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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 4

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

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25, RUSSELL SQUARE,
LONDON,
W.C.1.

JOHN G. LAWRENCE (for Plaintiffs), Examination-in-Chief.

Mr. Campbell: I make the same objection, my Lord.

His Lordship: Well, we will adjourn now.

And it now being 4.40 p.m., the further examination of the witness was adjourned until tomorrow, Tuesday, April first, 1930, at 10.30 a.m.

10

And further for the present deponent saith not.

Morning Session, April 1st, 1930.

JOHN GIBSON LAWRENCE

20 reappearance and continued his evidence as follows (in examination in chief).

By Mr. McKeown, K.C.:

Q.—Mr. Lawrence, I was questioning you at the adjournment yesterday with reference to the sales of alcohol during the current year beginning October 1st last and I had asked you to bring with you this morning the compilation to date. Have you got it with you?

A.—Yes. That is the report made up to March 22nd.

30

Mr. Campbell, K.C.: If Your Lordship will allow me, I wish to record again my objection to any evidence of any facts which have occurred since the action was brought. We are now down to March 22nd, 1930. My learned friend is proposing to establish sales to the 22nd of March, 1930, and it is absurd.

The Court: It is up to you to shorten it.

40 Mr. Campbell, K.C.: I am trying to shorten it by persuading Your Lordship to exclude evidence which we suggest is irrelevant and illegal. There is no end to it. My learned friend would produce facts down to the 22nd of March.

The Court: That may have nothing to do with my own conclusion, but it might have something to do with the sequestration and injunction.

JOHN G. LAWRENCE (*for Plaintiffs*), *Examination-in-Chief*.

Mr. McKeown, K.C.: This Estate is in a state of chaos. You are heading for the rocks and here is the proof of it.

Mr. Campbell, K.C.: If, peradventure, sales increased from now to the end of the trial, are we going to come back and tell you about it? I am perfectly convinced evidence of this kind cannot help Your Lordship to decide the controversy, which is your responsibility,
10 and we submit it is all illegal.

The Witness: This other statement is for comparison of the figures right up to date.

Mr. McKeown, K.C.: We had a Number 140 which has been cancelled. My learned friends were going to write us a further letter in connection with that subject. There was to have been a further exhibit, but my learned friends—

20 By Mr. McKeown, K.C.:

Q.—Will you produce as P-140 the statement to which you have referred, compiled to the week ending March 22nd, 1930?

A.—Yes.

Q.—Showing the sales from October 1st, 1929, to that date?

A.—Yes.

Q.—Now just take that form before you. Looking at P-140 I see it is headed “Consolidated Distilleries Report of Shipments of
30 Beverage to date.”

A.—Yes.

Q.—There seems to be, going down the left hand column, classifications under the names of Consolidated Distillery, Ste. Hyacinthe Distillery, Consolidated Distillery of Manitoba, Consolidated Distilleries, Limited, Vancouver; Wisers’ Distillery. Are these the plants from which the shipments are made by Canadian Industrial Alcohol?

A.—Yes.

Q.—And at the bottom there is another consolidation (all com-
40 panies). Is that a recapitulation of the shipments from the various distilleries as above?

A.—Yes.

Q.—The first two columns headed: “This date this year, the same date last year,” are not used in practice?

A.—No.

Q.—The third and fourth columns “This month this year and this month last”?

JOHN G. LAWRENCE (*for Plaintiffs*), *Examination-in-Chief*.

A.—“Same month last year.”

Q.—“Same month last year” refers to the current month, to the date of the statements?

A.—Yes, sir.

10 Mr. Campbell, K.C.: There is something about last year. Are you taking the full month or only the proportion?

The Witness: Just the proportion of the month.

By Mr. McKeown, K.C.:

Q.—For convenience, I have numbered these cross-columns one to ten. Columns five and six are headed “Increase over last year”; column six, “Decrease under last year”; those two go together?

A.—Yes.

20 Q.—Columns seven and eight are headed “Total this fiscal year.” That means from October 1st to the date of the statement? Column eight, “Total same period last year” is as you have already explained, the sales as at the weekly period in the corresponding month last year?

A.—Yes.

30 Q.—Finally, column nine, “Increase over last year,” means where there would be an indication, if such were the fact, of the number of cases to which the sales this year had increased over last year for the same period?

A.—Yes.

Q.—Column ten is for the purpose of showing any decrease in the same month?

A.—Yes.

Q.—In a sub-classification in the left-hand column, under the names of each of the distilleries and under the recapitulation you have “Cases bulk of whiskey” and “Bulk of alcohol” and a sub-sub-classification of each of these—domestic, export, export duty paid?

A.—Yes.

40 Q.—You have already explained to His Lordship the classification, domestic, export, and export duty paid?

A.—Yes.

Q.—Perhaps at the risk of repeating, I suggest to you “Domestic” means liquor sold here in Canada for beverage purposes to the Liquor Commission?

A.—Yes.

JOHN G. LAWRENCE (for Plaintiffs), Examination-in-Chief.

Q.—“Export” means exported to other countries than the United States?

A.—“Export” means liquors exported in bulk.

Q.—Other than to the United States?

A.—Yes.

Q.—“Duty paid” means liquor consigned and billed directly to the United States and cleared to United States ports, so far as
10 your company is concerned?

A.—Yes.

Mr. Campbell, K.C.: “Duty paid export” is wherever there is any landing certificate to release the bond.

The Witness: It is cleared for export out of Canada.

By Mr. McKeown, K.C.:

20 Q.—It is cleared “duty paid”?

A.—It is cleared “duty paid” for export out of Canada.

Mr. Campbell, K.C.: It might be for any foreign country.

Mr. McKeown, K.C.: What do you think they pay nine dollars a gallon for?

Mr. Campbell, K.C.: That applies to all countries where there is no landing certificate.
30

By Mr. McKeown, K.C.:

Q.—In any event all “duty paid” includes liquor consigned to the United States?

A.—It is cleared by order for export out of Canada.

Q.—If it is being exported out of the United States it is included in this “duty paid export”?

A.—If it eventually found its way into the United States it is
40 included in the classification.

Q.—I put it to you you know you ship liquor to the docks at Windsor to be shipped to the United States, consigned right across the river?

A.—Yes.

Q.—Is not that the classification of the liquor that goes through under this classification “duty paid export”?

A.—Yes.

JOHN G. LAWRENCE (for Plaintiffs), Examination-in-Chief.

Q.—Now, the great bulk of that liquor goes in cases?

A.—Yes.

Q.—Do I read this statement, P-140, correctly, as to the domestic sales as shown, that, as at the date of this statement, March 22nd, 1929, you had sold 61,462 cases for domestic consumption?

A.—Yes, sir.

10 the 22nd of March this year only amounted to 46,834 cases?

A.—Yes.

Q.—There was a falling off, therefore, of 14,628 cases in domestic sales?

A.—Yes.

Q.—That is, shipments from your distilleries?

A.—Yes.

20 the Company had shipped 112,233 cases?

A.—Yes.

Q.—And that this year it has only shipped 40,168 cases?

A.—Yes, sir.

Q.—A decrease on export of that class of 72,065 cases?

A.—Yes, sir.

Q.—Does that statement further show for “duty paid export” which we have been discussing, that a year ago, on March 22nd, 1929, your shipment was 58,241 cases?

A.—Yes.

30 Q.—That is on March 22nd, 1929. Of that classification you have only shipped 23,546. There is a decrease in that item of 34,695 cases. Does that statement in recapitulation further show that taking the three classifications, “domestic,” “export” and “duty paid export” a year ago, that is, March 22nd, 1929, you had shipped 231,936 cases?

A.—Yes.

Q.—For this year you have only shipped 110,548 cases?

A.—Yes, sir.

40 Q.—So that the total decrease in shipments since last October, over the previous years, as of date March 22nd, 1930, amount to 121,388 cases?

A.—Yes, sir.

Q.—What was the total shipment of cases for the whole of last year?

A.—For the fiscal year?

Q.—For the fiscal year.

A.—395,347 cases.

JOHN G. LAWRENCE (for Plaintiffs), Examination-in-Chief.

Q.—That is for 12 months?

A.—Yes.

Q.—That includes the three classifications, “domestic,” “export” and “duty paid export”?

A.—For last year, yes.

Q.—You have not yet got over the first six months of this year and you are short 121,388 cases already for less than six months.
10 Is that right?

A.—121,388.

Q.—Now that represents a dropping off of over 50% in the sales, does it not, for this year, up to date?

A.—Yes, sir.

Q.—Now I draw your attention to the fact that for less than six months you are 121,388 cases behind, so that for the year, if nothing better is done in the Sales Department, the average dropping off continues, you would finish the year 242,776 cases short
20 by the end of September next?

Mr. Campbell, K.C.: I object to the question as being hypothetical and illegal. As a matter of fact, the statement in my learned friend's hands shows that in the last month there has been a substantial improvement over last year. Now he is asking the witness to tell us the disasters of last year are going to continue for the next six months.

Mr. McKeown, K.C.: There is absolutely no improvement
30 shown there.

Mr. Campbell, K.C.: Yes, there is. Take the cases; we have shown an improvement on export cases of 3,095 this month over last year. I am calling attention to the result of the current month; I am calling your attention to the fact there is a substantial improvement shown.

Mr. McKeown, K.C.: I will deal with this substantial improvement in a minute. It is just a matter of bringing this to a percentage,
40 showing what it means.

Mr. Campbell, K.C.: You can show that without asking the witness.

The Court: If there is anything wrong you can cross-examine on it.

JOHN G. LAWRENCE (for Plaintiffs), Examination-in-Chief.

Mr. McKeown, K.C.: I think we ought to be permitted to finish this part of the evidence as to the effect on the situation.

The Court: It will be a matter of argument.

Question read as follows:

10 “ Now I draw your attention to the fact that for less than six months you are 121,388 cases behind, so that for the year, if nothing better is done in the Sales Department, the average dropping off continues, you would finish the year 242,776 cases short by the end of September next?”

Mr. Campbell, K.C.: Are you asking him to do it as a matter of arithmetic? I submit it is quite unfair to ask the witness to commit himself to what the conditions of the next six months are going to be.

20 Mr. McKeown, K.C.: If they do not do any better in the next six months the conditions will not do any better. You are trying to tell the witness to say that. I understand what you are doing. You have done it for 15 days here.

Mr. Campbell, K.C.: His Lordship rules on the question. I don't understand Your Lordship ruled.

30 Mr. McKeown, K.C.: The answer is simply a matter of calculation.

Mr. Campbell, K.C.: My learned friend is not putting it in that form.

Mr. McKeown, K.C.: I am putting it in that form to the witness.

Question re-read, as follows:

40 “ Now I draw your attention to the fact that for less than six months you are 121,388 cases behind, so that for the year, if nothing better is done in the Sales Department, the average dropping off continues, you would finish the year 242,776 cases short by the end of September next?”

The witness: If our sales did not increase that would be the figure.

JOHN G. LAWRENCE (for Plaintiffs), Examination-in-Chief.

By Mr. McKeown, K.C.:

Q.—And if that was the result, you would have for result sales covering only 152,571 cases for the whole year, as contracted with the sales of 395,347 cases for the previous year?

10 Mr. Campbell, K.C.: Your statement shows total sales 110,548 cases. You are dealing with cases.

Mr. McKeown, K.C.: I am dealing with the shortage. If it is 121,000 at present, I am putting it to him if the same thing goes on it will be double that by the end of the year, 242,000. I think that is the way it falls. As compared with previous years he will have only 121,000.

20 Mr. Campbell, K.C.: For less than a half year you have told us 110,548.

Mr. McKeown, K.C.: I am only taking in comparison with the previous year.

Mr. Campbell, K.C.: You are misleading the witness.

Mr. McKeown, K.C.: I will put the question in any form you approve of. I am asking him what is the comparison between this year and last year?

30 Mr. Campbell, K.C.: You are suggesting the deduction will be 152,000 cases.

Mr. McKeown, K.C.: I think that is right, and I will tell you why it is right, because from now on the sales are smaller. You are not going to run your sales at the rate of 110,000 cases for the next six months.

40 Mr. Campbell, K.C.: Neither you nor the witness knows that.

Mr. McKeown, K.C.: The witness knows that. I put the question to you. Do you imagine because the sales have been so much in the last six months they are going to be the same for the next six months?

Mr. Campbell, K.C.: You have asked the witness a question as to whether our loss will be the same in the next six months as in

JOHN G. LAWRENCE (for Plaintiffs), Examination-in-Chief.

the last six months. You are asking him to read an erroneous figure into the records.

Mr. McKeown, K.C.: It is not an erroneous figure, Mr. Campbell.

10 Question read, as follows:

“ I am dealing with the shortage. If it is 121,000 at present, I am putting it to him if the same thing goes on it will be double that by the end of the year, 242,000. I think that is the way it falls. As compared with previous years he will have only 121,000.”

The Witness: I don't agree with that figure.

20 By Mr. McKeown, K.C.:

Q.—What is it, if you don't agree with it?

A.—Last year's were 395,347; for practically six months, 110,548. On the same basis it would be twice 110,548, which would be 221,096.

30 Q.—That is where you and I differ. You know that the sales every year in the first six months, beginning with October 1st, are far heavier than they are in the last six months. Is it not true, right on the record now before you? For instance, just what were your sales during last year during this period, on the statement now before you, P-140?

A.—231,936.

Q.—If they had been maintained at the same rate for the next six months, they would have been 460,000 cases. You never sold any such quantity last year.

A.—The total sales have been 395,000 cases. The business was decreasing.

40 Q.—Is it not true that the sales of alcohol in every year are lighter in the final six months than they are in the first six months of the fiscal year?

A.—The first three months are the best of the year.

Q.—That is October, November and December?

A.—Yes. Then the next three months are lighter, January, February and March. Then they start in again.

Q.—But the net result is, I put it to you, Mr. Lawrence, all in all, the first six months are far better in the matter of sales than the last six months in the fiscal year, as shown by the statement P-140?

JOHN G. LAWRENCE (for Plaintiffs), Examination-in-Chief.

A.—On the present year, yes.

Q.—I put it to you, my first question was right, and upon the basis which I give you, if sales this year fell off in the proportion for the balance of the year as they have for the first part of the year, as contrasted with the figures of the previous years, you would only sell 152,000 cases in the 12 months ending 30th September next?

10 A.—Yes. Our sales are increasing now. We have increased for this month over 1,500 cases now.

Q.—You have a certain quantity of liquor which is shipped to the depots at St. Pierre Miquelon, which is included in these sales, is it not, although it has not been sold?

A.—No, sir.

Q.—I am instructed there is.

A.—No, sir.

Q.—When are the sales put on the register?

20 A.—When they are actually sold. If stuff is consigned it is not included in these figures.

Q.—If goods are consigned to some of your subsidiaries, you say you do not include them in the sales?

A.—No.

Q.—Is not there always about 15,000 cases floating in that way?

A.—There is a considerable quantity of increase.

Q.—When you speak of sales increasing this month, do you mean shipments or sales?

A.—If there are any consignments of goods on the statement I don't know about them.

30 Q.—You have made some shipments recently from Corbyville, large shipments?

A.—We are shipping all the time from Corbyville.

Q.—You made some large shipments from Corbyville. I don't know whether you are shipping every day. I hope you are.

A.—I don't know what specific shipments you are referring to.

Q.—Have you made any large shipments to St. Pierre Miquelon in the last month or so?

A.—We are always shipping there.

40 Q.—Have you made some large shipments? You heard what I said.

A.—I am not familiar with what shipments are going on.

Q.—You are not familiar with it?

A.—No.

Q.—We will find someone who is. Then ex-Director Archibald Kelly was in charge of the Sales Department?

A.—Yes.

Q.—Sales Manager—was that his title?

JOHN G. LAWRENCE (*for Plaintiffs*), Examination-in-Chief.

A.—Yes.

Q.—Had been for how long?

A.—I think he started there in 1927.

Q.—What do you mean? Had he joined the Company in 1927—
took over the management of the Sales Department?

A.—Took over the Sales Department.

Q.—Had he been there before?

10 A.—He was in charge of J. M. Douglas prior to that.

Q.—That is a subsidiary?

A.—Yes.

Q.—Incidentally, when Kelly resigned, he went over to this
combination known as Distilleries Seagram, did he not?

A.—No, sir.

Q.—Well, what is the name of the corporation?

A.—Distilleries Company, Limited.

Q.—I think I have a letter from him on the other heading.

20 A.—I think it is the Distilleries Company, Limited. This is the
branch of the Old Country company.

Mr. Campbell, K.C.: It has nothing to do with Seagram-
Walker?

The Witness: I believe they own the stock.

By Mr. McKeown, K.C.:

30 Q.—In any event, Mr. Kelly, when he left your Company, took
with him to somebody the Dewar agency, did he not, which one of
your subsidiaries, John M. Douglas, had had for many years?

A.—Yes, we lost it at that time.

Q.—That included the brands of Dewar's Ne Plus Ultra;
Dewar's Special Extra and all the other lines?

A.—Yes.

Q.—Any other agencies apart from the Dewar agency?

A.—I am not sure if there were other agencies we have lost.

Q.—Did you ever hear of Roderer Champagne agency?

40 A.—Yes.

Q.—Have you lost that?

A.—I don't know whether we have lost that.

Q.—You don't know whether you have lost that or not?

A.—No, sir, I don't.

Q.—You are Secretary of the Company and a Director?

A.—No, sir.

Q.—What Corporation lost that?

JOHN G. LAWRENCE (for Plaintiffs), Examination-in-Chief.

A.—John M. Douglas.

Q.—Were there any other agencies lost apart from those two which you have referred to, if they are both gone?

A.—I believe there were two other agencies. I don't remember what they were.

Q.—Operated formerly by J. M. Douglas?

A.—Operated formerly by J. M. Douglas.

10 Q.—And they went the way of Mr. Kelly?

A.—I don't know that.

Q.—Do you know the Dewar agency did?

A.—Yes.

Q.—Did you lose the agency of imported gin?

A.—Some considerable time ago, yes sir.

Q.—What agency was that?

A.—Burnetts.

20 Q.—Now, Mr. Kelly formally delivered his resignation on January 2nd, I think, to take effect on January 31st?

A.—Yes.

Q.—Were you aware before that resignation was formally handed in that Kelly was severing his connection with the Company, from him or from anybody else?

A.—Not until possibly two or three days before that.

Q.—What has been done in the matter of replacing Kelly as General Sales Manager of the Company since he notified the Company of his resignation?

30 Mr. Campbell, K.C.: The same objection. We are now coming down to very recent history. Kelly resigned as at January 31st. Surely what has been done after his resignation has nothing to do with this case. How can that be relevant? We do not say steps have not been taken. First of all, it is not a proper question, in my submission, and, secondly, it is not relevant to the controversy. Surely it seems to me we are getting very far afield. We are asked as to what steps have been taken since the 31st of January. This litigation was taken on the 15th of January.

40 The Court: It is only to find out whether steps have been taken to replace Kelly, who was leaving on the 1st of February.

Mr. Campbell, K.C.: If Your Lordship will limit my learned friend to that date, that will be all right.

Mr. McKeown, K.C.: We have proved the collapse of the Sales Department. Now we are going to try to find the cause.

JOHN G. LAWRENCE (for Plaintiffs), Examination-in-Chief.

Mr. Holden, K.C.: There was no collapse.

Mr. Campbell, K.C.: The falling-off in sales took place in the regime of Mr. Kelly. Since Kelly's departure there has been an improvement. It is coincident with his services.

10 Mr. McKeown, K.C.: I don't know whose fault it was.

Mr. Campbell, K.C.: It was coincident with the merger.

Question read as follows:

"What has been done in the matter of replacing Kelly as General Sales Manager of the Company since he notified the Company of his resignation?"

20 The Witness: Mr. Flanagan, his assistant, replaced Kelly.

By Mr. McKeown, K.C.:

Q.—Replaced him. When did he replace him?

A.—Immediately Kelly resigned.

Q.—That is, Flanagan remained in the office, is that what you mean, or was he formally appointed General Sales Manager with the authority of that position?

A.—He was not formally appointed.

30 Q.—Has he ever been formally appointed to this date?

A.—No.

Q.—In other words, Flanagan has continued acting as he did before, with such authority as one with his position as Assistant Sales Manager?

A.—Well, he is acting as Sales Manager now.

Q.—Since when?

A.—Since Kelly resigned.

Q.—Ever since Kelly resigned?

40 A.—Yes, sir. Well, conducting the affairs of the Sales Department.

Q.—With no title other than "Assistant Sales Manager?"

A.—No, he has no other title that I know of.

Q.—Will you give us the personnel of that Sales Department?

Who is in charge, if anybody is in charge?

A.—Well, Mr. Flanagan is in charge.

Q.—In the way you have already explained?

A.—Yes.

JOHN G. LAWRENCE (for Plaintiffs), Examination-in-Chief.

Q.—Who else is on that staff?

A.—Mr. McCrann.

Q.—Who else?

A.—Mr. Curran.

Q.—Who else?

A.—Mr. Masterson.

Q.—Who else?

10 A.—Do you want the clerks and stenographers?

Q.—No, I don't. I want the people who are supposed to be working as salesmen or working for the success of that Sales Department in some kind of position other than absolutely subordinate.

A.—In the Montreal office or elsewhere?

Q.—Well, here in Montreal, will do for us.

By Mr. Campbell, K.C.:

20 Q.—Is Curran Lady Davis' brother?

A.—Yes.

By Mr. McKeown, K.C.:

Q.—Who else?

A.—Mr. John Stormont.

Q.—Who else?

A.—That is, outside of travellers?

30 Q.—These are the permanent employees in the office connected with the Sales Department other than merely clerical assistants, is that it?

A.—Other than clerical assistants and travellers.

Q.—Where does McCrann come in the picture? What does he do? Where is he?

A.—He is brought down as assistant to work with Mr. Flanagan.

Q.—Assistant to work with? What does that mean?

A.—No, not assistant to work with Mr. Flanagan.

40 Q.—Under whose jurisdiction does Mr. McCrann come? Who has got any authority over him?

A.—The President.

Q.—Only the President?

A.—I think so, yes.

Q.—He does not come under the authority of Flanagan? Is that clear?

A.—No, he does not come under his authority.

JOHN G. LAWRENCE (for Plaintiffs), Examination-in-Chief.

Q.—Is he equal with Flanagan in authority or has he any authority as far as you know? I am speaking of McCrann?

A.—I understood he is to work with Mr. Flanagan presently until an appointment of Sales Manager is made.

Q.—Is he superior to the others whom you have named, Curran, Masterson and Stormont? Is McCrann in authority over them?

10 A.—No, I would not say he was.

Q.—Is Flanagan in authority over them?

A.—Yes.

Q.—Well, we will leave McCrann for the moment. What about Curran? What are his duties? What is his position up there?

A.—I think he looks after some advertising.

Q.—Advertising? Anything else?

A.—Not that I know of anything.

Q.—Did Curran always confine himself to advertising or was he at any time vested with other authority?

20 A.—He was travelling at one time.

Q.—Travelling where?

A.—Well, he was going to foreign countries.

Mr. Campbell, K.C.: We can guess he was a source of information to your clients.

Mr. McKeown, K.C.: Don't draw on your imagination, which is upside down, for the purpose of this case from start to finish. He was no source of information. We did not need him for a source
30 of information. I can assure you of that before we are through with this.

By Mr. McKeown, K.C.:

Q.—Has he taken any trips to foreign countries since last fall?

A.—No, sir.

Q.—Has he done anything in the Sales Department for the last four months?

A.—I think he looks after advertising.

40 Q.—Apart from that, you don't know any duties which he has performed in the Sales Department in the past four months?

A.—No, sir.

Q.—What about Masterson? Where does he come in?

A.—Well, he is an assistant to Mr. Flanagan.

Q.—Any particular branch under his jurisdiction?

A.—Well, more or less of an assistant Sales Manager.

Q.—Is Stormont a permanent fixture in that office or does he

JOHN G. LAWRENCE (for Plaintiffs), Examination-in-Chief.

just drop in and drop out? Is he a traveller?

A.—He is not a permanent fixture in the office.

Q.—Is he properly included in the permanent sales force of the office? I mean in the light of the duties which he has discharged heretofore.

A.—I don't understand your question.

10 Q.—Is he assistant Sales Manager?

A.—No.

Q.—Is he assistant to the Assistant Sales Manager?

A.—Yes.

Q.—Who comes under his jurisdiction in the office?

A.—Nobody comes under his jurisdiction.

Q.—A free lance. Is that it?

A.—Yes.

Q.—Do you know who is to be retained or appointed with authority to head the sales force of the Company?

20 A.—I don't know what decision has been made on that.

Q.—You don't know of any decision?

A.—No.

Q.—Have you a Mr. Hersey in the office?

A.—Yes, sir.

Q.—What are his duties?

A.—He is Vice-President, I think, of the Ste. Hyacinthe Distillery.

30 Q.—I know, but seeing that company is not functioning, does he do anything else? Is he connected with the Sales Department from near or far?

A.—I don't just know what his duties are.

Q.—Can you tell us if he has or has not anything to do with the Sales Department wherever he functions?

A.—Well, his office is in the Sales Department.

Q.—His office is in the Sales Department?

A.—Yes.

Q.—You don't know of anything he does in connection with the Sales Department?

40 By the Court:

Q.—Does he draw a salary?

A.—Yes, sir.

Mr. McKeown, K.C.: That comes every month, I imagine.

By the Court:

JOHN G. LAWRENCE (for Plaintiffs), Examination-in-Chief.

Q.—How much does he get?

By Mr. McKeown, K.C.:

Q.—What is Mr. Hersey's salary?

A.—I think it is \$6,000.

10 Mr. Campbell, K.C.: And he attends Court with great regularity in the company of the Plaintiff.

By Mr. McKeown, K.C.:

Q.—You cannot tell us anything Mr. Hersey does in connection with the Sales Department, in which he has his office?

A.—No, sir.

Q.—Any more employees in like happy state up there?

20 A.—No, sir.

Q.—Are there any others than those whom you have named who are on the sales staff, with offices in the Company's office here?

A.—I don't think so.

Q.—Now, is it customary for some representative of the Company to visit the various Liquor Commissions throughout the Dominion?

A.—Yes.

30 Q.—Do you know when the various Liquor Commissions were last called upon in the interest of your Company by any representative of the Company?

A.—No, I could not give you any dates on that.

Q.—I put it to you in place of paying them a visit, the Liquor Commissions were in receipt of telegrams from the representative of your Company whose custom it was to call on them in person, under recent date?

A.—I don't know of any telegrams.

Q.—You don't know?

A.—No, sir.

Q.—Do you know Mr. Lauster?

40 A.—Yes.

Q.—Is he one of the Vice-Presidents and Directors of your Company?

A.—Yes, sir.

Q.—Was it his practice to call upon the Liquor Commissions throughout Canada?

A.—He has done, periodically, yes.

JOHN G. LAWRENCE (for Plaintiffs), Examination-in-Chief.

Q.—Did he make any call upon them in recent times, in the last four or five months?

A.—Not in the last four or five months.

Q.—I put it to you you know he telegraphed the various Liquor Commissions in place of calling on them, within the last month or so?

A.—I don't know what telegrams he sent.

10 Q.—Do you know he sent telegrams to the Liquor Commissions in place of calling on them?

Mr. Campbell: Mr. Lauster has been under subpoena since this case started. How is he going to call on the Liquor Commissions when you are holding him here in Court?

Mr. McKeown: He has had plenty of time prior to the 3rd of March to call on them.

20 By Mr. McKeown:

Q.—I put it to you before the 3rd of March Mr. Lauster sent telegrams to all the Liquor Commissions except here in Quebec?

A.—He may have, yes.

Q.—You don't know it?

A.—I don't know it, no.

Q.—Never heard of it until this minute.

A.—No, sir. Those are matters of the Sales Department, Mr. McKeown. They are not my department.

30 Q.—Do you know that he did not even call on the Liquor Commission in Montreal for the last three or four months?

A.—No, I don't know that.

Q.—Do you know that he telephoned them in place of calling?

A.—Yes, I know he telephoned them one day recently, yes.

Q.—In the matter of soliciting business, or in connection with business?

A.—In connection with business, yes.

Q.—Is Mr. Lauster in any manner connected with the Sales Department or with authority over the Sales Department?

40 A.—He is the General Vice-President.

Q.—At large?

A.—At large.

Q.—Now, you keep, I presume, an account for each of the Liquor Commissions you sell to throughout the Dominion in the various provinces?

A.—Yes, sir.

Q.—Would you prepare and file as Exhibit P-141 the com-

JOHN G. LAWRENCE (for Plaintiffs), Examination-in-Chief.

parative statements for the years 1926, 1927, 1928 and 1929, meaning the fiscal years, of the amount of sales by Canadian Industrial Alcohol to each of the several Commissions operating in the Dominion?

A.—Yes, sir.

10 The Court: Some of these Commissions cease to exist.

By Mr McKeown, K.C.:

Q.—In the same connection I would like you to prepare and file as Exhibit P-142 a comparative statement year by year from 1924 forward of the total cases sold in each year by Canadian Industrial Alcohol Company?

20 Mr. Campbell, K.C.: Do you mean the parent company and its subsidiaries?

Mr. McKeown, K.C.: Starting in 1924.

Mr. Campbell, K.C.: Do you mean the parent Company? The cases are not sold by the parent Company. The cases are sold by the Consolidated.

Mr. McKeown, K.C.: I think Mr. Lawrence understands what I mean.

30 The Witness: You mean a summary of this statement here?

Mr. McKeown, K.C.: Yes, a summary of the statement P-140, but for the yearly periods only.

Mr. Campbell, K.C.: Covering the subsidiaries?

Mr. McKeown, K.C.: And subdivided under these three heads, "domestic," "export," "duty paid export."

40 By Mr. McKeown, K.C.:

Q.—You quite understand me, that I have been referring to the fiscal years?

A.—Yes.

Q.—And this will be the broken year, 1929?

A.—Yes. Do you want them by cases?

JOHN G. LAWRENCE (*for Plaintiffs*), *Examination-in-Chief*.

Q.—Yes, by cases.

A.—Just simply cases.

Q.—By cases.

Mr. Campbell, K.C.: When you speak of cases only are you referring to sales to the Liquor Commission?

10 Mr. McKeown, K.C.: I don't know whether it is all in cases or in bulk. Is that in cases?

The Witness: Principally cases.

By Mr. McKeown, K.C.:

20 Q.—Will you also prepare and file as Exhibit P-143 a compilation showing the dividend record of Canadian Industrial Alcohol for the years 1924 forward, showing separately the dividends paid in cash in each year; bonuses in cash and the stock dividends?

A.—Yes.

Q.—Will you now look at this statement, P-99, which is the statement of Canadian Industrial Alcohol as of date September 30th, 1929, and tell the Court, in round figures, what value is shown upon the outstanding stock of the Company per share?

Mr. Campbell, K.C.: You mean the book value?

30 Mr. McKeown, K.C.: The book value, yes.

By Mr. McKeown, K.C.:

Q.—How many shares are there, first of all? How much "A"?

A.—969,480.

Q.—"B"?

A.—123,435.

Q.—Which, together, is 1,092,915 shares?

A.—1,092,915.

40 Q.—These are no par value shares?

A.—Yes, sir.

Q.—What would be the book value of those shares, approximately, according to the statement?

A.—Six dollars.

Q.—It works out at six dollars?

A.—\$16, I meant to say.

JOHN G. LAWRENCE (for Plaintiffs), Examination-in-Chief.

Q.—How much over \$16. What does it run into to the cent, for the purpose of demonstration?

A.—About \$15.30.

By Mr. Campbell, K.C.:

10 Q.—\$15.36, I am told?

A.—About that.

By Mr. McKeown, K.C.:

Q.—That price of \$15.36 is based upon the value of the Alcohol, liquor, at something like 60 or 70 cents a gallon, which is in the statement under the head of "Stocks on Hand," \$5,755,679.87. Is that right?

A.—\$5,775,679.87.

20 Q.—You received a subpoena to bring these insurance policies here in connection with this Company?

A.—Insurance policies?

Q.—Yes. In any event, have you with you a memorandum of the insurance carried by the Company upon the stock of liquor?

A.—The stock of liquor, yes.

Q.—Will you produce and file a memorandum of the insurance carried by the Company as of date September 30th, 1929, as P-144?

A.—Yes.

Q.—Amounting to \$32,120,873.75?

30 A.—Yes.

Q.—This memorandum, P-144, is insurance exclusively on stocks of liquor, is it not?

A.—Yes.

Q.—It does not include buildings or plant or anything of that kind?

A.—No, it includes stocks on hand, such as beverage stocks.

40 Q.—To what extent is that? That is a very small item. You might tell His Lordship for the purpose of the record, what is the relative proportion of the nonbeverage and beverage business of this corporation, as consolidated, in turnover, the volume?

A.—Do you want the industrial sales?

Q.—Whichever way the information can be given most accurately. I don't care how you do it.

A.—Industrial Alcohol sales for the last fiscal year, 1,414,000 odd gallons.

Q.—What does it represent in dollars? First of all, it is happily free from all excise?

JOHN G. LAWRENCE (for Plaintiffs), Examination-in-Chief.

A.—Yes.

Q.—What is the cost of manufacturing that class, approximately?

A.—Oh, 30 cents.

Q.—And the sale price is approximately what?

A.—It is a very varying price, 80 cents, 90 cents, one dollar.

10 Q.—So that would the turnover be more than a million dollars in gross receipts, from the Industrial Alcohol end?

A.—No.

Q.—What would be the amount gross of the beverage sales, I mean, as put out by the Consolidated Distilleries, in round figures?

A.—Gross sales of Consolidated Distilleries last year, \$4,396,000.

Q.—Was that Consolidated Distilleries only?

A.—Yes.

Q.—What were the gross sales of all the subsidiaries, consolidated?

20 A.—I have not those figures made up. The consolidated statement for 1929 is not made up.

Q.—Will you prepare a memorandum and file the same as P-145?

A.—Yes.

Q.—I want the compilation showing the gross sales of, I presume it will have to be subsidiaries of Consolidated Distilleries?

A.—Consolidated and its subsidiaries?

Q.—Consolidated and its subsidiaries.

A.—Yes. Both as to industrial alcohol and as to beverage.

30

Mr. Campbell, K.C.: That won't be right.

The Witness: It would be Canadian Industrial Alcohol.

Mr. Campbell, K.C.: McNish is not a subsidiary of Consolidated. Are you including McNish?

Mr. McKeown, K.C.: Show McNish separate.

40 Q.—To come back to this statement Exhibit P-144, do you say that the statement P-144 covers only the insurance on the liquor, and is exclusive of insurance carried by the Company as to equivalent, plant, buildings and things of that sort?

A.—Yes, sir.

Q.—Does that statement P-144 include liquor shipped from the Distilleries, and stored at various points, such as St. Pierre Miquelon and Nassau?

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A.—Yes, I think it is all in there. I think so, yes.

Q.—Am I right in assuming that the practice is, and has been, with the Company, to insure their liquor to its replacement value, that is, on the basis of what it would cost to replace it, in case of a fire, if bought from competitors if it could be procured?

A.—Not exactly. It is insured up to a point at cost, and on other liquors at selling prices.

10 Q.—At cost?

A.—Unmatured spirits at cost.

Q.—What do you mean? Do you mean spirits which have been distilled less than two years?

A.—Yes.

Q.—That category is insured at cost?

A.—Yes.

Q.—After two years, what is it insured at?

A.—Selling value.

20 Q.—This Exhibit P-144 not only shows the insurance, or the value in dollars, but shows, I take it, the gallonage, the proof gallons?

A.—Yes.

Q.—Is there anything there to indicate what portion of the gallonage is unmatured spirits?

A.—No, there is nothing there.

Q.—What would be the proportion in round figures, if you know?

A.—I could not answer that offhand.

30 Q.—In any event, this item of \$32,000,000 refers to the item in the statement, Exhibit P-99 carried at \$5,755,679.87, does it not?

A.—No.

Q.—Directly or indirectly?

A.—No.

Q.—Then, does the top item amounting to \$27,942,122.53 refer to the item in the statement of \$5,755,679.87, the statement P-99?

A.—No, I do not think that does. I think in the financial statement, stocks on hand at cost also include raw materials and stocks in process. This insurance statement does not show the raw ma-

40

terials.
Q.—Have you a statement showing the insurance carried on the raw materials?

A.—No.

Q.—Approximately, what is the amount carried on raw materials?

A.—Oh, it is not a very large amount.

Q.—Will you prepare an additional statement, to be marked as

JOHN G. LAWRENCE (for Plaintiffs), Examination-in-Chief.

P-146, showing the insurance carried on plant, machinery, buildings and raw materials at the plants or various points, to correspond with the statement P-144?

A.—Yes.

Q.—Take the stocks, for instance, of Consolidated Distilleries Limited, and the liquor held by them, is that insured at cost to them, or at sale value?

10 A.—That would be on sales value.

Q.—I see that this statement P-144 shows a total gallonage of 8,391,709.48, is that right?

A.—Yes.

Q.—Can you give His Lordship an idea, an average, for the difference between the price at which that gallonage is carried on the books of the Alcohol Company and its subsidiaries, and its insured value per gallon, in round figures?

A.—I will have to go through some of these ———

20 Q.—Approximately, I do not want it down to a cent.

A.—Oh, I would say it was insured for about four times its book value. That is very approximate.

Q.—I think you said its book value would not exceed 70 cents a gallon?

A.—No. I said that its book value would be all the way from sixty cents to over a dollar.

30 Q.—Sixty cents to a dollar, let us say, for argument's sake. Take the mean, take eighty cents, that is, eighty cents a gallon if it is insured for four times its value, would be three dollars and twenty cents, and deducting the cost would leave two dollars and forty cents a gallon represented by additional insurable value over cost, whatever the purchase suggested?

A.—Yes, sir.

Q.—And that would apply virtually to nine million gallons?

A.—Yes.

Q.—So that additional insurable value would represent a sum of \$21,600,000 over and above the cost basis as used for the Statement, Exhibit P-99?

A.—Very approximately.

40 Q.—What would that work out per share?

Witness: Do you want that approximately?

Counsel: Approximately?

A.—It is just under \$20.00.

Q.—Therefore, to get at the equity behind the Alcohol shares,

JOHN G. LAWRENCE (for Plaintiffs), Examination-in-Chief.

based first upon book value, plus the additional insurance value—the book value of \$15.30, and the additional insurance value of say \$20.00 per share, would show a total of \$35.30 per share, approximately?

A.—Very approximately.

Q.—Is it a well known fact among the public and the shareholders generally that this Company has on hand this gallonage varying somewhere between nine and ten million gallons of liquor?

10 That is a well known fact?

A.—I think so, yes.

Q.—Is it equally known and is it also reflected by the Statement that the gallonage is carried in the accounts at cost or thereabouts? Is that apparent?

A.—Yes, sir.

Q.—Taking the two facts together?

A.—Yes.

Q.—Have you your Minute Book here? Have you the Minute as to the last meeting the Directors held?

20 A.—Yes.

Q.—What is the date of it?

A.—The 24th of March, 1930.

Q.—Was any action taken at that meeting in connection with the dividend?

A.—Yes, sir.

Q.—Will you just read it into the record?

30 Mr. Campbell: I make the same objection, my Lord. We are now down to the 24th of March and we will soon get into the month of April.

His Lordship: Objection reserved.

A.—“The President pointed out that this is the usual time for declaring the Company’s quarterly dividend, and on motion duly seconded it was resolved that for various existing reasons, the Directors defer taking any action with regard to the dividend.”

40 By Mr. McKeown:

Q.—In other words, the interpretation of that Minute is, the dividend was passed?

A.—Action was deferred on it.

Q.—That Minute reads that action was deferred, is that the language?

A.—Yes, sir.

JOHN G. LAWRENCE (*for Plaintiffs*), Examination-in-Chief.

Q.—Having regard to what has already been disclosed by your evidence this morning, as to the falling off of sales of this Company since October 1st, 1929, has your Company earned its dividend for the portion of the fiscal year beginning October 1st, 1929?

Mr. Campbell: What relevancy has that? A Company does not have to earn its dividend in the current quarter.

Mr. McKeown: That is a question.

Mr. Campbell: Surely, my Lord, that is not a proper question. If the menace of this litigation were out of the way, we are in a position to declare a dividend.

Mr. McKeown: If I were you, I would not refer to that subject again.

Mr. Campbell: My submission is, it is not a proper question to put to the witness.

Objection reserved.

By Mr. McKeown (continuing question): At the rate of \$1.52 per annum, or 38 cents per quarter since the beginning of October, 1929?

A.—It has not entirely earned its dividend for that quarter.

Q.—I put it to you that for the purpose of earning your dividend, your sales have to average 30,000 cases per month—a dividend at the rate I have mentioned, at \$1.52 per annum, or 38 cents per quarter?

A.—30,000 cases more or less.

Q.—That would be for the year 360,000 cases?

A.—We might pay a dividend on considerably less than that on the year.

Q.—But is not that a pretty nearly accepted axiom of the Company, that 30,000 cases per month has to be sold?

A.—Between 20,000 and 30,000.

Q.—Closer to 30,000 than 20,000, I suppose?

A.—Yes.

Q.—So that the gross sales of 110,543 cases shown by the Exhibit P-140, as of date March 22nd, which is approximately six months, should, for comfortable dividend purposes, have figured 180,000 cases, is that right?

JOHN G. LAWRENCE (for Plaintiffs), Examination-in-Chief.

A.—That would have been better for dividend purposes, yes.

Q.—And in the meantime leave something between 70,000 odd cases short for dividend purposes during the period which has elapsed since the first of October last?

A.—If 30,000 a month were required, yes.

10 Q.—I put it to you that if there is not an improvement in the results of the sales determined for the balance of the year, it would be quite impossible to pay a dividend at the rate it has heretofore declared of \$1.52 per annum?

A.—The Company has surpluses out of which it can pay a dividend.

Q.—Then, I will put it to you in this way that if the present falling off of sales continues for the balance of the fiscal year it will be, at least, impossible to pay the dividend rate heretofore of \$1.52 per annum out of earnings?

A.—Yes.

20 Q.—Do you know what the ruling price of Alcohol stock is on the Exchange at this time?

A.—No, I don't know what it is today.

Mr. Campbell: Same objection. We might open Court every morning with quotations of the day before.

Mr. McKeown: We will just complete the picture.

30 Mr. Campbell: I submit, the current market quotations is a condition for which we are not responsible. The plaintiffs have contributed much more to it.

Mr. McKeown: You have said that a number of times.

Mr. Campbell: And I believe that it is true.

And at this point it now being 12:40 P.M. the further examination of the witness was adjourned until 2:30 P.M.

40

Afternoon session, April 1st, 1930.

By Mr. McKeown:

Q.—Do you know that within the last day or so the "A" stock sold at \$8 a share?

JOHN G. LAWRENCE (for Plaintiffs), Examination-in-Chief.

A.—Around \$8 yes.

Q.—Let us come back to something from yesterday. You say you never heard of the terms of the suggested Merger?

A.—No.

Q.—Or any terms?

A.—No.

10 Q.—Did you ever discuss it with Lord Shaughnessy?

A.—No.

Q.—Did he ever tell you any terms, or suggested terms, of the merger with Walker's?

A.—No.

Q.—Did your competitors in Canadian Industrial Alcohol come to know of the position of your Company as based upon the data which you turned over to Mr. Gordon's office in Toronto?

A.—I think they would be supplied with a similar Statement to the one I got.

20 Q.—And the Statement that you got showed the consolidation as prepared by Mr. Gordon from your own figures?

A.—Yes, sir.

Q.—And also showed the consolidation as prepared by Mr. Gordon of Walker's figures?

A.—Yes.

Q.—And your understanding is that the Walker firm got a copy of the Statement which you are just referring to?

A.—Yes, sir.

30 Q.—And therefor, the Walker concern would know exactly what was the result of the data which you took to Toronto and turned over to Mr. Gordon?

A.—Yes, if they got such a Statement.

Q.—You suggested they did get one, did you not?

A.—I say they probably got one. I did not see them get one.

Q.—If they got it, they saw the full reflection of the data you took to Toronto, did they not?

A.—Yes, sir.

40 Q.—Did you study that Statement that you received from Colonel Gordon?

A.—No.

Q.—Would you tell us whether it properly reflected the real position and worth of Canadian Industrial Alcohol stock?

A.—Without going into it very carefully, I could not answer that.

Q.—Now, I come back to it, that you have heard from Lord

JOHN G. LAWRENCE (for Plaintiffs), Examination-in-Chief.

Shaughnessy that he proposed to exchange the shares of Alcohol share for share for the Walker stock?

A.—No.

Q.—You never heard that from him?

A.—No.

10 Q.—Did you hear that the proposal was to buy approximately 200,000 shares held by, or for the Estate, at \$10 a share for cash, and to exchange the balance of the stock?

A.—I think I read something about that in the press.

Q.—You think you read something about that in the press. Tell us where you read that in the press. You had heard of that anyway, had you not, either from the press or in some other way?

A.—I remember reading something about it. I think it was in the press.

20 Q.—What press did you read that in, and when, because I never saw it in the press. I never knew it was in the press, you saw it; tell us where you saw it, and when?

A.—I don't remember when I saw it, or what particular paper it was in. It might have been the Gazette or the Star or a financial paper.

Q.—You cannot tell us today any paper you saw it in, or when?

A.—No.

Q.—Having got that information from any source, did you ever discuss it with Lord Shaughnessy as being reasonable, or proper, or ridiculous?

A.—No.

30 Q.—You never took any attitude on it?

A.—No.

Q.—Having become aware that a proposal was mooted to exchange the shares of Alcohol, to sell part of it as I have suggested, and exchange the balance for Walker's, you never spoke to Lord Shaughnessy about the subject?

A.—No.

Q.—You never discussed it with him?

A.—No.

40 Q.—When were you elected to the Board of Directors?

A.—On the 23rd of December, 1929.

Q.—Was this incident when you heard through the press or otherwise of these figures, since you went on the Board?

A.—Oh, it might be before or after.

Q.—Was it before or after you went to Toronto with that information, the data which you turned over to Colonel Gordon?

A.—I have seen so many reports about Mergers in all the

JOHN G. LAWRENCE (*for Plaintiffs*), *Examination-in-Chief*.

various papers. I do not just remember what papers I saw them in. I think they were in the Star, the Gazette, the Financial Counsel, Financial Service.

Q.—Up to the present time you have not been able to name any paper you saw it in, and I never heard it suggested before that that information was in any paper, the information we have just been discussing together?

10 A.—I am pretty sure I saw that in a Financial paper, either the Financial Service or the Financial Counsel.

Q.—What do you mean? On the daily bulletins?

A.—Daily bulletins.

Q.—We will check that up—either the Financial Service. . . .

A.—Or the Financial Counsel.

Q.—By the Financial Service you mean the paper edited here by Messrs. Phalen, Lucas and Company?

A.—Yes.

20 Q.—And by the Financial Counsel you mean the paper edited by Mr. Harvey Black and McIntosh?

A.—Yes.

Q.—Those are just daily bulletins sent out in foolscap sheets from brokerage offices?

A.—Yes.

Q.—Do you suggest you ever saw it in any of the press, in the ordinary acceptation of the word, such as the Financial Times, Financial Post, the Gazette, the Montreal Star?

30 A.—I do not think I saw it in any of those papers. I think it was simply in one of those Financial sheets.

Q.—I ask you again, did the suggested terms of this Merger come to your attention after you had turned the data over to Colonel Gordon at Toronto, or before?

A.—I discussed no terms of the Merger.

Q.—I did not ask you that. Nobody asked you that?

A.—I am not aware even now that there were any suggested terms.

40 Q.—The terms that you saw on these sheets, or got knowledge of in some way—I don't care how you got it. I ask you, after you had got that knowledge in any way at all, if it was before or after you had turned this data over to Colonel Gordon in Toronto?

A.—I could not be definite on that.

Q.—In any event, whenever it was you never discussed the matter with Lord Shaughnessy?

A.—No.

Q.—You never brought the matter up to him?

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A.—No.

Q.—And you have been on the Board since the 23rd of December, 1929?

A.—Yes.

By the Court:

10 Q.—How many shares do you own?

A.—Sixty.

By Mr. McKeown:

Q.—Thirty-five is it not?

A.—Oh, no.

Q.—I mean “A” shares; I don’t know whether you have any “B” or not?

20 A.—Thirty-five “A” shares and 20 “B” shares, My Lord.

Q.—While we are upon that subject. Have you prepared a memorandum showing the present shareholders, Directors of Canadian Industrial Alcohol?

A.—No.

Q.—Then, will you be kind enough to prepare and file as Exhibit P-147, a memorandum showing the number of shares held by the eight persons now holding office as Directors of Canadian Industrial Alcohol?

A.—Yes. A and B shares?

30 Q.—A and B. Put them in separately. While upon that subject, have you a copy of the account of Lord Shaughnessy showing his share holdings?

A.—I have.

Q.—How many shares has Lord Shaughnessy in his name—A shares to start with?

A.—1,998.

Q.—How many B shares is he the registered owner of?

A.—1,030.

40 Q.—Look at the account of Lord Shaughnessy. How many shares did he have prior to March 2nd, 1928, A account?

A.—3,000.

Q.—What happened on March 2nd, 1928?

A.—He sold 1,000.

Q.—He sold 1,000 shares?

A.—Yes.

Q.—On March 2nd, 1928?

JOHN G. LAWRENCE (for Plaintiffs), Examination-in-Chief.

A.—Yes.

Q.—Of A shares?

A.—Yes.

Q.—Then, there was a transfer later on of two shares, which leaves him with what he has got now, 1,998 shares?

A.—Yes.

10 Q.—About the same time he bought 1,000 shares of B?

A.—Yes.

Q.—At how much a share?

A.—I don't know. It does not show.

Q.—Do you know how much?

A.—No.

Q.—Were those B shares allotted to him in any manner in connection with the management?

A.—No.

Q.—Just direct subscription?

20 A.—It must have been.

By the Court:

Q.—Did he buy them on the open market?

A.—I imagine so.

By Mr. McKeown:

30 Q.—Have you got before you the data which would enable you to give us the holdings of Directors at present?

A.—No.

Q.—Will you also in the memorandum which you are to prepare as P-147, show the date of the acquisition of the shares held by the Directors, Lauster, Wilmore, Stormont, Kessner and Reaper?

A.—Yes.

Q.—The date of acquisition by them of their shares?

A.—Yes.

Q.—A and B as the case may be?

40 A.—Yes.

Q.—Of course, the B shares have no voting rights?

A.—No.

Q.—These shares which, according to rumours, or the information afforded by Financial Service or Financial Counsel or any other sources, from which the information may have reached you which were to be sold by the Estate at \$10 and exchanged share for share for the balance, are the shares which you have shown this morning

JOHN G. LAWRENCE (for Plaintiffs), Examination-in-Chief.

to have had a book value of \$15.30, and with the increase having regard to insurable value of \$35.30?

A.—\$20.00.

Q.—The two together?

A.—Yes.

10 Q.—That is, adding to the book value of \$15.30 the surplus insurable value of approximately \$20.00, would make \$35.30?

A.—Yes.

Q.—These are the same shares which at the present time you have said are selling at around \$8 on the market?

A.—Yes, sir.

Q.—Have you brought with you the newspaper clippings which were referred to yesterday?

A.—Yes.

20 Mr. Campbell: I would ask Your Lordship to note my objection to the admission of any such evidence. Your Lordship has to try this case, and cannot be assisted in trying the case by newspaper comments. I object to the evidence as illegal and irrelevant.

The Court reserve the objection.

Mr. Campbell: We respectfully except to Your Lordship's ruling.

30 By Mr. McKeown:

Q.—Were these clippings which you have exhibited, clipped by yourself?

A.—Some of them, yes.

Q.—The first of these clippings to which I would draw your attention is a clipping from the Montreal Daily Star dated July 31st, 1929, headed "Shaughnessy denies rumour of resignation." Will you read that clipping, which is a short one, into the record?

40 Mr. Campbell: I repeat my objection and I would ask Your Lordship to rule upon it.

His Lordship: I will allow Counsel until tomorrow morning to look over these clippings. In the meantime, the witness may read the clipping, but I will not allow it to go on the record.

By Mr. McKeown:

JOHN G. LAWRENCE (for Plaintiffs), Examination-in-Chief.

Q.—Independently of the newspaper clippings, is it to your knowledge that Lord Shaughnessy authorized the statement to the press on the 31st of July, 1929, to the effect that nothing had been done about Mr. E. R. Decarie's resignation, but that he might resign ultimately?

A.—I know of no interviews given by Lord Shaughnessy to the press.

10 Q.—You don't know that?

A.—No.

Q.—If he gave such an interview, how did it jibe up with your Minute book in connection with E. R. Decarie's resignation? Check it up in your Minute book while we have the subject before us. Look at the Minutes of July 24th, 1929. What do you find there on July 24th, 1929, anent the resignation of Mr. E. R. Decarie as a Director?

20 A.—“The President also reported that he had received a letter from Mr. E. R. Decarie tendering his resignation as a Director of this Company.”

Q.—Is that all?

A.—“On motion duly made and seconded, this resignation was accepted.”

Q.—That is, July 24th, 1929?

A.—Yes.

30 Q.—As at date, July 31st, these other Directors, Henry Joseph, Mr. Marler and Mr. Gaudet had all resigned too, according to your Minute book had they not, that is to say, the resignations of Colonel Gaudet and Mr. Marler had gone through at the same meeting as Mr. Decarie's, on the 24th of July, 1929, and the resignation of Mr. Joseph had gone through earlier, is that right?

A.—Yes, sir.

Mr. McKeown: I will suspend the rest of the clippings until Counsel for the defendants have taken counsel among themselves.

By Mr. McKeown:

40 Q.—Now, let us get a few loose ends cleaned up.

Mr. Campbell: Just how is this matter left, my Lord. I did not quite understand Your Lordship's remarks.

His Lordship: I would suggest that you go fully into this matter of the clippings between now and tomorrow morning.

JOHN G. LAWRENCE (*for Plaintiffs*), *Examination-in-Chief*.

By Mr. McKeown:

Q.—In connection with the manner in which the overdraft of Canadian Industrial Alcohol was negotiated with the bank, you have said that in the Statement put before the Directors in June, the then overdraft of something less than a million dollars was included in the accounts payable?

10 A.—Yes.

Q.—And finally, that when the Auditors' Statement for the year, Exhibit P-99 was prepared, the whole overdraft or any indebtedness to the bank so far as Industrial Alcohol was concerned, had disappeared?

A.—Yes.

Q.—I put it to you that the indebtedness of the Alcohol Company to its bank had been designedly transferred immediately prior to the end of the fiscal year, September 30th, 1929, to Consolidated Distilleries, is that right?

20 A.—Consolidated Distilleries owed the Canadian Industrial Alcohol Company something like three and a half million dollars, and in order to pay some of that back to Canadian Industrial Alcohol, Consolidated Distilleries borrowed the money from the bank.

Q.—And paid enough money in to Alcohol to enable Alcohol to pay off its overdraft at the bank?

A.—Yes.

Q.—And that, immediately before the end of the fiscal year, September 30th, 1929?

30 A.—Yes.

Q.—And was that a constant practice with the Company? Had they done so in previous years?

A.—Yes.

Q.—And then, that debt having been got over on the 30th of September, the Alcohol shareholders saw the picture that they owed nothing to the bank, according to the Statement, is that it?

A.—The Canadian Industrial Alcohol Company did not owe anything to the bank.

40 Q.—That is what appeared to the shareholders of Canadian Industrial Alcohol, that the Company owed nothing to the bank?

A.—Yes.

Q.—What occurred following the passing of the date, September 30th, 1929, in relation to the position between Canadian Industrial Alcohol and the bank? Did the overdraft re-start at zero point?

A.—No. The overdraft remained with Consolidated Distilleries.

Q.—Until a new overdraft was created. We won't speak of this year, but let us speak following the beginning of the fiscal year 1928,

JOHN G. LAWRENCE (for Plaintiffs), Examination-in-Chief.

that operation was gone through then I take it, your Statement for the end of the year 1928 of the Alcohol Company did not show any overdraft to the bank, or any sum due to the bank?

A.—No, sir.

Q.—Had the same manipulation been gone through at that period with regard to the previous overdraft at the bank?

10 Mr. Campbell: I object to the use of the word “manipulation.”

A.—No, sir. We had no overdraft at the end of September, 1928.

Q.—In the course of the year 1928, and prior to September 30th of that year, had there been an overdraft with the bankers?

A.—No.

Q.—Then, this *modus operandi* had occurred for the first time on September 30th, 1929. Is that right?

20 A.—No, sir. During 1928 we sold “B” stock, and had money in the bank.

Q.—But, I did not ask you anything about that.

A.—I am telling you the reason we had no overdraft at the end of 1928.

Q.—Had this switching of the bank overdraft occurred at the ends of other fiscal years?

A.—Yes.

Q.—You did not require it in 1928, because you had money from the “B” stock?

30 A.—Yes.

Q.—Following the end of the year September 30th, 1928, it came about that an overdraft was needed?

A.—Yes.

Q.—As between Alcohol and the bank?

A.—Yes.

Q.—Which in May, 1929, was something under \$1,000,000?

A.—Yes.

40 Q.—And that overdraft continued for the rest of the fiscal year, in a greater or less amount, up to the time you were to prepare your statement for the end of the fiscal year September 30th, 1929?

A.—Yes.

Q.—And at that time the Consolidated Distilleries borrowed a sum from the Bank which enabled that Corporation to pay to the parent Company—the Alcohol Company—a certain sum sufficient to wipe out the Bank overdraft?

A.—Yes.

JOHN G. LAWRENCE (for Plaintiffs), Examination-in-Chief.

By Mr. Campbell:

Q.—On account of what it owed?

A.—Yes.

By Mr. McKeown (continuing):

10 Q.—Had Consolidated Distilleries a prior overdraft to this \$1,000,000 with the Canadian Bank of Commerce, as of date September 30th, 1929, other than the money which was borrowed to pay Alcohol?

A.—No.

Q.—So that the overdraft of Alcohol which was switched around in that way must have amounted to about \$1,500,000 at that time?

A.—I think it was \$1,400,000.

20 By Mr. Campbell:

Q.—What was due by Consolidated Distilleries at that time?

A.—I think about \$3,500,000.

By Mr. McKeown (continuing):

Q.—That is, due by Consolidated Distilleries to Alcohol?

A.—Yes.

30 Q.—And that was for the turning over of matured spirits in bulk?

A.—Yes. The amount was \$3,423,352.32.

Q.—On account of which how much was paid?

A.—\$1,400,000.

Q.—You just referred to the “ B ” stock, and I had intended to ask you the purpose for which that “ B ” stock was created and sold by Alcohol. Was there any specific purpose for it?

A.—Just to provide additional working capital.

Q.—Generally?

A.—Generally, yes.

40 Q.—Was not the creation, issuance and sale of the “ B ” stock coincident with the plant extensions at Corbyville, and was it not issued for that purpose largely.

A.—Not for plant extensions; for the manufacture of whisky.

Q.—For raw materials?

A.—Yes.

Q.—You erected a number of additional buildings at Corbyville at that same time?

JOHN G. LAWRENCE (for Plaintiffs), Examination-in-Chief.

A.—We probably built two buildings in 1928.

Q.—Running into some money?

A.—\$150,000 each,—\$300,000.

Q.—And, there was also the equipment in those buildings?

A.—And the barrels.

Q.—Which would run into considerable money?

A.—Yes.

10 Q.—How much?

A.—\$240,000 or \$250,000.

Q.—Additional?

A.—Additional.

Q.—That would be something like \$500,000 or \$600,000 that went into new plant and equipment at Corbyville, coincident with the issue and sale of this “ B ” stock?

A.—It would be about \$150,000 on the rack warehouses and about \$240,000 worth of barrels in each.

20 Q.—So, we have two warehouses at \$150,000 each, which is \$300,000; and we would have the barrels for the two warehouses, \$240,000 each, which is \$480,000?

A.—Yes.

Q.—Altogether \$780,000 for buildings and barrel equipment?

A.—Yes.

Q.—And, that work was carried on coincident with the issue and sale of this “ B ” stock?

A.—Yes.

30 Q.—Can you tell me the amount that was raised by the “ B ” stock, so far as the Company was concerned?

A.—About \$2,423,000.

Q.—Of which Sir Mortimer Davis, Incorporated, took up more than one half?

A.—I do not remember just what they took up.

Q.—If they owned 51 per cent of the prior “ A ” stock, and took their allotment, they would have to take at least one half of the amount realized?

A.—Yes.

40 Q.—That would be \$1,211,500, taking it even at one half of the sum you have given us?

A.—Yes, if they took their allotment.

By Mr. Campbell:

Q.—What was the allotment price?

A.—\$20.00.

Q.—Will you look at Exhibit P-51, which is the statement of

JOHN G. LAWRENCE (for Plaintiffs), Examination-in-Chief.

Sir Mortimer Davis, Incorporated, prepared by Price, Waterhouse and Company, the auditors, as of date September 30th, 1928, and at Exhibit C attached thereto, and will you say whether it appears that Sir Mortimer Davis, Incorporated, purchased 55,920 " B " shares, at a cost of \$1,118,440?

A.—55,920 shares: \$1,118,400.

10 Q.—" B " shares?

A.—" B " shares.

Mr. McKeown: I find, Your Lordship, when I started yesterday morning to go over the Exhibits which Mr. Lawrence had undertaken to produce, and which he had brought to Court for the first time, in some way or other we missed one. I have it here now, and I would like to have it properly placed. I think we will make a sub-number in order to put the Exhibit in its proper place.

20 Exhibit P-117 has been prepared by Mr. Lawrence in the form of two documents: I thought there would be only one document made in comparative columns.

His Lordship: You might call them Exhibits P-117 and P-117A.

Mr. Campbell: I think that would be a good idea.

By Mr. McKeown:

30 Q.—I had asked you to prepare, and produce as Exhibit P-117, the details of the goodwill, trade marks, real estate, buildings, machinery and equipment of Canadian Industrial Alcohol and subsidiaries as at September 30th, 1928, and as at September 30th, 1929. You have already produced, and we have marked as Exhibit P-117, the details of that compilation for the year ending September 30th, 1928. Will you now produce, and mark as Exhibit P-117-A, details of the same item for the year ending September 30th, 1929?

A.—Yes.

40 Q.—You were also asked to produce, as Exhibit P-126, two specimen letters to shareholders of Canadian Industrial Alcohol Limited, dated September 28th, and October 7th, 1927, re McNish debentures?

A.—I now produce them, and they are marked Exhibit P-126.

Mr. McKeown: I think that will conclude my examination-in-chief of the witness, subject to the continuation of the branch of the case in connection with the newspaper clippings, which is suspended until tomorrow.

Cross-
JOHN G. LAWRENCE (for Plaintiffs), Examination ~~in Chief~~.

His Lordship: Of course, the articles will speak for themselves, and the witness cannot add anything to them or take anything away from them.

Mr. McKeown: But we wish to have them produced from the file kept by the Company.

10 I may say that insofar as any of those newspaper clippings bear upon controversial matters we intend to examine the man who wrote the articles.

Cross examined by Mr. George A. Campbell, K.C., of Counsel for defendants.

20 Q.—You were questioned at the outset of your examination-in-chief in regard to the general corporate organization of Canadian Industrial Alcohol, Limited, and I would ask you to tell me if you can recall any changes in your corporate organization—that is, any changes of general character—which have been introduced since the death of the late Sir Mortimer Davis? Has there been any change in your corporate set up? Have you, for instance, taken in any new subsidiaries since the death of Sir Mortimer?

A.—No, sir.

Q.—Has there been any change of any significance in your corporate set up since the death of Sir Mortimer Davis?

A.—No, sir.

30 Q.—Who were the auditors of Canadian Industrial Alcohol and its subsidiaries during the lifetime of Sir Mortimer Davis?

A.—Deloitte, Plender, Haskins and Sells: the same auditors as we have now.

Q.—How long have they been the auditors of Industrial Alcohol and the various subsidiaries?

A.—Since their inception.

Q.—That is, since the inception of the Company?

A.—Yes.

40 Q.—You were asked as to whether they did not give a report or certificate in reference to the balance sheet of the parent Company at the end of its financial year: and you were questioned as to whether there was not a supplementary report to the Directors apart from the certificate appearing on the balance sheet, and I think you said there was not?

A.—There was none.

Q.—Will you please read into the record the certificate that appears on the balance sheet as at September 30th, 1929?

A.—(Reading):

JOHN G. LAWRENCE (for Plaintiffs), ^{Cross-}Examination ~~in Chief~~

“ We have examined the above balance sheet with the books of the Company, and have obtained all the information and explanations we have required. In our opinion the balance sheet is properly drawn up so as to exhibit a true and correct view of the state of the Company’s affairs according to the best of our information and the explanations given to us and as shown by the books of the Company.”

10

By the Court:

Q.—From what Exhibit are you reading?

A.—Exhibit P-99.

By Mr. Campbell (continuing):

Q.—Does the form of that certificate vary from the certificate that appeared on the balance sheets as at September 30th, 1928, which I now show you and which has been filed as Exhibit P-111?

20

A.—It is exactly the same.

Q.—You have produced in the course of your evidence-in-chief Exhibits P-99 and P-111, being the balance sheets as at September 30th, 1929, and September 30th, 1928. Will you also file, as Exhibit D-76, the balance sheet of the Company as at September 30th, 1927?

A.—Yes.

Q.—Will you please look at the Auditors’ Certificate on this balance sheet Exhibit D-76, as at September 30th, 1927, and say whether it is in substantially identical terms?

30

A.—Exactly the same.

Q.—The certificate is the same?

A.—Yes.

Q.—Will you produce, as Exhibit D-77, the balance sheet of Canadian Industrial Alcohol as at September 30th, 1926?

A.—Yes.

Q.—Will you verify if the Auditors’ Certificate is in the same wording?

A.—Yes, it is the same.

Q.—Will you produce, as Exhibit D-78, the balance sheet of Canadian Industrial Alcohol, Limited, as at September 30th, 1925?

40

A.—Yes.

Q.—Will you verify if the certificate of the Auditors appearing on this balance sheet is in the same form?

A.—Yes, sir, it is the same.

Q.—You are accustomed to see published balance sheets of other Companies, which appear in the public press?

Cross-
JOHN G. LAWRENCE (for Plaintiffs), Examination ~~in Chief~~

A.—Yes.

Q.—Is this form of certificate we have been discussing the ordinary and usual form of certificate that you see endorsed upon the balance sheets of other Companies?

A.—Yes.

10 Q.—Is it not almost a form of words that is habitually used in a very large number of public companies?

A.—Yes.

Q.—You have filed, as Exhibit P-108, a consolidated statement of Industrial Alcohol and its subsidiaries as at September 30th, 1928. Will you please verify whether there is an Auditors' Certificate attached to and forming part of that Exhibit, covering both the parent Company and all the subsidiaries?

A.—Yes, there is.

Q.—Will you please read into the record the form of certificate contained in that Exhibit?

20 A.—(Reading):

“ August 17th, 1929.

We have examined the books and accounts of Canadian Industrial Alcohol, Limited; Canadian Industrial Alcohol of Manitoba, Limited; Consolidated Distilleries, Limited; Consolidated Distilleries of Manitoba, Limited; J. M. Douglas & Company, Limited; Wiser Distillery, Limited; St. Hyacinthe Distillery, Limited; and Robert McNish & Company, Limited, for the year ended 30th September, 1928, and have obtained all the information and explanations we have required.

30

In the case of Canadian Cuban Export Company, Limited, we have accepted the accounts as certified by the Auditor of the Company, Mr. J. B. Phelan, C.B.A., of Havana, Cuba.

Subject to the above, we are of the opinion that the above balance sheet of 30th September, 1928, is properly drawn up so as to exhibit a true and correct statement of the combined affairs of the Companies according to the best of our opinion and the explanations given to us and as shown by the books of the Company.

40 DELOITTE, PLENDER, HASKINS & SELLS.”

Q.—Is the form of certificate you have just read from Exhibit P-108 the same form obtained by Canadian Industrial Alcohol and its subsidiaries in the previous years during the lifetime of Sir Mortimer Davis?

A.—Yes.

Q.—That is, there was no change as between the form of certifi-

JOHN G. LAWRENCE (for Plaintiffs), ^{Cross-}~~Examination-~~~~Chief~~

cate granted by your Auditors after the death of Sir Mortimer Davis and what prevailed during his lifetime?

A.—No.

10 Q.—In Exhibit P-108 you have the consolidated balance sheet of Canadian Industrial Alcohol and its subsidiaries as at September 30th, 1928. Will you tell me whether that consolidated balance sheet was prepared in accordance with the practice prevailing in previous years?

A.—Yes, exactly.

Q.—Did you vary your practice in the preparing of this consolidated balance sheet after the death of Sir Mortimer Davis?

A.—No.

20 Q.—Will you look at the form of Annual Statement which Canadian Industrial Alcohol has been accustomed to publish, and copies of which for the years 1925, 1926, 1927, 1928 and 1929 have been filed as Exhibits, and will you state whether that general form of balance sheet prevailed during the lifetime of Sir Mortimer?

Mr. McKeown: I enter a formal objection to this question, on the ground that these defendants, whatever may be their control of Alcohol, are bound to follow the law irrespective of any practice, and the balance sheets did not conform to the Companies Act.

Mr. Campbell: I am not suggesting Sir Mortimer Davis had the right to vary the law. I am just proving what he did in practice.

30 His Lordship: Objection reserved.

A.—Yes.

By Mr. Campbell (continuing):

Q.—Was it prepared with his concurrence during his lifetime?

A.—Yes.

40 Q.—Did he personally pass upon the form of balance sheet which was to be used?

A.—Yes.

Q.—When was the general form of balance sheet which has since been used established as a matter of practice in Canadian Industrial Alcohol?

A.—In 1923.

Q.—Have you a pro forma balance sheet of Canadian Industrial Alcohol as at September 30th, 1923, which has an indication on it of the approval of Sir Mortimer Davis?

Cross-
JOHN G. LAWRENCE (for Plaintiffs), Examination ~~in Chief~~

Mr. McKeown: I object to the question as illegal and irrelevant.

His Lordship: Objection reserved.

A.—Yes.

Q.—Will you please exhibit the original pro forma balance sheet, and will you tell me whether the initials “ O.K.: M.B.D.” are in the
10 handwriting of Sir Mortimer Davis?

A.—Yes.

Q.—Will you file this balance sheet as Exhibit D-79?

A.—Yes.

Q.—I notice in Exhibit D-79 the stocks on hand are shown at a certain figure, but the words “ At Cost ” or “ Cost ” do not thereon appear. Were they, in fact, shown at cost on that balance sheet of 1923?

A.—Yes.

Q.—When were the words “ At Cost ” added, and at whose sug-
20 gession? They appear in 1925, 1926, 1927, and 1928. When were they first added?

A.—They were first added in 1925.

Q.—At whose suggestion?

A.—On the instructions of Sir Mortimer Davis.

Q.—And, they have ever since been preserved in the same way?

A.—Yes.

Q.—At the opening of your examination-in-chief you spoke about the incorporation of the present Company; which took the
30 place, I think, of a previous Company of the same name, in 1924?

A.—Yes.

Q.—And, it took over the old Company as a going concern, on the basis of stock exchange, I think?

A.—Yes.

Q.—What was the basis of exchange? I am instructed it was two shares for one. Will you please verify if that is correct?

A.—Two for one, yes.

Q.—Coming back to the balance sheets of Canadian Industrial Alcohol for the years ending September 30th, 1928, and September
40 30th, 1929—has there been any increase in those balance sheets of the item of goodwill since the death of Sir Mortimer?

A.—No, sir.

Q.—Since the death of Sir Mortimer has there been any increase in the item of goodwill in any of the consolidated balance sheets covering Canadian Industrial Alcohol and its subsidiaries?

Mr. McKeown: How could the witness tell you that, when it is

Cross-
JOHN G. LAWRENCE (for Plaintiffs) Examination ~~in Chief~~

all like a Hungarian goulash—all in the same dish? Buildings, plant, machinery, and everything are all together in the same statement. I do not see how my learned friend can put a question like that to such an intelligent witness as Mr. Lawrence has proven himself to be. I will not object to the question, because I know there is no answer to it.

10 Mr. Campbell: My learned friend is being facetious but I want the witness to verify the fact.

Mr. McKeown: If he verifies that fact, he is a wonder.

By Mr. Campbell:

Q.—Is the item of goodwill substantially the same?

20 Mr. McKeown: There is a conglomerate item for goodwill, plant, buildings, machinery, and everything else, all mixed up together; and my learned friend asks the witness if the goodwill has been increased, and hands him a Statement upon which to base his answer. Mr. Lawrence may know of his knowledge outside of the Statement, but he cannot say from the Statement.

Mr. Campbell: I am asking him to testify from his knowledge of the facts.

30 By Mr. Campbell:

Q.—Would you like to verify that?

A.—I would like to verify one of the small subsidiaries of the Company.

Q.—You were questioned about the resignation of various Directors of Canadian Industrial Alcohol who have resigned, and I would like to determine how many of those Directors were not officers or employees of the Company? In other words, who were the outside Directors?

40

His Lordship: We have already covered that. Colonel Gaudet and Mr. Kelly were employees of the Company; the others were not.

Witness: Mr. Joseph, Mr. Decarie and Mr. Marler were not.

By Mr. Campbell (continuing):

Cross-
JOHN G. LAWRENCE (for Plaintiffs), Examination ~~in Chief~~.

Q.—There were only three Directors who were not employees or officers during the lifetime of Sir Mortimer Davis?

A.—Yes.

Q.—Mr. Marler resigned in July, 1929, and his letter of resignation is filed as Exhibit D-5, with a letter of explanation, Exhibit D-6. At that time had the Honorable Mr. Marler received any public appointment occasioning his absence from Canada?

10 A.—Yes, sir.

Q.—To what position had he then been appointed?

A.—Plenipotentiary Extraordinary to Japan.

Q.—He was Canadian Minister to Japan?

A.—Yes.

Q.—Mr. Marler, in his letter dated July 2nd, addressed to Lord Shaughnessy (Exhibit D-6) says in paragraph 2:

“ I think it is well that I should take this action . . .

20 (referring to his resignation)

“ . . . seeing that I am leaving Canada for an indeterminate period. If you think otherwise I will be very glad indeed to discuss the matter with you.”

As you see, this letter is dated July 2nd, 1929. When in point of time did Mr. Marler sell his shares? Was it before or after that date? Will you verify from Exhibit P-125 when the Honorable Mr. Marler sold his shares?

30 A.—On August 28th, 1929; September 6th, 1929; and September 24th, 1929.

Q.—And that was immediately prior to his departure for Japan?

A.—Yes.

Q.—How many shares did Mr. Decarie own in the Company?

A.—Two.

Q.—Two, or one?

A.—Two.

40 Q.—Mr. Decarie told me it was one, and that he did not own it. Do you know if he owned the two shares?

A.—He had had two shares since January, 1925.

Q.—Do you know, in fact, whether they are the property of Mr. Decarie, or whether they are held by him as the nominee of Sir Mortimer Davis, Incorporated?

A.—I could not say.

Q.—In any event, it is quite clear Mr. Decarie never had any substantial financial interest in the Company?

Cross-
JOHN G. LAWRENCE (for Plaintiffs), Examination ~~in Chief~~.

Mr. McKeown: That might not be a conclusion at all. A great many people are wise enough to keep their shares in the names of brokers.

Mr. Campbell: Mr. Decarie told me he had only one share.

His Lordship: So far as the record of the Company is concerned
10 he had two shares, and he still has them.

Mr. McKeown: In any event, Mr. Decarie will be here and will tell us all about it. At the same time he would have quite as much interest as some of the Directors on the Board now who only have two shares, and he would have twice as many as some of them have.

By Mr. Campbell (continuing):

Q.—That disposes of two of the three outside Directors: Mr.
20 Marler, who was going to Japan; and Mr. Decarie, who, according to the record, had no financial interest apart from two shares. Now we come to Mr. Henry Joseph. Will you please look at Exhibit P-125 and tell us when Mr. Joseph began to sell his shares?

A.—January 14th, 1929.

By the Court:

Q.—How many did he have altogether when he began to sell
them?

30 A.—3,840.

His Lordship: I would like to have the history of Mr. Joseph's shares. Since when had he the 3,840 shares? Since Sir Mortimer's days, I should imagine.

Mr. McKeown: I think Mr. Lawrence can give us the particulars.

Witness: He acquired 3,200 shares on October 9th, 1924.

40 By Mr. Montgomery:

Q.—That would be the date of the reorganization?

A.—Approximately.

Mr. Montgomery: That is what he would have got in exchange for the shares of the old Company.

Curia -
JOHN G. LAWRENCE (for Plaintiffs), Examination in Chief.

By Mr. McKeown:

Q.—The ledger sheet before you does not go back to the old Company?

A.—No.

He then bought 600 shares on February 9th, 1926, making a total of 3,800 shares.

10

By the Court:

Q.—And he began selling them on January 14th, 1929?

A.—January 14th, 1929.

Q.—How many?

A.—Forty shares.

By Mr. Campbell:

20 Q.—He began selling his shares on January 14th, 1929, when he sold 40 shares, and kept on selling, as shown by Exhibit P-125, in the quantities indicated, until April 4th, 1929, when he had reduced his holdings to 100 shares?

A.—Yes.

Q.—Will you please verify from Exhibit D-8 on what date he resigned as a Director?

His Lordship: Has he still the 100 shares?

30

Mr. Campbell: No, Your Lordship, he has none.

Witness: His resignation is dated June 12th, 1929.

By Mr. Campbell (continuing):

Q.—And the following day he sold his remaining 100 shares?

A.—Yes.

40 Q.—I wish you would supplement Exhibit P-125 by giving us the current prices of the day on which those shares were sold, and also the names of the brokers through whom they were sold; and will you file such supplementary statement as Exhibit D-80?

A.—Yes.

Q.—And you might add the same information for Colonel Gaudet and Hon. Mr. Marler.

A.—Very well.

(And the further testimony of the witness is continued until Wednesday, April 2nd, at 10.30 A.M.)

JOHN G. LAWRENCE (for Plaintiffs), Examination-in-Chief.

MORNING SESSION, Wednesday, April 2nd, 1930

(The continuation of cross-examination of witness J. G. Lawrence will be found at page 1023.)

Mr. Campbell: If Your Lordship please, since the adjournment yesterday, I have taken communication of the clippings which my
10 learned friend, Mr. McKeown, desires to have the witness produce.

When I made my objection, I did not know what the clippings were, nor from what source they came. I still think my objection well founded in the sense that Your Lordship has to decide the case, and not the gentlemen of the press. I see by the morning papers I am said to have made use of the expression "irresponsible journalists". I was not casting any reflection on any individual. I have no quarrel with the press as long as they contain themselves in their proper function, but my submission is that Your Lordship must decide this case without recourse to the sentiments expressed in the press. On
20 analysis of these articles, my chief objection to them is in the headlines which the editors have seen fit to put on them. The loss of public confidence referred to, is an interview apparently with Mr. Henry Joseph given in September, 1929. We think there were other explanations. However, I am satisfied that they should be admitted under reserve of our objection.

Mr. McKeown: If Mr. Campbell consents to their going in subject to reserve, I have not much to say, except it is our submission that these newspaper reports are absolutely relevant under the pleadings, and the paragraph to which I drew Your Lordship's attention
30 yesterday. They are relevant in this way, that while the duty of a President of a Corporation towards its shareholders is, in the first place, to so conduct the organization in a way that it will merit and maintain public confidence, and if this is not done, as a matter of fact, I think it is a matter that the President of Alcohol could be reproached with.

There is another feature to this, and that is, that the same individual who was President, was the President of Sir Mortimer Davis Incorporated, and was an Executor of his Estate, and apart from his
40 duty towards the shareholders of Alcohol, Lord Shaughnessy had a duty as Executor of the Estate, and as President of Sir Mortimer Davis Incorporated, the shareholder in this instance, to so conduct that Corporation as not to forfeit public confidence as to depreciate the value of these securities held by and for the Estate, more especially when, at that time, those securities were hypothecated to the bank where, upon the securities falling further, more serious conse-

JOHN G. LAWRENCE (for Plaintiffs), Examination-in-Chief.

quences could, and might, result. Therefore, we suggest that it is perfectly relevant to the main action as also, as Your Lordship suggested, particularly to the petition for injunction, in this suit of the Sequestration Petition, to establish that the management of Industrial Alcohol was so conducted since the month of June last as to bring forth from the financial journals and the press generally adverse comment. However, in view of Mr. Campbell's declaration that
10 he does not persist in his objection further than to ask that it be reserved, I will ask permission of the Court to put these clippings in the record.

I think I am in agreement with Mr. Campbell that possibly it would be better to at once complete this part of the case with the witness, in order that Mr. Campbell may complete his cross-examination.

I must say at once that it had been our intention to put the greater part of these clippings in and to bring here before Your Lordship their authors so that my learned friend would have an opportunity to cross-examine the persons responsible.
20

Whereupon Mr. Lawrence was called and his examination-in-chief was continued as follows:

By Mr. McKeown:

Q.—Yesterday, at a certain point we suspended your examination relative to the filing of clippings which had been kept by you, as Secretary of the Alcohol Company. You have exhibited a file containing quite a number of clippings, and I notice that these appear
30 to have been gathered by the Dominion Press and Clipping Agency?

A.—Yes.

Q.—Is that a service operating in Toronto?

A.—Yes.

Q.—Which gathers clippings in connection with various corporations, or industries, and supplies them to subscribers?

A.—Yes.

Q.—And is Canadian Industrial Alcohol a subscriber to that
40 service?

A.—Yes, sir.

Q.—It was in that way that quite a number of these clippings came to your attention, I suppose?

A.—Yes.

Q.—That is, the clippings to which these tags from that agency are attached, at least?

A.—Yes, sir.

JOHN G. LAWRENCE (for Plaintiffs), Examination-in-Chief.

Q.—Taking up first the clipping from the Montreal Daily Star of July 31st, 1929, to which reference was made in your examination yesterday, that is, the clipping headed: “Shaughnessy Denies Rumour of Resignation.” The contents of this clipping have already been read into the record. Will you please produce this clipping as P-148?

A.—Yes.

10

His Lordship: You had better give them each a number.

Mr. McKeown: We will give them a separate number and paste them on a sheet for convenience of reference.

By Mr. McKeown:

Q.—In order to get one point clear, this clipping, Exhibit P-148, of the 31st of July, 1929, concludes with the following paragraph:

20

EXHIBIT P-148

“ Asked regarding similar rumors of the resignation of another member of the board, E. R. Decary, His Lordship replied that nothing had been done yet, but that Mr. Decary may resign eventually owing to pressure of personal business. There is not the least likelihood of any other members resigning, he declared.”

30

At the time that this newspaper article was published on the 31st of July, 1929, had the resignations of Messrs. Joseph, Gaudet and Marler been announced, or were they not only announced in the month of October?

A.—I do not think they were officially announced to the press.

Q.—So that this statement there, “ There is not the least likelihood of any other members resigning, he declared ”, would not have been a declaration based upon a prior announcement that Messrs. Joseph, Marler and Gaudet had withdrawn?

40

Mr. Campbell: The clipping is there, and Your Lordship will interpret it if it has any significance.

(Question withdrawn.)

By Mr. McKeown:

JOHN G. LAWRENCE (for Plaintiffs), Examination-in-Chief.

Q.—Would you be good enough to identify as coming from your file of clippings an item published in the Financial Post of date September 26th, headed: “Lack of Confidence is Given as Reason for Alcohol Slump”?

A.—Yes.

Q.—And will you produce a counterpart of same as Plaintiffs' Exhibit P-149?

10 A.—Yes.

EXHIBIT P-149

Q.—This Exhibit P-149 is headed: “Lack of Confidence is Given as Reason for Alcohol Slump,” and then a sub-heading, “At Least Three Directors Have Resigned from Board”—“Quit Last Summer”—“E. R. Decary, Col. F. M. Gaudet and Henry Joseph No Longer Are Directors of Company”—“From Our Own Correspondent.”

20 Q.—Perhaps we ought to put on record that the Financial Post is published at Toronto and maintains an office or representative in Montreal?

A.—I believe so.

Q.—It is circulated to your knowledge in the District of Montreal as well as Toronto?

A.—Yes.

Q.—The article reads:

30 “Montreal—‘I attribute the drop in the price of Canadian Industrial Alcohol Co. shares to a lack of confidence in the administration,’ said Henry Joseph, former Director of the Company, to the ‘Financial Post’ this week. H. Joseph resigned from the board of Industrial Alcohol last June, and has not been connected with the corporation since that time.

40 It was also learned this week, contrary to the impression that has been created, that at least two other directors, namely, E. R. Decary and Colonel F. M. Gaudet, have also resigned from the board. Decary's resignation was made four or five months ago, it is understood, while Col. Gaudet resigned in July. Only a short time ago, a statement was credited to an official of the company, to the effect that nothing had been done yet as to the resignation of Decary, but that owing to pressure of business, he might eventually resign from the board. It was also stated at that time that there was not the least likelihood of any other members of the board resigning.

Marketwise, the company's shares have recovered somewhat from the heavy slump of last week following Lord Shaugh-

JOHN G. LAWRENCE (for Plaintiffs), Examination-in-Chief.

nessy's statement issued by wire from the West to the effect that 'The company is in a strong financial position and the monthly earnings are satisfactory in every respect and that the dividend is being well maintained and there is no cause for the slightest apprehension.' "

10 Mr. Campbell: My Lord, why should we burden the record? I notice the stenographer is taking all this down.

His Lordship: I don't know yet whether Mr. McKeown wants to ask any questions with reference to the article.

20 Mr. Campbell: If he does, I suggest that he select the portions of the article to which he wishes to call the attention of the witness, if he desires to question the witness about it. Your Lordship is quite able to read them from the Exhibits without having them read into the record at length.

Mr. McKeown: We already have 149 Exhibits in the record and there will probably be over one hundred on your side, and it is in order that the Court should not have to go searching through these Exhibits, I submit, that we ought to put the salient matter on the record.

30 Mr. Campbell: My learned friend is very considerate of the Court. He has been so considerate to the Court that we have taken a great deal of time since this case began, in order to facilitate Your Lordship's researches.

His Lordship: If it is agreed to on both sides——

Mr. Campbell: My submission now is, that my learned friend should file these clippings and if there is any particular passage in them he wishes to refer to, well and good, but I do not think he should read the whole clipping.

40 His Lordship: It would be handier to read it in a newspaper clipping than in the bulky volume of the record.

Mr. McKeown: I think, my Lord, this article ought to be read complete. I would like Your Lordship to have the information on the matter as we go along.

(The Court allows the reading of the clippings, the same to be inserted into the record.)

JOHN G. LAWRENCE (for Plaintiffs), Examination-in-Chief.

By Mr. McKeown:

Q.—The clipping, Exhibit P-149, then continues under a sub-heading: “New All-Time Low.”

10 “ The stock, however, from a high for the year of 47, dropped to a new all-time low of $15\frac{3}{4}$, which culminates a gradual decline in its price that has been going on for some time in spite of emphatic statements such as the one quoted above, that the company’s affairs are in good shape.

20 Undoubtedly a fundamental factor behind the decline, has been the lack of public confidence in the distillery situation. This was brought to a head when government operations at Windsor curtailed for two or three months the bootlegging activities of the rum-runners, which was, of course, reflected in the sales of the distillers, most of whom are indirectly materially interested in the export of liquor to the United States.”

Another sub-heading: “No Buyers Appear.”

30 “ This would account for the fact that there has been virtually no buying of any account in the liquor stocks, and that therefore as soon as there is any liquidation on the part of holders, the price of the shares reacts accordingly. That there has been more than usual liquidation in Alcohol, however, is apparent from the fact that during the year the company’s shares have depreciated in value 67 per cent as against a depreciation of approximately 46 and 43 per cent respectively in the shares of the other two big Canadian distilleries in which there is public investment interest.”

Another sub-heading: “Earnings are Better.”

40 “ At the present time, the management states definitely that earnings are on the upgrade, and the showing of the company during July, August and September have been sufficient to make up to a considerable degree for the loss in revenue earlier than the year so that the company’s statement for the year ending September 30th next will be substantially ahead of earlier estimates, and will be more than ample for dividend requirements.

It is known, however, that the company has not been successful in making its Robert McNish subsidiary profitable. This is a Scotch concern and was acquired in 1927. The parent com-

JOHN G. LAWRENCE (for Plaintiffs), Examination-in-Chief.

pany guarantees the \$5,000,000 of 6 per cent debentures of that organization which are outstanding.

10 However, the company would have to experience a very drastic cut in earning power seriously to jeopardize its position. Last year after paying dividend requirements, the company had a surplus of \$1,500,000 to the good. Then, too, the company's two main assets, consisting of a \$5,000,000 plant and 10,000,000 gallons of maturing spirits, which have a sale value of at least \$40,000,000, are sufficient to give an equity to the shares of substantially more than the present market value."

Then a sub-heading: "Dissatisfaction May be General."

20 "Just how far this dissatisfaction on the part of directors to the administration of the company will go, is, however, an important point to be considered. The criticism is apparently not levelled against the company's position as regards physical assets and plant, but against the broader policies of those administering the company's affairs. It is thought, for instance, that the company should adopt a much more active and vigorous attitude towards developing its industrial alcohol business, rather than the beverage lines. A step in this direction was made a month or so ago with the establishment of a small plant at Lindsay, Ont., for the output of wood alcohol and by-products.

30 Another point which must be taken into consideration in connection with Canadian Industrial Alcohol is the fact that for some time now the stock has lacked definite sponsorship. Up to the time of Sir Mortimer Davis' death, a local investment house was actively interested in the stock but this is not now the case, which would account in part for the fact that at a time such as this there has been apparently no one in the market to offer buying resistance to offset liquidation."

Another sub-heading: "Statement May Come."

40 "The recent low price level would seem to indicate that any lack of confidence in the company's administration has been pretty well discounted by the stock market, and with the return of Lord Shaughnessy to Montreal in the near future, some statement may be forthcoming which will indicate definitely how things stand in this regard. If there is still lack of confidence it would of course have an important bearing on the company's position."

JOHN G. LAWRENCE (for Plaintiffs), Examination-in-Chief.

Q.—Will you now identify as coming from your file a clipping, an article which appeared in the Montreal Financial Times in its issue of September 27th, 1929, headed: “Slump in Alcohol Reflection of Lost Confidence in Management” and produce as Exhibit P-150 a counterpart of the clipping from your file?

A.—Yes.

10 Mr. Campbell: I renew my objection, my Lord.

Mr. McKeown: I would like to make this part of my case without these interruptions.

Mr. Campbell: I am making objection to the Court that you are taking up a great deal of time reading documents which the Court is quite able to read. What bearing these clippings may have on the case I am unable to see.

20 Mr. McKeown: That may be your viewpoint, but I submit I am entitled to put them in.

His Lordship: To file it in the record is all right, but why read it?

Mr. McKeown: The whole case from the start of filing Exhibits has been very much auditors' statements and matters of that kind and have been put upon the record whenever the matter was convenient.

30 Mr. Campbell: At great addition to somebody's bill of expenses.

Mr. McKeown: Why be parsimonious over the poor stenographers' fees in the matter which involves anything up to \$30,000,000 and put His Lordship to additional inconvenience, or any other Court for that matter.

By Mr. McKeown:

Q.—Will you read this article into the record?

EXHIBIT P-150

40

“THE FINANCIAL TIMES

Montreal, Friday, September 27th, 1929

Slump in Alcohol Reflection of Lost Confidence in Management
The publication of the following in The Financial Times is requested by Canadian Industrial Alcohol”:

JOHN G. LAWRENCE (*for Plaintiffs*), *Examination-in-Chief*.

Before I proceed further with the reading of this article, can you tell His Lordship whether, previous to September 27th, 1929, you received from Lord Shaughnessy instructions by wire to communicate a certain statement by him to The Financial Times?

A.—No.

10 Q.—Then, can you give us any explanation of the opening words of this article which reads:

“ The publication of the following in The Financial Times is requested by Canadian Industrial Alcohol ”?

A.—No, sir, I don't know how it was communicated to them.

Q.—The article continues:

20 “ The following telegram from Vancouver from Lord Shaughnessy, president of the Canadian Industrial Alcohol Company Limited, is communicated to you:

‘ The unwarranted liquidation of the stock of this company is most surprising in view of the fact that the company is in a strong financial position and the monthly earnings very satisfactory in every respect. I hope that false and inspired rumors with ulterior motives will not cause shareholders to sacrifice their stock at a loss. The dividend is being well maintained and there is no cause for the slightest apprehension.’

30 “ It will be appreciated if you will kindly have the above published in the financial columns of your paper.”

You say you did not send that communication?

A.—No.

Q.—Do you know who did?

A.—No.

Q.—Then, the article continues:

40 “ In his communication Lord Shaughnessy has evidently missed the real point of the situation. If he were even casually in touch with the local Street he would readily encounter the opinion that the set-back in the securities of Canadian Industrial Alcohol Company has been due in large measure to the fact that such a considerable number of the shareholders have lost confidence in Lord Shaughnessy and his administration of the Alcohol Company. For months past there has been steady liqui-

JOHN G. LAWRENCE (for Plaintiffs), Examination-in-Chief.

dation, and shareholders have been taking their losses in the hope that it might be much easier to make them up in other securities. During all this period it has been evident that if renewed confidence is to be placed in the securities of the company there will have to be a greatly strengthened board of directors and more efficient management.

10 Owing to the comparatively low prices at which the securities have been selling since the last split-up in the stock a great many investors of moderate means have bought into the securities of the company; they can ill afford to sustain the severe losses they have had to take.

When Lord Shaughnessy says there is no cause for the slightest apprehension he unfortunately does not realize why so many shareholders are so seriously apprehensive regarding their holdings in Canadian Industrial Alcohol."

20 Q.—Will you identify from your file of clippings an article from the Financial Post of Toronto, published in its issue of October 10th, 1929, headed:—

“SHAUGHNESSY NOW RUNNING C. I. A. ALONE”

A.—Yes.

Q.—Will you produce a counterpart of this clipping as Plaintiffs' Exhibit P-151?

A.—Yes.

30 Q.—Will you read the clipping into the record?

A.—Yes.

EXHIBIT P-151

FINANCIAL POST
October 10th, 1929

SHAUGHNESSY NOW RUNNING C. I. A. ALONE
All Other Shareholder Directors Have Resigned

40 HERBERT MARLER OFF
No Explanation Given Why Resignation Has Not Been
Announced Before

(From Our Own Correspondent)

“Montreal.—Hon. H. M. Marler has resigned from the board of Canadian Industrial Alcohol, according to information

JOHN G. LAWRENCE (for Plaintiffs), Examination-in-Chief.

received by "The Financial Post" this week. This makes the fourth director to have resigned from that corporation within the past four months and means that there is virtually no shareholder representation on the board outside of Lord Shaughnessy, the president, who controls the company. The remaining members of the board are all employees of the corporation.

10 Lord Shaughnessy has not yet returned from his Western trip as a director of the Canadian Pacific Railway and accordingly no official statement is available to account for the resignation of the four Montreal citizens who were members of the board until June and July of this year.

As pointed out in "The Financial Post" last week, when the resignation of Col. F. M. Gaudet, E. R. Decary and Henry Joseph was announced, the recent slump in Alcohol's shares has been attributed by one of the ex-directors to a lack of confidence in the administration.

20 In the meantime, conjecture centres around the showing that the company will make during the fiscal year ended September 30th. The report does not usually appear until November or December—last year it appeared on November 30th.

SITUATION HAS IMPROVED

30 It is known, however, that the company would not have been able to make a good showing if it had not been for the improved business in the past two months. The company's sales increased considerably during the last two months of the fiscal year which offset losses sustained earlier in the year through a dropping off in export sales, in which the company is virtually, though indirectly interested.

On the other hand it is learned that this year the company will drop \$500,000 on its McNish business. This is nothing new, as it is understood that this is the sum which was dropped last year by this subsidiary, which was acquired in September, 1927.

ANOTHER \$500,000 GONE

40 Another item that is also to be met this year which is over and above ordinary expenses is a sum of \$500,000 on account of tax arrears, and which is payable to the Dominion Government. It is also understood that approximately this amount will have to be paid out by Alcohol for the next two or three years in order to make up for past dues which the Government is now collect-

JOHN G. LAWRENCE (for Plaintiffs), Examination-in-Chief.

ing. The other distilling companies have also had to meet this charge.

Marketwise, the company's shares have strengthened somewhat following the emphatic statement of Lord Shaughnessy, indicating that in all probability the liquidation that has been going on for some months has ceased for the time being at least.

10 As pointed out last week in "The Financial Post" the company's two main assets alone are worth much more than the book value placed on the company's shares at the present time and the company will have to have a very drastic cut in earning power to materially weaken its position."

Q.—Can you identify as coming from your file of clippings an article which appeared in the Montreal Financial Times under date of October 11th, 1929, headed:

20 LORD SHAUGHNESSY IN STATEMENT AVOIDS SOME
IMPORTANT POINTS

A.—Yes.

Q.—Will you produce a counterpart of this clipping to be marked as Exhibit P-152, and read the same into the record?

A.—Yes.

EXHIBIT P-152

Financial Times, October 11, 1929

30 LORD SHAUGHNESSY IN STATEMENT AVOIDS SOME
IMPORTANT POINTS

40 "In connection with the affairs of the Canadian Industrial Alcohol Company, the president, Lord Shaughnessy, has issued a statement declaring that 'while constructive criticism is entitled to consideration, criticism based upon personal antagonism, vindictiveness or other like motive can only be treated with the contempt which it deserves.' He does not, therefore, propose to discuss the articles which have appeared in certain papers concerning the company and its administration, 'inasmuch as the criticism therein contained is so general and so ludicrous that in his opinion it cannot be taken seriously.'

Continuing, Lord Shaughnessy goes on to practically admit that the criticism which has been offered is founded on fact, for he states that Henry Joseph, Hon. Herbert Marler and E. R. Decary have resigned as directors, the latter giving as an expla-

JOHN G. LAWRENCE (for Plaintiffs), Examination-in-Chief.

nation his desire to leave the directors free to reconstruct the board in their best judgment. Lord Shaughnessy also states that for 'some period there have only been on the board of the company, which consists of ten members, three not directly connected with the company in some executive capacity.'

10 In connection with these resignations Lord Shaughnessy says that not one of these directors, either at a meeting or privately, intimated in any way his dissatisfaction with the policies or administration of the company. It is quite evident then that these directors have not made to Lord Shaughnessy statements they have made to others in regard to the company's affairs—and that is perhaps not surprising.

20 The important thing about Lord Shaughnessy's statement, however, is that he does not answer the main point which has been raised, that the dividend being paid by the company on the common shares is not being earned. In a statement at Vancouver he said that 'the dividend was being well maintained.' But what was meant by this ambiguous statement? If it meant that the dividend is being paid, it was unnecessary, because that is evident. If it meant that it is actually being earned he should have been more explicit on that point, because there have been reports to the contrary from sources which cannot be disregarded.

30 As to the substance and tone of Lord Shaughnessy's statement it is unfortunate that he should place any such construction on the co-operative attitude of the leading financial papers of the country. Many hundreds of small investors for months past have been greatly concerned about their investment in the shares of the company, and at different times Lord Shaughnessy has been requested to give such information as might help them to better work out their problems in a trying market situation. Right along it has been the endeavor of the papers to be of as great help to the company as to the shareholders themselves."

Q.—Does the company subscribe to the Financial Post, the Financial Times and other trade papers?

40 A.—No.

Q.—Do you receive any in the office?

A.—No.

Q.—Do you subscribe for them?

· Witness: Personally?

Counsel: Yes?

JOHN G. LAWRENCE (*for Plaintiffs*), *Examination-in-Chief*.

A.—Occasionally.

Q.—Can you say whether the article from the “Toronto Saturday Night” of November 2nd, 1929, came to your attention at the time it was published?

10 Mr. Campbell: It will be a great addition to the record, because there is a photograph of Mr. Herbert Marler.

His Lordship: What is the date of the article?

Mr. McKeown: November 2nd, 1929.

Mr. Campbell: It may be difficult to reproduce this, and do justice to it, if we have to print this for a future record.

Witness: I do not think I have seen this before.

20 By Mr. McKeown:

Q.—Will you identify as coming from your file, a clipping from the Toronto Financial Post of date November 7th, 1929, headed:

“ NO DICKERS FOR ALCOHOL ON MERGER

and file a counterpart of the same as Exhibit P-153?

A.—Yes.

Q.—And you will read it into the record?

30 A.—Yes.

EXHIBIT P-153

Thursday, November 7, 1929
Financial Post Toronto

NO DICKERS FOR ALCOHOL ON MERGER

Never Approached on Rumored Deal to Consolidate
DIVIDEND IS EARNED

40

Satisfactory Profits in Year Just Ended—Stock Sells Below
Intrinsic Value

(From Our Own Correspondent)

“ Montreal—Canadian Industrial Alcohol is not merging with any other company in the distillery field, nor has it ever

JOHN G. LAWRENCE (*for Plaintiffs*), *Examination-in-Chief*.

been approached to link up with any other producer. Rumors to this effect have been going the rounds for several weeks, and an official of the company informs The Financial Post that as far as Canadian Industrial Alcohol is concerned there is absolutely no substance to the story.

10 The fiscal year of the company ended on September 30th last and though the audited statement will not be ready for a few weeks, it is understood that the report will show dividends well earned, with a comfortable margin to be carried forward into the profit and loss account. This means that earnings will be somewhat in the neighborhood of \$2,000,000.

CONSIDER PROFITS SATISFACTORY

20 This showing, if verified by the audited statement, is considered to be exceptionally good. It compares favorably with that reported by other distillery companies. The past year has not been an altogether favorable one for the companies in this industry. If the company is able to report earnings of \$2,000,000, or so on a market capital of around \$15,000,000 there is little reason for complaint. There are few industrial companies able to make as good a showing.

30 Business during the past three months has been more favorable. Sales of Canadian Industrial Alcohol have been better than in the summer months, when business was at a low point. The setback then, however, was sufficient to make a dent in earnings, though the improved situation in the closing months of the fiscal year largely offset the poor months.

Industrial Alcohol has maintained its policy of keeping alcohol reserves up to a figure of about 10,000,000 gallons. Some time ago the management set that mark as a reserve, and, when reached, started manufacturing to keep pace with current demands. This reserve of alcohol is one of the most important assets of the company and one which investors are quite apt to overlook.

40 The company is getting away to a good start this year. The new wood alcohol plant at Lindsay will be put into operation next week. For some time the company has been purchasing its needs of wood alcohol on the open market. Several months ago it was decided to build their own plant. It is expected that before long the company will be able to make all its own wood alcohol needs."

Q.—Will you identify as coming from your file a further clip-

JOHN G. LAWRENCE (for Plaintiffs), Examination-in-Chief.

ping from the Hamilton, Ontario, Spectator, of December 3rd, 1929, headed "Daily Market Chart" which I now show you?

A.—Yes.

Q.—Will you file a counterpart thereof as Exhibit P-154?

A.—Yes.

EXHIBIT P-154

10

This article is headed:—

"Tuesday, December 3rd, 1929, Hamilton, Ontario, Spectator.

DAILY MARKET CHART

20

Then follows a graph, which shows the stock at 20 in 1925, and below in 1925; at above 30 in 1926; above 40 in 1927; at 50 in 1928 and at 10 in 1929, and then under sub-heading:—

CANADIAN INDUSTRIAL ALCOHOL Co., LTD.

30

"The market performance of Canadian Industrial Alcohol stock has been a keen disappointment to the shareholders. It began to slip back early last year, after reaching a peak of 50½, but it held around 40 for some months, when the market as a whole was vigorous. In recent months it slipped down to about 10 and some shares were actually sold on the Montreal Exchange at 5.

The authorized common stock is divided into two classes—1,000,000 shares of A voting stock, and 500,000 shares of B non-voting. Both are of no par value, and enjoy equal rights apart from voting. Of the former 969,480 shares are issued, and the latter, 123,186 shares. Dividends of 38 cents a quarter, being at the rate of \$1.52 per year are being paid. The market value of the B stock is usually a point or two below that of the A stock.

40

The company operates through several subsidiaries, with plants at St. Hyacinthe, Que.; Prescott and Corbyville, Ont.; St. Boniface, Man.; Vancouver, B.C.; and London, Eng. In the year ended September, 1928, its net profits were \$3,136,680, while dividends took only \$1,614,042, while balance sheet showed assets of \$19,274,065, with liabilities of \$823,499. The new statement should appear any day now.

Last June, the president of the company issued an assurance that the dividends were being earned, and as recently as October 8th he made a further statement to ease the minds of share-

JOHN G. LAWRENCE (for Plaintiffs), Examination-in-Chief.

holders, though he did refer to the possibility of the profits for the past year being lower.”

Q.—Will you produce as Exhibit P-155 an article from the Toronto Saturday Night of November 2nd, 1929, containing a photograph of the Honorable H. M. Marler followed by the following words:—

EXHIBIT P-155

10

“Canadian Minister to Japan, whose resignation from the Board of Canadian Industrial Alcohol was recently announced. Mr. Marler is the fourth director of that company to sever his connection within a comparatively brief period.”

A.—Yes.

Q.—Mr. Lawrence, you were asked yesterday to produce certain compilations and memorandums. Have you brought them with you?

A.—Yes.

20 Q.—You were asked to produce as Exhibit P-141 a memorandum showing the amount of sales to the various Liquor Commissions in the years from 1926 forward?

A.—Yes, sir.

Q.—And you have just handed me the compilation which you have prepared?

A.—Yes, sir.

Q.—As to the broken period for the present fiscal year beginning October 1st, 1929, it only goes as far as February?

30 A.—That is as far as our records go. We have not got March closed yet.

Q.—Is it not your practice to keep your records up to date?

A.—Yes.

Q.—Today is the 2nd of April. When are the March figures going to be available?

A.—Within the next day or two.

Q.—That is a matter as far as Quebec is concerned that is controlled right from your office?

A.—Yes, but we have the returns to come in from the west yet.

Q.—Do they come in by mail or by wire?

40 A.—They come by wire and by mail both.

Q.—Will you be good enough to complete this Exhibit P-141, by adding to it in a further column, in red ink, the sales to the various Liquor Commissions, as of February 28th, 1929?

A.—That is to February.

Mr. Campbell: This includes February.

JOHN G. LAWRENCE (*for Plaintiffs*), *Examination-in-Chief*.

Mr. McKeown: What I mean is, we may compare the years, year by year from 1926 to 1929, but in 1930 we only have the broken period.

By Mr. McKeown:

10 Q.—I will ask you to add another column to show what the sales were from October 1st, 1928, to February 28th, 1929?

A.—Oh yes, I understand.

20 Mr. Campbell: I ask Your Lordship to note a repetition of my objection. There is a lot of material on this Exhibit purporting to be filed, which has to do with facts that have occurred since the actual beginning of this trial. Surely we cannot have a revised version of the facts every day. This purports to bring down the figures to the end of February 1930. These proceedings were taken on January 18th, 1930, and the actual trial started on the 3rd day of March 1930.

Mr. McKeown: These figures which Mr. Lawrence is now referring to only run to the end of February. It is just for the purposes of comparison.

By Mr. McKeown:

30 Q.—You were also asked to produce as Exhibit P-142, a compilation showing the sales in cases for the years 1924 forward. You have this morning handed me a compilation which is marked with that number?

A.—Yes. The 1924 figures are not split. I can only give them to you in total. The books are up at the plant.

Q.—Again, I draw your attention to the fact that this Exhibit, like Exhibit P-141, only shows the broken periods of the fiscal year 1929?

A.—Yes.

40 Q.—Will you add in red ink a further column showing the sales as at date February 28th, 1930?

A.—Yes.

Mr. Campbell: This is subject to my objection, my Lord.

His Lordship: Yes.

By Mr. McKeown:

JOHN G. LAWRENCE (for Plaintiffs), Examination-in-Chief.

Q.—You were also asked to prepare and produce as Exhibit P-143 a dividend record of the Alcohol Company for the years 1923 forward, and you handed me this morning a compilation which has been marked with that number?

A.—Yes, sir.

Q.—This compilation, P-143, shows the dividends as paid quarterly?

10 A.—Yes.

Q.—Would you be good enough to extend a new column to be entered at the place, at the point shown in red, an indication of the total amount per annum distributed?

A.—Yes.

Mr. Campbell: You mean to carry out the annual distribution, that is, for the financial years?

20 Mr. McKeown: Yes, for the fiscal years.

By Mr. McKeown:

Q.—And also total up those extensions so that we can see the amount?

A.—Yes.

By Mr. Campbell:

30 Q.—Do you understand what is needed?

A.—Yes.

By Mr. McKeown:

Q.—You have some notations under the heading of “Remarks,” and amongst those there is a remark opposite the date, “March 30th, 1927, 169,480 bonus shares?”

A.—Yes.

Q.—Were those no par value shares?

40 A.—Yes.

Q.—Those shares are not extended in dollars. They are not taken into the dollar column?

A.—Oh no.

Q.—So that those shares would be in addition to the amounts?

A.—It is just an increase in the capital amount.

Q.—But there is no account taken of those shares in the column

JOHN G. LAWRENCE (for Plaintiffs), Examination-in-Chief.

showing the cash dividend. You have not taken them at ten dollars a share?

A.—No.

Q.—The further item in the column, “Remarks, 969,480, voting and 123,186 non-voting,” simply refers to the capital outstanding at that time?

A.—No.

10 Q.—It is not a matter of bonus at all?

A.—No.

Q.—It refers to a new issue?

A.—It refers to a new issue of “B” stock.

Q.—It refers to a new issue of “B” stock which was issued at the price of \$20 to the treasury?

A.—Yes.

20 Q.—And the further notation under the column of “Remarks. Cash bonus against item of December 31st, 1928,” means a cash bonus of 25 cents per share paid in addition to the quarterly dividend at that time?

A.—Yes.

Q.—But that amount is extended in the cash column?

A.—Yes. It was paid in cash.

Q.—Is it taken into account in the cash column?

A.—Yes.

Q.—Are you sure of that?

A.—Yes, sir. \$273,166.50.

30 Q.—You were also asked to produce as Exhibit P-145 a compilation showing the gross sales of the Canadian Industrial Alcohol Company and its subsidiaries in the fiscal year ending September 30th, 1929, and you have since exhibited to me a compilation which has been marked with that number?

A.—Yes, sir.

Q.—And will you now produce the same?

A.—I do.

Q.—This Exhibit P-145 shows gross sales including Robert McNish of \$6,832,718.95?

A.—Yes.

40 Q.—In addition, I see the first item is the Canadian Industrial Alcohol Limited \$533,293.65. Is that the industrial branch?

A.—Industrial branch only.

Q.—Non-beverage?

A.—Yes.

By the Court:

JOHN G. LAWRENCE (for Plaintiffs), Examination-in-Chief.

Q.—All the rest are beverage?

A.—Yes, sir.

Mr. Campbell: Is it made clear that this is for the financial year ending September?

Mr. McKeown: Yes.

10

By Mr. McKeown:

Q.—You were also asked to prepare a compilation showing the insurance carried upon buildings, machinery, raw materials, coal, etc. Have you prepared that compilation?

A.—Yes.

Q.—Will you now produce the same under the number P-146 already assigned for it?

A.—Yes.

20

Q.—This compilation P-146 seems to give a total of \$5,-482,025.78?

A.—Yes.

Q.—What are the further figures on the left hand side of the statement totalling \$179,056.10, and are they included in the larger amount which I have just given you?

A.—Yes. They represent the details of the raw materials of Canadian Industrial Alcohol.

30 Q.—You were also asked to prepare a compilation of the “ A ” and “ B ” shares of the Alcohol Company held by the present members of the Board?

A.—Certain of the Directors of the Board, yes.

Q.—Have you prepared a compilation, and will you produce it as Exhibit P-147?

A.—I do.

Q.—This compilation covers only the holdings, according to the register, of Directors Kaestner, Lauster, Reaper, Stormont, and Wilmore, of “ A ” and “ B ” stock?

A.—Yes.

40

Q.—Mr. Kaestner holds a total of 70 shares?

A.—Yes.

Q.—Mr. Lauster holds one “ A ” share, and 368 non-voting “ B ” shares?

A.—Yes.

Q.—Mr. Reaper only holds 5 shares, which are all class “ A ”?

A.—Yes.

JOHN G. LAWRENCE (for Plaintiffs), Examination-in-Chief.

Q.—Mr. John Stormont holds 30 shares altogether 10 “ A ” and
20 “ B ”?

A.—Yes.

Q.—And, Mr. Wilmore holds 125 shares: 100 “ A,” and 25 “ B ”?

A.—Yes.

10 Q.—Will you be good enough to complete this statement by
showing opposite the name of each of those Directors the date of
their appointment to the Board?

A.—I think there is an Exhibit showing that.

Q.—Will you kindly add the information to this statement?

A.—Very well.

Q.—Who are the remaining Directors, not shown by Exhibit
P-147? There is Lord Shaughnessy, yourself, and Mr. Turnbull?

A.—Yes: Lord Shaughnessy, myself and Mr. Turnbull. That
is the lot.

20 Q.—And, we already have the particulars of Lord Shaughnessy’s
holdings, and of yours?

A.—Yes.

Q.—The only one missing from the Exhibit is Mr. Turnbull.
Will you kindly add Mr. Turnbull’s holdings to it, so that it will be
complete?

A.—Yes.

His Lordship: Is Mr. Reaper a Director?

30 Mr. McKeown: Yes, Your Lordship. He is mentioned on the
Exhibit as holding 5 shares.

His Lordship: He did not ruin himself by his qualification.

Mr. Campbell: Of course he is one of the two who vote the
control. He was just as qualified as Mr. E. R. Decary who had been
on the Board for many years. He owned his 5 shares.

By Mr. McKeown (continuing):

40 Q.—Do you know how many shares Mr. Turnbull has?

A.—No, sir, I have not the figure here.

Q.—Will you verify that the sum total of the shares held by the
five Directors whose names appear on Exhibit P-147 is 595 shares?

A.—599 shares.

Q.—Of which how many are voting shares, and how many are
non-voting?

A.—Voting, 166; non-voting, 433.

JOHN G. LAWRENCE (for Plaintiffs), Examination-in-Chief.

Q.—Then we have your own shares; which amount to 35 altogether, I think?

A.—Yes. That is “ A ” shares.

Q.—They are not all “ A,” are they?

A.—I have 35 “ A,” and 20 “ B.”

Q.—How many has Lord Shaughnessy?

10 His Lordship: 1,998 “ A,” and 1,007 “ B,” I think.

Mr. Campbell: Lord Shaughnessy has in fact an additional 375 “ B ” shares which are not on the register yet, but which have been recently released. They were in the hands of the Bank.

Witness: 1,030 “ B ” shares.

By Mr. McKeown (continuing):

20 Q.—Will you just total those up on your memorandum?

A.—It shows 2,164 “ A ” shares, and 1,463 “ B ” shares. Then there are 35 to be added to the “ A ” and 20 to the “ B.”

Mr. Campbell: I am instructed that since these slips were made up there were an additional 375 “ B ” shares which are now standing in the name of Lord Shaughnessy.

30 Mr. McKeown: My learned friend will have the right to take that up in cross-examination. There may be an error, and if there is my learned friend will have an opportunity of correcting it; but I would ask him not to hash up my question.

Witness: 2,199 “ A,” 1,483 “ B.”

By Mr. McKeown (continuing):

Q.—Making a total of how many?

A.—3,682.

40 Q.—That includes all the shares on the register up to within a day or two.

Mr. Campbell: What is the date of the last entry in Lord Shaughnessy’s account?

By Mr. McKeown (continuing):

JOHN G. LAWRENCE (*for Plaintiffs*), Examination-in-Chief.

Q.—When did you receive those figures from the Crown Trust Company?

A.—A couple of weeks ago, I think.

Q.—And, that was the position two weeks ago?

A.—Yes. With the exception of Mr. Turnbull's holdings.

Q.—Lord Shaughnessy's registered holdings included there, of 1,998 "A" and 1,030 "B," form a total of 3,028 shares. So that the
10 Directors, not including Mr. Turnbull, hold jointly 654 shares of both classes?

Witness: You have "A" and "B" in there?

Counsel: Yes.

A.—654 shares, yes.

Q.—And of those 654 shares, 433 are "B" shares?

A.—Plus 20—453 "B."

Q.—453 "B" shares, which are non-voting, and which would
20 leave _____

A.—(Interrupting), 201 "A" shares.

Q.—201 "A," or voting, shares held by the six Directors, yourself, Mr. Kaestner, Mr. Lauster, Mr. Reaper, Mr. Stormont, and Mr. Wilmore?

A.—Yes.

Q.—I think you told us Mr. Stormont was elected on February 24th, 1930?

A.—February 26th, 1930.

Q.—He never had any "A" shares in his name before February 24th, two days before, when he got 10 shares in his name. Is that
30 right?

A.—No, he never had any "A" shares before.

Q.—On what date was Mr. Kaestner elected to the Board?

A.—December 23rd, 1929.

Q.—Did he have any "A" or "B" shares in his name before December 18th, 1929, according to this memorandum Exhibit P-147?

A.—No, sir.

Q.—On what date was Mr. Reaper appointed?
40

A.—December 23rd, 1929.

Q.—He was out of luck all around. He did not have any shares at all in his name at that time— that is, on December 26th, 1929?

A.—No.

Q.—On what date did Mr. Lauster join the Board?

A.—December 21st, 1926.

Q.—According to this memorandum Exhibit P-147 he does not

JOHN G. LAWRENCE (for Plaintiffs), Examination-in-Chief.

appear to have had any " A " shares registered in his name until November 30th, 1928, when one " A " share was transferred to him?

A.—I may say I got those dates by telephone from the Crown Trust Company this morning. Perhaps I had better have them checked up.

10 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.

And at 2:30 o'clock in the afternoon, April 2nd, 1930, personally came and reappeared the said witness,

20 JOHN GIBSON LAWRENCE,

and his examination was continued as follows:

Mr. McKeown: Mr. Lawrence has verified the matter he was being questioned about at the adjournment, and he finds there is a little variation, which I think should be put on record.

Witness: The date given as the date of acquisition of the shares of Mr. Lauster was given in error.

30 By Mr. McKeown:

Q.—That is, as it appears upon Exhibit P-147 as originally prepared?

A.—Yes.

Q.—What are the facts?

A.—On July 15th, 1926, Mr. Lauster had 10 shares. He was appointed a Director on December 21st, 1926, at which time he had those 10 shares. Since that date various transactions have gone on
40 in his account, and at the present time he owns one " A " share.

By the Court:

Q.—How much salary does he draw from the Company in which he is so heavily interested?

A.—\$15,000.

JOHN G. LAWRENCE (for Plaintiffs), Examination-in-Chief.

His Lordship: He has the interest on his money all right.

Mr. Campbell: That is only part of the picture, my Lord. We will try to supplement it when we get a chance. As a matter of fact, Mr. Lauster has a very substantial potential contingent interest in the Company.

10 By Mr. McKeown (continuing):

Q.—You were asked about the 1,000 “ B ” shares which were purchased by Lord Shaughnessy in March, 1928, at about the time he sold 1,000 “ A ” shares. Do you know where those “ B ” shares came from?

A.—No.

20 Q.—Were there any “ B ” shares issued at the favored price of \$20.00 a share to officials of the Company other than those entitled to receive them in connection with their prior holdings of Alcohol stock?

A.—There was a small unsold balance of 249 shares.

Q.—Not taken up by the shareholders?

A.—Not taken up by the shareholders.

Q.—What became of those shares?

A.—Those shares were sold to employees at the price of \$20.00.

Q.—Had there been rights dealt in on the Stock Exchange as to the taking up of the “ B ” shares prior to the actual issue of the same in March, 1928?

30 A.—Yes.

Q.—Can you tell us from your knowledge of the corporate records in what way it could be ascertained whether the 1,000 “ B ” shares taken up by Lord Shaughnessy in March, 1928, had been taken over as upon rights, or whether they were bought in the open market?

A.—I would have no record of that.

Q.—Where would the record be? With the Crown Trust Company?

40 A.—They might have a record of it; I could not say. It does not appear in his ledger account.

Q.—You notice this ledger account of Lord Shaughnessy, now before you, contains no entry in the column “ Certificate Cancelled ” with respect to the 1,000 “ B ” shares there entered under date March 15th, 1928. Would not that be an indication to you that they were Treasury shares?

JOHN G. LAWRENCE (for Plaintiffs), Examination-in-Chief.

A.—I am not sufficiently familiar with the way the Crown Trust Company enter these ledger sheets to be able to say.

Q.—Do you notice on the other sheets now before you that where shares have been credited to accounts they carry the cancelled certificate number?

10 Mr. Campbell: If they are Treasury shares, the records of the Company will show the fact.

Mr. McKeown: But we actually have in the box the man who ought to know.

Mr. Campbell: We cannot speak from memory. If my learned friend attaches any importance to the fact, I would suggest he should verify it from the records.

20 Witness: I would have to refer to the Crown Trust Company for an answer.

Q.—Will you please do so?

A.—Yes.

By Mr. Campbell:

30 Q.—And, at the same time, will you bring Lord Shaughnessy's account down to date; because I am instructed that since that account was written up there have been an additional 375 shares transferred to his name?

A.—Yes, I will.

By Mr. McKeown:

Q.—In your examination yesterday you spoke of certain statements and schedules which you prepared and delivered to Colonel Gordon?

40 A.—Yes.

Q.—And of the consolidation made by Colonel Gordon?

A.—Yes.

Q.—You said you got a copy of that statement?

A.—Yes.

Q.—Have you it with you?

A.—Yes.

Q.—When did you get this statement from Colonel Gordon?

JOHN G. LAWRENCE (for Plaintiffs), Examination-in-Chief.

A.—In the latter part of January, 1930.

Mr. Campbell: I repeat my objection. Your Lordship cannot possibly decide this case on all those facts which have been put in evidence and which have arisen since the Action was taken. It will be extremely difficult for Your Lordship to segregate in the record or in your own mind what happened before Action brought and what happened since.

By the Court:

Q.—What is the date of the statement?

A.—The statement is not dated, Your Lordship.

Mr. Campbell: All those facts which have arisen since Action brought much be irrelevant, and therefore illegal. The Plaintiffs' Action was either good or it was bad the day it was taken. If it was bad the day it was taken, it cannot have become good by reason of anything that happened since. I would like to press that view, because I am satisfied the Action cannot be decided on the conditions that have arisen since, but must be decided on the conditions which existed at the time it was brought. That being so, how can these documents which were delivered to the witness long after Action brought have a bearing on the situation or help Your Lordship to decide the case?

Mr. Montgomery: My learned friend seems to pick out the case where there would be least ground for his argument, because in this instance the schedules and statements from which these figures were prepared were furnished by Mr. Lawrence to Colonel Gordon prior to the Action.

Mr. Campbell: But Colonel Gordon's report was not prepared until afterwards, and was not delivered until afterwards, and we are not bound by anything in it.

Mr. Montgomery: But, it is the natural conclusion of what you did before.

Mr. Campbell: The inference is we are to be bound by that report, and that we are prepared to accept it. We are not bound by it, nor were we ever prepared to accept it.

Mr. Montgomery: Was that after the new Board came in?

JOHN G. LAWRENCE (for Plaintiffs), Examination-in-Chief.

Mr. Campbell: Both the old Board, and the new Board.

His Lordship: It is a comparative statement of both Companies as at September 30th, 1929. I think it may go in.

10 Mr. Campbell: But, it was prepared and delivered long after Action brought.

His Lordship: It shows the respective positions of both Companies as at September 30th, 1929. When it was prepared is immaterial to me.

20 Mr. Campbell: But, it was prepared by an outside authority. It was prepared from information supplied by us on one side, and by someone else on the other. The inference is drawn by Clarkson, Gordon, Dilworth, Gilfoyle and Nash, alias Clarkson, McDonald, Currie & Company. My learned friend was very anxious to connect Mr. Lash with Blake, Lash, Anglin & Cassels, and now I would like to connect Mr. George McDonald with the firm of Clarkson, Dilworth, Gordon, Gilfoyle and Nash.

Mr. McKeown: Seeing that His Lordship has ruled the document goes into the record, my learned friend will have plenty of opportunity in his argument to submit why it should be rejected.

30 Mr. Campbell: I would like to record my respectful exception to the ruling of the Court.

By Mr. McKeown (continuing):

Q.—Will you produce a copy of this document, to be marked Plaintiffs' Exhibit P-156?

Mr. Campbell: Subject to my objection.

A.—Yes.

40 By Mr. McKeown (continuing):

Q.—I take it this consolidation in so far as it concerns Industrial Alcohol is compiled upon the statements and data which you turned over to Colonel Gordon?

A.—Yes.

JOHN G. LAWRENCE (for Plaintiffs), Cross-Examination.

Q.—I show you, from your own file, a clipping which I would like you to identify and mark as Plaintiffs' Exhibit P-157?

A.—Yes.

Q.—This has been extracted from the file of clippings you brought to Court?

A.—Yes.

10 Mr. McKeown: This is an item from the Toronto "Mail & Empire," dated November 29th, 1929. It is headed: "Possibilities of New Control of Canadian Industrial Alcohol," and it reads:

(Special to the Mail and Empire)

20 "Montreal, November 28th. The Annual Report of the Canadian Industrial Alcohol, Limited, for the year ending September 30th, 1929, will soon be ready for distribution. The Street hears that certain pourparlers have taken place in connection with the deal whereby the control of this Company may pass to other hands. In this connection it has been known for some time that the present management was considering the advisability of disposing of the liquor end of the business. When the stock was selling around \$45.00 negotiations took place in New York which many thought would lead to a deal that would have brought \$60.00 a share for the stock; however, the same did not materialize."

30 Mr. Campbell: If the others are as well founded in fact as that was, it will be of great help to the Court. I do not know what the purpose of this is. It appeared in print; but if everything one sees in print is to be believed I do not know how it will help Your Lordship. As far as the case goes, the statements from beginning to end are quite inaccurate. What possible bearing can it have on the case? If a Special to the Mail and Empire, from Montreal, appears in a Toronto paper, is it to be inferred there is any foundation in fact for it?

40 Mr. Montgomery: It is not a question at all of the truth of those things; it is a question of the state of the public mind.

Cross examined by Mr. George A. Campbell, K.C., of Counsel for defendants.

(Continuation of cross examination from page 993)

Q.—At the adjournment yesterday afternoon, when my cross

JOHN G. LAWRENCE (for Plaintiffs), Cross-Examination.

examination for the time being came to an end, I had asked you to prepare and file as Exhibit D-80 a statement in regard to the selling of the shares of Mr. Henry Joseph and Colonel Gaudet, showing the current prices of the day—that would be the high and the low of the day on which those shares were sold, and the names of the brokers through whom they were sold. Have you been able to prepare such a statement?

10 A.—Yes.

Q.—Will you please file it now, as Exhibit D-80?

A.—Yes.

Q.—I note from Exhibit D-80 that during the month of January, 1929, when Mr. Joseph started selling his shares, he sold, on the two dates shown, 540 shares; and from the same Exhibit I note that on those two days (and the details will appear from the Exhibit) the high was $41\frac{1}{2}$, and the low $38\frac{1}{4}$; bracketing those two dates?

A.—Yes.

20 Q.—I note that in the month of February, 1929, Mr. Joseph sold 2500 shares?

A.—Yes.

Q.—And I note that on the dates given in Exhibit D-80 on which he sold the high during that month—taking the dates on which he sold—would be 45, and the low $40\frac{1}{4}$?

A.—Yes.

Q.—In March he sold 400 shares, and on the day he sold the high was $40\frac{1}{4}$, and the low 40?

A.—Yes.

30 Q.—In April he sold 300 shares, and the high was $36\frac{1}{2}$, and the low 36, on the day he sold?

A.—Yes.

Q.—The last 100 shares he sold on June 13th, 1929, the day following the date of his letter of resignation, Exhibit D-8, dated June 12th, 1929, which I now show you?

A.—Yes.

40 Mr. McKeown: I do not think that is quite accurate. Those sales do not go through the register on the day the sale is made. I think that is elementary.

Mr. Campbell: My suggestion is he sold the day after, his letter of resignation is dated June 12th, and he sold on the 13th.

Mr. McKeown: But, those things do not go through until the next day.

JOHN G. LAWRENCE (for Plaintiffs), Cross-Examination.

Mr. Campbell: Then, he sold the same day, or the day following.

Mr. McKeown: Or perhaps the day before.

His Lordship: What was the market price?

Mr. Campbell: The market price for the last day was a high of
10 28 $\frac{1}{4}$, and a low of the same figure.

By Mr. Campbell (continuing):

Q.—When did the falling off in sales, in quantity, of Alcohol or its subsidiaries—the business of Alcohol in the quantity of cases sold—begin to be manifest, according to your records?

A.—In February, 1929.

Q.—And, from then on was there a marked diminution in the
20 quantity of sales, as compared with the previous year?

A.—Yes.

Q.—Continuing during February, March, April, May, June, and July, I think?

A.—Yes.

Q.—So, apart from the 540 shares Mr. Joseph sold in the month of January the other shares were sold by him when there was a more or less accentuated falling off in the sales of the Company's product?

A.—Yes.

Q.—I have been asking you about the falling off in the quantity
30 of goods sold, that is, in the number of cases sold. When did the profits of the Company begin to decline? I am speaking of the profits of the Alcohol Company, including its subsidiaries? Did they begin to decline before the falling off of sales in quantity?

A.—Yes.

Q.—When did the decline in profits begin?

A.—The decline in profits started in October, 1928.

Q.—Will you please look up your records and see whether there was any falling off in quantity of cases sold at that time, or whether it was simply that the margin of profit was narrower?

40 A.—There was actually an increase in the number of cases, but a decrease in the profits.

Q.—Would that be true of October, November, and December, 1928?

A.—It is true of October, and November. In December the number of cases were also down.

Q.—Will you see whether there was a meeting of Directors in the month of December, 1928, and, if there was, will you please tell

JOHN G. LAWRENCE (for Plaintiffs), Cross-Examination.

me whether Mr. Henry Joseph attended the meeting? December 18th, 1928, is the date I have.

A.—There was a meeting of Directors on December 18th, 1928, and Mr. Joseph was present.

Q.—Will you please look up the Minutes of that meeting, and say whether at that Meeting statements were submitted showing the operations for the month of November and for the two months ending November 30th?

A.—Yes, there were.

Q.—Will you say whether Mr. Joseph attended the Meeting of the Board of Directors held in January? About January 23rd, I think it was.

A.—January 23rd. Yes, he was present.

Q.—Were any statements submitted at that Meeting?

A.—Yes.

Q.—For what months?

A.—Statements were submitted showing the operations for the month of December, 1928, and for the three months ending December 31st, 1928; together with comparative figures for the same month and period last year.

Q.—And, those three months had all been unprofitable months?

Mr. McKeown: Not unprofitable.

Mr. Campbell: Comparatively unprofitable.

Mr. McKeown: Not comparatively unprofitable. I do not mind my learned friend exercising his undoubted right to cross examine the witness, but when he begins to put the whole of the answer into the question I think he is going too far. My learned friend should not undertake to tell the witness that the months were unprofitable.

By Mr. Campbell (continuing):

Q.—How did the operations for those three months, October, November and December, 1928, compare with the previous year?

A.—There was a decrease for those three months of \$339,791.00.

Q.—That is, a decrease in profits?

A.—A decrease in profits, for the months of October, November and December.

Q.—According to your record Mr. Henry Joseph attended the meeting on January 23rd?

A.—Yes.

JOHN G. LAWRENCE (for Plaintiffs), Cross-Examination.

Q.—Will you look at Exhibit D-80 and state when he sold his first large block of shares?

A.—On January 24th, 1929.

10 Mr. McKeown: Here we have the point coming up again, which will create an absolutely inaccurate idea of the fact. It is entirely wrong to say that the date on which the transfer of shares is entered by the Transfer Office is the date of the sale, because everyone knows it is not.

His Lordship: I would be interested to know the difference between those two dates.

Mr. McKeown: My learned friend wants to draw the inference that Mr. Joseph attended a Meeting on January 23rd, and the following day sold 500 shares.

20 Mr. Campbell: It may have been the same day. My learned friend says they sometimes go through a day later.

His Lordship: What he heard at the Meeting may, perhaps, been sufficiently serious to influence his mind.

30 Mr. McKeown: Mr. Joseph is not here to explain his actions, and I object to my learned friend overworking his imagination on those dates, which, we submit, are not accurate. All Mr. Lawrence can tell us is the date upon which those transactions went through the Transfer Office.

Mr. Campbell: My learned friend has just put those very dates in as his own Exhibit. He asked Mr. Lawrence to produce them.

Mr. McKeown: I did not put them in for that purpose at all.

40 Mr. Campbell: But I am entitled to use them for any legitimate purpose which I think may be of benefit to me.

Mr. McKeown: I draw the attention of the Court to the fact that those dates are not accurate as the dates upon which the sales were made by the vendors.

Mr. Campbell: In re-examination you will have an opportunity of correcting any wrong inference I may draw.

JOHN G. LAWRENCE (for Plaintiffs), Cross-Examination.

Mr. McKeown: But do not draw the inference that Mr. Joseph sold those shares the day after the Meeting, because he did not.

By Mr. Campbell (continuing):

Q.—I see the reason assigned by Mr. Joseph in his letter of resignation of June 12th, 1929, is that he expects to be absent from
10 Montreal. This letter has been filed as Exhibit D-8, and reads:

“ I beg to resign from the Board of Directors of the Canadian Industrial Alcohol Company, as I expect to be absent from Montreal a good deal in the future.”

In fact, Mr. Joseph did leave Montreal some months after the date of this letter.

A.—I believe so, yes.

20 By the Court:

Q.—From what you know was that the reason why Mr. Joseph left the Directorate of the Company?

A.—I know of no other reason why he left.

Q.—When you heard what was read here this morning about his resignation was it a surprise to you, or had you heard it before?

A.—I have seen all these newspaper clippings many times.

Q.—Had you ascertained whether that was so or not?

30 A.—No, sir.

Q.—Will you look at your Exhibit D-80 and will you tell us first of all through what brokerage house the first three sales of these shares were effected?

A.—McDougall and Cowans.

Q.—It is not a matter of whether this Court or any other Court is interested judicially, but for the purpose of the record, are they a prominent firm in Montreal?

A.—Very prominent, yes.

Q.—Probably about the largest brokerage house in the city?

40 A.—I would think so, yes.

Q.—Then through whom were the February sales effected?

A.—Greenshields and Company.

Q.—And the last went through McDougall and Cowans?

A.—Yes, through McDougall and Cowans.

Q.—Are Greenshields and Company another firm of stock brokers?

A.—Yes.

JOHN G. LAWRENCE (for Plaintiffs), Cross-Examination.

Q.—Then the other sales were effected in March and went through Kingstone and McKenzie. April went through Green-shields; June went through McDougall and Cowans?

A.—Yes.

Q.—On your Exhibit D-80 you say something about Colonel Gaudet's shares, about the sale of Colonel Gaudet's shares. He appears to have sold on or about the 28th of May, 1929, 2,000 shares?

10

A.—Yes.

Q.—What was the price of the day? What was the high?

A.—28½; 28 low.

Q.—Through what brokers were those shares sold?

A.—McDougall and Cowans.

Q.—And Henry Joseph, as you said, had been connected as a Director of the Company for many years?

A.—Yes.

Q.—Previous to his resignation he had sold all his shares except 20 100, which he retained?

A.—Yes.

Q.—Which he retained until the time of his resignation, I mean?

A.—Yes.

Q.—Would the sale by Henry Joseph of his holdings or shares in the Company, if it became known on what is called the Street, be liable to affect the market price of the shares of Alcohol?

30 Mr. McKeown, K.C.: I think we ought not to have any expert testimony from Mr. Lawrence in that line. If Mr. Lawrence would give expert testimony of the probable effect of the sale of the shares on the Street, I think we ought to have somebody who knows the brokerage business better than Mr. Lawrence. If he is not qualified, I submit we will get into all kinds of entanglements.

By Mr. Campbell, K.C.:

Q.—Will you refer to Exhibit D-56, which has already been produced in the course of Mr. Reaper's testimony.

40 Mr. McKeown, K.C.: Until you have corrected it, I don't think you should attempt to offer testimony on it because it is misleading.

Mr. Campbell, K.C.: I have no reason to believe any of these inaccuracies are in the dates I am dealing with.

By Mr. Campbell, K.C.:

JOHN G. LAWRENCE (for Plaintiffs), Cross-Examination.

Q.—Subject to verification, and I will bring you back if there are any inaccuracies on the Exhibit, I am going to use D-56, but subject to verification, taking the high and low of these shares of Alcohol as shown on the Exhibit filed by Mr. Reaper for the period beginning March 19th, 1929, and ending June, 1929, will you give me, first of all, the high of March, 1929, for the “ A ”?

A.—44 $\frac{3}{4}$.

10 Q.—Now I note Mr. Joseph’s shares which he sold are “ A ” shares. What was the low for “ A ” in that month?

A.—33.

Q.—What was the high for “ A ” in April, 1929?

A.—37 $\frac{1}{2}$.

Q.—The low?

A.—34 $\frac{1}{2}$.

Q.—In May, the high?

A.—36.

Q.—The low?

20 A.—27 $\frac{1}{4}$.

Q.—June?

A.—High, 29 $\frac{1}{4}$; and low, 24 $\frac{1}{4}$.

Q.—You told Mr. McKeown in your examination-in-chief that before you were a Director of this Company you had been accustomed to attend the meetings of the Board of Directors as Secretary?

A.—Yes.

Q.—How far back did that practice go? How far back had that been the fact? During what period of time have you been accustomed to attend the Meetings?

30 A.—Since October, 1924.

Q.—Since October, 1924?

A.—Yes.

Q.—Lord Shaughnessy became President, I think, in December, 1925, according to the deposition of Mr. Reaper?

A.—Yes.

Q.—During the whole period of Lord Shaughnessy’s tenure of office as President, you were accustomed to attend the Meetings of the Board of Directors?

40 A.—Yes.

Q.—At any of those Meetings, have you in mind any Meeting at which any Director asked for information and was refused by Lord Shaughnessy?

A.—No. I don’t recall any Meeting that any Director asked for information and did not get it.

Q.—Were the Meetings apparently amicable or were they con-

JOHN G. LAWRENCE (for Plaintiffs), Cross-Examination.

tradictory? Were the Board getting along well together or were they squabbling among themselves?

A.—Getting along very well together.

10 Q.—Was there any evidence of friction by any element of the Board of Directors, protesting against Lord Shaughnessy's management of this Company? Can you recall any occasion when any member of the Board of Directors intimated to Lord Shaughnessy in any way that he was dissatisfied with the management of the Company, at any Meeting of the Board of Directors? I am speaking now previous to the month of June, 1929?

A.—No, sir; I don't recall any incident of that nature.

Q.—You were asked as to whether notice was given of the resignation of these Directors who resigned just at the time of their resignation. Any announcement, I mean. Had other Directors in the history of the Company also resigned in the ordinary course in previous years?

20 A.—Yes, sir.

Q.—Was it usual to make an announcement in respect of their resignation, or was any announcement made that you have a record of or knowledge of, as far as announcement to the press?

A.—Yes. At the time it occurred I don't recall any announcement.

Q.—As a matter of fact, was it not the established policy of that Company not to make an announcement to the press as regards matters of internal management?

A.—I believe that was the policy.

30 Q.—Was that a policy that existed during the time of Sir Mortimer Davis?

A.—Yes.

Q.—Was it not an avowed policy?

A.—I believe so.

Q.—Have you got a copy of D-80? I have lost the original.

A.—Yes.

40 Q.—Reverting for a moment to this Exhibit D-80, and the shares sold by Colonel Gaudet, 2,000 shares sold by Colonel Gaudet on or about May 28th, 1929, can you tell us under what conditions Colonel Gaudet had acquired 2,000 shares of the "A" stock of Alcohol?

A.—He acquired them through the fulfilling of a contract he had with the Company.

Q.—Have you a record of the approximate price paid by him for those shares?

A.—Yes.

Q.—Will you give it to us?

A.—Yes.

JOHN G. LAWRENCE (for Plaintiffs), Cross-Examination.

Mr. McKeown, K.C.: How does he know those were the shares? Colonel Gaudet had more shares than that. How can he identify those as being the shares?

By Mr. Campbell, K.C.:

10 Q.—Have you a memorandum showing when he acquired them and how they were paid for?

A.—Yes.

Q.—Will you file it as Exhibit D-81?

A.—I have not got a copy.

Q.—I note from your Exhibit D-81 that the heading reads:

20 “Sale of 2,000 shares Canadian Industrial Alcohol Company Limited, Capital Stock, to Colonel F. M. Gaudet, at six dollars a share on the 15th November, 1922, in accordance with memorandum of agreement dated 6th February, 1926,”

and under date September 15th, 1927, he is charged with 2,000 shares at six dollars a share equal to \$12,000?

A.—Yes.

Q.—And against that are credited dividend payments between December, 1922, and December, 1927, totalling how much?

A.—\$11,940.

Q.—So that there remained in January, 1928, how much to be paid by Colonel Gaudet in respect of those 2,000 shares?

30 A.—\$60, apparently, according to D-81.

Q.—Paid in cash?

A.—Yes.

Q.—Can you tell from your record when Colonel Gaudet got delivery of those shares in accordance with this arrangement?

A.—According to the Crown Trust Company's record he got delivery on the 27th of January, 1928.

40 Q.—You were questioned in your examination-in-chief in regard to the relations between Alcohol and McNish, a subsidiary, of which I think it owned 90 per cent interest, 90 per cent preference and 90 per cent common?

A.—Yes.

Q.—McNish is a British Company, you have explained?

A.—Yes.

Q.—By whom is it managed? Who are the active officers of it?

A.—Colonel George McNish and John McNish.

Q.—Where do they reside or carry on their business?

A.—London and Glasgow.

JOHN G. LAWRENCE (for Plaintiffs), Cross-Examination.

Q.—By whom was the agreement with the McNish Company negotiated? Who arranged the terms of the relation between McNish and Alcohol?

A.—Sir Mortimer Davis.

Q.—Did he, after the interest had been acquired by Alcohol, become an officer with McNish?

10 A.—I think he did at the time.

Q.—He was a member of the Board. Do you remember whether he was at one time himself the Chairman of the Board of Directors?

A.—I think he was at the start. I could confirm that.

Q.—My information is he was Chairman of the Board at one time. I want to be sure. In any event, have you got with you, Mr. Lawrence, the agreement under which Canadian Industrial Alcohol acquired its interest in the McNish Company?

A.—Yes, sir.

Q.—Will you exhibit it?

20 A.—I exhibit the original and will file a copy without the schedules as D-82.

Mr. Campbell, K.C.: The agreement is dated 19th August, 1927.

Mr. McKeown, K.C.: Add to D-82 a copy of the balance sheet and attach a summary of the inventory without going into the details of it.

By Mr. Campbell, K.C.:

30 Q.—You understand you will have to add to this copy you prepared the balance sheet and a summary of the details; just the balance sheet. Add to this copy you prepared the balance sheet, attached to the agreement, without the other things?

A.—Yes, sir.

Mr. McKeown, K.C.: You just might put these things after the 33,000. Add “export allowances”.

40 By Mr. Campbell, K.C.:

Q.—Will you look at the agreement which is dated 19th August, 1927?

A.—Yes, sir.

Q.—Will you first of all read into the record from the original in your hands the provisions of paragraph 7 in reference to arrears of preference dividend? I will read it if you like:

JOHN G. LAWRENCE (for Plaintiffs), Cross-Examination.

10 “ 7. The Vendors on behalf of themselves and their respective wives and the Purchaser respectively agree that neither they nor any one claiming through them will at any time make any claim against the Company for any dividend on its Preference shares in respect of any period between the Thirtieth July One thousand nine hundred and ten and the First August One thousand nine hundred and twenty-seven. The Vendors undertake and warrant that Mr. Thomas Logan will enter into a similar agreement in respect of the Fifty Preference Shares of the Company held by him.”

Do you know whether that covers all the preference shares held up to that date?

A.—As far as I know.

Q.—Will you turn to the provisions of Section 9 of the Agreement and read it also into the record? I will read it:

20 “ 9. On completion of the purchase the Vendors will agree without further consideration to the cancellation of all existing arrangements and agreements under which they now hold office as Directors and Managing Directors of the Company and will if so required by the Purchaser procure that all other (if any) the Directors of the Company shall resign. The Purchaser shall thereupon procure that each of the Vendors shall be appointed a Managing Director of the Company for a term of three years from First August One thousand nine hundred and twenty-seven
30 with a remuneration in each case at the rate of Two thousand pounds per annum plus reasonable travelling expenses incurred while engaged on the business of the Company and plus one and a half per centum on the net earnings of the Company less all taxes and interest charges. The Vendors shall accept such appointment accordingly. The Purchaser warrants and undertakes that if during the said period of three years the Company shall go into liquidation and transfer its assets and undertaking to another Company, such other Company shall in respect of the then unexpired portion of the said period of three years appoint
40 the Vendors to be Managing Directors upon the terms above set forth.”

That three-year period provided for the management by Messrs. George and John McNish has not yet expired?

A.—No.

Q.—Look at Exhibit filed in your examination-in-chief as P-106, being the balance sheet of Robert McNish and Company Limited as

JOHN G. LAWRENCE (for Plaintiffs), Cross-Examination.

at September 30th, 1929, and verify from this what the net loss to that date was, or is this the loss for the year only?

A.—Net loss.

Q.—First of all, what was the net loss for the year ending September 30th, 1929?

A.—£105,256/14/7.

10 Q.—What was the net loss for the previous year, September 30th, 1928? Have you got your figures to tell us the loss that was incurred for the year ending September 30th, 1928?

A.—For the year ending September 30th, 1928, £119,811/19/11.

Q.—That would be somewhat over £200,000 for the two years, £200,000 loss?

A.—Yes.

20 Q.—Will you take communication of Sir Mortimer Davis' letter to Lord Shaughnessy dated 14th February, 1928, filed as D-59, and I will read into the record the third last paragraph on the last page of the letter:

“If McNish's cost us £100,000 a year, and I don't think it will, it is good insurance to protect our own 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.”

Is that the McNish Company referred to in that letter by Sir Mortimer Davis?

30 A.—Yes, I believe so.

Q.—His guess at 100,000 a year cost was not very far off the mark, according to figures you have given us, was it?

A.—No, sir.

Q.—But apparently in Sir Mortimer Davis' opinion, it was worth while, in view of the factors of the situation, according to the letter we have read?

A.—Yes.

Q.—In that period of time have any substantial sums been spent by the McNish Company in building up its good will?

40 A.—Yes, sir.

Q.—Can you tell us from the figures before you about how much has been spent on advertising?

A.—For the fiscal year ending 30th September, 1928, advertising amounted to £67,296/11/3.

Q.—And for the following year?

A.—For the fiscal year ending 30th September, 1929, advertising £60,204/1/1.

JOHN G. LAWRENCE (*for Plaintiffs*), *Cross-Examination.*

Q.—So that over one-half the loss incurred in each year might be attributed to the expenditure on advertising engaged in by the McNish Company?

A.—Yes, sir.

Q.—It would represent more than half the loss of each year?

A.—Yes.

10 Q.—Have you with you your files dealing with the listing of the McNish debentures, and if so, will you look them up? Will you refer to Exhibit P-126, Mr. Lawrence, and verify from the condition Number 2 on the first page of that letter when the right to subscribe for those McNish debentures on the part of the shareholders of Alcohol expired. When did they have to make their declaration as to whether they took out their allotment of debentures or not?

A.—On or before the 15th of November, 1927.

20 Q.—So that until the 15th of November, 1927, the shareholders of Alcohol had their right to take allotments of these debentures proportionately to their holdings of shares in Alcohol?

A.—Yes.

Q.—Will you verify from the terms of the same Exhibit P-126 when delay for the payment of the debentures expired?

Mr. McKeown, K.C.: What has that to do with the listing of the debentures?

Mr. Campbell, K.C.: I am coming to that now.

30 The Witness: The 15th of February, 1928.

By Mr. Campbell, K.C.:

Q.—Have you in your McNish debenture issue file a cable from Lord Shaughnessy, President of Alcohol, to the London solicitors, Linklaters and Paine, whose telegraph address I understand is “Hackwood-Cannon, London”?

A.—Yes.

40 Q.—Will you give us the date of that cable in reference to the form of debenture to be used, to be issued?

A.—18th of November, 1927.

Q.—And in that cable, Lord Shaughnessy cabled to those London solicitors, who were the solicitors of McNish and Company in London, I understand.

A.—Yes.

Q.—In regard to the final form of the debentures that were to be used?

JOHN G. LAWRENCE (for Plaintiffs), Cross-Examination.

A.—Yes.

Q.—When did you get a reply to that message?

A.—20th of November, 1927.

Q.—In Lord Shaughnessy's cable of the 18th he had inquired when the final form of debenture certificate was to be submitted, and their reply is on the 20th?

10 “Certificates not yet prepared as we await instructions on matters it deals with. If certificate in form you require trust deed in favor of trustee will be necessary. We are preparing draft and will despatch as early as possible. Please say who will be trustee.”

A.—Yes.

Q.—To which Lord Shaughnessy replied on the 22nd, questioning the necessity of the trust deed, indicating the Crown Trust, if trustee was necessary?

20 A.—Yes.

Q.—When did you first take steps in regard to the listing of these debentures on the Montreal Stock Exchange?

A.—During November, 1927.

Q.—Under what date?

A.—It was prior to the 21st of November.

Q.—To whom was the matter of the listing entrusted?

A.—To Mr. Ralph E. Allan.

Q.—An advocate?

30 A.—Yes.

Q.—Have you in your file a letter from Mr. Allan addressed to yourself under date November 21, 1927, in regard to the listing?

A.—Yes, sir.

Q.—Will you exhibit the original and read it into the record? It is as follows:

“ Montreal, November 21, 1927.

John Gibson Lawrence, Esq.,
Canadian Industrial Alcohol,
Canada Cement Building,
40 Montreal.

Dear Sir:

Since my interview with you in regard to listing of debentures of Robert McNish and Company Limited, I have called at your office twice but on each occasion you were engaged at a Meeting.

JOHN G. LAWRENCE (*for Plaintiffs*), *Cross-Examination*.

“As promised, I took the matter up with the Listing Committee of the Montreal Stock Exchange and they have come to the conclusion that it will be necessary to submit the application to list the debentures of Robert McNish and Company Limited in the form of an original application from Messrs. Robert McNish and Company Limited.

10 When convenient I would ask you to kindly telephone me in order to arrange appointment when we can further discuss the matter.

Yours faithfully,

(Sgd) RALPH E. ALLAN.”

That is dated November 21st?

A.—Yes.

20 Q.—Have you in your file a cable from Linklaters and Company dated 23rd November, 1927? See if it refers to the listing or the form of debenture. Read into the record the cable dated November 23rd from Linklaters and Paine. It is as follows:

“ London, November 23rd, 1927.

Beverage, Montreal.

That is the Alcohol Company?

A.—The Consolidated Distilleries.

30 Q.—“ Debentures stock is unsecured but trust deed necessary in order to obtain covenant to represent stop McNish will not actually allot to your company we will prepare Resolution for McNish Board. Expecting them to offer to purchase the whole issue you will then send us the names of your allottees to whom McNish will allot direct thus saving stamp on transfer stop will expedite as much as possible but matter at present awaiting approval of new articles which McNish is considering.”

Look up your cable to McNish. Will you read from your file your cable to the London office of McNish dated 26th November, 1927?

40 A.—(reading):

“Robinet Phone London. As it is proposed list debenture stock London and Montreal exchange important debenture form comply requirements English practice suggest Linklaters consider form and wording and submit it for approval Montreal Stock Exchange writing. Alcohol.”

JOHN G. LAWRENCE (for Plaintiffs), Cross-Examination.

Q.—See if you have in your file a letter from Mr. Miller of the Montreal Stock Exchange dated January 15th, 1928?

A.—Yes.

Q.—Between the date of your cable which you have just read and the 13th of January, 1928, to which I have called your attention, did you hold any communication with any official of the Montreal Stock Exchange in regard to the matter of the listing of these
10 McNish debentures?

A.—Yes, sir.

Q.—With whom?

A.—With Mr. Miller, the Assistant Secretary.

Q.—Did you submit to Mr. Miller the form of the proposed debenture?

A.—Yes, sir.

Q.—Under what date?

A.—On the 11th of January, 1928, I wrote a letter to the Secretary of the Montreal Stock Exchange, Montreal, reading as follows:
20

“ Dear Sir:

In connection with the \$5,000,000 debenture issue of Robert McNish and Company, Limited, one of our subsidiaries, which issue was recently sold to our shareholders, we have now prepared a form of Stock Certificate drawn up in accordance with a trust deed between Robert McNish and Company, Limited, Canadian Industrial Alcohol, and Crown Trust Company, which
30 we wish your approval of as being acceptable to the Montreal Stock Exchange, before having same printed.

Kindly, therefore, be good enough to scrutinize enclosed draft certificate, returning same to us with your approval or comments if this should be changed in any way.

Thanking you in advance, we are

Yours truly.”

Q.—To that you got Mr. Miller's reply?
40

A.—Yes, of the 13th of January, 1928.

Q.—Returning the form of Stock Certificate, what you had arranged in the interval. Had the Stock Exchange suggested any change or amendment?

A.—They had marked on the *pro forma* certificate some changes they required.

Q.—Did you deal with their requirements, and if so, when?

JOHN G. LAWRENCE (*for Plaintiffs*), *Cross-Examination.*

A.—On the following day, the 14th of January.

Q.—Did you send the amended form back to them?

A.—Yes.

Q.—When?

A.—On the 14th of January.

Q.—Will you read into the record your letter returning the amended certificate?

10 A.—“ Montreal, 14th January, 1928.

John M. Miller, Esq.,
Assistant Secretary,
Montreal Stock Exchange.

Dear Sir:

20 We are again enclosing herewith proof of proposed debenture share certificate of Robert McNish and Company, Limited, which we have amended in accordance with your wishes. If this draft Certificate note meets with your approval, kindly be good enough to signify same by endorsing on the face of the Certificate, returning it to us as soon as convenient.

Thanking you for your approval in this connection,

Yours very truly,

Canadian Industrial Alcohol.”

30 Q.—That is dated on what date?

A.—14th of January.

Q.—Did Mr. Miller make any comment as the result of your amended certificate?

A.—Yes.

Q.—Under what date?

A.—17th January, 1928.

Q.—Will you read into the record Mr. Miller’s letter to you of the 17th of January, without the address or the signature?

40 A.—(Reading):

“ Referring to your letter of the 14th instant, I herewith return draft of proposed debenture share Certificate of Robert McNish and Company, Limited, duly approved as to the form.

Please have the words ‘ of the par value of five dollars each ’ inserted after the word ‘ share ’ in the authorized capital, also in the body of the certificate.”

JOHN G. LAWRENCE (*for Plaintiffs*), *Cross-Examination.*

Q.—During your correspondence with the Montreal Stock Exchange, what did you do in reference to the matter of these debentures? Did you communicate with the London office of McNish?

A.—Yes.

Q.—Under what date?

A.—13th January, 1928.

10 Q.—To which you received a reply from the McNish Company, per Mr. Parrott, Joint Managing Director, under what date?

A.—The 26th of January, 1928. Under date London, 26th January, 1928, Robert McNish and Company, Limited, wrote Canadian Industrial Alcohol a letter acknowledging receipt of my letter of the 13th January, with the enclosure sent them, and the last paragraph of Mr. Parrott's letter is as follows:

20 “So far as we are concerned on this side, the details concerning the trust deed, copy of which has been forwarded to you by Mr. Branson, is now completed.

We have, however, written Linklaters and Paine on this subject, pointing out certain irregularities, notably the inaccurate wording of the debenture certificate and have asked their advice to make certain changes in order to comply with the trust deed which, as you know, has to be drawn in compliance with Scotch law.”

Q.—That was the 26th of January?

A.—Yes.

30 Q.—What is the next letter from Miller?

A.—1st of February, 1928.

Q.—On the 1st of February, 1928, you received a letter from Mr. Miller of the Montreal Stock Exchange. I will ask you to read it into the record.

A.—(Reading):

40 “I herewith return duly approved, amended copy of proposed stock certificate for the 6% guaranteed debenture stock of Robert McNish and Company Limited.”

Q.—That is February 1st, 1928. Will you verify on the 2nd of February you had a letter on the subject from Linklaters and Paine?

A.—Yes.

Q.—On February 2nd you received a cable: “Alcohol, Montreal” from Linklaters, the solicitors in London, in regard to this debenture stock?

A.—Yes.

JOHN G. LAWRENCE (for Plaintiffs), Cross-Examination.

Q.—To which Lord Shaughnessy replied as President of Alcohol, on the same day, the 2nd of February, 1928?

A.—Yes.

Q.—Did you receive the next day a further cable from Linklaters in regard to this debenture stock and the difficulty that had been suggested there of a British Company issuing dollar debenture stock?

A.—Yes, sir.

10 Q.—On February 3rd, “Alcohol, Montreal” received the following cable from Linklaters:

20 “Fear description as debentures will also create trouble here. If you cannot arrange that certificate shall state holders’ interest in dollar debenture stock transferred in multiples of five dollars next best would be to state number of units of five dollars each. If this is impossible recommend you state number of shares of debenture stock five dollars each and trust to being able persuade Stock Exchange here to quote in this form if necessity arises.”

When did you next communicate with Mr. Miller of the Montreal Stock Exchange?

A.—The 15th of February, 1928.

Q.—In that letter I see you enclosed the redrafted stock certificate of Robert McNish and Company Limited together with the original draft previously approved by the Stock Exchange?

A.—Yes.

30 Q.—When did you get a reply from Mr. Miller?

A.—On the following day.

“Referring to your letter of the 15th instant I herewith return duly approved redrafted debenture stock certificates of Robert McNish and Company, Limited.”

Q.—When did you next communicate with the London Office of McNish and Company?

A.—The 17th of February, 1928.

40 Q.—Will you turn up the copy. Will you read into the record paragraphs two and three only of that letter?

A.—“The redraft enclosed is the third of several approved by the Montreal Stock Exchange and I think you will agree after perusing all of the enclosed that we have done all in our power here to fall in with Mr. Branson’s views. Our view had all along been and we still think rightly so that a debenture issue has no reference to the capital of the company. In this

JOHN G. LAWRENCE (for Plaintiffs), Cross-Examination.

10 particular case in view of the guarantee of Canadian Industrial Alcohol, Limited, endorsed on the face of the certificate the inclusion of all information regarding the capitalization of your company is unnecessary. This point, however, we are conceding and trust that everything is now in order so that the engraving of this certificate may be proceeded with without any further delay as on the terms of the debenture issue shareholders are now entitled sent their fully paid up receipts for definitive scrip of the company and will doubtless be clamoring their heads off for same for two months yet before getting delivery.”

Q.—That is the 17th of February, 1928?

A.—Yes.

Q.—Did you receive an answer to your letter of February 17th, from the London Office of the Robert McNish and Company?

A.—Yes.

20 Q.—Dated March 5th, 1928, addressed to yourself?

A.—Yes, sir.

Q.—As it is somewhat long, I will ask you to make a copy of it and file it as D-83. This is a letter from Mr. Parrott to Mr. Lawrence. I note in that letter of Mr. Parrott's, which you are going to file as D-83, he quotes a cable sent to him by Sir Mortimer Davis in the course of which he says:

30 “If condition that stock must qualify by listing in London is waived Canadian certificate with minor alterations can be used. Alternative is certificate stating that the registered holder owns say \$500 of this stock and that the stock is transferable in multiples of five dollars. This form would be acceptable here.”

What is the date of that?

A.—March 5th, 1928.

40 Q.—I want you to verify that you exchanged additional correspondence in reference to this matter of the debentures and their listing. There is a letter from Mr. Parrott dated London, 13th March, 1928. Have you got a letter dated 21st March, 1928, from Mr. Parrott?

A.—Yes.

Q.—Will you prepare and file as D-84 a copy of that letter? I note from the first paragraph of that letter that they “enclosed the proof of the front pull of the debenture certificate; the finished proof containing the back wording is not yet to hand, although I have seen a rough copy.” When did you next hear from Mr. Parrott?

JOHN G. LAWRENCE (for Plaintiffs), Cross-Examination.

A.—The 23rd of March, 1928.

Q.—With that letter he enclosed specimen copies of the complete debenture certificate?

A.—Yes.

Q.—On April 4th did you hear by cable from Mr. Parrott?

A.—Yes.

10 Q.—Will you read into the record the cable you received from Mr. Parrott dated April 4th, 1928?

20 A.—“Experiencing great difficulties in connection with completion of debenture certificates stop our advisers in Scotland take the view with which Bramson does not agree that certificates in dollar denominations cannot be signed here. Most expeditious alternative is to appoint you and one or more others as assistant secretary to sign certificate in Canada and send you certificates bearing only engraved signature vice-Chairman and without Company’s seal stop if you approve this course state who shall be appointed stop all ready to ship.

.. (signed) Parrott.”

Q.—What reply was sent to that message?

A.—A cable dated the 4th of April was sent by Lord Shaughnessy.

Q.—Reading as follows; addressed to Parrott:

30 “Difficulty signature debentures absurd. Abide Bramson’s opinion and execute debentures there as soon as possible.”

What reply comes next?

A.—A reply dated 14th April, 1928.

Q.—Will you decode it and read into the record the translation?

The Court: Is it in Gaelic?

40 Mr. McKeown, K.C.: It might be anything.

The Witness: “Have disposed of difficulties debentures. Three thousand signed and sealed. Leaving per Letitia next week. Remainder following immediately.”

By Mr. Campbell, K.C.:

Q.—That was dated April 14th?

JOHN G. LAWRENCE (*for Plaintiffs*), *Cross-Examination.*

A.—Yes.

Q.—Did you write to Mr. Parrott on the 19th of April?

Whereupon an adjournment was taken until 10.30 o'clock A.M. April 3rd, 1930.

10 And on this third day of April, in the year of Our Lord One Thousand Nine Hundred and Thirty personally came and reappeared the said witness

JOHN GIBSON LAWRENCE,

and his cross examination was continued as follows.

By Mr. Campbell, K.C.:

20 Q.—At the adjournment yesterday we were dealing with the correspondence exchanged between yourself and officers of the Montreal Stock Exchange and officers of the Robert McNish & Company, Limited, in regard to the issue of debentures, and their listing. You had given some detail covering the period from November, 1927, to April 19th, 1928, at which date I think we stopped.

I do not propose to ask you to go into the full detail of all this correspondence; from that time until the actual listing. I would
30 simply ask you if you have with you your files in this matter, and, if so, will you exhibit them to me?

A.—Yes, I have the files.

Q.—You have these two files of correspondence exchanged with officers of the Exchange, or your attorney, Mr. Allen, or with the Old Country subsidiary, Robert McNish & Company, Limited, in reference to these matters?

A.—Yes.

Q.—I will not ask you to read this correspondence into the record, but will you please give His Lordship an idea how many
40 letters, cables and communications have been exchanged on the subject of those debentures and their listing between November, 1927, and the time of their listing in October, 1929?

A.—Approximately 370.

Q.—Letters and cables—communications in writing— on the subject?

A.—Yes.

Q.—I will not ask you to file copies of those 370 documents,

JOHN G. LAWRENCE (*for Plaintiffs*), *Cross-Examination*.

but in order that His Lordship may understand what was involved in the details of this, you will look up, if you have it, the letter from your attorney Mr. Ralph Allen, dated June 19th, 1928, in which he sent you a draft of formal listing application, showing the information that was called for by the Stock Exchange; and will you file a copy of that letter and the draft application sent to you by Mr. Allen, calling the letter Exhibit D-85 (being a letter from Mr. Allen to yourself dated June 19th, 1928) and the application for listing which was enclosed with it I will ask you to file as Exhibit D-86.

A.—Yes.

Q.—What is the date of the application?

A.—June 15th, 1928.

Q.—I note Exhibit D-86 consists of a formal draft application for listing, bearing the date you have given, June 15th, 1928, and draft prospectus showing the material to be supplied to the Stock Exchange Officials, consisting of eleven pages of draft material called for by the Exchange Regulations?

A.—Yes.

Q.—Of course, that application was not completed in that form at that time?

A.—No, sir.

Q.—Will you file, as Exhibit D-87, the completed application, which was filed, I think the following summer under Listing No. C 804?

A.—Yes.

Q.—Without going into the details of the occasion of all this delay, can you tell me how many times those debentures were reprinted?

A.—Three or four times, I should think.

Q.—Three, in any event?

A.—Yes, I think so.

Q.—And the occasion of the first two reprintings was an error, printers or otherwise, committed in Britain—not attributable to Montreal in any event?

A.—No, sir.

Q.—They were occasioned by a defect in the form of the printing as far as the Stock Exchange regulations were concerned?

Mr. Geoffrion: You might as well tell him what the mistakes were.

Witness: Yes. I do not think it was a printer's mistake.

JOHN G. LAWRENCE (for Plaintiffs), Cross-Examination.

By Mr. Campbell (continuing):

Q.—It was a failure to comply with something. Can you define what the two mistakes were in the first two reprints, without going into the details of them? Was not the first one in which they left out the word “Dollars,” or something of the kind?

10 A.—I can tell you generally what the errors were, but I could not give them in their order.

Q.—I am speaking of the first two changes that were occasioned. What were they? I do not care in which order you give them. I recall what they were, as I have read your files, but my learned friend wants you to tell the story.

A.—One certificate that was printed was drawn up so that the purchaser was the owner of ——— of Six Per Cent Guaranteed Debenture Stock.

Q.—And, exception was taken to that form?

20 A.—Yes.

Q.—Where? In Britain, was it not?

A.—I think in Britain.

Another certificate was drawn up showing that “This certifies that ——— is the owner of ——— Dollars of Six Per Cent Debenture Stock.”

Q.—That was the second one the Stock Exchange complained of. Was not that the one to which exception was taken by the Montreal Stock Exchange, by reason of a condition on the back?

30 A.—Yes. It is about the word “Dollars” in the body of the certificate and at the top of the certificate.

Another certificate was drawn omitting the word “Dollars.”

Q.—That would be three?

A.—Yes.

Q.—Was there not a final change due to a requirement of the Montreal Stock Exchange referred to in the letter of the Crown Trust Company dated October 8th, 1929, which has been filed by you in the course of your testimony as Exhibit P-127?

A.—Yes.

40 Q.—The change referred to in the letter Exhibit P-127 is in respect to a form of certificate which had previously been approved by the Montreal Stock Exchange officials here before it was printed?

A.—Yes.

Q.—In other words, they changed their minds, involving a change in the form of certificate?

A.—Yes.

Q.—You were asked to prepare a copy of the agreement between Canadian Industrial Alcohol, Limited, and Messrs. George

JOHN G. LAWRENCE (for Plaintiffs), Cross-Examination.

& John McNish, dated August 19th, 1927, with schedules attached. Have you done so, and if you have will you now file it under the number given to it yesterday, Exhibit D-82?

A.—Yes.

10 Q.—During this period of time from November, 1927, to the autumn of 1929, when the final listing took place, can you state whether as far as the Montreal officers of Canadian Industrial Alcohol were concerned, including yourself and any others who were dealing with it, you exercised reasonable diligence on your part in performing such portion of the operation as you had to perform during the negotiations?

A.—I think I exercised all diligence.

Q.—And did Lord Shaughnessy do his part, in so far as he was called upon to do anything, with reasonable diligence?

A.—Yes.

20 Mr. Geoffrion: I suppose the Court has to decide that question.

Mr. Campbell: I am enlightening the Court with the opinion of the witness. My learned friend has imposed the benefit of many opinions upon the Court, which may or may not be helpful.

By Mr. Campbell, (continuing):

30 Q.—You told us yesterday, I think, that McNish spent about £ 60,000 a year during the years ending September 30th, 1928, and September 30th, 1929, in an advertising campaign?

A.—Yes.

Q.—And, I suppose it is fair to say that McNish expects some day to get results from this expenditure?

A.—We hope so, yes.

Q.—It has cast its advertising bread upon the waters, and hopes to get it back with interest?

A.—Yes.

40 Q.—The advertising of those brands, whether it be spiritous liquor or anything else, I take it is looked upon as a legitimate expedient, is it not, for the purpose of creating goodwill?

A.—Yes.

Q.—Take the items of trademarks, goodwill, and so on, of Canadian Industrial Alcohol, about which you were questioned in your examination in chief: in your judgment are the trademarks of Canadian Industrial Alcohol really valuable?

A.—Very valuable.

Q.—Those trademarks, which have been advertised over a

JOHN G. LAWRENCE (for Plaintiffs), Cross-Examination.

period of years, presumably are intended to create a public demand for the goods covered by them are they not?

A.—Yes.

Q.—Speaking of trademarks and Industrial Alcohol, is not one of the trademarks of Canadian Industrial Alcohol, or Consolidated Distilleries, the celebrated parrot that says “Corby” when it makes a sound like the pulling of a cork?

10 A.—It used to be.

Q.—Not only Canadian Industrial Alcohol but different other Companies engaged in a similar line of business expend large sums of money per annum in the advertising of their brands of wares for public consumption?

A.—Yes, sir.

Q.—For instance, take our friend Johnnie Walker, the gentleman with the Beaver hat and the monocle, who was born in 1820 and is still going strong. Have very large sums of money been spent in advertising that brand?

20

Mr. McKeown: What does this witness know about Johnnie Walker?

Mr. Campbell: My learned friend said it pays to advertise.

Mr. Geoffrion: I think we may allow the Court to assume that.

30 By Mr. Campbell (continuing):

Q.—Will you look at the McNish statement as at September 30th, 1929 (the pro forma statement) Exhibit P-106, and will you tell me if you can what the stock of spirits at distilleries, etc., shown at £409,940.11.11, less interest reserve of £37,164.8.6.—at what price those spirits are carried in the balance sheet?

A.—At cost.

Q.—You were questioned in your examination in chief about what I may call the concealed asset on the balance sheet of Industrial Alcohol between the stock shown at cost, at Five Million odd
40 dollars, and the actual selling value, which was stated to be five or six times as great.

Mr. McKeown: My learned friend must understand that they bought this: they did not manufacture it. Do not deceive yourself on that point.

JOHN G. LAWRENCE (for Plaintiffs), Cross-Examination.

Mr. Campbell: Of course I am not suggesting it is worth that spread.

Mr. McKeown: They bought it in the open market, and got "stung." They are only blenders: they are not distillers.

10 Mr. Campbell: I am quite aware of that, although perhaps I may not know as much about the case as my learned friend does.

By Mr. Campbell (continuing):

Q.—I am not suggesting it is subject to be multiplied five or six times as in the case of the Industrial Alcohol item, but in your view, and with such knowledge as you have of the business, is there an element of value not shown in that balance sheet between the stocks carried at cost and their selling value?

20 A.—Yes.

Q.—You read into the record an extract from the letter of Sir Mortimer Davis to Lord Shaughnessy dated February 14th (Exhibit D-59) about McNish. Will you please look at the original letter of Sir Mortimer Davis to Lord Shaughnessy, dated January 3rd, 1928, filed as Exhibit D-58, and will you read into the record the third paragraph from the end on Page 2 of that letter?

A.—(Reading):

30 "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."

Q.—The "Industrial Company" referred to is Canadian Industrial Alcohol?

A.—Yes.

By the Court:

40 Q.—Is it an asset to Industrial Alcohol? Does McNish add to the revenue of Industrial Alcohol?

A.—Not up to date.

Mr. Campbell: Our bread has not come back yet.

By Mr. Campbell (continuing):

JOHN G. LAWRENCE (*for Plaintiffs*), *Cross-Examination.*

Q.—Will you look at the letter of Sir Mortimer Davis to Lord Shaughnessy, dated March 8th, 1928, Exhibit D-63, and will you read into the record the last paragraph on Page 1.

A.—(Reading):

10 “ I consider Col. McNish a very able, reliable, shrewd, honorable business man, and I feel that 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.”

Q.—How is the stock mentioned in this letter referred to on the balance sheet?

A.—Stocks of spirits at distilleries and warehouses.

Q.—Where did the money which went into that investment shown on the balance sheet at £409,940 11s 11d. come from primarily?

20 A.—It came from the sale of the debentures of Robert McNish and Company, Limited.

Q.—Will you look again at the letter Exhibit D-63, from Sir Mortimer Davis to Lord Shaughnessy, and read into the record the first paragraph on Page 3 thereof, in reference to those debentures?

A.—(Reading):

30 “ Re Debentures: Inasmuch as we are making excellent earnings for the debentures of Robert McNish we should get at least 105 or better. This is a gilt edged security.”

Q.—And the debentures referred to are the same debentures you were discussing yesterday, and which we have been discussing today, in connection with this debenture issue?

A.—Yes.

Q.—I would like to take up with you now a different branch of this discussion. Will you tell me again when Lord Shaughnessy became President of Canadian Industrial Alcohol?

A.—December 15th, 1925.

Q.—The financial year began on October 1st?

40 A.—Yes.

Q.—Apart from the months of October and November, and the first half of December, 1925, Lord Shaughnessy would be in office for the financial years ending September 30th, 1926, September 30th, 1927, September 30th, 1928, and September 30th, 1929?

A.—Yes.

Q.—A four year period?

A.—Yes.

JOHN G. LAWRENCE (for Plaintiffs), Cross-Examination.

Q.—Have you a consolidated statement of the earnings of Canadian Industrial Alcohol for that four year period; and, for purposes of comparison, a similar statement for the immediate preceding four years—and, if so, will you let me see it?

A.—Yes, I have.

10 Q.—Will you produce, and file as Exhibit D-88, a comparative gross and net profit statement of Canadian Industrial Alcohol, Limited, and its wholly owned subsidiaries excluding the McNish Company, for the years 1922 to 1929 inclusive?

A.—Yes.

Q.—Will you look at Exhibit D-88, which you have just filed. I call your attention to the fact that it covers Canadian Industrial Alcohol and its subsidiaries, excluding McNish?

A.—Yes.

Q.—McNish was not managed in Canada?

A.—No.

20 Q.—It was a British Company, managed in Britain?

A.—Yes.

Q.—And in terms of the agreement you filed yesterday to whom was the management entrusted for three years ending next summer?

A.—Colonel George McNish, and John McNish.

30 Q.—For the purpose of this comparison, excluding McNish, will you take this statement Exhibit D-88, and, beginning at the first period (which is the period from 1922 to 1925) will you tell me the gross profits earned by Industrial Alcohol and subsidiaries during this four year period, taking it year by year. First tell me what were the total gross profits for the year 1922?

A.—\$939,777.17.

Q.—What was the net profit for that year?

A.—\$201,878.07.

Q.—That is the total net profit?

A.—Yes.

Q.—What was the total gross profit for the year 1923?

A.—\$2,508,336.55.

40 Q.—What was the total net profit for that year?

A.—\$1,993,752.71.

Q.—What was the total gross profit for the year 1924?

A.—\$2,897,314.93.

Q.—What was the total profit for that year?

A.—\$1,813,864.46.

Q.—What was the total gross profit for the year 1925?

A.—\$2,450,085.10.

Q.—What was the total net profit?

JOHN G. LAWRENCE (for Plaintiffs), Cross-Examination.

A.—\$1,588,517.31.

Q.—What was the total gross profit for those four years?

A.—\$8,795,513.75.

Q.—And, what was the total net profit?

A.—\$5,598,012.55.

Q.—During those years, 1922, 1923, 1924 and 1925, was Sir
10 Mortimer Davis himself more in Canada than during the subsequent
four years, or was he less?

A.—I believe he was more in Canada during those four years.

Q.—And during those years Lord Shaughnessy was not an Ex-
ecutive Officer of Industrial Alcohol, except that I think he was on
the Board of Directors for part of the time? He only became an
Executive Officer in December, 1925?

A.—He became President on December 15th, 1925, and Vice
President on August 26th, 1925.

Q.—Apart from a portion of 1925 he had not been an Execu-
20 tive Officer during that period of time?

A.—No.

Q.—For the purpose of comparison with the figures you have
given, take the following four years, during which Lord Shaugh-
nessy was President. What were the total gross profits for the year
1926?

A.—\$3,343,438.25.

Q.—What was the net profit for 1926?

A.—\$2,316,692.66.

Q.—What was the total gross profit for the year 1927?

30 A.—\$3,764,465.51.

Q.—What was the net profit for that year?

A.—\$2,732,963.07.

Q.—What was the total gross profit for the year 1928?

A.—\$4,174,193.46.

Q.—What was the net profit for that year?

A.—\$3,117,541.63.

Q.—How did 1928 compare with other years in the history of
the Company, in the matter of gross profits and net profits?

A.—It was the largest year the Company ever had.

40 Q.—Beyond all comparison, was it not?

A.—Yes.

Q.—What was the total gross profit for the year 1929?

A.—\$2,816,635.91.

Q.—What was the total net profit for that year?

A.—\$2,139,794.98.

Q.—Making a total gross profit of how much for the four years
of Lord Shaughnessy's tenure of office as President?

JOHN G. LAWRENCE (for Plaintiffs), Cross-Examination.

A.—\$14,098,733.13.

Q.—Representing an increase, or decrease, of how much in total over the previous four years?

A.—An increase of \$5,303,219.38.

Q.—What would that increase represent on a percentage basis?

A.—About 60%.

Q.—That is, 60% increase in total gross profits?

10 A.—Yes.

Q.—What was the total net profit for the four-year period of Lord Shaughnessy's tenure of office?

A.—\$10,306,992.34.

Q.—Did that represent an increase, or a decrease, over the previous four years?

A.—It represented an increase of \$4,708,979.79.

Q.—What would that increase of net profits represent on a percentage basis?

20 A.—Approximately 84%.

Q.—That is, there was an improvement of 84% in the net profits of Alcohol during the four years of Lord Shaughnessy's tenure, as compared with the previous four years?

A.—Yes.

Q.—Will you refer again to the statement Exhibit D-88, and look at the dividends paid to shareholders of Alcohol during those periods of four years each. What was paid in dividends in 1922?

A.—There was no dividend paid in 1922.

Q.—What was paid in dividends in 1923?

30 A.—\$400,000.

Q.—What was paid in dividend in 1924?

A.—\$800,000.

Q.—What was paid in dividends in 1925?

A.—\$1,024,000.

Q.—Making a total of how much for the four years?

A.—\$2,224,000.

Q.—Those are cash dividends you are giving now?

A.—Yes.

40 Q.—Coming now to the second period, when Lord Shaughnessy was President. What was disbursed to shareholders in cash dividends during 1926?

A.—\$1,024,000.

Q.—What was disbursed in dividends in 1927?

A.—\$1,189,228.80.

Q.—What was disbursed in cash dividends in 1928?

A.—\$1,614,041.64.

Q.—What was disbursed in cash dividends in 1929?

JOHN G. LAWRENCE (for Plaintiffs), Cross-Examination.

A.—\$1,661,136.18.

Q.—Making a total of how much for this four year period?

A.—\$5,488,406.62.

Q.—The figures you have just given refer to cash dividends only?

A.—Yes.

10 Q.—How did the \$5,488,406.62 which the shareholders of Alcohol received in dividends during Lord Shaughnessy's four year tenure of office compare with the amount received during the previous four years?

A.—It was an increase of \$3,264,406.62.

Q.—An increase of more than 100%, because the amount previously disbursed was only \$2,224,000?

A.—Yes.

Q.—As a matter of fact, it would really represent an increase of nearly 150%, would it not?

20 A.—Yes, practically.

Q.—That is the regular dividend?

A.—Yes.

Q.—Were there any cash bonuses paid during those periods? Let us take the first four year period: were there any cash bonuses in that first four year period?

A.—Yes, there was a cash bonus of \$200,000.

Q.—When?

A.—In 1923.

Q.—Was there any cash bonus in the second four year period?

30 A.—There was a cash bonus of \$273,166.50.

Q.—In what year?

A.—In the year 1929.

Q.—Paid in January, 1929?

A.—Yes.

Q.—To shareholders of record on what date?

A.—December 31st, 1928.

Q.—Apart from the cash bonuses and dividends, were there any stock bonuses declared in the first four year period, previous to Lord Shaughnessy's tenure of office?

40 A.—No.

Q.—In the second period, during his tenure of office, were there any stock bonuses declared?

A.—Yes.

Q.—When, and how much?

A.—In 1927 there was a stock bonus of \$807,900.

Q.—Taking the shares at what figure for the purpose of that calculation?

JOHN G. LAWRENCE (for Plaintiffs), Cross-Examination.

A.—At \$5.00 a share.

Q.—Can you establish the percentage of the stock bonus in 1927?

A.—20%.

Q.—You have told us it was taken into the balance sheet at \$5.00 a share?

A.—Yes.

10 Q.—And, I think Mr. Reaper gave us the prevailing market price of the shares at the time they were so treated. At the time they were taken into your balance sheet for the purpose of this calculation what was the prevailing stock market quotation per share?

A.—I have not the sheet.

Mr. Campbell: I think Mr. Reaper established the price at \$20.00 per share.

20 By Mr. Campbell (continuing):

Q.—In any event, will you verify the market quotations of those shares at the time that stock bonus was paid? I mean the market quotation on the Montreal Stock Exchange?

A.—Yes.

Q.—Those were "A" shares?

A.—Yes.

30 Mr. McKeown: I suppose my learned friend will continue the dividend record of the Company right down to the present time, or down to the time the dividend was passed.

Mr. Campbell: After we have disposed effectively of the Plaintiffs we will resume our dividend speed at the old rate, I hope.

Mr. McKeown: If you could dispose of the Defendants in the meantime, you would do it earlier.

40 By Mr. Campbell (continuing):

Q.—What was the date of the stock dividend?

A.—January 15th, 1927.

Q.—Will you look at the sheets of Houston's Financial Manual, filed as Exhibit D-57-A, containing the market quotations on the Montreal Stock Exchange for 1927, and will you tell me the high and the low for the month of January of that year?

JOHN G. LAWRENCE (for Plaintiffs), Cross-Examination.

A.—The high in January, 1927, was $24\frac{1}{4}$. The low was $21\frac{1}{4}$.

Q.—So the shares you have entered in this statement Exhibit D-88 at \$5.00, during the month they were actually distributed sold between the high and the low you have just mentioned?

A.—Yes.

Q.—Before we go on to other details of the Company's operations I will ask you to tell me, for the purpose of summing up, the increase
10 in total gross profit during the four years of Lord Shaughnessy's tenure of office as compared with the previous four years when he was not in office.

A.—\$5,303,219.38.

Q.—Representing what percentage?

A.—Approximately 60% increase.

Q.—What was the total increase in net profit for Lord Shaughnessy's four year period as compared with the previous four year period?

20 A.—An increase of \$4,708,979.79.

Q.—Representing an increase of what percentage?

A.—Approximately 84%.

Q.—And the increase in dividends disbursed in cash during Lord Shaughnessy's period, as compared with the previous period, amounted to how much?

A.—\$3,264,406.62.

Q.—In addition to which there was a cash bonus of how much?

A.—An increase in the cash bonus.

Q.—Of how much?

30 A.—\$73,166.50.

Q.—And, in addition to that a stock dividend of how much?

A.—\$807,900.00.

Reckoning the shares at \$5.00?

A.—At \$5.00, yes.

Q.—In the course of your examination in chief you filed a record of production during those periods. This record has been produced as Exhibit P-109, and it shows your total production.

40 Mr. McKeown: Of course, this is absolutely irrelevant, inasmuch as that part of the Exhibit was not developed or relied upon in chief, and no one complains of the production end of this business. The production end of the business could not have been improved upon; thanks to the men in charge of the Distillery, not to Lord Shaughnessy. We have not said one word against the production end, but we have complained bitterly of the sales end and the dividend end. We have complained that the dividend has been passed, and we complain that the sales have collapsed. I would like my learned

JOHN G. LAWRENCE (for Plaintiffs), Cross-Examination.

friend to concentrate upon these matters, and not to go back to things which occurred during Sir Mortimer's lifetime, when Sir Mortimer had his hand on the throttle practically day and night, and the credit for the whole of which is sought to be taken by Lord Shaughnessy.

10 Mr. Campbell: Lord Shaughnessy is not seeking the whole credit. My learned friend's theory is that whatever is wrong is Lord Shaughnessy's fault, and that he is not entitled to any credit for anything that is right. That has been the theory of my learned friend from the start, and I disagree with that view.

Mr. McKeown: We have held him responsible for the collapse of the sales end of the business, and for the passing of the dividend.

20 Mr. Campbell: We had not passed our dividend when you started your proceedings.

Mr. McKeown: But you did not earn it.

Mr. Campbell: We could have paid it, and we were justified in paying it if you had not intervened.

By Mr. Campbell (continuing):

30 Q.—Have you got a copy of the statement you filed as Exhibit P-109?

A.—Yes, I have a copy of it.

Q.—Will you turn to page 1 of the grain manufacturing costs at Corbyville, which appears on page 1 of Exhibit P-109. This Exhibit covers more than the eight year period you mentioned in your previous comparison?

A.—Yes.

Q.—As a matter of fact, it also covers the years 1920 and 1921?

A.—Yes.

40 Q.—Then, we will take the whole ten year period. What were the gross proof gallons manufactured in 1920?

A.—139,062.78 gallons.

Q.—That is, of spirits manufactured from grain?

A.—Yes.

Q.—What are they used for?

A.—Beverage purposes.

Q.—What are the spirits manufactured from molasses used for?

JOHN G. LAWRENCE (for Plaintiffs), Cross-Examination.

A.—Industrial purposes.

Q.—In the experience of Canadian Industrial Alcohol which is the more profitable of the two?

A.—The beverage end of the business.

Q.—Very much so?

A.—Very much so.

10 Q.—In 1920 you manufactured the number of gross proof gallons you have just mentioned?

A.—Yes.

Q.—How many gross proof gallons were manufactured in 1921?

A.—6,278 proof gallons.

Q.—How many gross proof gallons were manufactured in 1922?

A.—749,200.

Q.—Perhaps we should give the net proof gallons year by year as we go along. How many net proof gallons were produced in 1920?

A.—128,979.66 gallons.

20 Q.—And, in 1921?

A.—5,811 gallons.

Q.—And, in 1922?

A.—662,008 gallons.

Q.—How many gross proof gallons were manufactured in 1923?

A.—784,842 gallons.

Q.—And how many net proof gallons were manufactured that year?

A.—695,495 gallons.

Q.—How many gross proof gallons were manufactured in 1924?

30 A.—1,880,199.

Q.—How many net proof gallons were manufactured in 1924?

A.—1,632,069.

Q.—How many gross proof gallons were manufactured in 1925?

A.—943,978 gallons.

Q.—And, how many net proof gallons?

A.—856,830.

Q.—That would cover to the end of the period before Lord Shaughnessy became President?

A.—Yes.

40 Q.—Let us now take the four years of his Presidency. How many gross proof gallons were manufactured in 1926?

A.—1,079,311.

Q.—How many net proof gallons were manufactured in 1926?

A.—1,006,462.

Q.—Quite an increase over the year immediately preceding?

A.—Yes.

Q.—How many gross proof gallons were manufactured in 1927?

JOHN G. LAWRENCE (for Plaintiffs), Cross-Examination.

A.—1,968,027.

Q.—How many net proof gallons.

A.—1,763,517.

Q.—Quite an increase over the previous year again.

A.—Yes.

Q.—How did we do in 1928? How many gross proof gallons were manufactured?

10 A.—3,360,382.

Q.—How many net proof gallons?

A.—3,174,007.

Q.—How does that compare, in a rough way, with any of the years previous to the time Lord Shaughnessy became President?

A.—Very much greater.

Q.—How many proof gallons were manufactured in 1929?

A.—3,515,010.

Q.—How many net proof gallons were manufactured in 1929?

20 A.—3,434,177.

Q.—On the question of net manufacturing cost per proof gallon, will you please look at the first page of Exhibit P-109 and tell me what was the net manufacturing cost per proof gallon in 1920?

A.—\$.7659. 76.59 cents—just over 76½ cents.

Q.—Per gallon?

A.—Yes.

Q.—What was the cost in 1921?

A.—\$.8652.

Q.—Per proof gallon?

30 A.—Yes.

Q.—What was the cost in 1922?

A.—\$.3616.

Q.—What was the cost in 1923?

A.—\$.4836.

Q.—And, in 1924?

A.—\$.4746.

Q.—In 1925?

A.—\$.5787.

40 1926? Q.—What was the net manufacturing cost per proof gallon in

A.—\$.4916.

Q.—As against how much the previous year?

A.—As against \$.5787.

Q.—So it cost less in 1926?

A.—Yes.

Q.—What did it cost per proof gallon in 1927?

A.—\$.4145.

JOHN G. LAWRENCE (for Plaintiffs), Cross-Examination.

Q.—How much did it cost per proof gallon in 1928?

A.—\$.4638.

Q.—And, how much did it cost per proof gallon in 1929?

A.—\$.4357.

10 Mr. McKeown: Of course everybody knows these figures are predicated to a large extent on the cost of grain, over which no one has any control.

Mr. Campbell: They are predicated on many things, including the Company management,—efficient management.

Mr. McKeown: Not in Montreal.

20 Mr. Campbell: Of course I understand my learned friend's contention is, and has been, that the Executive in Montreal have nothing to do with the success of the Company, but they are responsible for its failures.

Mr. McKeown: They have nothing to do with the distillery end of the business, thank the Lord.

By Mr. Campbell (continuing):

30 Q.—Did the average net cost per proof gallon for the last four years compare favorably with any other four years in the history of the Company?

A.—Yes sir, it compared favorably?

Q.—How did the Company stand as at September 30th, 1929 in regard to manufactured spirits on hand?

Mr. McKeown: There is already an Exhibit filed in regard to that.

By Mr. Campbell (continuing):

40 Q.—Will you please look at the statement you filed in your examination in chief as Exhibit P-110, giving the stocks on hand at Corbyville at the end of the fiscal years September 30th, 1926, September 30, 1927, September 30th, 1928, and September 30th, 1929; and will you tell me the total of all stocks on hand as at September 30th, 1926?

A.—2,906,980 gallons.

Q.—And, how many were there on September 30th, 1927?

JOHN G. LAWRENCE (for Plaintiffs), Cross-Examination.

A.—3,305,447 gallons.

Q.—How many on September 30th, 1928?

A.—5,560,361 gallons.

Q.—And, on September 30th, 1929?

A.—7,958,650 gallons.

Q.—Since that date has the quantity been more, or less?

A.—More.

10 Q.—What is the approximate quantity on hand now?

Witness: Of all spirits?

Counsel: Of the spirits shown on Exhibit P-110.

A.—I have not that figure.

That does not include industrial.

Q.—That is, Exhibit P-110 does not include industrial alcohol?

A.—No.

Q.—You have not the figure brought down to date of those spirits?

A.—No.

20 Q.—For purpose of comparison, have you the figures of proof gallons on hand of those various spirits shown on Exhibit P-110 for the previous four years?

A.—The figures could be obtained.

Q.—Will you please prepare, and file as Exhibit D-89, a statement corresponding to Exhibit P-110, showing the stocks on hand at Corbyville at the end of each of the fiscal years 1922, 1923, 1924, and 1925?

A.—Yes.

30 Q.—From your knowledge of the records can you testify in a general way whether the stocks have increased, or decreased, in the last four years?

A.—They have increased.

Q.—Materially?

A.—Very materially.

Mr. Geoffrion: You did not sell anything.

40 Mr. Campbell: We paid more in dividends, and we have had larger gross earnings and larger net earnings. We stopped the dividends since my learned friends appeared on the scene.

Mr. Geoffrion: You have made that statement three or four times. Can you give a single sensible reason why that prevented you from paying the dividends?

By Mr. Campbell (continuing):

JOHN G. LAWRENCE (for Plaintiffs), Cross-Examination.

Q.—Can you give us from the statements you have filed the increase, or decrease, in fixed assets during this four year period? In this connection will you look at the balance sheets you have filed, beginning with 1925.

10 Mr. McKeown: To what do you refer as fixed assets on this sheet?

Mr. Campbell: I do not know. I have not looked at it.

Mr. McKeown: There are not any. This is the Hungarian goulash.

By Mr. Campbell (continuing):

20 Q.—Will you refer to Mr. McKeown's Hungarian friend noted on the balance sheet under the heading of "Real Estate, Buildings, Machinery, Goodwill, Etc., Less Depreciation," beginning with the year 1926. Take the balance sheet as at September 30th, 1926, and tell me what was the total amount shown for that item on that balance sheet?

A.—\$4,209,760.38.

Q.—What was the item as at September 30th, 1927?

A.—\$4,545,499.85.

Q.—What was it as at September 30th, 1928?

A.—\$5,140,921.15.

30 Q.—And, as at September 30th, 1929 (Exhibit P-99)?

A.—\$5,412,532.29.

From the figures you have given it appears that in those years there has been a steady increase in that item referred to as "Real Estate, Buildings, Machinery, Goodwill, Etc., Less Depreciation?"

A.—Yes.

40 Q.—Can you tell us whether in those four years there has been any increase in the item of goodwill? You said yesterday there had been no increase in the item of goodwill since Sir Mortimer's death. From your knowledge now can you go back as far as September, 1926, or will you have to verify it? I think you told me yesterday there had been no increase in the item of goodwill since Sir Mortimer's death?

A.—Yes.

Mr. Keown: I think you had better look up the deposition of the witness, Mr. Campbell, and ascertain just what he did say on that point.

JOHN G. LAWRENCE (*for Plaintiffs*), *Cross-Examination*.

Witness: I think the question was left open.

Mr. Campbell: It was left open the first day, but I think I brought it up again yesterday. In any event, lest I forget I will put the question now.

10 Mr. McKeown: Mr. Lawrence was thinking it over yesterday, and he may want to think it over again.

Mr. Campbell: I think it was the day before yesterday he wanted to verify it.

By Mr. Campbell (continuing):

20 Q.—In any event, I ask you now whether in fact you have verified that since the death of Sir Mortimer there has been no increase in the item of goodwill appearing in the balance sheet of Canadian Industrial Alcohol or in the consolidated balance sheet of Canadian Industrial Alcohol and its subsidiaries?

A.—No, sir.

Q.—Has there been any decrease, or is the figure stationary?

A.—I do not think there has been any decrease either.

Q.—We have more spirits on hand, and we have more fixed assets, and we have paid out more money. What about our surplus? What was the Company's surplus brought forward on September 30th, 1926?

30 A.—\$2,717,340.55.

Q.—That is, brought forward as at September 30th, 1926?

A.—Yes.

Q.—For purposes of comparison, what was the surplus of Canadian Industrial Alcohol as at September 30th, 1925?

A.—\$1,631,489.12.

Q.—And, what was the Company's surplus as at September 30th, 1926?

A.—\$2,717,340.55.

Q.—What was the figure as at September 30th, 1927?

40 A.—\$3,134,207.80.

A.—And, as at September 30th, 1928?

A.—\$4,656,846.30.

A.—And, as at September 30th, 1929, before deducting the special item in respect of Dominion Government Sales Tax, what was the surplus?

A.—\$4,796,521.08.

A.—And, after deducting the allowance for Dominion Govern-

JOHN G. LAWRENCE (for Plaintiffs), Cross-Examination.

ment Sales Tax claim, amounting to \$1,404,000, what was the surplus remaining?

A.—\$3,392,521.08.

Q.—How far back did that Dominion Government Sales Tax claim go?

A.—To 1922.

10 Q.—What was the date the shareholders received the cash bonus to which you referred in discussing Exhibit D-88?

A.—January 15th, 1929.

Q.—To shareholders of record on.

A.—December 31st, 1928.

Q.—What did that cash bonus amount to?

A.—\$273,166.50.

Q.—When did Lord Shaughnessy's salary increase from \$25,-
000 to \$30,000?

A.—On January 1st, 1929.

20 Q.—Between the declaration of that bonus and its payment?

A.—Yes, sir.

Mr. McKeown: And, who sanctioned it except himself?

Mr. Campbell: The shareholders got their share. That is the point.

Mr. Geoffrion: Is that a justification?

30 Mr. Campbell: We will argue that when the time comes. I am pointing out that they got their share.

Mr. Geoffrion: Part of their share, perhaps.

By Mr. Campbell (continuing):

40 Q.—You were questioned in your examination in chief about the banking arrangements between the Alcohol Company and its subsidiaries that were put through at the end of your financial year, as at September 30th of the various years?

A.—Yes.

Q.—You told my learned friend Mr. McKeown that at September 30th, 1929, previous to this arrangement being given effect to, that Alcohol owed its Bank a certain sum of money, and that its chief subsidiary, Consolidated Distilleries, owed the Parent Company a certain sum of money?

A.—Yes.

JOHN G. LAWRENCE (for Plaintiffs), Cross-Examination.

Q.—Approximately how much?

A.—A little short of three and a half million dollars.

Q.—And, it paid the Parent Company how much on account of that indebtedness?

A.—\$1,400,000.

Q.—And, with that amount in hand the Parent Company paid its liability to its Bank, and left a certain balance in the Bank?

10 A.—Yes.

Q.—You said that in the previous year, 1927, that operation had not been done because the proceeds of the “B” shares were in Bank?

A.—I think that was the end of 1928.

Q.—Apart from 1928 had this banking operation been in previous years during Sir Mortimer’s lifetime?

A.—Yes.

Q.—Was there any impropriety in it, in your opinion?

20 A.—No, sir.

Q.—Did your Auditors ever take any exception to it?

A.—No, sir.

Q.—You were questioned about this merging of the Bank overdraft in “Accounts Payable” in your Monthly Directors’ Statements. When did that practice begin?

A.—February, 1929.

Q.—Has it continued ever since?

A.—Yes.

30 Q.—When did the falling off in the Company’s sales begin? I think you fixed the date yesterday.

Witness: In the number of cases?

Counsel: Yes: in the number of cases sold.

A.—In February, 1929.

Q.—And it continued progressively (I think you gave the figures yesterday) for the five or six months following?

A.—Yes.

40 Q.—That would be February, March, April, May and June, 1929? I am speaking of the falling off as compared with the previous year.

A.—Yes, right down to the end of that year.

Q.—During the five months period to the end of June, 1929, there was a consistent substantial falling off in sales of cases?

A.—Yes.

Q.—During that five months period had there been any change

JOHN G. LAWRENCE (for Plaintiffs), Cross-Examination.

in the personnel of the sales department as compared with the previous periods?

A.—No, sir.

Q.—Had there been any change in the personnel of the Sales Department from the time of Sir Mortimer's death up to then? I mean among the heads of the departments?

A.—No, sir.

10 Q.—Who was the Sales Manager during this period when the sales were falling off?

A.—Kelly.

Q.—When did Kelly leave the employ of Alcohol?

A.—The 31st day of January, 1930.

Q.—From February 1929 to the end of January 1930 when he left, what had been the condition of the sales? I mean in general terms.

A.—General decrease.

20 Q.—When Kelly left did he give you any reason why he left?

Mr. Geoffrion, K.C.: We cannot cross-examine him. There is no reason that he assigned. I submit they are not entitled to ask the witness that.

The Court: It was asked in examination in chief. You have a right to cross-examine him.

By Mr. Campbell, K.C.:

30

Q.—What reason did Kelly assign for leaving?

A.—He had got an offer of a very much larger salary.

Q.—What salary was he getting from Alcohol?

A.—\$15,000.

Q.—Did he tell you what salary he was getting in the new job?

A.—Yes.

Q.—How much?

A.—\$30,000.

40 Q.—You were asked yesterday about the reorganization of your Sales Department since Kelly left to take this \$30,000 job, and you gave certain particulars as to how this department is operating. Can you state what effect if any this pending litigation which originated on January 18th, 1930, has had on the general administration of the Alcohol Company and more particularly its Sales Department.

Mr. McKeown, K.C.: I submit we are not going to have any-

JOHN G. LAWRENCE (for Plaintiffs), Cross-Examination.

thing relevant as to that to be told, that this litigation has an effect on the organization, which is an entity of itself. We have heard that argument in other quarters. The Bank of Montreal was sued by the people from Quebec over the donation to the hospital. I do not see any falling off in the Bank stock on account of this.

10 Mr. Campbell, K.C.: That is why the stock of the Montreal Bank dropped 150 points.

Mr. Geoffrion, K.C.: If he wants to give facts it is all right, but if judgment, object.

The Court: There is a chance of Alcohol resuscitating. We have gone to January 1930.

Mr. Campbell, K.C.: We are down to April.

20 Mr. McKeown, K.C.: We are right up to date.

Mr. Campbell, K.C.: We are progressing day by day.

By Mr. Campbell, K.C.:

Q.—I ask you whether in your judgment this has affected the organization of that and other departments?

30 Mr. McKeown, K.C.: I make a formal objection.

The Witness: I believe so, yes.

By Mr. Campbell, K.C.:

Q.—How many of your chief executive officers have been under subpoena in this case since the 1st of March for the Plaintiff?

40 Mr. McKeown, K.C.: They have not been in Court, except one, as far as I know.

Mr. Campbell, K.C.: My learned friends have shown that since action brought—and we say one result of the litigation and byproducts incident to the litigation we have had, deferred action on the dividend. I think I am entitled to show this litigation is responsible for what happened.

JOHN G. LAWRENCE (for Plaintiffs), Cross-Examination.

Mr. Geoffrion, K.C.: We cannot sue you. Your points lead to that. You cannot be sued. If the dividend was not earned before we sued, the thing is ridiculous. If it was earned, why not declare it.

By Mr. Campbell, K.C.:

10 Q.—What is the condition of the Company's reserves?

Mr. McKeown, K.C.: You better ask him if they could not pay that in cash.

By Mr. Campbell, K.C.:

Q.—What is the condition of the Company's reserves as available for distribution in dividends?

20 Mr. McKeown, K.C.: We know what the condition of the reserves is. We have had some tangible proof of that.

Mr. Geoffrion, K.C.: The Directors have decided there were no reserves for distribution and they were not paid.

By Mr. Campbell, K.C.:

30 Q.—On the balance sheet as at September 30th, 1929, what was the condition of the Company's surplus account, Exhibit P-99.

Mr. Geoffrion, K.C.: It speaks for itself.

Mr. Campbell, K.C.: A great many things have spoken for themselves but we have had them made audible during a few weeks.

By Mr. Campbell, K.C.:

40 Q.—What is the condition of the Surplus Account as at September 30th, 1929?

A.—The net surplus amount \$3,392,521.08.

Q.—What has been disbursed in dividends since that time, since the 30th of September, 1929?

A.—On the 15th of October, 1929, dividend of \$415,307.70 was paid; on the 15th of January, 1930, a further dividend of \$415,307.70.

Q.—I think I asked you when Mr. McKeown wanted this information, how many of your chief executive officers were under

JOHN G. LAWRENCE (for Plaintiffs), Cross-Examination.

subpoena at the instance of the Plaintiff in this case since the 1st of March?

Mr. McKeown, K.C.: I object to that.

Mr. Campbell, K.C.: What chance had the President had to attend to his job since the 18th of January last. Will Your Lordship suggest the answer to me?

Mr. Geoffrion, K.C.: We will tell you.

By Mr. Campbell, K.C.:

Q.—Can you tell us how many?

A.—Ten, I think.

20 By Mr. Geoffrion, K.C.:

Q.—Are they in this room now?

A.—They are not all here.

Q.—How many are here?

Mr. Campbell, K.C.: They have been here more or less many a time.

By Mr. Campbell, K.C.:

30 Q.—Does that include Lord Shaughnessy? He has attended from day to day since the trial started?

A.—Yes.

Mr. McKeown, K.C.: I wonder if the Court had ever noticed that before.

By Mr. Campbell, K.C.:

40 Q.—I asked you a question at the opening of your cross-examination about the general relations of Alcohol and its subsidiaries, but I am not quite clear as to whether I put the question to you as to whether there had been any change in the relation of Alcohol to its subsidiaries since the death of Sir Mortimer Davis?

A.—No.

Q.—The relations are still the same?

A.—Yes.

JOHN G. LAWRENCE (for Plaintiffs), Cross-Examination.

Q.—Are the employees keeping the corporate records still the same?

A.—Yes.

Q.—Has there been any change in the general financial system, the system of financing, in the relations between the subsidiaries and the main company?

A.—No, sir.

10 Q.—You were asked I think in your examination in chief as to whether copies of the financial statements of the subsidiaries were sent to the shareholders and I think you said no.

A.—No.

Q.—Is it usual in your experience for statements of the subsidiaries to be sent to the shareholders?

A.—No, sir.

20 Q.—You told Mr. McKeown in your examination in chief that the book value of the shares of Alcohol, according to the balance sheet, Exhibit P-99, as at September 30th, 1929, worked out at about \$15.36 per share?

A.—Yes, sir.

Q.—What was the date of the last balance sheet of Alcohol published previous to the death of Sir Mortimer Davis?

A.—The 30th of September, 1927.

Q.—According to that balance sheet what did the book value work out at?

A.—\$14.53 per share.

30 Q.—That is, of course, without regard to any equity in the concealed asset on the asset side in reference to stocks on hand?

A.—Yes.

Q.—Was the concealed item of stocks on hand included in the stocks on hand, September 30th, 1929, greater or less than the concealed equity on the balance sheet of September 30th, 1927, of stocks on hand?

A.—Greater

Q.—That is the quantity of spirits on hand was substantially greater at September 30th, 1929, as against September 30th, 1927?

A.—Yes.

40 Q.—Mr. Lawrence, in the course of your examination in chief, you produced and filed a number of newspaper clippings.

Whereupon an adjournment was taken until 2:30 o'clock of the same day.

JOHN G. LAWRENCE (for Plaintiffs), Cross-Examination.

2:30 o'clock p.m.
April 3rd, 1930.

JOHN GIBSON LAWRENCE

reappeared and continued his evidence as follows (in cross-examination).

10

By Mr. Campbell, K.C.:

Q.—Before we take up the important matter of newspaper clippings, I would like to clean up the situation in reference to the stock interest of certain of the Directors of the Company, Canadian Industrial Alcohol. You filed as Exhibit P-147 a statement showing the number of "A" and "B" shares held by certain Directors who were also employees of the Company?

A.—Yes, sir.

20

Q.—Will you refer to it?

A.—Yes.

Q.—Apart from these shares that stand in their names, have any of those Directors rights in respect of shares that are in process of being earned under agreement similar to which Colonel Gaudet got 2,000 shares?

A.—Yes.

30 Mr. McKeown, K.C.: These are agreements which I understand are contingent. They do not carry interest with them and while a shareholder holding one share is qualified to be a Director under the bylaws of the Company, it shows what interest they have at present against the body of the shareholders and against the shareholders of the Company.

Mr. Campbell, K.C.: It was shown Mr. Lauster had one share. I propose to show Mr. Lauster had a substantial interest.

40 The Court: It will not cost him anything. In other words, he does not believe enough in the Company to invest his money in it.

Mr. Campbell, K.C.: If he is earning \$10,000 he did not need to buy them.

The Court: It is how much he is willing to invest out of his own money in the Company in which he is Vice-President.

JOHN G. LAWRENCE (for Plaintiffs), Cross-Examination.

By Mr. Campbell, K.C.:

Q.—Has Mr. Lauster an agreement of that kind?

A.—Yes.

Q.—How many shares are coming to Mr. Lauster under the terms of the agreement?

10 Mr. McKeown, K.C.: I think we ought to have the agreement if we are going to have that evidence in at all. I mean, in order we might appreciate it.

By Mr. Campbell, K.C.:

Q.—Have you got the documents with you?

A.—Yes.

Q.—Look them up. Your insatiable curiosity shall be satisfied.

20 Mr. McKeown, K.C.: Thanks very much.

By Mr. Campbell, K.C.:

Q.—Will you exhibit the original agreement between Canadian Industrial Alcohol Limited and Edward James Lauster, of the 5th of August, 1925, under which Mr. Lauster has his rights in respect of a certain block of shares?

A.—I do.

30 Q.—Will you read into the record clause one of the agreement which you have in your hand?

Mr. McKeown, K.C.: I think you should put it in.

Mr. Campbell, K.C.: All right.

By Mr. Campbell, K.C.:

40 Q.—Will you file a copy of this agreement as D-90, and meanwhile will you read into the record clause one of the agreement?

A.—“The Company has concurrently with the execution of this Agreement set aside stock remaining in the Treasury, 10,000 shares of ordinary stock of Canadian Industrial Alcohol which shall be held by the Company for the party of the Second Part.”

Q.—Lauster?

A.—Lauster.

Q.—“Until the period for the surrender thereof shall have

JOHN G. LAWRENCE (*for Plaintiffs*), *Cross-Examination.*

elapsed as hereinafter set forth, when the other terms and conditions hereof shall be fulfilled.”

Q.—What was the term provided in clause two of the Agreement?

A.—A period of five years.

Q.—That would run out in August, 1930?

A.—Yes.

10 Q.—First of all, was that Agreement entered into with the knowledge and consent of Sir Mortimer Davis?

A.—I understand so.

Q.—Were there corresponding agreements with other employees who were Directors? Was there one with Stormont?

A.—Yes, sir.

Q.—How many shares did Stormont have rights to under his agreement?

A.—5,000 shares.

20 Q.—When is his time up?

A.—The 1st of August, 1930.

Q.—Wilmore, how many shares does he acquire?

A.—5,000.

Q.—When is his time up?

A.—The 1st of January, 1932.

Q.—Mr. Kaestner, how many does he get?

A.—2,000.

Q.—When is his time up?

A.—The 1st of January, 1932.

30 Q.—Mr. Lawrence?

A.—The 1st of August, 1930.

Q.—How many shares?

A.—2,000.

Q.—Were any of these agreements entered into with any of these gentlemen subsequent to the death of Sir Mortimer Davis?

By the Court:

40 Q.—Was there a similar agreement with Kelly?

A.—Yes, sir.

Q.—When would his time have expired?

A.—His time would have expired on the 1st of January, 1932.

Q.—How many did he get?

A.—5,000.

Q.—Did he get any of it when he left.

A.—He did not get any of it when he left. The agreement was cancelled.

JOHN G. LAWRENCE (for Plaintiffs), Cross-Examination.

Q.—What was the date of the Kelly agreement?

A.—The 1st of January, 1927.

Q.—So he renounced the 5,000 shares?

A.—Yes.

Q.—How many shares did he give away?

10 Mr. Campbell, K.C.: I don't think there is any provision for a proportion after the three years.

By Mr. Campbell, K.C.:

Q.—Are they all for a period of five years?

A.—Yes.

By the Court:

20 Q.—When Kelly left the employ of the Company on the 1st of February, 1930, did he give up all hope of getting the 5,000 shares or did he get some of these shares?

A.—No, sir, no shares at all.

Q.—Colonel Gaudet served his time and got them?

A.—Yes.

By Mr. Campbell, K.C.:

30 Q.—Now, I was questioning you this morning, Mr. Lawrence, about the question of sales of alcohol measured in cases. Can you tell me whether, since Mr. Kelly left the employ of Alcohol, on January 31st, 1930, there has been any change in the sales, and if so, whether it is a change for the better or for the worse. I think I should say I am putting these questions under reserve of my objection. I am following Mr. McKeown. Your Lordship allowed my learned friend to go into it. I am not waiving my right under the action as brought. For the purposes of my question, March will do. I limit my question to the month of March, 1930. How did the sales for March, 1930, compare with the sales for the correspond-
40 ing month, 1929?

A.—The sales for the month ending 31st of March, 1930, were 23,772 cases as compared with 22,180 cases for the month of March, 1929, an increase of 1,692 cases for the month.

Q.—That includes all the sales you talked about in your examination in chief?

A.—Yes.

Q.—Will you file as Exhibit D-91 the daily report of shipments

JOHN G. LAWRENCE (for Plaintiffs), Cross-Examination.

for the month ending March 31st, 1930, subject to the objection I have already recorded as to its relevancy?

A.—I do.

Q.—Take Consolidated Distilleries Limited, which is the chief beverage company, is it not?

A.—Yes.

10 Q.—How did the shipments of Consolidated Distilleries compare in March, 1930, against March, 1929?

A.—The sales for the month of March, 1930, of Consolidated 20,052 cases as compared with 18,483 cases for the month of March, 1929, an increase of 1,569 cases.

Q.—You were questioned in your examination-in-chief about the sales of liquor by Consolidated Distilleries, and you filed the statement P-142. Will you look at it?

20 Mr. McKeown, K.C.: Did you notice that sales are going up notwithstanding the litigation all through March, the only month we have had any litigation?

Mr. Campbell, K.C.: I am sure by the time we are through with it it will help us.

By Mr. Campbell, K.C.:

30 Q.—Will you look at the Exhibit you filed in your examination-in-chief, P-142, and tell us the number of cases sold by Consolidated and its subsidiaries? First of all, take for the purposes of my comparison the year 1925. How many cases were sold?

A.—231,177.

Q.—Lord Shaughnessy became President in 1926. How many were sold in that year?

A.—334,467 cases.

Q.—He was President in 1927. How many cases were sold that year?

A.—342,025.

40 Q.—He was still President in 1928. How many cases were sold that year?

A.—455,916.

Q.—And he was President in 1929. How many cases were sold that year?

A.—395,347.

Q.—You filed in the course of your testimony-in-chief a statement as P-145 of gross sales as at September 30th, 1929.

JOHN G. LAWRENCE (for Plaintiffs), Cross-Examination.

A.—Yes.

Q.—Will you tell us, by looking at the Exhibit, what the gross sales of Robert McNish were during that year?

A.—\$1,090,618.34.

Q.—I intended to ask you regarding the Meetings of Directors of Alcohol attended by Mr. Henry Joseph and Colonel Gaudet between the date of the Annual Meeting of the Company in 1928 when they were last elected Directors and their resignation. Will you give us a list of the Meetings that they attended? Take first of all Mr. Henry Joseph. What meetings did he attend?

A.—Mr. Joseph attended meetings the 18th of September, 1928; the 23rd of January, 1929; the 22nd of March, 1929; the 22nd of May, 1929.

Q.—And Colonel Gaudet?

A.—Colonel Gaudet, the 18th of December, 1928; the 28th of December, 1928; the 27th of February, 1929; the 22nd of March, 1929; the 22nd of May, 1929, and the 21st of June, 1929.

Q.—Now, you produced in the course of your testimony yesterday certain newspaper clippings, and, subject to my objections, I wish to cross-examine, subject to the reserve of my objections as to the relevancy of the matter. I will ask you, subject to the reserve of my objections as to their propriety and relevancy, to tell me if you have in your file of newspaper clippings, a clipping from the Toronto Mail and Empire dated September 26th, 1929, in reference to the affairs of Canadian Industrial Alcohol?

A.—Yes, sir.

Q.—Will you file it as D-92? Will you read into the record?—I think I will follow Mr. McKeown's example and read into the record, not all the clippings, My Lord, but I will read into the record this very interesting despatch headed "Future Looks Brighter for Canadian Industrial Alcohol. Dividend Requirements on "A" and "B" stock seem to have been earned with a substantial carry-over."

"Canadian Industrial Alcohol will close its current fiscal year on Monday next, and so far as can be learned from well posted sources, it will earn its dividend requirements of \$1.52 per share on both "A" and "B" stock, 969,480, and 123,186 shares respectively, and still have a sum of some size to carry forward to Profit and Loss Account.

The recent statement of President Shaughnessy substantiates these opinions, and while it is generally admitted that last year's record of \$2.98 per share will hardly be equalled, it is believed that net per share profits will not fall below the two dollar mark. Last year's showing was the best reported by the

JOHN G. LAWRENCE (*for Plaintiffs*), *Cross-Examination*.

Company since its formation in 1924. Conditions in the distillery industry during the first six months of this year were not at all favourable for large earnings."

Is that a correct statement, about the conditions not being favourable for large earnings in the industry?

A.—Yes.

10 Q.—(continuing):

20 "There has been much talk in the past few months regarding Industrial Alcohol; the most common was that the company had lost a lot of business and that it would not earn dividend requirements. The effect of this adverse comment has been felt in the market, where quotations have been forced down to present levels of 18 compared with the year's high of 47. At 18 this stock shows a market yield of 8.45 per cent. It is true that for a time Alcohol's volume of sales was off, although this was common to the industry. The cause was traced to general unsettlement following reports that the Dominion Government might put up prohibitive barriers on export. This decline in the stock was also due in quite large measure to the selling of a large volume of shares in London belonging to the Estate of the late Sir Mortimer Davis. This volume hung over the market for weeks, and while it was fed out slowly to purchasers absorption was not easy with the general adversities then surrounding the business.

30 Toward the latter part of July, business with the alcohol companies began to move forward and during August sales reached a more satisfactory rate, and indications are that September will be an equally good month for Industrial Alcohol. and the balance of the year is expected to bring forth a good quantity of business. The let-up in midsummer months affected earnings but the improvement since July assures that the Company will make a satisfactory showing for the fiscal year. Earnings have shown a steady increase year by year. They were \$3,136,680 in 1929 against \$2,413,995 in 1927, and \$2,109,852 in 40 1926.

The Company is in an exceptionally strong liquid position with working capital of \$7,699,300. Current assets are eight times current liabilities. The net cash position of the Company alone shows an equity behind the outstanding stock equal to seven dollars per share. In addition there is a very concrete asset behind the shares in the shape of a huge reserve of alcohol amounting to 10,000,000 gallons. At current levels this alcohol

JOHN G. LAWRENCE (for Plaintiffs), Cross-Examination.

is worth \$35,000,000 to \$40,000,000, or equivalent to more than \$35 a share on the capital stock.

10 As further evidence of the Company's sound internal position may be cited its advancement into the field of chemical research and production. The Company now has a plant in active operation for the manufacture of 99 degrees overproof alcohol for industrial purposes such as lacquers. Two American companies now supply the entire Canadian demand. It is not at present a large demand but there is money in it, and in time it should augment the diversified earnings over 1929."

Q.—Have you got in your file a clipping from the Toronto Mail and Empire of October 9th, 1929, headed "Replies to Comments Industrial Alcohol. Those Who Circulate Unfriendly Rumours Scored by Lord Shaughnessy. Policies Unchanged. Same Executives at helm as in past Two Years. Explains Resignations." Will you file it as D-93?

20 A.—Yes.

Q.—Will you verify that that similar despatch, I think, in identical words, appeared in the Toronto Globe, October 9th, 1929; the Mail and Empire, Toronto Telegram, October 9th, 1929, and in the Montreal Gazette the same date, October 9th, 1929?

A.—Yes, they appeared exactly the same.

Q.—I only want you to file one for the purposes of the record as D-93?

A.—I do.

30 Q.—Have you got a clipping from the Financial Times, Montreal, October 11th, 1929, and if so will you file it as Exhibit D-94 entitled "Alcohol Affairs are Dealt with by Shaughnessy." "Says Changed Conditions are Affecting Operations of Company." "Directors not Critical." As this embodies, I think, the same despatch as the others, we better read one of them into the record.

Mr. McKeown, K.C.: The same as what others?

40 Mr. Campbell, K.C.: The one that is filed plus that one in your hand.

Mr. Campbell, K.C.: There is an introductory paragraph that is not there.

"Right Honourable Lord Shaughnessy took exception to the rumors circulated in connection with the affairs of the Canadian

JOHN G. LAWRENCE (for Plaintiffs), Cross-Examination.

Industrial Alcohol Company recently, and in his official capacity as President issued the following reassuring statements:

10 Constructive criticism from whatever source is always acceptable and entitled to sincere consideration, but criticism based upon personal antagonism, vindictiveness, or any other like motive, can only be treated with the contempt which it deserves. I will not, therefore, attempt to discuss the articles which have appeared in certain papers concerning the Canadian Industrial Alcohol Company Limited and its subsidiaries, inasmuch as the criticism therein contained is so general in its terms and so ludicrous that, in my opinion, it cannot be taken seriously.

20 In June of this year, Henry Joseph, a Director of the Company, practically since its incorporation, wrote me resigning from the Board and giving as a reason for such action that he was retiring from active business and intended to travel extensively, and would not, therefore, be able to fulfil to his satisfaction his duties as a Director.

There was no suggestion contained in this letter to the effect that he disagreed with the policies of the Company, nor that he had lost confidence in its management.

30 The Honourable Mr. Marler, when appointed Canadian Minister to Japan, offered his resignation inasmuch as he expected to be absent from Canada for an indefinite period, but at the same time offered to remain on the Board if his services were required, and I am happy to say that Mr. Marler severed his connection with the Company upon the distinct understanding that should he return to Canada in the near future, he would again, if invited, be glad to again join the Board.

For some period there have only been on the Board of the Company, which consists of ten members, three not directly connected with the Company in some executive capacity, and in view of the resignation of Mr. Joseph and Hon. Mr. Marler, Mr. Decary wrote me intimating his desire to leave the Directors free to reconstitute the Board in their best judgment, and tendering his resignation for the purpose.

40 I would like to take this opportunity of repeating that not one of these Directors either at a meeting or privately, intimated in any way his dissatisfaction with the policies or administration of the Company.

The executive officials guiding the destiny of this Company are the same as those who guided it during the past two years when profits of \$2,413,996, and \$3,136,680 respectively, were made, and the policies of the Company pursued now are the

JOHN G. LAWRENCE (for Plaintiffs), Cross-Examination.

same as were pursued then when, significantly, there seemed to be no cause for complaint, and should the profits this year be slightly less than those in the previous years referred to, such situation can only be attributed to changed conditions and not in any respect to lack of initiative or effort on the part of the administration.

10 The Annual Report will be published within the next few months when it is hoped that the shareholders will realize that it is far better to act upon stated facts from an authoritative source than upon unfriendly rumours.”

That is Exhibit D-94.

Mr. McKeown, K.C.: I think the way you have that in there it might appear it is a clipping you have handed me, which duplicates D-93.

20 Mr. Campbell, K.C.: D-93 contains the same statement. D-93 is the same thing from the Mail and Empire. It is similar to this one but it does not take up so much space. The quoted statement is the same in all these.

By Mr. Campbell, K.C.:

30 Q.—Will you file as Exhibit D-95 a clipping from the Financial Post of Toronto dated October 10th, 1929, where the heading is “Directors who quit Industrial Alcohol Quiet if Discontent.” Apparently there was no room for the last two letters “ ed ”.

Mr. McKeown, K.C.: Is that the same story?

Mr. Campbell, K.C.: The same general sense. I have not checked. You can read it.

By Mr. Campbell, K.C.:

40 Q.—Will you file as Exhibit D-96 a clipping from the Financial Post, Toronto, dated October 10th, 1929, headed “Distillery Merger again looms large in Public View.”

Mr. McKeown, K.C.: D-96 is the Financial Post.

By Mr. Campbell, K.C.:

JOHN G. LAWRENCE (for Plaintiffs), Cross-Examination.

Q.—Now you have filed specimens of clippings from Canadian newspapers. Have you got any clippings in your file from financial British journals dealing with the affairs of Canadian Industrial Alcohol?

A.—Yes.

Q.—Will you exhibit and file as Exhibit D-97 a clipping from the London Daily Mail of November 12, 1929?

10 A.—Yes.

Q.—I don't think I need read these. Look for a moment at D-97. I don't want you to read the whole thing into the record, but will you read apropos of the subject I am coming to, the second or third paragraphs of the clipping?

A.—Yes.

20 “Henry Joseph, said Lord Shaughnessy in a statement given out in Montreal, has been a director of the Company practically since its incorporation and has never to my knowledge at any Directors' Meetings evidenced his disagreement with the policies or administration of the Company; but during my absence abroad last May I was informed that without consultation with me or other members of the Board, Mr. Joseph had sold substantially all his shares at a time when the sales of such shares by a Director possessing intimate knowledge of its operation through having access to its monthly statements worked incalculable harm to the Company's securities on the market. On my return in June Mr. Joseph wrote me resigning as a Director. The resignation of Colonel Gaudet was requested.”

30

Q.—Will you file as D-98 a clipping from the London Daily Mail, November 13th, 1929?

A.—I do.

Q.—Will you read into the record simply the first paragraph of it?

A.—

40 “Last May, when the shares of Canadian Industrial Alcohol stood at 36, one of the Directors of the Company, aware that sales were declining (they have since improved) sold substantially all his shares, according to the Chairman of the Company at a time when the sale of such shares by a Director worked incalculable harm to the securities of the Company. The bear drive initiated by that Director has forced the shares down to 13.”

JOHN G. LAWRENCE (*for Plaintiffs*), *Cross-Examination.*

Q.—Will you file as Exhibit D-99 a clipping from the London Daily Mail, under the same heading of “Americans and Canadians,” by London Financier, dated December 14th, 1929?

A.—I do.

Q.—Before I leave the question of clippings, will you file a copy of the issue of the Financial Service to which you referred in your testimony-in-chief, for Thursday, November 28th, 1929, under
10 the heading “Canadian Industrial Alcohol undervalued at current levels,” as Exhibit D-100?

A.—Yes, I do.

Q.—Will you read into the records, not the whole article which seems to deal with various aspects, but the third to last paragraph of the sheet?

A.—It reads as follows:

20 “The decline in the price of “Alcohol ” has resulted in criticism being levelled at the management. The death of Sir Mortimer Davis has made no difference to the management, as he took no practical hand for some years prior to his death, Lord Shaughnessy being in complete charge. Whilst Lord Shaughnessy has not had a great many years of experience in the liquor industry, he is a clever and capable Executive, with a wide knowledge of commercial and financial matters and has the happy faculty of surrounding himself with exceptional
30 capable men on whose shoulders rests the practical management of the various departments of the business under their charge. There has been no change in management since 1928 when record earnings were reported, and it is the same today as then, the three vice-presidents of the company being outstanding men of many years practical experience in the distillery business.”

Q.—You filed yesterday during your examination-in-chief by Mr. McKeown, a clipping from the Toronto Financial Post, beginning with an interview attributed to Mr. Henry Joseph, under date of September 26th, which appeared in the Financial Post on September 26th, 1929 filed as P-149. On the date when that interview appeared, September 26th, 1929, where was Lord Shaughnessy?

40 A.—In Vancouver.

Q.—He was there as a Director of the Canadian Pacific Railway Company?

A.—Yes.

Q.—On their annual tour of inspection?

A.—Yes.

Q.—Mr. Henry Joseph had resigned in June, had he not?

A.—Yes.

JOHN G. LAWRENCE (for Plaintiffs), Cross-Examination.

Q.—Can you suggest any reason why Mr. Joseph having resigned on the 12th of June, you waited until the 26th of September to publish his views?

Mr. Geoffrion: That is mere guess.

10 Mr. Campbell: That he attributed the drop in the price of Canadian Industrial shares to the lack of confidence in the administration.

Mr. Geoffrion: Let the Judge do the guessing.

By Mr. Campbell:

Q.—You cannot suggest any reason why you should have waited until the 26th of September?

20 A.—No.

Q.—When did Lord Shaughnessy return from the West?

A.—I am not sure of the date.

Q.—I am instructed it was the 5th of October; and when he returned from the West, these other despatches which you have now produced, dated October 9th and 10th, were inserted in the papers?

A.—Yes.

Q.—Mr. Joseph suggests in his interview of September 26th, 1929, that there is a lack of confidence in the administration on the part of the shareholders of Canadian Industrial Alcohol. When was 30 the next Annual General Meeting of shareholders called for?

A.—The 17th of December, 1929.

Q.—Will you turn up your record of proxies which you received for the Annual Meeting of December 17th, 1929. How many proxies were filed with you as Secretary for that Annual Meeting, apart from the shares of Sir Mortimer Davis Incorporated?

A.—There were proxies from absent shareholders amounting to 260,954 shares.

Q.—In whose favor did these proxies run?

A.—In favor of Lord Shaughnessy and Mr. Lauster.

40 Q.—Mr. Lauster being the senior Vice-President, and Lord Shaughnessy the President?

A.—Yes.

Q.—Then, apart from the 260,954 proxies, how many shares did Lord Shaughnessy vote in addition at that Meeting?

A.—I have the figure of what Lord Shaughnessy voted, together with shareholders who were there in person.

Q.—In addition to the proxies which he held, amounting to

JOHN G. LAWRENCE (for Plaintiffs), Cross-Examination.

260,954 shares, Lord Shaughnessy and Mr. Reaper would vote the controlling interest in the Company held by Sir Mortimer Davis Incorporated?

A.—Yes.

Q.—Sir Mortimer Davis Incorporated held more than 50 per cent—51 per cent of the Common voting shares of Canadian Industrial Alcohol, did it not, in December last?

10 A.—Yes.

Q.—So in addition to the Sir Mortimer Davis Incorporated shares represented by Lord Shaughnessy and Mr. Reaper, he had on file at the Annual Meeting proxies representing 260,954 votes?

A.—Yes, sir.

Q.—How many proxies were filed at that meeting in favor of anybody else? Were any proxies filed with you as Secretary of that meeting of anybody in favor of Lord Shaughnessy and Mr. Lauster?

A.—No.

20 Q.—Look at the list of proxies which were filed at that meeting, and tell us whether you have got on the list of proxies any firms of Stock Brokers for instance?

A.—Yes.

Q.—We do not need the whole list, but give me the names of firms of Stock Brokers who filed proxies in favor of Lord Shaughnessy and Mr. Lauster at the last Annual General Meeting of Alcohol called for December 17th, 1929?

A.—Burnett and Company, 3,287 shares.
Craig, Luther and Irvine ———

30 Mr. Geoffrion: Are you filing that list?

Mr. Campbell: I was not going to file the whole thing. I am just picking out the big blocks.

By Mr. Campbell:

Q.—Craig, Luther and Irvine is, 4,381 shares?

A.—Yes.

40 Forget and Company, 3,379 shares.
Geoffrion and Company, 1,810 shares.
Johnston and Ward, 15,570 shares.
Leggat, Cassils and Company, 2,622 shares.
McDougall and Cowans, 5,301 shares.
McCuaig Brothers and Company, 6,335 shares.
McDougall and Cowans, another block, 8,285 shares.
O'Brien and Williams, 7,229 shares.

JOHN G. LAWRENCE (for Plaintiffs), Cross-Examination.

Watson and Chambers, 3,998 shares.
Smith, Fairbanks and Company, 1,776 shares.
Redpath and Company, 1,576 shares.

Q.—I do not want any blocks under 1,000.

Witness (continuing):

10 Truax, Carsley and Company, 1,115 shares.
 Forget and Forget, 1,024 shares.
 Flood, Potter and Company, 1,611 shares.
 Bruneau and Rainville, 1,047 shares.

Q.—In addition to these Stock Brokers, whose names you have given, I see on your list a substantial number of other Stock Brokers holding smaller blocks, who also sent proxies in favor of Lord Shaughnessy?

20 A.—Yes.

Q.—Taking the individual shareholders holding big blocks of stock, will you give me the names of some of those other big blocks, who filed proxies in favor of Lord Shaughnessy?

A.—Mrs. Ida M. Brown, 15,000 shares.

 Lady Henrietta Davis, 22,960 shares.
 Mrs. G. M. O'Meara, of Quebec, 26,050 shares.
 Mr. G. H. Balfour, of Winnipeg, 3,175 shares.
 Mr. Hugh A. Allan of Montreal (per Royal Trust), 1,500
30 shares.
 Mrs. Walsh, of Valleyfield, 1,140 shares.
 The Roy Estate of Quebec, 1,280 shares.

Q.—There has been filed as Plaintiffs Exhibit No. 14, a document enumerating certain Directorships held by Lord Shaughnessy previous to the time when he entered into his engagement with Sir Mortimer Davis in September 1924. What are the Companies therein mentioned. Will you read the names into the record?

40 A.—The Canadian Pacific Railway Company; the West Kootenay Light and Power Company; the Yorkshire Insurance Company; the Canadian Salt Company.

Q.—Do you know how long Lord Shaughnessy has been a Director of the Canadian Pacific Railway?

A.—No.

Q.—I am instructed that it is since 1919. However, Lord Shaughnessy will tell us that. Does he occupy any other position

JOHN G. LAWRENCE (for Plaintiffs), Cross-Examination.

besides being a mere Director in the case of the Yorkshire Insurance Company?

A.—I understand he is Chairman of the Board.

Mr. McKeown: Lord Shaughnessy will be the one to ask that.

10 By Mr. Campbell:

Q.—Is he a Director of any other large public Company to your knowledge? Is he a Director of any Bank for instance?

A.—Yes.

Q.—What Bank?

A.—He is a Director of the Canadian Bank of Commerce.

Q.—How does the Canadian Bank of Commerce rank in size among the banking institutions of Canada? Comparisons are odious, but is it fair to say that it is probably the third in size among the Canadian banking institutions?

20 A.—I believe it is.

Q.—Do you know if he is a Director of the Lake of the Woods Milling Company?

Mr. McKeown: I object.

Mr. Campbell: We will ask Lord Shaughnessy about that.

By Mr. Campbell:

30 Q.—Apart from those mentioned by the plaintiffs in their Exhibit No. 14, and the Canadian Bank of Commerce to which you have called attention, do you know of any other Company of which Lord Shaughnessy is a Director?

A.—No.

Q.—Well, we will ask Lord Shaughnessy in regard to that. You exhibited yesterday, in the course of your testimony in chief, a number of transfer sheets of the Crown Trust Company, in regard to the transfer of shares. Did you have time to have that written up to

40 date in respect of Lord Shaughnessy's holdings?

A.—Yes, sir.

Q.—Are there any additions to the form in which you had it when you were examined in chief? What are the additions, if any?

A.—On March 28th, 1930, there is an addition of 375 shares.

Q.—“ A ” or “ B ”?

A.—“ B ” shares.

Q.—In Lord Shaughnessy's account?

JOHN G. LAWRENCE (for Plaintiffs), Cross-Examination.

A.—In Lord Shaughnessy's account.

Q.—Have you the transfer sheet of the shareholdings in Canadian Industrial Alcohol by the plaintiff, Lady Eleanor Davis?

A.—Yes.

10 Q.—How many shares of "A" stock does Lady Eleanor Davis, one of the plaintiffs, hold in Canadian Industrial Alcohol, according to the last record of the Crown Trust Company in your hand?

A.—6,888 "A" shares.

Q.—When does that record begin?

A.—October 24th, 1924.

Q.—Since that date has Lady Eleanor Davis sold any shares of Alcohol "A"?

A.—No.

Q.—Has she purchased any since the death of Sir Mortimer Davis, in March 1928?

A.—Yes, sir.

20 Q.—When did she purchase them, and how many?

A.—On December 6th, 1929, 600 shares.

By the Court:

Q.—What was the market value of the shares on that date?

A.—I have not got the sheet.

Mr. McKeown: Lady Davis advises me she bought a 1,000 shares in October 1928 under the direct advice of Lord Shaughnessy.
30 The letters are there to show for it—at about 40½. Lord Shaughnessy bought them for her.

Mr. Geoffrion: My learned friends are trying to call these purchases. Mr. Campbell is trying to suggest there was a purchase in 1929.

By Mr. Campbell:

40 Q.—Will you give me the date which appears from the original record of the Crown Trust Company on which these shares were transferred into the account of Lady Eleanor Davis?

Mr. Geoffrion: We have no objection to that.

Witness: The 600 shares?

Mr. Campbell: Yes.

JOHN G. LAWRENCE (for Plaintiffs), Cross-Examination.

A.—On December 6th, 1929.

By Mr. Campbell:

Q.—There was one answer in your examination-in-chief I was not clear on. In speaking of the duty paid exports, you said something about the Company exporting to the United States. I do not
10 remember the exact words you used, but what I want to know is, does the Canadian Industrial Alcohol Company or Consolidated Distilleries itself do the export business or does it sell to others to export?

A.—Consolidated Distilleries and Beverage Companies sell the liquor as duty paid at the distillery, and it is shipped to certain ports for export out of Canada.

Q.—Is it exported by the Company, or by those who purchase from the Company?

20 A.—By those who purchase from the Company.

Mr. Campbell: I don't know if it went on the record, but if it did, I do not think it should have gone; I am instructed to say that the information that Lady Davis bought those shares on the suggestion and advice of Lord Shaughnessy, the last lot of shares to which she referred, is inaccurate. I don't know whether Mr. McKeown's remark was taken down, but if it was taken down, then, I want the fact entered, that according to my instructions it is not the fact.

30 His Lordship: Mr. McKeown's statement does not form part of the evidence.

By Mr. Campbell:

Q.—You were questioned in your examination-in-chief about the report prepared by Messrs. Clarkson, Gordon, Dilworth, Gilfoil and Lash, Chartered Accountants of Toronto, as to the consolidated balance of Hiram Walker, Gooderham and Worts Limited as at 31st of August, 1929, and Canadian Industrial Alcohol Limited and its
40 subsidiaries as at 30th of September, 1929. Was that Balance Sheet, or the suggested basis of the possible merger ever accepted by Canadian Industrial Alcohol?

A.—No.

Q.—I note there that they charge up as a liability against Canadian Industrial Alcohol, among other things, the Robert McNish and Company Limited Debentures at \$5 per unit?

A.—Yes.

JOHN G. LAWRENCE (for Plaintiffs), Re-Examination.

Q.—Showing a total charge as a liability of \$4,425,575?

A.—Yes.

Q.—First of all, what was the issue price of those?

A.—\$4.50.

Q.—They are par value of \$5?

A.—They are par value at \$5.

10 Q.—Is the number of units outstanding correctly stated approximately?

A.—Yes, I believe it is.

Q.—Those McNish Debentures were listed, I think, on the Montreal Stock Exchange, in October, 1929?

A.—Yes.

Q.—Have they, according to your observation, ever sold at as high as the issue price? What was the issue price to the shareholders?

A.—\$4.50.

20 Q.—Have you noticed any trading on the Montreal Stock Exchange since listing at as good a price as that?

A.—I do not think they ever sold at \$4.50.

Q.—What have most of the sales been at between the listing and the beginning of proceedings in this case, on January 18th, 1930? How did they vary? What was the general scope?

A.—I think they varied between about \$4.30 and \$3.50.

Q.—You were questioned in regard to the loss of the Burnett Gin Agency. Did that occur before the death of Sir Mortimer Davis or since?

30 A.—I think it was before the death of Mr. Mortimer Davis.

Re-examined by Mr. W. K. McKeown, K.C., of Counsel for plaintiffs.

Q.—Mr. Lawrence, in connection with the application to list McNish, did I understand you to say that on June 15th, 1928, the completed application was turned over to the local Exchange in Montreal, Defendants' Exhibit D-87?

A.—No.

40 Q.—Was this the form, D-86, when McNish was turned over to you on June 15th, 1928?

A.—Yes.

Q.—And D-87, the completed application, was put in in June?

A.—I do not think the date is on that.

Q.—I am instructed it was in June 1929?

A.—Yes, I would think so.

Q.—One year later?

JOHN G. LAWRENCE (*for Plaintiffs*), *Re-Examination*.

A.—Yes.

Q.—Have you ever seen listings before?

A.—Yes.

Q.—There is nothing very remarkable about the information required for listings? It is practically a stereotyped form of application is it not? It is a printed form they hand you to fill in, if you want to list any securities on the Montreal Stock Exchange?

10 A.—I have never seen any printed form like that. It is a question of compiling all the data, and then having it put into printed form.

Q.—You have to print it finally, but have they not the printed forms which were supplied to you, which is practically a questionnaire?

A.—I do not think so. The applications I put in were single sheets like that Exhibit which was filed a minute ago.

Q.—You mean the typewritten one?

20 A.—Yes, the typewritten one.

Q.—Did the McNish's ever raise their salary following the execution of this contract, D-82, in violation of the contract?

A.—I don't remember if it was an actual increase in the salary

Q.—Did they extend the terms of their engagement?

A.—Yes.

Q.—In violation of this contract?

A.—Yes, sir.

Q.—Lord Shaughnessy knew that?

30 A.—Lord Shaughnessy had that Minute rescinded when he found out about it.

Q.—He was a member of the Board?

A.—Yes.

Q.—Your attention has been drawn to large sums spent for advertising on McNish, 60,000 pounds in each of the years ending 1928 and 1929?

A.—Yes.

Q.—Has that advertising ever been followed out? Is it being followed out now?

40 Witness: You mean, is it continuing?

Counsel: Yes?

A.—Advertising is being continued.

Q.—Is it being continued on that scale?

A.—Pretty well up to now.

JOHN G. LAWRENCE (*for Plaintiffs*), *Re-Examination*.

Q.—What do you mean by pretty well up to now? How much has been spent in the first six months of this fiscal year?

A.—A certain amount of it has been cut off. The last statement I have of McNish is, “ November, 1929, advertising 4,675 pounds for the month.” That is less than \$25,000.

10 Q.—That is at the rate of something under 50,000 pounds per annum?

A.—It is less than that, yes.

Q.—Is Canadian Industrial Alcohol pushing the sale of McNish Scotch whiskey here in Canada?

A.—It has always done its best to, yes.

Q.—Have the salesmen instructions to push that liquor?

A.—Yes.

Q.—Do you know that? Do you say that without fear of contradiction?

A.—That is my belief.

20 Q.—Do you know anything about it?

A.—I don't know all the details of the Sales Department.

Q.—I don't think you do on that point?

Mr. Campbell: You asked him a great many questions.

Mr. McKeown: I thought he knew, but I did not want him to go guessing. I can do all the guessing, if necessary, in this case myself.

30 By Mr. McKeown:

Q.—Up to date we have not got anything in the record dealing with this matter of advertising, have we? This statement which has been produced, Exhibit P-106, is simply a balance sheet and profit and loss account?

A.—Yes.

Q.—Will you please file a third sheet with this Exhibit, being the details of this matter, to be made part of Exhibit P-106?

A.—Yes.

40 Q.—The statements which you have been making in chief and in cross-examination in connection with expense account for the two years, has not been based on any written statement which has been previously put in the record, is that right?

A.—It is based on the statement I have here, of which copies are there.

Q.—Do you suggest that there has been a copy of this statement

JOHN G. LAWRENCE (for Plaintiffs), Re-Examination.

put in properly, which is headed "Robert McNish and Company expenses"?

A.—No. I was asked, I think, for a copy of the Profit and Loss Account Balance Sheet.

Q.—You have given us from the statement of 1928-1929 the sum of 60,000 odd pounds for advertising, and from the net result of that period there is an operating deficit of 105,000 pounds odd?

10 A.—Yes, sir.

Q.—As to the stocks of spirits on hand shown at the net of 372,776 pounds, 3 shillings and 5 pence on Exhibit P-106, I think you said in answer to Mr. Campbell that that figure represented cost?

A.—Yes.

Q.—And cost by way of purchase, not by way of manufacturing and distilling?

A.—No.

Q.—Is it to your knowledge that it was proposed at one time to sell those spirits and recover the amount of their value with the view
20 to retiring the Debenture issue in whole or in part?

A.—It was decided to sell some of those whiskies.

Q.—And did they sell some of them?

A.—Yes.

Q.—Approximately, what proportion?

A.—I have not a statement of that here.

Q.—As Secretary of the Company you must know. You are in touch with that McNish situation?

30 Mr. Campbell: If there is a record, Mr. Lawrence, you are entitled to refer to it.

Witness: Up to the end of September 1929 they sold 18,096 pounds worth. I have not with me the record of what they have sold from that date to the present day.

By Mr. McKeown:

40 Q.—Are they still operating as a blending concern, buying new stock, or are they selling entirely from the stock purchased from the proceeds of these Debentures?

A.—I do not think they have been buying any new stocks.

Q.—Have they ever bought any new stocks since the original purchase?

A.—Oh yes.

Q.—When did they cease buying new stocks?

JOHN G. LAWRENCE (for Plaintiffs), *Re-Examination.*

A.—I will have to go through the statement and find that out. I cannot answer that offhand.

Q.—Well, I suppose that the 18,096 pounds which was realized from the sale of the stocks of alcohol by McNish, was put into their general funds of the McNish Company and used for that purpose, or is it held in escrow for the redemption of these Debentures?

A.—It is being used.

10 Q.—For the general purposes of the Company?

A.—For the redemption of these Debentures.

Q.—Have any of the Debentures been redeemed?

A.—Yes.

Q.—How much?

A.—Up to the end of February 1930, \$75,000 worth.

Q.—Have been redeemed?

A.—Yes.

Q.—Purchased in the open market?

20 A.—Yes.

Q.—Bought at whatever the market happened to be for the time being?

A.—Yes.

By Mr. Campbell:

Q.—Those are the Debentures?

A.—Debentures of McNish.

30 By Mr. McKeown:

Q.—Is there anything shown in this Exhibit P-106, that is, the Statement of McNish as at the 30th of September, 1929, indicating what sum is in hand as the proceeds of the sale of assets affected by the Debentures?

A.—Yes, sir.

Q.—Just indicate it.

A.—107,000 pounds.

Q.—What is this item below “W. McNish, France, S.A.”?

40 A.—That is the Distillery Company of Robert McNish.

Q.—That 107,000 pounds to which you have just drawn attention represents the gross proceeds of the sale of the stocks of liquors?

A.—Yes.

Q.—But it is not kept as a separate item, and earmarked to be used for paying off Debentures, on that Statement P-106 is it?

A.—No.

Q.—It is just taken into the General Account?

JOHN G. LAWRENCE (for Plaintiffs), *Re-Examination.*

A.—Yes.

Q.—How does it come about that better results have not been reached in the matter of the sale of the McNish stock of liquors, in view of the favorable opportunity to purchase those Debentures on the market at very much below their par value?

A.—The answer to that is, you could not dump that stock of liquor on the market in the Old Country without breaking the market. It has to be let out very gradually.

Q.—It seems to be going out quite gradually?

A.—That is the idea.

Q.—Is it due to overproduction there or anything of that kind?

A.—No. It is just that it has to be let out quietly.

Q.—What is being let out is what is being advertised. The advertising campaign, I suppose, is directed towards the sale of the stores of McNish liquors, is that it?

A.—No.

20 Q.—Well, what is it then?

A.—The whiskies that are being sold are not the McNish blend. They are single whiskies.

Q.—Which now do you mean, those that are actually being sold, or those that are in storage?

A.—The whiskies that are being sold.

Q.—Are not McNish blend?

A.—That results in that figure there of 107,000 pounds. These are broken stocks. They are not blended McNish whiskey.

30 Q.—Let us get that clear. What did they buy with the money they got from the McNish Debentures?

A.—Different types of whiskies.

Q.—When they blend them, they put them out as the output of McNish, they call them McNish as blended?

A.—Yes.

Q.—What you are advertising is the McNish brand, I presume?

A.—Yes.

Q.—Therefore, you are advertising the blended product of the liquors which were bought with the Debenture money?

A.—Yes, sir.

40 Q.—And originally was the whole of the proceeds of the Debenture issue invested in liquor stocks, in various liquors?

A.—Pretty well, I think.

Q.—Which would be an amount of something like 914,000 pounds as shown on the Statement P-106?

A.—Yes.

Q.—And of that they have only sold, according to that Statement, 107,000 pounds worth, is that right?

JOHN G. LAWRENCE (for Plaintiffs), Re-Examination.

A.—Yes.

Q.—That is the result?

A.—Yes.

Q.—At the present rate, and that is the amount of sales for say two years?

A.—No.

Q.—How many years?

10 A.—For some months.

Q.—What period?

A.—June, July, August and September, about four months.

Q.—Is not this an Annual Statement you are looking at, P-106?

A.—The item of 107,926 pounds appears on the Balance Sheet as an asset at the end of September. That does not mean to say that this is the trading of the twelve-month period. It might be the trading of a month or four months. It happens to be the trading of about a four-month period.

20 Q.—Why is it limited to four months?

A.—This policy was adopted about June last, June, 1929.

Q.—What policy? The policy of selling out a stock of liquor that had been bought with the Debenture money?

A.—The policy of reducing the stocks of liquor on hand.

Q.—Which had been bought with the Debenture money?

A.—Yes.

Q.—Prior to June, 1929, had any effort been made to sell the stocks of liquor which had been bought with the Debenture money, or was it kept intact up to that time?

30 A.—Pretty well intact up to probably May.

Q.—Of 1929?

A.—Yes.

Q.—And when had it been bought?

A.—At varying periods, varying times from the date of the sale of the McNish Debentures.

Q.—That would be in the fall of 1927?

A.—They would not get their money until February or March, 1928.

40 Q.—Was there anything wrong with that stock of liquors which was bought with those Debenture moneys?

A.—Nothing wrong, no.

Q.—A-No. 1 liquor in every respect?

A.—Yes.

Q.—Was it maturing spirits?

A.—Maturing spirits.

Q.—Was it matured spirits?

A.—Some was matured.

JOHN G. LAWRENCE (for Plaintiffs), Re-Examination.

Q.—Can I take it that in May, 1929, the policy was formally that this stock of liquor of McNish would be sold, and the proceeds would be used to take up the Debentures?

A.—Would be reduced.

Q.—Used, to the extent of the sales?

10 Witness: You mean the policy of taking up McNish Debentures?

Counsel: The policy of selling this stock of McNish liquors which had been purchased with the Debenture money.

A.—Well, the idea was to reduce the stocks of liquor McNish had on hand, and with the proceeds pick up McNish Debentures if, as and when.

By Mr. Campbell:

20 Q.—Above or below issued price?

A.—I don't think that question ever came up. It was always below the issued price.

By Mr. McKeown:

Q.—A letter has been read to you from Sir Mortimer Davis, dated March 8th, 1928, Exhibit P-63, in which Sir Mortimer expressed quite a high opinion of Colonel McNish?

30 A.—Yes.

Q.—Has Colonel McNish as an Executive borne out the impression as to the expectation so expressed by Sir Mortimer?

Mr. Campbell: My Lord, is that a fair question to ask this witness. Colonel McNish is the active Manager of this concern, under an agreement made with Sir Mortimer.

40 His Lordship: He can give the opinion Sir Mortimer had of him, for which Lord Shaughnessy is not responsible.

Mr. McKeown: The mere fact that he had a contract, and if he is running the Company behind at the rate of \$500,000 per annum, I think he ought to be requested to vacate.

Mr. Campbell: Sir Mortimer expected it to go behind. I do not think that is a fair question to put to the witness. He is not expected to criticize his superior officers.

JOHN G. LAWRENCE (for Plaintiffs), Re-Cross-Examination.

Mr. McKeown: Sir Mortimer's general expectations as to McNish, including Colonel McNish, seemed to have met with almost similar disappointments in the light of his statement in the same letter, in which he said the McNish Debentures were, in his opinion, a gilt-edged security for which not less than 105 should be realized—I mean in the light of subsequent events.

10 Mr. Campbell: He did not put a time limit.

By Mr. McKeown:

Q.—As you say, they have never even got to par?

A.—Well, they have only been out two years.

(And it now being 4.45 P.M., an adjournment was taken until next day, Friday, April 4th, 1930.)

20 And further for the present deponent saith not.

MORNING SESSION, April 4th, 1930

JOHN GIBSON LAWRENCE

reappeared and continued his evidence as follows (in re-cross-examination):

30 By Mr. Campbell, K.C.:

Q.—Mr. Lawrence was to prepare copies of documents. I will ask him before my learned friend continues his cross-examination to put them in. You were to prepare and file as Exhibit D-90 a copy of the Agreement between Canadian Industrial Alcohol and Mr. Edward James Lauster dated as of the 1st of August, 1925. Have you had that prepared, and if so, will you please file it?

A.—I do.

40 Q.—I notice that this Agreement is signed by Lord Shaughnessy as President?

A.—Yes, sir.

Q.—As a matter of fact, on the 1st of August, 1925, he had not yet become President. Can you tell how it is he signs this Agreement, under what circumstances?

A.—These agreements, I understand, were made at the instigation of—

JOHN G. LAWRENCE (for Plaintiffs), Re-Cross-Examination.

Mr. McKeown, K.C.: We cannot have witnesses tell us what they understand. Anything he does not know personally I submit should not be on the record at all.

By Mr. Campbell, K.C.:

10 Q.—Had Lord Shaughnessy become President when that document was actually signed?

A.—Yes.

Q.—Is that true of the other documents which were dated as of the same date?

A.—Yes.

20 Mr. McKeown, K.C.: I now submit that evidence contradicts the document itself. It is the worst kind of evidence. The document is dated at a time when Lord Shaughnessy was not President of the Company and he had no right to sign it, and in any event the witness cannot contradict that document. I might ask Your Lordship to note the objection under Article 1234. Those documents are not in accordance with the information we have had.

By Mr. Campbell, K.C.:

Q.—They are in accordance with the facts; they have always been. How many other documents are dated as of the same date?

30 Mr. McKeown, K.C.: I would object to that evidence as being worse than the first question. I object to the question put to the witness as being absolutely illegal.

The Court: Objection reserved.

By Mr. Campbell, K.C.:

Q.—Which other contracts were dated as of the same date?

40 A.—The contract between the Company and John Stormont and between the Company and myself.

Q.—The dating back to these dates, the five-year period provided for in these agreements dated back to the 1st of August, 1925?

A.—Yes, sir.

Q.—All right. Now you were to have filed a copy of a letter from Ralph Allan in regard to the listing of McNish, as D-85. Have you that copy prepared? If so will you please file it?

A.—I do.

JOHN G. LAWRENCE (for Plaintiffs), Re-Re-Examination.

Q.—I asked you to prepare a list of the proxies filed at the Annual General Meeting of Shareholders of Canadian Industrial Alcohol held on the 17th of December, 1929, in favor of Lord Shaughnessy and Mr. Lauster. Have you prepared that list? If so will you please file it as D-101?

A.—I do.

10 Q.—I note that this is arranged in alphabetical order?

A.—Yes.

Q.—It is just the proxies?

A.—Yes.

Q.—And that it contains 40 or 41 pages?

A.—Yes, sir.

Q.—Lists of names?

A.—Lists of names and the amount of shares represented.

Q.—Varying in quantities of shares held from one to 15,000?

A.—Yes. I think that would be from one to about 22,000.

20 Q.—Lady Henrietta Davis had 22,000?

A.—Yes.

Q.—From one to 22,000 and something? She had more than 22,000?

A.—22,960.

Q.—Varying in number from one to 22,960?

A.—Yes.

Q.—Was there anything else you were to file? I don't recall, Mr. Lawrence.

A.—No, sir.

30 Q.—That is all?

A.—Yes.

Q.—Can you tell us when the Notice of the Annual Meeting for which proxies were given was sent out? What was the date of the Meeting?

A.—The 2nd December, 1929.

Q.—The Notice was given on the 2nd of December, 1929?

A.—Yes.

Q.—For the Meeting on the 17th?

A.—Yes.

40 Q.—These proxies would have been received in what interval between the two dates?

A.—In between the 2nd and 17th of December, 1929.

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

Q.—Let us take up the matter of Mr. Joseph's stock for a moment. You have told Mr. Campbell that Mr. Joseph attended Directors' Meetings on December 18th, 1929, January 3rd, 1929, and apparently did not attend any Meeting in February, 1929?

JOHN G. LAWRENCE (for Plaintiffs), Re-Re-Examination.

A.—No, sir. He was not at the Meeting in February.

Q.—He was not at the Meeting in February?

A.—No.

Q.—A Meeting was held in that month?

A.—Yes.

Q.—Lord Shaughnessy was in Montreal in January, February
and March, 1929?

10 A.—Yes.

Q.—He did not sail for Europe until the beginning of April,
1929?

A.—Well, after the 22nd of March.

Q.—Will you look at this Exhibit D-80 and say if it is not ap-
parent from that Exhibit that Mr. Joseph had sold all his stock, apart
from 400 shares. That is, he had sold 3,440 shares on or before the
18th of March, 1929, while Lord Shaughnessy was here?

A.—Yes, sir.

Q.—All he had left at the time Lord Shaughnessy sailed for
20 Europe, if he sailed on the 1st of April, was 400 shares?

A.—Yes, sir.

Q.—And these sales had been made, 540 shares in January, 2,500
shares in February, and 400 shares in March. Will you verify that?

A.—Yes, sir.

Q.—The memorandum which you have got before you, D-80, is
a compilation made from the books of the Company's transfer agents
and registrars, the Crown Trust Company?

A.—Yes.

Q.—The dates given on which mean the certificates in Mr.
30 Joseph's name were turned in under the dates mentioned?

A.—Yes, sir.

Q.—Now, in these typical press clippings produced through you
by my learned friend, Mr. Campbell, they purport to contain a state-
ment—do you know that Lord Shaughnessy issued or at least author-
ized the statement of which an interview reported in the Mail and
Empire and other papers, D-93, is a reproduction?

A.—Well, I have always understood they emanated from Lord
Shaughnessy.

Q.—Did you not see it typewritten before it was ever in print?

40 A.—No, sir.

Q.—You were never consulted about it?

A.—No, sir.

Q.—You don't know anything about it?

A.—No, sir.

Q.—But you understand it comes from him and purports to be
an interview by him?

JOHN G. LAWRENCE (for Plaintiffs), *Re-Re-Examination.*

A.—Yes.

Q.—This same interview purports to be incorporated in the Exhibit D-97, the London Daily Mail?

A.—Yes, sir.

Q.—And this Exhibit D-97 attributes to Lord Shaughnessy these words:

10 “ But during my absence abroad last May I was informed that without consultation with me or other members of the Board Henry Joseph had sold substantially all his shares at a time when the sale of such shares by a Director possessing intimate knowledge of its operations through having access to the monthly statements worked incalculable harm to the Company’s securities on the market.”

20 That is incorporated in that interview and purports to be a declaration that Lord Shaughnessy did not know before the month of May Mr. Joseph had sold these shares which I have just pointed out to you had been disposed of by Mr. Joseph for almost their totality before Lord Shaughnessy left for the other side.

A.—Yes.

Q.—We have heard something also about the resignation of Mr. Decary and reference has been made to an Exhibit, D-7, annexed to the Pleas. I don’t think that Exhibit has been read into the record. Would you please read that Exhibit concerning the resignation of Mr. Decary into the record for the purpose of having it convenient?

A.—(Reading):

30 “ Montreal, July 17th, 1929.
Right Hon. Lord Shaughnessy,
Cement Building,
Montreal.

My dear Shaughnessy:

40 I am advised that both Mr. Marler and Mr. Joseph have resigned from the Board of Canadian Industrial Alcohol and I am therefore the only remaining outside Director. This will necessitate a considerable readjustment of your Board and under the circumstances I think it would be very wise for me to resign also in order to allow you to reappoint such a Board as you may feel like doing. I may say I have been considering resigning from your Board for the last eight months, as the increase in my business makes it imperative that I relinquish some of my directorships.

May I take this opportunity of stating to you that notwith-

JOHN G. LAWRENCE (for Plaintiffs), *Re-Re-Examination*.

standing the severance of my connections with the Company, if at any time there is anything I can do with any of our friends to foster the interest of your Company, you are at liberty to call upon me.

Sincerely yours,

(Sgd.) E. R. DECARY."

10

Q.—You have said something in answer to Mr. Campbell which might leave the impression that Mr. Joseph through his attendance at the Meetings of the Alcohol Board in the months preceding the time that he sold his stock—take the heavier sales, January and February—had got knowledge that the Company was not prospering. Will you turn up your Sales Register for the month of October, 1928, up to and including the month of February, 1929?

A.—Yes, sir.

20 Q.—Will you verify that the sales for the month of November, 1928, showed an increase of 19,125 cases over the same month for the preceding year?

A.—It is over the same period.

Q.—Who told you that?

A.—That is the period, not the month.

Q.—The period itself would be from October 1st?

A.—Yes.

30 Q.—Then, to put it correctly, the sales of the Company from the 1st of October to the end of November, 1928, showed an increase over the same period of 19,125 cases?

A.—Yes, sir.

Q.—At the end of December, 1928, the increase over the period for the preceding year was 13,849 cases?

A.—Yes, sir.

Q.—The increase up to the period ending January 31st, 1929, was 12,989 cases?

A.—Yes, sir.

40 Q.—While it is true for the month of February, if that period showed a decrease of 1,130 cases, those figures would not be available until the month of March, would they?

A.—No.

Q.—Moreover, Mr. Joseph was not at the Directors' Meeting of February, 1929, was he?

A.—No, sir.

Q.—And he would not even have had access at the Meeting of January, 1929, to the figures for that month? At the Meeting of January he would have access to the figures up to the end of Decem-

JOHN G. LAWRENCE (for Plaintiffs), Re-Re-Examination.

ber, but he would not have had access to the figures up to the end of the month of January, at the time the Meeting was held?

A.—No, sir.

Q.—Therefore, all he would have had access to in the way of the result of sales at the Meeting of January 23rd, 1929, would have been the figures up to the end of December, which showed an increase of 13,849 cases over the corresponding period preceding?

10

A.—Yes, sir.

Mr. Campbell, K.C.: Ask him the increase in dollars.

Mr. McKeown, K.C.: Just keep quiet.

By Mr. McKeown, K.C.:

Q.—You have also had brought out by Mr. Campbell that there
20 had been a decrease in the profits as reported prior to the meeting of January 23rd, 1929, the fact being the sales were going up in bulk?

A.—Yes.

Q.—Why were the profits going down? What was the source of that difficulty? Maybe if the sales had been where they are now that would be more wonderful. I never thought of it, that such a thing could come about in normal times.

A.—In certain territories there are more profits than in other territories. In the month of October, 1928, we had 7,315 cases of domestic as against 7,325 cases for the month of October, 1927, a
30 decrease of 10 cases. For export we had 16,344 cases in October, 1928, as against 4,502 cases for October, 1927, an increase of 11,842 cases. Export duty paid, October, 1928, 10,768 cases as against 16,329 cases for October, 1927, or a decrease of 5,561 cases. In November our increase in export was 24,234 cases. That is an increase in the export over the same month of the previous year, but our decrease on duty paid export was 14,541 cases. In the month of December, 1928, we had an increase in export of 3,789 cases; a decrease in duty paid export of 3,482 cases. In January, 1929—

40 Q.—Do not mention January, because it was not available at the time. So that, in plain language the duty paid export business was more profitable than the export or the domestic?

A.—Yes.

Q.—That is how that difference came about?

A.—Yes, sir.

Q.—Will you look at the end of your year, September 30th, 1928, and say if the duty paid export had not been decreasing even

JOHN G. LAWRENCE (for Plaintiffs), Re-Re-Examination.

at that stage, and was not then, as compared with the previous period, 37,204 cases short?

A.—Duty paid export at the end of—

Q.—I am talking about the decrease.

A.—Decrease, 37,204 cases.

10 Q.—So the decrease in duty paid export was no great novelty in November and December, was it, so far as Industrial Alcohol was concerned?

A.—The decrease was getting greater during that period.

Q.—Who was in charge of the duty paid export department during this decrease?

A.—The Sales Manager.

Q.—The Sales Manager?

A.—Yes, sir.

Q.—Who do you mean?

A.—Mr. Kelly.

20 Q.—Who was directly in charge under Mr. Kelly?

A.—Mr. Stormont.

Q.—Mr. Stormont. This new Director who was elected in February?

A.—Yes, sir.

Q.—He is the man who was directly in charge of the Department which was showing the decrease to which you have referred?

A.—Yes.

Q.—Did you ever hear he was a strong advocate of the merger with Walker's?

30 Mr. Campbell, K.C.: Objected to as illegal and irrelevant. It does not arise out of my cross-examination; secondly, it cannot affect the situation. Stormont is not President or an Executive Officer of this Company; no matter how much he favours the merger with Walker's it cannot help the Court.

Mr. McKeown, K.C.: My learned friend brings out the fact of a certain decrease and I am trying to find if we can find any reasonable explanation.

40 The Court: Objection reserved.

The Witness: Yes. I think he would like to have seen the merger go through very much.

By the Court:

JOHN G. LAWRENCE (for Plaintiffs), Re-Re-Examination.

Q.—Do you know his reasons for favouring the merger?

A.—Yes. I think his reasons would be the same as mine, that I think it would have been a very good thing.

By Mr. McKeown, K.C.:

10 Q.—You are another advocate of the merger, are you?

Mr. Campbell, K.C.: I repeat my objection. I have great respect for Mr. Lawrence's opinion, but I am quite sure Mr. Lawrence does not undertake to decide whether there shall be a merger or whether there shall not.

Mr. McKeown, K.C.: Nobody wanted it, according to you; now a couple of Directors have been unmasked here.

20 Q.—I suggested to you, Mr. Lawrence, from your remark you just made to His Lordship, you too were partial to the merger with Walker's?

A.—If favourable terms could have been got, yes.

Q.—What were the favourable terms which were offered?

A.—There were no terms offered.

Q.—As far as you know?

A.—As far as I know.

Q.—What did you think of the share for share?

30 A.—I did not form any opinion.

Q.—What did you think of the \$10 a share cash for Alcohol stock including handing over the control?

A.—I have no opinion on that.

Q.—You have no opinion on that?

A.—No, sir.

Q.—Now, after that, the holdings of Mr. Joseph, 3,840 shares, formed but a very small proportion of the outstanding securities of Alcohol, which ran into something like the vicinity of 1,100,000 shares?

40 A.—Yes, sir.

Q.—What would it be? About one-third of one-tenth of one per cent?

A.—It would be less than one-half of one per cent.

Mr. Campbell, K.C.: He did not have control.

By Mr. McKeown, K.C.:

JOHN G. LAWRENCE (for Plaintiffs), *Re-Re-Examination.*

Q.—The 2,000 shares which Colonel Gaudet sold, what would that figure, roughly, as contrasted with the total outstanding stock?

A.—In the neighbourhood of one-quarter of one per cent.

Q.—Of course, on one hand, here was over 555,000 shares in the hands of the Estate or the Estate Company?

A.—Yes, sir.

10 Q.—It was not on the market?

A.—No.

Q.—Now, you have been good enough to make some evidence, with the assistance of Mr. Campbell, in connection with the source of Mr. Gaudet receiving his shares, and you get them down to the basis that they cost him \$60 for 2,000 shares.

A.—That was the balance he had to pay on them when he got them.

Q.—Have you got Colonel Gaudet's contract with Canadian Industrial Alcohol?

20 A.—Yes.

(Witness hands document to counsel.)

Q.—Will you produce a copy of Colonel Gaudet's contract, to be marked as Exhibit P-158, dated as of the 6th of February, 1926?

A.—Yes.

Q.—On the 6th of February, 1926, Lord Shaughnessy, who had signed as President, was the President of the Company?

A.—Yes, sir.

30 Q.—The contract was made retroactive to September 15th 1922?

A.—Yes, sir.

Q.—As to the five-year period?

A.—Yes.

Q.—Had there been any prior understanding between Colonel Gaudet and the Company relative to the subject of setting aside shares for his benefit?

A.—I understand so.

40 Q.—Prior to the execution of this agreement? Have you got the document with you there in that connection?

A.—No, sir.

Q.—In what form was that understanding?

A.—I have not got that agreement at all.

Q.—You have never seen it?

A.—No, sir.

Q.—Under this agreement with Colonel Gaudet he was to get 2,000 shares at a price of \$10 per share, \$12 a share originally?

JOHN G. LAWRENCE (*for Plaintiffs*), *Re-Re-Examination.*

Mr. Campbell, K.C.: No, no, six dollars.

By Mr. McKeown, K.C.:

Q.—But \$12 a share originally, in 1922, before the split of the shares?

10 A.—That was the understanding I had, that he was to get 1,000 shares at \$12 and then the stock was split.

Q.—That would have been the understanding as of date September 15th, 1922. It would be another five-year period?

A.—Yes.

Q.—Do you know what the old stock was then selling for, September 15th, 1922?

A.—No, sir.

Q.—There was no dividend on it at that time, was there?

20 A.—The dividend was declared as of record the 31st of December, 1922.

Q.—The 31st December, 1922?

A.—Yes, sir; payable the 15th of January.

Q.—In September 1922 there was no dividend running on the stock?

A.—No, sir.

Q.—Will you look at Houston's once more, the volume of July, 1925, and at page 243 tell us the high and low of the stock as reported for the month of January, 1923?

30 A.—The high 13 and a low of 11⁷/₈.

Q.—That was after the dividend had been declared?

A.—Yes, sir.

Q.—So that \$10 would not have been a very wonderful price for this stock on the 15th of September, 1922?

A.—Ten dollars?

Q.—Twelve dollars, in the light of what——

A.—No.

40 Q.—Now, this contract, Exhibit 158, I take it, is part of the engagement of Colonel Gaudet by the Company. What I mean is that Colonel Gaudet from that date became an employee of the Company and remained an employee of the Company?

A.—Yes.

Q.—At a fixed salary in money. At a salary payable in money?

A.—Yes.

Q.—Payable in money?

A.—Yes.

Q.—This document P-158 says, as at the 1st of January:

JOHN G. LAWRENCE (for Plaintiffs), Re-Re-Examination.

“Whereas the Party of the Second Part is in the employ of the Company and can in the opinion of said Company contribute to the development and successful conduct of the business of the Company”—

10 and then the agreement goes on to provide for the setting aside of this stock?

A.—Yes.

Q.—Will you say generally whether this Agreement P-158 is similar in terms to the other employees, including yourself, except possibly as to dates and price of the stock?

A.—And the number of shares.

Q.—And the number of shares?

A.—Yes, sir.

20 Q.—The result which came about in Colonel Gaudet's case was that ultimately he only had to pay a trifling sum to release the shares at the end of the period is a clause which is also contained in these other agreements with the other employees?

A.—Yes, sir.

By Mr. Campbell, K.C.:

Q.—That is, about the application for dividends?

A.—Yes.

30 By Mr. McKeown, K.C.:

Q.—It has been brought out in your cross-examination that Robert McNish and Company, Limited, is a British corporation, and further that under the terms of the agreement through which shares were purchased by Canadian Industrial Alcohol, Colonel McNish and John M. McNish were retained and appointment Management Directors for a period of three years from August, 1927?

40 A.—Yes, sir.

Q.—These losses for 1928 of £119,000 gross and in 1929 £105,000 have come about under the management of the McNish Brothers. Is that it?

A.—Yes, sir.

Q.—Will you look at Exhibit P-123 and read into the record who the Directors of Robert McNish Company are. How many directors, to begin with?

JOHN G. LAWRENCE (for Plaintiffs), Re-Re-Examination.

A.—Seven.

Q.—Who are they?

A.—Right Honourable Lord Shaughnessy; E. Lauster; Colonel George McNish; John McNish; Thomas Logan; Fisher Wilmore; and myself.

10 Q.—So that of the seven Directors Lord Shaughnessy is Chairman, as they call him; Mr. Lauster is Vice-Chairman; Fisher Wilmore is a Director of Alcohol?

A.—Yes.

Q.—And yourself, are also Directors?

A.—Yes, sir.

Q.—Making four in number?

A.—Yes, sir.

Q.—And the other Directors are Colonel George McNish, John McNish, Thomas Logan, who was also, I take it, Secretary?

A.—No, sir.

20 Q.—That is the two McNish's, and Logan formed a minority Board, as against a majority Board, headed by Lord Shaughnessy?

A.—Yes.

Q.—That is as the matter stands now?

A.—Yes.

Q.—Is that how that Board stood since the McNish Corporation was acquired?

A.—No. There have been changes in the Board.

Q.—How long has this been the order of things?

A.—I cannot say offhand.

30 Q.—Have they had an Annual meeting this year?

A.—Not this year. Their Annual Meeting is, I think, in May.

Q.—Did not Lord Shaughnessy and Mr. Lauster both attend the Annual Meeting of McNish, held in May or thereabouts, 1929? Were they not both in England?

A.—I think they were in England.

40 Q.—I am now addressing one of the Directors of Robert McNish, and I am very humble in his presence. Would you tell us whether the Directorate is perfectly satisfied with the management of Robert McNish, under the management of the brothers, as under the contract?

Mr. Campbell, K.C.: Colonel George McNish and his brother are entitled to occupy the position under the contract.

Mr. McKeown, K.C.: Only insofar as their services are satisfactory.

JOHN G. LAWRENCE (for Plaintiffs), Re-Re-Examination.

Mr. Campbell, K.C.: If their term terminates in August, it is interesting to know. The witness is not going to decide the subject, and I do not think he should be called upon to express an opinion on the subject.

The Witness: Well, I am not at all satisfied with the results that have been obtained.

10

By Mr. McKeown, K.C.:

Q.—Do you think better results could have been obtained with better management and a more efficient management?

A.—I am not sufficiently familiar with the conditions of the Scotch whiskey business in Scotland.

Q.—McNish is not only sold in Scotland?

A.—Oh, no.

Q.—Is not there a world-wide market for it?

20

A.—It is sold in many countries, I believe.

Q.—You know one of Sir Mortimer Davis' plans was to send a couple of men around the world?

A.—I could not say.

Q.—Starting in opposite directions, keeping in touch with each other, as set out in one of his letters that have been read here?

A.—I don't know about that.

Q.—Did these men go around the world; anybody go around the world in the interest of McNish?

30

A.—I think they started. I don't know how far they got.

Mr. Campbell, K.C.: They may have time to go around the world before we finish the case.

By Mr. McKeown, K.C.:

Q.—That program has not been persevered in, I suppose?

A.—I don't know just where their travellers are at present, whether they are still on their way around the world or not.

40

Q.—Did that plan seem to be a fixed and definite idea of Sir Mortimer Davis to send two men around the world in opposite directions, in the interest of McNish?

A.—Well, I never really knew until now he had that plan of sending two men out, one in one direction and the other in the other direction around the world.

Q.—I don't care whether they travelled in the same direction, or if they are ever going to get back, but was that plan abandoned?

JOHN G. LAWRENCE (for Plaintiffs), Re-Re-Examination.

A.—I think the plan was abandoned. That is only from memory.

Q.—Did you ever hear it was Sir Mortimer's idea at one time to endeavor to obtain the services of Sir Henry Thornton to head the McNish Board?

A.—I have heard that.

Q.—Sir Mortimer had a plan of his own under which he too was going to spend three months in London. Do you remember that
10 appeared by his correspondence that has been read here?

A.—I am not absolutely sure of that. I know he intended to give some time to it.

Q.—He had planned to spend some time and had rented a house there. Do you remember it?

A.—That correspondence did not come to me. I read it in the paper.

Q.—What was ever done to replace part of the program Sir Mortimer had in mind of having some outstanding man head the
20 McNish Board at one point, to replace the services which he proposed to give himself for three months in London, as had been planned, to send these voyageurs around the world?

A.—I don't know what was done in that connection.

Q.—At the risk of repetition, just to have the subject in its proper place, under date April 14th, 1928, under D-84 you received a cable from the other side announcing that all difficulties had been overcome and that 3,000 debentures had been shipped on the S.S. Letitia?

A.—I had not time to get this file in order. It is the 14th of
30 April, 1928.

Q.—I find the reference at page 1635 of the deposition. Have you the original there?

A.—Yes.

Q.—The cable was addressed to Lord Shaughnessy?

A.—Yes.

Q.—And it was of date April 14th, 1928?

A.—Yes.

Q.—(reading):

40 “Have disposed of difficulties debentures; 3,000 signed and sealed leaving per Letitia next week; remainder following immediately.”

A.—Yes.

Q.—From that time onward we have not had a great deal of information from your cross-examination as to what happened, except this fact that these debentures were not listed until 18 months

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after that time; that is to say, his cable came on the 14th of April, 1928, and the listing was about the middle of October, 1929?

A.—Yes.

Q.—In the meantime, is it not a fact that there was a wonderful market for all beverage stocks between June, 1928, to around before the break in October, 1929?

A.—That was the time of the high.

10 Q.—I am not talking about the high. Was not the market for beverage stocks good from 1928 forward, well into the spring of 1929?

A.—Yes, I think it was good then.

Q.—I put it to you if these debentures had been listed at that time you would have expected that there would have been a strong public interest in them amongst your many shareholders of Alcohol?

20 Mr. Campbell, K.C.: That is purely hypothetical. What would have happened if certain other things had happened is utterly and purely hypothetical, upon which Your Lordship is as well able to judge as the witness.

The Witness: I do not know how the bond market would have re-acted.

By Mr. McKeown, K.C.:

30 Q.—You already had a number of McNish debentures distributed amongst your own shareholders, did you not?

A.—Yes, sir.

Q.—Are these figures right, 6,000 shareholders we have been speaking of, in Canadian Industrial Alcohol?

A.—Yes. I think there are a little over that.

Q.—That is a distribution, I suppose, from Halifax to Vancouver, speaking broadly?

A.—Oh, yes.

40 Mr. Campbell, K.C.: And including the British Isles. Don't leave them out.

By Mr. McKeown, K.C.:

Q.—I am only going to ask you to note that a part of your cross-examination covered at great length by Mr. Campbell, dealing with comparative net and gross figures for the two periods, five-year periods from 1922 to 1925 and then from 1926 to 1929, as also the

JOHN G. LAWRENCE (*for Plaintiffs*), *Re-Re-Examination*.

dividends during these same periods, as also the bonuses in cash, the stock bonuses, as also the production record, as also the cost record per proof gallon, and the stocks at Corbyville, the fixed assets, the surpluses, include a period up to March, 1928, when the whole of the destinies of Canadian Industrial Alcohol and its subsidiaries were under the direct domination of Sir Mortimer personally?

A.—Sir Mortimer acted in an advisory capacity.

10 Q.—Was he not virtually daily in touch upon the subject of Alcohol with the actual dividend in charge of the Executive office, Lord Shaughnessy?

A.—I could not say whether it was daily touch.

Q.—We will prove it. We have the letters here.

A.—He was in touch.

Q.—Very close touch, to your knowledge?

A.—I think so, yes.

20 Q.—Is it not true to your knowledge, the Secretary of the Canadian Industrial Alcohol, that no move of any major proportion was ever made during Sir Mortimer's lifetime without being submitted to him?

A.—Well, the major move of purchasing McNish, etc., was done by Sir Mortimer himself.

Q.—Now, the policy of getting out the " B " stock, was that not done subject to the approval if not under the direction of Sir Mortimer Davis?

A.—It was probably taken up by him with Lord Shaughnessy before it was done.

30 Q.—And the plant extension at Corbyville: do you think Lord Shaughnessy did that on his own initiative without referring it to Sir Mortimer during his lifetime?

A.—I don't know whether he did or not. We built rack warehouses as we required them for our manufactory.

Q.—You never built rack houses at the rate you did previously, in the last two or three years?

A.—We did not require them previously.

40 Q.—Now you had increase in stocks maturing at prices which had been doubled, as the proof shows, from the period about 1925 or 1926. Was that not also done by direction or at least with the approval of Sir Mortimer during his lifetime?

A.—I think that was, yes.

Q.—Mr. Campbell has had you explain the methods of suppressing the bank overdraft from the Annual Statement of the Alcohol Company as of date September 30th, 1929, and has drawn your attention to the fact that the process would be justified from the fact that prior to that date Consolidated owed upwards of three million

JOHN G. LAWRENCE (for Plaintiffs), Re-Re-Examination.

dollars to Alcohol, while Alcohol owed the Bank \$1,400,000 direct.
Do you follow me?

A.—Alcohol did not owe the Bank that amount.

Q.—How much?

A.—That was a loan by the Bank to Consolidated Distilleries,
\$1,400,000.

10 Q.—Through the overdraft at the Bank by Alcohol. What was
the overdraft by Alcohol?

A.—Probably about a million dollars; \$900,000 odd.

Q.—Whatever it is, the reason is that because when this process
was over, Alcohol was still the guarantor of the million dollars owed
to the Bank before the 30th of September and was also the guarantor
of \$400,000 added to the loan direct from the Bank to Consolidated.

Mr. Campbell, K.C.: It was cash in the Bank.

20 By Mr. McKeown, K.C.:

Q.—Now, as to Mr. Kelly and his departure, you have said in
answer to Mr. Campbell that no change in the personnel of the Sales
Department had been made during the time when the falling off in
the sale of cases began in June, 1929, up to the time Kelly left?

Mr. Campbell, K.C.: That is not when the falling-off began.
The falling-off began in February.

30 By Mr. McKeown, K.C.:

Q.—Did I say June? It should be February.

A.—Yes.

Q.—You have told us for reasons which appealed to Kelly's new
employers they engaged to pay him a salary of \$30,000 a year in
place of a salary of \$15,000 he was receiving from Canadian Indus-
trial Alcohol?

A.—I understand so.

40 Q.—Do you know the terms of his engagement? Is it only for a
week or a month? Has it any duration to it?

A.—I think it is for a period of years.

Q.—You don't know anything about it? Did Kelly tell you?

A.—I think he told me. I think it is for five years. I am not sure.
I think it is for——

Q.—You said the concern which Kelly has joined is not your
competitor?

A.—No, sir.

JOHN G. LAWRENCE (for Plaintiffs), Re-Re-Examination.

Q.—Is Distillers-Seagram Limited?

A.—No, sir.

Q.—But the concern which he has joined owns control of Distillers-Seagram Limited, does it not?

A.—I believe it does.

10 By Mr. Campbell, K.C.:

Q.—What is the name of the company which employs him?

A.—Distillers Company of Canada Limited.

Q.—Is it said to own the control of Distillers-Seagrams Corporation?

A.—I understand it does.

The Court: It is located at LaSalle.

20 By Mr. McKeown, K.C.:

Q.—In short, Distillers Company of Canada Limited is a subsidiary of Distillers Company Limited of Scotland?

A.—Yes, sir.

Q.—World distillers and blenders?

A.—Yes.

Q.—The largest concern in the world in the industry?

A.—Yes, sir.

Q.—Commonly known as D.C.L.?

30 A.—Yes.

Mr. McKeown, K.C.: It has not got anything to do with Doctor of Civil Law or Doctor of Criminal Law either.

By Mr. McKeown, K.C.:

Q.—And this other corporation, Distillers-Seagrams Limited, is one of your large competitors here in Canada, is it not?

A.—Yes.

40 Q.—This plant to which His Lordship has referred as being located at LaSalle is the so-called Bronfman plant, originally?

A.—Bronfman's are in that company.

Q.—Before that company was formed, was not that company known at least among laymen as the Bronfman plant?

A.—Yes.

Q.—That is now merged into this corporation that is called Distillers-Seagrams Limited?

JOHN G. LAWRENCE (*for Plaintiffs*), *Re-Re-Examination.*

A.—Yes.

Q.—Another subject that was brought out and made part of your cross-examination was that ten employees had been under subpoena by the plaintiffs for the purposes of this case. I think you gave that?

A.—Yes, I remember giving that.

Q.—Does that include Lord Shaughnessy?

A.—Yes.

10 Q.—It includes yourself?

A.—Yes.

Q.—It includes Mr. Hersey?

A.—Yes.

Q.—Do you see any other employees in Court?

A.—No, sir.

Q.—Have there been any other employees in Court while you have been giving your evidence?

A.—No, sir.

20 Q.—Were you in Court during the days occupied by Mr. Reaper's examination or were you in the office?

A.—I was in the office.

Q.—Is it not true that, perhaps saving the opening day, all the members of the staff outside of Lord Shaughnessy and the witness presently in the box, were in your office subject to telephone call, by arrangement with Counsel for the plaintiff?

A.—I think there were one or two of our employees down here as witnesses.

30 Q.—For several days at the start. At the beginning of March? Once upon a time; long, long ago. You do not seriously suggest that their attendance has interfered with the operation of the Sales Department, do you?

A.—No, I would not say that.

Q.—Will you exhibit to me, if you please, the agreements similar to the Lauster agreement, D-90, affecting Stormont, Wilmore, Kaestner? Have you got Mr. Kelly's?

A.—Yes.

Q.—I think you are mistaken in the suggestion that these contracts are all in identical terms?

40 A.—I do not think I said they were in identical terms.

Q.—Or that they vary?

A.—They vary as to prices and quantities, but otherwise I think they are substantially the same.

By Mr. Campbell:

Q.—General form of contract?

JOHN G. LAWRENCE (for Plaintiffs), Re-Re-Examination.

A.—General form of contract.

By Mr. McKeown:

Q.—Have you the original Lauster contract?

A.—Yes, sir.

10 Q.—I draw your attention to the fact that the Lauster contract, of which you put in a copy as Exhibit D-9, as also the contract of Stormont, and your own, cover a number of sheets which are only fastened together with a paper clip, or pins, not permanently fastened?

A.—They are kept carefully locked up in the safe.

Q.—Whereas, we have the contracts of Mr. Wilmore, Mr. Kaestner and Mr. Kelly on printed forms, all incorporated in one document; you notice that?

A.—Yes, sir.

20 Q.—The first three contracts to which I have referred, that is, those of Mr. Lauster, Mr. Stormont and yourself, were executed under date of the 1st of August, 1925?

A.—Yes.

Q.—And all purport to be signed by Lord Shaughnessy, as President of the Company, and by yourself, under that date, August 1st, 1925?

A.—Yes, they were signed after that.

30 Q.—I would ask you to verify that they are all executed as under date August 1st, 1925, and signed by Lord Shaughnessy as President under that date. Is that what the document in front of you shows?

A.—Yes.

Q.—Don't be afraid to answer?

Mr. Campbell: Let the witness answer.

Witness: Those agreements had to be dated back. It would have been impossible to go back to the prior President and get him to execute the documents. The reigning President had to execute the documents and date them back.

40 By Mr. McKeown:

Q.—Your explanation may be a perfectly proper explanation, but first of all I want you to verify for me that those documents which are now before you and in your hands are all dated August 1st, 1925, and signed by Lord Shaughnessy as President of the Company?

JOHN G. LAWRENCE (for Plaintiffs), Re-Re-Examination.

A.—Yes.

Q.—I am going to ask you for purposes of the record on what date did Lord Shaughnessy become President of the Company?

A.—The 15th of December, 1925.

Q.—Who was President on August 1st, 1925?

A.—Mr. J. B. Waddell.

10 Q.—Why was not your contract, for instance, executed on August 1st, 1925, with Mr. Waddell and with his signature? What is the answer?

A.—I can only presume it was after that date that Sir Mortimer Davis agreed to put this stock aside for me.

Q.—You can only presume it?

A.—Well, I have no documentary evidence.

Q.—So, what happened actually, so far as your personal knowledge goes, is that Lord Shaughnessy after he became President—on what date?

A.—The 15th of December.

20

Q.—1925?

A.—1925.

Q.—Executed these contracts as they now appear?

A.—Yes, sir.

Q.—How long after he was appointed President?

A.—Oh, it may have been 1927.

Q.—It might have been. That is pretty loose language?

A.—I cannot remember what date they were signed.

Q.—You know you signed them yourself?

30

A.—Yes, but I have no record of what date I signed that agreement.

Q.—Have you any memory or any recollection? You would not want to go down as having no recollection of such an important document as that, as to the date you got it signed, surely? Come now, be perfectly frank?

A.—I am perfectly frank. I have absolutely no recollection of the date I signed this document.

Q.—Was it completed within the last few months?

A.—Oh, no.

40

Q.—Well, then, you have no recollection? I am only just testing out what we are to understand by recollection?

A.—It might have been two years ago.

Q.—It might have been?

A.—Yes.

Q.—Is that a general form of expression of yours, it might have been?

A.—It would be in 1927 sometime.

JOHN G. LAWRENCE (*for Plaintiffs*), *Re-Re-Examination*.

Q.—Well, sometime. There are twelve months in 1927. I don't care what you say. Give us the best of your recollection, that is what I want?

A.—During 1927.

Q.—Oh, no, you will have to do better than that.

A.—I do not remember whether it was January or December. I cannot recall what date it was, probably during December, 1927.

10 Q.—You got a copy or a duplicate at the same time?

A.—Yes.

Q.—You have had it in your possession ever since?

A.—Yes.

Q.—And you want to tell His Lordship you do not know when that document was actually signed, other than that it was signed in 1927?

A.—I have no closer date than that that I recall at the minute.

Q.—Was it signed in 1928? I notice you hesitate?

20 A.—I don't think so. I am trying to recall. May I see my own contract, please? It was before 1928. It must have been, as far as I know, during 1927.

Q.—What have you referred to upon which you are able to say it was not in 1928? What have you just looked at there?

A.—I was looking at the record that I had of the shares that were held, and the date of the change in my own contract, which change was made on the 4th of January, 1928, so that the original contract was signed long before that. It may have been six months, or twelve months before that.

30 Q.—That is only a private record of your own?

A.—Yes.

Q.—Is that one of the records of the Corporation or something of your own?

A.—It is just a memorandum of my own.

Q.—Well, now, looking at your own contract (and I think I will have to ask you to produce copies of the contracts), the contract that refers to yourself as Exhibit P-159, of Mr. Stormont as P-160; did you ever have any agreement with anybody on August 1st, 1925, to set aside shares for you in this way?

40 A.—No, not on that date.

Q.—Not with Mr. Waddell, or with any responsible officer of the Corporation?

A.—No.

Q.—When did you first have any kind of verbal understanding with anybody (if you ever had) concerning the matters which have been entered in this Exhibit P-159?

JOHN G. LAWRENCE (for Plaintiffs), Re-Re-Examination.

A.—The first I heard of it was, when Lord Shaughnessy told me that Sir Mortimer Davis wanted some stock set aside for employees.

Q.—I did not ask you that, and I object.

Mr. Campbell: You asked him to say when he first became aware.

10 Mr. McKeown: That is not becoming aware. He could not answer directly to you, and he cannot force that answer on me. I object to that answer, which is something I did not ask him, and I ask that it be struck out.

His Lordship: If you don't want the answers don't ask the questions.

Mr. Campbell: I would ask that the witness be permitted to answer the question.

20

Mr. McKeown: I submit, my Lord, a party cannot be bound by an irrelevant answer of a witness given in a form which is not legal.

His Lordship: He stated that Lord Shaughnessy came to him and told him that Sir Mortimer wanted him to sign a certain contract.

Mr. McKeown: It may go in under reserve, but I submit it is not relevant.

30

(Objection reserved.)

By Mr. McKeown:

Q.—What date was this?

A.—I can only say I imagine it was during 1927. It was prior to 1928.

Q.—In any event, up to that moment, you had no agreement to get stock, had you?

40

A.—No.

Q.—And then, did you forthwith put it into writing in the form which is now shown as Exhibit P-159?

A.—Yes, sir.

Q.—So that the information which results from what you have just said is that this document, P-159, in place of having been signed on August 1st, 1925, was signed some time in 1927?

JOHN G. LAWRENCE (for Plaintiffs), *Re-Rec-Examination*.

A.—To the best of my belief, yes.

Q.—And there was no prior agreement upon which to base it prior to that time?

A.—Not with me, no.

Q.—Have you anything in writing emanating from Sir Mortimer Davis authorizing the execution of this contract P-159 with yourself?

10 A.—No.

Q.—You have never seen anything in writing?

A.—No.

Q.—Would the same statement apply to the other Exhibit, with Mr. Stormont, P-160?

A.—I would not think he had anything in writing.

Q.—So far as you know?

A.—As far as I know, no.

20 Q.—Seeing that you are a signatory of this contract with Mr. Stormont, P-160, and seeing that too is dated August 1st, 1925, at the time when Lord Shaughnessy was not President of the Company, although signed by him as such, do you wish the Court to understand that this contract P-160 between the Company and Mr. Stormont, under which he was to get 5,000 shares at a price of \$10 a share, if he continued in the employ of the Company for five years from the date of the contract, was signed under exactly similar circumstances as your own?

A.—Exactly.

30 Q.—You, as Secretary of the Company, had no prior understanding with Mr. Stormont to give him shares before this contract was actually signed?

A.—I had no understanding.

Q.—As representing the Company?

A.—No.

Q.—In the Stormont contract, you are one of the parties representing the Company by this document?

A.—Yes.

Q.—And signed as such?

A.—Yes.

40 Q.—And, as far as you know, Mr. Stormont had no prior understanding previous to that date?

A.—As far as I know, no.

Q.—Let us look at your contract again: How many shares did you get originally, whenever this conversation was in 1927?

A.—I was put down for 1,000 shares at that time.

Q.—Now I notice the contract is changed to 2,000 shares?

A.—Yes, sir.

JOHN G. LAWRENCE (for Plaintiffs), Re-Examination.

Q.—In ink?

A.—Yes.

Q.—And initialled " S " which, I suppose, is Lord Shaughnessy's initial; initialled by " J.G.L." that is yourself?

A.—Yes.

Q.—When was that change made?

10 A.—In January 1928.

Q.—You cannot tell us how old the contract was at the time that change was made?

A.—No.

Q.—Was it a month old?

A.—Considerably more than that. It might have been a year old.

Q.—It could not have been a year old?

A.—It might have been any time during 1927.

Q.—What was the object of changing it?

20 A.—The object of changing it was, that I was informed by Lord Shaughnessy that a mistake had been made in that, and that 2,000 should have been allotted instead of 1,000.

Q.—And these shares were to go to you, and in your case, on a \$10 basis?

A.—Yes.

Q.—Are these the new shares or old shares? These are the shares that sold at over \$50 apiece?

A.—Yes.

• Q.—And the same for the contract of Mr. Lauster?

30 A.—Yes.

Q.—The same for the contract of Mr. Stormont?

A.—Yes.

Q.—And the dividends accruing in the meantime were to be credited against the purchase price?

A.—Yes.

Q.—And not interest charged on the price of the shares?

A.—No interest, no.

40 Q.—Do you know if there is anything in the Minute Books of the Alcohol Company authorizing these contracts D-90 with Mr. Lauster, P-159 with yourself, and P-160 with Mr. Stormont?

A.—No.

Q.—There are no Minutes of Directors authorizing them?

A.—No.

Q.—Or anything of the kind?

A.—No.

Q.—Let us look at the three remaining contracts, that is, first, the contract with Mr. Wilmore of which I will ask you to produce

JOHN G. LAWRENCE (for Plaintiffs), Re-Rc-Examination.

a copy as Exhibit P-161; the contract with Mr. Kaestner, copy to be produced as P-162, and third, the contract with Mr. Kelly, copy of which will be produced as P-163; these contracts are all dated January 1st, 1927, and are all signed on behalf of the Company by Lord Shaughnessy, as President, and yourself as Secretary. First of all, were these contracts all signed at the same time?

A.—No.

10 Q.—Which of these contracts was signed first?

A.—I think that two, that of Mr. Kelly and Mr. Kaestner were signed first. I think Mr. Wilmore's was signed a little later on.

Q.—You think that Mr. Kaestner's contract, P-162, and Mr. Kelly's contract, P-163, were signed at the same time?

A.—These might have been all signed at the same time.

By Mr. Campbell:

Q.—You mean the whole three?

20 A.—The three of them might have been all signed together, if not altogether, around the same date.

By Mr. McKeown:

Q.—You have no present recollection?

By the Court:

Q.—Were they signed before your contract was signed, or later?

30 A.—Later, my Lord.

By Mr. McKeown:

Q.—We have it from you that your contract might have been signed sometime in 1927, and you have not been able to fix any date?

A.—No.

Q.—Or any month?

A.—No.

40 Q.—And these were signed afterwards?

A.—Yes.

Q.—Were they signed in 1927 or 1928?

By the Court:

Q.—Were they signed on the 4th of January 1928 when the old contract was modified?

JOHN G. LAWRENCE (for Plaintiffs), Re-Rc-Examination.

A.—I think Mr. Kaestner's was signed on that date, my Lord.

By Mr. McKeown:

Q.—Why do you say that?

A.—Because Mr. Kaestner was allotted 2,000 shares, and I think
10 it was at that time my own was changed.

Q.—That is the only reason you have for fixing the date of the
execution of Mr. Kaestner's contract as prior to January 4th, 1928?

A.—Yes. His contract was signed, and then, mine was altered
some days later, maybe a week, or some days later.

Q.—What about the other two? Were they signed at that time
or later, if you have any recollection?

A.—I am very sorry, I have no recollection of the date these
were signed.

Q.—Your evidence is, that they were signed after the first series
20 of contracts, that is, the contracts of Mr. Lauster, Mr. Stormont
and yourself?

A.—Yes, sir.

Q.—And you don't know how long after?

A.—I could not say.

Q.—All of these three contracts, that is, the contract of Mr.
Wilmore, Mr. Kaestner and Mr. Kelly, irrespective of the date which
they bear, of the date upon which they were actually signed, are all
retroactive as to the five-year period to August 1st, 1925?

A.—I do not think you are right. Kelly's is retroactive to the
30 1st of January 1927.

By Mr. Campbell:

Q.—That is the date it bears?

A.—That is the date it bears.

By Mr. McKeown:

Q.—What about Mr. Wilmore's contract? Is that the same?
40

A.—Yes, it is the same.

Q.—And Mr. Kaestner's?

A.—Yes, sir.

Q.—Did you, on behalf of the Company, have any agreement
with any of these three persons, Messrs. Kaestner, Wilmore or Kelly
on January 1st, 1927, to obligate the Company in the sense contained
in these contracts?

JOHN G. LAWRENCE (for Plaintiffs), Re-Re-Examination.

A.—No.

Q.—Are they like the three first contracts dealt with, not to be found mentioned in the Minutes of the Directors?

A.—No.

Q.—No mention?

A.—No.

10 Q.—Mr. Wilmore, under his contract was to get his 5,000 shares at \$10 a share?

A.—Yes.

Q.—And all dividends to apply on the purchase price?

A.—Yes.

Q.—Mr. Kelly was to get his 5,000 shares at \$15 a share, the stock dividends or bonuses were not to apply on the purchase price?

A.—Yes.

Q.—Mr. Kaestner was to get his 2,000 shares at \$15 a share and all the dividends to apply, except stock dividends or bonuses?

20 A.—Yes, sir.

By Mr. Campbell:

Q.—Does the same apply to Kaestner and Kelly?

A.—Yes.

Q.—Are they all for five-year periods?

A.—Yes, sir.

30 By Mr. McKeown:

Q.—Have you got any further contracts with any officials or employees of the Company of this nature?

Mr. Campbell: I do not know what the answer of Mr. Lawrence is going to be, but I object to this question as not arising out of the cross-examination. The only reason these other gentlemen's qualifications were gone into was, because the point was made that the shares they held on the Register were relatively small. What
40 interest have we to investigate whether any other members of the staff have stock. Your Lordship will realize how extremely undesirable it is to have all these details gone into. They cannot help your Lordship to decide this case; they are irrelevant and in my submission that branch of the case should not be allowed to be gone into, and it seems to me undesirable under the circumstances to go into all those anterior arrangements which have no bearing on the case, and I object to it as illegal.

JOHN G. LAWRENCE (for Plaintiffs), Re-Re-Examination.

Mr. McKeown: My learned friend himself brought up the subject of these contracts.

His Lordship: If it is an argument at all that some of the employees were liable to increase their holdings under contracts, it is just as true of the common herd.

10 Mr. McKeown: First of all, here are 30,000 shares with a market value, I think, that figures at \$1,500,000.

Mr. Campbell: At the high.

Mr. McKeown: Dished out without any authority of the Board, and under conditions we hope to investigate.

His Lordship: I thought we would be able to finish with Mr. Lawrence before the adjournment.

20 By the Court:

Q.—Have you any other contracts?

A.—There are another two.

Mr. Campbell: Your Lordship will note my objection. These contracts have no bearing on this case. These people are employees and not Directors.

30 By Mr. McKeown:

Q.—Who are the others?

A.—Mr. Charles Gazen and Mr. A. Curran.

By Mr. Campbell:

Q.—Mr. Curran, that is Lady Davis' brother?

A.—Yes.

40 By Mr. McKeown:

Q.—These further contracts which you produce, are both dated January 1st, 1928, and each for 1,000 shares providing for five-year periods, and a purchase price on the basis of \$15 less stock dividends and bonuses with credit for the dividends, except stock dividends and

JOHN G. LAWRENCE (for Plaintiffs), Re-Re-Examination.

bonuses, one being in favor of Audley Curran and the other in favor of Charles A. Gazen. Are they members of the staff too?

A.—Yes.

By the Court:

10 Q.—Are they still in the employ of the Company?

A.—Yes.

By Mr. McKeown:

Q.—How does it come about that these contracts are dated January 1st, 1928, and the five-year period runs from that date as to these two contracts—do you know?

A.—I don't know what the reason for that is.

20 Q.—Were both those persons, Mr. Curran and Mr. Gazen, employees of the Company for some years back, long before the date mentioned on the formal contracts now before you?

A.—Well, they had both been in the employ for some years.

By the Court:

Q.—In what capacity?

A.—Mr. Gazen is Manager for Ontario, and Mr. Curran is employed in the Sales office.

30 By Mr. McKeown:

Q.—And has been for some years? Was he not an Assistant Sales Manager?

A.—He was Assistant to Mr. Kelly.

Q.—When were these two contracts with Mr. Gazen and Mr. Curran signed?

A.—I would say on or about the date of the contracts.

By the Court:

40 Q.—Was that before or after your contract was modified?

A.—I imagine that was all about the same time, my Lord.

By Mr. McKeown:

Q.—Taking all these contracts together, they total up 31,000 shares, that is, Mr. Lauster, 10,000 shares at \$10; Mr. Stormont,

JOHN G. LAWRENCE (*for Plaintiffs*), *Re-Re-Examination*.

5,000 shares at \$10; yourself, 2,000 shares at \$10; Mr. Wilmore, 5,000 shares at \$10; Mr. Kaestner, 2,000 shares at \$15; Mr. Kelly, 5,000 shares at \$15; Mr. Curran, 1,000 shares at \$15; and Mr. Gazen, 1,000 shares at \$15?

A.—I think that comes to 31,000.

10 By the Court:

Q.—From which must be deducted the 5,000 shares that Kelly has not taken?

A.—Yes.

By Mr. McKeown:

Q.—Is there is a similar contract to this with Lord Shaughnessy?

A.—No.

20 Q.—Or any contract of such a nature whereby he is to get the shares?

A.—No.

Q.—Has there ever been such a contract?

A.—No.

Q.—Has he ever received any shares under a contract of that kind from the Company?

A.—No.

30 Q.—Have the shares mentioned in the contracts which we have reviewed together this morning, been taken out of the Treasury?

A.—No.

Q.—They are still in the Treasury?

A.—Yes, sir.

Q.—Are they included in the reported outstanding stock of the Company then?

A.—No. They are not earned yet.

40 Q.—And in point of fact, if the period is passed, and the contracts were carried out, it would increase the capital stock of the Company by 26,000 shares if all the remaining parties received delivery?

A.—Yes.

Q.—Not being out of the Treasury there have been no dividends declared on those shares?

A.—No.

Q.—That is only a manner of operating to reduce the ultimate price to be paid?

A.—Yes, sir.

JOHN G. LAWRENCE (for Plaintiffs), Re-Re-Examination.

Q.—Were shares delivered to anyone else under similar contracts apart from Colonel Gaudet?

A.—Not in this Company.

And it now being 1:05 P.M. the Court adjourned until 2:30 P.M.

10

AFTERNOON SESSION, FRIDAY, APRIL 4th.

By Mr. McKeown:

Q.—As to the proxies to which your attention has been drawn, that is, the proxies for the Shareholders Meeting called for December 17th, 1929, have you got with you a form of proxy?

A.—No.

20 Q.—Or a form of notice sent out calling that Meeting?

A.—I have a notice.

Q.—Was the formal notice sent out to the shareholders accompanied by any further literature?

A.—Accompanied by the proxy?

Q.—A proxy form?

A.—Yes.

Q.—Were there any directions on that, or requests for its return?

A.—No.

Q.—Addressed envelopes?

30 A.—I think addressed envelopes were enclosed also for the return of the proxy.

Q.—That is your constant practice every year?

A.—Yes.

Q.—When sending the notice of the Annual Meeting, it is accompanied by a form of proxy and an addressed return envelope?

A.—Yes.

Q.—And that is what you did this year?

A.—Yes, sir.

40 P-164? Q.—Will you produce a form of proxy as Plaintiffs' Exhibit

A.—Yes.

Q.—By the form of these proxies, are they continuing proxies, or proxies for single indicated meetings?

A.—They are specifically for each meeting.

Q.—There was no canvas actually made by any other interests to secure proxies for the December, 1929, Meeting, as far as your knowledge goes?

JOHN G. LAWRENCE (for Plaintiffs), Re-Re-Examination.

Witness: What do you mean by other interests?

Counsel: Any other interests than the management.

10 Witness: You mean outside of the Company?

Counsel: Outside of the management?

A.—Not that I know of.

Q.—Let me see the Minutes of that Meeting. I see that at this meeting there was a total of 718,480 voting shares represented, and I ask you to verify at the Annual Meeting of the year before there were 736,905 shares represented?

A.—1928, 736,905.

20 Q.—And in 1929?

A.—In 1929, 718,480 shares.

Q.—So that there were actually about 18,500 shareholders less represented in December, 1929, compared to the representation the year previous?

A.—Yes.

Q.—It was probably the normal representation of shareholders as resulting from the formal notice of the Meeting and demands, and proxies sent out?

A.—Yes, sir.

30 Q.—And of that number of shares represented each year, there were approximately 500,000 shares represented by Sir Mortimer Davis Incorporated?

A.—Approximately, yes.

Q.—And of the independent vote of about another 500,000, less than half, was represented in each year?

A.—969,480 outstanding.

By Mr. Campbell:

40 Q.—How many of Sir Mortimer Davis Incorporated? Look at Sir Mortimer Davis Incorporated.

A.—I have a figure of 496,433 according to my records here.

By Mr. McKeown:

Q.—What is the total outstanding?

A.—969,480.

By Mr. Campbell:

JOHN G. LAWRENCE (for Plaintiffs), Re-Re-Examination.

Q.—What is the number of the proxies filed?

A.—260,954.

By Mr. McKeown:

Q.—What was the number of independent shares apart from
10 Sir Mortimer Davis Incorporated?

A.—222,047.

Q.—I don't mean proxies, I mean shares outstanding.

A.—473,047.

Q.—You had how many independent proxies?

A.—222,047.

By Mr. Campbell:

Q.—You mentioned 260,000.

20 Mr. McKeown: Don't argue with the witness.

Witness: There were 718,480 shares voted, not all represented at the meeting, of which there were 496,433 represented the shares of Sir Mortimer Davis Incorporated. Subtracting the one from the other I get the figure of 222,047.

By Mr. Campbell:

30 Q.—You gave a figure of 260,000 proxies. Get your list of proxies.

A.—The proxies from absent shareholders amounted to 260,954. Then there were personally represented 457,526, making a total of 718,480.

Q.—That 457,526 included Sir Mortimer Davis Incorporated?

A.—Yes.

By Mr. McKeown:

40 Q.—It could not be 457,000. Let us take it the way you have it in the Minute Book. Never mind that memorandum. Let us get these figures without interruption from Mr. Campbell. Give us again in order to have them in proper form how much A stock is outstanding?

A.—969,480 shares.

Q.—How much has Sir Mortimer Davis Incorporated got?

A.—496,433.

JOHN G. LAWRENCE (for Plaintiffs), Re-Re-Examination.

Q.—How much does that leave for all other shareholders?

A.—473,047. That is the figure you wanted.

Mr. Campbell: That is not the number on the record of the Alcohol Company, 496,433. That is the figure he has to change. That belonged to Sir Mortimer Davis Incorporated, but they do not stand in that name in the books.

10

Mr. McKeown: Even that figure could not be right. Leave it alone.

Mr. Campbell: The 496,433 is wrong, because that is not the number on the records of the Alcohol Company in the name of the Estate. There are 60,000 less than that in the name of the Alcohol Company, because 60,000 of the Company's shares stand in the names of the Bank's nominees.

20

Witness: I had included in that figure the 60,125. The figure they had is 436,298.

By Mr. Campbell:

Q.—That is, the holdings of Sir Mortimer Davis Incorporated, on the records of the Company?

A.—Yes.

30 By Mr. McKeown:

Q.—Add these 60,000 which were in the hands of the Bank . . .

A.—60,125.

Q.—Add those on, what does that bring it to?

A.—That makes a difference of 473,047.

Q.—What do you make the amount of the Estate and the Bank together?

A.—496,433.

40 Q.—Subtracting from the total A stock outstanding of 969,480, how much was there in the name of all other shareholders?

A.—473,047.

Q.—And of that 473,047, how many proxies did the management have?

A.—222,047.

By Mr. Campbell:

JOHN G. LAWRENCE (for Plaintiffs), Re-Re-Examination.

Q.—That is excluding these

Mr. McKeown: Allow me to examine the witness. Wait until your turn. I want to understand the facts if I am allowed.

By Mr. Campbell:

10 Q.—What is the figure?
A.—222,047.

By Mr. McKeown:

Q.—As being in the hands of shareholders other than Sir Mortimer Davis Incorporated and the Canadian Bank of Commerce holding for Sir Mortimer Davis Incorporated?

A.—Yes.

20 Q.—Thus leaving in the hands of other shareholders 251,000 shares outstanding?

A.—251,000.

Q.—So that the management did not have fifty per cent of the independent shares standing at the last Annual Meeting?

A.—Slightly less than fifty per cent.

Q.—And they were the only element that canvassed for proxies, as you have already stated?

A.—Yes.

30 Mr. Campbell: He has not made any such statement.

Mr. McKeown: You will re-cross examine him.

Mr. Campbell: They sent the ordinary form in the ordinary course. That is not canvassing for proxies.

By Mr. McKeown:

40 Q.—As to the proxies received from the brokers, is it not true that they all came in signed in blank, and you filled in the amount at your office?

Witness: Filled in the amount of what?

Counsel: The amount of shares?

A.—I filled them in in any case.

JOHN G. LAWRENCE (for Plaintiffs), Re-Re-Cross-Examination.

Q.—The proxies are signed in blank, and you took the Register as it then stood by entering the number of shares?

A.—Yes, sir.

Q.—Have all the proxies which are included in that list been proxies for a specific date, or have they been continuing proxies?

A.—No, for a specific date.

10 Re-Cross-Examined by Mr. Geo. A. Campbell, K.C., of Counsel for Defendants:

Q.—What were the names of the nominees of the Canadian Bank of Commerce?

A.—H. Howard McKee and G. G. Aikman.

Q.—I want to identify that on this list of proxies. Would they be indexed under the letter P? What are the names.

A.—H. Howard McKee and G. G. Aikman.

20 Q.—The entry in your list of proxies is “H. Howard McKee and G. G. Aikman” under the heading of “Sir Mortimer Davis Incorporated”, but they stand in the records of your Company in the name of McKee and Aikman? .

A.—I believe so.

Q.—Who are McKee and Aikman?

A.—Officials of the Bank of Commerce.

Q.—And what is the number of shares involved in that?

A.—60,125.

30 Q.—Were any of these various agreements with employees under which they acquired shares, entered into subsequent to the death of Sir Mortimer Davis?

A.—I do not think so.

Q.—I mean, any of those that you have discussed this morning, and produced this morning?

A.—No, I do not think they were.

Q.—They were all for the five year period?

A.—For five years, yes.

Q.—And the five year period in each case runs from the date of the agreement?

40 A.—From the date of the agreement.

Q.—In other words, the agreements were dated back, so that the five year period would operate from the date of the agreement?

A.—Yes, sir.

Mr. McKeown: Not the date of the agreement, the date mentioned at the head of the document.

JOHN G. LAWRENCE (for Plaintiffs), Re-Re-Cross-Examination.

By Mr. Campbell:

Q.—The date as at which it purported to be executed?

A.—Yes.

10 Mr. McKeown: I would like to ask Mr. Lawrence a question which escaped me in re-examination-in-chief. It is not a matter of re-examination at all.

By Mr. McKeown:

Q.—On those schedules and statements which you turned over to Mr. Gordon, as you explained in examination-in-chief, were the stores of liquor at Corbyville shown at cost or present value, the sale value?

A.—They were shown at a price close to cost, not exactly.

20 Q.—Irrespective of the fact that at that time, the time you turned the data over, they had a value of a great deal more money?

A.—Yes, sir. Walker's figures were taken on the same basis exactly.

By Mr. Campbell:

30 Q.—There was one question I wanted you to verify in connection with those various contracts: You said you could not find any Resolution in your Directors' Minute Book authorizing their execution. I understood you to say that?

A.—Yes.

Q.—Was there any Resolution authorizing the agreement with Colonel Gaudet when it was entered into?

A.—Not when it was entered into.

Q.—Have you got a Resolution authorizing the delivery of his securities at the end of his term?

A.—Yes, sir.

40 Mr. Campbell: When did Colonel Gaudet get his securities, Mr. McKeown, you, who know all things?

By Mr. Campbell:

Q.—I think you said it was January, 1928. Have you not got a memorandum showing when he got his shares?

Mr. McKeown: Can't we check that up some other time.

JOHN G. LAWRENCE (for Plaintiffs), Re-Re-Cross-Examination.

By Mr. Campbell:

Q.—You mentioned a date of January, 1928, as I remember it, when you said that Colonel Gaudet got his shares. That ought to be about the time that the Resolution was put through, if there was one. I remember seeing one at some time.

(Witness refers to the Minute Book)

10 Q.—Will you read into the record from page 80 of your Minute Book from the Minutes of Meeting of Directors held on the 25th of January, 1928, the entry to which you have called attention?

Mr. McKeown: I object.

Objection reserved.

A.—(reading):

20 “The Chairman explained to the Meeting that the Company had entered into a contract with several of its officials whereby they were given the right to purchase stock of the Company under certain terms and conditions, and in this connection the terms of the Agreement entered into with Colonel F. M. Gaudet had been satisfactorily complied with. It was therefore moved by Mr. Henry Joseph, seconded by Honorable H. M. Marler, and unanimously resolved that the Company issue and allot to Colonel F. M. Gaudet, or his nominee, 2,000 shares of the capital stock of the Company in terms of an Agree-
30 ment dated 6th February, 1926, and that the Crown Trust Company, Transfer Agent, be, and they are hereby empowered to cause the transfer of this stock to be made, and further, that the National Trust Company, Registrars, be, and they are hereby authorized to countersign such certificate.”

Q.—Colonel Gaudet in virtue of that resolution got delivery of his shares?

A.—Yes.

40 Q.—Have any of the other shares under any of the other Agreements been delivered yet?

A.—No.

By Mr. McKeown:

Q.—I omitted to ask you in re-examination, Mr. Lawrence, with reference to the claim put forward by the Dominion Government for Sales Tax, which you said went back to 1922?

JOHN G. LAWRENCE (for Plaintiffs), Re-Re-Cross-Examination.

A.—Yes.

Q.—When did you first become aware of that claim, that such a claim was contended for by the Government?

A.—I think the first knowledge I had of a claim by the Government, was during the Customs probe.

Q.—When was that exactly?

A.—That covered a long period. I do not recall the date.

10 Q.—Was it during Sir Mortimer's lifetime?

A.—Yes.

Q.—It would be 1926 or 1927?

A.—Something like that.

Q.—And was the claim asserted immediately during, or following the probe?

A.—It was asserted following the Customs probe, yes.

Q.—No reference was ever made to it in the statement prior to September 30th, 1929, statement.

A.—No.

20 Q.—And it had by that time been adjudicated at \$1,400,000?

A.—Yes.

By Mr. Campbell:

Mr. McKeown: I call that adjudicating.

By Mr. Campbell:

30 Q.—It was settled at \$1,400,000. Had the Government's original claim been for a very much larger sum, including interest?

A.—Certain interest was waived.

Q.—Amounting to a substantial sum?

A.—Yes.

And Further Deponent Saith Not.

PHILIPPE P. BRODEUR (for Plaintiffs), Examination-in-Chief.

On this fourth day of April, in the year of Our Lord, one thousand nine hundred and thirty, personally came and appeared:

PHILIPPE P. BRODEUR,

10 of the City of Ottawa, in the Province of Ontario, Civil Servant, aged fifty-one 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.—In what Department of the Civil Service are you employed?

A.—National Revenue, Excise Division.

Q.—Who is your superior officer?

A.—The Commissioner of Excise, George W. Taylor.

20 Q.—Commissioner of Excise?

A.—Yes.

Q.—Do you appear here in answer to a subpoena served upon George W. Taylor, of the City of Ottawa, Ontario, Commissioner of Excise?

A.—Yes, under his instructions.

Q.—What particular Department are you in charge of?

A.—Excise Statistics.

30 Q.—Have you in the Department immediately under your control the returns made by the officers of your Department actively in charge of the bonded warehouses in each of the distilleries in Canada?

A.—Yes, we have, but these returns are made by the manufacturers themselves, not by our officers.

Q.—Made by the manufacturers to your Department?

A.—Yes.

Q.—Are they not delivered to the officer in charge of the local Excise warehouse?

A.—Yes, exactly so.

40 Q.—The taxes are paid there on the property?

A.—Yes, they are paid to the Collector.

Q.—On the basis of these returns?

A.—Yes, exactly.

Q.—And then those returns are sent forward to the Department at Ottawa?

A.—Yes.

PHILIPPE P. BRODEUR (for Plaintiffs), Examination-in-Chief.

Q.—And do they come under your work in the matter of compiling the statistics based upon those returns?

A.—Yes, the checking and the compiling.

Q.—And those returns are published in some form or other in the return to the Minister in blue book form?

A.—The compilation, not the return themselves, the compilation of their returns.

10 Q.—Have you prepared a compilation showing the returns since January, 1926, as to the spirituous liquors (if that happens to be the technical name) which have been made the subject of a return from the Distilleries of those Corporations presently known as the Hiram Walker, Gooderham and Worts, Distilleries Corporation, Seagrams Limited and Canadian Industrial Alcohol Limited, or subsidiaries of the three last named Corporations?

20 Mr. Holden: May it please the Court, we submit this is going very much too far. There is evidently no limit to the wanderings that we are being submitted to.

Mr. McKeown: We could not be closer to our subject.

By Mr. McKeown:

Q.—Have you prepared such a compilation?

A.—Yes, I have.

30 Mr. McKeown: I would like to state that Mr. Taylor was here in person a few days ago in obedience to a subpoena. At that time he told me he would arrange to have Mr. Brodeur give the information, which would be compiled, but that the view the Department takes of matters gathered for statistical purposes is that, except insofar as the same is published in blue book form and available to the public at large, that the Department discloses that information only in obedience to a Court's summons and on order of the Court. I told Mr. Taylor I would make this representation to your Lordship after the witness had been in the box and had explained the purposes of his evidence; and I ask your Lordship to allow the production of this compilation.

40 Mr. Holden: May I ask for a little more definite information as to what is the order asked for?

His Lordship: To exhibit the statement, and if there is no objection to it, it may be produced.

PHILIPPE P. BRODEUR (for Plaintiffs), Examination-in-Chief.

Mr. Holden: I thought my learned friend was asking your Lordship for an order.

Mr. McKeown: I understand your Lordship orders the witness to exhibit the statement?

10 His Lordship: Yes.

Witness: On the order of the Court I will produce this to the Court. There is a compilation of four years, made in duplicate.

Mr. Holden:—Under reserve of our objection as to irrelevancy, we do not see any reason to keep the statement out.

By Mr. McKeown:

20 Q.—Will you please produce, as Plaintiffs' Exhibit P-165, an abstract from the License Distillers' Monthly Returns of Spirits ex-warehoused for Duty, Exportation and Removal in the Year 1926, of Canadian Industrial Alcohol Company and its five subsidiaries, Consolidated Distilleries, Wisers, St. Hyacinthe Distillery, Consolidated Distilleries of Manitoba, and Consolidated Distilleries, Limited, of Vancouver, also of Gooderham & Worts, Limited, and Hiram Walker & Sons, Limited, also of The Distilleries Corporation, Limited, and Joseph E. Seagram & Son, Limited?

A.—Yes.

30 Q.—Before I go further, I would like to know whether the figures shown upon this statement throughout are the figures in proof gallons?

A.—They are in proof gallons. "P.G." means proof gallons.

Q.—Are they all the spirits?

A.—Yes.

Q.—Is that the term that is defined in the Excise Act?

40 A.—Yes. All alcohol is called spirits, because the duty is collected on the proof, so we call it spirits. The duty is collected on the spirits.

Q.—What is the duty on spirits?

A.—\$9.00.

Q.—\$9.00 per what?

A.—Per proof gallon.

Q.—I notice looking at Exhibit P-165 for the year 1926 that there are grouped together the five distilleries which we know here to be the subsidiaries of Canadian Industrial Alcohol, that is Con-

PHILIPPE P. BRODEUR (for Plaintiffs), Examination-in-Chief.

solidated Distilleries, Wisers, St. Hyacinthe, Consolidated Distilleries of Manitoba, and Consolidated Distilleries, Limited, of Vancouver; showing altogether a total of 1,066,380.72 proof gallons. Then there is what purports to be a further item, Canadian Industrial Alcohol Company, Limited, 1,157,382.86 proof gallons. Are those separate items, or does the greater include the less?

10 A.—These are separate items. One is the total of the five, and the other is a separate item.

Q.—The first is the total of the five, and the second is a separate item?

A.—By itself, yes. Industrial Alcohol by itself, and the five others as a separate grand total.

Q.—The first five, which we call the subsidiaries, amounting on Exhibit P-165 to 1,066,380.72 proof gallons for the year 1926, represents the total proof gallons of beverage of Canadian Industrial Alcohol?

20 A.—We do not know that. The gallons of spirits.

Q.—This next item, "Canadian Industrial Alcohol Co. Ltd.," is the name of a Company?

A.—Yes.

Q.—Opposite that name there is a total of 1,157,382.86 proof gallons?

A.—Proof gallons of spirits.

Q.—You do not mean to say that quantity of spirits is industrial alcohol—that is denatured alcohol or wood spirits—it is spirits?

30 A.—No; it is spirits. There is no wood alcohol or denatured alcohol in that, because the wood alcohol we call wood alcohol, and the denatured alcohol we call denatured alcohol. The rest is called spirits.

Q.—Does that mean it is beverage?

A.—It might, or it might not.

Q.—It could be used for medicinal purposes?

A.—If it is not two years old, it is not potable. The law says it has to be two years old. There might be some export in that less than two years old, or there might be some removed less than two

40 years old.
Q.—If it is under two years old does it go as spirits?

A.—It all goes as spirits.

Q.—And, over two years old, the same?

A.—Yes.

Q.—All on the basis of proof gallons?

A.—Yes.

Q.—Is there any explanation as to the first item shown, for the

PHILIPPE P. BRODEUR (for Plaintiffs), Examination-in-Chief.

five subsidiaries; and the second item, for Canadian Industrial Alcohol Company, Limited; except that those five are classed together?

Witness: Explanation what sense?

10 Counsel: Is there any explanation? Are they the same spirits?

A.—They are all the same spirits. It all deals with spirits. All the same kind.

Q.—Take the third group, Gooderham & Worts, Limited, 480,181.0 proof gallons, and Hiram Walker & Sons, Limited, 517,630.24 proof gallons; total 997,811.24 proof gallons. That again refers to spirits?

A.—Spirits.

Q.—These two are grouped together?

20 A.—Yes.

Q.—Then, the final group, Distillers Corporation, Limited, 45,959.85 proof gallons, and Joseph E. Seagram & Sons, Limited, 94,865.81 proof gallons, totalling 140,825.66 proof gallons—again spirits?

A.—Again spirits, yes.

Q.—Will you now produce a similar abstract for the year 1927, to be filed as Plaintiffs' Exhibit P-166, and will you say if it has been prepared in the same way as you have explained in connection with Exhibit P-165 for the year 1926?.

30 A.—Yes. Exactly in the same way.

Q.—Will you produce, as Exhibit P-167, a similar abstract for the year 1928, and will you say if it has been prepared in the same way as Exhibit P-165 already explained?

A.—Yes. Exactly the same way.

Q.—Will you produce, as Exhibit P-168, a similar abstract for the year 1929, and will you say whether it has been compiled and prepared in the same way as Exhibit P-165, but for the year 1929?

A.—Yes. The very same way.

40 Q.—What is the yearly period for which those Exhibits have been prepared?

A.—The calendar year.

Q.—I think the departmental year finishes at the end of March?

A.—The fiscal year. The orders were to prepare those statements for the calendar year.

Q.—And, they have been prepared for the calendar year?

A.—Yes.

PHILIPPE P. BRODEUR (for Plaintiffs), Cross-Examination.

Q.—Looking again at Exhibit P-165, for instance, are licenses issued by your Department to distillers?

A.—Yes.

Q.—Are the licenses actually issued and in force during those years in favor of the various distilleries whose names appear on those Exhibits?

A.—Under the names that appear in those statements.

10 Q.—That is to say, for instance, there was in the year 1926, and there is now, and there has been since 1926, a license running in the name of Consolidated Distilleries, Belleville?

A.—Yes.

Q.—And the same for every one of the other names on the Exhibit?

A.—Yes.

Q.—For each calendar year?

A.—For each fiscal year?

20 By Mr. Campbell:

Q.—The licenses run for the fiscal year?

A.—Yes, for the fiscal year, April 1st to March 31st.

Cross-examined by Mr. A. R. Holden, K.C., of Counsel for Defendants:

30 Q.—Exhibits P-165, P-166, P-167 and P-168, which you have filed, were prepared by you personally?

A.—Yes, sir.

Q.—Have you with you the data upon which you prepared them?

A.—No; they are in the records of the Department.

Q.—You did not bring those records?

A.—No.

Q.—Have you anything here showing more detail than those totals?

40 A.—No, sir.

Q.—Taking Exhibit P-165, I see the first two totals, the Canadian Industrial Alcohol Company and its five subsidiaries, make a grand total of 2,223,763 proof gallons. Can you tell the Court what part of that gallonage was what we call industrial alcohol, that is, non-beverage—molasses spirits?

A.—No. We have no way of telling that.

PHILIPPE P. BRODEUR (for Plaintiffs), Cross-Examination.

By Mr. Campbell:

Q.—It is all included in the one item?

A.—All classified as spirits.

By Mr. Holden (continuing):

10 Q.—In other words, looking at Exhibit P-165, can you tell the Court whether the second total, 1,157,382 gallons, applies to molasses spirits, and the total above it to beverage alcohol?

A.—No; it is the same as the other—just spirits.

Q.—You cannot subdivide it?

A.—No.

Q.—Looking at Exhibit P-166, the total for Canadian Industrial Alcohol Company and its subsidiaries is 1,943,068 gallons. You cannot tell the Court how it is divided either?

20 A.—This is the very same as Exhibit P-165. It is spirits.

Q.—Am I right that the same thing is true with regard to Exhibit P-167, according to which the Canadian Industrial Alcohol Company and those five subsidiaries together took 2,084,819 proof gallons out of warehouse in that year? You cannot subdivide that either?

A.—No, sir.

Q.—Nor the last one, 1929, in which they took out altogether for the year, according to Exhibit P-168, 1,366,253 gallons. You cannot subdivide that?

30 A.—No.

Q.—If your records were here would you have been able from them to tell the Court what amount, if any, of industrial alcohol—molasses spirits—is in any of those totals?

A.—No. Our records show them as spirits in different warehouses. Under two years old they should be in the maturing warehouse.

40 Mr. Geoffrion: Would not your books give you that information, Mr. Campbell?

Mr. Campbell: That is why we say it is non-beverage alcohol.

Mr. Geoffrion: We will answer that when we come to the argument, but the fact can be proved by your own books.

By Mr. Holden (continuing):

PHILIPPE P. BRODEUR (for Plaintiffs), Cross-Examination.

Q.—Am I right that there are two kinds of licenses issued by your Department, one for beverage spirits, and the other for molasses spirits?

A.—No. We only have one kind—distillery.

Q.—Distillery license?

A.—Yes.

Q.—There is no distinction?

10 A.—No distinction.

Q.—Am I right that you have a permanent official representative of the Department at each of those distilleries all the time?

A.—Yes; we have an officer in charge.

Q.—May I ask you this: look at Exhibit P-168, on which the Gooderham & Worts-Hiram Walker amount ex-warehoused is 1,695,524 gallons. Can you tell the Court what proportion of that was taken out for shipment on consignment and not yet sold?

A.—We have no way of telling that.

20 Q.—Is the same thing true of the following item, of Distillers Corporation-Seagram, which, according to the statement, took 1,240,789 gallons out of warehouse in the year 1929? You have no way of telling the Court what part of that was merely taken out on consignment; for shipment on consignment?

A.—No. The heading states it is for duty; that means the duty has been paid. It has been either paid duty, exported, or removed.

Q.—If I am the representative of one of the distillers, and I want to ship a large quantity on consignment, and I have to take it out of the warehouse, it would be included in those totals?

30 A.—Yes.

Mr. McKeown: If you pay the duty on it.

By Mr. Holden (continuing):

Q.—You cannot tell what proportion of these are such shipments?

A.—No.

40 Mr. McKeown: Or, if there were any.

By Mr. McKeown:

Q.—Can you tell the Court whether there was one gallon in all these Exhibits P-165 to P-168 which was shipped on consignment?

A.—No; we do not know that.

Q.—There may not have been any at all?

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A.—These figures mean that they have been taken out of a distillery warehouse: either bottling room warehouse, No. 1 warehouse, or No. 2 warehouse.

Q.—In any event, wherever they have been taken from, it is a question of \$9.00 per gallon before they are released from excise?

10 A.—Not for the export, or the removal. They may be exported in bond, and when they produce their landing certificate they do not pay any duty, if they are exported in bond. They may also be removed in bond, and the duty is paid by either the manufacturer who buys them, or the Liquor Control Board. That does not mean that the distillery has paid the duty; it may mean the duty has been paid by somebody else.

Q.—But the Department has been paid?

A.—Yes.

20 Q.—Is the duty the same, \$9.00, whether it is molasses spirits or grain spirits?

A.—No. Molasses spirits are \$9.03, because the molasses goes through the Customs without duty, and we charge them three cents a proof gallon more on the spirits.

Q.—So, whether it is molasses spirits or grain spirits, the duty payable to the Government is a minimum of \$9.00 per proof gallon?

A.—\$9.00, \$9.02, or \$9.03.

By Mr. Holden:

30 Q.—Are you sure of that?

A.—Yes.

Q.—On the molasses spirits?

A.—\$9.03. When the molasses is imported in bond free of Customs duty we charge them three cents per gallon more. That is in the Excise Act.

Q.—Is it not true that molasses spirits are sold at about 80 cents a gallon after paying duty?

A.—I do not know anything about the selling price.

40 Q.—Are you sure you are right about the duty on the molasses spirits?

A.—Oh, yes.

His Lordship: Do the molasses spirits appear at all on those statements?

Mr. McKeown: Not as molasses spirits, Your Lordship, just spirits.

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Mr. Holden: The witness does not know what part is industrial alcohol and what part is beverage alcohol.

By Mr. Holden:

Q.—You cannot tell the Court that?

10 A.—No.

Mr. Campbell: In some of the other Exhibits, Exhibit P-109, for instance, we show industrial alcohol, that is alcohol for non-beverage purposes.

Mr. McKeown: Not at all. You are not paying \$9.00 a gallon on industrial alcohol to put in an automobile radiator, and then selling it at \$3.50 a gallon retail.

20 By Mr. Geoffrion:

Q.—In any event, everything in these statements pays \$9.00?

A.—They are all subject to \$9.00, \$9.02, or \$9.03.

Q.—That is, all those shown on those statements?

A.—Yes.

By Mr. McKeown:

30 Q.—Denatured alcohol and wood alcohol are not on those statements at all?

A.—No. They are different things entirely.

His Lordship: Do the firms mentioned on those statements make molasses spirits?

Mr. Holden: Yes, Your Lordship.

40 Mr. Campbell: Exhibit P-109 speaks of grain spirits and molasses spirits, and the grain spirits are the beverage spirits and the molasses spirits are industrial alcohol?

Mr. McKeown: We will be waiting for anyone who says they do not sell molasses spirits for beverage purposes.

I think, without reading the statements into the record, Your Lordship will have perceived by the evidence the general purport of what is conveyed by those four statements. The figures of Canadian

PHILIPPE P. BRODEUR (for Plaintiffs), Cross-Examination.

Industrial Alcohol and its subsidiaries advanced to a certain point, and then took a nose dive at the end; while the others went up.

Mr. Campbell: No doubt it is the purpose of my learned friend to show that.

10 Mr. McKeown: That is my purpose, and those statements show it to be the fact.

By Mr. Holden:

Q.—I am instructed that all the spirits, whether denatured alcohol, what I was calling molasses spirits, or beverage spirits—grain alcohol—it is all charged \$9.00, or \$9.02, or whatever the figure may be, and that the denatured alcohol when withdrawn for industrial purposes is credited back with the charge so made. Am I right?

20 A.—The denatured alcohol is free. We have no duty on it.

Q.—All spirits when ex-warehoused is charged as though it were beverage spirits?

A.—As spirits, yes.

Q.—All kinds?

A.—Yes.

Q.—And then the denatured alcohol is credited back?

A.—When it is taken for denaturing it is free, and the amount is credited.

30 Q.—So that this would include all kinds, and the credits when made would straighten it out? Let me put it this way: am I right that your Exhibits P-165 to P-168 include all the alcohol taken out, and for the part of it that is denatured and used as denatured alcohol—commercial alcohol—the distiller is credited with the amount so charged on that.

A.—I do not grasp your question very well.

Those statements include all the spirits on which the excise duty was paid, or were exported, or were removed in bond. There is no question at all of denatured alcohol in those statements. They relate only to spirits.

40 Q.—I am instructed that you are wrong in that respect, and that the figures on which those statements are made cover all the alcohol that is taken out, and that the \$9.00 charge you speak of is credited back on the part that is denatured spirits.

A.—They are not included in this.

Q.—Are you sure of that?

A.—Yes, sure. They are not included in this. These are the

PHILIPPE P. BRODEUR (for Plaintiffs), Cross-Examination.

figures, as the heading says, entered for duty, exported, or removed. They do not include anything else.

Q.—I would like to have the record. Would you please bring the records from which these summaries are made up?

A.—Those would be the monthly returns. They are in the department. I have not them here.

10

Mr. Geoffrion: Do you want them all, or only some of them?

By Mr. Holden (continuing):

Q.—Where are the records?

A.—In the Department in Ottawa.

Q.—You will be available at Ottawa, if we communicate with you?

20

A.—Yes.

And further deponent saith not.

(And the further hearing of evidence in this matter is continued to Monday, April 7th, at 10.30 o'clock in the forenoon.)

30

40

F. M. GAUDET (for Plaintiffs), Examination-in-Chief.

On this seventh day of April, in the year of our Lord one thousand nine hundred and thirty, personally came and appeared

FREDERICK M. GAUDET

10 of the city of Montreal, gentleman, aged sixty-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.—Colonel Gaudet, it has come out in the evidence already in this case that you were at one time a Director of Canadian Industrial Alcohol?

A.—Yes.

20 Q.—When did you first join that Company, or its predecessors?

A.—On the 15th of September, 1922.

Q.—In what capacity?

A.—Sir Mortimer Davis gave me charge of manufacturing, purchasing and engineering work.

Q.—What previous experience had you had in the engineering business?

A.—I had about twenty-five years as a manufacturer.

Q.—Was any title assigned to your office?

A.—No.

30 Q.—Did you join the Board at that time?

A.—Not until the following year, some time in 1923.

Q.—Was Mr. Joseph a Director of the Company at that time?

A.—He was.

Q.—The Honorable Mr. Marler, too?

A.—Yes.

Q.—How long did you remain a Director of the Company?

A.—Until the 23rd of July, 1929.

Q.—Until the 23rd of July last year?

A.—Yes.

40 Q.—Were you elected to any of the offices of the Company?

A.—Vice-President.

Q.—Covering what period?

A.—In January, 1929.

Q.—Do you remember when Lord Shaughnessy first became associated with the Canadian Industrial Alcohol Company?

A.—I do.

Q.—And at the time Mr. Waddell was President?

F. M. GAUDET (for Plaintiffs), Examination-in-Chief.

A.—Yes.

Q.—Mr. Waddell became President, I think, in December, 1925?

A.—Possibly.

Q.—Will you tell His Lordship whether, following the death of Sir Mortimer Davis, in March, 1928, the conditions in and about the offices here, in Montreal, continued as they had done before?

10 A.—No, they did not.

Q.—In what respect?

A.—During Sir Mortimer's lifetime, meetings were held of what was known as the Executive Committee. At those meetings, the affairs of the Company were discussed; Sir Mortimer invited and provoked discussion. Subsequent to his death——

Q.—Just a moment: who were those meetings attended by?

A.—The Directors who were employees of the Company, with the addition of Mr. Marler, who was an outside Director, and usually the Sales Managers.

20 Q.—How often did these meetings take place prior to Sir Mortimer's death?

A.—Weekly.

Q.—Were they maintained from week to week?

A.—Yes.

Q.—After Sir Mortimer's death, with respect to these meetings?

30 A.—After Sir Mortimer's death, the meetings continued for a time, but they eventually became matters of routine, and towards the end were confined to reading the weekly sales reports; no business was discussed, no policy was discussed, or anything of that sort, and subsequent to that the meetings were discontinued entirely. Lord Shaughnessy said they would be replaced by meetings of heads of Departments, which were never held to my knowledge.

Q.—Can you say from memory, about how long after Sir Mortimer's death these meetings ceased entirely?

A.—Those meetings ceased some time in 1928.

Q.—In your opinion, from your experience of that Company, were there any real results obtained by the meetings as held prior to Sir Mortimer's death—these weekly meetings?

40 A.—Those meetings served as a clearing house for exchange of opinions, supplying information, and securing co-operation among the different members of the staff. When these meetings ceased, those benefits disappeared. People kept to themselves what they knew. There was a lack of co-operation, and secrecy, and people simply said they were holding the jobs, and did not divulge to others what they should have.

Q.—With respect to the duties originally assigned to you, did

F. M. GAUDET (for Plaintiffs), Examination-in-Chief.

you continue to function to the full extent of those duties up to the time of your resignation?

A.—I did for a time.

Q.—Up to what time?

A.—But eventually my work was taken away from me by Lord Shaughnessy, that is, manufacturing, purchasing and engineering work, and towards the end I had little or nothing to do, except the
10 supervising of monthly records of costs, and keeping a few statistics. I was virtually idle.

Q.—Who took over the direction of this work which had formerly been done under your charge?

A.—As far as I know, Lord Shaughnessy did himself.

Q.—And that work you say had been assigned to you under direct instructions from Sir Mortimer?

A.—By Sir Mortimer. It is in writing in the records.

Q.—You have referred to outside Directors. Who were the out-
20 side Directors at the time of Sir Mortimer's death?

A.—Mr. Marler, Mr. Joseph, Mr. Decary and Mr. Hugh Allan.

Q.—When did Mr. Allan leave the Board? Did he leave before Sir Mortimer's death?

A.—I imagine so.

By the Court:

Q.—Who is the fourth?

A.—Mr. Hugh Allan.

30 Mr. McKeown: I think the witness suggested he had probably left before Sir Mortimer's death.

By Mr. McKeown:

Q.—In any event, the other three, Messrs. Joseph, Marler and Decary, were still in office when Sir Mortimer died?

A.—They were.

Q.—And did they attend the meetings of the Board?

40 A.—Monthly.

Q.—And meetings were held monthly as was the practice?

A.—Yes.

Q.—During Sir Mortimer's lifetime was full disclosure made of the Company's business to the Board?

A.—Yes, and at these weekly meetings, there were prolonged discussions about everything.

Q.—Following Sir Mortimer's death, were the same disclosures

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of the Company's affairs made in the same way at the Board's meetings as heretofore?

A.—No.

Q.—In what respect?

A.—A summary of business, and a balance sheet was presented monthly, and there was no other information given the Company.

10 Q.—Did you ever hear from any source any reason assigned for discontinuing the Executive Meetings?

A.—Yes. I think I explained that those meetings became a matter of routine. They were rather useless. They read the sales; we could all know the sales without going to the meeting, because the daily reports were in the office, had we thought to do so, to read them. In any event, Lord Shaughnessy decided that he would have meetings of heads of Departments, instead of those Executive Meetings.

20 Q.—The meetings of the heads of Departments, whatever they were, were discontinued also?

A.—They were never held.

Q.—Did you ever hear from Lord Shaughnessy, or any of the other officers, any particular reason assigned for discontinuing these meetings?

A.—Mr. Marler asked me for some information on one occasion. He was going to Ottawa about some matter.

Q.—In connection with the Company?

30 A.—Yes. I do not recollect what it was; it is of no importance. I gave him the information, and I told Lord Shaughnessy about it. Lord Shaughnessy disapproved of what I had done, and he said he did not want Marler to mess into the Company's business. Shortly after that these meetings were discontinued.

Q.—Was that incident subsequent to Sir Mortimer's death?

A.—Yes.

Q.—Do you remember that Lord Shaughnessy sailed for England about the 29th of March 1929?

A.—Yes.

40 Q.—It has come out in the evidence that there was no meeting held in the succeeding month, in April, and no regular meeting in the month of May; a special meeting was held to give a proxy as to the McNish stock?

A.—Yes.

Q.—Do you remember that special meeting of the 22nd of May 1929?

A.—Yes.

Q.—Did you attend it?

A.—Yes.

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Q.—Who else was there?

A.—The regular employee Directors, Mr. Henry Joseph—those Directors who were employees and also Mr. Joseph and Mr. Decary.

Q.—At that meeting was the regular routine business of monthly meetings put through, the balance sheet?

10 Witness: Are you talking about that meeting for the proxy?

Counsel: The special meeting?

A.—No. That meeting was called for the special purpose of giving Mr. Lauster a proxy to vote the Alcohol stock in the McNish Company. It was not called as a regular monthly meeting.

Q.—And the balance sheet and the other routine business was not put through then?

A.—No.

20 Q.—Did you hear of any inquiry made on that occasion by anyone?

A.—Yes. Mr. Joseph asked for the monthly returns.

Q.—Who was he addressing?

A.—Mr. Lawrence, the Secretary.

Q.—This was in Lord Shaughnessy's absence?

A.—Lord Shaughnessy was not there; he was on the other side, and Mr. Lawrence replied that there was none, no records had been kept.

Q.—You mean, prepared?

30 A.—None had been prepared; none were available.

Q.—You say Mr. Decary was there?

A.—Yes.

Q.—Was any inquiry made by him for anything?

A.—Mr. Decary asked for the Minutes of the Executive meetings, and was told there were none.

Q.—In your presence and hearing?

A.—In my presence.

Q.—By whom?

A.—He was told this by Mr. Lawrence.

40 Q.—Did you attend the June meeting, on June 21st, 1929?

A.—Yes.

Q.—Was the regular routine business of the month taken up at that meeting?

A.—Yes, I think so.

Q.—Was the regular statement laid before the Directors of the Company's position?

A.—Yes.

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Q.—Did anything concerning that statement attract your attention on that occasion?

Witness: On the 21st of June?

10 Counsel: Yes, in June 1929, in connection with the Statement which was laid before the Directors?

A.—There was one meeting; I do not recall clearly the date; it may have been on that date, and in the Statement presented, the overdraft at the bank was included in the Accounts Payable.

Q.—Did that catch your eye at the time?

A.—I saw that at a meeting. I cannot say it was the 21st of June; I do not recollect. That I did see distinctly, and I spoke about it.

Q.—Who did you speak to?

20 A.—I spoke to the Secretary after the meeting, and took exception to it.

Q.—Mr. Lawrence?

A.—Yes.

Q.—Was any explanation given, or anything said?

A.—He told me that the object of that was, to prevent the outside Directors from knowing the amount of the overdraft at the bank.

Q.—Do you remember if Lord Shaughnessy returned from England in 1929, about mid-June?

A.—It was about the 10th of June.

30 Q.—1929?

A.—Yes.

Q.—Which would be before the meeting which it is in proof, took place on June 21st, of course. Did you attend the meeting of Directors which was held following Lord Shaughnessy's return?

A.—Yes.

Q.—Had you previously been aware of the position generally of the McNish matter?

A.—Very imperfectly. I had only fragmentary information, which was very difficult to get.

40 Q.—Had you been aware that a meeting of the McNish Company had been held in England while Lord Shaughnessy was there?

A.—No.

Q.—You referred to the proxy which was issued in favor of Mr. Lauster?

A.—Yes.

Q.—Was not that for a meeting of the McNish Company to be held in England?

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A.—I did not draw any inference. I did not know what they wanted it for.

Q.—In any event, did Lord Shaughnessy at that meeting of the Directors in June 1929, make a report of the McNish situation as to what he had found, and what he had left there, when he came away?

A.—None whatever.

10 Q.—Did he make any reference at all to McNish?

A.—He made no allusion to the McNish Company in my hearing at the meeting of the Board of Directors, no information.

Q.—Did he ever say anything to you in conversation outside of the meeting, after his return?

A.—He remarked incidentally in my room, that he had had a great deal of trouble and that is all.

Q.—About when would that be?

A.—That would be, possibly about the 11th of June.

20 Q.—A day or so after his return?

A.—Quite so.

Q.—A casual remark?

A.—Yes.

Q.—Did you ever get any further information from him?

A.—None.

Q.—Let us go back again: Do you remember the occasion of the sale of the " B " stock by the Company?

A.—Yes.

Q.—It was paid for, I think, in March 1928?

30 A.—Yes.

Q.—A matter of over \$2,000,000?

A.—Something over \$2,000,000.

Q.—What was the purpose of issuing that stock, and to what were the proceeds applied?

A.—That stock was issued for the purpose of raising money to manufacture additional quantities of whiskey, and to erect warehouses for storage and plant extension.

Q.—And was that programme carried out generally?

A.—Yes.

40 Q.—Both as to increasing the reserves of spirits, and the erection of plants?

A.—Yes.

Q.—Was the whole sum raised, acquired as soon as the funds were received by the Company, or was the expenditure spread over a period of time?

A.—The expenditure had to be spread. It could not all be used at once.

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Q.—And it was not used?

A.—It was not used.

Q.—What became of the funds in the interim, if you know?

A.—In the interim the funds lay in the Bank of Commerce.

Q.—The full amount?

A.—Beginning at over \$2,000,000 and then gradually being reduced as the expenditures were made.

10 Q.—Do you know whether those funds were put out, or employed to earn any interest until they were actually disbursed?

A.—I spoke to the Secretary two or three times about that, and asked him what they were going to do, and he told me he had seen Lord Shaughnessy about it, and also that they had got some bond-man up with suggestions regarding purchase of bonds.

Q.—In point of fact, was anything done?

A.—No, nothing was done.

20 Q.—As far as you know, was there any arrangement whereby the bank was to pay interest on that deposit?

A.—The Secretary told me that that money did not bear interest.

Q.—Can you give us an approximate idea of the average amount which was there over any given number of months?

A.—Well, the amount varied approximately. It would be \$1,500,000 over some six months.

Q.—On the average?

A.—Well, that is somewhat approximate.

30 Q.—Did you ever have any discussion with Lord Shaughnessy as to the matter of the general policy of the Company, or who was responsible for it?

A.—Shortly after Lord Shaughnessy took charge, I went into his room to speak to him about some matter of business.

Q.—Do you mean after his appointment as President?

40 A.—Yes. What that matter was, I do not recollect, and it is of no importance, but he told me on that occasion that he was responsible for everything in the Company, and that therefore, he did not intend to shift the responsibility to other shoulders; in other words, that he did not need any advice. I was somewhat taken aback by that remark.

Q.—How did that statement by him fit in with his general attitude from there onward?

A.—Well, I remained in observation. I was reluctant to believe that he meant that, but I discovered he did mean that. He carried that policy of controlling everything himself without consulting other people.

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Q.—Then, let us have an instance of what you are referring to. Do you remember the Customs Probe?

A.—Yes.

Q.—Do you remember if, as a result of that Customs Probe, claims were asserted against the Company by the Federal Government?

A.—Yes.

10 Q.—Was that matter ever discussed at any Board Meeting?

A.—The matter was never discussed at a Board Meeting. Lord Shaughnessy announced the bare fact one day, that an agreement had been made to pay the Federal Government \$1,400,000. The Directors were never consulted nor was the matter ever discussed. I am not disputing the wisdom of the agreement. It may be an exceedingly good one, but the Board were never told anything about it.

20 Q.—It has come out in evidence that there are further claims asserted by the Government against the Company in connection with landing certificates, or possibly the absence of them? Was a subject of that kind ever discussed at the Board Meetings?

A.—Those matters were never discussed at the Board Meetings I have alluded to.

Q.—Did you actually, as a Director of the Company, have any knowledge of these claims while you were in office?

A.—I had heard of them through the press, and I did hear the amount mentioned in this suit, and that is the only information I had. I knew nothing.

30 Q.—It has come out in evidence that your resignation as a Director of the Company was handed in, I think ———

His Lordship: I suggest it was the 23rd of July 1929.

By Mr. McKeown:

Q.—On the 23rd of July 1929, and was acted on in any event on the 24th of July 1929?

A.—Yes.

Q.—And accepted?

40 A.—Yes.

Q.—It has further come out in a newspaper clipping purporting to reproduce an interview given by Lord Shaughnessy in the fall, I think in October 1929, that your resignation had been requested. What was made the occasion for the request of your resignation?

Mr. Holden: I submit my learned friend should produce it. It was a written request.

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Mr. McKeown: I have no objection to produce it, if Colonel Gaudet has it. I thought I had a copy of it.

Witness: I have here the entire correspondence in connection with my resignation.

10 By Mr. McKeown:

Q.—Will you look at an original letter dated July 4th, 1929, addressed to you by Lord Shaughnessy in his own handwriting, and will you file it as Exhibit P-169?

A.—Yes.

Q.—This letter reads:

“ Office of Lord Shaughnessy,

Montreal, July 4th, 1929.

20

My dear Colonel: I have for the past week been giving serious consideration to the action on your part in selling your Alcohol shares under the circumstances which it was done, and I have discussed the matter with the other Directors and Executive officers, and have consequently arrived at the following conclusion. Your action has caused such injury to the reputation of the Company that it may take a long time to recover, and has in addition created a lack of confidence in the other Executives, which is deplorable in a Vice-President and Director. Officers and Directors of Companies are conversant with information concerning the Company's affairs which are not available to the public, and if they use the information for their own gain at the expense of their Company, then, they are not in my opinion qualified to occupy those positions. No one regrets more than I do this unfortunate occurrence on account of our long and pleasant associations, but I cannot allow sentiment to swerve me from the best interests of the Company and its shareholders. I am therefore reluctantly compelled to ask for your resignation as Vice-President and Director of the Company.

30

40

Yours very truly,

Shaughnessy.”

This letter is dated the 4th of July 1929, and is filed as Exhibit P-169. Lord Shaughnessy had returned from Europe about the 10th of June previous?

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A.—Yes.

Q.—I would take it from the contents of this letter P-169, that you had had some prior conversation with Lord Shaughnessy?

A.—Yes, originally on the 13th of June.

Q.—Just tell his Lordship what occurred at that interview.

10 By the Court:

Q.—First of all, when did you sell your shares?

Mr. McKeown: I am coming to that, my Lord.

Witness:—I sold them in the month of May, my Lord.

By the Court:

20 Q.—All of them?

A.—1,900 shares in the month of May.

By Mr. McKeown:

Q.—Will you please now answer my previous question?

By Mr. Holden:

Q.—It was on the 28th of May was it not?

30 A.—The 21st or 22nd I think—no, pardon me, the 20th or 21st of May, as far as I can recollect.

By Mr. McKeown:

Q.—Will you tell his Lordship what occurred at this interview on the 13th of June between Lord Shaughnessy and yourself?

A.—Lord Shaughnessy reproached me with selling my stock.

Q.—On the 13th of June?

40 A.—On the 13th of June. He said he had heard that the four Vice-Presidents, that is, three others and myself, were selling short.

Q.—Who were the other Vice-Presidents at that time?

A.—Lauster, Wilmore, Kelly and myself.

Q.—He said he had heard the whole four were selling short?

A.—The whole four were selling short, and he said I had hurt his feelings very much, he had been decent to me and was very much offended. I said I was sorry for that. I did not want to hurt anybody's feelings. That reminded him of a conversation which we

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had in February, 1929, and which you will find referred to in a subsequent letter, which you have in your hand, when it is produced.

Q.—Will you tell his Lordship approximately what time in February this prior conversation between Lord Shaughnessy and yourself had taken place?

10 A.—I cannot fix the date; some time in February, 1929, the stock was somewhat high, and I asked Lord Shaughnessy if he had any objection to my selling of my stock

Q.—Just a moment. How many shares did you have at that time?

A.—I had 2,480 of A stock and 335 of B.

Q.—It has come out in evidence that of the A stock, of which you had 2,480, you had received 2,000 through your engagement?

A.—Yes. I bought the other 335 with my own money.

Q.—What was the second quantity of B?

A.—335 shares of B.

20 Q.—And how much of A?

A.—2,480.

Q.—You say in February you spoke to Lord Shaughnessy. Where did this conversation take place?

A.—This conversation was in his office, in the Canada Cement Building, and he said, “You may sell your stock, it is your property, but I want you to keep an interest in the Company.”

30 Now, there was no necessity for me to do that. It was simply to avoid this misunderstanding, because I was absolutely free. There was no understanding or agreement regarding the stock, nor was it pooled or anything of that nature, the stock was mine.

Q.—You say that he so declared it was yours. What did he say in that connection?

A.—He said, “You may do as you please, it is your property, but I wish you to keep an interest in the Company.”

Q.—Did you have anything in the way of McNish Debentures, or anything of that kind?

A.—I had 5,000 McNish Debentures and still have.

Q.—Do you remember the market at that time?

40 A.—The market for the stock at that time was in the forties, between forty and forty-five, fairly high.

By Mr. Holden:

Q.—Was that in February?

A.—In February, 1929.

F. M. GAUDET (for Plaintiffs), Examination-in-Chief.

By Mr McKeown:

Q.—Mr. Montgomery, on reference to his memorandum, tells me the high was forty-five and the low was forty for February?

A.—That is what I recollect.

10 Q.—Taking the whole of your stock at forty for purposes of demonstration, it would give \$112,600 for your 2,815 shares, and in addition to that you say you had 5,000 McNish Debentures, in round figures, an investment of \$117,600 at that time?

A.—Yes.

Q.—You said that Lord Shaughnessy wanted you to keep . . .

A.—To keep an interest in the Company, and I said certainly I was quite willing.

Q.—Did you sell your shares at once?

A.—No. I did not sell them until the 20th of May, 1929, and I then sold 1,900 shares, leaving a balance of 915 shares.

20 Q.—Plus?

A.—Plus \$5,000 in McNish Debentures.

Q.—Do you remember what the market was by that time?

A.—The market was about thirty or thirty-three or thirty-four, somewhere around there.

Q.—So that would be something over \$30,000 of the Company's securities which you retained?

30 A.—I had more stock than any other Director, except Lord Shaughnessy himself. I did comply with his request and kept a very substantial interest in the Company.

Q.—Let us come back to your conversation with Lord Shaughnessy on the 13th of June, 1929. At that time he opened up the conversation by reporting to you a complaint that he had received, that the four Vice-Presidents were selling the stock short?

A.—Yes.

Q.—Had you sold any stock short?

A.—I never sold stock short in my life.

40 Q.—As far as you were concerned that charge was absolutely false?

A.—Absolutely false.

Q.—As the conversation proceeded, did the matter of the actual sale of your own shares come up?

A.—I don't know whether it was that day or the following day; he wanted to know what I had done, so I brought the brokers' slips to the office, and showed them to him. I made no secret of it, because I had his consent, but he said he had forgotten, he did not remember.

Q.—Did he undertake to deny at that time to you in any abso-

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lute or categorical manner your statement that he had consented and approved of the sale of your stock based upon the prior interview in February?

A.—No. He made no denial, except he said he did not remember, that he was very much hurt at the way I had treated him.

10 Q.—You say the first conversation took place on the 13th of June, and you had a further conversation with him the next day. Did you have any further conversation with Lord Shaughnessy upon the subject prior to the receipt of his letter of July 4th, Exhibit P-169?

A.—Well, I did go in one day subsequent to that, to see if I could make peace in some way. I told him I was very sorry, but he said he was very much hurt. He said he had treated me well. I said, “yes, you have, and I am very sorry,” but it was not any use, he would not listen to me.

20 Q.—In any of these conversations, did he ask you for your resignation?

A.—He said he would probably have to ask for my resignation, and then it was followed up.

Q.—By this letter?

A.—Quite so.

Q.—Did you allow matters to rest on receipt of that letter of July 4th, Exhibit P-169?

A.—I wrote him a reply which I think you have in your hand. That answers the case fully.

30 Q.—Before we take that up. Lord Shaughnessy, in his letter of July 4th to you, P-169, says: “I have discussed the matter with the other Directors and Executive officers.” Before communicating, or replying to Lord Shaughnessy, did you take up the subject with any of your Co-Directors in relation to the statement which I have just read to you?

A.—I did.

Q.—Who did you take it up with?

A.—Mr. Marler and Mr. Decary.

40 Q.—Were you able to verify from them that Lord Shaughnessy had discussed the subject with them, and had decided with them to ask for your resignation?

A.—As fully stated in the letter.

Q.—We will take up the letter in its turn, but I want to get facts?

A.—I had verified that they had not been consulted, and knew nothing about it.

Q.—At that time Mr. Joseph had ceased to be a Director?

A.—Yes, he had.

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Q.—You spoke to the two other independent Directors and found they had never heard of it?

A.—That is correct.

Q.—Did you send to Lord Shaughnessy the letter, copy of which I now mark as Exhibit P-170, dated July 5th, 1929?

A.—Yes, I did.

Q.—Was it sent to Lord Shaughnessy on the date it bears?

10 A.—Yes.

Q.—That is, the day following the receipt of his request for your resignation?

A.—Yes, I think so.

Q.—Will you read the letter into the record?

A.—Yes.

“ Montreal, July 5th, 1929.

20

Lord Shaughnessy,
Montreal, P.Q.

Dear Lord Shaughnessy: I have received your letter of the 4th instant in which you ask me to tender my resignation both as Vice-President and Director of the Canadian Industrial Alcohol, Limited.

30 This request I cannot entertain. In the first place, your Company and myself have a contract which I have carefully carried out both in spirit and letter. The tendering of my resignation at your suggestion before its expiry would imply an admission on my part that I had been remiss in my duty. Such a suggestion would be as false as it would be unjust.

I now come to the only question which has brought about the present serious disagreement, namely, the sale part of the stock which I hold, either having been earned under my contract or purchased with my own funds.

40 While this stock was my private property unconditional, without any obligation on my part to consult anyone as to its disposal, but to preclude the very misunderstanding which has now arisen, I called on you and asked you if you had any objection to my selling it, you replied: “Certainly you can sell your stock, it is your property, but I want you to keep an interest in the Company.” I am here quoting from your own words uttered in your office at the Canada Cement Building in February, 1929. Complying with your desire I not only kept “An interest in the Company,” but have kept and now hold some \$25,000 of stock, an amount which is in excess, I believe,

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10 of the shares held by any Director outside of yourself. This interview is as vivid in my mind as it can be and you cannot now go back on your word unreservedly given, and which was accepted in perfect good faith. Of these facts I have definite corroborative evidence. To state at this late date that you do not remember this important conversation does not justify you in the unfriendly and unjust attitude which you have taken towards me.

20 I note that you state that you have discussed this matter with the Directors of the Company before drawing your conclusion. I presume that following your precedence, you will consider that it was quite in order, that I should likewise have sought the opinion of two of the Directors, men of the highest character, Messrs. Marler and Decary, who are quite independent of office ties and the emoluments pertaining thereto. As I expected, these gentlemen were never consulted, and had their advice been sought it might have differed from that received from more inspired sources. I can only infer that you have discussed this matter with what you call "Executive officials," men who, after all are really employees of the Company, and this in my absence without giving me a chance to be heard. Perhaps you will call this fair play. I do not, and I have no more respect for the verdict given than for the method resorted to in obtaining it.

30 The accusation that the sale of a few shares of my stock has caused "injury" to the reputation of the Company from which it will take a long time to recover" is a baseless as it is unjust. You know well that the precipitating cause of the slump in the Company's shares was due to the closing of the American market. Everybody knows that. To attempt to saddle an innocent third party with such an accusation is so futile and unjust that it will be believed by no one and will not enhance the reputation of the chief Executive of the Company whose welfare he claims to have so much at heart.

40 I now come to a very important question besides which the position which I hold, and any monetary consideration that goes with it are of very little concern to me, indeed. You use words which carry with them the implication that in affecting the sale of my stock I used confidential information for my personal benefit and to the detriment of the Company which I was supposed to serve. It is a very daring man, indeed, who would attempt to cast a slur on my honor. When you spoke to me recently in a similar vein, I was impelled to forgive your angry tones and words which I thought were prompted by worry, keen

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disappointment and particularly ill-health of which you complained, but now that you write in the same frame of mind having discussed the matter with others, I not only expect, but want, an explanation and if you mean these words to convey the sense which the English language gives them, I demand an immediate apology.

10 In the meantime, no matter how distasteful the task may be, I will continue to carry out my contract with you according to its tenure until its expiry on the 1st of January, 1930, and I accordingly tender you my services for the accomplishment of such duties as pertain to my office.

Yours truly,

F. M. Gaudet.”

20 Q.—Did you receive from Lord Shaughnessy a reply to your letter which has just been read into the record?

A.—I did.

Q.—Will you produce and file the same as Exhibit P171, and read the same into the record?

A.—I do. It is on the stationery of Canadian Industrial Alcohol Limited, and is as follows:

July 6th, 1929,

Colonel F. M. Gaudet, C.M.G.
Montreal.

30

Dear Colonel Gaudet:

On my return from Toronto I received your letter of July 5th and must say I was somewhat surprised at the attitude you have taken.

40 I did not arrive at the conclusion expressed in my previous letter without very careful consideration, and as I explained to you therein it was most distasteful to me to be compelled to take the course which, under the circumstances, I felt justifiable inasmuch as I could not permit personal feelings or sentiment to affect my duty to this Company and its shareholders.

You do not seem to understand the nature of your transaction, but whether you do or not, the facts abundantly speak for themselves. Not only have you been present at Directors meetings when statements as to the affairs of the Company have been presented, but you have also made repeated inquiries from

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Mr. Kelly as to the amount of business done from time to time, and all this before you sold your stock.

One can only assume, therefore, that your stock was sold upon the strength of the information thus obtained, and was sold at a very low price. In view of the above you are not entitled, nor will you receive any apology.

10 I know of no contract which you have as an official of the Company, and as far as your being a Director is concerned, your resignation will obviate the necessity of my calling a special meeting of the shareholders to remove you from the Board.

In any event your salary as an officer of the Company will cease on August 1st next, and instructions have been given to the Secretary of the Company to that effect.

Yours truly,

20 Canadian Industrial Alcohol Limited,
Shaughnessy, President."

Q.—Do you note that by Lord Shaughnessy's letter, which has just been read, Exhibit P-171, that he fails entirely to deny the statement which you attributed to him in your letter P-170, as to the prior interview of February 1929, at which he consented to the sale of your stock?

Mr. Holden: I object to this question. . . .

30 Mr. McKeown: That is preliminary to something else.

Mr. Holden: Allow me to make my objection. I submit, my Lord, this record is long enough without my learned friend arguing the case in the form of a question to the witness. I submit it should not be done.

Mr. Campbell: And the letter is there.

40 His Lordship: Objection reserved.

By Mr. McKeown:

Q.—Lord Shaughnessy, both in his first letter to you of July 4th, 1929, Exhibit P-169, and in his second letter of July 6th, 1929, Exhibit P-171, suggests that you used information about the

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Company's position obtained by you as a Director in a confidential manner, at the meetings of the Board.

Mr. Holden: I submit, my Lord, that is not a correct statement. It is not that he used information. There is no such complaint. It is, that he learned of the falling sales and the unfavorable condition, and sold on a falling market a large block of his shares as as Vice-
10 President and Director of the Company. I submit my learned friend should not say that he "Used information."

Mr. McKeown: I do not know what this clause in Exhibit P-171 means, the clause in the letter of the 6th of July 1929, unless it means he used information. This is the quotation from the letter: "One can only assume therefore that your stock was sold upon the strength of the information thus obtained, and was sold at a very low price." My first question does not overstep the mark.

20 By Mr. McKeown:

Q.—Will you please state to His Lordship what were the facts in that respect?

A.—Lord Shaughnessy's accusation regarding my going to Mr. Kelley for information is both inaccurate and unjust, and he knows it. I had access every day to the sales reports of the Company. There were numerous copies of them throughout the office, which everybody saw, if he chose to look at them, therefore, it was entirely unnecessary for me to go to Mr. Kelly or to anybody else to obtain
30 information. Lord Shaughnessy knew it, and I take exception to what he says. It was most unfair.

Q.—Therefore, it was in no manner necessary that you should have had information as a Director, to know what the Company's position really was, especially in the matter of sales?

Mr. Holden: My learned friend is making statements in putting his questions. It is as a Director that he has access to the daily reports.

40 Mr. McKeown: The office boy has the same access to it. That is the point I am going to make.

Mr. Holden: I submit my learned friend should ask the question and not make too many statements.

His Lordship: Perhaps Mr. McKeown you can change your question.

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By Mr. McKeown:

Q.—Was such information as you got in the office of the Company concerning the brokers, and the sales information, reserved to you as a Director, or was it available to every member of the staff?

A.—It was available to everybody in the office.

10 Q.—Is a regular sales register kept from week to week?

A.—Daily.

Q.—Is that kept secretly under lock and key, or is it there in the office?

A.—It is available to anybody all over the place.

Q.—How many carbon copies are there strewn about?

A.—There are many copies.

Q.—Has it always been so?

A.—Always.

20 Q.—In point of fact, did you sell your stock because of any such information, or what was the reason?

A.—My reason for selling my stock was based on the very solemn warnings given by the Managers of all of our banks in the press; likewise, the Federal Reserve Board of the United States, warning the people that this speculation had gone to great excesses. It was further based on the fact

Q.—Just a moment: When is the end of the bank year?

A.—I don't know.

Q.—Had you got this information before you spoke to Lord Shaughnessy?

30 A.—No. I think it was afterwards that the General Managers made their statements at various times.

By the Court:

Q.—Which bank?

A.—All of the banks.

Mr. McKeown: We will put in a reproduction.

40 Witness: And also the Federal Reserve Board of the United States. It was further based on the fact that the newspapers published statements of exports to the United States. These figures were given by the Dominion Bureau of Statistics, published in the Canadian and American press. They showed that the exports had declined from one-quarter to one-half of the previous year.

By Mr. McKeown:

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Q.—In any particular line?

10 A.—In whiskies, spirits, and that was very widely known on account of the tremendous interest taken in prohibition on both sides of the line, and because the American authorities gave it wide publicity, to show, or to attempt to show that their officers were very
zealous and successful in preventing smuggling, so I did not need any information from the Company to know what to do in that case. I knew that, and everybody else knew it.

Q.—I would like to ask you another question which is more or less personal, having regard to the amount of your investment, the total investment which has been shown to have had a market value of something like \$117,000, and as to your general means, without asking you to disclose the total of your wealth. Was that a factor which influenced you?

20 A.—I held a great deal too much Alcohol stock for my means. It does not matter how good a thing is, it was too much; it was imprudent to hold that much, and I told Lord Shaughnessy that at the time.

Q.—At the time of the meeting?

A.—At the time we had had that dispute after the 13th of June. I told him it was not prudent for me to hold that much. I said, “If I lose all my money, you are not going to support me.”

30 Q.—Let us go back now to what occurred as a result of the letters which are already produced. The last letter which was filed is dated July 6th, 1929, that is, the letter P-171. Will you tell His Lordship what happened following that letter?

Witness: The letter that he wrote me?

Counsel: Yes.

A.—There was some correspondence about my contract. He said I had not any contract.

40 Q.—What did you have for a foundation of your suggestion that you were under contract until the 1st of January, 1930?

A.—I had a written intimation from the Secretary of the Company.

By Mr. Holden:

Q.—Will you show it to us before you go further?

By Mr. McKeown:

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Q.—You had tendered your services?

Mr. Holden: I would like Your Lordship to give a ruling.

Mr. McKeown: Don't be so technical.

10 Mr. Holden: Don't make statements to the witness.

Mr. McKeown: I am making statements of facts based upon the proven matter by writing, which is not disputed by my learned friend, that is, the concluding paragraph of Exhibit P-170 in which Colonel Gaudet writing to Lord Shaughnessy said:

20 “In the meantime no matter how distasteful the task will be, I will continue to carry out my contract with you according to its tenure until its expiry on the 1st of January, 1930, and I accordingly tender you my services for the accomplishment of such duties as pertain to my office.”

That is a perfectly proper question.

Mr. Holden: Ask him questions.

His Lordship: Objection reserved.

30 By Mr. McKeown:

Q.—By your letter, Exhibit P-170, as a concluding paragraph you had refused to resign and had tendered your services as an employee under your contract?

A.—Yes, for the reasons stated.

Q.—You say you took legal advice?

A.—Yes.

Q.—With respect to the dual question of your resignation and your right to salary?

40 A.—Yes.

Q.—Did you have any interviews with Lord Shaughnessy, or with anyone on his behalf?

A.—No.

Q.—Was there any correspondence in that connection?

A.—Not until the final payment was made. I do not recollect any.

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Q.—Will you please look at the letter, and see if it refreshes your memory?

A.—Yes. Lord Shaughnessy was seen by Mr. J. W. Cook, K.C., and Mr. Cook suggested——

Q. (interrupting)—For whom was Mr. Cook acting?

A.—Myself.

10 Mr. Holden: If it is of any importance——

Mr. McKeown: It is not of any importance.

Mr. Holden: —If my learned friend wishes to know what Mr. Cook, K.C., suggested, Mr. Cook can very easily tell Your Lordship. The letter, of course, may be produced, but any evidence as to what Mr. Cook suggested should not come from anyone else.

20 His Lordship: It is really not very material. The important question is whether or not the Company paid Colonel Gaudet his salary up to January 1st, 1930.

Mr. Holden: I submit Colonel Gaudet should not tell what Mr. Cook suggested to Lord Shaughnessy.

30 Mr. McKeown: It is only explanatory and collateral, and it does not make any difference. It is only required to make a sensible sentence in English in the interrogative form.

Mr. Holden: I submit with confidence the witness should not state what Mr. Cook said to Lord Shaughnessy.

His Lordship: In the first place, it would be hearsay evidence; and, in the second place, what I am interested in knowing is whether the Company ultimately paid Colonel Gaudet the rest of his salary.

40 Mr. Campbell: It is all in writing.

Mr. McKeown: My only object is to get the letters in.

Mr. Campbell: Then, file them.

Mr. McKeown: Does Your Lordship think the question should not be put?

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His Lordship: You may file the letters. Whether Colonel Gaudet got his money without taking legal advice does not matter.

Mr. McKeown: I want to file the letters.

His Lordship: If Colonel Gaudet had to take legal advice, I
10 suppose he had to pay for it.

By Mr. McKeown (continuing):

Q.—I had not intended to ask you what Mr. Cook told you, or anything of that nature; but will you please tell His Lordship what occurred following your interview or consultation with Mr. Cook?

A.—There was some correspondence with Lord Shaughnessy. He wrote me a letter, in which he said——

20 Mr. Campbell (interrupting): If we are going into that, I submit the letter should be produced.

His Lordship: I think you are right, Mr. Campbell. The letter should be filed.

Witness: He wrote me a letter, which I now produce as Plaintiff's Exhibit P-173.

30 By Mr. McKeown (continuing):

Q.—Will you please read this letter into the record?

A.—(Reading):

“CANADIAN INDUSTRIAL ALCOHOL COMPANY.

Montreal, July 15th, 1929.

Colonel F. M. Gaudet,
Montreal, Que.

40

Dear Colonel Gaudet:

I have had an interview with Mr. J. W. Cook, K.C., at which he informed me that you feared if you tendered your resignation to the Company such action on your part might affect your legal rights.

I can assure you that no resignation which you tender would

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be used in that way by the Company and such legal rights as you may pretend to have would not in any way be prejudiced thereby.

10 I am quite prepared to admit that in your letter to me you tendered your services to the Company and were informed that those services are not required, and in the event of your resigning neither the tender of your services nor any legal rights which you claim to have will be in any way affected.

Yours very truly,

Canadian Industrial Alcohol Co., Ltd.,

Shaughnessy,
President.”

20 Q.—Did you reply to that letter which has just been read?

A.—Yes.

Q.—Will you produce a copy of your reply as Exhibit P-174, and read the same to the Court?

A.—Yes.

(Reading)

“July 16th, 1929.

Lord Shaughnessy,

30 President, Canadian Industrial Alcohol Co., Ltd.
Montreal.

Dear Lord Shaughnessy:

I have carefully read your letter of the 15th instant.

Mr. Cook's suggestion to me, and which he embodied in a letter to you, had for object the relieving of a situation which is distasteful to us both by providing for my non-attendance at the office, without prejudice to any of my rights.

40 My resignation is another matter, as it involves my duties as an Executive Official as well as those of a Director of the Company. The first includes the payment of the services which I have tendered until the expiry of my contract on the 31st December next; and the second, amongst other things, attendance at Board Meetings for the same period.

Considering the disagreement we have had I am convinced that it will be almost impossible for me to render useful service

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as a Director in the interest of the Company and its shareholders, because any recommendations that I might wish to make could not be acceptable to you, and having control of the stock you have ample powers of over-ruling them.

10 Under these circumstances the whole question resolves itself into one of the payment of my services to the end of the year, and of my resignation from the Board. I feel disposed to meet you in this way, provided we act simultaneously and immediately.

This proposal is, of course, without prejudice to any of my legal rights.

Yours truly,

F. M. Gaudet."

20 Q.—Did you receive a reply to this letter of July 16th, which has just been read, and, if so, will you please produce the same as Exhibit P-175, and read it into the record?

A.—Yes, I did.

(The letter reads:

" CANADIAN INDUSTRIAL ALCOHOL COMPANY, LTD.

Montreal, July 22nd, 1929.

Colonel F. M. Gaudet, C.M.G.,
Montreal.

30

Dear Colonel Gaudet:

I beg to acknowledge receipt of your favor of the 16th, the contents of which have been discussed by me with the Directors of the Company.

40 In view of your long service with this organization the position of the Board, of which I am requested to advise you, is that they are agreeable you be paid your salary for the balance of the year, provided you tender your resignation immediately as Director and Officer of the following Companies: Canadian Industrial Alcohol Company, Limited; Consolidated Distilleries, Limited; St. Hyacinthe Distillery, Limited; Wisers Distillery, Limited; Consolidated Distilleries of Manitoba, Limited; Canadian Industrial Alcohol of Manitoba, Limited.

As soon as this resignation is received a cheque will be delivered to you for your salary for the balance of the year, which the Secretary reports amounts to \$7,500, and which you

F. M. GAUDET (for Plaintiffs), Examination-in-Chief.

undertake to accept in full of all claims which you have or may pretend you have against any of the Companies above mentioned.

It is understood that this letter is written entirely without prejudice to this Company's rights in the event of non-acceptance.

10 Yours very truly,

Canadian Industrial Alcohol Co., Ltd.,

Shaughnessy,
President."

20 Q.—Did you reply to that letter from Lord Shaughnessy, and, if so, will you produce a copy of your reply as Plaintiffs' Exhibit P-176, and will you please read it to His Lordship?

A.—Yes. The letter reads:

"July 23rd, 1929.

Lord Shaughnessy,

President, Canadian Industrial Alcohol Co., Ltd.,
Montreal.

Dear Lord Shaughnessy:

30

In reply to your letter of 22nd instant, I am enclosing a copy of my letter sent to the Secretary of Canadian Industrial Alcohol Co., Ltd., tendering my resignation as a Director and an officer of this and other Companies enumerated in your communication, and asking him to see that proper resolutions are passed accepting such resignation, making it immediately effective, and relieving me of any further responsibilities in connection therewith.

Yours truly,

40

F. M. Gaudet."

Q.—In the letter just filed as Exhibit P-176 you refer to a copy of a letter sent to the Secretary of the Alcohol Company tendering your resignation. Will you now produce and file as Exhibit P-177 copy of the letter sent by you to the Secretary of the Alcohol Company resigning from the Board?

A.—I do.

F. M. GAUDET (for Plaintiffs), Examination-in-Chief.

Q.—Will you please read it into the record?

A.—(reading)

“July 23rd, 1929.

J. G. Lawrence, Esq.,
Secretary, Canadian Industrial Alcohol Co., Ltd.,
Montreal.

10 Dear Sir:

In consideration of the payment to be made to me on receipt of this letter of the sum of \$7,500, being the balance of my salary to the end of this year, and for the further reasons given in my letter of the 16th July instant to the President of the Canadian Industrial Alcohol Company, I hereby tender my resignation as Director and Officer of the following Companies, said resignation to become effective at once: Canadian Industrial Alcohol Company, Limited; Consolidated Distilleries, Limited; St. Hyacinthe Distillery, Limited; Wisers Distillery, Limited; Consolidated Distilleries of Manitoba, Limited; Canadian Industrial Alcohol of Manitoba, Limited.

20

Will you please bring the tendering of my resignation up at the next regular Meeting of the Board of Directors of the Canadian Industrial Alcohol Company, Limited, and other Companies above enumerated, requesting them to accept it and forward me duly certified copies of the resolutions embodying the tender and acceptance thereof.

30

Yours truly,

F. M. Gaudet.”

Q.—Did you also receive at this time a letter from Mr. Lawrence, Secretary of the Company, forwarding a cheque for \$7,500 to you; and, if so, will you produce it as Exhibit P-178?

A.—Yes, I did. I produce the letter as Exhibit P-178.

Q.—Will you please read it into the record?

A.—(Reading)

40

“July 22nd, 1929.

Colonel F. M. Gaudet,
Montreal.

Dear Sir:

I herewith enclose the Company's cheque for \$7,500 in full payment of your services until the first of January, 1930. It is

F. M. GAUDET (for Plaintiffs), Cross-Examination.

also understood that no further services will be required from you on and after this date.

J. G. Lawrence,
Secretary.”

Q.—Under date August 5th, 1929, did you receive a further letter from Mr. Lawrence with a copy of Resolution passed by the
10 Directors under date July 24th, 1929, accepting your resignation?

A.—Yes.

Q.—Will you please produce it as Exhibit P-179?

A.—Yes.

And it being 12.30 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.

20

And at 2.30 o'clock in the afternoon, April 7th, 1930, personally came and reappeared the said witness.

FREDERICK M. GAUDET,

and his testimony was continued as follows:

30 Cross-examined by Mr. A. R. Holden, K.C., of counsel for defendants.

Q.—According to your recollection, when did Mr. Lawrence tell you that the money in the Bank from the sale of the “ B ” shares drew no interest?

A.—Shortly after the sale of that stock—not very long after.

Q.—After the completion of the sale, or the beginning of the sale?

A.—After the completion of the sale.

40 Q.—I can show you the Bank record, which establishes the fact that it drew interest from the very beginning of the sale, and, in fact, this record shows that up to December, 1928, it had already earned over \$16,000 of interest.

Mr. McKeown: The first credit is on May 31st, and the stock was sold on March 31st.

Mr. Holden: They commenced the sale of shares in February.

F. M. GAUDET (for Plaintiffs), Cross-Examination.

Mr. McKeown: Is not the first interest shown on May 31st?

Mr. Holden: May 31st is the first interest shown on this sheet.

Mr. McKeown: But, this sheet does not say what date it runs from?

10 Mr. Holden: Colonel Gaudet has just stated that according to his recollection it was after the end of the sale he was told that.

Witness: I do not know whether it was at the beginning, or the end, but he told me some time after we got the money.

By Mr. Holden (continuing):

20 Q.—In face of the Bank's records in that connection would you still testify that he told you it was not earning interest?

A.—He was considering the investment of the money in bonds, or call loans—placing it on call—and he led me to believe we were getting nothing from the Bank, and that it would be better to buy bonds or put the money out on call. That was the situation.

Q.—That was what you understood in any event?

A.—I did.

30 Mr. Montgomery: Do you know, Mr. Holden, at what rate this interest is figured?

Mr. Holden: No, I have not figured it out.

By Mr. Holden (continuing):

Q.—You testified that in February, 1929, Lord Shaughnessy said you could sell your shares if you wanted to do so. At that time the market price of the shares was high, was it not?

A.—Yes.

40 Q.—And the returns of sales were still keeping up, were they not?

A.—I do not know. Maybe.

Q.—I do not mean the sales of shares; I mean the sales of gallons. The returns you have told us you had daily communication of showed up to that time there was not yet any falling off?

A.—I would not like to say no positively.

Q.—In any event, this is the position as I understand it—am I

F. M. GAUDET (for Plaintiffs), Cross-Examination.

not right in telling the Court that what Lord Shaughnessy complained of was not that any shareholder should sell his shares if he wished to do so, but that a Vice-President and Director and important Official should sell 2,000 shares (the bulk of his holdings) on a falling market and with his knowledge of the Company's records showing falling-off of sales. Was not that his complaint, as you understood it?

10 A.—Lord Shaughnessy gave me his consent unconditionally. If he changed his mind, it was his duty to tell me so.

Q.—I did not mean to ask you to argue the point. What I aimed at was this: I understand your evidence to be that he gave his consent in February that you as a shareholder should sell your shares. Is it not true that his complaint in June was because you as a Vice-President and a Director and an important official of the Company dumped the bulk of your shares on a falling market as to the price of shares and with a falling record as to the sales of goods? Was not that his complaint, as you understood it?

20 A.—I do not know his complaint. I know as a Vice-President and a Director I have no interest in the Stock Market: I am interested in the earnings of the Company. I have nothing to do with gambling on the Stock Market.

Q.—The earnings were diminishing on the falling sales when you sold, were they not?

A.—They were.

Q.—You said just now that you had no interest in the market. What did you get for your shares when you sold them?

30 A.—I got 33, or thereabouts.

Q.—To whom did you sell them?

A.—MacDougall & Cowans.

Q.—The record already filed shows 28½.

Mr. Montgomery: That cannot be right. That is lower than the low.

Mr. Holden: I am sorry. It is my mistake.

40 By Mr. Holden (continuing):

Q.—You say it was 33?

A.—I got about 33 for the shares that were sold while I was in the employ of the Company.

Q.—On May 28th, 1929, you sold 2,000 shares, and those were the shares for which you got 33?

A.—No, I did not.

F. M. GAUDET (for Plaintiffs), Cross-Examination.

Q.—Then, tell me the fact.

A.—I sold 1900 shares on May 20th and 21st.

Q.—And, you got 33 for them?

About that.

Q.—You sold 1900 shares in the month of May?

A.—Yes.

10 Q.—And, about the middle of June you bought back 380 shares?

A.—I did not.

Q.—Did you ever buy any back?

A.—No.

Q.—We have a record which shows you did.

A.—Then, your record is wrong.

Q.—When did you sell the remainder of your shares?

A.—After I left the Company.

Q.—Do you remember the date?

A.—I do.

20 Q.—What was it?

A.—That has nothing to do with this case. That is my private business.

Q.—Have you any objection to telling the Court when it was?

A.—No. If His Lordship wishes the information I would be pleased to give it.

Q.—I would like to have it in the record, for His Lordship's use.

A.—It was in September.

30 Q.—When I asked you the reason of Lord Shaughnessy's complaint you said you had no interest in the market price. Is it not true that one part of his complaint was that you in your position as a Vice-President and Director and an important official of the Company sold 1900 of your shares on a falling market?

A.—No, he never said so.

Q.—Then why did you write in your letter Exhibit P-170?

40 “You know well that the precipitating cause of the slump in the Company's shares was due to the closing of the American market. Everybody knows that. The attempt to saddle an innocent third party with such an accusation is so vitally unjust that it will be believed by no one, and will not enhance the reputation of the Chief Executive of the Company whose welfare he claims to have so much at heart.”

Why do you refer to your contention that the precipitating cause of the slump in the shares was due to the closing of the American market?

F. M. GAUDET (for Plaintiffs), Cross-Examination.

A.—It was because Lord Shaughnessy was blaming me for contributing to the fall in the selling price of the stock on the market.

Q.—And, that was why you referred to it?

A.—Yes.

Q.—Are you still of the same opinion as you there expressed?

A.—Yes, I am.

10 Q.—Then, you do not agree with the plaintiffs when they allege in Paragraph 112 of their Declaration that the depreciation in the price of shares of the Alcohol Company was due to the faults of Lord Shaughnessy?

A.—I have nothing to do with that.

My reply requires some explanation.

Q.—Do you wish to give it?

A.—Yes.

Q.—Then, you may do so.

20 A.—I sold 1900 shares of stock, as I said before, out of a total of 1,092,000 shares outstanding. That is equal to exactly .0171 per cent—less than two tenths of one per cent. If a Company could not stand the sale of a small fraction of one per cent of its shares there must have been something wrong with the Company—it must have had pernicious anemia, or something of the kind.

Q.—You mean your shares would be a small influence?

A.—Merely a drop in the bucket.

30 Q.—And when you stated so emphatically in Exhibit P-170 that the precipitating cause of the slump in the Company's shares was due to the closing of the American market, and you added "Everybody knows that," you were evidently speaking with conviction on those facts?

A.—The Stock Market in general, both the Alcohol shares and other stocks, dropped at that time. That was a condition existing at that time. My selling 1900 shares had nothing whatsoever to do with the situation, and had no effect on it.

Q.—Did the same conditions of the American market affect the result in sales?

A.—Yes. It was published in the papers.

40 Q.—You spoke about the cessation of the Meetings of the Executive Committee of the Canadian Industrial Alcohol Company. Am I not right that the By-laws of that Company were changed in October, 1924? Do you remember that?

A.—I am afraid I do not know that fact.

Q.—Were you a Director in 1924?

A.—Yes.

Q.—And, you do not know whether the By-laws were changed or not?

F. M. GAUDET (for Plaintiffs), Cross-Examination.

A.—I have no recollection at the moment.

Mr. McKeown: That was the new Corporation.

By Mr. Holden (continuing):

10 Q.—I suggest to you that the old By-laws provided for an Executive Committee, and the new By-laws, which came into force in October, 1924, made no such provision.

A.—I would not like to say no. I do not know.

Q.—You do not know at the moment whether that is so or not?

A.—No.

Q.—I can show you the By-laws establishing the fact, if you wish.

20 You complained in your evidence-in-chief that soon after Lord Shaughnessy became President, in 1925, he took all the responsibility upon himself, or, as you put it, did not want any advice, and that he took work away from you (as I understood you) and would not give information, and other complaints that you mentioned. What letters or written communications did you make to Sir Mortimer Davis about those complaints of yours regarding Lord Shaughnessy?

A.—I never wrote Sir Mortimer Davis in my life.

Q.—Why did you not; if you found or thought those complaints were of any importance?

A.—I had no occasion to write to Sir Mortimer. I was working under Lord Shaughnessy.

30 Q.—Did you put any such complaints in writing to Lord Shaughnessy, or to anybody else, at any time?

A.—I went to Lord Shaughnessy one day . . .

Q.—(interrupting): I wonder if you would mind saying yes, or no, first? Did you put any such complaint in writing to Lord Shaughnessy or to anyone else at any time?

A.—No.

Q.—Do you want to add anything?

40 A.—I went to Lord Shaughnessy one day, and I told him I was not getting enough work. He said it did not matter: as long as I was about it was all right. That was one complaint I made to him, amongst others.

Q.—About when would that be?

A.—That would be some time back.

Q.—Of course, that is very vague. About when?

By the Court:

F. M. GAUDET (for Plaintiffs), Cross-Examination.

Q.—Before Sir Mortimer's death, or after?

A.—I think shortly after Sir Mortimer's death.

By Mr. Holden (continuing):

10 Q.—I see in your letter Exhibit P-170 you wrote, on the first page, that you had "A contract which I have carefully carried out both in spirit and in letter." Is it not true that if at that time you had had any complaints, or thought you had any complaints, with regard to Lord Shaughnessy in any way interfering with your usefulness and your work you would have said so?

Mr. Montgomery: It that a question?

Mr. Holden: Colonel Gaudet understands.

20 Witness: I was not going around every day complaining. Lord Shaughnessy knew the situation, and knew I had nothing to do.

Q.—When you wrote this letter of July 5th, 1929, Exhibit P-170, did you say you were not complaining of anything?

A.—Lord Shaughnessy wanted to force me to resign. I refused to resign, because that would have been an admission that I had not done my duty, which would have been false, and I refused to resign for that reason.

30 Q.—Now that we are on this point, let me ask you this: I see in the latter part of your letter, Exhibit P-170, you wrote that you not only expected but wanted an immediate apology?

A.—Yes.

Q.—And Lord Shaughnessy, in his answer, Exhibit P-171, wrote "You are not entitled to nor will you receive any apology?"

A.—Yes.

Q.—What else did you do about that?

A.—He refused to apologize, and I could not do anything else about it. I got my money, and that was all I wanted.

40 Q.—You got your money, and that was all that transpired after that emphatic demand for an apology?

A.—Yes.

Q.—How did you come to be appointed a Vice-President?

A.—By Lord Shaughnessy.

Q.—Do you remember an interview with Lord Shaughnessy in that connection before you were appointed?

A.—Very well.

Q.—And Lord Shaughnessy at that time had told you that Mr.

F. M. GAUDET (for Plaintiffs), Re-Examination.

Wilmore and Mr. Kelly were going to be appointed, and you were not mentioned then?

A.—That is correct.

Q.—What happened then? How did you come to be appointed?

10 A.—Lord Shaughnessy told me one evening that he was appointing those two men and putting them over my head. I, therefore, went to him the next morning and asked him if that meant he wished me to go—to resign. I offered to resign, and he said no. I asked him to reconsider the position, and he did so and made me a Vice-President. I went to him because I thought it was an unfair thing. I thought it was pretty bad administration. If you are going to break up an organization by passing people over, it was a good way of doing it. People are not likely to stay in a company when they are treated like that.

20 Q.—What duties were assigned to you after you were appointed a Vice-President?

A.—None.

Q.—Were you not put in charge of industrial alcohol?

A.—There was no change made in my duties.

Q.—What were your duties before that?

A.—My duties, given to me some time after I went in, were manufacturing, purchasing, and engineering. There was never any change made.

Q.—Did you have anything to do with the Lindsay plant?

30 A.—Yes.

Q.—What did you do?

A.—I prepared the scheme, and got the thing ready.

Q.—Including the estimates?

A.—Yes, I made estimates of cost.

Q.—Did you superintend the construction of that plant?

A.—At the very beginning. There was very little done—nothing to speak of.

Q.—Did you superintend what was done?

A.—Yes.

40 Q.—And, you went to the United States to buy machinery?

A.—Yes.

Q.—Were you still working on that practically up to the time you left the Company?

A.—Yes: about a quarter of an hour's work a day.

Re-examined by Mr. McKeown, K.C., of Counsel for Plaintiffs:

Q.—Approximately what percentage of the Company's turnover would be represented by Industrial Alcohol?

Witness: In volume, or in value?

F. M. GAUDET (for Plaintiffs), Re-Examination.

Counsel: In value.

A.—It is very small.

10 Q.—I am instructed that the statement of the Canadian Bank of Commerce, which was in the hands of Mr. Holden when he was asking you with reference to the interest on the money from the “B” stock, works out on a basis of approximately 2 per cent. I do not ask you to verify this figure, but for the purpose of my question, assuming it to be so (and we will endeavor to prove it later) what could have been obtained on call loans for that money at the same time?

A.—Call loans in New York ran up to 20 per cent. at one time.

Q.—Just speak of call loans in Montreal for the moment.

A.—Certainly not less than 6 per cent.

Q.—And had the money been lent in New York the rates would have been even higher?

A.—Yes.

20 Q.—My learned friend Mr. Holden suggested that you had bought 380 shares of stock in June last. Is there any foundation for such a suggestion?

A.—None whatever. I did not buy any.

Q.—Did you say something about having a certain number of “B” shares?

A.—I had 335 “B” shares.

Q.—Were the shares all registered in your own name, or were some of them carried in the names of your brokers?

30 A.—In my name.

Q.—At all times?

A.—At all times.

Q.—How many?

A.—2,480 “A,” and 335 “B”. I think that makes 2,815. I think there is some mistake in the statement you have.

Q.—In any event, these are the facts?

A.—Yes, these are the facts.

By the Court:

40

Q.—Did you say at what time the Meetings changed from consultations to mere routine meetings?

A.—It was some time after Sir Mortimer’s death.

Q.—During your stay with the Company did you experience any effects of that change in the policy of the Company?

A.—Yes, I did.

Q.—What were the effects you experienced of that change?

F. M. GAUDET (for Plaintiffs), Re-Examination.

A.—When those meetings were held under Sir Mortimer we knew what was going on: we knew the policy; we were invited to give our opinions, and to discuss the affairs. After that there was a complete silence and one did not know, and there was a tendency on the part of everybody to keep what they did know to themselves, and there was not an interchange of information.

10 Q.—Were the effects of that new policy shown by results of any kind, and, if so, in what way and what were the results?

A.—There was a loss of interest of people, and the staff did not work as well together because people were afraid to talk or afraid to say anything. If one went for information anywhere, it was difficult to get it. As the Secretary said to me, he knew things, but he was not at liberty to tell me although I was a Director. I did not want to embarrass him so I did not press the point.

20 Q.—You cannot give a concrete case where the Company lost either sales or earnings or anything else through that change of policy?

A.—It would be difficult to trace any alteration in sales or earnings directly to that, but I can add I know that the staff did not work as well together, they were not as satisfied.

Q.—If I remember correctly, you said that at the interview of June 13th, 1929, when Lord Shaughnessy first spoke to you about the sale of your shares, he said that you and other employee-Directors of the Company had sold their shares, or were selling short.

A.—He said that the four Vice-Presidents had been selling short—that he had been told that.

30 Q.—Who were the four Vice-Presidents?

A.—Mr. Wilmore, Mr. Kelly, Mr. Lauster, and myself.

Q.—Do you know whether Mr. Wilmore, or Mr. Kelly, or Mr. Lauster were reprimanded by Lord Shaughnessy?

A.—No, I do not.

Q.—Did you ask them whether they had sold their shares, or whether they had sold short?

A.—No. Mr. Lauster was in London, so it is hardly likely a man would sell short from London unless he was very venturesome.

40 Q.—If I remember well, Mr. Lauster had ten shares, and he sold nine of them. In any event, you do not know whether he sold?

A.—No.

Q.—What about Mr. Kelly? Did you speak to him?

A.—I did not speak to any of them.

Q.—And, you have not heard from any other source whether they sold or not?

A.—No.

Q.—Besides the employee-Directors there were non-employee-

F. M. GAUDET (for Plaintiffs), Re-Examination.

Directors of the Company, namely, Mr. Joseph, Mr. Decary, and Hon. Mr. Marler?

A.—Yes.

Q.—What was the particular specialty of Mr. Joseph when he was a Director of the Company?

A.—He had no specialty, if I understand your question correctly.

10 Q.—I was wondering on what account he had been selected a Director of the Company.

A.—That goes back a long way.

Q.—He was a personal friend of Sir Mortimer's?

A.—Yes.

Q.—What was Mr. Decary's particular work with the Company? He had two shares.

A.—I do not think any of those gentlemen, so-called outside Directors, had any particular work. They attended monthly.

Q.—Were they doing anything special for the Company?

20 A.—Not that I am aware of. The influence of their positions and standing in the community was, of course, beneficial.

Q.—You mean their political influence?

A.—Influence of every kind, I imagine, yes.

Q.—What was Mr. Marler's special line?

A.—Mr. Marler interested himself in every way; in Ottawa, for example, if he could do anything I have no doubt he did it. I do not quite know exactly.

Q.—Was he a Member of Parliament when he was made a Director?

30 A.—No, I do not think so. I think it was before that. He was a Director for a long time.

Q.—He was elected a Member of Parliament in 1921.

A.—I came to the Company in 1922, and Mr. Marler was then a Director.

And further deponent saith not.

ANDREW C. HERSEY (for Plaintiffs), Examination-in-Chief.

On this seventh day of April, in the year of Our Lord one thousand nine hundred and thirty personally came and appeared

ANDREW C. HERSEY,

10 residing at No. 21 Grove Park, Westmount, Vice-President, St. Hyacinthe Distillery Company, Limited, aged 35 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.—Your name has been mentioned in connection with this enquiry. Will you tell His Lordship when you first joined the staff of the Canadian Industrial Alcohol Company?

20 A.—About the middle of November, 1925.

Q.—In what capacity?

A.—I was taken on the staff, through Sir Mortimer Davis, to understudy Mr. Hill in the St. Hyacinthe Distillery Company.

Q.—What was Mr. Hill's position in that Distillery?

A.—Vice-President.

Q.—Had you known Sir Mortimer before that time?

A.—Yes.

Q.—For many years?

A.—A period of three or four years, personally.

30 Q.—You are a son of Dr. Milton Hersey, of Montreal?

A.—Yes.

Q.—And you have lived here all your life?

A.—Yes.

Q.—Where were your headquarters when you first joined the Company?

A.—In the Montreal Office, Canada Cement Building.

Q.—All the subsidiaries were run from the same general office?

A.—With the exception of Wiser's Distillery.

Q.—They had a separate office?

40 A.—They had a separate office, on Phillips Square right close to our building.

Q.—At the time you first became connected with the St. Hyacinthe Distillery was that plant in operation as a distillery?

A.—I think it had just closed down when I joined the Distillery. They had just ceased manufacturing and operating it as a distilling company.

Q.—From that time forward what was done at St. Hyacinthe?

ANDREW C. HERSEY (for Plaintiffs), Examination-in-Chief.

A.—It was operated practically entirely as a bottling room—a bottling department.

Q.—The plant is located in St. Hyacinthe?

A.—Yes, in St. Hyacinthe.

Q.—Did the maturing spirits on hand remain there?

A.—Yes. We have two tank warehouses there in which we matured the spirits.

10 Q.—Did you finally succeed Mr. Hill as Vice-President of the St. Hyacinthe Company?

A.—Yes.

Q.—On what date?

A.—I took over those duties on January 1st, 1927.

Q.—By whose direction?

A.—Sir Mortimer Davis.

Q.—And, you have retained that position up to the present time?

20 A.—With the exception of a time I spent in London and France with McNish Company.

Q.—That would be some time in the early part of 1928?

A.—January, 1928.

Q.—Upon your return did you resume your duties as Vice-President of the St. Hyacinthe Distillery?

A.—Yes.

Q.—Did you become a Director of St. Hyacinthe Distillery immediately upon joining up with the Company in 1925?

A.—No.

30 Q.—It was only in 1926, when you became Vice-President you were on the Board?

A.—Yes, to my knowledge.

Q.—So, it is a matter of upwards of three years?

A.—Yes.

Q.—Have there been any Meetings of the Directors or Shareholders of St. Hyacinthe Distillery since you became Vice-President?

A.—No, I have never attended a Meeting of St. Hyacinthe.

Q.—So far as you know, have any Meetings been held?

40 A.—The only indication I have that Meetings were held was that the Minute Book was brought to me to be signed.

Q.—The Minutes of the Meetings?

A.—Yes.

Q.—Brought to you by whom?

A.—Generally by Mr. Lawrence, or his stenographer.

Q.—In point of fact there have not been any Meetings at which persons were actually present?

A.—Not that I know of, no.

ANDREW C. HERSEY (for Plaintiffs), Examination-in-Chief.

Q.—What is the condition of the St. Hyacinthe Distillery at the present time? Is there any liquor there still?

A.—We have about 400 cases in the bonded warehouse.

Q.—400 cases of what?

A.—About 400 cases of gin.

Q.—Is that all?

A.—Yes, that is all.

10 Q.—About what would those 400 cases represent in gallons?

A.—About 1.59 gallons per case.

Q.—About 600 or 700 gallons?

A.—Yes.

Q.—Of case liquor?

A.—Yes.

Q.—And, that is all there is?

A.—Yes.

Q.—Is there any alcohol there?

20 A.—There is alcohol in the tank warehouse.

Q.—How much?

A.—Very little. I think the last reports I saw showed we had available for shipment around half a carload—that would be about 21 ninety gallon drums.

Q.—Is bottling still carried on at St. Hyacinthe?

A.—No.

Q.—When was it stopped?

A.—It was stopped over a year ago.

30 Q.—Were you consulted about it? Before it was done did you know it was going to occur?

Witness: What?

Counsel: The stopping of the bottling.

A.—No.

Q.—How did you happen to know of it?

40 A.—I was requested by Mr. Lawrence's stenographer to hand over the trademarks and registration of labels from the Department in Ottawa, and sign them over to the Consolidated Distilleries; which I refused to do. Then I went to Mr. Lawrence, and he gave me to understand that Consolidated Distilleries were going to take over the brands of the St. Hyacinthe Distillery and bottle them at Corbyville.

By Mr. Holden:

Q.—When was this?

A.—About a year and half ago.

ANDREW C. HERSEY (for Plaintiffs), Examination-in-Chief.

By Mr. McKeown (continuing):

Q.—Did you take it up with any other official of the Company?

A.—Yes. I then went to Lord Shaughnessy and asked him if it was so that my instructions were to hand over those registrations and labels, and he told me they were.

Q.—And, you signed them as an official of the Company?

10 A.—I forget whether I signed them. I know I turned them over personally to Mr. Lawrence's department.

Q.—How many brands had previously been bottled at and put out from St. Hyacinthe?

A.—Six.

Q.—Do you know whether those brands are now being put out from Corbyville?

A.—I understand one of them, and perhaps two, are being put out there now.

20 Q.—Do you know anything about a declaration of dividend at any time by St. Hyacinthe Distilleries?

A.—The only dividend I have any knowledge of ever having been declared by the Company was declared this year.

Q.—When?

A.—At the end of our fiscal year: September 30th.

Q.—What was that dividend?

A.—When the Minutes were brought to me to be signed I read it as one-sixth of one per cent.

30 Q.—You mentioned a few moments ago that there was an *inter regnum* in your services in the office of Vice-President of St. Hyacinthe Distilleries. That was while you were in London and in France in connection with McNish?

A.—Yes.

Q.—Do you know anything of the circumstances under which that change was brought about?

Witness: A change in the McNish Company?

Counsel: No. Your connection with the McNish Company.

40 A.—The first intimation I had of it was through an interview with Lord Shaughnessy, who told me that Sir Mortimer had either written or cabled requesting that I go to London, and prior to going there that I proceed to the South of France, to Cannes, to interview him.

I think originally it was intended that I should be one of two salesmen to make a trip around the world. I think that was the connection I went over there on.

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Q.—On what date did you sail?

A.—I left Montreal on January 4th, and sailed from New York on the 6th.

Q.—What year?

A.—1928.

10 By the Court:

Q.—How long were you on that trip altogether?

A.—I returned around the end of March. I brought Sir Mortimer's body home.

Q.—Did you go to Cannes?

A.—Yes.

Q.—At what time?

A.—I went to Cannes in January, 1928.

Q.—After having stopped in London?

20 A.—No, sir. I disembarked at Cherbourg, and from Cherbourg to Paris and from Paris to Cannes.

Q.—How long in Cannes?

A.—I was in Cannes about four or five days.

Q.—How long in London?

A.—The remainder of my time until Sir Mortimer Davis died. I left there at noon on the 22nd of March for Cannes.

By Mr. McKeown, K.C.:

30 Q.—Will you refer to a letter from Sir Mortimer Davis addressed to Lord Shaughnessy, upon the file which has been produced by Mr. Reaper, from Paris, the second paragraph, on page three, and read the same into the record?

A.—(reading):

40 "I am very much disappointed with Turnbull. He is full of Scotch cunning; he is good at criticising but never makes a suggestion. As we promised to give him back his position, do so, but I certainly don't consider from what I have seen, that he has any ability. His object is to impress one that he is the whole cheese. With that faculty he might be a good buyer, but I would certainly keep a close check on him in large transactions.

I have received your cable re Hersey, answered as follows: 'Not necessary come immediately. Satisfactory he leave about first year.' I propose putting Hersey in Turnbull's place and it will be a permanent position located at head office, London. I

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believe there is more in Hersey than is shown on the outside. He will develop if given an opportunity. You will have to replace him in Ste. Hyacinthe with some young man that has some vision. Have Hersey come direct to Cherbourg and come to Cannes before going to London.”

10 Q.—That letter that you probably never saw before refers to you?

A.—Yes.

Q.—As you said to His Lordship, following up this letter of Sir Mortimer Davis you went over to the other side, and went direct to Cannes first?

A.—Yes.

Q.—And saw Sir Mortimer Davis about the middle of January, 1928?

A.—About the middle of January.

20 Q.—And after receiving your instructions proceeded to London?

A.—Yes.

Q.—What was your position in London with McNish?

A.—Under the instructions of Sir Mortimer Davis I was to be made Joint Managing Director, plus on the Executive Committee, and given an opportunity to go into every department of the McNish business.

30 Q.—You have added a remark which would lead me to believe that you knew of Sir Mortimer Davis’ plan, which has been referred to, of sending two men around the world in connection with the McNish business?

A.—Yes.

Q.—About what time did you get back to London, after you left Cannes?

A.—After seeing Sir Mortimer?

A.—Yes.

A.—I think I left Cannes around, as far as I can remember, the 20th of January.

40 Q.—And proceeded and remained in London until the time of Sir Mortimer’s death?

A.—Yes.

Q.—Do you know that Sir Mortimer died suddenly?

A.—Yes, he did die suddenly.

Q.—Were you advised of his death?

A.—Yes.

Q.—Did you go to Cannes?

A.—I got a cable about half past one in the morning. I think

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the cable stated he died about that hour and I left that same morning for Cannes.

Q.—Did you remain at Cannes until the body was got ready to be brought to Montreal?

A.—Yes, sir. I made the arrangements there again to have the body taken to Cherbourg.

10 Q.—You came over with the body and with Lady Davis on the Aquitania?

A.—On the Mauritania.

Q.—Were you in the time which you spent in the McNish offices—can you tell us who was in charge permanently in the London office?

A.—John McNish.

Q.—The head office is in Paris?

A.—The head office is in Paris. They had a French company with offices in Paris.

20 Q.—Were you there long enough under the circumstances to have made any headway, to make a permanent program in connection with McNish.

A.—I had been there two or three weeks, to sort of get my bearings there I was made a Director in charge of the sales, as well as the other appointment.

Q.—That was your position at the time you left under the circumstances?

A.—That was one of the branches I was put in charge of.

30 Q.—You were not able to give much time to it before Sir Mortimer's death?

A.—No, it was just in the process of reorganization.

Q.—When you returned here to Montreal did you meet Lord Shaughnessy or did you report to him?

A.—Yes, sir.

Q.—Of the circumstances under which you had come over?

A.—Yes.

Q.—You did not return?

A.—I did not return.

Q.—You might explain to His Lordship how that came about?

40 A.—Well, after the necessary details had been attended to in conjunction with Sir Mortimer being brought back here and the funeral, in a few days after that I was at the offices; Lord Shaughnessy requested me to go to his office and see him, and he told me I could go back to London and rejoin the McNish staff if I so desired, but if I did go back naturally I would not be at the head office organizations and if promotions or anything like that came

ANDREW C. HERSEY (for Plaintiffs), Examination-in-Chief.

along I would naturally have to be overlooked, because I would not be there.

Q.—Be here, be at the head office?

A.—Yes, so under the circumstances I elected to stay here.

Q.—Did he make any suggestion as to whether you should go back or stay here?

A.—No, but he left the matter in my own hands whether I
10 should go back or stay here.

Q.—Did you decide to remain?

A.—Yes.

Q.—As far as you could judge was it satisfactory to him?

A.—Yes.

Q.—So that you have remained here following the funeral which, I think, was in April, 1928?

A.—Yes.

Q.—And you have resumed, such as they are, your duties as
20 Vice-President of the Ste. Hyacinthe distillery?

A.—Yes.

Q.—Have you any duties to perform? Is that a mere figure of speech, Vice-President of the Ste. Hyacinthe distillery, or have you any duties to perform, any actual work or anything of that kind, really?

A.—No duties to perform.

Q.—Do you perform any duties outside of drawing your salary? By what corporation are you paid?

A.—I am paid through the Treasurer's Trust Fund. I suppose
30 the salary is chargeable to the Ste. Hyacinthe distillery through the Trust Fund.

Q.—You get Lawrence's Trust cheque?

A.—Turnbull's cheque.

Q.—In point of fact, you don't know what company you are paid by?

A.—I assume it is by the Ste. Hyacinthe distillery.

Q.—Are all the employees paid out of that Trust Fund?

A.—No, sir.

Q.—Have you, under these conditions, drawing your salary,
40 and, as you say, doing no work, ever discussed that condition with Lord Shaughnessy?

A.—Yes, sir.

Q.—On more than one occasion?

A.—Yes, sir.

Q.—Give His Lordship an idea of what these conversations consisted of. What, if anything, was said by Lord Shaughnessy, under those conditions?

ANDREW C. HERSEY (*for Plaintiffs*), Examination-in-Chief.

A.—After I discovered the Ste. Hyacinthe distillery had been closed down, I naturally went to Lord Shaughnessy to find out what I had to do, and I was informed at the time that he would at a later date assign me some duties, that there was no cause to worry, just to carry on.

Q.—Carrying on consisted in doing what?

10 A.—At that time I was endeavoring to dispose of the bottling plant and equipment such as bottles, corks, and equipment, such as that, because the bottles we were using at Ste. Hyacinthe were not the same type of bottles being used by the Corbyville distillery, so I endeavored to liquidate that.

Q.—Did that take up much of your time?

A.—No.

Q.—Did you have more than one conference of that nature with Lord Shaughnessy?

A.—I had had two or three conferences.

20 Q.—Did Lord Shaughnessy ever recommend or suggest anything in tangible form in the way of prospective employment?

A.—He suggested in the final chat I had with him that it was his idea he might make me an understudy to the various Vice-Presidents, so that should a vacancy be created due to the illness of the man on the job, I would be in position to fill his shoes.

Q.—Did you ever take up the study of this persistently—these vacant positions?

A.—I was never given an opportunity.

30 Q.—You were never attached to any individual Vice-Presidents to act as their assistants?

A.—No, sir.

Q.—Through one of the other witnesses I think it came out your salary was \$6,000 a year?

A.—Yes.

Q.—Canadian Industrial Alcohol and subsidiaries occupy quite a large area of offices space?

A.—They occupy the entire ninth floor of the Canada Cement Building, with the exception of three small offices.

Q.—Three small offices?

40 A.—Yes.

Q.—Are you in and out of the office every day?

A.—Comparatively, yes.

Q.—Have you had an opportunity to observe what goes on there in the general matter of the staff?

A.—Yes. I mean, just in walking around the floors, naturally I observe what is going on. I mean if there is activity I naturally notice it.

ANDREW C. HERSEY (for Plaintiffs), Examination-in-Chief.

Q.—Have they all the employees they require there?

A.—I should say so, yes sir.

Q.—Could you add anything to that?

A.—I think they are overstaffed, personally. That is my personal opinion.

10 Q.—You have given us a description of the services which you are required to render. Are there any other members of the staff —

By the Court:

Q.—As hard worked as you are?

A.—Yes, sir. I think there are a few.

By Mr. McKeown, K.C.:

Q.—Is that the general condition there?

20 A.—No, I could not say it was the general condition, sir.

Q.—In some of the departments?

A.—I know there are people there capable of fulfilling and accomplishing a lot more work than they do do.

Q.—How is the Sales Department, as it comes under your observation? Is that a very busy corner of the office?

A.—Periodically.

Q.—Well, I mean periodically. We will take the last six months. How about that?

30 A.—No, I mean over the period I have been with the organization it appears to be slacker now than it has ever been.

Q.—You are not directly affiliated with the Sales Department, are you?

A.—No.

Q.—Perhaps some of those who are might be able to speak with authority?

A.—You understand these are only observations I am making, going around.

Q.—How far would that extend back from the present time?

A.—You mean—

40 Q.—The condition of slackness in the sales?

A.—The condition I have just expressed?

Q.—The conditions apparently showing slackness in the Sales Department, for instance?

A.—It covers a period,—it is most noticeable during the last two years.

By the Court:

ANDREW C. HERSEY (for Plaintiffs), Examination-in-Chief.

Q.—In a general way has the staff increased or reduced in the last two years?

A.—I think it has stayed about the same, sir.

By Mr. McKeown, K.C.:

Q.—In numbers?

10 A.—In numbers; numerically.

Q.—Now, from your observations there, Mr. Hersey, having been about the office daily from the period of time preceding Sir Mortimer's death and since—

Mr. Holden, K.C.: You say he has been daily about the offices for those two periods. He did not say so. I think he was laid up for quite a while.

20 The Witness: I have said at one time I was in the hospital.

By Mr. McKeown, K.C.:

Q.—How long was that?

A.—I was ill nearly eleven weeks.

Q.—How long a time was this?

A.—I was operated on in October this past year and I was sick some time prior to that, and I think I went back around the end of October or around November.

30 Q.—You were away eleven weeks at that period?

A.—No, not constantly, but I was off and on eleven weeks there.

Q.—But anyway in October, and beginning when?

A.—Around the 1st of August, the middle of August, somewhere around there, as far as I can remember.

Q.—Well, now, apart from that interlude and the time you were on the other side, have you been in the office daily for the last four years pretty much?

40 A.—Well, outside of the trip that I made down through the West Indies, the Bahama Islands, and places like that.

Q.—You did that in the earlier period?

A.—Yes. I was handling the sales of the Ste. Hyacinthe distillery in the south then.

Q.—Were you in the office for an appreciable period before Sir Mortimer's death and have you been in the office for an appreciable period since his death?

A.—Yes.

ANDREW C. HERSEY (for Plaintiffs), Examination-in-Chief.

Q.—How does that compare as an office with the office during the period of Sir Mortimer Davis, and with the period prior to his death?

A.—By staff, do you mean clerical? There is, in my opinion, a noticeable difference.

Q.—In what respect?

10 A.—Since Sir Mortimer's death there does not seem to be the same amount of inter-departmental liaison. There seems to be a lot of department secrecy.

Q.—Did that exist during Sir Mortimer Davis' time?

A.—It did a little, yes.

Q.—To the same degree?

A.—No, sir. I would not say so much secrecy as there was inter-departmental—not as strong as ill-will, but ill-feeling among some of the people.

20 Q.—Were you in Court when Colonel Gudet gave his evidence this morning?

A.—Yes, sir.

Q.—He referred to Executive Meetings which had been held prior to Sir Mortimer's death. Were you aware of these meetings being held?

A.—I knew they were being held insofar as I was around the office.

Q.—You never attended them?

A.—No, I never attended them.

30 Q.—Are you able to tell whether these meetings were kept up after the death of Sir Mortimer Davis, from your observation?

A.—I have not seen them.

By the Court:

Q.—Where is Turnbull now?

A.—Mr. Turnbull is in Montreal.

Q.—Has he been promoted?

40 A.—Yes, he was recently made a Director, sir.

Mr. McKeown, K.C.: He will be examined in a few minutes.

By the Court:

Q.—Was there anybody sent to London to take the position you occupied?

A.—Not to my knowledge.

ANDREW C. HERSEY (for Plaintiffs), Examination-in-Chief.

Q.—How is that, McNish Company run on the other side?

A.—How was it run?

Q.—Do you approve the way it was managed?

A.—I was really there during the process of reorganization, sir, and I really don't think I am in position to state. I did not have sufficient time to make proper observation.

10 Q.—What do you think of Colonel McNish?

A.—Well, in the dealings that I had with him, sir, I found him a very likeable fellow. I really did not know enough about the whiskey business to know whether he was good or not.

By Mr. McKeown, K.C.:

Q.—Do you remember when you met Sir Mortimer at Cannes on your arrival there on the trip which you told us you made, before going to London to the McNish's, did you discuss with Sir Mortimer
20 any particular features in connection with Canadian Industrial Alcohol?

A.—Yes.

Q.—What was the nature of the discussion?

A.—Well, it was generally the habit of Sir Mortimer to consult his juniors in the organization, and he always liked to find out what their views were as to the running of the organization, and as to how things went. As I remember, I expressed my views.

Q.—Did he write a letter in your presence on that occasion, dictate a letter in your presence to Lord Shaughnessy?

30 A.—He dictated three letters, or dictated three times in my presence.

Q.—Did the subject come up of meetings of departmental heads?

A.—The subject of Executive Meetings came up.

Q.—Yes. Now, you said you thought you left there about the 20th of March, 1928. I have from the file a letter which has just been handed to me by Mr. Reaper, an original letter signed by Sir Mortimer Davis, written at Golf One.

40 A.—That was his villa, the name of his villa.

Q.—On January 19th, 1928, addressed to Lord Shaughnessy, the second paragraph of which reads:

Mr. Campbell, K.C.: Are you filing the letter or just reading the paragraph in?

Mr. McKeown, K.C.: I would like very much to file the letter.

ANDREW C. HERSEY (for Plaintiffs), Examination-in-Chief.

Mr. Campbell, K.C.: I don't care whether you do or not. I was just inquiring whether you are proposing to.

Mr. McKeown, K.C. (reading):

10 " It has struck me that it would be a good idea that all your subsidiary companies should meet every two weeks with representatives of the parent Company present to discuss what is going on in the trade and what they have seen and learned about our competitors, plus any suggestions they might make to the parent Company to improve their respective Companies."

From the reading of that clause, would you say it was part of the matter which was dictated in your presence by Sir Mortimer Davis on that occasion?

A.—That was dictated in my presence.

20 Q.—“ You, Kelly, Lauster and Curran should be there.” Were those names discussed?

A.—Yes, they were, sir.

Q.—Was there any other subject taken up by you on that same occasion at Cannes?

A.—Yes.

Q.—Can you recall from memory?

A.—There was the subject taken up as to the securing of an understudy for the salesman who was in charge of what we term Board of Trade business.

30 Q.—Who was that at that time?

A.—Mr. Stormont; John Stormont.

Q.—I notice in this same letter the following clause:

“ John Stormont should have an understudy. If anything happened to him you have not got anyone to replace him. Therefore, see that you put in a bright young man to work under him.”

Was that subject discussed?

40 A.—Yes.

Q.—Was there any further subject discussed by you with Sir Mortimer at the time?

A.—There were several. One in particular I remember was that I suggested to Sir Mortimer that it might be a good idea if he brought about a condition whereby the Company set aside a certain amount of Treasury stock which should be subscribed to by employees of the Company and he said he thought it would be a good

ANDREW C. HERSEY (for Plaintiffs), Cross-Examination.

idea, and then he called Mr. Taylor, the Secretary, and dictated a letter on that subject.

Q.—Dictated further?

A.—Yes.

Q.—I see by the fourth and last paragraph of this same letter the following paragraph:

10 “ I hope you have not forgotten when you are getting under way the shares to be sold to the smallest and highest employees of the Company (I would go as far as the man handling your coal, and in fact throughout the whole organization) to sell these shares a little below the market price and let them pay the same out of their wages, the Company charging a low rate of interest. This is important. Every large American corporation has been doing this and it has turned out a big success.”

20 From the paragraph of this letter which I just read to you, would that be a subject which you heard dictated by Sir Mortimer in your presence on that occasion?

A.—Yes.

Q.—Will you file that letter as P-180?

A.—Yes.

Q.—Let us take up the matters *seriatim*. You have told us that the meetings of the Companies were discontinued following Sir Mortimer's death?

A.—To the best of my knowledge.

30 Q.—From your observation?

A.—From observation, yes.

Q.—Do you know of any general plant which has ever been put into force whereby the smallest and the highest employee of the Company could obtain shares as outlined by Sir Mortimer in that letter P-180?

A.—No, sir.

Q.—Never heard of it?

A.—Never heard of it.

40 Q.—On the third subject, do you know of any understudy who has ever been placed to take over, if need be, the work of Mr. John Stormont?

A.—No, sir.

Cross-examined by Mr. Holden, K.C., Counsel for defendant:

Q.—Mr. Hersey, when was it you went to England?

A.—I left Montreal on the 4th of January, 1928?

ANDREW C. HERSEY (for Plaintiffs), Cross-Examination.

Q.—And you were there until the end of March?

A.—Until the end of March, yes.

Q.—And then when did you arrive here with Sir Mortimer's remains?

A.—He died on the 22nd. I think we sailed about a week or ten days later from Cherbourg.

10 Q.—That would be about the beginning of April?

A.—Yes.

Q.—But do you remember when you arrived here?

A.—I don't recall the date, exactly.

Q.—When, would you say, roughly?

A.—Somewhere around the first week, the first ten days in April, I think.

Q.—About the 10th, do you mean?

A.—Yes. This is the best of my knowledge. I am only more or less guessing.

20 Q.—I want to get your idea of it. Then what did you do here? Were you occupied in anything for the late Sir Mortimer or his Estate then?

A.—No, I was only associated with the Companies here.

Q.—And practically after you got out here with the body, about the 10th of April, what did you do next?

A.—I assisted in the preparation at Pine Avenue for the funeral. After the funeral was over I went back to the Canada Cement Building.

30 Q.—Do you remember the date of the funeral?

A.—No. I could not definitely fix that. I remember approximately.

Mr. McKeown, K.C.: The 12th of April.

By Mr. Holden, K.C.:

Q.—When did the bottling at the Ste. Hyacinthe plant cease?

40 A.—I would like to look my records up before I could give you a definite answer on that.

Q.—Have you got it here?

A.—No.

Q.—Can you tell the Court about when?

A.—I should say about six or seven months after.

Q.—About six or seven months after the 10th of April, do you mean?

A.—Yes.

ANDREW C. HERSEY (for Plaintiffs), Cross-Examination.

Q.—May, June, July, August, September, October. Until the time the bottling ceased, about October, you had duties as Vice-President of the Ste. Hyacinthe Company, I understand?

A.—I still have.

Q.—I beg pardon?

A.—I still have.

Q.—You still have now?

10

A.—Yes.

Q.—Is there any work being carried on there now?

A.—No. When I say bottling ceased at the subsidiary that does not necessarily mean there was continually bottling being done. They stopped bottling. I refer to the period where our brands were taken away from us and we had nothing to bottle.

Q.—That was about October, as nearly as you can remember?

A.—As near as I can fix it. I can get the exact date.

20 By the Court:

Q.—1928?

A.—Yes.

By Mr. Holden, K.C.:

Q.—You know that, as a matter of fact, it was found to be more economical to bottle at Corbyville than at Ste. Hyacinthe?

A.—Yes. I would say it would be more economical.

30 Q.—You told the Court that after the transfer of the brands— if I understood you you told the Court you were occupied for some time getting rid of the old containers. Did I understand you right?

A.—That is, they endeavored to get rid of the majority of them. Those that could be used at the Corbyville plant were shipped there and we sold some of the remaining containers to various bottle dealers in the city.

Q.—Were you looking after that?

A.—Yes.

Q.—How long did that necessitate?

40 A.—I was looking after that in conjunction with the department that had been doing the purchasing. There is a Purchasing Department that would know what equipment was required; supplies were required for the various plants so that was naturally my first outlook.

Q.—How long were you occupied with that?

A.—Not any more than well ———

Q.—About how long?

ANDREW C. HERSEY (for Plaintiffs), Cross-Examination.

A.—I could not tell you definitely. We have still got some equipment down there that has not been moved. It is obsolete.

Q.—Are you doing what you can to get rid of it?

A.—Yes.

Q.—At the outset, when the brands were transferred, was there a good deal of that material—what was it, bottles and labels?

A.—Labels don't count, naturally. They would have to be
10 destroyed.

Q.—They would not be of any use to anybody else?

A.—No.

Q.—What was it you were trying to get rid of? Bottles and
corks?

A.—Yes.

Q.—There was considerable of that at the time?

A.—We had considerable bottles under contract with the Dominion Glass Company. We had a contract for some few hundred dozen bottles.

Q.—If I understand you right, these bottles and those things
20 are not all disposed of?

A.—All our bottles were made by moulds owned by ourselves.

Q.—When did you say you were taken ill with your tonsils?

A.—Yes. Throat trouble.

Q.—When did you suffer from that?

A.—I think it was around August of this past year.

Q.—August, 1929?

A.—Yes.

Q.—You were not well again until when?
30

A.—Around November.

Q.—Am I right that you have attended this trial every day from
the outset right up to today?

A.—That is right.

Q.—And you were in conference with the plaintiffs and their
attorneys?

A.—No.

Q.—In fact, you have been in constant conference with the
plaintiffs and their attorneys?

A.—I would not say that. I have been here daily.
40

By Mr. McKeown, K.C.:

Q.—Under subpoena?

A.—Under subpoena, actually.

By Mr. Holden, K.C.:

ANDREW C. HERSEY (for Plaintiffs), Cross-Examination.

Q.—When you say “ I would not say that,” do you mean you have had no conferences with the plaintiffs and their attorneys?

A.—Not constantly.

Q.—I am asking another question. You have had conferences with them?

A.—I have.

10 Q.—You seem to make a point that there had been no meetings of the Ste. Hyacinthe distillery, no actual meetings in person of the Ste. Hyacinthe distillery. Am I not right the Ste. Hyacinthe distillery was incorporated by the Consolidated Distilleries?

A.—I don't think that is right. I think the Company was purchased as an incorporated Company from _____

Q.—Purchased by the Consolidated Distilleries?

A.—Or Canadian Industrial Alcohol.

20 Q.—I understand as a matter of fact all the shares except the qualifying shares are held by the Consolidated Distilleries. That is right, is it not?

A.—I think so.

Q.—Can you tell the Court any things that required any more formal meetings or transactions for that Ste. Hyacinthe distillery than actually occurred?

A.—Well, I personally don't know of any occurring. I said there never was—or I was never at a meeting of the Ste. Hyacinthe distillery.

Q.—Do you know anything that required Minutes more than are already recorded?

30 A.—Insofar as I think every properly run business should have meetings, those in charge of it should be at the meeting and given an opportunity to express themselves.

Q.—So you say if I own all the shares of an incorporated company except the qualifying shares, and I recorded formal meetings from time to time, I should do more?

A.—If you own stock in a Company and a man is placed in charge to handle the actual management, I should think you should call him in to discuss various things with him.

40 Q.—To whom did you report while you were Vice-President of Ste. Hyacinthe?

A.—During the first period, if I had anything to bring out, I went to my President, who was Colonel Gaudet.

Q.—What do you mean by the first period?

A.—That was when Colonel Gaudet was President of the Ste. Hyacinthe distillery.

Q.—What period is that?

ANDREW C. HERSEY (*for Plaintiffs*), *Cross-Examination*.

A.—When he left the employ of the Canadian Industrial Alcohol he naturally severed that connection too.

Q.—For what period was he President of Ste. Hyacinthe?

A.—He was President of Ste. Hyacinthe when I went there, 1925.

Q.—1925 to 1929?

A.—Yes.

10 Q.—You reported to your President?

A.—Yes; and I reported to Lord Shaughnessy.

Q.—As President of the holding Company?

A.—The parent Company.

Q.—You do not pretend it is not the very usual and exceptional practice of such subsidiaries to hold their meetings in exactly the same way, and with the same procedure in all respects?

A.—I could not say. That is the first subsidiary I have had anything to do with.

20 Q.—Did you ever ask Lord Shaughnessy to have meetings more formal? Did you ever make any suggestions of that nature?

A.—No, sir. I did not feel it was my duty to do so, seeing Colonel Gaudet was President.

By the Court:

Q.—Who replaced him as President?

A.—I understand Mr. Lauster did, sir.

30 By Mr. Holden, K.C.:

Q.—That was, I suppose, in what? In July or August?

A.—I don't know. The only intimation I had of it was in the Minutes I saw of the last meeting.

Q.—Do you wish me to understand that in your opinion Colonel Gaudet, as President of the Ste. Hyacinthe Distillery, ought to have held more formal meetings during the time you were Vice-President?

40 A.—No, I would not say that, in view of the fact that I believe that meetings of all subsidiaries were more or less held en bloc, at the same time, one meeting following the other directly. What I do say is I think I should have been given an opportunity to be at these meetings, as far as Ste. Hyacinthe Distillery was concerned.

Q.—Did you ever ask to be there?

A.—No, I did not.

Q.—Did you ever raise the slightest objection to sign the Minutes of these formal meetings that were put before you?

A.—No, there was nothing in them.

ANDREW C. HERSEY (for Plaintiffs), *Cross-Examination.*

Q.—You add at the same time there was nothing that required any more formal meetings or more formal records?

10 A.—No, but at the same time if I am travelling down in the southern countries trying to market our products, and meeting government officials, I should have an opportunity on my return to give expression to my opinions and views generally for the benefit of all subsidiaries.

Q.—Did you give that to your President, Gaudet?

A.—No, I gave a written report, and I also gave Lord Shaughnessy a report.

Q.—Did not you ever have a discussion of them after the report?

A.—No.

Q.—Did you try to have?

20 A.—No. If I gave them a report and they thought it was satisfactory, I assumed that was the end of it.

Re-examined by Mr. McKeown, K.C., Counsel for plaintiff:

Q.—Has your President of Ste. Hyacinthe Distillery, or Lord Shaughnessy, as President of Alcohol, reprimanded you in any manner for being here in Court in obedience to the subpoena served on you?

A.—No.

30 Q.—Speaking of these brands, you said in chief that six of them were transferred to the Consolidated?

A.—Yes.

Q.—I understand you say only one is being continued?

A.—One, to my knowledge; perhaps two.

Q.—Are those the brands on which a great deal of money has been spent for advertising at one time and another?

A.—Well, there has been money spent. It has been nothing exorbitant. We have done advertising.

40 Q.—For those particular brands?

A.—Yes.

Q.—What is the effect, if you can tell us, of discontinuing advertising, and, what is more, discontinuing putting the brand out to the public?

A.—You mean the opinion that the public would express by knowing the brand had been discontinued?

Q.—No. I mean if the brand is not advertised and if the product under the name is not put out for a time, what is the effect?

ANDREW C. HERSEY (for Plaintiffs), Cross-Examination.

Mr. Holden, K.C.: It may not be useful unless my learned friend names the brands.

10 Mr. McKeown, K.C.: The point I want to bring out is the taking of such different brands off the market lessens the demand; the whole effect is gone forever. I think the question arises out of the cross-examination.

The Witness: The effect of that, in my opinion, would be that the public, who have been accustomed to that particular brand, would assume that something had taken place and caused it to be removed from the market.

By Mr. McKeown, K.C.:

20 Q.—You spoke about your bottles being special moulds. Were they blown? Were any names blown in the glass?

A.—No, not on the bottles I got.

Q.—Special moulds as to special forms of bottles or shapes?

A.—Yes.

By the Court:

Q.—You say that in your opinion the staff is over-manned?

A.—Yes, that is my personal opinion.

Q.—Is that new? Did that exist before?

30 A.—I think it has always been over-staffed.

Q.—Now, the advice of Sir Mortimer to you while ——

A.—Of course we were doing more business during that period, but during the last two and a half years or so I think it has been over-staffed.

Q.—You mean during the last two and a half years the business has been diminishing, but there is the staff just the same?

A.—It has diminished. They have taken more work on the staff at the distillery at Corbyville and it has taken more work from the staff at Montreal.

40 Q.—Who has replaced Colonel Gaudet in whatever capacity he was employed by the Company? I am not speaking of the presidency of Ste. Hyacinthe Distillery.

A.—That is the only answer I could have given you.

Q.—Who was supposed to be in charge of the manufacturing, purchasing and engineering of the Company? Who is doing that now?

A.—I don't know that.

ANDREW C. HERSEY (for Plaintiffs), Cross-Examination.

Q.—You know Colonel Gaudet left the Company in July, 1929?

A.—Yes.

Q.—Has anyone been engaged to use the money that was spent on his salary?

A.—His office is still vacant.

Q.—And the salary remains in the Treasury of the Company?

A.—I suppose so. I have not seen any of it.

10 Q.—You mean his room is empty?

A.—It has been. It is occupied periodically by Mr. Wilmore, when he comes in from the plant.

By Mr. McKeown, K.C.:

Q.—That is what you mean when you said his office was vacant?

A.—Yes. The position previously held by Colonel Gaudet to my knowledge has not been filled; nobody had been appointed.

20 By the Court:

Q.—Have new employees been engaged lately?

A.—Not to my knowledge.

Whereupon an adjournment was taken until 10:30 o'clock A.M., April 8th, 1930.

30

40

STUART G. TURNBULL (*for Plaintiffs*), *Examination-in-Chief*.

On this eighth day of April, in the year of our Lord one thousand nine hundred and thirty, personally came and appeared

STUART G. TURNBULL

10 residing at No. 783 Wilder Avenue, in the City of Outremont, Province of Quebec, purchasing agent, aged 46 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 Treasurer of the Canadian Industrial Alcohol Co. Ltd.?

A.—Yes.

20 Q.—When did you first join up with that organization?

A.—In 1912.

Q.—Have you been with them continuously since that time?

A.—Yes, with the exception of three months in London.

Q.—In connection with McNish?

A.—Yes.

Q.—About the end of 1927 and the beginning of 1928?

A.—Yes.

Q.—Then you returned to Montreal and resumed your former position?

30 A.—Yes.

Q.—For the past three or four years what have been the duties to which you have been assigned in connection with Canadian Industrial Alcohol?

A.—Purchasing Agent, in particular.

Q.—Can you tell me briefly the nature of the supplies which were purchased through you?

A.—Grain, bottles, labels, cases.

Q.—Molasses?

A.—Not molasses, no.

40 Q.—Whose specialty is molasses?

A.—Mr. Kaestner.

Q.—Molasses are bought on a different market, and under different conditions?

A.—Yes.

Q.—Will you tell His Lordship what percentage of the actual cost of spirits or alcohol is made up of raw material?

STUART G. TURNBULL (for Plaintiffs), Examination-in-Chief.

A.—It all depends on the industrial alcohol. It is probably 90 per cent. It varies up and down. If it is beverage naturally it is less.

Q.—But, it is a very important part of the total cost of the product?

A.—It is, very.

Q.—So that your Department is a fairly important one?

A.—Yes, I should say so.

10 Q.—And has been, under those conditions?

A.—I should say so, yes.

Q.—It has been established by other witnesses that Executive Meetings, or Meetings of Heads of Departments, have been discontinued since Sir Mortimer's death, or shortly following Sir Mortimer's death?

A.—Yes, to a certain extent. We have attended a few.

Q.—You mean within the last few weeks?

A.—Few weeks, yes.

20 Q.—How many?

A.—I should say four, or five, or six.

Q.—In the last few weeks?

A.—Not the last few weeks. Six, practically—within six weeks.

Q.—Did they restart at the number of two a week recently?

A.—No, not two a week.

Q.—Every week?

A.—Every week.

Q.—How far back from the present date?

A.—Probably two months, or three months.

30 Q.—You cannot swear to three months. You realize that three months would take you back beyond the beginning of the year?

A.—Yes, I would imagine three months. I could not say exactly. You can find out the exact dates from the Minutes.

Q.—In three months there have only been four or five Meetings held?

A.—There might be six. Four weeks would make four a month.

Q.—Remember, you are under oath. You were either at those Meetings or you were not. I was not there, and I do not know about them.

40 A.—In three months there would be twelve Meetings.

Q.—Have they met every week?

A.—No.

Q.—What did you mean by saying, within the last two minutes, that there were only four or five Meetings?

A.—They may have skipped a week.

Q.—Did you skip a week?

A.—I think so.

STUART G. TURNBULL (for Plaintiffs), Examination-in-Chief.

Q.—Are they being maintained at the present time?

A.—No.

Q.—When were they discontinued?

A.—I should imagine about two months after Sir Mortimer's death.

Q.—I mean after this recent restart?

A.—Since Lord Shaughnessy has been in Court.

10 Q.—Last month?

A.—Yes.

Q.—No Meetings?

A.—No Meetings.

Q.—From a period of a few months after Sir Mortimer's death until the first of January, 1930, there were none of those Meetings held?

A.—None of those Heads of Departments' Meetings.

20 Q.—Is it to your knowledge that in 1927 this Company could not fill its orders as received from spirits which were matured and ready for shipment?

A.—They could not fill them.

Q.—You are not directly attached to the Sales Department?

A.—No I have nothing to do with the Sales Department.

Q.—We have had some evidence of the condition of the Sales Department at the present time, from which I would gather that the condition of not being able to fill their orders does not now obtain?

A.—I do not think so.

30 Q.—Did you mention that the purchase of bottles and labels came under your Department?

A.—Entirely.

Q.—Do you know there has been a demand in the trade for a style of package or bottle different from what you have been putting out?

A.—Yes, there was.

Q.—When did that demand first declare itself?

A.—That demand has existed for about eighteen months, I should imagine.

40 Q.—Have your competitors put out the style of bottle or package demanded by the trade?

A.—Yes.

Q.—Have you put it out?

A.—No. They had not the whisky. They sold the package; not whisky.

Q.—You know that demand declared itself as far back as eighteen months ago?

A.—Yes.

STUART G. TURNBULL (for Plaintiffs), Examination-in-Chief.

Q.—You knew of it then?

A.—Yes.

Q.—Did the other officers of the Company know it?

A.—Yes, the Sales Department.

Q.—Did you discuss it with Lord Shaughnessy?

A.—There were several discussions about it.

10 Q.—With whom?

A.—Lord Shaughnessy, and the rest of the Heads of the Departments.

Q.—Did you finally order new packages?

A.—Yes.

Q.—When?

A.—In the month of November.

Q.—November, 1929?

A.—Yes.

Q.—Are you putting out the new packages now?

20 A.—Yes.

Q.—How are they going?

A.—Very well.

Q.—I put it to you that they would also have gone pretty well eighteen months ago?

A.—Of course we have the whisky inside the bottles. That is what sells—not the packages.

Q.—You had the whisky eighteen months ago?

A.—Yes.

Q.—And you have had it ever since?

30 A.—Yes.

Q.—The best whisky on the market?

A.—Yes.

Q.—Still, it did not sell until you got the new packages?

A.—I did not say it did not sell. It sold all the time.

Q.—But, it did not sell as well?

A.—No, it did not sell as well.

Q.—You say you got those packages in November. As a matter of fact, were they delivered to you in November?

A.—No. They had to be made specially.

40 Q.—When were they delivered to you?

A.—The packages comprise the bottle, and cap, and cup, labels, cartons, and everything else. They were all made specially, and they came in one by one. We went to the market about six weeks ago.

Q.—When did you get delivery of all those component parts which go to make up the package which enables you to sell your wonderful and very best whisky to the consumers in the container they demanded?

STUART G. TURNBULL (for Plaintiffs), Examination-in-Chief.

A.—I imagine about six weeks ago.

Q.—When did you order those supplies?

A.—In November.

Q.—Do you agree with me that the best part of the year in your particular line of business is from September forward to the beginning of the year?

A.—Yes.

10 Q.—Is that enormously the heaviest part of the year?

A.—It is the heaviest part.

Q.—So, you missed the whole of that?

A.—Yes, we did; on that new package.

By the Court:

Q.—What are the particular virtues of that package?

20 A.—Nothing whatever. The object of people is only that they have got a fancy package. That is all right. People who want to sell not whisky, who put it up in a package and sell the package, not the whisky.

By Mr. McKeown (continuing):

Q.—In any event, your very excellent whisky did not sell itself. To get it clearly on the record, the former packages in which you put out your whisky were the ordinary quart bottles?

30 A.—Straight whisky bottles, the same as they ship from the other side today—John Dewar, Johnnie Walker and the rest.

Q.—The things you are in favor of on general principles?

A.—Yes.

Q.—The new package is not a round bottle?

A.—No.

Q.—It is the shape of a large size flask?

A.—Yes.

Q.—Has it any special equipment in the way of corks or cups, in order that a person may not take any chance of suddenly passing away but may proceed at once to enjoying the contents?

40 A.—Exactly. They have the whole thing there.

Q.—And that was a strictly new departure from what you had been previously putting out?

A.—Yes.

Q.—Do you know your competitors are putting out that type of package?

A.—Yes. Even in tin cans.

Q.—Were they on the market first?

STUART G. TURNBULL (for Plaintiffs), Examination-in-Chief.

A.—Yes.

Q.—And have been on the market for eighteen months?

A.—Quite so.

Mr. Campbell: Eighteen months from when?

10 Mr. McKeown: Eighteen months from now, I hope—not from
any more remote period.

By Mr. McKeown (continuing):

Q.—You are occupying the dual position of Treasurer and a
Director in this Corporation?

A.—Yes.

Q.—When were you elected to the Board?

A.—In December.

20 Q.—December of what year?

A.—1929.

Q.—That was following the date the Annual Meeting was
called for?

A.—Yes.

Q.—You have been a shareholder of the Corporation for some
time?

A.—Yes, sir.

Q.—I take it from the sheets of the Crown Trust Company, the
Transfer Agents, which sheets I now hold in my hand, that you had
30 been accumulating the stock up to a certain period?

A.—Yes.

By the Court:

Q.—What is the whisky you sell most of?

A.—American whiskies—Bourbon rye.

Q.—Made here?

A.—Yes.

40 Q.—What about Chesapeake Gin and Chesapeake Rye?

A.—That is one of ours too. It is all right. It is good whisky too.

Q.—Those packages are for American consumption?

A.—American consumption, more or less.

By Mr. McKeown:

Q.—Do you mean that it is cut four ways, three-quarters water
and one-quarter whisky?

STUART G. TURNBULL (for Plaintiffs), Examination-in-Chief.

A.—His Lordship asked about American consumption. You might be down there and take it.

By the Court:

Q.—Are they consumed here, or on the other side?

10 A.—Consumed on the other side.

By Mr. Geoffrion:

Q.—Out of Canada?

A.—Yes, out of Canada.

By Mr. McKeown (continuing):

Q.—I see in particular that up to July 4th, 1927, you had as
20 many as twenty-four hundred "A" shares. Do you remember that?

A.—If the record says so, it must be so. I cannot remember.

Q.—You must have thought rather highly of the securities, because I see that on January 26th, 1929, you had as many as 520 "B" shares in addition to the "A" shares?

A.—Yes.

Q.—Then I notice a very remarkable change came over the picture. According to the records of the Crown Trust Company you had 1,900 "A" shares on September 6th, and on that date there was transferred out of your account 1,400 of those 1,900 "A" shares,
30 leaving you 500 "A" shares.

As to the "B" shares: on September 6th, 1929, you had 520 "B" shares, and on that date you sold 500 of your "B" shares, leaving a balance of 20 "B" shares?

A.—Yes.

Q.—When did Lord Shaughnessy leave for the West on his trip last fall?

A.—About the 3rd of September. I am not just sure of the exact date.

Q.—I think the date mentioned was the 5th, but we will not
40 quarrel about a couple of days.

His Lordship: October 5th.

Mr. McKeown: That was when he returned, Your Lordship I am speaking of his departure for the West. He came back about October 5th.

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His Lordship: He left on September 5th, and returned on October 5th.

By Mr. McKeown (continuing):

Q.—Before September 5th, or whatever date Lord Shaughnessy left for the West, did you become aware of what had occurred to
10 Colonel Gaudet in relation to his having sold some of his shares?

A.—Yes.

Q.—That is to say, he had ceased to be connected with the Company?

A.—Yes.

Q.—That had occurred in the previous July?

A.—In July.

Q.—Between that time and September 5th had you in any manner become aware that that was a fate likely to overtake anybody else doing the same thing?

20 A.—There were rumors around the office, which had been in effect for quite a long time, that any party found selling any stock would be dismissed. Of course, that was only rumor.

Q.—Did you take the rumor sufficiently seriously to take up the subject with Lord Shaughnessy before he left on that Western trip?

A.—I did not take the rumor up seriously at all.

Q.—Never mind to what degree of seriousness you took up the rumor. Did you see Lord Shaughnessy?

A.—I approached Lord Shaughnessy.

30 Q.—Did you see Lord Shaughnessy with reference to the sale of your shares before he left for the West?

A.—Two days before.

Q.—Was he aware of the number of shares standing in your name?

A.—I should imagine so.

Q.—Did you have it in mind to sell your shares at that time?

A.—At that time, yes.

Q.—Do you recall that the " B " stock was selling somewhere in the vicinity of 20, and the " A " stock somewhere in the vicinity of
40 22, at that time?

A.—Yes, sir.

Q.—Was it your thought to clean it all out?

A.—No, not all.

Q.—Not all?

A.—No.

Q.—Under those conditions which you have just stated to His Lordship, you say you approached Lord Shaughnessy?

A.—Yes.

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Q.—With a view to obtaining his permission to sell the stock?

A.—With a view to him giving me permission to ask the other Directors of Sir Mortimer Davis, Incorporated, to see if they would take them off my hands.

Q.—With a view to asking the Directors of Sir Mortimer Davis, Incorporated, if they would take your Alcohol shares off your hands?

A.—Yes.

10 Q.—That was your idea, was it?

A.—Yes.

Q.—Did you know who were the other Directors of Sir Mortimer Davis, Incorporated?

Q.—Apart from Lord Shaughnessy, Mr. Reaper, and Lady Davis?

A.—Yes.

Q.—You never made any direct overtures in this direction, nor ever brought the subject up directly with Lady Davis, did you?

20 A.—Lord Shaughnessy was to do that.

Q.—You did not?

A.—No.

Q.—Lord Shaughnessy was to do it?

A.—Yes.

Q.—Did you ever speak to Mr. Reaper about the subject?

A.—No.

Q.—Who was to do that?

A.—Lord Shaughnessy.

30 Q.—Will you just tell His Lordship what you said to Lord Shaughnessy in that connection on that occasion two days before he left?

A.—Two days before Lord Shaughnessy left I approached him to sell a certain amount of Alcohol stock to cover some private obligations I had which were very pressing. I approached him two days before he left, and on the day he left I went back for his answer.

Q.—What was said in the first conversation?

40 A.—I explained my position, and told him that I had certain private obligations to meet, and the only thing I had to meet those obligations was the Alcohol stock, and I asked his permission if he could see his way clear that the Incorporated Company or the Estate should take over part of my stock.

Q.—That was the proposition at that time?

A.—Yes.

Q.—Emanating from you?

A.—Emanating from me.

Q.—What did he say he would do?

STUART G. TURNBULL (*for Plaintiffs*), *Examination-in-Chief*.

A.—That he would approach the other Directors of the Estate, or the Incorporated Company.

Q.—And he was leaving for the West two days later?

A.—Yes.

Q.—Had he said anything to you in the meantime?

A.—Nothing up to half past four.

10 Q.—Had he been in the office those two days?

A.—Yes.

Q.—You were there also?

A.—Yes.

Q.—What time does the office usually close?

A.—Five, or half past five, or six o'clock.

Q.—And he had not said anything to you?

A.—No.

Q.—Up to half past four, when you approached him?

A.—Yes.

20 Q.—You approached him at half past four?

A.—Yes.

Q.—Did you go into his private office?

A.—Yes.

Q.—And did you enquire for your answer?

A.—Yes.

Q.—What did he say?

A.—He said he had enquired of Lady Davis, and she would not take the stock.

30 Q.—Did he say what had been Mr. Reaper's reaction to the suggestion, if he had made any to him upon the subject?

A.—No.

Q.—Did you ask him if he had spoken to Mr. Reaper?

A.—No, sir.

Q.—But there was a direct reference to the fact that Lady Davis had declined to take the stock?

A.—Yes.

Q.—Why in the world should any of the Executors take your stock off your hands?

40 A.—For the simple reason I did not want to go to the open market and sell it.

Q.—That was your own idea?

A.—That was my own idea.

Q.—As far as Lord Shaughnessy was concerned, was he leaving the subject there?

A.—Yes.

Q.—That the Executors would not take your stock over?

A.—No.

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Q.—Did you leave the subject there, or did you pursue it further?

A.—No. I just threw out a hint. I said: “If you give me the loan of Mr. Reaper for half an hour I could fix this.”

Q.—What did you mean by that? That you wanted to discuss it with Mr. Reaper?

10 A.—Yes: I wanted to find a way of selling my stock without going to the open market with it.

Q.—What did he say to that?

A.—He said it was all right, and he left the office.

Q.—He said it was all right for you to discuss it with Mr. Reaper—or, that was what you understood?

A.—Yes.

20 Q.—Did he say anything about the propriety or advisability of your selling that stock, either at the interview two days in advance of his departure for the West, or at the second interview an hour or two before the close of the day before he went West?

A.—In the first interview he told me he thought it was the wrong time to sell. He said he thought I could get much more if I could hang on.

Q.—He did not give anything approaching his consent that you should sell the stock?

A.—He did not make any objection that I could see. I could have gone to the open market and sold it, of course.

Q.—But he was not giving his consent that you should do that?

A.—He made no remark about that.

30 Q.—Did you take the matter up with Mr. Reaper?

A.—Yes.

Q.—Did Mr. Reaper make any arrangement to take your shares off your hands?

A.—He made no arrangement to take them off himself.

Q.—Did you finally sell them on the open market?

A.—They were sold on the open market.

Q.—For your account?

A.—Yes.

40 “A” Q.—And are those the sales to which I have just referred: 1,400 “A” shares and 500 “B” shares?

A.—No.

Q.—Then, what stock was this?

A.—You have that wrong.

Q.—I have only the record as it shows.

A.—If you figure up your debits, and credits, you will see the difference.

Q.—All I have to do is take the record as I find it, and that

STUART G. TURNBULL (for Plaintiffs), Examination-in-Chief.

record shows (and Mr. Lawrence agrees with me, after having examined it) that there came out of your " A " account on September 6th, 1929, 1,400 shares, and out of your " B " account, on the same date, 500 shares. If you can give His Lordship any other explanation of those original sheets from the Crown Trust Company's transfer books, I am sure he would like to have it.

10 Mr. Holden: The record does not show sales; it shows withdrawals from their register.

Witness: It goes out and comes back.

Mr. Holden: The sheets do not show sales; they show what is on the register. I might have shares in the Company, and I might take my shares out today and put them back tomorrow.

The witness will know what he sold, and what he did not sell.

20 Mr. Geoffrion: You began by treating register entries as sales.

Mr. Holden: We did not ask for this at all.

Mr. McKeown: Mr. Campbell did, with another witness.

Mr. Geoffrion: You went on the assumption then that all entries were sales.

30 By Mr. McKeown (continuing):

Q.—All I have to do is take the record as I find it, and that record shows (and Mr. Lawrence agrees with me, after having examined it) that there came out of your " A " account on September 6th, 1929, 1,400 shares, and out of your " B " account, on the same date, 500 shares. If you can give His Lordship any other explanation of those original sheets from the Crown Trust Company Transfer Books, I am sure he would like to have it.

40 A.—Those shares were transferred into brokers' names, under permission to sell that amount of stock.

Q.—How many shares?

A.—This number of shares mentioned.

Q.—You gave instructions to sell that number of shares?

A.—Yes.

Q.—That is, 1,400 " A " shares, and 500 " B " shares.

A.—Yes. And that is the transfer.

Q.—And, for that purpose, and in anticipation of the sale and

STUART G. TURNBULL (for Plaintiffs), Examination-in-Chief.

delivery, you endorsed the certificates and turned them over and they were transferred into the name of the brokers?

A.—Yes.

Q.—To come down to the point: on or before September 6th, 1929, you had to all intents and purposes given instructions for the sale of the number of shares we have reviewed together?

A.—Quite so.

10 Q.—Did you take that action after Lord Shaughnessy had left for the West?

A.—Yes.

Q.—The next morning?

A.—The next morning.

Q.—And, at a time when you had not his permission to make any sale?

A.—Exactly.

20 Q.—And, at a time when he had suggested to you that you should hold the shares and you would get more for them?

A.—Yes. I was pressed not to do it.

Q.—And, in spite of that you did it?

A.—Yes, I did it.

Q.—You will notice by these sheets that on September 26th, twenty days later, some stock appears to have been returned back into your name on the register?

A.—Yes, quite so.

Q.—In point of fact were the fourteen hundred “A” shares, and the 500 “B” shares all sold in accordance with your instructions?

30 A.—No.

Q.—How many were actually sold?

A.—10 “B,” and 1,125 “A.”

Q.—On what dates were those shares sold?

A.—Probably over a week or ten days time.

Q.—Let out easily?

A.—Yes, easily.

Q.—What did you realize for those shares when they were sold?

A.—About 20 for the “B,” and I think about 22 or 23 for the “A.”

40 Q.—Are you sure you got as much as that, later in the month?

A.—Yes. There would be several prices. Around that.

Q.—The stock was going down all the time?

A.—Going down, yes.

Q.—From the figures before me I notice that in the week ending September 21st the high was 22½, and the low was 15, and the close was 17. Are you quite sure you got 20 for your stock?

A.—I got 22.

STUART G. TURNBULL (for Plaintiffs), Examination-in-Chief.

Q.—I am speaking of the “A” stock.

A.—About 22, or 22½.

10 Q.—I notice in the same week there were no sales of “B” stock, but in the week of the 28th it went as high as 16, and as low as 13, and it closed at 14⁵/₈. You only sold a small quantity of “B” stock?

A.—10 shares.

Q.—Who were the brokers through whom that stock was sold?

A.—Redpath & Company.

Q.—Have you your Sold Notes?

A.—I do not know if I have any slips at all. There is a bunch of stuff. I might have them. They might be at home.

Q.—When Lord Shaughnessy returned from the West did you report to him what you had done?

A.—No.

20 Q.—You never reported to him?

A.—No.

Q.—Never discussed it with him again?

A.—Never discussed it with him, not even till today.

Q.—He never brought the subject up with you?

A.—No.

Q.—I take it from what you have told us of this sale that was operated through Redpath, that you did not handle the matter: Mr. Reaper handled it for you?

30 A.—Exactly.

Mr. Holden: Would you mind asking him in whose name Mr. Reaper handled it?

By Mr. McKeown (continuing):

Q.—To oblige my learned friend I will put the question to you. In whose name did Mr. Reaper handle it?

40 A.—Sir Mortimer Davis, Incorporated.

Mr. Holden: The witness' name did not appear at all.

Mr. McKeown: That would not be of any importance.

Mr. Geoffrion: If it is bad policy for the Directors to sell, it is worse for the Company itself to sell.

By Mr. McKeown (continuing):

STUART G. TURNBULL (for Plaintiffs), Cross-Examination.

Q.—And, it was subsequently to the sale of your stock that you were appointed a member of the Board?

A.—Yes.

Cross-examined by Mr. A. R. Holden, K.C., of Counsel for Defendants:

10 Q.—I understand that when Lord Shaughnessy went west he turned the matter over to you and Mr. Reaper to arrange between you?

A.—Yes.

Q.—And, it was arranged as you have just explained?

A.—Yes.

Q.—Was it important to you personally to have ready money at that time?

A.—Absolutely necessary.

20 Q.—And, had you any other means of realizing anything?

A.—No other means.

Q.—Did you explain that to Lord Shaughnessy when you told him you proposed to sell?

A.—I did, fully.

Q.—You have been familiar with this industry for a long time, as you have already told the Court?

A.—Eighteen years.

30 Q.—It has been brought out in evidence that the market price of the Company's stock went very low, as we all know it did, and that the Company's sales fell off some little time ago, since Sir Mortimer's death. I would ask you what in your opinion as a man of experience in those matters was the cause of the falling off of the sales and of the decline of the stock in so far as it declined any before the general slump, and including the general slump? In your opinion, what was the cause?

A.—The Press had a lot to do with that.

Q.—Will you just tell His Lordship what you mean?

A.—I guess His Lordship has read the Press.

40 Q.—But, I want it on the record. What were the conditions along the border, and otherwise, and what was the effect?

Mr. McKeown: Is not that a trifle suggestive, especially when my learned friend is taking up a new subject? I did not ask the witness anything about this in chief, and it is absolutely irrelevant to the examination-in-chief. I submit my learned friend should pro-

STUART G. TURNBULL (for Plaintiffs), Cross-Examination.

ceed in the ordinary way, and not give all the evidence himself. Let him allow Mr. Turnbull to earn his witness fee.

By Mr. Holden:

10 Q.—Will you please explain to the Court what, according to your expert opinion, was the cause of the fall in the sales and the fall in the price of the stock? Give the Court your views.

A.—You know pretty well the American Government tightened up the ports of exit for liquor going out. Naturally that would have an effect.

Q.—And that is what you mean as having been broadcast in the Press?

20 Mr. McKeown: The witness never said anything of the kind. My learned friend is now taking Mr. Turnbull as his own witness, and is putting the worst kind of leading questions. I submit it is illegal.

By Mr. Holden (continuing):

Q.—Was that what you meant as having been broadcast in the Press?

30 Mr. McKeown: That is precisely the question I am objecting to.

Witness: Exactly.

By Mr. Holden (continuing):

Q.—In reply to Counsel for the plaintiffs you have referred to the change of the shape of container—the bottle and so on—that occurred amongst your competitors?

A.—Yes.

40 Q.—When that change was made by your competitors was the matter considered and discussed by you and your fellow officials in the Industrial Alcohol Company?

A.—Yes.

Q.—For some time, and at some length?

A.—Yes, quite.

Q.—Were you all agreed as to what policy. . . .

Mr. McKeown (interrupting): That is a question along the

STUART G. TURNBULL (for Plaintiffs), Cross-Examination.

same line as I have already objected to. My learned friend has no right to give the evidence for the witness.

Mr. Holden: If you will allow me to put my question, you may object to it when it is completed.

10 Mr. McKeown: No. If you put it in that way I will not allow it to be put without objection.

Mr. Holden: I have a right to complete my question, and I shall put it.

Mr. McKeown: Not unless His Lordship permits you to do so.

By Mr. Holden (continuing):

20 Q.—Were you all of one opinion as to what policy should be followed?

Mr. McKeown: I submit questions of this kind on a new subject are absolutely illegal and inadmissible.

His Lordship: Of course, this is cross-examination.

30 Mr. McKeown: But my learned friend is putting the words into the mouth of the witness. The witness has not shown he is inimical or partial to any one.

His Lordship: He was your witness, and Mr. Holden is now in cross-examination.

By the Court:

Q.—Who attended those Meetings?

A.—The Heads of Departments.

40 Q.—Who were the heads of Departments?

A.—Lord Shaughnessy, the President; Mr. Lawrence, the Secretary; myself, as Treasurer; Mr. Wilmore; Mr. Lauster, and Mr. Kelly.

Q.—That is seven?

A.—Yes.

Q.—Who brought up the question of the containers?

A.—Those containers have been on the tapis for the last eighteen

STUART G. TURNBULL (for Plaintiffs), (Cross-Examination).

months, but we were undecided whether to take them up or not. The reason, I think, those containers have been put on the market was to sell the whisky of somebody else which was not aged, in other words, a young whisky, which was no good to the consumer. They have to sell the whisky some way, and the only way they could sell it was to put it in an expensive package to be marketed.

10 By Mr. Campbell:

Q.—And the consumers paid for the package, instead of the whisky?

A.—Paid for the package instead of the whisky.

By the Court:

Q.—Who had this ingenious idea of putting inferior whisky in
20 an expensive container?

A.—Well, it is obvious.

Mr. Holden: I suppose Mr. Turnbull does not want to mention any names.

By the Court:

Q.—Some of your competitors?

A.—Yes, sir.

30 Mr. McKeown: They will be amazed to hear that through the Press.

By Mr. Holden (continuing):

Q.—What was your own view at first?

A.—My own view was (and it is still the same) that I do not think it is necessary to put it in fancy containers. If you have the goods I do not think you require a fancy container to sell them.

40 By the Court:

Q.—Are those containers more expensive than the old ones?

A.—Yes.

By Mr. Holden (continuing):

STUART G. TURNBULL (for Plaintiffs), Re-Examination.

Q.—And, has your Company the goods?

A.—Yes, we have, very much so.

By the Court:

Q.—How long had you been discussing the question among
10 yourselves when you adopted the change of containers in November
last?

A.—I should imagine probably about a year, roughly.

Q.—Were you all of the same opinion in those days, or was
there a difference of opinion?

A.—There was a difference of opinion, and there is a difference
of opinion still.

Q.—Do those new containers mean additional expense to the
Company?

A.—Yes, sir.

20 Q.—In proportion to the effects they bring?

A.—You have to take it by the case. It is so much a case addi-
tional. There are some cases of 24 bottles, and there are some of 12.
It would probably mean \$1.00 a case additional expenditure on the
twenty-fours.

By Mr. Holden (continuing):

Q.—And, I suppose it is too early yet to tell the Court how the
additional expense compares with the results in sales?

30 A.—It is too early yet.

Re-examined by Mr. McKeown, K.C., of Counsel for Plaintiffs:

Q.—It does not seem to have been too early, from the proof
which has been made here, for your competitors to find out that
they are all right?

Mr. Holden: My learned friend has not made any proof as to
the results obtained by the competitors.

40 Mr. McKeown: Did you notice anything in the evidence made
by the gentleman from Ottawa the other day?

Mr. Campbell: That does not prove anything in the sense of
your question.

By Mr. McKeown (continuing):

STUART G. TURNBULL (*for Plaintiffs*), *Re-Examination*.

Q.—Are your competitors still pursuing the policy of putting out those containers which they started eighteen months ago?

A.—Yes, and an additional container on top of that.

Q.—In the form of a sealed can?

A.—A tin can, yes.

Q.—And, I expect if you people ever wake up you will be putting out tin cans too?

A.—Well, I do not know.

Mr. Holden: Of course, this is not re-examination.

By Mr. McKeown (continuing):

Q.—Under examination by my learned friend Mr. Holden you referred to the cause of the falling of the Stock Market and the falling off in the sales of your product, and you mentioned one cause as being the tightening up of the Border. I put it to you that of the 100 per cent of your business roughly 20 per cent is domestic, right here in Canada with the Liquor Commissions?

A.—I would not say the exact percentage, but it is approximately that?

Q.—And, 60 per cent is export business, as distinct from duty paid export. Is not that approximately correct?

Witness: At what date?

Counsel: I am speaking of the rise and fall of your general volume of business.

Witness: That would be probably a year ago?

Counsel: Yes.

A.—Yes.

Q.—And, only 20 per cent of your business is this duty paid export, alias Border business?

A.—Yes.

Q.—The tightening up of the Border could only affect the duty paid export business?

A.—Yes.

Q.—How do you account for the fall in the 20 per cent domestic business, and the 60 per cent export business?

A.—I am not aware of the domestic market falling.

STUART G. TURNBULL (for Plaintiffs), *Re-Examination*.

Q.—Then, you have not been following the case as closely as I thought you had.

You told His Lordship the question of the containers was discussed over a year back at Meetings of Heads of Departments?

A.—Yes.

10 Q.—Mr. Lawrence has told us there were no such Meetings held. How do you get around that?

Mr. Campbell: Mr. Lawrence made no such statement.

Mr. McKeown: Mr. Lawrence brought the Minutes, which stopped a few months after Sir Mortimer's death, and I am speaking by the record.

Mr. Campbell: Mr. Lawrence may have said they stopped keeping Minutes, but he distinctly stated that they continued in
20 consultation whether they kept formal Minutes or not.

His Lordship: The Meetings were not given up altogether.

Mr. Campbell: Whether they took the form of Meetings of which Minutes were kept, the consultations continued.

By Mr. McKeown (continuing):

30 Q.—In any event, you suggest to His Lordship that there were Meetings of Heads of Departments within the last year, at which this subject of the containers was discussed?

A.—Yes.

Q.—Did you attend them?

A.—It was not exactly what you would call a Meeting: it was a meeting of Heads of Departments, probably in my office, or in the office of somebody else—just an informal meeting.

Q.—Not a Meeting held on any fixed day in the Board Room?

A.—No.

40 Q.—Just a conversation in an office?

A.—Yes.

Q.—As you are the Purchasing Agent, you ought to be able to tell us what is the additional cost of this new package per case, over the old stereotyped form of package?

A.—I should say about \$1.00 a case.

Q.—Of how many bottles?

A.—24 bottles.

STUART G. TURNBULL (for Plaintiffs), *Re-Examination*.

Q.—You know all the cases that are sent out are not 24 bottle cases?

A.—No, there are some 12's.

Q.—Some cases with a dozen bottles each—dozen bottle cases?

A.—Yes.

Q.—Do not most of them go out one dozen bottles to the case?

A.—No, the majority are 24's.

10 Q.—If it is a matter of changing 12 bottles, it would be 50 cents a case?

A.—No, I would not say that. Roughly \$1.00.

Q.—Why? You only have 12 bottles?

A.—Your expense is the same. Your bottles do not amount to much, and your other supplies are very small, and

Q.—(Interrupting): But, you have not as large a bulk? You have not as large a quantity?

20 Mr. Holden: I object to my learned friend interrupting when the witness starts another sentence.

Mr. McKeown: I did not interrupt the witness.

Witness: I would increase the price of the 24's from \$1.00 to \$1.25 or \$1.35.

Q.—An advance of 35 per cent over your first quotation?

A.—I am figuring labor, which naturally I have to figure.

30 Q.—You would have the same labor in putting up the ordinary package, would you not? If you put out a case of 12, or a case of 24, bottles in the old stereotyped form, they would have to go through the same packing and handling?

A.—No, those new packages require a lot more labor.

Q.—The containers come to you complete: they have only to be filled?

A.—They have to be filled, and capped, and corked, and labelled three times.

Q.—You have to cap and cork every package?

A.—In the old package, only one cork.

40 Q.—Now you want to tell His Lordship that in your opinion the additional cost per case of 24 bottles for the new type of package would be \$1.35?

A.—I would imagine so.

Q.—And, how much would it be for a package of 12?

A.—Roughly \$1.00. Of course these are all figures not verified by accountants.

STUART G. TURNBULL (for Plaintiffs), Re-Examination.

Q.—Am I to take it that the form of new package is substantially the same as the form of new package of your competitors?

A.—No, I would not say that.

Q.—Do they put on a cap?

A.—Yes.

Q.—And a cup?

A.—Yes.

10 Q.—Did I understand you to say something about extra labels?

A.—Yes. We have three labels on our bottles; they have only one.

Q.—Have you really expressed what you meant and the viewpoint which has obtained in Canadian Industrial Alcohol when you said your goods were good enough to sell themselves irrespective of the container they went out in?

A.—That is my opinion in the market in the present day in whiskies.

20 Q.—Is that a policy which has been accepted and pursued, that your goods were superior goods, and would sell themselves in competition with any other goods, no matter what containers your competitors' goods were put out in?

A.—I had that opinion for some time but I have changed it now.

Q.—You are a convert to the new container?

A.—Yes.

Q.—When did your conversion take place?

A.—Not very long ago.

30 Q.—Evidently you and the others who had the original view that the goods could be sold and would be sold and would sell themselves in any container has turned out a modification?

A.—Yes.

Q.—After a delay of eighteen months you are now in the market?

40 Mr. Holden, K.C.: My learned friend says "a delay of eighteen months." I submit it is ridiculous. If any industry adopted all the fads of its competitors at once—the form of my learned friend's question is objectionable.

By Mr. McKeown, K.C.:

Q.—Do you say there was still a difference of opinion in the Company on that subject?

A.—Yes.

Q.—Who was the advocate of the old view?

STUART G. TURNBULL (*for Plaintiffs*), *Re-Examination*.

A.—I think the President is of the impression the bottles are perhaps not whiskey bottles.

By the Court:

Q.—How many shares do you own?

A.—Now 775 “A” and 510 “B”.

10 Q.—Have you bought them since the 6th of December?

A.—No, sir.

Q.—Since when are you Treasurer of the Company?

A.—Six or seven years ago.

Q.—You stated at one time 20 per cent of your business was with the Liquor Commission; 60 per cent export business and 20 per cent duty paid export?

A.—That is approximately right.

Q.—Is that changed now?

20 A.—Naturally duty paid export will be decreasing.

Q.—You do not know what proportion?

A.—I could not say in proportion.

Q.—What about export; pure and simple?

A.—It has very much increased now.

Q.—What about the Quebec Liquor Commission?

A.—That is all Commissions. I don't think we are dropping off there now. Right now is a bad time. 'The Commissions' stock up to New Years and Christmas are light and they work up their stock again.

30 Q.—The Commission is not influenced by the size of the container?

A.—They don't care.

Q.—Has the business increased with the Liquor Commissions?

A.—I cannot answer that question.

By Mr. McKeown, K.C.:

Q.—Is it not to your knowledge that the general turnover of all the Liquor Commissions in Canada increases year by year?

40 A.—That is, the general increase of their sales. That does not say the whiskey increases.

Q.—Don't argue with me. I am just asking whether it is not the truth that the gross sales of the Liquor Commissions throughout Canada increase year by year?

A.—Quite so.

Q.—Of course, that, as you suggest, covers not only whiskies, but covers wines?

STUART G. TURNBULL (for Plaintiffs), Re-Examination.

A.—Yes.

Q.—The witness has said he does not know what the situation is, but the Exhibit says so. I won't pursue that further. If we take the figure you mention, 20 per cent from the Liquor Commission, 60 per cent export, 20 per cent duty paid, what would be the proportion now?

10 A.—I could not answer that question.

By Mr. Holden, K.C.:

Q.—You have no interest in the sales?

A.—No, only I know what goes through, and I have a good barometer along beside me.

And further deponent saith not.

20

30

40

GEORGE McCRANN (for Plaintiffs), Examination-in-Chief.

On this 8th day of April, 1930, personally came and appeared.

GEORGE McCRANN

10 of the city of Montreal (Mount Royal Hotel) Sales Department.
Canadian Industrial Alcohol, aged 51 years, called as a witness on
behalf of plaintiff, having been first duly sworn, doth depose and
say:

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

Q.—I think, Mr. McCrann, you have answered to former questions you were with the Canadian Industrial Alcohol at the present time?

A.—Yes, sir.

20 Q.—Connected with the Head Office of the Company here in
Montreal?

A.—Yes.

Q.—And I think you mentioned something in reference to the Sales Department?

A.—Yes.

Q.—If I might go back with you—when did you first become connected with the Canadian Industrial Alcohol Company?

A.—October, 1927.

30 Q.—Have you been connected with the Company ever since
that time?

A.—Yes.

Q.—Where did you first take up your work with the Canadian Industrial Alcohol Company?

A.—At the plant at Corbyville.

Q.—That is at the distillery?

A.—Yes.

Q.—Let me now ask you what experience had you had in the distillery business before October, 1927, when you first joined the Company?

40 A.—I was born on distillery property, had been there all my life.

Q.—You had followed the industry from a boy?

A.—Yes.

Q.—Had you previously had charge of any distilleries or been connected with them?

A.—Yes, sir.

Q.—Where?

GEORGE McCRANN (for Plaintiffs), Examination-in-Chief.

A.—In Kentucky.

Q.—From the first point at which you had responsible management of a distillery?

A.—1900.

Q.—Where was that?

A.—Kentucky.

Q.—Where, in Kentucky?

10

A.—Louisville.

Q.—What distillery was that?

A.—The first two years I was with the Roach plant, and following that with Millwood.

Q.—In what capacity?

A.—Manager.

Q.—Were those important distilleries at that time, under those conditions?

20 A.—The first one was a small one but the Millwood and Crystal plant was a large one.

Q.—That was in 1903?

A.—That was a company or a distillery which owned a number of distilleries and this was one of their branches. They were called the Whiskey Trust. They owned about 30 distilleries.

Q.—They were all in the States?

A.—Yes.

Q.—You were in charge of those plants under that name until what years?

A.—I was up until 1909.

30 Q.—That would be continuously from 1903 to 1909 as Manager of the various distillery companies?

A.—Yes.

Q.—What distillery in 1909?

A.—I was still in the Kentucky Distillery and Warehouse Company.

Q.—Any particular distillery?

A.—Windsor and Menville.

Q.—In 1909 was there any change made by you?

40 A.—I decided the sales end was more profitable and I decided to leave that end and go to the Sales Department. I came up here in 1910, spent some time in Canada, and was offered a better position in 1911 and went back to the States.

Q.—Where were you in Canada?

A.—I went with the Corbyville, and I went with Watham in 1911. I went home in 1911 and received a better proposition than I had in Canada.

Q.—You mean the Corbyville Distillery?

GEORGE McCRANN (for Plaintiffs), Examination-in-Chief.

A.—Yes.

Q.—Who was running it at that time?

A.—Sir Mortimer Davis.

Q.—Under the name of the Consolidated Distilleries?

A.—I do not recall their name at that time.

Q.—In 1911 you returned to the States?

A.—Yes.

10 Q.—What part of the work did you take up there?

A.—Travelling from New York to Cuba and east of the Mississippi River.

Q.—In what concern were you?

A.—R. E. Watham and Company. They were the largest distillers in Kentucky.

Q.—That was before the 18th Amendment?

A.—It terminated.

Q.—From 1911, when you took up the sales work for this concern, how long did they continue?

20 A.—I beg your pardon?

Q.—From 1911, when you took the position with the Watham Company, you took what end?

A.—Until 1917, that is when Prohibition came in.

Q.—Were you therefore continuously engaged from 1911 to 1917 on the selling end with Watham?

A.—Yes.

Q.—Was it always in the same territory?

A.—Yes.

30 Q.—That is, New York to Cuba and east of the Mississippi?

A.—Yes. My north line was the Ohio River; Pittsburgh to New York City.

Q.—What occurred in 1917?

A.—I went back to the manufacturing end. We were making alcohol for ammunition purposes and then I continued in the—

Q.—Where did you take up the manufacturing?

40 A.—The same company, Watham, in Louisville, a portion of time there and a portion of the time I disposed of one of their other plants out of the State, and then they sent me to the north west for the increased medical trade. Liquor was gone. It was sold under permit to the drug trade.

Q.—How long were you in that?

A.—Until I came back to Canada in 1927.

Q.—Where were your headquarters from 1921 to 1927 in charge of the sales?

A.—Chicago.

Q.—Did you have a sales force under you?

GEORGE McCRANN (for Plaintiffs), Examination-in-Chief.

A.—Yes.

Q.—How many men?

A.—I had eight. It varied. At different times I had probably six or eight or nine, or probably ten.

Q.—You were the Sales Manager?

A.—Yes.

10 Q.—And from there you came to Corbyville. What work was assigned to you on your arrival at Corbyville?

A.—I came there to examine some old whiskey for the company.

Q.—How long had Mr. Wilmore been with the company?

A.—I don't know. I think he came the January before that.

Q.—He had been there from January, 1927? Willmore had been there and you came in October in the same year, and you say your first work assigned to you at Corbyville was to examine some old whiskey?

A.—Yes.

20 Q.—What proportion of the then maturing spirits did you examine?

A.—I would say one-fourth of it.

Q.—How many barrels?

A.—25,000 barrels.

Q.—Were these 25,000 barrels opened up?

A.—Yes, sir, each of them.

Q.—Passed upon by you in your position?

A.—Yes.

Q.—How long did that occupy?

30 A.—Until about the 21st or 22nd of December of the same year, 1927.

Q.—When that work was over was there any other work assigned to you?

A.—I went home for Christmas and I came back to Montreal and they sent me to Europe.

Q.—For the Canadian Industrial Alcohol?

A.—Yes, sir.

40 Q.—Do you know at that time whether there were sufficient maturing spirits available for the Company's orders as they came in?

A.—There was sufficient on hand for certain brands, and of other brands there was a little shortage.

Q.—You say you were sent to Europe on whose instructions?

A.—Mr. Kelly's instructions, the Sales Manager. I was sent to report to him and he gave me instructions as to what to do?

Q.—Was the idea generally to purchase spirits or whiskey in Europe to bring it to Canada?

GEORGE McC RANN (*for Plaintiffs*), *Examination-in-Chief.*

A.—Yes, they had some line of quite some quantities in various parts of Europe, but they were not satisfied with the quality, and they wanted them examined before they purchased them.

10 Q.—Did you take up that work?

A.—Yes.

Q.—When did you leave here?

A.—I think on the 21st of January, 1928.

Q.—What countries did you visit there?

A.—I visited Germany, Scotland and Holland.

Q.—Did you examine whiskey in these various places?

A.—Yes.

Q.—Did you pass on and accept some of it?

A.—I bought 868 barrels in Hamburg, Germany.

20 Q.—What would that run, in gallons?

A.—The total would be \$250,000 in value.

Q.—Was it shipped from Hamburg?

A.—Yes.

Q.—Did you accept any other?

A.—No, I rejected the stuff in Holland and the stuff in Scotland.

Q.—Then you returned here?

A.—Yes.

Q.—What time did you get back?

30 A.—The first of March.

Q.—Were you assigned any other work upon your return?

A.—I went to the distillery and looked after the blending from that until the fall of the year.

Q.—Of the same year?

A.—Yes.

By the Court:

Q.—Of 1928?

40 A.—Yes.

By Mr. McKeown, K.C.:

Q.—Was Mr. Wilmore in from time to time?

A.—Yes.

Q.—In the fall of 1928 what happened?

A.—I went back to Germany and bought some more of that whiskey.

Q.—How long were you absent on that trip?

GEORGE McCrANN (for Plaintiffs), Examination-in-Chief.

A.—One month.

Q.—Did you buy any appreciable quantity?

A.—409 barrels.

Q.—What countries did you visit on that trip?

A.—Just the one place.

Q.—Germany?

A.—Yes.

10 Q.—Do you remember what time you got back?

A.—I left the distillery October 22nd and returned about the 21st of November.

Q.—Well, now, from there on were you assigned any other work?

A.—I have been at the distillery since up until January, when I came here.

Q.—In what capacity have you been at the distillery?

A.—Looking after the blending for shipments.

20 By Mr. Holden, K.C.:

Q.—That is at Corbyville?

A.—Yes.

By Mr. McKeown, K.C.:

Q.—Acting under Mr. Wilmore, I take it?

A.—Yes.

30 Q.—Up to what date?

A.—The middle of January.

Q.—What happened? Have you been working at the distillery since the middle of January this present year, 1930?

A.—No, I was sent up here.

Q.—When did you arrive?

A.—I think I came up here on the 19th or 20th of January.

Q.—Had you received any instructions or information as to the purpose for which you were being sent here?

40 Mr. Holden, K.C.: I object to that, as already made with other witnesses, that these facts are subsequent to the institution of the action.

The Witness: I was informed I was to report to Lord Shaughnessy to discuss something about the Sales Department.

By Mr. McKeown, K.C.:

GEORGE McCRANN (for Plaintiffs), Examination-in-Chief.

Q.—Who gave you that information?

A.—Mr. Wilmore.

Q.—He is one of the Vice-Presidents of the Company and a Director?

A.—Yes.

Q.—Is he permanently at Corbyville?

10 A.—Yes.

Q.—He resides there?

A.—Yes.

Q.—Did you carry out your directions? Did you come here and report to Lord Shaughnessy?

A.—Yes.

Q.—On what date, approximately?

A.—I would say the 20th of January.

Q.—You had a conversation with Lord Shaughnessy at that time?

20 A.—In a day or so later. He was busy or something.

Q.—Did you report at the office the next morning?

A.—Yes.

Q.—When you were able to see Lord Shaughnessy, in a day or two?

A.—Yes.

Q.—Do you remember how long?

A.—I would say in a couple of days.

Q.—Had you met Lord Shaughnessy before? Did you know him?

30 A.—Yes.

Q.—You finally did have a conversation with him?

A.—Yes.

Q.—Did he seem to be aware of the purpose for which you had come?

A.—Yes.

Q.—Did you discuss the subject with him?

A.—Yes.

Q.—Did he give you any instructions or directions?

A.—Yes.

40 Q.—What did he say?

A.—He instructed me to go to the Sales Department to acquire any knowledge that I could. In a short time he was going to make some decision about the Sales Manager and he wanted me to be familiar with the business in the office in case he decided who to give it to.

Q.—You were aware at this time Kelly was leaving?

A.—So he told me.

GEORGE McCrANN (for Plaintiffs), Examination-in-Chief.

Q.—Was Kelly actually in the office?

A.—I did not see him.

Q.—You never saw him after your arrival?

A.—No, sir.

Q.—Are you quite sure of it?

10 A.—I would not want to swear to it. I might have seen him once but I could not swear to it.

Q.—He was not there daily?

A.—I could not swear to that. I did not go into his office at all. I think Kelly left before the 31st.

Mr. Campbell, K.C.: His resignation was in anyway that day.

The Witness: I think he left before that.

By Mr. McKeown, K.C.:

20 Q.—Were you assigned to any desk or any particular quarters in the office?

A.—I went back and took an office that had been occupied by Mr. Flanagan, and he went in to Mr. Kelly's office.

Q.—Who directed that?

A.—I don't know, but I was directed in to Mr. Flanagan's office.

Q.—By whom?

A.—I don't know. I went back and that is when they assigned me. I think it was Flanagan.

30 Q.—Did you know Flanagan previously?

A.—Yes.

Q.—You met him previously?

A.—At the plant.

Q.—Did you take possession of his office before or after you had the interview with Lord Shaughnessy?

A.—After.

Q.—Flanagan had moved into the office formerly occupied by Kelly?

A.—Yes.

40 Q.—And Flanagan's office was assigned to you?

A.—Yes.

Q.—On what date would that be, about?

A.—Somewhere about the 25th of January. Along after the 20th of January, I would say.

Q.—Did you proceed to carry out the suggestions and instructions of Lord Shaughnessy, to familiarize yourself with the situation?

GEORGE McCrANN (for Plaintiffs), Examination-in-Chief.

A.—Yes.

Q.—What did you do?

A.—Well, I began to talk among the boys as to what their duties were, ask them about the customers and various people I would like to meet, and asked them for certain information about the stocks, prices, territories, etc.

Q.—To whom did you address these inquiries?

10 A.—I talked with Flanagan and I got up a list of questions that I submitted to Mr. Masterson, who was the gentleman in charge of the records for the Sales Department.

Q.—Were those the two persons to whom you addressed your inquiries particularly, Flanagan and Masterson?

A.—Yes.

Q.—You say you formulated your inquiries in the form of questions?

A.—I did, after some time.

20 Q.—Did you get any information? What nature of replies did you get from Flanagan and Masterson?

A.—Well, I got some information and others I did not get.

Q.—Did it come at one time to a point where you made a memorandum in writing?

A.—Yes.

Q.—Did you hand the memorandum to anybody?

Q.—To whom?

A.—To Masterson.

Q.—What date would that be?

30 A.—January 28th.

Q.—Were the subjects covered by the memorandum things on which you should have answers for the duties to which you had been assigned?

A.—Yes.

Q.—Did you get some information?

A.—I got some information. I got records of the stocks at various places, reports of it. I failed to get complete information in regard to the salesmen and their territories.

Q.—Did you get that information?

40 A.—No.

Q.—What did you understand was the position which was to be filled, in connection with which you had been brought here?

A.—Sales Manager.

Q.—I wish you would enumerate the subjects on which you did not get information after putting in a written memorandum.

A.—I know particularly one. It was the one about the salesmen, their territory, salaries, expenses, and what they produced.

GEORGE McCrANN (for Plaintiffs), Examination-in-Chief.

Q.—On your written memorandum?

A.—Yes.

Q.—You handed that to Masterson and had not got the information?

A.—No, sir.

Q.—Did you take some other steps towards getting it?

10 A.—Yes. About two weeks later I got some information from Mr. Lawrence. I asked him for it. Mr. Masterson gave me some of this information, and told me that information I would have to get from Mr. Lawrence, the information about the salesmen.

Q.—Did you apply to Mr. Lawrence?

A.—Yes.

By Mr. Holden, K.C.:

Q.—When was that?

20 The Court: I do not know what it has to do with this case, just showing how the Sales Department operates.

By Mr. McKeown, K.C.:

Q.—Did you get any information from Lawrence?

A.—No, sir.

Q.—His Lordship asked about what time would this be, that you had this conversation with Mr. Lawrence?

30 A.—Some time in February. I am not positive about the date.

Q.—Failing to get the information from Mr. Lawrence, did you apply to any other source?

A.—No. I took it up with Lord Shaughnessy on February 25th. I reported to him I had not been getting satisfactory information.

Q.—Reported to Lord Shaughnessy personally?

A.—Yes.

Q.—In his office?

A.—Yes.

Q.—What did he say?

40 A.—He said he was pleased I had brought it to his attention; he said he would see I got the information promptly.

Q.—Did you get the information following that interview?

A.—Not yet.

Q.—You have not got it yet?

A.—No.

Q.—You have spoken of your attempts to obtain information as

GEORGE McCRANN (for Plaintiffs), Examination-in-Chief.

to the organization of the Sales Department. Did you have any greater success in the matter of meeting the customers?

A.—No, sir. I met a few, not many.

Q.—Who were the customers handled by?

A.—Mr. Flanagan. I was only introduced to those that accidentally came into the office and whom I met by accident.

10 Q.—There was no effort made to have you meet the customers generally?

A.—No, sir.

Q.—Do you know Flanagan met them?

A.—Yes, sir.

Q.—Do you want to say to the Court that Flanagan was the man who received and interviewed and dealt with the persons who called at the office as purchasers?

20 A.—Flanagan had been assistant to Kelly. He was personally acquainted with these people and had that advantage, and when they came in they naturally asked for him and were received by him.

Q.—I mean, were they handled by anybody else, Mr. Lauster or Lord Shaughnessy?

A.—Not that I know of.

Q.—From the time you arrived there, about the 20th of January up to the present day, April 8th, what progress have you been able to make in the matter of being assistance to that Sales Department?

A.—Very little.

Q.—Have you been able to make any?

30 A.—No.

Q.—From your experience which you have detailed as Sales Manager, will you give His Lordship your view as to whether that department is at the present time properly organized or not for the purpose of getting results?

40 Mr. Campbell, K.C.: I would like to reiterate Mr. Holden's objection to all this evidence. What chance has this company or any other company to carry on its business in the ordinary course for the last six weeks? Now this witness is being asked questions and we have been going on the last six weeks, when anybody is liable to have to come to Court at any minute. It seems to me it is utterly unfair to be trying to produce an impression on Your Lordship's mind under these conditions.

The Court: That is what I have been considering from the beginning. That deposition is practically of no use, but now we have it, let us finish it.

GEORGE McCRANN (for Plaintiffs), Examination-in-Chief.

10 Mr. McKeown, K.C.: It is simply preposterous to say when the most important department of this Company is in a state of collapse that it has been not only on account of this case, but before the case started, reaching back into months, that is very important, and if my learned friends say because the case is going on between the President of the Company and these plaintiffs, that is an excuse for the disorganized condition of that department. I think it is very important. My learned friend can be in Europe for six months, with no executive, and is supposed to be in his office and carry on the business.

Mr. Holden, K.C.: My learned friend should not make statements except from the witness box as to the state of collapse and disorganization, in the face of the evidence, which shows the opposite.

20 Mr. Campbell, K.C.: The Exhibit he filed shows an increase in March over the other year.

Mr. McKeown, K.C.: It showed an increase of 2,000 cases. To bring that even, it would take 130 months, and the increases have taken place since the case has started. It would take 130 months to bring this back to where it was a year ago.

Mr. Campbell, K.C.: When we get rid of you it won't take long.

30 Mr. McKeown, K.C.: When you get rid of me you won't have time for anything.

The Witness: Well, there is an organization working there, but I think it can be improved on, and it seems to me there are just a certain few that want to do all the business, and they surely cannot cover the entire field, and they don't seem to want to co-operate or let anybody else in to assist them.

40 By Mr. McKeown, K.C.:

Q.—Just one different subject. There has been an Exhibit produced here, P-123, and I notice your name as a Director of the Consolidated Distilleries Limited. Did you know you were a Director of the Consolidated Distilleries Limited?

A.—Mr. Lauster mentioned it at one time but I don't know anything more about it.

Q.—When was that?

GEORGE McCRANN (for Plaintiffs), Examination-in-Chief.

A.—A couple of months ago, I think.

Q.—Did you ever attend any Meetings of the Consolidated Distilleries?

A.—No.

Q.—Have you ever been able or been permitted to give your view as to the proper organization of the Consolidated Distilleries?

A.—No.

10 Q.—I see that your name also appears as a Director of the Ste. Hyacinthe Distilleries Company. Were you aware you were a Director of that Company?

A.—Never heard of it.

Q.—Never heard of it until this minute?

A.—No.

Q.—Your name appears as a Director of the Wiser's Distillery Company Limited. Did you know you were a Director of that Company?

20 A.—No, sir.

(Whereupon an adjournment was taken until 2.30 o'clock P.M., April 8th, 1930.)

AFTERNOON SESSION, 2.30 P.M., April 8th, 1930

GEORGE McCRANN

30 reappeared and continued his evidence as follows (in examination-in-chief):

By Mr. McKeown, K.C.:

Q.—This morning I did not have available some data for a couple of questions I was to put to this witness. You stated this morning particulars of, I think, your first trip to the other side in early January, 1928, to purchase some whiskey there, which was shipped here afterwards?

A.—Yes.

40 Q.—Will you produce an extract from a letter dated January 9th, 1928, from Lord Shaughnessy to Sir Mortimer Davis which I find upon the file, outlining the conditions which existed prior to your trip, and in connection with it, in which your name is mentioned. Will you look at this letter and read into the record the first and second paragraph?

Mr. Holden, K.C.: I think it should go in.

GEORGE McCRANN (*for Plaintiffs*), *Examination-in-Chief*.

Mr. McKeown, K.C. (reading):

“ January 9th, 1928.

Re Industrial Alcohol

10 We have, as you know, gone through a period of four months' business unequalled in the history of the Company, each month being almost equivalent to two months' business heretofore; but our only care now is to supply the demand which in view of the small manufacturing program decided upon three or four years ago, is a very difficult matter.

20 In 1923-1924, 1924-1925, 1925-1926 there was very little American Bourbon whiskey manufactured owing to the fact that it was then considered that this was impossible to sell, and energies were particularly centred on the manufacture of “ C ” whiskey, which was then quite abundant without any demand. During the last year, however, the demand has completely changed, and everyone is endeavouring to get American Rye and Bourbon, and the “ C ” whiskey is constantly falling behind. With this tremendous demand it has been difficult to cope, and we are running short on stock, though by January, 1929, owing to our having manufactured in the past two years a good supply of this type, there will not be much difficulty. Our problem, therefore, is to tide over this year, and for that purpose we have found it necessary to purchase some American whiskey. We have located some in Hamburg, samples of which are very good. 30 but before committing ourselves I considered it important to have the whole quantity carefully tested to make sure it was up to sample, and am therefore sending a man there for this purpose. This cargo amounts to about 40,000 gallons and is ten years old, and of course can be blended in small quantities with younger spirits to reach the desired results, and Wilmore, after experiments, is satisfied that the blend will not be changed. The man I am sending is G. McCrann, Wilmore's assistant at the plant, who is a Southerner, of broad experience in the whiskey business, and in Wilmore's opinion the best man we could procure for this purpose. He has also been instructed to search 40 Europe for other consignments since we can do with a little more, and to make a report on general conditions. The next few months are always somewhat quiet and I therefore feel that with the purchase of this whiskey and possibly a little more from Europe, we should tide over the year satisfactorily. I am also working the United States in an endeavour to obtain some from there, but this is very difficult owing to the provisions of

GEORGE McCrANN (*for Plaintiffs*), *Examination-in-Chief*.

the U.S. law which exact that whiskey can only be exported through for medicinal purposes."

You are the Mr. McCrann quoted in that letter?

A.—Yes.

Q.—And you followed out the policy outlined in that?

A.—Yes.

10 Q.—Have you, in the course of working up the information required for the position which you have been occupying with the Alcohol Company, examined the figures showing the sales of the Company at the present time as contrasted with a year ago?

A.—You mean for the period, or the beginning of the year?

Q.—From the beginning of the fiscal year, October 1st?

A.—Yes.

20 Q.—First of all, will you tell His Lordship what the sales were in the classifications of Domestic, Export and Duty Paid Export a year ago, in cases?

A.—Last year, Domestic, 64,342.

Q.—What period are you speaking at?

A.—From October 1st, 1928, to April 5th, 1929.

Q.—Domestic, 64,342. Before we leave that, what per cent of the whole sales was that at that date?

A.—27 per cent.

Q.—27 per cent?

A.—Yes.

Q.—On the same date what were the number of the Export?

30 A.—112,582.

Q.—What per cent was that of the total?

A.—47 per cent.

Q.—And Duty Paid Export?

A.—61,355.

Q.—What per cent was that?

A.—26 per cent.

Q.—As of this year, the period from October 1st, 1929, to April 5th, 1930, what was the—

A.—Domestic, 49,385.

40 Q.—Just a minute before we leave that. What is that percentage?

A.—42 per cent.

Q.—A year ago it was 27 per cent of the whole?

A.—Yes.

Q.—What about Export at the present time?

A.—42,598.

Q.—Cases?

GEORGE McCrANN (for Plaintiffs), Cross-Examination.

A.—Yes; 36 per cent.

Q.—A year ago the per cent was 47 per cent?

A.—Yes.

Q.—What is the Duty Paid Export cases at the present time?

A.—26,454 cases.

Q.—What per cent is that of the whole?

A.—22 per cent.

10 Q.—A year ago Duty Paid Export was 26 per cent?

A.—Yes.

Q.—Have you also figured out how much in percentage the Domestic sales have dropped within the year?

A.—23 per cent.

Q.—They are down 23 per cent?

A.—Yes.

Q.—How much have the Export sales dropped in per cent?

A.—62 per cent.

20 Q.—62 per cent?

A.—Yes.

Q.—And Duty Paid Export?

A.—57 per cent.

Q.—Based upon the figures which you have just given the Court?

A.—Yes.

Q.—What have you in your hand?

A.—The sheet is of April 5th, 1930.

Q.—Is that from the Company's records?

30 A.—Yes.

Q.—Will you produce that as Exhibit P-181?

A.—Yes.

Mr. Campbell, K.C.: All this is subject to objection.

Cross-Examined by Mr. Holden, K.C., Counsel for Defendant:

40 Q.—Mr. McCrann, when you saw Lord Shaughnessy on the 25th of February, as you have testified, how were you treated? How did he treat you?

A.—Very pleasantly.

Q.—Have you any complaint against his relations with you?

A.—No, sir.

Q.—That was the 25th of February, and a week later, the 3rd of March, this trial commenced?

A.—Yes.

Q.—If he had not been here all day and every day at the trial,

GEORGE McCrANN (for Plaintiffs), Cross-Examination.

would you have seen him further in connection with the Department and the questions arising there?

A.—I cannot say so. I know I would have taken it up with him at some time.

10 Q.—You told the Court your connection with the distillery at Corbyville for some time. Tell the Court, please, what is the character, in your opinion, as an expert—what is the character and condition of the liquor stock there?

A.—In first class condition.

Q.—By character, I mean what did you think of the quality of the aged stock and the young stock? What are the conditions of things with regard to the age of the stock of liquor?

A.—Well, we had some various ages. Of course, of the older age there is less, but they are all in first class condition; they are a very fine quality of goods.

20 Q.—Do you know how they contrast with the stock of the competing distilleries?

A.—The samples that I examined from various competitors, I would say our goods are superior to any on the market.

By the Court:

Q.—What would you think could be possible to restore the sales to their former level?

A.—Well, I think a more energetic campaign and more men on the road, more effort to secure business.

30 Q.—Do you think the present attitude of the American and Canadian governments would affect the sales?

A.—It might affect business on the border but I think business on the ocean would be correspondingly increased.

Q.—Would the reform that you suggest mean additional expense?

A.—Well, I would say yes, not a great deal of expense though.

Q.—How much approximately?

40 A.—It would depend on the number of men we put out and the territory we send them to.

Q.—To have the number of men you consider proper, you think it would be advisable to send out. how much more would it cost a year? How much more would it cost for the first year?

A.—I would say between \$75,000 and \$100,000 to put a right campaign on.

Q.—For the first year?

A.—Yes.

GEORGE McCRANN (for Plaintiffs), Cross-Examination.

Q.—And afterwards?

A.—It would depend on the condition at that time what would be justified.

And further deponent saith not.

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JOHN STORMONT, Jr. (for Plaintiffs), Examination-in-Chief.

On this 8th day of April, 1930, personally came and appeared

JOHN STORMONT, JUNIOR

of the City of Montreal (331 Clarke Avenue, Westmount), salesman,
aged 47 years, called as a witness on behalf of plaintiffs, having been
10 first duly sworn, doth depose and say:

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

Q.—Mr. Stormont, your name has been mentioned in connection
with this trial, and you are now a member of the Board of Directors
of the Canadian Industrial Alcohol Company?

A.—Yes, sir.

Q.—Just turn around and speak to the Judge, please. By whom
were you invited to join the Board?

20 A.—I could not say.

Q.—You could not say?

A.—No.

Q.—What does that mean? Can you convey any intimation to
His Lordship as to how you came to be on the Board?

A.—I must have been called by the rest of the Directors.

Q.—What are the facts?

A.—There are no facts.

Q.—Did it just come out of——

30 A.—Just out of the sky.

Q.—They did not run a lottery there, did they?

A.—I cannot say.

Q.—Now, Mr. Stormont, this is a very serious matter.

A.—Yes.

Q.—Did anybody give you the slightest intimation that you
were to become a member of the Board of Directors of Canadian In-
dustrial Alcohol before you found yourself on the Board?

A.—No, sir.

Q.—Who notified you this event had come about?

40 A.—The Secretary.

Q.—Mr. Lawrence?

A.—Yes.

Q.—In writing?

A.—No, sir.

Q.—Up to that time you had no intimation you were going to be
singled out for that honor?

A.—No, sir.

JOHN STORMONT, Jr. (for Plaintiffs), Examination-in-Chief.

Q.—Had you ever served on any other Boards of corporations prior to your advent as a Director of Canadian Industrial Alcohol?

A.—No, sir.

Q.—So you had had no prior experience as an executive in any kind of a corporation?

A.—I have only been 23 years in the liquor business. That is all.

10 Q.—In the matter of the management of liquor businesses as confided to a Board of Directors by the shareholders, and people interested in the Company, you had never had any such experience before?

A.—No.

Q.—You know now there are several Directors have left that Board, Mr. Joseph and Mr. Marler. Do you know whether you have taken over the position of Mr. Joseph or Mr. Marler or whose position you have taken over?

A.—No, sir.

20 By the Court:

Q.—How many shares have you got?

A.—20. Now I got 30.

Q.—Did you buy them or were they given to you?

A.—I bought them, sir.

By Mr. McKeown, K.C.:

30 Q.—When did you get those shares? Have you any record as to the date of your appointment to this Board?

A.—I don't remember.

Q.—Where did you buy them?

A.—Where did I buy them?

Q.—You heard what I said.

A.—Yes, sure.

Q.—Where?

A.—Where did I buy them where?

Q.—It is customary to buy shares through a brokerage office.

40 A.—I don't go into brokerage offices.

Q.—How did you manage to secure the shares you have at the present time?

A.—I bought them through my Bank.

Q.—What Bank?

A.—The Royal Bank.

Q.—What branch?

A.—St. Matthew Street.

JOHN STORMONT, Jr. (for Plaintiffs), Examination-in-Chief.

Q.—When?

A.—I don't remember the date exactly.

Q.—That won't do for us.

A.—I could go back and look it up for you.

Q.—Give us the best kind of a guess you can.

10 A.—Some time in February this year.

Q.—February this year?

A.—This year.

Q.—Before or after you were elected to the Directorate?

A.—I must have bought them before, I guess.

Q.—You say you bought them through the Bank?

A.—Yes. I paid through the Bank too.

Q.—It is not a bad idea.

A.—Not a bad idea. I keep out of brokerages.

20 Q.—I hope you never heard about the lawyer. Do you know when you were elected a Director?

A.—No. I got notification one morning I was a Director. I don't remember the date.

Q.—Right out of the blue?

A.—Right out of the blue.

Q.—Are you still a Director?

A.—I think so, sir.

30 Q.—Now, you have not succeeded Colonel Gaudet as Vice-President. You have not taken any additional office. You are just a plain Director?

A.—Very plain.

Q.—You speak of 23 years experience in the liquor business. In what capacity? Not as a Director, at least.

A.—Selling.

By the Court:

Q.—By the glass or wholesale?

A.—I beg your pardon? Oh, maybe both.

40 By Mr. McKeown, K.C.:

Q.—Is that a fact, or by the cases, or both?

A.—No, by the case.

Q.—Well, you have been connected with the Company some time?

A.—Yes.

Q.—Are your headquarters here in Montreal?

A.—Yes, sir.

JOHN STORMONT, Jr. (for Plaintiffs), Examination-in-Chief.

Q.—Have you been aware that these sales have been going off very badly in the last year?

A.—The last year?

Q.—You heard me the first time.

A.—Yes, sir.

10 Q.—Well, how do we stand on that question now? Just between the two of us, Mr. Stormont, have the sales been going off badly in the last year or not?

A.—They have fallen some.

Q.—We have an impression they have fallen off about 120,000 cases. Do you refer to that as “some.”

A.—Yes; it is a condition.

Q.—What condition?

A.—We oversold ourselves.

Q.—You oversold yourselves?

A.—Yes.

20 Q.—Evidently that was not a condition with your competitors, whose sales appear to be going up. If you were prudent and did not oversell yourselves—

A.—They did not have anything to sell.

Q.—How many years have you been connected with the Company?

A.—About eight years.

Q.—Is it true that a couple of years ago you were unable to fill your orders as they arrived?

A.—Yes, we have had times we could not fill orders.

30 Q.—You have not had trouble in the last few months at all in that respect, have you?

A.—What are you asking me? What kind of whiskey? For instance, what age whiskey?

Q.—You know I am not an expert. I have not had 23 years experience in the business so you might make allowance for that. I am talking about whatever goods you people have to sell; the sales appear to have fallen off.

A.—I don't know what you mean by that question.

40 Q.—Everybody else has been able to get along better with me than you are. It has come out in proof that the sales beginning on October 1st, 1929, up to the present, as compared with the sales of the similar period for a year ago are down about 120,000 cases.

A.—We did not have the whiskey to supply the orders this last couple of months. We are coming into whiskey again.

Q.—And the whiskey you were short of between October and a couple of months ago you could not deliver?

JOHN STORMONT, Jr. (for Plaintiffs), Examination-in-Chief.

A.—I don't think that is a fair question. I am going not to tell my competitors what kind of whiskey we have got.

Q.—Yon don't wish to divulge that matter?

A.—I don't think it is fair.

Q.—Fair to your competitors? Fair to whom?

A.—Fair to us.

10 Q.—You are the first witness who has suggested any such cause as that up to date?

A.—I was connected with the Department that ran out of whiskey. We could not supply it.

Q.—Because you could not deliver it?

A.—I never said "deliver." I said supply.

Q.—I am going to ask you to be specific. Tell me what whiskey it was you had orders for you could not deliver?

A.—I will answer that for you, Mr. McKeown. You had a witness here just a few moments ago—

20 Q.—Never mind asking about the witness.

A.—I am going to give you an answer. We went out to the Old Country to buy certain whiskey to supply certain demands and that whiskey was used, certainly used, to carry us over a certain period.

Q.—What next?

A.—That is all. We are going into good business again. That is two years ago. We still have some left.

Q.—Why did you not sell it then?

A.—We had not any to sell. We are using it for other purposes.

30 Q.—Have you anything else to add as the cause of stopping that except that you could not supply the whiskey?

A.—I suppose Mr. McCrann's shipment might have something to do with it.

Q.—It does not seem, according to the figures we have. What is the matter with the ocean business?

A.—The ocean business is very good.

Q.—It seems to be going up?

40 A.—As I told you, we ran out of whiskey. We oversold ourselves.

Q.—What did you oversell, in connection with export?

A.—American Rye.

Q.—Did you run out of American Rye?

A.—Practically. Of an age.

Q.—What age?

A.—Now, there is another thing again. I don't think that is

JOHN STORMONT, Jr. (for Plaintiffs), Examination-in-Chief.

a fair question. I am giving our competitors information of the stock of whiskey we have on hand.

Mr. Holden, K.C.: This is as much in the plaintiffs' interest as the defendants'.

10 The Court: More so.

Mr. Holden, K.C.: I submit it is for Your Lordship to decide, not my learned friend.

Mr. McKeown, K.C.; This witness is here as the colleague of Lord Shaughnessy, and I brought him to get some information out of him.

20 The Court: On the other hand, they now are avoiding the disclosure of anything that may have to do with their rivals in the industry.

Mr. McKeown, K.C.: They have had the exposure by the falling off of the stock. It is no news to them. My learned friend safeguarding the competitors is a little too much of a good thing, in view of the evidence that has come out. Schedules were delivered over to them, so it does not become this witness in the box to be shielded under imaginary information.

30 Mr. Holden, K.C.: My learned friend is wrong in stating that information has been given to competitors. They got the valuations. They did not get the information my learned friend is now trying to put in the record and the newspapers and everywhere else.

Mr. McKeown, K.C.: I propose to check up Mr. Stormont's evidence with Exhibits and compilations in the books, showing the quantity of whiskey and the ages.

40 The Court: Assuming his answers would be wrong, do you think it would be sufficient for me to dismiss Lord Shaughnessy?

Mr. McKeown, K.C.; Not at all. I think we will leave this Director then where he is, as to his position on the Board.

Mr. Campbell, K.C.: In the liquor business and the helpfulness to the Company.

And further deponent saith not.

EDWARD JAMES LAUSTER (for Plaintiffs), Examination-in-Chief.

On this 8th day of April, 1930, personally came and appeared:

EDWARD JAMES LAUSTER

of the city of Montreal (1455 Drummond Street), General Assistant,
aged 45 years, called as a witness on behalf of plaintiff, having been
10 first duly sworn, doth depose and say:

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

Q.—How long have you been with Canadian Industrial Alcohol?

A.—Since August 1st, 1925.

Q.—1925?

A.—1925.

Q.—Only five years?

20 A.—Only five years.

Q.—Before that period were you with any of the subsidiaries of
Canadian Industrial Alcohol?

A.—Yes, sir.

Q.—What company?

A.—Wiser's Distillery Limited.

Q.—The distillery situated at Prescott?

A.—Yes.

Q.—That is a distillery now forming part of the Canadian In-
dustrial Alcohol combination?

30 A.—Yes.

Q.—Was Wisers' only taken into Canadian Industrial Alcohol
five years ago?

A.—No, it was taken in about ten years ago.

Q.—So that you for ten years have been either with Canadian
Industrial Alcohol or one of its operating subsidiaries?

A.—Yes.

Q.—Up to five years ago your headquarters were in Prescott?

A.—I think I came down here about six or seven years ago.

40 Q.—To visit Canadian Industrial Alcohol?

A.—No. I took charge of the Ste. Hyacinthe distillery for a
couple of years.

Q.—Where was their office at that time?

A.—Which?

Q.—Ste. Hyacinthe distillery?

A.—Ste. Hyacinthe.

Q.—They had no office in Montreal?

EDWARD JAMES LAUSTER (for Plaintiffs), Examination-in-Chief.

A.—No.

Q.—Did you live in Ste. Hyacinthe?

A.—No.

Q.—Where did you live?

A.—Prescott. I ran back and forth.

Q.—Was Ste. Hyacinthe at that time a subsidiary of Canadian Industrial Alcohol?

10 A.—I don't know whether it was a subsidiary or not, but I think they were operating under a separate name.

Q.—Who owned the stock, if Canadian Industrial Alcohol did not, of the Ste. Hyacinthe distillery?

A.—Really, I don't know who owned that stock.

Q.—You don't know?

A.—No.

Q.—In any event, did you become at some time or other a Director of Canadian Industrial Alcohol?

20 A.—Yes.

Q.—When?

A.—1926.

Q.—And at the present time you are one of the Vice-Presidents?

A.—Yes, sir.

Q.—What did you say your occupation was?

A.—General assistant to Lord Shaughnessy.

Q.—You are not assigned to any special duties with the establishment?

A.—No, sir.

30 Q.—What is your salary?

A.—\$15,000.

Q.—\$15,000?

A.—Yes.

Q.—Are you general supervisor of the whole organization?

A.—No.

Q.—Have you got any department at all coming under your jurisdiction directly?

A.—Well, I look into every department that I can every day.

40 Q.—Do you want to tell His Lordship you do not look after any department in particular?

A.—More in the manufacturing than anything else because I had experience in manufacturing, blending, etc.

Q.—That is the department which now concentrates at Corbyville?

A.—Yes.

EDWARD JAMES LAUSTER (for Plaintiffs), Examination-in-Chief.

Q.—Is that your specialty at the present time, looking after the manufacturing end at Corbyville?

A.—No, because Sir Mortimer wanted, if anything should happen to one of our managers up there, so he would have me so I could go up there and fill Mr. Wilmore's position or anyone's position.

10 Q.—Have you a competent man in Mr. Wilmore there at the present time?

A.—Yes.

Q.—You say it was Sir Mortimer's idea that you should be ready to take over any department?

A.—Any department at all.

Q.—Did you happen to know the Sales Department had been vacant for the last few months, since Kelly resigned?

A.—I would not say it was vacant, because I understand Flanagan and McCrann had taken it over.

20 Q.—Is there any recognized head to that department or has there been since Kelly's departure?

A.—I was supposed to look after that and Commissions.

Q.—You mean Liquor Commissions?

A.—Yes.

Q.—Since when has that fallen upon your shoulders?

A.—February 1st.

Q.—Who looked after the Liquor Commissions before February 1st?

30 A.—February 1st Kelly had charge of the Commission here.

Q.—Are you speaking of 1930?

A.—Yes, sir.

Q.—Kelly had charge of what?

A.—He had charge of Quebec and Toronto and I used to take trips to the west, the Commissions in the west.

Q.—That is, the four western provinces?

A.—Yes.

Q.—Manitoba, Saskatchewan, Alberta and British Columbia?

A.—Yes.

40 Q.—You used to take trips out there?

A.—Well, I have, up to this year?

Q.—When did you take your last trip out there?

A.—Last March.

Q.—1929?

A.—Yes, sir.

Q.—Prior to that, how often had you visited the west?

A.—Twice a year.

EDWARD JAMES LAUSTER (for Plaintiffs), Examination-in-Chief.

Q.—Did you go west twice a year during Sir Mortimer's time?

A.—Yes.

Q.—How did it come about you have not gone west since March, 1929?

A.—I came back here in April and got word from Lord Shaughnessy to go to Europe.

10 Q.—In April?

A.—I got back in April and I sailed on May 7th for Europe.

Q.—How long were you away?

A.—Three months; pretty near three months.

Q.—That would bring you back here in August?

A.—I got back here the 29th day of July, or the 30th.

Q.—July. Seeing you were taking two trips a year you did not take any in the fall of 1929?

A.—No, I did not.

Q.—Was that your decision or anybody else's?

20 A.—Lord Shaughnessy went west in October.

Q.—In September?

A.—In September; and Mr. Wilmore went out west.

Q.—You did not go?

A.—I did not go.

Q.—Did Mr. Wilmore go west to call on the Commissions?

A.—He called on the Company's subsidiaries in British Columbia. I called on the distilleries; also the Commission.

Q.—That is when you went west?

A.—Yes.

30 Q.—When Mr. Wilmore went west did he not go purposely in connection with the distilleries in British Columbia?

A.—Manitoba and British Columbia.

Q.—Where you had subsidiaries in both places?

A.—Yes.

Q.—What services have you rendered as assistant to the President in the last six months in any department?

A.—I have been back and forth to the plants, Prescott and Corbyville.

40 Q.—Prescott is not a very serious matter. In the last six months it has not been a very important factor?

A.—No, not very.

Q.—Have you done any bottling there?

A.—Yes, we have.

Q.—You have not done distilling there?

A.—No.

Q.—What other plants have you been up to?

EDWARD JAMES LAUSTER (for Plaintiffs), Examination-in-Chief.

A.—Those are the only two.

Q.—What else have you done in the past six months in your role as assistant to the President?

A.—Not very much.

Q.—What if anything have you done towards the amelioration of the Sales Department?

10 A.—Well, I have been down to the Commission two or three times, I think. Three times, I think.

Q.—What do you mean? The local Commission here?

A.—Yes.

Q.—You have been there three times in the last six months?

A.—Not six months.

Q.—Have you been there in the last six months?

A.—I have been there three times in the last three weeks.

Q.—Before that how long since you went there?

A.—I did not go there because Kelly went.

20 Q.—I am asking you when you were there before?

A.—I have not been there in a year.

Q.—Is it not true the Liquor Commissions generally were supposed to come under your jurisdiction?

A.—Not Quebec or Toronto, no.

Q.—Is that all you have done towards aiding the Sales Department in the last six months, calling on the Liquor Commission three times in the last three weeks?

A.—No, but we had customers come in my office and try and sell them goods there.

30 Q.—You tried to sell them goods there?

A.—That is all. That was more for the Wiser Company than the Consolidated.

Q.—Within the past few months?

A.—Yes.

Q.—Do you handle the customers who come in?

A.—Very few, unless I know them personally.

Q.—Who does handle the customers who call?

A.—Now?

40 Q.—Well, yes.

A.—Well, now, it is Flanagan.

Q.—Flanagan?

A.—Or Masterson.

Q.—At the risk of repetition, when did you go last to call upon the Liquor Commissioners of the Provinces of Manitoba, Saskatchewan, Alberta and British Columbia?

A.—Last March.

EDWARD JAMES LAUSTER (for Plaintiffs), Examination-in-Chief.

Q.—Last March?

A.—Yes.

Q.—Did you communicate with them?

A.—Yes, I have since.

Q.—Did you wire them?

A.—Yes, sir.

Q.—Soliciting business?

10 A.—Well, I thought I was going out the first of the year and I found that I could not go so I wired them.

Q.—What did you say in the wire? Did you wire them all approximately the same thing.

A.—Yes.

Q.—What was that?

A.—Asking if they required any goods, expected to be out before this time and I just asked them if any required anything.

20 By Mr. Holden, K.C.:

Q.—Why could you not go?

A.—I spoke to Lord Shaughnessy about it and he did not want me to go at that time.

By Mr. McKeown, K.C.:

Q.—Your plan was to have gone after the turn of the year, after the first of January?

30 A.—Something after the first of January, yes.

Q.—Have you been aware of the rate at which the sales of this Company have been dropping off?

A.—Yes, sir.

Q.—What steps, special steps, or any steps, have you taken to remedy that condition?

A.—I tried to get every man out and hustle around and sell goods, that we had around.

40 Q.—Did you do anything towards changing the men, getting more competent salesmen?

A.—No. That was up to Lord Shaughnessy. It was not up to me.

Q.—Did you do anything towards increasing the number of the force?

A.—No.

Q.—Did you consider that that was your affair?

A.—No, not at that time.

EDWARD JAMES LAUSTER (for Plaintiffs), Examination-in-Chief.

Q.—Faced with the major situation of the sales manager, did you do anything on your own initiative towards putting in a new sales manager or securing a competent man?

A.—I spoke to Lord Shaughnessy about it.

Q.—Did you do anything more than that?

A.—No.

10 Q.—What is the present policy, if you can tell us, of the Sales Department, in the matter of improving the conditions?

A.—They are improving every day.

Q.—Do you mean the improvement which is reflected in the March business of the eleven hundred cases, for the total year?

A.—I do not think they had a fair chance in March. I think they will improve and continue to improve.

20 Q.—How is it that the improvement has been so long deferred, when these sales started to fall off as far back as February 1929? What other indications of improvements were there, because about March 1930, you were there watching this every day?

A.—I think it has been due to the package somewhat.

Q.—Were you in Court this morning when Mr. Turnbull was examined?

A.—Yes.

Q.—You referred just now in your evidence to the package?

A.—I think that had something to do with it.

Q.—That was the subject upon which he was examined?

A.—Yes.

30 Q.—Could the present packages now being used have been put out earlier than they were?

A.—We had so many old supplies, and I thought it would be a good idea to work off these old supplies first, to see how the new package would take. That was the idea. I have no doubt it would have helped.

Q.—But you do not attribute the whole falling off, especially of those 120,000 cases to the package?

A.—No, I do not.

40 Q.—Can you define the present policy for the amelioration of the Sales Department? What has to be done? What is planned to be done?

A.—I think if we had more salesmen out, it would help us.

Q.—Have you any further reasons to give His Lordship for the present condition of the Sales Department than those to which you have already referred?

A.—No, I have not.

Q.—Have you during the past six or eight months felt satisfied

EDWARD JAMES LAUSTER (for Plaintiffs), Examination-in-Chief.

in your own mind that that Sales Department was being properly and efficiently operated, and were you satisfied with the results?

A.—I thought it was due to the conditions for two or three months, the break in the market and everything. I thought that was affecting the sales.

Q.—The break in what market?

A.—The general break we had in October.

10 Q.—Do you mean in the stock market?

A.—In the stock market, that the buyers were all broke or something.

Q.—That is what it looked like, but how about the period for six months before the break, when your sales were still dropping off?

A.—I was in Europe then you must remember.

Q.—But, you had got back in July?

A.—In July.

20 Q.—I ask you, were you satisfied in your own mind as a Director of that Company with the conditions?

A.—Not in the sales, no.

Q.—Was it not a perfectly apparent situation that something had to be done about those sales as early as the time of your return from Europe last July?

A.—I thought that we should have made a change in our package, something like that—made a change there, yes.

Q.—Did you say anything to Lord Shaughnessy in that respect?

A.—Yes, we spoke about the package for sometime.

30 Q.—I take it that you were not satisfied with the conditions that you found in the sales end when you returned in July 1929?

A.—No.

Q.—No one could be, could they?

A.—It would be hard for me to answer that question.

Q.—Will you tell His Lordship quite frankly whether that Sales Department is organized up to the point of efficiency to which, in your opinion, it should be?

Witness: Do you mean organized now the way it should be?

40 Counsel: Take now.

A.—Well, I think we are doing everything that we can at the present time.

Q.—That may be.

A.—I think at the present time we are making an increase every

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month, and I think we have a much better showing all the way around.

Q.—The increase you are referring to resulted last month in an increase of some eleven hundred cases?

A.—That was not a fair test.

Q.—That is a fact, is it?

10 A.—Yes, around that. I would not say just eleven hundred cases.

Q.—Would you be in favor of continuing the present conditions in that Sales Department as they are now, speaking as a responsible officer of the Company?

A.—Well, I would want to try it out and see for a month or six weeks, to see how this new package takes.

Q.—Apart from the new package. I am talking about the personnel. Are you satisfied with the personnel and the way things are operating there?

20 A.—It would be hard for me to answer that.

Q.—To be frank. All I want you to do is to tell the truth.

A.—I think we can make a change, perhaps make certain changes there which would increase the sales.

Q.—Have you any fixed plan in your mind as to how you would go about it just at this present moment?

A.—Not at this present moment.

Q.—If the increase does not come about any more rapidly than as shown in March, it will take a long time to rectify it, will it?

A.—Yes, it sure will.

30 Q.—I want you to tell His Lordship frankly, on your oath, so tell the truth here, whether, in your opinion, that Company as organized at the present time is an efficient organization?

A.—Well, I do not think it is.

Q.—Beginning at the head up, and going down, in your opinion, from the experience that you have had in connection with the liquor business, is the present President of that Company, Lord Shaughnessy, a competent man to be in charge of the Company?

40 A.—Well, all I can say is, I spoke to Sir Mortimer sometime ago, and said, I thought that he should have a real alcohol man at the head of the Alcohol Company.

Q.—You told Sir Mortimer that?

A.—In 1925.

Q.—Was that your opinion then?

A.—Yes, sir.

Q.—Is that your opinion now?

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A.—I think it would be much better if we had an Alcohol man there who knew more about the business.

By the Court:

Q.—Are you an Alcohol man?

10 A.—Yes, sir.

By Mr. Campbell

Q.—Are you a candidate for the Presidency?

A.—No.

Mr. McKeown: Now, Mr. Campbell, just leave the witness alone at the present time.

20 By Mr. McKeown:

Q.—Did you take it upon yourself on or about January 10th to call upon Lady Davis?

A.—I did.

Q.—Did Lady Davis solicit that interview in any manner with you?

A.—No, sir.

Q.—Where did you call upon Lady Davis?

30 A.—At the Ritz Carlton Hotel.

Mr. Holden: May it please Your Lordship, I am not trying to shut out this evidence if you see any utility in it, which I confess I cannot. I submit that what the witness may have thought best to do at that time, and in that way, is not relevant evidence in this case.

Mr. McKeown: I wish simply to have this witness tell Your Lordship what he told Lady Davis in that connection, on his own initiative.

40 His Lordship: Objection reserved.

By Mr. McKeown:

Q.—Had Lady Davis in any manner solicited that interview?

A.—No.

Q.—Did you interview Lady Davis absolutely on your own initiative?

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A.—Yes, sir.

Q.—That was before this suit was taken? The suit was taken on the 18th of January, and this interview, I think, was on the 10th of January?

A.—Yes.

Q.—Did you, at that interview, state to Lady Davis —

10 Mr. Holden: I submit my learned friend should ask what he stated.

Mr. McKeown: You are quite right, Mr. Holden.

By Mr. McKeown:

20 Q.—Will you state to His Lordship just what you stated to Lady Davis with reference to the Alcohol Company or Lord Shaughnessy, if anything, on that occasion?

Mr. Holden: I submit, my Lord, the witness should be asked, “What did you say to Lady Davis?”

Mr. McKeown: I am quite prepared to put the question in that form. I do not think it will make one iota of difference with the witness in the box.

By Mr. McKeown:

30 Q.—Just tell His Lordship what you said?

A.—I went up to see about myself. That was the whole thing. It was not so much about the Alcohol Company, because, I did not want to stay with the Alcohol Company. I wanted to resign; I had heard so much talk about the case, I did not want to stay if I was not wanted, and I asked Lady Davis if she had anything against me in any way.

Q.—What did Lady Davis say?

A.—She said, no.

40 Q.—What was the next feature of the conversation?

A.—She asked me about how the McNish Company was getting along and I told her that they were cutting down expenses and so forth over there as fast as we could.

Q.—What further subjects were discussed?

A.—There was another subject about something, about an overdraft in the bank; she asked me about an overdraft. Then, some-

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thing came up about the Merger; she wanted to know if I had heard anything about the Merger.

Q.—Had you heard anything?

A.—I said I had heard it rumored.

Q.—What else?

A.—I do not recall—oh yes, then there was something about the Alcohol Company, about a conversation I had had with Sir
10 Mortimer.

Q.—Do you suggest that Lady Davis asked you about it?

A.—No, no, Lady Davis did not. I was saying that I had a conversation with Sir Mortimer at the St. Regis Hotel in New York, about the Alcohol Company. That was before Lord Shaughnessy was President. Mr. Waddell was President at that time, and I said, I thought it would be much better for him to have somebody from the Alcohol Company, or somebody who knew the Alcohol business at that time placed in the Incorporated Company, and also at the
20 head of the Alcohol Company, and at that time there was a gentleman there—I was just ready to go down South ———

Q.—You mean in 1925?

A.—Mr. Sinnet was there.

Q.—Was he present at this interview?

A.—No, not there.

Q.—How did his name come up?

A.—He asked me—because, Sir Mortimer got kind of peeved about him suggesting anything to me at that time, and he asked me that.

30 Q.—He asked you what?

A.—He asked what we were talking about when he came in the room?

Q.—In the same connection I take it, from what you have already said, that you told Lady Davis that you had had this conversation with Sir Mortimer in 1925?

A.—Yes.

Q.—And, did you make any further statement based upon that conversation to Lady Davis?

40 A.—Well, I said that I felt that it would have been much better if he had somebody in there who knew the Alcohol business. That is all I said.

Q.—At the present time, or at that time?

A.—At the present time.

By the Court:

EDWARD JAMES LAUSTER (for Plaintiffs), Examination-in-Chief.

Q.—That is, you repeated to Lady Davis what you told Sir Mortimer?

A.—Yes.

Mr. McKeown: That is not the point, my Lord. He went further.

10 By Mr. McKeown:

Q.—Apart from repeating the conversation to Lady Davis which you had had with Sir Mortimer in 1925, did you say anything to Lady Davis with reference to the present existing conditions of the Alcohol Company?

A.—I said that I thought it would have been much better if they had an Alcohol man in there.

Q.—As applied to the present time?

20 A.—Yes, sir.

Q.—Do you testify that on that occasion you told Lady Davis that at the time of your conversation with her, on the 10th of January, 1930, you thought that the Alcohol Company would be much better off with an Alcohol man?

A.—At the head of it.

Q.—And in the same connection you referred to what you had previously told the late Sir Mortimer Davis?

A.—Yes.

30 Q.—And you say that your thought was, that there should be an Alcohol man. Was that the limit of what you said, or did you say anything further?

A.—That is all I said.

Q.—And is that your opinion at the present time?

A.—Well, I think if the organization was reorganized, it would be all right.

Q.—Did you not use the expression on that occasion, “An Alcohol man or a good business man”?

A.—I don't remember at all, “A good business man.”

40 Q.—Did you say that the particular nature of the business required someone skilled in that particular line?

A.—I did.

Q.—You have referred to McNish, and you have been over at the McNish offices in London and have seen the plant in operation too I suppose?

A.—Yes.

Q.—Have you been at their blending plants?

A.—Yes, sir.

EDWARD JAMES LAUSTER (for Plaintiffs), Examination-in-Chief.

Q.—And are you personally familiar both with the financial condition, and the physical condition of the McNish assets?

A.—Yes.

Q.—And you were there as late as last July, 1929?

A.—Yes, sir.

Q.—Did you meet Colonel McNish and the others concerned?

10 Q.—Had you been over there more than once?

A.—Yes, sir.

A.—No.

Q.—That was the only trip?

A.—That was the only trip.

Q.—And you were there three months in that connection?

A.—Pretty nearly three months.

20 Q.—Will you tell His Lordship from your experience, and having regard to the present financial condition of McNish, and the condition of its physical assets, what has to be done with that Company to change it from the position which it has been proved to be in by the evidence here?

A.—The only thing to do, is to cut down on the overhead and expenses, sell off your stock, get your money back, reduce your capital down even to \$500,000.

Q.—From what?

A.—From what we now have on hand.

Q.—How much have you on hand?

30 A.—Well, there are about 1,500,000 gallons I would think. That is roughly.

Q.—Of spirits?

A.—That is of malt and grain alcohol, what they call grain spirits.

Q.—What do you mean? To cut them down to 500,000?

A.—No.

Q.—Sell it out?

A.—I mean, to sell it off.

Q.—Sell it all out?

40 A.—I would not sell it all at once, because if you did, you would break the market?

Q.—Sell it as fast as you can?

A.—Yes.

Q.—Is any effort being made at the present time to sell it?

A.—There has been, yes.

Q.—There has been?

A.—I think they are selling right along, when they get a chance to sell, because, of course, we have not been selling anything at a loss.

EDWARD JAMES LAUSTER (for Plaintiffs), Examination-in-Chief.

Q.—Has there been any campaign made to dispose or realize upon that 1,500,000 gallons of spirits?

A.—Not now, because the spring is the best time to sell it. It has to be sold in the spring; May, June, July and August is when you get a good market for it. You would get a better price then than now.

Q.—And your remedy for the McNish situation would be to sell the stock—

10 A.—Yes, to the very best advantage. I would not sell at a loss.

Q.—And cut down overhead?

A.—Yes.

Q.—Would that have the effect of curing in large measure the annual deficit of about \$500,000?

A.—I think it would, because there is a carrying charge on that.

Q.—Carrying charge?

A.—Yes, and insurance.

Q.—In this deficit of McNish, of \$500,000 per annum, does that include the six per cent interest on the five million dollars of McNish
20 Bonds which are out, guaranteed by Alcohol?

A.—Yes.

Q.—Is that one of the contributing causes to that deficit?

A.—The advertising and the interest.

Q.—In point of fact, is the interest charge—we will take it in round figures at six per cent on five million dollars, say \$300,000 disbursed by Alcohol or disbursed by the McNish Treasury?

A.—I think it is from here.

Q.—Disbursed by Alcohol, and charged to McNish, is that it?

30 A.—I think it is.

Q.—What did you do exactly in connection with McNish, during the period that you were over in England for the three months?

A.—Running out the stocks. It is handled in a different way to what it is here. Over there you run it out in brokers' hands.

Q.—You mean the stock of liquor?

A.—The stock of liquor. It is handled that way.

Q.—Jobbed by these brokers?

A.—By the brokers.

Q.—Instead of having travellers calling on consumers or the
40 retail trade, it is sold through brokers?

A.—Through brokers. It takes some time.

Q.—And was that part of the plan of your visit, to liquidate this stock of liquors in that way?

A.—Yes, sir.

Q.—Is that what you were concentrating on?

A.—Yes.

Q.—How much did you succeed in selling?

EDWARD JAMES LAUSTER (for Plaintiffs), Examination-in-Chief.

Witness:—At the time I left?

Counsel:—Yes.

A.—About \$175,000 worth.

Q.—While you were there?

A.—While I was there.

Q.—Did you have any offers for the balance en bloc?

A.—No.

10 Q.—Or, for the McNish Company?

A.—No, not any offers at all.

Q.—Were there any negotiations for the sale of the Company as a going concern?

A.—As a going concern, I think there was. Mr. Chapman offered to take it on a commission basis.

Q.—Mr. Chapman of the Scottish D.C.L.?

A.—I do not think he is connected with the D.C.L. now.

Q.—But he has been connected with them at different times?

20 A.—I guess he has.

Q.—And on a commission basis?

A.—On a commission basis.

Q.—To take over the stock on a commission basis?

A.—Yes.

Q.—But you decided against that policy, is that right?

A.—Lord Shaughnessy and I decided against it.

Q.—Can you make any estimate with any degree of definiteness as to how long it will take to liquidate that stock of McNish liquors?

30 A.—I do not think it would take over a year; maybe less than that.

Q.—In point of fact, what is Industrial Alcohol doing towards a solution of the McNish troubles?

Witness:—You mean here in Montreal?

Counsel:—Yes.

A.—We are selling it here.

Q.—Are you pushing it?

A.—Yes, sir.

Q.—Have you got another brand called Teachers?

A.—Yes.

40 Q.—Which do you sell the most of?

A.—We just got Teachers.

Q.—Which do you sell the most of?

A.—We are selling more of McNish than Teachers.

Q.—I am not speaking of Montreal. I am speaking of the sales of Industrial Alcohol, of McNish on the one hand and Teachers on the other?

A.—We have not got Teachers; just for export.

EDWARD JAMES LAUSTER (for Plaintiffs), Cross-Examination.

Q.—I don't care where it goes?

A.—We are selling more of McNish through Canada.

Q.—Will you please not speak of Canada. I am talking about the McNish liquor which is sold by the Canadian Industrial Alcohol Company; I don't care where it goes, and I am speaking about Teachers sold through Canadian Industrial Alcohol, and I do not care where it goes. Which do you sell the most of?

10 A.—I have not those figures, but I think we are selling more McNish.

Cross examined by Mr. A. R. Holden, K.C., of Counsel for defendants.

Q.—Do you remember, Mr. Lauster, what part of 1925 it was that you had the interview with Sir Mortimer in New York?

A.—Yes sir, July 7th or 9th.

20 Q.—How did the question as to the Presidency of the Alcohol Company come up?

A.—He told me that Mr. Waddell was going to be through, and he wanted my opinion, I suppose, or advice. I don't know how it came up. He spoke to me about it.

Q.—And did he say he had in mind asking Lord Shaughnessy to take the position?

A.—No, not at that time.

By the Court:

30 Q.—Was Lord Shaughnessy's name mentioned in that conversation?

A.—No, sir.

By Mr. Holden:

Q.—But, in your conversation with Sir Mortimer, did you make it very clear that, in your opinion, it should be an experienced Alcohol man who should be President?

40 A.—I did.

Q.—And then, it was a few months later that he asked Lord Shaughnessy to take the position. Do you remember when Lord Shaughnessy became President?

A.—It was in December, 1925.

Q.—The same year?

A.—Yes.

Q.—There is no question that Sir Mortimer understood, and

EDWARD JAMES LAUSTER (for Plaintiffs), Cross-Examination.

gave consideration to your suggestion?

A.—Well, I don't think he did.

Q.—He did not agree, but he did understand what you said?

A.—Well, he understood what I said absolutely.

Q.—May I ask you this: You told the Court that you went to see Lady Davis on the 10th of January? Why did you go? What was really your reason for going?

10 A.—I did not want to stay in the organization. I wanted to resign.

Q.—Why?

A.—I had another position in view. I did not want to stay.

Q.—Had you heard at that time anything about there being trouble?

A.—Yes.

Q.—What did you say you wanted to know from Lady Davis?

A.—If she had anything against me in the way I was handling Canadian Industrial Alcohol.

20 Q.—If she had anything against you?

A.—Yes.

Q.—Is that why you went to see her?

A.—Yes.

Q.—You have already told the Court she said no, she had nothing against you?

A.—Nothing against me.

By the Court:

30 Q.—Did you tell her you had taken another position?

A.—I said I had another position offered me.

Q.—And did Lady Davis urge you to stay?

A.—No she did not.

Q.—Did you intend to take up that other position?

A.—I did not. I thought if they had anything against me that I would look out and get another position for myself.

Q.—And I suppose you are still Vice-President of Canadian Industrial Alcohol?

40 A.—Yes, sir.

Q.—And you have made no plans to take another position?

A.—Not yet, I have not.

Q.—How long have you been in the Alcohol business?

Witness:—Do you mean with this Company.

By the Court:—Altogether?

EDWARD JAMES LAUSTER (for Plaintiffs), Cross-Examination.

A.—Nearly twenty years.

By the Court:

Q.—What did you do before you joined Sir Mortimer's Company?

10 A.—I was with J. P. Wiser and Sons first, and then, Wiser's Distillery Limited, and Sir Mortimer bought out Wiser's Distillery.

Q.—What would be your suggestion to improve the Canadian Industrial Alcohol Company?

Witness:—Right now?

By the Court:—Yes.

20 A.—Well, I think that we all should get out after we get all through manufacturing, and produce business. That is the only thing I can see my Lord.

Q.—What changes would you make?

A.—I would make some changes. I would cut down expenses for one thing, and the changes in the office of the Corbyville plant, all through our organization.

Q.—What expenses would you cut down?

A.—I would cut down the overhead here, this office.

Q.—What overhead would you cut down?

A.—I would transfer some of our clerks.

30 Q.—Where?

A.—To the Corbyville plant. I do not think we need them all.

Q.—How much economy would that realize?

A.—Oh, I would judge—I have not figured it up, about thirty thousand dollars.

Q.—What about the Sales Department?

A.—It would have to be reorganized.

Q.—In what respect?

A.—I would put more in there.

40 Q.—In other words, you would spend on the Sales Department what you would save elsewhere?

A.—Well, to try it out.

Q.—In the long run, you would spend just as much if not more?

A.—Well, I don't know. I would try it out and see first.

Q.—How long have things been going in a way not to suit you?

A.—When I came back from Europe—maybe in October, well, I would say sometime in October.

EDWARD JAMES LAUSTER (*for Plaintiffs*), *Re-Examination*.

Q.—Did you notice many changes when you came back from Europe in 1929?

A.—I noticed that all the Directors had gone.

Q.—That did not change the expense?

A.—No.

10 Q.—It did not change the economy? What else? Was anything changed in the *modus operandi* of the Company?

A.—No.

Q.—Was anything changed from the days of Sir Mortimer Davis?

A.—Only the meetings, the Executive meetings.

Q.—What was changed in the meetings?

A.—We did not have them.

Q.—Is that the only change that you can notice from the days of Sir Mortimer up to now?

A.—There is a different feeling around the office right now.

20 Q.—What is the difference in the feeling?

A.—Well, they do not seem to be co-operating together.

Q.—Was there more co-operation before?

A.—I think so.

Q.—Can you give any concrete results of that change in the *modus operandi* as to lack of co-operation in producing results, which you can indicate?

A.—No. I don't think I could.

30 Re-examined by Mr. W. K. McKeown, K.C., of Counsel for Plaintiffs:

Q.—Are the conditions in the matter of selling of your product of your Company which exists today, the same conditions as existed during Sir Mortimer's time in the matter of your competitors?

A.—Well, I think that is a pretty hard question for me to answer, because I am afraid that the competitors give credit, and we do not give any credit.

40 Q.—That is to say, some of your competitors may sell their product on credit?

A.—On credit.

Q.—And you do not?

A.—We do not.

Q.—What I meant rather was, was the Sales Department more the problem in Sir Mortimer's time than it is now?

A.—In 1925 we were down quite a bit. In 1925 we had a bad year—I won't say a bad year, we had a half year in 1925.

Q.—What about 1926 and 1927?

EDWARD JAMES LAUSTER (for Plaintiffs), Re-Examination.

A.—We had a very good year in 1927.

Q.—Was there any difficulty about the Sales Department in those years?

A.—No.

Q.—Did your competitors have the stock of liquors in those days that they have got now?

A.—No.

10 Q.—Am I right in suggesting to you that one of the important factors in the situation is, that you have got to meet the different forms of competition now than you had then?

A.—Every day.

Q.—Is this organization as it at present functioning meeting those new and altered conditions?

A.—We are trying to.

Q.—And we have the result. Is it not true that in those days you had buyers come to your office, and were unable on many occasions to fill their orders?

20 A.—Yes.

Q.—Is that a condition which exists now?

A.—No.

By the Court:

Q.—Is it because the orders have diminished, or because your stock is not sufficient?

30 A.—We have more competition than we had two or three years ago.

Q.—Is your stock as considerable as it was then, or more considerable?

A.—We have more stock now than we had then.

Q.—Did you produce as much stock then as you do now?

A.—I think last year we produced more than ever. We cut down on our production to about half this year.

By Mr. Campbell:

40 Q.—That is over what period of time?

A.—I think we started in October to cut down.

By Mr. Holden:

Q.—When would you think you commenced to have your uncomfortable feeling with regard to co-operation? About when would that be?

EDWARD JAMES LAUSTER (for Plaintiffs), Re-Examination.

Witness:—You mean in the office?

Mr. Holden:—Anywhere. You said that you had an uncomfortable feeling about co-operation?

A.—When I came back from Europe I could see a difference. All our directors had resigned.

10 By Mr. Holden:

Q.—That resigning of the Directors is what gave you that feeling?

A.—Yes.

By the Court:

Q.—Do you consider that the Directors who resigned were an asset to the Company?

A.—Yes, I think they were.

20 Q.—In what respect?

A.—Well, I think that they would help us out on different things.

Q.—What things? Take Mr. Joseph for instance?

A.—Well, what I mean, in figuring out our mash, what we had better do with it, and what we had not better do with it; figuring out our capacity, what we should run, whether we had better build a new warehouse and so forth.

Q.—What about Mr. Marler?

A.—I certainly liked Mr. Marler very much.

30 Q.—What was his particular usefulness in the Company?

A.—Not more than a Director. He did not help us in getting any business to speak of.

Q.—What about Mr. Decarie?

A.—About the same.

Q.—What about Colonel Gaudet?

A.—Colonel Gaudet I think, helped us considerably about the plants.

40 Q.—Lady Davis spoke to you about a Merger. Had you ever heard of the Merger before?

A.—I had heard of it around the office.

Q.—Did Lord Shaughnessy ever consult you about a Merger?

A.—Lord Shaughnessy spoke to me about a Merger.

Q.—When was that?

A.—Sometime in January.

Q.—Of this year or last year?

A.—This year.

Q.—What opinion did you express to him, if any?

EDWARD JAMES LAUSTER (for Plaintiffs), Re-Examination.

A.—I said I always believed in Mergers on certain terms.

Q.—Did he mention any terms to you?

A.—No.

Q.—Did Lady Davis mention any terms?

A.—No, she did not.

Q.—Was she opposed to a Merger of any kind?

A.—Yes, she said she was.

10 Q.—You say that you have not done very much in the last six months. Why?

A.—I wanted to go west. I went up to Toronto, around there, that is about all. I did not do much, because there was not very much to do.

And further deponent saith not.

20

30

40

KENNETH McARDLE (for Plaintiffs), Examination-in-Chief.

On this April 9th, 1930, personally came and appeared

KENNETH McARDLE

of the City of Montreal (1730 Dorchester street west), Employee,
Financial Times, aged 25 years, called as a witness on behalf of
10 Plaintiffs, having been first duly sworn, doth depose and say:

Examined by Mr. McKeown, K.C.:

Counsel for Plaintiffs:

Q.—You stated, Mr. McArdle, you are in the employ of the
Financial Times?

A.—Yes.

20 Q.—Is that a financial publication, published here in the city of
Montreal?

A.—It is.

Q.—It has been established for a number of years?

A.—It has, sir.

Q.—And enjoys considerable circulation throughout Canada?

A.—It does, sir.

Q.—Does the Financial Times maintain a statistical depart-
ment?

A.—It does.

30 Q.—Its connection with the quoted securities on various Ex-
changes?

A.—It does, sir.

Q.—Is that maintained daily?

A.—Yes, sir.

Q.—Did you, at the request of the Plaintiffs in this case, assist
in the compilation of certain charts bearing upon Canadian Indus-
trial Alcohol class “A” shares, the same in class “B”; Hiram Walker;
Gooderham and Worts; Distillers Corporation-Seagrams Limited;
Asbestos Corporation; Liggett and Myers “A” and “B” class?

40 Mr. Campbell, K.C.: I don't know how useful this information
is going to be to Your Lordship. I do not propose to press the objec-
tion but it is not the best evidence. If my learned friend wishes to
prove this trend accurately it is the officials of the Stock Exchange
who should prove it. I ask Your Lordship to note it.

By Mr. McKeown, K.C.:

KENNETH McARDLE (for Plaintiffs), Examination-in-Chief.

Q.—Will you now look at the chart or graph marked Exhibit being a chart in connection with the market movements of class “A” shares, Canadian Industrial Alcohol, common, marked in this instance class “A”. Was this chart prepared by you and under your directions?

A.—It was, sir.

10 Q.—Will you, for the purposes of the record, say what is indicated—

Mr. Campbell, K.C.: I am entitled to look at it before you question the witness. It is usual to show your Exhibits to opposing counsel before you ask questions on it.

Mr. McKeown, K.C.: Look at the chart as much as you like.

20 Mr. Campbell, K.C.: (Counsel for Defendant takes communication of chart.) As I understand this graph it purports to begin approximately at the time of the death of the late Sir Mortimer Davis and continues down to the month of March, 1930. In respect to any portion of it which has to do with matters after this action I submit it is illegal.

By Mr. McKeown, K.C.:

30 Q.—Taking the broken lines, the one on top in black and the one below in red—what does the top broken line across the chart represent?

A.—It is the price trend of the high for class “A” stock, Canadian Industrial Alcohol.

Q.—First of all, what period is covered by that chart?

A.—From March, 1928, to March, 1930.

Q.—You say the top line indicates the prices?

A.—The trend of the high of that stock.

Q.—For each of these months. Do I take it that the point at which the black line traverses the circle immediately above indicates the month?

40 A.—On the bottom that indicates the high for the month.

Q.—Take for instance March, your black line starts in March at 44?

A.—Yes.

Q.—Is that the high for March, 1928?

A.—It was.

Q.—In the month of April the price appears to have advanced above 50?

KENNETH McARDLE (*for Plaintiffs*), Examination-in-Chief.

A.—Yes.

Q.—And so on all the way across the chart?

A.—Yes, sir.

Q.—As to the line in red, the lower line, what does that indicate?

10 A.—The price trend of the low for Canadian Industrial Alcohol "A".

Q.—Over the same period?

A.—Over the same period of time.

Q.—Indicated in the same way?

A.—Yes.

Q.—What do the figures on the horizontal lines indicate, at the end of each line?

A.—Those indicate the actual prices of the stock.

20 Q.—So that you would be able by taking any point on the broken line—you can refer directly across and find their value, that is to say, where the broken line starts on a cross line. "44". It means that was the price?

A.—That was the price for that month, the high.

Q.—The next month you have indicated something about 50?

A.—Yes.

Q.—And so on all the way across the chart?

A.—Yes.

Q.—I notice on the bottom of the chart, the last line the total sales on one side?

A.—Yes.

30 Q.—And then I notice figures above each month. What do those figures represent in each instance? Take for instance March, 1928. I see 96,866. What does that mean?

A.—That means the total amount of shares reported sold for that month through the Exchange.

Q.—I notice further, at the end of the chart, these words "1928, total yearly sales, 548,312." What does that represent?

A.—That represents the addition of each separate month, giving the total number of reported sales for the entire year.

Q.—1928?

40 A.—1928.

Q.—Over further I see "reported total sales, 388,144."

A.—That represents exactly the figure for 1929.

Q.—I notice some figures which have been compiled on the outside of the columns, both on the right and left hand sides. What do they represent? Take the right hand side first.

A.—On the right hand side you have the valuation of the actual

KENNETH McARDLE (*for Plaintiffs*), Examination-in-Chief.

number of class "A" shares issued by the Canadian Industrial Alcohol, 969,480.

Q.—What do those figures indicate opposite each of the other figures which you state were the actual prices from time to time?

A.—That represents the actual value.

Q.—The market value?

10 A.—The value at market, 969,484, such and such a price per share, down the list.

Q.—To illustrate, there are outstanding 969,480 class "A" shares?

A.—Yes.

Q.—Those shares at 50 represented the value at market?

A.—\$48,477,000 for the whole of the outstanding stock.

Q.—As the stock dropped these prices opposite each quote represent the value of the outstanding stock at the quote for the time being?

20 A.—Yes.

Q.—For instance, the price at 20—when did the market break
take place?

A.—That took place mostly in October.

Q.—1929?

A.—1929.

Q.—Looking at this chart for the previous month, September,
1929, what was the high of the stock?

A.—The high of the stock was 23½.

Q.—And the low?

30 A.—The low was 15.

Q.—Now, taking the high for that month, that is 23—take it at
24 to avoid fractions, because your chart does not show fractions—
what was the value at market of the total outstanding "A" shares of
Canadian Industrial Alcohol?

A.—\$23,267,520.

Mr. Campbell, K.C.: As of what date?

40 Mr. McKeown, K.C.: As of date September, the high of
September. That was approximately one-half.

By Mr. McKeown, K.C.:

Q.—The figure which you gave at market for the stock when it
was at 50 was \$48,474,000?

A.—Yes.

Q.—These figures, before going through the extension of every

KENNETH McARDLE (for Plaintiffs), Examination-in-Chief.

one of them, are there to be readily available to determine the value at market of the shares at any price, from \$2 to \$50, of the whole of the outstanding stock?

A.—Yes.

Q.—What do the figures represent on the right?

A.—In this instance the actual valuation of the shares held by the Estate Company.

10 Q.—How many shares?

A.—496,300.

Q.—Those shares at 50 had a value of how much?

A.—\$24,815,000.

Q.—By September, before the break, how much had these shares declined to, taking the price you gave us, at 24?

A.—Approximately \$11,910,200.

Q.—That would be the approximate value at market of these same shares?

A.—Held by the Estate Company.

20 Q.—As at September, and before the October break?

A.—Yes.

Q.—In point of fact, by February of this year, what had the “A” stock declined to for the high of that month?

A.—You mean for the Estate Company shares?

Q.—No, for the price.

A.—That would be 10½.

Q.—What would that represent, the value of the holdings of the Estate?

30 A.—Approximately \$5,000,000.

Q.—Take it at the nearest point.

A.—At the nearest point?

Q.—Yes.

A.—\$4,963,000.

Q.—At 10?

A.—At 10.

Q.—Before I leave this chart, by the Exhibit D-80, filed on behalf of the Defence, with reference to the sale, first, of the shares of Mr. Joseph. In the month of January, 1929, he sold 540 shares.

40 How many shares were sold during that month?

A.—49,732.

Q.—In the month of February Mr. Joseph sold 2,500 shares. How many shares were sold in that month?

A.—71,716.

Q.—In the month of March Mr. Joseph sold 400 shares. How many shares were sold in that month?

A.—35,906.

KENNETH McARDLE (for Plaintiffs), Examination-in-Chief.

Q.—This had been in 1929?

A.—1929.

Q.—Finally in April he sold 300 shares. How many “A” shares were sold that month?

A.—13,816.

Q.—In June he sold 100 shares. How many shares were sold that month?

10 A.—8,473.

Q.—As to the sale of Colonel Gaudet’s shares: on the 28th of May, 1929, he sold 2,000 shares. How many shares were sold in May, 1929?

A.—May, 1929?

A.—Yes.

A.—21,915.

Q.—Have you prepared a similar chart demonstrating the same market action in connection with the Alcohol “B” stock as that which you just explained to His Lordship concerning the “A” stock on the chart which you had marked P-182.

20

A.—I did, sir.

Q.—Will you please produce the chart concerning the “B” Alcohol stock and mark the same P-183.

A.—Yes, sir.

Q.—This chart is prepared exactly in the same way?

A.—Exactly, sir.

Q.—Therefore the top and black line I take it, shows the high, and its variation at market quotations, and the red the low over the same period, from March, 1928, to March, 1930?

30

A.—It does, sir.

Q.—And the figures at the bottom of the month, and the figures immediately above the name of each month show the monthly sales, and the figures on the bottom show the yearly sales for both periods?

A.—Yes, sir, exactly.

Q.—Have you also in this instance shown upon the chart the effect at market of the variation of prices on the total “B” stock issued?

A.—I did, sir.

40 Q.—How many shares are shown there?

A.—123,186.

Q.—Now those shares seem to have opened the period, that is, March, 1928, at \$42 or thereabouts?

A.—Yes, sir; very close to 42.

Q.—And from 42 advanced in the next month, in April, to what?

A.—46 exactly.

KENNETH McARDLE (for Plaintiffs), Examination-in-Chief.

Q.—In the succeeding month of May, 1928, what was the action of the stock in the succeeding month?

A.—In May?

A.—Yes.

A.—Almost 48.

Q.—From that point up to the present time what has been the trend?

10 A.—Generally downwards.

Q.—Taking the high of the "B" stock as for the total outstanding shares, what was the approximate value at market?

A.—The highest point?

A.—Yes.

A.—The approximate value was \$5,912,928.

Q.—Will you now tell us for the purposes of the record the approximate prices of the "B" shares before the break, that is in September, 1929, for the high quote?

20 A.—It was 21.

Q.—And the value at market approximately?

A.—The value at market approximately \$2,710,092.

Q.—At what price did you take for the last figure you gave the Court?

A.—I took the figure of 22.

Q.—What was the low for that month, September?

A.—14½.

Q.—Now, ultimately, what was the low for all time, as they call it, of Alcohol "B"?

30 A.—The low was 7½.

Q.—When was that reached?

Mr. Campbell, K.C.: I record my usual objection to any evidence of fact since action brought.

The Witness: It was in January and February, 1930.

By Mr. Campbell, K.C.:

40 Q.—Can you fix the date?

A.—For the two months.

By Mr. McKeown, K.C.:

Q.—For January, what was it?

A.—For January it was 7½. For February it was 7½ for the low.

Q.—Of course it was above that in both instances for the high?

KENNETH McARDLE (for Plaintiffs), Examination-in-Chief.

A.—Yes.

Q.—The month of March, at the time that this chart was compiled, had not been completed?

A.—No, not exactly completed. It was past the middle of the month. It is complete to the month of February, 1930.

Q.—What was the high in the month of February?

A.—In the month of February the high was 9½.

10 Q.—At 9½, to what amount had the value at market of the total outstanding “B” stock depreciated?

A.—To approximately \$1,231,860.

Q.—Taking it at what?

A.—Taking it at 10.

Q.—Finally, on the right hand side of this chart, referring to Alcohol “B” stock, that is Exhibit D-183, what is shown here? L

A.—The valuation of the shares; 56,080 held by the Estate Company.

20 Q.—As affected by the drop in the market quotation of the stock?

A.—Yes, and the listing made exactly as on the other side.

Q.—Taking the holdings of the Estate, 56,080 “B” shares at \$46, which is below the highest point to which it went since March, 1928, what was the value of the stock at market?

A.—\$2,579,680.

Q.—What was the value of the same block of stock at market at the high and before the break, that is, in September, 1929?

A.—At 22, \$1,233,760.

30 Q.—A little less than half?

A.—Yes.

Q.—At the price to which the “B” stock had gone down by the 1st of March what was the value of the holdings of the Estate?

A.—At the 1st of March, 1930?

A.—Yes.

A.—Taken at 8, it is \$448,640.

Mr. Campbell, K.C.: The same objection.

40 By Mr. McKeown, K.C.:

Q.—Did you equally, at the request of counsel for the Plaintiffs, prepare a chart showing the price trend of the shares of Hiram Walker, Gooderham and Worts?

A.—I did, sir.

Q.—Will you produce the same, to be marked Exhibit P.184?

A.—Yes.

KENNETH McARDLE (for Plaintiffs), Examination-in-Chief.

Q.—Is this chart prepared along the same lines as the Alcohol stock charts which you have already explained?

A.—Generally, sir, with one small alteration.

Q.—One omission, you mean?

A.—One omission.

Q.—Here, as on the others, is the price of the shares of the stock shown for the high on the black line monthly and for the low on the red line in the same way?

A.—Yes.

Q.—The turnover of the sales by months is shown in the same way?

A.—They are, sir.

Q.—And the figures on the right and left hand border represent the quotes?

A.—They do, sir.

Q.—The prices?

A.—Yes.

Q.—Will you, for the purpose of the record, show what was the action on Hiram Walker? I might ask you—Hiram Walker stock we will refer by that short name—was split some little time back?

A.—It was, sir.

Q.—What was the split?

A.—Three for one, I think, sir.

Q.—Are the prices which are shown on the chart there the old prices or the split prices?

A.—They are split prices.

Q.—Which conform to present quotations?

A.—Yes.

Q.—What did you do as to the period covered by the time when the old prices were in force?

A.—I divided the figures by three and put them down so as to give an even ratio.

Q.—Do you remember the date of the split?

A.—I don't exactly, sir.

Q.—Would you verify by Houston's, which is very readily available here for all classes?

Mr. Campbell, K.C.: A very valuable volume; much greater than the Old Testament and the New Testament, according to Mr. McKeown.

The Witness: The split took place in April, 1929.

By Mr. Campbell, K.C.:

KENNETH McARDLE (for Plaintiffs), Examination-in-Chief.

Q.—Did you fix the date?

A.—It may show it in the text here. I am just taking it from the high and low of the shares.

Q.—It was around May?

A.—It shows both April and May for old and new stocks. I took the prices between those two times.

10 Mr. McKeown, K.C.: You would not think it was important to have the day of the month, would you, Mr. Campbell?

Mr. Campbell, K.C.: I understand it is in May, in fact.

By Mr. McKeown, K.C.:

Q.—Perhaps we could have the witness say it was May 11th, as reported by Houston. Will you say, for the purposes of the record, what was the trend of Hiram Walker stock beginning from the month of March, 1928, forward, that is, in a general way?

20 A.—The first six months it began in general even movements of upward trend; for the following six months, by which time it had reached a peak at $31\frac{1}{2}$.

Q.—That would be February?

A.— $31\frac{1}{2}$, $31\frac{3}{4}$. That would be in February, 1929. The general trend following that is steadily downward with slight reactions.

Q.—Where was that stock, the Walker stock, for the high in September, 1929, before the break?

30 A.—That was at $18\frac{1}{2}$.

Q.—What was the difference between that and where it had started out in March, 1928? How many points?

A.—Approximately two points.

Q.—Over a period of 18 months an average of approximately that?

A.—Yes.

Q.—Did you prepare a further chart dealing with the securities of Distillers Corporation-Seagrams Limited?

A.—I did, sir.

40 Q.—Will you produce the same, marked Exhibit P-185?

A.—Yes.

Q.—Is this chart prepared upon precisely the same lines as the Hiram Walker chart, which you just explained to His Lordship?

A.—Yes, sir.

Q.—Now, those black and top lines show the high, and the lower line in red the low during a period which seems to start in April?

KENNETH McARDLE (for Plaintiffs), Examination-in-Chief.

A.—Yes.

Q.—1928, instead of March?

A.—It does, sir.

Q.—Will you say to His Lordship—

10 Mr. Campbell, K.C.: Is there any reason for that? Why was March, 1928, not shown him?

The Witness: There were no quotations at all in the Company then, Mr. Campbell.

Mr. McKeown, K.C.: The Company was a newly formed Company and the quotations had just been started in April. That can be verified from Houston's.

By Mr. McKeown, K.C.:

20 Q.—I ought to have asked you in connection with the Walker stock. There is only one class of stock. There is no "A" and "B"?

A.—I don't think so.

Q.—And the same with the stock of Distillers-Seagrams?

A.—Yes.

Q.—Beginning in the month of April, 1928, the stock came out for the high at what?

A.—At 24.

30 Q.—What was the trend generally thereon for the next four months?

A.—Generally downward.

Q.—And from there forward?

A.—An upward trend with irregularities.

Q.—Extending to what time?

A.—Extending to approximately February, 1929.

Q.—Did it reach the high at that time?

A.—It reached the high point at that time, 28½.

Q.—What was the low for that month?

A.—The low for that month was 21.

40 Q.—Now, from that point, what was the general trend of the so-called Seagram stock?

A.—Irregular, but a general decline.

Q.—What was the position of the stock in September, 1929, the Seagram stock? In September, 1929, before the break, the high?

A.—September, before the break, the high was at 20, and the low at 16.

Q.—How did the high in that month, September, 1929, com-

KENNETH McARDLE (for Plaintiffs), Examination-in-Chief.

pare with the high in April, 1928, when that stock first came out?
How much had it gone down?

A.—Four points only.

Q.—Will you say, for the purpose of the record, the turnover in that stock for the eleven months of 1928?

A.—The total annual sales, 320,638 shares.

10 Q.—For 1929?

A.—The total yearly sales, 350,998 shares.

Q.—Is that limited to the Montreal and Toronto Exchanges?

A.—Yes.

Q.—Did you have New York in there?

A.—No, sir, we did not.

Q.—The stock was also listed and dealt with in New York?

A.—I frankly don't know, offhand.

Q.—Did you prepare a further chart showing the market trend of the common shares of Asbestos Corporation?

20 A.—I did, sir.

Q.—Will you produce the same and mark it Exhibit P-186?

A.—Yes.

Q.—Is this chart prepared along the lines of those which you have already explained to the Court?

A.—It is, sir.

Q.—The top and black line and the lower red line indicated—

A.—The high and low, respectively.

Q.—Over a period of—

30 A.—Approximately two years.

Q.—Beginning?

A.—Beginning March, 1928, to March, 1930.

Q.—What do the figures on the left-hand margin of this chart on Asbestos, P-186, represent?

A.—Those figures on the left-hand side show the valuation of 23,060 shares held by the Estate Company, at the various market prices as listed on the extreme right of the column.

40 Q.—Will you say for the purposes of the record what was the trend of these Asbestos securities beginning in March, 1928, for the first three months?

A.—There was a slight increase in the market valuation for the first three months.

Q.—From what point to what point, for the high and the low?

A.—For the high from 29—for the high month respectively it went from 34—

Q.—In March, 1928?

A.—To 39½ in May, 1928.

KENNETH McARDLE (for Plaintiffs), Examination-in-Chief.

Q.—For the low during those same months?

A.—For the low during these same months the fluctuation was from 29 in March, 1928, to 32 in May, 1928.

Q.—From there on what was the general trend?

A.—Irregular decline, sir; generally downwards.

Q.—By January, 1929, what were the high and low?

10 A.—January, 1929, the high was 22½; the low was 16.

Q.—By September, 1929, before the break, what were the high and low on Asbestos?

A.—The high was 10; the low 4½.

Q.—And the ultimate high and low in December, 1929?

A.—The high was three.

Q.—And the low?

A.—The low 2½.

Q.—Now what was the value at market holdings of Asbestos shares as marked in this chart by the Estate Company?

20 A.—For what period, sir?

Q.—The high?

A.—For the high, giving the closest figure, at 39½. I can give you the actual figures, \$910,870.

Q.—By, say a year later, in March, 1929, take the high?

A.—The high—the exact value, at 18, \$415,000.

Q.—And its low for that month?

A.—Its low for that month at 10, the valuation is exactly \$230,600.

30 Q.—At the ultimate low, in December, 1929, what was the value? Take it at the high.

A.—At the high?

Q.—Yes.

A.—At three. I can give the figure, the closest figure at 2½; it is \$57,650.

Q.—That would be the value of that block of stock which at the high in May, 1928, was \$910,870?

A.—Yes, sir.

By The Court:

40

Q.—What is the present value of it?

Mr. McKeown, K.C.: The present value of it is now at 3½, \$57,650.

By Mr. McKeown, K.C.

KENNETH McARDLE (for Plaintiffs), Examination-in-Chief.

Q.—Did you also, at the request of counsel, prepare a special compilation showing the market trend of the Liggett and Myers stock, class “A” and class “B”?

A.—I did, sir.

Q.—Over the same period?

A.—Yes.

10 Q.—Will you produce the chart covering class “A” shares of Liggett and Myers, and mark it Exhibit P-187?

A.—Yes.

Q.—Is this chart prepared along lines similar to the other charts which you have explained?

A.—It is, in every respect.

Q.—From the beginning of the month of March, 1928, what was the trend of the Liggett and Myers “A”?

A.—Upwards slightly for one month. It took an upward rise for one month.

20 Q.—It went up, from approximately what?

A.—From March, 1928; April, 1928.

Q.—What was the high in March?

A.—The high was 119½.

Mr. Campbell, K.C.: No, you are wrong.

By Mr. McKeown, K.C.:

Q.—For March?

30 A.—Oh, for March; the high was 113, approximately.

Q.—That is March, 1928?

A.—Yes.

Q.—What was the high in the next month, in April?

A.—119½.

Q.—From there what was the trend of the stock?

A.—Downward, very rapidly, for the next three months.

Q.—What had it descended to for the high and the low for that month?

40 That month was July. The high for July, 1928, was 92, and the low for the same month was 83.

Q.—Then what followed in the way of the general trend?

A.—The general trend was irregular, with slight increases, particularly in January, 1929, when it rose to 105½.

Q.—From there onward, what was the trend?

A.—Irregular again.

Q.—Was it upward or downward?

A.—Downward; reaching almost the low point in June, 1929,

KENNETH McARDLE (for Plaintiffs), Examination-in-Chief.

or rather, in March, 1929, it reached almost its low point at 81, almost 82.

Q.—How was it after that?

A.—Up and down for the next three months. It then took—

Q.—What was the high and low for June, 1928?

A.—For June, 1928: 86 was the high for June, 1928, and the low was 82.

10 Q.—From there onward what was the movement?

A.—Generally upwards.

Q.—In the month of October and November, in the break, what happened to the stock?

A.—It fluctuated very widely, sir. It had a high point of 106, and its low point for the same month was approximately 80½.

Q.—What month was that?

A.—October, 1929.

Q.—How did it act the next month?

20 A.—Its low point hardly varied at all. The high dropped.

Q.—What was the low?

A.—80½.

Q.—The high point?

A.—The high for October, 1929, was 97.

Q.—Finally, in the months of February and March this year, what was the tendency?

A.—Upwards.

Q.—What point had been reached for the high and low of the month of March this year?

30 Mr. Campbell, K.C.: The same objection as to the month of March.

The Witness: It has reached a point of 104¼ in the month of March, 1930, and a low in the same month of 101½.

By Mr. McKeown, K.C.:

40 Q.—Do you know what the movement of the stock has been since this chart was prepared? Have you been following Liggett and Myers?

A.—No, I have not been following it at all.

Q.—I forgot to ask you with reference to the figure on the left-hand column, the Liggett and Myers "A", the chart, P-187. What do they refer to?

A.—Those figures in the left-hand column refer to the valuation of 3,300 shares held by the Estate.

Q.—3,300 "B" shares?

KENNETH McARDLE (for Plaintiffs), Examination-in-Chief.

A.—No, "A" shares.

Q.—At the various market quotations extended in that way?

A.—Yes.

Q.—Will you say, for the purpose of the record, what was the value at market of 3,300 "A" Liggett and Myers shares at the high?

A.—The high point, 119½, the valuation, \$394,350.

10 Q.—At the low point, between 80 and 82. How often was that low point reached in the period covered by the chart?

A.—Approximately four times, on an average scale.

Q.—Take it at 82, for good measure. What was the value of those shares, those 3,300 shares, at the low of 82?

A.—The value of the 3,300 shares held by the Estate at 82, was \$270,600.

Q.—As against a high of \$396,000, which you have already given us?

A.—Yes.

20 Q.—Will you now look at the chart covering the heavier holdings of the Estate in Liggett and Myers "B", and say whether this chart was prepared by you?

A.—It was, sir.

Q.—And is upon the basis of the other charts explained?

A.—Yes, in the same way.

Q.—For the purposes of the record, we will follow very generally the trend of the market for Liggett and Myers "B", beginning March, 1928. What was that?

A.—The high was at 113½.

30 Q.—What was the low?

A.—The low was 105¼.

Q.—From there on what was the immediate trend?

A.—Generally downward, sir. Well, it had a slight increase for the month of April.

Q.—What did the stock advance to?

A.—It advanced to 119½ in April, and it had a low for the same month of 97½.

Q.—And the trend was generally downward?

A.—The trend was generally downward after that.

40 Q.—By June, what was the position?

A.—It had dropped to a high of 97, and a low of 80¼, approximately.

Q.—From there on, what was the trend?

A.—Irregular, with slight increases in value, particularly in January, 1929.

Q.—What was the high and the low for that month?

KENNETH McARDLE (for Plaintiffs), Examination-in-Chief.

A.—The high for that month was $103\frac{1}{2}$, while the low for the same month, $89\frac{3}{4}$.

Q.—And from there onward, what was the trend?

A.—Downward. There is a slight increase in the fluctuation in May.

Q.—What was the high and the low of the stock in March, 1929?

10 A.—March, 1929. The high for March, 1929, was 95; the low for the same month was $81\frac{1}{2}$.

Q.—How was it until June? How did the market act in June?

A.—Downwards.

Q.—By June, what was the high and the low?

A.—In June of the same year the high was 86 and the low was 81.

Q.—What action did the stock take from June forward?

A.—Irregular, but generally upward.

Q.—In October, what was the position, in the month of the break, the high?

20 A.—The high in the month of October was 106.

Q.—And the low?

A.—And the low for the same month, approximately $82\frac{1}{4}$.

Q.—Then in November?

A.—In November the high was 97 exactly, and the low for the same period was 80.

Q.—And from there onward, what action did the stock take?

A.—Evenly upwards.

Q.—Until March of this year, give the high and the low.

A.—For March, 1930, the high was 110; low, $101\frac{7}{8}$.

30 Q.—You might give us the high and the low for the month of February, this year.

A.—For the month of February this year the high is $109\frac{3}{4}$; the low for the same month is $91\frac{3}{4}$, approximately.

Q.—Do you remember that there were rights attached to the shares? Were they taken into your calculations?

A.—I believe there were.

Q.—Those prices would represent prices including the rights? The stock sold at 93. That has already come out in this record.

A.—Yes.

40

By the Court:

Q.—Do you know the rate of interest on those shares?

A.—I don't know offhand.

Mr. Campbell, K.C.: Dividends.

KENNETH McARDLE (for Plaintiffs), Examination-in-Chief.

Mr. Montgomery, K.C.: Mr. McDonald tells me they got six dollars a share on the Liggett and Myers. You were asking about the bonuses, My Lord.

By Mr. McKeown:

10 Q.—Now, Mr. McArdle, will you say to His Lordship——

Mr. Campbell, K.C.: There was a bonus which we got when we sold. We got a dividend of one per cent. and a bonus of one per cent. when the Liggett and Myers shares were sold.

The Court: You sold at 106 and you got 2%, which will give you 108 $\frac{7}{8}$.

20 Mr. McKeown, K.C.: They got one dollar quarterly dividend, and then it just happened at that time there was a bonus, which does not run every quarter. It ran for every quarter one dollar additional, and they got one dollar per share for the rights, and got about 91, or 92 or 93 for the stock. My recollection is it run up to 108 $\frac{3}{4}$.

Mr. Campbell, K.C.: It averaged at 108 and a fraction.

Mr. McKeown, K.C.: The dividend on the stock is one dollar per quarter.

30 Mr. Campbell, K.C.: Plus a cash bonus of one per cent. per annum.

Mr. McKeown, K.C.: There is no bonus fixed. In 18 months this is the first one paid, apparently. The bonus is payable in March each year. The bonus has been paid ordinarily in March each year.

Mr. Campbell, K.C.: That is not part of the dividend. It is not quite fair to say it is a four per cent. stock. It is four per cent. plus a bonus.

40 Mr. McKeown, K.C.: If you can get it.

By the Court:

Q.—Can you tell me whether the highest point of that stock was reached before or after the 25th of April, 1928?

A.—I cannot tell you offhand. I would have to refer to——

KENNETH McARDLE (for Plaintiffs), Examination-in-Chief.

The Court: On the 25th of April the two executors decided not to sell the Liggett and Myers stock. Whether it was upward or on the down grade is no reflection on the Executors.

10 Mr. McKeown, K.C.: That was in April. It does not show the date. Seeing it was towards the end of April the chances would be the stock had already had its high.

The Court: It would probably explain the action of the Executors. What was the lowest point in April, 1928?

Mr. Campbell, K.C.: We are only interested in the "B".

20 Mr. McKeown, K.C.: Both. You had 3,300 "A" and about 6,800 "B". Just to answer His Lordship's question, the lowest point of the "A" and "B" Liggett and Myers stock in April, 1928. I would ask Mr. McArdle to answer that question.

The Witness: The lowest point for Liggett and Myers class "A" in April, 1928, was 98, Your Lordship, and in class "B" for the same month the low was 98.

By the Court:

Q.—What was the highest point for class "B" in April, 1928?

A.—The highest point for class "B" in April was 119½.

30 Q.—The same as for "A"?

A.—Yes, Your Lordship.

Mr. McKeown, K.C.: These stocks do not vary much.

By Mr. McKeown, K.C.:

40 Q.—I think I forgot to ask you, Mr. McArdle, based upon these figures as shown in the left-hand column of the Liggett and Myers "B" chart, Exhibit 188, what was the value of the 6,250 class "B" shares held by the Estate Company, at the high which you have given us for April, 1928?

A.—\$779,140.

Q.—What was the value of the same stock at the low in the yearly period following that?

A.—The low was approximately 521,600.

Q.—How many dips were there in that low before February of this year?

KENNETH McARDLE (for Plaintiffs), Examination-in-Chief.

A.—Approximately four.

Q.—So that there would be a depreciation between the figures which you have given us on the 6,520 “B” shares of approximately \$260,000?

10 Mr. Campbell, K.C.: You mean there would have been if he sold.

Mr. McKeown, K.C.: We went through the misery of these dips.

Mr. Campbell, K.C.: You recovered from your dip and got out where you started

The Witness: On these figures there is a depreciation of \$260,000.

20 By Mr. McKeown, K.C.:

Q.—Coming back to the beverage chart, of the Canada Products only, will you give to His Lordship the comparative figures for the month following Sir Mortimer Davis’ death, April, 1928, and one year later, April, 1929, on these three stocks. Take first class “A” Canadian Industrial Alcohol. What was the high and the low for that stock, according to Exhibit P-182, in the month of April, 1928?

30 A.—The high in April, 1928, Canadian Industrial Alcohol, class “A”, was $50\frac{1}{4}$. The low for the same month and the same year and the same stock was 42.

Q.—Looking at the same chart, will you give us the high and low of the same stock one year later, in April, 1929?

A.—The high and the low for the same stock in April, 1929, was $37\frac{1}{2}$; low for the same month, the same year, was $34\frac{1}{2}$.

By the Court:

40 Q.—Will you give us at date, as you have it, the respective high and the low for this year, subject to Mr. Campbell’s objection at present?

A.—At the present moment?

By Mr. McKeown, K.C.:

Q.—The Court would like to know the high and the low at the present moment, as far as your chart goes.

A.—March, 1930 the high is $91\frac{1}{2}$; the low is $8\frac{3}{4}$, approximately.

KENNETH McARDLE (for Plaintiffs), Examination-in-Chief.

Q.—Will you give His Lordship the same information as to class “B” stock from the chart, P-183?

A.—Canadian Industrial Alcohol, class “B”, in April, 1928, the high for that stock was 46; the low for the same month was $38\frac{3}{4}$. For the same stock in the month of April, 1929, the high was $32\frac{1}{2}$; the low for the same month of the same year was 28, approximately, and the final valuation, as far as we have it, in March, 1930, both
10 the high and the low are at eight.

Q.—Give it for January. There is not an awful lot of difference. Will you give His Lordship the same information concerning Hiram Walker-Gooderham and Worts, taken from Exhibit P-184, that is the high and low in April 1928 and the high and the low for the same month in 1929.

A.—For April, 1929, Hiram Walker, high $21\frac{3}{4}$; low is $20\frac{1}{4}$.

By Mr. Campbell, K.C.:

20 Q.—Is this calculated on the basis of the split shares?

A.—These are calculated, Mr. Campbell, on the split shares, dividing the ultimate quotations by three for the first month.

Q.—What do you give for the high in April?

A.—The high of April is approximately $21\frac{3}{4}$.

Mr. McKeown, K.C.: It was 65, so your price of $21\frac{3}{4}$ is very fair.

30 The witness: And the low for that same period was at $20\frac{1}{4}$, approximately.

By Mr. McKeown, K.C.:

Q.—For 1929?

A.—For 1929, the month of April, the stock was $28\frac{1}{2}$, and the low for the same period was 23, as on the split basis. The final figure—will I give you January?

Q.—No. You might as well have them uniform, I presume.

40 A.—For March, 1930, the high was 10; the low, eight.

Q.—Will you now give His Lordship, from the chart, P-185, concerning the stock of Distillers Corporation Seagrams, Limited, some information: What was the high and low in April, 1928?

A.—We are still on Seagrams, Limited. In April, 1928, the high for that month was $23\frac{3}{4}$; the low for the same month was 20. Now for the year 1929—

KENNETH McARDLE (for Plaintiffs), Examination-in-Chief.

Mr. Campbell: Wait a moment, we are not in agreement on that.

By Mr. McKeown:

Q.—Is that what your chart shows?

10 A.—24. I had made a mistake there.

Mr. Campbell: I suggested it was $24\frac{1}{4}$.

Witness: I was looking at the wrong column.

By Mr. McKeown, K.C.:

Q.—Give the high and low again for April, 1928, as shown by the Exhibit P-185?

20 A.—24 for the high, and for the low, $18\frac{1}{2}$.

By Mr. Campbell:

Q.—Are you sure about the fractions?

Mr. McKeown: I would not bother about the fractions.

Witness: These were all checked, Mr. Campbell.

30 By the Court:

Q.—April, 1929?

A.—April, 1929, Your Lordship, the high for that month was $23\frac{3}{4}$; the low for the same month was 18. The final figure in March, 1930, the high was $9\frac{1}{2}$; and the low $8\frac{3}{4}$ to $\frac{7}{8}$. That is approximate.

By Mr. McKeown:

40 Q.—To review together the information which you have just read into the record, taking up first, Walkers, their high of $21\frac{3}{4}$ in 1928 had been advanced one year later to $28\frac{1}{2}$.

A.—Yes, sir.

Q.—And their low of 28 for that month of $20\frac{1}{4}$ had been improved to 23?

A.—Yes, sir.

Q.—As to the Distillers Corporation Seagrams, their high of 24 for April, 1928, remained virtually the same, and was $23\frac{3}{4}$ for their high in 1929?

KENNETH McARDLE (for Plaintiffs), Examination-in-Chief.

A.—Yes.

Q.—And their low of $18\frac{1}{2}$ for 1928 was virtually the same, that is, 18 for the low in 1929?

A.—Yes, sir.

Q.—Whereas, Canadian Industrial Alcohol, the high of April, 1929, of $50\frac{1}{4}$ had suffered to be decreased one year later to $37\frac{1}{2}$?

A.—Yes, sir.

10 Q.—And the low of Industrial Alcohol (this is all of "A" stock) of 42 in April, 1928, had gone down to $34\frac{1}{2}$ in April, 1929?

A.—Yes, sir.

Q.—And as to the B shares, the high of 46 in April, 1928, had gone down to $32\frac{1}{2}$ in April, 1929?

A.—Yes, sir.

Q.—And the low of $39\frac{3}{4}$ in April, 1928, had gone down a year later to 28?

A.—Yes, sir.

20 Q.—Do you know the dividend returns which were paid on these shares?

A.—No, I do not.

Q.—We have it already in the record that both classes of Alcohol stock, pay a quarterly dividend of 38 cents, or an annual dividend at the rate of \$1.52, and have paid the cash bonus within the period covered by your figures?

Mr. Campbell, K.C.: Only in one year.

30 Mr. McKeown, K.C.: Yes, of 25 cents, making \$1.77 return per share for Alcohol.

By Mr. McKeown, K.C.:

Q.—Will you refer to Houston and say what the return per share on the Walker stock is?

A.—Dividends on the Hiram Walker stock, payable quarterly, 50 cents per share, paid December 15th, 1927.

40 Q.—I mean the current dividend. Never mind about the past dividends. Let us have the current dividend? Is it shown there?

A.—They started at fifty cents.

Q.—50 cents a share?

A.—Per share.

Mr. Campbell: Per quarter?

Mr. McKeown: Not per quarter at all.

KENNETH McARDLE (for Plaintiffs), Examination-in-Chief.

Witness: Total quarterly, 50 cents per share quarterly.

By Mr. McKeown:

Q.—Does it mean that 50 cents was paid every quarter or that 12½ cents was paid every quarter?

A.—It means 50 cents every quarter.

10 Q.—Are you quite sure of that?

A.—Yes, sir. Then it changes to 75 cents.

Q.—Read that carefully, if you are not certain.

A.—Well, I am positive of that, 50 cents per share paid December 15th, 1927.

Mr. McKeown: The witness is right, except it is the old stock. I offer you my apologies and congratulations, Mr. McArdle.

By Mr. McKeown:

20

Q.—Let us get that matter straightened out: The dividends to which you have just been referring, were they on the new or the old stock, having regard to the fact that the stock was split in 1929?

A.—That is in regard to the old stock.

Q.—That is, the stock which was split three ways?

A.—Yes, sir.

Q.—What is the dividend on the new stock?

A.—25 cents.

30 Q.—Per what?

A.—Quarterly.

Q.—That is, a dollar per annum on the new stock?

A.—Yes sir.

Q.—And that is a dollar per annum as against these figures which we have established, a dividend and bonus of the Alcohol Company amounting to \$1.77?

A.—Yes sir.

40 Mr. Campbell: Surely, My Lord, that is not fair. There was a bonus one year. Why does my friend say a thing of that kind. The regular dividend on Alcohol was never more than \$1.52. Why does he take advantage of the fact that one particular year, because of particular prosperity, we paid a bonus. I submit that is quite unfair for the purposes of comparison.

Mr. McKeown: It was fine for Ligget and Myers, but no good at all for Alcohol.

KENNETH McARDLE (for Plaintiffs), Examination-in-Chief.

Mr. Campbell: His Lordship asked what the return was. You were giving a partial return, and I completed the answer.

Mr. McKeown: His Lordship asked what the interest was. That meant the dividend.

Mr. Campbell: That meant the dividend, it did not include the
10 bonus. A bonus was paid on Alcohol on one year, and one year only.

Mr. McKeown: All I wanted to show was, that during this period Alcohol was going down and other competitors were going up on the market; this stock was paying a good deal more return to the shareholders than the others. I only took it for that year because that was the year that the shareholders and public generally concentrated on that stock, as shown by those charts. Those charts refer to the calendar period in which that return was paid to the shareholders.

20

His Lordship: You can argue that later on.

By Mr. McKeown:

Q.—Will you refer to the dividend payable upon Distillers Corporation Seagrams, if there is any?

A.—The dividend for Distillers Seagram, 25 cents, an interim dividend.

Q.—Is it stated in Houston to be only an interim dividend?
30

A.—Yes, sir.

Q.—On what date was that declared?

A.—Paid October 15th, 1928.

Q.—The book does not show any further dividend action?

A.—No.

Mr. Campbell: That issue would not show any later dividend.

Mr. McKeown: We will complete the evidence as to that.

40

Mr. Campbell: It is not shown in that book. This book is published in 1929, and only covers the 1928 figures.

Mr. Montgomery: No, it does not. It goes right down to June, 1929.

Mr. Campbell: If it is of any consequence, let us prove it pro-

KENNETH McARDLE (for Plaintiffs), Examination-in-Chief.

perly. My submission is, this is not the way to prove it if it is material.

Mr. McKeown: Not by Houston?

Mr. Campbell: Not by Houston. Houston stopped inconveniently short. That is the only answer. Call an officer of Distillers Seagram if you want to prove it properly, if it is of importance.

Mr. McKeown: Evidently the witness does not know.

Mr. Campbell: Evidently the witness does not know, and that is an excellent reason why he should not testify.

Mr. McKeown: And the Manual does not show, therefore, we will have to look elsewhere, unless Mr. Montgomery can convince Mr. Campbell that Houston goes up to 1929.

Mr. Campbell: Distillers pay a dollar a year.

By Mr. McKeown:

Q.—I will ask you the question, and you will answer by consent. Will you state if it is not the fact that Distillers Corporation-Seagrams at the present time pays one dollar per year on each of their shares outstanding?

A.—They do.

Q.—And that is again in contrast with the figures which we have shown for each distribution for dividends and bonus of \$1.77 for the Alcohol Company?

A.—Yes, sir.

And it now being 12.35 p.m. the Court adjourned until 2.30 p.m.

Afternoon Session, Wednesday, April 9th, 1930.

By Mr. McKeown:

Q.—Have you since the adjournment verified the facts in connection with the dividend of Distillers Corporation Seagrams Limited?

A.—I have.

KENNETH McARDLE (for Plaintiffs), Cross-Examination.

Q.—You spoke this morning of an initial dividend. Will you give again the date upon which that was declared?

A.—The interim dividend of 25 cents was paid on October 15th, 1928.

Q.—Was that the first dividend of the Corporation?

A.—It was.

Q.—Was any further dividend declared after that date in 1928?

10 A.—Yes sir, there was.

Q.—In 1928?

A.—No, not in 1928?

Q.—Nothing in 1928?

A.—No.

Q.—Was any dividend declared in 1929?

A.—There was.

Q.—On what date?

A.—November 15th.

Q.—November 15th, 1929?

20 A.—Yes.

Q.—What dividend was declared at that time?

A.—A dollar per share.

Q.—Per annum or per quarter?

A.—Per annum I understand.

Q.—Beginning on November, 1929?

A.—Yes, November, 1929.

30 Q.—So that for the period which we covered for these other Corporations, Canadian Industrial Alcohol and Walkers, that is, from April, 1928, to April, 1929, so far as Distillers Seagram was concerned, there was no dividend during that period, except the interim dividend of 25 cents?

A.—That is right.

Q.—And as and from November, 1929, the stock is on a dividend basis of a dollar per share per annum?

A.—Yes, sir.

40 Q.—And as contrasting the conditions for that year of Distillers Seagrams with the Canadian Industrial Alcohol, the dividend distribution of Distillers Seagrams for the whole period was 25 cents, and the dividend distribution and bonus of Industrial Alcohol was \$1.77?

A.—Yes, sir.

Cross-examined by Mr. G. A. Campbell, K.C., of Counsel for defendants:

Q.—Mr. McArdle, you told us that you were connected with the Statistical Department of the Financial Times?

KENNETH McARDLE (for Plaintiffs), Cross-Examination.

A.—I hardly expressed it that way.

Q.—Will you define your position more accurately?

A.—Well, I am connected with the Advertising Department of the Financial Times, and at various times I write for them, and am also connected with the Financial Advertising Agency.

Q.—But you are not associated with the Statistical Department yourself?

10 A.—Well, but there is no question of an association with the Statistical Department. By that I mean that should statistics be required, there are men who prepare them, ordinarily.

Q.—Have you a regularly organized Statistical Department whose business it is to be controlling statistics more or less all the time?

A.—I can answer your question in another way, and it is in this way, that there is a portion of the Editorial Department which distinctly looks after the quotations of the stocks in the market.

20 Q.—Have you any connection with that yourself?

A.—I have no definite regular connection with that Department.

Q.—Did you, yourself, prepare these graphs that you filed as Exhibits P-182, P-183, P-184 and P-185?

A.—Not completely and altogether, but I drew them all.

Q.—Did you do the plotting of the graph?

A.—I did.

Q.—You did the plotting of the graph from information supplied you by others?

30 A.—Not altogether, because part of that information I compiled myself, and what information I did not compile, I checked the other man's figures who did compile them.

Q.—What was your source of information?

A.—I can say sources; Houston as far as he went in his latest book. From then on I took the daily charts made up in our offices.

Q.—That is, you used Houston, I take it, from the beginning of your graph down to about June, 1929, when the Houston quotations stopped?

A.—I can say that.

40 Q.—But Houston's figures only give the monthly high and low, do they not?

A.—They do.

Q.—They do not give the daily variations?

A.—No.

Q.—Then, I understand your testimony to be that from the latter part of 1928, when your graph begins, down to June, 1929, it is built up only on the monthly high and low shown in Houston?

A.—I can say yes to that.

KENNETH McARDLE (*for Plaintiffs*), *Cross-Examination.*

Q.—And from that time on it is built up on what?

A.—On our monthly compilations—on our daily compilations of the same figures to which Houston's have access.

Q.—Did you make the compilation yourself?

A.—As I mentioned before, Mr. Campbell, I made part of them, and what I did not make I checked.

10 Q.—But back to what source of information? To Houston?

A.—Well no, naturally since Houston did not have the figures.

Q.—You only checked back to Houston as a source of information for the period ending June, 1929, and since that, you checked to what other source?

A.—There was no necessity of checking to any other source, because our own figures were correct.

Q.—Where did you get them?

A.—We got them from the daily information, from the Stock Exchanges, as far as I understand.

20 Q.—As far as you understand. What do you mean by that. Let me be quite fair. Can you testify of your own personal knowledge that these graphs are accurate in detail? I am not speaking of their being generally inaccurate, but accurate in detail?

A.—I can.

Q.—You did not check them back to original sources, did you?

Witness: You mean to say that I did not get figures from the Stock Exchanges?

30 Counsel: From any official record of the Stock Exchanges?

A.—I can still say yes, because our own figures are official.

Q.—But you only went to Houston—from March, 1928, to June, 1929, you took Houston's Manual?

A.—Yes.

Q.—If Houston's Manual happens to be inaccurate, your graph, of course, would be out?

A.—It would if it is inaccurate.

40 Q.—I take it that these graphs begin (if you will look at P-182) in the latter part of March, 1928, which, I understand, is intended to represent the period of the death of Sir Mortimer Davis, which occurred on the 22nd of March, 1928. These graphs, I take it, begin around the 22nd of March, 1928, is that it?

A.—No. These graphs are all considered for every month inclusive, with the exception of the end, before the end of the month.

Q.—Look at March, 1928, on this Exhibit P-182. When does it begin?

KENNETH McARDLE (for Plaintiffs), Cross-Examination.

A.—It comprises the whole month of March. The red line showing the low is based on what would correspond to the 15th of the month, as there are eight units in that square and this is opposite “ 4 ”, approximately the middle of the month. The way these daily charts ordinarily were taken, the high was picked out for the entire month and naturally placed at the 15th, so that there would be no confusion as to which month that was in.

10 Q.—Let us be careful about this. I do not understand your chart to read that way. These spaces are ruled off into small spaces

A.—Into eighths.

Q.—And take the black line on P-182 showing the high of Industrial Alcohol “A”, does not that indicate that it was in the latter part of the month of March, 1928, that your graph begins?

A.—No, it does not indicate anything of the kind. It indicates that that was the high of that month as a whole.

20 Q.—It cannot be that—it won't be at the end of March. This whole column here is labelled, March, 1928, is it not?

A.—Yes.

Q.—You observe from the place where your graph starts at “44 ” during the month of March, it goes up to 46 does it not?

A.—No.

Q.—Well, what does it say? What does your graph mean?

A.—While this whole graph is relative for the individual months, it is not either relative or cumulative for each individual month. In other words, this first column is the high for March, 1928. The second column is the low for March, 1928.

30 Q.—But this column in the high for March, 1928, at 44, is not so indicated on your chart? Does not your chart indicate that in the remaining part of March, it went higher, to 46?

A.—No. That is purely arbitrary. In other words, I could have placed this black line on P-182 starting at 44. I could have placed that at the extreme left edge, but for arbitrary reasons, and to avoid confusion, it was placed in the centre, in the definite centre of each month, and in all the charts it was placed the same way to show the high of that month.

40 Q.—Are you quite clear that that was the explanation? I put it to you that it is intended to show the level of those stocks on the day Sir Mortimer Davis died, is not that the situation?

A.—No.

Q.—Are you sure of that?

A.—I am positive of it.

Q.—Have you got the material from which these graphs were built up?

A.—As we discussed before, these original figures up to a certain

KENNETH McARDLE (for Plaintiffs), Cross-Examination.

point in June, 1929, as you stated, all these figures were taken from Houston.

Q.—And you have no other information than the figures contained in Houston which is already filed in this record?

A.—No. We do not feel it necessary to look for any more.

A.—And you cannot tell me in what portion of the month of March, 1928, the 44 high was reached?

10 A.—No, I cannot. It might state that in Houston if we checked back.

Q.—But Houston only gives the monthly average, the high and low of the month; it does not indicate in what period of the month the high is reached, or in what period of the month the low is reached?

A.—I do not think so.

Q.—Let us make quite sure. Look at Houston. Will you look at the pages of Houston and make quite sure? Houston is a work of great authority according to my learned friend?

20

Mr. McKeown: According to you, too, unless you have changed your mind, Mr. Campbell.

Witness: There is no reference, Mr. Campbell, to any particular date.

By Mr. Campbell:

30 Q.—It does not indicate what day of the month the high or low is reached?

A.—No.

Q.—And you cannot tell us from your chart, or from any material you have available, during what period in the months these highs or lows can be reached?

A.—It can be obtained.

Q.—I know that, but I am asking you if you have the information here?

A.—I have not the information here.

40 Q.—And you never had the information when you built up these charts, had you?

A.—Yes, we had.

Q.—I am speaking now of the day on which the high was reached, and the day on which the low was reached?

A.—We have that information, and we had it when we made these charts.

KENNETH McARDLE (for Plaintiffs), Cross-Examination.

Q.—But you say you made them up to June, 1929, from Houston?

A.—But why should we build up—to build up an enormous amount of work, when Houston is recognized all over the country as being accurate.

10 Q.—I am not saying that you did not have them on file in your office, and I am not abusing your system; all I am trying to do, is to establish the facts on which you built up these graphs, and the fact is that you built them up from Houston, from March, 1928, to June, 1929, is it not?

A.—That is true.

Q.—And Houston only gives the monthly high and the monthly low, without showing in what part of the month either the high or low was reached?

A.—Exactly.

20 Q.—How near can you fix from the Exhibit before you, P-182, the date when the high peak of Alcohol "A" was reached?

A.—I could fix it within the month.

Q.—Cannot you get nearer than that?

A.—From the way we compiled our charts, I do not see how we can.

Q.—At any rate, take the month for the purposes of this discussion.

A.—In April, 1928.

30 Q.—In connection with your consideration of these charts at all, while you compiled them from Houston, did you look at your daily returns showing the daily variations of these shares? Did you examine the daily stock exchange sheets?

A.—As to Houston?

Q.—In connection with the preparation of these charts of Alcohol "A" and "B"?

Witness: In any part?

Counsel: Yes?

A.—Yes, I did.

40 By the Court:

Q.—After Houston was not available?

A.—After Houston was not available.

By Mr. Campbell:

KENNETH McARDLE (for Plaintiffs), Cross-Examination.

Q.—But during the period covered by Houston you did not?

A.—No.

Q.—When you got back to using the daily sheets, did you notice that there were very wide variations even, in the course of the day, in those shares?

A.—Sometimes there were.

10 Q.—Spreads of very considerable numbers of points?

A.—Yes, particularly in the slump.

Q.—Even before the slump?

A.—I believe so, in some cases.

Q.—I suggest to you that the history of Industrial Alcohol through the period covered by your graph, showed very abnormal variations from day to day in the prices, that is, there was often a spread of many points in the course of a day in the market quotations of those shares. Is not that the fact?

20 A.—I notice here there are some wide variations in the course of a day.

Q.—Running into a lot of points?

A.—No, the widest I notice

By Mr. McKeown:

Q.—Is that a month or a day?

A.—That is about a week. That might be any day, in any month in fact.

Q.—Different days?

30 A.—Different days.

By Mr. Campbell:

Q.—But sometimes there was a spread of four, five and six points in a day in the dealings in those shares?

A.—I could not answer that distinctly, but I believe so.

40 Q.—I put it to you as a general proposition, that during the whole period (and I am not only speaking of the time of the bad break to which I am coming) but during the whole period covered by your graph) that in the case of the Alcohol "A" shares there were very large variations in the quoted prices, even in the course of a single trading day?

Mr. McKeown: We are prepared to put in a statement from the Stock Exchange sheets for every week showing the high, low and the opening prices, which would be authentic.

KENNETH McARDLE (for Plaintiffs), Cross-Examination.

Mr. Campbell: I am asking the witness. He has qualified as an expert, and I am asking him whether it is not the fact that there were wide variations in the quoted prices of those shares in the course of a single trading day on the Montreal Stock Exchange.

Witness: It is very reasonable to believe there were.

10 By Mr. Campbell:

Q.—In other words, it was a stock in which there was a large speculative following, and in which there was wide speculation during the period covered by your graph?

A.—It is rather hard for me to testify on that point.

Q.—But, you are an expert, Mr. McArdle. You qualified as an expert, and you are in the quality of an expert.

20 Mr. McKeown: He is not a walking encyclopedia.

Mr. Campbell: I am only asking him to accept a very obvious general proposition which, I think, is perfectly true. I am asking him if it is not true that there was a wide variation in the quoted prices of those shares in the course of a single trading day on the Montreal Stock Exchange.

Witness: I cannot say. I believe there is a certain amount of speculation in Industrial Alcohol in the market.

30 By Mr. Campbell:

Q.—Industrial Alcohol "A" reached its high in April, 1928?

A.—Yes, sir.

Q.—A high of 50 and a fraction?

A.—Yes, sir, 50 and a quarter.

Q.—Then, it went down slightly, not very materially for a speculative stock, down until October, 1928, when there was a general, but not accentuated down trend, is that right?

40 A.—That is correct.

Q.—Going down from 50 in April to what?

A.—April to October.

Q.—But to what?

A.—To $43\frac{1}{4}$.

Q.—To $43\frac{1}{4}$ in October?

A.—Well, $43\frac{1}{2}$.

Q.—There would be nothing abnormal in that trend?

KENNETH McARDLE (for Plaintiffs), Cross-Examination.

A.—No.

Q.—Then it went up again in October, 1928, did it not?

A.—Yes.

Q.—Up to?

A.—Or November.

Q.—From your graph it looks to have started up in October?

10 A.—In those things I would like to explain that after all, you cannot call it a rise there, because it is just taken from the centre of the month.

Q.—You don't know? You cannot tell us what part of the month that low trend belongs to?

A.—Oh no.

Q.—As a matter of fact, your graph might be accurate. That might be the low point indicated at the middle of the month?

A.—It is the low point of the month.

Q.—It might be the middle of the month in point of time?

20 A.—It might be.

Q.—As far as you know, your graph might be accurate in that respect, and it might indicate the very day when the low was reached?

A.—Yes, but according to the method these charts were prepared, they are correct in every respect. The point in the middle square is purely arbitrary. The position of the lines are purely arbitrary.

30 Q.—Sometime in October, 1928, it started in an upspurt, it went up, and in November and December, 1928, it was fairly level for a considerable period of time, some weeks—at what level?

A.—At 47.

Q.—Do you know when the financial year of Industrial Alcohol ended?

A.—I do not know just offhand.

His Lordship: The 30th of September.

By Mr. Campbell:

40 Q.—The evidence in the case is that it ended on the 30th of September, so I put it to you that after the close of the financial year, in September, 1928, there was an upward spurt to 47 from . . .

A.—From 43½.

Q.—Now Mr. McArdle, sometime in December, at a date you cannot fix, there was a sharp recession to sometime in January at a date you cannot fix, down to 42?

A.—42.

KENNETH McARDLE (for Plaintiffs), Cross-Examination.

Q.—Then a slight upward spurt to sometime in February, 1929?

A.—Yes, sir.

Q.—And you cannot fix the date in February when that happened?

A.—No.

Q.—As far as your graph shows that might apply to the last week in February?

10 A.—It might apply to the last week, or the last day, or the first week.

Q.—I suggest to you that it does apply to the last week in February. Can you offer any correction of that suggestion?

A.—Supposing you suggest it that way, I could not, but I could on any future occasion. It could be easily checked.

Q.—It might be wise for you to check it. At any rate, beginning sometime in February, 1929, there was a marked, as Mr. McKeown has suggested, toboggan slide in that stock?

20 A.—Yes.

Q.—A recession, not so much marked in the first few weeks, and then much more marked during the months of March and April, is not that so?

A.—Yes.

Q.—And during those months of March and April the recession is very marked, is it not?

A.—Yes.

Q.—As shown on your graph?

A.—Yes.

30 Q.—Will you look at the statement which was shown to you this morning, Exhibit D-80, which shows the date at which Mr. Henry Joseph, one of the Directors of the Alcohol Company, started selling his shares, and will you verify that during the month of February, 1929, Mr. Joseph sold 2,500 of his shares out of his total holdings of 3,840 shares?

Witness: In February, 1929?

40 Counsel: Yes. I am asking you to look at this Exhibit. This Exhibit is already filed as Exhibit D-80. Will you verify, in fact, that during that month he did sell that number of shares?

A.—Yes, it is so stated.

Q.—And will you verify that immediately following that month, there was a very marked recession in the price of that stock that persisted from then on?

A.—I admit that.

Q.—Without significant recovery?

KENNETH McARDLE (*for Plaintiffs*), *Cross-Examination*.

A.—Without significant recovery.

By the Court:

Q.—Mr. Joseph sold when the selling was good?

A.—Yes, sir.

10 Mr. McKeown: It is always wise to sell at the top and buy at the bottom.

By Mr. Campbell:

Q.—As Mr. McKeown has very aptly said, it is always wise to sell at the top and buy at the bottom, if you are a stock market operator?

A.—Yes.

20 Q.—But the secret of being able to do so, is not possessed by many, is it?

A.—Not that I know of.

Q.—Before we leave Exhibit P-182, the graph dealing with Alcohol "A," you called attention in your testimony to your right hand column, showing the valuation at the market of the shares held by Sir Mortimer Davis Incorporated?

A.—I have it, the Estate Company.

30 Q.—That is the alias of Sir Mortimer Davis Incorporated, which is a Company the controlling interest of which is held by Sir Mortimer's Estate?

A.—I see.

Q.—You have there the holdings would be 496,300 shares?

A.—Yes.

Q.—And this is merely an arithmetical calculation, multiplying that number of shares by the price of the day?

A.—By the current price of the high and low of the month.

Q.—You do not suggest that that number of shares should have been sold on the Montreal Stock Exchange at any such price?

A.—Not if they were all unloaded on one day.

40 Q.—What would have been the effect on the Montreal Stock Exchange market in your expert opinion, if 496,300 shares of Alcohol "A," out of a total issue of 969,480, had been offered in the course of a few weeks or a few months? Would it have helped the price up?

A.—It would not.

Q.—Would it not have broken the price as badly as it ever broke? I put it to you as an honest man?

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A.—I would not say that.

Mr. McKeown: No one but a lunatic would offer them to start with.

By Mr. Campbell:

10 Q.—The Montreal Stock market is relatively a very small puddle to play in, is it not, in a stock market sense?

A.—The operations are not as great in a day, and the sales per day are not as great as on the New York Exchange.

Q.—To compare it with New York, the unloading of a substantial block of shares would have more influence on a hanging over market in Montreal than on the New York Exchange?

A.—I would say that there is a greater influence on the Montreal market by the unloading of shares than in New York.

20 Q.—A much greater influence?

A.—I would not say that. It would depend on circumstances.

Q.—Let us be frank. What were the total dealings in Alcohol shares in the whole of the year 1928 on the Montreal Stock Exchange?

A.—548,312 shares.

Q.—Those were all the shares dealt with in that whole year?

A.—Yes.

Q.—And some of those shares might have been traded in half a dozen times?

30 A.—Yes.

Q.—The same shares may have appeared and reappeared a hundred times?

A.—Yes.

Q.—What was the total number of shares dealt in in 1929?

A.—328,444 shares.

Q.—I put it to you, in view of the dimensions of that trading, that a block such as the Sir Mortimer Davis Estate held through the Incorporated Company, could not have been absorbed by the
40 Montreal Stock Market in either one year or two years without smashing the price?

Mr. McKeown: I submit, My Lord, that there has never been any suggestion as to the "A" stock, that it should have been sold, or anything of the kind; therefore, the question is ultra hypothetical. Anybody offering, or attempting to market a block of shares like that, it seems to me the last place they would go, would be to

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the market. That is the object of the talk of these mergers, and these other talks about mergers before this trial. People controlling an industry with 500,000 shares are not imbeciles; they do not propose to pull the plug and dump the whole load on one spot, and allow it to be blown away by the wind. I think my learned friend's question goes to the limit of being grotesque?

10 Mr. Campbell: Is it more grotesque than your suggestion on Exhibit P-182, that those shares were ever worth \$24,835,000?

Mr. McKeown: We hope to prove they could have been sold for more than that.

Mr. Campbell: The whole block?

Mr. McKeown: Certainly the whole block.

20 Mr. Campbell: When you prove that, I will reconsider what I am saying.

By Mr. Campbell:

Q.—In the meantime, if the Estate had dumped these shares all at once on the Montreal Market, it would have overwhelmed the price of the daily quotations?

A.—I can answer you relatively on a thing like that.

30 Q.—Give me your relative answer?

A.—It would naturally effect a decline in the stock.

Q.—A serious decline? Be frank?

A.—I cannot tell you how serious it would be. It would be serious naturally.

Q.—Look at Exhibit P-183, your graph, about the " B " stock. Would the same thing be true about the " B " shares of a large block of " B " overhung the market. Would it affect the market in the same way?

A.—It would tend to depress the stock.

40 Q.—What were the total sales of " B " shares in the calendar year 1928, according to your Exhibit P-183?

A.—55,774.

Q.—And in 1929?

A.—29,000.

Q.—And what are the holdings of the Estate?

A.—56,080 shares.

Q.—If there had been any attempt to market those 56,080 " B "

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shares on the Montreal Market, can you suggest a level to which the price would have broken?

A.—No. I could not even suggest it.

Q.—Will you look at P-183, and tell us when the high of Alcohol “ B ” was reached on the Montreal Stock Exchange?

A.—In May 1928.

10 Q.—Going back for a moment to P-182, that is the Alcohol “ A ” graph, will you look at the totals at the bottom of the sheet, showing the total sales per month of these Alcohol “ A ” shares during the calendar year 1929; they began at 49,732 in January, did they not?

A.—Yes, they did.

Q.—How many shares were sold in February 1929?

A.—71,716.

20 Q.—Compare that month with every other month in the year, and tell me if that was not very abnormal in the quantity of shares sold in any one month?

A.—No, it was not abnormal.

Q.—In any other one month? January was 49,000?

A.—Oh, in that year?

Q.—I am speaking of that year?

A.—Pardon me. I will say there was an unusual large sale that month.

Q.—Very much larger than usual?

A.—I said unusual.

30 Q.—For instance, except January, when it was 49,732, and March, when it was 75,907, it was very much larger, three or four times larger than all other months, except October, was it not?

A.—It was.

Mr. Montgomery: What about November?

Mr. Campbell: November was small.

Witness: 7,136 for November.

40 Mr. Montgomery: I was speaking of November 1928.

Mr. Campbell: I was speaking of the bad break.

Mr. Montgomery: If you will look at November of the previous year you will see it is high.

Mr. Campbell: I am simply taking the actual year 1929 and

KENNETH McARDLE (for Plaintiffs), Cross-Examination.

am asking the witness whether the month of February was not very abnormal, and he has admitted it is so, as his graph clearly shows.

Mr. Montgomery: It does not show it abnormal for the preceding month. It is very much higher than that.

10 Mr. Campbell: I am speaking of the calendar year 1929.

Mr. Montgomery: "Abnormal" is the wrong word, because sales were running much higher than that.

Mr. Campbell: Not during that calendar year.

Mr. Montgomery: Later on they kept going down.

By Mr. Campbell:

20 Q.—Will you look at the graph (P-184) of the Hiram Walker Company, and tell me when the high for Hiram Walker was reached?

A.—In February 1929.

Q.—And in February 1929 Walkers also struck the toboggan slide, did they not?

A.—There was an irregular decline I would say, from that time on.

Q.—Very marked from that time to the end of your graph?

30 A.—I would say it was marked.

Q.—Be frank. Is it not very marked?

A.—Well, it is very noticeable.

Q.—Will you look at your graph (P-185) being the graph of the Distillers Corporation Seagrams, and tell me when the high of that was reached?

A.—In February 1929.

Q.—And what happened after that?

A.—There was a decline. It was not so marked as the other, as the Hiram Walker.

40 Q.—But if we take the high of February 1929 and the low shown on your graph, there is a very pronounced decline between those two points?

A.—The average line through that would show a decline.

Q.—In other words, does it not appear on those graphs that all the Distillery shares during this period beginning February 1929, and going down to the end of the period shown on your graphs, all

KENNETH McARDLE (*for Plaintiffs*), *Cross-Examination*.

of them without exception, suffered a serious decline in market price?

A.—Well, those we have seen have.

Q.—I am speaking of the three we have discussed.

A.—Yes.

Q.—In your testimony you spoke of the bad break. What do you refer to by that?

10 A.—The great decline in the market prices of stocks.

Q.—In stocks generally?

A.—Generally.

A.—A wide open break, was it not?

A.—Well, fairly general.

Q.—In the stock markets throughout the United States and Canada at least?

A.—Yes.

Q.—And perhaps throughout the world?

20 A.—Perhaps.

Q.—And when did that occur in point of time?

A.—In October the first move began, and then in November it continued. The worst break was in November.

Q.—1929?

A.—1929.

Q.—What were the dimensions of the break?

A.—I am not in a position to give you the exact figures.

Q.—As a man who is posted in such matters, was not the break the worst break in stock market history, considering its extent?

30 A.—I would say this much, that it has been the worst for the past ten years.

Q.—The worst break, and do you think I am exaggerating if I put it to you, that it is the worst break in stock market history considering its extent?

A.—I would not say that.

Q.—Can you suggest any parallel or anything like the same extent covering the same number of shares?

A.—I would say at the beginning of the war in 1914.

40 Q.—Was that anything like the same extent in dealings? Were there anything like the number of shares dumped on the market as there were during this bad break?

A.—I am dealing with the relative values of the actual stock.

Q.—In any event, I will take you for the last ten years and be content: This break in October and November 1929 was the worst in recent stock market history?

A.—Yes.

KENNETH McARDLE (for Plaintiffs), Cross-Examination.

Q.—Unquestionably?

A.—Unquestionably.

Q.—Go back to the period covered by your graph, from March 1928 to the end of 1929, or rather, to October 1929, what had been the general stock market history of the Stock Exchanges in New York and elsewhere in the United States, and in Montreal?

10 A.—I could not really competently give you that.

Q.—I am not asking for details. Was it not the greatest bull market in history?

A.—I would not say that at all.

Q.—Do you deny that it was?

A.—I frankly say I would not be in a position to state about just what the actual conditions of the market were.

Q.—But after all, you read the newspapers, do you not?

A.—I do.

20 Q.—And your business keeps you in touch with stock market quotations from day to day, does it not?

A.—It does.

Q.—You are on the staff of a financial newspaper?

A.—I am.

Q.—You are better posted than the average man on the street on such matters are you not?

A.—Ordinarily. It just depends on circumstances.

Q.—I put it to you with those qualifications, that during the period covered by these graphs, the stock markets on this hemisphere went through the greatest boom market in all history?

30 A.—I would not say that.

Q.—Can you give us any parallel? Was it a very pronounced bull market?

A.—No, I would not say it was very pronounced. I would say that the stocks were on the rise.

Q.—And did they not rise to unheard of heights?

A.—I would not say that.

40 Q.—Did your paper, the Financial Times, publish a synopsis at the end of 1929 showing the general trend of stock market prices on the Montreal Exchange?

A.—I don't know.

Q.—You do not know that?

A.—No, I don't know that.

Q.—Do not financial papers generally do that?

A.—They do.

Q.—For instance, the daily press of Montreal does it, The Gazette and the Star?

KENNETH McARDLE (for Plaintiffs), Cross-Examination.

A.—At different times in the year they take an opportunity to show the trend.

Q.—And at the end of the year, do they not publish a sheet giving the market history of the year? Do they not all do that?

A.—I have not seen them. At least, I have forgotten if I have.

Q.—You see the financial pages of *The Gazette* from day to day, do you not?

10 A.—I do.

Q.—And, you know that at the end of every year *The Gazette* publishes a sort of Review of the year?

A.—They do.

Q.—And, you do the same thing?

A.—We have a Review, which usually comes out in March.

Q.—Did you at the end of 1929 get out a price range sheet such as I now show you from the *Montreal Gazette*?

20 Mr. McKeown: Put this right in as an Exhibit. We would very much like to have it.

By Mr. Campbell (continuing):

Q.—Will you produce, and file as Defendants' Exhibit D-102, page 16, from the Yearly Statement of the *Montreal Gazette*, published on January 4th, 1930, giving the *Montreal Stock Market* price range for 1929?

A.—I do.

30 Q.—Will you produce, as Exhibit D-103, the same thing for the *Montreal Curb Market*?

A.—Yes.

Q.—To help you in your testimony, will you look at Exhibit D-102, and note whether there were not very wide variations during the calendar year 1929 in nearly every stock on the list, speaking in general terms? Were there not very wide variations in a multitude of stocks during that year?

A.—There are some very wide variations.

40 Q.—Let us take a few stocks as samples.

Mr. Montgomery: Can we help you at all by admitting there were very marked declines in 1929?

Mr. Campbell: I would like to call attention to some of them in particular.

By Mr. Campbell (continuing):

KENNETH McARDLE (for Plaintiffs), Cross-Examination.

Q.—Let us begin with the Bank shares. During the period covered by your graph will you tell us what would be the variation quoted for the Royal Bank shares, giving the high and the low, covering those two years. The high shown on this sheet, Exhibit D-102, appears to have been 435.

10 Witness: For 1929?

Counsel: For the two-year period.

A.—The high would be 435.

Q.—And the low shown on the sheet for 1929 would be what?

A.—285.

Q.—That is a spread of 150 points, is it not?

A.—Yes, but that is not so much for the amount paid for the shares. Relatively it is not so great.

20 Q.—You have struck exactly the point to which I was coming. It is all relative, is it not? The higher priced shares dropped more than the lower priced?

A.—Ordinarily, yes.

Q.—And, that is true of the Bank shares?

A.—Yes.

Q.—You do not suggest a drop of 150 points in Royal Bank stock indicated any public lack of confidence in the management of the Bank, do you?

A.—No, I would not say so.

30 Q.—Relatively the same drop occurred in Bank of Montreal shares, within a point or two? They went from 420 down to 295?

A.—Yes.

Q.—A drop from 420 to 295—125 points?

A.—Yes.

Q.—I suppose the Bank of Montreal is entitled to be regarded as enjoying public confidence almost as much as the Royal Bank?

A.—I would say so.

40 Q.—Then, let us take some other groups of stocks. Take, for instance, some of the paper stocks. Canada Power & Paper Company, which has a very distinguished Board of Directors, was also considerably affected. Will you tell me what was the high of the period covered by this sheet Exhibit D-102?

A.—55, for 1928.

A.—And, what was the low covered by the sheet?

A.—17, for 1929.

Q.—You do not suggest that reflected any want of confidence in the Directors of that Company, do you?

KENNETH McARDLE (for Plaintiffs), Cross-Examination.

A.—No, sir.

Mr. McKeown: They did not jump off the Board.

By Mr. Campbell (continuing):

Q.—Is the stock of Consolidated Mining & Smelting Company
10 a very high class stock?

A.—It is considered very good.

Q.—It is a very admirably managed Company, is it not?

A.—I believe so.

Q.—Owned, or controlled, by the Canadian Pacific Railway
Company?

A.—Yes.

Q.—Will you please tell me the high of Consolidated Mining
& Smelting Company for the year 1929?

20 A.—575.

Q.—\$575 per share?

A.—Yes.

Q.—That is, \$575 for a share of a par value of \$25.00, is it not?

A.—I believe so.

Q.—What was the low for the year?

A.—210.

Q.—You do not suggest this drop indicates any reflection on the
management of the Company, do you?

A.—No.

30

Mr. McKeown: Their Board is still acting also.

By Mr. Campbell (continuing):

Q.—A drop from 575 to 210 represents a spread of 365 points in
the course of the calendar year 1929?

A.—I believe so.

Q.—Now let us take another category. What was the high of
the Massey Harris Company in 1929?

40 A.—99½.

Q.—And what was the low?

A.—32½, for 1929.

Q.—How many points did Massey Harris break?

A.—66½ points.

Q.—What was the high for Winnipeg Electric Company—one
of the Power stocks?

A.—109½.

KENNETH McARDLE (for Plaintiffs), Cross-Examination.

Q.—What was the low?

A.—40.

Q.—How many points did Winnipeg Electric break?

A.—69½.

Q.—In the calendar year 1929?

A.—Yes.

10 Q.—You do not suggest that was any reflection on the management of the Company, do you?

A.—I would not suggest anything of the kind at all.

Q.—Do you know what was the spread in Canadian Pacific Railway stock on the New York Stock Exchange in the same period of time?

A.—No, sir.

Q.—I suggest to you it went from a high of 265 to a low of 190. Would that be approximately right?

20 Mr. McKeown: Who is giving the evidence?

Mr. Campbell: I am following your noble example, Mr. McKeown.

By Mr. Campbell (continuing):

Q.—Was there not a drop of 75 points in C.P.R. on the New York Stock Exchange?

A.—I think that is quite correct.

30 Mr. McKeown: Nobody has gone off the Board of C.P.R.

Mr. Campbell: No.

By Mr. Campbell (continuing):

Q.—Let us now take some of the well-managed industrials. Dominion Textile Company is a very admirably managed company, is it not?

40 A.—Yes.

Q.—Sir Charles Gordon is Chairman of the Board?

A.—He is Vice-President, I think.

Q.—You are wrong in that, Mr. McArdle. He is Chairman of the Board.

A.—Yes, that is right.

Q.—And Mr. Frank Daniels is President?

A.—Yes.

KENNETH McARDLE (for Plaintiffs), Cross-Examination.

Q.—What was the high for Dominion Textile Company in 1929?

A.—118.

Q.—And what was the low for the same year?

A.—74.

Q.—That would be a difference of how much?

A.—44 points.

10 Q.—I only gave you one Power Company.

Mr. Montgomery: Take the whole list.

By Mr. Campbell (continuing):

Q.—As Mr. Montgomery suggests, if you take the whole list is not the situation relatively the same? Of course I do not mean to say every stock dropped 150 points, or 500 points, or 300 points, or 65 points, but did not the whole list go down in a very conspicuous manner?

A.—I would say the whole list is down.

Q.—And what you have said in regard to the Montreal Stock Market would also be true, would it not, of the New York Stock Market?

A.—In general, yes.

Q.—And there were, perhaps, even more conspicuous declines there than were noted in Montreal?

A.—I think they were about the same according to the value of the stocks per share.

30 Q.—That is, the higher they went the farther they fell?

A.—In dollars, yes.

Q.—And that did not affect their intrinsic value one iota, did it?

A.—No, it was mostly on paper.

Q.—So, the intrinsic value of all those shares, through all the variations, remained unchanged?

A.—In most cases, yes.

40 Q.—You said the higher one went the farther one had to fall, and the farther one was liable to fall, under those conditions. How did the high reached by Canadian Industrial Alcohol class "A" compare with the high reached by either of the competing Companies, Walkers or Seagrams?

A.—I believe Industrial Alcohol "A" went higher than the others.

Q.—A good deal higher, did it not? As a matter of fact, it went to 50 and a fraction, did it not?

Witness: Industrial Alcohol "A"?

KENNETH McARDLE (for Plaintiffs), Cross-Examination.

Counsel: Yes.

A.—You have the chart.

Q.—Industrial Alcohol “ A ”, according to Exhibit P-182, went to 50 and a fraction, did it not?

A.—It did.

Q.—How high did Walkers go, according to Exhibit P-184?

10 A.—It went to 31½, but there is a split on that.

Q.—But that is the split value—this is giving effect to the split?

A.—Yes.

Q.—This graph is reduced to the basis of the present shares?

A.—Yes.

Q.—And that basis corresponds to the present basis of Industrial Alcohol?

Mr. McKeown: I would not think so. They were worth about one-third.

20 Witness: I would not say that.

By Mr. Campbell (continuing):

Q.—These are no par value shares?

A.—In other words, these would have a value of 93½.

Q.—That is, of the old stock?

A.—Yes.

Q.—These graphs give effect to the split, do they not?

30 A.—Yes.

Q.—What was the high, on the basis of the split stock, shown on Exhibit P-184?

A.—31½.

Q.—Will you now look at Distillers Corporation-Seagrams and tell us what was the comparative high? How high did it ever reach?

A.—28½, in February, 1929.

Q.—So, on a comparative basis Industrial Alcohol reached a much higher point, did it not, on the Montreal Stock Exchange?

A.—I would hardly say that.

40 Mr. McKeown: As a matter of fact the others were relatively twice as high.

By Mr. Campbell (continuing):

Q.—I am taking your graphs as they read. Is not that the fact on your graphs as they read?

KENNETH McARDLE (for Plaintiffs), Cross-Examination.

A.—The other stocks were of greater value at the beginning, were they not?

Q.—They were, but they were split in three. For purposes of comparison you have split them in three in the case of Walkers?

A.—Yes.

Q.—In Seagrams this problem does not arise?

A.—No.

10 Q.—In the case of Walkers, for the purpose of comparison you have split them in three to show them on your graphs?

A.—Yes.

Q.—I suggest to you that on the basis shown on your graphs Industrial Alcohol went higher per share, to 50, as against the figures you have given for the other shares?

A.—They went higher, on the actual face of it, yes.

Q.—And, having gone higher, they had farther to fall when the smash came?

20 Mr. McKeown: I submit this is almost really too funny to be asked in a Court of Justice; to put forward an argument that because C.P.R., or Smelters, or Ogilvie, or Royal Bank, go up they are all primed for a fall, and there is no value behind them and they must come down.

Mr. Campbell: I am demonstrating the answer of the witness that the higher they go the farther they fall.

Mr. McKeown: He did not say so. It was your statement.

30

Mr. Campbell: And the witness accepted it.

Mr. McKeown: I think His Lordship understands the extent to which he accepted it.

By Mr. Campbell (continuing):

40 Q.—Let us take the Walker shares before the split. From the material you have either before you or here available for reference can you tell me how high the unsplit Walker shares went during the period covered by your graphs, and in this connection you might look at the sheets in Houston's invaluable Manual for Hiram Walker during 1928 and 1929?

Witness: Do you mean the high for 1928 and 1929, or just 1929?

Counsel: I think the high was in 1929. I suggest to you that the high for the unsplit shares was in February, 1929.

KENNETH McARDLE (for Plaintiffs), Cross-Examination.

A.— $95\frac{3}{4}$.

Q.—I suggest to you they never reached a higher figure during the period reported by Houston?

A.—No, sir, they did not.

Q.—From 95, in February, 1929, how far did this stock drop before the end of March, 1929?

10 A.—It apparently dropped to 65.

Q.—It dropped 30 points?

A.—Approximately, yes.

Q.—From 95 to 65 is actually 30 points?

A.—It is $95\frac{3}{4}$, I think, in this book.

Q.—Then, that represents a drop of 30 points plus?

A.—Yes.

Q.—Will you turn to Distillers-Seagrams in this invaluable Manual, and look at the same period. I think you will find the high again was in February, 1929.

20 A.—February, 1929.

Q.—What was the high for Seagrams that month?

A.— $28\frac{1}{2}$.

Q.—What was the low before the end of March?

A.— $16\frac{3}{4}$.

Q.—So, Distillers-Seagrams dropped from $28\frac{1}{2}$ to $16\frac{3}{4}$?

A.—Yes.

Q.—During those two months?

A.—Yes.

30 Q.—During the same two months, February and March, 1929, Industrial Alcohol "A" dropped from 45 to 33, did it not?

A.—The high in February was 45, and the low in March was $32\frac{3}{4}$.

Mr. McKeown: What was the high in March?

Mr. Campbell: I am giving the spread of the two months in each case.

40 Mr. McKeown: What was the high and what was the low for February, 1929?

Mr. Holden: I think my learned friend should wait until his turn comes for re-examination, when he can bring this out if he wishes. It would be courteous on the part of my learned friend to wait for his turn.

Mr. McKeown: I could make a very proper suggestion to you,

KENNETH McARDLE (for Plaintiffs), Cross-Examination.

which I will not make. I was only bringing the point up now to keep the record clear so that I would not have to come back to it in re-examination.

Mr. Campbell: I think that is very desirable. What do you want to know, Mr. McKeown?

10 Mr. McKeown: The high and the low for each of the months of February and March, 1929. You jump from February to March before you get the low for February.

Mr. Campbell: I have been taking them in the two months' periods.

Mr. McKeown: You want to take the high of the two months, and the low of the two months?

20 Mr. Campbell: Yes.

Mr. McKeown: Of course, that is very convenient for you.

Mr. Campbell: For purposes of illustration it is quite convenient.

By Mr. Campbell (continuing):

30 Q.—Will you please give the high, and the low, of those two months?

A.—February: high, 45; low, 40. March: high, $44\frac{3}{4}$; low, $32\frac{3}{4}$.

Q.—A bad break in March?

A.—Yes, quite a decline.

Q.—Apparently Mr. Joseph just got out in time?

Mr. McKeown: Does my learned friend suggest that Mr. Joseph's retirement caused the break in Seagrams, and also the big break in the fall? Because that is where his logic carries him.

40 By Mr. Campbell (continuing):

Q.—In your examination-in-chief you gave some quotations of the market position of all those shares for the month of September, 1929, did you not?

A.—Yes.

Q.—And you were comparing unfavorably the relative market

KENNETH McARDLE (for Plaintiffs), Cross-Examination.

position of Alcohol shares in September, 1929, as against Seagrams and Walkers, were you not?

A.—I believe so, if it is in the records.

Q.—You are connected with the Financial Times?

A.—Yes.

Q.—Do you sometimes read your own publication?

A.—I do, occasionally.

10 Q.—Did you read a despatch which appeared in the Financial Times of September 26th, 1929, filed as Plaintiffs' Exhibit P-149, which I now show you?

A.—I have read this, I believe; but it is from the Financial Post.

Q.—I am sorry, and I apologize. I had the wrong slip. Let us take the one from the Financial Times, so that there may be no doubt of its authenticity.

Mr. McKeown: Just what do you want to know, Mr. Campbell?

20 Mr. Campbell: An interview with Mr. Joseph which appeared in the Financial Times.

Mr. McKeown: You will never find it in the Financial Times, because it is in the Financial Post.

By Mr. Campbell (continuing):

30 Q.—Mr. McKeown is quite right. Exhibit P-149 is the Financial Post. Is the Financial Post a reputable financial publication?

A.—Yes, it is.

Q.—I have both extracts, but I will take the Financial Post since I started with it. Do you sometimes read the Financial Post?

A.—Yes.

Q.—Did you read the issue of the Financial Post in which the despatch Exhibit P-149 appeared?

A.—I did, at the time.

40 Q.—It starts by an interview with Mr. Henry Joseph, in which he says: "I attribute the drop in the price of Canadian Industrial Alcohol Company's shares to a lack of confidence in the administration," does it not?

A.—It does say that.

Q.—Do you think the publication of an article of that kind in a journal like the Financial Post would be calculated to help the market position of Canadian Industrial Alcohol shares?

A.—I think the Financial Post, as well as the Financial Times, is working only in the interests of the investors.

KENNETH McARDLE (for Plaintiffs), Cross-Examination.

Q.—But I am not asking you that, and you are not answering my question. I am not criticizing Mr. Joseph, or anyone else. My question to you was what would be the probable effect on the market position of the shares of the Company concerned of the publication of an interview of that kind with Mr. Henry Joseph?

A.—I think it would tend to depress them.

10 Q.—Very materially?

A.—I would not say that.

Q.—How far would it tend to depress them?

A.—I would just say it would tend to depress them. Of course, it would depend on circumstances, and what actually happened. You have the records.

Q.—We have just spoken of the Financial Post. Will you now look at a publication of much greater authority, the Financial Times, of Friday, September 27th, Exhibit P-150, and will you please read the heading of what appears there?

20 A.—(Reading): “Slump in Alcohol Reflection of Lost Confidence in Management.”

Q.—Is it fair to say that when a publication of the standing of the Financial Times comes out with such a heading printed in heavy type it would injuriously affect the market position of the shares of the Company involved?

A.—It, however, is true, and it would be justified none the less.

30 Q.—But, that is not the point. I am not discussing with you whether it was justified or not, because the Court will have to determine that and it is one of the responsibilities His Lordship has to assume. Fortunately it is not your responsibility, nor mine. What I ask you is what would be the effect of the publication of that kind of material on the market for those shares?

A.—Your question is different now. As you put it first, I gathered you rather appeared to intimate that we were trying to drop the stock.

Q.—Far be it from me to criticize, or suggest that the Financial Times was bearing the market. All I asked you was what would be the natural effect of the publication of an article of that kind?

A.—It would tend to depress the stock.

40 Q.—Do you wonder that the stock of Canadian Industrial Alcohol broke somewhat during the month of September, in the face of the publication of articles of that kind?

A.—I would not be at all surprised.

Mr. McKeown: But the joke is that it did not break very much.

By the Court:

KENNETH McARDLE (for Plaintiffs), Cross-Examination.

Q.—Did you write the articles yourself?

A.—No, Your Lordship, I did not.

Mr. McKeown: We will have the author of the article as a witness. He will not be overlooked.

10 By Mr. Campbell (continuing):

Q.—In your studies in connection with the preparation of those graphs which you have prepared did you give some consideration to the general conditions of the distilling industry in Montreal represented by those three Companies?

A.—I did not have any opportunity of giving any attention to a general study of the conditions.

20 Q.—Are you able to tell the Court what were the general factors which occasioned the very pronounced slump which you have shown occurred in the shares of all those three Companies? Do you know what it was that occasioned the slump?

A.—I have a fair idea, but I would not like to testify to it. There are others who are far more capable than I am to discuss that.

Q.—You understand, I am not speaking of any one Company in particular. I am grouping them—taking the whole as an industry. All the shares of all the Companies in the industry suffered more or less in the same proportion, did they not?

Mr. McKeown: Not in the same proportion.

30 By Mr. Campbell (continuing):

Q.—More or less, though not necessarily in the same proportion?

A.—Yes.

Q.—Those that went higher had more to fall, and fell more?

Mr. Montgomery: That is argument.

40 By Mr. Campbell (continuing):

Q.—Can you suggest a reason for that?

A.—I think there was too much speculation, in the first place. That was one good reason.

Q.—Were you in Court when Colonel Gaudet gave his testimony?

A.—No, I was not.

KENNETH McARDLE (for Plaintiffs), Cross-Examination.

Q.—Colonel Gaudet referred to warnings given by Presidents of Banks throughout the country in the early summer of 1929, calling attention to the dangerous

Mr. McKeown: He did not say in the early summer of 1929. He said in the Annual Statements.

10 Mr. Campbell: The Annual Statements of 1929.

Mr. McKeown: The beginning of 1929.

By Mr. Campbell (continuing):

Q.—I do not know the exact dates those Annual Bank Statements for 1928 appeared, but it would be between January and June, 1929, in connection with the Annual Meetings of all the Banks?

20 A.—Yes.

Q.—And there would be the addresses of the Presidents of all the Banks?

A.—Yes.

Q.—And, in almost all those addresses attention was called to the dangerous speculative condition that prevailed throughout the country?

A.—Yes, sir, I believe so, but I would not be willing to swear to it.

30 Q.—In addition to that was there not a local condition which affected the distillery industry in particular, to which Colonel Gaudet referred?

Mr. McKeown: But, he did not say there was any warning in connection with that.

By Mr. Campbell (continuing):

40 Q.—Will you please look at Colonel Gaudet's letter to Lord Shaughnessy, under date July 5th, 1929, which has been filed as Plaintiffs' Exhibit P-170, and tell me whether it contains this paragraph:

“ The accusation that the sale of a few shares of my stock has caused injury to the reputation of the Company from which it will take a long time to recover is as baseless as it is unjust. You know well that the precipitating cause of the slump in the

KENNETH McARDLE (*for Plaintiffs*), *Cross-Examination.*

Company's shares was due to the closing of the American market. Everybody knows that."

Q.—Do you find that passage in Colonel Gaudet's letter?

A.—I do.

Q.—Was that situation talked about in the Press?

A.—I believe so.

10 Q.—Would the closing of the American market tend to enhance or depress the Stock Market value of the shares of those Companies?

A.—In that particular case I think it would tend to depress it.

Q.—And, in fact, the graphs you have prepared show that the price was depressed during that period of time? They all did go down during that period of time?

A.—Yes, they did.

20 Q.—We have spoken of Colonel Gaudet's letter, and of Mr. Joseph's interview. Did the fact of the resignations of those gentlemen from the Board of Canadian Industrial Alcohol, and the fact that they had some disagreement with Lord Shaughnessy, the President, become known on the Street and in journalistic circles, before the publication of those despatches late in September?

A.—I could not say that.

Q.—Did you not hear of it long before that?

A.—I could not say, frankly.

Q.—Was it not common talk on the Street that those gentlemen had resigned?

A.—Yes, it was.

30 Q.—What do you think would be the effect of those resignations, without any reason or explanation being given for them until September? In other words, what do you think the effect would be on the shares of the Company concerned—would it put them up, or would it put them down?

A.—It might put them down, but I could not say as a definite cause for depressing the stock.

40 Q.—Supposing a Director of a Company, possessed of inside information which an outsider has not, went to a prominent stock brokerage firm in Montreal and sold a large block of shares—practically his total holdings—over a short period of time, on the Montreal Stock Exchange; if that fact became known on the street what would be the probable effect on the market for the shares?

A.—It would tend to depress the stock, I think, to a certain extent.

Q.—To a marked extent, would it not?

A.—Not necessarily. It would depend on the man, and it would

KENNETH McARDLE (for Plaintiffs), Cross-Examination.

depend on the stock. If there is a strong Board of Directors behind it, it might not affect it at all.

Q.—Mr. Henry Joseph is a gentleman with a reputation for shrewdness?

A.—Yes, I understand so.

Q.—A man of standing in the community?

10

A.—I understand so.

Q.—Supposed to be a very shrewd business man?

A.—I understand so.

Q.—Supposing between the end of January, 1929, and the beginning of April, 1929, Mr. Henry Joseph sold all his Alcohol shares, with the exception of 100 shares which he retained to maintain his qualification, and that fact became noised around the Street, what effect would it probably have on the Stock Market history of the stock?

20 Mr. McKeown: There is no evidence of anything being noised on the Street.

By Mr. Campbell (continuing):

Q.—If it were noised on the Street, what would be the effect?

A.—I suppose some individuals who did not feel they wanted to hold their shares would sell.

Q.—It might induce a lot of people to sell, might it not?

30

A.—It might.

Q.—As a matter of fact your graph of Alcohol "A" shares, Exhibit P-182, so shows, does it not? That in the month when Mr. Henry Joseph sold most of his shares, February, 1929

Mr. McKeown: I object, inasmuch as the date was right at the end of the month.

Mr. Campbell: I am taking the graph as it reads.

40 The question is applied to that month, and is applied to Mr. Joseph's shares. They were sold at the end of the month.

Mr. McKeown: The question is hypothetical.

Mr. Campbell: The graph may mean those prices refer only to the last day of the month.

It is based on Exhibit P-182.

KENNETH McARDLE (for Plaintiffs), Cross-Examination.

Mr. McKeown: I made no evidence in that respect, except that Mr. Joseph's stock was all sold at the end of February.

Mr. Campbell: And the graph may mean the break started on the very last day.

By Mr. Campbell (continuing):

10

Q.—As a matter of fact, your graph of Alcohol "A" shares, Exhibit P-182, shows, does it not, that in the month when Mr. Henry Joseph sold most of his shares, February, 1929, the number of shares sold on the Montreal Stock Exchange was very much greater than in any other one month in that year?

A.—It was considerably greater.

Q.—71,716, as against 49,732 the next highest month? and some of them going down as low as 8,714 in February, 1930, and 8,473 in June, 1929?

20

A.—Yes.

Q.—Where do we wind up at the end of all your graphs, as far as the shares of the three Companies are concerned? Are they all still pretty much on a fifty-fifty basis?

Witness: In March?

Counsel: At the period at which your graph stops.

30

A.—I am afraid I do not understand your question.

Q.—Do all these graphs stop at the same period?

A.—Yes, they all stop in the month of March.

Q.—What was Alcohol "A" at the end of March, 1930? Follow the long jogging trail to the end, and tell me what point is indicated.

A.— $9\frac{1}{2}$, for the high.

Q.—And, for the low?

A.— $8\frac{3}{4}$, for the low.

Q.—That is Alcohol?

40

A.—Yes.

Q.—Will you give me the same information for Walker?

A.—Walker is 10 for the high, and 8 for the low.

Q.—And Distillers?

A.— $9\frac{1}{2}$ for the high, and $8\frac{3}{4}$ or $8\frac{7}{8}$ for the low.

Q.—All "pretty much of a muchness"?

A.—They are fairly close to one another.

KENNETH McARDLE (for Plaintiffs), Cross-Examination.

Q.—Will you look at the Alcohol “A” graph, Exhibit P-182, and tell me what the position was at the end of December, 1929?

A.—December, 1929, the high was 15.

Q.—And, what was the low?

A.—The low was 11½.

10 Q.—According to the Record I think these present proceedings were instituted on January 18th, 1930. What has been the market history of the shares of this Company since the beginning of January, 1930?

Mr. McKeown: I submit that would be irrelevant.

Mr. Campbell: It is clearly irrelevant, but 25 per cent of your record is on the very same irrelevancies. If you had limited yourself to conditions before Action brought we would have finished this case long ago.

20 Mr. McKeown: I think, perhaps the easiest way would be to let it go subject to my objection.

Witness: I have not been following it at all.

Mr. Montgomery: Ask him what it went to in October.

Mr. Campbell: I might ask him that, and I might also ask him where some of the Paper Companies went.

30 By Mr. Campbell (continuing):

Q.—In dealing with your graph Exhibit P-184—the Hiram Walker graph—you spoke of one omission. What was the omission to which you referred? You remember you said it was the same as Alcohol, with an omission. What was the omission to which you referred?

40 A.—It does not amount to anything. In the case of Canadian Industrial Alcohol Class “A” shares, Exhibit P-182, the graph lines were marked according to the actual market value of the shares. In the case of the prices of Hiram Walker-G. & W., Exhibit P-184, the split was taken into consideration; so those are relative lines, but after the split was taken off. Anything before the split was divided by three, in order to follow in unison that which went after the split.

Q.—You also spoke about an omission. What was the omission to which you referred?

KENNETH McARDLE (for Plaintiffs), Cross-Examination.

A.—This was the difference.

By Mr. McKeown:

10 Q.—I think you referred to the extension of values in the outside margins of the Alcohol charts showing the value of the shares held by the public at large, and by the Estate.

Mr. Campbell: It was the witness who said there was an omission.

Mr. McKeown: If that was not what he meant, then ask him.

Mr. Campbell: I did, and he said he did not know. Now that you have helped him, may be he will be able to tell me.

20 Witness: That must have been what I referred to.

By Mr. Campbell (continuing):

Q.—Now that Mr. McKeown has refreshed your memory, you think it was the omission of those marginal notes?

A.—It must have been.

30 Q.—Did you not work out the fortunes lost by the owners of Hiram Walker and Distillers-Seagrams during those market variations?

Mr. McKeown: The Estate has not any of those shares yet, and we hope it will not get any of them.

By Mr. Campbell (continuing):

40 Q.—Of course you can tell without bringing it down to dollars and cents that there would be a very substantial shrinkage in the nominal market value of the holdings of the capital stock of both those Companies?

Witness: Both which Companies?

Counsel: Hiram Walker, and Distillers-Seagrams.

A.—Yes, there would be a shrinkage all right.

Q.—I mean between the high and the low on graphs 184 and 185 there would be a serious shrinkage in the market value of the

KENNETH McARDLE (for Plaintiffs), Cross-Examination.

holdings of persons who owned the shares, would there not?

A.—There is a shrinkage. I would not say it was quite as serious as the others.

Q.—Obviously it is not as serious, because they did not drop as many points; still, it is a serious shrinkage?

A.—It is a shrinkage.

10 Q.—I would say it is a serious shrinkage.

Mr. Montgomery: Have it your own way.

His Lordship: For the shareholders it is serious.

Mr. McKeown: I think anyone would be safe in saying they would consider it serious.

By Mr. Campbell (continuing):

20 Q.—You spoke of the decline in Asbestos shares. Do you know anything of the circumstances which brought about the collapse of the shares in Asbestos Corporation stock?

A.—I know a bit about it.

Q.—The Company ran through a period of very serious misfortune did it not?

A.—Yes.

Q.—It met with a number of catastrophies in a comparatively short time?

30 A.—I do not know about a number of them. There was one serious catastrophe some time ago.

Q.—Did it not run into the collapse of a tunnel which spoiled its operations for a very long period of time?

A.—I do not know whether that would account for it.

Q.—Was it one of the factors?

A.—It certainly hurt the current opinion on the Street as regards the Company. As a matter of fact, I do not think they have quite cleared out that pit yet.

40 Q.—I put it to you that there were special reasons for the collapse of the market value of the stock of Asbestos Corporation, due to conditions that happened on the property?

A.—Not altogether. I would not say that.

Q.—Of course there is no doubt the general stock market atmosphere had a great deal to do with it, but apart from that were there not special conditions in the Asbestos Corporation which occasioned the stock to fall even more than the shares of other Companies?

KENNETH McARDLE (for Plaintiffs), Re-Examination.

A.—No. I would say there were certain conditions at the mines which may have caused the shares of Asbestos Corporation to drop, but I do not say they were exclusive to the property.

Q.—What I mean is there were particular conditions peculiar to that Company, not affecting the other industries?

A.—Yes, they had certain conditions which were peculiar.

10 Q.—You also spoke of the market history of Liggett & Myers shares, and I think you made a graph. Will you please look at your graphs of Liggett & Myers' shares, Exhibit P-187, for the "A" shares, and Exhibit P-188 for the "B" shares, and tell us, if you can, when the Liggett & Myers "A" shares reached the peak of 119.5, as I think you said?

A.—In April, 1928.

Q.—Can you fix the date in April?

A.—No, I cannot.

Q.—Have you any means of fixing the date?

20 A.—Not in my immediate possession.

Q.—What was the situation as to the "B" stock?

A.—It was at the same figure in the same month of the same year.

Q.—Can you state whether that was before, or after, April 25th, 1928?

A.—I cannot.

Q.—In connection with the split up of Walker shares, were there any rights issued to the shareholders under which they were entitled to take up new shares?

30 A.—I believe there were, but I am not positive of that.

Q.—Did that help the stock market in Walkers? Either the fact or the rumor that there would be rights?

A.—I do not know if it would very seriously affect the market in Walkers.

Q.—Is it not common in market history that when it is rumored there are to be rights the stock goes up?

A.—In some cases it does.

40 Re-examined by Mr. McKeown, K.C., of Counsel for plaintiffs.

Q.—Will you be good enough to prepare, and file as an Exhibit in this case, the opening, high, low, and closing, of those various securities which have been suggested to you by my learned friend Mr. Campbell, namely: Royal Bank, Bank of Montreal, Power Corporation ———

Mr. Campbell: I did not speak about Power Corporation, but

KENNETH McARDLE (for Plaintiffs), Re-Examination.

I would be glad to have it. I spoke about Canada Power & Paper Company.

By Mr. McKeown (continuing):

Q.—Canada Power & Paper Company, Winnipeg Electric Company, Manitoba Power Company, Massey Harris Company, Dominion Textile Company, and Canadian Pacific Railway Company, for the month of September, 1929, before the beginning of the break to which reference has been made?

A.—Very well.

By Mr. Campbell:

Q.—And will you also note the opening price of the year for each of those stocks?

A.—Open, high, low, close, and the opening price of the year. That is for the month of December, 1929.

Mr. McKeown: September. Just before the break.

Mr. Campbell: And, I asked you to add to it the opening price for the year of each of those shares. I would also like you to give the high between the first of the year and September—that is the high each of those stocks reached between January 1st, 1929, and the beginning of September. I would like you to make the Exhibit as comprehensive as possible.

A.—Very well.

By Mr. McKeown (continuing):

Q.—Mr. Campbell has drawn your attention to the warnings of the Presidents and General Managers of the Banks in their reports to their shareholders.

A.—Yes.

Q.—Were those warnings generally heeded, or did the Stock Market continue on its merry way and increase its daily turnover, for a time at least?

A.—It went on quite nicely, for a time, I believe.

Q.—And came to grief in October and November?

A.—October and November.

Q.—There was not any special warning to look out for Canadian Industrial Alcohol stock, that you ever noticed?

A.—No.

KENNETH McARDLE (for Plaintiffs), Re-Examination.

Q.—No such warning by the Bank Presidents or General Managers?

A.—No.

Mr. Campbell: Mr. Joseph gave a warning, and so did Colonel Gaudet.

10 By Mr. McKeown (continuing):

Q.—My learned friend Mr. Campbell has been at pains to bring you to say that at the end of the graph those three Distillery stocks, which were very very far apart in March, 1928, had all arrived at parity?

A.—Practically, yes.

Q.—Notwithstanding the split of three for one in Walkers?

A.—Yes.

20 Q.—And, notwithstanding the discrepancy in the dividend returns to the shareholders?

A.—Yes.

Q.—I am pleased that Mr. Campbell reminded me of something in connection with Asbestos. This graph looks like a ski jump, but it is just a high dive. This is one stock, at least, that did not suffer from the break—it was broke before the break?

A.—Yes.

30 Mr. Campbell: I do not mind my learned friend being frivolous, if he is accurate, but I think he is not accurate in that statement.

Mr. McKeown: You may hold your own opinion, but I am sorry I cannot agree with you. As a shareholder I am very sorry that you are mistaken.

By Mr. McKeown (continuing):

40 Q.—You notice, as shown by the graph Exhibit P-186, from a high of $39\frac{1}{2}$ in May, 1929, this stock slid down, virtually, without any comeback, until the month of September, when it arrived at a high of 10 and a low of $4\frac{1}{2}$?

A.—Yes.

Q.—And at the very worst time my learned friend Mr. Campbell has ever heard of—October and November—what was the high of that stock?

A.— $4\frac{1}{4}$.

Q.—What was it in November?

KENNETH McARDLE (for Plaintiffs), Re-Examination.

A.—In November: low $2\frac{3}{4}$; high $4\frac{1}{4}$.

Q.—Was that rock bottom?

A.—Not quite.

Q.—What was the ultimate figure?

A.—The ultimate was 3 for the high, in December, January and February; and the low was $2\frac{1}{4}$, for December, January and February.

10 Q.—And, as far as we have gone in March what great recovery have those securities made?

A.—The high had a recovery to $3\frac{1}{4}$, and the low to 3.

Q.—Are you aware Lord Shaughnessy was Vice-President and a Director of Asbestos Corporation?

A.—I am.

Mr. Campbell: He was not General manager, was he?

20 By Mr. McKeown (continuing):

Q.—He had been Vice-President and a Director for a number of years, and especially during the time covered by this graph?

A.—Yes.

Mr. Campbell: No doubt in my learned friend's view Lord Shaughnessy was responsible for the break.

By Mr. McKeown (continuing):

30 Q.—It is common knowledge, is it not, that there has been general mismanagement in that Corporation, at least of the physical assets and the plant?

Mr. Campbell: My learned friend has been connecting Lord Shaughnessy's name with the Directorate. Is he suggesting that Lord Shaughnessy had any part in the management, because if that is the suggestion, my submission is it is utterly unfair. Lord Shaughnessy had no more to do with the management than my
40 learned friend had.

Mr. McKeown: I do not know whether he had or not. This was an organization with an investment of \$700,000 or \$800,000 of other people's money in it. However, we will see what the President had to say about it.

By Mr. McKeown (continuing):

KENNETH McARDLE (for Plaintiffs), Re-Examination.

Q.—You have referred to difficulties which they had at the plant?

A.—Yes.

Q.—Do you know of the caving in of a tunnel which they had built to connect up a mill? Do you know the particulars?

A.—I have a fair idea.

10 Q.—Do you know of the caving in of one of the main pits?

A.—Yes.

Q.—Has the report to the shareholders of the Asbestos Corporation been issued for the current year?

A.—It has.

Q.—Will you take communication of the copy I now show you of the fourth Annual Report of the Directors of Asbestos Corporation, Limited, of December 31st, 1929, and will you please read the first four paragraphs into the record?

A. (reading):

20 “ To the Shareholders:

Your Directors submit herewith the Annual Report of the Corporation for the year ending December 31st, 1929.

The present Board of Directors was elected at an adjourned Annual Meeting of the Corporation on the 22nd May, 1929, five months after the beginning of the fiscal year.

30 During the short period of office of the present Board, and direction of the affairs of the Corporation by the present management, every effort has been put forward to improve the efficiency of the plants, and to make such an investigation as is necessary, and which could be completed within the time, to lay the foundation for sound economical operations in future years.

40 The Corporation has been suffering, and the present Board has been handicapped, as a result of the policy of the former management which led to the depletion of accessible ore bodies attributable to the various mills—apparently without consideration of the advisability of rendering available in each year an amount of asbestos bearing ore equal to that which the year's operations had exhausted; a policy which led to capital and other expenditure from which immediate benefits could not be enjoyed, and in some cases which mean a complete loss to the Corporation. In fact contracts let during the year 1928 and the early part of 1929 and in connection with which large sums had been expended prior to the last Annual Meeting, which contracts the present Board had no alternative but to carry through, resulted in a complete loss and contributed sub-

KENNETH McARDLE (for Plaintiffs), Re-Examination.

stantially to the reduction in liquid surplus as shown by the balance sheet of December 31st, 1929, over December 31st, 1928.

10 The Corporation's shipments, however, for the year 1929 exceeded those of the previous year by \$296,488.25. The profits for the year, as shown by the Profit and Loss Statement herewith submitted, after allowing for bond interest and other charges, and before depreciation, amounted to \$318,333.89. The profits from operations for the year ending December 31st, 1929, after providing for Dominion and Provincial taxes, and before bond interest and depreciation, amounted to \$710,192.27.

In the year 1929 expenditures for stripping, drilling, and development, in the amount of \$203,000 were charged to operations, in comparison with a similar charge in 1928 of \$94,735.55.

20 To make a comparison of the Profit and Loss Statement as presented with that as shown in the year 1928 it must be noted, first, a payment received by the Corporation in connection with the Etchemin Power transactions in the year 1928 and the instalment due on January 1st, 1929, were taken into profits for the year 1928; second, had the inventory of asbestos on hand as at December 31st, 1929, been valued on the same basis as on December 31st, 1928, the profits for 1929 would have been \$160,569.39 more than shown in the Profit and Loss Statement; third: the provisions set up for depreciation in the year 1929 amounted to \$300,000, as against \$200,000 in the year 1928."

30 Q.—You note in the Statement with reference to the Etchemin Power transaction that a payment received by the Corporation in connection with that transaction had been carried into profits for the year 1928?

A.—I do.

Q.—Do you understand the purport of that?

A.—Yes.

Q.—Was that sum properly assignable to profits, or was it a capital asset; if you know?

40 A.—I could not say.

Mr. Campbell: Are we not going very far afield? We are not trying the Directorate of the Asbestos Corporation.

Mr. McKeown: We are not trying them, but everybody else is. In any event, the witness says he does not know.

By Mr. McKeown (continuing):

KENNETH McARDLE (for Plaintiffs), Re-Examination.

Q.—My learned friend Mr. Campbell suggests that since the institution of this Suit the securities of the Canadian Industrial Alcohol Company have tumbled down. Will you be good enough to look at Exhibit P-182, being the graph of the Alcohol "A" stock, and will you tell His Lordship to what point that stock had dropped in October, 1929?

A.—To 5.

10 Q.—If we are going to compare it with the other graphs, will you please say if the stock of Walkers, or of Distillers, ever dropped to 5?

A.—No, sir.

Q.—For the purpose of the Record will you please state what has been their low for all time?

A.—The lowest for all time is $8\frac{3}{4}$ for Distillers-Seagram; and the low for all time for Walker is 8.

20 Q.—Your attention has been drawn by Mr. Campbell to the action of the Alcohol "A" stock from December up to the point to which your graph goes, and my learned friend has been at great pains in that connection. Will you just give His Lordship the figures again; the high and the low, from December, 1929? Let us begin with the December prices.

A.—The prices in December, 1929, for Canadian Industrial Alcohol "A" stock were 15 for the high, and $11\frac{1}{2}$ for the low.

Q.—And, as far the chart goes, it ultimately went down to what figure?

A.— $9\frac{1}{2}$ for the high, and $8\frac{3}{4}$ for the low.

30 Q.—The figures you have just given are for the Alcohol "A" stock?

A.—Yes.

Q.—Will you now look at the graph of the Hiram Walker securities, and will you say what was the high, and the low, in the month of December, 1929?

A.— $13\frac{7}{8}$, for the high; $10\frac{1}{4}$ for the low.

Q.—Those Companies had no lawsuits on their hands. What occurred to those stocks?

A.—A general trend downward.

40 Q.—What have they arrived at?

A.—10, and 8, respectively, for high and low.

Mr. Campbell: The influence of bad example.

By Mr. McKeown (continuing):

Q.—Will you now look at the graph Exhibit P-185, for the

KENNETH McARDLE (for Plaintiffs), Re-Cross-Examination.

Seagram securities, and will you tell His Lordship the high, and the low, for the month of December, 1929?

A.—For December, 1929, the high for Distillers-Seagram was 12½; the low was 12.

Q.—What happened to those securities, which did not have the disadvantage of litigation, up to the end of the graph?

10 A.—A depression in the stock.

Q.—A decline?

A.—Yes.

Q.—Where did they terminate?

A.—They terminated for March at 9½ for the high and 8⅞ for the low.

Q.—Will you now tell His Lordship what was the high, and what was the low, for Alcohol “ B ” stock in December, 1929?

A.—In December, 1929, Canadian Industrial Alcohol “ B ”: high, 12¾; low, 11.

20 Q.—What happened to the stock ultimately, as far as the graph goes?

A.—A general trend downward, to March, when both the high and the low were at 8.

Re-cross-examined by Mr. Campbell, K.C., of Counsel for defendants.

30 Q.—Lord Shaughnessy was one of the Vice-Presidents of the Asbestos Corporation in 1928. Do you know who the other Vice-President was?

A.—I do not know.

Q.—Was it not Mr. William McMaster?

A.—I do not know for sure.

Q.—Let us refer to Mr. McKeown's source of all information.

His Lordship: Mr. Massey, of Toronto, was President.

40 Mr. Campbell: That was the last year. Mr. William McMaster was a Vice-President until April, 1929. Lord Shaughnessy was at one time a Vice-President with Mr. William McMaster. Mr. William McMaster was senior Vice-President.

His Lordship: Who composed the old Board?

Mr. McKeown: Mr. W. G. Ross was President; Lord Shaughnessy, Mr. W. G. Ross, Professor Colby, Mr. Mitchell, Mr. McMaster, Mr. Finley, and Mr. Beaudry Leman.

KENNETH McARDLE (for Plaintiffs), Re-Cross-Examination.

By Mr. Campbell (continuing):

Q.—Until May, 1929, Mr. William McMaster was First Vice-President of the Asbestos Corporation?

A.—Yes, so I understand.

Q.—And, Lord Shaughnessy was Second Vice-President?

A.—So I believe.

10 Q.—Mr. William McMaster is a man of the very highest standing in the financial community here?

A.—He is.

Q.—You do not hold him responsible for any collapse of the affairs of the Asbestos Corporation, do you?

Mr. McKeown: I do not think he signed the Statement.

20 Mr. Campbell: I am asking the witness whether he in his own mind, or any one else, holds Mr. William McMaster responsible for the collapse of the Asbestos Corporation.

Witness: In my own mind I would not.

By Mr. Campbell (continuing):

Q.—In other words, those Vice-Presidencies are purely titular offices, and the Vice-Presidents do not interfere in the management?

A.—It all depends on the case.

30 Q.—I am speaking of the Asbestos Corporation.

A.—I am not familiar with the workings of the Company, and what the Vice-Presidents do.

Q.—You read two or three paragraphs from the Annual Report of the Asbestos Corporation, but my learned friend's voice gave out before he reached the last two paragraphs. In order that the document may be complete, will you please read into the record the two paragraphs my learned friend Mr. McKeown left out?

40 Mr. McKeown: I left out much more than two paragraphs.

Mr. Campbell: I only ask for the last two paragraphs.

Witness (reading):

“Your Directors and the present management are particularly gratified with the co-operation of the staff and workmen, which has been increasingly in evidence during recent months.

KENNETH McARDLE (for Plaintiffs), Re-Cross-Examination.

10 Your Corporation controls approximately 30,000 acres in districts which as a matter of record are known to have asbestos bearing ores containing asbestos equal in quality to the best produced and without a superior anywhere, and it seems reasonable to assume that the exploration work now being carried on in a conservative manner should reveal deposits of asbestos of equal quality to that now in evidence, and your Directors, through the efficiency which the Corporation is establishing and the economies it is effecting, hope to be able to re-establish without the necessity of re-organization this Corporation in the status intended and in the field where it belongs.”

By Mr. Campbell (continuing) :

Q.—This is signed by Mr. Robert F. Massey, the now President and General Manager?

A.—Yes.

20 Q.—You spoke of the price of \$5.00, the low reached by Canadian Industrial Alcohol shares in the bad break of October, 1929?

A.—Yes.

Q.—Do you know how many minutes it stayed at \$5.00?

A.—No, I do not.

Q.—Do you not know that it recovered during the course of the day, and that only a few shares changed hands at \$5? Is not that known to you?

A.—I believe that is the case.

30 Q.—As a matter of fact, a mere handful of shares changed hands at that low, and it was an accident of the wide open break of the day, was it not?

A.—I would not say it was an accident. The stock was at that low.

Q.—And to what did it recover in the course of the day?

A.—I do not know, for that particular day.

Q.—In any event, I am not exaggerating when I say it remained at 5 only a minute or two?

A.—I would not bring it down to a minute or two.

40 Q.—How many shares changed hands at that figure?

A.—I do not know how many shares.

Q.—It is not an exaggeration to say that a very few shares changed hands at that price during the day when there was a wide open break on the New York market?

A.—I am very open to conviction on that point.

Q.—You have investigated this matter, and you have prepared those graphs. Is not what I say the fact?

KENNETH McARDLE (for Plaintiffs), Re-Cross-Examination.

A.—Not the day and date.

And further deponent saith not

And the further hearing of testimony in this matter is continued to Friday, April 11th, at 10:30 o'clock in the forenoon.

10

20

30

40

ANDREW R. W. YOUNG (for Plaintiffs), Examination-in-Chief.

On this eleventh day of April, in the year of Our Lord, one thousand nine hundred and thirty, personally came and appeared.

ANDREW R. W. YOUNG,

10 of the city of Montreal, residing at No. 80 Maplewood Avenue, News Editor, aged thirty-six 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. Young, are you connected with the Financial Times?

A.—Yes.

20 Q.—Since how long?

A.—Over six years.

Q.—With what Department are you connected?

A.—The Editorial Department.

Q.—Do your duties include interviewing of the responsible heads of various corporations?

A.—Yes.

Q.—Whose securities are listed on the Stock Exchange of Montreal?

A.—Yes.

30 Q.—During the course of the winter and spring of 1929, or the early summer, it has come out that there was a downward trend in the stock of the Canadian Industrial Alcohol. Do you remember the circumstances?

A.—Yes.

Q.—In connection with Financial Times, do they render services to their subscribers, and to inquiries, investors and others who desire such information from time to time concerning shares in Corporations?

40 A.—Yes.

Q.—In that connection, did you receive inquiries?

A.—Many.

Q.—Having regard to the fall in the stock of Canadian Industrial Alcohol in the period I have suggested, did you receive inquiries?

A.—Very many.

Q.—From people locally, in Montreal?

ANDREW R. W. YOUNG (*for Plaintiffs*), *Examination-in-Chief*.

A.—No, all over the country, from Vancouver to Halifax.

Q.—Where does your circulation extend to?

A.—Throughout Canada and the United States.

Q.—Was this a condition which obtained prior to the 16th of July, 1929, that is to say, these inquiries?

A.—Yes.

10 Q.—Did you make any effort prior to the 16th of July, 1929, to obtain any authoritative information as to the exact position of the affairs in connection with the Company?

A.—I made several.

Q.—Tell His Lordship exactly what you did in that connection?

A.—I called a couple of times to see Mr. Lawrence ———

Mr. Campbell: I would like to be on record, My Lord, that I object to this as irrelevant. The activities of the Financial Times, however important a publication it may be, I submit, are not relevant to this lawsuit. Your Lordship has to decide this case.

Mr. McKeown: It will tend to show the state of the public mind at that time.

Mr. Campbell: It may show the state of mind of the publishers of Financial Times, but it will not help Your Lordship in deciding this case.

30 His Lordship: Objection reserved.

A.—I made several calls on Mr. Lawrence, the Secretary, and obtained no satisfaction, and then I called on Mr. Kelly, one of the Directors.

By Mr. McKeown:

Q.—At whose suggestion?

A.—At Mr. Lawrence's suggestion.

40 Q.—Did you know at that time that Mr. Kelly was one of the Vice-Presidents?

A.—No, I am not aware of that.

Q.—You understood he was a Director?

A.—Yes.

Q.—Did you fare any better with Mr. Kelly?

A.—No.

Q.—What did he say?

ANDREW R. W. YOUNG (*for Plaintiffs*), *Examination-in-Chief*.

A.—Mr. Kelly told me the only man who would give me information was Lord Shaughnessy. I went outside to the information desk, and asked if I could see Lord Shaughnessy, who was in conference at the time. I went back to the office, called on Lord Shaughnessy's Secretary ———

Q.—That day?

10 A.—That same day. I asked for an interview, explained the circumstances, that the stock was falling badly, and it was rumored on the street there was a cut in the dividend, and that the Financial Times wanted the information.

I did not hear from the Secretary until the following day, when I called again. He told me he had spoken to Lord Shaughnessy, but Lord Shaughnessy had made no appointment; I asked him once more, if he would make an appointment, and once again I heard no further word. Then, I wrote that letter which is in evidence.

20 Mr. Campbell: It is not quite in evidence yet. No doubt my learned friend will see that it will be in evidence, but it has not reached the record yet.

Mr. McKeown: I submit that what the witness in the box might have said to Lord Shaughnessy had he been granted the interview which he sought, would have been evidence here, but inasmuch as he did not have the interview with Lord Shaughnessy, then, I suggest what he wrote to Lord Shaughnessy is quite relevant, because this letter went to Lord Shaughnessy, and was re-
30 turned by Lord Shaughnessy. It has been in and out of his keeping.

Mr. Campbell: I still fail to see how that makes it relevant to this controversy, what the Financial Times may have seen fit to write to Lord Shaughnessy.

His Lordship: It may be relevant. It may become relevant if properly supported by other evidence.

40 Mr. Campbell: I take it, My Lord, that it will be produced under reserve of my objection.

His Lordship: Yes.

By Mr. McKeown:

Q.—Will you produce as Exhibit P-190 the original letter ad-

ANDREW R. W. YOUNG (*for Plaintiffs*), Examination-in-Chief.

dressed by you as Associate Editor of the Financial Times, to Lord Shaughnessy, under date July 16th, 1929?

A.—I do.

Q.—Will you read the letter into the record?

Mr. Campbell: Is that necessary, My Lord?

10 Mr. McKeown: We have had plenty of your reading into the record.

Mr. Campbell: I will undertake to say that I have not read into the record ten per cent of what my learned friend has read. File the letter. It is a typewritten letter. There is no difficulty in reading it. Why take up the time to read it in the record.

20 His Lordship: What possible difficulty can there be. I may go and lock myself up with the record somewhere out of town, and I may not have the Exhibits with me when I read this particular evidence.

Mr. Campbell: Is that the contingency my learned friend is meeting. I would like to point out to my learned friend that there are many Counsel engaged in this case. The per diem cost is very high. The taximeter is running all the time, and it takes time to read these documents into the record, and my submission is that Your Lordship can read them when the time comes.

30 His Lordship: I cannot help it if he reads the letter.

Mr. McKeown: It does seem to me that the Court should have, as the case proceeds, a proper grasp of the significance of these documents and not be in doubt as to what they are all about until deliberation takes place following the argument. It is a letter, Mr. Campbell, which you are probably not at all interested in.

40 Mr. Campbell: I am not interested in it, because I do not think it affects the case.

Mr. McKeown: Don't worry about the case.

Mr. Campbell: I am worrying about the time you are taking.

Mr. McKeown: Don't worry about the time lost. We could have read that letter while you were talking about it.

ANDREW R. W. YOUNG (for Plaintiffs), Examination-in-Chief.

His Lordship allows the reading of the letter into the record.
The letter is as follows: (Reading):

“ Financial Times, Montreal, July 16, 1921.

10 The Right Honorable Lord Shaughnessy,
 President, Canadian Industrial Alcohol Limited,
 Canada Cement Building,
 Montreal.

Sir:

Last week, in view of many letters and telegrams from Shareholders who expressed worry at the serious decline in the market value of the stock during recent months, I called for an interview with two officials of your Company in order that I might be able to answer these inquiries intelligently.

20 Both of these officials informed me that you were the only person who could talk on the subject of the Company's operations, and as you happened to be busy when I telephoned, I asked your Secretary if he would arrange an appointment for me to see you for a few minutes. Your Secretary promised to do so, but so far I have received no further word.

30 It is understood, of course, that Executives of an industrial Company may not be concerned in the market for the Company's stock. At the same time when the value of the securities is practically cut in half within a space of a few months time, it appears obvious that there must be some reason for this drastic decline. You will recognize the fact that it is good policy to protect your shareholders and take whatever steps you can to prevent them from disposing of their holdings at such a time.

40 Many rumors have been current recently of a serious decline in the earnings of Industrial Alcohol, and the possibilities of a cut in or discontinuance of the dividend on the stock. It has never been the policy of Financial Times to place any great stress on market rumors, but it is obvious that if information cannot be obtained from the proper source, our only course is to separate the wheat from the chaff in connection with these rumors in order to obtain our news for our sources of advice to inquiring subscribers.

We may say that we have advised against the sale of Alcohol all the way down from 35, and under the circumstances believe that you will see that we feel entitled to obtain an authoritative statement of some sort which will be of assistance

ANDREW R. W. YOUNG (for Plaintiffs), Examination-in-Chief.

to those shareholders who have to face the present market situation.

Some statement from you to guide us in dealing with the situation would, we believe, be in order.

Yours very truly,

10

A. R. Young,
Associate Editor, Financial Times.”

Q.—In what way was this letter forwarded to Lord Shaughnessy, and how does it come that it is back in your possession, what appears to be the original letter?

A.—I personally did not receive the reply to the letter.

Q.—In what way was the letter forwarded?

A.—The letter was sent back by Lord Shaughnessy to Mr. Cox?

20 Q.—How was the letter forwarded to Lord Shaughnessy?

A.—By mail.

Q.—How does it come to be back in your possession?

A.—The letter was sent by mail by Lord Shaughnessy to Mr. Cox, the owner of the Financial Times, with a covering letter.

Q.—Will you now produce as Exhibit P-191, the covering letter from Lord Shaughnessy to Mr. Cox under which your letter to Lord Shaughnessy, P-190, was returned?

A.—I do.

Q.—Will you read the same into the record?

30 A.—I do. It is on the stationery of Canadian Industrial Alcohol Limited, and reads as follows:

“ Montreal, July 17th, 1929.”

Q.—That would be the day following the date of your letter to Lord Shaughnessy.

A.—Yes.

40 “ Emmett Cox, Esq.,
President, Financial Times.

Dear Mr. Cox:

I am returning to you the enclosed letter which I received today from your Associate Editor named Young.

I have not been in the habit of receiving letters of this description, and if anything may create in my mind a lack of

ANDREW R. W. YOUNG (*for Plaintiffs*), *Examination-in-Chief*.

desire to see him, or help him in any way, the tone of this letter could best accomplish that result.

It seems to me that if an Editor desires an interview he should be taught good manners as an important way to secure it.

Yours very truly,

10

Canadian Industrial Alcohol Limited,
Shaughnessy, President."

Q.—In the course of your experience, I think you have told us that it was customary to call upon heads of Corporations for information?

A.—Yes, sir.

Q.—Had you ever had any prior experience of the treatment received as indicated by the letters P-190 and P-191?

20

A.—Never.

Q.—Is the general view taken of the financial papers one of co-operating with the Corporations usually?

Mr. Campbell: What interest can Your Lordship possibly have in the general view as to what Lord Shaughnessy's reply, or anybody's reply was.

Mr. McKeown: We are not doing that.

30

Mr. Campbell: We are not entitled to ask this gentleman in the box as to what the general view of the financial papers is as to what the result of that correspondence is. We know that the Financial Times was offended, and ventured its offence in the articles it published. Whether it was entitled to be offended or not, Your Lordship will decide, and whether there is any offence in this case is a matter of mystery.

40 Mr. McKeown: I am asking the witness whether the attitude of the chief Executive of this Corporation is the usual one, or whether it is the accepted view that it is a matter of co-operation in the interests of the shareholders. I do not mean as to his Company, I mean as to the general proposition. I think the question is fair.

His Lordship: I think so. Objection reserved.

ANDREW R. W. YOUNG (*for Plaintiffs*), *Cross-Examination.*

Witness: As a general rule.

By Mr. McKeown:

Q.—Were you about to add something when I interrupted you?

A.—Well, there was one thing I wanted to say about that letter.

Q.—Which letter do you mean?

10 A.—This letter to Lord Shaughnessy, which is in as evidence.

Q.—You mean the letter P-190 addressed to Lord Shaughnessy and signed by yourself?

A.—Yes. It was written by me, but Mr. Tyson, who was editor at that time, went over the letter with me, and the letter was very carefully considered at that time.

Q.—Before it was sent?

A.—Yes.

20 Q.—Upon the return of the letter by Lord Shaughnessy to Mr. Cox, under the covering letter, P-191, were you reprimanded?

A.—I only heard of it second-hand through Mr. Tyson.

Q.—Mr. Tyson at the time was the editor?

A.—Mr. Tyson at the time was the editor of the Financial Times.

Q.—Following this correspondence in July, 1929, were these rumors to which you had referred allayed? Was information given out at once?

A.—I do not recollect, but I feel sure that no official statement was made at that time.

30 Cross-Examined by Mr. G. A. Campbell, K.C., of Counsel for Defendants:

Q.—Mr. Young, exactly what is your position with the Financial Times?

A.—I am in charge of it now as News Editor.

Q.—And what was your position in July, July 16th, 1929, when you wrote this letter?

A.—I was Associate Editor.

40 By Mr. McKeown:

Q.—You have not been demoted?

A.—No.

By Mr. Campbell:

ANDREW R. W. YOUNG (for Plaintiffs), Cross-Examination.

Q.—It did not affect your status with your employer, evidently?

A.—No, not adversely.

Q.—I see in paragraph 3 of your letter, Exhibit P-190, that you say in the course of it: “It is understood, of course, that Executives of an industrial company may not be concerned in the market for the Company’s stock.” I suppose that is an attitude sometimes taken by Executives of quite responsible Companies?

10 A.—Yes.

Q.—I also note in the next paragraph you state: “Many rumors have been current recently of a serious decline in the earnings of Industrial Alcohol, and the possibilities of a cut in or discontinuance of the dividend on the stock.” Is that a correct statement of fact?

A.—There were rumors.

Q.—You say “many rumors”. Were there many such rumors?

A.—There were many rumors.

20 Q.—And the currency of those rumors would have what tendency on the value of the stock market quotations of the stock?

A.—It would depress the stock naturally.

Q.—Seriously depress the stock?

A.—Seriously.

Q.—In fact, was the dividend on Industrial Alcohol discontinued at that time?

A.—It was not.

Q.—Do you know when the financial year of Industrial Alcohol ended?

A.—September 30th.

30 Q.—Did you see the figures of Industrial Alcohol as of September 30th, 1929?

A.—I did.

Q.—Do you remember what the reported net earnings were?

A.—I think somewhere around \$1.90 a share.

Mr. McKeown: \$1.89.

Witness: Forty or fifty cents less than the previous year per share.

40 By Mr. Campbell:

Q.—But still, a substantial sum?

A.—Oh, yes.

Q.—Exhibit P-99, being the Balance Sheet of Canadian Industrial Alcohol as filed, showed net profit for the year ending that date of \$2,073,977.46, did it not?

ANDREW R. W. YOUNG (for Plaintiffs), Cross-Examination.

A.—Yes.

Q.—And what were the dividends paid to the shareholders during that year 1929?

A.—\$1,661,136.

Q.—And did that include a special distribution made during the course of that financial year?

10 A.—Yes, during that fiscal year.

Mr. McKeown: That is not included in that, it is taken from the surplus. They ran themselves within \$200,000 of the distribution of all their earnings.

By Mr. Campbell:

20 Q.—My attention has been called to the fact that the bonus was taken out of surplus, as appears on this Exhibit P-99, a bonus of twenty-five cents a share, amounting in all to \$273,166.50.

His Lordship: How much was the bank overdraft at that period?

Mr. Campbell: The bank overdraft as at September 30th? There was no overdraft. There was cash in bank.

Mr. McKeown: They show \$504,622 as cash in the bank.

30 Mr. Campbell: Cash in the bank of \$504,000 odd. That was after the subsidiary had paid the parent Company \$1,400,000—

Mr. McKeown: This was after they had switched the bank overdraft which they had to guarantee just the same.

Mr. Campbell: They borrowed from the bank and paid the Company by a perfectly legitimate, ordinary, everyday bookkeeping process.

40 By Mr. Campbell:

Q.—But I asked you to verify that the reported net profits for the year covered not only the ordinary dividend of \$1,661,136.18, but also this bonus of \$273,150.52, making a total distribution to shareholders during the year of how much?

A.—\$1,934,302.68.

Q.—In the next paragraph of your letter, Exhibit P-190, you

ANDREW R. W. YOUNG (for Plaintiffs), Cross-Examination.

say: "We may say that we have advised against the sale of Alcohol all the way down from 35." Is that true?

A.—Yes.

Q.—You believed that it was a good thing to buy or keep at 35 or less?

A.—Not buy.

Q.—All you advised against was the sale?

10 A.—We advised against the sale of stock because I believed that the assets were behind it as an investment.

Q.—In other words, you considered its investment value was thirty-five dollars or better?

A.—On the basis of its assets and potential earning power.

Q.—In the last paragraph of your letter, P-190, you state to Lord Shaughnessy: "Some statement from you to guide us in dealing with this situation would, we believe, be in order." You do not find anything peremptory at all in the tone of that third paragraph?

A.—No, not under the circumstances.

20 Q.—You had asked for an interview and you had not had it?

A.—Several times.

Q.—Were you a little peeved when you wrote that letter?

A.—Not peeved.

Q.—Describe your state of mind?

A.—I think that last paragraph describes the state of mind. We felt that we should have an interview.

Q.—In other words, you felt you were entitled to an interview, and Lord Shaughnessy had not given it to you?

A.—Yes.

30 Q.—Does the Financial Times assert that same position to the Presidents of all other industrial, and other Companies?

A.—Where we are not granted an interview.

Q.—In other words, you exact interviews from the Executives of all Companies, do you?

A.—Not in every case.

Q.—But do you threaten them with your displeasure if they do not give you interviews?

A.—There is no threat there.

40 Q.—The Financial Times was not pleased with the reply it got from Lord Shaughnessy, P-191?

A.—The first I saw of this letter was yesterday.

Q.—You saw the consequences of it, did you not, in the columns of the Financial Times?

A.—No.

Q.—On September 20th, 1929, did the Financial Times publish an article I now show you, headed "Alcohol dividend not being

ANDREW R. W. YOUNG (for Plaintiffs), Cross-Examination.

earned", sub-heading, "Business and profits off sharply. Losing money on McNish"?

A.—It did.

Q.—Did it publish that?

A.—Yes.

Q.—Do you think that despatch would be likely to improve the market position of Alcohol stock?

10 A.—No.

Q.—It would not help your unfortunate subscribers who still held their Alcohol shares?

A.—If they were holding them on an investment basis it would not hurt them.

Q.—But if they were holding them on a speculative basis it would?

A.—I don't know. The Financial Times does not give advice for speculation.

20 Q.—Was there a large speculative following in Alcohol?

A.—Very much.

Q.—It was a highly speculative stock, was it not?

A.—It had been.

Q.—Will you file this clipping as D-104?

A.—Yes, I do.

Q.—Will you please read into the record the first paragraph of it?

A.—(Reading):

30 "Canadian Industrial Alcohol has, it is understood from authoritative sources, experienced a sharp falling off in business both in export and domestic fields."

Q.—What was the authoritative sources referred to in that paragraph?

A.—I could not tell you at this time.

Q.—Did you write the article?

A.—I could not even tell you that. I would have to see a copy.

Q.—You do not recognize your own peculiar style?

40 A.—I do not recollect. The possibilities are it was written by me.

Q.—But you cannot at this time recall your authoritative sources?

A.—No.

Q.—Will you read into the record, please, the second paragraph of the despatch?

A.—(Reading):

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“ Contrary to recent reports that earnings for the current year would approximate, if not exceed those for the fiscal period, it is stated that the report for the year which closes at the end of this month will fail to show dividend requirements fully earned by the Company.”

10 Q.—This was written on September 20th. The financial year ended, you have told us, on September 30th. Were your prognostications fulfilled in reference to the earning of the dividends, according to the financial statement?

A.—I don't know—according to the financial statement.

Q.—So, if for the purposes of this discussion the financial statement is accurate, and if the certificate of Deloitte, Plender and Company, Auditors, is properly given, your prognostication would be inaccurate, would it not?

20 A.—Not necessarily. Depreciation is not shown on the Balance Sheet.

Q.—Will you look again at the Balance Sheet, Exhibit P-99, which I show you, and will you look at the first item on the asset side and state how it reads? I am referring to the Profit and Loss which is shown in the Balance Sheet?

A.—(Reading):

“ Real Estate, buildings, machinery, goodwill, etc., less depreciation, \$5,412,532.29.”

30 Q.—So that as far as the Balance Sheet is concerned, the assets are carried at, less depreciation?

A.—Yes.

Q.—The Profit and Loss account is, as you see, is of a summary character, is it not?

A.—Yes.

Q.—Will you look at the last paragraph of the despatch, D-104, and read into the record the whole of the last paragraph?

A.—(Reading):

40 “ For some time past there has been steady selling of the stock, and this was accentuated that the retirement of several local Directors were announced. More recently it is claimed that some difficulties have arisen between the Company and the Quebec Liquor Commission.”

Q.—First of all, in regard to the statement as to the retirement of Directors, is that an accurate statement of fact?

ANDREW R. W. YOUNG (*for Plaintiffs*), *Cross-Examination.*

A.—Yes.

Q.—Did it help the sale of the shares or help to depress the stock?

A.—Naturally.

Q.—Do you know anything of the truth of the last sentence in the despatch?

A.—It was denied by the Liquor Commission.

10 Q.—In other words, there were no difficulties between Alcohol and the Liquor Commission?

A.—The Liquor Commission said no.

Q.—You do not doubt the truth of their statements?

A.—No.

Q.—On September 27th, the Financial Times published another article in reference to the affairs of Alcohol, did it not, which has been filed as Exhibit P-150?

A.—Yes.

20 Q.—Did you write this article of September 27th, P-150?

A.—No.

Q.—Who was that written by?

A.—I could not say.

Mr. McKeown: We will enlighten you in due course.

By Mr. Campbell:

Q.—You do not recognize the style?

30 A.—That would go through Mr. Tyson's hands.

Q.—Will you look at this Exhibit P-150—I do not want you to read the whole article as it has been read already, perhaps more than once, but read one paragraph, the first paragraph in the first column?

A.—(Reading):

“ In his communication, Lord Shaughnessy has evidently missed the real point of the situation.”

(That is referring to the telegram from Lord Shaughnessy re-
40 ferred to above.)

“ If he were even casually in touch with the local “ Street ” he would readily encounter the opinion that the set-back in the securities of Canadian Industrial Alcohol Company has been due in large measure to the fact that such a considerable number of the shareholders have lost confidence in Lord Shaughnessy, and his administration of the Alcohol Company.”

ANDREW R. W. YOUNG (for Plaintiffs), Cross-Examination.

Q.—Do you think that would help the market for the shares of Industrial Alcohol?

A.—No.

Q.—Do you know how many shareholders filed proxies at the Annual General Meeting held on December 17th, 1929, in favor of Lord Shaughnessy, outside of shares that he himself controlled?

10 Mr. McKeown: You will be surprised to find out. We have counted them.

Witness: I don't know.

By Mr. Campbell:

Q.—I show you a clipping from the Financial Times of October 4th, 1929, which, I take it, is from the column in which you answer inquiries?

20 A.—“Hints to investors.”

Q.—Do you think there is any provocation for writing to the editor of the letters to which you answer in this column?

A.—I do not understand that.

Q.—I do not want you to read the whole thing. I will file it. Will you file this clipping as Exhibit D-105?

A.—I do.

Q.—Did you write this answer to your “Anxious Enquirer”?

A.—Yes, I presume so. I write most of them.

30 Q.—In the course of your answer you say:

“The statement wired by Lord Shaughnessy from Vancouver would seem to be a direct contradiction to the statement which appeared in the Financial Times, that the Company was not earning its dividend. This statement, however, is quite in keeping with the recent policy of the Alcohol management in that it gives little real information to shareholders.”

That passage appears?

40 A.—Yes.

Q.—In the last paragraph of that clipping you state:

“It seems unfortunate that shareholders, many of whom have purchased this stock at levels more than one hundred per cent higher than those now prevailing should be forced to sell at a heavy loss due to the fact that no worth while information can be obtained on the operations of the Company. This situa-

ANDREW R. W. YOUNG (for Plaintiffs), Cross-Examination.

tion taken in conjunction with the recent resignation from the Board of three very substantial Directors would apparently indicate that the public in general has lost faith in the management, and that there is little hope for any worth while market improvement in the near future.”

10 Q.—Do you think that despatch would tend to help the market value of the stock on the Montreal Stock Exchange?

A.—Not from a speculative point of view.

Q.—That is, not if the opinion of the Financial Times is worth anything whatsoever?

A.—Yes.

Q.—The general tone of those despatches to which I have called your attention, is not very friendly to Lord Shaughnessy, is it?

Q.—Somebody was offended from the letter you got from Lord Shaughnessy, filed as Exhibit P-191?

20 A.—I think you will find the same set of articles in the Financial Post, and other financial papers.

Q.—Are you a correspondent of the Financial Post?

A.—No.

Q.—Is anybody on your staff a correspondent for the Financial Post?

A.—Hardly, they are competitors.

30 Q.—You speak in your despatch there, of the depreciation in the stock market value of Alcohol shares, as being due to want of confidence in the Management. Were there other reasons which affected the market value of that stock, and also other distilling stocks at about the same time?

A.—There were rumors of adverse operations as a result of various influences.

Q.—The strengthening of the Border Patrol on the Detroit border?

A.—Yes.

Q.—Rumors that business was not carried on to the same extent as it had been in the good old days?

A.—Yes.

40 Q.—Apart from the Distilling industry which was particularly affected by these particular conditions, was there a general slowing up of that industry in the Dominion of Canada in the latter part of 1929?

A.—There was in some directions.

Q.—It affected the industry in general?

A.—The tone was mixed.

Q.—What was the trend?

ANDREW R. W. YOUNG (*for Plaintiffs*), *Cross-Examination.*

A.—It was mixed.

Q.—The trend could not be mixed?

A.—Some were doing better, others were doing worse.

Q.—What would a graph of industries that took this trend indicate? What would it show, up or down, in the last half of 1929?

A.—Down naturally.

10 Q.—Apart from stock market quotation, even in industrial activity, down?

A.—The trend is always down, my understanding is, in the latter months of the year.

By Mr. McKeown:

Q.—That is not the stock market?

A.—No.

Q.—In the industry itself?

20 A.—Yes.

By Mr. Campbell:

Q.—I am speaking of business in general?

A.—I am referring to business in general.

Q.—And does that general down trend of business affect stock market values?

A.—Not necessarily.

30 Q.—But, in a speculative stock?

A.—No, not necessarily.

Q.—Usually?

A.—No. It depends on the market conditions.

Q.—The Financial Times on December 27th, 1929, published a review of financial conditions, did it not?

A.—Yes.

Q.—Did you write the article which I now show you?

A.—No. That came from a man in Ottawa. It was a correspondent.

40 Q.—But, it was published with the authority of the Financial Times?

A.—Yes.

Q.—I do not want to put in the whole article, because a good deal of it has no bearing on this case, but I would call your attention to one or two sentences in the course of it. Do you know the name of the gentleman who wrote this article?

A.—Mr. Sydney Smith.

ANDREW R. W. YOUNG (*for Plaintiffs*), *Cross-Examination.*

Q.—A man well qualified to make a review of the situation?

A.—I would say so.

Q.—In the course of his article he says, dealing with the general review of the year 1929:

10 “ The trend of general business operations turned downward from June to the end of the year.”

Is that an accurate summing up of the general trend of industrial operations?

A.—I would say so, a general trend.

Q.—Later on he says:

20 “ Though the index of general business indicates that the expansion over 1928 was 8.6 per cent., the downward trend from June to the end of the year should not be ignored.”

That is a correct statement?

A.—Yes.

Q.—Later on, under a sub-heading, in this despatch, it states:

30 “The records of 1929 taken by themselves do not tend to inspire confidence, but it must be observed that a turning point in general business operations was reached in June, steady decline being shown after that month to the end of the year. Owing to speculative excesses in some quarter and the very rapidity of business expansion in the last two years, reactionary conditions have arisen which were of sufficient importance to initiate the Business recession evident at the present time.”

Do you agree with that expression of opinion?

A.—Yes.

Q.—Further down in the article under a sub-heading headed “Disconcerting Factor” do you find this paragraph:

40 “The spectacular event in the economy sphere was the severe liquidation of the stock market in the ten weeks ending November 13th. While this was regarded by many as an isolated phenomenon occasioned by the break on the New York market, it is now evident that the prices on the Canadian Exchanges was one link in a chain of events which were intimately related.”

Do you agree with that expression of opinion of your correspondent?

ANDREW R. W. YOUNG (for Plaintiffs), Cross-Examination.

A.—Up to a point.

Q.—In what respect do you disagree?

A.—It is a matter of opinion, the whole business or market situation.

Q.—Of course, there was a spectacular wide open break, was there not in the stock market?

10 A.—Yes, but there was no break in business to compare with the break in the stock market.

Q.—In other words, the break on the stock market was out of proportion to the recession in business?

A.—Yes.

Q.—The break in the stock market was, I take it, occasioned by the conditions which existed in the stock market due to speculation?

A.—Due to speculation.

Q.—In other words, it had risen to dizzy heights and had fallen with a crash?

20 A.—That is right.

Q.—In the issue of the Financial Times of December 27th, 1929, at page 47, there is an article published under the heading "Canadian Industrial Alcohol" is there not?

A.—Yes.

Q.—I wish to call your attention to one paragraph in that article, the fourth paragraph which I will ask you to read into the record and is as follows:

30 "Difficulties in the distillery business this year were reflected by the showing of Industrial in common with all similar stocks. Earnings were only equal to \$1.90 on the capital stock as compared with \$2.88 in 1928."

Did you write that article?

A.—No.

Q.—Can you give us the earnings per share of the Hiram Walker, Gooderham and Worts for 1929?

A.—Not offhand.

40 Q.—Can you give us earnings per share of Distillers Seagrams for 1929?

A.—Not the exact figures for 1929.

Q.—Will you look at the same page of the Financial Times, page 47, and you will find an article dealing with Distillers Corporation Seagrams, and will you tell us what that page shows to have been the earnings per share of that Company?

A.—\$1.52.

ANDREW R. W. YOUNG (for Plaintiffs), Re-Examination.

By Mr. McKeown:

Q.—For what year?

A.—For the year ended 1928 it must have been.

By Mr. Campbell:

10 Q.—Read the sentence into the record which this refers to?

A.—(reading):

“The first annual report this year (that is Distillers Corporation Seagrams) shows earnings of \$1.52 a share, and at present are understood to be running much higher.”

Q.—On the same page do you find a reference to the earnings per share of Hiram Walker, Gooderham and Worts?

A.—Yes.

20 Q.—Will you read into the record the paragraph referring to the earnings per share?

A.—(reading):

“This year the shares were split three for one, and the annual dividend of one dollar per year instituted on the new stock earnings for the year ended August 31st, showed an increase of 20 per cent at \$1.55 a share. New financing was undertaken during the year for propositions under consideration as so stated.”

30

Q.—In your testimony, you referred to rumors of a cut in dividend. Can you tell us when you first heard these rumors which you state were current in the Street?

A.—Around the month of July, just previous to the date of that letter which was filed, for a week or so previous.

Q.—You would say in the first two weeks of July, as your letter is dated July 16th?

40 A.—At the end of June or beginning of July, three or four weeks previous to July 16th.

Q.—Three or four weeks previous to July 16th, 1929?

A.—Yes.

Re-examined by Mr. W. K. McKeown, K.C., of Counsel for plaintiffs:

Q.—Mr. Campbell in cross examination has placed before you

ANDREW R. W. YOUNG (for Plaintiffs), *Re-Examination.*

the profit and loss statement and balance sheet of Canadian Industrial Alcohol issued to shareholders, and covering the period of the year ending September 30th, 1929, being Exhibit D-99. As shown by that statement, the net earnings of the Company are placed at \$2,073,977.46?

A.—Yes.

Q.—The regular dividend amounted to \$1,661,136.18?

10

A.—Yes.

Q.—Which left \$412,841.64, that is, the difference between the net earnings and the regular dividend?

A.—Yes.

Q.—Do you notice the cash bonus which was paid within the calendar year? I think it was paid in December, 1928?

Mr. Campbell: It was paid in January.

20 By Mr. McKeown:

Q.—Paid in January, 1929, which is within the same period as that, it was paid in January, 1929, to the shareholders of record as of December 15th, 1928. Do you notice the cash bonus which was paid within the calendar year of twenty five cents a share which amounted to \$273,166.50?

A.—Yes.

30 Q.—If that be deducted from the balance of the earnings for the year \$412,841.46, after providing for the regular dividend, do you find that there was only a margin of \$139,674.96?

A.—That is right.

Q.—Which remained of the profits of the year ending on September 30th, 1929?

A.—Yes.

Q.—Looking at that statement, you said that you drew attention to the fact that nowhere on that statement is it shown how much, if anything, was written off in that year for depreciation?

A.—No.

40 Q.—There was no means of telling whether the sum taken for depreciation was one dollar or a million dollars?

A.—No. You could only tell by comparison with fixed assets, and at that you do not know what capital expenditures were made during the year. You cannot make a comparison.

Q.—In point of fact, the item for fixed assets is the one for goodwill, for one item, and the depreciation is all merged without any detail?

A.—Well, depreciation comes off.

ANDREW R. W. YOUNG (for Plaintiffs), *Re-Examination.*

Q.—But it is not shown how much?

A.—No.

Q.—To follow out the formula for comparing the amount of fixed assets in the statement before you, will you look at Houston's and note the amount of fixed assets as shown at the end of the year 1928?

A.—\$59,140,921.15.

10 Q.—What are the fixed assets shown at in the statement now before you, Exhibit P-99.?

A.—\$5,412,532.29.

Q.—That is an increase of how much?

A.—An increase of approximately \$270,000.

Q.—Which might or might not be justified by additional capital expenditures?

A.—We cannot tell.

20 Q.—What might not be justified by improper and inadequate amounts taken off for depreciation?

A.—Yes.

Q.—And that is but one element entering into whether or not the net profits as shown, of \$2,073,977.46 could, or could not be, criticized?

A.—Yes. It affects the comparison of earnings for the fiscal year ending September 30th, 1929, with the previous year's earnings. You cannot make an intelligent comparison of actual earnings.

30 Q.—This Exhibit D-104, which has been introduced in your cross examination, headed: "Alcohol Dividend not being earned," was published by the Financial Times under date September 20th, 1929, before the end of the fiscal year?

A.—Yes.

Q.—Lord Shaughnessy evidently had that before him when he sent the wire from Vancouver, and which appeared in your next issue of September 27th, 1929, and which has been filed as Exhibit P-150. In that statement by Lord Shaughnessy, did he say that the dividend was being earned, in the reply?

40 Mr. Campbell: The statement is there. I do not think the witness should be asked to construe the statement. His Lordship will construe it.

By Mr. McKeown:

Q.—It is very short, just read what Lord Shaughnessy said, if anything, in connection with the dividend?

A.—He says "The dividend is being maintained."

ANDREW R. W. YOUNG (*for Plaintiffs*), *Re-Examination*.

Q.—Just read the exact words?

A.—“The dividend is being well maintained.”

Q.—Is that the customary expression?

10 Mr. Campbell: Don't answer yet. What interest has Your Lordship in knowing whether Lord Shaughnessy used a customary expression or not. It seems to me we are wandering far afield in this case, and I can't see of its ever ending if it goes on in this way, and I do ask Your Lordship to invite my learned friend to restrict himself to some reasonable element of relevancy.

Mr. McKeown: You examined the witness on that clipping. I don't want to put any leading questions to the witness or to give the witness the cue as to what answer he is to make to this question, but I am entitled to re-examine on the clipping produced.

20 His Lordship: Objection reserved.

A.—Well, it is not a commonly used expression. I have heard of earnings being well maintained.

By Mr. McKeown:

Q.—But in dealing with a specific thing like a dividend, is that a customary expression?

A.—It is customary to say a dividend is well earned.

30 Q.—Lord Shaughnessy failed to use that language in his expression, as you note, in that expression “The Dividend is being well maintained.” Would that be the equivalent of saying, the dividend is being paid, or did anybody know that?

A.—I would take it to mean the dividend is being paid. I would not take it to mean that the dividend was being earned.

40 Q.—In the review of the financial situation contained in the issue of the Financial Times, December 27th, 1929, your attention has been drawn to the several articles dealing with the earnings for the then current year of those three Distillery Companies, as compared with their earnings in the previous year, and if I understand you correctly, it states that the Alcohol earnings were about \$1.90 as shown, as against \$2.88 the previous year. The Distillers Corporation Seagrams earnings were \$1.52, with no means of comparison, as there had been no previous report, but there is a rider that it is \$1.52 and running up very much higher. Do you remember those words?

ANDREW R. W. YOUNG (for Plaintiffs), Re-Examination.

Mr. Campbell: Hope springs eternal in the human breast, Mr. McKeown.

Witness: Running at a very much higher rate.

By Mr. McKeown:

10 Q.—Just let us have the exact language. The exact language in the article in question in reference to the Seagrams' earnings reads as follows:

“The Annual Report this year showed earnings of \$1.52 a share and at present are understood to be running much higher,”

and the Hiram Walker, Gooderham and Worts position was, that the Company for the year ending in 1929—it is reported in this way:

20 “This year the shares were split three for one, and the annual dividend of one dollar a year instituted on the new stock. Earnings for the year ended August 31st, showed an increase of 20 per cent at \$1.55 a share.”

I notice in the same article this reference with regard to Hiram Walker, Gooderham and Worts:

30 “New financing was undertaken during the year for propositions under consideration as so stated.”

Do you know what that new financing of Hiram Walker, Gooderham and Worts was?

A.—No, there was no statement made.

Q.—You don't know what it was for, but do you know that they did?

A.—I heard rumors.

40 Q.—What did they do, as between the Company and the shareholders?

A.—They issued additional stock to shareholders.

Q.—To what amount?

A.—I forget how many shares. It netted them around \$10,000,000.

Q.—Which they had in cash?

A.—Yes.

Q.—In their Treasury?

ANDREW R. W. YOUNG (for Plaintiffs), *Re-Cross-Examination.*

A.—Yes.

Q.—Were there any rumors of any covetous eyes on any of their competitors?

Mr. Campbell: What interest have we in what designs Hiram Walker had on anything else.

10 Question withdrawn.

By Mr. McKeown:

Q.—Will you also give to His Lordship the reported gross earnings of Hiram, Walker, Gooderham and Worts, for the year 1928 compared with the year 1929 as reported in this same review which has been presented to you by Mr. Campbell?

A.—Gross earnings of \$3,442,378. That is 1928.

20 Q.—What is it for 1929?

A.—1929, \$4,117,668.

Re-cross-examined by Mr. G. A. Campbell, K.C., of Counsel for Defendants:

Q.—Look at this paragraph about Hiram, Walker, Gooderham and Worts. What was their capitalization? How many shares had they outstanding?

A.—Outstanding, 2,250,000 shares.

30 Q.—Outstanding, 2,250,000 shares of no par value?

A.—Of no par value.

Q.—And what was their total assets according to the balance sheet of 1929?

A.—\$39,803,279.

Q.—What were the assets of Industrial Alcohol as shown by Exhibit P-99 as of the same date?

A.—\$19,043,199.

Q.—How many shares were outstanding?

40 A.—1,092,915 shares.

Q.—That includes both voting and non-voting?

A.—Both "A" and "B."

Q.—Did you compile this article about Hiram Walker, Gooderham and Worts?

A.—No.

Q.—The financial year of Hiram Walker, Gooderham and Worts ended August 31st, 1929, did it not?

ANDREW R. W. YOUNG (for Plaintiffs), *Re-Cross-Examination*.

A.—Yes.

Q.—These figures which you have given us are in the balance sheet of 1929?

A.—Yes.

Q.—Where did they get the number of issued shares at 2,250,000 that you mentioned?

10 A.—I could not say.

Q.—Do you think it is accurate?

A.—Mistakes are made sometimes.

Q.—Even by the Financial Times?

A.—Even by the Financial Times.

Q.—I show you the published balance sheet of Hiram Walker, Gooderham and Worts Limited as at August 31st, 1929, and I ask you to verify that according to that published balance sheet, copy of which I now exhibit to you, the number of issued shares were how many?

20 A.—2,640,000 shares.

Q.—That was one occasion on which the Financial Times was a little inaccurate?

A.—Was a little inaccurate.

Q.—You referred to the fact that in the published profit and loss statement of Alcohol, you could not tell whether depreciation had been taken off or not in the earnings; you did not know whether the earnings were before depreciation or after it. Was that your idea?

30 A.—Oh, no, earnings after depreciation.

Q.—So that the depreciation is taken off before the net earnings are published?

A.—Yes.

Q.—I show you Exhibit P-99, and will ask you to make sure whether the reported earnings of \$2,073,977.46 for the year ending 30th of September, 1929, were as stated on the balance sheet, after making provision for depreciation and Income Tax?

A.—Yes. The point is, how much depreciation was taken off.

40 Q.—Even after all its misfortunes, the earnings of Industrial Alcohol per share were still greater than for any of its competitors, were they not?

Mr. McKeown: That is why the price should have been higher also.

By Mr. Campbell:

ANDREW R. W. YOUNG (for Plaintiffs), Re-Cross-Examination.

Q.—How much did Distillers Seagrams earn?

A.—\$1.52.

Q.—And Hiram Walker, Gooderham and Worts?

A.—\$1.55.

Q.—And Alcohol?

A.—\$1.90.

10 And further deponent saith not.

20

30

40

J. WILLOUGHBY TYSON (for Plaintiffs), Examination-in-Chief.

On this eleventh day of April, in the year of Our Lord one thousand nine hundred and thirty personally came and appeared:

J. WILLOUGHBY TYSON,

10 residing at No. 469 Marcell Avenue, in the City and District of Montreal, Chief Correspondent, Greenshields & Company, aged 42 years, a witness produced and examined on behalf of the Plaintiffs, who, being duly sworn, deposes as follows:—

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

Q.—You say you are in the employ of Greenshields & Company?

A.—Yes.

20 Q.—They are members of the Montreal Stock Exchange?

A.—Yes.

Q.—Affiliated with their stock brokerage business they have a bond brokerage concern?

A.—Yes: investment bankers.

Q.—For the purpose of the Record will you please say whether Greenshields & Company is a firm of quite a number of years standing as a member of the Exchange?

A.—Some twenty years, I believe.

30 Q.—How long have you been in your present position?

A.—Since October 15th.

Q.—1929?

A.—1929, yes.

Q.—What was your occupation previous to that?

A.—I was for three years Managing Editor of the Financial Times.

Q.—Here in Montreal?

A.—Yes. That position also entailing the responsibilities of Editor.

40 Q.—You were the Managing Editor, and, as you say, the Editor of Financial Times throughout the year 1929 up to the time you went to Greenshields & Company in October?

A.—Yes.

Q.—Were you in Court this morning when Mr. Andrew Young was being examined?

A.—I was.

Q.—In your capacity as Editor of Financial Times will you

J. WILLOUGHBY TYSON (for Plaintiffs), Examination-in-Chief.

please tell the Court whether your duties were confined to your desk in a way that would require you to spend your entire time in the office, or did you circulate about the City? What did you do in that respect, and in what quest, speaking generally?

10 A.—My duties were largely confined to the desk, but not by any means entirely. I made it my business to keep in touch with conditions, by visiting the brokerage offices and by calling on high executives of the important corporations.

Q.—Corporations whose securities were listed upon the Montreal Stock Exchange and elsewhere, having their headquarters in Montreal principally?

A.—Yes.

Q.—With reference to your circulation about the Street, as it is called,—in and out of the brokers' offices—will you please tell His Lordship how often that would occur? Was it a daily occurrence?

20 A.—Almost, particularly during the days about the time of publication.

Q.—That is, the publication of the paper?

A.—Yes.

Q.—The Financial Times is a weekly paper?

A.—Yes: published on Thursday afternoon.

Q.—Going to press on Thursday afternoon?

A.—Yes.

30 By Mr. Campbell:

Q.—You would be looking for copy?

A.—Quite.

By Mr. McKeown (continuing):

Q.—Was that the order of things during the months of June, July, August, and September, 1929?

A.—To my recollection, yes.

40 Q.—Can you tell His Lordship whether in those months, and prior to, say, September 27th, 1929, there was any interest about the Street in the securities of Canadian Industrial Company, Limited?

A.—Yes, there was.

Q.—We have had graphs produced here which, I think it is common ground, show that the stock was under a very pronounced

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downward trend during those months and from the month of February previous?

A.—Yes.

Q.—Mr. Young has told us your paper maintained a service to its subscribers in the matter of receiving and answering enquiries about securities?

10 A.—Yes. A financial newspaper, in my conception, goes further than a daily newspaper, in that circulation is sold on the basis of service rendered, in addition to news. In other words, we feel a responsibility to serve investors in relation to their investment holdings. It is part of our propaganda in selling circulation that we answer enquiries and in other ways serve investors in connection with their investments.

Q.—In that connection, during the months to which I have made reference did you receive any enquiries from subscribers with relation to Canadian Industrial Alcohol securities?

20 A.—Yes, there were quite a number being received; but, as I heard Mr. Young testify, in our arrangement he was replying to them in detail, while we would perhaps discuss the policy we thought seemed advisable.

Mr. Campbell: If those enquiries are of any consequence, I think we had better have them. This is not the best evidence of the existence of the enquiries, if they were not bona fide?

30 Mr. McKeown: Do you suggest they were not bona fide?

Mr. Campbell: I have known of newspapers; not the Financial Times ———

Mr. McKeown (interrupting): Who wrote the enquiries themselves?

Mr. Campbell: Who had very fair correspondents in their odd moments writing letters asking very appropriate questions.

40 As I say, if the enquiries are of any consequence we had better have them, and I submit the evidence now being offered is not the best evidence in regard to them.

Mr. McKeown: It is absolutely secondary.

His Lordship: In any event, the witness is no longer connected with the Financial Times.

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By Mr. McKeown (continuing):

Q.—What was the order followed in the matter of meeting the enquiries? What was done? If you had enquiries about any security, in a general way, or if special information was desired, what was done?

10 A.—That is a difficult question to ask, because the course of action might be decided by each individual enquiry. It might be different in each case; depending on the enquiry.

In general our effort was to secure from the best available sources information which would seem to serve the purpose of the individual making the enquiry.

Q.—In that connection did it happen that from time to time the heads of Companies were interviewed with the idea of obtaining authoritative information?

A.—That was one method.

20 Q.—Could you think of a better source from which authoritative information could be obtained?

A.—No. Our policy always was to go to the Companies, and to the highest available official.

Q.—Did you have any personal knowledge of the fact that efforts were being made to obtain information with respect to Canadian Industrial Alcohol shares?

A.—Yes.

30 Q.—Do you remember the evidence of Mr. Young this morning, and the production of the letter of July 16th, 1929 (Exhibit P-190) written by him to Lord Shaughnessy?

A.—Yes.

Q.—Prior to the writing of that letter were you aware of the activities of Mr. Young in an effort to obtain information?

A.—He reported them to me.

Q.—Did you know of this letter, Exhibit P-190, before it was sent to Lord Shaughnessy?

A.—My recollection is that the final draft was in some particulars revised by me.

40 Q.—You went over the final form of the letter personally before it was sent to Lord Shaughnessy, and you did that in your capacity as Managing Editor of the Financial Times?

A.—Mr. Young signed it, because he had been conducting the negotiations with the officials of the Company.

Q.—Did you see the reply which was sent to Mr. Cox, the President of the Company?

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A.—I do not think I saw it, but I was made aware of the nature of its contents.

Q.—At the time it was received?

A.—Yes, at that time.

Q.—That is the document which has been produced here as Exhibit P-191?

A.—Yes.

10 Q.—Following the date of Mr. Young's letter, July 16th, 1929, and up to the date of the Article of September 27th, 1929, headed: "Slump in Alcohol Reflection of Lost Confidence in Management" (Exhibit P-150) had you had any success in obtaining any information from the Company concerning the enquiry made by Mr. Young's letter?

A.—I recollect nothing.

20 Q.—Do you know whether the Financial Times had received from Lord Shaughnessy, either directly or through the Canadian Industrial Alcohol Company's offices here, the telegram set out in the clipping, Exhibit P-150, which I now show you?

A.—May I state the circumstances, as I recollect them, in connection with this telegram?

Counsel: You may, if you wish.

A.—I believe that a telegram was received directly by the Financial News Bureau.

Q.—Is that a branch of the Financial Times?

30 A.—Yes, a subsidiary; associated in so far as the collection of news is concerned.

My further recollection is that a copy of the telegram was then sent by mail to Mr. Cox as President of the Financial Times.

Q.—You mean it was received by mail by Mr. Cox?

A.—Received.

Q.—Sent by whom?

A.—My recollection is that a copy of the telegram came from the office of the Canadian Industrial Alcohol Company in Montreal.

40 Q.—In any event, whether it came directly by wire, as you suggest, to the Financial News Bureau, or whether it was delivered through the Montreal Office of Canadian Industrial Alcohol, the request was to publish the statement which is there set out purporting to be authorized by Lord Shaughnessy?

A.—Yes.

This quotation of three lines, as I recollect, was from the communication.

J. WILLOUGHBY TYSON (for Plaintiffs), Examination-in-Chief.

Q.—That is the request?

A.—(Reading): “It will be appreciated if you will kindly have the above published in the financial columns of your paper.”

Q.—Did you accede to that request?

A.—Yes.

Q.—And, published the statement by Lord Shaughnessy in the form as you now have it before you, Exhibit P-150?

10 A.—Yes.

Q.—Following the insertion of the request and the statement by Lord Shaughnessy, the Article proceeds, by way of comment:

20 “In his communication Lord Shaughnessy has evidently missed the real point of the situation. If he were even casually in touch with the local Street he would readily encounter the opinion that the setback in the securities of Canadian Industrial Alcohol has been due in large measure to the fact that such a considerable number of shareholders have lost confidence in Lord Shaughnessy and in his administration of the Alcohol Company.”

In the first place, may I ask you who wrote and edited the Article produced as Exhibit P-150?

A.—In its present form it is my product.

30 May I explain that at the time Mr. Cox sent up this communication which he had received we discussed the matter over the telephone, and my recollection is he also sent me a memorandum suggesting in some respects what our policy might be. Following which I wrote what is here.

Q.—By the communication received by Mr. Cox you mean the telegram, or the request including the telegram?

A.—Yes.

Q.—In reference to the part of the article just read, that is the lack of confidence in Lord Shaughnessy and his administration as evidenced by the opinion of the Street, where had you gleaned or gathered the basis upon which you wrote of that lack of confidence?

40 A.—It would, perhaps, be difficult now to indicate definite sources from memory, because dealing with hundreds of Companies and articles from week to week, after the articles themselves are prepared the sources are not definitely remembered. There is no definite record of the sources of information.

My recollection is that this was the feeling gathered from visits to brokerage offices, from contact with people who were in touch with the market situation, from the general tenor of enquiries we were receiving, and so on. That, perhaps, is as definite as I could be.

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Q.—In other words, was it the opinion of the man on the street, as you met him?

Mr. Campbell: I submit the witness is no better judge of the opinion of the man on the street than is Your Lordship.

10 Mr. McKeown: But, His Lordship has to be here.

Mr. Campbell: The editor of a financial paper, who writes financial articles, is no better judge than is His Lordship of the opinion of the man on the street, and he is no better judge of it than is any of the Counsel engaged in this case.

His Lordship: The witness passes judgment on the opinion of the man on the street.

20 Mr. Campbell: I know that is one of the privileges of the Fourth Estate.

By Mr. McKeown (continuing):

Q.—Apart from yourself were there other members of your staff who visited the brokerage offices?

A.—Yes. I think I can say that the sentiments expressed in Exhibit P-150 would have been concurred in by at least six, and perhaps ten, members of our organization.

30 Q.—Men who were in touch with public opinion and financial matters in and about Montreal?

A.—All of them: perhaps individually more than I was.

Q.—Upon what basis do you make that statement? Was it because of discussions you had with them, or for some other reason?

A.—Yes, discussions I had with them.

Q.—Inter-office discussions on this subject?

A.—Yes.

40 Q.—I find the statement “ For Months There Has Been Steady Liquidation.” Is that true? Had there been sales of the stock right along?

A.—Yes.

Q.—(Reading):

“ And Shareholders have been taking their losses in the hope that it might be much easier to make them up in other securities. During this period it has been evident that if renewed confidence is to be placed in the securities of the Com-

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pany there will have to be a greatly strengthened Board of Directors and more efficient management.

At the time you wrote that were you aware of the fact that the Board of Directors was in large part composed of employees of the Company?

10 Mr. Campbell: Is not that a little leading?

Mr. McKeown: We have had it proved fifty times already.

Mr. Campbell: That is all the more reason why you should not lead your witness on it.

By Mr. McKeown (continuing):

Q.—Was there any question about the Directorate? Was the Directorate in a satisfactory position generally?

20 A.—My recollection is we had information at this particular time that Mr. Decarie and Mr. Joseph were leaving the Board, but at the moment I cannot say whether they had resigned or not.

Q.—What is the effect marketwise of the uncertainty of uncontradicted rumors floating about of Directors leaving a Company?

A.—I believe the usual effect is to cause a selling of securities by, shall we say, those shareholders who may not have other information. Of course, a Company may be in such a position that it might possibly be that the buying by people having other information as to the affairs of the Company would possibly more than
30 offset the selling by the small shareholders who might sell on the strength of such a report.

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, on this eleventh day of April, 1930, personally came and reappeared the said witness:

J. WILLOUGHBY TYSON

and his examination was continued as follows:—

By Mr. McKeown, K.C.:

Q.—Will you please look at the Article from the Financial Times of October 11th, 1929, headed: “ Lord Shaughnessy in State-

J. WILLOUGHBY TYSON (for Plaintiffs), Examination-in-Chief.

ment Avoids Some Important Points," which Article has already been produced as Plaintiffs' Exhibit P-152, and will you please say by whom this Article was written?

A.—I wrote this Article.

10 Q.—This Article is by way of comment upon the statement given out by Lord Shaughnessy, and it was used, amongst other papers, by the Toronto Mail & Empire (Exhibit D-93) the clipping being headed "Replies to Critics Industrial Alcohol"?

A.—I do not recall this particularly. I presume I saw it at the time.

My recollection is that following the publication of the Article we were discussing this morning, the point seemed to arise again as the meaning of the phrase "Maintain the Dividend," and in writing the Article Exhibit P-152 my purpose was to deal more particularly with that point as to the meaning of the phrase "Maintain the Dividend."

20 I believe this Statement was quite widely published at the time.

Q.—You mean the Statement now before you, Exhibit D-93?

A.—Yes. I believe it was published in the Financial Times.

Q.—This is a statement issued by Lord Shaughnessy in answer to the criticism which had been directed at Canadian Industrial Alcohol and at himself personally?

A.—Yes.

30 Q.—In the course of this Statement as authorized by Lord Shaughnessy, and as incorporated in the clipping Exhibit D-93, I find:

40 "Constructive criticism from whatever source is always acceptable and entitled to sincere consideration, but criticism based upon personal antagonism, vindictiveness, or other like motive can only be treated with the contempt it deserves. I will not, therefore, attempt to discuss the articles which have appeared in certain papers concerning Canadian Industrial Alcohol Company, Limited, and its administration, inasmuch as the criticism therein contained is so general in its terms, and so ludicrous, that, in my opinion, it cannot be taken too seriously."

You notice this Article, Exhibit P-152, appears to deal with the very subject to which I have just drawn your attention?

A.—Yes.

Q.—And in addition, the language used by Lord Shaughnessy

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in his wire from Vancouver to the effect that the dividend was being well maintained?

A.—Yes.

Q.—As to the first point: that is the criticism being based on ulterior motives, I note you say in this Article P-152:

10 “Lord Shaughnessy goes on to practically admit that the criticism which has been offered is founded on fact, for he states that Henry Joseph, Hon. Herbert Marler, and E. R. Decary have resigned as Directors: the latter giving as an explanation that he desired to leave the Directors free to reconstruct their Board in their best judgment. Lord Shaughnessy also states that ‘For some period there have only been on the Board of Directors of the Company, which consists of ten members, three not directly connected with the Company in some Executive capacity.’”

20 Then there is your further comment:

“It is quite evident that these Directors have not made to Lord Shaughnessy statements they have made to others in regard to the Company’s affairs, and it is, perhaps, not surprising.”

Then we come to the part to which I wish to draw your attention specially:

30 “The important thing about Lord Shaughnessy’s statement, however, is that he does not answer the main point which has been raised that the dividend being paid by the Company on the common shares is not being earned. In the statement at Vancouver he said that ‘The dividend was being well maintained’, but, what was meant by this ambiguous statement? If he meant that the dividend is being paid, it was unnecessary because that is evident. If it meant that it is actually being earned, he should have been more explicit on the point because
40 there have been reports to the contrary from sources which cannot be disregarded.”

This Article, Exhibit P-152, was, of course, written before the Company’s Statement had been published, that is to say, in the early part of October.

Mr. Campbell: What is the date of it?

J. WILLOUGHBY TYSON (for Plaintiffs), Examination-in-Chief.

Mr. McKeown: October 11th.

By Mr. McKeown (continuing):

Q.—Although the fiscal year had actually ended?

A.—I presume so.

10 Q.—Was this Article, Exhibit P-152, met at the time by any further statement, or any definite statement, by Lord Shaughnessy, to the effect that the dividend had been earned?

A.—Not that I saw.

Q.—Then your article continues:

20 “As to the substance and tone of Lord Shaughnessy’s statement, it is unfortunate that he should place any such construction on the cooperative attitude of the leading financial papers of the country. Many hundreds of small investors for months past have been greatly concerned about their investments in the shares of the Company, and at all times Lord Shaughnessy has been requested to give such information as might help them to better work out their problems in a trying market situation. Right along it has been the endeavor of the papers to be of as great help to the Company as to the shareholders themselves.” Does this clause sum up the actual attitude of the Financial Times in relation to the subject discussed in Exhibit P-152 and to the previous attitude of the paper?

A.—It indicates the attitude of the paper at that time.

30 Q.—Was there any ulterior motive on your part, as Editor of Financial Times, in editing and publishing the two items to which I have drawn your attention, Exhibit P-150, in the issue of September 27th, 1929, headed: “Slump in Alcohol Reflection of Lost Confidence in Management,” or in the subsequent Article, published on October 11th, Exhibit P-152, entitled “Lord Shaughnessy in Statement Avoids Some Important Points”?

A.—The effort at all times was to describe the situation as we saw it or as we found it.

40 Q.—To be specific, I would like to have the question re-read to you, and have you give us your considered answer.

Mr. Campbell: If the answer already given by the witness does not please my learned friend, he may ask another question. Had he not better tell the witness what answer he would like him to give?

Mr. McKeown: You have the whole field in that, and I do not want to encroach on it.

J. WILLOUGHBY TYSON (for Plaintiffs), Cross-Examination.

(The question was re-read by the stenographer, as follows):

Q.—Was there any ulterior motive on your part, as Editor of Financial Times, in editing and publishing the two items to which I have drawn your attention, Exhibit P-150, in the issue of September 27th, 1929, headed: “Slump in Alcohol Reflection of Lost Confidence in Management”, or in the subsequent Article, published on October 11th, Exhibit P-152, entitled: “Lord Shaughnessy in Statement Avoids Some Important Points”?

A.—To the first part of the question, absolutely none.

Q.—To be specific, were those Articles, as suggested by Lord Shaughnessy in his Statement to the Press, in any manner “based upon any personal antagonism, vindictiveness, or other like motive”?

Mr. Campbell: I object to the question as leading, and as illegal.

20 A.—Absolutely not.

Cross-examined by Mr. Campbell, K.C., of Counsel for Defendants:

Q.—I think you said you left the Financial Times and joined Greenshields & Company about October 15th, 1929?

A.—That is right.

Q.—In time for the big slump?

A.—About three or four days before it started. I am accepting your phrase of what is referred to as the big slump.

Q.—There was a big slump, was there not?

A.—Yes.

Q.—Immediately following your joining Greenshields & Company there was a very serious stock market situation both in Montreal and New York, and elsewhere?

A.—Yes, during the latter part of October, and extending until about the middle of November.

Q.—Very wide open breaks, and very serious losses of market value, in all sorts of securities?

40 A.—Very.

Q.—You said that during your editorial career with the Financial Times you were accustomed to leave your desk sometimes and circulate among the brokers' offices in search of material for copy?

A.—Yes, and impressions.

Q.—I take it the impressions would be material for copy in your editorial capacity?

A.—Quite right.

J. WILLOUGHBY TYSON (for Plaintiffs), Cross-Examination.

Q.—Did you learn in those peregrinations that there was a pretty substantial speculative following in the Alcohol stock?

A.—Yes, that was generally recognized.

Q.—It was in a vulnerable position as a stock, was it not, because there was a pretty wide speculation in it?

A.—I would not say so. The wider a stock is held, sometimes, the greater its strength.

10 Q.—But there was a large speculative following which was in it only for a trade and not in it to retain it as an investment?

A.—I do not think I have knowledge on which I could say definitely.

Q.—During your visits to the brokerage offices did you hear rumors about falling off in earnings of the Alcohol Company and other Distillery Companies?

A.—Yes.

Q.—That was common rumor, was it not?

A.—Yes.

20 Q.—Would that help the stock, in a stock market sense?

A.—It would probably cause holders, particularly the smaller holders, to sell their stock, I should think.

Q.—It would cause nervous speculators to get out?

A.—That would be natural.

Q.—During your visits to the brokerage offices did you hear stories about the resignations of certain Directors before any public announcement had been made?

30 A.—I do not recall particularly, myself; but other members of the staff did.

Q.—It came to your ears as a rumor?

A.—Yes.

Q.—The rumor was in circulation before there was any public official announcement? The rumor was in circulation on what is called the Street that certain Directors had resigned?

A.—That is my recollection.

Q.—Would that help the stock, or hurt it?

A.—It would have the effect I have previously described, of causing certain people to sell.

40 Q.—A disquieting atmosphere would be created?

A.—Quite.

Q.—And, that would be reflected in the dropping of the market value of the stock?

A.—It would be reflected in certain sales. Frequently, under such circumstances, however, there may be other interests buying the stock, which would put it up when there is bad news reaching the public.

J. WILLOUGHBY TYSON (for Plaintiffs), Cross-Examination.

Q.—Did you hear the rumor that Mr. Henry Joseph had sold his shares, with the exception of 100 which he retained as a qualification? I mean, before his resignation?

A.—No, I do not think I did. My recollection is that what I saw in regard to Mr. Joseph's relations with the Company at that time was contained in an Article that was published in the Financial Post.

10 Q.—That was in September, but you surely knew about Mr. Joseph's resignation long before that?

A.—I cannot say definitely. .

Q.—Did you hear about Colonel Gaudet's resignation?

A.—I could not say definitely when.

May I explain that Mr. Young, who was on the stand this morning, was handling in detail the news matter in connection with this and other Companies. Mine was more less a supervision of his work.

Q.—Would Mr. Young confide the rumors he heard to you?

20 A.—Perhaps. Not in detail. Mr. Young was in a pretty responsible position, and it was accepted that his material was carefully checked up before it was made use of.

Q.—Had you any doubt that he knew long before the Joseph interview in September that Mr. Joseph had resigned?

A.—I would think it was likely he knew, but I could not say more definitely.

Q.—I am referring to the interview which appeared in the Financial Post of September 26th.

A.—Yes.

30 Q.—You knew before that, did you not?

A.—I could not say definitely. This case now seems to stand out, but at the time it had no more importance than perhaps a hundred other developments taking place, and those matters were not recorded, and, as I said this morning, after the Article appeared a great many of the details leading to the preparation of the Article are forgotten.

Q.—I take it from your testimony that you cannot at this time state when you learned of the Joseph resignation?

A.—No.

40 Q.—Or when you learned of the Gaudet resignation?

A.—No.

Q.—It may have been weeks, or months, before that date, but you are unable to state.

A.—That is quite right.

Q.—You cooperated in the preparation of the letter of July 16th to Lord Shaughnessy, Exhibit P-190?

J. WILLOUGHBY TYSON (for Plaintiffs), Cross-Examination.

A.—Yes. There was a draft brought to me, and I made some revision in it.

Q.—Was Mr. Young rather displeased at Lord Shaughnessy's failure to give him an interview?

A.—I think his feelings are pretty well set forth in the letter.

Q.—The letter expressed disapproval of Lord Shaughnessy's attitude, did it not?

10 A.—I would not think so.

Q.—You do not find anything critical in the tone of the letter?

A.—Nothing beyond what would be justified by the circumstances being explained.

Q.—I am not questioning for the moment whether you had occasion to be critical or not; but you were frankly critical, were you not?

A.—If it was critical to point out that those interviews had been sought and had not been granted. That is as far as I would go.

20 Q.—Did you look upon it as a vested right of the Financial Times to be granted interviews by the Executive of this or any other Company?

A.—No, but it is customary for Executives to grant interviews under such circumstances.

Q.—Do you not think that the last paragraph of the joint communication prepared by Mr. Young and yourself, Exhibit P-190, has at least a possible rather peremptory implication?

A.—No, I do not; and it would not have been there if I had thought so.

30 Q.—You did not intend it to be peremptory?

A.—No.

Q.—The words to which I refer are "Some statement from you to guide us in dealing with this situation, would, we believe, be in order." You do not find anything peremptory in that?

A.—No.

Q.—Or a suggestion that you were entitled to some information which you had been refused?

A.—It would suggest that we would like some information. I do not think it goes any further.

40 A.—Does it not suggest that you had been refused information to which you thought you were entitled?

A.—Perhaps. Because that was the case.

Q.—That was your view of it, in any event?

A.—Yes.

Q.—You were not pleased with Lord Shaughnessy's reply, were you? Mr. Young has so told us.

J. WILLOUGHBY TYSON (for Plaintiffs), Cross-Examination.

Mr. Montgomery: No, he did not. He said he did not see Lord Shaughnessy's reply until he saw it here in the witness box. My learned friend is quite mistaken on that. Mr. Tyson simply said he was told the tenor of it.

10 Mr. Campbell: Whether he saw the reply or not, he knew the sense of it.

Mr. Montgomery: My objection is that your statement, in the form of a question, is inaccurate.

Mr. Campbell: Then, I will change the form of the question.

By Mr. Campbell (continuing):

20 Q.—Were you pleased or satisfied with Lord Shaughnessy's reply to Exhibit P-191?

A.—Perhaps I might say this: as an individual, no, but as an editor of a paper I cease to be an individual.

Q.—Were the editorial "We's" pleased or satisfied with Lord Shaughnessy's reply?

A.—I am speaking of the responsibility of an editor, that his position does not allow for personal feelings on questions of that kind.

30 Q.—I am not speaking of you as an individual, but is it not clear from the subsequent Articles in the Financial Times that the Financial Times, rightly or wrongly, was displeased with Lord Shaughnessy?

A.—There is nothing of the kind in the Articles, so far as I am concerned.

Q.—Do they bear that possible construction?

A.—No, I do not think so.

Mr. Montgomery: We will argue that.

40 Mr. Campbell: I think Mr. Young was more confiding on that point.

Mr. Montgomery: You had better re-read Mr. Young's evidence. I think your impressions are a little out on it.

Witness: Mr. Young was not editor of the paper.

By Mr. Campbell (continuing):

J. WILLOUGHBY TYSON (for Plaintiffs), Cross-Examination.

Q.—Did you personally solicit an interview with Lord Shaughnessy at this time?

A.—No.

Q.—Lord Shaughnessy was out of the City, was he not, when those Articles appeared in the Financial Times, in September, 1929?

10 A.—I am not sure of the date he left, but he left on a trip to the Coast, I believe, with a party of C.P.R. Directors, about that time.

Q.—As a Director of the C.P.R. he went with his fellow Directors on their annual inspection trip?

A.—Yes.

Q.—He left early in September, and returned early in October?

A.—I presume the dates are available.

20 Q.—That has been established in the evidence. As a matter of fact when this Article headed “Slump in Alcohol Reflection of Lost Confidence in Management” appeared, on September 27th, Lord Shaughnessy was a long way from home and not here to take immediate action in the matter, was he not?

A.—That was indicated, because we say “The following telegram from Vancouver from Lord Shaughnessy.”

Q.—Had the lost confidence in the management, to which you referred in that Article, anything to do with the interview with Mr. Henry Joseph the substance of which has been filed as Exhibit P-149?

A.—I have no knowledge of this.

Q.—Read the first sentence.

30 A.—This is not the Financial Times, you understand.

Counsel: I quite understand that.

Witness (reading): “‘I attribute the drop in the price of Canadian Industrial Alcohol Company shares to a lack of confidence in the administration,’ said Mr. Henry Joseph.”

Q.—Is there not a little significant similarity of the lack of confidence of Mr. Henry Joseph and the lack of confidence of the Financial Times Article?

40 A.—I think the Financial Times Article appeared first, did it not?

Counsel: No, it did not. It appeared later. It appeared the next day.

Mr. Montgomery: How could it appear the next day, in Toronto, and in Montreal? This is the third time I have had to

J. WILLOUGHBY TYSON (for Plaintiffs), Cross-Examination.

complain of my learned friend giving the witness incorrect information. I am sure he is doing it inadvertently, but, nevertheless, it is inaccurate.

Mr. Campbell: The Article in the Financial Times appeared the day after the Article in the Financial Post.

10 By Mr. Campbell (continuing):

Q.—What day of the week is the Financial Times dated?

A.—Friday.

Q.—And, it is offered on the Streets the same day? It is for sale the same day?

A.—It is printed Thursday afternoon, and offered Friday morning: dated Friday.

20 Q.—Is it sometimes offered Thursday afternoon? In other words, are not some of those financial papers available for sale ahead of the actual date they bear?

A.—They are printed on newspaper presses. The Financial Times is printed around four o'clock in the afternoon.

Q.—And, is it not quite possible that by the time the Financial Times of the 27th appeared the Financial Post of the 26th was available?

A.—There were probably copies in Montreal. There may have been copies in Montreal.

Q.—I am suggesting to you the similarity of the phrase used.

30 A.—I would just add one point. At that time the Financial Post may have altered its date of publication, which some time ago was altered from Thursday to Wednesday. I am not sure as to the time. If the change had been made, and the Financial Post was printed on Wednesday, there would be copies here available on Friday morning.

Q.—The similarity of the phrase is what suggests to my mind that you had probably seen the reported interview with Mr. Henry Joseph?

40 A.—There would be absolutely no chance that an Article appearing in the Financial Post would be used in relation to an Article of that type in our paper the same week.

Q.—You do not go to the Financial Post for your copy?

A.—No. If we can get a copy of the Financial Post about the time we are going to Press, and if we see where some Company has paid a dividend, or some important news of that type, we may run a line and make use of it, but only news articles are handled on "Stop press" in that way.

J. WILLOUGHBY TYSON (for Plaintiffs), Cross-Examination.

Q.—Was the Joseph article a scoop of the Financial Post?

A.—They might consider it so. It might be considered so by them.

Q.—I am not sure whether the Financial Times ran that interview in its copy?

Witness: You mean the interview with Mr. Joseph?

Counsel: Yes.

10 A.—No; I am sure we did not.

Q.—I understood from your testimony in chief that you were unable to indicate the source, or sources, of information which led you to write this loss of confidence article. You think the Joseph interview played no part in it, do you?

A.—As I said, it came later.

Q.—No, it did not. In point of fact, it came the day before.

A.—The day before the second Article, but not before the first Article.

20 Q.—I think you are wrong in that. Your article is dated September 27th, and the lack of confidence interview with Mr. Joseph is dated September 26th.

A.—This is covered by the statement, I made previously, I think, that while copies of the Financial Post containing this Article may possibly have been in Montreal at the time this was printed there would be no opportunity to see the sentiment of one in the other.

Q.—Did you write the despatch which was filed this morning as Exhibit D-104?

30 A.—No, I did not.

Q.—It is not editorial material?

A.—No. I probably passed it.

Q.—When you passed it did you know it was within ten days of the end of the financial year of the Alcohol Company?

A.—I could not say whether that had been checked by the writer of the Article or not. It was not a point in my mind, to my recollection.

40 Q.—It is in evidence that the financial year of the Alcohol Company expired ten days later than the date of this despatch, which is September 20th.

A.—Yes.

Q.—If that were so, do you not think it would have been rational for the management of the Alcohol Company to wait until the end of the financial year to determine what were the earnings of the Company for the year?

Mr. Montgomery: When did the Official Statement come out?

J. WILLOUGHBY TYSON (for Plaintiffs), Cross-Examination.

Mr. McKeown: In December.

Mr. Campbell: It was published long before December.

By Mr. Campbell (continuing):

10 Q.—I ask you would it have been reasonable, in your judgment, for the President and the Directors of the Alcohol Company to have said: “ We think we can afford to wait for ten days, until the end of the Alcohol year, when we will know what are the final figures for the year ”—and of course such additional time after September 30th as would be necessary to close the books?

A.—It would seem to me, in view of the circumstances, a statement to that effect might very well have been made.

Q.—In your visits to brokerage offices, Mr. Tyson, was it there you got the impression of the want of confidence in the management of Alcohol?

20 A.—To some extent.

Q.—Did you find that idea widespread in the brokerage offices?

A.—It is pretty difficult to say perhaps just definitely. I recall one incident that comes to my mind if it would be of interest.

Q.—I am not speaking of a particular broker. Are you speaking of the general atmosphere you encountered in your circulation among the brokerage offices?

A.—Yes. As indicated in the article, that the impression was probably much stronger at that time.

30 Q.—When did that change of mind exist in the brokerage offices?

A.—About the time the article appeared.

Q.—Was there a subsequent change of heart on the part of the brokerage fraternity in regard to Alcohol and its movements?

A.—What I have said in regard to opinions gained in the brokerage community and brokerage offices might not apply to the brokerage fraternity.

Q.—Where did you get your rumours? From the brokers or from the hangers-on in the public room of the brokerage offices.

40 A.—It was sometimes important to consider the frame of mind of the clients.

Q.—Some of the clients who haunt brokerage offices are not the most responsible type in the community.

A.—Quite so, but we have been discussing the small shareholders to a large extent.

Q.—I am putting it whether you found out among the respon-

J. WILLOUGHBY TYSON (for Plaintiffs), Cross-Examination.

sible leading brokers of Montreal a change of mind reflected by your articles?

A.—I would say yes.

Q.—That was when?

A.—About the time the articles were written.

Q.—Yes, but in September, 1929?

A.—Yes.

10 Q.—Was there any revolution of feeling on the part of stock brokers shortly after the appearance of Lord Shaughnessy's statement?

A.—Not that I know of.

Q.—Do you know when the Annual Meeting of Industrial Alcohol was called for, the Annual Meeting of 1929? For what date?

A.—I have not the definite information.

Q.—The evidence is it was called for December 17th, 1929, and the notice of that Meeting was sent out about a week in advance in the ordinary course, when the form of proxy was sent out to the shareholders. It is in evidence from Exhibit D-1 that between 1,900 and 2,000 shareholders sent in proxies in favour of Lord Shaughnessy and Mr. Lauster for that annual General Meeting on December 17th, 1929, representing some 260,000 votes, and that in effect no proxies in favour of anyone else were filed for that Meeting. Does that indicate any want of confidence in Lord Shaughnessy by the Directors of the Company? We will eliminate 60,000. That stood in the names of the nominees of the Bank. 60,000 shares which I will subtract stood in the names of the nominees of the Canadian Bank of Commerce; but eliminating those 60,000 shares by putting in a figure of 200,000 votes of outside shareholders, over and above the control represented by Lord Shaughnessy and his co-Executor, I am asking whether that represented any want of confidence, when there were no opposing proxies filed?

30

A.—The figures will speak for themselves.

Q.—It appears from D-101 that the following stock brokers' firms filed proxies in favour of Lord Shaughnessy and Mr. Lauster:

40

Burnett and Company.

Bruneau-Rainville.

Craig, Luther and Company.

Flood, Potter and Company.

Forget and Forget.

Forget and Company.

Johnson and Ward.

Kingston and MacKenzie.

McDougall and McDougall.

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10 McCuaig Brothers.
 McDougall and Cowans.
 Pitblado.
 Geoffrion & Company.
 Harcourt & Company.
 Legatt & Cassels Company.
 Mathewson, McLennan & Molson.
 O'Brien & Williams.
 Redpath & Company.
 Smith, Fairbanks & Company.
 Drury & Thompson.
 Truax, Carsley & Company.
 Watson & Chambers.
 Ekers & Cushing.
 Grier & Company.
 Glickman & Glickman.
20 Hodgson, Jarvis & Company.
 Morrow, Plummer & Company.
 Peterson & Company.
 Playfair, Patterson & Co.
 Savard, Gelinas & Plow.

 Some 30 brokers' firms filed proxies in favor of Lord Shaughnessy and Mr. Lauster. Does that suggest to you with nearly all the names of all the leading brokerage firms of Montreal any want of confidence?

30 A.—There are some exceptions.

 Q.—Does not that list contain all the prominent brokerage firms in Montreal?

 A.—I would want to compare it with the complete list.

 Q.—Any other names that are not on there?

 A.—McDougall and Cowans.

 Q.—They have given a proxy for 8,285 shares. Who else do you suggest is not on the list?

 A.—I have not the roster of the Montreal Stock Exchange.

40 Q.—I invite you to give me the names of any firms that are not on the list I have read to you?

 A.—I am not in a position to do so. I don't know whether they had any interest in Alcohol; besides, I am not contesting your statement.

 Q.—Does it indicate any want of confidence in Lord Shaughnessy on the part of brokerage houses in Montreal?

 A.—It would not seem to.

 Q.—Does it not indicate he did enjoy their confidence?

J. WILLOUGHBY TYSON (for Plaintiffs), Cross-Examination.

A.—I would think so.

Q.—That is a reasonable inference, is it not?

A.—Yes.

Q.—Which part of the community is it most important for the executive of a company to enjoy the confidence of, the outside public or their shareholders?

A.—That might be difficult.

10 Q.—In your judgment?

A.—It might depend on the type of the corporation.

Q.—Is it more important for the executives to have the confidence of the brokerage offices or the people who haunt their offices, or the shareholders? I am speaking of the public that are interested and the shareholders?

A.—Certainly the shareholders are much more interested.

Q.—Is it not much more important to have the confidence of the shareholders than the gentlemen who haunt brokerage tickers?

A.—I would think so.

20 Q.—Were other industries affected by the condition prevailing in Montreal in the latter part of 1929 in the alcohol industry?

A.—Yes.

Q.—You concur in the opinion expressed by your Ottawa correspondent that the general trend of business that was given there, taking an economist's interpretation rather than that as compiled by the Statistics at Ottawa, which was in statistical fashion only. You are not undertaking to say your Ottawa correspondent was wrong in his deductions in stating that other industries were affected outside of the distilling industries in the last six months of 1929, in Canada?

30 A.—Yes.

Q.—As a corollary to the slowing down of business and the reduction of earnings there was a depression in the Stock Market which called forth in particular stocks a wide open break?

A.—It was out of proportion. There was the factor of inflation which was present in business.

Q.—The Stock Market faced a condition more than business conditions warranted?

40 A.—I don't know whether further than conditions warranted, but certainly in a much greater proportion.

Q.—All the wise men of the country had been preaching on the housetops the break was coming; all the Bank presidents and the people in authority had been warning speculators of the fact they had run mad with their speculation?

A.—Yes.

Q.—We were ready for the break, and it came through.

A.—I would not say we were ready for it.

J. WILLOUGHBY TYSON (for Plaintiffs), Cross-Examination.

Q.—Even the wisest among us were not ready and got caught?

A.—Perhaps we all knew it was coming but we did not know when.

Q.—Very few of even the wisest knew enough to get out at the time?

A.—Some of the wiser suffered worse.

10 Q.—You knew when the evidence was given after the general break in prices in the Stock Market there was a shrinkage in quoted valuations during 1929, amounting in companies, for instance, Consolidated Mining and Smelting, to \$365; Royal Bank to \$150; in others industries, \$40 and \$50?

A.—It is a matter of record.

Q.—Do you suggest in any of these cases that break in prices was a reflection on the management of the company?

A.—No. I would say it was a reflection of a changed opinion on the part of shareholders and prospective shareholders as to
20 business prospects, and the prospects of the companies concerned.

Q.—A return of sanity on the part of the speculating and investing public?

A.—It might be put that way.

Q.—The mere fact that there was an enormous shrinkage in quoted valuations does not reflect in itself any lack of confidence in the management of a Bank or a corporation or anything else?

A.—No, not in a break of that kind.

30 Q.—You spoke in your testimony that the desire in the publishing of these articles that appeared in the Financial Times was to be of help to the Company. Do you remember that?

A.—It was said, I think, in conjunction with the statement, it was a desire to help the Company as well as the shareholders, something to that effect.

Q.—Did you think that article was helpful either to the Company or to the shareholders?

A.—It was my contention shareholders were entitled to certain information whether it was favorable or unfavorable.

40 Q.—Did you think it would help the Company to have you advertise on the basis that you have indicated that there was a want of confidence in the management and executive officers of Canadian Industrial Alcohol? Did you think that would be helpful to the Company?

A.—Perhaps not, but I think what we indicated was we desired to be helpful to the Company, and that was why we asked for information.

Q.—Do you think the desire to be helpful to the Company is well indicated by your heavy typed heading in the Exhibit P-150

J. WILLOUGHBY TYSON (for Plaintiffs), Re-Examination.

“Slump in Alcohol—a reflection or loss of confidence in the management?” Did you think that would be helpful to the Company?

A.—That was reporting a condition possibly not helpful to the Company, but had we secured the statement we had asked for it probably would have been helpful to the Company. It was our desire it should be helpful to the Company.

10 Q.—This article in the Financial Times of September 27th was occasioned by Lord Shaughnessy’s refusal to give you the information asked for?

A.—I have said nothing to warrant that assumption.

Q.—You said you could not get the information. That was the purpose of your articles? Your articles were written because you did not get the information?

A.—I said the articles stand as they are standing by themselves report the situation. Had we secured the information we asked from Lord Shaughnessy the articles would undoubtedly have been biased.

20 Q.—As a matter of fact, when the figures for the fiscal year did come out, they were not bad, were they?

A.—I have no distinct information in my mind.

Re-examined by Mr. McKeown, K.C., of Counsel for Plaintiffs:

Q.—Mr. Tyson, just a word or two: with reference to the fact that your article appeared in September, shortly before the end of the fiscal year, and the further suggestion that that matter might have been deferred until ten days, would the results of the
30 Company’s business be announced to the shareholders or to the public or anyone on the 30th of September, the day the fiscal year ended?

A.—That is not customary.

Q.—Will you just look at the copy of the Notice—the date, first, of the auditors’ report to the Company, on Exhibit P-99, and verify the auditors’ report was made up on November 24th, 1929.

A.—Yes, November 24th, 1929.

Q.—Will you note further that the report or the notice to the shareholders, forwarding them the Annual Report, came out under
40 date December 2nd, 1929?

A.—December 2nd, 1929.

Q.—In the meantime, there were upwards of two months without any announcement by the Company?

A.—Yes.

Q.—With reference to these proxies which have been referred to by Mr. Campbell—first of all as to the proxies for Annual Meetings of corporations where there is no contest for control and

J. WILLOUGHBY TYSON (for Plaintiffs), Re-Examination.

no request for proxies against the management, what is the generally accepted thing so far as progress was concerned in the matter of their proxies?

A.—I think it is customary to support the management and send in their proxies. There is seldom any very great opposition in evidence unless it was organized.

10 Q.—Was there any organized opposition for the purposes of the Annual Meeting of this Company, which was called for December 17th, 1929, as amongst the shareholders?

A.—Not that I know of.

Q.—Was it also a well known fact that the Estate Sir Mortimer Davis already held absolutely all that Company and no organization could succeed against the management?

A.—I believe that would be indicated by the facts.

Q.—What purpose would it serve the shareholders in attempting to oust the management that held over 50% of the stock?

A.—That would seem to discourage any organization.

20 Q.—Mr. Campbell suggested to you the management received a total of 1,916 proxies. I find that is absolutely correct for figures. We also have the statement from our learned friends there are over 6,000 shareholders, so that would leave us with 4,000 shareholders who did not respond to the call for the proxies by the management.

A.—Yes.

30 Q.—Reference has also been made by Mr. Campbell to the general fall of securities in the latter part of 1929. Do you agree with the evidence previously given that the fall of the securities in general which took place, beginning in October, 1929, followed great strength in these same securities, such as those which have been contrasted here, Consolidated Smelters, and other similar stocks. I want to ask you whether the fall of securities generally has been due to, and forming part of the October and November break, rather than something which had started, as in the case of Alcohol, in the month of February previous?

40 A.—Yes, the market was generally advancing throughout 1929, I believe, until some time in September when it started to sag and established about three new low marks, and then came the big slide towards the end of the October recovery; still a further decline during the first half of November.

Q.—So that Alcohol stock was not following the general trend of the market in its decline from February down to the month of August and September before the break?

A.—That decline in the early part of the year would not follow the general trend of the market.

Q.—It was running against it.

J. WILLOUGHBY TYSON (for Plaintiffs), Re-Examination.

A.—Yes.

By Mr. Campbell, K.C.:

Q.—Are you quite clear that there was no general drop in industrial stocks in the early part of 1929, the first six months? That is my recollection, that securities were generally strong until
10 September, kept going up in September.

A.—That is my recollection.

Q.—Do you keep yourself posted on that? Is your recollection reliable on that point?

A.—That is my business.

Q.—You feel there was a general continuous upward trend of industrial stocks on the Montreal Stock Exchange until about September, 1929?

A.—I have in mind particularly the New York market.

Q.—Let us talk about Montreal.
20

A.—I would not be prepared to say definitely. There are so many curves to keep in mind. I would agree with the evidence, if there were any in the Montreal Stock Exchange.

Q.—Do you remember the issue of the Financial Times in December, 1929? You had severed your connection by that time but I suppose its review of conditions had not become immediately unreliable after you severed your connections.

A.—I hope not.

Q.—These graphs can still be taken as probably accurate?

A.—I hope so.
30

Q.—Page 18 of the Financial Times, September, 1927, I ask you to look at the graphs, the prices of industrial stocks.

Mr. McKeown, K.C.: Would you think Industrial Alcohol was an industrial?

Mr. Campbell, K. C.: Yes, I think it is an industrial.

By Mr. Campbell, K.C.:

Q.—These figures along the bottom of the graph represent the years 1924, 1925, 1926, 1927, 1928 and 1929. If this graph in the issue of the Financial Times is correctly drawn, does it not appear from it that not the exact peak but next to the summit was reached about the boundary between 1928 and 1929? Does it not appear from this graph which appeared in the Financial Times that not the ultimate high, because it went higher again in September, but the
40

J. WILLOUGHBY TYSON (for Plaintiffs), Re-Examination.

height of September was approximately reached in the early part of the year, at the beginning of January?

A.—Yes, according to the graph.

Q.—According to this graph, from September down until June, there was a pronounced trend downwards in industrial stocks?

A.—Yes.

10 Q.—Some time about the middle of the year there was a rebound up, which reached the peak in September?

A.—Yes.

Q.—Then in September, there was almost a perpendicular drop representing the big break, September, October and November?

Q.—That is the trend shown by that graph?

A.—Yes.

Q.—Have you any reason to doubt the substantial accuracy of that trend as shown?

20 A.—No, except I would like to explain that I recently examined four indexes of industrial stocks in Canada, the Montreal Gazette; then one by the Bureau of Statistics, and one by a news bureau, and one by the Financial Times' report on the Company's business.

Q.—These graphs only show in a very general way the general trend?

A.—Yes.

Q.—But this graph of December 27th showed a downward trend of prices of industrial stocks?

A.—Followed by the recovery of September high.

30 Q.—Followed by the recovery of September high. It went as high, or even higher than it had been at the beginning of January?

A.—Yes.

By Mr. McKeown, K.C.:

Q.—Might Canadian Industrial Alcohol be numbered among the industrial group of securities, or does it belong to a specialty, known as beverage?

A.—That would depend on the compilation.

40 Q.—I mean apart from its high sounding name. It came out in evidence that the commercial alcohol end of this business other than beverage, is negligible. As a beverage concern does it belong in the classification such as Massey-Harris?

A.—If you sub-divide the industrial group then it would be in the beverage subdivision.

Q.—In the general classification does it come under industrial?

A.—Yes, as compared with utilities and bank stocks.

Q.—These industrial stocks shown on the graph, which has been

J. WILLOUGHBY TYSON (for Plaintiffs), Re-Examination.

made the basis of Mr. Campbell's re-examination, all showed recovery from the cellar. What was the general trend of the stocks after they were in the cellar? Did they get out to any extent?

A.—Half way through.

Q.—After the dip in September?

A.—After the dip in September?

Q.—Yes.

10 A.—No. They continued right down. They turned up for a short time early in July, until somewhere early in September, according to that graph.

Q.—As far as this graph is concerned?

A.—It went to a new high in September, before the big break started.

Q.—After having been at the same high about the first of the year previous?

20 A.—One thing that throws these graphs out is whether a stock like Consolidated Smelters would be put in as an industrial or mining, or whether Ogilvie Milling would be classified as a milling or holding company.

Q.—The Ogilvie Milling Company is known to have apart from its milling business virtually all the elements of an investment company?

A.—It can be classified as an industrial or holding company.

Q.—Including its holdings in Consolidated Smelters?

A.—Yes.

30 By Mr. Campbell, K.C.:

Q.—Just look at this issue again and tell us when, according to the graphs appearing on page 18 of the issue—when was the peak of the economic trend in Canada?

A.—January, 1929.

Q.—From that time on, until about the middle of the year?

A.—There was a slight recovery; a recovery of about 40%.

Q.—And then a pronounced downward?

40 has A.—I don't know how pronounced it was. The trend downward not been very pronounced since.

Q.—The graph does not finish the year?

A.—No.

And further deponent saith not.

KENNETH R. WILSON (for Plaintiffs), Examination-in-Chief.

On this 11th day of April, 1930, personally came and appeared

KENNETH R. WILSON

of the city of Montreal, Editor, aged 27 years, called as a witness on behalf of Plaintiffs, having been first duly sworn, doth depose
10 and say:

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

Q.—Mr. Wilson, are you connected with the Toronto Financial Post?

A.—Yes.

Q.—Where are your headquarters?

A.—Montreal, at the present time.

Q.—Is there a branch office of the Financial Post maintained
20 all the year round here?

A.—Yes, sir.

Q.—Who has charge of the office?

A.—Mr. Langdon.

Q.—John E. Langdon?

A.—Yes.

Q.—What is your position?

A.—I am Associate Editor, sir.

Q.—Were you connected with the Financial Post in the month
30 of September last year?

A.—Yes, sir.

Q.—Here in Montreal?

A.—Yes.

Q.—Does it come within your duties to gather news in Montreal for the publication of the Post, published at Toronto?

A.—Yes.

Q.—Will you look at the newspaper article headed “Lack of Confidence is Given as Reason for Alcohol Slump” and say whether that article appeared in the Toronto Financial Post on September
40 26th, 1929?

A.—Yes.

Q.—That article was actually published?

A.—Yes.

Q.—Who wrote that article?

A.—I did.

Q.—The heading of the article and the sub-headings—is that a matter left to the editorial department at Toronto?

KENNETH R. WILSON (*for Plaintiffs*), *Examination-in-Chief*.

A.—Not always, because heads are written by the people doing their own stories in our paper and sometimes they are changed.

Q.—Do you know who is the author of the head of that article? Do you remember?

A.—I do not remember, sir. I may have been.

Q.—After the article was written in the ordinary course, they add the heading to it. When sent up it may have been revised.

A.—Yes. We usually put the heads on it.

Q.—This article reads:

“At least three Directors have resigned from the Board, quitting last summer: E. R. Decarie, Colonel F. M. Gaudet and Henry Joseph are no longer directors of the Company. ‘We attribute the drop in the price of Industrial Alcohol Company shares to a lack of confidence in the management,’ said Mr. Henry Joseph, former Director of the Company, to the Financial Post this week.”

Have you had occasion to meet Mr. Joseph?

A.—Yes.

Q.—Did you meet him prior to writing the article to which I have drawn your attention, Exhibit P-149?

A.—Yes.

Q.—Did Mr. Joseph make that statement attributed to him by the article in question?

A.—Yes.

Q.—Are those his words?

A.—Yes.

Q.—How did it come about you called on Mr. Joseph in that connection?

A.—I interviewed him prior to the publication of that article, to discuss his resignation with him, and as a result of that interview I had his permission to use his name for these words.

Q.—For these words?

A.—Yes, sir.

Q.—Have you been in Court during the examination of Mr. Young of the Financial Post and Mr. Tyson?

A.—Yes, sir, I have, during most part of it.

Q.—I would like to ask you in connection with the gathering of news here in Montreal for your paper. How do you go about it?

A.—The usual practice is to interview wherever possible the executives or officials of whatever companies we are concerned with.

Q.—Was it to your knowledge prior to this interview with Mr.

KENNETH R. WILSON (for Plaintiffs), Examination-in-Chief.

Joseph that rumours were afloat in Montreal concerning Alcohol and its officers?

Mr. Campbell, K.C.: Objected to as leading and illegal.

By Mr. McKeown, K.C.:

10

Q.—How did it come about you went to see Mr. Joseph?

A.—Information had come in the first place that Mr. Joseph had resigned, and it was sufficient indication to me that some explanations might be forthcoming, in view of the fact that Lord Shaughnessy was out of town, sir.

Q.—Was this the first occasion on which you had followed up any leads on Alcohol?

A.—I think it was, yes, sir.

Q.—And Mr. Joseph gave you that explanation at that time?

20

A.—Yes, sir.

Q.—Was that relatively a matter of news to you?

A.—His statement was certainly news, sir. I believe the notice of his resignation had been announced in the Financial Post, printed in various papers, including the Post, prior to that time.

Q.—Had there been any announcement by the other Directors as to their status prior to that, by Mr. Decary and Colonel Gaudet?

A.—Not to my knowledge.

Q.—Then it goes on to say:

30

“ It was also learned this week, contrary to the impression that has been created, that at least two other members of the Board of Directors, Decary and Gaudet, have resigned from the Board.”

A.—Yes.

Q.—Can you say where you got that information at that time?

A.—No, I don't remember where I got that. I may have got it from Mr. Joseph.

40

Q.—It was in accordance with the fact?

A.—Yes.

Q.—Had that information come to you then at that time for the first time?

A.—Yes, it was news to me, sir.

Q.—“ Only a short time ago a statement was credited to an official of the Company to the effect that nothing had been done

KENNETH R. WILSON (for Plaintiffs), Examination-in-Chief.

as to the resignation of Decary, but that owing to pressure of business he might eventually resign from the Board. It was also stated that at that time there was not the least likelihood of any other members of the Board resigning."

10 After referring to the resignation of Decary and Gaudet from the Board it continues as follows:

" Only a short time ago a statement was credited to an official of the Company to the effect that nothing had been done as yet as to the resignation of Decary, but that owing to pressure of business he might eventually resign. It was also stated at that time that there was not the least likelihood of any other members of the Board resigning."

Upon what did you base that?

20 A.—That was a statement from Lord Shaughnessy. I believe he was queried by a reporter, I think, as to the resignation of certain members.

Q.—Had you seen this prior statement of Lord Shaughnessy's reported?

A.—Yes.

30 Q.—Will you look at the Exhibit P-148, a clipping from the Montreal Star, July 31st, already produced, article headed " Shaughnessy Denies Rumoured Resignation," and say if that is the issue on which you have based yourself in the part of your story to which I have just referred?

A.—Yes.

Q.—Was the remainder of your article, Exhibit P-149, in accordance with the facts as ascertained by you at the time?

A.—Yes, sir, I believe so.

Q.—Did you see a reply by Lord Shaughnessy which came out, to the general criticism which had been directed at him and the Alcohol Company, a specimen of which appears in the Exhibit D-93, showing as an authorized statement of Lord Shaughnessy?

40 A.—Yes, I think I got that statement from Lord Shaughnessy.

Q.—What is the date of the item now before you?

A.—October 9th.

Q.—Will you look now at the article from the Financial Post, October 10th, headed " Shaughnessy now running C. I. A. alone. All other Shareholder-Directors have resigned."

A.—Yes.

Q.—" No explanation given why a resignation has not been an-

KENNETH R. WILSON (*for Plaintiffs*), *Examination-in-Chief*.

nounced before.” Already filed in this record as Exhibit P-155, and say who wrote that article?

A.—I wrote the article, but the date is incorrect. It should be October 3rd. This appeared in the Financial Times, October 3rd. It is October 10th here.

10 Q.—This article had been written then, prior to Lord Shaughnessy’s answer which appeared in the Toronto Mail, October 9th, D-93, which I have just shown you?

A.—Yes.

Q.—Now, this article “Shaughnessy now running C. I. A. Alone,” P-151, purports to announce as a piece of news that the resignation of a fourth Director, that is, Honourable H. M. Marler—was that a matter of news as far as you were concerned, as of its date, October 3rd, 1929?

A.—Yes.

20 Q.—Had the resignation of Mr. Marler been announced before that time to the press?

A.—Not to my knowledge, sir.

Q.—This article reads:

30 “Honourable H. M. Marler has resigned from the Board of Canadian Industrial Alcohol, according to information received by the Financial Post this week. This makes the fourth Director to have resigned from that Corporation within the past four months and means there is no shareholder representative on the Board outside of Shaughnessy, President, who controls the Company; the remaining members of the Board are employees of the Corporation.”

Can you tell us from whom you obtained that information, from memory?

A.—I believe I obtained it from one of the other Directors, but I am not sure.

Q.—In any event, it was in accordance with the fact?

A.—I believe so.

40 Q.—Is the remainder of that article, P-151, in accordance with the facts, as ascertained by you at that time?

A.—Yes.

Q.—I forgot to ask you,—were you permanently in charge of the work in connection with the office of the Post here in Montreal?

A.—Yes.

Q.—In which the writing of these two articles, Exhibits 149 and 151 was a part?

A.—I was at that time.

KENNETH R. WILSON (for Plaintiffs), Examination-in-Chief.

Q.—Was Mr. Langdon here?

A.—No, sir.

Q.—Where was he?

A.—I believe he was in the Maritimes.

Q.—These were written upon your responsibility at that time?

A.—Yes, subject to our editor in Toronto.

10 Q.—It was passed upon in Toronto before being published?

A.—I presume so.

Q.—As to these two articles, Exhibits 149 and 151, were they written by you with any ulterior motive?

A.—No, sir, none at all.

Q.—What was the purpose of these?

A.—Simply to state the items of news contained therein for the benefit of our readers.

Q.—Is the Financial Post a paper conducted along the lines indicated by Mr. Young and Mr. Tyson?

20 A.—Yes.

Q.—With circulation throughout Canada?

A.—Yes, and other parts of the world.

Q.—Was there any ulterior motive by you in writing these articles?

A.—I believe I have so answered that question, no sir.

Q.—Lord Shaughnessy, in his reply to his critics, referred to the fact that “Constructive criticism was always acceptable and entitled to sincere consideration, but that criticism based upon personal antagonism and vindictiveness or any other like motive can only
30 be treated with the contempt it deserved.”

In these particular instances, were these articles, P-149 and P-151, written by you with any motives of personal antagonism or vindictiveness or other like motives toward Lord Shaughnessy?

A.—No, sir.

Q.—There is a further Exhibit which has been produced marked Exhibit P-153, which appeared in the Financial Post, November 7th, 1929: “Alcohol Merger never approached or reported deal to consolidate. Dividend is earned. Last Year just ended. Stock sells below intrinsic value.” This purports to be an article emanating from the
40 Montreal correspondent of the Post. Did you write that article?

A.—No, sir, I don't think so, no sir.

Q.—Will you produce as Exhibit P-192—

Mr. Campbell, K.C.: I object to the filing of this as illegal and irrelevant. They purport to be criticisms and reviews of these three distillery companies, but what business is that of Your Lordship or ourselves in this case? I cannot see what bearing these despatches,

KENNETH R. WILSON (for Plaintiffs), Examination-in-Chief.

whether written by the witness or by someone else of greater authority than the witness, can have in helping Your Lordship decide the case. I object to it as illegal and irrelevant.

Mr. McKeown, K.C.: We submit the analysis of these will be helpful to Your Lordship; the analysis of the three taken together will show the comparative figures for the two years. On the first
10 Exhibits now tendered, they are tests of the various statements for the year ending October, 1929, of the three beverage concerns, two of which are supposed to go into the merger, and we submit this analysis will be helpful to Your Lordship as indicating the great impropriety of that proposed, as between Canadian Industrial Alcohol, Hiram Walker, Gooderham and Worts, and even with the Seagram position, and that the three taken together, analyzing the statements, would show the comparative figures for the two years, showing in our view at least the position of Canadian Industrial Alcohol over
20 the other two, and how much more valuable was the stock than the other two that were supposed to be exchanged at a parity.

Mr. Campbell, K.C.: No such proposition was made and no such proposition was accepted. What interest have we if somebody in Toronto or somewhere else thought it would be nice to merge these companies on a share for share basis, but that does not help Your Lordship in this case. We never got down to the basis of discussing terms of merger, and as Your Lordship has already remarked there will not be any merger now.

30 Mr. McKeown, K.C.: My learned friends took it upon themselves to go into this matter so far as to divulge to their competitors the inside position of this Corporation without consulting Lady Davis and others who were the owners of the stock and were on their way to commit the deal when we applied for the injunction. If the co-Executors treated Lady Davis in the proper way when they were leading this Corporation out to the slaughter without conferring with her, I think we are entitled to show just what this whole thing meant.

40 Whereupon an adjournment was taken until Monday, April 14th, at 10:30 o'clock A.M.

KENNETH R. WILSON (for Plaintiffs), Examination-in-Chief.

MORNING SESSION,

April 14th, 1930.

The Court reconvened at 10.45 a.m., pursuant to adjournment.

10 Mr. Campbell: I think at the adjournment of the last Session my learned friend was offering certain Exhibits.

His Lordship: He offered three Exhibits.

Mr. Campbell: I may say I have followed your Lordship's instructions and considered the terms of the Exhibits proposed to be filed, and with all respect I still adhere to the objection I made to their filing.

20 The first one, offered as Exhibit P-192, is an Article extracted from the Financial Post of November 14th, 1929, containing a sort of review of the condition of Canadian Industrial Alcohol. My objection to the filing of this Article is that there is absolutely nothing in it that is new, as I have read it. Every fact mentioned in this despatch has been proved two or three times. We are not adding anything to the Record by its production, and, therefore, it is unnecessary and irrelevant. In my submission any comment which might be made by the Financial Post or any other paper must be absolutely irrelevant. We are not trying this case upon
30 the opinions of the gentlemen who edit those publications, and it is your Lordship, not the gentlemen of the press, who will decide the issues here.

As I say, there is absolutely nothing new in the Article, and its production is entirely unnecessary and irrelevant.

With regard to the other two Exhibits offered, which contain extracts from the same issue of the Financial Post concerning Hiram Walker-Gooderham and Worts, and Distillers-Seagram, we are not in any way concerned with the business of those Companies. Those clippings purport to be resumes of their financial
40 conditions, statements of their balance sheets, their previous earnings, etc., and I submit they are absolutely irrelevant. We have enough to do in this case if we have to try the issue of Canadian Industrial Alcohol. I do not know if we are not going too far, but, in any event, we certainly have not to go beyond that Company, and, in my submission, any inquiry into the affairs of Hiram Walker-Gooderham and Worts, and Distillers-Seagram, is utterly irrelevant and therefore illegal.

KENNETH R. WILSON (for Plaintiffs), Examination-in-Chief.

If my learned friend introduces those Exhibits into the Record, we will certainly spend the morning with them. They will be filed, they will be read into the Record, my learned friend will discuss them with the witness and will comment upon them, and will argue with the witness what they really mean; and by the time he is through the hour for adjournment will have arrived. In my submission we have already taken an unconscionable length of time
10 in trying this case, and I must say, with respect, that I do not think those Exhibits now offered can add one useful iota to this Record, and I therefore object to their being filed.

His Lordship: If in the opinion of counsel the Exhibits offered are not useless, I will let them go in for what they are worth.

Mr. Campbell: My objection is on the ground that they are irrelevant. If they are irrelevant, then they are illegal.

20 His Lordship: I should think you might have an interest in having them put in if they show, as Mr. McKeown said on Friday, that really Canadian Industrial Alcohol should not merge with those other Companies because it is in a healthier condition than either of them.

Mr. Campbell: We do not require them for the purpose of our defence. They may be offered for the purpose of assisting us in our defence, but we do not require them.

30 His Lordship: I will let them in. If they are useless nothing more will be said about them.

Mr. Campbell: I would respectfully ask your Lordship to suggest to my learned friend that he should simply file them and leave them in the record. It is not necessary that we should take up the whole morning discussing them.

40 Mr. McKeown: On the question of relevancy my learned friend is absolutely mistaken and misses the whole point, comparing those Companies supposed to go into the merger—

Mr. Campbell (interrupting): The merger is all off. We are not going to merge.

Mr. McKeown: That is one of our ambitions attained, in any event.

KENNETH R. WILSON (for Plaintiffs), Examination-in-Chief.

Mr. Campbell: I hope you are pleased.

Mr. McKeown: I would be delighted if I knew it was off for any definite length of time.

10 His Lordship: I am not sure whether you would be the gainer by it.

Mr. McKeown: We will have to take a chance on that. I think before we close the case we will be able to show your Lordship the very great prospect was that we would have been ruined had it gone through.

Mr. Campbell: I do not know that prospect disappears if it does not go through.

20 His Lordship: The Articles are offered as Exhibits P-192, P-193 and P-194, and I will allow them to go in.

Mr. Campbell, K.C., of Counsel for Defendants, respectfully excepts to the ruling of the Court.

Kenneth Wilson, already sworn, reappearing, continues his evidence as follows:

30 By Mr. McKeown:

Q.—Will you look at the newspaper clippings from the Financial Post of November 14th, 1929, concerning Canadian Industrial Alcohol, Hiram Walker-Gooderham and Worts, and Distillers-Seagram, marked Exhibits P-192, P-193 and P-194, respectively, and will you say by whom those Articles were written?

40 Mr. Campbell: As the record stands we have had the discussion ahead of the question. The discussion as to the legality of the question should be at this point.

Mr. McKeown: As a matter of fact, the discussion for large part is already in the transcript of Friday's proceedings, subject to what my learned friend added this morning.

Witness: I am unable to say. I did not write them myself.

KENNETH R. WILSON (for Plaintiffs), Cross-Examination.

By Mr. McKeown (continuing):

Q.—Do you know whether they were contributed by the Montreal office?

A.—I could not say.

10 Cross-examined by Mr. Campbell, K.C., of Counsel for Defendants.

Q.—How long have you been in the journalistic profession?

A.—Approximately four years.

Q.—Is that the extent of your total experience?

A.—In that occupation, yes.

Q.—Always with the Financial Post?

A.—Yes.

Q.—Are you a friend of Mr. Young of the Financial Times?

20 A.—No, I did not know him until I saw him here.

Q.—How did you come to interview Mr. Henry Joseph in September, 1929? What led you to go to see Mr. Joseph?

A.—I learned that he had resigned, and, as I said in my evidence, Lord Shaughnessy was out of town, and I called Mr. Joseph on the telephone. I think he was away when I first tried to get in touch with him. I called him several times, and finally made an appointment to see him in his office.

30 Q.—And, he authorized you to use the words which you used at the opening of the Article which you contributed to the Financial Post of September 26th, 1929, Exhibit P-149, which begins: "I attribute the drop in the price of Canadian Industrial Alcohol Company's shares to a lack of confidence in the administration"?

A.—Yes.

Q.—Did you discuss the matter further with Mr. Joseph when he authorized you to use that formula?

A.—Yes, I discussed the situation to some extent with him.

Q.—Did he tell you that he had sold his own shares in the previous winter at a very good price?

A.—No, I do not think so.

40 Q.—Did he tell you at all that he had sold his shares?

A.—No, I do not think so.

Q.—Did he tell you that Lord Shaughnessy had been critical of his attitude in selling his shares?

A.—No. I did not know his shares were sold.

Q.—Did he tell you that he and Lord Shaughnessy had had a very serious difference of opinion about Mr. Joseph's relations with the Alcohol Company?

KENNETH R. WILSON (for Plaintiffs), Cross-Examination.

A.—I gathered from the interview they were not on the friendliest terms, perhaps.

Q.—You gathered from the interview that he and Lord Shaughnessy were on distinctly unfriendly terms at that time, did you not?

A.—No, I do not think so. As I remember it, he did not want a great deal put in, but my recollection is he made the statement
10 that if anything was to go in the paper from him or expressing his views it would be contained in that statement and nothing further.

Q.—In any event, he did not discuss the cause or the occasion of his quarrel with Lord Shaughnessy?

A.—No, sir.

Q.—But, you understood from the tone of his conversation that at that time Lord Shaughnessy and he were not on friendly terms?

A.—Yes, I think so.

Q.—You spoke of having interviewed some other Director. Can
20 you recall which one?

A.—I think I got in touch with all the gentlemen who either had been Directors, or I think most of them had resigned by that time except Mr. Marler.

Q.—There were only three outside Directors at any time, Hon. Mr. Marler, Mr. Joseph and Mr. Decary?

A.—Yes.

Q.—Colonel Gaudet had been an officer of the Company, like
the other officers?

A.—Yes. I did not know that at that time.

Q.—But, you know it now?

A.—Yes.

Q.—So, as a matter of fact, there were only three outside
Directors?

A.—Yes.

Q.—You have told us about Mr. Joseph?

A.—Yes.

Q.—In one of your Articles you comment about the resignation
of Mr. Marler. In view of the circumstances, there was nothing
40 extraordinary about Mr. Marler's resignation, was there?

A.—No, I do not think so.

Q.—Mr. Marler had just been appointed to a very important public position, and at the time you wrote your Article he had already left to take up this important position which he now occupies in Japan?

A.—I am not sure of that. He was either on the point of leaving, or had just left.

KENNETH R. WILSON (for Plaintiffs), Cross-Examination.

Q.—When he explained in his letter of resignation that that fact was the occasion of his resignation, it was a perfectly adequate explanation, was it not?

A.—Yes.

Q.—Did you interview Mr. Marler?

A.—No. He was not in town at the time.

Q.—Had he not already left?

10 A.—I do not think so. I believe he was in Ottawa.

Q.—Mr. Marler says in his covering letter to Lord Shaughnessy, which enclosed his formal letter of resignation, a copy of which has been filed as Exhibit D-6:

20 “I am sending you herewith my resignation as one of the Directors of Canadian Industrial Alcohol Company, Limited, and all subsidiary Companies. I think it is well that I should take this action, seeing that I am leaving Canada for an indeterminate period. If you think otherwise I will be very glad indeed to discuss the matter with you. In any event, will you allow me to extend my very sincere thanks for the many courtesies I have received at your hands, and to assure you also that my association with you those many years has been most pleasant in every particular.”

You do not find in that letter any indication of want of confidence in Lord Shaughnessy, do you?

A.—No.

30 Q.—And, the circumstances of Mr. Marler's resignation provided an ample explanation of why it took place at that time, did they not?

A.—I should think so.

Q.—Did you interview Mr. Decary?

A.—Yes.

Q.—Did Mr. Decary tell you what was his stock interest in the Company?

A.—No, sir.

40 Q.—He did not intimate to you that he had no significant stock interest in the Company, and that he only held one or two qualifying shares?

A.—Not as I remember it.

Q.—In the course of the Article which you contributed to the Financial Post of September 26th, Exhibit P-149, you say:

“Undoubtedly a fundamental factor behind the decline (that is, the decline in Alcohol shares) has been a lack of public

KENNETH R. WILSON (for Plaintiffs), Cross-Examination.

confidence in the distillery situation. This was brought to a head when Government operations at Windsor curtailed for two or three months the bootlegging activities of the rum-runners, which was, of course, reflected in the sales of the distillers, most of whom are indirectly materially interested in the export of liquor to the United States.”

10 That was an accurate statement of fact, was it not?

A.—I would think so.

Q.—The second article you wrote for the Post, is the article filed as Exhibit P-151—the article of October 3rd. This is headed: “Shaughnessy Now Running C. I. A. Alone”?

A.—Yes.

Q.—Where did you get the inspiration for that article?

A.—As I remember it, I did not realize until that time, not having checked up each Director, that there were no outside Directors
20 on the Board—Mr. Marler also having also resigned.

Q.—I suggest to you this was inspired by a conversation you had with Colonel Gaudet?

A.—I do not think that is true at all.

Q.—Did you have a conversation with Colonel Gaudet?

A.—Yes.

Q.—And, was that not the burden of Colonel Gaudet’s complaint?

A.—No, I do not think so. I just spoke to him over the tele-
30 phone.

Q.—Your justification for the heading used on this Article was that the three outside Directors had resigned?

A.—Yes.

Q.—Mr. Marler resigned because he was going to Japan; Mr. Decary resigned for the reason he assigns in his letter of resignation, Exhibit D-7; and Mr. Joseph resigned for the reasons that he did not disclose to you?

A.—Yes.

40 Q.—You were shown a clipping which my learned friend Mr. McKeown has filed as Exhibit P-153, which appeared in the Financial Post of November 7th, and I think you said you did not write it?

A.—I did not write it.

Q.—Who wrote it?

A.—I believe Mr. Langdon wrote it.

Q.—At that date was Mr. Langdon one of the representatives of the Financial Post in Montreal?

A.—Yes, sir.

KENNETH R. WILSON (for Plaintiffs), Cross-Examination.

Q.—You have no doubt it was contributed by one of the staff of the Post, and was published in due course?

A.—No, sir, no doubt.

Q.—I note the first Paragraph of Exhibit P-153 says:

10 “Canadian Industrial Alcohol is not merging with any other Company in the distillery field, nor has it ever been approached to link up with any other producer.”

Do you know where Mr. Langdon got that information?

A.—I believe he interviewed Lord Shaughnessy.

And further deponent saith not.

20

30

40

JOHN E. LANGDON (*for Plaintiffs*), *Examination-in-Chief*.

On this fourteenth day of April, in the year of Our Lord one thousand nine hundred and thirty, personally came and appeared

JOHN E. LANGDON,

10 residing at No. 1441 Drummond Street, Montreal, Eastern Editor of the Financial Post, aged 30 years, a witness produced and examined on behalf of the Plaintiffs, who, being duly sworn, deposes as follows:

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

Q.—What is your occupation?

A.—Eastern Editor of the Financial Post—Montreal Editor.

Q.—Where are your headquarters?

A.—Southam Building, 1070 Bleury Street, Montreal.

Q.—What particular territory comes within your jurisdiction?

20 A.—We cover all companies not covered by the Toronto Office: Montreal and Maritime Companies, and some of the Ottawa Companies, and Companies the controlling interest of which is held in Montreal, such as Winnipeg Electric, B. C. Power, Ottawa Traction, and so on.

Q.—How long have you been connected with the Financial Post?

A.—Since 1926.

Q.—No; I was two years in Toronto, and I have been two years here.

A.—In Montreal all the time?

30 Q.—We have had it, I think, from Mr. Wilson that news is collected here and sent to Toronto to be used in the weekly editions?

A.—That is quite right.

Q.—Were you in Court when Mr. Wilson was examined?

A.—Part of the time, I was.

Q.—Were you in Montreal at the end of September and the beginning of October last?

A.—No, at that time I was in the Maritimes. I was there a little over two weeks.

40 Q.—Who was in charge in your absence?

A.—Mr. Wilson.

Q.—Did it come to your knowledge that the Article covered by Exhibit P-149, headed "Lack of Confidence Is Given as a Reason for Alcohol Slump" appeared in the edition of the Financial Post of September 26th, and the Article headed "Shaughnessy Now Running C. I. A. Alone," Exhibit P-151, appeared in the issue of the Post of October 3rd?

JOHN E. LANGDON (*for Plaintiffs*), *Examination-in-Chief*.

A.—Yes.

Q.—Had they been published during the period of your absence to which you have referred?

A.—They were published during the period I was in the Maritimes.

Q.—Upon your return you became aware of the fact that they had been used?

10 A.—I saw the paper in the Maritimes, and read the Articles there.

Q.—A further clipping has been produced as Exhibit P-153, covering an Article which appeared in the Financial Post of November 7th, 1929, headed: "No Dickers for Alcohol on Merger—Never Approached on Rumoured Deal to Consolidate." Will you please tell His Lordship who wrote that Article?

A.—I wrote this Article.

Q.—The Article commences in this way:

20

"Canadian Industrial Alcohol is not merging with any other Company in the distillery field, nor has it ever been approached to link up with any other producer. Rumours to this effect have been going the rounds for several weeks, and an official of the Company informs Financial Post that as far as Canadian Industrial Alcohol is concerned there is absolutely no substance to the story."

30 How did you come to incorporate the statement contained in this part of the Article in the story?

A.—That was the substance of the statement made to me by Lord Shaughnessy.

Q.—Where did you see him?

A.—In his office.

Q.—About what date?

Witness: What is the date of the Article?

40

Counsel: It appeared on November 7th, 1929.

A.—It would be on the Monday or Tuesday of that week, if I am not mistaken.

Q.—Within a day or two before?

A.—Yes. We have to get our copy to Toronto on Tuesday night, therefore that story must have been written on Monday or Tuesday.

Q.—Would it go by wire?

JOHN E. LANGDON (for Plaintiffs), Examination-in-Chief.

A.—No, it goes by mail.

Q.—So if you had not seen Lord Shaughnessy on Monday, it would have been the concluding days of the previous week?

A.—No. Copy written here between Thursday and Tuesday of the following week appears in the issue of Thursday.

Q.—What you have to do is to get your copy in the mail by Tuesday night at the latest?

10 A.—Yes, that is the latest; unless we wire it on the following morning.

Q.—So, it would be likely the Monday or Tuesday preceding November 7th, 1929?

A.—Yes.

Q.—Where did you have that interview with Lord Shaughnessy?

A.—In his office at the Canadian Industrial Alcohol Company.

Q.—Was the interview solicited by you?

A.—Yes.

20 Q.—Who brought up the subject of mergers?

A.—That story had been going the rounds for some time. There was general talk of the merger.

Q.—How far back?

A.—Indefinite, I should say: but, several weeks.

Q.—The part of the Article which I have just read to you is founded upon information supplied to you by Lord Shaughnessy himself?

A.—That is correct.

Q.—The next Paragraph of the Article reads:

30

“The fiscal year of the Company ended on September 30th last, and though the audited statement will not be ready for a few weeks it is understood the Report will show dividends well earned, with a comfortable margin to be carried forward into Profit and Loss Account. This means that the earnings will be somewhat in the neighborhood of \$2,000,000.”

Where did you get the information upon which that Paragraph was founded?

40 A.—Lord Shaughnessy made the statement that the dividend would be earned, with a small surplus to be carried forward into Profit and Loss.

Q.—Was that statement made by Lord Shaughnessy at the same interview to which you have referred?

A.—At the same time.

Q.—Prior to that time had you seen any authoritative state-

JOHN E. LANGDON (for Plaintiffs), Examination-in-Chief.

ment in terms that the dividend had been earned for the year ending September 30th, 1929?

A.—No, no authoritative statement.

Q.—Had there been suggestions to the contrary in the press?

A.—I believe the Financial Times had raised that point once or twice; but no other paper.

10 Q.—And, as far as you know, no authoritative denial had been made prior to the first week in November?

A.—No, none.

Q.—What is the authority for this part of the Article?

20 “ This showing, if verified by the Audited Statement, is considered to be exceptionally good. It compares favorably with that reported by other distillery companies. The past year had not been an altogether favorable one for the companies in this industry. If the Company is able to report earnings of \$2,000,000 or so on a market capital around \$15,000,000, there is little reason for complaint. There are few Industrial Companies able to make as good a showing.”

A.—It was our understanding at that time that the distillery business was not particularly prosperous and we believed that if Industrial Alcohol could earn its dividend, \$1.52, and carry a fair surplus forward it would be making a fairly good showing.

Q.—Was this part of the Article your comment, or was it a statement by Lord Shaughnessy?

30 A.—There are two statements in the paragraph. The first part is our own statement. During my talk with Lord Shaughnessy he made reference to the fact that if the Company could show earnings of \$2,000,000 on a market valuation of \$15,000,000 the shareholders would have no cause for complaint.

Q.—Having regard to the fact that there are about 1,100,000 shares in the Company, what would a \$15,000,000 market capital represent?

A.—About \$14 or \$15 a share.

40 Q.—On those figures the fact of the matter is that a dividend of \$1.52 would represent something in the vicinity of 10%?

A.—Yes, very close to that.

Q.—Who is responsible for this part of the Article?

“ Business during the past three months has been more favorable; sales of Canadian Industrial Alcohol have been better than in the summer months, when the business was at a low point. The setback then, however, was sufficient to make a dent

JOHN E. LANGDON (for Plaintiffs), Examination-in-Chief.

in the earnings, though an improved situation in the closing months of the fiscal year largely offset the poor months.”

A.—Lord Shaughnessy made that statement to me.

Q.—The Article proceeds:

10 “Industrial Alcohol has maintained its policy of keeping the alcohol reserves up to a figure of about 10,000,000 gallons. Some time ago the management set that mark as a reserve, and when reached started manufacturing to keep pace with the current demand. This reserve of alcohol is one of the most important assets of the Company, and one which investors are quite apt to overlook.”

Who is responsible for that?

20 A.—Lord Shaughnessy made the statement to me on several occasions that it was the intention of the Company to maintain a reserve of about 10,000,000 gallons of alcohol, and then manufacture to replace sales during the year.

Q.—Then we come to the final paragraph:

30 “ The Company is getting away to a good start this year. The new wood alcohol plant at Lindsay will be put into operation next week. For some time past the Company has been purchasing its needs of wood alcohol in the open market. Several months ago it was decided to build their plant. It is expected that before long the Company will be able to make all of its own wood alcohol needs.”

What was your authority for that statement?

A.—That statement came from Lord Shaughnessy. He informed me that they were starting off in a small way with this plant, and later on if things went well they hoped to obtain the major portion of their requirements of wood alcohol from the Lindsay plant.

40 Q.—As to the two Articles which were contributed by Mr. Wilson during your absence, and to which I have drawn your attention, I take it you had no knowledge of those Articles until you read them in the paper?

A.—I had not seen the Articles until I read them in the paper.

Q.—So far as the *Financial Post* and your connection with it were concerned, was there any ulterior motive in publishing any of the Articles concerning Canadian Industrial Alcohol or Lord Shaughnessy?

A.—Absolutely none.

JOHN E. LANGDON (*for Plaintiffs*), *Examination-in-Chief*.

Q.—What is the attitude of the Financial Post towards Corporations?

A.—Our attitude is to report what information we can secure on the Companies' current operations, or their financial statements, which would be of interest to the shareholders.

Q.—And, what about your own readers, and investors generally?

10 A.—Our own readers in this country and elsewhere are very largely interested in Canadian stocks, and naturally they are not interested in carrying stocks unless they can get current information on the Companies. We endeavor to supply that information from official sources.

Q.—Do you know, so far as the Financial Post is concerned, of any personal antagonism against Lord Shaughnessy, or

Mr. Campbell: We have never suggested any thing of the kind.

20 Mr. McKeown: I am negating the suggestion.

Mr. Campbell: There is no suggestion of any personal antagonism on the part of the Financial Post, and you have already been so informed. The accusation is not levied at the Financial Post.

Mr. McKeown: The Financial Post is a responsible paper in the field of financial journalism in Canada, and it accepted the responsibility of publishing the statement of Mr. Joseph.

30 Mr. Campbell: They published it as Mr. Joseph's statement.

Mr. McKeown: And, we say they published it from absolutely proper motives, and not from the motives attributed by Lord Shaughnessy to his critics in the press. Whether the Article emanated from the pen of Mr. Langdon, Mr. Wilson, or any other employee of the Financial Post is immaterial. It was an Article contributed, for which the Financial Post accepted the responsibility of publication. It does not make one iota of difference where the Article came from, because it was in an answer to Lord Shaughnessy.

40 I submit I am entitled to show by this witness that from first to last there was never any thought of doing anything more than reporting the news and the facts as they existed.

Mr. Campbell: I object to my learned friend's implication that Lord Shaughnessy's criticism was levied at the Financial Post. As a matter of fact, it was levied at the sources to which the Financial Post went for their information.

JOHN E. LANGDON (for Plaintiffs), Cross-Examination.

His Lordship: Put the question the way Mr. Campbell wants it.

By Mr. Campbell (continuing):

10 Q.—Do you know, so far as the Financial Post is concerned, of any personal antagonism against Lord Shaughnessy or Canadian Industrial Alcohol, or any other Corporation with which Lord Shaughnessy was connected?

Mr. Campbell: I do not object to the witness being asked whether he had any improper motives, but I do object to any intimation that we attributed any improper motive to him.

Mr. McKeown: We will take the Article Exhibit D-93 as it is. I submit we are entitled to negative the suggestion.

20 By Mr. McKeown (continuing):

Q.—Do you know, so far as the Financial Post is concerned, of any personal antagonism against Lord Shaughnessy, or Canadian Industrial Alcohol, or any other Corporation with which Lord Shaughnessy was connected?

A.—No.

Q.—Or any spirit of vindictiveness, or any other like motives, in connection with the publications of the Articles which appeared in the Financial Post?

30 A.—No. We do not allow them in our paper.

His Lordship: Good faith is always presumed, of course.

Mr. McKeown: Bad faith was alleged.

Mr. Campbell: Bad faith on the part of the Financial Post was never alleged. We have some doubt of the good faith of the source of their information, but no doubt as to the good faith of the newspaper itself.

40 Cross examined by Mr. Campbell, K.C., of Counsel for defendants:

Q.—You spoke in your testimony of giving information to shareholders carrying stocks? You mean the speculative following of a stock?

A.—No.

Q.—Then, what did you mean?

JOHN E. LANGDON (for Plaintiffs), Cross-Examination.

A.—We mean the people who have purchased stocks. It is customary for people who own stocks, once in three months, or once in six months, or once a year, to check up their holdings and find out if there are new developments which would affect the value of their securities, and they may write in to us and ask us if we have any current information on the stocks they hold.

10 Q.—Was there a substantial speculative following in Canadian Industrial Alcohol at that time?

A.—Of that I am not sure.

Q.—You said that previous to your interview with Lord Shaughnessy, which was published on November 7th (Exhibit P-153) you had not seen any announcement that the Alcohol dividend was being earned?

A.—Not that I remember, no.

Q.—Were you in Montreal on September 27th?

20 A.—I am rather indefinite on that. That was just about the time I left for the Maritimes—in that week.

Q.—On September 27th, 1929, an Article appeared in the Financial Times of Montreal, in which they quoted a telegram from Lord Shaughnessy, the last sentence of which reads: “The dividend is being well maintained and there is no cause for the slightest apprehension.” Do you not think that is an intimation that the dividend was not in danger?

A.—Yes. I remember that telegram, but not the details of it.

30 Q.—Now that I call your attention to it, there was, in fact, a public announcement by Lord Shaughnessy, in the same sense as your interview of November, was there not?

A.—Yes.

Q.—Have you had occasion to interview Lord Shaughnessy a number of times?

A.—Yes, a number of times.

Q.—How were you received?

A.—Very friendly.

Q.—Courteously received?

A.—Yes, excellently received.

Q.—All reasonable information furnished you?

40 A.—Yes: Lord Shaughnessy answered all my questions without reserve.

By Mr. McKeown:

Q.—When did you go to see Lord Shaughnessy? Are you referring to this interview of November?

A.—In reply to the last question of Mr. Campbell.

JOHN E. LANGDON (*for Plaintiffs*), *Re-Examination*.

By Mr. Campbell:

Q.—I was asking generally.

A.—I saw Lord Shaughnessy a number of times during the year.

Re-examined by Mr. McKeown, of Counsel for plaintiffs.

10 Q.—Between the month of June and the first of October did you apply to Lord Shaughnessy for any information concerning the resignation of his Directors?

A.—No, I did not.

Q.—Did you have any interview with him between June and October, 1929, in connection with Canadian Industrial Alcohol?

A.—I could answer that question better if I had a chance to check back on our clippings to find out. You see, we do not keep a record of interviews.

Q.—You cannot say at the moment that you did?

20 A.—Not offhand. I do know, however, that I saw Lord Shaughnessy on several occasions during the year, more or less regularly.

Q.—This Article, Exhibit P-151, contributed by Mr. Wilson, starts in this way:

30 “Hon. H. M. Mr. Marler has resigned from the Board of Canadian Industrial Alcohol, according to information received by the Financial Post this week. This makes the fourth Director to have resigned from that Company within the past four months.”

Do you suggest that between June and October you had an interview with Lord Shaughnessy in connection with the Directors of the Company?

A.—No, I did not speak to Lord Shaughnessy about the Directors. The matter of the resignation of the Directors came up a short time before I left for the Maritimes.

Q.—Had you any information about it at that time?

40 A.—The information I had was from Mr. Wilson. He had spoken to me about it, and said that he was going to see Lord Shaughnessy.

Q.—So that the statement you made in answer to my learned friend Mr. Campbell with reference to your interviews with Lord Shaughnessy would not include any interviews by you in connection with the Directorate?

A.—Not in connection with the Directorate, no.

By Mr. Campbell:

JOHN E. LANGDON (for Plaintiffs), Re-Examination.

Q.—There was a question I should have put to you in cross-examination. With my learned friend's permission I will put it now.

Your attention was called to a certain sentence in your despatch Exhibit P-135 speaking of the earning of the dividend. The last sentence in the second paragraph reads: "This means that earnings will be somewhat in the neighborhood of \$2,000,000"—referring to the earnings for the fiscal year ending September 30th, 1929.

10 A.—Yes.

Q.—Will you please look at the Balance Sheet of Canadian Industrial Alcohol Company which has been filed as Exhibit P-99, and, for the purpose of checking up Lord Shaughnessy's anticipation, will you please tell me the amount at which the net profit for the year is shown in that Balance Sheet?

A.—The amount shown in this Balance Sheet is \$2,073,977.46.

Q.—So, Lord Shaughnessy's anticipation of net earnings of \$2,000,000 was not very far from the mark, was it?

20 A.—Hardly.

Q.—You said Mr. Wilson was going to see Lord Shaughnessy about the Directors who had resigned. Did you know Lord Shaughnessy was absent from Montreal from the beginning of September to the beginning of October, 1929?

A.—Yes, I knew he had gone west then with the C.P.R. Directors.

Q.—So, Mr. Wilson would not be able to see him at that time, would he?

A.—No, he would not.

30 By Mr. McKeown:

Q.—Mr. Campbell has drawn your attention to this Balance Sheet Exhibit P-99, and to the net profits for the year shown at \$2,073,977.46. Are you accustomed to read Balance Sheets?

A.—Yes.

Q.—A great many of them come before you?

A.—Yes.

40 Q.—Could anyone tell from this Balance Sheet how much is written off for depreciation?

A.—Not from this Balance Sheet, no.

Q.—From the Balance Sheet Exhibit P-99 it is impossible to say how much has been written off for depreciation for the year?

A.—No.

Q.—So, you cannot judge whether the write off is adequate?

A.—No. The only way we could tell would be by comparing the Balance Sheet of September 30th, 1929, with the year preceding,

JOHN E. LANGDON (for Plaintiffs), Re-Examination.

and a detailed income account showing expenditures during the year.

Q.—Which is not here?

A.—Which is not here at all.

Q.—In the course of the evidence of Mr. Tyson, I think, it was established that after providing for the dividend and the cash bonus distributed in the year 1928-29 there was only something
10 in the vicinity of \$137,000 remaining. Is it customary for Corporations to run as close as that in their distribution of their earnings?

Mr. Campbell: I submit that is not legitimate re-examination, and further it is not fair to put a question of that kind to the witness unless his attention is called to the fact that there is a very large balance carried forward from previous years.

Mr. McKeown: Any balance carried forward and shown here
20 would be something of which he would have no knowledge.

Mr. Campbell: The surplus account has a very substantial amount at its credit.

Mr. McKeown: It is not cash.

Mr. Campbell: Whether it is cash, or alcohol which is subject to sale as raw material, it is still there.

Mr. McKeown: I am simply asking the witness whether it is
30 a general practice for Corporations to distribute to their shareholders so large a percentage of their earnings as is shown here.

Mr. Campbell: And my submission is it is not relevant to this case.

Witness: Some Companies do, depending upon the type of business.

40 By Mr. McKeown:

Q.—As a general rule is it done?

A.—Not as a general rule. They generally try to carry forward a fairly substantial balance.

Q.—This balance of \$137,000; with the Statement in its present form as it is before you would leave the shareholders in the position

JOHN E. LANGDON (*for Plaintiffs*), *Re-Examination*.

of being unable to judge of the adequacy of the write-off for depreciation, if any.

A.—Quite so. There is no way of determining from that just what the depreciation was, or how much.

Q.—And now we know we are in the position where the dividend has been passed?

10 A.—Yes.

Mr. Campbell: Thanks to Mr. McKeown, K.C., *et al.*

Mr. McKeown: Do not leave that child on my doorstep.

Mr. Campbell: Its parentage seems familiar.

By Mr. Campbell:

20 Q.—Will you please verify that the Balance Sheet Exhibit P-99 to which your attention has been called, says the amount shown as net profits is after making provision for depreciation and income tax?

A.—Yes.

Q.—Presumably the allowance was in accordance with established practice?

A.—Of this Company, yes.

30 Q.—And if any shareholder was interested in knowing what amount was charged to depreciation he could easily find out by asking at the Annual Meeting, or by communicating with the Secretary of the Company?

Mr. McKeown: He would be out of luck this year.

Witness: He would have that right.

Mr. McKeown: The Home Bank made a wonderful Statement the year before it wound up.

40 Mr. Campbell: Then, did you take Action for them, or against them?

Mr. Geoffrion: He was retained by the Assignee, on the side of the depositors. My learned friend Mr. McKeown and I were together, on the side of the depositors.

Mr. McKeown: And we were very successful.

JOHN E. LANGDON (for Plaintiffs), Re-Examination.

Mr. Campbell: Then, you will be able to offset that success against your failure in this case.

Mr. McKeown: If it ever occurs.

And further deponent saith not.

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

On this 14th day of April, 1930, personally came and appeared

ALEXANDER M. REAPER

recalled as a witness on behalf of plaintiffs, having been previously sworn, doth depose and say:

10

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

Q.—You have already been sworn in this case?

A.—Yes.

Q.—In the course of your examination at page 325 I asked you the following questions and you made the following answers:

20

“ We have reviewed with you what you did up to September 6th, proposals as of that time. What is your present plan to solve the financial problems of this Estate and the Incorporated Company?”

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 and to take care of the revenue expenditure of the Estate and to provide for the liabilities of the Estate by further capital distribution.

Q.—Is that all?

30

A.—That is all.”

Again, at the foot of page 350 following the same subject:

“ Q.—Perhaps to clear the matter up if he will get us the formula again and we will all know where we are starting there?”

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 by capital distribution in the way of reduction of capital of the Incorporated Company.”

And following out the subjects dealt with in the questions I have cited to you, we arrive, I believe, at a position where taking into account the requirements of the Estate at \$3,289,113.48, as fixed by you at page 358 and certain assets indicated by you amounting to \$2,023,832, as again determined by you at page 389 and which in turn are to be increased by \$763,500 as direct capital assets of the

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

Estate, bringing the figure up to \$2,787,332, as mentioned at page 390 of your deposition, left you with an amount of \$500,000 unprovided for in the realm of capital assets of the Estate, as suggested to you at the top of page 390 of your deposition. Will you, if you please, before I proceed with the additional matters I wish to submit to you, verify the items I have given you in this part of your evidence, in order that we might be in agreement as to what your previous testimony has been on that point?

10 A.—I have verified that.

Mr. McKeown, K.C.: Up to the point I have reviewed, we had come to a point where you indicated liabilities of some \$3,000,000 odd, which had to be met as capital assets of the Estate. You indicated direct assets of the Company as \$2,000,000 odd, aggregating \$2,700,000 odd, which you said could be made available to apply, and I brought you to the point where there were \$500,000 unprovided for.

20 (Whereupon an adjournment was taken until 2:30 o'clock P.M.)

AFTERNOON SESSION

2:30 O'clock P.M., April 4th, 1930

ALEXANDER M. REAPER

30 reappeared and continued his evidence as follows (in-chief):

By Mr. McKeown, K.C.:

Q.—From that point of your deposition you indicated by way of reduction of the item of \$500,000 left unprovided for, the insurance monies amounting to \$130,000?

A.—Yes.

40 Q.—And at that time you did not suggest any further available items against the figures which we reviewed?

A.—I don't recall any other items now; that is, omitting any reference to any of the Alcohol shares or the McNish debentures.

Q.—That appears from the other part?

A.—Yes.

Q.—At page 392 of your deposition you were asked with reference to the length of time it would take to work out the solution along the lines which you had indicated, this question:

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

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.

10 Q.—Could you give His Lordship some approximation?

A.—No, I could not.

Q.—Would it take a year?

A.—I could not give any definite date.

Q.—Would it take two years?

A.—I could not say.

By His Lordship: It has taken two years already.

By Mr. McKeown, K.C.:

20 Q.—I mean from the present time. We know what has occurred in the last two years and I am trying to anticipate what might happen in the next two years. Can you suggest to His Lordship that beyond any question such a plan as you have just suggested could be worked out in two years?

A.—I could not make any statement as to just the exact time. It depends a good deal on conditions."

30 Since this evidence was given by you—you recall having given the evidence which I have just cited, with reference to the probable length of time it would take to work your plans out for caring for the capital indebtedness of the Estate?

A.—Yes.

Q.—Since you gave that evidence there has been some change come over the scene with reference to the assets which you indicated as being included in the item of \$2,786,332, which you had suggested would be available to meet the capital indebtedness of the Estate?

A.—Yes.

40 Q.—You had included in making up the items available for capital assets cash of the Incorporated Company at \$1,250,000. Do you remember that?

A.—Yes.

Q.—At the present time is that item available with which to meet the capital liabilities of the Estate?

A.—No. That amount is not now available.

Q.—Approximately one million dollars of that amount has been applied toward the payment of the Bank's indebtedness?

A.—Yes.

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

Q.—Here in Montreal?

A.—The Bank's indebtedness has been reduced by that amount.

Q.—That is, the Montreal loan?

A.—The Montreal loan, yes.

10 Q.—The shortage of \$500,000 which had been established on the occasion of your previous examination will have to have added to it one million dollars in connection with that item which you have just discussed here. In other words, the cash available which at that time was \$1,250,000 is now reduced to, I presume, approximately \$250,000?

Mr. Campbell, K.C.: I object to the admissibility of this evidence. It all has reference to a very recent situation for which the defendants in this case, in our submission, were in no way responsible and the picture cannot be reviewed in the light of what has happened in the last few weeks, over which the defendants have no control. In my submission, we ought not to go into that aspect of
20 this whole controversy. What has happened since the action is not relevant, and cannot justify the question and cannot be in any way attributable to the defendants. I do not think the defendants can be called upon now to offer a solution on the spur of the moment of the facts or problems which have arisen as the result of something which has, as I say, in our submission, flowed from the institution of these proceedings. What has happened in the latter weeks of March cannot possibly justify an action taken on the 18th of January. In my submission all that evidence is irrelevant and therefore illegal.

30 Mr. McKeown, K.C.: The defendants are reaping that which they sowed. We set up the general condition of the Estate, and we claim it was in a state of chaos and that it was heading for a situation which arose at an earlier date than any one has anticipated. I think the principle followed by Your Lordship in allowing in a great deal of evidence of facts which have actually transpired within a comparatively short time and even since the institution of the action, indicates that the whole thing had its root further back than the action and was absolutely sound in law, and we are entitled to make this proof. It is too much of a good thing to be told that the institution of this suit has brought along conditions such as they are. Other-
40 wise it would mean we were to be debarred from taking action, and they might plunge the Estate straight ahead with no one capable in law of applying the brakes.

The Court: I think it is all to go in under reserve.

Mr. McKeown, K.C.: And I cannot think how my learned

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

friends can seriously contend it is not relevant. I may say the admission which was put in recently is of exactly the same class. It sets up the correspondence, and under express reserve of the suggestion of my learned friends' rights, both parties can make evidence, of course always under the objection.

10 The Court: I have admitted all sorts of things now. It might be that the facts are different. We will see at the time of the argument. We will take the matter into consideration.

Mr. Campbell, K.C.: In answer to the point my learned friend urges, that our point means nobody can take a suit, they cannot accuse the defendants of the responsibility for the consequences of the suit.

20 The Court: If the suit has any consequence, certainly the plaintiff will be the first to bear it because the Estate is there.

Mr. Campbell, K.C.: If the suit brings about as a result certain conditions, those conditions in our submission cannot be charged to the defendants.

The Court: You are arguing that certain facts that are apparently against the defendants are attributable to the plaintiff.

30 Mr. Campbell, K.C.: We do not even admit they are apparently against the defendants. Our submission is they are, on the face of the record, as chargeable to the plaintiff.

The Court: Objection reserved.

(Question read as follows:

40 " Q.—The shortage of \$500,000 which had been established on the occasion of your previous examination will have to have added to it one million dollars in connection with that item which you have just discussed here. In other words, the cash available which at that time was \$1,250,000 is now reduced to, I presume, approximately \$250,000.")

A.—It would appear that way, but I think they have actually a little more cash today. At that time I think we were figuring on the balance sheet as at the end of December.

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

By Mr. McKeown, K.C.:

Q.—Whatever the amount is, it is practically cut \$1,000,000?

A.—\$1,000,000 has been paid up.

Q.—And the million dollars has not been paid off against any capital indebtedness of the Estate, has it?

10 A.—No. It was paid off against the indebtedness of the Company.

By the Court:

Q.—Against the indebtedness of Alcohol?

A.—No, of the Incorporated Company.

By Mr. McKeown, K.C.:

20 Q.—You also had included in this total sum available of \$2,787,000 an item of Imperial Tobacco Company at, I think, \$60,000?

A.—I think in our calculation we took it at \$50,000. It has a market value of \$60,000.

Q.—Taking it at \$50,000; you still have that Imperial Tobacco stock?

A.—We still have it.

30 Q.—Have you in mind to use it for a purpose other than to apply it to the capital indebtedness of the Estate by way of a change of programme, which you had at the time of your previous examination?

A.—Well, that might depend on how the matter was viewed. We had intended to use it for a certain purpose, to make up certain requirements of the Incorporated Company, but included in this requirement of the Incorporated Company was an amount of \$200,000 on account of the Estate.

Q.—Do you mean in the original figures given in the previous testimony which we have reviewed?

A.—No. I thought you were referring to this——

40 Q.—I am asking you whether—when you were examined and gave the testimony which I have referred to on pages numbered from 330 to, say, 390 of the record, you had in mind to use that Imperial Tobacco stock when liquidated, to be passed or to be used by the Estate towards the capital indebtedness of the Estate, had you not?

A.—Yes. We had figured it to be used that way.

Q.—It was one of the items going to make up this sum of \$2,787,000. Is that right?

A.—Yes.

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

Q.—And now I put it to you, you have in mind to make a different use of the Imperial Tobacco stock whereby it will not be available to be passed, which would apply on the capital assets of the Estate?

A.—Yes, it would be available for the capital assets of the Estate.

Q.—It would still be available? Is that what you mean?

10 A.—Yes.

Q.—In what way?

A.—Because at the present time it is intended to pay \$200,000 by the Incorporated Company on account of capital disbursements and in order to make up that amount this Imperial Tobacco stock is figured to be used.

Q.—So that that should not be added to the other figures which we have determined here, that is the original shortage of \$500,000 and the additional shortage of \$1,000,000, making \$1,500,000?

20 A.—No.

Q.—\$60,000 for the Imperial Tobacco should not be added to this figure for the moment?

A.—No. As a matter of fact, that figure of \$1,000,000 should only be treated as \$900,000 in that case because, when we figured up the total assets of the Incorporated Company which could be applied, you took off 10 per cent of the total. If you are going to apply this million dollars, 10 per cent should not be included.

30 Q.—You cannot make a distribution of other capital revenue of the Incorporated Company and give 100 per cent of it to the Estate, can you?

A.—No.

Q.—In the notes which I have of the manner in which the total assets of the Incorporated Company and of the Estate available to be applied to capital indebtedness of the Estate was made up, we have this item "Cash, etc." from the Incorporated Company in at \$1,250,000. Is that amount not cut down by \$1,000,000?

40 A.—The amount is cut down by a million dollars but when we made up the total, we made the calculation, we took the total assets available by the Incorporated Company and deducted 10 per cent, so if you take \$1,000,000 and apply it on the debts of the Incorporated Company itself, you reduce that.

Q.—Your suggestion is we should have spoken of \$900,000 for the purposes of our former figures?

A.—Yes.

Q.—And that would bring the amount down, as far as we have gone, to \$1,400,000?

A.—In round figures, approximately.

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

Q.—And then that \$1,400,000, subject to your contention, in connection with the insurance monies of \$130,000—is that right?

A.—Yes.

Q.—Which we took off for the purposes of your examination at the present stage would leave \$1,270,000 of a shortage in the assets indicated by you at the present time available to be applied to the capital indebtedness of the Estate. Is that right?

10 A.—Yes, approximately. As I said, there might be some little cash received since the first of the year, but, on the basis of the previous figures, approximately.

Q.—When you were examined on the previous occasion you could not tell His Lordship as against the shortage of \$500,000, or the amount of \$300,000, whether it was going to take one or three years to work out a solution of the payment of the capital indebtedness of the Estate. Faced with the increase from your indicated assets, where were you to meet the capital indebtedness of the Estate, that is, an increase from \$370,000 up to \$1,270,000? Will you give His Lordship
20 your estimate of how long it would take to work out the payment of the capital indebtedness of the Estate upon the formula which you gave us then, and which I suppose you still adhere to?

Mr. Campbell, K.C.: Objected to as hypothetical.

The Court: Objection reserved.

The Witness: I could not make an estimate now.

30 By Mr. McKeown, K.C.:

Q.—Assume Lord Shaughnessy and yourself are permitted by the judgment in this case to continue in office, do you still say you could not make any estimate of how long it would take you to work out the capital indebtedness of the Estate?

A.—No. It is difficult to say just when, just how long it would take.

40 Q.—At page 402 of your deposition you were asked these questions and gave these answers with reference to the revenue position of the Estate:

“ Q.—Will you tell His Lordship where you were going to get any money for revenue purposes of the Estate excepting out of the Incorporated Company, for revenue sources for the next twelve months if you remain in office?

A.—It would practically have to come from there mostly.

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

Q.—Where will the revenue come from in the event of Alcohol dividend being cut off, the revenue of the Incorporated Company?

A.—That would change the picture, of course, very considerably.

10 Q.—How much did this dividend amount to quarterly?

A.—Approximately \$210,000.

Q.—Approximately \$210,000?

A.—Yes.

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 twelve months?

20 A.—During the year it would amount to that.

Q.—And without 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 freely used as revenue in that Estate during that period?

A.—No, not if this were wiped out. There would not be sufficient revenue to cover current charges."

30 Do you remember having given that evidence at that time? At that time the dividend on Alcohol was being paid or maintained, whichever is the proper word, in connection with Alcohol's dividend; had not been deferred, passed, had it?

A.—No.

Q.—And since then the dividend period has arrived, the Board has met, and has announced that the dividend is deferred?

A.—Yes.

Q.—Any date of the announcement for the resumption of the dividend?

40 Mr. Campbell, K.C.: If you will give us the date of the judgment in this case we will tell you the date of the dividend.

The Witness: No, sir.

By Mr. McKeown, K.C.:

Q.—You are a Director of the Alcohol Company and you participated in that Meeting when the dividend was deferred, I presume?

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

By the Court:

Q.—When was the Meeting held?

A.—Towards the end of March.

Mr. Campbell, K.C.: The last week in March.

10 Mr. McKeown, K.C.: Perhaps the witness might have the assistance of Mr. Lawrence for the correct date.

Mr. Campbell, K.C.: About the 22nd or 23rd of March.

Mr. McKeown, K.C.: It would be well to have that accurate.

Mr. Lawrence: 24th of March.

By Mr. McKeown, K.C.:

20 Q.—In point of fact, the Company was asking for financial assistance from its Bank just about the period when the dividend question would have come up. Is that right?

A.—That is the Alcohol Company?

Q.—Yes.

A.—Yes.

30 Q.—And I take it that before March 21st, which is the date of Exhibit P-129 which I now show you, with which I think you are familiar, the Alcohol Company had applied to the Bank in connection with its finances?

A.—It had, yes.

Q.—The fact of the matter is this letter which I have now shown you, in the third paragraph, refers to a communication which had been addressed by the Bank to the Consolidated Distilleries under date March 18th, 1929.

A.—Yes. It is referred to there.

Q.—Did you not have a Meeting of the Directors on the 17th of March in connection with this very same subject?

A.—I don't think that is just the exact date.

40 Q.—Well, was it before or after the receipt of that letter of the 18th, to which I have drawn your attention?

A.—It had to be after the 18th. It was after the 18th.

Q.—Was it on the 18th or the 19th?

A.—I am not sure of the exact date. Possibly it was the 19th. Probably Mr. Lawrence can give us the exact date.

Q.—I have verified from Mr. Lawrence the meeting of the Directors was on the 19th, when the letter of the 18th was dealt with.

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

A.—Yes.

Q.—And that was all prior to the correspondence shown by the Exhibits P-129 to P-139, the first letter of which is dated March 21st, 1929?

A.—Yes.

Q.—In addition to the payment already made of a million dollars, I think—are you preparing to make a further payment of
10 \$500,000?

Mr. Campbell, K.C.: It is bad enough to have in the record evidence of facts that are past.

The Court: It is bad enough to have the present.

Mr. Campbell, K.C.: I submit we should not be asked as to what we are going to do in the future.

20 Mr. McKeown, K.C.: It is so tied up for the present it is sufficiently definite.

Mr. Campbell, K.C.: It is going to the last limit of extremity when we put in the record what happened yesterday.

Mr. McKeown, K.C.: I will satisfy myself with Mr. Campbell's suggestion, and we will not go past—we won't even go into this month at all.

30 By Mr. McKeown, K.C.:

Q.—Will you look at Exhibit P-138 dated March 27th, 1929, and at page four of that Exhibit, and at the letter therein cited dated March 26th, 1929, addressed to Lord Shaughnessy, and say whether you are aware of the request for \$500,000 therein referred to, made on that date?

A.—I am.

Q.—Has that amount been paid yet?

A.—No, sir.

40 Q.—Is it the intention of Lord Shaughnessy and yourself to pay it, provide for it?

Mr. Campbell, K.C.: We are going to do the best we can in the circumstances in which we are placed.

Mr. McKeown, K.C.: If your best is your worst it is going to be terrible.

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

Mr. Campbell, K.C.: It is surely not legitimate to question the witness as to what he is going to do in the future.

The Court: Ask him if he has the cash available.

10 Mr. Campbell, K.C.: We don't want to be asked as to what we are going to do. We are going to do what we have to do.

Mr. McKeown, K.C.: As little as possible. That is what you have been doing, as little as possible, but you cannot have as much choice in the future as in the past.

Mr. Campbell, K.C.: We will have to trim our sails accordingly.

20 Mr. McKeown, K.C.: It is too bad you did not think of that earlier.

Mr. Campbell, K.C.: We did think of it. We were sailing on nicely until something in the nature of a squall happened.

Question read as follows:

“ Is it the intention of Lord Shaughnessy and yourself to pay it, provide for it,—”

30 By Mr. McKeown (continuing):

Q.—On behalf of the Incorporated Company?

A.—Yes.

Q.—Where are you going to get the money with which to meet it?

A.—Well, we intend to get that from our call loans and insurance.

Q.—How much are the balance of the call loans?

40 A.—\$480,000.

Q.—How much is the balance of the insurance?

A.—\$130,000.

Q.—Neither of these have been collected up to date?

A.—They have both been collected.

Q.—Why do you say “ we intend to do it”

A.—It has come from that.

Q.—You have mentioned something about the Incorporated

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

Company proposing to provide \$200,000 for the Estate. Is that right?

A.—Yes, sir.

Q.—Is that for early payment, that \$200,000?

A.—Yes.

10 Q.—Now, have you got any interest charges against the Incorporated Company for the period of the next six months, to the 30th of September?

A.—Yes.

Q.—How much do they amount to?

A.—We figure we would have to pay out approximately \$84,000—\$84,400.

Q.—What about the expenses of operating the Incorporated Company?

A.—In that period we estimate approximately \$30,000.

Q.—\$30,000. What does that make a total of?

20 A.—Including the \$500,000?

Q.—Yes.

A.—\$814,000.

Q.—Including the \$500,000?

A.—Yes.

Q.—This \$30,000, I presume, is made up largely of salaries of Lord Shaughnessy and yourself?

A.—They are included there, yes.

Q.—That is about \$3,000 a month, is it?

30 A.—Practically, yes.

Q.—And for the next six months that is \$18,000 altogether for salary?

A.—Yes.

Q.—That is the salaries as officers of the Incorporated Company only?

A.—Officers of the Incorporated Company.

Q.—That does not include your remuneration in your case as an executor of the Estate, which is at the rate of \$5,000 a year additional?

40 A.—That is not included.

Q.—Is Lord Shaughnessy's either?

A.—No.

Q.—Or Lord Shaughnessy's salary in Alcohol?

A.—No.

Q.—That has no reference to that?

A.—No.

Q.—Against this sum you figure you are going to require for the

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

Incorporated Company in the next six months, you have spoken of items, balance of call loans, \$480,000 and the balance of the insurance monies \$130,000 forming together \$610,000. Where are you going to get the balance of \$200,000 odd from?

A.—Interest on McNish debentures amounting to \$74,000 odd. dends during that period.

10 A.—There are approximately \$12,500 would come in on divi-

Q.—On securities held by the Incorporated Company?

A.—On securities held by the Incorporated Company. That makes a total of \$696,691.90.

Q.—And still leaves you short?

A.—\$117,708.

Q.—How do you propose to raise that?

A.—We consider disposing of the Imperial Tobacco Company's shares, 6,000 shares, which would bring approximately \$60,000, and by borrowing from the Royal Bank stock about \$75,000, it would
20 give us \$135,000, and should leave approximately \$17,000 balance.

Q.—That would leave about \$17,000 odd over and above what you provided for?

A.—Yes.

Q.—In point of fact, heretofore, you have had a call loan on McNish Debentures?

A.—We had a call loan on McNish Debentures.

Q.—Of approximately how much?

A.—\$2,250,000.

Q.—At the New York office?

30 A.—Yes.

Q.—Is that still on call, or is it on time now?

A.—According to that letter, it is going to be adjusted. It is in process of arrangement.

Q.—When it is arranged, is it going to be on call or on time?

A.—On time.

Q.—For how long?

A.—Till the end of September.

Q.—Until the end of September next?

40 A.—1930, yes.

Q.—What collateral is there against that loan? Has the collateral been increased since you gave your evidence recently? What was the collateral at that time?

A.—500,817, I think.

Q.—\$5 par, is that right?

A.—Yes.

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

Q.—That is something over \$2,500,000, the par value for the McNish Debentures?

A.—Yes.

Q.—What else was the collateral at the time you formerly testified?

A.—160,000 Alcohol “A” shares.

10 Q.—In what way are these securities to be increased?

A.—By 75,000 shares of Alcohol “A”.

Q.—Additional?

A.—Additional.

Q.—So, then, the collateral would consist of

A.—There has been a slight change. That has been reduced to 497,817 Debentures.

Q.—That would be, at \$5 par value, \$2,498,085?

A.—Yes.

Q.—And in addition 235,000 class “A” shares of Alcohol?

20 A.—Yes.

Q.—And the loan is to be continued until the 30th of September next?

A.—Yes.

Q.—Has the additional collateral been furnished?

A.—Not yet.

Q.—But will be forthwith?

A.—Yes.

30 Q.—In point of fact, looking at the affairs of the Incorporated Company for the next six months, will there be any operating profit from revenue sources against revenue expenditure?

A.—If Alcohol does not declare a dividend.

Q.—Assuming that present conditions will not continue?

A.—There would not be an operating profit.

Q.—Would there be an operating loss?

A.—I think so.

Q.—So, so far as the Company is concerned under existing conditions, during the next six months of its operations, you admit it can only result in a loss?

40 Mr. Campbell: He has not admitted that.

By Mr. McKeown:

Q.—Under the same conditions?

A.—Yes, if there is no Alcohol dividend paid in the interval.

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

By Mr. Campbell:

A.—Yes.

Q.—Is there not enough operating revenue to cover operating charges?

10 A.—Mr. McKeown refers to operating charge for the six months, but not for the year.

By Mr. McKeown:

Q.—Will you check your figures with me, and see if it is not the fact that the estimated operating expenditure for the next six months, is \$114,400, and that your estimated revenue for the same period is only \$86,691.90?

20 Mr. Campbell: Are you talking of the Company or the Estate, Mr. McKeown?

Mr. McKeown: I am talking of the Company.

Mr. Campbell: Do you follow Mr. McKeown, Mr. Reaper?

Witness: Yes.

30 By Mr. McKeown (continuing): Leaving an estimated deficit of \$27,708.10?

A.—This statement is only showing what we expected to have in the way of cash receipts and disbursements. It was not only revenue.

Q.—What cash receipts and disbursements, except revenue. You have the dividends down there and the interest on Debentures?

40 A.—But I have only taken this—interest on Debentures were taken in because we took in either side, bank loans, one pretty well offsetting the others, but the total expenditure periods are not taken in.

Q.—The total expenditure periods?

A.—Yes.

Q.—Would the expenditure be more than I suggest of \$114,400?

A.—Yes.

Q.—How much more?

A.—I could not tell exactly. There is the interest on the Serial Notes.

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

Q.—To begin with, how much of those Notes are outstanding?

A.—\$4,140,000.

Q.—You have taken into consideration on that side, the interest to Mr. Waddell and to Mr. Marler?

A.—Yes. That has to be paid in cash.

Q.—That only amounts to something like \$14,200?

A.—Yes.

10 Q.—How much is the total interest for the six months period?

A.—It is really only a matter of \$7,200.

Q.—Is there six months overdue interest?

A.—It has been paid since. At the time I made the memorandum here, it was not paid.

Q.—Taking the figures which you have yourself given, in making up the amount of \$814,400 of disbursements, it is not true there are included therein \$114,400 of items which are chargeable to revenue disbursements?

20 A.—Yes.

Q.—And is it not true that taking your same figures under which you established the revenue for the same period at \$696,691.90, there are included in that only \$86,691.90 from revenue sources?

A.—Yes.

Q.—And therefore, that there is an estimated revenue deficit upon those two sides of figures of \$27,708.10?

A.—Yes.

30 Q.—Which is more than covered by the operating administrative expenses of the Corporation during the same period, of \$30,000?

A.—Yes.

Q.—I understood you to say that in addition to the revenue disbursements chargeable in that period as contained in the figures which we have just reviewed, there would be the interest on the Serial Notes at present outstanding for \$4,140,000 of capital at six per cent, less the notes held by Mr. Waddell and Mr. Marler, and how much would that original item amount to?

A.—\$117,000.

40 Q.—\$117,000 additional for interest on Serial Notes during the next six months?

A.—Yes.

Q.—Of course, there might be some of these expenses in connection with these coal and oil fields, exploration companies and Sudbury mines, or is that a thing of the past?

A.—I do not think there will be very much in the next six months.

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

Q.—Let us hope for the best. How about Cadillac coal, Jennison and Company and other investments?

A.—There won't be anything in Jennison. There may be something in Cadillac coal.

Q.—Are you taking care of these investments, Cadillac coal?

A.—Partly.

10 Q.—Where is the item as to Cadillac coal, the figures which we reviewed together?

A.—It is really taken care of in the amount of the bank, which has been reduced. It is being taken care of now.

Q.—Has it been paid?

A.—\$30,000 has been taken care of.

Q.—Paid out?

A.—Has been paid out.

Q.—Since when?

A.—Towards the end of last month.

20 Q.—Towards the end of March?

A.—Towards the end of the month.

Q.—So your prophecy that some money might be required, has come true to the extent of \$30,000 anyway?

A.—We said they would probably, until this fall.

Q.—You estimated, I think, on a previous occasion, which would I presume, include the \$30,000 which has been paid out recently, that the amount would be \$50,000. Are you able to revise your estimate upward or downward?

30 A.—No—it might be. I don't think it will be; not more.

Q.—It might be?

A.—I don't think it is likely to be any more.

A.—Not more than \$50,000.

A.—Not more than \$50,000.

Q.—Altogether?

A.—Altogether.

Q.—And \$30,000 of that \$50,000 has gone out?

A.—Yes.

40 Q.—Is there any more good luck shown in the way of disbursements?

A.—No. We will benefit to some extent by the bank loan being reduced.

Q.—That is, in the matter of interest?

A.—Yes.

Q.—But you have taken care of that in your figures here, have you not? What is this item in the disbursements?

A.—I was referring to the Statement. It has been taken care of.

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

Q.—Included in your figures of \$814,400, that is the interest on the bank loan?

A.—The interest on the bank loan is taken into consideration.

Q.—We have it from you that the prospect is, there will be no profits of the Incorporated Company during the next six months?

A.—No, not for the six months period.

10 Q.—And if the dividend is not resumed on Alcohol for the following six months, it will be the same thing in the prospects?

A.—In the prospects.

Q.—That is, the prospects for this same Corporation which, by this Annual Statement, Exhibit No. 10, showed a profit of \$711,910.71?

20 Mr. Campbell: I submit, my Lord, that this is a very misleading and improper way of putting the question. Mr. McKeown is asking the witness as to what is going to happen in the next six months, and he has got the witness to make certain anticipations, and when he says, "As against a profit", and he gives the proceeds of the whole calendar year, surely my learned friend should not try to mislead the witness.

Mr. McKeown: I did not mislead him. I am putting it to him not only for the next six months, but the preceding six months.

30 Mr. Campbell: Ask the witness what the position will be at the end of the calendar year, taking the calendar year as a year, but to ask him to anticipate the next six months, and then compare these unproductive six months with the whole year of the productive months, seems to me to be most unfair and misleading to the witness.

Objection reserved.

A.—Yes, when the Alcohol dividends are not paid, it is liable to run at a loss for the calendar year ending September 30th, 1930. There should be some profit shown.

By Mr. McKeown:

40 Q.—Do you base that statement on the expectation of the Alcohol dividend?

A.—No. I base it on having already received six months dividend.

By Mr. Campbell:

Q.—That is, at the end of the current financial year there will

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

probably be a profit, even if there are no further dividends from Alcohol?

A.—Yes.

By Mr. McKeown:

10 Q.—Because of the dividends already received?

A.—Yes.

Q.—Let us take a bird's eye view of the Estate's condition. What is the prospect for any revenue from the Estate in the next six months?

By the Court:

Q.—Has the Estate got anything that is bringing in any revenue?

20 A.—Very little, just a few shares of Royal Bank stock. Outside of that it has nothing. It is depending on the Incorporated Company.

By the Court:

Q.—That won't pay the carrying charges of the house?

A.—Oh no.

By Mr. McKeown:

30

Q.—You have some pressing obligations in connection with the Estate, that is, a matter of making provision for the further payment on account of Succession Duties?

A.—Yes.

Q.—That is, to the extent of \$100,000?

A.—Yes.

Q.—I understand that has already been paid?

A.—It has.

40 Q.—With moneys received from the Incorporated Company by way of an additional loan from the Incorporated Company to the Estate?

A.—Yes.

Q.—Then, have you any further pressing obligations which must be met by the Estate?

A.—There is an other item of \$100,000 of accrued interest.

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

Q.—Is that in connection with the Marriage Contract of Lady Henrietta Davis? It is intended to provide for that.

A.—It is intended to provide for that.

Q.—At once or very shortly?

A.—Yes.

Q.—What do the annuities under the will amount to per month?

10

A.—About \$15,000 a month.

Q.—For the seven months period?

A.—\$105,000.

Q.—How about salaries?

A.—The salaries of the Estate are being deferred.

Q.—It has been suggested by His Lordship that there are quite a number of properties vested in the Estate which have a carrying charge of considerable sums outside of interest on the investment?

A.—There are two properties, apart from the Estate in France, that cannot be sold.

20

Q.—About how much are these carrying charges per month?

A.—The properties here, together with the Estate in France, and general expenses of the Estate, I should think would be approximately \$4,000 per month.

Q.—And for the seven months it would be \$28,000 additional?

A.—\$28,000, yes.

Q.—Will you tell His Lordship how you intend to provide for these various items which we have reviewed together?

30

A.—At the time I had that memorandum, we had \$147,000 in the bank, and there is a dividend, a small amount of \$1,164, and from Sir Mortimer Davis Incorporated we have received \$200,000.

Q.—By way of loan?

A.—By way of loan.

Q.—Making a total of \$348,164.34?

A.—Yes.

Q.—Which would leave a surplus estimate for six months of \$4,510, is that it?

A.—Yes, approximately.

40

Q.—What about these bequests, to Mr. Godsall, chauffeur, and these other sums, and the Charities. How do you propose to provide for them?

A.—That had not been definitely arranged. We only figured what we had actually to pay out immediately, and during that period that the others could probably stand for the time being.

Q.—Now we have approached the subject, do you say that your plan is to have them stand for the next seven months unpaid?

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

A.—I think that was the intention, to let them remain for the time being.

By the Court:

Q.—Do you say the same thing of the amount due under the Marriage Contract?

10 A.—No. It was intended to pay that.

Mr. Campbell: That is provided for under the Scheme of arrangement.

Mr. McKeown: That is provided for, but they have been threatened by suit.

By Mr. McKeown:

20 Q.—You have received an intimation that if that amount is not paid, proceedings will be instituted?

A.—We did receive an notification to that effect.

Q.—From Mr. Geoffrion who has been the Attorney of Lady Henrietta Davis for many years?

A.—I don't know how many.

Q.—Quite a number of years to your knowledge? Long before this litigation started?

30 A.—I was under the impression that another lawyer looked after her interests for some time.

By the Court:

Q.—Is the question of Succession Duties settled?

A.—No, not altogether. In this estimate we have taken care of the further payment of \$100,000.

By the Court:

40 Q.—How much have you paid so far?

A.—That makes \$700,000 so far that has been paid.

His Lordship: I thought that proceedings were stopped at the beginning of this trial, in order to meet the exigencies of the Government.

Mr. McKeown: They were going to sue if they were not paid.

ALEX. M. REAPER (recalled for Plaintiffs), Cross-Examination.

Mr. Campbell: That is when we paid the other \$100,000. We paid \$100,000 since this trial started by arrangement of Counsel. An additional \$100,000 has been paid to the Provincial Government and, if and when, this litigation is decided, the matter will be further discussed. We have paid \$700,000 to date. It is still an open question whether we owe any more or have not already overpaid.

10 By Mr. McKeown:

Q.—Is it the plan then, that all bequests, including the bequests to the Notre Dame Hospital, the General Hospital, and the Jewish Federation, the *mise-en-cause*, and all the other individuals are to be deferred for seven months, without any further plan at the present time than deferring them?

A.—Unless other circumstances arise in the interval.

20 Q.—The result of all this is, that it is a rather dubious outlook for the two plaintiffs, Lady Davis and Mr. Mortimer Davis Junior, in the matter of their claim for the surplus revenue obviously for the next six months anyway?

A.—I think that condition has existed from the beginning. It was expected it would take some time before there would be surplus revenue over and above the annuity.

30 Q.—Now that we have also got upon that subject, can you give His Lordship any suggestion as to any period, however remote, when there is likely to be any revenue to come under the operation of the clause of Sir Mortimer's will under which the widow and his son were to divide the surplus revenue of the Estate?

Mr. Campbell: I submit we cannot be asked to grope into the future.

Mr. McKeown: You have been in charge two years, and you ought to be able to get around and see something.

40 Mr. Campbell: If you had not come along we could see further than we can see now, but you have obstructed the landscape within the last three months.

Mr. McKeown: As it seems to worry you very much, Mr. Campbell, I am going to leave that question entirely to His Lordship without the assistance of Mr. Reaper.

Cross examined by Mr. G. A. Campbell, K.C., of Counsel for defendants:

ALEX. M. REAPER (recalled for Plaintiffs), Cross-Examination.

Q.—Mr. Reaper, you referred in your testimony to the fact that since you testified before, the Incorporated Company had reduced its indebtedness to the figures, in the sum of \$1,000,000, by a payment of that amount, of substantially that amount, in reduction of the amount carried in the Montreal Agency?

A.—Yes.

10 Q.—When had that loan originated? How long had it been outstanding?

A.—From March 1st or 2nd, 1928.

Q.—That is, it was a loan which originated during the lifetime of Sir Mortimer Davis?

A.—Yes. It was a loan that was got in connection with the purchase of the " B " stock.

Q.—And it had been outstanding all that time as a call loan?

A.—Yes.

20 Q.—Of course, that was carried on the books of the Incorporated Company as a liability?

A.—Yes.

Q.—And having reduced your liabilities by that extent, you have to the same degree increased the value of the shares of the Incorporated Company? You have reduced the liabilities on the liability side?

A.—The liability has been reduced.

Q.—You have taken the assets from the asset side?

A.—Yes.

Q.—Your position is no worse?

30 A.—No, it is practically the same.

Q.—In other words, you have reduced your liability, and you have used an asset to do it?

A.—Yes.

Q.—But the shares of the Incorporated Company are not diminished in value by that operation?

A.—No.

Q.—In your judgment, have your difficulties in the handling of the problems of this Estate, been diminished or increased by reason of the pending litigation?

40

Mr. McKeown: I object. If he says, yes, where is it? If he says, no, where is it?

Mr. Campbell: It seems that you have added to our difficulties. That is what I contend. I am not criticizing.

Mr. Geoffrion: It is a matter of argument.

ALEX. M. REAPER (*recalled for Plaintiffs*), *Cross-Examination*.

His Lordship: Objection reserved.

A.—Yes, I think it has.

10 By Mr. Campbell:

Q.—Were these advances for which the Alcohol Company, or its subsidiaries, applied to its bankers, to which you testified in your examination-in-chief, other than advances in the ordinary course of business? They were just the ordinary advances which any industrial enterprise is liable to make through its bankers for the purpose of carrying on its business?

A.—Yes.

20 Q.—Was this application that was made to the Bankers of the Alcohol Company for the accommodation necessary to enable it to carry on its business in the ordinary course, in any way an unusual operation in the course of any industrial concern?

A.—No.

Q.—I mean, do not many industrial companies in the ordinary course of their business go to these Bankers for accommodation for the same purpose as Alcohol asked its Bankers for accommodation?

A.—Yes, most industrial companies do.

30 Q.—You referred in your testimony-in-chief to the small reduction in the amount of the McNish loan outstanding, and in the number of Debentures held by the bank as collateral, first of all, the reduction of the bank loan on the Debentures and the reduction on the collateral carried. To what did that refer?

A.—I think we had only referred in the reduction of the bank loan to an amount of

Q.—(Interrupting): You referred to some small reduction?

A.—In mentioning the collateral, I mentioned the Debentures had been reduced by 3,000 Debentures.

Q.—Just explain that.

40 A.—Those 3,000 represented the loan which had been carried by Lord Shaughnessy, and which has been paid off.

Q.—That is when this situation arose under which this adjustment of your figures was made, Lord Shaughnessy took up his share of the additional, and received possession of his share of the collateral?

A.—He did.

Q.—Did he do the same thing in regard to the Alcohol "B" shares?

A.—The same thing with those. He felt if the bank came and

ALEX. M. REAPER (recalled for Plaintiffs), Cross-Examination.

asked for conditions in connection with the Company account, he should take up his part of the loan.

Q.—So, he took up his loan which was carried against the Alcohol “ B ” shares, and his loan which was carried against the McNish Debentures?

A.—Yes.

10 Q.—And paid them to the Company?

A.—And paid them to the Company.

Q.—Does that clear the slate as far as Lord Shaughnessy’s loans are concerned?

A.—Yes.

Mr. McKeown: I object. We contend he owes \$230,000.

Mr. Campbell: Subject to my learned friend’s interpretation of the contract.

20 By Mr. Campbell:

Q.—On the books of the Company, does that clear the slate?

A.—It is clear.

Q.—What was the date of the last financial statement of the Incorporated Company? As of what date was the last figure?

A.—September 30th, 1929.

Q.—We have not established a balance since that date?

A.—No.

30 Q.—As at September 30th, 1929, what was the amount carried forward at the credit of undistributed revenue?

A.—\$961,951.66.

Q.—So that you would have that at the credit of the Incorporated Company’s revenue account undistributed on that date?

A.—Yes.

Q.—Then, since that date, you have received among other things, how many Alcohol dividends?

A.—Two.

40 Q.—And other sources of revenue?

A.—Yes.

Q.—I am not questioning their size; in other words, can you state that even if, peradventure, Alcohol dividends are not resumed before the 30th of September next, that for the financial year then ending, the Incorporated Company will still show an operating profit for the year?

A.—It should, yes.

ALEX. M. REAPER (recalled for Plaintiffs), Cross-Examination.

By the Court:

Q.—How is that surplus invested?

A.—That has been used for the general purposes of the Company.

10 By Mr. Campbell:

Q.—It is in all the assets of the Company, just as all the funds of the Company—the funds of the Company are not earmarked in any particular asset. They are there. They are invested?

A.—And as at September 30th, \$961,000 had been advanced to the Estate at that time.

By the Court:

20 Q.—How does the Estate stand then? Has the Estate a surplus or deficit?

A.—Well, it still has a deficit on revenue account, which might be offset by the declaration of the dividend and applied against the advances.

By the Court:

Q.—Even in that \$961,000?

30 A.—No, it has considerable surplus if that is taken into account.

By Mr. Campbell:

Q.—In your former testimony you described in reference to the meeting which was held on December 6th, or whatever date it was the meeting was called, that if the dividends you contemplated there had been declared, certain bookkeeping entries would be made on the books of the Incorporated Company which would have had the result of wiping out these advances which had, up to that date, been made by the Incorporated Company to the Estate?

40 A.—Yes, or would have been applied against the revenue deficit as at that date, and the balance applied against capital.

Q.—And the dividend declared out of revenue would have offset the advances on revenue account that had been used for revenue purposes, and the other items taken care of by a reduction of capital?

A.—Yes.

Q.—Which had been used for revenue purposes of the Estate,

ALEX. M. REAPER (recalled for Plaintiffs), Re-Examination.

that is, items which had been advanced by the Incorporated Company to the Executors to be used for capital expenditure?

A.—Yes.

Q.—Will there be any change in the method of operations necessary between now and September 30th than have been followed since the date of Sir Mortimer's death as far as providing the Estate with those necessities as and when they arise?

10

A.—No.

Q.—That is, the Incorporated Company will continue to follow the same procedure that it has followed in the past, subject to what may be done, if and when this case is decided one way or the other?

A.—Yes.

Re-examined by Mr. W. K. McKeown, K.C., of Counsel for plaintiffs.

Q.—In connection with the Debentures belonging to Lord
20 Shaughnessy, and which were held against his loan—what was the amount of his loan?

A.—\$13,500.

Q.—I think you already told us the Debentures at \$3.50 were worth \$10,500?

A.—Yes.

Q.—He was under flat how much at the end, with no margin, and was under flat how much?

A.—If you figure them at \$3.50 they would have a value of
30 \$10,500. It would show they were under margined about \$3,000.

Q.—There was no equity in them over the loan, and they were under margined \$3,000 when he paid them off?

A.—Yes.

Q.—How about this wonderful " B " stock transaction which you have referred to at the suggestion of Mr. Campbell? How many shares of " B " did he have?

A.—375.

Q.—At \$8 a share, market value, would be \$3,000 gross. What was his loan against that that he paid off?

40

A.—\$3,000.

Q.—375 shares at a market of \$8 a share, or \$3,000, how much did he owe the Company against them?

A.—About \$7,200.

By Mr. Campbell:

Q.—Which he paid?

ALEX. M. REAPER (*recalled for Plaintiffs*), *Re-Examination*.

A.—Which he paid.

By Mr. McKeown:

10 Q.—He has been sued since on behalf of the Corporation for these two loans, has he not—not since he has paid, but I mean he has paid those loans back to the Company since he was sued, on behalf of the Corporation, by Lady Davis and Mortimer B. Davis, Junior, for the return of this loan to the Company?

Mr. Campbell: He repaid those two loans when the Bank asked for payment.

Mr. McKeown: I think Your Lordship had better construe what the action is.

20 Mr. Campbell: I submit the proceedings which have been taken will speak for themselves.

By Mr. McKeown:

Q.—Give us the date upon which Lord Shaughnessy repaid those two loans. Are they repaid yet?

A.—Yes, they have been paid.

Q.—When were they repaid?

A.—I have not the exact date.

30 Q.—About when?

A.—About the end of March, 1930?

Q.—What did he do? Did he consolidate them into another loan, or was it paid in cash? Is there a new loan in replacement of them, or is the payment of cash which terminates?

A.—In cash.

Q.—And this repayment has taken place since you were in the box the last time?

A.—Yes.

40 Q.—Did you speak to Lord Shaughnessy and tell him he had to pay those loans back, seeing that the collateral was away under flat, or did he paid it of his own volition?

A.—He paid it on his own volition. I did not speak to him.

Q.—Why did you not speak to him and ask him why he should not pay those loans back, and why he should borrow money from this Corporation of which he is in charge in a fiduciary capacity?

A.—I did not consider it necessary at the time.

ALEX. M. REAPER (recalled for Plaintiffs), Re-Cross-Examination.

Q.—You did not consider it necessary?

A.—No.

Q.—Do you think that is the way to administer the Corporation, to loan money ———

Mr. Campbell: Don't answer.

10 By Mr. McKeown:

Q.—Loan money on securities which do not amount to the face value of the loan to say nothing of providing margin, and to an Executor and a Co-Director ———

— Mr. Campbell: When you want to make a speech on this subject, Mr. McKeown, you will have lots of opportunities, but this is not the time.

20 Mr. McKeown: I am asking a question. Do you object to the question?

Mr. Campbell: I do.

Mr. McKeown: Then, I shall not insist on your client answering.

30 Mr. Campbell: You have made your speech, and I have no doubt it serves your purpose.

Re-cross-examined by Mr. G. A. Campbell, K.C., of Counsel for defendants.

Q.—How did this repayment by Lord Shaughnessy of these loans in respect of the " B " shares and the McNish Debentures compare in point of time with the request of the Bank for a reduction of the Company's indebtedness?

40 A.—It was immediately after the Bank had made that request.

By Mr. McKeown:

Q.—Had the Bank not made that request, I suppose it would have gone on indefinitely?

A.—Well, I don't know. I would just like to point out that while there was no other collateral in the Incorporated Company

ALEX. M. REAPER (recalled for Plaintiffs), Re-Cross-Examination.

itself, there are about two years fees accrued to Lord Shaughnessy.

Q.—I did not follow you before, but now I do. Your idea is, as an Executor of this Estate, that because Lord Shaughnessy has not drawn his fee of \$5,000 a year as an Executor, that that is going to serve as some kind of collateral to under margin loans from the funds of the Incorporated Company, is that it?

A.—No. I did not give that as a reason.

10 Q.—What is it, if it does not mean that?

A.—Well, I say it could have been applied had it been necessary to do so.

By Mr. Campbell:

Q.—And in addition, how many shares of stock of the Incorporated Company stand today in the name of Lord Shaughnessy?

A.—2,325 shares.

20 Q.—And in addition, how many of the Debentures of the Incorporated Company stand registered today in Lord Shaughnessy's name?

A.—196,500.

By Mr. McKeown:

30 Q.—Do you know what Lord Shaughnessy's personal indebtedness is to the world at large, because you would not have any particular claim on his Alcohol stock or Debentures as a Director of the Incorporated Company for these loans?

Mr. Campbell: He has a privileged position in respect of the Incorporated Company, if Lord Shaughnessy owes the Incorporated Company anything.

And further deponent saith not.

GEORGE C. McDONALD (for Plaintiffs), Examination-in-Chief.

On this April 15th, 1930, personally came and appeared,

GEORGE C. McDONALD,

of the city of Montreal (66 St. Sulpice Road, Chartered Accountant,
aged 47 years), called as a witness on behalf of plaintiffs, having
10 been first duly sworn, doth depose and say:

Examined by Mr. McKeown, K.C., Counsel for plaintiffs.

Q.—Mr. McDonald, you have given your occupation as a Chartered Accountant. I would like to go a little further back for the purposes of the record, and I understand you are a graduate in Arts from McGill University?

A.—Yes.

20 Q.—In what year?

A.—1904.

Mr. Campbell, K.C.: We admit Mr. McDonald's qualifications.

Mr. McKeown, K.C.: Don't be facetious. We will get along faster.

By Mr. McKeown, K.C.:

30 Q.—Since that time have you confined yourself entirely to accountancy?

A.—Yes. I have never been in any other profession.

Mr. Campbell, K.C.: Except the military.

By Mr. McKeown, K.C.:

Q.—With what firm?

40 A.—Well, I served my apprenticeship with the firm of Creek, Cushing and Hodson.

Q.—After having been educated as a full-fledged accountant what did you take up then?

A.—I began practice of my own since 1910, and have since been practising in Montreal.

Q.—With whom have you been associated since that time?

A.—My principal partner is Mr. George S. Currie.

Q.—Is Mr. Currie still associated with you?

GEORGE C. McDONALD (*for Plaintiffs*), *Examination-in-Chief*.

A.—Yes.

Q.—Are you also associated with the Clarkson firm of Toronto?

A.—Yes. We have an association with them. They are partners of ours.

Q.—Were you in the month of July last approached on behalf of Lady Davis in connection with matters pertaining to the estate of the late Sir Mortimer Davis?

10

A.—Yes.

Q.—Can you give us the date?

A.—Well, I was approached about the 23rd of July in the first instance.

Q.—Yes. With what view? With what in view?

A.—With a view to my perhaps becoming a Director of Sir Mortimer Davis Incorporated, which I was then told was the company in which Sir Mortimer Davis had left his principal assets.

Q.—Was the situation—the interlocking interests between the Estate Sir Mortimer Davis and what we have been referring to as the Incorporated Company, explained to you at that time?

20

A.—Yes.

Q.—And you say that the purpose at that time was that you might possibly become a Director of the Incorporated Company?

A.—Yes.

Q.—Did you in that connection have any interviews with Lord Shaughnessy?

A.—Yes.

30

Q.—When? At what date?

A.—On the 25th of July.

Q.—I take it you were aware at that time of the persons occupying the charge as Executors, joint charge, Lady Davis, Lord Shaughnessy and Mr. Reaper?

A.—Yes. I had been given a copy of the will and the situation had been explained to me.

Q.—Had there been any further object in view? I mean prior to the time you called upon Lord Shaughnessy in connection with the policy of the Estate, of the Company? You said you had been approached with a view to becoming a Director, possibly becoming a Director of the Incorporated Company. In that connection was there any interview in connection with the future policy of the Estate or the Incorporated Company?

40

A.—When I went to see Lord Shaughnessy I had, as I say, studied the will, and I had reached the conclusion that it was the duty of the Executors and through them, of the Directors of the Incorporated Company, to distribute all the revenue of the Incorporated

GEORGE C. McDONALD (for Plaintiffs), Examination-in-Chief.

ated Company to the heirs of the Estate, and I wanted to make it quite clear and told Lord Shaughnessy if I became a Director of the Company that that was what my policy was going to be.

Q.—Was the suggestion at that time limited to simply the addition of yourself to the Board, or was there any reference made to any other possible ———

10 A.—No. At the time it was suggested I should go on it was also suggested that J. B. Waddell might go on and make the Board five.

Q.—Who made that suggestion?

A.—Well, I had been interviewed by Mr. Montgomery before this meeting, who was the only person I had seen. It must have been at his instance, because I did not make it. I did not know Mr. Waddell at the time.

Q.—I was going to suggest it was made by Lord Shaughnessy.

A.—I don't think it was made by Lord Shaughnessy at all. I think it was part of what I went up there to see him about.

20 Mr. Campbell, K.C.: I would ask Your Lordship to note this is all preliminary, in my view. There are no such allegations in the declaration, as I recall. I object to the admission of any evidence which does not arise under the allegations of the plaintiff's declaration.

Mr. McKeown, K.C.: Of course all you have to allege in the pleadings is the fact. The evidence does not have to be alleged; otherwise the declaration would be about 2,500 pages in length.

30 Mr. Campbell, K.C.: I point out there was no allegation in the declaration wherein it was suggested Mr. McDonald should become a Director. There is no allegation of any kind that there was ever any suggestion that a fourth member should be added to the Board, or a fifth member. There is no such allegation in the declaration.

The Court: I don't suppose I would oust Lord Shaughnessy from the Directorate on the ground that he refused to appoint a fourth Director.

40 Mr. Campbell, K.C.: We have not reached the point where Lord Shaughnessy did refuse him. I object to any evidence of this kind that is not alleged in the declaration.

By Mr. McKeown, K.C.:

Q.—You have stated you had gone over the will in advance.

GEORGE C. McDONALD (for Plaintiffs), Examination-in-Chief.

A.—Yes.

Q.—And were you aware that under the will the surplus revenues of the Estate were to be divided between Lady Davis and M. B. Davis, Junior, one-half to each?

A.—Yes. I was aware of that.

Q.—Did you make this proposal to Lord Shaughnessy that you on behalf of Lady Davis should be added to the Board?

10 A.—Yes, I told him I had been asked to.

By the Court:

Q.—Is that the way the conversation began?

A.—Yes. I went up to Lord Shaughnessy and told him Mr. Montgomery had asked me to come up and see him about becoming a Director of the Incorporated Company.

Mr. Montgomery, K.C.: To get it clear, I met Lord Shaughnessy and I had discussed that situation previous to Mr. McDonald going up.

Mr. McKeown, K.C.: That will come out in some further part of the evidence with which Mr. McDonald is not fully familiar.

By Mr. McKeown, K.C.:

Q.—What was Lord Shaughnessy's attitude upon that suggestion as at the time of your conversation with him?

30 A.—He was quite willing I should become a Director of the Company.

Q.—Any condition to your appointment?

A.—Yes, there was a very distinct condition that Lady Davis should resign. He was not willing to accept the increased number.

Q.—Was he prepared to have that suggestion put into operation forthwith, that you should join the Board at once?

A.—I presume that if Lady Davis had been willing to resign. The conclusion was he was willing to have had me elected in her place, but when it was a matter of increasing the Board to five, he said that that of course could not be done until the end of the year, or rather that the By-laws of the Company arranged that the number of Directors was fixed at the Annual Meeting, and that any change of the number would have to be deferred until the Annual Meeting. Of course he knew as well as I did that By-laws can be changed throughout the year if the parties interested in them wanted to have them changed.

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Q.—What you wish to convey is even if the plan was to increase the Board to five, you conveyed to Lord Shaughnessy there was no necessity to defer that to the end of the year. Did you know then when the fiscal year ended for the Incorporated Company?

A.—Yes. I think it was the usual rule it was to end the 30th of September.

10 Q.—Were you aware then at what date it was customary to hold the Annual Meeting of the Company?

A.—I don't think I ever heard that discussed.

Q.—In any event, Lord Shaughnessy's suggestion to defer the change of the Board on the basis of a directorate of five would have meant a continuation of the position until some time subsequent to the 30th of September, 1929.

A.—Undoubtedly.

20 Q.—Did you on this occasion have any discussion with Lord Shaughnessy as to your thought that the Executors' duty was to see that the Directors of the Company disbursed the annual revenue of the Company for the purposes of the Estate?

Mr. Campbell, K.C.: I object to the question. If it purports to be an allegation that Lord Shaughnessy admitted or did not admit a particular thing, then it ought to be alleged. There is no such allegation.

30 Mr. McKeown, K.C.: That is a head-on issue. They say "We don't have to distribute the revenue of the Incorporated Company." We say "You do." I think that the question is correct under the pleadings.

By the Court:

Q.—Did that come up also at the very start?

40 A.—Yes. It was not a very long interview, My Lord. In discussing the policy of the Executors and Directors of the Company, Lord Shaughnessy intimated that the late Sir Mortimer Davis had certain plans for the development of Sir Mortimer Davis Incorporated. These plans included investing money in industrial enterprises.

Mr. Campbell, K.C.: I don't think the witness should read his evidence. There has been no necessity for him to refresh his memory. His memory has been quite accurate and Mr. McDonald has an excellent memory.

GEORGE C. McDONALD (for Plaintiffs), Examination-in-Chief.

The Court: Omit the memorandum.

The Witness: When I went back to the office the next day I dictated as a memorandum the interview, which I have before me, and that is the memorandum from which I am making the statement. I remember the statement very well.

10 Mr. Campbell, K.C.: I prefer you should speak from your recollection.

Mr. McKeown, K.C.: I submit the new rule my learned friend is insisting for——

The Court: If you omitted something or altered something in your deposition you will correct it.

20 The Witness: I might say I have not so far mentioned that I had the pleasure of meeting Mr. Reaper on that occasion too. He was the other Director. He was there prior to the interview; and I asked Lord Shaughnessy if he did not think that the death of Sir Mortimer Davis and his will brought about a different situation in regard to the policy of that company. It seemed to me the Incorporated Company was just part and parcel—in fact, very much the principal part of the Sir Mortimer Davis Estate, and the revenues from which he had given by will to his wife and son, and it seemed to me the duty of the Directors was to distribute these revenues to
30 the usufructuary beneficiaries. That is not all written down. It is much longer.

By Mr. McKeown, K.C.:

Q.—What was Lord Shaughnessy's attitude in answer to your suggestions that you have just given the Court?

A.—He made it plain to me that he did not agree with me on that subject.

40 Q.—He did not agree with you?

A.—No, he did not think that that was the——

Q.—What did he think? What did he say in that connection?

Mr. Campbell, K.C.: The same objection. If it purports to be any admission or representation we do disagree with the witness. I disagree with him, and so did Lord Shaughnessy, but my submission is now he is purporting to offer evidence of some allegation or

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some admission made by Lord Shaughnessy about which there is no allegation in the pleadings, and my submission is it is not legal or relevant.

10 Mr. McKeown, K.C.: I might do as my learned friend has been doing all through the case, and ask leading questions and draw the answer out of the witness. I want the witness to tell his story in his own way, but I can take the Court and Counsel into my confidence in saying it will not result in Lord Shaughnessy admitting the revenue should be distributed.

The Court: If Mr. McDonald could tell his own version from start to finish, we will see the end.

Mr. McKeown, K.C.: He has a memorandum practically verbatim.

20 The Witness: I don't know of any better way than to read the memorandum I made the next day.

By the Court:

Q.—You can swear to that memorandum?

A.—I do.

30 Mr. Campbell, K.C.: This is subject to my objection.

40 The Witness: I was approached by Mr. George Montgomery to act as a Director of Sir Mortimer Davis Incorporated. I found that the situation was that, with the exception of the Pine Avenue house and a few other assets, practically all of Sir Mortimer Davis' interests were held in Sir Mortimer Davis Incorporated. In the course of considering the question of my appointment I had occasion to interview Lord Shaughnessy, who is an Executor of the Estate, together with Lady Davis and Mr. Reaper: The interview was merely with Lord Shaughnessy, not Mr. Reaper. These three are also Directors of Sir Mortimer Davis Incorporated. It is Lady Davis' wish that I should be appointed a Director in addition to herself, and possibly also Mr. Waddell, who has a five per cent interest in Sir Mortimer Davis Incorporated.

In the course of my interview with Lord Shaughnessy he explained to me that the succession duties and legacies of the Estate would involve the funds of the Company to such an extent for

GEORGE C. McDONALD (for Plaintiffs), Examination-in-Chief.

several years that there was very little likelihood of there being any money for reinvestment. By the terms of the Will, after paying certain annuities, the revenue of the Estate was 50 per cent to Lady Davis and 50 per cent to Mortimer Davis. Lord Shaughnessy stated that he and Mr. Reaper, while quite willing to accept me as a Director of the Company in lieu of Lady Davis, was most emphatically unwilling to have both on. He explained the technical difficulties with regard to the appointment being made at the Annual Meeting and so on, but admitted that if those interested wished they could, of course, amend the by-laws to take any action that might be necessary in regard to increasing the number of Directors.

10
20
30
In discussing the policy of the Executors and the Directors of the Company, Lord Shaughnessy intimated that the late Sir Mortimer Davis had certain plans for the development of Sir Mortimer Davis Incorporated. These plans included investing money in industrial enterprises. I asked Lord Shaughnessy if he did not think that the death of Sir Mortimer Davis brought about a different situation for the Directors of the Incorporated Company, intimating that it seemed to me that the Incorporated Company should disburse all its revenue to its shareholders. Lord Shaughnessy did not agree that this was the case. He thought that the Executors of the Estate would have to distribute all the revenue they received, but the Directors of Sir Mortimer Davis Incorporated, if carrying out Sir Mortimer Davis' policy would be entitled to, after paying reasonable dividends, invest surplus revenue in new enterprises and extension of other enterprises in which the Company was interested.

I asked him if the Income Tax Department were treating Sir Mortimer Davis Incorporated as a personal corporation. He said that they were trying to for the period during Sir Mortimer's life, but that there was a question as to the propriety of this action, as Sir Mortimer, during the last few years, had been a resident of France.

With regard to the present status of the Corporation, apparently the matter has not yet been taken up with the Income Tax Department.

40
Mr. Campbell, K.C.: I might ask the witness to put in parenthesis that the paragraph to which he is referring refers to the date of the interview.

Mr. Montgomery, K.C.: He is reading a memorandum he dictated the next day.

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Mr. Campbell, K.C.: I was suggesting I should ask the witness to put a parenthesis there so there will be no misleading idea that he was referring to the attitude as it should be conveyed on the date of the interview. Whether it was the subsequent idea of Lord Shaughnessy is a matter for the Court. It creates a very erroneous idea.

10 Mr. McKeown, K.C.: It does not deceive anybody except yourself. I think this is a very excellent idea, to have this gone in without interruption.

The Witness: I do not know what Mr. Campbell is getting at. I do not see anything wrong with it.

The Court: The parenthesis won't do any harm.

20 Mr. Campbell, K.C.: The parenthesis I asked you to insert was that that was Lord Shaughnessy's attitude on the day you mentioned. The implication might be in the minds of not fully informed persons that that situation persists to this date.

The Court: That is what Mr. McDonald is supposed to have reported on the 24th and he cannot go beyond that date.

The Witness: Here is the sentence, as I have it:

30 "With regard to the present status of the Corporation, apparently the matter has not yet been taken up with the Income Tax Department. In discussing the matter of the"—

there is one word missing in my carefully dictated memorandum. I think it is "usufructuary." We will have to leave it blank. "In discussing the matter of the (blank) interest, Lord Shaughnessy stated that the question of investing surplus revenue would not arise for several years as the Bank loans would involve a large portion of the Company's revenue for some time. He further stated
40 that it was his hope to sell as soon as a favourable market was obtained, certain of the shares of the Alcohol Company and invest the proceeds in such a manner as to produce revenue of say 5½%, and then this paragraph:

"At the conclusion of my interview I reported the substance to Mr. G. H. Montgomery and on the following day to Lady Davis.

GEORGE C. McDONALD (for Plaintiffs), Examination-in-Chief.

Matters were then left pending Lady Davis taking the matter up with Lord Shaughnessy."

Mr. Campbell, K.C.: Are you filing a copy?

10 Mr. McKeown, K.C.: I think a copy of the memorandum should be filed.

By Mr. McKeown, K.C.:

Q.—Would you file a copy of the memorandum you have just read as Exhibit P-195?

A.—Yes.

20 Q.—Looking now at the memorandum you just produced as P-195, Lord Shaughnessy purports to have given you as a reason that there would be very little likelihood of there being any money for reinvestment, the fact of the Succession Duties and legacies of the Estate?

A.—Yes.

By the Court:

Q.—The Succession Duties or the Income Tax?

A.—Both.

30

By Mr. McKeown, K.C.:

40 Q.—At another point in your memorandum I notice a reference to a statement attributed to Lord Shaughnessy that, in his view-point, after paying reasonable dividends by the Incorporated Company, the surplus should be used for new enterprises and the extension of enterprises in which the Company was interested. Was that point developed by Lord Shaughnessy in any particular on that occasion?

Mr. Campbell, K.C.: The witness in the box has offered us this memorandum prepared at the time as being a complete record of what took place between himself and Lord Shaughnessy. It seems to me he ought to do one thing or the other, either testify from his recollection of what was done or else restrict himself to the memorandum prepared at that time. He has elected to file a copy. My submission is he should not develop from memory, more particularly as there is not one word, in my submission, in plaintiffs' allegations, to justify this evidence.

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Mr. McKeown, K.C.: It is perfectly absurd.

Mr. Campbell, K.C.: Surely if this interview was relied on in the plaintiffs' case there should be something in the 118 allegations.

10 Mr. McKeown, K.C.: Mr. Campbell has evidently had a very bad night and he is very cross, and he has lost sight of a whole lot of things in this case, and this morning he has lost more. We have the issue absolutely joined. We complain of Lord Shaughnessy's policy in refusing to disburse the income of the Incorporated Company, and since Sir Mortimer died, it has run into hundreds of thousands of dollars, and we say it is justified by the plea.

Mr. Campbell, K.C.: Where is the reference in the declaration to the interview between the witness in the box and Lord Shaughnessy?

20

Mr. McKeown, K.C.: That is evidence; that is not fact.

Mr. Campbell, K.C.: My submission is if any weight is to be attached to an actual interview which did take place between Lord Shaughnessy and Mr. McDonald in July, if it was important, it should have been alleged and that we are not called upon to be faced today with—I submit if it is relied on as being an admission it must be alleged, as no admission is admissible unless it is alleged.

30

The Court: Tell me how the plaintiffs are to prove the statements?

Mr. Campbell, K.C.: If you propose to prove admissions, my submission is you must prove admissions by allegations. The admission is not a fact.

Mr. McKeown, K.C.: It is only a means of proof of a fact.

40

The Court: I really don't see how this interview is evidence at all.

Mr. Campbell, K.C.: I will ask Your Lordship to note it. We have to protect our position in this matter.

The Witness: Well, he gave me to understand that he thought the Company should be continued to be conducted as it had been

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during the lifetime of Sir Mortimer, and that the Directors were entitled to invest the surplus revenue in new enterprises, and the extension of enterprises that the Company was already interested in.

The Court: That is the impression I have from Mr. Reaper's evidence. It was at the very beginning: it is such a long time ago
10 my impression might be mistaken.

Mr. Campbell, K.C.: That is our position in law.

The Court: It is certainly the explanation of what took place at the beginning of the administration of Sir Mortimer Davis, rightly or wrongly, the fact of his death, and the additional obligations that had been imposed on his Estate both as to the payment of the government duties and as to the payment of the legacies,
20 which were more or less overlooked, rightly or wrongly. I am not expressing the merits of it, but it is the impression I had from the evidence that was given during the first few days. It was considered proper to go on and let the legacies look after themselves.

Mr. McKeown, K.C.: Look after themselves, depreciate, for want of payment.

By Mr. McKeown, K.C.:

30 Q.—Then I notice further reference in your memorandum on the second but last paragraph on page two, in which you say:

“ In discussing the matter of usufructuary interest, Lord Shaughnessy stated that the question of investing surplus revenues would not arise for several years as the Bank loans would involve a large portion of the Company's revenue for some time.”

40 In point of fact, dealing with that particular subject, were there any Bank loans in Sir Mortimer Davis Incorporated which had arisen since Sir Mortimer's death and which were for the revenue department of Sir Mortimer Davis Incorporated?

A.—At that time I did not know what the situation was. Since the case opened I know that there are these loans and that they have existed in the Incorporated Company since before Sir Mortimer's death.

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Q.—And for capital account?

A.—Yes.

Q.—What I am asking you is, since Sir Mortimer's death, were there any Bank loans incurred by the Incorporated Company which were a proper charge against the Incorporated Company from the time of Sir Mortimer's death?

10 A.—I cannot conceive of a loan ever being a charge against the Bank account. As a matter of fact, since Sir Mortimer's death up to the 30th of September, 1929, the revenue of the Estate has been in excess of the expenditure by \$941,000.

Q.—Of the Company, or the Estate?

A.—Of the Incorporated Company; so that there was no occasion for any Bank loans as far as the Incorporated Company's revenue was concerned.

Q.—Did you ever see Lord Shaughnessy again on the subject after the interview of July 25th, 1929?

20 A.—Not officially. I met him out on his tour in the West. I had dinner——

Q.—In any event, you were not appointed a Director of Sir Mortimer Davis Incorporated, and no further action was taken in that regard?

By the Court:

Q.—Was the subject dropped altogether after that?

30 A.—As far as the suggestion that I should become a Director was concerned. I heard no more of it.

By Mr. McKeown, K.C.:

Q.—Have you been in Court and taken communication of the evidence of Mr. Reaper in connection with the position of the Estate and also in connection with the Incorporated Company, and of the various exhibits produced by him?

A.—Yes, I have.

40 Q.—I will ask you one question, Mr. McDonald. When you went to see Lord Shaughnessy on the 23rd of July, had you taken communication of any figures relating to the Estate besides the Will of Sir Mortimer Davis; any statements. Were you prepared to discuss the matter, as an accountant?

A.—Mr. Montgomery had given me certain statements. I think I had seen a statement to the 30th of September, 1928, of the Incor-

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porated Company and that had put me in possession of the situation to a sufficient extent to enable me to discuss it, I think, intelligently.

Q.—Have you also been in Court during the evidence given by Mr. Lawrence, the Secretary of the Alcohol Company, and have you taken communication of that evidence and of the exhibits produced bearing upon the Alcohol Company?

A.—Yes.

10 Q.—Have you, at the request of counsel for plaintiffs, prepared an analysis of certain parts of this evidence to which I have just referred, and the various exhibits produced?

A.—Yes.

Q.—Including the statements of these corporations?

A.—Yes.

Q.—Have you had access also to the Annual Reports of Sir Mortimer Davis Incorporated from the time the Company was first organized in 1919, forward?

20 A.—Yes.

Q.—In what way did you get access to these?

A.—I got them in the Court Room here either from Mr. Reaper or Mr. Smith, of Price, Waterhouse and Company, and I also got access to them through the permission of Price, Waterhouse and Company in their own office.

Q.—Have you prepared, with reference to Sir Mortimer Davis Incorporated, a statement from the opening balance sheet in 1919 or a memorandum re Capital, Profit and Losses, for the ten-year period to September 30th, 1929?

30 A.—Yes.

Q.—Will you produce the same, to be marked P-196?

A.—Yes.

Q.—Will you explain as briefly as you can to His Lordship the purport of this statement, P-196?

A.—In September, 1919, Sir Mortimer Davis formed one of those so-called one-man companies, which, in 1926, were recognized by the Income Tax Act as personal corporations, and he turned over certain assets to this Company and took in exchange shares and debentures. The summary of the opening Balance Sheet is shown on
40 the first sheet.

Q.—How much for assets?

A.—\$11,753,070.69.

Q.—Liabilities?

A.—Loan from Union Bank, \$1,529,178.96.

There are two reserve accounts:

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S. Davis, excess assets valuation, \$223,891.73.
The capital structure being \$5,000,000.
20-year 6 per cent serial notes, \$5,000,000.

10 Now, for these two accounts, Sir Mortimer Davis gave the assets listed below and took in exchange shares. I might say practically all my figures, except where I will state to the contrary, have been taken from the Annual Report, the statement of Price, Waterhouse and Company, and this opening Balance Sheet was prepared by them in their report. They state these assets were taken over at values arbitrarily placed thereon. You will see the list of assets taken over. The list of investments down below totals \$11,473,290. Do you wish me to go on and explain the situation?

Q.—You have some further references to assets?

A.—I would draw your attention to the remark of Price, Waterhouse and Company that value placed were arbitrary.

20 Q.—They were not based upon any Stock Market quotations?

A.—Well, they may have been but the future history of a lot of them show there were quite a number of them in the course of the next few years had to be written off, so they could not have much value, and there was included in those assets 41,000 shares of common stock of Industrial Alcohol.

Q.—As it then existed?

30 A.—Which, as I understand it, had just about been formed, at about that time, and I have been informed Sir Mortimer Davis got these shares for the goodwill of forming the Company, and that the subsequent evidence that I have heard about the assets of the Canadian Industrial Alcohol has justified that assumption; and that at that time Canadian Industrial Alcohol was just in process of formation, and that valuation of \$4,100,000 on that——

Q.—That was \$100 a share?

A.—For something that I understand Sir Mortimer got for nothing.

40 Mr. Campbell, K.C.: The understanding of the witness as to what value Sir Mortimer Davis gave for this block of stock is surely not evidence in this case.

Mr. McKeown, K.C.: I ask it be admitted subject to the objection and for what it is worth, because it is only for the purpose of completing the figures, which do not depend on it, in the last analysis.

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The Witness: Those shares of Canadian Industrial Alcohol were not listed on the market until several years later. Then they were given a market value and one could then esteem their worth. The point I wanted to make was this company——

By Mr. McKeown, K.C.:

10 Q.—You mean the Incorporated Company?

A.—The Incorporated Company was formed up in this way, and these assets turned over, but, as I say, the subsequent history showed that the Alcohol Company, the Imperial Tobacco Company, and the Corby Distillery Company proved to have considerable value, but most of the others came to a bad end.

Q.—To an amount of how much?

A.—In the course of the next eight or nine years they wrote off, including a lot of these, \$4,885,219.98, but some of these may have been losses incurred after the opening of the Company.

20 Q.—Before we leave Alcohol, were those 41,000 shares of Alcohol, shown on the first page of your Exhibit P-196, shares of the present Alcohol Company, or by what multiple are they now represented?

A.—They have to be multiplied by 16 to get into the denomination of the present Alcohol. That 41,000 shares are now represented by 656,000 odd shares, which shows that at the time Sir Mortimer had approximately 70 per cent control of that Company.

30 Q.—Just while you are on that point, if Sir Mortimer had retained from the opening of Sir Mortimer Davis Incorporated, in September, 1919, to the end of September, 1929, those shares originally numbering 41,000, he would have had 656,000 shares of the present “ A ” stock?

A.—Yes.

Q.—Do you know what percentage that would have represented of the total stock presently outstanding?

A.—I think the presently outstanding is 900,000 some odd.

Q.—The present “ A ” shares?

A.—969,480 shares.

40 Q.—What would be the percentage which Sir Mortimer would be holding today? Will you just figure that out, of the stock of the present Corporation, had he retained the whole 656,000 shares?

Mr. Campbell, K.C.: Perhaps it would save time if I make no objection but I cannot see the relevancy of all this. Objected to as illegal and irrelevant. It is not something Lord Shaughnessy can be

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blamed for. What somebody thought fit to do in 1919 is not relevant to this case.

Mr. McKeown, K.C.: Mr. Joseph is supposed to have started something in the world's crash when he sold 2,000 shares of this Company. Sir Mortimer sold out from 71 per cent down to 51 per cent and everybody knew it and the Company prospered in spite of it. If the virtual owner of the Company can sell the shares and it has not any effect on the position of the remainder of the shares, it is not likely my learned friend can support the argument a Director might be responsible by selling a couple of thousand shares, in precipitating the consequences they attempt to lay at his door.

(Question read as follows):

“ Q.—What would be the percentage which Sir Mortimer would be holding today? Will you just figure that out, of the stock of the present Corporation, had he retained the whole 656,000 shares ”?

The Witness: It is approximately 68 per cent.

By Mr. McKeown, K.C.:

Q.—Now, we know that the Estate, through the Company, only holds 50 per cent?

A.—I have heard that.

Q.—Sir Mortimer Davis Incorporated from time to time reduced its holdings to the equivalent of 17 per cent. That is the difference between the figure of 68 per cent which you have just given us and the present figure of 51 per cent?

A.—Yes.

Q.—Will you look at page two of the Exhibit P-196 and just tell His Lordship in a word what is indicated there?

A.—I may say, my Lord, that this form of capitalization which was adopted resulted in there not being any very great returns for a very long time, because these assets proved to be not very productive. The Alcohol Company paid a dividend the first year, in 1920, and then it did not for a couple of years more, and the revenue from the other investments was comparatively little. On the other hand, the charge of interest on the 6 per cent serial notes resulted in a very heavy charge. The notes were outstanding for \$5,000,000 at 6 per cent, which required this Company to produce to meet that fixed charge of \$300,000 per year.

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Q.—Just as to that item alone?

A.—Exactly. So that is the reason that for many, many years—in fact, I think down until 1927, they began to get a surplus on Profit and Loss Account, they showed a deficit on Profit and Loss Account until the 30th of September, 1926, and it went over to the other side in 1927, even though at the time they had been crediting profits on sales, investments as well as revenue, but the
 10 burden of the 6 per cent serial notes was very much more than the earnings, more than the Company could bear for many years, as reflected through the statements.

Q.—As reflected through the Profit and Loss Account?

A.—As reflected through the statements.

Sheet two shows a recapitulation of the Capital Surplus Account and Profits and Losses Account on capital for the years to the 30th of September, 1929. It was the policy of the Company to periodically revalue shares of the Canadian Industrial Alcohol and also at the same time to take stock of the value of its other assets, and this
 20 resulted on five or six occasions in very considerable write-ups to Capital Surplus, and also certain write-offs on account of these investments which, as time went on, had become considerably valueless. Now, those losses or debits include a lot of those that were not in the original Balance Sheet, and together with some other ventures which Sir Mortimer Davis went into subsequently, and to understand his policy, perhaps I should read a list of those written off:

30	Dominion Reduction Company	\$1,270,603.00
	Croesus Gold Mines Limited	8,999.00
	Trans-Canada Theatres Limited	89,999.00
	Consolidated Asbestos Co. Ltd	1,173,959.92
	Union Bank of Canada	36,767.09
	Jacobs Asbestos Co. Bonds	5,500.00
	Crescent Lorraine Silver Mine Co	21,566.74
	General Cigars Co. Ltd	943,180.88
	Newfoundland Oil Lands	10,684.40
	Mason Valley Mines	2,614.00
40	Federal Coals 1922-23	98,197.25
	Delamar Estate Notes	221,211.40
	Property	5,750.00
	Alberta coal property	25,000.00
	Murray property	10,677.90
	Blue Stone Mining & Smelting	543,260.00
	Imperial Tobacco Co. Common	182,039.79
	Re loan S. Davis	64,596.29

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H. Fortier Company Ltd	67,300.00
Sundry Investments 1920	6,132.32

And then the insurance policies which are offset by a credit written down, \$95,986.56; and subsequently covered by a credit of \$11,464,922.80.

10 Aside from profits made in the Alcohol and the Corby Distillery Company, the only other profits were certain bonds of Imperial Tobacco, \$39,893.43.

20 There is shown a profit on the sale of the Federal Coals property, which was written up in the Capital Expenditures Account since the date of Sir Mortimer's death, but I understand that is what Mr. Campbell would probably call a perfectly ordinary every-day book-keeping process, because the Company was formed for \$500,000, which bought the Federal Coal property from the Federated Company. The Federal Coal Company was carried in the books at \$10,000. The Company was incorporated.

Mr. Campbell, K.C.: And the shares which were carried for that purpose were paid, \$500,000 in cash, by a cheque of the Company, and could not possibly be paid in any other way.

By Mr. Campbell, K.C.:

Q.—Do you suggest it could have been carried any other way on the books of the Company, in view of the price paid?

30 A.—Yes. I could suggest. They passed cheques there too.

Q.—You do not suggest there was any impropriety in carrying it at this figure on the books?

40 A.—I do. The result of ten years has been that the Company shows surpluses arising from revaluation, Canadian Industrial Alcohol, \$8,311,981.29, and then profits on transactions in this stock, about \$1,430,333.10. If it had not been for the periodical revaluation the profits shown would have been so much greater. They carried stock originally at \$6.25 a share and then they wrote it up to \$9.25 and anything they sold after that showed the difference between \$9.25 and the sale. As far as Sir Mortimer Davis' purposes were concerned, he esteemed the value of the Company by taking into account what his shares were worth at the end of the year, and the result was this Company, during the ten years, made large sums out of the Alcohol Company back and forth, on the sale of Corby, practically nothing else.

Q.—You mentioned bonds of the Imperial Tobacco and something else. I forgot what the other was.

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A.—Jacobs Asbestos Mining Company, but it is a contra. It shows on both sides.

Q.—Alcohol, Corby, and the bonds of Imperial Tobacco would be the only productives?

A.—Those are practically the only ones shown.

10 By Mr. McKeown, K.C.:

Q.—Have you prepared a further compilation with references to the Incorporated Company in the way of a comparative statement of the assets and liabilities for the ten years ending September 30th, 1929. If so, will you produce and file the same as Exhibit P-197?

A.—Yes.

Q.—Will you just give to His Lordship in as few words as possible the general scope of this Exhibit?

20 A.—During all these years Sir Mortimer Davis did not take any dividends out of this Company. As I explained, it never showed anything on the credit side of Profit and Loss until 1927 on account of this heavy charge for the interest on the serial notes, being the principal item, but he did get a certain amount of cash out of the sale of the Company.

30 If you look in the liabilities, the second sheet, the interest on the serial notes was accrued and credited in the books, in 1920, \$300,000; 1921, \$300,000 added, and so on until 1927, when the amount had reached \$3,219,000. At the same time Sir Mortimer Davis had a personal drawing account which appeared in the Assets on the first sheet, and that account varied, gradually creeping up until in 1924 the books showed that he owed the Company on personal advance account, \$1,841,000.

Q.—What happened at that time?

40 A.—At that time it was offset by this distribution of capital, so-called distribution of capital, 65 per cent, under date September 30th, 1924. In 1924 they wrote Industrial Alcohol shares up to \$4,000,000. Then out of that they issued capital stock to the extent of \$3,250,000, and the portion of that that was credited to Sir Mortimer Davis was used in part to take up that debit balance.

40 By Mr. Campbell, K.C.:

Q.—That is when that stock was redeemed?

A.—Yes, in 1928. The Coal account, I understand, was offset against the interest on the notes. The point I want to make out of this statement is Sir Mortimer was not even taking the cash out from the interest of the serial notes, but he was taking it out in other

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forms, and he redeemed certain serial notes in 1923. There are originally \$5,000,000; in 1923 reduced to \$4,152,000, and there is another small reduction the following year. In that way he got \$860,000, and he had this Distribution, \$3,250,000 in 1924, and his personal drawings which were subsequently offset against the interest on the serial notes amount during the eight years—he took about \$6,000,000 in cash, although there was no distribution of dividends. What I mean,
10 he has confused the revenue and capital. It was no concern of his. He owned them both, and it was his policy to treat them that way.

By Mr. McKeown, K.C.:

Q.—He may have a slight concern not to show up too much revenue, the conditions of which are well understood by my learned friends; but under the Income as it then stood, the tax was upon the dividends, was it not?

20 A.—The Canadian Income Tax law tries to tax all usufructuary and prior to 1925 personal corporations were not treated as they have been subsequently, so that they received dividends from other companies free of tax, or they might be subject to an 8 per cent tax but they were not subject to the rest of the tax.

Q.—There was no tax on capital distribution up to that time, or accumulated surplus?

A.—Nor is there now. That is sometimes arguable.

Q.—Is there anything further you would care to add to that Exhibit?

30 A.—No.

Q.—Have you prepared a further compilation with reference to the Incorporated Company, being a memorandum showing transactions in shares of the Canadian Industrial Alcohol Limited? If so, will you produce the same as Exhibit P-198?

A.—I have.

Q.—Will you explain to His Lordship the purport of this Exhibit?

40 A.—I have prepared this to show the transactions of the Incorporated Company in the Alcohol shares, and Sir Mortimer Davis' attitude towards the investment.

Q.—Just before you go any further, I notice on the first page, under the class "A" shares, the first line reads:

" Investment as at September, 1919, 656,000 shares, \$4,100,000."

Are we to take it that you have for the purposes of this Exhibit

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extended the holdings then, only 41,000 shares, into the multiple as on the basis at the present time?

A.—The heading indicates that, showing the shares on the basis of the present denomination.

Q.—So that that item showing 656,000 shares means shares on the present basis, and represents shares which in 1919 numbered 41,000?

10 A.—Yes.

Q.—And so on, for the purpose of the whole Exhibit?

A.—Yes.

Q.—Just explain to His Lordship the general purport of this Exhibit?

A.—It has already been stated that the Incorporated Company reduced their holdings during those nine or ten years from 656,000 shares to the present holding, 496,300 shares, and there was a certain amount of drawing during that time, so that this is a summary showing during the period they bought 218,699 additional shares or an equivalent of that number—they either bought them or acquired them in the form of dividends or new issue.

20 Q.—What would that make their total, having regard to the original holdings and those acquired during the period?

A.—874,699.

Q.—You say they sold certain shares?

A.—378,399.

Q.—Bringing the holdings to what?

A.—496,300. If it had not been for this periodical revaluation of the stock this 496,300 would have appeared on the books as of the 30th of September, 1929, \$1,615,555.

30 Q.—That is all that would have stood on there?

A.—That is what would have stood in the books, but taking into account the periodical revaluations in capital surplus, that stands at \$9,926,000. Down below shows the transactions in class " B " in the same, say in 1928.

Q.—Is there anything special on the second page of the Exhibit?

A.—I would say it was the sale of these shares in Imperial Tobacco and certain other assets that gave Sir Mortimer the cash to withdraw in the manner I have described, the amounts to the extent I have indicated.

40 Q.—Is this just a detail?

A.—That has a very special significance.

Q.—Page two of this Exhibit.

A.—I have indicated that Sir Mortimer's policy was to periodically revalue these shares. There was a write-up in 1923 of prac-

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tically \$2,000,000. There was another in 1924 of \$4,000,000; in 1927, and 1928 there were other write-ups.

Q.—Up to the amount of \$6,712,369.24?

10 A.—Up to the amount as shown on the previous Exhibit, \$8,310,000. If you take the total write-ups of the first column—in previous Exhibits, My Lord, it was shown that the earnings for the five first years of this Incorporated Company were very sad affairs as compared to the second five years. The earnings of the first five years had to bear the burden of that arbitrary valuation that I referred to.

Q.—Of the original assets going into the Company?

20 A.—Of the original assets going into the Company, and the second five years got the full benefit of the gradual building up in price, which, for January 1st, 1926, showed to have a very considerable value, and the reflection of it on the books of the Company is that I concede we have to take into account the dividend received and profits from sales, and also write-ups it was Sir Mortimer Davis' custom to make. Profits on the sales would have been greater if these sales had not taken place. It was the policy of the Company to keep write-ups in the Capital Surplus. They kept them through their Profit and Loss Account with earnings for the current year, but those profits were rather misleading, because they did not take into account the write-ups which went into the Capital Surplus.

30 Finally, at the time of Sir Mortimer's death, profits and losses made were taken out of the revenue and carried into Surplus Account, leaving on the 30th of March, 1928, a net surplus revenue for all this year at a figure of \$825,000.

Page two shows year by year Sir Mortimer's estimation of the position as reflected by the write-ups in the books of the Company with the two exceptions I have put in here. They are rather disagreeable but still I have put in two write-downs to market value, September 30th, 1929, and the other, March, 1930, in order to show the position as in my estimation it was Sir Mortimer's practice to consider the worth of the Company.

40 During the first five or six years up to the beginning of 1926, the dividends are shown in the first column, \$1,652,000; profit on the sales \$529,000. The write-up in the value to the capital stock, \$6,036,000. There was a loss on sales of \$180,000, a write-down in value of \$72,000; but the total of those as shown by the books for the first quarter of 1926 means \$7,965,577.65.

Q.—Is that not appreciation of assets and dividends?

A.—Dividends, profits, and appreciation as written up in the books, \$7,965,577.65.

GEORGE C. McDONALD (for Plaintiffs), Examination-in-Chief.

Q.—For the first so-called five year period?

A.—Yes. If I am right in my estimation of the arbitrary value of \$4,000,000, if it is a fact Sir Mortimer got those shares for goodwill, you have to add that \$4,000,000, because in 1926 Alcohol shares has a generally accepted public value as shown by the books here, so that by that time this enterprise, in Sir Mortimer's estimation, showed he was \$12,000,000 better off than he had been in 1919.

10 Q.—That is to say, you take those figures shown on the second page of P-198, \$7,965,577.60 and add to those figures \$4,100,000, which represents a figure at which Alcohol stock was taken in, assuming it was good, or whatever the amount was, excess value in 1919, and arrive at a figure of \$11,000,000 or \$12,000,000 for the total benefit which had accrued to Sir Mortimer during the first five year period?

Q.—Those figures are taken entirely from Price, Waterhouse and Company's statement. The next period, dividends, profit and loss write-ups, amounted to \$7,144,729, that is, taking the addition of the first three columns. That shows on the next sheet, but I have applied, as at the 30th of September, 1929, and the 1st of March, 1930, the system of writing down the value of the shares to the then market as to Alcohol. These are all Alcohol shares.

Q.—From what you have seen, were they written down?

A.—They were carried in the books at \$30. In September, 1929, they were written down to \$18. We wrote them down by that entry of \$1,273,000, and I think the market value on the 1st of March, 1930, was taken as \$8.

30 Q.—Did that involve in your processes a further write-off?

A.—Yes.

Q.—How much?

A.—\$5,411,640.

Q.—That was the result of the second five year period, having regard to the figures as shown by the books, the two special write-offs to which you have referred?

A.—The figures shown by the books in the second period from dividends, profit and loss write-offs, \$7,144,729. Write-downs in September and February, \$6,684,640, which leaves a net figure of \$460,089.17.

40 Q.—As contrasted with the benefits which had accrued to that corporation, by Price, Waterhouse and Company's figures?

A.—By Price, Waterhouse and Company's figures, yes.

Q.—For the first period, of \$7,965,577.65?

A.—Yes. I would say that that value, treating those shares on a market value of that basis, which is the only value to go on

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now and only reflects the public estimation of those shares. Just as, at a previous stage, I think the public estimation was wrong. I think this reflects the situation, which, I hope, is only temporary.

By Mr. Campbell, K.C.:

Q.—You do not suggest that is the real value of the shares?

10 A.—No. I think if you can get this Company into able hands, the shares can be shown a real value then. Ten million gallons of Alcohol in stock—if you divide that among the shareholders themselves, they would each get ten gallons, would they not?

Mr. McKeown, K.C.: Everybody would have a crock.

By Mr. McKeown, K.C.:

20 Q.—Do I understand you correctly in applying to the second period, the five year period, the formula of bringing the stock down to the actual market value in these two periods, September, 1929, and March, 1930, you have only applied the formula applied for the write-up for the first and second period, which was an approach to the market value?

A.—That is the reason I did that.

Q.—And the result of the application of that formula gives the figures shown on the third page of the Exhibit, P-198, for each of the two periods?

30 A.—Yes.

Q.—Have you also prepared an Exhibit with reference to the Estate of the late Sir Mortimer Davis?

A.—That is going into quite another subject.

Mr. McKeown, K.C.: Mr. McDonald suggests, as we are now leaving the Company and getting more or less into the Estate, that that might be a good point to stop at.

40 Whereupon an adjournment was taken until the following day, April 16th, 1930, at 10:30 o'clock A.M.

GEORGE C. McDONALD (for Plaintiffs), Examination-in-Chief.

MORNING SESSION, Wednesday, April 17th, 1930.

And on this sixteenth day of April, in the year of our Lord,
one thousand nine hundred and thirty, personally came and re-
10 appeared

:
GEORGE C. McDONALD.

and his examination-in-chief was continued by Mr. W. K. McKeown,
K.C., of Counsel for plaintiffs, as follows:

By Mr. McKeown:

Q.—At the time of the adjournment, yesterday, Mr. McDonald,
20 you had been going over the memoranda produced as Exhibit P-198
with reference to the transactions in shares of the Canadian Indus-
trial Alcohol Limited for the two five year periods, between Sep-
tember, 1919, and September, 1929, and extending into February,
1930, and had shown that the benefits accruing to the Incorporated
Company in the first period, amounted to \$7,965,577.65, during
which time the Corporation was under the direct guidance of Sir
Mortimer Davis and Mr. Waddell, and that during the second period,
for part of which Lord Shaughnessy was in charge, the benefits were
only \$480,089.17?

30 His Lordship: Are you talking from Exhibit P-198, Mr.
McKeown?

Mr. McKeown: P-198, the third page.

Mr. Campbell: I do not want to argue all these questions, but
is it quite fair to put a question of that kind to Mr. McDonald. He
talks about the benefit accruing to the Incorporated Company. The
benefit accruing to which he refers, was the result of a certain
40 writing-up of capital assets on the books of the Company. It is
quite fair to call that a benefit accruing to the Company; the in-
trinsic value of those shares at no time changed during that write-up.
It was always the same.

Mr. McKeown: Certainly, it is changed.

Mr. Campbell: They wrote it up on the books of the Company
and he calls that a benefit accruing during the first period, and con-
trasts it with what he calls a similar benefit accruing, and he reaches

GEORGE C. McDONALD (for Plaintiffs), Examination-in-Chief.

the similar benefit accruing in the second period by a hypothetical course.

His Lordship: That is a correction you can make in cross-examination.

10 Mr. McKeown: This evidence is being made in this respect to meet evidence that has been adduced by my learned friend in Exhibits D-17 and D-18 in the testimony of Mr. Reaper, wherein by simply dealing with the profit and loss accounts during those periods they endeavored to make it appear to the Court that some wondrous change had come over the scene after Lord Shaughnessy had become identified with the Company, that is, in the latter period of five years, from what had gone on before when, in point of fact, the real situation as to this Corporation is as shown in the Exhibits which are now being produced.

20 Mr. Campbell: Of course, we utterly disagree as to that being in point of fact. By the time we get through this discussion Mr. McDonald will no doubt understand the answer he is expected to make.

Mr. McKeown: Mr. McDonald does not need any wireless messages.

30 Mr. Campbell: The point I would like Your Lordship to bear in mind, is what we referred to in those Exhibits D-17 and D-18, was actual money which came in from outside sources into the coffers of the Company in real money cash. What they are referring to in this Exhibit is a mythical operation by which they write up the value of the assets on the books of the Company.

Mr. McKeown: In point of fact, during the period covered by this first Exhibit, about \$6,000,000 have been drawn out in cash.

40 Mr. Campbell: I still fail to understand how by drawing out in cash you put money into the till.

Mr. McKeown: I am not going to endeavor to convert you at this stage, but I trust at the argument you will be perfectly satisfied.

Witness: The answer to the question is not what he expects

By Mr. Campbell:

GEORGE C. McDONALD (for Plaintiffs), Examination-in-Chief.

Q.—Mr. McKeown or I?

Witness: Either of you. The first period there reflects the position as shown from the books, from dividends or sales or writings.

Now, in my opinion that first period should be increased probably by \$4,000,000, because, I believe, at the beginning of that period those Alcohol shares did not have the value, so that the real appreciation of the first period is much more like \$12,000,000 than \$7,000,000.

The second period shows the figures according to the books, plus the writing down of the shares of Sir Mortimer Davis Incorporated to market value in the first instance, as at September 30th, 1929, and in the second instance as at March 1st, 1930.

By Mr. Campbell:

Q.—A writing down that had never taken place on the books of the Company?

Mr. McKeown: It had taken place in the market.

Witness: I would add further, My Lord, that Mr. Campbell states that the profit and loss account showed certain profits earned. Those profits he refers to do not show the whole profit, because this very writing-up process that took place from time to time made those profits, when taken through that profit and loss account, less than they would have been if the write-ups had not taken place.

By Mr. McKeown:

Q.—Just to demonstrate what you mean, what did they take those Alcohol shares in originally at?

A.—They were originally taken in at par of the then shares, which was \$100 a share, but those shares were subsequently multiplied by sixteen, which means that when these books were opened originally, the shares of the present denomination were given a value of \$6.25.

A.—Yes.

Q.—If they had always remained at \$6.25 when this large number of shares were sold at various times since

A.—The profit and loss account would have reflected so much more cash profit.

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Q.—As it is, they were sold at \$46, there would have been a profit of \$40 per share on each share?

A.—Yes.

Q.—As I understand it, what happened was, that the shares did not remain at \$6.25, but were advanced from time to time?

A.—To \$20.

10 Q.—As high as \$20?

A.—Yes.

Q.—And when the shares, therefore, were sold, to illustrate, at \$46, they were taken as though they had cost \$20, and the profit for the profit and loss account was only \$20 instead of \$46. Is that it?

Mr. Campbell: Do you suggest that there was ever any possible sale at \$46 on the basis of this sixteen for one?

Mr. McKeown: There are actual sales at \$46.

20 Mr. Campbell: On the basis of sixteen for one during the first five years? •

Mr. McKeown: That is a matter for cross examination, there were sales, and taking the market on the same basis in the same way, the people in charge of that Company for ten years saw fit to write up the assets based on the Alcohol stock from time to time until they wrote it up finally to the figure of \$20.

30 Mr. Campbell: My submission is, you have offered no evidence to show that there was ever any sale of any share on the basis of \$46 for the present shares previous to the entry into office of Lord Shaughnessy.

Mr. McKeown: With Mr. Campbell's good will, let us see what the point is we want to make about the statement P-198 before we leave it.

40 By Mr. McKeown:

Q.—In connection with this subject which has come up, of writing up, what is the effect where there are different individuals holding the ownership, or capital interests, from those holding the usufructuary interest: What is the effect on the two?

A.—It might have no effect. It depends on the nature of the transaction, but the point I would say in this regard is, that when under the incidents of the Income Tax, people nowadays would pre-

GEORGE C. McDONALD (for Plaintiffs), Examination-in-Chief.

fer, insofar as it would be legally possible, to get their profits in the form of capital appreciation, or capital profit that is not subject to Income Tax, than in the form of dividends that are subject to Income Tax, and to the extent that that has been operating, certain usufructary interests are suffering. I do not think it is intentional on the part of those interested, but the tendency has been, insofar as in the operation of this Company and perhaps extended a little
10 into the Alcohol Company, to build up a large surplus made out of usufructary earnings, and insofar as those surpluses get into the hands of the owners of capital from time to time, in my opinion, the usufructary interests are being sacrificed to the benefit of capital interests.

Q.—Do you seen an indication of that in the present instance?

A.—As far as Sir Mortimer Davis Incorporated is concerned, that might very well have taken place, but Sir Mortimer Davis him-
20 self, during his lifetime, was owner of both the usufructary interest, and the capital interests, and the confusion did not adversely affect them.

Q.—From the period beginning at his death, where there was a different interest for the ownership of the shares in a sense, and a different interest in the dividend or usufruct of the shares, was the position the same as when Sir Mortimer was alive and owned them both?

A.—I think it was necessary then that those two interests should be absolutely distinguished the one from the other.

30 By the Court:

Q.—If I understood you properly, your contention is that the administration of the Executors was detrimental to the usufructary and to the advantage of the naked owners, the ultimate owners, that is, the future hospital of the Jewish Federation and those instances, is that it?

A.—That is the way it is working out.

40 By the Court:

Q.—Do you consider that their duty was to increase the revenue as much as possible, even if the ultimate capital should be diminished thereby?

A.—I think it was their duty to hold the revenue for the benefit of the usufructary interests, that they had no right to reinvest that revenue for the benefit of the residuary.

GEORGE C. McDONALD (for Plaintiffs), Examination-in-Chief.

By the Court:

Q.—Your contention is that the whole revenue belonged to the usufructary and should not be used in swelling the ultimate capital?

A.—That is the point, but I wanted to bring out this fact, that I think today, aside from this case altogether that usufructary interests are suffering. I think that some of the Executors, the
10 Trust Companies perhaps, should put up a bigger fight than they are putting up for that, and that carried into this case here, of course, it is vital.

By Mr. McKeown:

Q.—Just one further question on this statement P-198. I drew your attention yesterday to the fact that Sir Mortimer Davis Incorporated had sold shares sufficient to reduce their holdings of the Alcohol Company from approximately 68 per cent to 51 per cent.
20 Will you tell His Lordship, from the Exhibit P-198, exactly the number of share which were involved in that reduction?

A.—At different times between September 1919, and September, 1929, there were sold on the basis of the present denomination of these shares, 378,399 shares.

By Mr. Campbell:

Q.—“A”?
30 A.—“A”.

By Mr. McKeown:

Q.—And have you seen enough of the record to be able to say that during that period the stock advanced?

Witness: Do you mean the market price of the stock?

Counsel: The market price?

40 A.—Oh yes, it had considerable advances and several recessions.

Q.—But on the whole, the advance was very substantially upward in the ten year period?

A.—Well, the picture on the first of March, taking Alcohol shares at \$8, was nearly back to what it had been in September, 1919, when they were taken on the books at \$6.25.

Q.—When you talk about the recession, you mean the recession since the death of Sir Mortimer Davis?

GEORGE C. McDONALD (*for Plaintiffs*), *Examination-in-Chief*.

A.—Well, that in particular.

By Mr. Campbell:

Q.—Before you go on from there

10 Mr. McKeown: I cannot have this general interruption.

Mr. Campbell: My submission is that I should not have to cross examine the witness about an elementary matter I want to clear up now.

Mr. McKeown: I am not taking any instructions from you about elementary matters. If you have an objection, state the ground of your objection.

20 Mr. Campbell: I wish to have you put a question to Mr. McDonald so I will not have to cross examine upon it. He has just referred to a figure of 378,399 shares that were sold during the period of ten years and I would like him to note now that during the same period there were 218,699 shares bought.

30 Mr. McKeown: What difference does that make. It seems to me Mr. Campbell ought to try and wait his turn. If he is not objecting to a question of some kind or other, he is objecting to the answer. It seems to me the only possible way to control a trial of this kind is for Mr. Campbell to take notes, and when his turn comes, to cross-examine and ask any further questions, but to stop me at every question is most annoying.

His Lordship: Perhaps you can compromise on this, Mr. McKeown. Mr. McDonald has a number of statements and you might allow him to be cross-examined on each statement before taking up another.

40 Mr. McKeown: One is interlocking with the other, and the effect on the whole would be lost. Why should this trial be conducted differently from any ordinary trial which has gone on since the Court House was built.

His Lordship: The only difference is that the depositions are longer and when the cross-examination comes in the next week or so Mr. Campbell will have forgotten the question.

GEORGE C. McDONALD (for Plaintiffs), Examination-in-Chief.

Mr. Campbell: I submit Your Lordship should not be left under a wrong impression in the interval. My suggestion is that my learned friend should, as I say, develop the whole truth from the witness. There is nothing more dangerous than to put part of the picture forward. The rest of the picture is right under the eye of the witness, and I ask my learned friend to put that simple question so as to correct what I think is a perfectly wrong impression.

10

Mr. McKeown: Whoever heard of any such problem, that I have to frame every question to please you, and if it does not please you, I have to ask further questions which belong in your cross-examination. We would never get anywhere. I hope Mr. Campbell will not offend any more.

Mr. Campbell: Your hope is in vain.

By Mr. McKeown:

20

Q.—Have you prepared a further compilation in connection with the Estate of the late Sir Mortimer Davis in the way of a summary, showing the problem of the Executors in dealing with the liquidation of the liabilities of the Estate at the time of his death, March 22nd, 1928, and if so, will you produce copy of the same to be marked Exhibit P-199?

A.—I have.

Q.—Will you explain to His Lordship briefly the purport of this Exhibit P-199?

30

A.—In looking at the problem that the Executors are faced with, I have treated the Incorporated Company as being part of the Estate, just as if it had not existed at all, otherwise it was utterly impossible.

By the Court:

Q.—That is the only way?

A.—Otherwise the liabilities of the Estate at date of death could not have been dealt with except by realization through the Incorporated Company, and in making these figures I have taken the assets available of the Incorporated Company, keeping in mind the instructions in the Will that the control of certain enterprises was to be retained.

40

By Mr. McKeown:

Q.—And have you also taken the direct assets of the Estate into consideration?

GEORGE C. McDONALD (for Plaintiffs), Examination-in-Chief.

A.—The Estate and Company, and at the date of Sir Mortimer's death the current liabilities of the Estate were \$4,174,345. There is a list of them on the second sheet.

If you analyze those liabilities at that date, you will realize that \$3,500,000 of them were due to the death of Sir Mortimer.

Q.—That is to say, \$3,500,000, and the \$4,174,345 really came into existence by Sir Mortimer's death?

10 A.—They were the contracts and donations which were on the books before, which became effective.

Q.—What are the items going to make up the \$3,500,000 to which you have referred?

A.—The Succession Duties, \$1,392,158; the funeral expenses, \$50,437; legacies and bequests, \$428,723; contracts and donation, \$1,700,000.

Q.—Forming together a round sum of \$3,500,000?

A.—\$3,500,000.

20 At the same time in the Incorporated Company there were current liabilities of \$437,156.

Q.—They are also listed?

A.—They are also listed on the fourth sheet of that Exhibit.

Then, in addition to that, there were two loans. There was a loan to Bamberger Brothers, which was secured against some of the marketable securities of the Estate. That loan was \$1,348,391, and there was the loan to the Bank of Commerce which, at that time, was \$3,590,504. That means the gross liabilities of the Estate and Incorporated Company, were somewhere between \$9,000,000 and

30 \$10,000,000. At that moment, I do not think the Executors need have considered that the loan to the bank had to be dealt with at once, but practically all the other liabilities were of a current nature, and it was part of the Executors duty to discharge the legacies and contracts and donations and the debts of the Estate within a reasonable period.

I have made up at the same time a list of the assets in the Estate and in the Incorporated Company that could at the time, or subsequent history, have been shown to have been realizable to meet

40 these liabilities.

The assets in the Estate available to meet the liabilities are listed on page two. After deducting the Bamberger loan from the securities which were pledged against it, the total available in the Estate was \$1,170,000.

By Mr. Campbell:

GEORGE C. McDONALD (for Plaintiffs), Examination-in-Chief.

Q.—Where is that figure shown?

A.—On page two.

Page three shows the marketable securities of the Estate at the values which I understand are established between the Executors and the Succession Duties Department.

10 The assets of the Incorporated Company are shown on page four, included cash in bank and call, life insurance, loans, marketable securities, and a property that was subsequently sold, totalling \$1,992,732, and a list of the marketable securities follows on the last page.

By Mr. McKeown:

Q.—Amounting to how much?

A.—\$544,987.46.

20 Now, going back to the first page, in those assets that I have taken as readily realizable, I have been guided by the subsequent history of the market conditions to show what could possibly have been dealt with, but I have not included the item shown on sheet one, Alcohol " B " shares, 61,980; Asbestos Corporation Common, 5,000; Consolidated Asbestos Common, 37,188, and 436,340 shares of Alcohol " A."

Q.—That is the whole of Alcohol " A " ?

30 A.—The whole of Alcohol " A," some of which was pledged against the bank loan and certain other properties, the Pine Avenue property and Ste. Agathe property which did not appear to be readily saleable.

Q.—The other assets which you took in are shown in the supporting schedules?

A.—Yes. The bank loan at the time was secured by 60,000 shares of Canadian Industrial Alcohol " A," having at that time a market value of \$2,460,000.

By Mr. Campbell:

Q.—What is that figured at?

40 A.—At about \$41; and the Robert McNish Debentures shown at a market value of \$2,229,080.90.

By Mr. McKeown:

Q.—Together, forming how much collateral?

A.—\$4,689,080.90.

Q.—Against how much of a loan?

GEORGE C. McDONALD (for Plaintiffs), Examination-in-Chief.

A.—\$3,590,504.

Q.—What would the equity be there?

A.—The equity would be about \$1,100,000.

10 Now, the assets available exclusive of these that I have said were shown on the bottom sheet made a total of \$3,162,779, to meet liabilities of \$4,611,502, which meant that at that time there was a net deficiency of liquid assets of \$1,448,722.75, that is, without taking into account the McNish Debentures, the Alcohol " B " stock, the Alcohol " A " ———

Q.—The frozen assets?

A.—And the frozen assets.

Q.—Or the equity in the Bank loan?

A.—Or the equity in the Bank loan.

Q.—Leaving those aside, there was a deficiency, as you say, of \$1,448,000 between the current liabilities and the current assets of the Estate, so to speak?

20 A.—Of the Estate and Incorporated Company.

Q.—Of the Estate and Incorporated Company as at the date of the death?

A.—Yes.

To meet that \$1,448,000, of course, there was an equity in the loan of \$1,100,000, and there were the whole of the Alcohol " A " shares, the Alcohol " B " shares and the Asbestos shares, and other frozen assets, but those were the things that Sir Mortimer, I consider, directed should be carried on, the controlling interest in Alcohol " A " was in peril at this time on account of that situation.

30 Q.—Have you any further comment that you would like to make on that Exhibit?

A.—I think that is the picture.

Q.—Have you prepared a further Exhibit in connection with the Estate, with reference to the liabilities of the Estate which has been discharged, and those which have remained unpaid, and of certain transactions of the Incorporated Company since the date of the death of Sir Mortimer, and if so, will you produce a copy of the same as Exhibit P-200?

40 A.—Yes.

Q.—Will you explain to His Lordship the purport of this Exhibit P-200?

A.—The Exhibit covers the period from the death of Sir Mortimer up to the 30th of September, 1929, which is the end of the last fiscal year, or, in other words, eighteen months after the death of Sir Mortimer, during that time the first sheet shows the extent

GEORGE C. McDONALD (for Plaintiffs), Examination-in-Chief.

to which the Executors had met their problem in discharging certain of the liabilities.

Q.—Of the Estate?

A.—This is of the Estate.

Q.—The first sheet is of the Estate?

A.—The first sheet is of the Estate. The Bank overdraft had
10 been reduced by \$127,151. Accounts Payable had been reduced by
\$453,065. The main items were the Y.M.H.A. building, \$278,478;
Sundry accounts \$136,089; the principal item, I believe, was Income
Tax, and Funeral Expenses, \$15,000. On the contracts and dona-
tions, \$200,000 has been paid, on marriage contract to Lady Eleanor
Davis. The legacies and bequests had been discharged. They were
not cash. Those were the ones that were in kind, or contra account
to the extent of \$23,723.48

Q.—Just a moment: With reference to the legacies and be-
quests, the first item there, Lady Eleanor Davis for servants in
20 Canada, \$3,800, was not that in cash?

A.—That would be cash. Howard Clark was settled by contra
account. The personal jewellery was taken in kind, and the per-
sonal cash was taken by Lady Davis.

Then, there was spent on Succession Duties and expenses in
connection therewith \$92,158.08.

Q.—That did not have any relation to the Succession Duties
claimed by the Quebec Government?

A.—No, those were Succession Duties, I think, in France.

Q.—And expenses in connection therewith?
30

A.—And expenses in connection therewith. The Quebec Gov-
ernment had not got any of that.

That makes a total of those liabilities discharged of \$876,099.

Then the loan from Bamberger Brothers has been taken up,
\$1,348,391.

The second sheet shows liabilities and legacies of the Estate
which had existed since March, 1928, which had not yet been dis-
charged. On the 30th of September, 1929, there was still part of the
bank overdraft, \$12,000; Accounts Payable, Legacies and Bequests,
40 \$405,000; Succession Duties \$1,300,000, a total of \$3,298,246.

The last sheet shows that the liabilities of the Incorporated
Company which had been discharged during that period. These are
the liabilities as they existed in the Statement at March, 1928.

Q.—That had been discharged by the 30th of September, 1929?

A.—Yes.

Q.—According to Price, Waterhouse and Company's statement
as of that date?

GEORGE C. McDONALD (for Plaintiffs), Examination-in-Chief.

A.—Yes. They consist of H. M. Marler and H. B. McLean in Trust, \$199,515; J. B. Waddell, \$46,118; Canadian Bank of Commerce loan, \$348,355, and H. M. Marler, \$900; a total of \$594,890.

Q.—Just to identify that first item in the last list which you have mentioned, H. M. Marler and H. B. McLean, is that the item which includes the offset of loans by the Incorporated Company to Lord Shaughnessy amounting to some \$60,000 and interest, and the
10 withdrawal of a further sum amounting to about \$150,000 by him in the month of September last in cash?

A.—That was the item that was settled in September, 1929, by contra account against various other accounts and cash.

Q.—Partially by set-off against his loans and the balance by the withdrawal of cash?

A.—Yes.

Q.—The figures entering into this statement amounted to just a little under \$200,000?

A.—\$199,515 at the time with accrued interest during the period
20 which would have amounted, I understand, to \$212,000.

Q.—Are these figures the amounts as they showed at the time of the death of Sir Mortimer?

A.—That is it.

Q.—And they do not include the interest accrued from that date up to whatever date the matters were taken out of the Incorporated Company's books?

A.—No, they are the same figures that are included in the last Exhibit showing the problem of the Executors.

Q.—P-199, showing the problem of the Executors at the time
30 of the death of Sir Mortimer?

A.—Yes.

Mr. Campbell: Is not there a clerical error on that Exhibit P-199, on that page to which you have referred, showing the \$199,555, the words "Accrued interest on Davis Trust," should that not be the Davis Estate? Is not that the interest accrued?

Mr. McKeown: That is a \$3,000,000 trust.

40 Mr. Campbell: Is that the interest accruing to the Davis Estate or is that interest accruing generally?

Mr. McKeown: That is accruing on the so-called \$3,000,000 Davis Trust.

Mr. Campbell: That is what I want to make sure of. I could not identify that figure.

GEORGE C. McDONALD (for Plaintiffs), Examination-in-Chief.

Witness: Those figures are taken and the words used are the ones on the Price-Waterhouse statement.

Mr. Campbell: I think in one case they use the word "Trust." Should not the words "Davis Trust" read "Davis Estate". Is that due to the Estate?

10 Mr. McKeown: No, due to the Trust.

Witness: If it is wrong in Price-Waterhouse and Company's statement, it is wrong in mine.

Mr. McKeown: It is not wrong in either.

Mr. Campbell: Can you identify what it is?

20 Witness: My other Statements show "Davis Trust." I took that figure from Price, Waterhouse and Company's statement as of March, 1928, originally.

Mr. Campbell: I am not blaming you for the mistake.

Mr. McKeown: It is not a mistake, it is right.

Witness: I know, but I cannot correct it any more than the knowledge I have——

30 Mr. McKeown: I think, Mr. Campbell, your client will instruct you it is the Davis Trust and refers to the \$3,000,000 Trust Fund, made up of the \$3,000,000 Serial Notes on which interest accrues and is not paid, but is credited up to the Trust.

Mr. Campbell: Mr. Reaper thinks that that item accrues to the Estate through this Trust.

Mr. McKeown: Not at the present time.

40 Mr. Campbell: As of the 22nd of March. This refers to the 22nd of March, 1928, as at date of the death of Sir Mortimer, accruing to the Estate.

Mr. McKeown: Up to the time of Sir Mortimer's death the interest was payable to Sir Mortimer.

Mr. Campbell: That is the point I wanted cleared up. I did not want to be under any misapprehension.

GEORGE C. McDONALD (for Plaintiffs), Examination-in-Chief.

By Mr. Campbell:

Q.—Can you help us from your investigation?

A.—I can only quote the writing I took. Can you show me Price, Waterhouse and Company's statement as of March, 1928?

10 Mr. Campbell: I don't know what you took that from.

Witness: Price, Waterhouse and Company's statement of the Estate as of March, 1928—no, of the Incorporated Company.

Mr. McKeown: There is no question whatever as to what that is.

Mr. Montgomery: I think Mr. Campbell is mistaken on that.

20 Mr. McKeown: Sir Mortimer some years ago made a donation in Trust of the sum of \$3,000,000, consisting of \$3,000,000 of six per cent. Serial Notes of the Incorporated Company. By the terms of that donation he retained for himself during his lifetime the interest on \$3,000,000, and it was credited to him right along up to the time of his death. At the time of his death there was \$162,000 unpaid on that, which I think is the amount Mr. Campbell is referring to. From the date of Sir Mortimer's death the interest on that sum of \$3,000,000 during a certain period would have gone to Mortimer Davis, Junior, but he transferred his rights to his father
30 before his father's death, and the Estate, during that period which will expire in December, upon Mortimer Davis, Junior, becoming thirty years of age; up to that period only \$10,000 is payable to him out of the revenue, and from the moment he becomes thirty he would have received the full amount, and having transferred it to his father the Estate will get the full amount of that interest, but the item included of \$165,000 is the amount due upon that so-called Davis Trust, and that is the way it has been referred to all the way through.

40 By Mr. Campbell:

Q.—I want to clear that up. That accrues for the benefit of the Estate, as on this statement of assets and liabilities. I take it that this is the statement from which you took your figures?

A.—I do not see it here.

Mr. Campbell: It is on that schedule which I handed you.

GEORGE C. McDONALD (for Plaintiffs), Examination-in-Chief.

Witness: Yes, that is it. It is on this balance sheet, interest accrued on Serial Notes Sir M. B. Davis Estate less contra account \$165,622.24.

Mr. Campbell: And that the amount that you mentioned?

10 Witness: That is the amount I mentioned.

Mr. Campbell: So it would be for the benefit of the Estate through the Trust, as Mr. McKeown has explained.

Witness: I don't know. It is a liability shown in the Estate then, and it was treated as such.

Mr. Campbell: I think the word "Trust" should read "Estate," according to the source from which you took it.

20 Witness: I would like to go back. I have a Price, Waterhouse statement which shows that item as the Davis Trust.

Mr. McKeown: Give us the date of that statement?

Witness: This is August 31st.

Mr. McKeown: This all comes from interrupting the examination.

30 Mr. Campbell: Where is the item you were calling attention to?

Witness: I do not agree with Mr. Campbell or Mr. Reaper.

Mr. McKeown: Let us take that up in cross-examination.

Mr. Campbell—I think for once we are right.

40 Mr. McKeown: The only thing that started this up was whether the word should be "Estate" or whether it should be "Trust," and I think it is properly in there as "Trust," and if you can establish it is a mistake, Mr. Campbell, you will have your opportunity of doing so.

By Mr. McKeown:

Q.—Now, let us go back to where we left off in this matter: In this statement Exhibit P-200, which I will ask you to file, of the

GEORGE C. McDONALD (for Plaintiffs), Examination-in-Chief.

liabilities of the Estate which have been discharged, and those which have remained unpaid, and the same for the Incorporated Company, is there anything included there to represent the revenue of the Incorporated Company which could have been obtained by these Executors since the death of Sir Mortimer Davis?

A.—No, that has not been taken into account.

10 Q.—And what does that amount to?

Witness: At the 30th of September?

Counsel: Yes, 1929.

A.—The excess of revenue of the Incorporated Company had amounted to \$961,951.66.

20 Q.—That is, excess revenue of the Incorporated Company from the date of the death of Sir Mortimer Davis in March, 1928, to the end of the last fiscal year, September 30th, 1929?

A.—Yes.

Q.—Have you prepared a further compilation in reference to the Incorporated Company, covering a period from the date of the death of Sir Mortimer Davis, March 22nd, 1928, to September 30th, 1929, dealing with investments made by the Incorporated Company, and subject to criticism; and if so, will you produce a copy of the same as P-201?

A.—Yes.

30 Q.—Will you explain to His Lordship the purport of this Exhibit P-201?

A.—My Lord, faced with the problems the Executors had I can conceive they did not have any money to invest whatever.

Q.—Do you mean the Incorporated Company?

A.—The Executors either of the Estate or of the Incorporated Company, did not have any funds to invest, and I think that any accruing revenue which has just been referred to, should have been paid to the usufructary beneficiaries.

40 Q.—That is, you mean the surplus revenue of the Incorporated Company should have been paid out by the Executors of the Estate for distribution to the usufructary interests of the Estate?

A.—Yes, and on account of the liabilities they had to meet, they were not justified in making any investments whatsoever, unless they were committed to them and could not withdraw. There were certain investments there that nobody would criticize as investments, such as taking up certain shares in the Royal Bank, which was done to the extent of \$37,800 in the Incorporated Com-

GEORGE C. McDONALD (for Plaintiffs), Examination-in-Chief.

pany; but, if you have not got the cash you cannot spend it. It was their duty to protect the capital rights of those shares.

Q.—In practice, were there any means whereby they could have protected the rights of the Incorporated Company to the new shares otherwise than by actually buying the new stock?

10 A.—Yes, they could have sold the rights, or they could have taken up the new stock and have sold it at once. They probably were under obligation to make some payments to the Union Cigar Company, which is shown as a disbursement, on account of which is shown at \$31,107.15, but with that exception, and the Royal Bank and the National Steel Car Corporation, I understand is new stock there, and certain of those others, Imperial Tobacco—I don't know what the conditions there were, but in any case, not having the funds to meet their liabilities, I conceive they had no justification in investing even in good investments.

Q.—The money which went into those indicated stocks?

20 A.—The money which went into those indicated stocks.

Q.—What about the other class of investments, that would be "A" and "B" Alcohol, I see mentioned, to start with?

A.—I heard the Alcohol shares referred to as a speculative investment. There were 2,200 shares of Alcohol "A".

Q.—You are referring to the purchase by the Incorporated Company since Sir Mortimer's death of additional "A" and "B" shares of Alcohol?

30 A.—2,200 "A" and 160 "B". I would assume that if the "A" shares were purchased to maintain control of the Company, the Executors would have been justified.

Q.—But were they required for that purpose?

A.—Not so far as I am aware.

Q.—And the "B" shares had no voting rights?

A.—No, and judging from the history of the investments Sir Mortimer made during his life, and the currency of the Incorporated Company, I should think the Executors should have been very wise to keep out of the Coal Company venture, and a venture such as Jennison appears to be.

40 Q.—And what you have just said as to the investments of Sir Mortimer which turned out unfortunate, are they those shown on the second sheet of Exhibit P-196, amounting to \$4,885,219.98. Is that what you are referring to?

A.—Yes, that is what I refer to.

During these nine or ten years prior to his death the ventures he had made—it was all very well for him to take flyers in speculative things, in mines and so on, but the Executors should have taken a warning from the example he gave them there.

GEORGE C. McDONALD (for Plaintiffs), Examination-in-Chief.

By Mr. Campbell:

Q.—That was one of the policies they should not have carried out.

A.—Yes.

Then, I would further there, in regard to these sundry disbursements charged against revenue listed at the bottom——

10

By Mr. McKeown:

Q.—Beginning with Alberta coal properties expenses: Have those items been debited up against the revenue of this Company?

A.—They were paid for out of the revenue of th Incorporated Company.

Q.—Did they in that way go to reduce this figure which you have given us of \$900,000 odd?

20

A.—Yes. It seems to me that the usufructary legatees are entitled to demand all the revenues of the Estate, and the Executors are not entitled to charge against those revenues anything of a new nature.

By Mr. Campbell:

Q.—Were these paid by the Executors?

Mr. McKeown: Mr. Campbell, can't you contain yourself?

30

Witness: The Incorporated Company, the Directors of which were the Executors of the Estate.

By Mr. Campbell:

Q.—Not in their qualities. You mean the mere individuals.

Mr. McKeown: Mr. Campbell, the witness is not addressing every one of his remarks to you.

40

By Mr. McKeown:

Q.—Those investments of the category last referred to appear to cover Alberta coal properties, Alberta oil fields, Canadian Exploration Syndicate, Sudbury Mines and Deferred Exploration expenses, they are all of the same category?

A.—They sound very much alike.

GEORGE C. McDONALD (for Plaintiffs), Examination-in-Chief.

Q.—Have you also prepared a compilation first, with reference to the Estate showing the balance sheets as of March 22nd, 1928, and September 30th, 1929, and a record of intervening transactions with a recapitulation of the revenue, cash transactions and the capital cash transactions, and if so, will you produce and file the same as Exhibit P-202?

A.—Yes.

10

Mr. Campbell: Does this contain any new material?

Mr. McKeown: You have copies of this since yesterday.

Mr. Campbell: I have just glanced through this. I have not had time to examine it in detail. As I read it at first glance this material is already in the record. These are all very long, complicated documents for Your Lordship or any other Court to read, and unless there is some material added, my submission is there is no necessity to repeat all of them.

20

Mr. Montgomery: I think Mr. McDonald is a fairly good judge as to that.

Mr. McKeown: Mr. McDonald has been over the Exhibits that you have produced and I do not think it is any part of Mr. McDonald's duty to act as a copyist.

Mr. Campbell: If he is adding something of benefit I have no objection. That is why I am asking if he would point out where the new material is.

30

Mr. McKeown: We handed these Exhibits to you yesterday noon, and I am sure you have studied them very well.

Mr. Campbell: I cannot say that I have had time to do that. That is why I am not sure where the new material comes in.

Mr. McKeown: Then, listen to Mr. McDonald and you may hear something that will assist you.

40

By Mr. McKeown:

Q.—Would you explain to His Lordship the purport of this Exhibit P-202?

GEORGE C. McDONALD (for Plaintiffs), Examination-in-Chief.

A.—I have drawn up this statement in the form in which it is my own practice to use in Executorships—

Q.—Just a moment. I was going to ask you in that particular connection, a point perhaps I should have covered by way of a preliminary question to your whole examination: In addition to the work of your office conducted in connection with Corporations, have you heretofore acted in the capacity of Accountants for important
10 Estates?

A.—Yes.

Q.—And are acting as such now?

A.—Yes.

Q.—And are you familiar with the system of accountancy adopted in connection with important Estates?

A.—Yes.

Q.—Have you also acted in relation to such Estates in your capacity as Auditor?

20 A.—Yes.

Q.—Have you further acted in the same connection in the capacity as Executor?

A.—I have—not the same Estate.

Q.—But you have acted, and are acting as Executor of important Estates?

A.—Yes.

Q.—Will you say to His Lordship whether the Exhibit P-202 is drawn in conformity with your practice in the particulars which I have just reviewed with you?

30 A.—Yes.

Q.—And will you also say what is the particular purpose of a Statement prepared and maintained in that form?

A.—The Trust Companies in keeping Estate accounts go to great lengths in keeping the revenue and capital distinct and the records thereof, and the banking transactions separately. It is not wholly necessary to do that, but it is desirable to keep the records so that the revenue transactions and capital transactions are kept distinct, and in order to show these very clearly, we have a practice
40 of preparing a statement such as this, which starts on the left hand column with a balance sheet at the beginning of the period, listing the assets and liabilities in the first column.

Q.—In this instance listing them as at the date of Sir Mortimer's death, March 22nd, 1928?

A.—In this instance listing them as at the date of Sir Mortimer's death, March 22nd, 1928, and the rest of the Statement, going

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across, shows the history of what has happened in the interval to the end of the subsequent period with a balance sheet at the end.

To elaborate that, the second set of columns show revenue and expenditure produced or made in connection with the various accounts of the Estate. The third set shows profits and losses on account of capital. The fourth set shows the capital cash receipts and disbursements, and a memorandum column for remarks, and the balance sheet at the end of the period, the purpose being that you can take any one of the assets at the beginning of the period and follow through what it has produced in the way of revenue, what has happened in the way of purchases and sales, and the position at the end, and it keeps all the transactions from revenue distinct from capital.

Q.—Take for instance, the top line, Pine Avenue property, that simply shows, following that line along, that it was entered on the balance sheet, March 22nd, 1928, at \$170,000 with an expenditure of \$15,019 up to September 30th, and that the property still remains at the same price?

A.—It was charged against revenue.

Q.—And that still appears in the balance sheet at the same sum?

A.—Yes.

Q.—Take for instance, the second line, dealing also with Pine Avenue, but with the contents of the house; the amount is entered first at \$13,347 as at the date of the balance sheet March 22nd, 1928, and there appears to have been a sale for \$375 which is credited to capital receipt and the remarks "Sale of furniture," and which has the effect of reducing the amount, shown in the balance sheet of the 30th of September, 1929, to \$12,972?

A.—Yes.

Q.—And so on for other items?

A.—Yes.

Q.—Let us suppose for argument's sake, for one reason or another, the assets were sold, and produced a greater price than they had appeared in the balance sheet; take for instance, the Racing Stable, the seventh item entered originally in the balance sheet at \$118,200 on March 22nd, 1928, running expense charged up at \$4,735.22, and this charge is against revenue; finally the stable was sold?

A.—Yes.

Q.—And produced \$14,424.28 over the price entered originally at \$118,200?

A.—Yes.

GEORGE C. McDONALD (for Plaintiffs), Examination-in-Chief.

Q.—The result is that profit and loss capital account is credited with the profit of this sum of \$14,000 odd?

A.—Yes.

Q.—And in the remarks “Sold,” and it disappears out of the statement?

A.—That is it.

10 Q.—And so on for every other item?

A.—Yes.

Q.—For every other item dealt with by the Estate during the period covered by the Statement?

A.—Yes.

Q.—The first page deals with properties and charges evidently?

A.—Yes.

Q.—When you come to the second page, there is a continuation, and then, the Accounts Receivable are dealt with?

A.—Yes.

20 Q.—Interest accrued on bonds, cash on hand, bank overdraft, accounts payable, and on the third page, Contracts and Donations, Legacies and Bequests, Succession Duties, Capital Surplus: Those are the headings of the columns to which you have already drawn the attention of the Court? The Statement is virtually self-explanatory?

A.—Yes.

Q.—And gives practically a bird eye’s view of the operations during the entire period?

A.—Yes.

30 Q.—Looking at the third page, P-202, will you indicate to His Lordship by what sum the revenue expenditure of the Estate from March, 1928, to September, 1929, exceeded the revenue?

A.—\$463,910.80.

Q.—And by what amount did the capital expenditure exceed the capital realization?

40 A.—There was actually a slight profit on capital account resulting from the sale of the Racing Stable, and some profits on the Tobacco Products and Victor Talking Machine stocks, that taken into account with the additional payment to the Y.M.H.A. building of \$20,356 made a net increase in the capital of about \$40,000.

By Mr. Campbell:

Q.—Where is that shown?

A.—It is shown by taking the details in the profit and loss items and reducing the amount of the excess expenditure from \$463,910 to \$424,983.

GEORGE C. McDONALD (*for Plaintiffs*), *Examination-in-Chief*.

By Mr. McKeown:

Q.—Will you look at the supporting schedule of P-202, being a recapitulation of the revenue cash transactions, and explain to His Lordship the exact purpose of that schedule with relation to the main Statement contained in Exhibit P-202?

10 A.—If all the transactions that entered into the revenue and expenditure account had actually been paid out in cash during the year, or received in cash during the year, the summary of the revenue and expenditure in the two columns, revenues and expenditures would give a summary of the cash receipts of revenue and expenditure, but certain items are accrued like interest on bonds and so on, and you have to treat them as being borrowed from one to the other. I have a summary there showing what the actual cash receipts and disbursements on account of the revenue were, and treated the ones that were accrued as having been borrowed from capital cash. The receipts show dividends \$98,000, bond interest \$46,000
20 and interest on funds in Trust \$12,000, total \$138,000. The disbursements show \$430,000, but some of those were not actually made, and the interest on Contracts and Donations was not actually paid, and it had to be treated as an accrual, but the net result of that shows that revenue cash only had to borrow from capital cash during the year, \$292,643, although the excess expenditure was \$463,000. The fact that a large part of that was interest accrued and not paid out in cash reduced the amount that was borrowed from the capital cash account to that extent.

30 Q.—Will you please explain the final supporting schedule, being the recapitulation of the capital cash transactions?

A.—That is a summary of the two columns of capital cash receipts and disbursements shown in the main statement. It shows to what extent the capital cash account had been used to make good the requirements of the revenue cash account.

The capital cash shows there were certain assets sold, and money borrowed from the Bank to reduce the Bamberger loan; there were other assets sold to the amount of \$152,000 odd; there were sundry bequests cleared out; and cash amounts in the sum of \$1,404,989
40 received from the Incorporated Company. On the other side, they paid off the Bamberger loan, and made certain investments. The investments made by the Estate were the 450 shares they bought from Marler, or in the Incorporated Company, and another subscription to the Royal Bank shares. They paid off the Bank overdraft, accounts payable, and sundry bequests and liabilities, and sundry other items.

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By Mr. Campbell:

Q.—Where are the particulars of the liabilities of \$292,337.00, on the last page, shown?

A.—You will get them out of the capital cash disbursements column. The Y.M.H.A. Building is the principal one.

Q.—They will be in the capital cash disbursements?

10 A.—Yes.

By Mr. McKeown (continuing):

Q.—Have you prepared a further Exhibit, in the same form as Exhibit P-202 which concerned the Estate, but covering the same subjects with reference to the Incorporated Company, and, if so, will you please produce it as Exhibit P-203?

A.—Yes.

20 Q.—I take it the explanations you have given in connection with Exhibit P-202 will apply equally to this Exhibit, except that P-202 refers to the Estate and P-203 refers to the Incorporated Company?

A.—Yes. They are on exactly the same basis.

By the Court:

Q.—The investments in stocks and bonds are investments made by Sir Mortimer Davis himself and investments made by his Executors, I understand?

A.—Yes.

30 Q.—Anglo Scottish, for instance?

A.—Anglo Scottish was something additional. At Sir Mortimer's death there were 5,000 shares of common, and there is no change in that.

Q.—What about Asbestos Corporation? Did the Executors invest in that?

A.—No. That stood.

40 The new investments show in the capital cash disbursements on the first page of Exhibit P-203. The capital cash disbursements show any new investments since Sir Mortimer's death.

By Mr. Montgomery:

Q.—Will you mention one or two of them?

A.—40 shares of Alcohol " B." The \$450,000 investment in Cadillac Coal common also shows there, I have had to show it as a cash

GEORGE C. McDONALD (for Plaintiffs), Examination-in-Chief.

transaction because, as Mr. Campbell pointed out, cheques were drawn for it.

Below that there are 1,000 shares more of Imperial Tobacco, increasing the holding to 6,000 shares; Investment Foundation, Limited, \$47,500, and \$40,000; Jennison Company, \$50,000; National Steel Car, 33 shares, \$2,515; 189 shares Royal Bank, \$37,800 and certain instalments on Union Tobacco Company, \$30,103.

10

By Mr. Campbell:

Q.—Is the column headed “Profit and Loss” all capital account, or all revenue account, or partly one and partly the other?

A.—May I finish my list of investments? There is another one of \$50,000 Cadillac Coal First Mortgage Bonds.

That is all the new investments.

The Profit and Loss is altogether relating to capital items.

20

Q.—Profit and Loss on capital account?

A.—Yes.

By Mr. McKeown (continuing):

Q.—I think you have already explained how it comes about that you show this somewhat fictitious transaction in connection with Cadillac Coal in this column, first the \$450,000 and then \$50,000 additional for bonds. In point of fact that refers to the same property that was previously carried at \$10,000?

30

A.—Yes. Two spaces farther down you will see the Federal Coal property appears as having been sold at a profit of \$490,000.

Q.—Is that \$490,000 entry with the original price of \$10,000 as an offset as against those two items of \$450,000 and \$50,000?

A.—That is the effect of it.

By Mr. Montgomery:

Q.—It is merely a bookkeeping cross entry?

A.—An ordinary every day bookkeeping cross entry.

40

By Mr. McKeown (continuing):

Q.—So, to the extent of \$490,000 out of the \$500,000 it is just merely a cross entry?

A.—It is a write-up in the capital surplus account of \$490,000.

Q.—Does the actual advance of new cash to Cadillac Coal show anywhere on this statement Exhibit P-203?

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A.—Yes.

Q.—Which exceeded \$100,000 at September 30th last, and which has since been increased?

A.—Yes.

You will see about the middle of the second page “Loans and Advances to Cadillac Coal Company, \$108,920.41.”

Q.—Real money, in this instance?

10 A.—That was cash money, in this instance.

Q.—The others were.

A.—(Interrupting) Cheques.

Q.—Every day bookkeeping entries?

By Mr. Campbell:

Q.—The cheques went through the Bank?

A.—Yes.

20 By Mr. McKeown:

Q.—Both ways?

A.—The Banks will do that.

Q.—Is there any further comment you care to make in relation to Exhibit P-203, concerning the Incorporated Company?

30 A.—On the last sheet, at the bottom of the Revenue and Expenditure Account, the excess revenue for the period shows at \$961,951.66. It is carried at the credit of Revenue and Expenditure on the books. It is the debt the Executors owe to the usufructary interests.

Q.—And, perhaps, in an absolutely technical way, which represents the surplus revenue of the Incorporated Company from the death of Sir Mortimer Davis to September 30th, 1929. Is that right?

A.—That, plus any of those items that were disbursed which I claim should not have been—Alberta Coal, for instance.

Q.—So, this item of \$961,951.66 would be increased had the items in connection with the oil fields and the coals, other than Cadillac Coal, been debited to capital account instead of revenue?

40 A.—Yes.

Q.—No part of this sum has been passed over by the Directors of the Incorporated Company to the Executors of the Estate as a separate entity?

A.—It has not been passed over as dividends.

Q.—Or, as revenue?

A.—Or, as revenue.

Q.—To exhaust the subject, there is the loan amounting to some

GEORGE C. McDONALD (*for Plaintiffs*), *Examination-in-Chief*.

\$900,000 from the Incorporated Company to the Executors on September 30th, 1929?

A.—The last Exhibit shows that at \$941,649.32 as on September 30th, 1929.

10 Q.—And which appears both by the books of the Incorporated Company and by the accounts of the Executors as a loan from the Incorporated Company to the Executors, bearing interest, on the face of it, subject to repayment?

A.—That is the way it has been treated.

20 Q.—With reference to the loan in question, in the event of the same not having been made from the origin, but having been replaced by dividends of the Incorporated Company to the shareholders, prior to September 17th, 1929, the interest claimed by Lord Shaughnessy, of 5% (amounting in this instance to \$50,000) would not have participated? In other words, if they paid it in dividends to the Estate Lord Shaughnessy under that contract (even if it is the best contract in the world) had no interest in the matter up to September 17th, but after September 17th he had a 5%, or \$50,000, interest in it?

Mr. Campbell: He had not, in the light of the documents in the record.

Mr. McKeown: Documents he wrote himself, months afterwards—we never heard of them.

30 Mr. Campbell: But, that does not make it less binding.

Mr. McKeown: It cost the Estate \$50,000 in one shot.

Mr. Campbell: I submit it is quite unfair to put a question or make a suggestion of that kind. Lord Shaughnessy had deliberately bound himself that whenever a dividend was paid he would not take it.

40 Mr. McKeown: We never heard of that until after the Suit.

Mr. Campbell: Whether you heard of it or not, it existed and was of record.

Mr. McKeown: But, we are not going to predicate any questions on that.

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By Mr. McKeown, (continuing):

Q.—Are you familiar with the terms of the contract?

A.—As I understand the situation, up to September 17th, 1929, all the dividends that were payable out of Sir Mortimer Davis, Incorporated, would have gone to the Estate except that part accruing to Mr. Waddell, who was then the only shareholder entitled to
10 dividends at the time, Mr. Marler's shares having been acquired.

Q.—If this sum which stood as a loan from the Incorporated Company to the Executors at September 30th, 1929, had been distributed in the form of dividends by the Incorporated Company, would not the Incorporated Company have benefited to the extent of the 5% claim under Lord Shaughnessy's contract, which, if the contract is valid, would have to be provided for in the event of a dividend being declared after that date to compensate the loan?

A.—The Estate would have benefited.

20 Q.—To the extent of approximately \$50,000?

A.—Whatever the amount is.

Mr. Campbell: And will still benefit; if, as and when.

By Mr. McKeown, (continuing):

Q.—Have you prepared a further compilation, for the purpose of consolidating the statements Exhibit P-202, with reference to the Estate, and P-203, with reference to the Incorporated Company, and,
30 if so, will you produce a copy as Exhibit P-204?

A.—Yes.

Q.—Do I read this consolidation to which I have just drawn your attention, Exhibit P-204, correctly as being simply the consolidation of the two Exhibits P-202 and P-203?

A.—Yes, and after making provision for the minority interest. I have practically eliminated the structure of the Incorporated Company, but provided for the minority interest in the capital and
40 surplus as a liability.

Q.—For the purpose of this statement at what have you placed the minority interest?

A.—As it stood on September 30th, 1929.

By Mr. Campbell:

Q.—Which column is that?

GEORGE C. McDONALD (for Plaintiffs), Examination-in-Chief.

A.—The minority interest shows on Page 2. Under the balance sheet in the first set of columns you will see: Minority Interest,

A.—The minority interest shows on page 2. Under the balance Share and Capital Stock, and Capital Surplus. That item which Mr. McKeown was speaking about—the interest in the dividend—is dealt with in a footnote.

10 By Mr. McKeown, (continuing):

Q.—That is the footnote on page 2?

A.—Yes.

By Mr. Campbell:

Q.—What is the \$94,000?

A.—That is the share the minority interest would be entitled
20 to if the surplus was distributed.

Q.—You mean of the capital surplus?

A.—The capital and revenue surplus. If they distributed the revenue surplus of \$961,000 as at September 30th, Mr. Waddell and Lord Shaughnessy would be entitled to 10% of it, subject to whatever reduction there was for that period prior to September 17th.

Q.—Under Lord Shaughnessy's agreement with the Estate, or otherwise?

A.—As you have made me understand it. It is drawn to show
30 if the Incorporated Company had never existed the excess revenue for the period would have been \$498,040.86: that is deducting the excess expenditure in the Estate from the excess revenue in the Incorporated Company, the usufructuary interest would have had \$498,040.86?

Q.—Where is that shown?

A.—In the revenue and expenditure column.

By Mr. McKeown, (continuing):

Q.—These figures of \$498,040.86 are based upon the subtraction
40 tion of the whole of this minority interest, \$94,752.23?

A.—Yes: taking all those into account.

Q.—And it is assuming practically that this reduction of 10% on the surplus revenues was properly chargeable or properly deductible for the whole amount from those figures of \$498,040.86?

A.—Yes.

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Q.—If from this \$94,752.23 we subtract the approximate amount of the dividends as accruing on the 2375 shares claimed by Lord Shaughnessy, to what amount would the \$94,752.23 be reduced?

10 A.—It would be reduced to about \$49,000, I should think. Mr. Waddell would get about one half of it, and Lord Shaughnessy would get about one twenty fourth of it—from September 17th to the end of the month. The rest would belong to the Estate.

Q.—Let us take the figures arbitrarily at \$50,000 for Mr. Waddell and \$44,752.23 for Lord Shaughnessy; you would have to add those figures of \$44,752.23 to your prior figures of \$498,040.86, making a total of \$542,793.09?

A.—Yes.

Q.—And that would be the amount which, according to your formula, should have been available for distribution to the usufructuary interests of the Estate?

20 A.—Yes.

Q.—Over the period from the death of Sir Mortimer, in March, 1928, to September 30th, 1929?

A.—Yes.

Q.—And, in point of fact there is nothing there available as surplus revenue of the Estate for that period, the way matters have been dealt with?

A.—It does not show in the Estate books, but it still shows to the credit of revenue and expenditure in the books of the Incorporated Company.

30 Q.—As far as the Estate books are concerned it shows even worse than that, because instead of having a sum of \$542,793.09 for division between Lady Davis and Mortimer Davis, jr., there is a deficit of revenue of some \$400,000?

A.—Yes.

Q.—And that is the product of the form of handling the Incorporated Company by the majority of the Board of Directors of that Corporation?

A.—That is the way it has been done.

40 And it being 12.45 o'clock, the further examination of the witness is continued until 2.30 o'clock in the afternoon.

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And at 2.30 o'clock in the afternoon, April 16th, 1930, personally came and reappeared the said witness.

GEORGE C. McDONALD

10 and his examination was continued as follows:

By Mr. McKeown, K.C.:

Q.—Since the adjournment have you taken occasion to refer to Exhibit P-199, and at page 4 of that Exhibit to the item “Accrued Interest on Davis Trust, \$165,622.24” to which your attention was drawn this morning by my learned friend Mr. Campbell?

20 A.—Yes. That is accrued interest on serial notes, and at the date of Sir Mortimer’s death that sum was due to the Davis Estate. It now accrues to the Davis Trust.

By Mr. Campbell:

Q.—This was the amount accrued to the Estate at date of death?

A.—Yes.

By Mr. McKeown, (continuing):

30 Q.—That is the amount which would have been payable to Sir Mortimer Davis had he not died?

A.—Yes, and it is payable to his Estate.

Q.—And, it is the interest upon the \$3,000,000 forming the capital asset of the so called Davis Trust?

A.—Yes: and now that same interest is accruing to the benefit of the Davis Trust, and on September 30th, 1929, it amounted to \$283,000 odd.

By Mr. Campbell:

40 Q.—But, this particular item accrued to the Estate, and was part of the assets of the Estate at death?

A.—Yes.

By Mr. McKeown, (continuing):

Q.—For the reason that the interest up to that point upon that \$3,000,000 Trust was payable to Sir Mortimer during his lifetime?

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A.—Yes.

Q.—And, this other amount you have mentioned, \$283,000 odd, is additional interest accrued on the same Trust from the time of Sir Mortimer's death to September 30th, 1929?

A.—That is it.

10 Q.—Which is in no way concerned in the item appearing on page 4 of Exhibit P-199?

A.—It had not accrued at March 30th, 1928.

Q.—Have you prepared a further compilation with reference to the Incorporated Company, being a memorandum of valuations of assets as at the following dates: March 31st, 1928; September 30th, 1929; and February 28th, 1930—and, if so, will you produce the same as Exhibit P.205?

A.—Yes.

20 Mr. Campbell: I take it any evidence of values subsequently to Action brought is subject to my usual objection.

By Mr. McKeown, (continuing):

Q.—Looking at the first page of this Exhibit, will you please tell His Lordship if it includes all the assets of Sir Mortimer Davis, Incorporated, at book value, as at the arbitrary date March 30th, 1928, to correspond approximately with the date of death, March 22nd, 1929?

30 A.—It includes the investments. It does not take in all the assets: they are listed on the second sheet.

Q.—Will you explain to His Lordship, from that point forward, just what is covered by this Exhibit P-205?

40 A.—This statement is prepared to show the value of those investments as at March 31st, 1928, which was the date on which Price, Waterhouse and Company prepared a statement of the Incorporated Company, showing the figures at which they were carried in the books, and showing their book value on the same date: the values used being those I understand agreed upon between the Executors and the Succession Duties Department, after certain adjustments had been made.

Mr. Campbell: I do not think those were the values agreed upon. I think they were the values put in by the Executors, and contended for.

Witness: They are all the values presented in Court here.

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Mr. Campbell: The statement as of March 31st was the statement put in by the Executors in support of their position and their valuation.

Witness: Yes. Those are the figures that were used in showing the market value at March 31st, 1928.

10 By Mr. McKeown:

Q.—The book value?

A.—The market value.

Mr. Campbell: My point is, I do not want it to be understood those are necessarily final figures.

Witness: The book value of those investments March 31st.

20 The other assets of the Estate have not been taken in, because it is presumed they have not appreciated or depreciated to any considerable extent, and they were available to liquidate the liabilities. That is what I had in mind in preparing the statement.

Those assests, as shown at book values on that sheet at \$14,715,575, had a market value on that date of \$26,297,270.

By Mr. McKeown, (continuing):

Q.—The same assets?

30 A.—The same assets. And a later schedule—the last sheet—gives those figures.

Q.—That would be page 4 of the Exhibit?

A.—Yes.

Q.—Which shows the manner in which the market value as at March 31st, 1929, has been made up, with an indication of the price taken for the various stocks?

A.—Yes.

40 Q.—In other words, the amount there shown is the same as indicated in the second set of figures on the first page, namely, \$26,297,270?

A.—Yes.

Those same assets taken as at price on September 30th, 1929, and February 28th, 1930, are shown.

Q.—Market prices?

A.—Market prices. And the prices are given against them on the third sheet.

Q.—Looking at the set of figures on the upper part of the first

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page of the Exhibit, by September 30th, 1929, those assets had depreciated from \$14,000,000 odd to \$12,000,000 odd.

A.—Yes.

Q.—A depreciation of \$2,000,000 odd is shown?

A.—Yes. That is on the book value.

Q.—That is the difference between book value

10 A.—(Interrupting). At March, and market value at September.

Q.—Market value at September 30th, 1929?

A.—Yes.

Q.—Following under the same date, but in the set of figures below, that is market value—those same assets which had been \$26,000,000 odd at market value on March 31, 1928, had, by September 30th, 1929 (about eighteen months later) become reduced to \$12,000,000 odd; a depreciation of \$13,000,000 odd having taken place in the meantime. Is that the idea?

A.—Yes.

20 Q.—I notice you have extended the same figures up to February 28th, 1930?

A.—Yes.

Q.—And, by that time the assets which on March 31st, 1928, had a book value of \$14,000,000 odd had a reduced value on February 28th, 1930, of \$6,000,000 odd, and had suffered a depreciation of \$8,000,000 odd in the meantime?

A.—Yes.

30 Q.—And starting from the market value of the same securities, of \$26,00,000 odd on March 31st, 1928, those securities had depreciated in value to something like \$6,000,000 odd on February 28th, 1930—a depreciation of \$19,000,000 odd on the self same assets. Is that right?

A.—Yes.

Q.—In this compilation have you eliminated the new assets of the variety of Cadillac Coal, Investment Foundation, Jennison Company, and so on?

A.—Yes. For purposes of comparison on March 31st, 1928, I have taken them out at the figures at which they stood on the books.

40 Q.—You have not depreciated those assets?

A.—No.

Q.—And, in point of fact, those assets as entered on page 3 of the Exhibit form no part of the assets dealt with generally in this Exhibit, amounting to \$14,000,000 odd, and which are listed on page 2.

A.—No. They were not held by the Estate at that time.

Q.—So, the depreciation of the various amounts as shown on

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the first page of this Exhibit does not include any depreciation on the assets set out on page 3?

A.—No. I have not depreciated the ones that are taken off.

By Mr. Campbell, K.C.:

10 Q.—What about the Royal Bank? Did you not depreciate the whole Royal Bank shares?

A.—Only those held at the date of death. That was all I was making a comparison for.

Q.—So you did not depreciate the Royal Bank shares taken up since death?

A.—I did not take them into account.

By Mr. McKeown:

20 Q.—For the purposes of this Exhibit?

A.—Quite so.

By Mr. Campbell:

Q.—Or the Tobacco stock either?

A.—None of the new investments. They are shown at depreciated values on page 4, but they do not enter into the depreciation shown on page 1.

30 By Mr. McKeown (continuing):

Q.—Page 3 of this Exhibit brings you to the same figures for market depreciation as of date September 30th, 1929, and February 28th, 1930, as shown for the same time on page 1?

A.—Yes, as compared with market value on page 1.

Mr. Campbell: I do not understand the last part of page 3 of Exhibit P-205.

40 Witness: They are deducted there, because they are included on page 4.

Mr. Campbell: Is the object of the deductions on page 3 for the purpose of comparison only with date of death?

Witness: Yes. On page 4 the list includes all the investments. The second and third lists include the Foundation Investment, the

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Jennison Company, and so on. They are not in the first. They have been taken out of those.

Mr. Campbell: The reason they are deducted on page 3 is because they were not owned at the date of death?

Witness: Yes.

10

By Mr. McKeown (continuing):

Q.—To make it perfectly clear: although you have included the new investments on page 4, you have not depreciated them?

A.—Yes. They are taken at market value there.

Q.—Take, for instance, the Jennison item.

A.—That is taken at book value.

Q.—\$50,000, all the way across?

20 A.—There is an asterisk there, showing all four of those new investments, totalling \$692,000, are shown at book value.

Q.—And to the extent of those four items so marked no depreciation enters into it?

A.—No.

Q.—Jennison, for instance, if it is worth anything, you have credited the \$50,000 they paid for it?

A.—Yes.

Q.—And, the same for the \$450,000 Cadillac Coal investment?

30

A.—Yes.

By the Court:

Q.—What was spent on Cadillac Coal mines?

40 A.—I would convey a wrong impression if I said half a million dollars had been spent on it, although I am justified in saying that from the catechizing I got from Mr. Campbell on it. When Sir Mortimer Davis died they had an investment equal to \$10,000 in Federal Coals, and they decided to incorporate a Company called Cadillac Coals; and they gave that \$10,000 value to the Cadillac Coal Company, for which the Cadillac Coal Company paid over \$500,000 by cheque, which cheque was deposited and a cheque drawn against it buying \$450,000 of common stock of the Cadillac Coal Company and \$50,000 of bonds of the Cadillac Coal Company.

By Mr. Campbell:

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Q.—The \$10,000 item represented a writing down from what figure? What had the original investment been?

A.—There was \$98,000 written off on Federal Coals in 1922 and 1923.

Q.—So that it would be something like \$108,000? \$98,000 had been written off, and only \$10,000 retained?

10 A.—Yes. Whether any of those other write-offs refer to it, I do not know.

By Mr. McKeown (continuing):

Q.—But, years before Sir Mortimer's death that item had been written down to \$10,000?

A.—Yes.

Q.—Still looking at page 4 of Exhibit P-205, and dealing with the Cadillac Coal item, are the \$50,000 bonds in there too?

20 A.—Yes, they are the last item.

Q.—Then, plus the bonds, taken altogether, \$500,000 back to the \$10,000 they started out with when the Executors took office there would be a further item of \$490,000 to be taken into account in that respect?

A.—It would not be deductible from this first list, because I did not include it.

Q.—I understand that it should be added to the total depreciation shown on the first list at \$19,000,000 odd?

30 A.—No. The \$19,000,000 was only depreciation on the investments shown on page 2 of this Exhibit.

By Mr. Campbell:

Q.—Owned at death.

A.—Yes.

By Mr. McKeown, (continuing):

40 Q.—But, if you take the whole Estate, and the other assets at least to the extent of those which are marked on P-4 with an asterisk, you would require to add to this \$19,000,000 of depreciation shown on page 1 of this Exhibit an item of \$490,000 with respect to Cadillac Coal Company, would you not?

A.—I told Mr. Campbell yesterday I would not admit it was proper for them to put that up. If I did not allow them to write it up, I have not to force them to write it down. It certainly has been

GEORGE C. McDONALD (for Plaintiffs), Examination-in-Chief.

credited to the capital surplus of the Estate, and to the extent that it has not a market value it has to be taken out of the Estate.

By Mr. Campbell:

Q.—Not of the Estate?

10 A.—Of the Company. I thought we had eliminated the Company by this time.

By Mr. McKeown, (continuing):

Q.—Is not page 1 of this statement Exhibit P-205 a reflection of the depreciation since death on those securities listed on page 2?

A.—Yes.

Q.—Which do not include Cadillac Coal Company?

A.—No, nor Federal Coals either.

20 Q.—Nor Jennison?

A.—No.

Q.—Nor the additional Alcohol “ A ” purchased?

A.—No.

Q.—Nor Investment Foundation?

A.—No.

Q.—Are each of those reasonably worth the book value at the present time?

30 Mr. Campbell: I do not think Mr. McDonald should be asked that.

Mr. McKeown: It is only as to the principle.

Mr. Campbell: Mr. McDonald is an expert accountant, and he is testifying on matters of accountancy. I do not see and I do not think his opinions on the values of those securities could be any better than the opinion of any of the rest of us. Mr. McDonald does not pretend to be any more of a wizard on the Stock Market than any of the rest of us.

40 His Lordship: It may be a reflection of his thought, but there it is.

Mr. McKeown: I am asking the question simply for the purpose of completing the information contained in the statement.

By Mr. McKeown, (continuing):

GEORGE C. McDONALD (for Plaintiffs), Examination-in-Chief.

Q.—You will understand, Mr. McDonald, I am not asking you to revalue those securities at any fixed amount.

A.—It was because I could not give any market value to them that I put an asterisk opposite them and said they were shown at book value.

Q.—If they had had a market value of 50 per cent. below the book value, and that was a sound basis, would it not have been added
10 to the \$19,000,000 shown on page 1?

Mr. Campbell: Do not two and two make four? If you add certain things it will give certain results. My submission is that this is not a competent question to the witness.

Mr. McKeown: I am trying to show something approaching the total depreciation of those assets. Mr. McDonald has pointed out that the depreciation of \$19,000,000 does not cover all the depreciation of the assets, but only covers those on page 2.
20

Witness: If there is any depreciation on those, it is not included in the \$19,000,000.

By Mr. McKeown, (continuing):

Q.—It would be in addition to that?

A.—Yes.

Mr. McKeown: In any event, His Lordship will judge of those
30 four wonderful assets, and will be in a position to fix the depreciation.

Mr. Campbell: I would like you to leave something to the Court to judge.

Mr. McKeown: Evidently my learned friend is not prepared to leave very much.

By Mr. McKeown, (continuing):

Q.—Have you prepared a further compilation in connection
40 with the Estate, in the way of a memorandum of values of the investments as at the dates March 22nd, 1928; September 30th, 1929, and February 28th, 1930: similar to your memorandum of values of the assets of the Incorporated Company which we have just reviewed, and, if so, will you produce it as Exhibit P-206?

Mr. Campbell: I wish to be of record as making the same objection to any evidence in regard to values after Action brought.

GEORGE C. McDONALD (for Plaintiffs), Examination-in-Chief.

Witness: I have.

By Mr. McKeown, (continuing):

Q.—Will you please explain the purport of this Exhibit P-206?

10 A.—It has been prepared along similar lines to the previous Exhibit, in order to show the market fluctuation in the investments of the Estate at the same dates. Setting aside the shares and serial notes of Sir Mortimer Davis, Incorporated, the book value and market value of the remaining investments in stocks and shares as at March 30th, 1928, seems to have been roughly \$2,370,000.

Q.—As set out on page 1 of Exhibit P-206?

A.—Yes.

20 The above figure included the following, which were disposed of in the course of the next few months: Victor Talking Machine, \$510,000; Tobacco Products, \$555,000; Mount Bruno Country Club, \$1,500;—making, for purposes of comparison with investments still on hand September 30th, 1929, \$1,303,500. That value as at March, 1928, compared with a market value on September 30th, 1929, of \$1,014,550, and a market value on February 28th, 1930, of \$1,198,636.

Q.—That is to say, as to this residue of investments, which had a value of approximately \$1,300,000 at date of death, had depreciated at September 30th, 1929, to \$1,014,550, or a depreciation of something like \$290,000?

30 A.—\$272,961.00.

By Mr. Campbell:

Q.—Where is that shown?

A.—Page 3. Page 3 and following show the picture. Page 1 includes the valuation of investments exclusive of properties.

By Mr. McKeown (continuing):

40 Q.—Looking at page 1, you establish the figures of \$1,303,500?

A.—Yes.

Q.—You have taken out certain assets, which were sold almost at once?

A.—Yes.

Q.—Leaving the figure I have just mentioned?

A.—Yes.

GEORGE C. McDONALD (for Plaintiffs), Examination-in-Chief.

Q.—As representing the securities which at September 30th 1929, had depreciated to \$1,014,550?

A.—Yes.

Q.—And I suggest to you that the depreciation, being the difference between those two sets of figures for those particular securities, represents a sum slightly less than \$290,000?

A.—\$288,450.

10 Q.—On the other hand, by February 28th of this year those same securities had appreciated in value to a certain extent since last September?

A.—Yes.

Q.—And then had a value of \$1,198,636?

A.—Yes.

Q.—So, as between the time of death and February 28th, 1930, the depreciation has been something like \$105,000 or \$106,000?

A.—Yes.

20 By Mr. Campbell:

Q.—Where are the particulars of the totals given on the first page?

A.—The lists of market value as the date of death are shown in the long column on Page 2. That gives you the \$2,370,000. The other figures are shown on Page 5.

By Mr. McKeown (continuing):

30 Q.—Which other figures?

A.—The figures of investments as at September 30th, 1929.

Q.—\$1,014,550?

A.—Yes.

Q.—And, at February 28th, 1930, \$1,198,636?

A.—Yes.

By the Court:

40 Q.—Has there been an increase in value since September 30th, 1929?

A.—Yes, Your Lordship.

Q.—Where did it come from?

A.—There has been an appreciation in the value of the Liggett & Myers common and "B" shares. The Liggett & Myers shares are shown in September at a market value of 88, and at the end of February they had risen to 107 and 108.

GEORGE C. McDONALD (for Plaintiffs), Examination-in-Chief.

Q.—Is there any more Liggett & Myers stock in the Estate?

A.—No. I understand it was sold during February.

By Mr. McKeown:

10 Q.—You treated it as though it was on hand, for the purpose of comparison—although it was sold in February?

Mr. Campbell: At 108.

By Mr. Campbell:

Q.—At what figure did you take it in?

A.—February, 1930: 107 for the common and 108 for the “B.”

Mr. Campbell: We got just a little better than that, I think.

20

Mr. McKeown: You got a little less, as a matter of fact.

By Mr. McKeown (continuing):

Q.—Of course, looking at Page 5 of this Exhibit P-206, it is perfectly apparent that the great bulk of the investments held by the Estate consisted of those self same Liggett & Myers stocks?

A.—Yes.

30 Q.—They ran up over \$1,050,000?

A.—That is the original book value, \$1,060,000.

Q.—I am looking at the price in the last column.

A.—Yes: that is the same, \$1,057,000.

Q.—Out of a total of how much on hand at the end?

A.—\$1,198,000.

Q.—So that the other securities of the Estate were relatively negligible as to amount?

A.—The only important one was the Royal Bank stock.

40 Q.—And, how much was that, as in the figures of February, 1930?

A.—\$59,946.

Q.—What were the others?

A.—The Societe Daviso, \$72,750.

Q.—The Societe Daviso, as I understand it, is a Corporation which holds the title to the properties of the Estate in France, or in which the Estate is interested in France? There has been no change in those figures from what they were originally taken in at book value?

GEORGE C. McDONALD (for Plaintiffs), Examination-in-Chief.

A.—No.

Q.—Put in at \$72,750?

A.—Yes.

Q.—And, you just accepted those figures?

A.—Yes.

10 Q.—Have you prepared a further statement in connection with both the Estate and the Incorporated Company; a summary of the approximate position in regard to the ability to discharge the obligations of both those entities as at date April 8th, 1930, and, if so, will you produce the same as Exhibit P-207?

Mr. Campbell: Of course my objection comes again. I thought February 28th, 1930, was pretty late, but now we are down to April 8th, 1930. Perhaps by June 25th there may be an entire change in the picture, and things may have doubled in value.

20 Mr. McKeown: I do not know if we can promise anything as soon as that, but we have very good hopes that it will come about in due course.

Mr. Campbell: I share your hope, but not for the same reason.

(The question is re-read to the witness by the stenographer).

A.—Yes. I have even prepared some supporting schedules for it, too.

30 Q.—Which will really form part of the same Exhibit?

A.—Yes.

Q.—Will you be good enough to explain to His Lordship the purport of Exhibit P-207?

A.—I prepared a previous set of statements, my No. 4; a summary showing the problem of the Executors in dealing with liquidation of the liabilities of the Estate as of March 22nd, 1928.

Q.—That is Exhibit P-199?

A.—Yes.

40 I went over some of those figures with Mr. Reaper the other day, to try to get an idea of what the position was at the time of the preparation of this last statement I have produced, and the result is shown on this statement.

Q.—That is the statement which is now being introduced as Exhibit P-207?

A.—Yes.

GEORGE C. McDONALD (for Plaintiffs), Examination-in-Chief.

They have on hand cash amounting to approximately \$500,000. The Estate has remarkable securities, valued at market prices on February 28th. I used the same market prices I had before. Some of those are, I hope, somewhat better, but I did not revalue them.

Q.—You used the same prices as shown on your previous Exhibits?

10 A.—Yes: February 28th.

The Estate investments are \$67,367—that is the Royal Bank stock, and the others that are marketable. The Incorporated Company is \$6,757,103.

Q.—Does that include the Alcohol stock?

A.—It includes the Alcohol stock taken at 8.

There are lists of those shown.

Q.—The detail of the item \$67,367, that is for marketable securities at market value, is shown on page two?

20 A.—It is marked Schedule One.

Q.—The next item, “ Marketable Securities available for sale as at 1st April, 1930 ”, amounting to \$6,757,103.00, is shown on page three, marked “ Schedule Four ”?

A.—Yes.

Q.—In addition to these assets of that category, “ Other Assets not readily Realizable ”, \$282,700.84, are listed on page two, marked Schedule One?

A.—Yes.

30 Q.—Made up of “ Properties ”, is that the Pine Avenue and Ste. Agathe properties?

A.—Yes.

Q.—“ \$360 Robert McNish debentures ”?

A.—There are some of the other debentures included in the marketable securities. It is questionable whether they are marketable. “ Interest accrued on trust donations ”, which will come in due course, from the Incorporated Company.

Q.—Going to make up \$282,700.84?

40 A.—Yes. Then the ones in the Incorporated Company are Wolf Advertising Company. Then “ Other Assets not readily realizable, \$596,078.27 ”, in the Incorporated Company, shown in schedule five on page three:

Properties	\$156,121.56
Loans	
Dominion Reduction Co	\$300,000.00
Sundry	20,598.84
Cadillac Coal	111,035.81

GEORGE C. McDONALD (for Plaintiffs), Examination-in-Chief.

I understand that has since been increased by about \$30,000.

Q.—Cadillac Coal?

A.—Yes.

Q.—These are as at date of—

A.—These are taken from the last balance sheet, the 30th of September, 1929.

10	Office furniture	\$ 2,822.70
	Sundry Accounts Receivable	5,499.36
	Total	<u>\$596,078.27</u>

Also certain other "Investments not Readily Marketable" are listed on page two, schedule number three, totalling \$149,255.60.

Page three, schedule six—we will meet your friends there.

20 By the Court:

By Mr. Campbell, K.C.:

Q.—Are these in the Company or in the Estate?

A.—Both. They are all headed. Page two refers to the Estate and page three to the Incorporated Company.

Q.—Page two refers to the Estate only?

A.—Yes.

30 By Mr. McKeown, K.C.:

Q.—You have left those "Investments not readily Marketable" out of the schedule on your exhibit. You have just noted it?

A.—Yes.

Q.—What are the other assets available to discharge obligations?

A.—I think that is everything. The total of that amounts to \$8,203,249.11.

40 Q.—What are the obligations of the Estate and the Company as against that sum which you have just established, of assets?

A.—The balance of Accounts Payable, Contracts and Donations, Bequests and Legacies, and Bank Loans shown in the statement at the 30th of September, 1929, and still undischarged at the 8th of April, 1930, \$5,333,032.56.

By Mr. Campbell, K.C.:

GEORGE C. McDONALD (for Plaintiffs), Examination-in-Chief.

Q.—I am confused about the two figures on page three, \$596,078.27 and \$595,006 at the bottom of the same page. I did not hear what you said about that.

A.—They are not given any value on sheet one. There is just a memorandum that there are some.

10 By Mr. McKeown, K.C.:

Q.—Those are assets “not readily marketable” as you term it?

A.—Yes.

Q.—Now, continue.

A.—Just while we are on the assets there, that small holding of Robert McNish debentures in the assets has been put into the “Not readily realizable Securities”, whereas in the Incorporated Company the bulk of the Robert McNish debentures are included with the marketable securities. That is inconsistent.

20 Q.—At what price?

A.—\$3.50.

Q.—The other amount of \$252 was put there because the amount was negligible?

A.—It had not been negligible in the “Readily Marketable Securities”.

30 Q.—Coming back to the liabilities, as shown on page one, you have given us an item of \$5,333,032.56 as representing the balance of the Accounts Payable, Contracts and Donations, Bequests and Legacies and Bank Loans shown in the statement as at September 30th, 1929, and still undischarged as at 8th of April, 1930. That would be both liabilities of the Estate and of the Incorporated Company?

A.—Yes.

Q.—There is a schedule of them on page four of this same Exhibit?

A.—Yes. Liabilities of the Estate consist of

40

Accounts Payable	\$ 74,714.02
Contracts and Donations	1,500,000.00
Legacies and Bequests	405,000.00
Succession Duties	600,000.00
Interest on Succession Duties	77,436.67

Q.—What is that based on?

A.—The fact is \$700,000 has been paid on the original figure of \$1,300,000. There is still interest due, \$77,436.67.

Accrued Interest on Contracts and Donations \$125,702.77
making a total of \$2,782,853.46.

GEORGE C. McDONALD (for Plaintiffs), Examination-in-Chief.

Liabilities of the Incorporated Company:

Trust Deposit	\$ 25,000.00
Interest on Serial Notes	283,030.90
Bank Loan	\$2,242,148.20
Total liabilities	5,333,032.56

10 These are only liabilities that existed in September, and they will be taken into account in figuring liabilities and further interest on Succession Duties, Contracts and Donations, and Serial Notes.

Mr. Campbell, K.C.: Less, I take it, credit for the reduction that is coming in Succession Duties?

The Witness: Yes. We have all agreed on that.

By Mr. McKeown, K.C.:

20 Q.—In that way you have given us the detail of \$5,333,032.56, appearing on page one of this Exhibit, P-207.

A.—The only remaining item appears to be “ Outstanding six per cent 20 year serial notes ” of the Company, entered at \$3,436,500. The other serial notes are held by the Estate. The Incorporated Company show “ serial notes outstanding ” to be \$4,100,000, but \$700,000 of these are in the hands of the Estate and have been eliminated in the Trust.

Q.—For the purposes of this Exhibit?

A.—Yes.

30 Q.—You have not totalled the liabilities, have you?

A.—No.

Q.—These two items form a total of \$8,769,532.56?

A.—Yes.

Q.—And are in excess of those “ Readily Marketable ” shown on the same statement as \$8,203,249?

A.—Yes, always remembering——

Q.—We will come to that. By something like \$500,000?

A.—Yes.

40 Q.—Now, Mr. McDonald, with these figures before you, compiled in the manner which you have explained, what have you got to say of the present situation as to the safety of the capital of this Estate?

A.—Well, these figures are based on the market value of the Alcohol shares at \$8, and I sincerely hope that that is very much less than the actual value of the Alcohol Company, but if by any chance that is the real value, the Estate is insolvent, practically.

GEORGE C. McDONALD (for Plaintiffs), Examination-in-Chief.

Q.—Now, from your experience, Mr. McDonald, in connection with corporations, and your capacity as an auditor; from your experience as an accountant of large estates; from your experience as a testamentary executor yourself, viewing this picture as you have seen it, as you have analyzed it, what, in your opinion, is the remedy to bring this Estate out of its present condition?

10 The Court: That is a question I wanted to ask.

The Witness: The history of the Alcohol Company which you have seen, my Lord, illustrates the development of a very prosperous enterprise over a period of years. It was very well established by the list of January, 1926, when, as I say, in Sir Mortimer's estimation, he made about \$12,000,000 out of it, and it continued prosperous beyond that, and I do not see why that industry that has been built in that way, subject to very serious difficulties which everybody knows, in regard to the disposal of its product—I don't see why the
20 value of the shares of that Company cannot be made considerably more than the present market price.

By the Court:

Q.—Do you see how that can be done?

A.—I said yesterday they had 10,000,000 gallons of alcohol on hand, and they had their plants and equipment complete. Liabilities of that company so far as I know are not very great; I don't think
30 there is any bonded indebtedness. There are just the shares and whatever they owe to the Bank at the moment, which has been increasing recently, because of their increasing stocks on hand. During 1929 they increased these stocks on hand at Corbyville by 2,400,000 gallons. That meant they were tying up their money. All the profits they made the last year were needed to carry that. Under those conditions they have presently got their capital tied up in their stock on hand, and until they market that stock they are in serious difficulty.

Q.—What is the possibility of marketing that stock?

A.—The only possibility I can see is a very able and aggressive
40 policy of management.

By Mr. McKeown, K.C.:

Q.—Sales particularly?

A.—They have got to get practical men who know that business; they may have them; they may have the best men in Canada. I don't know except what I have heard in the Court room, but under ten

GEORGE C. McDONALD (for Plaintiffs), Examination-in-Chief.

years' experience, under various difficulties of various sorts, they did market their product and other companies are marketing their products. The last three or four years' history shows the effect of this increased competition from other distilleries that have been growing lately, and have probably made the difficulties of management harder, but the Company, as it has been represented to me, is in a strong position, through the reputation of its product, every year, to have the goodwill they had built up to a certain extent.

10 Q.—In the light of the evidence that competitors of the Canadian Industrial Alcohol Company have shown increased profits in the year ending September, 1929, as against this Company showing decreased profits; in the light of the further evidence that the returns produced here from the Excise Department at Ottawa indicate that the sales of the competitors have increased in bulk during the last year, whereas the sales of Canadian Industrial Alcohol have decreased over the preceding year, does that strengthen or weaken your suggestion that by a competent and aggressive policy of the management, this Company, Canadian Industrial Alcohol, can be brought
20 back to its own?

Mr. Campbell, K.C.: I undertake to say you are stating these government returns show competitors have sold more product than we have. My submission is they do not show that at all.

Mr. McKeown, K.C.: It is a matter of absolute certainty, as to the fiscal statement of these two companies. These companies show increased profits; our company shows the opposite. I submit the
30 question I have put to Mr. McDonald is thoroughly relevant.

Mr. Campbell, K.C.: I object to that insofar as the question as put, I submit, to be an inaccurate statement of fact.

The Witness: Obviously the other companies are getting business. As a rule, when that occurs, it means that they are following more able and aggressive policies.

By the Court:
40

Q.—When you say “obviously”, what do you base that on? Why do you say “obviously”? What do you base “obviously” on?

Mr. McKeown, K.C.: You have copies of that, Mr. Campbell. Let us have your copies of it.

By the Court:

GEORGE C. McDONALD (for Plaintiffs), Examination-in-Chief.

Q.—What do you say as to the fact that the former Sales Manager of Canadian Industrial Alcohol was taken away from that company, hired by a competitor, at, I understand, a salary double the one he had with the Canadian Industrial Alcohol? Would not you consider that to mean that apparently the Sales Department of Canadian Industrial Alcohol was well managed until that date, that they could afford to pay him such a salary as that?

10 A.—It certainly would be a tribute to the man's ability. The man who had been getting \$15,000 a year up to the end of 1929, and was offered more by these other competitors who we have just been told have been earning greater profits than the Canadian Industrial Alcohol, must have considered him to be a pretty good man, unless there was some other reason which I don't know of.

Q.—They might have found out, although he was a good man, he was not free to——

A.—Mr. Brodeur gave evidence here the other day and filed certain exhibits for the returns of 1926, 1927, 1928 and 1929, and I
20 tabulated them and took out percentages. In 1926 Canadian Industrial Alcohol did 66 per cent of the business reported on by Mr. Brodeur; Hiram Walker and Distillers Corporation did 33 per cent and a bit. In 1927 Canadian Industrial Alcohol was 55 per cent; Walker and Distillers Corporation was 44 per cent.

By Mr. Campbell, K.C.:

Q.—Lumping them, you mean?

30 A.—Yes.

Q.—Lumping Walkers and Distillers?

A.—Yes. In 1928 Canadian Industrial Alcohol was 50 per cent; Walker and Distillers, 49.6 per cent. In 1929 Canadian Industrial Alcohol was 31.74 per cent; Walker and Distillers, 68.26 per cent. In other words, in the four years the picture had completely turned. Canadian Industrial Alcohol had been 66 per cent in the first year, while the others had 34, and we see now Canadian Industrial had 32 per cent and the others 68 per cent.

40 By the Court:

Q.—How does that 68 per cent divide between Walkers and Distillers?

A.—Walkers had 39.43 per cent of that; Distillers, 28.83 per cent.

By Mr. McKeown, K.C.:

GEORGE C. McDONALD (*for Plaintiffs*), *Examination-in-Chief*.

Q.—That is in 1929?

A.—Yes. Now, my Lord, statistics are awful things at times, but there are four years——

Q.—Four years of steady movement in one direction?

A.—Yes.

Mr. McKeown, K.C.: That is the consolidation. The percent-
10 ages shown on these are worked out by Mr. McDonald. The other
and earlier exhibits are simply the various amounts mentioned. We
will give this exhibit as number 208.

By Mr. McKeown, K.C.:

Q.—Mr. McDonald, will you compile and file as Exhibit 209 a
comparative statement of the profits for the past three years, insofar
as the same are available, of Canadian Industrial Alcohol, Hiram
Walker, Gooderham and Worts, and Distillers-Seagram Corporation.
20 I understand that that last company is a new concern for which the
figures may not be available as far back as the others—showing the
percentage of increase or decrease in profits from year to year in the
same way as the change has been shown by you in percentage on the
Exhibit P-208, with reference to the release of gallonage kept by the
Statistical Department at Ottawa.

A.—Yes.

Q.—You have seen the statement prepared and filed in this case
as of the condition of the Estate at the date of Sir Mortimer's death,
produced as one of the earlier Exhibits of the plaintiffs?

30 A.—Yes.

Q.—And which it is in evidence was delivered to Lady Davis in
Europe, I think, in July, 1928, by Lord Shaughnessy while he was
there. That is the earliest statement. You have also seen the audi-
tors' statement for the Incorporated Company to September 30th,
1928, which was forwarded to Lady Davis by mail in December,
1928?

A.—Yes.

Q.—It is also in evidence that those were the only two state-
ments which Lady Davis had received from Lord Shaughnessy up to
40 the time she arrived in Montreal. I ask you, from these two state-
ments, that is the statement of the Estate as at the time of death, and
the statement of the Incorporated Company as at September 30th,
1928, if Lady Davis could ever have guessed that the condition of
this Estate was as it has been found to be as a result of this trial?

A.—The only item that had shown up in September, 1928, which
has been subject to a suggestion of criticism, was the \$10,000 ad-
vanced to Jennison.

GEORGE C. McDONALD (*for Plaintiffs*), *Examination-in-Chief*.

Q.—Which was the loan?

A.—Loan.

Q.—But at that time?

A.—At that time there was only that \$10,000 loan to Jennison, and the fact of the debts and liabilities had not applied to any extent.

Q.—I am speaking from the statement.

10 A.—At the 30th of September, 1928, there was \$10,000 advanced as a loan to Jennison that might be criticized. In the view of subsequent developments it certainly was, but it was only six months after Sir Mortimer's death, and as a rule one does not expect Executors to clear up all the debts in six months, but would expect some action in a year, but in six months nothing untoward developed.

Q.—As reflected by these two statements?

A.—Yes.

20 Q.—There are a couple of items in connection with the obligations of the Incorporated Company which I would like to draw your attention to particularly. The first are the McNish debentures which, it is in proof, were subscribed for or were taken up by the Incorporated Company as rights upon the shares which they held in the Alcohol Company. Do you remember that?

A.—I have heard of it.

30 Q.—And which required at the issuing price of, I think, \$4.50, an investment of \$2,225,000, if I mistake not. The second item was the "B" stock which, in turn, was subscribed for by the Incorporated Company by way of the rights to which it was entitled as the holder of the former "A" shares representing the control of the Company, and involving the outlay of a sum of \$1,100,000 in March, 1928. Do you follow me on these items?

A.—Yes.

Q.—We have to keep in mind the "B" stock only cost Sir Mortimer Davis Incorporated \$20 a share?

A.—Yes.

40 Q.—Having regard to the fact that neither the McNish debentures nor the "B" stock were necessary adjuncts to enable the Incorporated Company to maintain control of the Alcohol Company, what was the obvious duty of the Executors with respect to these two items, following the death of Sir Mortimer Davis, having in mind that the Bank loans had been obtained in both instances to finance these blocks of securities?

By the Court:

Q.—Putting yourself in the position of the Executors, having the money loaned from the Bank and a certain number of McNish debentures at \$4.50, what would you have done?

GEORGE C. McDONALD (for Plaintiffs), Examination-in-Chief.

A.—As an Executor of that Estate I would have devoted myself to getting rid of these in the very favorable market that then existed.

By Mr. McKeown, K.C.:

Q.—How long did that favorable market continue under which securities of that kind might have been disposed of?

10 A.—I think the bull market we have heard about ran until September, 1929, did it not? A more or less favorable market seems to have continued until the middle of July, 1929, for the beverage stocks.

Mr. Campbell, K.C.: We are talking about Alcohol " B ".

By Mr. McKeown, K.C.:

Q.—You say a favorable market for beverage stocks continued.
20 Would that be from March, 1928, to July, 1929?

A.—From March, 1928? No. I should say until March, 1929.

Q.—A year?

A.—Yes.

Q.—That is, as to beverage stocks in particular?

A.—Yes.

Q.—As to the general trend of the market, how was it during that period?

30 Mr. Campbell, K.C.: Is he testifying from his own knowledge or from the documents in his hands? Because if he is, the best evidence is the documents.

The Witness: I am refreshing my memory on market prices. The bull market, to my knowledge, from the figures compiled in my own office, where I have a lot to do with market prices of stocks, continued until September, 1929.

By Mr. McKeown, K.C.:

40 Q.—From March, 1928, until September, 1929, the general movement of the Stock Market was up, and, as defined by you, as being the bull market?

A.—Yes.

Q.—Have you prepared a chart to support the suggestions which you have just given?

A.—Yes. I have had prepared a chart here. In the red line the

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monthly indexes of the number of common beverage stocks, and in the green line the number of common stocks on the Montreal Stock Exchange.

Q.—Will you produce this as Exhibit P-210?

A.—I do, yes.

10 Mr. Campbell, K.C.: I object to the production of the document as not being the best evidence of the facts attempted to be proved.

Mr. McKeown, K.C.: Mr. McDonald tells us it has been prepared under his directions. I submit it ought to go in.

(Whereupon an adjournment was taken until 10:30 o'clock A.M., Thursday, April 17th, 1930.)

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30

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GEORGE C. McDONALD (for Plaintiffs), Examination-in-Chief.

And on this seventeenth day of April, in the year of our Lord, one thousand nine hundred and thirty, personally came and re-appeared the said witness

GEORGE C. McDONALD

10 and his examination was continued as follows:

By Mr. McKeown, K.C.:

Q.—Yesterday there was produced in the course of your examination Exhibit P-199, with reference to the Estate, being a summary of the problems of the Executors in dealing with the liquidation of liabilities of the Estate as at the date of death, March 22nd, 1928; and my learned friend Mr. Campbell drew your attention to the fact that on page 4 of this Exhibit there was included among
20 the current liabilities an item reading: “Accrued Interest on Davis Trust, \$165,622.24.” I understand upon further consideration of Mr. Campbell’s suggestion you wish to make a correction in that connection, and to substitute a new Exhibit to deal with this particular item. Will you please explain the position exactly to His Lordship?

A.—That is interest accruing on some of those serial notes, which now accrues to the Trust, and up to the date of Sir Mortimer’s death accrued to the Estate. I thought I had broken down all the
30 barriers between the Incorporated Company and the Estate, but this one I had not.

I have now amended Exhibit P-199, eliminating that item because it is not a liability the Executors have to face, as it would have been if it had been payable to the Trust, which only came into existence on Sir Mortimer’s death.

By Mr. Campbell:

Q.—It was only a liability to themselves?

40 A.—It was a liability of the Incorporated Company to the Estate. I thought I had eliminated all such transactions or items between the two, but I found that was not a liability to the Trust.

By Mr. McKeown (continuing):

Q.—From the time of Sir Mortimer’s death the interest accru-

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ing on that Trust is a liability to the Trust by the Incorporated Company?

A.—Yes.

Q.—And, up to the time of Sir Mortimer's death the interest on that Trust Fund was payable to Sir Mortimer personally, and, therefore,

A.—(interrupting) Became absorbed in the Estate.

10 Q.—The amount due at the time of his death was absorbed in his Estate?

A.—Yes.

Mr. McKeown: With Your Lordship's permission, seeing there is already some evidence made on the basis of Exhibit P-199 as it was when produced, it may possibly avoid confusion if we give this amended Exhibit a separate number.

By Mr. McKeown (continuing):

20 Q.—Will you produce the amended Exhibit to which you have just referred, and mark it P-211?

A.—Yes.

Mr. McKeown: Your Lordship will understand Exhibit P-211 now produced is an amendment of Exhibit P-199.

By Mr. McKeown (continuing):

30 Q.—Has this item to which you have specially referred in connection with interest on the Davis Trust at time of death been carried through the whole of the amended Exhibit P-211?

A.—Yes.

By Mr. Campbell:

Q.—Is there any other change, apart from that?

A.—No. It did not affect any of the other Exhibits.

By Mr. McKeown (continuing):

40 Q.—It does not affect any of the other Exhibits which you have produced?

A.—No. It might have been shown differently on Exhibit P-203, but it does not affect either the Revenue and Expenditure, or the Capital Profit, or the position at the beginning and the end. It might have been shown differently, but the results are the same.

Q.—At the adjournment yesterday you had produced a graph, Exhibit P-210. Will you please explain to His Lordship upon what that graph has been based by you?

GEORGE C. McDONALD (*for Plaintiffs*), *Examination-in-Chief*.

A.—It is based upon the Monthly Review of Business Statistics, Volume 5, No. 3, for March, 1930; published by the Dominion Bureau of Statistics.

Mr. Campbell: Of course, this is under reserve of the objection which I made to the filing of the document.

10 His Lordship: Yes.

By Mr. McKeown (continuing):

Q.—This Monthly Review of Business Statistics is published by the Dominion Government, Ottawa?

A.—Yes.

Q.—By what particular Department?

A.—I think the Department of Trade and Commerce; authority
20 of the Hon. James Malcolm.

Page 27 of this volume shows Table No. 20, an index number of security prices, weighted. Three columns of those tables have been plotted as graphs on three Exhibits which I have here—this one, and two others. The object of plotting the figures is to assist the interpretation of the tables.

Q.—In order to keep the record straight, will you file as Exhibit P-212, the Monthly Review of Business Statistics for March, 1930, published by the Department of Trade and Commerce, to which you have just referred?

30 A.—Yes.

Mr. Campbell: In so far as it refers to anything subsequently to January 18th, 1930, I take it it is subject to my habitual objection.

Mr. McKeown: Your ordinary, every day, persistent objection.

Witness: Yes, I file it as Exhibit P-212.

There is a green line on the graph Exhibit P-210 which shows the general index number of common stocks on the Montreal Stock
40 Exchange for the period October, 1927, to February, 1930. There is a red curve plotted which shows the index number of Beverages as taken from this.

By Mr. McKeown (continuing):

Q.—The Beverage stocks are specially dealt with in the Statistics shown by the pamphlet Exhibit P-212?

GEORGE C. McDONALD (for Plaintiffs), Examination-in-Chief.

A.—Yes.

10 These curves show that the market fluctuation of the Beverage stocks followed the general trend of the market up to February, 1929, and then dropped more rapidly than the market as a whole. They also show that the index for Beverage stocks rose sharply from March until May, 1928, and then took a sharp drop in sympathy with the severe market break. From August, 1928, to February, 1929, with the exception of December, the index shows a satisfactorily advancing figure, indicating that after the market slump in June or July, 1928, there was a strong market that had developed for the Beverage securities for approximately six months.

By Mr. Campbell:

Q.—What are you quoting from?

A.—A report I had prepared in my office on that graph.

20 Q.—Something of your own composition?

A.—Yes.

By Mr. McKeown (continuing):

Q.—Have you prepared any further graphs based upon the data which you have just given His Lordship?

A.—Yes, I have a graph, marked “2”, showing the number of shares traded in on the Montreal Stock Exchange.

30 Q.—Will you please produce this graph and mark it as Exhibit P-213?

Mr. Campbell: I object to this as not being the best evidence of the fact sought to be proved.

His Lordship: It is not a fact; it is an illustration.

Mr. McKeown: Just a condensation of available information from Government sources, based on this Statistical book, which, in the absence of any proof to the contrary, I think makes *prima facie* evidence probably for the purposes of this case.

40

Witness: I produce it as Exhibit P-213.

This covers the period from October, 1927, to February, 1930. It indicates that activity was on an increasing scale during April and May, 1928, but dropped off sharply during the recession in price in the summer of that year; and then from September, 1928, to January, 1929, the volume of trade exceeded all previous records.

The conclusion to be drawn from this graph is that there was

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a wide and active market on the Montreal Stock Exchange in the latter half of 1928, and 1929.

By Mr. Campbell:

Q.—What period of 1929?

10 A.—Active during the whole year. An extremely active market.

Q.—Irrespective of prices?

A.—Irrespective of prices.

By Mr. McKeown (continuing):

Q.—Looking at the graph Exhibit P-213, I notice some figures on the left side, starting at the bottom with “0”, then “\$1,000,000”, “2,000,000”, “3,000,000”, “4,000,000”. Those represent the number of shares traded in per month on the Montreal Stock Exchange during each period?

20 A.—Yes, as shown by the Bureau of Statistics.

Q.—Reading this graph in that light, will you please tell us from the Statistics the figures of the turnover for the month of March, 1928, in shares, on the Montreal Stock Exchange?

A.—1,393,587.

Q.—What was the turnover for the next month, April?

A.—1,603,000.

Q.—And, May?

30 A.—1,727,793.

Q.—June?

A.—1,214,858.

Q.—July?

A.—700,127.

Q.—From that point in July the turnover increased somewhat?

A.—Yes.

Q.—What was it in September?

A.—900,422.

Q.—And, October?

40 A.—2,308,349.

Q.—November?

A.—3,217,754.

Q.—And, December?

A.—2,206,717.

By the Court:

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Q.—That is all 1928?

A.—1928, yes, Your Lordship.

By Mr. McKeown (continuing):

Q.—What was the turnover in January, 1929?

A.—4,173,257.

10 Q.—Contrasting the month of January, 1929, with the turnover in March, 1928, when the figures were approximately 1,500,000 . . .

A.—(interrupting) 1,393,587.

Q.—What was the turnover in January, 1929?

A.—4,173,257.

Q.—So, the turnover in January, 1929, was three times as great as it was in March, 1928?

A.—Yes.

Q.—How was it from January, 1929?

20 A.—It gradually dropped until June, when there were only 766,813 shares.

Q.—That is, June, 1929?

A.—Yes.

Q.—From June, 1929, forward to October, 1929, what was the turnover?

A.—July, 928,841 shares;
August, 2,103,138;
September, 1,854,675;
October, 3,609,402.

30 Q.—What was the turnover in November?

A.—2,077,720.

Q.—And, December?

A.—1,088,757.

Q.—What was the turnover in January, 1930?

A.—988,789.

Q.—And, February, 1930?

A.—830,534.

Q.—Have you prepared any further graphs based upon the same Statistics?

40 A.—I have a graph of Canadian Industrial Alcohol "A" and "B" shares, and the Beverage Index Number.

Q.—Will you produce this graph as Exhibit P-214?

Mr. Campbell: Under reserve of my same objection.

Witness: Yes. I produce it as Exhibit P-214.

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By Mr. McKeown (continuing):

Q.—Is this graph, Exhibit P-214, based upon the official Statistics?

A.—In so far as the Beverage stocks—the red line—are concerned, it is taken from these Official Statistics. The prices of the “A” and “B” stock are taken from the Montreal Stock Exchange Record, compiled by ourselves, and checked carefully, from March, 1928, to December 31st, 1929.

Q.—Will you explain this graph to His Lordship?

A.—The black curve shows the closing price for Canadian Industrial Alcohol “B” stock for each week during the period.

The yellow curve shows the corresponding price for Canadian Industrial “A” stock for each week during the period.

The red curve is the Monthly Index number for the Beverage common stocks shown on Sheet No. 1, being Exhibit P-210.

Q.—Does the graph show the high and the low?

A.—The closing price each week.

Q.—I forgot to ask you, in connection with Exhibit P-210, to explain the series of figures on the left hand side of the Exhibit, beginning with “20”, and going upwards to “220”. What do those figures indicate?

A.—The general index number.

Q.—Adopted by the Bureau of Statistics?

A.—Adopted by the Bureau of Statistics.

By Mr. Campbell:

Q.—What do you mean by that? Index of price, or volume?

A.—The index number that is inserted by the Bureau of Statistics as reflecting the relative rise and fall.

By Mr. McKeown (continuing):

Q.—Looking again at Exhibit P-214, I notice figures on the extreme left hand side: “0,” “10,” “20,” and so on, in black ink. What do they represent?

A.—They are the market prices of the Canadian Industrial Alcohol stocks “A” and “B”.

Q.—What are the figures in red?

A.—They are the index number from the compilation of the Bureau of Statistics.

Q.—And correspond to the same numbers as used on Exhibit P-210, which you have already explained?

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A.—Yes.

Q.—You have explained those colored lines: the black representing the “B” stock; the yellow representing the “A” stock; and the red representing the index of the Beverage stocks generally?

A.—Yes.

Q.—Over this period from March, 1928, to the end of 1929?

10 A.—Yes.

Q.—What does this graph Exhibit P-214 indicate as to the market for Beverage stocks generally in the period covered?

A.—It indicates that the price fluctuations of Canadian Industrial Alcohol stocks correspond to the general price fluctuations of the Beverage group of stocks. This is indicated by the general similarity of trend between the red curve and the other two.

The market price of Canadian Industrial Alcohol “B” stock was always two to four points below that of Canadian Industrial “A”. This differential is not constant, and the prices become closer
20 together at the lower levels.

It also indicates that the market price of Canadian Industrial “B” stock did not drop to 20 (the price at which it was acquired by Sir Mortimer Davis) until July, 1929. I think it also indicates that the “B” stock never sold below 35 until after March 16th, 1929.

Q.—That is to say, for virtually a year after the death of Sir Mortimer Davis, which occurred on March 22nd, 1928, the non-voting “B” stock, of which this Estate held something like 55,000 or 56,000 shares, never went below 35 on the market during the
30 following twelve months?

A.—No.

Q.—In connection with this block of “B” shares, of which the Estate holds 56,080, you say it cost the Estate, as shown by the evidence, \$20.00 a share, or \$1,121,600?

A.—Yes.

Q.—From your study of the conditions of the Montreal Stock Market, and the evidence made here, and the graphs which you have produced, what have you to say as to whether those “B” shares
40 could have been disposed of, in whole or in part, during 1928 and the early months of 1929?

Mr. Campbell: I object to the question as not being a competent question for the witness to answer. Mr. McDonald is a very able Chartered Accountant, but with all respect I submit he is not better qualified than Your Lordship or possibly any one of us to

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express an opinion on that particular question. We all might have our own guess as to what the conditions would have permitted.

My learned friend has not qualified Mr. McDonald as an expert in the rise and fall of Stock Exchange prices, and I think Mr. McDonald would be the last to contend that he had more knowledge than most men on the subject.

10 My submission is it is not a competent question to put to the witness, and I object to it on that ground, because the witness has not been qualified as a proper expert.

Mr. McKeown: I think the evidence is very proper, and Your Lordship may, if you see fit, allow it under reserve. In deference to my learned friend's personal ideas on the subject, and with the permission of the Court, I think I can clarify the situation with the witness.

20 By Mr. McKeown (continuing):

Q.—As a preliminary question to the one to which objection has been taken I would like to ask you whether you have acted, and are acting, as Auditor of any brokerage concerns in and about Montreal and elsewhere?

A.—Yes.

Q.—How many?

A.—I should say at least twenty-five or thirty.

30 Q.—Under the rules of the Stock Exchange those brokerage houses are required to be audited at fixed periods of the year, for the purpose of a special return to the Exchange as to their solvency?

A.—Twice a year.

Q.—Do you participate in those audits?

A.—I do.

Q.—Apart from the audits for Stock Exchange purposes, those brokerage houses are audited from time to time—once a year or oftener?

40 A.—Many of them, quarterly; some of them monthly; some of them daily.

Q.—And, in that way do you keep yourself informed of and in touch with market quotations, for the purpose of those audits such as you have described?

A.—Yes, we have to keep in touch with market quotations because every time we prepare a balance sheet we have to value the stocks according to the market prices and estimate the worth of the account.

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By Mr. Campbell:

Q.—Those are quotations of the past, not of the future, I take it?

By Mr. McKeown:

10 Q.—Those would be the current quotations, for the purposes of the audit?

A.—We sometimes have to review the past too.

Q.—I will now put the question to which my learned friend objected:

From your study of the conditions of the Montreal Stock Market, and the evidence made here, and the graphs which you have produced, what have you to say as to whether those “ B ” shares could have been disposed of, in whole or in part, during 1928 and the early months of 1929?

20 A.—I have written the conclusions I have reached in this regard, and I will read them:

It appears that 6,000 odd shares of “ B ” stock were sold in April and May, 1928 ———

Q.—(Interrupting): That is, 6,000 shares belonging to the Estate?

A.—To the Incorporated Company.

The number of shares of Class “ B ” stock in the hands of the public at any time was far less than the number of “ A ” shares.

30 Q.—Do you know the total number of “ B ” shares outstanding, as contrasted with the total number of “ A ” shares outstanding. I think about 123,000 “ B ” shares, against something less than 1,000,000 “ A ” shares.

A.—That is substantially correct.

The “ A ” stock was at all times very active. The price of the “ B ” stock was determined by the fluctuations in the price of the “ A ” stock.

The “ B ” stock never sold below \$35.00 a share during the period from March 22nd, 1928, to March 16th, 1929.

40 The total number of shares of “ B ” stock sold between March 22nd and December 31st, 1928, including the 6,000 shares sold in April and May, amounted to 48,924 shares.

The total number of “ A ” shares sold during the period from March 22nd to December 31st, 1928, amounted to 417,770 shares.

In 1929 there were 25,476 “ B ” shares, and 298,893 “ A ” shares dealt in.

In view of this situation, my conclusion is that if the “ B ”

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shares which it was proposed to sell had been gradually sold the market for the " B " shares would have become more active, as there would have been more shares available for trading purposes, and, consequently, it is possible that most of these shares could have been liquidated at prices a little lower than the prevailing prices of the " A " shares.

10 Q.—Supposing, for the sake of argument, that the " B " shares had been offered on the market in an orderly way—I do not mean an attempt to market them all in one day, as at a slaughter sale, but marketed in an orderly way—over the period of time you have indicated, and had been disposed of at a price two to four points below the " A " shares over the same period, what would have been the approximate range between the high and the low obtained?

20 A.—The " B " shares obviously could not have affected the price of the Alcohol generally to any extent, because there were quite a restricted number of them, and, as I said, the " A " shares governed the price; so, to my mind, it would not have been at all a difficult matter for an experienced broker to have gradually sold those " B " shares over this period at prices, until March, 1929, at least in the neighborhood of 35 or better.

Q.—Just take the graph before you, and take the prices of the " A " shares during the period covered, and drop it down two to four points, and tell His Lordship what the " B " shares should have realized in that process?

A.—The " A " stock started about 44, and went up to the neighborhood of 48 or 49, in April and May.

30 By Mr. Campbell:

Q.—What year?

A.—1928. And then gradually dropped. It went slightly below 40 in August, 1928, and then recovered to about 43 in September. It was again 40 in October and November, and at the end of November recovered to 45, and went up to 48 in December.

Q.—All 1928?

A.—Yes.

40 Then around the end of December and in January it hung around 40. About January 20th it had dropped down to about 37. Then it recovered to 41 by the end of January, rose gradually to February, and was selling at 47 in March. Then it began to slide.

By Mr. McKeown (continuing):

Q.—We find, therefore, that it started in March, 1928, at 44?

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A.—Yes.

Q.—And touched a low of what within the following year?

A.—About 37. Possibly 36.

Q.—And where did it wind up at the end of the year?

A.—As a matter of fact it never went below 37.

Q.—Where was it in March, 1929?

10 A.—About March 10th, 1929, it was 43.

By Mr. Campbell:

Q.—Was that the low of the month?

A.—No, that is the high of the month.

By Mr. McKeown (continuing):

Q.—That is the closing of the month?

20 A.—March 10th.

Q.—Was it the high, or the low?

A.—That was the closing for the week ending March 10th.

Q.—It was not the high for the day, or the high for the month?

A.—No.

Q.—It was the closing for that particular day?

A.—Yes. That is March, 1929.

30 Q.—If we apply your formula of taking four points off the "A" stock to get a line on the possible price for the "B," the "A" at 44 in March, 1928, would, for the purposes of your illustration, place the "B" at an arbitrary figure of 40?

A.—Yes.

Q.—Going to the extreme low of the "A" stock, 37, and taking off four points for the "B," would bring the "B," for the same purpose, to 33?

A.—That is right.

Q.—And, taking the "A" at the date you have given us in March, 1929, 43, and taking off the full four points, would leave an arbitrary figure of 39 for the "B" at that time?

40 A.—Yes.

Q.—And your suggestion is that that "B" stock, if marketed over that period, would have followed the price of the "A" stock within a maximum of four points, as shown by the actual experience?

A.—That is what the experience showed. If it had ever got too far away from the "A" stock somebody would sell his "A" and buy the "B." The voting rights, for anyone who thought about that, were not of much value.

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Q.—As a matter of fact, they were not of any value, in view of the fact that the Estate held absolute control of the class of voting shares?

A.—That is so.

10 Q.—So, whether a man owned “ A ” shares or “ B ” shares would not really make any difference, because while in the one case he had a technical right to vote it was of no use to him on account of the fixed majority against him, whereas in the other case he had no right to vote, which would leave him in about the same position?

A.—Sometimes there is some satisfaction in voting.

Mr. Campbell: Even to a disgruntled minority.

Mr. Geoffrion: He could talk.

By Mr. McKeown (continuing):

20 Q.—Apart from the process of marketing shares to be absorbed by public demand, are there other means offering in practice for the purchase and sale of large blocks of shares?

A.—Yes. Sometimes arrangements are made with brokers or bankers to distribute fairly large blocks of stock.

Q.—To Syndicates?

A.—Yes.

Q.—Is that a common practice?

A.—Quite common.

30 Q.—Under any conditions, in order to sell the “ B ” shares would it have been necessary to have thrown them on the market in one day, or in one offering—where there was no forced liquidation?

A.—It is very unusual for anything like that to happen.

40 Q.—Just to sum up for a moment the series of compilations which have been produced by you for the information of the Court. At the time of Sir Mortimer’s death, as reflected by the corrected or amended Exhibit P-211 which you produced this morning, the deficiency of liquid assets, without taking into account the McNish Debentures, or the Alcohol “ B ” stock, or the frozen assets in the way of real estate and matters of that kind, was \$1,283,100. Is that right?

A.—Yes.

Q.—That is to say, the whole amount required to be financed by the Executors against the Alcohol “ A ” stock and Alcohol “ B ” stock would have been, in round figures, a million and a quarter dollars?

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A.—Yes. The Asbestos stocks also have to be considered in that.

Q.—The Asbestos stocks would have been free, along with the Alcohol “ A ” stock, apart from what was already hypothecated, I suppose?

10 A.—Yes. The Asbestos stocks, and the Alcohol “ B,” and 436,340 shares of Alcohol “ A ” stock, together with the so-called unrealizable assets—properties, and so forth—were free.

Q.—As to Alcohol “ A ” I notice the number of shares shown as in that class to which you have just referred as free assets is 436,340 shares. Is that because of the fact that at that time 60,000 shares of the “ A ” stock was already under hypothecation to the Bank?

A.—Yes.

20 Q.—In the same connection, I think you told us yesterday that this deficiency in liquid assets involved taking into account a certain number of liabilities which came into being by Sir Mortimer’s death, amounting to three and a half million dollars?

A.—Yes.

Q.—So, the Executors and the Estate had to face three and a half million dollars of liabilities with which Sir Mortimer did not have to concern himself during his lifetime?

A.—Not unless some of those contracts and donations were payable before his death, and I do not know about that.

Mr. McKeown: They were all payable after death.

30 Mr. Campbell: You mean as to the interest on them.

Mr. McKeown: As to the capital.

By Mr. McKeown (continuing):

Q.—So, in the matter of current liabilities and current assets Sir Mortimer was in a more favorable position than the Executors, to the extent of three and a half million dollars; for the purposes of this Exhibit?

40 A.—In a more favorable position alive than dead, yes.

Q.—Of course, at the time of Sir Mortimer’s death the value of the Alcohol “ A ” and Alcohol “ B ” stock, at market, represented a huge amount of money?

A.—Very large.

Q.—At the present time, after two years’ administration of the Estate, the position is as you explained yesterday, and as reflected by Exhibit P-207; taking into account not only those assets which

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were dealt with by you as liquid assets and readily available assets in Exhibit P-11, but also taking into account the whole of the Alcohol " A " stock, and the whole of the Alcohol " B " stock, and also the so-called frozen assets in the way of real estate, other than the assets specially enumerated in schedules 3 and 6 of the Exhibits, the first of \$149,000 for the Estate, and the second of \$595,000 of the Company—there is a deficiency in the whole Estate, including the Incorporated Company, of something in the vicinity of \$500,000.

10 A.—Based on those market valuations, and the valuations of the properties as carried in the books.

Q.—Based, in particular, on the market value of the Alcohol stock at \$8.00 a share?

A.—That is the principal.

By Mr. Campbell:

20 Q.—Is it the book values of the properties that appear?

A.—Yes.

His Lordship: What is the amount of the deficiency?

Mr. McKeown: About \$500,000.

By Mr. McKeown (continuing):

30 Q.—The \$500,000 deficiency in question being the difference between the total liabilities of \$8,769,532.56, and assets of \$8,203,-249.11, shown on page 1 of Exhibit P-207.

A.—Yes.

There are certain other accrued interest items, to which I referred in my evidence yesterday, which would swell those liabilities to a certain extent.

Q.—Would that be interest since September 30th, 1929?

A.—Yes. Interest on the Succession Duties, the contracts, the donations, the serial notes, and the loans perhaps.

40 I have made this compilation, as I explained yesterday, roughly in conversation with Mr. Reaper the other day.

Q.—But, the liabilities do not take into account interest which would have accrued since September 30th, 1929?

A.—No.

Q.—And which would go to increase the deficit?

A.—Yes.

Q.—And this condition which has now come about, I presume has been progressive from March, 1928, forward?

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A.—As I understand your question, the progression has been rapid in the last eight or nine months, as far as the depreciation is concerned; but for the first period, of almost a year and a quarter or a year and a half, there was not much change. As a matter of fact, the graph of the Alcohol shares shows you when the change took place.

Q.—In largest part?

10

A.—Yes.

Q.—You spoke yesterday, dealing particularly with the condition of the Alcohol Company, of what you conceived to be the remedy for Alcohol alone. Dealing with the Estate situation especially, has this Estate, in the matter of payment of legacies, adjustment of Succession Duties, and matters of that kind, been administered in the ordinary and customary way of handling Estates of that description: basing yourself upon your experience?

20

Mr. Campbell: I think my learned friend is again inviting the witness to usurp the functions of the Court.

His Lordship: Of course, I am at liberty to reverse his judgment.

Mr. Campbell: But, my submission is that it is not quite proper to ask him to render judgment. I do not know whether Mr. McDonald is quite prepared to decide the case. He might be, but fortunately for us we do not have to submit to his jurisdiction.

30

Mr. McKeown: It is unfortunate that you do not have to, because it would be very good.

Mr. Campbell: His judgment might be sound, or it might be unsound. In any event we are not obliged to submit to his jurisdiction. We are obliged, and ready, to submit to Your Lordship's jurisdiction, and the question now put to the witness is a matter for the Court to decide, and I do not see how the opinion of the witness can possibly help Your Lordship.

40

His Lordship: Out of two or three opinions offered I might select what I considered to be the best reasoned one. Of course, it is all argument made under oath.

Mr. McKeown: Mr. McDonald is shown to have had experience in connection with large Estates, both as an Executor, and an Accountant, and an Auditor, and he may have gleaned from his expe-

GEORGE C. McDONALD (for Plaintiffs), Examination-in-Chief.

rience what customarily happens in matters of this kind. He may be able to tell us whether conditions such as are shown by the evidence to exist here are customary conditions to be found at the end of a two-year period of Executorship.

10 Mr. Campbell: As I understand the question, my learned friend is inviting the witness to say that in his judgment the plaintiffs are entitled to succeed in their Action. That is the real purport of the question, and in my submission that is Your Lordship's responsibility.

His Lordship: Assuming it is not evidence, it may be a valuable assistance. On the other hand I may regard it, or I may disregard it. Whether it is under oath or not, I would like to hear it. Personally my great interest in the case is how I can dispose of this matter with the least inconvenience and loss to the Estate.

20 Mr. Campbell: And we are very anxious to co-operate with Your Lordship in arriving at that result.

His Lordship: Not only the Estate, but there is the Hospital, for instance.

By the Court:

30 Q.—Supposing I dismiss all the Executors, and appoint you sole Executor of this Estate, how would you deal with it?

A.—I would renounce it at once.

Mr. Campbell: And I think I would, if I were you. In other words, it is much easier to criticize than to construct?

Witness: At this stage.

40 If the Court will ask me how I would have dealt with it in March, 1928, I will tell His Lordship.

Mr. McKeown: That is the purport of my question. How this Estate should have been dealt with, as contrasted with how it has been dealt with.

Witness: The practice of the Trust Companies and people who are experienced in executorship matters is forthwith to settle the

GEORGE C. McDONALD (for Plaintiffs), Examination-in-Chief.

debts of the Estate and begin to realize on the assets at the earliest possible moment.

His Lordship: If the Will does not dictate another course?

Witness: Yes. In this instance one of the very definite things
10 set out in the Will was that Sir Mortimer charged the Executors to
settle his debts before they started making any disposition. There
never has been any bull market that gave any Executors a better
chance of realizing on certain of those investments. There were
certain of them which were going badly to start with, like the As-
bestos Corporation, and perhaps the Executors would have been
all the more right to press the sale of that stock before it got too
far away. Certainly if it had been one of the Trust Companies that
had been put in charge of the Estate, with the Will as it stands, they
would have realized a lot of those assets, and settled a lot.

20 His Lordship: But, there is not only the Will in this case:
there are the instructions given by Sir Mortimer Davis during his
lifetime which dictated a course which is not exactly the course
Executors as a rule are obliged to follow.

Mr. McKeown: But those letters, so far as they were dictating
a course, had in view the carrying out of that course during the
lifetime of Sir Mortimer and under his instructions, and in writing
30 those letters he certainly was not making provision for acts follow-
ing his death.

Mr. Campbell: Except he says in his Will " You are instructed
to carry out my policies."

Mr. McKeown: The logical conclusion of the point just raised
by my learned friend is that if Sir Mortimer bet on race horses, these
Executors are to bet on race horses.

40 I think Mr. McDonald's suggestion to the Court that the dom-
inant clause in the whole Will was to settle the debts, and this other
clause which is being invoked by my learned friends was to deal
with the residue of the assets after the debts had been settled, is an
absolutely sound construction of the Will: otherwise there would
never be any payment either of the legacies, or the Succession
Duties, or anything else, simply because Sir Mortimer never had
to meet those conditions during his lifetime.

GEORGE C. McDONALD (for Plaintiffs), Examination-in-Chief.

Mr. Campbell: Of course, when the time comes we will argue what the Will provides. For the moment my submission is that the opinion of the witness as to what the Will means will not enlighten Your Lordship.

10 Mr. McKeown: Mr. McDonald is not giving any opinion on the Will, other than saying what he would have done with the Estate had he been Executor at the outset.

His Lordship: Under the Will, disregarding any other correspondence which might have taken place in the lifetime of the Testator.

Mr. McKeown: Most assuredly.

20 Mr. Campbell: Of course we do not agree with the plaintiffs' contentions in that respect.

30 Witness: The reason of the compilation of the problem facing the Executors had in mind that if there is any one thing you can read in the Will it is to retain control of Canadian Industrial Alcohol, and the day Sir Mortimer died that control was imperilled because of the position that the amount of current liabilities his death created would absorb practically all the other assets of the Estate. If the Will meant anything, that was the most urgent problem of all, that I can see. That was the only investment of any magnitude which the Company had control of, and I think their primary duty to retain control of Canadian Industrial Alcohol certainly was a much stronger duty than any investments that were made in any other course.

By Mr. McKeown:

40 Q.—We will come back now to the question I asked you which gave rise to this discussion. In the light of your experience to which you have testified, and of course in the face of the Will, has that Estate been administered in accordance with the usual and customary administration of Estates of its proportions?

Mr. Campbell: I object to this as being utterly illegal.

His Lordship: I will allow the answer to be given.

GEORGE C. McDONALD (for Plaintiffs), Examination-in-Chief.

Witness: In my opinion it has not.

By Mr. McKeown (continuing):

Q.—In what respect, in particular: even at the risk of repetition of what you have already said?

10 A.—In not more promptly settling the debts of the Estate, the legacies, contracts, and donations; and incidental to that realizing on the assets that were available to settle those debts. Then, secondly, in investing moneys which to my mind were not available for investment at all—which should have been used to settle those debts. Then I think there is an entire misconstruction of the clause of the Will in regard to the usufructuary interests, in that I conceive it was the clear duty of the Executors to pass all the revenue of the Estate on to the usufructuary beneficiaries. I think that extended even so far as to have them, in turn, through the ownership of the control of the Alcohol Company, to see that the Canadian Industrial
20 Alcohol Company was carried on in such a way that the full earnings of that Company, in so far as they were consistent with keeping the Company as a going concern, were passed on to the usufructuary beneficiaries.

That was the duty, as I conceive it, of the Executors in their capacity under the Will and as having the controlling interest in the Alcohol Company.

30 Q.—Yesterday in the course of your examination you were asked to prepare a compilation showing the earnings for the past three years of the three Beverage Companies, Canadian Industrial Alcohol, Hiram Walker, Gooderham and Worts, and Distillers Corporation, with a view to indicating whether the profits of those Corporations in 1929, the period specially under review, increased or decreased from what they were in previous years, and we were to give this compilation an Exhibit number, P-209. Have you since prepared the compilation, and, if so, will you please produce it?

A.—Yes.

40 Q.—Looking at the statement P-209 now before us, I notice for 1927 the earnings only appear for Canadian Industrial Alcohol opposite Hiram Walker and Gooderham and Worts and also Distillers Corporation, and there is an entry made “Not available.” How does that come about?

A.—Well, I don't think these two were listed prior to that and their published statements are not available.

Q.—I find Distillers Corporation did not appear?

A.—Distillers Corporation shows a broken period for 1928.

GEORGE C. McDONALD (for Plaintiffs), Examination-in-Chief.

Q.—1927 I am speaking of, first.

A.—I don't know.

Q.—You were not able to procure the earnings for those of 1928?

A.—No.

Q.—Canadian Industrial Alcohol is shown for 1927 as \$2,413,-996.05.

10 A.—Yes.

Q.—The next column "1928"—Alcohol earnings have advanced from the figures I have just given to \$3,136,680.14?

A.—Yes.

Q.—In 1929 they have dropped from that figure to \$2,073,-977.46?

A.—Yes.

Q.—Those figures are taken from the annual printed statements which are here in the record?

20 A.—Yes.

Q.—As to Hiram Walker; in 1928 their profits are shown as \$3,442,378.23. For 1929 they had increased to \$4,117,668.11. Is that right?

A.—Yes. Those figures are before deducting Income Tax.

Q.—For both years?

A.—For both years.

By Mr. McKeown, K.C.:

30 Q.—The Alcohol figures are net?

A.—The Alcohol figures are after deducting Income Tax.

Q.—In both instances?

A.—In all instances.

Q.—Distillers Corporation, 1928, \$1,470,910, I think, for the full 12 months period, from March 1928 to the 1st of July, 1928, five months. Assuming for the purposes of the Exhibit the earnings would be continuous for the full year at the same rate, what would be the deductions?

40 A.—\$430,000 is about \$1,130,000 every year.

Q.—\$430,910 for five months would, at the same proportion for 12 months, be \$1,130,184?

A.—Yes.

Q.—In 1929 Distillers-Seagram profit advanced to \$2,287,963?

A.—Yes. For that Distillers-Seagram I was not able to get the published statements and the figures are compiled from statistics compiled by Financial Service Limited.

GEORGE C. McDONALD (for Plaintiffs), Examination-in-Chief.

Q.—That is a corporation operating in Montreal and Toronto, supplying financial service?

A.—I have sometimes found figures inaccurate in these publications.

Q.—That is the source of the figures?

A.—Yes.

10 Q.—On a percentage basis what has happened to the profits of Canadian Industrial Alcohol for 1929 as compared with the profits of 1928?

A.—They are 33 per cent less in 1929 than in 1928.

Q.—What is the situation in connection with Hiram Walker and Gooderham and Worts in 1929, as contrasted with the financial year of 1928?

A.—There is an increase of about 20 per cent.

20 Q.—What is the position with reference to Distillers Corporation-Seagrams in 1929 having regard to a full 12 months period at the rate shown for five months in 1928?

A.—There is 100 per cent increase.

The Court: How many witnesses will you have?

Mr. McKeown, K.C.: We will have three or four more witnesses. We propose to put Lord Shaughnessy in the box for certain questions. If his cross-examination is limited to the subjects brought out in chief it will not be a very long examination. If he traverses the whole field, as Mr. Reaper, did in the examination, it is practically in defence, then I am not any good at guessing. Perhaps my
30 learned friend might take us into his confidence and help the Court at the same time and say whether his proposal is to limit his cross-examination to the subjects in chief and I can go ahead with my guessing.

Mr. Holden, K.C.: I am afraid you will have to tell us what are the subjects in chief.

Mr. McKeown, K.C.: I do not believe Lord Shaughnessy's
40 examination-in-chief would take an hour, but I cannot say anything about the cross-examination based on my personal experience; then Lady Davis next, and there are a couple more witnesses who should not be very long.

The Court: As there are only four days next week it will practically cover the week.

GEORGE C. McDONALD (for Plaintiffs), Cross-Examination.

Mr. McKeown, K.C.: I would think so, if my learned friends follow the regular procedure.

The Court: I just want to know where we stand.

Whereupon an adjournment was taken until 2:30 o'clock p.m.
10 of the same day.

On this April 17th, 1930:

GEORGE C. McDONALD

reappeared and continued his evidence as follows:

Cross-examined by Mr. Campbell, K.C., Counsel for Defendants:

20 Q.—Mr. McDonald, at the outset of your examination-in-chief, you spoke of the interview which you had with Lord Shaughnessy on the 25th of July, 1929, in reference to the affairs of the Estate Sir Mortimer Davis and the Incorporated Company and you filed a memorandum which you prepared of that interview, did you not?

A.—The interview was July 25th.

30 Q.—And at that interview, as I understand your testimony and your memorandum, you intimated to Lord Shaughnessy that Lady Davis wished you to become a member of the Board of Directors of Sir Mortimer Davis Incorporated?

A.—Yes.

Q.—More particularly for the purpose of supervising her interests in the administration of that Company?

A.—I suppose that was the idea.

Q.—That was the idea?

A.—You can ask her.

Q.—You were quite frankly to be there as her nominee for the protection of her interests?

40 A.—That was undoubtedly the intention.

Q.—I beg your pardon?

A.—That must have been the intention.

Q.—Lord Shaughnessy, as I understand your testimony, was quite willing to have you as a member of the Board of Directors in replacement of Lady Davis, was he not?

A.—Quite.

GEORGE C. McDONALD (for Plaintiffs), Cross-Examination.

Q.—But as I understand it, he objected to your being there in addition to Lady Davis, at that time?

A.—Yes.

Q.—I think you told us you had been first approached some two days before that interview by Mr. Montgomery, who was acting as counsel for Lady Davis?

10 A.—Yes.

Q.—And in the interval you had, I think you said, read the Will of Sir Mortimer Davis?

A.—Whether I had read all the particulars of it I don't know, but I had had access to it and the statement of the 30th of September, 1928, which she had at that time.

Q.—But you had read and considered the Will?

A.—Yes.

Q.—You reached certain conclusions, I take it from your testimony, as to the rights of Lady Davis and her co-beneficiary, Mortimer Davis, under the Will?

20 A.—Yes. Mr. Montgomery had explained the situation pretty clearly.

Q.—And that situation, as I understand your testimony, was that in your view Lady Davis and Mortimer Davis, the other plaintiff, were entitled to have the Incorporated Company transmit to the Executors substantially all the available net revenues of the Incorporated Company, subject, of course, to the rights of the minority interests, if there were any.

30 A.—That is what I tried to intimate to Lord Shaughnessy was my opinion of the situation.

Q.—That opinion as to the right is based on the terms of Sir Mortimer's Will?

A.—And the discussion I had with Mr. Montgomery.

Q.—But your position, as I understand it, was fundamental?

A.—Yes, absolutely.

Q.—And has always been fundamental with you in your dealing with this subject?

A.—I have not seen any reason to change my opinion.

40 Q.—In other words the construction of the Will is vital to your criticism of the way things have been managed, or in your view, mismanaged under the Will?

A.—Only in regard to that particular point. Its only power is a matter of investments.

Q.—It does affect the whole position in reference to Lord Shaughnessy's administration and the administration of Mr. Reaper?

GEORGE C. McDONALD (for Plaintiffs), Cross-Examination.

A.—This morning I gave three points. It affects one of them. The first is the duty of the Executor to, as soon as possible, to the benefit of the Estate, pay the debts incidental thereto.

Q.—Would those include Succession Duties?

A.—Yes.

Q.—And would include legacies?

10 A.—Yes.

Q.—Your first point was, under the Will, it was the duty of the Executors to pay the debts, the Succession Duties and Legacies?

A.—Yes, and to take the necessary steps to find money for that purpose.

Q.—Would it have been appropriate for them to have used money coming from the Incorporated Company by way of dividends for these purposes?

20 A.—Technically, at the date of Sir Mortimer's death there was a surplus in the Profit and Loss Account, made up of excess revenue of some \$825,000, during his life and profits on sales of certain investments and it would have been quite proper for the Directors to declare dividends out of that account for the Executors to distribute as capital.

Q.—Did you concur in the view of the Price, Waterhouse statement that the surplus earnings and accumulated profits as at the date of Sir Mortimer's death should properly be regarded as Capital, in the hands of the Executors and only used for disbursement on Capital Account?

30 A.—That is the way anybody would use that in my opinion.

Q.—Any dividend that was a disbursement of surplus accumulated as at the date of the death of Sir Mortimer would properly be used by the Executors in payment of indebtedness on the Capital Account? Succession Duties, legacies and debts?

A.—Yes.

Q.—All revenues accruing from the date of Sir Mortimer's death—was it your view that they or any of them were available to the Executors to be used for disbursement on Capital Account?

A.—No.

40 Q.—Your view was and still is that these net revenues were not available to the Executors for the payment of debts and liabilities of the Estate?

A.—That is correct.

Q.—And your view is that these net revenues ought to have been turned over by the Incorporated Company through its Board of Directors to the Executors for distribution to the beneficiaries,

GEORGE C. McDONALD (for Plaintiffs), Cross-Examination.

Lady Davis and Mortimer Davis as residuary revenue after payment of the other carrying charges of the Estate?

A.—After payment of the proper carrying charges of the Estate.

Q.—The carrying charges reasonably chargeable to revenue?

A.—Yes.

Q.—Including all the annuities?

10 A.—Yes. The Incorporated Company did not pay the annuities. The Estate did that.

Q.—I am suggesting the Incorporated Company should have turned over this net revenue to the Executors, and in the hands of the Executors that would have been available for taking care of matters chargeable to the revenue of the Estate?

A.—Yes.

Q.—Such as the payment of the annuities and the payment of the carrying charges?

A.—Yes.

20 Q.—And the balance, if any, would then accrue, in your view, to Lady Davis and Mortimer Davis as residuary revenue.

A.—To be paid annually under the terms of the will.

Q.—By annually, would you mean as at the end of the company's financial year?

A.—I presume that would be proper.

30 Q.—Just so we might identify these amounts of net revenue which, in your view, you think should have been so treated, look at the financial statement of the Incorporated Company as at 30th September, 1929, Exhibit Number 10 and will you give me the amount that, under the construction of the Will, ought to have been paid over by the Incorporated Company to the Executors in respect of the period from the 31st of March, 1928, to the 30th of September, 1928?

A.—According to this the amount is \$250,040.95.

Q.—That would be available for revenue purposes of the Estate?

A.—Yes.

40 Q.—Does this statement also show what would be available for disbursement on account of capital obligations of the Estate, had the Directors of the Company so thought fit?

A.—There is a capital surplus there amounting to \$4,154,812.

Q.—Of which how much represents accumulation of surplus income?

A.—\$825,109.40.

Q.—As far as the revenue of the Estate is concerned, any surplus of which would be available to the plaintiffs in this case, I assume, at September 30th, 1928, would be \$250,000 less also the

GEORGE C. McDONALD (for Plaintiffs), Cross-Examination.

minority interest of Mr. Waddell or whoever else was interested at the time, plus anything else objected to, plus something you think was improperly charged against revenue which, in your view, ought to have been capitalized?

A.—Ought not to have been spent at all.

Q.—As for the year ending 30th September, 1929, what would be the amount for the financial year ending September 30th, 1929?
10 What would be the amount which the Directors of the Company ought to have turned over to the Executors for distribution by the Executors to the beneficiaries?

A.—\$711,910.71.

Q.—Less, of course, such proportion of that as might accrue to Mr. Waddell as a minority interest, and Lord Shaughnessy, according to his rights, and your other qualifications.

A.—Yes. We think it ought to have been larger by those things which have been stated.

Q.—Eliminating for the moment any deduction from the
20 amount for Lord Shaughnessy in view of the terms of the documents filed in this case governing his position in reference to dividend up to the 30th September, 1929, and only eliminating the five per cent interest of Mr. Waddell, what would roughly be the amount accruing to the Estate out of that \$711,910.71?

A.—Accruing, five per cent to Mr. Waddell, would be \$35,955, leaving a balance of \$675,955, accruing to the Estate.

Q.—In your view, that amount of \$675,955 ought to have been paid over by the Directors of the Company to the Executors, on
30 account of revenue of the Estate?

A.—Yes.

Q.—Which, after providing for the Annuities mentioned in the Will, which total about \$180,000, would have left a residue, subject to such small deductions as were necessary for carrying charges, of how much?

A.—Yes.

A.—Nearly \$500,000.

Q.—Available for surplus revenue accruing to Lady Davis and
Mortimer Davis?

40 A.—Yes.

Q.—Roughly \$250,000 each in your view they would have received?

A.—If your calculation about the annuities and so on is correct.

Q.—I think it is common ground, \$180,000 a year.

By the Court:

GEORGE C. McDONALD (for Plaintiffs), Cross-Examination.

Q.—Would you have to leave something of the Estate for Lord Shaughnessy's interest since the 17th of September?

A.—You would have to leave one twenty-fourth of the revenue.

Q.—What would that be?

A.—A couple of thousand dollars.

Q.—What would that represent?

A.—Thirteen days.

10

By Mr. Campbell, K.C.:

Q.—I am agreeing with you that off that \$500,000 there would have to be deducted such charges as are carrying charges of the Estate, but they are of relatively small amount, are they not? Can you give us any idea what they would be?

A.—The Executors' fees, \$15,000.

Q.—What were roughly the carrying charges?

20

A.—There were \$77,000 carrying charges for the period from the 22nd of March to August 31st, represented by proper expenses, trustees' fees, legal expenses.

By Mr. McKeown, K.C.:

Q.—Is that the 31st of August?

A.—I have the 31st of August.

30 Mr. McKeown, K.C.: Perhaps you better check the statement to the end.

Mr. Holden, K.C.: I think he means August, 1929.

By Mr. Campbell, K.C.:

40 Q.—I will bring it up to September 30th. I want to get approximately what the net result of your calculation is. If you can give the figures as at September 30th, give them. As we are only talking about the financial year, September 30th, 1929, can you give us the carrying charges for that year?

A.—I have not got that. If you give me that statement of Price, Waterhouse, of September 30th, 1929—

Q.—I was asking you in my last question about the financial year. Are they numbered, so you can talk about the financial year the statement to which you have called my attention, Exhibit P-75. Give us these carrying charges from the date of the death to September 30th, 1929.

GEORGE C. McDONALD (for Plaintiffs), Cross-Examination.

A.—\$81,076.52.

Q.—So that for the purposes of deduction, we would have to add to your other figures \$250,040.95. Is that not the fact, between March 31, 1928, and September 30th, 1928?

A.—Yes.

10 Q.—You would have to add—can you make that calculation in a rough way?

A.—To get the total revenue for the surplus income of the Incorporated Company from March, 1928, to September, 1928, adding the two periods together gives \$961,951.66.

Q.—From which you would have to deduct for the purposes of our rough calculation the Waddell five per cent?

A.—Yes; leaving \$913,834.08.

Q.—Which in your view the Directors of the Incorporated Company ought to have paid over to the Executors for disbursement as revenue to the parties entitled?

20 A.—Yes.

Q.—Will you, from that amount, deduct the carrying charges to which we have called attention?

Mr. McKeown, K.C.: Your carrying charges include the interest and everything else. Make the calculation.

The Witness: \$913,854.08.

30 By Mr. Campbell, K.C.:

Q.—To which you would have to add the revenues of the Estate proper, amounting to \$192,667.42?

A.—Yes.

Q.—Then to deduct the expenditures of \$81,076.52 and interest charges of how much?

A.—\$301,812.82.

Q.—Leaving how much?

40 A.—The annuities are to come off too. Taking the revenue of the Incorporated Company, \$913,000 odd, and adding the revenue of the Estate, \$192,667, would give \$1,106,521.50. Deducting annuities, \$178,688; expenses for trustees' fees, \$81,070.52; interest, \$301,812.82 represents \$449,423.28 which, in your view, would be distributable 50-50 between the two plaintiffs?

A.—Yes, but there are some other items that have to be brought into that somehow or other.

Q.—Adding or subtracting?

GEORGE C. McDONALD (for Plaintiffs), Cross-Examination.

A.—I have prepared here an Exhibit which apparently is P-204, which is a combination of the two, showing the surplus revenue. The figures you have just given me include some charges of interest, one against the other, which have got to be eliminated between the two, so if you take Exhibit P-204, page two —

10 Q.—I want to establish what, in your view, ought to have been divided between the two residuary legatees of the revenue of \$498,040.86.

By Mr. McKeown, K.C.:

Q.—As shown where?

A.—On Exhibit P-204, page two.

Q.—Column?

A.—Third column, under the words “Revenue Expenditure,” being excess revenue for the period.

20 By Mr. Campbell, K.C.:

Q.—Would you not have to add something to that? You have deducted, in establishing that, the whole of Lord Shaughnessy's percentage?

A.—Yes.

Q.—So there would be roughly over \$447,863.02 for distribution between the two residuary legatees in residuary revenue?

A.—Yes.

30 Q.—That, in your view, was what they were entitled to under the Will?

A.—Yes.

Q.—Plus, of course, any amount represented by amounts that you think were improperly charged by the Incorporated Company against revenue account?

A.—Thank you, Mr. Campbell.

Q.—I did not want to leave anything out.

40 By Mr. McKeown, K.C.:

Q.—That would be in addition to the annuities already received, which are taken out?

A.—Yes.

Q.—I mean the annuities received by the two plaintiffs over the same period?

A.—Yes.

GEORGE C. McDONALD (for Plaintiffs), Cross-Examination.

By Mr. Campbell, K.C.:

Q.—Those figures are over and above?

A.—Yes.

Q.—In addition to that they would have each their \$67,000 a year annuity?

A.—Yes.

10 Q.—The position which results in those figures—is it substantially the position you took at your interview with Lord Shaughnessy in July, 1929?

A.—Yes.

Q.—These are the result of that attitude?

A.—It reflects the same attitude.

Q.—Did you discuss that in detail with Lord Shaughnessy?

By the Court:

20 Q.—Did you discuss that with him or did you discuss just the principle with him?

A.—I asked him if he did not consider the death of Sir Mortimer Davis brought about a condition where it was the duty of the Executors to distribute all the revenue. I wanted him to understand if he accepted me as a member of his Board that was the view he would encounter.

By Mr. Campbell, K.C.:

30 Q.—At that interview, did you also suggest that you would go on the Alcohol Board?

A.—I don't remember that that was discussed between Lord Shaughnessy and myself.

Q.—Don't you remember that he asked you if you would be willing to go on the Alcohol Board?

A.—I don't remember whether I discussed that with him.

Q.—I am instructed it was discussed at that interview. You expressed perfect unwillingness to go on the Alcohol Board.

40 A.—I don't remember discussing it, but I am very ready to state I was not willing to go on the Alcohol Board at that time, and I did not express that view, but I don't remember whether it was to Lord Shaughnessy. I thought it was to Mr. Montgomery.

Q.—If Lord Shaughnessy tells me at that interview you did express formally your unwillingness to go on the Alcohol Board, you would not contradict it?

GEORGE C. McDONALD (for Plaintiffs), Cross-Examination.

A.—I am quite prepared to say if he asked me I would have said that I had no intention positively of going on the Alcohol Board.

Q.—Your idea was you should be on the Board of the Incorporated Company to represent more particularly the interest of Lady Davis. That was your position at the time?

10 A.—That was one step in certain negotiations that were taking place. All that I had been asked up to that stage was as to my willingness to go on the Board of the Incorporated Company, which I regarded ———

By the Court:

Q.—As the parent Company?

A.—As a separate executorship duty.

By Mr. Campbell, K.C.:

20

Q.—You were there quite frankly to champion the interests of Lady Davis?

A.—I assume that is the reason Mr. Montgomery suggested I should go on. I don't know that it is the whole of it. I have no other suggestion to make.

Q.—You were quite frankly the partisan of Lady Davis?

Mr. McKeown, K.C.: He was not a partisan.

30

The Witness: Mr. Campbell, I flatter myself that my experience in business as an executor and so on entitles me to believe that from time to time I might be asked to take duties of that sort. and that I would not be supposed to show necessarily any partisanship.

By Mr. Campbell, K.C.:

40 Q.—Don't misunderstand me, but you were there more particularly to champion the rights of Lady Davis, to get for her what you thought the Will entitled her to. Was not that the purpose of your being put on the Board?

A.—Mr. Campbell, I have told you I had one interview with Mr. Montgomery, who outlined the position, asked me if I was willing to accept what I regarded as an executorship duty, and I said to him it seemed to me it was in the line of my profession, and that I should accept appointments of that sort, and carry them out as I would any others.

GEORGE C. McDONALD (for Plaintiffs), Cross-Examination.

Q.—Did you notice when you examined the Will of Sir Mortimer Davis there was equality of power given to all the three Executors?

A.—I do not remember anything to the contrary.

Q.—My recollection of the Will is that there was that provision in it.

10 A.—If you do not know it better than I do now ———

Q.—I will undertake to say that I am right. I have guessed right this time.

Mr. McKeown, K.C.: What clause?

Mr. Campbell, K.C.: The last sentence of Article 20 of the Will. Read it into the record.

20 (Reading): “My said Trustees and Executors shall all have the same power and be responsible for good faith only, and each only for his or her own acts and deeds.”

The Witness: That is what I said was my recollection. I answered I had no recollection there was any distinction between them.

By Mr. Campbell, K.C.:

30 Q.—I am asking you to verify in fact it is so provided in the terms. When you discussed this construction of the Will with Lord Shaughnessy, I understood from your testimony that he disagreed; I mean in respect of this duty of the Directors of the Incorporated Company to turn over to the Executors of the Estate these net revenues for distribution. Did he express disapproval of that position?

40 A.—He gave me to understand that his opinion was that the Incorporated Company was to be carried on as it had been, and that after paying reasonable dividends the Directors were entitled to invest surplus revenues in such enterprises as the Incorporated Company had been in the practice of investing.

Q.—So that there was a question in issue between you and Lord Shaughnessy as to the position created by the Will?

A.—Yes.

Q.—And you still adhere to your view, don't you?

A.—Most emphatically.

Q.—Lord Shaughnessy still adheres to his.

GEORGE C. McDONALD (for Plaintiffs), Cross-Examination.

Mr. McKeown, K.C.: We will hear about that.

By Mr. Campbell, K.C.:

10 Q.—Would you be surprised to learn that Lord Shaughnessy has received the advice of a number of counsel confirming him in his view of the situation, or would you not be surprised at anything in this world?

A.—I think you better not develop that.

Q.—You would not like me to quote here the counsel who concur in Lord Shaughnessy's view of the Will?

A.—I do not doubt that.

20 Q.—Will you concede if I tell you Mr. Eugene Lafleur, Mr. Holden, Mr. Campbell and a number of other supposedly reputable counsel shared Lord Shaughnessy's opinion of the Will, and disagreed with yours, and all concede that was the opinion he might reasonably hold in the circumstances? In any event, do you concede that there is room for honest difference of opinion as to what that Will, properly interpreted, means?

A.—I think you might leave that to His Lordship.

Q.—I am glad you are going to leave something to him, but all I am asking you is whether it is possible Lord Shaughnessy was correct in his interpretation of the Will and that you were mistaken in your interpretation?

Mr. McKeown, K.C.: I submit that is not cross-examination.

30 The Witness: I presume Mr. Campbell wants me to say what I am quite willing to say, that even if the eminent gentlemen whom he has quoted do agree with Lord Shaughnessy, it does not make the slightest effect on my opinion in this matter.

By Mr. Campbell, K.C.:

Q.—You are still of your own opinion, but you are willing to concede a different opinion may be held?

40 A.—My opinion is not startled at all by anything you said.

Q.—You prefer your own construction of the Will?

A.—Exactly.

Q.—You prepared some graphs which you filed in the course of your testimony this morning. Did you prepare these yourself, or were they prepared by your staff?

A.—My partners or assistants. I did not do that beautiful piece of work.

GEORGE C. McDONALD (*for Plaintiffs*), *Cross-Examination*.

Q.—You did not do the plotting yourself?

A.—No.

Q.—And you did not verify yourself the information on which it is based?

10 A.—Everything is here. The book from which it is prepared is here. I roughly looked through the particulars of that compilation and compared it with these, but not in detail, but I would be delighted to do it or call in the members of my staff who are here to help you.

Q.—Let us look at the graph, P-210. The red line on that graph shows the market history on the Montreal Stock Exchange of the beverage common stocks for the period from the latter part of 1927 until the end of February, 1930?

A.—Yes.

Q.—And it shows a somewhat varied career up to the peak reached in February, 1929?

20 A.—Yes.

Q.—And from February, 1929, your Exhibit shows that all the beverage stocks included in that graph as a class suffered a very serious decline, persisting down to the end of the graph?

A.—Yes. It was more like an elevator shaft than a ski jump at this time.

Q.—It was almost perpendicular, common to all beverage stocks as a class?

30 A.—Some of them might have held back. As a class the whole industry was on a steep toboggan slide in that way from February, 1929, to the end of that graph in 1930.

Q.—They suffered a much more serious decline than the common stocks in general on the Montreal Stock Exchange?

A.—Yes.

The Court: What about Asbestos?

Mr. McKeown, K.C.: It was in a class by itself.

40 Mr. Campbell, K.C.: Asbestos, I take it, would be part of the weight borrowed by the common stocks.

By Mr. Campbell, K.C.:

Q.—That showing, as to the perpendicular decline of beverage stocks as a class in the year, February 1929 to February 1930, pre-

GEORGE C. McDONALD (*for Plaintiffs*), *Cross-Examination*.

sumably had some explanation that would be peculiar to that industry as against trade conditions in general, would it not?

A.—There is evidently something other than mere trade conditions; something in addition.

Q.—By that you mean something peculiar to the beverage industry as against trade conditions in general?

10 A.—Yes. Of course those beverage stocks include Canadian Industrial Alcohol, and it had the biggest drop of them all, and therefore contributed most to that big slide.

Q.—We have comparative graphs showing the comparison, but they have the comparative graphs. The comparison showed that they all, without exception, suffered decline during that period of time, did they not?

A.—That is a compilation of eleven different companies altogether. You see that, without exception. It is a combination.

20 Q.—As a class, your graph shows they suffered a very serious decline?

A.—Yes.

Q.—Would that not indicate to you there was something in the industry which affected if not 100 per cent of them, a very large percentage of those beverage stocks in the Stock Market opinion?

A.—Yes. It indicates something special.

The Court: How many beverage stocks are there in addition to Hiram Walker and Seagram?

30 By Mr. Campbell, K.C.:

Q.—How many beverage stocks are taken in that calculation?

A.—There are eleven.

Q.—Can you enumerate them just for the purpose of the record? Tell us on what that red line in Exhibit 210 is based?

40 A.—Canadian Industrial Alcohol "A"; Canadian Industrial Alcohol "B"; National Breweries; Brading Brewers; Brewers Distillers; Canada Brewers; Distillers Corporation-Seagrams; Charles Gurd; Lake Ontario Brewing; Orange Crush; Hiram Walker, and Gooderham and Worts.

Q.—Can you tell us whether the innocent beverages like Orange Crush suffered the same angle of declivity as the others, or if they helped bolster up the others a bit?

A.—I think their inclusion caused the catastrophe.

Q.—Do you think they broke as badly as the intoxicating liquors?

GEORGE C. McDONALD (for Plaintiffs), Cross-Examination.

A.—No, I don't think so. They were a comparatively small factor in this condition.

Q.—It was perfectly clear from your graph and from the other conditions that there were conditions in the distilling industry from February 1929 to 1930 which occasioned and accounted for the very serious decline in the Stock Market value?

10 A.—I want to warn you that the very bad acting of Canadian Industrial Alcohol in itself might have had a good part in that graph, if there was nothing else.

Q.—Can you give me any distillery shares in that interval which did not contribute?

A.—No, I think they contributed.

Q.—In other words, whatever happened to the brewery shares or the soft drink shares, the distillery shares all showed decline, did they not?

A.—I understand they did.

20 Q.—Did not that suggest to you there was a condition in the industry which was peculiar and reflected adversely on the Stock Market condition?

A.—There was something in that which was largely responsible.

Q.—You have been in Court since this case started?

A.—I think every day.

Q.—You assisted counsel on points on which they asked your assistance?

A.—Sometimes even unasked.

30 Q.—You have heard the evidence about the newspaper publicity given, real or imagined adverse opinions affecting the distillery shares. Whether they were true or whether they were false, they obtained wide circulation in the Press?

A.—Yes.

Q.—And threatened hostile legislation, among other things?

A.—Yes. I have heard of that.

Q.—Stiffening of the export regulations on the Detroit border. Do you remember that has been testified to?

40 A.—I think stiffening of the export regulations on the whole Canadian border.

Q.—Stiffening of the export regulations on the Canadian and United States border?

A.—I have heard that.

Q.—Threats of hostile legislation at Ottawa?

A.—Yes.

Q.—And consequent public uncertainty of the future of the industry?

GEORGE C. McDONALD (*for Plaintiffs*), *Cross-Examination*.

A.—Yes.

Q.—Well, now, insofar as these conditions were common to all the distillery shares, the distillery industry, you do not suggest Lord Shaughnessy had any special responsibility for that, do you?

A.—I have just intimated that the Canadian Industrial Alcohol suffered a bigger decline than any of the others.

Q.—I heard you say that a number of times.

10 A.—Bad management of that company might very well have contributed a considerable portion to the development.

Q.—You think bad management in Alcohol might have contributed to the decline in all the shares in that industry?

A.—It might have brought about a certain portion of the general drop.

Q.—I want you to be frank with me.

A.—I think the management in Canadian Industrial Alcohol might well help to raise them.

20 Q.—Is it not fair to suggest that there were conditions in the industry for which Lord Shaughnessy had no more responsibility than you had which contributed to the serious decline in the market value of Alcohol shares.

A.—There were no doubt such conditions.

30 Q.—For the purposes of comparison in the same period of time shown by your graph, let us take another outstanding industry, more outstanding even than the distilling industry. Let us take the pulp and paper position through that period of time. Was there a very serious general decline in the market value of pulp and paper shares as a class in the period covered by that graph, P-210?

A.—There has been a very serious decline in the pulp and paper shares in the last couple of years.

Q.—Due to conditions affecting the industry as an industry?

40 A.—There are quite a few conditions affecting the newsprint industry including one, the extent to which amalgamations, recapitalization and such like had been going on. That, I think, had a very serious bearing on the industry. That was peculiar, perhaps. I might say the pulp and paper industry, or the explanation of its Stock Market career in the period covered by that graph is partly explained by conditions peculiar to the industry, not common to all industries in general in the Dominion of Canada. They all have their ups and downs. They know periods of prosperity and periods of decline.

Q.—Pulp and paper had a bad time, whatever the reasons were?

A.—I do not know whether we might develop this.

Q.—I am asking whether it does not even happen that a par-

GEORGE C. McDONALD (for Plaintiffs), Cross-Examination.

particular industry during a particular period of time suffers because of the causes that affect its Stock Market value?

A.—Yes. Lots of times the industry is in a serious condition.

Q.—All the industries are in turn liable to run into that condition during a period of time?

A.—Yes.

10 Q.—Which ultimately recover and carry on?

A.—Yes, and the weaker ones go to the wall.

Q.—Talking about the paper industry, look at Exhibit P-212. For the purpose of comparison will you give me first of all the beverage index number at the opening of this compilation, October, 1927?

A.—Beverage was 147.1.

Q.—And at the close of the compilation in February, 1930, what was the index number?

A.—79.2.

20 Q.—A reduction of how much? Is my arithmetic right?

A.—67.9.

Q.—Subtract 79.2 from 147.1 and give me the difference?

A.—67.9.

Q.—For purposes of comparison, will you take the pulp and paper industries shown in the same schedule, the index number for that in October, 1927, was?

A.—134.7.

Q.—And the index number of February, 1930, was?

A.—63.3.

30 Q.—A difference of how much?

A.—71.4.

Q.—So that the paper industry in that interval on those index figures suffered an even greater decline than the beverages?

A.—Yes.

Q.—In making up these graphs, what figure was taken? Was it the closing price or the high or low, or what?

A.—In the figures I gave in regard to Alcohol "A" and "B," it was the closing price weekly.

40 Q.—Irrespective of whether it was the high or the low?

A.—Yes. There could only be one closing price.

Q.—You did not pay any attention to the fact that it might have been a higher or a lower price in the course of the week?

A.—No.

Q.—You suggested in your testimony that, in your view, the Directors of Sir Mortimer Davis Incorporated ought to have marketed approximately 60,000 odd shares of "B" stock, and you sug-

GEORGE C. McDONALD (for Plaintiffs), Cross-Examination.

gested that they could have done that successfully in your view of fair prices on the Montreal Stock Exchange?

A.—Yes.

Q.—Do you know how many shares they actually succeeded in selling?

A.—I think it was 6,000 that they sold in April or May.

10 Q.—Are you aware that they had a standing order for the sale of a block of those shares which was outstanding in the hands of a prominent brokerage firm in Montreal at what they thought was a fair price, which could not be filled during a period of seven months?

A.—I am not aware of that.

Q.—In any event, how many shares of B stock were sold in the calendar year 1928 on the Montreal Stock Exchange?

A.—From March 22nd, 1928, to December 29th, 1928, there were 48,924 “B” shares sold.

Q.—Have you got the figures for the whole year?

20 A.—No, I have not got them.

Q.—They would not be materially different for the year, because the “B” shares were only issued in March?

A.—Well, that is probably the whole year.

Q.—That is probably the whole year, is it not?

A.—Yes.

Q.—How many B shares were sold in the whole calendar year 1929?

A.—25,476.

30 Q.—One of your graphs will give us the price range of “B” in 1929, will it not?

A.—Yes.

Q.—Give us the price range of “B” in 1928?

Witness: Do you want it by weeks?

Counsel: I am just asking for the high and the low if you can give it to me. Take your weekly closing which would be near enough for the purposes of my calculation.

40 A.—The closing on March 22nd, 1928, was 39.

Q.—Was that the high?

A.—It went to 46 on April 14th. It was 46½ on May 12th.

Q.—How low did it go in the course of the year?

A.—Then it went to 36 on December 8th. That was the lowest That is the lowest closing price I find I have.

Q.—Can you give me the low for the year?

A.—The low for the year appears to have been 35.

GEORGE C. McDONALD (for Plaintiffs), Cross-Examination.

Q.—When?

A.—In the week of December 8th.

Q.—In 1929, what was the price range of the Alcohol “ B ”?

A.—The Alcohol “ B ” closed in December, 1928, at 37, and it did not vary very much until April, when it went down to 30. Then, on May 25th, it went down to 23, and in August to 21. On the 28th of September it is shown at 14⁵/₈. It went down to 10 on the 16th of
10 November and closed at 11.

Q.—That was the day of the bad break, was it?

A.—That is the bad time.

Q.—And how did it close the year?

A.—11.

Q.—From what time on was it 20 or worse?

A.—September 14th, 20¹/₂.

Q.—From the middle of September it was never better than 20?

A.—No.

Q.—Can you tell me from your figures how many of the Alcohol
20 “ B ” shares traded in, totalling 25,476, were sold at 20 or less?

A.—After the 14th of September, the sales to the end of the year amounted to 8,588 shares, all shown at less than 20.

Q.—So that from the time the market struck 20 or worse, only 8,588 shares were sold?

A.—Yes.

Q.—What was the total number outstanding on that date?

A.—I think it was about 121,000 shares.

30 Mr. Campbell: 123,000 odd.

By Mr. McKeown:

Q.—Including the 56,000 locked up in the Estate?

A.—Yes.

By Mr. Campbell:

Q.—In your view would it have helped the stock market posi-
40 tion of the Alcohol “ B ” shares had it become known that the Executors of the Davis Estate proposed to sell 56,000 shares following the death of Sir Mortimer Davis?

A.—That is not such a large quantity to affect a market like that.

A.—It was more than half the total number outstanding, was it not?

A.—Well, but the shares had the same revenue producing value

GEORGE C. McDONALD (for Plaintiffs), Cross-Examination.

as the Alcohol "A" shares, which were 900,000 odd shares. That was a comparatively small proportion.

Q.—But they habitually sold some four points under "A"?

A.—Two to four points.

Q.—I thought you averaged it at four?

A.—No, four was the outside, the extreme.

10 Q.—Do you think it would not have affected the market or that it would?

A.—I do not think that a knowledge of that would necessarily have broken the market. You could not have broken the "B" market without breaking the "A" market as well.

Q.—At any rate, would it have been one of the factors which, if known, would have been liable to injuriously affect the stock?

A.—It certainly would not have helped.

Q.—That is obvious to anybody, is it not?

A.—It is a silly question to ask.

20 Q.—I agree with you. The answer is obvious, is it not?

A.—Yes.

Q.—In other words, it is an elementary thing which is silly to ask about, that a block of stock overhanging the market does not help the market position of the stock, is not that right?

A.—That is a fact.

30 Q.—If the Executors of the Davis Estate had continued the sale of the "B" stock which they held, irrespective of the price it would have brought, can you venture any expression of opinion as to where the price would have gone before they had realized their 60,000 odd shares?

A.—If they had been willing to accept a point or two less more than the four points, the offering of that stock at that price would have brought some of the people who held "A" to give up their "A" stock, and invest in "B."

Q.—You may be very right, but that is not an answer to my question. Can you express an opinion—after all, you have been expressing opinions from the beginning—can you express an opinion as to where the stock would have gone if the 60,000 shares had been offered down until it was absorbed?

40 A.—The price range in March, April and May, when it started at 39 and went to 46 and carried on to 43, 45, 45 and 45½ to May 19th, that is the time they were selling, the transactions are evident here, there were more sales during that time than at any subsequent time. The price dropped. There was a recession for a time and the volume of trading dropped back, and then it recovered again, and I think if the Executors had come out and offered a similar quantity of shares, they could have got rid of them at those prices.

GEORGE C. McDONALD (for Plaintiffs), Cross-Examination.

Q.—You think it would not have affected the market if they had got that offering down, until they had got rid of them?

A.—Not if it was done judiciously and as such transactions are done by competent Executors and competent brokers.

Q.—Even, irrespective of the fact that it represented fifty per cent of the total outstanding block of the “ B ” stock?

10 A.—That does not show the picture, and I cannot admit that. I say it is only about 5 per cent of the real stock.

Q.—That is, meaning “ A ” and “ B ”?

A.—You have to take in “ A. ” I consider that in considering the marketability of that block of stock, it was only a difference of voting power, and as we know voting as yet has not meant much in that Company.

Q.—The Incorporated Company stopped selling the “ B ” shares that they were in process of unloading in what month? You gave us a month?

20 A.—They appeared to have stopped some time in May.

Q.—In May, 1928?

A.—Yes.

Q.—At that time, what was the general condition of Industrial Alcohol as to earnings?

A.—It had been showing very satisfactory earnings.

Q.—The earnings were excellent at that time, were they not?

A.—Yes.

Q.—And for the year ending September 30th, 1928, the earnings were very good indeed, were they not?

30 A.—Yes, they were \$3,000,000. I think that was it.

Q.—Incomparably the best year in the history of the Company?

A.—Well, I don't know from memory whether that is the case or not.

Q.—You have followed this case very closely. Can you suggest there was any year that approached that year in net earnings?

A.—Well, I have got Mr. Lawrence's evidence here. The year ending 30th of September, 1928, shows the largest profits.

Q.—In the history of the Company?

40 A.—Yes, but there is just one thing I would like to say there was in the year ending September 30th, 1929, \$1,400,000 taken out of the surplus, but applied to previous years up to the 30th of September, 1928, and a certain portion of that ought to be taken off these, because I don't know whether that brought the profits down.

Q.—That was in respect of the situation which only developed subsequently, and was charged back when the settlement with the Government was made in 1929, was it not? You are referring to the Government tax?

GEORGE C. McDONALD (for Plaintiffs), Cross-Examination.

A.—Yes, the earnings as to previous years had not been reduced.

Q.—But as at the close of the financial year, September 30th 1928, that liability, as far as Alcohol is concerned, had not been admitted, had it?

A.—Well, I don't know. I understand as a result of the Royal Commission it must have been known in 1926.

Q.—I am putting to you that as a matter of fact that liability
10 was not an admitted liability as on the 30th of September, 1928?

A.—I don't know about the admission by the Alcohol Company as to when that became a liability. I do know that the Royal Commission occurred in 1925, because I participated in it, and I know those claims were made at that time, and from the evidence shown in Court those sums were not deducted from the profits of the various years. Now, I have not before me at present the amount applicable to that year, but from the figures that are here, the earnings of that year are greater than any other year.

Q.—That is good enough for the purposes of my question, and
20 as at May and June, 1928, when the Executors stopped selling the Alcohol shares, when the price dropped below what they thought was fair, the prospects of the Company at that time were bright, were they not—in May, 1928?

A.—The history of the Company showed great prosperity up to that time.

Q.—And, as a matter of fact, the prosperity continued, did it not, for some months?

A.—Well, the end of that year showed very big profits.

Q.—So, was it an irrational opinion that they might reasonably
30 have upheld that there was no necessity at that time to sacrifice the shares below what they thought was a fair price, in view of all the prospects?

A.—The situation they were faced with—they bought the stock at 20 in March, 1928, and then had the Estate to settle, and I think they would have been very well advised—it is easy to say this now, but I think that even if I had been there then, that they would have been very well advised to accept a point or two less and get rid of that, particularly in view of the situation which they must have
40 known they were in in regard to the amount of liabilities they had to meet.

Q.—As you a moment ago remarked, it is always easier for all of us to be wiser after the fact?

A.—Well, it is.

Q.—If we had all known a year ago what we know today after the stock market history of the past year, we could all have made huge fortunes?

GEORGE C. McDONALD (for Plaintiffs), Cross-Examination.

A.—Perhaps our principles would not have allowed us.

Q.—As a matter of fact, it is fair to say in justice to the defendants that it is much easier to criticize after the fact than to anticipate accurately the future?

Mr. McKeown: His Lordship might have thought that too.

10 Witness: Are you referring now to Sir Mortimer Davis' wisdom in drawing his Will?

By Mr. Campbell:

Q.—I am referring to the general proposition?

A.—Well, some people are perhaps better at criticizing after the fact that foreseeing it. Other people are better the other way.

Q.—Do you not think the average man is a lot wiser after the fact than before?

20 A.—There is no doubt about it.

Q.—You referred a moment ago to Sir Mortimer Davis' wisdom, as I understood your remark, in making his Will. Did that refer to his wisdom in selecting his Executors?

A.—No. I had not that in mind.

Q.—You are not critical of his wisdom in selecting his Executors?

A.—No, I am not expressing an opinion.

30 Q.—In the course of your testimony, you produced an Exhibit P-208, which, I understand, to be based upon the monthly occurrence of spirits withdrawn from warehouses for duty by the three different Companies shown?

A.—Yes. That is based on four Exhibits. That is merely a compilation of four Exhibits which were filed here by Mr. Brodeur.

Q.—You made certain comparative percentages which, I understood you to say, represented the comparative sales made by these Companies in the different years shown. Is that what these percentages purport to represent?

A.—They only show what those other figures gave me. I don't know anything about that.

40 Q.—Can you testify as to whether, in fact, those figures represent accurately sales actually made by any of those Companies during their respective periods shown on the statement?

A.—I don't know anything at all about them. They are the figures that are there, being a compilation of four documents which were filed in the course of this trial.

Q.—You do not undertake to say that they accurately represent the number of gallons sold by any of those Companies, do you?

GEORGE C. McDONALD (*for Plaintiffs*), *Cross-Examination.*

A.—I do not.

Q.—Supposing, for instance, that any of those Companies, Canadian Industrial Alcohol, or any one of the others, withdrew a substantial amount of liquor from one of those bonded warehouses to export on a consignment basis, they would have to pay duty on it if they took it out of warehouse?

A.—I don't know.

10 Q.—For the purposes of my discussion, let me assure you that they do. The Government takes no chances. The Government trusts not a man in that respect. When they take spirits out of warehouse to ship abroad, or anywhere else, on consignment, the spirits taken out of the warehouse would necessarily appear in those figures?

A.—I understand that is what Mr. Brodeur told us these Exhibits contained.

20 Q.—I take it you know nothing to the contrary, if I suggest to you that a very considerable amount of that gallonage may have been, in fact, shipped by one or all of those Companies on a consignment basis, and would not represent liquor actually sold at all?

Mr. McKeown: There is no such evidence in this record. How can you put a hypothetical question based on nothing.

Mr. Campbell: It is a little late in the day to object to hypothetical questions.

30 Mr. McKeown: Hypothetical questions based on facts are all right, but hypothetical questions based on imagination are all wrong.

Mr. Campbell: We have had hypothetical questions based on the acme of imagination for eight long weeks.

By Mr. Campbell:

40 Q.—If, in fact, substantial quantities of that gallonage shown on Exhibit P-208 were shipped by these Companies, or any of them, on a consignment basis, your percentage, as worked out on this Exhibit, would not be accurate in reference to the actual sales, would it?

A.—If any of their shipments are not included here, it would affect their percentage.

Q.—You understand what I mean by goods shipped on consignment, that is, they are goods shipped by the manufacturer to people of their own type in Cuba or St. Pierre Miquelon, or anywhere else, or to a foreign importer, he does not undertake to buy them except if,

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as and when he needs them. You understand what I mean by consignment?

A.—Yes.

Q.—Goods that are unsold, but are shipped with the prospect of being ultimately sold, when they reach their destination: Now, supposing that gallonage is included in those figures, and supposing, in fact, those goods were not sold during the years shown, and are not
10 necessarily sold today, the percentage which you show would not be accurate as to sales, would they?

A.—I do not like dealing with these questions, my Lord.

His Lordship: If goods were shipped today and sold three years hence, they would not appear in this year's statement.

Mr. Campbell: But they still appear in this Exhibit P-208.

By Mr. Campbell:

20

Q.—In other words, is not your Exhibit P-208 built on the quantity of spirits ex-warehoused by the respective Companies whether it was ever sold or not?

A.—This Exhibit is built on four documents that were filed here, supported by Mr. Brodeur's evidence, the tenor of which I forget at the moment, and if you want to read his evidence to me, perhaps I might express—

Q.—Read the heading of your own Exhibit.

A.—(Reading):

30

“ Abstract from Licensed Distillers' Monthly Returns on Spirits Ex-Warehouse for Duty, Exportation and Removal by the Under-Mentioned Distilleries During the Following Years.”

Q.—It only refers to spirits ex-warehoused. Whether it was goods warehoused for purposes of sale and delivery, or goods warehoused for purposes of exportation on consignment you are unable to state?

A.—I don't know.

40

Q.—But, if my suggestion is accurate that in fact substantial quantities of that gallonage were, in fact, exported on consignment, and were unsold, I suggest your percentages would be thrown out insofar as they purport to be percentages of sales actually made?

A.—Any change in those figures would change the percentages.

Q.—If in fact one of the Companies did not do any consignment business and the others did, the figures would not reflect the accurate position as to sales, would they?

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A.—I presume over a long period when the consignments were finally brought home, they probably would.

Q.—But not in one year?

A.—Taking them year by year and by and large and over all, they probably would.

10 Q.—Will you look at your Exhibit P-209, which you filed in your examination-in-chief, showing the comparative net earnings of Canadian Industrial Alcohol, and its two chief competitors for the years 1927, 1928 and 1929: You have pointed out that Hiram Walker, Gooderham and Worts improved their position in 1929 over 1928, and that Distillers Corporation-Seagrams Limited also did during 1929 as against 1928, in net earnings?

A.—The statements here show that.

Q.—And that there was not a corresponding increase in the net earnings of Alcohol as between those two years?

A.—That is what the Exhibit shows.

20 Q.—Do you know when, in fact, Distillers Corporation-Seagrams Limited, for instance, became a serious competitor of Canadian Industrial Alcohol in the distillery field, in the sale of spirits field?

A.—No.

Q.—Do you know that until 1928 they were not in the picture?

A.—This Exhibit will show that their operations here began on the 2nd of March, 1928. Whether they were in the picture before that or not I don't know. They may have been in a private company carrying on, not publishing statements.

30 Q.—But as far as being competitors as to available supplies of spirits comparable in quantity with Industrial Alcohol, as far as your present information is, they were not in the picture previous to 1928, were they?

A.—I don't know.

Q.—I suggest to you that they were not. I may be right, or I may be wrong, but as far as your knowledge goes?

A.—I do not want necessarily to contradict you on that subject.

His Lordship: You almost agree on that point.

40 Mr. Campbell: Before we get through, I have no doubt Mr. McDonald and I will reach some point on which we agree.

By Mr. Campbell:

Q.—Is the same thing true of Hiram Walker, Gooderham and

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Worts, more particularly as to a special brand of liquid refreshments?

A.—As a matter of fact, as a small boy I went to school with one of the Seagram's. I think his family was in the whisky business then, and Gooderham and Worts is a name that has been known a long time, so they probably have been in the business quite a number of years.

10 Q.—I am not referring to your favorite brand; I am suggesting that in the American rye situation they were not serious competitors.

His Lordship: We are not through the rye yet.

Mr. Campbell: We are coming to the rye, not through.

By Mr. Campbell:

20 Q.—Coming to the rye, the American rye, are you aware that, in fact, neither of these Corporations were in a position to compete with Canadian Industrial Alcohol until the year 1928?

A.—I am not aware.

(And it now being 4.20 P.M., the further cross-examination of the witness was adjourned until Tuesday next, the 22nd day of April, instant, at 10.30 A.M.)

30 And further for the present deponent saith not.

On this 21st day of April, 1930,

GEORGE C. McDONALD

reappeared and continued his evidence as follows:

40 (In cross-examination.)

By Mr. Campbell, K.C.:

Q.—Mr. McDonald, before we go on further with your testimony, I understand you wish to make a correction in the testimony as reported at page 2487 of your deposition. Will you make the correction to which you call attention?

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10 A.—I refer, My Lord, to the testimony on Exhibit P-204, the amount of net revenue in the statement, showing the combined revenue and expenditure of the Estate and the Incorporated Company. Just before we came to this Exhibit Mr. Campbell had worked up to a point showing revenue distributable to the usufructuary beneficiaries, \$449,000, which is approximately right, but in answer to one of his questions I said there was a percentage of Lord Shaughnessy's to be added on to that. As a matter of fact, the percentage should have been deducted; that is, the percentage going to the minority interests, Mr. Waddell and Lord Shaughnessy. There is an amount accruing to Mr. Waddell of \$48,531 and the amount to Lord Shaughnessy is \$1,646. That would reduce \$498,040.86 to the sum of \$447,863.02. That was accruing to the usufructuary beneficiaries, under my contention, after setting aside the amount of revenue accrued to the minority interests.

Q.—That was distributable revenue?

20 A.—Yes.

Q.—Looking at Exhibit P-204, page two, the item \$498,040.86, I take it, includes the item of \$94,752.23, which you show in one of the columns as minority interest?

30 A.—\$94,000 is included in the \$498,000 and should not be added to it. The other day I was much embarrassed at one stage when Mr. Campbell came at me with such a heavy barrage of legal talent, contrary to my opinion. I want to be very careful not to appear disrespectful to Mr. Campbell's opinion or that of either of his colleagues, but this very point brings to my attention that I would like to make it clear what that is: that item \$447,863.02, the surplus revenue of the Estate and the Incorporated Company, to my mind, should go to the usufructuary beneficiaries after having set aside the percentage that goes to the minority interests. In the interview I had with Lord Shaughnessy he stated to me his idea was after paying reasonable dividends out of the revenues of the Company the balance should be available for investment and I believe that is the issue between the legal gentleman and myself, and I would just like to carry that contention to its logical conclusion in this instance.

40 There is one Exhibit dealing with the investments made during that period, and I refer to P-201; the investments made in the Incorporated Company totalled \$392,848, but the loans and advances to Cadillac Coal were \$108,000, which is a total of \$500,000. Down below there are listed "Sundry Disbursements charged against revenue which, to my mind, were not properly so chargeable.

Under the contention that has been put forward the invest-

GEORGE C. McDONALD (*for Plaintiffs*), *Cross-Examination*.

10 ment of surplus revenue, \$447,000 can be considered to have been made in this way. Here is \$500,000 during the period that was so invested. If the policy was carried on, amounts of some \$300,000 a year—if that was carried to its logical conclusion, that would be taken as the revenue of the Estate year by year, which would mean considerable money accruing to the legatees. That would be very considerably increasing the value of the residuary interest as, to my mind, against the interests of the usufructuary beneficiaries. I tried to show that was done by Sir Mortimer Davis during his lifetime in the Incorporated Alcohol Company and is being done in many companies, building up a capital fund, so that the owners of the capital shares are often meeting a benefit of a usufructuary nature. As long as the usufructuary and the residuary is the same, no harm is done, but, in many cases today, I believe the usufructuary interests are being injured. Carried to its logical conclusion that would build up an Estate of a very considerable value for the residuary beneficiaries, and I am surprised that Mr. Campbell, in the legal opinion that was against me, did not have Mr. Bercovitch, representing the Mis-en-Cause, who would have very considerably benefited by this policy.

20 Q.—The Mis-en-Cause are represented by Counsel but they have not interfered in this controversy.

A.—I would want to take advantage of having the surplus revenue here and the investments made, in order to show what, to my mind, was the legal effect of carrying out the argument on this matter with you.

30 Q.—In any event, we are quite clear on that particular question of law; you and I hold different opinions. At the adjournment of your testimony we had come to the rye, but had not got through it. What I was questioning you in reference to was the comparative increase in profits made by the competitors of Canadian Industrial Alcohol during 1928 and 1929, shown on one of the Plaintiffs' Exhibits and I was asking you whether you had any information in regard to the fact that these competitors, Hiram Walker, Gooderham and Worts, Distillers Corporation-Seagrams, only came into the market as active competitors in the supply of American rye or Bourbon whiskey in the year 1928. Have you informed yourself as to that?

40 A.—No, sir, I have not.

Q.—You have no intimation?

A.—No, sir.

Q.—My instructions are that they only came into the market in 1928 as competitors in the supply of American rye and Bourbon.

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More particularly Hiram Walker only then came in and Gooderham and Worts only became active competitors in 1929. Would that tend to explain the falling off of sales of these particular products by Canadian Industrial Alcohol during that period of time?

A.—Yes. There is no doubt if there is one store on the corner and two others come along and start opposition they take away a share of the business. There is nothing to that.

10 Q.—I am instructed that Hiram Walker and Gooderham and Worts only began to manufacture American rye and Bourbon comparatively late in the picture, about 1926, I think; we have already been informed, as a matter of interest, that it takes at least two years to mature whiskey, to make it saleable as beverage?

A.—Yes.

Q.—If they only began to manufacture on any scale American rye and Bourbon whiskey in 1926, that would only bring them into the market for the fine two year old product in 1928?

20 A.—Yes.

Q.—Distillers Corporation-Seagrams only started another year later; that would bring them still later into the picture?

A.—Yes.

Q.—If these premises are correct, my conclusion, I take it, is not unsound that that would tend partly to explain the falling off in sales of Canadian Industrial Alcohol during that period, the period in which they were increasing comparatively, as against Canadian Industrial Alcohol?

30 A.—That is the usual result.

Q.—Have you followed this case with sufficient interest to be aware that in recent years American rye and Bourbon whiskey has played a very large part in the beverage picture, as far as the chief or ultimate market for these products is concerned?

A.—I have heard that emphasized here.

40 Q.—If, in fact, Distillers Corporation, Seagram only came into the market with that product as a serious competitor in 1929, that, of course, would pull their earnings up as compared with previous years by a substantial percentage? If it was only in 1929 they came into the market as active competitors in the supply of American rye and Bourbon, it would tend to pull their sales up as against previous performances?

Mr. McKeown, K.C.: The question is by far too ultra-hypothetical. This Seagram Company has been in the whiskey business for God knows how long; also Gooderham and Worts. There is no proof in the record to support this question and I do not think

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hypothetical questions not based on facts established before the Court is evidence at all. This is a hypothetical question based on nothing. Here is Mr. McDonald, who would give an opinion on a hypothetical question based on facts which might never be proved. If there is one man owning a business, and two or three other people come in, whether it tends to bring the business of the first man away down is perfectly apparent. It is perfectly obvious if the dis-
10 tillation of whiskey was started in 1926, it does not compare with people who were distilling 20 years before. Canadian Industrial Alcohol has five or six or seven years' whiskey.

Mr. Campbell, K.C.: I am putting to the witness in the box a perfectly hypothetical question, and far be it from my learned friend to object from hypothetical questions. He has had a great many in the course of this marathon.

The Court: I do not know that it requires any expert to state
20 if some manufacturers begin to manufacture and place upon the market a new product, that their sales are likely to raise or lower on account of the introduction of the new product. Even without Mr. McDonald's assistance we can find that out ourselves. Whether it explains their competitors reach a higher point is another matter, or whether they substitute a new product for an old one.

(Question read)

30 By Mr. Campbell, K.C.:

Q.—(Continuing): I really don't care very much. If you would rather not answer the question I will withdraw the question.

A.—I am quite willing to say if all the facts are as you suggest, there is no doubt your deduction is possibly right.

Q.—You prepared a number of statements which you have filed as Exhibits P-196 to P-211, with one or two intervening numbers that go into other Exhibits, but taking this group of statements as a class, I understand from your testimony that they were pre-
40 pared exclusively on material which you found in the report of Price, Waterhouse and Company, the auditors of the Incorporated Company and of the Estate. Is that where you went for your sources of information?

A.—Not exclusively.

Q.—I mean exclusively, as to any figures pertaining to the Estate and the Company?

A.—That and the information I got in Court from evidence,

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and from talks with Mr. Reaper, specially in regard to Number 211, and the amount of cash on hand.

Q.—Substantially these are based on the Price, Waterhouse statements?

A.—Yes.

Q.—They are a revamping of these statements to show particular points which you are desirous of making in your testimony?

10 A.—They constitute a revamping of these statements to show more clearly what happened, but in other ways to show the whole story that was not shown in any one statement I had yet seen; in order to show the whole picture that I had read, and I consolidated in the Price, Waterhouse statements the statements that are in. I did not bother repeating a lot of these and so on.

Q.—You have observed from your investigation that Price, Waterhouse and Company have been the auditors of this Company, Sir Mortimer Davis Incorporated, from its inception?

20 A.—Yes.

Q.—Also the auditors of the Estate?

A.—Yes.

Q.—You have examined their annual reports attached, the balance sheets, the statements from 1919 onward?

A.—Yes.

Q.—Would you say they had apparently been prepared with the usual care and diligence that reputable auditors exercise in the performance of their duties?

A.—Yes.

30 Q.—Price, Waterhouse and Company are quite a reputable firm of auditors, are they not?

A.—Yes, they are.

Q.—In other words, are they not one of the outstanding firms of auditors, internationally speaking, in the English world?

A.—Yes, and it gives me pleasure to testify to the very good work they have done in this instance.

40 Q.—I wanted to be quite sure you were not critical of Price, Waterhouse. You would not be as critical of them as you might have been of their clients?

A.—I am certainly not critical of them. They have done beautiful work in this case.

Q.—And their clients got very good and complete information from them in their Annual Reports?

A.—I think it is an example that might well be held up to any company.

Q.—So Sir Mortimer Davis, when he was alive, and any one

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interested after his death, when they had those statements, had a source of complete information in regard to the affairs of both the Company and the Estate?

A.—Very very good, indeed.

Q.—While we are on the question of the status, so we might not have to refer to it, do you recall who were the auditors of Alcohol?

10

A.—No.

Q.—Deloitte Plender, Haskins, and Sells.

A.—Yes.

Q.—They are also a firm of wide reputation?

20

A.—This puts me in a delicate position. I would like to make myself clear in regard to the Alcohol statement. I do not want to express criticism in advance. There are certain things in the Alcohol statement that have been subject to criticism in this Court, and the position of the auditor is one where he has to express an opinion, and before doing it he generally should have an opportunity to discuss the matter with the President of the Company or the Manager, whoever it might be, and I don't like to express that opinion. I have not heard the story; but as far as Canadian Industrial Alcohol Balance Sheet is concerned, there are certain things which I would be glad to draw your attention to, and if the management wants to make a statement on them, if you want to call me back to give my opinion on it, I would be glad to do it; but I wanted to be very careful in not drawing attention to any failings on anybody's part, and in order to cover that ground I would like to tell you what I have seen in regard to Alcohol's statement.

30

Q.—I was not discussing the Alcohol Company. I was discussing the general status of the auditors of the Alcohol Company.

A.—May I have the Balance Sheet of the Canadian Industrial Alcohol, with the report?

Q.—Will you venture an opinion as to whether the firm of Deloitte, Plender and Company are highly considered internationally as a firm of reputable auditors?

40

Mr. McKeown, K.C.: He has been asked to pass upon Messrs. Price, Waterhouse and Company and that is half the picture.

The Witness: There are certain things in the Alcohol balance sheet that are not explained to me, and before criticising anybody who signed that balance sheet, either director or officer, I would like to give them a chance to explain. In the meantime, I do want to make this clear, that I would like to have the balance sheet to tell

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you what I think about it. There may be some explanations necessary.

By Mr. Campbell, K.C.:

10 Q.—I am coming to the balance sheet in time, but I was dealing with the abstract question of recognizing status in your profession, which is a different story. All I am desirous of is to have you answer my question. If you will not, say so.

A.—I want to answer the question fully. It may take a long time and I am not going to answer until after I have heard a good deal more.

Q.—I am not asking you to criticize this particular piece of handiwork at the minute. It may or may not be open to criticism. I suppose the handiwork of every one of us is sometimes open to criticism.

20 A.—That is exactly one of the things I want to say before going further with the balance sheet. The auditors are appointed at the Annual Meeting after the Directors are appointed. The auditors' duty is to supervise the affairs of the Company insofar as pertain to the accounting, and to report to Shareholders at the Annual Meeting. The form of the Report is prescribed, and the form of the Balance Sheet is prescribed in the Companies Act, Section 136; an amendment to the Act of 1917, copied out of English Law Prac-
30 tice. It took some time for that Balance Sheet to be generally accepted and put into use. It is not fully in use yet by companies, but it is gradually becoming more or less recognized, and auditors are realizing they have to comply with that form. If they do not comply with that form, the auditors and the Directors who sign that Balance Sheet, take their own responsibility in any respect in which the statement might not comply with that form. Sometimes a reservation made by the auditors would be altogether out of proportion to the significance of the fact, whatever it was, and that means the auditors would be willing to take their share of the responsibility. In this Alcohol Company's balance sheet they have
40 never complied with that Act insofar as showing the depreciation and the good will as separate items. I think there has been no book since started; there has been no change since the death of Sir Mortimer Davis; there has been the established practice. I think that Companies' Act was formed for the benefit of the shareholders in order to see they got the information they were entitled to.

There was an old-fashioned type of President who considered, insofar as the shareholders were concerned, they should be treated

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rough, and they gave them nothing Shareholders of the Alcohol Company always got less information than they were entitled to under that Act. It may have been considered a matter of unimportance not to put in the depreciation or the goodwill. I am quite ready to hear what the auditors or the management have to say on that subject. That has regard to the balance sheets from the start. 10 The last two or three balance sheets have offended against the letter of the law. The 1929 Balance Sheet is shown to have offended against that Section 136 in that the Bank Loan guarantee was not disclosed. I am not aware, from anything that was before me, there was ever any Bank guarantee before.

Q.—Mr. Lawrence has testified the same situation has existed in previous years, and it was treated in exactly the same way?

A.—If that is the case, the same criticism applies to the previous years. I do not remember Mr. Lawrence intimating there was more than one. The 1929 Balance Sheet showed a contingent guarantee for McNish debentures without showing the amount. The 20 1929 Balance Sheet did not show that. Now, that is as far as the letter of the law goes, My Lord. The spirit of the law is another thing. Here again is where I sometimes find myself in conflict with legal opinions. While abiding by the letter of the law you are probably not held to any criticism, but there are times when I consider and my professional colleagues also consider that the auditors' duty is to go further and see that the spirit of the law is carried out.

The letter of the law calls for a certain type of balance sheet, as I have described. The spirit of the law, as I conceive it, in regard to 30 this particular Balance Sheet, to be properly interpreted for the shareholders, they should be given a balance sheet such as the consolidated one. I think the shareholders of the company were entitled to get that. I don't think the auditors or Directors could be forced to do it. At the present minute in England they are trying to revise the law, to put more of the spirit of the law into the letter of the law, to prevent further things happening such as the Hatry failure where, through the subsidiary companies, many of the shareholders suffered great losses.

40 Insofar as Canadian Industrial Alcohol is concerned there is on file a statement showing the comparative situation of the parent and all the companies, and that, I conceive, is the statement the shareholders should have got. If they got that in 1928 and 1929 they would see certain losses had been incurred in the subsidiary company. The subsidiaries are not all wholly owned because there were a few minority shareholders of McNish. I conceive, on behalf

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of the shareholders of the company, they should be entitled to know what is happening.

Here again we have the inter-company barriers set up. That Robert McNish Company, as I understand it, is a company that sells whiskey in England. As far as those of the shareholders here are concerned, they have different subsidiaries of the company selling whiskey here, there and everywhere. In 1928 they lost \$500,000 in the McNish and in 1929 another \$500,000 that was not disclosed in the parent company. I do not say the parent company surplus was any less than the amount given on the Balance Sheet to the shareholders, but I do say that if the shareholders had been trying to look at their enterprise irrespective of the barriers they would have seen a completely different picture from what was presented to them.

That was the situation of Canadian Industrial Alcohol, and if a firm of auditors can explain that satisfactorily to myself or the shareholders, or if the management who signed this statement, can make me see that is right and proper, I am willing to express an opinion.

Q.—This is rather a long story, but it is interesting. Would you tell me this, without going into the same length, as to whether or not it is habitual for companies that are in the same relation to the subsidiaries as Canadian Industrial Alcohol was to its subsidiaries—is it habitual to supply their shareholders with all the details of the subsidiaries?

A.—I was looking at the report of the British Empire Steel Company this morning and I found that all the Interlocking barriers were broken down and a complete picture shown.

Q.—Is that in a recent statement?

A.—Yes.

Q.—Is not that quite unusual in that particular company?

A.—Not in my experience.

Q.—What is the particular reason for this particular treatment of the British Empire Steel situation at this time?

A.—I think they are probably following the practice of Judge Gary, in the United States Steel Corporation.

Q.—As a matter of fact, are they not working out a reorganization at the moment?

A.—They are, but they are giving a proper balance sheet to the shareholders.

Q.—In connection with the working out of the reorganization?

A.—I don't think Price, Waterhouse and Company would give any different statement than that to the shareholders.

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Q.—There are a great many companies, groups of companies, relatively in the same relation as Canadian Industrial Alcohol and their subsidiaries. It is a very common practice today to have a parent company with groups of subsidiaries?

A.—It is common practice, and what I concede to be the best practice that whenever there are no wholly owned subsidiaries, inter-company barriers should be eliminated, consolidated statements made, and that, I say, is the thing I understand they are now trying to put into the English company law.

Q.—I am not disputing that, that that is proper, and ideal, but whether or not it was not the common practice not to reach that ideal?

A.—It is not common practice in my firm. I can only speak about my own firm, and that I consider the shareholders should get the information. They get it or they get another auditor.

Q.—I was asking you to go beyond the particular scope of your general practice. I am under the impression that it is quite common practice that companies holding the relative position of Alcohol and its subsidiaries publish statements in substantially the same general form as Alcohol did?

A.—If I open up Houston's to show me, I will tell you whether they are or not.

Q.—After this little discussion, let us return to our mutttons. Will you look at the series of statements which you prepared and filed. Take in the first instance P-196, which is the first of the set. Now this is, as far as the total indicates, the opening Balance Sheet of Sir Mortimer Davis Incorporated, as at September 30th, 1919?

A.—Yes.

Q.—That was the opening set-up of the Incorporated Company?

A.—Yes.

Q.—Did you observe—while I think you are quite right, these are the figures shown by Price, Waterhouse and Company as the original set-up, did you observe that in the course of the first year certain adjustments were made which caused that to be revised somewhat in the course of the year? I don't know whether they wrote them back to this date or not, but do you remember that during the first year of the Incorporated Company they made certain revisions of that set-up? I think you will find it in the Price, Waterhouse report of 1920?

A.—Yes. I have got particulars of that in my notes.

Q.—Do you remember that there was an investment made in the course of the first year which did affect that original set-up?

A.—You are referring to those employees' shares?

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Q.—There were two items, I think, which entered into that.

A.—I think there was a reduction of the book value of the Dominion Reduction Company from two dollars to one dollar a share, which made a reduction on the capital set-up of \$632,303. That is part of the item on the second sheet.

10 Q.—In other words, the amount of \$1,270,603 was adjusted in the course of the first year to \$635,301?

A.—I presume that is the amount. I have not got my notes here on that, but whatever it was in the report it was written down from two dollars to one dollar a share.

Q.—Where do you find that?

Mr. McKeown, K.C.: Exhibit P-196.

By Mr. Campbell, K.C.:

20 Q.—Perhaps you could check this figure aggregating \$866,184.76.

A.—There were quite a few changes.

Q.—The other item is that item to which you referred a moment ago about these shares. Do you recall that there was 775 shares or thereabouts of \$100 each of the original Alcohol stock which were held in trust for certain employees of the Company under an agreement between Sir Mortimer Davis and the Montreal Trust Company?

A.—Yes. I understand there was something like that.

30 Q.—Should not that have been taken into account in your calculations, 775 of the original Alcohol shares, which were multiplied 16 to one.

A.—It was taken out of the Capital Surplus Account, that \$77,500.

40 Q.—I will come back to that. I suggest to you that in fact, a moment ago I said there should be a reduction in the first item on P-196, which you show at \$11,473,470. I should have said rather, an addition; that there was a write-up of that amount, an addition to the amount of \$866,184.76.

A.—In 1920, the Dominion Reduction Company was written down \$632,303.

Q.—And there was a charge off of those shares of Alcohol transferred, 775 shares?

A.—\$77,500.

Q.—In the same year Corby Distillery shares were written at \$866,184.76?

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A.—Those are all filed. Price, Waterhouse's statement for the year ending September 30th, 1920, shows in detail the amount I have recapitulated on the statement you have too. Mr. Campbell is dealing with them one at a time.

Q.—That is, I understand, a revamping of the original set-up; was a write-up of the Corby Distillery shares by that amount \$866,184.76, and a reduction of the Dominion Reduction \$632,303?

10 A.—Yes.

Q.—Of the 775 shares of the original Alcohol stock at par which were transferred to the employees?

A.—Those transactions were dealt with, I think, through the reserve account, which would affect the amount of the reserve account, we will say, on page one of P-196 by \$130,657.45. There is a difference of \$153,382.96.

Q.—I note from page one the Incorporated Company started out in life by owing its Bank \$1,529,178.96, and I think some of your other Exhibits show that that was pretty much its chronic condition, that is, it was perpetually indebted to its bankers in very large amounts almost all through its history, except perhaps during one particular year which we will come to when we come to that Exhibit.

A.—Until 1926.

Q.—Did the indebtedness entirely disappear in 1926?

A.—It was down to \$45,000.

Q.—In 1927 it disappeared?

A.—Yes.

Q.—Apart from 1927, when it disappeared, and apart from 30 1926, when it was reduced to \$40,000 odd, throughout the length of the whole history of that Company it was heavily indebted to its bankers?

A.—Yes.

Q.—In amounts exceeding \$1,500,000 running up to \$3,500,000?

A.—In those years the highest amount shown at the end of any one year was \$2,034,000.

Q.—When you say at the bottom of page one of Exhibit 196 that the investment in stocks and bonds aggregating an amount of 40 \$11,473,000 odd is represented by your capital issue and your 20-year serial notes, that is over and above the liabilities which the Company assumed?

A.—Yes.

Q.—Including the liability of \$1,529,178.96 to its Bank?

A.—It made it a little harder to show any revenue.

Q.—But all I am establishing at the moment is that the Com-

GEORGE C. McDONALD (for Plaintiffs), Cross-Examination.

pany was perpetually, with the exceptions we have covered, indebted to its Bankers in very large amounts?

A.—Yes, under very heavy interest charges.

Q.—That indebtedness to its bankers persisted all up to the time of Sir Mortimer's death. I mean it was not a situation that arose after his death?

10 A.—He had cleaned it up before his death, at least if he was responsible.

Q.—In 1927?

A.—Yes, it had been cleaned up.

Q.—While it had been cleaned up it had come into being again?

A.—In 1928.

Q.—On a larger scale than ever?

Q.—At the time Sir Mortimer died the indebtedness of the Incorporated Company to its bankers was larger than it had ever been in their history?

20 A.—Than they were at the end of any one year.

Q.—I will say as far as disclosed by the statements which you examined.

A.—If there are some of these ordinary everyday bookkeeping processes at the end of each year ———

Q.—You have paid Price, Waterhouse and Company the compliment that they did their auditing with care and thoroughness.

A.—I have that impression.

30 Q.—Taking it for granted the statement for the life of the Company that you have examined, showed the position of the Bank, the fact that the Company today, or until comparatively recently, owed its Bank large sums of money, was not a new thing in its history?

A.—No.

Q.—Can you tell us whether in fact, apart from the item represented possibly by accrued interest, was there ever any increase in the Bank indebtedness subsequent to the death of Sir Mortimer Davis, eliminating the question of possible accrued interest?

A.—My recollection is that at his death the loan was \$3,590,000. At the end of September, 1929, it had been then reduced by about \$340,000.

40 Q.—But all I want now is that this is not a situation that was created since the death of Sir Mortimer Davis. Look at P-196, page two. It has been suggested to me that perhaps a fairer wording of the heading at the top of the page might be this:

“Recapitulation of Capital Surplus Account arising out of revaluation, adjustment and profits and losses on Account of Capital Assets for ten years.”

GEORGE C. McDONALD (for Plaintiffs), Cross-Examination.

In other words, should we not bring in there that the result shown on that page is the result of revaluation, adjustment and profits and losses?

10 A.—The heading used there is taken from the one used in the annual reports of Price, Waterhouse and Company for the last eight or nine years. The first year or two it was called "Reserve." In 1924, when the big write-up took place, I think they changed the term from "Reserve" to "Capital Surplus arising from Revaluation of Capital Assets." After the death of Sir Mortimer Davis there was another revamping of Capital Account, when the profit and losses that showed in the Profit and Loss Account that were made out of buying shares were transferred into this account, \$487,000, and leaving for the period of March, 1928, a sum of about \$825,000, and in making that heading I was just trying to describe the thing, not with any special reason. That \$487,000 does not represent profit and loss made on buying and selling stocks because of the write-up.
20 There is confusion there. It would be the book value at the time. Shares sold after they were made up actually are greater than shown through the Profit and Loss Account.

Q.—That is why I am suggesting the heading would be more accurate in its description.

A.—It might be a fuller description of the thing.

Q.—Look at the debit items on P-196. These debit items total \$4,885,219.98, representing the losses that were charged off against Capital Surplus in the course of the ten-year period.

30 A.—Either against Capital Surplus or against Profit and Loss, because they were amalgamated.

Q.—But they represent an enumeration of the bad debts of the Company?

A.—Yes.

Q.—Look at the enumeration and tell me which of them, if any, represent investments entered into after Lord Shaughnessy became actively identified with the management of the Company in, say, January, 1926?

A.—I don't know if there are any losses written off.

40 Q.—I don't know that there are either.

A.—Do you think there are?

Q.—My impression is that they were all losses in respect of transactions entered into before Lord Shaughnessy had anything to do with the active management of the Company.

A.—In 1926?

Q.—He became Vice-President, I think, in 1926, after Mr. Waddell. I look through the list and my impression is that every one

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of the losses noted resulted from transactions entered into previous to Lord Shaughnessy becoming a Vice-President of the Incorporated Company.

A.—In 1929 there are \$7,729.24 written off Alcohol shares. That has been deducted from profit in transactions in stock. This is a loss charged against Capital Surplus Account in 1929.

10 Q.—And it went to reduce profits that had been made. It is a deduction in the credit side?

A.—Yes.

Q.—I am asking you to look at the debit items enumerated. I am asking you which of them, if any, represented losses incurred by the Incorporated Company after Lord Shaughnessy became its Vice-President and became an active party in its management in January, 1926. Did not every one of those bad debts originate previous to the time when Lord Shaughnessy became actively identified with the management of the Incorporated Company?

20 A.—I presume they did.

Q.—You cannot indicate any that did not? If you are satisfied to leave it like that, I would be glad if you would correct me, because my idea is every one of these bad debts resulted from transactions previous to Lord Shaughnessy having any responsibility for them.

A.—I have not got dates for that.

Q.—On the same page, coming to the item of Credits, where you take the item "Surplus arising from the Revaluation of Canadian Industrial Alcohol," what have you done in respect of that item, about these employees' shares, 72,900 shares?

30 A.—Employees' shares have gone in as a deduction from either the write-ups in Alcohol or the profits on sales. I think it is write-ups.

Q.—Should the value of those shares properly be added to this \$8,000,000 item?

A.—It was in the Capital Surplus Account where the \$8,000,000 went.

Q.—That is where it came out of.

40 A.—It seems to me it was a misconception. I am only getting information from you, but when they took the shares on the book at \$4,100,000 they afterwards took part of the \$4,100,000 and set it aside for the benefit of the employees.

Q.—As a understand it these shares were set aside under an agreement between Sir Mortimer Davis and the Montreal Trust for the benefit of the employees?

A.—Yes, and they were charged against Capital Surplus.

Q.—Turning to the third page of that same Exhibit, where you

GEORGE C. McDONALD (for Plaintiffs), Cross-Examination.

speak of the reconciliation of the Capital Surplus Account—first of all, Capital Surplus would be in the statement of Price, Waterhouse and Company?

A.—At one stage. The first statements I had to work on were at August 31st, 1929, most admirable statements too. “Profit on Capital Account as per Statement.”

10 Q.—I don’t want to be critical, but does that represent in fact a profit made on the dealing with Capital Assets, \$487,000?

A.—The totals that are shown on the next sheet were the profits and losses in buying and selling those assets which are shown during the period from September, 1919, to September, 1929, which were then summarized and taken out of the old Profit and Loss Account and put into the Capital Surplus Account and put away from the Usufructuary earnings.

Q.—It was an item that represented the general result of the tradings of the Company?

20 A.—As I explained, to show the real cash profits should be considerably implemented.

Q.—That was profits shown according to the books of the Company?

A.—Yes, as one that is distinguished as Capital Profit and not subject to Income Tax, as compared to earned surplus.

Q.—Coming to the last page of that Exhibit, where you show profits under the heading “Canadian Industrial Alcohol \$1,430,333.10,” is that the net result of the Company’s trading in and out of the Alcohol shares?

30 A.—Yes, Mr. Campbell. I have that here year by year.

Q.—I don’t propose to go into great detail because we have ten or twelve of these Exhibits to go through. I want to deal more in general terms, going through its whole career, bought and sold Alcohol shares.

A.—Yes.

Q.—Sometime it may be a profit and sometime a loss?

40 A.—Yes. There was a loss in 1923, which would not have been a loss if the stock had not been written up. That is the result of the transactions as shown by the books.

Q.—As a matter of fact, the Company did go into the market to buy and sell shares?

A.—Sometimes it bought them and resold them possibly a few days later. It was an active trader in the stock. I don’t know how active.

Q.—It was a trader in the stock?

A.—Yes.

GEORGE C. McDONALD (for Plaintiffs), Cross-Examination.

Q.—As a result of its trading in Alcohol it made a book profit of the amount shown in this Exhibit, according to the books of the Company?

A.—It really made more than that.

Q.—I am speaking of the book profit. I am referring entirely to the way it kept its books. Have you not failed to include in your total \$1,430.00, a loss in dealing in Alcohol shares, which you have
10 included among the losses “ Sundry Surplus amounts, 1920 ”?

A.—That is possible.

Q.—Will you look at the particulars?

A.—I have not got the particulars of 1920.

Q.—My information is that there was a loss of \$5,300 in Alcohol, which you have included in your sundry losses, which really ought to come off.

A.—I did not have the particulars of that. I have the items in 1920 marked “ Sundry Investments \$6,132.32.”

Q.—Look at page one, Exhibit P-197, under the fourth item
20 “ Loans and Interest Accrued,” the column beginning “ \$1,367,-568.66.”

A.—Yes.

Q.—What in a word would those represent, right across, in general terms, without going into all the details. Did that represent advances made by the Incorporated Company to subsidiaries in which it was interested? Was that the general character of that? I am speaking of the larger amounts.

A.—The only answer I can give you to that is they represent the
30 figures taken from Price, Waterhouse’s statements.

Q.—You have not got under your hand the detail?

A.—No. I have just got the totals.

Q.—I thought possibly you had the details from which this was built up.

A.—I only have the totals here.

Q.—I will ask you to observe there under the fifth item called “ Loans,” the fifth item of Assets called “ Loans from 1927 on,” the Company had substantial sums of money out on call, the Incorporated
40 Company.

A.—Yes.

Q.—Beginning at \$400,000 odd in 1927, increasing to \$880,000 in 1928 and 1929?

A.—Yes.

Q.—I take it as a matter of common accounting, money out on calls is like money in the Bank. Is it considered as the equivalent of money in the Bank?

GEORGE C. McDONALD (for Plaintiffs), Cross-Examination.

A.—It is in New York; not in Montreal, not yet. I hope it will get there some day.

Q.—It is considered a very high category of liquid asset. I think the evidence is that these particular call loans are secured by very excellent securities.

A.—Yes.

10 Q.—Taking the position as at September 30th, 1929, I understand at that time the Company had out on call \$880,000, and at the same time owed its bankers on overdraft, which is consolidated on this statement—

A.—Bank loans and overdraft—\$3,447,973.26.

Q.—The overdraft was a couple of hundred thousand dollars?

A.—Yes. It was recently incurred. It shows in P-203, I think.

Q.—It shows in Exhibit Number 10?

A.—\$205,825.06.

20 Q.—So that on that date although it owed its bank on an overdraft \$205,825.06, it had out on call the sum of \$880,000?

A.—Yes.

Q.—On page 2 of that same Exhibit 197, further down near the bottom of the page, where you speak of “Capital Surplus arising from the Revaluation of the Capital Assets”, I note there was no such capital surplus during the years 1920, 1921, 1922, and 1923.

A.—There was a reserve account. The balance there was merged with the Surplus Account in 1924.

Q.—Up to that date it had been called Capital Surplus. Was it the same thing?

30 A.—At the beginning they set up the principal part of the Reserve Account as a Specific Reserve against a specific item in the Balance Sheet which they afterwards wrote off. Then it began to be Capital Surplus as soon as the assets began to have more substantial value.

Q.—What I am getting at is whether the figures from 1924 on include profits on trading in Capital Assets, which had been transferred into Capital Surplus?

Q.—They did not include them until 1929.

40 Q.—I want to locate that particular figure, the figure given for 1929 does include that item which has been mentioned, \$487,199.45.

A.—Yes. Previously that had been carried in what, in the last three years, was called “Surplus Capital,” down lower.

Q.—Of course, the surplus account which is the last item on the sheet represented a surplus of net profits on operations as distinguished from transactions on the capital account, did it?

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A.—No. That surplus account in 1927 and 1928 included two items, the usufructary item as well.

Q.—They had not then transferred it to the capital surplus?

A.—No.

Q.—Until 1928 it included both the surplus on operations plus the surplus on trading in securities?

A.—Yes, but not any of that revamping.

10 Q.—But none of the write-ups appears in that surplus account?

A.—No, some of the writing down.

Q.—Were charged up against it?

A.—Yes.

Q.—At any rate, it was only in 1927 that the Incorporated Company worked itself into the position that it had a surplus account in its books arising from these operations?

A.—Yes.

20 Q.—Looking at the first page for the moment of that same Exhibit, the total assets shown in 1920 at the opening, were \$12,468,347.10?

A.—Yes.

Q.—Then, in 1925, just previous to Lord Shaughnessy becoming actively responsible for the management, under Sir Mortimer Davis, they had increased to what figure?

A.—You are on dangerous ground. They included the deficits. They are substantially the same figures.

Q.—Less the deficit?

A.—Yes.

30 Q.—We really would have to subtract the amount shown above for deficit account?

A.—Yes.

Q.—As a matter of fact, there was a deficit shown on operations for 1920, right down without cessation to 1926, was there not?

A.—Yes.

Q.—But in 1925, then the picture would be, total assets of \$13,764,190.86 minus a deficit of \$1,076,681?

A.—Yes.

40 Q.—In 1929, what was the picture, according to the books of the Company?

A.—The assets added to it \$16,694,078.55.
deductions?

A.—No. Did you ask me for 1929 or 1928?

Q.—1929. Did you give the figure of 1928?

A.—I gave 1928; 1929 is \$18,014,059.76.

Q.—Will you look at the next Exhibit you filed, P-198, on

GEORGE C. McDONALD (for Plaintiffs), Cross-Examination.

page 1, where you give the history of the holdings in Canadian Industrial Alcohol. You have explained that the investments as at September 30th, 1919, reduced to shares of present day denomination, would amount to 656,000 shares, which were carried on the books at a valuation of \$4,100,000?

A.—Yes.

10 Q.—And that is on the basis of sixteen for one of the original \$100 shares?

A.—Yes.

Q.—How did the sixteen for one operation work out, when it was worked out?

A.—There was an eight for one split in 1923.

Q.—Was that when the par value was reduced to no par value shares?

A.—It became \$25 par stock then.

Q.—In 1923?

20 A.—In 1923—in 1924 I think they became no par.

Q.—How, as a matter of bookkeeping, did that work out?

A.—They split the \$100 shares into eight. I have not solved that problem.

Q.—Was a new company formed, and they sold out two shares for one?

A.—I don't know.

Q.—At any rate, you cannot tell us?

A.—I have not been furnished with that information.

30 Q.—You cannot tell us how they made eight shares of \$25 par value of one share of \$100 par?

A.—No.

Q.—At any rate, they succeeded in doing it by some operation for the purposes of their books?

A.—Evidently.

Q.—That would give us eight for one. How did they get from eight to sixteen, and when?

A.—Well, in 1924 I think it was, the new no par value stock, apparently two for one.

40 Q.—That is where they incorporated a new company—Company "A" sold out to Company "B", two shares for one of no par value stock?

A.—Yes.

Q.—As I recall your testimony in chief, you stated you understood that Sir Mortimer Davis had really given substantially no value of the original 41,000 shares that he got, and that therefore, in your view, that was to all intents and purposes, what?

GEORGE C. McDONALD (for Plaintiffs), Cross-Examination.

A.—Good will, I said.

Q.—Have you any real information on that point?

A.—Well, the evidence that there is \$7,500,000 goodwill in the balance sheet today.

Q.—That is not quite an answer to my question. Do you know, in fact, what value Sir Mortimer Davis gave for those 41,000 shares —not in 1919, when he turned them over to the Incorporated Company, but when he took those shares over in payment for what he transferred to Canadian Industrial Alcohol?

A.—I don't know.

Q.—Do you know that he had a very substantial investment in Corbys Distillery before this?

A.—Yes, it is obvious he had. He still had it.

Q.—That is where I don't want you to be misled. Do you know if Corbys Distillery had turned over a very substantial portion of its assets to Industrial Alcohol in exchange for shares, which was the source from which these 41,000 shares came?

A.—I don't know. The only information I have is, that at the present day Canadian Industrial Alcohol has \$7,500,000 good will on its books in different forms, and that at the time of the opening balance sheet, Price, Waterhouse made the remark that the values placed, were arbitrarily placed there. I am sure if you ask them what it is, they will explain it to you.

Q.—You do not ask the Court to accept as a fact that Sir Mortimer Davis had given no substantial value for these 41,000 shares?

A.—No. I think the good will value may have been very substantial.

Q.—Apart from good will?

A.—Well, I don't know anything about that.

Q.—You don't know anything about it?

A.—No.

Q.—That is a fact, is it not?

A.—That is a fact.

Q.—Because my instructions are that he gave a very substantial interest— do you know this from your investigation, that he had a very large interest in the Corby Distillery Company at the time that that Company transferred its physical assets to the Canadian Industrial Alcohol Company?

A.—I know that he had an interest in the Corby Distillery back as early as 1906 and 1907.

Q.—And, as a matter of fact, do you not know that he had made a very serious investment in that Company?

A.—I don't know what the investment was.

GEORGE C. McDONALD (for Plaintiffs), Cross-Examination.

Q.—I mean, running into millions of dollars?

A.—I do know this, that in September, 1919, he carried his Corby Distillery on his books, at \$1,653,440, and he subsequently wrote it up by \$863,000.

Q.—But that \$1,653,000 represented the amount which, according to his books, he had spent in the Corby Distillery venture?

A.—That was taken in separately from any value taken in on
10 the Alcohol.

Q.—Are you right as to that?

A.—They are there. They are both included.

Q.—Do not let us confuse two things. Are you aware that the Corby Distillery Company at the time Canadian Industrial Alcohol was organized, transferred, for instance, its physical assets to the Alcohol Company in exchange for a block of shares?

A.—I don't know what. I would suggest that you should ask Mr. Waddell. I believe he knows.

20 Q.—All I want to be quite clear on is, you do not intend to testify that there was no value given for those 41,000 shares?

A.—No.

Q.—Because, my instructions are quite the contrary?

A.—No, I do not intend to. As I say, I found what good will there was as to the present Company for the purpose of trying to size that up originally.

Q.—That does not justify you in saying that Sir Mortimer Davis gave no value?

A.—I did not say he gave no value.

30 Q.—I agree with you the good will might be very valuable, and it is often very valuable?

A.—Yes.

Q.—It is a substantial asset in a business is it not?

A.—It is. At times it is extremely valuable. In this particular Company there were times when it had a very extraordinary value.

Q.—But apart from that, I am asking you whether or not you are not aware that there were very substantial assets transferred?

A.—Could you get me the statement at the time and let me give
40 an opinion on it?

Q.—I have not the figures under my hands, but all I wish to establish at the moment is, that you do not want the Court to understand that you were testifying from any knowledge of the facts, when you indicated that those 41,000 shares represented only good will?

A.—I have been informed that Sir Mortimer Davis got those shares for good will.

GEORGE C. McDONALD (*for Plaintiffs*), *Cross-Examination*.

Q.—What was the source of the good will?

A.—Gossip in the Court.

Q.—You are not asking the Court to accept it as an established fact?

A.—No. That led me to inquire, to seek for one thing, what was the goodwill in the balance sheet, and if there were \$7,500,000 of goodwill in 1929, there is evidence that there is a good deal of it there in 1919.

Q.—But there were some physical assets at the original transfer, were there not?

A.—I would be glad to see the statement.

Q.—Did you not know enough about the fact?

A.—No, I did not.

Q.—You don't know anything about the original set-up of Alcohol?

A.—No.

Q.—Coming back to Exhibit P-198, where you speak of the purchases of Alcohol shares to September 30th, amounting to 218,699 shares, while they purchased that, they, of course, sold more, did they not?

A.—Yes, very much. Those purchases included the new stock issued in 1928, and was all acquired. They increased their holdings by 218,699. During the same period they reduced them by 378,399.

Q.—So their net sales would be only the difference?

A.—Yes.

Q.—But that does go to show that they were active traders in and out of the market in the stock during that ten-year period, does it not?

A.—You say active traders. In 1921 they appear to have bought 46 shares; in 1922 they bought 1,096 shares; in 1924 they bought 1,164 shares and sold 44,001 shares, and so on; in 1925 they bought 10,626 and sold 19,066 shares; and later on, in 1925, they bought 12,870 and sold 12,199 shares. In 1926 they bought 12,976 and sold 27,118 shares; in 1927 they bought or subscribed for 50,619, and they got a stock dividend of 90,807 four-fifths and sold 121,624 four-fifths; in 1928 they bought 7,375 and sold 7,978 shares; in 1929 they bought 2,200 shares.

Q.—During the last few years of Sir Mortimer's lifetime, they were actively buying and selling shares?

A.—Yes.

Q.—And their transactions since his death have not been as great as they were in the last year or two of his life?

A.—No.

Q.—Will you look again at Exhibit P-198, page 1, at the items

GEORGE C. McDONALD (for Plaintiffs), Cross-Examination.

where you speak of the write-off in book value shown at \$102,165.29. Does that figure there not include 77,500 of employees' stock?

A.—It does.

Q.—So that really that should come out of that item, should it not, as a write-off? It was a transfer of stock to employees; it was not really a write-off of stock, was it, not in the ordinary sense of the word?

10 A.—The actual shares went out, but they did not change the book value of the shares at all. They simply took them out of their capital surplus.

Q.—But they transferred the shares?

A.—Obviously.

Q.—So really the only write-down that actually took place as an actual operation in the books was, I suggest to you, the write-down that took place in 1928, I think it was?

20 A.—Well, Mr. Campbell, taking those shares out of the account in which they were carried, would, in effect, constitute a write-up of the remaining ones, unless they made this transfer out of capital surplus.

Q.—Well, but did they?

A.—They took these out of capital surplus, yes.

Q.—Would that constitute, in effect, in your view, a writing up or writing off?

A.—Well, the correct way of doing it—they should have taken it out of the \$4,100,000 at which the book originally stood. They did not. They took it out of capital surplus.

30 Q.—Was there any actual writing down of Alcohol shares on the books of the Company during the lifetime of Sir Mortimer Davis, eliminating whether this particular item about employees' stock should be so treated or not—eliminating that, in the ordinary sense in which other assets were written down, was there ever writing down of stock of Alcohol during the lifetime of Sir Mortimer Davis?

A.—Not a write-down in the capital surplus account. There was a write-off of the loss in 1923, that went to profit and loss account.

Q.—That was a trading loss?

40 A.—It was marked a trading loss. It was not really a trading loss, there was a profit.

Q.—It was a trading loss according to the books?

A.—It was a trading loss according to the books.

Q.—It was a trading loss at the price the shares were then carried on the books?

A.—Yes, at the price they had been written up to.

Q.—But apart from that, was there ever any write-down of the books, of the shares of Alcohol, on the books of the Incorporated

GEORGE C. McDONALD (for Plaintiffs), Cross-Examination.

Company during Sir Mortimer's lifetime in the sense in which he wrote down a great many other assets?

A.—No. I think the market history of those shares shows a continual progression, which was the highest they were ever carried in the books.

Q.—Were there not certain periods at which the shares for a certain period of time were actually selling on the market under the
10 valuation at which they were carried on the books?

A.—I do not think so.

Q.—Can you say quite definitely that they were not?

A.—On prices shown here at the end of each year, I do not think they were.

Q.—Have you investigated that?

A.—Yes.

Q.—Can you say definitely there was no time at which the market value was under the book value during the lifetime of Sir
Mortimer Davis?

20 A.—The figures I have before me here show that in 1924, that was after the book write-up, the high was $22\frac{1}{2}$ and the low $17\frac{7}{8}$.

Q.—When you speak of the low, was that the closing price as at
30th of September, or is that the high and low for the year?

A.—It is the price range.

Q.—You mean the price range for the year?

A.—I think it was.

Q.—What do you say the high and low was?

A.—The high was $22\frac{1}{2}$ and the low $17\frac{7}{8}$.

30 Q.—What were they carried at in the books at that time?

A.— $6\frac{1}{4}$ originally, but they raised to $9\frac{1}{4}$ in 1923.

Q.—Does not the Statement show?

A.—I think they were \$17.50.

Q.—So that, as a matter of fact, they were at one time, at any rate, in the Company's history, carried at \$17.50?

A.—They were put up to \$17.50 in 1924, and the price range shown in the latter part of that year was, high $22\frac{1}{2}$ and low $17\frac{7}{8}$, which was after the split.

40 Q.—You cannot identify any period of time at which there was a difference between the market price and the price carried in the books?

A.—In 1925, there was a time the price range, in 1925, was from $20\frac{7}{8}$ to 14, so that there must have been a time when they were below their book value in 1925.

Q.—That is not my understanding. My understanding is, that in 1925, at certain periods, the market value was below their book value?

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A.—That would appear to be correct. I don't know what the market value was on the 30th of September, 1925.

Q.—But this item of write-off in book value of \$102,165.24, on the first page of P-198, eliminating the \$77,500 represented by stock transfer of employees' shares, would reduce the amount to \$24,666.24, which I suggest to you occurred in 1929?

A.—Yes.

10 Q.—When there was a write-down of certain shares to 20?

A.—Yes.

Q.—In other words, in 1929, certain shares were bought in the market above 20, and to reduce them to the price at which the other shares were carried, there was a write-down from the first price paid, to 20, and which represented a write-off of the sum of \$24,666.24?

A.—Yes.

Q.—And I suggest to you that was the first time in the history of the Company as any such operation as that had deliberately been done?

20 A.—Yes, until I operated on it.

Q.—Until your operation in this case?

A.—Yes.

Mr. McKeown: That was a major operation.

By Mr. Campbell:

30 Q.—What was the highest Alcohol shares ever stood at on the books?

A.—20.

Q.—They were never written up in the books above 20 at any time?

A.—No, not to my knowledge.

Q.—And the market reached the dizzy height of 50, I think, at one time?

A.—Yes.

40 Q.—And during the last year or so of Sir Mortimer's life, and at the time just previous to his death, the market was 41, I think, or thereabouts?

A.—In 1928 the price range was from 35½ to 50½.

Q.—But in any event Sir Mortimer never wrote those up to the full market value in the last year or two of his life?

A.—No, not on the books.

Q.—I am speaking, on the books of the Company.

A.—No.

Q.—Then, have these write-ups or write-downs, except as a

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piece of interesting calculation, any particular significance? I am speaking now of the Alcohol "A" shares: Having in view the fact that the Executors were not in a position to dispose of the shares in terms of the Will—you recall that under the terms of the Will, in effect, they are told to maintain and carry on this industry?

A.—Yes.

10 Q.—So that would, for the purpose of taking advantage of a favorable market for that block of "A" shares, more or less put them out of the picture?

A.—Quite.

Q.—So that a write-up to 50 or a write-down to anything else in respect of the Alcohol "A" shares would not have any particular meaning, would it? It would be a mere interesting calculation?

A.—It is just an interesting document to lay alongside one of the Exhibits which were produced earlier, showing certain profits.

20 Q.—But, as a matter of fact, the Company never took the paper loss which you have attributed to it on your Exhibit?

A.—And I hope never will.

Q.—I join you in that hope. That is another thing we are agreed on. You suggested, I think, in discussing this Exhibit P-198, that in your view, if the \$4,100,000 of the original set-up was all water?, that was really an item that should be added to the book profit?

A.—To the extent that it was—that it was above the proper value at September 1919, I think that was.

30 Q.—We now agree that you were not in a position to determine what that extent was?

A.—I do not pretend to, but I do challenge the valuation, and I think I am justified in doing so, at \$1,400,000.

Q.—You think there was at least some spread between the value given and the shares he got?

A.—Yes.

Q.—Which was represented by the item of goodwill?

A.—The spread would be the value that they had in 1919 as compared with what they subsequently obtained.

40 Q.—But for the purposes of this calculation, if there was no value given, if the \$4,100,00 in the original set-up, and you transferred that really into surplus, would you not have to correspondingly reduce the capital account?

A.—If he had called on \$8,000,000 instead of \$4,000,000 the subsequent capital write-up would have been so much less.

Q.—In your original set-up, would you not have had to reduce the amount of your capital

GEORGE C. McDONALD (for Plaintiffs), Cross-Examination.

A.—If he had taken the Alcohol shares at \$8,000,000 instead of \$4,000,000 his capital

Q.—Would have to be increased accordingly?

A.—Well, perhaps he could have abolished the bank loan on that.

Q.—Perhaps the set-up of assets helped the banking situation. Do you think it did?

10 A.—You might find what security the Union Bank had for that loan originally.

And at this point it being 1:00 p.m. the Court hereupon adjourned until 2:30 p.m.

And at 2:30 p.m. personally came and reappeared:

20

GEORGE C. McDONALD

and his cross-examination was continued by Mr. George A. Campbell, K.C., of Counsel for Defendants as follows:

By Mr. Campbell:

Q.—We had reached, I think, page 2 of your Exhibit P-198 at the adjournment. Will you please look at that? Have you before 30 you page 2 of your Exhibit?

A.—Yes.

Q.—The item of \$72,900 in the write-down column at the top, that, of course, refers to these employees shares which you have referred to on a number of occasions this morning?

A.—Yes.

Q.—It was only a write-down in the sense that they were taken out of the surplus account and transferred to employees for illustrating

40 A.—For illustrating the value of the shares which were carried in the books.

Q.—But it was not a write-down in the ordinary sense in which the other securities were written down?

A.—Not in the same sense, but there was a loss of value that had been given it.

Q.—First of all, look at the first column of that page—look at the figures in the first column. I understand that that first column

GEORGE C. McDONALD (for Plaintiffs), Cross-Examination.

shows the dividends received by the Incorporated Company from their Alcohol shares during the respective periods they have covered, is that right?

A.—Yes.

Q.—And in the first six quarter years the Incorporated Company received in dividends \$1,652,769.13?

A.—Yes, that is right.

10 Q.—And in the second period that Lord Shaughnessy became President for the four—what would it be, the four and a quarter years or four and a half years? For the four and a half years covered by that Shaughnessy period, they received in cash dividends \$3,715,-223.30?

A.—Yes.

Q.—That, of course, was real money that came in from outside into the till of the Company?

A.—Yes.

20 Q.—Then, in their profits on sales having always in regard the point you have made a number of times about the variation of the book value, but taking the books as they stood in the first six and a quarter years, there was a profit on trades or sales in Alcohol of \$529,205.68, was there?

A.—Yes.

Q.—And, in the Shaughnessy period covering the years, part of 1926, 1927 and 1928, there was a trading profit of \$1,081,287.61?

A.—Yes.

Q.—Subject always to the qualification that you made?

30 A.—Yes.

Q.—If you will look for a moment at the item written down in red figures that you have entered as of the 30th of September, 1929, amounting to \$1,273,000, that item, of course, does not appear in the books of the Incorporated Company, does it?

A.—No.

Q.—The Company itself never wrote them down to that figure?

A.—No.

40 Q.—It is purely a hypothetical calculation which you have based on market values?

A.—Exactly.

Q.—At what figure did you take the Alcohol shares to make that calculation?

A.—I think the figure was 18.

Q.—At 18 for “ A ”?

A.—Yes.

Q.—And what for “ B ”?

GEORGE C. McDONALD (for Plaintiffs), Cross-Examination.

A.—“ B ” is not figured in that.

Q.—Yes, I think the “ B’s ” are included. I am instructed it includes the “ B’s.” It is not very material for the purpose of my question. Deal only with the “ A’s.”

A.—I gave that figure in my evidence. I think the figure was 18.

Q.—It was 18 for “ A,” that is my note, 18 for “ A,” but I have
10 got 15 for “ B.” I am not sure whether you mentioned that or not.
I want to verify it?

A.—“ B ” was taken at 15.

Q.—Where did you get those prices for the purposes of your calculation?

A.—From stock market quotations.

Q.—Were they the high or the low of the day?

A.—Well, presumably the low. In our practice and in cases like those of bank securities as against brokers loans and accounts we always take the low of the day at the close.

20 Q.—Or the low?

A.—The close or the low.

Q.—I put it to you that in this case you have taken the low of the day?

A.—Yes, this is the low.

Q.—And, as a matter of fact, there was a variation in the course of the day, was there not?

A.—There may have been. I don’t remember.

Q.—I put it to you there was a variation of a point or more in the course of the day?

30 A.—There may have been.

Q.—So that this calculation which you have based on the low figure of September 30th, 1929, and from which you would deduce the propriety of writing-down \$1,273,000, represents a writing-down from what book value?

A.—20.

Q.—From 20 to 18?

A.—Yes.

40 Q.—While that was, I believe, actually the low on the 30th of September, do you recall that, in fact, a day or two before that, the stock was selling at 20 or better. Have you got the figures for the 26th and 27th?

A.—On the 28th of September the open was 20; the low $17\frac{1}{2}$; the close $18\frac{1}{2}$.

Q.—That was the trading day immediately before the 30th. The 29th was a Sunday?

A.—That was the week ending the 28th.

GEORGE C. McDONALD (for Plaintiffs), Cross-Examination.

Q.—I think the 29th was a Sunday?

A.—Yes.

Q.—And on the 26th and 27th both those days it also sold at 20, did it not?

A.—I have not the figures. That week it opened at 20. Its high was 20; its low was $17\frac{1}{2}$, and it closed at $18\frac{1}{2}$.

10 Q.—If, on the preceding trading day that stock sold at 20, do you think there was any necessity of writing it down to 18 in accordance with the practice of that Company?

A.—October 5th—the week ending October 5th ———

Q.—Wait a moment. Please answer my question. I am speaking as of September 30th, without regard to what happened afterwards?

A.—The week ending October 5th includes September 30th.

Q.—But I am taking the date as of the financial year. After all, that is the financial year, is it not?

20

Witness: What is the financial year?

Counsel: The 30th of September is the financial year.

A.—Yes.

Q.—And the low to that point was 18?

A.— $17\frac{1}{2}$.

Q.—I should have said the low of that day?

30

Witness: The low of what day?

Counsel: The low of the 30th?

A.—I have not the figures of the 30th before me here. I have the figures weekly. You are asking my opinion as to how I would value these things?

Q.—No, you are not listening to my question.

A.—All right then.

40 Q.—I am asking you whether, in your opinion, it was in accordance with the previous practice of Sir Mortimer Davis Incorporated to write those shares down from 20 to 18, because, on the 30th of September that was the low of the day and 20 was the high, and in view of the fact that in the preceding day or two they had been traded in at 20 freely?

A.—I do not see any evidence. There may have been one time in the preceding year when at the close of the year—I am not sure of

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this—the stock might have been lower than it stood on the books and they did not write it down, so that they had no practice of writing-down, nor have I pretended that they had. I am merely showing you a picture here such as I conceive Sir Mortimer Davis was in the habit of sizing up what the value of his possessions were.

10 Q.—I am putting the question to you practically in that sense, if Sir Mortimer Davis had been alive on the 30th of September, 1929, do you think he would have considered it necessary to have written his Alcohol shares down from 20 to 18 in view of the then condition of the market?

A.—I do not think he would have written them on the books, but he would have said to himself in his own mind, the state of my fortune at this stage is as based on the price at 18.

Q.—But, as far as his books are concerned, you do not suggest he would have made any writing-down?

A.—No, not at that stage.

20 Q.—I am speaking as of that date.

A.—He might have done so later.

Q.—Possibly, but I am speaking of that particular date. Have you before you the Price, Waterhouse statement as of September 30th, 1925?

A.—No, I have not.

Q.—Will you look at the Price, Waterhouse balance sheet of Sir Mortimer Davis, Incorporated, as at September 30th, 1925, and will you give me the value at which the Alcohol "A" shares were carried in that balance sheet?

30 A.—At \$17.50.

Q.—Will you look at Exhibit D-57, being the leaves of Houston's Manual, covering the market quotations of Alcohol for that period, and give me the high and the low for the month of September, 1925?

A.—16 and 14½.

Q.—16 was the high?

A.—16 was the high and the low 14½.

Q.—Sir Mortimer Davis did not in the light of that market quotation think it necessary to alter his book value of \$17.50.

40 A.—Obviously not.

Q.—Subject to my objection to the relevancy of any conditions, or market values, that have occurred since action was brought in this case and which, in my submission, have nothing to do with it, I want to ask you about this other figure in red on your Exhibit P-198, which represents a hypothetical write-down as at February 28th—I don't know whether that is February 28th, or March 1st,

GEORGE C. McDONALD (for Plaintiffs), Cross-Examination.

because there is some confusion—is the date February 28th or March 1st?

A.—The market price is presumed to be the same on both days.

Q.—At any rate, it purports to be the market as at February 28th, 1930, or March 1st, 1930?

A.—Yes.

10 Q.—Some weeks after this litigation had started—after this action had been brought?

A.—Yes.

Q.—Of course, that write-down also has not taken place on the books of the Company?

A.—I do not think so.

Q.—But, as far as you are aware?

A.—No.

Q.—And it is based on a price, I think you said, of \$8 for “A,” and what for “B”?

20 A.—I think it is \$7 for “B.”

Q.—I think you did say in qualification of that, that that was not your own appreciation of the intrinsic value of those shares?

A.—The market values very frequently do not represent the intrinsic values.

Q.—Either at the high or low?

A.—I think they swing beyond in both instances.

Q.—And in the case of Alcohol do you think they did?

A.—I think they probably did swing to a high along with a lot of other things.

30 Q.—They were washed up by the tide to a considerable height, were they not?

A.—Very considerable.

Q.—And now that the tide has ebbed, they were washed down by the tide?

A.—It happens.

Q.—To a low ebb?

A.—Very.

40 Q.—But, I think it was in the course of the testimony of Mr. Lawrence that my learned friend Mr. McKeown was at some pains, for which I am obliged to him, to establish what we might call an intrinsic value according to the books, of something like \$35 a share writing-up—of course, the Alcohol from the cost value at which it was carried, to what is supposed to be a calculated ready selling value—do you remember those figures?

A.—Well, I much prefer my own valuation of 10 gallons per share.

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Q.—Can you convert it into money? 10 gallons per share? What about our fixed assets?

A.—You would own your fixed assets still, if you have 10 gallons per share, subject to the Bank liability any taxes that may be outstanding, and comparatively little else. The Company owns its fixed assets.

10 Q.—That stock was insured. Its insured value was \$32,000,000 according to the figures given by Mr. Lawrence?

A.—I heard something about it.

Q.—And in addition we had the biggest distillery in the world in the way of a fixed asset, had we not?

A.—I presume so. I don't know.

Q.—Have you not heard it so labelled in this case?

A.—No. I don't know very much about it.

20 Q.—I understand that goes on their advertising matter, "The biggest distillery in the world," and I believe it to be accurate. In other words they have substantial physical assets quite over and above their supply of manufactured liquor, have they not?

A.—Yes, the consolidated balance sheet I admit shows very substantial physical assets as well as various stocks.

Q.—So, as a matter of fact, except for the general Stock Exchange conditions, you do not suggest that \$8 is a fair value to place upon the shares of Alcohol "A" over any reasonable period of time?

30 A.—I think that considering the history of that Company, of what it has shown itself capable of doing, that it is an extremely low value.

Q.—Will you look at the next page of that Exhibit P-198, where you show certain figures for profits and losses on sales. I note there that you show an item for losses on sales amounting to \$180,160.19. Do you see that figure?

A.—Yes.

Q.—That was, I think, a trading loss in the course of the year 1920, was it not?

A.—I think it is 1923.

Q.—You may be right.

40 A.—It is one of those losses that would not have occurred . . .

Q.—You mean that it would not have occurred if . . .

A.—It would have shown that way if it had not been written-up.

Q.—But any value at which they were carried in the books, they appear as a loss?

A.—That is it.

GEORGE C. McDONALD (for Plaintiffs), Cross-Examination.

Q.—As a matter of fact, did they not also buy some shares that year or did they only sell? Are you sure it was 1923?

A.—That is what it shows here. They did not buy any in 1923.

Q.—So that those were the shares carried forward from the previous years?

A.—Yes.

10 Q.—These proceedings were served on the 18th of January, 1930. Have you got the market value of Alcohol on that day?

A.—My statistics stop at 30th of September, 1929.

Q.—I think the writ was issued on the 16th. The writ in these proceedings was issued out of the Superior Court on the 16th of January, 1930, and I will ask you to look at the daily tabulations of prices, and give me what was the high and the low of the 16th of January for Alcohol "A".

A.—On the figures which you produce the high was $11\frac{3}{4}$ and the low is $11\frac{1}{2}$.

20 Q.—And on the 18?

A.—The high is 11 and the low is $10\frac{5}{8}$.

Q.—Have you any doubt as to the accuracy of these figures?

Witness: Are they stock market figures?

Counsel: Yes, prepared by Jones, Heward and Company.

A.—I know that is approximately the situation.

30 Q.—If you find there is an inaccuracy in those figures, will you tell me. Can you make a rough and ready calculation, taking for easy figuring—take the high of the 16th, which was $11\frac{3}{4}$ and the low $11\frac{1}{2}$ —well, take it as an even figure of 11, and down to 8, which have entered into your calculations in this Exhibit, would be a loss of four points?

A.—Three and a half.

Q.—Take the even 11?

A.—Three is enough.

Q.—A loss of three points?

A.—Yes.

40 Q.—Taking this loss of three points, what would it mean in dollars, extended as you have extended it, your hypothetical loss on this Exhibit?

A.—Taking 560,000 shares approximately at three dollars, it is \$1,650,000.

Q.—We would have to subtract from your write-off \$1,650,000 to establish the picture as at the time these proceedings were taken?

A.—Yes.

GEORGE C. McDONALD (for Plaintiffs), Cross-Examination.

Q.—Will you look at your Exhibit P-199 (that is the one you prepared a revised version of, is it not)?

A.—Yes, Exhibit P-211 now.

Q.—My notes are on the original version. I do not think the difference is material, so will you look at your original P-199, and at page 1 of your Exhibit, where you speak of Current Liabilities of Sir Mortimer Davis Incorporated, and show them at \$437,156.30, 10 you obviously do not include in that the bank loans?

A.—No, they are shown on the same statement.

Q.—You do not call them Current Liabilities?

A.—In this Exhibit I was dealing with the problem the Executors were faced with, and at the moment I was doing this, I did not consider it was necessary that they should have cleaned up that bank loan. On the date of Sir Mortimer's death, that bank loan was pretty well margined, and the securities they were given pretty good revenue producing securities. It was not at that time one of those things I regarded as a pressing problem of the Executors, and 20 that is why I dealt with it in that way.

Q.—Of course, they were really demand loans?

A.—Oh yes.

Q.—The \$3,590,504.19 that you show a little further down, was due the Bankers on demand loans, and might have been called any day?

A.—Oh yes.

Q.—You referred in the course of your testimony in chief to the general situation as to liabilities of the Estate and the Incorporated Company merging, that is, wiping out their identity and merging them, and I think you mentioned a figure of something 30 like \$9,000,000 for the total cash liabilities of the Estate plus the Company. I have it in mind that you gave that figure?

A.—Well, they are all here; \$4,445,879.94 being the Estate and Sir Mortimer Davis Incorporated.

Q.—What are you reading from?

A.—That is the amended total, and then the Bank of Commerce loan was \$3,590,504.19, and there was the Bamberger loan shown on sheet 2, of \$1,348,391.77. That total comes to about \$9,000,000.

Q.—And those were practically all demand loans, were they not? 40

A.—They were all current liabilities.

Q.—If everybody on the 31st of March, 1928, had come, and wanted their money, the position would have been pretty serious, if they had all called at once?

A.—It would have been a picture such as happened when the war broke out, when everybody wanted their money.

GEORGE C. McDONALD (for Plaintiffs), Cross-Examination.

Q.—Sir Mortimer Davis left behind him an Estate that was not entirely free from difficulties, is not that a fact?

A.—Now, that is a point. I have prepared this Exhibit to show that the control of the Alcohol Company was almost imperilled at that time.

It was one of those things that was quite a problem to the Executors.

10 Q.—And granted the fact that the control of Alcohol had, if possible, to be maintained, the Executors were faced with a pretty serious problem?

A.—They were.

Q.—And a problem to work out successfully, which needed among other things, time?

A.—That is quite debatable. The bigger problems have sometimes the least time in which to work themselves out. We discovered that during the war.

20 Q.—Do you not concede that really the situation at the time of Sir Mortimer's death was a difficult one, requiring, among other qualifications, time to work out?

A.—I do not like to unduly emphasize that. I think the situation at the moment was one in which people faced with this problem, realized that it was one that required to be dealt with as quickly as possible.

Q.—Don't you think that it was a problem that could perhaps more adequately be worked out over a given period of time, supposing no untoward event happened?

30 A.—All such problems as those have to have a certain amount of time to work out. The law prescribed a year and a day, and that is frequently extended, but at this particular moment there was a special condition arising. I don't know whether you would care to have it, but I have a mass of bank presidents' cautionary letters that had been written for a year or two before. I had been preaching myself to my clients that this was a bull market, that the securities were up at the high, entirely beyond what I considered them to be worth.

40 Q.—And all the wise men in the country were preaching the same doctrine, were they not—a great many wise ones?

A.—A great many wise ones.

Q.—And in spite of all the doctrines of all the wise men, the market went on going up?

A.—It kept on. It gave those Executors quite a decent opportunity . . .

Q.—Quite apart from that, the fact is it kept on going up?

A.—Yes.

GEORGE C. McDONALD (for Plaintiffs), Cross-Examination.

Q.—And then at last the deluge came?

A.—Yes.

Q.—And then, there was the natural reaction and it has gone to the other extreme?

A.—Yes.

10 Q.—It was the Canadian Bank of Commerce that was interested in these loans both of the Incorporated Company, and of the liability of the Executors, insofar as there was any liability of the Executors to their banks—the Canadian Bank of Commerce were the Bankers both of the Estate and of the Incorporated Company?

A.—Well, they had some small notes.

Q.—Had the Canadian Bank of Commerce been dissatisfied, let us say, with the choice of Executors made by Sir Mortimer Davis, and when the will was published, had called for payment of their loans at that time, the problem was pretty serious, was it not?

20 A.—If any bank calls loans suddenly like that, it is a serious problem. It is a very unusual procedure for a bank.

Q.—Supposing the Canadian Bank of Commerce had been dissatisfied with the choice of Directors made by Sir Mortimer, as certain individuals apparently have since become dissatisfied, and supposing they had said that they wished payment of their loans, and had asked for them, the position would have been pretty serious would it not?

A.—It might have caused . . .

Q.—The loss of control of Alcohol?

30 A.—Yes. It is very likely at that time another market could have been found.

Q.—That is a possible solution?

A.—Yes. I can give you a hypothetical answer to your hypothetical question.

Q.—There might have been another bank that would have taken them?

A.—Yes.

40 Q.—But in other words, the Canadian Bank of Commerce was in the boat and had to stay?

Mr. McKeown: Oh no.

By Mr. Campbell:

Q.—Is it fair to infer that from the time of the death of Sir Mortimer Davis down to these proceedings, that the Canadian Bank of Commerce did not ask for payment of their loans, that they

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were satisfied with the management of Sir Mortimer Davis Incorporated during that interval?

Mr. McKeown: I don't think that is a question that should be put to this witness at all. If they want to find out if the bank is satisfied, let them bring the bank officials and examine them.

10 Mr. Campbell: I am asking the witness if it is fair inference, that they did not call their loan . . .

His Lordship: Question allowed.

Witness: I think the fair inference is, that they were satisfied with the security they had.

By Mr. Campbell:

20 Q.—Is that the only fair inference? You think it is not only fair inference that they were not satisfied with the management?

A.—The Bankers carrying loans of that kind consider more the securities they have got than the management, as long as they have got security.

Q.—The security the Bank of Commerce held was security of a somewhat volatile character, was it not?

A.—It has shown itself to be pretty volatile since that time.

30 Q.—Even before that time, it varied a great deal, it went up and down with some rapidity, did it not?

Mr. McKeown: It did not go up very much.

Witness: If you hand me those graphs, I can show you. It was an active stock. In 1928 it does not show a very great appreciation. That was the big year you were talking about.

By Mr. Campbell:

40 Q.—These securities that the bank held against their \$3,590,000 odd loan—there were two securities; at least half security or approximately half the security consisted of McNish Debentures, did it not?

A.—Yes.

Q.—At the time of Sir Mortimer's death there was no market for McNish Debentures, was there?

A.—There was the value though of the Canadian Industrial

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Alcohol Company behind them, which I have since discovered was a guarantee.

Q.—At that time there was no established market? At that time they had not been listed?

A.—I understand they were not listed until October, but as far as the Canadian Bank of Commerce was concerned, those Debentures were guaranteed by the Canadian Industrial Company, and I
10 presume the Canadian Bank of Commerce knew what the Canadian Industrial Alcohol was.

Q.—And was satisfied?

A.—Knew even better than the shareholders, as I was telling you about this morning.

Q.—And was satisfied with the value?

A.—Well, obviously it was satisfied with the security it had, or it would have called the loan, unless there was some other reason.

Q.—And the only other main security they had was those 60,000
20 shares of Alcohol which, of course, if called and realized, meant the loss of control by the Mortimer Davis Estate?

A.—Yes.

Q.—On the third page of that Exhibit P-199 (or P-211) you show as a marketable security, as at March 22nd the Wolff Advertising Company of New York, \$74,960.84. Do you think that was a marketable security at that time at that price?

A.—Well, I understand the Succession Duties Department valued it on that basis, and up to that time and for some time afterwards, it paid its dividend, but it was a seven per cent preferred
30 stock.

Q.—Was there ever a market for it at any such price as that?

A.—I don't know. I gave the benefit of the doubt for that.

Q.—Then, on the last page of that same Exhibit?

A.—I did the same thing.

Q.—Where you show marketable securities of the Incorporated Company, you see there the Crescent Lorraine item of \$21,567?

A.—Yes.

Q.—You do not suggest that that was a real market value?

A.—No. I took that in Court here from the evidence given on
40 the valuation of the Incorporated Company, as in accordance with the negotiations between the Executors and the Succession Duty Department. I think I was generous.

Q.—In the course of those negotiations, that was written down to one dollar?

A.—Somebody claimed a value for it, which I gave it there, and I think I erred on the generous side.

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Q.—As a matter of fact, it was written down to \$1?

A.—Yes, I think it is now in the books at \$1.

Q.—And was written down by the Succession Duties Department at \$1?

A.—I perhaps did not appreciate that.

10 Q.—Before we pass on from the previous Exhibit P-199 (or P-211), as I understand the first page of that Exhibit, you look upon the securities listed at the bottom of the page, Alcohol “B” and so on, Alcohol “B,” Asbestos and Consolidated, as securities available for realization to be dealt with by the Executors in the settlement of obligations of the Estate, eliminating the bank position?

20 A.—When I first worked out the Executors problem, I stopped at the upper one, because I had the impression from the will, that the Asbestos Corporation shares and the Consolidated Asbestos, was possibly one of those enterprises that probably Sir Mortimer wished to be retained in the hope of future appreciation, and I left them out of that account for the purposes of preparing that, to see whether the Executors could deal with the situation with encroaching and the Alcohol “B,” a copy to be substituted for the Alcohol “A” pledged with the bank in order to keep control.

Q.—But, as a matter of fact, if the Alcohol “B” had been in fact sold, the Bankers would have expected to get the proceeds, or to the extent at least, that they had advanced moneys for the purpose?

30 A.—As I understood the situation, it was, the money had been borrowed from the bank to buy among other things, Alcohol “B.” and the security given for it was Alcohol “A” and McNish Debentures. I presume the intention of that was to liquidate it from the proceeds of Alcohol “B.”

Q.—So, if the “B” had in fact been sold to the extent of \$1.-250,000 that was owing to the bank in respect of the purchase price, that would have gone to the bank?

A.—Yes.

40 Q.—Will you pass on to your Exhibit P-200 and look at page 1. I am not clear as to whether I understand your heading there. Does that indicate all the amounts paid by the Executors in respect of legacies, and succession duties prior to September 30th, 1929?

A.—That indicates all the liabilities existing in the balance sheets as prepared in March, 1928, that had been liquidated by the 30th of September, 1929.

Q.—But for instance, it does not take into account the amounts actually disbursed in the course of the administration by the Executors?

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A.—It only takes into account the liabilities that exist in this problem that I have just described that had been dealt with.

Q.—Would not part of the problem be the annuities that had to be provided?

A.—No. They were provided out of the revenue that came in, presumably.

Q.—But they had to be paid, had they not?

10 A.—Oh yes, but they were not at the moment at the date of Sir Mortimer's death, they were not at that moment a problem.

Q.—Except that provision had to be made for their future payment, is that correct?

A.—Yes. Those items on the first sheet are the ones which are included in the previous Exhibit as being in the liabilities.

Q.—Will you look for a moment at your Exhibit P-202, at page 1 under your column headed "Capital cash"; I am not quite clear as to just what that column purports to show. Is it intended to show
20 all cash received on Capital Account?

A.—No. It shows all the cash transactions on Capital Account other than those affecting the profit and loss on account of Capital.

Q.—So that if a Capital asset, for instance, was sold at a profit, the profit would not appear in that column?

A.—No. It would appear under the "Profit" column alongside of it. Taking the racing stable in France, it stood on the books at the beginning of the period at \$118,200. It was sold for \$132,624. The capital cash account shows as having received its capital back; the profit and loss account shows having a profit of \$14,000 which,
30 in turn, at the end of the statement goes into the Capital Cash Account.

Q.—I want to be quite clear that that Capital Cash column does not purport to be of amounts received in cash on Capital Account?

A.—It does before you are through with it, because I took the profits in at the end of the statement.

Q.—Item by item as shown?

A.—No, not item by item. The total comes in, and the total of the Capital Cash receipts includes disbursements.

Q.—You have mentioned the item about the racing stable. Look
40 a little further down at the Tobacco Products Company and Victor Talking Machine there, but you have only got in the Capital Cash column the book value, which I take it would be the cost price?

A.—Exactly.

Q.—And you put in the column to the left, profit actually made in disposing of those securities?

A.—Yes.

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Q.—In other words, the \$10,862.50 was a profit made by the Executors on Tobacco Products Stock and the \$29,647.50 was a profit on the Victor Talking Machine stock?

A.—And came into that Capital Cash receipts column in the total towards the end of the statement.

Q.—Looking at page 2 of the same Exhibit, in the Capital Cash column again, you enter certain items which are not properly speaking Cash. Let me instance the personal jewellery item: that, of course, was not a cash transaction, but you take it into the cash transactions at the book value?

A.—Yes, and take it out. It goes in, and goes out.

Q.—Because it was distributed in kind?

A.—Yes.

Q.—Right above that, where you speak of the Trust Debentures, an item of \$31,869; that, of course, was only an accrual?

A.—Yes. You borrow the money from Capital Cash in order to give it to Revenue Cash.

Q.—Those are really only accruals? The column does not purport to represent actual spot cash transactions?

A.—No, but it gives the actual cash transactions throughout the year, with the exception of those accruals, which, as I say, have to be treated as borrowings between Capital Cash and Revenue Cash.

Q.—Looking at the third page of the same Exhibit, where you come to the item “Excess Expenditure for the Period, \$463,910.80”: that means the Executors actually expended—is that both on Revenue and on Capital Account?

A.—It is on Revenue. It means they borrowed it from Capital Cash.

Q.—Where, in fact, did the money come from?

A.—It came from the Capital Cash.

Q.—But, what was the source of the money?

A.—It may have been any of those sources of the Capital Cash Receipts.

Q.—It came from the Incorporated Company?

A.—All that sum of money came from the Incorporated Company?

Q.—The Executors were supplied by the Incorporated Company with such moneys as they needed to carry on with under the method of administration adopted by Lord Shaughnessy and Mr. Reaper?

A.—Yes. I have made a recapitulation of the Capital and Revenue Cash Receipts and Disbursements at the end of the Statement. It is just a recapitulation of those columns, and it shows what has been necessary to borrow from one to the other.

Q.—I understand you were working on the theory that to all

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intents and purposes the Incorporated Company and the Estate were one and the same thing?

A.—It is only the Estate we are looking at now. Later on I joined them.

Q.—In that picture, of course those amounts advanced by the Incorporated Company to the Executors would disappear?

A.—Yes.

10 Q.—It would be a payment to themselves?

A.—Yes.

Q.—Looking at the fourth page of the same Exhibit I see an item "Interest on \$196,500 notes in Trust." Up to what date is that calculated? I suggest to you it would be September 17th, 1929? It is in the recapitulation of Revenue Cash Transactions?

A.—Yes: \$12,643.23.

Q.—Those would be the Lord Shaughnessy notes, would they not?

A.—Notes held under the Shaughnessy contract.

20 Q.—The interest on which accrued to Sir Mortimer Davis or his Estate up to September 17th, 1929?

A.—Yes. It shows on the previous page, Interest on \$196,500 6% Serial Notes of Sir Mortimer Davis, Incorporated, held in Trust by Marler & McLean, \$12,643.23, in Revenue.

Q.—The interest on which is only calculated up to the date they were deliverable to Lord Shaughnessy, September 17th, 1929?

A.—I understand that is the situation.

30 Q.—On the disbursement side on the last page of the same Exhibit, under the heading "Investments" you have certain figures. Those, I take it, were the investment in the Marler shares and the Royal Bank stock?

A.—Yes.

Q.—Looking at your Exhibit P-203, I take it the same explanation applies to the column headed "Capital Cash"? There are certain things in it that are not actually spot cash, but which are treated as the equivalent of cash from the way they appear in the books?

A.—There is the Cadillac Coal, \$450,000.

40 Q.—That is one to which you are very fond of referring. There is also the stock dividend. For instance, in the disbursement side you have a disbursement item in Imperial Tobacco Company, of \$5,000. That was really a stock dividend, was it not?

A.—I do not know. It appears as an increase in the investment during the year, bringing the total debit to which it was carried from \$31,187.20 to \$36,188.00.

Q.—Did you not verify that it was, in fact, a stock dividend?

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A.—No, I did not verify that. I see there is room for it to have been a stock dividend, because the Revenue Account is credited with \$8,150.00. For the purposes here it has been credited in as Cash Revenue, \$8,150, and disbursed as an investment in Imperial Tobacco \$5,000.

10 Q.—On Page 4 of that same Exhibit you show under the heading “Excess Revenue for Period” \$961,951.66. That was the excess revenue for the period shown according to the books of the Incorporated Company?

A.—Yes: and goes into the Capital column as Cash Receipts, increasing the Cash Capital as you transfer over and credited to Surplus Excess Revenue for the period in the Liability column at the end of the Statement.

Q.—How did that amount compare with the total amount advanced by the Incorporated Company to the Executors as at the same date?

20 A.—Speaking from memory, the figure was \$941,000 approximately.

Q.—They were not very far apart?

A.—Not far apart.

Q.—\$941,649.32 is, I think, the figure?

A.—That is right.

Q.—I take it also that the items shown on the Receipt side of the same Exhibit are not all actual money received into the till?

A.—They are the accrued items between the Revenue and Capital.

30 Q.—Take your “Sundries” for instance. Do you recall to what they refer?

Witness: That is the \$3,144.48?

Counsel: Yes. I suggest to you that was the item for depreciation on the office fixtures. It is only a balancing item, is it not?

A.—You might as well run it down.

Q.—It is not exactly a receipt, if I am right that it is a depreciation item, is it?

40 A.—It means, as far as the entries in this Statement are concerned, a credit to Capital Cash, and a debit to Revenue Cash, in order to get it in the columns.

Q.—It is a balancing entry?

A.—A charge against Revenue, to balance the amounts.

Q.—Obviously, if it is depreciation it is not a Cash Receipt?

A.—It cancels itself out in the Statement.

Q.—Will you look at your Exhibit P-201, which is headed “Investments Subject to Criticism.” I take it from the heading that

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those are investments which you think the Executors made unwisely?

A.—I think I explained that, faced with the problem they were faced with, the Executors did not have any money to invest.

Q.—They were not necessarily unwise in the abstract, but were unwise by reason of the special circumstances in which they were placed. Is that your idea?

10 A.—They had to take advantage of the rights on those shares, as I explained, and this stock dividend which you just brought up. There was nothing for them to do but to accept that. The primary part of my criticism in this regard is that they had no money to invest out of capital account because they had so many liabilities to meet; and, secondly, the difference of opinion that you and I have in regard to the Revenue.

Q.—And, that is on the theory of merging the identity of the Company and the Estate?

20 A.—Yes.

Q.—Take the first two items in regard to Industrial Alcohol, where you show 2,200 shares of Canadian Industrial Alcohol "A" were purchased by the Incorporated Company during the interval between March 22nd, 1928, and September 30th, 1929. Have you the item before you?

A.—Yes. This particular lot was purchased really between September 30th, 1928, and September 30th, 1929. There was some sold in the previous periods.

30 Q.—I am taking the period as you have grouped it on your Exhibit.

A.—As a matter of fact, during this period the net increase in holdings was only 40 shares. That situation was due to the fact that during the first six months of the subsequent period there were some sales. I took this from the Statement of Price, Waterhouse & Company, prior to the 31st August, 1928, which showed that investment of 2,200 shares.

40 Q.—But, in fact, taking the period you have indicated on your Exhibit, while the Incorporated Company had during that period purchased 2,200 shares, how many had it also sold at the same time?

A.—They sold 2,240 shares in the prior period. In the first six months they sold 2,240 shares.

Q.—I am taking your exhibit, as you have it, showing the period.

A.—The 2,240 shares were sold within six months of Sir Mortimer's death. Then, according to the information which I had when I was preparing the Exhibit, between September 30th, 1928,

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and September 30th, 1929, they purchased 2,200 shares more. That was after the sales previously made.

Q.—But, taking the whole period of their administration, from the time of death to September 30th, 1929, they purchased 2,200 shares, and they sold 2,240 shares?

A.—Yes: they sold 2,240 shares in the earlier months.

Q.—Never mind that, Mr. McDonald. You are always arguing.
10 I am entitled to take your Exhibit as you have prepared it. You are very anxious that the Court should take it for granted that you are an impartial and disinterested witness, but if you will admit that you are here to argue the case of the Plaintiffs on all those points, I am quite satisfied. If you are prepared to commit yourself to that position, it is all very well; otherwise I would like you to take your Exhibits as you have drawn them. Are you prepared to admit that, in fact, you are here in the box as a special pleader for the Plaintiffs?

20 Mr. Campbell: I will withdraw the question.

Mr. McKeown: And, you had better apologize also.

Mr. Campbell: No, I will not apologize. All I want is that the witness shall not be at such pains to take every occasion to try to make an extra point.

Witness: I wanted to explain in this regard that I made this Statement up before I had access to the complete history of the Incorporated Company, and when I drew it I only had the Price,
30 Waterhouse Company's statement between September 30th, 1928, and August 31st, 1929, which showed the purchase of 2,200 shares. I subsequently got access to the prior period, and found that during that period they had sold 2,240 shares. The reason it is shown that way is because I was working through that period. You will find those disbursements were all made in that year, but there were none of them in the first six months, although the heading of the Statement does say "Period from 22nd March, 1928, to September 30th, 1929." If I was criticizing, my criticism would be founded on the fact that I
40 do not think the Executors had funds to invest. They quite properly sold those shares in the earlier months, but quite improperly invested in the later months.

Q.—Will you follow me this far: that taking the period of their administration as a whole, in their trading in Alcohol "A" shares, they sold more than they purchased?

A.—That is quite right.

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Q.—Will you also tell me what was the result of that trading to the Incorporated Company?

His Lordship: Three weeks ago we knew it; the difference between approximately \$90,000 and \$60,000.

10 Mr. Campbell: But, that was a long time ago, Your Lordship.

His Lordship: Has it changed since?

Mr. Campbell: The enormous quantity of material we have heard since has quite obliterated it from my memory. I do not know whether Your Lordship still has it in mind.

20 Witness: The result of that trading, as reflected in the books of the Incorporated Company, shows that on the Alcohol "A" they made profits of \$53,343.43. I think that was in the earlier period. I refer to the sale of the 2,240 shares.

By Mr. Campbell (continuing):

Q.—Can you take the whole period covered by this Exhibit?

A.—They made profits of \$53,343.33, and they show a write down of \$24,666.24.

Q.—That is the write down from whatever they paid, to the market value of \$20?

30 A.—Yes; I understand that write down applied to those shares I have been referring to as having been bought in the later period.

On the Alcohol "B" they made profits of \$149,619.29, and they wrote down the shares in the end of September, \$3,063.00.

Q.—But, the general result of their trading in both "A" and "B" was a profit to the Company, taking the period as a whole?

A.—Yes.

40 Q.—Of course it had been the previous practice of the Incorporated Company during the lifetime of Sir Mortimer both to buy and to sell Alcohol "A" shares? I mean, particularly during the later years? I think you gave us some figures this morning. They had been active traders during the later years of Sir Mortimers' lifetime?

A.—They had been gradually selling over the period of the life of the Company—gradually reducing their holdings.

Q.—And buying whenever necessary? Whenever it was necessary to support the market?

A.—I do not know about that. They did buy a few shares now and again—as many as 12,000 in one year.

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Q.—If they were interested in maintaining the market for the “A” shares, for trading purposes, they would be at times under the necessity of buying to support the market, would they not?—in the ordinary course of business?

A.—I have heard of transactions of that nature. Of course, I do not know whether they were trying to support the market. I am not informed on that subject at all.

10 Q.—If they were, in fact, trying to maintain or support the market they would occasionally have to buy shares that were being offered down?

A.—Yes.

Q.—On the next item on your Exhibit, Imperial Tobacco, I think you have stated that inasmuch as that was a stock dividend of \$5,000 it is, perhaps, not quite properly labelled as an investment open to criticism?

A.—Quite.

20 Q.—In connection with the matter of Investment Foundation, Limited, units I do not know whether your criticism is as to the character of the investment in general, or simply by reason of the special circumstances in which this Incorporated Company was placed at the time it made that investment?

A.—I really do not know any more than His Lordship does about the Investment Foundation or Jennison Company.

30 Q.—You do not suggest that the Investment Foundation was, in itself (apart from the special conditions to which you have called attention) an improper investment for a reasonable man to take, I hope; and I hope my learned friend Mr. Montgomery joins me in that.

A.—But it might not be a proper investment for a reasonable Executor to make.

Q.—I have eliminated the Executors from the question. I am speaking of the investment in the abstract. If I told you I was so indiscreet as to buy some of those shares for my own account, and paid more for them than Lord Shaughnessy paid, would you think I was very unwise? This happens to be the fact.

40 A.—You are master of your own money, of course.

Q.—And, as a matter of fact, might even name other learned Counsel, engaged on the other side of this case, who also invested in the funds of this Incorporated Company. The point I put to you is that in the abstract it was not and it is not necessarily a faulty investment.

Mr. McKeown: We know how it turned out.

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Mr. Campbell: It has not turned out yet.

By Mr. Campbell (continuing):

Q.—My point is that in the abstract it was not in itself necessarily a faulty investment; was it?

10 A.—If you go a little farther on in my Exhibit you will see that investment seems to have suffered from the market point of view; and, from the Executors' point of view I understand it was only a 3% dividend.

Mr. Campbell: 6%.

Mr. McKeown: It only paid 3%.

By Mr. Campbell (continuing):

20

Q.—The units consisted of 6% Preferred Stock, and a certain amount of Common Stock, I think?

A.—I understand the investment is \$142,500, and there is a dividend of \$3 declared on 3,000 shares. That is an investment of \$142,500 which produces \$4,500 a year.

Q.—You are grouping the whole investment?

A.—Yes, I should say so.

30 Q.—The Preferred Shares, in themselves, are 6% Preferred Stock, are they not?

Mr. McKeown: \$50 shares.

Mr. Campbell: Whatever their par value is.

Witness: I have not the information about it here.

Mr. Campbell: Perhaps we might call some of the officers of the Company who will give us the information definitely.

40

By Mr. Campbell (continuing):

Q.—Do you know about the item of the National Steel Car Company?

A.—I understand that was taking up some rights.

Q.—If it was the taking up of rights you would hardly say it was exposed to criticism?

GEORGE C. McDONALD (for Plaintiffs), Cross-Examination.

A.—I would say it was the duty of the Executors to take the rights up and protect the capital; but, whether they should not have subsequently sold on the market is another question. It was their duty to do whichever way was most profitable.

Q.—It would depend upon market conditions?

A.—Whichever way was most profitable; either sell the rights, or take up the stock and sell the stock.

10 Q.—And, the same applies to the Royal Bank of Canada. 189 new shares were taken up?

A.—Yes.

Q.—At how much a share? What was the issue price?

A.—\$200.

Q.—Of course it rose to dizzy heights afterwards?

A.—Yes.

Q.—200 shares sold at one time over \$400, did they not?

A.—I believe they did.

20 Q.—And even today, in spite of the cataclysm which has overtaken the Stock Market world, they are selling over \$300, are they not?

A.—Yes.

The main point here, as I told you in regard to the previous Exhibit, is the control of Alcohol was imperilled, and investing \$392,000 like that was further imperilling the control.

30 Q.—All I want to understand is whether the point of your criticism is that those investments were not necessarily bad in themselves but were wrong under the special circumstances? Eliminating Mr. Jennison.

A.—I am a little doubtful about the wisdom of Investment Foundation. I am sorry for you in that. I do not know that it would be called a Trustee Investment.

Q.—But, was Sir Mortimer Davis, Incorporated, a Trustee Institution? Was it a Trustee Institution limited in its operations to Trustee investments?

A.—We have already had our argument on that subject, I think.

Q.—And, we disagreed?

40 A.—Yes.

Q.—And, we are not likely to agree by arguing further.

In your next Exhibit, P-204, as I understand it, this is where you merge the identity of the Incorporated Company and the Estate?

A.—Yes.

Q.—And, for the purpose of that Exhibit all payments made by the Incorporated Company to the Estate, aggregating approximately

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\$940,000, would no longer appear as advances, but would be payments over?

A.—They would be eliminated—crossed off one against the other.

Q.—Your Exhibit P-205 is the statement in which, as I might say, you exercise some powers of imagination. You have extended
10 into this Exhibit the Stock Market value of the securities of the Incorporated Company?

A.—There is one for each.

Q.—Exhibit P-205 is for the Incorporated Company, I think?

A.—Yes.

His Lordship: A comparison of market value?

Mr. Campbell: Yes, my Lord.

20 By Mr. Campbell (continuing):

Q.—Where did you take your market values? Who supplied them to you?

A.—I got them in Court, from the evidence about the Succession Duty.

Q.—Did you take the values placed for Succession Duty?

A.—The value I took was what I understood to have been agreed upon after argument with the Succession Duties Department.

Q.—That would only be the value at March 31st?

30 A.—Yes.

Q.—Where did you get your values as at September 30th, 1929?

A.—From the Stock Market quotations.

Q.—Did you verify them yourself?

A.—Not personally. One of my staff did it.

Q.—Did you personally verify the Stock Market values as at February 28th, 1930?

A.—No.

40 Q.—This is based on certain information furnished to you by somebody in respect of those quotations?

A.—Yes.

Q.—The whole burden of the complaint (if I may so call it) set forth in this Exhibit P-205 is the result of Stock Market fluctuations between the dates mentioned, in the securities carried, is it not?

A.—The basis of this Exhibit is to show what the Stock Market values were on those different dates, from the point of view of sizing up the situation as to the manner of dealing with it by the Executors.

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Q.—Is it fair to say that during the same period of time every individual, speaking as a general rule (and of course there might be exceptions) and every large Corporation owning any reasonable variety of listed securities also suffered substantial diminution in the quoted value of their holdings?

A.—I think as a general statement it is fair to say that, as from September, 1929, onwards.

10 Q.—And going farther back than September, 1929, in respect of certain shares?

A.—Yes.

Q.—For instance, the Bank shares reached their high much before that?

A.—I have forgotten when the Bank shares reached their high.

Q.—According to the evidence we have in this record, the Bank shares reached their high in 1928.

A.—I missed that.

20 Q.—For the purpose of my suggestion I put it to you that from September, 1929, to date, every holder of securities has suffered a very serious decline in the quoted value of his holdings?

A.—Yes; whenever it was the public estimation had gone, to my mind, completely crazy.

Q.—Up?

A.—Yes—it suffered whatever it was—the necessary shock—to bring it back to a more conservative frame of mind, which resulted in nearly all stocks going to extremes the other way.

30 Q.—Will you look at the list of investments on the last page of Exhibit P-205, and will you call my attention to any of those investments which show an increase in quoted value between September 30th, 1929, and February 28th, 1930?

A.—None of them show an increase.

Q.—In other words, every security on the list is down?

A.—No, not down. Some of them are flat.

Q.—One or two of them are flat?

A.—Yes. And I have made reservations about some which I have shown at book value.

40 Q.—But, eliminating those which you carry at book value because there is no market?

A.—There are only one or two which have not suffered a decline.

Q.—With how many Companies the securities of which are on those lists did Lord Shaughnessy and Mr. Reaper have anything to do with the active management?

A.—I understand the Asbestos Corporation was one.

Q.—Lord Shaughnessy is a Director, and titular Vice-President

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of the Asbestos Corporation, but has never had anything to do with its actual management, has he?

Witness: Is that the answer you want me to give?

Counsel: No. I am making the statement of fact that Lord Shaughnessy is a Director and a titular Vice-President of the Asbestos Corporation, but has not had anything to do with the active management of the Company?

A.—I suggest he signed the statement as at September 30th, 1928, and I would like to be informed at some time what it means when a Director signs a statement. My personal point of view is a Director signs the statement before the Auditor does. I do not know what it is in the Act for, if he is not taking some responsibility.

Q.—In actual practice do not many of us sign statements put before us—and I am speaking in the editorial “ We ”—those of us who happen to be Directors of Companies, do we not on many occasions sign the statements put before us by the management, in the hope and expectation they are correct and according to the books?

A.—And taking full responsibility for anything you sign.

I would like to draw attention to a point which is more clearly defined in England than it is here, as to just how much responsibility Directors take in a case like that. I noticed the attitude taken by the Price, Waterhouse Company in the Asbestos Corporation. They distinguish it very nicely. In the 1929 Report they associate themselves with the remarks of the President, and show any reservations they may have to make in their supplement to his Report. In the 1928 Report they made a special reservation. The Report was sent to the Directors in 1928, signed by them: “ Subject to our Special Report,” and any reservation they made was their own.

Q.—Subject to the equivocal position, we will call it, which Lord Shaughnessy may have occupied in the Asbestos Corporation inasmuch as he appears to have signed a Balance Sheet as a Director, with what other Companies on the list had he anything to do with the management of? Industrial Alcohol, he had?

A.—Yes.

Q.—And Cadillac Coal?

A.—Yes.

Q.—Cadillac Coal is carried out by you at book value, so that it does not appear.

Mr. McKeown: There is also Consolidated Asbestos.

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By Mr. Campbell (continuing):

Q.—Consolidated Asbestos was not an operating company during this period?

A.—I understand their principal assets were shares of the Asbestos Corporation.

10 Q.—In other words, Consolidated Asbestos had sold out its assets to the Asbestos Corporation, and had been paid in shares?

A.—Yes. And you tell me Lord Shaughnessy is a Director of that Company.

Q.—But, it is not an operating company; it is simply holding certain shares. I am asking you to indicate to me on this list the Companies in the management of which he plays an active part.

A.—I do not know very much about him, but as far as that is concerned I do not think he has anything to do with the Crown Trust Company.

20 Q.—He has not.

A.—Or the Investment Foundation.

Q.—He is a member of the Board of Directors?

Mr. McKeown: And, Jennison the same.

By Mr. Campbell (continuing):

30 Q.—Both the Investment Foundation and Jennison & Company you have carried out without profit or loss? Let me put it this way: those Companies which have shown a decline in their shares during the period in question, how many of them is Lord Shaughnessy or Mr. Reaper connected with the management of?

A.—I do not know if they are connected with any of the other Companies on the list.

Q.—Is there any Company, except Canadian Industrial Alcohol, with the actual management of which Lord Shaughnessy is connected? Cadillac Coal does not come into the question as I frame it.

A.—I would say a Director of a Company was concerned with the active management, and I include the Asbestos Corporation.

40 Q.—Do you think a Director of a Company is responsible for the details of the management of the Company?

A.—I do not say the details. He is responsible for the management of the Company. Directors have to do something.

Q.—But, do you hold the Board of Directors responsible for the management of the Company?

A.—The other day you asked one of the witnesses whether he held Mr. William McMaster, a Vice-President, responsible for a

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certain situation, and the witness immediately said no. I think if Mr. William McMaster were here he would say: "I take my share of the responsibility, with the rest of the Directors."

Q.—Perhaps he would, but, knowing Mr. McMaster as I do, I think it very doubtful.

Looking for a moment at your Exhibit P-206, have you taken those Victor Talking Machine and Tobacco Products items in at
10 book value, or at selling price?

A.—On March 22nd, 1928, they are taken at book value, which I understand was the market value at that time agreed upon for Succession Duty purposes.

Q.—But, for the purpose of your calculation, might it not have been fairer to have taken them at actual selling price, since they realized more than book value?

A.—They realized more, nearly two years later.

Q.—No: they were sold immediately.

20 A.—For the purpose of this calculation I was taking the Succession Duty value at market. In the other Exhibit I have I show they did sell at a profit of \$10,000 and \$29,000 respectively.

Q.—But, I suggest to you that for the purpose of this valuation, since they were sold very shortly after Sir Mortimer's death at quite a substantial profit, it might have been fairer to have taken the selling price.

A.—But, were the Executors willing to pay Succession Duties on that amount? That is the basis of my valuation.

Q.—But, is it a fair basis for the purposes of your Exhibit?

30 A.—For the purposes of my Exhibit, Tobacco Products, being for comparative purposes, has been eliminated altogether in the two subsequent valuations, by being taken out.

Q.—But, I am looking at the first page of your Exhibit P-206, and I am asking you whether those two particular securities should not have been taken in at the prices at which they were sold very shortly after Sir Mortimer's death, for the purposes of your calculation?

40 A.—If you will look at the first page you will see the market value is approximately \$2,370,000, of certain investments at the top. There is a list of them on the second sheet. Tobacco Products and Victor Talking Machine were taken in at the then book value on the date of death, which was the Succession Duty value I understand. I am taking them out of there, because they were subsequently sold and do not enter in to the comparative picture. I am taking them out at the same figure they were taken in. If they were taken in, and taken out, at a higher figure, the \$2,370,000 would have been so much higher.

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Q.—You have taken them out at the same price you took them in?

A.—Yes.

Q.—What have you done with the United Cigar Stores scrip item?

A.—It was taken in at \$25,000 in the first Exhibit.

Q.—Where is it?

10 A.—On page 2.

Mr. Montgomery: "1,000 United Cigar Stores scrip, \$25,000."

Witness: It is the sixth item under "Stocks."

By Mr. Campbell (continuing):

Q.—One half of it was sold, I think?

20 A.—It was shown at the time of Sir Mortimer's death at \$25,000, and one half of it was sold, and the remaining half was shown on September 30th, 1929, at \$4.00 a share; and in February, 1930, it was shown at \$3.00 a share.

Q.—Where is the \$25,000 included on the first page of this Exhibit?

A.—It is included in the total of \$2,370,000.

Q.—Then the 500 that were sold, and which I understand realized \$12,500, would have to be deducted from that total before making your calculation?

30 A.—Yes, I think it should have been deducted—\$12,500.

Q.—The figure is not very large, but, in fact, there should be a deduction of \$12,500?

A.—Yes.

Q.—Referring again to the last page of this same Exhibit, where you make a comparative statement of market value. I notice, for instance, the item of Wolff Advertising Company, you start out by showing it as at March 22nd, 1928, with a market value of \$74,960.94.

A.—Yes.

40 Q.—Then apparently thereafter you wipe it out entirely. Do you mean to indicate by that that it wound up by having no value at all?

A.—No. It was a stock that at the time of Sir Mortimer's death had been paying 7%, and continued to pay 7% for a year after, I think.

Q.—Why do you show it as having no value?

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A.—I could not get a market value for it. I might have put a nominal value on it.

Q.—I thought your theory was to put it at book value if you could not find a market value.

A.—As a rule I did, but perhaps not in this instance.

Q.—In this instance, to be fair you would really have had to carry it across, or establish a market value?

10 A.—Or establish a market value, if I could. If I dealt with it the same as I did with Jennison & Company and others I would have carried it across.

Mr. McKeown: In any event, it is now in liquidation.

Mr. Campbell: But we have some security. Our investment in it is protected quite fully and substantially.

20 Mr. McKeown: By some life insurance on which you have to pay the premium.

Mr. Campbell: I am instructed the Wolff Advertising Company is not in liquidation.

Mr. McKeown: It is in the hands of its creditors.

Mr. Campbell: In any event, Sir Mortimer Davis, Incorporated, holds substantial security for its investment in that Company.

30 Mr. McKeown: As a matter of fact, it does not hold any substantial security.

By Mr. Campbell (continuing):

Q.—Coming now to Exhibit P-207, this was the Exhibit as a result of which you reached a rather dismal consequence?

A.—Yes.

40 Q.—Which, I take it, you join with me in hoping is not the actual picture?

A.—I do.

Q.—I have not been quite able to establish the basis of your figures. Was it sometimes market value, and sometimes book value?

A.—Yes.

Q.—Did you take whichever was the more unfavorable?

A.—No. I took market value wherever I could get it, and

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the other assets not readily realizable, like the properties, I took at book value. Investments not readily marketable I just showed on the schedules at their book value, but did not include any value for them on the first statement.

Q.—That is the note: but there are also certain other investments which are not readily marketable—you would not indicate that they have no ultimate value?

10 A.—No. This Wolff Advertising Company is in there again.

Q.—Wolff Advertising Company has an actual substantial value in the hands of Sir Mortimer Davis, Incorporated, because it has special protection.

Mr. Montgomery: Is the special protection a liability, or an asset?

Mr. Campbell: It is in the form of insurance policies, on which we have to continue to pay the premiums, no doubt, if the assured
20 does not pay them, but which have a very very substantial cash surrender value.

Mr. McKeown: Not at all.

By Mr. Campbell (continuing):

Q.—In making up this same dismal picture on Page 1 of Exhibit P-207, did you have any regard to the situation under any
30 of the Deeds of Donation either as a potential asset of the Estate—not an immediate asset?

A.—I did have a certain regard for that.

Q.—You understand, for instance, that in the donation of \$1,100,000 to the first Lady Davis as the beneficiary during her lifetime, there is an asset which will accrue to the Estate of Sir Mortimer Davis on her death. Did you have any regard to that value in making up this statement?

Witness: Is it part of the twenty-year serial notes?

40 Counsel: No. I understand it consists of quite gilt-edge listed securities.

A.—No, it is not shown on the books of the Estate or the Incorporated Company.

I deliberately did not add those two liabilities together, because I understand that at a certain period those twenty-year serial

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notes come back into the Estate and will cease to be a liability.

Q.—So that you would not press your point about any pretended insolvency?

A.—I deliberately did not add my total for that very purpose.

Q.—And, the whole picture is based on market values as at the end of February, 1930?

A.—Yes: substantially the whole picture.

10 Q.—That gives color to the whole picture.

A.—Yes.

Q.—Looking at the additions which you have made to page 2 of Exhibit P-207: "Marketable Securities Available For Sale on April 1st, 1930," at what price have you included the Royal Bank stock?

A.—About 340, I think.

Q.—No, it cannot be that.

A.—No, I am wrong in that. It is more like 390.

20 Q.—You and I are getting tired, Mr. McDonald. Will you please try again?

A.—\$59,940 divided by 194, is 390.

Q.—I think I will sit down while you work it out again. Try it at 307, or thereabouts?

A.—309. You are quite right, we are both getting tired.

Q.—You had the right figures, but in the wrong order.

A.—Yes.

Q.—Was that the market price of the day?

A.—That was the market price that was given to me.

30 Q.—You are not undertaking to testify as to the accuracy of those quotations?

A.—I will do it tomorrow, if you wish.

Q.—But, with your present information, and in your present state of mind, you would not?

A.—I did not do it myself. If you want my own testimony, I will give it to you tomorrow.

Q.—On the same page you speak of properties, \$250,579. Is that book value?

40 A.—I think it is. It is the two properties, Pine Avenue, and Ste. Agathe. It is the book value of the Pine Avenue property and its contents, and the Ste. Agathe property and its contents, at March 22nd, 1928.

Q.—But you do not suggest it is the reasonable selling value?

A.—I do not know anything about the selling value.

Q.—At what price did you put in the Pine Avenue property?

A.—\$170,000.

Q.—You have been present in Court when the evidence was

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made as to what the Executors were asking for it, and you know the asking price is \$300,000?

A.—I do not remember.

Q.—I think they refused an offer of \$250,000.

Mr. Montgomery: \$150,000.

10 Witness: My figure is book value.

By Mr. Campbell (continuing):

Q.—So that there may be some reasonable margin of safety?

A.—Well, you know what it is with properties like that. I am an Inspector of an Estate which has a property nearby, for which we are offering to take a very small price.

Q.—Of course, if you have to sell in a hurry you are forced to take what you can get?

20 A.—Yes.

Q.—But, you do not suggest that there is no reasonable hope of those properties ultimately producing more than the figures shown on your Exhibit \$250,579?

A.—No, I do not suggest that.

Q.—Looking at page 3 of the same Exhibit (P-207), where did you get the market value shown of the marketable securities at the upper part of the page?

30 A.—So far as they were available, from the Montreal Stock Market.

Q.—Did you verify them yourself?

A.—Not any more than the others. Just the same as the others.

Q.—Somebody furnished you with this information?

A.—Yes, one of my staff.

Q.—Did you make the calculations yourself?

A.—I took his figures. I had one of my juniors in Court here working on this, and I sent him to the Stock Exchange to get the quotations and make up the Statement.

40 Q.—Do you know where he got the quotations for some of the foreign securities? For instance, where did he get the quotation for Anglo Scottish?

A.—I do not know.

Q.—Where did he get the \$50,000 quotation for Investment Foundation?

Witness: Is it listed now?

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Counsel: I think not.

A.—He got some sort of quotation—I think he probably got it from Greenshields & Company.

Q.—Was that an over the counter quotation?

A.—I do not know.

10 (And further for the present deponent saith not.)

And it being 4.45 o'clock the further examination of the Witness is continued to Wednesday, April 23rd, at 10.30 o'clock in the forenoon.

On this 24th day of April, 1930,

20 GEORGE C. McDONALD

reappeared and continued his evidence as follows (in cross-examination):

By Mr. Campbell, K.C.:

Q.—Mr. McDonald, at the termination of your cross-examination on Tuesday afternoon, I had asked you where you got the quotation of \$50 per share for the Investment Foundation—units, I take it?

30 A.—Yes.

Q.—Was that the quotation for the units?

A.—Yes.

Q.—You told me then you did not know. I understand you wish now to indicate the source of your information?

A.—I knew it was from one of the brokers' offices. I found the office referred to was Flood, Barnes and Company.

Q.—As of what date was the quotation given you?

40 A.—That quotation was made about ten days ago, but this morning I confirmed it through Greenshields, who had a bid of 50.

Q.—The quotation you state was as of what date?

A.—The 8th of April.

Q.—Was that the date of the statement you worked right into?

A.—Yes.

Q.—I have forgotten what statement that comes into.

A.—P-207.

Q.—We had reached the last one of the different statements

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prepared by you, that is, the last in numerical order, P-211, which is the amended 199.

A.—Yes.

Q.—Will you look at that for a moment, Mr. McDonald, and I am not clear as to just the entire significance of the first page of it. Let me put the question this way and you will see what I am getting at: supposing at the date of Sir Mortimer Davis' death Lord Shaughnessy and Mr. Reaper had come to you in your professional capacity for advice, had more or less put themselves in your hands in order to be guided by you both in your interpretation of the Will and in your application of your interpretation to the problems of the Estate. Look at the first page of 211. Take, for instance, the current liabilities of the Estate, \$4,174,346.86, the details of which you have given on the second page. Then are the available assets of the Estate which you list, \$1,170,147.01? You note these as assets available for sale and you list them as marketable securities. Do you think the Wolf Advertising Company was marketable at the price you indicated there?

A.—I don't know when it became unmarketable, but at that time it had been paying 7 per cent dividend. It was preferred stock. I don't know how early it was traded in, but it was established for Succession Duty purposes.

Q.—You mean the Succession Duties accepted the book value?

A.—Yes.

Q.—Do you think the Wolf Advertising shares were a marketable security at the price you indicated?

A.—That is one of the cases where we become wise after the event. At that event they were paying their dividends and they continued to pay 7 per cent for a full year after Sir Mortimer's death.

Q.—You would not be disposed to eliminate them as a marketable security at that price?

A.—I think it is a fair enough assumption to put in anything that is pledged for Succession Duties to a marketable value of that amount.

Q.—In any event, do you think that these Wolf Advertising shares could legitimately have been counted on to yield \$74,960?

A.—There was quite an argument between yourself and Mr. McKeown the other day in regard to that. Mr. McKeown said they had gone into liquidation and that was denied. I am told the Estate had ample security to cover that. I do not pretend that they had any greater value than the Executors were willing to pay Succession Duty on. I don't know anything about the Wolf Advertising.

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Q.—The security, in fact, consists in two policies of life insurance, the value of which is \$46,000; the face value must be \$50,000. If you insist on having that value in P-207 I would have to leave it in P-211.

A.—I say that might have been a generous valuation but it was based on Succession Duty valuation.

10 Q.—You are not disposed to indulge me to the extent of admitting it was probably not marketable at that time at that price?

A.—I don't know whether it was.

Q.—I say if the Executors had put themselves in your hands for advice, would you have recommended them to have sold that list of securities listed on page three of that Exhibit to yield roughly the amount noted?

A.—If they are putting themselves in my hands for advice, I will give the advice in my own way, but not in answer to your question.

20 Q.—Would you have recommended them to have sold the shares, or would you have anticipated getting that much?

A.—The first thing would have been to prepare a summary of the position as soon as possible, to see what the position of the Executors was. That is approximately what I gather the position is, what I conceive the position is, in the light of all the information that I have since had, which was more than was available at the time.

30 Q.—Having drawn up the problem you had to face, what was your next step in solving it?

A.—The next step in solving it was to have in mind the intentions of the Will. The primary and main direction of the Will was to maintain control of Canadian Industrial Alcohol.

Q.—How did you construe the Will as to maintaining the shares in Consolidated Asbestos?

40 A.—When I first read the Will, I looked to see which ones they had larger interests in, and I thought possibly the Asbestos was one intended in the Will, but obviously they did not have control of it, but Asbestos was obviously one Sir Mortimer had in mind to retain control of. I did not know anything about what he had in mind, but I do know now, right from the start, that Asbestos shares did not have control in any form.

Q.—He had control of Consolidated?

A.—But Consolidated Asbestos, I understand, had sold all its assets to Asbestos Corporation.

Q.—Merely owned shares in Asbestos, but did have shares in Consolidated, which controlled Consolidated as it then was?

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A.—I don't know anything about Consolidated except what you tell me. When Executors are faced with the problem of settling debts, legacies, and so on, I do not conceive it is their duty to sell stocks for a higher price, but I do conceive if this problem had fallen into the hands of the Executors after the crash in October, that they might have been justified in taking a considerable longer time to work it out than was the situation in March, 1928. I think
10 Asbestos was on the ski jump that Mr. McKeown described prior to the death of Sir Mortimer Davis. It had been worth a great deal more and had been dropping. I don't know very much about Asbestos. I have studied the thing further since I saw the two balance sheets I have referred to. I think that was one of the things I would have gone into to see whether I considered it was more desirable, to sell or to hold. That might have been one of the things that would have been recovered.

Q.—We will suspend Asbestos and leave it in the doubtful
20 column for a moment. We have \$4,174,345 to meet in the Estate, current liabilities. Were there any marketable securities noted on page three you would not have sold or would you have recommended your clients to clean up at the market, or current prices, faced with the problem they had of having control of Canadian Industrial Alcohol?

A.—I think it was their duty to realize on the other assets as quickly as possible and wipe out the liabilities.

Q.—You would have realized approximately the amount noted on page three from the securities listed?

A.—There are securities on page three and another list on
30 page five.

A.—As far as the Estate is concerned the securities you had to dispose of were listed on page three and would have realized about \$3,289,000?

A.—Yes.

Q.—Out of that you had to take care of the Bamberger liability of \$1,348,391.77?

A.—Yes.

A.—Then you would have cleaned up the other assets in the
40 Estate noted at the bottom of page two, taken over the cash, disposed of the jewelry, racing stable and so on, wiping out \$1,170,047.01?

A.—Yes.

Q.—That includes the balance of the two securities that would be cleaned up, the available assets in the Estate, except what Mr. McKeown has referred to as "frozen assets", plus the Alcohol shares and the Asbestos shares?

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A.—Yes.

Q.—And those certain properties and loans?

A.—There were properties in the Estate.

Q.—I have referred to the Pine Avenue and Ste. Agathe properties as the frozen assets of the Estate.

10 A.—My experience has shown that it is very very expensive to carry real estate in Montreal for the Executors, and it is advisable, I think, as a general thing, to have the Estate realize on properties that are not going to be needed for the Estate as quickly as possible. There you come in conflict between the usufructuary and residuary interest.

Q.—But the question would be one of reasonable price, in the light of what the actual Executors have experienced with the Pine Avenue property, that it has not yet been marketable at what they thought was a reasonable price. I take it Sir Mortimer valued it in his own mind at \$400,000. You would not have recommended
20 to the Executors to sell it at \$150,000?

A.—I have just, in my capacity as an Executor of an Estate, recommended the acceptance of \$250,000 for a property that cost in the neighborhood of a million dollars.

Q.—Does that mean, if you were advising them, you would advise them to take \$150,000 if it had been offered?

A.—I would say that is an insolvent Estate.

Q.—In view of the general set-up of the Sir Mortimer Davis Estate, you would not have suggested accepting 50 per cent of the reasonable price?
30

A.—I am sorry to say they won't get any more. I have heard so many sad stories of carrying real estate in Montreal in the last 20 years—

Q.—We will put the doubtful assets in the "frozen" column. Then come to the available assets of Sir Mortimer Davis Incorporated listed on page four of the Exhibit. There you had current liabilities to provide for, \$271,574.06 over and above, of course, your bank loans?

A.—Yes.

40 Q.—Which totalled upward of three and one half million dollars?

A.—Yes.

Q.—You had available assets listed there totalling \$1,192,732.42. Will you look at that list of assets on the next page, the marketable securities, and I suggest to you we have to eliminate the Crescent-Lorraine, which came down to a one dollar value for Succession Duty purposes. Would you agree, in the light of what has happened, Crescent Lorraine was valueless for the purposes of your problem?

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A.—The claim of the Succession Duty Department that it had that value could not apparently be substantiated.

Q.—They have since accepted the value of one dollar so that that would disappear?

A.—Yes.

10 Q.—Would you have recommended the Directors of the Incorporated Company, or the Executors, through the Directors of the Incorporated Company, to have cleaned up those assets and realized that amount?

A.—Yes. I think they had not anything else to do. That is what they had to do.

Q.—What would that have left in the Incorporated Company in the way of assets. You would always have left the Alcohol shares and for the time being, the Asbestos, and certain pieces of real estate?

A.—The McNish debentures.

20 Q.—The McNish debentures I am coming to. The McNish debentures were in hock, I think, at the Bank?

A.—Yes. They have certain properties.

Q.—That would not leave them much in the way of property?

A.—No.

Q.—In other words, by the time you had cleaned up the affairs of the Incorporated Company listed on that page, it would not have left much except Alcohol, McNish and Asbestos, plus odd pieces of real estate?

30 A.—Dominion Reduction loans were standing on the books at \$300,000, but they since brought in \$365,000.

Q.—At that time they were promising.

A.—They were not promising.

Q.—My suggestion is that in the Incorporated Company subject to the recovery you have mentioned, in the Reduction Company, there would not have been much left except Alcohol, Asbestos and McNish?

A.—There were quite a few loans.

Q.—They were of relatively small amount.

A.—There would not be much left.

40 Q.—Having cleaned up those assets you had a net deficit of liquid liabilities over liquid assets of \$1,283,151, as shown on page one?

A.—Yes. I would not say that it was an absolute policy I followed. I am always wanting to protect the control of Alcohol. Apparently as long as everything else was all right and the Bank was not dissatisfied with its security, the Bank would not move to disturb that loan, and the Bank might have loaned a little more.

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Q.—You were working out on page one you said, still a deficiency of liquid assets over liquid liabilities?

A.—Yes.

Q.—You had always your banker in mind, who held security of 60,000 Alcohol “ A ” and the McNish debentures?

A.—Yes.

10 Q.—If the McNish debentures were sold at all, the Bank would have to have the proceeds?

A.—Yes.

Q.—Do you think there was any reasonable prospect of marketing the McNish debentures at that time at \$4.50? They were not then listed.

A.—The Succession Duty was paid on them at that price. It was the value established.

Q.—Something like that.

20 A.—At that time I think Canadian Industrial Alcohol was considered to be a very prosperous enterprise, and Canadian Industrial Alcohol had guaranteed these debentures.

Q.—Do you think they were readily marketable at that price?

A.—They were acceptable by the Bank as security for the loan.

Q.—Plus 60,000 shares with more market value?

A.—The loan was \$3,590,000.

Q.—Do you know how much had been borrowed on the McNish debentures?

30 A.—No. I don't know the figures, but it is evidence that they were considered to be marketable if any Bank would loan on them in that way.

Q.—As a matter of fact, it would be a washout, because if they were sold the Bank would have to get the money to reduce the Bank loan by that amount?

A.—The problem there as I have said would be for the Executors to sell the “ B ” and the McNish debentures to clean the loan up.

Q.—If they sold the McNish debentures the Bank would get the loan eventually.

40 A.—They could have substituted more Alcohol “ A ”. Then the proceeds of the McNish debentures could be made available for the Estate. The Bank had advanced the money to buy the debentures, and they would expect to get the proceeds of the sale. That is the usual practice.

Q.—That would reduce your Bank loan, and your suggestion is that you would clean up the rest of the Bank loan out of Alcohol “ B ”, a large part of the price of which had been borrowed from the Bank.

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A.—I understand the money was borrowed from the Bank to buy the “ B ” stock and the loan was secured with the “ A ” stock.

Q.—There again when the “ B ” stock was sold the Bank would expect to get the proceeds?

A.—Yes, and release “ A ”.

10 Q.—In the ordinary course of banking business, when money is borrowed for that purpose and the security is sold, the Bank expects to get the proceeds?

A.—Yes.

Q.—So I suggest the Bank would have liked to get the proceeds of the McNish and the “ B ”.

A.—It appears that is what had taken place in fact, because I gather at the time of Sir Mortimer’s death the Bank loan was \$3,000,000 and in the next place it was reduced, and I think that was the proceeds of the “ B ” stock.

20 Q.—What equity would there be in those two securities, your McNish debentures and Alcohol “ B ”, after the Bank had been paid off?

A.—About \$100,000,000.

Q.—It is a little less. I figured it out; a little over \$900,000?

A.—Yes, \$919,000.

Q.—So you would have \$919,000, having cleaned up your Bank in reduction of your deficiency of \$1,283,150?

A.—Yes, sir.

Q.—That would leave you how much still to provide?

A.—\$365,000.

30 Q.—\$365,000. What would you have left to provide it?

A.—There is the Asbestos stock.

Q.—Plus the Alcohol “ A ”?

A.—And plus properties and loans and such other things, those securities, including Dominion Reduction loan, which, in December, produced \$365,000.

Q.—At that time it was not in sight?

A.—The loan was valued at \$300,000.

Q.—It was salvage?

40 A.—Yes, I understand so.

Q.—It was a salvage which came in in December, 1929, but which at that date was not convertible?

A.—No.

Q.—You would have to have salvaged your doubt about the Asbestos shares in order to clean up what you still owed on your current liabilities?

A.—The reason I left out Asbestos—there are two thoughts in

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my mind about Asbestos; one is whether it was a thing Sir Mortimer knew sufficiently about to know it would recover at some date in the future.

Q.—Sir Mortimer had been a large operator in the Asbestos Company.

A.—Yes. That is one of the reasons which made me think it was one of the things he thought might increase.

10 Q.—Did he have confidence in the industry?

A.—He had sold it.

Q.—He had sold out his assets for shares in the new company?

A.—Somehow I have the impression that the interest in Asbestos at the time of his death was much less than he had at previous times.

Q.—Do you remember you were here when we were told about the Consolidated selling out to the merger?

A.—Yes.

20 Q.—Then it sold securities which it had got to pay off its bank, and that obligation is approximately cleaned up now.

A.—There are \$4,036,000 still open.

Q.—I suggest to you the Executors would have been faced in the course of cleaning up with the necessity of selling their Asbestos?

A.—After clearing off all the other loans, provided Alcohol kept good, their credit would have been good to carry.

Q.—Do you think they should have financed with borrowed money?

30 A.—If there had been any particular reason such as the carrying of Asbestos shares that would justify them. The shares were in the hands of Sir Mortimer. They were not responsible for buying. They were responsible for making the best deal they could have made.

Q.—The Executors did not have any more Asbestos shares after his death?

A.—Not that I know of.

Q.—It would probably have been necessary for them to have sold some of their Asbestos.

40 A.—Unless they would have found some other way. You are asking me to advise you on the whole source of what I conceive might have been done in eighteen months, when I might have been able to give a good deal more thought to the situation.

Q.—I want to bring you to this conclusion which I think is the conclusion that, under the cleaning up process, you would have suggested. You would have been left with nothing in the Estate except what you have called "frozen assets" plus the Mortimer Davis debentures. There would be nothing left in the Estate except

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“frozen assets”, that is the properties which were not saleable at the prices which to the then Executors appeared reasonable to accept, and you would have nothing left in Sir Mortimer Davis Incorporated of any great consequence except Alcohol shares?

A.—Yes.

10 Q.—So to all intents and purposes, to have a solution of the problem, you would have been left with your Alcohol “A” shares and very little else that would yield any revenue.

A.—That is exactly the situation I conceive this summary shows, The reason I show it was at the date of Sir Mortimer's death it left legacies, debts and so on, amounting to \$9,000,000 which had placed the Estate in a very difficult position.

20 Q.—My suggestion is, to carry out the provisions of Sir Mortimer's Will and do it in the manner I have been discussing with you, the Executors would have wound up by owning control of Alcohol and precious little else that would have yielded them any revenue.

A.—They would have paid off liabilities that in eighteen months caused an expenditure out of the Estate revenue of over \$600,000.

Q.—In the meantime, the assets they have had still have been yielding certain revenues?

A.—The assets they had still yielded \$533,000 during the same period.

Q.—So there is no mighty difference between the interest paid and the other interesting dividends received?

30 A.—There is about \$60,000. The only difference would be at the end of eighteen months they would not have owed anybody anything.

Q.—I agree you would have paid off your debts and wound up with the control of Alcohol and nothing much else to yield any revenue?

A.—That is the position the Estate was in.

Q.—Sir Mortimer Davis left a number of eggs in that basket and there were not many eggs left in any other basket.

A.—\$9,000,000 was a lot to pay.

40 Q.—Of course you have told us that your view of the Will was that not only the beneficiaries, Lady Davis and Mortimer Davis, were entitled to get all the available net revenues of the Incorporated Company, but I think you followed that a step further. You thought they were in a position to compel the Executors to make a full distribution.

A.—I conceive that they controlled the policy of the Incorporated Company and that Company in turn controlled the policy of

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the Canadian Industrial Alcohol; that in carrying out the intention of Sir Mortimer Davis the earnings of the assets that he left which, carried out into their various companies, represented profits made in Canadian Industrial Alcohol, and should have been practically 100 per cent turned over to his heirs, insofar as they could put that policy into effect.

10 Q.—Would you have thought the Alcohol Company should have distributed in dividends in one year ending September 30th, 1928, more than they actually did distribute, according to Exhibit P-211. Would the balance they carried forward be more than was fair to the beneficiaries of the Estate?

A.—There is a complication in there due to the fact that on September 30th, 1929 ———

Q.—I am speaking of 1928.

20 A.—I have the figures here year by year. I understand those stocks on hand were increasing. The cash available from profits made in selling Alcohol was being tied up to a great extent each year, and I do not suggest it was ever any Executor's duty to force a company into an embarrassing position with its Bank in insisting on getting revenues, but insofar as the liquid position of the Company permitted from time to time, what I call usufructory earnings, it was Sir Mortimer Davis' intention to be passed on to the usufructory beneficiaries.

Q.—Can you now say whether you think they distributed sufficient in dividends for the year ending September 30th, 1928?

30 A.—I don't like the statement, as I have told you before. You tried to make me say this was the banner year, and now I am shocked and horrified to find I get more information through Mr. Lash that there is another liability that has not been disclosed, and I have disclosed another \$500,000 that should come out of that, provided everything was done as I have been doing it myself and they had those profits. It did not injure the liquid position; did not embarrass the Company with its bankers. I consider those profits from the time of his death should be given to the usufructory heirs.

40 Q.—You are not losing sight of the fact that some months after a bonus of 25 per cent had been declared?

A.—I had lost sight of the fact.

Q.—Would it be true to say that both in 1928 and 1929 Alcohol did not distribute enough to its shareholders to satisfy the rights of the plaintiffs in this case?

A.—Of course, the plaintiffs' rights only began in March, 1928. I happen to know that the inventory situation would have prevented them from distributing much more than that.

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Q.—You think the dividends distributed were about right. I am speaking of the circumstances in which the Company was placed?

A.—Yes.

Q.—Of course whatever the Incorporated Company received in dividends, in your view of the Will, you would advise the Executors to hand on to the beneficiaries?

10 Q.—As net revenue?

A.—Subject to proper charges.

Q.—Supposing that situation had proceeded for a year or two, and you had nothing left of consequence in your Incorporated Company except Alcohol “ A ”; you had put all your eggs substantially in that basket?

A.—There were all these things that had been left.

Q.—They were only odds and ends, in a comparative sense.

A.—There were quite a few properties and so on.

Q.—There was not anything very much revenue bearing?

20 A.—No.

Q.—Supposing in the ordinary course of the trade and the industry, Alcohol had run into hard times a year or two later, and had had to suspend the payment of its dividends, through no fault of the management; we will say the management was 100 per cent; for the purposes of my question we will say the management was 100 per cent, but conditions in the industry were such that any reasonable Board of Directors would have thought it necessary to pass the dividends; supposing that condition was persisted in for a year or two—do you recall, in fact, there were two or three times in Sir Mortimer Davis’ lifetime when Alcohol paid no dividend?

30

A.—Yes.

Q.—Supposing there were two years passed, 1931 and 1932, or supposing for 1930 and 1931, due to whatever disaster overtook the Alcohol Company, how are you going to function in your Incorporated Company and Estate when your Alcohol dividends stopped?

A.—I suppose pretty much the way you are functioning at the present moment.

Q.—You have not followed your advice.

40 A.—My advice is just my interpretation of Sir Mortimer’s Will, which was to retain control of Alcohol at all costs.

Q.—I am not disputing that. I agree with you on that.

A.—I cannot answer your question in any other way than to say if there are no revenues, if the Incorporated Company does not earn revenue, there are no revenues to go to the Estate.

Q.—And the Estate then would have had to suspend the payment of its annuities, which were fixed charges.

GEORGE C. McDONALD (for Plaintiffs), Cross-Examination.

A.—Do you want me to dare venture to give an opinion on a legal matter, “ Would those annuities be payable out of the Estate?”

Q.—They are charges out of the Estate.

A.—Out of either residue or capital.

Q.—Always subject to retaining control of your Alcohol.

A.—I don't know what Sir Mortimer's wish is in that regard.

10 Q.—You think they might have had to sell their Alcohol control in order to continue the payment of the annuities?

A.—Well, I will leave that to you gentlemen.

Q.—The whole proposition I am discussing is to show the situation practically narrows itself down under your conception of the situation, into cleaning up everything else except Alcohol “ A ” and hoping to heaven Alcohol “ A ” would continue to earn its dividend.

A.—You rather misunderstood perhaps the Exhibit which was prepared to show the problem the Executors were faced with at the time of his death.

20 Q.—Now I have been asking you to solve the problem.

A.—The Judge asked me the other day if I was willing to solve it now. I said no.

Q.—I was relieving you of the responsibility of the Executors. You say you are the professional adviser to them. I say if you carry out the advice I have just given you you would own the control and you would be able to make a good dicker with Mr. Lash, and you would be that much better off than you are now, compared to the position of the Estate as shown in 1928, where you still owe—you would still be doing the best you could to carry out Sir Mortimer's intention, which was to hold the control of Alcohol. Do you think we would have been wise to consider share for share deal with Mr. Lash?

Mr. McKeown, K.C.: I submit that is not a question for this witness, because this matter involves the question of the Hiram Walker assets.

Mr. Campbell, K.C.: I withdraw the question.

40 By Mr. Campbell, K.C.:

Q.—I have just one or two more questions: you saw Lord Shaughnessy on the 25th of July, 1929, and you had the interview you described in your testimony?

A.—Yes.

Q.—Two days before you had been handed a copy of the Will and you had in the interval read and considered it?

GEORGE C. McDONALD (for Plaintiffs), Cross-Examination.

A.—I discussed it with Mr. Montgomery.

Q.—Did you read the whole document? Did you read, in any event, Article 15 of it?

A.—Yes.

Q.—Let us look together at the last two paragraphs of that article:

10 “ In explanation of these provisions of my Will, I desire to state that the greater part of my Estate consists of notes or debentures of Sir Mortimer Davis Incorporated. In this Company is vested the control of several important undertakings.”

That obviously meant Alcohol and possibly Asbestos.

A.—That is what I had in mind.

20 Q.—“ All of which, I believe, by proper management, will greatly increase”

 “ 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 interest.”

30

Did you note that clause?

A.—I presume I did.

Q.—After all, this is of the essence of your position?

A.—Yes. The preceding paragraph is the more important.

Q.—That is why I asked you if you read the whole Will. We must give effect to the Will as a whole.

A.—Yes.

40 Q.—Just looking at the last sentence, who were the beneficiaries, in your judgment, who were referred to there, and who are directed and required not to disturb “ by their demands and actions the carrying on of Sir Mortimer Davis Incorporated in any manner which, in the opinion of the Directors of such Company may be prejudicial to its interest.” Who were the beneficiaries mentioned there?

A.—I presume the beneficiaries mentioned there are any one listed in the earlier part of the Will.

GEORGE C. McDONALD (for Plaintiffs), Cross-Examination.

Q.—First of all, the Deaths and Succession Duties had to be paid. Then certain specific legacies of specific sums had to be paid, and certain annuities had to be paid. They were not left to any discretion. In the light of the theory you have advanced I put it that the beneficiaries mentioned in that sentence were clearly the plaintiffs in this case, who were the beneficiaries of the residuary revenues of the Estate.

10

Mr. McKeown, K.C.: I don't think, whether it is the Jewish Hospital or Lady Davis or Mortimer Davis, Junior, it will affect the position in any way.

The Witness: The policy I advocated is not to interfere with the position of the Incorporated Company. They can keep on carrying that Incorporated Company so long as they think it is worth while, if it is Sir Mortimer's wish they should carry on even after they have paid the debts of the Estate. In the problem that was left the Executors it was impossible to pay the debts of the Estate without realizing some of the assets of the Incorporated Company.

20

By Mr. Campbell, K.C.:

Q.—Nobody has suggested that that was not necessary. In fact that has been done up to a certain time. In other words, the Incorporated Company has advanced to the Estate approximately \$1,000,000 which has been disposed of by the Estate in the payment of charges on capital account and the other \$463,000 odd has been advanced and used for the purposes of the revenue of the Estate.

30

A.—But the condition of the Estate that Sir Mortimer left made it impossible for the Executors and the Directors of the Company to do anything else, without realizing on its assets in order to meet its liabilities.

Q.—When you read that Will did you not clearly realize that the beneficiaries in that section were the beneficiaries of the residue of the revenue?

Mr. McKeown, K.C.: That is the same question I just objected to.

40

The Witness: I gather that is a hypothetical question regarding the taking of the action.

By Mr. Campbell, K.C.:

GEORGE C. McDONALD (for Plaintiffs), Re-Examination.

Q.—I am asking you to identify who you think in your construction of the Will are meant by the beneficiaries. I am not asking you at all to condemn or . . . criticise the fact that plaintiffs have taken these proceedings. I want to identify who are the beneficiaries indicated in that section.

10 Mr. McKeown, K.C.: That is a pure question of law and therefore a perfectly improper and inadmissible question which I am sure Mr. Campbell will, on reconsideration, have withdrawn.

The Witness: The beneficiaries are listed earlier in the Will.

By Mr. Campbell, K.C.:

Q.—You decline to be more specific?

A.—Well, I don't think it is necessary.

20 Q.—Do you think it unnecessary or unwise?

Mr. McKeown, K.C.: Why argue with the witness.

Whereupon an adjournment was taken until 10:30 A.M. April 25th, 1930.

30 And on this twenty-fifth day of April, in the year of Our Lord one thousand nine hundred and thirty, personally came and re-appeared

GEORGE C. McDONALD

and his testimony was continued as follows:

Re-examined by Mr. McKeown, K.C., of Counsel for plaintiffs.

40 Q.—In the course of your cross-examination, under the skilful guidance of my learned friend Mr. Campbell, you have been brought to exercise so many roles that I am constrained to show, for the purpose of the record, that you may have been qualified for all the exalted positions to which Mr. Campbell took you at different times. With this in view I would like to ask you whether you have heretofore served as President of the Montreal Board of Trade, and when?

Mr. Campbell: I happen to know Mr. McDonald has served in a very exalted capacity on the Board of Trade, but I do not see how it is relevant to Mr. McDonald's capacity to solve the problems in

GEORGE C. McDONALD (for Plaintiffs), Re-Examination.

this particular case. There never was any challenge of Mr. McDonald's general status in the community, and I offered to admit that very fully at the outset.

My submission to Your Lordship is that it should not be gone into now, and, in any event, is not a proper subject of re-examination.

10 Mr. McKeown: Far from having done what my learned friend says he did, he suggested by his questions that Mr. McDonald was a rank partizan of the plaintiffs, and a whole series of his questions was based upon that status. It may not be necessary to ask the question, but I think, in fairness to Mr. McDonald, the subject is a very proper one.

By Mr. McKeown (continuing):

20 Q.—Have you heretofore served as President of the Montreal Board of Trade, and when?

A.—Yes. Last year, 1929.

Q.—Had you held office in connection with the Montreal Board of Trade before your election as President?

A.—Yes, I had served in various capacities on the Council of the Board for the previous five years, which included the laborious process of going through the positions of Treasurer, Second Vice-President, First Vice-President, and finally President.

Q.—And, last year, just closed, you were President?

A.—Yes.

30 Q.—I believe I asked you whether you had experience in the auditing of Corporations, and Stock Exchange houses in particular. I think, however, I omitted to make any reference to the larger financial institutions of the country, and in that connection I would ask you whether you have acted as Auditor of any of the Banks?

A.—Yes, I have acted as Auditor for the Bank of Montreal, and the Molsons Bank, at different times.

Q.—In that capacity you were the shareholders' auditor, appointed by the shareholders at their meetings?

40 A.—Yes.

Q.—Just a word with reference to your initial interview with Lord Shaughnessy in connection with the Estate and the Incorporated Company. Did you wish the matter to be left in any way that would suggest to His Lordship that you had called on Lord Shaughnessy with a view to obtaining his consent that you should be a Director of the Incorporated Company, or what was the exact position in that regard?

GEORGE C. McDONALD (for Plaintiffs), Re-Examination.

Mr. Campbell: I object to this, as not arising out of the cross-examination of the witness, and as having been gone into in examination-in-chief.

Mr. McKeown: In going over my notes it seemed to me there might be an inference left that at the time Mr. McDonald called upon Lord Shaughnessy he did so soliciting Lord Shaughnessy's consent that he should become a member of the Board, whereas my instructions are that prior to Mr. McDonald's call the matter had been arranged between Lord Shaughnessy and Mr. Montgomery.

The difficulty in this respect in Mr. McDonald's examination was that we had to open that part of the picture midway through and not at the initial stage, and I just want to correct any possible misapprehension there might be in the particular to which I have just alluded.

By Mr. McKeown (continuing):

Q.—Did you wish the matter to be left in any way that would suggest to His Lordship that you had called on Lord Shaughnessy with a view to obtaining his consent that you should be a Director of the Incorporated Company, or what was the exact position in that regard?

A.—The situation was that I was not seeking a position on the Board. I had been asked to go on by Mr. Montgomery, and so far as I could see then I was willing, and I went up to have a talk with Lord Shaughnessy, in the course of which (as my testimony shows) I tried to make him understand clearly what my point of view was going to be.

Q.—Before you called upon Lord Shaughnessy at all, the subject of your going on the Board had been taken up between Lord Shaughnessy and Mr. Montgomery?

A.—So I understand.

Q.—My learned friend Mr. Campbell asked you your view of the Statements furnished by Price, Waterhouse & Company, in connection with the Estate and with the Incorporated Company, and concerning which you expressed a very high opinion. Then my learned friend asked you if those Statements gave full and proper information, in which you readily concur. What I wish to ask you in that connection is whether in answering Mr. Campbell as you did concerning those Statements you were referring to all the Statements produced here emanating from Price, Waterhouse & Company, or whether you intended to suggest that at the time you first took up the subject you were in possession of any Statements of

GEORGE C. McDONALD (for Plaintiffs), Re-Examination.

Price, Waterhouse & Company which showed the full conditions which have since been revealed here in Court.

10 Mr. Campbell: I object to the question, first, as not arising out of the cross-examination; secondly, as being leading, and thirdly, because the documents in question are all of record, under certain dates, and speak for themselves.

Witness: When I was first brought into the picture, in July, 1929, I think the only Statement I saw at that time was the Statement up to September 30th, 1928.

By Mr. McKeown (continuing):

Q.—Of what?

A.—Of the Incorporated Company.

20 Q.—By Price, Waterhouse & Company?

A.—Yes, by Price, Waterhouse & Company.

Q.—Let us deal first with the one in connection with the Incorporated Company. That was a Price, Waterhouse Statement?

A.—As far as my recollection goes I think I saw a Statement of the Estate and of the Incorporated Company as at September 30th, 1928; that is all. Up to that stage I think that was all the Statements that were available at that time.

30 Q.—I was going to suggest to you that that Statement of the Estate at the date of death was not a Price, Waterhouse Statement, but was made by Mr. Reaper?

A.—Well, I do not know. I do not remember that.

Q.—And, your reference to Price, Waterhouse Statements generally, I take it, would be to Statements supplied after you appeared in the picture, and which have been produced here?

A.—All the Statements I have seen prepared by them, I may say, were entitled to be considered as having been full and complete Statements showing the position.

40 Q.—Perfectly. But what I want to get at is what information was available at the time you entered upon the scene, about July, 1929?

A.—The information was the Statements prepared up to September 30th, 1928.

Q.—For the Incorporated Company?

A.—For the Incorporated Company.

By the Court:

GEORGE C. McDONALD (for Plaintiffs), Re-Examination.

Q.—Those Statements would not then relate to your first visit to Lord Shaughnessy?

A.—They were available at that time, I understand.

10 I had a terrific wrangle with Mr. Campbell the other day because I took out the purchases of shares in the Alcohol Company after that date and did not include the sales that were shown by those Statements before that date. The point is that up to September 30th, 1928, there were none of those transactions that have been subject to criticism. Those investments had not been made. The only transaction that was in those Statements, or which might have been subject to criticism by the other Executors was the loan of \$10,000 to Jennison. None of those other investments had been made at that time. At the same time, the Executors in the first six months, had shown ———

By Mr. McKeown:

20

Q.—(Interrupting). A disposition to liquidate?

A.—A disposition to sell the shares, because they had sold 2,240 shares.

Q.—Of Alcohol “ B ”?

A.—Alcohol “ A,” I think.

Q.—And 6,000 “ B ”?

A.—And 6,000 “ B.” In the first six months.

30 Q.—With further reference to the role of Price, Waterhouse & Company as Auditors of the Incorporated Company, and the examination and certification by that firm of the Statements of September, 1928, August, 1929, and September, 1929; would it be any part of the duty of the Auditors of the Company to interfere with the policy of finance of the Directors? I mean, in the sense of suggesting to the Directors to sell any of the assets of the Company, or anything of the kind—or is that a matter left to the Administration?

A.—The Auditors’ duties are defined by the Civil Code, and the terms of the Will.

Q.—Do you mean the Auditors, or the Executors?

40 A.—The Auditors’ duties are defined by whatever regulations of the law apply, and the Will. If they see anything which is not being complied with, I conceive it is their duty to point it out in their report, but I do not conceive it is their duty to interfere.

Q.—For instance, would you think it was any part of the duty of Price, Waterhouse & Company to tell the Directors of Alcohol to sell “ B ” stock, or do this, that, or the other thing?

A.—No, I would not think so.

GEORGE C. McDONALD (*for Plaintiffs*), *Re-Examination*.

Q.—That was a matter which remained with the Management?

A.—Unless it was contrary to the directions of the Will. If it was contrary to the directions of the Will, or the law, in any respect, it would be their duty to point it out; not otherwise.

Q.—But, do the Auditors of a Company carrying on business in the ordinary way comment upon the policy of finance of the management?

10 A.—They do, sometimes; whenever they think it is in the interests of the shareholders.

Q.—In the same connection to which you referred a moment ago, during the first six months the Executors, in some respects at least, seemed to be carrying out the general notion of winding up the Estate. I think you noted that the Bank loan was reduced.

A.—Yes.

Q.—Mr. Campbell was at great pains yesterday to take you over a part of your Exhibits and of your testimony-in-chief, to establish that no particular advantage would have resulted from carrying out your suggestions for the early liquidation of the assets and the payment of the liabilities, because the carrying charges of those liabilities were about offset, or a little better, by the revenues; and that today there is only a comparatively small difference in the result. What have you to say as to the difference in the result growing out of the fact that the collateral was not liquidated at that time, as against its liquidation under the present existing conditions? What would be the difference in that regard?

30 Mr. Campbell: I object, because we are not liquidating under present conditions, and there is no evidence that we are.

Mr. McKeown: My question was if you had to liquidate under present conditions; and you came very close to it.

Witness: If they had liquidated within a year after Sir Mortimer's death, at the market price prevailing, they could practically have paid the debts and still retained the control of Alcohol and considerable other properties in the Estate. The position now, due to the unfortunate drop in the Stock Market since September last year, is an entirely different one. They cannot settle the debts now without involving control of the Alcohol Company.

40 By Mr. McKeown (continuing):

Q.—For the reasons which you have gone into fully in your examination-in-chief and in the Exhibits?

GEORGE C. McDONALD (for Plaintiffs), Re-Examination.

A.—Yes.

Q.—My learned friend Mr. Campbell paid a little attention to the investment by the Directors of the Incorporated Company in the Company known as Investment Foundation. That investment consists of 1,500 units, and 3,000 Directors' common, so called. What did those units consist of?

10 A.—I understand the units consist of one share of preferred, \$50 par, 6 per cent; and one share of common.

Q.—And, the Directors' common are just what is indicated by the name—3,000 shares of common stock?

A.—Directors' common; 3,000 shares of common stock.

Q.—The purchase price of the units in this investment was \$65 per unit?

A.—Yes.

Q.—\$50 for the preferred would be \$75,000?

A.—I do not know how it was split.

20 Q.—But that is the way it would work out?

A.—It would work out that way.

Q.—And \$15 for the common included in the unit would be \$22,500?

A.—Yes.

Q.—Then, the 3,000 Directors' common, at the same price of \$15, would work out at \$45,000 additional?

A.—Yes.

30 Q.—The only part of that stock which draws any dividend is the preference shares, with an aggregate par value of \$75,000, giving a total return for the whole investment of \$4,500 per annum?

A.—Yes.

Q.—As to the balance of the investment, that is, the common included in the units, and the Directors' common (representing figures of \$22,500 and \$45,000, or, together, \$67,500) there is no return on it. Is that the idea?

40 A.—There is no return as yet. That is exactly one of those things that I have been stating where usufructuary interests are being injured as against residuary interests. People making investments like that are doing so for the long haul. I am sure Mr. Campbell is doing that with his common; in the meantime he is only going to get a very small return on his investment, from a usufructuary point of view. If Executors have Estate moneys to invest, they have to be very careful because in one way the residuary legatees, and in another the usufructuary legatees, might have a grievance against them unless the moneys are invested to produce a fair return, and not invested in such a way as to produce a return in a capital manner.

Q.—Taking the whole investment made there: \$75,000 cash for

GEORGE C. McDONALD (for Plaintiffs), Re-Examination.

the preference shares, and \$67,500 for the common shares—altogether \$142,500; how does the return of \$4,500 for the whole figure out as to percentage?

Mr. Campbell: We have had this already.

10 Mr. McKeown: We will have it again.

Mr. Campbell: As Your Lordship remarked in regard to certain other figures, we had it several weeks ago.

Mr. McKeown: I know my learned friend does not like it, but we will complete the picture.

Mr. Campbell: I think the fundamental principles of arithmetic have remained unchanged, in spite of the length of this case.

20 Mr. McKeown: But some people do not seem to know anything about them.

Witness: A return of \$4,500 on \$142,500 is something slightly over 3 per cent.

By Mr. McKeown (continuing):

30 Q.—Looking at your Exhibit P-207, the first page of which shows an actual deficit of something in the vicinity of \$500,000, my learned friend Mr. Campbell asked you whether in establishing those figures you had taken into consideration the donation in favor of Lady Henriette Davis of \$1,100,000. Those figures were not taken into account anywhere by the Executors, or by Price, Waterhouse & Company, were they?

A.—Not to my knowledge. I fail to appreciate it, if they did.

40 Q.—I understand there is some reversionary right to the Estate in that donation, but it is not anything that has been dealt with by Price, Waterhouse & Company or by the Executors themselves in the Statements which you have seen?

A.—Not to my knowledge.

Mr. Campbell: We were never asked to demonstrate our solvency, Mr. McKeown.

By Mr. McKeown (continuing):

GEORGE C. McDONALD (for Plaintiffs), Re-Examination.

Q.—It is not anything that would be available for present-day indebtedness, at least as far as any information has reached you?

A.—You have heard all the information that has reached me.

I do not know the nature of it. I understand it is not available at the moment.

Q.—In connection with the same subject, of Investment Foundation, you mentioned earlier in your testimony, and again, I think, 10 yesterday, having obtained a quotation on those units—that would be one share of preferred and one share of common?

A.—Yes.

Q.—You obtained a quotation of \$50 per unit?

A.—That was the quotation I got.

Q.—You mentioned that you applied for that information and obtained it from the firm of Flood, Barnes & Company?

A.—Yes.

Q.—Is the firm of Flood, Barnes & Company a firm which might 20 be expected to be well informed upon the current value of those securities?

A.—I understand it is the firm which put that issue out.

Q.—Will you look at Exhibit P-78, being a letter addressed to Lord Shaughnessy by Mr. H. C. Flood, President, on the stationery of Investment Foundation Company, Limited, dated December, 1929, and will you say whether that is the same Mr. Flood of Messrs. Flood, Barnes & Company to whom you applied for the quotation?

A.—I do not know Mr. Flood's signature, but I know Mr. H. C. Flood is a member of Flood, Barnes & Company to whom I applied 30 for the quotation.

Q.—And, by this letter he appears to be President of the Investment Foundation Company?

A.—Yes, sir.

Q.—So, the quotation of \$50 which you adopted would seem to have a fairly reasonable basis, in view of the source from which you obtained it?

A.—That is what I thought.

Q.—Another point which my learned friend Mr. Campbell appeared to have very much in mind yesterday was that if your plan 40 had been carried out—early liquidation of the assets, and early payment of the debts—today the Estate would have been left with no diversification of assets, but largely with Alcohol. Would there be any advantage had the reverse of your policy been followed, as has been pretty much the case? While you had certain inflows of dividends from Royal Bank and other securities, would they all have to be charged up and go out as interest?

A.—Yes. I figured out the carrying charges on the debts of the

GEORGE C. McDONALD (for Plaintiffs), Re-Examination.

Estate were greater than the revenues produced from those assets which were available.

Q.—Of course, if the affairs of the Alcohol Company had been conducted in such a way that the dividend had stopped (as it has stopped) the matter of meeting the annuities, or the other charges of the Estate would not have been helped in any manner by holding the whole corpus of the Estate together up to this time, would it?

10 A.—No, it would have been more difficult to meet the annuities.

Mr. Campbell: For the time being we are meeting them, are we not?

Mr. McKeown: Borrowing from Peter to pay Paul—

Witness: It is hurting though, Mr. Campbell.

20 By Mr. McKeown (continuing):

Q.—I think my learned friend finally brought you to some figures showing that with everything cleared up and the equity obtained out of the Bank loans, the Estate today would be owing something like \$365,000, but would have the Alcohol “ A ” stock free, I believe; as well as certain of the frozen assets?

A.—Yes.

Q.—Would that be a very difficult situation to meet today, with the Alcohol stock available even at its market value of \$8.00 per share?

30 A.—I conceive it would be a much better situation for the Estate to be in rather than the one it is in now.

Q.—Have you the figures as to the total “ A ” stock outstanding?

Mr. Reaper: 964,480 shares.

By Mr. McKeown (continuing):

Q.—What is the quantity of “ A ” shares held by the Estate?

40 A.—496,300 shares.

I believe the Estate has 72 shares more than that.

Q.—Taking the outstanding “ A ” stock at 969,480 shares, one-half of that stock, or the quantity required to be retained by the Estate in order to retain control, would amount to 484,740 “ A ” shares, plus an odd share or two?

A.—Yes.

GEORGE C. McDONALD (for Plaintiffs), Re-Examination.

Q.—In point of fact the Estate had 496,300 shares, leaving out the 72 shares?

A.—Yes.

Q.—So, there seems to have been something like 11,560 “ A ” shares held by the Executors, which were not required to retain control?

A.—Apparently.

10 Q.—Certain “ A ” shares were sold in the first six months?

A.—2,240.

Q.—Do you remember the price that was obtained for that stock?

A.—I think they got about \$108,000.

Q.—I mean, the price per share?

A.—Between March and September that year the “ A ” stock was selling from a high of 49 to a low of 35; so, obviously, those sales must have been made in the neighborhood of 40.

20 Q.—Then, let us take your figure of 40. The 11,560 “ A ” shares which were not required for control would have produced, according to my calculation, \$462,400 additional, if sold.

A.—Yes.

Q.—Have you up to this amount taken that item into consideration in establishing your figures?

A.—No, I have never used it.

Q.—So, assuming the Executors had made the sale, that amount of \$462,400 would have left them today with no indebtedness, on the basis of your figures?

30 A.—Yes.

Q.—That amount being more than sufficient to cover the figures of \$365,000 established by my learned friend Mr. Campbell, which would have been outstanding at the present time?

A.—Yes.

Q.—And they would have the remainder of the “ A ” stock, the control of Alcohol, and the frozen assets, free of any charge?

A.—Yes, if they had been able to dispose of the assets in that way.

40 Mr. Campbell had quite a good deal to say about my plan. It is all very fine, as he says (and I quite agree with him) to be wise after the event; and if I had been in that position I do not know that would have been my plan. It is, of course, easy to say now. Mr. Campbell was leading me along yesterday to develop this plan which was working in his mind, not necessarily in mine.

The principal part of my plan was to have sat down at the time this summary was made, and then decided on the merits of what

GEORGE C. McDONALD (for Plaintiffs), Re-Cross-Examination.

would have been done. I do not want to have that plan over-emphasized, because, as I say, it is more easy to criticize after you have the history ahead of you.

Q.—In other words, to be an arm-chair general, and turn around and look backward?

A.—Yes.

10 Mr. Campbell: We are all wiser after the fact, Mr. McDonald.

Witness: Yes.

Re-cross-examined by Mr. Campbell, of Counsel for Defendants:

Q.—I do not want to press my point about your being a partizan, because I did not and do not mean it in any improper sense. I understand, however, you are professionally retained by the plaintiffs to
20 assist them and to assist their Counsel in the prosecution of this case.

Mr. McKeown: The same as I am.

Witness: That is the case.

By Mr. Campbell (continuing):

Q.—Just as I am retained by the defendants in the prosecution
30 of my professional duty.

A.—Yes.

Q.—And, you have been in that position since some months before the actual institution of proceedings?

A.—Yes.

By Mr. McKeown:

Q.—In that new field, I might ask whether following your interview with Lord Shaughnessy, which did not result in your inclusion
40 on the Board of the Incorporated Company, you assisted Lady Davis in her efforts to obtain information with reference to the Estate and the Incorporated Company?

A.—Yes.

Q.—When those Statements, which afterwards became available, were received—I mean the Interim Statement of August 31st, 1929, which was received in the early part of October—did you go over that Statement with Lady Davis and her Counsel?

GEORGE C. McDONALD (for Plaintiffs), *Re-Cross-Examination*.

A.—Yes.

Q.—Did you also go over with Lady Davis the Annual Statement of the Incorporated Company of September 30th, 1929, which was received after the middle of November and a few days before the demand for Lord Shaughnessy's resignation?

A.—I saw that one also.

10 I have done my best to make sure that all the facts were put before Your Lordship, whether in answer to Mr. Campbell or in answer to Mr. McKeown.

His Lordship: I have no doubt of that.

By the Court:

Q.—I asked you a question a few days ago, and you avoided the answer. I will put it in a slightly different form. Assuming that today
20 you were called upon either by the present Executors or their successors to indicate a course to be followed for the proper management of the Estate as it now stands, what would be your answer?

A.—I think the best course now is to put the Estate in the hands of the strongest Trust Company you can get.

Q.—What would be the advantage of putting it in the hands of a Trust Company?

A.—I think they have great resources. Their association with Banks, and so on, enables them to carry through situations that I myself would not attempt.

30 Q.—Do you think the situation is hopeless?

A.—No.

Q.—As far as concerns having credit with the Bank, I understand the defendants have all the credit they can possibly require. What would be the advantage of a Trust Company?

A.—The Trust Companies' practice is that of liquidation and administration, and when Estates get into difficulties they are put into the hands of Trust Companies who pretend to be the best able to take charge of such things.

40 Q.—Would a Trust Company be able to devote the proper talent to the administration of the Alcohol Company, which is a complicated affair? Could they do it otherwise than by putting one or two or more men exclusively on the work?

A.—That is what they would have to do. Whoever is in charge of that Estate has to get the Alcohol Company into the hands of men able to run that Company. The Company was well run for certain years, judging by the results. The Company is in difficulties now,

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whatever they are. The other Alcohol Companies are being well and capably managed, judging by the results they are getting.

Q.—Do you consider the other Alcohol Companies are in a sound position?

A.—They seem to be showing bigger returns than this one, although, judging from Mr. Lash's evidence here yesterday, they admit they have troubles, and he is anxious to solve them.

10 Q.—In any event, that is the remedy you suggest?

A.—That is the best thing I can see for it now.

Q.—What would you suggest with regard to the payment of the liabilities as they are: the unpaid legacies, the Succession Duties, and whatever else there may be?

A.—I would suggest negotiations with the Succession Duties Department to revamp their claim. And the postponement of the liabilities for the time being to see if possibly the Alcohol Company in able hands cannot be made to show the value I believe it has, which is considerably more than its present market value.

20 There is no question in my mind now the control of the Alcohol Company cannot be maintained and pay the debts of the Estate. It was in peril at the time of Sir Mortimer's death, and in order to leave anything at all in the Estate the duty of the administrators will have to be to take such steps as they can to put the Alcohol Company into the best possible condition, so that they can get the most out of their assets and clear up everything.

Q.—You do not see any way for the Estate to meet its liabilities and at the same time keep control of the Alcohol Company?

30 A.—I do not think it is possible, except through restoring the Canadian Industrial Alcohol Company into the position it had about the time of Sir Mortimer's death.

By Mr. Campbell:

Q.—You mean the market position?

Mr. McKeown: He means the market—the sales.

40 Witness: Putting the Company into a position that would result in the market position improving itself and enabling them to recover the value of the Alcohol "B" and the McNish debentures to the extent that they would be able to liquidate those debts.

By the Court:

Q.—What would you do with the houses?

A.—I think I would accept a good deal less than \$300,000 for the Pine Avenue property. I would not hope to get a very great

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amount for the Ste. Agathe property. In the meantime they are both quite a charge on the Estate.

By Mr. Campbell:

10 Q.—You spoke of those other Distillery Companies showing bigger returns: you mean on a comparative basis, as compared with their own previous performance? They do not show bigger returns per share than the Alcohol Company does, do they?

A.—I was not referring to the return per share at all. Their shares are increasing. I saw an article in the Financial Times yesterday, or the day before——

Q.—(Interrupting) But, this is as compared with their own previous performance?

Q.—The earnings of Alcohol per share, even for the last year ending September 30th, with reduced earnings, were greater, per share, than either of the other Companies?

20 A.—They may have been, but the earnings per share are not the criterion by which one judges in a Company. It depends on the capital structure: one Company may have 5,000,000 no par value shares, and another Company may have 5,000 par value shares.

Q.—The capitalization of the Hiram Walker-Gooderham & Worts Company was vastly greater, was it not, than the capitalization of Canadian Industrial Alcohol?

A.—I do not know.

Q.—Do not their Balance Sheets disclose assets of nearly double the amount?

30 A.—I have only seen it in Court.

Q.—I am speaking of the assets side. Does it now show assets of something like \$30,000,000? In any event, the Balance Sheets are filed, and speak for themselves. However, it is a much bigger Company, is it not, as far as assets are concerned, taking their book value, and as far as outstanding shares are concerned?

A.—May I see the report? I never saw this Statement outside of this Courtroom.

40 Q.—Does not the comparative Statement of Clarkson, Gordon and Dilworth show what I have stated in my question?

Mr. McKeown: No. That Statement does not mean anything of the kind. This Company was split three for one; and pays \$1.00 a share, which would have been \$3.00 a share if there had not been a split.

Mr. Campbell: I am simply referring to the fact that their assets were vastly larger.

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By Mr. Campbell (continuing):

Q.—Will you look at the Comparative Statement filed as Exhibit P-156, and will you please say what are the total assets shown?

Mr. McKeown: I object to the question, because the figures are not the total assets. This Statement was made up in the dark.
10 We do not understand it, and no one understands it. We do not accept it, and we protest against it. It was never any part of our position that Alcohol shares did not have the value behind them that the Walker shares had. Time and time again that proposition had been turned down during Sir Mortimer's regime.

Mr. Campbell: Exhibit P-156 purports to have been prepared by an independent accountant, as a matter of fact one of Mr. McDonald's Toronto associates, and purports to be on the same basis
20 in respect to the two Companies.

Mr. McKeown: But, we do not know what the basis was.

Mr. Campbell: Those were his instructions, in any event. I am simply asking Mr. McDonald to tell me the relative assets shown for those two Companies.

By Mr. Campbell (continuing):

30 Q.—What were the total assets shown for Hiram Walker-Gooderham and Worts?

A.—The assets of Hiram Walker shown here are \$35,000,000, and the assets of Canadian Industrial Alcohol are shown as \$19,000,000.

Q.—And the outstanding shares of Hiram Walker are shown as 2,640,000?

A.—Hiram Walker, 2,640,000. Canadian Industrial Alcohol, 969,000 voting shares, and 123,000 non-voting shares. If those shares of Canadian Industrial Alcohol had not been split by 16 there would
40 have been only 16,000 shares.

Q.—I am taking the shares outstanding as at the date of the last Balance Sheets?

A.—And I want you to understand that in comparing two companies together I do not consider the amount earned per share actually conveys any impression. It is an impression for the Stock Market man who is investing in the stock, but it is not an impression as to what the company is doing.

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Q.—It is one of the indications of prosperity, is it not—not necessarily conclusive?

A.—It may be an indication of adversity.

Q.—Or adversity—not necessarily conclusive?

A.—Quite so.

Q.—You suggested to His Lordship that your idea of the solution of these particular difficulties was the appointment of a Trust
10 Company. Do you think this particular Estate, with its particular difficulties, is really a Trust Company proposition?

A.—That is what I suggested. I am not prepared to tackle it

By Mr. McKeown:

Q.—Carrying out your suggestion in regard to the appointment of a Trust Company, would it be your thought that the officers of the Trust Company should run Alcohol directly, or that a competent man and an outstanding man in that industry should be procured as
20 the nominee of the Trust Company for that purpose?

A.—That would be my opinion.

While I have been very generous to the Trust Companies, I may say that my partner, Mr. G. T. Clarkson, does a lot of work of that type, and his policy in a case of this sort has always been to get the ablest man possible to run the particular industry.

Q.—Just to illustrate your point as to the advantages which can be derived by having a Trust Company, rather than an individual, in charge of valuable properties over a trying period, do you
30 know if the situation in connection with the Dominion Iron & Steel Corporation and the British Empire Steel Corporation?

Mr. Campbell: Are we not very far afield?

Mr. McKeown: No, not at all. I am just demonstrating the point brought out by the witness. You might ask what does a Trust Company know about steel? The answer is they put a competent man in to look after the business. They know too much about it to put it in the hands of tyros or unqualified persons. Order has been
40 brought out of chaos in the steel industry just through the intervention of a powerful Trust Company.

Witness: I know the National Trust Company has been connected with the Dominion Iron & Steel Corporation. A situation like that has to be dealt with by a Trust Company or a competent Trustee.

And further deponent saith not.

FRANCIS J. LASH (for Plaintiffs), Examination-in-Chief.

On this twenty-fourth day of April, in the year of our Lord, one thousand nine hundred and thirty, personally came and appeared:

FRANCIS J. LASH,

10 of the city of Toronto, Barrister, aged forty-four years, a witness produced 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.—You are a member of the legal firm of Blake, Lash, Anglin and Cassils, of Toronto?

A.—Yes.

Q.—I think your firm, or yourself personally, are Solicitors for the Distillery combination known as Hiram Walker-Gooderham and Worts, Limited?

20 A.—That is correct.

Q.—Are you actively in charge of the work of the Corporation?

A.—I am a Director of the Corporation, and those things which are dealt with through the office, are sometimes dealt with by myself and sometimes by other members of the firm.

Q.—You have mentioned you are a Director of this Corporation?

A.—Yes.

Q.—Since how long have you been a Director?

30 1927. A.—Since its incorporation or organization; I would say early in

Q.—Is that the present Company?

A.—That is the present Company. Its name is changed, but it is the Company that originally was known as Hiram Walkers, Limited. Its name was changed when it acquired all the outstanding shares of Gooderham and Worts, Limited.

Q.—Is it the continuing Company which was formerly known as Hiram Walker, Limited, or is it a new Corporation that has been formed?

40 A.—Hiram Walker, Limited, was incorporated for the purpose of acquiring all the outstanding shares of Hiram Walker and Sons, Limited, of Walkerville, which is an operating Company.

Q.—And is that the Corporation now continuing under another name?

A.—Hiram Walker Limited, that name was changed to Hiram Walker, Gooderham and Worts, when it acquired the outstanding shares of Gooderham and Worts, Limited.

Q.—Without changing the Corporation?

FRANCIS J. LASH (for Plaintiffs), Examination-in-Chief.

A.—Without changing the Corporation.

Q.—How far back would that go, roughly—I mean, to the time to the change of name?

A.—I would think somewhat more than a year; I would think sometime in the spring of 1928; I am not certain as to that, but about a year perhaps, or more than a year after its incorporation.

10 Q.—Hiram Walker, Limited was an operating concern?

A.—No, there was no such Company as Hiram Walker, Limited; Hiram Walker and Sons, Limited, was an operating Company and still is.

Q.—And as to Gooderham and Worts, Limited, is that still an operating Company?

A.—Gooderham and Worts, Limited, is still an operating Company.

Q.—And the shares of both these concerns are held—

A.—By Hiram Walker, Gooderham and Worts, Limited.

20 Q.—It is a holding Company?

A.—It is a holding Company, owning or controlling all the outstanding shares in the capital stock of those two Companies.

Q.—And conducting the distillery business of both those subsidiaries?

A.—It is a holding Company.

Q.—Both those subsidiaries are distilleries?

A.—Both of those subsidiaries are distilleries.

30 Q.—At the present time, who is the President of this holding Company, Hiram Walker, Gooderham and Worts?

A.—Mr. W. J. Hume.

Q.—Who is Chairman of the Board?

A.—Mr. H. C. Hatch.

Q.—Have you a Director by the name of Mr. Rainer?

A.—Yes.

Q.—How long does your connection go back with this combination, either of the original Walker Company, or otherwise, as a Director?

40 A.—Since the incorporation of Hiram Walkers Limited, or rather since its organization.

Q.—Of course, you have heard of the death, in March, 1928, of the late Sir Mortimer Davis?

A.—Yes.

Q.—Were you at that time connected with the combination of which you have spoken?

A.—Yes.

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Q.—Since that time, did your Corporation raise among its shareholders the sum of \$10,000,000?

A.—Approximately \$10,000,000.

Q.—By the sale of their shares?

A.—By the issue of rights to purchase additional shares, and from the sales of the shares in connection with which the rights were issued.

10 Q.—When did that occur?

A.—I would think approximately a year ago; possibly a little less.

Q.—When is the end of the fiscal year of your Company?

A.—I think it is August 31st.

Q.—And at that time they had something in the vicinity of \$9,000,000 of that money on hand, last August?

A.—Our financial statement at that period showed cash on hand, or in banks, of approximately over \$9,000,000—something over
20 \$10,000,000.

Q.—Largely the proceeds of the sale of additional shares to which you have just referred?

A.—Yes.

Q.—How many years does the history of Hiram Walker and Company go back as distillers? A great many years?

A.—A great many years; it is considerably older than I am.

Q.—You have suggested that the Gooderham and Worts distillery dates back into the early fifties?

30 A.—I am not sure that it is not in the forties. I think Hiram Walker's is not quite so old.

Q.—But still going strong?

A.—Still going strong.

Q.—Do you know anything about the types of whiskies—I mean as a distiller?

A.—Very little.

Q.—Do you know what is referred to as American rye and Bourbon whiskey?

40 Witness: Do you mean as to the chemical analysis?

Counsel: I mean, in a general way, as among distillers, and in the industry?

A.—I know there is a type of whiskey known as American rye, and another type known as Bourbon.

Q.—Do you know that American rye is distinctive from the

FRANCIS J. LASH (for Plaintiffs), Examination-in-Chief.

ordinary rye whiskey formerly manufactured by Canadian Distilleries?

Witness: Is it?

Counsel: I am asking you if you know that.

10 Witness: I am sorry, will you ask me that again?

Q.—Do you know that American rye is distinctive from the ordinary rye whiskey formerly manufactured by Canadian Distilleries?

A.—No, I do not.

Q.—You don't know that it was a very much heavier whiskey?

20 A.—I know that Hiram Walker and Sons Limited, and I understand Gooderham and Worts Limited, manufactured American types of whiskies, which I understand did cover American rye and Bourbon for many years prior to the time when the shares of that Company were acquired by Hiram Walker, Gooderham and Worts.

Q.—That would be at the time that you joined up?

A.—Prior to that time.

Q.—And both these concerns had manufactured the types of American rye and Bourbon whiskey prior to that date?

A.—I know Hiram Walker's had on hand stocks of Bourbon at that time.

Q.—Did they have on hand stocks of American rye?

30 A.—I am afraid I cannot give you that information. I don't know.

Q.—That would be approximately at what time?

A.—The beginning of 1927. I think I should perhaps explain though they had been manufacturing, that there were not large stocks on hand at that time. I have not got the definite figures. I know there was some.

Q.—Nothing compared to the quantities which, I presume, you now have on hand?

A.—I cannot give you any comparisons.

40 Q.—But your impression is that the stocks were relatively light in those whiskies?

A.—Yes.

Q.—Of those particular types of whiskies?

A.—Yes.

Q.—Do you know that since then they have gone in heavily in the manufacture of those types of American rye and Bourbon, or have endeavored to?

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A.—Yes, I think that there is considerably more stock on hand now than at the time when the Company took over.

Q.—Do you know when they first opened up with this policy of manufacturing those types in large quantities?

A.—No, I cannot give you that date.

10 Q.—Do you know whether they have got at the present time any three-year-old American Rye or Bourbon whiskey on hand which is entitled to be sold under Government control?

Witness: My Lord, I submit that is not a proper question. This is a matter which affects the shareholders of Hiram Walker, Gooderham and Worts Limited. It is a highly competitive business, and in my opinion, that question should not be answered, having regard to the interests of Hiram Walker, Gooderham and Worts Limited, and its shareholders, of whom there are several thousands.

20 Mr. McKeown: May it please the Court, Your Lordship will remember that Lord Shaughnessy on his own initiative, without any reference to Lady Davis, as far as the evidence goes, took it upon himself at a time when he was acting in a fiduciary capacity and was in control of Alcohol in his fiduciary capacity as Executor, undertook to go to the Company of which Mr. Lash is a Director and to proceed along certain lines towards a merger, and to disclose —

30 Mr. Holden: I submit, My Lord, my learned friend should not make these statements which, I am instructed, are unfounded and incorrect.

Mr. McKeown: That is for the Court to control.

Mr. Holden: I am asking the Court to control it.

Mr. McKeown: I am speaking from the evidence of Mr. Lawrence and also from a statement which was brought here, made by Mr. Gordon.

40 Mr. Holden: Then, you are not speaking correctly. That is not a fact.

Mr. McKeown: It does not make any difference whether you say no, the fact remains, and I intend to answer the objection which Mr. Lash has seen fit to make, as a witness, without interruptions from my learned friend. I say I am speaking correctly. They ex-

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posed the whole situation to their competitors, and at a given moment we applied for an injunction to stop this merger, and to stop that Alcohol Meeting, and we obtained an injunction to stop the Alcohol Meeting and got an undertaking from the other side, equivalent to an Order by Your Lordship that that merger should not proceed, and then we come to Court and have this evidence here up to a certain point. We say that this merger was highly improper, so far as the interests of the Sir Mortimer Davis' Estate was concerned, and the only way to demonstrate that is to show Your Lordship what the picture was. I submit, speaking to Mr. Lash's objection, which he has just made in the capacity of a witness, and also, I presume, as representing his own Corporation, according to his own viewpoint, that his objection should not be allowed by Your Lordship, for the reason that that Corporation, Hiram Walker, Gooderham and Worts, proceeded with these negotiations and transactions to a certain point ———

20 **His Lordship:** As far as negotiations and transactions are concerned, I imagine Mr. Lash would have no objection to answer, but I quite understand that Mr. Lash is not necessarily supposed to know the number of gallons of whiskey available for sale.

Mr. McKeown: He is not making his objection on that ground. He does not object because he does not know.

30 **His Lordship:** Even if he alleges that as a first ground of objection, he is not, I imagine, the best witness to give that evidence.

Mr. McKeown: He is a Director of the Company.

His Lordship: It is very distant hearsay, as far as the transactions or how far the negotiations went with a view of preparing a settlement—well, that is something different. The first thing to know is, how far did the transactions go.

40 **Witness:** My Lord, might I interrupt: The situation, so far as any negotiations or proposed merger were concerned started—I think the first interview that I had with Lord Shaughnessy was, on October 11th of last year. At that time I dropped in to see Lord Shaughnessy, being in Montreal on another matter, and I had a conversation with him, suggesting that it might be a good thing if Hiram Walker, Gooderham and Worts Limited, and Industrial Alcohol were to come together on some proper basis ———

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Mr. McKeown: Just a moment, will you permit me. We have a witness here who is under examination by Counsel for plaintiffs, while I submit that he has a perfect right to speak to any objection, I do not wish him to proceed in his own way and not under examination on another part which has no relevancy whatever to the question which has been propounded. Mr. Lash will have the fullest opportunity to explain to Your Lordship the matters in connection with his transactions with Lord Shaughnessy, but I submit that that has not the remotest connection with the question which he was asked, namely, if this Company of his at this time had any of these types of whiskey on hand, which may be sold as three-year-old whiskey. That is a plain question. Mr. Lash won't be forgotten on his interviews with Lord Shaughnessy. This is one of the purposes for which I brought him here, and one of the express purposes, to examine him upon, but I do not wish this part of the examination to be confused and jumbled up with another very important part of his examination.

If Your Lordship feels that perhaps that question I have asked him should be suspended until we have dealt with the other part, I have no objection. That might be the easiest way.

His Lordship: Yes, I think so.

The question is suspended in the meantime.

By Mr. McKeown:

Q.—Now, can you tell us from memory what the authorized capital of your Company is?

A.—I think the authorized capital of Hiram Walker, Gooderham and Worts, is 2,640,000 shares without any nominal or par value.

Q.—All of one class?

A.—All of one class.

Q.—No Preference shares?

A.—No Preference Shares.

Q.—No Bonds?

A.—No Bonds.

Q.—How much of that is outstanding?

A.—2,640,000. Did you say authorized or unauthorized?

Q.—Authorized?

A.—2,640,000 authorized. There are some unissued; I am not

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certain as to the amount; 2,640,000 is the outstanding. There is some unissued, I have forgotten the amount.

Q.—When did you first hear from any quarter, either within or without, your own Corporation, of the idea of a merger which would involve Hiram Walker, Gooderham and Worts and Canadian Industrial Alcohol, with the idea of such a movement?

10 A.—There may have been some joking reference as to the thing, but the first time it was seriously considered, I think, was on October 8th, 1929, and then only by two or three of the Directors of Hiram Walker, Gooderham and Worts.

Q.—What are these joking references to which you have just made allusion?

A.—Just in the same way as we would make joking references as to taking over Industrial Alcohol of the United States.

Q.—When were these jokes indulged in?

20 all. A.—I don't know. There was no time with regard to that at I say merely there may have been some joking.

Q.—Who were the jokers?

A.—Probably myself.

Q.—We have one probability, but seeing that you must have had something pretty firm in your mind to have made that reference here as a witness, who else took part in this jest?

A.—I have no recollection. It may have been anyone or more of the Directors. I have no recollection of any definite reference having been made.

30 By Mr. Holden:

Q.—Directors of what?

A.—Of Hiram Walker, Gooderham and Worts.

By Mr. McKeown:

Q.—You have no definite recollection of any joke even having been passed at that time?

40 A.—Nothing definite, but I have no doubt in answering your question in the form in which it was put—I have given you the best information I can.

Q.—Can you tell us when these merry men made these jokes around the Board or elsewhere of Hiram Walker? How long before October, 1929?

A.—I have no idea.

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Q.—You are speaking always of any personal participation that you took in any such notion?

A.—Of course, I am speaking only personally.

Q.—You do not know how far this joking was taken seriously by some of your associates, Mr. Hatch or Mr. Hume?

A.—I am perfectly certain it had not been taken seriously by any of them. If it had been, I should have known of it.

10 Q.—Did you see that these jokes had got into the newspapers prior to the date you are talking about?

A.—Well, I thought they came from Montreal.

Q.—Who would you suggest as indulging in that kind of frivolity down here?

A.—The Stock Exchange operations.

Q.—Then, can we take it from you that the first serious discussion was on the 8th of October, 1929?

A.—Yes.

20 Q.—Between two or three of your associates on the Board of Hiram Walker, Gooderham and Worts?

A.—Yes.

Q.—And what was the suggestion?

A.—The suggestion was, that having regard to the general situation, that it might be desirable to have some sort of an amalgamation, or combination of interests of the Canadian Industrial Alcohol Company and Hiram Walker, Gooderham and Worts.

30 Q.—Under which Hiram Walker, Gooderham and Worts would pass under the control and lose its identity in going into Canadian Industrial Alcohol: Is that your suggestion?

A.—There was no suggestion of any method of carrying out the proposed getting together; it was merely a question that if satisfactory terms to both parties could be arranged, it would be a desirable thing in the interests of the stockholders of both Companies.

Q.—Did you have any notion at that time, or at any other time of participating, or negotiating for any kind of a merger whereby Canadian Industrial Alcohol and its present control would have control of Hiram Walker, Gooderham and Worts?

40 A.—I think that that probably was never considered. I do not imagine that there was any consideration given to that point or, on the other hand, whether there was any consideration given to having the Industrial Alcohol come under the control of Hiram Walker, Gooderham and Worts. The matter was just purely a question of endeavoring to arrange some terms satisfactory to all concerned.

Q.—Let me draw your attention at once to the fact that you had outstanding 2,640,000 shares, and Canadian Industrial Alcohol

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had outstanding less than half that amount, about 1,100,00 shares. Do you remember that circumstance?

A.—I think that is correct.

Q.—In the light of those figures which I have placed before you, do you want to suggest to His Lordship that you ever had had in mind to permit Hiram Walker, Gooderham and Worts to be lost and absorbed by Canadian Industrial Alcohol in any merger at any time?

10 A.—I think it would have been entirely foolish to bring those Companies together on any terms which would have done away with the identity of Canadian Industrial Alcohol.

Q.—What do you mean? Where would the control be?

A.—The control?

Q.—You heard me?

A.—The control would be in whatever merger and whatever Corporation evolved as the holding Company for all.

20 Q.—And had you in mind to consider, or to ever agree to a holding Company taking over these two concerns whereby the holding Company would be dominated by the present interests in control of Canadian Industrial Alcohol?

A.—If the terms were sufficiently attractive to the shareholders of Hiram Walker, Gooderham and Worts, I would have been decidedly in favor of such a thing.

Q.—What do you suggest in the way of attractive terms?

A.—I submit again that this is not a proper question as to the situation respecting the stockholders of Hiram Walker, Gooderham and Worts.

30 Q.—Very well, following this serious talk amongst your own Directors on October 8th, 1929, what was the next step taken?

A.—I happened to be in Montreal; I think the date was October 11th, on another matter—yes, October 11th, on another matter, and I telephoned to Lord Shaughnessy suggesting that I would like to come and have a talk with him. I had a talk with Lord Shaughnessy, and told him, that in my view, without any authority to represent the Board of Hiram Walker, Gooderham and Worts, and that I was talking merely on that basis, that a combination of some kind between Canadian Industrial Alcohol and Hiram Walker, Gooderham and Worts, would be desirable in the interests of all stockholders.

40 Q.—And how was that suggestion received by Lord Shaughnessy at that time?

A.—Not very favorably.

Q.—And this was all on the 11th of October?

A.—On the 11th of October.

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Q.—How long were you with Lord Shaughnessy on that occasion?

A.—About three quarters of an hour. I have a memorandum to that effect.

Q.—You have told us what your suggestion and contribution to the interview was: What did Lord Shaughnessy say?

10 A.—Lord Shaughnessy said, to be prepared to consider any such proposition it would have to be very attractive; in his opinion the shares of Canadian Industrial Alcohol were valuable, and that he did not know what kind of a consideration, or price, could be made that would be attractive to them.

Q.—Did you know at that time that the control of Canadian Industrial Alcohol was, in effect, held by the interests of the Sir Mortimer Davis Estate, of which Lord Shaughnessy was a Director?

A.—Lord Shaughnessy told me that at the time.

20 Q.—Did Lord Shaughnessy give you any suggestion as to what he would consider an attractive basis in respect to the valuation to be placed upon the shares of Canadian Industrial Alcohol?

A.—Well, I took it that Lord Shaughnessy was a pretty good salesman, and he made various references as to prices. He compared various other outstanding companies, and seemed to indicate that \$40 a share or thereabouts, was a proper value for the Canadian Industrial Alcohol Company at that time. I regarded that as sales talk.

Q.—Was that to be on a cash basis?

30 A.—No, there was no suggestion of cash basis.

Q.—Did you think he intended to turn over the control of the Alcohol Company to other interests on that basis, and to go into a minority position for the Estate?

Witness: What do you mean by other interests?

Counsel: For anyone who might have joined in?

40 A.—No. There was no question as to that. He told me that it would be necessary to consider the point, that he would not give any definite reply of any kind, and the interview stopped at that.

Q.—So you went out of that interview not knowing whether you were expected to pay \$40 cash for the stock, or \$40 in exchange, or with other securities or what?

A.—No. I went away with no such impression at all. I went away with the impression that Lord Shaughnessy might, or might not, be willing to recommend to his Directors and so on, any kind of

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an amalgamation. The situation was left in my mind merely that it was not necessarily closed, but that something further might be brought up in the way of proposal.

Q.—The door was ajar?

A.—The door was ajar.

10 Q.—Did he ever go back to you with any suggestion following that interview?

A.—I went back to him.

Q.—When?

A.—I was in Montreal during that next month or so pretty frequently.

Q.—Do you mean the following October 11th?

A.—Yes, I think about the beginning of December I was down back and forward to Montreal, at least once a week.

Q.—That is, between the 11th of October and 1st of December you were in Montreal once a week?

20 A.—I would think so; very frequently anyway. I should think on two or three of those occasions I called up Lord Shaughnessy, and asked him whether he had any further opinions in connection with the matter, and he said he had been considering the matter; he had not been in a position yet to have such consultations as were necessary, in order to see whether the proposal would be attractive in any event.

30 Q.—Did you see him personally between the 11th of October and the 1st of December, 1929, or were your dealings with him confined to telephone interviews only?

A.—I think I saw him at least twice.

Q.—Personally?

A.—Personally.

Q.—At his office?

A.—I think all times at his office, yes.

By the Court:

Q.—Besides the first interview?

40 A.—I would think three interviews in all My Lord.

By Mr. McKeown:

Q.—When would you fix the second interview? We have the first at October 11th, 1929?

A.—I would think some time, possibly the first interview, towards the end of that month, and the next one in the month of

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November, but I cannot be sure My Lord; I might be able to get further information on it.

By Mr. Campbell:

10 Q.—That would be the second interview late in October, and the third interview some time in November?

A.—That is my guess. I am not at all certain. I may be off some weeks in those dates.

By Mr. McKeown:

Q.—Have you any personal recollection of what transpired at this second interview which you placed towards the end of October?

20 A.—Yes. I suggested to Lord Shaughnessy that the only possible basis, in my opinion, of coming together was, on a valuation of the assets, liabilities, and earnings of the two Companies, that that was the only possible fair basis on which an amalgamation could be brought about.

Q.—What did he say to that at that time?

A.—My recollection is that he was more or less non-committal, but at the same time he seemed to view the situation more favorably, and I think agreed in principle with the terms I had suggested.

Q.—You do not mean the terms—the basis?

30 A.—The basis, I beg your pardon; the basis I suggested.

Q.—That is in sum that occurred at the second interview. How long did that last, have you any recollection?

A.—Not very long. I should think possibly half an hour or more—I don't know.

Q.—Let us take the third interview, as well as we may under the circumstances, which you placed at some time in November, which is a spread of thirty days. Can you give us any approximation of that date?

A.—I am afraid that I cannot.

40 Q.—You fixed the second interview as being close to the end of October; now, we have a whole thirty days to run in November. Would it have been close to that second interview, or would it have been more likely towards the middle or the end of the month of November?

A.—I think it would have been about the middle of November as far as I can remember it. My recollection is that at that time Mr. T. K. Morrow and myself had a talk with him.

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Q.—Is Mr. Morrow a Director of Hiram, Walker, Gooderham and Worts?

A.—Yes.

Q.—On these other occasions, I take it you were there alone?

A.—Yes.

10 Q.—On the third occasion Mr. Morrow appears on the scene somewhere possibly towards the middle of November?

Q.—Just Mr. Morrow and yourself?

A.—Just Mr. Morrow and myself.

Q.—Have you any recollection of what transpired at that meeting?

A.—It was more or less a repetition of my previous interview with Lord Shaughnessy, when I suggested a basis of comparison of assets, liabilities and earnings, as being the proper basis on which to get a comparative statement of the two Companies.

20 Q.—Had that interview been brought about by yourself or by you and Mr. Morrow, or both, or had you come on invitation or appointment?

A.—Mr. Morrow and I happened to be in Montreal at the same time. That is why we both went along together.

Q.—That is the only interview you had in November to the best of your recollection?

A.—To the best of my recollection; I do not think there were any others.

30 Q.—Do you know that Mr. Hume, the President of Hiram Walker, Gooderham and Worts, was often in Montreal during the months of October and November?

A.—I have no knowledge on the subject. I think it is quite likely.

Q.—Did you ever hear from him that he had been in touch with Lord Shaughnessy upon the subject?

40 A.—No, definitely not. These were more or less, as I pointed out, preliminary conversations. There was no question of making an offer by Hiram Walker, Gooderham and Worts. It was merely conversations between myself and Lord Shaughnessy with a view to seeing whether there was any basis which could be arrived at and which might be submitted to the Boards of Directors of the two Companies. Events had to start somewhere, and they started from that kind of conversation.

Q.—We are narrowed down to the 15th of November as an approximate date. Up to the 15th of November, had all these advances upon the subject been confined to yourself, or had Lord Shaughnessy

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at any time communicated with you in any manner on his own initiative?

A.—I do not think in any manner at all on his own initiative.

Q.—Up to the 15th of November?

A.—Up until that interview. You see, I came to Montreal as I say, every week or so during that period, and the natural thing was, when I was here, I called up Lord Shaughnessy.

10 Q.—Do you suggest that the three interviews which you have spoken of, and which were personal interviews in each instance, exhausted your communications with Lord Shaughnessy during that period, or is it within the realm of possibility, if not probability, that you also communicated with him by phone at least, on these other occasions, when you were so frequently in Montreal?

A.—I think it is probable. I think it is probable I called him up once or twice. I have no recollection of it at the minute. I think it is quite possible.

20 Q.—We have now got down to the approximate date of November 15th, 1929. What was the upshot of that interview? Was it the same as the other two. The door still ajar, or had you convinced anybody by that time, or had you converted anybody?

A.—I think Lord Shaughnessy was feeling that the proposal was a fair one, that it was in the interests of the stockholders, and that he was prepared to consider it with such other interests as there were, with a view to entering upon some negotiations in connection with the matter.

30 Q.—Do you know whether there had been propaganda set afoot to support the notion of a merger through the press prior to November 15th, the date which you fixed for that third interview?

A.—Nothing would have made me more angry to think there had been.

Q.—Had the subject, in any event, been dealt with or commented upon?

A.—Where?

Q.—In the press, to your knowledge?

40 A.—I would think not; I don't remember. There may have been some of the usual stock brokers rumors.

Q.—Do you remember having seen newspaper reports bearing upon the subject, of meetings at the offices of Hiram Walker, Gooderham and Worts?

A.—No, I have no recollection of any such newspaper reports or clippings.

Q.—What occurred as a result of the meeting, which we will

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fix as having taken place on November 15th, subject to your memory that that date is only an approximate date. What was the next step?

By Mr. Campbell:

Q.—Is that after the November interview?

10 A.—After the interview of about the middle of November. My recollection is that the Industrial Alcohol Company's statement was being prepared, that there were no figures available prior to that, and that somewhere along about the beginning of December, I got a Balance Sheet of the Industrial Alcohol from Lord Shaughnessy, sent out to the shareholders of the Company. I took that Balance Sheet, together with the Balance Sheet of Hiram Walker, Gooderham and Worts, and to make a pretty picture, I believe I also took the Balance Sheet of Distillers Seagrams, and asked Clarkson, Gordon, Dilworth, Guilfoile, and Nash to put them together, and
20 see what the result would be, and whether it would make a very pretty picture, or whether it would not make a pretty picture.

By Mr. Holden:

Q.—They are Chartered Accountants of Toronto?

A.—They are Chartered Accountants of Toronto. Clarkson, Gordon, Dilworth, Guilfoile and Nash.

By Mr. McKeown:

30 Q.—You submitted them to Mr. Gordon?

A.—I think I gave them to Mr. Gordon.

Q.—Did he consolidate them for you?

A.—He did.

Q.—Did you receive any statement from Lord Shaughnessy by mail?

A.—Yes.

Q.—Have you got his letter which covered it?

A.—Yes.

40 Q.—Both these letters which you have exhibited to me, are dated on Lord Shaughnessy's stationery, in handwriting, under date November 28th, 1929. The first letter reads:

“Dear Jack:

I enclose a draft of the Annual Statements of the Canadian Industrial Alcohol Company for the year ending September 30th, 1929.

FRANCIS J. LASH (for Plaintiffs), Examination-in-Chief.

As this has not yet been printed or distributed to shareholders, I am counting on it being kept as strictly confidential.

Sincerely yours,

Shaughnessy”

10 . . . And the second letter, a handwritten letter, on Lord Shaughnessy’s stationery, dated November 28th, 1929, reads:

“Dear Jack:

Here is statement I forgot to enclose with my previous letter.

I repeat as it has not been printed or distributed, will you please regard it as strictly confidential.

20

Sincerely,

Shaughnessy.”

Both of those are handwritten letters?

A.—Yes.

Q.—With those letters before you, and noticing the date, November 28th, 1929, are you better able to fix your interview with Lord Shaughnessy that you had approximated at November 15th?

A.—I think that probably is a pretty good approximation. Possibly it may have been a little earlier. Some time elapsed between that interview and the letters.

30

Q.—It is quite evident from Lord Shaughnessy’s first letter of November 28th, 1929, that he must have had some prior understanding with you that that statement would be sent?

A.—Oh yes. I explained that at the prior interview he had said that figures were not available, that when they were available and had been settled, that he would show me a copy of the published Balance Sheet.

40

Q.—Did you receive from him simply the Balance Sheet of Canadian Industrial Alcohol Limited, or of that Company and its subsidiaries?

A.—Merely the Balance Sheet of Canadian Industrial Alcohol Limited.

Q.—For the year ending September 30th, 1929?

A.—That is right, as published.

Q.—Subsequently?

A.—About the same day I think.

Q.—After having gone through this process of getting these

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Balance Sheets of these three Companies, Canadian Industrial Alcohol, Hiram Walker, Gooderham and Worts, and Distillers Seagrams, consolidated by Mr. Gordon, what did you do then? First of all, did you intimate to Mr. Gordon to have that work completed for you, having regard to the date of those letters of November 28th.?

10 A.—I think about December 23rd—I think it was a day or two before Christmas, I first saw some figures from Colonel Gordon in connection with the matter.

Q.—Then, between those two dates, the 28th of November, Lord Shaughnessy's letter, and your approximate date of December 23rd, had you been in Montreal?

A.—I do not think so. I do not think I had any further communications with Lord Shaughnessy in between those times. I cannot be certain as to that.

20 Q.—Let me just remind you of a certain circumstance which may bring something to your mind. Subject to correction, I think I may tell you that the Annual Meeting of the shareholders of Canadian Industrial Alcohol was fixed by the notice sent out originally was fixed for December 17th, 1929. You must remember the circumstance, that that meeting was adjourned—I mean by newspaper report.

A.—I remember seeing it in the newspapers.

Q.—Did you know it was adjourned?

A.—No.

Q.—Did you notice that Lord Shaughnessy made some reference at that meeting to a possible change in the Board?

30 A.—I did. I wondered what he meant.

Q.—Having regard to that date as being the fixed date, for the purpose of this question, would you not have seen Lord Shaughnessy prior to that Annual Meeting of December 17th, and between the time that he had sent you these statements?

A.—No. Your statement as to that makes me pretty nearly positive that I had no further communications with him from the time I got the Balance Sheet until a later date.

40 Q.—Are you quite clear you were not in Montreal between the time you received these statements from Lord Shaughnessy under cover of the letter of November 28th, 1929, and the date of the Annual Meeting, December 17th, 1929?

A.—Having heard this murmured conversation between Lady Davis and yourself, I would have said that I had not been. As I said before, I would have said that I had not been. As I said before, I have no recollection of having been in there between those dates.

Q.—Do you remember, or do you not remember, having been in

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the offices, in the Canada Cement Building, of Canadian Industrial Alcohol Company, in company with Mr. Hume prior to the Annual Meeting, and just very shortly before?

A.—I have no recollection of that, although it sounds a little bit vaguely familiar. I cannot recall going into the office with Mr. Hume; I cannot remember either going up in the elevator. It is possible, but I do not recollect.

10 Q.—Let us exhaust the subject on a larger scope. If it was not at that time, have you ever been in the office there with Mr. Hume?

A.—Subject to what I have just said, I do not think I have ever been in the office with Mr. Hume.

Q.—You have no present recollection of it?

A.—I have no present recollection whatever.

Q.—Perhaps Mr. Hume's recollection may be better. In any event, did you reply to Lord Shaughnessy. Did you send him an acknowledgment of the statements which you received under cover of his letter of November 28th?

20 A.—No, I do not think so.

Q.—You say that you got from Colonel Gordon the consolidated statement of the three Companies shortly before Christmas?

A.—Yes.

Q.—And did you take the subject up with Lord Shaughnessy?

A.—I wrote to Lord Shaughnessy on December 27th.

Q.—Will you produce a copy of your letter to Lord Shaughnessy at that time, and mark the same as Exhibit P-215, and read the same to the Court?

30 A.—I do.

“December 27th, 1929.

Right Honourable Lord Shaughnessy,, K.C.
Canada Cement Building,
Montreal, Quebec.

Dear Sir:—

Re Canadian Industrial Alcohol Company Limited.

40

I refer to the conversation which Mr. Morrow and myself had with you in connection with a suggested arrangement for a closer connection between Canadian Industrial Alcohol Limited, Hiram Walker, Gooderham and Worts Limited and possibly Distillers Corporation-Seagram's Limited.

My understanding is that you and your co-executors of the Sir Mortimer Davis Estate and co-directors of Sir Mortimer

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10 Davis Incorporated are of opinion that such a closer connection would be advisable and beneficial from the point of view of all the companies concerned and their respective shareholders, and that they are willing to have such information furnished with respect to the business and affairs of Canadian Industrial Alcohol Limited as may be necessary to enable a common basis for comparison to be made between that Company and Hiram Walker, Gooderham and Worts Limited.

10 . You will remember that we agreed that Messrs. Clarkson, Gordon, Dilworth and Company would be satisfactory as independent auditors as they have no connection with any of the three companies above referred to. We have accordingly handed the published balance sheets of the three companies to Messrs. Clarkson, Gordon and Company. I enclose a letter from them containing a memorandum of questions referring to these balance sheets, the answers to which are required before a common basis for comparative purposes can be reached so far as the
20 three companies are concerned.

It has been suggested that the best method of dealing with the matter in the first instance would be to have each of the companies itself make up a balance sheet as at the end of its last fiscal year, giving all the information asked for in the enclosed memorandum. Balance sheets giving this information can be exchanged and a tentative share value arrived at from these figures. If a satisfactory arrangement is arrived at, a date
30 could then be set to which the balance sheets of all three companies would be adjusted.

It is understood of course that all information supplied will be treated as strictly confidential by all concerned and Hiram Walker, Gooderham and Worts Limited is prepared, if this proposal is satisfactory, to exchange balance sheets on this basis.

40 It is also understood, if a satisfactory share value be reached as a basis of exchange, that for the protection of all concerned, an independent audit of the books of the three companies shall be made by Messrs. Clarkson, Gordon and Company and in the event of a transaction failing to materialize with respect to any company such company will bear the expense of the investigation so far as its own affairs are concerned.

Yours truly,

J. F. Lash."

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Q.—Have you got a copy of the letter of Clarkson, Gordon and Company referred to?

A.—I have.

Q.—Will you please produce the same as Plaintiffs' Exhibit P-216?

A.—That is a copy. I have not compared it myself, but I had it copied in the office.

10 Q.—Will you, for the information of the Court, please read the letter? It does not need to be read into the deposition?

(The letter is read to the Court).

Q.—Looking at your letter to Lord Shaughnessy of December 27th, 1929, P-215, I see that the first paragraph refers to the conversation which you and Mr. Morrow had with Lord Shaughnessy. Is that the conversation of which we fixed a tentative date of November 15th, or was it subsequent?

20 A.—I would think it was the conversation of November 15th, but I am not prepared to state definitely that I had not seen Lord Shaughnessy later.

Q.—Are you in a position to say with any degree of certainty that neither Mr. Morrow or Mr. Hume had interviews with Lord Shaughnessy apart from the occasion when you were present?

A.—I think Mr. Morrow had an interview with Lord Shaughnessy in October.

Q.—About what time would that be?

A.—I think about the week after I saw Lord Shaughnessy on October 11th. I have a memorandum of that—on October 18th
30 I would think.

Q.—What does your memorandum show?

A.—My memorandum shows that Mr. Morrow was in Montreal, and my recollection is, he telephoned to me from Montreal on another matter, and the question as to the Industrial Alcohol situation came up, and I suggested that it might be a good thing if he had a talk with Lord Shaughnessy. My recollection is, I telephoned to Lord Shaughnessy, telling him that Mr. Morrow was in charge, and suggesting that he get in touch with him. I think they had an inter-
40 view.

Q.—Do you remember if Mr. Morrow reported to you after?

A.—I think he told me he had an interview, which was very much the same as mine.

Q.—Can you fix the date of that?

A.—I think it was on October 18th.

Q.—I notice looking at Exhibit P-216, the letter of Colonel Gordon to Mr. Morrow, is dated December 26th, 1929; and I notice

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your letter to Lord Shaughnessy, forwarding a copy of same, is dated the day following, December 27th, 1929?

A.—Yes.

Q.—So, no time was lost in forwarding it to Lord Shaughnessy?

A.—None.

10 Q.—What was your next communication with Lord Shaughnessy following the despatch of your letter to him of December 27th, 1929, Exhibit P-215?

A.—The next thing, so far as I know, was on January 14th. I am not prepared to say I did not have some telephone conversation with Lord Shaughnessy in between, but I think on January 14th Lord Shaughnessy telephoned to me and told me he was now in a position to have the figures along the lines suggested by Clarkson, Gordon & Dilworth submitted, and he pointed out to me at that time that in view of the fact that there was no certainty of anything going through and that we might never reach any kind of an agreement, 20 that he considered it undesirable to submit his figures to us. He suggested that the method of carrying on should be to have a representative from the Industrial Alcohol Company (I think Mr. Lawrence) give those figures to Clarkson, Gordon & Dilworth without giving them to Hiram Walker-Gooderham & Worts, and, similarly, that we should give our same kind of figures to Clarkson, Gordon & Dilworth, which would not divulge either Company's figures to the other; and on that basis a combination would be put together which would enable something in the way of a comparison to be made and form a basis for negotiation.

30 Q.—Did you have any similar arrangement with representatives of Distillers-Seagram?

A.—I think that has nothing whatever to do with the case, but I do not mind answering it. We had not.

Q.—Did Distillers-Seagram ever join in this picture? Were they ever parties to this arrangement that we have spoken of?

A.—I think that has nothing whatever to do with this case, and I object to answering it.

40 Q.—Their names seem to have been mentioned quite freely in the correspondence, especially in the letter from Colonel Gordon to Mr. Morrow in which he criticized their statement, and pointed out in the concluding part of his letter (which covers four pages of the Exhibit) certain particulars which he thought should be furnished with reference to the Annual Statement of Distillers-Seagram.

A.—I took merely the published Balance Sheets of those Companies, with a view to getting information for myself as to the situation if those three or four things were put together. I did the same

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thing with various other Companies. They are purely a matter of personal information, with an idea of it perhaps being worth while to start something, or getting a result which would indicate it was entirely useless to endeavor to start anything.

Q.—It is naturally a little out of that class, because you did have those conversations to which you have referred with Lord Shaughnessy as representing Canadian Industrial Alcohol?

10 A.—I certainly would give him the same information I had.

Q.—Did you have any similar conversations with anyone on behalf of Distillers-Seagram?

A.—I object to answering. I think that has nothing whatever to do with this case.

Mr. McKeown: How would it be, Your Lordship, if we maintained the objection of the witness? I will not press the matter, because that angle did not take any definite form.

20 By Mr. McKeown (continuing):

Q.—I was asking you with reference to your communications with Lord Shaughnessy between the time you sent this letter of December 27th, 1929 (Exhibit P-215) and the date which you have fixed, I think, as January 14th, 1930; and you have told us that during that period there were likely some communications by telephone only?

30 A.—I think it is probable, because I imagine it looks like rather a long period without my having said something as to whether anything was happening.

Q.—And it was during that period this data was being assembled for the purpose of being submitted, as you suggest, to Colonel Gordon for consolidation by him without disclosure by one side or the other as to detail?

A.—Yes.

Q.—On January 14th Lord Shaughnessy advised you the information was available?

A.—Yes. I think that was fully answered.

40 Q.—Was that a communication by telephone?

A.—Telephone.

Q.—On January 14th?

A.—January 14th, according to my memorandum.

Q.—Was it at that time he said there was no certainty anything would come of it, and that he thought that instead of releasing the information directly to Hiram Walker-Gooderham & Worts' interests that it should be given to Colonel Gordon?

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A.—Yes.

Q.—Was that the first time that motion came up?

A.—No. I think it probably had been in both our minds all along. It was merely a question as to a method of getting those things together without each disclosing information to the other party which we did not want to disclose.

10 Q.—That was the first occasion upon which either party—Lord Shaughnessy or your group—suggested that this information should not be made available to the other?

A.—No, I do not think so. I think the situation had been generally agreed that this information should be made available, and Lord Shaughnessy called me up to ask me how we had better deal with it.

Q.—You say, should be made available?

20 A.—I mean, made available for comparative purposes. That the information should be obtained. He called me up to ask me what my view was as to how it should be dealt with, and made the suggestion I have just told you of, with which I agreed.

Q.—Evidently that was not the purpose at all originally, if we can judge from the second last paragraph of your letter of December 27th, 1929 (Exhibit P-215) in which it is stated:

“ It is understood, of course, that the information supplied will be treated as strictly confidential by all concerned, and Hiram Walker-Gooderham & Worts, Limited, is prepared, if this proposal is satisfactory, to exchange Balance Sheets on this basis.”

30 Did not that contemplate a disclosure to be made of Canadian Industrial Alcohol directly?

A.—Yes, I think it did.

Q.—And vice versa?

A.—And vice versa.

Q.—So this was a new departure from that idea, which came about on January 14th, 1930; that is to say, that the information, instead of being given to the two concerns interested, would be placed in escrow, so to speak, with Colonel Gordon, for the benefit of both?

40 A.—I do not think really any thought had been given at all to the actual method of exchanging this information, and putting it together. My letter suggested an exchange of Balance Sheets prepared on that basis, which would be kept confidential, but Lord Shaughnessy's idea struck me as a very good one. We both had confidence in Clarkson, Gordon & Dilworth.

Q.—What was the upshot of this telephone conversation on January 14th, 1930?

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A.—I understand within the next few days Mr. Lawrence came up with the information, and had an interview with Colonel Gordon, and gave it to him. And I understand Mr. Hume gave similar information as far as Hiram Walker-Gooderham & Worts were concerned.

Q.—And Colonel Gordon put the information together in consolidated form?

A.—Yes.

10 Q.—And delivered a copy of his findings to the representatives of Hiram Walker-Gooderham & Worts?

A.—Yes.

Q.—On what date did you get the Statement from Colonel Gordon?

A.—My recollection is it was two days before the adjourned Annual Meeting of the Alcohol Company was held. I think it must have been about January 20th.

20 Mr. Holden: We are now getting into the same realm of things which happened after the service of the Action, and we respectfully object to any evidence in regard to any such facts.

Mr. McKeown: I suppose it will be admitted under the same reserve.

His Lordship: Yes. I really cannot see how I can dispose of the injunction without it.

30 By Mr. McKeown (continuing):

Q.—You say you received this Consolidated Statement from Colonel Gordon's office on a date which you fix as being January 20th, 1930?

A.—I think it was January 20th. The way I fix it is my understanding that the adjourned Meeting of the Canadian Industrial Alcohol Company was to be held on January 22nd. I believe I got the Statement from Colonel Gordon, under those circumstances, on January 20th.

40 Q.—Do you remember what day of the week it was?

A.—No, I do not. Probably Monday.

Q.—Were you in Montreal between January 14th and January 20th, 1930?

A.—I do not think so.

Q.—Were you in communication with Lord Shaughnessy during that period?

A.—I do not think so.

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Q.—Did you know that proceedings were then imminent against Lord Shaughnessy, at the instance of Lady Davis, with a view to his removal as an Executor of the Estate of Sir Mortimer Davis?

Witness: On January 20th?

Counsel: Yes.

10

A.—I think I heard that an Action had been commenced.

Q.—I did not mean on the 20th. I meant in the period between the 14th and the 20th?

A.—I think I had heard rumors of wars.

Q.—In particular were you not aware on January 14th that there had been negotiations between Counsel for the parties to the present suit in connection with the matter of the Executorship of the Estate of Sir Mortimer Davis?

20 A.—I had heard small rumors of wars. I had not any definite information as to the situation. I do not think I knew of any negotiations or meetings of Counsel representing the parties in this Action.

Q.—Had you been in touch with Lord Shaughnessy all through the fall and down to this period of the 14th of January without having become aware that a demand had been made upon him for his resignation as an Executor of the Estate Sir Mortimer Davis?

A.—I heard nothing whatever of that sort from Lord Shaughnessy.

Q.—From whom did you hear it?

30 A.—I have no idea. As I say, it was a rumor.

By the Court:

Q.—Did you hear anything about it in the year 1929, or was it only in 1930?

A.—Yes, because at the time I wrote that letter, namely, on December 27th, to Lord Shaughnessy, I knew there were some disputes—I knew there were rumors of wars.

40 By Mr. McKeown (continuing):

Q.—And, notwithstanding the rumors of wars, you went ahead with those negotiations with Lord Shaughnessy?

A.—I wrote a letter in which I was purposely careful to put in: “My understanding is that you and your co-Executors of the Sir Mortimer Davis Estate, and co-Directors of Sir Mortimer Davis, Incorporated, are of opinion that such a closer connection . . .”

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Q.—Had you ever seen Lady Davis in your life before that?
Did you know her?

A.—I am sorry to admit I am afraid I never saw her before the last time I was here.

Q.—So, you had never taken the subject up with Lady Davis?

A.—No.

10 Q.—When you speak of your letter, to which you have just referred, you are speaking of your letter of December 27th, 1929, addressed to Lord Shaughnessy, which has been filed as Exhibit P-215?

A.—Yes.

I wrote this formal letter for the express purpose of getting it on record, having regard to the fact that I had heard there might be something in the nature of disputes between Lord Shaughnessy and Lady Davis, and putting it on record that this was an official letter dealing with the whole situation officially—a formal letter for that
20 purpose.

Q.—And, of course, addressed to Lord Shaughnessy?

A.—Naturally: the President of the Company and the person with whom I had been dealing.

By the Court:

Q.—Did Lord Shaughnessy answer that letter?

A.—I think the answer to that letter was merely his telephone conversation on January 14th, saying that the information had been
30 got together.

By Mr. McKeown (continuing):

Q.—I think you suggested that there likely had been other conversations by telephone prior to the conversation of January 14th, 1930.

A.—I think it is quite probable there had been another telephone conversation.

40 Q.—For the reason, as you say, that you would not have allowed the matter to have remained inactive during that interregnum?

A.—I think I should. I did not want to appear too anxious.

Mr. Campbell: Of course, we are not all as guileless as my learned friend, Mr. McKeown.

By Mr. McKeown (continuing):

FRANCIS J. LASH (for Plaintiffs), Examination-in-Chief.

Q.—In what way did you receive the copy of the Statement prepared by Colonel Gordon consolidating the positions of the two Companies based upon the supplementary information given by both, Mr. Lawrence having made the contribution on behalf of Canadian Industrial Alcohol, subsequently to January 14th? When, or how, did you get it?

10 A.—I think probably it was handed to me by Colonel Gordon at his office.

Q.—Can you tell me about the date?

A.—I think it was January 20th.

Q.—And that was a Monday?

A.—That was a Monday, I think.

Q.—Did you understand he was at the same time releasing similar Statements to Canadian Industrial Alcohol?

A.—Yes.

Q.—Probably forwarded by mail?

20 A.—I do not know.

Q.—What did you do on the Monday on the subject, after you got this Statement which I take to be a copy of Exhibit P-156 already filed?

Mr. Campbell: Of course, this is all subject to our objection in regard to evidence of matters subsequently to Action brought.

By Mr. McKeown (continuing):

30 Q.—What did you do on Monday, January 20th, 1930, upon receiving a copy of Exhibit P-156?

A.—I think I had a talk about it with Mr. Morrow and Mr. Hume.

Q.—In Toronto?

A.—Yes.

Q.—Two of your co-Directors?

A.—Two co-Directors.

Q.—Did you communicate with Lord Shaughnessy on Monday?

A.—I think probably I did.

40 Q.—Do you remember whether he was in Montreal or in Toronto that day?

A.—I think probably I communicated with him, because after talking this matter over, and having seen further statements in the paper with respect to a whale of a row being expected at the Industrial Alcohol Meeting (which I think was to be held on Wednesday), Mr. Morrow, Mr. Hume and myself thought it would be advisable for us to come down to Montreal with a view to seeing what the situ-

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ation was and possibly making some sort of an arrangement, if possible, which would obviate the whale of a row at the Industrial Alcohol Meeting, which we felt would be very bad for the whole business.

Q.—In what paper did you see anything which suggested to your mind there was going to be a whale of a row at the Alcohol Meeting?

10 A.—I have no recollection of which paper it was.

Q.—It would not be one of the Toronto papers, surely?

A.—I have no recollection what paper it was.

Q.—When did you set sail for Bagdad—in other words, Montreal? Did you leave on the Monday night?

A.—My recollection is we left Monday night.

Q.—Arriving in Montreal Tuesday morning?

A.—Tuesday morning; at 7.45, I think.

Q.—And all this on the eve of the whale of a row?

A.—Anticipated.

20 Q.—Which never occurred?

A.—I am glad to say.

Q.—Upon your arrival in Montreal on the Tuesday morning did you take up the subject that had been covered by Colonel Gordon's figures with anybody?

30 A.—Yes. Mr. Morrow, Mr. Hume and I called on Lord Shaughnessy in the morning at his house, after breakfast, and discussed the matter. I think at that time the copy of Exhibit P-156 had not been received by Lord Shaughnessy. It was probably mailed Monday afternoon by Colonel Gordon, and probably went to Lord Shaughnessy's office.

Q.—Did you have a copy of Exhibit P-156 with you?

A.—Yes.

Q.—What was the particular object in calling upon Lord Shaughnessy at his residence?

A.—At a convenient place. We were at the Mount Royal Hotel, and just walked up the street to see him there, instead of going downtown.

Q.—There is quite a hill to go up?

40 A.—There is, and it was a very slippery morning.

Q.—And they have plenty room at the Canada Cement Building. I suggest to you the purpose of that meeting at Lord Shaughnessy's residence was in order that the staff would not become aware of the presence of those three gentlemen from Toronto?

A.—No, I think that had nothing whatever to do with it. Lord Shaughnessy was kind enough to invite us to go to breakfast, but we decided to have breakfast at the hotel.

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Q.—You had communicated with him before breakfast time?

A.—No, I think we had had breakfast.

Q.—But, he invited you to have breakfast?

A.—Quite right. That brings it back to my mind now. I did telephone him the night before, and it was the night before he invited us to breakfast with him on our arrival.

10 Q.—Speaking to you the night before he suggested you should go directly from the train to his house?

A.—Yes.

Q.—The Toronto train arrives in Montreal at about 7:30 in the morning?

A.—7:45, I think.

Q.—Has it been his constant practice in his interviews with you to take up business so early in the day?

20 A.—I think the only business I have ever had to take up with Lord Shaughnessy has been either in Toronto, or somewhere outside of Montreal, except in this connection; and on those occasions I had telephoned to him during the day after I had got here.

Q.—In any event, you were not there before breakfast on any prior occasion?

A.—No.

Q.—Will you please tell His Lordship at what time you arrived at Lord Shaughnessy's residence on this occasion?

30 A.—I had a shave, and a bath, and had breakfast, after getting to the hotel. I would assume somewhere in the neighborhood of 9:30. I have no definite recollection.

By Mr. Campbell:

Q.—You did not have a stop watch in your hand?

A.—No.

By Mr. McKeown (continuing):

40 Q.—There was no purpose of going up there with any idea of breakfasting?

A.—There might have been.

Q.—But, you have just told me you declined the invitation?

A.—Quite right.

Q.—Therefore, we find you and your two associates from Toronto at Lord Shaughnessy's house at 9:30 in the morning to discuss a business subject?

A.—Yes.

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Q.—On the day before that appointed for the Alcohol Meeting?

A.—The Adjourned Meeting.

Q.—How long did you spend at Lord Shaughnessy's residence?

A.—I think about half an hour.

Q.—Can you give us, to the best of your recollection, the purport of the interview?

A.—Yes.

10 Q.—Did you show him the Statement Exhibit P-156?

A.—Yes.

Q.—Was his attention drawn to the comparative figures indicated as to the values of the shares?

A.—Yes.

Q.—I think you said in your evidence, or mentioned in one of your letters, that the Statement was to be based upon assets, and, amongst other things, earnings?

20 A.—Yes; the basis of negotiation would certainly be assets, liabilities and earnings.

Q.—Is there anything in this Statement, Exhibit P-156, as to earnings?

A.—Not that I know of. I do not think so.

Q.—This is a statement of assets and liabilities?

A.—Yes.

30 The question of earnings would come in on the matter of negotiations when it came to a situation respecting getting together on some basis. This was a comparative Statement of Assets and Liabilities. The negotiations had not yet reached a stage where Earnings were considered.

Q.—In any event the earnings had not been compiled, and had not been dealt with, by Colonel Gordon?

A.—No.

Q.—Although mentioned in your letter as being a basis?

A.—Yes.

We had no figures from the Industrial Alcohol Company, and at that time we would not have been prepared to give figures of earnings of Hiram Walker-Gooderham & Worts.

40 Q.—At this after-breakfast interview I suppose Lord Shaughnessy was first presented with this Statement, and considered it?

A.—Yes.

Q.—What followed?

A.—Lord Shaughnessy said he did not know whether he was in a position to continue to negotiate or not; that at the adjourned meeting of the Industrial Alcohol Company, which was to be held the following day, he felt there was quite a likelihood of some In-

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junction, or some Proceedings, being taken which would either interfere with the holding of the meeting, or which, in any event, might leave him in a position where he was not able to continue any negotiations.

Q.—Did that deter you and your associates from further discussing the subject with Lord Shaughnessy?

10 A.—No; I would not say it deterred us in the least. The general situation that came up then was that I said—and I think I was practically the only person who was speaking, so far as Mr. Morrow, Mr. Hume and I were concerned—that I had not the faintest idea of what would be a proper basis of a suggestion for bringing those two Companies together. I also said I thought it would be a very bad mistake if this Industrial Alcohol meeting were to be a quarrelsome one—that is the meeting to be held the next day. I also said I assumed the Estate would want some money, and that without any very definite ideas on the situation I thought we would be prepared
20 to buy a proportion of the shares of the Estate for cash, and make some arrangement, subject to verification by the Auditors, as to the price of the shares which were to be bought for cash; and some basis of exchange, also subject to verification. No basis of exchange was mentioned.

Q.—From the time this subject was first mooted to you, or by you to Lord Shaughnessy, did he ever tell you the Estate was in need of cash?

A.—No.

30 Q.—Then, will you please explain to His Lordship what you meant a moment ago when you said that you suggested the payment of some cash to the Estate, or that you thought the Estate would want some cash? Why?

A.—Because from outside rumors which I had heard I was rather under the impression that there were heavy claims for Succession Duties which had to be met by the Estate, and I have always found that in an ordinary negotiation a little cash is very helpful.

Q.—You had heard of heavy claims for Succession Duties against the Estate?

40 A.—A rumor of it. I knew nothing of details.

Q.—The subject of the financial requirements of the Estate had never been spoken of up to that time?

A.—Never.

Q.—Had you ever heard of big claims from any other source against Sir Mortimer Davis, Incorporated?

A.—No. I knew nothing at all of the affairs of the Estate.

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Q.—You knew there was an Incorporated Company, did you not?

A.—That was explained to me by Lord Shaughnessy at my first interview—as to how the shares of the Industrial Alcohol Company were held.

Q.—That is to say, there were three Executors of the Estate: Lord Shaughnessy, Lady Davis and Mr. Reaper?

10 A.—I do not know that I knew who the personnel was, and I did not care much.

Q.—You knew, in any event, that there was a private company?

A.—Yes.

Q.—The shares of which were held by the Estate, and which, in turn, held the control of Alcohol?

A.—Yes, I understood that.

Q.—I put it to you: did you know of any claims by any Institutions against Sir Mortimer Davis, Incorporated?

20 A.—No.

Q.—You never heard of any?

A.—No.

Q.—At that time had you ever heard of any indebtedness by the Alcohol Company or its subsidiaries to the Federal Government or to anyone else?

A.—Yes.

Q.—What was it?

30 A.—Shown on their Balance Sheet. I also understood there was another claim by the Dominion Government, which was not shown on their Balance Sheet.

Q.—You understood thoroughly their position as guarantors of McNish Debentures, did you not?

A.—When you say I understood thoroughly—I knew the McNish Debentures had been guaranteed by Canadian Industrial Alcohol Company.

Q.—Had you had access to the Balance Sheets of the subsidiary companies?

A.—No, I never saw them.

40 Q.—You just had before you the Balance Sheet of Canadian Industrial Alcohol itself?

A.—I never saw any Statement of the Canadian Industrial Alcohol Company, other than the published Statements.

Q.—And, Colonel Gordon's Statement, which is now before you?

A.—This is a comparative Statement; it is not a Statement of the Canadian Industrial Alcohol Company.

Q.—Is it not supposed to be a consolidated statement as of that

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company and of its subsidiaries, in so far as it refers to Canadian Industrial Alcohol?

A.—The Statement itself says what it is.

Q.—What does it say, “Draft Consolidated Balance Sheet Hiram Walker-Gooderham & Worts, 31st August, 1929: Canadian Industrial Alcohol Company and its subsidiaries, 30th September, 1929.” So, the heading would show my question is right, would it
10 not, using your formula to look at the heading?

A.—If your question was a statement you put, it corresponds with the heading you read, I think.

Q.—It was a statement in interrogative form, and the answer is given by the witness supported by the Statement.

Were you aware that the Incorporated Company was indebted to its bankers in a very large sum of money?

A.—No.

Q.—Were you aware then that Canadian Industrial Alcohol
20 Company and its subsidiaries were indebted to their bankers?

A.—Their published Balance Sheet showed loans.

Q.—I show you the published Balance Sheet, and ask you to point out to me the loans by the Banks which are shown on that Statement?

A.—I think you can find them as well as I can.

Q.—I think you are mistaken. Just see if you can find them, because we have been looking for them for two months and have not been able to find them, and it is one of the things in which we are
30 interested.

A.—It is rather astonishing. I had looked at them and I thought there were bankers' loans there.

Q.—I agree with you entirely that it is astonishing, but, nevertheless, it is true?

A.—I do not know that the Statement is astonishing. The fact is that I am astonished.

Q.—Then, you got your information from some source other than the Balance Sheet that there were Bank loans?

A.—I imagine the Consolidated Statement must have shown it.
40 \$1,400,000.

Q.—When you are speaking of the Consolidated Statement you mean Colonel Gordon's Report, Exhibit P-156, which shows an indebtedness to the Bank of \$1,400,000 by Canadian Industrial Alcohol and its subsidiaries?

A.—Yes.

Q.—If you had not the information from any other source you would have had it from that?

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A.—Yes.

Q.—And you say to His Lordship that your suggestion that the Estate would probably like to have a little money was altogether on broad general ideas and not because of any information Lord Shaughnessy had given you to the effect that money was required for the purposes of the Estate?

10 A.—Yes. Lord Shaughnessy had never told me anything of the affairs of the Estate.

Q.—You say Lord Shaughnessy suggested at this afterbreakfast interview on the morning of January 21st, 1930, that he did not know whether he was in a position to continue negotiations?

A.—Yes.

Q.—And you made the general statement which you have given us, upon your own authority, as to certain lines upon which you might be prepared to consider the matter further?

A.—Yes.

20 Q.—As to this little subject of cash, did anybody whisper any amount there that day?

A.—I do not think so.

Q.—Will you please think it over?

A.—I have been thinking of it since my conversation with you this morning, and I think no amount of cash was mentioned.

At Lord Shaughnessy's it was gradually coming into my mind that the proper thing for me to do was to go down to see Mr. Montgomery, who I had heard was in charge of the case; and I think no mention at all or a specific sum was made at Lord Shaughnessy's.

30 Q.—At least there was a statement made by you of a disposition to pay the Estate some money?

A.—Some cash.

Q.—But, according to your present recollection no amount was mentioned?

A.—No amount was mentioned.

Q.—Whose idea was it that you should proceed from Lord Shaughnessy's residence to Mr. Montgomery's office?

A.—Mine.

40 Q.—Did you discuss it?

A.—I did. I went back to the hotel.

Q.—Did you discuss it then and there in the presence of those who were at Lord Shaughnessy's with you?

A.—I think probably I said I was considering going down to see Mr. Montgomery: that I thought those people were very silly—and I probably put it stronger than that—in wrecking a perfectly good business by being foolish at a Shareholders' Meeting, and if I could

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do anything to obviate anything of that kind at the Shareholders' Meeting I would do so.

Q.—Did you have in mind the independent vote of the shareholders, or did you have any notion of who was going to do the wrecking at the Meeting?

A.—I had no idea. I just was told there was going to be a whale
10 of a row.

Q.—Emanating from

A.—(Interrupting): Newspaper reports, and my own feelings in regard to the various conversations I had had.

Q.—Was anything further said before you left Lord Shaughnessy's residence for Mr. Montgomery's office, which you would like to leave with His Lordship before we close this Chapter?

A.—No. I think that sums up the whole situation.

Q.—Did you carry out this thought of yours to go and see Mr. Montgomery?

20 A.—I went back to the hotel with Mr. Morrow and Mr. Hume, and we discussed it, and I said I felt a little diffident in butting in on a thing that I did not know where I was going. Then as I began to consider the situation I felt there were two or three things which came along. In the first place, I felt the row which was anticipated at the Industrial Alcohol Meeting would be a great mistake from the point of view of the industry generally; that it would not be desirable, for it would render the value of Canadian Industrial Alcohol considerably less in the event of our taking it over or in the event
30 of any merger or consolidation going through. I also felt that anything I might do could be justified from that point of view. I had no objection to Lord Shaughnessy and Lady Davis having as much of a private row as they liked, but when that private row slopped over and became one which affected an industry, I felt, as we were in that industry also, we had a status to say something, although we had no status to make any definite objection or tell the parties to that private row what they should or should not do. I felt, however, that I might be able to give something in the way of an inducement, and that I was justified in making that remark and endeavoring to give something in the nature of an inducement which would
40 prevent a row at that Meeting.

With that in view I went down to see Mr. Montgomery.

Q.—What time of the day on January 21st, 1930, would it be when you left the hotel to go to Mr. Montgomery's office?

A.—Before lunch.

Q.—Up to that time you had never been in touch with Mr. Montgomery?

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A.—Not in the least.

Q.—or with Lady Davis, or any representative of hers, concerning this subject?

Witness: Concerning what subject? The lawsuit?

10 Counsel: No. The matter of putting those two Companies together.

A.—I had been in touch with the President of the Company.

Q.—But, I am not speaking of Lord Shaughnessy: I am speaking of Lady Davis or any legal representative of hers.

A.—Why should I be?

20 Q.—I am not quarreling with you because you were not. As a matter of fact, I am sorry you were not. I am simply establishing the fact.

A.—It is the fact, I was not.

Q.—Off your own bat you determined with your associates Mr. Hume and Mr. Morrow to go down and interview Mr. Montgomery upon the subject, with the idea that Mr. Montgomery was acting for Lady Davis in the forthcoming or commenced litigation?

A.—Yes, and particularly in connection with the suggested whale of a row at the Annual Meeting to be held the next day.

30 Q.—I think we will leave the whale of a row for the moment. You must have known on January 21st that Proceedings towards ousting Lord Shaughnessy as an Executor of the Estate of Sir Mortimer Davis had been served on him the previous Saturday?

A.—Yes: Lord Shaughnessy told me that in the morning.

Q.—And, he told you he anticipated some move to stop the Meeting, or something in the nature of an Injunction?

A.—He said he did not know what was going to happen, but it was not unlikely that some move would be made.

Q.—And, he told you that on the morning of January 21st, 1930?

A.—Yes

40 Q.—And, following that you went down to see Mr. Montgomery?

A.—Yes.

Q.—Did you call on Mr. Montgomery at his office?

A.—Yes.

Q.—On the Tuesday morning?

A.—Yes: assuming our days and dates are right all the way through.

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Q.—I presume you explained your viewpoint of the matter to Mr. Montgomery?

A.—Yes.

Q.—What did you say to him, or what did he say to you, at that interview?

10 A.—I told him my view as to the general situation. After I had got back to the hotel with Mr. Morrow and Mr. Hume I still said I did not know what in the dickens I was going to say when I went to see Mr. Montgomery, and the reply of one them was: “Well, you never know what kind of a fish you are going to catch when you drop a line over the boat, anyway.” I left there very much in the same frame of mind.

Q.—They did not accompany you?

A.—No. They said: “Whatever you do is good enough.” I was a plenipotentiary, for the purpose of representing myself.

Q.—A plenipotentiary extraordinary?

20 A.—For the purpose of representing myself.

Q.—And, clothed with all that great strength, force and authority, you approached Mr. Montgomery, threw a line over the side of the boat; and what happened?

A.—I was told he thought there was very little likelihood of anything being done in the nature of a settlement of the dispute, and that he was satisfied the lawsuit would be continued.

Q.—Did that deter you from your efforts?

30 A.—No. I explained to Mr. Montgomery my feeling in connection with the matter, and told him that I was not concerned in a private row between Lady Davis and Lord Shaughnessy until that row had affected outside parties. I said that we were being affected by that row if a Meeting of the Industrial Alcohol Company came along at which there was a lot of undesirable publicity given to various details, and that under those circumstances I felt I had a status to say something.

40 I then told him that I still felt I had no right to butt in with a demand that anything should or should not be done at that Meeting, but that I might possibly offer something in the nature of an inducement which would prevent a row at the Meeting, as was anticipated. I pointed out to him that I was acting on my own authority, but I did not think it was likely I would be turned down, and that it could be regarded as a very definite kind of suggestion. I suggested we would be prepared to purchase a certain number of shares of the Estate at a value verified by the Auditors, and purchase as many shares as a couple of million dollars on that basis would buy: and that, subject again to check up by the Auditors, we would

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be prepared to make an arrangement for an exchange of shares of Hiram Walker, Gooderham & Worts, Limited, for shares of Industrial Alcohol, making the same offer to all outside shareholders with regard to the exchange as would be made to the Estate.

Q.—And, that was the inducement?

A.—I thought it was.

10 Q.—That is what you had in mind would be an inducement to stop the whale of a row?

A.—Yes.

Q.—\$2,000,000 would have been produced by Hiram Walker towards buying out a block of the holdings of the Estate or the Estate Company, which would go to Hiram Walker, and Hiram Walker money would go to the Estate, as to that particular block?

A.—Yes.

20 Q.—What is the formula to determine how much it is per share —on the basis of Colonel Gordon's Statement, Exhibit P-156? Is that the basis?

A.—Oh, no.

Q.—What was the basis?

A.—The basis would have been assets, liabilities, and earnings.

Q.—On the basis of this Statement, as to assets alone, your stock apparently was worth more than Canadian Industrial Alcohol stock?

A.—On any basis.

Q.—On the basis of this Statement, for the time being?

A.—On any basis.

30 Q.—Please do not go beyond the scope of my question, because otherwise I may have to follow you. Just keep yourself to the question. Upon the basis of assets, as shown by Colonel Gordon's Statement, Exhibit P-156, which you had before you, your stock was worth more than the Alcohol stock?

A.—The value per share shown on the basis of the Statement Exhibit P-156 showed Hiram Walker stock to be worth more per share than Canadian Industrial Alcohol stock.

40 And it being 1:30 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.

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And at 2:30 o'clock in the afternoon, April 24th, 1930, personally came and re-appeared the said witness:

JOHN FRANCIS LASH

and his examination was continued as follows:—

10 By Mr. McKeown, K.C.:

Q.—Following up the last question before the adjournment, when we were looking at Colonel Gordon's consolidation, Exhibit P-156, I had drawn your attention to the fact that this Exhibit would indicate that the Hiram Walker, Gooderham & Worts stock was worth more than the Alcohol stock, and that would be so to the extent of about \$2.00 per share, according to the figures shown here?

A.—Approximately.

20 That, of course, gives no definite idea as to the percentage.

Q.—At the interview which you had with Mr. Montgomery on the morning of January 21st, 1930, did he tell you he was in charge of Lady Davis' interests?

A.—Yes.

Q.—What did he say in that respect?

A.—He told me that you had taken over the case, but that he was still connected with it in the capacity of Counsel, and also that Mr. Aime Geoffrion was connected with it.

30 Q.—Did he suggest that you would have to see any person other than himself in that connection?

A.—He suggested that I should see you.

Q.—Just what did you say to Mr. Montgomery as to your thought in the matter, in Mr. Montgomery's office before you came to my office?

A.—I think I have already told that as fully as I could.

Q.—But, it does not quite agree with Mr. Montgomery's recollection, and I just want to make quite sure where we stand on it.

A.—In what respect? I would be very glad to give you any information I can.

40 Q.—I mean, as to the suggestion you made?

A.—My mind was working along endeavoring to see what sort of a fish there might be available at the end of a line, and with that in view I more or less talked out loud, so far as my thoughts were concerned; and my recollection as to what I said to Mr. Montgomery with regard to the proposed amalgamation, or merger, or whatever you want to call it, was precisely as I have already stated; that I felt the Hiram Walker Company would be prepared to buy a portion

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of the shares belonging to the Davis Estate in the Industrial Alcohol Company, at a fair valuation, and that valuation having to be checked up by the Auditors. That so far as the rest of the shares of the Davis Estate were concerned we would be prepared to take them over at some sort of a fair exchange, having regard to the value of those shares as compared with the shares of Hiram Walker-Gooderham and Worts. And that we would be prepared to make a
10 similar offer to all other shareholders of the Industrial Alcohol Company with respect to taking over their shares on an exchange basis.

Q.—That is to say, apart from the question of the purchase for cash, you would be prepared to consider exchanging the remainder of the holdings of the Estate, as also the balance of the outstanding stock of Alcohol, for shares of Hiram Walker-Gooderham and Worts?

A.—Yes: on a basis to be settled by a proper statement.

20 Q.—I put it to you that you said, in effect, to Mr. Montgomery, that you would recommend, we might say, to your Company to purchase, and to use \$2,000,000 in cash for the purchase of such portion of the shares of the Estate as would amount to that sum, having regard to those figures on the Statement Exhibit P-156; and would exchange the remainder of the stock of the Estate and the stock of the Independent shareholders on the basis of share for share with your stock?

A.—I do not think I said that.

30 As I say, I was thinking out loud going along, and I think I probably said to Mr. Montgomery that on the basis of this Statement it would mean taking over at the value as shown there as far as the shares were concerned, and I may have said on possibly a share for share basis. All subject to check on the audit.

Q.—Share for share basis would not be the same as an exchange upon the basis of Exhibit P-156?

A.—No.

Q.—In other words, it would take more Alcohol shares, in number, in an exchange, than Hiram Walker would have to give up to make the exchange?

40 A.—Yes.

Q.—About 20 per cent more?

A.—Yes, about 5 to 4.

Q.—The exchange would be about 5 to 4?

A.—Yes.

Q.—Five shares of Alcohol for 4 shares of Hiram Walker-Gooderham and Worts?

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A.—About that.

Q.—Is it not true that in regard to carrying out the cash suggestion your proposal was to carry it out on the same basis?

A.—No. I made no statement at all as to that.

Q.—You spoke of using \$2,000,000 for that purpose?

A.—Yes.

10 In other words, I meant we would ascertain and settle upon a fair basis for a cash price for the number of shares that could be bought by \$2,000,000 at that price. If the price were \$5.00, it would buy so many shares; if the price were \$25.00, it would buy so many shares.

Q.—You have spoken of a basis of exchange of 4 for 5. Was it not nearer 5 for 6?

A.—Yes, nearer 6 to 5. You are right.

20 Might I hurry this up, Your Lordship? As far as I can see the statements I made to Mr. McKeown with regard to what Hiram Walker might or might not be prepared to do are absolutely irrelevant as far as I can see.

Mr. McKeown: I do not think that is a matter which comes within your rights as a witness, at this stage in any event.

By Mr. McKeown (continuing):

30 Q.—On the matter of \$2,000,000 cash; that would have meant that that sum would have been used to buy as many shares as could be purchased with that sum of money—I mean, shares of Alcohol—on the basis of \$10.74 each?

A.—No.

Q.—I suggest to you that was the way you put it to Mr. Montgomery?

A.—What I said was that we would do it on a fair basis, having regard to an Audited Statement, and having regard to the whole situation. I may have said that on the basis of this Statement that would mean we would buy as many of the shares of Industrial Alcohol at that price as \$2,000,000 would buy; but I did not say that we would do it at that price.

40 Q.—It was subject to a check up?

A.—All subject to a check up, and the valuation to be agreed upon.

Q.—But Mr. Montgomery never invented those figures which were used at that time. You used them. Mr. Montgomery did not make you any proposition?

A.—No.

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Q.—This \$2,000,000 was not a sum that arose in his mind, was it?

A.—Not until I put it there, I imagine.

Q.—On the contrary, it was you who suggested that amount—at whatever stage of the conversation it was?

10 A.—I think, as a matter of fact, this Statement was not shown to Mr. Montgomery. I gave Mr. Montgomery no figures whatsoever until he asked me at the end was there much difference between the valuation shown in this Statement of the shares of Industrial Alcohol and the shares of Hiram Walker-Gooderham and Worts. He had not seen this Statement. I carefully left it at the hotel when I went down, and the only possible chance he would have had to get any figure whatsoever was near the end, when he asked me. I regarded it as a confidential sort of question. He asked me if I had objection to telling him whether there was much difference in the value of the shares.

20 Q.—You had made this proposal involving the \$2,000,000 before that?

A.—Yes, I think so. That we would buy \$2,000,000 worth of shares at whatever price we would agree upon.

Q.—And the price representing the value of the Alcohol shares on the Gordon Statement, which you knew the Estate controlled, was \$10.74?

A.—Yes: but I did not regard that as being a basis. As I say, that left out one very essential qualification, of earnings.

30 Q.—For both Companies?

A.—For both Companies.

Q.—Would you be surprised to learn that Mr. Montgomery was left under the impression, from what you said to him at that interview, that your proposal was to exchange the remainder of the shares of the Estate, and the shares of the shareholders at large, share for share with Walker stock?

40 A.—No, I do not think I would. I think I probably did say something to the effect that it might be on a share for share basis, or whatever was regarded as fair; and it would be so settled to have the Auditors check up.

Q.—This interview with Mr. Montgomery was on the morning of Tuesday, January 21st?

A.—If our days and dates are right all the way through, it was that day.

Q.—Did you endeavor to make an appointment at my office for later in the day?

A.—Mr. Montgomery had suggested that you were the gentle-

FRANCIS J. LASH (for Plaintiffs), Examination-in-Chief.

man who was in charge of the case, and that I would have to see you if anything was to be done. He very kindly offered to make the appointment for me, and he did so.

Q.—In your presence?

A.—In my presence.

10 Q.—Do you remember for what time the appointment was made? Because the events of that day are important in this case, even as to the hours.

A.—After we had talked for some time in Mr. Montgomery's office, he was kind enough to take me out to lunch. As a matter of fact, that was the only profit we got out of it.

I know he telephoned, after lunch. I do not believe he telephoned before lunch. I think it was after lunch he telephoned your office, and, if my recollection is right, you were tied up.

20 I went away, and came back to Mr. Montgomery's office again, and he telephoned again and found you were available, and we went downstairs to your office.

Q.—That would be between four and five o'clock that afternoon?

A.—Was it as late as that? Yes, I think it was. I think I went back to Mr. Montgomery's office at four o'clock. That sounds familiar.

Q.—Do you remember Mr. Montgomery came to my office with you?

A.—Yes.

Q.—And remained with us for some little time?

30 A.—Yes.

Q.—Did you not then and there, in my office, and in the presence of Mr. Montgomery, re-state this proposal, in the sense that you were either prepared to offer, or would recommend to your associates of offer, \$2,000,000 in cash for the purchase of shares upon the basis of this \$2 difference, and the exchange of the remainder of the outstanding stock of the Alcohol Company, including the shares of the Estate?

40 A.—I did not talk about those figures, and I do not think I mentioned those figures to you at all that day. I may be wrong in that, but I do not think I did?

Q.—You had been informed I was in charge of the affairs of Lady Davis, and you suggest that you never mentioned the \$2,000,000, or the other figures, in my office in the presence of Mr. Montgomery?

A.—I mentioned the \$2,000,000. I made the same suggestion to you as I had made to Mr. Montgomery—precisely the same suggestion. I do not think I mentioned there was a \$2.00 difference

FRANCIS J. LASH (for Plaintiffs), Examination-in-Chief.

shown on the Clarkson Gordon and Dilworth Balance Sheet between the shares of Hiram Walker-Gooderham and Worts and the shares of Industrial Alcohol.

Q.—Do you mean to say you left me under any impression that there was a favorable balance on that Statement on the Alcohol shares?

A.—No. I said they were worth less on this Statement.

10 Q.—Do you remember how long you were in my office that afternoon?

A.—Until pretty late. I think it must have been getting on pretty nearly to seven o'clock.

Q.—Would you say eight o'clock?

A.—I would be surprised to find it was as late as that. Your entertainment was very nice, of course.

Q.—And, I assure you I enjoyed your visit very much. Were you not there for a matter of three or four hours?

20 A.—I should think at least three hours.

Q.—And during that time we discussed the whole situation generally, and those subjects to which you have referred specially?

A.—Yes.

Q.—Was the upshot of that interview that I refused, on behalf of Lady Davis, to consider the proposal?

A.—I certainly got that impression.

Q.—Had you see Lord Shaughnessy since breakfast time?

A.—No.

Q.—Did you see him again that evening?

30 A.—No.

Q.—Your associates, Messrs. Hume and Morrow, remained in Montreal that day?

A.—I do not think so. I think Mr. Morrow remained, but my recollection is Mr. Hume went back to Toronto.

Q.—On the night train?

A.—That same day. With me, that night. Mr. Morrow stayed over on other matters.

40 Q.—Do you say you did not see Lord Shaughnessy, or communicate with him, after your interview with Mr. Montgomery and myself?

A.—I have no recollection of communicating with him after that.

Q.—What about your associates?

A.—I am perfectly sure neither Mr. Morrow nor Mr. Hume communicated with him that night.

Q.—Or, during the afternoon?

FRANCIS J. LASH (for Plaintiffs), Examination-in-Chief.

A.—Not to my knowledge; and I would be awfully surprised to find they had.

Q.—But, you were not in their company?

A.—No, I was not; but they told me when I went back that they had not.

10 Q.—I intimated to you, did I not, that an Application would likely be made for an Injunction to prevent the election of Directors at the meeting the next day?

A.—You did.

Q.—Will you tell His Lordship if I had said “Yes” to your suggestion whether it would not have involved the passing of the control of Industrial Alcohol from the Estate Sir Mortimer Davis to the interests of your Corporation?

Mr. Campbell: I do not know that you had the right to decide the matter.

20

Mr. McKeown: And, I did not decide it. Let us see what Mr. Lash’s interpretation was of it.

Witness: I had no knowledge as to what control you had of the situation, or whether you were in a capacity to deal. I knew you were advising Lady Davis, but I had no knowledge as to what influence or power you exercised over the control of the Estate or the control of the shares of Industrial Alcohol.

30 By Mr. McKeown (continuing):

Q.—I did not mean in that connection. I meant, supplemented, of course, by the other interests in control agreeing to the same thing.

Witness: You mean if a deal went through?

Counsel: Yes.

40

A.—If a deal had gone through, the Estate would have sold out.

Q.—If a deal had gone through on your proposal the Estate would have sold out its control?

A.—Yes, absolutely. It was an offer to purchase. It would not only have been a deal to sell; the Estate would have sold out its entire interests.

Q.—Exchanging it for shares of the Walker Corporation?

A.—Yes.

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Q.—To what would the shares which passed on the cash basis have amounted, approximately?

A.—I have never figured it out.

Q.—Let us take it in round figures at \$10.00; \$2,000,000 would represent 200,000 shares?

A.—That is pretty good mathematics, I think.

10 Q.—It is good enough for the purpose of this record. Therefore, for a \$2,000,000 purchase of their assets this Estate would have lost control of Industrial Alcohol?

A.—No.

Q.—Why not?

A.—I do not know now the number of shares of Industrial Alcohol they would have had. They would have got shares of another Company in exchange for the shares of the present Company, and they would have received cash, in addition, to the amount of \$2,000,000 on the suggestion.

20 Q.—Cash in addition to the \$2,000,000?

A.—Cash in addition of \$2,000,000, over and above the additional shares that would have been exchanged.

Q.—You do not mean to suggest you were going to exchange the entire holdings of the Estate share for share, and give them \$2,000,000 in cash to boot?

A.—No.

Q.—The \$2,000,000 you were going to give was to buy \$2,000,000 of shares? Approximately 200,000 shares at \$10.00 a share?

30 A.—I had no idea of the number of shares which would have been purchased, because no price basis had been settled or agreed upon.

Q.—Carrying it out on the basis of \$10.00, \$2,000,000 would have required the Estate to have given over absolutely to your group 200,000 shares of Alcohol?

A.—If we had bought 200,000 shares of Alcohol at \$10.00 a share, we would have paid \$2,000,000 for them, and got the shares.

40 Q.—And the Estate would have been left as a minority shareholder of Hiram Walker-Gooderham & Worts, against the other interests in control of that Company?

A.—A very fortunate position for it.

Q.—That is an open question. We are clear, however, on this point: that your proposal, in any form in which you submitted it, required the Estate to give up control?

A.—It required the Estate, if it acquiesced in our proposal, to sell all its shares to Hiram Walker-Gooderham & Worts, Limited.

FRANCIS J. LASH (*for Plaintiffs*), *Examination-in-Chief*.

Q.—Would the Estate have any control of Hiram Walker-Gooderham & Worts after such a transaction as that?

A.—Certainly not.

Q.—You told me that as far as you know you never even went back to Lord Shaughnessy to report?

A.—I am quite certain I did not.

Q.—And nobody else reported on your behalf?

10 A.—As I told you during our interview in the afternoon, when it was suggested either by you or by myself (I have forgotten which) that I might see Lord Shaughnessy, I said that there was a Biblical reference to the role of peacemaker, and that I did not intend to step into it, and that was particularly the reason I did not want to go back to see Lord Shaughnessy.

Q.—No one had invited you to undertake this role?

A.—No.

Q.—Certainly not Lady Davis, or her Counsel?

20 A.—Unless it was my suggestion. I do not know whether it was yours or mine. We discussed whether it was worth while my seeing Lord Shaughnessy again that afternoon, and I then made that statement.

Q.—But this was at a stage when the Suit to remove Lord Shaughnessy as Executor of the Estate had already been instituted and served, and Proceedings by way of Injunction to stop the Alcohol meeting and the merger were imminent?

30 A.—Yes. The point I had in mind was not the question of messing into this lawsuit. The situation I was interested in was the situation of Industrial Alcohol, and any suggestion I made was merely with reference to getting by and keeping out this whale of a row at the meeting on the following day.

Q.—Then, you were a sort of philanthropist in the interests of the shareholders of Alcohol?

A.—I think it would have turned out that way.

40 Q.—From your viewpoint was this whole proposal something essentially in the interests of Alcohol, or was it anything that you thought might be at least of equal interest to the shareholders of Hiram Walker-Gooderham & Worts?

A.—Any amalgamation or any merger with which I would have anything to do would at least have to carry my judgment or my opinion that it would be fair to the shareholders of both parties.

Q.—In the meantime you had no mandate from anyone in Alcohol to safeguard their interests?

A.—No. I was not representing the Alcohol Company in any way.

FRANCIS J. LASH (for Plaintiffs), Examination-in-Chief.

Q.—And, I did not think you were. The shares of which we have been speaking as those which you wanted to get control of were the “ A ” shares—the voting shares—of Alcohol?

A.—Oh, no.

Q.—Were you proposing that they might deliver to you the non-voting “ B ” stock for this \$2,000,000?

10 A.—We were to take all the shares, or nothing. We were not buying \$2,000,000 worth of stock. It was a simultaneous transaction. If we were going into any such thing I would not have been prepared to recommend having Hiram Walker-Gooderham & Worts buy any minority of the shares. It would have had to be the whole, or nothing, of the shares belonging to the Estate.

Q.—But, speaking of this \$2,000,000 proposition: your proposal was in no sense—

20 A.—(Interrupting) I did not care which we got, as long as we got all the shares. You could allocate the \$2,000,000 to any shares you liked.

Q.—But you were not trying to force the merger through; you were going to make an offer to the others?

A.—The offer to the others was that the Estate would not be in the unenviable position of having sold itself out and leaving the other shareholders under the control of a foreign concern.

Q.—And, as far as the Estate was concerned, unless it consented to put the whole of its holdings (which you knew represented the majority of the stock) into your proposal, then you did not want any part of it?

30 A.—Unless we got all, we did not want any.

Q.—You knew the Estate held the majority of the voting shares?

A.—I do not know.

Q.—Do you mean to tell me you did not know the Estate Sir Mortimer Davis, through the Incorporated Company, held the majority of the outstanding voting stock of Alcohol?

A.—Yes, I knew that.

Q.—And, I put it to you that unless you got that which the Estate held—in other words, the majority—you did not want any part of it?

40 A.—I will go further than that: unless we got the whole darn thing, we did not want any part of it.

Q.—But you might have wound up, under your own formula, with some of the shareholders refusing to exchange the stock?

A.—We would take a chance on that. They would be quite able to judge for themselves on that situation.

Q.—Following January 21st, you know an Injunction was ap-

FRANCIS J. LASH (for Plaintiffs), Examination-in-Chief.

plied for to stop the merger, and an Injunction was issued to stop the Meeting of the Alcohol Company?

A.—I understand that.

Q.—Since then what have Hiram Walker-Gooderham & Worts, and their Directors, and those active in their interests, been doing in connection with the subject?

A.—Nothing whatever.

10 Q.—You told me that at one of your earlier interviews with Lord Shaughnessy—I think possibly one of the October interviews—he wanted \$40.00 a share for the stock?

A.—No, I do not think I told you that. I told you he made some more or less elaborate calculations, talking about comparisons with other Companies, and the prices at which they were selling, and he mentioned \$40.00 as being a price that he suggested represented the value of the Industrial Alcohol shares. As I say, I thought it was sales talk.

20 Q.—Those are the same shares which you were discussing acquiring in Mr. Montgomery's office and in my office on the day before the Injunction was taken?

A.—I assumed the Estate had not disposed of any, or acquired others. If they were still the Estate shares, they were the same shares.

Q.—And the shares which you were suggesting should be exchanged share for share with the Hiram Walker-Gooderham & Worts shares, subject to this cash?

30 A.—If they were still the same shares. I had not searched the title to them.

Q.—To come back once more to the after-breakfast gathering at Lord Shaughnessy's residence: you told us, I think, there was a suggestion from some quarter that you should see Mr. Montgomery?

A.—I suggested it.

Q.—And at that time Lord Shaughnessy knew of those figures of Colonel Gordon?

A.—Yes.

Q.—He knew you were going down to see Mr. Montgomery who was representing Lady Davis?

40 A.—No. I suggested that I might go and do that. I went entirely on my own. I was particularly careful not to make out that I was going under any arrangement with Lord Shaughnessy.

Q.—I understand that, but Lord Shaughnessy was cognizant of your intention to go?

A.—He could not be sure. I had said I thought I probably would go. He said he did not know whether it would be advisable. I said it was a matter I thought I had to deal with on my own so far as

FRANCIS J. LASH (for Plaintiffs), Cross-Examination.

Hiram Walker-Gooderham & Worts was concerned; that I was not concerned in his private quarrel with Lady Davis, but if I felt like going down I would do it, if I felt it was in the interests of Hiram Walker-Gooderham & Worts.

10 Q.—He never suggested to you that any proposal to exchange the stock on the basis of the Gordon Statement would be ridiculous and ludicrous?

A.—He made no statement at all of any kind.

Q.—And, as far as you know, no one ever reported back to Lord Shaughnessy as to the result of your interview with Mr. Montgomery or myself?

A.—I do not think so.

Q.—Do you remember where you spent that evening?

A.—I was with Mr. Hume and Mr. Morrow.

Q.—Where?

A.—At the hotel.

20 Q.—And you have no recollection that you, or they, or any of you, communicated with Lord Shaughnessy?

A.—I am perfectly certain no one communicated with him that night. I think—though I am not positive as to this—that Mr. Morrow told me after he had got back from Montreal that he had called up Lord Shaughnessy the following day—that was the day of the Meeting. I think it was in the afternoon; and merely said to him—of course this is hearsay. I think I remember what he said. Did not Lord Shaughnessy make a statement on that day? If so, I think Mr. Morrow said it was a pretty good statement, and told Lord
30 Shaughnessy that.

Cross-examined by Mr. Holden, K.C., Counsel for Defendants:

Q.—Mr. Lash, early in your deposition you intimated, as I understood you, that your interest in the question of some kind of amalgamation arose from the general statement or was influenced by the general situation. Would you tell the Court what you had in mind in that connection?

40 A.—Well, the general situation was that Canadian Industrial Alcohol was carrying on as a separate organization; Hiram Walker and Gooderham and Worts were carrying on as a separate organization, and I had felt it would be very much to the advantage of both companies, that big savings could be effected by them in savings of overhead, savings as regards shipments. Canadian Industrial Alcohol insofar as its industrial alcohol was concerned was well suited to work in with Gooderham and Worts, and shipment could be made

FRANCIS J. LASH (for Plaintiffs), Re-Examination.

from the cheapest places and the savings in overhead would be enormous and greatly to the benefit of both companies.

Re-examined by Mr. McKeown, K.C., of Counsel for Plaintiffs:

10 Q.—Is it not true that any competitive concern in the same industry can be merged, with the benefits which you have indicated, savings, overhead, shipments and all such matters?

A.—I don't know. That is an economic question that perhaps I am not qualified to answer. I would rather deal with a specific instance.

Q.—I put it to you that your prime move in this whole thing was to get possession of the known large stocks of Bourbon whiskey and of American rye which Canadian Industrial Alcohol did have and you did not have?

A.—No.

20 Q.—Was that not a consideration?

A.—The consideration was the putting together of the two concerns' stocks of whiskey on hand, which would naturally go together, but I would not say for one moment that that was the moving consideration.

Q.—Is it not true you know that at the time you were down here last fall Canadian Industrial Alcohol had enormous quantities of aged stocks of American rye and Bourbon whiskey, which you people did not have?

30 A.—No, sir, we did not. They had it. How could we have it?

Q.—You did not have it?

A.—We did not have their stock, certainly not.

Q.—I am not asking whether you had their stock or whether they had your stock. I am asking whether they did not have a large stock of American rye and Bourbon whiskey and you did not have a large stock of American rye and Bourbon whiskey.

A.—Did they have a large stock of American rye and Bourbon whiskey?

Q.—I am putting it to you they had it and you did not have it.

40 A.—I am glad to get the information.

Q.—Did you have a large stock of American rye and Bourbon whiskey carrying the government stamp?

A.—I think that goes back to my original objection.

Q.—If you had paid the two million dollars to Sir Mortimer Davis Incorporated and exchanged shares of the Canadian Industrial Alcohol for shares of Hiram Walker and Gooderham and Worts,

FRANCIS J. LASH (for Plaintiffs), Re-Examination.

would the Estate of Sir Mortimer Davis or the Company have kept any interest in the Company?

A.—If I understand you I think the answer is this. I think the outstanding stock held by the Sir Mortimer Davis Estate either through the Incorporated Company or otherwise was approximately 51 per cent of the outstanding shares of Canadian Industrial Alcohol.

10 If the suggestion which I have made were carried through the result would have been that \$2,000,000 worth of the Estate shares would have been purchased for cash at a certain price per share; the balance of their shares would have been transferred to Hiram Walker, Gooderham and Worts and in exchange the Estate would have received shares of Hiram Walker and Gooderham and Worts, so depending on the basis of the exchange of Canadian Industrial Alcohol for shares of Walkers, the Estate would have held Walkers shares in place of Canadian Industrial Alcohol to a number varying on the basis of the exchange. If it were five for Canadian Industrial
20 Alcohol it would have been one figure; if it had been share for share basis it would have been another figure.

Q.—In other words, would Hiram Walker have been in the control of both companies?

A.—Absolutely, because Hiram Walker were the owners of the shares of the subsidiary company. Our consideration therefore involved our owning all the shares of Canadian Industrial Alcohol.

By the Court:

30 Q.—Would the Estate Davis have owned some, according to the valuation?

A.—They would have owned some, but a higher number, according to the valuation.

Q.—Who are the directors of Hiram Walker?

A.—W. I. Hume, H. C. Hatch, F. E. Morrow, H. F. Merriot, Harold Mara, Mr. Rainer, E. G. Gooderham, Mr. Wellington Hay, Mr. Duncan McLeod and myself, all resident in this country except Mr. McLeod, who is a resident of Scotland.

40 By the Court:

Q.—In a general way do all these men own stock in the company in their own name or their own right, or as trustees for somebody else?

A.—They are all owning it in their own right.

Q.—I suppose they own a considerable block of stock of the company?

FRANCIS J. LASH (for Plaintiffs), Re-Examination.

A.—I don't know what the figure would show.

Q.—How many of them are experts in alcohol?

A.—Mr. Hume is President and General Manager of the Company; Mr. Hatch has practical experience; Mr. Rainer has also practical experience in it; Duncan McLeod, I think, is the owner of Bulloch, Lade, until they turned it over to the distilling company, and the rest of us are just us.

10

By Mr. McKeown:

Q.—These three experienced individuals which you have indicated to His Lordship—Mr. Hume is the same W. J. Hume who was formerly Vice-President and a Director of Canadian Industrial Alcohol?

A.—Yes.

Q.—Mr. H. C. Hatch was also at the same time General Sales
20 Manager of Canadian Industrial Alcohol?

A.—I don't know what his position was.

Q.—He was there?

A.—I know he had something to do.

Q.—And this Mr. Rainer whom you have also indicated as another alcohol man, is another party formerly connected with Canadian Industrial Alcohol?

A.—Yes, I understand so.

Q.—And those men left Canadian Industrial Alcohol Company during the lifetime of Sir Mortimer Davis, under strained relations
30 with Sir Mortimer Davis?

A.—I imagine so; I don't know about that.

Q.—Do you know that by rumor or repute?

A.—I have no knowledge.

Q.—Never heard of it till this minute?

A.—I heard Mr. Hatch had some disagreement with Sir Mortimer Davis. I have heard nothing of the others.

Q.—Do you know that this individual, McLeod, with whose name you have associated Bulloch, Lade, is another person who had strained relations with Sir Mortimer Davis during his lifetime?

40

A.—No, I have never heard of it.

And further deponent saith not.

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

On this twenty-fifth day of April, in the year of our Lord one thousand nine hundred and thirty, personally came and appeared

WILLIAM JAMES LORD SHAUGHNESSY

10 residing at No. 3547 Peel Street, in the City and District of Montreal, aged 46 years, a witness produced and examined on behalf of the plaintiffs, who, being duly sworn, deposes as follows:

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

Q.—You received a subpoena to attend at this trial?

A.—Yes.

Q.—Have you it with you?

A.—No, I have not it with me.

20 Q.—Have you with you the original document which was signed under date September 17th, 1924, between Sir Mortimer Davis, yourself, Sir Mortimer Davis, Incorporated, and Messrs. Herbert M. Marler and Herbert B. McLean?

A.—Yes, I have it.

Q.—Will you exhibit it to the Court, and in particular the form of the execution of same?

A.—Yes.

(Witness exhibits the document in question)

30 His Lordship: There is a filed copy in the Record?

Mr. Holden: Yes, your Lordship, it is filed as Plaintiffs' Exhibit No. 13.

His Lordship: It is a Notarial document?

Mr. McKeown: No, your Lordship, it is not. That is just the point.

40 By Mr. McKeown (continuing):

Q.—Are you prepared to concede that Plaintiffs' Exhibit No. 13 is an exact copy of the original document which you now exhibit to the Court, as to its substance, form and mode of execution?

A.—I think it is, yes. I have not verified that.

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

Mr. Holden: I have verified it.

Witness: Then, I am prepared to say it is.

By Mr. McKeown (continuing):

10 Q.—Obviously the document now before you is not executed in notarial form en minute?

A.—No.

Q.—Or, en brevet?

A.—No.

Q.—From the time that document was executed has it ever been registered in any manner under the Registration Laws of the Province of Quebec?

A.—Not to my knowledge.

Q.—Do you concede that it has not been registered?

20 A.—I would not like to say that. I do not believe it has been. There is no record of it on the document itself, or on any of the originals, and to my knowledge it has not been. Mr. Marler might have registered it without my knowing anything about it, although I do not think he did.

Q.—Have you with you the serial notes and share certificates having to do with the contract Plaintiffs' Exhibit P-13?

A.—Yes.

Q.—Will you please exhibit them to the Court?

A.—Yes.

30 (Witness exhibits the document in question)

40 Q.—You exhibit, first, the serial note of Sir Mortimer Davis, Incorporated, covering \$196,500 aggregate; and with reference to numbers, 11,08211278½; which purports to be dated October 1st, 1919, to be signed by yourself, as President, and by A. M. Reaper, as Secretary: whereby Sir Mortimer Davis Incorporated, promised to pay to Lord Shaughnessy or registered assigns, on the first of October, 1939, or on such earlier date as the principal thereof becomes payable in accordance with the provisions hereinabove recited, on presentation and surrender of this note, the sum of \$196,500 in lawful currency of the Dominion of Canada, at the office of the Company in the City of Montreal, and to pay interest thereon from the first day of October, 1919, at the rate of Six Per cent per annum, at the said place, in like currency, on the 31st March and the 30th September in each year until the maturity of the note?

A.—Yes.

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

Q.—Will you verify, if you please, that the form of serial note which you have just exhibited, and the particulars of which have been incorporated in your deposition, conforms in all particulars to the specimen of the same serial notes already filed in this Record as Exhibit P-79?

A.—Yes, they appear to be exactly alike.

10 Mr. Holden: Exhibit P-79 being in blank?

Witness: Yes, Exhibit P-79 being in blank, and marked "Specimen."

By Mr. McKeown (continuing):

Q.—In fact, this note Exhibit P-79 was removed from the back of the book of note forms?

20 A.—Precisely.

Q.—You notice by the serial note which you have exhibited that the same, by its terms, purports to be payable to Lord Shaughnessy or to the registered assigns?

A.—Yes.

Q.—And under the terms of the By-law creating those notes, the particulars of which are incorporated in the upper part of the note now before you, registration of the notes is provided for?

A.—Yes.

30 Q.—Therefore, this particular note now before you, which you exhibit, is not payable to bearer under anything in its terms which you can indicate?

A.—No. As far as I can see it is payable to the person named in the body of the note, or registered assigns.

Q.—The serial note which you have exhibited, and to which we have been referring, while dated October 1st, 1919, was not delivered to you as of that date?

A.—It could not have been. No, it was not delivered to me then.

40 Q.—I think it came out in the evidence of Mr. Reaper that this particular piece of paper, being in the form of a serial note, was only received by you some time in October, 1929, after your return from the west?

A.—By me, yes. It was received from the Trustees by Mr. Reaper on my behalf before that date.

Q.—But, it did not come into your personal possession until after your return from the West, some time about October 4th?

A.—About October 5th. After October 5th.

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

Q.—In the meantime, as explained by Mr. Reaper, the notes which this purports to replace, had been obtained by him from Mr. McLean, and used as a basis for the issue of the note which you now exhibit?

A.—Yes.

10 Q.—Evidently the date October 1st, 1919, which appears on this note, is part of the original lithographed form used since the series commenced?

A.—It is, yes.

Q.—And, when the notes are cancelled, or turned in for transfer, a new note similar to the original note is used, with a variation of the serial number and the amount?

A.—Yes.

20 Q.—Looking at the stock certificate which you exhibit, I note the same is stock certificate No. 029, of Sir Mortimer Davis Incorporated: certifying that Lord Shaughnessy is the owner of 2400 fully paid and non-assessable shares of the par value of One Hundred Dollars each in the capital stock of Sir Mortimer Davis, Incorporated, transferable only on the books of the Company (in person or by attorney) in the manner and upon the conditions and subject to the restrictions expressed in the By-laws of the said Company printed on the back hereof, upon surrender of this certificate. The certificate is dated 20th September, 1929, and is signed by yourself, as President, and by Mr. Reaper, as Secretary.

A.—Yes.

30 Q.—On the back of the certificate are reproduced By-laws 29, 30, 31, and 32; followed by a form of transfer which is in blank. Is that a fair recital?

A.—Yes. There is also a form of acceptance.

Q.—The form of transfer also included a form of acceptance?

A.—Yes.

Q.—Will you be good enough to produce a specimen of the form of certificate to which we have just been referring, to be filed as Plaintiffs' Exhibit P-217?

A.—Yes.

40 Q.—Will you note from the certificate which you exhibit that the shares represented by the certificate are not transferable to bearer, but are transferable only upon the books of the Company?

A.—Transferable only upon the books of the Company.

Q.—This certificate which you exhibit, covering 2400 shares, is dated September 30th, 1929, and Mr. Reaper has told us in his evidence of the circumstances connected with its issue, in which you concur?

A.—Yes.

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

Q.—In particular, this certificate now exhibited, as to the 2400 shares therein referred to, includes the 2375 shares of the stock of Sir Mortimer Davis, Incorporated, mentioned in the agreement Exhibit P-13?

A.—Yes.

Q.—That is the agreement of September 17th, 1924?

A.—Yes.

10 Q.—And also includes a further 25 shares forming part of the shares formerly owned by the Honorable H. M. Marler?

A.—Yes.

Q.—And, which were dealt with in the manner explained by Mr. Reaper in his evidence?

A.—Yes.

Q.—I take it, as to the 2375 shares included here, that the same were prior to September 18th, 1929, the shares of the same number registered in the name of H. M. Marler and H. B. McLean in trust, or as Trustees?

20 A.—Trustees, yes.

Q.—And, the certificate which you now exhibit, for 2400 shares, in so far as concerns 2375 of those shares is a certificate issued in replacement of a certificate or certificates surrendered by Mr. McLean to Mr. Reaper for 2375 shares, which surrendered certificate was in similar form to the certificate which you now exhibit and of which a specimen is to be produced?

A.—Yes.

30 Q.—With the exception, of course, that it was for 2375 shares, and was made originally in favor of H. M. Marler and H. B. McLean, Trustees, and bore a different date?

A.—Yes.

Q.—And, in particular, those 2375 shares were not transferable otherwise than upon the books of the Company?

A.—I think they had the same conditions attached to them as all the shares, as mentioned on the certificate.

Q.—They were not bearer shares in any sense—they were not share warrants?

40 A.—No, I would not take that certificate to be a bearer certificate at all.

Q.—Nor anything in the form of a share warrant, which is transferable simply by delivery?

A.—No.

Q.—At any time since the Incorporation of Sir Mortimer Davis, Incorporated, and up to the present time have those serial notes or the shares of the Corporation been listed or dealt in upon any recog-

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

nized Stock Exchange by means of scrip endorsed in blank transferable by delivery?

A.—I think not. I am prepared to say they have not been. They have never been listed, to my knowledge.

Q.—And, they have never been dealt in by scrip endorsed in blank and transferable by delivery?

10 A.—I can only answer from the date of my connection with Sir Mortimer Davis, Incorporated, in 1924, but I can reasonably say I have knowledge of the fact they were not prior to that time.

Q.—At least since September 17th, 1924, neither the scrip or the shares have been listed or dealt in upon any recognized Stock Exchange by means of scrip endorsed in blank transferrable upon delivery?

A.—No.

Q.—You were asked by your subpoena to bring with you your Income Tax Returns. Have you brought them?

20 A.—I brought such as I could find. I could not find them back very far. I have copies back to, I think, 1924, or 1925, but I have not much beyond that.

Mr. Holden: I submit these Income Tax Returns have no relevancy to the issues in this Action, and therefore respectively object to any evidence being made in regard to them.

Witness: It is better than I thought. I find I have them from 1921 to 1928.

30 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

on this April 25th, 1930,

WILLIAM JAMES, LORD SHAUGHNESSY

40 reappeared and continued his evidence as follows: (In Examination in Chief).

By Mr. McKeown, K.C.:

Q.—You gave your occupation, Lord Shaughnessy, as an Advocate?

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

A.—Yes.

Q.—In what year were you admitted to the Bar, do you remember?

A.—In the year 1910.

Q.—You practised for some years following in association with the firm of Meredith, Holden and Company?

10 A.—Meredith Holden and Company, always, yes.

Q.—Will you be good enough to give His Lordship the amount of your professional earnings for the years 1921, 1922, 1923 and 1924, while you practised as an Advocate?

Mr. Holden, K.C.: This is under reserve of our objection as to the relevancy of this evidence.

20 The Witness: For the year 1921, My Lord, the Income Tax Return which I made in that year indicates I received from professional fees, cash receipts, the sum of \$8,994.59.

By Mr. McKeown, K.C.:

Q.—1922?

A.—For the year 1922 the Income Tax Report indicates \$8,249.41.

Q.—For 1923?

30 A.—For the year 1923, the Income Tax Return indicates the sum of \$14,447.09. I left the firm of Meredith and Company on September 30th, 1924. For that year, which would be a year less one-quarter, the Income Tax Return indicates the amount received \$12,476.16. Carrying that out for the balance of the year, adding the extra quarter at the same rate, it would work out \$16,434.00.

Q.—These figures which you have just given to the Court are confined exclusively to your earnings, professional earnings, as an Advocate?

A.—Yes.

Q.—Having no reference whatever to your other sources of income during the same period?

40 A.—None. You will notice quite a change between 1922 and 1923. 1922 was \$8,249.41; 1923, was \$14,447.09.

Q.—Was there any change of the basis of your participation in the firm between those two years?

A.—Yes. I think that between those periods I was admitted as a full partner, participating as a full partner in the profits of the firm. Previous to that I had been on salary.

Q.—Do you remember what the salary was?

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

A.—Well, it varied. It started out, I think, at \$100 a month and it improved as time went on.

Q.—Do you remember how it was converted into another form of remuneration?

A.—It was \$8,000 a year.

Q.—Was it on the basis of a straight salary and interest?

10 A.—Straight salary in those days, without any particular interest.

Q.—From 1923, while you remained there?

A.—I participated in the shares of the firm and I got a proportion of the profits attributable to those shares.

20 Q.—Will you examine the Income Tax Returns you have in Court, which I think extend from 1921 to 1928, and say to His Lordship whether, during the period subsequent to the 17th of September, 1924, you reported in your Income Tax Report as income any part of the sum which ultimately amounted to \$217,000 in connection with a share dividend of October 1st, 1924, or of the serial notes amounting to \$196,500 or of 2375 shares of Sir Mortimer Davis Incorporated, having to do with the contract of the 17th of September, 1924, Plaintiffs' Exhibit Number 13.

Mr. Holden, K.C.: Apart from the fact that we contend it was not a share dividend, the question refers to a period of before 1928, while the contract he refers to did not take effect until 1929. I submit the question is illegal.

30 The Court: I fail to see what the point is.

Mr. McKeown, K.C.: If these various forms of remuneration were in the form of earnings they were subject to Income Tax. If it was a donation it did not come under such responsibility. I am, just for the moment, covering the fact that during those years they were not reported as earnings.

Mr. Holden, K.C.: My respectful submission is that that is argument and the question is not appropriate or legal.

40 Mr. McKeown, K.C.: I want to establish the fact on the record here; in point of fact during those years Lord Shaughnessy did not report any—

The Witness: I object to any suggestion that I did not make a proper return of Income Tax. I would like to answer the question. My answer would be that I was not entitled to any control of the \$217,000 worth of shares until the fulfilment of the contract in 1929.

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

By Mr. McKeown, K.C.:

Q.—What you have said to the effect that no part of these various items, the cash representing repurchasing of the shares under the redistribution of shares, that \$196,500 of serial notes or 2375 shares of Sir Mortimer Davis were reported by you as earnings, applies to all of the years 1924, 1925, 1926, 1927 and 1928, in the
10 matter of your Income Tax Returns?

A.—I did not make any return upon those things.

Q.—In those years?

A.—In those years.

Q.—You have, in your view, at least, in the month of September last, 1929, received the equivalent of about \$217,000 in cash, plus serial notes of the par value of \$196,500, plus these shares, 2375 in
number?

A.—Yes.

Q.—Do you propose to report those items in your Income Tax
20 Report for 1929?

Mr. Holden, K.C.: I object as irrelevant. The witness should not be asked?

Mr. McKeown, K.C.: I submit that is a perfectly proper question. If that is a gift it is not subject to Income Tax and if it is remuneration it is, and we think we are entitled to ask this witness at this stage, seeing his Income Tax will be due in a few hours—

30 Mr. Holden, K.C.: It is not what this witness or any other witness intends to do that constitutes a legal construction, governing any rights on the subject, and it is an irrelevant question.

The Court: He can decide what may be a donation for Income Tax purposes; maybe something else.

Mr. McKeown, K.C.: I think surely Income Tax Return, as a matter of obligation, must be filed by midnight of the 30th of April.
40 For all I know Lord Shaughnessy may have anticipated matters and prepared his Income Tax, but I submit he may be like the rest of us mortals, and put it off as long as possible. As to this objection, I submit this suit involves the question of that donation, of that Deed being either a donation or being something else, because we have alleged that that is a donation and my learned friends have seen fit to join the issue on that. We say it is a donation because it says so by its terms, and we say it is void in either case, first, because it is

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

revokable at will, and second, it is not made in the sacramental form of donations.

10 The Court: Assuming you are technically right, would I be justified in removing the Executors because they have given effect to a Deed, whatever it might be, which was the expression of the untrammelled will of Sir Mortimer Davis?

Mr. McKeown, K.C.: They are not above the law.

The Court: It is not the time to discuss the setting aside of the Deed. I am simply asking whether I can remove the Executors for having obeyed the distinct instructions of Sir Mortimer Davis, without their having been warned there was anything wrong legally.

20 Mr. McKeown, K.C.: All that may be argued by my learned friends, but I am only speaking of the question of concrete law.

The Court: First of all it is a fact which nobody cares to disclose. Then what is a donation for income purposes may be something else for other purposes. I consider Lord Shaughnessy quite justified in not treating that as salary for income tax purposes. Whatever Lord Shaughnessy's answer is would not change my judgment a bit. I don't think we should inquire into the private business of individual, to satisfy what appears to be legitimate curiosity.

30 Mr. McKeown, K.C.: It is nothing as far as we are concerned, except concrete law, without the slightest tinge of curiosity. However, if Your Lordship does not think the question should be answered, I do not think it is pivotal for this case.

The Court: I shall certainly not compel him to answer that question. He may volunteer to answer it.

By Mr. McKeown, K.C.:

40 Q.—I notice the witness does not volunteer the information.

A.—It is under the ruling of the Court. There is no reason why I should.

Mr. McKeown, K.C.: I would enter a respectful exception to the ruling of the Court

By Mr. McKeown, K.C.:

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

Q.—In connection with the self-same matter, you have been served with a suit at the instance of the usufructuary residuary legatees of this Estate, Lady Davis and M. B. Davis, Junior, for restoration to the Estate of 196½ serial notes of a par value of \$196,500, as also of 2375 shares of the Incorporated Company, and to have you condemned to repay to the Incorporated Company this sum, aggregating \$217,000, which you have withdrawn in cash. That
10 is the action—

A.—That is one of the copious proceedings.

Q.—We will identify this one very particularly.

Mr. Holden, K.C.: The Court record speaks for itself.

The Witness: I have been served with such a suit, yes,

By Mr. McKeown, K.C.:

20 Q.—That is in an action instituted in this Court, bearing number F-65140, in which Lady Davis and M. B. Davis, Junior, are Plaintiffs; yourself, Sir Mortimer Davis Incorporated, together with Honourable Mr. Marler and Mr. McLean, are Defendants, and you, Mr. Reaper and Lady Davis, in your quality of Joint Executors of Sir Mortimer Davis Estate, Mis-en-Cause, and Sir Mortimer Davis Incorporated is Garnishee. You remember that proceeding?

A.—Yes.

Q.—And the purport of that proceeding is, as I have suggested
30 to you a moment ago?

A.—Yes.

Q.—Will you produce and file in this case as Exhibit P.-218 a copy of the Writ and Declaration in the suit to which we have just referred, Number F-65140?

A.—Yes. I will file that, but I might say as to the purport of that case, that is an action taken by the Plaintiffs in this case against me, asking that I be condemned to return to the Incorporated Company these different securities.

Q.—And the conclusions are that you be ordered to pay the
40 Incorporated Company \$217,000 in cash and to return the serial notes and the shares to the Estate?

A.—I think you said “the Estate.” The condemnation asked against me by the Plaintiffs is that I return to the Incorporated Company the amount of money.

Q.—Quite so. And you have appeared in that action and have filed a contestation, contesting the action on your own behalf personally?

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

A.—I believe so. My attorneys filed it.

Q.—And that action is still pending?

A.—Still pending. No decision that I know of yet.

Q.—Will you file as an additional Exhibit, P-219, a copy of the defence which you have filed to the action to which we have been referring?

A.—Yes.

10 Q.—That is the defence on your own behalf?

A.—Yes.

Q.—In connection with the same subject, is it not a fact that the residuary usufructuary legatees of the Estate, Lady Davis and M. B. Davis, Junior, have instituted a further suit against you to have you condemned to pay directly to the Incorporated Company the sum of \$234,032.61, being the amounts of loans, with interest, aggregating \$90,317.71, and the further sum of \$143,714.90, being moneys withdrawn by you from the Incorporated Company on the 25th of September last, 1929; the action bearing number A-60334
20 of the records of this Court?

Mr. Holden, K.C.: I do not think I should object to Lord Shaughnessy being asked if he has been sued, but when my learned friend puts a long descriptive passage in his question, I submit the record speaks for itself, that Lord Shaughnessy should not be expected to follow my learned friend's elaborate description of that litigation.

30 The Witness: I have been sued in such an action, but Mr. McKeown, I take exception to the phrase "withdrawn" by me. It was paid to me by the Company.

By Mr. McKeown, K.C.:

Q.—The Plaintiffs take a different view of the same fact.

A.—Precisely. They are entitled to.

Q.—You are defending this action which I have just referred to, the suit for the recovery of the loans and the moneys withdrawn.
40 Will you file a copy of the Writ and Declaration in that suit, A-64334, as Plaintiffs' Exhibit P-220?

A.—Yes.

Q.—And, perhaps, your solicitors would be better pleased with me if I ask you also to file as Exhibit P-221, a copy of the Defence which you have lodged to that suit. In a further suit brought by the residuary usufructuary legatees of the Estate, Lady Davis and M. B. Davis, Junior, you have been sued to have returned to the

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

Estate 25 shares of Sir Mortimer Davis Incorporated stock, part of the shares of that company originally held by Honourable Mr. Marler?

A.—Yes.

Q.—You have also filed a defence to that suit?

A.—Yes.

10 Q.—I understand that the number of that suit is C-62341.

A.—I take that for granted. I don't know.

Q.—Will you be good enough to produce as Exhibit P-222, copy of the Writ of Summons and Declaration in that suit, and the copy of your Defence in the same action, as Exhibit P-223?

A.—Yes.

(No Cross-Examination.)

And further deponent saith not.

20

30

40

WILLIAM P. O'BRIEN (*for Plaintiffs*), *Examination-in-Chief*.

On this 25th day of April, 1930, personally came and appeared

WILLIAM P. O'BRIEN

of the city of Montreal (420 St. Catherine Road, Outremont), Stock
10 Broker, 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.—You are a member of the Stock Exchange firm of O'Brien
and Williams?

A.—Yes, sir.

20 Q.—And have been for how many years?

A.—Eighteen years.

Q.—In active business in Montreal during that time?

A.—Yes.

Q.—One of the members of the firm was the late Murray
Williams, who died during the course of the present trial?

A.—Yes.

Q.—What was the date of his death, do you know?

30 A.—The 10th of April. May I correct that? I think it would be
at 12:30 on the 11th; early Monday morning.

Q.—Just to have it for the purposes of the record, and to explain
why Mr. Williams has not been examined in this case, because he
was under subpoena. Did you know the late Sir Mortimer Davis?

A.—Yes.

Q.—Was your firm at any time retained by him, by Sir Mortimer
Davis, in the capacity of stock brokers?

A.—Yes.

Q.—Had you in that way, over a period of years, any occasion
to be in touch with the securities of Canadian Industrial Alcohol?

40 A.—Yes.

Q.—Do you remember the issue of the "B" stock of Canadian
Industrial Alcohol which was made—I think it came out on the 1st
of March, 1928, non-voting stock, an issue of some 123,000 shares?

A.—Yes, perfectly.

Q.—Did you sell any shares, either the voting shares or the "B"
shares for either the Estate or the Estate Company, Sir Mortimer
Davis Incorporated, following the death of Sir Mortimer Davis?

WILLIAM P. O'BRIEN (for Plaintiffs), Examination-in-Chief.

A.—Yes.

Q.—What shares?

A.—Some of the “B” shares.

Q.—Some of the “B” shares?

A.—Yes.

Q.—Do you remember how many?

A.—We sold 4,200 shares.

10 Q.—Following Sir Mortimer's death?

A.—Yes, in the month of May, 1928.

Q.—Did you sell any “A” stock?

A.—Not to my best recollection.

Q.—We have it in evidence while there were only 123,000 “B” shares outstanding, there was something like over 900,000 shares of the “A” stock issue. As to each class of shares over 50% were held by or for the Estate or the Estate Company. Did you understand that to be the situation?

A.—Yes.

20 Q.—Was your firm, O'Brien and Williams, prepared to consider taking over a block of either “A” or “B” shares from the Estate or the Estate Company?

A.—Yes.

Q.—Following the death of Sir Mortimer?

A.—Yes.

30 Mr. Campbell, K.C.: I object to any evidence as to what the firm of O'Brien and Williams might have been prepared to consider. We are not called upon to question these gentlemen as to what might have been in their innermost thoughts at the time; what they were prepared at the time to consider, in their own minds, I submit is irrelevant.

Mr. McKeown, K.C. : Evidence has been attempted by my learned friends to show there was no market for the “B” stock. We are prepared to show there was and we hope to bring it home to the Defendants in the way of knowledge.

(Question read.)

40 The Witness: Yes. We prepared, at a price. At a price means under the market. We considered taking over a block of “B” stock.

By Mr. McKeown, K.C.:

A.—Yes.

WILLIAM P. O'BRIEN (for Plaintiffs), Examination-in-Chief.

Q.—Under the market?

A.—Yes.

Q.—Do you know whether a proposal in that sense was directed or made to the Executors?

Mr. Campbell, K.C.: Unless the witness in the box made the proposal, my submission is his evidence on that point is inadmissible.
10 He cannot speak from his office records.

The Court: It may have been sent by correspondence. He is speaking from his personal knowledge.

By Mr. McKeown, K.C.:

Q.—What did you do in that connection?

A.—Inasmuch as the conversation would be the proposal, my partner spoke to Lord Shaughnessy.
20

Mr. Campbell, K.C.: That becomes pure hearsay. My learned friend might examine Lord Shaughnessy on that point when the time comes but he cannot surely ask Colonel O'Brien what his partner told him had happened. My objection is it is not the best evidence; it is not admissible.

By Mr. McKeown, K.C.:

Q.—You have referred to your partner, who, I take it, was the late Murray Williams?
30

A.—Yes, Murray Williams.

Q.—Now, what was the extent of the block which you were prepared to take under the market price?

A.—Part or all of the belongings of Sir Mortimer Davis Estate.

Q.—Part or all of the belongings of Sir Mortimer Davis Estate?

A.—Yes.

Q.—Did you understand at that time they amounted to something more than one-half?

A.—We knew it represented control of the "B" stock.
40

Q.—Your firm was prepared to take part or all of the holdings of the "B" stock of the Estate or the Estate Company at a figure under the market?

A.—Yes. We would consider making that purchase at price under the market.

Q.—What was the market at that time, approximately, do you remember?

WILLIAM P. O'BRIEN (*for Plaintiffs*), *Examination-in-Chief*.

A.—I think between 42 and 45, if I remember.

Q.—Speaking of the price as under the market—how many points below the market?

A.—We would want three or four points concession; three to five points concession.

Q.—Did that anticipate simply an option or a firm purchase?

A.—That would have been a firm purchase under the market.

10 Q.—Who had the option whether you would get part or all? Was it your option or their option?

A.—Their option.

Q.—They could have delivered the whole of their holdings of the "B" to your firm at a price three to five points below the market. Is that a fair construction of what you mean?

A.—Yes.

20 Mr. Campbell, K.C.: My submission is it is not legal or relevant evidence.

By Mr. McKeown, K.C.:

Q.—On behalf of your firm, was that proposal then communicated to the Executors?

A.—That was after my conversation with Mr. Williams, and Mr. Williams carried on by conversation; no documents; simply a conversation.

30 Q.—Without having the documents or the dialogue between Mr. Williams and Lord Shaughnessy, are you ready to say, if you please, as to whether or not that communication was really made to Lord Shaughnessy.

The Court: If there was an answer in writing from Lord Shaughnessy.

Mr. Campbell, K.C.: If there is an answer in writing from Lord Shaughnessy, he will produce it. My learned friend is asking him to testify from absolute hearsay.

40 By Mr. McKeown, K.C.:

Q.—You had this discussion first of all with Murray Williams?

A.—Yes.

Q.—What was the next step?

A.—Well, he spoke to Lord Shaughnessy.

Q.—Did he report back to you?

WILLIAM P. O'BRIEN (for Plaintiffs), Examination-in-Chief.

A.—He reported back to me.

Q.—What did he tell you?

A.—He said “Nothing doing.”

Q.—Did you give us the date of this?

A.—I think well on towards the end of May, 1928.

Q.—“Nothing doing?”

A.—Yes.

10 Q.—Was your firm at that time prepared and in a position to carry out as a firm contract?

A.—We would have been ready.

Q.—Could you have, in your opinion, and from your experience as a stock broker, succeeded in marketing the shares involved, some 55,000 shares?

A.—I think so.

Q.—And you say Mr. Williams reported back to you there was nothing doing?

20 A.—I think it was when we approached him about getting an option on a block of stock.

Q.—At what price?

A.—At an advance over the market. The reason for that, Lord Shaughnessy felt he had to get his clients'—to make it interesting we would have to bid over the market.

The first deal was if they agreed on a price the Estate could have handed the whole 56,000 shares to you at that price?

A.—Yes.

Q.—That was a price over the market?

30 A.—Under the market.

Q.—The second proposal, after Lord Shaughnessy said “Nothing doing” to the first, was that you would have a call or an option on the stock and to deal above the market?

A.—Yes.

Q.—What would have been the approximate basis of the second proposal?

A.—We would probably figure on a price of 45 or 47 on an option?

40 Q.—How much above the market?

A.—Two to three points above the market.

Q.—After you and Mr. Williams had discussed the subject on that basis, what was the next step?

A.—Mr. Williams saw Lord Shaughnessy.

Q.—The second time?

A.—Yes.

Q.—Did Mr. Williams report back to you?

WILLIAM P. O'BRIEN (for Plaintiffs), Examination-in-Chief.

A.—Yes, Mr. Williams reported back to me that Lord Shaughnessy would not entertain our proposition, as he felt if the market went up naturally his shareholders would feel dissatisfied, which we quite agreed with. They probably would have; that is the shareholders of the Estate.

Q.—Therefore nothing came of the second point?

10 A.—No, nothing.

Q.—And it ended there?

A.—Yes.

Q.—Leaving aside these two mooted transactions for the firm purchase by yourselves of the whole of the stock at a figure slightly below the market, and the other on an option somewhat above the market, in your opinion, as a member of the Stock Exchange, based on your experience as such and in particular upon your experience in connection with Canadian Industrial Alcohol securities, in and for the Estate, if you had been asked; could you have sold the holdings
20 of the Estate, some 55,000 "B" shares, during the year extending from the death of Sir Mortimer Davis in March 1928 to March 1929, at a reasonable price?

A.—I think we could have. The stock was very popular. It would not be a very great effort. If an order was placed we could have sold it openly on the market over a year.

Q.—Letting it out judiciously, I suppose?

A.—Yes.

Q.—Having regard to the large number of "A" shares outstanding, and in the hands of the public, probably 500,000 shares, as compared with the relatively small block of "B" shares, would it have
30 broken the market to have offered the "B" shares of the Estate in a judicious manner over a term of a year, following the death of Sir Mortimer Davis?

A.—It might have depressed the market, but we could have got a reasonable price for the stock.

Q.—What would have been the normal action of the market where "A" and "B" shares were listed as here, if the buying of the "B" was not quite strong enough for the offerings over a period of
40 a year?

A.—If the discrepancy was too great, many "A" holders would dispose of the "A" and buy the "B." They would act more or less separately.

Q.—That refers not only to the securities of Canadian Industrial Alcohol, where there are two classes of shares, but to practically every corporation where there are two classes of shares?

WILLIAM P. O'BRIEN (for Plaintiffs), Cross-Examination.

A.—That is pretty general. You can take Famous Players. They operate the same way.

Q.—Was it public knowledge on the Street, in the Exchange, amongst the members, that Sir Mortimer Davis had absolute control of the "A" stock and that it was voting stock?

A.—Yes. It was well known.

10 Q.—It was a well known fact?

A.—Yes.

Q.—So that while technically the "A" stock had a vote that fact did not affect it more forcefully than the "B" stock which technically had no vote? I think for a period of 10 years the common stock of Canada Steamships was dealt with in two classes, one common and the other voting trust certificates. Do you remember those two stocks moved up in parallel lines, more or less apart?

A.—Yes.

Q.—Over a period of two years?

20 A.—Yes.

Q.—Is that a normal action on all classes where the stock has the same rating outside the vote?

A.—Yes.

Cross-examined by Mr. George A. Campbell, K.C., of Counsel for the Defendant:

Q.—Colonel O'Brien, did your firm have instructions from Sir Mortimer Davis, Incorporated, to sell any of the "B" shares for its account?

A.—Yes, we sold 4,200 shares in 1928.

30 Q.—Did that exhaust the orders that you had placed?

A.—Except for a few hundred extra shares.

Q.—They had given you an offer to sell 5,000?

A.—Yes, that is right, 5,000.

succeeded in selling 4,200?

Q.—They had given you an offer to sell 5,000, and you only

A.—Yes, at that stated price.

Q.—And some months later you returned the other 800 unsold?

A.—Exactly.

40 Q.—I understand that the conversations between Lord Shaughnessy and the late Mr. Murray Williams, were more or less of a preliminary character?

A.—That is correct.

Q.—Would it, in your judgment, as a stockbroker, have helped the market for the sale of Alcohol "B", had it become generally known on the Street that the Estate of Sir Mortimer Davis was selling "B"?

A.—No, it would not have helped.

WILLIAM P. O'BRIEN (for Plaintiffs), *Re-Examination.*

Q.—In other words, if the insiders who have the controlling interest are known to be selling, it does not help?

A.—It does not help.

Q.—It tends to depress the stock?

A.—Correct.

Q.—So that if it became known that Sir Mortimer Davis, Incorporated, was offering its "B" shares on the market, it would
10 seriously affect the price of "B", would it not?

A.—Surely.

Re-examined by Mr. W. K. McKeown, K.C., of Counsel for Plaintiffs:

Q.—You have spoken first in cross-examination of the order received from the Executors to sell 5,000 shares of "B," which was carried out to the extent of, I think you said, 4,200, and that you returned the remaining 800 shares subsequently on their request?

A.—Yes.

Q.—Was that on a market order to sell it at the market, or was
20 it an open order, or fixed price?

A.—A fixed price.

Q.—Do you remember what the price was?

A.—If I remember right, it was 45.

Q.—If there had not been a fixed price on that stock, would there have been the slightest difficulty in disposing of the 800 shares returned?

A.—We could have sold them at slightly below.

Q.—But the Executors gave you no revised instructions as to
30 the price?

A.—No.

Q.—And as it did not sell at 45 you returned it at their request?

A.—Yes.

Q.—To sum up that subject, the fact that you returned the 800 shares is not even conclusive proof that it could not have been sold for 44½?

A.—Whatever the market was approximately at that time.

Q.—Mr. Campbell has asked you whether, if it had become known that the Estate was selling, it would have helped the market.
40 Are you aware that during Sir Mortimer's lifetime his personal Corporation, Sir Mortimer Davis, Incorporated, both bought and sold "A" shares of that Company in large numbers through your office?

A.—Yes.

Q.—What was the trend of the market under such conditions? Did it take a nose-dive right away down, or what happened?

A.—Sometimes it did, and sometimes it shot up.

WILLIAM P. O'BRIEN (for Plaintiffs), Re-Cross-Examination.

Q.—But, the whole trend?

A.—Might I say that in those days the stock received more support, it had a lot to do in the marketing of the shares at the time.

Q.—Support from Sir Mortimer Davis' interests?

A.—Support from himself.

Q.—That is to say, in days that too much stock was offering, he would buy?

10 A.—Yes.

Q.—And when the offerings were lesser and the demand was greater, he would sell stock outright?

A.—Yes.

Q.—Was it well known on the Street that the market was being supported and dealt in by Sir Mortimer Davis' interests?

A.—The Street can made deductions pretty quickly. It would not be any great secret.

20 Q.—And it was during that period of time that the stock advanced from the lower figure to the ultimate high after Sir Mortimer's death, to 50 $\frac{1}{4}$ for the "A"?

A.—I think so.

Q.—Was it during the period that Sir Mortimer Davis, through his Company, was buying and selling those shares that the stock advanced to a point which culminated at 50 shortly after his death?

A.—Yes, pretty near.

30 Q.—So, the mere fact that Sir Mortimer Davis' interests were selling shares, would not depress the market to the extent of breaking it, or bringing about anything in the form of more than an irregularity which might occur in any stock?

A.—No.

Q.—And your firm had full knowledge that it was the Estate's stock that was going to be sold, when you were to buy it, and buy it firmly?

A.—Yes.

Re-cross-examined by Mr. G. A. Campbell, K.C., of Counsel for Defendant:

40 Q.—When you say you were prepared to buy the Estate's stock, I take it if that transaction had culminated and gone through, it would not have been a matter of public notoriety?

A.—Oh, no.

Q.—You would not have gone on the Street and announced that you had bought the shares of Sir Mortimer Davis, Incorporated?

A.—No, we would keep it quiet.

WILLIAM P. O'BRIEN (for Plaintiffs), Re-Cross-Examination.

Q.—It would be entirely a private transaction between Sir Mortimer Davis, Incorporated and your own firm?

A.—Absolutely.

Q.—It would not help the stock had it become known where you had bought the stock you offered?

A.—That is right.

10 And further deponeth saith not.

Whereupon the Court adjourned until Monday next, the 28th day of April instant, at 10.30 a.m.

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30

40

LADY DAVIS (*for Plaintiffs*), *Examination-in-Chief*.

On this April 28th, 1930, personally came and appeared

ELEANOR CURRAN (Lady Davis)

of the City of Montreal (Ritz-Carlton Hotel), widow of the late
10 Sir Mortimer Davis), 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.—Lady Davis, you are one of the Plaintiffs in the present
action?

A.—I am.

Q.—You are the widow of the late Sir Mortimer Davis, whose
Estate is concerned in this suit?

A.—Yes.

20 Q.—When were you and the late Sir Mortimer Davis married,
and where?

A.—May 28th, 1924, at Valerie, in France.

Q.—Where did you reside, Sir Mortimer and yourself, following
that time?

A.—Well, mostly in France. We paid occasional visits to
Montreal.

Q.—Can you say whether, from your personal knowledge, Sir
Mortimer Davis kept in touch with his business interests here in
30 Canada?

A.—Yes, he did; very close touch.

Q.—Could you tell His Lordship during what period of time
following your marriage Sir Mortimer actually spent here in
Montreal?

A.—I made a memorandum of it.

Q.—I mean just briefly.

A.—In 1924 we spent from June until October here, and in
1925 from May until August; in 1926 a part of September and
October, and then we came back in November and spent part of
40 December.

Q.—That would be in 1926?

A.—Yes.

Q.—Sir Mortimer was here for two periods?

A.—Yes. In 1927 we spent part of September and left in
October.

Q.—Sir Mortimer died, I think, that has already come out——

A.—On March 22nd, 1928.

LADY DAVIS (*for Plaintiffs*), Examination-in-Chief.

Q.—Will you tell His Lordship the circumstances of Sir Mortimer's passing away?

A.—Well, yes; we dined out that evening. We dined at a very large dinner party and Sir Mortimer seemed very well, quite amused until about an hour after dinner he complained. He came to me. He said he was not feeling very well and would like to go home. We left immediately; we drove up to the villa; it was about ten minutes from the place where we dined. Five minutes after we reached the house Sir Mortimer was dead.

Q.—Speaking of Sir Mortimer's business interests in Canada, while you were residing here in Montreal for the periods throughout the years 1924, 1925, 1926 and 1927, where did you reside here?

A.—In Montreal?

Q.—Yes.

A.—516 Pine Avenue part of the time, and part of the time at the country place at Ste. Agathe.

Q.—Can you say whether during those stays in Montreal by Sir Mortimer, he had attended to his business here?

A.—Yes. He went every morning to the office and stayed all day.

Q.—Where was his office situated?

A.—In the Cement Building; Canada Cement Building.

Q.—He had his own private office reserved there?

A.—Yes.

Q.—And he went to the office while here?

A.—Regularly.

Q.—When in France, you have told us that Sir Mortimer kept in close touch with his business affairs here. In that connection, I would ask you whether he maintained any clerical assistants?

A.—Yes, he had a secretary.

Q.—Did he have a secretary constantly?

A.—Yes.

Q.—Can you give His Lordship any idea in a general way of the extent to which Sir Mortimer kept in touch with his Montreal interests?

A.—Well, Sir Mortimer worked every morning from ten or half-past ten until half-past one or two o'clock. Sometimes even after lunch he would work from three until four. He would write letters, send cables and things of that sort practically daily.

Q.—These cables and letters were sent practically daily?

A.—Yes.

By the Court:

LADY DAVIS (*for Plaintiffs*), *Examination-in-Chief*.

Q.—While in France?

A.—Yes.

By Mr. McKeown, K.C.:

Q.—For the purpose of the record, will you say when the season at Cannes—over what period it extends?

10 A.—The season at Cannes?

Q.—Yes. In the south of France.

A.—In the south of France.

Q.—Yes.

A.—I should say the season begins usually in January.

Q.—And extends how long?

A.—Until March.

Q.—You have said your home is in Cannes?

A.—Yes.

20 Q.—Was it in Cannes that you and Sir Mortimer had your main establishment? I mean your domicile?

A.—Yes.

Q.—For the purposes of the record, while we know pretty well concerning the Pine Avenue and Ste. Agathe properties having been residences here during a number of years, the position is well understood locally, but will you say for the purpose of the record the extent of the property at Cannes which was left to you by Sir Mortimer Davis?

A.—What do you mean? The size?

30 Q.—What is the area?

A.—Well, it is the largest property in the south of France.

Q.—Of that nature?

A.—Yes. I have forgotten whether it is 100 or 125 acres, all cultivated.

Q.—All under cultivation?

A.—Yes.

Q.—Do you know anything of the value of the property?

A.—I have heard Sir Mortimer say it was worth a million dollars.

40 Q.—How many dwellings or villas are there on the property?

A.—There are two villas, three cottages.

Q.—You occupied one of the principal villas?

A.—Yes.

Q.—That is the one that was occupied by Sir Mortimer and yourself during his lifetime?

A.—Yes.

Q.—You said that the property is under cultivation?

LADY DAVIS (for Plaintiffs), Examination-in-Chief.

A.—Yes.

Q.—What species of cultivation? Horticulture or agriculture?

A.—Flowers and fruits. Mostly flowers and fruit trees.

Q.—To what extent in flowers?

A.—Well, there are about 60,000 rose bushes. There are quite a quantity of mimosa. I say that because we sell the roses and the mimosa.

10 Q.—The fruit trees?

A.—We do not sell the fruit.

Q.—What is the extent of them?

A.—I think about 5,000 fruit trees.

Q.—How many gardeners are employed around the property?

A.—I think around 30.

Q.—How many maids have you maintained there?

20 Mr. Campbell, K.C.: It is quite interesting in detail, but I do not quite see its bearing on the particular case. My objection is not to its being uninteresting but to its being irrelevant.

30 Mr. McKeown, K.C.: I hope Mr. Campbell will not, with the present witness, persist in his objections as he has practically with every other witness. I think the relevancy of this is to show in Sir Mortimer's will under which he left Lady Davis the use of the property for her lifetime, and by another clause she was to have one-half of the revenue plus the clause that if Mortimer Davis Junior died, she was to have it all, plus the fact the revenues were \$800,000 per annum. I only wish to establish now it is not necessary we should go into any details about the Pine Avenue property, which has been fully brought out, but I want to show the conditions under which Sir Mortimer left her and the conditions which go to interpret the clause of his Will, in this all important matter, whether it was his intention to tie up out of that residuary fund and build a hospital 50 years hence, and to accumulate the revenues under that capital, and leave Lady Davis without the revenue.

40 Mr. Campbell, K.C.: I think the best answer is the Will of the late Sir Mortimer Davis, who provided a handsome annuity for Lady Davis, plus sundry other provisions.

Mr. McKeown, K.C.: It just shows the barrier between the contentions of my learned friend and ourselves, and the distance we are apart. I submit it is proper and relevant evidence and should be of assistance to Your Lordship and to any other Court to which this case may go, to have the proper conception of the conditions existing at the time Sir Mortimer made his Will.

LADY DAVIS (for Plaintiffs), Examination-in-Chief.

The Court: It appealed to me as irrelevant first, but there may be some reason for it.

Mr. Montgomery, K.C.: The scale of living which he normally contemplated by his Will should be maintained. We are entitled to show the station in life.

10 The Witness: You have asked me something I have not thought of. I would have to count. May I go through it now?

Mr. Montgomery, K.C.: Give it very roughly.

The Witness: They were mostly male servants in France.

By Mr. McKeown, K.C.:

20 Q.—How many servants, either male or female?

A.—I should say we had eleven.

Q.—Does that include the chauffeur?

A.—Twelve.

Q.—Twelve, with your chaffeur?

Q.—In point of fact, how many chauffeurs had you?

A.—During Sir Mortimer's lifetime we had two; three, with one here; one in France. Now I have one.

Q.—How many cars have you in connection with your place at Cannes at the present time?

30 A.—Six.

Q.—You said something when I was asking you about the extent of the property, about the gardens and flowers. You said the flowers were sold?

A.—Some were sold.

Q.—As a matter of fact, the title in this property, if I understand correctly, is vested in a French Corporation, styled Societe Davisco?

A.—Yes.

40 Q.—And of that corporation the Estate or the Incorporated Company own the whole of the shares?

A.—I think so.

Q.—In turn, it was leased by that Corporation to Sir Mortimer personally?

A.—Yes.

Q.—Under the clause of the Will giving you the use of that property for your lifetime, under clause seven, the Estate is required to pay the rental of that property to the Societe Davisco?

LADY DAVIS (*for Plaintiffs*), *Examination-in-Chief*.

A.—Yes. That is my understanding.

Q.—Perhaps, for the purpose of my question, I will read into the record article seven of the Will, dealing with this property:

10 “ Article VII. My said Trustees and Executors shall permit the use, usufruct, habitation, and enjoyment during her life-
time by my said wife, Lady Davis (Maiden name, Eleanor
Curran) of any and all residences, country estates, apartments,
and/or properties situated in France that may belong to me or
rented by me or the use and enjoyment of which I may in any
way be entitled, together with all furniture, appurtenances,
household effects, works of art, statuary, implements, utensils,
horses and carriages, motor cars, animals used in connection
therewith, and in a general way, all the contents thereof; the
whole on the ordinary obligations of a usufruct, but without
20 giving any security in regard thereto or making any inventory
of moveables comprised in the said usufruct, and the rentals of
and taxes on any property or residences leased by me shall be
paid by my Executors and Trustees out of and be a charge
against my Estate, and if any such lease shall arrive to expira-
tion during my wife’s lifetime, my Executors and Trustees shall
renew same if she so request. Any and all or any part of said
residences, country estates, apartments or properties in France
may be leased, sub-leased or sold with my wife’s consent, in
which case the net rentals of the leasing or sub-leasing or the
sales price as the case may be shall be paid into and be and
30 become part of my residuary Estate. My said Trustees and
Executors shall also pay over to my said wife any cash that may
be found in said residences, country estates, apartments and/or
properties in France, or any of them, and any balances of money
standing in my name at the time of my death in any Bank or
Banks in France. However, my racing stables in France, includ-
ing race horses, stud farms, training establishments and funds
and all property generally, both moveable and immoveable, real
and personal, appertaining thereto, are not included in this
provision of usufruct for my said wife, but the same shall fall
40 into and be and become part of my residuary Estate, and be
treated by my Executors and Trustees as such.”

Q.—The villas and other buildings at Cannes estates, I pre-
sume, were furnished after the mode of living and the position of
life of Sir Mortimer Davis at the time of his death?

A.—They were quite well furnished.

Q.—I notice that this clause, Article VII. of the Will, which I

LADY DAVIS (*for Plaintiffs*), *Examination-in-Chief*.

have just read to you, speaks of the residences, country estates, apartments, and/or properties situated in France belonging to or rented by Sir Mortimer at the time of his death. In this connection you have told us that the season at Cannes extends from January to March. Did you spend the whole of the year in Cannes, while in France?

A.—No.

10 Q.—Where did you live apart from Cannes?

A.—Well, we spent quite a lot of time in Paris. We used to go to Deauville in August.

Q.—Did you travel to any extent on the Continent with Sir Mortimer?

A.—We spent most of the time in Paris.

Q.—Let me ask you in that connection whether, during your married life with Sir Mortimer, he rented and occupied a residential property in Paris?

20 A.—We did one year, yes, but it was not at the time of Sir Mortimer's death.

Q.—I understand it was the year previous to Sir Mortimer's death?

A.—Yes, I think it was.

Q.—How long a time did that lease extend over?

A.—I think we had a lease for a year, Mr. McKeown.

Q.—When living in Paris, you resided there with Sir Mortimer?

A.—Yes, that year.

Q.—That would be in 1926?

30 A.—Yes.

Q.—Sir Mortimer was in negotiations for the purchase of a residence for himself in Paris?

A.—Yes, he was.

Mr. Campbell, K.C.: In fact, he did not purchase the property in France. It could not therefore be affected by the clause in the Will. In my submission, what Sir Mortimer's projects in life may have been are not relevant to this subject and they cannot enter into the problem which Your Lordship has to decide.

40 Mr. McKeown, K.C.: Taking the Court and Counsel into my confidence, I hope to prove by Lady Davis that on the occasion of the last visit to Cannes before Sir Mortimer's death—that was in October or November, 1927—Sir Mortimer had an option on a house in Paris, which showed he had firmly in mind to locate in a home in Paris.

LADY DAVIS (*for Plaintiffs*), *Examination-in-Chief*.

By Mr. McKeown, K.C.:

Q.—Do you know to what extent those negotiations had progressed? Was it just talk?

A.—He had an option, I know, but when we came to America the man broke his word and sold it someone else.

10 Q.—Which trip to America was it this occurred on?

A.—I think it was the last trip; I am not sure.

Q.—That would be the fall of 1927?

A.—I don't know whether it would be 1927, but it would be quite soon before Sir Mortimer's death.

Q.—What was the price of the house Sir Mortimer had in view to pay?

A.—I think I remember it was between 9,000,000 and 10,000,000 francs.

20 Q.—Which at the then rate of exchange would represent approximately how much?

A.—I should think the franc was around four cents.

Q.—Something like \$400,000?

A.—Yes.

Q.—Where was that house located?

A.—72 Avenue du Bois.

Q.—How does that section of the city rate as residential?

A.—The very best; the most desirable part of Paris.

Q.—In the residential section?

30 A.—Yes.

Q.—I think you said to His Lordship while you were here the man broke his word. In what way, and what happened to the property?

A.—It was sold to an American man called Mr. Palmer, I think, and Mr. Palmer erected another house or an apartment house or building or some sort of thing on that site. It was a most desirable location.

By The Court:

40 Q.—Do you know the name of the man who gave you that option?

A.—No, I don't. I think it was that man himself, the proprietor himself.

Q.—Did he have a written option?

A.—I don't think so. There was some correspondence, but I don't think it was a written option...

LADY DAVIS (for Plaintiffs), Examination-in-Chief.

By Mr. McKeown, K.C.:

Q.—On other occasions, when you resided in Paris with Sir Mortimer during your married life, where did you live?

A.—Other than the house we rented?

Q.—Yes.

A.—We lived at the Hotel Raphael and Hotel Plaza.

10 Q.—Earlier than that at the Ritz?

A.—Yes. We lived one year at the Ritz. We had a very unfortunate experience there.

Q.—While on that subject, perhaps, for the curiosity of Mr. Campbell—

Mr. Campbell, K.C.: He is not a bit curious.

The Witness: We were robbed.

20 By Mr. McKeown, K.C.:

Q.—In any event, you changed your hotel after that?

A.—Yes.

Q.—You have noticed in Article VII. of the Will which I read to you a reference to a racing stable?

A.—Yes.

Q.—Did Sir Mortimer, in point of fact, maintain a racing stable?

30 A.—Yes, he did.

Q.—And it was maintained at the time of his death?

A.—Yes.

Q.—In France?

A.—Yes.

Q.—Under the terms of the Will the racing stable was sold?

A.—Yes.

Q.—During the course of a year or so afterwards?

A.—Yes.

40 Q.—For the purpose of indicating to the Court the extent to which Sir Mortimer kept in touch with his Montreal interests during his absences from Montreal, will you file if you please a list, by way of a summary of the correspondence which has been turned over to your counsel during the course of this case by the Defendants, extending in the years 1926, 1927 and 1928, as Plaintiffs' Exhibit P-224?

A.—Yes, I will.

Q.—Lady Davis, will you say to His Lordship what became of the files of Sir Mortimer Davis' affairs which he maintained in

LADY DAVIS (*for Plaintiffs*), *Examination-in-Chief*.

France during his lifetime, following his death? What became of the files?

A.—I told his secretary, Mr. Taylor, to make a package of them and send them to Lord Shaughnessy.

Q.—That was done?

A.—Yes.

10 Q.—That is, you say everything that was there was put in a package and sent here to the Executors?

A.—Yes, everything but a statement I found in a drawer afterwards, that Mr. Taylor had forgotten.

Q.—The package also included correspondence also listed under Exhibit P-224?

A.—Yes.

Q.—Insofar as you have received it back during the course of the trial?

A.—Yes.

20 Q.—Sir Mortimer's Will, Exhibit Number 1 in this case, appears to have been signed by him in London in November, 1927. Do you remember the circumstances?

A.—I was in London with Sir Mortimer at the time.

Q.—And that was signed following your return from Canada in that fall?

A.—Yes. Just to be absolutely correct, Mr. McKeown, the will was really signed in France. It was brought over to London.

Mr. Campbell, K.C.: A little louder.

30 The Witness: As I remember it, the Will was first signed in France and then it was brought over to London for some legal details.

By Mr. McKeown, K.C.:

Q.—To be resigned there?

A.—Yes.

Q.—It was resigned there?

40 A.—Yes.

Q.—Were you present when the Will was signed or when the Will was made or discussed?

A.—Yes, I was.

Q.—Were you aware of its contents at the time it was executed?

A.—Yes.

Mr. Campbell, K.C.: I think we are getting into dangerous

LADY DAVIS (for Plaintiffs), Examination-in-Chief.

territory. The document is a valid Will on which both parties rely, and I submit my learned friend should not by verbal testimony of the Plaintiff in the box, attempt in any way to add to the situation created by the document. My submission is there should be no attempt, even very remote, to explain the conditions of the Will. The Will is there. It is valid and is not attacked on any side, and I submit we should not go into a territory which might lead to an attempt by verbal testimony to in any way add or take from the interpretation of the document.

Mr. McKeown, K.C.: I submit it is good law to use in a case of this description. It is legal evidence to make proof of the circumstances under which the Will was made. You cannot extend or vary its terms, but I think in the same way the evidence of the Cannes Estate would be good, so that the Court might interpret the intention of the testator at the time of making it. I just want to show your Lordship the circumstances under which that Will was executed by Sir Mortimer Davis.

The Court: I think I will allow proof of the circumstances. That might not prove anything. Reserved.

Mr. McKeown, K.C.: They may not be of any significance in the last analysis, and they might be of very great significance.

By Mr. McKeown, K.C.:

Q.—Did Sir Mortimer at that time discuss the Will with you?

Mr. Campbell, K.C.: Excuse me; that is exactly the territory I was afraid my learned friend might get into, and it seems to me that is absolutely illegal and inadmissible. The previous discussions which Sir Mortimer may have had with Lady Davis, whatever they were, culminated in the document, which is a valid document, which Your Lordship will have to construe. It seems to me it would be utterly illegal to have the witness in the box attempt to testify as to her conversations with Sir Mortimer preceding the Will.

Mr. McKeown, K.C.: This objection of my learned friend is a little bit premature.

Mr. Campbell, K.C.: If I waited until the witness answers the question the damage is done, by reason of the territory in which you are operating.

LADY DAVIS (for Plaintiffs), Examination-in-Chief.

The Court: What is the reason of the question?

Mr. McKeown, K.C.: I am going to show his income was a minimum of \$800,000 a year.

10 Mr. Campbell, K.C.: That is not hard to show. The financial statements showing all Sir Mortimer's drawings are all in the record, and surely Lady Davis is not going to establish by her testimony what his income was. Perhaps we do not always confide the matter of our incomes even to our wives.

Mr. McKeown, K.C.: Speak for yourself.

20 Mr. Campbell, K.C.: I do not know that would be the best evidence. If it purports to be offered in support of what Sir Mortimer's actual income was, I submit it is not the best evidence absolutely, and can be nothing more than hearsay, and inadmissible.

Mr. Montgomery, K.C.: I suggest Mr. Campbell ask the Star not to include that in their report.

Mr. Campbell, K.C.: It may be indiscreet. My learned friends having disclosed the purpose of the question, will Your Lordship please rule on my objection.

30 Mr. McKeown, K.C.: Are you asking His Lordship to rule I cannot prove the income was \$800,000? I think it is a collateral fact, and I think the proof ought to be admitted in this kind of case.

The Court: Surely his income can be ascertained. What evidence is there of his income at the time of his death?

40 Mr. Campbell, K.C.: Why does my learned friend attempt to vary the legal evidence which has been offered in support of the situation. Every dollar he drew is recorded in the statements that are filed.

The Court: How much does it vary?

Mr. McKeown, K.C.: How do you like that question?

Mr. Campbell, K.C.: It varied very much from year to year. Some years he drew large sums; other years he drew less. There is

LADY DAVIS (for Plaintiffs), Examination-in-Chief.

no doubt he drew from his Montreal Company very substantial sums of money.

10 Mr. Montgomery, K.C.: Sir Mortimer managed the thing in such a way he added to capital, but he professed to draw it down as distribution of capital which would make it rather difficult to establish what he himself regarded as capital, as entirely distinct from income. He had his own idea of what income was but he did not distribute dividends, but for his own purposes he added it to capital, and there is where the statements are not as helpful as they otherwise might be.

Mr. Campbell, K.C.: The statements disclose what he drew, and Your Lordship can consider it all income if you wish to.

20 The Court: Have we got in the record the amounts that Sir Mortimer drew since his marriage with Lady Davis, since 1924?

Mr. Campbell, K.C.: I think those figures are all in.

30 Mr. McKeown, K.C.: The whole difficulty about the thing is that there is confusion in those drawings, in all kinds of transactions which Sir Mortimer had personally at that time, and I just wish to get an approximate idea. It is not an absolute figure. It would be difficult even for an accountant, perhaps, to show an absolute figure, but I want to prove in a general way what Sir Mortimer considered the income was?

The Court: I will allow it. Was there evidence in the record of what the true income is? I do not mind Lady Davis telling what Sir Mortimer considered his income.

(Question read as follows: Did Sir Mortimer at that time discuss the Will with you?)

The Witness: Yes.

40 By Mr. McKeown, K.C.:

Q.—Apart from the matter of the Annuities, which are fixed as to amount, there is clause XIII., which provides that the remainder of the net annual revenue from the residue of the Estate should be paid over to the extent of one-half to yourself and one-half to Mortimer Davis, Junior?

A.—Yes.

LADY DAVIS (for Plaintiffs), Examination-in-Chief.

Q.—Now, in connection with that clause, and in the discussion of the Will with Sir Mortimer, what did he say with reference to revenues which would be divisible between yourself and his son under that clause?

Mr. Campbell: That is to me the essence of illegality. My learned friend is, as far as the questions appear, purporting to reconstruct the last Will and Testament of Sir Mortimer Davis. 10

Mr. McKeown, K.C.: I had not finished my question. You do not permit me to finish my questions, saying nothing about the objections that you constantly make.

Mr. Campbell, K.C.: My learned friend is doing the very thing I suspected him of endeavoring to do. He is endeavoring materially to add to the provisions of Sir Mortimer's Will. My learned friend cannot, by the testimony of this witness, add to or vary the document in any way. Suppose Sir Mortimer told her she was going to have an income of \$500,000 a year, can Your Lordship admit testimony of that kind? Your Lordship has all the figures before you, and you are to decide what he meant when he made his Will, and I submit to you the witness in the box, one of the most interested in the Will, cannot be controlled in the answers she is going to give. The document is a complete regular document and cannot be added to in any way by the verbal testimony of the witness, and I ask Your Lordship to so rule. 20

30

Mr. McKeown, K.C.: Mr. Campbell says the document is there. He says it is to be construed. That is what I am asking Your Lordship to do. I am not asking that this portion of one-half to each of the main beneficiaries be changed or be added to or anything of the kind, but in law I submit we are entitled to explain everything of every kind, and every description as to what was the intention of the testator as to how it should work out, and we propose to prove what Sir Mortimer said with reference to his income, what he had said as to how that clause would work out in the matter of dividing one-half of the income of the estate. That does not change anything. The document is still there, as Mr. Campbell argues. We are following the sound lines he is laying down, but he is going wrong on the application. 40

Mr. Campbell, K.C.: My objection is founded on elementary principles of law in the construction of Wills. If Your Lordship is

LADY DAVIS (for Plaintiffs), Examination-in-Chief.

in doubt I would ask to argue the matter at greater length. My learned friend is attempting to add a codicil to the last Will and Testament of Sir Mortimer Davis by the witness in the box.

10 The Court: I am not at all sure that the jurisprudence is with you. I think the last case I had at the Bar was one in which I was asked to act for the Defence, in that way, and I was surprised at the weight of authorities which counsel brought to me to argue upon.

Mr. Campbell, K.C.: I would like to have an opportunity of going into that at some time. It is a very serious illegality which we are about to commit if this evidence goes in.

The Court: I will reserve the objection and you may cite authorities on the subject. Before the case of Latour and Dupuis I was inclined to agree with you

20 Mr. Campbell, K.C.: I would like to have an opportunity of trying to convince Your Lordship.

The Court: Judge Fortin was on the bench before the case was decided and I was appointed in his place, and we both disappeared from the record. I will reserve the objection. You will make the whole of the argument on the merits.

30 To which ruling of the Court Defendants' Counsel respectfully excepted.

Question read as follows: "Now, in connection with that clause, and in the discussion of the Will with Sir Mortimer, what did he say with reference to revenues which would be divisible between yourself and his son under that clause?"

The Witness: Sir Mortimer said that young Mortimer and I would have around \$400,000 a year.

40 By Mr. McKeown, K.C.:

Q.—Between you or each?

A.—Each.

Q.—Each? \$400,000 a year each?

A.—Yes.

LADY DAVIS (for Plaintiffs), Examination-in-Chief.

Mr. Campbell, K.C.: That demonstrates, if anything does, the absolute soundness of my objection to prevent this kind of illegal evidence going in.

Mr. McKeown, K.C.: Is not there something left to the Court in this case?

10 Mr. Campbell, K.C.: I am trying to persuade the Court of the utter illegality of this evidence.

Mr. McKeown, K.C.: You still say it is illegal after His Lordship has ruled, and you reserve that for your argument. It is most extraordinary and unusual.

20 Mr. Campbell, K.C.: May I suggest, having gone thus far, you at least ought to stop now. It seems to me you have started out to vary the whole of the conditions of the Will in the most illegal manner. The provision of the Will that we have modified is the provision which is fixed, in the fixed annuity.

Mr. McKeown, K.C.: That is preposterous.

Mr. Campbell, K.C.: Plus a share of the revenue, and my learned friend is trying to make the share of the revenue something definite.

30 Mr. McKeown, K.C.: I am not trying to make the share of the revenue something definite. Under other conditions it might have been away above \$800,000.

By Mr. McKeown, K.C.:

Q.—At the time Sir Mortimer made his Will and signed it on the 30th of October, 1927, he had this large block of "A" stock of Alcohol?

40 A.—Yes.

Q.—Do you remember the approximate dividends at that time being paid on that large block of "A" stock alone?

A.—Well, I am not sure, but I think it was in the vicinity of \$800,000.

The Court: It can be verified by the record.

LADY DAVIS (for Plaintiffs), Examination-in-Chief.

Mr. McKeown, K.C.: Yes, of course.

By Mr. McKeown, K.C.:

Q.—The “ B ” stock had not then been issued, in November, 1927?

A.—No.

10 Q.—Sir Mortimer had, in addition to the Alcohol “ A ” stock, the other interests which have come out in the course of the trial?

A.—Yes.

Q.—We have spoken of Sir Mortimer’s death at Cannes on the 22nd of March, 1928. It has also come out that the burial took place in Montreal?

A.—Yes.

Q.—Do you remember the date when you sailed from France, when the body was brought over?

20 A.—The 31st of March.

Q.—The 31st of March?

A.—Yes.

Q.—Where was Mortimer Davis, Junior, at the time of his father’s death?

A.—He was on the ocean. He had left New York en route to France.

Q.—Did he arrive in time for the ceremonies which took place in France before you left on the 31st of March?

A.—I waited for him in Paris.

30 Q.—When did you arrive in New York?

A.—I think it was the 6th of April, was it not?

Q.—Did you come on to Montreal at once?

A.—Yes, the next morning, the 7th.

Q.—What day of the week was it; do you remember?

A.—No, I do not.

Q.—I think it was Saturday, from my memory.

A.—Yes, it was Saturday.

Q.—When was the funeral here in Montreal?

40 A.—The funeral was the 12th.

Q.—What day of the week was it?

A.—Thursday.

Q.—Who had charge of the funeral arrangements in Montreal, from New York?

A.—Lord Shaughnessy took care of them.

Q.—Did Lord Shaughnessy meet you in New York?

A.—Yes.

LADY DAVIS (*for Plaintiffs*), *Examination-in-Chief*.

Q.—Took full charge?

A.—Yes.

Q.—Was the funeral from the Pine Avenue house?

A.—Yes.

Q.—At that time did you remain here in Montreal?

10 A.—I stayed until the 14th and then I went to New York to stay with some friends.

Q.—What day of the week was it, do you remember?

A.—I don't remember.

Q.—Was it Saturday?

A.—The 14th would be the following Saturday.

Q.—How long did you remain in New York at that time, Lady Davis?

A.—I stayed until the 23rd—the 22nd, I suppose. I came back here on the 23rd.

20 Q.—So, following the funeral on Thursday, you were here Thursday, Friday and Saturday?

A.—Yes.

Q.—Where were you staying at that time?

A.—At the Pine Avenue house.

Q.—Will you give to His Lordship your best recollection as to whether following the funeral, before you went to New York on Saturday evening, Lord Shaughnessy had taken up with you the financial condition of the matters of the Estate, and so forth?

A.—I was under the impression that we did have a meeting on the 14th.

30 Q.—That would be on the 25th of April?

A.—It has come out since, but I was under the impression it was the 14th. I may have been mistaken.

Q.—Your impression was that meeting took place earlier?

A.—That was my recollection.

Q.—In point of fact, you have just told His Lordship you were not here in Montreal from the 14th to the 22nd?

A.—That is right.

Q.—Your impression is that this meeting took place before you went away the first time?

40 A.—That is my impression, but I might have been mistaken.

The Court: There is no proof of the date of that meeting?

Mr. McKeown, K.C.: It was not written up at the time the meeting actually took place. It does not make a great deal of difference; it is only that I wish to have Lady Davis give Your Lordship her personal recollection of the incident.

LADY DAVIS (for Plaintiffs), Examination-in-Chief.

Mr. Campbell, K.C.: Is not there a very improper implication in this? Lady Davis signs the Minutes with her own hands and they start out by stating the date they were drawn up and signed by the witness in the box.

10 Mr. McKeown, K.C.: I can quite understand the way matters were going at that time Lady Davis would have signed whatever Lord Shaughnessy prepared, and it would not have made one iota of difference whether the Minutes were drawn on the day this conversation took place, or on any sacramental point.

The Court: Until the contrary is proved, that meeting is supposed to have taken place on the 25th of April.

20 Mr. McKeown, K.C.: We have the uncertainty that any written statement—they are not sure whether they were drawn at that time. Lady Davis was not querying anything suggested by Lord Shaughnessy. On the other hand we make no suggestion whatever that Lord Shaughnessy had any motive in adding the date or retiring it, but it was just the idea of having a Minute of what was discussed.

By the Court:

Q.—You took cognizance of the meeting?

A.—I remember the meeting perfectly. I do know Minutes were not signed the day of the meeting.

30 By Mr. McKeown, K.C.:

Q.—You signed them afterwards?

A.—I signed them afterwards.

Q.—When did you sail for the other side; on the 5th of May?

A.—On the 12th of May.

40 Q.—How much longer did you spend in Montreal? I was taking that up step by step. I asked her to verify from her hotel accounts so she could give you the exact dates. You have said to His Lordship you recollect very well what occurred at the meeting?

A.—Yes.

Q.—Now, without exhausting subjects which are of no particular importance, will you tell His Lordship briefly the salient points which were taken up there?

Mr. Campbell, K.C.: There is a record made at the time signed

LADY DAVIS (for Plaintiffs), Examination-in-Chief.

by all the parties. Surely that is a document my learned friend ought not now be allowed to add to or detract from or vary. My objection covers that there is no allegation, and I might have added that same objection in regard to the amount of residue that the witness has testified to. There is no allegation that I recall in plaintiffs' declaration, to justify that proof.

10 Mr. McKeown, K.C.: We do allege there was a meeting after of Sir Mortimer Davis Incorporated, and certain assets to which I will not refer in detail were discussed, and were to be made available to be disposed of.

Mr. Campbell, K.C.: There was a record made at the time and now my learned friend is proposing to add to it, by the recollection of the witness.

20 Mr. McKeown, K.C.: When Your Lordship will piece that out long enough to consider the circumstances under which the meetings were held, and the Minutes drafted and the circumstances under which they were presented to Lady Davis, I don't think we want to treat them as though they were a binding contract in a sacramental form. We have to turn back the book of life immediately following Sir Mortimer's funeral and the absolute complete confidence which Lady Davis had and was entitled to have in Lord Shaughnessy at that time, in virtue of which the whole matter was left absolutely to him, and the further notion that at that time every-
30 body regarded that Estate as being enormously wealthy, and the details were of no significance.

Mr. Campbell, K.C.: My learned friend is trying to imply from the very date of this meeting there was some secret conspiracy in the minds of Lord Shaughnessy and Mr. Reaper.

Mr. McKeown, K.C.: No.

40 Mr. Campbell, K.C.: These Minutes were drawn up by all the parties. They were in the best of relations and in good faith, and it seems to me to ask the witness to reconstruct from her uncertain memory, to add something to a document which had been a record, is a violation of all the terms ———

Mr. McKeown, K.C.: I never suggested for one moment there was any conspiracy between Lord Shaughnessy and Mr. Reaper at

LADY DAVIS (for Plaintiffs), Examination-in-Chief.

that stage or any other stage. They might have made mistakes, but we do not charge them with conspiracy. I just wish to get these facts before Your Lordship in a general way, in a way Your Lordship will understand things occurred under the conditions which we now know.

10 The Court: As this can only be a resumé of what took place at the meeting of the Executors, it is impossible to say. Objection reserved.

To which ruling of the Court Defendants' Counsel respectfully excepted.

20 The Witness: Lord Shaughnessy had the statement of the Incorporated Company before him and a statement of Bamberger Brothers, and he said, pointing to the Bamberger Brothers' statement: "Of course, we must sell these out at once. We cannot hold these because, as Executors, you cannot retain a speculative account." In going over some of the statements of the Incorporated Company he said there was nearly a million dollars in cash in the Incorporated Company, and that when the "B" stock of the Alcohol Company was sold, that would produce perhaps a couple of million dollars more.

By Mr. McKeown, K.C.:

30 Q.—Was any reference made to the equity in the Bamberger account at that time?

A.—Yes. There was a million dollars profit.

Q.—So that the million dollars profit from Bambergers, the million dollars in cash in the Incorporated Company and a couple of million dollars more from the "B" stock, was the particular subject of the conversation?

A.—Yes.

40 Q.—I think you said to His Lordship no Minutes were drawn at the time?

A.—No. I am quite sure.

Q.—Do you remember whether notes were taken?

A.—No. I left right after.

Q.—Was there anybody else present at the meeting?

A.—No, just the three of us.

Q.—Mr. Reaper was there?

A.—Yes.

LADY DAVIS (for Plaintiffs), Examination-in-Chief.

Q.—Do you remember anything in connection with the Y.M.H.A. at that meeting?

A.—Yes. I remember that Lord Shaughnessy complained of the people that were interested in the Y.M.H.A. He said they wanted more money, that they told him Sir Mortimer had promised them \$50,000 more and he said “I told them the Estate could not give them \$50,000 more, Sir Mortimer had promised them verbally.”
10 Then he said “They asked me would not you,” meaning me and Mr. Davis, “give it out of your income this year.”

Q.—Lord Shaughnessy said to you that the people interested in the Y.M.H.A. having said Sir Mortimer Davis had promised them \$50,000 additional, Lord Shaughnessy could not give it to them because it was verbal, and because, as Lord Shaughnessy said to you, the people asked whether you would not give it, and Mortimer Davis Junior would not give it, out of your income this year?

A.—Yes.

20 Q.—What did you say?

A.—I said we better wait and see what the income was going to be.

Q.—Was the matter left that way?

A.—Yes.

Q.—The question arose right then and there that any provision which Sir Mortimer was supposed to have made for the project in his lifetime, if it was going to be exceeded, that they were asking for out of your income?

A.—Yes.

30 Q.—As you have told His Lordship, your recollection is that that interview was when, as to date?

A.—I thought it was the 14th, but I might have been mistaken.

Q.—You have this further fact, as I understand it, that you testified absolutely that you were not in Montreal from the 14th to the 22nd?

A.—No, I came at night.

Q.—You spent, you say, some time with friends in New York?

A.—Yes.

40 Q.—Let us come to the next period, at the time you say you returned to Montreal on the 23rd. How long were you in Montreal on that trip?

A.—Until the 25th.

Q.—You were here the 23rd, 24th, and 25th?

A.—Yes. I left the evening of the 25th.

Q.—You actually were in Montreal on the date mentioned in the Minutes, Defendants' Exhibit D-2, you were here on the 25th?

LADY DAVIS (*for Plaintiffs*), *Examination-in-Chief*.

A.—Yes, I was.

Q.—Can you tell His Lordship how it is you are able to verify those dates you are now giving us? What way have you to verify them?

A.—From the Ritz-Carlton hotel. I asked when I was there.

10 Q.—On that trip you came on the 23rd and left on the 25th, did you go to the Pine Avenue house?

A.—No. I went to the Ritz.

Q.—And returned to New York on the night of the 25th?

A.—Yes, and I stayed until the 2nd of May.

Q.—In New York until the 2nd of May?

A.—Yes.

Q.—Can you tell His Lordship whether, at the time Lord Shaughnessy was in New York on either of those periods from the 14th to the 22nd of April, or from the 26th of April to the 2nd of May while you were there?

20 A.—Well, he was down there—I think he was down there the latter part of April.

Q.—Would that be the time while you were there, from April 26th to May 2nd?

A.—Yes, I rather think so.

Q.—Lord Shaughnessy was in New York?

A.—Yes.

Q.—Do you know what he was doing in New York? What was the occasion of his presence there?

30 A.—Yes. He had gone down to see a group of men that were representing the D.C.L. that were interested in the purchase of the Alcohol Company.

Q.—Who did you get that information from?

A.—Lord Shaughnessy.

Mr. Campbell, K.C.: Surely the plaintiffs must prove the case which they have alleged in their pleadings. There is not a word in the pleadings. My submission is it is illegal. There is nothing in the pleadings to justify it.

40 The Court: There are so many allegations in the declaration it is in order some things may not have been alleged.

Mr. McKeown, K.C.: His Lordship has pointed out the easiest way of controlling the situation ———

The Court: There is not very much harm in Lord Shaughnessy being in New York.

LADY DAVIS (for Plaintiffs), Examination-in-Chief.

Mr. McKeown, K.C.: We are going to show what statements he made in these interviews, and with what state of mind Lady Davis left America.

The Court: You might thank your opponent for not having made a motion for a Bill of Particulars. Reserved.

10 To which ruling of the Court Defendants' Counsel respectfully excepted.

Q.—You referred to the D.C.L. For the purposes of the record, will you just say what that means?

A.—Distillers Corporation.

Q.—Is that the Corporation to which reference has already been made as being the Corporation having headquarters in Scotland, and controlling the liquor industry largely in Great Britain?

20 A.—Yes.

Q.—It is a very very large and important Corporation?

A.—I think it is the largest in the world.

Q.—Is it the parent Corporation in connection with the Distillers Corporation Seagrams?

A.—Yes.

Q.—Here in Canada, to which reference has been made?

A.—Yes.

30 Q.—Lord Shaughnessy, I take it, from what you have said, told you that he was in New York, to see a group of men representing the Distillers Corporation, in connection with Canadian Industrial Alcohol?

A.—Yes.

Q.—From what Lord Shaughnessy said to you, what was your understanding as to the interest of these people in that gathering in New York at that time?

Mr. Campbell: I take it, My Lord, this is all subject to the same objection.

40 His Lordship: Yes.

A.—He told me they wanted to buy our Alcohol stock.

By Mr. McKeown:

Q.—He told you they wanted to buy the Alcohol stock of the Estate?

LADY DAVIS (for Plaintiffs), Examination-in-Chief.

A.—Yes.

Q.—From your conversation with Lord Shaughnessy, did you understand that he met those people at that time?

A.—Well, he did.

Q.—He told you he did?

A.—Yes.

Q.—You were not present at the meeting?

10 A.—No. He told me he met them at the Madison Hotel.

Q.—And was he there more than a day at that time?

A.—I think so, but I do not remember the exact length of time.

Q.—Did you see Lord Shaughnessy there, in New York, on more than one occasion?

A.—Yes, I saw him on more than one occasion.

Q.—On more than one occasion at the time he was there for this interview with the D.C.L. people?

A.—Yes.

Q.—You met him more than once?

20 A.—Yes.

Q.—Had you seen him before he met them? Did you know from him that he was to meet them?

A.—Yes, I think he told me he was going down to meet them.

By the Court:

Q.—Did he call upon you?

A.—We went down on the same train, if I remember correctly.

30 By Mr. McKeown:

Q.—After he had seen them, did he report to you that he had met them?

A.—He told me they were very interested, and his expression at the time was, that they were nibbling, and that they were talking around \$60.

Q.—\$60 per share?

A.—Yes.

40 Q.—I presume that would be of the "A" stock?

A.—Yes, "A" stock.

Q.—Was it said, "A" or "B"?

A.—No, just \$60 a share. Lord Shaughnessy said that he figured it was worth \$80.

Q.—Do you know from what Lord Shaughnessy said, in what way the matter was left at that time?

A.—No, I don't, except that he said they were very interested.

LADY DAVIS (for Plaintiffs), Examination-in-Chief.

Lord Shaughnessy said that he would like to get \$30,000,000 or \$40,000,000 in the Sir Mortimer Davis Company in bonds. I thought that sounded very sensible.

Q.—At \$80 a share for the holdings of 550,000 shares of the Estate, would represent an amount of some \$45,000,000, would it not?

A.—Yes.

10 Q.—Did you hear from Lord Shaughnessy at that time, on that trip to New York, how the matter was left with them, or was his final report just what you told His Lordship about the cable?

A.—I think he said he was to see them again, he expected to see them again.

Q.—Do you know if anybody else from Montreal was in New York at that time in connection with that proposal or those negotiations?

A.—I do.

20 Q.—Who?

A.—Dr. Kauffman.

Q.—Doctor Joseph Kauffman?

A.—Doctor Joseph Kauffman.

Q.—Had he been an intimate friend of Sir Mortimer in his lifetime?

A.—Well, he was Sir Mortimer's doctor.

Q.—And he was very close to him?

A.—Well, he was very close to him.

30 Q.—Did you see Doctor Kauffman in New York yourself at that time, do you remember?

A.—Yes, I saw him.

Q.—Speaking of those negotiations with the D.C.L. representative, did you ever have any further conversation that you can give us with Lord Shaughnessy, in connection with those negotiations at that time, in May, 1928, that you remember anything in particular?

A.—No.

By the Court:

40 Q.—Was Lord Shaughnessy in New York when you left on the 12th of May?

A.—Lord Shaughnessy was in New York at that time. He came to say goodbye to me, but he had returned to Montreal, so had I, as a matter of fact.

By the Court:

LADY DAVIS (*for Plaintiffs*), *Examination-in-Chief*.

Q.—Did you see him on his last visit to New York?

A.—On the 12th of May, I saw him.

By the Court:

Q.—What did he report then?

10 A.—Nothing.

By Mr. McKeown:

Q.—We are just a little past the point of our story, and we are dealing particularly with your stay in New York from April 26th to May 2nd, 1928, when Lord Shaughnessy was there with the D.C.L. people. Following that trip I think you stated to His Lordship you returned to Montreal. What day would that be? What days were you here?

20 A.—I came back on the 3rd of May.

Q.—How long did you remain?

A.—Until the 5th.

Q.—That would be, you would be in Montreal the 3rd, 4th and 5th of May?

A.—Yes.

By the Court:

Q.—Did you see Lord Shaughnessy in Montreal?

30 A.—Yes.

By the Court:

Q.—That is when you signed the Power of Attorney?

A.—Yes.

Mr. McKeown: The Power of Attorney was signed on the 4th; the modifying Agreement was the 5th.

40 By Mr. McKeown:

Q.—I notice that the Plaintiffs' Exhibit Number 5, filed with the return of the action, is a Power of Attorney executed by you on May 4th, 1928, in favor of Lord Shaughnessy and Mr. Reaper jointly as your Co-Executors and Co-Trustees under the Will before Mr. Phillips, Notary. Do you remember that Power of Attorney?

A.—Yes.

LADY DAVIS (for Plaintiffs), Examination-in-Chief.

Q.—Do you remember the circumstances under which you signed that?

A.—Yes, I do remember it, because Lord Shaughnessy had returned from New York before I had, and when I arrived in Montreal, Lord Shaughnessy to me: “I was terrified you had gone to Europe without coming back, because there are some papers you must sign before going,” and he said “You must sign a Power of Attorney”,
10 I said, “All right”.

By the Court:

Q.—Was the Power of Attorney prepared in your absence?

A.—I suppose so. I do not remember it being prepared. Anyhow I signed it.

By Mr. McKeown:

20 Q.—And that was the Power of Attorney you, as mentioned here, gave these powers as shown by the second paragraph of the document?

A.—Yes.

Q.—(Reading):

30 “Which said appearer in her said capacity doth hereby constitute and appoint her Co-Trustees and Executors, to wit, William James Shaughnessy, the Right Honorable Lord Shaughnessy, of Montreal aforesaid, a Baron of the United Kingdom, and Alexander M. Reaper of Montreal aforesaid, Secretary—
40 jointly to be her Attorneys for her in her said capacity, to do and perform all such things as may be required in connection with the Estate and Succession of the deceased, the said late Sir Mortimer B. Davis, hereby delegating generally to her said Attorneys as such Co-Trustees and Executors all affairs which she, the said appearer might exercise herself as such Trustee and Executrix, if personally present in and by virtue of said Will whether in respect of matters of conservation, administration or alienation, including the express power to sell, transfer and in any way alienate and dispose of any and all property of said Estate both moveable and immoveable.”

This Power of Attorney as it appears, was signed under date May 4th, which would be the second day after you had returned from that trip?

A.—Yes.

LADY DAVIS (for Plaintiffs), Examination-in-Chief.

Q.—Did I understand you to say that Lord Shaughnessy had been concerned for fear you had left for Europe prior to that time, and said to you there were other papers he wanted you to sign? Did he use that expression?

A.—Yes, he did.

10 Q.—The Meeting was supposed to have been held on the 25th, as shown by the draft of the minutes. Had you signed any papers prior to the signing of this Power of Attorney, except possibly those minutes, that you can say now?

A.—Not unless it was the stock certificate.

Q.—The stock certificate is another date?

A.—Well, I do not remember.

Q.—Unless it was the stock certificate, you cannot think of any papers except these minutes?

A.—No.

20 Q.—Those minutes are admitted not to have been drafted on the date they bear

Mr. Campbell: I do not know that there is any such evidence in the record.

Mr. McKeown: Subject to correction.

Mr. Campbell: They may not have been reduced to writing at the very seance, tenant; I do not think there is any evidence in the record that I recall that they were not signed on that day.

30 Mr. McKeown: Mr. Reaper said they were signed some days afterwards.

By Mr. McKeown:

Q.—Very well, on the 4th, you signed the Power of Attorney?

A.—Yes.

Q.—You have spoken of the stock certificate?

A.—Yes.

40 Mr. McKeown: The stock certificate, My Lord, was some form through which the other Executors went under date, I think May 5th, according to their plea, whereby one share of the stock of the Sir Mortimer Davis Incorporated was transferred into the name of Lady Davis, as she thought, for the purpose of qualifying her as a Director.

By Mr. McKeown:

LADY DAVIS (*for Plaintiffs*), *Examination-in-Chief*.

Q.—Upon referring to paragraph 8 of the pleas of both defendants, I notice that it is there alleged that on May 4th, you were qualified with one share of the Incorporated Company. Is that the stock certificate you are referring to?

Q.—Did you endorse the stock certificate referred to in that part of the plea?

A.—Yes.

10 Q.—In the office of Lord Shaughnessy?

A.—In the office of Lord Shaughnessy.

Q.—It could not have been before the 4th, because that is the date that the plea states the transfer was made. Would it be that day?

A.—I should think so.

Q.—So that that could not possibly have been the document you signed prior to this trip back from New York, when you arrived in Montreal on May 3rd?

20 A.—No.

Q.—Where did you sign the Power of Attorney?

A.—I think in Lord Shaughnessy's office—I am quite sure.

Q.—Was Mr. Phillips, the Notary, there present?

A.—Yes.

Q.—Do you remember having met him?

A.—Yes.

Q.—And you say you signed the stock certificate there?

A.—Yes.

Q.—Do you remember where you signed the minutes?

30 A.—No. It was a big book, but I should think in Lord Shaughnessy's office.

Q.—It was in a book?

A.—Yes.

Q.—There is a further document produced in this record as Plaintiffs' Exhibit Number 15 with the return of the action. It is page 19 of the Plaintiffs' printed Exhibits, which purports to be a memorandum of Agreement made on May 5th, 1928, between Sir Mortimer Davis Incorporated and the Trustees and Executors of the last will of the late Sir Mortimer Davis as parties of the first
40 part, and Lord Shaughnessy as party of the second part. Will you look at the original of this document which I now show you, and say whether that document bears your signature?

A.—Yes, it does.

Q.—What were the circumstances under which this document was signed? Where did you sign that document?

A.—In the Ritz Carlton Hotel.

Q.—I see it is dated May 5th, 1928?

LADY DAVIS (for Plaintiffs), Examination-in-Chief.

A.—Yes.

Q.—Would that be the day?

A.—Yes.

Q.—That is the day upon which you left Montreal?

A.—Yes.

Q.—For the last time?

A.—Yes.

10 Q.—Who, if anyone, brought that document to you for signature at the Ritz Carlton?

A.—Lord Shaughnessy.

Q.—Was anyone else present?

A.—No.

Q.—When the document was first presented to you for signature, had anyone else signed it?

A.—Yes.

Q.—Who had signed it?

20 A.—Mr.Reaper.

Q.—Was it signed at this interview at the same time it was presented to you?

A.—Yes.

Q.—How long did the interview last?

A.—Only a few minutes.

Q.—And it was brought to you by Lord Shaughnessy?

A.—Yes.

30 Q.—This document in the preamble refers to the contract of September 17th, 1924, between Sir Mortimer Davis Incorporated, Sir Mortimer Davis personally, and Lord Shaughnessy, as it states here:

“Relating to the placing in Trust with the Honorable H. M. Marler and H. B. McLean, Trustees, of certain six per cent Serial Notes and Shares of the Capital Stock of Sir Mortimer Davis Incorporated, to be delivered to said Shaughnessy upon the fulfilment of and according to the conditions of the said contract”:

40 Let me ask you this, was that contract of September 17th, 1924, to which reference is made there, presented to you for consideration at the same time as the Modification, Exhibit number 15?

A.—No.

Q.—Had you ever seen the contract of September 17th, 1924, prior to the time that Lord Shaughnessy presented to you the Modification now dated May 5th, 1928, Exhibit number 15?

A.—No. I had never seen it.

Q.—This clause in the preamble then continues:

LADY DAVIS (for Plaintiffs), Examination-in-Chief.

“ And whereas it was subsequently agreed between the parties to the said contract that the conditions hereinafter expressed be, and the same form part of said contract ”.

That clause apparently refers to paragraph 2 of the document, which reads:

10 “ (2) That in order to clarify and make certain the terms of that certain letter dated October 15th, 1924, from Sir Mortimer Davis Incorporated to Right Honorable Lord Shaughnessy with reference to the obligation on the part of the latter to turn in to Sir Mortimer Davis Incorporated all Directors' fees received from any Company in which Sir Mortimer Davis Incorporated is largely interested, and the subsequent Agreement that this letter does not cover, and was not intended to cover remuneration received by the said Shaughnessy as an officer of the Canadian Industrial Alcohol Company Limited, 20 or as an officer in any other Company which Sir Mortimer Davis Incorporated may or may not be interested.”

Let me ask you first of all, at the time the Modification Agreement, Exhibit number 15, was presented to you, was there also presented to you a copy of this letter of October 15th, 1924?

A.—No.

Q.—Had you ever seen the letter in question?

A.—No, never.

Q.—Had you ever heard of it before?

30 A.—No.

Q.—This Exhibit number 15, the Modification Agreement, and the particulars which I have just read to you, speaks of a subsequent Agreement, subsequent to the letter of the 15th of October, 1924. Without saying whether the Agreement is verbal or in writing, did you know of any Agreement modifying the letter of October 15th, 1924, at the time the Modification Agreement Exhibit number 15 was presented to you?

A.—No.

40 Q.—What, if anything, did Lord Shaughnessy say in presenting this document for your signature as an Executrix, and which had already been signed by Mr. Reaper as you said?

A.—Lord Shaughnessy came in; he told me he wanted me to sign this document, and that Mr. Reaper had already signed it, and he explained that it was in case anything should happen to him, and that he had a contract with Sir Mortimer, and that this would protect his family

Q.—The Modification Agreement?

LADY DAVIS (*for Plaintiffs*), *Examination-in-Chief*.

A.—Yes, would protect his family in case he should die, because otherwise, he would have worked three years for nothing.

Q.—Did he say anything further than what you have told us?

A.—No.

Q.—How did you happen to place your signature on it?

A.—Well, I signed it.

Q.—At Lord Shaughnessy's request?

10 A.—At his request, yes.

Q.—And did he sign it there in your presence?

A.—I do not remember.

Q.—The signatures to this Agreement are first, Sir Mortimer Davis Incorporated, by Lord Shaughnessy as Vice-President, A. M. Reaper as Secretary-Treasurer, with the Seal of the Company. You are now looking at the original?

A.—Yes.

20 Q.—And in the second place, the Estate Sir Mortimer B. Davis, Shaughnessy, Eleanor Davis and A. M. Reaper, Executors?

A.—Yes.

Q.—Still looking at the original?

A.—Yes.

Q.—And the Beneficiary under it does not appear to have signed personally. There is no further signature on the original by Lord Shaughnessy?

A.—No.

30 Q.—Did Lord Shaughnessy suggest before signing that document you should have independent advice or advice of Counsel, or anything of that nature?

A.—No.

Q.—And you accepted his representation and signed it?

A.—Yes.

Q.—Had he ever spoken to you about anything of that kind prior to the time he had been at the Ritz that afternoon, the last day you were in Montreal when about to leave for Europe?

A.—No, I had never heard from him before.

Q.—You have spoken of the Stock Certificate which you were asked to sign?

40 A.—Yes.

Q.—That was signed in Lord Shaughnessy's office?

A.—Yes.

Q.—On the 5th of May, 1928?

A.—I should think the 4th.

Q.—Who were present there?

Q.—Just Mr. Reaper and yourself?

A.—Yes.

LADY DAVIS (for Plaintiffs), Examination-in-Chief.

Q.—Was there any explanation given to you at that time as to the purpose of this formality as to what it was being done for?

A.—Lord Shaughnessy told me to sign that, and I would become a Director of the Sir Mortimer Davis Incorporated.

And it now being 12.50 P.M. the Court adjourned until 2.30

10

And on this 29th day of April, 1930, personally came and re-appeared the said witness

LADY ELEANOR DAVIS

and her examination-in-chief was continued by Mr. W. K. McKeown, K.C., as follows:

20 By Mr. McKeown:

Q.—Did you ever find out, Lady Davis, subsequent to the time you signed that stock certificate on May 4th, 1928, whether you had, in fact, been appointed a Director on that date?

A.—That was when the trouble started. I was told I was not appointed on that date; it was very much later.

Q.—Until this litigation began here recently, did you know that you had not been appointed a Director as of date May 4th, 1928?

30 A.—No. I was under the impression I was appointed a Director at the time.

Q.—Did Lord Shaughnessy at any time between the date you signed that certificate, in May, 1928, and the commencement of this litigation, refer to your Directorship; I mean, did you ever have any conversation with him as to your position as Director, how it came about, and what your rights were in the connection?

A.—I do not think I quite understand the question, Mr. McKeown.

40 Q.—Did the question of your right to be a Director come back at any subsequent time between Lord Shaughnessy and yourself?

Witness: Between what date?

Counsel: Between the time you thought you were a Director in May, 1928, and the time this lawsuit started.

A.—Yes, at one meeting Lord Shaughnessy told me——

LADY DAVIS (for Plaintiffs), Examination-in-Chief.

Q.—Just tell His Lordship when that would be?

A.—It is rather difficult to tell when it was.

Q.—Was it since you returned to Canada, since June?

A.—Oh, yes.

Q.—What was said by Lord Shaughnessy in that connection?

10 A.—Well, Lord Shaughnessy said that I had no right to be a Director at all; it was entirely through his courtesy I was a Director, and I said, that being an Executor gave me, I thought, the right to be a Director of the Sir Mortimer Davis Incorporated. He said: “Not at all, that the Estate was very well represented by two persons on the Board, himself and Mr. Reaper.”

Q.—After the 5th of May, when these documents were signed, I understand you left Montreal?

A.—Yes.

Q.—And went to New York?

A.—Yes.

20 Q.—And sailed from there?

A.—On the 12th of May.

Q.—On the 12th of May, 1928?

A.—Yes.

Q.—When did you next see Lord Shaughnessy after sailing from New York on the 12th of May, 1928?

A.—I should think it was in August or the end of July, in Paris.

Q.—The same year?

A.—Yes.

30 Q.—Do you remember how much time Lord Shaughnessy spent abroad on the occasion of that trip?

A.—I think he went over in July, and returned in September.

Q.—Was he accompanied by any members of his family?

A.—His wife, and some of the children, I think.

Q.—You mentioned having met Lord Shaughnessy in Paris?

A.—Yes.

Q.—Did you see him more than once during the time he was there from July to the end of September?

A.—Oh, yes.

Q.—How often?

40 A.—I do not remember, but several times. They also spent a week with me in Deauville, in August.

Q.—Did you see them anywhere else except in Paris and Deauville?

A.—Yes, I went to London to say goodbye to them before they sailed.

Q.—Did you make any enquiry from Lord Shaughnessy during his stay in Europe concerning the affairs of the Estate?

LADY DAVIS (*for Plaintiffs*), *Examination-in-Chief*.

A.—I asked him how things were, and he always assured me that everything was going along very well, everything was all right.

Q.—Did Lord Shaughnessy, while in Europe on that occasion, hand you any statements in connection with the position of the Estate?

A.—Yes.

10 Q.—Will you identify the statement (Exhibit P-50) to which you have referred now shown you as being a statement of the affairs of the Estate, at the date of Sir Mortimer's death, March 22nd, 1928, as being the statement handed you by Lord Shaughnessy?

A.—Yes.

Q.—Did you ever receive any further statement of the affairs of the Estate from Lord Shaughnessy or Mr. Reaper, prior to the time of your return to Canada in June, 1929?

A.—No.

20 Q.—Did you have any correspondence with Lord Shaughnessy from time to time?

A.—Yes.

Q.—From the time you left, in May, to the end of 1928?

A.—Yes, casual correspondence.

Q.—Can you recall any incident while Lord Shaughnessy was in Europe on that occasion, with reference to the value of the Alcohol shares and the advisability of purchasing the same, or anything of that kind?

A.—Yes.

30 Mr. Campbell: I object to this evidence as not arising under the pleadings.

His Lordship: Objection reserved.

Witness (continuing): Yes. Before Lord Shaughnessy sailed, he told me that any time the Alcohol shares were under 40 it was a very, very good buy.

By Mr. McKeown:

40 Q.—You say this was before he sailed. Would that be in September, 1928?

A.—Yes.

Q.—Did you act upon that suggestion from Lord Shaughnessy in the matter of purchasing any shares for your own account personally?

LADY DAVIS (for Plaintiffs), Examination-in-Chief.

Mr. Campbell: I object to this question. There is no such allegation.

(The Court reserves the objection.)

10 A.—Yes, I did. I saw the shares quoted one day at 38, and I telegraphed Lord Shaughnessy, and asked him if he would purchase a thousand shares for me.

By Mr. McKeown:

Q.—Will you look at the copy of cable now produced as Plaintiffs' Exhibit P-225, which has been handed to me from Mr. Reaper from his files, and say whether this is a copy of the cable which you sent Lord Shaughnessy on the occasion to which you have just been referring?

20 A.—Yes, that is the cable.

Q.—Will you read it?

A.—(Reading) "Neuille Sur-Seine, October 11th, 1928, Shaughnessy, Montreal, buy one thousand Canadian Industrial Alcohol use McNish Bonds for security signed Eleanor."

Q.—How did it come about that you cabled Lord Shaughnessy to make that purchase for your account, rather than anybody else?

A.—Well, because Sir Mortimer had always asked me during his lifetime not to buy or sell Canadian Industrial Alcohol stock through brokers, but to ask someone of the Incorporated Company to buy it.

30 Q.—At that time did the Incorporated Company have possession of any securities held for your personal account?

A.—Yes, they had.

Q.—Apart from these thousand shares referred to in the cable?

A.—Yes.

Q.—Will you look at the list of securities contained in the receipt which I now show you, and marked Exhibit P-226, and say whether the securities mentioned in this list, which include the thousand shares to which you have just referred, were in the possession of the Incorporated Company for your account?

40 A.—Yes.

Q.—This receipt which I have just exhibited to you is a copy of receipt which you gave when these securities were surrendered to you under date October 28th, 1929, but were those securities in the possession of the Incorporated Company—I do not refer to the thousand shares; the McNish, \$31,440, of McNish Debentures, being 6,288 Debentures at \$5, and 6,268 Alcohol "A" shares?

A.—Yes.

LADY DAVIS (for Plaintiffs), Examination-in-Chief.

Q.—And they are in addition to the thousand shares which were purchased?

A.—Well, I think there were some other stocks there too.

Q.—Did you at any subsequent time give Lord Shaughnessy instructions to sell those thousand shares which you purchased under his recommendation?

10 A.—I wrote a letter to him asking him to sell them at five points profit.

Q.—Do you remember what those shares cost?

A.—A little over 40.

Q.—Including brokerage and everything?

A.—Yes.

Q.—Will you look at the original letter which I now show you, and which is marked Exhibit D-15, being a letter dated December 31st, 1928, and say whether you sent that letter to Lord Shaughnessy on the date it bears?

20 A.—Yes.

Q.—I notice that the third paragraph reads:

“ I would like to get five points on the thousand shares of Alcohol that I bought. Will you sell it if it reaches this mark.”
Do you remember that?

A.—Yes.

Q.—Had you given any prior instructions to Lord Shaughnessy in that respect?

A.—No.

30 Q.—I notice by the Defendants' Exhibit D-55 that the stock sold in February at 45. Do you remember having noticed by the quotations, the stock had reached that point?

A.—Yes, I did notice it in the newspapers, in Paris.

Q.—Did you speak to Lord Shaughnessy, and inquire whether he had sold your stock for you in accordance with your request?

A.—Yes, I did.

Q.—When would that be?

A.—It would be when he came to Europe.

Q.—The next year?

A.—Yes.

40 Q.—In 1929?

A.—Yes.

Q.—What did he say in that respect?

A.—I said, “ Did you ever sell my stock?” and he said, “ No, to sell that quantity it would have had to have gone to 47 or 48, so I did not sell it ”.

Q.—That was his answer to you?

A.—Yes.

LADY DAVIS (for Plaintiffs), Examination-in-Chief.

Q.—Did he explain why no part of the stock had been sold or offered?

A.—No.

Q.—That was the only explanation he gave you?

A.—Yes.

10 Mr. McKeown: I may say, my Lord, I make that evidence more particularly to show Lord Shaughnessy's view of the stock at that time.

By Mr. McKeown:

Q.—And in point of fact you still have those shares?

A.—Yes.

20 Q.—Speaking of this casual correspondence with Lord Shaughnessy during the year 1928, you remember having received a cable from Lord Shaughnessy in connection with the so-called Marler stock?

A.—Yes.

Q.—Will you look at the original calls and decode, dated October 31st, 1928, addressed to Lady Eleanor Davis, and signed "Shaughnessy", which is now produced and marked Exhibit P-227, and say whether this is the cable which you received from Lord Shaughnessy in connection with the Marler stock?

A.—Yes.

Q.—This cable reads:

30

" Marler willing sell his stock of Sir Mortimer Davis Incorporated numbering five hundred shares at price fixed by Auditors, namely, one hundred and seventy dollars per share. Under By-laws these must be offered to present shareholders in proportion to their holdings, namely, Estate ninety per cent, Waddell five per cent, self five per cent. We think purchase very advisable and I willing take my proportion if you concur."

Did you reply to that cable?

40

A.—Yes.

Q.—Will you look at copy of cable now produced, dated Paris, November 1st, 1928, addressed to "Shaughnessy", and signed "Eleanor", copy of which is now marked as Exhibit P-228, and say whether you sent this cable?

A.—Yes.

Q.—This cable reads:

LADY DAVIS (*for Plaintiffs*), *Examination-in-Chief*.

“ Paris, November 1st, 1928. Shaughnessy, Montreal. Yes concur understand purchase out of capital invested. Signed Eleanor ’ ”.

Q.—When this cable, Exhibit P-227, arrived from Lord Shaughnessy, were you aware of the conditions of any By-laws of Sir Mortimer Davis Incorporated?

10 A.—I had never seen the By-laws.

Q.—And assuming the position was as so stated, you sent the reply, P-228?

A.—Yes.

Q.—What does your reply refer to in its discretion—“ Understand purchase out of capital investment ”?

20 Mr. Campbell: I submit, my Lord, the document is there and Your Lordship will construe it. I submit the witness should not interpret the document by her verbal testimony.

Mr. McKeown: I think the question should be allowed for the purposes of explaining it.

His Lordship: What do you want to file?

Mr. Campbell: The document is already in.

Mr. McKeown: I am filing Lady Davis' cable.

30 Mr. Campbell: Mr. McKeown is now asking Lady Davis what her reply means. I submit the reply is there and Your Lordship can construe what it means.

(The Court reserves the objection.)

By Mr. McKeown:

40 Q.—What do those words refer to: “ Understand purchase out of capital investment ”?

A.—I did not think it was fair to take it out of the revenue. I did not think it was right to make an investment of this amount of money out of the revenue.

Q.—This price of \$170 per share as mentioned in Lord Shaughnessy's cable to you represented a sum of \$85,000, did it not?

A.—Yes.

LADY DAVIS (*for Plaintiffs*), *Examination-in-Chief*.

His Lordship: That is, the Marler shares?

Mr. McKeown: The whole of the Marler shares, my Lord.

By Mr. McKeown:

10 Q.—And your reply was that you concurred, and understood the purchase was to be out of capital investment?

A.—Exactly.

Q.—Did you during 1928, towards the close of the year, receive from Lord Shaughnessy a copy of the Auditors' report and statement of the Incorporated Company, as of date September 30th, 1928?

A.—Yes.

Q.—Will you identify as a copy received by you, the Exhibit already produced, and marked P-51?

A.—Yes.

20 Q.—Insofar as the Incorporated Company is concerned, from the time you sailed from New York on May 12th, 1928, until you returned in June, 1929, did you ever receive from Lord Shaughnessy any further statement of the Incorporated Company, except this Exhibit P-51?

A.—No. That was the only one.

Q.—Going back just for a moment to the matter of the Marler stock: Will you identify as having been received by you from Lord Shaughnessy, the original letter dated November 7th, 1928, marked D-9, already in the record?

30 A.—Yes.

Q.—Did you personally have any dealings, or negotiations, with Mr. Marler concerning the acquisition of his stock by the Estate?

A.—No, never.

Q.—The whole of the information you received came to you from Lord Shaughnessy?

A.—Yes.

40 Q.—There is one expression used by Lord Shaughnessy in this letter to which I wish to draw your attention, that is, Lord Shaughnessy's concluding reference to the purchase of the stock, in which he says on page 4:

“Reaper and I think it is a very good purchase quite apart from the fact that we got rid of Marler forever.”

Do you know of any reasons, so far as you were concerned, why there was any advantage of getting rid of Marler forever?

A.—No.

Q.—Were you a party at any stage in getting rid of Marler forever, as an Executrix or otherwise?

LADY DAVIS (*for Plaintiffs*), *Examination-in-Chief*.

A.—No.

Q.—In this letter, on page 4, Lord Shaughnessy continues:

“ Under one of the Trust Deeds he is entitled to remuneration of two thousand dollars per annum, and it might be fair to 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.”

10

Had you ever seen the Trust Deeds under which two thousand dollars was payable to Mr. Marler?

A.—No, never.

Q.—Had you any other information on that subject, except what is contained in Lord Shaughnessy's letter?

A.—No, nothing.

Q.—And, in point of fact, you had received his cable, and sent your reply before this letter of November 7th arrived?

20

A.—Yes.

Q.—Authorizing the purchase of the stock out of capital, before you received this letter of the 7th of November?

A.—Yes.

Q.—Because it is dated afterwards, and must have taken some time to reach you?

A.—Yes.

30

Q.—Did Lord Shaughnessy at any time subsequent to this letter of the 7th of November, and prior to the difficulties here, explain to you anything about any little additional compensation to Mr. Marler in connection with the Trust Deed?

A.—No. That was the only news I had about it.

Q.—Did you know in particular that Mr. Marler was to receive \$15,000 in addition to the \$85,000 representing the 500 shares?

Mr. Campbell: I object to this question in the form in which it is put. My learned friend is leading the witness in a manner that I suggest there is no necessity in doing. The witness is a very capable witness indeed and does not need to be led.

40

Mr. McKeown: I am basing myself on your client's letter.

(The Court reserves the objection.)

A.—No.

By Mr. McKeown:

LADY DAVIS (*for Plaintiffs*), *Examination-in-Chief*.

Q.—I find another interesting subject in this same letter, beginning on page 5, in which Lord Shaughnessy says:

“ Things are running very smoothly and we have almost got the Succession Duties settled. This should be done by the beginning of December.”

10 This letter, you will remember, is dated November 7th, 1928. Did Lord Shaughnessy before your arrival in Canada give you any further information that the Succession Duties were being settled?

A.—No.

Q.—You have spoken of the return to Europe in 1929 of Lord Shaughnessy. What time did he spend in Europe in this last year, 1929?

A.—I think it has come out that he went over in April. I first saw him either in the latter part of April or the beginning of May.

20 Q.—Where?

A.—In Paris.

Q.—Was he accompanied by any member of his family on that trip?

A.—Yes, Lady Shaughnessy was with him.

Q.—And do you remember how long he was in Europe before he sailed?

A.—No, I do not remember how long he was in Europe. I saw him in Paris either at the end of April or beginning of May, and then I saw him when I went to London in May.

30 Q.—Did you see him in Paris more than once?

A.—It might have been once or twice.

Q.—And how many times in London?

A.—Well, I arrived Sunday and I think we lunched; I saw him twice, I think.

Q.—Was that the only time you met him in London on that trip?

A.—Well, I was only there two days.

40 Q.—Did you on the occasion of those interviews inquire from Lord Shaughnessy as to the progress of matters in connection with the Estate here?

A.—Yes, I always inquired how things were going on. He always said everything is going on very well, fine.

Q.—Would that be his statement to you in the month of April, in Paris, in 1929?

A.—Yes.

Q.—That everything was going along fine?

A.—Yes.

LADY DAVIS (*for Plaintiffs*), *Examination-in-Chief*.

Q.—Did he at that time, in Paris, tell you of any difficulties which the Executors were experiencing?

A.—No, nothing at all.

Q.—The statement was as you have given it to us?

A.—Yes.

Q.—Who was Sir Mortimer's legal or confidential adviser in France in the latter years of his life?

10 A.—Well, professionally, a man named Candelac, but an intimate friend of Sir Mortimer's was a man called William Corbett, an American lawyer living in Paris.

Q.—Was he practising in Paris?

A.—No, he was retired.

Q.—Had he been a friend of Sir Mortimer over a term of years?

A.—Yes, a very intimate friend.

Q.—Do you know whether he had participated in advising Sir Mortimer with respect to the Will which became his last Will?

20 A.—Yes, he did.

Q.—To your personal knowledge?

A.—Yes.

Q.—And you have said that he was an intimate friend of Sir Mortimer's?

A.—Yes, he was.

Q.—Did you know Mr. Corbett in France?

A.—Very well indeed.

30 Q.—Did you have occasion to discuss the situation with Mr. Corbett following Sir Mortimer's death at any time, as to the matters of the Estate?

A.—Yes. Mr. Corbett often talked about things like that with me.

Q.—We have now come to the period at the end of April, 1929, when Lord Shaughnessy was assuring you, in Paris, that everything in connection with the Estate was going along well, going fine, to use his expression?

A.—Yes.

Q.—Had Mr. Corbett made any suggestion to you at any time with reference to anything in connection with the Estate?

40 A.—Yes.

Mr. Campbell: I object to this as illegal and irrelevant. There is nothing in the pleadings about conversations between the witness and Mr. Corbett.

His Lordship: Conversation means nothing unless it leads to something.

LADY DAVIS (for Plaintiffs), Examination-in-Chief.

Mr. Campbell: How can anything that may have occurred in a conversation between the witness and Mr. Corbett affect the defence?

His Lordship: It is probably an introductory question.

Mr. McKeown: It is merely introductory.

10 Mr. Campbell: I submit it does not arise under the pleadings and is illegal and irrelevant.

His Lordship: Objection reserved.

A.—Mr. Corbett advised me to make occasional trips to Canada, and familiarize myself with the conditions of the Estate, and to keep in closer touch with things of the Estate, and he also pointed out that it was Sir Mortimer's express wish, as he so stated in his Will.

20 By Mr. McKeown:

Q.—And you say that Mr. Corbett had participated in the preparation and execution of that Will?

A.—Yes.

Q.—Had you ever had any discussion with Sir Mortimer upon the same subject?

A.—Yes, Sir Mortimer told me——

30 Mr. Campbell (interrupting): This raises the same point.

Mr. McKeown: It is only introductory. It does not cover anything, except to explain why Lady Davis took this interest which she manifested in the will.

Mr. Campbell: It was perfectly proper for her to take an interest. It was not only proper, but was her duty as an Executrix.

40 Mr. McKeown: Exactly.

Mr. Campbell: Why should we be faced with testimony about conversations held between the late Sir Mortimer Davis and the witness in the box. How can we possibly control that. There is no allegation in the pleading, and it is utterly beyond our power to control. My submission is it is illegal, and should be excluded from the record.

LADY DAVIS (for Plaintiffs), Examination-in-Chief.

Mr. McKeown: I think we should be allowed to make evidence to explain why Lady Davis came away from those scenes of absolute security——

His Lordship: She thought she was secure.

10 Mr. McKeown: If Lady Davis had known, when she was discussing with Lord Shaughnessy in Paris, in 1929, what the true facts were, she would have been over here even faster than she came.

By the Court:

Q.—When did you see Mr. Corbett?

A.—I saw Mr. Corbett recently in New York before I sailed. I saw him the last day I was in Paris, which would be about the 10th of May.

By Mr. McKeown:

20 Q.—And how often had you seen him before that during the year following Sir Mortimer's death?

A.—Oh, I saw him practically two or three times a week.

Q.—You were intimate friends with Mr. and Mrs. Corbett?

A.—Yes.

Q.—And they had been intimate friends of Sir Mortimer and yourself during the time that you were in Paris?

A.—Yes.

30 Q.—Will you answer the question, had you ever had any discussion with Sir Mortimer upon the same subject?

A.—Yes. Sir Mortimer had always told me that if anything should happen to him, supposing he should die, that I should go out at least once a year to Canada.

Q.—There is, as you have just said to His Lordship, the clause to which your attention was specially directed by Mr. Corbett, that is, Article 23 of the Will which reads:

40 “ Article XXIII. I charge my said Trustees and Executors to take an active and energetic interest in the management of my Estate, and to carry out the policies I have laid down, and to particularly conserve the capital of my Estate, and not to sacrifice the same by premature liquidation.”

That is the clause to which reference is made?

A.—Yes.

Q.—Did I understand you to say that you had, from these motives, decided to come out to Canada in the spring of 1929?

LADY DAVIS (*for Plaintiffs*), *Examination-in-Chief*.

A.—Yes.

By the Court:

Q.—That was in April?

A.—In April, 1929, yes.

Q.—You came in June?

10 A.—I sailed in May—the middle of May.

By Mr. McKeown (continuing):

Q.—Your purpose, as you have defined it, was to familiarize yourself with the affairs of the Company and of the Estate?

A.—Yes.

Q.—Will you say whether up to the time you reached the determination to come to Canada you had the slightest suspicion of anything being wrong with the Estate?

20 A.—No, not the slightest.

Q.—At that time did you have complete confidence in the ability and integrity of Lord Shaughnessy and Mr. Reaper as Executors?

A.—Yes.

Q.—What was the first element which justified your condition of mind you have just described?

A.—The conversation at the dinner party in London.

Q.—At the Embassy Club?

30 A.—At the Embassy Club. I think we fixed the date as May 13th.

Q.—I think you have told us you came over from France on Sunday, May 12th, and dined on the Monday or the Tuesday night, and sailed the next morning?

A.—I sailed on the 14th.

Q.—Who were present at this dinner party at the Embassy Club?

A.—There were four of us.

Q.—Lord Shaughnessy and Lady Shaughnessy were there?

40 A.—Yes.

Q.—Did Lord Shaughnessy become aware that you were leaving for this side in a few days?

A.—Yes.

Q.—What did Lord Shaughnessy say to you on that occasion which gave an indication of conditions being otherwise than as you had supposed?

LADY DAVIS (for Plaintiffs), Examination-in-Chief.

A.—It was his announcement that he had found this financial genius.

Q.—Will you please tell His Lordship, as well as you can recall it, exactly what was said by Lord Shaughnessy in that connection on that occasion?

10 A.—Lord Shaughnessy was very enthusiastic, and he said that he had engaged a man who was a financial genius; that he had had him in mind for some time, but he had been very busy getting reports about him. He said the reports were not very good at first —they did not exactly say he was not honest, but they said something that rather made him think he was not trustworthy. He said: “ I will risk that, because he cannot do anything unless he comes to me first. I have bought an Investment Company for \$30,000, and I am paying him a salary of \$20,000 a year. I have given him offices, and I have told him: ‘ Now go out and see what you can do. Go out and get some underwriting ’. I expect to build this up to a gigantic Investment Company, perhaps one hundred and fifty million dollars. Of course, you and Mortimer won’t get any surplus revenue in the meantime, but after a few years the revenue will be very very good indeed.”

20 Q.—Was this absolutely the first intimation you had heard of any proposal of the kind in connection with the affairs of the Estate or the Company?

A.—The very first.

Q.—And, this was on May 12th or 13th, 1929?

A.—Yes.

30 Q.—What did you say to this statement at the time?

A.—I did not say anything. I was dumbfounded.

Q.—Did you think it coincided with anything you had ever previously heard of in connection with the Will or the Estate?

A.—I knew it was absolutely opposite to anything I had ever heard previously.

Q.—But at the time you did not engage in any discussion with Lord Shaughnessy on the subject?

A.—No. I thought it very much better to find out more about it and then learn the exact details.

40 Q.—And, of course, this was at a time when you were intending to sail the following morning for Canada?

A.—Yes.

Q.—Did you tell us the date of your sailing?

A.—May 14th.

Q.—For New York?

A.—Yes.

LADY DAVIS (for Plaintiffs), Examination-in-Chief.

Q.—When did you arrive in New York?

A.—I presume about May 21st or 22nd.

Q.—Lord Shaughnessy and Lady Shaughnessy were with you in London on this date which you have given as, I think, May 12th or 13th?

A.—Yes.

Q.—When were they returning here?

10 A.—They had arranged to sail on the 18th.

Q.—May 18th?

A.—Yes.

Q.—And, your passage was booked for the 14th?

A.—Yes.

Q.—Were they going via New York?

A.—No, they were coming by Canada; but they changed their sailings.

Q.—Do you remember when Lady Shaughnessy sailed?

20 A.—No, I do not.

Q.—But, it would be after you left?

A.—It was after I sailed, yes.

Q.—Did Lord Shaughnessy come across with Lady Shaughnessy?

A.—No, he came after Lady Shaughnessy.

Q.—You say you think you would have reached New York about May 22nd. What, if anything did you do from then on to verify whether Lord Shaughnessy was or was not in Montreal or when he was expected?

30 A.—I telephoned to Montreal several times to find out whether they had arrived, or when they were going to arrive, and I was told they had changed their sailings. I waited to find out when they were to arrive, and I think Lady Shaughnessy arrived before I did, but I arrived before Lord Shaughnessy.

Q.—You mean Lady Shaughnessy arrived in Montreal before you did?

A.—Lady Shaughnessy arrived in Montreal perhaps a few days before I did, but I arrived before Lord Shaughnessy.

40 Q.—Did you come up from New York to Montreal?

A.—Yes.

Q.—About when?

A.—I arrived on the 6th.

Q.—The 6th of June?

A.—Yes.

Q.—Had Lord Shaughnessy reached Montreal at that time?

A.—No.

LADY DAVIS (for Plaintiffs), Examination-in-Chief.

Q.—But, Lady Shaughnessy was here?

A.—Yes.

Q.—I think it has been established in the evidence that Lord Shaughnessy reached Montreal on Saturday, June 8th. Having that in mind, had you met Lady Shaughnessy prior to that time?

10 A.—Yes. I think we lunched together the day I arrived, and Lady Shaughnessy was very excited over some McNish trouble that Lord Shaughnessy had in London. She told me he had quarreled with the McNish Brothers, and that she was very anxious for his return, and that when he would return she would like me to meet him and dine with them alone so that he could tell me all about it.

Q.—Lady Shaughnessy made this statement to you at luncheon on the day you arrived, which would be Thursday, June 6th?

A.—Yes.

20 Q.—Following Lord Shaughnessy's arrival here did you dine at his home?

A.—Yes.

Q.—Do you remember how long afterwards that would be?

A.—No, I do not.

Q.—A matter of a few days?

A.—A day or two after.

Q.—Was there anyone present at dinner on that occasion?

A.—Just Lady Shaughnessy, Lord Shaughnessy and myself.

30 Q.—During the course of the dinner did Lord Shaughnessy proceed to give you the explanation which you had expected with reference to the McNish situation?

A.—No, nothing was said.

Towards the end of the evening Lady Shaughnessy said: "Billy, tell Eleanor about the McNish". And he said: "Oh, that will be all right. That is all right. That will be quite all right". I never heard anything about it except from Lady Shaughnessy.

Q.—As far as Lord Shaughnessy was concerned was that the beginning and the end of all he told you at that dinner concerning McNish?

40 A.—Yes.

Q.—That it would be all right?

A.—Yes.

Q.—At that time did you know anything of the connection between McNish and the Alcohol Company?

A.—Yes.

Q.—You knew McNish was a subsidiary of the Company?

A.—Yes.

LADY DAVIS (*for Plaintiffs*), *Examination-in-Chief*.

Q.—It has come out in the correspondence produced that at one time Sir Mortimer planned to spend three months in London in connection with McNish, shortly before his death?

A.—Yes.

Q.—Do you know that that was his plan?

A.—Yes, I do.

Q.—But that plan was cut off by his passing away?

10 A.—Yes.

Q.—Do you know anything further of Sir Mortimer's plans in connection with McNish?

A.—Sir Mortimer was very enthusiastic about the McNish Company. At one time he tried to get Sir Henry Thornton to be Chairman of the Board, or President, or the Head, of the McNish Company: and I think he wanted to send some men around the world to do what they call missionary work—place the whisky in different parts of the world.

20 Q.—Was this reference by Lord Shaughnessy to McNish which you have just mentioned to the Court, made during dinner, or was it after dinner?

A.—After dinner.

Q.—He said nothing about it during dinner?

A.—No. I waited patiently the whole evening, but heard nothing.

Q.—And, the only reference he made to it was upon the suggestion of Lady Shaughnessy to tell you about McNish?

A.—Yes, that is right.

30 By the Court:

Q.—Was that what kept him on the other side?

A.—Yes. Lady Shaughnessy told me so. She said he had a great deal of trouble with the McNish Brothers: that he found them very dishonorable—that in his absence they had extended their contracts, and that they had raised their salaries, and that he was having a great deal of trouble with them.

40 By Mr. McKeown (continuing):

Q.—That information was given you by Lady Shaughnessy?

A.—Yes.

By the Court:

Q.—Did she tell you that in London or in Montreal?

LADY DAVIS (*for Plaintiffs*), *Examination-in-Chief*.

A.—In Montreal.

Q.—Before, or after, her husband's arrival?

A.—Before.

By Mr. McKeown (continuing):

10 Q.—During the course of the dinner to which you have referred did you notice anything which attracted your attention particularly?

A.—Yes.

Q.—What was it?

A.—Some furniture.

Q.—What do you mean in that connection? What do you mean by your reference to the furniture? What was it?

A.—That I had seen up in 516 Pine Avenue.

Q.—You are referring to the furniture of which room?

A.—The dining room.

20 Q.—The dining room in Lord Shaughnessy's residence on Peel Street?

A.—Yes.

Q.—In other words, the furniture you saw there that night you had previously seen in 516 Pine Avenue?

A.—It was our dining set.

Q.—It had been your dining room furniture?

A.—Yes.

30 Q.—Had you had any prior knowledge or information that that dining room furniture had been removed from the Pine Avenue house to Lord Shaughnessy's residence?

A.—No.

Q.—None whatever?

A.—No.

Q.—It consisted of the furniture which has been examined and referred to by Mr. Finlay and the New York expert in the early part of the trial?

A.—Yes.

40 Q.—Did you make any comment upon the matter of that furniture at the time?

A.—No.

Q.—Did Lord Shaughnessy offer you any explanation in regard to it on the occasion of the dinner?

A.—No.

Q.—Was the subject taken up later by any member of his family?

A.—Yes: Lady Shaughnessy asked me if I minded.

LADY DAVIS (for Plaintiffs), Examination-in-Chief.

Q.—When was that?

A.—It might have been the next day, or it might have been a few days after.

Q.—Where did the conversation take place?

A.—As I remember, it was on Sherbrooke Street in front of the Linton.

Q.—You just met Lady Shaughnessy casually?

10 A.—I think we lunched at the Hunt Club, and I was leaving her. I was going to visit some friends in the Linton. That is my recollection of it.

Q.—Did you bring up the subject to Lady Shaughnessy?

A.—No.

Q.—What did she say?

A.—She asked me if I minded about the dining room furniture, and I said: “No, not at all”.

Q.—Had you, either before that incident, or afterwards, visited
20 the Pine Avenue house?

A.—No. You mean after my return from Europe?

Counsel: In connection with this subject of the dining room furniture.

Witness: Had I been to the Pine Avenue house?

Counsel: Yes: before or after this conversation with Lady Shaughnessy.

30 A.—No.

Q.—Did Lady Shaughnessy, or anyone else, ever again refer to the dining room furniture to you, before this litigation started?

A.—No.

Q.—You met Lord Shaughnessy a number of times from the the occasion of the dinner that evening until the litigation began?

A.—Yes.

Q.—In the months of June, July and August?

A.—Yes.

Q.—Did he ever offer you any explanation of how it came
40 about that that furniture from your dining room had arrived in his dining room?

A.—No, Lord Shaughnessy never mentioned it to me.

Q.—Did any other member of the family, except Lady Shaughnessy, and on this occasion to which you have referred in front of the Linton, ever bring up the subject to you?

A.—No.

LADY DAVIS (*for Plaintiffs*), *Examination-in-Chief*.

Q.—Following that incident what did you do in the matter of checking up the affairs of the Estate with Lord Shaughnessy?

A.—I asked Lord Shaughnessy if he would go over some of the Statements with me.

Q.—When did you make this request?

A.—I think the night we first dined together I asked him if he would give me a little bit of his time, and he told me he had
10 been away so long that I would understand he would be very busy for the next few days—I think he put it—and that he had so many Meetings, and being away so long, he would naturally be very busy for a while. So, that passed off perfectly.

Q.—He did not make any appointment on the occasion of your first bringing it up with him?

A.—No.

Q.—He simply said he would be very busy for a time?

A.—Yes.

Q.—Did you make further efforts to get in touch with him?
20

A.—Yes, I did.

Q.—In what way?

A.—I asked him several times before it really happened if I could go to the office, and would he go over the Sir Mortimer Davis Statement with me sometimes. He always said yes he would, but there was never any specific time fixed. Then I telephoned him and asked him if I could go one morning, and he said yes.

Q.—And, you went?

A.—And, I went.

Q.—Do you know whether the inaugural ceremony of the
30 Young Men's Hebrew Association had taken place?

A.—Yes. That happened on June 16th, I think.

Q.—Up to the time of that inaugural ceremony of the Y.M. H.A. had you had any interview with Lord Shaughnessy at which he gave you any information in connection with the affairs of the Estate?

A.—No.

Q.—Your initial interview was after June 16th?

A.—Yes.

Q.—How long after?
40

A.—In my mind I rather place it towards the end of June.

Q.—May we take it it would be roughly in the last week in June?

Mr. Campbell: I think I must ask my learned friend again not to lead his witness.

LADY DAVIS (for Plaintiffs), Examination-in-Chief.

Mr. McKeown: It is not leading anywhere to do any harm. Everyone knows the interview took place, and it is only a matter of my effort to approximate the date of something.

10 Mr. Campbell: In a case of this kind I think the rule against putting leading questions to my learned friend's own client should be very strictly observed. I submit the question is leading, and therefore should not be put.

Mr. McKeown: It is not leading. The witness has said it was towards the end of June. She said it was after June 16th, which was a firm date fixed. I am really only asking whether it was the first week following June 16th, or the later week. The exact date of the meeting is of no importance, although it is rather significant, in a way, there were no Minutes kept of it, whereas there were Minutes kept of many other things. Apparently there was no record kept, and we are doing the best we can under these conditions to approximate a date which may have some little bearing on the situation.

20

By Mr. McKeown (continuing):

Q.—What is your best recollection of the date?

A.—Mr. Campbell asked me the same question, and I think my answer was I thought it was the last week in June. That is my recollection.

30 Q.—What transpired on that occasion?

A.—I had a copy of the Sir Mortimer Davis' Incorporated Statement of September, 1928.

Q.—That would be Exhibit P-51, which I have already shown you?

A.—Yes.

Also the Statement of Sir Mortimer Davis Estate.

Q.—At the time of death?

A.—Yes.

40 Q.—Which would be the Statement Exhibit P-50, which I have shown you?

A.—Yes.

I brought those two Statements to Lord Shaughnessy at his office, and asked him if he would go over the Sir Mortimer Davis, Incorporated, Statement and explain some of the things to me. He said he would, and he did. In going over the Statement we came to an item of C. S. Jennison, a loan of \$10,000, in the Sir Mortimer

LADY DAVIS (*for Plaintiffs*), *Examination-in-Chief*.

Davis, Incorporated, Statement. I would like to explain that in the meantime I found out that Mr. Jennison was the genius.

Q.—That is, you found out that fact after you arrived here in Montreal?

A.—Yes.

10 Q.—Speaking of the item in Exhibit P-51, the Price, Waterhouse Report and Statement of the Incorporated Company as at September 30th, 1928, and which concerned Mr. Jennison, do you refer to Exhibit “ E ” of the Statement, and to the entry reading:

“ Other Loans: C. J. Jennison: amount of loan \$10,000, interest accrued \$205.49: total \$10,205.49. Income for year, \$205.49. Note due December 1st, 1928, \$10,000; 500 shares no par value capital stock of Jennison Company, Limited.”

20 Is that the entry which caught your eye and which you asked Lord Shaughnessy to explain?

A.—Yes.

Q.—And, you say that when you put that question to him you had already found out that this Jennison was the financial genius of whom he had spoken to you in London?

A.—Yes.

Q.—Did you know anything about Jennison when you got this Statement originally at the end of December, 1928?

A.—No.

30 Q.—Had you ever heard of him?

A.—No.

Q.—Did that entry to which I have just drawn your attention mean anything to you when you received the Statement originally, in December, 1928?

Mr. Campbell: I object to the question as illegal and leading, and I invite my learned friend again not to lead his witness.

40 Mr. McKeown: I am not leading. I am asking the question in the only form I know how to ask.

His Lordship: Perhaps you could put it in another way.

Mr. McKeown: I am willing to put in any form that will suit my learned friend, if he will tell me how I can ask it, and get an answer from the witness, otherwise than I have propounded it. I

LADY DAVIS (for Plaintiffs), Examination-in-Chief.

am not a willing sinner in this instance: I am sinning in spite of myself, if I am sinning at all.

Mr. Campbell: I think if my learned friend will try he can put his question in a way that will not suggest the answer to the witness.

10 Mr. McKeown: This question cannot suggest any kind of an answer. However, I will try to satisfy my learned friend.

By Mr. McKeown (continuing):

Q.—When you got this Statement of the Incorporated Company (Exhibit P-51) in December, 1928, had you ever heard of a man called C. J. Jennison?

Mr. Montgomery: It is C. J. Jennison.

20

Mr. McKeown: It is C. J. Jennison in the Exhibit.

A.—No, never.

By Mr. McKeown (continuing):

Q.—You, therefore, knew of no one connected with the Company in any manner who would be a debtor to the Company for \$10,000?

30

A.—No.

Q.—Did you have any notion at all upon the subject, and, if so, will you please tell His Lordship what, if anything, was in your mind in regard to it?

A.—Sir Mortimer was very kind and very generous, and I felt perhaps Sir Mortimer had lent this money to some old friend of his.

Q.—Was that really your thought as you saw that item in this Statement when you received it in December, 1928?

40 A.—Yes. I did not think Lord Shaughnessy would take it upon himself to lend money in that way.

Q.—And, you had not the slightest inkling of what the matter was?

Mr. Campbell: I must again renew my objection. This is leading the witness.

By Mr. McKeown (continuing):

LADY DAVIS (*for Plaintiffs*), *Examination-in-Chief*.

Q.—Had you the slightest inkling?

A.—I had not.

Mr. Campbell: Of course the harm is done by the time the objection is made.

10 By the Court:

Q.—Did Lord Shaughnessy mention Mr. Jennison's name at the interview in London?

A.—No, Your Lordship, he did not mention his name.

Q.—When did you connect him with the affairs of the Estate?

20 A.—Because strangely enough when I came back I happened to meet someone who spoke of an American who was always in Lord Shaughnessy's office, and asked me who he was. They said he was a sort of a promoter, and asked if I knew him. I immediately connected the two, and that was where I heard his name. Then I found out that he had offices in the Canada Cement Building, and looking at the Statement everything sort of fitted in, and there was not any doubt in my mind that it was he.

Q.—When did you begin your investigation as to his past?

Witness: You mean Mr. Jennison?

His Lordship: Yes.

30 A.—Immediately I came here, when I heard of him. I naturally got the opinions of people, and they all seemed to say he was charming, and that personally and socially he was quite nice; but he was a promoter, and did not seem to stay any place very long—not very substantial.

By Mr. McKeown (*continuing*):

40 Q.—Subsequently you obtained a report of the R. G. Dun Company, or one of the Mercantile Agencies, on him?

A.—Yes. That was later.

Q.—When you went to see Lord Shaughnessy for this initial meeting, as you have told His Lordship you had well in mind that this financial genius was Mr. Jennison?

A.—Yes.

Q.—Whose abilities you had learned about, to the extent you have just informed the Court?

LADY DAVIS (for Plaintiffs), Examination-in-Chief.

A.—Yes.

Q.—Will you now tell His Lordship exactly what occurred, as to salient matters, at the first interview, which you have placed in the latter part of June, 1929?

A.—I asked Lord Shaughnessy if this was the financial genius to whom he referred in London, and he said yes. I said “This Investment Company—this Holding Company as you expressed it—I
10 thought Sir Mortimer Davis was a Holding Company. What do you want two for? It seems very expensive to be paying this man \$20,000 a year.” He said: “I am not paying him \$20,000 a year. He has to make it first. The only thing between Jennison and Sir Mortimer Davis, Incorporated, is this loan of \$10,000.” I said: “I object to it very much. I think we should call his loan. Then, because this is a very speculative thing, and as this Company is controlled by an Estate, I do not think we should have anything speculative like this.” Lord Shaughnessy immediately concurred with me, and
20 called in Mr. Reaper and said: “Mr. Reaper, Lady Davis has just brought forward a very good point. She objects to Jennison, so we will call his note; and, as she quite rightly pointed out, Sir Mortimer Davis, Incorporated, is controlled by an Estate, and it should be run as an Estate. We will call Jennison’s note, and that will be the end of that.”

Then Mr. Reaper said: “What about the oil leases?” I said: “Which oil leases? Have you taken on new oil leases?” Lord Shaughnessy said: “Oh, not very many. That will be all right. We are going to sell them out to the Standard Oil Company.”

30 Q.—How did this statement of Lord Shaughnessy to you at this June meeting, that the only thing between Jennison and Sir Mortimer Davis, Incorporated, was the \$10,000 loan, coincide with the story which he had told you of the financial genius in London?

A.—It was entirely different; but he denied that.

Q.—In June he denied the story which he had told you in London?

A.—Exactly.

Q.—And, the story he told you in London was . . . ?

40 A.—He told me in June that he had bought an Investment Company for \$30,000, and was going to pay him a salary of \$20,000 a year.

Q.—And, at your interview at the end of June his story was . . . ?

A.—That there was nothing between them but the note of \$10,000.

Q.—Which was going to be called?

LADY DAVIS (for Plaintiffs), Examination-in-Chief.

A.—Which would be called.

Q.—And, Mr. Reaper was called in?

A.—Yes.

Q.—There are one or two matters which I would like to make perfectly clear at this point. What did Lord Shaughnessy say (giving his own words, if you can) to your protest against anything speculative?

10 A.—He said that it would be run as an Estate—as an arm of an Estate—and that they would not indulge in anything speculative.

Q.—What did he say as to whether your point was well or badly taken?

A.—He said it was very well taken.

Q.—Were those his own words?

A.—Very well taken. He called Mr. Reaper in and told him that.

Q.—Do you know what Lord Shaughnessy's impression was, if any, at that time, as to whether you intended to remain in Canada
20 for the next year, or otherwise?

A.—Lord Shaughnessy thought I was going to sail for Europe very shortly.

Q.—Why do you say that?

A.—Because of the things which happened afterwards; things he said or did that he was not sincere about.

By Mr. Campbell:

30 Q.—Did he ever confide his thoughts to you?

A.—I said subsequent events made me think so.

Mr. Campbell: Surely the witness should not be invading the region of Lord Shaughnessy's thoughts, except in so far as he may have communicated them to her.

Mr. McKeown: She said she judged of his thoughts by what he afterwards did, and found he was not sincere, and we will come to pretty concrete evidence that she was right.

40 Mr. Campbell: What he said and did may be relevant, but what the witness thinks he thought surely is not relevant.

By Mr. McKeown, continuing:

Q.—What further matters were covered at that interview?

LADY DAVIS (for Plaintiffs), Examination-in-Chief.

A.—I asked Lord Shaughnessy why it was that Mortimer and I only got \$67,500 a year.

Q.—You mean Mr. Mortimer Davis, jr., co-plaintiff in this action?

A.—Yes. When Sir Mortimer had told me we would get a very much larger income.

10 Q.—Did you mention any amount?

A.—I told him exactly what Sir Mortimer had told me, that we would have around \$400,000 a year.

Q.—Each?

A.—Each.

Q.—You made that statement to Lord Shaughnessy?

A.—Yes.

Q.—And what did Lord Shaughnessy answer to that statement made by you to him on that occasion?

20 Witness: Do you want his exact words?

Counsel: Yes, his exact words.

A.—He said: “Then, your husband lied to you.”

Q.—What did you say to that?

A.—I said I did not think he had. Lord Shaughnessy said: “You will not have more than \$67,500 for a good many years. Look at all the debts I have to pay, and the death taxes, and the bequests.” Then he called Mr. Reaper in, and Mr. Reaper had some Statements of the Sir Mortimer Davis Estate—some loose leaves—in his hand, and they were reading off some figures. I said: “May I have these statements?” and Mr. Reaper said: “No, not these. They are not made up yet.” I said: “Will you make me up a statement of the Estate?” and he said he would.

30

Q.—What did you gather from those leaves, as you remember them? What was the purport of them?

A.—They were just mentioning items—bequests, and things of that sort.

40 By the Court:

Q.—Was that at the interview at the end of June?

A.—Yes.

Q.—How long did that interview last?

A.—Perhaps a half hour.

Q.—How long did Mr. Reaper remain with you?

LADY DAVIS (for Plaintiffs), Examination-in-Chief.

A.—Not all the time; a part of the time. In the beginning he was not there—there was just Lord Shaughnessy and myself. Mr. Reaper was called in after.

By Mr. McKeown, continuing:

10 Q.—And in your presence given those instructions by Lord Shaughnessy to which you have testified in connection with the Jennison loan?

A.—Yes. Another thing Lord Shaughnessy said at that meeting was: he said he had meant to ask me in London if I minded Mr. Waddell going on the Board of the Incorporated Company, that he had been thinking of it because Mr. Waddell had a 5% interest in the Incorporated Company. I said: “I have no objection at all.”

Q.—Lord Shaughnessy brought that subject up of his own initiative?

20 A.—Yes.

Q.—On the occasion of that first visit did you find amongst your papers any further papers which had not been discussed, either in connection with the Estate or the Company?

A.—Yes. When I went in to see Lord Shaughnessy I noticed a Statement—I just read “Sir Mortimer Davis, Incorporated”—and as I had asked Lord Shaughnessy to give me this interview and tell me about Sir Mortimer Davis, Incorporated, it flashed through my mind when I saw this Statement that it was there for me. In the course of the interview and our conversation, the Statements that I had and some letters I had were all mixed, and when I got home I found I had taken this Statement of Sir Mortimer Davis, Incorporated, to April, which Lord Shaughnessy had not referred to at all in our conversation or interview. When I went home I found that I had three Statements instead of two, and my mail that I had with me.

40 Q.—Will you look at the Statement already filed in this Record as Exhibit D-11, being a Statement of Sir Mortimer Davis, Incorporated, as at April 30th, 1929, and will you say whether this is the Statement which you gathered up with your papers on the occasion of that visit, and to which you have just referred?

A.—Yes, this is it.

Q.—These are the identical sheets of paper?

A.—Yes.

By the Court:

LADY DAVIS (*for Plaintiffs*), *Examination-in-Chief*.

Q.—Had you taken legal advice on June 29th?

A.—No. I had, but not on any subject like this. I think I had been to Mr. Montgomery before this, but not on this subject.

By Mr. Montgomery:

10 Q.—Nothing to do with any troubles?

A.—Nothing to do with any troubles. I think it was on June 24th.

By Mr. McKeown (*continuing*):

Q.—Following up His Lordship's enquiry as to whether you had taken legal advice prior to the interview at the end of June to which you have been referring, will you please look at the letter I now show you, dated June 8th, 1928, addressed to you by Lord
20 Shaughnessy, and produced as Plaintiffs' Exhibit P-229, and will you say whether that letter was received by you from Lord Shaughnessy following its date, together with a lengthy considered opinion by the firm of Messrs. Meredith, Holden, Heward & Holden concerning Trust Deeds for \$3,000,000 and \$1,200,000 made by Sir Mortimer Davis, and which involved some important legal questions following his death?

A.—Yes.

Q.—You have stated, in answer to His Lordship, that you had taken legal advice prior to your first interview with Lord Shaughnessy, and that you had consulted Mr. Montgomery?
30

A.—Yes.

Q.—Will you say whether the consultation with Mr. Montgomery had reference to the Trust Deeds referred to in this letter Exhibit P-229?

Mr. Campbell: I object to the form of the question, as leading and illegal.

40 His Lordship: Lady Davis said she had taken legal advice.

Mr. Campbell: Might I suggest that my learned friend should ask her to define what she sought legal advice about, rather than suggesting the answer.

Mr. McKeown: Becoming highly technical does not help much towards expediting matters.

LADY DAVIS (for Plaintiffs), Examination-in-Chief.

Mr. Campbell: It is not a matter of being highly technical: it is a matter of your having a very well disciplined witness in the box, who is being, if I may say so, led in a way that is not proper according to the rules of evidence.

10 Mr. McKeown: You have been overruled in your objections by His Lordship up to date.

Mr. Campbell: But, I have to preserve my rights.

Mr. McKeown: I will not ask His Lordship to rule upon this question: I will withdraw it and put it in another way which will be airtight.

By Mr. McKeown (continuing):

20 Q.—Will you please tell His Lordship whom you consulted and from whom you received legal advice between the time you reached Canada, in June, 1929, and the time of your first meeting with Lord Shaughnessy?

A.—I consulted Mr. Montgomery.

Q.—Did you consult any other Counsel apart from Mr. Montgomery, at that time?

A.—No.

30 Q.—Will you tell His Lordship what was the subject upon which you consulted Mr. Montgomery?

A.—Those Trust Deeds.

Q.—The Trust Deeds mentioned in the letter I have shown you. Exhibit P-229?

A.—Yes.

Mr. Campbell: That is much better.

Mr. McKeown: I am delighted to be able to please my learned friend for once.

40 By Mr. McKeown: (continuing):

Q.—You have told us that at this first interview you were promised Statements by Mr. Reaper in connection with the affairs of the Estate. You said he exhibited certain sheets, and offered to put them together for you. Did you receive those Statements in the course of the next week or so?

LADY DAVIS (for Plaintiffs), Examination-in-Chief.

A.—I think I received them two or three weeks after.

Q.—Before receiving them did you make any further effort to get in touch with Lord Shaughnessy again?

A.—When I got home and saw this new Statement which did not belong to me.

Q.—Are you referring now to Exhibit D-11, being the Statement of Sir Mortimer Davis, Incorporated, of March 30th, 1929, which you say picked up at the first interview?

A.—Yes. When I got home I saw I had an extra Statement, and I looked at it.

Q.—Did you find anything on it which attracted your attention at that time, and, if so, what?

A.—Those things that are still marked.

Q.—The things which are still marked with lead pencil on the last page?

A.—Yes.

Q.—What are those items?

A.—“ Investment Foundation, Limited, 3,000 shares, at \$15 ”: “ Cadillac Coal Company, Limited, Loan Account, \$15,742 ”: “ Donations ”: “ Salaries ”:

On the page next to the last: “ Cadillac Coal Company, \$450,000.” I had never seen anything like it before.

In the course of a day or two I brought it back to Mr. Reaper.

Q.—Up to the time you glanced over this Statement of the Incorporated Company, Exhibit D-11, had you ever heard of the Cadillac Coal Company?

A.—Never.

Q.—And, you found that item mentioned for \$450,000 apparently?

A.—Yes.

Q.—Had you ever heard of the Investment Foundation, Limited, before that time?

A.—No, never.

Q.—And, it was down on the Statement for \$45,000?

A.—Yes.

Q.—And, the Cadillac Coal was down for another item “ Loan Account, \$15,742 ”?

A.—Yes.

Q.—You also referred to an item of Donations, \$2,830?

A.—Yes.

Q.—And, did you mention something about Salaries?

A.—Yes. I saw there was a difference in the salaries between

LADY DAVIS (for Plaintiffs), Examination-in-Chief.

those and the Statement of Sir Mortimer Davis, Incorporated, of September 30th, 1928. There was an increase in this one.

Q.—That is to say, the last page of the Statement Exhibit D-11 showed an amount, under Expense Accounts, of \$5,958.49 for salaries, which was an increase over the amount shown in the former Statement of the Incorporated Company, Exhibit P-51?

A.—Yes.

10 Q.—Having reached the point of noticing those new items, what did you do?

A.—I went to the office, and I asked to see Lord Shaughnessy, but Mr. Reaper told me he was busy.

Q.—About how long would this be after the first interview?

A.—A few days after.

Q.—Mr. Reaper said Lord Shaughnessy was busy?

A.—Yes: so I spoke with Mr. Reaper. I asked him to explain
20 the items I have mentioned in this Statement. I asked him about the Cadillac Coal Company—that is the item of \$450,000. I asked if it meant that they had paid \$450,000 for a Coal Company, and he said no, that it was simply a bookkeeping cross entry. I said: “How much did you pay for it?” He said: “We put very little cash in it.” I said: “How much? What do you call very little cash?” He said: “Oh, about \$100,000.” I said I thought that was a great deal of money.

Then I asked him about the salaries, and he said that Lord Shaughnessy had been in the habit of receiving a bonus, and instead
30 of voting him a bonus each year they decided to raise his salary \$5,000 a year.

Q.—Meaning whom by “they”?

A.—Meaning Lord Shaughnessy and Mr. Reaper, I presume.

Q.—At that time you were supposed to be a Director of the Company?

A.—Yes.

Q.—Prior to the conversation to which you are now referring had you ever heard of any increases of salary to either Lord Shaughnessy or Mr. Reaper by the Incorporated Company?

40 A.—No.

Q.—It has been established in evidence that that matter came into being about the end of December—I think on December 31st, 1928. As a Director of the Company were you ever advised that any such change had been made?

A.—No.

Q.—When Lord Shaughnessy was in Europe, in the spring and

LADY DAVIS (for Plaintiffs), Examination-in-Chief.

summer of 1929, did he inform you, or make any reference to the Incorporated Company, in that respect?

A.—No.

Q.—At your first interview with Lord Shaughnessy and Mr. Reaper, at the end of June, did they disclose to you that there had been any changes in the position of the Incorporated Company in respect to the matter of salaries?

10

A.—No.

Q.—You have been speaking of Cadillac Coal, and you have told us Mr. Reaper said they put very little money into it; and upon further enquiry it turned out he said they had put in about \$100,000?

A.—Yes.

Q.—Of real money? That was not supposed to be a bookkeeping entry?

A.—No. Real money.

20 Q.—You also spoke of the salaries. What, if anything, was said about the other items on this Statement to which you have made reference: Investment Foundation, for instance?

A.—He said that was a new investment they had gone into.

Q.—Was anything said about the donations?

A.—I asked him about the donations, and he said they had been in the habit of donating this money. I said I did not think they should continue it, considering Sir Mortimer was dead.

Q.—What else occurred at that interview with Mr. Reaper?

30 A.—I asked Mr. Reaper if Lord Shaughnessy had called Mr. Jennison's note, and he said no, that Lord Shaughnessy had been very busy. I thought it was a very important thing, and it would not take very long, and I thought he should have done it. Mr. Reaper said: "As a matter of fact, we have decided not to run Sir Mortimer Davis, Incorporated, as an arm of the Estate. We are going to run it as an Operating Company." I said: "Then, I am afraid you are going to have trouble with me."

Q.—Did I understand you correctly to say that at the first meeting, in June, the Jennison note was to be called?

A.—Yes.

40 Q.—And, at the second meeting, a few days afterwards, Mr. Reaper said they had decided not to call the Jennison note?

A.—No, he did not say they had decided not to call it. He said Lord Shaughnessy was too busy, and that he had not time to call it. And he said, anyhow, they had decided not to run the Company as an arm of the Estate, and that they were going to run it as an Operating Company.

LADY DAVIS (*for Plaintiffs*), *Examination-in-Chief*.

Q.—At the first meeting in June he had told you the note was the only thing between the Incorporated Company and Jennison?

Mr. Campbell: I object to the question as leading, and illegal.

A.—Yes.

10 By Mr. McKeown (continuing):

Q.—What, if anything, did Mr. Reaper say at the second interview as to the position of the Jennison matter?

His Lordship: He said he had not called the note.

By Mr. McKeown (continuing):

Q.—Was anything further said by Mr. Reaper at that interview upon salient matters?

20 A.—I cannot think of anything else.

By the Court:

Q.—Did you see Lord Shaughnessy that time?

A.—No, I did not.

By Mr. McKeown (continuing):

30 Q.—Following the discoveries which you had made up to date did you consult Counsel with reference to the affairs of the Estate generally?

A.—Yes, I did.

And it being 4:30 o'clock, the further examination of the witness is continued to Tuesday, April 29th, at 10:30 o'clock in the forenoon.

On this 29th April, 1930:

40 ELEANOR CURRAN (Lady Davis)

re-appeared and continued her evidence as follows:

By Mr. McKeown, K.C.:

Q.—At the adjournment yesterday, Lady Davis, I had been questioning you with reference to the interview you had with Mr. Reaper early, I take it, in July, when you called to have him explain

LADY DAVIS (for Plaintiffs), Examination-in-Chief.

to you the statement of the Incorporated Company for April, 1929, at which the Jennison matter came up again and the matter of the conduct of the Incorporated Company for the future. At that interview had Mr. Reaper completed the statements which had been promised you at the first interview with Lord Shaughnessy?

A.—No. I asked Mr. Reaper for the statements, but he said he had not completed them yet.

10 Q.—Did you give us the date, approximately, of the meeting with Mr. Reaper? That was the second meeting?

A.—I verified it. I should say it was about the 4th of July. The only way I could verify it was from the visit to Mr. Montgomery's office.

Q.—My last question was whether, following the interview with Mr. Reaper, you took legal advice.

A.—Yes, I did. I went to see Mr. Montgomery about it.

20 By the Court:

Q.—Immediately after the 4th of July?

A.—Yes.

By Mr. McKeown, K.C.:

Q.—You have already spoken of a previous visit to Mr. Montgomery in connection with the Trust Deeds?

A.—Yes.

30 Q.—And on this occasion you are now referring to, that we might understand correctly, you spoke to him of other matters in connection with the Estate?

A.—Yes.

Q.—Following that interview with Mr. Montgomery, or in connection with it, did you get in touch with anybody else?

A.—Well, Mr. Montgomery advised me to ask Lord Shaughnessy to let me have a representative on the Board, some competent man that would keep me in touch with things and probably be of
40 assistance to Lord Shaughnessy so Mr. Montgomery suggested Mr. Donaldson.

A.—Yes.

Q.—Mr. Fred G. Donaldson, the General Manager of the Montreal Trust Company here in Montreal?

A.—Yes.

Q.—Now, for the purpose of the record, will you say whether

LADY DAVIS (for Plaintiffs), Examination-in-Chief.

the Montreal Trust Company is one of the largest trust companies operating here in Montreal?

A.—Yes, it is.

Q.—And it is in close affiliation with the Royal Bank of Canada?

A.—Yes.

10 Q.—Did you act upon Mr. Montgomery's recommendation in the connection which you have just spoken of?

A.—Yes. I asked Lord Shaughnessy if he would let me have a representative on the Board of Sir Mortimer Davis Incorporated, that might keep me in touch with the affairs of this Company and send me regular reports, and he said it was all right; he agreed to it.

Q.—Was there any name mentioned by yourself?

A.—No. I did not mention Mr. Donaldson's name.

Q.—Well, what was the next step?

20 A.—Lord Shaughnessy said he had spoken to Mr. Waddell and he wanted to know if I would like Mr. Waddell to represent me. I said no, as he had suggested Mr. Waddell was going to represent his own interest, and I thought that would be quite all right. Then Lord Shaughnessy asked me if I would like my brother to represent me. I said no, I would not, because my brother had had no financial experience, and he was an employee of the Alcohol Company, and I did not want my brother to represent me.

Q.—That is your brother Audrey Curran?

A.—Yes.

Q.—He was an employee of the Alcohol Company?

30 A.—Yes.

Q.—Under the authority of Lord Shaughnessy, as President?

A.—Yes.

Q.—As you say you suggested your brother had not had any previous financial experience?

A.—Yes.

Q.—And gave also the further reason of his connection with the Alcohol Company?

A.—Yes.

40 Q.—Was that in the interview which you had with Lord Shaughnessy following the interview with Mr. Montgomery?

A.—Yes.

Q.—That was the 5th of July?

A.—It was the 5th of July I had the interview with Mr. Montgomery.

By the Court:

LADY DAVIS (*for Plaintiffs*), *Examination-in-Chief*.

Q.—With Lord Shaughnessy?

A.—With Lord Shaughnessy, no. It was later. I think I have it correct approximately. I say it was a few days later.

By Mr. McKeown, K.C.:

10 Q.—It was immediately following, in any event?

A.—Yes, the same day or two.

Q.—At the interview with Mr. Montgomery on the 5th of July, had you done anything to get in direct communication with Mr. Donaldson?

A.—Mr. Montgomery telephoned Mr. Donaldson and asked him to come over, to explain the situation, and asked him if he would accept this Directorship if it were arranged.

Q.—Was this prior to your interview with Lord Shaughnessy to which you have just referred?

20 A.—Yes, it was.

Q.—The idea was just to know whether he would accept anyone as a Director?

A.—Yes.

Q.—And would give his consent to the principle of an additional Director to represent you?

A.—Yes. I explained of course that it must be somebody agreeable to Lord Shaughnessy.

Q.—Did you later put before Lord Shaughnessy Mr. Donaldson's name?

30 A.—Yes. I telephoned Lord Shaughnessy and asked him if he would accept Mr. Donaldson.

Q.—Did he agree?

A.—No, he did not. He said no, he would not have him.

Q.—He would not have Mr. Donaldson?

A.—No.

Q.—Was he emphatic?

A.—Very emphatic, yes. And then he asked me to come to the office and see him.

40 Q.—Did you go to Lord Shaughnessy's office following that telephone message?

A.—Yes, I did.

Q.—When?

A.—Well, I don't remember exactly. Shortly after, I think. I have here Tuesday, the 9th of July, about the time I went.

Q.—Did you have that fixed as the approximate date?

A.—Yes, around that time.

LADY DAVIS (*for Plaintiffs*), *Examination-in-Chief*.

By the Court:

Q.—Have you kept that memorandum from day to day?

A.—No, Your Lordship. I only checked it up by visits to Mr. Montgomery's office.

10 By Mr. McKeown, K.C.:

Q.—You have just prepared the memorandum which you have before you for the purposes of your evidence?

A.—That is all. They are not absolutely accurate. I could say just about that date.

Q.—You have told us of the telephone message at which you proposed Mr. Donaldson's name, and Lord Shaughnessy asked you for an interview, and that you went to see him in his office?

A.—Yes.

20 Q.—On July 9th, Tuesday?

A.—Yes.

Q.—Where was the interview with Lord Shaughnessy?

A.—In his office.

Q.—Anybody present?

A.—Mr. Reaper was there.

Q.—During the whole interview?

A.—Yes, I think he was.

30 Q.—Just tell His Lordship in your own way exactly what transpired on that occasion?

A.—Well, Lord Shaughnessy was very annoyed. First of all he said he did not like the way I was acting. He said I had come to his office and deliberately taken a statement that did not belong to me, that was never meant for me, and I said I was very sorry, but I made no secret about it, that I thought I had all access to any statements of the Sir Mortimer Davis Incorporated, as I was a Director. He said "Not at all."

40 Q.—What statement was he referring to? Was that the statement you identified in the course of your evidence yesterday afternoon?

A.—Yes, that is the statement.

Q.—What do you say Lord Shaughnessy said to you with reference to that statement?

A.—He said I had deliberately taken a statement that did not belong to me, was never meant for me.

Q.—You made the reply which you have just given us?

A.—Yes. I told him I made no secret of it. I brought it back

LADY DAVIS (for Plaintiffs), Examination-in-Chief.

there to discuss it with Mr. Reaper and had every intention of discussing it with him but was told that he was busy.

Q.—This is the selfsame statement that forward the basis of your interview with Mr. Reaper?

A.—Lord Shaughnessy said he did not like the way I was acting, that I was acting as though I did not trust him or Mr. Reaper, and he said he did not know why I wanted a representative on the Board
10 That was the time he said I had no business on the Board at all. It was entirely through his courtesy, and I argued, as an Executor, I had a right on the Board. He said “Not at all”: the Estate was very well represented by the two people, Mr. Reaper and himself. He said my husband trusted him it was very unusual to ask for a representation on the Board, that he could not go to the C.P.R. and ask to have someone represent him in his absence in Europe. I laughed and said “You cannot compare the C.P.R. with Sir Mortimer Davis Incorporated. It is not at all the same thing.”
20 He said “Yes,” it was; there were outside interests.

Q.—Then Lord Shaughnessy referred to some outside interest in Sir Mortimer Davis Incorporated?

A.—Yes.

Q.—Who could be the outside interest at that time, July 9th?

A.—Mr. Waddell and Lord Shaughnessy were the outside interests.

Q.—The remainder of the shares of the Incorporated Company were owned by the Estate?

A.—He asked me what I wanted a representative for, and I
30 told him, as I had explained, I wanted someone to keep in closer touch with the Estate. He said “We will keep you in close touch.” I suggested the appointment would aid him, perhaps aid on some questions. He said “I can get as much advice as Mr. Donaldson. I don't want a man in here checking me up.”

Q.—Did he at any stage express or suggest any other solution of what he might do or could do?

A.—Yes. He said it cast a reflection upon his character, that he was a director of many other large companies, and that he could
40 resign, but then after saying he could resign, I think twice, he said “But, however, I consider this a sacred trust left me by your husband.” I said I did not wish to argue with him, but I would like a representative.

Q.—Was the interview productive of anything else than what you have given us?

A.—I went to Mr. Montgomery and told him what had happened, and he said he would go and see Lord Shaughnessy.

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Q.—Did you hear from Mr. Montgomery that he had called on Lord Shaughnessy?

A.—Yes, he called on Lord Shaughnessy.

Mr. Campbell, K.C.: I submit the witness has no right to testify what Mr. Montgomery said to Lord Shaughnessy, or what Lord Shaughnessy said to Mr. Montgomery. I object to the question as illegal.

By Mr. McKeown, K.C.:

Q.—Tell us what Mr. Montgomery reported?

A.—He said he had seen Lord Shaughnessy.

Mr. Campbell, K.C.: I don't think she should refer to interviews between herself and her counsel. You are asking the witness what she said to her counsel and what her counsel said to her. My suggestion is she should not be asked to discuss the conversations between herself and Mr. Montgomery. I don't mind her saying what she did as a result of the conversation with Mr. Montgomery, but I say it is not proper she should testify as to what those conversations were, because I cannot check up on that.

The Court: I recognize what she said to Mr. Montgomery is not evidence.

Mr. McKeown, K.C.: The only thing is we might have the general statement from Lady Davis that Mr. Montgomery reported to her he would consent or he would not consent. In a practical way I do not think Lord Shaughnessy agreed to Mr. Donaldson on that occasion, or to anybody.

The Court: No, because we have in evidence Mr. McDonald went to see him on the 23rd of July. However, one thing is certain, Lord Shaughnessy did not accept Mr. Donaldson.

Mr. McKeown, K.C.: That is all I want her to say.

Mr. Campbell, K.C.: We are quite in agreement on that. She should not give the report as evidence. It is impossible to overlook it altogether and it leads to the next step.

By Mr. McKeown, K.C.:

LADY DAVIS (for Plaintiffs), Examination-in-Chief.

Q.—Mr. Montgomery reported to you he had seen Lord Shaughnessy?

A.—Yes.

Q.—Did Mr. Montgomery further report to you whether Lord Shaughnessy agreed or did not agree to the appointment of Mr. Donaldson?

A.—No, he did not agree to the appointment of Mr. Donaldson.

10 Q.—As reported to you by Mr. Montgomery?

A.—Yes.

By the Court:

Q.—Did you understand Mr. Montgomery had suggested Mr. Donaldson the second time?

A.—Yes.

20 By Mr. McKeown, K.C.:

Q.—Following Mr. Montgomery's visit, did you take further advice from Mr. Montgomery with relation to what your next step would be?

A.—Yes, I took advice from Mr. Montgomery.

Q.—Acting upon that, did you get in touch with him—was there any other name suggested to replace Mr. Donaldson on the Board?

A.—Yes. Mr. McDonald.

Q.—Did you see Mr. McDonald in that connection?

30 A.—Yes, I did.

Q.—That is Mr. George C. McDonald. He has been a witness here in the case?

A.—Yes.

Q.—Can you give us the date of your interview with Mr. McDonald, or the approximate date?

A.—Well, I have not got it with me. Mr. McKeown. I think it was—

40 Q.—Let me tell you something that may refresh your memory. (Counsel exhibits document to witness).

A.—It was between the 11th and the 23rd.

Q.—Will you look at the letter addressed to you by Lord Shaughnessy on July 24th, 1929, signed "Sir Mortimer Davis Incorporated, Shaughnessy President," to which is attached a copy of certain by-laws, Numbers 8 to 19 of the Incorporated Company, and say whether you received that letter from Lord Shaughnessy, and the enclosure, on or about its date?

LADY DAVIS (*for Plaintiffs*), *Examination-in-Chief*.

A.—Yes.

Q.—That letter is dated the 24th of July?

A.—Yes.

Q.—The opening clause is “Apropos of our telephone conversation, I enclose herewith copy of the bylaws.” Having regard to the fact that this letter is dated the 24th and it refers to a conversation with Lord Shaughnessy, can you give us the approximate date you
10 saw Mr. McDonald prior to this letter, which also mentions Mr. McDonald’s name, as coming from Lord Shaughnessy?

By the Court:

Q.—Did you get that from Mr. McDonald himself?

Mr. McKeown, K.C.: This is a letter to Lady Davis. That letter is between the two dates in which Mr. McDonald is referred to. Mr. McDonald’s name is mentioned in the latter. All I want to do is to
20 fix a date on which Lady Davis took the matter up with Mr. McDonald and Mr. Montgomery prior to this date.

By Mr. McKeown, K.C.:

Q.—Having regard to the fact that Lord Shaughnessy’s letter P-234 is dated July 24th, 1929, and it also refers to Mr. McDonald by name, it is quite evident you had met Mr. McDonald and Mr. Montgomery before the 24th of July?

30 A.—Yes.

Q.—Just how long before?

A.—A few days; a week.

Q.—You have given us two dates between.

A.—Yes, but as I remember it Lord Shaughnessy had agreed to accept Mr. McDonald on the Board.

Q.—I want to establish the date of the interview between Mr. McDonald and yourself before we come to the matter of having submitted it to Lord Shaughnessy. How long before the 24th of July, the date of this letter, would the interview with Mr. McDonald and
40 Mr. Montgomery have taken place?

A.—I should think a few days before.

Q.—This interview, always between Mr. Montgomery, Mr. McDonald and yourself, where was that interview?

A.—In Mr. Montgomery’s office.

Q.—Was the situation explained to Mr. McDonald in your presence by Mr. Montgomery?

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A.—Yes.

Q.—What was the proposition to Mr. McDonald at that time?

A.—The same practically as made to Mr. Donaldson, if he would accept a directorship with Sir Mortimer Davis, Incorporated.

Q.—And that would have taken two or three days, perhaps on the 22nd of July?

A.—Yes.

10 Q.—Following that incident, did you communicate with Lord Shaughnessy and ask him whether Mr. McDonald would be acceptable?

A.—I did.

Q.—Did you see him in person or did you phone him?

A.—I don't remember whether I saw him in person or telephoned him. He said Mr. McDonald was quite acceptable; that he was a friend of his; that he knew him and liked him very much.

20 Q.—From the fact that a telephone conversation is referred to in his letter, P-234, would it influence you to think you had spoken to Lord Shaughnessy by phone about Mr. McDonald?

A.—Not necessarily, because I think Lord Shaughnessy refers to another matter there; he would have him elected, but he did not do it, and I telephoned him and asked him if he would hold a meeting and have Mr. McDonald elected, and that was the letter I got in reply, asking for the meeting.

Q.—The conversation referred to in this letter would be the one to which you have just alluded?

A.—Yes.

30 Q.—After the conversation by phone with Lord Shaughnessy at which he had agreed to have Mr. McDonald elected he wrote you this Exhibit P-234, dated July 24th, 1929?

A.—Yes.

Q.—Attached to this letter are copies of the Company's by-laws Nos. 8 to 19?

A.—Yes.

Q.—For the purpose of the record this letter reads as follows:

”July 24th, 1939.

40 Lady Davis,
Ritz Carlton Hotel,
Montreal, Que.

Dear Lady Davis:

Apropos of our telephone conversation I enclose herewith copy of by-laws of Sir Mortimer Davis, Incorporated, relating to the appointment of Directors.

LADY DAVIS (for Plaintiffs), Examination-in-Chief.

10 At the last Annual General Meeting of Shareholders the number of Directors was fixed at three, namely, yourself, Mr. Reaper and myself. It would seem under the by-laws that this number cannot be increased except at the Annual General Meeting. It seems quite clear vacancies in the number fixed can be filled for the unexpired portion of the year and of course the number increased to the required number at any Annual General Meeting.

20 It would not, however, be strictly in accordance with the by-laws to increase the Board at the Directors' Meeting now, but though under the circumstances we have no objection to the appointment of Mr. McDonald on policies affecting the company from now until he can regularly be elected a Director. I might say in this connection our fiscal year ends on September 30th, and the Annual Meeting is usually held as soon after that as the Auditors can prepare the Annual Statement. Attached are the copies of the company's by-laws Nos. 8 to 19."

Up to the time of the receipt of this letter had there been any question you would have to leave the Board if Mr. McDonald went on?

A.—No.

30 Q.—The idea as shown by this letter was it was a question of increasing the Board and putting Mr. McDonald on, which Lord Shaughnessy points out or suggests, cannot be done until the Annual Meeting?

Mr. Campbell, K.C.: I object to counsel leading his witness.

By Mr. McKeown, K.C.:

Q.—Do you remember when the Annual Meeting of Sir Mortimer Davis, Incorporated, was held in 1928, following the death of Sir Mortimer Davis?

A.—No, I do not.

40 Q.—I think it has come out in evidence it was held on the 31st of December, 1928.

A.—Yes.

Q.—So that this plan suggested by Lord Shaughnessy to defer Mr. McDonald's appointment to the Board until the Annual Meeting if the Annual Meeting was not held earlier than in previous years, would have meant that from the 24th of July until the 31st of December effect would not have been given to the proposal to

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have Mr. McDonald made a Director. In the year 1929 did you receive a copy of the Annual Report of the Company for the fiscal year ending 30th September, 1929?

A.—Yes.

Q.—A copy of the same has been filed as Exhibit P-Number 10. Will you note that the report of the auditors accompanying the statement is only dated November 16th, 1929?

10

A.—Yes.

Q.—When you received this letter P-234 from Lord Shaughnessy, dated July 24th, 1929, proposing to defer Mr. McDonald's election to the Board, what did you do with it?

A.—I went up to Mr. Montgomery's office. Mr. Montgomery telephoned Mr. McDonald. Mr. McDonald said it was absurd, of course, that the meeting could be held at any time if he really wanted to elect him as a Director.

Q.—Mr. McDonald testified that on July 25th, 1929, he had that
20 interview with Lord Shaughnessy which was made the basis of his evidence. That would have taken place, therefore, after Lord Shaughnessy's letter of the 24th that had reached you and had been placed before Mr. McDonald?

A.—Yes.

Q.—Mr. McDonald also testified at the interview he had with Lord Shaughnessy on the 25th of July, Lord Shaughnessy insisted upon your withdrawal from the Board if he, Mr. McDonald, was to be appointed. When and how did you first hear that your resignation was to be demanded as the price of placing Mr. McDonald on the
30 Board?

A.—I heard it first from Lord Shaughnessy. I telephoned and asked him if he had intended holding this special meeting to elect Mr. McDonald. He said Yes, he would, but he said, "Of course, you will resign." I said no, I had no intention of resigning, that I had not said I would. He said, "How many places do you want?" I said "How many do you?"

Q.—As a matter of fact, did you care whether he had 10 or 20 as long as you had your own place or one other nominee?

40

A.—No.

Q.—Will you tell His Lordship what the purpose was of having Mr. McDonald or Mr. Donaldson on the Board?

A.—I think I have already stated really to keep in closer touch with the affairs and to stop Lord Shaughnessy making these very speculative investments. I thought they would advise him to do differently.

Q.—At this time to what extent had you obtained information

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as to the real condition of affairs? I mean by the 25th of July had the statement which Mr. Reaper promised you been handed to you? Do you remember?

A.—I really don't remember whether I received that statement then or not.

10 Q.—At the very most, did you have at that date, July 25th, any statements other than the two statements which you have already identified, Exhibit P-50, concerning the Estate at the time of death, and P-51, the report of the Incorporated Company as at September 30th, 1928? And the further statement, Plaintiffs' Exhibit Number 6, which I now show you and which I think you can identify as being the statement received from Mr. Reaper.

A.—I don't remember whether I had this one (indicating statement). I had those two, and I had the April statement.

20 Q.—The last statement to which I have referred, Plaintiffs' Exhibit Number 6, is a statement as at May 31st, 1929, which, I take it, you received from Mr. Reaper some time about the date——

A.—I have already stated two or three weeks after.

Q.—Two or three weeks after it was first promised?

A.—Yes.

Q.—This statement Number 6 which Mr. Reaper handed you?

A.—Yes, it was the 27th of June; three weeks after, the 27th of June.

30 Q.—It would have been some time before the interview, perhaps before Mr. McDonald's interview or perhaps afterwards, but this is the sum total of your information then available, these four statements. That is clear.

The Court: I must correct my notes. That statement P-6 had been handed to Lady Davis in July, when she saw Mr. McDonald.

Mr. McKeown, K.C.: She is not able to so testify directly except in her recollection she got it perhaps three weeks after her request, if that is accurate.

40 By Mr. McKeown, K.C.:

Q.—At the very most the sum total of the information then available, and there may be some doubt as to whether the new statement of the Estate was there or not. Following up Lord Shaughnessy's demand for your resignation and your refusal to resign, what did you do next?

A.—I went to see Mr. Montgomery about it. I was terribly worried.

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Q.—Did you know that on that occasion Mr. Montgomery went to see Lord Shaughnessy about it?

A.—Yes.

Q.—Can you give us the date of that interview, from your memorandum?

10 Mr. Campbell, K.C.: We are back on the forbidden ground.

The Witness: The 8th of August.

Mr. Campbell, K.C.: My learned friend can establish these dates from Lord Shaughnessy when the time comes.

Mr. McKeown, K.C.: I have no doubt he will admit it.

By Mr. McKeown, K.C.:

20 Q.—I take it what you wish to say is Mr. Montgomery reported to you he saw Lord Shaughnessy on the 8th of August?

A.—Yes.

Q.—Did he report in sum whether any solution had been found, whether Lord Shaughnessy had agreed to any suggestion?

A.—No. Lord Shaughnessy would not agree to anything. He said he was not going to do anything.

30 Mr. Campbell, K.C.: Objected to as absolutely hearsay. It is just preparatory to a further illegality which has been committed, which is a very serious one. Objected to as illegal and inadmissible. What the witness in the box says as the result of her interviews I don't object to, but where she undertakes to testify what happened between Mr. Montgomery and Lord Shaughnessy, I object.

The Court: There is nothing of what Lady Davis said or what Mr. Montgomery reports is really evidence. It is only asking to link one to the other.

40 By Mr. McKeown, K.C.:

Q.—Now I am going to ask Lady Davis if on the strength of what Mr. Montgomery reported to you of his interview with Lord Shaughnessy on August 8th—did you see Lord Shaughnessy in person?

A.—Yes, I went to see Lord Shaughnessy.

LADY DAVIS (for Plaintiffs), Examination-in-Chief.

Q.—On what date?

A.—I have it marked about the 8th of August.

Q.—Was it following the reports to you by Mr. Montgomery he had seen Lord Shaughnessy?

A.—Yes.

Q.—Where did you see Lord Shaughnessy on that occasion?

10 A.—I went to see him at his office.

Q.—Who was present on that occasion?

A.—Nobody. He was alone.

Q.—Lord Shaughnessy and yourself?

A.—Yes.

Q.—What did Lord Shaughnessy say at that stage in connection with the matter which was then under discussion?

A.—I asked him if I could not have a representative and if he would not run the Incorporated Company as an arm of the Estate. He said no, and he referred to a lot of correspondence my husband
20 had written him. I said, “ I know perfectly well these are the letters giving you instructions to do things when he was alive. It does not mean you are to carry on that way after he was dead.” Lord Shaughnessy said “ Not at all ”; that was the policy he was going to follow, and he again referred to his outside shareholders. I became excited. I said I had heard of outside shareholders, but so far as I know the only person I knew who put any money in Sir Mortimer Davis, Incorporated, was Sir Mortimer Davis, and the outside shareholders consisted of gifts, and he said they were working interests. I said
30 “ Perhaps they were, but the working people were very well paid.” I told him unless he changed his policy and carried it as an arm of the Estate and stopped speculating that I would appeal to the Courts. Lord Shaughnessy said “ Very well, if you feel that way about it, go ahead. You have more to lose than I have.”

Q.—Was that the substance of the interview?

A.—Yes. Then I left.

By the Court:

40 Q.—Did Lord Shaughnessy quote to you any of Sir Mortimer’s letters?

A.—No. He just waved to them that way (illustrating). He said “ I have a lot of correspondence here.”

The Court: I don’t want to stop you. If this ends the period you might as well not begin another subject. You have reached the spot where Lady Davis is about to enter suit.

LADY DAVIS (for Plaintiffs), Examination-in-Chief.

Mr. McKeown, K.C.: Yes, and cuts aloof to get her recourse.

The Court: Have you any other witnesses besides Lady Davis?

Mr. McKeown, K.C.: I think we might have, when Lady Davis is concluded, but let me say to Mr. Campbell I understood him in an entirely contrary sense this morning.

10

(Whereupon an adjournment was taken until 10:30 o'clock A.M. Wednesday, April 30th, 1930.)

20

30

40

LADY DAVIS (*for Plaintiffs*), *Examination-in-Chief*.

And on this thirtieth day of April, in the year of our Lord one thousand nine hundred and thirty, personally came and reappeared the said witness

LADY ELEANOR DAVIS

and her examination was continued as follows:

10

By Mr. McKeown:

Q.—When your examination was suspended yesterday afternoon we had reached the point that on August 8th last you had an interview with Lord Shaughnessy at which he declined to agree to the appointment of Mr. McDonald and yourself, and you had told him that you would invoke the aid of the Courts. Will you just say to His Lordship what you did in that connection following that interview?

20

A.—I reported my interview to Mr. Montgomery, and we telephoned Mr. McDonald, and I think he was away, so Mr. Currie came, and we drafted a letter and sent it to Lord Shaughnessy.

Q.—I take it you refer to the letter of August 15th, which has already been filed with the Return of the Action as Plaintiffs' Exhibit No. 7, and which appears at the bottom of page 8 of the plaintiffs' printed Exhibits?

A.—Yes.

30

Q.—Without troubling to read the whole of the letter into the record, in the first paragraph you wrote Lord Shaughnessy as follows:

“ In response to my request you have supplied me with copies of Statements relative to the accounts of Sir Mortimer Davis, Incorporated, and the Estate Sir Mortimer B. Davis. These Statements do not disclose the situation sufficiently in detail to give me the information which I require.

40

I, therefore, request that you have Statements drawn up for me by your accountants, Messrs. Price, Waterhouse & Company, covering the affairs of Sir Mortimer Davis, Incorporated, and the Estate of Sir Mortimer Davis, upon the following lines . . . ”

Then follows a long enumeration of the various matters which the Statement should cover both as to the Incorporated Company and as to the Estate.

The letter continues:

LADY DAVIS (*for Plaintiffs*), *Examination-in-Chief*.

“ I also wish to be supplied with copies of all contracts, agreements, etc., affecting the relations of Sir Mortimer Davis, Incorporated, or the Estate Sir Mortimer B. Davis with any Director, Officer, Executive, or Executor, or Employee, of either.

10 I request that you give Messrs. Price, Waterhouse & Company instructions to proceed with their work forthwith, sending me a copy of their Reports and Statements immediately upon compilation thereof.

Kindly acknowledge receipt of this letter to me, and at the same time advise me approximately when I may expect to receive copies of Messrs. Price, Waterhouse & Company's Reports.

Yours very truly,

ELEANOR DAVIS.”

20 Did you subsequently receive the Reports which were requested by that letter?

A.—No. Six days after I received a letter from Lord Shaughnessy.

Q.—Will you look at the original letter I now show you, dated August 21st, 1929, addressed to you and signed by Lord Shaughnessy, and will you say if that is the letter to which you have just referred?

A.—Yes.

Mr. Campbell: This has already been filed as our Exhibit D-3.

30 By Mr. McKeown (continuing):

Q.—Will you verify the original letter which I have just exhibited to you as the original of Defendants' Exhibit D-3 filed with the defence?

A.—Yes.

Q.—This letter, Exhibit D-3, is dated August 21st, 1928, and in it Lord Shaughnessy wrote you:

40 “ I beg to acknowledge receipt of your favor of the 15th instant requesting in connection with Sir Mortimer Davis, Incorporated, and the Estate Sir Mortimer B. Davis Statements to be prepared by the firm of accountants, Messrs. Price, Waterhouse & Company, showing in detail the information set forth in your letter.

We are, of course, most pleased to give you any information which you may require in the form in which you require it, but

LADY DAVIS (*for Plaintiffs*), *Examination-in-Chief*.

in connection with Sir Mortimer Davis, Incorporated, I feel it important to point out that the Auditors, in accordance with the By-laws of the Company, will in any event prepare a Statement of the affairs of the Company after the end of the fiscal year, namely, September 30th, next, and should you so desire it this Statement can be made in such form as to contain all the information which you have requested.

10 I merely mention this as it appears to me that it might be more satisfactory, and save a lot of unnecessary work, if the one Statement were prepared, instead of one now and another after the 30th September. Of course, if you particularly desire a Statement made now I shall be pleased to take the matter up with the Accountants immediately and put the matter in hand by furnishing you naturally with all the required information.

In connection with the Estate Sir Mortimer B. Davis, the Statement can, of course, be prepared immediately.

20 I will be obliged if you will kindly let me know your decision in connection with Sir Mortimer Davis, Incorporated, when I shall be most pleased, in any event, to comply with your request."

Did you reply to this communication from Lord Shaughnessy?

A.—Yes, I did.

30 Q.—Will you verify that the part of Plaintiffs' Exhibit No. 7 filed with the Return of the Action, which will be found on page 8 of the plaintiffs' printed exhibits, is the letter to which you have just referred?

A.—Yes.

Q.—This letter is dated August 23rd, 1929, and reads as follows:

" Dear Lord Shaughnessy:

I beg to acknowledge receipt of your letter of August 21st. I wish to state that I should like an Interim Statement of the 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 Davis' Estate to proceed immediately, and I shall want an Audited Monthly Statement of all transactions for the account of the Estate. In regard to my request, which you do not acknowledge in your letter, to be supplied with copies of all

LADY DAVIS (for Plaintiffs), Examination-in-Chief.

contracts, etc., affecting the relation of Sir Mortimer Davis, Incorporated, or the Estate Sir Mortimer Davis with any Director, officer, or employee of either, I again express the wish that this be supplied immediately.

Yours very truly,

ELEANOR DAVIS."

10

Was this letter delivered to Lord Shaughnessy on or about the date it bears?

A.—Yes.

Q.—Did you get any word from Lord Shaughnessy as to whether the Interim Statement would be prepared at once as required; as to whether the Monthly Statements of the Company and the Estate would be supplied; and whether the contracts, as requested, would be delivered immediately?

20 A.—I waited six days, and then I telephoned Lord Shaughnessy. I asked him if he had received my letter, and he said yes. I said, "Have you answered it?" and he said, "I am just writing you now" and he rang off.

Q.—Did you, subsequently to that telephone conversation, receive a letter from Lord Shaughnessy upon the subject?

A.—Yes, I did.

30 Q.—Will you refer to the original letter I now show you, marked Exhibit P-235, and will you say whether this is the letter which you received from Lord Shaughnessy following the telephone communication you had with him?

A.—Yes.

Q.—This letter is dated August 29th, 1929, and reads as follows:

"Lady Davis,
Ritz-Carlton Hotel,
Montreal.

Dear Lady Davis:

40

With reference to our telephone conversation of yesterday . . ."

Would that be the telephone conversation to which you have just alluded, and would you fix the date in that way?

A.—I do not know; but those were Lord Shaughnessy's exact words, "I am just writing to you now".

LADY DAVIS (for Plaintiffs), Examination-in-Chief.

Q.—And, you remember a letter was received following that conversation?

A.—Yes.

Q.—If the statement contained in this letter is accurate, and the letter is properly dated as of August 28th, Lord Shaughnessy's reference to the " telephone conversation of yesterday " would mean your conversation would have been on the 28th?

10

A.—Yes.

Q.—The letter continues:

" I beg to advise that since Mr. Reaper has gone on a week's holiday and I am unable to readily lay my hands upon the documents in question, I am enclosing you herewith my own copy of the agreement between Sir Mortimer Davis, Sir Mortimer Davis, Incorporated, and myself, and would be obliged if you would kindly return it to me when it has served your purpose."

20

Was the letter accompanied by the contract?

A.—Yes.

Q.—The letter continues:

" This is, as far as I know, the only agreement with any officer of the Company, apart from a similar one made with Mr. Waddell, which was completed and fulfilled.

With all deference and respect, I would like to take this opportunity of protesting against the dictatorial attitude which you have adopted in requesting information.

30

While I am at all times ready and willing to comply with any reasonable request that you may make, and to furnish you with any information that you might desire in connection with the Company and the Estate, I should like to point out that I am not and never was in your employ, and consequently resent the receipt of what can only be considered in the spirit of orders.

It is not my desire to be unpleasant in the matter, which I hope you will fully appreciate, but unless a more conciliatory tone is adopted it may be difficult, if not impossible, to comply with your desires.

40

I am sending a copy of this to your legal adviser, Mr. Montgomery.

Yours very truly,

SHAUGHNESSY."

With reference to the part of this letter which speaks of a dictatorial attitude, and the demand for a modification of tone, and spirit of orders: prior to that letter had you made any demands in

LADY DAVIS (for Plaintiffs), Examination-in-Chief.

writing or personally other than as reproduced here by your evidence and the documents of record?

A.—Not at all.

Q.—When did you next hear from Lord Shaughnessy with respect to the subject of these accounts and this letter which has just been produced?

10 A.—I never heard from Lord Shaughnessy again. I received the Statement on October 7th. The next I heard of Lord Shaughnessy was when I read in the newspaper that he had gone out West with the Canadian Pacific Directors.

Q.—When would that be?

A.—I read it in the newspaper in the early part of September.

Q.—Of course, at the time of the departure of Lord Shaughnessy for the West, which was following the deadlock of August 8th, when you had intimated your intention to invoke the Courts, and following the demand contained in your letters of August 15th and August 20 21st and Lord Shaughnessy's replies of August 23rd and 29th?

A.—Yes.

Q.—Just at that point did you receive any information from any source in connection with an automobile which had formerly been owned by the late Sir Mortimer Davis?

A.—Yes. Godsall told me Lord Shaughnessy had sent the automobile back, and he did not know whether Lord Shaughnessy wanted to store it for the winter, or just how or why he sent it back. I said I did not know, and I asked him: "What did Lord Shaughnessy say when he took it?" and he said he understood Lord Shaughnessy was 30 going to purchase it.

Q.—At this time, in September, 1929, did you attempt to give Godsall any instructions in regard to the automobile?

A.—No.

Q.—I think you have just said to the Court that following the conversation by telephone with Lord Shaughnessy, which would be on August 28th, the next you heard of him was that he had left for the West, and you learned of that through the newspapers?

A.—Yes.

40 Q.—Were you in Court when Mr. Turnbull testified in this case?

A.—Yes, I was.

Q.—Do you remember a statement by Mr. Turnbull with reference to the shares of Canadian Industrial Alcohol which he was carrying at that time, in the forepart of September, 1929, and before Lord Shaughnessy had left for the West?

A.—Yes, and it surprised me very much, because I knew nothing about it. Lord Shaughnessy had never spoken to me about that.

LADY DAVIS (for Plaintiffs), Examination-in-Chief.

Q.—Will you recall with me that the purport of Mr. Turnbull's evidence in that connection was that he had asked Lord Shaughnessy to confer with his co-Directors, or co-Executors, with a view to having them take over his shares of Canadian Industrial Alcohol?

A.—Yes.

10 Mr. Campbell: I do not want to take what my learned friend is pleased to call a highly technical position, but I do again suggest that my learned friend is leading his witness.

Mr. McKeown: If I am leading the witness at all, I am leading her upon a matter which is already of record.

Mr. Campbell: Even on matters of record you should not commit that particularly bad habit.

20 Mr. McKeown: It is not a habit of mine, and whether it is bad or not is something you know because you are fairly familiar with it.

Mr. Campbell: I am familiar with it. It has been demonstrated to me several times in the course of this case, and I have been obliged on more than one occasion to suggest to you that it is not the proper way of putting questions.

His Lordship: Whatever Lady Davis might say about Mr. Turnbull's evidence would not supersede Mr. Turnbull's evidence.

30 Mr. Campbell: No, of course not, but my learned friend should not put into the mouth of the witness the result of Mr. Turnbull's evidence which suits him.

His Lordship: If the resume is not a faithful one it will be disregarded.

40 Mr. McKeown: I do not particularly care what Mr. Turnbull said, except I want to have Lady Davis negative something in two ways—not Mr. Turnbull's evidence, because he probably told the truth—but I want Lady Davis to negative the substance of the evidence that Lord Shaughnessy spoke to her about it at the same time, for the first reason that he was not here, and, secondly, inasmuch as he never spoke to her at any time.

Mr. Campbell: I do not mind my learned friend asking her

LADY DAVIS (*for Plaintiffs*), *Examination-in-Chief*.

that, but I object to the form of the questions my learned friend has latterly been using, which I submit are leading and illegal.

Mr. McKeown: I am not asking Lady Davis what happened between Lord Shaughnessy and Mr. Turnbull. I am simply referring to a matter which is of record, and if we had the volume of the evidence here, we could find it many volumes back. I am just pre-
10 cising the evidence, and that is all.

His Lordship: Ask her again whether she had any conversation with Lord Shaughnessy with regard to shares which Mr. Turnbull wanted the Executors to relieve him of.

Mr. Campbell: I would have no objection at all to that.

By Mr. McKeown (continuing):

20 Q.—In the early part of September, and before the date of Lord Shaughnessy's return from the West, did you have any conversation with him wherein any question came up or was discussed in connection with the Estate or the Incorporated Company taking over, or carrying, or purchasing any shares belonging to Mr. S. G. Turnbull, the Treasurer of the Company?

A.—No.

Q.—In point of fact, did you see Lord Shaughnessy or communicate with him by telephone between the date of his letter,
30 August 29th, and the end of the month of September?

A.—No.

Q.—To cover the whole field, will you please say to His Lordship whether at any time, before or after the month of September, Lord Shaughnessy ever spoke to you about carrying or purchasing Mr. Turnbull's shares in the Alcohol Company?

A.—No, never.

Q.—When did you first hear of it?

A.—In Court.

Q.—During Lord Shaughnessy's absence in the west did you
40 make any efforts by application to Price, Waterhouse and Company, the accountants, directly, to obtain the Statement? Any application, or any enquiries?

A.—Yes, I went down to see them once and asked them if they would hurry the statements up and send them to me.

Q.—During the month of September, prior to Lord Shaughnessy's return from the West, had anything particular transpired in connection with the interests of the Estate?

LADY DAVIS (for Plaintiffs), Examination-in-Chief.

A.—A great many newspaper articles appeared, and any number of rumors, and a great many conversations. People were talking about a merger between the Industrial Alcohol Company and the Hiram Walker Company.

Q.—Had those rumors reached you?

A.—Yes.

10 Q.—Were the rumors confined entirely to the question of a merger with Hiram Walker, or did they extend to the matter of purchases, or negotiations, along similar lines?

A.—There were different rumors. Some people said the two Companies were merging; other people said the Hiram Walker Company was going to buy the Estate stock. Then I heard a rumor that Mr. Jennison had been sent to Europe to make a merger between the McNish Company and some independent companies.

Q.—You mean independent English Companies?

A.—Yes.

20 Q.—Independent of the D.C.L.?

A.—Yes.

Mr. Campbell: I will ask Your Lordship to note that the defendants cannot be affected by any evidence of this kind. My learned friend has asked the witness to testify to rumors which she heard on the Street or read in the newspapers.

His Lordship: They might have dictated her course of behavior.

30 Mr. Campbell: We all have the experience of newspapers knowing more about our affairs than we do ourselves, and that may have been the case in this particular instance.

By Mr. McKeown (continuing):

Q.—Can you give His Lordship any precise date in September when this subject became active in your mind on those rumors?

A.—I should think about the middle of September.

Q.—Did it cease at the middle of September, or did it continue?

40 A.—It continued.

Q.—Did you write Lord Shaughnessy upon the subject?

A.—Yes. I think Mr. Montgomery and I first drafted the letter on September 26th, but I had found out that Lord Shaughnessy was not coming back until the 4th or 5th of October, so I sent the letter really just a day before he came back.

Q.—Will you look at the copy of letter I now show you, which will be marked Plaintiffs' Exhibit P-236, being a copy of a letter

LADY DAVIS (for Plaintiffs), Examination-in-Chief.

dated October 3rd, 1929, addressed to Lord Shaughnessy, and will you say whether this is a copy of the letter you sent him and to which you have just made reference?

A.—Yes.

Mr. Campbell: I am under the impression this is already in, Mr. McKeown.

10 Mr. McKeown: I do not think so. In any event it will not do any harm to have it in again. Lord Shaughnessy's reply is filed, but I do not think this is.

This letter is dated October 3rd, 1929, and reads as follows:

“ Dear Lord Shaughnessy:

20 I have been very much disturbed in my mind during the past few weeks by persistent rumors that negotiations are being conducted with one group or another for the sale of the Alcohol Company. While there may be nothing in those rumors I cannot help but feel that where there is so much smoke there must be some fire, and although I am co-executor of the Estate and a Director of the Incorporated Company I am being kept very much in the dark.

It has recently come to my ears that Jennison has been despatched to the other side in connection with matters in which I am naturally very much interested.

30 I would be glad to know whether this is so, and what is really going on.

In so far as Sir Mortimer Davis, Incorporated, is concerned I understood that you agreed with me that Jennison's engagement was unnecessary and that you were to terminate whatever arrangements had been contemplated. Have you reconsidered your decision, and, if so, why?

I have no desire to work in conflict with you, but if we are to work together I certainly feel that I should be kept more fully advised.

40 I would be glad to hear from you at your earliest convenience, as well as to make an appointment to discuss matters with you if you feel there is anything which it is not advisable to put in writing at the present time.

Yours sincerely,

Eleanor Davis.”

LADY DAVIS (*for Plaintiffs*), *Examination-in-Chief*.

By Mr. McKeown (continuing):

Q.—Did Lord Shaughnessy reply to this letter Exhibit P-236?

A.—Yes, he did.

Q.—Will you please identify Lord Shaughnessy's reply, dated October 4th, 1929, already filed in the record as Exhibit D-10?

A.—Yes.

10 Q.—This is an autograph letter?

A.—Yes.

Q.—It reads as follows:

“ October 4th, 1929.

My dear Lady Davis:

20 On my return this morning I received your letter of the 3rd instant. To my certain knowledge there has not even been a suggestion of negotiating with anyone concerning the sale of the Alcohol shares; and during my absence, apart from interviewing the Liquor Commissions in the various Provinces, I have not seen anyone even remotely connected with the business. This rumor must, therefore, be added to the many which adorned the Press recently and for which I am at a loss to account.

I can assure you, however, that not even a commencement of discussion will ever take place without you being fully consulted and advised.

30 As far as I know Jennison went to England on matters solely concerning himself, and his visit has nothing whatever to do with our connection with him.

I have not changed my mind about eliminating him eventually, but am waiting until he is in a position to take the shares off our hands.

In the meantime, rest assured that we shall have no further dealings without full and complete discussion.

40 I really think it would be well if we had a meeting to discuss matters of importance to us all, and, if I may, I will give you a ring in the beginning of the week.

Sincerely yours,

Shaughnessy.”

Did that letter reach you on or about its date, October 4th, 1929?

A.—Yes.

LADY DAVIS (for Plaintiffs), Examination-in-Chief.

Q.—Did Lord Shaughnessy give you a ring at the beginning of the week, as suggested in this letter?

A.—No, I did not hear from Lord Shaughnessy. I think Mr. Reaper called me up about the 16th or 17th of October.

Q.—That would be approximately twelve or thirteen days following the date of this letter?

A.—Yes.

10 Q.—You had a telephone call from Mr. Reaper?

A.—Yes.

Q.—What did he say?

A.—He asked me if I would go to the office. I think he stipulated the 18th: in any event, it was about that time—we said it was the 18th—and that he and Lord Shaughnessy would like to discuss some things with me.

Q.—Did you attend?

A.—Yes.

20 Q.—You went alone, without Counsel?

A.—I went alone.

Q.—Perhaps I ought to ask you whether in the meantime you had received from Price, Waterhouse & Company the Statements which you had asked for by your letter of August 15th?

A.—Yes, I received them on October 7th.

Q.—In what way did they come to you?

A.—Price, Waterhouse & Company sent them directly.

Q.—Directly to you?

A.—Yes.

30 I am not sure they did now, really. I asked them to send them directly to me. Anyhow, I received them on October 7th. I do not know whether Mr. Reaper sent them, or whether Price, Waterhouse & Company sent them, but I received them on October 7th.

Q.—You say you had asked Price, Waterhouse & Company to send them to you directly?

A.—Yes. I thought it would save time.

40 Q.—How many requests had you made to Price, Waterhouse & Company, say after August 29th, to have those Statements delivered to you, before they actually reached you?

Witness: You mean how many requests did I make on Price, Waterhouse & Company?

Counsel: Yes.

A.—I should say two or three. I was rather anxious to get them

Q.—In point of fact those Statements were not delivered to

LADY DAVIS (*for Plaintiffs*), *Examination-in-Chief*.

you until after you had written Lord Shaughnessy the letter of October 3rd, to which he replied on October 4th?

A.—Quite so.

Q.—Do you identify Plaintiffs' Exhibits Nos. 8 and 9 with the Return of the Action, the first concerning the Estate, and the second concerning the Incorporated Company, both as of date August 31st, 1929, as being the Statements which were delivered to you on or
10 about October 7th, 1929?

A.—Yes.

Q.—What did you do upon receipt of those Statements Exhibits 8 and 9?

A.—I brought them to Mr. McDonald's office to be analyzed.

Q.—Were they with Mr. McDonald for some days?

A.—Yes.

Q.—Had you looked them over casually first?

A.—Yes.

Q.—Had you noticed anything particular in the way of in-
20 formation: say, for instance, with reference to the Jennison matter?

Mr. Campbell: Do not lead your witness, Mr. McKeown.

Mr. McKeown: But, I cannot ask Lady Davis to give us the details of twenty-five pages of Exhibits uselessly.

Mr. Campbell: But, you can ask her if she noticed anything
30 in particular, or whether there were any particular items to which her attention was called, or to which she now wishes to call attention. I do object to your pointing out to her the specific items you wish her to say her attention was called to.

Mr. McKeown: I will try to put it as you suggest.

By Mr. McKeown (continuing):

Q.—Was your attention drawn to any particular items? And,
40 if that does not work I will go back to my original question.

Mr. Campbell: If the Court permits you to do so.

Mr. McKeown: Subject, of course, always to your objection; and if the Court permits me.

Witness: Several. I noticed instead of Jennison being \$10,000, it was \$50,000 then.

LADY DAVIS (for Plaintiffs), Examination-in-Chief.

By Mr. McKeown (continuing):

Q.—So far as the Jennison position was concerned, up to the moment you received the Statement Exhibit No. 9 what was the amount involved, according to the representations made to you by Lord Shaughnessy?

A.—\$10,000.

10 Q.—And, you found by the Statement Exhibit No. 9 that the amount was

A.—\$50,000.

Q.—Was there any other matter which attracted your attention particularly as you casually glanced over the Statement before sending it to Mr. McDonald?

A.—I saw an additional loan of \$10,000 to Lord Shaughnessy.

Q.—Prior to that time had you ever heard of any additional loans by the Incorporated Company to Lord Shaughnessy?

20 A.—No, that was the first intimation I had of the \$10,000.

Q.—Then, I take it you had not participated as a Director of the Company in authorizing the loan, and that it had not even been reported to you?

A.—No.

Q.—How about the change which apparently had occurred in the Jennison situation? Are we to take it

30 Mr. Campbell: I suggest you stop there, Mr. McKeown, as you did a day or two ago.

His Lordship: Let us see how far Lady Davis can go without assistance.

Mr. Campbell: I am quite sure she knows the story perfectly, and does not need your assistance.

Witness: Instead of being a loan of \$10,000, it was a purchase of \$50,000 of Jennison's personal stock.

40 By Mr. McKeown (continuing):

Q.—Without even having looked at the Statement at the present time, can you tell us from memory any further items which struck your mind from your casual examination of the Statement?

A.—I was surprised to see I was indebted to the Incorporated Company for some \$39,000.

LADY DAVIS (*for Plaintiffs*), *Examination-in-Chief*.

Q.—Let us get this item down clearly, because we have not been favored with anything on the subject yet. Do you refer to Exhibit 6 in the Annex to the Statement of the Incorporated Company as of date August 31st, 1929, Plaintiffs' Exhibit No. 9, in connection with the reference to the loan to yourself?

A.—Yes.

10 Q.—And, to the entry which reads:

“Lady Eleanor Davis. Amount of loan, \$39,536.87. Total, \$39,536.87. Income for 11 months, \$2,132.71. Remarks: Loan of \$40,470, October 9th, 1928, secured by \$31,440 R. McNish & Company, Limited, debentures, and 1,000 shares Canadian Industrial Alcohol common.”

A.—Yes.

20 Q.—Prior to the receipt of that Statement did you know you had borrowed any money from the Incorporated Company?

A.—No. I thought it would be placed with a brokerage house.

Q.—If my learned friend Mr. Campbell does not object I will ask you if this item we have just been reviewing purports to refer to the purchase of the 1,000 shares of Canadian Industrial Alcohol which you instructed Lord Shaughnessy to buy for your account in, I think, October, 1928?

A.—I think it was November, 1928.

30 Q.—And in regard to which a cable and a further letter from you to Lord Shaughnessy were produced yesterday?

A.—Yes.

Q.—I think you explained at that time that Sir Mortimer had asked you whenever purchasing securities of Canadian Industrial Alcohol Company to give instructions to someone in Sir Mortimer Davis, Incorporated, to put the transaction through, rather than dealing directly with the broker yourself.

Mr. Campbell: Are you not leading, Mr. McKeown?

40 Mr. McKeown: I am reviewing. I am sure on this point, Mr. Campbell.

Mr. Campbell: You are incurably leading your witness.

By Mr. McKeown (continuing):

Q.—Will you please answer my question now, Lady Davis?

LADY DAVIS (*for Plaintiffs*), *Examination-in-Chief*.

A.—Yes.

Q.—What did you just suggest to His Lordship as to what you thought about a broker when you saw that item?

A.—I said I thought that transaction had been placed with a brokerage firm.

10 Q.—Let us conclude the subject at once. Having discovered you were an involuntary debtor of Sir Mortimer Davis, Incorporated, what did you do?

A.—I sent them a cheque, and paid for it.

Q.—You sent them your cheque for the full amount of the so-called loan, to the order of the Incorporated Company?

A.—Yes.

20 Q.—Just in order that there may be no confusion, and so that it may appear plainly that there was only one transaction of 1,000 shares, will you permit me to suggest that the date of the cable from yourself to Lord Shaughnessy was October 11th, as shown by Exhibit P-225?

A.—Yes.

Q.—I think you said your letter of August 15th to Lord Shaughnessy, giving in detail the information you requested concerning both the Estate and the Incorporated Company had been drafted for you in Mr. Montgomery's office?

A.—Yes.

Q.—And, you told us also, I think, that when you got those Statements you turned them over to Mr. McDonald's office for analysis?

30 A.—Yes.

Q.—Following the receipt of Lord Shaughnessy's letter of October 4th, 1929, (Exhibit D-10) in which he denied all knowledge of mergers, did you take any action with respect to the power of attorney which you had given to Lord Shaughnessy and Mr. Reaper at the time you left Montreal following the funeral?

A.—Yes. I revoked it, on October 5th.

Q.—By Plaintiffs' Exhibit No. 111 filed with the Return of the Action, which appears at page 11 of the Plaintiffs' Printed Exhibits?

A.—Yes.

40 Q.—Do you remember whether prior to the revocation of the power of attorney to which you have just referred you had learned through Mr. Montgomery that in the absence of Lord Shaughnessy the \$196,500 of serial notes and the 2,375 shares had been removed from the possession of the Trustees, Messrs. Marler & McLean?

Mr. Campbell: I make the same objection. In my submission my learned friend is repeating his fault.

LADY DAVIS (for Plaintiffs), Examination-in-Chief.

His Lordship: There is no doubt those securities were gone.

Mr. Campbell: That may be, but that does not justify my learned friend in putting all his questions in the leading form in which he is putting them.

10 His Lordship: Do you know as a fact those securities were removed?

Mr. Campbell: But, is it proper to speak of them as being removed? They were delivered by the Trustees in accordance with the terms of the document as the Trusts construed it and as the other parties to the contract construed it.

20 His Lordship: It is a question of words. The only point that interests us is when Lady Davis was apprised of the fact.

Mr. Campbell: I do not mind her being asked if effect had been given to the Shaughnessy contract, but I do object to the form in which my learned friend is putting his questions to this witness, who is, after all, one of the most interested parties.

30 Mr. McKeown: I submit there is nothing wrong with the form of the question. It is not intended to be pivotal on the word "removed." I could not say Lord Shaughnessy went and got those notes and this stock, because he was still in the West when they were taken possession of. I was trying to use a word which would be midway between my learned friend's contention and ours.

Mr. Campbell: That is not going to decide the issue.

Mr. McKeown: I am not bothering about the word "removed." Put any word you like.

40 His Lordship: Perhaps you could soften it. When was effect given to the contract of September 17th, 1924?

Mr. McKeown: That would not be quite fair to the situation, because we never knew this money was withdrawn until we received those final statements three days before we demanded Lord Shaughnessy's resignation. We found out he had taken securities, but we did not know he had overdrawn at the Bank \$200,000. So that Your Lordship's form in regard to giving effect to the contract, which in-

LADY DAVIS (for Plaintiffs), Examination-in-Chief.

cludes both taking the securities and taking the money, would not cover the facts as they were at that time.

10 Mr. Campbell: If Lady Davis wishes she may divide her answer and say she only learned effect was given to part of the contract on a particular date, and that effect was given to the other part on a different date. Of course, this discussion has disclosed to Lady Davis what my learned friend wants.

Mr. McKeown: It would be entirely unnecessary to do that; she knows it as well as I do.

Mr. Campbell: And it is quite unnecessary for you to tell her.

Mr. McKeown: I did not tell her. You raised an objection, and I had to elucidate our position to the Court.

20 By Mr. McKeown, continuing:

Q.—Do you remember whether prior to the revocation of the power of attorney to which you have just referred you had learned through Mr. Montgomery that in the absence of Lord Shaughnessy the \$196,500 of serial notes and the 2,375 shares had been removed from the possession of the Trustees, Messrs. Marler & McLean?

30 Mr. Campbell: Surely my learned friend can modify that. I think it is an objectionable form in which to put a question. There is an implication in the word “ removed,” which I think is absolutely objectionable and not justified by the facts or the documents. If there had been any contestation of Lord Shaughnessy’s position at the time, the word might have been justified; but at the time effect was given to the document neither Lady Davis nor her Counsel, nor anyone else, had suggested for one moment any impropriety or illegality, or anything else, in regard to the contract, and it was given effect to as a matter of routine.

40 Mr. McKeown: The surreptitious manner in which those securities were taken possession of, without the matter being referred to the Board of Directors, but simply on an order of the President to deliver them to himself, written weeks before he left Montreal, and the securities taken possession of in his absence, would, I think, be sufficient to arouse the suspicion of anyone.

LADY DAVIS (for Plaintiffs), Examination-in-Chief.

Mr. Campbell: The contract was given effect to in accordance with its terms, and neither Lord Shaughnessy nor anyone else had any option in regard to it. The machinery was provided in the document, and that was the machinery which was put into operation.

10 Mr. McKeown: And it was put into operation not over night, but instanter, and I think very much in anticipation of the proceedings which are now before the Court contesting its validity.

Mr. Campbell: It is a pity you did not exercise your pretensions before that.

Mr. McKeown: You have always claimed I show an utter lack of diligence, and perhaps this might be one of the occasions when you would be right. In any event, why quarrel over the word "removed"? It is not intended to be pivotal.

20

Mr. Campbell: It is intended to be offensive.

Mr. McKeown: No, it is not. You and your client may consider it offensive, but we do not intend it in that sense at all.

His Lordship: Frame the question any way you like, Mr. Campbell. What is your suggestion?

30 Mr. Campbell: I suggest my learned friend might ask Lady Davis when she first learned any effect had been given to the Lord Shaughnessy agreement.

Mr. McKeown: Then, put the words in my mouth. Let us see you do it.

By Mr. Campbell:

40 Q.—Will you be so kind as to tell the Court when you first learned that any effect had been given to the carrying out of the Lord Shaughnessy agreement, a copy of which had been sent to you in the month of August?

A.—Just prior to the revocation of my power of attorney.

By Mr. McKeown:

Q.—In what way did you learn of that?

LADY DAVIS (for Plaintiffs), Examination-in-Chief.

A.—I learned it from Mr. Montgomery.

By the Court:

Q.—The revocation of the power of attorney was on October 3rd?

10 A.—October 5th, I think.

By Mr. McKeown, continuing:

Q.—To what extent had the contract been carried out as far as Mr. Montgomery's information went at that time?

A.—Lord Shaughnessy had received the shares.

Q.—And the notes also?

A.—Yes.

20 Q.—When did you first learn that he had withdrawn the sum which has been spoken of here as aggregating \$217,000?

A.—When I saw the statement.

Q.—Which statement?

A.—I think it is the Annual Statement.

Q.—Do you refer to Plaintiffs' Exhibit No. 10, being the Annual Statement of Sir Mortimer Davis, Incorporated, as at September 30th, 1929?

A.—Yes.

30 Q.—Will you note the date of the Auditors' Report upon this statement?

A.—November 16th, 1929.

Q.—Was it subsequently to November 16th, 1929, that this Statement Exhibit P-10 came into your possession?

A.—Afterwards, yes.

Q.—And that was the first intimation you had received that Lord Shaughnessy had withdrawn the cash involved in the contract in question?

A.—Yes.

40 Q.—Let us now come back to the meeting. I do not remember whether you said there was a meeting on October 18th?

A.—Yes, there was.

Q.—Who were present at that meeting?

A.—Lord Shaughnessy, Mr. Reaper and myself.

Q.—Had you received any formal notice, or any notice, of a meeting?

A.—No.

Q.—I think you told us Mr. Reaper telephoned you?

LADY DAVIS (*for Plaintiffs*), *Examination-in-Chief.*

A.—I think Mr. Reaper telephoned me.

Q.—Did you go to Lord Shaughnessy's office?

A.—Yes.

Q.—What occurred at that meeting?

A.—Lord Shaughnessy discussed quite a few subjects.

Q.—Can you remember the subjects which came up?

10 A.—Yes. I asked why the farm was continued at Ste. Agathe. It was quite an expense. And I think he asked Mr. Reaper why the farm was continued.

Q.—Who asked Mr. Reaper?

A.—Lord Shaughnessy.

Q.—Did Mr. Reaper make any reply?

A.—Yes; he said it was continued to supply Sir Mortimer with milk and eggs.

Q.—On that occasion were you given any further information on that subject beyond that remark by those two Executors?

20 A.—No. I also suggested the house should be rented.

Q.—You mean the Ste. Agathe house?

A.—Yes.

Q.—What was said in regard to the Ste. Agathe house? Was the rental proposal agreed to?

A.—No, I do not think it was.

Q.—Can you remember anything further on that subject?

A.—No, not on that subject. Lord Shaughnessy said he had had an offer of \$200,000 for the Pine Avenue house, and he thought the offer came from Mr. Neill.

30 Q.—What Mr. Neill?

A.—Mr. Charles Neill, I think.

Q.—I am asking you, just to identify him for the purpose of the record?

A.—I do not know the gentleman. I have heard his name. He is Mr. Charles Neill.

Q.—With what institution is he connected?

A.—The Royal Bank.

Q.—What else was said in that respect?

40 A.—I did not think it was very much money for the house, because I asked Lord Shaughnessy what the ground was worth—the real estate—and he said about \$150,000.

Q.—For the real estate without the building?

A.—Yes. I thought as long as they had been asking \$300,000, and were offered \$200,000, if Mr. Neill really wanted the house, and I assumed he was in a position to pay more for it, perhaps they had better wait a while and see if he would not pay more for it.

LADY DAVIS (*for Plaintiffs*), *Examination-in-Chief*.

Q.—Was that a thought which was joined in by the other Executors?

A.—Yes.

Q.—It was not your dissenting opinion; it was what was agreed to?

A.—No, but I suggested it.

10 Q.—You did not hold out for that opinion against their demand to close for \$200,000?

A.—No, they agreed.

Q.—Did you have any further reference to the Pine Avenue property at that time?

A.—I said why did they not rent it in the meantime if they could not get the proper price for it. I heard Sir Henry Thornton had been interested in it. He said he had been interested in renting it. I said “Why not rent?”

Q.—He said who had been interested in renting it?

20 A.—Sir Henry Thornton.

Q.—What did Lord Shaughnessy reply?

A.—Nothing.

Q.—I notice in the minutes I have before me the following report with reference to Pine Avenue and Ste. Agathe; in the Minutes of the meeting of Executors of October 18th, 1929, the following particulars:

30 “ Re Pine Avenue and Ste. Agathe properties: It was reported that an offer of \$200,000 for Pine Avenue and \$55,000 for Ste. Agathe could be accepted if it was thought these prices would be accepted, but it was decided these were too low and our asked prices of \$300,000 and \$100,000 be maintained.”

A.—Yes.

Q.—I notice that there is a reference to a negotiation of some kind for Ste. Agathe at that time, an amount being mentioned of \$55,000. Whose offer was that?

40 A.—I think it was Senator Raymand’s, and I said I knew someone that would pay \$60,000, which I do.

Q.—Did anybody disclose to you at that meeting that Senator Raymond was interested in the property in the way of leasing it?

A.—No.

Q.—There was no statement made to that effect?

A.—No.

Q.—For the purpose of the record, Senator Raymond is a mem-

LADY DAVIS (*for Plaintiffs*), *Examination-in-Chief.*

ber of the Canadian Senate and a man of very large financial interests in and about Montreal?

A.—So I have been told. I don't know.

Q.—Did you understand that his negotiations were for the purchase of the Ste. Agathe property for his own personal use?

A.—Yes.

10 Q.—Can you now refer to any other matters in particular?

A.—Yes. Lord Shaughnessy said what did I think about him protecting the Alcohol stock.

Q.—This was on the 18th of October, 1929?

A.—Yes.

Q.—How was the market then? Was it up or down?

A.—Well, I think Alcohol was very low then, but the general market was good. It was before the crash.

Q.—Lord Shaughnessy made the suggestion to protect the Alcohol stock. Did you say anything or did Mr. Reaper say any-
20 thing to that suggestion?

A.—Lord Shaughnessy continued and he said that he had never done that sort of thing, but that Mr. Waddell and my husband had been in the habit of protecting stock in the market and he did not believe in it, and he had never done it. I said "If you want to know what I really think, I think it is too late."

Q.—Was any action taken to support it or not to support it?

A.—No, there was no action taken.

Q.—Do you remember any other subject which was discussed?

30 A.—He said something then about oil things, and I said "I thought you were going to sell them to the Standard Oil." I said "You know my opinion on the subject, the same with Jennison and all things that are speculative. I think this thing should be run as an arm of the Estate," and I touched the Jennison subject. I think I have already said I had heard—

Q.—We have the Jennison subject referred to in your letter and you have his reply?

A.—Yes.

Q.—Was anything said about Jennison at the meeting?

40 A.—I told Lord Shaughnessy I had heard Mr. Jennison had gone to Europe to make a merger with the independents and the McNish Company. Lord Shaughnessy became very indignant and said he was maligned; it was absolutely untrue. Mr. Jennison had gone to Europe, was in business for himself. There was absolutely nothing between Mr. Jennison and the Company. I said I thought \$50,000 was a lot.

Q.—You said you thought \$50,000 was a lot?

LADY DAVIS (for Plaintiffs), Examination-in-Chief.

A.—Yes, and I said he had given him \$50,000.

Q.—What did he say to that?

A.—He said he did not, that he had bought his stock for it. I said “Why don’t you try and sell it?” He said “He will take it back; he is making lots of money in Europe and will take it back. Don’t worry about it.” I protested further. He said “I will give you my word of honor there is nothing about a merger; nobody has
10 been to see me about it at all.” I told Lord Shaughnessy I could not take his word of honor; I could not believe him. I had lost all confidence in him.

Q.—We are still speaking of the meeting of the 18th of October, 1929?

A.—Yes.

Q.—And you have just detailed Lord Shaughnessy’s statement on the subject of the merger as of that date?

A.—Yes.

Q.—Would that sum up what was said about the merger at that
20 time?

A.—I think so.

Q.—Do you remember any other subjects that were spoken of then?

A.—I cannot just now; there may have been other subjects.

Q.—Was it following that interview that you wrote Lord Shaughnessy forwarding your cheque to pay off this loan which appeared against you, of some \$38,000 and requesting the delivery to you of your securities?

A.—Yes.
30

Q.—Look at what I think is a copy of the letter you sent Lord Shaughnessy in that connection. Is that the original, or is that a copy, October 24th, 1929?

A.—I don’t know whether it is a copy or the original. That is the letter.

Q.—In any event, the letter which you sent to Lord Shaughnessy is reproduced by the exhibit I show you, marked P-237?

A.—Yes.

40 Mr. Campbell, K.C.: I don’t know whether I have seen that or not.

Mr. McKeown, K.C.: I don’t think it is in the record. It is one of the many letters which were given on discovery, without being filed, for the information of Counsel.

The Witness: I don’t know whether it is the copy or the original,

LADY DAVIS (*for Plaintiffs*), *Examination-in-Chief.*

because it was a hand written letter. The letter is dated Ritz-Carlton Hotel, October 24th, 1929.

By Mr. McKeown, K.C.:

Q.—This letter reads:

10 “ Dear Lord Shaughnessy:

I cabled you last year to buy 1,000 shares of Alcohol stock and to use my McNish bonds as collateral. I note that you have me down as owing the Company \$39,600. I thought that this would be carried by a Bank or a broker. It was never my intention to borrow money from Sir Mortimer Davis Incorporated nor have I ever authorized any loans. Will you please send me the broker's contract for this purchase and also my McNish bonds and all my Alcohol stock. I am enclosing cheque to cover
20 the amount.

Very truly,

(Sgd) ELEANOR DAVIS.”

Did you receive any acknowledgment from Lord Shaughnessy of the letter in question?

A.—Yes.

30 Q.—Will you look at the letter I now show you, marked Exhibit P-238, being a letter dated October 28th, 1929, and addressed to you at the Ritz-Carlton Hotel and signed Sir Mortimer Davis Incorporated, Shaughnessy, President, and say whether this is the letter you received in reply to your letter forwarding the cheque?

A.—Yes.

Mr. Campbell, K.C.: Are you putting it in?

Mr. McKeown, K.C.: Yes (reading):

40 “ Montreal, October 28th, 1929.

Lady Davis,
Ritz-Carlton Hotel, Montreal.

Dear Lady Davis:

I beg to acknowledge receipt of your favour of the 24th instant, which only arrived here late on Saturday morning and

LADY DAVIS (for Plaintiffs), Examination-in-Chief.

consequently remained unanswered until today as it was necessary for me to inquire into the facts of this transaction before answering.

10 I find that on October 11th, 1928, you cabled me as follows: 'Buy 1000 Canadian Industrial Alcohol; use McNish bonds for security.' We felt you probably were buying this stock for a turn and would liquidate it if it realized a profit, and desired the transaction put through this office or else you would probably deal with a Bank or broker direct, and upon this assumption we purchased the stock and held it and the McNish debentures as security for the advance which, I might say, was good and sufficient. We cabled you on the same date: 'Have bought 1,000 shares, average price 40 $\frac{1}{4}$, will hold bonds as requested.' From the above you must have understood that we were holding the bonds and this appeared to be with your approval since no objection was taken thereto. I understood from Mr. Reaper further that on June 1st a statement was given to you of your account which indicated clearly this transaction, to which you did not in any way demur.

20 I regret exceedingly that the matter should have been handled otherwise than you desired, and can assure you we had no intention of doing anything but complying with your instruction.

30 We acknowledge receipt of your cheque for \$39,536.87, and will forward to you immediately the broker's note covering the thousand shares themselves, your McNish bonds, and your other Alcohol stocks."

By Mr. McKeown, K.C.:

Q.—Was that letter followed by the delivery to you of the securities in question?

A.—Yes.

Q.—I think the list of them was put in here in the form of a receipt?

A.—Yes.

40 Q.—As to this statement referred to by Lord Shaughnessy as having been sent you on June 1st, did you receive the statement?

A.—I did receive the statement, yes.

Q.—I have not got it here, but will you produce it for the purpose of the record in this case as Exhibit P-239 of plaintiffs'?

A.—Yes.

Q.—Did that statement convey to you the information that these shares had been——

LADY DAVIS (for Plaintiffs), Examination-in-Chief.

Mr. Campbell, K.C.: Excuse me, Mr. McKeown. "What did it convey to you?"

Mr. McKeown, K.C.: It might have conveyed anything in the world.

10 Mr. Campbell, K.C.: What did it convey?

By Mr. McKeown, K.C.:

Q.—Did the statement in question show whether the shares——

Mr. Campbell, K.C.: What did it show?

By Mr. McKeown, K.C.:

20 Q.—What did it show?

Mr. Campbell, K.C.: That is better.

The Witness: As far as I remember it showed that a transaction had been made of the purchase of the shares of stock and there were some items of interest, but one offset the other.

By Mr. McKeown, K.C.:

30 Q.—The net result ultimately was that those 1,000 shares cost over \$40,000 only required your cheque for \$39,000 odd a year afterwards?

A.—Because the interest on the McNish bonds more than offset the interest on the loan.

Q.—Did you realize from the statement that the shares had not been purchased in accordance with your intention?

40 Mr. Campbell, K.C.: It is the same old form in the same old way.

Mr. McKeown, K.C.: The same old objections you are making every day.

Mr. Campbell, K.C.: Because I think it is necessary to put them at frequent intervals. I desire you continue to examine your client but in a legal manner.

LADY DAVIS (for Plaintiffs), Examination-in-Chief.

Mr. McKeown, K.C.: Shall I take Mr. Campbell's place and do the best I can? I abandon the possibility and I would like to ask Your Lordship to frame the question. I will suspend that matter and we will judge perhaps from the document itself.

10 Mr. Campbell, K.C.: The document speaks for itself. The plaintiffs says she received the document. He is going to put it in.

The Court: We will adjourn until this afternoon and put the document in.

Whereupon an adjournment was taken until 2:30 o'clock p.m.

On this 30th April, 1930:

20

ELEANOR CURRAN (Lady Davis)

re-appeared and continued her evidence as follows:

By Mr. McKeown, K.C.:

30 Q.—Lady Davis, will you look at the statement dated June 1st, 1929, marked P-239, which was referred to before the adjournment and say whether this is a carbon copy of the statement which you received at that time?

A.—Yes.

Q.—This statement extends in date from November 15th, 1927, to June 1st, 1929?

A.—Yes.

Mr. Campbell, K.C.: It speaks for itself. I suggest the answer.

By Mr. McKeown, K.C.:

40

Q.—And from November 15th, 1927, down to September 1st, 1928, and carries certain debit and credit items and shows a balance at that date of \$29,237.84 down to there. Do you understand the transaction? That was before the purchase of the Alcohol shares?

A.—Yes.

Q.—Under date September 29th, 1928, there is a credit of \$28,638.20 which apparently is a payment for the McNish debentures?

LADY DAVIS (for Plaintiffs), Examination-in-Chief.

A.—Yes. I issued a cheque in May, but my brother had forgotten to give it to them.

Q.—You had actually issued this particular cheque under date of May 29th, 1928, for \$29,237.84 in the month of May, 1928, and had given it to your brother?

A.—To deliver to Mr. Reaper.

10 Q.—But he had not turned it over to Mr. Reaper?

A.—No, he forgot about it.

Q.—Then the matter came up and he did deliver the cheque about that date. That is the way it was done?

A.—I think so.

Q.—There appear two items in red ink in the Balance Column, \$400, so it would appear you had overpaid what you were owing there?

A.—Perhaps. I don't remember.

20 Q.—There is a debit, \$139.32 under date September 30th, which would be the end of the Company's fiscal year.

A.—Yes.

Q.—You still had a balance at your credit of \$231.64 on the 30th of September, 1928?

A.—Yes.

Q.—And the next transaction is the purchase of your 1,000 shares between 39 and 41, \$40,470?

A.—Yes.

30 Q.—And from there on there are debits and credits down to June 1st which brought the balance of \$40,208.96 down to \$39,320.88 at the end?

A.—Yes.

Q.—That is the amount for which you gave your cheque?

A.—Yes.

Q.—The statement is marked "Long McNish debentures" and "1,000 shares Alcohol common"?

A.—Yes.

Q.—That is the statement to which you were referring this morning?

40 A.—Yes.

Q.—Concerning the thousand Alcohol which you requested Lord Shaughnessy to cable to buy for your account?

A.—Yes.

Q.—Look at this statement and say from it whether there is anything appearing in that statement—

Mr. Campbell, K.C.: I object. The trouble is by the time you

LADY DAVIS (for Plaintiffs), Examination-in-Chief.

10 frame the question most of the harm is done. The question is he is proposing to suggest to the witness the answer he wishes her to make to the question he is about to put. In other words, he is coming back to the question he put before the adjournment. I have sufficient knowledge of my learned friend's mind to know what he is coming to. Once a leading question has been put the objection does not destroy the effect. I suggest he hand the statement to the witness. As a matter of fact, the statement is there. The witness says she received it and she should not be asked to construe it.

The Court: The statement speaks for itself.

Mr. McKeown, K.C.: It is the limit, that no question can be asked at all. Every question must be stopped, if not to be stopped in the middle it should be stopped before it starts.

20 Mr. Campbell, K.C.: That is the logical result of the argument which he has been supporting, which shows his logic is not proper logic. My only submission is that as regards some of the elementary rules of evidence he should not lead her, put leading questions to her which suggest the inevitable answer.

30 Mr. McKeown, K.C.: It seems to me Mr. Campbell's argument calls for the sort of jurisprudence or legal argument that you begin to make the objection before the question is propounded. What is that based on? What authors have supported that? What tribunal?

Mr. Campbell, K.C.: When your question is bound to be illegal you do not lessen its illegality by leading the witness.

40 Mr. McKeown, K.C.: That might have been logical in the trial of Bardell and Pickwick. I would like to go out and whisper what the question is. Mr. Montgomery suggests, and I am sure Mr. Campbell will not challenge his form of question as he has mine, that I should ask the witness "Were you advised either by the receipt of this statement or otherwise that the purchase of your Alcohol had not not been made in accordance with your instructions as given by you?"

Mr. Campbell, K.C.: I have the greatest of respect for Mr. Montgomery's opinion but at the same time I must object to the form of the question.

LADY DAVIS (for Plaintiffs), Examination-in-Chief.

Question read as follows: “Mr. Montgomery suggests and I am sure Mr. Campbell will not challenge his form of question as he has mine, that I should ask the witness: “Were you advised either by the receipt of this statement “or otherwise that the purchase of your Alcohol had not been made in accordance with your instructions as given by you?”

10 Mr. McKeown, K.C.: It is a question of a loan to a shareholder and a loan to a Director.

The Court: Lady Davis said she intended her shares should be bought from a broker. She received that statement which might or might not have conveyed to her the knowledge or the information that the shares were not bought from a broker but were taken from the Treasury of the Company.

20 The Witness: No. They were bought from a broker.

Mr. Campbell.: In other words, what was done was exactly in accordance with instructions.

Mr. McKeown, K.C.: Why do you object to the question?

Mr. Campbell, K.C.: My learned friend is trying to have the witness say she did not understand they were being carried by the Company. That was the very purport of her instruction.

30 The Witness: No. You are wrong there.

Mr. Campbell, K.C.: The instructions are already filed and the statement that was sent to the witness is there. Now, we find the witness, acting under very careful advice, of very competent counsel, trying to revamp the situation, but in my submission the witness cannot improve her position by letters written late in October in trying to put an entirely different complexion on what was done. I submit the witness in the box should not deduce the consequences.

40 The witness in the box is not entitled to say now what she was construing.

Mr. Montgomery, K.C.: The thing is very simple. The instructions are to buy 1,000 Canadian Industrial Alcohol, use McNish bonds for security. The evidence is they were holding some McNish bonds as security; to use McNish bonds as security. She gets the

LADY DAVIS (for Plaintiffs), Examination-in-Chief.

Annual Statement. She is in the position of being a borrower from the Company, a position she never in the world wanted to be placed in. They were held for her personal account, some of the McNish bonds or debentures; she had left them with them and this cable was to Lord Shaughnessy. Now, without her consent she finds herself in the position of having borrowed from the Incorporated Company, the very thing she reproaches Lord Shaughnessy with having done.

Mr. Campbell, K.C.: It is just because she is reproaching Lord Shaughnessy with doing this thing that she is trying to escape the consequences of having done it herself.

The Court. Either course is very clear, that she had the right to assume the purchase would have been made in the usual way.

Mr. Campbell, K.C.: There was a cable reply telling her what was done.

Mr. Montgomery, K.C.: My learned friend asks the question whether she was ever advised by the statement or otherwise that the transaction instead of being carried out through a broker was carried out by a loan from the Company. I do not see how my learned friend can object to that except that he does not like it.

Mr. Campbell, K.C.: What I do not like is the witness under the advice of counsel is attempting a reconstruction of her position. It is a question of reconstructing or trying to improve her position in October, under the advice of her counsel.

The Court: Lady Davis either tells the truth or she does not. If the question is a proper question, for the time being I am not concerned with what the answer is.

Mr. McKeown, K.C.: We do not want to be pleased in the same category as we say Lord Shaughnessy is, dipping into this corporation of which he is a trustee, and taking \$10,000 without the knowledge of the other Directors. It is simply an attempt by the other side to draw a herring across their own trail, and the statement we tried to revamp the situation in November is absolutely false. We paid our cash, which he did not do.

Mr. Campbell, K.C.: It is an attempt to try to prevent the

LADY DAVIS (for Plaintiffs), Examination-in-Chief.

witness from extricating herself from the position she discovered herself in.

Question read as follows: “Mr. Montgomery suggests, and I am sure Mr. Campbell will not challenge his form of question as he has mine, that I should ask the witness “Were you advised either by the receipt of this statement or otherwise that the purchase of your
10 Alcohol had not “been made in accordance with your instructions as given by you?”

Mr. Campbell, K.C.: Perhaps it would simplify it if Mr. McKeown would answer the question the way he would like it answered.

The Witness: No.

20 By Mr. Campbell:

Q.—Were you ever advised prior to the receipt of the statement of Price-Waterhouse and Company dated August 31st, 1929, and which you received early in October, 1929, that funds of the Incorporated Company had been used for the purchase of these 1,000 shares on your account?

A.—No.

Q.—Was it ever your intention anything of the kind should
30 happen?

Mr. Campbell, K.C.: Never mind the intention. We are interested in facts, because the intention is very variable in the consequences, and we are not able to check it.

By Mr. McKeown:

Q.—I will put that question in another form: What was your intent in the matter as stated in the letter which has been produced
40 here this morning as P-237?

A.—That was my intention.

Mr. Campbell, K.C.: If that is not a leading question I never heard of a leading question in my professional life.

Mr. McKeown, K.C.: You have got quite a lot of things to hear about but I don't believe that is a new one to you.

LADY DAVIS (*for Plaintiffs*), *Examination-in-Chief*.

By Mr. McKeown:

Q.—I think you had this morning identified as having been received by you on or after November 17th, 1929, Plaintiffs' Exhibit Number 10 with the return of the action, the Annual Statement of the Incorporated Company for the year ending September 30th, 1929?

10 A.—Yes.

Q.—And that final statement of the Company, Exhibit Number 10 in the report of the auditors annexed to it contains this reference:

“On the Balance Sheet of August 31st, 1929, a liability of \$212,516.86 was shown as due to shareholders in respect of the purchase of Capital Stock. This liability was discharged as at September 17th, 1929, and therefore disappears from the Balance Sheet as at September 30th, 1929.”

20 Did you understand to what item the clause in the report referred?

A.—Yes. I understood it was Lord Shaughnessy's money that he had drawn down.

Q.—Did you notice the amount in the Bank overdraft in the former statement, that is the statement as at the 31st of August, 1929, in the Exhibit Number 9?

A.—Yes. \$80,844.93.

30 Q.—Had you noticed what had occurred to the Bank overdraft by this new statement for the whole fiscal year up to September 30th, 1929, Exhibit Number 10, which you received on or after November 16th, in the matter of the Bank overdraft?

A.—Yes. There is a Bank overdraft of \$205,825.06.

40 Q.—Would you now look at the copy of letter, Plaintiffs' Exhibit Number 12, filed with the return dated November 21, five days after the date of the auditors' report, addressed to Lord Shaughnessy, signed by myself, and say whether you gave instructions to send that letter, and the same to Mr. Reaper?

A.—Yes, I did.

Q.—By this letter in question, you requested the resignation of both Lord Shaughnessy and Mr. Reaper as Executors of the Estate and as officers of the Incorporated Company and of the Alcohol Company?

A.—Yes.

Q.—Was it brought to your notice that Lord Shaughnessy as

LADY DAVIS (*for Plaintiffs*), *Examination-in-Chief*.

well as Mr. Reaper, replied to your letters of November 21st, 1929, requesting their resignations?

A.—Yes.

Q.—Do you identify the copies of letters incorporated, Plaintiffs' Exhibit Number 12, on page 12 of the Exhibit, as being the replies received from Lord Shaughnessy and Mr. Reaper?

A.—Yes.

10 Q.—This reply has some significance, so I think we will put it on the record:

“Montreal, November 22nd, 1929.

W. K. McKeown, K.C.
Royal Bank Building, Montreal.

Dear Sir:

20 I beg to acknowledge receipt of your favour “of November 21st, in respect to the demand by Lady Davis of my immediate relinquishment of the offices of Joint Executor and Trustee under the Last Will of her husband, the late Sir Mortimer Davis, and of all offices held by me in Sir Mortimer Davis Incorporated and all corporations which it controls, including Canadian Industrial Alcohol Limited.

30 The demand is so ridiculous and absurd that it should be hardly necessary for me to say I have no intention of relinquishing such offices, but quite apart from this since you have made a serious statement to the effect that such demand is made for cause, I feel that I am justly entitled to know and would appreciate if you would instantly inform me as to the cause or causes to which you referred, in default of which I shall be reluctantly constrained to demand the same, according to law.

Yours very truly,

SHAUGHNESSY.”

40 A letter in identical terms was received from Mr. Reaper?

A.—Yes.

Q.—Without going into any details of the matter, how did it come about that your action in this matter was only instituted on the 16th of January, 1930, and served on the 18th of January?

Mr. Campbell, K.C.: I am quite agreed we should make a joint admission of counsel as to what was done in the interval. It is com-

LADY DAVIS (for Plaintiffs), Examination-in-Chief.

mon ground and has been frequently before the Court, that in the interval following the receipt of the letters there were repeated conferences of counsel.

The Court: The action is good or bad. If it is bad two months delay will not improve it; if it is good it will not prejudice it.

10 Mr. Montgomery, K.C.: We will just make the formal statement it was common ground in the interval that counsel for the parties—

The Court: It is just a simple statement.

20 Mr. Campbell, K.C.: It is common ground following the receipt by the Defendants of Mr. McKeown's letters of November 21st, and Lord Shaughnessy's reply dated November 22nd, that there followed during a period of some weeks, down to some time in January, repeated consultations of counsel representing both parties in this case, in an endeavour to agree on a common ground on which they should agree, for the solution of the difficulties that had arisen. Unfortunately, those negotiations came to nothing. They were conducted, of course, without prejudice to the rights of either of the parties; and because they were conducted that way they are not proper matters for evidence, in my submission.

30 Mr. McKeown, K.C.: Plaintiffs accept the declaration made by counsel for the Defence for the purpose of the matter therein referred to. I don't want it to appear in this record in any other Court there had been an interruption or an interregnum in the matter, without reasons therefor.

Mr. Montgomery, K.C.: I think in justice to counsel on both sides that the Court should know and the public should know a most sincere endeavor was made by counsel on both sides to avoid this litigation.

40 By Mr. McKeown, K.C.:

Q.—Do you remember these negotiations came to an end on Monday January 13th, 1930?

A.—Yes.

Q.—And the record shows that the Writ was issued on the 16th of January and was served on the 18th?

LADY DAVIS (for Plaintiffs), Examination-in-Chief.

A.—Yes.

Q.—I find before I take up the events from the 13th of January on, there are a few little odds and ends I would like to cover up, arising out of your letters to Lord Shaughnessy in August. In your letter of August 23rd, part of Plaintiffs' Exhibit Number 7, you asked that monthly statements of the Estate and of the Company be forwarded to you. Did you ever receive those monthly statements for
10 August, September, or any subsequent month up to the time this action was taken in 1930?

A.—No.

Q.—Had you been familiar with the type of statement concerning the Incorporated Company and Sir Mortimer's private affairs which had been forwarded to him from Montreal to the time of his Death?

A.—Yes.

Q.—Will you identify the Exhibit P-43 already produced, and
20 say whether these are the type of statement which were received by Sir Mortimer during his lifetime, covering his personal affairs and those of the Company?

A.—Yes.

Q.—Where did these sheets on P-43 come from?

A.—Mr. Taylor, the secretary of Sir Mortimer, evidently forgot that statement and left it in the villa at Cannes.

Q.—You found it there and brought it with you and handed it to counsel?

30 A.—Yes.

Q.—While upon this subject had you ever seen statements of that kind prior to these particular sheets now forming P-43, during Sir Mortimer's lifetime?

A.—Yes, often.

Q.—In what way did they come to your attention?

A.—Sir Mortimer often showed them to me.

Q.—Following Sir Mortimer's death did you ever receive either after your return to France, or at any time after your return to
40 Montreal, monthly statements of the nature of P-43 concerning either the Estate or the Incorporated Company?

A.—No, never.

Q.—Apart from the subjects to which you have already alluded in the course of your examination, in the matter of information sought to be obtained concerning Jennison, and matters of that kind, what information were you ever able to obtain in connection with the McNish situation prior to the institution of this suit.

LADY DAVIS (*for Plaintiffs*), *Examination-in-Chief.*

A.—I never had any information.

Q.—You never had any information?

A.—No, except from Lady Shaughnessy in conversation.

By the Court:

10 Q.—You spoke of a conversation with Lady Shaughnessy?

A.—Yes.

Q.—Was that the only conversation you had with Lord Shaughnessy with regard to the McNish situation?

A.—He never mentioned it himself, no.

By Mr. McKeown, K.C.:

Q.—Did you ever speak to him about McNish, before referring to Lady Shaughnessy?

20 A.—You mean with reference to Jennison?

Q.—Yes, or in any other connection.

A.—Just in a general way I asked him how everything was.

Q.—Did you ever speak to him specially of the McNish situation?

A.—No.

Q.—It did come up in the meeting in October in connection with Jennison?

A.—Yes.

Q.—Did he ever volunteer any information to you?

30 A.—No.

Q.—Did you know the facts as disclosed here at the trial prior to that time, that the Company was losing money at the rate of \$500,000 a year?

A.—No, I did not know they were losing that much, but I knew they were not making any money.

Q.—Lord Shaughnessy never gave you any information either as Executrix or as a Director of Sir Mortimer Davis Incorporated, with reference to that McNish situation?

A.—No.

40 Q.—Did you know prior to the receipt of the statements in the fall, I think, of this last year, that any part of the Company's monies had been used to acquire a part of the Marler stock for Lord Shaughnessy's account?

Mr. Campbell, K.C.: Is that a fair way to put the question? Lord Shaughnessy had or had not the rights which he thought he had. That is a question of law and a very difficult question of law

LADY DAVIS (for Plaintiffs), Examination-in-Chief.

which Your Lordship may have some difficulty in solving. Your Lordship will remember Mr. Marler had 500 shares he wished to sell. The Estate took over the whole block and distributed 25 shares to Mr. Waddell and 25 to Lord Shaughnessy in accordance with what Lord Shaughnessy, in any event, thought were the provisions of the bylaws. I am not proposing to discuss at this time whether he is right or wrong. I think he was perfectly right, but surely the
10 opinion of the witness in the box on a question of law is not going to help you.

Mr. Montgomery, K.C.: It is on a question of fact, whether Lord Shaughnessy was or was not entitled to take the Marler stock. That will be something to argue and will be decided by Your Lordship. The other question is whether Lord Shaughnessy was using the corporation's money to pay for the stock rightly or wrongly.

20 The Court: The only question is whether Lady Davis knew that.

Mr. Campbell, K.C.: I don't object to Lady Davis testifying as to what she knew about the affairs of the company or what she did not know, but what I object to is the form and the implication of the questions.

Mr. McKeown, K.C.: Don't bother about the implications. We have been bothering about that for two months.

30 Mr. Campbell, K.C.: If you had avoided them you would have avoided some of my objections.

By Mr. McKeown, K.C.:

Q.—Did you know before the actual trial of this case that Lord Shaughnessy had, during the summer months of 1928 and 1929 withdrawn from the funds of the Company in sundry amounts—

40 The Court: All we want to know from Lady Davis is whether she knew these particular facts before they took place, and if so, how and when. As to whether they are defined by one party or another I will have to give my own definition.

Mr. McKeown, K.C.: All we want to know is whether Lady Davis knew of the takings of these monies from the Company before this case was on its way, at the time we made the amendment.

LADY DAVIS (for Plaintiffs), Examination-in-Chief.

Question read as follows: Did you know before the actual trial of this case that Lord Shaughnessy had, during the summer months of 1928 and 1929 withdrawn from the funds of the Company in sundry amounts —

By Mr. McKeown (continuing question):

10 Q.—As shown by the two Exhibits, P-27, which amount to a total of \$4,684.22 between July 11th and September 19th, as shown by the further Exhibit P-28, which involves an amount of \$2,875.82 withdrawn between April 2nd and June 20th, 1929?

A.—No, I did not.

Q.—Did you tell us that there was a discussion at any time with reference to charitable donations or anything of that description since your return here in June last?

20 A.—On the 18th of October Lord Shaughnessy said something about Sir Mortimer having been in the habit of giving the Jewish charities \$10,000 a year from Sir Mortimer Davis Incorporated, and I said I did not think we should continue it, we did not have the money to do it.

Q.—Would that be at the meeting to which you referred this morning, the 18th of October?

A.—Yes.

Q.—Was the charity in question the Jewish Federation of Charities, Mis-en-cause in this case?

A.—Yes.

30 Q.—Which, apart from being one of the ultimate beneficiaries 50 years hence, is by clause 12 of the Will, an immediate beneficiary to the extent of \$100,000.

A.—Yes.

Q.—Which bequest has not been paid yet?

A.—No.

Q.—His proposal was to keep on giving \$10,000 in addition to what is provided in the Will?

A.—Yes.

Q.—What did Lord Shaughnessy say?

40

Mr. Campbell, K.C.: My objections come too late because you put the question in the mouth of the witness.

The Witness: Lord Shaughnessy had given them a donation so I thought we should discontinue it.

By Mr. McKeown:

LADY DAVIS (*for Plaintiffs*), *Examination-in-Chief.*

Q.—Did you know before the receipt of these statements which were handed you in October or November that the Incorporated Company had been purchasing Alcohol “A” stock?

A.—No.

Q.—Now, generally, in connection with the Incorporated Company, had you been summoned to any meetings of the Company prior to the time you demanded Lord Shaughnessy’s removal on
10 November 20th-21st?

A.—No, I had never been so honoured.

Q.—As to the meeting of the 18th of October, did you go to that by way of formal request?

A.—No.

Q.—Did you know at that time that was being dealt with as both a meeting of the Estate and a meeting of the Incorporated Company while it was progressing, while you were there?

A.—I was asked to come over there to discuss some things.

Q.—Did you realize it was a formal meeting both of the Executors and of the Incorporated Company, as shown by the minutes which we have here this morning?
20

A.—I had no idea what it was. I told you exactly what happened. I received a letter from Lord Shaughnessy and a telephone message to come there.

Q.—Did you spend your time in Montreal from your arrival on the 6th of June, up to the time of Lord Shaughnessy’s resignation was requested, here in Montreal?

A.—Yes, practically all the time. I have been away for a few
30 week-ends.

Q.—The Minute Book which is just handed me by Mr. Reaper, that is, the Minute Book of the Incorporated Company, purports to show that meetings of the Directors of the Company took place on June 13th, June 27th, August 4th, 1929. Were you here on those dates?

A.—Yes.

Q.—Did you receive any notice or call to those meetings of the Company?

A.—No, never.
40

Q.—Now, you have testified this morning with reference to Lord Shaughnessy’s letter of the 4th of October protesting that nothing had been done by him in the matter of a merger, and not even a commencement of negotiations would start without consultation with you. You have testified further to his denials of any negotiations of a merger being in progress at the time of the meeting of October 18th, 1929. Did Lord Shaughnessy ever advise

LADY DAVIS (for Plaintiffs), Examination-in-Chief.

you that he had opened negotiations with anybody dealing with the Alcohol stock?

A.—Never.

Q.—Did you receive at any time an intimation to such effect from his attorneys, anyone on his behalf?

A.—The first I saw of it was a letter in your office.

10 Q.—The first you saw of it was a letter in my office?

A.—Yes.

Q.—Do you refer to the letter which has already been produced and marked Exhibit D-1, being letter dated January 17, 1930, addressed to myself and signed by Meredith, Holden, Heward and Holden?

A.—Yes.

20 Q.—Do you say that this is the first intimation that you have received on behalf of Lord Shaughnessy that there were any negotiations for the merger involving the Alcohol stock of the Estate and Incorporated Company?

A.—Yes.

By the Court:

Q.—Was there anything more said about the Distillers Corporation Limited since you saw Lord Shaughnessy in New York, in 1928?

30 A.—Yes. Lord Shaughnessy did say at one time that Mr. Cleland, I think, was one of the men who had an interview with him, and that he did not consider Mr. Cleland was serious, that he thought that perhaps Mr. Cleland just wanted to see the books of the Company.

By the Court:

Q.—When was that?

A.—That was, I think, some time in Europe when I saw Lord Shaughnessy.

40 By the Court:

Q.—Is that Distillers Corporation the parent Corporation of that which amalgamated with Seagrams?

A.—Yes. It is the largest whiskey Corporation in the world — the largest whiskey.

By Mr. McKeown:

LADY DAVIS (for Plaintiffs), Examination-in-Chief.

Q.—The letter D-1 of the 17th of January, 1930, from Meredith and Company reads as follows:

His Lordship: I have read it.

Mr. McKeown: I would like to have it in the record.

10 Mr. Campbell: It has been in the record since the start.

Mr. McKeown: It is not in the record since the start.

Mr. Campbell: It is a printed Exhibit. I think it is one of your Exhibits.

By Mr. McKeown: It is not my Exhibit.

20 Q.—This letter is reproduced on page 14 of the Exhibits, annexed to the Plea of the Defendant, Lord Shaughnessy, and reads as follows:

“Montreal, 17th January, 1930.

W. K. McKeown, Esq., K.C.,
Royal Bank, Montreal.

Dear Sir:

Re Lady Davis vs. Lord Shaughnessy and A. M. Reaper.

30 In reference to the various actions at law which, on behalf of Lady Davis, you have threatened to institute against Lord Shaughnessy, we are instructed by Lord Shaughnessy to call to your attention before you actually begin those proceedings, the fact that there are presently pending preliminary overtures or negotiations looking to the possible merger of Canadian Industrial Alcohol with other Companies engaged in a similar line of business. While these negotiations are at present merely tentative and have not developed sufficiently for Lord
40 Shaughnessy to disclose or discuss the details, he instructs us to say to you for Lady Davis' information that he is hopeful that if nothing happens to disturb the negotiations that may eventuate in an offer being made to merge Canadian Industrial Alcohol with other competing Companies on terms which would appear to be most advantageous to Canadian Industrial Alcohol in general and to the Estate of the late Sir Mortimer B. Davis in particular.

LADY DAVIS (*for Plaintiffs*), *Examination-in-Chief*.

Lord Shaughnessy does not wish that Lady Davis should even be able to contend that when she instituted the proceedings which she threatens to institute she was unaware that negotiations were pending that would necessarily be disadvantageously influenced by such proceedings if not thereby entirely broken off and wrecked.

10 Will you therefore be so good as to give Lady Davis communication of this letter.

Yours truly,

MEREDITH, HOLDEN, HEWARD & HOLDEN."

20 Q.—You will notice that this letter is dated January 17th, 1930, which is the day following the issue of the writ. Will you look at the original of this letter which I now show you, and at the memorandum in lead pencil written on the bottom:

"Received at 10.40 a.m., January 18th, 1930. W. K. M. R. R. B. S. C."

Did you ever see that memorandum before?

A.—Yes.

Q.—Was that written in your presence?

A.—Yes.

Q.—On the date it bears and at the hour mentioned?

30 A.—Yes.

Q.—What was the circumstance under which that letter was delivered to me, to your personal knowledge?

A.—The Bailiff was waiting for the writ.

Q.—The writ in this case?

A.—Yes.

Q.—And did the Bailiff depart with the writ in your presence?

A.—Yes.

40 Mr. Campbell: After receipt of the letter.

Mr. McKeown: After receipt of the letter, a fine time to get notice of a merger.

By Mr. McKeown:

Q.—You have said, I think, in answer to His Lordsip, that you had heard many rumors of mergers involving Alcohol, which, I pre-

LADY DAVIS (for Plaintiffs), Examination-in-Chief.

sume, would be prior to the receipt of this letter by your Counsel on January 18th, 1930?

A.—Yes.

Q.—Extending from what time up to that date?

A.—I should say August and September.

Q.—And were they continuous during that period?

A.—Yes.

10 Q.—Were they from Lord Shaughnessy? When you saw Lord Shaughnessy on the occasions that you did, and spoke to him of the rumors, what did he say about them?

A.—He said no one had ever come to see him.

Q.—And in addition you had his pledge by the letter of the 4th of October that not a commencement of negotiations would be made without you being consulted?

A.—Yes.

20 Q.—Had you been in any manner consulted about these suggested mergers referred to in this letter which has just been read into the record?

A.—Never.

Q.—Where had your information come from that you had, apart from seeing it in the press?

A.—Mr. Lauster come over and told me.

Q.—Mr. Lauster's evidence is, I think, that he called on you on January 10th?

A.—Yes, I think it was then.

30 Q.—I intended to ask you about that specially. You were present when Mr. Lauster testified?

A.—Yes.

Q.—Just tell us what Mr. Lauster said on that occasion?

Witness: About the merger?

Counsel: Yes.

40 A.—He said that he had heard that Lord Shaughnessy was negotiating for a merger with the Walkers, and he thought it would be a very good thing.

Q.—First of all, did you bring up that subject with Mr. Lauster or did he bring it up?

A.—Mr. Lauster brought it up.

Q.—And he expressed the opinion that it would be a good thing?

A.—Yes.

Q.—Did you express any opinion as to a merger with Walkers?

LADY DAVIS (*for Plaintiffs*), *Examination-in-Chief*.

A.—I asked him if he knew the terms. He said, no, he did not.

Q.—And he is Vice-President of the Company?

A.—Yes.

Q.—And this was on the 10th of January, 1930, according to Mr. Lauster's evidence?

A.—Yes.

10 Q.—Did you express any opinion to Mr. Lauster as to the advisability or otherwise, of the merger with the Walker concern?

A.—I said I did not see how anybody could say that a merger was good unless they knew the terms.

Q.—Was any reference made as to the desirability of merging with the Walker Corporation?

A.—Personally I do not think it is desirable.

Q.—Why do you say that, Lady Davis?

20 A.—I say that because I think it would be terrible if the Canadian Industrial Alcohol Company become minority shareholders in the Walker Company—I am talking about the Incorporated Company. I am talking about the Estate.

Q.—You mean in the interests of the Estate and the Incorporated Company it would be terrible to put your shares of Industrial Alcohol into a minority condition with Walker?

A.—Yes, I do.

Q.—Why do you say that?

A.—Because my husband had had very unfortunate experiences with Mr. Hatch and Mr. Hume.

30 Q.—Are you able to say that Lord Shaughnessy is aware of what you are referring to?

A.—I think Lord Shaughnessy is fully aware.

Q.—What were the unfortunate circumstances that Sir Mortimer experienced with Mr. Hatch?

A.—Mr. Hatch was the trusted agent . . .

Mr. Campbell: Will you caution the witness, Mr. McKeown, to say what she knows of her own personal knowledge.

By Mr. McKeown:

40

Q.—From your personal knowledge?

A.—I am talking of what my husband told me, and I thoroughly believe it.

Mr. Campbell: Then, my Lord, my submission is that it is nothing but hearsay, what Sir Mortimer might have told the witness in the box is not evidence and I submit is not permissible.

LADY DAVIS (for Plaintiffs), Examination-in-Chief.

His Lordship: It does not prove it is true, to prove what Sir Mortimer said. Objection reserved.

Witness: Mr. Hatch was trusted to go to the Gooderham and Worts Company . . .

10 By Mr. McKeown:

Q.—Trusted by whom?

A.—By Sir Mortimer, to purchase the Gooderham and Worts Company for the Canadian Industrial Alcohol Company. He reported to Sir Mortimer that he could not purchase it.

Mr. Campbell: When you put in the writings, the writings will speak for themselves. In the meantime, I object to the evidence as hearsay and illegal.

20 By the Court:

Q.—Did you hear Sir Mortimer say that to Mr. Hatch, or did he simply tell you that he had told Mr. Hatch.

A.—I know that it happened.

By the Court:

Q.—Were you there?

30 A.—No, I was not there, but Lord Shaughnessy knows too. It is common knowledge.

Mr. McKeown: Very well, if my learned friend insists on that, we will reserve it for his client, and in the meantime I will produce his client's letters.

Mr. Campbell: That is quite legal. I am quite satisfied you should do that.

40 By Mr. McKeown:

Q.—Will you speak of another circumstance. It is already in proof that Mr. Hatch at one time was connected with the Canadian Industrial Alcohol Company?

A.—Yes.

Q.—And in a position of authority?

A.—Yes.

LADY DAVIS (for Plaintiffs), Examination-in-Chief.

Q.—He was one of the Officials?

A.—Yes.

Q.—And do you know from your own knowledge that he ceased to be connected with Canadian Industrial Alcohol, and that he is now the Chairman of the Board of the Hiram Walker, Gooderham and Worts combination?

A.—Yes.

10 Q.—Do you know a Mr. W. J. Hume?

A.—Yes, I do.

Q.—Was he at one time connected with the Canadian Industrial Alcohol Company?

A.—Yes.

Q.—Did he cease to be connected with the Canadian Industrial Alcohol Company, and is he now President of the Hiram Walker, Gooderham and Worts Company?

A.—Yes.

20 Q.—Do you know a Mr. Rainer who, at one time, was connected with the Canadian Industrial Alcohol Company, and who is now a Director of Hiram Walker, Gooderham and Worts?

A.—I do not know Mr. Rainer, but I know he was connected with Canadian Industrial Alcohol.

Q.—Was he connected with Canadian Industrial Alcohol?

A.—Yes.

30 Q.—And we have it in proof that he is now a Director of Hiram Walker, Gooderham and Worts Corporation. Were you present when Mr. Lash gave his evidence the other day, and testified that these were the three Alcohol men in charge of the Corporation, Hiram Walker, Gooderham and Worts?

A.—Yes.

Q.—Do you know whether Mr. Hatch severed his connection with Canadian Industrial Alcohol since your marriage to Sir Mortimer?

A.—I do not remember whether it was before then or after. I am not just sure when it was.

40 Q.—Can you tell us the approximate date when Mr. Hume severed his connection with the Canadian Industrial Alcohol Company?

A.—Yes. It was either at the end of December, 1926, or the beginning of January, 1927. I know we were on the ocean when we heard about it, going to France.

Q.—Had you been here with Sir Mortimer at the time of the Annual Meeting held in December, 1926?

A.—Yes.

LADY DAVIS (*for Plaintiffs*), *Examination-in-Chief*.

Q.—Had Mr. Hume previously been a Director of the Company?

A.—Yes.

Q.—Was he re-elected at that meeting, and was he elected Vice-President of the Company?

A.—Yes.

10 Q.—The meeting, I suppose, would be held sometime toward mid-December?

A.—I do not remember.

Q.—Anyway you were on the ocean returning to France?

A.—Yes.

Q.—When Sir Mortimer received the news of what?

A.—That Mr. Hume had resigned, he had left, and he had gone to the Hatch Company, to the Walker Company.

20 Q.—You have told His Lordship that following Sir Mortimer's death you gave instructions to his Secretary to gather up all the letters and correspondence which he could find bearing upon Sir Mortimer's matters, and to send them to Lord Shaughnessy at Montreal?

A.—Yes.

Q.—I now show you an original letter which has been handed to me by Mr. Reaper, as forming part of that correspondence, and which I will produce and mark Exhibit P-240, and upon which I note certain lead pencil marks. Do you recognize the handwriting of those scribblings?

A.—That is Sir Mortimer's handwriting.

30 Q.—What is this up in the first page?

A.—That is Sir Mortimer's handwriting.

Q.—Will you read into the record the part of this letter, beginning with the fifth paragraph, and continuing to the end? The letter is dated January 3rd, 1927, on the stationery of Sir Mortimer Davis Incorporated, Montreal, and is as follows:

40 “Since you left things have transpired in connection with which I submit herein a complete report. In the first place H. C. Hatch appears to have purchased the Walker Company though it is not yet clear whether the deal has actually been completed or whether he only has an option. After careful investigation the best information I can get on the subject is as follows“ (And then a matter is dealt with which is of no importance for the present moment).

Then, the fifth paragraph:

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“The second matter of importance is that Hume arrived here the other morning and tendered his resignation as Vice-President and Director of the Company in order to take up with Hatch the position of General Manager of the Walker Company.

10 “I was of course astonished at this action on the part of a man that owes everything he has in life to the generosity of this Company and you, and while I do not to any extent regret his loss since he is easily replaced, I did not hesitate to tell him what I thought of his loyalty and decency. He apparently has always been a cur and I am informed only through gossip and without verification that he has always had a substantial interest in the shares of Gooderham and Worts.”

The Gooderham and Worts referred to in that point in the letter is the concern which Mr. Lash told us has now been merged with the original concern of Hiram Walker?

20 A.—Yes.

Q.—And at the time, prior to this letter, it was a competitive concern of Canadian Industrial Alcohol of which Hume was a Director?

A.—I did not understand your question.

Q.—That is to say, the Gooderham and Worts Corporation was a competitive concern with Canadian Industrial Alcohol?

A.—Oh yes.

Q.—Of which Mr. Hume was a Director?

30 A.—He was a Director of Canadian Industrial Alcohol, yes.

Q.—Then, the letter continues:

40 “I also understand that this proposition was made to him (Hume) before he went to England, and consequently he took a trip to investigate conditions in England and on the Continent at our expense, and from which the Walker Company will derive advantage. In addition to this he came down here and freely discussed the Walker purchases with you and with me and with Stormont and Lauster, discussed future plans for meeting Walker competition and permitted himself to be elected Vice-President and re-elected Director when all the time he knew he was going to Hatch.

In these respects, therefore, he is only living up to the tradition of the Douglas and Hatch school in which he was educated and has by his actions earned the reputation of a low skunk devoid of loyalty, gratitude or decency.

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As far as he is concerned I am very glad he is out because it would be impossible to make any progress with a man like that in a position of importance, and as I have said as far as ability is concerned, he is easily replaced.

I think the organization is now free of germs and we will be able to work in future with confidence in the Officials occupying important positions.

10 I sent over Wilmore as it appears to me that he would be a good man to take charge of manufacturing, having in mind the fact that he really started the Company on the manufacture of beverage and practically taught Hume all he knows, but he will be given to understand that he will be under the jurisdiction of the Executive Officials of the Company, while at the same time given an opportunity to advance himself if he proved satisfactory. I have not seen him yet, and therefore do not know whether he will be prepared to accept the position, but if not, other arrangements will be made. In any event the plant can be properly operated by Wilkie who has in fact been solely responsible for the last six months or so. With Lauster, Hume, 20 Kelly and Stormont all organizing their departments and watching the aggressive selling campaign, I look forward to the next year with optimism, satisfied at all events that our Company has been purged of traitors. Hume is not taking any staff and his leaving will not interfere in any way with our operations and we have all formulae and processes and can continue as usual.

30 Business was fairly good last month considering the huge month of November and reached a total of about 28,000 cases.

With renewed good wishes.

Yours very truly,

SHAUGHNESSY."

By the Court:

Q.—When did you sail for Europe that year?

40 A.—Well, I know we were on the boat New Year's eve, so it was the last week in December.

By the Court:

Q.—Around Christmas time?

A.—Yes.

By the Court:

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Q.—When was the Meeting of the Alcohol Company at which this matter was dealt with?

Mr. McKeown: Around the 15th.

By Mr. McKeown:

10 Q.—We have had Lord Shaughnessy's appreciation of Messrs. Hatch and Mr. Hume. Let us see what he thinks about Mr. Rainer?

Mr. Montgomery: The Annual Meeting is the third Tuesday in December.

20 Mr. Campbell: I have re-read that letter, and I do not know what my learned friend is proposing to go through now, but I fail to see the relevancy of all this. My learned friend has just now read into the record and into the newspapers a very private and confidential communication from Lord Shaughnessy to his employer, Sir Mortimer Davis. I do not know any of these gentlemen involved in this; I don't know anything about them, but what possible good can it do, and what possible assistance can it be to Your Lordship.

Mr. McKeown: It is your client's language. I am not responsible for it.

Mr. Campbell: It is my client's language written in an official report to his employer, and I submit it is utterly irrelevant.

30 His Lordship: Lord Shaughnessy and Mr. Reaper and the Davis Estate are in the same boat as Messrs. Hume, Hatch and Rainer. The letter may be useful in that respect.

Mr. Campbell: But the point is, the negotiations never came to anything and never can now.

40 His Lordship: I went that far that Clarkson had in his possession a statement of both Companies and wrote a report prepared from those statements.

Mr. McKeown: And then comes this letter which crystallizes the thing after the suit had started, to say nothing of Mr. Lash's visit.

His Lordship: I am not here to say that it is important or has very much bearing, but I cannot say it is irrelevant.

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Mr. Campbell: It is irrelevant, in my submission, to the issues now joined, because they never came to anything.

His Lordship: The question is whether the Company did not waste valuable time discussing with Mr. Lash as to what had taken place between Mr. Hume, Mr. Hatch and Mr. Rainer.

10 Mr. McKeown: No one couples Mr. Lash in this angle.

His Lordship: Who, according to his own statement, which I certainly would not question for a moment, opened up negotiations himself. Was it wise to give Mr. Lash as much information as he had received. I am not discussing the question, but I cannot say it is irrelevant.

20 Mr. Campbell: I submit it is irrelevant, and I ask Your Lordship to note my objection.

His Lordship: Objection overruled.

Mr. Campbell: I respectfully except to Your Lordship's ruling.

By Mr. McKeown:

30 Q.—You mentioned that you knew of that fact, that Mr. Rainer was at one time connected with the Corporation, that is to say, the Canadian Industrial Alcohol Company, and that he left and is now a Director of the Walker Company?

A.—Yes.

40 Mr. Campbell: There is the further question I would ask Your Lordship to consider, and that is whether these documents are not confidential and privileged, as between Sir Mortimer Davis and Lord Shaughnessy. Lord Shaughnessy was not only Vice-President, but he was General Counsel. My statement is that these are privileged communications and they are not matters for publication. They can do no possible good to the Plaintiffs.

Mr. McKeown: We will take our chances on that.

His Lordship: I am willing to listen to your argument as to their being privileged communications.

Mr. Campbell: My submission is that any communications by

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Lord Shaughnessy to Sir Mortimer Davis are privileged communications inasmuch as Lord Shaughnessy occupied the position, not only of Vice-President, but as General Counsel.

His Lordship: Not as General Counsel.

10 Mr. Campbell: These are communications on the letter paper of Sir Mortimer Davis Incorporated, of which he was the General Counsel. I do not think we can divide Lord Shaughnessy's positions into water tight compartments.

Mr. McKeown: He was President of Sir Mortimer Davis Incorporated.

20 Mr. Campbell: Not at the time he wrote the letter to Sir Mortimer. He was Vice-President then. He was Vice-President and General Counsel.

Mr. McKeown: And was President of the Alcohol Company.

Mr. Campbell: But he is writing these letters on the letter paper of Sir Mortimer Davis Incorporated.

Mr. McKeown: That is a pretty fine way to try and crawl out of it.

30 Mr. Campbell: It is not a question of trying to crawl out of anything, but is what I believe to be illegal evidence.

His Lordship: I do not see how it is illegal.

Mr. Campbell: If it is privileged, it is illegal. If it is irrelevant it is illegal.

His Lordship: You have an exception to the general rules. You must show that you fall within the objection.

40 Mr. Campbell: My submission is, that Lord Shaughnessy as General Counsel

His Lordship: Not as General Counsel at all, as agent or representative in Canada in some Estate or other of Sir Mortimer Davis. The fact that he is a member of the Bar and acted in his legal capacity whenever his services were required in that connection, has

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nothing whatever to do with the nature of the letters he wrote to Sir Mortimer.

Mr. Campbell: I submit my objection to Your Lordship for your ruling.

His Lordship: Objection overruled.

10

Mr. Campbell: I respectfully except to Your Lordship's ruling.

By Mr. McKeown:

Q.—Will you look at the original letter on the stationery of Sir Mortimer Davis Incorporated, dated, Montreal, November 6th, 1926, addressed to Sir Mortimer Davis and signed "Shaughnessy," consisting of five pages, which letter has been handed to us by Mr Reaper as being part of the file which was returned from France, and say whether you can identify the handwriting in lead pencil marks, as being in the handwriting of Sir Mortimer?

20

A.—Yes, that is Sir Mortimer's handwriting.

Q.—You refer to certain lead pencil notations on page 4?

A.—Yes.

Q.—Will you verify, if you please, and read into the record the part of the letter commencing on page 3, and headed "Alcohol"?

A.—(Reading)

30

"Alcohol. The Company is going strong and last month was quite satisfactory. The hurricane in Cuba and the South has interfered to some extent with business this month owing to the fact that most of the operators there lost their equipment, via boats, etc., and it will take them sometime to make new arrangements. We might suffer to some extent in the interval, but indications are that business should be much better later owing to loss of stocks which will have to be repurchased.

40

A somewhat disturbing piece of information came before me yesterday when I was examining into our list of shareholders. As you no doubt remember Rainer held about 6,000 shares in the Company, and sometime ago he asked me if I had any objection to him selling a few shares in order to pay off a mortgage on his house. I think he represented it would take about 700 shares for this purpose. I told him that I had no objection and was glad that he spoke to me before selling.

I find now that he has disposed of all his stock except some 500 shares, and on being asked by someone why he had done this,

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he said that as he had no faith in the future of the Company he thought it better to cash in.

10 This in itself is his own affair since the stock belonged to him and he is at liberty of doing what he likes with it, but I cannot see how any Company can be successful when the General Manager of Sales has so little faith in the future of the Company that he is afraid of losing his money. If his incentive is removed he is no good to me because I would always feel that he did not take the interest of the Company at heart, and in view of the important position which he occupies this would be disastrous. He is at present travelling in the West on business, and I have not had any opportunity to discuss the matter with him, but I really feel that unless some good explanation can be given for this extraordinary conduct without consulting anyone, he should be eliminated and a new Sales Manager appointed.

20 I had discussed the matter with Hume and Lauster, and while Hume does not know of Rainer's conduct in connection with the stock, he was of the opinion that Rainer was not in the proper place, but they both appear to be of the opinion that Gazen whom we have had in Winnipeg and who is anxious to have an opportunity of showing what he can do would fill the position with satisfaction. I think probably he should be tried, and if he does not prove satisfactory I have in mind putting Kelly in there who, to my mind, is one of the best men we have in the organization, and I would then put Gazen in charge of J. M. Douglas and Company since he has had considerable experience in the wine commission business even before he came to us. In any event there is no difficulty in finding a substitute, but I would like your opinion as to what should be done in connection with Rainer.

40 I am very sorry indeed that a man who has been with the organization for so long and who has been so reliable and industrious should place himself in this idiotic position, but I would never have confidence in him or believe that he was doing his best for the Company, feeling that he was imbued with the idea that the business was doomed to failure, and all his actions would be judged by that standard."

Q.—Do you verify that this extract from the letter is in accordance with the original?

A.—I do.

Q.—Will you file this letter as Exhibit P-241?

A.—I do.

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Q.—Will you please refer to an original letter which I now produce and mark as Exhibit P-242, dated Golf Juan, January 19th, 1927, addressed to Lord Shaughnessy, and say whether the same bears the signature of Sir Mortimer Davis?

A.—Yes, it does.

10 Mr. Campbell: I repeat my objection, My Lord. This is Sir Mortimer's confidential reply to the man who acted, among other positions, as his Counsel and is a privileged communication, and is therefore inadmissible in evidence.

His Lordship: Supposing the letter was in possession of Lady Davis. I really do not see that it is irrelevant. I do not see why it should be privileged. You might possibly plead that in an action for libel.

20 Mr. Campbell: Not only do I submit it is privileged, but I also submit it is utterly irrelevant and cannot have any possible bearing on this case.

His Lordship: Objection overruled.

Mr. Campbell: I respectfully except to Your Lordship's ruling.

By Mr. McKeown:

30 Q.—Will you read the letter into the record?

A.—(Reading):

“Golf Juan, January 19th, 1927.

“The Right Honorable Lord Shaughnessy, K.C.,
Cement Building, Montreal.

My Dear Will:

40 I am today in receipt of your first letter since my departure bearing date 3rd instant, also a clipping of the prospectus published in the papers. I quite agree with you that the whole thing is a stock jobbing proposition and presents a wonderful opportunity to use to smash the whole enterprise if we so desire.”

Q.—Will you note that by the letter of Lord Shaughnessy to Sir Mortimer of January 3rd, 1927, Exhibit P-240, that he speaks of the

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two subjects, first, the purchase by Hatch of the Walker Company, and second, the disappearance of Hume from the Alcohol Company?

A.—Yes.

Q.—Will you note further, that so far as I have read this letter to you, from Sir Mortimer, filed as Exhibit P-242, it is stated Sir Mortimer purports to have acknowledged receipt of Lord Shaughnessy's letter of the 3rd?

10 A.—Yes.

Q.—As far as I have read, Sir Mortimer in his reply, speaking of "A stock jobbing proposition that offers a wonderful opportunity to smash the whole enterprise," apparently refers to the Hatch purchase of the Walker Company?

A.—Yes.

Q.—Then the letter continues:

20 "The wonderful opportunity to us to smash the whole enterprise if we so desire by cutting the selling price of whiskey to pieces, but at my age I do not think it worth while making a commercial war in this industry notwithstanding the fact that we are in a splendid position to do so. However, our being in that position and knowing full well that any time we can play ducks and drakes with our competitors should make us all very optimistic to push ahead and to keep the lead that we have at present against all competition.

30 I have not anything to say about Hume beyond remarking, as you say, he is a dirty skunk, which must be borne in mind in future, and he must be classed with those others of the same type whom it has been our misfortune to have had in our employ. I have written to you communicating my views upon the policy you should adopt, and you are no doubt working up to that end, but the most important thing we want to see is not to allow Hatch and his crowd to secure that Ontario business. . . . Keep your selling organization on the move and do not let them sit in the office waiting for business and telling hard luck stories. Spend your money on salesmen and advertising. I notice in the Statement for the two months that the increase for the Industrial was very substantial and in the Beverage we have held our own. I have already written to you about starting getting the Americans who come over here to call for our whiskies, and I am waiting your views on that subject.

40 I might state how glad I am to read the fighting tone of your letter and I know that you will not miss an opportunity to whip our competitors in the manner they deserve. Use your subsidiary companies on the lines I have so frequently laid