughnessy: I do not think so, Mr. McKeown. I know of no such agreement. There is one with Mr. Waddell.

By Mr. McKeown (continuing):

10

Q.—You have given us the date of January 30th, or January 31st, 1929, at which a certain entry was made in your journal in connection with the 25 so-called Marler shares which were ultimately registered in the name of Lord Shaughnessy?

A.—Yes.

Q.—In order that we may be quite clear on the point: Lord Shaughnessy never put up any of his funds for the purpose of acquiring these 25 so-called Marler shares at any time prior to September 18th, 1929?

20

A.—No. They were charged against that Trustee Account.

Q.—On the contrary, what was done was that under date January 31st, 1929, by reason of the journal entry to which you have already referred, \$4,250.00, being the price of 25 shares at \$170.00 a share, was debited against the account opened in the name of H. M. Marler and H. B. McLean, Trustees?

A.—Yes.

30

Q.—And from that onward reduced to the extent of \$4,250.00 what would otherwise have been the balance on that account up to the time it was closed off on September 25th, 1929?

A.—Yes.

Q.—The interest item of \$42.52 debited to the same account is the interest from December 4th, 1928, to January 31st, 1929, on \$4,250.00?

A.—Yes.

Q.—Once that item of \$4,200.00 odd was debited against the Marler and McLean account it reduced from then on by \$4,250.00 and interest the amount to which that account would otherwise have amounted at the end of the period?

40

A.—It reduced it.

Q.—You treated it as if the sum of \$4,250.00 had been paid out of that account as at December 4th, 1928, did you not? As far as the Company was concerned?

A.—No. We charged up the interest on that.

Q.—On what?

A.—\$4,250.00, with interest.

Q.—Right up to September?

ALEX. M. REAPER (*for Plaintiffs*), *Examination-in-Chief.*

A.—I think it was, yes.

Q.—You now call my attention to a further interest debit in the account, apart from the initial interest debit of \$42.52, of two items of \$21.25 each, and you say those interest items offset what would have been the loss of interest on the \$4,250.00 from December 4th, 1928, up to the end of the period in September, 1929?

10 A.—Not these items altogether. After a certain period the debit was deducted from the credit of the account, and interest was only credited on the net balance—which comes to the same thing.

Q.—In paying Lord Shaughnessy the cash which went out of the funds of the Company on the 24th and 25th September, 1929, did you not overpay him the amount which would have been coming to him even if everything had been in order?

A.—There was a slight amount, yes.

Q.—How much?

A.—About \$800.00, I think.

20 Q.—How did that come about?

A.—I think it was simply a slip in making up the figures in the first instance.

Q.—You do not make slips of \$800.00 often, do you?

A.—We made an adjustment in making up the final figures.

Q.—Initially the slip operated so that the Incorporated Company had overpaid Lord Shaughnessy how much?

A.—I think when we made the final adjustment it was, roughly, around \$1,000; which he paid back as soon as his attention was called to it when he returned.

30 Q.—Having regard to the price of \$170.00 for the stock as at the time it was purchased and paid for, on December 12th, 1928, what was that stock really worth at that time? Look at the statement you have nearest to that date and tell me what the real value of those shares was at that time, in round figures?

A.—The book value was approximately \$180.00, according to the statement of September 30th, 1928.

Q.—What was the basis of Alcohol taken into that statement at?

40 A.—\$20.00.

Q.—What was the market value then?

Mr. Campbell: As at what date?

Mr. Montgomery: September, 1928. The market quotations were a high of \$44 5-8, and a low of \$40.

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

Witness: The high in September, 1928, was \$44 and a fraction; and a low of \$40.

By Mr. McKeown, continuing:

Q.—That is “A” stock?

A.—Yes.

10 Q.—What about the “B” stock?

A.—The “B” stock had a high of \$40.00, and a low of \$38.00—what was being sold on the market.

Q.—Let us take the figure of \$40.00; that is just double what you had Alcohol on your statement at—\$20.00?

A.—Yes.

Q.—How much would that increase your real surplus over the amount at which it was entered there? How many shares had you?

20 A.—It would add approximately \$11,000,000 on that calculation.

Q.—The outstanding stock was 50,000 shares?

A.—50,000 shares.

Q.—That would add \$220.00 a share?

A.—Yes: on that calculation.

30 Q.—So, this stock instead of being worth \$170.00 a share at that time was worth \$400.00 a share; taking your own book value of the capital of the Incorporated Company at \$180.00 a share, plus \$220.00 additional represented by the appreciation in the value of the Alcohol stock of \$11,000,000 to which you have already referred?

Mr. Campbell: Are you putting a hypothetical question?

Mr. McKeown: Largely hypothetical.

Mr. Campbell: I think it is. If you will begin your question by saying “Supposing every share of Alcohol could have been sold at \$40.00 a share, what would have been the result?” It would be all right.

40 Mr. McKeown: We hope to show it could have been sold at \$60.00.

Mr. Campbell: If you put in a firm offer of \$60.00 it might be all right,—it might be acceptable.

By Mr. McKeown (continuing):

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

Q.—So, this stock instead of being worth \$170.00 a share at that time was worth \$400.00 a share; taking your own book value of the capital of the Incorporated Company at \$180.00 a share, plus \$200.00 additional represented by the appreciation in the value of the Alcohol stock of \$11,000,000 to which you have already referred?

A.—Yes, that is what that calculation would come to; but we did not consider that the shares were worth that, or could be considered at that value for Estate purposes.

Q.—That is the way it worked out?

A.—That is the way it worked out, but we did not consider that to be what could be considered a reasonable value for the shares. Market considerations had to be taken into account, and whether you could dispose of them, or had to hold them, and so on.

Q.—While we are upon this subject: do you know of any offers received by Lord Shaughnessy for the sale of the securities of Canadian Industrial Alcohol, Limited—and I do not mean the “B” stock; I mean all the holdings of the Company or of the Estate?

A.—No.

Q.—Do you know of any negotiations?

A.—I think possibly he has been seen some times in connection with that.

Q.—Did you ever hear of a price of \$60.00 being mentioned in that connection?

A.—There were some rumors, I understand, going around of about \$60.00, but I do not know of any offer of that being made.

Q.—Were there any enquiries for an option upon the shares of the Estate at or in the vicinity of \$60.00 a share at any time since Sir Mortimer died?

A.—I do not know just what happened. Lord Shaughnessy handled those things. I do understand, however, that some time after Sir Mortimer’s death some people had been in communication with Lord Shaughnessy—I do not know in what way—when the matter was discussed, and I believe it was found they seemed to be only looking for information: that they had no authority to act without taking the matter up further with other parties. I understood those people had no authority—that they were only looking for information to try to put before others.

Q.—It would not have been a bad proposition if they had found someone who would have taken it over on a cash basis?

A.—In the light of present conditions it would look that way.

Q.—How about it in the face of conditions at that time?

A.—The situation was altogether different at that time.

Q.—You thought \$60.00 was too cheap for it?

A.—We had not an offer on which we could figure; and I think

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

even if we had, a decision would have been a little difficult to make.

Q.—That is to say, you would have been for holding out, even with an offer of \$60.00?

10 A.—No, I do not say we would have been for holding it. If an offer had been made at \$60.00 I know I would have taken it into consideration and would have given it a good deal of thought, but in view of the business the Company was doing—the earnings hav-

ing been better than even in Sir Mortimer's time—and no indication that there would be any falling off, and in view of the fact that Sir Mortimer specified in his Will that the securities should not be dis-

posed of prematurely, even if I had thought that \$60.00 was a fair price it would have been rather a difficult decision to make in the circumstances as to what to recommend.

Q.—As far as you were concerned where did you stand in the matter of those negotiations, such as they were? Did you participate in the discussions?

20 A.—No, not at that time.

Q.—How did you hear of them? Just by the way, or casually, from Lord Shaughnessy?

A.—Casually, yes.

Q.—Did he tell you with whom he was negotiating?

A.—I do not know if he did. He probably did at the time, but I do not recall who it was.

Q.—You did not pay sufficient attention, and you do not remember the name?

30 A.—No, I do not. I understand he went to New York to see some people.

Q.—And, you did not pursue your enquiries, or press the matter, or do anything towards furthering the transaction?

A.—No.

And it being 4.30 o'clock, the further examination of the witness is continued to Thursday, March 13th, at 10.30 o'clock in the forenoon.

And further for the present deponent saith not.

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

And on this 13th day of March, 1930, personally came and re-appeared the said witness:

A. M. REAPER,

10 and his Examination in Chief was continued by Mr. McKeown, K.C.

By Mr. McKeown:

Q.—At the time of the execution of the contract of September 17th, 1924, what would be the value of the 196 1-2 notes mentioned therein?

20 Mr. Campbell—My Lord, I object to this question and I make the objection now, because I can see what my learned friend wishes to go into. I object to any evidence at this stage, and in this case, that has any bearing as value of what was deliverable under Lord Shaughnessy's contract of September 24th. Whether the contract was good or bad, was matter for the agreement of the parties, and it is not relevant to the merits of this controversy. If it has any bearing at all upon any controversy, it is controversy in the other case, and my submission is we cannot go into that. I cannot see what possible bearing it may have on this case, as to whether the notes and shares delivered under that contract were worth par, or more than par, or less than par.

30 The contract called for certain securities to be delivered, and they were delivered in accordance with the contract. The value of these securities in September, is not relevant to this controversy. I do not see how it can possibly help Your Lordship to decide this issue. When your Lordship comes to decide the other case (if you have the responsibility of deciding that), it may or may not then be relevant, but on this issue my submission is that it has no possible bearing, and I object to it as irrelevant.

40 Mr. McKeown: May it please the Court, in the present question of the removing of the Executors, we allege, among other things, that this contract, insofar as it affected the \$196,000 of notes, and the 2,375 shares and their adjuncts, was a gift. We say, the contract is not only such by its nature, it is expressly declared in the contract to be a gift, and we wish to prove that it is a gift, in the sense that the value of these securities exceeds beyond many many times the possible value of any services which could be rendered, because my learned friend met our allegation that this is a gift,

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

and that it is null and void, by a general denial, which forces the proof on us, and I think we are entitled to put in that element to prove our contention that it is a gift.

10 In point of fact we propose to prove that these securities were worth over \$600,000, in addition to the salary provided of \$20,000 per annum, and which is now \$25,000 per annum, and in addition to the Alcohol salary which was originally \$25,000, and which is now, as I understand it, \$30,000. In other words, it is in addition to \$55,000 a year that these securities were turned over, and we say under those conditions it was not an onerous contract to show a gift.

His Lordship: But supposing that Lord Shaughnessy has accepted the gift of an onerous contract, whatever it is, supposing that contract has been executed, is that a reason why I should dispossess Lord Shaughnessy from the position of Trustee of this Estate?

20 Mr. McKeown: In this sense as we say, our allegations flowing from the original gift are several in number.

His Lordship: That question would be perfectly proper for whoever tries that case.

Mr. Campbell: I agree with that.

30 His Lordship: But as I understand the evidence was made to the effect that \$125,000 or some such amount was paid to Lord Shaughnessy when there was already a deficit in the bank, that would possibly be relevant to the present issue. It is my opinion that you can argue perfectly in support of your case as to the actual value of those securities. Apparently Lord Shaughnessy got \$125,000 out of that active gift.

Mr. McKeown: He got more than that. He got \$217,000 in cash, and he got notes in addition to what he drew out in cash.

40 His Lordship: Those securities were originally worth \$600,000 and they dwindled to \$217,000.

Mr. McKeown: He got those notes in addition to the \$217,000 and those shares in addition to the notes. What Lord Shaughnessy took last September was not only the \$196,000 plus the \$80,000 loan which he had, but in addition to that, he took possession of the notes of \$196,000, and took possession of the shares, 2,375, plus the

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

Marler shares. We say it is null and void because it is a gift, and you have no right to take anything.

Even supposing the contract was good in law, then, under those terms, you are not entitled to the interest, or to any dividends upon those securities before the five year term, and you have taken \$217,000 which represents, in our view, a dividend on the shares, and you have taken that without any reference to the Board of
10 Directors, and in addition to that, even if you were entitled to these dividends, under the circumstances you are not entitled to the interest which accumulated on the money while in the hands of the Company, which amounts to \$50,000 in any event. We submit that gift is void; it is non-existent. You could not base yourself on a thing which was an absolute nullity, in law, based upon the rule of public order.

His Lordship: Supposing that were the case, what difference
20 does it make whether those securities were worth \$600,000 or \$100,000 at the time?

Mr. McKeown: We allege it is a gift. We wish to prove that fact in support of that. We are met with a general denial. My learned friends will probably contend, as they contend directly in the other matters, that it was not, that it was an onerous transaction. It was not a gift at all, notwithstanding its terms. Of course, if it was an onerous transaction that is not enough. The mere fact that some services were to be rendered is not sufficient. The moment
30 the services are not adequate for the purpose of the gift, it is still a gift subject to the rights of the other party, if any he has, to exercise them. That is what was held by the Supreme Court in the case of Macey and Beique. There the contention was that the gift was a gift remuneratoire, but the Supreme Court said all at once that the gift was not equal to the services rendered, and that the rights remained to the donee to exercise whatever claim he had for services rendered.

We propose to prove that in the present instance this huge sum of \$600,000 having regard to the remuneration which Lord
40 Shaughnessy was receiving for services in the form of salary, was out of all proportion to any services which he could have rendered, and therefore that the matter was a gift even if a gift remuneratoire.

Mr. Geoffrion: May I suggest this angle, if we are right in suggesting that this is a gift as it appears on its face by its terms. It is a very large amount and is not the point of view whether those Executors should stay or not. If they stay they will have the duty

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

of collecting and investing that money. What chance is there of the Estate being repaid if that Executor remains in charge? Your Lordship knows that as regards tutors (I have not the article here), but as to the existence of an important lawsuit when an Estate disqualified a tutor, there is an article somewhere to that effect, and under the circumstances it should be a guide to the discretion of the Judge, if we are right. Here is a huge claim of several hundred
10 thousand dollars which will be due by this gentleman to the Estate and it will be his duty to collect it.

Mr. Campbell: My submission is that all these issues, are issues in the other case which your Lordship has not the immediate responsibility of deciding. The late Sir Mortimer Davis was a pretty shrewd man of business and he stipulated that he would enter into a certain agreement with Lord Shaughnessy. He thought he was getting value for what he was giving under that agreement. Whether
20 he was or not, is not the issue before this Court at this time. Our pretension is, and I think all the facts so far established, go to show that anything Lord Shaughnessy got under that agreement, he got by virtue of its terms. If those terms are bad in law, the Court that decides the other case, will so decide, and that decision will have its proper consequences, but that surely is not the issue in this case, and I submit that it can have no possible bearing on this case. Whether Sir Mortimer Davis agreed to pay Lord Shaughnessy more than he ought to have paid him, is not an issue in this case. He was the best judge of his own business, and he made his own decision
30 at that time and it is not at this time, I submit, the function of this Court or any Court deciding this case to review that decision of the late Sir Mortimer Davis.

My submission is, even supposing in law there was any issue as between the Executors of the Estate on the one hand and Lord Shaughnessy on the other as to whether this contract is bad, because the two Notaries who were parties to it did not begin the document in a particular way and did not know it in a particular way, is not an issue in this case. Supposing there should have been a third Notary to the Deed that began with a particular form of
40 words and ended with a particular form of words, that is the issue in the other case. That is my point, and your Lordship has not, I submit, that responsibility in this case, and it possibly cannot have any bearing on this case. The existence of that controversy is not in law a reason for the removal of the Executors. When we come to argue the case we will give your Lordship ample assistance on that point.

ALEX. M. REAPER (*for Plaintiffs*), *Examination-in-Chief*.

Mr. Geoffrion: What about Article 282, paragraph 4?

His Lordship: I think it is important for me to know whether or not from the 17th of September, 1924, to the 17th of September, 1929, the Estate under the management of the Defendants had dwindled to such an extent that securities which were worth \$600,000 were worth half that amount. I will allow the evidence.

10

Mr. Campbell: If your Lordship wishes to go into that, but that is not the question my learned friend is putting.

His Lordship: Mr. McKeown is asking the witness what is the value of those securities.

Mr. Campbell: He is asking the value of what Lord Shaughnessy got under his agreement.

20

Mr. McKeown: That is exactly what His Lordship says.

His Lordship: What he would have got if the agreement had been complete on the 17th of September, 1924, as compared with what he actually got on the 17th of September, 1929, or shortly afterwards. I will allow the evidence.

Mr. Campbell: I would respectfully except to Your Lordship's ruling.

30

A.—I would think they would be worth par, \$196,500.

By Mr. McKeown:

Q.—They were a charge ahead of the stock?

A.—Yes.

Q.—And the stock at that time was entered at \$5,000,000, was it not? It was carried at \$5,000,000?

A.—Yes, the stock was entered at \$5,000,000.

40

Q.—And was shown on the statement not to be impaired?

A.—Yes. The capital stock was shown at \$5,000,000 and there is a capital surplus of \$1,084,000, making a total of \$6,084,000, from which is to be deducted the deficit account as at that date of \$1,015,000.

Q.—The capital and the surplus together amount to \$6,084,000?

A.—Yes.

Q.—And while there was some kind of a bookkeeping deficit

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

carried on the other side of \$1,015,000, for deficit account so-called, It still left over \$5,000,000 required to make the capital intact?

A.—Yes, slightly over \$5,000,000.

Q.—Therefore, these 2,375 shares were, according to the statement now before you, worth at least par?

A.—The book value.

Q.—Which would give us a sum of \$237,500?

10 A.—Yes.

Q.—Looking at that statement, there is something about it which I have not been able to fathom. Perhaps you can tell us. That statement is made up by Price, Waterhouse & Company, and certified as of date September 30th, 1924, is it not?

A.—Yes.

Q.—And it includes this capital distribution we have been talking about, of \$3,250,000, does it not?

A.—Yes.

20 Q.—Although that was supposed to have been made under date of October 1st, 1924. How does that come about?

A.—They apparently were asked to give effect to the allotment of stock and distribution in making up the statement.

Q.—Is that the customary thing?

A.—It is sometimes done. When a company makes an application for an offering of new stock they generally send out a statement showing what the results will be.

Q.—As a matter of information, but not as a matter of record. In any event, that was done in this case?

30 A.—That was done.

Q.—Does not the net results of what was done mean, in addition to this figure shown of \$237,500, that you have to take into account the 1,625 shares which were included in that capital distribution of 32,500 shares, and add the value of the 1,625 shares, namely, \$152,500 to these figures which we have already established of \$237,500?

A.—Yes.

Q.—Is that right?

A.—Well, I think so.

40 Q.—If we sum up, taking the value of the 196½ thousand-dollar notes, that is, an amount of \$196,500, the value of the 2,375 shares at par, \$237,500, and the value of the 1,625 shares included in the capital distribution at \$162,500, we arrive at the figures of \$596,500?

A.—Yes.

Q.—And that, according to the Price, Waterhouse Company's statement of the 30th of September, 1924, thirteen days after this

ALEX. M REAPER (for Plaintiffs), Examination-in-Chief.

document is dated—I mean the agreement of Lord Shaughnessy of September 17th, 1924, is the sum at which the securities therein referred to figured out?

A.—Yes, that is apparently the book value.

Q.—In addition to that, will you prepare and file a memorandum showing the net earnings of the Incorporated Company for 1924 to 1928, that is to say, ending 1929, as Exhibit P-86?

10 A.—Yes.

Q.—As to profits arising both from earnings and from revaluation of assets during that period, and profits arising from the sales of shares held for capital account by the Company?

A.—Yes.

Q.—You do not suggest for a moment that these figures which are taken into account in the statement now before you of September 30th, 1924, to establish assets of the Incorporated Company on that date, are in any manner inflated?

20 A.—Well, I will have to check up. I presume they are fair valuation.

Mr. Campbell: Does not this statement cover the information my learned friend is just asking for? Would not that give the information?

Witness: What is that?

By Mr. Campbell:

30 Q.—This five-year statement?

A.—It should.

Mr. McKeown: I have not digested that statement. I do not know anything about it.

By Mr. McKeown:

40 Q.—You can assemble the information from this separate Exhibit, from the statement or any statement any way you like?

A.—I think the particulars which you ask for are all there.

Q.—I would like to have them in a special memorandum?

A.—Yes, all right.

Q.—Now, let us go back to the question: You don't suggest for a moment that these figures which are taken into account in the statement now before you, of September 30th, 1924, to establish the

ALEX. M. REAPER (for Plaintiffs), Examination-in-Chief.

assets of the Incorporated Company on that date, are in any manner inflated, do you?

A.—I don't know. I presume they are fair values.

Q.—The main securities going to make up the total assets show 252,651 shares of Canadian Industrial Alcohol at \$35 per share. Do you see that?

10 A.—Yes.

Q.—That is the old stock before the split, is it not?

A.—Yes.

Q.—On the present basis it would mean \$17.50 a share, would it not? Was it not split two for one?

A.—It was split two for one.

Q.—As a matter of fact, is it not true that the range upon those shares in the month of September, 1924, was from \$34 to \$40 as shown by Houston's Manual which is now before you?

20 Mr. Campbell: I think the answer should be, it so appears in that Manual. Are you asking the witness to testify from his recollection as to what they are? I think the witness is entitled to say "From the Houston Manual which you put before me it so appears."

Mr. McKeown: That is good enough.

30 Mr. Campbell: That is what I suggest the answer should be, the answer of the witness, not the answer of Counsel.

By Mr. McKeown:

Q.—Do you know if Houston's Manual is the accepted statistical record for stock market quotations in Canada?

A.—Yes.

40 Q.—The agreement of September 17th, 1924, Exhibit P-13, clause 2, provides for the giving of a certificate by the President or Vice-President of the Company in connection with the termination of the Agreement? Who was the President of the Incorporated Company at the time this Agreement was executed on the 17th of September, 1924?

A.—Sir Mortimer Davis.

Q.—Who was the Vice-President at that time?

A.—Mr. Waddell?

Q.—J. D. Waddell?

A.—Yes.

ALEX. M. REAPER (for Plaintiffs), Cross-Examination.

Q.—So that it would seem that it was never anticipated that Lord Shaughnessy, who was one of the contracting parties to this contract, should be the party who would certify for the other contracting parties?

10 Mr. Campbell: I object to that question as it is not a fair question to put to the witness. In the lifetime of the late Sir Mortimer Davis, and with his concurrence and at his suggestion and with his consent, Lord Shaughnessy became Vice-President of this Company, and when Sir Mortimer died he was Vice-President of the Company with Sir Mortimer's consent.

Mr. McKeown: After you have told the witness what to answer——

20 Mr. Campbell: I submit it is not fair for you to put that question to the witness. You can construe the document as well as the witness.

Mr. McKeown: In every one of these objections, Mr. Campbell insists on advising the witness what his answer should be.

Mr. Campbell: The objections are not made for that purpose at all.

30 Mr. McKeown: To settle the whole matter, I will withdraw the question.

Question withdrawn.

40 Mr. McKeown: Now, as Your Lordship can very well appreciate the duration of the Examination-in-Chief of the present witness, the many days it has taken, the many objections which have arisen and the discussions of the same has brought me to the point that while I feel I have concluded with Mr. Reaper, I may have to check up and recall him, but for the purposes of this part of the case I now hand him over to my learned friend, who can start in, instead of waiting ten days hence as he thought he would have to do.

Mr. Campbell: We are not very far short of the ten days.

Cross-examined by Mr. George A. Campbell, K.C., of Counsel for defendants.

ALEX. M. REAPER (*for Plaintiffs*), *Cross-Examination.*

10 Q.—Mr. Reaper, you have been under direct examination-in-chief for, I think, six or seven days, and I do not propose to cover in detail the whole somewhat winding journey that you have followed in that time, but I want to stop at a few of the milestones you made on the road, and the first milestone I come to, is your early associations with Sir Mortimer Davis, and I will ask you to be so kind as to say again when you first had occasion to come into contact with the late Sir Mortimer Davis?

A.—I think it was about 1906. At that time I was employed by Mr. J. A. Jacobs, and Sir Mortimer about that time became interested with him in different ventures with which I had something to do, and then I was connected with different companies that he was interested in, principally the Jacobs Asbestos Mining Company, and later the Consolidated Asbestos.

Q.—And what position did you occupy with those Companies?

A.—Secretary-Treasurer.

20 Q.—And as Secretary-Treasurer of those Companies did you come into contact with the late Sir Mortimer Davis?

A.—Well, I was very frequently in communication with him on various business matters, and more particularly I think in the last ten years.

Q.—From that time on, were you more or less in personal contact with the late Sir Mortimer Davis down to the time that you became directly associated with his Incorporated Company?

A.—Yes.

30 Q.—And when was it you were appointed to the Incorporated Company?

A.—In February, 1926.

Q.—In the interval of twenty years between 1906 and 1926, was Sir Mortimer Davis residing for the most part at that time in Canada?

A.—I think for the most part until about 1923. About 1923 he took up permanent residence in France.

Q.—But in any event, previous to 1923 he was more in Canada than he was since?

40 A.—Oh yes, very much more.

Q.—In those twenty odd years of your acquaintance with him, did he have opportunities of estimating your capacity as a business man?

Mr. McKeown: Just a moment. I do not wish to have anyone think I am trying to emulate Mr. Campbell's example in making objections, but I do not see where this arises out of the Examination-

ALEX. M. REAPER (for Plaintiffs), Cross-Examination.

in-Chief, but I do see it *en pleine lettres* where it comes in in his defence. If my learned friend wishes to call Mr. Reaper on that matter, of course, it is absolutely relevant, but under our hard and fast rules of the examination of witnesses, the only subject which is relevant in cross-examination is on matters which have been covered in Examination-in-Chief. I do not suggest that it is not relevant to the case, but I do not think it arises in cross-examination, and if the intention of my learned friend is to traverse his putting leading questions to him, just as he has been doing since he started, I submit he is exceeding his rights.

We have a defendant here who has exhibited every ability to take care of himself in the box, and he does not require to have any leading questions put to him upon matters of defence.

My learned friend has his rights in cross-examination, but I submit that they are restricted to some extent, where he has his own client in the box, but it could never extend to him going to his defence in cross-examination and going outside of matters which have been raised here.

Mr. Montgomery draws my attention, my Lord, to paragraph 89, which reads:

“ Both defendants were well known to Sir Mortimer Davis long before he made his will, and had occupied during many years intimate associations and relations with him, and he had every opportunity for considering and estimating their integrity, business capacity and soundness of their judgment, and their fitness for the positions of Trustees and Executors to which he subsequently appointed them after due consideration of their qualifications aforesaid.”

That is absolute defence, and I do not know upon what my learned friend can base any such subject for cross-examination unless it be for ulterior motives which can be discussed. If this is going on all days and other days, the point might just as well be submitted for a ruling of Your Lordship which will prevent a recurrence of this examination and the necessity of an enormous loss of time to re-argue the same point over and over again.

Mr. Campbell: If in the course of six or seven days' examination my learned friend has covered aspects of our defence that is not our fault. I submit I am entitled to travel over the same road. I am not proposing to cover it in detail, but my learned friend started

ALEX. M. REAPER (for Plaintiffs), Cross-Examination.

out by questioning Mr. Reaper about his early associations with Sir Mortimer, and I submit I am entitled to question the witness about those early associations and the extent of them.

His Lordship: At page 110 of the evidence, he is asked: " You are one of the Executors " ?

10 Lord Shaughnessy: Pages 110 and 111.

Mr. McKeown: That is introductory.

Mr. Campbell: I think I am entitled to develop this question.

His Lordship: I think you have the right. In the opening sentence the door is open. Mr. Reaper has already said he was connected with Sir Mortimer Davis in 1906. I will allow the evidence.

20 By Mr. Campbell: Will you answer the question: In view of the twenty odd years of your acquaintance with Sir Mortimer Davis, did we have opportunities of estimating your capacity as a business man?

A.—I should think so.

Q.—And your character?

A.—Yes.

Mr. McKeown: That is absolute defence.

30 Mr. Campbell: Incidentally, it may be defence, but the point is that it arises out of the Examination-in-Chief.

Mr. Montgomery: No one has reflected on Mr. Reaper's character.

His Lordship: We can suppose some spark of intelligence on the part of the Court. It is not very likely that Sir Mortimer would appoint a man he did not know as an Executor of an Estate of that
40 importance.

By Mr. Campbell:

Q.—At the outset of your deposition, you referred to Mr. J. B. Waddell. What position did Mr. Waddell hold in the Incorporated Company according to your corporate records?

ALEX. M. REAPER (*for Plaintiffs*), *Cross-Examination.*

A.—Vice-President.

Q.—During what period of time was he associated with the Company?

A.—I think from about 1919 until the end of 1925.

Q.—And when did he resign?

A.—He resigned in the fall of 1925, about the end of that year.

10 Q.—Have you in your corporate records any agreement between the Incorporated Company and Mr. Waddell?

A.—Yes.

Mr. McKeown: I submit that is irrelevant to this case. That is one of the allegations of the specific defence.

His Lordship: One of your pleas to this other action is that the Deed was the same as that made in favor of Mr. Waddell.

20 Mr. McKeown: Here, all we have as a ground of defence is a general denial. We cannot prove any affirmative facts under this issue as joined. I submit if my learned friend proposes to drag that matter in here after he has refused to join the cases, he is presuming a little bit too much.

His Lordship: I am interested in knowing something about Mr. Waddell. It may be illegitimate curiosity.

30 Mr. Campbell: If Your Lordship pleases, my learned friend's position which he has been at great pains to develop during the examination-in-chief of this witness was, that the witness was presumed to have known that Lord Shaughnessy's agreement was utterly null and void and he had no right to pay any regard to it, or to have given any affect in the course of his dealings with Lord Shaughnessy.

40 I wish to prove, if I am allowed, that the agreement was, in substance and in form, along the same lines, not that I am asking Your Lordship to decide whether Lord Shaughnessy's agreement was good, or was bad, but I do propose to prove that certain of the amendments that my learned friend objects to having been added to the Shaughnessy agreement in the course of these additions that he speaks to, were taken in effect from the Waddell agreement, and my submission is that I am entitled to show where those amendments came from.

Mr. McKeown: Where is the logic of that. How can anybody follow that line of reasoning, because for another man years before

ALEX. M. REAPER (for Plaintiffs), Cross-Examination.

10 certain things were done, certain things of the present defendants do are justified. There is no allegation of the kind. How are we to be prepared to meet that proof. We are supposed under our system to anticipate the proof of all our pleadings. I submit there is not a word of that in the pleadings, either of precedent or custom, and there would be no means of controlling the proof unless parties on both sides are held down to the pleadings. That is the purpose of our system of pleadings, which is criticized in other jurisdictions, but I think we are right under our system, because you at least know what you are going to be met with. We have no information previous to this moment that the Waddell agreement is sought to be dragged in here, to justify it as a precedent or for any other purpose. If the cases had been joined then, the door would have been wide open for everything.

20 His Lordship: The trouble is that Sir Mortimer's will states that the Executors are immune from everything except bad faith, and if by bringing in the Waddell agreement Mr. Reaper bolsters up the presumption of good faith which the law creates —

Mr. McKeown: Could he not have alleged it?

30 Mr. Campbell: It arises out of the examination in chief. In his examination in chief, my learned friend has sought to prove that the witness had no justification for calling into effect the Shaughnessy agreement because of its supposed defective form.

Mr. McKeown: You had our charges as to that matter, and if you wanted to prove specific facts you should have alleged them. If we had found allegations in the plea in this case such as we find the plea in the action to annul the gift, we would have been prepared for them.

His Lordship: You will have lots of time to prepare yourself before the case is over. I will allow the evidence under reserve.

40 Mr. McKeown: The plaintiffs respectfully except Your Lordship's ruling.

His Lordship: If I try the other case it will be in the record.

Mr. McKeown: It is not that I want to keep information from the record, it is only to have this record intact.

ALEX. M. REAPER (for Plaintiffs), Cross-Examination.

By Mr. Campbell:

Q.—Will you please exhibit the original?

A.—I do.

Q.—Having exhibited the original to my learned friends, will you have prepared and certified as a true copy and filed as Exhibit D-12 a copy of the Agreement between Mr. J. B. Waddell and the late
10 Sir Mortimer Davis and Messrs. Herbert M. Marler and H. B. McLean, Trustees?

A.—I do.

Mr. Campbell: Will you admit the copy subject to verification,

Mr. McKeown?

Mr. McKeown: I certainly will.

20 His Lordship: What is the date of the Agreement?

Mr. Campbell: The date of the Agreement is the 4th of December, 1919.

(Copy is admitted subject to verification.)

By Mr. Campbell:

30 Q.—When Mr. Waddell resigned at the end of 1925 as Vice-President of the Incorporated Company, Sir Mortimer Davis Incorporated, by whom was he replaced in that position?

A.—By Lord Shaughnessy.

Q.—When had Lord Shaughnessy become a Director of the Company?

A.—In October, 1924.

Q.—That would be immediately following the date of his Agreement?

A.—Yes.

40 Q.—Is it to your personal knowledge as to whether the late Sir Mortimer Davis had any relations with Lord Shaughnessy before the date of his Agreement, September, 1924? In your contact with Sir Mortimer Davis did you know anything about his previous relations with Lord Shaughnessy?

A.—Well, apart from personal relations with Lord Shaughnessy, Lord Shaughnessy had acted for him in a legal capacity.

Q.—As one of his Counsel?

ALEX. M. REAPER (for Plaintiffs), Cross-Examination.

A.—Yes.

Q.—Was he the individual member of the firm with whom the late Sir Mortimer Davis did his legal business, as far as your knowledge goes?

A.—No. It was the firm of Meredith, Holden, Hague, Heward and Shaughnessy.

10 Mr. McKeown: How does this arise out of the examination. I would rather have Lord Shaughnessy in the box.

Mr. Campbell: Lord Shaughnessy will give his evidence if you will possess your soul in patience.

Mr. McKeown: You cannot get that out of cross-examination.

20 Mr. Campbell: I submit that I can. Your whole examination dealt with the relations between Sir Mortimer Davis and Lord Shaughnessy and you wound up your examination by trying to establish that the late Sir Mortimer undertook to transfer to Lord Shaughnessy much more than his services were worth.

Mr. McKeown: We still think so.

Mr. Campbell: The only difficulty is that Sir Mortimer did not share that view.

30 Mr. Geoffrion: He does so in the deed of gift.

(The Court allows the question.)

By Mr. Campbell:

Q.—At that time you were associated with Companies but were not in the individual employ of Sir Mortimer Davis?

A.—Yes.

40 Q.—You became a Director of the Incorporated Company in the autumn of 1927, was it?

A.—Yes.

Q.—At the annual meeting of 1927?

A.—At the annual meeting of 1927.

Q.—And at the time of Sir Mortimer's death you were a Director of the Company, and Lord Shaughnessy was a Director of the Company?

A.—Yes.

ALEX. M. REAPER (for Plaintiffs), Cross-Examination.

Q.—At that time, according to your corporate records, was Lady Davis, one of the plaintiffs, a shareholder of record in the Incorporated Company?

A.—No.

Q.—At any time during the lifetime of Sir Mortimer Davis was Lady Davis a shareholder of record in the Incorporated Company?

A.—No.

10 Q.—When was the qualifying share put into her name? Do you recall the date?

A.—I think it was May 4th, 1928.

Q.—How soon after that did Lady Davis leave for France?

A.—I think she left Montreal the following day.

By the Court:

20 Q.—The day she signed the Power of Attorney?

A.—Yes.

By Mr. Campbell:

Q.—Between her departure for France in May, 1928, and her election as a Director, about the 31st of December, 1928, was Lady Davis during that interval in Canada?

30 His Lordship: She was absent from the 5th of May, 1928, to the 21st of June, 1929.

By Mr. Campbell:

Q.—Have you the minute book of the Incorporated Company with you?

A.—Yes.

Q.—During that interval between the time that qualifying share was put into her name in May, 1928, and the end of that year, will you see what meetings of Directors were held?

40 A.—There are two meetings.

Q.—Will you give the dates?

A.—July 11th, 1928, and October 11th, 1928.

Q.—According to the record, was there any particular business done at those meetings?

A.—The first had to do with the resolution regarding the sale of a piece of property, and the second covered a resolution accepting payment and authorizing a discharge to be given.

ALEX. M. REAPER (for Plaintiffs), Cross-Examination.

Q.—In respect to the same transaction?

A.—In respect to the same transaction.

Q.—Are the Minutes quite short?

A.—They are.

Q.—Will you prepare and file as Exhibit D-13 and D-14 copies of the Minutes of those two meetings, so that it may appear what business was transacted at them?

10 A.—Yes.

Q.—At that time who was the other member of the Board of Directors, at the time those two meetings were held?

A.—Honorable Mr. Marler.

Q.—You have told us the only transaction that went through at those meetings were in reference to the sale of a particular piece of real estate. For how much was it sold?

A.—\$7,500.

Q.—Where did the draft resolutions that are included in those Minutes come from?

20 A.—They were prepared in the office of Marler and Company and sent to us to be passed.

Q.—Was anything else done at those meetings, except the enactment of those two resolutions which came from that source?

A.—No, that was all.

Q.—You were questioned about the degree to which you kept the late Sir Mortimer Davis informed about the affairs of Sir Mortimer Davis Incorporated during his absence from Canada, and I think you said you were accustomed to sending him periodical statements. With what frequency did you send these statements as a matter of habit or routine?

A.—The Incorporated Company, monthly statements.

Q.—Have you with you any of the other monthly statements corresponding to the Exhibit P-43, of which you sent copies to Sir Mortimer Davis? Have you them with you in your file?

A.—No, I have not.

Q.—Will you take communication of a certified copy of these monthly statements which were exhibited to my learned friends covering the period—

40

Mr. McKeown: Don't let us have anything on the record which, out of Court, is between Counsel, as we would have to put it all in and we would get nowhere. I don't think this should be taken down by the stenographer. If my learned friends want to go into matters which happen between witness and Counsel, it ought to be all gone into, but to put on the record certain facts which are not proved properly or completely, I submit that form of question is wholly vicious

ALEX. M. REAPER (for Plaintiffs), Cross-Examination.

and cannot be tolerated and I would ask my learned friend to reform that question and to adhere to proper questions to the future.

Mr. Campbell: I propose to offer to the witness certified copies of these balance sheets.

10 Mr. McKeown: Show them to him, but don't talk about anybody else.

Mr. Campbell: And I propose to show, if I am allowed, that my learned friend has had ample opportunity to examine these things, and if any plaintiffs were ever provided with material in advance, these plaintiffs were. All I ask is to show that these complete monthly balance sheets were shown to them before they took their action.

20 Mr. Montgomery: I think it would be rather interesting to go into all the negotiations prior to this action.

Mr. McKeown: I submit, my Lord, that this point is very important and that Mr. Campbell should not be permitted to make these declaratory statements, which are incomplete, to build up his case.

His Lordship: Who were these statements for?

30 Mr. Campbell: These are copies of the statements sent to the late Sir Mortimer Davis and the point I wish to make is, we submitted them not only to Sir Mortimer, but to my learned friends for the plaintiffs long before this action was brought.

Mr. McKeown: Not long before.

40 Mr. Montgomery: We are getting into things which are off the record, and we are going to get into trouble. We have the dates. There need be no controversy over it. You know the circumstances under which you gave it, and if you want to go into that we will go into it.

Mr. Campbell: As far as I am concerned I have no objection. My learned friend, Mr. McKeown, has already entrenched on that territory.

Mr. McKeown: Not in the slightest. Tell me where I did so.

Mr. Campbell: You have endeavored to prove a lot of facts since

ALEX. M. REAPER (for Plaintiffs), Cross-Examination.

action was brought, some of which arose out of conferences of Counsel.

Mr. McKeown: That is not true.

Mr. Campbell: It happened.

10 Mr. McKeown: Not in this record, not by me.

Mr. Campbell: In connection with the very issue, in connection with the question of the Succession Duties difficulty.

Mr. McKeown: Not in the slightest. I have something in my pocket I intend to use before I get through.

His Lordship: What is the object of putting this question?

20 Mr. Campbell: I wish to show by the witness the extent to which the late Sir Mortimer Davis was kept informed by the witness of the progress of affairs in connection with Sir Mortimer Davis Incorporated.

His Lordship: And when you have shown that, where will we be?

30 Mr. Campbell: We will be this far advanced, that Sir Mortimer knew what was going on and was satisfied with it, and acquiesced in it, and made no objection, and in the light of what was going on, and in the light of the results shown by these statements, took the action which he did when he wrote his last Will in November, 1927.

His Lordship: Suppose the case goes to appeal? Do you want me to read those statements? If I read those statements, will I know any more about the case than I do now?

40 Mr. Campbell: I was not proposing to file them. I propose to exhibit them to the witness and ask him to describe for the purposes of the record what he did. I wish to make it quite clear on the record that similar monthly statements were provided to the late Sir Mortimer Davis.

Mr. McKeown: We will admit that formally.

His Lordship: You will admit that the statements filed as Exhibit P-43 is typical of the statements sent to Sir Mortimer?

ALEX. M. REAPER (*for Plaintiffs*), *Cross-Examination.*

Mr. McKeown: Exactly. That is what we are entitled to prove.

His Lordship: If Sir Mortimer had not received statements at the appointed time, he probably would have cabled for them.

By Mr. Campbell:

10 Q.—If you had not kept Sir Mortimer informed would he have applied for information?

A.—I think he would have.

Q.—Were statements substantially similar, and containing similar information to the Exhibit P-43, furnished to Sir Mortimer Davis during the period of your occupation of the office of Secretary-Treasurer of the Incorporated Company?

A.—Yes.

Q.—And in what manner were those statements sent to him? With what regularity?

20 A.—Monthly.

Q.—What was the practice of the late Sir Mortimer Davis in regard to visiting Canada during the last five years of his life, or, we will say, during the period subsequent to September, 1924? With what frequency did he come to Canada?

A.—Not very frequently during that period.

Q.—Was he more absent from Canada in that five-year period or less than in the previous years, so far as your contact with him was concerned?

A.—I think he was much more away during the last five years.

30 Q.—You were questioned by my learned friend in regard to the Exhibits Number 14 and 15 which were executed after the date of Lord Shaughnessy's agreement, and with reference to it. Will you tell us what had been the practice of Lord Shaughnessy at the time that agreement Exhibit Number 15 was executed on the 5th of May, 1929, in regard to the turning in of his salary as President of Industrial Alcohol. Had it ever been turned in?

A.—It had never been turned in to the Incorporated Company.

Q.—And that was known to Sir Mortimer Davis, of course?

A.—Yes.

40 Q.—Would that appear from the statement sent?

A.—That would appear from the statement.

Q.—Who was Lord Shaughnessy's predecessor as President of Alcohol?

A.—Mr. J. B. Waddell.

Q.—In the years immediately preceding his resignation, 1925 and 1924, what was Mr. Waddell's practice in regard to turning in his remuneration as President of Alcohol?

ALEX. M. REAPER (for Plaintiffs), Cross-Examination.

A.—He did not turn that in either. He retained that.

Q.—So that there was no variation between Lord Shaughnessy's practice and Mr. Waddell's practice in the matter?

A.—No.

Q.—That agreement, Exhibit Number 15, in paragraph 1, referred to the pro-rating of the shares accruing to Lord Shaughnessy under that agreement, in the event of his death or other contingencies. Do you know whether there was any corresponding provision in any other agreement?

Mr. McKeown: I submit, my Lord, that that agreement under our rule of Article 1234 of the Civil Code cannot be added to or varied by parole testimony. You cannot prove a prior or verbal agreement which would modify or affect, or justify the agreement in question. I submit it would be wholly inadmissible as evidence. This document as it is must stand or fall as we find it. It cannot be bolstered up or justified by any conversations or any other documents dealing with other parties, and I submit that that question should be ruled out.

Mr. Campbell: I am not proposing to prove any parole agreement; I am proposing to ask the witness whether there was a corresponding provision in any other agreement.

His Lordship: I will allow the question.

A.—Yes.

By Mr. Campbell:

Q.—Refer to the agreement?

A.—There is a paragraph in the Waddell agreement providing for pro-rating under certain conditions.

Mr. McKeown: I submit that just proves what we have suggested. Here is an agreement made with Mr. Waddell five years before this agreement that had some other feature which was not incorporated in the contract before Your Lordship of the 17th of September.

His Lordship: That is a question of argument. As a matter of fact, the Waddell agreement having been put in the record, Mr. Campbell might have made the same argument without pointing out the existence or non-existence of it.

By Mr. Campbell:

ALEX. M. REAPER (for Plaintiffs), Cross-Examination.

Q.—You have referred in the course of your testimony on a number of occasions, and it is referred to in the various statements, to the Mount Royal Avenue property. For purposes of identification, will you tell us what that was so that we may understand the reference?

A.—That was the property which had been acquired on which to erect the Y.M.H.A. building.

10 Q.—And when it is referred to in the Statement as the Mount Royal Avenue property, that is the property that is referred to?

A.—Yes.

Q.—Was there any other property on Mount Royal Avenue belonging to the Estate?

A.—No.

Q.—Or the Incorporated Company?

A.—No.

20 Q.—Was that purchased during the lifetime of Sir Mortimer Davis?

A.—Yes.

Q.—Did anybody else co-operate with him in the selection of that property?

Mr. McKeown: Same objection.

A.—Yes. There was a Committee that had been appointed, I think Alderman Rubenstein, Mr. S. Kellert and, I think, Mr. A. H. Jassby.

30 His Lordship: Anyhow, the building is there now.

By Mr. Campbell:

Q.—And the property was purchased for the purposes for which it has since been used?

A.—Yes.

40 Mr. McKeown: That is parole testimony. I would like my objection noted.

(Objection reserved.)

By Mr. Campbell:

Q.—Have you the original Minutes of the first meeting of Executors held after the death of Sir Mortimer Davis in April?

ALEX. M. REAPER (for Plaintiffs), Cross-Examination.

His Lordship: There are several. There is only one of the 28th of April.

Witness: The 15th of April.

Mr. Campbell: The first meeting of Executors. There is only one printed, but there are a number. It is the one printed in our
10 Exhibits.

By Mr. Campbell:

Q.—I would like to see the original Minutes if you have them. Have you now with you the original Minutes of that meeting?

A.—Yes.

Q.—Do you know the handwriting of Lady Davis?

A.—Yes.

20 Mr. McKeown: I would like to enter a formal objection to this evidence.

By Mr. Campbell:

Q.—Are those Minutes signed by Lady Davis?

Mr. McKeown: I object to any proof of any acts by either the plaintiffs or the defendants in the matter of donations, including this
30 particular donation to the Young Men's Hebrew Association, as being unsupportable in law and as not being binding in any event upon the male plaintiff in this case, who is not an Executor. We are quite prepared to have all the facts come out and propose to base an argument upon that later on. I just wish that objection noted, if Your Lordship will reserve it, and to apply to any similar evidence dealing with the matter.

(Objection reserved.)

40 By Mr. Campbell:

Q.—Subject to the objection of my learned friend, are those Minutes signed by Lady Davis, one of the plaintiffs?

A.—Yes.

His Lordship: Have those Minutes been filed?

ALEX. M. REAPER (*for Plaintiffs*), *Cross-Examination.*

Mr. McKeown: Yes. I think a copy of the Minutes is annexed to the plea.

By Mr. Campbell:

10 Q.—Will you verify whether the printed copy attached to the pleas of the defendants as Exhibit D-2 is a correct copy of the Minutes of that meeting of Executors?

A.—Yes.

His Lordship: Is that the only meeting held between the time of the death of Sir Mortimer Davis and the departure of Lady Davis for Europe?

Mr. Campbell: Yes.

20 (Copy of Exhibit D-2 is admitted subject to verification.)

By Mr. Campbell:

Q.—Just so that we will get the dates clearly in mind, Mr. Reaper, what was the date of Sir Mortimer's death? Let us get the chronology of it?

A.—March 22nd, 1928.

Q.—He died in France, did he not?

A.—Yes.

30 Q.—Was the body brought from France to Canada for burial?

A.—Yes.

Q.—Can you tell me the approximate date of the funeral?

A.—It seems to me it was about April 20th, if I remember rightly. I am not just quite certain.

Q.—Some time in April, 1928?

A.—Yes.

Q.—Was the Meeting of Executors held before or after the funeral?

A.—It would be after the funeral.

40 Q.—Therefore, the funeral must have been held before April 25th, 1928?

A.—Yes.

Q.—Following the funeral this Meeting of the Executors covered by Exhibit D-2 was held?

A.—Yes.

Q.—How soon after that did Lady Davis leave Canada?

A.—I think she left on May 5th, 1928.

ALEX. M. REAPER (for Plaintiffs), Cross-Examination.

Q.—Up to the time she left had there been any discussion with her on Estate matters? I mean as far as you personally are concerned—did you have any further discussion with her?

By the Court:

10 Q.—Apart from what is recorded in Exhibit D-2?
A.—No, I had not.

By Mr. Campbell (continuing):

Q.—In the interval did she ever go to see you in reference to the Estate?

A.—No.

Q.—Before she left for Europe did she make any request to you in regard to sending her the financial statements concerning either the Estate or the Incorporated Company?

20 A.—No.

Q.—She left in May, 1928, and returned to France, I think?

A.—Yes.

Q.—What was the Company's financial year that then next ended? What was the next date which would constitute the end of the financial year of the Incorporated Company?

A.—September 30th, 1928.

30 Q.—Before the end of September, 1928, had you prepared any financial statement in reference to the Estate, a copy of which was provided for Lady Davis?

A.—Yes, there was a statement of the Estate as at March 28th, which had been made out as nearly as we could get to it early in the summer, I think, of that year, which Lord Shaughnessy took with him when he went to Europe and delivered to Lady Davis as far as I know.

Q.—You understand he delivered it to Lady Davis?

A.—Yes.

Q.—Is the statement to which you now refer the statement a copy of which has been filed as Exhibit P-50?

40 A.—Yes.

Q.—Will you please look at that statement and verify the fact that it contains a statement of assets and liabilities of the Estate as at date of death, with nine additional pages containing additional information in reference to the Estate?

A.—Yes.

Q.—Subsequently to Lord Shaughnessy's departure for Europe,

ALEX. M. REAPER (for Plaintiffs), Cross-Examination.

in the summer of 1928, did you receive any communication from Lady Davis in reference to that statement of affairs?

A.—No.

Q.—Either in the way of commendation, or criticism?

A.—No.

10 Q.—What was the next financial statement concerning either the Company or the Estate which was sent to Lady Davis after the month of July, 1928?

A.—The statement of the Incorporated Company for the year ending September 30th, 1928.

Q.—Which has been filed as Plaintiff's Exhibit P-51?

A.—Yes.

Q.—By whom was this statement Exhibit P-51 prepared?

A.—Price, Waterhouse & Company.

Q.—Who are Price, Waterhouse & Company?

A.—The auditors for the Company.

20 Q.—Are they a reputable firm of auditors?

Mr. McKeown: We will admit that.

A.—Answering your question, Mr. Campbell: I think so.

By Mr. Campbell (continuing):

Q.—Are they a firm of auditors known all over the world?

30 Mr. McKeown: We will admit that also.

Witness: Pretty well and pretty generally, I think.

By Mr. Campbell (continuing):

Q.—Had they been the auditors of Sir Mortimer Davis, Incorporated, during the lifetime of Sir Mortimer?

A.—Yes.

40 Q.—You at least did not change the auditors after Sir Mortimer's death?

A.—No.

Q.—Is the statement Exhibit P-51 a complete financial statement of the affairs of the Company as at that date? I mean is it as complete as those financial statements of Incorporated Companies usually are?

Mr. McKeown: It is as complete as it is.

ALEX. M. REAPER (for Plaintiffs), Cross-Examination.

Witness: Yes, I think so.

By Mr. Campbell (continuing):

Q.—Does it disclose with considerable detail what the situation of the Incorporated Company was at that date?

A.—Yes.

10 Q.—What does this statement Exhibit P-51 show as due at that date by the Estate Sir Mortimer Davis to the Incorporated Company?

A.—\$230,368.27.

Q.—How had that obligation arisen?

A.—That had been advanced to the Estate to enable them to pay off some of their current accounts.

20 Q.—In the statement as at death, Exhibit P-50, was there an amount owing by Sir Mortimer to the Company, or by the Company to Sir Mortimer?

A.—There was an amount payable by the Company to Sir Mortimer at the time of his death.

Q.—What was the amount?

A.—About \$163,000.00.

Q.—Had that amount been paid by the Company to the Estate as at the date of this statement?

A.—Yes, that had been paid.

30 Q.—And, would that be over and above the amount of \$230,368.27 shown as owing by the Estate to the Company as at that date?

A.—Yes. The total payments would have been the total of the two.

Q.—That would mean that in the interval between the date of death and September 30th the Incorporated Company had paid the debt of \$163,000 that it owed Sir Mortimer at death, and had advanced to his Executors the sum of \$230,368.27, would it not?

A.—Yes.

Q.—Making a total of \$393,368.27, if my arithmetic is correct?

40 A.—Yes.

Q.—Will you please look again at Exhibit P-51, and tell me how many shares of Alcohol ordinary stock were then shown as belonging to the Incorporated Company?

A.—494,100 shares of ordinary stock.

Q.—How would that compare with the number of shares at death?

ALEX. M. REAPER (for Plaintiffs), Cross-Examination.

His Lordship: Did not the Estate sell 2,240 shares during that period?

Mr. Campbell: They sold some "B," Your Lordship; but I am dealing with the "A" stock at the moment.

10 Witness: 496,340 shares.

By Mr. Campbell (continuing):

Q.—So, you held a few less shares as at September 30th, 1928, than the Company had owned at the date of Sir Mortimer's death?

A.—Yes, 2,240 shares less.

Q.—How many shares of Alcohol "B" stock does that statement show as belonging to the Company at that date?

A.—55,920 shares.

20 Q.—How many McNish debentures does the statement show the Company owned at that date?

A.—494,426.

Q.—Does the statement of loans forming part of Exhibit P-51 show the loan of \$50,000 to Lord Shaughnessy as then outstanding?

A.—Yes; \$50,000, with interest.

Q.—With interest calculated as shown?

A.—Yes.

Q.—Does it show any loan to Mr. C. S. Jennison?

30 A.—Yes.

Q.—How much?

A.—\$10,000, and some accrued interest.

Q.—On that statement Exhibit P-51 what was the net profit for the financial year of the Company shown at?

A.—\$763,203.34; which would have been made up of both the revenue and capital profits.

Q.—Can you tell me how much of that was net profit from revenue, and how much from transactions in shares dealing with capital account? Does this Exhibit show that?

40 A.—Yes, it is shown here.

Profits from revenue account, \$454,705; Profits from capital account, \$308,497.

Q.—Of those profits both ways how much had accrued as at the date of Sir Mortimer's death—or, say as at March 31st, 1928, for easy figuring? Will you please look at Exhibit No. 9, and see

ALEX. M. REAPER (for Plaintiffs), Cross-Examination.

if it gives the distribution of the profit accrued before March 31st (the approximate date of death) and the profit accrued after that to the end of the financial year?

A.—Yes; the surplus account shows the amounts.

Q.—The surplus account, shown on the page marked “Exhibit A” of Exhibit No. 9 shows this distribution, does it not?

10 A.—It shows the amount from revenue profits from March 31st, 1928, to September 30th, 1928, had been \$250,040.93.

Q.—So that you would have to subtract the \$250,040.95 from the \$454,705.72 to establish the ratio between the revenue profits earned before date of death and those earned since?

A.—Yes.

Q.—Did that statement Exhibit P-51, which you have before you, show any amount as due to shareholders in respect of capital stock and interest?

A.—Yes.

20 Q.—How does the entry read?

A.—“Amount due to shareholders in respect of purchases of capital stock, and interest thereon (H. M. Marler and H. B. McLean in trust), \$205,501.03.”

Q.—For the purpose of identification, to what item does that refer?

Mr. McKeown: The statement speaks for itself.

30 Mr. Campbell: But, I submit I am entitled to have the witness identify the item to which it refers.

Witness: That was the amount of interest which had been credited to Messrs. Marler & McLean under the agreement with Lord Shaughnessy, and the distribution to shareholders.

By Mr. Campbell (continuing):

40 Q.—Have you your ledger here showing that amount?

A.—It was built up.

Q.—From what original amount?

A.—\$162,500.

Q.—And the difference between \$162,500 and this amount of \$205,501.03 would represent what?

A.—Interest.

Q.—Accrued to the credit of that account?

A.—Yes.

ALEX. M. REAPER (for Plaintiffs), Cross-Examination.

Q.—Was a copy of this financial statement as at September 30th, 1928 (Exhibit P-51), sent to Lady Davis?

A.—Yes, a copy was mailed her.

Q.—Did she acknowledge its receipt?

A.—Yes, it was acknowledged.

10 Mr. McKeown: Let us see the acknowledgment.

Witness: I think Mr. Holden has it.

By Mr. Campbell (continuing):

Q.—Will you make a note to exhibit the original, and will you file a copy as Exhibit D-15?

A.—Yes.

20 Q.—Therefore, a copy of Lady Davis' acknowledgment will be filed as Exhibit D-15?

A.—Yes.

And it being 12:45 o'clock, the further testimony of the witness is continued until 2:30 o'clock in the afternoon.

And further for the present deponent saith not.

30 And at 2:30 o'clock in the afternoon, March 13th, 1930, personally came and reappeared the said witness,

ALEXANDER M. REAPER,

and his cross-examination was continued as follows:

By Mr. Campbell:

40 Q.—Since the adjournment have you been able to find the acknowledgment written by Lady Davis in regard to the receipt of this financial statement?

A.—Yes.

Q.—What date does it bear?

A.—December 31st, 1928.

Q.—This will be filed as Exhibit D-15, as we stated this morning?

A.—Yes.

ALEX. M. REAPER (for Plaintiffs), Cross-Examination.

Mr. Campbell: This letter reads as follows:

“ Les Glaiculs
Golfe-Juan
Alpes Maritimes.

10 Dear Billy:

Received the September statement of the Sir Mortimer Davis, Incorporated. My boy friends Vlasto and Meurice are driving me mad about Fairy —

Mr. Campbell: “ Fairy ” I understand is a horse.

Lady Davis: Yes.

20 Mr. Campbell (continuing reading):

“ Meurice is in a state. He wants me to telephone you and telegraph you almost every day. He says it is ridiculous that he should have to wait Vlasto’s refusal. I told him I was sorry; I did the best I could, and he would have to wait until I heard from you.

I have taken a furnished house in Paris, 9 rue Constantin. I hope that you and Marion will stay with me when you come over —

30 Mr. Campbell: I take it “ Marion ” is Lady Shaughnessy.

Lady Davis: Yes.

Mr. Campbell (continuing reading):

40 “ I would like to get five points on the 1,000 shares of Alcohol that I bought. Will you sell it if it reaches this mark. Did we buy Marler’s S.M.D. Incorporated shares?

Received a telegram from Mortimer this morning from Palm Beach. Our boy is certainly travelling. Louis Bamberger asked me to tell you that he loaned Mort \$6,000 for insurance premiums. I cannot remember whether I told you or not.

May go to St. Moritz on the 13th for two or three weeks.
Give my love to Marion, my boy —

ALEX. M. REAPER (*for Plaintiffs*), *Cross-Examination.*

Mr. Campbell: Presumably one of the young gentlemen of the household.

Lady Davis: A son.

Mr. Campbell (continuing reading): "And Am.

10 All good wishes to you and all for the New Year.

Sincerely,

Eleanor.

December 31st, 1928."

By Mr. Campbell (continuing):

20 Q.—Up to the time that letter Exhibit D-15 was received had you had any communication from Lady Davis since she left Montreal the previous May on matters concerning the Estate? I mean you individually?

A.—No.

Q.—Did you have any letters from Lady Davis in reference to the affairs of the Incorporated Company during that interval?

A.—No.

30 Q.—When Lady Davis received the financial statement Exhibit P-51, which is acknowledged by the letter Exhibit D-15, did she communicate with you in reference to the condition of affairs of the Incorporated Company shown by that statement at that time?

A.—No.

Q.—Or previously to her return to Canada in the following summer?

A.—No.

His Lordship: The affairs were in pretty good shape then, were they not?

40 Mr. Campbell: Yes, my Lord, the affairs were not so bad. I am coming to that with the witness in a few minutes.

By Mr. Campbell (continuing):

Q.—What did that balance sheet Exhibit P-51, in the form in which it was sent to Lady Davis, show as the profit for the year ending September 30th, 1928?

ALEX. M. REAPER (for Plaintiffs), Cross-Examination.

A.—\$763,203.34.

Q.—Of what?

A.—Of profit for the year ending September 30th, 1928. That is made up of revenue, and capital.

Q.—Part of that profit would be profit accrued previous to the death of Sir Mortimer, and part accrued subsequently to his death?

A.—Yes.

10 Q.—And, I think you gave us this morning the distribution between those two sets of figures?

A.—Yes.

Q.—In any event, for the financial year then ending a profit of \$763,203.34 was shown?

A.—Yes.

Q.—What was the balance at surplus account in the Company as of that date?

20 A.—Just before that date. The balance as at September 30th, 1927, was \$799,146.54.

Q.—The two items making a total of ?

A.—\$1,562,349.88.

Q.—Did you have any communication from Lady Davis when she received that financial statement suggesting that it would be appropriate to declare a dividend out of Sir Mortimer Davis, Incorporated?

A.—No.

30 Q.—In the interval between the time she left Montreal in May, 1928, and the time that financial statement was sent her in the autumn of 1928, had you sent Lady Davis monthly financial statements such as you had been accustomed to send to Sir Mortimer?

A.—No.

Q.—Had she ever written you asking why you were not sending them?

A.—No.

Q.—Did she ever send you any enquiry in reference to the affairs of the Incorporated Company during the interval?

A.—Nothing, no.

40 Q.—This brings us down to the end of December, 1928. Apart from the letter addressed to Lord Shaughnessy, which has been filed as Exhibit D-15, did you yourself hear from Lady Davis about that time either by letter or cable?

A.—The only thing was just a greeting at the end of December—a New Year's Greeting.

Q.—Will you produce the cable in question as Exhibit D-16? This cable reading as follows:—

ALEX. M. REAPER (for Plaintiffs), Cross-Examination.

“Mr. Reaper, Canada Cement Building,
Montreal:

Every good wish for the New Year.

Eleanor Davis.”

A.—Yes.

10 Q.—Did you receive anything more critical in tone than that cable from Lady Davis previous to her return to Canada the following summer?

A.—No.

Q.—Between the first of January, 1929, and the arrival of Lady Davis in Montreal in the first week of June, 1929, did you hear from her in any way referring to either the Estate or the Incorporated Company?

20 Mr. McKeown: I am wondering what part of my examination in chief this is cross examination upon. It is the same old story; evidently making the defence at this stage for outside purposes, and entirely outside of the examination in chief of the witness.

His Lordship: Mr. Campbell’s contention is that Lady Davis condoned everything that may have happened before.

Mr. Campbell: And was satisfied; or if she was dissatisfied she did not express any dissatisfaction.

30 Mr. Geoffrion: Even supposing that to be the case.

Mr. McKeown: My submission to your Lordship is that when evidence of this kind is being made I should be in the position of cross examining the witness upon it. It should not be put in under the guise of cross examination with restricted rights to the opposite party, and I respectfully submit it does not arise out of the examination in chief. It may be relevant to the defence, but it is not proper cross examination.

40 Mr. Campbell: If there is anything that refers to this case and does not arise out of my learned friend’s examination in chief, I do not know of it, because as far as I could see the examination in chief of this witness covered every possible fact both in the declaration and in the defence.

Mr. McKeown: What is the question my learned friend is cross examining upon?

ALEX. M. REAPER (*for Plaintiffs*), *Cross-Examination.*

Mr. Campbell: I am cross examining as to whether or not there were any suggestions or complaints.

Mr. McKeown: Do we say there were?

Mr. Campbell: Yes.

10 His Lordship: In the examination on discovery Lady Davis said she had no quarrel at all until the conversation in London.

Mr. Campbell: I am coming to that now, your Lordship.

Mr. Geoffrion: There is no controversy on that point.

By Mr. Campbell (continuing):

20 Q.—Between the first of January, 1929, and the arrival of Lady Davis in Montreal in the first week of June, 1929, did you hear from her in any way referring to either the Estate or the Incorporated Company?

A.—No.

Q.—In that interval, until she arrived the following June, did she indulge in any criticism of your financial statement?

A.—Not that I heard.

30 Q.—When she arrived in Montreal, in June, 1929, the statement which has been filed as Plaintiffs, Exhibit No. 6 was prepared by you and handed to her some time towards the end of June or the beginning of

Mr. McKeown: Please do not suggest to the witness when it was.

Mr. Campbell: You have established the fact in your examination in chief.

Mr. McKeown: But, that would not give the rights to be suggestive.

40 His Lordship: I understand there was a statement on March 31st, and another on September 30th. When was the next statement prepared?

Mr. Campbell: This refers to the Estate.

Witness: There was not one of March 31st.

ALEX. M. REAPER (for Plaintiffs), Cross-Examination.

Mr. Campbell: There was a statement of the Estate, not of the Company, as of March 22nd.

By Mr. Campbell (continuing):

Q.—When was the next statement of the affairs of the Estate as? As of what date was the next statement prepared that was furnished to Lady Davis?
10

Mr. McKeown: We do not care when it was prepared. When did Lady Davis get it?

Witness: The statement to May 31st, 1929, which was given to Lady Davis towards the end of June or may be in the first few days of July. I think the draft had been run over with her before that time.

20 By Mr. Campbell (continuing):

Q.—That is the statement which has been filed as Plaintiffs' Exhibit No. 6?

A.—Yes.

Q.—At that date what amount had been advanced by Sir Mortimer Davis, Incorporated, to the Executors, as shown by this statement Plaintiffs' Exhibit No. 6?

A.—\$796,206.16.

30 Q.—Did that statement show that no dividend had been yet declared by the Incorporated Company?

A.—No dividend was shown on that statement.

Q.—When you handed that statement to Lady Davis did she at that time make any reference to the absence of a dividend from the Incorporated Company? I mean, of course, did she make any reference to it to you?

A.—No. I think that statement was mailed to her.

Q.—Did you ever subsequently discuss it with her?

40 A.—I think it had been discussed with her previous to it being typed.

Q.—Did she at that time suggest that it was time to declare a dividend on the Sir Mortimer Davis, Incorporated, stock?

A.—No. When we were discussing the draft of the statement mention was made that those figures were before any dividend from the Incorporated Company.

Q.—Mentioned by whom?

A.—By Lord Shaughnessy.

ALEX. M. REAPER (for Plaintiffs), Cross-Examination.

Q.—Did Lady Davis suggest in your hearing that it was time for the dividend to be then declared?

A.—No, I do not think there was any mention of that.

Mr. Geoffrion: I suggest my learned friend should not suggest all the answers to the witness when he is clearly under cross examination and proving his own affirmative plea. If my learned
10 friend wishes to make the evidence for the witness, let him go into the box and testify.

Mr. Campbell: I do not think the question is objectionable in form or in substance, and as I understand it it arises directly out of the examination in chief. The witness is testifying from documents in the record.

By Mr. Campbell (continuing):

20 Q.—Following the preparation of the Estate statement as at May 31st, 1929, what was the next financial statement which was furnished to Lady Davis covering the affairs of the Estate?

A.—It was the statement of August 31st, 1929.

Q.—Filed as what Exhibit?

A.—Exhibit No. 8. This statement was prepared by Price, Waterhouse & Company.

Q.—How long had Price, Waterhouse & Company been the auditors of Sir Mortimer Davis?

30 A.—I think they had been auditors from the incorporation of the Incorporated Company.

Q.—That would be about 1919?

A.—About 1919.

Q.—Will you please look at the statement Plaintiffs' Exhibit No. 8 and tell me what is its general nature? Does it convey a substantial amount of information in reference to the Estate?

A.—Yes, it does. I think it is a very complete statement.

Q.—What does it disclose, in general terms?

40 A.—There are eleven pages in that statement, together with the report covering three pages.

Q.—That is, the report of the auditors?

A.—Yes.

Q.—About when did Lady Davis receive a copy of this document Exhibit No. 8?

A.—I think on October 7th.

Q.—That is the date of the auditors' report?

A.—That is the date of the auditors' report.

ALEX. M. REAPER (for Plaintiffs), Cross-Examination.

Q.—Was it sent to her about the time it was received?

A.—It was sent to her directly by the auditor.

By the Court:

Q.—On what date?

A.—October 7th, 1929.

10

By Mr. Campbell (continuing):

Q.—In addition to that statement of the affairs of the Estate as at August 31st, was there any other statement prepared at that time for the information of Lady Davis?

A.—Yes, a statement of the Incorporated Company was prepared.

Q.—By whom?

20 A.—By Price, Waterhouse & Company; also as at August 31st, 1929.

Q.—What Exhibit is that?

A.—Plaintiffs' Exhibit No. 9.

Q.—Will you please tell His Lordship the general character of that statement? Is it full and complete in the particulars it discloses?

A.—Yes, I think it is a very full statement.

30 Q.—It contains a balance sheet as at August 31st, 1929, with a considerable variety of supporting schedules, as shown in the Exhibit?

A.—Yes.

Q.—When was that statement Plaintiffs' Exhibit No. 9 sent to Lady Davis?

A.—It was also delivered on October 7th, 1929.

Q.—By whom was it prepared?

A.—It was prepared by Price, Waterhouse & Company.

Q.—And those were prepared in answer to the requests forwarded by Lady Davis in the letters of August 15th and August 23rd forming part of Plaintiffs' Exhibit No. 7?

40

A.—Yes.

Q.—About what time did Lord Shaughnessy and you receive those auditors' statements?

A.—On the same day they were sent to Lady Davis.

Q.—Following the receipt of those statements did Lady Davis make any suggestion to you, or to Lord Shaughnessy in your hearing, about the declaration of a dividend on the shares of the Incorporated Company?

ALEX. M. REAPER (for Plaintiffs), Cross-Examination.

A.—No.

Q.—Coming back for a minute to the statement of September 30th, 1928; previous to the beginning of trouble, in the summer or autumn of 1929, did Lady Davis ever make any comment to you on the number of shares of Alcohol "A" and Alcohol "B" shown as being carried on that statement?

A.—No.

10 Q.—Did she ever make any complaint to you that they should have been sold?

A.—No.

Q.—Did she ever make any reference to you in regard to the McNish debentures?

A.—No, I do not think so.

Q.—When these statements as of August 31st, 1929, were delivered what did they show were being carried in the way of Alcohol shares?

20 A.—496,300 ordinary shares; 56,080 "B" shares.

Q.—How many McNish debentures were shown as then being carried by the Incorporated Company.

A.—494,426 debentures.

Q.—Following the delivery of this statement Plaintiffs' Exhibit No. 9 to Lady Davis did you at that time receive any criticism from her with reference to the shares shown as being then owned by the Incorporated Company?

A.—No.

30 Q.—Did she make any comment to you as to the number of shares still being carried?

A.—No.

Q.—On what date following August, 1929, did the next financial year of the Company end?

A.—September 30th, 1929.

Q.—A copy of the balance sheet and statement as of that date has been filed as Plaintiffs' Exhibit No. 10?

A.—Yes.

40 Q.—Will you please look at that Exhibit and tell me whether there was any change in the number of shares of Alcohol "A" and Alcohol "B" still carried by the Company as at that date? Were they the same as in August?

A.—The number was the same; 496,300, and 56,080.

Q.—Was there any substantial difference between that number and the number of shares owned at the time of the death of Sir Mortimer? I think you mentioned a slight difference.

A.—I think there was a difference in the "B" stock.

Q.—Were the numbers substantially the same?

ALEX. M. REAPER (for Plaintiffs), Cross-Examination.

A.—The "A" stock was substantially the same.

Q.—As at death?

A.—Yes.

Q.—What was the difference in the "B" stock?

A.—I think it was about 6,000, or 5,900 shares less at this date.

10 As at the date of Sir Mortimer's death, or March 31st, 1928, the holdings of "B" stock by the Incorporated Company were 61,980 shares.

Q.—And, as at September 30th, 1929?

A.—September 30th, 1929, 56,080 shares.

Q.—A difference of how many?

A.—A difference of 5,900 shares. 5,900 shares less.

Q.—Did you at that time receive any comment from Lady Davis as to the number of shares of Alcohol "A" and Alcohol "B" that statement showed you were carrying?

A.—No.

20 Q.—Did you receive any comment or complaint in regard to the McNish debentures?

A.—No.

Q.—Does that statement show whether or not the Liggett, Myers shares were still unsold?

A.—They are in the Estate. They are not in the Incorporated Company.

Q.—Did the statement as at May 31st, plaintiffs' Exhibit No. 6, show them unsold?

30 A.—It did not give them in detail. They were not shown separately. They would have to be got at by a process of elimination.

Q.—By the amount of the Bamberger account?

A.—Not exactly.

Q.—This has to be read in relation to the previous statement as at date of death?

A.—It would have to be taken up in conjunction with the previous statement.

Q.—Does it not show the Bamberger account?

A.—Yes, it does.

40 Q.—Does not the last page show?

A.—This statement shows there is still a balance of \$215,000 due Bamberger.

Q.—Would that indicate that the Liggett & Myers shares were still in the account, or were not?

Mr. McKeown: Is not that a trifle leading?

ALEX. M. REAPER (for Plaintiffs), Cross-Examination.

Mr. Campbell: No, it is not. I am simply asking whether it would indicate they were there or not.

Witness: It would indicate there was collateral with Bamberger at that time, which could only be Liggett & Myers stock. I think the statement shows the other shares, Tobacco Products and Victor Talking Machine, were sold.

10 This statement shows the stock that had been sold.

By Mr. Campbell (continuing):

Q.—Does not the statement Plaintiffs' Exhibit No. 6 show what shares had been sold out of the Bamberger account of that date?

A.—Yes.

Q.—Does it show whether the Liggett & Myers shares had or had not been disposed of?

20 A.—No, the Liggett & Myers shares are not shown.

Q.—Does it show what had been sold?

A.—It shows the Tobacco Products and the Victor Talking Machine stock had been sold.

Q.—It does not show anything about the sale of Liggett & Myers stock?

A.—No.

Q.—At that time did Lady Davis make any comment on the subject of the sale or non-sale of the Liggett & Myers stock?

30 A.—No.

Q.—When did Lord Shaughnessy become associated with the Company?

A.—In 1924.

Q.—The year following Lord Shaughnessy's association with the Incorporated Company would be the year ending what date?

A.—September 30th, 1925.

Q.—Will you please look up and give me from your office records the results of the Incorporated Company for the year ending September 30th, 1925?

40 A.—The operating profits for the year ending September 30th, 1925, were \$171,300.14.

Q.—Were there any charges or deductions from that?

A.—Yes. There was a loss on sales of securities, and so on, of \$227,807.04; which left a net loss for the year of \$56,506.90.

Q.—That is the net loss for the year, after deducting the loss on trading or by writing off?

A.—Yes.

ALEX. M. REAPER (for Plaintiffs), Cross-Examination.

Q.—Can you tell me what those losses on trading or writing off were? What were the chief items included in this loss?

A.—There was loss on the sale of the Murray property, \$10,-677.90. There was the Alberta Coals property, option written off, \$25,000. Loss on advances to Bluestone Mining & Smelting Company, \$17,703.90. Loss on purchase Delamar Estate notes, \$222,-211.40.

10 Q.—Taking those four losses; do you know if any of those transactions had been entered into during the financial year then ending, and, if so, which?

A.—From the records I take it those all referred to propositions that had been undertaken before that period.

Q.—Take the big item, the Delamar Estate notes, had they originated in the financial year then ending?

A.—No. I think they originated several years previously.

20 Q.—In any event, after charging up those losses against the operating profit, the figures showed red to the extent of \$56,506.90 at the end of the year?

A.—Yes.

Q.—And, red figures mean a loss?

A.—Usually.

Q.—As far as your corporate records show was any dissatisfaction expressed by Sir Mortimer Davis? Do you find in your corporate records any dissatisfaction expressed by the late Sir Mortimer Davis with the result of that year's operations?

A.—I have not seen any.

30 Q.—Have you the Minute Book of the Incorporated Company here?

A.—Yes.

Q.—Will you please look and see if any bonus was declared to Lord Shaughnessy for that year?

His Lordship: So much percentage on the losses?

40 Mr. Campbell: Perhaps, Your Lordship. We will see. Sir Mortimer took his losses cheerfully.

Mr. McKeown: I wonder how this arises out of the examination-in-chief. Your Lordship will also remember that Sir Mortimer Davis was President of the Company up to the time of his death, and I would like to know what credit Lord Shaughnessy was entitled to take under those conditions, if this line of evidence can be relevant to the examination-in-chief or to the enquiry.

ALEX. M. REAPER (for Plaintiffs), Cross-Examination.

Mr. Campbell: The whole purpose of the examination-in-chief of this witness was to show the incompetent management of the defendants.

10 Mr. McKeown: What you have to defend is what happened after Sir Mortimer died: not what Sir Mortimer did during his lifetime.

Mr. Campbell: We will see whether we are entitled to any credit for what happened during his lifetime.

By Mr. Campbell (continuing):

20 Q.—Will you please look at the Minutes of the Annual Meeting of Sir Mortimer Davis, Incorporated, held after the close of the financial year September 30th, 1925, and tell me if you have any record of any bonus? In the first place, when was the Meeting held?

A.—There was a Meeting of Directors held immediately after the Annual Meeting, December 1st, 1925, at which the payment of a bonus of \$5,000 to Lord Shaughnessy was approved.

Q.—Would that appear in the corporate records at the time?

A.—Yes.

Q.—And, be shown in all the financial statements?

A.—It would come up in the financial statement for the year ending September 30th, 1926.

30 Q.—That was for the year ending September 30th, 1925. How did the Company get along in the year ending September 30th, 1926?

A.—The operating profit for that year was \$224,225.29, and there is a credit or profit on insurance policies of \$13,694.77; making a total profit of \$237,920.06.

Q.—How did we get along in the matter of bonus for that year? Was there a bonus for that year?

A.—Yes.

Q.—What is the date of the Minute?

40 A.—At the Meeting of January 25th, 1927, the payment of a bonus of \$10,000 was approved and ratified.

By the Court:

Q.—\$10,000 to Lord Shaughnessy?

A.—Yes, Your Lordship.

Q.—Were there any losses that year?

A.—No: there was a profit that year.

ALEX. M. REAPER (for Plaintiffs), Cross-Examination.

Q.—How much?

A.—\$237,920.06.

Mr. Campbell: We are improving a little.

His Lordship: I was beginning to think the object of the Company was to make losses.

Mr. Campbell: We will endeavor to show Your Lordship how it got along.

By Mr. Campbell (continuing):

Q.—How did the year ending September 30th, 1927, turn out?

A.—In that year there was an operating profit of \$701,854.86 shown.

Q.—And, in addition, what other item had you?

A.—There was an additional profit on capital account of securities of \$931,052.62.

Q.—Making a total of—

A.—\$1,632,907.45.

Q.—Do you know if there was a special reason in regard to that operating profit?

A.—Yes.

Q.—What was it?

A.—\$454,039.00 of that amount was made up of a stock dividend by the Canadian Industrial Alcohol Company.

Q.—Including that stock dividend in that amount there was a profit shown for the year of \$1,632,907.48?

A.—Yes.

Q.—Did we get a bonus for 1927?

A.—There was a bonus, but it was only approved a year later. It was not put in the Minute.

Q.—The bonus was attributed to that year, but was only approved a year later?

A.—Yes.

Mr. McKeown: Taken that year, and approved the next year.

Mr. Campbell: We will come back to that.

Witness: It was actually paid at the usual time, but apparently was not recorded in the Minutes until the end of the following year.

ALEX. M. REAPER (for Plaintiffs), Cross-Examination.

By Mr. Campbell (continuing):

Q.—Was it shown on the financial statements at the time?

A.—It was included. Salaries and bonuses were always mentioned.

Q.—During the lifetime of Sir Mortimer?

10 A.—Yes. The item was shown as a separate item on the statements sent to Sir Mortimer at the time payment was made.

Q.—What about the year ending September 30th, 1928? How did we come along that year?

A.—For that year there was an operating profit of \$454,705.72, and an additional profit from sale of securities and so on, and on insurance policies, of \$308,497.62.

Q.—To how much would the item for insurance policies amount?

A.—\$128,923.70.

Q.—That was September, 1928?

20 A.—Yes.

Q.—Was a bonus voted in respect of that year, or was it voted after Sir Mortimer's death? I am only interested in bonuses voted during the lifetime of Sir Mortimer.

A.—This was voted after Sir Mortimer died.

Q.—What about the year ending September 30th, 1929?

A.—There was an operating profit of \$711,910.71.

Q.—What was the total operating profit for those five years?

A.—\$2,263,996.72.

30 Q.—And what was the profit, or loss, made on dealings in securities, or that kind of thing?

A.—A profit of \$1,025,437.97.

Q.—Making a total of?

A.—\$3,289,434.69.

Q.—During all that five-year period who was in active charge, as far as the Canadian management of the Company was concerned? Who was in active charge of the operations of Sir Mortimer Davis, Incorporated?

40 A.—During the year ending September 30th, 1925, Mr. Waddell was Vice-President. From that time on Lord Shaughnessy was Vice-President and in charge.

Q.—And during that five-year period was Sir Mortimer much in Canada?

A.—No.

Q.—What was his custom?

A.—Just on a few visits. Probably once a year. I think one year he came twice, for short periods of a few weeks.

Q.—Let us now look at the years before Lord Shaughnessy came

ALEX. M. REAPER (for Plaintiffs), Cross-Examination.

upon the scene, in 1924. Who preceded him in the active management of the Company, apart, of course, from the part played by Sir Mortimer himself?

A.—Mr. Waddell.

Q.—During what period of time was Mr. Waddell in office?

A.—Practically from the incorporation of the Company until 1925.

10 Q.—For the purpose of comparison let us see how the Company did during the five-year period of what I will call the Waddell regime. Will you look at the figures for the year ending September 30th, 1920, and tell His Lordship what the result was?

A.—The year ending September 30th, 1920, showed an operating loss of \$134,384.46.

Q.—And was there any other loss, or profit, in regard to stock dealings or that kind of thing?

A.—An additional loss of \$6,132.32.

20 Q.—Making a total loss of?

A.—A total loss of \$140,516.78.

Q.—How did the Company do for the year ending September 30th, 1921?

A.—There was an operating loss of \$86,335.91, and a further loss on other things of \$595,099.17.

Q.—Making the total loss for the year——

A.—(Interrupting) \$681,435.08.

His Lordship: Was there any bonus given to Mr. Waddell?

30 Mr. Campbell: We are going to look that up, Your Lordship. We will verify it.

By Mr. Campbell:

Q.—How did the operations of the Company turn out for the year ending September 30th, 1922?

A.—The operating loss for that period was \$333,585.43.

Q.—And the loss on other things?

A.—The loss on other things, \$98,664.81.

Q.—Making a total loss of?

40 A.—\$432,250.24.

Q.—Still red?

A.—Yes.

Q.—Now come to the year ending September 30th, 1923. How did the operations turn out that year?

A.—The operating loss was \$164,002.68; and the other losses, \$295,389.07.

Q.—For the four years' period you have dealt with, 1920, 1921,

ALEX. M. REAPER (for Plaintiffs), Cross-Examination.

1922, and 1923, what was the result, in general terms, of those four years' operations? Was there a profit shown in any of those years?

A.—No; each year showed a loss.

Q.—How did the Company get along for the year ending September 30th, 1924?

A.—They showed an operating profit of \$241,372.90; and a profit from other sources of \$457,046.85.

10 Q.—What was the total profit for that year?

A.—The total profit shown for that year was \$698,419.75.

Q.—They got out of the red figures that year?

A.—For that year, yes.

Q.—What was the result of the five years taken as a period?

A.—The operating loss was \$476,935.58. The other losses were \$538,238.52. The total loss for the period was \$1,015,174.10.

Q.—As compared with what for the five years following, during Lord Shaughnessy's tenure of office in connection with the Company?

20 A.—An operating profit of \$2,269,996.02; and other profits of \$1,025,437.95; making a total of \$3,289,434.69.

Mr. McKeown, K.C.: Are you going to put those statements in, Mr. Campbell?

Mr. Campbell, K.C.: I am, presently.

Mr. McKeown, K.C.: Thank you.

30 Mr. Campbell, K.C.: Would you like me to put them in now?

Mr. McKeown, K.C.: No.

By Mr. Campbell, K.C.:

Q.—Will you produce and file as Exhibit D-17 the summarized statement of profit and loss for the five-year period ending September 30th, 1929; and as D-18 a similar statement for the five-year period ending September 30th, 1924?

40 A.—I do.

Mr. McKeown, K.C.: Are you putting in the statements of the summaries here for these years?

Mr. Campbell, K.C.: If you wish it.

Mr. McKeown, K.C.: We would like to have them. We would like to examine them.

ALEX. M. REAPER (for Plaintiffs), Cross-Examination.

By Mr. Campbell, K.C.:

Q.—Have you got all the Financial Statements for those years?

A.—Only my office records. I would have to get copies of them.

Q.—Will you make a note and get copies of the supporting statements that are summarized?

A.—Yes.

10 Q.—For those periods?

A.—Both periods. You have a lot of them. Take that one for the first period. Some of them are already filed.

Q.—Get them together for the whole of the periods. The years 1920, 1921, 1922 and 1923 showed red in the statements you filed. That is a loss?

A.—Yes.

Q.—But the year September 30th, 1924, showed a profit of, in all, \$698,419.75, did it not?

20 A.—Yes.

Q.—Was any dividend declared by Sir Mortimer Davis Incorporated for that year in respect of that financial statement?

A.—No.

Q.—The year ending September 30th, 1926, showed an operating profit of how much?

A.—\$224,225.29.

Q.—Was any dividend declared for that year?

A.—No.

Q.—The year ending September 30th, 1927, showed what result?

30 A.—An operating profit of \$701,854.86, and in addition there appears \$931,052.62, making a total of \$1,632,907.48.

Q.—Was there any dividend declared in respect of that financial year of the Company?

A.—No, sir.

Q.—Up to the time of the death of the late Sir Mortimer Davis and apart from the transaction in stock which you have been examined on in your examination-in-chief, when there was an issue of new shares, which were subsequently redeemed, but apart from that transaction, which we will discuss later, was there ever a cash dividend declared by the Incorporated Company during the lifetime of

40 Sir Mortimer Davis?

A.—No.

Q.—During those years how was Sir Mortimer Davis accustomed to provide himself with such monies from the Incorporated Company as he required?

A.—Well, there was an account on the books, sort of a current account, or drawing account, to which any payments to him or for

ALEX. M. REAPER (*for Plaintiffs*), *Cross-Examination.*

his account or any charges for him were debited, and then on the other hand there was a credit accruing to him for interest on serial notes.

Q.—Before the transaction by way of increase of Capital Account and subsequent repurchase of Capital Account at the end of September or the beginning of October, 1924, what was the then condition of Sir Mortimer Davis' personal account?

10 A.—The personal account at that time was a considerable amount over what stood to his credit on interest account.

Q.—Have you got the statement there to look up?

A.—That would appear on the Financial Statement as at the date of September 30th, 1924.

Q.—Would that give it? This is only preliminary.

A.—Oh, it is only preliminary.

Q.—Would this show it, or is this after? See if that gives you the figures there.

20 A.—Have you not got another statement of this?

Q.—That is the only copy I have got. The Balance Sheet as at that date would not show that, because that had given effect to the stock transaction.

A.—That had given effect to the stock transaction, but there is mention made, I think, on the report.

Q.—That is the preliminary thing.

A.—I think the information is given.

Q.—The exact figure is not really very material if you have the approximate figure.

30 A.—It was, according to this statement in the report here——

Q.—According to these records you have before you, what was the balance of the account of Sir Mortimer Davis personally as at September 30th, 1924?

A.—After allowing and giving him credit for the amount accrued on interest account for the serial notes, there would have been a debit balance to his account of a little over \$600,000.

Q.—How had this amount drawn up? What was the custom? How did those charges to his debit occur?

40 A.—Just as he asked for them, the advances were made or payments made for his account.

Q.—And charged to him on the books of the Company?

A.—And charged to him on the books of the Company.

Q.—And immediately before the stock transaction as at the end of September, 1924, that was the approximate condition of that account?

A.—Yes.

Q.—Have you got your Succession Duty file?

ALEX. M. REAPER (for Plaintiffs), Cross-Examination.

A.—Yes.

Q.—You were questioned in your examination-in-chief at some length about your discussion of the Succession Duty situation with the representatives of the Provincial Government, and you have filed a number of letters commencing—I don't want to duplicate any documents you have already put in, but I want to see if there are any others that should go in—apart from yourself and Lord Shaughnessy was there anyone else discussed the adjustment of Succession Duties with the Provincial Government on behalf of the Estate?

A.—Mr. Phillips just started.

Q.—It was through Mr. Phillips, the Notary, that you, on August 12th, filed the statement that was put in during your examination, as P-55?

A.—Yes, it was sent through Mr. Phillips.

Q.—That statement was only sent in, I think, in September?

Q.—Before you sent in your statement, you filed, or Mr. Phillips filed, a petition which has been referred to and which I think you produced in your examination-in-chief as P-54?

A.—Yes.

Q.—That was a petition for extension of delay?

A.—Yes.

Q.—Sir Mortimer had died the March previous?

A.—Yes.

Q.—When he died where was he residing?

A.—At Cannes.

Q.—In France?

A.—Yes.

Q.—Outside of the Province of Quebec, were there any other assets located elsewhere?

A.—Yes, there were some assets in France.

Q.—In order to complete your statement, and return to the Succession Duty office, was it necessary to obtain information as to the location and amount of these foreign assets?

A.—It was; also to get particulars of the liabilities there.

Q.—And this was in substance the basis on which this petition for delay, Exhibit P-54, was made, the delay for filing returns?

A.—Yes.

Q.—That petition, in the discretion of the then Provincial Treasurer, was not granted, was it?

A.—No.

Q.—What were, in a word, some of these foreign assets? What did they chiefly consist of?

A.—They consisted of the villas in Cannes, which have really

ALEX. M. REAPER (for Plaintiffs), Cross-Examination.

been taken care of by a Company incorporated there under the name of La Société de Viso.

Q.—Did they belong to Sir Mortimer Davis?

A.—Yes, they belonged to Sir Mortimer Davis, and the racing stable in France, and the contents of these villas; then the liabilities has also to be ascertained.

10 Q.—Was the racing stable which Sir Mortimer maintained in France a substantial establishment? What was the scale?

A.—Some 21 horses; 20 horses, I think.

By the Court:

Q.—What became of that?

A.—That was sold.

By Mr. Campbell, K.C.:

20 Q.—Was that sold soon after his death?

A.—About as soon as it could be arranged after his death.

Q.—On August 12th, 1928, you applied for an extension of time for filing your returns on the ground you had not the information about these foreign assets, and did not file your return, and you then filed a preliminary statement, produced as P-55?

A.—Yes. In the meantime we saw the Provincial Treasurer, Mr. Nicol, and he suggested we file such return as we could, leaving the rest for adjustment later.

30 Q.—That statement was filed on September 14th, 1928, by Mr. Phillips, Notary, as per Exhibit Number P-55?

A.—Yes; dated September 14th, 1928.

Q.—First of all, is that statement, Exhibit P-55, entitled—what does it purport to be?

A.—Preliminary statement as of March 22nd, 1928.

Q.—Will you read the opening remarks which form part of it, the head remarks?

40 A.—“ This statement, with the accompanying declaration, are filed now because the application of Mr. A. M. Reaper, one of the Executors, for six months' further delay was not granted, and they are so filed subject to the right of the Executors to amend the statement or cause it to be amended under reserve of rights for revised Succession Duties or otherwise, and it should be pointed out in this connection——”

Q.—And the words “ to be pointed out ” are those noted in the course of this Exhibit, on page 3 of it?

A.—Yes.

ALEX. M. REAPER (*for Plaintiffs*), *Cross-Examination.*

Q.—What was, according to this statement, P-55, the valuation placed by the Executors or by yourself on behalf of the Executors, on the assets of the Estate, gross amount?

A.—\$11,183,353.36.

Q.—In that asset side, what constituted by much the greater asset? What constituted the bulk of that asset item?

A.—The stock of Sir Mortimer Davis Incorporated.

10 Q.—The stock of Sir Mortimer Davis Incorporated?

A.—Yes.

Q.—At what figure?

A.—Shown at \$170 per share.

By the Court:

Q.—How much does that make?

20 By Mr. Campbell, K.C.:

Q.—Does that show the number of shares?

A.—\$7,586,250.

Q.—What were the liabilities shown in that statement? You will have to deduct the surplus.

A.—Liabilities were shown as \$3,659,720.71.

Q.—And these include \$1,500,000 of what are labelled “Trust Funds” on page 2 of that Exhibit?

A.—Yes.

30 Q.—That is the marriage contract of the first Lady Davis, \$100,000; the marriage contract of the second Lady Davis, \$200,000?

A.—\$2,200,000, yes.

Q.—Did you include among the assets of the Estate, in that preliminary statement, the insurance policies on the life of Sir Mortimer Davis?

A.—No, I did not. There were no insurances payable to his Estate. Any insurance policies which there were were payable to Sir Mortimer Davis Incorporated or to the Canadian Industrial Alcohol Company.

40 Q.—And they amounted in total to how much, roughly?

A.—I think \$345,000.

Q.—Of which how much accrued to the Industrial Alcohol Company?

A.—\$160,000.

Q.—And the balance to Sir Mortimer Davis Incorporated?

A.—And the balance to Sir Mortimer Davis Incorporated.

ALEX. M. REAPER (*for Plaintiffs*), *Cross-Examination*.

By the Court:

Q.—What were the net assets under that statement?

A.—\$7,523,631.65.

Q.—How much did you acknowledge to owe to the Provincial Government on that?

A.—Well, we did not make it. We left it for the government to
10 make up the figure.

By Mr. Campbell, K.C.:

Q.—Just at that time, did you, following the lodging of that preliminary statement, receive any kind of account from the Provincial Government until the following spring, I think it was May or June?

A.—Nothing before May, 1929.

Q.—Following the lodging of that preliminary statement, did
20 you or anyone else on behalf of the Estate, take up the matters that were subsequently discussed between you and the Executors? I mean, did you personally take up the discussion of these matters either by letter or by interview?

A.—Yes, we had interviews; one at least with Mr. Begin after that statement being lodged, before the letter of January, 1929, introducing Mr. Rivard.

Q.—Were any supporting statements prepared for the information of the Provincial Government by the auditors of the Estate in regard to the value of the assets shown? Were any supporting statements prepared to justify or to attempt to justify the valuation of
30 \$170 a share, which had been placed by you on the shares of Sir Mortimer Davis Incorporated for Succession Duty purposes?

A.—Yes. We supplied them with a statement prepared by Price, Waterhouse and Company as at March 31st, 1928.

Q.—What is the date of that statement and report?

A.—The report is dated June 12th, 1928.

Q.—Was it filed with the Succession Duty Department or was it handed to them?

A.—I think it was handed to them.

Q.—Will you file a copy of that statement as D-19?
40

A.—Yes, I do.

Q.—You referred a moment ago to Mr. Begin. Who was he?

A.—He is the Comptroller of the provincial revenue.

Q.—Who is Mr. Rivard, who is mentioned in the correspondence?

A.—His assistant.

Q.—Is he not also the counsel for the Department?

ALEX. M. REAPER (for Plaintiffs), Cross-Examination.

A.—He has signed as counsel.

Q.—He is counsel for the Succession Duty Department?

A.—Yes, he is counsel for the Succession Duty Department.

Q.—What did this supporting statement D-19 show as the value of the shares of Sir Mortimer Davis Incorporated in the opinion of the auditors?

A.—They gave you the figure \$169.79.

10 Q.—By whom was that supporting statement prepared?

A.—Price, Waterhouse and Company.

Q.—Following the lodging of that supporting statement with the Department, did they ask for further information in regard to the operations or the value of those shares?

A.—Yes, they asked for Profit and Loss statements covering the five years. They asked for statements of the Profit and Loss account of Sir Mortimer Davis Incorporated for each of the five years up to September, 1929.

Q.—Was that provided?

20

A.—Yes.

Q.—Under what date?

A.—That was dated November 30th, 1928.

Q.—By whom was it prepared?

A.—Price, Waterhouse & Company.

Q.—Was it filed with the Succession Duty Department?

A.—Yes.

Q.—Will you produce a copy of it as D-20?

A.—Yes.

30 Q.—In respect of the item in this statement of assets, were those statements D-19 and D-20 supplied to the Department, and did they vary in any particular?

A.—On the stock of Sir Mortimer Davis Incorporated?

Q.—That is, the value of Succession Duty purposes?

A.—Yes.

Q.—Have you in your files a letter from Oscar Senecal, the Collector of Provincial Revenue for the district of Montreal, dated 7th January, 1929, of which you filed a copy as Exhibit P-57?

A.—I have.

40 Q.—Between the lodging of the preliminary statement in September and the filing of these supporting statements D-19 and D-20, had you in that interval received any account from the Succession Duty office dealing with any amount of liability, etc., in respect of Succession Duties of this Estate?

A.—No.

Q.—During that interval, I mean the autumn of 1928, apart from your own correspondence, was there anyone else corresponding

ALEX. M. REAPER (for Plaintiffs), Cross-Examination.

with the Department in respect of a particular item in which the Estate of Sir Mortimer Davis was concerned? Who else was discussing the Succession Duty matters besides yourself and Lord Shaughnessy?

A.—Mr. Phillips discussed the correspondence with them in connection with insurance policies.

Q.—Was that the particular subject?

10 A.—That was the particular subject. These were not payable to the Estate.

Q.—Have you copies of the letters exchanged between Mr. Phillips and the Succession Duty office, bearing on that particular subject, in the autumn of 1928?

Mr. McKeown, K.C.: We would like to have Mr. Phillips in the box; that is, on the letters.

20 Mr. Campbell, K.C.: All right; if my learned friends insist.

Mr. McKeown, K.C.: Certainly I insist.

Mr. Campbell, K.C.; Question withdrawn. Strike it out.

By Mr. Campbell, K.C.:

30 Q.—During the autumn of 1928, apart from anything Mr. Phillips may have done, did you yourself, either alone or Lord Shaughnessy, take any steps or have any interviews with any officer of the Succession Duty office—I am speaking now of the interval between September, 1928, and the letter of January 7th, 1929? In that interval did you have any discussions?

A.—We had met Mr. Begin I think during that interval.

A.—And discussed the statement?

A.—I think this statement had been handed to him and so on.

Q.—In any event, down to the receipt of this letter that you filed as P-57 from Mr. Rivard, you had not, in that interval, received any kind of a bill?

40 A.—No.

Q.—P-57 in the letter from Mr. Senecal addressed to you, dated January 7th, 1929; refers to Mr. Rivard, to whom you are asked to furnish information when he asks it. When did you hear from Mr. Rivard following that letter?

A.—I think Mr. Rivard delivered it.

Q.—Mr. Rivard delivered the letter?

A.—Yes.

ALEX. M. REAPER (for Plaintiffs), Cross-Examination.

Q.—Did he make certain inquiries?

A.—He made certain inquiries?

Q.—Did you answer the inquiries?

A.—Yes. I don't think we answered by letter. I think we discussed matters and he followed up by the letter of January 10th.

Q.—When did the interview take place? Can you fix the date? Would it be about the date of the letter?

10 A.—The letter is dated the 7th. It must have been within a day or two.

Q.—When did you hear from Mr. Rivard following that letter?

A.—His letter of January 10th.

Q.—I don't think it has been put in.

Mr. Holden, K.C.: No, it has not been filed.

By Mr. Campbell, K.C.:

20 Q.—Will you exhibit his original letter addressed to you, dated January 10th, 1929, and file a copy as D-21?

A.—Yes, I do.

Q.—In that letter Mr. Rivard puts to you a number of inquiries. Did you reply to it?

A.—Yes.

Q.—What was the date of your reply?

A.—January 19th we wrote him.

Q.—Will you file a copy of your reply to Mr. Rivard, dated January 19th, 1929, as Exhibit D-22?

30 A.—Yes.

Q.—I note in that letter of January 19th, 1929, you deal with some of the questions asked by him in his letter to you of January 10th?

A.—Yes.

Q.—The letter, I think, should be read to Your Lordship. For your information it is giving certain information asked for. It is in reply to an inquiry dated January 10th.

Mr. Campbell, K. C. (reading):

40

January, 19th, 1929.

“ Eugene Rivard, Esq.,
Advisor,
Collector of Provincial Revenue,
Montreal, Que.

Dear Sir:—Referring to your letter of the 10th inst., we now give you particulars asked for as follows:

ALEX. M. REAPER (for Plaintiffs), Cross-Examination.

(1) The lot in Mount Royal Cemetery was purchased by the late Sir Mortimer Davis and paid for by him on November 27/18. While this has been shown as an asset of this Estate you will notice that it has also been included in the funeral expenses and included on the liabilities side so that the one entry really offsets the other.

10 (2) Sir Mortimer had only one brother surviving him, viz: Melvin H. Davis, who was shown in returns as residing in Atlantic City but who is now at the Foster Hotel, Dansville, N.Y., and one sister, Mrs. Lustgarten (Beatrice Davis) at present at the Ritz Carlton Hotel, Montreal.

(3) Neither brother nor sister were indebted to Sir Mortimer at the time of his death.

20 (4) Full particulars of all assets in France have been asked for and statements are being prepared—as soon as these are received we will give you the information asked for.

30 (5) At the date of his death, Sir Mortimer had a debit balance in his account at Cannes with the Lloyds & National Provincial Foreign Bank Limited of Frs. 1,114,579.65 and a debit balance with their Paris house of Frs. 513,718.20. There was found in his box at the Casino at Cannes, Frs. 932,755, which were deposited to the credit of Sir Mortimer by Mr. Taylor, the British Vice Consul, so that the net debit balance amounted to Frs. 695,542.85. Confirming this we enclose herewith copy of translation of a letter from the Lloyds & National Bank in Paris, dated June 12/28, which was forwarded by our solicitors there.

(6) Attached you will find list of parties to whom Sir Mortimer at the time of his death had been paying gratuities, which list shows the amount paid to such persons during the three years previous to Sir Mortimer's death.

40 (7) Sir Mortimer B. Davis did not really make a subscription to the Y.M.H.A., but in September, 1926, agreed to secure land and erect a building which, on completion, would be turned over to trustees to be decided upon for their use under certain conditions. The total cost is estimated to be approximately \$400,000. This building is now in course of erection.

ALEX. M. REAPER (for Plaintiffs), Cross-Examination.

(8) The total amount of a subscription to the Joint Hospital Campaign was \$10,000 and was made in May, 1927, when the first payment of \$2,500 was made.

10 (9) The 1,000 Tobacco Products Scrip A of United Cigar Stores include 500 Tobacco Products Scrip A shown in Messrs. Bamberger Bros. account, the other 500 had been declared as a dividend prior to the death of Sir Mortimer but the stock had not been delivered at the date of his death, which accounts for it not being shown on the Bamberger Bros. statement.

20 (10) The Union Tobacco Company and the Union Cigar Company stocks which are held by Sir Mortimer Davis, Incorporated, are both American concerns. We are trying to secure a copy of the statements of these companies for you.

Yours very truly,

For the Executors Estate Late Sir Mortimer B. Davis

(Sgd) A. H. Reaper, Executor."

By Mr. Campbell, K.C.:

30 Q.—On that date did you send a further letter to Mr. Rivard giving additional information in reference to the assets of the Estate or Sir Mortimer B. Davis?

A.—Yes, there was another letter on the same date?

Q.—Will you file as Exhibit D-23 a copy of your other letter of the same date addressed to Mr. Rivard under date January 19th, 1929?

A.—I do.

40 Q.—In this subsequent letter, January 19th—I don't want to take the time to read the whole thing to the Court—but how many different assets or securities do you discuss?

A.—Nine, I think.

Q.—You give information in reference to nine different securities about which inquiry had been made by the Succession Duty Office, I think?

A.—Yes.

Q.—Now, following the despatch of these letters of January 19th, did you get any acknowledgment from Mr. Rivard?

ALEX. M. REAPER (for Plaintiffs), Cross-Examination.

A.—There is an acknowledgment of January 21st.

Q.—Will you file a copy of that acknowledgment as D-24, dated January 21st, 1929?

A.—I do.

Q.—In the letter of January 21st, Mr. Rivard acknowledges the receipt of your communication of the 19th, including the information asked for by Mr. Begin, and he proceeds to ask you in respect
10 to one item of real estate in the second paragraph of that letter?

A.—Yes.

Q.—Did you supply the information asked for by Mr. Rivard in that letter?

A.—Yes, that was supplied on January 22nd, 1929.

Q.—January 22nd or January 28th?

A.—January 22nd.

Q.—Will you file as D-25 a copy of your answer to Mr. Rivard's inquiry.

A.—I do.

Q.—And that letter D-25 answered the inquiry in respect of
20 Notre Dame de Grace property put in Mr. Rivard's previous letter?

A.—Yes.

Q.—What was the next communication you received from the Succession Duty Office apart from those you produced in your examination-in-chief?

A.—Well, I wrote him again on January 28th.

Q.—Will you file a copy of that letter to Mr. Rivard of that date?

A.—I do, as D-26.

Q.—Did you get an acknowledgment of that letter, and if so,
30 will you file a copy?

A.—Yes.

Q.—As D-27?

A.—Yes.

Q.—Will you file as D-27 a copy of Mr. Rivard's acknowledgment of your letter dated January 28th, 1929?

A.—Yes.

Q.—What was your next communication?

A.—January 30th, 1929.

Q.—Will you file as D-28 copies of the correspondence exchanged between yourself or some one else in your office on behalf
40 of the Estate of Sir Mortimer Davis, with the representatives of the Succession Duty Office of the Province of Quebec between the dates January 28th and the 14th of May, 1929, and give this file of letters Exhibit Number D-28.

A.—Yes. I file as Exhibit D-28 the following copies of correspondence:

ALEX. M. REAPER (for Plaintiffs), Cross-Examination.

- D-28A—Letter from myself to Eugene Rivard, dated January 30th, 1929.
- D-28B—Letter from Eugene Rivard to myself dated January 31st, 1929.
- D-28C—Letter from myself to Eugene Rivard, dated February 4th, 1929.
- 10 D-28D—Letter from Eugene Rivard to myself, dated February 6th, 1929.
- D-28E—Letter from myself to Eugene Rivard, dated February 19th, 1929.
- D-28F—Letter from myself to Eugene Rivard, dated February 20th, 1929. (With the attached memoranda; two attached memoranda).
- D-28G—Letter from myself to Eugene Rivard, dated February 20th, 1929.
- D-28H—Letter from myself to Eugene Rivard, dated February 21st, 1929.
- 20 D-28I—Letter from Eugene Rivard to myself, dated February 27th, 1929.
- D-28J—Letter from myself to Eugene Rivard, dated March 2nd, 1929.
- D-28K—Letter from myself to Eugene Rivard, dated March 12th, 1929.
- D-28L—Letter from Eugene Rivard to myself, dated March 14th, 1929.
- D-28M—Letter from Eugene Rivard to myself, dated April 2nd, 1929.
- 30 D-28N—Letter from myself to Eugene Rivard, dated April 3rd, 1929.
- D-28O—Letter from myself to Eugene Rivard, dated April 4th, 1929.
- D-28P—Letter from Eugene Rivard to myself, dated April 9th, 1929.
- D-28Q—Letter from myself to Eugene Rivard, dated April 13th, 1929.
- D-28R—Letter from Eugene Rivard to myself, dated April 16th, 1929.
- 40 D-28S—Letter from myself to Eugene Rivard, also dated April 16th, 1929.
- D-28T—Letter from Eugene Rivard to myself, dated April 17th, 1929.

Q.—Between the receipt of the letter of January 7th from Mr. Senecal to you, Plaintiffs Exhibit P-57, and the receipt of the letter

ALEX. M. REAPER (for Plaintiffs), Cross-Examination.

from the Department, May 14th, which the Plaintiffs filed as P-58, you, in that interval, exchanged by actual count, how many letters with the Department?

A.—28, as I count it. 28 in the Exhibit. There were eight letters mentioned separately.

Q.—We will call it 28, subject to verification.

A.—Yes. 28 is right.

10 Q.—28 or thereabouts?

A.—Yes.

Q.—Now that brought you down to the 14th of May, 1929, when you received the statement of account filed as Exhibit P-58. Is that right?

A.—Yes.

Q.—Up to the receipt of that Exhibit, had you received any request for payment from the Provincial Government in respect of Succession Duties?

20 A.—No.

Mr. Campbell, K.C.: I need to go into the question of the different interviews, so that possibly it might be an appropriate occasion to adjourn.

Whereupon an adjournment was taken until the following day, Friday, March 14th, 1930, at 10:30 o'clock A.M.

30

40

ALEX. M. REAPER (*for Plaintiffs*), *Cross-Examination.*

And on this fourteenth day of March, in the year of Our Lord one thousand nine hundred and thirty, personally came and appeared the said witness,

ALEXANDER M. REAPER,

10 and his cross-examination was continued as follows:

By Mr. Campbell, K.C.:

Q.—Before the adjournment yesterday I was asking you about the correspondence exchange between yourself or Lord Shaughnessy and the Succession Duties Office in reference to the matter of Succession Duties, and you filed a large number of letters (which we have finally agreed upon as being twenty-eight in number) dated 20 between January 7th, I think, 1929, and May 14th, of the same year. Those letters I judge from glancing over them deal with a great variety of questions in reference to different assets. Apart from this file of correspondence dealing with those various securities and assets which are discussed in it—and which I do not propose to take you over in detail—did you have any other correspondence on a particular subject in reference to the Estate during this same interval, which correspondence is included in a different file?

A.—There is the insurance file.

Q.—Apart from the file of correspondence which you produced, 30 you have another file of correspondence exchanged on the subject of insurance policies?

A.—Yes.

Q.—Have you that file with you?

A.—Yes.

Q.—Will you please look up your file of correspondence in reference to the matter of insurance policies on the life of the late Sir Mortimer Davis, and will you tell me if you can find in it a copy of a sworn declaration which you made before Mr. Phillips, notary, on 40 July 28th, 1928, setting up the particulars of those various insurance policies?

A.—Yes, I have it.

Q.—Will you file, as Exhibit D-29, a copy of that sworn declaration in which you recite the different policies of insurance outstanding on the life of Sir Mortimer Davis at the time of his death in favor of various parties?

A.—Yes.

ALEX. M. REAPER (for Plaintiffs), Cross-Examination.

Q.—This is dated July 28th, 1928?

A.—Yes.

Q.—How many policies of insurance are mentioned in that Declaration?

A.—Eight.

Q.—Totalling how much?

A.—\$345,000.00.

10 Q.—Did you make a subsequent Supplementary Declaration on the same subject, in the month of August, I think?

A.—Yes.

Q.—As of what date?

A.—August 25th, 1928.

Q.—Will you file, as Exhibit D-30, a copy of that Supplementary Declaration in reference to those insurance policies?

A.—Yes.

20 Q.—Subsequently to the dates of this original sworn Declaration and Supplementary Declaration did you, or Lord Shaughnessy, from the office of the Company, exchange any correspondence with the officials of the Succession Duties Office in reference to this matter of insurance policies?

A.—Yes, we did.

Q.—Will you please file, as Exhibit D-31, copies of this correspondence, consisting of:

30 A.—Copy of letter from Lord Shaughnessy to the Comptroller of Provincial Revenue, dated October 8th, 1928;

B.—Copy of letter from the Comptroller of Provincial Revenue, Mr. Begin, to Lord Shaughnessy, dated October 11th, 1928;

C.—Copy of letter from Lord Shaughnessy to Mr. Begin, Comptroller of Provincial Revenue, dated October 20th, 1928;

40 D.—Copy of letter from yourself to Mr. Begin, dated November 5th, 1928;

E.—Copy of letter from yourself to Mr. Begin, dated November 8th, 1928;

F.—Copy of letter from Mr. Begin, Comptroller of Provincial Revenue, to Sir Mortimer Davis, Incorporated, dated November 8th, 1928;

ALEX. M. REAPER (for Plaintiffs), Cross-Examination.

G.—Copy of letter from Mr. Begin, Comptroller of Provincial Revenue, to yourself, dated November 26th, 1928;

H.—Copy of letter from Mr. Begin, Comptroller of Provincial Revenue, to yourself, dated December 22nd, 1928;

10 I.—Copy of letter from yourself to Mr. Begin, Comptroller of Provincial Revenue, dated January 7th, 1929;

J.—Copy of letter from Mr. Rivard, the adviser of the Collector of Provincial Revenue, to yourself, dated January 9th, 1929;

K.—Copy of letter from yourself to Mr. Begin, Comptroller of Provincial Revenue, dated February 21st, 1929;

20 L.—Copy of letter from yourself to Mr. Begin, Comptroller of Provincial Revenue, dated March 23rd, 1929;

M.—Copy of letter from Mr. Begin, Comptroller of Provincial Revenue, to you, dated March 26th, 1929;

N.—Copy of letter from Mr. Begin, Comptroller of Provincial Revenue, to yourself, dated April 8th, 1929;

30 O.—Copy of letter from yourself to Mr. Begin, Comptroller of Provincial Revenue, dated April 13th, 1929;

P.—Copy of letter from Mr. Eugene Rivard, Solicitor of the Provincial Revenue Department, to yourself, date April 26th, 1929;

Making in all sixteen letters exchanged with the Succession Duties Office on the subject of those insurance policies during that interval between October 8th, 1928, and April 26th, 1929?

40 Q.—Will you produce, as Exhibit D-31-Q, an additional letter which I now find, from yourself to Mr. Rivard, dated May 2nd, 1929?

A.—Yes.

Q.—In addition to this extensive correspondence exchanged on these matters with the officers of the Succession Duties Office, did you, or Lord Shaughnessy to your knowledge, do anything else besides exchanging letters in the interval? I am speaking of the interval between the autumn of 1928 and the month of May, 1929. Did you do anything else besides write letters?

ALEX. M. REAPER (for Plaintiffs), Cross-Examination.

A.—I was in communication with and saw Mr. Rivard, also Mr. Begin, on different occasions.

Q.—Where did you have those interviews. In Montreal, or in Quebec?

A.—In Montreal, during that interval.

10 Q.—I see by your letter Exhibit D-31-D, dated November 5th, 1928, reference to an interview which Lord Shaughnessy and you had with Mr. Begin apparently on the Saturday previous. Will you look at the letter please. I have verified the fact that November 5th, 1928, was a Monday. Do you remember that interview?

A.—Yes.

Q.—At that interview, which was apparently held on Saturday, November 3rd, 1928, was anything discussed apart from the matter of insurance policies to which this particular letter has reference? Do you recall the interview?

20 A.—Not very clearly. I do think, however, the Estate matters were mentioned at that interview.

Q.—In the letter Exhibit D-31-I, from you to Mr. Begin, I see a reference to what I would judge from the wording used was an interview of that morning. Do you recall that particular interview?

Witness: What is the date of the letter:

Counsel: January 7th, 1929.

A.—That would be with Mr. Rivard.

30 Q.—The letter is addressed to Mr. Begin. With who was the interview?

A.—It was with Mr. Rivard. You will notice the letter is marked "For attention, Mr. Rivard."

Q.—The letter is addressed to Mr. Begin, but is marked "Attention, Mr. Rivard"?

Q.—The letter is addressed to Mr. Begin, but is marked "Attention, Mr. Rivard"?

A.—Yes.

40 Q.—With whom was the interview had on that occasion?

A.—With Mr. Rivard, when he called to deliver the letter of introduction.

Q.—That was in Montreal?

A.—Yes.

Q.—What was discussed on that occasion?

A.—Some matters for the Estate, and he said he would like to get certain information.

ALEX. M. REAPER (for Plaintiffs), Cross-Examination.

Q.—We have come now to the time the Government rendered you the original statement which has been filed as Plaintiffs' Exhibit P-58. Will you please look at this statement Exhibit P-58, which you filed in your examination-in-chief; as I understand it this is a statement of account received under date Montreal, May 14th, 1929, from the Succession Duties Office?

A.—Yes.

10 Q.—Up to that time had the Succession Duties Office sent you any account for any request for payment?

A.—No; this was the first account.

Q.—Will you look at the assessed values which were put by the Succession Duties Department on the assets of the Estate of Sir Mortimer Davis, and will you verify how they compared with the valuation which you had put upon them in the statement you had filed the previous September and which has been produced here as Plaintiff's Exhibit P-55?

20 What was the gross value put by you in your preliminary statement as at March 22nd, 1928, date of death, which you had filed in the previous September? I show you a copy of Exhibit P-55.

A.—\$11,183,352.36.

Q.—Did the Succession Duties Office accept that valuation?

A.—No.

Q.—What did they add?

A.—They added to it \$5,780,278.47.

30 Q.—How did they treat the debts declared in your statement of the previous September? How much did your liabilities total?

A.—\$3,659,721.71.

Q.—And, of those liabilities how much did the Succession Duties Office admit as deductible from the assets?

A.—They disallowed the different donations, and so on, to an amount of \$2,002,500.00.

Q.—Leaving how much for liabilities admitted?

A.—\$1,657,221.71, as admitted debts.

40 Q.—Adding to the increased value on the assets side, of \$5,780,278.47, the debts disallowed, amounting to \$2,002,500.00, what was the total difference between what you offered to pay upon by your statement and what the Government asked you to pay by their bill of May 14th, 1928?

A.—\$7,782,778.47.

Q.—What was the chief item of difference on the asset side? I am not going to take you through every particular item, because it would be very long, but I would like you to deal with the chief item

ALEX. M. REAPER (for Plaintiffs), Cross-Examination.

of difference on the asset side. What accounted for most of the \$5,780,278.47 which the Government added to your assets?

A.—The main item was the shares of the Incorporated Company, Sir Mortimer Davis, Incorporated.

Q.—At what price had you valued those shares for Succession Duties purposes?

10 A.—\$170.00.

Q.—Was that the figure established by the statements of Price, Waterhouse & Company which you put in yesterday in support of your valuation?

A.—Yes.

Q.—To what amount per share did the Government raise the valuation of those shares?

A.—They raised them to a value of \$280.00 per share.

Q.—That would be a difference of \$110.00 per share?

A.—Yes.

20 Q.—How many shares were involved?

A.—44,625 shares.

Q.—So, on that item alone there was a difference in issue between the Government and yourself of how much?

A.—\$4,908,750.00.

His Lordship: Did the Government give any reason for raising the value of those shares? Does it appear in the correspondence?

30 Mr. Campbell: It is discussed to a certain extent in the subsequent correspondence, Your Lordship.

His Lordship: At first glance it seems an absolutely exorbitant claim on the part of the Government.

Witness: It is partly explained in the correspondence.

By Mr. Campbell (continuing):

40 Q.—The difference between your valuation of the Estate net, and the Government's valuation net, was some seven million seven hundred thousand?

A.—Yes.

Q.—What was the rate of duty which was applicable, according to their account, on the residue of the Estate?

A.—Eight per cent, 5 per cent and 3 per cent.

Q.—At 8 per cent what would the amount in issue in the way

ALEX. M. REAPER (*for Plaintiffs*), *Cross-Examination.*

of Succession Duties between you and the Succession Duties Office come to?

A.—About \$622,000.00.

Q.—In any event, over \$600,000.00?

A.—Yes.

10 Mr. Geoffrion: Does the witness know how much would be payable on their own figures?

Mr. Campbell: No, I do not think he has figured it out yet.

Mr. Geoffrion: I am dealing with the remark of His Lordship, in the face of the Judgment of the Supreme Court.

Mr. Campbell: But the Judgment of the Supreme Court may not apply to us yet.

20 By Mr. Campbell (continuing):

Q.—Have you a record of when the statement of May 14th, 1929, was received?

A.—No, but I think probably it was received the following day or so.

Q.—Do you know that?

A.—No. From my records here it had to be received between that and the 18th. In the interval I had seen Mr. Lazure, and it must have been about the 15th or 16th at the latest. There is a letter of May 18th, and another of May 25th.

30 Q.—Plaintiffs' have already filed, as Exhibits P-59, P-60 and P-61, three letters, dated May 18th, 1929, from you to Mr. Rivard; May 25th, 1929, from Mr. Rivard to you, and May 30th, 1929, from Mr. Rivard to you.

A.—Yes.

Q.—That brings us down to May 30th, 1929. What was the next letter exchanged following those three filed by the plaintiffs?

A.—June 7th, 1929, from myself to Mr. Begin.

40 Q.—Will you file a copy of this letter as Exhibit D-32?

A.—Yes.

Q.—What was the next letter exchanged with the Succession Duties Office following June 7th, 1929?

A.—A letter from Mr. Begin, under date June 11th.

Q.—This letter is signed by Mr. Rivard, is it not?

A.—Yes, that is right. It is a letter from Mr. Rivard to myself.

ALEX. M. REAPER (for Plaintiffs), Cross-Examination.

Q.—Will you file a copy of this letter as Exhibit D-33?

A.—Yes.

Mr. McKeown: If there is no comment on those letters it might be well to put them all in as one Exhibit. It would save a great deal of time.

10 Mr. Campbell: I thank my learned friend for his suggestion, but I do not see how I can follow it because there are certain reasons for stopping as we go through the correspondence.

By Mr. Campbell (continuing):

Q.—What is the next letter on your file?

A.—A letter of June 13th, from me to Mr. Rivard.

Q.—Will you file a copy of this letter as Exhibit D-34?

20 A.—Yes.

Q.—The first paragraph of this letter Exhibit D-34 says:

“ I am in receipt of your favor of the 11th instant, in which you advise that Mr. Begin expects to be at his office at the new Court House, Montreal, on the 17th instant, and can be seen any time during the forenoon.”

Did Mr. Begin come to Montreal on the 17th, as this letter indicated he was going to do?

30 A.—No, I do not think he came at that time.

Q.—Did you make any attempt to see him that day?

A.—Yes.

Q.—Was he available?

A.—No, he was not available.

Q.—Did he fix any other appointment when he could be seen?

A.—I think what happened after that was I got a telephone message from Mr. Rivard.

Q.—From where?

40 A.—From Quebec. Stating that Mr. Begin would be in Montreal towards the end of June. I just forget the exact date. It was the Friday, I think, just before the last of June—and he thought I could see him then.

Q.—What is the next letter on your file?

A.—July 2nd.

Q.—From whom?

A.—From me to Mr. Begin.

ALEX. M. REAPER (*for Plaintiffs*), *Cross-Examination.*

Q.—Will you file a copy of this letter as Exhibit D-35?

A.—Yes.

Q.—The first paragraph of this letter Exhibit D-35 says

10 “ I am sorry to have missed you last Friday morning, but when I telephoned your office here I was advised that you had not yet arrived and they were uncertain as to whether you would be there that day or not. Having heard you had been in the City, I again telephoned Mr. Senecal on Saturday morning to see if you had by any chance stayed over, but was advised that you had left town.”

Were you informed by anyone on behalf of the Succession Duties Office that Mr. Begin was in Montreal on that occasion, and available to be seen if you needed to see him?

20 A.—Yes. After I had telephoned I happened to meet one of the parties employed in the Department, and he said Mr. Begin had been around that day. That was the reason I telephoned the following morning to see if he had stayed over.

Q.—Had you been notified he was in town the day he was here?

A.—No. When I telephoned they said he was not there, and that they did not know if he would be.

Q.—What was the next step in your negotiations after you missed Mr. Begin at the end of June or beginning of July as referred to in Exhibit D-35?

30 A.—After that letter of July 2nd I received a reply from Mr. Begin's Secretary, under date July 4th.

Q.—What was the effect of that reply?

A.—That the Comptroller of Provincial Revenue was out of town, on his holidays, and they did not expect him back to the office until July 22nd.

Q.—Will you file a copy of this letter as Exhibit D-36?

A.—Yes.

Q.—What happened when Mr. Begin came back from his holidays? What is the next letter on your file?

40 A.—The next letter is August 15th.

Q.—What had happened before the next letter, which is dated August 15th?

A.—I had seen Mr. Begin here in Montreal.

Q.—Can you fix the date of your interview?

A.—It apparently was in the first half of August. Probably around the 10th.

ALEX. M. REAPER (for Plaintiffs), Cross-Examination.

Q.—Will you produce, as Exhibit D-37, copy of your letter to Mr. Begin under date August 15th?

A.—Yes.

Q.—Did you go to Quebec in accordance with the suggestion contained in this?

A.—Yes, but not on that date.

10 Q.—What is the next letter on your file, following the letter of August 15th?

A.—August 16th; from Mr. Begin to me.

Q.—Will you file a copy of this letter as Exhibit D-38?

A.—Yes.

Q.—This letter says:

20 “ I have your letter of the 15th inst. advising me that you expect to be in Quebec on Monday, 19th instant. I must say I expect Mr. Rivard will not be ready for you on that date. We have talked this matter over, and have decided to invite you for Thursday, 22nd August, in the forenoon.”

A.—Yes.

Q.—Did you go in answer to that invitation?

A.—Yes, I did.

Q.—On what date?

A.—On August 22nd.

Q.—Whom did you see?

30 A.—Mr. Begin, and Mr. Rivard.

Q.—What did you discuss?

A.—Different things in connection with the Estate and the valuations which they had put on them. I was there more as a seeker of information as to how they had arrived at their figures. What I had had up to that time did not fully explain how they had arrived at the values they had put on the statement.

Q.—Up to the date of your interview in Quebec, August 22nd, 1929, had you been able to figure out how the Government had arrived at their increase of five million odd dollars in your assets?

40 A.—No. While the letter of May 30th gave certain information as regards increases which they had made, the actual amount which they had added could not be checked from that.

Q.—Following your interview in Quebec at the end of August, 1929, did you hear further from the Department in answer to your enquiries? And I will limit my question to between that time and the end of September.

A.—No.

ALEX. M. REAPER (for Plaintiffs), Cross-Examination.

Q.—At the beginning of October, 1929, did you take any further steps on your own part? Look at your letter to Mr. Begin under date October 4th.

A.—Yes. That was a letter in which I gave him some information in connection with some of the assets.

10 Mr. Campbell: I will try not to duplicate any of the documents already of record, but in a case of this kind it is sometimes very difficult to avoid that possibility.

By Mr. Campbell (continuing):

Q.—Will you file, as Exhibit D-39, a copy of your letter to Mr. Begin dated October 4th, 1929?

A.—Yes.

Q.—In the first paragraph of this letter you say:

20

“Enclosed I am now pleased to hand you supplementary statement of the Estate of the late Sir Mortimer B. Davis, which, I think, completes returns to be made with the exception of a possible claim for income tax as mentioned therein.”

A.—Yes.

Q.—Will you file, as Exhibit D-40, a copy of the Supplementary Statement referred to in your letter?

A.—Yes.

30

Q.—Will you look at the first page of your Supplementary Statement Exhibit D-40 and tell me what assets had been added to the statement previously filed by you in September, 1928?

A.—The assets of the Estate in France.

Q.—Amounting to how much?

A.—\$86,591.00.

Q.—What additional liabilities did you set up in the Supplementary Statement?

A.—\$42,273.50.

40

Q.—I note on the first page of that statement a reserve which I will ask you to read into the record?

A.—“Balance to be added to return as per preliminary statement, but subject to the right to make further additions to liabilities as noted on statement of accounts payable attached, \$44,317.50.”

Q.—Will you please look at the last page of that return and read into the record the note which appears at the bottom?

A.—“Liabilities may be added to by a claim from the Income

ALEX. M. REAPER (for Plaintiffs), Cross-Examination.

Tax Department. Sir Mortimer did not consider himself liable, but definite decision has not yet been made by the Department. We must, therefore, reserve the right to add to the liabilities reported should we have to pay tax."

Q.—How does the question of the claim of the Income Tax Department now stand? Has it been settled, or is it still open?

10 A.—It is still in abeyance.

Q.—Have the Executors accepted any liability in respect of the items in dispute?

A.—No.

Q.—The amount appearing in Exhibit D-40 as having been paid to the Receiver General of Canada for income tax, totalling \$79,622.80, does not, I take it, concern those items in dispute?

A.—No. These were old matters.

Q.—That was a liability which was admitted?

A.—Yes.

20 Q.—Has it been paid?

A.—Yes.

Q.—What is the next letter in your file, following October 4th, 1929?

A.—A letter of October 8th, 1929, which I sent to Mr. Begin.

Q.—Dealing with a particular subject?

A.—Yes.

Q.—The valuation of stock in the Toronto Bond Exchange?

A.—Yes.

30 Q.—Will you file a copy of this letter as Exhibit D-41?

A.—Yes.

Q.—What is the next letter on your file?

A.—A letter of October 10th, from Mr. Rivard to me, acknowledging my letters of the 4th and 8th.

Q.—Will you file a copy of this letter as Exhibit D-42?

A.—Yes.

Q.—In this letter Mr. Rivard acknowledged your enclosures (that is your Supplementary Statement) and thanked you for your courtesy; but, did he do anything else at that time?

40 A.—No, I think not.

Q.—What did you do then?

A.—On October 16th I wrote him again.

Q.—Will you file, as Exhibit D-43, a copy of your letter to Mr. Rivard dated October 16th?

A.—Yes.

Q.—This letter reads as follows:

ALEX. M. REAPER (for Plaintiffs), Cross-Examination.

“ Dear Mr. Rivard:

10 I presume we will soon be hearing from you regarding the different items which we discussed in my interview with Mr. Begin and yourself in Quebec, and in this connection would bring to your attention that we have been advised that the gifts of \$100,000 as per marriage contract of October 20th, 1897, and and \$200,000 under marriage contract of May 24th, 1924, should not be liable to Succession Duties as these are not gifts of property the ownership whereof is transmitted owing to death and as both were made under a marriage contract.

20 With regard to the insurance payable to Sir Mortimer Davis, Incorporated, and the Canadian Industrial Alcohol Co. Ltd., which we have discussed on various occasions, the premiums on which were all paid by the assignees, those, we are also advised, should not be liable to Succession Duties, as those policies should not be considered as devolving by gratuitous title.

We will be obliged if you will kindly give these items your further consideration, along with the other items we discussed.”

A.—Yes.

By the Court:

Q.—Did you have legal opinion on this matter?

30 A.—Yes, Your Lordship, we had, but I have not it here.

By Mr. Campbell:

Q.—You could look it up during the adjournment?

A.—Yes.

Q.—Do you know whether it was in writing?

A.—I think it was. I will look it up.

40 His Lordship: Will you give the opinion an Exhibit number now, or later on?

Mr. Campbell: I am not sure whether it is in writing. We will have to verify that.

Witness: I think it is covered in the further letters.

Mr. Campbell: My learned friend, Mr. Holden, tells me he gave

ALEX. M. REAPER (for Plaintiffs), Cross-Examination.

the advice, but he is not sure whether it was in writing. In any event, I have no doubt it was very sound advice.

Mr. Geoffrion: Have the Government accepted it?

Mr. Campbell: I am not sure they have yet; perhaps they will.

10 By Mr. Campbell (continuing):

Q.—What is the next letter on your file?

A.—A letter from Mr. Rivard, dated October 24th, 1929.

Q.—Will you file a copy of this letter as Exhibit D-44?

A.—Yes.

Mr. Campbell: This letter reads as follows:

20 “ Dear Mr. Reaper:

Your favor of the 16th was received in due course. I must add that I have been notified by the Attorney General's Department that the answer to our queries will be sent to us either today or tomorrow, and either Mr. Begin or myself will communicate with you within a few days.

With my best personal regards, I am,

Yours very truly.”

30 By Mr. Campbell (continuing):

Q.—Up to the date of this letter, Exhibit D-44, October 24th, 1929, had you received any complaint from the Succession Duties office about your dilatoriness in providing them with information?

A.—No.

His Lordship: I do not see how they could complain.

Mr. Campbell: Nor I, Your Lordship.

40 By Mr. Campbell (continuing):

Q.—What is the next letter on the file?

A.—A letter from Mr. Rivard under date November 7th, 1929.

Q.—Will you file a copy of this letter as Exhibit D-45?

A.—Yes.

Q.—This letter reads:

ALEX. M. REAPER (*for Plaintiffs*), *Cross-Examination.*

10 “ With further reference to your letter of the 16th ultimo, in which you stated that you had been advised that the gifts of \$100,000 as per marriage contract of October 20th, 1897, and \$200,000 under marriage contract of May 24th, 1924, should not be liable to Succession Duties: I would very much appreciate your securing and forwarding me, at your earliest convenience, the authorities and arguments of your advisers or solicitors. **This would enable me to clear the matter in a definite way before having the record returned to our Montreal Office.**”

Did you comply with the terms of the request contained in Exhibit D-45?

A.—Yes.

Q.—What is the next letter on your file?

A.—Our letter of November 15th, to Mr. Rivard.

Q.—Will you file a copy of this letter as Exhibit D-46?

20 A.—Yes.

Mr. Campbell: This letter reads:

“ In answer to your letter of the 7th, we are glad to give you, as requested, the reasons given to us by our legal advisers on the points you mention.

30 Both the gift of \$100,000 of October 20th, 1897, and the gift of \$200,000 of May 24th, 1924, were made in marriage contracts. Section 6-A of the Quebec Succession Duties Act, R.S.Q. 25, Chap. 29, as amended by the Act of 1928, 18 George V, Chap. 17, provides in Section 3 that the law with regard to donations *inter vivos* in which the donor reserves to himself in whole or in part the control, administration or enjoyment of the property given, or any part thereof, until his death or until a period after his death, does not apply whenever such donation *inter vivos* is made in a marriage contract.

Section 6 of the Succession Duties Act, which also deals with transmissions owing to death, makes an exception also for the case of any donation *inter vivos* in a marriage contract.

40 Sir Mortimer Davis died on March 22nd, 1928, so that these marriage contracts were made about thirty years and four years respectively before his death.

The Executors submit that in both cases the Succession Duties are not payable, in view of the provisions above referred to.”

By Mr. Campbell (continuing):

ALEX. M. REAPER (for Plaintiffs), Cross-Examination.

Q.—How did Mr. Rivard take your law as set forth in this letter of November 15th?

A.—He replied to that letter on November 26th.

Q.—Will you file a copy of his reply as Exhibit D-47?

A.—Yes.

Q.—I take it from the terms of Mr. Rivard's letter, Exhibit D-47, he did not agree with your argument?

10 A.—No, he did not.

Q.—What is the next letter on your file?

A.—A letter of December 5th, 1929.

Q.—From whom?

A.—A letter I wrote to Mr. Rivard.

Q.—Will you file a copy of this letter as Exhibit D-48?

A.—Yes.

Q.—That brings us down to December 5th, 1929?

A.—Yes.

20 Q.—What was the next you heard from the Succession Duties Office?

A.—The Notice from the Department.

Q.—That is the Notice filed as Exhibit P-62 by plaintiffs?

A.—Yes.

Q.—A Notice on the printed form of the Succession Duties Office, signed by Mr. Oscar Senecal, Collector of Provincial Revenue for the District of Montreal, notifying the Executors of the Estate of the late Sir Mortimer Davis that they were called upon to pay a certain amount?

30 A.—Yes.

Q.—What was that amount?

A.—\$1,314,209.04.

Q.—How did that amount compare with the amount originally demanded by the Government on May 14th, 1929?

A.—It was the same amount, only that the seizin tax had not been included.

Q.—Under the terms of this demand of December 14th, 1929, the Government had not up to that time made any concessions as a result of this correspondence and of those interviews?

40 A.—No.

By the Court:

Q.—And they had added the interest in the meantime?

A.—Yes, Your Lordship. Interest from July 22nd, 1928, was called for.

Q.—Roughly \$200,000?

ALEX. M. REAPER (for Plaintiffs), Cross-Examination.

A.—Oh, no, \$100,000. Interest at the rate of 5 per cent per annum.

By Mr. Campbell (continuing):

10 Q.—On this question of interest: while this amount of Succession Duties was outstanding (whatever amount may ultimately be determined to be due) what had the Incorporated Company in the way of cash resources outstanding available to be used, if necessary, supposing an agreement had been reached in the interval? For instance, what were the call loans as at September 30th, 1928?

A.—\$880,000.00.

Q.—Had they been outstanding from the time of the death of Sir Mortimer?

A.—I think there were \$850,000.00 at the date of death.

20 Q.—So, either \$850,000 or \$880,000 was out on call during all the time this correspondence was being exchanged?

A.—Yes.

Q.—And was still out on call until the time of the institution of these proceedings?

A.—Yes.

Q.—None of the call loans had been paid until these proceedings?

A.—No.

Q.—What was the average rate of interest being earned by this money which was out on call loan?

30 A.—I think it would average about 6 per cent.

Q.—So that if you were owing the Government money for Succession Duties which bore interest against you at the rate of 5 per cent, and you had your money out on call earning 6 per cent for you, were you losing or gaining by the deal?

40 Mr. McKeown: I submit that is an absurd question in a case of this kind, or at least carried to its logical conclusion it reduces itself to the absurdity of never paying the Succession Duties. The defendants are not on trial as to whether they knew how to beat the Government on a matter of interest. That is not the issue before Your Lordship in any way.

Mr. Campbell: But we are being charged with causing this Estate irreparable damage by failing to pay.

Mr. Geoffrion: You may fight the Government as much as you like, but you must administer the Estate in the meantime.

ALEX. M. REAPER (for Plaintiffs), Cross-Examination.

Mr. Campbell: I think perhaps it will save time if I withdraw the question.

By Mr. Campbell (continuing):

10 Q.—We had reached the time of this demand made by Mr. Senecal. Until you received that demand, Exhibit P-62, had you received any intimation from the Government that they wanted payment of the amount demanded, or any amount?

20 Mr. McKeown: Whether the Government asked for it or not is not an issue in this case. These defendants had the same duty to discharge as the executors of any other estate, and their duty was not to wait until they were driven to the wall and threatened with suit. Their business was to accelerate the settlement of this debt and to do everything they possibly could to bring it about. I submit it is no answer at all to say that they paid only when they were forced to pay, and, therefore, the question is not relevant to this enquiry.

Mr. Campbell: I am only asking a question of fact. Your Lordship will decide the law when the time comes.

His Lordship: You already asked the question, and had an answer. I do not know that it makes very much difference.

30 Mr. Campbell: Whether it was a new broom sweeping very clean, or what, I cannot say; but after a long and voluminous correspondence in the most cordial terms we get this bolt from the blue on December 14th, 1929, and that is why I think I am entitled to ask the question.

His Lordship: You have filed everything there was, and there was no demand for payment at all before this document.

By Mr. Campbell (continuing):

40 Q.—How long did this demand Plaintiffs' Exhibit P-62 give you to make payment?

A.—Thirty days.

Q.—And thirty days from the receipt of this letter would bring you to about the day of the institution of these Proceedings, January 18th, 1930?

A.—Yes.

Q.—In that interval how were relations between yourself and

ALEX. M. REAPER (for Plaintiffs), Cross-Examination.

Lord Shaughnessy and your co-executor? In the interval between the receipt of that demand and the expiration of the thirty days period were you on cordial terms, or were you, so to speak, at arms length with one another?

Mr. McKeown: What difference would that make?

10 Mr. Campbell: It may make some difference.

Mr. Geoffrion: There is not much controversy on that point, I think.

By Mr. Campbell (continuing):

20 Q.—Before the receipt of that demand of payment you had already received a demand for your resignation, addressed to you by my learned friend Mr. W. K. McKeown, under date November 21st, 1929, filed as part of Exhibit No. 12, had you not?

A.—Yes.

Q.—In connection with the valuation of \$280.00 a share put by the Succession Duties Office on the shares of Sir Mortimer Davis, Incorporated, as against \$170,000 a share at which you had declared them, at what figure did the shares of Canadian Industrial Alcohol appear in the calculation? I understand Canadian Industrial Alcohol was the main asset involved in the calculation?

A.—It was the main asset, yes.

30 Q.—Sir Mortimer Davis, Incorporated, owned upwards of half a million shares of Canadian Industrial Alcohol “A” and “B” at that time?

A.—Yes.

Q.—What value had you put upon those shares in your calculation?

A.—\$20.00.

Q.—Both for the “A” and the “B”?

A.—Both for the “A” and the “B.”

40 Q.—How did that compare with the book value at which you carried them on your books?

A.—That was the book value.

Q.—What value did the Government put upon them in its revision of your valuation?

A.—In revaluing the assets of Sir Mortimer Davis, Incorporated, they took the “A” stock at \$41.00 per share, and the “B” stock at \$39.00 per share.

ALEX. M. REAPER (for Plaintiffs), Cross-Examination.

Q.—Supposing the division of the classes was equal, that would be an average of about \$40.00 per share?

A.—Yes.

Q.—So, they doubled your valuation on that particular asset?

A.—Yes.

10 Q.—Which would make a difference of \$20.00 a share, which on 500,000 shares would be approximately how much?

A.—But it does not work out exactly that way. That was what I could not make out from their letter on May 30th, and I had to go to see them and get further information.

They used a method of calculation by raising the values of the assets of Sir Mortimer Davis, Incorporated, taking the Alcohol "A" at, I think, \$41.00, and the "B" at \$39.00, and after making their revaluations they arrived at a certain net result for the Incorporated Company, which they called the intrinsic value of the Company. Then they went over the earnings for the previous five years, and
20 arrived at a capitalization on a basis of earnings. They took the two amounts so arrived at, added them together, and then divided by two, and arrived at the valuation which they showed.

Q.—What result did that give them?

A.—\$280,000 a share.

By the Court:

Q.—What was the market value of those shares about that time?

30 A.—That was the market value for such shares as were being sold,—\$41.00, and \$39.00.

By Mr. Campbell:

Q.—You mean the Canadian Industrial Alcohol shares?

A.—Yes, the Alcohol shares.

Q.—Are you aware as to whether there was any substantial quantity of shares that changed hands at that figure?

40 A.—I could not tell exactly. I think no quantity such as we had on hand could have been sold at that figure.

Mr. Geoffrion: Was not that very question up in the Supreme Court?

Mr. Campbell: The law of the Supreme Court may not be good, and you can correct it.

ALEX. M. REAPER (for Plaintiffs), Cross-Examination.

By Mr. Campbell (continuing):

10 Q.—You have been asked to express an opinion about the market conditions for Alcohol stock. Is it your opinion the market would have absorbed 500,000 shares of Canadian Industrial Alcohol “A” and “B” at the figures at which they were assessed for Succession Duties purposes by the Succession Duties Office?

Mr. McKeown: I do not think the witness is qualified to express an opinion on that. The matter of what the market would or would not do is a subject more within the scope of knowledge of members of the Stock Exchange than within the scope of Mr. Reaper’s knowledge. He has no knowledge whatever on the subject, and never made any attempt to ascertain whether the market would or would not absorb the shares, and his basis of experience is zero. I submit he is not a competent person to give evidence on a matter
20 of expert knowledge of this kind, and I submit evidence of this character is evidence which can only be made by a competent expert.

Mr. Campbell: He is one of the Executors who objected to this valuation, and I think I am entitled to know whether he thought it was a rational valuation.

His Lordship: What Mr. Reaper may have thought of it does not necessarily prove it was so.

30 Mr. Campbell: But, it proves the good faith of the Executors in their resistance of those exorbitant demands.

Witness: I do not think the quantities we held could have been sold at those prices. Then, again, there was the fact that to retain control of the Alcohol Company we had to retain possession of the “A” shares in any case.

Mr. Campbell (continuing):

40 Q.—Apart from Alcohol, what was the other big item which entered into the calculation of the value of those Incorporated Company shares?

A.—That was the main item.

Q.—What did they value Asbestos at?

A.—They valued Asbestos at \$31.25 per share.

ALEX. M. REAPER (for Plaintiffs), Cross-Examination.

Q.—What shares did they value at that price? Asbestos Corporation?

A.—Asbestos Corporation.

Q.—Anything else?

A.—They had valued Consolidated Asbestos at the same price, but they had made a mistake in that and had treated Consolidated Asbestos as being the same as Asbestos Corporation. They have
10 agreed to make a reduction.

Q.—I am coming to what they agreed to do. On the basis of their bill and their demand of payment of December 14th, what valuation did they put on the Consolidated Asbestos shares?

A.—\$31.25 per share.

Q.—Which was intended to be a valuation on what shares?

A.—Asbestos Corporation, Limited, shares.

Q.—In other words, they had confused the two Companies?

A.—Yes.

Q.—And they have since so admitted?
20

A.—They admitted it to me, and agreed to make the change. They did this when I saw them, but they have not given effect to it yet.

Q.—In any event, was there any equality of market value between the shares of the Asbestos Corporation and the shares of the Consolidated Asbestos Company? Were they equal, share for share?

A.—No, they were not.

Q.—On the basis of the transaction which took place between the Consolidated and the Asbestos Corporation what would be the
30 approximate relation in value between the shares of the two Companies?

A.—At that time I think about one share of Asbestos Corporation for two shares of Consolidated. It might have been slightly over that.

Q.—This mistake (and we will call it a mistake for the time being) in Consolidated amounted to how much? How much did it add to the value of the assets of the Incorporated Company for the purposes of the calculation of the Government?

A.—About \$500,000.00.

40 By Mr. McKeown:

Q.—\$500,000.00 is not the difference?

A.—That is the difference.

By Mr. Campbell (continuing):

ALEX. M. REAPER (for Plaintiffs), Cross-Examination.

Q.—The difference in value of the assets?

A.—Yes.

Q.—Would it increase the actual value of the stock to that extent, or would that be the basis of the calculation of the Government?

A.—The Government's calculation was \$1,162,000.

For that asset?

10 A.—Yes. And to put it at the proper valuation would reduce that amount by about \$500,000.

Q.—So the correction of that error would be a diminution in the value of the assets of the Incorporated Company, Sir Mortimer Davis, Incorporated, of approximately \$500,000?

A.—Yes.

Q.—What did they value Asbestos Corporation at?

A.—\$31.25 a share.

Q.—And that is the stock which you told us in your examination-in-chief has since sold down to

20 A.—(Interrupting) \$2.50 or \$3.00, today.

Q.—So the Government's calculation is based on a valuation of \$31.25 for a stock now selling on the Stock Exchange at \$2.50?

A.—Yes, \$2.50 to \$3.00.

Q.—Were there a considerable number of shares involved? If it is only a small item I do not want to go into it. How many shares of Asbestos did the Incorporated Company have?

A.—5000 shares; and their proportion of Asbestos shares through their holdings of Consolidated meant they approximated about 19,000 more.

30 Q.—So, there would be about 24,000 shares of that particular security involved in the calculation?

A.—Yes.

Q.—You have told us about the insurance policies?

A.—Yes.

Q.—How much did they total?

A.—\$345,000.

Q.—Of that how much was payable to Alcohol?

A.—\$160,000.

40 Q.—Who was the Government asking to pay the Succession Duties due on the policies payable to Alcohol?

A.—They are included in our account at the face value of the policies less the amount which the Company had paid in premiums—they were willing to allow that.

Q.—So, the Government is asking the Executors to pay Succession Duties on those policies which are payable to Canadian Industrial Alcohol?

ALEX. M. REAPER (for Plaintiffs), Cross-Examination.

A.—Yes.

Q.—Do you know if in fact they have been paid?

Witness: Which?

Counsel: The policies payable to Alcohol?

10 A.—I understand they have been paid, yes.

Q.—At any rate they were not paid to the Executors?

A.—Those Insurance Companies did not insist on certificates, although they had asked for them in the first place.

Q.—Was the amount of those policies paid to the Executors, or did it pass through your hands, so that you could deduct anything you were obliged to pay if you had to pay anything?

A.—No, we had nothing to do with it. It went to the Alcohol Company.

20 By Mr. Geoffrion:

Q.—It was used to make up the value of the Alcohol shares?

Witness: It was an asset of the Alcohol Company.

Mr. Geoffrion: But, that asset could not increase the value of the Alcohol Company.

30 Mr. Campbell: It would not appear in the statement of the Alcohol Company as of the date of their calculation. In any event, we will argue the consequences when we come to that.

Q.—By the bill and the demand for payment that was sent to the Executors you were asked to pay Succession Duties on upwards of \$160,000 of insurance policies which were payable, and were in fact paid directly, to Canadian Industrial Alcohol?

A.—Yes.

Q.—Were the Executors asked to pay on the insurance policies payable to Sir Mortimer Davis, Incorporated?

A.—Yes.

40 Q.—Was that included in those bills that were sent to you?

A.—That was included, yes.

They have agreed to an adjustment on that.

Q.—I will ask you about the agreements when we come to them. Up to this time they have a demand for payment, and except for verbal discussions no statement in writing as to the concessions they were going to make to you?

A.—That is right.

ALEX. M. REAPER (for Plaintiffs), Cross-Examination.

Q.—Were there any other assets of substantial value that were in discussion? Do you remember how they treated the value of the real estate in Montreal and in Ste. Agathe? Did they accept your valuations?

A.—They raised the valuation of the Montreal property. The Ste. Agathe property, they left it as valued.

10 Q.—How much did they raise your Montreal property valuation?

A.—\$28,300.

Q.—To what figure?

A.—\$198,300 from \$170,000.

Q.—Which had been based on what?

A.—On the assessment. There was a write-up on the Cobalt property from One Dollar to \$15,192.

Q.—What were the other write-ups that were important?

20 A.—They had taken the debentures of the McNish Company at par, \$5.

Q.—What had you put these in at?

A.—We had put them in at \$4.50, the issued price.

Q.—What did you pay for them?

A.—\$4.50.

Q.—And they raised them to \$5?

A.—And they raised them to \$5.

Q.—What did that 50 cent raise in McNish debentures mean in dollars?

A.—\$247,000.

30 Q.—I mean the 50 cent raise, a 50 cent raise per debenture?

A.—Yes.

Q.—They were \$5 debentures?

A.—Yes.

Q.—How did they treat the Dominion Reduction item?

A.—They wanted to assess that at \$60,000 instead of our valuation of One Dollar.

Q.—It was a write-up of \$60,000?

A.—Yes.

40 Q.—What about the treatment of Imperial Tobacco?
A.—That has also been increased in their valuation.

Q.—I mean, was it substantial?

A.—They assessed it at \$8.75 per share.

Q.—Do you remember what you put it in at?

A.—Something like a little over \$6, I think.

Q. Mr. Rivard's letter to you of May 30th mentioned an item under "Imperial Tobacco," an amount of \$43,750?

A.—Yes.

ALEX. M. REAPER (*for Plaintiffs*), *Cross-Examination.*

Q.—Would that be the amount of the write-up?

A.—No: it is the total valuation.

Q.—What were the other items? Did they raise the value of your St. James Street property?

A.—Yes. They raised that by \$10,000.

Q.—How did they treat your Royal Bank shares?

10 A.—They raised them to a value of \$356 per share.

Q.—What did you put them in at, approximately?

A.—A little over \$200.

Q.—You gave the increase on the St. James Street property?

A.—Yes.

Q.—Those are the main items they have written up and that were under discussion?

A.—Yes.

Q.—Apart from them there was a question on the liability side. What were the issues?

20 A.—They had also in a calculation treated the fees to the Executors, as Lord Shaughnessy reports, on the annuity basis, capitalized that, and fixed the amount so arrived at on a basis of gifts to strangers.

Q.—What did they capitalize it at?

A.—I think approximately \$100,000.

Q.—Each, or for the two?

A.—For the two.

30 Q.—So, if the Plaintiffs should be so unfortunate as to succeed in their action, and the Government would have taxed the Estate on the basis of your life tenancy of that amount, there might be some variation in that item, unless your successor in office, of course, enjoyed the same remuneration and bore the same relation to the deceased as yourself?

A.—Well, we considered these as fees. It should be treated as residue of the Estate.

Q.—I understand your pretension was those were not by gratuitous title?

A.—No.

40 Q.—I think you earned your fees this year?

Mr. McKeown, K.C.: The last few days.

By Mr. Campbell, K.C.:

Q.—That brings us down to the institution of the proceedings. I

ALEX. M. REAPER (for Plaintiffs), Cross-Examination.

proceed to cross-examine on what happened since the institution of the proceedings, under reserve of my objection and the relevancy of the matter.

Mr. McKeown, K.C.: Keep to the examination-in-chief on this branch.

10 By Mr. Campbell, K.C.:

Q.—What is the next letter in your file after the institution of the proceedings. Is that January 29th?

A.—You have January 29th. There is one on February.

Q.—The next letter would be January 29th, 1930, filed as Exhibit P-63? Is that right?

A.—Yes.

Q.—What is the next letter, in point of time?

20 A.—Letter from the Department, February 8th, 1930.

Q.—P-64?

A.—Yes.

Q.—Has that been filed?

A.—Yes.

Q.—What is the next letter on your file?

A.—After which?

Q.—After the one that Plaintiffs filed as P-64?

A.—February 8th. P-64, February 8th; P-65 on February 18th.

30 P-65? Q.—That was remitting the proceeds of Liggett & Myers sale,

A.—Yes. I have not got here P-65. That is the one, P-65.

Q.—That was the letter covering the remittance?

A.—Yes.

Q.—The next letter on the file is P-65, in which you remitted to the Provincial Government \$600,000 adding, “It is understood that this payment is made without prejudice to any adjustments which have been agreed to, or to any claims which we have made or may yet make in connection with the account sent us”?

40 A.—Yes.

Q.—Have you a letter on your file from Mr. Rivard to yourself, dated February 28th, 1930?

A.—Yes.

Q.—Will you file a copy of it as D-49?

A.—Yes.

Q. This letter reads as follows:

ALEX. M. REAPER (for Plaintiffs), Cross-Examination.

“ February 28th, 1930.

“ A. M. Reaper, Esq.,
Sir Mortimer Davis Incorporated.
Montreal.

Dear Mr. Reaper:

10 Re late Sir Mortimer B. Davis Estate. A few days ago I
undertook to readjust a few issues which you raised some time
last fall. I have also forwarded my figures to the Montreal
office with the request to prepare an amended statement of ac-
count in which the following changes will be included:

In the first place the North Cobalt property will be carried
at One Dollar as per your original statement.

20 On this item there will be a rebate of \$15,191, as the prop-
erty had been assessed at \$15,192. The 2,000 shares of Toronto
Bond Exchange assessed by us at \$2,000 have been reduced to
One Dollar as per your suggestion. This means a reduction of
\$17,190 on what I would call the Estate proper.

As regards the following stock held by Sir Mortimer Davis
Incorporated, the following changes or allowances have been
made:

The Robert McNish debenture shares primarily assessed
by us at \$5 are reduced to \$4.65, according to the quotation given
by Messrs. Redpath and Company.

30 The Dominion Reduction Company Limited shares have
been assessed at One Dollar instead of at \$60,000; and the
Crescent Lorraine Silver Mining Company have also been ad-
mitted at One Dollar instead of at \$21,567.74.

With respect to the Crescent Lorraine Silver Mining shares
I would have been justified to take Messrs. Poillon and Poirier's
estimate of \$3,750 for the whole shares, but the said shares are
now practically worth nothing, if anything at all, so I deemed it
expedient to carry them at One Dollar.

40 These several rebates take the value of Sir Mortimer Davis
Incorporated Estate shares to \$278 instead of \$280.

Trusting that this explanation will be satisfactory to you,
I am,

Yours very truly,

Eugene Rivard,
Collector of Succession Duties for the
Province of Quebec.”

ALEX. M. REAPER (for Plaintiffs), Cross-Examination.

Now, Mr. Reaper, does this letter of Mr. Rivard, dated February 28th, cover all the concessions that have to be made by the government, even all your negotiations?

A.—No.

Q.—Does it give effect to the mistake made in respect of the valuation of the Asbestos shares?

A.—No.

10 Q.—And that amounts in bulk to how much, you said?

A.—\$500,000 is the difference.

Q.—On the question of liabilities, the matter that is still open on the liability side, are the questions of the donations, the marriage contracts, whether they are deductible or whether they are not. Those are the main questions on the liability side, I take it?

A.—Those are the main questions, yes.

20 Q.—Have the Executors ever accepted the valuation, even the reduction of valuation, of \$278 per share for the shares of Sir Mortimer Davis Incorporated?

A.—No, we have not agreed to it.

Q.—The concession in the Asbestos, has that concession still to be given effect to in the government's figures?

A.—Yes. They also agree to put back the valuation of the real estate of the Incorporated Company back to their original figure, which gives a difference of around \$12,000.

Q.—Are there any other concessions you had agreed on with them?

30 A.—No, those life insurances, while in abeyance, they had agreed if they did not give us credit on the Estate account, they would make an allowance to us for the amount of the policies in the assets of the Incorporated Company.

Q.—For the amount, not of the policies, but of the premiums?

A.—In the statement which they have rendered, they have taxed us on the basis of the face value of the policies, less the premiums paid. If they do not collect it all together they have agreed if that amount is to be left in the Estate account, to deduct the face value of the policies in arriving at the assets of the Incorporated Company.

40 Q.—Because at the moment they are getting you going and coming?

A.—Yes.

Q.—I see Mr. Rivard, in his letter of February 28th, said that there would be an amended statement of account prepared. Have you received it yet?

A.—No, not yet.

ALEX. M. REAPER (for Plaintiffs), Cross-Examination.

By The Court:

Q.—Have you asked for it? Have you answered that letter of February 28th?

A.—Yes, I have.

10 By Mr. Campbell, K.C.:

Q.—Have you got a copy of your reply?

The Court: We will see it before the trial is over.

By Mr. Campbell, K.C.:

Q.—Will you file as D-50 your reply to Mr. Rivard's letter, D-49?

20 A.—I do.

By Mr. McKeown, K.C.:

Q.—Of what date?

A.—March 8th, 1930.

By Mr. Campbell, K.C.:

30 Q.—That concludes the Succession Duty question. You were asked in your examination in chief as to whether you had got a clearance in respect of the Liggett and Myers' shares and the life insurance policies, the Liggett and Myers' shares or other assets in respect of the payment of \$600,000. You answered "No," I think. Have you since received that clearance?

A.—I have, for the insurance and for the Liggett and Myers' shares. That is the insurance of the Incorporated Company.

40 Q.—You now exhibit the clearance from the Succession Duty office for 9,820 shares of Liggett and Myers Tobacco Company and the clearance for the \$10,000 in the Mutual Life Insurance Company of New York, the \$5,000 in the Manhattan Life Insurance Company of New York, \$45,000 in the Equitable Life Assurance Society concern; \$75,000 in the Travellers Insurance of Hartford?

A.—Yes.

By Mr. McKeown, K.C.:

ALEX. M. REAPER (*for Plaintiffs*), *Cross-Examination.*

Q.—Dated what date?

A.—March 13th, 1930.

By Mr. Campbell, K.C.:

Q.—You wish to retain those, I take it?

A.—Yes, I have to use them.

10 Q.—I think that concludes the Succession Duty matter. That closes up the insurance question?

A.—That closes up the insurance question, except we had been billed with Succession Duties which we claim should not be charged. The money has been released.

Q.—I want to make that clear in the record. We are being billed with Succession Duty on those policies. We do not admit we are liable, yet we are being billed.

20 Mr. McKeown, K.C.: You got them released in the meantime?

The Witness: The Alcohol Company got their money. The Insurance Companies that they were in, while they asked for clearances, in the first place, paid it over.

Mr. Campbell, K.C.: The Executors are being billed for Succession Duty in respect of these policies, the releases of which you have now exhibited?

30 The Witness: Yes.

By Mr. Campbell, K.C.:

Q.—That is, in the amount still demanded by the government and under discussion?

A.—Yes.

Q.—These releases you have mentioned—to whom are those policies payable?

40 A.—These are policies payable to the Incorporated Company.

Q.—Does this cover all policies payable on the life of Sir Mortimer Davis to Sir Mortimer Davis Incorporated?

A.—No, it does not include the policies which were payable to the Alcohol Company.

Q.—I mean Sir Mortimer Davis Incorporated?

A.—Yes.

ALEX. M. REAPER (for Plaintiffs), Cross-Examination.

Q.—Do those clearances you have exhibited this morning cover all policies payable to Sir Mortimer Davis Incorporated?

A.—Yes.

By The Court:

Q.—What about the policies payable to Alcohol?

10 A.—We figure we will leave that to them. They have not got any certificates from the Department and I understand the Insurance Companies, while they asked for the certificate in the beginning actually paid over the money without insisting on them being produced, to the Alcohol Company.

By Mr. Campbell, K.C.:

Q.—Is the liability for Succession Duty on the policies paid to
20 the Alcohol Company still included in the amount of your government bill?

A.—Still in the amount.

Q.—The question of your liability and the extent of your liability is one of the matters still in abeyance between the Executors and the government?

A.—Yes.

The Court: If you at any time before the trial is over get Mr.
30 Rivard's amended statement, you can file it.

Mr. Campbell, K.C.: We will be pleased. We don't want to say we are prepared even to accept the amended statement.

The Court: You have gained something by this prolonged correspondence and it should be of record.

Mr. Geoffrion, K.C.: You are welcome to gain something more if you like.

40 Mr. Campbell, K.C.: We are going to try. You may have a very excellent case to defend for the government.

Whereupon an adjournment was taken until 2.30 o'clock p.m. of the same day.

ALEX. M. REAPER (for Plaintiffs), Cross-Examination.

Afternoon Session, 2.30 o'clock p.m., March 14th, 1930.

ALEXANDER M. REAPER

reappeared and continued his evidence as follows (In cross-
10 examination).

By Mr. Campbell, K.C.:

Q.—Mr. Reaper, have you got a comparative statement of the
combined Profit and Loss for the five years ending September 30th,
1924, and for the five years ending September 30th, 1929, respec-
tively, showing one page for the purpose of comparison with the
figures which you gave us yesterday in your exhibits D-17 and D-18?
Have you got a statement showing that on one page for purposes of
20 comparison?

A.—Yes.

Mr. McKeown, K.C.: I would like to enter an objection at this
stage to the evidence as not arising out of the examination in chief,
and being moreover irrelevant inasmuch as the conditions under
which these results come about are shown to be entirely different.
I just want it noted in the deposition; Sir Mortimer Davis having
been the President of the Company during both periods, that is, up
30 to the time of his death on March 22nd, 1928.

By Mr. Campbell, K.C.:

Q.—Will you file a copy of this account as D-51?

A.—I do.

Q.—Will you look at the ten years' comparative statement D-51
and tell us whether it shows in consolidated form the figures which
you gave us yesterday in the other two exhibits, D-17 and D-18?

A.—It does.

40 Q.—That shows that the income for the five years ending
September 30th, 1924, of Sir Mortimer Davis Incorporated was
\$1,746,216.74. That would be the income?

A.—Yes.

Q.—What was the income for the corresponding five-year period
ending September 30th, 1929?

A.—\$4,535,650.81.

Q.—But apart from the participation Sir Mortimer Davis him-

ALEX. M. REAPER (for Plaintiffs), Cross-Examination.

self gave to the management of the Company during those respective periods, who was in charge in the first five-year period ending September 30th, 1924?

A.—Mr. Waddell was in charge in the first five years.

Q.—Who in the second five-year period?

A.—Mr. Waddell was for the first time up to 1925.

10 Q.—Up until the end of 1925?

A.—Up until the end of 1925.

Q.—That would not cover the whole financial year?

A.—It would cover the financial year ending September 30th, 1925. I think he was there for the balance of the year.

Q.—And from that time on?

A.—From that time on Lord Shaughnessy.

Q.—During what period of that time were you yourself in office in the Company in an executive position?

A.—From February, 1926.

20 Q.—That would be the financial year ending 1927?

A.—The financial year ending in 1926.

Q.—The financial year ending in 1926?

A.—Yes.

Q.—So that for the financial years ending 30th September, 1926, 30th September, 1927, 30th September, 1928, 30th September, 1929, you were yourself an officer of the Company, except during the first half, approximately of the first financial year, that is the year beginning October 1st, 1925?

30 A.—Yes.

Q.—You entered the employ of the Company in the spring of 1926?

A.—Yes.

Q.—You would be in office from that time on?

A.—Yes.

40 Q.—We will forget about the first six months of your association, but that three years ending September 30th, 1927, September 30th, 1928, September 30th, 1929, in which you were an officer of the Company, compared with any other three years in the Company's history, in the matter of earnings, I think, for the three-year period they were the best three years in the history of the Company?

A.—Yes.

Q.—What was the very best year in the history of the Company?

A.—I think it would be 1927.

Q.—The year ending 1927?

A.—Yes.

Q.—What was the profit for that year?

ALEX. M. REAPER (*for Plaintiffs*), *Cross-Examination.*

A.—The operating profit, \$701,854.86, and from other sources \$931,052.62, making a total of \$1,632,907.48.

Q.—That was at what date?

A.—That was for the year ending September 30th, 1927.

Q.—Do you recall the date of Sir Mortimer Davis' Will?

A.—I think it was November 30th, 1927.

10 Q.—Will you produce certified copies of the Balance Sheet of Sir Mortimer Davis for the years ending September 30th, 1924, as Exhibit D-52; September 30th, 1928, as Exhibit D-53; September 30th, 1926, as Exhibit D-54 and September 30th, 1927, as Exhibit D-55?

A.—Yes.

Mr. McKeown, K.C.: What about the balance sheet of the Waddell period?

20 Mr. Campbell, K.C.: I have not got those made. I have not got copies ready for filing.

The Witness: We will have to get copies.

By Mr. Campbell, K.C.:

30 Q.—Now, Mr. Reaper, you were questioned in your examination in chief about the variations in the market value of the stock of the Canadian Industrial Alcohol from the time of the death of Sir Mortimer Davis to date. Do you remember what you gave as the high and the low, the approximate figures? What was the high?

A.—50, I think.

Q.—And the low; the low for all time?

A.—The low for all time, I think, was five.

Q.—And it had recovered at about the time of the institution of these proceedings to a figure that was discussed as around 10?

A.—Yes.

40 Q.—And now there was a spread therefore of from 50 to five between the high and the low. In what year did that variation take place? In what calendar year? That spread took place in what period of time?

A.—Well, that would be—

Q.—Yes, but was it between the time of the death of Sir Mortimer Davis and the end of the year 1929?

A.—Yes, from about May, I think, 1928.

Q.—What was the stock selling at at about the date of Sir

ALEX. M. REAPER (for Plaintiffs), Cross-Examination.

Mortimer's death? Do you remember what it was selling at at about that time?

A.—41 for the "A"; I think 39 for the "B".

Q.—Did the stock go up or down after the death of Sir Mortimer Davis?

A.—It went up.

10 Q.—When was the high point reached?

A.—In April and May, 1928.

Q.—In April and May, 1928?

A.—Yes.

Q.—For the balance of the year 1928, roughly, without going into details, how did the stock behave, the stock of Canadian Industrial Alcohol?

A.—It held fairly steadily.

Q.—On the Montreal market?

20 A.—It held fairly steadily. It varied from the other price of 50 to about 44; 43½, during the balance of the year 1928.

Q.—When did the decline in the stock of Alcohol become noticeable?

Mr. Geoffrion, K.C.: Noticeable is not the opinion of the witness.

By Mr. Campbell, K.C.:

30 Q.—Have you got a memorandum showing the variations of the Stock Market quotations? I will put a preliminary question. What were the other two main competitors of Canadian Industrial Alcohol, in the same industry in Canada?

A.—Hiram Walker's; Gooderham and Worts; Distillers Corporation.

40 Q.—Have you got a memorandum prepared showing the fluctuations in the market value on the Montreal Stock Exchange of the securities of these three companies, covering the period since the death of Sir Mortimer Davis in March, 1928, to the end of February, 1930?

A.—Yes.

Q.—Will you file a copy as D-56?

A.—Yes.

Q.—Which of those shares are dealt with on the Exchange and which on the Curb, do you know? Industrial Alcohol is on what they call the Big Board, that is, the Montreal Stock Exchange?

A.—Yes.

ALEX. M. REAPER (for Plaintiffs), Cross-Examination.

Q.—Are not both the others Curb stocks?

A.—Yes, I think so, yes.

Q.—So that the quotations shown on the Montreal Stock Exchange are Canadian Industrial Alcohol and the Montreal Curb Market have Hiram Walker, Gooderham and Worts and Distillers Corporation?

A.—Yes.

10 Q.—Will you look at this statement of fluctuations in these different shares, and first of all take the case of Hiram Walker's Limited in the year 1928; that is, for a portion of the year from 1928, March, to December, 1928, and from the memorandum before you, will you give us for convenient reference the high and the low?

A.—Yes.

Q.—What was the high for Hiram Walker in that period of time?

A.—In 1928?

A.—Yes.

20 A.—It appears to be 90½.

By Mr. McKeown, K.C.:

Q.—That is before the split?

A.—That is before the split.

By Mr. Campbell, K.C.:

30 Q.—90½. What was the low in that same period of time?

A.—54.

Q.—54?

A.—Yes.

Q.—Did Distillers Corporation, Seagrams' Limited, vary during that portion of the year 1928?

A.—The high was 24.

Q.—24¼, was it not?

A.—24¼.

Q.—24 or 24¼, and the low?

40 A.—13.

Q.—And the low 13?

A.—Yes.

Q.—Alcohol "A." What was the high?

A.—The high 50¼.

Q.—And the low?

A.—35¼.

Q.—Alcohol "B." What was the high?

ALEX. M. REAPER (for Plaintiffs), Cross-Examination.

A.— $47\frac{3}{4}$.

Q.—And the low?

A.— $35\frac{7}{8}$.

Q.—That was the end of December, 1928. Take the following calendar year, 1929. In that year something happened to the Walker organization and the stock was split up. What was the split?

10 Mr. Campbell, K.C.: Three to one.

By Mr. Campbell, K.C.:

Q.—In the year 1929 the Walker stock was split, so we will have to deal with that in two periods, but take the period of 1929, from January, remember, when the stock was still on the old basis, the unsplit basis, what was the high for that period of time for Hiram Walker, and Gooderham and Worts?

A.—95.

20 Q.—And the low?

A.—66.

Q.—Then in May apparently the stock was split; three to one, I am told.

A.—Yes.

Q.—Will you give us the variations of the split stock beginning in June? From June to the end of 1929 what was the high for Hiram Walker?

A.—The high was in June, at 22.

30 Q.—And the low?

A.—The low was seven, in October, 1929.

Q.—Distillers, Seagram, for the year 1929, what was the high?

A.— $28\frac{3}{4}$.

Q.—And the low?

A.— $8\frac{3}{4}$.

Q.—When?

A.—November.

Q.—Alcohol "A." What was the high for the year?

A.—45.

40 Q.—And the low?

A.—Five, in October.

Q.—Alcohol "B." What was the high?

A.—The high was 40.

Q.—When?

A.—In February.

Q.—And the low?

A.— $9\frac{1}{2}$ in November.

ALEX. M. REAPER (for Plaintiffs), Cross-Examination.

Q.—So that in the bad break in October, Hiram Walker broke to seven; Distillers, Seagrams, to nine; Alcohol "A" to five, and Alcohol "B" to ten?

A.—Yes.

Q.—Now, Alcohol was the main investment; the Alcohol stock was the main investment of the Incorporated Company, was it not?

A.—Yes.

10 Q.—But did it hold other securities outside of Alcohol? For instance, did you own any Bank shares?

A.—We had some Royal Bank stock.

Q.—How many shares?

A.—1,323 shares, I think.

Q.—Well, was there any variation in the price of the Royal Bank stock between the time of the death of Sir Mortimer Davis, and the end of the calendar year 1929?

20 Mr. McKeown, K.C.: We can find a few witnesses who know the Stock Market fell in October.

Mr. Campbell, K.C.: I must put a word of it into the record.

Mr. McKeown, K.C.: The trouble about your stock was it was down before the break.

Mr. Campbell, K.C.: We will discuss that when we come to it.

30 The Witness: The high of the Royal Bank stock was in May, 1928, when it reached 435.

By Mr. Campbell, K.C.:

Q.—When did it reach its low?

A.—The low in November 1929, at 285.

Q.—So that Royal Bank stock had a spread of how many points?

A.—150 points.

Q.—Who is the President of the Royal Bank?

40 A.—Sir Herbert Holt.

Mr. McKeown, K.C.: Is not that getting a little bit far afield in this case? What analogy is there between bank stock and beverage stock? If we are going to take the whole list of the Montreal Stock Exchange we are not going to get anywhere. Keep to those beverages and find out where it lands you.

ALEX. M. REAPER (for Plaintiffs), Cross-Examination.

Mr. Campbell, K.C.: I am asking who the President of the Royal Bank is.

Mr. McKeown, K.C.: Is that important?

10 Mr. Campbell, K.C.: Is the management of the Royal Bank reputable and competent?

Mr. McKeown, K.C.: Is that a defence, that the Royal Bank management is not good?

Mr. Campbell, K.C.: We are not the only stocks which had momentous breaks in 1929. I am not going to take any great length of time.

20 Mr. McKeown, K.C.: Your stock was down practically to where it is now before the break. Why do you want to worry about where bank stocks went in these world conditions? Your trouble has not been world conditions; your trouble is before the break occurred.

Mr. Campbell, K.C.: Time will tell.

Mr. Geoffrion, K.C.: Time is telling very fast against us.

Mr. McKeown, K.C.: You cannot invoke that as a defence here.

30 Mr. Campbell, K.C.: Does Your Lordship allow him to answer?

The Court: Probably it is the shortest way.

By Mr. Campbell, K.C.:

Q.—Who is the President of the Royal Bank?

A.—Sir Herbert Holt.

40 By Mr. Geoffrion, K.C.:

Q.—Do you know personally?

A.—Published reports.

Mr. Geoffrion, K.C.: I object to the evidence. It is illegal.

Mr. Campbell, K.C.: He is reputed to be the President of the Royal Bank.

ALEX. M. REAPER (for Plaintiffs), Cross-Examination.

Mr. Geoffrion, K.C.: "Commonly reputed" is not admitted in this case; facts are admitted.

By Mr. Campbell, K.C.:

10 Q.—Do the Directors and Officers of that Bank enjoy the public confidence so far as you, as a shareholder, are aware?

Mr. Geoffrion, K.C.: Objected to as irrelevant.

Mr. McKeown, K.C.: It is becoming a farce. My learned friend is a great jokesmith but there ought to be a limit to it.

Mr. Campbell, K.C.: He is holding us responsible for a mythical condition, and I want to say other people suffered similar losses. Does Your Lordship permit the question?

20 The Court: Yes.

The Witness: Yes, I think so.

By Mr. Campbell, K.C.:

30 Q.—I take it it is a matter of common knowledge from the observations of the last moment or two, but I should put a word into the record. How did the year 1929 stand in Stock Market history as far as the American continent is concerned?

Mr. McKeown, K.C.: It seems to me Mr. Reaper is not a fit person to give this evidence in the first place. In the second place it is in no manner relevant. In the third place there is no proof to show this stock was down to the figures that have been taken into account before the break. Why talk before the break? It had nothing more than the San Francisco earthquake to do with it.

40 Mr. Campbell, K.C.: We will put in the figures at the time of the break.

Mr. McKeown, K.C.: I object to this evidence as irrelevant in this case, inasmuch as the proof already in the record shows that Alcoñol stock was down to its present level or in the vicinity of ten before the break.

Mr. Campbell, K.C.: The Royal Bank was a long ways down too before the break.

ALEX. M. REAPER (for Plaintiffs), Cross-Examination.

Mr. McKeown, K.C.: Never mind the Royal Bank.

Mr. Campbell, K.C.: Does Your Lordship allow the evidence?

The Court: Yes.

10 The Witness: I think for some part of the year prices had started to decline, and then there was a bad break in the market in October and November.

By Mr. Campbell, K.C.:

Q.—How did the year start? Was the market still on the up grade at the beginning of the year?

A.—I think it was fairly strong.

Q.—Was the boom still on in the beginning of the year?

20 A.—I think prices were good then.

Q.—And the bad break happened when?

A.—In October and November.

Q.—Now, just a word about the Estate in general terms: were the valuations of stocks generally affected?

A.—Yes. I think nearly all stocks were very badly affected.

Q.—Can you give us some for illustration? Take some of the stocks in the Montreal Stock Exchange that had bad variations. What about Consolidated Mining and Smelting? What was the spread in Consolidated Mining and Smelting?

30 Mr. McKeown, K.C.: It melted very fast. I will object as being irrelevant, not being the same species of stock, and not being in the period under discussion here.

Mr. Campbell, K.C.: I am speaking of the calendar year 1929.

The Witness: Smelters in 1929 had a high of 575, and a low of 210.

By Mr. Geoffrion, K.C.:

40

Q.—What was the September Smelters?

A.—I have not got that.

Mr. Campbell, K.C.: We have the annual range.

Mr. Geoffrion, K.C.: You are avoiding the important range in September as compared with October, carefully avoiding it.

ALEX. M. REAPER (*for Plaintiffs*), *Cross-Examination.*

Mr. Campbell, K.C.: We welcome the whole thing.

By Mr. Campbell, K.C.:

10 Q.—Apart from the distillery industry, what about some other industries? For, instance, take the paper industry. How did the paper stocks behave for that calendar year?

Mr. McKeown, K.C.: The same objection as being irrelevant, as having nothing to do with the beverage stocks. Take the beverage stocks.

Mr. Geoffrion, K.C.: We will have to refer to Honourable Mr. Taschereau in Quebec and Honourable Mr. Ferguson in Toronto before we are through.

20 By Mr. Campbell, K.C.:

Q.—Give me Abitibi. Not Abitibi; give me Canada Power and Paper Company.

A.—Canada Power and Paper Company in 1929 had a high of 37½ and a low of 17. In 1928 it had a high of 55.

Q.—Do you know whether since the end of 1929 it has held up to 17 or what has happened since the turn of the year?

30 Mr. Geoffrion, K.C.: This is either useful or not useful. If it is useful we will have to see the special conditions in each of the groups. We are serious on that point now. If this is simply farcical we need not bother about it. If it is serious we will have to show there are special conditions in connection with Canada Power and Paper Company, and make inquiry on the intimate affairs of this company. It is not quite as amusing as conceived by my learned friend. This has either to be exhausted or not entered into. If this is of any consequence, we will have to investigate the Canada Power and Paper Company, investigate the reasons there. We may be here next winter. I suggest this is absurd, and if it is not we must go to the bottom of it.

40 Mr. Campbell, K.C.: The Plaintiffs are accusing us in their declaration for the responsibility which we say was shared in common with all the world. I am offering proof in support of that and I am entitled to offer general proof in support of that position. I am entitled to submit that in the paper industry there were wide spreads. In the Consolidated Mining and Smelters there was a spread of 300 points.

ALEX. M. REAPER (for Plaintiffs), Cross-Examination.

Mr. McKeown, K.C.: Take Ogilvy's and have a good time.

Mr. Campbell, K.C.: In all different branches of industry there were wide spreads and we are entitled to show now there was a general change brought about in any event, and the result in Alcohol they are trying to hold to the account of the Defendant.

10 Mr. Geoffrion, K.C.: Nobody thinks of denying seriously there was a big break in the market everywhere. My learned friend can bring the Secretary of the Stock Exchange to give him the curve of the stocks showing what happened to Alcohol, the same as the others. Alcohol was showing an average recovery, and the general administration was as good as the others internally. We don't deny that. I might suggest my learned friend could, by the Secretary of the Stock Exchange, if he thinks it is useful, prove what we already admit, that there was a crisis in the Stock Exchange which we
20 then a reaction upwards, and we will see whether the dates and the behaviour of this stock compares with the general average, and if there is going to be an argument, we will have to meet it by going into each of the branches.

Mr. Campbell, K.C.: I only want to show it. What I thought I was entitled to get on the record was that there was a Stock Exchange situation that was worldwide during that year.

30 Mr. Geoffrion, K.C.: You avoid the dates purposely because you do not like it.

Mr. Campbell, K.C.: I am dealing with the calendar year of 1929.

Mr. Geoffrion, K.C.: We admit it for a certain period of the year.

40 Mr. Campbell, K.C.: It went up and went down with a crash, I can give you the low and the high.

Mr. McKeown, K.C.: You would have to prove every one of those companies had a bunch of dummy directors.

Mr. Geoffrion, K.C.: How many of them had half of their directorate resign, for example?

ALEX. M. REAPER (*for Plaintiffs*), *Cross-Examination.*

Mr. McKeown, K.C.: You mean replaced.

By Mr. Campbell, K.C.:

10 Q.—You referred to the high of the Canadian Industrial Alcohol stock as 50 in the months of April and May, 1928, and the low in the month of the bad smash down to five, and a recovery by the end of the year to 11¾, according to your exhibit P-56. You were asked by my learned friend Mr. McKeown yesterday to give us from Houston's Manual, which he pointed out was a work of great authority —

Mr. McKeown, K.C.: Just as good today as yesterday.

Mr. Campbell, K.C.: Just as good today as yesterday.

20 Mr. McKeown, K.C.: I think the Clerk of the Court took it home to look it over last night.

Mr. Campbell, K.C.: I want to find the entry you questioned him about. It is marked in blue pencil.

Mr. McKeown, K.C.: I asked him about the stock before the split, away back in 1924.

30 Mr. Campbell, K.C.: The 1924 values of Alcohol stock, before the split.

By Mr. Campbell, K.C.:

Q.—Will you take communication of a copy of Houston's Annual Financial Review for 1926 and look at page 249, and verify whether that gives you in schedule form the variations of that stock in the Alcohol Company during the years indicated on the schedule, of the years 1923, 1924, and 1925?

A.—1923, 1924 and 1925, and six months of 1926.

40 Q.—Will you please take at that page, 249 of Houston's Manual, that you testified to in your examination-in-chief, — pick out that page and we will file it as D-57.

A.—Yes.

(Witness removes sheet from Manual).

Q.—When did the split in the stock of Alcohol occur?

A.—1924.

ALEX. M. REAPER (for Plaintiffs), Cross-Examination.

Q.—As at September 30th there were only the old number of shares. It must have been after September.

A.—Yes, I think so.

Q.—Where in 1925? Give me 1925.

A.—1925 has the other number.

Q.—Will you verify from looking at your Balance Sheets D-52 and 53 that the split in Industrial Alcohol stock took place between
10 the 30th of September, 1924 and the 30th of September, 1925?

A.—Yes.

Q.—What did the split consist of, Mr. Reaper?

A.—Two shares no par value new for each share of the old company.

Q.—What did the split consist of?

A.—Two shares no par value for each share of the old stock.

Q.—I want to fix the time that took place. October 14th, 1924, would apparently be the date?

A.—Yes.

Q.—The change of stock apparently took place on the 14th of
20 October, 1924, according to the recitals on D-57?

A.—Yes.

Q.—And the change of stock was two for one, so we would have to divide the price before that change by two and make it extend to percentage prices?

A.—Yes.

Q.—Take the range for 1923, as shown on this Exhibit D-57 and give me the range of the Canadian Industrial Alcohol for the year
30 1923?

Mr. McKeown, K.C.: Objected to as irrelevant.

The Court: Objection reserved.

The Witness: The high for that year was in December, 24.

By Mr. Campbell, K.C.:

Q.—And the low?
40

A.—11½.

Q.—But to reduce those figures to present day terms you would have to cut these figures in half; that is, the high of 24 would be two 12's, would it not? The high of 24 would be 12 on the basis of present shares?

A.—Yes.

ALEX. M. REAPER (for Plaintiffs), Cross-Examination.

Q.—And the low of $11\frac{1}{2}$ would be $5\frac{3}{4}$ on the basis of the present shares?

A.—Yes. As a matter of fact the difference would be slightly greater than that because there was 20% bonus.

Q.—That is correct.

A.—The difference would be a little greater than those figures I have given you because in 1927 there was a stock dividend of 20%.
10

Mr. Geoffrion, K.C.: Would you apply the same argument to the Royal Bank and Sir Herbert Holt now?

Mr. Campbell, K.C.: We may get a lot of help from the Royal Bank, too.

Mr. Geoffrion, K.C.: In that argument particularly.

By Mr. Campbell, K.C.:
20

Q.—What was the variation in the year 1924, before the split in Industrial Alcohol stock?

Mr. McKeown, K.C.: I would like to note a further objection at this stage that these figures are of no significance whatsoever, without taking into account the physical assets of this Corporation at that time. This Company, Industrial Alcohol, was fairly in its infancy. Its stores of spirits are today more than 10,000,000 gallons, and its operations were reflected by the market quotations of the stock, even if the Company was managed with 100% efficiency. These figures mean nothing. They might just as well turn back to the picture of any other Company when they speak of Canadian Industrial Alcohol.
30

Mr. Campbell, K.C.: The Plaintiff's theory is whenever that stock goes down it is Lord Shaughnessy's fault but if it goes up, somebody else has got the credit.

Mr. McKeown, K.C.: Lord Shaughnessy was not even the office boy at that time.
40

Mr. Campbell, K.C.: Before Lord Shaughnessy was connected with the company there were variations of the stock comparable with today. Does Your Lordship allow the question?

The Court: Yes.

ALEX. M. REAPER (for Plaintiffs), Cross-Examination.

By Mr. Campbell, K.C.:

Q.—How high was it in October, 1924?

A.—44½%.

Q.—That is before the split?

A.—Yes.

Q.—And the low?

10 A.—The low is 26, in May.

Q.—Take the year 1925, which would be split stock? What were the variations during 1925?

A.—The high was 20¾% in January, 1925.

Q.—And the low?

A.—14 in August.

Q.—Were the number of shares held by Sir Mortimer Davis Incorporated in Canadian Industrial Alcohol materially different in 1925 from the number held today, eliminating the stock dividend which occurred in 1927? I mean were the holdings then substantially the same, or were they substantially different?

20 A.—I think the percentage of holding was probably a little higher than today.

Q.—The percentage of holding today is a little higher?

A.—No, the percentage of holdings of Sir Mortimer Davis Incorporated in those days were perhaps a little higher than they are today.

Q.—You hold a smaller percentage of the total issued stock today than you did in those days?

30 A.—I think so, yes.

Q.—As far as the fixed physical assets of the Canadian Industrial Alcohol are concerned, eliminating their liquid cash position or their receivables, or that kind of thing, but as far as their plant and equipment is concerned, do you know of any great loss they have suffered in physical assets since the death of Sir Mortimer Davis? Have any of their plants been burnt down or have they suffered any damage as far as their physical assets are concerned?

A.—I think there was a fire loss at one time, but I don't know the extent.

40 Q.—How does this plant account compare today with at the time of Sir Mortimer Davis' death?

A.—I should think——

Mr. McKeown, K.C.: This witness does not know that.

Mr. Campbell, K.C.: I will withdraw the question.

ALEX. M. REAPER (for Plaintiffs), Cross-Examination.

By Mr. Campbell, K.C.:

Q.—When the Executors started to sell a certain number of these shares of Alcohol, it was approximately what period of time they did some trading in the way of selling “B” shares?

A.—I think it was the latter part of April and the beginning of May, 1928.

10 Q.—At that time what was the general condition of the Alcohol Company as far as you know it?

A.—It seemed to be quite good.

Q.—How were its earnings, as far as you know them?

A.—As far as I knew, they were good.

Q.—Business good?

A.—Yes.

Q.—When did you stop selling Alcohol “B” shares?

A.—In May, 1928.

20 Q.—In May, 1928?

A.—Yes.

Q.—When the market got about what price?

A.—Well, I think the only ones we sold were around \$45 per share.

Q.—\$45?

A.—Yes.

Q.—You did not sell below that?

A.—No.

30 Q.—At that time had you any information or premonition which led you to suppose that the stock would have reached the position which it subsequently reached in October and November, 1929?

A.—No, I don't think so.

Mr. McKeown, K.C.: What do we care about premonitions in this case? They had a certain duty to perform then. Premonitions are not going to help or kill them. I think that question is ridiculous.

40 By Mr. Campbell, K. C.:

Q.—What opinion did the late Sir Mortimer Davis have in regard to your Alcohol securities, so far as he communicated?

Mr. McKeown, K.C.: I think we ought to have that in writing if there are any writings.

ALEX. M. REAPER (for Plaintiffs), Cross-Examination.

Mr. Campbell, K.C.: I will withdraw that question until I get the document.

By Mr. Campbell, K.C.:

10 Q.—Now, dealing with the McNish debenture situation, what price had the Incorporated Company paid for the McNish debentures?

A.—\$4.50.

Q.—\$4.50?

A.—Yes.

Q.—When did they buy them?

A.—I think on November 15th, 1927.

Q.—During the lifetime of Sir Mortimer Davis?

A.—Yes.

Q.—Was this McNish Company in the habit——

20 Mr. McKeown, K.C.: “Was” is good.

The Witness: That was an English or a Scotch distillery company; more of a blending company.

By Mr. Campbell, K.C.:

30 Q.—Who arranged the alliance or connection between Canadian Industrial Alcohol and McNish? Who was responsible for that transaction?

A.—That was looked after by Sir Mortimer Davis.

Q.—What opinion did Sir Mortimer Davis express in writing as to his thought on the value of these McNish Debentures, and if so, will you produce the letter?

Mr. McKeown, K.C.: Let us see the letter first. We want all the correspondence.

40 By Mr. Campbell, K.C.:

Q.—Have you got the original letter from Sir Mortimer Davis addressed to Lord Shaughnessy, dated the 3rd of January, 1928, in the course of which he refers among other things to McNish?

A.—Yes.

Q.—Will you exhibit the original letter and file a copy of it as Exhibit D-58?

ALEX. M. REAPER (for Plaintiffs), Cross-Examination.

Mr. McKeown: Put in the original, and keep your own copy for yourself. Why keep the original? I think you ought to put the original in.

Mr. Campbell: So far, we have been exhibiting the originals. We will have them all carefully compared and attach an affidavit that they are correct. Will Your Lordship allow us to substitute
10 a copy in the record and we will put the original in in the meantime?

His Lordship: Yes.

By Mr. Campbell, K.C.:

Q.—Will you produce as Exhibit D-58, the original letter from Sir Mortimer B. Davis to Lord Shaughnessy dated at Les Glaieuls, Golfe-Juan, the 3rd of January, 1928, and which reads as follows:

20 “The Right Honorable Lord Shaughnessy, K.C.
Canada Cement Building,
Phillips Square, Montreal.

My Dear Will,

I confirm my cable of today reading: (Decoded) “Have you acted employees’ stock and also promotions as discussed? What are you doing re American Rye.”

30 It is very important that the Staff business should be done and that it should date back from the time we told them they would be interested.

Please officially notify the Organization that the two Assistants to the Sales Department are, I understand, to be: Curran and . . . (I forget the name of the other man) and also officially inform any other changes you might make in the way of promotions.

40 I would like to hear from you as to the development of each important man in your organization, whether he is improving or if his services are depreciating.

Re Short of American Rye:—It is much better not to take any chances than to send out inferior quality.

ALEX. M. REAPER (for Plaintiffs), Cross-Examination.

10 I cabled you yesterday as follows: (Decoded) "Referring to your letter of 21st ultimo congratulations on your splendid address to Shareholders (stop) Williams treat as suggested two years ago (stop) When is Hersey sailing?" The Statement of the Industrial Company, to my mind, was excellent as were also your remarks to the Shareholders. It was sound and should appeal to the sound investor.

Diplomatically, cut O'Brien and Williams out as suggested to you two years ago. I enclose a letter from them which speaks for itself.

McNish are getting good results from our "free bottle in each case" scheme. There is no doubt that within two or three years McNish will be quite an earning power for the Industrial Company.

20 I was pleased to receive your cable re Mason Valley Copper Company. I do trust that the profits will hold up.

What are you doing re financial man for the Davis Finance Corporation? There are wonderful opportunities for a Company of that kind.

30 We are sailing from Genoa for Egypt per s.s. "Esperia" on 2nd February. I will cable my address from time to time so that I can keep in close touch with affairs. You had better address the "mail" here. I expect to be away about one month and think the change will do me good.

With my best wishes to you and yours,

Yours very truly,

M. B. Davis."

A.—I do.

40 Q.—Have you in your files a subsequent letter from Sir Mortimer Davis, in the course of which he refers to McNish under date of 14th of February, 1928?

A.—Yes.

Q.—Will you file it as Exhibit D-59?

A.—Yes.

Mr. McKeown: Read the letter,

Mr. Campbell: The letter reads as follows:

ALEX. M. REAPER (for Plaintiffs), Cross-Examination.

“Les Glaieuls,
Golfe-Juan,
Alpes-Maritimes.

14th February, 1928.

10 The Right Honorable Lord Shaughnessy, K.C.,
Canada Cement Building,
Montreal.

My Dear Will,

20 I enclose copies of cablegrams exchanged. I have your letter of 2nd inst. re House at Sainte Agathe: We are delighted to have you use the house as we know that Marion will take care of it and, as a matter of fact, it is better that the house should be occupied. I think it will do you a lot of good to go up there for week-ends, and also for the family to spend some time there. There ought to be good milk, eggs, and produce from the farm; see that your family get same, otherwise it will only be used by the people on the place.

30 Re Exploration Company (Mining Interests): Your letter is quite clear re our Mining interests. In Newfoundland I believe there will be great mineral development. Lord Rothermere has just returned and, as you know, Guggenheim's have taken up a property and are developing it for him as a fifty-fifty proposition. When a body of mineral is found in a country it generally means there are other large mineral bodies somewhere about. My idea, with this new Exploration Company, is to have a young energetic organization right on the job, not sleepy heads, sitting in New York, like Mr. Micawber "waiting for something to turn up." Within the last two or three years Poillon should have picked up some properties. As I have stated before, we will diplomatically eliminate him. If Cochran measures up the way I think he will, he is the type of man we want, but the Exploration Company must be well organized with
40 young blood, checked up, from the commercial side, by us, and from the mining point, by outside engineers, if necessary. I quite understand about Asbestos. That need not go into the Company, but all our other interests, except Mason Valley, I would put into the Company; in other words interests that are not producing, except our Coal interests. Oil:—You cannot take up too much land. I notice that the Imperial Company of Canada have got Crown Lands to the extent of 140,000 acres. I

ALEX. M. REAPER (*for Plaintiffs*), *Cross-Examination.*

do not know the cost of carrying this Concession but I certainly would grab all I could, as I have a "hunch" that there will be big oil development in Canada. We have practically all minerals that the United States have, except Oil, and the reason why we have not got oil is that there has not been enough prospecting done as yet. I hope that you are passing up and lightening your work to others and strengthening our interests by increasing the officials.

10

Wilmore is, I hope, getting two or three good men under him.

Kelly, who is a highly-strung, nervous, ambitious, energetic, typical Sales Manager, should have three or four men around him whom he could shoot to different parts of the World when so desired for Export and Import.

20

Distillers Co. (Seagrams') :—The Distillers Company buying into Seagrams'; it looks to me that they had to do something to save their position, but if we can make a success with McNish's on Export, the D.C.L. will think twice before rubbing us the wrong way.

If McNish's cost us one hundred thousand pounds a year,—and I do not think they will,—it is a good insurance to protect our Home interests, because if they try any "monkey" business there, "at home," we can make it most interesting for other parts of the World as soon as we get a nucleus.

30

Co-Ordination (McNish) :—Inform London of the territory you are covering for McNish, so that, as they are now arranging to send two men around the World, by keeping each other posted in every detail there will be no overlapping.

Eleanor is much better. Her trip to St. Moritz did her a lot of good.

With our kindest regards and best wishes,

Yours truly,

M. B. Davis."

40

Mr. Campbell: There is another letter I want to put in, but unfortunately I have not the original so that I will have to suspend it until I find the original.

By Mr. Campbell:

Q.—You were questioned, in your examination in chief, about

ALEX. M. REAPER (for Plaintiffs), Cross-Examination.

the Pine Avenue residence of the late Sir Mortimer Davis. Have you got with you the Minutes of the meetings of the Executors of the Estate that were held. I want to see what was determined in reference to that matter. Have you with you the original Minute book of the Executors of the Estate?

A.—Yes.

10 Q.—Will you turn up the Minutes of the meeting of Executors that was held on the 25th of April, 1928, and will you verify that the Defendant's Exhibit No. 2, which is printed and attached to your plea, is a true copy of the Minutes of that meeting as entered in your original Minute book?

(Copy is admitted subject to verification.)

20 Q.—Will you keep that Minute book before you for a moment, Mr. Reaper. Will you look at what is entered in the Minute of the Executive meeting, and quote to me what appears in reference to the disposition of margin accounts?

A.—“Re margin accounts: It was resolved that stocks of Victor Talking Machine and Tobacco Products be sold; stock of Liggett and Meyers Company were to be held until a more satisfactory price could be obtained.”

Q.—Were the stocks of Victor Talking Machine and Tobacco Products sold?

A.—Yes.

Q.—How soon, relatively, after the date of this meeting?

30 A.—Probably right after; about the beginning of May.

Q.—Immediately following?

A.—Yes.

Q.—And was the Liggett and Meyer stock held until it was disposed of quite recently?

A.—Yes.

Q.—And it was only disposed of since these proceedings were taken?

A.—Yes.

40 Q.—At about what amount was the Liggett and Meyer stock entered at the time of Sir Mortimer's Death?

A.—At \$108.

Q.—And it sold at about what?

Witness: When we sold it?

Mr. Campbell: Yes.

ALEX. M. REAPER (for Plaintiffs), Cross-Examination.

A.—At practically the same, including the dividend of two dollars.

Q.—Mr. McKeown asked you if it had not since gone up?

A.—Well, it has gone higher since.

Q.—Had it in the interval been higher than \$108 as far as your recollection goes? If you don't know at the moment, I will give you a chance to verify it.

10 A.—It had not gone to \$108.

Q.—So the price had not improved since Sir Mortimer's death up to the time you sold it, is that right? It had gone down and had come up again?

A.—It had fluctuated to some extent. I think the highest price at any time was in October, 1929, when it reached \$106.

Q.—But the anticipated rise mentioned in this paragraph of your Minutes at your Executive meeting was not reached until after the institution of these proceedings?

20 A.—No.

Q.—Will you take the next paragraph of your Minutes and read it into the record?

A.—“Pine Avenue property, property at Ste. Agathe, residence and farm, Racing stable in France: It was agreed that all these be sold when satisfactory prices could be obtained.”

Q.—Has there been at any time since, any change in that policy in reference to those assets?

A.—No.

30 Q.—Until the trouble started in the autumn of 1929, did Lady Davis, your Co-Executrix, suggest any change in that policy?

Mr. McKeown: I object to this question as leading. That is altogether too leading at this stage of the proceedings. It does not arise out of the examination in chief. It may be proper defence. I submit my learned friend should be restricted to legal questions, and not to traverse his defence in the cross-examination of this witness. In his question he declares dates in an affirmative statement, and the question is absolutely leading in form. The whole effect is it would appear that Mr. Reaper is giving the evidence
40 and Mr. Campbell is the gentleman responsible for the result.

Mr. Campbell: I do not think it is even suggestive in form. I am not suggesting what the answer should be. I fail to see how that question suggests what the answer should be.

His Lordship: You might ask him what efforts he or the other Defendant have made to sell that property.

ALEX. M. REAPER (for Plaintiffs); Cross-Examination.

Mr. Campbell: I first want to know whether there was ever any change of policy.

Mr. McKeown: He has said that. You took that hurdle at one jump.

By Mr. Campbell:

10

Q.—I will put the question impersonally: Did any of the Executors, previous to November, 1929, suggest any change in the policy of dealing with those assets indicated in that Minute?

A.—No.

Q.—What happened to the Racing Stable in France?

A.—That was sold shortly after Sir Mortimer's death, as soon as it could be arranged.

Q.—What have you done about the Pine Avenue property?

20

A.—It has been in the hands of several real estate agents.

Q.—How many?

A.—I don't remember.

Q.—Who are they? Give us the names.

A.—Ewing and Ewing; Ernest Pitt and Company; I think Walter Molson and Company; Henry Joseph; the Royal Trust Company has looked it over, and, I think, Wilder-Birmingham and Company.

Q.—Is it listed, for sale, with these gentlemen?

A.—They have it on their lists.

30

Q.—What is the asking price?

A.—We have been asking \$300,000 for Pine Avenue.

Q.—Was that price agreed upon by the Executors?

A.—Yes.

Q.—Have you ever received any offers, and, if so, what were they? By offers, I mean something definite in writing.

A.—I have something here.

Q.—These real estate brokers whose names you have given, how do they rank in Montreal in the real estate world?

A.—They are of good standing among the real estate agents.

40

Q.—Are they of as good standing as any?

A.—They are among the best.

Mr. McKeown: Don't let Fitzjames E. Browne hear you.

Mr. Campbell: He said, among the best.

By Mr. Campbell:

ALEX. M. REAPER (*for Plaintiffs*), *Cross-Examination.*

Q.—Will you look through your file of correspondence in reference to the Pine Avenue property, and tell us what was the best offer the Executors ever received?

A.—The best offer was \$150,000.

By the Court:

10 Q.—When was that offer received, Mr. Reaper?

A.—On October 11th, 1929. Ewing and Ewing had been asked to submit an offer for that amount.

By Mr. Campbell:

Q.—Was that offer of \$150,000 considered acceptable?

A.—No.

20 Q.—At what had Sir Mortimer Davis valued this property in his lifetime?

A.—He had given me a price to set up in his books of \$400,000.

By the Court:

Q.—Did you consult Lady Davis with regard to that offer?

A.—Yes.

By Mr. Campbell:

30 Q.—With what result?

A.—Following this letter of Ewing and Ewing of October 11th, in which they stated that they had been asked to submit an offer of \$150,000, Mr. Ewing communicated with Lord Shaughnessy, and intimated that if \$200,000 would be accepted by the Executors, he thought he could get an offer for that amount. That was submitted to Lady Davis at a meeting at the office on October 18th, when it was thought that the price was still too low, and it was not felt that we should reduce our last price, and it was agreed that we
40 would continue asking \$300,000.

Q.—And did all the Executors concur in that decision?

A.—Yes.

Q.—You were questioned about the “For Sale” signs upon the property. Did you ever see the signs that were there?

A.—Yes, two large conspicuous signs which had been put up by Henry Joseph and Company, one, I think, facing on Pine Avenue, and the other on Peel Street.

ALEX. M. REAPER (for Plaintiffs), Cross-Examination.

Q.—If all the agents with which this property were listed had exercised an equal privilege, had you room on the property to accommodate all the signs that would have been called for?

A.—There might have been room. I don't know what the appearance would have been.

Q.—Do you think it would have added to the saleability of the property?

10 A.—I think not.

Q.—What was the attitude of Sir Mortimer Davis in regard to this property during his lifetime? Had he had any idea about it?

A.—Yes, I think he had in mind selling that property.

Mr. McKeown: I object to this question. You cannot prove that by parole testimony.

By Mr. Campbell:

20 Q.—I will put it this way: Was the property to your knowledge listed for sale with any real estate brokers before the death of Sir Mortimer Davis?

Mr. McKeown: Let us have the true listing. We do not know the circumstances under which it was listed. This is the worst kind of hearsay evidence.

30 Mr. Campbell: My learned friend has invited the witness during seven days to give hearsay evidence.

Mr. McKeown: I never invited him to give that kind of evidence.

Mr. Campbell: All I am trying to prove is, that Sir Mortimer tried to sell the property; but he did not think it wise or necessary to placard it with signs. One of the charges against us is, that we removed Mr. Joseph's signs.

40 Mr. McKeown: In one instance it was a house occupied by Sir Mortimer. Here we have a vacant house. There is no analogy whatever.

His Lordship: It may not prove much, but still there is the question of good faith that has to be considered.

By Mr. Campbell:

ALEX. M. REAPER (for Plaintiffs), Cross-Examination.

Q.—Will you answer the question, Mr. Reaper? Was the property, to your knowledge, listed for sale with any real estate brokers before the death of Sir Mortimer Davis?

A.—Yes, I understand so.

Mr. McKeown: I object. Let us draw the line somewhere.
10 What Mr. Reaper understands and what he knows are altogether two different things.

His Lordship: I will allow it for what it is worth, but don't state what came to Sir Mortimer Davis through somebody else.

Witness: I knew it was in the hands of the real estate agents.

By Mr. Campbell:

20 Q.—Is there any evidence in the company's records of that?

A.—I knew it was in the hands of the real estate agents.

Q.—During Sir Mortimer's lifetime?

A.—Yes.

Q.—While it was so listed during Sir Mortimer's lifetime, were there any "For Sale" signs put up?

Mr. McKeown: I object to that. There is no analogy at all between the situation.

30 Mr. Campbell: There may not be, but we are told we did not take the proper steps to sell the property. My submission is going to be, before we are through, that a property of that kind is not sold by placarding it with signs and expecting somebody to pass by and come in and buy it over the counter.

Mr. McKeown: I submit that that evidence should not be allowed, there being no analogy between the conditions suggested by my learned friend and the conditions which existed after Sir
40 Mortimer's death.

The Court allows the evidence.

By Mr. Campbell:

Q.—While this Pine Avenue house was listed for sale during the lifetime of Sir Mortimer Davis, were there any visible signs displayed upon the property to your knowledge?

ALEX. M. REAPER (for Plaintiffs), Cross-Examination.

Same objection.

Objection reserved.

A.—No.

10 Q.—During the lifetime of Sir Mortimer Davis, he had owned this Pine Avenue residence for how many years, roughly?

A.—About twenty years.

Q.—And during the last five years of his lifetime, he lived for the most part where?

A.—In France.

Q.—During these last five years of Sir Mortimer's lifetime, how did the expense of maintaining the Pine Avenue house compare with the expense that the Executors had been put to in maintaining it since his death?

20 Mr. McKeown: I submit again there is no analogy. The house was kept open. It was not closed up and unoccupied as it is now, and I object to it as irrelevant.

His Lordship: I will allow the evidence.

By Mr. Campbell:

30 Q.—I do not mean to the last dollar. Was there more spent on it or less? Have the Executors spent more in maintaining the Pine Avenue property than Sir Mortimer spent in the last five years of his life, or less per annum, in a general way?

A.—I should think it would be less, because when he came here there was naturally more expense, and the house was opened up at different times.

Q.—But eliminating the periods of his presence in Canada, did the Executors incur any additional expense that was not habitual for the maintenance of the property during Sir Mortimer's lifetime?

40 A.—No, there was no additional expense.

Mr. McKeown: I think we will leave that to his Lordship without any objection.

Mr. Campbell: I am glad you are going to leave something to his Lordship.

By Mr. Campbell:

ALEX. M. REAPER (for Plaintiffs), Cross-Examination.

Q.—What was the asking price of the St. Agathe property?

A.—\$100,000.

Q.—And how near did your nearest offer come?

A.—The nearest offer was \$45,000.

Q.—Whose offer was that?

A.—Which was made by Senator Raymond.

10 Q.—Was there another one at higher figures, but subject to deductions?

A.—There was another offer by Henry Joseph and Company. They said they had been authorized to make an offer of \$46,000, but it was subject to a commission of three per cent, so that the price would have been actually lower than the price of Senator Raymond.

Q.—Was the offer that you received from Senator Raymond of \$45,000 the best offer that you received?

A.—Yes, that was the best offer.

20 Q.—Did you confer with Lady Davis, your Co-Executrix, about that?

A.—Yes.

Q.—With what result?

A.—She considered the price was too low.

Q.—And was it refused or accepted?

A.—It was refused. I have no letter covering that. I think it was attended to by phone. I am not sure.

Q.—I think you have a letter from Lady Davis?

A.—Yes.

30 Q.—Did Lady Davis, your Co-Executrix, concur in the refusal?

A.—Yes.

40 Q.—Have you a letter from Lady Davis in reference to Senator Raymond's offer, and will you file it as Exhibit D-60?

A.—Yes, I do.

Q.—The letter reads as follows:—

“Dear Lord Shaughnessy:

I think Mr. Raymond's offer too low. I am quite sure we can do better. Why has the sign been removed from the Pine Avenue house?

Yours sincerely,

ELEANOR DAVIS.

August 18th.”

What year was that? There is no year mentioned?

ALEX. M. REAPER (for Plaintiffs), Cross-Examination.

A.—It was 1929. There was a similar situation as regards an offer from Ewing & Ewing.

Q.—In connection with Pine Avenue?

A.—In connection with St. Agathe.

Q.—In any event, did you ever get an offer that any of the Executive considered acceptable in respect of St. Agathe?

10 A.—No. Later on we had a similar situation occur with St. Agathe as with Pine Avenue. When Mr. Ewing asked if the Executors would consider \$200,000 for the Pine Avenue property, he also said that if \$55,000 would be acceptable for St. Agathe, that he thought he could get an offer at that price. That was considered at the same time as the other offer, and it was thought that this price should not be accepted.

Q.—Considered with whom?

A.—With Lady Davis. As a matter of fact, she stated at that interview that she thought Mr. Bamberger would pay \$60,000 for
20 that property.

Q.—Did you ever get an offer of that kind?

A.—No, and it was agreed then that we hold the property for the asked price of \$100,000.

Q.—What steps were taken to dispose of the St. Agathe property?

A.—It was also listed with a number of agents, pretty much the same agents as for the Pine Avenue property.

Q.—With prominent agents dealing in that class of property?

A.—Yes.
30

Q.—What is the St. Agathe property in a word. Is it a farm? Something was spoken about it. I have never seen it. Was it a farm or something else?

A.—Well, there is the residence there, and attached to it there is a farm.

Q.—Is the residence a handsome place, a substantial place?

A.—Well, quite a substantial place. It is really a gentleman's estate.

Q.—What other steps than those you have taken do you think
40 you ought to have taken to have disposed of that property? As a gentleman's estate, is there anything else that you felt should have been done to dispose of the property that you did not do?

A.—No, I do not think so. I think reasonable steps were taken to sell the property.

Q.—And you have not yet been able to find a buyer at a satisfactory price?

A.—No.

ALEX. M. REAPER (for Plaintiffs), Cross-Examination.

Q.—How did the cost of maintaining this gentleman's property at St. Agathe since the death of Sir Mortimer Davis compare with the cost of maintaining the same property during his lifetime?

Mr. McKeown: I make the same objection.

Objection reserved.

10

By Mr. Campbell:

Q.—I do not mean in actual dollars?

A.—If anything, probably slightly less.

Q.—Did you spend any more on it, in any event, since his death than was customary to be spent during his lifetime?

Mr. McKeown: Is not that question a bit leading?

20

Witness: No, there was no additional expense incurred.

By Mr. Campbell:

Q.—Did you ever get any suggestion from your Co-Executrix, Lady Davis, about doing anything else with these properties, besides trying to sell them—I am speaking now of any period before the summer of 1929, before the trouble started in August 1929. Up to that time, had you had any suggestion from Lady Davis as to any
30 other disposition of the properties?

A.—No, I think not.

Q.—Will you look again at your Executors meeting, and give us the next item after the property questions?

A.—“Y.M.H.A. Building. Lord Shaughnessy explained his understanding with Sir Mortimer regarding building he had promised to erect for this Association. . . .

Mr. McKeown: I would like to make an objection to this evidence going in for any purposes of this case, on the ground that that
40 is a donation of \$300,000. The objection is already in the record to the reception of that evidence on the ground that those matters cannot be proved by parole testimony.

Mr. Campbell: As far as Lady Davis is concerned, she signed the Minutes.

ALEX. M. REAPER (for Plaintiffs), Cross-Examination.

Mr. McKeown: Lady Davis could not give away this Estate any more than the other Executors could.

Mr. Campbell: I am making the point as far as Lady Davis is concerned.

10 Mr. McKeown: There are other plaintiffs in this case, and other interested parties. I just ask, My Lord, that the objection be noted as I did on the former occasion.

Objection reserved.

Witness (continuing): "And it was resolved that the work be proceeded with."

By Mr. Campbell:

20 Q.—Was that resolve carried out?
A.—Yes.

By Mr. Geoffrion:

Q.—On what date?
A.—April 25th, 1928.

30 By Mr. Campbell:

Q.—About when was the building completed?
A.—In June 1929.

Q.—Were there any opening ceremonies?

A.—Yes, there was a formal opening. I think it was the 23rd of June.

Q.—Were you there?

A.—Yes.

Q.—Was Lady Davis there?

40 A.—Yes.

Q.—Was Lord Shaughnessy there?

A.—Yes.

Q.—At this opening ceremony, was there any formal delivery of possession to anybody?

A.—Yes. An address was made by Lord Shaughnessy in that connection, and the formal handing over of the building was done by Lady Davis.

ALEX. M. REAPER (for Plaintiffs), Cross-Examination.

Q.—How was the delivery made?

A.—It was the handing over of the key.

Q.—And it was Lady Davis who handed over the key of the property on that occasion?

A.—Yes.

10 Q.—Will you look at the last paragraph of the Minutes of your Executors meeting and read it into the record?

A.—“ Re-Annuities. It was reported that payments had been made on March 31st, or April 1st, to all parties who had been regularly receiving gratuities from Sir Mortimer, so that payments would be continuous which was approved, and it was resolved that payments to annuitants as provided for by the will be continued on the first of each month.”

Q.—Has that policy been carried out?

A.—It has.

20 Q.—Has there been any delay in the payment of any of the annuities?

A.—No. They have always been paid promptly.

Q.—Did Lady Davis, the plaintiff, get her monthly annuity cheque the same as everybody else?

A.—Well, it was always sent to the bank to be put to her credit.

Q.—And the other plaintiff, Mr. Mortimer Davis?

A.—He always got his also.

30 Q.—Will you look at the list of annuitants filed as plaintiffs Exhibit Number 4, and verify that they are the annuitants mentioned in the will?

A.—Yes.

Q.—Totalling how much per annum?

A.—\$180,600.

Q.—You kept Sir Mortimer Davis' personal accounts, as well as the accounts of the Company, in his lifetime?

A.—Yes.

Q.—How many of those persons was he accustomed to pay annuities, or allowances, to during his lifetime?

A.—Just the number of names mentioned on the list.

40 Q.—Are there any on the list that were not accustomed to receive them, or were they all accustomed to receive them?

A.—No. Lady Davis and Mortimer Davis had not been receiving them up to the time of Sir Mortimer's death.

Q.—But apart from Lady Davis and Mr. Mortimer Davis?

A.—The others had all been receiving them. I think there is the matter of Mr. Samuel Davis, which Mrs. Davis had been re-

ALEX. M. REAPER (for Plaintiffs), Cross-Examination.

ceiving. Prior to that it was always considered as being the same thing as his.

Q.—Have any of those annuitants mentioned on Plaintiffs Exhibit Number 4, so far, failed to receive the annuities accruing to them?

A.—No, they get them on the first of each month.

Q.—Right down to date?

10 A.—Yes. There is one there, a Mrs. Vehon has died in the meantime.

Q.—As long as she lived did she get her annuity?

A.—Yes.

Q.—Will you look at the letter which was filed yesterday as Exhibit D-15, letter from Lady Davis to Lord Shaughnessy dated December 31st, 1928, and will you tell me in whose handwriting that letter is written?

A.—It is Lady Davis' writing.

20 Q.—For purposes of identification, what is referred to in the first sentence of that letter?

A.—It says, "Received the September statement of the Sir Mortimer Davis Incorporated." It refers to the statement of September 30th, 1928.

Q.—That would be the financial statement as at the end of that year?

A.—Yes.

30 His Lordship: I think that was covered yesterday.

Mr. Campbell: I did not know whether I had identified it.

By Mr. Campbell:

Q.—It is filed as Plaintiffs' Exhibit P-51?

A.—Yes.

Q.—In the course of this letter Lady Davis said:—

40 "Received a telegram from Mortimer this morning from Palm Beach. Our boy is certainly travelling."

As a matter of identity, who is the person referred to in that sentence?

A.—That refers to Mr. Mortimer Davis.

Q.—That is, Mr. Mortimer Davis the other plaintiff?

A.—Yes.

ALEX. M. REAPER (for Plaintiffs), Cross-Examination.

Q.—Where the words “ Our boy ” are used, of course, Mr. Mortimer Davis is the stepson of Lady Davis, not her son?

A.—Yes.

His Lordship: Unless Mr. Campbell you have something short, we will call it a week.

10 Mr. Campbell: I agree with Your Lordship.

WHEREUPON THE CROSS-EXAMINATION OF THE WITNESS was adjourned until Monday next, the 17th day of March instant, at 10.30 a.m.

And further for the present deponent saith not.

20

30

40

ALEX. M. REAPER (for Plaintiffs), Cross-Examination.

MORNING SESSION, MARCH 17th, 1930.

10 Mr. McKeown, K.C.: I return into Court this morning the subpoena which was served on Lord Shaughnessy, Mr. Reaper and Mr. Lawrence Saturday, requiring the production of certain correspondence, copies, circulars and different matter. In order that there may be no difficulty about any misunderstanding in connection with it, I do not wish the Court to be held up while we delve through all the correspondence before the Court, and I suggested to my learned friend that Mr. Lawrence should proceed at once to get out parts of the correspondence which comes under his particular block. Mr. Reaper is otherwise engaged for the moment, but he likely can give directions to his assistants, who can gather up their quota in addition. This is voluminous correspondence, and I do not wish to hold up the Court with any delving into it. It would
20 help matters if we have access to it in the meantime.

Mr. Holden, K.C.: I would like to co-operate with the object my learned friend suggests. The subpoena was served at half past five Saturday afternoon and I just saw it for the first time, and it called for all original letters since 1926, from the date of Sir Mortimer's death, and so on, since January 1st, 1926.

The Court: That will take some time.

30 Mr. Holden, K.C.: We want to advise our clients whether it is relevant before we do our best.

The Court: I am quite sure it will come early enough.

Mr. Campbell, K.C.: My learned friend spent some time on these facts in his discovery. It is a pity he did not discover he needed them. We would have had them.

40 ALEXANDER M. REAPER

reappeared and continued his evidence as follows (in cross-examination):

By Mr. Campbell, K.C.:

Q.—At the adjournment we were discussing the properties of

ALEX. M. REAPER (for Plaintiffs), Cross-Examination.

Sir Mortimer Davis on Pine Avenue and at Ste. Agathe, and you told us that the Pine Avenue property was being offered by the executors, I think you said at \$300,000.00. What did that price comprise?

A.—It was the price for the property itself.

Q.—Did it comprise any of the contents?

A.—No.

10 Q.—Will you look at Exhibit P-55, filed during your examination-in-chief, and state what valuation was used for succession duties purposes upon the contents of the Pine Avenue house?

A.—\$13,347.00.

Q.—What view did the Succession Duty Department then take of that valuation?

A.—They accepted that valuation. They were satisfied.

Q.—By whom was that valuation made?

A.—By Fraser Bros.

20 Q.—Who are they?

A.—Auctioneers and valuers.

Q.—In Montreal?

A.—In Montreal.

Q.—Have you got with you the details of that valuation?

A.—Yes, I have.

Q.—Will you let me have a look at it?

A.—Yes.

30 Mr. McKeown, K.C.: I would like to enter an objection that the evidence now being offered of the value of moveables is not made in the form required by law, as not being the best evidence, in as much as the person who made the valuation should appear here to be cross-examined.

Mr. Campbell, K.C.: Don't be alarmed. They will be available.

40 Mr. McKeown, K.C.: Then they should be here now. What Mr. Reaper finds as a matter of record of the value made is not proof of the value for one thing, and it is not the best proof even of the fact that the valuation was made by these people. I think this evidence should be offered by the people who made the valuation, because it might very well appear that the basis taken was not the replacement value; that it was ultra auctioneers' auction value. We know in principle what valuations are made for Succession purposes. There is no real reason why any extreme should be taken in matters of household effects, insofar as it has any bearing on the

ALEX. M. REAPER (for Plaintiffs), Cross-Examination.

value of the dining room; in view of the special circumstances disclosed on proof I submit that the knock-down auction value is not the proper market value, and that is what it should be for those assets.

10 The Court: That is not on the merits of the question. I quite realize Lord Shaughnessy, having taken the dining room furniture, saying, "I am taking that because it is a memento of \$1,000.00 that Sir Mortimer left me by his Will." I take it that valuation will be established by Fraser Bros. as a possible price it would have fetched at an auction sale. It is a fair answer to the criticism.

By Mr. Campbell, K.C.:

Q.—First of all, who were the individuals connected with Fraser Bros., Auctioneers, who made the valuation?

20 A.—John S. Penman and David S. Fraser.

Q.—Who selected them to make the valuation? Who instructed them or selected them?

A.—I arranged it with them by telephone. I think I spoke to Mr. Penman at that time.

Q.—Where did you get the idea of employing them to make the valuation?

A.—I had spoken to Mr. Phillips as to who were good valuers of Estates, and he recommended Fraser Bros. He said they did work for Trust Companies.

30 Q.—On Mr. Phillips' recommendation, you instructed these gentlemen to make the valuation?

A.—Yes.

Q.—Were they sworn to perform their duty?

Y.—Yes, before Mr. Phillips.

Q.—Will you exhibit and file a copy as D-61 of this oath of office they took? This oath is dated when?

A.—The 1st of May, 1928.

Q.—That was sworn before ——?

40 A.—E. W. H. Phillips, Notary.

Q.—Reading as follows:

" John S. Penman and David S. Fraser, both of said City of Montreal, auctioneers, being appraisers chosen for the purposes of the inventory of the Estate of the late Sir Mortimer Davis, in his lifetime of said City of Montreal, Knight,
Who being duly sworn under oath administered to them

ALEX. M. REAPER (for Plaintiffs), Cross-Examination.

by me, the undersigned Notary, do hereby promise that they will appraise and value at their real value all moveable property and effects submitted to them for the said inventory to the best of their knowledge and ability.”

Those are the words of the oath I have read?

10 A.—Yes.

Q.—This inventory, without going into all the details, what does it cover in a general way?

A.—It covers the contents of the house on Pine Avenue and all the other buildings.

Q.—Does it comprise the whole establishment as it then stood?

A.—The whole thing.

Q.—At the date of this valuation in May, 1928, had Sir Mortimer Davis removed any of the contents of the house?

20 Mr. McKeown, K.C.: This does not arise out of the examination-in-chief. There is not a word spoken of it by Mr. Reaper.

— Mr. Campbell, K.C.: I stand corrected. I withdraw the question.

Mr. Campbell, K.C.: Will you look at this —

Mr. McKeown, K.C.: I object at this stage.

30 Mr. Campbell, K.C.: He has the document in his hands.

Mr. McKeown, K.C.: I don't care where it is. It is irrelevant. It has nothing to do with the agreement. My learned friend is trying designedly to put into the witness's mouth by way of cross-examination what absolutely belongs to his case-in-chief in defence. He has been doing it right along, and this is a most glaring offence. Mr. Reaper was not asked a word about it in chief. It is evidence which came out on the evidence of Mr. Godsall and the other witnesses.

40 Mr. Campbell, K.C.: Mr. Reaper produced in the course of his testimony an exhibit respecting succession duties, Exhibit P-55. I am entitled to ask the witness to give us details of the item.

The Court: This witness never said anything about the Circas-

ALEX. M. REAPER (for Plaintiffs), Cross-Examination.

sian walnut furniture. If you insist on your objection I will maintain it.

10 Mr. Campbell, K.C.: On this particular item the defendants, and particularly the defendant Lord Shaughnessy, has leaned under the imputation for ten days of what my learned friends have tried to present to Your Lordship, and we are certainly entitled to clear up this imputation. It seems to me we should have been entitled to have cleared up that item. We could not cross-examine all these witnesses because these witnesses knew nothing of the other side of the picture. The explanation of the imputation is that this furniture was worth a fabulous price.

Mr. McKeown, K.C.: Your defence is you took it and it was cheap.

20 The Court: A regular sale and an auction sale are two different things.

The Court: Exhibit P-55 says, "contents as per valuation." I have no objection to your filing the valuation which completes P-55.

By Mr. Campbell, K.C.:

30 Q.—Will you complete and file as Exhibit D-62 the inventory prepared by these gentlemen under their oath of office, John S. Penman and David S. Fraser?

A.—I do.

Q.—Will you look at the original of Exhibit D-62 and give us, first of all, the heading of it. I am not going to read the whole thing into the record.

A.—"Inventory of furniture and effects, residence 276 Pine Avenue West, Montreal, belonging to Estate Sir Mortimer Davis, for Succession Duties made by Fraser Bros. on the 5th May, 1928."

40 Q.—Will you look through the valuation and see if it contains any valuation of the contents of the dining room?

Mr. McKeown, K.C.: That would be on the same reasoning that in view of the special circumstances, that that furniture was specially designed for that room.

The Court: It is a matter of argument.

By Mr. Campbell, K.C.:

ALEX. M. REAPER (for Plaintiffs), Cross-Examination.

Q.—Does the valuation comprise the contents of the dining room?

A.—Yes.

Q.—Does the valuation comprise the articles in the dining room subsequently removed to the residence of Lord Shaughnessy?

A.—Yes.

10 Q.—At the date of that valuation had they been removed to Lord Shaughnessy's house?

A.—No.

Q.—They were removed later?

A.—Yes.

Q.—Six months later?

A.—About October, I think.

Q.—What valuation was placed by these valuator on the walnut dining table and cover, twelve chairs in figured crimson plush?

A.—\$225.00.

20 Q.—Does that inventory comprise the settee which we have been informed was subsequently removed to Lord Shaughnessy's house? If so, at what was it valued?

A.—\$75.00.

Q.—First of all, it does comprise it?

A.—Yes.

Q.—And it was valued at what?

A.—\$75.00.

Q.—Can you identify the other articles? What were they?

A.—Two chairs in the upper hall.

30 Q.—There were two Chippendale chairs removed from the upper hall? Can you identify those articles in that valuation?

A.—Yes.

Q.—What were they valued at?

A.—\$50 for the two.

Q.—Those were all the articles removed, as I recall it, from Sir Mortimer's house to Lord Shaughnessy's?

A.—Yes.

Q.—Will you total up those amounts you have just given us?

A.—\$350.00.

40 Q.—Will you look and see whether the inventory comprises a 1913-1914 Rolls-Royce?

A.—It does.

Q.—Will you read the item into the record?

A.—“Rolls-Royce car, with trunks and accessories, \$2,500.00.”

Q.—Is that the same car that was valued on the policy of Insurance produced as Plaintiffs' Exhibit P-39 at \$2,000.00?

ALEX. M. REAPER (for Plaintiffs), Cross-Examination.

Mr. McKeown, K.C.: \$3,600.00.

Mr. Campbell, K.C.: The last valuation was \$2,000.

Mr. McKeown, K.C.: That would be after.

10 Mr. Campbell, K.C.: The question is whether it is the same car that was insured.

Mr. McKeown, K.C.: Never mind the \$2,000. We will get the figures.

By Mr. Campbell, K.C.:

Q.—Was that the same car that was insured by the Insurance policies that have been filed in this case?

20 A.—Yes.

Mr. McKeown, K.C.: Do you want the policy?

Mr. Campbell, K.C.: Yes. There are two or three. I only have that.

30 Mr. McKeown, K.C.: Here is the \$3,600.00 one filed. That was in the policy of Insurance dated April 18th, 1928, that the car was valued at \$3,600.00. Where is the next policy? That is in the Exhibit P-29?

A.—Yes.

By Mr. Campbell, K.C.:

Q.—Now I would like the other one if convenient.

Mr. McKeown, K.C.: It will be quite convenient.

By Mr. Campbell, K.C.:

40 Q.—Take communication of the policy dated 6th May, 1929, filed as Exhibit P-30 and show at what valuation it was then valued.

A.—\$2,000.00.

Q.—Before we leave the question of the properties, did you ever spend a week-end at Ste. Agathe?

A.—No.

Q.—The Courts cannot remove you for that offence, I take it.

ALEX. M. REAPER (*for Plaintiffs*), *Cross-Examination*.

Will you take communication of the letter of Sir Mortimer Davis to Lord Shaughnessy, dated 14th February, 1928, filed as Exhibit D-59. Will you read into the record the paragraph referring to that property?

10 Mr. Montgomery, K.C.: That has already been read, with an objection. It is in already. I read it in the Star.

Mr. Campbell, K.C.: I will not undertake to say I have not done anything in this case. If you tell me I did it I will agree.

Mr. McKeown, K.C.: Are you going to do it again?

Mr. Campbell, K.C.: No, I am not.

By Mr. Campbell, K.C.:

20 Q.—Will you tell us whether the house at Ste. Agathe which Sir Mortimer said he was delighted to have Lord Shaughnessy use was the same property that the Executors have since been trying to sell?

Mr. McKeown, K.C.: I object to that, because whatever the owner of this property might have done in his lifetime would be no justification for the use of the property of the Estate by any of the Executors.

30 The Court: It is a matter of argument.

By Mr. Campbell, K.C.:

Q.—Is that the same property?

A.—It is the same property, yes.

Q.—Does it appear from that paragraph in that letter whether Sir Mortimer had any objection to Lord Shaughnessy using that property or not?

40 Mr. McKeown, K.C.: That is beside the question. The letter speaks for itself.

Mr. Campbell, K.C.: My learned friend is very anxious to save Your Lordship and any other Judges the trouble of looking up documents. Will Your Lordship allow me to read into the record at this particular time that paragraph?

ALEX. M. REAPER (for Plaintiffs), Cross-Examination.

The Court: I have no objection.

Mr. Campbell, K.C.: The paragraph to which I refer in Sir Mortimer's letter to Lord Shaughnessy is Exhibit D-59 and reads as follows:

“ Re House at Ste. Agathe.

10 We are delighted to have you use the house, as we know Marion will take care of it and as a matter of fact that the house should be occupied. I think it will do you a lot of good to go up there for week-ends, and also for the family to spend some time there. There ought to be good milk, eggs and produce from the farm. See that your family get them. Otherwise, it will be used by the people on the place.”

Is that the property referred to in that paragraph?

A.—Yes.

Q.—The property the Executors were trying to sell?

20 A.—Yes.

Q.—It has been said in evidence that Lord Shaughnessy had spent a week-end there?

A.—Yes.

Mr. McKeown, K.C.: That item speaks for itself.

By Mr. Campbell, K.C.:

30 Q.—As to that paragraph in which reference is made to Lord Shaughnessy using eggs and milk on the farm, what was the practice of Lord Shaughnessy with respect to anything Lord Shaughnessy used with respect to the property?

A.—He paid for anything he got there.

Q.—When we were talking on Friday, I wanted Sir Mortimer's ideas of the value of McNish. I was without a letter which I had mislaid and which I have since found. Will you produce a letter from Sir Mortimer Davis, addressed to Right Honourable Lord Shaughnessy, dated 8th March, filed as Exhibit D-63?

40 A.—Yes.

By the Court:

Q.—Did Sir Mortimer Davis die suddenly?

A.—Yes.

By Mr. Campbell, K.C.:

ALEX. M. REAPER (for Plaintiffs), Cross-Examination.

Q.—The said letter, D-63, signed by Sir Mortimer Davis, reads as follows:

“ Right Honourable Lord Shaughnessy, K.C.,
Montreal.

My dear Will,—

10

Re Robert McNish & Co. Ltd.—I have received a copy communication sent to you by Colonel George McNish and I trust that the Commission will be satisfied with the explanation.

20

We must bear in mind the little ‘ dinky ’ nucleus and did not pay anything for it, and as you know it takes time to get an organization together to handle an entirely different policy with green help; and the first suggestions to you would help the Company very materially by having Douglas or some other Department keep them informed as to all details necessary to give service and as to the general condition of the Scotch whisky business from time to time.

As soon as they have time, one of the McNish’s will come out; I consider Col. McNish a very able, reliable, shrewd, honourable business man, and I feel we are in good hands. The stock he has bought remarkably well. As a matter of fact, the market price is higher than when we purchased it.

30

Re Market Quotations: Our stock selling at 39 and the B at 37½ is not dear, as I am more optimistic than ever and the only fly in the ointment is whether we can tide over the shortage of American whisky. As I have often explained to you, the earning power in the future will be based entirely on the amount of whisky on hand and you cannot make too much. As soon as you get your ten million gallons, you should continue and if necessary work for fifteen or twenty million.

40

I met Wee McLeod here the other day. He claims that Walker’s and Gooderham’s have ten million gallons, of course, not matured. Also he told me that Hatch himself has not sold any of his Scotch but he himself cleared one hundred thousand pounds sterling. Of course, I take this for what it is worth.

You should be able to find out the amount of whisky each Company has from the Government returns or someone in Ottawa could do this for you.

The financing we did puts us in an excellent financial position to manufacture quantity without leaning on the Bank. It will be but a short time when the ‘ B ’ stock will sell at the same

ALEX. M. REAPER (for Plaintiffs), Cross-Examination.

price as the 'A.' The division of the ' non-voting power ' does not affect the value as the stockholders do not care about voting except when the Company shows decreased earnings, which naturally reflects upon the management who, rightly or wrongly, have to bear the burden.

10 Re Debentures: Inasmuch as we are making excellent earnings for the Debentures of McNish, we should get at least 105 or better. This is a gilt-edged security.

Re Mining Exploration Co.: When you form this Company, I think it would be well for you to become its president. Make me a director and also Reaper. I would be satisfied with a small directorate until I see how Cochran and his staff work out. As mentioned in my former communication, make him Manager. By putting our mining interests together in this Company we will concentrate on one department, and I feel that it will have much better attention than in the past, and if 20 Cochran works out as I think he will we should make the Company a huge success with luck and an active progressive organization.

I wrote you fully previously to instruct Cochran in his duties and what we expect of him. With the Davis Corporation holding the whole of the stock this makes it much easier to administer as a private corporation.

I expect to leave here right after Easter. Will go to Paris for a week and will be on the McNish job.

30 This is not an easy proposition, and requires a lot of patience, but I feel that with fairly good aggressive business methods we will win out in time.

With my kind regards, trusting you are well,

Yours sincerely,

M. B. DAVIS."

40 Q.—What had Sir Mortimer Davis Inc. paid for their McNish debentures?

A.—Four dollars fifty cents (\$4.50).

Q.—Since they have been marketed, how has the market price run?

A.—Well, I think at one time they went up; probably a few debentures were sold about \$4.75, which would be equivalent to 95, compared to the figure which Sir Mortimer Davis uses there, and since then they have gradually weakened.

ALEX. M. REAPER (*for Plaintiffs*), *Cross-Examination.*

Q.—What are they selling at now?

A.—Approximately \$3.50. There is not very much of a market for them.

Q.—Sir Mortimer Davis speaks of 105. They were \$5.00 debentures?

A.—Yes.

Q.—105 would be 105 per cent?

10 A.—Yes.

Q.—What would that mean in dollars?

A.—\$5.25.

Q.—Did they ever reach anything like \$5.25 on the quoted prices?

A.—No.

Q.—Was there any substantial market where they had ever sold above your issued price?

A.—No, there has never been very much of a market for them.

20 Q.—Was there any market, or would you have absorbed such a block of them as the Incorporated Company held at any price above your issued price?

A.—I don't think so.

Q.—In this letter, D-63, Sir Mortimer speaks about market quotations and says " Our stock selling at 39 and the B selling at 37½ is not dear, as I am more optimistic than ever about our stock "—does he refer in that paragraph to any particular stock?

A.—He refers to Canadian Industrial Alcohol stock and the B shares.

30 Q.—Evidently from that paragraph Sir Mortimer Davis at that time was not down-hearted about the future of Alcohol?

A.—No. He was rather optimistic.

Mr. McKeown, K.C.: He was right. It went to 50.

By Mr. Campbell, K.C.:

Q.—Before we pass on from this letter of the 8th March, 1928, how long after the date of that letter did Sir Mortimer die?

40 The Court: This is dated the 18th.

The Witness: The 22nd March; fourteen days after this.

By Mr. Campbell, K.C.:

Q.—Fourteen days later, as you have already told His Lordship he died suddenly?

ALEX. M. REAPER (*for Plaintiffs*), *Cross-Examination.*

A.—Yes.

Q.—Will you look at Sir Mortimer's Will, about which you were questioned in your examination-in-chief, and will you look particularly at article 15 of the Will, Plaintiffs' Exhibit No. 1, and read that article into the record.

A.—(Reading):

10 “ Except where otherwise decided by my Trustees and
“ Executors, or to make payment of particular legacies as pro-
“ vided for in this Will, I direct that the capital of said revenue
“ of my Estate shall remain absolutely vested in the hands of my
“ Executors for a period of at least fifty years from the date of
“ my death, during which period no beneficiaries shall be en-
“ titled to demand any partition of my estate.

20 “ My Trustees and Executors may, in their absolute and
“ uncontrolled discretion, make partitions of my Estate, partial
“ or entire, prior to the period above named, should they consider
“ it desirable and proper to do so but not otherwise.

“ In explanation of this provision of my Will I desire to
“ state that the greater part of my Estate consists of notes, de-
“ bentures, and shares in Sir Mortimer Davis, Inc., a Company
“ presently organized under the laws of the Province of Quebec.
“ In this Company is vested the control of several important
“ undertakings, all of which I believe by proper management
“ will greatly increase in value and thus yield in capital revenue
“ a great benefit to my Estate.

30 “ To disturb the organization of this Company would result
“ in a depletion of its resources and would prevent the develop-
“ ment of the various undertakings entrusted to its care and to
“ the care of its officers and directors. I therefore expressly direct
“ and require that the beneficiaries of this Will shall not disturb
“ by their demands or actions the carrying on of the said Sir
“ Mortimer Davis, Inc., in any manner which, in the opinion of
“ the directors of such Company, may be prejudicial to its
“ interests.”

40 Q.—What were the important undertakings referred to in the
second paragraph of that article 15 of Sir Mortimer's Will?

A.—Well, the principal ones were the Canadian Industrial Com-
pany and its subsidiaries, including the McNish Company.

Q.—Were there any others?

A.—Those were the principal. Some other mining interests.

Q.—Mining interests in the West?

A.—Yes.

ALEX. M. REAPER (for Plaintiffs), Cross-Examination.

Q.—Where were the mining interests?

A.—There were some things that needed to be cleaned up.

Q.—They were in process of development, evidently?

A.—Yes.

Q.—Did Sir Mortimer Davis, at the date of his Will, control any Asbestos Companies?

10 A.—No. Well, only the Consolidated Asbestos, but it was being closed up by—

Q.—He controlled Consolidated Asbestos, which had sold out to the Asbestos Corporation?

A.—Yes. It was simply being cleaned up.

Q.—You were questioned in your examination-in-chief in regard to dividends received by the Incorporated Company from Canadian Industrial Alcohol Ltd., and I think you gave certain figures, but I do not recall just what time these figures cover. Have you any record showing from the organization of the Company what amount Sir Mortimer Inc. received in dividends from Canadian Industrial
20 Alcohol?

A.—Yes

Q.—From the Company records, when did it get its first dividend from Canadian Industrial Alcohol, and what amount? This is taken from the records of Sir Mortimer Davis Inc.?

A.—Yes.

Q.—From the records of Sir Mortimer Davis Inc., and its first dividend received from Canadian Industrial Alcohol?

30 A.—During the year ending September 30th, 1920, a dividend received to the amount of \$40,225.00.

Q.—What was received for the financial year ending September 30th, 1921?

A.—There was nothing in that period.

Q.—What was received for the financial year ending September 30th, 1922? How much was received?

A.—Nothing.

Q.—During the years 1920, 1921 and 1922, who was the President of Canadian Industrial Alcohol?

A.—Mr. Douglas was.

40 Q.—Mr. Douglas was?

A.—I don't think he was the whole period.

Q.—Was Sir Mortimer ever President himself? Never mind. You don't know. Alright. We will find that out in the corporate records. During those years 1920, 1921 and 1922, was Sir Mortimer living mostly in Canada or mostly abroad?

A.—He was much more here in those years.

Q.—For the corporate year ending September, 1923, what

ALEX. M. REAPER (for Plaintiffs), Cross-Examination.

amount was received in Alcohol dividends by the Incorporated Company?

A.—\$224,400.75.

Q.—That would make the group, the last three years, forming the first years? What was received in the three-year periods ending September 30th, 1921, 1922 and 1923?

A.—For the three-year period, \$224,440.75.

10 Q.—For the year ending September 30th, 1924, what was received in dividends?

A.—\$609,960.23.

Q.—First of all, who was the President of Alcohol at that time?

A.—Mr. Douglas was, up to 1924.

Q.—For the year ending September 30th, 1925, what dividends were received?

A.—\$624,987.55.

Q.—Who was President of Alcohol then?

20 A.—Mr. Waddell.

Q.—For the year ending September 30th, 1926, what dividends were received?

A.—\$615,777.60.

Q.—Who was then the President of Alcohol?

A.—Lord Shaughnessy.

Q.—For that group of three years, during which Mr. Douglas, Mr. Waddell and Lord Shaughnessy were each in office for a year, how much was received in those three years?

A.—\$1,850,725.38.

30 Q.—In Alcohol dividends?

A.—In Alcohol dividends.

Q.—For the year ending September 30th, 1927, what amount was received in Alcohol dividends by Sir Mortimer Davis Inc.?

A.—There was received in cash a dividend of \$636,523.20 and in a stock dividend, taken at \$5.00 per share, which was the price arranged with the Income Tax, and was an amount of \$454,039.00, making a total of \$1,090,562.20.

Q.—I notice that the stock dividend is taken in at \$5.00 a share.

A.—Yes.

40 Q.—What was the market quotation for the stock at that time? The page from Houston's Manual, which you filed as P-57, I observe stops in 1926. I will ask you to file under the same Exhibit, D-57, A, the page from Houston's Manual, page 333, 1929, which will bring the history of those shares down to date.

A.—I do.

Q.—These shares that were valued for the purpose of your cal-

ALEX. M. REAPER (for Plaintiffs), Cross-Examination.

ulation at \$5.00 a share were still—do you remember, first of all, when was that dividend declared?

A.—Payable in January.

Q.—Paid in January, 1927?

A.—Paid in January, 1927.

10 Mr. Holden, K.C.: In 57-A, in the footnote, I think there is something to show that.

Mr. Campbell, K.C.: This won't show it because that stops in 1926. Let me see the financial statement ending September 30th, 1927. Can we fix the date of the stock dividend?

Mr. McKeown, K.C.: I think it is in Houston's.

20 Mr. Campbell, K.C.: It might be on that page. I only put in the page with the record on it. Should we put in the whole thing together?

Mr. McKeown, K.C.: Put the whole book in and you will be O.K.

The Witness: 20 per cent stock bonus paid January 15th, 1927. It appears from Houston's Manual at page 332 that a stock bonus of 20 per cent was paid on January 15th, 1927.

30 By Mr. Campbell, K.C.:

Q.—Will you file as D-57-B the other page of Houston's Manual for 1929, giving this information?

A.—I do.

Q.—Will you verify from the copy of Houston's before you, from which I have torn these pages, that these pages, 332-333, are both taken from the 1929 edition of Houston's Manual?

A.—Yes.

Q.—That is D-57-A and D-57-B?

40 A.—Yes.

Q.—Coming back to the stock dividends, will you look at Exhibit D-57-A, and tell us what the market quotation was for the month of January, 1927, when this stock dividend of 20 per cent was paid. Give each, the high and low, for the month of January, 1927.

A.—The high in January is $24\frac{1}{4}$ and the low $21\frac{1}{4}$.

Q.—And that stock that was quoted at those prices during that month, you have taken into your calculations on the basis of how

ALEX. M. REAPER (for Plaintiffs), Cross-Examination.

much per share? I mean your calculations as to the dividend received?

A.—\$5.00.

Q.—You take as an average price between the high of 24—forget fractions—take from the high, 24, and the low, 21, that would be an average of $22\frac{1}{4}$. For easy figuring, say 20. For easy figuring, take an average price for the month of January of 20; that would be
10 a difference of how much in the amount of your dividends received? I mean dividends received that year, if you take credit for some of the stock at the current market value. They take it into revenue at 1927?

A.—That would increase the amount by \$1,362,117.00.

Q.—In the figures you have given, you have not taken credit for the \$1,362,117.00?

A.—No.

Q.—That was the year September 30th, 1927?

20 A.—Yes.

Q.—Who was the President of Alcohol for the year ending September 30th, 1927?

A.—Lord Shaughnessy.

By the Court:

Q.—He has been President ever since?

A.—Yes.

30 By Mr. Campbell, K.C.:

Q.—He has been President ever since?

A.—Yes.

Q.—And is still President?

A.—Yes.

Q.—What amount was received from Alcohol in the financial year ending September 30th, 1928, in Alcohol dividends? Give the division?

40 A.—On the Common or A stock, we received \$723,278.44; B, \$44,802.00, making a total of \$768,080.44.

Q.—So that there might be no confusion on the subject, until the stock dividend was declared in January, 1927, how did the number of shares of Alcohol carried by the Incorporated Company compare? Was it relatively about the same quantity, or were there substantial variations?

A.—During what period?

Q.—From the beginning of your figures until 1927? I don't

ALEX. M. REAPER (for Plaintiffs), Cross-Examination.

want the exact number of shares held, but how did the shares compare? Were they relatively the same or were there wide variations?

A.—There would not be wide variations. They would be slightly less.

Q.—As time progressed?

A.—Yes.

Q.—When was the B stock taken up?

10 A.—March 1st, 1928.

Q.—From that time on we would have to take into our calculations the addition of B stock that was purchased and the dividends on that would have to be taken into account?

A.—Yes.

Q.—At what price was the B stock purchased?

A.—\$20.00 per share.

Q.—Was Sir Mortimer Davis consulted about the purchase?

A.—It was taken up with him.

20 Q.—Is the B stock you purchased at 20 the stock that he thought was not dear at $37\frac{1}{2}$, in the letter D-63?

A.—Yes, that is the same stock.

Q.—What did Sir Mortimer Davis, Inc. receive in Alcohol dividends in the financial year ending September 30th, 1929?

A.—From A stock, \$875,793.46; from B, \$99,200.80, making a total of \$974,994.26.

Q.—Was there anything special in that year? Because I notice the figures are apparently larger than normal?

A.—Yes, there was an extra dividend declared that year.

30 Q.—When?

A.—Payable in January, 1929.

Q.—Charged against which calendar year? It would be in that financial year?

A.—25 cents per share.

Q.—That was a bonus; an extra dividend bonus?

A.—Yes, extra dividend.

Q.—What was the normal rate of dividend during the last three years? Was it always the same?

40 A.—In 1927 the dividend was 32 cents per share quarterly; \$1.28 per year, and the stock bonus of 20 per cent in 1928.

Q.—In 1928 the dividend rate remained the same?

A.—Yes.

Q.—Some rights were given?

A.—In connection with it.

Q.—As to the rate of 1928, what is that rate?

A.—In 1928 the dividend rate was increased to 38 cents, or \$1.52 per year. There were some rights given on B stock.

ALEX. M. REAPER (for Plaintiffs), Cross-Examination.

Q.—That would be the rights in connection with the issue of the B stock?

A.—Yes.

Q.—In 1929?

A.—The regular dividend, \$1.52 per year, was maintained and an extra 25 cents given.

10 Q.—Grouping the last three years as one of the three-year periods, what was the total received by the Incorporated Company during the three-year period in dividends by the Incorporated Company from Industrial Alcohol dividends, taking in the stock at \$5.00 a share?

A.—\$2,833,636.90.

Q.—When do you say Lord Shaughnessy became President of Alcohol?

A.—I think in the end of 1925; about December, I think.

Q.—He was in office for a year ending?

20 A.—There would probably be one dividend paid for the year 1927.

Q.—We cannot very well divide the financial year, because he was in office part of the time and part of the time he was not?

A.—Mr. Waddell remained substantially until the end of 1925. The Alcohol year ended September 30th, but their annual meeting had not taken place until September, and he remained in office until that time. There would be one dividend paid before he took office.

Q.—In the year 1926 there would be a dividend declared during Mr. Waddell's tenure of office as President?

30 A.—Yes.

Q.—What did that dividend amount to at the rate then prevailing?

A.—Take roughly, one-quarter of this——

Q.—For easy figuring, take one-quarter. There were four quarterly dividends the next year?

A.—Yes.

Q.—Take one-quarter of the total as shown for the year, \$615,777.60. What would one-quarter of that be?

A.—\$154,000.00.

40 Q.—Subtract that from the total for the year?

A.—That would leave \$461,000.00.

Q.—So that approximately, for that financial year \$154,000.00 were received by the Incorporated Company during Mr. Waddell's tenure of office as President of the Alcohol Company; \$461,000.00 odd during Lord Shaughnessy's tenure as President of the Company?

A.—Yes.

Q.—I am speaking about the amounts received? Take the figure

ALEX. M. REAPER (for Plaintiffs), Cross-Examination.

\$461,000 even and add that to the total of \$2,833,636.90 and give me the total. What does it come to?

A.—\$3,294,636.90.

Q.—And that, I understand, would represent the amount received by Sir Mortimer Davis Incorporated in dividends on their Alcohol stock during the time that Lord Shaughnessy was President of Alcohol?

10 A.—That is up to September 30th, 1929.

Q.—Three and three-quarter years?

A.—Yes.

Q.—That is, taking in this stock dividend at \$5.00 a share as against an average market value at the time it was issued of approximately 20. Now will you add, for purposes of rough comparison, these 15 points, the difference between the book value and the market value you gave at \$1,362,117.00. Just add that to your other total and give me the result.

20 A.—That would make \$4,656,753.00.

Q.—Taking the stock dividend at current market value for purposes of calculation only, am I right that these figures show while Lord Shaughnessy was President of Alcohol the Incorporated Company received in cash or stock taken at market value \$4,656,753.90?

A.—Yes.

Q.—Will you calculate from the evidence or figures before you how much the Incorporated Company had received before Lord Shaughnessy became President of Alcohol. How much would that give?

30 A.—\$1,654,351.00.

Q.—\$1,654,351.00 during what period?

Mr. Geoffrion, K.C.: From the incorporation?

By Mr. Campbell, K.C.:

Q.—That would be how many years of time?

A.—6 $\frac{1}{4}$.

Q.—That would be 6 $\frac{1}{4}$ years?

40 A.—Yes.

Q.—So that during the 6 $\frac{1}{4}$ years before Lord Shaughnessy became President, the Incorporated Company received in dividends \$1,654,351.00, and in the 3 $\frac{3}{4}$ years since he became President, they received in dividends or stock taken out at the quoted market value, how much?

A.—\$4,656,753.00.

Q.—Thank you. The position, as I understand it, is this: we

ALEX. M. REAPER (*for Plaintiffs*), *Cross-Examination.*

are not giving Lord Shaughnessy credit for all that has been paid. This statement stops.

Mr. McKeown, K.C.: Don't think of Sir Mortimer Davis as President all that time. Don't take into consideration Sir Mortimer Davis was President of the Company.

10 Mr. Campbell, K.C.: During this whole period of time was Sir Mortimer Davis President? From the period when Lord Shaughnessy became President of Alcohol in January, 1926, until Sir Mortimer died in March, 1928, Sir Mortimer of course was President of the Incorporated Company.

By Mr. Campbell, K.C.:

Q.—And during that period of time where was he residing?

A.—In France.

20 Q.—During that period of time how many visits per annum did he pay to Canada?

A.—Usually one visit. I think one year he came twice.

Q.—Now I suggested we were forgetting something. These figures, ending on 30th September, 1929—have any dividends been received by the Incorporated Company from Alcohol between that date and the institution of the proceedings in this case, on January 18th, 1930?

A.—Yes.

30 Q.—How much?

A.—There was a dividend paid on October 15th and one on January 15th.

Q.—That would be two dividends? How much?

A.—They would be approximately \$210,000.00 each; about \$420,000.00.

Q.—So that we really ought to add together \$420,000 to the total of \$4,656,753.90. Will you add that?

A.—Yes.

Q.—Giving a total of what?

40 A.—\$5,076,753.00.

Q.—For the purposes of comparison, during the 6¼ years before Lord Shaughnessy became President of Alcohol, Sir Mortimer Incorporated received in cash dividend or equivalent \$1,654,351.00?

A.—Yes.

Q.—And during 4¼ years since he became President the Incorporated Company received in dividends or stock taken at its quoted market value, how much?

ALEX. M. REAPER (for Plaintiffs), Cross-Examination.

A.—\$5,756,053.00.

Q.—Now we will try something else?

Mr. Geoffrion, K.C.: Something more relevant.

Mr. McKeown, K.C.: It is all mythical when you lose; it is wonderful when you get it in.

10 Q.—Now Mr. Reaper, will you come to the meeting of Directors. Coming to the meeting of Directors of Sir Mortimer Davis Incorporated, which was called for the 9th of December, 1929, and of which a copy was filed as Plaintiffs' Exhibit Number 20, you have told us in your examination-in-chief that this meeting was called as a result of complaints that were made to you by your Counsel, as a result of conversations with Mr. McKeown. You told us that in your examination-in-chief?

A.—Yes.

20 Mr. McKeown: That is not true. First of all the witness did not say so, and the next thing, he could not have said it.

Mr. Campbell: I do not say you suggested calling a meeting.

His Lordship: Ask the witness simply how the Directors of the Company decided, or came to the conclusion that the meeting should be called.

30 Mr. McKeown: We never discussed that with Mr. Campbell, or anybody else. We did not even know what it meant.

Mr. Campbell: I want to make it quite clear, Mr. McKeown, that you did not suggest calling a meeting, but it was called as a result of the complaints you made about amounts advanced by the Incorporated Company. I am not suggesting you were responsible for the calling of the meeting.

By Mr. Campbell:

40

Q.—Under what circumstances did you come to send a notice sent out, as Secretary-Treasurer of the Directors' meeting called for December 9th, 1929, Plaintiffs' Exhibit Number 20?

A.—Mr. McKeown, as I understand it, had

Mr. McKeown: As you understood it?

ALEX. M. REAPER (for Plaintiffs), Cross-Examination.

Mr. Campbell: Never mind Mr. McKeown.

His Lordship: You mean, the facts are different to what he thought they were.

Mr. Campbell: I want to make it quite clear that Mr. McKeown did not suggest the calling of the meeting. I say that quite frankly.
10 Mr. McKeown made certain objections to the amounts advanced by the Incorporated Company to the Executors.

Witness: I would say that our Counsel advised us that Mr. McKeown had taken exception to the advances made by the Estate to the Incorporated Company.

By Mr. Campbell:

20 Q.—By way of loans?

A.—By way of loans.

Q.—And it was to meet that situation that this meeting was called?

A.—Yes.

Q.—I see in the first paragraph of this notice, Exhibit Number 20, that it was called for the 9th of December, 1929:—

30 “For the purpose of considering the Company’s financial affairs, and the advisability of declaring a dividend of twenty-one per cent to the Shareholders of record on September 30th last.”

What was that twenty-one per cent referred to in that meeting designed to cover?

A.—That was designed to cover the advances which had been made by the Incorporated Company to the Estate.

Q.—Up to what date?

A.—Up to September 30th, part of which had been used for revenue purposes, and part for capital disbursements.

40 Q.—And, under the idea conveyed by that original notice, how was this dividend of twenty-one per cent to be attributed?

A.—Part of it was to be declared, and had to taken from revenue from the date of the death of Sir Mortimer, and part from revenue which had accrued before that.

Q.—Roughly, in what proportions?

Mr. Geoffrion: There is nothing in the notice about that.

ALEX. M. REAPER (*for Plaintiffs*), *Cross-Examination.*

Mr. Campbell: I am asking him how it was to be charged. You did not come to the meeting; if you had come to the meeting we would have told you.

Mr. McKeown: You did not hold any meeting.

10 Mr. Geoffrion: It was decided, and cut and dried before the meeting apparently.

Mr. McKeown: Let us get this clear, it was understood before the hour for the meeting came, that there was to be no meeting.

Mr. Campbell: I agree that the meeting was adjourned by common consent.

By Mr. Campbell:

20 Q.—Can you give us that distribution of figures, approximately, in percentage?

A.—It would take ten to twelve per cent from revenue earned since Sir Mortimer's death, and the balance from revenue prior to that which would be treated as capital for the Estate.

Mr. Geoffrion: Do you suggest that revenue earned by the Alcohol Company before Sir Mortimer's death, but not declared, was capital for the Estate?

30 Mr. Campbell: Capital *co-ad* the Executors.

By Mr. Campbell:

Q.—Were you advised as to how you should treat all surplus revenues of the Incorporated Company accrued previous to the death of Sir Mortimer?

A.—Yes. We had been advised that they should be treated when disbursed as capital for the Estate.

40 By Mr. Geoffrion:

Q.—From whom did you get that advice?

A.—We had it, I think, from both Counsel and Auditors.

Q.—Who are the Auditors?

A.—Price, Waterhouse & Company.

ALEX. M. REAPER (for Plaintiffs), Cross-Examination.

By Mr. Campbell:

Q.—At any rate, this was the idea that a certain proportion of this twenty-one per cent dividend was to be attributed against the earnings previous to Sir Mortimer's death, and the balance against earnings since his death?

A.—Yes.

10 Q.—And how were those calculations made? What were they intended to meet?

A.—That was to meet the advances which had been made by the Incorporated Company to the Estate.

Q.—So that the advances were made by the Incorporated Company to the Estate and used by the Executors on capital account?

20 Mr. McKeown: He did not say so. You asked him that and he did not catch the point at all. He did not give you the answer, and now you are putting words into his mouth.

(Question withdrawn).

By Mr. Campbell:

Q.—What was to be done with that portion of this dividend which you state you were proposing to attribute against earnings earned previous to the death of Sir Mortimer?

30 Mr. McKeown: Is that any kind of evidence at all, what a man intends to do with things that he never did.

Mr. Campbell: I am entitled to cross examine upon them.

Mr. McKeown: The dividend was never declared. They had the intention of declaring a dividend, and the intention to do something when that dividend was declared, which was never done. How can we ever check up the mental process in the mind of the witness.

40 His Lordship: There are roads that are paved with good intentions. I will allow the question.

A.—It was intended to apply that to pay off the amount of the advances by the Incorporated Company to the Estate which had been applied for capital purposes.

ALEX. M. REAPER (for Plaintiffs), Cross-Examination.

By Mr. Campbell:

Q.—By whom?

A.—By the Estate.

Q.—By the Executors?

A.—Yes.

10 Q.—Can you give us that approximate figure? Have you got it in your mind?

A.—I think the capital amount as at September 30th, would be about \$477,000.

Q.—Expended by the Executors to that date on capital account?

A.—Yes.

Q.—Are you right on that figure?

Mr. McKeown: That is about right.

20 Mr. Geoffrion: It is about that.

By Mr. Campbell:

Q.—And where was the remainder of that dividend to come from to be distributed, if it had not been declared?

Mr. McKeown: To come from? To go to?

By Mr. Campbell:

30 Q.—Where was it to be attributed?

A.—That was to take care of the deficit of revenue account.

Q.—Amounting roughly to how much?

A.—I think at that time to about \$443,000.

Q.—And what was it to be charged against?

A.—The revenue at the time of Sir Mortimer's death until September 30th.

40 Q.—I want to make that clear. Will you look at the amended notice of that same meeting that was sent out, and which is filed as Exhibit Number 21, where it was called for the same day and hour. "For the purpose of considering the Company's financial affairs and the advisability of declaring a dividend at such rate as the Directors may determine to the Shareholders of record on September 30th last." No rate of dividend is specified in that amended notice?

A.—No.

Q.—The amended notice goes on to state:—

ALEX. M. REAPER (for Plaintiffs), Cross-Examination.

10 “ Notice is also given that the Directors will be asked to consider the propriety of reducing the capital of the Company to such extent as may be necessary, to enable the Executors of the Estate of the late Sir Mortimer B. Davis to repay to the Company all amounts advanced by the Company, and expended by the Executors on account of capital indebtedness of the said Estate, and to provide for certain future requirements of the Executors on capital account.”

You told us in your examination-in-chief that you considered a reduction of how much?

A.—Well, we had thought of suggesting twenty-five per cent.

Q.—Was any definite percentage ever finally agreed upon?

A.—No. That was left to be discussed and decided at the meeting.

20 Q.—As to this amount of capital reduction, how was it to be applied if it had been put through?

A.—That would have been applied by the Estate towards the payment of the capital disbursements, which would have paid off the balance which they had used of the advances for capital, and would have provided a certain amount over to take care of certain other requirements.

Q.—In the future?

A.—In the future.

30 Q.—The amounts then owing on capital account were roughly, how much? I mean by capital account, amounts expended by the Executors up to that time for items chargeable against capital of the Estate?

A.—That would have been about \$477,000.

Q.—And the balance of any capital reduction was proposed to be rendered available for the purposes indicated in the notice, for certain future requirements of the Executors on capital account?

A.—Yes.

Q.—Have you the Minute book of the Incorporated Company?

A.—Yes.

Q.—Was that meeting ever held?

40 A.—No.

Q.—Will you turn up the Minute book. Will you turn up the Incorporated Company's Minute of the meeting of December 9th; that appears on page 208. Was notice of that meeting sent to Lady Davis?

A.—Yes.

Q.—In writing?

A.—Yes.

ALEX. M. REAPER (for Plaintiffs), Cross-Examination.

Q.—In the form filed as Exhibit 20, and then, the amended notice in the form filed as Exhibit 21?

A.—Yes.

Q.—And did Lady Davis appear at that meeting on that date?

10 Mr. McKeown: I respectfully submit that first of all this evidence is not available to the Defendants in view of the conditions which existed up to that time, Lady Davis was not called upon to take any responsibility in the situation which had come about under conditions where she had been ignored. The next thing, it is in proof that in this case the meeting was not held by arrangement, which is common ground, and the meeting was adjourned and finally adjourned *sine die* without the meeting being held.

20 Mr. Campbell: You have examined the Minute book. I only propose to offer that statement. I am quite ready to make the statement that it was postponed from time to time by arrangement between Counsel.

Mr. McKeown: And then postponed *sine die*?

Mr. Campbell: And that meeting was never held.

Mr. Geoffrion: We came to the stage where we could not settle the difficulties. We cannot go into negotiations.

30 Mr. Campbell: I am not proposing to do so.

By Mr. Campbell:

Q.—First of all, the meeting was convened on this 9th day of December?

A.—Yes.

Q.—Who were present?

A.—Lord Shaughnessy and myself.

40 Q.—Then, the notice calling the meeting was read?

A.—Yes.

Q.—And on motion the meeting was adjourned?

A.—Yes.

Q.—Until when?

A.—Until Thursday, the 12th of December.

Q.—What happened on Thursday the 12th of December?

A.—It was again adjourned until the 16th.

ALEX. M. REAPER (for Plaintiffs), Cross-Examination.

Q.—Was notice of the adjournment given to Lady Davis?

A.—Yes.

Q.—What happened on the 16th? There was a formal financial matter put through?

A.—Yes.

By Mr. Geoffrion:

10

Q.—There was a meeting on the 16th?

A.—Yes.

Mr. Geoffrion: And something was done.

Mr. Campbell: To vote the shares.

Mr. Geoffrion: Something else was done formally, but nothing as a result of this.

20

By Mr. Campbell:

Q.—The Minutes of the meeting of December 16th, page 210, simply formally approved of a power of attorney to vote the shares of the Incorporated Company at the annual meeting of the Alcohol Company which was due to be held the next day?

A.—Yes.

Q.—And all other matters were adjourned?

30

A.—Yes.

By Mr. Geoffrion:

Q.—And only two were present?

A.—Yes.

By Mr. Campbell:

Q.—At this same meeting, there was a resolution put through about the sale of a particular piece of real estate to Philip Segal?

40

A.—Yes.

Q.—And an authorization to you by Lord Shaughnessy to sign the Deed?

A.—Yes.

By Mr. Geoffrion:

ALEX. M. REAPER (for Plaintiffs), Cross-Examination.

By Mr. Geoffrion:

Q.—And the meeting then adjourned?

A.—Yes.

By Mr. Campbell:

10 Q.—When was the meeting adjourned to?

A.—December 23rd.

Q.—The only two present at that meeting were Lord Shaughnessy and Mr. Reaper?

A.—Yes.

Q.—Who else was a member of the Board at that time?

A.—Lady Davis.

Q.—Then, what happened at the meeting of December 23rd?

A.—There was another adjournment until December 30th.

Q.—Was notice of that adjournment given to Lady Davis?

20 A.—Yes, notice was sent for that meeting.

By Mr. McKeown:

Q.—For the meeting of December 23rd?

A.—Yes.

By Mr. Campbell:

Q.—And that meeting was adjourned until when?

A.—Until December 30th.

30 Q.—December 30th, 1929?

A.—Yes.

Q.—And at that meeting, you and Lord Shaughnessy again alone were present?

A.—Yes.

Q.—And the meeting was adjourned until January 6th?

A.—Yes.

Q.—Was there a notice of that meeting sent to Lady Davis?

A.—No, I think not.

40 By Mr. McKeown:

Q.—No notice for January 6th?

A.—No.

By Mr. Campbell:

Q.—At all these meetings only you and Lord Shaughnessy were present. Lady Davis did not appear at any of these meetings?

ALEX. M. REAPER (*for Plaintiffs*), *Cross-Examination.*

A.—No.

Q.—And the meeting of January 6th was never held?

A.—No.

Q.—Did Lady Davis communicate with you in time for any of those meetings, any expression of her views on the matter covered by the notice?

10 Mr. Geoffrion: Is it your desire, Mr. Campbell, to go into a discussion about that meeting?

Mr. Campbell: No.

Mr. Geoffrion: Don't create a false impression before the Court. You have been told the attitude of Lady Davis in regard to that meeting.

20 Mr. Campbell: And we stated that she refused to take any sides.

Mr. Geoffrion: Lady Davis told you in her deposition, she was unable to help you. We were in the midst of negotiations and at arms length between the lawyers conducting affairs then. That was the situation.

And it now being 12.40 P.M. the further cross examination of the witness was adjourned until 2.30 P.M.

30

AFTERNOON SESSION 2.30 P.M.

By Mr. Campbell:

Q.—Mr. Reaper, before we leave the question of the meetings that were called for December, and were continued and ultimately were not held, will you tell me whether you and your Co-Executor, Lord Shaughnessy, ever reached a final conclusion as to what your
40 future dividend policy in the Incorporated Company was to be, and if so, when you reached it? Was there any final decision ever reached as to what your dividend policy was to be?

A.—No, nothing definite.

Q.—Were you at all times open to consider suggestions from your Co-Directors?

A.—Yes.

ALEX. M. REAPER (*for Plaintiffs*), *Cross-Examination.*

Q.—So far, have you received any suggestions as to what your future dividend policy should be from Lady Davis?

A.—No.

His Lordship: You may get some before this case is closed.

10 By Mr. Campbell:

Q.—Will you look at the comparative statement D-51 for the ten year period prepared by Price, Waterhouse & Company, I want to clear up some of the details that were dealt with in your examination-in-chief. I want you to look at some of these items. This is the ten year comparative statement covering the ten years beginning September 30th, 1919, and ending September 30th, 1929?

A.—Yes. There might be a month or two over on the first year.

20 Q.—Will you look at the item of Directors' fees shown there and tell us how much is shown for the first five years ending September 30th, 1924?

A.—\$36,916.51.

Q.—And for the last five years how much?

A.—\$7,761.64.

Q.—In view of those figures, would it be possible to have comprised within them the salary of the President of Alcohol?

A.—No.

Q.—The salary of the President of Alcohol could not possibly be comprised in the figures of those dimensions?

30 A.—It was greater than either of those amounts tiself.

Q.—Each year?

A.—Yes.

Mr. McKeown: I object to this. This is a compilation prepared by Price, Waterhouse & Company. Why don't you put Price, Waterhouse & Company in the box?

40 Mr. Campbell: We will. Don't be alarmed, we are going to put a lot of people in before we are through.

Mr. McKeown: I object to this question as the document speaks for itself. It does not arise out of the examination-in-chief. Prove it by the books, produce the books.

Objection reserved.

By Mr. Campbell:

ALEX. M. REAPER (for Plaintiffs), Cross-Examination.

Q.—Was Mr. Waddell the President of Alcohol at any time previous to the 30th of September, 1924?

A.—No. I think he became President of Alcohol at the annual meeting after that date.

Q.—So that any salary as President of Alcohol that he or Lord Shaughnessy received, would be in the period ending September 30th, 1929?

10 A.—Yes.

Q.—Where the total is shown?

A.—\$7,761.64.

Q.—Looking at the same sheet, what amount appears in the first five year period under the heading of “Donations”?

A.—\$127,553.33.

Q.—And for the second five years under the same heading, how much?

A.—\$74,980.00.

20 Q.—In connection with this matter of Donations (I am excluding for the purpose of my question the Young Men’s Hebrew Association enterprise) how have the amounts expended by the Incorporated Company since the death of Sir Mortimer compared with the amounts spent by the same Company for the same purposes before his death?

Mr. McKeown: : Surely there ought to be a limit to that kind of evidence. What Sir Mortimer cared to do with what he owned, and what the Executors chose to do when they own anything, surely
30 bears not the slightest analogy one to the other.

Mr. Campbell: These are disbursements made by the Incorporated Company, and we are charged with making improper donations, and we say that any donations we made, were in accordance with previous practice, and my submission is that as the witness was examined-in-chief as to these donations, I am entitled to ask him in cross examination.

His Lordship: You have the figures.

40 Mr. Campbell: It is for the purpose of comparison. This is the five year period

His Lordship: The first five years there were \$127,000, and in the second period of five years there is less than \$75,000?

Mr. Campbell: I am asking whether the Incorporated Com-

ALEX. M. REAPER (for Plaintiffs), Cross-Examination.

pany increased the donations after Sir Mortimer's death or diminished them, as to whether there was any change in policy. I think my question was, how did they compare? Does Your Lordship permit the question?

His Lordship: You wish to know how much of the \$75,000 odd dollars was spent during the lifetime of Sir Mortimer and how
10 much after?

Mr. Campbell: Yes.

Witness: I have not got that here.

His Lordship: We can wait until tomorrow for the answer if it is very important.

20 By Mr. Campbell:

Q.—Is there a statement that shows it?

A.—Yes.

Q.—Well then, if you are satisfied that a statement has been put in, we will find it?

Q.—At the year ending September 30th, 1928, the donations were \$11,940 for the whole year, and for the year ending September 30th, 1929, the donations were \$12,040.

30 Q.—While you have this financial statement before you, have you got the statement of Price, Waterhouse and Company for the year ending September 30th, 1928, P-51?

A.—September 30th, 1928, I have.

Q.—Will you turn to page 3 of that statement in regard to the dealings by the Incorporated Company in Alcohol shares. You were questioned in your examination-in-chief in regard to the results of those dealings. I notice that Price, Waterhouse and Company, in their report, divide the financial year into two halves, the first half of the year ending March 31st, 1928. In that half year how many A shares were purchased?

40 A.—7,015 shares.

Q.—And how many sold?

A.—5,478.

Q.—Making net purchases of?

A.—1,637.

Q.—On those transactions,, how did the Company do? Did it make a profit or a loss?

A.—They made a loss of \$23,388.80.

ALEX. M. REAPER (*for Plaintiffs*), *Cross-Examination.*

Q.—That is, for the half year ending March 31st, 1928?

A.—Yes.

Mr. McKeown: That is not loss. It is bookkeeping.

By Mr. Campbell:

10 Q.—That is shown on this statement in red figures, which I take it, indicates for bookkeeping purposes, a bookkeeping loss?

A.—Yes.

Q.—That was for the half year Sir Mortimer was alive, except the last few days of that month?

A.—Yes.

Q.—In the last half year ending September 30th of that year, how many shares of A did you buy?

A.—2,500 shares.

20 Q.—How many did you sell?

A.—260.

Q.—Making net sales of?

A.—2,240.

Q.—And in that half year did you make a profit or a loss?

A.—A profit of \$53,343.43.

Q.—Are the dealings in class B shown on that statement, Exhibit P-51, page 3—in which half of the financial year would that be?

A.—In the last half.

30 Q.—As a matter of fact, the B shares were only issued in March, 1928?

A.—March 1st, 1928.

Q.—So that these dealings in B would be all in the last half of the financial year after Sir Mortimer's death?

A.—Yes.

Q.—What was the result of your trading in B shares?

A.—There was a profit of \$149,619.29.

40 Q.—You were questioned in your examination-in-chief about certain Directors' meetings held during 1929 while Lady Davis was in Canada at which meetings you were not sure she had been sent a notice?

Mr. Montgomery: He said absolutely she had not.

By Mr. Campbell:

Q.—As far as you know, are you aware that Lady Davis was notified of those meetings or was not? What is your recollection?

ALEX. M. REAPER (for Plaintiffs), Cross-Examination.

A.—I do not think she was.

Q.—What is the date of the first of those meetings?

A.—Meeting of June 13th, 1929.

Q.—Will you produce a copy of the Minutes of that meeting as Exhibit D-64?

A.—Yes.

10 Q.—Look at the Minutes of that meeting, D-64, and tell us in a word what was done at that meeting?

A.—There was a resolution to accept payment for a piece of property which previously had been sold, and to grant a discharge.

Q.—Nothing else?

A.—That is all.

Q.—What was the next Directors' meeting to which Lady Davis was not invited?

A.—June 27th, 1929.

20 Q.—Will you file as Exhibit D-65 a copy of the Minutes of that meeting?

A.—I do.

Q.—What has that meeting reference to?

A.—That was to pass a resolution regarding conveying the Y.M.H.A. building to the Young Men's Hebrew Association.

Q.—Was that draft of Deed submitted to Lady Davis?

A.—It has been, yes.

Q.—I understand you told us in your examination-in-chief it had not yet been executed?

A.—It has not been executed.

30 Q.—There was a third meeting on August 4th, 1929?

A.—Yes.

Q.—Will you file as D-66 the Minutes of that meeting?

A.—I do.

Q.—Will you tell us what that had to do with? Did it have to do with a particular transaction and its general nature?

A.—Well, that was also in connection with a property transaction.

Q.—As shown in the Minutes filed?

A.—Yes.

40 Q.—Before I pass on to the next point, I find, although I filed a lot of them, there were one or two Succession Duty letters I missed, and in order that we may complete the record, I will ask you to put them in now. Have you your Succession Duty record here?

A.—Yes.

Q.—Have you the original of a letter written by Mr. E. W. H. Phillips to the Executors dated July 16th, 1928?

ALEX. M. REAPER (*for Plaintiffs*), *Cross-Examination.*

A.—Yes.

Q.—Have you got the original of that letter?

A.—Yes.

Q.—Will you file a copy as D-67?

A.—Yes, I do.

10 Q.—Have you got in your Succession Duty file a copy of your reply to Mr. Phillips, dated July 18th, 1928?

A.—Yes.

Q.—Will you file it as Exhibit D-68?

A.—Yes, I do.

Q.—Then, have you the original of the letter from Mr. Phillips, Notary, to yourself, in reference to insurance policies dated October 4th, 1928?

A.—Yes.

Q.—Will you exhibit the original and file a copy as D-69?

A.—Yes.

20 Q.—This letter enclosed copies of two communications, one from Mr. Senecal, addressed to Mr. Phillips, and the other a communication from the Department, apparently addressed to Mr. Senector, dated October 1st, that were enclosed in that letter. Will you file all those as Exhibit D-69?

A.—Yes.

Q.—Have you on your file the original of the letter from Mr. Begin, Comptroller of Provincial Revenue to Lord Shaughnessy, dated October 3rd, 1928?

A.—Yes, I have it.

30 Q.—Will you file a copy as Exhibit D-70?

A.—Yes, I do.

Q.—Have you got an original of a letter from Mr. Begin to Lord Shaughnessy, dated October 27th, 1928?

A.—Yes.

Q.—Will you exhibit the original and file a copy as D-71?

A.—Yes.

Q.—You have no personal knowledge of the extent of correspondence carried on by Mr. Phillips with the Department during this interval?

40 A.—No.

Q.—You were questioned in your examination-in-chief about the increases in salary voted to Lord Shaughnessy and yourself at the meeting of Directors which, I think, was immediately following the annual meeting of December 31st, 1928. Have you the Minute book there?

A.—Yes.

Q.—At that meeting it was resolved, in respect of Lord Shaugh-

ALEX. M. REAPER (for Plaintiffs), Cross-Examination.

nessy, that in place of paying an annual bonus to Lord Shaughnessy, that he be placed on a straight salary basis of \$25,000 per annum, payable monthly, commencing from January 1st, 1929, was it not?

A.—Yes.

10 Q.—Going back over the period of Lord Shaughnessy's engagement by Sir Mortimer Davis Incorporated since the beginning of his engagement in September, 1924, taking the compensation that accrued to him by way of salary, or in other ways, how did the amount of \$25,000 compare?

A.—It was practically the same, with the exception that one year the bonus had been \$10,000.

Q.—So that it was the same all other years, except one year he got \$5,000 more?

A.—Yes.

20 Q.—In regard to your compensation, at that meeting you were granted an increase in your own salary, and I will ask you to read into the record the paragraph from the original Minute of that meeting having reference to it?

A.—“The Chairman suggested that in view of the increased responsibilities and work incidental to the death of Sir Mortimer, the salary of Mr. A. M. Reaper be made \$10,000 per annum, to commence on January 1st, 1929.”

Q.—What had your previous salary been?

A.—\$7,500.

Q.—After the death of Sir Mortimer, was there any change in the positions in the Incorporated Company which you occupied?

30 A.—Yes. I became at that meeting Vice-President and Secretary-Treasurer.

Q.—When you were in receipt of the salary of \$7,500 per annum, had that been fixed during Sir Mortimer's lifetime?

A.—Yes.

Q.—What position did you then occupy?

A.—Secretary-Treasurer.

Q.—At the time that your salary was increased from \$7,500 to \$10,000, what additional office did you then assume?

A.—Vice-President.

40 Q.—Were there any Directors' fees allowed to Directors of the Company in respect of their services as Directors?

A.—No.

Q.—You were questioned in your evidence-in-chief in reference to an investment of the Incorporated Company known as Jennison and Company Limited, and I think you told us you did not know much personally about the details of that, but can you say this—

ALEX. M. REAPER (for Plaintiffs), Cross-Examination.

Mr. McKeown: No leading question.

By Mr. Campbell:

Q.—Can you now tell us, or is it now demonstrated, what the result of the investment of the Incorporated Company in the affairs of that Company is going to be? Is it yet established?

10 A.—I think it is too early to show yet.

Q.—During the lifetime of Sir Mortimer, was there any discussion about a possible development along financial lines that you recall?

Mr. McKeown: I object to that subject being gone into under the existing circumstances. Whatever Sir Mortimer may have thought during his lifetime, while he was alive and able to direct the matter, I submit cannot be invoked by these Executors as a precedent for what they did after his death and when they were adminis-
20 tering the Estate.

His Lordship: It may be a matter for argument. There is no doubt if Sir Mortimer had not laid out the main lines of this Jen- nison undertaking, I may be prepared to say the Directors were wrong in undertaking them, but it seems to me in Sir Mortimer's correspondence there is enough to justify them organizing some- thing that Sir Mortimer desired. Whether it was advisable or not is another matter.

30 Mr. McKeown: Those orders were given in Sir Mortimer's life- time, for his lifetime. They certainly could not be orders to be exe- cuted after death. They were only Executors of that Company. They did not own their own stock. Their acts were those of Executors. If they had put other people in the position of Directors of that Com- pany, and had remained only as Executors themselves, they would be bound by the acts of those people.

His Lordship: I have to decide whether the Executors acted in bad faith.

40 Mr. McKeown: There is no question of bad faith. The ques- tion of bad faith is only as to their civil liability. There would be no limit to what they could do. They could waste the Estate in good faith and ruin the whole proposition, remain in office, and be kept in office by the Court, because they had acted in good faith. I submit that that clause in the Will, when speaking of good faith, has no relation to their acts—

ALEX. M. REAPER (for Plaintiffs), Cross-Examination.

His Lordship: That is a matter of argument.

Mr. Campbell: I don't think it will be useful to engage in the arguing of that point at this particular juncture.

10 Mr. McKeown: You might as well tear up the Article of the Code if that was the proper construction to put on it, for an Executor to remain in office even if he ruins the Estate. It seems to be there would be no such thing as removing a man from office once you proved he had acted in good faith.

Mr. Campbell: It is not yet demonstrated that the Estate is ruined. If my learned friend keeps on proceeding along this line it may be.

20 Mr. Geoffrion: To say that you cannot sue, because a suit will ruin the Estate, that would be ridiculous.

Mr. Campbell: All I suggest is, that these proceedings are not likely to increase the prospects of the Estate or of the Alcohol Company Limited.

Mr. Geoffrion: It won't increase the value of the shares on the Stock Exchange. It won't change the value of the Estate itself one cent.

30 Mr. Campbell: If you don't care about the Stock Exchange price——

Mr. Geoffrion: It is to prove the mal-administration.

Mr. Campbell: But we are responsible if the Stock Exchange goes down, but if the Stock Exchange goes up someone else is entitled to the credit. That is my learned friend's argument.

40 Mr. Geoffrion: It is perfectly useless to argue. We say the Stock Exchange prices are corroborative of the mal-administration.

(The Court allows the question.)

By Mr. Campbell:

Q.—Now, Mr. Reaper, I will repeat the question: During the lifetime of Sir Mortimer, was there any discussion about a possible development along financial lines that you recall?

ALEX. M. REAPER (for Plaintiffs), Cross-Examination.

A.—Yes.

Q.—In the letter, copy of which is filed as D-58, will you read into the record the second to last paragraph of that letter which is quite short?

A.—“What are you doing re financial action for the Davis Finance Corporation? There are wonderful opportunities for a Company of that kind.”

10 Q.—That is a letter addressed by Sir Mortimer to Lord Shaughnessy under date of 3rd of January, 1928?

A.—Yes.

Q.—You were questioned in your examination-in-chief about the investment of the Company in the stock of Investment Foundation Limited, and you filed a financial statement of that Company. Have you got a certified copy of the list of Directors of Investment Foundation Limited, and if so, will you file it as Exhibit D-72?

A.—I do.

20 Q.—Will you look through that list of Directors and state whether, in your judgment, they are a list of representative men in the financial world?

A.—Yes, I think so.

Q.—Will you read into the record the names of these Directors for convenience?

A.—They are as follows:

30 K. S. Barnes, Montreal; L. J. Belnap, care Worthington Pump & Machinery Corporation, New York; A. K. Cameron, care Eastern Steel Products Limited, Montreal; W. M. Chadbourne, 165 Broadway, New York; F. B. Common, K.C., Royal Bank Building, Montreal; Hon. T. A. Crerar, Department Railways & Canals, Ottawa; H. C. Flood, Montreal; Severe Godin, Jr., care Societe de Placements du Canada, Montreal; Oliver Hall, care Mond Nickel Company Limited, Copper Cliff, Ontario; C. J. Jennison, care Jennison & Company, Limited, Montreal; L. A. Lovett, K.C., care McInnis, Lovett & Macdonald, Halifax, N.S.; Jas. MacMurray, care Eastern Securities Company, Limited, St. John, New Brunswick; H. E. Mahon, Halifax, Nova Scotia; W. H. Mara, care Mara & McCarthy, Toronto; L. M. McCarthy, care Mara & McCarthy, Toronto; J. E. C. Meffre, care Banque H. A. Basin, Paris, France; M. W. Pask, care
40 Pask & Walbridge, New York; T. G. Potter, Montreal; Ernest Rossiter, care St. Lawrence Paper Mills Co., Montreal; Rt. Hon. Lord Shaughnessy, K.C., Montreal; E. G. Tennyson-d'Eyncourt, care Cockburn Trust Company, Ltd., London, Eng.; N. A. Timmins, Montreal; A. S. Fraser, Montreal.

Q.—You filed in the course of your testimony a communication addressed by Mr. Flood, the President, to Lord Shaughnessy?

ALEX. M. REAPER (for Plaintiffs), Cross-Examination.

A.—Yes.

Q.—In regard to the financial statement of that company which was filed?

A.—Yes.

Q.—Have you in your records a copy of the circular letter addressed to the shareholders by Mr. Flood, the President, under date of December 19th, 1929, and if so, will you file it as Exhibit D-73?

10 A.—Yes.

Q.—According to this financial statement filed as P-77, what has that Investment Foundation Company invested in securities at cost?

Mr. McKeown: Does not this statement speak for itself? The statement is there. We know what the General Investment Trust Company did, they passed their dividend at the time because of the fall which has taken place in the market.

I submit that this statement speaks for itself. We have already had it in proof that this Company's surplus was wiped out, its reserve was wiped out and it had a deficit of some \$200,000 and they declared a dividend just the same. Whether that is good financing or whether it is good sound business or not, Your Lordship does not need to enquire into.

His Lordship: He is giving figures.

Mr. McKeown: The statement speaks for itself.

30 His Lordship: He will point out what part of the statement, and I must read the statement and that will help to form my opinion.

Mr. Campbell: Whether this Company is right or wrong in the declaration of dividend is not a matter for this Court. The purpose of my submission is that it was a reputable investment company that came through the crash a lot better off than a good many others.

40 Mr. Geoffrion: Would you like to discuss the matter?

Mr. Campbell: Yes, I would like to, to show that this is comparable with some of those who passed their dividend, and who came through the crash better.

(The Court allows the question.)

By Mr. Campbell:

ALEX. M. REAPER (for Plaintiffs), Cross-Examination.

Q.—According to this financial statement, P-77, as at November 30th, 1929, what had the Investment Foundation Company out on call?

A.—\$528,000.

Q.—And on time loans?

A.—\$200,000.

Q.—And in securities at cost, what had it invested?

10 A.—\$2,503,787.85.

Mr. Geoffrion: Is my learned friend going to extract certain things from this file, leaving others in? That would be misleading to the Court. The statement is in the record, and the Court can appreciate it in its entirety.

Mr. Campbell: If my learned friend had been here during the first six days of this trial he would appreciate the fact that I am just following in the footsteps of Mr. McKeown.

20

Mr. McKeown: Not in the slightest.

By Mr. Campbell (continuing):

Q.—What were the total assets as shown according to that statement?

A.—The total assets were shown at \$3,254,662.65.

Q.—What liabilities to the public were shown according to that statement, apart from the shareholders?

30 A.—There is nothing shown here to the public.

Q.—The only liabilities shown against the assets side are the liabilities for capital stock, reserve for dividend, and surplus account?

A.—That is all.

Q.—The third matter of investment you were questioned about was the investment of the Incorporated Company in the Cadillac Coal Company. What was the total amount of those investments?

40 His Lordship: About \$200,000.

Witness: About that. A little over \$200,000, including the guarantees.

By Mr. Campbell (continuing):

Q.—What is your present view of the future of that prospect: Cadillac Coal Company?

ALEX. M. REAPER (for Plaintiffs), Cross-Examination.

A.—We think the prospects are very good. We consider the prospects very good.

By the Court:

Q.—Upon what do you base yourselves?

A.—On the engineers' reports—the physical condition of the property.

10 Q.—How much had Sir Mortimer invested in the original company?

A.—Without going into it in detail, I think he probably was out about \$100,000 on that proposition.

By Mr. Campbell (continuing):

Q.—The property had been bought in for a nominal figure at sheriff's sale?

A.—Yes.

20 Q.—The figure of \$10,000, I think, which appeared in your books was the nominal figure at which it had been purchased at sheriff's sale?

A.—Yes.

His Lordship: All I wanted to know was how much he had lost

Witness: About that.

By Mr. Campbell:

30 Q.—Was there any change in the position of that Company between the conditions that existed in Sir Mortimer's lifetime and the conditions which now exist out there? Has there been any enlargement of the scope of the enterprise?

Mr. McKeown: I submit that is not relevant at all. Mr. Reaper's own estimation is that the money that has been spent has not been spent on the property, and that Sir Mortimer lost his money. He lost his money on the Federal Coal, but this money has been spent on the Donaldson property.

40

His Lordship: But, they were joined together.

Mr. McKeown: But the money was spent on the Donaldson property.

Mr. Campbell: We have hopes of pulling out of the previous loss.

ALEX. M. REAPER (for Plaintiffs), Cross-Examination.

By Mr. Campbell (continuing):

Q.—Was there any change in the position of the Company between the conditions that existed in Sir Mortimer's lifetime and the conditions that now exist out there? Has there been any enlargement of the scope of the enterprise?

10 A.—Yes, additional coal areas were secured and cleared, and new plant put up.

Q.—Who is in control of the enterprise as it now stands?

A.—Sir Mortimer Davis, Incorporated.

Q.—So that if you have not at the minute delivered all your bonds, the question of future delivery is, I take it, within the control of your own Directors?

Mr. McKeown: Subject to the rights of the creditors.

20 Mr. Campbell: Subject to the rights of the creditors, as my learned friend Mr. McKeown very properly observes.

Witness: Yes.

By the Court:

Q.—Do you expect the property will carry itself, or will you have to put some more money into it?

A.—It may take a little more to carry on over this season.

30 Q.—How much?

A.—It is difficult to say. Perhaps it might go up to \$50,000 during the summer.

By Mr. Campbell (continuing):

Q.—You were questioned about amounts spent on oil leases and that kind of thing. When was the investment in oil lands first undertaken? Was it during the lifetime of Sir Mortimer, or after his death?

40 A.—During the lifetime of Sir Mortimer.

Q.—I note in Sir Mortimer's letter to Lord Shaughnessy dated 14th February, 1928, Exhibit D-59, he says, under the heading "Oil" _____

Mr. McKeown (interrupting): I object to any evidence of instructions by Sir Mortimer Davis during his lifetime in connection with this particular subject of oil leases as being absolutely

ALEX. M. REAPER (for Plaintiffs), Cross-Examination.

irrelevant in connection with acts done by the Executors after Sir Mortimer's death. If putting the funds of the Estate into oil is to be justified, then there is no limit.

10 Mr. Campbell: I would like to call Your Lordship's attention to the directions contained in the Will in regard to carrying on Sir Mortimer's policies.

Mr. McKeown: The policy laid down in the Will was to pay his debts, and before paying the debts these Executors are in the oil business.

By Mr. Campbell (continuing):

20 Q.—On this particular point will you please read into the record the provisions of Article 23 of the Will which is filed as Plaintiffs' Exhibit No. 1?

Mr. McKeown: I object, on the ground that Article 23 is subservient to the other preceding Articles including the Articles under which these Executors were directed to pay the Testator's debts.

Mr. Campbell: And we will, when we know what we owe.

Witness: Article 23:

30 "I charge my said Trustees and Executors to take an active and energetic interest in the management of my Estate, and to carry on the policies I have laid down, and particularly to conserve the capital of my Estate and not to sacrifice the same by premature liquidation."

By Mr. Campbell (continuing):

40 Q.—Will you read into the record the Clause in reference to oil contained in Sir Mortimer's letter to Lord Shaughnessy dated February 14th, 1928, Exhibit D-59?

Mr. McKeown: I make the same objection.

Witness (reading):

"Oil—You cannot take up too much land. I notice the Imperial Company of Canada have Crown Lands to the extent of 140,000 acres. I do not know the cost of carrying this con-

ALEX. M. REAPER (for Plaintiffs), Cross-Examination.

cession, but I certainly would grab all I could, as I have a hunch that there will be a big oil development in Canada. We have practically all minerals that the United States have, except oil, and the reason why we have not got oil is that there has not been enough prospecting done as yet.”

10 Q.—What was the practice of the Incorporated Company in regard to its banking? Did it keep separate bank accounts for its capital and revenue account, or had you one general bank account?

A.—One general bank account.

Q.—So that the funds in the bank account would be derived from one source or another according as the books of the Company showed?

A.—Yes.

Q.—Since Sir Mortimer’s death has there been any recovery on capital account from any assets that have turned out rather unexpectedly good?

20 A.—There is this Mason Valley matter.

Q.—Will you please tell me the amount that was recovered from that source since Sir Mortimer’s death?

A.—About \$360,000.

Q.—You recovered \$360,000, and that would be, I take it, at the credit of capital account on the books of the Company?

Mr. McKeown: Do not give all the evidence, Mr. Campbell. Ask the witness where it is.

30 Witness: It was treated as capital.

Mr. McKeown: That is the very point, and Your Lordship sees it. The intimation is that the witness means yes, whereas I am sure he does not mean yes at all. There is no capital account to which it is credited.

This simply shows the danger of my learned friend Mr. Campbell putting leading questions which reflect upon the record facts which do not exist.

40 Witness: I think the statement of December 31st shows it has been added to capital account.

By Mr. Campbell (continuing):

Q.—To what account on the books of your Incorporated Company were your investments in Jennison & Company, Limited; In-

ALEX. M. REAPER (for Plaintiffs), Cross-Examination.

vestment Foundation, Limited; and Cadillac Coal Company put? To what account were the expenditures in these three ventures charged in your books?

A.—To investments.

Q.—On revenue, or on capital account?

A.—On capital. We had no investments on revenue.

Q.—How much did you spend on Jennison & Company? \$50,-
10 000 was it not?

A.—Yes.

Q.—And in Investment Foundation?

A.—\$142,500.

Q.—Was that the total amount?

A.—Yes.

Q.—And, on Cadillac Coal?

A.—We have really advanced \$114,000, and given guarantees for approximately \$100,000.

Q.—I mean, what has been your cash expenditure?
20

A.—\$114,000.

Q.—Then, of course, you have your contingent liability in Cadillac Coal?

A.—Yes.

Q.—How much do those three items total as far as your actual expenditure is concerned?

A.—\$306,500.

Q.—So that apart from your liability under your guarantee re Cadillac Coal, your \$360,000 recovery would more than cover your
30 investments in those three enterprises you have mentioned?

Mr. McKeown: I object to the question as illegal. At the time this money was paid out the Mason Valley money had not come in, and they used the revenue money because there was no other money to put into those affairs; now they want to make a bookkeeping entry, many months after they had committed themselves to those transactions and were criticized, using the revenues which should have been put out into the Estate and when this Mason Valley money came in, just a month or so ago, they want to cross it off and
40 justify it.

His Lordship: Of course, that is argument.

Mr. McKeown: I submit the question is not a proper one to put to the witness. Those moneys which were all disbursed in 1928 from revenue account, which they now say are for the account of capital covered by money which was recovered in the month of

ALEX. M. REAPER (for Plaintiffs), Cross-Examination.

December or recently. I submit it is not a question of fact. My learned friend may argue the point, but he cannot prove it as a matter of fact.

Mr. Campbell: I think it is erroneous to say those investments were out of revenue account. They were investments on capital account, and were taken out of the general funds of the Company.

10 His Lordship: That will all come out in the argument on the merits.

Mr. Campbell: Does Your Lordship allow the question?

His Lordship: You may put it.

By Mr. Campbell (continuing):

20 Q.—Apart from your liability under your guarantee re Cadillac Coal, your \$360,000 recovery would more than cover your investments in those three enterprises you have mentioned?

A.—Yes.

Q.—You were questioned in your testimony in chief about the form of execution of Lord Shaughnessy's contract. I do not know whether you have any personal knowledge of the details of notarial law in regard to the form of execution of a document which is executed *en minute* as against any other form of document. Have you any personal knowledge of that?

30 A.—I have seen them, but I cannot say I would recall the exact form.

Q.—We have specimens of both in the record. Will you take communication of Plaintiffs' Exhibit P-68, which is ———

His Lordship (interrupting): Cannot the Court know itself whether these Deeds are in the same form or not?

Mr. McKeown: Will His Lordship be enlightened by what Mr. Reaper may say on the subject?

40 Mr. Campbell: His Lordship may be enlightened as to whether Mr. Reaper in good faith was entitled to consider (as he did consider at the time the Shaughnessy contract was given effect to) that it was effective.

His Lordship: Is there any reason for putting that in Mr. Reaper's mouth? Can you not argue it from the documents?

ALEX. M. REAPER (for Plaintiffs), Cross-Examination.

Mr. Campbell: I think I am entitled to ask the witness to compare the forms of the documents.

His Lordship: Had he made that comparison before he paid the amount to Lord Shaughnessy?

10 Witness: No, I had not.

Mr. Campbell: I think it is relevant evidence on the question of the good faith of the witness.

His Lordship: Before borrowing from the Bank the amount necessary to repay Lord Shaughnessy, had he examined what was done in the Waddell case?

Mr. Montgomery: The witness says he did not.

20 By Mr. Campbell (continuing):

Q.—When you made payment under Lord Shaughnessy's agreement did you examine in detail what had been done in the Waddell case?

A.—I knew what had happened in the Waddell case. The records showed it quite clearly.

30 Q.—Perhaps we might clear it up if we look at it in this way; just to illustrate the point about the different forms of execution, will you look at Exhibit P-68, for instance—you will notice the form in which it is executed. Before so and so, notary, appeared Sir Mortimer Davis, Baronet, of the First Part, and Herbert Meredith Marler and John B. Waddell, Trustees, etc., of the Second Part; then follows the recitals.

Mr. Geoffrion: I object to this. The document is being read to the witness, and his attention is called to the fact that the granters or the grantees are notaries, and he is given lectures on law. I do not know where it is leading to, but I submit it is getting ridiculous.

40 Mr. Campbell: My learned friends are in this position, it seems to me, that they have suggested by their Allegations that the contract with Lord Shaughnessy was void for want of execution *en minute*. I would like to know, if I can, that by implication that means Sir Mortimer Davis had executed a number of Deeds of Donation, and was familiar with their form, with Mr. Herbert M. Marler, who was a notary of great reputation familiar with the requirements

ALEX. M. REAPER (for Plaintiffs), Cross-Examination.

of notarial documents, and Mr. McLean, also a notary of great reputation and familiar with notarial documents, and the fact of executing the document in that form obviously did not label it as a donation and could not have labelled it as a donation.

Mr. Geoffrion: That is argument.

10 Mr. McKeown: Of course it is a matter of argument; not a matter of proof.

Mr. Geoffrion: Mr. Reaper will not add very much light to that by his testimony.

His Lordship: What is the object of your question, Mr. Campbell?

20 Mr. Campbell: I desire to call attention to the different forms in which the documents were executed.

In this case I do not think Your Lordship will have to construe the contract at all, because my submission will be that you are entitled to take it for granted for the purposes of this case. The merits of the contract will be decided in the other case. At present we propose to invite Your Lordship to take the contract as *prima facie* good, at its face value.

My learned friends have gone into that ———

30 His Lordship (interrupting): I tried to prevent them, but I could not. They are now trying to prevent you.

Mr. Campbell: I am simply trying to follow them.

Mr. Geoffrion: But, you must follow us by legal questions.

40 Mr. Campbell: I am putting a document in the hands of the witness, and am asking him to observe the form. Of course, if my learned friends insist I suppose we will have to read the whole document in.

Mr. Geoffrion: My learned friend is not proceeding legally. It is one thing to have a document read into the record, and quite another thing to ask the witness to place an interpretation upon it. If my learned friend will refrain from putting illegal questions, there will not be any argument. I submit my learned friend has no right to lead the witness.

ALEX. M. REAPER (for Plaintiffs), Cross-Examination.

Mr. Campbell: I think the witness is quite able to look after himself. Any witness who has stood what he has stood for the last two weeks must be quite capable of taking care of himself without assistance from Counsel.

By Mr. Campbell:

10 Q.—The document is not very long. Will you please read it into the record, Mr. Reaper?

Mr. McKeown: This is absolutely a waste of time. Your Lordship can see those documents yourself. It is nothing more or less than a presumption on the credulity of the Court.

20 His Lordship: The documents are in the record, and I will have to make my own comparison. Whether Mr. Reaper says they are notarially correct or not cannot affect the position because, after all, it is a matter for me to determine.

Mr. McKeown: It is a matter of law, not a question of fact further than what appears by the documents themselves.

His Lordship: All I may be called upon to say is whether there is sufficient resemblance between the documents that were completed in Sir Mortimer's lifetime and the last document to justify Mr. Reaper's good faith.

30 Mr. McKeown: And, that will have to appear from the documents themselves.

By Mr. Campbell (continuing):

Q.—Will you look at the labels on the documents filed by Plaintiffs as Exhibit P-68 and P-69. What is the label on Exhibit P-68?

A.—“Donation by Sir Mortimer Barnet Davis to Herbert Meredith Marler and John Bell Waddell in Trust.”

40 Q.—What is the label on P-69?

A.—“Donation by Sir Mortimer Barnet Davis to Mortimer B. Davis and others, Trustees.”

Q.—What is the label on Mr. Waddell's document?

A.—“Agreement between Sir Mortimer B. Davis and John Bell Waddell and Herbert M. Marler and Herbert B. McLean.”

Q.—What is the endorsement on Lord Shaughnessy's document?

ALEX. M. REAPER (for Plaintiffs), Cross-Examination.

A.—“Memorandum of Agreement between Sir Mortimer B. Davis and Sir Mortimer Davis, Incorporated, and Baron Shaughnessy and Herbert M. Marler and Herbert B. McLean.”

Q.—Will you please look at Mr. Waddell's agreement, dated December 4th, 1919? What was accruing to him under this agreement?

10 Mr. Geoffrion: I object to this question, inasmuch as the agreement speaks for itself.

Mr. Campbell: During eight long days my learned friends put documents into the hands of the witness.

His Lordship: Do you want to exceed their time?

20 Mr. Campbell: No, Your Lordship. I will try not to exceed half the time they took.

Mr. Geoffrion: My objection to the question is that it is asking the witness to say what the agreement meant. The agreement is in writing, and is before the Court, and Your Lordship will interpret it and say what it means.

His Lordship: As far as saving time is concerned it would have been shorter if the whole document had been read.

30 By Mr. Campbell (continuing):

Q.—Will you please read into the record the first paragraph of Mr. Waddell's agreement?

A.—“The First Party has concurrently with the execution of this agreement transferred and delivered to the Trustees \$250,000 face value of the 6% Twenty Year Notes of Sir Mortimer Davis, Incorporated, and 2,500 shares of the capital stock of Sir Mortimer Davis, Incorporated, which Notes and Shares shall be held by the said Trustees subject to the conditions hereinafter provided for.”

40 Q.—At the time of this agreement what percentage of the issued capital stock and issued notes would these figures represent?

A.—Five per cent of each.

Mr. McKeown: I object to this evidence as irrelevant. This is a special contract with Lord Shaughnessy, and whatever may have been done with Mr. Waddell is absolutely irrelevant.

ALEX. M. REAPER (for Plaintiffs), Cross-Examination.

Mr. Campbell: My learned friend argued in answer to one of my objections that Your Lordship would be called upon to determine whether in the case of this being a donation remuneratoire there had been a reasonable *quid pro quo*. I would like the record to be in condition for me to answer, if that argument is advanced, that considering what Sir Mortimer paid to Mr. J. B. Waddell and the results he got from Mr. Waddell's management, as compared with
10 what he paid to Lord Shaughnessy and the results he got from Lord Shaughnessy's management, entitle one to infer that on a comparative basis there was not an unreasonable justification.

Mr. Geoffrion: If that be the case, it is much more serious; because if the question of the value of Mr. Waddell's services must be gone into we will have another trial perhaps as complicated as that of Lord Shaughnessy. If the point is to show that Lord Shaughnessy was better than Mr. Waddell, it is going to involve another trial.

20 My learned friend surely does not hope that he will go into it just as far as it is to his interest, and that it will be left there; because if we go into it at all it will have to be done fully and completely.

Mr. Campbell: My learned friend is entitled to go as far as the Court will allow him. My learned friend Mr. McKeown went a very considerable distance, and I am simply trying to follow him part of the way to clear up some of the ambiguities which I thought were left.

30 Mr. Geoffrion: My objection is that it is irrelevant in this case to go into a comparison between the services of Mr. Waddell to Sir Mortimer Davis and the services of Lord Shaughnessy to Sir Mortimer Davis in order to establish that the Deed between Sir Mortimer and Lord Shaughnessy is not a donation. It is absolutely irrelevant to that point, and it will simply lead us into an endless enquiry.

I do not care very much if my learned friend asks the witness to read the document, and say what it means, because if he goes
40 astray the Court will correct him. I do, however, insist that it is absolutely irrelevant.

Mr. Campbell: If Your Lordship is of the view that the merits of the Shaughnessy agreements are not in issue in this case I do not think it necessary to pursue that particular branch any further.

His Lordship: They are not.

ALEX. M. REAPER (for Plaintiffs), Cross-Examination.

Mr. Campbell: If, on the other hand, Your Lordship thinks the question of the formal validity or invalidity is in issue, then I am bound to follow the lead which has been opened.

His Lordship: If you say this evidence will serve in the other action I might allow it to go in, but as far as this case is concerned I do not think it is useful.

10 Mr. McKeown: We say the Deed is void *ab initio*, and the defendants put in a general denial; then they notice the Waddell angle, and now they are cross-examining on their own evidence. Our submission is that whatever may be good or bad about the Waddell contract will not affect the validity or otherwise of the Shaughnessy contract which has to stand or fall on its own merits. Whether the Waddell provision converted itself into a donation, or whether it is an onerous contract, has nothing whatever to do with the matter now before Your Lordship. They might as well prove fifty other contracts with fifty different persons.

20

Mr. Campbell: My submission is that the effect the witness gave to the Shaughnessy agreement at the time he gave it effect is relevant to the good faith of the witness. He was confronted with a certain situation, he did certain things, and he is now criticized for having done them. I submit I am entitled to show that the witness had a right to believe (whatever the Courts may ultimately decide) at the time he did take action that the Shaughnessy agreement was, as we believe it to be, perfectly valid.

30

Mr. McKeown: Then, let him say so. That is all he has to do.

His Lordship: Had he anything to do with the respective success or failure of Mr. Waddell's administration, as compared with Lord Shaughnessy's administration?

Mr. McKeown: Not in the slightest. He was not there under Mr. Waddell.

40 His Lordship: That is really what we are called upon to examine now.

Mr. Campbell: That is not quite my point, Your Lordship. I am establishing the good faith of what he did with reference to Lord Shaughnessy's agreement.

His Lordship: He saw an agreement practically like the agree-

ALEX. M. REAPER (for Plaintiffs), Cross-Examination.

ment he was asked to sign or pay his cheque in consequence of, and he did pay the cheque.

Mr. Montgomery: And the witness has told us he had not even seen the Waddell agreement.

10 Mr. Campbell: No, he did not say that.

Mr. Montgomery: He said he had not examined it before making the payment.

Witness: No, I did not say that.

20 Mr. Campbell: Of course it would be impossible for me to undertake to repeat what the witness has said on any particular subject during such a long examination. However, I must say I do not remember him making any such statement.

Mr. McKeown: This was only within the last day or two.

Mr. Montgomery: He was asked by the Court if he had examined the Waddell agreement prior to this, and he said no.

Mr. Campbell: I have no recollection of his having said any such thing.

30 Mr. McKeown: In any event, let him say what he likes now, and we can compare his statement with what he has already said.

By Mr. Campbell (continuing):

40 Q.—Will you compare the form of execution in the case of the agreement with Mr. J. B. Waddell dated 4th December, 1919, and the form of the agreement between Sir Mortimer B. Davis et al. and Lord Shaughnessy dated September 17th, 1924, both of which you now have in your hands. Are they executed in the same general form?

Mr. Montgomery: How can the witness say that? In the best of faith he may say they are, whereas a lawyer or a notary may know they are not.

Witness: They appear to be.

ALEX. M. REAPER (for Plaintiffs), Cross-Examination.

By Mr. Campbell (continuing):

Q.—Have you the Minute Book of the Incorporated Company?

A.—Yes.

Q.—Will you please look up the Minutes of the Meeting of October 1st, 1924—that is the Meeting at which the capital of the Company was increased?

10

Mr. McKeown: I would not care to have my learned friend qualify what they did, because there is a very serious question as to what they did at that time.

By Mr. Campbell:

Q.—I notice in these Minutes, extract of which has been filed as Plaintiffs' Exhibit No. 16:

20

“ On motion, duly seconded, it was resolved that of the 5,000,000 shares of Treasury Stock there be issued and allotted to the Shareholders 32,500 Shares in the following proportions, namely:

Sir Mortimer Davis, 28,925 shares;

J. B. Waddell, 1,625 shares;

H. M. Marler and H. B. McLean, Trustees under agreement with Lord Shaughnessy dated September 17th, 1924, 1,625 shares;

30

H. M. Marler, 325 shares.

That the Secretary be and he is hereby authorized to issue certificates for shares in the above-named proportions to the persons above named, and to do all other acts which may be necessary to effectuate the issue and allotment of said shares.”

By whom are these Minutes signed?

A.—Sir Mortimer Davis and Lord Shaughnessy.

40

Q.—In what capacity did Sir Mortimer sign?

A.—As Chairman.

Q.—And, Lord Shaughnessy?

A.—As Secretary

Q.—At the same Meeting By-Law “ B ” was passed, providing for the paying off of 32,500 shares of a par value of \$100.00 each?

A.—Yes. It is part of the same Exhibit.

Q.—Will you look up your ledger of Sir Mortimer Davis, Incor-

ALEX. M. REAPER (for Plaintiffs), Cross-Examination.

porated, and say to whose credit that redemption price of the 1,625 shares in respect of the Marler and McLean Trustees under Shaughnessy agreement allotment was carried on your books? How is it headed?

A.—“ H. M. Marler and H. B. McLean, Trustees under Agreement with Lord Shaughnessy dated September 17th, 1924, 1,625

10 Q.—Under what date did the amount go to the credit of that account?

A.—Under date September 30th, 1924, the account was credited with \$162,500.00.

Q.—What has been done in connection with the interest on that account ever since?

A.—It has been accrued, and added to the amount.

Q.—Is that the same amount which, with interest accrued, amounted to approximately \$217,000.00 on September 17th, 1929?

A.—Yes.

20 Q.—Will you look at the balance sheet of the Incorporated Company as at September 30th, 1924, and will you state whether any amount is shown on that balance sheet as outstanding in the names of Messrs. Marler & McLean?

A.—Yes; it is shown in the liabilities under amounts due shareholders in respect of purchase capital stock, H. M. Marler and H. B. McLean, in trust, \$162,500.00.

Q.—Would that correspond with the entry you have just given us from the ledger?

A.—Yes.

30 Q.—How does it appear in the annual financial statement for 1925, Exhibit D-53? What amount appears there? What is the heading?

A.—“ Amounts due to Shareholders in respect of purchase of capital stock, and interest thereon (H. M. Marler and H. B. McLean in trust) \$172,250.00.”

Q.—I note in the balance sheet for the previous year items were shown for other shareholders: Sir Mortimer Davis, so much; Mr. Waddell, so much; and Mr. Marler, so much?

A.—Yes.

40 Q.—They had disappeared at the end of the next financial year. What had happened to them?

A.—Sir Mortimer Davis' amount had been credited to his current account.

Q.—Would that leave the account at his debit or credit?

A.—Which at the end of September, 1925, had been changed from a credit of \$1,051,000 to a debit of \$158,000.

Q.—What had happened to Mr. Waddell?

ALEX. M. REAPER (for Plaintiffs), Cross-Examination.

A.—He disappears from the balance sheet. Both Mr. Waddell's and Mr. Marler's. In the meantime they have been paid off.

Q.—How do you explain the increase from \$162,500 in the 1924 balance sheet to \$172,250 in the 1925 balance sheet?

A.—By the interest mentioned here—capital stock and interest.

Q.—Let us now take the next year, September 30th, 1926. What was it shown as?

10 A.—It is shown as amount due to Shareholders in respect of purchase of capital stock and interest thereon (H. M. Marler and H. B. McLean in trust) \$182,585.

Q.—That would represent the amount of the previous year, plus what?

A.—Plus additional interest.

Q.—How did the item appear for the year ending September 30th, 1927?

A.—In the same way:

20 “Amounts due to Shareholders in respect of purchase of capital stock, and interest thereon (H. M. Marler and H. B. McLean in trust) \$193,704.43.”

Q.—In those four annual balance sheets this amount is shown as accumulating, with the interest added every year?

A.—Yes.

Q.—Were copies of those financial statements sent to Sir Mortimer Davis in his lifetime?

30 A.—Yes.

Q.—In your testimony in chief you referred to the monthly statements that you were accustomed to send Sir Mortimer. Will you please look through this file of monthly statements which I show you, and will you say how that item in respect of this Marler and McLean accrued balance was treated? Is it shown in these monthly statements?

A.—Yes. It is shown under the heading “Amount due to Shareholders re Trust Accounts”.

40 Q.—I have before me the statement of October, 1926. You observe it appears on that statement at \$183,497.93?

A.—Yes.

Q.—For the purpose of identification will you please tell me what was the amount that appeared on the balance sheet of September 30th, 1926?

A.—\$182,585.00.

Q.—That is the same amount that appears on Exhibit D-54?

A.—Yes.

ALEX. M. REAPER (*for Plaintiffs*), *Cross-Examination*.

Q.—Does it appear from month to month that that amount was carried forward at the credit of those gentlemen in that way, with the interest always added?

A.—It is shown on each statement, with the interest added.

Q.—And you have told us those statements were sent to Sir Mortimer from month to month?

A.—They were, yes.

10 Q.—Did Sir Mortimer at any time criticize to you the way the item of interest was being dealt with in those annual and monthly financial statements?

A.—No. Just in going over one of the statements on one occasion he made a casual comment.

Mr. McKeown: I object to any parole testimony being made on this subject. In an action on documents, the documents must speak for themselves.

20 His Lordship: Even if it is of no importance in the other case, it may be of service in clearing the good faith of the witness.

By Mr. Campbell (continuing):

Q.—Did he ever lay claim to that interest?

30 Mr. McKeown: I object to this on the ground that it is illegal and leading. These statements and entries have been made pursuant to the contract, I suppose, and no parole testimony can be allowed tending to vary or contradict the contract. No evidence of Lord Shaughnessy or of this witness undertaking to enlarge or interpret the contract can be permissible. The contract must be judged by itself and as it is, and we say there is nothing inconsistent about it. My learned friend has claimed that these men were Trustees for Lord Shaughnessy, but that must be done by the documents; it cannot be done by parole evidence, and it cannot be done by what Sir Mortimer may have said to the witness, which is a matter over which we have no control today.

40 His Lordship: But it may have a great deal of worth in showing that this gentleman was in perfect good faith in carrying out what had been said by Sir Mortimer Davis. I am not here at the moment to judge of the formal validity of the contract, and I presume very little evidence will be admitted in the other case.

By the Court:

ALEX. M. REAPER (*for Plaintiffs*), *Cross-Examination.*

Q.—Were you ever instructed to reverse the entries shown on your financial statements?

A.—No.

Q.—I think you were going to say something when you were interrupted.

A.—I was going to say that in going over one of those statements with Sir Mortimer he made a casual comment going through
10 the statement that that was the amount to equalize the Shaughnessy shares.

Q.—Can you remember what year that was?

A.—No, I would not be sure. It might have been in 1927, but I would not be quite sure as to the year.

By Mr. Campbell:

Q.—To what did you understand that to refer?

A.—I understood from him that—

20 Mr. McKeown (interrupting): It seems to me that all my learned friend is entitled to put of record is what was said.

Mr. Campbell: I am simply identifying what the witness was talking about.

Mr. McKeown: But we cannot take Mr. Reaper's appreciation of what Sir Mortimer said. The most he can do is to reproduce what was said.

30 His Lordship: All he could reproduce would be the impression he carried away of what was said

Mr. McKeown: Which might have been entirely unjustified.

His Lordship: Which might be.

40 Witness: My impression of the remark was that Sir Mortimer insisted that this amount was required to be credited to Lord Shaughnessy's account in order to make up the difference in his shares from the original agreement and the amount he would have been entitled to by that increase in capital.

By Mr. Campbell:

Q.—That is, it had reference to those shares redeemed on the increase of capital?

ALEX. M. REAPER (for Plaintiffs), Cross-Examination.

A.—Yes.

Q.—Will you look at Lord Shaughnessy's agreement, dated September 17th, 1924, and filed as Exhibit P-13. Under that agreement will you verify who during the currency of the five-year period was entitled to get the interest on the debentures that were to accrue at the end of the five-year period?

A.—Sir Mortimer Davis.

10 Q.—As a matter of fact, what was done by you in regard to the items of interest on those debentures during the currency of that agreement? Where did you put it?

A.—They were credited to Sir Mortimer's account during his lifetime, and, later, to the Estate.

Q.—Would that be shown on those financial statements that were sent to Sir Mortimer?

A.—Yes.

Q.—Under that agreement Sir Mortimer was entitled to any
20 dividends declared? Was he not? Will you please read Clause 6 of the Shaughnessy agreement?

A.—(Witness reading).

“ Interest paid upon the notes, and dividends, if any, declared upon the shares, held by the Trustees shall, so long as they are so held, be paid to the First Party.”

Q.—And, in respect of interest you have told us you credited
30 Sir Mortimer's account during his lifetime and his Estate since his death, with the interest on those debentures up to the end of the period?

A.—Yes.

Q.—During Sir Mortimer's lifetime had any dividends been declared on any of those shares; apart from the matter of the stock transaction on October 1st, 1924—eliminate that in your answer.

A.—No.

Q.—No cash dividends?

A.—No.

40 Q.—When did you first hear any suggestion that there was anything invalid in Lord Shaughnessy's agreement because it was not executed in proper notarial form?

A.—I think it was after we received the letter of November 21st from Mr. McKeown:

Q.—That was the letter demanding your resignation?

A.—Yes.

ALEX. M. REAPER (for Plaintiffs), Cross-Examination.

Q.—The letter of November 21st, 1929, a copy of which is filed as Plaintiffs' Exhibit No. 12?

A.—Yes.

Q.—Will you look through the letter addressed to Lord Shaughnessy under that date, and as it is quite short will you read it into the record?

10 A.—(Witness reading letter.)

“ To the Rt. Hon. Lord Shaughnessy, Montreal.

Dear Lord Shaughnessy:—

I am instructed by Lady Eleanor Davis to demand the immediate relinquishment by you of the office of Joint Executor and Trustee of the last Will of her husband, the late Sir Mortimer Davis, as also of all offices presently held by you in Sir Mortimer Davis, Incorporated, and all corporations which it controls, including Canadian Industrial Alcohol, Limited; and in default of prompt compliance with this demand to institute on her behalf appropriate proceedings for your removal for cause from each of such offices.

As the matter is most urgent, I must ask you that you let me hear from you not later than Monday next, November 25th, as to whether or not the present demand will be acceded to by you.

30 Yours sincerely,
W. K. McKeown.”

Q.—Do you find any reference in that demand to any invalidity in Lord Shaughnessy's agreement, or was it subsequent to that?

A.—It was after that, I think, when I first heard of it.

Q.—Up to the time of the receipt of that letter had anybody ever suggested to you any possible invalidity in Lord Shaughnessy's agreement?

A.—No.

40 Q.—Lord Shaughnessy's agreement is dated September 17th, 1924.

A.—Yes.

Q.—Will you read into the record the provisions of Clause 5?

A.—(Witness reading):

“ 5.—And the First Party, Sir Mortimer B. Davis, agrees that in the event of the Company at any time increasing the

ALEX. M. REAPER (for Plaintiffs), Cross-Examination.

10 notes or capital stock of the Company he will add to the amounts of the notes and shares transferred and delivered to the Trustees such amounts of shares and notes as will make the total amount of notes and shares deposited bear the same proportion to the total amount of notes and shares created and issued as the notes and shares now deposited bear to the present notes and shares of the Company created and issued.”

Q.—Will you look up your ledger account of Lord Shaughnessy and tell me when the loan of \$50,000 was made to Lord Shaughnessy?

His Lordship: If you are now entering upon another subject, Mr. Campbell, I think it might be as well to adjourn, if it is going to take some time.

20 Mr. Campbell: It may take a little while, Your Lordship.

And it being 4:45 o'clock the further testimony of the witness is continued until Tuesday, March 18th at 10:30 o'clock in the forenoon.

And further for the present deponent saith not.

30

Morning Session, March 18th, 1930.

And on this eighteenth day of March, 1930, personally came and appeared

ALEXANDER M. REAPER

and his cross-examination was continued by Mr. G. A. Campbell, K.C.:

40 By Mr. Campbell:

Q.—Mr. Reaper, I was questioning you yesterday about the Plaintiffs' Exhibit No. 20, the Notice of Directors' meeting that was sent out by you on December 4th, 1929, and we discussed the first paragraph of that notice. I omitted at the time to call your attention to the second paragraph of the Notice which reads as follows:—

ALEX. M. REAPER (for Plaintiffs), Cross-Examination.

10 “ The attention of the members of the Board is called to the fact that the Secretary-Treasurer has received a communication from Lord Shaughnessy intimating that whenever a dividend is declared, an adjustment will be made between him and the Estate of the late Sir Mortimer Davis by which that Estate will receive such proportion of the dividends upon the shares acquired by Lord Shaughnessy under his Agreement with the late Sir Mortimer Davis as would represent the dividends on those shares that might fairly and equitably have been payable out of surplus if dividends had been declared by that Company between the date of the death of Sir Mortimer Davis and the 17th of September, 1929 when the shares in question became the property of Lord Shaughnessy under his agreement.”

Q.—Was the communication referred to in that part of that notice verbal, or in writing?

20 A.—In writing.

Q.—Have you got the original?

A.—Yes.

Q.—Will you exhibit the original and file a copy as D-74?

A.—Yes.

Q.—When did you receive that letter?

A.—On the date it was written.

Q.—That is, the 29th of November?

A.—The 29th of November, 1929.

30 Q.—Lord Shaughnessy in the course of his letter says: “ I take this means to put on record the understanding I had with you, etc.” To what does that reference in the letter refer?

A.—It refers to the conversation we had, I think during August, or the latter part of August.

Q.—Of what year?

A.—1929.

Q.—And what was the sense of that conversation?

40 A.—At that time we discussed as to whether it was possible at that time to declare a dividend from the Incorporated Company to take care of the revenue deficit at that time in the Estate, and it was thought best in view of the fact that the financial statement for the year was not then out, to leave the matter over until we had the annual statement of the Company for the year ending September 30th, 1929, and Lord Shaughnessy said that he would make any adjustments in connection with any dividend which might be declared.

Q.—I want you to come to the question of the loans between

ALEX. M. REAPER (for Plaintiffs), Cross-Examination.

the Incorporated Company and Lord Shaughnessy about which you were examined by Mr. McKeown. Will you turn up the ledger of the Company and get me the account of Lord Shaughnessy, so that we may have the dates? Also get your Minute Book.

First of all, will you look up the record of the loan of \$50,000. That was, I think, the first loan in point of time made to Lord Shaughnessy?

10 A.—Yes.

Q.—Where does that appear entered in the Company's books? Under what date?

A.—November 3rd, 1926.

Q.—And from that time on, would that amount appear in the monthly and annual statements of the Company? Would it be comprised in the figures which appeared therein, in the monthly and annual statements of the Company?

20 A.—Yes, in the monthly statements. It was not shown separately, but it was always shown in the annual statements.

Q.—It would be lumped in the monthly statements? It would be lumped with other similar loans?

A.—Yes.

Q.—But, it would be comprised in the amount of the loan?

A.—It was included.

Q.—Would it have been possible that the loan could have been made without the knowledge of Sir Mortimer Davis, in view of his knowledge of the records of your Company?

30 Mr. McKeown: We allege it was.

By Mr. Campbell:

Q.—Then, we will take it for granted, in view of my learned friend's declaration, that Sir Mortimer knew of this loan?

A.—Yes.

40 Q.—Get me the Minutes of the meeting at which that was authorized or ratified. The reference in the Minutes as to that loan is in the Minutes of the meeting of Directors held on January 25th, 1927?

A.—Yes.

Q.—And reads as follows:—

“ Loan to Lord Shaughnessy. It was reported that with the approval of Sir Mortimer B. Davis a loan of \$50,000 had been made to Lord Shaughnessy at interest of six per cent per annum.”

ALEX. M. REAPER (*for Plaintiffs*), *Cross-Examination.*

Who signed the Minutes of that meeting?

A.—Lord Shaughnessy signed as Chairman; I signed as Secretary-Treasurer.

Q.—And who else were present at the meeting?

A.—Mr. Mortimer B. Davis, Honorable H. M. Marler and Lord Shaughnessy.

10 Q.—Was Sir Mortimer in Canada at that time?

A.—No.

Q.—What security did the Company hold in respect of that loan of \$50,000 at the time it was made, or at any time subsequent thereto?

A.—There was no special collateral made for that, but there was also this amount at the credit of Messrs. Marler and McLean, which it was understood was to go to Lord Shaughnessy at the end of his contract period.

20 Q.—And what was the amount standing at the credit of that Marler and McLean account on the day the loan was made, November 3rd, 1926?

Mr. McKeown: I would like to enter a formal objection. That amount was not available at all for security for that loan, and the question is therefore irrelevant.

Mr. Campbell: We will argue that when the time comes.

By Mr. Campbell:

30 Q.—What was the amount at the credit of the account headed “H. M. Marler and H. B. McLean Trustees under agreement with Lord Shaughnessy, dated September 17th, 1924,” at page 193 of your ledger? Take the nearest date at which your interest is calculated?

A.—On October 31st, 1926, the amount is shown as \$183,497.92.

Q.—That would be only a few days before the cash was advanced to Lord Shaughnessy according to the entry at page 473?

A.—Yes.

40 Q.—Did Sir Mortimer ever instruct, you, as Secretary-Treasurer of the Company, to demand any other or further security from Lord Shaughnessy in respect of that loan?

A.—No.

Q.—What was the next loan in point of time?

By the Court:

ALEX. M. REAPER (for Plaintiffs), Cross-Examination.

Q.—Did he instruct you to make demand of payment of the account?

A.—No.

By Mr. Campbell:

10 Q.—That loan of \$50,000 remained outstanding until what point of time?

A.—Until September. It was closed out on September 25th, when the settlement was made with Lord Shaughnessy under his contract.

Q.—How was that amount then treated?

A.—This amount of \$50,000 with interest was deducted from the amount paid him.

20 Q.—The next loan, or advance, on Lord Shaughnessy's account in point of time was in connection with the McNish Debentures, was it not?

A.—Yes.

Q.—What was the date of that advance and its amount?

A.—November 15th, 1927; the amount, \$13,500.

Q.—Did you get any instructions in reference to that loan, or by whom was that loan arranged?

A.—That was arranged by Sir Mortimer.

By Mr. McKeown:

30 Q.—Do you know that personally? Remember, you are under oath and you are supposed to tell what you know personally. I don't care what deductions you draw, but when you make a statement like that, that conveys to the Court that you have been so instructed by Sir Mortimer. If that is not the case, then that should not be the statement. Of course, I don't know what the facts are, but I just mistrust that Sir Mortimer ever told you anything of the kind?

A.—Well, no, I do not think he did, but it was shown in the statement which was sent to his. . . .

40 Mr. McKeown: That is not an answer to Mr. Campbell's question at all.

By Mr. Campbell:

Q.—I only want you to say, of course, what you know of your own personal knowledge, and if you do not know it of your own personal knowledge you will say so, but do you know whether at that time. . . .

ALEX. M. REAPER (for Plaintiffs), Cross-Examination.

Mr. McKeown: There again, all kinds of leading questions.

Mr. Campbell: If you will allow me to put my question. It is not objectionable.

By Mr. Campbell:

10 Q.—Do you know whether at that time any other loans on a similar security were made to other persons?

A.—Yes.

Q.—And who were they?

Mr. McKeown: I submit that would not be relevant.

Mr. Campbell: It is part of the general transaction. The whole thing was arranged.

20 Mr. McKeown: Don't make statements in open Court unless you go into the witness box.

Mr. Campbell: I would like to go into the witness box. I could tell you a whole lot about this now.

By Mr. Campbell:

30 Q.—At the time of this advance to Lord Shaughnessy, in respect of the McNish Debentures was entered into in November, 1927 to what other persons were similar advances made for the same purpose?

A.—To Lady Davis.

Q.—What was the amount advanced to her?

A.—\$28,296.

Q.—Who else?

A.—Mr. Mortimer B. Davis.

Q.—That is the other Plaintiff?

A.—Yes. \$61,249.50—Audrey Curran

40 Q.—That is Lady Davis' brother?

A.—Yes. \$2,160, and to Melvin H. Davis \$1,350.

By Mr. Holden:

Q.—Melvin H. Davis is a brother of Sir Mortimer's?

A.—Yes.

By Mr. Campbell:

ALEX. M. REAPER (*for Plaintiffs*), *Cross-Examination.*

Q.—Was there any difference in the way the loan to Lord Shaughnessy was made, in connection with that McNish transaction and the other loan, on the books of the Company?

A.—No, they were all treated the same?

Q.—How was the banking done?

A.—An advance was got from the bank to take care of the allotment of McNish Debentures going to Sir Mortimer Davis Incorporated, together with these amounts.

10 Q.—Were all these persons individual shareholders of Alcohol too?

A.—Yes.

Q.—Then, in regard to McNish Debentures there were rights on allotment, I understand, given to shareholders of the Alcohol Company?

A.—Yes.

Q.—To take up McNish Debentures if they wished to?

A.—Yes.

20 Q.—Did Sir Mortimer Davis Incorporated take up its proper allotment of McNish Debentures?

A.—Yes.

Q.—And these figures that you have given us would, I take it, be proportionate to the holdings of the various persons of the Alcohol stock?

A.—Yes.

Q.—In respect of the rights to McNish Debentures?

A.—Yes.

30 Q.—At what price were these Debentures taken up for these persons?

A.—They were all taken at \$4.50.

Q.—At the same price as the Incorporated Company?

A.—Yes.

Q.—You referred to the loan from the bank. Were there separate loans from the bank in respect to these different borrowers, or were they consolidated in one loan?

A.—They were all in one loan. All of the Debentures were given to the bank as collateral.

40 Q.—Then, on the books of the Company, what did you do with it?

A.—We issued the amounts due by each party of the Debentures held against them.

Q.—So that as between the Company and the bank the whole thing was one transaction?

A.—Yes.

Q.—Then, the Company distributed between itself and these

ALEX. M. REAPER (for Plaintiffs), Cross-Examination.

other persons whose names you have given, their proportion of the amount of the liability?

A.—Yes.

Q.—That was in respect to the McNish Debentures?

A.—Yes.

10 By the Court:

Q.—What happened ultimately about that loan?

By Mr. Campbell:

Q.—What is the present condition of the McNish transaction, first of all, as between the Incorporated Company and the Bank?

20 A.—It is slightly reduced. Mr. Mortimer Davis instructed us to sell some Debentures for him, which we did, and those brought in \$52,100.

Q.—First of all, do you remember when that was done?

A.—That was done during May, 1928, and then, Lady Davis paid for her Debentures amounting to \$28,296.

Q.—When?

A.—At the end of September, or beginning of October, 1928, and the amounts so received were paid to the bank to get the release of the Debentures so paid, leaving a balance which was then on the loan of \$2,251,076.50 with 500,817 Debentures still left there as collateral.

30 Q.—And the only collateral that has been released would be the collateral of Lady Davis and part of the capital of Mr. Mortimer Davis?

A.—Yes.

Q.—The proportionate part of the capital of Mr. Mortimer Davis?

A.—Yes.

Q.—Is Lord Shaughnessy's still with the bank?

A.—It is still with the bank.

Q.—And Mr. Audrey Curran's?

40 A.—Yes.

Q.—And Mr. Melvin H. Davis?

A.—Yes.

Q.—In point of time, the next loan was in respect of the Alcohol "B" shares? First of all, when were the "B" shares issued by Alcohol?

A.—March 1st, 1928.

Q.—At what price?

ALEX. M. REAPER (for Plaintiffs), Cross-Examination.

A.—\$20.00.

Q.—And were rights given to the shareholders to subscribe for one share of “ B ” in respect of so many shares of “ A ”? Do you remember the number?

A.—I think it was one in eight.

Q.—Did the Incorporated Company take up its allotment of Alcohol “ B ”?

10 A.—Yes.

Q.—At \$20.00?

A.—At \$20.00.

Q.—Was Sir Mortimer then alive?

A.—He was.

Q.—Did he approve of that transaction?

A.—I think he advised us to take up the same subscriptions.

Q.—First of all, how did the Company finance the purchase of the “ B’s ”?

20 A.—We arranged with the bank to get an advance to practically cover the amount. We arranged for the loan of \$1,250,000 at that time.

Q.—And the “ B’s ” I suppose were placed as collateral?

A.—No, the “ B’s ” were not pledged as collateral. They were held by us. The bank at that time had 60,000 shares of “ A ” stock which were practically free.”

Q.—Who else did you take up “ B ” stock for?

A.—We took up some for Lady Davis.

Q.—How many shares did you take up for her?

30 A.—786 shares.

Q.—Who else?

A.—For Mr. Curran 60 shares, and for Mr. Melvin H. Davis 38 shares, and Lord Shaughnessy 375 shares.

Q.—How was the purchase of these shares from Alcohol financed?

A.—By loan from the bank.

Q.—Through the general loan?

A.—Yes.

40 Q.—Who paid for all the shares allotted both to the Incorporated Company and to these various persons mentioned?

A.—The Incorporated Company.

Q.—And out of the proceeds of the loan ———

Mr. McKeown: Now, now, Mr. Campbell.

Mr. Campbell: He has just this moment said so. I am entitled to lead.

ALEX. M. REAPER (*for Plaintiffs*), *Cross-Examination*.

Mr. McKeown: You are not entitled to lead, and you are not representing it accurately. I do not think it is in accordance with the facts.

Mr. Campbell: The witness is very capable of correcting me if I am wrong.

10 By Mr. Campbell:

Q.—Where did the money come from to pay for the “ B ” shares?

A.—It came from the loan arranged by the bank.

Mr. McKeown: Are you talking about all the “ B ” shares, or these particular ones?

20 Mr. Campbell: I am talking about all the “ B ” shares including these.

Witness (continuing): We arranged for a loan of \$1,250,000. That was not just exactly at the rate of \$20.00 per share, but it was a round amount nearest to it.

By Mr. Campbell:

30 Q.—Then, what was done on the books of the Incorporated Company in respect of the shares taken up for these various people?

A.—They were charged against it.

Q.—Were they all treated alike, or was Lord Shaughnessy treated differently from the others?

A.—They were all treated alike. The shares were held as collateral.

Q.—Was Sir Mortimer alive at the time of this transaction?

A.—Yes.

Q.—Of these, what amount owing to the Incorporated Company in respect of these allotments of “ B ” shares are still outstanding?

40 A.—Those of Lord Shaughnessy, Mr. Curran and Mr. M. H. Davis.

Q.—When did Lady Davis pay off her allotment?

A.—We were instructed in a letter from Sir Mortimer, I think, March 13th, 1928, to charge this to his account, that they were to be considered as a gift.

Q.—And did you do so?

A.—We did.

ALEX. M. REAPER (*for Plaintiffs*), *Cross-Examination.*

Q.—So that would clear Lady Davis' liability on your book?

A.—Yes.

Q.—Now, as to the McNish and Alcohol "B": You referred a moment ago to a loan from the bank of \$1,250,000 in respect of this transaction. Is that still outstanding, or has anything been done in respect of it?

10 A.—No. When we sold some of the "B" stock between April 20th and May 10th, 1928, on May 10th we paid off the bank to the extent of \$269,702.65.

Q.—Leaving a balance on that loan of how much?

A.—\$980,297.25.

Q.—How did the amount paid the bank compare to what you had realized from the shares of "B" stock?

A.—On the date we paid, it had been sold. The following day we did sell another 25 shares which had not been turned over to the bank; we had expected there would be some sales to make the amount larger.

20 H.—Have these loans in respect of McNish and in respect of Alcohol "B" always appeared on your financial statements since that time? Have they been comprised in your financial statements since that time?

A.—Yes.

Q.—They have been carried as assets of the Company due by these persons to the Company?

A.—Yes.

30 Q.—Do I understand that both in respect of McNish and "B," all the Debentures and all the shares covered by those loans were in the hands of the bank as part of the bank's collateral?

A.—Not the "B" stock.

Q.—The "B" stock was not deposited, but the McNish Debentures were?

A.—Yes.

Q.—Was the "B" stock covered by this advance to Lord Shaughnessy delivered to Lord Shaughnessy?

A.—No. The shares for those three parties are held by the bank.

40 Q.—At the time of the advance to Lord Shaughnessy in respect to the McNish Debentures was made, what amount was outstanding at the credit of this Marler and McLean Trustee account?

Mr. McKeown: Same objection.

Objection reserved.

ALEX. M. REAPER (for Plaintiffs), Cross-Examination.

By Mr. Campbell:

Q.—Take the nearest date you have it calculated in your books?

A.—As at October 31st, 1927, the amount at the credit of the Marler and McLean account was \$194,672.95.

Q.—That is the account headed, “ Marler and McLean, Trustees, under agreement with Lord Shaughnessy ”?

10 A.—Yes.

Q.—On the date of the Alcohol “ B ” transaction, what amount stood at the credit of that account? Take the nearest date at which you have interest calculated in your books?

A.—\$198,547.03.

By Mr. McKeown:

Q.—What date is that?

20 A.—February 29th, 1928.

Same objection.

Same reserve.

By Mr. Campbell:

Q.—Can you fix the date of the \$10,000 loan?

30 Mr. McKeown: I will help you if you like. It was about the 7th of January, 1929.

By Mr. Campbell:

Q.—Under what date is it entered in the Company’s books?

A.—Under date January 5th, 1929.

Q.—And what is the amount?

A.—\$10,000.

40 Q.—Look up again the Marler and McLean Trustee under Shaughnessy agreement account, and tell us what was at the credit of that account at that date? Take the nearest date at which you have it calculated?

Same objection.

Same reserve.

ALEX. M. REAPER (for Plaintiffs), Cross-Examination.

A.—\$208,583.53.

Q.—As at what date?

A.—December 31st, 1928.

Q.—On the date of that \$10,000 loan, when this amount appeared at the credit of that Marler and McLean Trustee under Shaughnessy agreement account, there was outstanding \$50,000 and interest, the loan arranged during Sir Mortimer's lifetime?

10 A.—Yes.

Q.—The McNish loan amounting to \$13,500?

A.—Yes.

Q.—Was there interest accruing on it?

A.—No, the income from the bonds. The bond interest just about offset that interest.

Q.—The bond interest that the bank held offset that interest?

A.—Yes.

Q.—Then, there was the B stock, the amount of the loan \$7,500?

A.—\$7,500.

20 Q.—What about dividends on the B stock?

A.—The dividends were a little more than the interest on the loan.

Q.—Who got the dividends?

A.—We did.

Q.—By "We," you mean the Incorporated Company?

A.—The Incorporated Company.

Q.—So that the McNish Debentures and B stock, as far as interest was concerned, carried themselves?

30 A.—Yes.

Q.—Then, there was this \$10,000?

A.—Yes, with interest.

Q.—Without calculating the question of interest on the \$50,000 and interest on the \$10,000, what was the capital amount of those four loans?

A.—\$81,000.

Q.—And of the \$81,000, \$50,000 was bearing interest from the date you have given, and \$10,000 was bearing interest from the date of this advance?

40 A.—Yes.

Q.—What interest was charged on the \$10,000?

A.—Six per cent.

Q.—I understand that the McNish and Alcohol B items are still outstanding?

A.—They are still outstanding.

Q.—What happened to the \$10,000?

Q.—That was deducted when we made the settlement with

ALEX. M. REAPER (for Plaintiffs), Cross-Examination.

Lord Shaughnessy for this amount which had been credited to the Marler and McLean account.

Q.—When was that?

A.—In September, 1929.

Q.—Did your treatment of that differ from your treatment of the \$50,000 item?

10 A.—No, the same thing.

Q.—So that you deducted the \$50,000 plus interest from the time it was made?

A.—Yes.

Q.—And the \$10,000 plus interest from the time it was made from Lord Shaughnessy's settlement, when it was made in September, 1929?

Mr. McKeown: I object to this question as irrelevant.

20 Same objection.

Same reserve.

A.—Yes.

By Mr. Campbell:

Q.—After the settlement with Lord Shaughnessy in September, 1929, how do those loans stand on the books of the Incorporated
30 Company?

A.—Of course, they disappeared after that.

By Mr. McKeown:

Q.—What disappeared?

A.—The loan of \$50,000.

By Mr. Campbell:

40 Q.—The loan you referred to?

A.—The loan of \$50,000, and the loan of \$10,000 disappeared. The other loans of the McNish Debentures and the B shares remained?

Q.—Why have the loans of \$50,000 and the \$10,000 disappeared from your books?

A.—Because they were deducted in the settlement made with Lord Shaughnessy.

ALEX. M. REAPER (for Plaintiffs), Cross-Examination.

(Same objection.)

(Same reserve.)

Q.—And you considered that as

10 (Same objection.)

(Same reserve.)

A.—As payment.

Q.—I am not quite clear, Mr. Reaper, whether I asked you what loans re McNish and re B stock are still outstanding outside of Lord Shaughnessy's?

20 Mr. McKeown: I object to this question as absolutely irrelevant.

(The Court reserves the objection.)

A.—On the McNish, there is still a balance on Mr. Mortimer B. Davis' account, and Mr. Curran's and Melvin H. Davis.

By Mr. Campbell, K.C.:

Q.—Mr. Mortimer B. Davis is one of the Plaintiffs?

30 A.—Yes.

Q.—What security held in respect of those loans?

A.—The McNish Debentures in the case of Mr. Mortimer Davis.

Q.—Does it hold any other security in respect of those loans of those individuals?

A.—No.

Q.—As to the B, what is outstanding?

A.—Just the two loans outside of Lord Shaughnessy, the two loans of Mr. Curran and Mr. Melvin H. Davis.

40 Q.—What security does the Company hold in respect of those loans?

(Same objection.)

(Same reserve.)

A.—The shares of B stock which were taken up at that time.

ALEX. M. REAPER (for Plaintiffs), Cross-Examination.

Q.—Did you ever receive any instructions from Sir Mortimer to demand other security from any of those persons?

A.—No. They had been made just recently before his death, one in November and the other in the beginning of March, 1928.

10 Q.—You were questioned in your examination in chief about the Plaintiff's Exhibit Number 17, being the communication addressed to Messrs. Marler and McLean, under date, Montreal, September 18th, 1929, and I note that the first paragraph of this document says this:—

“This will certify that the Right Honorable Lord Shaughnessy, K.C., has been in the uninterrupted employment of Sir Mortimer Davis, Incorporated, since the 17th of September, 1924, and is still in the employment of that Company.”

Do you note that?

20 A.—Yes.

Q.—Is the statement of fact made therein true?

A.—Yes.

Q.—At that time Lord Shaughnessy was the President of the Company?

A.—Yes.

Q.—He signs this as President?

A.—Yes.

Q.—And you were the Vice-President?

A.—Yes.

30 — Q.—And I think you told us in your examination in chief that Lord Shaughnessy, before going to the West, had left this document with you, dated September 18th, with instructions to deliver it after the 17th of September?

A.—Yes.

Q.—Will you turn up the terms of the Shaughnessy Agreement for the moment, and see what is required to be done on that date? It is filed as Plaintiffs Exhibit Number 13. Will you look up clause Number 2 of that agreement and read it into the record:—

40 “2.—Should the said Shaughnessy remain in the uninterrupted employment of the Company (that means the Sir Mortimer Davis, Incorporated, I take it) during a period of five years, computed from the date hereof (the date being September 17th, 1924) as evidenced by a certificate in writing of the President or Vice-President of the Company, and at the expiration of the said period be still in the employ of the Company, then the said Shaughnessy shall be entitled to receive from the Trustees, and

ALEX. M. REAPER (for Plaintiffs), Cross-Examination.

the Trustees shall on presentation of such certificate transfer and deliver to him the notes and shares of the Company hereinafter referred to as his absolute property.”

At the time the certificate I have just shown you was given, who was the President of the Company?

A.—Lord Shaughnessy.

10 Q.—And who was the Vice-President?

A.—I was.

Q.—And Lord Shaughnessy signed that certificate, left it with you, and you yourself delivered it to Mr. McLean?

A.—Yes.

Q.—When you delivered the certificate, had the appointed time arrived?

A.—Yes.

Q.—What was the date of the delivery?

20 A.—I think it was actually on the 19th. I may have telephoned him on the 18th.

Q.—But at any rate, was it after the 17th of September, 1929?

A.—Yes.

Q.—And did Mr. McLean on behalf of Messrs. Marler and McLean comply with the requirements of that paragraph I have just read to you with regard to delivery?

A.—Yes.

Q.—To deliver the notes, and to deliver the shares?

A.—Yes.

30 Q.—And you, in due course, turned them over to Lord Shaughnessy?

A.—Yes.

Q.—When did he return from the West?

A.—He returned, I think, about the 5th of October.

Q.—You were questioned in your testimony in chief, about certain advances made by the Incorporated Company acting by yourself for Lord Shaughnessy’s account during the summer of 1928, of which a statement was filed as P-27. I note from that statement that these advances were made between July 11th and September 40 19th, 1928?

A.—Yes.

Q.—At the time of those advances, where was Lord Shaughnessy?

A.—He was in Europe.

Q.—On what business?

A.—He was on business for some of the Companies. He attended

ALEX. M. REAPER (for Plaintiffs), Cross-Examination.

to some things for the Estate, and probably attended to some personal affairs at the same time.

Q.—When did Lord Shaughnessy return from Europe? When did he get back to the office?

A.—I think in the beginning of October.

Q.—Then, what did you do about these advances that you had made for him? Did you call them to his attention?

10 A.—I did.

Q.—And what did he do when you called them to his attention?

A.—He gave me a cheque.

Q.—And what was the date of the cheque?

A.—I think October 4th.

Q.—During what financial period of the Company had those advances been made?

A.—For the year ending September 30th, 1928.

20 His Lordship: What is the number of that Exhibit?

Mr. Campbell: P-27, My Lord.

By Mr. Campbell, K.C.:

Q.—At the time those advances were made by the Incorporated Company for the account of Lord Shaughnessy, what amount was standing at the credit of the Marler and McLean account?

30 (Same objection.)

(Same reserve.)

Q.—Take the nearest date as at the end of August, 1929. What was the date of the last advance?

A.—I will take the first advance.

Q.—Take the first advance, that is the better way.

(Same objection.)

40 (Same reserve.)

A.—On June 30th, the amount of that account would have been \$202,508.29.

Q.—Apart from the item appearing on this Exhibit P-27 to the Receiver-General of Canada, re Income Tax of \$2,827, the other items on that, I think you explained, were practically small household items, such as servants' wages and that kind of thing?

ALEX. M. REAPER (for Plaintiffs), Cross-Examination.

A.—Yes.

Q.—At that time was Lord Shaughnessy's family away, or were they in Montreal?

A.—I think all his family were away at that time.

Q.—Apart from the servants, was there anybody in charge of the Montreal house, as far as you know at that time?

A.—No, not as far as I know.

10 Q.—You said, when Lord Shaughnessy returned to the office in the early days of October, 1928, you called his attention to these items, and I think you said he gave you a cheque. Did you give the date of the cheque?

A.—I think it was October 4th.

Q.—What was the amount of the cheque?

A.—\$4,684.32.

Q.—You got a cheque which balanced this statement of which you filed a copy as Exhibit P-27?

A.—Yes.

20 Q.—What did you do with that cheque?

A.—I entered that in my cash book after receipt, before I closed off the cash book for the month.

Q.—For which month?

A.—For the month of September, 1928.

Q.—Was there any special significance as to the date, the end of September, 1928, in the Company's records?

A.—It was the end of the financial year.

30 Q.—Is that the only cheque that you treated in that way? Are there any other items in your books that you treated that way?

A.—There were a few other items treated in the same way.

Q.—What were the other items? Let us take the other items?

A.—There was a cheque from O'Brien and Williams for interest on call loans for the month of September, which I received in the beginning of October—

Q.—Wait a moment. That, I suppose, would apply to the previous year, too?

A.—It was interest for the previous year's period.

Q.—And you entered it in your records for the previous year?

40 A.—Yes.

Q.—Under what date?

A.—September 29th.

Q.—As a matter of fact, the 30th of September that year was a Sunday?

A.—Yes.

Q.—What was the amount of O'Brien and Williams' cheque?

A.—\$1,808.20.

ALEX. M. REAPER (for Plaintiffs), Cross-Examination.

Q.—Were there any other cheques that you got in the early days of October that you entered as of September 29th?

A.—There were a few cheques for Directors' fees from the Alcohol Company, and I think one from the Asbestos Corporation, which had come in during Lord Shaughnessy's absence, and which I was holding for his endorsement.

Q.—To whose order were they drawn?

10 A.—They were drawn to the order of Lord Shaughnessy.

Q.—When he returned, what did you do with them?

A.—I had him endorse them, and I entered them under the date of September 29th.

Q.—The end of your financial year?

A.—Yes. There was also another cheque.

Q.—Were there any other cheques that you entered in a corresponding manner?

A.—There was a cheque of Lady Davis for \$28,638.20.

20 Q.—Under what date did you enter it?

A.—I entered that also on the same date. That was a cheque on which there had been some misunderstanding.

Q.—Just give us the explanation of that.

A.—Lady Davis had actually issued that cheque in May, and had left it, I think, with her brother, but it had been mislaid or something, and I think it was probably on the afternoon of that last day of September he came and asked me if I knew anything of an amount like this, and he said that he had this cheque, but having held it so long he did not know whether it could be used or not and he wanted
30 to find out, and it was only early in October when I told him it was all right to put it through.

Q.—Had he communicated with Lady Davis in the interval?

A.—I understood he was going to do so.

Q.—At any rate, it was in the early days of October that you got instructions to make use of that cheque?

A.—Yes.

Q.—And what did you do with it? As of what date did you enter it?

A.—I entered that also as of date September 29th.

40 Q.—Is there any great impropriety, from a bookkeeping point of view, in making these entries under the circumstances under which you got most of those things?

A.—I did not think so.

Q.—You were questioned about corresponding disbursements made by you the following year for the account of Lord Shaughnessy?

ALEX. M. REAPER (for Plaintiffs), Cross-Examination.

His Lordship: What is the number of the Exhibit?

Mr. Campbell: P-28, My Lord.

By Mr. Campbell, K.C.:

10 Q.—Will you give me the dates within which those advances were made?

A.—Between April 2nd, 29th, and June 20th.

One item is a debit charge on the Alcohol Company. The cheques were all issued before June 14th.

Q.—The last entry on this Exhibit P-28 is simply a debit charge from Alcohol?

A.—Yes.

Q.—And the 14th, the Beaver Truck, Taxi of \$1.50, would that be made before or after his return?

20 A.—I think that would be made after. It was something that was incurred before.

Q.—Apart from those two last items, where was Lord Shaughnessy when you disbursed the other amounts for his account?

A.—In Europe.

By the Court:

Q.—He left on the 8th of March, if I am not mistaken?

A.—Yes.

30 By the Court:

Q.—And he came back?

A.—In the early days of June.

By Mr. Campbell, K.C.:

40 Q.—So between April 2nd, which is the first entry on this Exhibit P-28, and June 6th, which apparently is the last payment made. Lord Shaughnessy was abroad?

A.—Yes.

Q.—Apart from an amount, \$1,400, which you explained in your examination in chief, was paid to Lord Shaughnessy's sister, the Honorable Mrs. Redmond, are the other items of similar character? Are they petty household expenses of Lord Shaughnessy?

A.—Yes.

Q.—At the time of those advances, what amounts stood to the

ALEX. M. REAPER (for Plaintiffs), Cross-Examination.

credit of Marler and McLean Trustee under Shaughnessy agreement account?

(Same objection.)

(Same reserve.)

10 A.—At the end of March, 1929, the balance of that account was \$211,668.03. That, in any case, was before the deduction of the 25 shares.

Q.—At the time the Marler shares had come into the account?

A.—They had been charged, but that is the amount before the reduction.

Q.—At the time that you made these disbursements (P-28), who was in charge of Lord Shaughnessy's household? Were any members of his family there? Was Lady Shaughnessy there?

A.—Lady Shaughnessy was with him, yes.

20 Q.—And Lord Shaughnessy's children, I take it, who were not grown up, were they with him, too?

A.—No, the two youngest children were here.

Q.—What ages were they? They were not in a position to sign cheques, I take it, for the payment of their nursemaids?

A.—No.

Q.—I am instructed they are aged eight and thirteen?

A.—That is about right, I should think.

30 Q.—When were these items totalling \$2,875.82 paid, and under what circumstances?

A.—This amount, I think, was paid on September 4th, 1929, just before Lord Shaughnessy went to the West.

Q.—Up to that time had you asked him for payment?

A.—No, I had not asked him for payment.

(Same objection.)

(Same reserve.)

40 Witness (continuing): I thought that the date of settlement with him in September was coming so close, that these items might possibly be deducted on that account, but when I spoke to him about it before he went West he said he wanted to give a cheque for it.

Q.—And that was at the beginning of September?

A.—September 4th.

Q.—And when did you enter it in your books?

ALEX. M. REAPER (*for Plaintiffs*), *Cross-Examination.*

A.—I entered that on August 31st before I closed off that account.

Q.—What was the reason for that? What were you doing on August 31st or at that time?

A.—We were making up the financial statement of the Company as of that date.

10 By the Court:

Q.—Is that the special statement that Lady Davis had asked for?

A.—That was the special statement Lady Davis had asked for.

By Mr. Campbell:

20 Q.—Now, you have mentioned a number of times what are called the Marler shares. Will you look up the entries in your ledger about the Marler shares. I want to make quite clear just what happened. When were the Marler shares purchased?

A.—On December 4th, 1928, we paid for them.

Q.—At what price?

A.—\$170 per share.

Mr. McKeown: I object to this as being a contradiction of the Marler letter which says the price is \$100,000.

Mr. Campbell: The Marler letter does not say any such thing.

30

Mr. McKeown: It says exactly that.

Mr. Campbell: We disagree.

Mr. McKeown: I ask Your Lordship to note my objection.

By Mr. Campbell:

40 Q.—Mr. McKeown examined you at that time as to whether the then market price of Alcohol shares did not appear to be worth more than \$170. How long had Mr. Marler at that time been a Director of the Incorporated Company, up to the time he sold his shares?

A.—About nine years.

Q.—Had he not been a Director since its inception?

A.—From the inception of the Company.

Q.—Was Mr. Marler also a Director of Alcohol?

A.—Yes.

ALEX. M. REAPER (for Plaintiffs), Cross-Examination.

Q.—Where is the chief market for Alcohol stock?

A.—Montreal.

Q.—Are the market shares in the dealings of Alcohol stock noted in the daily press?

A.—Yes.

10 Q.—If Mr. Marler was interested in the stock of Alcohol of which he was a Director, was he in a position to keep in daily touch with the market fluctuations of that stock from the newspapers?

A.—Yes.

Q.—And Mr. Marler, perhaps not unwisely in the light of after events, saw fit to sell his shares at the price you have mentioned of \$170?

A.—\$170 a share.

Q.—What price was fixed by the Auditors of the Company in terms of the By-laws of the Company, at the end of that financial year as the value?

20 A.—The value they fixed, was for Succession Duty purposes.

Q.—At the end of the financial year?

A.—That was the statement we used.

Q.—At the end of the financial year you used the same statement as had been used for Succession Duty purposes?

A.—Yes.

Q.—Has there ever been any other bona fide sale for cash, of the shares of Sir Mortimer Davis Incorporated than the transaction with Mr. Marler?

A.—No.

30 Q.—Will you just tell us in a word how that Marler transaction was handled? How many shares were involved?

A.—500 shares.

Q.—Whose cheque did Mr. Marler get?

A.—The cheque of the Estate.

Q.—What was done with that?

40 A.—The Estate charged back 50 shares to the Incorporated Company, and the Incorporated Company in turn charged Mr. Waddell for 25 shares, and deducted the value from the next payment of interest to him, and the other 25 shares were charged to the H. M. Marler and H. B. McLean Trustee account.

Q.—In the net result Mr. Waddell got his 25 shares and paid for them?

A.—Yes.

Q.—And the Marler and McLean account took up the other 25 shares you have referred to?

A.—Yes.

ALEX. M. REAPER (for Plaintiffs), Re-Examination.

(Same objection.)

(Same reserve.)

10 Q.—Had the purchase price of those shares at \$170 a share been charged against the Marler-McLean account before the settlement with Lord Shaughnessy in September, 1929?

(Same objection.)

(Same reserve.)

Q.—Was the amount of that purchase deducted from the amount coming to him?

A.—It was deducted after settlement.

20 Q.—You referred a number of times to your practice of sending monthly statements of the affairs of the Incorporated Company to Sir Mortimer Davis while he was living in Europe?

A.—Yes.

Q.—Have you any reason to believe or to know that he received the statements in the ordinary course?

A.—Yes.

Q.—What reason?

A.—Well, in some papers which I got back from France after his death, I got some of the statements which had been forwarded to him.

30 Q.—If he had not got his financial statements, in view of Sir Mortimer's character and business practice, would you probably have heard from him?

A.—I think so.

Re-examined by Mr. W. K. McKeown, K.C., of counsel for plaintiffs.

By the Court:

40 Q.—Did you keep up the practice of sending statements to Lady Davis after Sir Mortimer's death?

A.—No.

By the Court:

Q.—Why not?

A.—They were never asked for.

ALEX. M. REAPER (for Plaintiffs), *Re-Examination*.

Mr. McKeown: There has been so much new matter that has crept into this cross-examination I fear my re-examination will take up a little more time than otherwise would be necessary.

His Lordship: Would you like to suspend Mr. Reaper and take another witness?

10 Mr. McKeown: No, I think not My Lord.

By Mr. McKeown:

Q.—In the opening of your cross-examination, you were asked your experience prior to joining the Sir Mortimer Davis Company and you spoke of J. A. Jacobs, Asbestos Company?

A.—The Jacobs Asbestos Mining Company.

Q.—Did that Company wind up in liquidation?

20 A.—No. That Company was reorganized really under the name of the Consolidated Asbestos Limited.

Q.—After having been put in liquidation?

A.—No.

Q.—Reorganized in what way?

A.—A change in capitalization and in name.

Q.—Was it not a new Corporation entirely that took it over?

A.—No. Sir Mortimer bought the controlling interest in that Company, and he formed the Consolidated Asbestos. The only
30 change was a change in capitalization.

Q.—Was it not a new Corporation that took it over?

A.—It was a new Company entirely. It was a new reorganization.

Q.—Was it the new Company that took it over?

A.—Yes.

Q.—What position was the Jacobs Asbestos Company in at that
time?

A.—They were in fair shape.

40 Q.—Have they ever paid dividends?

A.—Yes, they have paid dividends in 1919.

Q.—Where can we get the particulars of that transaction?

Witness: The dividends?

Mr. McKeown: No, the transaction whereby that Company was taken over?

ALEX. M. REAPER (*for Plaintiffs*), *Re-Examination*.

A.—I think I can get it.

Q.—Who has the archives of the Jacobs Company?

A.—I think I have them.

Q.—Did the Consolidated wind up by going into the Merger with the Asbestos Corporation?

A.—Yes.

10 Q.—At the time it went into the Merger it was largely in the hands of the bank was it not?

A.—Well, just after it went in it was.

Q.—How much, in other words, did the Consolidated Asbestos owe the bank at the time it went into the Merger?

A.—We borrowed from the bank \$1,625,000 to clear off all liabilities.

By Mr. Campbell:

20 Q.—At the time of going into the Merger?

A.—At the time of going into the Merger.

By Mr. McKeown:

Q.—Certain securities were issued by the Merger and turned over to the bank and liquidated in part to pay off that loan of \$1,625,000?

A.—Yes.

30 By the Court:

Q.—Is that loan paid up?

A.—That loan is paid up.

By Mr. McKeown:

Q.—You also had a loan in connection with a subsidiary of Consolidated, that is, Federal Asbestos?

A.—Yes.

40 Q.—How much was that loan?

A.—\$465,000.

Q.—That is additional?

A.—Yes.

Q.—So that the indebtedness to the bank of those two Companies consolidated together was about \$2,090,000?

A.—Yes.

ALEX. M. REAPER (*for Plaintiffs*), *Re-Examination*.

Q.—As you have just said to His Lordship, part of the loan predicted on Consolidated Asbestos, \$1,625,000 has been paid off?

A.—Yes.

Q.—As to the other part of the loan in connection with the Federal Company originally of \$465,000, you still owe \$45,000 or \$46,000?

10 A.—Mr. Campbell: My recollection is that my learned friend went into all these figures in chief.

By Mr. McKeown:

Q.—Today the position is the Federal Asbestos has no properties?

A.—No. They have some securities yet.

Q.—They have some balance of securities from the Merger?

20 A.—Yes.

Q.—And as to Consolidated Asbestos they have no properties or operating concerns?

A.—No.

Q.—I think you told us that all the Bonds and the Preferred Stock received by Consolidated have been sold?

A.—Yes.

Q.—And they have got on hand a certain number of Common shares of Asbestos: How many in round figures?

A.—I think it is about 25,700.

30 Q.—That stock is selling in the vicinity of \$3.00 a share, which will give a total value to the present assets of Consolidated of \$77,000: How much capital stock is outstanding?

Witness: Of Consolidated?

Mr. McKeown: Of Consolidated?

A.—Actually outstanding, \$5,500,000, but \$250,000 is held in the name of Trustees and can be cancelled, held for the Company.

40 Q.—The outstanding stock actually is?

A.—\$5,500,000.

Q.—Five and a half million?

A.—Yes, but there are \$250,000 held for the Company, so that the outstanding stock is only \$5,250,000.

Q.—And what they have got to meet that \$5,250,000 due to shareholders are these Common shares which we have established the present value at \$77,000, is that right?

ALEX. M. REAPER (*for Plaintiffs*), *Re-Examination.*

A.—Yes.

Q.—And what is the picture as to Federal Asbestos? How much of the securities are they holding?

A.—They hold 46,000 General Mortgage Bonds of the Asbestos Corporation, and I think it is 3,495 shares of Common stock.

Q.—What are those Bonds worth today?

A.—I think the last I noticed was about \$40.00.

10 Q.—That would give a value of about \$18,400 for those bonds?

A.—Yes.

Q.—And, taking the common shares at \$3.00, would be \$10,-485.00 additional?

A.—Yes.

Q.—The bonds and the stock together, at their present value, would amount to \$28,885.00?

A.—Yes.

Q.—Is that all the assets the Federal Asbestos have?

20 A.—Yes, that is all the assets.

Q.—How much do they owe the Bank against that \$28,885.00?

A.—\$46,000.00.

Mr. Campbell: I would ask your Lordship to note my objection that all this matter does not arise out of the cross-examination, and, secondly, it has all been gone into exhaustively by my learned friend in examination in chief. The witness was questioned about practically every fact which has been asked him in his examination in chief. Practically every fact touched upon in this re-examination
30 was dealt with in the examination in chief. If my learned friend took eight days for his examination-in-chief, he should not now take another eight days to go all over the story again in re-examination. I submit the witness has established himself up to now as an honest man, and my learned friend cannot expect to break his testimony by going through the whole story again for another eight days.

This evidence does not arise out of the examination-in-chief, and is not legal re-examination.

His Lordship: Since you raise no objection as to the relevancy
40 of these questions I must presume they are relevant; but, why are they relevant? They do not strike me in that way at all—probably because I have not grasped their import.

Mr. Campbell: The point is they have already been dealt with in the examination-in-chief of the witness. Surely my learned friend is not in re-examination entitled to go over his examination-in-chief. To my mind every question he has put in re-examination has already

ALEX. M. REAPER (for Plaintiffs), Re-Examination.

been put in examination-in-chief, and the witness answered it, and as far as I recall there is no variation in the answers. Does my learned friend intend to take the witness through another eight days of examination? It is not fair to the witness, or to the Court, or to the case in general. We have already taken up a considerable length of time on this, and I submit there must be an end to it.

10 I make this objection now because it seems to me my learned friend should restrict himself to the legitimate scope of re-examination, and not attempt to repeat his examination-in-chief. If he wishes to recall the witness perhaps he may do so, after Mr. Reaper has had a rest.

Mr. McKeown: Of the eight days it was my unfortunate duty to examine this witness I will guarantee at least one-third was taken up, and the record will show it, by my learned friend's objections. That is just what he is doing now continuously, and, as I submit, simply wasting the time of the Court.

20 The relevancy of the question is because the witness attempted in cross-examination, under the questions of my learned friend, to state his prior experience and justify his ability as an administrator.

I never brought out the matter of the Jacobs Company. I never heard of it before. I am just now going to show how he got along prior to his advent into this.

Mr. Campbell: Whether Sir Mortimer Davis chose well or badly, he knew the history of the witness and chose him as an Executor. It was he who ran those Companies which came to grief. Surely it is not going to help your Lordship to decide whether this witness should be ousted because Sir Mortimer Davis (who knew the shortcomings of the witness, if he had any) named him as an Executor.

Mr. McKeown: I think I am entitled to show that so far as Mr. Reaper contributed the matter was a fiasco.

Mr. Campbell: But, that would only go to show that Sir Mortimer made a wrong choice.

40 His Lordship: If you can prove that Mr. Reaper has made mistakes since he entered on the Will of the late Sir Mortimer, I will listen to you; but I have no interest in his previous mistakes, if there were any. Of course, everyone makes mistakes.

Mr. McKeown: But, there comes a time when the Article of the Code has to come into force.

ALEX. M. REAPER (for Plaintiffs), Re-Examination.

His Lordship: The previous mistakes of the witness are not interesting. Sir Mortimer took him with his mistakes.

Mr. McKeown: I call your Lordship's attention to the fact that I did not mention the Jacobs Asbestos. Now when the point is about to be concluded, my learned friend comes in with a fifteen-minute speech. I will only take a few minutes on this point, and I will ask
10 my learned friend to be as careful as he can in his objections.

Mr. Campbell: I will make my objections whenever I consider they are well founded.

His Lordship: Perhaps for the sake of brevity it would be as well to reserve the objection.

By Mr. McKeown (continuing):

20 Q.—So, there is a deficit of \$17,115 as against the Bank loan, taking all the assets of the Federal into account?

A.—At present market prices, yes.

Q.—And, that is the figure for which the Incorporated Company is guarantor?

A.—They are guarantors.

Q.—They are guarantors to the Bank?

A.—Yes.

30 Q.—Your present salary from the Incorporated Company is \$10,000?

A.—Yes.

Q.—In virtue of the meeting of Directors held December 31st, 1928?

A.—Yes.

Q.—At which Lord Shaughnessy and yourself were the only persons present?

A.—Yes.

Q.—Prior to that time your salary had been \$7,500?

A.—Yes.

40 Q.—From what date had it been \$7,500?

A.—From October 1st, 1926.

Q.—What had it been before that?

Mr. Campbell: I repeat my objection to this, as not being proper re-examination. My learned friend went into all this in chief, and I cross-examined the witness upon it. My learned friend is now repeating the whole story, and if this continues I do not see when

ALEX. M. REAPER (for Plaintiffs), Re-Examination.

we are ever going to end. My learned friend in examination-in-chief went exhaustively into this matter of increase of salary in the attempt to persuade your Lordship that it was illegal and improper. He will argue that when the time comes, but surely we cannot help your Lordship further upon it by having the witness repeat the circumstances again and again ad nauseam. It is not legitimate re-examination, and therefore the question is illegal and I object to it.

10

Mr. McKeown: My learned friend had the witness say in cross-examination that he had additional duties to carry out, and on that ground attempted to justify this increase of salary from \$7,500 to \$10,000. The witness stated his previous salary was \$7,500, but I am instructed it was less than that, and I think this is proper re-examination. My learned friend was very careful not to bring this up, but it is my intention to put the whole picture before your Lordship.

20 By Mr. McKeown (continuing):

Q.—What was your salary before it was \$7,500?

A.—\$6,000.

Q.—From when was it \$6,000?

A.—From the time I went with the Incorporated Company, in February, 1926, until the end of September, 1926.

Q.—What were the additional duties you claim were imposed upon you at the time your salary was increased from \$7,500 to \$10,000? You had become Vice-President?

30

A.—Yes.

Q.—What additional work devolved upon you as Vice-President, which you did not have before as Secretary-Treasurer and a Director of the Company?

A.—There were certainly more responsibilities.

Q.—What were the duties that devolved upon you, which you did not have before, in the way of actual work?

A.—In detail work, probably not very much difference; but without the co-operation of Sir Mortimer the responsibilities were naturally greater.

40

Q.—You had the same leader, Lord Shaughnessy, as you had during Sir Mortimer's time?

A.—Yes, but I did not have the same responsibility when Sir Mortimer was there as I had afterwards.

Q.—You mean you had greater responsibilities afterwards?

A.—Yes.

Q.—But, you had Lord Shaughnessy there, as you had before?

ALEX. M. REAPER (*for Plaintiffs*), *Re-Examination.*

A.—Yes.

Q.—So that the increase of salary would be justified on account of the responsibilities, rather than the additional work you had to do?

A.—Yes, I think so. Of course, there would be a certain amount of additional work.

10 Q.—You had a very active President of the Company right with you in the office all the time?

A.—Yes.

Q.—You do not suggest for one moment that before you put up the salaries on December 31st you had conferred with Lady Davis as your co-Executor upon the subject?

A.—No, I had not.

Q.—Now, a word about Mr. Waddell, whose name has come out in your cross-examination. Mr. Waddell was the Manager of the Union Bank prior to joining Sir Mortimer, was he not?

20 A.—He was their manager here in Montreal.

By Mr. Campbell:

Q.—Was that the Head Office, or a Branch?

A.—Montreal was the Branch Office.

By Mr. McKeown (continuing):

30 Q.—Mr. Waddell was in charge of the Montreal Office of the Union Bank at that time?

A.—Yes.

Q.—And, had been for some years?

A.—Yes, for some years.

Q.—Did Sir Mortimer do his banking with the Union Bank at that time?

A.—Yes, I think so.

Q.—And, Mr. Waddell gave up his position with the Bank to take this position with Sir Mortimer, as you understand it?

A.—As I understand it, yes.

40 Q.—What was Mr. Waddell's salary?

Witness: When he started here?

Counsel: Yes.

Mr. Campbell: You mean with Sir Mortimer Davis, Incorporated, not with the Bank?

ALEX. M. REAPER (for Plaintiffs), Re-Examination.

Mr. McKeown: Yes. With Sir Mortimer Davis, Incorporated.

Witness: It appears to have been \$12,500 at the start.

By Mr. McKeown (continuing):

10 Q.—When would that be?

A.—That was in 1919.

Q.—You are now speaking from the Company's ledger?

A.—Yes.

By Mr. Campbell:

Q.—Were there any changes? Does it appear that he got a bonus?

A.—There is an item of \$5,000 here.

20 By Mr. McKeown (continuing):

Q.—Let us deal with his salary first, and we will come back and see about the bonuses afterwards.

A.—On December 21st, 1920, there is a bonus of \$5,000 to Mr. Waddell. Then his salary was increased, apparently about April, 1921, to \$20,000. On December 21st, 1921, there is a bonus of \$5,000. On December 18th, 1922, there is a bonus of \$5,000.

30 By Mr. Campbell:

Q.—Was his salary still the same in 1922?

A.—The same, yes.

Apparently in May, 1923, his salary was increased to \$25,000 a year. On December 19th, 1923, there was a bonus of \$5,000.

That appears to have been all. He continued at the salary rate then, I think. He was paid salary, I think, up to April 30th, 1926, although I believe he actually left the Company about the first of January.

40 By Mr. McKeown (continuing):

Q.—What was the condition of Mr. Waddell's health at that time?

A.—It was not too good, I understand.

Q.—Of course, you were not there then?

A.—I was there just before he left. I had seen him.

ALEX. M. REAPER (for Plaintiffs), *Re-Examination*.

Q.—Was he not an old man at that time?

A.—I understand he was not too well, and he has not been very well since.

Q.—Are you able to say he severed his connection with the interests of Sir Mortimer Davis on account of his health?

A.—No, I would not like to say that.

Q.—You could not say that?

10 A.—No; I hardly think that was it.

Mr. Campbell (to the witness): If you know any other reason you might just as well give it now, so that I will not have to come back upon it in re-cross-examination.

By the Court:

Q.—Did Mr. Waddell get a bonus in 1924 and 1925?

20 A.—No, I think not. The last one I mentioned was 1923. There was nothing in 1924 or 1925.

Q.—Mr. Waddell had already gone when you entered the employ of Sir Mortimer Davis?

A.—He was going at that time. He was still coming around occasionally, but he left town just about that time.

Q.—How was his health at that time?

A.—Not too good. He was not very well at that time.

Q.—Do you know whether he resigned on account of ill-health?

30 A.—I really do not think that was the main reason. I think it was really through some misunderstanding with Sir Mortimer.

And it being 12.45 o'clock, the further testimony of the witness is continued until 2.30 o'clock in the afternoon.

And further for the present deponent saith not.

And at 2.30 o'clock in the afternoon personally came and re-appeared the said witness,

40

ALEXANDER M. REAPER,

and his re-examination was continued as follows:

By Mr. McKeown, K.C.:

Q.—I do not know whether it has been brought out definitely

ALEX. M. REAPER (for Plaintiffs), *Re-Examination.*

as yet, but will you say to His Lordship whether any work had been done on the Y.M.H.A. Building prior to Sir Mortimer's death?

A.—No. I think certain plans had been prepared, but there was no actual work done on the building.

Q.—What would be the date the ground was broken?

A.—There were certain leases on part of the property that was acquired, and when those ran out on the first of May the buildings
10 were demolished, and I think probably about a month after that they began the work on the new building.

Q.—That would be about June, 1928?

A.—About that, I should think.

Q.—You know Lady Davis has not signed the Deed of Transfer which was offered for her signature concerning that property?

A.—Yes.

Q.—In the course of your cross examination you have been taken over a great many statements; but, to make a point perfectly clear
20 it is a fact that the only statements which Lady Davis had received from Lord Shaughnessy and yourself from the time of Sir Mortimer's death until the time she arrived back here, in June, 1929, are the two Exhibits I now show you, Exhibit P-50, being a statement of the Estate as at March 22nd, 1928 (date of death) and the statement of the Incorporated Company as of September 30th, 1928.

A.—Yes, I think those were all.

Q.—Those were the only two?

A.—Yes.

Q.—Was there anything in the statement of the Company of
30 September 30th, Exhibit P-51, sent to Lady Davis, which would show that the Jennison transaction was anything more than a loan of \$10,000?

A.—No.

Q.—Would it show it was any part of a Finance Corporation, or a scheme, or anything more than a loan?

A.—No, that is all there is there.

Q.—Secured by what?

A.—Secured by 500 shares no par value capital stock of Jennison & Company, Limited.

Q.—That is all the information concerning Jennison that was
40 afforded from first to last to Lady Davis, as far as statements went, prior to what information she may have obtained after her return to Canada in June 1929?

A.—As far as statements were concerned.

Q.—Otherwise, this statement Exhibit P-51, the statement of the Incorporated Company, did not look too badly (as was suggested

ALEX. M. REAPER (*for Plaintiffs*), *Re-Examination*.

by His Lordship at the time the statement went in?) It showed profits for the year of \$763,203.34?

10 Mr. Campbell:—I do not want to take up your Lordships's time with objections, so I will simply repeat my objection to this evidence. My learned friend is not entitled on re-examination to go into matters which have been covered in chief.

Mr. McKeown: And I am not going into anything I have covered in chief.

20 Mr. Campbell: All those statements were gone into most exhaustively in the examination in chief of the witness. My learned friend produced them as his own Exhibits. I now respectfully submit that in law he is not entitled in re-examination to go into matters which have been fully and completely dealt with in chief, and I object to the question as illegal for that reason.

Mr. McKeown: The matter was dealt with in cross-examination by my learned friend, and the attention of the witness was specially focussed on those profits. I wish to emphasize now that they did not even represent the Alcohol dividends, and I think this is evidence which is quite relevant.

Mr. Campbell: Does Your Lordship admit the evidence?

30 His Lordship: It would take longer if I were to rule it out.

Mr. Campbell, K.C., of Counsel for Defendants, respectfully excepts to the ruling of the Court.

By Mr. McKeown (continuing):

40 Q.—Otherwise, this statement Exhibit P-51, the statement of the Incorporated Company, did not look too badly as was suggested by His Lordship at the time the statement went in?) It showed profits for the year of \$763,203.34?

A.—Yes: made up of operating profits, and profits from investments, and insurance policies.

Q.—I do not care what it was made up of. It was profits?

A.—Yes.

Q.—What were the Alcohol dividends for that year?

A.—The Alcohol dividends received that year were \$768,080.44.

ALEX. M. REAPER (for Plaintiffs), Re-Examination.

Q.—About \$5,000 over the total profit shown both from operating and the other source you have spoken of—capital?

A.—Yes.

Q.—After Lady Davis' return to Montreal she had several interviews with you and Lord Shaughnessy at the offices of the Incorporated Company?

A.—Yes.

10 Q.—And, at her request you prepared the statement Plaintiff's Exhibit No. 6?

A.—We had a rough draft of this ready for her, and this was typed at her request and given to her later on.

Q.—When you first took up the matters referred to in Exhibit No. 6 it was not in its present form?

A.—No; it was a rough statement—rough sheets.

Q.—Lead pencil sketches?

A.—Yes.

20 Q.—And, you discussed with Lady Davis the matters sketched out on those lead pencil memoranda?

A.—Yes.

Q.—Later on you converted the whole into the Exhibit which is now before you, Exhibit No. 6, and either gave it to her or sent it to her?

A.—Mailed it to her, I think.

Q.—Some considerable time elapsed between the interview when you showed her the sketch of Exhibit No. 6, and the time it was sent to her by mail?

30 A.—I do not know just how long. It might have been probably two weeks. I do not know exactly how long.

Q.—It might have been longer than two weeks?

A.—I do not know the exact date. I do not think it could have been much longer than that. I have not the exact date this was delivered.

Q.—But, there was some space of time, which you were speaking of as being, I suppose, a minimum of two weeks, between the time of your interview and the time the statement was made up and forwarded?

40 A.—Yes, there was a little time in between.

Q.—As to two further statements to which you have referred, Plaintiffs' Exhibits Nos. 8 and 9—Interim Statements of both the Estate and the Company, of August 31st, 1929—those statements, I take it, were prepared by the Auditors in accordance with Lady Davis' request contained in her letter to Lord Shaughnessy of August 15th, 1929, part of Plaintiffs' Exhibit No. 7?

A.—Yes.

ALEX. M. REAPER (for Plaintiffs), Re-Examination.

Q.—Lady Davis wrote Lord Shaughnessy, under date August 15th, specifically asking for the information contained in the two Exhibits you have just examined, Nos. 8 and 9, and asking that they be prepared by the Auditors of the Company? You understood that?

A.—Yes.

10 Q.—When did you give instructions to the Auditors to prepare those statements Exhibits Nos. 8 and 9?

A.—There were two letters, I think, from Lady Davis: one of August 15th, and one of August 23rd. We carried on to the end of the month. I think it was in the beginning of September we instructed the auditors to go ahead.

Q.—In other words, between the receipt of the letter Exhibit P-7, dated August 15th, 1929, specifically asking for this information, and until after the first few days in September, no instructions were actually given to the Auditors?

20 A.—I think it was the first few days in September.

By the Court:

Q.—There was a letter from Lord Shaughnessy asking whether she could wait until September 30th?

A.—Yes.

Q.—And she said no?

A.—Yes.

30 By Mr. McKeown, continuing,

Q.—Will you please verify that the letter to which His Lordship refers forms part of Exhibit No. 7, being the letter of August 23rd, 1929, from Lady Davis to Lord Shaughnessy, in which she says:

“I beg to acknowledge receipt of your letter of 21st. I wish to state I should like an Interim Statement of Sir Mortimer Davis, Incorporated, as I requested, made out at once.

40 In order that you may make proper arrangements I wish to advise you that in future I shall require a properly audited monthly balance sheet, together with supporting figures, as usually submitted to Directors.

I wish the audited statement of Sir Mortimer B. Davis' Estate to proceed immediately, and I shall want an audited monthly statement of all transactions” etc.

A.—Yes.

ALEX. M. REAPER (for Plaintiffs), Re-Examination.

Q.—That letter is dated August 23rd?

A.—Yes.

Q.—Will you give us, as well as you can, the date the instructions were given to the Auditors?

A.—Probably September 4th.

Q.—Those audits are relatively very short audits?

A.—I think it took a considerable time.

10 Q.—How many hours would that audit take?—For the Estate?

A.—I do not know.

Q.—You were there when it was being carried on?

A.—Yes, but I did not check the hours.

Q.—Can you not give me some idea of the time?

A.—No, not as to hours. I know they started about the first of the following week, and they were there pretty well continuously until the report was submitted.

20 Q.—On those two small audits of the Estate and of the Incorporated Company?

A.—Yes: on those audits.

Q.—How many men were working on it?

A.—They ranged from two to four, I think.

Q.—And, they worked daily?

A.—For the most part. They may have had part of it finished before, but they were not completed until just about the time the statements were delivered.

30 Q.—That was some time after October 6th, I think. Surely it never took a month to make those two small audits with two to four men working on them?

A.—I suppose the auditors will have the exact time they spent on the work.

Q.—In any event, those reports were not delivered to Lady Davis until Lord Shaughnessy had returned from the West.

A.—I think they were delivered on October 7th.

Q.—You will notice you are not answering the question I asked you. October 7th does not mean anything in reply to my question.

40 His Lordship: We know Lord Shaughnessy went West, and came back. He left on September 5th, and came back on October 5th.

Mr. McKeown: Your Lordship's memory is better than mine on that point.

By Mr. McKeown (continuing):

ALEX. M. REAPER (for Plaintiffs), Re-Examination.

Q.—When did Lord Shaughnessy return from the West?

A.—On October 5th, I think.

Q.—So, they were delivered after his return. Had they been submitted to him before being closed?

A.—No.

Q.—You have been taken over a variety of subjects by my learned friend, and have answered him to the effect that Lady Davis
10 did not complain of or criticise the statements which she received, and matters of that kind. During the whole of that period Lord Shaughnessy and yourself held her power of attorney, did you not?

A.—Yes.

Q.—These statements Exhibits D-17 and D-18 cover the two
five year periods—summarized statements of profit and loss for the
period beginning September 30th, 1919, and ending September, 1924
(Exhibit D-18) and the other statement beginning September 30th,
1924, and ending September 30th, 1929. Looking at the first state-
20 ment, Exhibit D-18, I think you have already explained that all the
figures shown in red are deficits?

A.—With the exception of the figures on the line “Interest on
Other Loans, Etc.”

Q.—All the other red figures are deficits?

A.—Yes.

Q.—And this document before you purports to show that the
result of five years’ operation of this Company, from the time of its
incorporation to September 30th, 1924, was a deficit of \$1,015,174.10?

A.—Yes. That is the total deficit here—made up of the oper-
30 ating loss, and other losses.

Q.—Does that reflect the real position of affairs?

A.—I think so. These are the figures taken from the Company’s
records.

Q.—Do they reflect the real results obtained during that time?

A.—I think so.

Q.—Do you see any indication on that compilation of the fact
that in the year ending September 30th, 1924, the shareholders re-
ceived \$3,250,000 from the Company?

A.—No, there is no indication there.

Q.—In point of fact did the shareholders of the Company not
40 receive such a sum?

A.—Yes; by a capital distribution.

Q.—What does this statement show in the way of profits for the
year ending December 30th, 1924?

A.—Altogether \$698,419.75.

Q.—And that does not take into account this other item I have

ALEX. M. REAPER (for Plaintiffs), Re-Examination.

just mentioned to you of the odd sum of three and quarter million dollars, does it?

A.—No, but

Q.—(interrupting) Just add those two items together.

10 Mr. Campbell: I submit my learned friend should let the witness answer the question. If the witness wishes to explain he has a right to do so. My learned friend should let him complete his answer.

Mr. McKeown: I would not think of interfering with him.

Witness: The \$3,250,000 was

By Mr. McKeown:

20 Q.—(interrupting) Do not argue with me. Just make the mathematical calculation.

Mr. Campbell: Let the witness answer the question.

Mr. McKeown: That is just what I want him to do.

By Mr. McKeown, continuing,

Q.—Will you add those profits of the year 1924

30 Mr. Campbell (interrupting): The witness has not answered the previous question. My learned friend interrupted him.

Witness: The item of \$3,250,000 was a capital distribution.

By Mr. McKeown, continuing,

40 Q.—I am not asking you to argue with me. I ask you simply to add those two items together.

Mr. Campbell: He is answering your previous question.

Mr. McKeown: He is not doing anything of the kind. I did not ask him what they were. I simply asked him to add them together and tell me the total. Of course, I know my learned friend does not like it.

ALEX. M. REAPER (*for Plaintiffs*), *Re-Examination*.

Mr. Campbell: I like it, but that is not the point. It is not the whole truth.

Mr. McKeown: I will argue that with my learned friend, but I will not argue it with the witness. I have asked a perfectly simple and perfectly legal question, and I expect the witness to answer it and not usurp the position of my learned friend in arguing the case.

10

Mr. Campbell: He is answering the question, and I submit he is entitled to make a complete answer, and I ask that the witness be permitted to complete his answer.

Witness: The capital stock had been increased and . . .

By Mr. McKeown:

Q.—(interrupting.) We have heard of that, and everybody knows it. I am not asking you that at all.

20

Mr. Holden: My learned friend interrupts every time the witness starts to say a word, and it is impossible for Mr. Reaper to give his answer.

Mr. McKeown: I would not think so.

Mr. Holden: I say so.

30

Mr. McKeown: But that would not make it so.

Witness: Then later there were a number of shares redeemed practically of that same value.

By Mr. McKeown (continuing):

Q.—Who in the world ever asked you that? I asked you to add the two sums for the purpose of this record, and nothing more.

40

Mr. Campbell: You asked me about a certain sum of money which was distributed, and the witness is telling you where it came from.

Mr. McKeown: I never asked him anything of the kind. You forgot to ask him. It is purely a matter of arithmetic.

ALEX. M. REAPER (*for Plaintiffs*), *Re-Examination*.

Mr. Campbell: I will be very glad if you ask him the whole story.

Mr. McKeown: I am sorry if I cannot accommodate my learned friend on every question I ask.

10 By Mr. McKeown (continuing):

Q.—Now that this has blown over, will you please tell me the amount of those two sets of figures?

A.—The total of those items comes to \$3,948,419.75.

Q.—And the particular item of three and a quarter million dollars was paid out to the shareholders, or carried to their credit, in the year 1924, was it not?

A.—Yes.

20 Q.—Would you be good enough to refer to your records and verify that in the year 1920, in connection with Corby Distillery, the sum of \$866,184.76; in the year 1923, on Alcohol, the sum of \$1,994,247.03; and in the year 1924 on Alcohol, \$4,047,072.00—forming a total of \$6,907,503.79—were written up on the capital assets of Sir Mortimer Davis, Incorporated, and are not reflected on this statement, Exhibit D-18, which has been produced during the course of your examination?

Mr. Campbell: Did you read the heading of the document, Mr. McKeown? It refers to profit and loss.

30 Mr. McKeown: I am referring to money that was taken out of the Company, which is a little more to the point.

Mr. Campbell: We talk about the money we put in.

Mr. McKeown: And we will not forget that, either.

40 Witness: That amount is substantially correct. The statement of August 31st, 1929, shows how capital surplus account was paid out.

The total of those figures would amount to \$6,834,751.03. The difference is a readjustment of value.

Q.—They were actually written up for approximately the amounts I have given you in the years I have mentioned?

A.—Yes. Probably other adjustments would account for the difference.

Q.—And, all prior to September 30th, 1924?

ALEX. M. REAPER (for Plaintiffs), Re-Examination.

A.—Yes, or on that date.

Q.—So that the regrettable apparent result of the operation of this Company for the five years as shown by Exhibit D-18 of a deficit of \$1,015,174.10 was not quite as bad as it appeared on the face of it?

10 Mr. Campbell, K.C.: We filed a statement which purported to be a statement of profit and loss of the Company. He is now asking the witness about something entirely different. The implication is that the statement we filed was inaccurate or incomplete.

Mr. McKeown, K.C.: It was very misleading as a result of the five years' operations.

Mr. Campbell, K.C.: I think it left everybody under the impression that it was a loss of \$3,500,000.00.

20 Mr. McKeown, K.C.: We will leave it to the Judge. This is not the mythical money you were talking about. This is real money.

The Court: Do I understand if you add \$3,250,000.00 with the apparent deficit of \$1,150,000.00, leaving a surplus of a little over \$2,000,000.00 for the five years ending—

Mr. McKeown, K.C.: They took out \$3,250,000.00 and put it in their pocket.

30 The Court: If you debit this \$3,250,000.00, there would be a debit of \$3,000,000.00 and something.

40 Mr. McKeown, K.C.: This is a statement put in by Mr. Campbell and is only a statement of profit and loss; it is a system of bookkeeping during the five years. I submit it is altogether fallacious, to fool anybody who did not know enough to dig into the surface position. It might be all right for Income Tax purposes and bookkeeping, to plow profits back into the assets and matters of that description, and at the end of the year do what they did here,—write up the capital assets, \$3,250,000.00, and draw it out the same day.

Mr. Campbell, K.C.: It does not belong in the operating statement.

Mr. McKeown, K.C.: It is immaterial; it is bookkeeping.

ALEX. M. REAPER (*for Plaintiffs*), *Re-Examination*.

The Court: I want to know whether there has been a profit.

Mr. McKeown, K.C.: Sir Mortimer Davis was not conducting business for amusement. You write up the capital assets on one side and draw them down on the other.

10 The Witness: What I was just looking at—I might say I would like to point out while the increased value of this write-up appears at \$6,854,751.00, apparently the actual write-up on assets as at September 30th, 1924, was only \$4,334,143.00. There were write-downs had to be taken into consideration as well.

20 Mr. McKeown, K.C.: The write-downs would be more considerable but at the same time I have no doubt there were actual losses sustained that would not be written down. They were written down and the capital surplus shown on September 30th, 1924, \$3,250,000.00, was taken out.

The Witness: Yes.

By Mr. McKeown, K.C.:

Q.—What was the capital surplus after the \$3,250,000.00 was taken out?

A.—\$1,184,143.00, with a deficit on the profits and loss equal to \$1,115,174.00.

30 Q.—One about offset the other?

A.—Yes.

Q.—You saw where the \$5,000,000.00 was enough?

A.—Yes.

Q.—And that period was when the business had the misfortune to be operated by Sir Mortimer Davis and Mr. Waddell?

A.—Yes. Mr. Waddell was there.

Q.—It was before the advent of Lord Shaughnessy?

A.—Yes.

40 Q.—The statement Exhibit D-17 covering the five-year period from September 30th, 1924, to September 30th, 1929, showed during the five years, for four of which Lord Shaughnessy was President, I think; is that right?

A.—Yes.

Q.—Vice-President?

A.—Vice-President.

Q.—Of the Incorporated Company?

A.—Well, he was President for a while.

ALEX. M. REAPER (for Plaintiffs), Re-Examination.

Q.—President for the remaining year or so—shows operating profits of what?

A.—Operating profits, \$2,263,996.72, and other profits, \$1,025,437.99, or a total of \$3,289,434.69.

Q.—Taking the operating profits, those are the profits which would reflect Alcohol dividends received by the Incorporated Company?

10 A.—They are included in the income from investments.

Q.—They represent on this figure \$2,263,996.72, operating profit?

A.—They are included, yes.

Q.—What were the Alcohol dividends during those years, from September 30th, 1924, to the end of September, 1929?

A.—\$4,074,402.05.

Q.—Which is about \$1,500,000.00 in excess of the operating profit to which your attention has just been drawn, of \$2,263,996.72 for the same period?

20 A.—Yes.

Q.—Now, you said something in your cross-examination, I think, to the effect that the year ending September 30th, 1927, was the best year the Incorporated Company had had since its incorporation. Is that right?

A.—Yes, in total profits.

Q.—And which is shown on Exhibit D-17, to have been, from operating, \$701,854.86, and from other sources \$931,052.62, or a total of \$1,632,907.48. But that did not compare with the results of the year finishing September 30th, 1924, taking into account the profits, \$698,419.75, and the amount distributed from capital in the same year of \$3,250,000.00, of which you have already given the figures, \$3,948,419.75?

30 A.—No. Not if you take that depreciation in assets into account.

Q.—Now, looking once more at this statement D-18, the whole write-up to which I have drawn your attention during that period aggregating something in the vicinity of \$7,000,000.00, was written up, for I understand nearly \$6,000,000.00 in the years 1923 and 1924. Is that so, in 1923, on Alcohol?

40 A.—\$1,994,247.03, and in 1924 on Alcohol \$4,047,072.00, but there were also write-downs, which brought the total down to around \$4,000,000.00.

Q.—But as to these write-ups, do you contest that they might, if the management had so chosen, have been distributed better over the five years than they were as being concentrated in the last two years?

ALEX. M. REAPER (*for Plaintiffs*), *Re-Examination*.

A.—I don't think that came into the profit and loss account.

Q.—I am not talking about the profit and loss. I am talking about the write-ups.

A.—They were written up at stated intervals.

Q.—In the period covered by Lord Shaughnessy's tenure of office, will you verify, allowing for the write-ups and write-downs, there was a total write-up during that period of \$1,758,360.00?

10 A.—Yes, that is right.

Q.—Included in these write-ups, was this item of Cadillac Coal, which has been carried in the books of the Company at \$10,000.00, written up to \$500,000.00?

A.—Yes.

Q.—A write-up of \$490,000.00?

A.—Yes.

By Mr. Campbell, K.C.:

20 Q.—Cadillac Coal stock?

A.—Yes. Cadillac Coal stock.

By Mr. McKeown, K.C.:

Q.—Which was simply, I suppose, to equalize the capital structure of the Coal Company, upon which you had received \$450,000.00 worth of stock?

A.—Yes.

30 Q.—And that stock took the place of the former item carried at \$10,000.00, stock?

A.—And \$50,000 of bonds.

Q.—What were the main items of the Cadillac Coal, which figured in the write-ups to which you have just referred, apart from Cadillac Coal?

A.—The Alcohol Company stock.

Q.—Speaking of the write-ups, during the last period, do they include an item of \$1,135,097.50, representing \$15.00 a share on the Alcohol stock dividend which were taken into account for the purpose of profits at only \$5.00 a share.

40 A.—Yes.

By Mr. Campbell, K.C.:

Q.—Were they written into the surplus account at \$15.00?

A.—The difference between \$5 and \$20, or \$15 a share, was written into the capital surplus account.

ALEX. M. REAPER (*for Plaintiffs*), *Re-Examination*.

By Mr. McKeown, K.C.:

Q.—Now, Mr. Reaper, I would like to draw your attention to another subject: are you familiar with this report purporting to be prepared by Price Waterhouse & Co. under date June 15th, 1928, filed by my learned friend as Exhibit D-19?

A.—Yes.

10 Q.—Did you participate in the preparation of that?

A.—Well, I knew of its preparation.

Q.—Can you tell His Lordship if the figures which are mentioned here for the operating profits and returns on the stock of the Incorporated Company from September 30th, 1924, to the end of March, 1928, are accurate?

A.—No. I could not say without checking it up. I would have to—

20 Q.—I will read it into the record and if it is wrong someone can correct it.

Mr. Campbell, K.C.: Give him the comparative statement so he can follow it. You are asking him if they are accurate. Let him look at the comparative statement and he can tell you.

By Mr. Campbell, K.C.:

Q.—Have you got your comparative statement?

A.—No, I have not got it.

30 Mr. Campbell, K.C. What years are covered by the report?

Mr. McKeown, K.C. . 1924 forward.

Mr. Campbell, K.C. This will give 1925, 1926, 1927, 1928 forward. 1924 will be the other one. You will need D-18, too, Mr. Reaper.

40 Mr. McKeown, K. C. I will give him my D-18.

By Mr. McKeown, K.C.

Q.—I notice this report at page 2, that is Exhibit D-19, of the Incorporated Company's statement of Assets and liabilities, operating statement March 3rd, 1928, proceeds, at page 2—

“ With a view to assist the Directors and Shareholders of

ALEX. M. REAPER (for Plaintiffs), *Re-Examination.*

the Company in determining the value of the shares as called for by the Company's by-laws, we give below the operating profits of the Company for four and one-half years, ending March 31st, 1928;

	Year ending September 30th, 1924	\$241,372.90
	Year ending September 30th, 1925	171,744.04
10	Year ending September 30th, 1926	224,222.29
	Year ending September 30th, 1927	
	which include a capital stock bonus of \$454,039.00, as received from the Canadian Industrial Alcohol Limited	701,854.86
	Half year to March 31, 1928	204,664.77"

A—That is approximately right.

Q.—And then proceeds this, the important part

20 "These operating profits are returns on the issued capital stock, 50,000 shares as under:

"For Year ending September 30th, 1924, \$4.48 per share."

Q.—That is 4.83%, is it not, Mr. Campbell?

Mr. Campbell, K.C.: I suppose so.

By Mr. McKeown, K.C. (reading):

30 For the year ending September 30th, 1925, 3.43%.
For the year ending September 30th, 1926, exclusive of capital stock bonus, 4.95%.
Average for four years ending September 30th, 1927, 4.42%.
Average for three years ending September 30th, 1927, 4.29%.
Half-year, March 31, 1928, 4.09%.

Do you verify that?

A.—Yes.

40 Q.—That is how these fabulous sums work out?

Mr. Campbell, K.C.: That is operating profit and he divided his figures quite clearly, so much into operating and so much in dealing in stock and securities. Don't leave a wrong impression.

Mr. McKeown, K.C.: Don't be afraid of a wrong impression.

ALEX. M. REAPER (for Plaintiffs), *Re-Examination*.

Mr. Campbell, K.C.: I am very anxious you should not mislead the witness.

Mr. McKeown, K.C.: No one can do that.

By Mr. McKeown, K.C.:

10 Q.—Let us say a word about Succession Duties; I take it from the time Sir Mortimer died, on March 22nd, 1928, up to the time of the filing of the petition for the six months' extension on August 14th, 1928, you did not have the subject up at all with the Succession Duties authorities, did you?

A.—No. We were just getting data together.

By the Court: Would it have been possible with the statement of Price, Waterhouse & Co. for the period ending 31st March, 1928, to have filed some sort of declaration?

20 A.—It was only made in June, 1928. That statement was only made in June.

Mr. Campbell, K.C.: Price, Waterhouse did not prepare a statement as at March. They prepare a statement as at the financial year.

The Witness: It was only for a special purpose they prepared a statement later on, as at that date.

30 By Mr. McKeown, K.C.:

Q.—I might go further in this connection, to Exhibit D-19, being the statement—

By the Court:

Q.—That was the basis for the Succession Duty?

A.—For the stock of Sir Mortimer Davis, Incorporated.

40 By Mr. McKeown, K.C. (continuing last question):

Q.—Of the Incorporated Company as of March 31, 1928, prepared by Price, Waterhouse and accompanied by a report dated 12th June, 1928, which, in point of fact, is the statement which was afterwards filed, is it not?

A.—That was filed in support of the statement we submitted.

ALEX. M. REAPER (*for Plaintiffs*), *Re-Examination*.

Q.—It was filed in September?

A.—Yes.

Q.—Could it not have been equally well filed in the month of June, three months earlier?

A.—We were waiting to get returns from France. We hoped to be able to complete the return.

10 Q.—Did Price, Waterhouse Company also make an interim statement that would concern the Estate about the same time as D-19 was delivered to you, on June 12th, 1928?

A.—About the Estate?

Q.—Yes?

A.—No, I don't think so.

Q.—You did not ask them to make a statement on the Estate?

A.—No.

20 Q.—On the other hand, Lord Shaughnessy had left for England about that time, and took with him a statement of the Estate, Exhibit P-50?

A.—Yes.

Q.—No doubt this P-50 was prepared before Lord Shaughnessy sailed for the other side in the early summer or the summer of 1928?

A.—In the beginning of July, I think. Of course, there is also mentioned here that certain things are missing.

Mr. Campbell, K.C.: There is a note on the Balance Sheet as to its incompleteness and why had it been your purpose before approaching the Succession Duties authorities?

30

Mr. McKeown, K.C.: To have the whole Estate complete for final settlement.

The Witness: As complete as we possibly could.

By Mr. McKeown, K.C.:

40 Q.—Did you at any stage, prior to the demand for your resignation on the 21st of November, 1929, go to the Collector of Succession Duties here and apply to negotiate a partial release of the shares for the purpose of clearing up the debts and the legacies?

A.—No, only for Insurances.

Q.—Those Insurances had nothing to do with the Estate?

A.—Not directly, only that they taxed us on the amount.

Q.—It is useless for me to ask you whether you suggested that the contested items of the Government's claim be segregated from those which you were ready to concede, because you did not go there

ALEX. M. REAPER (*for Plaintiffs*), *Re-Examination.*

at all until after your resignation was demanded; go to the Collector of Succession Duties for the purpose of arranging for a partial release of the assets wherewith to clear up the liabilities and the legacies. You did not do it, did you?

A.—No.

Q.—How many interviews did you have with Mr. Begin from first to last?

10 A.—I could not say. Numerous ones.

Q.—Numerous. You had one in Quebec?

A.—Yes.

Q.—Only there once?

A.—Only at Quebec once.

Q.—Was Mr. Begin ever at your office?

A.—I think not. I don't recall him being at the office.

Q.—All the other interviews took place at the Government office?

20 A.—Yes.

Q.—How many?

A.—I could not say how many.

Q.—There were one or two that apparently are mentioned in the correspondence. How many more were there with Mr. Begin?

A.—It is pretty hard to say. I should imagine there must have been over six. There must have been half a dozen at different times.

Q.—How long did they last?

30 A.—Sometimes not very long. Sometimes an hour or so. Very often he did not have his files here. They were in Quebec. He could not take the matter up very much.

Q.—They would hardly be interviews for the purpose of progress?

A.—We did not make very much progress in these interviews with him.

Q.—How many interviews did you have with Mr. Begin when the subject was actually taken up and discussed?

A.—I could not say exactly.

Q.—Did you have more than one?

A.—Yes.

40 Q.—How many more than one?

A.—I could not say how many more. I should say several.

Q.—I am talking about interviews where one side or the other—

A.—There were none of them had very much result until we got to Quebec, when we got some information.

Q.—How many interviews did you have with Mr. Rivard at your office?

A.—I think he was at the office possibly twice.

ALEX. M. REAPER (for Plaintiffs), *Re-Examination.*

Q.—You saw him when you saw Mr. Begin at Quebec?

A.—Yes, and I saw him several times here. He was located in Montreal here before he went to Quebec.

Q.—How many times did you see Mr. Rivard?

A.—It would be difficult to say. I saw him several times. It would be hard to say just how often.

10 Q.—Did you have the matter up with another official except Mr. Begin and Mr. Rivard in person?

A.—No. I got some information, or tried to get some information from Mr. Lazure on one occasion.

Q.—Which you did not get?

A.—I got so much and he then referred me to Quebec.

Q.—You have told us that the reason you did not approach the Succession Duty authorities before August, 1928, was on account of some of these assets being in France?

A.—Yes.

20 Q.—And that that was the reason you gave at that time for wanting six months' more delay?

A.—Yes.

Q.—It is also in proof Lord Shaughnessy was then in Europe, from July to October?

A.—Yes.

Q.—Look at this Exhibit D-22, letter written on 19th January, 1929. You see in paragraph Number 4:

30 “Full particulars of all assets in France have been asked for and statements are being prepared. As soon as these are received we will give you the information asked for.”

Here we find on the 19th January, 1929, the information from France had not even been obtained then.

A.—It had not.

Q.—The Estate had a legal adviser in Paris, Mr. Kandalaft, had it not?

A.—Yes.

40 Q.—Here is a period which is ten months after Sir Mortimer's death, and evidently you had not even by that time taken steps to get the information from France necessary to complete your return.

Mr. Campbell, K.C.: Is that fair to the witness?

The Witness: We had asked for it but we had not at that time received it.

ALEX. M. REAPER (for Plaintiffs), Re-Examination.

By Mr. McKeown, K.C.:

Q.—And Lord Shaughnessy had been over there in the meantime?

A.—He had, yes.

Q.—Perhaps he can explain what it was?

A.—Yes.

10 Q.—What was the occasion of your hurry-up visit to Quebec on the 22nd August, 1929?

A.—It was not a hurry-up visit by any means. I had been trying for some time to make an appointment to get information and eventually when I saw Mr. Begin here in Montreal, he said it was a question of he and Rivard coming to Montreal or me going to Quebec, and that seeing that was the case, of two coming from Quebec and only one going from Montreal, that I might possibly make the trip.

20 Q.—You got a letter from Lady Davis on the 15th August, 1929, part of Exhibit Number 7, demanding some pretty ample information concerning the Estate and the Incorporated Company, letter addressed to Lord Shaughnessy?

A.—On August 15th?

Q.—Yes?

A.—Yes.

Q.—Any coincidence between that fact and the fact you on that day wrote Mr. Begin suggesting an appointment for the next Monday, the 19th?

30 A.—None whatever.

There appears to have been an *inter regnum* in any event between the interview at Quebec on the 22nd August, 1929, and the 4th October; nothing doing?

A.—No, there was not. In that interval I was waiting for some information from them. Some things we had discussed, and they were to let me know about and I was also getting some information which they had asked me to get, which was given them on October 4th.

40 Q.—Now, in point of fact, you have, since those proceedings started, had released from the Succession Duties claims the Liggett and Myers shares amounting to upward of \$1,000,000.00?

A.—Yes.

Q.—And the whole of the Insurance policies amounting to how much? I mean these coming to the Company?

A.—The balance, \$135,000.00.

Q.—How much altogether for Insurance?

A.—Well, we had releases altogether for \$185,000.00. The In-

ALEX. M. REAPER (for Plaintiffs), Re-Examination.

surance, of course, belongs to the Incorporated Company, not the Estate.

Q.—Quite so. And the matters in dispute are still in dispute?

A.—There are some things still in dispute, yes.

Q.—You said in the course of your cross-examination that you had started to sell B stock following the death of Sir Mortimer. You sold 6,000 shares?

10 A.—Yes.

Q.—Do you remember the period, off-hand, the period covered by these sales?

A.—The latter part of April and the earlier part of May, 1928.

Q.—And after that you did not offer any shares at any price?

A.—No, the market, I think started to weaken. We did not offer any more.

Q.—I think you said in cross-examination that the B shares were to have been sold? Is it not always usual to sell B shares?

20 A.—Eventually, yes.

Q.—It was the plan that these shares were to be sold?

A.—Yes, that they would eventually be sold. There was no time or set price put on them.

Q.—Did you not have instructions from Sir Mortimer Davis to sell those B shares?

A.—I don't think we had definite instructions. It was understood they were to be sold through time.

Q.—Sir Mortimer had not told you to hold them for any fixed price, had he?

30 A.—No, I don't think the price was mentioned.

Q.—They cost \$20 a share?

A.—Yes.

Q.—And you did not sell any below \$45.00?

A.—About \$45.00, yes. A little over \$45. I think we got for them.

Q.—Now those shares had only been issued as of date March 1st, 1928, the same month as Sir Mortimer Davis died?

A.—Yes.

Q.—When did you get delivery? When was the date for these shares?

40 A.—March 1st or 2nd.

Q.—Is that the date of the payment, the date the stock was to be taken up?

A.—Yes.

Q.—As to McNish: These McNish debentures were distributed to holders of Alcohol stock in the fall of 1927 at one debenture, one share, \$4.50?

ALEX. M. REAPER (for Plaintiffs), Re-Examination.

A.—One debenture for one share; \$4.50 for the debenture.

Q.—\$4.50 for a \$5.00 debenture?

A.—Yes.

Q.—You were with Sir Mortimer, of course, at that time?

A.—Yes.

Q.—Who arranged the loan in New York on those debentures?

10 A.—I am not quite certain whether Sir Mortimer had it up with the Bank officials, or not. The final rate was possibly fixed by Lord Shaughnessy.

Q.—Interest rate?

A.—Yes.

Q.—You think Sir Mortimer held up the deal?

A.—I would not be quite certain on that but I think he did.

— Q.—It is not customary to borrow a sum of money, as much as \$2,250,000.00 from a Bank indefinitely, is it? Was that a call loan?

20 A.—It was a call loan.

Q.—It might have been called at any time?

A.—I think there was an understanding it would run for some time.

Q.—Was not the plan from first to last to distribute those McNish debentures?

A.—I think they were to be sold when we got a proper price for them.

Q.—And as part of the plan, were they not to be marketed, put on the market?

30 A.—Listed?

Q.—Yes?

A.—Yes.

Q.—Where?

A.—Montreal, and I think some consideration was given to listing in London.

Q.—Listing on which Exchange in Montreal? The big board? The Montreal Stock Exchange?

A.—Yes.

40 Q.—I am instructed that the application to list those debentures on the Montreal Stock Exchange is dated the 4th June, 1929?

A.—I don't know about that. I did not handle the detail. I only know the date of the listing.

Q.—We will reserve that for future consideration for somebody else. And they were issued in what? October, 1927?

A.—The debentures, I think, on November 15th, 1927.

Q.—What did you do, if anything, following Sir Mortimer's

ALEX. M. REAPER (for Plaintiffs), *Re-Examination.*

death prior to June 4th, 1929, to have those debentures listed on the Montreal Stock Exchange?

A.—I did not have anything to do with it.

Q.—You did not have anything to do with it?

A.—I did not have anything to do with it.

Q.—Who did have to do with it?

10 A.—I think Lord Shaughnessy had the matter up, and probably the Alcohol officers.

Q.—Was it left to the Alcohol officers to look after it?

A.—No. I think Lord Shaughnessy had something to do with it.

Q.—Was it left to Mr. Lawrence in particular to look after that?

A.—No, I think Lord Shaughnessy acted in the matter.

Q.—Personally, you did not do anything?

A.—No, I did not do anything.

Q.—Those debentures depreciated very much in the meantime in the market value?

20 A.—They have gone down to some extent now. There was never very much of a market for them.

Q.—Do you know when they were listed on the Montreal Stock Exchange?

A.—I think it was October 17th, 1929.

Q.—Was that after the break?

A.—I don't just recall the first date. I know there was a bad break towards the end of October. I think it was before the bad break.

30 The Court: If you are going to take up a new subject we will adjourn.

(Whereupon an adjournment was taken until the following day, March 19th, 1930, at 10.30 o'clock A.M.)

MORNING SESSION, Thursday, March 19th, 1930.

40 The Court reconvened, pursuant to adjournment at 10.30 A.M.

Mr. Campbell: By arrangement between Counsel, and with your Lordship's permission, we will replace Exhibits D-52, D-53, D-54 and D-55, which were merely the balance sheets of the respective years. My learned friend, Mr. McKeown, would like to have the supporting Auditors' Reports connected with them, and we have no objection. These more complete documents which we propose

ALEX. M. REAPER (*for Plaintiffs*), *Re-Examination*.

to substitute will reproduce all the material in these Exhibits, plus the further information desired by my learned friend.

ALEXANDER M. REAPER, already sworn, reappearing, continues his re-examination as follows:

10 By Mr. McKeown, K.C.:

Q.—In your cross examination you gave a list of real estate firms with which the Pine Avenue property had been listed?

A.—Yes.

Q.—You mentioned the firms of Ewing and Ewing, Ernest Pitt and Company, Walter Molson and Company, Wilder Bermingham and Company, and the Royal Trust. When was the property listed with those firms?

A.—I do not know just the exact dates of the listing.

20 Q.—I put it to you it was listed with those firms only after the difficulty with Mr. Joseph, in June, 1929.

A.—I think we had had enquiries before that.

Q.—But, I am not asking you about enquiries. I am speaking about listing. Did you have that property listed with those firms before the trouble with Mr. Joseph?

A.—I think some of those Companies had it on their lists before that.

Q.—Which of them?

A.—That I would not be sure of.

30 Q.—Have you any correspondence to support your present impression?

A.—I do not know that I have.

Q.—I am not speaking about enquiries. I am speaking of action that was taken by the Directors to list that property with those firms, on the initiative of the Executors. Had you taken any action to list the Pine Avenue property with any of the concerns I have mentioned until after the difficulty with Joseph in June last?

40 A.—I do not know that we had taken any definite action. Those agents had enquired whether those properties were for sale, and if they could put them on their lists, from time to time.

Q.—Before the trouble with Joseph had you taken any initiative to have those properties listed in the way listing is done by people who want to sell their property?

A.—I had not, no.

Q.—As to this best offer which was received for the Pine Avenue property, of \$150,000, I have a note the date was October 11th, 1929.

ALEX. M. REAPER (for Plaintiffs), Re-Examination.

Mr. Campbell: I want to be again of record as objecting to my learned friend in re-examination going into matters which have already been covered in chief. He went into this matter in chief.

Mr. McKeown: These names came out in cross-examination. No one ever heard of them before.

10 Mr. Campbell: My impression is this matter was gone into by my learned friend in his examination in chief of the witness. He questioned the witness about it in chief, and, in my submission, he is not entitled in re-examination to go again into a matter which has already been covered in chief. I would ask your Lordship to note my objection to this kind of evidence as illegal under the circumstances.

His Lordship: The Defendant said something about it in his
20 cross-examination.

Mr. Campbell: But I was cross-examining on the examination in chief, and as I remember it, in cross-examination I only touched upon matters which had been dealt with in the examination in chief.

His Lordship: I think I remember Ewing and Ewing had received an offer, or had communicated an offer, for \$150,000; supplemented by a letter to the effect that the offer might possibly be increased to \$200,000.

30 Mr. Campbell: That was in the examination in chief.

Mr. McKeown: Not at all. The difficulty with my learned friend is that he has forgotten what is of record as examination in chief, and bases his objections to my questions as not arising out of his cross-examination, when, as a matter of fact, the material upon which they are based arises directly from the cross-examination.

Mr. Campbell: I may say all this matter was practically com-
40 pletely covered by the examination on discovery. It was also proved in the examination in chief of this witness, as I remember it.

His Lordship: I think it is new. In any event, it will not do any harm to clear it up.

By Mr. McKeown (continuing):

ALEX. M. REAPER (for Plaintiffs), *Re-Examination.*

Q.—As to this best offer which was received for the Pine Avenue property, \$150,000, I have a note the date was October 11th, 1929.

A.—Yes, the date of the letter was October 11th.

Q.—The name of the principal is not disclosed?

A.—No.

10 Q.—Did you have reason to believe it was Mr. C. E. Neill, of the Royal Bank, who was making that offer?

A.—I do not know who it was.

Q.—You never heard any suggestion that it was Mr. Neill?

A.—I do not really know who it was.

Q.—You have never had any intimation from any quarter as to who made that offer?

A.—No. I understand Mr. Neill had looked at the house, and Mr. Wilson also; but I have no idea who this offer was from.

20 Q.—The Mr. Wilson to whom you refer is another official of the Royal Bank?

A.—Yes. I know he looked at the house.

Q.—So, you got this offer from Ewing and Ewing that \$150,000 might be offered, and an intimation that \$200,000 might be given, but you have not any idea as to who was the party behind the offer?

A.—No. Lord Shaughnessy may know.

Q.—This date, October 11th, was still in boom times, before the break?

A.—Yes, I do not think the bad break had occurred at this time.

30 Q.—And the Executors agreed and were in unanimity that the offer of \$150,000 would not be accepted, that even the intimation of \$200,000 would not be followed up, and that they would continue for the time being to hold the property at \$300,000?

A.—Yes.

Q.—And everybody was in agreement on that?

A.—That was agreed to.

Q.—Is it not true Lady Davis at that time suggested the house should be rented if it could not be sold?

40 A.—No, I do not think there was any suggestion of that sort. I think she did pass the remark that she had understood Sir Henry Thornton, I believe, had been prepared to rent it.

Q.—In any event, at that meeting there was a discussion emanating from Lady Davis which dealt with the question of renting the house?

A.—I think the question was just that she understood it might be done. It was a casual enquiry. There was nothing further than that discussed about renting.

ALEX. M. REAPER (for Plaintiffs), Re-Examination.

By Mr. Campbell:

Q.—What was the date of that?

A.—October 18th.

By Mr. McKeown (continuing):

10 Q.—That is, the Meeting?

A.—Yes.

Q.—October 18th, 1929?

A.—Yes.

Q.—Seven days after the offer?

A.—Yes.

Q.—In any event, you got an offer from Sir Henry Thornton for that property?

A.—Since this date, yes.

20 Q.—So, he was really interested in the property?

A.—I do not know how much interested he was before the offer. We had an offer from him since this time.

Q.—He offered \$125,000, in terms which clearly indicated he would pay more. Have you his letter?

A.—No, I have not that letter here.

Q.—Will you produce that letter as an Exhibit?

Mr. Campbell: They refused \$200,000. My learned friend has been at pains to show that the Executors concurred in refusing
30 \$200,000, and he is now bringing in evidence that an offer of \$125,000 was submitted.

Mr. McKeown: It was submitted on terms which made it perfectly evident that it was a first bid.

Mr. Campbell: Does my learned friend think that a man in Sir Henry Thornton's position would offer \$125,000 and be prepared to pay more than \$200,000?

40 Mr. McKeown: I do not know. No one followed it up to find out.

Witness: The offer of Sir Henry Thornton was submitted to Lady Davis.

Mr. McKeown: I think we are entitled to have the letter in the record.

ALEX. M. REAPER (*for Plaintiffs*), *Re-Examination*.

His Lordship: There are so many documents in the record that one letter more or less will not make much difference.

By Mr. McKeown (continuing):

Q.—Will you file the letter as Exhibit P-87?

A.—Yes.

10

Mr. Campbell: So that I may not have to come back on this point, will the witness produce, as Exhibit P-88, Lord Shaughnessy's reply to this letter. This will complete the correspondence.

Mr. McKeown: I will attend to anything I think is necessary in that respect without any suggestion from my learned friend, and if I forget or overlook anything I am sure His Lordship will allow my learned friend an extraordinary right of re-cross-examination.

20 By Mr. McKeown (continuing):

Q.—In order to satisfy my learned friend Mr. Campbell in every way possible, will you also produce, as Exhibit P-88, whatever reply was sent to Sir Henry Thornton?

A.—Yes.

Do you want to complete it by putting in a copy of Lady Davis' letter on the subject?

Q.—Sir Henry Thornton's proposal was considered by Lord Shaughnessy and yourself, and submitted to Lady Davis, and you all
30 agreed that the offer would not be accepted?

A.—Yes.

Q.—Did you ever enquire from Sir Henry Thornton as to whether he would be disposed to lease that property?

A.—I did not, no.

Q.—Do you know of any enquiry of that nature being made by Lord Shaughnessy?

A.—I do not know what happened.

Q.—You never discussed the idea of leasing with Lord Shaughnessy?

40 A.—We had thought it was inadvisable to lease the property.

Q.—You knew, from what you have told us, that when you turned down the offer of Ewing & Ewing, and from the conversation which took place at that time, and Lady Davis' remark which you have reproduced, that Sir Henry Thornton was a possible lessee for that property?

A.—I did not know very much about it. The interview on that subject was with Lord Shaughnessy.

ALEX. M. REAPER (for Plaintiffs), Re-Examination.

Q.—It was on the occasion you turned down the offer of Ewing & Ewing of \$150,000, on October 18th, that Lady Davis mentioned Sir Henry Thornton as being interested in the property in the way of leasing it?

A.—Yes.

Q.—And, it was after that interview you got Sir Henry Thornton's letter?

10 A.—Yes, some months afterward.

Q.—Did you follow up Sir Henry Thornton to see whether or not he would be interested in the property from the point of view of leasing it?

A.—No.

Q.—Neither did Lord Shaughnessy?

A.—Not that I know of.

Q.—You never even discussed it or considered it with Lord Shaughnessy?

20 A.—No.

Q.—And that is a property which is costing something like \$12,000 or \$14,000 a year to carry?

A.—Not quite as much as that. Probably about \$10,000.

Q.—Are you certain of your figures?

A.—The figures are all in the record.

Q.—Will you please look at the statement Exhibit No. 8 and say what are the carrying charges on that property?

A.—\$14,000 for a period of seventeen months.

30 Q.—Mr. Campbell has taken up with you the matter of the valuation of the movables and furniture at Sir Mortimer's Pine Avenue residence. Do you know who is Mr. John S. Penman, one of the assessors?

A.—He is of the firm of Fraser Brothers.

Q.—Is he a member of the firm?

A.—That I would not be sure of.

Q.—I understand he is a storeman there?

A.—I do not know.

Q.—Do you know him personally?

40 A.—No.

Q.—Personally you do not know anything about him?

A.—No. I know he has been in that business for a great many years.

Q.—Where is the auction room of Fraser Brothers located in the City of Montreal?

Mr. Campbell: What has that to do with the case?

ALEX. M. REAPER (for Plaintiffs), Re-Examination.

Mr. McKeown: Because it is the cheapest place in town—where everything is slashed for practically nothing. Those things might have been sold for \$1.00 each.

Mr. Campbell: But, the location of Fraser Brothers' establishment surely cannot be material. As a matter of fact, Fraser Brothers have been employed for years doing this very kind of work, and I
10 would undertake to say they make more valuations for Estate purposes than any other firm in the city.

Mr. McKeown: That is your statement, but you do not know anything about it.

Mr. Campbell: We will ask them.

By Mr. McKeown (continuing):

20 Q.—Where is their auction room located in the City of Montreal?

A.—I think they are on St. James Street, near Inspector Street. They also conduct sales at other places.

By the Court:

Q.—Do they not carry on sales for the Morgan Trust Company?

A.—Yes, at times they have catalogue sales and other sales at the Morgan Trust Company.

30 By Mr. McKeown (continuing):

Q.—Do you notice that the net value they have put on the whole dining room furniture does not equal even one of the arm chairs as fixed by the people who built those chairs originally?

Mr. Campbell: I object to the form of the question as being an inaccurate representation of what the other witnesses said. Their evidence was that to reproduce those things new would cost so much—which is an entirely different proposition. My submission is the
40 question is objectionable in form because it is not an accurate reproduction of the testimony on this point. My learned friend questioned those witnesses as to what it would cost to reproduce the furniture new. We are not reproducing it new; we are dealing with twenty-year-old furniture, valued at its value on the day of valuation.

Mr. McKeown: This furniture was removed from the premises, and the only remedy was to have it replaced. We have established

ALEX. M. REAPER (for Plaintiffs), Re-Examination.

the replacement cost, and that is the measure of damage done. It is not at all a question of what this furniture might sell for under the hammer, because the different pieces might be sold for one dollar each. We all know how things are sometimes sacrificed.

At page 69 of the record Mr. Green placed the value of the arm chairs at \$275.00 each.

10 Mr. Campbell: That is replacement value.

Mr. McKeown: We all understand what it is.

Mr. Campbell: We may understand it, but you are not putting it fairly to the witness. Mr. Green spoke about replacement value—reproduction value.

Mr. McKeown: We understand that.

20 Mr. Campbell: If you make it clear in your question, and the witness understands it, I do not mind.

Mr. McKeown: The value fixed for the arm chairs is \$275.00 each, plus \$60.00 or \$65.00 for coverings (which is not included in the figure of \$275.00), plus duty, plus freight.

By Mr. McKeown (continuing):

30 Q.—In order to satisfy my learned friend I will put the question in this way:

Do you notice that the net value they have on the whole dining room furniture, that is to say, the table, the cover, the two arm chairs, and the ten side chairs, \$225.00, does not equal the replacement value of even one of the arm chairs as fixed by the people who built those chairs originally?

A.—Yes.

40 Q.—You read into the record a letter from Sir Mortimer in connection with his plans for handling the McNish situation, in which he said he had taken a house in London and was going to spend three months there to take charge of the matter in person?

A.—I do not think he said he had taken a house. I think he said he was going to take one.

Q.—He was going to take a house, and was going to spend three months in London on the matter?

A.—Yes.

Q.—The letter to which I have just drawn your attention is

ALEX. M. REAPER (*for Plaintiffs*), *Re-Examination.*

Exhibit D-63, written on March 8th, 1928, just two weeks before Sir Mortimer died?

A.—Yes.

Q.—With that letter before you and Lord Shaughnessy, what action did you take to fill the gap in the McNish plans caused by Sir Mortimer's unexpected death?

10 A.—I did not do anything in the matter. Whatever arrangements were made were arranged by Lord Shaughnessy as President of the Alcohol Company, and the officials of that Company.

Q.—You did not do anything?

A.—No.

Q.—Did you speak to Lord Shaughnessy and enquire what he was doing in the connection to which I have just drawn your attention?

A.—No, except in a general way I may have known what was going on, to a certain extent, but not in detail.

20 Q.—Today do you know what was done to cover the part of the plan which was outlined by Sir Mortimer in that letter?

A.—I could not tell you offhand.

Q.—It seems to me the bell was ringing for you on McNish when you saw what Sir Mortimer thought he had to do in the way of a personal effort on McNish; and you say you personally did nothing?

A.—No, I did not do anything. McNish was a subsidiary of the Alcohol Company, and was looked after by them.

Q.—That is true; but you were a Director of the Incorporated Company, and you were an Executor of the Estate?

30 A.—Yes.

Q.—And the Incorporated Company held more than half of those McNish debentures?

A.—Yes.

Q.—And you did nothing?

A.—No, I did not take any direct action on that.

Q.—You knew that two and a quarter million dollars had been borrowed from the Bank on those McNish debentures held by the Incorporated Company, and still you did nothing?

A.—No, I did not do anything in that matter.

40 Q.—How long did you think that loan was going to continue in that shape and be tolerated by the Bank?

A.—I did not know.

Q.—Is this the letter in which Sir Mortimer made use of the expression that "The 'B' stock at 37 is not dear"?

A.—Yes.

Q.—That is at the top of page 2 of the letter?

A.—Yes.

ALEX. M. REAPER (*for Plaintiffs*), *Re-Examination*.

Q.—Is it not perfectly plain that that expression meant it was not dear for the people who would buy it as of that date?

Mr. Campbell: I object to the question. Your Lordship will construe the meaning of the letter, and it is not for the witness to construe it.

10 Mr. McKeown: I am going to prove what the witness understood by it.

Mr. Campbell: I ask Your Lordship to note my objection to the question as illegal. The document is in the record, and speaks for itself, and Your Lordship will construe it.

Witness: I understood it meant for anybody: Sir Mortimer Davis Incorporated or the public.

20 Q.—Did Sir Mortimer Davis Incorporated at that time intend to buy any more “ B ” stock?

A.—No.

Q.—So, it could not have been meant for Sir Mortimer Davis Incorporated?

A.—Why not?

Q.—I put it to you that it could not have been meant for Sir Mortimer Davis Incorporated, because, according to you, they did not intend to buy any stock?

A.—But that did not mean they had to sell it at this price.

3) Q.—That is the stock which had cost you on the first of March, the same month, \$20.00 a share?

A.—Yes.

Q.—And which on March 8th was selling at \$37.50—17½ points up, according to this letter?

A.—I am not sure of the exact figure. That is what the letter says. I admit the letter, but I do not know if the figure checks up with the quotations.

Q.—You do not imagine Sir Mortimer made any such glaring mistake as to be wrong on such a subject in which he was so greatly
40 interested?

A.—I presume he was right.

Q.—You have told us it was the plan from first to last to sell the “ B ” stock?

Mr. Campbell: I draw Your Lordship’s attention to the fact that my learned friend is picking two or three words out of a sentence, and my submission is he should read the whole sentence and

ALEX. M. REAPER (*for Plaintiffs*), *Re-Examination*.

not take two or three words out of its context. I do not wish to have to come back over this subject again, but the question is improper in form, and from that point of view is illegal.

Mr. McKeown: I am dealing only with the one subject, that the stock was not dear.

10 By Mr. McKeown (continuing):

Q.—You have told us it was the plan from first to last to sell the “B” stock?

A.—Yes, I understood it was to be eventually sold.

Q.—And after Sir Mortimer’s death you proceeded to sell some 6,000 shares of it?

A.—We sold 6,000 shares, yes; but there was no time set as to when it was to be sold, or the price that was to be obtained.

20 Q.—Have you brought with you the correspondence asked for by the subpoena served upon you Saturday?

A.—No. I am getting it together, but I have not it all out yet.

Q.—What system of filing do you use for keeping the correspondence in your office? Is it not all together now?

A.—It is in files. It is pretty well all together.

Q.—Is it not just a matter of putting it into your motor car and bringing it down here, the same as you have brought the books and everything else?

A.—It has to be looked up. I think I have some downstairs in a vault.

30 Q.—When are we likely to get that correspondence? Because we need it.

Mr. Campbell: After you have finished with the witness he will get it. The witness cannot be in the box here all day and spend the night looking up correspondence.

Witness: I understood it was only to be got after I was finished here.

40 By Mr. McKeown (continuing):

Q.—Will you please tell me now when that correspondence will be available?

Mr. Holden: I think perhaps I should take the responsibility. I advised Mr. Reaper that the subpoena served at the end of Saturday afternoon called for all letters of Sir Mortimer since the 1st of

ALEX. M. REAPER (*for Plaintiffs*), *Re-Examination*.

January, 1926, but that he did not have to go to the vault and go through all the files until he was free from the witness box where he is each day. That was the advice I gave him, either rightly or wrongly.

Mr. McKeown: I think my learned friend advised him something else; that he wanted to see this correspondence and cull it and
10 see what was relevant and what was not relevant. I do not propose to have that done, and I do not propose to have my learned friends decide what is relevant and what is not relevant. They said they were going to decide whether it was relevant.

Mr. Campbell: That we would give you what you wanted.

Mr. McKeown: What is relevant, and what is not relevant, will be a matter for Your Lordship to decide. We were just as much interested and entitled to have all the correspondence here on
20 Monday morning as we were to have the ledger, and there is no such thing as these defendants and their Counsel going over the correspondence and deciding what will be produced and what will not. We sent a subpoena calling for the production of everything, and when we have the correspondence Your Lordship will decide what is to be produced and what is not. It is not for Counsel for the adverse party to decide what will be brought, or what is relevant and what is not. We cannot go into the office and look over the correspondence in the same way as they can, and we are entitled to have the whole correspondence here before the Court and have it produced
30 upon the oath of the gentleman who is in custody of it, one of the defendants, the Secretary-Treasurer of the Company, and in charge of the whole matter.

Mr. Holden: Now that my learned friend has thought fit to make that speech with regard to my saying I wanted to cull something, I should tell Your Lordship what we advised Mr. Reaper was that as soon as he could after his deposition he should get together everything asked for and that we would submit to Your Lordship any legal objections we thought lay, and would naturally abide by
40 Your Lordship's decision as to the result. There was no question of culling or of any such procedure as my learned friend insinuates.

Mr. McKeown: At page 917 of the record I explained the purpose of the subpoena, and my learned friend Mr. Holden said:

“ I would like to co-operate with the object my learned friend suggests. The subpoena was served at 5.30 Saturday

ALEX. M. REAPER (*for Plaintiffs*), *Re-Examination*.

afternoon, and I just saw it for the first time, and it called for all original letters since 1926 from the date of Sir Mortimer's death and so on, since January 1st, 1926.

His Lordship: That will take some time.

Mr. Holden: We want to advise our clients whether it is relevant before we do our best."

10

If that does not imply their going over the correspondence, I do not know what it means, and my statement did not mean anything more than my learned friend Mr. Holden said.

Mr. Holden: The trouble is you say more than you mean.

By Mr. McKeown (continuing):

20 Q.—Can you tell us at this stage when we are going to get the correspondence?

Mr. Campbell: If you will please tell the witness when you will finish with him. The question has nothing to do with this case.

Mr. McKeown: Mr. Campbell, why can I not question the witness for ten minutes without these constant and irritating interruptions from you? It is quite improper, and irregular. The witness is the custodian of the correspondence, and I submit we are entitled to have it, and I want to know when we can get it.

30

By Mr. McKeown (continuing)

Q.—When are we going to get the correspondence covered by the subpoena served upon you last Saturday?

A.—You may be able to have it tomorrow, or the next day.

Q.—What is to prevent you having it tomorrow morning?

A.—I may be able to get it for tomorrow morning.

40 Q.—You have just told us the correspondence is all together on files?

A.—Some of it is pretty well together, but there is a parcel I have to get from another place.

Q.—From the vault downstairs?

A.—Yes.

Q.—In the same building?

A.—Yes.

Q.—That should not take very long for a man of your activity?

ALEX. M. REAPER (*for Plaintiffs*), *Re-Examination*.

A.—It should not take very long. It is a question of getting it out.

Q.—Then, we will hope for the best, and expect to have it tomorrow morning?

Mr. Campbell, in the course of his cross-examination, drew your attention to Clause 15 of Sir Mortimer's Will, Plaintiffs' Exhibit
10 No. 1, in which it is provided that except as otherwise decided by the Trustees the Executors were to make payments of the legacies as provided by the Will, and the Testator directed that the capital of the residue of the Estate should remain absolutely vested in the hands of the trustees for a period of at least fifty years. Then follows the explanatory clause:

20 "In explanation of this provision of my Will I desire to state that the greater part of my Estate consists of notes or debentures and shares of Sir Mortimer Davis, Incorporated, a Company presently organized under the laws of the Province of Quebec. In this Company is vested the control of several important undertakings, all of which, I believe, by proper management will greatly increase in value and thus yield in capital and revenue a great benefit to my Estate."

I think you said in answer to a question in that connection that the main matter in which Sir Mortimer was interested was Alcohol.

A.—Yes; Alcohol and its subsidiaries, including McNish.

30 Q.—You said something about mining interests. What other industry, or what other investment, according to you, is covered by or intended to be referred to in that clause?

A.—I think it covers more generally just the balance of what he had.

Q.—There was no other Corporation he controlled except Alcohol, was there?

A.—No, except the Asbestos Company, which has been cleaned out; and the Federal Coal property which we owned outright.

Q.—That is the \$10,000 item which is now Cadillac Coal?

40 A.—Part of Cadillac Coal, yes.

Q.—You notice also that this restriction in Clause 15 is limited to capital, and says nothing about revenues?

A.—I do not think that is so. I think it includes both.

Mr. Campbell: I wish to enter an objection. Your Lordship will have to construe the Will.

ALEX. M. REAPER (for Plaintiffs), *Re-Examination.*

Mr. McKeown: I will withdraw the question, and leave it to His Lordship.

By Mr. McKeown (continuing):

10 Q.—My learned friend Mr. Campbell also drew your attention to the increased dividends of the Alcohol Company between the first five-year period, beginning in September, 1919, and ending in September, 1924, and the second five-year period beginning September, 1924, and ending September, 1929. Do you know anything about the distillery business?

A.—No, I am not familiar with the details of the distillery business.

Q.—Do you know how much raw material, labor, barrels, and matters of that kind, are required per day when the distillery is operating?

A.—No.

20 Q.—You have not any idea?

A.—No.

Q.—You are a Director of the Alcohol Company at present, are you not?

A.—At present, yes.

Q.—And you have been more or less in touch with the Alcohol Company since you joined Sir Mortimer's staff in the spring of 1926?

A.—Our offices have been on the same floor.

30 Q.—And all that time Sir Mortimer Davis, Incorporated, held the control of Alcohol?

A.—They have, yes.

Q.—I put it to you that for grain, molasses, barrels, and supplies for running the distillery at Corbyville alone the expense involved would run from \$5,000 to \$10,000 a day?

A.—I could not give you the exact figures on that.

Q.—It is a big item, is it not?

40 A.—I should think it is, but I do not know what the figures are. I am not familiar with the figures. I have only gone by the general statements and results.

Q.—Do you know also that from the time the spirits are first distilled they cannot be put on the market or sold for three years, and that that is the practice there?

A.—It takes some time to mature, yes. I know that.

Q.—Do you think that has anything to do with the comparatively small dividends in the first five-year period, as contrasted with the larger dividends in the second five-year period? That is to say,

ALEX. M. REAPER (for Plaintiffs), *Re-Examination.*

the high cost of manufacturing and the necessity of keeping the product in storage to mature? Do you think that accounts in any manner for the difference in the dividends?

A.—It may be. The business naturally had to be built up.

Q.—I will put it to you in another way. Do you know that at the present time they are practically filled to capacity at Corbyville?

A.—Nearly so, I think.

10 Q.—Somewhere between nine million and ten million gallons of whisky? Do you know that, as a Director?

A.—That is what I am advised, yes.

Q.—Do you know what quantity of spirits they had in the Corbyville distillery alone at the end of the first five-year period?

A.—No.

Q.—You also made the statement that Sir Mortimer lived in France during the part of the last five-year period he was alive?

A.—Yes.

20 Q.—Whereas, he had lived in Montreal during the first five-year period, or the greater part of it?

A.—Yes.

Q.—Is it not true that you were virtually in daily contact with Sir Mortimer in France in connection with matters in which the Incorporated Company was concerned, and, in particular, Alcohol?

A.—I was in pretty close touch with him.

Q.—My suggestion to you is that you were virtually in daily contact with him?

30 A.—I do not know what you mean by “virtually”. We were in very close touch with him.

Q.—By cable, and by letter?

A.—By cable, and by letters, yes.

Q.—To give us an idea of the cabling, can you tell His Lordship the approximate amount of the cable bills?

A.—Not offhand, no.

Q.—Were those cables paid for by Sir Mortimer Davis, Incorporated, or by Alcohol?

A.—It depended on what the business was for.

40 Q.—Even if it was sent from your office, if it was in connection with Alcohol it would be charged to Alcohol?

A.—They communicated directly, I think, on some occasions.

Q.—I put it to you that those bills ran into a very considerable sum per month?

A.—A fair sum, yes.

Q.—\$1,000 a month?

A.—Oh, no; nothing like that.

Q.—Not as much as that?

ALEX. M. REAPER (for Plaintiffs), *Re-Examination.*

A.—No, nothing like that.

Q.—To what are you now referring? That the bills of Sir Mortimer Davis did not run up to \$1,000 a month, or that all the bills did not reach \$1,000 a month?

A.—The cables of Sir Mortimer Davis, Incorporated, did not come to anything like \$1,000.

10 Q.—Do you know how much was charged up to Alcohol for cables?

A.—No, I do not. I would not think the whole of our ordinary telegraph bills would run more than \$100, or \$200 at the outside.

By Mr. Campbell:

Q.—Per month?

A.—Yes, per month—and very often much less than that.

20 By Mr. McKeown (continuing):

Q.—Of course, that would not include the cables which emanated from France?

A.—No.

30 Q.—I draw your attention to the four certified balance sheets of the Incorporated Company prepared by the Auditors, Price, Waterhouse & Company, as of dates September 30th, 1924, September 30th, 1925, September 30th, 1926, and September 30th, 1927, produced in the course of your cross-examination as Exhibits D-52, D-53, D-54, D-55, respectively, and I ask you, as arranged between Counsel, to substitute for these four Exhibits as produced, and under the same numbers respectively, the Auditors' Annual Reports and Accounts for the same dates.

A.—I will have copies prepared, and will file them.

Q.—I also ask you to produce and mark as Exhibits P-89, P-90, P-91 and P-92, the Annual Reports and Accounts prepared by the Auditors of the Incorporated Company for the years ending September 30th, 1920, September 30th, 1921, September 30th, 1922, and September 30th, 1923.

40 A.—I will have them prepared, and will file them.

Q.—Will you now look at the statement Exhibit D-18, being a summarized statement of profit and loss for the five years ending September 30th, 1924, and will you tell His Lordship if that statement is extracted from Exhibits P-89, P-90, P-91, P-92, and D-52?

A.—Yes.

Q.—These five Exhibits I have just mentioned to you are really the basis of the statement Exhibit D-18?

ALEX. M. REAPER (for Plaintiffs), Re-Examination.

A.—They are, yes.

Q.—Will you look at Exhibit D-17, covering the five year period beginning September 30th, 1924, and ending September 30th, 1929, which is entitled “ Summarized Statement of Profit and Loss for the Five Years Ending September 30th, 1929,” prepared by Price, Waterhouse & Company; and will you state whether the same has been extracted from Exhibits D-53, D-54, D-55, P-51 and P-10, being the Auditors’ Annual Reports and Statements for the years ending September 30th, 1925, September 30th, 1926, September 30th, 1927, September 30th, 1928, and September 30th, 1929?

A.—Yes.

Q.—In connection with the manner in which the accounts of the Estate have been kept with reference to capital and revenue, I take it you have treated all assets owned by Sir Mortimer Davis at the date of his death, March 22nd, 1928, as forming the capital of his Estate?

A.—Yes. Less the accounts payable.

Q.—Those are what you call the capital assets?

A.—Yes.

Q.—And anything those capital assets have produced from that date you have treated and considered as revenue?

A.—Yes.

Q.—If a capital asset is sold it is credited to capital account?

A.—Yes.

Q.—But the revenues or the fruits that come from those capital assets as of the time of Sir Mortimer’s death you have treated as revenue in the accounts of the Estate?

A.—Yes.

Q.—Dividends, and such matters as that? Dividends on Liggett & Myers stock, for instance, and everything of that description?

A.—Yes.

Q.—I put it to you that you have done exactly the same thing in the Incorporated Company; that is to say all the assets in the Incorporated Company as of the date of Sir Mortimer’s death—the real capital assets, which were there permanently, like the stock in Alcohol, and other investments of that kind, plus the surplus which to that date had accumulated in the Incorporated Company, and plus the earnings of the Incorporated Company to that date, have been segregated in the accounts of the Incorporated Company? And in that connection I show you Plaintiffs’ Exhibit No. 9, Exhibit “ A,” being the Auditors’ Report and Accounts as of date August 31th, 1929.

A.—Not exactly segregated, no. Such investments as investments in stock, and those items of a capital nature, would be treated

ALEX. M. REAPER (*for Plaintiffs*), *Re-Examination*.

as capital assets, but there was no separate Bank accounts, or no separate accounts, kept to show the distribution of those items.

Q.—But, I did not ask you that. In your system of accountancy in the Incorporated Company have you not segregated the assets to which I referred in my previous question—and is it not so shown on the statement which is now before you?

10 A.—I do not know if I just understand what you are trying to get. Naturally investments and such would be considered as capital assets.

Q.—Have you not also treated and considered as capital assets the part of the surplus which had accumulated as of the date of Sir Mortimer's death, and have you not segregated it from the other surplus?

A.—It was segregated. That amount is shown as a separate item under the heading of "Capital Surplus," as surplus income at March 31st, 1928.

20 Q.—You took the date March 31st as an arbitrary date, but to correspond with Sir Mortimer's death?

A.—Yes, that is true. That surplus we considered for the Estate would be capital in a distribution of it.

Q.—And as to the earnings of the year beginning September 30th, 1927, and ending September 30th, 1928, have you not cut the earnings in half as of date March 31st?

A.—The revenue for the year was separated, yes.

Q.—Now, that was done designedly. You intended to do that, did you not?

30 A.—Yes, I think so.

Q.—The fact of the matter is the subject had been dealt with by your auditors' in the same report, Plaintiff's Exhibit No. 9, in the clause which I will read to you at page 4 of the Auditors' report:

“ We would suggest that Income surplus at the date of Sir Mortimer's Davis's death be carried in a separate account. Any distribution thereof would be treated by the Executors of the Estate as capital, and any distribution from the surplus after March 22nd, 1928, as revenue.

40 The accounts of the Company were closed as at March 31st, 1926, and on the appended accounts we have treated surplus income at that date as a capital surplus.”

Do you remember that clause?

A.—Yes.

Q.—And the suggestions have been followed out?

A.—It has been followed on the statements.

ALEX. M. REAPER (*for Plaintiffs*), *Re-Examination*.

Q.—The principle set out in the clause has been followed and is being followed by you to-day, is it not?

Q.—And following that principle out, as applied out to the last Annual Report, which has been prepared, that is, the report of September 30th, 1929, Plaintiffs' Exhibit No. 10, we find, do we not, for the period between March 31st, 1928, and September 30th, 1928, the revenue profits of the Company were \$250,040.95, and for the year ending September 30th, 1929, \$711,910.71, forming together the sum of \$961,951.66. Is that right?

A.—Yes.

Q.—And those were the revenue profits of the Incorporated Company since Sir Mortimer's death, up to the 30th of September last?

A.—Yes.

Mr. Campbell, K.C.: My learned friend went into all these figures in chief. Every figure mentioned now he questioned the witness on in chief.

Mr. McKeown, K.C.: I just have to straighten up a few of your fallacies.

By Mr. McKeown, K.C.:

Q.—And notwithstanding that revenue income, nothing has been disbursed in the way of revenue by that Incorporated Company to the Estate?

A.—Not so far. I mean so declared in the way of dividend.

Mr. Campbell, K.C.: That is the very kind of question that is unfair to the witness. My learned friend's implication is that a large sum has been disbursed. It has not been paid by way of dividends, and the \$443,000.00 odd dollars that has been disbursed by the Incorporated Company to the executors has been disbursed by way of advance, so I submit my learned friend's question is not accurate in form.

Mr. McKeown, K.C.: I am not going to argue that again.

Mr. Campbell, K.C.: We offered to declare the dividend and wipe it out. You did not come to the Meeting.

Mr. McKeown, K.C.: We know a joke when we see one.

By Mr. McKeown, K.C.:

ALEX. M. REAPER (for Plaintiffs), *Re-Examination*.

Q.—Now the suggestion from Mr. Campbell brings something to my mind we were forgetting: You told Mr. Campbell in cross-examination, speaking with reference to the Meeting called originally for December 6th, and which never took place, that you had an open mind on the future dividend policy of the Company. Is that right? Were you serious in that statement?

A.—Yes.

10 Q.—So that that would seem to mean—was that Lord Shaughnessy's condition of mind, too, do you know?

Mr. Campbell, K.C.: Don't answer, please.. My learned friend asked him to speak of his own state of mind at the time.

By Mr. McKeown, K.C.:

Q.—Did you discuss the subject with Lord Shaughnessy?

A.—We had, to some extent.

20 Q.—At the time the notice was sent out, on the occasion of these adjournments?

A.—Yes.

Q.—Did Lord Shaughnessy communicate to you any definite plan?

A.—There was a suggestion to be made. I think we were ready to receive suggestions at that Meeting.

Q.—Insofar as you were concerned, you just told us you had not made up your mind?

30 A.—Not definitely, no.

Q.—You did not know then, on the 6th December, and thereafter, what your dividend policy was. Is that the position?

A.—We had suggestions to make.

Q.—Did you decide on any definite dividend policy since, up to this moment?

A.—There has been no further action taken since these meetings were not held.

Q.—Can you indicate any policy at this stage to His Lordship which you are prepared to sponsor, and accept the responsibility for?

40 Mr. Campbell, K.C.: What we are going to do in the future, when we continue the administration of this Estate free from the hampering of this litigation, we will be prepared to say, but in the meanwhile we cannot formulate any definite policy.

By Mr. McKeown, K.C.:

ALEX. M. REAPER (*for Plaintiffs*), *Re-Examination*.

Q.—Speaking of the donations, which were reviewed in your cross-examination, by the Incorporated Company, \$127,000.00 for the first five year period, and \$74,000.00 after the death of Sir Mortimer, is it not true Sir Mortimer—

Mr. Campbell, K.C.: Those were the five-year periods.

10 The Witness: It is shown here on the same sheet.

By Mr. McKeown, K.C.:

Q.—Is it not true that during Sir Mortimer's lifetime the matters of all donations were dealt with by him in person, fixing the amount?

A.—The larger amounts were, yes. He was always consulted before they were made.

20 Q.—And the most of those donations, I think, were Hebrew philanthropies?

A.—Yes, and those since his death are practically the same, and naturally have practically all been discontinued with the exception of one to Mrs. O'Grady, about \$1,000.00 a year, \$1,040.00.

30 Mr. Holden, K.C.: I might make a suggestion, if you want to adjourn now until three o'clock, I am instructed we would have a reasonable chance of having—it is a very large order but the subpoena asks Mr. Reaper to produce all original letters, whether to him or to Lord Shaughnessy or the Company or the Alcohol Company and so on, but if your Lordship adjourns until three o'clock I think we could have them all here then.

The Court: I had hoped you would finish with Mr. Reaper before you adjourned. You are shattering my hopes again. I think you could perfectly well examine another witness while Mr. Reaper is getting them, if we could dispose of Mr. Reaper now.

By Mr. McKeown, K.C.:

40 Q.—What I wanted to point out was, as far as the Jewish Federation of Philanthropies is concerned, they were remembered by a particular bequest of \$100,000.00 in the Will, were they not?

A.—Yes.

Q.—And the Young Men's Hebrew Association are also particular legatees for another lump sum of \$100,000.00?

A.—Yes.

ALEX. M. REAPER (for Plaintiffs), Re-Examination.

Q.—I better have a little word with you about Cadillac Coal. You suggested, in answer to a question, I think, by His Lordship, there is a prospect of \$50,000 still being required?

A.—Yes, I think they may need assistance to that extent to carry them over the summer months. I think after that they should
10 be in position to earn money and start repaying shortly after August.

Q.—After August?

A.—Yes, with any sort of normal conditions, they should be.

Q.—The appeal for the moment is that they won't be able even to meet their expenses until next August.

A.—No, this is a dull season in that district.

Q.—I want to ask you, had either Lord Shaughnessy or yourself had any previous experience with handling coal properties?

A.—I don't know about Lord Shaughnessy. I have not been in
20 the coal business before.

Mr. Campbell, K.C.: Perhaps Sir Mortimer knew that, Mr. McKeown.

By Mr. McKeown, K.C.:

Q.—The Directors of that Company, I think it has already come out not only include Lord Shaughnessy and yourself but are made up, with the exception of Mr. Donaldson, of employees of the Com-
30 pany?

A.—Yes. Mr. Poillon is Consulting Engineer for the Company.

Q.—Have any of the other Directors ever had any practical experience in operating coal properties?

A.—I think Mr. Poillon had. I think Mr. Cochran had some knowledge of coal.

Q.—He is the gentleman who is now in South Africa?

A.—Yes.

Q.—Were you aware before embarking in the coal properties that the coal industry, the operation of coal mines is a highly special-
40 ised industry?

A.—No

Mr. Campbell, K.C.: He was not going to operate the mine.

Mr. McKeown, K.C.: He is one of the Directors. I know what it is going to cost.

Mr. Campbell, K.C.: If you would like to take the job to operate the mine—

ALEX. M. REAPER (*for Plaintiffs*), *Re-Examination*.

Mr. McKeown, K.C.: No, I have done nothing to deserve that up to date.

By Mr. McKeown, K.C.:

Q.—Did you consider that subject before investing the funds of the Incorporated Company in that Coal venture?

10 A.—No. We thought the people we had in charge had sufficient experience to operate the property successfully.

Q.—Did you propose, or you and Lord Shaughnessy, to do the directing or were you going to be led by the people on the ground?

Mr. Campbell, K.C.: It is not re-examination. My learned friend went into all this in his examination-in-chief, and again the questions are hypothetical, and I submit for both of these reasons the questions are illegal. At this rate we are not going to finish—

20 Mr. McKeown, K.C.: My learned friend went far beyond the realm of cross-examination in Cadillac Coal, and very happily brought out the fact that more money is going to be required.

Mr. Campbell, K.C.: We hope to get it all back. We are casting our bread upon the waters.

The Witness: The reports we have are most encouraging.

30 By Mr. McKeown, K.C.:

Q.—Who is the directing genius of Cadillac Coal at the present?

A.—Lord Shaughnessy is President of the Company; quite naturally, he would be governed to some extent by the reports from the operating end and by the Engineers.

By Mr. Campbell, K.C.:

Q.—Who are they?

40 A.—The Engineers I referred to would be Mr. Cochran and Mr. Poillon.

Q.—Who is on the job?

A.—Mr. Donaldson is in charge. He is an operator of many years' experience.

By Mr. McKeown, K.C.:

ALEX. M. REAPER (*for Plaintiffs*), *Re-Examination.*

Q.—Let us go to oil; in one of Sir Mortimer's letters there was a reference to oil leases and recommends you should grab as much oil as you could get. Do you remember that?

A.—Yes.

Q.—Let us see that letter.

10 The Court: Has that any bearing on the case, these oil leases?

Mr. McKeown, K.C.: They went and put money into the Oil leases.

Mr. Holden, K.C.: That was done by Sir Mortimer.

Mr. McKeown, K.C.: That was put in after.

20 Mr. Campbell, K.C.: The letter D-63, to which my learned friend refers, refers to his mining interests, but I don't think it refers to oil. This letter speaks about "putting our mining interests together into a Company."

(Whereupon an adjournment was taken until 2.30 o'clock P.M. on the same day, March 19th, 1930.)

AFTERNOON SESSION, March 19th, 1930.

30 ALEXANDER M. REAPER reappeared and continued his evidence as follows (in re-examination):

By Mr. McKeown, K.C.:

40 Q.—Mr. Campbell, in his cross-examination, drew your attention particularly to the provisions of clause 23 of the Will, in which the testator charged his trustees and Executors to take an active and energetic interest in the management of his Estate, to carry out the policies which he had laid down, and particularly "to conserve the capital of my Estate and not to sacrifice the same by premature liquidation," and that referred to the letter of Sir Mortimer Davis, Exhibit D-59, in which he deals with the subject of oil. I think it is quite clear from your previous evidence that apart from some oil leases which were on hand at the time of Sir Mortimer's death, the Executors took on further oil leases?

A.—No. I did not take on any other leases after Sir Mortimer's

ALEX. M. REAPER (for Plaintiffs), Re-Examination.

death. I think I have explained we took on other leases; other leases had been allowed to lapse and there was no increase in the acreage.

Q.—I did not ask you that at all. How many leases did you take on? As many as lapsed?

A.—Probably two sections. Between two and three sections, possibly.

Q.—Are these leases by sections or quarter sections?

10 A.—I think for the most part by sections. It depends on how you could get the areas.

Q.—Can you tell His Lordship how many new leases you took on?

A.—No, I could not say offhand. It was a very small area. We had allowed other leases to lapse and there was no additional acreage.

Q.—I think that acreage shows a total loss at present?

A.—Yes.

20 Q.—In taking on these oil leases, did you consider you were justified in doing so under this clause of the Will, Clause 23, to which I have drawn your attention?

Mr. Campbell, K.C.: I object to that question. Clause 23 has reference to the Estate; not the Incorporated Company.

Mr. McKeown, K.C.: You connected the two, I did not.

30 Mr. Campbell, K.C.: I did not connect the two of them. My learned friend must always, I submit—I am not afraid of the answer of the witness, and the dealings the witness has been testifying to were the dealings by the Incorporated Company, which are quite entirely distinct and separate affairs referred to in the clause of the Will.

The Court: The Estate is father to the Company; the Company is father to Alcohol, and Alcohol is father to McNish.

40 Mr. Campbell, K.C.: This particular clause refers to a particular situation and there is another clause of the Will referring to the Incorporated Company.

The Court: When you have sold the house on Pine Avenue and the Ste. Agathe property, which I hope you will do in the near future, there will be very little left in the Estate.

Mr. McKeown, K.C.: That is about the whole story in a nutshell.

ALEX. M. REAPER (for Plaintiffs), Re-Examination.

(Question read as follows)

“ In taking on these oil leases did you consider you were justified in doing so under this clause of the Will, Clause 23, to which I have drawn your attention? ”

10 A.—What is 23? I don't know that we considered that as part of the Will. We took this up in connection with the Incorporated Company.

Mr. Campbell, K.C.: The witness, at the end of two weeks, has shown he does not require—it is the only inaccurate answer.

Mr. Keown, K.C.: You do not seem to be sure when you raise your objection. You better withdraw the objection.

20 Mr. Campbell, K.C.: I would like to read another clause of the Will into the record at this time. If I be allowed, I would call his attention to it. I would read it into the record.

Mr. Montgomery, K.C.: The witness has shown that he is amply able to take care of himself.

By Mr. McKeown, K.C.:

Q.—Do you intend to take up any more oil leases?

30 Mr. Campbell, K.C.: Objected to. We have enough to answer for for the past. We do not ask Your Lordship to hold us responsible for our future. This was only to dispose of my learned friend's objections. We will do the best we can for the time being. I submit the question is illegal

Mr. McKeown, K.C.: How about the future?

40 The Court: I might ask him whether there is anything in process of execution or at least if the options are considered or something of that kind, if there is a plan for the future interest.

By Mr. McKeown, K.C.:

Q.—What are your plans, and intentions for the future as to oil leases in administering this Estate?

A.—There is nothing under contemplation at the moment.

ALEX. M. REAPER (for Plaintiffs), Re-Examination.

Q.—Let us hope you don't change your mind about it. Mr. Campbell has further drawn your attention to the Minutes of the Directors' Meeting of October 1st, 1924, that is, of the Incorporated Company, at which this distribution of shares was authorized by Resolution as shown by the statement Exhibit Number 16. In your cross-examination I went over that document with you, and we worked it out that it was equivalent to a distribution of 65 per cent.

10 Do you remember that?

A.—Yes. It figured 65 per cent.

Q.—There are two distinct things done at this Meeting of October 1st, 1924, Exhibit Number 16. The first is a Resolution distributing those shares. Is that right?

A.—Yes. It was first explained that an appraisal of the shares had been made and the values increased and that shares be allotted to cover that increase.

Q.—It was one complete subject, was it not? Those shares could be allotted and left in the hands of the shareholders and stop there.

20 A.—Yes. I presume so.

Q.—And that would have been a stock dividend of 65 per cent to the shareholders?

Mr. Campbell, K.C.: That question, I submit, is a question of law and not a question for the witness. Your Lordship will say whether this stock dividend—the answer of the witness in the box is not going to bind the defendants. It is a question of law. Whether he thinks it is a dividend or something else cannot possibly help His Lordship to decide this case.

30 A.—Well, it was a distribution of the increased appraisal value, yes.

Q.—They would have got their shares under that first resolution, would they not?

A.—They would have.

Q.—And they did get them, did they not? Did not the shareholders named in that resolution have contributed to them the number of shares set opposite their names?

A.—They did.

40 Q.—And if the thing had stopped there, their share-holdings would have been increased by the number of shares indicated in this Resolution?

A.—Yes.

Q.—And that would have been exactly the same thing as Alcohol did when they gave a 20 per cent bonus in shares to the shareholders?

A.—No.

ALEX. M. REAPER (for Plaintiffs), Re-Examination.

Q.—Why not?

A.—When they gave a 20 per cent bonus in shares, they charged them against their Profit and Loss Account.

Q.—Did it make any difference to the shareholders of Alcohol where they got the shares as long as they got them?

A.—It reduced their profit and loss in Alcohol to that extent.

Q.—It did not change their position as holding shares?

10 A.—Yes, it probably made a little difference in the value of the shares after the new issue was made.

Q.—Did it reduce Alcohol shares by 5 or by 20 per cent?

A.—By \$5 per share.

Q.—And the shares at that time were taken into account by the Incorporated Company at \$17.50 per share?

A.—Afterwards we put them in at \$17.50. \$5 is revenue account. That has been as a capital surplus.

20 Q.—The second thing that was done by the meeting of Directors of the Incorporated Company on October 1st, 1924, Exhibit 16, was to repurchase those shares from the shareholders and pay them in cash. Was that the process?

A.—Yes.

Q.—That is done by By-law B?

A.—Yes.

Q.—In particular the Resolution allotting the shares has not got a word in it about re-purchasing them in?

A.—No, I don't think so.

30 Q.—On the other hand, By-law "B" has no reference whatever to the source from which these shares came?

A.—No.

Q.—Would there have been anything to have prevented that Company at that time to have declared a straight dividend of 65 per cent on shares then outstanding?

A.—A straight cash dividend?

Q.—Yes?

40 Mr. Campbell, K.C.: Objected to as hypothetical. What the Company might have done in 1924, when he was not an officer of the Company and was not connected with the Company, surely is an improper question for the witness in the box. My learned friend can suggest to the Court what they might have done, and the consequences of it, but my submission is he is not entitled to ask the witness what they might have done in 1924. Your Lordship will construe what they might have done.

Mr. McKeown, K.C.: The witness is the Secretary. There is

ALEX. M. REAPER (for Plaintiffs), Re-Examination.

no one more familiar with the Company's archives and records than he is.

(Question read as follows)

10 " Q.—Would there have been anything to have prevented that Company at that time to have declared a straight dividend of 65 per cent on the shares then outstanding?

A.—A straight cash dividend?

Q.—Yes?

A.—They were not in a position to do so. Their profit and loss account showed a debit balance.

Q.—Is there anything, so far as you know, to prevent the declaration of a dividend payable in cash out of accumulated reserves of a Corporation?

A.—I don't think it is usual to do that sort of thing.

20 Q.—I will ask you the question over. Would you give us the answer?

Mr. Campbell, K.C.: Let us be fair to the witness.

Mr. McKeown, K.C.: Let us play cricket. You carry your bat. You will have a chance for a while.

The Witness: There was no accumulated cash surplus at that time. Their profit and loss account showed a loss.

30 Q.—That is not the question which is asked you.

The Court: May I ask what took place on the 1st of October, 1924, which had to do with the removal of the Executors?

40 Mr. McKeown, K.C.: It has this to do. My learned friends are using that as collateral and as a cloak, after having reached into the coffers of this Company and taken out \$10,000.00, different items; \$4,601.00 and \$3,000.00 in another, and are always shielding themselves through the artifice that that \$217,000.00 belongs to them. It does not belong to them at all. It belongs in the Estate.

The Court: That is argument.

Mr. McKeown, K.C.: The point we must make is that that is so.

Mr. Campbell, K.C.: The answer is that all the documents created during Sir Mortimer's lifetime are in that.

ALEX. M. REAPER (*for Plaintiffs*), *Re-Examination*.

Mr. McKeown, K.C.: This \$217,000.00 and more belonged to Lord Shaughnessy, if his contract was perfect, no more than it belonged to Your Lordship. What I want to show is what was taken on October 1st was exactly the equivalent of a straight cash dividend. Under one of the clauses of the contract, the dividend went to Sir Mortimer.

10 Mr. Campbell, K.C.: You dealt with it in chief.

Mr. McKeown, K.C.: You used it for page and page and page as collateral to those supposed loans of yours.

Mr. Campbell, K.C.: Used it properly.

Mr. McKeown, K.C.: We will see about that.
(Question read)

20 “Is there anything, as far as you know, to prevent the declaration of a dividend payable in cash out of accumulated reserves of a Corporation?”

A.—I don't think it is usual to do that sort of thing.

Q.—I will ask you the question over. Would you give us the answer.”

By Mr. McKeown, K.C.:

30 Q.—Can you give any other answer than that?

Mr. Campbell, K.C.: I don't think he can.

Mr. McKeown, K.C.: There ought to be some sort of limit other than calling for the Marshall to remove you.

Mr. Campbell, K.C.: He has asked the questions and he has answered.

40 By Mr. McKeown, K.C.:

Q.—Have you any other answer?

A.—No, I would not like to give any definite opinion on that but I understood at that time the matter was fully discussed with the legal advisers of the Company and also the Accountants or the

ALEX. M. REAPER (for Plaintiffs), Re-Examination.

Auditors were taken into consultation and they considered that that was the proper way to make the distribution.

Q.—Don't you know that Canada Steamships for the last year—

10 Mr. Campbell, K.C.: He has nothing to be responsible for. He is being held responsible for Sir Mortimer Davis, Incorporated; Alcohol and all its subsidiaries. Don't drag in the fleet.

Mr. McKeown, K.C.: Well, I withdraw that question.

Mr. Campbell, K.C.: Thank you, Mr. McKeown.

Mr. McKeown, K.C.: All right, Mr. Campbell. Now do keep quiet. That was intended to give you an opportunity to keep you right once or twice so you would be satisfied.

20 By Mr. McKeown, K.C.:

Q.—You have just given as a part of the reason why the dividend could not have been declared as a cash dividend was because they did not have cash reserves?

A.—They did not have cash surplus. They did not have surplus and a Profit and Loss Account.

30 Q.—Well, now, this statement, D-52, being the statement of the Incorporated Company on the 30th September, 1924, shows the position after the process was over and after \$3,250,000.00 was taken out of the Company, does it not?

A.—Well, the capital surplus account shows the amount of \$3,250,000.00 is deducted but there is actually \$1,400,000.00 actually due the shareholders on account of the re-purchase of stock.

Q.—If it had been a cash transaction, could it not have been put through? Would not the position have been the same except the item due to the shareholders would have been due to the Bank, as is often done, money raised to pay the dividend for the time being?

40 A.—Yes, it would have changed the Bank position to that extent, but having been put through as a surplus account there was no surplus to charge it to.

Q.—When was it given?

A.—At that period.

Q.—Just be good enough to look at that (indicating statement).

A.—I say Profit and Loss surplus.

Q.—According to you, the difference between Profit and Loss surplus and accumulated surplus is such that you could not declare the dividend which would require the taking of part of the ac-

ALEX. M. REAPER (for Plaintiffs), Re-Examination.

cumulated surplus. You could not have declared a dividend there at that time. Do you suggest you can only declare a dividend from earnings of the current year or from any year?

A.—You can declare it from any year.

Q.—In other words, you can declare a dividend which will be paid out of earnings from past years which have entered the surplus account. Do you concede that?

10 A.—Yes.

Q.—Supposing that would realize some profits on capital account by the sale of some property, according to you is it not proper to declare a dividend which does not impair the Company's capital?

A.—I think so.

Q.—Is not that what was done here?

A.—No, that was realized on surplus.

Q.—That does not come out of surplus?

20 A.—Well——

Q.—That does not come out of surplus or income if you sell capital property and distribute the proceeds?

A.—It is realized from a capital asset.

Q.—It is not from surplus income necessarily?

A.—No, not necessarily.

Q.—Let us see the report of Price, Waterhouse for 1929.

(Report handed to Counsel.)

30 Q.—Have you followed out the practice of having your Directors sign the Statement, the Annual Report and Statement?

A.—No, I don't think so. That has not been usual.

Q.—What is this? A Quebec Company?

A.—A Quebec Company.

Q.—You are not familiar with the Quebec Act under which the Incorporated Company's charter was issued, requiring the statement to be signed by two Directors?

40 A.—I think there is something in the Act to that effect. It has never been followed out.

Q.—Your practice was not to have the Directors sign the Statement?

A.—It has not been usual.

Q.—Have you signed any Statement for the Incorporated Company?

A.—No.

Q.—Do you know if Lord Shaughnessy signed any?

ALEX. M. REAPER (*for Plaintiffs*), *Re-Examination*.

A.—Well, I have not noticed any signed.

Q.—I put it to you that in connection with a Corporation such as the Incorporated Company here is, in which there have only been, I think, the greater part of the time, only three Directors—there are three now?

A.—There are three now.

10 Q.—Have there been a larger number of Directors heretofore?

A.—There have been at times, yes.

Q.—But it has been the personal Corporation of Sir Mortimer Davis?

A.—Yes.

Q.—Price, Waterhouse have been and are the Auditors since the Company was incorporated?

A.—Yes.

20 Q.—I take it that the practice with that Company is the same as with other Corporations, that the annual audit of the Company and the Auditors' Report to the President and Directors is prepared in collaboration with the Officials of the Company?

A.—That is the usual procedure, yes.

Q.—I mean, take for instance, the last report prepared, September, 1929. No doubt Lord Shaughnessy and yourself, as the two active Directors of the Company, were in constant touch with the auditors as the work progressed and was brought to a finish?

A.—We gave them such information as required, such assistance as they wanted.

30 Q.—Then, they prepared a statement in draft form and they prepared the report and conferred with Lord Shaughnessy and yourself before it was in final order. Is not that the regular way?

A.—Not always.

Q.—Is not that the regular way?

A.—Sometimes. They do not always submit a draft when they are reporting on anything.

Q.—It is usually done. Is that the usual way with anything of that sort?

A.—I think so, yes.

40 Q.—You were not with him at the time of this report and cannot tell us anything more concerning this report in the archives of the Company?

A.—No.

Q.—Have you got in the archives of the Company now the Price, Waterhouse report and the account up to 1925?

A.—I did have.

ALEX. M. REAPER (for Plaintiffs), *Re-Examination.*

Q.—You have had that in your archives right up to the present time?

A.—Yes.

Q.—Will you be good enough to refer to page 6 of the Report which I will read into the record and have you verify if the reading is correct:

10 “Liabilities of the Company include an amount of \$172,-
250.00 carried at the credit of H. M. Marler and H. B. McLean
in trust and it is made up of an account payable in respect of
purchase of capital stock, \$162,500.00; interest thereon at 6%
for one year, \$9,750.00; total \$172,250.00. We understand that
the beneficiary under the Trust does not wish to participate in
the distribution of this amount of \$172,250.00 and under these
circumstances it would seem that any steps which may be
20 necessary should now be taken to have this amount transferred
to the credit of Sir Mortimer B. Davis.”

Is that a correct reading?

A.—Yes.

Mr. Campbell, K.C.: Ask him if it was done.

By Mr. McKeown, K.C.:

30 Q.—And this report, D-53, has formed part of your archives
ever since?

A.—Yes.

Q.—Who was the beneficiary referred to there?

A.—Lord Shaughnessy.

Q.—That is signed by Price, Waterhouse & Company? Do you
know whose signature that is, by whom that is signed?

A.—No; I could not say whose it is.

40 Q.—I want to draw your attention in the same connection to
the fact that the mention of this item, at the credit of H. M. Marler
and H. B. McLean in the Report from which an extract has just been
read, is the report of September 30th, 1925, Exhibit D-63, and was
not the first occasion upon which that subject had appeared in the
Statements of the Corporation. That item had appeared in the
Statement, the Auditors' Statement of the year previous, that is,
the year finishing September 30th, 1924. What I mean is the item
“H. M. Marler and H. B. McLean in trust,” at that time “\$162,-
500.00”?

ALEX. M. REAPER (*for Plaintiffs*), *Re-Examination*.

A.—Yes. That refers to the same item.

Q.—And one year later it is made the subject of a remark of the Auditors contained in their Report, Exhibit D-53?

A.—Yes.

Q.—Which has been read into the record?

A.—Yes.

10 Q.—You were shown by Mr. Campbell a compilation which was filed in the Record as Exhibit D-56, compilation of quotations upon beverage stocks. Hiram Walker, Distillers Corporation, Canadian Industrial Alcohol; also Hiram Walker, Gooderham & Worts, Distillers Seagrams and Canadian Industrial Alcohol. I observe, upon checking that document that there are quite a number of inaccuracies. All I want to bring out is that I want to ask you if you are in position to suggest to the Court that this compilation is correct, having checked the same against the records of any recognized Stock Exchange?

20

Mr. Campbell, K.C. I have already explained that that document was prepared by my own Accountant in my own office from a daily record of daily sales of the year. I have already offered, if there are any inaccuracies in it, to make any necessary corrections; but it purports to show the monthly high and low. It was taken from a compilation showing the daily high and low of each year, and I don't want to encumber the record, which is very long. I don't want my learned friend to put this in with the idea it was wrong.

30

Mr. McKeown, K.C.: I am not doing more than putting it in the record. We cannot be guided by this, because we propose to make some other proof which will be in conflict with that.

Mr. Campbell, K.C.: I don't want to put the responsibility on the witness because he did not compare it. I am ready to file the daily record from which D-56 is prepared. I don't see any reason for encumbering the record.

40

By Mr. McKeown:

Q.—You produced in cross-examination as Exhibit D-74 a letter addressed to yourself by Lord Shaughnessy under date November 29th, 1929, setting out a declaration that an adjustment would be made between the Estate and Lord Shaughnessy in connection with dividends: You remember it?

ALEX. M. REAPER (for Plaintiffs), Re-Examination.

A.—Yes.

Q.—First of all, that document was put in writing, do you say, on the date it bears, November 29th, 1929?

A.—Yes.

Q.—There had never been anything before that date in writing?

A.—No.

10 Q.—The letter goes on to say that, “In accordance with the advice now received from the Company’s lawyers I take this means to put on record the understanding that I had with you some months ago.” Now, that was, I take it, a verbal talk?

A.—That was a verbal understanding.

Q.—And you stated in your cross-examination that you thought it was in the latter part of August?

A.—Yes, it was before he went West in any case.

20 Q.—Was it after Lady Davis’ demand by the letter of August 15th for the full particulars which were furnished with the Price, Waterhouse interia reports?

A.—It might have been.

Q.—Lady Davis was in touch with you at the office of the Incorporated Company from that time well on into the month of November, from time to time?

A.—No. She called me up about the middle of October, I think possibly.

Q.—Was she not in touch with you in September?

A.—In September, yes; there were these letters.

Q.—And did she not also communicate with you by phone?

30 A.—Quite likely.

Q.—There were quite a number of matters coming up in connection with matter of the Estate which you communicated with her about?

A.—There may have been a few. There were not very many.

Q.—She was at the meeting of October 18th, 1929?

A.—Yes.

40 Q.—Is it not true that you never communicated, or disclosed this arrangement referred to in this letter to her at any time before you sent the formal notice of December 4th, with reference to calling the meeting of Directors for December 6th?

A.—No. At the time Lord Shaughnessy and I had discussed it, we thought it better to wait until we had the completed statement for the year of the Company before taking any action on the dividend.

Q.—I am not asking you about that at all. I am asking you

ALEX. M. REAPER (for Plaintiffs), *Re-Examination.*

whether from the time this conversation took place as you claim, between Lord Shaughnessy and yourself, before he went West, and the time you sent out the notice for the special meeting of Directors on December 6th, which is dated, I think, December 4th, up to that time you had never disclosed to Lady Davis this arrangement which is referred to in the letter, had you?

A.—No.

10 Q.—Have you got the Minute book of the Directors and of the Executors here?

A.—Yes.

Q.—Under date October 18th you appear to have Minutes written up of the meeting both of the Executors and of the Directors of the Company?

A.—Yes.

Q.—Were there ever any notices sent out calling either of those meetings?

20 A.—Lady Davis was ready to come to this meeting by telephone.

Q.—Were they supposed to be meetings or just casual gatherings to discuss the situation?

A.—I understood they were meetings. It was the same thing.

Q.—In any event, Lady Davis did happen to discuss sundry matters, and they are now in the form of Minutes of meetings of both the Executors and Directors of the Company?

A.—Yes.

30 Q.—Do you find any mention in either of those, of this proposal of Lord Shaughnessy to make an arrangement with the Executors concerning dividends declared on the shares, 2,400 shares, which he claims, owned by the Incorporated Company?

A.—No.

Q.—According to you that was an arrangement previously entered into between Lord Shaughnessy and yourself?

A.—Yes.

Q.—There was no disclosure made at this meeting at all either as Executrix or Co-Director?

40 A.—No, it was not mentioned at the meeting.

Q.—You understood perfectly well that if Lord Shaughnessy's agreement was good, he was not entitled to participate in any dividends declared by that Company prior to the 17th of September, 1929, did you not?

A.—Yes.

Q.—It is perfectly sound that if Lord Shaughnessy and yourself, as the two active Directors in charge of that Company, had

ALEX. M. REAPER (for Plaintiffs), Re-Examination.

declared dividends to the extent of that loan of approximately a million dollars prior to the 17th of September, 1929, Lord Shaughnessy would not have participated in those dividends, even if his contract was good, is that it?

10 A.—Had the dividend been declared and paid prior to the close of his contract period, he would not have been entitled to dividends.

Q.—And it was during that period that Lord Shaughnessy and yourself, in the dual qualities of Executors as borrowers, and of Directors of the Company as the lender, decided to pursue this policy of the loan which is already of record, is that right?

A.—Of course, we decided to let that loan remain for that length of time until we declared dividends at the end, after we had received the annual report of the Company.

20 Q.—In point of fact, you got the report of the Company some time in November?

A.—I think on the 18th.

Q.—You were not in any doubt as to the position of the Company? You knew what position the Company was in long before the handing over of the Auditors' report, did you not?

A.—We knew pretty well how things were, yes.

Q.—This letter, D-74, is supposed I take it, to refer to the disadvantageous position in which the Estate had been placed by the failure to declare any dividends from the time of Sir Mortimer's death up to the 17th of September, 1929?

30 A.—Yes.

Q.—In reference to the shares claimed by Lord Shaughnessy?

A.—Yes. The understanding that we had was that any dividend that would be declared up to that time would be granted to the Estate.

Q.—And you had not declared any dividend?

A.—No, we had not.

40 Q.—But any dividends you should have declared, is that what you mean, in that period from Sir Mortimer's death on March 22nd, 1928, to the 17th of September, 1929?

A.—No. The understanding was that the proportion of any reasonable dividend which could have been declared before that period which would be coming to Lord Shaughnessy, would be credited to the Estate.

Q.—Why the proportion? What do you mean by that?

A.—His proportion of the dividend which might be declared.

Q.—His proportion in what respect?

A.—Approximately on the 2,400 shares which were in his name.

ALEX. M. REAPER (for Plaintiffs), Re-Examination.

Q.—What proportion of that dividend was going to be handed over to the Estate?

A.—Practically all of it, as I understand it. There was a portion of it coming to him in the dividend, not a proportion of the dividend.

10 Q.—That does not say that all dividends declared will be handed over to the Estate. It says something to the effect that:—

“ Adjustment will be made between me and the Estate by which the Estate will receive such proportion of the dividends upon the shares that I have acquired under my contract with him as would represent a dividend on those shares which could fairly and equitably have been payable out of surplus if dividends had been declared by the Company between the date of his death and September 17th, 1929, when the shares in question became my property.”

20

Just read that?

Witness: Do you want me to read it again?

Q.—Tell us what was the proportion which it was proposed to turn over to the Estate?

A.—Well, whatever was declared, the whole proportion that would have come to Lord Shaughnessy on such dividend as might be declared.

30

Q.—I cannot follow that. I could never understand what that letter means. I do not think His Lordship will either if it stays where it is. You and Lord Shaughnessy must have agreed that this letter, D-74, covered your understanding. What was your understanding?

A.—The understanding was that such proportion of dividend as would be coming to Lord Shaughnessy on the shares which were going to him, would be turned over to the Estate.

40 Q.—Yes, but what proportion? How are you going to determine that?

A.—His proportion. He held 2,400 shares. He would have had the proportion of dividend on those 2,400 shares, and that amount would have been turned over to the Estate.

Q.—Supposing there had been a ten per cent dividend of \$24,000, that \$24,000 would be turned over?

A.—In that case.

Q.—That is the way you understand that letter?

ALEX. M. REAPER (for Plaintiffs), *Re-Examination.*

A.—That is the way I understand that letter, yes.

Q.—I would also like you to note something else, that this letter dated November 29th is subsequent to the date of the demand for your resignation on November 21st, 1929?

A.—It is.

Q.—Just one word about these loans. Instead of taking them up one at a time, I am going to bulk them; the \$50,000 loan, the \$13,500 McNish loan, the \$7,500 Alcohol B loan, the \$10,000 loan without any name to it; you told Mr. Campbell that there was no special security for these loans, and in each instance you have referred to the Marler and McLean balance?

A.—Yes.

Q.—If we eliminate the Marler and McLean balance, is it not true that there was no security whatsoever for this loan?

A.—If they were eliminated, but I always understood that was going to him.

Q.—Answer the question?

Mr. Campbell: If a great many things happen, a great many other things will happen. I submit the question as framed is not fair.

Mr. McKeown: I think the question is fair.

By Mr. McKeown:

Q.—I put it to you, eliminating the Marler and McLean balance, there was no security for these loans whatsoever held by the Incorporated Company, is that true?

A.—No, but, as I said, I understood that was going to Lord Shaughnessy.

Q.—Do you say yes to my question?

A.—Yes.

Q.—And then, you give your explanation that you understood that was going to Lord Shaughnessy?

A.—Yes.

Q.—In connection with the \$10,000 sum which he received from the funds of the Company in January, 1929, on a cheque which bears your signature, did you discuss the matter with him at all before signing that cheque?

A.—Not at all.

Q.—Did you ask him for any security?

A.—No, I did not.

ALEX. M. REAPER (for Plaintiffs), Re-Examination.

Q.—He suggested the amount, and you signed the cheque. is that it?

A.—Well, he said he would like to get a loan of that amount at the time.

Q.—He would like to have that amount, and you signed the cheque?

A.—I did, yes.

10 Q.—And did you say anything to him at all when he suggested to you, before going west, that this very large sum of money aggregating something like \$150,000 should be paid out of the Company's funds in his absence through your instrumentality, that is to say, did you say anything to him with reference to the McNish loan of \$13,500 and the Alcohol loan?

A.—No, I think not.

Q.—And the Alcohol B shares?

A.—No, I think not.

20 Q.—And you knew at that time the collateral for these loans was not sufficient to meet the amount of them at market prices?

A.—I don't know what the market was at that time.

Q.—Let us take McNish. Do you know what collateral he had to McNish? You knew that the collateral there was 3,000 McNish Debentures?

A.—Yes.

Q.—At \$3.50 each?

A.—I don't know just now what they were at that time.

Q.—Did you enquire?

30 A.—I do not think I did. I do not think they were as low as that at that time.

Q.—Do you suggest to the Court that the value of the McNish Debentures when that money was drawn out equalled the amount of the McNish loan of \$13,500?

A.—At the moment I could not say just what the amount was. They were not as low as they are today. I think they would have been over \$4.00 at that time. I do not know the exact amount.

Q.—Would you suggest that?

A.—I would not like to say.

40 Q.—And as to the Alcohol B loan, where are these funny figures which you have got there. What does it show as the price of Alcohol B on September 25th?

A.—I have not got the 25th.

Q.—What is the high and low for September?

A.—I have twenty and three-quarters and thirteen.

Q.—Take it at twenty. Likely, twenty dollars was the price in the early part of the month, was it not?

ALEX. M. REAPER (for Plaintiffs), Re-Examination.

A.—I have not got the record.

Q.—See what that was on the 25th, when you went and released that money?

A.—Lord Shaughnessy went away on the 5th.

Q.—Will you verify from the compilation now shown you, that on the 25th of September the high was sixteen and the low was fifteen for Alcohol B?

10 A.—Yes, the high was sixteen and the low fifteen.

Q.—At those figures the Alcohol B loan was not even covered. It was under flat?

A.—It was not quite covered.

Q.—It was under flat?

A.—On the 5th when Lord Shaughnessy went away it was high.

By Mr. Campbell:

20 Q.—What was it on the 5th?

By Mr. McKeown:

Q.—I suggest that there were some transactions at twenty and three-quarters?

A.—Yes.

Q.—Assuming for the moment that McNish was then at the price which we have been considering, \$3.50, there was only about \$10,500 of collateral there for a loan of how much at that time?

30 A.—The original amount of the loan was \$13,500.

Q.—What was the amount of the loan you allowed this money to go out, about?

A.—I cannot say that exactly. Approximately that amount.

Q.—Approximately \$13,500?

A.—Yes

Q.—And if the Debentures were worth \$3.50, there was only \$10,500 collateral as security?

A.—At that rate, yes.

Q.—So that that loan would be under flat also?

40 A.—Yes.

Q.—Whatever was the position before Lord Shaughnessy asserted his claim to the \$217,000, and through you got possession of it, as already shown in September, 1929, after that time the Company did not hold any collateral, good, bad or indifferent, from Lord Shaughnessy other than the McNish Debentures and the Alcohol B stock, is that right?

A.—That is right.

ALEX. M. REAPER (*for Plaintiffs*), *Re-Examination*.

Q.—And that was not sufficient to meet the face amount of those loans at the time you allowed this money to be taken out in September?

A.—No, it was a little less.

Q.—And those loans are still outstanding?

A.—They are.

Q.—That is, the McNish, and the B Alcohol?

10 A.—The McNish and B Alcohol stock.

Q.—Speaking of the two items covered by Exhibit P-27, advances out of the Company's bank account to Lord Shaughnessy in 1928: You have said that as to the first of those matters, that is, the advances in 1928, that you called Lord Shaughnessy's attention to the subject and he gave you a cheque, is that right?

A.—Yes.

Q.—And that was in October, 1928?

A.—Yes.

20 Q.—And you have explained that that cheque came in on the 4th of October and you entered it under date 29th of September?

A.—Yes.

Q.—Which was the day before the end of the financial year, the Saturday I think you said?

A.—I think so.

Q.—And before the audit of Price, Waterhouse & Company?

A.—Yes.

His Lordship: He said the 30th was a Sunday?

30 Witness: Yes.

By Mr. McKeown:

Q.—I think you said in that connection that Lord Shaughnessy had been approached, and that he only returned, I think you suggested, about the day you got the cheque?

A.—In the first days of October.

Q.—Are you quite sure when he got back?

A.—I would not be sure.

40 Q.—You are sure he was not back in September?

A.—I am pretty sure he was not. He was not in the office. That I know.

Q.—Would you undertake to pledge your oath that he was not back?

A.—That he was not back in the office, yes.

Q.—Of course, that condition of affairs did not exist at all the

ALEX. M. REAPER (for Plaintiffs), *Re-Examination.*

next year in 1929, when he did the same thing over again? He returned that year in June, did he not?

A.—He did.

Mr. Campbell: My learned friend went into all this in chief, and I cross-examined on it. He is now re-cross-examining. Am I to re-cross-examine on his re-examination?

10

Mr. McKeown: I just wanted to check up a statement made by the witness in his cross-examination in connection with the giving of a cheque, which is something new.

By Mr. McKeown:

Q.—You said that you thought those items would be taken care of when the contract matter was adjusted in September, is that right?

20

A.—Well, I had not made out a statement for him. That was coming so close that it could be adjusted then.

Q.—And without any request by you for payment, Lord Shaughnessy said he wanted to give a cheque, is that it?

A.—No. When we were talking about the settlement of his account, after the end of his contract period on September 17th, and the deductions which were to be made, this matter was brought up, and he said, no, he did not want that deduction off there, he wanted to give a cheque for it, which he did.

30

Q.—Was that Lord Shaughnessy's idea to give the cheque?

A.—Yes.

Q.—When did you have that conversation with him?

A.—I imagine that would be on the 4th of September.

Q.—You knew that Lady Davis had asked for an audited statement of the figures of the Incorporated Company, did you not?

A.—Yes.

Q.—Had the Auditors been instructed then to make their audit?

A.—I think they were during that day, or the day before.

40 from? Q.—And what day were they instructed to make their audit

A.—As at August 31st.

Q.—So that you took this cheque of September 4th from Lord Shaughnessy, given on his own initiative, after this demand for an audit had been made, and you put it in under date August 31st?

A.—I did, before I closed off for the night.

Q.—Between the time Lord Shaughnessy got back from Europe that year, on the 1st of June, and the time of this conversation of the

ALEX. M. REAPER (for Plaintiffs), Re-Examination.

4th of September, did you ever discuss with him the matter of his indebtedness on these drawings?

A.—No, I do not think I had.

Q.—You never even mentioned the subject?

A.—No.

Q.—And he never mentioned it to you?

A.—No, I do not think so.

10 Q.—The net result of what was done on both those occasions all ante-dated the receipts of these moneys from Lord Shaughnessy, so that on neither occasion did it appear in the Auditors' report or statement?

A.—No. I just reduced the accounts receivable in the statement, that was all.

Q.—I asked you, Mr. Reaper, the other day, to look up the letter of November 1st, 1928, from Lord Shaughnessy to Mr. Marler. Have you been able to find it?

A.—I have.

20 Q.—Will you now produce the same as Exhibit P-93?

A.—Yes.

Q.—Following the sending of this letter by Lord Shaughnessy to Mr. Marler of November 1st, 1928, the three letters marked P-84, already produced, and all dated November 6th were received?

A.—Yes.

Q.—It has also come out that on December 4th, the Estate gave a cheque to Mr. Marler for \$85,000, representing \$170 a share for 500 shares?

A.—Yes.

30 Q.—Is that right?

A.—Yes.

Q.—And also at the same time gave a cheque of the Incorporated Company for \$15,000 additional?

A.—Yes.

Q.—Mr. Marler's letter of the 6th, that is the one marked personal, reads:

“ As discussed between us, the amount to be paid me will be \$100,000.”

40

A.—Yes.

Q.—What was the purpose of giving the two cheques? The \$15,000 cheque given by the Company, you afterwards switched that back into the Estate?

A.—Yes.

Q.—And it stands as a sum paid out by the Estate today, does it not?

ALEX. M. REAPER (for Plaintiffs), Re-Examination.

A.—Yes.

Q.—What was the purpose of that?

A.—They were separate transactions as I understood.

Q.—Today, we have both sums paid out of the Estate, have we not?

A.—Yes.

10 Q.—The \$85,000 which was paid out direct by the Estate cheque?

A.—Yes.

Q.—And the \$15,000 which was paid out by the Company?

A.—Yes.

Q.—And charged by the Company to the Estate?

A.—To the Estate.

Q.—Why not have given one cheque for the whole amount of \$100,000 of the Estate, seeing that the whole amount ultimately found its way out of the Estate's money. Do you know any reason?

20 A.—I don't know of any special reason.

Q.—According to this correspondence exchanged between Mr. Marler and Lord Shaughnessy, it would seem that Lord Shaughnessy had represented that it was necessary to hold the annual meeting, and at the annual meeting to adopt a resolution fixing the value of the shares in accordance with the report of the Auditors. Was that ever done before the meeting was dispersed on the 4th of December?

A.—No, before the demand was made in these letters, Mr. Marler agreed to accept the price that would be set.

Q.—These letters, D-84, of the 6th of November?

30 A.—Yes.

Q.—He agreed to fix a price which would be set?

A.—He agreed to accept a price which would be fixed at the annual meeting.

Q.—His letter says he is to be paid \$100,000?

A.—He says:

“ I hereby offer these shares for sale at the value thereof to be established by Resolution of the Shareholders to be adopted at the Annual Meeting of the Company.”

40

By Mr. Campbell:

Q.—And it was adopted?

A.—That is just in conformity with what Lord Shaughnessy had said in his letter of November 1st, P-93, which reads:

“ Subject to your ideas, it appears to me that it is neces-

ALEX. M. REAPER (for Plaintiffs), Re-Examination.

sary, first, to adopt a resolution at the Annual Meeting, which I might say will take place very shortly, fix the value of the shares in accordance with the report made by the auditors, after which we should receive notice from you of your willingness to sell the shares at this price, when I think the matter could be arranged.”

10 By Mr. McKeown:

Q.—What I am asking you now, whether before you paid out that money amounting altogether to \$100,000, there was any annual meeting of the Company held, and the price of these shares fixed?

A.—The annual meeting had not been held.

Q.—And the price of these shares had not been fixed at \$170, or at any price?

20 A.—No, it was understood at the time that they would be fixed at that price.

Q.—The understanding you have just referred to does not appear by the correspondence, does it?

A.—It says he is willing to accept the price, and the other letter specifies the price which had been set by the Auditors.

Q.—Can you point out anything to His Lordship in Mr. Marler's three letters of November 6th, 1928, Exhibit P-84, which indicates that Mr. Marler agreed to sell his shares for \$170 a share?

30 Mr. Campbell: I object to this question as illegal. My learned friend has been arguing with the witness for some time about the construction of these letters. That is Your Lordship's responsibility. As a matter of fact, a resolution was passed at the annual meeting of the shareholders establishing the value of this stock.

Mr. McKeown: Three weeks after the money had been paid out.

Mr. Campbell: But in accordance with the arrangement made. The witness is not obliged to argue the significance of the documents with Counsel.

40

Mr. McKeown: I have just asked him a plain question. He stated it was understood it was to be \$170 a share, and I show him the correspondence and ask him to indicate from the correspondence if he can.

Witness: In this letter of November 6th addressed to Lord Shaughnessy, Mr. Marler says:

ALEX. M. REAPER (for Plaintiffs), Re-Examination.

“ In reference to your letter of the 1st of November instant as you are aware I am the owner of 500 shares of Sir Mortimer Davis Incorporated.

I hereby offer these shares for sale at the value thereof to be established by Resolution of the Shareholders to be adopted at the Annual Meeting of the Company.”

10 This letter was in reply to the letter of November 1st which specifies \$170 a share.

By Mr. McKeown:

Q.—What specifies \$170?

A.—The letter of November 1st to which this is a reply.

Q.—Now, Mr. Reaper, is it necessary for me to read this quotation again from Lord Shaughnessy’s letter in which he says the value is to be fixed by resolution:
20

“ Subject to your ideas, it appears to me that it is necessary, first, to adopt a resolution at the Annual Meeting ” . . .

Mr. Campbell: I renew my objection, my Lord, that Counsel is simply arguing with the witness about the construction of the document. He reads to the witness part of the letter; he abstracts from its context certain words of the letter, which is utterly unfair. Let him read the whole letter, or let him read, at least, the whole paragraph. It is perfectly clear that Lord Shaughnessy in his letter of November 1st states they are agreeing to fix the price of \$170 a share, and Mr. Herbert Marler states in his reply: “ I am ready to accept the price you will fix.”
30

Mr. McKeown: He does not say anything of the kind. He says the Auditors have fixed it for Succession Duty purposes.

Mr. Campbell: And he says they propose to fix it at \$170 a share.

Mr. McKeown: I just want to show that the application of this By-law 31 was never carried out, was never intended to be carried out, that the transaction was one for \$100,000. We already have the evidence that there was no consideration then fixed. There was not a nickel going to Mr. Marler on that.
40

Mr. Campbell: Surely that is argument.

ALEX. M. REAPER (for Plaintiffs), Re-Examination.

Mr. McKeown: It is not argument. I am only making the statement from the evidence which has already been adduced to justify the evidence I am now making at this state. That is my only intention.

10 Mr. Campbell: Of course, that is a construction of the document we entirely disagree with.

Mr. McKeown: We have one of the defendants in the box.

Mr. Campbell: You are arguing the case with the defendant.

20 Mr. McKeown: I am not arguing the case with the defendant. In the meantime I think I am entitled to have from this witness, who is one of the co-Executors, dealing with some important transaction, which forms one of the direct matters of controversy in the case, and to have the evidence without interference from Mr. Campbell.

His Lordship: Not so much in this case as in the other case.

Mr. McKeown: I think if, in the present instance, this transaction is on the basis with which we view it, it is very, very relevant to this case, otherwise if this is a sample of the administration that that Estate was going to have for the rest of the term of the Trust, Lord help the Trust.

30 His Lordship: I reserve the objection.

Witness: I have already answered that question.

By Mr. McKeown:

Q.—Will you kindly answer it again, for I missed it if you answered it?

40 Mr. Campbell: Quote the letter to him.

Mr. McKeown: I am not speaking of Lord Shaughnessy's letter, I am speaking of Mr. Marler's letter.

Witness: Mr. Marler's letter is a reply to Lord Shaughnessy's letter, and naturally if he agrees to what is contained in Lord Shaughnessy's letter, Lord Shaughnessy's letter surely has to be taken into account.

ALEX. M. REAPER (for Plaintiffs), Re-Examination.

By Mr. McKeown:

Q.—Will you point in Mr. Marler's letter where he agrees to sell his shares for \$170 a share? He says:

10 “ In reference to your letter of the 1st of November instant, as you are aware I am the owner of 500 shares of Sir Mortimer Davis Incorporated.

 I hereby offer these shares for sale at the value thereof to be established by Resolution of the Shareholders to be adopted at the Annual Meeting of the Company ”

and in the letter which he refers to of Lord Shaughnessy of November 1st, Lord Shaughnessy says:

20 “ In accordance with the above, while no price has been fixed by the shareholders, it was necessary in valuing the assets of the Davis Estate to fix a value of these shares and the Officers of the Company, in conjunction with the Company's auditors, after exhaustive analysis of the financial statement of the Company for the preceding year, fixed a value of \$170 per share. Under the above By-Law it would not be possible to purchase stock except at this price, and by the shareholders in proportion to their respective holdings. This would mean that the Davis Estate would purchase 90%, Mr. J. B. Waddell 5%, and the Davis Estate for the purpose of the Trust created in my favor
30 another 5%, which comprises all the shareholders of the Company, and if Mr. Waddell did not wish to purchase his proportion, I think it is clear under the By-Law that the Davis Estate could also purchase this amount,”

and then it goes on further.

Q.—Just read the last paragraph?

40 A.—“ Subject to your ideas, it appears to me that it is necessary, first, to adopt a resolution at the Annual Meeting, which I might say will take place very shortly, fix the value of the shares in accordance with the report made by the auditors, after which we should receive notice from you of your willingness to sell the shares at this price, when I think the matter could be arranged. I doubt, however, whether the Estate, under any circumstances, could give any higher price than that fixed by the shareholders.”

Q.—To come back to the first question: Where is there any mention in the letter P-84 of \$170 a share? Is there any?

ALEX. M. REAPER (for Plaintiffs), Re-Examination.

A.—I have read the letter.

Q.—Is there any in the letter P-84?

A.—No.

Q.—You might have said that in the first place?

A.—The letter mentions that, and says he is willing to accept it.

10 Q.—I understand your argument under which you wish to read something that is not here?

Mr. Campbell: That is utterly unfair. Mr. Marler is answering a letter in which a certain proposal is made, and he accepts.

His Lordship: A proposal which he accepts.

Mr. Campbell: Yes, my Lord.

By Mr. McKeown:

20 Q.—What about the clause in which Mr. Marler says:

“ As discussed between us, the amount to be paid me is \$100,000 ”?

That does not work out at \$170 a share, does it? Can you work out \$100,000 for 500 shares at \$170 a share?

A.—No.

Q.—On the contrary, does it not work out at \$200 a share?

30 A.—But that was not——

Q.—Does it not work out at \$200 a share?

Mr. Holden: Allow the witness to answer. I submit, my Lord, that Mr. McKeown interrupts every answer the witness commences.

By Mr. McKeown:

Q.—On the contrary, does not \$100,000 for 500 shares work out at \$200 a share?

40 A.—If you were to assume \$200 as the price, but that was not the price as I understand it.

By the Court:

Q.—Why did you issue the cheque for \$15,000?

A.—That was something in connection with Trustees, in con-

ALEX. M. REAPER (for Plaintiffs), *Re-Examination.*

nection with donations. That matter was arranged by Lord Shaughnessy.

Mr. McKeown: I think we had arrived at the conclusion that the \$15,000 on the execution of those Deeds, which were produced, that there was not a copper due Mr. Marler, and I think it was putting Mr. Marler in a very false position before this Court and before
10 the public.

Mr. Campbell: I did not reach any such conclusion.

Mr. McKeown: In every one of those Deeds it is stated those items were not to be paid, not a cent of Trustees funds during Sir Mortimer's lifetime.

Mr. Campbell: We will read the Deeds and argue what they mean when the time comes, but in the meantime you are giving your
20 own construction of the evidence, but do not answer for everybody.

Mr. McKeown: I do not claim to answer for everybody.

By Mr. McKeown:

Q.—Now, Mr. Reaper, I put it to you that no annual meeting had been held as outlined by Lord Shaughnessy in his letter of November 1st, 1928, Exhibit P-93, before the money was paid over to
30 Mr. Marler?

Mr. Campbell: You have already asked him that question in chief.

Witness: No, the annual meeting had not been held.

By Mr. McKeown:

Q.—Had you communicated with Mr. Waddell before that
40 money was paid over by the Estate to know whether he was going to take up 25 shares or not?

A.—Oh, I think he had.

Q.—You think?

A.—I have not, but I think Lord Shaughnessy had.

Q.—Limit yourself to what you know, I have told you to do that many many times. Did you communicate with Mr. Waddell?

ALEX. M. REAPER (for Plaintiffs), *Re-Examination.*

A.—I did not, but Lord Shaughnessy had communicated with him as far as I know.

His Lordship: He refers to Lord Shaughnessy.

Witness: The matter was treated ———

10 By Mr. Campbell:

Q.—And Mr. Waddell took his shares and paid for them?

Mr. McKeown: Mr. Campbell, will you allow me to examine the witness.

Witness: It was mentioned that Mr. Waddell had agreed to take his proportion.

20 Q.—Are you quite sure of that?

A.—Yes.

Q.—What do you think of the statement contained in Lord Shaughnessy's letter to Mr. Marler in which he says, "the Davis Estate for the purpose of the Trust created in my favor another 5 per cent," do you see that?

A.—Yes.

Q.—Was the Davis Estate going to pay 5 per cent on shares for some Trust created in Lord Shaughnessy's favor out of the Marler stock?

30 A.—Well, according to the agreement with Lord Shaughnessy, a certain percentage of shares were held by Marler and McLean in trust for him which were to be delivered to him at the end of his contract period. At this time he could not get delivery of the shares until the end of the contract period, therefore, the Estate purchased the shares, and they were applied or charged against the amount in the name of Marler, in Trust, to be delivered at the end of the contract period.

Q.—But as to the statement here that the Estate was going to purchase 5 per cent for Lord Shaughnessy, that means 25 shares?

40 A.—25 shares.

Q.—And those are the 25 shares which, in point of fact, were all included in the 500 for which the cheque was given, of the Estate, for the \$85,000, is that right?

A.—They were part of the 500 shares.

Q.—And which were afterwards on the dates as it has already come out, put into the name of Marler and McLean in Trust?

A.—Yes.

ALEX. M. REAPER (for Plaintiffs), *Re-Examination.*

Q.—Have you any further correspondence with Mr. Marler about this transaction?

A.—I do not think so.

Q.—Is there any covering letter handing him those cheques for \$85,000 and \$15,000?

A.—They were handed to him personally.

10 Q.—By whom?

A.—I think by me, in the office.

And it now being 4:40 P.M., the further examination of the witness was adjourned until the next day, Thursday, the 20th day of March instant, at 10:30 A.M.

And further for the present deponent saith not.

20

MORNING SESSION, MARCH 20th, 1930.

ALEXANDER M. REAPER

reappeared and continued his evidence as follows (in re-examination):

By Mr. McKeown, K.C.:

30 Q.—I find there is one question more I want to ask Mr. Reaper on three exhibits which he has already referred to, which I would like to put in with the indulgence of the Court and the condescension of my learned friend.

Mr. Campbell, K.C.: If my learned friend is literal in his number I am quite satisfied.

By Mr. McKeown, K.C.:

40 Q.—Mr. Reaper, will you be good enough to tell His Lordship how much fire insurance is carried by the Estate upon the Pine Avenue house?

A.—On the contents, \$25,000.

Q.—That insurance affects the moveables listed in the inventory prepared by Fraser Brothers?

A.—Yes.

Q.—The amount of which, I think, was how much?

ALEX. M. REAPER (for Plaintiffs), *Re-Examination.*

A.—\$13,000.

Q.—\$13,000?

A.—Yes.

Q.—How much insurance is carried on the house itself?

A.—\$156,000.

Q.—\$156,000?

A.—Yes.

10 Q.—Apart, of course, from the moveables?

A.—Yes, apart from the moveables.

Q.—Now, one further point about Pine Avenue. You gave His Lordship the carrying charges as being, in 17 months, how much, as shown by this statement?

A.—About \$14,000, I think.

Q.—You suggested it cost about \$10,000 per year to carry the Pine Avenue house?

A.—Approximately, yes.

20 Q.—That does not take into consideration any loss of interest on the investment in the property at all?

A.—No, it does not take any interest.

Q.—To illustrate: taking the figures mentioned by Ewing and Ewing, \$200,000, on a six per cent basis, there would be \$12,000 a year additional which is lost to the Estate while the property remains in its present condition?

A.—Yes. If it was to be sold at that price there would be that much loss.

30 Q.—Will you be kind enough to file as Exhibit P-94 a memorandum showing the donations made by the Incorporated Company since March 22nd, 1928, to January 30th, 1929, which has already been referred to by you at length in your evidence?

A.—Yes.

Q.—Will you also produce and mark as Exhibit P-95 a list of the donations paid out by the Estate since Sir Mortimer's death, on March 22nd, 1928, to January 30th, 1929, amounting to \$310,356.90, which includes the Y.M.H.A.?

A.—Yes.

40 Q.—Will you also produce as Exhibit P-96 the statement prepared by yourself showing the manner of the withdrawal by Lord Shaughnessy as at September 25th, 1929, of the sum of \$213,800.65 from the Incorporated Company?

A.—Yes.

Q.—This statement shows that after crediting against that sum the loan originally of \$50,000 and interest, that is \$59,340.63, the loan originally of \$50,000 with interest, then amounting to \$10,436.47, and the three cheques, a cheque to Redpath and one to the

ALEX. M. REAPER (for Plaintiffs), Re-Examination.

order of Lord Shaughnessy, and \$100 of sundry items, and a further item of \$28.90, Lord Shaughnessy was overpaid to the extent of \$788.98, which was credited back by cash under date 9th and 31st of October.

A.—Yes.

By Mr. Campbell, K.C.:

10

Q.—What do you mean by “credited back”?

A.—Repaid.

By Mr. McKeown, K.C.:

Q.—First of all, Mr. Reaper, might I inquire how you got along with gathering the correspondence together from Sir Mortimer?

A.—It is pretty well together now.

20

Q.—You have not brought it with you this morning?

A.—No.

Q.—There were a couple of other little matters which were left open for the production of exhibits. Did you prepare a memorandum showing the sale on February 13th and 14th, 1930, of the Liggett and Myers shares?

A.—No, I did not.

Mr. Campbell, K.C.: What was that to be?

30

Mr. McKeown, K.C.: There seems to be a little confusion about that number. I think that is the number “65,” we started to put in for two purposes.

The Court: Payment of the \$600,000.

Mr. McKeown, K.C.: It was in connection with it.

Mr. Campbell, K.C.: What is it that was called for?

40

The Court: I have a note here stating “The sale of L. & M. stock.”

Mr. McKeown, K.C.: Then we transferred it to a letter of February 17th forwarding the cheque.

The Witness: I think I gave you the letter forwarding the cheque. I believe I gave it. I don't know whether it is filed.

ALEX. M. REAPER (for Plaintiffs), Re-Examination.

By Mr. McKeown, K.C.:

Q.—Will you be good enough to prepare and file as Exhibit P-97 a memorandum showing the sale of the Liggett and Myers shares, and rights, on February 13th and 14th, 1930.

10 Mr. Campbell, K.C.: I take it that will be filed under reserve of my general objection to all evidence that occurred since the action was brought?

By Mr. McKeown, K.C.:

Q.—You were also to produce as Exhibit No. 71 a letter in May, 1928, with reference to the Jennison \$10,000 loan?

A.—Yes, I think I had given you that.

Q.—Will you take a note of that, if you please?

20 A.—I think I have one here.

Mr. Campbell, K.C.: We will put it in with the general correspondence.

Mr. McKeown, K.C.: That has nothing to do with the general correspondence. You can hand it to me in a moment.

The Witness: I think I have it with me. What is that number?

30 By Mr. McKeown, K.C.:

Q.—P-71. The letter in May 1928 re Jennison loan.

A.—I thought it was filed.

Q.—You were also to produce as Exhibit P-76 a statement of collateral to the call loans. Did you prepare that?

A.—I did not make it at intervals. I made it as it was the other day.

Q.—Will you make it in accordance with the understanding at the time and check up the matter by the deposition and produce it?

40 A.—All right.

Q.—Have you prepared Exhibit D-80?

The Court: What about P-77? Statement of Investment Foundation?

Mr. McKeown, K.C.: That is in.

ALEX. M. REAPER (for Plaintiffs), *Re-Cross-Examination.*

By Mr. McKeown, K.C.:

Q.—Have you with you the copy of the Stock Register and Ledger Account of H. M. Marler and H. B. McLean, which was to be produced as P-80?

A.—Yes.

10 Q.—Also the copy from the same book of the personal account of Honourable H. M. Marler and of Sir Mortimer Davis, the whole two to be marked Exhibits P-81 and P-82. We will now mark the account of Messrs. Marler and McLean as Exhibit P-80; the account of H. M. Marler personally P-81, and the account of Sir Mortimer Davis P-82. Have you prepared the copies of letters from Mr. Marler to Lord Shaughnessy, three letters, all dated November 6th, 1928, the original of which is exhibited, and of which copies are to be produced as a single exhibit under P-84?

A.—Yes.

20 Q.—Will you please produce the copies now and verify that they are marked P-84?

A.—I do.

Q.—You were also to prepare a memorandum to be marked Exhibit P-86, indicating the revenue of the Incorporated Company year by year, from September 1924 to September 1928. Has that been prepared?

A.—No, I thought it was covered by the statements.

30 Q.—It is covered, but I would be glad to have you extract it and put it in as a single memorandum.

Re-cross-examined by Mr. Campbell, K.C., Counsel for Defendants:

Q.—Mr. Reaper, in the course of your re-examination, you were questioned by Mr. McKeown about the signing of the deed to the Y.M.H.A. property, and I think you said it had been sent to Lady Davis for her signature. Has it been returned by Lady Davis?

A.—No.

40 Q.—Has any reason been given to you for the failure to return or the failure to approve? Has it been given to you personally by Lady Davis?

A.—Not to me personally, no.

Q.—Do you recall when it was sent to her? Can you tell from the Minute Book?

A.—Yes, there is a Minute of that.

Q.—There is a Minute referring to it?

ALEX. M. REAPER (for Plaintiffs), Re-Cross-Examination.

A.—Yes. I think it is about ——

Mr. Campbell, K.C.: Mr. McKeown has changed his mind. He has another question. Representing a lady client, I suppose he is entitled to it.

By Mr. McKeown, K.C.:

10

Q.—Speaking of the donations from the Company since Sir Mortimer's death and the exhibit which you have produced this morning, which is marked P-95, these donations from the Estate, including the Y.M.H.A., at the figures there indicated, \$295,000 payments made, and \$14,000 remaining further payments, aggregating altogether \$310,000—those figures do not include the lot?

A.—No, that had been bought in Sir Mortimer's lifetime.

Q.—In point of fact, the title to that lot is taken and is held by the Incorporated Company, is it not?

20

A.—Yes. It is still in their name.

Q.—On the other hand, the list of donations by the Incorporated Company, P-94, does not include the lot; these donations being taken at a total amount of \$22,070, made by the Incorporated Company since Sir Mortimer's death, do not include the lot.

A.—No, the lot had been paid for by the Incorporated Company before Sir Mortimer's death and charged to his account.

Q.—How much was paid for the lot?

30

A.—\$110,000.

Q.—About when was the deed sent to Lady Davis?

A.—The copy was passed on June 27, 1929. I should think it would have been sent within a day or two afterwards.

By Mr. Campbell, K.C.:

Q.—That is June 27th?

A.—June 27th, 1929.

40 By Mr. McKeown, K.C.:

Q.—And the Trust Deed is still with Lady Davis, as far as you know?

A.—As far as I know, yes.

Q.—Can you fix the date when Lady Davis first called at the office of the Incorporated Company after her return from Europe in 1929? How near can you get to the date when she first visited

ALEX. M. REAPER (for Plaintiffs), Re-Cross-Examination.

the office of the Incorporated Company in June, 1929, after she came from Europe? What is your best recollection?

A.—It is rather difficult to fix that date. I think she called at the office just before the 23rd of June. At least I think so. She returned to Montreal, I think—

10 The Court: In the first week of June. Lord Shaughnessy returned on the 8th of June, if I remember well; Mr. Reaper said before—it is such a long time ago—that Lady Davis did not call at the office of the company until after Lord Shaughnessy's return.

Mr. Campbell, K.C.: That is right.

The Court: Shortly afterwards. That is my recollection.

By Mr. Campbell, K.C.:

20 Q.—But you cannot fix the date.?

A.—I cannot fix the date. I think she did call before the 23rd of June but I do not think there was any business of any kind discussed at that time.

30 Q.—You were questioned in your re-examination on the write-up of capital assets on the books of the Incorporated Company which took place, I understand, in September, 1924, and is referred to in the auditors' report and accounts as at September 30th, 1924, which is to be filed as Exhibit D-52. Will you say whether this write-up of capital assets on the books of the Company would have any place in the statements D-17 and D-18, or where those statements would be? What is the heading of the statement? Look at the statement D-18. First of all read into the record the heading on the statement. What is it?

A.—“ Summarized Statement of Profit and Loss for the five years ending September 30th, 1924.”

Q.—That would include this period of the write-up of assets?

A.—The write-up was made as at September 30th, 1924.

40 Q.—It was made in the beginning of October but given effect to as at September 30th, 1924?

A.—Yes.

Q.—Would that write-up of assets have any place in the Profit and Loss statement?

A.—No, I think not.

Q.—Is it in any way an operating profit?

A.—No.

Q.—Is it Profit and Loss on the sale of securities?

ALEX. M. REAPER (for Plaintiffs), Re-Cross-Examination.

A.—No, it was simply the write-up of the assets on the books by re-valuation.

Q.—It results from re-valuation of the assets. Where is it continued to on the account of the Company?

A.—It was in the capital surplus.

Q.—In other words, the Company's assets are revalued. Are the figures given. This auditors' report of which a copy is to be filed as D-52 explains where this write-up of capital assets came from, on page 1 of it, does it not, beginning at the paragraph "The capital surplus" and so and so?

A.—Yes. That explains how the amount of capital surplus had been made up.

Q.—In order that your testimony may be clear, will you read that part of the auditors' report into the record, the paragraph beginning "Capital surplus." I will read it: (quoting from Exhibit D-52, page 1, being the report of Price, Waterhouse and Company, dated October 13th, 1924.)

	" Capital surplus of \$4,338,799.85 appearing in the accounts at September 30th, 1924, is made up as follows:	
	Amount of reserve for investments carried at September 30th, 1923	\$1,468,739.26
	Add increase in book value 252,942 shares Canadian Industrial Alcohol Ltd. from \$19 to \$35 per share	4,047,072.00
30	Increase in book value of \$4,000 of Corby Distilleries bonds to face value \$400.	4,047,472.00
	Forward	5,516,211.26
	Deduct amounts written off investments:—	
	Consolidated Asbestos stock reducing book value to \$1,000,000; \$782,959.92	
	Union Bank of Canada stock, reducing book value to par value of \$140,300; \$36,767.09	
	Jacobs Asbestos bonds, reducing book value to face value, \$55,000; \$5,500	
	Giving a total of	825,227.01
40	Amount written off loans Bluestone Mining and Smelting Company to reduce book value, \$500,000	341,500.00
	Newfoundland Oil Land expenditures written off \$10,684.40	
	Total	1,177,411.41
	Deducting from the amount carried forward, giving a balance of	4,338,799.85

ALEX. M. REAPER (for Plaintiffs), *Re-Cross-Examination.*

That extract from your Exhibit explains the sources from which the write-up came?

A.—Yes.

Mr. Montgomery, K.C.: I wonder if my learned friend realizes how much that will add to the cost of printing when it goes to appeal?

10 Mr. Campbell, K.C.: It is very late in the day to think of that. My learned friend has been at great pains to explain he has been reading all his evidence in the record to facilitate the Judge.

By Mr. Campbell, K.C.:

Q.—Did that write-up of assets on the books of the Company bring anything in to the till of the Company? Did it add anything to the Company's intrinsic value?

20 A.—No.

Mr. McKeown, K.C.: It took something out.

By Mr. Campbell, K.C.:

Q.—These operating profits that are set out in Exhibits D-17 and D-18, whether they are operating profits properly so-called or total operating profits plus the balance, or Profit and Loss on transactions in securities, etc.,—would those amounts be added to the Company's assets? Would they bring something in to the Com-

30 pany's till?

A.—Yes.

Q.—The amounts shown on the statement?

Mr. Geoffrion, K.C.: That is bookkeeping. We can argue that.

The Witness: Yes, or losses as the case may be.

By Mr. Campbell, K.C.:

40 Q.—The date of Lord Shaughnessy's contract was September 17th, 1924?

A.—September 17th, 1924.

Q.—On that date how many outstanding shares of stock of Sir Mortimer Davis Incorporated were there? How many issued shares?

A.—50,000.

Q.—Under Lord Shaughnessy's Agreement and subject to its

ALEX. M. REAPER (for Plaintiffs), Re-Cross-Examination.

terms, he became the potential owner at the end of five years and subject to the conditions of the Contract, of how many shares?

A.—2,375 shares.

Q.—Will you establish the proportion of the capital issued stock that would be?

A.—Under five per cent.

Q.—It would be a little less than five per cent?

10 A.—Yes.

Q.—Mr. Waddell had a straight five per cent in his 2,500?

A.—Yes.

Q.—Would Lord Shaughnessy's be five per cent of what was left after the deduction of the Waddell shares?

A.—Yes, that is what it would be.

Q.—I think Lord Shaughnessy's shares would be five per cent of what was left after the deduction of the Waddell shares?

A.—Five per cent of \$4,750,000 or 47,500 shares.

20 Q.—On the date of Lord Shaughnessy's Contract, September 17th, 1924, what represented the equity in Sir Mortimer Davis, that is, the difference between its assets and its liabilities?

A.—That would be represented by the capital stock.

Q.—That would be represented by the capital stock?

A.—Yes.

Q.—So that the issued capital stock on that date would represent the shareholders' equity, that is the difference between what the Company owned on the one side and what it owed on the other?

A.—Yes.

30 Q.—And Lord Shaughnessy, under his Contract, would, according to its terms, become entitled to what proportion of these shares?

A.—Slightly under that five per cent.

Q.—Does it matter whether there are 150,000 or 100,000 outstanding? Do they still represent the same equity?

A.—Yes.

Q.—In other words, the shareholders' equity is represented by the outstanding shares irrespective of everything?

A.—Yes.

40 Mr. McKeown, K.C.: I would like to intervene with an objection which I hope is well founded. I think that question asked the witness in the box is irrelevant in the light of the Contract under which Sir Mortimer was entitled to the dividends on the stock and the dividends which, under his will, have been paid out of current earnings for the year, as out of reserve.

Mr. Campbell, K.C.: There were no current earnings.

ALEX. M. REAPER (for Plaintiffs), Re-Cross-Examination.

Mr. McKeown, K.C.: \$3,250,000, Lord Shaughnessy had nothing to do with because it went out in 13 days.

10 Mr. Campbell, K.C.: The write-up has been created by the current assets. Does anybody suggest Price, Waterhouse and Company passed that—it was used to make capital distribution. It is not any feat of bookkeeping which is practiced by auditors who represent
shareholders, and that did not take place except for one reason, the stock was worth what it was written up to.

The Court: There is no reason why I should not allow that evidence to go into the record. It may have no value.

20 Mr. Campbell, K.C.: We will argue the Contract when we come to it; but what I want to point out is on the day of Lord Shaughnessy's contract, he became potentially the owner of a percentage of the shares of that Company.

Mr. McKeown, K.C.: Subject to the right to draw them in cash or any other way, and from any source from which the dividends could be declared.

By Mr. Campbell, K.C.:

30 Q.—In this Exhibit D-52 which you produced in your re-examination, certain assets were written up and certain assets were also written down, in deduction. Did any of those assets written down, quoted in the extract you have just read, occur during the time when Lord Shaughnessy was connected with Sir Mortimer Davis Incorporated? I mean, had these investments been gone into during that period?

A.—No, he had only been connected with the Company on September 17th.

Q.—So that those losses, if incurred, had been incurred previous to his connection with the Company?

A.—Yes.

40 Q.—You mentioned in your re-examination that there was a write-up of certain assets and certain asset valuations after Lord Shaughnessy took charge. Do you remember the years, so I can get the statements?

A.—No. I have not got the statements. You took them all away from me yesterday. It may occur in the one I have.

Q.—In 1927 I think you will find the write-up referring to the Alcohol stock dividend, of which five dollars went in to your Profit

ALEX. M. REAPER (for Plaintiffs), Re-Cross-Examination.

and Loss statement, and the balance, I think you told us, went somewhere else.

A.—The balance went into capital surplus.

Q.—The balance went into capital surplus?

A.—Yes.

10 Q.—But did anything else than the five dollars you have mentioned enter into the statement of earnings for that period, which you filed as Exhibit D-17?

A.—No. They were taken in at five dollars.

Q.—And the remaining \$12.50 does not appear as part of the operating profit in that statement?

A.—No.

Q.—There was another write-up. Where was the next write-up?

A.—In the statement of March 31st.

Q.—Is that 1928?

20 Mr. McKeown, K.C.: I will tell you, Mr. Campbell.

By Mr. Campbell, K.C.:

Q.—Where did the \$12.50 go?

A.—That was carried to capital surplus.

30 Q.—But that stock dividend would represent something actually received by the Company, the value of which was distributed in the way you told, five dollars into the operating statement, and \$12.50 into the capital surplus?

A.—Yes.

Q.—In the auditors' report again, September 30th, 1928, P-51, an explanation is given of a write-up or revaluation of the shares of Alcohol held by the Incorporated Company from \$17.50 per share to \$20.00 per share. You know that, which amounts in all to \$1,240,850?

A.—Yes.

Q.—From that write-up certain deductions were subtracted. What were they?

40 A.—Consolidated Asbestos Limited written down from \$1,000,000 to \$609,000, making a reduction of \$391,000. Mason Valley Mining Company written from \$7,842.00 to \$5,228.00; \$2,614. reduction. Crescent Lorraine Silver Mining Company, written down from \$21,567.74 to one dollar making a reduction of \$21,566.74; General Cigars Limited Preferred, written down from \$85,200 to one dollar, reduction \$85,199. General Cigars Company Limited,

ALEX. M. REAPER (for Plaintiffs), Re-Cross-Examination.

Common stock, \$394,980, written down to one dollar; reduction \$394,979. Total \$895,358.74.

Q.—How many of those deductions arose from transactions in which the Incorporated Company engaged after Lord Shaughnessy became associated with it in September 1924?

10 A.—They were all matters which had been on the books before that time.

Q.—So that none of these losses, if they were losses were as the result of transactions in which the Incorporated Company engaged after Lord Shaughnessy became associated with it in September, 1924?

A.—No.

Q.—As the result of the re-valuation of the assets on October 1st, 1924, there was a write-up of the Company's stock, immediate reduction and redemption of the Company's stock to the same amount, was there not?

20 A.—Yes, additional capital stock was issued to the shareholders.

Q.—How would that affect the position of the Incorporated Company after it had been given effect to? Was it better off or worse off as far as future operations were concerned?

A.—After we had paid off the amount for the stock the position was not quite so good. That much money had been taken out.

30 Q.—In other words, the Company had to pay out some \$3,250,000 less, of course, what was retained at the credit of Messrs. Marler and McLean account. It had to pay off that amount of capital. It would have that much less to operate with thereafter?

A.—It would have that much less assets.

Q.—On the day the write-up of the capital assets was given effect to in 1924, what was the approximate position of the personal account of Sir Mortimer Davis with the Company?

Mr. McKeown, K.C.: Objected to as irrelevant.

By Mr. Campbell, K.C.:

40 Q.—Before giving effect to the write-up or to credit him with anything further—

A.—There would have been a balance due by him to the Company of a little over \$600,000.

Q.—At his debit were certain amounts he had withdrawn. At his credit were certain items of interest on the notes accruing to him?

ALEX. M. REAPER (for Plaintiffs), *Re-Cross-Examination.*

A.—Yes.

Q.—And the difference would be approximately what?

A.—A little over \$600,000.

Q.—After the write-up and the distribution of shares and the redemption of shares, what was the condition of the account?

10 A.—You have that statement. After this write-up and reduction in capital had been given effect to, the balance at the credit of Sir Mortimer's personal account was \$1,064,896, and there was also at his credit on interest accrued account approximately \$1,200,000.

Q.—So that he had ceased to be a debtor of the Company for \$600,000 odd and had become a creditor for the amount you mention?

A.—Yes.

Q.—Was there ever any other distribution of the capital in the history of Sir Mortimer Davis Incorporated that you know of apart from this one in 1924?

20 A.—That appears to be the only one.

Q.—You were questioned in your re-examination about the leasing of the Pine Avenue property. When, if ever, did you receive any suggestion from Lady Davis and the other plaintiffs, Mortimer Davis, that the Pine Avenue property should be leased instead of sold?

A.—Well, I don't think there was any suggestion it should be leased. There was just a casual remark at the meeting of October 18th.

30 Q.—What year?

A.—1929; that she understood that Sir Henry Thornton had been prepared to rent it.

Q.—Up to that time had she ever made any suggestion in the matter?

A.—No, not to me.

40 Q.—Will you look at the Price, Waterhouse report and accounts as at September 30th, 1925, Exhibit D-53, from which you read into the record a paragraph on page 6, referring to the Marler and McLean Trust Account. What is this Exhibit number? Do you remember? D-53, I think.

Mr. McKeown, K.C.: Is that the September 30th, 1925, exhibit?

By Mr. Campbell, K.C.:

Q.—And the amount which stood at its credit, \$162,500 together

ALEX. M. REAPER (for Plaintiffs), *Re-Cross-Examination.*

with the interest for one year of \$9,750, amounting in all to \$172,250, and your attention was called to the paragraph which says:

10 “ We understand that the beneficiary under the Trust does not wish to participate in the distribution of this amount of \$172,250 and under the circumstances it would seem that any steps which may be necessary should now be taken to have this amount transferred to the credit of Sir Mortimer B. Davis.”

Q.—Was effect given to the suggestion of the auditors, to that suggestion of the auditors on the books of the Company?

A.—No, it has never been done.

Q.—Did Sir Mortimer ever follow that out with instructions to transfer this amount to his credit?

A.—No.

20 Q.—Did Sir Mortimer receive a copy of this auditors' report, Exhibit D-53?

A.—He did, yes.

Q.—Have you got the office copy of that report? Have you got among your office records the copy of that report which came back from France among Sir Mortimer's papers?

A.—This copy (indicating document).

Q.—Is there any notation on any part of the report showing Sir Mortimer Davis had had communication of it?

30 Mr. McKeown, K.C.: We would not suggest he had not seen it.

Mr. Campbell, K.C.: There are notations in his own handwriting on it.

Mr. McKeown, K.C.: Not that these notations have any bearings on the matter.

The Witness: Yes, I consider that Sir Mortimer's handwriting.

40 Mr. Campbell, K.C.: We will put in this one with the notation on it. We will file the copy with this notation on it.

By Mr. Campbell, K.C.:

Q.—In whose handwriting are the notations on Exhibit A of that report, D-53, as far as you know? as far as you can identify it?

A.—It looks to me to be Sir Mortimer's writing.

ALEX. M. REAPER (*for Plaintiffs*), *Re-Cross-Examination.*

Q.—And that document came back to you from where?

A.—From France.

Q.—Among his papers?

A.—Among some other papers.

10 Mr. McKeown, K.C.: We will pray acte of that. Don't imagine we are offended by that proof.

By Mr. Campbell, K.C.:

Q.—Will you look at those figures, believed to be in Sir Mortimer's own handwriting. Can you indicate what they refer to? What is "I.T.C. June 1926" referred to? Would that be "Imperial Tobacco Company."

20 Mr. McKeown, K.C.: Just a moment. How far can we get with my learned friend standing by the witness and suggesting the answers into his ear?

Mr. Campbell, K.C.: I am suggesting that to you. "I.T.C." represents Imperial Tobacco Company. Does it look to you as if it did? We will have the Court construe what it means. Will you read into the record the exact extract without any comment or interpretation?

30 A.—(Reading) "I.T.C. June, 1926, 1,200,000 sh will pay 250; market price 900 and one million prop. \$500,000. Co. Davis owe me \$1,200,000; goes to my Estate \$1,300,000. Total \$4,000,000."

Q.—Now can you identify the \$1,200,000 from the balance sheet?

A.—I think that is the amount here.

Q.—\$1,200,000 owing by the Davis Company would be the item shown on the face of that Exhibit at——

A.—At the credit of Sir Mortimer.

40 Mr. McKeown, K.C.: Just a moment. These figures do not agree at all. I would object to that attempt to construe this memorandum.

Mr. Campbell, K.C.: All right. We will struggle with it when we come to it.

Mr. McKeown, K.C.: By the witness in the box.

ALEX. M. REAPER (for Plaintiffs), Re-Cross-Examination.

Mr. Campbell, K.C.: By learned friend has asked me to construe a great many things and I am going to add to his labours at this time. I will let the Court construe it.

Mr. McKeown, K.C.: The Court will likely accept your invitation.

10 By Mr. Campbell, K.C.:

Q.—You referred in your re-examination to the Meeting of Directors of the Incorporated Company, held, I think you said, October 18th, 1929. At that Meeting was there any discussion about the propriety of declaring a dividend on the stock of the Incorporated Company?

A.—No, it was not discussed at that Meeting.

Q.—Did Lady Davis make any suggestion on the subject?

20 A.—No, she did not.

Q.—She was present at the Meeting?

A.—She was present at the Meeting.

Q.—You were questioned in your re-examination about the value of the shares purchased from Mr. Marler and you read the correspondence as to a value to be fixed by the shareholders. Was such a value ever fixed?

30 Mr. McKeown, K.C.: I submit that the question ought to be whether it was fixed before they paid for the shares.

Mr. Campbell, K.C.: We are going to give the date exactly when it was fixed.

Mr. McKeown, K.C.: Predicated on the date when you paid for them.

40 Mr. Campbell, K.C.: We have a great deal to argue about this case. That is one of the points.

Mr. McKeown, K.C.: There is no argument about it. That is a fact.

By Mr. Campbell, K.C.:

Q.—Was the value ever fixed, and if so, when?

A.—Yes. It was fixed at the meeting of December 31st, 1928.

ALEX. M. REAPER (for Plaintiffs), *Re-Cross-Examination.*

Q.—Meeting of whom?

A.—The shareholders.

Q.—What was the value fixed?

Mr. Montgomery, K.C.: Who were at the shareholders' meeting?

10 The Witness: \$170 per share.

By Mr. Campbell, K.C.:

Q.—Who were present at the Meeting in person, who by proxy?

A.—There were present by proxy the Estate, represented by Lord Shaughnessy and myself; Honourable Mr. Marler, represented by proxy by Lord Shaughnessy, and Lord Shaughnessy and I in person.

20 Q.—Will you read into the record the paragraph from the Minute which has to do with this valuation of shares; I am reading from page 20 of the Minute Book:

“ In accordance with by-law Number 30 the Meeting then proceeded to fix a value on the shares of the Company as provided by said by-law. A statement as of 31st March, 1928, signed by the auditors of the Company was submitted which suggested, based on the earnings of the Company, that the real value of the shares was \$170 per share.

30 In view of this and after giving consideration to the earnings for the past year as shown by the annual Statement, it was moved, seconded and resolved that in accordance with the above-mentioned by-law, the real value of the shares of the Company be and the same is hereby fixed as \$170 per share.”

Lady Davis personally did not attend that Meeting?

A.—No, she was in France at that time.

40 Q.—Before we go on to the question of the donations: at the time you made your settlement with Lord Shaughnessy, Messrs. Marler and McLean in September, 1929—on the day you made your adjustment with Mr. McLean on behalf of Lord Shaughnessy and on behalf of the Incorporated Company insofar as it was concerned, up to that time had anybody suggested to you any illegality in Lord Shaughnessy's contract?

A.—No.

Q.—Had Lady Davis received previous to that date a copy of Lord Shaughnessy's contract?

ALEX. M. REAPER (*for Plaintiffs*), *Re-Cross-Examination*.

A.—Yes. She had been sent a copy of it, I think, about the end of August, 1929.

Q.—And you received no communication from her on the subject previous to the date of your settlement?

A.—No, the agreement which had been sent her she returned without comment, about a week or ten days later.

10 Q.—Has any suggestion ever been made to you by Lady Davis about any invalidity or illegality in Mr. Waddell's contract?

Mr. McKeown, K.C.: What difference does that make? I submit that ought to be dealt with in the way of being irrelevant. It is not going to validate Lord Shaughnessy's contract one way or the other. If there are differences between the position of Mr. Waddell and Lord Shaughnessy, that is a matter for Your Lordship to decide, and that is a matter which Your Lordship will be concerned with.

20 Mr. Campbell, K.C.: I am asking whether any suggestion was ever made to the witness.

Question read as follows:

Has any suggestion ever been made to you by Lady Davis about any invalidity or illegality in Mr. Waddell's contract?

A.—No.

30 Q.—Will you look at the list of donations which you filed this morning as P-94 and tell us which of them, if any, were made, that is the obligation and engagement entered upon before the death of Sir Mortimer, and which after his death?

Mr. McKeown, K.C.: I object to that as a matter of law. Donations which are not in definite form and are not removeable property, where delivery has taken place, are not valid.

40 Mr. Campbell, K.C.: All I am trying to show is that Mr. Reaper fulfilled certain obligations, which he assumed in Sir Mortimer's lifetime.

Mr. Montgomery, K.C.: You have the actual Minute proving the thing.

Mr. Campbell, K.C.: I am not speaking of the Y.M.H.A. I am speaking of the other things.

ALEX. M. REAPER (for Plaintiffs), Re-Cross-Examination.

By Mr. Campbell, K.C.:

Q.—Take the Financial Federation items: there were three payments totalling \$750. When had the subscription been made?

A.—For those three payments which had been made during the fiscal year of the Company, 28th September, 1930, the subscription had been made in the fall of 1927, prior to Sir Mortimer's death.

10 Q.—Had any payments on account of that subscription been made during his lifetime?

A.—Yes, the first quarterly payment, \$232.

Q.—About the Jewish Philanthropies, what was the situation?

A.—That situation was very much the same although they had not been coming to us and getting renewal subscriptions every year. It was a standing subscription.

Q.—Had any payment on account of the Jewish Federation of Philanthropies been made for that fiscal year during Sir Mortimer's lifetime?

20 A.—Yes, the first quarterly payment of \$2,500 had been made.

Q.—What date?

A.—I would say about the beginning of January, 1928.

Q.—How did that subscription compare with the subscription to the same fund in the previous years?

A.—It was the same as had been contributed for a few years.

Q.—By the Incorporated Company?

A.—By the Incorporated Company, yes.

Q.—The other item, P-94, is Mrs. O'Grady, a small item, \$1,040?

30 A.—Yes, sir.

Q.—During her lifetime she had been a recipient of Sir Mortimer Davis?

A.—Yes. That was agreed by the Directors. It was a new subscription by the Incorporated Company, although Sir Mortimer had formerly been making her an allowance of that amount.

Q.—Charged to whom?

A.—Charged to him.

Q.—The subscriptions in 1929 were obviously after his death?

A.—Yes.

40 Q.—The subscriptions for the calendar year 1929 were obviously after the death of Sir Mortimer. How did they compare in amount with the subscriptions of the previous year?

Mr. McKeown, K.C.: The same objection.

The Witness: They were the same.

ALEX. M. REAPER (for Plaintiffs), Re-Re-Examination

By Mr. Campbell, K.C.:

Q.—Both to the Financial Federation and the Federation of Jewish Philanthropies?

A.—Yes.

Re-re-examination by Mr. McKeown, K.C., Counsel for Plaintiffs:

10 Q.—I want to wish Mr. Reaper farewell and in that respect I would like to have the last word with him, and it is going to be only a word: in connection with the write-up of the capital assets made and taken into the account as of date September 30th, 1924, the write-up at September 30th, 1924, was \$4,000,000 that had not already been made just at that time, but that amounted to—I put it to you that write-up was passed by the firm of auditors appointed by the shareholders of the Incorporated Company, Price, Waterhouse and Company. Is that right?

20 A.—I presume they took an account which was probably approved of.

Q.—Probably?

A.—I mean to say the write-up was.

Q.—You mean to say it certainly was.

A.—It was in their statement.

By Mr. Campbell, K.C.:

Q.—It is covered by their report?

A.—Yes, it is covered by their report.

30

Re-Re-Examined by Mr. McKeown, K.C.:

Q.—In order to get it quite clear in the mind of the Court, the increase of the previous valuation of those capital assets by \$4,000,000 was not a fictitious affair, was it? Was it not intended to represent the then market value of those securities and the capital values of the Incorporated Company?

A.—I think that was the idea, to write them up to the market value, or approximately so.

40 Q.—In connection with the position of the Incorporated Company on the date of Lord Shaughnessy's Contract, September 17th, 1924, at that time as far as bookkeeping went the capital assets had not been then written up but were written up 13 days later?

A.—They had not been written up at the date of his Agreement. They were written up as at the end of the month.

Q.—Under Lord Shaughnessy's Agreement all dividends from that Company ———

ALEX. M. REAPER (for Plaintiffs), Re-Re-Examination

Mr. Campbell, K.C.: My learned friend has argued the case on this very point with the witness, and he reargues it now and he is going to reargue it again.

10 Mr. McKeown, K.C.: I am bringing him to the point you brought him to, that the equity was represented by the capital stock; at the time that the Company showed no profits.

Mr. Campbell, K.C.: I did not say anything about the profits. I said whatever the value of the assets of the Company was, wherever they were placed, was the equity behind the issued shares.

Mr. McKeown, K.C.: The Court will decide whether you are right or wrong.

By Mr. McKeown, K.C.:

20 Q.—Do you remember the clause in Lord Shaughnessy's Agreement under which all dividends of that stock were to go to Sir Mortimer during the five-year period?

A.—Yes. There is another clause in it.

Mr. Campbell, K.C.: The witness says there is a clause and another clause.

30 Mr. McKeown, K.C.: I am asking him about dividends. He is growing as clever as you are, because he now finds when an answer does not suit he gives an evasive answer.

The Witness: Yes, that clause is there, but there is another clause.

Mr. McKeown, K.C.: That is all I am asking you. What other clauses are in that contract bearing on dividends?

40 Mr. Campbell, K.C.: Let the witness answer.

Mr. McKeown, K.C.: He is not going to answer me at all. He has been well schooled by you.

Mr. Campbell, K.C.: He is entitled to answer that question as he pleases, and the nervous strain to which you have been exposing him for the last three weeks, it is not to be wondered at—

ALEX. M. REAPER (for Plaintiffs), Re-Re-Examination

The Witness: Yes, there is that clause in the statement, but I would like to explain the other clause which has a bearing on——

By Mr. McKeown, K.C.:

Q.—Has it any bearing on dividends?

A.—It would have, yes.

10 Q.—In what respect has it any bearing on dividends?

A.—In case of any stock dividend it would have a bearing.

Q.—Where are the words “stock dividend” in that contract?
Be fair now. Don’t spoil your evidence at this stage. Where do you justify the use of the words “stock dividend”?

A.—It does not say “stock dividend” but it does say if there is going to be any increase in the capital stock of the Company or any increase in the notes of the Company, that Sir Mortimer was to allot to Lord Shaughnessy an additional proportion to equalize his shares and notes.

20 Q.—And that is all you have to say, that there is in that contract conflict with the clause. The dividends—the word being unrestricted, should go to Sir Mortimer during the term of the contract. As to the proxy under which you say Mr. Marler was represented at the meeting of the 31st of December, 1928——

Mr. Campbell, K.C.: Is this a new subject?

Mr. McKeown, K.C.: You brought it up.

30 By Mr. McKeown, K.C. (continuing):

Q.—Is it not true that Mr. Marler had been paid for his stock and surrendered it to Lord Shaughnessy weeks before that?

A.—He had been paid for his stock before the Meeting but not before he had given the proxy.

And further deponent saith not.

40

AMABLE LAZURE (*for Plaintiffs*), *Examination-in-Chief.*

L'an mil neuf cent trente, le vingtième jour de mars,

A comparu :

AMABLE LAZURE,

10 officier du gouvernement provincial, département du Revenu, demeurant au numéro 1357 du Parc-Lafontaine, à Montréal, âgé de quarante-trois ans;

Témoin produit de la part des demandeurs;

Lequel, après serment prêté sur les Saints Evangiles dépose et dit:

Je ne suis pas intéressé dans l'évènement de ce procès;

20 Je ne suis ni parent, ni allié, ni au service d'aucune des parties en cette cause.

Interrogé par Me Aime Geoffrion, C.R., avocat des Demandeurs:

Q.—Monsieur Lazure, vous êtes à l'emploi du gouvernement de Québec?

R.—Oui, monsieur.

Q.—Quel département?

30 R.—Au département des droits sur les successions.

Q.—Depuis combien de temps?

R.—Depuis quatre ans (4) ans.

Q.—Vous êtes ici, à Montréal?

R.—A Montréal.

Q.—Vous avez été mêlé au règlement d'un grand nombre de successions, grosses et petites, pendant ce temps-là, je suppose?

R.—Oui.

40 Q.—Dans une succession, lorsque le règlement traîne pour une raison ou une autre, que ce soit un débat sur la valeur, une différence d'évaluation, ou n'importe quoi, quelle est la pratique régulièrement suivie, pour permettre, dans l'intervalle, en attendant ce règlement qui retarde, la réalisation de biens, la distribution de legs particuliers, paiement de dettes, etc.?

R.—La pratique? Assez souvent on donne un acompte.

Q.—La succession donne un acompte?

R.—La succession donne un acompte.

AMABLE LAZURE (for Plaintiffs), Examination-in-Chief.

Q.—Et quand la succession donne un acompte, qu'est-ce que vous faites?

R.—Afin d'avoir certains certificats sur les différents items de la déclaration.

10 Q.—Qu'est-ce que vous voulez dire par “certificats”? C'est-à-dire que si, par exemple, je vous apporte quelque chose en acompte, et selon le montant que je vous apporte en acompte sur les droits, vous certifierez que telle proportion des biens de la succession sont clairs de droits?

R.—Oui.

Q.—Afin que je puisse, moi, exécuteur, disposer de cette partie-là des biens de la succession? est-ce cela?

R.—C'est cela.

Q.—Est-ce la pratique générale?

R.—C'est la pratique générale.

20 Q.—Et vous prenez toujours ces paiements en acompte, et vous accordez toujours les certificats que des biens proportionnellement au montant de droits payés sont libérés?

R.—Oui.

Q.—Je suppose que moi, exécuteur-testamentaire, j'ai besoin, pour des paiements immédiats, de cent mille dollars, deux cent mille dollars, dans une succession considérable, je vous apporterais un acompte sur les droits correspondant au montant dont j'ai besoin immédiatement, et vous me donnez un certificat libérant cette partie-là des biens de la succession?

30 R.—On vous demande un acompte basé sur le montant total approximatif de la succession, et on émet des certificats pour le montant que vous nous donnez.

Q.—Pas pour le montant que je vous donne, pour la proportion des biens représentés par ce montant?

R.—Oui.

Q.—Si je vous apporte cinq mille dollars, vous ne me donnerez pas un certificat pour cinq mille dollars?

R.—Non, un certificat pour une proportion du total des biens de la succession.

40 Q.—Pour le montant capital que les droits représentent?

R.—Pour le montant capital que les droits représentent, c'est exactement cela.

(Et le déposant ne dit rien de plus).

HERBERT B. McLEAN (recalled for Plaintiffs), Examination-in-Chief.

On this twentieth day of March, in the year of our Lord, one thousand nine hundred and thirty, personally came and appeared:

HERBERT B. McLEAN,

10 of the city of Montreal, Notary, aged forty three years, a witness produced on behalf of the Plaintiffs, who being duly sworn doth depose and say as follows:

Examined by Mr. W. K. McKeown, K.C., of Counsel for Plaintiffs:

Q.—Mr. McLean, you are a practicing Notary?

A.—I am.

Q.—In Montreal?

A.—Yes.

20 Q.—And you have for some years been associated with the office of Messrs. Marler and Marler?

A.—Yes.

Q.—Of which firm the Honorable Herbert M. Marler has also been a partner?

A.—Yes.

30 Q.—You are the Herbert B. McLean whose name has already been mentioned in the course of this trial, as having been with the Honorable Herbert M. Marler, Trustees, mentioned in the Plaintiffs Exhibit Number 13, that is the contract of September 17th, 1924, between Sir Mortimer Davis Incorporated, Sir Mortimer Davis, Lord Shaughnessy, and yourself and Mr. Marler as Trustees?

A.—I am.

Q.—Have you in your possession as a party to that Deed the counterpart of it?

A.—No, I have not.

Q.—Did you ever have?

A.—I am not sure whether I ever had one or not. I read it at the time. I was well acquainted with it.

Q.—Are you in charge of Mr. Marler's matters in his absence?

40 Do you hold a power of attorney from him?

A.—Yes.

Q.—In connection with that transaction, were all counterparts of the Agreement, Plaintiffs Exhibit Number 13, in the same form, sous seing prive?

A.—So far as I know they were.

Q.—Anything that you signed, was sous seing prive?

A.—Yes.

HERBERT B. McLEAN (recalled for Plaintiffs), Examination-in-Chief.

Q.—And in the form of this Exhibit produced by the Plaintiff as Number 13?

A.—Yes.

Q.—Was it to your knowledge that following the execution of that document, certain serial notes therein referred to were transferred into the name of Mr. Marler and yourself jointly as Trustees?

A.—Yes.

10 Q.—Are you familiar, and can you give his Lordship the detail of that, and how it was done, because the evidence thus far shows only one transfer of ninety six and a half notes. . . .

A.—One hundred and ninety six and a half.

Q.—The transfer actually shows for ninety six and a half?

A.—I actually had in my possession delivered to me by Lord Shaughnessy personally one hundred and ninety six and a half thousand face value of notes; two thousand three hundred and seventy five certificates.

20 Q.—Did you receive the notes and the scrip for the shares originally from Lord Shaughnessy?

A.—That is my recollection.

Q.—And those shares remained in your possession until the month of September 1929?

A.—They did.

Q.—Can you tell us the date of Mr. Marler's appointment to his present post in Japan?

A.—Not the actual date. It was in May or June I think.

Q.—Of what year?

30 A.—1929. He left the office about the middle of May 1929.

Q.—For the purpose of the record, what is the position occupied by Mr. Marler at present?

A.—His Majesty's Minister for Canada to Japan.

Q.—You have given us the date as May or June when he left the office. When was his appointment made?

His Lordship: You can get that from Ottawa.

40 Witness: The appointment is made by the King direct. The appointment would not be completed until he had received the appointment from the King in England, which would be sometime in June.

By Mr. McKeown:

Q.—When was his appointment unofficially made, if we may use that term?

HERBERT B. McLEAN (recalled for Plaintiffs), Examination-in-Chief.

A.—That is not to my knowledge.

Q.—How long before May or June was it? A year or six months?

A.—It was during 1929. It was not until after the 1st of January 1929. It was never heard of.

Q.—You had never heard of it until after the 1st of January?

A.—No.

10 Q.—Was it to your personal knowledge that Mr. Marler, in the months of October, November and December was negotiating for the sale of 500 shares owned by him in the Incorporated Company?

A.—No.

Q.—And can we take it further that you did not know that he had even sold the 500 shares?

A.—He told me that he had sold the shares.

Q.—He told you he had, after he sold them?

A.—Yes.

20 Q.—Is that all you know about it?

A.—That is all I know about it.

Q.—Had he been paid for them at that time?

A.—I don't know.

Q.—It is in proof that he was paid for these shares on the 4th of December, 1928. I tell you that for your information, because that is now of record, and can we take it that your conversation with Mr. Marler was subsequent to that date?

A.—I cannot say. It was merely a casual remark.

30 Q.—Did you ever know in the months of October, November or December that you, H. B. McLean, jointly with Mr. Marler, had purchased some of Mr. Marler's shares?

A.—No.

Q.—I take it nobody ever discussed any such subject with you?

A.—No.

Q.—What was the first inkling you received, and when was it that it was contended that you and Mr. Marler had purchased part of Mr. Marler's stock?

A.—I did not know it was ever contended.

40 Q.—You don't know it to this minute?

A.—No.

Q.—You hold a general power of attorney from Mr. Marler?

A.—I do.

Q.—And are in charge of his interests and matters in his absence?

A.—I am.

Q.—Do you remember that you received a visit from Mr.

HERBERT B. McLEAN (recalled for Plaintiffs), Examination-in-Chief.

Reaper, one of the Defendants in this case, on or about the 18th of September, 1929?

A.—Yes. Mr. Reaper telephoned me first, then came down to see me.

Q.—The same day?

A.—I think the following day.

10 Q.—You say that Mr. Reaper first telephoned you?

A.—Yes.

Q.—And then you saw him?

A.—Yes.

Q.—What did Mr. Reaper say to you by phone? What was the purport of that conversation?

A.—He said that Lord Shaughnessy had asked him to get delivery of the securities which we held as Trustees, the Trust having expired, and I said I would get them out of the safety deposit box and have them for him.

20 Q.—What date would that be? I see that the letters which were delivered at that time are dated September 18th, 1929?

A.—Well, it was either the 18th or 19th. It was very shortly after the expiration of the Agreement.

Q.—What happened next?

A.—Mr. Reaper came down, and I handed him over the securities and took his receipt for them.

30 Q.—Did Mr. Reaper at that time deliver to you the original of the letter addressed jointly to the Honorable Mr. Marler and yourself under date September 18th, and a certificate bearing the same date signed by the Incorporated Company by Lord Shaughnessy as President?

A.—Yes.

Q.—I take it these would be the originals of the Plaintiffs Exhibit Number 17?

A.—Yes.

Q.—Have you got the letter before you of the 18th? The second clause of the letter of Lord Shaughnessy to Mr. Marler and yourself proceeds to state:

40

“ In this connection I would like to point out that on September 30th, 1924, after increasing the stock of Sir Mortimer Davis Incorporated, the shares represented by said increase were repurchased by the Company.”

First of all, previous to your interview with Mr. Reaper and delivery by him to you of this letter, Exhibit Number 17 of September

HERBERT B. McLEAN (recalled for Plaintiffs), Examination-in-Chief.

18th, did you know that 1,625 shares had been placed—additional shares, had been placed in the joint names of Mr. Marler and yourself as Trustees?

A.—No. The letter gave me the information.

Q.—Previous to that you had no knowledge of the fact?

10 A.—No.

Q.—The letter proceeds:

“The shares represented by the increase were repurchased by the Company in reduction of capital.”

Had you ever heard of any repurchase of those shares?

A.—No. The information was given me by the letter.

Q.—And the letter further states:

20 “And as a result of this transaction, you should have been paid on my behalf a sum of \$162,500 which sum, together with interest thereon, would be delivered to me under the same terms and conditions and simultaneously with the notes and shares.”

I take it that was complete news to you?

A.—Quite.

Q.—Then, the next paragraph:

30 “This sum, however, was not paid to you, but was credited to you on my behalf on the books of Sir Mortimer Davis Incorporated, and has been carried in that manner since the above date of September 30th, 1924. An adjustment of this sum will therefore be made between Sir Mortimer Davis Incorporated and myself, in consequence of which I hereby release the Trustees from any liability in that connection.”

40 I take it you had had no prior understanding with Lord Shaughnessy authorizing him to take possession of any sum which stood in the name of Mr. Marler and yourself?

A.—No.

Q.—And then comes the reference as to Mr. Marler's shares:—

“In addition to the above on December 4th last the shareholders of the Company purchased the interest of the Honorable H. M. Marler and under this transaction there was allotted to you on my behalf the number of shares which I was entitled

HERBERT B. McLEAN (recalled for Plaintiffs), Examination-in-Chief.

to purchase, namely, 25 shares with the payment for which I have been debited in the books of Sir Mortimer Davis Incorporated, and which will be taken into account in the adjustment between the Company and myself.

I enclose herewith the stock certificate in that connection with the request that you kindly endorse it and turn it over with the other securities.”

10

Up to that time you had not had possession of this certificate covering the 25 shares?

A.—No. Mr. Reaper brought it with him.

Q.—And then, the final request:—

“I would also request that you deliver over all the certificates, notes and shares to A. M. Reaper, Esquire, who is authorized to accept the same on my behalf and give a receipt.”

20

And you did so?

A.—I did so, and took the receipt of Mr. Reaper.

By the Court:

Q.—Did you endorse the shares?

A.—I endorsed the shares and the certificate and transferred them in the books. They were book stock.

30 By Mr. Campbell:

Q.—And the notes?

A.—And the notes. They were book stock. Mr. Reaper and I agreed it was no use to transfer the shares, to endorse them, and I would also sign the book.

By Mr. McKeown:

40 Q.—Will you look at the copy of the receipt which I now show you and which I will mark P-98, and say whether you received the original of that receipt from Mr. Reaper at the time you delivered these certificates to him on the morning of either the 18th or 19th of September?

A.—Yes.

Q.—And at some subsequent date you went to the Company's office and signed?

A.—A few days afterwards I signed the transfer book.

HERBERT B. McLEAN (recalled for Plaintiffs), Cross-Examination.

Q.—You were asked by your subpoena, Mr. McLean, to bring with you all correspondence in your possession in connection with this matter. Have you any correspondence personally?

A.—No.

Q.—I think you were also asked to bring any correspondence received, or sent, by Mr. Marler in connection with the sale of the 500 shares which were formerly owned by him. Have you any
10 correspondence?

A.—I have not been able to find any.

Q.—So you are unable to produce anything in that connection?

A.—I am unable to produce anything in that connection.

Cross-Examined by Mr. A. R. Holden, K.C., of Counsel for Defendants:

Q.—How long have you and Mr. Marler been partners?

20 A.—Approximately ten years.

Q.—How long have you been admitted to the Notarial profession?

A.—Eight years.

Q.—Can you say how long Mr. Marler has been a Notary?

A.—Approximately thirty years.

His Lordship:—More than that, thirty-two years.

By Mr. Holden:

30

Q.—At the time that Mr. Marler sold his shares that my learned friend has referred to, he was your partner was he not?

A.—He was.

Q.—And you knew that he was a Director of the Incorporated Company, whose shares they were? Did you know that Mr. Marler was one of the Directors?

A.—I knew he had been a Director.

Q.—I mean, before he sold his shares?

A.—Those were Mr. Marler's private affairs.

40

Q.—But what I have in mind, is, did you feel any necessity as Trustee, to examine into what Mr. Marler was doing with regard to his shares?

A.—None.

A.—And do you know that in the letter that Lord Shaughnessy wrote to Mr. Marler, this matter of the 25 shares being added to the shares in Trust, was set forth, was explained and mentioned?

A.—I don't know.

HERBERT B. McLEAN (recalled for Plaintiffs), Cross-Examination.

Q.—You did not know?

A.—No.

Q.—And you do not know now?

A.—I never knew.

Q.—Well, the Exhibit shows it as a matter of fact. Have you with you, Mr. McLean, an authentic copy of the Notarial discharge which was finally given?

10 A.—I have.

Q.—Will you please produce it, that is, the discharge between you and Mr. Marler, as Trustees, and Lord Shaughnessy under that Agreement. Will you produce now as Exhibit D-75 an authentic copy of that discharge?

A.—I do.

Q.—I see it is dated the 7th of October, 1929. It was signed before a partner of yours, Mr. Honey, was it?

A.—Yes.

20 Q.—He is a partner in your firm?

A.—Yes.

Q.—And enclosed the letters of September 18th?

A.—The original letters were attached to the original of the Deed.

Q.—Two letters, one from Lord Shaughnessy to the Trustees, and the other from the Incorporated Company to the Trustees?

A.—And the receipt.

30 Q.—Do you know if Mr. Marler, your Co-Trustee, was present at the meeting of Directors of the Incorporated Company on the 1st of October, 1924, when this transaction with regard to the allotment of the new shares, and the reduction of capital afterwards was decided upon and put through?

A.—No.

Mr. Holden: I have the original Minutes from which you will see that he was present at that meeting.

By the Court:

40 Q.—Do you know who drew up the Deed of September 17th, 1924?

A.—No, Your Lordship.

By the Court:

Q.—You did not draw it yourself?

A.—It was not drawn in our office.

HERBERT B. McLEAN (recalled for Plaintiffs), Cross-Examination.

By the Court:

Q.—Do you know whether you gave a receipt to Lord Shaughnessy for the shares and notes brought to you in execution of that Deed?

A.—I don't remember that. My recollection is that the Agreement in itself contained an acknowledgment by the Trustees that
10 they had received the securities.

By the Court:

Q.—You signed the Agreement?

A.—Yes.

By the Court:

Q.—Before the shares were delivered, or afterwards?
20 A.—I think it was before.

And further deponent saith not.

30

40

JOHN G. LAWRENCE (for Plaintiffs), Examination-in-Chief.

On this twentieth day of March, in the year of Our Lord, one thousand nine hundred and thirty, personally came and appeared;

JOHN GIBSON LAWRENCE,

10 of the city of Montreal, Secretary, aged thirty-six years, a witness produced on behalf of the Plaintiffs, who being duly sworn doth depose and say as follows:

Mr. Holden: May it please the Court, before my learned friend starts to examine this witness, we wish to submit, and it is our duty to submit as emphatically as we can, that it is not in the interests of the Plaintiff's or the Defendant's, or any of the other six thousand shareholders of the Canadian Industrial Alcohol Company, that its own personal business affairs should be discussed in open Court in the presence of a battery of newspaper reporters in constant attendance, and with the conditions that exist at present in the trade, particularly considering the Companies that are at present engaged in it, under all the circumstances.

20 Our clients feel and we, on their behalf feel, that it is our manifest duty at the outset not only to draw Your Lordship's attention to the fact in the first place that this Alcohol Company is not a party to this suit, and in the second place that it has, as we all know, important competitors in this line of business.

I am making the objection on our clients behalf at the outset, because there can be only one reason for subpoenaeing the Secretary-Treasurer of this Company, and that is, to go into its affairs, and our respectful submission is that the Company in the first place is not a party to this case; in the second place, that the Plaintiffs, if they commence and undertake to air the business affairs of this Company in so public a proceeding as this, they will be jeopardizing their own as well as everybody else's interests in this case. We shall be of record before the case is closed. That will come later.

40 It is our duty to submit the situation as we see it at the outset, and to make it perfectly clear that the desire, and intend that the responsibility for any such ventilation of the business affairs of such an industry shall lie where it falls, namely, on the Plaintiffs, to make such an investigation.

Mr. Campbell: If I may add a word to what Mr. Holden has said: I think it is only proper at this stage, and in view of the general objection, to indicate that we have to go into the affairs of Alcohol; we have also, in fairness to the Defendants, to go into the affairs of all the other Companies included in this industry.

JOHN G. LAWRENCE (for Plaintiffs), Examination-in-Chief.

Our contention is that if there was a diminution and falling off of the receipts of the Alcohol business, there has been a corresponding diminution in the receipts of other Companies similarly placed.

His Lordship: You have filed a synopsis.

10 Mr. Campbell: That is as to the market value. I would point out to Your Lordship at present that not only do we have to investigate the affairs of Alcohol, but we will have to investigate the affairs of all the beverage Companies that are in any way correspondingly placed. Some are more favorably placed than others; some will suffer less and some are in a similar position. Not only are the affairs of Alcohol necessarily investigated, but in fairness to the Defendants the affairs of these other Companies must be equally investigated, and that is why we contend at the outset it is going to be a long investigation involving a great many people who are not even indirectly interested in this litigation, and I think it is only right at 20 this point that we should find out where an investigation of this kind is going to land us. It is not relevant to this action. If Your Lordship will look at the conclusions of plaintiff's action in this case, you will find it is an action to remove the Defendants as Executors of the late Sir Mortimer' Davis' Estate.

His Lordship: The point in question is, that they have not properly administered the affairs of the Canadian Industrial Alcohol Company.

30

Mr. Campbell: Is that relevant to this controversy?

His Lordship: Lady Davis and her son-in-law are important shareholders as Institutes under the will of Sir Mortimer Davis. If it suits them to air the affairs of the Company and bring about their own possible ruin in doing so, Lord Shaughnessy and his friends will have no personal interest in that. If it suits Lady Davis and Mr. Mortimer Davis to ruin themselves for the pleasure of being nasty 40 to the Defendants, I do not see that I can reject this evidence.

Mr. Campbell: Will Your Lordship then allow us the right to go further, that is, in other words, if we have to investigate the affairs of this Company, that we may have the right to investigate the affairs of other Companies similarly placed?

Mr. Holden: May I add to what I have already stated. Our

JOHN G. LAWRENCE (for Plaintiffs), Examination-in-Chief.

clients do not want, and we on their behalf, do not want to hide from Your Lordship or our opponents any facts. We do want in the first place, and we intend and shall do our utmost to put the situation as it exists. The responsibility belongs to the Plaintiffs, if they go ahead on this line, and in the second place, that while it would be clear and will be clear, if they go on, that the falling off in sales that occurred by reasons that were very foreign to, and not at all answerable for by the Defendants, those reasons are not such facts as should
10 be offered wholesale to competitors in the industry.

His Lordship: But whom do you represent?

Mr. Holden: The main reason why I feel it my duty to put it carefully and fully is this, our client, Lord Shaughnessy is the President of the Company, who feels he has just as much responsibility to look after the interests of the shares held by these Plaintiffs as by
20 the other six thousand shareholders, as well as his own shares. He has responsibility as President to protect and promote the interests of the Company that he is President of, and it certainly is not protecting or promoting these interests to make a public ventilation of these facts.

Mr. McKeown: May it please the Court, from the attitude of my learned friends, before a question has been asked, and from their great concern, reminds me very much of the school boy who knew he was going to get a good licking and began to scream in advance.
30

So far as the position of the distillery industry is concerned, it is a matter of public record in the public statistics; it is open, and has been to the wide world, has been commented upon, has been dealt with by the press for months and months.

As to the conditions of this Company and its competitors, the proof will disclose in a few minutes that the Defendants in this case saw fit to put the whole of their position before these competitors. It is a little bit too much of a good thing for them to stand up here and
40 adopt the attitude which they assumed in this case and to attach the responsibility of this litigation to the plainiffs, who are exercising their legal rights in a legal way. If the situation in the Industrial Alcohol business turns out today to be different than it was when Lord Shaughnessy took hold of this matter, and when Sir Mortimer died, then, I assume responsibility for saying it is upon him. We are going to show what the position is at the present time.

JOHN G. LAWRENCE (for Plaintiffs), Examination-in-Chief.

It may very well be that in the process, injury will be done to the Plaintiffs' fortunes, and to the assets of the Estate, but our view is that the cure is not as bad as the disease, and whatever injury may be done in that respect, we had no alternative or no choice than to go ahead. My learned friends will bear me out that before this litigation started, every effort was made (and I may say it openly) on both sides to avoid litigation, and nothing could be reached in that regard. Therefore, there was no alternative for us but to proceed, and we will leave it to Your Lordship to decide where the responsibility is, if any injury is done to the corpus of this Estate by the process necessary to oust these Executors.

His Lordship: What are the allegations of your Declaration that you intend to prove? I will have to follow that up and be more careful with your objections than I have been heretofore.

Mr. McKeown: Your Lordship will remember that first of all we are proceeding jointly upon the main action to remove the Executors, upon the petition for sequestration, the matter of urgency upon the petition for the joining of these issues, the issue on the main action, and also on the petition for injunction against holding the Alcohol meeting.

The first Alcohol question comes in referred throughout the Declaration, but it is taken up in part at page 18 of the Declaration in chapter 12, that is, allegations 106 to 114.

His Lordship: Of course, as far as allegation 109 and following are concerned, they are only introductory.

Mr. McKeown: They are general. No particulars have been asked. The first allegation, 106, is the general allegation.

His Lordship: Allegation 107 is a statement of fact.

Mr. Campbell: It is not contested.

His Lordship: As far as allegation 109 is concerned I cannot prevent you from proving what you have alleged.

Mr. McKeown: In addition to that, the issue is also covered by the Answer to Plea of Lord Shaughnessy, paragraphs 8, 47, 56, 74 to 79. There are allegations earlier in the plea, but the allegations to which I have drawn your Lordship's attention are paragraphs 106 to 114 of the Declaration.

JOHN G. LAWRENCE (for Plaintiffs), Examination-in-Chief.

His Lordship: I am reading the plea now, pages 47 to 56.

Mr. McKeown: I have not assembled the allegations of the defence, but have assembled the allegations of the answer which are our pleadings.

10 His Lordship: From the facts that are alleged there, I do not see how I can prevent you from proving them.

Mr. McKeown: Those facts are elaborated in the Petition for sequestration in both the injunction cases.

His Lordship: They are in the record.

20 Mr. Campbell: There is just one point I would like to call your Lordship's, and my learned friends attention to, and that is, his assumption that the proceedings to date have all applied to the application for the injunction in the Alcohol case. I think it is quite possible that Mr. Lawrence's testimony may be relevant to that issue, but my submission is, as I understand it, that your Lordship has not yet given judgment on that application.

30 I am referring to the injunction not what is called the Alcohol case. There is another case your Lordship has before you and that is the injunction in the Alcohol case. While I think Mr. Lawrence's evidence may be relevant to some of that, ninety nine percent of the testimony so far heard must be clearly irrelevant to the Alcohol case. The Alcohol Company is not interested in all that we have been discussing so far, and the position I want to make clear is this, supposing, for instance, there should be an appeal in this Alcohol case, surely we should not have to take to appeal this ninety nine percent of evidence in which it is in no way interested, and which can have no bearing on this case.

His Lordship: I will restrict Counsel to the proof of allegations 106 to 114 of the Declaration, and to the petition for sequestration, and the one injunction and will not allow you to go beyond that.

40 As to the allegations of your plea and the allegations of the Answer to Plea which Mr. McKeown referred to a moment ago, if there is anything that has to be said by Mr. Lawrence, or any other witness for that matter, which applies solely to the injunction taken against the Alcohol Company, I will preclude it.

Mr. Campbell: As a matter of fact, the facts in the Alcohol case could almost be agreed to. There is no controversy as to that.

JOHN G. LAWRENCE (for Plaintiffs), Examination-in-Chief.

We disagree as to the consequence of fact, but we are in agreement as to the facts. In the Alcohol case we might perhaps try and agree on the statements of facts, and then argue before your Lordship what the consequences of those facts are.

10 The point I wish to make is, that all this testimony we have now heard for three weeks should not affect the Alcohol Company in its proceedings, because it has not been interested in that, and can have no bearing on the result. The facts in the Alcohol Company case, if your Lordship will look at the pleadings in that case, are practically anticipated. There is very little dispute.

His Lordship: What is the point in the Alcohol case?

20 Mr. Campbell: They are applying for a postponement of the Alcohol meeting. There is a dispute between the Plaintiffs and the Defendants about the control of the Sir Mortimer Davis Estate, which in turn controls Sir Mortimer Davis Incorporated, which in turn owns the controlling interest in Alcohol. That is not a fact that is in dispute. I think we can agree on that.

His Lordship: That has nothing to do with the case. The question at present is, whether the Defendants, and Lord Shaughnessy in particular, are administering the Alcohol Company as prudent and wise administrators.

30 Mr. Campbell: I take it, my Lord, Mr. Lawrence's testimony will avail in the main action, the action we are trying, and your Lordship can make it available in the Alcohol case if it is relevant.

His Lordship: If is agreed upon by Counsel.

Mr. Campbell: It should not be understood at the moment that it necessarily comes in. A great deal may not be relevant to the controversy of Alcohol.

40 Mr. Montgomery: What do you call the Alcohol case?

Mr. Campbell: The action in the Alcohol case is the case against Alcohol to postpone the meeting.

Mr. Montgomery: Does not that really come in with this?

Mr. Campbell: There is no controversy about the facts there.

JOHN G. LAWRENCE (for Plaintiffs), Examination-in-Chief.

Mr. McKeown: It does seem to me that if these cases were proceeding as I thought they were from the first, not the action to annul the gift or the action on the Marler stock—those were separate cases, as far as those cases I thought we were proceeding upon the whole of them, and if there should be an appeal necessary on the Alcohol injunction, there are provisions in the rules of practice and in our Code in such matters whereby you can apply to a Judge and an order
10 can be given fixing the case and eliminating anything and everything that does not bear directly upon the point which will be covered in such an appeal, so my learned friends great fear of having a bulky record to annoy the Judges in appeal would not be exactly well taken.

Whereupon Mr. Lawrence was called to the stand and his examination was commenced.

By Mr. McKeown, K.C.:

20 Q.—Mr. Lawrence, you are the Secretary of the Canadian Industrial Alcohol Company?

A.—Yes.

Q.—And have been for how long?

A.—Since 1924.

Q.—Were you with the Company before that?

A.—Yes, sir.

Q.—For how long?

A.—Prior to that from November, 1922.

30 Q.—Is that your first connection with the Company?

A.—Yes.

Q.—But you were not there at the time of the incorporation and organization of the Canadian Industrial Alcohol Company?

A.—The first Company, no.

Q.—What is the date of the organization of the incorporation of the present Company, Canadian Industrial Alcohol?

A.—The charter is dated 30th of September, 1924.

40 Q.—And what Corporations were taken over by the present Corporation? Had there previously been another Corporation known as Canadian Industrial Alcohol?

A.—Yes, sir.

Q.—And were any other Corporations taken in to the present Corporation in September, 1924, except the former Corporation?

A.—No.

Q.—At what point was the merger made which took in the former Corporation called The Consolidated Distilleries? Is that not a subsidiary of the present Company?

JOHN G. LAWRENCE (for Plaintiffs), Examination-in-Chief.

A.—That is a subsidiary, yes.

Q.—When was it taken in or acquired? Are you the Secretary of that Company also?

A.—Yes.

Consolidated Distilleries, Limited, the date of incorporation is the 4th of September, 1924. Excuse me, that is wrong. I have not got the date of that with me, but prior to that.

10 Q.—Let us see if I can get at it another way. What are the present subsidiaries of Canadian Industrial Alcohol?

A.—Consolidated Distilleries, Limited; Wiser's Distillery, Limited; St. Hyacinthe Distillery Company, Limited; Canadian Industrial Alcohol Company of Manitoba, Limited; Consolidated Distilleries of Manitoba, Limited; the Canadian Cuban Export Company, Limited.

Q.—Is that all?

20 A.—And ninety percent of Robert McNish and Company, Limited.

Q.—What about J. M. Douglas?

A.—J. M. Douglas and Company, Limited.

Q.—Any others?

A.—That is the lot.

Q.—Are you the Secretary of all the subsidiaries?

A.—Not all of them, no, with the exception of J. M. Douglas, Robert McNish and the Canadian Cuban Export Company, and the Manitoba Companies, both of them.

30 Q.—That brings it down to this, that you are the Secretary then of Consolidated Distilleries, Wiser's Distillery, and St. Hyacinthe Distillery Company, Limited?

A.—Yes.

Q.—Have you ever been Secretary of those other Companies, any of them?

A.—No.

Q.—Is the St. Hyacinthe Distillery an operating concern?

A.—Yes.

Q.—As a Corporation, but does it operate a distillery? Is the distillery in operation?

40 A.—Yes.

Q.—Distilling?

A.—No.

Q.—What is it used as?

A.—It is used for bottling purposes.

Q.—Since how long?

A.—Two or three years.

Q.—What about the Wiser's Distillery?

JOHN G. LAWRENCE (for Plaintiffs), Examination-in-Chief.

A.—It is also bottling.

Q.—They are not distilling down there?

A.—No.

Q.—Since how long?

A.—For several years.

Q.—What about these two Manitoba Companies?

A.—They have not been distilling for the past two or three
10 years.

Q.—Are they bottling?

A.—Yes.

Q.—The Canadian Cuban Export Company, is that a sales Com-
pany?

A.—Yes.

Q.—That is not a distillery?

A.—No.

Q.—Robert McNish are blenders in Scotland?

A.—Blenders and bottlers.
20

Q.—In Scotland?

A.—In Scotland.

Q.—J. M. Douglas is a sales Corporation?

A.—Yes.

Q.—Were all of those Corporations subsidiaries of the earlier
Canadian Industrial Alcohol Company?

A.—No.

Q.—With what exceptions?

A.—With the exception of Robert McNish and Company, Lim-
30 ited, J. M. Douglas and Company Limited, and the Canadian Cuban
Export Company Limited.

Q.—The others were subsidiaries of the parent Company?

A.—The Manitoba Companies may have been incorporated—no
they were not. The Canadian Industrial Alcohol Company of Man-
itoba was incorporated on the 17th of November 1923; Consolida-
ted Distilleries of Manitoba was incorporated on the 4th of Septem-
ber 1924.

Q.—Is all of the stock of those Companies other than Robert
40 McNish and Company Limited owned by the present Canadian In-
dustrial Alcohol Company?

A.—It is either owned by the Canadian Industrial Alcohol Com-
pany or Consolidated Distilleries Limited.

Q.—All in the same group?

A.—Yes.

Q.—Can you give us the date of the incorporation of Consolida-
ted Distilleries?

A.—I do not think I have that here.

JOHN G. LAWRENCE (*for Plaintiffs*), *Examination-in-Chief*.

Q.—Does it go back quite a number of years?

A.—To about 1920. I think, October 1920.

Q.—That is the Corporation which operates the distillery at Corbyville?

A.—No. The Canadian Industrial Alcohol Company operates the distillery at Corbyville.

10 Q.—That did operate the distillery at Corbyville formerly?

A.—No.

Q.—Is the title of the distillery at Corbyville in the present Canadian Industrial Alcohol Company, and owned directly by it?

A.—Yes.

Q.—Was it ever owned by Consolidated Distilleries?

A.—I could not say.

Q.—Not in your time?

A.—Not in my time, no.

20 Q.—Is that distillery at Corbyville operated in the name of the Canadian Industrial Alcohol Company Limited?

A.—Yes.

Q.—Has the Consolidated Distilleries Company any distillery operating in its own name?

A.—No.

Q.—And has not had since when?

A.—I could not say.

Q.—As far as your knowledge goes?

His Lordship: It never had.

30 By Mr. McKeown:

Q.—But as far as your knowledge goes, you cannot give us any date at which the distillery at Corbyville was operated by the Corporation known as Consolidated Distilleries?

A.—No.

40 Q.—Have these Companies been merged into the present Canadian Industrial Alcohol Company in such a way as to lose their identity and corporate existence, or do they continue to exist as Corporations?

A.—They continue to exist as Corporations.

Q.—And as subsidiaries of Canadian Industrial Alcohol?

A.—Yes.

Q.—Do you know at what time the late Sir Mortimer Davis first became connected with the distilleries which now form part of the assets of the Canadian Industrial Alcohol Company?

A.—No.

JOHN G. LAWRENCE (for Plaintiffs), Examination-in-Chief.

Q.—You do not know?

A.—No.

Q.—I put it to you that it is over twenty years ago since Sir Mortimer first became interested in the distilleries which are now in the group of Canadian Industrial Alcohol?

A.—That might be.

10 Q.—And he continued his interests in the distilleries right up to the time of his death through Canadian Industrial Alcohol?

A.—Yes.

Q.—Are these subsidiaries, the names of which you have given us, all officered by the nominees of the Canadian Industrial Alcohol Company at the present time—I mean the Directors and Officers?

A.—McNish is not.

Q.—Are the others?

A.—Yes, the others are.

20 Q.—Will you produce the annual statements and reports of Canadian Industrial Alcohol Company, and of each of these subsidiaries?

Mr. Campbell: In order that the record may preserve the situation, I would ask your Lordship to note that we object to the entering into of any evidence having reference to these annual statements as being irrelevant to the merits of the controversy now before Your Lordship, and therefore as illegal, and we want to quite clearly preserve the rights of the parties.

30 It is our submission that that is not relevant, and should not be gone into in this case; I therefore ask Your Lordship to note and rule upon my objection that any evidence on these figures is illegal and irrelevant.

His Lordship: I am not prepared to say at the moment. I will allow it under reserve.

Mr. Campbell: I respectfully except Your Lordship's ruling.

40 Witness: From what year?

Mr. McKeown: For the last year.

(Witness hands Counsel document.)

By Mr. McKeown:

JOHN G. LAWRENCE (for Plaintiffs), Examination-in-Chief.

Q.—Excuse me, but this is not what I asked for. This is nothing but the balance sheet. I want the Report and Balance Sheet in each instance.

I do not see the Auditors report here.

A.—There is no report other than that.

10 Q.—Do you mean to tell me that the Auditors did not make any report to the present Directors of the Company than these Balance Sheets?

A.—No, sir.

Q.—Who are the Auditors of this Corporation?

A.—Delight, Pender, Haskell and Sells.

Q.—How long has this been going on that no report has been made by the Auditors of Canadian Industrial Alcohol? There is an Auditors certificate with every annual statement?

20 Mr. Campbell: That is the report.

Mr. McKeown: That is a new way of making a report.

Mr. Campbell: Read the words of it into the record.

Mr. McKeown: Mr. Campbell, if you please—

By Mr. McKeown:

30 Q.—You have handed me the Balance Sheet and accounts to September 30th, 1929, of Canadian Industrial Alcohol, which I will ask you to produce as Exhibit P-99?

A.—I do.

Q.—And you say to the Court that this, when received by the President and Directors of the Company, was not accompanied by any report from the Auditors to the Officers of the Company concerning this Balance Sheet?

A.—No further report than appears on the face of the Balance sheet.

40 Q.—You know exactly what I mean, Mr. Lawrence, do you not; but in order that we shall not have the slightest misunderstanding between ourselves, I want to show you what I am referring to. I show you by way of illustration of what I am asking you for, is Exhibit P-51, being the report and accounts prepared by Price, Waterhouse and Company, of Sir Mortimer Davis Incorporated as of date September 30th, 1928, and I ask you to note the report which precedes the Balance Sheet commenting on the Company's position, and

JOHN G. LAWRENCE (for Plaintiffs), Examination-in-Chief.

to have you tell me whether the Exhibit which you have just produced and marked P-99, when received by the Company, was accompanied by such a report as preceded the report in the Exhibit P-51 now before you?

A.—No, sir.

Q.—And how long has that been the practice of the Auditors of the Canadian Industrial Alcohol Company to hand in Balance Sheets
10 without a report such as I have indicated to you on P-51?

Mr. Campbell: I think my learned friend should, at least, read into the record the report that is on the Balance Sheet, and the certificate, which is the form of report and certificate that is given in, I would say, ninety nine cases out of one hundred of published statements.

Mr. Montgomery: Of published statements, yes.

20 Mr. McKeown: I think we are entitled to an answer to this question.

The Court allows the question.

By Mr. McKeown:

Q.—What is the answer, Mr. Lawrence?

A.—I don't know that we have ever had any report other than
30 appears on the Balance Sheet.

Q.—You don't know? What does that mean that you don't know? You have been Secretary of this Company for a number of years, and it seems to me that you ought to be able to answer a little more definitely than the form in which you have just given your last answer?

A.—I could look up and find out. Offhand, I do not remember any report being given.

Q.—Covering a period of how many years?

A.—Since 1924.

40 Q.—Well, we have got that for what it is worth. Will you now show me the report of Consolidated Distilleries?

(Witness hands Counsel report).

Q.—Will you be good enough to search your archives, and see whether your reports for previous years have been accompanied by an Auditors report of the kind we have been discussing?

(Witness looks amongst his papers).

Have you been able to find any report, Mr. Lawrence?

JOHN G. LAWRENCE (for Plaintiffs), Examination-in-Chief.

A.—None whatever.

Q.—Very well. You have now handed us the Balance Sheet and accounts as September 30th, 1929, of Consolidated Distilleries, Limited, which we will mark as Exhibit P-100.

Have you now the report for Wiser's Distillery Limited?

10 A.—I produce the report for Wiser's Distillery Limited as Exhibit P-101.

Q.—Now have you the report for the St. Hyacinthe Distillery?

A.—Yes.

Q.—Will you produce this report as Exhibit P-102?

A.—I do.

Q.—The next one on the list seems to be Canadian Industrial Alcohol Company of Manitoba?

20 Mr. Campbell: I take it your Lordship understands this is all under the same objection. I do not wish to keep repeating my objection.

His Lordship: Yes.

A.—Canadian Industrial Alcohol Company of Manitoba.

By Mr. McKeown:

Q.—Will you file this as Exhibit P-103?

A.—I do.

30 Q.—Will you produce the report of Consolidated Distilleries of Manitoba as Exhibit P-104?

A.—I do.

Q.—The next one seems to be the Canadian Cuban Export Company?

A.—I have to get that one. I have not it with me.

Q.—Has it been prepared?

A.—Yes.

Q.—When was it prepared?

A.—Following the end of the year.

40 Q.—How long after the end of the year?

A.—Probably within the first two or three weeks.

Q.—Who prepared it?

A.—The Accountants in charge of the Company in Cuba.

Q.—And where is it now?

A.—It is up in the office.

Q.—What do you mean by telling me it is up in the office?

JOHN G. LAWRENCE (for Plaintiffs), Examination-in-Chief.

Mr. Campbell: That is a perfectly proper explanation and a perfectly proper way of expressing himself.

By Mr. McKeown:

Q.—Where is it now?

10 A.—In the office.

Q.—Can you arrange to phone up and have it brought down here right away by one of your employees?

His Lordship: Is it so urgent as all that?

Mr. McKeown: I just want to have it in its proper order.

By Mr. McKeown:

20 Q.—Will you produce it as Exhibit P-105?

A.—Yes.

Q.—Will you ask Mr. Kessner to telephone and have them brought down for this afternoon?

A.—I do not think he is in Court.

Q.—Perhaps Mr. Reaper, one of the Directors of the Company, could do it.

His Lordship: There is no such hurry, Mr. McKeown.

30 Mr. McKeown: Just in regard to this particular report I think there is, my Lord.

Mr. Campbell: What do you suggest?

Mr. McKeown: I would like to have it here, because Mr. Lawrence received a subpoena requiring him to bring it. He has all the others, but he has not that.

40 His Lordship: If you wish we might suspend Mr. Lawrence's evidence, and take another witness.

Mr. McKeown: I would not like to do that, your Lordship.

Mr. Campbell: Then, carry on.

Mr. McKeown: I should have liked to have it in its regular order with the others.

JOHN G. LAWRENCE (~~for~~ Plaintiffs), Examination-in-Chief.

By Mr. McKeown (continuing):

- Q.—The next balance sheet of Robert McNish & Company?
A.—That has not been received by us yet.
Q.—It has not been received?
A.—No.
10 Q.—When does that Company's year end?
A.—September 30th.
Q.—And the balance sheet has not been received yet?
A.—No.
Q.—It is nearly six months overdue? Have you taken any steps
to get it?
A.—Yes.
Q.—When did you take the subject up with the official in charge
of that Company?
A.—We have had it up on quite a number of occasions.
20 Q.—Who is the Secretary of Robert McNish & Company?
A.—The Interim Secretary is Mr. McCulloch.
Q.—The Interim Secretary?
A.—Yes.
Q.—Exactly what do you mean by Interim Secretary?
A.—The present Secretary has resigned.
Q.—Since when?
A.—Some time last fall.
Q.—Who was he?
A.—Mr. Parent.
30 Q.—Where are his headquarters?
A.—Glasgow, Scotland.
Q.—You keep copies, or duplicates, of the archives of the
McNish Company in the Alcohol Office here?
Witness: Copies of what?
Counsel: Minutes, and Reports, and matters of that kind.
A.—Yes.
Q.—Have you a copy of the McNish Minute Book here?
A.—I have copies of their Minutes, yes.
Q.—Have you them with you?
40 A.—Yes.
Q.—You are not able to give us the McNish Report for the year
ending September 30th, 1929?
A.—Not the audited statement, no.
Q.—Have you any kind of a statement?
A.—I have our own, yes.
Q.—Prepared by the McNish Company?
A.—Yes.

JOHN G. LAWRENCE (for Plaintiffs), Examination-in-Chief.

Q.—Will you please let us have it, for the time being?

A.—It is the balance sheet and profit and loss account?

Q.—As of what date?

A.—September 30th, 1929.

Q.—You mentioned the fact that this is not an Auditors' Statement, but your own. By whom was it prepared?

A.—By Robert McNish.

10 Q.—By the officers of the Company, in Glasgow?

A.—Yes.

Q.—Will you produce this Report as Plaintiffs' Exhibit P-106?

A.—Yes.

Q.—Can you give us any information as to when the Auditors' Statement of the McNish Company will be available?

A.—I understand the work is just about complete now, and we may receive it at any time.

20 Q.—Do I understand the McNish year also ends September 30th?

A.—Yes.

Q.—The other subsidiary which you mentioned is J. M. Douglas & Company. Will you produce the Annual Statement of that Company as Plaintiffs' Exhibit P-107?

A.—Yes.

30 Q.—The statements of the subsidiary Companies (leaving out the McNish Company) which you have produced are similar in form to the Alcohol statement: that is, they are mere balance sheets without the Report of the Auditors commenting on the balance sheet?

A.—Yes.

Q.—But, certified by the Auditors, as you have pointed out?

A.—Yes.

Q.—May we take it that at the present time the only Distillery being operated as such under the control of Canadian Industrial Alcohol is the Distillery at Corbyville?

A.—Corbyville; and a branch at Vancouver.

Q.—What does the branch in Vancouver come under?

A.—Consolidated Distilleries.

40 Q.—Is that the only branch of Consolidated Distilleries?

A.—Yes.

Q.—Is it relatively a small proposition?

A.—Yes, a very small proposition.

Q.—What is the total capacity in gallons there?

A.—I could not say, offhand. It is quite a small plant.

Q.—The others are really being operated as bottling establishments?

JOHN G. LAWRENCE (for Plaintiffs), Examination-in-Chief.

A.—Blending and bottling, in some cases, yes.

Q.—Under the name of which Corporation is the general business of Canadian Industrial Alcohol carried on? The purchasing of supplies, such as grain, molasses, barrels, on one side; and the selling and shipment of spirits on the other?

A.—Canadian Industrial Alcohol.

Q.—Entirely?

10 A.—The beverage end of the business is done by Consolidated Distilleries.

By Mr. Campbell, K.C.:

Q.—Alcohol does the manufacturing?

A.—Yes.

Q.—And what does Consolidated Distilleries do?

A.—The selling of the beverage.

20 By Mr. McKeown (continued):

Q.—You have a commercial department, have you not, which takes in the Lindsay plant?

A.—The Lindsay plant is a branch of Canadian Industrial Alcohol.

Q.—The Lindsay plant is a non-beverage plant?

A.—It is a wood alcohol plant.

Q.—And it comes directly under Canadian Industrial Alcohol?

30 A.—Yes.

Q.—The beverage end, you say, is operated under the name of Consolidated Distilleries?

A.—Yes.

Q.—Only the selling?

A.—Bottling and selling.

Q.—Does it work out in this way; that the distilling is done by Canadian Industrial Alcohol, and that that Corporation sells the product to Consolidated Distilleries, which, in turn, bottles it and markets it?

40 A.—Yes.

Q.—There is a big stock of liquor at Corbyville at present, is there not?

A.—Yes.

Q.—Something approaching nine million or ten million gallons?

A.—Approximately that.

Q.—Which Corporation owns that?

A.—Canadian Industrial Alcohol.

JOHN G. LAWRENCE (for Plaintiffs), Examination-in-Chief.

Q.—Up to such time as it may make a sale to Consolidated for sale and distribution?

A.—Yes.

Q.—You have a stock of liquor at St. Pierre Miquilon, and Nassau?

A.—Yes.

Q.—Who owns that?

10 A.—Consolidated Distilleries.

By Mr. Campbell:

Q.—The plant at Lindsay is a wood alcohol plant?

A.—Yes.

By Mr. McKeown (continuing):

20 Q.—Have you a Consolidated statement of Canadian Industrial Alcohol and its subsidiaries?

A.—Yes.

Q.—Will you please let me see it?

Mr. Campbell: For what year?

Mr. McKeown: For this last year.

30 Witness: I made a mistake in that. I have not it. It is not prepared yet, on account of the McNish matters.

By Mr. McKeown (continuing):

Q.—Have you it less the McNish accounts?

A.—No.

Q.—Will you please show me the last Consolidated Statement you have?

40 (Witness Exhibits to Counsel Statement dated September 30th, 1928.)

Q.—Will you file this Consolidated Statement, as of date September 30th, 1928, as Exhibit P-108?

A.—Yes.

Q.—The raw material for the distillery business of Canadian Industrial Alcohol, you told us, is purchased by Canadian Industrial Alcohol direct?

JOHN G. LAWRENCE (*for Plaintiffs*), *Examination-in-Chief*.

A.—Yes.

Q.—Have you a compilation showing for the years beginning with your fiscal year 1926-27, and forward, the number of bushels of grain and gallons of molasses used per day in the Corbyville plant, and the proof gallons of various kinds of whisky manufactured?

A.—Not per day. Per year.

10 Q.—Then, I will take it per year.

Mr. Campbell: I cannot see how that detail could possibly interest Your Lordship, or help you in this case. I object to the evidence as illegal and irrelevant, and I do not see what possible bearing it can have.

20 These balance sheets may have some bearing, although I do not see it at the moment; still, at the same time, my learned friend may be able to abstract an argument from them. But, what has the quantity of grain, or the number of barrels, or anything else the Company bought during a day to do with this case? I fail to see it, and I fail to see what possible relevance it can have on the merits of the controversy Your Lordship has to try.

30 Mr. McKeown: The relevancy comes about in this way: in the cross examination of Mr. Reaper my learned friend built up a situation which would show that in the early administration of those Companies under Sir Mortimer and Mr. Waddell there were scanty dividends and practically little or no returns, and even losses in some periods. Then in the second five year period a great harvest seems to have been repeated, and my learned friend would take all the credit for it.

40 I asked Mr. Reaper in re-examination whether he was aware of the amount of money that had to be put into this industry before it could begin to show a profit at all. I think Mr. Lawrence has a compilation of those figures, and has kept them as a matter of routine of the office because it would be a matter of very great interest from their own point of view. I am sure the witness knows exactly the quantities used throughout this ten year period, and I think the information will disclose that at the time those dividends were lean and scant they had nothing like the demands on them for raw materials that they had in the after years, and nothing like the stores of liquor which they ultimately had, and which, as Mr. Lawrence has told us, now amounts to an accumulation of some nine million or ten million gallons.

JOHN G. LAWRENCE (for Plaintiffs), Examination-in-Chief.

It is not a matter of asking the witness to give the figures from memory, because I feel sure they have all this information compiled and of record in their office.

10 Mr. Campbell: My learned friend is suggesting that because he proves we made more whisky and got a larger supply of raw materials in the last five years than in the previous five years that would go to show why we paid larger dividends. I must say to Your Lordship I cannot see in what sense this would be any reflection on the management. I cannot see the sequence of my learned friend's argument that there is any reflection on the management in the fact that we were able to make more goods and at the same time turn out larger dividends and distribute them. I cannot see where he is going to found an argument in explanation of the previous lean years by proving that in the later years we bought more goods, and made more whisky, and had more on hand at the end.

20 Mr. McKeown: If I establish by the witness that at the end of 1924, say—the end of the first period—the quantity of liquor on hand was about half what it is now, and prove the cost per day that had to be put into raw materials, and the cost of distilling generally. I think I will have given Your Lordship some explanation of the difference in the amount of dividends over those two periods, and the real cause for it.

30 Of course, as a matter of fact, the answer could have been given ten times over while my learned friend has been arguing his objection.

I submit to Your Lordship that I am entitled to make this evidence, and I ask that the witness be ordered to answer.

His Lordship: If you say it is going to be useful, I will take your word for it.

Mr. McKeown: Thank you, My Lord. I shall try to be as good as my word.

40 Mr. Campbell, K.C., of Counsel for Defendants, respectfully Excepts to the Ruling of the Court.

By Mr. McKeown (continuing):

Q.—I understood you to say you have it by the year?

A.—Yes.

JOHN G. LAWRENCE (for Plaintiffs), Examination-in-Chief.

Q.—Will you prepare a memorandum in the sense of my question, and file it as Plaintiffs' Exhibit No. 109?

Mr. Campbell: Subject to my objection.

A.—Yes.

10 By Mr. McKeown (continuing):

Q.—This memorandum will show the number of bushels of grain and gallons of molasses used at the Corbyville plant for each of the years beginning September 30th, 1926, and forward; and also the number of proof gallons of the various kinds of spirits? It is classified with you, is it not?

A.—Bourbon, Rye, Gin, Scotch.

Q.—Do not classify the Bourbon and Rye in one classification: put the Bourbon alone, the Rye alone, and the others together.

20 A.—I can give it to you in so many gallons of whisky.

Q.—I want you to separate the Bourbon, and Rye, and make a third category to include the others.

By Mr. Campbell:

Q.—Are the records so kept that you can do that readily?

A.—I think we can get it.

30 By Mr. McKeown, continuing,

Q.—Will you also produce, as Plaintiffs' Exhibit P-110, a memorandum showing the quantities on hand of Bourbon, Rye, and a third category to include all others, on October 1st, 1926, and forward?

Mr. Campbell: Before the witness undertakes to produce all this information, may I ask Your Lordship to rule under what particular paragraph of the Plaintiffs' Declaration it is relevant? Because I cannot bring it in under any of the Allegations.

40 I understood Your Lordship to say you proposed to restrict the Plaintiffs to the Allegations of their Declaration. I have been looking through the Allegations, but I have not yet been able to locate a paragraph in it under which this evidence could be made. I do not want the witness to be put to considerable possible trouble and inconvenience in preparing statements which Your Lordship may afterwards determine are not relevant.

JOHN G. LAWRENCE (for Plaintiffs), Examination-in-Chief.

Mr. McKeown: I understood the Court had already ruled upon Mr. Campbell's objection, and that the proof was allowed under reserve of it. I had indicated to Your Lordship that this evidence would offer some explanation of the discrepancy between the small amount of the early dividends and the larger amount which was invoked by my learned friend for the last five year period.

10 Mr. Campbell: But there is no issue of that kind in the Declaration. The Plaintiffs are not complaining that we paid out too many dividends. They are not complaining of the Alcohol dividends being too large. They do not charge Lord Shaughnessy with responsibility for having disbursed undue dividends from the Alcohol Company. How can this evidence possibly be relevant to the controversy? I have not been able so far to find any Allegation of the Plaintiffs' Declaration which would entitle them, in my submission, to go into proof of that kind.

20 Mr. McKeown: It has the same relevancy as the questions put by my learned friend when he tried to show the discrepancy between the early dividends and the later dividends, and took all the credit for Lord Shaughnessy.

Mr. Campbell: I was not taking all the credit for Lord Shaughnessy. You say when the stock goes up we have no credit, but when it goes down we are responsible.

30 His Lordship: I will let the statement go in.

Mr. McKeown: Of course your Lordship will understand it is impossible to argue every iota of evidence as we go along, and then argue it all over again a second time just to suit my learned friend Mr. Campbell.

Mr. Campbell: If the questions are objectionable I will make my objections to the Court, and the Court will rule upon them.

40 By Mr. McKeown (continuing):

Q.—Is the Distillery at Corbyville now about filled to capacity?

A.—Yes.

Q.—Which is something in the vicinity of ten million gallons?

A.—Yes.

Q.—Is it the fact that they have used on some occasions as high as 5000 bushels of grain a day in that Distillery?

JOHN G. LAWRENCE (for Plaintiffs), Examination-in-Chief.

A.—I would think so, yes.

Q.—And I put it to you that with the additional items of molasses and barrels the expenditure there in using 5000 bushels of grain a day would run to \$10,000 a day or thereabouts?

A.—Hardly that.

Q.—How close to it?

A.—Between \$7000 and \$8000.

10 Q.—I take it that in your experience as Secretary you have at least heard, if you do not know, that this liquor has to remain in wood for a period of, I think, something like three years before it is properly matured and ready for marketing?

A.—Two years.

Q.—Have you not lots of liquor there which is three or more years of age?

A.—Yes.

Q.—It can be sold and consumed in two years, but it is usually sold in three?

20 A.—Yes.

Q.—I do not want you to boast about your connection with this industry, but is it not a fact that the Corbyville Distillery is known to be the largest Distillery in the world?

A.—Yes.

Q.—And, has at present probably the largest stores of liquor in the world?

A.—No, sir.

Q.—You do not think so?

A.—No.

30 Q.—Then, I must be wrong in my information. Have you brought with you the Minute Book of Canadian Industrial Alcohol Company?

A.—Yes.

Q.—Have you with you a copy of the last statement as sent out to the shareholders of Canadian Industrial Alcohol Company?

A.—Yes.

Mr. Campbell: That is the printed Annual Statement?

40

Mr. McKeown: Yes.

Mr. Campbell: I think it is the same as Exhibit P-99.

By Mr. McKeown (continuing):

Q.—Is it the fact that the printed statement sent to the share-

JOHN G. LAWRENCE (for Plaintiffs), Examination-in-Chief.

holders, which you now exhibit, is a copy of the first page of the Auditors' Report Exhibit P-99?

A.—Yes.

Q.—It does not include the profit and loss statement which follows?

A.—It includes it, at the top.

Q.—In synopsis?

10 A.—Yes, in synopsis.

Q.—Have you with you a copy of the balance sheet and accounts of Canadian Industrial Alcohol as at September 30th, 1928?

A.—Yes.

His Lordship: You are not filing the statement to which you referred in your previous question?

Mr. McKeown: No, my Lord; because I find it is covered by Exhibit P-99.

20

By Mr. McKeown (continuing):

Q.—Will you file a copy of this balance sheet as Plaintiffs' Exhibit P-111?

A.—Yes.

Q.—This is the balance sheet and accounts of Canadian Industrial Alcohol as at September 30th, 1928?

A.—Yes.

30 Q.—Have you copies printed in code form of the By-laws of Canadian Industrial Alcohol, such as might be delivered to shareholders for their information or have you a certified copy of the By-laws?

A.—No, I have not any here..

Q.—Have you a balance sheet of Consolidated Distilleries as at September 30th, 1928?

A.—Yes.

Q.—Will you please produce it as Plaintiffs' Exhibit P-112?

A.—Yes.

40 Q.—Will you please read into the record the By-law of Canadian Industrial Alcohol in connection with the number of Directors?

Mr. Campbell: Where does my learned friend find any issue with reference to the number of Directors?

Mr. McKeown: We allege Lord Shaughnessy arrogated to him-

JOHN G. LAWRENCE (*for Plaintiffs*), *Examination-in-Chief*.

self the rights of the members of the Board, and we want to show how many members there should be on the Board.

Witness: It is By-law No. 7:

10 “ (a) There shall be a Board of not less than fifteen Directors, but it shall not be necessary for a full Board of fifteen to be elected or maintained, and a Board of less than fifteen Directors elected from time to time shall manage the affairs of the Company, provided, nevertheless, that the Board shall never be less than eight.

20 “ (b) The Board of Directors may at any time elect a Director or Directors to add to the number of the Board until the Board shall reach the number of fifteen, and may also fill vacancies on the Board caused by death, resignation, incapacity, or any other cause, and such appointments shall be effective until the next meeting of shareholders.”

Q.—That is the only By-law you have as to the number of Directors?

A.—Yes.

Q.—Have you a By-law as to the remuneration to be received by Directors or officers of the Company?

A.—No.

Q.—Will you please read By-law No. 13 into the record?

30 A.—(Witness reading).

“ The Directors shall be paid out of the funds of the Company by way of remuneration for their services in such sums and in such manner as the Directors may from time to time determine.”

Q.—In a negative way, is there any By-law of the Alcohol Company at present in force under which the shareholders may between the elections of Directors meet and require the resignation of any Director or of the whole Board?

40 A.—I do not think so. No, there is not.

Q.—There is no such By-law?

A.—No.

Q.—Is there any By-law at all dealing with Directors, other than the two By-laws you have just read into the record?

A.—There is By-law No. 8.

Q.—You draw my attention to By-law No. 8. Will you please read it into the record?

JOHN G. LAWRENCE (*for Plaintiffs*), *Examination-in-Chief*.

A.—(Witness reading) :

“ Any shareholder not in arrears for payment of calls upon his stock may be elected a Director. The Directors shall hold office for one year, or until their successors shall be elected.”

10 Q.—You have read to His Lordship the By-law fixing the number of Directors with which this Company as a matter of practice operated?

Witness: For what year? During 1928.

Q.—How many in 1928?

A.—Eight.

Q.—How many in 1927?

A.—Eight.

20 Q.—When you give these answers, that the number of Directors was eight for those years, do you mean that was the number elected at the Annual meeting?

A.—Yes.

Q.—You do not mean to say there were eight Directors in office all the time?

A.—There were eight Directors appointed at the Annual Meeting in 1927.

Q.—And did they continue in office throughout the next twelve months?

30 A.—Yes.

Q.—That would be the twelve months ending. . . .

A.—(Interrupting) September 30th, 1928.

Q.—While your fiscal year ended on September 30th each year, was not the Annual Meeting fixed for the third Wednesday in December of each year?

A.—The third Tuesday.

Q.—So your last answer should perhaps be corrected to the effect that the Directors continued in office until the next Annual Meeting, in December, 1928?

40 A.—Yes.

Q.—Will you please turn up the Minutes of the Annual Meeting held in December, 1928, and tell me who were elected Directors at that time?

A.—The same eight.

Q.—Who were they?

A.—Rt. Hon. Lord Shaughnessy;, Hon. H. M. Marler, E. Laus-

JOHN G. LAWRENCE (*for Plaintiffs*), *Examination-in-Chief.*

ter, Henry Joseph, E. R. Decarie, Col. F. M. Gaudet, Archibald Kelly, Fisher Wilmore.

Q.—Those eight gentlemen were re-elected to the Board at the Annual Meeting held in December, 1928?

Q.—I think we already know they did not all serve out their term?

A.—No, they did not.

10 Q.—Who was the first to resign?

A.—Mr. Henry Joseph.

Q.—You are looking at the Minutes of the Directors' Meeting, I presume?

A.—Yes.

Q.—On what date was his resignation dealt with by the Board?

A.—June 21st, 1929.

Q.—Does the Minute mention the date of the resignation proper?

A.—The letter dated June 12th (Exhibit D-8).

20 Q.—June 21st was the meeting of the Directors at which this matter was dealt with?

A.—Yes.

Q.—Who were present at that Meeting?

A.—Lord Shaughnessy, Archibald Kelly, and Colonel Gaudet.

Q.—Three Directors?

A.—Yes.

Q.—Do you know when Mr. Joseph's resignation was announced to the Shareholders generally, to the Press, and to the public?

30 A.—No, sir.

Q.—Who was the next Director to resign?

A.—Colonel Gaudet.

Q.—Before we take up the matter of Colonel Gaudet's resignation, have you any correspondence exchanged with Lord Shaughnessy concerning the resignation of Mr. Joseph, other than the formal letter of resignation filed as Exhibit D-8?

A.—No, sir.

40 Q.—Colonel Gaudet was the second Director to resign. Will you please refer to the Minutes and tell me on what date action was taken upon his resignation?

A.—At the meeting of the Board of Directors held July 24th, 1929.

Q.—Who were present at that Meeting?

A.—Rt. Hon. Lord Shaughnessy, Archibald Kelly, and Fisher Wilmore.

Q.—Perhaps I should have identified this list of Directors, or at least some of them.

JOHN G. LAWRENCE (for Plaintiffs), Examination-in-Chief.

Mr. Lauster occupied the position of Director and Vice President, did he not?

A.—Yes.

Q.—And, he is an employee of the Company, under salary?

A.—Yes.

10 Q.—Actively in charge of what particular branch? He is assistant to the President, I understand?

A.—General Assistant to the President.

Q.—I do not think we require any introduction to Mr. Marler. He was in no way connected with the Company, other than as a Shareholder?

A.—A Shareholder, and a Director.

Q.—He was not an official of the Company—not under salary?

A.—No.

Q.—Mr. Joseph was in the same position as Mr. Marler?

20 A.—Yes.

Q.—And, Mr. Decarie was in the same position as Mr. Marler and Mr. Joseph?

A.—Yes, exactly.

Q.—Colonel Gaudet was Vice-President of the Company, and an employee of the Company, was he not?

A.—Yes.

Q.—What Department was he in charge of?

A.—In charge of manufacturing.

30 Q.—Mr. Kelly was also an employee of the Company, in charge of the Sales Department?

A.—The Sales Department, yes.

Q.—And Mr. Fisher Wilmore was also an employee of the Company, in charge of the Distillery at Corbyville?

A.—Yes.

Q.—Let us now return to Colonel Gaudet. You said his resignation was dealt with by the Board on July 24th, 1929?

A.—Yes.

40 Q.—Do you know when it was announced to the Shareholders, and the Press, and the public?

A.—No.

Q.—Who was the next Director to resign?

A.—Hon. Herbert Marler.

Q.—On what date did he resign?

A.—His resignation was dealt with at the same Meeting, July 24th, 1929.

JOHN G. LAWRENCE (for Plaintiffs), Examination-in-Chief.

Q.—Will you please tell me if the letter filed as Exhibit D-5 is a copy of the intimation given by Mr. Marler that he desired to retire from the Board?

A.—I believe so, yes.

Q.—This letter is dated July 2nd, 1929, but was not dealt with by the Board until July 24th, 1929?

10 A.—At the regular meeting of the Board, yes.

Q.—You speak of “The regular meeting.” Were there regular fixed meetings of the Board held periodically?

A.—There was one a month.

Q.—Was there any fixed date for those Meetings?

A.—The third Wednesday in the month.

Q.—Did the By-laws require that, or was there a formal resolution, or was it just the practice?

A.—Just practice.

20 Q.—How long had that practice extended back with regard to holding Meetings of the Board on the third Wednesday in each month?

A.—All my time.

Q.—During the four years you were there?

A.—Yes.

Q.—What was the date of Colonel Gaudet’s resignation?

Mr. Campbell: Do you mean his letter?

Mr. McKeown: Yes.

30 Witness: July 23rd, I think.

By Mr. McKeown, continuing,

Q.—Who was the next Director to resign?

A.—Mr. E. R. Decarie.

Q.—On what date was his resignation dealt with by the Board?

A.—July 24th.

40 Q.—At the same Meeting?

A.—Yes.

Q.—What was the date of his letter?

A.—July 17th, 1929. (Exhibit D-7)

Q.—Mr. Archibald Kelly has since resigned?

A.—Yes.

Q.—On what date was his resignation dealt with?

Mr. Campbell: Is it understood that the copies of the letters

JOHN G. LAWRENCE (for Plaintiffs), Examination-in-Chief.

of resignation filed as Defendants' Exhibits, and printed and attached to the Pleadings, are admitted in lieu of the originals?

Mr. McKeown: Yes.

10 Mr. Campbell: I am instructed Mr. Kelly resigned after Action brought, and, therefore, I must repeat my objection to any evidence of any facts which have occurred since Action brought?

By the Court:

Q.—What was the date of his resignation?

A.—He resigned as of January 31st, 1930.

By Mr. McKeown (continuing):

20 Q.—Have you a copy of his letter?

A.—No.

Q.—Did he resign in writing?

A.—Yes.

Q.—On what date was his resignation actually handed in?

A.—The beginning of January.

Mr. McKeown: My learned friend's objection may not be well taken. This suit was served on January 18th.

30 Mr. Campbell: But the resignation was not to be effective until the end of the month.

His Lordship: But, he resigned before the service of the Action.

Mr. Campbell: My understanding is that the resignation was not to be effective until the end of the month.

His Lordship: But, he resigned.

40 Mr. Campbell: He had given notice of resignation, to be effective at the end of January.

By Mr. McKeown (continuing):

Q.—When was Mr. Kelly's resignation announced?

A.—February 3rd.

JOHN G. LAWRENCE (for Plaintiffs), Examination-in-Chief.

His Lordship: Do you intend to file the letter of resignation, Mr. McKeown?

Mr. McKeown: I think it would be well to have it of record, so as to complete the file.

10 By Mr. McKeown (continuing):

Q.—Will you please bring a copy of Mr. Kelly's letter of resignation, and file it as Exhibit P-113?

A.—Yes.

Q.—The result is that of the group of Directors who were elected at the last Annual Meeting, held in December, 1928, the only Directors in office today are Lord Shaughnessy, Mr. Lauster, and Mr. Wilmore?

A.—Yes.

20 Q.—And, as you have already told us, Mr. Lauster and Mr. Wilmore are both employees of the Company?

A.—Yes.

His Lordship: Who were present at the Meeting of February 3rd?

Mr. McKeown: They filled up the Board. I am coming to that, Your Lordship.

30 By Mr. McKeown (continuing):

Q.—Will you turn back to the Minutes of the Meeting of June, 21st, 1929, at which Mr. Joseph's resignation was dealt with. At that Meeting was anyone appointed to succeed Mr. Joseph as a Director of the Company?

A.—No, sir. There is just the reference to the resignation.

40 Q.—Will you turn to the Meeting of July 24th, at which the resignations of Colonel Gaudet, Mr. Marler and Mr. Decarie were dealt with. These gentlemen went out of office on that date, according to the Minutes of the Directors' Meeting?

A.—Yes.

Q.—Were any successors appointed to them?

A.—No.

Mr. Campbell: You mean at that time?

Mr. McKeown: Yes, at that time.

JOHN G. LAWRENCE (*for Plaintiffs*), *Examination-in-Chief*.

By Mr. McKeown (continuing):

Q.—So, on and from July 24th, 1929, Mr. Joseph, Mr. Gaudet, Mr. Marler, and Mr. Decarie were out of office; and the remaining Directors were Lord Shaughnessy, Mr. Lauster, Mr. Kelly, and Mr. Wilmore?

A.—Yes.

10 Q.—The Annual Meeting of this Company was fixed for December 17th, 1929, was it not?

A.—Yes.

Q.—Were any Meetings of the Board held from July 24th, 1929, up to that time?

A.—There was a Meeting held on August 28th.

Q.—Who were present at that Meeting?

A.—Rt. Hon. Lord Shaughnessy, Archibald Kelly, and E. Lauster.

20 Q.—Only three Directors?

A.—Yes.

Q.—Is there any By-law fixing the quorum of the Board of Directors?

A.—I think there is a By-law fixing it at three. By-law Number 9: “At any Directors’ Meeting three Directors present in person or by proxy shall form a quorum.”

Mr. Campbell: We did not draw the By-laws. Those By-laws were before our day. I think that was a slip but it was not our slip.

30 By Mr. McKeown (continuing):

Q.—Does the word “three” appear to have been there in the original typing?

A.—Yes.

Q.—Has this By-law you have just read to us about a quorum by proxy ever been amended?

A.—No, sir.

40 Q.—Were any further Meetings of the Board held after August 28th, and before the Annual Meeting?

A.—Another Meeting was held on September 11th.

Q.—Who were present?

A.—E. Lauster, Fisher Wilmore, and Archibald Kelly.

Q.—Was there another Meeting held after that?

A.—There was another Meeting on October 30th.

Q.—Who were present?

JOHN G. LAWRENCE (for Plaintiffs), Examination-in-Chief.

A.—Rt. Hon. Lord Shaughnessy, E. Lauster, Archibald Kelly, and Fisher Wilmore.

Q.—Any proxies?

A.—All in person.

Q.—Was there another Meeting held after that?

A.—There was another Meeting held on November 27th, 1929.

Q.—Who were present at that Meeting?

10 A.—Rt. Hon. Lord Shaughnessy, E. Lauster, A. Kelly, and Fisher Wilmore.

Q.—Was there another Meeting held between November 27th, 1929, and the Annual Meeting?

A.—The next Meeting was the Annual Meeting. There were no more Directors' Meetings.

Q.—Between the Meeting of Directors of July 24th., 1929, at which time four of the eight Directors went out of office, were any steps taken by the remaining Directors to fill the vacancies before the Annual Meeting?

20

Mr. Campbell: I do not know that the witness is competent to give evidence on this fact.

Mr. McKeown: I mean, of course, according to the corporate records.

30 Mr. Campbell; Of course, if you limit him to the corporate records it is a different proposition. He would not be in a position to answer of his own knowledge. As I understood the question the witness was asked whether any steps were taken. That is very comprehensive.

His Lordship: Were the Directors replaced?

Mr. Campbell: That is a different story. My learned friend is asking a different question. He asked if any steps were taken to fill the vacancies.

40 By the Court: Were they replaced?

A.—No, sir.

By Mr. McKeown (continuing):

Q.—On the day fixed for the Annual Meeting, December 17th, 1929, the Shareholders met, and adjourned?

A.—Yes.

JOHN G. LAWRENCE (for Plaintiffs), Examination-in-Chief.

Q.—Upon a resolution explained to the Meeting by Lord Shaughnessy, as President of the Company, and, I think, moved by Mr. Lauster, and seconded by Mr. Kelly, and carried on division?

Mr. Campbell: Should it not go into the record that this was done by arrangement between Counsel?

10 Mr. McKeown: Of course.

By Mr. McKeown (continuing):

Q.—The adjournment I have suggested to you appears by the Minutes, which I think are properly entered in your Minute Book?

A.—Yes.

20 Q.—Mr. Campbell suggests, and I concur (although it is not shown in the Minutes) and the Shareholders were all “wise to it” that that adjournment was by arrangement between Counsel?

A.—Yes.

Q.—The adjournment was taken to what date?

Mr. Campbell: The arrangement was between Counsel representing the parties in this case. Do not blame us for the adjournment, when you at least concurred in it, and that was the only concurrence we have been able to get from you.

Witness: The Meeting was adjourned to January 22nd, 1930.

30 By Mr. McKeown (continuing):

Q.—Were you in the room when the Meeting was held?

A.—Yes.

Q.—The Meeting was held in the Board Room?

A.—Yes.

Q.—There was the Directors' table, at which the President was presiding?

A.—Yes.

40 Q.—Lord Shaughnessy was present, and there was a group around that table. Who were in that group?

Mr. Campbell: What possible bearing can this have? The adjournment of this Meeting was arranged in advance by Counsel representing these parties. The Meeting assembled, and was *pro forma* adjourned to a date agreed. How can the details of the Meeting, or the grouping of those present, affect this case? It seems

JOHN G. LAWRENCE (for Plaintiffs), Examination-in-Chief.

to me my learned friend is going very far afield. Of course, it may suit his purposes, but surely it cannot help Your Lordship.

10 Mr. McKeown: We were not in control of Alcohol that day. I propose to show that on that occasion, having only three Directors—and I speak subject to correction—they had set up four or five dummies, who were not Directors, posing as Directors at the Directors' table.

I think it is relevant.

Mr. Campbell: Did they wear labels around their necks saying " I am a Director " ?

Mr. McKeown: No, they were really too good for that. Mr. Reaper was one of them.

20 Mr. Campbell: And Mr. Reaper became a Director shortly afterwards for the purposes of the *interregnum*.

Mr. McKeown: Be that as it may, I think we ought to get at the facts.

Mr. Campbell: I enter an objection to the question as illegal and irrelevant.

By Mr. McKeown (continuing):

30

Q.—Lord Shaughnessy was present?

A.—Yes.

Q.—He was a Director?

A.—Yes.

Q.—Mr. Lauster was present?

A.—Yes.

Q.—He was a Director?

A.—Yes.

40

Q.—Mr. Kelly was present?

A.—Yes.

Q.—He was a Director?

A.—Yes.

Q.—Mr. Reaper was there?

A.—Mr. Wilmore was there also, and he was a Director.

Q.—The others sitting at the table included Mr. Reaper? Do you remember him sitting at the end of the table?

A.—I believe so, yes.

JOHN G. LAWRENCE (for Plaintiffs), Examination-in-Chief.

- Q.—You were present?
A.—Yes, as Secretary.
Q.—Was Mr. Turnbull present?
A.—I think he was.
Q.—He was not a Director?
A.—No.
10 Q.—Was Mr. Kessner there?
A.—Mr. Kessner may have been there.
Q.—He was not a Director?
A.—No.
Q.—How long had Mr. Henry Joseph been a Director of Canadian Industrial Alcohol before his resignation in June, 1929?
A.—He was a Director during the entire lifetime of this present Company.
Q.—And, even before that?
A.—I believe so, but I do not remember.
20 Q.—How long had Mr. Marler been a Director of that Company?
A.—I should think about the same time.
Q.—About the same time as Mr. Joseph?
A.—Yes.
Q.—How long had Mr. Decarie been a Director of the Company?
A.—I do not know when he was appointed.
Q.—Are you familiar with Houston's Manual?
A.—Yes.
30 Q.—Will you please verify from Houston's Manual, which I now show you, that Mr. Decarie was a Director of the Company in 1924?
A.—Yes.
Q.—And he was continuously thereafter?
A.—Yes.
Q.—When did Colonel Gaudet become a Director of the Company?
A.—He was a Director in 1924.
Q.—And was continuously thereafter?
A.—Yes.
40 Q.—Up to July, 1929?
A.—Yes.
Q.—What has been done since the opening of the Annual Meeting on December 17th, 1929, in the matter filling vacancies on the Board, and when?
A.—On December 23rd, 1929.
Q.—What occurred on that date, and who were present?

JOHN G. LAWRENCE (for Plaintiffs), Examination-in-Chief.

A.—Lord Shaughnessy, Mr. Lauster, Mr. Kelly, and Mr. Wilmore.

Q.—What was done by the Board that day with respect to the Directors?

A.—(Witness reading from Minutes)

10 “ On account of the vacancies created in the Directorate of the Company through the resignations of Messrs. Joseph, Decarie, Marler and Gaudet, the Chairman informed the Meeting that it was deemed advisable to elect four new Directors to fill these vacancies, subject to the ratification of the Shareholders at the adjourned Annual Meeting to be held 22nd January next, and submitted to the Meeting the names of four persons whom he in his opinion considered eligible, each of the said persons being shareholders of the Company. The names submitted were E. J. Turnbull, A. M. Reaper, G. G. Kessner, and J. G. Lawrence.

20 It was therefore moved by Lord Shaughnessy, seconded by Mr. Kelly, and unanimously resolved that E. J. Turnbull, A. M. Reaper, G. G. Kessner, and J. G. Lawrence be and they are hereby elected Directors of the Company to hold office in that capacity until such time as their elections are ratified and approved by the Shareholders of the Company at the adjourned Annual Meeting of Shareholders to be held on the 22nd January, 1930.”

Q.—Mr. Reaper was not an employèe of the Alcohol Company?

30 A.—No.

Q.—Mr. Turnbull was Treasurer?

A.—Yes.

Q.—And is Treasurer?

A.—Yes.

Q.—And, has been for years?

A.—Yes.

Q.—Mr. Kessner is also an employèe of the Company?

A.—Yes.

Q.—He was then, and he is now?

40 A.—Yes.

Q.—What is his position.

A.—Sales Manager.

Q.—The other member of the quartet was yourself?

A.—Yes.

Q.—And, you have told us of your connection with the Company?

A.—Yes.

JOHN G. LAWRENCE (for Plaintiffs), Examination-in-Chief.

Q.—Even that splendid body of Directors did not hold together. Mr. Kelly resigned, as you have told us. What has been done in regard to replacing him?

His Lordship: He resigned in January.

Mr. Campbell: Mr. Kelly's resignation was effective as of January 31st.

Witness: Yes.

By Mr. McKeown (continuing):

Q.—What has been done in regard to replacing Mr. Kelly?

A.—He has been replaced on the Board now.

Q.—Would you mind telling us by whom he has been replaced?

20 A.—By Mr. John Stormont.

Mr. Campbell: I wish to put my objection again on the record. This was all subsequently to Action brought, and is not relevant or legal.

By Mr. McKeown (continuing):

Q.—Who might Mr. Stormont be?

A.—An employee of the Company.

30 Q.—Is he connected with the Sales Department?

A.—Yes.

Q.—Where does he reside?

A.—In Montreal.

By the Court:

Q.—When was he elected?

A.—February 26th, 1930.

40 By Mr. McKeown (continuing):

Q.—Are we to take it, therefore, that the Board at present consists of eight members, made up of Lord Shaughnessy, Mr. Lauster, Mr. Wilmore, Mr. Turnbull, Mr. Reaper, Mr. Kessner, Mr. Lawrence and Mr. Stormont?

A.—Yes.

JOHN G. LAWRENCE (*for Plaintiffs*), *Examination-in-Chief*.

Q.—And all these gentlemen except Mr. Reaper, are employees of the Company?

A.—Yes.

Q.—Have the 6,000 shareholders, about whom we have heard so much, any representation directly or indirectly on that Board at present, as far as you know?

A.—I do not quite get the question. Those gentlemen are all
10 shareholders.

Mr. Campbell: They are all shareholders, and they are the nominees of the controlling shareholders.

Mr. McKeown: Many days ago I suggested that you should be sworn, Mr. Campbell.

Mr. Campbell: My learned friend is at great pains to have all
20 this variety of stuff

Mr. McKeown: That is a bad word.

Mr. Campbell: But it is an appropriate word in this case.

Since December 17th we have been marking time, and for the last several months we have been under Your Lordship's directions about holding the Annual Meeting. My learned friend implies we have carried on this situation deliberately, but the fact is we have carried on the situation because the Court enjoined us to do it.

30 Mr. McKeown: That is one of the standing jokes. We offered you to hold the Meeting, and you would not have it.

Mr. Campbell: The one thing you refused to do was to appoint a Board of Directors.

His Lordship: Do you think, Mr. McKeown, there is any chance of finishing with the witness within a short time?

40 Mr. McKeown: I am afraid not, Your Lordship.

His Lordship: Then, we will adjourn until tomorrow.

And it being 4.45 o'clock the further examination of the witness is continued until Friday, March 21st, at 10:30 o'clock in the forenoon.

And further for the present Deponent saith not.

JOHN G. LAWRENCE (*for Plaintiffs*), *Examination-in-Chief*.

MORNING SESSION, MARCH 21st, 1930.

On this twenty first day of March, in the year of Our Lord, one thousand nine hundred and thirty, personally came and reappeared,

JOHN GIBSON LAWRENCE,

10 and his examination-in-chief was continued.

By Mr. McKeown:

Q.—Yesterday, Mr. Lawrence, you had not with you the balance sheet and account of the Canadian Cuban Export Company Limited. Have you got it this morning?

A.—Yes.

Q.—Will you produce it as Exhibit P-105 as arranged yesterday?

20 A.—Yes.

Q.—There is another matter arising out of your examination yesterday: You were only able to tell us that those Directors, Mr. Joseph, Mr. Marler, Mr. Decarie and Colonel Gaudet, had been Directors of the Company, I think, back to the period of 1924?

A.—Yes.

Q.—Have you the archives of the former Canadian Industrial Alcohol Company?

A.—Yes.

30 Q.—Will you be good enough to verify from your archives, and file as Exhibit P-114, a memorandum showing the dates from which those four Directors first became identified as Directors with either the Canadian Industrial Alcohol Company, the parent Company, or any of its predecessors?

A.—I have not got these. I will file them.

Q.—I might include Mr. Kelly also?

A.—Yes.

Q.—You know Mr. Joseph personally?

A.—Yes.

40 Q.—You know that at present he is abroad?

A.—No.

Q.—Do you know he was a lifelong friend of Sir Mortimer Davis?

A.—I knew he was a friend of Sir Mortimer Davis.

Q.—A prominent citizen of Montreal here for many years?

A.—Yes.

Q.—Mr. Ernest R. Decarie is a practicing Notary in Montreal?

JOHN G. LAWRENCE (for Plaintiffs), Examination-in-Chief.

A.—Yes.

Q.—He is a Director of the Canadian National Railways?

A.—I don't know.

Mr. Campbell: We admit his prominence as a citizen, if that is what my learned friend wishes to prove.

10 Mr. McKeown: I wish to have it on the records. His Lordship is probably better acquainted with Mr. Ernest R. Decarie than I am.

By Mr. McKeown:

Q.—Do you know that Mr. Decarie is the President of the Title Guarantee and Trust Company?

A.—Yes.

20 His Lordship: And a Director of the University of Montreal.

By Mr. McKeown:

Q.—And he has occupied prominent positions in Montreal?

A.—Yes.

Q.—Do you know that at one time he was Chairman of the Commission ———

Mr. Campbell: I have given you an admission, Mr. McKeown.

30 By Mr. McKeown:

Q.—Do you know that Mr. Decarie was also Chairman of the Commission which took over the control of the city of Montreal for a number of years under authority of the Legislature?

A.—I have heard that.

Q.—Have you in your possession, as Secretary of the Company, any correspondence from any of these five Directors bearing upon their resignations, other than the formal letter of resignation which
40 has already been filed?

A.—No.

Mr. Campbell: Defendants Exhibits D-5, being the letter of resignation of the Honorable Herbert M. Marler, dated July 2nd, 1929; D-6 being an accompanying personal letter from Honorable Mr. Marler to Honorable Lord Shaughnessy bearing the same date;

JOHN G. LAWRENCE (for Plaintiffs), Examination-in-Chief.

D-7 being a letter of resignation of Mr. E. R. Decarie, dated July 17th, 1929, and D-8 being the letter of resignation of Mr. Henry Joseph, dated June 12th, 1929, are admitted in lieu of originals, as printed and attached to the Plea of the Defendants Shaughnessy and Reaper.

By Mr. McKeown:

10

Q.—Will you now look at the balance sheet and accounts, September 30th, 1929, of Canadian Industrial Alcohol Company Limited, Exhibit P-99, and in that connection I would ask you if you are familiar with the requirements of Section 136 of the Companies Act as contained in the Revised Statutes of Canada, 1927?

Mr. Campbell: Are you proposing to put the witness through an examination on principles of commercial law?

20

Mr. McKeown: This is only preliminary.

A.—Yes, sir.

By Mr. McKeown:

Q.—Is there on the statement now before you, Exhibit P-99, an item indicating, as required by Section 136, paragraph 3, subparagraph G of the Companies Act, the amount of good will entered in the account of the Alcohol Company?

30

Mr. Campbell: I object to this question as illegal and irrelevant. There is no allegation in the Plaintiffs' declaration in the twenty pages taken up by allegations numbering one hundred and eighteen paragraphs, where there is any complaint about the manner in which the Canadian Industrial Alcohol Company kept its accounts or in the way it drew up its balance sheet. I submit it is not in issue and that Your Lordship cannot be required to go into that. I ask Your Lordship to rule that it is irrelevant.

40

Mr. McKeown: We do not complain of how he made up his balance sheet, but we do complain of his administration of the Company; we do complain of the position of the Company, and we complain of this proposed merger and matters of that description. All we want to show is, what the true position of Alcohol is, and we are endeavoring to do so. We want to analyze this statement and show exactly where the Company stands. Under the law, items of good

JOHN G. LAWRENCE (*for Plaintiffs*), *Examination-in-Chief*.

will should be shown as good will. That is our submission. As I understand that statement, the good will is bulked in with the buildings, and I propose to ask Mr. Lawrence to give us the figures which go to make up that item, which will show what Alcohol's real position is.

10 Mr. Campbell: Does Your Lordship allow the question?

His Lordship: Yes, I will allow the question.

Mr. Campbell: The Defendants respectfully except to Your Lordship's ruling.

A.—Not specifically.

By Mr. McKeown:

20 Q.—It is, on the contrary, included in the general item of real estate, buildings, machinery, goodwill, etc., less depreciation, \$5,412,532.29?

A.—Yes.

Q.—You, of course, carry in the books a separate account for each of those items, buildings, plant, goodwill, etc?

A.—Yes.

30 Q.—Will you therefore be good enough to prepare a memorandum showing in detail the various items for real estate, buildings, machinery, good will, and any others which enter into this item of \$5,412,532.29 before depreciation, and file it as Exhibit P-115?

A.—Yes.

Q.—Will you again look at the statement, Exhibit P-99, and say whether, on that statement, as it has been prepared, there has been shown the debts owing by the Company, secured by mortgage or lien upon the property of the Company independently of its general indebtedness?

A.—There are none.

Q.—It has not been shown specifically?

40 A.—There are none.

Q.—There are no mortgages, and there are no liens?

A.—No sir.

Q.—Is the Canadian Industrial Alcohol Company indebted to the banks by way of loans or overdrafts, and were they on the date of September 30th, 1929, when this statement was drawn?

A.—No.

Q.—No indebtedness whatsoever?

JOHN G. LAWRENCE (for Plaintiffs), Examination-in-Chief.

A.—No.

Q.—No overdrafts or loans?

A.—No.

Q.—By the statement, Exhibit P-99, as drawn, is depreciation, that is, the amount written off on account of depreciation on plant, buildings, good will and similar items, shown in any specific item?

10 A.—Not specifically.

Q.—Then, will you be good enough to prepare and file as Exhibit P-116, a memorandum showing the depreciation written off for plant, machinery, good will and similar items?

A.—Yes.

Q.—And reflected in this Exhibit P-99?

A.—Yes.

Q.—Do you see anything upon this statement, Exhibit P-99, with reference to contingent liabilities as required to be shown under the Companies Act, section 136, paragraph 3, sub-paragraph L, with regard to direct and contingent liabilities?

20

A.—Yes.

Q.—What do you find?

A.—Contingent liability in respect to guarantee of Twenty-Year Six Per Cent Debenture Stock of Robert McNish and Company Limited.

Q.—Is that all that is mentioned there?

A.—Yes.

Q.—In point of fact, how much is it?

30

A.—\$4,444,000.

By Mr. Campbell:

Q.—Are these dollars or pounds?

A.—\$4,444,000.

By Mr. McKeown:

Q.—Guaranteed both as to capital and interest?

40

A.—Principal and interest.

Q.—Is it so stated on the balance sheet that the guarantee is to both principal and interest?

A.—No.

Q.—You have put in as Exhibit P-100 the balance sheet and accounts as at September 30th, 1929, of Consolidated Distilleries, one of the subsidiaries of Canadian Industrial Alcohol?

A.—Yes.

JOHN G. LAWRENCE (for Plaintiffs), Examination-in-Chief.

Q.—Will you look at that statement, and say whether, on its date, there was any amount due the bank by that Company?

A.—Yes.

Q.—How much?

A.—\$1,400,000.

10 Q.—Was that amount guaranteed by the Canadian Industrial Alcohol Company to the bank on September 30th, 1929?

A.—Yes.

Q.—Do you see any reference on this statement of Canadian Industrial Alcohol Company, P-99, before you, to that indirect liability by the Alcohol Company?

A.—No.

Q.—That is to say, the liability of Consolidated Distilleries to the bank existing on the same date, of \$1,400,000?

A.—No.

20 Q.—In looking at the Exhibit P-100, the statement of Consolidated Distilleries, in which the liability to the bank of \$1,400,000 appears, is it shown by that Exhibit, P-100, that the amount is secured in any manner?

A.—No.

Q.—Was it secured in any manner at that time to the bank?

A.—Yes, sir.

Q.—Other than by the guarantee of the Canadian Industrial Alcohol Company? Was it secured in any manner except the guarantee of Canadian Industrial Alcohol Company?

A.—I don't know.

30 Q.—You are the Secretary of that Company?

A.—Yes.

Q.—Is it not true that the bank had a lien to secure that \$1,400,000 on September 30th, 1929, under Section 88 of the Bank Act?

A.—I don't know if that would apply.

Q.—Did they have such a lien at that time?

A.—I don't know.

Q.—Who would know?

A.—The bank might know.

40 Q.—I would go a little further and say the bank would know, but you don't know?

A.—No.

Q.—Could it exist without your knowledge? What do you mean you don't remember?

A.—I don't remember, no.

Q.—I put it to you that the bank had a lien on the stores of

JOHN G. LAWRENCE (for Plaintiffs), Examination-in-Chief.

liquor at St. Pierre Miquelon, Nassau and Cuba to secure that \$1,400,000. Would that refresh your memory?

A.—Not in any, I don't remember.

Q.—That is the only answer you can give?

A.—Yes.

10 Q.—Can you indicate who, on behalf of the Canadian Industrial Alcohol Company, or its associated Companies, would know the answer to that question?

A.—I don't know that anybody would know.

Q.—Is it going to remain for ever a mystery, or is it you cannot give us any suggestion as to where light might be obtained upon that transaction involving \$1,400,000?

A.—All our banking requirements, bank forms, etc., were submitted to the bank years ago.

Q.—Has that been a continuing loan which had arrived at \$1,400,000 on the date of September 30th, 1929?

20 A.—From time to time.

Q.—It had gone up and gone down, is that it?

A.—Well, yes.

Q.—And you, as Secretary of the Company, cannot tell His Lordship whether or not there was any lien held by the bank at that time?

A.—No, I do not remember.

30 Q.—This statement, Exhibit P-99, had to be signed on behalf of the Company, had it not, before being submitted to the shareholders?

A.—Yes.

Q.—Who signed it?

A.—It was signed by Lord Shaughnessy and E. Lauster.

Q.—Under what date?

A.—29th November, 1929.

Q.—That is the statement of Alcohol for the last year ending September 30th, 1929?

A.—Yes.

40 Q.—So that while this statement P-99 shows cash in the bank and on hand of \$500,000, the fact is that there was an underlying liability to the bank of Consolidated Distilleries guaranteed by Alcohol for \$1,400,000 on the same date?

A.—Yes.

Q.—Will you look at another Exhibit which you produced as P-108, being the consolidated statement of Canadian Industrial Alcohol and its subsidiaries as based on balance sheets of September 30th, 1928, a year ago, which shows entered against fixed assets, that

JOHN G. LAWRENCE (for Plaintiffs), Examination-in-Chief.

is, good will and trademarks, real estate, buildings, machinery, equipment, etc., of \$11,508,495.54, and tell us if you can in round figures, how much of that sum is represented by good will and trademarks?

A.—I could not answer offhand.

10 Q.—Well then, will you be good enough to prepare another compilation at your leisure, and file the same as Exhibit P-117, showing in detail for the parent Company and each of the subsidiaries, the amount carried by each of them for good will and trade marks, and which enter into this total sum of \$11,508,495.54, shown on the consolidated balance sheet of September 30th, 1928, Exhibit P-108?

A.—Yes.

Q.—And by the same Exhibit will you also show the depreciation which has been taken off each of these subjects in order to determine the principal figures on this Exhibit which you are to prepare?

20 A.—Yes.

Q.—These figures in each statement, and in the consolidated statement in connection with fixed assets are after depreciation, are they not?

A.—Yes.

30 Q.—In point of fact, had the trade marks been maintained in a commercial way, those which were originally entered into these items which we have been discussing? Take for instance, the trade marks in connection with the St. Hyacinthe Distillery. Are you still putting out goods under that name?

A.—Yes, I believe so.

Q.—All of them?

A.—I could not answer that.

Q.—Who would know?

A.—The Sales Department.

40 Q.—Will you look again at the consolidated balance sheet, Exhibit P-108, as at September 30th, 1928, and at the item entered against the fixed assets of \$11,508,495.54 to which your attention has already been drawn, and tell us if you can what that item amounts to upon the basis of the consolidated balance sheet as of September 30th, 1929?

A.—The consolidated balance sheet of 1929 has not yet been prepared.

Q.—Will you prepare a further memorandum then from the balance sheets as of September 30th, 1929, of the Alcohol Company and its associate Companies and give us the proper figure for the

JOHN G. LAWRENCE (for Plaintiffs), Examination-in-Chief.

Consolidated balance sheet as of September 30th, 1929, as to that item?

A.—I cannot do that until I get the McNish figures.

Q.—Basing yourself for the time being on the statement of McNish which you have produced this morning as Exhibit P-106?

A.—Yes.

10 Q.—I put it to you that in round figures, that amount is \$14,500,000 at present?

A.—I could not answer that.

Q.—Are you not able to say that that is the approximate amount?

A.—Oh, no. It might be.

Q.—Will you now file as Exhibit P-118 a compilation, which I now present to you, and showing the amount of the fixed assets first as contained in the consolidated balance sheet of September 30th, 1928, amounting to \$11,508,495.54 and showing as of date 20 September 30th, 1929, the same assets of \$14,543,745.37, and produce the same subject to verification?

Mr. Campbell: I submit the witness is entitled to check the figures. I think the witness should be allowed to check them at the adjournment.

Mr. McKeown: Subject to the witness checking them at the adjournment. If they turn out to be wrong, they will be rectified.

30 By Mr. McKeown:

Q.—Assuming for the purposes of the examination that the figures on the compilation, P-118, are correct, it would show an increase between September 30th, 1928, and September 30th, 1929, in the fixed assets of approximately \$3,000,000, would it not—over \$3,000,000?

A.—I think the statement is added up \$2,000,000 wrong.

40 Mr. Campbell: I think the witness is right when he states that it should be checked up. There is a difference of opinion between eminent accountants, my Lord.

Witness: It is wrong.

Mr. Campbell: I think my learned friend had better stick to his original question and let the witness furnish his own memorandum.

JOHN G. LAWRENCE (for Plaintiffs), Examination-in-Chief.

To put a memorandum before him of another accountant and for him to have to say that is right, I do not think is fair to the witness.

By Mr. McKeown:

Q.—Will you please check this statement P-118 against the statement of the individual Companies as of date September 30th,
10 1929, and the item of fixed assets?

A.—That would take longer than a few minutes.

Q.—They are right in front of you there?

A.—There are certain adjustments to be made. It cannot be run right off like that.

Q.—Just a minute, I will help you.

Mr. Campbell: If Your Lordship please, the witness is asked to make in the witness box, in five minutes, a very complicated calculation involving all sorts of entries and cross-entries. It seems to me
20 that is not fair to the witness, and I submit he is entitled to take his time to make it so that it may be accurate.

His Lordship: Perhaps he can do it, and in the meantime Mr. McKeown might examine another witness.

By the Court:

Q.—When can you have that prepared?

30 A.—I could have it done at the noon recess.

Mr. McKeown: I will suspend that part of the examination for the time being.

By Mr. Campbell:

Q.—Mr. Lawrence, do you understand what is wanted?

A.—Yes, sir.

40 By Mr. McKeown:

Q.—We are still on the point where you cannot tell us even in a general way as to the increase on the item of fixed assets from September 30th, 1928, to September 30th, 1929?

Q.—Will you now look at the consolidated statement of September 30th, 1928, and for the item for inventories styled in that item, stocks of alcohol, stocks of molasses and supplies?

JOHN G. LAWRENCE (for Plaintiffs), Examination-in-Chief.

Mr. Campbell: Those are different items. Alcohol is one item.

By Mr. McKeown:

Q.—They are all embraced in the expression “Inventories”, are they not?

10 A.—The stocks of alcohol and stocks of raw materials.

Mr. Campbell: They are shown differently.

By Mr. McKeown:

Q.—Will you prepare a further compilation, to be filed as Exhibit P-119, showing the difference, as shown on September 30th, 1928, in the two items, \$7,703,390.65, for the alcohol, and other supplies, \$1,162,465.83; and as the same figures work out upon the statement of the Alcohol Company and its subsidiaries on September 30th, 20 1929?

A.—Yes.

Q.—In the meantime, are you able to give us in a general way the increase or decrease in those items?

A.—No.

Q.—Could you, for the purposes of continuing your examination, concede that they amounted to over \$3,000,000?

30 Mr. Campbell: The witness has said that he has not got those figures.

Mr. McKeown: Very well, I will not press him.

Mr. Campbell: There are involved ten different Companies. Surely it is not fair to ask the witness to carry in his head complicated figures of ten different Companies. I submit that the witness is entitled to verify his figures.

By Mr. McKeown:

40 Q.—Are there any underlying liabilities of any of these subsidiaries existing at the present time—bonds?

A.—In Robert McNish and Company only.

Q.—Let us look at that McNish statement. The statement which you produced yesterday, and marked P-106, is an interim statement; or an informal statement of assets?

A.—It is our own office statement.

JOHN G. LAWRENCE (for Plaintiffs), Examination-in-Chief.

- Q.—Prepared where?
A.—Prepared in London.
Q.—In the McNish office?
A.—In the McNish office.
Q.—It has not yet gone through the Auditors?
A.—They are working on that now.
10 Q.—Looking at the statement, I see the whole statement is in sterling?
A.—Yes.
Q.—The capital structure consists of 6,528 Six Per Cent Cumulative Preference Shares of one pound each?
A.—Yes.
Q.—Is the dividend in arrears as to those Cumulative Preference Shares?
A.—There has never been any dividend declared on them.
Q.—From what date are the dividends cumulative? Is there
20 anything shown on this statement to indicate it?
A.—No.
Q.—Is it to your knowledge that no dividend has been declared by that Company for years, or paid on either preference or common shares?
A.—There has been no dividend paid since we took it over.
Q.—And that was when?
A.—July, 1927.
Q.—Can you tell His Lordship what has accumulated in the way
of arrears of preferred dividends?
30 A.—No.
Q.—There is nothing shown on this statement?
A.—No.
Q.—There must be something, if that is the proper description, that the stock is being cumulative preference stock? Have you a copy of the By-laws?

Mr. Campbell: Surely, my Lord, the witness is not going to be asked for an expression of opinion on a question of law, whether a
40 dividend on cumulative or preference stock that has never been declared or earned is a liability. I object to the question as illegal and improper.

Mr. McKeown: It impairs the position of the people who own the common stock. They will never get a copper on that common stock until the cumulative preference shares are paid, and it takes sixteen years to make it one hundred per cent.

JOHN G. LAWRENCE (for Plaintiffs), Examination-in-Chief.

Mr. Campbell: This is an inter-office statement between the London office of McNish and the office in Montreal. Lord Shaughnessy, although he happens to be a Director of McNish, had nothing to do with the administration of McNish. It is a British Company administered in London. How can Your Lordship be helped in solving the problems as to whether Lord Shaughnessy's administration has been good or bad by going into the affairs of McNish in London.

10 Surely we are not going to be held responsible for what is going on there. I submit it is not relevant to this controversy. McNish was bought during the lifetime of Sir Mortimer Davis on his personal instructions and he believed greatly in its future. Whether he was right or wrong time will tell, but we are not responsible, and I submit it is not relevant.

Mr. McKeown: "Qui s'excuse s'accuse." This is one of the matters on which we could never get any information about and my learned friend is suggesting that they are not responsible when ninety

20 per cent of this McNish Corporation is owned by Alcohol and they have the nominating of the Directors. If they have kept men in office who should not have been there, they are responsible. If they are not responsible, where does the responsibility lie. Are they going to blame Lady Davis for that condition.

Mr. Campbell: We have not blamed Lady Davis.

Mr. McKeown: One of the complaints we have made is that we

30 have always been denied information about McNish.

His Lordship: Is the Court sitting for the purpose of enlightening you on the affairs of McNish and Company, or is it trying the case of whether Lord Shaughnessy is competent.

Mr. McKeown: Your Lordship is trying the case to find out whether Lady Davis was properly treated by her co-Directors and Executors in their refusal to give her any information on the affairs of this Company.

40 Mr. Campbell: I submit my learned friend may bring evidence if he can prove that there was a refusal to supply information. If Lady Davis had asked for information that she was entitled to get and it was refused, that may be legitimate evidence, but I submit that is not the evidence my learned friend is offering. He is asking the witness to criticize the management of a British Company which Sir Mortimer selected to associate with Canadian Industrial Alcohol, rightly or wrongly, but that is not the fault of the defendants. Sir

JOHN G. LAWRENCE (for Plaintiffs), Examination-in-Chief.

Mortimer's judgment as to the future of McNish may be perfectly right, but at this moment we are not able to judge. Surely it is not the fault of the defendants, and my submission is that it has nothing to do with the defendants.

Mr. McKeown: If Sir Mortimer had lived, the Company would never have been in the position it is now. We submit that the Estate
10 under the defendants' control has been improperly administered and that we have been denied information and the enormity of the offence perpetrated on Lady Davis is as to the information they have refused to tell her about.

His Lordship: Go on with the examination.

By Mr. McKeown:

Q.—You don't know?

20 Q.—Have you a copy of the By-laws of the McNish Company?

A.—I think so.

Q.—Will you produce the By-law dealing with the preference shares as Exhibit P-120?

A.—Yes.

Q.—Apart from the preference shares of McNish which we have been referring to, there are 10,000 ordinary shares of one pound each?

A.—Yes.

Q.—Amounting to ten thousand pounds?

A.—Yes.

30 Q.—Is it a fact that ninety per cent of that common stock is held by Canadian Industrial Alcohol?

A.—Yes.

Q.—Do you know what was paid for these shares, the ninety per cent control?

A.—Yes.

Q.—How much?

A.—Fifty thousand pounds.

Q.—When was that?

A.—In July, 1927, I think.

40 Q.—And annexed to and forming part of the balance sheet of the McNish Company, as of date September 30th, 1927, is a profit and loss statement?

A.—Yes.

Mr. Holden: It is not a balance sheet?

Mr. McKeown: It says balance sheet.

JOHN G. LAWRENCE (*for Plaintiffs*), *Examination-in-Chief*.

Mr. Holden: It is preliminary.

By Mr. McKeown:

Q.—A preliminary balance sheet, if you wish. Mr. Holden is quite right—showing that the operations of McNish in the year 1928-1929 showed a deficit of £105,256-14.7?

10

Mr. Campbell: I object to the form of the question. The document is in the record. What possible interest can my learned friend possibly have in proclaiming whether the statement in particular shows a profit or a loss? When he comes to argue the case he will point it out to Your Lordship. Why is it necessary to put a question of that kind to the witness and have it proclaimed from the house-tops? It seems to me the whole purpose of this examination is unfair to the defendants. The imputation is that they are responsible for a state of things which they did not create, for which they have no responsibility in our submission, and I contend that this question is illegal and irrelevant to this controversy.

20

Mr. McKeown: Here is a statement, a mass of figures. Everybody may not be as well informed as Mr. Campbell is on accountancy. I think to have this in condensed form would be very helpful to all concerned because we would know what it means then, and if my learned friend says it does not mean what we say it means, he will have the opportunity to show Your Lordship it means something else.

30

His Lordship: It may simplify my work in the end. I will allow the question.

Mr. Campbell: The defendants respectfully except to Your Lordship's ruling.

A.—Yes.

By Mr. McKeown:

40

Q.—And does the balance sheet show what the position was prior to that date so far as the Company was concerned?

A.—Yes.

Q.—What was it?

A.—A deficit of £89,755-6-4.

Q.—Making a total deficit to September 30th, 1929, of how much sterling?

JOHN G. LAWRENCE (for Plaintiffs), Examination-in-Chief.

A.—£195,012-0-11.

Q.—In close proximity to a million dollars?

A.—Practically, yes.

Q.—Will you turn up the Minute book of Canadian Industrial Alcohol (perhaps you can tell us without doing so) and say what instructions were given for the voting of the proxy of Canadian Industrial shares held in the McNish Company at the last annual meeting of McNish? Were the shares of Canadian Industrial Alcohol in Canada voted at the last annual meeting of McNish?

A.—Yes.

Q.—By whom?

A.—Either by Lord Shaughnessy or Mr. Lauster.

Q.—Either one or the other attended the meeting in Glasgow?

A.—I think so.

Q.—When was that meeting held?

Mr. Campbell: Which meeting?

Mr. McKeown: The McNish meeting.

Witness: I think it was about May.

By Mr. McKeown:

Q.—Of what year?

A.—1928.

Q.—You mean 1929?

A.—May, 1929, yes.

Q.—Lord Shaughnessy was abroad in May, 1929, was he not?

A.—I think so.

Q.—When he returned to Montreal, did he make any report to the Directors of Canadian Industrial Alcohol in connection with McNish, as shown by the Minute book of the Canadian Industrial Alcohol Company?

By the Court:

Q.—What was the first meeting in June?

A.—The 21st of June, my Lord.

When I write up the Minutes in this book, I put in the resolutions. I do not put in any discussions which take place.

By Mr. McKeown:

Q.—Is there any notation whatsoever in that Minute book—

JOHN G. LAWRENCE (for Plaintiffs), Examination-in-Chief.

take the meeting His Lordship suggested on June 21st, 1929, concerning the subject of McNish?

A.—No. If a discussion took place on that, it would not be entered in the Minute book.

Q.—Anyway, there is nothing in the Minute book?

A.—No.

10 Q.—Is there anything in the Minute book at any later meeting within the next three months, or before the resignation of these outside Directors, put through I think on the 24th of July?

A.—No.

Q.—Is there any reference to the subject at all from that time forward up to the time of the annual meeting?

A.—There would not be anything in the Minute book at all unless it was in the form of a resolution.

Q.—And there is nothing in the form of a resolution?

A.—No.

20 By the Court:

Q.—Do you remember having heard any statement from Lord Shaughnessy at any of the meetings which took place, or at the meeting of the 21st of June?

A.—I could not remember that meeting specifically, my Lord, but I have heard Lord Shaughnessy tell the Directors about his trip, and about conditions.

30 By Mr. McKeown:

Q.—What do you mean by conditions? What did he say exactly?

A.—I cannot remember what he said.

Q.—But did he tell them there was a million dollars deficit in the Company? Did you hear him make any approximate statement of that kind?

A.—I do not recall that.

Q.—Who were the Directors that he told of his trip, the incident to which you refer?

40 A.—I am not referring specifically to that trip.

Q.—That is the one I am asking you about, as it happens. Did you hear him say anything after the trip he got back from in June?

A.—I don't remember.

Q.—So that your former statement that he spoke to the Directors in your hearing of general conditions of McNish would not refer to the conversation which took place after he returned from his trip last summer?

JOHN G. LAWRENCE (for Plaintiffs), Examination-in-Chief.

A.—Well, he could not have spoken about the trip before. It would be after he came back that he spoke to the Directors.

Q.—Let us get this clear. Lord Shaughnessy went to Europe in the summer of 1928—

Mr. Campbell: 1929.

10 By Mr. McKeown:

Q.—And he also went again in April, 1929, and remained until June, 1929. Do you want His Lordship to understand that the conversation in general terms to which you have referred occurred after he returned in 1929, or after he returned in 1928?

A.—Probably on both occasions.

Q.—Probably won't do?

A.—I cannot remember specific conversations.

20 Q.—You don't remember which it was, is that it?

A.—No.

Q.—Can you tell us who were the Directors to whom he made his declarations?

A.—The Directors would be the Directors present at the meeting.

Q.—Can you remember the individuals who were present, because there were plenty of meetings at which there were only three there. Do you mean that he spoke to Mr. Lauster and Mr. Wilmore, the two employees?

30 A.—If he made any statements at the Directors' meeting, he was making the statement to the Directors who were present at the meeting.

Q.—I will put it to you another way. Can you vouch for the statement that at a Directors' meeting at which either Mr. Joseph, Mr. Marler, Mr. Decary or Colonel Gaudet was present, Lord Shaughnessy ever referred to McNish after his return in June, 1929?

A.—I could not say that.

40 Q.—In the statement Exhibit P-99, the Annual Statement of the Alcohol Company as at September 30th, 1929, where is this McNish asset carried? Is it in stocks on hand and at cost?

A.—It is in "Shares in Associated Companies and Other Investments".

Q.—A total item of \$5,219,717.89?

A.—Yes.

Q.—Will you prepare and file, as Exhibit P-121, the detail of that item, including the McNish asset?

A.—Yes.

JOHN G. LAWRENCE (for Plaintiffs), Examination-in-Chief.

Q.—Do you carry the McNish asset as the shares of the Company—the 90 per cent shares which are owned by Alcohol? It is carried as shares?

A.—It is carried at the value.

Q.—In other words, what do you show on your statement?

A.—The cost of the stock.

10 Q.—9,000 £1 shares, at a cost of \$250,000?

A.—We show 90 per cent of the preferred and common stock.

Q.—Shown at what sum?

A.—Approximately £50,000.

By Mr. Campbell:

Q.—That would cover both preferred and common?

A.—Yes.

20 By Mr. McKeown (continuing):

Q.—Your statement is kept in dollars? What do you show it at? Approximately \$250,000, is it not?

A.—Approximately.

Q.—Has that item been written down in any manner for the purposes of the statement Exhibit P-99 as of date September 30th, 1929?

A.—No.

Q.—It is still carried at \$250,000, or thereabouts?

30 A.—Yes.

Q.—Have you the statement of the Alcohol Company for September 30th, 1928?

A.—I think it has been produced.

Q.—It is the statement Plaintiffs' Exhibit P-111?

A.—Yes.

Q.—The statements for both years start off with a synopsis profit and loss account?

A.—Yes.

40 Q.—At what amount are the profits for the year ending September 30th, 1928, shown on Exhibit P-111?

A.—\$3,136,680.14.

Q.—At what amount are the profits for the next year, ending September 30th, 1929, shown on Exhibit P-99?

A.—\$2,073,977.46.

Q.—A difference of upwards of \$1,000,000?

A.—Yes.

Q.—That is, decreased profits in the last fiscal year?

JOHN G. LAWRENCE (for Plaintiffs), Examination-in-Chief.

A.—Yes.

Q.—The last fiscal year, ending September 30th, 1929, you had to take into account, had you not, a new item, of \$1,400,000 or thereabouts, in connection with the Sales Tax Claim?

A.—Yes.

Q.—What was the amount?

A.—\$1,404,000.

10 Q.—That is an item which had not been taken into account in any previous statement?

A.—Yes.

Q.—And it is an item which ran over some period of time?

A.—Since about 1922.

Q.—It appears in the statement of Canadian Industrial Alcohol?

A.—Yes.

Q.—In a word, what was the nature of it? It was a claim by the Federal Government, was it not?

20 A.—Yes.

Q.—What was the nature of it?

A.—Sales Tax on duty paid exports.

Q.—Would that mean a tax on the sales from the Alcohol Company, as the operating company, to Consolidated Distilleries as a vending Company?

A.—Sales by the Companies to the customers.

30 Q.—At that time were the sales put through in the manner you have already explained to us: the distilling being done by Canadian Industrial Alcohol, that Company selling the product to Consolidated Distilleries, and Consolidated Distilleries selling to the customers?

A.—Yes.

Q.—This claim arose, as you say, on the sale of the alcohol to the customers?

A.—Yes.

Q.—And on what you call "Duty Paid Export"?

A.—Yes.

40 Q.—Let us clear up this matter of duty paid export? All this alcohol is retained in the distillery in bond from the time it is distilled?

A.—Yes.

Q.—Excise bond?

A.—Yes.

Q.—In order to release the alcohol from the excise bond is there not an excise duty of \$9.00 per gallon?

A.—Yes.

Q.—Which goes to the Federal Government?

JOHN G. LAWRENCE (for Plaintiffs), Examination-in-Chief.

A.—Yes.

Q.—If the alcohol is released for consumption within Canada—say a sale to one of the Liquor Commissions—there is an excise duty of \$9.00 per gallon?

A.—Yes.

Q.—Which is payable by whom? The vendor—the distillery?

A.—By the distillery.

10 Q.—If, on the other hand, that liquor is not to be used for consumption in Canada, but is to go to South America, or any country other than the United States, it is what they call export?

A.—Yes.

Q.—And, the \$9.00 excise duty is not payable upon that liquor?

A.—Not if it is shipped out in bond.

Q.—It is shipped out in bond, and being in bond, the moment it is landed the bond expires and there is no excise duty on it. Is that the position?

A.—That is right.

20 Under the present arrangements, and the arrangements which have prevailed for some time past, if the liquor is destined for the United States, it is what you call duty paid export liquor. Is that right?

A.—Yes.

Q.—That liquor leaves the excise bond, goes to a dock somewhere in Canada, is loaded on board a vessel, and is cleared for a United States port, is it not?

A.—I believe so, yes.

30 Q.—And on all such liquor handled in that way the Government insists upon and collects the \$9.00 Excise Duty?

A.—Yes.

Q.—And that is what you call Duty Paid Export?

A.—Yes.

Q.—And that applies not only to your distillery but to all the distillery industry in Canada?

A.—Yes.

Q.—You have told us the Sales Tax was an accumulation claimed by the Government upon this Duty Paid Export liquor?

40 A.—Yes.

Q.—And it had run over the period of years you mentioned?

A.—Over six years.

Q.—And eventually culminated in a claim which is taken into the accounts of Canadian Industrial Alcohol at \$1,404,000 in the last fiscal year?

A.—Yes.

Q.—Was that quite a regular way of taking it into the Canadian

JOHN G. LAWRENCE (*for Plaintiffs*), *Examination-in-Chief*.

Industrial Alcohol accounts, if I am correct in understanding that the sales were actually made by Consolidated Distilleries? Should the claim not rather have been against the Corporation selling and delivering the liquor? Or, upon which Corporation was it made, if you know?

A.—The claim was made against the Consolidated Distilleries.

10 Q.—Is it entered in the accounts of Consolidated Distilleries?

A.—No, sir.

Q.—It was assumed, then, by Canadian Industrial Alcohol to the exoneration of Consolidated Distilleries?

A.—Yes.

By Mr. Campbell:

Q.—Did Canadian Industrial Alcohol own all the stock of Consolidated Distilleries?

20 A.—Yes.

By Mr. McKeown (continuing):

Q.—When you came to deal with that item of \$1,404,000, I take it you proceeded to deduct it from the Company's prior surplus?

A.—Yes.

Q.—Thereby cutting the surplus as entered from \$4,795,421.08 to \$3,392,521.08?

A.—Yes.

30 Q.—Then how much did you take into your operating results for the year 1928-29? \$500,000?

A.—\$475,000.

Q.—And the balance you set up as a liability against the Company, as it now appears, of \$929,000?

A.—Yes.

Q.—You made arrangements with the Government to pay that off in two instalments, I think?

A.—Yes.

Q.—One of which is maturing shortly?

40 A.—Yes.

Q.—And, another in a year's time?

A.—Yes, in a year's time.

Q.—Apart from that claim which appears on the statement, is it not true the Dominion Government has asserted further claims against Canadian Industrial Alcohol in connection with bonds for clearances?

A.—Yes, sir.

JOHN G. LAWRENCE (for Plaintiffs), Examination-in-Chief.

Q.—How much do those claims amount to?

A.—Their claim is for approximately \$1,400,000.

Q.—\$1,400,000 additional?

A.—Yes.

Q.—Just what is the nature of that claim?

10 Mr. Campbell: Surely the witness should not be asked to discuss the merits or demerits of the claim of the Federal Government, which is under discussion and which is not admitted. I submit to Your Lordship it is quite unfair. We are not proposing to fight the battle of the Federal Government, either for or against it, in this case, and I submit the witness should not be asked about matters in controversy with the Federal Government.

Mr. McKeown: The witness is not going to discuss the claim at all; he is only going to state the fact that the claim is made.

20 Mr. Campbell: He has stated that fact, and I would ask my learned friend to stop there. I submit that to pursue the subject further is not relevant.

His Lordship: It is important to your case that it should be said the claim is contested.

30 Mr. Campbell: I would not like to be understood as trying to prevent evidence of the fact that there is a claim, and that it is contested. My objection is as to my learned friend going into a discussion of the merits of the claim.

Mr. McKeown: But, I do not intend to do anything of the kind.

His Lordship: Lady Davis is not any more interested than you are in that.

40 Mr. Campbell: That is what I would have supposed, and that is why I do not think it is legal that the witness be asked to discuss the merits of a contested claim which is still unsettled.

Mr. McKeown: We are not discussing the merits of it. I am on your side in that.

Mr. Campbell: Then, let us agree that the discussion stop.

Mr. McKeown: We only want the light to shine, and let His

JOHN G. LAWRENCE (for Plaintiffs), Examination-in-Chief.

Lordship see the position of this Company and whether it is under the management it should have or whether it needs new management.

By Mr. McKeown (continuing):

10 Q.—What is the nature of the claim as set up by the Government?

Mr. Campbell: That is the question I think is objectionable. Why should the witness be asked to define the nature of the claim set up by the Federal Government? When the Government makes its claim, it will define it, and if it is contestable we will contest it. Surely the witness should not be asked to define the claim or make any statement on it. It seems to me it is quite unfair. The Government has made a claim, and it is contested. I submit it is not relevant to this controversy to ask the witness to go into the merits or demerits of the claim.

Mr. McKeown: But, we have a statement which we find is not at all prepared in accordance with the Act. If there are contingent liabilities, they should appear.

Mr. Campbell: Would you consider it a contingent liability because the Federal Government has a claim which is contested?

30 Mr. McKeown: I do not think that is the point at all.

His Lordship: I think we will adjourn now, and perhaps you may be able to agree upon the point before we resume.

(And it being 12.45 o'clock, the further examination of the witness is continued until 2.30 o'clock in the afternoon).

And further for the present Deponent saith not.

40

(And at 2.30 o'clock in the afternoon personally came and re-appeared the said witness, J. G. LAWRENCE, and his examination was continued as follows:

Mr. McKeown: The question which had been asked, and which was unanswered when we adjourned, was as to the nature of this

JOHN G. LAWRENCE (for Plaintiffs), Examination-in-Chief.

additional claim of \$1,400,000 set up against the Industrial Alcohol Company by the Government. My learned friend and I had some discussion, but I do not remember whether Your Lordship dealt with the matter formally or whether the discussion was still open.

10 His Lordship: When we adjourned you were to take up the question of whether it would go into the record or not.

Mr. Holden: My firm are the attorneys for the Defendants in those Actions, and I can assure Your Lordship it is not a simple matter than a layman can speak to.

His Lordship: Is there a lawsuit by the Government against the Company?

Mr. Holden: Yes, Your Lordship.

20 Mr. McKeown: We ought to have some particulars of it in this record.

Mr. Holden: There are lawsuits for well over a million dollars in the Exchequer Court, and they are defended emphatically. There are third party proceedings against our customers who were to export the goods and who gave us guarantees. There are the Export B-13 Forms which were issued, which on their face at least (and we say, effectively) permit the export. The whole thing is very seriously
30 contested, and there are third party proceedings now pending.

His Lordship: Whatever the witness might say would be far less reliable (and I mean no offence) than the filing of the Exchequer Court proceedings, if you want to file them. If those proceedings are filed you will have the whole contestation.

Mr. Campbell: I do not think the witness should be asked to say anything which before any Court might be construed as an admission or anything else.
40

His Lordship: If there are any such documents as a Statement of Claim, a Defence, and Third Party Proceedings, they might be filed.

Mr. Holden: There are not only Third Party Proceedings, but there is an Appeal, still pending, from a decision on the Third Party Proceedings. It is a very complicated mass of litigation.

JOHN G. LAWRENCE (for Plaintiffs), Examination-in-Chief.

His Lordship: Is there a Joint Case filed on the Appeal Proceedings?

Mr. Holden: The Appeal Proceedings were argued about two weeks ago, and are under advisement.

His Lordship: Would not the filing of copies of the Proceedings
10 cover the point?

Mr. Holden: They would not help on the main issue. The Appeal is only on the Third Party issues.

His Lordship: In any event the parties may decide what they want put in.

Mr. McKeown: We will file, as Exhibit P-122, copies of the Statements of Claim, and of Defence, and of the Third Party Proceedings.
20

Mr. Holden: In pointing out the issues to Your Lordship I did not want to be taken as admitting it has any relevancy to this case, or has any reason for encumbering the record here with those voluminous proceedings.

His Lordship: One document more or less will not make much difference.

30 By Mr. McKeown (continuing):

Q.—Have you been able to assemble during the adjournment any of the data which was left open this morning?

A.—Not completely. It is in course of preparation now.

Q.—Will it be here during the course of the afternoon?

A.—If it is finished, yes.

Q.—In any event, none of it is now available?

A.—No.

40 Q.—I omitted to ask you as to the Directors of the several subsidiary or Associate Companies of Canadian Industrial Alcohol. Am I to take it that each of those Companies is officered by the nominees—in the way of Directors and officers—of Canadian Industrial Alcohol?

A.—Yes.

Q.—And is the totality of the stock of each of those Companies

JOHN G. LAWRENCE (for Plaintiffs), Examination-in-Chief.

owned by Canadian Industrial Alcohol, with the exception of McNish?

A.—Yes, with the exception of McNish.

Mr. Campbell: The McNish exception would apply to the whole answer?

10 Witness: Yes.

By Mr. McKeown (continuing):

Q.—Will you prepare, and produce as Exhibit P-123, a statement or memorandum showing who are the Directors and Officers of each of the subsidiary Companies?

A.—Yes.

Q.—Is Lord Shaughnessy President of all the subsidiaries?

20 A.—No, sir.

Q.—Is he an officer of any of them?

A.—Yes, he is.

Q.—He is not President of Consolidated Distilleries?

A.—No.

Q.—Who is?

A.—Mr. Lauster.

Q.—Was Lord Shaughnessy ever President of Consolidated Distilleries?

A.—Yes.

30 Q.—Until when?

A.—I think about two years ago.

Q.—Speaking generally are the Directors of the subsidiaries taken from among the present Directors of Canadian Industrial Alcohol?

A.—Yes, sir.

Q.—With the exception of McNish?

A.—With the exception of McNish.

40 Q.—The statements which you have exhibited in connection with the subsidiaries never came before the Shareholders of the Alcohol Company, except in so far as they are reflected by the Statement of Alcohol itself?

A.—No, sir.

Q.—In other words, the Shareholders of the Alcohol Company were never sent a statement of Consolidated Distilleries, for instance?

A.—No.

Q.—Or of any of the other subsidiaries?

JOHN G. LAWRENCE (for Plaintiffs), Examination-in-Chief.

A.—No.

Q.—Was it the practice at one time to hold Executive Meetings of Canadian Industrial Alcohol?

A.—Yes.

Q.—Was there an Executive Committee appointed in some way or other?

A.—Yes.

10 Q.—How was the appointment made?

A.—By the Directors of the Company.

Q.—By resolution?

A.—By resolution.

Q.—Did the Executive Committee as thus composed comprise persons other than Directors? I mean, heads of departments who were not actually Directors of the Alcohol Company?

A.—I do not think so. I think, if I remember rightly, the Executive Committee was composed entirely of Directors.

20 Q.—Did they associate the heads of the departments with them at the Executive Meetings?

A.—Sometimes, yes.

Q.—When was the last Executive Committee appointed?

A.—The last Executive Committee Meeting was held January 20th, 1925.

Q.—Since that date has there been any Executive Committee acting in connection with Alcohol?

A.—There is no provision for any Executive Committee now in our By-laws.

30 Q.—Were the By-laws amended at any time?

A.—Yes.

Q.—When?

A.—When the new Company was incorporated.

Q.—That would be in 1924?

A.—1924.

Q.—Since that time there has been no provision for an Executive Committee?

A.—No.

40 Q.—In point of fact has an Executive Committee acted since the new Company?

A.—No.

Q.—You told us the Executive Committee met on January 20th, 1925?

A.—I am afraid that is a mistake on my part in writing the Minutes of the Meeting of Heads of Departments. I suppose I inadvertently called them Minutes of an Executive Committee up until January 20th, 1925, when I saw my mistake.

JOHN G. LAWRENCE (for Plaintiffs), Examination-in-Chief.

Q.—What did you do from then on?

A.—Called them Minutes of Meetings of Heads of Departments.

Q.—Perhaps I have the wrong name. Following January 20th, 1925, did the heads of departments meet?

A.—Yes.

Q.—How often?

10 A.—Once a week.

Q.—Was that a practice followed in accordance with instructions of Sir Mortimer Davis?

A.—I believe so, yes.

Q.—How long did such Meetings continue? Up to what time?

A.—I do not remember offhand.

Q.—Did you keep Minutes of the deliberations?

A.—Yes.

Q.—Did you keep them in the Minute Book?

20 A.—No.

Q.—In what did you keep them?

A.—**In a Minute Book.**

Q.—Not in the Directors' Minute Book?

A.—No.

Q.—Have you the Minute Book with you?

A.—No.

Q.—Have you it at the office?

A.—Yes.

30 Q.—Were Minutes regularly kept of each of those deliberations of the Heads of Departments?

A.—Yes.

Q.—Were those Meetings of the Heads of Departments held up to the time of Sir Mortimer's death?

A.—I think so.

Q.—Were they continued after his death?

A.—I think so.

Q.—For how long?

A.—I do not remember the dates.

Q.—Have you had any in the last year?

40 A.—I could not answer that offhand.

Q.—Will you be good enough to bring with you on Monday the Minute Book of those Meetings?

A.—Yes, I will.

Q.—Did you attend those Meetings as Secretary of the Company?

A.—Yes.

JOHN G. LAWRENCE (for Plaintiffs), Examination-in-Chief.

Q.—You were in charge of and responsible for the accountancy of the Alcohol Company and all the subsidiaries?

A.—And some of the subsidiaries only.

Q.—Most of them?

A.—Yes.

10 Q.—Did you attend those Meetings simply as Secretary, or as Head of your particular Department?

A.—In both capacities.

Q.—Who else attended those Meetings? The Heads of all the Departments?

A.—The Heads of all the Departments.

Q.—In that way, I suppose they took in some of the officers who were actually Directors?

A.—Yes.

Q.—Did Lord Shaughnessy attend them?

A.—Yes.

20 Q.—Mr. Lauster?

A.—Yes.

Q.—Mr. Kelly?

A.—Yes.

Q.—He was in charge of the Sales Department at all times, while he was with the Company?

A.—Yes.

Q.—Did Colonel Gaudet attend them?

A.—Yes.

30 Q.—He was in charge of the manufacturing?

A.—Yes.

Q.—Did Mr. Marler attend those meetings?

A.—Yes.

Q.—Mr. Decarie?

A.—No, sir.

Q.—Mr. Joseph?

A.—No.

Q.—Did Mr. Turnbull attend?

A.—Yes.

40 Q.—He was Treasurer of the Company?

A.—Yes.

Q.—And, in charge of the purchasing?

A.—Yes.

Q.—What other officials of the Company attended?

A.—Mr. Kessner.

Q.—What was his Department?

A.—Sales Manager of Industrial Alcohol.

JOHN G. LAWRENCE (for Plaintiffs), Examination-in-Chief.

Q.—Mr. Kessner was in charge of the sales of alcohol used for non-beverage purposes?

A.—Yes.

Q.—Can you not give the Court any idea of when those Meetings of the Heads of Departments were given up?

A.—I do not remember the dates.

10 Mr. Campbell: We will get the Minute Book, which will give the information definitely.

By Mr. McKeown (continuing):

Q.—By whose instructions were they discontinued? Upon whose authority were those meetings discontinued?

A.—I imagine it was on the instructions of the President.

Q.—You mean, Lord Shaughnessy?

20 A.—Yes.

Q.—And, that would be subsequently to Sir Mortimer's death?

A.—I believe so.

Q.—Lord Shaughnessy left for Europe at the beginning of April, 1929. Do you remember that?

A.—I remember he left for Europe, but I do not remember the date.

Q.—Will you look up your Minute Book and see if any Meeting of the Directors was held in the month of April, 1929?

30 A.—No, sir, there was no Meeting in April, 1929.

Q.—Your By-laws call for a monthly meeting, do they not? I think you told us so earlier in your examination.

A.—(Witness reading):

“Directors' Meetings may be held as often as the business of the Company may require, and may be called by the President or any two members.”

Q.—Is that the end of it?

40 A.—(Witness reading):

“At any Directors' Meeting, three Directors present. . . .”
That is in reference to the quorum, and so on.

Q.—There was no Meeting held in April, 1929?

A.—No.

Q.—Was there a Meeting held in May, 1929?

JOHN G. LAWRENCE (for Plaintiffs), Examination-in-Chief.

A.—Yes.

Q.—On what date?

A.—May 22nd, 1929.

Q.—What was the business transacted at that Meeting?

Witness: Do you want me to read the Minutes?

10 Counsel: No. Just tell me the business that was transacted.

A.—The appointment of Mr. E. Lauster as the Company's proxy to vote the shares of Robert McNish & Company, Limited, owned by this Company at any Meeting of Robert McNish & Company, Limited.

Q.—Was that all the business that was transacted?

A.—There was also the opening of a checking account with the Canadian Bank of Commerce at Lindsay, Ontario.

20 Q.—What was the next Meeting of Directors held after that?

A.—June 21st, 1929.

Q.—That was after Lord Shaughnessy's return?

A.—Yes.

Q.—Before Lord Shaughnessy left for Europe did you not have instructions from him not to hold any Meetings of the Directors in his absence?

A.—I do not recall any such instructions.

Q.—You do not recall that?

A.—No.

30 Q.—And, as a matter of fact, apart from the Meeting to authorize the proxy to vote the McNish stock and to open a Bank account with the Canadian Bank of Commerce at Lindsay, there was no Meeting of the Directors held in Lord Shaughnessy's absence?

A.—No, sir.

Q.—Have you the monthly statement submitted to the Directors at the Meeting in June, 1929?

A.—Yes.

40 Q.—Will you look at this statement, Summary of Business for May, 1929, and will you say whether it was submitted to the Directors at their Meeting in June, 1929?

A.—Yes.

Q.—You see an item here "Accounts Payable, \$1,282,544"?

A.—Yes.

Q.—Does that include an overdraft to the Bank?

A.—Yes.

Q.—Of how much?

JOHN G. LAWRENCE (for Plaintiffs), Examination-in-Chief.

A.—\$973,000.00.

Q.—Was that the customary way of showing Bank overdrafts in the statements to the Directors, under the title of “Accounts Payable”?

A.—That was the way it was being done at that time.

Q.—What do you mean by “at that time”? Just for the months of May and June? What had been the previous practice?

10 A.—During that year it was shown as Accounts Payable.

Q.—During what year? Beginning when?

A.—February, 1929, I think.

Q.—Prior to February, 1929, how was the Bank indebtedness shown on the Directors Statements?

A.—It was shown as Bank overdraft.

Q.—Do you know of any reason for changing the form of that indebtedness into “Accounts Payable”?

A.—No, sir.

20 Q.—Will you prepare a copy of this Directors’ Statement for the month of May, 1929, which was placed before the Directors at the June Meeting, and will you file it as Exhibit P-124?

A.—Yes.

Q.—Upon whose authority did the form of the Monthly Statements to the Directors change, in the connection we have just been discussing: that is, including the overdraft to the Bank under the item “Accounts Payable”?

A.—Upon the instructions of the President.

Q.—Lord Shaughnessy?

30 A.—Lord Shaughnessy.

Q.—Will you tell His Lordship who attended the Monthly Meeting of the Directors held in February?

A.—Lord Shaughnessy, E. Lauster, and Colonel Gaudet.

Q.—And, who attended the March Meeting?

A.—Lord Shaughnessy, Archibald Kelly, E. Lauster, Colonel Gaudet, Hon. Herbert M. Marler, and Henry Joseph.

Q.—And, who attended the April Meeting?

A.—There was no Meeting in April.

40 Q.—What was the date of Mr. Joseph’s resignation?

A.—June 12th, 1929.

By Mr. Campbell:

Q.—Is that the date of the letter of resignation?

A.—Yes, the date of the letter of resignation.

JOHN G. LAWRENCE (for Plaintiffs), Examination-in-Chief.

By Mr. McKeown (continuing):

Q.—Have you with you the stock registers and ledger of the Company?

A.—They are available at the Crown Trust Company on telephone call. There are about twelve ledgers, and an enormous number of transfer registers.

10 Q.—Will you kindly give instructions to have brought down here the stock registers and ledgers affecting the accounts of Mr. Henry Joseph, Honorable Herbert M. Marler, Colonel Gaudet, Mr. E. R. Decarie, Lord Shaughnessy, and Baroness Shaughnessy?

A.—Yes.

Mr. Campbell: By Baroness Shaughnessy, Mr. McKeown means Lord Shaughnessy's mother, not his wife.

20 A.—Do you want the entire history of these accounts?

Q.—I would like the transfers and the accounts as closed at present. Is there a Stock Ledger kept?

A.—There is a stock ledger, there, and it shows the transactions in that account, but the transfer sheets will be the number given through a number of years.

Q.—Is this not the way of it: this Ledger is kept in loose leaf?

A.—Yes.

Q.—When the accounts use up the page and there is still stock remaining, they take a new sheet and put it in the binder?

30 A.—Yes.

Q.—If the account is closed, even if the page is not filled, they put it in the binder?

A.—Yes.

Q.—So the current ledger plus the binder will show the position of the accounts, the names of which I have given you?

A.—Yes, there is the Stock Ledger.

40 Q.—I want the Stock Ledger sheets out of the Stock Ledger that are now in the Stock Ledger or in the transfer and which were put in as a binder?

A.—Yes.

Q.—Perhaps you can tell me from memory for the purposes of this examination how many shares Mr. Henry Joseph had?

A.—He had, so far as I know, 3,840 shares.

Q.—As at what date, Mr. Lawrence?

A.—As at the beginning of 1929.

Q.—Did he retain them? Did he retain his holdings?

JOHN G. LAWRENCE (for Plaintiffs), Examination-in-Chief.

- A.—No, sir.
Q.—Did he retain any part of them?
A.—No, sir.
Q.—Is that the whole lot?
A.—Yes, sir.
Q.—Under what date or between what dates?
10 A.—Between the 14th of January and the 13th of June, 1929.
Q.—Have you a memorandum to show the dates upon which the
stock was let out?
A.—Yes.
Q.—Will you produce it as Exhibit P-125?
A.—I will produce a copy. It is the only record I have.
Q.—Produce a copy and mark it P-125?
A.—Yes.
Q.—How many shares did Mr. Marler have in the Company
while he was a Director?
20 A.—400 shares.
Q.—Has he retained those shares?
A.—No, sir.
Q.—Has he retained any?
A.—No, sir.
Q.—All sold?
A.—Yes, sir.
Q.—Will you include in Exhibit P-125 memorandum respecting
the sale of Mr. Marler's stock, giving the date?
30 A.—Yes, sir.
Q.—How many shares did Colonel Gaudet have in Canadian
Industrial Alcohol while he was a Director of the Company?
A.—2,860.
Q.—These were holdings which Colonel Gaudet had while he
was a Director of the Company?
A.—Yes.
Q.—Did he retain his shares in the Company?
A.—No, sir.
Q.—Did he sell them all?
40 A.—Yes, sir.

By the Court:

- Q.—When?
A.—During May and September, My Lord.
Q.—1929?
A.—1929.

JOHN G. LAWRENCE (for Plaintiffs), Examination-in-Chief.

Q.—And Mr. Marler?

A.—Mr. Marler, in August and September, 1929.

By Mr. McKeown, K.C.:

10 Q.—Will you also include in the statement Exhibit P-125 a memorandum covering the holding of shares of Colonel Gaudet and the sale of the same made by him?

A.—Yes.

Q.—Can you tell me the number of shares held by Mr. E. R. Decary in the Company?

A.—No, sir.

Q.—I suppose you cannot tell me either whether he has sold the shares?

A.—No, sir.

Q.—From your personal knowledge?

20 A.—No, sir.

Q.—Will you verify that fact and also show on the same Exhibit P-125 the holdings of shares of Mr. Decary while a Director of the Company and whether or not the same have been sold, and if so, the date upon which he sold them?

A.—Yes.

30 Q.—Speaking of the proxy which was given at the meeting of Directors, I think in May, 1929, in favour of Mr. Lauster, upon the McNish shares, was that proxy issued in accordance with instructions of Lord Shaughnessy?

A.—I think so, yes.

Q.—Probably by cable?

A.—By cable, I think.

Q.—Were any balance sheets prepared for the month of April or May, 1929, for the Directors of Canadian Industrial Alcohol?

A.—Just the summary of business.

Q.—The summary of business?

A.—Yes.

40 Q.—But they were not submitted for the months of March and April because these balance sheets are always a month ahead of the Meeting, are they not, or a month behind the meeting?

A.—A month behind. Apparently they were not presented at that Meeting.

By Mr. Campbell, K.C.:

Q.—Which meeting are you talking about now?

JOHN G. LAWRENCE (for Plaintiffs), Examination-in-Chief.

Mr. McKeown, K.C.: The Meeting of the 22nd of May.

By Mr. McKeown, K.C.:

Q.—Were any summaries of business actually prepared for those months?

10 A.—No, a statement was prepared every month.

Q.—A matter of routine?

A.—Yes.

Q.—But the statements for those months, that is, summaries for March and April, were not submitted to the Directors?

A.—This Minute here is a Minute of the special Meeting of the Board of Directors.

Q.—It does not appear from that Minute any monthly statements were submitted to the Directors' Meeting, and no monthly statement for the previous month was submitted?

20 A.—They met specially to pass this proxy and to open this cheque account with Lindsay.

Q.—Did you get a request from Mr. Decary for the monthly statement, monthly summaries of business for March and April?

A.—I don't remember.

Q.—You could not deny it?

A.—He might have asked; I don't know.

Q.—Did Mr. Decary ask you for the Minutes of the Executive Committee Meetings, whatever they are called, in the course of the spring or early summer of 1929?

30 A.—Somebody asked for them, yes.

Q.—Somebody?

A.—Yes.

Q.—I put it to you it was Mr. Decary?

A.—It might have been.

Q.—Was there more than one Director who asked for these Minutes?

A.—No. I think they were just asked for on one occasion.

Q.—You are speaking of a conversation with yourself? What was your reply?

40 A.—My reply was that there was no Executive Committee.

Q.—No Executive Committee or no Minutes?

A.—No Minutes of such.

Q.—Did the Directors ask you for information during those months, April and May, concerning the affairs of the Company? I mean, the outside Directors, including Mr. Joseph, Mr. Marler, and Mr. Decary, any of them?

A.—For information?

JOHN G. LAWRENCE (for Plaintiffs), Examination-in-Chief.

Q.—Yes.

A.—I don't recall them asking for anything, no.

Q.—You don't remember having received such an inquiry and having made the statement there was no information available?

A.—I don't remember.

10 Q.—I put it to you that the sole and only purpose of placing the bank overdraft on the monthly statements of Directors under the heading "Accounts Payable" was that the outside Directors would not know the amount of the bank overdraft?

A.—That might have been the reason.

By Mr. Campbell, K.C.:

Q.—What is the item called?

A.—Accounts Payable.

20 By Mr. McKeown, K.C.:

Q.—That, as a general classification, would include the purchase of merchandise and supplies?

A.—Yes.

Q.—Such as grain and molasses?

A.—It would cover all accounts payable.

Q.—All accounts payable?

A.—Accounts payable to the bank and accounts payable otherwise.

30 Q.—How is that item being treated at the present time? Is the practice of keeping the bank overdraft under the classification of "Accounts Payable" still being followed up?

A.—Yes.

Q.—Do you remember that Mr. Turnbull was transferred to London at one time in connection with McNish?

A.—Yes.

Q.—He had been in charge of the Purchasing Department for the Company?

A.—Yes.

40 Q.—That is a very important branch, is it not?

A.—Yes, very.

Q.—The fact of the matter is, would it represent raw materials, represent 90 per cent of the Company's distillery operations?

A.—It would represent a big per cent.

Q.—Very large percentage. Who took over Mr. Turnbull's duties after he had left for London?

A.—Mr. Scott.

JOHN G. LAWRENCE (for Plaintiffs), Examination-in-Chief.

Q.—Is he there now?

A.—He is still with the Company.

Q.—Who looked after the purchase of the grain in Mr. Turnbull's absence?

A.—I think Mr. Scott actually looked after the purchase of it, on advice.

10 Q.—On instructions, probably?

A.—On advice.

Q.—By whom?

A.—Well, he would take that up with Lord Shaughnessy.

Q.—When was this incident you have been referring to, when Mr. Turnbull went over to the other side?

A.—When did Mr. Turnbull go to the other side?

Q.—Yes. I mean this absence.

A.—It was the winter of 1927, I think; it might have been 1928.

20 Q.—Is it to your knowledge that Mr. Turnbull, before he went away, had strongly advocated the immediate purchase of grain?

A.—No.

Q.—Do you know of a loss which the Company incurred in connection with the purchase of grain at that time? He does not know.

Mr. Campbell, K.C.: If he does not know, that will save my objection.

The Witness. I don't know.

30 By Mr. McKeown, K.C.:

Q.—You are saved. The Company made an issue of " B " stock, I think, in 1928, which was paid in by the shareholders in March, 1928?

A.—March, yes.

Q.—What did that net the treasury of the Alcohol Company?

A.—Oh, about \$2,500,000, I think.

40 Q.—Was that amount of money required and used by the Alcohol Company as soon as it was received, the full amount?

A.—The full amount used immediately?

Q.—Yes.

A.—It was placed in the general funds of the Company.

Q.—I put it to you that \$1,500,000 of that amount lay in the bank for six months without being invested or loaned out on call or otherwise in a way to earn some return.

A.—That might be.

Q.—Is that true?

JOHN G. LAWRENCE (for Plaintiffs), Examination-in-Chief.

A.—I don't know the amount. You say \$1,500,000. I don't know whether that amount is correct or not.

Q.—Was there a large part of it which did remain in the bank to the credit of the Company?

A.—The \$2,500,000 was not spent all immediately.

10 Q.—Are you able to say that a large part of it—I suggest to you \$1,500,000—lay in the bank for six months without having been placed out on call or otherwise at interest?

A.—It might have.

Mr. Campbell, K.C.: Would that be an offence?

Mr. McKeown, K.C.: It is not a very wonderful form of administering a property, for \$1,500,000.

By Mr. McKeown, K.C.:

20 Q.—I put it to you that Lord Shaughnessy was urged to invest the money, to lend it out on call. He did not do so?

A.—He was urged by whom?

Q.—By his co-directors.

A.—I don't know whether he was or not.

Q.—What was the salary paid to Lord Shaughnessy as President of the Alcohol Company at the time of Sir Mortimer Davis' death?

A.—\$25,000.

30 Q.—What is the salary paid to Lord Shaughnessy at the present time?

A.—\$30,000.

By the Court:

Q.—\$30,000?

A.—\$30,000.

By Mr. McKeown, K.C.:

40 Q.—When was the change made, from \$25,000 to \$30,000?

A.—I think that was effective the first of January, 1929.

Q.—Can you turn up the Minutes of the Directors' Meeting which authorized that change?

A.—The salaries are never authorized by the Directors.

Q.—The salaries are never authorized by the Directors?

The Court: Does the office boy look after that?

JOHN G. LAWRENCE (*for Plaintiffs*), *Examination-in-Chief*.

Mr. Campbell, K.C.: This is not the only Company where that practice is followed. I would undertake to say if you will take most of the banks or large corporations, you would search in vain through Minutes for records of such things.

Mr. McKeown, K.C.: Not at all.

10 By Mr. McKeown, K.C.:

Q.—The increase of Lord Shaughnessy's salary from \$25,000 to \$30,000 as President of the Alcohol Company is nowhere authorized in the Minute Book?

A.—No, sir.

Q.—You are Secretary of the Company?

A.—Yes, sir.

Q.—You keep all the books, including the Cash Book?

20

A.—Yes.

Q.—Do you sign the cheques?

A.—Which cheques?

Q.—Take the salary cheques.

A.—No, sir.

Q.—Who does?

A.—The Treasurer.

Q.—Alone?

A.—In a Trust Account, yes.

Q.—The Treasurer's signature alone?

30

A.—Yes.

Q.—But the preparation of the cheques is a matter of accountancy and comes under your branch?

A.—Yes.

Q.—Are the salaries paid monthly?

A.—Yes, sir.

Q.—What was the first intimation you received that there was a change here as to the salary of the President?

A.—I would be notified by the President of the changes in such salaries as would be increased, including his own.

40

Q.—Did he notify you? Was he the person who brought you the first information that the salary had been increased from \$25,000 to \$30,000 of Lord Shaughnessy himself?

A.—Yes, sir.

Q.—You say that these salary cheques are drawn upon a special Trust Account?

A.—Yes.

Q.—Which are signed by the Treasurer?

JOHN G. LAWRENCE (*for Plaintiffs*), *Examination-in-Chief*.

A.—The cheques are signed by the Treasurer, yes.

Q.—Who signs the cheque that goes into the spécial Trust Account which keeps it in funds?

A.—The Treasurer and myself.

Q.—Is a particular cheque deposited monthly to equalize drawings and salaries?

10 A.—Yes.

Q.—So that you, from the knowledge received from the President, that his salary was increased, would issue a cheque for the amount over the amount of the previous month?

A.—Yes.

Q.—And I suppose give Mr. Turnbull, the Treasurer, instructions as to the amount for which the cheque was to be issued to Lord Shaughnessy for the increased sum?

A.—Yes.

Q.—Did you do it?

20 A.—Yes.

Q.—Were the cheques which went to Lord Shaughnessy for the increase signed by Mr. Turnbull?

A.—Yes.

Q.—You are quite certain of that, from the very beginning?

A.—Yes.

Q.—In addition ——

Mr. Campbell, K.C.: Is it not fair to ask if there were any other increases?

30

Mr. McKeown, K.C.: I am not interested in what other people did.

By Mr. McKeown, K.C.:

Q.—Apart from the increased salary of the officials and Lord Shaughnessy in particular, to \$30,000, is it not true that the whole salary list was increased by 10 per cent per annum?

A.—Bonus.

40 Q.—So that Lord Shaughnessy's salary is \$30,000 plus 10 per cent, \$33,000?

A.—No, sir.

Q.—What is it?

A.—The bonus did not apply on Lord Shaughnessy's salary.

Q.—No bonus on his salary?

A.—No, sir.

JOHN G. LAWRENCE (for Plaintiffs), Examination-in-Chief.

Q.—Has that always been the manner of handling the President's salary?

A.—Yes, sir, always.

Q.—Is there an honorarium to Directors as Directors?

A.—Directors outside—Directors only. The Directors who are not employees or officials of the Company were paid \$500 a year.

10 Q.—Who are the outside Directors?

A.—There are none.

Q.—There are none. Who were the outside Directors?

A.—Henry Joseph.

Q.—That is the category you are referring to, four other names, who were not employees of the Company?

A.—Yes, sir.

Mr. Campbell, K.C.: There were only three; Colonel Gaudet was a salaried officer?

20 The Witness: Yes.

By Mr. McKeown, K.C.:

Q.—You told His Lordship at the present time the Directors are paid, being no outside Directors, there is no \$500 for Directors?

A.—No.

Q.—Are the present Directors paid anything?

A.—No, sir, not as Directors.

30 Q.—Are they paid just for their services?

A.—Yes.

Q.—You told me that the 10 per cent increase or bonus does not apply to any person who is a Director?

A.—No, sir; I did not say that.

Q.—What did you say?

A.—I said the bonus does not apply to Lord Shaughnessy.

Q.—Does it apply to any other Directors?

A.—It applies to employees of the Company.

40 Q.—I am not illustrating your own case. Do you get in addition to your straight salary 10 per cent?

A.—Yes.

Q.—Does every other member of the Board except Lord Shaughnessy get that 10 per cent?

A.—Every employee gets 10 per cent.

Q.—Everybody except Mr. Reaper, then. How does it work. I cannot understand.

A.—All employees get 10 per cent bonus, outside the President.

JOHN G. LAWRENCE (*for Plaintiffs*), *Examination-in-Chief*.

Q.—Who are the employees who get 10 per cent.

A.—All the employees.

Q.—Name them, because I don't understand this. There is yourself, Mr. Lawrence.

A.—Yes.

Q.—Who else?

A.—Mr. Lauster, Mr. Turnbull, Mr. Kessner, Mr. Wilmore.

10 Q.—Who else?

A.—Do you want me to name all of our employees?

Q.—No, I don't want the names of the persons who are on the Board who get 10 per cent.

Mr. Campbell, K.C.: It is a bonus, not as Directors, but in connection with their salaries as officers.

By Mr. McKeown, K.C.:

20 Q.—Just let us see who they are.

A.—Stormont.

Q.—He gets 10 per cent.

A.—Yes.

Q.—The other two are Mr. Reaper—he does not?

A.—Mr. Reaper does not.

Q.—He does not get 10 per cent. Lord Shaughnessy does not get 10 per cent.

A.—Lord Shaughnessy does not get 10 per cent.

30 Q.—Did not these employee directors at one time receive \$500 a year in place of a bonus?

A.—One time, yes.

Q.—Now they get \$50 a month but no bonus?

A.—The Directors' fees were cut off by employees who were Directors, some years ago.

Q.—By instructions of Sir Mortimer Davis?

A.—Yes.

Q.—Now they do not receive any fees as Directors, but they come under their bonus for their work?

40 A.—Yes.

Q.—Is there a by-law or a resolution on the books to the effect the Directors are not to be paid fees, or not to be paid Directors' fees if they are employees?

A.—No, sir.

Q.—Take the subsidiary companies, including Consolidated Distilleries—are the Directors of those Companies paid anything?

A.—No, sir.

JOHN G. LAWRENCE (for Plaintiffs), Examination-in-Chief.

Q.—Do they ever hold meetings, Directors' meetings, the subsidiary companies?

A.—Yes, sir.

Q.—Monthly meetings, or just meetings when and as required?

A.—Meetings, if, as and when.

Q.—Have you got a Minute Book of the Canada Cuba Export Company?

10 A.—Yes, sir.

Q.—When was that corporation organized?

A.—It was incorporated on the 1st of June, 1926.

Q.—Where is its head office?

A.—Montreal.

Q.—Is it incorporated under Part 1 of the Companies' Act?

A.—Yes.

Q.—Will you let me see the Minute Book?

A.—I have not got it here.

20 Q.—Where is the Minute Book?

A.—The Minute Book is in the lawyers' office.

Q.—Mr. Holden's office?

A.—Yes.

Q.—When was it taken there?

A.—Oh, I sent it down there a long time ago, some months ago.

Mr. Campbell, K.C.: It is not there in connection with these proceedings, Mr. McKeown. Mr. Holden does not know. Mr. Holden has not got it.

30

The Witness: No, sir; Mr. Collins has it.

By Mr. McKeown, K.C.:

Q.—It has not been back in your office since?

A.—Not since it went down to our lawyers, no.

Q.—Are minutes maintained in the Minute Book right up to date?

40 A.—I don't think—there have not been any Minutes of Meetings of that Company for some considerable time. It is practically defunct.

Q.—What do you mean by some considerable time? More than a year back?

A.—It was incorporated on the 1st of June, 1926.

Q.—What is the date of the last meeting of that corporation, the Canada Cuba Export?

A.—I could not say offhand.

JOHN G. LAWRENCE (for Plaintiffs), Examination-in-Chief.

Q.—Several years back?

A.—It ought to be a couple of years back.

Q.—You say the company is defunct?

A.—It is practically non-operating.

Q.—Have you got the statement here for that?

A.—Yes, sir.

10 Q.—That is not a very formidable company.

A.—No, sir.

Q.—Now it has come out in the earlier evidence, Mr. Lawrence, that you have been connected in some way with listing McNish debentures?

A.—Yes.

Q.—Can you tell us from memory when these debentures were issued and taken up by the shareholders of Alcohol, approximately the date?

20 A.—They were sold to shareholders of record the 5th of October, 1927.

Q.—They had been offered to the shareholders, I take it, prior to that date?

A.—They were offered to the shareholders under date of 28th September, 1927.

Q.—By your subpoena you were asked to bring with you all circulars sent out to the shareholders of the Alcohol Company offering the debentures. Have you got a special memorandum?

A.—Yes.

Q.—Is this the only one, Mr. Lawrence?

30 A.—There is that one, and the follow-up.

Q.—Is this all?

A.—That is all. I think there was a further circular to the shareholders at a much later date.

Q.—Have you got a specimen of that?

40 Mr. Campbell, K.C.: I wish to record an objection to the filing of these documents in view of the dates which they bear. All that was done in respect to these documents was done under the directions and with the concurrence of the late Sir Mortimer Davis. It cannot reflect on the Defendants in this case, and cannot be relevant to the present demand for their removal, and my submission is any evidence tending to show acts of poor judgment or anything else, that preceded the death of Sir Mortimer Davis, they were carried on by his knowledge and should be excluded from the record. I object to it as illegal and irrelevant.

Mr. McKeown, K.C.: The Incorporated Company owns about

JOHN G. LAWRENCE (for Plaintiffs), Examination-in-Chief.

500,000 of those debentures, and we say they had been allowed to go stale in the hands of the people for want of their activity since their appointment. We want to show the date on which these were brought out and show why they were not listed until last fall, two years after they were brought out. I would ask it be reserved.

10 The Court: Objection reserved.

To which ruling of the Court the Defendants' Counsel respectfully excepted.

The Witness: I have a copy of that if you wish it.

By Mr. McKeown, K.C.:

20 Q.—Would you produce as a single Exhibit to be marked P-126 two specimen letters to the shareholders of Industrial Alcohol concerning McNish debentures, the first of which was issued under date September 28th, 1927, and the second under date October 7th, 1927, and verify that those two letters went out to the shareholders of record on their respective dates?

A.—Yes.

30 Q.—Will you produce and mark as Exhibit P-127 a circular letter sent out by the Crown Trust Company on October 8th, 1929, to the debenture holders of Robert McNish, concerning certain requirements of the Montreal Stock Exchange in connection with the listing of the debentures?

A.—Yes.

Q.—Now, I take it that it was the intention of the interests of the debenture holders to have these debentures listed on some recognized Stock Exchange?

A.—Yes.

Q.—And that was the intention from the outset?

A.—Yes.

40 Q.—When were steps first taken to procure the listing of the debentures? Could you give us from memory the approximate date?

A.—I would rather be exact.

The Court: How long do you think the case will take, as it is going? I want to make other arrangements.

Mr. Campbell, K.C.: I have given up guessing. If my learned friend will guess first—

JOHN G. LAWRENCE (for Plaintiffs), Examination-in-Chief.

The Court: Shall we say two weeks or three?

10 Mr. McKeown, K.C.: It is a case which has got its inherent difficulties on both sides in the matter of getting the evidence in. I would hope and had hoped we would have concluded this case long before this, and I will accept my share of the responsibility and I will hand the balance to Mr. Campbell, but I would think, My Lord, after the examination of Mr. Lawrence, we have a few witnesses who I do not think will take very long because, as the case progresses, points clear up very much. We have Mr. McDonald to be heard and Lady Davis.

The Court: Will you finish your side of the case next week?

Mr. McKeown, K.C.: Oh, I think so.

20 Mr. Campbell, K.C.: I would like to take that as a promise.

Mr. McKeown, K.C.: In fact I do not want to get enthusiastic; I have had so many disappointments. What I was going to suggest, it does seem to me in a case of this kind, if it would suit Your Lordship's convenience, it seems to me the case should be continued without any *interregnum* or adjournments because at the present time it is going to take some considerable time to see that all matters are cleared up and to prepare the argument, and the other matters cleared up. I would certainly hope and devoutly hope that in the next five 30 days of next week we can conclude our evidence. We on our side will certainly do everything we can to close our side of the case and to expedite Mr. Campbell's defence.

Mr. Campbell, K.C.: I would not venture on any anticipations.

Mr. McKeown, K.C.: Perhaps Mr. Campbell might give some idea how long he would require for his evidence.

40 Mr. Campbell, K.C.: There is a fair chance of finishing by Easter, I should say.

By Mr. McKeown, K.C.:

Q.—Well, Mr. Lawrence, have you got the answer?

A.—I think I started the listing on the 19th of June, or thereabouts.

By Mr. Campbell, K.C.:

JOHN G. LAWRENCE (*for Plaintiffs*), *Examination-in-Chief*.

Q.—Steps were taken?

A.—Yes.

By Mr. McKeown, K.C.:

Q.—What was the plan about the listing? Were they to be listed on the Montreal Stock Exchange only or elsewhere?

10 A.—The original plan, I think, was to list them on the Montreal and the London Stock Exchange.

Q.—Was the London Stock Exchange plan abandoned?

A.—Yes.

Q.—Would this date, the 19th of June, 1928, be the date on which you took initial steps for listing on the Montreal Stock Exchange?

A.—It was about that date.

Q.—What do you find about that date?

20 A.—There is a letter from Ralph Allan, who was doing the listing.

Q.—Relative to the subject?

A.—Relative to McNish debentures.

Q.—When were they actually listed?

A.—The 17th of October, 1929.

Q.—That is a year and four months. Was the subject actively pursued from the 19th of June, 1929, until the 17th of October, 1929?

A.—More or less.

30 Q.—I am advised by Mr. Miller, the assistant secretary of the Exchange, that the actual application for listing was only signed on June 4th, 1929. Can you verify that?

A.—The listing application is not dated except when it was adopted by the governing Committee.

Q.—What date is that date?

A.—October 10th, 1929.

Q.—Now, have you got the Sales Register of the Company with you?

A.—I have not got it with me. I can get it down by telephone.

40 The Court: Do it Monday.

By Mr. McKeown, K.C.:

Q.—Will you bring it with you on Monday? I would like to ask you, have you any earlier reports on the McNish Company which have passed the Company's auditors then the copy which you produced, the preliminary copy which you produced as Exhibit P-106?

JOHN G. LAWRENCE (*for Plaintiffs*), Examination-in-Chief.

A.—I have the auditors' statement of September 30th, 1928.

Q.—Have you it with you?

A.—Yes.

Q.—Will you just exhibit it?

A.—Yes.

10 Q.—Will you be good enough to have a copy prepared of this statement of the McNish Company as of September 30th, 1928, and file it as Exhibit P-128?

A.—Yes.

Q.—Now, just another subject before we close for this afternoon, perhaps. These resignations of the four Directors, first Mr. Joseph, Mr. Marler, Mr. Gaudet and Mr. Decary—did I ask you at what date those resignations were announced to the public, irrespective of the date of the letter?

A.—I think you did ask it, yes sir.

Q.—Were they announced to the public at all?

20 A.—They were announced to the public in October, some of them.

Mr. Geoffrion, K.C.: They were announced in the papers, whether they were announced or not.

By Mr. McKeown, K.C.:

30 Q.—Let us begin with the resignation of Mr. Joseph. Do you know when that was announced to the public?

A.—No, sir.

Q.—Was it announced at the time it went through the Minutes?

A.—By the Company?

Q.—By the Company to the press or to the public?

A.—No, sir.

Q.—It was not?

A.—No, sir.

40 Q.—How long was it withheld? How long was the announcement withheld?

A.—I don't know that there was an official announcement made.

Q.—Then the next is Colonel Gaudet. You know when the announcement of that resignation was made to the public, to the shareholders? Do you know?

A.—No, sir.

Q.—Or Mr. Decary?

A.—No, sir.

Q.—Do you know, as matter of fact, that those resignations

JOHN G. LAWRENCE (for Plaintiffs), Examination-in-Chief.

were not announced at the time that they were acted on by the Board?

A.—I know, yes.

Q.—Am I right in interpreting from what you have just said in this sense, that the management decided not to announce those, not to make any public announcement of those resignations at the time they were dealt with by the Board?

10 A.—I would not put it that way, no, sir.

Q.—What way would you put it?

A.—I said no announcements had been made.

Q.—Did you get inquiries from the representatives of the press for information in connection with these resignations after they had been put through by the Board and before the announcement had been made?

A.—I believe I did, yes.

20 Q.—Did you give information to the representatives of the press as to what the facts were in connection with these resignations?

A.—No, sir.

Q.—Why did you take that upon yourself?

Mr. Campbell, K.C.: I don't think the witness was called upon to make a statement to the press. That was not the press' business, surely. I object to the question.

The Court: It might interest the public.

30 Mr. McKeown: We allege this was the subject of adverse press criticism, and no information was available for the Directors or shareholders or the public or anybody else.

Mr. Campbell, K.C.: I object to that as illegal.

The Court: Objection reserved.

40 To which ruling of the Court defendants' Counsel respectfully excepted.

The Witness: I make no announcements to the public.

By Mr. McKeown, K.C.:

Q.—Who does make the announcements?

JOHN G. LAWRENCE (for Plaintiffs), Examination-in-Chief.

A.—I make announcements if I am instructed to make them, but I do not do it on my own responsibility.

Q.—Who does? Who makes the announcements?

A.—The President.

Q.—At those times when the representatives of the press were asking for information upon the specific subject of the resignation of Directors, you did not enlighten your inquirers on the subject?

10

A.—No, sir.

Q.—I put it to you you had instruction from Lord Shaughnessy not to give out this information?

A.—I had general instructions from Lord Shaughnessy to give out no interview to the Press.

Q.—Lord Shaughnessy was in Montreal from about the 10th of June forward up to the present time; is that right? 1929, I am speaking of.

A.—Up until he went west.

20

Q.—Yes. Did you report to him that inquiry had been made from you upon this subject of the resignation of the Directors?

A.—I may have.

Q.—Are you not quite sure that you did?

A.—No, I am not sure.

Q.—Do you think as important a subject as that—

A.—I get inquiries from the Press every day. I do not communicate those telephone conversations to the President.

Q.—Were not these inquiries pointed and direct, as to whether these resignations had actually been received?

30

A.—I believe the Press did ask if those Directors had resigned.

Q.—What answer did you give—simply refused to give any information, or did you deny it?

A.—I did not deny it, no.

Q.—You refused to make any statement?

A.—Yes.

Q.—Did you know all this time that adverse criticism was going on in the Press, that it was publicly stated in the Press that Lord Shaughnessy was running the Company alone?

40

A.—I saw some articles.

Q.—And these articles had come to your attention before the time these inquiries were made for information?

A.—I could not say whether it was before, at the time, or after.

Q.—And no information was given out?

A.—Not by me.

Q.—It did not occur to you to pause long enough to go to the

JOHN G. LAWRENCE (for Plaintiffs), Examination-in-Chief.

President and ask him whether information might be given out in answer to this inquiry about the position of the directorate?

A.—I think, if I recall, all this controversy in the Press was while Lord Shaughnessy was out west.

Q.—We will produce the newspaper articles bearing upon the matter.

10 A.—That is my recollection.

Q.—Did you, following the inquiries by the Press representatives, report to Lord Shaughnessy that you had been asked for information on behalf of the Press?

A.—Possibly I did.

Q.—Can you not give us a more definite answer than that?

A.—I don't remember all the conversations that I have with Lord Shaughnessy.

Q.—What, if any, reply did you get from Lord Shaughnessy, instructions in that connection?

20 A.—My instructions ever since I have been in the Company, right from Sir Mortimer down, were that I was to give no interviews by telephone or otherwise.

Q.—In the same connection, do you remember that during the course of this litigation you received a message from the Crown Trust Company—first of all the Crown Trust Company are your transfer agents and registrars?

A.—Yes.

30 Q.—They are in possession of the stock records of the Company?

A.—Yes.

Q.—Do you remember on one occasion receiving a telephone message from an employee of the Crown Trust Company that I, on behalf of Lady Davis, had called at the Crown Trust office, and asked to see the Stock Register, that I on her behalf was then applying at the office of the Crown Trust Company, applying for the Stock Register of shareholders?

A.—Yes.

40 Q.—Did you give instructions to the Crown Trust Company that I might be shown the list of shareholders?

A.—Yes.

Q.—You did give instructions to the Crown Trust Company?

A.—Yes.

Q.—When?

A.—After.

Q.—I just remind you before you answer—do you remember

JOHN G. LAWRENCE (for Plaintiffs), Examination-in-Chief.

that, that I had Mr. Jackson call up and speak to Lord Shaughnessy himself on the subject. Do you remember that?

A.—I do not remember Mr. Jackson phoning Lord Shaughnessy, no.

Q.—Do you remember the net result was that I did not see the list of shareholders that day?

10 A.—I know I spoke to Lord Shaughnessy and he said he had no objection to you seeing it, and I phoned Mr. McKay of the Crown Trust Company and said “If Mr. McKeown wants to inspect the Register, he can do so.”

Q.—How long was that after you received the telephone communication, after I was there?

A.—It might have been the same day, or the next day.

Q.—I think it must have been the next day. At that time I personally was a registered shareholder of the Company. You had signed the certificate. Do you remember that?

20 A.—Well, I don't remember the transfer going through. I would never even see that.

Q.—Is that a constant practice, where shareholders call at the office of the registrar, to refuse to allow them to have access to the list of shareholders?

Mr. Campbell, K.C.: Objected to as illegal and irrelevant. We have enough to answer for what happens in this case. My submission is that the witness in the box is not entitled to be examined on the constant practice.

30

Mr. McKeown, K.C.: Under the law that is one of the books that they have to keep open in business hours every day, except on holidays.

By Mr. McKeown, K.C.:

Q.—I ask the witness if that is the constant practice of the Company?

40 A.—At that particular time I did not know the exact law on whether a shareholder or anybody off the street could walk in and look at the Shareholders Registers. I then consulted our lawyers and found out they had access to these books. Since then no shareholder has been refused.

Q.—Prior to that had it been the practice not to show the list of shareholders to anybody without an authorization from the Company?

JOHN G. LAWRENCE (for Plaintiffs), Examination-in-Chief.

A.—Prior to that there were only a few inquiries to see our list of shareholders, and insofar as I know these books were not open to inspection, and after that I took legal advice on it.

Q.—You found you were a better accountant than a lawyer?

A.—Yes.

10 Whereupon an adjournment was taken until Monday, March
24th, at 10:30 A.M.

20

30

40

JOHN G. LAWRENCE (for Plaintiffs), Examination-in-Chief.

And on this thirty-first day of March, in the year of our Lord one thousand nine hundred and thirty, personally came and reappeared the said witness

JOHN GIBSON LAWRENCE

10 and his examination was continued as follows:

By Mr. McKeown:

Q.—In the course of your examination you were asked to prepare, and file, as Exhibit P-114, a memorandum showing the date of the election to office of Directors Gaudet, Joseph, Marler, Decarie and Kelly. I understand you have prepared the memorandum now?

A.—Yes, I have.

20 Q.—Will you please read it into the record?

A.— . . . “Colonel Gaudet, appointed Director April 30th, 1923; Henry Joseph, February 14th, 1919; Hon. H. M. Marler, January 18th, 1921; E. R. Decarie, May 29th, 1923; Archibald Kelly, December 20th, 1927.”

Q.—You were also asked to prepare, and file, as Exhibit P-123, a list of the Directors and officers of the Alcohol Company and its various subsidiaries. Have you prepared the list?

A.—Yes, and I now produce it.

30 Q.—Exhibit P-123 shows in office at the present time the eight Directors whose names you have already given us, including yourself?

A.—Yes.

Q.—This is up to date?

A.—Yes, up to date.

Mr. Campbell: I do not want to be burdening the record with a repetition of my objection, but in respect of any fact arising from Exhibit P-123 which has reference to anything which has occurred since service of the action I repeat my former objection and restate
40 our contention that all such evidence is illegal and irrelevant, and cannot avail the plaintiffs in their present proceedings.

I do not know how much of the Exhibit has to do with facts since action brought, but I wish to be of record in the sense I indicate.

By Mr. McKeown (continuing):

Q.—You were also asked to prepare, and file, as Exhibit P-125, a

JOHN G. LAWRENCE (for Plaintiffs), Examination-in-Chief.

memorandum showing the holdings of shares in the Company by former Directors Gaudet, Joseph and Marler, and also the dates upon which those shares were sold by them as shown by the stock ledgers of the Company. Have you prepared such memorandum?

A.—Yes, I have.

10 Q.—This memo, Exhibit P-125, shows that Colonel Gaudet having originally 2,860 shares sold 2,000 shares on May 28th, 1929, and the balance on September 5th, 1929?

A.—Yes.

Q.—Mr. Joseph, originally holding 3,840 shares, sold all his shares between January 14th and June 13th, 1929?

A.—Yes.

Q.—And, Hon. Mr. Marler holding 400 shares sold the whole of his shares between August 28th and September 24th, 1929?

A.—Yes.

20 Q.—You were also asked to produce as Exhibit P-127 the circular letter by the Crown Trust Company to the debenture holders of Robert McNish, of 8th October, 1929. Have you that circular letter?

A.—Yes.

Q.—I think you were also asked to produce, as Exhibit P-113, the resignation of Mr. Kelly as a Director?

A.—Yes. I now produce the letter, which reads as follows:

“ January 2nd, 1930.

30 Messrs. Canadian Industrial Alcohol Co. Ltd.,
Montreal.

Dear Sirs:

Please accept my resignation from the employ of the Company, to take effect February 1st, 1930.

This will also serve to tender my resignation both as an officer and director.

Yours very truly,

40

A. KELLY.”

Q.—You were also asked to produce, as Exhibit P-115, a statement showing the details of the real estate, buildings, machinery, goodwill, etc., less depreciation, in the statement of Canadian Industrial Alcohol, Limited, as of date September 30th, 1929. Have you prepared this memorandum?

JOHN G. LAWRENCE (for Plaintiffs), Examination-in-Chief.

A.—Yes.

Q.—You were also asked to produce, as Exhibit P-116, a further memorandum showing the depreciation on items for plant, machinery, goodwill, etc., on the statement of the Alcohol Company of September 30th, 1929.

A.—The depreciation is shown on the statement marked Exhibit P-115.

10

(Exhibit P-115 is now also marked P-116.)

Q.—You were also asked to produce, as Exhibit P-117, a compilation showing in detail the goodwill, trademarks, real estate, buildings, machinery, equipment, etc., shown in the Consolidated Balance Sheet of the Alcohol Company and its subsidiaries at September 30th, 1928, marked Exhibit P-108, at the sum of \$11,508,495.54. Have you prepared this memorandum?

20

A.—Yes, and I produce the same.

Q.—Will you say to His Lordship from a proper reading of Exhibit P-117 at what amount the item of goodwill and trademarks figures in the consolidated assets of the Alcohol Company and its subsidiaries, as carried on its books as at September 30th, 1928.

30

Mr. Campbell: I submit this question is not relevant, and is, therefore, illegal unless my learned friend before putting the question will establish that there has been some change in the matter of this item of goodwill since the death of Sir Mortimer Davis. My pre-tension is that insofar as there were any items in respect of goodwill on the balance sheets of the Alcohol Company or any of its subsidiaries as at the date of the death of Sir Mortimer Davis they were put there with his knowledge or by his direction, or, in any event, with his knowledge and consent; and Your Lordship is not called upon to go into the situation that existed previous to Sir Mortimer's death.

40

In my submission it does not arise under the allegations of the plaintiffs, and can in no way be a matter reflecting upon the defendants or for which the defendants have any responsibility, and unless my learned friend will first show that any portion of that item was introduced into the balance sheets of this Company or its subsidiaries since the death of Sir Mortimer it is not relevant.

Mr. McKeown: Our contention is that the present defendants were bound to deal with the Alcohol Company as they found it at the time of Sir Mortimer's death, and following. If this Company which appeared to have enormous assets really had them, it might

JOHN G. LAWRENCE (for Plaintiffs), Examination-in-Chief.

have justified one course of action. On the other hand, if (as we say) there were intangible and non-realizable items in those assets, our pretension is the defendants should have taken that fact into account and possibly pursued an altogether different dividend policy and everything else in the proper administration of the Alcohol Company.

10 In order that Your Lordship may see the picture we are showing the first balance sheet of the Consolidated Corporations following the coming into office of the defendants, and we want to establish before Your Lordship exactly what the assets really were. Then we will follow it step by step to the present day, and show the condition in which matters now are; and we may be able to draw an inference that the defendants did not properly administer the Company.

20 His Lordship: You can only prove one fact at a time, and what you are now endeavoring to establish may or may not prove something according to what the other figures will show.

30 Mr. Campbell: My learned friend is purporting to put into the record evidence in respect of an item of goodwill which does not appear in the balance sheet of the Canadian Industrial Alcohol Company, Exhibit P-111. Only a very small fraction of the total evidence my learned friend is now offering appears in that balance sheet, and my submission is it might be very misleading to have it suggested to Your Lordship that out of the total assets shown on this balance sheet of Canadian Industrial Alcohol as at September 30th a very large item, such as is purported to be shown by the figures just mentioned, was included. As a matter of fact, only a relatively small fraction was included.

Mr. McKeown: \$2,000,000 is directly included, and the other is reflected in the balance of the stock.

Mr. Campbell: \$2,000,000 out of \$10,000,000 is included in the balance sheet.

40 Mr. McKeown: That is what I am trying to have the witness tell me.

Mr. Campbell: And, my submission is it is not relevant to the details of Exhibit P-111 to show that taking in all the subsidiaries the item of goodwill is very much larger than appears on that balance sheet. As a matter of fact, the item of goodwill which is included in the balance sheet Exhibit P-111 is a relatively small proportion,

JOHN G. LAWRENCE (for Plaintiffs), Examination-in-Chief.

something like 20 per cent, of the total item upon which my learned friend is now offering evidence.

I submit to Your Lordship it is not relevant to this controversy, and more particularly is it not relevant if it is a continuation of the situation which existed at the time of Sir Mortimer's death.

10 His Lordship: Is not that a matter of argument, to be based upon the evidence?

Mr. Campbell: My learned friend may be able to show in argument that it is relevant, but at the moment I cannot see how it is. How is it going to help Your Lordship to decide this case whether there is or is not a substantial item of goodwill included in the Alcohol balance sheet?

20 Mr. McKeown: My learned friend is an excellent advocate, but I am afraid he is not much of an accountant.

His Lordship: You have the item in the Exhibit, and it is just a question of calling my attention to it, or calling the attention of the witness to it.

Mr. McKeown: If we do not do that the Court might fall into the same error Mr. Campbell is laboring under at the moment, and think the goodwill is \$10,000,000, when I know as a matter of fact it is not.

30 Mr. Campbell: There is no item of goodwill in this balance sheet, Exhibit P-111.

Mr. McKeown: But, this is a peculiar balance sheet, and we will not discuss it at the moment.

Mr. Campbell: I am afraid lest my learned friend should lead the Court into the impression there was such an item in that balance sheet. Our contention, of course, is that there is not.

40 Mr. McKeown: The question now being asked the witness is with a view to establishing how much the goodwill actually figures in the consolidated balance sheet which takes in everything as it would be without any fine distinctions of bookkeeping or accountancy.

His Lordship: I think the question may be put.

JOHN G. LAWRENCE (for Plaintiffs), Examination-in-Chief.

(Mr. Campbell, K.C., of Counsel for defendants, respectfully excepts to the ruling of the Court.)

By Mr. McKeown (continuing):

10 Q.—Will you say to His Lordship from a proper reading of Exhibit P-117 at what amount the item of goodwill and trademarks figures in the consolidated assets of the Alcohol Company and its subsidiaries as carried on its books as at September 30th, 1928?

A.—The figure shown is \$10,178,731.36.

Q.—Are those figures subject to any variation?

A.—From which figure an amount of \$1,999,999 requires to be subtracted

Q.—What does this figure of \$1,999,999 represent?

A.—That represents the goodwill in Wisser's Distillery.

20 Q.—Which is not extended into the statement of the assets as consolidated?

A.—Wisser's Distillery is carried on the books of Consolidated Distilleries at the sum of \$1.00.

Q.—And Wisser's Distillery carries on its own books an item of \$2,000,000 for goodwill?

A.—That is the capital of Wisser's, \$2,000,000.

Q.—Capital on one side, and goodwill on the other?

Mr. Campbell: The Exhibit speaks for itself, of course.

30 Witness: The Wisser statement, Exhibit P-101, as of date September 30th, 1929, shows a capital of \$2,000,000 on one side, and on the other side goodwill, \$1,970,950.47.

Mr. Campbell: I think I must repeat my objection to this. Unless it was done by the defendants after the death of Sir Mortimer Davis what relevancy can it have to this case?

40 Mr. McKeown: It is just explaining this particular item. Of course if my learned friend proposes to continue what he has done for the last three weeks—make a fifteen-minute address to the Court after every question has been ruled upon—it will take us some considerable time to get through with this case. I had hoped we might be able to make a little faster progress than we have done in the past, but I am afraid we will not do so if my learned friend Mr. Campbell persists in his tactics.

Mr. Campbell: If my learned friend puts a question which I

JOHN G. LAWRENCE (for Plaintiffs), Examination-in-Chief.

think is objectionable I have the right to make my objection, and Your Lordship will rule upon it. I think the question is objectionable, and I ask Your Lordship for a ruling. It is irrelevant and illegal, because, in my submission, this all occurred during the lifetime of Sir Mortimer Davis, and, therefore, is in no way chargeable to the defendants.

10 His Lordship: Do you argue it in extenuation?

Mr. Campbell: It is not a question of extenuation, Your Lordship. It was not done by the defendants directly or remotely in their quality as Executors, and they can have no responsibility for it in their quality as such—and it is in their quality as Executors they are attacked in this case.

20 If my learned friend is going into all this, he is liable to create a misleading impression in Your Lordship's mind over something which, in my submission, has no relevancy whatever to this controversy. We are charged with certain things which my learned friend will endeavor to prove us guilty of, if he can, and which we will endeavor to refute, if we are able. The matter my learned friend is now dealing with, however, is not one of those things, and is therefore absolutely irrelevant.

His Lordship: The Plaintiffs will argue how those facts help their case, and if the facts do not help them, they have "missed their shot."

30 Mr. Campbell: My learned friend is putting a great deal into the record, which, in my submission, is utterly irrelevant. It takes time to put it there, and it takes time to object to it.

His Lordship: It is a question which takes more time: the putting in of the papers, or the objection.

40 Mr. Campbell: That may be true, Your Lordship, but we cannot acquiesce to my learned friend putting in a great deal of evidence which we consider utterly illegal. We must preserve this record in what we consider to be proper legal form, and if we think legal objections lie we must place them on record and submit to Your Lordship's ruling.

Mr. McKeown: His Lordship has already ruled.

His Lordship: I have stated I think the question is permissible, and I will not reverse my ruling.

JOHN G. LAWRENCE (for Plaintiffs), Examination-in-Chief.

Mr. Campbell, K.C., of Counsel for defendants, respectfully except to the ruling of the Court.

Mr. Campbell: The implication, to me, is that we are contending this item of \$1,970,950.47 is goodwill—as a matter of fact it is out of total assets of \$2,436,000 odd.

10 Mr. McKeown: It may be just an inference, for all I know.

Mr. Campbell: It may be, but I would ask you to put a question asking the total assets, so that I will not have to come back to it.

By Mr. McKeown (continuing):

20 Q.—To satisfy my learned friend, will you please say to the Court what the total assets are as entered upon the Wiser balance sheet, Exhibit P-111, as of date September 30th, 1929?

A.—The total assets are shown as \$2,436,248.84.

Q.—Including the item for good will to which you have just referred?

A.—Yes.

Q.—Is there anything further to be deducted from the item of \$10,178,751.56 shown for goodwill on Exhibit P-117, other than the item to which you have just referred in connection with Wiser's, \$1,999,999?

30 A.—Yes, there is a further item of half a million dollars to be deducted.

Q.—What is that?

A.—It represents capital surplus of \$250,000 in Consolidated Distilleries, Limited, and \$250,000 in St. Hyacinthe Distillery Company, Limited.

40 Q.—How does it come about that those items while shown in Exhibit P-117 should be deducted from the figures which you have just given us—from Exhibit P-117? You have explained the reason why the Wiser deduction had to be made, but why should those two items of \$250,000 each—Consolidated Distilleries and St. Hyacinthe Distilleries—be deducted?

A.—Owing to the nature of the statement. You can only show it in that way.

Q.—Whatever be the cause, what is the result? To what will it further reduce your figures for goodwill and trade marks?

A.—\$7,678,732.36.

Q.—Is that the final figure?

JOHN G. LAWRENCE (for Plaintiffs), Examination-in-Chief.

A.—Yes.

Q.—I put it to you that amount you have just mentioned is included in those two items, or one, or the other, or both, on the Alcohol balance sheet of September 30th, 1929, Exhibit P-99: those items reading: “Real Estate, Distilleries, Machinery, Goodwill, Etc., Less Depreciation, \$5,412,532.29,” and “Shares in Associated Companies, and other investments, \$5,219,717.89,” forming together
10 \$10,632,250.18?

A.—The item of goodwill for Canadian Industrial Alcohol is specifically included, but the goodwill of the other Companies is not specifically included. The item “Shares in Associated Companies, and Other Investments,” represents the Canadian Industrial Alcohol equity in the subsidiary companies.

And it being 12:45 o'clock, the further examination of the witness is continued until 2:30 o'clock in the afternoon.

20 And further for the present deponent saith not.

AFTERNOON SESSION

Q.—The item carried for goodwill as of the Alcohol Company itself is \$2,100,000 odd.

A.—Two million and something, yes.

30 Q.—And the balance of \$7,600,000, that is, approximately \$5,500,000, is carried on the books of the subsidiaries as goodwill?

A.—Yes.

Q.—And would be affected in the Alcohol statement in accordance with the value at which the shares of the subsidiaries are carried by the Alcohol Company?

A.—It is very hard to answer that question without making a complete analysis of the whole of the consolidated statement. It is practically impossible to answer that.

40 Q.—Very well. We will leave it there. You were also asked to produce a copy of the by-laws of the Robert McNish Company concerning preferred shares and for the purpose of determining whether or not 6 per cent dividend on these shares was a cumulative dividend and if so at what date. Have you been able to trace anything definite on that?

A.—No, sir, in the by-laws of the Company I do not find anything specific relevant to the dividend on Alcohol shares.

JOHN G. LAWRENCE (for Plaintiffs), Examination-in-Chief.

By Mr. Campbell, K.C.:

Q.—Is not there a provision under which McNish was bought? There is a provision under the agreement under which all previous preferential dividends were wiped out?

A.—Yes.

10 By Mr. McKeown, K.C.:

Q.—In any event, will you produce the by-laws to which you have referred and filed already as P-120?

A.—Yes.

Q.—You were also asked to produce a memorandum showing the details of the shares in the associated companies and other investments carried in the statement of the Alcohol Company as at September 30th, 1929, \$5,219,717.89, that is, in Exhibit P-99. Have you prepared that?

20 A.—Yes, sir.

Q.—Will you now produce that under the number 121?

A.—Yes.

Q.—It is an exhibit showing the details of ———

The Court: Has it been referred to already?

Mr. McKeown, K.C.: Yes. It was already referred to in Mr. Lawrence's deposition.

30 By Mr. McKeown, K.C.:

Q.—You were also asked to produce the statement submitted to the Directors showing the summary of business for the month of May, 1929, as Exhibit P-124?

A.—I produce the same.

Q.—Will you look at the Exhibit P-124 and say whether the item "Accounts Payable," shown at \$1,282,544 and marked with an arrow in red is the item which included the bank overdraft as at that date?

40 A.—Yes.

Q.—Do you know what the bank overdraft was at that time?

A.—\$973,000.

By Mr. Campbell, K.C.:

Q.—Even figures?

JOHN G. LAWRENCE (*for Plaintiffs*), *Examination-in-Chief*.

A.—Yes.

By Mr. McKeown, K.C.:

Q.—I think you told us on your previous examination that statements similar to P-124 submitted to the Directors from February, 1929, forward were in this form with respect to the item in question?

10 A.—Yes.

Q.—That is, the bank overdraft was not shown as a separate item?

A.—Yes.

Q.—You were also asked to produce a copy of the Balance Sheet of Robert McNish and Company for the year ending September 30th, 1928, to be marked Exhibit P-128?

A.—Yes.

Q.—As at September 30th, 1928?

20 A.—Yes.

Q.—You were also asked to produce a statement showing the quantities of grain and molasses used at the Corbyville plant in each year as Exhibit P-109.

Mr. Campbell, K.C.: Have you got a copy of those statements so that I can follow them? Are they all under one Exhibit number?

Mr. McKeown, K.C.: Yes.

30 The Witness: I produce a memorandum consisting of five sheets in that connection, all marked as a single Exhibit called P-109.

By Mr. McKeown, K.C.:

Q.—Looking at the first sheet of P-109, does the line marked with an arrow in red show the total proof gallons of the various kinds of liquor produced at Corbyville for the years beginning 1919 to 1929?

A.—Yes.

40 Q.—The first sheet only goes as far as 1928, and on page 2 is the result for 1929?

A.—Yes.

Q.—Marked by an arrow in the same way?

A.—Yes.

Q.—As to page 3 I take it it shows the quantity of grain used in the years 1926 to 1929 at the plant?

A.—Yes, sir.

JOHN G. LAWRENCE (for Plaintiffs), Examination-in-Chief.

Q.—For the various kinds of liquor?

A.—Yes, sir.

Q.—As to page 4, do the lines shown by the arrows show the number of proof gallons of liquor produced from the molasses used?

A.—Yes.

Q.—And the second line marked with an arrow shows the Imperial gallons of molasses used?

10 A.—Yes.

Q.—Page 5 is simply giving the same result for the year 1929?

A.—Yes.

The Court: Will the case be decided on the quantity of gallons used in a particular year?

Mr. McKeown, K.C.: No.

20 Mr. Campbell, K.C.: It may be interesting, but I do not see its relevance.

Mr. McKeown, K.C.: That went in two weeks ago. My learned friend was not objecting and it went in.

Mr. Campbell, K.C.: I am sorry I was asleep at the switch.

By Mr. McKeown, K.C.:

30 Q.—You were also asked to produce a memorandum showing the quantities of liquor on hand at the end of each of the years 1926, 1927, 1928 and 1929 at the Corbyville plant, showing separately the quantities of Bourbon whiskey, American rye whiskey, Canadian rye whiskey and sundry. Have you prepared that memorandum?

A.—Yes.

Q.—Will you produce it as P-110?

A.—Yes.

40 Q.—Will you note by its compilation, of P-110, the total quantity of liquor on hand at the Corbyville plant increased from September 30th, 1927, when it was 3,335,447 gallons, to 7,958,650 gallons on September 30th, 1929; in other words, more than double?

A.—Yes.

Q.—Now, does this statement P-110 include stocks which are not in bulk and stored at various points in question, including St. Pierre Miquelon, Nassau and other points?

A.—No, sir.

JOHN G. LAWRENCE (for Plaintiffs), Examination-in-Chief.

Q.—So that the total shown as of September 30th, 1929, 7,958,650 gallons of liquor does not show the full stock of liquors then held by Industrial Alcohol. How much would the additional stocks amount to, in round figures?

A.—I could not say.

Q.—In round figures?

A.—I would not guess at it.

10 Q.—Enough to bring it up to practically somewhere between 9,000,000 and 10,000,000 gallons at the present time?

A.—Yes.

Q.—And as at September 30th, 1929, how about it?

A.—Something less than that at that time.

Q.—Is it a fact that within the past two years the storage capacity of the plant at Corbyville has been doubled?

A.—It has been very greatly increased.

20 Q.—I am instructed it has been doubled, that the capacity before the extensions began would have been limited to about 5,000,000 gallons. Now the capacity is about 10,000,000 gallons.

A.—That might be. I could not say offhand.

Q.—You are a Director of the Company and you have been the Secretary of this organization for a long time back, and I am sure have been in very close touch with it. Do you suggest the figures I am putting to you are not approximately right?

A.—They may be approximately right. I have not got these figures clearly.

Q.—It is not a piece of news I am giving you?

30 A.—No.

Q.—Is it not true these figures are approximately right, that the plant has been doubled?

A.—The capacity of the plant has been greatly increased. Whether it has been doubled or not I don't know.

Q.—Approximately doubled?

A.—It might have been.

40 Q.—Let us see if you know anything more about something else which is important than you do about this subject. How much insurance is being carried on the stock of liquor at Industrial Alcohol?

A.—Something over \$30,000,000.

Q.—Over \$30,000,000?

A.—I think so.

Q.—Are you speaking of the stock of liquor at Corbyville only?

A.—The stock of all liquors.

Q.—Over \$30,000,000?

A.—Yes.

JOHN G. LAWRENCE (for Plaintiffs), Examination-in-Chief.

Q.—Has there ever been a higher figure carried, larger amount?

A.—No.

Q.—How much over \$30,000,000?

A.—At the end of September last the insurance carried on industrial and beverage spirits amounted to \$32,000,000.

Q.—Has the quantity of liquor in store or maturing been increased since that date?

10 A.—Yes.

Q.—Has the insurance been increased proportionately?

A.—Yes.

Q.—This stock of liquor which was insured for \$32,000,000 as far back as September, 1929, and which you say has since increased in quantity is, I take it, the item appearing in the statement Exhibit P-99 of the Alcohol Company as of date September 30th, 1929, reading:

“Stocks on hand at cost. \$5,755,679.87.”

20 A.—The stocks on hand as shown in this statement are the stocks belonging to the Canadian Industrial Alcohol only.

Q.—That would be the spirits in bulk?

A.—Yes.

Q.—And the goods, after being bottled and cased, would appear in the Consolidated Distillery statement. Is that right?

A.—And other subsidiary statements.

Q.—Which you have already filed?

A.—Yes.

30 Q.—But the larger quantity of it is in bulk and is covered by the item to which I have just drawn your attention?

Q.—In point of fact, at which price is the Alcohol's liquor entered as at cost, taken into the statements?

A.—It has a very varying cost.

Q.—Per gallon?

A.—It is a very varying cost per gallon.

Q.—I put it to you somewhere between 50 and 60 cents?

A.—Part of it?

Q.—I say the whole of it.

40 A.—Oh, no. It would go from 50 to 60 cents; over a dollar; up to a dollar.

Q.—What would it average? 70 cents?

A.—Possibly, yes.

Q.—Well, it is only entered as 70 cents a gallon. At what price do you sell it?

A.—Some of it sold at four dollars; some of it at six dollars. It depends on the age.

Q.—What is it insured at, in round figures?

JOHN G. LAWRENCE (*for Plaintiffs*), Examination-in-Chief.

A.—\$4 and \$6, according to its age.

By Mr. Campbell, K.C.:

Q.—These prices you have given are the ultimate paid by the public?

10 Mr. McKeown, K.C.: It is not the public at all, if you mean the consumer—

By Mr. McKeown, K.C.:

Q.—The prices you have been speaking of, \$4 and \$6 per gallon, would be the price at which the Consolidated sells it to the Liquor Commission?

A.—Yes.

20 Q.—Not the price at which the Liquor Commission sells it to the public?

A.—No, sir.

Q.—Did you bring with you the Minute Book of Executive Meetings or Meetings of heads of departments?

A.—I did not bring the book because it is a tremendous volume, but I brought you since 1925.

Q.—Will you exhibit to the Court the Minutes of the heads of departments of Canadian Industrial Alcohol and say upon what date the last of such meetings was held?

30 A.—The last meeting was held on the 29th of May, 1928.

Q.—Up to that time had the meetings been held weekly?

A.—Pretty well, yes.

Q.—I notice you also exhibit Meetings of Heads of Departments of Consolidated Distilleries?

A.—Yes.

Q.—You kept separate minutes for those meetings?

A.—Yes.

Q.—Did they go on simultaneously with the Alcohol meetings, or were they held separately?

40 A.—Held concurrently.

Q.—And you divided the particulars affecting Alcohol into one set of Minutes, and the business affecting Consolidated into another?

A.—Yes.

Q.—Have you in your possession a similar Minute Book for the Meetings of Heads of Departments for Consolidated Distilleries?

A.—Yes.

Q.—When you say these meetings were held concurrently, did

JOHN G. LAWRENCE (for Plaintiffs), Examination-in-Chief.

they cease at the same time as the meetings of the Alcohol heads of departments?

A.—Yes.

Q.—In point of fact, the Alcohol Company and the Distillery Company did occupy the same office and did have the same staff?

A.—Yes.

10 Q.—Will you verify that it was the practice of Honourable Mr. Marler and Colonel Gaudet to attend those Executive Meetings, meetings of heads of departments, so-called, up to the time the meetings ceased?

A.—Yes.

Q.—Is that true?

A.—Yes.

Q.—Did you tell us that those meetings were given up under instructions of the President, Lord Shaughnessy?

A.—Yes, sir.

20 Q.—At that time, Mr. Marler, of course, was a Director?

A.—At that time Mr. Marler was a Director, yes.

Q.—Colonel Gaudet as well?

A.—Yes.

Q.—This was after the death of Sir Mortimer Davis?

A.—Yes.

Q.—Do you know that letters had been received from Sir Mortimer Davis insisting these meetings should be held?

A.—No, sir.

Q.—Never saw any such letters?

30 A.—No, sir.

Q.—I put it to you that the purpose of giving the Meetings up was to eliminate Mr. Marler's knowledge of what was going on in the Alcohol Company?

A.—I don't know why they were given up.

Q.—You don't know why they were given up?

A.—No.

Q.—Can you offer to His Lordship any reason why these meetings were given up at this moment, further than on instructions from the President?

40 A.—No, sir.

Q.—I asked you the other day with reference to the resignation of the four Directors, Messrs. Joseph, Gaudet, Decary and Marler, all of which we notice went through the Minute Books in June and July, 1929. Do you remember that?

A.—Yes.

Q.—And I also asked you in connection with the announcement of these resignations. Do you remember that?

JOHN G. LAWRENCE (for Plaintiffs), Examination-in-Chief.

A.—Yes:

Q.—And I think you told us that these resignations were not announced until the month of October, 1929?

A.—I don't remember when they were announced. Possibly October, 1929.

Q.—Do you keep a book of newspaper clippings of matters affecting the Alcohol Company or subsidiaries?

10 A.—I keep a file.

Q.—Yes. Do you paste them in to any kind of permanent book or just keep them as clippings loose?

A.—Just keep them as clippings loose.

Q.—I am going to ask you to bring down all the clippings you have, bearing on Alcohol since the month of June, 1929, when the resignation of these Directors first came up.

20 Mr. Campbell, K.C.: We can possibly save the witness the necessity of bringing this additional file. My suggestion to Your Lordship is going to be that Your Lordship has the responsibility of deciding the case, not the newspapers.

The Court: He is simply asking the witness to bring them. We might not use them.

By Mr. McKeown, K.C.:

30 Q.—Was it to your knowledge communications were received by the Company from the recognized trade journals such as the Financial Times, the Financial Post, inquiring on the specific subject of the resignation of these Directors?

A.—I believe they phoned me up.

Q.—It is not true that they wrote letters asking for this information and that you know it?

40 Mr. Campbell, K.C.: I do not know what the answer is, but I do not care. My submission is that it is not relevant. If every newspaper in the city wrote to inquire of Mr. Lawrence, as Secretary, my submission is he was not obliged to give them an answer and under the instructions which had been instructions for months, long before Sir Mortimer Davis died, it was no violation of his instructions not to have given any information. My submission is it is illegal and irrelevant.

The Court: He is simply asking whether financial papers inquired about that. I suppose the *Canadienne Nationale* received a

JOHN G. LAWRENCE (for Plaintiffs), Examination-in-Chief.

number of inquiries as to the death of Honourable Mr. Amyot who died last week.

The Witness: Without looking up the files I could not answer that question from memory. I might have received such inquiries. I don't recall them specifically coming from those papers.

10 Mr. McKeown, K.C.:

Q.—You say they did call you up by phone?

A.—Some, I think, yes.

Q.—Some of these trade journals to which I have just referred?

A.—It might have been them; it might have been the Star; it might have been the Herald or the Gazette.

Q.—Did any reporters attend in person at the office and ask for it?

A.—I don't recall it.

20 Q.—Is your memory good or bad, Mr. Lawrence?

A.—I get people coming in all day and every day. I don't remember things like that specifically.

Q.—We will try and refresh your memory. Do you know a man called H. C. Hatch?

A.—Yes.

Q.—Was he ever an employee of this Company?

A.—Yes.

Q.—In your time?

30 A.—Yes.

Q.—Do you know the circumstances under which he left the Company?

A.—I think so, yes.

Mr. Marler, K.C.: Unless this gentleman left the Company since the death of Sir Mortimer Davis, I submit, My Lord, it is not relevant and we are not interested. We have a great many problems to solve here, but we have not got to solve the problems of this gentleman. My instructions are he left in 1924, before Lord Shaughnessy became President. Surely we are not interested in going into the circumstances under which Mr. Hatch left the Alcohol Company in 1924. My submission is it is irrelevant.

40 Mr. McKeown, K.C.: We say, amongst other things, that Lord Shaughnessy was advocating and promoting a merger of this Company with Walker's. We want to show who Walker is and the circumstances under which the people who are in the active control of

JOHN G. LAWRENCE (for Plaintiffs), Examination-in-Chief.

Walker's left this present Corporation in order that we might judge of the propriety of the present Company, Alcohol, going into any merger with that Company, which would lose its identity in this Company, which was built up by Sir Mortimer Davis in twenty years, and which was ordered to be preserved in his will.

10 Mr. Campbell, K.C.: We have not merged.

Mr. McKeown, K.C.: I hope you never will, and you never will if we have any voice in it.

The preceding question and answer were read as follows:

Q.—Do you know the circumstances under which he left the Company?

A.—I think so.

20 By Mr. McKeown, K.C.:

Q.—What were they?

A.—He bought a share of Gooderham & Worts Company and left us to take over the management of that company.

Q.—Of Gooderham and Worts Limited?

A.—Of Gooderham and Worts Limited.

Q.—When would that be?

A.—In 1924, I think.

30 Q.—Do you know that he had instructions to buy that for Sir Mortimer Davis, that which he bought for himself on that occasion?

A.—I have heard that.

Q.—Do you know a man called Hatch?

The Court: Was not Hatch a contractor before that?

The Witness: No, sir, I don't think so.

Mr. McKeown, K.C.: You are thinking of Hitch, My Lord.

40 By Mr. McKeown, K.C.:

Q.—Do you know W. J. Hume, I think his name is?

A.—Yes.

Q.—Was he ever an employee of Canadian Industrial Alcohol?

A.—Yes.

Q.—In your time?

JOHN G. LAWRENCE (for Plaintiffs), Examination-in-Chief.

A.—Yes, sir.

Q.—I might ask you, going back to Hatch, what was his connection with the Alcohol Company at the time he bought up Gooderham and Worts?

A.—He was a Director and Sales Manager.

Q.—And had been for how long?

10 A.—I could not say that.

Q.—Some years anyway. He was no new arrival on the scene?

A.—He might have been there for two or three years.

Q.—Let us come down to Hume. You say at one time he was connected with the Alcohol Company?

A.—He was connected with the Alcohol Company, yes.

Q.—And when did he sever his connections with the Alcohol Company?

A.—At the end of 1927, I think it was.

20 Q.—What was his connection with the Alcohol Company when he was there?

A.—He was a Director and Distillery Manager.

Q.—Perhaps you could tell from memory?

A.—The end of 1927.

Q.—The end of 1927?

A.—Yes.

Q.—Can you give us the date from the Minute Book? Cannot you tell at what date Mr. Hume was replaced, Mr. Lawrence?

30 Mr. Campbell, K.C.: Look about the end of 1926, Mr. Lawrence, or the beginning of 1927?

The Witness: The first of January, 1927.

By Mr. McKeown, K.C.:

Q.—What happened on that date?

A.—Mr. Hume resigned.

40 Q.—Did you ever hear of a merger between Gooderham and Worts and Hiram Walker?

A.—Yes.

Q.—How did that incident coincide with the departure of Mr. Hume from the Canadian Industrial Alcohol Company?

A.—Mr. Hume left the Canadian Industrial Alcohol Company to take over the Managership of the Hiram Walker plant.

Q.—Was that before or after the merger between Hiram Walker and Gooderham and Worts?

A.—I think about the same time.

JOHN G. LAWRENCE (for Plaintiffs), Examination-in-Chief.

Q.—That was during the lifetime of Sir Mortimer Davis?

A.—Yes.

Q.—Do you remember the announcement of Mr. Hume's resignation was conveyed to Sir Mortimer Davis while he was at sea, crossing—the first intimation of that?

A.—I have no knowledge of that at all. I would not make the announcement.

10 Q.—Will you turn up the Annual Meeting of Alcohol before the 1st of January, 1927, when Mr. Hume resigned, and see who was elected? On what date was that Annual Meeting held?

A.—The Annual Meeting of the 21st of December, 1926.

Q.—And Mr. Hume's resignation is dated January 1st, 1927, eleven days later, is that it?

A.—Yes.

Q.—What does it say? Read that entry?

20 A.—“The President informed the meeting of the resignation of Mr. W. J. Hume as a Director and Vice-President of the Company, effective January 1st, 1927, which resignation had been accepted, and that Mr. Fisher Wilmore had been appointed General Manager of manufacture to fill the vacancy caused by Mr. Hume's resignation.”

Q.—Turn back to the Annual Meeting. Was Mr. Hume re-elected at that Annual Meeting on the 21st of December, 1926?

A.—Yes.

Q.—Did they hold a meeting of the Directors immediately following that Annual Meeting?

30 A.—Yes.

Q.—Who was elected Vice-President of the Company at that meeting?

A.—W. J. Hume and——

Q.—Is that the same party?

A.—The same party.

By Mr. Campbell:

Q.—Finish your answer.

40 A.—W. J. Hume and E. Lauster.

By Mr. McKeown:

Q.—Was Mr. Hume personally present at the meeting of the Directors that you have now before you?

A.—Yes, sir.

Q.—Was Sir Mortimer Davis there?

JOHN G. LAWRENCE (for Plaintiffs), Examination-in-Chief.

A.—No.

Q.—Do you know a Mr. Rainer?

A.—Yes.

Q.—What are his initials?

A.—W. S.

Q.—Was he ever an employee of Canadian Industrial Alcohol?

A.—Yes.

10 Q.—In what capacity?

A.—Director and Sales Manager.

Q.—When did he sever his connection with the Alcohol Company?

A.—He severed his connection at the Annual Meeting of the 21st of December, 1926.

Q.—He was not re-elected?

A.—No.

Q.—Had he resigned previously?

20 A.—I think it was that day he resigned.

Q.—Is his resignation dealt with in any way? Is his resignation entered in the Minute Book?

A.—No, I have not got that.

Q.—And where did he go to?

A.—He went to Gooderham and Worts, Toronto.

Q.—Was Gooderham and Worts at that time amalgamated with Hiram Walker?

A.—It was just about that time the Merger took place. I do not think they were merged at that time.

30 Q.—Referring to the copy of Houston, which I have before me, I notice that the change of name of the merged Companies, the present style of Hiram Walker and Gooderham and Worts is recorded as of the 19th of November, 1927?

A.—November, 1927.

Q.—That was the change of name, and that Company was incorporated as of date December 31st, 1926?

Mr. Campbell: Which Company is this?

40 Mr. McKeown: That is the Company now known as Hiram Walker, Gooderham and Worts, Limited.

By Mr. McKeown:

Q.—Would that be about your recollection?

A.—Yes.

Q.—Are all these individuals, H. C. Hatch, W. J. Hume and

JOHN G. LAWRENCE (for Plaintiffs), Examination-in-Chief.

W. S. Rainer connected with the Company now known as Hiram Walker, Gooderham and Worts Limited?

A.—Yes.

Q.—I put it to you that, speaking mildly, they left the Industrial Alcohol Company under strained relations with Sir Mortimer Davis?

A.—I do not think Hume did.

10 Q.—What about the other two?

A.—Rainer, I understand, did.

Q.—Hatch?

A.—I think Hatch left on his own.

Q.—Do you know that they took the opportunity of disposing of their shares in Industrial Alcohol before leaving?

A.—Yes, I think they did.

Q.—All of them—the three of them?

A.—I think so, yes.

20 Q.—Those men held a considerable number of shares in Alcohol, did they not?

A.—Yes, I think so.

Q.—Do you remember how many shares Hatch held?

A.—No.

Q.—Do you remember how many shares Hume held?

A.—No.

Q.—How long had Hume been with the Company?

A.—I think he was born at the plant.

30 Q.—Had his father been connected with the Company before him?

A.—His father was with the Company.

Q.—And he had been in the employ of the Company since he first took up business?

A.—Yes.

By Mr. Montgomery:

Q.—That is, Hume?

A.—Yes.

40 By Mr. McKeown:

Q.—How long had Rainer been with them?

A.—I don't know when he joined the firm.

Q.—I think you said you did not know how many shares Hume had?

A.—No.

Q.—Do you know how many shares Rainer had?

JOHN G. LAWRENCE (*for Plaintiffs*), *Examination-in-Chief*.

A.—No.

Q.—I put it to you he had 6,000 shares?

A.—He might have had.

Q.—You do not remember the fact?

A.—No.

10 Q.—You never saw any correspondence dealing with the conduct of Rainer in disposing of his 6,000 shares under the circumstances?

A.—Not correspondence.

Q.—What are you referring to if you are not referring to correspondence. What is it you did see?

A.—I just heard about it.

Q.—Are those three individuals still connected with Hiram Walker, Gooderham and Worts?

A.—Yes.

Q.—What is Mr. Hatch's position there?

A.—I think he is Chairman of the Board of Directors.

20 Mr. Campbell: Surely, My Lord, there must be a limit to this.

Mr. McKeown: There ought to be a limit. You don't need any limit.

30 Mr. Campbell: I have reached my limit, and I object to the question as being irrelevant and therefore illegal. We have been listening for the last half hour to questions which, in my submission, have absolutely no bearing on the controversy Your Lordship has to judge. There were certain negotiations referred to in the pleadings and we say quite frankly in the abstract, a Merger was worthy of consideration; we never got down to discussing details, and we always told you there would be no Merger without conferring with your client, and that if she has any reasonable objections to make, we will be glad to consider those reasonable objections. There was nothing but very vague preliminaries. Why should we take up the time of this Court going into a discussion of details of the past history of these gentlemen. I cannot see what possible bearing they can have on this controversy now before the Court, and I submit it is irrelevant
40 and illegal.

Mr. McKeown: We have a direct issue on the injunction in this very case to prohibit this very Merger. We have that as a result of the Petition for sequestration, saying that this must be taken out of the hands of these Defendants before the Merger is consummated, and we have the same question arising on the injunction against

JOHN G. LAWRENCE (for Plaintiffs), Examination-in-Chief.

holding the Alcohol meeting, and we are not prepared to take the words of the Defendants that they call it off.

Objection reserved.

By Mr. McKeown:

10 Q.—What is Mr. W. J. Hume's position in this combination of Hiram Walker, Gooderham and Worts?

A.—I believe he is the President.

Q.—What is Mr. Rainer's position in connection with Hiram Walker, Gooderham and Worts?

A.—I think he is a Director, and Treasurer.

Q.—Do you know who the other Directors are of Hiram Walker, Gooderham and Worts, Limited?

20 Mr. Campbell: I submit, My Lord, that if the fact is relevant, this is not the way to prove it. The witness in the box may be giving his recollection, but if it is of any consequence that is not the way to prove it, and my submission is, that it is not the best evidence of the facts sought to be proved.

Mr. McKeown: As collateral facts, I think this is a good enough way to make the evidence.

By Mr. McKeown:

30 Q.—Do you know Mr. J. F. Lash?

A.—Yes.

Q.—Do you know he is a Director of the Company?

A.—Yes.

Q.—He is a member of the law firm of Blake, Lash, Anglin and Cassells?

A.—Yes.

40 His Lordship: I may say that Mr. Lash told me there was absolutely no prospect of a Merger.

Mr. McKeown: I only hope they may never change their view upon the matter.

Mr. Campbell: It would be a most miraculous happening to be possible now.

JOHN G. LAWRENCE (*for Plaintiffs*), *Examination-in-Chief*.

Mr. McKeown: Under the present circumstances I agree with you. We hope to prove the circumstances.

By Mr. McKeown:

10 Q.—Did you become aware in the course of the last five or six months, or since September 1st, that there were negotiations looking to a Merger of Canadian Industrial Alcohol with Hiram Walker, Gooderham and Worts, Limited from any sources whatsoever?

A.—The first I knew about it was in January.

Q.—January of what year?

A.—1930.

Q.—What are you looking at there?

A.—A memorandum of the time I went to Toronto.

Q.—A memorandum of the time you went to Toronto?

A.—Yes, either about December or January.

20 Q.—About December or January. That is pretty broad. December has thirty-one days in it?

A.—I do not remember the first day I heard of it.

Q.—We may have to work backwards. You say you went to Toronto?

A.—Yes.

Q.—What date was your first trip to Toronto?

A.—The 14th of January.

By Mr. Campbell:

30

Q.—What year are you referring to?

A.—The 14th of January, 1930.

By Mr. McKeown:

Q.—You had got along by that time far enough, that you took the books, or some of them, up with you to Toronto, did you not?

A.—No.

40 Q.—Did you take some statements?

A.—Yes.

Q.—What statements did you take up at that time?

A.—I think I took up the Balance Sheets of the Company.

Q.—The Balance Sheets of what Company?

A.—All the Companies.

Q.—The Canadian Industrial Alcohol and its subsidiaries?

A.—Yes sir.

Q.—You took them all up to Toronto?

JOHN G. LAWRENCE (for Plaintiffs), Examination-in-Chief.

A.—Yes, sir.

Q.—Under whose instructions did you take them up there?

A.—The President's.

Q.—Lord Shaughnessy?

A.—Yes.

10 Q.—When did you get those instructions to take those Balance Sheets to Toronto?

A.—Just prior to the 14th of January.

Q.—How long prior?

A.—Possibly a week, or a couple of weeks.

Q.—Did you take anything else except those Balance Sheets?

A.—Just the Balance Sheets and the details of them.

Q.—Did the details of them consist of the books?

A.—No.

Q.—What did the details consist of?

A.—Schedules.

20 Q.—Prepared from the books?

A.—Yes.

Q.—How long were you building up those schedules?

A.—Oh, a couple of weeks possibly.

Q.—I take it those schedules were prepared for the purposes of your Toronto trip?

A.—Yes.

Q.—And prepared on instructions of the President?

A.—Yes sir.

30 Q.—Will you give us the approximate dates you started to work on those schedules, if you went to Toronto on the 14th of January, 1930?

A.—I think it was just after the New Year.

Q.—Are you swearing to that date with any idea of definiteness?

Witness: That I went up with those statements?

Counsel: Yes.

A.—Yes.

40 Q.—And how long before that had you first got wind of the idea of a Merger?

A.—I think it was just prior to Christmas, and I left over the preparation of the statements until just after New Years.

Q.—Let me ask you this question: You know that the Annual Meeting of this Company was scheduled to be held on December 17th?

A.—The 17th, yes.

JOHN G. LAWRENCE (for Plaintiffs), Examination-in-Chief.

Q.—December 17th, 1929?

A.—Yes.

Q.—Did you know of this rumor of a Merger at that time?

A.—Yes, I remember hearing of it.

Q.—So you knew of it before December 17th, 1929?

A.—I heard the rumors

10 Q.—How long before December 17th, 1929, had you heard a talk of this Merger?

A.—I could not say how long. I don't know.

Q.—You must be able to give us some information. You were the Secretary of the Company, and occupied a very important position in its affairs at that time?

A.—Well, prior to that I had nothing whatever to do with any Merger negotiations.

Q.—I understand that; I know you may not have been in touch with it, but I ask you when you first heard of it?

20 A.—I cannot give you anything more definite than prior to the Annual Meeting.

Q.—How long prior? Two months?

A.—It might have been. It might have been less. I don't know.

Q.—It might have been two months prior to the Annual Meeting that you heard of these negotiations of the Merger, is that what you want to say?

A.—It might be, yes.

30 Q.—Then, you might have heard of the Merger before the 17th of October, 1929?

A.—It is possible, yes.

Q.—Will you swear you did not hear of it before that date?

A.—No.

Q.—You would not deny that you heard?

A.—I won't deny it. I might have heard of it. I do not recall what day I heard of it.

Q.—I suppose at that time you enjoyed Lord Shaughnessy's full confidence in connection with the affairs of the Company?

A.—I enjoyed his confidence. I do not know whether it was his full confidence.

40 Q.—Did you at that time? I don't know how you stand now. At that time, were your relations with Lord Shaughnessy such that you would have expected to be informed of matters of vital interest to the Company?

A.—No, I don't know that he would have mentioned that particularly.

Q.—You heard a statement read out by Lord Shaughnessy at the Annual Meeting of December 17th, 1929, did you not?

JOHN G. LAWRENCE (for Plaintiffs), Examination-in-Chief.

A.—Yes.

Q.—Have you a copy of that statement with you, or is it in the Minutes?

A.—I think it is in the Minutes.

Q.—Will you just read that into the record, the Minutes of the meeting of December 17th, 1929? What did Lord Shaughnessy say to the shareholders at that meeting?

10 A.—“During the past few weeks conversations and discussions have taken place concerning matters which, if carried to conclusion, might have some effect upon the personnel of the Board and the administration of this Company. I regret that it is inadvisable to discuss more fully the nature of these matters at this time, but it is considered in the interests of the Company and the Shareholders that this Annual Meeting should be adjourned for a short time, and Mr. Lauster will now move and Mr. Kelly will second the Resolution accordingly.”

Q.—And that Resolution was passed by division, was it not?

20 A.—“It was then moved by Mr. Lauster, seconded by Mr. Archibald Kelly that this Annual General Meeting of the Shareholders of Canadian Industrial Alcohol Company, Limited be forthwith adjourned to 2.30 o'clock p.m. on the 22nd January at this place.”

Q.—You were in the room when this announcement was read out by the President?

A.—Yes.

Q.—Did you understand it referred to these Merger negotiations, or did you know what it referred to?

30 A.—Well, I think it referred to more than the negotiations for the Merger.

Q.—Lord Shaughnessy spoke of a change in the personnel of the Board—

Mr. Campbell: I submit, My Lord, that is not fair. Your Lordship has already been informed as to the arrangement between Counsel.

Mr. McKeown: We did not draw that document.

40

Mr. Campbell: You were present at the meeting, and you knew what it referred to. There were negotiations going on at that time between Counsel for Lady Davis and the other Plaintiff looking to a possible adjustment of the whole situation which might have involved, had they been successful, reconstitution of the Alcohol Board. At that time the knowledge of the whole reconstituting of the Board was a matter of discussion, and at that time the parties

JOHN G. LAWRENCE (for Plaintiffs), Examination-in-Chief.

had not reached either an agreement or a disagreement, and the matter was, by arrangement postponed.

Mr. McKeown: But what I am asking, is that statement referring to the Merger or not?

10 Mr. Campbell: He did not draw the statement. When Lord Shaughnessy testifies he can tell you.

Mr. McKeown: Lord Shaughnessy will not be overlooked.

By Mr. McKeown:

Q.—Do you think that that reference referred to the Merger?

A.—I think it referred to this present litigation.

20 Q.—Do you mean the whole statement, or just that particular reference?

A.—It might mean both. It might mean one or the other. It certainly was a result of the present litigation.

Q.—This present litigation was not started then?

Mr. Campbell: No, but it was threatened.

By Mr. McKeown:

30 Q.—Well now, we have got it from you that you might have known as early as the 17th of October, 1929, of negotiations for the Merger, and you must have seen reports of rumors in the press before the date you are now mentioning dealing with the suggestion of the Merger?

A.—Oh yes, these reports appeared periodically in the press.

Q.—Before that date? Before October 17th?

A.—Oh yes.

Q.—Let us go back to your first visit to Toronto. Did you meet any of these gentlemen in Toronto, Messrs. Hatch, Hume or Rainer?

A.—I met Mr. Hume and Mr. Rainer.

40 Q.—On the occasion of your visit of the 14th of January?

A.—Yes.

Q.—Mr. Hume does not live in Toronto?

A.—No.

Q.—He lives in Walkerville?

A.—Yes.

Q.—He must have been down there by appointment to meet you?

JOHN G. LAWRENCE (for Plaintiffs), Examination-in-Chief.

A.—He was down there at the time.

Q.—What about Mr. Rainer? Where does he reside?

A.—Toronto.

Q.—Did you discuss the data which was brought up—the statements?

A.—Yes.

10 Q.—You laid them before them?

A.—No.

Q.—Did you show them to them?

A.—No.

Q.—Who was there with you on that occasion?

A.—I was alone.

Q.—There was no other representative of the Company?

A.—No.

Q.—Where did you meet Messrs. Hume and Rainer?

A.—At the office of Gooderham and Worts.

20 Q.—Was Mr. Hatch there?

A.—No.

Q.—And is that all you did on that trip to Toronto?

A.—I think I went and saw Mr. Lash at the time, too.

Q.—That would be Mr. J. F. Lash whom we referred to a few moments ago, of Blake, Lash, Anglin and Cassells?

A.—Yes, sir.

30 Q.—Did you interview anybody else there, that is, than the three Directors of Hiram Walker, Gooderham and Worts Limited, that have been covered. Did you see anybody else there on that trip?

A.—No.

Q.—Then, you came back?

A.—Yes.

Q.—Did you show Mr. Lash these figures?

A.—No.

Q.—You took those statements up to Toronto plus the schedules?

40 A.—I do not think I had the schedules prepared at that time. I think they were in course of preparation at that time, and prepared later.

Q.—Then, you had the statements with you?

A.—Yes.

Q.—Of the Alcohol Company and all its subsidiaries?

A.—Yes.

Q.—And do you want it to be understood that you journeyed up to Toronto, went to Hiram Walker, Gooderham and Worts office, saw Mr. Hume, the President of that organization, and Messrs.

JOHN G. LAWRENCE (for Plaintiffs), Examination-in-Chief.

Rainer and Lash, Directors, and came back here and did not show anybody the statements?

A.—Yes, sir.

By The Court:

10 Q.—Did they show you any statements?
A.—Not on that trip.

By Mr. McKeown:

Q.—That is all you can enlighten the Court on as to that trip?
A.—Yes.
Q.—When was your next trip?
A.—I went up on the following Saturday.
Q.—What date would that be?
A.—The 18th of January.
20 Q.—Did you bring those statements back with you, which you had on the first trip?
A.—Yes, sir.
Q.—What were you armed with on the second trip? The same statements?
A.—The same statements, and the completed schedules.
Q.—And whom did you see on that trip?
A.—Mr. Rainer, Mr. Hume and Colonel Gordon.
Q.—Colonel Gordon of the firm of Clarkson, Dilworth and
30 Gordon?
A.—Yes.
Q.—You saw Mr. Gordon?
A.—Yes, sir.
Q.—Were the statements exhibited to any of these gentlemen on that occasion?
A.—Just to Mr. Gordon.
Q.—Did you see any statements of Hiram Walker, Gooderham and Worts on that occasion?
A.—Just a statement prepared by Clarkson, Dilworth and
40 Gordon.
Q.—Did you see any statement of the Seagram Distillery on that occasion?
A.—No.
Q.—What else occurred on that trip? You say you showed these statements to Colonel Gordon?
A.—Yes.
Q.—Did anything else happen?

JOHN G. LAWRENCE (for Plaintiffs), Examination-in-Chief.

A.—And I left them with him at that time.

Q.—That was all on the 18th of January, 1930?

A.—On the 19th, 20th and 21st.

Q.—You left here on the 19th and were there for the 20th and 21st?

A.—I was there for the 19th and 20th.

10 Q.—Was that Sunday and Monday?

A.—Sunday and Monday.

Q.—Did you spend both days with Colonel Gordon going over them?

A.—Principally Monday.

Q.—And did you leave the schedules together with the statements?

A.—Yes.

Q.—When were you up there next?

20 Mr. Campbell: We have come to the time at which this action was served. As a matter of fact, it was served on the occasion of that visit. It was served on the 18th of January, and I therefore repeat my objections.

Same Reserve.

Mr. Campbell, K.C., of counsel for Defendants, respectfully excepts to His Lordship's ruling.

A.—I have not been back to Toronto since.

30 By Mr. McKeown:

Q.—Were your statements and schedules returned to you?

A.—I do not think so. I think they are still in the office of Clarkson, Dilworth and Gordon.

Q.—While all these visits were being paid by you to Toronto, did the Ontario people pay any visits to Montreal, and to the offices of Industrial Alcohol?

40 A.—I believe somebody came down. I did not see them personally.

Q.—I suggest to you that Mr. Hume was around the office quite a lot?

A.—Yes, I think Hume came down. I saw Hume.

Q.—How many times was Mr. Hume in the office between, say, the 1st of September and the 1st of January last, to your certain knowledge?

A.—I think he was in my office about twice.

JOHN G. LAWRENCE (*for Plaintiffs*), Examination-in-Chief.

Q.—During that period?

A.—Yes.

Q.—Will you give us the dates?

A.—He was in my office around the time that this discussion was going on.

Q.—Had he been in your office before the date fixed for the Annual Meeting on December 17th, 1929?

10 A.—He might have been. He comes down to Montreal periodically, and comes in to see me.

Q.—After the 1st of January? Take first, the 18th of January, how often had Mr. Hume been in the office?

A.—Two or three times probably.

Q.—Was it in connection with these negotiations?

A.—Yes.

Q.—And after the 18th of January, how often has he been in there, up to the present time?

20 A.—Well, he may have been in once since.

Q.—Was he not in more than that, since the 18th of January?

A.—Not in my office.

Q.—In the office of Canadian Industrial Alcohol or Lord Shaughnessy's office?

A.—Well, he might come in to see Lord Shaughnessy a dozen times that I would never know about.

Q.—Do you mean to tell me that you only know he has been in the joint offices of Lord Shaughnessy and the Industrial Alcohol once since the 18th of January?

30 A.—I don't know how many times he has been in any other office bar my own.

Q.—I put it to you that he swaggered around the office and came to pick out furniture?

A.—I never heard of it.

Q.—You don't know that?

A.—I never heard of it.

Q.—Under whose authority were you acting in what you told us you have done in connection with taking these statements to Toronto, and turning them over to this firm of Accountants there?

40 A.—The President's.

Q.—Did you understand at that time what the purpose was of delivering those statements to Clarkson, Gordon and Dilworth?

A.—Yes.

Q.—What was the purpose?

A.—A proposed Merger.

Q.—From whom did you learn that?

A.—The President.

JOHN G. LAWRENCE (*for Plaintiffs*), *Examination-in-Chief*.

Q.—When did the President give you these instructions to take these statements to Toronto for the purpose of the proposed Merger?

A.—I think I have already answered that, just before Christmas.

Q.—Did you ever have any further connection with the negotiations for this proposed Merger than what you have told us?

A.—No.

10 Q.—Do you remember the injunction which was taken against the holding of the adjourned Alcohol Meeting on January 22nd, 1930?

A.—Yes, sir.

Q.—Had not Hume been in the office several days, to your knowledge, prior to the service of that injunction?

A.—I could not answer that.

Q.—You would not deny it, would you?

A.—I would not deny it.

20 Q.—Did you ever have any relations in the matter of these negotiations with the representatives of a Corporation known as Distillers Seagrams Limited?

A.—No.

Q.—Do you know who did?

A.—No.

Q.—You attended all the meetings of the Board as Secretary, until the time of your own election as a Director?

A.—Yes.

30 Q.—At these meetings of the Board, did the President, Lord Shaughnessy, refer to the proposed suggestion of a Merger, formally or informally?

A.—I do not think so.

Q.—Was it generally known amongst the Directors that this move was afoot in the months of say, October, November and December?

A.—I think so, yes.

Q.—The Directors knew it generally?

A.—Oh, yes.

40 Q.—Would you say that they had as early a knowledge of it as you had?

A.—I could not say.

Q.—You have told us you know Mr. Lash?

A.—Yes.

Q.—Did you ever meet Mr. Lash in Montreal, in connection with the matter of this Merger?

A.—No.

Q.—Never?

A.—No, sir.

JOHN G. LAWRENCE (*for Plaintiffs*), Examination-in-Chief.

Q.—You never discussed it with him in Montreal?

A.—No.

Q.—Did you ever hear any terms of this Merger suggested by either Lord Shaughnessy or Mr. Lash or anybody else?

A.—No.

Q.—Did you ever get any information from any source as to the proposed terms of the Merger?

10 A.—I do not think it ever got as far as that.

Q.—You notice you do not answer the question. I can tell you more than that myself. Did you ever get any information from any source as to the proposed terms of the Merger?

A.—No.

Q.—And you do not know today?

Witness: As to the terms of the Merger?

20 Counsel: The terms of the proposed Merger?

A.—No.

Q.—Or, the proposed terms of the Merger, whichever way you like?

A.—No.

Q.—You never heard of the suggestion of changing these shares, share for share, with Hiram Walker, Gooderham and Worts?

A.—No.

Q.—You never heard of it until this moment?

30 A.—I know what the figures are. I know what the basis would be, but I have never discussed that with anybody.

Q.—No one has ever suggested such terms to you?

A.—No. It may have been discussed among ourselves in the office, but not with Mr. Lash, Hume or any of those people. I may have discussed that with Colonel Gordon in Toronto.

Q.—That Walker stock pays a dollar a share dividend?

A.—I believe so.

Q.—Your stock at the same time was paying a dollar fifty-eight plus a bonus of twenty-five cents in twelve months?

40 A.—No. It paid a dollar fifty-two.

Q.—Plus what bonus?

A.—A bonus at the start of the year of twenty-five cents.

By Mr. Campbell:

Q.—How often was the bonus paid?

A.—Just once.

JOHN G. LAWRENCE (for Plaintiffs), Examination-in-Chief.

By Mr. McKeown:

Q.—I am talking about what was paid for twelve months?

Mr. Campbell: You are implying there was an annual bonus of twenty-five cents.

10 By Mr. McKeown:

Q.—That is, for the twelve months in any event, the Alcohol shareholders received a dollar and seventy-seven cents per share?

A.—Yes.

Q.—While the Walker shareholders were receiving one dollar per share?

A.—Yes, on a different number of shares.

Q.—Have you got with you the Sales Register of this Company?

A.—I have the summary of sales.

20 Q.—Well, let us see it. Under the system followed in the office, the sales are kept track of on the basis of cases, are they not?

A.—Those are Industrial Alcohol sales.

Q.—Sales of Industrial Alcohol to Consolidated, is that what you mean?

A.—No, sales of Industrial Alcohol to the customers.

Q.—What do you mean? Do you mean these are the consolidated sales of Canadian Industrial Alcohol subsidiaries, is that it?

A.—Yes, sir, of Industrial Alcohol only.

30 By Mr. Campbell:

Q.—This has nothing to do with the beverage business?

A.—No.

By Mr. McKeown:

Q.—This is non-beverage?

A.—Industrial Alcohol.

40 Q.—Let us take something a little bit better. You now exhibit to me the daily reports of shipments which represents, I take it, the consolidated sales of the subsidiaries of Canadian Industrial Alcohol and of beverage liquor?

A.—Yes.

Q.—This is made up to the week ending February 28th, 1930?

A.—Yes.

JOHN G. LAWRENCE (for Plaintiffs), Examination-in-Chief.

Q.—What were the total sales, in cases, of beverage goods for the year ending September 30th, 1927, if you can give me that?

A.—342,025 cases.

Q.—Well, then, give me the figures for the year ending September 30th, 1928?

A.—459,216 cases.

10 Q.—That was an increase of something like 125,000 cases from the previous year?

A.—Yes.

Q.—Give us the figures as at September 30th, 1929?

A.—395,347 cases.

Q.—That was a decrease of something like 64,000 cases?

A.—Yes.

By Mr. Campbell:

20 Q.—From the previous year?

A.—From the previous year.

By Mr. McKeown:

Q.—Give us the figures for the present year up to the end of your compilation, that is, for the five months?

A.—91,275 cases.

Q.—To February 28th, 1930?

A.—Yes.

30 Q.—What number of cases are the sales, for the first five months of the year, as compared with the same period last year?

A.—122,254 cases.

Q.—In other words, while last year at the end of February, you had sold 213,529 cases, this year you have only sold during the same period 91,275 cases, is that right?

Yes, to the end of February.

Q.—Do you know how the sales stand on the 15th of March this year?

A.—Not offhand.

40 Q.—I put it to you, they were 132,000 cases—

A.—For the half-month.

Q.—Short on the year—short, as contrasted with the same date last year?

Witness: Until the 15th of March?

Counsel: Yes.