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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 5

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

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

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

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CONTENTS OF RECORD.

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

BOOK 1.

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

BOOK 2.

Vol. 1 (pp. 148-280) - - Exhibits.

Vol. 2 (pp. 281-630) - - Exhibits continued.

Vol. 3 (pp. 631-990) - - Exhibits concluded.

BOOK 3.

Vol. 4 (pp. 1-313) - - Evidence.

Vol. 5 (pp. 314-633) - - Evidence continued.

Vol. 6 (pp. 634-945) - - Evidence continued.

BOOK 4.

Vol. 7 (pp. 946-1256) - - Evidence continued.

Vol. 8 (pp. 1257-1575) - - Evidence continued.

Vol. 9 (pp. 1576-1913) - - Evidence continued.

BOOK 5.

Vol. 10 (pp. 1914-2248) - - Evidence continued.

Vol. 11 (pp. 2249-2466) - - Evidence concluded.

BOOK 6.

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

BOOK 7.

Factums and Synopsis.

INSTITUTE OF ADVANCED
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LONDON,
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LADY DAVIS (for Plaintiffs), Examination-in-Chief.

down. By this means you will have St. Hyacinthe, Wiser, the Consolidated fighting G. & W. and Walker. I am still of the opinion that the name, St. Hyacinthe, is not a good one.

With best wishes,

Yours sincerely,

10

M. B. DAVIS.”

See overleaf.

“ P.S.: I hope shortly to receive from you the actual transaction of Walker and others. No doubt you are aware that Dewar bought Bulloch Lade, and I understand that MacLeod has lost considerable money. I notice he is on the Walker Board.

20

We should be able to work out some valuation with the Scotch combination by manufacturing brands or controlling importation.

It might be well to feel out the whiskey combination, and I would like to know whether that would be open for some kind of evaluation, also if possible to find out whether they are favorable to Hatch and his gang.”

And it now being 5.00 p.m. the further examination of Lady Davis was adjourned until Monday next, the Fifth Day of May at 10.30 a.m.

30

On this May 5th, 1930, Eleanor Curran (Lady Davis) reappeared and continued her evidence as follows:

By Mr. McKeown, K.C.:

Q.—Lady Davis, before resuming the part of your evidence at which we had arrived at the time of the last adjournment, I would like first to take up another subject which I previously overlooked. Do you remember that the Estate or the Company owned a property
40 in the Sudbury district?

A.—Yes.

Q.—I believe it was assumed to be a nickel property and was referred to at different times?

A.—Yes.

Q.—That is the property referred to by Mr. Poillon at some stage or another of his examination here as a witness on behalf of the Defence?

LADY DAVIS (*for Plaintiffs*), *Examination-in-Chief*.

A.—Yes.

Q.—Mr. Poillon explained that the property had been drilled at some time prior to the death of Sir Mortimer Davis. You understood that part of his evidence?

A.—Yes.

10 Q.—Following your return to Montreal last June, did you ever have any discussion with Lord Shaughnessy in connection with that nickel property?

20 A.—Yes, I asked Lord Shaughnessy what they did with it because I had heard rumours of the International Nickel Company being interested in it and wanting to buy it. Lord Shaughnessy said he had drilled it and he had a piece paper and a pencil and he showed me they had drilled it in a certain way, but that they had had no results from it, and he also said he intended to drill it differently, because he heard in the Frood Mine that was why they obtained no results, the way they had drilled it, but they had obtained results in drilling at more depth. I said “That would be expensive?” He said “Yes, that would be expensive.”

Q.—Speaking of the Frood Mine, what did you understand Lord Shaughnessy was referring to?

A.—That is owned by the International Nickel Company.

Q.—In Sudbury district?

A.—Yes.

Q.—Do you remember Mr. Poillon’s deposition in which he said that the property of the Company or of the Estate, whichever it is, was situated at some considerable distance from the Frood Mine?

30 A.—Yes; I remember that.

Q.—Did you understand that?

A.—No. I always thought it was nearer.

Mr. Campbell, K.C.: If Lady Davis can contradict him it is quite proper evidence; otherwise it is not.

Mr. McKeown, K.C.: She is going to accept Mr. Poillon’s evidence as to the distance. She had previously thought it was an adjacent property.

40 The Witness: I was surprised because I really thought it was nearer.

By Mr. McKeown, K.C.:

Q.—That had been your previous impression?

A.—Yes.

LADY DAVIS (*for Plaintiffs*), *Examination-in-Chief.*

Q.—You said Lord Shaughnessy stated he was going to drill that over again?

A.—Yes; he did tell me that.

Q.—Upon your inquiry as to whether it would be expensive he said it would be expensive?

A.—Yes. He said it would be expensive.

10 Q.—Where was this conversation you had with Lord Shaughnessy?

A.—It was in the Ritz-Carlton Hotel at lunch.

Q.—In the Ritz-Carlton Hotel. You mean in Montreal?

A.—Yes.

By the Court:

Q.—It was in June?

A.—Yes.

20 By Mr. McKeown, K.C.:

Q.—Was that before or after the first meeting which you had with Lord Shaughnessy in his office to which you have already referred?

A.—It was before.

Q.—Did Lord Shaughnessy tell you at that time that Mr. Poillon had advised him not to drill that property or not to expend any more money on it?

30 A.—No, he did not.

Q.—Did you know of the advice which Mr. Poillon says he gave Lord Shaughnessy before Mr. Poillon was examined in the box here?

A.—No, I did not.

Q.—I mean in reference to that particular property?

A.—No.

40 Q.—At the time of the adjournment the other day, I think I was asking you why you objected to the proposed merger, and in particular the merger with the Walkers, and you gave us the reason and produced certain correspondence. This was on account of the personnel of the directorate of the Walker Corporation?

A.—Yes.

Q.—Have you any other reason to suggest to His Lordship against the advisability of a merger either with the Walker people or with anybody else under the conditions which obtained when this litigation began in January, and which obtain today?

A.—I don't think this Company is in position to merge.

Q.—Which Company?

LADY DAVIS (for Plaintiffs), Examination-in-Chief.

A.—Canadian Industrial Alcohol. I think the organization is in such a chaotic state, it is so run down, until proper organization is put in, and the Company built up, it is absurd to think of a merger.

Q.—Analyzing the answer you have just given, in view of the chaotic condition of the Company, it is absurd to think of a merger at the present time or until it is rebuilt, to what do you refer in particular?

10 A.—I refer in particular to their earning power, their falling off in sales. Their Sales Department is in a terrible condition; they have no head.

Q.—You refer to the Sales Department and to the earning power of the Company?

Mr. Campbell, K.C.: I desire you would not tell the witness what the answer is in putting the question.

20 By Mr. McKeown, K.C.:

Q.—In your opinion, as an Executrix of the Estate, and with such knowledge as you have been able to obtain in connection with the Alcohol Company before or since Sir Mortimer's death, what do you consider would be the favourable or unfavourable effect on merger terms of the fact that this Company has passed its dividend?

Mr. Campbell, K.C.: I think we do not need Lady Davis to tell us that.

30 The Court: I think you have Mr. Lash's evidence.

Mr. Campbell, K.C.: In any event, unless my learned friend would qualify Lady Davis as an expert, on this matter, I do not think her evidence is going to be very valuable.

Mr. McKeown, K.C.: However, if the Court thinks the effect is obvious and Mr. Campbell agrees, I shall withdraw that question.

40 By Mr. McKeown, K.C.:

Q.—Now, Lady Davis, it appears from the evidence that some time about the 25th of July last, overtures were made at your instance to secure the appointment on the Board of the Incorporated Company of George C. McDonald?

A.—Yes.

Q.—The present action, as has already been indicated was

LADY DAVIS (*for Plaintiffs*), *Cross-Examination.*

brought on the 16th of January, 1930. Will you say whether, as an Executrix of this Estate, as one of the two residuary usufructuary legatees, you will still be satisfied with the form of relief of the situation merely with the appointment of Mr. McDonald to the Board of the Incorporated Company?

A.—No.

10 Q.—What is your suggestion to the Court as to the probable remedy in the interests not only of yourself and of your co-Plaintiff, but in the interest of the whole Estate as represented by you as one of the joint Executors?

Mr. Campbell, K.C.: I do not know what the answer would be but I do not know that it would be helpful. We cannot quite expect Lady Davis to give judgment in the case. After all, Your Lordship is going to decide the case. She cannot add anything to the pleading in the case. In my submission the question as put is illegal.

20 By Mr. McKeown, K.C.:

Q.—At an early stage of this case Lord Shaughnessy mentioned something to Lady Davis about the appointment of a new Director in that Company, but I want to show Your Lordship that that is not Lady Davis' present idea of the relief of the situation. I do not suggest Lady Davis will render judgment.

A.—I surely concur with Mr. McDonald. I think the remedy would be to get the strongest possible Trust Company.

30 Cross-Examined by Mr. Campbell, K.C., Counsel for Defendants:

Q.—Lady Davis, you told us at the opening of your examination-in-chief, the circumstances of your marriage to Sir Mortimer Davis in June, 1924, I think you said?

A.—May 28th.

Q.—May, 1924?

A.—Yes.

40 Q.—Without going into any of the detail, but in order to clear up the reference in the record to the existence of Lady Henrietta Davis, but without going into any of the detail, but to establish the fact that Sir Mortimer and the first Lady Davis had been divorced previous to your marriage to him—

A.—Yes.

Q.—Approximately when?

A.—When they were divorced?

A.—Yes.

LADY DAVIS (*for Plaintiffs*), *Cross-Examination*.

A.—They were divorced in the same month, in May, 1924.

Q.—In May. Shortly following your marriage to Sir Mortimer in 1924 you came to Canada with him?

A.—Yes, in June.

Q.—In June. On that occasion you spent, I think you told us, some months in Montreal?

A.—Yes.

10 Q.—Did you and Sir Mortimer reside in Montreal from day to day or were you only here at intervals during that period?

A.—We were here the greater part of the time. We may have gone away for week-ends but between here and Ste. Agathe the most of the time.

Q.—Until when?

A.—My recollection is that was the longest trip we stayed here.

Q.—That was the occasion of your longest visit to Montreal?

A.—Yes.

20 Q.—It lasted, with these breaks, for some months?

A.—Yes.

Q.—Have you any recollection when you returned?

A.—I think in October.

Q.—Early or late?

A.—Early, I should think.

Q.—In 1925, about how long did you stay in Montreal?

A.—I had it marked out as I remembered it.

Q.—Have you a memorandum you can refer to?

A.—My recollection is May until August.

30 Q.—That is in 1925?

A.—Yes.

Q.—Was that late or early in August?

A.—I really could not tell you. I only tell you as I remember.

Q.—Without referring to accurate dates, I want to establish as accurately as your recollection will run the length of your visits to Canada on these occasions?

A.—That is my recollection.

Q.—But you cannot be more precise?

40 A.—No.

Q.—Coming to 1926, how long were you in Canada with Sir Mortimer in 1926, according to your best recollection?

A.—We sailed in September and we were here during September and a part of October. That is my recollection.

Q.—Altogether how long did you say you were in Montreal on that occasion?

LADY DAVIS (*for Plaintiffs*), *Cross-Examination*.

A.—I don't know how long. Mr. Reaper can tell you very much better than I could, I am sure.

Q.—You have no distinct recollections of the duration of your visit on that occasion?

A.—I have not, except we usually came for the end of the fiscal year.

10 Q.—Would you say you were here about a month on that occasion?

A.—Perhaps.

Q.—Would you say perhaps less or perhaps three weeks?

A.—Or a month.

Q.—Was that in 1926?

A.—Yes. That was when we came back.

Q.—Had you returned to Europe in the interval?

A.—Yes.

Q.—When you came back, about what time of the year was it?

20 A.—I have it here. In November we came back.

Q.—Early or late?

A.—I don't remember. I might tell you we were on the boat on New Year's Eve.

Q.—That was going back?

A.—Yes.

Q.—I am speaking as to when you came to Canada?

A.—I don't remember exactly when we came, because Sir Mortimer was negotiating to buy Hiram Walker's at the time.

30 Q.—You have given us these dates from the memorandum you have in your hands?

A.—Yes.

Q.—Where did you get the information that is on your memorandum?

A.—By my memory.

Q.—It is your recollection I am testing. If you don't mind, I would rather you gave me your recollection.

A.—I am giving it to you.

40 Q.—I want you to be as definite as you can about the duration of these visits in 1926. How long did the second visit last?

A.—I don't remember.

Q.—Take the visit of 1927, if you please, without referring to your memorandum. Would you mind putting the memorandum away just for a moment? How long would you say you were in Canada on the occasion of your 1927 visit?

A.—We came in September and left in October. I should think probably two or three weeks. That is my recollection.

LADY DAVIS (for Plaintiffs), Cross-Examination.

Q.—Two or three weeks in Montreal?

A.—Yes.

10 Q.—I want to get an idea of the duration of your visits exactly, beginning in 1926. Your recollection is on the first occasion in 1926 you were here probably three weeks. I mean actually in Montreal, eliminating the time taken in travelling; probably three weeks on the first occasion and possibly another three weeks on the second occasion?

Mr. McKeown, K.C.: When a person says “ We came in November and we were on the boat in December,” you cannot call that three weeks under any stretch of imagination.

Mr. Campbell, K.C.: I want to establish as near as I can the witness' recollection of the duration of her actual visits to Montreal during these years.

20 The Witness: I have given you my recollection. I cannot help you any more.

By Mr. Campbell, K.C.:

Q.—You cannot add to it as to definiteness?

A.—No. I thought it was easily found out. When my husband was here there was correspondence.

30 Q.—The only purpose of my question is to establish the reliability of your own recollection. You mentioned Sir Mortimer died quite suddenly?

A.—Yes.

Q.—Did you know and did his friends know that he realized that he was in a precarious condition of health, and what did happen might absolutely have happened to him at any time?

A.—I think some of his friends thought so. I don't think Sir Mortimer ever thought so.

40 Q.—Do you not think Sir Mortimer realized from the things he said to his friends he was liable to die suddenly?

A.—I don't think he did because there was quite a difference of opinion as to just what was the matter with him.

Q.—He suffered from a serious heart ailment?

A.—There was a difference of opinion about that.

Q.—The doctors differed, as doctors do?

A.—Yes.

LADY DAVIS (for Plaintiffs), Cross-Examination.

Mr. Geoffrion, K.C.: And lawyers.

Mr. Campbell, K.C.: And lawyers.

By Mr. Campbell, K.C.:

10 Q.—You spoke, I understand, about your property in France, the villa property at Cannes. Do you know at what value that was put on the books of the Société Davisco?

A.—No, I do not.

Q.—The Estate, of course, paid the rental to the Société Davisco? You did not pay it personally?

A.—It is a very small sum.

Q.—Whatever it was, you did not pay it personally?

A.—I have not paid it yet.

Q.—Under the will you were not obliged to pay it, were you?

20 A.—No.

Q.—Do you know what the rental was?

A.—I don't know. It is something very small because of taxes.

Q.—As a matter of fact, it was set up on the books of the Société Davisco at quite a small sum, was it not?

A.—What? The rent or the property?

Q.—The property?

A.—I don't know.

30 Q.—I suggest to you it was set up at a sum under 2,000,000 francs?

A.—I don't know. I have no idea. I know it cost a good deal more.

Q.—You have no idea what it was capitalized at?

A.—No.

Q.—Have you any idea what it could be sold for?

A.—Yes. I should think it would sell at pretty nearly a million dollars now.

Q.—Who was Sir Mortimer's adviser in France, his legal adviser?

40 A.—Since November, 1927?

A.—Yes.

A.—Mr. Kandalajt.

Q.—Do you know Mr. Kandalajt's signature?

A.—Yes.

Mr. McKeown, K.C.: I submit it is not evidence, what Mr. Kandalajt may have written. That is not evidence. Bring Mr. Kan-

LADY DAVIS (for Plaintiffs), Cross-Examination.

dalaft here or bring the Succession Duty Department here or bring anybody else. I do not think it is binding upon anybody. It may not make any difference, but the question seems to be illegal.

The Court: We will put it in for what it is worth.

10 By Mr. Campbell, K.C.:

Q.—Do you know Mr. Kandalaft's signature?

A.—Yes.

By the Court:

Q.—You said that in 1926 Sir Mortimer Davis came back to Canada with a view to discussing a merger with Walker?

A.—No. He was going to buy Hiram Walker.

20 Q.—Do you know why the matter did not materialize?

A.—Yes, I do; because I think it was offered to Sir Mortimer at between eleven and twelve million dollars. Sir Mortimer thought it was a new project and he felt at his age it would not probably be wise in taking something new, and at that time Canadian Industrial Alcohol was in a dominating position. Its earning power and everything was far superior to any other alcohol company in Canada. He said he felt he really was not obliged to buy; he was just as well off without it.

30 Q.—Had a proposal to buy or a proposal to sell been made to him?

A.—I think, as I remember it, that the Walker people lived in America, in Detroit, and they rather were embarrassed with the whiskey business in Canada and they wanted to sell.

Q.—Had they approached him to buy it, by correspondence?

A.—By correspondence and interviews.

Q.—Did the interviews take place in Canada or elsewhere?

A.—Yes, in Montreal.

40 Q.—Before his departure?

A.—They were negotiating for some time and then we went to Europe and then negotiations continued. Sir Mortimer was quite undecided whether he would purchase it or not and he came back home making up his mind to review the situation, and he decided he would not buy.

Q.—Was Walker merged with Gooderham and Worts at that time?

LADY DAVIS (for Plaintiffs), Cross-Examination.

A.—After Sir Mortimer had refused it.

By Mr. Campbell, K.C.:

10 Q.—Mr. Kandalaft was a member of a legal firm in Paris, Harper, Szlapka and Harper. Donald Harper is the main partner. It is quite a well-known firm of attorneys in Paris, is it not?

A.—Yes.

Q.—Will you read into the record Mr. Kandalaft's expression of opinion to Mr. Reaper in that letter about the value of the property at Cannes?

Mr. McKeown, K.C.: This is objected to, under the reservation, as being illegal.

20 Mr. Campbell, K.C.: (Reading)

“ I do not know if we can find anyone that would offer to pay 1,180,000 francs for the property.”

Will you look a little earlier in the same letter and read into the record in reference to the Société Davisco, which was Sir Mortimer's holding company for his French assets. Will you read into the record Mr. Kandalaft's expression to Mr. Reaper about the set up on the books of the Company for this property at Cannes?

30

“ For French fiscal purposes we have declared the par value of the shares as indicated in the by-laws of the Société.”

This was Sir Mortimer himself estimated the land and the two villas which he brought into the Société at 1,730,000 francs?

The Witness: Yes.

40 By Mr. Campbell, K.C.:

Q.—The subscription in cash for the constitution of the Société was only Fr;110,000, covering 110 shares?

A.—Yes.

Q.—You spoke, Lady Davis, of the extent of this villa property at Cannes and you told us there were 30 gardeners in connection with the gardens?

LADY DAVIS (for Plaintiffs), Cross-Examination.

A.—Yes.

Q.—Who paid for the maintenance of the gardens?

A.—Well, that is rather a long story. Shall I tell it?

Q.—Perhaps I will put it this way and you will correct me if I am wrong. As a matter of fact, the gardens were operated as a so-called commercial enterprise?

A.—Yes.

10 Q.—Like some other commercial enterprises, they were not a commercial success?

A.—Quite so.

Q.—There was a certain loss made in the operation of the gardens every year?

A.—Yes.

Q.—Both while Sir Mortimer was alive and since he died?

A.—Yes.

20 Q.—And the loss, such as it has been since his death, has been paid by the Estate, not by yourself?

A.—Well, Mr. Campbell, the Estate has paid up to date the gardeners; not all the expense, but they have paid the gardeners' salaries. Lord Shaughnessy told me I should pay that personally. In speaking with Mr. Kandalraft one day, Mr. Kandalraft said the Estate was liable for the gardeners' pay, because it was a commercial enterprise, and I said I thought he was mistaken, because Lord Shaughnessy said I should pay it; so he said "Speak to Lord Shaughnessy about it"; and I saw Lord Shaughnessy and I asked

30 him as to whether he was still of the opinion I should pay the gardeners. He said "Yes." Mr. Reaper was present and produced some letters from Mr. Kandalraft. Mr. Reaper was of the opinion Mr. Kandalraft was right. However, nothing was decided, so I do not know whether I must pay the gardeners or whether the Estate must pay the gardeners, but the Estate has paid the gardeners up to date.

Q.—So far you have not refunded the Estate any amount so paid?

A.—Not so far.

40 Q.—Then as to the number of domestic servants to which you referred in your examination-in-chief, did you maintain that same establishment after Sir Mortimer's death? I mean was it necessary in your judgment to have the same number of servants?

A.—Quite necessary, Mr. Campbell.

Q.—Did you, in fact, maintain them?

A.—Yes, I did.

Q.—How long per annum did you usually live in the villa?

LADY DAVIS (for Plaintiffs), Cross-Examination.

A.—Since my husband's death?

Q.—Yes.

A.—The villa is open practically the year round. It is open now.

Q.—Do you maintain the full staff?

A.—No, I do not maintain the full staff.

10 Q.—You spoke about the season in Cannes. I think you said it lasted from January to March?

A.—Yes.

Q.—While Sir Mortimer was alive, had there been a period you lived there?

A.—We lived there longer.

Q.—Materially longer?

A.—Yes.

20 Q.—What I want to know is was it your custom during Sir Mortimer's lifetime and since, when you were not living there, to let the domestic servants go?

A.—Some of them, yes.

Q.—You maintained enough, I take it, to keep the house in order during your absence?

A.—I have six servants there at present, in the house, and it is quite necessary to keep them.

Q.—Does the Estate pay anything else besides the rent and the ground expenses in connection with the Cannes property?

A.—Not that I can think of.

30 Q.—Who pays the taxes?

A.—I suppose they do. I have never paid them.

Q.—At any rate, you do not?

A.—No.

Q.—You spoke of the general scale of furnishings in the Cannes property, and I have no doubt it was quite adequately furnished, as you have stated. Do you know whether Sir Mortimer had removed to the Cannes property any of the furnishings of the Pine Avenue house?

40 A.—Yes, his bedroom set.

Q.—Only his bedroom set?

A.—Yes.

Q.—That had never been replaced in the Pine Avenue house?

A.—No.

Q.—The option on the Paris house to which you have referred—can you be more precise as to the date?

A.—No, I cannot.

LADY DAVIS (*for Plaintiffs*), *Cross-Examination.*

Q.—Are you able to say whether it was in 1926 or 1927?

A.—I think it went over a period of two years, I would say. It may have begun in 1926 and ended in 1927.

Q.—But you have no distinct knowledge on the subject?

A.—I know it was quite soon before Sir Mortimer's death because he was quite disappointed he did not get the house.

10 Q.—This, you have told us, was a verbal option or understanding.

A.—There were two or three parties involved in it, but Sir Mortimer did not have a written option, but he had the man's word, which evidently the man did not keep.

Mr. Campbell, K.C.: I wish to question the witness in regard to the \$800,000 of residue, but I would like Your Lordship to note I do so under my objection as to the admissibility of the evidence which, in my opinion, is illegal; under reserve of my objection as to
20 the legality. I would ask Lady Davis a few questions in reference to it.

By Mr. Campbell, K.C.:

Q.—You mentioned in your examination-in-chief you had had a conversation with Sir Mortimer about his will, and more particularly the provisions in it both for you and the other plaintiff, Mr. Mortimer Davis, Junior?

30 A.—Yes.

Q.—When did that conversation take place?

A.—I should say the last time it took place—probably the last time it took place was a week before Sir Mortimer died.

Q.—So it was subsequent to the making of the will?

A.—Sir Mortimer had often spoken about it. You asked me the last time.

Q.—I am speaking of the time when he told you that this residuary income, as I understood your testimony, would amount to some
40 \$800,000, to be divided between you and Mortimer Davis.

A.—Yes.

Q.—When was that reference to the will made?

A.—It was made then. The last time I particularly remember it he said, laughingly, to me "What are you and Mortimer going to do with all that money if anything should happen to me?" He said "You will have \$400,000 a year each."

Q.—This was said laughingly?

LADY DAVIS (*for Plaintiffs*), *Cross-Examination.*

A.—It was said laughingly the last time, but it was said seriously many times.

Q.—Let us consider that. Do you know what Sir Mortimer's income was at the time of his death? I mean have you any personal knowledge on that?

A.—Yes.

10 Q.—What were his sources of income?

A.—I should say the big source of the income was the Canadian Industrial Alcohol.

Q.—That would be only indirectly. He did not directly hold other than a negligible number of shares?

A.—I cannot admit this great technicality between Sir Mortimer Davis and the Alcohol Company. Sir Mortimer owned the Alcohol Company.

20 Q.—I am coming to the Alcohol Company because that is the way the legal situation compels us to deal with it. We will say the Alcohol Company was the chief source of Sir Mortimer Davis' income. Is that your answer?

A.—Yes. I said the greater income.

Q.—That income reached him through Sir Mortimer Davis, Incorporated, which was the owner of the shares of Alcohol, was it not?

A.—Yes.

Q.—Sir Mortimer personally did not own, directly in his own name, other than a very negligible number of Alcohol, did he?

30 A.—Sir Mortimer owned Sir Mortimer Davis, Incorporated, less five per cent he had given away.

Q.—I do not want you to fence with me. I put it quite frankly—I am asking whether he owned directly in his own name more than two or three shares of Alcohol?

A.—No, I don't think so.

Q.—He owned, as you said, a very large interest in Sir Mortimer Davis, Incorporated?

A.—I contend that he owned it all except what he gave away.

40 Q.—When you speak of giving away, you mean the interest he vested in Mr. Waddell?

A.—The interest he had given to Mr. Waddell.

Q.—And such rights as Lord Shaughnessy may have, together with Mr. Marler?

A.—He gave Mr. Marler a few shares too.

Q.—He owned Sir Mortimer Davis, Incorporated, except such as he had transferred to Mr. Waddell and Mr. Marler, and such rights as Lord Shaughnessy may have, under his contract?

LADY DAVIS (for Plaintiffs), Cross-Examination.

A.—Yes.

Q.—So he owned in the net result just under 90% of the Incorporated Company, supposing Lord Shaughnessy's construction of his contract is accurate?

A.—At the time we are talking of he owned 95%.

Q.—Subject to Lord Shaughnessy's rights?

10 A.—Lord Shaughnessy had no rights, even if his contract was good, until 1927.

Q.—He had a right to certain shares. He was in process of earning them.

A.—I cannot agree with you.

Q.—I suggest to you Sir Mortimer owned, as I say, eliminating from the discussion Lord Shaughnessy's five per cent, about 89 per cent, because Mr. Waddell had five per cent, and Mr. Marler had about one per cent, had he not?

A.—Yes.

20 Q.—We will leave in suspense the Shaughnessy contract.

A.—All right.

Q.—First of all, what else did Sir Mortimer draw during his life from Sir Mortimer Davis Incorporated by way of fixed revenue?

A.—Any way he pleased. Whenever he wanted money he asked for it and they sent it to him. It was his money.

Q.—That is quite true, but do you know how it was charged on the books?

A.—I know how he got it. He got in when he asked for it.

30 Q.—Sir Mortimer, during his lifetime, was entitled to the interest under just four million dollars of debentures of the Incorporated Company. That was one source of revenue?

A.—Yes.

Q.—He was entitled to the interest on the \$3,000,000 trust?

A.—Yes.

40 Q.—He also held in his personal holdings plus the interest on the Shaughnessy bond during the five year period the interest on another million dollars or just under another million; that would give him by way of income from Sir Mortimer Davis Incorporated at six per cent suppose we take it for easy figuring \$4,000,000, that would give him \$240,000 a year in debenture interest, would it not?

A.—Yes.

Q.—Apart from that, and apart from other money he may have drawn from the Mortimer Davis Incorporated, what were his other substantial sources of revenue?

A.—Mr. Campbell, his substantial source of revenue was the Sir Mortimer Davis Incorporated. I am very much afraid if you

LADY DAVIS (for Plaintiffs), Cross-Examination.

dared to tell Sir Mortimer that he only had the interest on these notes he would have laughed at you. He was entitled to all the earnings and all the capital if he so choose.

Mr. Campbell, K.C.: I am cross-examining the witness on a statement she made in her examination-in-chief.

10 Mr. Montgomery, K.C.: The figures are all in the record.

The Court: There must have been statements from time to time.

Mr. Campbell, K.C.: I am asking the witness what Sir Mortimer's sources of revenue were outside of Sir Mortimer Davis Incorporated, if she can tell us.

20 Mr. Montgomery, K.C.: Mr. Reaper has produced every statement.

Mr. Campbell, K.C.: My learned friend undertook to lead the witness into this territory. Surely I am entitled to cross-examine her on it.

The Court: Yes.

By Mr. Campbell, K.C.:

30 Q.—Will you try again and see if you can answer my question about the other sources of revenue?

A.—I have told you the chief source of income was the Alcohol Company, which was in the neighborhood of \$800,000 a year, that was paid in to Sir Mortimer Davis Incorporated, which Sir Mortimer considered the revenue that would have been divisible between young Mortimer and myself.

40 Q.—In other words, you consider Sir Mortimer Davis told you that you and young Mr. Mortimer Davis were going to divide the Alcohol dividend between you?

A.—There were other incomes that would cover the expenses of Sir Mortimer Davis Incorporated, and that was approximately the figure that would be divided.

Q.—Now come back and try and answer the questions.

A.—I am trying very hard.

Q.—Were there any other sources of revenue known to you?

A.—In what? In the Incorporated Company?

LADY DAVIS (*for Plaintiffs*), *Cross-Examination*.

Q.—Outside of the Incorporated Company. I exclude the Incorporated Company. I am asking about other sources of revenue your husband had.

A.—There were very few outside, but I cannot see what difference there is between the Incorporated Company and the Estate.

Q.—I agree there were very few, but that is what I wanted you to say.

10

The Court:

Mr. Montgomery, K.C.: We have taken the responsibility of putting in on Lady Davis' behalf the statement that showed it.

By Mr. Campbell, K.C.:

Q.—Did Sir Mortimer discuss the affairs of the Incorporated Company a good deal with you during the period of your marriage?

20 A.—Yes.

Q.—Were you aware that during his lifetime the Company never declared a dividend?

A.—We have gone through that, Mr. Campbell.

Q.—I am asking you if you are aware of that.

A.—I think we can say Sir Mortimer never drew a dividend.

Q.—Sir Mortimer drew down by way of reduction of capital such sums of money as he required?

A.—Yes.

30 Q.—Sir Mortimer used to discuss the affairs of the Incorporated Company with you, you said?

A.—Yes.

Q.—Have you any idea, Lady Davis, from the conversations you had with Sir Mortimer, what the net profits from operations, that is, what the net operating profits of the Sir Mortimer Davis Incorporated would average for the five years previous to his death? That is, the profit from operations, the cash profit for operations? Have you any idea what the cash profit from operations would average for the five years previous to his death, including, we will

40 say, 1928, during one-half of which he lived? Take the years 1928, 1927, 1926, 1925 and 1924. Have you any idea from your conversations with Sir Mortimer what the operating profit of Sir Mortimer Davis Incorporated would average for the five year period?

A.—I don't remember now. There has been quite a discussion here in regard to it.

Q.—I am asking from your discussions with Sir Mortimer?

A.—I don't think it was discussed like that, Mr. Campbell.

LADY DAVIS (*for Plaintiffs*), *Cross-Examination.*

Q.—Have you any idea? I want to get your idea, as to what was the net operating profit of the Incorporated Company, in your idea, during the period of five years to which I have referred.

Mr. McKeown, K.C.: We have the audited statements. Lady Davis' idea of what was the amount would not lead us anywhere. I can understand Mr. Campbell's questioning the witness as to what
10 Sir Mortimer might have told her, but what her idea of these involved statements and compilations may be will not assist Your Lordship, I am sure. It is a great loss of time, as I do not think Lady Davis will undertake to criticise, to sum up and knock down the statements which have been made by those giants at figures.

Mr. Campbell, K.C.: Lady Davis has undertaken to testify to a conversation she had with Sir Mortimer before he died. I must cross-examine Lady Davis on such matters as are available.

20 By Mr. Campbell, K.C.:

Q.—Have you any idea what they were during that five year period?

A.—I think they depended a good deal on the earnings of the Alcohol Company.

Q.—I agree, but that is not an answer to my question. Have you any idea what they were?

A.—The five years?

30 Q.—Yes. The five year average. What was the net five year average of Sir Mortimer Davis Incorporated.

The Court: Lady Davis was only married four years.

Mr. Campbell, K.C.: I want to give her the benefit of a five year average because we dealt with five-year periods.

The Witness: I have an idea but you are asking me to give you the sum total of the five years.

40 By Mr. Campbell, K.C.:

Q.—I am asking you what the net average operating profit from operations, from dividends, and that kind of thing, of Sir Mortimer Davis Incorporated, over a period of five years previous to Sir Mortimer's death were. If you can do it I would like you to do it. If

LADY DAVIS (for Plaintiffs), Cross-Examination.

you cannot then I will show you some figures. Your counsel has suggested what your answer is. You don't know?

A.—I don't think that is quite right because if I remember the last year the operating profit was in the neighborhood of seven hundred and some odd thousand dollars. You are asking me for four years, which is taxing my memory a great deal.

10 Q.—You state you have an idea as to the average of the five years previous to your husband's death?

A.—I won't say I have no idea, but I don't know.

Q.—I show you statements already filed as Exhibits D-17 and D-18, and I will ask you to note according to these figures the average cash operating profit shown from these statements for Sir Mortimer Davis Incorporated for the five year period ending September 30th, 1928, and eliminating the stock dividend, which was entered in the year 1927, at the figure \$454,039; eliminating that because it was in stock, not in cash, I will ask you to verify that the average net operating profit during that period of time was \$267,-
20 883.98?

A.—Yes.

Q.—1924?

A.—Yes.

Mr. Montgomery, K.C.: For the purposes of this case you presume Lord Shaughnessy would continue to—I am just dealing with this one year you are now dealing with, where you get \$224,000, that he has charged in one item alone \$367,000 against the Alberta Gold Mine lease expense. I will read the whole of the item. I will
30 read them all if you want.

Mr. Campbell, K.C.: You infer that that was an item in respect of Alberta Gold Mines.

Mr. Montgomery, K.C.: It is Canadian Exploration Syndicate expense; other things of that nature.

40 Mr. Campbell, K.C.: In any event, you can re-examine the lady at length and call her attention to all these items. I am asking her if the statement filed shows the figures I have given her.

Mr. McKeown, K.C.: That looks very much to me as three months.

Mr. Campbell, K.C.: That is the five year Statement. If the

LADY DAVIS (for Plaintiffs), Cross-Examination.

witness will say that the figures are as they appear by the Statement, we will carry on.

Mr. McKeown, K.C.: Here are the profits for 1928 shown as \$763,000. You have them in this statement \$454,000. You are only about \$300,000 out.

10 Mr. Campbell, K.C.: I eliminated in the question the profit on the sales of securities, what is called on the statement "Operating Profits from Dividends" and that kind of thing. You will re-establish in your re-examination if you think I am wrong.

Mr. McKeown, K.C.: That does not conform with the—

Mr. Campbell, K.C.: It conforms exactly with the Exhibit.

20 Mr. McKeown, K.C.: It is a sort of short-circuit question designed to show something that is not of any use, and is between the law and the truth.

Mr. Montgomery, K.C.: What it is will be a debatable point between us up to the time Your Lordship gives judgment.

Mr. Campbell, K.C.: I might be allowed to argue a little with a hostile witness.

30 The Witness: You are not calling me hostile, are you?

Mr. Campbell, K.C.: If the objection had not been made, we would be away around the corner by this time.

By Mr. Campbell, K.C.:

40 Q.—You agree with the learned counsel on both sides that the answer is that the operating profit of Sir Mortimer Davis Incorporated for the five years ending September 30th, 1928, is as shown by the statements filed?

A.—Yes.

Q.—Now we have solved the problem?

A.—Yes.

Q.—This conversation with Sir Mortimer, to which you referred, left you at any rate under the impression that you were going to have a residuary revenue of \$400,000 a year, and that Mortimer

LADY DAVIS (for Plaintiffs), Cross-Examination.

Davis, the other plaintiff, was going to have the same. Was that your idea?

A.—Yes. I thought we would have something like that.

Q.—Just dealing for a moment with the relations which then existed between Sir Mortimer and Mr. Mortimer B. Davis at that time, at the time of this conversation Sir Mortimer was not very pleased with Mortimer Junior, was he?

10 A.—He objected to his marriage, if that is what you are referring to.

Q.—Did he not also object to his habits?

A.—No.

Q.—Did he not object to his habits?

A.—No.

Q.—Did you not voice objection to his habits?

A.—No, sir.

Q.—Either before or after Sir Mortimer's death?

A.—Never.

20 Q.—You are sure of that?

A.—Positive.

Q.—Are you quite clear you never expressed—

A.—No, I am quite sure I have never criticised Mr. Mortimer Davis' actions.

Q.—Or his habits?

A.—Or his habits.

30 Q.—Will you look at an original letter which I show you dated September 25th on the letter, and the envelope shows it was 1928, addressed to Lord Shaughnessy, and tell me whether that is in your handwriting?

Mr. Geoffrion, K.C.: I object to the question. It is a letter written by Lady Davis to Lord Shaughnessy six months after Sir Mortimer's death. What relevancy that has either to the examination-in-chief or to the case I don't know. When my learned friend put the question I objected immediately, if Your Lordship remembers well, so I am renewing my objection. I believe what they may have said of young Mortimer Davis before Sir Mortimer's death is
40 quite irrelevant, but at the present time I am on stronger ground and it is a question of what might have been said of Mortimer Davis, Junior, after. Your Lordship appreciates that is a particularly important question and if it is irrelevant it should be excluded.

Mr. Campbell, K.C.: The witness has just undertaken to testify she never expressed opinions. The whole importance of Lady Davis' testimony must depend on the reliability of her recollection.

LADY DAVIS (for Plaintiffs), Cross-Examination.

I am entitled to show her recollection is not reliable. I am entitled, seeing she is one of the plaintiffs in the case, to considerable latitude. Moreover, she has undertaken to testify that Sir Mortimer has made what to me is an unbelievable statement as to what the will provided, and I think it is quite relevant to show that young Mortimer had the same rights under the will as Lady Davis had, but at that time it was inconceivable in the state of mind Sir Mortimer was in, and
10 in view of the habits of Mortimer, Junior, it was inconceivable that any such person was going to provide him a revenue for any such purposes. I submit it is relevant, particularly in testing the recollection of the witness.

Mr. Geoffrion, K.C.: I have not given my reason why I thought it irrelevant, because I could not conceive any exclusive reason for the relevancy, and that is why I did not argue it. Now, I have heard his proposal and I will be more precise in answering my
20 learned friend. The test of credibility my learned friend is trying results from the question he put himself and I objected to it but the answer came too quick. You have no right to inquire about statements after Sir Mortimer's death by anybody, including the witness. You might as well test her credibility about the last dance or trip which she read of in the paper or whatever you introduce in cross-examination. I put my objection in time as my learned friend interrupted. Now, My Lord, from that point of view, the fallacious basis of my learned friend's argument is that he is introducing something quite extraneous, something quite subsequent to
30 the death, something that can have no effect on the case whatever, and when I objected if the answer was in the answer can be stricken out. That equally, of course, answers anything else and as to Sir Mortimer's views about his son I suggest it is a matter that surely cannot have any influence on the decision of this case, or of the importance to be attached to the statement, Mr. Campbell.

Mr. Campbell, K.C.: I do not see that I have criticised him. I asked her about her signature. I am testing her recollection. That is the purpose of my cross-examination. Now the witness has been
40 handed the letter during this argument. We are being confronted on a number of points by way of recollection and a conversation with a man who has since died, and surely I am entitled to great latitude, in testing her recollection.

Mr. Geoffrion, K.C.: Is my learned friend quite serious in suggesting when he gave her the letter to identify her signature she was not entitled to read the letter unless he expressly told her not to?

LADY DAVIS (for Plaintiffs), Cross-Examination.

Mr. Campbell, K.C.: I asked her to verify the signature first.

Mr. Geoffrion, K.C.: The usual invariable practice is when you show a letter to a witness she is entitled to read it, and now when you start to complain here loudly the thing is ridiculous.

10 Mr. Campbell, K.C.: I am coming back to my point.

Mr. Geoffrion, K.C.: Perhaps it would be better if Your Lordship read the letter. It is a letter subsequent to the death and I am going to leave it to Your Lordship as to whether you consider it material.

Mr. Geoffrion: There is one remark I would like to add. Your Lordship noticed that the Will contains the decision of the testator in view of young Mortimer's marriage.

20 Mr. Campbell: If my learned friend, Mr. Geoffrion, had been here the other day when the evidence to which I objected was admitted, which I thought was most illegal, he would have heard that I submitted that the Will was the only evidence. His Lordship reserved the objection and allowed the evidence in under the reserve. Now I have to cross-examine on that evidence, although I think the evidence is most illegal. The witness has just testified now that she never expressed any opinion about her co-plaintiff.

30 His Lordship: I do not see that this letter expresses any opinion either. It is a recital of what took place. It seems to me that the point is this. Sir Mortimer Davis has left to his wife and son a revenue of \$67,000 a year, plus the revenue of whatever residue there may be after payment of the annuities, debts, etc. That revenue, so far as Mortimer Davis Junior is, at least, concerned, is left as an alimentary allowance. Now, Lady Davis has stated, that as far as she could expect, that revenue should be \$400,000 a year for each of them. Both plaintiffs are, except as to the alimentary nature of the disposition, on the same footing. You can possibly attempt to
40 prove by Lady Davis, or otherwise, that Sir Mortimer did not intend such a big amount to be left to his son as an alimentary allowance. It seems to be out of all proportion to the ordinary needs of the average man; and you may attempt to prove also, that as he did not approve of his son's behavior, it would not have been in his mind to have left him that large amount. I do not think the letter is absolutely irrelevant. There is not very much in it, but I do not see how I can prevent the production of that letter.

LADY DAVIS (for Plaintiffs), Cross-Examination.

Mr. Campbell: I will file the whole letter, of course, if my learned friend prefers. I did not intend to file the whole letter.

His Lordship: I think you had better do so. It is the only way one can judge of the facts of the letter, by putting it all in the record.

10 Mr. Hyde: Do you propose to read it into the record?

Mr. Campbell: Not the whole letter.

Witness: I would like, if you read it at all, for you to read the whole letter.

(The Court allows the filing of the letter.)

The question is read as follows:

20 Q.—Will you look at the original letter I show you, dated September 25th on the letter, and the envelope shows 1928, addressed to Lord Shaughnessy, and tell me if that is in your handwriting?

A.—Yes.

Q.—And as the letter is simply dated September 25th, can you verify from the envelope that the year is 1928?

A.—Yes.

Q.—Will you file this letter as Exhibit D-106?

A.—Yes.

30 Mr. Campbell: The letter is in the handwriting of Lady Davis and consists of two sheets dated September 25th. There is no year mentioned on the letter, but Lady Davis has established it means 1928.

Mr. McKeown: Objected to the production of the letter.

(The Court allows the production.)

By Mr. Campbell:

40 Q.—The letter refers to Mr. Mortimer Davis having thanked you for arranging the interview and said that his lawyer told him that you told him, the lawyer, certain things, which I do not propose to read into the record. Do you remember an interview between yourself and Mr. Mortimer Davis' lawyer some time after the date of this letter?

A.—I remember Colonel Hayward came to see me in town.

LADY DAVIS (for Plaintiffs), Cross-Examination.

Q.—Colonel Hayward, representing Mortimer Davis Junior, came to see you. Can you recall the approximate date of that interview?

A.—No, I cannot.

Q.—Might I suggest to you that it was in January, 1929?

A.—It may have been.

Q.—Have you any recollection of the interview?

10 A.—Yes.

Q.—Do you remember where it took place?

A.—Yes, in the Avenue George Fifth, in Paris.

Q.—You cannot fix the date at all?

A.—No.

Q.—What did Colonel Hayward want on behalf of Mr. Mortimer Junior?

A.—He wanted the Estate to guarantee a \$1,000 a month alimony to Mr. Mortimer Davis' wife.

Q.—Was there any other proposal that he discussed with you?

20 A.—I do not remember. There may have been.

Q.—Did he discuss with you having the Incorporated Company make advances to Mr. Mortimer Davis at that time of some substantial sums?

A.—I do not remember that part of it. I do remember that he wanted us to guarantee Mrs. Davis a \$1,000 a month, and I said I did not think we should.

Q.—Did not the lawyer suggest as an alternative that the Incorporated Company should, at that time, make an advance of a substantial sum to Mr. Mortimer Junior?

30

Mr. Geoffrion: Are we going into the marital troubles?

His Lordship: It is going pretty far.

Mr. Campbell: I am not going into the marital troubles at all, but it is relevant to the story which the witness has told about what rights she thought she had under the Will and that Mr. Mortimer had under the Will. I am entitled to show if I can—it is not quite fair that I should define what I am proposing to show. I am trying to

40 establish the relevancy of the letter.

Mr. Geoffrion: My learned friend might establish to his own satisfaction or to the satisfaction of the Court, and there is one practice, if my learned friend insists, which is a difficult one, and that is to have the lawyer and the Court sit in camera to argue the objection, if he thinks it is important. We must stop somewhere as to the marital troubles.

LADY DAVIS (for Plaintiffs), Cross-Examination.

Mr. Campbell: I am not asking about the marital troubles.

His Lordship: You are speaking of something that took place in September, 1928. You have undertaken to prove by that letter that Lady Davis, and possibly Sir Mortimer Davis, in his lifetime, did not approve of Mortimer Davis Junior's conduct. You produce a letter
10 some facts.

Mr. Campbell: I am talking about a different letter. I am coming to a different one. I am not referring further to that particular letter. I am asking the witness if she remembers a proposal discussed in Paris with an attorney representing Mr. Mortimer Davis, under which that attorney suggested that Sir Mortimer Davis Incorporated should make certain payments to Mr. Mortimer Davis. What he was going to do with the money when he got it, I do not care, and am not going into at all.
20

Mr. Geoffrion: What has that to do with the question whether Lord Shaughnessy and Mr. Reaper are competent to administer the Estate?

Mr. Campbell: It has a great deal to do with it, as to the state of mind of the witness at the time as to her rights, and the rights of Mr. Mortimer Davis.

His Lordship: Might Lady Davis not have had a change of mind since she came to Montreal in June.
30

Mr. Campbell: We will face the change of mind when it comes.

Mr. Geoffrion: That is a pretext to get something in as clear as can be. We have not suggested there was any trouble.

Mr. Campbell: It is a question of what she thought her rights were at that time, and when she changed her mind as to what she
40 thought her rights were.

Mr. Geoffrion: It is not material what her rights were, if she misunderstood the terms of the Will.

Mr. Campbell: I am quite satisfied the witness misunderstood the terms of the Will.

LADY DAVIS (for Plaintiffs), Cross-Examination.

His Lordship: Have you another letter there you want to file, Mr. Campbell?

Mr. Geoffrion: It is a little mud slinging, that is all.

10 Mr. Campbell: My learned friend missed on Wednesday last all the offensive material that Mr. McKeown succeeded in reading into the record. Mr. McKeown has provoked by some of his examination-in-chief this cross-examination which I am obliged to cover.

Mr. McKeown: This is reprisal, but I was right and you were wrong.

Mr. Campbell: That is possible.

20 Mr. McKeown: My subject was relevant and yours is not. My subject is pleaded and yours has an ulterior motive, as far as I can make out.

His Lordship: Well, we will adjourn, and you can decide about this letter in the meantime.

(Whereupon an adjournment was taken until 2.30 P.M.)

30 On this 5th day of May, 1930, at 2.30 P.M., the Court resumed, and Lady Davis continued her cross-examination as follows:

Mr. Campbell: I do not propose at this stage to press the point as to the question I asked the witness before the adjournment. I may, however, have to come back to it. I will suspend the question. I take it there is no ruling as to whether the question is admissible or not, and I will come back to it if, and when, I find it necessary.

40 By Mr. Campbell:

Q.—Lady Davis, I want to come back to that point in your testimony-in-chief when you spoke of what happened in Montreal subsequent to Sir Mortimer's funeral in April, 1928. You recall that there was a meeting of Executors some little time after the funeral, do you not?

A.—Yes.

LADY DAVIS (for Plaintiffs), Cross-Examination.

Q.—As I remember your testimony-in-chief, you were inclined to put the date of that meeting at about the 14th?

A.—That was my impression.

Q.—Is it still your impression?

A.—I am in doubt as to whether it was the 14th, the 23rd, or 25th. I am sure that the minutes were not written up at the time of the meeting, because it would have necessitated me waiting to sign
10 them.

Q.—That is common ground, but that would not necessarily mean that the minutes do not correctly recite the day when the meeting took place, would it, even though they were not signed. The minutes may have been signed a month later?

A.—Oh, yes.

Q.—But they would refer to the date on which the meeting was held?

A.—Quite right.

Q.—But I am testing at the moment your recollection. I want to
20 see how reliable your recollection is, as to dates and order of events, and I am asking you again as to whether you still think it was the 14th of April that that meeting took place?

A.—I am not sure, Mr. Campbell. I have admitted that.

Q.—In any event, was it after Sir Mortimer's Will had been probated?

A.—If it had been the 14th, it would not have been after Sir Mortimer's Will had been probated.

Q.—Does that help you to say it was not?

A.—No, it does not help me a bit.
30

Q.—You do not know whether it was before or after the probate?

By the Court:

Q.—Do you know the date of the probate of the Will?

A.—It was on the 18th.

Mr. Campbell: The Will was probated on the 18th

40 By Mr. Campbell:

Q.—You will note that the first entry in the minutes of this meeting filed as Exhibit D-2 says that the Will of the late Sir Mortimer was reported as having been probated on April 18th, 1928. Does that make it quite clear to you that the meeting of Executors was subsequent to that date—on or subsequent to that date?

A.—It does not, because I do not remember Lord Shaughnessy

LADY DAVIS (for Plaintiffs), Cross-Examination.

saying anything about the Will having been probated, and I told you my first recollection was that it was about the 14th. It would be before I went to New York for the first time. I might be mistaken about it.

Q.—You spoke of a visit by Lord Shaughnessy to New York, in, I think, the latter part of 1928, on which occasion he travelled to New York on the same train as yourself?

10 A.—Yes.

Q.—Do you recall the circumstance?

A.—Yes.

Q.—How near can you fix the date of that visit to New York?

A.—I have here “the 15th to 22nd at New York” and then “the 26th of April to the 2nd of May”.

Q.—Also in New York?

A.—Yes.

Q.—To what are you referring now?

20 A.—My visits to New York.

Q.—But to what document are you referring?

A.—This is a memorandum I checked up with the Ritz-Carlton Hotel in Montreal.

Q.—Are you sure that was the occasion that Lord Shaughnessy went down on the same train?

A.—No, I am not sure, but I remember of his going down on one occasion.

Q.—But it may very well have been a different occasion?

A.—It may have been a different occasion.

30 Q.—In any event, you recall the occasion when he went to New York to discuss with representatives of the D.C.L. the possibility of the purchase of the Alcohol shares owned by the Estate?

A.—Yes.

Q.—He reported to you that they were nibbling at a price in the vicinity of \$60?

A.—Yes.

Q.—And that he was dangling before them by way of bait a price of \$80 a share?

40 A.—He did not tell me that. He told me that he thought the shares were worth \$80.

Q.—Did you make any comment on this suggested price of \$60 to \$80 at that time?

A.—Not at all. I was delighted to hear that he thought the shares were worth \$80.

Q.—Did you think it a rational view for him to hold?

A.—Well, he was President of the Company. I gave him credit for knowing something about the Company.

LADY DAVIS (for Plaintiffs), Cross-Examination.

Q.—Was it in line with Sir Mortimer's own views of the probable future of Alcohol?

A.—Sir Mortimer was very optimistic about the future of Alcohol.

10 Q.—Knowing what you know, from your discussions with Sir Mortimer, would you think that Lord Shaughnessy's idea of a possible \$80 was utterly visionary or reasonable?

A.—At that time, no.

Q.—Quite reasonable at that time?

A.—Yes.

Q.—And as I understand it, there was more or less general discussion that if anything came of these negotiations for the sale of the Alcohol shares, it would be very nice to have thirty or forty millions in bonds salted down?

A.—Yes.

20 Q.—Was that what was to be done with the proceeds of the sale if they were sold?

A.—That is what Lord Shaughnessy told me he intended doing.

Q.—And you concurred in that view?

A.—Well, I thought it would be a very sensible view.

Q.—You mentioned Doctor Kauffman being in New York on the occasion of these D.C.L. negotiations?

A.—Yes.

Q.—What was his place in the picture?

30 A.—I do not know, except that he was a very big shareholder at the time.

Q.—Did he know of the nibbles that were going on?

A.—I think he was perfectly well aware.

Q.—And was he participating in the discussion?

A.—Yes, I should say he was.

Q.—You do not know personally what part he played in the discussion?

A.—Well, I heard that he brought these people to Lord Shaughnessy.

Q.—You do not know to what extent he participated in the actual discussion? You do not know of your own knowledge?

40 A.—No. He was at the interview.

Q.—You were so informed?

A.—By Doctor Kauffman.

Q.—After your return to Montreal on the occasion of that visit to New York when this D.C.L. project was under consideration, the memorandum which you have handed me shows that you were in Montreal on that occasion, from the 3rd to the 5th of May?

A.—Yes.

LADY DAVIS (for Plaintiffs), Cross-Examination.

Q.—And you have told us, in your examination-in-chief, that you signed a number of documents?

A.—Yes.

Q.—Do you remember any other documents that you signed in that interval besides those that you enumerated?

A.—No.

Q.—You do not?

10 A.—No.

Q.—I am testing your recollection. I want you to search your recollection, Lady Davis, as to whether any other documents besides those you have told us you signed?

A.—Well, Mr. Campbell, it is a very long time ago, and at that time I would have signed anything Lord Shaughnessy asked me to sign. I don't know what I signed.

Q.—Do you mean now to testify that you do not know what else you signed, or do you recall having signed any other documents?

20 A.—Any other documents?

Q.—Than those you have enumerated in your testimony?

A.—Well, I do not.

Q.—Do you remember signing a discharge of your marriage settlement?

A.—Yes.

Q.—A notarial discharge?

A.—I don't know. I suppose it was notarial.

Q.—It was executed before Mr. Phillips, Notary?

30 A.—I do not remember. I know that Lord Shaughnessy handed me a cheque, and said that he would like to pay this, that he would owe the interest at 7½ per cent from the date of Sir Mortimer's death, and he preferred to pay it now, and he handed me the cheque, and that is my recollection of it.

Q.—Do you not remember the circumstances under which the discharge was signed?

A.—No, I do not.

Q.—I mean, the actual signature of the document?

40 A.—I told you my recollection of it, Mr. Campbell. I remember Lord Shaughnessy giving me the cheque, and I was surprised that he gave it to me so soon, and he expressed the reason that he gave it to me was, because from the date of Sir Mortimer's death it was bearing interest at seven per cent, that he owed me seven and a half per cent, he evidently thought it better to discharge it at once.

Q.—Are you quite sure that that was the substance of the explanation that Lord Shaughnessy gave you?

A.—That is what Lord Shaughnessy told me at the time.

LADY DAVIS (for Plaintiffs), Cross-Examination.

Q.—Will you look at the notarial receipt and discharge, dated the 4th of May, 1928, before Mr. E. W. H. Phillips, Notary, and state whether you recall, now that I have called your attention to it, signing that document?

A.—Honestly, I do not.

Mr. Campbell: I file a copy of the discharge as Exhibit D-107.

10 By Mr. Campbell:

Q.—Will you verify from the terms of that document that, as a matter of fact, you are mistaken as to the rate of interest? It is seven per cent?

A.—A small fraction of a half per cent.

Q.—In other words, what you did receive was the sum of \$200,000 with interest calculated at the rate of 7 per cent?

A.—Yes.

20 Q.—From the date of Sir Mortimer's death down to the date of payment?

A.—Yes.

Q.—You told us, in your examination-in-chief, that when you signed the agreement dated the 5th of May, 1928, between Sir Mortimer Davis Incorporated and Lord Shaughnessy, which was filed as Plaintiffs Exhibit No. 15, I think you stated that at that time that no copy of Lord Shaughnessy's agreement was put before you?

A.—Yes.

30 Q.—But were you aware of the general nature of the arrangement between Sir Mortimer Davis and Lord Shaughnessy previous to the signing of the document?

A.—I knew that Lord Shaughnessy had a contract with Sir Mortimer, but I did not know what the terms of the contract were.

Q.—Did you ask to see the document on the occasion of the signature of this Exhibit?

A.—No.

40 Q.—You knew, in a general way, that subject to certain conditions, Lord Shaughnessy was going to acquire a certain stock interest in Sir Mortimer Davis Incorporated at the end of some particular period, did you not?

A.—Yes.

Q.—During the lifetime of Sir Mortimer Davis, had you ever been a Director of Sir Mortimer Davis Incorporated?

A.—No, certainly not.

Q.—And it was about the 5th of May, 1928, that the suggestion

LADY DAVIS (for Plaintiffs), Cross-Examination.

was brought forward by Lord Shaughnessy that you would at some time, in any event, become a Director of the Company?

A.—There was not any suggestion. Lord Shaughnessy had a stock certificate before him, and he asked me to endorse it, and he said, “ We are going to make you—we are now making you a Director of the Sir Mortimer Davis Incorporated.”

10 Q.—And that was particularly, and immediately, following that conversation, you left, I think, for France the same day?

A.—I don't know it was that day, Mr. Campbell, but I am telling you the circumstances.

Q.—Did you not leave Montreal on the 5th of May?

A.—I left Montreal on the 5th of May.

Q.—And were you ever back in Montreal that year?

A.—No.

20 Q.—So, if your testimony-in-chief establishes the date on which that was signed as the 5th of May, the fact is that that date the document was signed by you for the purposes indicated?

A.—I am not sure it was the 5th of May. Are you talking about the document of Lord Shaughnessy?

Q.—I am speaking of the stock certificate.

A.—Oh, yes. The stock certificate of the Sir Mortimer Davis Incorporated, or the stock certificate modifying his contract?

Q.—The stock certificate of Sir Mortimer Davis Incorporated, the one share that was going to qualify you as a Director?

30 A.—I don't know that it was on the 5th of May. I don't know which day it was, but it was a day at Lord Shaughnessy's office.

Q.—Was it immediately before you left Montreal?

A.—That is not my recollection of it, that it was immediately before, because on the 5th of May Lord Shaughnessy came to the Hotel, and I do not think I had been at the office that day.

Q.—It is not very material whether it was the 4th or 5th, or, for that matter, the 3rd, but the point is that either on the day you signed it, or within a day or two, you left Montreal?

A.—Yes.

40 Q.—And you did not return to Montreal during the balance of that calendar year 1928?

A.—No.

Q.—Do you know when the next Annual Meeting of Shareholders of Sir Mortimer Davis Incorporated was held, following that date?

A.—Whenever it was held, I did not receive a summons to go to the meeting.

LADY DAVIS (*for Plaintiffs*), *Cross-Examination.*

Q.—I understand that at that time you were in France?

A.—Yes.

Q.—But do you know when it was held? What is your recollection?

A.—No, I do not know when it was held.

Q.—You have sat all through this trial, Lady Davis, and have been following it with great fidelity every day?

10 A.—Yes.

Q.—And do you not recall that the minutes of that Annual Meeting are dated the 31st of December, 1928?

A.—Yes.

Q.—And you do recall, do you not, that on that occasion you were elected a Director of the Company at the Annual Meeting?

A.—So I found out after.

Q.—In any event, you left Montreal about the 5th of May, 1928, and you left New York about the 12th of May, I think you said?

20 A.—That is right.

Q.—To return to Europe?

A.—Yes.

Q.—And you remained in Europe until the following April, 1929?

A.—Yes.

Q.—Or May?

A.—Yes.

Q.—The Sir Mortimer Davis Incorporated, through Mr. Reaper or some other officer, had been accustomed to send Sir Mortimer
30 monthly statements of the affairs of the Company, had it not?

A.—Yes.

Q.—And you had been accustomed to seeing these statements during Sir Mortimer's lifetime?

A.—Yes.

Q.—Did he discuss them with you?

A.—Sometimes, not always.

Q.—But did he show them to you as a matter of interest?

A.—Yes.

40 Q.—Did Sir Mortimer take you into his confidence in regard to his business affairs?

A.—Yes. Sir Mortimer discussed his business affairs freely with me.

Q.—And you knew he had been accustomed to receiving these monthly statements?

A.—Yes.

Q.—Following your return to France in May, 1928, down until

LADY DAVIS (for Plaintiffs), Cross-Examination.

the end of December, 1928, did you receive any of these monthly statements?

A.—No, never.

Q.—Did you write Lord Shaughnessy or Mr. Reaper, inquiring why not?

10 A.—No. I told you before, Mr. Campbell, if you remember, I did not want to make a nuisance of myself. I thought they were busy settling the affairs of the Estate, and I had always heard that it took a reasonable length of time, a year, to do that sort of thing. I did not want to trouble them or worry them. I thought they might have sent them to me.

Q.—Well, you thought they might have sent them. You did not express that thought to them at that time?

A.—No. I did not want to be an unnecessary bother. I trusted him explicitly, otherwise I would not have given him a Power of Attorney.

20 Q.—I am not blaming you at all for not doing so, Lady Davis, I am establishing the fact that you did not receive them?

A.—No, I did not.

Q.—And you did not, down to your return to Montreal in the month of June, 1929, make any request to Lord Shaughnessy or to Mr. Reaper that you be furnished with these monthly statements?

A.—No, I did not.

30 Q.—Lord Shaughnessy, when he visited you in the summer of 1928, handed you a preliminary statement which had been prepared, showing the condition of affairs of the Estate as at the date of Sir Mortimer's death?

A.—Yes.

Q.—That is the statement which you filed in the course of your testimony as Exhibit P-50, which I now show you, is it not?

A.—Yes.

Q.—When you received that statement from Lord Shaughnessy, did you make any comment upon it?

A.—No.

Q.—Did you examine it?

A.—Yes.

40 Q.—That was in the summer of 1928?

A.—Yes.

Q.—And the next statement, I think you said you received was, the Financial Statement of the Incorporated Company as at September 30th, 1928?

A.—Yes.

Q.—That would be the end of the Company's financial year following your husband's death?

LADY DAVIS (*for Plaintiffs*), *Cross-Examination.*

A.—Yes.

Q.—And you received that financial statement sometime in November or December 1928?

A.—Yes.

Q.—And you acknowledged it to Lord Shaughnessy in the letter which is already filed under date of 31st of December 1928, as I recall?

10 A.—Yes.

Q.—When you got that statement of the Incorporated Company as at September 30th, 1928, which has been filed as Exhibit P-51, did you examine it?

A.—Yes.

Q.—Did you hold any communication with Lord Shaughnessy or Mr. Reaper in reference to it, other than to acknowledge its mere receipt?

A.—No.

20 Q.—Where were you living in January, 1929?

A.—In the South of France, I should think.

Q.—Or, were you not in Paris?

A.—I might have been there a day. I very often came up for a day.

Q.—I suggest you were in Paris?

A.—I may have been there a day or two.

Q.—Do you remember receiving while you were in Paris, a visit from an Attorney representing Mr. Mortimer Davis?

A.—Yes.

30 Q.—What was this gentleman's name?

A.—Colonel Hayward.

Q.—Do you remember Colonel Hayward suggesting to you that Mr. Mortimer Davis, his client, would like to obtain an advance of some additional sums of money from the Incorporated Company?

A.—The thing I remember mostly was, that he wanted us to guarantee this alimony.

40 Q.—I am not interested at all, Lady Davis, in that, and I do not think it is relevant to this case as to the matrimonial difficulties of Mr. Mortimer Davis, whatever the purpose was. Let us forget the purpose for which the meeting was needed, which does not really concern me, but I am asking you as to whether you recall that Colonel Hayward did suggest to you that he would like Sir Mortimer Davis Incorporated to make an advance to Mr. Mortimer B. Davis of a substantial sum of money, in January, 1929?

A.—I do not remember that part of it, but if it refers to it in my letter, it is probably so. If you will let me read the letter I will tell you whether I remember it or not.

LADY DAVIS (for Plaintiffs), Cross-Examination.

Q.—The letter to which you are referring is ——

A.—It would be the second letter I wrote Lord Shaughnessy reporting the interview with Colonel Hayward.

Q.—I show you the original letter dated at Paris, Avenue George Fifth—January 21st, 1929, would be the year?

A.—Yes.

10 Q.—Did you verify from that letter that Colonel Hayward made that suggestion to you?

(Witness takes communication of the letter.)

By Mr. Campbell (continuing):

Q.—Now that you have read the letter, can you tell me whether you remember Colonel Hayward making such a suggestion to you at that conversation in Paris?

20 A.—Yes.

Q.—And what was your reaction, as the modern saying is, to that suggestion? Did you approve or disapprove?

A.—I did not approve of lending him money. I thought any liability that he had assumed should be paid out of his income.

Q.—Did you make any other suggestion at that time?

30 A.—If you mean as to the amount of his income—if you mean as to the suggestion of the amount, my idea was that it would take a year before we would come into the revenue that Sir Mortimer had talked about—I thought that it would take probably a year before they would give us the surplus revenues, because they were in the meantime trying to arrange for the liabilities, so that is why I stipulated he might make an effort in the meantime. I thoroughly thought that when he did come into the surplus that Sir Mortimer spoke of, that he could pay fully.

Q.—But at any rate, you did not think at the time of this conversation in January, 1929, that the feasible solution of Mr. Mortimer Davis, Junior, difficulties was his demand for more money on account of his revenue from the Incorporated Company at that time?

40 A.—Well, I knew what he was getting at that time, because I was getting the same.

Q.—You were getting a fixed stipulated annuity at the rate of \$67,000 a year?

A.—Yes.

Q.—And so was he?

A.—But I thought at the end of the year that he would get the surplus of the revenue and that he could make further arrangements after that.

LADY DAVIS (for Plaintiffs), Cross-Examination.

Q.—And you have explained that you thought that the surplus revenues up to that time during the first year, might be needed for the settlement of the debts and liabilities of the Estate?

A.—No. The debts and the liabilities were to come out of capital. The revenue was not to be touched for that.

Q.—Did you know that there were any surplus revenue?

A.—I knew that there should be.

10

Mr. Geoffrion: They were to be paid annually under the will.

By Mr. Campbell:

Q.—Did you observe from the financial statement, Exhibit P-51, there had been sent to you before this conversation, that there was an undistributed surplus revenue shown on that statement for the year, September 30th, 1928, of \$763,203.34?

A.—I saw the item.

20

Q.—But you made no suggestion or comment to Colonel Hayward, or Lord Shaughnessy in that connection at that time?

A.—I did not think it was my business to discuss the surplus revenue with Colonel Hayward. Lord Shaughnessy was just as familiar with this statement as I was, and I would think more so.

Q.—At any rate, you did not make any suggestion?

A.—I did not make any suggestion.

Q.—Either to Colonel Hayward or to Lord Shaughnessy about providing for Mr. Mortimer, Junior's, necessities in this way?

30

A.—Mr. Mortimer Davis was old enough to look after his own liabilities.

Q.—I am asking you if you made any suggestion?

A.—I did not want Mr. Mortimer Davis to be indebted to Sir Mortimer Davis Incorporated because I thought that his revenues in time would be enough that he could settle his own liabilities.

Q.—At any rate, are you willing to state that at that time you did not offer this other solution of Mr. Mortimer's difficulties?

A.—I have explained my mind on the subject.

40

Q.—All right, Lady Davis, if you do not care to add anything I am satisfied. The next time you saw Lord Shaughnessy and discussed the affairs of the Estate, was on the occasion of his visit to Europe in April, 1929, when you saw him and other members of his family on a number of occasions, I think you said?

A.—Yes.

Q.—And it was on one of these occasions that you had the conversation with him in regard to the advisability of your buying for your own account some additional shares of Alcohol?

LADY DAVIS (for Plaintiffs), Cross-Examination.

A.—I did not discuss this subject with Lord Shaughnessy at all. He voluntarily told me that if ever I saw the stock under forty, it was a very good buy.

Q.—Were you in the habit of following the prices of Alcohol stock?

A.—Yes, I was.

10 Q.—Through what means of communication? Where did you get the prices?

A.—Through the Paris New York Herald.

Q.—Were the daily quotations given?

A.—Yes.

Q.—So you were kept in touch with the daily quotations of the movement of Alcohol stock?

A.—Yes.

20 Q.—And you knew, in a general way, how Alcohol stock had behaved, when Lord Shaughnessy made this suggestion to you that Alcohol was a good buy at any time it went under forty?

A.—Yes.

Q.—You did not act on that suggestion until the following October, I think?

A.—I don't know when it was; when I sent the telegram.

Q.—The telegram is dated October 11th, 1928, and reads:—
“Buy one thousand Canadian Industrial Alcohol; use McNish bonds for security”?

A.—Yes.

30 Q.—When you sent that cable to Lord Shaughnessy, had you verified the price at which Alcohol was then selling?

A.—I had seen it quoted in the newspaper the day before about thirty-eight, and that is why I sent the telegram.

Q.—And then, you got a cabled reply from Lord Shaughnessy: “Have bought one thousand shares for the price forty and a quarter; will hold bonds as requested”?

A.—Yes.

40 Q.—And the statement of account which you filed as Exhibit P-239 shows that a thousand shares of Alcohol common were bought at between thirty-nine and forty-one for a total amount of \$40,470 for your account?

A.—Yes.

Q.—That would be an average of 40.47, including brokerage?

A.—Yes.

Q.—You were handed a statement of this account, P-239, by Mr. Reaper, I think you told us in June, 1929, on the occasion of your visit?

A.—I don't know that it was handed to me or sent to me.

LADY DAVIS (for Plaintiffs), Cross-Examination.

Q.—At any rate, you received it?

A.—Yes.

Q.—Early in June, 1929, or at least, about when?

A.—I should say early in July.

Q.—Early in July, 1929, because, I notice, it is dated as of June 1st, 1929. Would it not probably be in the course of the month of June?

10 A.—The end of June I should think.

Q.—And this Exhibit is headed: "Lady Eleanor Davis in account with Sir Mortimer Davis Incorporated"?

A.—Yes.

Q.—And it shows as a debit entry this purchase for your account of a thousand shares of Alcohol common in a total amount of \$40,470?

A.—Yes.

20 Q.—When you got that statement of account, P-239, from Mr. Reaper, did you make any comment to him on it at the time?

A.—No.

Q.—Previous to this transaction in Alcohol, do you remember that the Incorporated Company was carrying for your account a number of the McNish Debentures?

A.—Yes.

Q.—According to Exhibit P-239 there were 6,288 Debentures at \$4.50 each?

A.—Yes.

30 Q.—That was the issue price at which the Debentures were issued to the shareholders of Alcohol?

A.—Yes.

Q.—And this I take it was your allotment as a shareholder of Alcohol?

A.—Yes.

Q.—And this transaction was financed for you through Sir Mortimer Davis Incorporated?

A.—Yes.

40 Q.—And your account with Sir Mortimer Davis Incorporated was debited under date of November 15th, 1927, with the sum of \$28,296?

Mr. McKeown: I object to this line of questioning for the reason that at that time that is being referred to by Mr. Campbell, Lady Davis was not even a shareholder of the Incorporated Company, much less a Director, and had a perfect right to have the Company deal with her as with any other individual. The objection to the

LADY DAVIS (for Plaintiffs), Cross-Examination.

10 dealing of Lord Shaughnessy in that Company is, that in violation of the Quebec Companies Act under which this Company was incorporated, and in violation of every principle of common law which covers the rights of a person in a fiduciary capacity, who had no right to become a borrower, and the Company had no legal power to lend him a cent from the time he became a Director, and the point Mr. Campbell is raising now is back in 1927, when Lady Davis was neither a shareholder or a Director, or an Executor of the Estate, nor in any fiduciary capacity towards anybody, and had a perfect right, if the Company saw fit to lend her money or to carry securities for her, to do so. There is no analogy whatever, and otherwise the matter is absolutely irrelevant to this enquiry.

The Court allows the question.

20 The question was repeated to the witness as follows: And your account with Sir Mortimer Davis Incorporated was debited under date of November 15th, 1927, with the sum of \$28,296, was it not?

A.—Yes.

Q.—And you discharged that account by a payment in cash entered in the account under date of September 29th, 1928, with a cheque for \$28,638.20?

A.—Yes. I have explained that.

30 Q.—The first time you made any comment or suggestion by way of criticism of your account, P-239, was, when you wrote the letter P-237, to Lord Shaughnessy, dated October 24th, 1929?

A.—Yes.

Q.—And that letter was written on the advice of your Counsel?

A.—Well, I think that I first learned that I was a debtor to the Sir Mortimer Davis Incorporated about October 7th.

By Mr. McKeown:

Q.—From what source?

40 A.—By the interim statement that I had asked for, and I was rather of the mind to pay it at once. I did not like being a debtor. I did not approve of Mr. Mortimer B. Davis being a debtor; I did not approve of Lord Shaughnessy being a debtor to the Company, nor did I wish to be in that condition.

By Mr. Campbell:

LADY DAVIS (for Plaintiffs), Cross-Examination.

Q.—But that is not an answer to my question. Did you write that letter of October 24th, 1929, after you had consulted your Counsel in reference to the matter?

A.—I had spoken to my Counsel about it.

Q.—In other words, you had no idea of any illegality, had you, in your having a dealing of that kind with Sir Mortimer Davis Incorporated?

10 A.—I did not have any idea of an illegality, but I did not think it was right. I had refused to make a loan to Mr. Mortimer Davis, and I did not like Lord Shaughnessy representing himself to borrow money when he pleased, so I did not think I should be a privileged one either.

Q.—What position did the account which you received after June, 1929, show you to be in in reference to your dealings with Sir Mortimer Davis Incorporated?

20 A.—I have explained, my opinion was that my Debentures would cover this loan, and that I was of the opinion that they put them either in the bank or a brokerage house.

Q.—I am asking what Exhibit P-239 shows? It shows the condition of your account as of June 1st, 1929, does it not?

A.—But, Mr. Campbell, I have explained it.

Q.—I know your explanation. As a matter of fact, there was no other way of complying with the wishes of Sir Mortimer Davis, was there; he did not want you to deal direct?

30 Q.—He did not want me to send the telegram to the brokerage firm myself.

Q.—And he did not want these shares bought in the name of others than Sir Mortimer Davis Incorporated, did he?

A.—I would not say others. He did not want them bought in his name.

Q.—As a matter of fact, he wanted all your dealings in the shares of Alcohol to be done in the name of Sir Mortimer Davis Incorporated for your account?

A.—Well, he did. He wanted them billed to the Company.

40 Q.—The Statement of Account that you received as of date June 1st, 1929, showed a debit balance of \$39,320 between you and Sir Mortimer Davis, Incorporated?

A.—Which was covered by bonds.

Q.—Amplly secured by McNish Debentures and Alcohol?

A.—All the more reason it could have been with a Bank or brokerage house. They did not have to carry it.

Q.—You told us you kept in touch with the fluctuations of

LADY DAVIS (for Plaintiffs), Cross-Examination.

Alcohol stock from day to day in the Paris newspapers. Apart from anything you may have heard from Lord Shaughnessy or Mr. Reaper, did you have other sources of information as to how things were going generally in the Alcohol Company?

A.—No.

Q.—You had a brother in the organization?

A.—Yes.

10 Q.—Did you ever hear from him?

A.—Yes.

Q.—Did you ever put any questions to him as to how things were going in the Alcohol Company?

A.—No, not at that time. I have, since.

Q.—I mean, at that time?

A.—No.

20 Q.—When Lord Shaughnessy returned to Paris, in April, 1929, and told you he had not sold your 1,000 shares of Alcohol because, as he said, there had not been sufficient rise in the market to take care of a block of that size at the margin of profit you wished to get, did you make any comment?

A.—No.

Q.—And, you did not give any instructions to sell it then?

A.—No.

Q.—And, you have never given any instructions to sell it since, down to the time you took delivery of it in October, 1929?

A.—No.

30 Q.—You received a cable from Lord Shaughnessy in the autumn of 1928, to which you have referred in your testimony, in connection with the purchase of Mr. Marler's shares. The cable was in code, but decoded it appears Lord Shaughnessy told you that Mr. Marler was willing to sell his stock of Sir Mortimer Davis, Incorporated, numbering 500 shares, at price fixed by buyers, namely \$170 per share?

A.—Yes.

40 Q.—Then he referred to the By-laws of the Company under which he thought those shares must be offered to present shareholders in proportion to their holdings; namely, Estate, 90 per cent; Waddell, 5 per cent; self, 5 per cent.

A.—Yes.

Q.—“Self,” of course, referred to Lord Shaughnessy?

A.—Yes.

Q.—Then he added: “We think purchase very advisable and I

LADY DAVIS (for Plaintiffs), Cross-Examination.

willing take my proportion. Do you concur?" His proportion would be the 5 per cent referred to?

A.—Yes.

Q.—Then he wrote you, under date November 7th, the letter Exhibit D-9, in which he discussed the purchase of Mr. Marler's shares, and used the phrase which has been referred to a number of times about Mr. Marler being let out of the Company forever?

10

A.—Yes.

Q.—Are you aware that Sir Mortimer himself had rather changed his attitude towards Mr. Marler, rightly or wrongly, in the last few years of his life?

A.—I heard Sir Mortimer criticize Mr. Marler's political career.

Q.—In the last year or two of his life he was not as friendly to Mr. Marler as he had previously been?

A.—I do not know about that. I told you what I knew about it.

20 criticism ———

A.—The only criticism he ever expressed to me was his criticism of Mr. Marler's political career.

Q.—Disapproval of his politics?

A.—Yes.

Q.—It is in evidence already that Mr. Marler was an Executor in some of the previous wills made by Sir Mortimer, but had been left out.

30 Mr. McKeown: I do not recall any such evidence in this trial.

Mr. Campbell: You made the evidence yourself. In any event, I will ask Lady Davis if she knows.

Mr. McKeown: But it has nothing to do with the examination-in-chief, and it has not even been mentioned in the plaintiffs' case up to the present time.

40 Mr. Campbell: I am not justifying Sir Mortimer's attitude, as a matter of fact. I do not know that there was any particular justification for the attitude. I am just wishing to show what the attitude was.

Witness: Let Lord Shaughnessy show it. He ought to know.

By Mr. Campbell, continuing:

LADY DAVIS (for Plaintiffs), Cross-Examination.

Q.—When Lord Shaughnessy made the suggestions he made, you concurred in those suggestions?

Witness: Which suggestions?

Counsel: After buying Mr. Marler's shares, and letting Mr. Marler out.

10

Mr. McKeown: That is absolutely unfair to the witness. How can the witness be asked such a question? Her consent came on November 1st, in answer to a cable of October 31st. The letter about letting Mr. Marler out forever was not even written in Montreal until seven days afterwards. How can it be said Lady Davis concurred in letting him out forever, when the letter suggesting that he should be let out forever had not been written?

20 By Mr. Campbell, continuing:

Q.—When you received Lord Shaughnessy's letter Exhibit D-9, dated December 7th, 1928, in reference, among other things, to the purchase of the Marler shares, did you make any comment in your reply (if you did reply) to the proposals in that letter?

A.—No.

Q.—Lord Shaughnessy returned to Europe in April, 1929, with Lady Shaughnessy and some members of his family, and I think you told us you had a number of interviews with him on the occasion of that visit?

30

A.—Yes. I saw them once or twice in Paris, and then I saw them in London.

Q.—During those discussions you had with Lord Shaughnessy in April, 1929, had you any apprehensions as to the situation in reference to the Estate?

A.—No.

Q.—You were satisfied, from what you then heard, that things were apparently going all right?

40

A.—Yes, he assured me that they were going all right.

Q.—And as far as you then knew that assurance was justified?

A.—Yes.

Q.—When was it you decided to sail for America following those interviews with Lord Shaughnessy in April, 1929?

Witness: When did I decide to sail for America?

LADY DAVIS (*for Plaintiffs*), *Cross-Examination.*

Counsel: Yes.

A.—I had it in mind probably a month before to come to America, because of my discussions with Mr. Corbett. I have stated that.

Q.—Can you recall when you took your passage?

A.—As I recall it, I had reservations on two or three boats.

10 Q.—Made some weeks before you actually left?

A.—Yes, probably. It was quite difficult at that time of the year.

Q.—In any event, you made your plans to come to Canada some weeks if not months, before you actually came on the occasion of that visit?

A.—Yes, I had it in mind.

Q.—Then you went to London on your way to take your ship?

A.—Yes.

20 Q.—Do you remember what day of the week you arrived?

A.—No. I think it has come out it was a Sunday.

Q.—Can you fix the date?

A.—I sailed on the 14th, which was a Tuesday.

Q.—So Sunday would be the 12th?

A.—Yes.

Q.—Sunday, May 12th, 1929?

A.—Yes.

Q.—Did you see Lord Shaughnessy the day you arrived?

A.—I think I did; I do not remember.

30 Q.—Were you staying at the same hotel as Lady Shaughnessy and Lord Shaughnessy?

A.—Yes, at the Ritz.

Q.—You had no business conversation with Lord Shaughnessy that day, I think?

A.—No.

Q.—Do you remember the first business conversation you had with Lord Shaughnessy on the occasion of this visit to London and when did it take place?

40 A.—The one that is clearest in my memory is the dinner I told you about at which he made his announcement about Mr. Jennison.

Q.—Is your recollection on that clear?

Witness: What do you mean? About the dinner, or what he told me? It is very clear about what he told me.

Q.—I mean, about the occasion?

A.—Yes.

LADY DAVIS (for Plaintiffs), Cross-Examination.

Q.—Are you sure it was after dinner?

A.—Yes.

Q.—I suggest to you it was in the afternoon, after lunch?

A.—I think you are mistaken.

Q.—Did you lunch with Lord Shaughnessy on that occasion?

A.—I did lunch with him alone one day, yes.

10 Q.—Now that I have brought to your mind the fact that you and he lunched together, I suggest to you that it was that afternoon you had the business conversation with Lord Shaughnessy and that it was not in the evening?

A.—I think you are mistaken. My recollection is it was at the Embassy Club in the evening.

Q.—You still maintain that is your recollection?

A.—Yes.

Q.—Might it have been in the afternoon? I put it to you it was after lunch that afternoon.

20 A.—No. My recollection of that afternoon conversation is that Lord Shaughnessy had been up to the North of England making speeches.

Q.—Did he tell you about his speeches?

A.—Yes.

Q.—Did that occupy the whole afternoon?

A.—No; but that was mostly the conversation through luncheon, I think.

30 Q.—Did you not have quite a long interview with him that afternoon?

A.—I do not remember. No.

Q.—Have you a distinct recollection? Because the details are rather important to me.

A.—I am very sorry, but they are not to me.

Q.—You still think it was at the Embassy Club, in the evening?

A.—I still think it was at the Embassy Club, in the evening, yes.

40 Q.—What was the chief subject of conversation on this occasion, whether it was in the afternoon or in the evening?

Witness: You mean about the financial genius?

Counsel: Is that the thing which stands out in your memory?

A.—Yes.

LADY DAVIS (for Plaintiffs), Cross-Examination.

Q.—It was this reference to a financial genius that stands out in your memory?

A.—Yes; and the consequences that would follow.

Q.—The consequences you anticipated might follow, or that Lord Shaughnessy suggested would follow?

A.—Both. Because one was his idea of tying up the revenue, and in my anticipation of course I thought it was pretty hazardous.

Q.—Was this conversation serious, or jocular?

A.—I took it very seriously.

Q.—Including the financial genius?

Mr. Geoffrion: It must have been. It was a matter of \$20,000 a year.

Mr. Campbell: You do not think you could buy a financial genius for \$20,000 a year?

Mr. Geoffrion: Of that class, easily.

Witness: Lord Shaughnessy was not joking, I assure you.

By Mr. Campbell, continuing:

Q.—Will you just give me your version again of your recollection of the substance of this conversation with Lord Shaughnessy?

A.—Lord Shaughnessy said that he had met a financial genius, that he had had him in mind for some time, and that he was a perfect wonder. He said he had been very busy getting reports about him, and that the first reports were not very good—they did not say he was dishonest, but they said he was not trustworthy. Lord Shaughnessy said: “However, I have decided to risk that. He cannot do anything until he comes to me first. I have bought an Investment Company for \$30,000. I am paying him \$20,000 a year. I have taken offices for him, and now I have told him, ‘Go and do something. Let us see what you can do. Go out and get some underwriting and some things.’ I expect to build this up to a gigantic Investment Company; I would not be a bit surprised if it were \$150,000,000.”

Q.—Was this after dinner?

A.—It sounds after dinner, does it not? I agree with you. He said: “Of course, you and Mortimer will not have anything more than the \$67,500 in the meantime, but after a few years the revenue will be very good—splendid.”

LADY DAVIS (for Plaintiffs), Cross-Examination.

Q.—Since it was after dinner, were you able to bear up in the face of that anticipation that your revenues were going to be absorbed for some years?

Witness: Was I able to bear up?

10 Counsel: Yes.

A.—Well, I did not swoon.

Q.—Did you make any comment?

A.—No, I did not.

Q.—Did you ask who was the financial genius?

A.—No. I thought the best thing to do would be to come to Montreal and find out about the financial genius.

Q.—You did not even ask his name?

A.—No, I did not even ask his name.

20 Q.—When did you first recollect that Lord Shaughnessy told you this meant you would have to go without your annuities? You and Mr. Mortimer Davis?

Mr. McKeown: She did not say that at all.

By Mr. Campbell, continuing:

Q.—I mean, without the surplus?

30 A.—That was the first I heard of that. That was the first I heard of not having any surplus revenue.

Q.—But, when did you first recall that part of the conversation?

Witness: How do you mean?

Counsel: Have you only recently remembered it?

A.—No.

40 Q.—Do you remember being examined by me on discovery in February last?

A.—Very well.

Q.—We had quite an agreeable little half hour.

A.—I was too nervous to appreciate it.

Q.—Do you remember me questioning you on that occasion about this conversation in London?

A.—Yes, I do.

LADY DAVIS (*for Plaintiffs*), *Cross-Examination*.

Q.—Do you remember when this deposition on discovery was given?

A.—February 14th, I think.

His Lordship:—Valentine Day.

10 Witness: Yes.

By Mr. Campbell (continuing):

Q.—You have since re-read your deposition on discovery?

A.—Yes, I have.

Q.—Quite recently?

A.—Yes.

Q.—You told me on that occasion the substance of this conversation between you and Lord Shaughnessy?

20 A.—Yes.

Q.—In reference to the financial genius?

A.—Yes.

Q.—Why did you not tell me then about this threat that this was going to absorb your residuary revenues for some years to come?

A.—If I did not tell it to you then it was because I was so nervous, I suppose; I forgot it.

Q.—In any event, having re-read your testimony, you recognize you did not tell me of that part of the conversation at that time?

A.—I do not know. I am taking your word that it is not there.

30 Q.—And, you have re-read it?

A.—I have, but I do not know whether I said it or not. It is rather long to remember by heart.

Q.—If you said it, I am unable to find it in the transcript.

A.—Well, I have said it since.

40 Mr. McKeown: The examination to which my learned friend refers as being a happy and pleasant half hour lasted from, I think, half past ten in the morning until nearly two o'clock in the afternoon; and Your Lordship will see that at the conclusion of that examination a special reservation was made by Counsel in order that it should not last until six o'clock. Mr. Campbell's questions were answered, but no attempt was made to exhaust the evidence.

Mr. Campbell: Of course, I did not intend to limit myself to half an hour as the time occupied in the examination. I do not remember the exact duration of the deposition.

LADY DAVIS (for Plaintiffs), Cross-Examination.

By Mr. Campbell (continuing):

Q.—During Sir Mortimer's lifetime had you discussed with him his projects in regard to an Investment Company?

A.—No.

Q.—Had he ever confided in you that he had any scheme in his mind in regard to a Financial or Investment Company to be developed as one of the subsidiary enterprises of Sir Mortimer Davis, Incorporated?

A.—No. I have heard him talking about looking for a financial man.

Q.—Do you know that shortly before his death he intended branching out into matters of finance?

A.—I do not want to argue with you, Mr. Campbell; but, if he had it does not mean that they should have been gone into afterwards.

Q.—You may be perfectly right, Lady Davis, but that is not the question at issue. What I am asking you is whether Sir Mortimer confided in you shortly before his death that he did intend going into this branch of financial venture?

A.—I knew he was on the lookout for a financial man.

Q.—He did not use the phrase "financial genius"?

A.—No.

By the Court:

Q.—He was satisfied with the ordinary talent?

A.—Yes.

By Mr. Campbell (continuing):

Q.—Did he confide in you what he proposed to pay him in the way of salary?

A.—No.

Q.—You spoke in your testimony of what happened in Montreal after you returned here in June, 1929, on one occasion when you were dining at the house of Lord Shaughnessy and Lady Shaughnessy, in reference to the McNish situation. Do you recall your conversation?

A.—Yes.

Q.—Perhaps you have stated what was the attitude of Sir Mortimer himself to the McNish proposition during his lifetime. Did he believe in its future?

A.—He believed in its future, with proper organization.

LADY DAVIS (for Plaintiffs), Cross-Examination.

Q.—But he thought, naturally, if organization and management were adequate, that McNish might ultimately become a big earner, did he not?

A.—He knew it was very much in need of organization, and he particularly wanted to get an outstanding able man in the McNish Company.

10 Q.—But, he confided the actual management to the McNish Brothers, did he not?

A.—Temporarily.

Q.—In any event, he gave them an agreement which remained in force, according to its terms, until 1930?

A.—Yes, but he wanted another man in there with them—a very able man. He knew it was very much in need of that.

Q.—Providing that organization was adequate, he believed that ultimately McNish would be a success and a good earner for Alcohol, did he not? Subject, of course, to adequate management?

20 A.—He hoped it would be, but he knew the most essential thing was management

Q.—But he contemplated, did he not, that for the first year or two it might be a loss?

A.—Yes.

Q.—Quite a serious loss?

A.—I do not know.

Q.—Do you not remember he made a guess in one of his letters?

A.—Yes.

Q.—Of about £100,000 a year?

30 A.—Yes; but if you do not have management in the meantime, building up something—if you spend that in advertising, and overhead, and if your management is going down, and you are not building up anything, then you are just risking your money.

Q.—I agree you are a very able advocate, Lady Davis, but all I am interested in at the moment is what was the attitude of Sir Mortimer Davis in regard to the McNish proposition?

A.—I think I have answered that.

Q.—Did he believe in its future; given, of course, that the management would be competent?

40 A.—Yes.

Q.—According to your recollection, how many times did you dine or lunch at Lord Shaughnessy's house on the occasion of your visit to Montreal in June, 1929?

A.—I remember dining there twice, and lunching once.

Q.—You told us you noticed the dining room furniture on the occasion of the first of those visits?

A.—Yes.

LADY DAVIS (for Plaintiffs), Cross-Examination.

Q.—And you recognized it was the furniture that had been in the dining room of the Pine Avenue house?

A.—Yes.

Q.—I think you said you made no comment to Lord Shaughnessy in reference to that?

A.—None at all

10 Q.—At any time?

A.—At any time.

Q.—Did you make any comment to Mr. Reaper?

A.—No.

Q.—You made no comment at any time to either of your co-Executors in reference to this matter?

A.—No.

Q.—Do you recall a conversation between yourself and Lord Shaughnessy in reference to this dining room furniture, in Montreal, in 1928, before you went abroad, on or about May 5th?

20 A.—No.

Q.—Is your mind a perfect blank on that subject?

A.—It is not a perfect blank, but I do not recall it.

Q.—I put it to you that Lord Shaughnessy suggested to you in a conversation in Montreal, in the month of April or May, 1928, that he would in fact take over this dining room furniture as a payment, either in whole or on account, of the legacy which had been left to him—a memento—in Sir Mortimer's Will. Do you remember that?

Mr. Geoffrion: I object to the question as illegal.

30

A.—I never heard it before.

Q.—You spoke in your testimony of the Y.M.H.A. inaugural ceremonies?

A.—Yes.

Q.—Do you recall that you were present?

Mr. Geoffrion: Same objection.

40

A.—Yes, I do.

Q.—You took some little part in the ceremonies, did you not?

A.—Yes.

Q.—Handed over the key, for instance?

A.—Yes.

Q.—How nearly can you fix the date of that ceremony?

A.—It was June 16th.

Q.—1929?

A.—Yes.

LADY DAVIS (for Plaintiffs), Cross-Examination.

Q.—Are you clear on that?

A.—I have it marked down here, Mr. Campbell. You make me feel so dubious about things.

Q.—Before you look at your memorandum. I will let you look at the memorandum afterwards. In the meantime, I am afraid I am too late.

10 Mr. McKeown: The train has left.

By Mr. Campbell (continuing):

Q.—Having looked at your memorandum, are you sure it was the 16th?

A.—I have not found it yet.

Q.—Then, do not look at the memorandum, but tell me your recollection?

20 A.—I have told you. I think it was the 16th. It is not on the memorandum.

Q.—I suggest to you that you are mistaken in the date.

A.—I might be.

Q.—I suggest to you those inaugural ceremonies were held on June 23rd. What would you say to that?

A.—Was it postponed? It might have been postponed. I have June 16th or the 23rd?

A.—I do not know, now that you say it like that. I thought it was the 16th.

30 Q.—Are you willing to believe that my instructions are right that it was the 23rd, because I am instructed it was the 23rd.

A.—You are probably right.

Mr. Geoffrion: Do not say probably; say possibly.

Witness: Possibly.

By Mr. Campbell (continuing):

40 Q.—You knew of Sir Mortimer's interest in this Y.M.H.A. charity, did you not?

A.—Yes.

Q.—It was one of the things he really did take stock in?

A.—What do you mean by "stock"?

Q.—I do not mean stock in a financial sense; I mean in a sentimental sense. It was one of the charities in which he was deeply interested?

A.—Yes, he was very interested in it.

LADY DAVIS (for Plaintiffs), Cross-Examination.

Q.—Now that I have given you June 23rd, 1929, as the suggested date for this inaugural ceremony of the Y.M.H.A.; supposing that is the right date, can you fix the date of your next interview with either Lord Shaughnessy or Mr. Reaper in reference to Estate matters? Was it shortly after this inaugural ceremony?

10 A.—If you are talking about the meeting, I went to see Lord Shaughnessy with the Statement of Sir Mortimer Davis, Incorporated.

Q.—I am referring now to the first meeting in the office of the Incorporated Company, at which Lord Shaughnessy was present, and in the course of the conversation he called for Mr. Reaper; Mr. Reaper came in, and you had some discussion with them both.

A.—What I call a meeting—the first meeting was when I brought over the Sir Mortimer Davis Incorporated Statement and saw Lord Shaughnessy and Mr. Reaper.

20 Q.—But, you have put that, I think, in the month of July, did you not?

A.—No. June 27th.

Q.—Did you not have a meeting in the office of the Incorporated Company on June 24th, the day following this inaugural ceremony?

A.—I did not have a meeting. I lunched with Lord Shaughnessy, and going down I discussed some things with him, but I did not consider it a meeting.

Q.—Did you not go to the office?

A.—Yes, I went to the office.

30 Q.—Was it not on that occasion Mr. Reaper was called in and that you had some discussion about Estate matters?

Witness: Do you want me to tell you the story of the meeting?

Counsel: Yes, I would like you to do so; in so far as it is relevant, and in so far as you discussed Estate matters.

40 A.—I had an insurance premium come due, and I had an idea that it was a liability before Sir Mortimer died—a part of it. I found out that it was not so, but that it was paid in advance, and I was responsible for the whole of the premium.

Q.—Was this an insurance on your own life?

A.—It was my own insurance.

Q.—On your life, or on your property?

A.—It was not a life insurance. It was on property.

At that time I figured the Estate owed me between \$17,000 and \$20,000.

LADY DAVIS (for Plaintiffs), Cross-Examination.

Q.—On what account?

A.—Interest on a Trust Fund, and Executors' fees. I asked Lord Shaughnessy if I could collect some of this money, or if I could get some of this money to meet this liability, and he said: "Come over to the office, and we will see about it". At the office he called Mr. Reaper in, and I said I did not want to borrow money, but if they could let me have this money that I considered due me I would appreciate it. Lord Shaughnessy said: "We do not have to let you have this money—this interest on the Trust Fund—until the Death Duties are paid; but, how much do you want?" I said I thought I needed about \$10,000. Lord Shaughnessy said to Mr. Reaper: "As long as we are carrying it on the books and crediting the interest you might as well let her have the \$10,000."

Q.—And did you get it?

A.—Yes, I did.

Q.—And that was considered as a payment on account of this obligation under this Trust?

A.—I could never find out what they charged it to. I did not know what they charged it to.

Q.—They told you at the time.

A.—No, they did not. They simply let me have the \$10,000. I did not know whether it was going to be charged against Executors' fees, or against this Trust, or what it was going to be charged against.

Q.—The Trust to which you have referred is the document filed as your Exhibit P-68 at enquete, a copy of which I show you?

A.—Yes.

Q.—And that was a donation of the sum of \$200,000, of which you were to be the beneficiary of the interest from the time of Sir Mortimer's death until your death?

A.—Yes.

Q.—What was the occasion, as nearly as you can fix it, when you first discussed the Jennison situation with Lord Shaughnessy or Mr. Reaper in Montreal after your return here in June, 1929?

A.—I placed it about the 27th of June.

Q.—Was that the occasion on which Lord Shaughnessy said that the only thing between Sir Mortimer Davis Incorporated and Mr. Jennison was this \$10,000 note?

A.—Yes.

Q.—How did you reconcile that with his conversation in London in the previous May?

A.—I referred to his conversation in London, and I said: "You told me you were paying him \$20,000 a year," and he said: "No, I am not paying him \$20,000 a year. He has to make it first."

Q.—To make it out of what?

LADY DAVIS (for Plaintiffs), Cross-Examination.

Mr. Geoffrion: His genius.

Mr. McKeown: His ingenuity.

By Mr. Campbell (continuing):

10 Q.—My learned friend, Mr. Geoffrion, suggests the answer is that he was to make it out of his genius. Is that your answer?

A.—It is a very good one, is it not?

Q.—In any event, he was to make it out of this Investment Company which Lord Shaughnessy told you he had purchased for \$30,000?

A.—Yes.

Q.—Did you understand this \$10,000 was over and above the \$30,000?

20 A.—I did not know what to believe about it. Lord Shaughnessy told me that what he told me in London was not so—that nothing existed between them but the \$10,000. I had my choice of the two stories.

Q.—Are you quite clear on that?

A.—Yes, I am quite clear on that.

Q.—Was he not referring to the fact that that was the situation at the time the Financial Statement of the Company as at September 30th, 1928, Exhibit P-51, was issued?

A.—No. He was telling me that was the condition at that time, June 27th, when he was speaking to me.

30 Q.—Did you not think it was extraordinary that when he told you in London he had invested \$30,000 in an Investment Company for this gentleman, a month or six weeks later, he should tell you there was only a \$10,000 note between them? Did you not think that was extraordinary?

A.—I thought it very extraordinary.

Q.—Did you cross-examine him about it?

A.—Well, now, really, Mr. Campbell.

Q.—Did you put any questions to him?

40 A.—I said “ You told me in London you had bought this Investment Company for \$30,000, and were paying him \$20,000 a year.” He said: “ I mean, he has to make the \$20,000 a year first. There is nothing between us but this note of \$10,000, and he has done nothing for us, and I will call the note, and that will be the end of that.”

Q.—You still affirm that was the substance of Lord Shaugh-

LADY DAVIS (for Plaintiffs), Cross-Examination.

nessy's conversation with you on this occasion in reference to this Jennison matter?

A.—Yes.

Q.—Was Mr. Reaper present during the conversation?

A.—He called Mr. Reaper in and repeated it to him.

10 Q.—You had observed that Jennison had appeared in the Financial Statement Exhibit P-51 as being indebted to the Company in the sum of \$10,000 as a loan, had you not?

A.—Yes.

Q.—When did you first observe that?

A.—When I saw in the statement which I received. As I explained, I did not think Lord Shaughnessy would do that. I thought perhaps it was some friend of my husband to whom he had lent the money.

Q.—And you did not make any enquiry on the subject?

20 A.—No, because I knew Sir Mortimer was very apt to do that sort of thing.

Q.—Your husband was a very generous man?

A.—Very.

Q.—A man of large ideas, with nothing small in his make-up as far as dealing with other people was concerned?

A.—I think so.

Q.—He appreciated highly, and rewarded generously, services which he thought were well rendered, did he not?

A.—Yes.

30 Q.—How nearly can you fix the date on which you first consulted Mr. Montgomery, about which you told us in your examination-in-chief? Will you please refer again to your invaluable memorandum, and tell me the date?

A.—It was the 24th.

Q.—The 24th of what?

A.—The 24th of June, 1929.

Q.—Was that after you had lunched with Lord Shaughnessy and had the interview we spoke about?

40 A.—I suppose it would be.

Q.—Was it in the afternoon, or in the morning?

A.—I think it was in the afternoon.

Q.—As nearly as you can place it, the conversation in which Jennison and other matters were discussed between you and Lord Shaughnessy and Mr. Reaper was June 27th?

A.—Yes.

LADY DAVIS (for Plaintiffs), Cross-Examination.

Q.—Did you on that occasion suggest that the Incorporated Company should be run as an arm of the Estate?

Witness: On June 27th?

Counsel: Yes.

10

A.—Yes.

Q.—Was that the first time you had made that suggestion?

A.—Yes.

Q.—Where did you get this phrase about running the Company as an arm of the Estate? I am rather struck by the phrase, and I would like to know where it came from.

A.—As a matter of fact, on the 27th I do not think I used the phrase “an arm of the Estate.” I have learned it since.

20 Q.—I suggest that you learned it during your numerous discussions with your learned Counsel.

A.—I probably first heard it in a lawyer’s office.

Q.—That is where it came from?

A.—What I did say was that it should be run as an Estate.

Q.—This defining the relations between the Incorporated Company and the Estate as running the Company as an arm of the Estate you first got after you had taken advice of Counsel in reference to Estate matters?

30 A.—Only the expression “arm of the Estate.”

Q.—That is what I refer to.

Mr. Geoffrion: It is the body of the Estate; not an arm of the Estate.

By Mr. Campbell, continuing:

40 Q.—When did you first raise the question with your co-Executors, Lord Shaughnessy and Mr. Reaper, as to your right to have something representing your surplus residuary revenues? When did that question first come up for discussion between you and your co-Executors?

A.—I do not think we ever discussed it. I do not think I ever discussed it. The only thing I ever said to Lord Shaughnessy and Mr. Reaper was why did we not get more than the \$67,500 a year, when Sir Mortimer told me our income should be around \$400,000

LADY DAVIS (for Plaintiffs), Cross-Examination.

a year. There has never been any statement to them otherwise than that.

Q.—What was the date of that conversation?

A.—June 27th.

Q.—Was that the first occasion on which the subject (not necessarily in those words) was discussed between you and your co-
10 Executors?

A.—Yes.

Q.—Is it not a fact than when you mentioned what your husband told you about the proportions of this residuary revenue you suggested it was going to be \$400,000 divided between yourself and Mr. Mortimer Davis, and not \$400,000 each?

A.—No.

Q.—Are you quite clear on that?

A.—I am quite clear. \$400,000 each.

20 Q.—How long did this interview of June 27th last?

A.—My recollection is about twenty minutes, or thirty minutes perhaps.

Q.—Was it in the morning, or in the afternoon?

A.—I think it was in the morning.

Q.—Do you know what you did after you left the interview? Do you remember where you went?

Witness: Directly after the interview?

30

Counsel: Yes.

A.—No. I probably went to see Mr. Montgomery.

Q.—Do you remember where you lunched that day, and with whom?

A.—No.

Q.—I suggest you lunched with Lady Shaughnessy.

40

Witness: On June 24th?

Counsel: On the day of this interview.

A.—Perhaps. I do not remember.

Q.—And did you tell her you had been down to see her husband and had talked over Estate matters?

A.—Perhaps.

LADY DAVIS (for Plaintiffs), Cross-Examination.

Q.—Do you recall the circumstances?

A.—I do, now that you mention it. I do remember saying at one time I had had an interview with Lord Shaughnessy.

Q.—And that he had been very kind, and given you full explanations in reference to Estate matters?

10 A.—Quite so. I said he had been very kind, and I thought it was particularly nice that he concurred with my wishes, and that he was going to call Jennison's note, and run it as an Estate.

Q.—Did you tell Lady Shaughnessy about the Jennison note?

A.—I probably did.

Q.—Have you any recollection of telling her anything about the Jennison note?

A.—No.

Q.—Your report to Lady Shaughnessy was, speaking generally, that Lord Shaughnessy had been kind and considerate, and had given you the information for which you had asked?

20 A.— Yes, that Lord Shaughnessy had impressed me that way when I left him—that he was going to do everything he could; that he was going to run it as an Estate; that he was not going to speculate; and that he was going to call the Jennison note.

Q.—What was the occasion on which you picked up, in the manner you have told us, this statement of the affairs of the Incorporated Company as at April 30th?

A.—That was the time I picked up the statement.

Q.—That was the same occasion?

30 A.—Yes. My first visit there.

Q.—Was your picking it up quite inadvertent?

40 A.—I have been perfectly frank about it. When I went in I noticed a statement which was at the left of Lord Shaughnessy, and I read on it: "Statement, Sir Mortimer Davis, Incorporated." As I had asked Lord Shaughnessy to go over the statements with me, the thought ran through my mind that he had the statement there to go over with me. I sat there, and I had those other statements in my hand, and I had a lot of mail in my hand. I did not think of it again. When I left the office I picked up all the papers before me, and this paper was with them.

Q.—Was that quite inadvertent, or did you pick it up because you thought it should have been shown to you and had not been?

A.—Oh, no. I did not think it should have been shown to me, and had not been, deliberately.

Q.—You did not ask specifically on that occasion to see it?

LADY DAVIS (for Plaintiffs), Cross-Examination.

A.—No. I had forgotten about it in the course of the discussion. Lord Shaughnessy seemed quite willing to call Jennison's note.

Q.—The next interview you had with Mr. Reaper was early in July, 1929?

A.—Yes.

Q.—Did you fix the date? If you did, I am not clear on it. Was it about the 4th?

10 A.—Yes, it would be the 4th.

Q.—On that occasion you brought back to Mr. Reaper this statement of Sir Mortimer Davis, Incorporated, as at April 30th, 1929, to which you have just referred?

A.—Yes.

Q.—Which has been filed as Exhibit D-11 in this case?

A.—Yes.

Q.—I think you told us in your examination-in-chief that you had noted in pencil the different items in this statement which you
20 wished to discuss with Mr. Reaper?

A.—Yes.

Q.—Looking at Exhibit D-11, and turning over the pages as we come to them, the first item that seems to be ticked off in lead pencil is the item on page 3 headed: "Receipts and Accrued Revenue, April, 1929; Cadillac Coal Company, Limited, \$450,000?"

A.—Yes.

Q.—And I think you told us Mr. Reaper explained that to you as being a bookkeeping entry?

A.—Yes.

30 Q.—Did he tell you that they had, first of all, sold the property for \$500,000, and then subscribed for \$450,000 of stock and \$50,000 of bonds?

A.—No, he did not.

Q.—He did not give you the details of it?

A.—What he said was that it was a bookkeeping cross entry. I said: "How much money did you put in it? Did you put any cash in it?" He said: "Yes, but we put very little cash in it." I said: "How much?" and he said: "\$100,000."

40 Q.—The \$100,000 to which he referred had nothing to do with this item of \$450,000?

A.—No. I marked that so that I would not forget to ask him about it.

Q.—The second item ticked in pencil is on the next page, and again refers to Cadillac Coal Company: 90,000 shares, at \$5 each, \$450,000?

A.—Yes.

LADY DAVIS (for Plaintiffs), Cross-Examination.

Q.—That would be the cross entry, I take it, to which Mr. Reaper referred on the previous page?

A.—Yes.

Q.—The next entry ticked off in pencil by you is the Investment Foundation, Limited, 3,000 shares, at \$15, common stock, \$45,000?

A.—Yes.

10 Q.—Did you ask some explanation about that?

A.—Yes, I asked him what it was.

Q.—And was that the first time you discussed that subject with your co-Executors?

A.—Yes.

Q.—Was it the only time you ever discussed it with them?

A.—No, I think it was mentioned once after.

Q.—On what occasion?

20 A.—I do not remember. I remember Lord Shaughnessy saying it was a very good investment. He was not at this meeting, so it could not have been on this occasion.

Q.—The next item ticked in pencil is in reference to Cadillac Coal Company, Limited, loan account, \$15,740.42?

A.—Yes.

Q.—And the last item ticked in pencil on this statement is the item of Donations, \$2,830?

A.—Yes.

Q.—Did you enquire what those donations consisted of?

30 A.—Yes. I asked him what the donations were, and he said Sir Mortimer had been in the habit of giving this charity \$10,000 a year. I said: “Sir Mortimer is dead now, and we have a lot of liabilities to meet, and I think conditions are different, and you should not make donations of that sort.”

Q.—Was that the first time you had expressed disapproval of any donations?

40 A.—I think on this occasion I also asked Mr. Reaper how much money was being spent for the Y.M.H.A. He was rather vague about it. He said the lot cost so much, and the building cost so much. I said: “Let me know how much, in all.” And he said: “About \$410,000.” I said: “That is a tremendous amount of money. Sir Mortimer never intended to spend anything like that for that building.”

Q.—All I am asking at the moment is whether this occasion was the first time you had been critical in your observations in regard to those donations?”

A.—Yes, I think it was.

LADY DAVIS (for Plaintiffs), Cross-Examination.

Mr. Campbell: There are no other items ticked in pencil on this Statement Exhibit D-11, as far as I can observe.

By the Court:

10 Q.—In your examination-in-chief you said that you had met a Mr. Corbett, who was a friend of your husband, and he advised you to look after the Estate matters yourself, and to watch them yourself?

A.—Yes.

Q.—When was that?

A.—He told me several times. I remember him first telling me in November, 1928. He told me it was Sir Mortimer's wish that I familiarize myself with the affairs, and that I should make a point of going to America at least twice a year.

20 Q.—Did you see Mr. Corbett, or did you communicate with him, subsequently, between, say, November, 1928, and May, 1929?

A.—We are neighbors, you see, and I see him quite often.

Q.—At Cannes?

A.—At Cannes, and in Paris.

Q.—So you saw him frequently?

A.—Yes.

Q.—And he repeated that?

A.—Yes.

Q.—When was Mr. Phillips substituted to Mr. Marler as Notary for Sir Mortimer Davis or for the Estate?

30 A.—I do not know.

Q.—Do you know whether Sir Mortimer's last will was drawn by Mr. Marler?

A.—I know it was not drawn by Mr. Marler. It was drawn in Paris.

Q.—Are you sure of that?

A.—I am positive of that.

40 Q.—Do you know whether his previous wills had been drawn by Mr. Marler?

A.—I do not know by whom they were drawn.

And it being 4:40 o'clock, the further testimony of the witness is continued to Tuesday, May 6th, 1930, at 10:30 o'clock in the forenoon.

LADY DAVIS (for Plaintiffs), Cross-Examination.

And on this sixth day of May, in the year of Our Lord, one thousand and thirty, personally came and re-appeared:

LADY ELEANOR DAVIS

10 and her cross-examination was continued by Mr. Campbell, K.C., of Counsel for defendants, as follows:

By Mr. Campbell:

Q.—Lady Davis, do you recall telling me during your examination on discovery which was referred to yesterday that you had at no time suggested to Lord Shaughnessy or Mr. Reaper, that the Incorporated Company should declare a dividend. Do you remember telling me that?

20 A.—Yes.

Q.—And that was true?

A.—Yes.

Q.—When did you first make anything approaching a threat of trouble for your Co-Executors, as near as you can fix the date?

A.—Well, I should think that my visit to Mr. Reaper early in July was rather in the way of a warning that I was not satisfied.

Q.—That began to indicate that there might be trouble?

A.—Yes.

Q.—I think you told Mr. Reaper that there would be trouble?

30 A.—Yes, if they continued that policy.

Q.—And I think you placed the date of that meeting about the 4th of July?

A.—Yes.

Q.—So that from the 4th of July, 1929, on relations for the first time began to be a little strained?

A.—Yes.

Q.—Up to the 4th of July, 1929, your relations with your Co-Executors had been quite amicable?

A.—Yes.

40 Q.—When was it that you discussed with Lord Shaughnessy the propriety of appointing Mr. Donaldson to the Board of Directors of the Incorporated Company?

A.—Very soon after my interview with Mr. Reaper that we have just spoken of.

Q.—Have you got that valuable memorandum of yours?

A.—I think I have.

Q.—Will you look at it?

LADY DAVIS (for Plaintiffs), Cross-Examination.

By the Court:

Q.—The 23rd of July?
A.—It was before that.

By Mr. Campbell:

10 Q.—Let us look at your memorandum, Lady Davis. We will look at it together. As a matter of fact, have you any objection to filing this memorandum?

Mr. Campbell: Your Lordship, the witness has had occasion to refer so often to this memorandum that we may have occasion also to refer to it, and I invite the witness to file it.

20 Mr. McKeown: I object to that. Let me see it first. I never heard of such a proposal before. Mr. Campbell has been looking at it for his own purposes, but I do not think we will have this document put in. I think I understand Mr. Campbell's point clearly and I think all purposes will be served after giving him full access to this document before the Court without having it put into the record.

Mr. Campbell: Will Your Lordship allow the filing of it.

His Lordship: I would like to see it first.

30 Mr. Campbell: The witness has had constant access to it and has referred to it repeatedly to refresh her memory, and we would like to have an equal advantage with her in refreshing our memory. I would like to have it in the record.

His Lordship: I really do not see any objection to the filing of that memorandum.

40 Mr. McKeown: It is a most unusual application and my learned friend is quite unfair in asking to have it in the record. He has got it. What more does he want, unless he has some ulterior motive.

His Lordship: Of course, it may be misleading. If that was put into the record and the Court of Appeals were called upon to investigate and examine it, it may give rise to error in the interpretation of it.

LADY DAVIS (*for Plaintiffs*), *Cross-Examination*.

Mr. McKeown: I ask that it be not filed.

Mr. Campbell: What is Your Lordship's ruling?

His Lordship: Well, go on with your examination, and if you feel that you cannot go on without it, I will see.

10 Mr. Campbell: Does Your Lordship suggest I suspend the filing of it?

His Lordship: Yes.

20 Mr. McKeown: In order that there may be no suggestion that we have anything to fear from this, and while my first idea was it should not be filed as it was an extravagant request by Mr. Campbell, in order that everything may be as Mr. Campbell would like to have it and that he may never have any occasion for blame, he can file it if he wishes.

Mr. Campbell: Thank you, Mr. McKeown. I will, if the Court will allow me.

Mr. McKeown: Of course, this memorandum was prepared for Counsel and client, but I think it is a most extravagant demand.

Mr. Campbell: It is only for the purpose of fixing these dates.

30 Mr. McKeown: Oh, Mr. Campbell, have a little more courage. I prepared that with Lady Davis for the purpose of enabling Lady Davis to have before her verified dates.

Mr. Campbell: That is exactly why I thought it should go in the record.

Mr. McKeown: You insisted on having it, now you have it, you can proceed.

40 Q.—Will you file this memorandum as Exhibit D-108?

A.—Yes.

Q.—Will you look at your memorandum which has been filed as Exhibit D-108, and verify the date of the interview with Lord Shaughnessy at which the appointment of Mr. Donaldson was discussed?

A.—I did not mention Mr. Donaldson's name at my first inter-

LADY DAVIS (for Plaintiffs), Cross-Examination.

view with Lord Shaughnessy. I telephoned him, and asked if I could have Mr. Donaldson as a representative, and as I explained, these dates are not absolutely accurate, and I have it more clear, about July 6th, "Phoned refusing Donaldson". Then Lord Shaughnessy asked me for an interview.

Q.—When was it that Lord Shaughnessy defined his objections to the appointment of Mr. Donaldson?

10 A.—Well, he objected over the telephone, and when I saw him, he gave me certain reasons.

Q.—Mr. Donaldson was the General Manager of the Montreal Trust Company, you have told us?

A.—Yes.

Q.—Who was the President of the Company?

Witness: Of the Montreal Trust Company?

Counsel: Yes.

20

A.—Well, I will have to plead ignorance. I do not know.

Q.—Was it not explained by Lord Shaughnessy?

A.—No.

Q.—I think it is in evidence in this case, if not, let us put it in evidence, that Sir Herbert Holt is the President of the Montreal Trust Company?

A.—Yes.

30 Q.—Did you know, during Sir Mortimer's lifetime, of any little friction or unpleasantness between himself and any of the officers of the Montreal Trust Company. I do not want you to go into the details of it Lady Davis?

A.—Well, I would not if I were you.

Q.—Was there, in fact, some little friction between Sir Mortimer

A.—Lord Shaughnessy told me there was a little friction between

Q.—I am asking you if you knew there had been?

40 A.—I knew that Sir Mortimer admired Sir Herbert Holt very much, and had a great deal of respect and admiration for his ability.

Q.—But did you know there had been any discussion with him or a difference of opinion?

A.—Lord Shaughnessy told me so.

Q.—Did you know who were the bankers of the Incorporated Company during the time of your marriage with Sir Mortimer?

A.—I did not.

Q.—Are you aware that at the time the bankers of the Incor-

LADY DAVIS (for Plaintiffs), Cross-Examination.

porated Company was the Union Bank of Canada? You have heard that stated in the case, have you not?

A.—Well, I know my husband liked the Union Bank of Canada.

Q.—He had banked with the Union Bank for many years, had he not?

A.—Well, he told me at one time he had done so.

Q.—And when the Union Bank of Canada was absorbed by the
10 Royal Bank, he changed his bankers did he not?

A.—I don't know.

Q.—Are you not aware of that?

A.—No, I am not.

Q.—Have you not heard it so stated here?

A.—Well, but you said at the time he changed. I don't know at which time he changed. I do know that latterly he banked with the Bank of Commerce, and before that bank with the Union Bank, but when he changed, I have no idea.

Q.—You do not know that a change took place immediately fol-
20 lowing the absorption of the Union Bank by the Royal Bank?

A.—I do not.

Q.—You have told us in your deposition that the Montreal Trust Company was intimately associated with the Royal Bank. You know that to be the fact, do you not?

A.—Yes.

Q.—So, if there had been any cause, justified or unjustified, of disagreement between Sir Mortimer and the Royal Bank or the affiliations of the Royal Bank, would that be a reason in your mind
30 against the appointment of Mr. Donaldson as an individual?

Witness: Would it be a reason in my mind?

Counsel: Yes.

A.—I do not know how to answer that. Why should it be a reason in my mind because my husband had changed his bank?

Q.—And, if your husband had had a disagreement with the Royal Bank, or any of its prominent officials, you did not think that
40 was a reason in your mind why respect should be had to that state of mind in the appointment of Mr. Donaldson at the time you suggest?

A.—I know nothing of the things you are assuming. As far as I know, I have told you Sir Mortimer had a great deal of respect for Sir Herbert Holt's ability.

Q.—And, I share your husband's opinion. But, do you not know there was a little difficulty?

LADY DAVIS (for Plaintiffs), Cross-Examination.

A.—No, I do not.

Do you want me to tell you the reasons Lord Shaughnessy gave me?

Q.—I do not think the details of the discussion are relevant to this controversy.

What were the objections Lord Shaughnessy suggested to you he had to the appointment of Mr. Donaldson as a member of the
10 Board of Directors of the Incorporated Company? Did he voice them?

A.—Yes.

Q.—What were they, in effect?

A.—I would rather not say.

Mr. McKeown: I happen to know thoroughly the subject on which Counsel is now examining the witness, and I am sure Counsel does not know it. My suggestion is that while Lady Davis might properly communicate them to Your Lordship and to my learned
20 friend, if he knew the facts he would never ask the question.

I do not think the question should be answered in open Court and in the presence of a battery of representatives of the press, and I say this quite as much in consideration of my learned friend's client as in any other respect. I have no objection whatever to Lady Davis disclosing to Your Lordship the exact words used by Lord Shaughnessy, but it will not further this case, and will not further my learned friend's interests; and I think Your Lordship will agree with me if you knew what the answer would be.

30 I have no objection to Lady Davis writing the answer and handing it to Your Lordship, but I think my learned friend had better withdraw the question, otherwise his client will hear something which is not very pleasant.

His Lordship: I think it would be as well to postpone it until the afternoon, and you may decide it between yourselves in the meantime.

Mr. Campbell: I am quite willing to do that, Your Lordship.

40 By Mr. Campbell (continuing):

Q.—On what occasion in Lord Shaughnessy's dealings with you did he first exhibit anything in the nature of resentment at your attitude?

A.—The day of the interview when he said I cast reflection upon his character.

LADY DAVIS (for Plaintiffs), Cross-Examination.

Q.—Was that the interview you fixed as about July 9th?

A.—You have taken my paper, have you not?

Counsel: No, I think I left it with you.

A.—Anyway, it was about that date. After the telephone message.

10 Q.—That interview of July 9th was really the beginning of strained relations between you and Lord Shaughnessy, I take it?

A.—Yes.

Q.—Between July 9th and the date of the interview which Mr. George McDonald had with Lord Shaughnessy, to which he has testified (and which has been placed as of July 25th) did you have any consultations or interviews with Lord Shaughnessy?

A.—Mr. Montgomery had.

Q.—But, I am speaking about yourself.

20 A.—If you will let me see the paper I will tell you. I cannot remember it all.

Q.—I will show you the paper in a minute. Without seeing the paper can you recall any?

Witness: Between July 9th and when?

Counsel: Between July 9th and July 25th, can you recall any interviews with Lord Shaughnessy?

30 A.—I have to go through it in my mind. There were some telephone calls.

Q.—But, I am eliminating telephone calls.

Mr. McKeown: Let the witness complete her answer.

By Mr. Campbell (continuing):

Q.—I am eliminating any telephone interviews. I am speaking of interviews at which you saw Lord Shaughnessy face to face?

40 A.—I asked Lord Shaughnessy to have Mr. McDonald put on the Board.

Q.—Was that by telephone?

A.—I cannot remember unless I looked at the paper.

Q.—You cannot recall whether it was by telephone or by interview?

A.—No, I cannot.

Q.—Let us look at the memorandum Exhibit D-108

LADY DAVIS (for Plaintiffs), Cross-Examination.

Mr. McKeown: You have no right to ask the witness a question on a document without showing the document first. That is elementary.

Mr. Campbell: I am entitled to test the accuracy of the recollection of the witness in every detail.

10 Mr. McKeown: By legal methods.

Mr. Montgomery: And, as a matter of fact, you put the memorandum into the record, so she is entitled to see it.

Witness: You asked me whether I saw Lord Shaughnessy, or whether I telephoned. It is not written here whether I did either. I should think I telephoned.

20 His Lordship: My recollection is Lady Davis mentioned nothing as having taken place between July 11th and July 23rd. I may be wrong about these dates. I had a note to ask her that question.

Mr. Campbell: That is the situation I wanted to clear up. I am a little in doubt about it.

By Mr. Campbell (continuing):

30 Q.—Can you clear it up from the memorandum Exhibit D-108?

A.—I think I telephoned Lord Shaughnessy and asked him by telephone if Mr. McDonald would be acceptable, and he said yes, that he would be.

Q.—I have eliminated telephone interviews for the purpose of my question. You had no personal interview?

Mr. McKeown: She has said she does not remember now. Do not put a statement into her mouth.

40 Mr. Campbell: I am seeking to verify from her memory that she has no record of any such interview.

Witness: No, I have not.

By Mr. Campbell (continuing):

Q.—You are satisfied there was not one?

LADY DAVIS (*for Plaintiffs*), *Cross-Examination*.

A.—No, I am not. I have told you my recollection.

Mr. McKeown: The evidence of the witness in chief was quite clear on the point: that she had spoken to Lord Shaughnessy by telephone, and he had agreed to the suggestion. Then there was this pretext that the Board had to be changed, or something; and by his own letter it is established to be before the 25th. The proposition
10 is perfectly plain.

His Lordship: I will not either remove Lord Shaughnessy or keep him in office because Lady Davis saw him or did not see him between July 11th and July 25th.

By Mr. Campbell (continuing):

Q.—When was it Lord Shaughnessy first suggested to you that if he accepted Mr. McDonald on the Board of Directors it would
20 be necessary for you to resign?

A.—That was by telephone.

Q.—What was your answer to that suggestion?

A.—I said I had no idea of resigning.

Q.—Was that really the first time you and Lord Shaughnessy had more or less come to grips on a definite difference of opinion?

A.—No, I would not say that. We came to grips on a definite difference of opinion about Jennison, and about the Coal Company, and about his speculations of all sorts. I thoroughly disagreed with
30 him.

Q.—You expressed criticism and disapproval of those things, but I understood from your testimony in chief he acquiesced in your criticism and agreed to discontinue for the future?

A.—He agreed, but he continued to do it.

Q.—Has he gone into any such ventures since?

A.—I cannot speak about what he has done since, because I have not seen the Statements.

Q.—As far as you are informed at the moment, he has had regard to your criticism as far as concerns going into new ventures of
40 that character?

A.—I do not want to argue with you, Mr. Campbell, but I think some of the old ones are involving enough. The Cadillac Coal Company, for instance, has tripled its expenditure.

Q.—We were in the boat before, and we have to row to shore if we can. But, did he embark in any other craft that you know of?

A.—To my knowledge, no.

LADY DAVIS (*for Plaintiffs*), *Cross-Examination*.

His Lordship: Was there a Statement due on March 31st?

Mr. McKeown: We ought to have one every month, but we did not get any at all. We are hoping we will get one in September, if there is any Company there to issue one.

10 Mr. Campbell: And, by that time we may have finished this enquete.

By Mr. Campbell (continuing):

Q.—In any event, this conversation by telephone between yourself and Lord Shaughnessy, wherein, he suggested he would be glad to have Mr. McDonald on the Board providing you resigned, was followed by your interview with him on August 8th, and an interview on the same day between him and Mr. Montgomery representing you?

20 A.—I do not know. I have explained all through that those dates are approximate; they are not accurate. But, that was about the time, August 8th, when I went in to see Lord Shaughnessy and told him that unless he discontinued speculating, and would treat the Incorporated Company as an arm of the Estate I would appeal to the Court.

Q.—What I want to bring you to is the fixing quite definitely of the declaration of war, and I suggest it was a declaration of war, August 8th, 1929.

30 Mr. McKeown: Why put words of that kind into the mouth of Lady Davis?

Mr. Campbell: I am entitled to put them.

Witness: I would not call it a declaration of war.

By Mr. Campbell (continuing):

40 Q.—You would not?

A.—No.

Q.—In any event, it was an intimation you would take the proceedings which you subsequently began?

Mr. McKeown: I do not think that is fair either, in the light of what we know happened. There is a most unfair insinuation contained in the question.

LADY DAVIS (for Plaintiffs), Cross-Examination.

Mr. Campbell: My learned friend should not caution the witness.

Mr. McKeown: And I am not cautioning the witness.

His Lordship: In any event, the correspondence is in the record.

10 Mr. McKeown: But why call it a declaration of war?

His Lordship: Perhaps to give it a grand appearance.

Mr. McKeown: In order to add something to the question which would not be there otherwise.

Mr. Campbell: It subsequently achieved respectable dimensions.

20 (And it being 12.40 o'clock, the further testimony of the witness is continued until 2.30 o'clock in the afternoon.)

And at 2.30 o'clock in the afternoon on this 6th day of May, 1930, personally came and reappeared the said witness

LADY DAVIS

30 and her cross-examination was continued as follows:

Mr. McKeown: Before resuming the testimony of Lady Davis, upon reconsideration during the lunch hour of the question asked by my learned friend, Mr. Campbell, as to the reasons given by Lord Shaughnessy for refusing to accept Mr. Donaldson as a Director of the Incorporated Company; having conferred with Associate Counsel, we have decided to withdraw our objection to the question and to permit the answer to be given, in order that there may be no mis-
40 impression.

By Mr. Campbell:

Q.—You told us in your examination-in-chief (and you also referred to it in your cross-examination, I think) that Lord Shaughnessy declined to accept Mr. Donaldson as your nominee on the Board of Directors of the Incorporated Company, in addition to

LADY DAVIS (for Plaintiffs), Cross-Examination.

yourself. Did he give you any reason for declining Mr. Donaldson as a Director?

A.—Yes.

Q.—Will you state what the reason was?

A.—When I went to the office to see Lord Shaughnessy he was very annoyed that I had gone to see Mr. Montgomery, and he said that my husband did not like Sir Herbert Holt. I said my husband
10 had a great deal of admiration for Sir Herbert Holt's business ability, and I thought that he did like him. Lord Shaughnessy said: "Well, he did not." And he said: "George Montgomery is nothing but the hired assassin of Sir Herbert Holt, and Mr. Donaldson is his aide."

Q.—Is that where the conversation ended?

A.—That is all; that part of it.

Q.—Did he express any objection to Mr. Donaldson individually, or by reason of his association with the Montreal Trust Company?

A.—I have just told you.

Q.—Was that the whole conversation?

A.—That is the whole conversation. That was his objection to Mr. Donaldson.

Q.—I suggest that he explained to you the cause of the disagreement between Sir Herbert Holt and Sir Mortimer.

A.—I am sorry; he did not.

Q.—Do you know what was the cause of that disagreement? They had been friends, had they not?

A.—Yes.

Q.—And the friendship cooled towards the end?

A.—Yes. I am saying yes, Mr. Campbell; I am agreeing with you. I do not know anything about the quarrels they may have had.

Q.—Did you know that Sir Herbert was a partizan of the first Lady Davis in the disagreement?

A.—No, I do not. I know he is one of her Trustees, and Sir Mortimer always said he was very glad he was.

Q.—He was one of her Trustees under the arrangement that was come to and the Trust that was set up as the result of that arrangement?

A.—Yes.

Q.—At this interview in question were both you and Lord Shaughnessy somewhat wrought up?

A.—Yes. I have explained that Lord Shaughnessy was very annoyed. He said I did not trust him, and he referred to the sacred trust.

Q.—Lord Shaughnessy was very annoyed on that occasion, was he not?

LADY DAVIS (for Plaintiffs), Cross-Examination.

A.—Very annoyed.

Q.—At what he considered your want of confidence in him?

A.—Yes.

Q.—From the time of this interview, which I have qualified perhaps melodramatically as a declaration of war, I take it you acted on the advice of Counsel?

10 A.—Yes. I would like to say, however, that I never repeated that conversation to Mr. Montgomery.

Q.—When did you first tell him about it?

A.—Today, at luncheon.

By Mr. Geoffrion:

Q.—After the lunch adjournment today?

A.—Yes.

20 Mr. Montgomery: I was as much in the dark as any one else.

By Mr. Campbell (continuing):

Q.—You referred in your testimony to having seen rumors in the press—I take it, in the autumn of 1929—about possibilities of mergers in the distilling industry?

A.—I do not remember which month it was, but I did see them in the fall of 1929.

30 Q.—Did you see a number of articles?

A.—Yes, I think I saw as many as two, anyhow.

Q.—Did you see the Articles which appeared in the Financial Post?

A.—I really could not tell you which papers now.

Q.—You do not know whether you saw the Articles which appeared in the Financial Post?

A.—No.

By the Court:

40 Q.—Were you a constant reader of the Financial Post at that time?

A.—I was, at that time, because they sent them to me. I am not now, nor was I before.

By Mr. Campbell, continuing:

LADY DAVIS (for Plaintiffs), Cross-Examination.

Q.—At that time they sent you the copies of the Financial Post containing information on this subject?

A.—Yes.

Q.—Among others, did you see the copy of the Financial Post of October 10th, 1929, containing the clipping the date of which we could not establish at the time the other clippings were filed??

10 Mr. Campbell: I may say my Lord, there is another clipping we were going to put in at the time, but we had not the date of it because the date had been cut off. Having now verified the date from the Financial Post I would like to file the clipping.

Witness: No, I did not see this that I remember.

Mr. Campbell: If my learned friends do not object I will file it. I do not want to have to call Mr. Langdon, whose letters are attached to the clipping. It was just a question of establishing
20 the date of the appearance of the Article.

His Lordship: What is the date?

Mr. Campbell: October 10th, 1929. I will file the clipping as Exhibit D-109, and I will file as Exhibit D-110 Mr. Langdon's letter establishing the date of the clipping. This letter is dated April 16th, 1930, and it establishes the date of the appearance of the Article. I may say this letter is addressed to my firm.

30 We had the clipping, but we were unable to verify the date of its appearance, so I communicated with the Financial Post.

By the Court:

Q.—Were those papers sent you anonymously, Lady Davis.

A.—No, your Lordship, not anonymously.

By Mr. Montgomery:

40 Q.—They were not sent to you by Counsel?

A.—No.

By Mr. Campbell, continuing:

Q.—From the time the difficulty started between you and Lord Shaughnessy, in August, 1929, was your brother aware of the

LADY DAVIS (*for Plaintiffs*), *Cross-Examination.*

situation—I do not mean in detail, but was he aware of the general situation?

Witness: You mean of my disagreement with Lord Shaughnessy?

Counsel: Yes.

10 A.—No. I took particular pains to try to keep my brother out of it entirely.

Q.—When did he first learn of it, as far as you know?

A.—I really could not tell you. I have tried not to discuss this with my brother. He is an employee of the Company, and I did not consider he had anything to do with the matter.

Q.—When did any of the employees of the Company first become aware of the existence of this friction, as far as your information goes?

20 A.—I could not answer that.

Q.—You cannot say?

A.—No.

Q.—When did you first mention the matter to anybody in the employ of the Company?

A.—I do not remember ever going to talk over this affair with anyone in the Company.

30 Q.—I do not mean that you went to the office of the Company to make a complaint or anything of the kind, but when did you first suggest, or intimate, to anyone in the employ of the Company that there was trouble between you and Lord Shaughnessy?

A.—Naturally my brother is not so stupid that he would not know that Lord Shaughnessy and I had disagreed in some way, but I never told him any details, nor did I discuss it with him.

Q.—Did he know?

A.—I do not know how much he knew. I did not discuss it with him, nor did I tell him about it.

The first employee who came to me to discuss it with me was Mr. Lauster.

40 Q.—Had you mentioned the matter to anyone in the employ of the Company before that?

A.—No, I do not think I did.

Q.—Had you mentioned the matter in any casual way to Mr. Hersey, for instance?

A.—No.

Q.—Did Mr. Hersey know anything about the existence of a difficulty between you and Lord Shaughnessy?

A.—He did not know it from me; if he knew it.

LADY DAVIS (for Plaintiffs), Cross-Examination.

Q.—Did he mention the matter to you, or did he indicate to you that he did know there was trouble?

A.—No.

Q.—You referred to a Meeting of Directors of the Incorporated Company, held on October 18th, 1929, which you attended?

A.—Yes.

10 Q.—And, as I understand it, at that Meeting Lord Shaughnessy denied that Mr. Jennison's visit to England had anything to do with a prospective merger of Alcohol?

A.—Yes.

Q.—Or McNish?

A.—Yes. He gave me his word of honor.

Q.—That Mr. Jennison's trip had nothing to do with any proposal of merger?

A.—Yes.

He also gave me his word of honor that there was no merger of any sort that he knew of.

20 Q.—At that Meeting was there not some discussion of the possibility of his being approached to discuss?

A.—He had said no one had come near him, and that the minute they would come near him he would let me know.

Q.—Did you not make a comment on that very subject, in answer to that suggestion?

A.—No.

30 Q.—Do you recall that you make a remark a propos of that, as to what Lord Shaughnessy's attitude would be in the negotiations, and the guarantee you felt you had as to his conduct of the negotiations?

A.—No.

Q.—Do you not remember stating that as he had a 5% interest you felt satisfied that he would not sell Alcohol out on unfair terms?

A.—No, I did not say that. You are twisting my words.

Q.—Or, did you not use words to that effect?

40 A.—No. What I did say was "One would think one would not have to worry about it, with your contended 5% interest." But I never expressed my confidence in Lord Shaughnessy in the merger, because I do not think Lord Shaughnessy is competent to handle a merger of that sort.

Q.—You have intimated, and I think you have told us quite clearly, and we are under no delusions as to your opinion, but what I was interested in was what you said on this particular occasion in reference to that question of merger?

A.—That is exactly what I said. When Lord Shaughnessy protested so much, and asked me why I was so worried, I said: "One

LADY DAVIS (for Plaintiffs), Cross-Examination.

should think I should not have any fears." I did not say I had no fears, because I had great fears.

Q.—Just what was your remark?

A.—"One should think I should not have any fears, considering that you have a 5% interest."

10 Q.—Was it at this meeting that you asked some question about the continuing of the farm at Ste. Agathe?

A.—Yes.

Q.—What was Mr. Reaper's answer?

A.—I thought it a most stupid answer. I could not make it out.

Q.—What was it?

A.—Lord Shaughnessy said to Mr. Reaper: "Why have we continued the farm?" and Mr. Reaper said: "To supply Sir Mortimer with milk and eggs?"

Q.—Had Mr. Reaper taken leave of his senses?

20 A.—I do not know, I am sure. I am repeating his exact words. Q.—Mr. Reaper is not a drinking man, is he?

A.—No, he does not look one.

Q.—And, Sir Mortimer had been dead for how long?

A.—Nearly two years.

Q.—In any event, that is your recollection of what Mr. Reaper said?

A.—Yes, and it is accurate.

Q.—Did you make any comment on that answer?

A.—No. I did not think it called for comment.

30 Q.—You did not venture to remark that Sir Mortimer had been dead for some time?

A.—That was known to Mr. Reaper, was it not?

Q.—I think so. In any case, you made no comment?

A.—No, I made no comment; except, perhaps in an expression of the face.

Q.—And, I take it, some mental comment?

A.—Oh, yes.

Q.—When did you first learn there was any question of the legality of Sir Mortimer Davis, Incorporated, lending you money?

40 A.—I do not know when I first heard about the legality of it, but I knew it was not right to lend anybody money. It was not that sort of thing. It should be carried on as an Estate. People should not borrow money from Sir Mortimer Davis, Incorporated.

Q.—But, you have produced a letter, dated October 24th, 1929, in which you make certain explanations and send a cheque in payment. I want you to get, as nearly that date as you can, when you

LADY DAVIS (for Plaintiffs), Cross-Examination.

were informed that, in the opinion of some people, it was illegal for you to be a borrower from Sir Mortimer Davis, Incorporated? I would like you to fix the date as nearly as you can?

A.—I should think I first learned of it in July.

Q.—July, 1929?

A.—July, 1929.

10 Q.—From your Counsel?

A.—Yes.

Q.—And, up to that time you had no idea of any illegality or impropriety in the situation?

A.—I would not say impropriety.

Q.—Well, any illegality.

A.—Yes.

Q.—You had been accustomed to see the Financial Statements of Sir Mortimer Davis, Incorporated, during the lifetime of your husband, had you not?

20 A.—Yes.

Q.—Did you know he was a constant borrower from the Incorporated Company?

A.—Yes. I also know he owned it. It was practically his.

Q.—I am not suggesting any impropriety. . . .

Mr. Geoffrion: The witness is entitled to complete her answer.

By Mr. Campbell (continuing):

30 Q.—Was he also a shareholder and a Director of the Company?

A.—He was.

Q.—Did you know that during Sir Mortimer's lifetime Lord Shaughnessy was indebted to the Company in the sum of \$50,000, which was arranged with Sir Mortimer?

A.—I did, but that is just exactly the point. It was a different thing when Sir Mortimer was alive, and when Sir Mortimer was dead.

40 Q.—That may be so, and I am not discussing that feature. I am asking you whether you knew in Sir Mortimer's lifetime Lord Shaughnessy had borrowed from the Company, with Sir Mortimer's consent and by his arrangement, the sum of \$50,000?

A.—Yes, I did know it.

Q.—You referred in your testimony to the fact that between August 31st, 1929, and September 30th, 1929, there was an increase in the Bank overdraft of Sir Mortimer Davis, Incorporated?

A.—Yes.

LADY DAVIS (*for Plaintiffs*), *Re-Examination*.

Q.—Were you also aware as to the fact and extent of the call loans then outstanding for the account of Sir Mortimer Davis, Incorporated?

A.—Yes.

Q.—What were they?

A.—\$880,000.

10 Q.—So, if they had overdrawn at their Bank, they had concurrently \$880,000 of money out on call at interest?

A.—Yes.

Q.—You terminated your testimony in chief by telling His Lordship that you concurred in the opinion of Mr. George McDonald that in your judgment the solution of these difficulties was the appointment of a strong Trust Company?

A.—Yes.

20 Q.—Have you any preference for any particular Trust Company?

A.—The strongest one we could get, yes. That is my preference.

Q.—Preferably the Montreal Trust Company?

A.—Not necessarily.

Q.—But, I am asking you whether it would be preferable—in your preference?

A.—I might say the only Trust Company I would object to would be the National Trust Company.

30 Q.—You have not any dominating preference for the Montreal Trust Company?

A.—The strongest Trust Company we could secure would be my preference.

Q.—Does the Montreal Trust Company come within your definition?

A.—I should think it would.

40 Mr. Geoffrion: There has been a big fight between the two Banks and the Trust Companies as to which is the stronger. Is it quite fair to ask the witness to pass judgment on that point?

Mr. Campbell: She has passed judgment on a number of other points.

Mr. Geoffrion: But, you have compelled her to pass on them.

Re-examined by Mr. McKeown, K.C., of Counsel for Plaintiffs.

LADY DAVIS (for Plaintiffs), Re-Examination.

Q.—In the course of your cross examination you were shown by my learned friend Mr. Campbell a notarial discharge of May 4th, 1928, by yourself to the Estate Sir Mortimer Davis, having to do with your marriage settlement?

A.—Yes.

10 Q.—And, covering a payment of \$200,000 made to you at that date?

A.—Yes.

Q.—Had you asked Lord Shaughnessy to pay that sum to you before you received it?

A.—No.

Q.—How did it come about it was paid to you?

A.—Lord Shaughnessy had the cheque, and he gave it to me. I had not asked for it. As I explained, he told me that 7% interest was due, and that he would rather pay me and discharge the liability.

20 Q.—He paid it, therefore, on his own initiative and without any demand by you?

A.—Yes, absolutely.

Q.—And, that was a day or two before you left Montreal to return to Europe, following the funeral, May 4th?

A.—Whenever it was: I do not remember exactly. It was in Lord Shaughnessy's office.

Q.—In order to make the matter perfectly clear: before you went there that day did you know that money was to be offered to you and that you were to receive it?

A.—No, I knew nothing about it.

30 Q.—Mr. Campbell asked you with reference to the Monthly Statements which you had seen, received by Sir Mortimer during his lifetime, concerning both his personal affairs and the affairs of the Incorporated Company; and Mr. Campbell drew from you that those Statements were not forwarded to you following Sir Mortimer's death. Did I understand you to say that at the interviews which you had with Lord Shaughnessy in Europe, in the summer of 1928 and again in 1929, that you made enquiry from him as to the condition of the Estate?

A.—Yes.

40 Q.—And, he gave you information?

A.—He always said everything was going on splendidly.

Q.—You have also spoken of the payment made by you for the McNish debentures, which I think you explained in your examination in chief amounted to some \$28,638.20; for which you said you gave your brother a cheque on May 5th, 1928, with instructions to give it to Mr. Reaper?

A.—Yes.

LADY DAVIS (for Plaintiffs), *Re-Examination.*

Q.—Have you withdrawn the cheque from the Bank, and will you please exhibit it?

A.—Yes, I have it here.

(Witness exhibits the cheque in question.)

10 Q.—Will you please produce this cheque as Plaintiffs' Exhibit P-243?

A.—Yes.

Q.—You note this cheque is drawn on the Canadian Bank of Commerce, St. Catherine-Metcalf Branch, is dated May 5th, 1928, payable to the order of Sir Mortimer Davis, Incorporated, for the amount of \$28,638.20, and is signed "Eleanor Davis." You also notice it is stamped by the Bank, and cleared under date October 5-6, 1928?

A.—Yes.

20 Q.—This is the cheque which was referred to by Mr. Reaper in the course of his evidence as having been received from your brother about the time it was put through the Bank, in October, 1928?

A.—Yes.

Q.—Will you exhibit to His Lordship the stub of your cheque book covering the cheque in question, and which may be seen as having been detached from its proper place and will you say whether this stub was filled out in your cheque book at the same time, and whether it is in the series cheque No. 4, cheque No. 5, cheque No. 6, followed by the other cheques, Nos. 7 and 8?

30

A.—Yes.

Q.—When did you remove this stub from your cheque book, and for what purpose?

A.—I removed it yesterday to bring it down to you, because I thought it was not necessary to bring the whole book.

Q.—And upon further advice of Council you were asked to bring the book and exhibit it?

A.—Yes.

40 Q.—Will you produce this stub from your cheque book, as Exhibit P-244?

A.—Yes.

Mr. McKeown: There are two further cheques, Your Lordship, to Mr. Reaper, on some other matters, but as they have not come up here I do not think we need deal with them.

By Mr. McKeown (continuing):

LADY DAVIS (for Plaintiffs), Re-Examination.

Q.—In connection with the 1,000 shares of Alcohol which you bought, you stated in your examination in chief, and reiterated in cross-examination, that your intention was that the Incorporated Company should buy them in the name of the Corporation, for the reasons which you have explained, and have them carried either with a broker or with a Bank for your account?

A.—Yes.

10 Q.—Have you with you the bought slip covering the purchase of those 1,000 shares in question?

A.—Yes.

Q.—Will you exhibit it, please?

(Witness exhibits the document in question).

Q.—Will you please produce this bought slip as Plaintiffs' Exhibit P-245?

A.—Yes.

20 Q.—From whom did you receive this bought slip Exhibit P-245?

A.—Lord Shaughnessy.

Q.—When?

A.—Accompanied by the letter sent in October, I think it was.

Q.—That is, when you sent your cheque in payment you received this bought slip of Redpath & Company, stock brokers, covering 1,000 shares?

A.—Yes.

30 By Mr. Campbell:

Q.—That is, October, 1929?

A.—Yes.

By Mr. McKeown (continuing):

Q.—And, this bought slip shows that under date October 11th, 1928, 1,000 shares of Alcohol "A" were purchased in the name of Sir Mortimer Davis, Incorporated, and the amount shown is \$40,470?

40 A.—Yes.

Q.—And, Lord Shaughnessy turned this slip over to you with your stock certificates in October, 1929?

A.—Yes.

Q.—Was that the form in which you wished the purchase to be made: through a broker?

Mr. Campbell: We are again back to the old story. Your

LADY DAVIS (for Plaintiffs), Re-Examination.

Lordship knows the facts, and you will decide. I do not think the witness can help your decision by saying she did not intend the thing to be done the way it was done, and, in my submission, the evidence is illegal. The facts are of record, and Your Lordship will determine what are the consequences of the facts. In my submission the witness should not be asked this question.

10 His Lordship: I understand so far it was done according to her wishes.

Mr. McKeown: And then there was a divergence. He made a payment which she never intended he should make, and never told her of it.

His Lordship: I will let the answer in.

20 By Mr. McKeown (continuing):

Q.—Was that the form in which you wished the purchase to be made: through a broker?

A.—Yes, through a broker.

Q.—And, up to that point you considered your instructions had been carried out?

A.—Yes.

30 Q.—Did you give any instructions in any form to Sir Mortimer Davis, Incorporated, to advance the amount of that purchase to the brokers?

A.—No.

Q.—Did you ever intend they should advance it for that purpose?

A.—I expected my bonds would be used as collateral either in a Bank or in a brokerage office.

40 Q.—Lady Davis, in connection with McNish, you have mentioned the name of Sir Henry Thornton. Do you know whether Lord Shaughnessy was aware of the intention of Sir Mortimer Davis to procure if possible the services of Sir Henry Thornton in connection with McNish?

A.—Yes.

Q.—Why do you say so?

A.—Because I remember Lord Shaughnessy and Sir Mortimer going to interview Sir Henry Thornton at one time.

Q.—Do you know whether, in the correspondence which has been handed to your counsel by Mr. Reaper, reference is made to Sir Henry Thornton in connection with McNish?

LADY DAVIS (for Plaintiffs), Re-Examination.

A.—Yes, I read it.

Q.—Will you look at a copy of the letter which I now show you dated July 27th, 1927, to Lord Shaughnessy from Sir Mortimer Davis and verify the paragraph with me in the second page, which I would like to read in.

10 “Colonel McNish is a blender and his brother as a salesman for a certain class of people also to guide us, having had years of experience in the way of past history of the trade, and their knowledge of all the details, but as teamed off up to date progressive and aggressive merchants they are not——”

and it originally read:

“or I am not”——

20 and then corrected to read:

“ ‘ nor am I ’—(in lead pencil).

“banking on their being such and I have made up my mind without telling them to put a real live wire in the concern. If it is not Thornton it will be somebody else.”

Now, Lady Davis, to get this certain matter cleared up beyond any doubt, when you first consulted Mr. Montgomery—can you give us the date of your first interview?

30 A.—The 24th of June.

Q.—At that time what did you consult him upon?

A.—I consulted him—asked his opinion as to a Trust Deed. I had received an opinion from Meredith Holden—name the firm, will you, please?

Q.—Meredith, Holden, Heward and Holden.

A.—In Paris, and I had gone over that with Mr. Corbett. Mr. Corbett told me when I came to Montreal I should get another opinion, so I saw a friend of mine here and asked him the name of a good lawyer and he proposed Mr. Montgomery.

40 Q.—Had you ever heard of Mr. Montgomery before?

A.—Never.

Q.—Will you look at the opinion now shown you, written on the stationery of Meredith, Holden, Heward and Holden, headed “Report accompanying letter to Right Honorable Lord Shaughnessy, K.C., 25th May, 1928, re Estate late Sir Mortimer Davis,” covering 12 pages, and say whether it is the opinion to which you have been referring, on which you consulted Mr. Montgomery?

LADY DAVIS (for Plaintiffs), Re-Cross-Examination.

A.—Yes.

Q.—Did you on the 24th of June consult Mr. Montgomery on any other subject except this opinion which is now before you?

A.—No.

Q.—In point of fact, the opinion which is now before you has no reference whatsoever to the present difficulties in this case?

A.—None at all.

10

A.—No.

Q.—Have you ever met Sir Herbert Holt in your life?

A.—Never.

Q.—Now, so far as the Montreal incidents are concerned, what was it that affected your state of unrest or created your state of unrest here in Montreal, the first point de depart?

20

A.—When I picked up the statement (and I don't think I looked at the statement that day, but I think it was the next day I looked at the statement) I saw I had a statement as Lord Shaughnessy said did not belong to me, but I looked at it and became very alarmed at the new investments I knew nothing of.

Q.—That statement which you picked up, as to the date, do you persist it was the 27th of June?

A.—Yes.

Q.—When you got that statement you say you were disturbed by the investments you saw there stated?

A.—Yes.

Q.—Is that what led you to ask for a representative?

A.—Yes.

30

Q.—Just to clear up one final point, and give way, as Mr. Campbell suggests, you said in answer to Mr. Campbell you first learned it was illegal for shareholders and Directors to borrow money from a corporation, in July, 1929?

A.—Yes, sir.

Q.—Did that have any reference to the fact you were a borrower at that date, or Lord Shaughnessy was a borrower at that date?

Mr. Campbell, K.C.: Objected to, as leading and illegal.

40

Mr. McKeown, K.C.: As Mr. Geoffrion suggests, I will withdraw the question.

Re-cross-examined by Mr. Campbell, K.C., Counsel for Defendants:

Q.—I have just one question and then we will let you go. You read into the record one paragraph from the letter of Sir Mortimer

LADY DAVIS (for Plaintiffs), Re-Cross-Examination.

to Lord Shaughnessy dated Deauville, the 27th of July, 1927, in reference to Mr. McNish?

A.—Yes.

Q.—Will you also read into the record the two preceding paragraphs from the same letter? I will read them:

10 “ The valuation of assets was made between Wilmore and McNish’s. If ‘ over market price ’ we deduct. If ‘ under market price ’ it was to remain the same. You will see it is in the option or at any rate it was definitely understood but I agreed, you will remember, to give McNish’s one thousand pounds, not ten thousand pounds, the amount he claimed from Wilmore, so that there is a difference of nine thousand pounds, according to your statement. I can see by the tone of your letter that you are timid with the proposition, which surprises me:—

20 First, I know McNish’s brand is not a big seller; otherwise their volume of business would be considerably more;

 Second, the money we will get to develop this industry I have explained to you several times the advantages of and the risks to my mind is nil except the actual loss in the development of McNish’s if it was not a success; besides, the money can always be used on loan outside and the interest gained.

 Third, what you seemed to forget is that we have got to go into the Scotch whiskey business whether we want to or not, and if you are going to face your competitor with a shotgun there is not much chance for you, as money talks in commerce.

30 The question we have got to decide is: Is McNish’s business a nucleus to work on ”

And further deponent saith not.

40

JOHN B. WADDELL (*for Plaintiffs*), *Examination-in-Chief*.

MORNING SESSION, TUESDAY, MAY 6th, 1930.

Mr. Montgomery: Your Lordship, I have an application to make. If it suits Your Lordship and my learned friends, Mr. Waddell is here. He has just arrived back from the South yesterday, and is not well. He could be examined very shortly, and could be released
10 from attendance.

His Lordship: In this case, as we cannot suit the convenience of either the Judge and the Lawyers, the least we can do is to suit the convenience of the witnesses.

DEPOSITION OF JOHN B. WADDELL, A WITNESS
PRODUCED ON BEHALF OF THE PLAINTIFFS.

20

On this sixth day of May, in the year of our Lord, one thousand nine hundred and thirty, personally came and appeared

JOHN B. WADDELL,

presently residing at 697 Aberdeen Avenue, Westmount, in the District of Montreal, gentleman, aged sixty-two years, a witness produced on behalf of the Plaintiffs, who being duly sworn both depose
30 and say as follows:

Examined by Mr. George H. Montgomery, K.C., of Counsel for Plaintiffs:

Q.—We have applied to interrupt the examination of one of the witnesses, Mr. Waddell, to permit you to be examined, as we understand you have not been in good health. You have just returned have you not from a winter spent in the South?

A.—Yes; Augusta.

40 Q.—You were for many years Manager of the Union Bank of Canada, Montreal, were you not?

A.—Yes.

Q.—And subsequently were confidential man of Sir Mortimer Davis?

A.—Yes.

Q.—And occupied certain offices in connection with his Companies?

JOHN B. WADDELL (*for Plaintiffs*), *Examination-in-Chief.*

A.—Yes.

Q.—What offices did you have in his Companies?

A.—I was Vice-President of the Sir Mortimer Davis Incorporated, of the Asbestos Company, and the same offices in a number of his subsidiary companies.

Q.—Between what dates, approximately?

10 A.—From 1919 till, I think, 1924 or 1925.

Q.—Up until 1924 or 1925?

A.—Yes, from 1919.

Q.—How long had your connection with Sir Mortimer Davis existed prior to that time? Did you say 1919?

A.—1919. From 1919 to 1924 or 1925.

Q.—I do not intend to take you over the long events of that period, but merely just to ask you about certain things that have happened since the death of Sir Mortimer. Do you recall that occurred in the spring of 1928?

A.—Yes.

20 Q.—I may say it was March 22nd, 1928. Perhaps you recall that?

A.—Yes.

Q.—My learned friend draws my attention to the fact that you did not include the Alcohol Company among the list of Companies with which you were connected?

A.—Well, it was an oversight. I was connected with that Company also.

Q.—In what capacity?

30 A.—Vice-President, and I think President; I would not be sure.

Q.—So I take it that during the period you have mentioned, you were pretty familiar with the affairs of Sir Mortimer Davis personally, the Estate, and generally the Alcohol Company?

A.—Yes.

Q.—And you also hold a certain interest in the Incorporated Company?

A.—Yes.

Q.—In fact, apart from the immediate parties to this litigation, you are the only outside shareholder, I understand?

40 A.—I believe so.

Q.—And in addition to the shares you have a block of the bonds and debentures?

A.—Yes.

Q.—Approximately how much?

A.—\$210,000.

Q.—And five per cent. of the stock of the Company?

A.—Yes. A trifle over 2,500 shares.

JOHN B. WADDELL (for Plaintiffs), Examination-in-Chief.

Q.—In a general way, have you endeavored to keep in touch with the affairs of the Incorporated Company since the death of Sir Mortimer Davis?

A.—In a very casual way because I have been away most of the time, and I have never gone into them.

Q.—Then, in a casual way, from what sources have you endeavored to get information?

10 A.—From Lord Shaughnessy principally.

Q.—Do I understand then, that you have had casual conversations from time to time with Lord Shaughnessy about the affairs of the Incorporated Company?

Mr. Holden: I would like to be of record that we object to any questions regarding what happened subsequent to the institution of the action.

20 His Lordship: Objection reserved.

A.—Yes.

By Mr. Montgomery:

Q.—During the course of these conversations, have you been interested in inquiring as to what his plans were for the conduct of the Incorporated Company?

A.—Yes.

30 Q.—And what was the information you received?

A.—A general discussion of the affairs of the Company.

Q.—You, of course, were fully acquainted with the interest of the Estate in the Incorporated Company, and of a number of predominant interests he had in the shareholdings of the Incorporated Company?

A.—Yes.

Q.—After the death of Sir Mortimer, did you make inquiries as to how Lord Shaughnessy proposed to work things out?

A.—Yes. That came up in our conversation.

40 Q.—I do not want to lead you at all, Mr. Waddell, but can you tell us what Lord Shaughnessy regarded to be the future of the Incorporated Company under his management and administration?

A.—He was always very optimistic.

Q.—Can you translate that into something a little more definite? This room has been full of optimists.

A.—Well, he always spoke of the enormous future that was be-

JOHN B. WADDELL (*for Plaintiffs*), *Examination-in-Chief*.

fore the Company through the reputation and goodwill of the Company.

Q.—Are you speaking now of the Incorporated Company, or the Alcohol Company?

A.—Well, it is rather hard to answer, because they are so associated. The whole of Sir Mortimer Davis was so wrapped up by the success of the Alcohol Company.

10 Q.—Did he discuss with you at all his plans in connection with the financial ventures outside of the Alcohol Company?

Witness: Do you mean any particular plan?

Counsel: Either particular or in a general way.

A.—I am sorry, I do not quite grasp the question, Mr. Montgomery.

20 Q.—Did he tell you how big a Company he expected to make the Incorporated Company?

A.—Yes. He casually mentioned on one occasion \$100,000,000.

Q.—He expected to make it a \$100,000,000 Company, or what?

A.—He expected to increase the Company to the extent of \$100,000,000, that the Company would be a \$100,000,000 Company, I could explain that probably.

Q.—Perhaps you might explain it?

A.—I could make it more intelligible to you.

30 After he came back from England, after Sir Mortimer's death, I expressed in friendliness entirely in his interests, and probably the Company's interests, why did he not get rid of the Alcohol Company; why did he not get rid of it—I do not mean to dispose of it, but to get rid of the management and control. He was managing the Incorporated Company; he was managing the Alcohol Company, and he now had the Estate on his hands, and I made the remark that that was more than any man could tackle—the combination of circumstances, because one Company, the Alcohol Company, was a very technical business, and for his own sake, why did he not get out; I might make that clear, I mean, get out of the management of
40 it, not to divorce it from Sir Mortimer Davis' interests, but to get out of the control of it. He then made the statement that he was going into financial issues; he was taking many issues, and was going to make it a \$100,000,000 Company in a few years.

Q.—The Incorporated Company?

A.—Yes.

Q.—He was going into financial issues, and so on?

A.—Yes.

JOHN B. WADDELL (for Plaintiffs), Examination-in-Chief.

Q.—When you speak of getting rid of the control, you mean his personal management?

A.—His personal management, that was it.

Q.—Not the dispossession or controlling interest of the stock?

A.—No. \$100,000,000 was too good a thing to dispose of.

Q.—Was he proposing to form a financial company?

A.—Yes, he mentioned that.

10 Q.—Did you discuss at all with him, how he was going to finance all these different branches?

A.—Yes. I asked how the Estate's indebtedness was to be taken care of, and how the capital was to be supplied for these Companies, and the Succession Duties paid and all that, and he said, well, it was worrying him a great deal, and he said, as far as he could see, there were two ways of doing it, that was to pay a large dividend out of the Incorporated Company.

Q.—What was the other way?

20 A.—It has slipped my memory now.

Q.—Were there any suggestions of his making loans?

A.—Yes, for borrowing from the Incorporated Company.

Q.—Well, what had you to say as to that?

A.—Well, I said I thought the dividend idea was very good, but I did not see that it would work out very well to borrow from the Incorporated Company, and I said, personally, he had come into an interest in the Company on his part, and on my part, and I did not see why we should finance the Davis Estate.

Q.—By loans?

30 A.—By loans.

Mr. Holden: Ask him to explain. Do not explain for him, Mr. Montgomery.

By Mr. Montgomery:

Q.—That is what you referred to, was it not, when you referred to financing. You referred to financing by loans?

40 A.—Well, yes, those were the two suggestions as I said, to borrow from the Company, that is, Sir Mortimer Davis would lend the Estate the money. I, as a shareholder of the Company, but not interested in the Estate in any way, took rather an exception to that, and pointed out as there was no security he could give, that I did not think that would be a good deal on our part. I was not objecting; I was simply pointing out, because the whole thing was in the air.

Q.—Whatever may have happened with regard to the loan policy you have never received the big dividend, nor your portion of it?

JOHN B. WADDELL (*for Plaintiffs*), *Examination-in-Chief*.

A.—No.

Q.—You told us you had some Debentures. Have you ever received the interest on those Debentures?

A.—Yes.

Q.—There was to be an annual redemption, was there not?

A.—Well, the issue called for a redemption I think, of \$100,000 annually on \$5,000,000.

10 Q.—Have you received the annual redemptions since Sir Mortimer's death?

A.—Some of them. I cannot tell exactly what proportion I received.

Q.—Since Sir Mortimer's death have you received any? My instructions are that none have been paid since then—do you recall?

A.—No, I do not recall. I would not say. I am not sure about it.

Q.—Did you discuss at all any of the ventures in particular, either Coal or Finance, or otherwise?

20 A.—I do not think on that occasion. On other occasions I have.

Q.—Tell us about the other conversations?

A.—Well, Lord Shaughnessy sent for me to ask me to go on the Board.

Q.—Which Board?

A.—The board of the Sir Mortimer Davis Incorporated. I said I was out of touch with these dealings and procedure for a long time and I did not know how it was, that I would have to get considerable information. He gave me some information, which included the fact that certain expenditures had been made by way of investment, and information of that kind. I made the remark that I did not think he was hardly in a position to go into new things at all, he could not finance what he had, or pay the debts that he had; I did not think he would be justified in going into anything new. He rather agreed with that.

30

Q.—You told us he ran over several investments he had made, or expenditures that had been made. Do you remember any of them in particular?

A.—Yes. He mentioned the Coal Company, which was entirely new to me, the Cadillac Coal Company, and I was surprised, because we had had an interest in the Federal Coal Company, which, when I left, was considered practically dead. We had leased it to one of our employees to keep it going.

40

Q.—Excuse me interrupting you, but had your experience in that venture been an encouraging one?

A.—No, not very satisfactory. He then explained that this deal that went through was practically the absorption of another

JOHN B. WADDELL (*for Plaintiffs*), *Examination-in-Chief*.

company, and was conducted on an exchange of securities. My previous experience with the Federal Coal had taught me that it was a sink-hole.

Q.—That it was a sink-hole?

A.—That it was a sink-hole putting up money, and he assured me that they had arranged for all the finances and everything satisfactorily; and I spoke of machinery. He said that had all been
10 arranged for. It made no impression whatever on me, except I was sorry naturally.

Q.—Did he suggest to you that he was going to

Mr. Holden: I object. I submit my learned friend should ask questions, he should say, "What did you suggest"?

Mr. Montgomery: We have to get the subject matter out. We We don't want to spar around for an hour.

20 By Mr. Montgomery:

Q.—What did he say as to the amount of money which the Incorporated Company would have to invest in this thing to finance it, or the guarantee it might, or might not have to give, and so on?

A.—Well, there was no suggestion of any guarantee or any increase at all. It was a matter that so much had been put in. My memory may be weak, but it was \$100,000 to cover everything; I was afraid of it eating in; I had a horror from my experience of
30 things starting in a small way and ending up in a big way on the debit side.

Q.—And did he assure you on that?

A.—He said it was very profitable.

Q.—But as regards further capital advances, as to the necessity of further capital advances?

A.—No. He said there would be no further advances at all.

Q.—You spoke of a Finance Company, and participating in new issues. Was there any further discussion of that, or any alliance that he had made?

40 A.—No. He mentioned a man's name whom he had been going into, but again, I used the arguments—well, he said, there was no necessity of going on with that at all, that nothing had been done, and he agreed with me that nothing in that line should be done in the present state of the financial condition.

Q.—Can you fix approximately the dates of those two interviews?

JOHN B. WADDELL (for Plaintiffs), Examination-in-Chief.

A.—Well, they were since Sir Mortimer's death. One interview took place about, I should think, the last week in July this past year.

By Mr. Holden:

Q.—1929?

10 A.—1929.

By the Court:

Q.—Was Lady Davis in Canada then?

A.—Well, she was at that later interview. The time I was asked to go on the Board. Lady Davis, I believe, was in Canada then.

Q.—Was that the first or second interview?

20 A.—Well, I have given the information rather the two together. The question as put required that. I cannot separate the two interviews; when they took place a general discussion arose—a casual discussion of information which he furnished me with, when I asked about going on the Board, if there was anything hanging over. He just told me of these circumstances. I did not take a note of it, or go into it at all. Of course, that was before this suit, or anything in connection with it.

By the Court:

Q.—These two interviews took place at very short intervals?

30 A.—No. One took place immediately after the death of Sir Mortimer, and the other took place this last July.

By Mr. Montgomery:

Q.—When you say immediately after the death of Sir Mortimer, I understand you to say in the earlier part of your examination, that it was after the return of Lord Shaughnessy?

A.—From being abroad?

40 Q.—From being abroad, subsequent to the death of Sir Mortimer?

A.—Yes.

Q.—Coming back again to the Finance Companies, having mentioned the name of a certain party, you said you used the same arguments, but I don't know that you told us exactly what they were?

A.—Well, the arguments were that we were not in a position to go into a Finance Company.

Q.—And did that see obvious to you?

JOHN B. WADDELL (for Plaintiffs), Examination-in-Chief.

A.—Quite obvious. It was his own statement.

Q.—Were you in Montreal during the summer of 1929?

A.—Yes, to the best of my belief I was. I am here every summer, and have been for years.

Q.—When did you go South?

A.—I go South about the first of January or the end of December.

10 Q.—Were you here during the time that there were certain rumors being published in the press, which are in evidence in this case, referring particularly to the Alcohol Company?

A.—Yes.

Q.—Did they create any disturbance in your mind?

A.—Yes.

20 Mr. Holden: I object to this evidence. The newspaper clippings were put in under reserve of our objection. I submit we are going too far afield when my learned friend asks Mr. Waddell whether those clippings created any disturbance in his mind.

Mr. Montgomery: I will tell you frankly, it is purely introductory. If he says yes, I am going to ask him what he did.

Mr. Holden: Is the Court interested in what Mr. Waddell did? Surely there should be some limit. I submit our objection, my Lord.

His Lordship: Reserved.

30 By Mr. Montgomery:

Q.—What did you do?

A.—I endeavored to find out what was started. I did not do anything particularly, except to try to ascertain what was the trouble, where the trouble was, why it was, why it was not put a stop to. I had many ideas as to what should be done, mainly, that publicity regarding the Company, which I understood was in a most excellent position, should be given to the public, and that would stop it.

40 Q.—Well, how did you translate your thought into action?

A.—I did not, beyond, as I say, ascertaining—I discussed it with employees of the Company who were the only people available. Lord Shaughnessy was not here.

Q.—Who did you see?

A.—I saw Mr. Lauster.

Mr. Holden: My objection applies to all this evidence.

JOHN B. WADDELL (for Plaintiffs), Examination-in-Chief.

(Same reserve.)

By Mr. Montgomery:

Q.—You saw Mr. Lauster?

A.—Yes, and Mr. Lawrence, and that kind of thing, and my suggestion was——
10

Mr. Holden: May I ask for a ruling. I do submit, may it please the Court, that this is not evidence, as to what Mr. Waddell may have said to Mr. Lauster and others.

His Lordship: I assume that it is only preliminary as to something that happened. Mr. Waddell heard some rumors about the Alcohol Company, and not being able to see Lord Shaughnessy, he saw some employees of the Company.

20 By Mr. Montgomery:

Q.—What did you suggest to them, or did you suggest anything?

Mr. Holden: I would ask Your Lordship for a ruling.

His Lordship: I will allow it under reserve.

Witness: I suggested that some publicity, some statement should be made to the financial papers, and our side of the case put before them, because the rumors were absurd.
30

By Mr. Montgomery:

Q.—What reply did you receive?

A.—Mr. Lauster said that Lord Shaughnessy was not in sympathy with the financial papers, and did not propose to take them into his confidence, he did not think it would be to the advantage of the Company to do so.

40 Q.—Coming back to the request that you go on the Board of the Incorporated Company, did you ever hear anything more of that suggestion?

A.—No, beyond the fact that I met Lord Shaughnessy one day, and asked him what had happened to it, and he said that Mr. Reaper had found some clause in the By-laws, or some motion that had been passed—some motion had been passed at the last Annual Meeting, or a Annual Meeting, I don't know which, of reducing the number of

JOHN B. WADDELL (for Plaintiffs), Examination-in-Chief.

Directors, therefore I could not be put on until after a subsequent meeting had been held. I was astonished at that, but as I was not going on the Board, I did not go any further into it at all.

Q.—I think you said that if you went on the Board of the Incorporated Company you would have to have either some association, or some information as to the Alcohol Company, did you not?

10 A.—No. I pointed out to him that I would look into the thing before giving any decision, and expressed the obvious fact that the whole basis of revenue of Sir Mortimer Davis Incorporated came from the Alcohol Company, therefore I would not under any conditions go on the Incorporated Company without being on the Alcohol, to which he agreed entirely and said that was his intention.

Q.—Did you ever receive any further invitation to go on the Alcohol Board?

A.—No.

20 Q.—Was the matter of the resignation of the Directors of the Alcohol Company the subject of any discussion?

Mr. Holden: Do you mean any discussion with Lord Shaughnessy?

By Mr. Montgomery:

Q.—With Lord Shaughnessy?

30 A.—Yes. In speaking of the Alcohol Company, I expressed anxiety of the lack of organization, as you may call it, that there was none of the Directors practically of any prominence, and he would have to strengthen up his Board before anything was done before he could get over this publicity, because my inquiries had shown that there was a great deal of lack of public confidence, due to lack of strength on the Board. He said that it was against his views and Sir Mortimer's views. I pointed out that they were all employees on the Board, practically, and he said that was far more satisfactory because in the other case leakages occurred and things get out prejudicial to the Company, and that he and Sir Mortimer had felt that it was desirable to keep the affairs of the Company entirely within the
40 Company.

Q.—Were you satisfied with that explanation?

A.—That explanation did not satisfy me, but it was an argument that Sir Mortimer had used to me.

Q.—But had not given effect to?

Mr. Holden: I submit my learned friend should not give the evidence.

JOHN B. WADDELL (*for Plaintiffs*), *Examination-in-Chief*.

Witness: You are covering a whole twelve years.

By Mr. Montgomery:

Q.—Well, I will try and avoid covering that?

A.—I am covering it in that way.

10 Q.—I have promised you that your examination will be very short, and for that reason I do not intend to even go into the twelve years?

A.—Oh, I will go into it.

Q.—You spoke of his having mentioned a certain man in connection with the Financial Company. Can you recall his name?

A.—Well, it is kind of hindsight, I have heard it so often that I know it anyhow. It is Jennison.

Q.—Have you to any extent followed the proceedings in this case?

20 A.—No, only very casually. I have seen clippings and newspapers have been sent to me when they concerned myself, or anything of that kind, but I have had no communication, no advice or no knowledge of any kind officially, or in any other way. I get an inch of the Star sometimes saying something about myself.

Q.—Have you gone into it, or made sufficient inquiry to ascertain the fate of your own particular interests in the Incorporated Company?

A.—Yes, I have. That was one of the things that was sent me.

30 Q.—What have you to say about that as to the shrinkage or otherwise?

A.—Well, it appalled me. An analysis showed that my equity had depreciated a \$1,000,000.

Q.—In what period?

A.—In value, in two years.

Q.—That is, your five per cent equity?

A.—Yes, my five per cent equity.

Q.—Is that without regard to the bonds, or the value of the securities?

A.—Oh, entirely outside of the bonds.

40 Q.—What conclusion did you reach?

Mr. Holden: May it please the Court, the facts that Mr. Waddell can tell us, of course, are being received under reserve of our objection. Is it any help to this Court or has it any relevancy to the issues—

His Lordship: If Mr. Waddell can give any directions whereby

JOHN B. WADDELL (for Plaintiffs), Examination-in-Chief.

the situation can be remedied, I think the direction would be welcomed by everybody.

Mr. Montgomery: I had in mind something a little different. I want to be frank. I do not want to lead the witness in any way, but I wish to ask Mr. Waddell, not in any attempt to get his opinion, or substitute his opinion for that of the Court, but because of his familiarity with the whole situation based upon his knowledge of the affairs of the Incorporated Company and of the Alcohol Company, what his conclusion was as to that result.

Mr. Holden: I submit my objection.

Mr. Montgomery: As he has been referred to as being the only outside interest.

His Lordship: Yes, we have had Mr. Waddell's opinion of the subject. Mr. Waddell's is just as legal. I will allow the evidence.

By Mr. Montgomery:

Q.—What conclusion did you reach?

A.—That I had lost a \$1,000,000.

Q.—And with your knowledge of the Alcohol Company and of the Incorporated Company, what conclusion did you reach, first, as to the cause, then I will ask you about the remedy?

A.—I was not sufficiently inside to know all the causes leading to it, but it was obvious that the public had lost confidence. The shares had depreciated, and that my chance or hope of getting anything substantial out of this had gone. I was very much upset, because I had worked a great many years and had taken a very deep interest in the Company for years, and the Company was in excellent straits, very few loans, and I realized that some drastic thing had occurred to cause such a condition to exist in a period of two years.

Q.—I suppose that you are only too well aware that the Alcohol dividend had been passed?

A.—No, I did not know it.

Q.—You are a direct shareholder of Alcohol?

A.—I have one share in Alcohol.

Q.—Your interest is through the Incorporated Company?

A.—Indirectly through the Incorporated Company which owns the Alcohol.

Q.—Have you heard or read the evidence which was given in this case as to the falling off in sales of the Alcohol Company?

JOHN B. WADDELL (for Plaintiffs), Examination-in-Chief.

A.—No.

Q.—Then I will ask you, assuming that the dividend has been passed, and that the sales have fallen off, what would that point to with regard to the affairs of the Company with which you are familiar?

10 Mr. Holden: I object. I submit my learned friend has gone too far.

Mr. Montgomery: I asked him, with his knowledge of the Company, that the sales had fallen off from the Alcohol Company and that the dividend had been passed, what would that point to.

Objection overruled.

By Mr. Montgomery:

20 Q.—Are you satisfied with the present condition of affairs?

A.—I am not.

Q.—And with the present management?

A.—I am not with the results.

Q.—What have you to suggest?

A.—Well, a change of methods. Do you want me to give my views as to what should occur?

30 Q.—I think the Court will welcome them. His Lordship will not necessarily be bound by them, but I am sure he will welcome them?

A.—Well, in the first place, there must be an entire reorganization of the Company.

By the Court:

Q.—Do you mean of the Incorporated Company or of the Alcohol Company?

40 A.—The Alcohol Company. That is the source from which everything comes. I find that many of the old organizers with whom I was familiar, who were very successful, who made the Company, have gone.

By the Court:

Q.—To whom do you refer particularly?

A.—Well, it covers a period of some years. Mr. Hatch, Mr. Hume, and I understand just lately Mr. Kelly have gone.

JOHN B. WADDELL (for Plaintiffs), Examination-in-Chief.

By the Court:

Q.—Did you know these men?

A.—Yes. They were all under me. The basis of the Company, of the strength of the Company, were men like Mr. Hume, who had been there for twenty-five years or more, who had grown up in the Company, and who was a technical man and was thoroughly con-
10 versant with all things.

By the Court:

Q.—Did you know under what circumstances Mr. Hume deserted Sir Mortimer Davis?

A.—Well, I would not put in as my answer that he deserted him. I don't know anything of Mr. Hume's inner mind, but he evidently left to better himself. Whether there was any friction with
20 the Company or not, I do not know; but these men were a very great asset. They are, I think, outstanding, the cleverest men in the business in Canada, as instanced by the success they have made of their own Company.

Now, the Company should be built up to that point with new blood, with men who have some knowledge of the alcohol business, which is a very technical business as I have said before. A business man cannot go in and run an alcohol company.

By Mr. Montgomery:

30 Q.—What about a lawyer?

A.—Worse. I am not joking. It is all right to be facetious, but a million dollar loss at my age, there is nothing facetious about it. Whether you can get a body of men to do it, or whether you can do it through a Trust Company, I am not prepared to say, but you have to get the men, and I will tell you what it is worth, you have got to get them soon. Look at that statement; six months from now, what would happen to it if there is not some new blood infused into it. It does not matter whether it is right or wrong, confidence has
40 to be re-established and something done, or there is not any Alcohol. You have to work through underlings; you have to work through subordinates. That Company was always so worked, and for every Company that I know of of \$20,000,000 size has been worked with men who know their business. One clever man at the head is not going to make success of a \$20,000,000 Company. He cannot do it. It has not been done.

JOHN B. WADDELL (for Plaintiffs), Examination-in-Chief.

Q.—I suppose it would not be a bad thing to have one at the head?

A.—You have to know what each man is doing. I was President of Alcohol, and I did not know anything about Alcohol, but I surrounded myself when I first went in there with very capable men. Those men made the almost fairy tale profits which the Company succeeded in making.

10 Q.—Did your heads of departments confer together? Did you have meetings of heads of departments?

A.—Constantly, always. The whole Company was run on the basis of the subordinates of the Company.

Q.—With your knowledge, what would you have to say of the probable success of a policy built upon abandoning the meetings of the Executive Committee, and the weekly meetings of the heads of departments?

A.—Absolutely fatal; it cannot be done.

20 By the Court:

Q.—Do you know anything about the present Directors of the Company?

A.—I am not sure who they are.

By the Court:

30 Q.—Mr. Lauster, Mr. Lawrence?

Mr. Holden: Mr. Wilmore?

Lady Davis: Mr. Kaesner, Mr. Stormont?

Witness: Yes, I know them. I think I know all of them.

By the Court:

40 Q.—What do you think of them?

A.—Well, My Lord, that is a very hard question. I will put it in this way, that I would not run that Company with that Board of Directors for ten minutes.

By Mr. Montgomery:

Q.—I might ask you as to the affairs of the Incorporated Com-

JOHN B. WADDELL (for Plaintiffs), Cross-Examination.

pany, how, in your opinion, could the affairs of the Estate and the Incorporated Company be administered?

A.—I don't know anything about it.

Q.—I understand your last remarks are directed more particularly to the Alcohol Company?

10 A.—Well, of course, the Incorporated Company is merely a business proposition. It is a different proposition to the other. Even a lawyer could take up the Incorporated Company. That is a business proposition of taking care of certain share interests.

Q.—Are you satisfied with the management of the present lawyer?

A.—That is hard to answer. I am very dissatisfied with the results.

Q.—Is it a matter which could be handled by one of the larger Trust Companies?

20 A.—You are dealing now strictly, as I understand, with the Incorporated Company?

Q.—The Incorporated Company?

A.—Yes, they could handle it.

Cross-examined by Mr. A. R. Holden, K.C., of Counsel for Defendants:

Q.—When did you leave the banking to go with Sir Mortimer Davis?

A.—I think about 1919. It may have been a year earlier.

30 Q.—And when did you cease to be President of the Alcohol Company?

A.—In 1924 or 1925.

Q.—Am I right that you had a serious disagreement with Sir Mortimer at the time of severing your connection?

40 A.—Not a serious one. I objected to Sir Mortimer's reflection on certain members of the staff which were utterly unwarranted. We had made a splendid year; he took exception to one or two of the men there; he thought they had not enough vision, a favorite expression of his, and I said that this man had been with us some twenty odd years. He was to a great extent the backbone of the concern. He had been away, and he came back filled up with enthusiasm. He was probably irritable at the time. He had made splendid progress; the profits, if I remember right, were running equal with the Imperial Tobacco Company, one of the biggest concerns in the world, and I told him he had no right to say that at all. Now, Sir Mortimer and I had been together for twelve or eleven years—no, seven years. We had never in that time had one word of disagree-

JOHN B. WADDELL (*for Plaintiffs*), *Cross-Examination*.

ment. He was a difficult man to get on with, but I think I had his confidence, and he had my confidence and affection, and I never hesitated to argue out any point, or to take exception to any policy of his. We were in eternal disagreement in a business way, in a friendly way, and this thing arose which was inevitable, considering our dispositions and temperaments and all the rest of it.

10 I told Sir Mortimer when I first joined him—I attended several meetings at which he was presiding in connection with another Company, and I said, “Don’t ever speak to me like you spoke to those, or I will hit you with the handiest thing there is.” I said, “You and I do not need to do that sort of thing,” so that from that day till the last day he never spoke an impatient or cross word to me until this arose over the appreciation of a boy I considered a most valuable man, a man who is now at the head of one of these opposition companies, a courteous gentleman.

20 Q.—I think I should ask you who that was under the circumstances?

A.—That is Mr. Rainer.

Q.—Is he one of the men that you felt it was so serious to lose?

A.—Yes. He was one I regret very much.

Q.—And Sir Mortimer did not agree with you?

30 A.—I won’t say that. It never got that far. I put in my resignation at once. He asked me to reconsider it. He sent Lord Shaughnessy to ask me to reconsider it. Lord Shaughnessy said he was so distressed, he sent him up to the country over the week-end. I went in and explained to Sir Mortimer when the heat of battle had passed on—I went in and told him—I said, “I am sorry, Sir Mortimer, but it is finished.” He said, “Oh now, you are nervous, your mother has died and you are undone.” I said, “No, I have extended my contract with you, or at least I have acted over it for two years, I am not very well, I am not very strong, and I think the time has come when it is better for us to part.” That was the end of it, except one thing; there is just one item there in regard to that, when I put in my resignation he went into it; he said, “I don’t want you to leave now.” He said, “Do that for me.” He said, “Douglas had left, and several of the officials had left, and it will look very sad.” I said,
40 “I will on one condition. I will stay six months, take it as a holiday which is due me on condition that anything and everything is submitted to me, that is, that you do not do anything with the Company, enter into no new enlargement of buildings without my knowledge.” He said, “All right.”

Q.—And did you remain the six months?

A.—I remained under salary for six months. I was away a great part of the time, which was the arrangement. I was only protecting

JOHN B. WADDELL (for Plaintiffs), Cross-Examination.

myself, Mr. Holden, against some fantastic action on the part of Sir Mortimer, or the Company, and as my name was there as President, I was not going to come in for the blame.

Q.—What made you think that there might be some fantastic action on the part of Sir Mortimer?

A.—Well, because he was a very hard man to hold down, a very hard man to hold down, and he could come down some mornings
10 and have a vision over night, and my business was to try and wake him out of the vision.

Q.—According to you, Mr. Waddell, why did these officials that you say you thought so useful and important leave?

A.—Well, it is very hard, I cannot tell you, Mr. Holden.

Q.—What is your opinion?

A.—One man, Mr. Hatch, bought a distillery of his own. He formed a Company. Mr. Hume was dissatisfied at something of which I don't know. I was out of the Company then, you know, and I don't know what Hume's reason was.

20 Q.—It was in Sir Mortimer's lifetime, was it not?

A.—Hume, I think so.

Q.—When did Mr. Kelly join the Company?

A.—I have no idea of the date. He was not under me or associated with me.

Q.—I was wondering why you mentioned him?

A.—I was speaking of association with him, from the universal appreciation of the staff and organization in regard to Kelly.

Q.—Have you inquired why he left?

30 A.—No, I have not. He has gone.

Q.—You don't know why he left?

A.—No.

Q.—You do not know the circumstances?

A.—No.

Q.—You mentioned, if I understood you, the men who had gone, in your opinion, were the men who built up the Company. Was that the way you intended to put it?

A.—Well, to a large extent.

40 Q.—Who were those men? Anybody besides Hatch, Hume and Rainer?

A.—Now I am not expressing my views on these, as to their ability. There was a man called Orton. He was the original, and there was Hatch; there was Taylor in there for a time. I would have to look that up.

Q.—I refer more particularly to the losses that you stated were, in your opinion, serious losses?

A.—The breaking up of any organization in a technical Com-

JOHN B. WADDELL (for Plaintiffs), Cross-Examination.

pany such as that is serious. It does not matter—a man by himself may not amount to much, but when it is a dislocation of a close-knit organization, it is very serious.

Q.—Did Mr. Hatch leave while you were President of the Alcohol Company?

A.—President, or Vice-President.

Q.—You mean you don't know which you were?

10 A.—No. I was moving around so fast. I was a sort of chronic Vice-President.

Q.—Am I right that Mr. Taylor also left while you were President?

A.—He left while I was President or Vice-President.

Q.—At any rate, the disagreement between you and Sir Mortimer was serious enough that you did, in fact, leave, in 1924 or 1925?

20 A.—Yes, but I acceded to his request and stayed for six months more, and then I left. I may say, speaking of the serious disagreement, that it took probably six minutes. That was the end of the disagreement. It was merely that I resented his manner of stating that we should have done impossible things, because we had done magnificently. We had started with nothing, and were making money up to near the Imperial Tobacco Company, one of the biggest Companies of the world. I thought it was a marvellous achievement.

Q.—Were you in Montreal when the news came of Sir Mortimer's death?

A.—No.

30 Q.—Where were you then?

A.—I was at Augusta, Georgia.

Q.—Do you remember when, in 1928, you came back to Montreal from Georgia?

A.—Yes.

Q.—When would that be?

A.—I don't know that particular year, but during all these years I came back from the first of May to the fifteenth, more approaching the fifteenth.

40 Q.—Towards the middle of May?

A.—Yes.

Q.—And then, how long were you in Montreal?

A.—I cannot tell you that.

Q.—After the middle of May, 1928?

A.—I was probably here off and on. I go away and come back. I was probably here until the middle of December.

Q.—Did you say you go away and come back?

JOHN B. WADDELL (for Plaintiffs), Cross-Examination.

A.—I go away to New York for a week or two weeks. I go down to Atlantic City or somewhere else. I cannot tell what I do on any certain day of any certain month of the year.

Q.—Were you away more than you were here during that interval?

A.—You mean in the summer interval?

Q.—Between the summer interval and some time in December?

10 A.—No, I was here most of the time.

Q.—And then you went South again until the middle of the following May?

A.—Yes.

Q.—In July, 1929, the whole matter, if I understand you rightly, between you and Lord Shaughnessy, was his request or his suggestion that you should become a Director again of the Incorporated Company?

A.—No, that was this summer.

Q.—1929?

20 A.—Oh yes.

Q.—That was the occasion of the interview?

A.—Yes.

Q.—You had been a Director of the Incorporated Company when you were with Sir Mortimer, had you not?

A.—Yes.

Q.—And Vice-President?

A.—Yes.

Q.—For how many years?

30 A.—Ever since it was formed.

Q.—That would be 1919?

A.—1919, I think.

Q.—I think you left in 1924 or 1925?

A.—Yes.

Q.—Were you here at the time of the very serious slump in all stock prices in November of 1929?

A.—Yes.

Q.—October and November?

A.—Yes.

40 Q.—You know what a serious catastrophe that was?

A.—Yes.

By the Court:

Q.—What do you think of Mr. Hume? Did you have him under you?

A.—He was very satisfactory to us. It was rather a family

JOHN B. WADDELL (for Plaintiffs), Cross-Examination.

affair. I believe his grandfather or his father had been in the employ of the Company. He was our Distiller, and there are two or three generations of them. Sir Mortimer had a very high opinion of him, and had a very great regard for him.

By the Court:

10 Q.—Do you remember whether it was in 1924 or 1925 that you fell out with Sir Mortimer? Was Lord Shaughnessy attached to Sir Mortimer when you had this discussion?

A.—Yes.

By the Court:

Q.—How long?

A.—A year or two years—a year.

20 And further deponent saith not.

30

40

DEFENDANTS' EVIDENCE

LADY DAVIS (for Defendants on Discovery), Examination-in-Chief.

Deposition on discovery on behalf of defendants.

On this fourteenth day of February, in the year of Our Lord one thousand nine hundred and thirty, personally came and appeared

10

ELEANOR CURRAN

of Cannes, France, widow of the late Sir Mortimer B. Davis, a witness examined on behalf of the Defendants on Discovery, who, being duly sworn, deposes as follows:

(The present deposition to avail on behalf of both defendants.)

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

20

A.—Yes.

Q.—Where were you residing at the time of the death of Sir

Q.—You are one of the plaintiffs in this Action?

Mortimer B. Davis, on March 22nd, 1928?

A.—Cannes.

Q.—In France?

A.—Yes.

Q.—Had you and Sir Mortimer B. Davis been residing there for some time previous to his death? I mean in that vicinity?

30

A.—Yes.

Q.—Substantially ever since your marriage?

A.—Yes, we spent the greater part of our married life there.

Q.—Sir Mortimer's will was made, I think, in England, in November, 1927. Was that just on the occasion of a visit to England?

A.—It was really made in France, but the legal part of it was done in London.

Q.—Were you present in London when the will was made?

A.—Yes.

40

Q.—Since Sir Mortimer's death, until you came to Montreal last summer in connection with these proceedings, did you continue to reside in France?

A.—Yes.

Q.—Have you ever resided in Montreal except during these recent months when you were here in connection with this dispute?

A.—Yes; in 1912 and 1913.

Q.—I mean, since your marriage with Sir Mortimer?

LADY DAVIS (for Defendants on Discovery), Examination-in-Chief.

A.—No. We came here. We made occasional visits to Montreal.

Q.—But, they would be only of relatively short duration?

A.—Yes. I think we stayed as long as three or four months on one visit.

10 Q.—You refer to the fact that at one time you resided in Montreal? Did you reside here continuously for any length of time?

A.—Yes, nearly two years.

Q.—Clause 14 of Sir Mortimer's will (to which you refer in Paragraph 4 of your Declaration or Statement of Claim) refers to a certain contingency, and I just want to be clear that the conditions of that contingency were not fulfilled. Was there ever any issue of your marriage with Sir Mortimer Davis?

A.—No.

20 Q.—Running through a few of the paragraphs of your Declaration in the order in which they occur. Will you tell me if you recall an interview which took place in London, England, in May, 1929, between yourself and Lord Shaughnessy?

A.—Yes.

Q.—Were you in London for any continuous length of time on that occasion?

A.—No. I was there a few days.

Q.—On that occasion did you have some discussion with Lord Shaughnessy in reference to the affairs of your husband's Estate?

30 A.—No. We dined together, and Lord Shaughnessy told me after dinner that he had taken a man who was a financial genius—that he had discovered a financial genius, and that he had bought an Investment Company for \$30,000, and he was paying him \$20,000 a year, and had told him to go out now and get some underwriting and bring some things to him. That is about all I remember he told me.

Q.—Substantially that is what you recall of the interview?

A.—Yes.

Q.—Did you express any opinion of the proposal?

A.—No, I did not.

Q.—You neither approved or disapproved of it?

A.—No, but it worried me very much.

40 Q.—Did you make any enquiries as to what were the details of the proposal?

A.—No, because it was after dinner and I did not think it was quite the place to do it.

Q.—Did you ask as to the identity of the financial genius?

A.—No, I did not.

Q.—In any event, you understood he was to purchase an Investment Company for \$30,000?

LADY DAVIS (*for Defendants on Discovery*), *Examination-in-Chief*.

A.—So he told me.

Q.—And, that this Company was to employ this financial genius at a salary of \$20,000 a year?

A.—Yes.

Q.—That was your understanding?

A.—Yes.

10 Q.—And, the Investment Company was to seek out underwritings and such financial enterprises?

A.—Yes.

Q.—Can you recall anything else of that interview in reference to that particular subject of discussion?

A.—Yes. He told me he had known this man for some time, and he was not quite sure about him, but that he had enquired and the reports were not too good at first, but he said: “I will risk it because the man cannot do anything unless he comes to me first.”

20 Q.—Did you ask him as to what credentials he had received about this gentleman?

A.—No, but I assumed he had enquired, or asked references from people with whom the man had been employed before, or agencies, or that sort of thing.

Q.—Did he tell you through what channel he had come in contact with this man?

A.—No, he did not.

Q.—Let me exhaust your recollection of the subject of that particular interview. Do you recall anything else that was said on that subject?

30 A.—No, not now.

Q.—On that occasion was anything else discussed in reference to the affairs of your husband's Estate?

A.—No, not that I remember. We were at dinner.

Q.—It was just more or less a social occasion between you and Lord Shaughnessy?

A.—Yes.

Q.—An after dinner conversation, I take it?

A.—He did say he was going to build up a gigantic Investment Company.

40 Q.—On that occasion?

A.—Yes.

Q.—Out of what?

A.—Out of the brains of this genius, I suppose, and the money of Sir Mortimer Davis, Incorporated.

Q.—So, this Investment Company to which you referred a moment ago was to be developed?

A.—I do not know anything more than I have told you—what

LADY DAVIS (for Defendants on Discovery), Examination-in-Chief.

he told me—that they had bought an Investment Company for \$30,000.

Q.—Did you discuss the matter at any greater length?

A.—No.

Q.—Did you leave for America shortly after that interview?

10 A.—Within a day or two, yes.

Q.—Did you come directly to Montreal?

A.—No.

Q.—Did you tell Lord Shaughnessy on that occasion why you were going to America?

A.—No.

Q.—Did you not refer to the fact that some member of your family circle was ill?

A.—No. I said I thought I would go to see my brother, who lives in New Orleans. He did not have very good health.

20 Q.—As a matter of fact, did you not go to see your brother in New Orleans on that occasion?

A.—No.

Q.—Did you not tell Lord Shaughnessy that was the occasion of your visit to America?

A.—I might have said I was going to America, and that I would see my brother.

Q.—How closely can you fix the date of that interview?

A.—I should think it was either the 12th or the 13th of May.

Q.—1929?

A.—1929.

30 Q.—Actually when did you reach Montreal on that visit?

A.—I should think the first week in June.

Q.—Had Lord Shaughnessy returned by that time?

A.—No; I came first.

Q.—In Paragraph 31 of your Declaration you refer to the fact that the defendants informed you on a certain occasion that upon reconsideration they had decided not to administer the Incorporated Company (which I take it means Sir Mortimer Davis, Incorporated) as an arm of the Estate, and to continue the connection of said Jennison with the Incorporated Company. Can you recall to what occasion you refer in that Paragraph?

40 A.—Yes. Mr. Reaper told me at first. That was when I brought the statement of April 30th, 1929, back. I think that was the date.

Q.—That was the date of the statement?

A.—Yes. I brought it back to Mr. Reaper to ask him about some items in the statement. I asked him about the raise of his salary and Lord Shaughnessy's salary. I asked him about some Coal Companies. I asked him if they had called Jennison's note for

LADY DAVIS (for Defendants on Discovery), Examination-in-Chief.

\$10,000, and Mr. Reaper said no, that Lord Shaughnessy had been very busy and that he had not had time to do it, and that they had reconsidered it and they were not going to run it as an Estate but that they were going to run it as a Company.

Q.—What were they referring to, in your understanding? What was Mr. Reaper referring to, in your understanding?

A.—The Incorporated Company.

10 Q.—Sir Mortimer Davis, Incorporated?

A.—Yes.

Q.—Did you suggest it was to be run as an Estate?

A.—Yes.

I went to see Lord Shaughnessy, and I complained of Jennison's note for \$10,000, and I asked him if this was the financial man he had bought the Investment Company for, and to whom he was paying \$20,000 a year. He said: "Yes, but I am not paying him \$20,000 a year. He has to earn it first. There is nothing between us but the note of \$10,000." I said: "That is not the sort of thing for an Estate. This is controlled by an Estate—90 per cent of an Estate—
20 and I think this is most speculative." He concurred immediately, and he said: "Very well." He called Mr. Reaper in, and he told Mr. Reaper in front of me that my point had been very well taken, and that they had to call Jennison's \$10,000, and it would be called at once. Mr. Reaper then ventured to say "What about the Oil leases?"

Q.—How closely can you fix the date of that conversation?

30 Witness: The first conversation with Lord Shaughnessy?

Counsel: The one to which you have just referred.

A.—There were two different times. When Lord Shaughnessy was present the first time, I should say it was the latter part of June or the very first few days of July. More likely the last part of June—perhaps the 26th or 27th of June.

Q.—1929?

A.—Yes.

40 Q.—When this conversation with Mr. Reaper took place?

A.—The first was with Lord Shaughnessy, and Lord Shaughnessy assured me there was nothing between Jennison and the Company but the \$10,000, and that he would call the note and that would be the end of it.

Then when I went back a few days later to see Mr. Reaper and ask him about the statement I had picked up from the desk of Lord Shaughnessy—the statement of Sir Mortimer Davis, Incorporated—

LADY DAVIS (for Defendants on Discovery), Examination-in-Chief.

Mr. Reaper told me they had reconsidered, and were not going to run it as an arm of the Estate.

Q.—What was the date of this statement to which you have just referred?

10 Witness: You mean the statement that I brought back to Mr. Reaper?

Counsel: The statement to which you have just referred, which you picked up from Lord Shaughnessy's desk?

A.—April 30th, 1929. A monthly statement.

Q.—When you have found this statement will you please hand it to your Counsel, so that I may take communication of it? I do not wish to encumber the record, but there may be something in the statement that I would like to see, and I have not had occasion to examine it.

20 A.—I will hand it to Mr. McKeown.

Q.—On the occasion of that conversation, or those conversations, with Lord Shaughnessy in Montreal in June, 1929, when this discussion took place in reference to Mr. Jennison, how many such interviews did you have? On how many different occasions was your criticism of the Jennison Investment Company a matter of discussion between you and Lord Shaughnessy?

A.—On every occasion that I saw Lord Shaughnessy after the first criticism.

30 Q.—How many interviews do you recall?

A.—That would be rather difficult to say offhand.

Q.—Were there a good many?

A.—I do not know.

Q.—Let us exhaust the period in question. You arrived in Montreal early in June, 1929.

A.—Yes.

Q.—How early?

A.—The first week in June.

40 Q.—Did you see Lord Shaughnessy the week of your arrival—immediately following your arrival?

A.—Yes, but Jennison was not discussed until I went to the office.

Q.—How closely can you come to the date of that discussion at the office?

A.—I should think it was a little after the 24th of June. It might have been the 25th or 26th.

Q.—Is it fair to say it would be the last week in June, 1929?

LADY DAVIS (for Defendants on Discovery), Examination-in-Chief.

A.—I should think so.

Q.—When had Mr. Jennison's name first been mentioned to you?

A.—I did not know his name. Lord Shaughnessy did not tell me his name. I found it out when I came to Montreal. I naturally was very much interested to find out who this financial genius was.

Q.—Did you know something about him?

10 A.—Not when I arrived in Montreal, but I did find out a lot about him after that.

Q.—Did you know something about him before? Had you ever met Mr. Jennison?

A.—He claimed acquaintance. I met him in the lift of the Ritz one day, and he spoke to me. He said Lord Shaughnessy was talking about me, and that they had often spoken about me.

Q.—Had you a recollection of him?

A.—No.

20 Q.—So, I take it he was a stranger to you at the time his name was first mentioned?

A.—Yes.

Q.—You knew nothing either for or against his qualifications as a financial genius?

A.—I did not think he could have been much of a genius if he had arrived at the age of forty-six and had to borrow \$10,000.

Q.—But, Lady Davis, I am not sure that is a safe test.

A.—Anyway, not a financial genius.

30 Q.—Had you never known a financial genius of that age who had occasion to borrow \$10,000?

A.—I have never known a financial genius.

Q.—Did you have occasion to write to either Lord Shaughnessy or Mr. Reaper giving expression to any of your criticisms or other views as to their administration of the affairs of your husband's Estate?

A.—Not before August, 1929. I do not think I ever wrote before that.

40 Q.—Is the letter filed as part of Exhibit No. 7, dated Ritz-Carlton Hotel, Montreal, August 15th, 1929, the letter to which you have just referred?

A.—Yes.

Q.—Do I understand that was the first occasion on which you ever wrote Lord Shaughnessy anything in the nature of a criticism of the administration of the affairs of the Estate by himself and Mr. Reaper?

A.—I think so.

LADY DAVIS (for Defendants on Discovery), Examination-in-Chief.

Q.—Previous to that had you written him letters in reference to Estate matters? Not necessarily critical in tone, I mean?

A.—Yes, perhaps I may have referred to it in some of my letters.

Q.—Have you copies of any letters you wrote Lord Shaughnessy on Estate matters previous to August 15th, 1929?

A.—I do not remember, really.

10 Q.—Was it your practice to keep copies of any business letters that you wrote? When you wrote a business letter did you keep a copy of it?

A.—I did, after August, yes.

Q.—I mean, before that?

A.—Not that I remember. I would not be apt to do it.

Q.—Did you not make it a practice to keep copies of letters you wrote?

A.—No.

20 Q.—Am I to understand that to the best of your recollection you wrote no letters either to Lord Shaughnessy or Mr. Reaper on Estate matters previous to this letter of August 15th, 1929?

A.—Not that I can remember.

Q.—And, if you did write any such letters, have you copies of them?

A.—No, I did not keep any.

Q.—So, if you wrote any such letters you have not retained copies of them?

A.—No, I do not think so.

30 Q.—And, to the best of your recollection at the present time you did not write any?

A.—Yes.

Q.—From August 15th, 1929, forward, apart from the letters which you filed as Plaintiffs' Exhibit No. 7, bearing date August 15th and August 23rd, 1929, have you personally written any other letters to either Lord Shaughnessy or Mr. Reaper in reference to Estate Sir Mortimer Davis matters?

A.—I wrote a letter to Lord Shaughnessy, dated October 4th, 1929. I have a copy of this letter which I exhibit to you.

40 Q.—Will you hand a copy of this letter to your Counsel, so that it may be available for filing if we wish to file it?

A.—I will.

Q.—I take it that between August 23rd and October 4th you wrote no other communication of any kind to either of the Defendants?

A.—No.

Q.—Did you write any other letters following October 4th, 1929?

A.—I exhibit copies of letters written to Lord Shaughnessy on

LADY DAVIS (*for Defendants on Discovery*), *Examination-in-Chief*.

October 24th, 1929; to Mr. Reaper, on October 26th, 1929; and to the Incorporated Company, on November 20th, 1929.

Q.—Will you please hand these copies to your Counsel, so that we may verify if we have the originals and produce them if we so desire?

A.—I will.

10 Q.—Apart from the letters, copies of which you have exhibited, are there any other letters written by you to either Lord Shaughnessy or to Mr. Reaper, the defendants, having reference to affairs of the Estate Sir Mortimer Davis, and/or the affairs of Sir Mortimer Davis, Incorporated, and/or the affairs of Canadian Industrial Alcohol?

A.—I do not know. I have not been able to find any more. If I find them I will produce them.

Q.—Is it your present recollection that there are others, or that there are no others?

20 A.—That would be difficult to say. I have just told you I do not know.

Q.—All I am enquiring into is your present recollection. Do you recollect that there are any others?

A.—I cannot recall for the moment.

Q.—Do you think there are some others?

A.—I do not know.

Q.—Have you looked to see if there are any others?

A.—Yes.

30 Q.—Am I to understand that as far as your investigation has gone there are no others apart from those copies of which you have exhibited?

A.—I have not found any others up to now.

Q.—Will you please make further searches for copies of letters addressed by you to the defendants, or either of them, in reference to any of those companies I have mentioned; and will you please hand anything you find in the nature of copies of those letters to your Counsel, Mr. McKeown, in order that he may exhibit them to me, say not later than Wednesday next, the 19th instant?

40 At the suggestion of your Counsel I will limit the copies to which I refer to any letters you may have written since the date of your interview with Lord Shaughnessy in London in May, 1929.

A.—I will hand Mr. McKeown any additional copies of letters I find that I may have written, and he will hand them to you.

Q.—Did you from time to time receive certain communications from either Lord Shaughnessy or Mr. Reaper in reference to Estate matters, first, previous to the interview in London in 1929?

LADY DAVIS (for Defendants on Discovery), Examination-in-Chief.

A.—I thought I received very little information about Estate matters.

Q.—Did you receive occasional communications?

A.—Very occasional.

Q.—Have you with you any letters you may have received either from Lord Shaughnessy or Mr. Reaper dated previous to the interview in London in May, 1929?

10 A.—I exhibit a file of original letters that I have received, bearing the following dates:

April 17th, 1928, addressed to me by Sir Mortimer Davis, Incorporated, per A. M. Reaper;

November 7th, 1928, addressed to me by Lord Shaughnessy;

June 8th, 1928, addressed to me by Lord Shaughnessy;

August 5th, 1929, from Lord Shaughnessy;

August 8th, 1929, from Mr. Reaper;

August 13th, 1929, from Lord Shaughnessy;

20 August 21st, 1929, from Lord Shaughnessy;

August 21st, 1929, from Lord Shaughnessy;

August 29th, 1929, from Lord Shaughnessy;

October 4th, 1929, from Lord Shaughnessy;

November 19th, 1929, from Sir Mortimer Davis, Incorporated, per A. M. Reaper;

December 2nd, 1929, from Sir Mortimer Davis, Incorporated, per A. M. Reaper;

December 4th, 1929, Notice of Directors Meeting Sir Mortimer Davis, Incorporated, per A. M. Reaper;

30 December 6th, 1929, Amended Notice of Meeting of Directors of Sir Mortimer Davis, Incorporated, per A. M. Reaper;

December 10th, 1929, Letter from Sir Mortimer Davis, Incorporated, per A. M. Reaper;

December 18th, 1929, letter from Sir Mortimer Davis, Incorporated, per A. M. Reaper;

December 23rd, 1929, letter from Mr. Reaper.

40 Q.—Will you please produce the original letters from Lord Shaughnessy dated November 7th, 1928 and October 4th, 1929, written in Lord Shaughnessy's hand-writing, and leave the other originals with your Counsel, Mr. McKeown, so that I may take communication of them?

A.—I exhibit the two originals in question, and will leave them with my Counsel who will hand you photostatic copies of them today, to be filed as Exhibits D-9 and D-10. I will hand the other type-written originals to Mr. McKeown.

Mr. McKeown has prepared a list of various correspondence, etc., which I now hand you, and which you may file if you wish.

LADY DAVIS (for Defendants on Discovery), Examination-in-Chief.

Mr. Campbell: I will examine it, and file it later if necessary.

By Mr. Campbell continuing):

Q.—Have you now found the copy of the statement re Sir Mortimer Davis, Incorporated, as at April 30th, 1929, and, if so, will you please produce it as Exhibit D-11?

10 A.—I exhibit the original statement, and Mr. McKeown will today hand you a photostatic copy of it.

Q.—Are the letters which you have exhibited to me, and handed to Mr. McKeown, all the letters or other communications you have received from the defendants or either of them in reference to the affairs of the Estate Sir Mortimer Davis since the interview in London in May, 1929?

A.—I would say yes; but I am not sure. They are all I know of.

Q.—I want to be sure they are all.

A.—They are all I know of.

20 Q.—As far as your present knowledge goes, are these letters which you have exhibited the only letters you received from the defendants or either of them since the London interview in May, 1929?

A.—They are all I could find. They are all I know of.

Q.—Either before the interview in London in 1929, or since?

A.—No, I could not say that, because I was not very careful about keeping the letters before. I have given you all the letters I have found. I have searched, and I have given you all the letters I could find.

30 Q.—Do you know of the existence of any others which you have not produced?

A.—No.

Q.—Did you receive from the defendants, or either of them, any financial statement in reference to the Estate of Sir Mortimer Davis showing its condition as at the date of Sir Mortimer's death?

A.—Yes, one.

Q.—Will you please exhibit that statement?

40 A.—I exhibit a statement in reference to the Estate Sir Mortimer B. Davis as at March 22nd, 1928. I will leave the original with Mr. McKeown, who will hand you copies of it if you so desire.

Q.—Have you any other financial statements, apart from this one as at March 22nd, 1928, concerning the affairs of the Estate Sir Mortimer Davis—at any time since Sir Mortimer's death?

A.—Yes. At request Mr. Reaper gave me one, which has been filed as Plaintiffs' Exhibit No. 6, being a statement as at May 31st, 1929.

LADY DAVIS (*for Defendants on Discovery*), *Examination-in-Chief*.

I also have, of course, the report of Price, Waterhouse & Company in reference to the Estate of the late Sir Mortimer B. Davis as at August 31st, 1929, which has been filed as Exhibit No. 8.

Q.—Have you any financial statements in reference to the affairs of Sir Mortimer Davis, Incorporated, and if so, will you please exhibit them?

10 A.—I exhibit the Report and Accounts of Sir Mortimer Davis, Incorporated, as at September 30th, 1928, prepared by Price, Waterhouse & Company. I have already exhibited the statement of the affairs of that Company as at April 30th, 1929, copy of which is filed as Exhibit D-11.

Q.—Will you please leave with your Counsel the statement as at September 30th, 1928, so that I may take communication of it if I so desire?

A.—I will.

20 There are, in addition, the financial statements of Sir Mortimer Davis, Incorporated, prepared by Price, Waterhouse & Company as at August 31st, 1929 (filed as Exhibit No. 9), and as at September 30th, 1929 (filed as Exhibit No. 10).

Q.—Apart from these financial statements which you have exhibited have you had any other financial statements since the death of Sir Mortimer Davis?

A.—No.

Q.—Had you any financial statements concerning the affairs of Sir Mortimer Davis, Incorporated, previous to the death of Sir Mortimer?

30 A.—Yes.

Q.—Will you please exhibit them?

A.—I exhibit copies of the balance sheet of Sir Mortimer Davis, Incorporated, as at September 30th, 1924, 1925, 1926 and 1927; which you supplied to my Counsel, Mr. McKeown, some time ago.

Q.—Apart from these balance sheets have you any other financial statements of Sir Mortimer Davis, Incorporated?

40 A.—I believe I have copies of the monthly statements sent to Sir Mortimer for the months of January and February, 1928, concerning both his private account and the affairs of the Company. I think these are included in the monthly statements which were given by you to my Counsel before suit.

Q.—Will you please hand those additional documents to your Counsel, Mr. McKeown, so that I may take communication of them and make sure they are included in the file copy of which I handed to your Counsel?

A.—I will.

LADY DAVIS (for Defendants on Discovery), Examination-in-Chief.

Q.—Have you any other financial statements than those which you have just now exhibited or referred to, concerning the affairs of Sir Mortimer Davis, Incorporated?

A.—No.

Q.—Have you any financial statements concerning the affairs of Jennison & Company?

10 A.—No. I have a report on Jennison & Company, but no statement.

Q.—Have you a report on them, or of them?

A.—Which would be the correct term? I have a report of the Company.

Q.—I take it you mean a financial statement issued by the Company?

A.—No. The report of a mercantile agency. A report about them.

Q.—Have you no financial statement issued by the Company?

20 A.—No.

Q.—Have you any financial statement issued by the Cadillac Coal Company?

A.—No.

Q.—Did you ever see a financial statement or balance sheet of that Company?

A.—No.

Q.—Would you know a balance sheet if you saw it?

A.—Oh, yes.

30 Q.—And, you never saw a balance sheet of the Cadillac Coal Company?

A.—No.

Q.—Did you ever see a balance sheet or a financial statement of the Investment Foundation, Limited?

A.—No.

Q.—And, you have none in your possession?

A.—No.

Q.—Have you in your possession any financial statements of the Canadian Industrial Alcohol Company?

40 A.—Yes.

Q.—Are they just the published Annual Reports?

A.—Yes.

Q.—For what years?

A.—Just this last year.

Q.—For the year ending September 30th, 1929?

A.—The last year that was issued.

LADY DAVIS (*for Defendants on Discovery*), *Examination-in-Chief.*

Q.—Is it just the published Financial Statement as at the end of the last financial year?

A.—Yes.

Q.—Have you any other apart from that?

A.—No.

10 Q.—Did you examine those financial statements when you got them?

Witness: Which financial statements?

Counsel: Those you have just exhibited, in reference to the affairs of the Estate Sir Mortimer Davis?

A.—Yes.

Q.—And the affairs of Sir Mortimer Davis, Incorporated?

A.—Yes.

20 Q.—Did you examine them in detail?

A.—Yes.

Q.—Have you had sufficient business experience to understand statements of that nature?

A.—Yes. Sir Mortimer went over his statements with me very often.

Q.—So you were accustomed to analyze and examine those statements?

A.—Yes.

30 Q.—During Sir Mortimer's lifetime were you accustomed to go with him into the financial statements he received from time to time about his Company in Montreal?

A.—Yes. He often talked over his affairs with me.

Q.—The subpoena on Discovery which was served upon you also asked you to produce the documents mentioned in Paragraph 86 of the Declaration, which are a marriage contract between, I take it, Sir Mortimer Davis and the first Lady Davis, Dame H. M. Meyer, dated October 20th, 1897; a Deed of Donation, dated October 26th, 1921; and a Deed of Donation dated August 1st, 1923. Have you copies of these documents?

40 A.—I never had the first marriage contract. I have had a copy of the second one.

Q.—That is the donation of October 26th, 1921?

A.—Yes. I have had it, but I do not know where it is now. I tried to find it, but I cannot.

Q.—Was it a notarial document?

A.—Yes.

Q.—And, what have you to say about the third one?

LADY DAVIS (*for Defendants on Discovery*), *Examination-in-Chief*.

Witness: What was that?

Counsel: A Deed of Donation to Lord Shaughnessy and others, as Trustees, for \$1,200,000. Have you a copy of it in your possession?

10 A.—No, I have not.

Q.—I do not know what is in those documents, but perhaps you can tell me. Are you interested as a beneficiary in any of them?

Witness: In any of which documents?

Counsel: Any of these three we have just mentioned. Of course, you are clearly not interested in the first marriage contract, but are you interested in the Deed of Donation dated October 26th, 1921? Have you any benefit under it?

20 A.—Yes.

Q.—Have you not a copy of that document?

A.—No, I have not. I have had it, but I have not it now. I have not been able to find it.

Q.—I see it was for the sum of \$200,000. Were you the beneficiary of the donation?

A.—Yes.

Q.—Is that the amount that has since been paid?

30 Witness: To whom?

Counsel: To you.

A.—I never received anything.

Q.—Was there not a sum of \$200,000 paid to you by the Executors since Sir Mortimer's death?

A.—That was my marriage contract.

40 Q.—The sum of \$200,000 which has actually been paid by the Executors since Sir Mortimer's death was quite distinct from the \$200,000 mentioned in this Paragraph?

A.—Yes.

Q.—Can you tell me from memory what this \$200,000 was, and when it was payable?

Mr. McKeown: I object to the question on the ground that the Deed speaks for itself, and the Executors are in possession of a copy of it, and show the item on the balance sheet of the Estate.

LADY DAVIS (for Defendants on Discovery), Examination-in-Chief.

By Mr. Campbell (continuing):

Q.—In any event, if you were benefitted by it, has that benefit been overwritten by the provisions of the subsequent marriage contract under which you apparently received a similar sum?

10 A.—I think they are two separate things. I do not see why one should override the other.

Q.—As you understand it, the terms of this donation of 1921 were not discharged by your subsequent marriage settlement with Sir Mortimer Davis in 1924?

A.—No.

Q.—Have you ever demanded payment of any benefits to which you might be entitled under that donation?

20 Mr. McKeown: I object to the question as illegal, inasmuch as the Defendants' Executors have themselves acknowledged the present liability with interest in the balance sheet of the Estate as of date March 22nd, 1928, exhibited today; and shown further in Plaintiffs' Exhibit No. 6, balance sheet of the Estate as at May 31st, 1928; and also by the balance sheet of August 31st, 1929, Plaintiffs' Exhibit No. 8.

By Mr. Campbell (continuing):

30 Q.—Did you ever demand payment of that particular sum of \$200,000, or any benefit that might accrue to you in respect of it?

A.—I did not demand. I asked when they were going to pay it, and they said they did not have to pay it until after the death duties were paid.

Q.—Was it to be paid to you, or to the Trustees, under the Deed?

Mr. McKeown: I object to the question, inasmuch as the Deed in question is an authentic document and speaks for itself.

40 By Mr. Campbell (continuing):

Q.—Was the amount of \$200,000 to be payable to you? Did you have the right, as you understood it, to receive payment of that sum?

A.—No. The interest.

Q.—Only the interest?

A.—Yes.

LADY DAVIS (for Defendants on Discovery), Examination-in-Chief.

Q.—And, you are quite clear that it was distinct from the other \$200,000 accruing to you under your marriage settlement?

A.—Yes.

Q.—Have you a copy of your marriage settlement?

A.—No, I have not.

Q.—What was the date of your marriage contract, as nearly as you can fix it?

10 A.—It would probably be just before we were married, would it not?

Q.—When was that?

A.—We were married May 28th, 1924.

Q.—Were you married in Canada?

A.—In France.

Q.—Was your marriage contract passed in France, or before a notary in Montreal?

A.—In Cannes.

20 Q.—In Paragraph 42 of your Declaration you refer to the fact that Lord Shaughnessy unlawfully converted to his own use certain moveable property belonging to the Estate, consisting of ornaments and valuable household furniture. To what have you reference in that Paragraph?

A.—A dining room set, a settee done in tapestry, and some Chippendale chairs.

Q.—How many?

A.—I really do not know.

30 Q.—Did you ever have any discussion with Lord Shaughnessy about his taking those articles?

A.—No.

Q.—Never?

A.—Never.

Q.—At no time?

A.—At no time.

Q.—Where were they taken from?

A.—The Pine Avenue house.

Q.—Did you ever see them in Lord Shaughnessy's house?

A.—Yes.

40 Q.—Did you recognize them as having belonged to Sir Mortimer Davis?

A.—Yes.

Q.—Did you see them on more than one occasion?

A.—I saw the dining room set, I think, on three occasions.

Q.—When you were dining, or lunching, with Lord Shaughnessy?

A.—Yes. And I saw the settee once.

LADY DAVIS (for Defendants on Discovery), Examination-in-Chief.

Q.—When you saw those articles there did you make any remark to Lord Shaughnessy?

A.—No.

Q.—Did he make any remark in reference to them?

A.—No.

Q.—Are you quite clear on that?

A.—Yes, quite clear.

10 Q.—And your testimony is you never discussed the matter with Lord Shaughnessy at any time?

A.—No, I did not.

Q.—Did you ever discuss the matter with Mr. Reaper?

A.—No. What would Mr. Reaper have to do with it?

Q.—Of course, he was one of your co-executors.

A.—I know, but he did not take the furniture.

Q.—In any event, you never called Mr. Reaper's attention to the fact that the furniture had been taken?

A.—No.

20 Q.—Did you attach any importance to the incident at the time?

A.—Yes. I felt it was rather a pity, because I thought if they could not find a purchaser at least the house should be rented.

Q.—As a furnished house?

A.—Yes, and I thought it would be a better selling proposition as a furnished house rather than as an unfurnished house.

Q.—That is, that it would be more attractive to a prospective buyer if it were furnished?

A.—Exactly.

30 Q.—Was that your only thought on the subject at the time?

Witness: At what time?

Counsel: At the time you saw those articles of furniture in Lord Shaughnessy's house?

A.—It did not encourage any great respect for Lord Shaughnessy in my mind.

40 Q.—How nearly can you fix the date when you first saw those articles of furniture in Lord Shaughnessy's house?

A.—I should think the early part of June.

Q.—1929?

A.—Yes.

Q.—You made no comment to him?

A.—No.

Q.—Did you make any comment to any member of his family?

LADY DAVIS (for Defendants on Discovery), Examination-in-Chief.

A.—No, but his wife asked me if I minded, and I said: “ Oh, it does not matter.”

Q.—On what occasion was this?

A.—After I had dined there.

Q.—The first time?

A.—Yes. That was only apropos of the dining room set. I had not seen the other things then.

10 Q.—What did you say to Lady Shaughnessy in answer to her comment or question? Tell me your exact words, as far as you recall them.

A.—She asked me if I minded about the dining room set, and I said: “ Oh, no. It does not matter.” What could I say? I could not raise a row about it.

Q.—And that, as nearly as you can recall, was the first time you saw the dining room set in Lord Shaughnessy’s possession—some time in June, 1929?

A.—Yes.

20 Q.—Apart from that conversation with Lady Shaughnessy, did you ever mention the matter to Lord Shaughnessy?

A.—No, never.

Q.—Did you ever ask him why he had taken those articles?

A.—No, I did not.

Q.—Did you consider it a matter of any consequence?

A.—Yes, I thought it very significant.

Q.—Yet you made no comment to Lord Shaughnessy?

A.—None at all.

30 Q.—And you made no comment to Mr. Reaper, your co-executor?

A.—None at all.

Q.—Either verbally or in writing?

A.—No.

Q.—Apart from this one occasion when you exchanged those remarks with Lady Shaughnessy, did you ever on any other occasion discuss the matter with either Lord Shaughnessy or Mr. Reaper?

A.—No.

40 Q.—You refer in one of the articles of your Declaration to certain visits which Lord Shaughnessy paid to the Ste. Agathe property of Sir Mortimer Davis. Do you complain of that fact?

A.—I thought it unusual that he should use it when he refused to rent it.

Q.—Did you know the extent of his use?

A.—Yes, in a way. The housekeeper told me.

Q.—Were you informed as to how often he had been there?

LADY DAVIS (for Defendants on Discovery), Examination-in-Chief.

A.—He had been up there several times. He spent the holidays there.

Q.—What do you mean by the holidays?

A.—Christmas and New Year's, I think. And he had loaned the house to one of the employees of the Company, Mr. Lauster.

Q.—Was that a week-end period?

10 A.—I do not know whether Mr. Lauster was there more than once or not, but I know he took some friends with him. I think he was there more than once.

Lord Shaughnessy left his family up there.

Q.—For how long?

A.—Over the Christmas holidays.

Q.—Apart from week-end periods, or visits of relatively short duration, were you given to understand there had been any substantial use of the property made by Lady Shaughnessy?

A.—I think it is very substantial to spend the holidays there.

20 Q.—What I want to be sure of is whether the matter was one of any consequence, or of very little consequence.

A.—I think it was of consequence considering that he refused to rent it and then used it himself.

Q.—Did you suggest to him that it should be rented?

A.—I asked him why it was not rented.

Q.—In writing?

A.—No. I asked him why they were not renting it.

Q.—Where was that, and when?

A.—At his house.

30 Q.—During June, 1929?

A.—Yes.

Q.—Was that the only time you discussed the renting of the Ste. Agathe property with Lord Shaughnessy or with Mr. Reaper?

A.—I do not remember. It was quite a natural thing to rent the house if they could not sell it.

Q.—I just asked you whether you suggested on more than one occasion that it should be rented. Is that the only occasion you recall of making such suggestion?

40 A.—No. Afterwards. I think on October 17th I asked again why the farm was not discontinued, and why the places were not rented.

Q.—That was in October, 1929, after the trouble had started?

A.—Yes.

Q.—In Paragraph 45 of your Declaration you refer to the contract dated September 17th, 1924, between Lord Shaughnessy and the late Sir Mortimer Davis and Sir Mortimer Davis, Incorporated, and others. Previous to the institution of these proceedings did you

LADY DAVIS (for Defendants on Discovery), Examination-in-Chief.

ever make any complaint to Lord Shaughnessy about the terms of that contract or the benefits accruing to him under it?

A.—I never saw the contract until about the end of August or the beginning of September.

Q.—You never saw the contract until the end of August or the beginning of September, 1929?

A.—That is right.

10 Q.—When you saw it did you thereafter complain to Lord Shaughnessy or comment upon it in any way?

(Mr. McKeown, K.C., of Counsel for Plaintiffs, objects to the question as irrelevant and illegal.)

(The objection is reserved by consent of the parties in the absence of a Judge.)

A.—No.

20 Q.—Had you not had previous knowledge of the substance of that agreement—whether you had ever seen the document or not?

A.—No.

Q.—Had Sir Mortimer never informed you as to the general nature of his relations with Lord Shaughnessy, and as to Lord Shaughnessy's interest in Sir Mortimer Davis, Incorporated?

(Mr. McKeown, K.C., of Counsel for Plaintiffs, objects to the question as irrelevant and illegal.)

30 (The objection is reserved by consent of the parties in the absence of a Judge.)

A.—I knew he had a contract with Sir Mortimer, but I did not know the exact terms of the contract.

Q.—Did you know that he had, or contended that he had, a certain interest in the stock of Sir Mortimer Davis, Incorporated?

A.—I thought he would have.

Q.—At the end of his five-year period?

40 A.—Yes.

Q.—In Paragraph 49 of the Declaration you refer to the purchase by the Estate of 500 shares of Sir Mortimer Davis, Incorporated, from the Honorable H. M. Marler. Before that was done, did you have any correspondence with Lord Shaughnessy in reference to the matter?

A.—There is a letter, copy of which is being filed as Exhibit D-9, written to me by Lord Shaughnessy under date November 7th,

LADY DAVIS (*for Defendants on Discovery*), *Examination-in-Chief*.

1928, in which I think there is some reference to the matter.

Q.—Apart from the letter of November 7th, 1928, did you receive any communications by letter or cable or otherwise from Lord Shaughnessy in reference to the matter?

A.—Yes, I think there was a cable.

Q.—Have you the cable?

A.—No, I have not. I have not been able to find it.

10 Q.—That was a cable you received when you were living in France?

A.—Yes.

Q.—What was the substance of that cable?

A.—As I remember, it was asking about whether the Estate would purchase Marler's stock.

Q.—Did you reply?

A.—Yes, I replied.

Q.—Did you keep a copy of your reply?

A.—No, I did not.

20 Q.—What was the sense of your reply? Was it affirmative, or was it negative?

(Mr. McKeown, K.C., of Counsel for Plaintiffs, objects to any verbal testimony being made in regard to either of the cables referred to, inasmuch as the defendants are in possession of a copy of the first cable, and of the original of the reply.)

30 (The objection is reserved by consent of the parties in the absence of a Judge.)

Q.—What was the nature of your reply? Did you concur in the proposal put forward by Lord Shaughnessy, or did you disagree with it?

A.—I concurred with the purchase of the Marler shares.

Q.—Was there an qualification to your concurrence?

A.—Yes. I stipulated it should be bought out of capital, not out of interest.

40 By Mr. McKeown:

Q.—That is your recollection?

A.—That is my recollection.

By Mr. Campbell, continuing:

Q.—Did you ever write to either of the defendants, your co-

LADY DAVIS (for Defendants on Discovery), Examination-in-Chief.

executors, suggesting or recommending the sale of any of the assets of the Estate?

10 (Mr. McKeown, K.C., of Counsel for Plaintiffs, objects to the question as irrelevant and illegal, inasmuch as it is admitted by the pleadings that the defendants held a full power of attorney from the female plaintiff from May 4th, 1928, to October 5th, 1929.)

(The objection is reserved by consent of the parties in the absence of a Judge.)

Q.—Now that your Counsel has given you that valuable suggestion, will you please answer my question?

Witness: Your question was did I ever write a letter suggesting the sale of assets?

20 Counsel: Yes.

A.—No, I do not think so. As Mr. McKeown said, they had my power of attorney.

Q.—In any event, whether it was, as Mr. McKeown said, because they had your power of attorney, or otherwise, the fact is you did not write either of the defendants suggesting to them the sale of any of the assets of the Estate, did you?

A.—No.

30 Q.—Did you ever write either of the defendants enquiring as to where they were going to get the money to pay the annuities that accrued to be paid under your husband's will?

(Mr. McKeown, K.C., of Counsel for Plaintiffs, objects to the question as irrelevant and illegal.)

(The objection is reserved by consent of the parties in the absence of a Judge.)

40 A.—No. The source of income was Sir Mortimer Davis, Incorporated.

Q.—Did you write to enquire from them when a dividend would be paid on the stock of Sir Mortimer Davis, Incorporated?

A.—No. I had every confidence in my co-executors at that time, and I knew it was an understood fact when Sir Mortimer died that the dividends would be paid out of Sir Mortimer Davis, Incorporated.

LADY DAVIS (for Defendants on Discovery), Examination-in-Chief.

rated, into the Estate, otherwise I could not see how the annuities or anything else were going to be paid.

Q.—Did you ever put this thought of yours in writing to either of the defendants? Did you ever write them enquiring if those dividends had been paid?

10 (Mr. McKeown, K.C., of Counsel for Plaintiffs, objects to the question as irrelevant and illegal.)

(The objection is reserved by consent of the parties in the absence of a Judge.)

A.—There was no need to. It was just as well known by Lord Shaughnessy and by Mr. Reaper as it was by me.

Q.—The purport of my question is whether you ever wrote them enquiring if they ever had declared a dividend on the stock of Sir Mortimer Davis, Incorporated?

20 A.—No: you do not write to enquire about something you think is an understood fact.

Q.—In any event, you did not write?

A.—No, I did not.

Q.—When did you first discover that no dividend had been declared on the shares of Sir Mortimer Davis, Incorporated, subsequently to Sir Mortimer's death?

30 (Mr. McKeown, K.C., of Counsel for Plaintiffs, objects to the question as irrelevant and illegal.)

(The objection is reserved by consent of the parties in the absence of a Judge.)

40 A.—I did not want to be a nuisance, and bother them. I thought they were settling the affairs as it was understood, and I thought that surely within a year everything would be settled and then the dividends would be declared. When Lord Shaughnessy told me about his plans in London I realized then that he had evidently changed his mind about the thing.

Q.—Did you know when the financial year of Sir Mortimer Davis, Incorporated, finished?

A.—Yes.

Q.—When was it?

A.—September 30th.

Q.—At September 30th, 1928, following the close of the financial year did you enquire from Lord Shaughnessy or from Mr. Reaper

LADY DAVIS (*for Defendants on Discovery*), *Examination-in-Chief*.

whether a dividend had been or would be declared on the shares of the Company?

A.—No. I just told you I did not want to worry them. I knew it was an understood fact, and I thought it would be done.

Q.—In any event you never wrote to enquire whether it had been done or not?

A.—No.

10 Q.—Did you at any time write them suggesting that a dividend should be declared?

A.—No. I just told you I thought it was understood.

Q.—The only purpose of my question is to ascertain whether at any time previous to the institution of these proceedings you wrote either Lord Shaughnessy or Mr. Reaper suggesting or requesting that a dividend be declared on the shares of Sir Mortimer Davis, Incorporated?

A.—No, I did not.

20 Q.—Did you ever write them suggesting that the capital of that Company should be reduced in order that money might become available for the payment of capital obligations of the Estate?

A.—I did not write them: no. But, it was an understood fact—otherwise how were they going to meet their liabilities.

Q.—When was this understanding reached?

A.—It was reached at the meeting after Sir Mortimer's death.

Q.—What meeting was that?

A.—Lord Shaughnessy, Mr. Reaper and I met.

30 Q.—That, I take it, was the meeting of April 25th, 1928, a copy of the Minutes of which is filed?

A.—Yes.

Q.—Did you ever write to the defendants, or either of them, enquiring as to the payment of succession duties to the Province of Quebec?

(Mr. McKeown, K.C., of Counsel for Plaintiffs, objects to the question as irrelevant and illegal.)

40 (The objection is reserved by consent of the parties in the absence of a Judge.)

A.—No.

Q.—In Paragraph 75 of your Declaration you complain that the defendants have not any feasible or workable plan for meeting the obligations of the Estate and of the Incorporated Company.

LADY DAVIS (*for Defendants on Discovery*), *Examination-in-Chief*.

Did you ever suggest to the defendants in writing any plan for either of those purposes?

Mr. McKeown, K.C., of Counsel for Plaintiffs, objects to the question as irrelevant and illegal.

10 (The objection is reserved by consent of the parties in the absence of a Judge.)

A.—In writing, no.

Q.—Have you any plan in your mind?

A.—It is rather difficult now in the present state of affairs, is it not?

Q.—Did you ever suggest a plan for dealing with these problems?

A.—I think the best plan would be to get the incapable ones out.

20 Q.—Is that your answer?

A.—I do not see how you can build up anything with incompetency.

Q.—Did you contribute any constructive suggestion as to how this situation was to be met and those obligations referred to were to be provided for?

A.—I was not permitted to do so.

Q.—In any event, did you do so?

A.—I would like to.

30 Q.—Did you do so?

A.—I told you I was not permitted to.

Q.—I take it your answer means you did not because you were not permitted to.

A.—Exactly. It was very difficult for me to get a hearing with Lord Shaughnessy.

Q.—To what point of time have you now reference?

A.—Since June.

Q.—1929?

A.—Yes.

40 Q.—Previous to June, 1929, your relations with Lord Shaughnessy were quite amicable, were they not?

A.—Yes.

Q.—You visited his home?

A.—I did.

Q.—And your relations with him were quite cordial up to that time?

A.—Yes.

LADY DAVIS (for Defendants on Discovery), Examination-in-Chief.

Q.—During the period of your cordial relations did you ever advance to him any constructive suggestions as to how those obligations of the Estate were to be provided for?

(Mr. McKeown, K.C., of Counsel for plaintiffs, objects to the question as irrelevant and illegal.)

10 (The objection is reserved by consent of the parties in the absence of a Judge.)

A.—No: we did not speak of business.

Q.—So, as long as your relations with Lord Shaughnessy were cordial you practically never discussed business with him?

A.—I would not say that. You asked me if I visited his house.

20 Q.—I am not limiting myself to the occasions of your visits to his house. Your relations with Lord Shaughnessy were still cordial, were they not, down to June, 1929?

A.—Yes.

Q.—Until the end of June, 1929, did you ever make to Lord Shaughnessy or to Mr. Reaper any constructive suggestion as to what should be done in the administration of the affairs of the Estate so as to provide for the necessities of the Estate?

(Mr. McKeown, K.C., of Counsel for plaintiffs, objects to the question as irrelevant and illegal.)

30 (The objection is reserved by consent of the parties in the absence of a Judge.)

A.—I suggested bringing in a very competent financial man: Mr. Donaldson. Lord Shaughnessy objected.

Q.—Was that not after the situation had altered?

A.—No; we were quite friendly.

Q.—When was that?

A.—I should say the first week in July.

Q.—1929?

40 A.—Yes.

Q.—But, for the moment I am limiting my question to the period ending June, 1929. Up to that time did you make any constructive suggestion as to how the affairs of the Estate were to be managed?

A.—I thought the plan we agreed upon in April would be carried out.

Q.—That is, April, 1928?

LADY DAVIS (for Defendants on Discovery), Examination-in-Chief.

A.—Yes. I did not realize in what a chaotic state things were.

Q.—When did you discover this state of chaos?

A.—When I received the statements.

Q.—The statements you filed or referred to this morning?

A.—Yes.

Q.—Where is the chaos in those statements? Will you please indicate it?

10 A.—I think \$750,000 of very bad investments; the depreciation in the Alcohol stock; the indebtedness to the Bank, which has not been wiped out; lack of capital on hand—I should say all these things represent a chaotic state—liabilities; no cash.

Q.—No cash in the coffers of the Estate, or of the Incorporated Company?

A.—Not enough to meet their liabilities, surely.

Q.—Even in the Incorporated Company?

A.—No.

20 Q.—When you discovered what you have referred to as a state of chaos did you make any other suggestions in writing to the defendants apart from those covered by the letters which you have already produced?

(Mr. McKeown, K.C., of Counsel for plaintiffs, objects to the question as irrelevant and illegal.)

(The objection is reserved by consent of the parties in the absence of a Judge.)

30 A.—In writing, no; but I had meetings with Lord Shaughnessy in which I suggested things.

Q.—Were they meetings of the Executors, or just conversations between you and Lord Shaughnessy?

A.—I should say conversations between Lord Shaughnessy and me; but at Lord Shaughnessy's office.

Q.—On how many occasions did you go there?

A.—I should say four or five times.

Q.—In the summer and autumn of 1929?

40 A.—Yes.

Q.—Did you ever suggest to either of the defendants the sale of the Asbestos shares—that is, the shares in the Asbestos Corporation, referred to in Paragraph 93 of your Declaration?

Mr. McKeown, K.C., of Counsel for plaintiffs, objects to the question as irrelevant and illegal.

LADY DAVIS (for Defendants on Discovery), Examination-in-Chief.

(The objection is reserved by consent of the parties in the absence of a Judge.)

A.—No.

Q.—Did you ever suggest to either of the defendants a different method of dealing with the disposal of the Pine Avenue residence or the Ste. Agathe property?

10 A.—I asked why a sign was not out, if that is what you mean.

Q.—On the Pine Avenue property?

A.—Yes.

Q.—Did you get a reply?

A.—Yes.

Q.—What was the reply?

A.—Lord Shaughnessy said it would spoil the appearance of the house.

Q.—Did you know that the house had been listed for sale with several of the leading real estate brokers in Montreal?

20 A.—So I was told.

Q.—Do you think it would have been appropriate to have placarded the house with a board announcing that it was for sale by all those different agents?

A.—Yes. I do not think it would detract from the appearance of the house any more than a boarded door in front of the house.

Q.—Was the door usually boarded up when Sir Mortimer was away?

30 (Mr. McKeown, K.C., of Counsel for plaintiffs, objects to the question as irrelevant and illegal, inasmuch as the house was not then for sale.)

(The objection is reserved by consent of the parties in the absence of a Judge.)

A.—When Sir Mortimer was away I was away, so how would I know?

Q.—You do not know?

40 A.—No, certainly not.

Q.—Did you ever discuss with Lord Shaughnessy, or Mr. Reaper, the question of a possible merger of Canadian Industrial Alcohol with other Companies in the same industry?

A.—I asked Lord Shaughnessy if it were true, and he denied it most emphatically.

Q.—Is that the denial which is referred to in his letter of October 4th, 1929, which I show you?

LADY DAVIS (*for Defendants on Discovery*), *Examination-in-Chief*.

A.—He most emphatically denied it at the meeting of October 17th in the Canadian Industrial Alcohol offices.

Q.—Who were present at that meeting?

A.—Lord Shaughnessy, Mr. Reaper and myself.

Q.—What did the denial consist of? Can you repeat the words he said on that occasion?

10 A.—I said I had heard Mr. Jennison had gone to Europe to merge with some independent companies.

Q.—In Europe?

A.—In Europe. Lord Shaughnessy became very annoyed, and said it was absolutely untrue, and that there was not a suggestion or thought of a merger of any sort, and there is absolutely nothing between Jennison and myself." I said: "I think \$50,000 is a lot. You gave him \$50,000". He said: "I did not give him \$50,000. I bought stock from him for \$50,000". I said: "Why don't you try to sell it?" He said: "He will take it back when he comes back. 20 He is making money in Europe, and when he comes back he will take back the stock". I said: "I am not as credulous as you are".

Q.—For the moment I am only speaking of this Industrial Alcohol suggested merger.

A.—But that appertained to it.

Q.—On that occasion did you not inform Lord Shaughnessy that you saw no objection to a merger being discussed if opportunity offered?

A.—There was no reason for me saying that, because Lord 30 Shaughnessy assured me that nobody had even suggested a merger —no one had come to him at all.

Q.—This was in October, 1929?

A.—Yes.

Q.—On that occasion did you not say that if opportunity did offer for a possible discussion that you had no objection?

A.—No, I did not.

Q.—Did you say anything to indicate that you did not object to considering the matter in principle?

A.—That is a very broad statement. How do I know what sort 40 of a merger it is?

Q.—I am not suggesting you expressed approval of any particular merger, but did you not suggest that you were perfectly willing to consider proposals for a merger, if they were submitted?

Witness: By whom?

Counsel: By anybody.

LADY DAVIS (for Defendants on Discovery), Examination-in-Chief.

A.—No. I was very much against a merger with independents.

Q.—Were you against a merger with anyone?

A.—It would depend on the terms. That is a very difficult thing to answer.

Q.—Of course, it would depend upon the terms; but did you not express the general idea that if satisfactory terms of merger were available it was a matter for appropriate consideration?

10 A.—But not a matter of secrecy. Lord Shaughnessy was not in a position to handle it as it wanted handling.

Q.—But, did you not express the idea that in so far as Lord Shaughnessy was, or contended he was, interested as a shareholder in Sir Mortimer Davis Incorporated, that you were quite satisfied anything he did in the name of that Company with reference to a possible merger of Alcohol would be probably satisfactory because of his personal interest? Did you not make such a statement as that?

20 (Mr. McKeown, K.C., of Counsel for Plaintiffs, objects to the question as irrelevant and illegal.)

(The objection is reserved by consent of the parties in the absence of a judge.)

A.—Never. I do not consider Lord Shaughnessy an appropriate person to make a merger.

Q.—When did you reach that conclusion?

A.—After our conversation in London.

30 Q.—Was that the time, and was that conversation the occasion of your change of mind with reference to Lord Shaughnessy's capacity?

A.—Yes.

Q.—From that time on you were persuaded that he was not competent to handle such negotiations?

A.—I thought his statements were rather wild.

Q.—Have you objections to the whole principle of a merger of Industrial Alcohol with any other company engaged in the same industry?

40 (Mr. McKeown, K.C., of Counsel for Plaintiffs, objects to the question as illegal, hypothetical and as not in issue.)

(The objection is reserved by consent of the parties in the absence of a judge.)

A.—I think a merger of the three largest companies, on right

LADY DAVIS (for Defendants on Discovery), Examination-in-Chief.

terms, would be a very good thing. I think a merger with Walker alone would be ridiculous.

Q.—So, is it your view that a merger of Canadian Industrial Alcohol, plus Hiram Walker-Gooderham Worts, plus Distillers Corporation, would, subject to consideration of detailed terms, be advisable in the interests of Canadian Industrial Alcohol?

10 (Mr. McKeown, K.C., of Counsel for Plaintiffs, objects to the question as illegal, hypothetical and as not in issue.)

(The objection is reserved by consent of the parties in the absence of a judge.)

A.—I think a combination of the three companies would probably be all right; but certainly not with Walker alone.

20 Q.—Have you any personal information as to the condition of the distilling industry in Canada?

(Mr. McKeown, K.C., of Counsel for Plaintiffs, objects to the question as irrelevant and illegal.)

(The objection is reserved by consent of the parties in the absence of a judge.)

A.—Yes.

30 Q.—Do you know whether the condition of the industry in Canada at the present and, say, since the beginning of 1929, has been such that it is highly desirable in the interests of Canadian Industrial Alcohol that some steps be taken to merge Canadian Industrial Alcohol, on suitable terms, with some of its chief competitors in the Canadian field?

(Mr. McKeown, K.C., of Counsel for Plaintiffs, objects to the question as irrelevant and illegal.)

40 (The question is suspended for the decision of the Court.)

Q.—When did you first learn of tentative overtures for negotiations for a possible merger of Canadian Industrial Alcohol with any other company?

A.—When Mr. McKeown showed me a letter sent him by Messrs. Meredith, Holden, Heward & Holden, dated January 17th, 1930, and shown to me on the morning of January 18th, 1930.

LADY DAVIS (for Defendants on Discovery), Examination-in-Chief.

Q.—Do you testify that was the first time you learned that there was anything in the nature of suggestions, or negotiations, or overtures looking to a merger of Canadian Industrial Alcohol with any other company in the industry?

A.—That was the first thing I heard of it.

Q.—Are you sure?

10 A.—I am positive.

Q.—You understand I am not now asking you as to whether that was the first thing you heard from the defendants.

A.—I heard rumors outside, but nothing positive. That was the first acknowledgment from Lord Shaughnessy.

Q.—Were you not informed that your Counsel had been told many weeks before that of the existence of those negotiations?

A.—No.

Q.—You are quite clear on that?

A.—Very clear on it.

20 Q.—Had you heard rumors from other sources that those things were under way?

A.—Yes.

Q.—Did you make any enquiries from Lord Shaughnessy with reference to them?

A.—Yes, on October 3rd.

Q.—But I am speaking of after October 18th, 1929.

A.—No. I have not seen Lord Shaughnessy since then except in Court. I do not think we were on speaking terms, as a matter of fact.

30 Q.—So, after you heard those rumors from other sources, you held no conversation with either Lord Shaughnessy or Mr. Reaper on the subject?

A.—What is the point? When Lord Shaughnessy denied them, and I could not believe him.

Q.—Is that your answer?

A.—Yes, that is my answer.

Q.—In any event, you did not hold any conversations with him?

A.—No.

40 Q.—Did you ever write him with reference to the matter subsequently to that interview of October, 1929?

A.—I wrote him the letter of October 3rd.

Q.—This interview with Lord Shaughnessy, to which you refer as being in October, 1929, can you fix the date? Was it October 18th?

A.—I think so.

Q.—From that time forward did you write to either Lord

LADY DAVIS (for Defendants on Discovery), Examination-in-Chief.

Shaughnessy or to Mr. Reaper enquiring in reference to those rumors you had heard about a possible merger?

A.—No.

Q.—You referred in one of your answers a few moments ago to the shrinkage in market value of Canadian Industrial Alcohol shares. Do you know whether the shares of other companies engaged in that industry also shrank in market value?

10

(Mr. McKeown, K.C., of Counsel for Plaintiffs, objects to the question as irrelevant and illegal.)

(The objection is reserved by consent of the parties in the absence of a judge.)

Q.—Do you know whether the shares of the other companies engaged in a similar line of business also shrank in market value?

20

(Same objection.)

(Same reserve.)

A.—Not to the extent ours did.

Q.—Was there some noticeable shrinkage in the other shares too?

(Same objection.)

30

(Same reserve.)

A.—Yes, I think there was; but the shrinkage in sales does not compare with ours.

Q.—What do you mean by sales? The number of shares sold?

A.—No. The shrinkage in their business—in their sales.

Q.—You mean in the sales of output?

A.—Yes.

Q.—Is it your idea the sales of Canadian Industrial Alcohol had
40 fallen off more in proportion than the sales of other companies?

A.—Yes.

Q.—During what period of time has that been true?

A.—The last year.

Q.—The financial year of the Canadian Industrial Alcohol Company ended on September 30th each year?

A.—Yes.

LADY DAVIS (for Defendants on Discovery), Examination-in-Chief.

Q.—Do you mean that subsequently to the close of the financial year of that company, which ended on September 30th

A.—(interrupting)—I mean during the last year the shrinkage in their sales has been tremendous. I mean the past twelve months.

Q.—Were you ever a director of Sir Mortimer Davis, Incorporated, during Sir Mortimer's lifetime?

10 (Mr. McKeown, K.C., of Counsel for Plaintiffs, objects to the question as irrelevant and illegal.)

(The objection is reserved by consent of the parties in the absence of a judge.)

A.—No.

Q.—Do you know if that Company ever declared a dividend during Sir Mortimer's lifetime?

20 (Mr. McKeown, K.C., of Counsel for Plaintiffs, objects to the question as irrelevant and illegal.)

(The objection is reserved by consent of the parties in the absence of a judge.)

A.—It was not necessary to declare a dividend. It was all my husband's money, and he drew the money as he liked.

30 Q.—Did the Company ever declare a dividend during Sir Mortimer's lifetime?

(Mr. McKeown, K.C., of Counsel for Plaintiffs, objects to the question as irrelevant and illegal, and inasmuch as the defendants are in possession of the corporate records which speak for themselves.)

(The objection is reserved by consent of the parties in the absence of a judge.)

40 A.—I do not think so.

Q.—In Paragraph 39 of your Declaration you refer in general comprehensive terms to the acts and omissions of the defendants as your co-executors in regard to the performance of their duties as such. Will you please glance through the contents of that Paragraph and tell me in you own words what are those acts and omissions to which you refer in that Paragraph?

LADY DAVIS (for Defendants on Discovery), Examination-in-Chief.

(Mr. McKeown, K.C., of Counsel for Plaintiffs, objects to the question as illegal and inadmissible, the declaration speaking for itself and the context of the Paragraph in question making it perfectly plain that the details of the acts and omissions are those set forth in the declaration.)

10

Q.—The purpose of my question is to have you give in your own words, without all the detail used by your Counsel in the Statement of Claim, your own idea as to what the Defendants have done, or have left undone, which justifies the complaint you have brought against them and your request for their removal from office.

(Same objection.)

20

(The question is suspended for the decision of the Court.)

Q.—My attention has been called to the fact that in the subpoena served upon you you were asked to produce the statements or reports of any of the subsidiaries of Canadian Industrial Alcohol, Limited. Have you any such statements?

A.—No, I have not.

Mr. Campbell: I have no further questions.

30

Mr. McKeown: It being now 1:35 p.m., the plaintiffs declare they will not proceed to cross-examine the witness upon the foregoing examination-in-chief, but expressly reserve their full rights in the course of the examination of the plaintiff at the trial to cover all subjects which might properly constitute cross-examination upon the foregoing examination-in-chief.

And further deponent saith not.

40

HOWARD A. POILLON (*for Defendants*), *Examination-in-Chief*.

DEFENDANTS' EVIDENCE AT TRIAL

On this twenty-ninth day of April, in the year of our Lord one thousand nine hundred and thirty, personally came and appeared

HOWARD ANDREW POILLON

10

of the City of New York, in the State of New York, Mining Engineer, aged fifty-seven years, a witness produced on behalf of the defendants, who being duly sworn doth depose and say as follows:

Examined by Mr. George A. Campbell, K.C., of Counsel for Defendants:

20 Q.—Mr. Poillon, you have given your occupation as that of a mining engineer. Will you give me, in a word, your qualifications and training in the profession?

A.—I studied at Columbia University School of Mines; I then went West and operated in mines in the West for a period of about fourteen years.

Q.—What is the total length of time of your experience as a mining engineer?

A.—Thirty years.

Q.—In active practice?

A.—Yes, sir.

30 Q.—And what is the name of your firm?

A.—Poillon and Poirier.

Q.—And where are your headquarters?

A.—No. 11 Broadway, New York City.

Q.—When did you first make the acquaintance of the late Sir Mortimer Davis, as far as you can recall?

A.—About 1912.

Q.—From that time on, did you have any professional relations with him?

A.—Well, one or two years after, practically continuously.

40 Q.—Dealing with what sort of ventures on his behalf?

A.—Mining ventures.

Q.—Advising him, as a mining engineer generally?

A.—Yes, sir.

Q.—In the course of your professional relations with Sir Mortimer Davis, did you have any occasion to consider for him any coal mining areas in Western Canada?

A.—Yes, sir.

HOWARD A. POILLON (*for Defendants*), *Examination-in-Chief*.

Q.—In what general district were they?

A.—In the Lethbridge field.

Q.—Would that be what is referred to in the record as the Federal Coals property?

A.—Yes, sir.

Q.—Do you know, approximately, the extent of Sir Mortimer Davis' early venture in the Federal Coals property; about how much
10 had he to spend on that prospect?

A.—It was not a prospect; it was an operating property.

Q.—How much, about, had he invested?

A.—I believe that it was around \$100,000.

Q.—Did you have to do with the Federal Coals property during Sir Mortimer's lifetime?

A.—Yes, sir.

Q.—When you say that you had, during this period of time, been employed continuously by Sir Mortimer Davis, from 1919 on, by whom were the operations in which you were interested professionally conducted? Was it by Sir Mortimer personally, or by his Company?
20

A.—By his Company.

Q.—That is, Sir Mortimer Davis Incorporated?

A.—Sir Mortimer Davis Incorporated.

Q.—So that in the last ten years, your employment would be rather by Sir Mortimer Davis Incorporated than by Sir Mortimer in person?

A.—Yes, sir, ever since the Company was incorporated.

Q.—I think the record shows that that was about 1919. Since
30 the death of Sir Mortimer Davis, in March, 1928, have you continued to be employed professionally by Sir Mortimer Davis Incorporated?

A.—Yes.

Q.—Were you on a permanent retainer?

A.—I was.

Q.—Was there any change in your professional relations with the Company before and after the death of Sir Mortimer Davis?

Witness: Do you mean immediately before and immediately
after?

40 Counsel: Immediately before, and immediately after?

A.—No.

Q.—Your retainer remained the same?

A.—Yes.

Q.—In the course of your professional employment for Sir Mortimer Davis Incorporated, subsequent to the death of Sir Mortimer Davis, did you have occasion to again consider these Western coal lands?

HOWARD A. POILLON (*for Defendants*), *Examination-in-Chief*.

A.—I did.

Q.—In which the Company was interested?

A.—Yes.

Q.—When did you make your investigations, and in what connection?

A.—The Federal Coal property was under lease to Mr. Donaldson.

10 Q.—That was at the time of Sir Mortimer's death?

A.—That was at the time of Sir Mortimer's death. Prior to Sir Mortimer's death it was thought advisable to try to obtain some other properties, so that the operations could be carried on, on a larger scale.

20 Mr. McKeown: I would like to know whether the witness is speaking from his personal knowledge in what he is now giving to the Court, or whether this is instruction which he received. I do not object to him giving the information, but I would like it defined as we go along.

Mr. Campbell: I will ask the witness to restrict himself entirely to what is within his personal knowledge.

By Mr. Campbell:

Q.—Did you, yourself, make any recommendation in that sense?

A.—I did.

30 Q.—To Sir Mortimer Davis Incorporated?

A.—To Sir Mortimer Davis Incorporated and Sir Mortimer Davis.

Q.—Then, after the death of Sir Mortimer Davis, did Sir Mortimer Davis Incorporated take any action in line with the suggestion which you had made?

A.—They did.

Q.—And what action was taken?

A.—We first examined, or continued the examination of the Rogers area, which was an area adjacent to Federal Coals.

40 Q.—The Rogers area, was that the one referred to in the record as having been under option?

A.—That was under option.

Q.—Was that option taken during the lifetime of Sir Mortimer Davis?

A.—That option was taken during the lifetime of Sir Mortimer.

Q.—You examined the Rogers area, and what was the result of your examination of it?

HOWARD A. POILLON (*for Defendants*), *Examination-in-Chief*.

A.—We drilled it, and found the coal measured too thin; also, there was some difficulty about a railroad siding.

Q.—Did you recommend the taking up, or the dropping of the option?

A.—We recommended that the option be not exercised.

Q.—And was your advice followed?

A.—It was.

10 Q.—Then, did you look for any other solution?

A.—About the time that we were drilling the Rogers area, Mr. Donaldson, who was leasing the Federal Coal mine, was developing a piece of property, which is now known as the Cadillac Coals, and it was thought that we might substitute Mr. Donaldson's property for the Rogers area.

Q.—Did you make any examination of the Donaldson property, that is, the property under lease to Mr. Donaldson?

A.—Personally at that time I did not, but Mr. Cochrane did.

20 Q.—On the reports that you received, did you make any recommendation about the advisability of the deal?

A.—I did.

Q.—Did you recommend that these companies of Mr. Donaldson would be effected, or did you recommend against him?

A.—I recommended that it be effected.

Q.—And was it, in fact, effected?

A.—It was effected.

Q.—Have you any personal knowledge as to how the merged enterprise is working out as a coal property?

30 A.—We have every expectation that it will be very successful.

Q.—What opinion do you hold professionally of the Cadillac Coal venture in its present set-up? What is your professional judgment of its probable future?

A.—I consider its future to be very bright, inasmuch as Cadillac Coal Mines contains the best seam of coal that is now exposed in that area, insofar as I myself know.

Q.—So that in quality of coal, it will stand competition with other mines?

40 Mr. McKeown: Don't give the evidence yourself, Mr. Campbell.

Mr. Campbell: I am repeating his opinion.

By Mr. Campbell:

Q.—Let me meet the view of Mr. McKeown. How does the quality of the Cadillac Coal Company's coal compare with the

HOWARD A. POILLON (*for Defendants*), *Examination-in-Chief*.

quality of coal being shipped by competing coal companies in Western Canada?

A.—It is equal in quality to any coal produced in the Lethbridge field and the seam itself is considerably thicker than any being mined in the Lethbridge field.

Q.—Can you give us the approximate cost per ton of production?

10 A.—About \$2.75 a ton.

Q.—How does that price per ton compare with the cost or production of competing properties?

A.—It is about a dollar a ton less.

Q.—Apart from the quality of the coal mining land itself, can you give us any idea of the extent and value of the equipment installed upon the property?

20 A.—As to the equipment, I think I will have to refresh my memory on that from notes. This entire property as it now stands has been appraised at approximately \$300,000.

Q.—Is that including the coal lands, or apart from that?

A.—Quite apart from the coal lands.

Q.—Quite apart from the coal lands, \$300,000?

A.—Yes.

Q.—By whom was the appraisal made?

A.—An appraisal company in Canada whose name I do not recall.

30 Q.—Then, you would have this plant and equipment of an appraised value of \$300,000? What other value would you have apart from the actual mining lands?

A.—Your coal in the ground.

Q.—Are you speaking now only of the Donaldson area under lease, or are you also including the Federal property?

A.—No, I was only speaking of the Cadillac Coal Company, of the old Cadillac Coal Company.

Q.—In addition to that, what is the value of the plant and equipment, if any, at the old Federal Coal property?

A.—About \$90,000.

40 Q.—So that you would have \$300,000 plus \$90,000, plus the value of the coal lands for whatever they may be worth?

A.—Yes, sir.

Q.—You have mentioned the name of Mr. Donaldson. What position does he occupy in connection with the property?

A.—Mr. Donaldson is the Manager of the property.

Q.—Have you known him for some time?

A.—I have known him since 1912. I beg your pardon, since about 1921.

HOWARD A. POILLON (for Defendants), Examination-in-Chief.

Q.—From your knowledge and experience of him, is he a capable administrator?

A.—Extremely so.

Q.—I mean, as an operator of a coal mining property?

A.—He is a very excellent coal mining operator.

Q.—What sort of results is he getting from his property?

A.—Very good results.

10 Q.—The record in this case shows that Sir Mortimer Davis Incorporated had advanced to the 31st of January last, \$114,117.40, that it had given a guarantee to the Bank of \$80,000 to cover a Bank loan, and another Bank guarantee under the Wages Securities Act of \$20,000, making a total investment up to that date of some \$214,117.00; and I think Mr. Reaper mentioned there had been a more recent advance of about \$30,000; that would make a total investment to date of about \$244,000.00, or nearly \$250,000.00. In your judgment, what are the prospects of Sir Mortimer Davis Incorporated recovering that investment, or of getting a fair return on it as a fair
20 investment?

A.—Why, they should be able to earn after all interest, about \$100,000 a year.

Q.—When you say “after all interest”, does that include the interest on the proposed bond issue?

Witness: Well, what is the proposed bond issue?

Counsel: When you spoke of interest—I am instructed that
30 there are about \$150,000 of bonds that are to be presently outstanding, when the issue is complete, this will increase in proportion.

A.—Yes, sir.

Q.—But taking it for granted that there will be \$150,000 of seven per cent bonds outstanding, plus these Bank loans to be carried, what, in your judgment, is the prospect of the Company of paying its way?

A.—I wonder if I can refresh my memory from some notes.

Q.—Surely. You are entitled to look at your notes?

40 A.—The Company could earn, with interest on the amount of the bonds, amounting to \$10,500, approximately \$120,000.

Q.—That is, per annum?

A.—Per annum, from which must be deducted the interest on **their Bank loans.**

Q.—On what estimated production are those figures taken?

A.—That is on 70,000 tons from the Standard and 18,000 tons from the Federal.

HOWARD A. POILLON (*for Defendants*), *Examination-in-Chief*.

Q.—The Standard is what has been referred to as the Donaldson area?

A.—The Cadillac.

Q.—Now called the Cadillac?

A.—Now called the Cadillac.

10 Q.—Apart from the Cadillac Coal Company, about which you told us, did you have any professional employment in Western Canada for Sir Mortimer Davis Incorporated in connection with any oil lands?

A.—Yes, sir.

Q.—During the lifetime of Sir Mortimer?

A.—During his lifetime.

Q.—Did you make any professional examination of these lands?

A.—I did.

Q.—Since his death, have you made any further investigation of oil lands in Western Canada?

A.—I have.

20 Q.—First of all, what was Sir Mortimer's general attitude to oil prospects in that part of the country?

A.—He was very desirous of obtaining a large area in Western Canada, as he had great faith in its oil possibilities.

Q.—Following up that field, did the Company during his lifetime lease considerable areas?

A.—Yes, sir.

Q.—Did you make a professional examination of these areas?

A.—I did.

30 Q.—Before or since his death?

A.—Before his death.

Q.—With what result?

A.—With the result that we took up considerable areas at various points in Western Canada.

Q.—Since his death, have you made any further investigation of these lands?

A.—I have visited them once.

Q.—How have they fulfilled the promise of their first hope?

40 A.—Sir Mortimer's scheme in general was the acquisition of a large area in Western Canada. His desire was to hold it, and let others do the prospecting work, and eventually sell it to someone else, or interest somebody in the development of it on a royalty basis, and it was under that scheme the land was acquired.

Q.—Since his death, did you give Sir Mortimer Davis Incorporated any advice in reference to these oil lands?

A.—Yes, sir.

Q.—And what advice did you give them?

HOWARD A. POILLON (for Defendants), Examination-in-Chief.

A.—That if they could not interest someone in actively drilling, to slowly let them return to their original owners.

Q.—That would be on the expiry of the lease?

A.—On the expiry of the lease.

Q.—They were all then leasehold properties?

A.—They were all leasehold properties.

Q.—Did they act on your advice?

10 A.—They did.

Q.—It is in evidence in this record by Plaintiffs' Exhibit Number 9, that for the year ending September 30th, 1928, there was expended by Sir Mortimer Davis Incorporated on what is headed " Alberta Coal Properties " the sum of \$7,733.60, and for the eleven months to August, 1929, the sum of \$5,442.32. In your experience of the operations of that Company, how did those sums compare with the scale of expenditures ordinarily made by that Company in such ventures in previous years?

A.—I am afraid I do not quite understand those entries.

20 Q.—I am asking you whether the expenditure made in those years compare with the expenditures ordinarily made by Sir Mortimer Davis Incorporated in the investment of development of coal mining properties in Western Canada? Can you testify as to that without being precise as to figures? Did they exceed what was normally spent in such ventures during the lifetime of Sir Mortimer Davis?

A.—No, they did not.

30 Q.—In the same Exhibit there is shown an expense in respect of Alberta oil fields of \$37,368.89 for the year ending September 30th, 1928, and \$8,929.57 for the eleven months ending August 31st, 1929. How did these amounts compare with the previous expenditures of that Company in the similar enterprises?

A.—Considerably less; 1929 were considerably less than 1928.

Q.—How did the 1929 expenditure compare with the previous practice of the Company over a period of years from the time they went into that oil venture? Was it more or less than the amounts usually expended in that kind of venture—I am speaking of the recent history of Sir Mortimer Davis Incorporated?

40 Mr. McKeown: If he knows anything about it.

By Mr. Campbell:

Q.—Yes, if you know anything about it?

A.—It was less.

HOWARD A. POILLON (*for Defendants*), *Examination-in-Chief*.

Mr. McKeown: Mr. Campbell, excuse me. Let us look at this thing which you are putting before the witness.

Mr. Campbell: I am not limiting him to the period covered by the Exhibit.

10 Mr. McKeown: I think you should examine the witness from your ordinary place, without showing him a statement.

Mr. Campbell: He asked to see the figures. He is entitled to see the figures.

By Mr. Campbell:

20 Q.—Apart from the Lethbridge oil fields and the Lethbridge coal properties, did you have occasion professionally to examine any mining properties belonging to Sir Mortimer Davis Incorporated or Sir Mortimer Davis personally in the Sudbury district?

A.—I did.

Q.—What kind of prospects were they? What was he looking for? What mineral was he hoping to get there?

A.—A nickel property that he owned.

Q.—That he owned personally?

A.—I believe he did.

Q.—During his lifetime, did you make any investigation of that property?

30 A.—I did.

Q.—After his death, did you make any further investigation?

A.—I did not. Mr. Cochrane did.

Q.—As a result of such investigations you made at any time, did you make any recommendation to the Incorporated Company in regard to the Sudbury nickel property?

A.—Yes, sir.

Q.—What was it?

40 A.—It was a recommendation not to expend any further money on it, for the reason that it would take a great deal of money to bring it into a stage of development, if nickel existed on it.

Q.—Was that advice tendered before or after the death of Sir Mortimer?

A.—Before and after.

Q.—Did the Company, since his death, take your advice?

A.—They have.

Q.—Did you render any other professional services as a mining engineer to Sir Mortimer Davis Incorporated, in regard to other

HOWARD A. POILLON (*for Defendants*), *Examination-in-Chief*.

properties or prospects of properties in Western Canada, or anywhere in Canada?

A.—Yes, sir.

Q.—The Exhibit to which I have called your attention, Plaintiffs' Exhibit Number 9, showed an expenditure under the heading of "Exploration expenses" for the year ending September 30th, 1928, of \$3,328.38, and for the eleven months ending August 31st, 1929, of \$3,618.26. How, in your judgment, do these figures compare in a general way with amounts expended in previous years by that Company in similar ventures?

A.—They were very low.

Q.—Did you, in your relations with Sir Mortimer Davis, have anything to do with his Asbestos interests?

A.—Yes, sir.

Q.—Over what period of time?

A.—I cannot give you the exact dates, but I should say for two or three years prior to the consolidation.

Q.—The Asbestos Corporation, present consolidation, was formed in January, 1926?

A.—Well, probably during 1923, 1924, 1925 and 1926.

Q.—In connection with what property were you employed?

A.—The Federal Asbestos property and the Consolidated.

Q.—Sir Mortimer, I think, had a controlling interest in both those properties, had he not?

A.—I believe so.

Q.—Had Sir Mortimer, to your knowledge, been interested in the Asbestos industry over a period of years?

A.—For a long time.

Q.—What was his general attitude towards the Asbestos industry in the Province of Quebec?

A.—He thought it was one of the best industries in the Province.

Q.—Had he confidence in its future as an industry?

A.—A great deal of confidence.

Q.—I should have asked you at the outset to give me rather more in detail your general professional experience, apart from your activities with Sir Mortimer Davis. Have you been employed professionally by other clients?

A.—Yes, sir. I have been the Consulting Engineer for the American Agricultural Chemical Company; the Consulting Engineer for the Reid Newfoundland Company; the Consulting Engineer for J. S. Cosden; Consulting Engineer for Carnegie Metals Company.

Q.—And what period of time has your professional experience covered?

A.—My professional experience has covered thirty years.

HOWARD A. POILLON (*for Defendants*), *Cross-Examination*.

Cross-Examined by Mr. W. K. McKeown, K.C., of Counsel for Plaintiffs:

Q.—Are you at present the Consulting Engineer for the American Chemical Company?

A.—No.

10 Q.—How many years is it since you have been Consulting Engineer of that Corporation?

A.—Well, I imagine five or six years.

Q.—How many years were you the Consulting Engineer of that Company?

A.—Seven or eight.

Q.—Were you the sole Consulting Engineer of that Corporation?

A.—Well, Mining Consulting Engineer.

Q.—You were Mining Consulting Engineer?

20 A.—Yes.

Q.—And is that so as to these other Corporations you have mentioned?

A.—Yes, sir.

Q.—You were not the Mining Consulting Engineer of the Reid Newfoundland Company?

A.—I am.

Q.—And you are at present?

A.—Yes.

Q.—What about Mr. Cosden?

30 A.—Mr. Cosden is not mining any more.

Q.—You say you are a graduate of Columbia University, do you?

A.—No.

Q.—You are not a graduate of Columbia University?

A.—No.

Q.—You attended Columbia University for a certain length of time, but you did not graduate?

A.—I did not graduate.

Q.—Are you a graduate of any university?

40 A.—I am not a graduate of any university.

Q.—You say that you went West, and you were in the West for fourteen years, in mining areas, did you say?

A.—Yes.

Q.—Doing what?

A.—Well, mining, working as a miner, working as a Superintendent, working as a Manager.

Q.—In what years?

HOWARD A. POILLON (for Defendants), Cross-Examination.

A.—From 1901.

Q.—For the next fourteen years, to 1915?

A.—Yes.

Q.—And you were working as a miner?

A.—Yes, sir.

Q.—And Mining Superintendent?

A.—Yes, sir.

10

By Mr. Holden:

Q.—And Manager?

A.—Yes.

By Mr. McKeown:

Q.—In what area, to begin with?

20 A.—All the way from the Arctic Circle to the Equator, north of the Equator.

Q.—That is, on the branch of the continent up the Pacific?

A.—Up the Pacific and on the High Plateau even, over into the East.

Q.—How long did you have any one position in those fourteen years?

A.—Oh, about a year and a half.

Q.—You were a general investigator on your own account very much during that period of your life. Are you called a prospector?

30 A.—No, I was not a prospector. I never was a prospector.

Q.—Were you up in the Yukon?

A.—Yes.

Q.—What metals or minerals were you in quest of during those fourteen years?

A.—Almost anything that I could make any money on.

Q.—How did you get along, as a matter of fact, during those fourteen years? Did you make any money?

A.—Yes, sometimes more and sometimes less.

40 By Mr. Campbell:

Q.—Like the rest of us?

A.—Yes.

By Mr. McKeown:

Q.—You have told Mr. Campbell that at the beginning of 1912,

HOWARD A. POILLON (*for Defendants*), *Cross-Examination*.

with the exception of a couple of years, you were connected with the Sir Mortimer Davis interests practically continually, is that right?

A.—I believe it is 1912. That is as near as I can come to it.

Q.—Will you be good enough to turn around and tell His Lordship the name of the Corporation that Sir Mortimer ever made any money out of under your advice in his mining ventures?

10 A.—He never made any money out of my advice in any Company at all, if making a profit constitutes making money; if minimizing a loss constitutes making money, he made money out of my advice in every mining operation he was connected with.

Q.—Your advice was rather getting him out of mining difficulties?

A.—Quite right.

Q.—Is that it?

A.—Sure, and I was busy on that. I had no time for anything else.

20 Q.—You were the lifesaver, so to speak, and he was the wreck?

A.—He was not the wreck, no; he furnished the passengers

Q.—Who was it led him into Federal Coal?

A.—Sir John Carson.

Q.—When was that?

A.—Some time before I became connected.

Q.—Before your advent?

A.—Before my appearance. I had appeared before.

30 Q.—Now you see it and now you don't. This is one of the times we see the Consulting Engineer absent; this was in your absence that he went into Federal Coals?

A.—He went into all these things in my absence. He did not require anybody present to go into anything.

Q.—Do you know that Federal Coals wound up in liquidation?

A.—I put it in liquidation.

Q.—And that was after Sir Mortimer had gone through the unimportant formality of dumping \$100,000 of perfectly good money into it?

A.—I believe it was.

Q.—When was that?

40 A.—I cannot tell you the date.

Q.—The date of the winding-up proceedings?

A.—The date of the winding-up proceedings.

Q.—You must know, because you put it there. In fact, it is really a pleasure to meet you in that respect so that we can have authentic information on a lot of these things that seem to be in the dim and distant past?

A.—I am sorry I really cannot tell you.

HOWARD A. POILLON (*for Defendants*), *Cross-Examination*.

Q.—Give us an approximate date. I don't care how close or remote it may be? What is it approximately?

Witness: What is approximate?

Counsel: Well, approximate is any time between when you
10 joined him in 1912 and the present date. That is a pretty good recollection. That is about eighteen years of our short lives.

A.—Oh, about 1921.

Q.—And Sir Mortimer, as you know, died in 1928. Had Sir Mortimer Davis ever, from the time this Company went into liquidation in 1921, in the seven years which followed before his death, done anything to put it into operation again either alone or with others?

A.—No, but he operated it himself.

Q.—Did you ever hear that he leased it for some \$5,000 per
20 annum to Mr. Donaldson?

A.—I never heard that.

Q.—I may tell you that has come out?

A.—I effected the lease. It was not for any \$5,000 per annum.

Q.—Was it on a royalty basis?

A.—It was on a royalty basis.

Q.—You know in point of fact it netted a royalty of \$5,000 per
annum to the Corporation?

A.—It returned \$5,000 to \$7,000, but we had to put certain
30 moneys back at times, because the river freezing ruined the mine, so I do not know what the net results of the lease were.

Q.—You told Mr. Campbell that you had been under retainer by the Incorporated Company since Sir Mortimer's death?

A.—Yes, sir.

Q.—How much, if I might inquire?

A.—\$5,000 a year.

Q.—Are you still under retainer?

A.—I still am.

Q.—What have you done for the Corporation in the last twelve
40 months, for instance?

A.—Well, I have had charge of the operations of the Federal Coals.

Q.—Have you been out on the property?

A.—No, I have not been out on the property.

Q.—You have not been out on the property? Where have you been residing? Have you been residing here in Montreal during the past year?

HOWARD A. POILLON (*for Defendants*), *Cross-Examination.*

A.—In New York City.

Q.—How long is it since you visited this Coal property now known as Cadillac?

A.—Just a trifle over twelve months.

Q.—They were not in operation then?

A.—Yes, sir.

10 Q.—Were they?

A.—I may have been out there within twelve months. I really cannot tell you.

Q.—Tell us which of the properties was in operation within the last twelve months? The Standard or Federal?

A.—Both.

Q.—Producing coal?

A.—Yes

Q.—Well, then, if you have had twelve months' start since production, have you got a balance sheet?

20 A.—No, I have not a balance sheet.

Q.—How long further back than a period of twelve months, that is, last April, 1929, had these properties been producing coal?

A.—The Federal had been producing coal ever since 1921, I think, and before too.

Q.—And when did the Standard go into operation?

A.—The Standard has been producing coal, but it is not operating as a coal mine.

Q.—What is it operating as?

30 A.—It is producing coal through development, and opening a few rooms.

Q.—Just tunnelling forward, leaving pillars?

A.—No, it is turning off some rooms, getting ready to operate under full scale.

Q.—And are they producing more coal, as they take it out of the seam, as they go ahead drifting?

A.—When they get orders for it.

Q.—And the only coal they produce is the coal which they have removed from the seam in drifting, is that it?

40 A.—No, they have turned some rooms off. They have mined some coal as a mining operation early this year and late last year.

Q.—Once upon a time I thought I knew something about coal, and as I understand it, you drift along and leave these pillars, and develop the coal and pull it down on the pillars as you go along, is that the form of mining?

A.—Well, yes.

HOWARD A. POILLON (for Defendants), Cross-Examination.

Q.—Have they done more, as far as Standard is concerned, than to drift along the seams?

A.—Well, they have turned their entries off, and have opened up some rooms, and mined some coal out of the rooms.

Q.—How long does that extend back?

A.—That extends back probably since last fall, November.

10 Q.—November, 1929?

A.—Yes.

Q.—1929 and 1928?

A.—November of 1929.

Q.—And before that, was that property producing coal?

A.—It was producing coal from its development entries.

Q.—And when would that begin?

A.—That would begin probably in 1927—in 1928 sometime, I beg your pardon.

20 Q.—And you have seen no statement of the Company, in the form of a financial statement, showing its position as a result of its operations, and you are the Consulting Engineer?

A.—Well, I have seen a statement.

Q.—You have seen a statement of the Company's position, profit and loss statement?

A.—No, I have not seen a statement of profit and loss.

Q.—You have seen a statement of the number of tons mined, is that it?

A.—I have seen a statement of the number of tons mined.

30 Q.—Do you suggest to His Lordship that Sir Mortimer ever heard of the proposition which these Executors have carried into effect, and which now is the Cadillac Coals, that is, the fusion of the Federal and this so-called Standard mine?

A.—I don't know. I would say that possibly he did not, but I do not know myself.

Q.—In other words, is it not true, and I put it to you that it is the case, that that idea is something brand new, and originated with these Executors, which was never considered by Sir Mortimer, who had a different proposition in view?

40 A.—I don't quite understand what you mean.

(The question was repeated to the witness.)

Witness: The idea of consolidating with another mine was in view, but the Cadillac was probably not in view.

Q.—What you mean is, that the idea of joining the Federal to the so-called Standard, was never thought of by Sir Mortimer Davis in his lifetime?

HOWARD A. POILLON (*for Defendants*), *Cross-Examination*.

A.—Those two specific things, no.

Mr. Campbell: He did not limit his answer that way.

Mr. McKeown: That is what he is saying to me.

By Mr. McKeown:

10

Q.—Is it not the case that instead of the Standard being in the picture, Sir Mortimer was considering the Rogers property?

A.—Yes, sir.

Q.—And you reported that the Rogers property was not advisable to take it up?

A.—Yes.

Q.—And the Executors dropped it?

A.—Yes.

20 Q.—Mr. Campbell has given you the amounts of cash that have gone into this fusion, amounting to about \$250,000?

A.—Yes, sir.

Q.—Are we correctly informed here, that that money has been spent entirely on the new property, the Standard property?

A.—I think there were about \$15,000 or \$16,000—somewhere around \$20,000 was spent on Federal.

Q.—And the balance?

A.—And the balance on Standard.

30 Q.—On this new property that Sir Mortimer had never considered, and of course, this appraisal value that you speak of as \$300,000, includes this amount which has been spent by the Executors on the Standard property, is that right?

A.—Less \$20,000 that they had to deposit for the guarantee of payrolls, which is not an advance, but simply a guarantee.

Q.—Do you know that up to date the Executors, so far from getting back their money, have not got back a cent of interest on the money which has been put into this so-called Cadillac property?

A.—Yes, sir.

Q.—Is that a fact?

40 A.—I believe that is a fact.

Q.—Did I understand you to say that you had examined the Standard property?

A.—Yes, sir.

Q.—Immediately before the Executors decided to merge it with the Federal?

A.—I believe so.

Q.—Well, you believe so. You must know that?

HOWARD A. POILLON (*for Defendants*), *Cross-Examination*.

A.—You say immediately before.

Q.—Well, even if immediately before, you must know it, or do not know it. You cannot say you believe so?

A.—I don't know what immediately means.

Q.—Well, how long before? Let us say, how long before October, 1928, did you examine it?

10 A.—Probably around in July.

Q.—July 1928?

A.—Yes.

Q.—And was this Standard property operating them after a fashion?

A.—After a fashion. It was under development at that time.

Q.—And you have said in answer to Mr. Campbell as to the prospect of that so-called Cadillac Coals, "We have every expectation that it will be very successful"?

A.—Yes, sir.

20 Q.—Is that right?

A.—Yes, sir.

Q.—Under the terms upon which Mr. Donaldson parted with the Standard mine, he gave \$450,000 out of a capital of \$500,000, and nine-tenths of the property over to the Sir Mortimer Davis Estate?

A.—Yes.

Q.—That is the property I suppose that you built your greatest hopes on, between the Federal and Standard?

A.—Yes.

30 Q.—Have you any reason to suggest to His Lordship why it was necessary for a man having such a wonderful property, to give away nine-tenths of it, to get anyone to develop it for him?

A.—He also received some bonds for it.

Q.—I think he received \$50,000 of bonds, but the Estate received \$50,000 of bonds for it too?

A.—I think he received more bonds.

Q.—As to the stock proposition, my statement is correct, is it not?

40 A.—Your statement is correct.

Q.—And as to the bonds, if you know, will you say what Mr. Donaldson received in bonds, or was to receive in bonds? No one has got anything yet?

A.—I think it is \$100,000.

Q.—And the Estate was to get how much?

A.—\$50,000.

Q.—Of bonds?

HOWARD A. POILLON (*for Defendants*), *Cross-Examination.*

A.—Of bonds.

Q.—So Donaldson was ahead of the Estate at one time for \$50,000 of bonds, and was behind them for \$400,000 worth of stock?

A.—Donaldson put in 7,000,000 tons of coal, and the Estate put in 700,000 tons of coal.

Q.—That is an additional reason why it amazes me to know that Mr. Donaldson could not make a better trade, if he had such a wonderful property. Do you know of any reason?

A.—You seem to be fighting a lawsuit over that. Lord Shaughnessy made the trade for that.

Q.—Just answer the question?

A.—Lord Shaughnessy made a good trade with him.

Q.—I am not criticizing Lord Shaughnessy, I am asking if you can suggest any reason to His Lordship why this man with his wonderful property, with 7,000,000 tons of coal, found it necessary to part with it, yielding up such a large proportion?

A.—Yes. I can tell you the reason. Unfortunately, he had an overdraft in the bank of about \$30,000. He was a man with comparatively small resources but a very excellent reputation in the community. He realized that it took more money to put a coal property on its feet when he first started, because of the necessity of putting coal on the market and delivering to customers everywhere, giving them a good product; he therefore found himself confronted with a valuable property, owing money, and he was anxious to make as good a trade as he possibly could. He came to Sir Mortimer Davis Incorporated, because he had been operating for them for a number of years. They had a good deal of confidence in him and he had confidence in them, and in that way on the basis that they would increase the output of his property over what he would be able to do, he was perfectly willing to take ten per cent of what he considered a good thing, rather than to have the whole of something which might be very difficult for him to carry on.

Q.—And therefore it would appear now, from what you have just stated, that his operations in Standard coal had got his finances in an embarrassed condition and resulting in an overdraft to the bank of \$30,000, which he could not swing, is that it?

Witness: His operations?

Counsel: Yes.

A.—He was then developing it.

Q.—I don't know what he was doing?

A.—Well, his position was that at that time.

HOWARD A. POILLON (for Defendants), Cross-Examination.

Q.—And that was the condition of that proposition when Lord Shaughnessy I expect, under your advice, decided to go into the transaction which we know afterwards took place?

A.—Yes, I advised it.

Q.—You say that the cost of production at the Standard mine is one dollar a ton under that of the other mines in the District?

A.—That is my belief.

10 Q.—Did you ever check up the cost of production in the surrounding mines in the District?

A.—From their actual cost figures, no.

Q.—We have not got a great deal to base it on as a matter of certainty, that there is this dollar margin?

A.—I have.

Q.—You feel it?

A.—Yes, through the knowledge I have.

20 Q.—If a person can make a dollar a ton as a coal operator, that is a wonderful profit, is it not?

A.—Well, but they are making more than a dollar a ton. That is the differential between the two. That is what makes the proposition so good. If you can operate at a dollar less than your competitor, if you just broke even, you would be making a dollar a ton.

Q.—Do you know how the cost of \$2.75 a ton is determined?

A.—Yes.

Q.—Have you ever seen any figures on that?

A.—Yes. It is determined from actual records of last year when we reached 400 tons a day.

30 Q.—Was that checked up by any credit auditors, or are those your own figures?

A.—My own figures.

Q.—Is that District known as the Lethbridge District?

A.—Yes, sir.

Q.—Speaking now of the old Federal plant, you say that that is appraised at \$90,000?

A.—Yes.

Q.—That is the same property which was carried by the Executors at \$10,000 before the Cadillac Coal Company was formed?

40 A.—Yes, sir.

By the Court:

Q.—\$10,000 was the price Sir Mortimer paid for it?

A.—That is the price he bid it in at, I believe.

Mr. Campbell: Sold at liquidation sale. He had put \$100,000 into it while it was operating.

HOWARD A. POILLON (*for Defendants*), *Cross-Examination*.

Mr. McKeown: He had lost \$100,000 in it.

Mr. Campbell: He had lost \$100,000 in it, and he bought it back for \$10,000.

Witness: Yes.

10 By Mr. McKeown:

Q.—You say with that set-up of Cadillac Coal Company, you earned in addition to its bond interest of \$10,000, \$120,000 per annum?

A.—Yes.

Q.—Do you mean net, or gross, or what kind of appreciation?

A.—That is before bank interest, depreciation and depletion.

20 Q.—Is there any accepted scale for depreciation and depletion on a coal property of that description?

A.—Whatever the Government will allow.

Q.—Whatever it will stand in Income Tax? Those are open figures and against the amount which you have suggested of \$120,000?

A.—Yes, but they do not amount to very much.

Q.—What is the output of the Standard at the present time?

A.—The Standard at the present time is capable of producing ———

30 Q.—I did not ask you what it is capable of producing. What is it producing?

A.—Whatever orders it gets.

Q.—It is a made to order mine. They don't bother about doing any mining unless they get orders?

A.—That is the way that all coal mining operates. When they have an order they go to work.

Q.—What is their position? Are they waiting for orders?

A.—They are filling whatever orders they get. This is a very slack season in the coal business.

40 Q.—What orders have they got to fill, that is what I would like to know? This is a slack season you say?

A.—They get the orders in the morning and fill them in that day.

Q.—Is it cash and carry?

A.—Practically cash and carry.

Q.—How many tons of coal has Standard produced in the last twelve months, cash and carry, and everything else?

A.—Around 10,000 tons.

HOWARD A. POILLON (*for Defendants*), *Cross-Examination*.

Q.—That would not be the same mine you mentioned to Mr. Campbell, figures for 70,000, in your examination-in-chief, would it?

A.—Yes, sir.

Q.—It is exactly the same?

A.—It is exactly the same.

10 Q.—Let us see to what further extent I have misunderstood you in your examination-in-chief. Here is the Federal mine, you have 18,000 tons for that. How much has that mine produced at the present time?

A.—I say it can produce.

Q.—I am asking you how many tons Federal produced in the last twelve months?

A.—I think around 12,000 tons.

Q.—In twelve months?

A.—Yes.

20 Q.—And these figures of 18,000 that you gave to Mr. Campbell in chief, what capacity do they represent?

A.—They represent what we expect to produce. We can produce more than that.

Q.—You have got three scales; what you produce, what you expect to produce and capacity?

A.—That is quite right.

Q.—And the figures of what you have produced in Standard, in twelve months, are 10,000 tons. You expect to produce 70,000 in twelve months?

A.—Yes.

30 Q.—And what is the capacity, if there is any capacity, on the plant?

A.—Well, yes, there is capacity on the plant.

Q.—7,000,000 a year?

A.—No.

Q.—Well, never mind about that.

By Mr. Campbell:

Q.—Put it on its basis per year?

40 A.—180,000 tons.

By Mr. McKeown:

Q.—What is that?

A.—600 tons.

Q.—600 tons a day for 300 working days?

A.—You can work all year at capacity.

HOWARD A. POILLON (*for Defendants*), *Cross-Examination*.

Q.—Of course, in point of fact, those properties in the Lethbridge area are not worked at all at certain times of the year?

A.—Some are and some are not. If they can shut down entirely, they prefer shutting down entirely.

10 Q.—We would prefer that ourselves, if we could shut that property up and stop the loss on it; but that is the condition during the year, seriously, that properties which are eventually developed do close down at certain seasons of the year?

A.—They try to close down whole days. It is a peculiar thing in the coal mining business, you try and make your close-down for three or four days, and then operate for three or four days, in order to keep your organization, but all of them have to stay open a certain length of time.

Q.—Are you a coal mining expert? Do you consider yourself such?

A.—I consider myself such.

20 Q.—You would not be a specialist?

A.—I am not a specialist.

Q.—But I would ask you in a general way, is it not true the whole world over, that the coal mining industry is a very difficult and hazardous business and has been proven so for one reason and another, as has been proven by the conditions in England, and the anthracite conditions in the Pennsylvania area, and the conditions on the Pacific Coast Vancouver Island?

30 A.—It is not a hazardous industry. It has been in a great many places an unprofitable one, but it is a necessity, and where you can get a much better deposit than the other man has, you then have your market already prepared for you, and it is always a very profitable operation.

Q.—In these areas inland, is not the industry quite often affected by excessive freight rates which limits the radius for deliveries? It would not be possible to bring coal down here from this wonderful property and burn it in this Pine Avenue house?

A.—No, it would not.

Q.—And does not the freight rate restrict the area of profitable operation, apart from any other consideration?

40 A.—Well, it does.

Q.—Is your market for these particular mines more than the local market?

Witness: You mean the local market in Lethbridge?

Counsel: Yes.

HOWARD A. POILLON (*for Defendants*), *Cross-Examination.*

A.—The Federal Mine supplies the Lethbridge market and then ships to points outside of that.

Q.—Within a radius of how many miles?

A.—Well, all the way to Winnipeg. The Standard mine will ship within that radius. There are 3,300,000 tons of coal produced in Lethbridge and 700,000 tons of coal is produced from the Lethbridge field alone.

10 Q.—And there are quite a number of mines that are developed, and operating mines?

A.—There are only two mines in Lethbridge of any size. Both of them are mining four and a half foot seams. Both of them have extremely long workings to get to their coal mine.

Q.—Have there not been other properties opened up in the last fifteen or twenty years in that region?

A.—Yes.

Q.—And they closed up?

A.—Yes.

20 Q.—Has there been many coal failures? Failures, on attempts to develop coal properties in that area have taken place?

A.—Due entirely to the character of the seam, the thinness of the seam.

Q.—Let us jump into the oil game and see how we get along. Are you an expert in oils?

A.—No.

Q.—Did you ever prospect in oils?

30 Witness: Do you mean examine oil lands?

Counsel: Yes.

A.—Yes, sir.

Q.—Do you know all about the anticline?

A.—I know it when I see it.

Q.—Do you consider yourself a qualified investigator to investigate oil prospects?

A.—Under the conditions that exist in Western Canada, yes.

40 Q.—Why do you say under conditions that exist in Western Canada, because there is no oil there?

A.—The oil occurrences in Western Canada have defied all the Geologists that have seen it.

Q.—They have gone wrong in large part?

A.—They have either gone wrong or gone away.

By Mr. Campbell:

HOWARD A. POILLON (*for Defendants*), *Cross-Examination*.

Q.—That is, excepting the Turner Valley?

A.—Excepting the Turner Valley.

By Mr. McKeown:

Q.—Were these oil leases in the Turner Valley?

A.—Yes.

10 Q.—Is it a fact that the C.P.R. owns every alternate section in the way of oil rights throughout the West to your knowledge?

A.—I do not think it is. The Hudson Bay Company and the C.P.R. and other railroads own a great deal of the land.

Q.—Not only the land, but the oil rights, even if they don't own the land?

A.—I don't know that.

Q.—They own enormous tracts of oil bearing land?

A.—Yes.

20 Q.—Is it not a fact that neither the C.P.R. or Hudson Bay Company have ever yet located a profitable area in the whole of that country?

A.—I believe that is so.

Q.—And this is the end of the rainbow which three Executors were chasing, to the extent that they took up additional oil leases?

A.—They traded oil leases. If they had an oil lease in one County, and a large block of land in the other, they would be apt to trade.

30 Q.—They allowed a certain lease to lapse so they could take new leases from the Government?

A.—I don't know.

Q.—That is my understanding?

Mr. Campbell: They did not increase their areas.

By Mr. McKeown:

40 Q.—Do you, or do you not know, as their oil Counsel that after Sir Mortimer's death, Lord Shaughnessy and Mr. Reaper, as Executors, or through the Incorporated Company, took up new oil leases, which they did not have at the time of Sir Mortimer's death. Do you know that?

A.—I believe that at one time in view of negotiations they had with a man, who was going to acquire certain rights, that at his suggestion they may have traded, let some of their leases lapse, and taken up others in order to make the area more attractive for him, because most of these men who came up, were from the States.

HOWARD A. POILLON (for Defendants), Cross-Examination.

Q.—Some from Missouri too?

A.—I think so. I think they were mostly from Missouri. In the States you have to get a considerable area in order to justify drilling, because it is considered as wild-cattling, and if you wild-cat and bring an area in, you want to have control of a large area of ground.

10 Q.—What do you consider wild-cattling? Is the whole oil venture a stock jobbing proposition?

A.—Wild-cattling in oil wells is not stock jobbing. It means sinking a well in an unproven area. Most areas are proven after somebody has wild-catted it away.

Q.—But Sir Mortimer's idea was to secure a lease and allow others to expend money on developing the area, and proving it, and then to dispose of such holdings as he might have without ever, from beginning to end, having the idea of developing, or attempting to develop those oil properties himself, is that it?

20 A.—I believe that was his idea, although I explained to him at the time that he could not follow the American practice, because we could go to Texas and obtain leases on oil lands there for a quarter of a cent an acre, whereas here, we had to pay almost a dollar an acre in some places, therefore, he could not follow the same practice in Canada as he could do in the States.

Q.—Insofar as the Executors, in securing further oil leases after Sir Mortimer's death, had he not in mind that they would land these leases upon some third party but as far as your knowledge goes, they never succeeded in doing so?

30 A.—No, they never succeeded in doing so.

Q.—Nobody else was interested at any stage subsequent to the acquisition by them of these additional leases to make any deal which they considered acceptable?

A.—No, they were not. They were interested in looking them over.

Q.—And those leases have lapsed now?

A.—I imagine they have.

Q.—And they are a one hundred per cent loss for the Incorporated Company?

40 A.—Absolutely, a complete loss.

Q.—Mr. Campbell has asked you specifically whether the amounts shown to be included, expended on Alberta coal properties in the year ending September 30th, 1928, of \$7,733.00 and of \$5,332.00 in the eleven months of the next year, he has asked you how those amounts compared with the amounts previously spent by the Incorporated Company in the matter of Alberta coal proper-

HOWARD A. POILLON (*for Defendants*), *Cross-Examination.*

ties, and you suggested that those amounts are lower than what have been spent in previous years?

A.—I believe I said that the amounts spent on that item, the Alberta coal property, that the amount spent in 1929, was lower than the amount spent in 1928.

Q.—You did not mean anything more than that?

A.—No.

10 Q.—You were not talking about the years extending say, from your first connection with Sir Mortimer in 1912, up to and including 1927. You were not comparing that period with what you see in the statement?

A.—No, but I can.

Q.—That is not what you meant by your answer. Your answer meant simply, and nothing more, that the amount spent in 1929 was less than in 1928 as shown in the statement. Is that what you meant to say to Mr. Campbell?

20 A.—I think I was asked about the Cadillac Coal area.

Q.—This is Alberta Coals, which excludes Cadillac Coal?

A.—Well, it is perfectly obvious that if Sir Mortimer lost \$90,000 in the Federal Coals, he must have spent more than \$7,000.

Q.—We know that fact, but we are not speaking of Cadillac, we are speaking of other ventures than Cadillac. Are you in a position to say that these Executors in spending \$7,733 in 1928, and in spending \$5,000 odd in the eleven months of the following year, were spending more money or less money than Sir Mortimer spent on that kind of venture, which I tell you does not include Cadillac, 30 in the previous years. Do you know anything about it?

A.—Well, there were not any similar ventures to that.

Q.—No, of course not. Mr. Campbell asked you the same species of questions in connection with Alberta oil fields expenses, \$37,000 odd in 1928, and only \$8,000 in 1929, and you gave the same form of answer which I would like to have you define?

A.—There was less in 1929 than there was in 1928.

Q.—Yes, but we have caught on to that already, what I am asking you is, did you intend to convey to His Lordship that those figures of \$37,000 in 1928, and \$8,900 in 1929, were higher or lower 40 than what Sir Mortimer had spent in previous years on oil lands in Alberta? Had there been any money spent at all before 1928?

A.—Prior to Sir Mortimer's death there had been money spent.

Q.—I am not speaking of Sir Mortimer's death; I am speaking of the calendar year which started on October 1st, 1927?

A.—When did Sir Mortimer die?

Q.—He died on March 22nd, 1928, and the year that these periods cover started on October 1st, 1927. Do you know what money

HOWARD A. POILLON (*for Defendants*), *Cross-Examination*.

was spent in the year which commenced on the 1st of October, 1926, or October, 1925?

A.—I think Sir Mortimer conceived the plan very shortly before he died.

Q.—I am not asking you that?

10 Mr. Campbell: Allow the witness to answer.

By Mr. McKeown:

Q.—I am asking you specifically whether you intended to compare those figures for the two years indicated, with the figures for Alberta oils in 1928 and 1929, with figures for any previous fiscal years? Is that what you were intending to do by your answer?

20 A.—All those figures that were referred to me, I was intending to convey the idea that the figures of 1929 were lower than the figures in 1928.

Q.—And nothing more?

A.—And nothing more.

Q.—Just to clear up that point, and rivet it: Do you know of any expenditures which were made before 1928 for Alberta oil?

A.—I do not recall whether there was anything done in Alberta oil, whether Sir Mortimer gave instructions in 1928.

By the Court:

30 Q.—Do you know if any part of the 1928 expenditure took place before the 22nd of March, 1928?

A.—Yes. We had acquired a considerable area before Sir Mortimer died; in fact, almost all the area of oil land that was acquired.

Before his death, Sir Mortimer had a conversation with us, and told us to acquire 200,000 acres.

By the Court:

40 Q.—And did you get the 200,000 acres?

A.—I did not. He was under the impression it would not cost so much to carry. He was under the impression it would not cost one dollar an acre a year to carry

Q.—Do you suggest that Sir Mortimer went into that venture on your opinion or your advice?

A.—No, sir, I do not.

Q.—I have an interesting communication here to which I might refer in that connection, which may enlighten us as to the esteem

HOWARD A. POILLON (for Defendants), Cross-Examination.

in which Sir Mortimer held your opinion in connection with the oil business.

A.—It depends entirely upon the time.

Q.—There was only one Mr. Poillon who was connected with Sir Mortimer Davis here in May, 1927?

A.—Yes.

10 Q.—And you were the Mr. Poillon?

A.—I must have been.

Q.—I find a letter in the file produced by Mr. Reaper on behalf of the defendants, addressed to Lord Shaughnessy, written from the Claridge Hotel, Brooke Street, London, under date May 21st, 1927. I would like to show you the signature, and ask you whether you recognize it as Sir Mortimer's signature?

A.—Yes, I recognize it.

20 Mr. McKeown: This letter is addressed to Lord Shaughnessy, and we will file it as Plaintiffs' Exhibit P-230.

By Mr. McKeown (continuing):

Q.—The fifth paragraph of this letter reads:

“ Re Mortimer Davis, Incorporated:

I note what you say re the leases of oil bearing ground. Take up a big area. The only weak spot is Poillon; he is a lazy unprogressive fellow, and I believe we should make a change”.

30 I do not read this except for the purpose of getting on the face of this record the opinion which Sir Mortimer Davis indicated to Lord Shaughnessy concerning yourself at that time.

A.—That was on May 21st, 1927. You probably can get more like that.

Q.—I think I have another.

By Mr. Campbell:

40 Q.—You all had your turn?

A.—That was in 1927, you see. I can give you some more if you want them.

By Mr. McKeown (continuing):

Q.—You have some of your own in the same sense?

A.—Yes, I have some of my own.

HOWARD A. POILLON (*for Defendants*), *Cross-Examination*.

Q.—In the event, you are relieving me in a rather embarrassing position.

A.—It is not at all embarrassing to me. Every time I used to see him I used to resign.

By Mr. Campbell:

10 Q.—Did you get the same kind of thing from 1912 forward?

A.—No; once I was out for a couple of years. Ever since that time I used to resign, and he would say not to take things to heart, and we would have a drink together.

Q.—You learned to take the criticism tranquilly?

A.—Yes.

By Mr. McKeown, continuing:

20 Q.—As you seem to take this matter in such excellent good part, will you also look at a further letter from the Claridge Hotel, London, dated May 25th, 1927, to Lord Shaughnessy, and will you say

A.—(interrupting)—Is not that the same date?

Q.—No, the other one was dated May 21st. Will you look at this letter I now show you, dated May 25th, 1927, and say whether you recognize Sir Mortimer's signature to that letter?

A.—Yes.

30 P-231? Q.—Will you produce a copy of this letter as Plaintiffs' Exhibit

A.—Yes.

Q.—Will you verify with me the following passage in the letter, contained in the second paragraph:

“ Poillon to my mind is a lazy fellow who in other words thinks he knows more about other people's business than they know themselves.”

A.—That was just it.

40 Q.—(continuing reading):

“ As a matter of fact, I feel it would be better to have some reliable engineer who has some enterprise and grit.”

A.—That is right. That probably was after I told him he was in a bad mining proposition.

HOWARD A. POILLON (*for Defendants*), *Cross-Examination*.

By Mr. Campbell:

Q.—He did not like the last advice you gave him?

A.—No.

By Mr. McKeown, continuing:

10 Q.—Will you please look at another letter written from Golfe Juan—that is Sir Mortimer's residence in Cannes?

A.—Yes.

Q.—This letter is dated December 24th, 1927—around Santa Claustime—and is a letter addressed to Lord Shaughnessy. Will you please verify the signature to this letter?

A.—Yes.

Q.—It is signed by Sir Mortimer Davis?

A.—Sir Mortimer Davis, yes.

20 Q.—Will you produce a copy of this letter as Plaintiffs' Exhibit P-232?

A.—Yes.

Q.—Will you verify with me the contents of the third paragraph, which reads:

30 “ The drilling of the nickel property continues. It is worth while. International Nickel have made a great find—10% copper—but I am still of the opinion that Poillon and his crowd are sleepy heads, and we should get some active engineer located in the mining districts. Every day I read of new fields and good properties being found, but we do not seem to be able to get at anything. Poillon is too much of a pessimist, but just sitting quiet and afraid to take a chance, thinking of his reputation.”

A.—Yes.

40 Q.—Now let us leave the oil fields with the people who went out there and came back, and let us consider the coal fields again. Will you please look at the original letter I now show you, dated Golfe Juan, March 10th, 1928, addressed to Lord Shaughnessy, and will you please verify that this letter bears the signature of Sir Mortimer Davis?

A.—Yes.

Q.—Will you produce a copy of this letter as Plaintiffs' Exhibit P-233?

A.—Yes.

Q.—Will you please verify with me the correctness of the paragraph on the second page reading:

HOWARD A. POILLON (*for Defendants*), *Cross-Examination*.

10 “Coal. Rogers has peddled this proposition for a number of years, in fact, it has cost us \$25,000 some time ago for an option, besides our property cost, I think, \$100,000, and when we asked Mr. Poillon he was very optimistic at first, and turned pessimistic, and we took his suggestion to lease the same for \$5,000 a year.”

That refers to the so-called Federal property.

Q.—Yes, it refers to it, but it is not correct—I mean, the \$5,000—the other part I am not questioning.

Q.—It refers to the Federal property?

A.—Yes.

Q.—The letter continues:

20 “Conditions must have changed very materially in our sleepy head Poillon, or our sleepy head Poillon made a mistake. To my mind I am very bullish on the situation, and the property should certainly earn its bond interest and considerably more.”

What was Sir Mortimer speaking about there: Federal Coal alone, or Federal Coal plus Rogers?

A.—He was saying it was a good idea to take Rogers up.

Q.—What he was referring to was Federal Coal, plus Rogers?

A.—Federal Coal, plus Rogers.

Q.—Not Federal Coal, plus Standard?

A.—No.

30 Q.—The letter continues:

“ I would therefore suggest a third . . . ”

Which I think should be “ thorough.”

Witness: No, I think it is third. There were, you see, the first, the second and the third.

40 Q.—(continuing reading):

“ . . . investigation, double checked, and the expenditure of \$20,000 to \$30,000 by us, if necessary, to satisfy us as to the future; and to capitalize it in the following way: tie up Rogers on a twelve months' option, not paying for same, paying him \$250,000 of 6% Bonds at par.”

That is Rogers who never came in?

HOWARD A. POILLON (for Defendants), Cross-Examination.

A.—That is Rogers whose property was not worth anything.

Q.—(continuing reading):

10 “ We will ~~borrow~~ ^{take} \$1⁵00,000 in 6% Bonds at par, plus 500,000 shares no par value. After the Davis Mining Company and the Rogers are financially settled, we will then issue \$600,000 of 6% Bonds at 90, plus a 20% bonus of common shares no par value (which the Davis Mining Company will release). This will leave us with 80% of the common stock. The set up of the Company will be as follows: \$1,000,000 6% Bonds; 1,000,000 common shares no par value; to be issued, bonds \$400,000—\$250,000 to Rogers, \$150,000 to Davis Mining Company; common, 560,000 shares to Davis Mining Company (which will leave 440,000 shares in the Treasury for the future).”

A.—Yes.

Q.—Then the letter continues:

20 “ I do not propose to go into this enterprise and invest a lot of cash with the hope of getting it back like the Asbestos deal. We have had this proposition a considerable time, and it has actually cost us more than we got for the bonds.”

A.—Yes.

Q.—(continuing reading):

30 “ By taking 80% of the common stock we are only being paid for the risk and work we have done in the proposition. We must be absolutely sure that there is a future, otherwise we do not want to issue bonds as we do not want a comeback on any enterprise we are connected with. We want to be satisfied that the cash realized from the public is sufficient, namely, \$540,000 at 90, as we do not in the future want to call for any more money before this is on a paying basis.”

40 I would like here to draw your attention to this word about which we spoke, and which you thought was “third.” I notice in Sir Mortimer’s own copy, which was preserved by him, he wrote a pencil correction in which he put the word “thorough.”

A.—We had it once, \$25,000; we had it a second time, and this is the third investigation.

Q.—He wanted it investigated anew?

A.—That is what I think.

HOWARD A. POILLON (*for Defendants*), *Cross-Examination*.

Q.—Now, just a word about Sudbury. When did Sir Mortimer acquire that nickel property?

A.—I do not know the date, but he obtained it, I believe, years before.

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 at 2.30 in the afternoon, April 29th, 1930, personally came and reappeared the said witness

HOWARD ANDREW POILLON

and his cross-examination was continued as follows:

20 By Mr. McKeown:

Q.—He acquired it some years back?

A.—Years back, yes.

Q.—Many years back.

A.—Many years back, as far as I know.

Q.—That property, in point of fact, is right next to the Frood Mine, owned by the International Nickel Corporation?

A.—No.

30 Q.—It is not adjoining?

A.—No.

Q.—Have you examined the property?

A.—Yes, I have examined the property.

Q.—If you know its location, how far away is it from the Frood Mine?

A.—It is a number of miles away.

Mr. Campbell: Far enough away to miss the vein.

40 By Mr. McKeown, continuing:

Q.—Do you say you investigated the property?

A.—Yes.

Q.—After it was secured by Sir Mortimer?

A.—Yes.

Q.—When did you investigate it?

A.—Around 1927, I think.

HOWARD A. POILLON (for Defendants), Cross-Examination.

Q.—What does “ around ” mean, as applied to 1927?

A.—Late 1926, early 1928, or 1927.

Q.—What investigation did you make of their property at that time?

A.—We diamond drilled the property.

Q.—What is the extent of the property?

10 A.—I should say it contained about 1,000 feet along the contact.

Q.—To what extent did you diamond drill it? Over the whole area?

A.—We put two or three holes down.

Q.—On a length of 1,000 feet?

A.—Yes, but we centralized them at a point where there had been some showing on the surface.

Q.—How deep did you drill it?

A.—Around 800 feet.

20 Q.—Each hole down 800 feet?

A.—No, the first hole was a short hole, in order to determine the dip or pitch of the vein, and after having established that, a second hole was drilled to cut it at depth.

Q.—Those veins did not run vertically up and down?

A.—The ore current is on the contact between two formations, and the veins rake on the contact.

Q.—Do they pitch at an angle, or are they up and down?

A.—They rake at an angle.

Q.—What do you mean by “ rake ”?

30 A.—What you mean when you say pitch.

Q.—So that you might find a showing on the surface and to pick it up at depth you would require to get quite a way from the showing on the surface in order to cut it at depth?

A.—Yes. The first hole was in order to determine what the probable rake was.

Q.—Was the 800-foot hole the deepest hole you drilled?

A.—I believe so.

Q.—And you cannot tell us whether this was in 1926, or 1927, or 1928?

40 A.—I cannot, no, because I have not looked it up.

Q.—What is your best recollection?

A.—From the letter you showed me this morning, I assume it must have been either late 1926 or early 1927.

Q.—Did you pick up a vein?

A.—We picked a contact up.

Q.—Did you regard it that you had found anything?

A.—No, sir.

HOWARD A. POILLON (for Defendants), Cross-Examination.

Q.—And you think that was in late 1926?

A.—Late 1926, or early 1927.

Q.—And that is the investigation to which you have referred?

A.—Yes.

Q.—Was it drilled again after that?

A.—Not to my knowledge.

10 Q.—Was that the drilling Mr. Cochrane participated in?

A.—I do not think Mr. Cochrane did any drilling.

Q.—I thought you said Mr. Cochrane did drill it. I have Mr. Cochrane's name in my notes.

A.—No, sir. Mr. Cochrane went up and made a surface geological examination.

Q.—Was that following the drilling?

A.—After Mr. Cochrane was employed by the Company.

Q.—Was it after the drilling?

A.—Yes.

20 Q.—Were you up there since the drilling?

A.—No, sir. I went up after the drilling was completed, and examined the drill cores.

Q.—You mean the cores that were brought up by the drills?

A.—Yes.

Q.—You found nothing of any importance?

A.—Nothing of any importance, according to my estimation.

Q.—Then you recommended the Incorporated Company not to spend any more money on it. Is that right?

A.—Yes.

30 Q.—Were they contemplating further drilling at the time you gave them that piece of advice?

A.—No, sir.

Q.—Was that simply your report of your investigation?

A.—Yes, sir.

By the Court:

Q.—Was that before, or since, the death of Sir Mortimer Davis?

A.—It was before the death of Sir Mortimer Davis.

40 By Mr. McKeown (continuing):

Q.—Smith-Travers are a drilling concern?

A.—Yes.

Q.—Where are their headquarters?

A.—Sudbury, or out in that district.

HOWARD A. POILLON (for Defendants), Cross-Examination.

Q.—I see an item here of \$11,091.25 in 1928; would not that represent drilling? It comes under the heading of “Sudbury Mines Expense.”

A.—If that was the bill in that year, that was the drilling we had done.

10 Mr. Campbell: This is for the year ending September 30th, 1928.

Witness: I may have been wrong in the year.

By Mr. McKeown (continuing):

Q.—His Lordship asked you whether this drilling was done during Sir Mortimer’s lifetime. Are you quite sure of that now?

A.—Yes, I am quite sure of that.

20 Q.—You thought a moment ago it must have been in the end of 1926, yet here we find it charged up in 1928.

A.—It is quite possible. I do a great deal of work, and I have done a great deal of work, and I have not refreshed my memory in this case any more than I would in any other.

Q.—You understand I am not quarreling with you in regard to that. I am just suggesting you got your dates a little confused.

A.—Probably you are correct.

30 Q.—This item to which I have just drawn your attention amounts, in reality, to \$13,276.93, and is under “Sudbury Mines Expense; Poillon and Poirier Expense, \$2,185.48; Smith-Travers, drilling, \$11,091.25,” together \$13,276.93. Would not that indicate that the work was carried out between September 30th, 1927, and September 30th, 1928?

A.—Undoubtedly.

Q.—Do you drill all the year round?

A.—No; we only had a certain drilling commission. We gave them so many feet of holes to drill.

Q.—Do you drill in the winter?

40 A.—Just as well as in the summer. They prefer, in places, to drill in winter.

Q.—Do you know, in point of fact, whether that drilling was done in the winter or the summer of 1928?

A.—No, I really do not. All I know is that it was done, and it was done under explicit instructions from Sir Mortimer Davis; so it must have been done before his death, because I objected very strenuously to doing the work.

Q.—You objected to the drilling?

HOWARD A. POILLON (*for Defendants*), *Cross-Examination*.

A.—Yes.

Q.—Your recommendation was against it?

A.—Yes. That is what some of the letters refer to.

Q.—You were too much of a pessimist?

A.—Yes, and I also felt I had a reputation.

Q.—Sir Mortimer referred to that too?

10 A.—Yes. I did not want to drill in places where we were not apt to get anything.

Q.—And, you did not think you were apt to get anything on that Surbury property?

A.—No, I certainly did not.

Q.—Do you know if it was planned by Lord Shaughnessy, or under his instructions, to redrill that property during this last summer, 1929?

A.—No.

Q.—You would have been against it, would you?

20 A.—I would have been, yes.

Q.—Was it submitted to you for consideration?

A.—No, it was not.

Q.—Did you consider that the manner in which the drilling had been carried out was faulty?

A.—No.

Q.—You thought the drilling as done was a fair test of the property as it was—as a property?

A.—Yes, I believe so.

30 Q.—And, it was a negative result?

A.—It was only a negative result. Those things are always subject to opinion, and are rather indefinite.

Q.—In any event, your professional opinion as technical adviser of this Corporation would have been distinctly against drilling that property in this last year, 1929, would it not?

A.—Yes.

40 Q.—My learned friend Mr. Campbell has also undertaken to draw comparisons between these figures and other figures of other years, and he asked you whether these figures of expenses at Sudbury in 1928 and 1929 compared in a general way with similar work in previous years. Did Sir Mortimer do other drilling in other properties for nickel?

A.—No, sir.

Q.—So, so far as you know, this item “Sudbury Mines Expense” was an effort in a new direction in Sir Mortimer’s mining experience? That is, drilling for nickel?

A.—Yes, sir.

HOWARD A. POILLON (*for Defendants*), *Cross-Examination*.

Q.—One more chapter of this particular page which has been brought to your attention by Mr. Campbell in Plaintiffs' Exhibit No. 9, Schedule 6-F. You find another chapter entitled "Exploration Expenses"?

Q.—\$3,329 in 1928, and \$3,618.26 in 1929, including, pretty much, salaries. The first item is "Poillon and Poirier, services, \$1,500." That is your concern?

10 A.—Yes.

Q.—What were the exploration services which you rendered to this Company since Sir Mortimer's death?

Witness: Since Sir Mortimer's death?

Counsel: Yes.

A.—We ourselves have done no exploration since Sir Mortimer's death.

20

Mr. Campbell: That was for the year ending September 30th.

By Mr. McKeown (continuing):

Q.—Do you know what you received \$1,500 for in the year ending September 30th, 1928, which belongs under the heading of "Exploration Expenses"?

A.—I really do not know, but I can make a guess.

30

Q.—Will you try it, please?

A.—I think I spent about a month and a half in Alberta, on the oil properties.

Q.—But, we have a separate chapter for that. We have you down for \$4,296.89 in that chapter.

A.—Then your \$1,500 was probably the salary and expenses of a man we had in Canada looking for properties in accordance with Sir Mortimer's instructions.

Q.—What was his name? Hopper?

A.—No; Harry Heine.

40

Q.—Was he the gentleman who was going over Northern Quebec in aeroplanes accompanying Mr. Cochrane, if you know anything about that?

A.—No; he did not travel in aeroplanes.

Q.—Apart from this guess which you have just made, you do not know to what this item of \$1,500 which is entered under "Exploration Expenses" in the year ending September 30th, 1928, would refer?

HOWARD A. POILLON (for Defendants), Cross-Examination.

A.—It would cover the whole calendar year 1927 and 1928. I am really afraid I cannot pick it out. It was services rendered.

Q.—Do you know anything about two gentlemen named H. B. Hopper and J. Edwardson, who appear in this chapter for \$1,691 in 1928, and for \$1,939 in 1929?

A.—I believe those two men employed by the Corporation for the purpose of making investigations at Chibougamou.

10 Q.—Chibougamou is away back of beyond somewhere up in Northern Quebec?

A.—Yes.

Q.—Reached only by the skies at present?

A.—It is reached mostly efficiently by the skies, if time is of any value.

Q.—Have you ever been up in that region?

A.—No, I have never been there.

20 Q.—Do you know what is supposed to be up there in the way of minerals?

A.—That is rather a difficult question.

Q.—It is not coal, like we were dealing with this morning?

A.—No; it is a precious metal district.

Q.—Mr. Campbell's question as to how those figures of \$3,329 for 1928, and \$3,618.26 for 1929, under the heading of "Exploration Expenses," compare with similar expenses in previous years—you do not know what the expenses in the previous years were?

30 A.—I only know the expenses incurred by us, because that was a department we were directly connected with; and they are less than those expenses we have.

Q.—You do not know what your firm was doing for the \$1,500 in the meantime?

A.—Except we must have had services for it. I do not know the exact services.

Q.—When did Mr. Heine join the Corporation?

A.—He never joined the Corporation.

Q.—He was an employee of yours?

40 A.—He was an employee of ours. We carried out the work for our own account.

Q.—At the expense of the Estate?

A.—At the expense of the Corporation.

Q.—For your own account?

A.—Yes. We handle a great many pieces of work that way. It is considered proper.

Q.—It must be very successful?

A.—We have been very successful, thank you.

HOWARD A. POILLON (*for Defendants*), *Cross-Examination*.

Q.—How have your clients been getting along?

A.—They apparently have been pleased.

Q.—Perhaps they are easily amused?

A.—Possibly.

Q.—You have spoken of Sir Mortimer's interest in Asbestos in the Province of Quebec, and you said that he personally entertained considerable faith in the future of the industry?

10 A.—Yes, sir.

Q.—Did you say you had been advising him in connection with Federal Asbestos?

A.—Yes.

Q.—That Company wound up in liquidation, did it not?

A.—Yes.

Q.—Was Consolidated Asbestos another matter in which you advised him?

A.—Yes.

20 Q.—And that Company wound up with its properties transferred to the Consolidation?

A.—In the same condition that Federal wound up in.

Q.—Out of business?

A.—Yes.

Q.—Retired from the field?

A.—Retired from the field.

Q.—Sold out their securities, with the result we already have in this record?

A.—They did not sell any securities.

30 Q.—They sold their securities.

Mr. Campbell: They sold their physical properties to the merger.

Witness: An asbestos mining company must have a mine to mine.

By Mr. McKeown, continuing:

40 Q.—Has Federal Asbestos a mine today?

A.—No, they sold it.

Q.—Has Consolidated?

A.—No, they sold it, too.

Q.—For securities?

A.—Yes.

Q.—To the merger?

A.—I believe so, yes. Securities, and some cash .

HOWARD A. POILLON (for Defendants), Cross-Examination.

Q.—And we know already in this record what happened to those securities?

A.—I know what happened to \$1,800,000 of them.

Q.—I would not press it too far, for I happen to know something about a smaller amount.

A.—Then you have been amused, too, by someone else.

Q.—At my expense, but I had a good time.

10 A.—That is what you implied as far as I was concerned. A good time was had by all.

Q.—Do you know that Sir Mortimer's faith in the Asbestos industry moved him to sell all his General Mortgage Bonds and Preferred Shares, and part of his common stock, which he had received in the present Asbestos Corporation, and this during his lifetime?

Mr. Campbell: He did that to pay his Bank loan.

20 By Mr. McKeown, continuing:

Q.—Do you know that?

A.—Yes.

Q.—He owed some money to the Bank in connection with both Federal Asbestos and Consolidated Asbestos?

A.—I believe he did.

Q.—And he took no chances, but sold those securities and paid off the Bank indebtedness. Is that right?

30 A.—I know he paid off the Bank indebtedness. I do not know what the Bank said to him when he got those liquid securities, but I suspect they said something.

Q.—We have all heard of Banks who can speak fairly well.

A.—Yes.

Q.—And the Bank may have said something to Sir Mortimer?

A.—Yes.

Q.—You are still in the employ of the Company, at \$5,000 a year?

A.—Yes.

40 Q.—When were you here in Montreal last? The opening day of the trial?

A.—No, I think I was here about three days of the trial.

Q.—But you were here?

A.—Yes.

Mr. Campbell: He thought he might have been reached, Mr. McKeown.

HOWARD A. POILLON (*for Defendants*), *Cross-Examination*.

By Mr. McKeown, continuing:

Q.—How long was it since you had been in Montreal previously to that?

A.—Probably two weeks or three weeks.

Q.—How often do you favor Montreal with your presence in connection with your retainer by Sir Mortimer Davis, Incorporated?

10 A.—Approximately once a month; sometimes more than that. Whenever I am needed, or whenever I think the things I have under my charge require attention.

Q.—What have you under your charge at the present time for which your firm receives a retainer of \$5,000?

A.—We have the Federal Coals Company. Up to a very short time ago I represented Sir Mortimer Davis in a large investment he had in Mason Valley Mines Company, which is not as yet liquidated, and I am still representing him.

Q.—On the Board?

20 A.—On the Board, yes; as representative, and also a Consulting Engineer of the Company.

Q.—What Company?

A.—Mason Valley Mines Company.

Q.—But Sir Mortimer Davis did not control that Company?

A.—No, he did not control the Company, but he had an investment of about \$1,000,000 in a mine called the Bluestone Mine, which was eventually consolidated into shares of the Mason Valley Mines Company. He was probably one of the largest individual shareholders.

30 Q.—But you do not consider that is part of your retainer by Sir Mortimer Davis, Incorporated?

A.—I certainly do.

Q.—Were you anything more than a Director of the Mason Valley Company?

A.—I was Consulting Engineer, and I am still.

Q.—Receiving a salary from whom?

40 A.—I am receiving a salary from the Mason Valley Mines Company, and I am receiving a retainer from Sir Mortimer Davis, which is quite customary.

By Mr. Campbell:

Q.—When you say Sir Mortimer Davis, you mean the Incorporated Company?

A.—Yes.

HOWARD A. POILLON (for Defendants), Re-Examination.

By Mr. McKeown (continuing):

Q.—Was there not a Colonel Thompson largely interested in the Mason Valley Company?

A.—Yes. Colonel W. B. Thompson.

Q.—Were you associated with him, or in his employ, or looking after his interests in any way in relation to the Mason Valley proposition?

A.—No.

Re-Examined by Mr. Campbell, K.C., of Counsel for Plaintiffs:

Q.—I should have asked you in chief (and my learned friend's cross-examination reminded me of it) as to whether you were connected with any of the Professional Associations of Mining Engineers?

Mr. McKeown: This is your third attempt on that branch.

Mr. Campbell: Your cross-examination reminded me of it.

Mr. McKeown: Very well, go as far as you like.

Witness: I am connected with the only two: the National American Society of Mining Engineers and the Mining and Metallurgical Society of America.

Q.—You are a member of both?

A.—Yes.

Q.—Since the death of Sir Mortimer Davis has there been any increase in the retainer paid you by Sir Mortimer Davis Incorporated?

A.—No.

Q.—How does it compare in amount with what you had previously received from the same source?

A.—It is approximately the same. It has varied over years; some years I have received more.

Q.—What was your retainer at the time of Sir Mortimer's death?

A.—\$5,000 a year.

Q.—You said the idea of hooking up the Federal Coal property with Mr. Donaldson's property, to form the Cadillac Coal enterprise, was a new idea developed by the Directors of the Incorporated Company after the death of Sir Mortimer Davis. In your professional judgment is it a reasonable idea?

A.—Quite.

HOWARD A. POILLON (*for Defendants*), *Re-Examination*.

Q.—You spoke of the Rogers option having been dropped—that is the option referred to in one of the letters of Sir Mortimer Davis which was quoted to you. Why was it dropped?

A.—Because after drilling we discovered that the coal seam was too thin.

Q.—How was it tested?

A.—By diamond drilling.

10 Q.—Was that test made before, or after, the death of Sir Mortimer Davis?

A.—I believe it was made before the death of Sir Mortimer.

Q.—Under whose direction was it made?

A.—It was made under my direction. Mr. Cochrane had the actual operation of it. Mr. Cochrane was out there.

Q.—If Mr. Cochrane was in direct charge of it, it was after Sir Mortimer's death?

A.—Yes.

20 Q.—As a matter of fact, Mr. Cochrane was employed by Sir Mortimer in his lifetime, but only began his job after Sir Mortimer's death. Is not that the fact?

A.—I believe that is correct.

Mr. McKeown: The witness has just flatly contradicted himself in that.

Witness: That is quite right.

30 Mr. Campbell: He wishes to change the statement that it was in the lifetime of Sir Mortimer, because he identifies by whom it was done.

Mr. McKeown: And you led him into the first error. What is he going to do about it now?

By Mr. Campbell (continuing):

40 Q.—In view of the testimony you have now given, are you quite clear whether it was before or after the death of Sir Mortimer Davis?

A.—It was done under the direction of Mr. Cochrane.

Q.—Are you aware—

Mr. McKeown (interrupting): Do not lead the witness.

By Mr. Campbell (continuing):

HOWARD A. POILLON (*for Defendants*), *Re-Examination*.

Q.—Do you know when Mr. Cochrane entered upon the performance of his duties for the Incorporated Company?

A.—I have heard he entered upon them after Sir Mortimer died.

Q.—Will you look at Exhibit No. 9, to which your attention was called this morning, and under the heading of “ Alberta Coal Properties Expense ” can you identify any of the items shown there as the cost of this drilling of the Rogers property to which you have referred? If you cannot, I will ask Mr. Reaper.

A.—No, I cannot. There were two drilling commissions, and one might have lapped over into the other. One contract might have been over into the other, for all I know.

Q.—To your knowledge were they diamond drilling any other Alberta coal properties than the Rogers?

A.—Yes, they diamond drilled the Cadillac. I do not know whether a portion of this is Cadillac, or a portion of that is Rogers. There were two commissions, and they might have gone over your financial year.

Q.—You told us in your cross-examination something about the prospective profits of the operation of the Cadillac Coal Company if and when it got into its operating stride. What would you say would be the probable profit on a per ton basis?

A.—About \$1.50 a ton.

Q.—Your attention was called to the amounts expended in Alberta oil leases in the years 1928 and 1929. Will you look at the financial statement of the Incorporated Company, Sir Mortimer Davis, Incorporated, for the year ending September 30th, 1927, and will you read into the record the amount shown there as having been spent on Alberta oil fields, leases and expenses?

A.—\$30,163.05.

Q.—On the same page do you find a reference to the amount spent in that financial year for the Canadian Exploration Syndicate expense, and will you say what it is?

A.—\$5,826.10.

Q.—Your attention was called by my learned friend, Mr. McKeown, to some critical references to yourself by Sir Mortimer Davis, found in a number of letters written during 1927. Was that your first experience of criticism at the hands or tongue of Sir Mortimer Davis?

A.—No, sir.

Q.—Going back over the time of your professional association with him were there other occasions when he frankly expressed views about your qualities and capacities?

A.—Yes, sir.

HOWARD A. POILLON (*for Defendants*), *Re-Examination*.

Q.—To yourself?

A.—To myself.

Q.—Did they terminate his employment of you professionally?

A.—Momentarily. I resigned, and he re-employed me.

By Mr. McKeown:

10 Q.—And, you re-considered?

A.—I suggested that if he was dissatisfied with my services he might ally himself with his old associates.

Mr. McKeown: And, that he could not stand.

By Mr. Campbell (continuing):

20 Q.—Were you still in receipt of a definite retainer by Sir Mortimer Davis, Incorporated, down to the time of Sir Mortimer's death?

A.—Yes.

Q.—With his knowledge, and consent?

A.—With his knowledge. I do not know about his consent.

By Mr. McKeown:

30 Q.—Evidently Lord Shaughnessy did not see fit to act upon the intimation contained in the letters from Sir Mortimer relative to continuing you in the employ of the Company: I mean the letters in which Sir Mortimer suggested that they had better get an engineer and let you out?

Mr. Campbell: Not yet.

Witness: Is that an observation of yours, or am I supposed to answer it?

40 Mr. McKeown: Let it go without an answer. I think you have done very well, Mr. Poillon, and I have no further questions to ask you. I thank you, and will allow you to go to Europe at once if you wish.

By the Court:

Q.—What have you done for the Incorporated Company since the death of Sir Mortimer Davis?

HOWARD A. POILLON (*for Defendants*), *Re-Examination*.

A.—I have made the consolidation of the Federal Coals Company with the Standard Mines, C. S. Donaldson, Cadillac Coal Company. I have been representing the Estate in the matter of the Mason Valley Mines Company, acting as a Director for the Estate.

By Mr. Campbell:

10 Q.—When you say the Estate, you mean the Incorporated Company?

A.—The Incorporated Company, yes.

By the Court:

Q.—Practically the same thing?

A.—Yes. I have had various properties referred to me, passed on them, and given my advice. In other words, I have been operating for them in the same manner that I operated for Sir Mortimer.

20 Q.—How many days, or weeks, has that taken you?

A.—It is very difficult for me to tell you that. I really cannot tell you.

Q.—Have you looked into the Rogers properties since Sir Mortimer's death?

A.—No, because the returns were given to me, and it was not necessary for me to look into them. In other words, I got the drilling results, and on the basis of the drilling results I turned the property down.

30 Q.—That was before Sir Mortimer's death?

A.—No, that was after. I made an examination of the Cadillac.

Q.—The Rogers property was under option, was it not?

A.—It was under an option.

Q.—When did the Rogers option expire?

A.—It expired the moment we told Rogers we did not want his property. We simply turned it back to him.

Q.—Did you tell him that before Sir Mortimer's death, or after?

A.—After.

Q.—What did you do after Sir Mortimer's death?

40 A.—We did the drilling after. We also did the equipping.

Q.—In what month did you turn down the Rogers option?

A.—I really cannot tell you that.

Q.—Was it in 1928?

A.—Shortly after Sir Mortimer's death, or reasonably shortly after his death.

Q.—Did you go to Lethbridge, or near Lethbridge, in connection with the Cadillac Coal?

HOWARD A. POILLON (for Defendants), *Re-Examination*.

A.—Yes.

Q.—You did not look into the Rogers property at Lethbridge?

A.—I knew the Rogers property, because the Rogers property is right adjoining the Federal Coal. It was hoped we would be able to continue the workings of Federal Coal through the Rogers property.

10 Q.—Did you go to or near Lethbridge in connection with the Federal property, and when?

A.—I should say it was last summer. No, it was the fall before this.

Q.—The fall of 1928?

A.—Late in the fall of 1928, yes.

Q.—Did you examine the Federal property?

A.—Yes, I went into the Federal property while I was there.

Q.—At that time the Rogers option had expired?

A.—We had thrown the Rogers option up, yes.

20 Q.—There was a question of working the Federal property alone, or working it in conjunction with some other property that you did not yet know about?

A.—We knew about Donaldson's property at the time. We were in rather a peculiar position. The whole Federal property—the hoisting works of the property are located on an island in the Belly River, and whenever the water rose it was apt to sweep it all out. It was a question of removing it and putting it on the mainland, which we did not think we could do because we did not think we would have business enough in the Federal mine; but, if we got it in connection with some other property we might preserve it, because we would have sufficient tonnage to move so that we could afford to do various things we could not do otherwise.

30 Q.—You knew when you went to Alberta that the Federal property was worked by Donaldson?

A.—Yes; because I made the lease.

Q.—You know the Estate, or the Company, got \$8,000 out of it?

40 A.—They got anywhere from \$5,000 to \$8,000, depending on how the situation was. But, if the river had come up, which everybody expected it would do, it would have removed all the head frame and all of the hoisting works, and the property would have been inoperative then. Then it would have been necessary to have put in \$10,000 or \$15,000 more.

Q.—If that had happened Donaldson would have renounced?

A.—He would have thrown his lease up immediately, and gone over to the Standard mine and operated it for himself. In which

HOWARD A. POILLON (for Defendants), Re-Examination.

case the Federal property would have been a total loss, because in a coal mine you have to retimber your entries every so often.

Q.—It had practically paid the \$10,000 that Sir Mortimer paid for it?

A.—Yes, but Sir Mortimer had \$100,000 in.

Q.—But, that is the Company?

10 A.—There was a peculiar situation there. Sir Mortimer had also paid a lot of bills that were outstanding.

Q.—However, you advised the putting together of the property leased to Donaldson and the property owned by Donaldson, namely the Standard?

A.—Yes.

Q.—When did you come to that conclusion. Before you left Alberta?

20 A.—No. The information was given to me about the time we had finished the drilling of the Rogers property: that Donaldson had a property that he was opening, which contained the thickest coal seam that was known in that field.

Q.—How is it he was not operating it, but was operating the Federal?

A.—He was operating both. He was taking his earnings from the Federal mine to open up his Standard mine.

Q.—How much did you pay for the Standard property?

30 A.—We gave \$100,000 in bonds secured by his own property. In addition to that, we assumed a Bank overdraft of around \$30,000 that he had. In addition to that we entered into an agreement with him by which the Corporation would continue developing the mine. We paid him no cash at all.

Q.—He has a salary now?

A.—He has a salary now.

Q.—Paid by the Cadillac Coal Company?

A.—Paid by the Cadillac Coal Company.

Q.—Did anybody besides the Estate Sir Mortimer Davis put any money into the Cadillac Coal Company?

A.—Donaldson did.

40 Q.—Apart from his property?

A.—Apart from his Bank overdraft. He put all the money he had in.

Q.—You are a Director of Cadillac Coal Company?

A.—Yes.

Q.—How much money did you put in the Company?

A.—I am simply a Director through the fact that I am consulting engineer of Sir Mortimer Davis, Incorporated, and likewise I

HOWARD A. POILLON (for Defendants), Re-Examination.

have an indefinite interest in anything that is acquired through my services.

Q.—Do you agree with Mr. Reaper that about \$50,000 more would have to be spent by the Estate on the Cadillac Property?

Witness: From what date? \$50,000 more from today, no.

10 Mr. Campbell: That includes the \$30,000 which has been spent, your Lordship. Mr. Reaper mentioned \$50,000 before the \$30,000 had been advanced, so there would be only \$20,000 left.

By the Court:

Q.—Do you think that with \$20,000 you will show results?

A.—Yes.

20 Q.—How much of the money spent so far by the Cadillac Coal Company has been spent on the Federal property, and how much on the Standard property?

A.—I should say about \$12,000 or \$15,000 on the Federal, and the balance was spent on the Standard.

Q.—Where have the results come from so far?

30 A.—In introducing a new coal you have practically to have a season to give people a chance to see how the coal is. Therefore, the first season it is quite unbelievable that you are going to be able to sell much more than demonstration tonnage. Apparently the results we are getting now, and the size of contracts we are getting, would indicate they have been eminently satisfied with Standard coal, because we have already contracted for a considerable tonnage for next season at a profitable price to us.

Q.—Have you looked into the Asbestos proposition since the death of Sir Mortimer Davis?

A.—I went down there once.

Q.—Since the death of Sir Mortimer?

A.—Yes, sir.

Q.—What did you report?

40 A.—I reported that the situation, as far as I could see, was fairly satisfactory. That was shortly after the consolidation was made, and rather shortly after Sir Mortimer died. There was a time when we of the Federal and Consolidated were not really too welcome there, when they felt they would be just as happy, although we were shareholders, if we did not come. So, I was given a very pleasant visit, but I got no further than that.

When we turned over the Federal and the Consolidated, one of the agreements we made (it was a tacit agreement) was that all

HOWARD A. POILLON (*for Defendants*), *Re-Cross-Examination*.

the officers, including the President and the Vice President agreed to resign and turn the properties over to the Asbestos Corporation of Canada: so that we would give them nothing but the properties, and they could operate them as they saw fit.

Q.—What is the outlook of the Asbestos proposition, as far as the Estate Sir Mortimer Davis is concerned?

10 A.—I really do not know; because I have not been down there, and I do not know what the situation is.

Q.—Do you think it would be wise for the Company to send you there, and let you do something for your retainer?

A.—I am doing a lot for my retainer. We had about \$150,000 expenditure in the equipping of the Cadillac Coal Company all last year, and I directed all that. Although I cannot tell you the exact minutes, days, or hours I put in on it, I put in a considerable amount of time on the equipment.

Q.—Was that in 1928, or 1929?

20 A.—1929.

I was extremely busy arranging for that, passing on their plans, and so on.

Q.—Has your retainer begun to run from January 1st, 1930, for another year?

A.—My retainer is the usual form of retainer I have, that either party may cancel it on thirty days' notice: either I can cancel it, or they can.

Q.—When does it begin? On January 1st?

30 A.—A retainer of that kind, cancellable at any time, runs from year to year, beginning on the signing of the agreement. This agreement has been the outgrowth of a number of agreements I have had with them. I can resign on thirty days' notice, or they can dispense with my services on thirty day's notice.

By Mr. Campbell:

Q.—During the last year or so was there any recovery out of the Mason Valley Mine situation?

A.—Yes.

40 Q.—Amounting to how much?

A.—Amounting to around \$350,000, I think. We still have some interest in it that will be forthcoming.

Re-cross-examined by Mr. McKeown, K.C., of Counsel for plaintiffs.

Q.—When did the money from this recovery which has been

HOWARD A. POILLON (*for Defendants*), *Re-Cross-Examination*.

made in the Mason Valley go into the Treasury of the Incorporated Company?

A.—I think last year.

Q.—It was not anything very great in the way of a piece of news, was it? Had it not been expected, and was it not on the way for two or three years, even before Sir Mortimer died?

10 A.—No: it was slowly building up. When Sir Mortimer died probably a quarter of it had been realized.

Q.—It was part of a plan which had been formulated during Sir Mortimer's lifetime to salvage the Mason Valley proposition, was it not?

A.—Yes, it was part of a plan to operate the Mason Valley mine until we had exhausted it.

Q.—And that plan had been put into operation before Sir Mortimer died?

A.—Before Sir Mortimer died.

20 Q.—And it is the result of what Sir Mortimer's plan originally was that the Corporation got back \$375,000 last year?

A.—It was a plan that was originated by Sir Mortimer Davis, W. B. Thompson, and the rest of the people, when the consolidation was effected; that we should operate the mine, take as much ore as we could out of it, and then either continue the Corporation or liquidate the Corporation and the interests decided they would liquidate the Corporation. We were minority shareholders, so we had to agree with what the majority said.

30 Q.—In connection with Cadillac Coal: do you know of the clause in the Cadillac contract under which Sir Mortimer Davis, Incorporated, is bound to finance that Company to an unlimited amount?

A.—Yes, sir.

Q.—Is it not a fact that Sir Mortimer Davis, Incorporated, is obligated by the contract with Cadillac Coal to finance Cadillac Coal for an unstated amount—all its financial requirements?

A.—No, sir. We being 90% shareholders . . .

Q.—(interrupting): Never mind any quibbles about this.

40 A.—I am not quibbling.

Mr. Campbell: It is to an amount not exceeding \$50,000.

Mr. McKeown: Not at all. Do not be silly, Mr. Campbell.

Q.—Will you look at the copy of the Cadillac Company's contract now before you filed as Exhibit Number 19 of the Plaintiff in this case, and at page 27 of the printed Exhibits, clause five,

HOWARD A. POILLON (*for Defendants*), *Re-Cross-Examination*.

about the middle of that clause, and note that the Davis Company agrees to advance from time to time by way of loan such working capital as may be necessary, without any amount stated?

A.—I don't see that at all.

Q.—Have you got your glasses on there?

A.—Yes, sir.

Q.—I will go around and see if I can help you.

10 A.—There is something there about 200 tons.

Q.—“From time to time by way of loan, such working capital as may be necessary.” Do you notice that?

A.—Yes, sir.

Q.—Is there any limit to the amount for which the company is obligated?

A.—Yes.

Q.—Where is the limit?

A.—200 tons per day capacity.

20 Q.—Where is the “200 tons per day”?

A.—“Two hundred (200).”

Q.—Clause five, “The Davis Company further agrees to advance by way of loan to the Cadillac Company for equipping the said properties and other properties of the Cadillac Coal Company with machinery and appurtenances with a view to developing the production of at least 200 tons per day of coal, such sums as may be necessary for this purpose to an amount not exceeding in any event the sum of \$50,000.”

A.—Yes.

30 Q.—“To advance from time to time by way of loan such working capital as may be necessary.” Do you think the \$50,000 qualifies the working capital?

A.—I think the 200 tons qualifies the working capital because if they gave it away it would not be so much, so it is not unlimited.

By the Court:

Q.—There was a man named Poirier mentioned in connection with you?

40 A.—Yes.

Q.—Where did he work with you?

A.—He is my partner in New York. We are a firm, Poillon and Poirier. We have been in business since about 1915.

Q.—So you did work all over the place?

A.—Yes, in northern Canada and everywhere else.

And further deponent saith not.

LINDSAY H. EWING (for Defendants), Examination-in-Chief.

On this 19th day of May, 1930, personally came and appeared

LINDSAY H. EWING

of the City of Montreal, Real Estate Agent, aged 51 years, called
10 as a witness on behalf of defendants, having been first duly sworn,
doth depose and say:

Examined by Mr. Campbell, K.C., Counsel for Defendant:

Q.—Colonel Ewing, you are a member of the real estate broker-
age firm of Ewing and Ewing of this city?

A.—Yes.

Q.—How long have you been engaged in that line of business?

A.—24 years.

20 Q.—In the course of your brokerage business did you ever have
occasion to pay any attention to the Pine Avenue residential prop-
erty of the late Sir Mortimer Davis?

A.—Yes.

Q.—During Sir Mortimer's lifetime had it come to your know-
ledge that the property was for sale?

A.—Yes.

Q.—Did your agency list it among properties that were avail-
able?

A.—No. We obtained a price from Henry Joseph and Company.

30 Q.—Did you discover that it was listed with Henry Joseph and
Company?

A.—Yes.

Q.—At what price were you informed that the property was
then for sale?

A.—\$550,000.

Q.—That was for the property alone, exclusive of contents?

A.—Yes.

Q.—I take it in all the questions I am putting it is exclusive of
contents, unless you indicate the contrary?

40 A.—Yes.

Q.—Did you, during Sir Mortimer's lifetime, submit any pro-
posals for the possible purchase of the property?

A.—Yes, we made in offer in 1926. I could not tell you exactly
—I think it is 1926. May 12th, 1926.

Q.—What was the amount of your offer? I do not know that
we are interested in the name of your client, but I would like the
amount of your offer?

LINDSAY H. EWING (for Defendants), Examination-in-Chief.

A.—\$120,000.

Q.—That offer, I take it, was not accepted by Sir Mortimer?

A.—It was refused.

Q.—During Sir Mortimer's lifetime did you submit any further proposals for the purchase of the property?

A.—I am not sure of the date of Sir Mortimer's death.

Q.—He died in March, 1928.

10 A.—No.

Q.—Subsequent to the date of Sir Mortimer Davis' death did you have dealings with his Executors in reference to the property?

A.—Yes.

Q.—You dealt direct with the Executors?

A.—We made two offers subsequently; two in 1929, one through Joseph and Company, and one direct to Lord Shaughnessy.

Q.—First of all, was there any change in your listing price after Sir Mortimer's death.

20 A.—The price was changed in September; I think September 30th, 1929, it was changed to \$300,000, according to our office records.

Q.—And had you any indication apart from the listing at \$300,000? Had you any indication as to the price?

A.—There is a note on the card to submit offers.

Q.—Listed at \$300,000, to submit offers?

A.—Yes.

Q.—I think you said you did submit certain proposals. How was the first one submitted, direct?

30 A.—Through Henry Joseph and Company. That was on January 16th, 1929.

Q.—What was the amount of that offer?

A.—\$150,000 cash.

Q.—It was not accepted?

A.—Refused.

Q.—Did you submit any further offers for the sale of the property?

A.—There was one on October 11th, 1929.

Q.—For how much?

40 A.—\$150,000 again.

Q.—And again this proposal was not accepted?

A.—Refused.

Q.—Are you aware that the property was listed for sale in other agencies? I am speaking now of the latter part, say the autumn of 1929.

A.—I understood it was almost a free for all when we dealt direct with the Executors.

LINDSAY H. EWING (for Defendants), Examination-in-Chief.

Q.—Was it known in the real estate world that the property was on the market?

A.—Yes.

Q.—I mean among the class of buyers that would be likely to buy a property of that description?

A.—Yes.

10 Q.—Among the brokers dealing with that class of property? You know the property, do you not?

A.—Yes, very well.

Q.—Subsequent to the death of Sir Mortimer Davis, did you notice whether any “ For Sale ” signs were displayed on the property?

A.—You mean after his death?

A.—Yes.

A.—Yes, for a while there was a sign on it.

Q.—What firm?

20 A.—Henry Joseph and Company.

Q.—As a matter of fact, there were two signs, one on each side of the property?

A.—Only one that I can remember. There was a fairly large one just on the west of the front door.

Q.—A conspicuous sign?

A.—Yes.

Q.—At that time, at the time that sign was placed there what was your understanding as to the agent who had the right or the exclusive right, we will say, to deal with the property?

30 A.—I presume Henry Joseph and Company.

Q.—You deduced that from the fact of the sign?

A.—Yes.

Q.—Is it in your view helpful to the sale of a property of that character to have it placarded with such signs as Messrs. Joseph and Company put on it?

A.—That is a matter of question. There is a very limited market for that type of house and a number of large residences—usually they do not put signs on but I think it is a matter of opinion.

40 Q.—Does a “ For Sale ” sign on a property of that kind usually lead to any effective steps for its disposition? In your judgment is it useful to placard a property of that character with “ For Sale ” signs?

A.—As a matter of fact if I had it I would like to put a sign on it. Whether it would help the situation or not I don't know.

Q.—That just suggests to me—is the sign helpful to advertise

LINDSAY H. EWING (for Defendants), Examination-in-Chief.

the sale of the property, or to the agency that is charged with the sale?

A.—Mr. Campbell, that is rather difficult. In smaller houses I should say a sign, yes; in the bigger ones, it is a question.

Q.—Do you think there were any offers missed for the sale of that property after the sign was removed when it was listed, generally.

10 A.—I should not think so.

Q.—After it became a free for all and it was listed with a number of different agencies, what, in your judgment would be the appropriateness of each agent that would have a right to list it having placarded the property with a sign of the same dimensions as Joseph's?

A.—I think it would be an impossible situation.

Q.—What, in your experience, as dealing with real estate of that character and class, would you think it necessary to be done in regard to maintaining the property pending the finding of a purchaser?

A.—I don't know what you mean.

Q.—Would it be a reason to maintain the property and keep a janitor on the spot, maintain the furnaces and that kind of thing?

A.—I should say very important.

Q.—In this climate a property of that kind could not be left vacated during the winter months without deteriorating the property?

A.—No.

30 Q.—Do you know the Ste. Agathe property that belonged to Sir Mortimer Davis?

A.—Yes.

Q.—What is its general character? How would you describe it?

A.—Well, it is a gentleman's estate.

Q.—A gentleman's country estate?

A.—Yes.

Q.—An extensive property?

A.—Yes, quite.

40 Q.—Did you make any efforts to effect a sale of that property?

A.—Yes.

Q.—During Sir Mortimer's lifetime did you make any efforts?

A.—No.

Q.—Do you know whether it was for sale during his lifetime?

A.—No, I do not know.

Q.—Subsequent to his death, what connection had you with the possible sale of the property?

LINDSAY H. EWING (*for Defendants*), *Examination-in-Chief*.

A.—I will tell you the date we got the first intimation of it. It was on June 8th, 1928.

Q.—Was the property listed on your books for sale?

A.—No. We got it from Henry Joseph and Company.

Q.—At what price was it quoted?

A.—\$100,000.

10 Q.—You mentioned a date just now in June?

A.—June 8th, 1928.

Q.—What proposal did you submit?

A.—We never made a firm offer of the Ste. Agathe property. I saw Lord Shaughnessy in October, I think it was, and asked him if they thought they would accept around \$50,000, and he advised me subsequently that they would not, so we did not make an offer.

Q.—You never made an actual offer?

A.—No.

20 Q.—Was any actual offer for the property ever submitted through you?

A.—No, not through us.

Q.—But, in any event, you talked about a price in the vicinity of \$50,000?

A.—Yes.

Q.—And the answer was?

A.—“ No ”.

30 Q.—What would you consider, in your judgment as a real estate man, the necessity of maintaining that property during the finding of a purchaser, just as you would the city property on Pine Avenue?

A.—It should be kept up, of course.

Q.—Would it lessen, in your judgment, the chances of a sale if the property was not maintained?

A.—Yes.

Q.—Would that be equally true of the Pine Avenue property?

A.—Absolutely.

40 Q.—It is in evidence in this case that both these properties were latterly, in any event, listed for sale with a number of very prominent brokerage firms, whose names have been given in the record. Is that, in your experience, an ordinary and usual way which a property of that kind is disposed of, and a buyer found for it ultimately?

A.—Under normal circumstances, it is either given to one broker for a limited period, or it is given all around.

Q.—If it is given to one broker for a limited period, and he does not find a buyer, what is the ordinary practice?

A.—He would get another individual.

LINDSAY H. EWING (for Defendants), Cross-Examination.

Q.—Or it becomes a free for all? Are those the steps that are ordinarily taken to find a buyer for a property that proprietors wish to dispose of?

A.—Yes.

Q.—Did you ever submit any proposals for the renting of either of those properties?

A.—No.

10

Cross-examined by Mr. W. K. McKeown, K.C., of Counsel for plaintiffs:

Q.—Will you let me see those cards a moment?

A.—That (indicating) is just a memorandum of the dates, the the records of when they are submitted.

Q.—You have exhibited to me two of your office listings, affecting Pine Avenue, one under date November 11th, 1925, and the other under date 7th of May, 1926?

20

A.—Yes, and there is a subsequent alteration on this one.

Q.—There is an alteration on the earlier card, that is the one of November 11th, changing the price from \$550,000 to \$300,000, and I notice a further addition evidently made in ink at the same time, "Offers September 30th, 1929"?

A.—Yes.

Q.—That refers to changing the listing price of \$550,000 to \$300,000, and also the instructions to submit offers?

A.—I do not follow that.

30

Q.—I mean as to the date?

A.—Yes.

Q.—Both are of date September 30th, 1929?

A.—Here is the date of the original altering.

Q.—I am not speaking of that; I am speaking of this change here?

A.—Well, excuse me, that referred to the \$300,000. That memorandum of offer is in reference to the \$300,000.

Q.—Prior to the 30th of September, 1929, you had no instructions to offer that property at \$300,000, or to submit offers?

40

A.—We had it for \$500,000. We would naturally submit any offers we got.

Q.—You had nothing noted on your card before that day, had you?

A.—No. It is the ordinary practice.

Q.—These alterings as to the two cards, the card of November, 1925, and the card of May, 1926, were evidently listings which

LINDSAY H. EWING (for Defendants), Cross-Examination.

came to you during Sir Mortimer's lifetime. Were they under his personal instructions?

A.—I don't know. They came from Henry Joseph and Company.

Q.—Does that mean from Henry Joseph and Company in virtue of an arrangement which, I understand, exists between the members of the Real Estate Exchange, of exchanging listings?

10 A.—No, we asked for them.

Q.—Had you made an enquiry for them?

A.—Yes.

Q.—And I think you told us you received an offer of \$300,000 during Sir Mortimer's lifetime which was refused?

A.—Yes.

Q.—And there were no further offers up to the time of his death?

A.—No.

20 Q.—I put it up to you that from the time these Executors came into office in March, 1928, up to the 30th of September, 1929, they had never given you any instructions about that property?

Witness: The Executors?

Counsel: Yes, the Executors?

A.—No. We were dealing with Joseph and Company.

30 Q.—And you had no fresh instructions from Joseph and Company between the time of Sir Mortimer's death in March, 1928, and the 30th of September, 1929?

A.—No.

Q.—So the matter, as far as your firm is concerned, as one of the prominent Montreal real estate agents, was dormant from March, 1928, to September, 1929, insofar as concerned these Executors in charge of the property—They had not approached you, or asked you to lease it or sell it?

A.—We had it there, and if we could have found a buyer, we certainly would have sold it.

40 Q.—You did not see any sign of life in the Executors?

A.—I had no negotiations with the Executors until last summer.

Q.—What do you mean by last summer?

A.—August.

Q.—I don't quite understand that: What negotiations did you have with the Executors in August last concerning the Pine Avenue property?

A.—Mr. Joseph told me that he had listed

LINDSAY H. EWING (for Defendants), Cross-Examination.

Q.—(Interrupting): I am asking you about the Executors?

A.—The negotiations—I had a conversation with Lord Shaughnessy.

Q.—When?

A.—In August.

Q.—What date?

10 A.—I cannot tell you.

Q.—Where?

A.—In Montreal.

Q.—That is a pretty large order. Cut it down.

A.—I don't know. I am not sure.

Q.—Are you sure you had it at all?

A.—Yes, I am perfectly sure.

Q.—And what was it about?

A.—The Pine Avenue property, and the sale of it.

Q.—And you could not tell us what time it was in August?

20 A.—No. All I can tell you is, that I came from St. Andrews, where I had seen Mr. Joseph, and I went to see Lord Shaughnessy afterwards, sometime in August, but I could not be sure just when.

Q.—Towards the end of the season. Towards the end of August?

A.—I could not be sure.

Q.—And since then you have had the offers which you have mentioned to Mr. Campbell, or the offer?

A.—We made two offers to the Estate, one before and one since. One was to Joseph, and one was direct to Lord Shaughnessy.

Q.—I think you gave us the dates of those, did you not?

30 A.—Yes, the approximate dates.

Q.—What date did you give us for the first offer?

A.—May 12th, 1926.

Q.—But I am speaking of these offers

A.—January 10th, 1929, and October 11th, 1929.

Q.—About the Ste. Agathe property: Have you examined the Ste. Agathe property personally?

A.—I have examined it to this extent, I have dined there several times and am familiar with the property.

40 Q.—Did you say that a sign for advertising that property would not be of utility and of necessity almost, on account of the location of the property—a sign near the roadway?

A.—No, I did not say so.

Q.—You do not say that?

A.—No.

Q.—Will you agree with me that the sale of that property would

LINDSAY H. EWING (for Defendants), Cross-Examination.

be rendered very much more probable if a sign were displayed near the roadway?

A.—No, I should not think a \$100,000 property in the country would be sold by a sign.

Q.—A great many people who own properties to a considerable extent pass there, in that region?

10 A.—There is a very limited margin for that kind of property in that region.

Q.—Was that property ever listed with you?

A.—Yes.

Q.—Directly by the Executors?

A.—No.

Q.—Did I understand you to say that this card which you have handed me, of date June 8th, 1928, was a listing from Henry Joseph and Company?

A.—Henry Joseph and Company.

20 Q.—What was the earliest date that the Executors were in touch with you upon the matter of the Ste. Agathe property?

A.—I never discussed the Ste. Agathe property with the Executors, excepting the time I went to see Lord Shaughnessy.

Q.—And they never went to you to bring the matter especially to your attention?

A.—No.

30 Q.—You say that you never made any actual proposal for either properties. You received no inquiries. In your opinion and experience as a real estate agent—take, for instance, the Ste. Agathe property. would it have been an advantageous thing for the Executors to have leased that property to a man of very considerable means who had already made an offer?

A.—I should think so.

By the Court:

Q.—In the present state of the money market, what are the chances of selling the Pine Avenue property?

40 A.—I should think they are very limited. There is a very, very small market for big properties like that. It is a very, very expensive one to keep up.

Q.—How much do you think you could get for the Pine Avenue property?

A.—It is very difficult to say.

Q.—Could you get as much as \$150,000?

A.—Well, we offered it for \$150,000 cash. Whether we would get it today or not, I do not know.

LINDSAY H. EWING (for Defendants), Cross-Examination.

Q.—Would you consider it possible or advisable to rent a property like that furnished or unfurnished?

A.—Well, if you could find a satisfactory tenant. You could not please everybody. It would be a very difficult property to lease.

10 Q.—What about the Ste. Agathe property; what do you think the chances are of getting rid of it?

A.—You would have the same situation of a country property where a gentleman spends quite a lot of money on it; he has to take quite a sacrifice, unless it happens to be something he wants pretty badly.

Q.—Did you submit an offer of \$46,000 for the Ste. Agathe property?

A.—No.

Q.—How much do you think you could get for the Ste. Agathe property?

20 A.—It is very difficult to say.

Q.—Might you get \$50,000?

A.—Well, it really all entirely depends whether you can find a man, and find someone who wants that type of property. In that case you might do considerably better. Of course, you are dealing with a very limited market.

By Mr. McKeown:

Q.—Do you know Senator Donat Raymond?

A.—Yes.

30 Q.—Would you, as a real estate agent, have been in favor of considering a proposal from Senator Raymond to lease the property to Senator Raymond with a view of purchasing?

Mr. Campbell: With a view of purchasing?

By Mr. McKeown:

40 Q.—I will qualify that. If Senator Raymond had admittedly made two offers, one of which was an increase of \$10,000 over the first, would you have been in favor of renting it to him under these circumstances?

A.—I would think he would be a good tenant.

Q.—As to the Pine Avenue house, how would you regard the possibility of renting that house to Sir Henry Thornton after he had made an offer of \$125,000?

A.—I do not follow you. Do you mean to rent to Sir Henry Thornton?

LINDSAY H. EWING (for Defendants), Cross-Examination.

Q.—Following an offer of \$125,000 which had been declined?

A.—Well, if I could get a satisfactory rental.

Q.—You would regard him as a satisfactory tenant anyway?

A.—Yes.

By Mr. Campbell:

10 Q.—I take it, Colonel Ewing, that the propriety of renting would depend on the desirability of the tenant and the sufficiency of the rent?

A.—Absolutely.

By Mr. McKeown:

Q.—Colonel Ewing, as to the Ste. Agathe property, you expressed the opinion in answer to Mr. Campbell, that it would be the proper thing to have that property maintained pending the sale?

20 A.—Yes.

Q.—Would you think it would be necessary to maintain an adjacent farm, to rent the farm, and to operate it at a very, very considerable operating loss per annum?

A.—I think that is a matter for the people renting it, as to whether they want to sell it as a gentleman's estate with a farm attached to it or not. It is a question.

Q.—Would the farm deteriorate to the extent that a large sum of money should be expended on it to maintain the operations?

30 A.—I don't know anything about farming.

Q.—Let us go back to something you know of, to city property. Take the Pine Avenue house, you know there are conservatories about those premises?

A.—Yes.

Q.—In your opinion, do you think it is a part of good administration to maintain those conservatories with gardeners now covering a period that has run into two years?

40 A.—Well, I would say that the property would look much better, and the house would be so much better with flowers, and with having conservatories.

Q.—But having regard to the expense of maintaining a gardener, and heating the conservatories and allowing the flowers to become ordinary vegetation, in your opinion, would that be necessary?

A.—I cannot follow that question.

Q.—To maintain the house for the purposes of sale?

A.—It might not be necessary, but I should think it would be an advantage from the selling standpoint.

LINDSAY H. EWING (for Defendants), *Re-Examination.*

Q.—Would it not be in any man's mind, that it would be a pretty good thing to have a tenant to maintain the property for the purposes of sale?

A.—The only point in having a tenant there, if you are offering a house for sale, and if it is tied up by a lease, this certainly will interfere with your selling. I do not think you can get a revenue from rent that will give you a return on the sale value of the house.

10 Q.—You are speaking of a long term lease, which probably would not be the part of wisdom at all, but for a short term lease, or a lease with the option of purchase, how would that strike you as a practical real estate man?

A.—If I could get a tenant in there who would pay a better return on whatever value fixed on it, I would say certainly.

Q.—Many valuable properties in Montreal are leased for an entire year or for six months?

A.—Yes, but they get a very, very small return, no return at all.

20 Q.—Better than nothing at all, and cost of maintenance. Do you know the Taylor and Beardmore properties on Pine Avenue?

A.—Yes, also the Delotbiniere.

Q.—Are they properties of very considerable extent?

A.—Yes.

Q.—Can you tell us about what they are being held for sale?

A.—They are getting \$500 a month rental for houses they are asking \$250,000 for.

Q.—And those properties are under lease at the present time, or have been?

30 A.—Yes, and they will be again. In fact, they are all leased now.

Q.—And they are getting a return of \$500 per month?

A.—One property which is in the market at \$250,000.

Q.—But the tenants have, of course, the whole of the maintenance charges?

A.—I presume so.

Re-examined by Mr. Geo. A. Campbell, K.C., of Counsel for Defendants:

40 Q.—Would it, in your judgment, facilitate the sale of the property generally to have it under lease to A, B or C?

A.—It certainly would not facilitate the sale if it is tied up. In other words, if they lease, the rent will be less than the return will be on the capital expenditure.

Q.—Have you any idea if the Pine Avenue property of the Sir Mortimer Davis Estate could have been leased at, in rental, which

LINDSAY H. EWING (for Defendants), Re-Cross-Examination.

would have returned anything like a fair return on the asking price of \$300,000?

A.—I should think it most improbable.

Q.—And what about the Ste. Agathe property. Could it have been leased at any price that would have brought a return on the asking price of \$100,000?

A.—I should not think so.

10

Re-cross-examined by Mr. McKeown, K.C., of Counsel for plaintiffs.

Q.—Is it not true that the residence of Sir Frederick Williams-Taylor, and the others, in the same vicinity to which you have referred, are all under short term leases, and that such leases are being renewed from time to time?

A.—The Beardmore lease, I think, was a five-year or three-year lease and the Taylor lease is short term, has been occupied this last winter and is going to be occupied again—I don't know for how long, maybe a month.

20

Q.—You know the Pine Avenue property well?

A.—Quite.

And further deponent saith not.

30

40

HERBERT C. FLOOD (for Defendants), Examination-in-Chief.

On this nineteenth day of May, in the year of our Lord one thousand nine hundred and thirty, personally came and appeared

HERBERT C. FLOOD

10 of the city of Montreal, residing at number 2 MacGregor Street, stock broker, aged forty years, a witness produced on behalf of the defendants, who being duly sworn doth depose and say as follows:

Examined by Mr. George A. Campbell, K.C., of Counsel for Defendants:

Q.—What is your occupation?

A.—Stock broker.

Q.—You are a member of the firm Flood, Potter and Company?

20 A.—Yes, sir.

Q.—And that firm are members, or have, at any rate, membership in the Montreal Stock Exchange?

A.—Yes, sir.

Q.—Are you also a member of the firm of Flood, Barnes and Company?

A.—Yes, sir.

Q.—Is that a limited liability company?

A.—That is a limited liability company.

Q.—Flood, Barnes and Company Limited?

30 A.—Yes.

Q.—And are they engaged in underwritings and that kind of business?

A.—Yes.

Q.—Did either of the firms with which you are associated, Flood, Potter and Company, Stock Brokers, or Flood, Barnes and Company Limited, have to do with the flotation of the Investment Foundation Limited?

A.—Yes, we sponsored it.

Q.—Which of these firms did?

40 A.—Flood, Barnes and Company.

Q.—Flood, Barnes and Company Limited?

A.—Yes.

Q.—When was the public issue brought out?

A.—My memory is March, 1929; I don't know the exact date—
March of last year.

Q.—In the winter and spring of 1929?

A.—Yes.

HERBERT C. FLOOD (for Defendants), Examination-in-Chief.

Q.—So as not to take you over all the details of the matter, I will ask you to file a copy of the circular which Flood, Barnes and Company Limited issued in connection with that flotation, giving certain particulars in regard to the flotation.

Will you produce and file as D-129 a copy of the circular which Flood, Barnes and Company issued in connection with the flotation of the units of Investment Foundation Limited?

10 A.—I do.

Q.—I notice in this circular, Exhibit D-129, a list of the Board of Directors of Investment Foundation Limited, and I believe a certified list has already been filed in this record, but will you look at that list and tell me, speaking generally, whether the gentlemen whose names appear as Directors of that Company are men of standing and substance in the financial community?

A.—Yes.

20 Q.—Do you consider that it is a representative Board of Directors for an Investment Company?

A.—Yes.

Mr. McKeown: Don't give all the evidence, Mr. Campbell.

By Mr. Campbell:

Q.—How were these shares issued in your public flotation?

A.—About a thousand shareholders or unit holders.

Q.—They were issued in units?

30 A.—Yes.

Q.—What did the units consist of?

A.—One share of Preferred, and one share of Common and an option on a half share of Common at twenty dollars a share, all embodied in the circular.

Q.—These three warrants are the warrants referred to in this circular D-129?

A.—Yes.

Q.—I did not get your answer, if you gave it, as to the extent of the distribution of your units?

40 A.—The distribution of both the units and the Common stock I would say was from a thousand to twelve hundred shareholders or unit holders.

Q.—And geographically, how were they distributed?

A.—From Halifax to Vancouver, and quite a considerable portion in France and in England.

Q.—I don't wish to enquire into the private business of all the members of your Board of Directors, but I want to know in general

HERBERT C. FLOOD (for Defendants), Examination-in-Chief.

terms whether every member of your Board of Directors had a substantial holding in the Common stock of the Company?

A.—Yes.

Q.—By the Company, I mean the Investment Foundation Limited?

A.—Yes.

10 Q.—When did the first financial year of Investment Foundation Limited finish?

A.—March 31st this year.

Q.—1930?

A.—1930.

Q.—Have you got a copy of the balance sheet?

A.—Yes.

Q.—As of that date?

A.—Yes.

Q.—Will you let me see it?

20 A.—Yes. It is signed by the Auditor.

Mr. Campbell: Subject to my general objection, which is very much recorded in this record as to the admissibility of any events since action brought, inasmuch as a great deal of other evidence subsequent to action brought has been put in subject to the reserve of my objection as to its admissibility, I will ask the witness to file this balance sheet, as the end of the financial year happened to be after the institution of the proceedings.

30 By Mr. Campbell:

Q.—Mr. Flood, will you please file as Exhibit D-130 the Balance Sheet and Auditor's Certificate of Investment Foundation Limited as at March 30th, 1930?

A.—Yes.

Q.—What official position do you occupy yourself in reference to the Company?

A.—I am President.

Q.—You are President of the Company?

40 A.—Yes.

Q.—By "Company" you mean the Investment Foundation Limited?

A.—Yes.

Q.—And have you always occupied that position since its inception?

A.—Yes.

HERBERT C. FLOOD (for Defendants), Examination-in-Chief.

Q.—Have you taken a substantial personal interest in the Company in an investment sense?

A.—Yes.

Q.—You told us, I think, that this public flotation took place in the spring of 1929. What was, in a few words, the stock market situation of the North American hemisphere, in any event, in the autumn of 1929? Did it go through a period of crisis?

10 A.—Yes. There was considerable change in stock market quotations between the first of October and the middle of November.

Q.—During October and November, 1929, there was a very serious change in the quoted values of the stock market?

A.—Quite.

Q.—This Investment Foundation Limited, I understand, was engaged in purchasing securities. That was its business?

A.—Yes.

Q.—Had you a wide distribution of securities?

20 A.—Yes.

Q.—I presume that if you owned securities, this stock market situation would affect the stock market value, the quoted value of your securities, in common with all other holders of securities?

A.—Yes.

Q.—Can you say, however, how Investment Foundation Limited came through that stock market crisis during October and November, 1929, as compared with other Companies in the same line of business?

30 Mr. Geoffrion: I object to comparisons.

Mr. Campbell: I will strike out the words "As compared with other Companies in the same line of business".

Mr. Geoffrion: I object. The balance sheet speaks for itself. You have it in the balance sheet here as clear as day.

Witness: The notation on the statement shows.

40 Mr. Geoffrion: We object to comparison, unless we get the other balance sheets in.

Mr. Campbell: Will Your Lordship allow the witness to answer under reserve if I withdraw the words "As compared with other Companies in the same line of business"?

His Lordship: Objection reserved.

HERBERT C. FLOOD (for Defendants), Examination-in-Chief.

The question was repeated to the witness as follows:

Q.—Can you say, however, how Investment Foundation Limited came through that stock market crisis during October and November 1929?

A.—I would say it came through very favorably. The only manner in which you can judge that is in comparison with other
10 Companies in a similar line of business.

Mr. Geoffrion: That is exactly where the other balance sheets come in, and then, of course, there may be others to. I do not want the witness to give an answer to a question which he has heard, and which has been withdrawn.

Mr. Campbell: You can cross-examine him.

20 Mr. Geoffrion: I am not on cross-examination. I am on legality of evidence. My learned friend put a question which we objected to. He withdrew part of that question and the witness is beginning to answer to the part of the question which was withdrawn.

Mr. Campbell: It seems to me the witness has given a perfectly proper answer to the question as modified.

Mr. Geoffrion: A remarkable answer for you, but I don't want him to go on and give comparisons.

30 Mr. Campbell: Do you wish him to produce the other balance sheets or do you not?

Mr. Geoffrion: You cannot go into comparisons. If you do, we will have to deal with all the other Companies. I was hoping we would finish this case some day, but I am beginning to lose hope.

Mr. Campbell: You are an optimist.

40 Mr. Geoffrion: I was hoping. I do not now. My learned friend has withdrawn part of his question and the witness has no right to introduce a fact which, by withdrawal of part of the question, he is told not to answer. I object to any reference to other Companies until we have a ruling.

His Lordship: That part of the question was withdrawn.

HERBERT C. FLOOD (for Defendants), Cross-Examination.

Mr. Geoffrion: Therefore, the witness cannot refer to other Companies or base his answer on other Companies.

Mr. Campbell: I am a little uncertain as to just how the matter stands.

10 Mr. Geoffrion: I am asking the Court to tell the witness that he has no right to refer in any way to other Companies as a basis for comparison. He could come from the zenith to the lowest limits. It means nothing.

His Lordship: If he files the other balance sheets.

20 Mr. Geoffrion: We do not want only the Companies he chooses. He can choose the worst Companies. We can reduce it to dollars and cents. The balance sheet shows it. It is as clear as day from the balance sheet.

Mr. Campbell: If you wish to cross-examine him on the balance sheet, he perhaps will be able to give you some of the information you prevent me from putting it.

Objection reserved.

By Mr. Campbell:

30 Q.—Mr. Flood, in view of your knowledge of the past history of Investment Foundation Limited, what is your judgment as to the probable future of that Company?

A.—I am optimistic as to its future.

Cross-examined by Mr. W. K. McKeown, K.C., of Counsel for plaintiffs.

40 Q.—You are a member of both stock brokerage firms of Flood, Potter and Company, and of the Incorporated Company called Flood, Barnes and Company Limited?

A.—Yes, sir.

Q.—Were you formerly associated with Nesbitt, Thompson and Company?

A.—Yes.

Q.—Was Mr. Barnes also associated with them?

A.—Yes.

HERBERT C. FLOOD (for Defendants), Cross-Examination.

Q.—Has Mr. Barnes recently withdrawn from the firm of Flood, Potter and Company?

A.—Yes.

Q.—How long ago?

A.—Within thirty days.

Q.—Thirty days from today?

A.—About that time.

10 Q.—This flotation of Investment Foundation Limited was put out by Flood, Barnes and Company?

A.—Yes.

Q.—Flood, Barnes and Company Limited?

A.—Yes.

Q.—Bond dealers, brokers, etc.?

A.—Yes.

Q.—But not stock brokers?

A.—No.

20 Q.—You say that this issue was floated in March 1929?

Mr. Campbell: He did not say it was floated.

By Mr. McKeown:

Q.—Use your own language. What happened in March, 1929?

A.—The Company was formed and the money was gathered and put into the treasury of the Company.

Q.—In what month?

30 A.—I am not sure of this, but my memory says March 1929.

Q.—And that money was gathered together and ran into how much?

A.—\$3,000,000.

Q.—In the face of the screaming warnings of all the financial authorities of this country against the investment in securities at the then levels of the stock market, is that right?

A.—I would like to hear the question again.

Q.—You will hear the question read again?

40 Question read again as follows: In the face of the screaming warnings of all the financial authorities of this country against the investment in securities at the then levels of the stock market, is that right?

A.—The money was raised in March 1929.

Q.—Are you not aware that at that time, from the beginning of the year 1929 at least, all the bank Presidents and other financial authorities in Canada, warned the public in the strongest possible language against the continuation of stock market speculation?

HERBERT C. FLOOD (for Defendants), Cross-Examination.

A.—There were warnings.

A.—And this Board of Directors that you so highly recommend to us, saw fit to organize this Company and draw in \$3,000,000 in March 1929 . . .

A.—The money was raised.

10 Q.—How much of the holdings of this organization were blown into last October and November when this collapse occurred?

A.—I have no figures with me, but very little of the money was invested at that time.

Q.—Where was the money then?

A.—Out on call.

Q.—Will you look at an Exhibit already filed in this case as P-77, and say if it is not true, that this, being the balance sheet for 1929 ———

Witness: November?

20

Counsel: Yes.

Witness: That is after the break occurred.

Q.—This is the whole month?

A.—Could I see ———

30 Q.—Just a moment. Wait for the question—after all, this Company had out on call at that time only \$528,000, and in time loans \$200,000, and the rest of its assets were pretty nearly all invested in securities?

A.—It says, time loan was out on call. The amount of money that was out was \$737,000.

Q.—Out of \$3,000,000?

A.—That is the November statement.

Q.—I am speaking of November. Is that right?

A.—That is correct.

Q.—And the balance of your money was tied up in securities?

A.—Yes.

40 Q.—Do you know how much of an impairment there was in the capital stock of Investment Foundation Limited when the break was at its worst?

A.—I don't remember at the moment.

Q.—Its reserve was all wiped out to start with?

A.—I don't remember at the moment.

Q.—Will you deny it? Will you suggest that is not a fact?

A.—I do not suggest anything. I don't remember.

Q.—Do you agree with me that the depreciation had been such

HERBERT C. FLOOD (for Defendants), Cross-Examination.

as to impair the capital stock of that Company quite a number of hundreds of thousands of dollars?

A.—The capital stock was impaired at the whole point.

Q.—Your Company went right ahead and paid its dividend notwithstanding the break in the market and the impairment of its capital?

A.—Yes.

10 Q.—Is that right?

A.—Yes, sir.

By the Court:

Q.—Did it pay a dividend on the capital?

A.—It has paid dividends. The securities were purchased and not sold, and it was paid from the dividends that these Companies have paid into our Company.

20 By Mr. McKeown:

Q.—Irrespective of the depreciation of your capital assets?

A.—Quite.

Q.—Do you know that other similar Companies, the Canadian General Trust of Toronto, a company organized for similar purposes and objects, passed its dividends because of the fact that the depreciation had impaired its capital position more than sufficient to wipe out any possible earnings for the period?

30 Mr. Campbell: I object to this question as not arising out of the examination-in-chief. There again, if my learned friend is going to ask the witness about what Mr. Meighen's Companies in Toronto did, we want to know all the inside history of these Companies. There may be absolutely no comparison between their position and the position of Investment Foundation Limited. The fact is, as the witness has said, the Foundation Investment Limited was not in the market in any large scale until the break.

40 Mr. McKeown: I made a mistake there. I suggested this Company was in the same class as the Companies of Mr. Meighen, and I find it is nothing of the kind, so I will withdraw the question.

By Mr. McKeown:

Q.—You have exhibited a circular which was put out by Flood, Barnes and Company at the time this offering was made to the pub-

HERBERT C. FLOOD (for Defendants), Cross-Examination.

lic and was absorbed, and with details in units, made up of one share of Preferred and one share of Common, and a warrant of half a share of Common at twenty dollars, is that right?

A.—Yes.

Q.—And those units taken together pay the dividend on the Preferred stock at the rate of \$3.00 per share?

A.—Yes.

10 Q.—And those are \$50 shares?

A.—Yes.

Q.—So that is at the rate of six per cent per annum on the Preferred?

A.—Yes.

Q.—And nothing at all on the Common?

A.—Quite so.

Q.—I think that this Corporation, Sir Mortimer Davis Incorporated, was invited on board this flotation to buy the units at sixty-
20 five, is that right?

A.—It was the price the Company netted for them.

Q.—That is to say, they bought fifteen hundred units and they got \$75,000 of Preferred stock, is that right?

A.—I have forgotten the exact amount.

Q.—Which would carry six per cent dividend, or \$4,500 on that Preference stock per annum, is that right?

A.—Yes.

Q.—Then, they got fifteen hundred shares of Common upon
30 which they got nothing?

A.—No dividend has been paid.

Q.—What about those Directors Common which we find thrown
in here?

A.—I don't know of any Directors Common.

Q.—I will tell you about it then. That Directors Common does not pay any dividend by any odd chance?

A.—The Directors Common, there were warrants attached, and each share of Common stock the Directors bought, they had the right to buy one share of Common up to a certain date at twenty.

40 Q.—The warrants and rights of the Directors Common were different than the warrants and rights of Common included in the units?

A.—No, the same.

Q.—I thought you said it was half a share at twenty?

A.—One was a warrant for one share and in the unit it was for half a share.

HERBERT C. FLOOD (for Defendants), Cross-Examination.

Q.—Half a share of Preference and Common. A warrant attaching to each Preference share and each Common share in the unit for half a share in each share?

A.—I don't understand your question.

Q.—You pay on fifteen hundred Common shares and fifteen hundred Preference shares?

10 A.—Yes.

Q.—What warrants were attached to these shares?

A.—Seven hundred and fifty.

Q.—What warrant was attached to each Common share?

A.—There was no warrant attached, but the Directors had the privilege ———

Q.—Don't speak to me of the Directors. I am speaking of the Estate as an ordinary subscriber for units?

20 A.—They had the option, when they bought fifteen hundred shares of Common, they got with it fifteen hundred shares-warrants to buy stock at twenty.

Q.—Which worked out, half a share for Common and half a share on the Preferred; in other words, they had three thousand shares in these units, made up of fifteen hundred Preference and fifteen hundred Common, is that right?

A.—That is not quite correct. What they actually did, was, they bought fifteen hundred units; the units comprised fifteen hundred shares of Preferred, \$50 par value, fifteen hundred shares of Common, no par value, and a stock option warrant to purchase seven hundred and fifty shares of Common at twenty dollars.

30 Q.—Attaching to what particular units?

A.—That was a unit all in one brigade.

The other transaction was a purchase of fifteen hundred shares of Common, with which they got an option to buy fifteen hundred shares of Common at twenty.

By Mr. Campbell:

Q.—That is what you call the Directors Common?

40 A.—Yes.

By Mr. McKeown:

Q.—In this particular instance, the investment made by Sir Mortimer Davis Incorporated for Directors Common was, a purchase of shares upon which there were no present dividend, is that right?

A.—No dividend on the Common stock.

HERBERT C. FLOOD (for Defendants), Cross-Examination.

Q.—And do you know what they paid for these Directors stock?

A.—Fifteen dollars for the Common stock.

Q.—So that is \$23,500 invested in an investment which is not interest-bearing at the present time so far as these Directors Common shares are concerned?

A.—Quite so.

10 Q.—You said that all the Directors of the Investment Foundation Company were substantial holders of stock. What substantial holding of stock had C. S. Jennison in Foundation Investment Limited?

A.—My understanding is—I have not looked at the shareholders' list, but he bought fifteen hundred shares of Common for which he got the fifteen hundred options at twenty dollars.

Q.—Do you mean as a Director?

A.—As a Director.

20 Q.—That is, he bought fifteen hundred shares of Directors' Common?

A.—Yes.

Q.—You understand that? You tell us that for a fact without fear of contradiction?

A.—I cannot tell you that. That was my understanding.

Q.—Tell us what substantial holdings Lord Shaughnessy had in the Directors' Common?

30 A.—The transaction I had with Lord Shaughnessy—I did not follow through where the payment came from; it is impossible for me to distinguish whether it was Lord Shaughnessy's purchase or whether it was a purchase of an account for some other moneys he had in his hands.

Q.—In whose name is the stock?

A.—Well, the shareholders list would show that. To be a Director a certain amount of Common shares would have to be in his name.

Q.—Would you be good enough to bring us tomorrow morning a list of shareholders of Investment Foundation Limited?

40 A.—It will be impossible to have an up to date list prepared by that time.

Q.—Bring up the register such as it is?

A.—The register is at the Montreal Trust Company.

His Lordship: Even if the list is not up to date it does not matter very much.

Witness: The last available list would be about forty days ago.

HERBERT C. FLOOD (for Defendants), Cross-Examination.

And it being 4:45 P.M., the further cross-examination of the witness was adjourned until tomorrow, Tuesday, the 20th day of May instant at 11:00 A.M.

10 On this Twentieth day of May, in the year of Our Lord, One thousand nine hundred and thirty, personally came and reappeared:

HERBERT C. FLOOD

and his cross-examination was continued as follows:

By Mr. McKeown:

20 Q.—At the time your evidence was suspended yesterday afternoon, Mr. Flood, I had asked you to bring here to Court the list of shareholders of the Investment Foundation Limited. Have you brought it with you?

A.—Yes, sir.

Q.—And do you exhibit it to the Court?

A.—I do.

30 Q.—You told us yesterday, and it has already come out early in the evidence, that the Sir Mortimer Davis, Incorporated, purchased fifteen hundred units of Investment Foundation Limited, made up of fifteen hundred shares of Preferred and fifteen hundred shares of Common?

A.—Yes.

Q.—I think you have explained to us that for the time being, at least, upon the books of the Investment Foundation Limited, those units continued to be treated as units on the register?

A.—Quite so.

Q.—So all you have produced here is the list of holders of units and the list of holders of Common shares?

A.—Yes.

40 Q.—On the list of the holders of the units, does the name of Sir Mortimer Davis, Incorporated, appear?

A.—Yes.

Q.—For how many units?

A.—Fifteen hundred.

Q.—It has also come out in evidence that Sir Mortimer Davis, Incorporated, some time, I think, in the month of April, 1929, invested the further sum of \$45,000 in three thousand additional shares of Common at \$15 a share. Will you look at the list of Common

HERBERT C. FLOOD (for Defendants), Cross-Examination.

shareholders, and see if there is any reference to Sir Mortimer Davis, Incorporated, owning any of those shares?

A.—I know there is not.

Q.—You know there is not?

A.—No.

Q.—That is to say, to get this quite clear, Sir Mortimer Davis, Incorporated, does not appear on the list of Common shareholders
10 of Investment Foundation Limited for any shares whatever?

A.—Yes, that is right.

Q.—I wonder if it is merely a coincidence that we find two other names on this list of Common shareholders, that is to say, Clark S. Jennison, Esquire, Jennison Company, Canada Cement Building, Montreal, fifteen hundred shares, and to Right Honorable Lord Shaughnessy, K.C., Canadian Industrial Alcohol Company Limited, Canada Cement Building, Montreal, fifteen hundred shares. Do you know if there is any relation between those two blocks of shares to
20 which I have just drawn your attention, and the three thousand shares of Common, for which Sir Mortimer Davis, Incorporated, paid \$45,000?

A.—No.

Q.—You don't know that?

A.—No.

Q.—You are the President of the Company?

A.—Yes, sir.

Q.—And have been since its incorporation and organization?

A.—Yes.

Q.—In March?
30

A.—March, 1929.

Q.—Do you know anything of the circumstances under which Mr. Clark S. Jennison paid for the fifteen hundred Common shares registered in his name on the list of shareholders which you have just exhibited?

A.—No.

Q.—How about the same question as applied to Lord Shaughnessy with reference to the fifteen hundred shares in his name? Do you know anything about that?

A.—No.
40

Q.—Do you know what price was paid by the Estate for the fifteen hundred units?

A.—Yes.

Q.—How much?

A.—\$65.

Q.—\$65 per unit?

A.—Yes.

HERBERT C. FLOOD (for Defendants), Cross-Examination.

Q.—That would be \$97,500?

A.—Yes.

Q.—And then the three thousand Common at \$15 per share would be \$45,000 additional?

A.—Yes.

Q.—Making altogether \$142,500 of the money of the Incorporated Company which would seem to have found its way into the
10 treasury of Investment Foundation Limited?

A.—Yes.

Q.—Do you know anything about how that investment came to be made by Sir Mortimer Davis, Incorporated?

A.—No.

Q.—Do you know whether or not anybody received any commission or benefit in connection with that particular investment of \$142,500?

A.—No.

Q.—Did your Company pay any commissions on subscriptions
20 for shares?

A.—Yes.

Q.—What was the commission paid?

A.—I have forgotten the exact amount. I think the Syndicate was made at \$67½ to certain dealers, to be sold at \$70.

Q.—For the units?

A.—Yes.

Q.—This has not anything to do with that, because the price seems to be \$65 a unit?

A.—That was the price it netted the Company.
30

Q.—But in this instance that was the price which was supposed to have been paid by Sir Mortimer Davis, Incorporated.

A.—It went direct into the Company. There was no commission.

Q.—You say there was no commission?

A.—There was no commission.

Q.—As far as you know?

A.—I know.

Q.—But you told us before you did not know?

A.—You asked me if there were any commissions paid in con-
40 nection with the stock. I was referring to other cases.

Q.—I am referring to this case?

A.—There was no commission paid.

Q.—What about the \$45,000 of Common?

A.—No commission. \$15 went direct into the Company's treasury.

By the Court:

HERBERT C. FLOOD (for Defendants), Cross-Examination.

Q.—Who paid the \$45,000?

A.—The fifteen hundred shares, My Lord, of Preferred, and fifteen hundred Common which were in the unit, Lord Shaughnessy negotiated for at \$65 a share, plus three thousand shares of Common at \$15, was paid for through the Industrial Alcohol Company's office.

10 By Mr. Campbell:

Q.—Sir Mortimer Davis, Incorporated?

A.—I mean their office, on their floor, and the full amount of the proceeds went into the treasury of the Foundation Company without any commission to anybody.

By Mr. McKeown:

20 Q.—That is, the gross amount of \$142,500?

A.—Yes.

By the Court:

Q.—Is there any connection between the facts that a unit gives the right to buy certain shares at \$20, and the fact that \$42,500 was spent on Common shares?

30 Mr. Campbell: Lord Shaughnessy and Jennison, for his Company, took up fifteen hundred shares.

By Mr. McKeown:

Q.—Just a moment, let us get this thing clear of the risk of repetition. The first figures, which were established at \$97,500, paid for the fifteen hundred units at \$65 per unit?

A.—Yes.

Q.—And these units carried with them warrants for future Common at \$20 per share, plus an equal amount of Common shares?

40 A.—Any unit at \$65 represented one share; each unit represented one share of Preferred, \$50 par value; one share of Common at no par value; one for \$50, the other being \$15, making \$65; another option to purchase a half share of Common stock at \$20 up to November 1st, 1933.

Q.—Attached to each unit?

A.—And it was all in one package.

Q.—When does that warrant expire?

HERBERT C. FLOOD (for Defendants), Cross-Examination.

A.—November 1st, 1933. It would be embodied in the circular.

Q.—And those shares were paid for by what we call the Incorporated Company (Sir Mortimer Davis, Incorporated), and stand registered in the name of Sir Mortimer Davis, Incorporated?

A.—I would imagine so. That I don't know.

10 Q.—Is it not a fact that those shares are the shares entered in this way upon the list of unit holders which you have exhibited?

A.—Yes, sir.

Q.—“ Sir Mortimer Davis Incorporated, Canada Cement Building, Montreal, 1,500,” that means 1,500 units?

A.—Yes.

Q.—Those are the 1,500 units you have been referring to for which the Estate paid your Company \$97,500?

A.—Yes.

Q.—You told us before that there are no Common shares registered in the name of Sir Mortimer Davis Incorporated, is that right?

20 A.—Yes.

Q.—And when I asked you if there was any relation between that fact, or the absence of that fact, and these two lots of 1,500 Common shares, one lot registered in the name of Jennison, and the other in the name of Lord Shaughnessy, you said you did not know.

A.—I do not.

Q.—And you still don't know?

A.—No.

Q.—Well, then, where are the 3,000 Common Shares for which the Estate paid your Company \$45,000?

30 A.—Whether the Estate paid it or not, I don't know.

Q.—We have evidence that they did—not the Estate, I beg your pardon, the Incorporated Company?

A.—If the Incorporated Company paid for these shares, there are 1,500 registered in the name of Lord Shaughnessy; there are 1,500 registered in the name of Jennison.

Q.—Are those the shares Sir Mortimer Davis Incorporated paid for?

A.—I cannot say that.

40 Q.—Who can tell us that?

Mr. Campbell: Mr. Reaper will tell us.

Mr. McKeown: I was not enquiring from you, Mr. Campbell.

Witness: The only way would be to check back by records, and see whose cheque it was which came into my hands.

HERBERT C. FLOOD (for Defendants), Cross-Examination.

By Mr. McKeown:

Q.—Did Jennison give you a cheque for \$22,500 to represent those 1,500 Common shares now in his name at \$15 a share?

A.—That I cannot tell.

Q.—You ought to know a thing like that. This man Jennison is a brother Director of the concern, you are President; if you don't
10 know, who does know?

A.—The record would show where the cheque came from. On the other hand, a certified cheque, or a cheque that is made payable at the bank, I would not check immediately to see if it came from Jennison or Jones, Smith or otherwise.

Q.—As President of this concern, did you have any transaction at any time with Jennison that called for the purchase by Jennison on his own behalf of 1,500 Common shares, for which he was to pay \$15 apiece, amounting to \$22,500?

A.—That answer is rather difficult to make for this reason, that
20 this transaction was made all together, and 1,500 shares were put in Jennison's name on instructions.

Q.—On instructions from whom?

A.—I am not prepared to say. I think it was Lord Shaughnessy.

Q.—You think so?

A.—Yes.

Q.—Well, I will go back and draw your attention to the fact that you have not answered my previous question. Did you ever at
30 any time know any circumstances of a transaction whereby Jennison, for his own account, was purchasing 1,500 Common shares of Investment Foundation Limited at \$15 a share, amounting to \$22,500, for his own account? Did you ever hear of such a transaction as President of the Company?

A.—My understanding was that the 1,500 shares that were purchased in his name was for his own account.

Q.—Your understanding was that Jennison at the time purchased them for his own account?

A.—Yes.

Q.—As far as your knowledge goes?

A.—Yes.
40

Q.—And, I presume, the same would apply to the purchase by Lord Shaughnessy of 1,500 shares in his own name? Did you understand that was for his own account?

A.—Yes, that was my own personal understanding.

Q.—That Lord Shaughnessy and Jennison were each paying \$22,500 of their own money into Investment Foundation Limited, is that what you understood?

HERBERT C. FLOOD (for Defendants), Cross-Examination.

A.—Yes.

Q.—And is that the basis upon which the other Directors went into it, to put up their own money, as you told Mr. Campbell?

A.—I do not understand that question.

The question was repeated to the witness as follows: And is that the basis upon which the other Directors went into it, to put up their own money, as you told Mr. Campbell?

10 A.—I do not think that had anything to do with what the other Directors did.

Q.—Then the other Directors were in there on some other basis?

A.—No. They were on the basis that they paid \$15 cash.

Q.—For their Common shares?

A.—And the majority of Directors were in before Lord Shaughnessy and Mr. Jennison were elected.

Q.—And they paid \$15 cash, presumably, as far as you know, of their own money, for their Common stock, which was allotted to them?

20 A.—Yes, they did.

Q.—Do you know of any Directors who did not?

A.—No.

By the Court:

Q.—Did they buy units or Common stock?

A.—The Directors bought mostly Common stock; in some cases they did buy units.

30 By the Court:

Q.—Do you know whose cheque was given to the Company for the purchase of those 1,500 shares of Lord Shaughnessy and Jennison?

A.—No.

By Mr. McKeown:

40 Q.—On this Exhibit D-129, which you produced yesterday, you give a list of the Directors, some twenty-one in number, is that right?

A.—Yes.

Q.—And a great many of them are non-residents of Montreal or of Canada?

A.—Not a great many of them.

Q.—Some of them?

HERBERT C. FLOOD (for Defendants), Cross-Examination.

A.—There are two non-residents of Canada—three.

Q.—How many offices has this concern got?

A.—One.

Q.—In Montreal?

A.—Yes.

Q.—We will just review those who do not live in Montreal.

10 Does Mr. Belknap live in Montreal?

A.—He is still a citizen of Canada.

Q.—Mr. Chadbourne lives in New York?

A.—Yes.

Q.—The Honorable Mr. Crerar does not live in Montreal.

A.—You said Canada.

Q.—I am talking about Montreal for the time being: Mr. Oliver lives in Ontario?

A.—He is connected with a nickel mine.

Q.—Mr. Lovett lives in Halifax?

20 A.—Yes.

Q.—Mr. McMurray of St. John, N.B.?

A.—Yes.

Q.—Mr. Monn, in Halifax?

A.—Yes.

Q.—Mr. Mara, Toronto?

A.—Yes. He is a Director of Hiram Walker.

Q.—Mr. Meffre, of Paris?

A.—Yes.

30 Q.—Mr. Pash of New York?

A.—Yes.

Q.—Mr. Tennyson D'Eyncourt?

A.—Yes.

Q.—That is another of your Directors who lives in London, England?

A.—Yes.

Q.—That is eleven of them. That leaves you with ten more. Of the ten, is it not true that three of them are bound up in your own private, personal organization of Flood, Potter and Company, and Flood, Barnes and Company, that is K. S. Barnes, H. S. Flood and T. G. Potter?

40

A.—Quite so.

Q.—Now, we have got it down to eight. Then, you also have Lord Shaughnessy and Mr. Jennison amongst your members?

A.—Yes.

Q.—Now, we have got it down to six.

Mr. Campbell: Your arithmetic is wonderful.

HERBERT C. FLOOD (for Defendants), Cross-Examination.

By Mr. McKeown:

Q.—And the six remaining Directors would be A. K. Cameron, F. B. Common, Severe Godin, Jr., Ernest Rossitter and N. A. Timmins. Mr. Timmins is not in active practice as a Director, is he?

Q.—Is it not a fact that Messrs. Timmins, Rossitter and Cameron are all practically in the same group?

10 A.—I would not say that exactly. They happened to be on another Board.

Q.—And is there any Executive of this organization?

A.—Yes.

Q.—Who is on the Executive?

A.—Mr. Rossitter, Mr. Godin, Mr. Common

Q.—Mr. Flood?

A.—Yes. Mr. Potter. Did I name Mr. McMurray?

Q.—Is that the whole of the Executive?

20 A.—Yes.

Q.—Is Mr. Rossitter very heavily interested in this institution?

A.—I think he has 1,000 shares of Common; I would not be sure. Oh yes, there are 999 shares in his Secretary's name, I think, Mr. Elvins; I am not sure of that. I would rather you take it from the records.

Q.—I notice he has one share of Common according to the register?

His Lordship: Are you referring to Rossitter?

30 Mr. McKeown: Rossitter.

Q.—What do you suggest is the name of his Secretary so that we can verify that?

A.—Elvins.

Q.—I do find Mr. Albert R. Elvins with 999 shares. That probably is the same thing as Mr. Timmins whom I see down her for one share?

A.—Yes.

40 Q.—He has 999 shares in the name of the N. A. Timmins Corporation?

A.—Yes.

Q.—We had a word yesterday together about the financial condition of the Company. You said something about a large percentage of the funds of this Company having been out on call at the time of the break last November, but I think we agreed afterwards that

HERBERT C. FLOOD (for Defendants), Cross-Examination.

that would be limited to some \$739,000 out of the total capital of \$3,000,000?

A.—That is not correct.

Mr. Campbell: That is not a fair question. The witness spoke of the condition as at November 30th, not at the time of the break.

10 Mr. McKeown: Are you going to give evidence all the time, Mr. Campbell?

Mr. Campbell: If you undertake to incorrectly state what the witness has said, but if you state it correctly I won't interfere.

By Mr. McKeown:

20 Q.—At the time of making the statement for the Directors for the month of November, Exhibit P-77, is that right?

A.—That is incorrect, because the break

Q.—Just listen to my question. Don't pay any attention to Mr. Campbell. Just answer the question as I put it to you for the time being?

A.—That statement is not correct.

Q.—Just pay attention to the document in front of you and I don't think you will contradict that statement in front of you?

A.—The break took place in the middle of November, and this was after the funds

30 Q.—I am asking you whether on the occasion of that break by the 30th of November, the position was not such as appears by that statement P-77 in front of you?

A.—At the 30th of November, yes.

Q.—You wanted to tell me, I think, under the suggestion of Mr. Campbell, that it was something different on the day of the break. Go ahead now and say what you were going to say?

A.—At the end of September there were \$2,000,000 out on call

40 Q.—No one asked you about September. What about the peak of the break? When was the peak the worst?

A.—November 13th.

Q.—You say that at the end of September you had \$2,000,000 out on call?

A.—Yes.

Q.—Then, you started to plunge into the break evidently?

A.—I would not say plunge.

HERBERT C. FLOOD (for Defendants), Cross-Examination.

Q.—You went ahead and bought securities?

A.—Yes.

Q.—From September down to what date?

A.—Sometime in October.

Q.—Do you know how badly you had got stung on this purchase by the time the break was at its worst?

10 A.—No.

Q.—I put it to you that you were in the hole for nearly a million dollars by that time?

A.—No.

Q.—Just look at this statement, P-77, and say whether to begin with, that is a copy of the statement issued by your Company to its Directors at the end of November 30th, 1929?

A.—Yes.

Q.—That statement contains on page one, an item of \$2,503,-
20 787.85 that your Company had invested of its funds in securities, does it not, as at date November 30th, 1929?

A.—Substantially.

Q.—That is on page one?

A.—Yes.

Q.—Beginning on page four, and on page five, is a correct list of the securities which your Company was holding on the 30th of November, 1929, amounting to this sum of \$2,503,787.85, is that right?

A.—Yes.

30 Q.—Let me verify something else: On these sheets to which I have just referred, is shown a classification of the securities held by you of Industrials, Public Utilities, Oils, Railways, Mines, Banks and Bonds?

A.—Yes.

Q.—And the number of shares, or Bonds, held by you as indicated, as to each Company in which you were interested?

Q.—In another column is the cost price. That is what you paid for them?

A.—Yes.

40 Q.—In the next column is the market price?

A.—Yes.

Q.—That would be the market on the 30th of November, 1929, would it not?

A.—Yes.

Q.—And then, in the last column is the book value, which is the extension of the value of the securities at the cost price?

A.—Yes.

HERBERT C. FLOOD (for Defendants), Cross-Examination.

Q.—I show you a compilation based upon that statement, which I will produce as Exhibit P-260, headed "Investment Foundation Limited", compilation from financial statement of the Company as of date November 30th, 1929, showing market value of securities then being carried upon its books at \$2,502,079.11. The first thing I wish to call your attention to is the diversification among the securities by classes which I have just reviewed with you: Industrials, your investments were 26%; Public Utilities, 23.2%; Oils, 14.1%; Railways, 7%; Mines, 21.2%; Banks, and Bonds, 2.6%, making a total of 100% of your investments. Do you follow that with us?

A.—Yes.

Q.—And is that from your own knowledge approximately correct as to the diversification?

A.—I could not say unless I made a calculation.

Q.—I also draw your attention to the fact that your \$2,502,079.11 had depreciated from your cost as entered in the statement, Exhibit P-77, to the extent of \$539,690.00, as of date November 30th, 1929. What have you to say to that?

A.—I don't know the figures you are using. I mean, I imagine they are correct.

Q.—You imagine they are correct?

A.—They are made up by a reputable Accountant whom I understand you have.

Q.—You do not challenge him. You may verify them if you wish?

A.—I have not seen them.

Q.—You do not know, as a matter of fact, as President of this Company, that on November 30th, 1929, when you put out this statement for your Directors, that there had been an impairment in the securities held made from cost of an amount in excess of \$500,000?

A.—I cannot say I understand it is a fact, but if it was the fact I have it in the records and it was presented to the Directors.

Q.—I do not suggest for one moment that what you represented to the Directors were not true facts; I say they were, because this statement P-260 is based on the statement you gave to the Directors?

A.—If that was the fact, I was aware of it.

Q.—There is no question that these figures as entered in Exhibit P-77 on pages four and five as market prices of your securities, meant the prices as of November 30th, 1929?

A.—The prices in the first column are the cost prices. The prices

HERBERT C. FLOOD (for Defendants), Cross-Examination.

under market prices, would be the last price on November 30th, which, perhaps, with very minor changes.

Q.—Some taken perhaps arbitrarily?

A.—Yes.

Q.—But generally, the basis would be the prices of November 30th, 1929?

A.—Yes.

10 Q.—When did you say the break was at its worst?

A.—November 13th.

Q.—I put it to you that as between November 13th and November 30th, there had been a rise in a great many of those securities which were held by your Company?

A.—I would say yes.

Q.—So that these figures which we have established for the depreciation as at 30th of November, 1929, of \$539,690.00 would have been a great deal worse on the 13th of November if the accounts
20 had been made up that day?

A.—Yes.

Q.—Will you verify with me further that the Industrials which you held depreciated from cost on the 30th of November 24.8%, the Public Utilities 27.7%, the Oils 8.5%, the Railways 6.1%, the Mines 28.9%, the Banks 3.9%, and the Bonds 0.1%?

A.—I cannot verify unless I check it.

Q.—You will be at liberty to make any corrections you wish to make in this statement if these figures are found to be inaccurate by you in any particular. Let us go a little further back. We found
30 out yesterday that this Corporation was organized and put into operation in March, 1929, and in the face of a great many opinions that the stock market quotations were high at that time—do you remember that instance, we were talking about it yesterday?

A.—Yes.

Q.—You have told us that on the 30th of September you still had \$2,000,000 of your \$3,000,000 intact available in the form of call loans or its equivalent?

A.—Yes.

40 Q.—And your Board of Directors saw fit following the 30th of September to go into that falling market and to invest how much of the \$2,000,000 before they got to the bottom?

A.—This is a semi-correct compilation. I know in September there were \$2,068,000 on call. Advantage was taken of a rise in a few securities. At the end of November the call loans were \$739,000, and they have ranged around that figure from that time until now.

HERBERT C. FLOOD (for Defendants), Cross-Examination.

Q.—Evidently, you made a serious mistake in buying heavily following September 30th, 1929?

A.—Yes.

Q.—Now, let us go back again to the origin of this Company. All of the investments of the funds of that Corporation, Investment Foundation Limited, have been made in listed securities, have they not?

10

A.—Yes.

Q.—Except what was retained for call loans?

A.—Well, some few exceptions of Bonds—very little, though.

Q.—Some of them quite volatile?

A.—Well, nearly all stocks were volatile last November and October.

Q.—And some that we have heard quite a lot of, Consolidated Smelters, for instance?

A.—Yes.

20

Q.—And Nickel?

A.—Yes.

Q.—And Brazil?

A.—Yes.

Q.—And Hiram Walker?

A.—Yes.

Q.—And Massey Harris?

A.—Yes.

Q.—National Breweries?

30

A.—Not to the same extent.

Q.—St. Regis Paper?

A.—St. Regis Paper was not volatile quite.

Q.—And both on the Montreal market and on the New York market?

A.—Both what?

Q.—You held stocks in both markets?

A.—Quite so.

Q.—And you had about the same experience with one as the other?

40

A.—Yes, unfortunately.

Q.—You were pretty well interested in Oils and Mines—not so much in Oils; you had some \$353,000 in Oils, and in Mines you had \$529,000?

A.—To refresh my memory, what was it we had?

Q.—You had some pretty good ones, British American, Imperial Oil, International Pete, Mid-Continental, Standard of New Jersey, Texaco and Vacuum Oil; and under Mines you had Anaconda,

HERBERT C. FLOOD (for Defendants), Cross-Examination.

Nickel, Consolidated Smelters, Lake Shore, Noranda and Kennecott?

A.—Yes.

Q.—Is not the fact that this Corporation, Investment Foundation Limited, was conceived in the minds of yourself and your immediate associates, Mr. Barnes, Mr. Potter and those interested in your brokerage business and bond business?

10 A.—No, not exactly.

Q.—You told us that you were the people who put out the flotation?

A.—Yes.

Q.—Was it not from the first to the last intended to be a Corporation which would deal in listed securities?

A.—Yes.

Q.—And would make money on the rise of listed securities; that was the expectation?

A.—No.

20 Q.—What was it?

A.—The object was to buy securities with a good dividend record, or the possibility of increased dividends, more from the point of revenue and appreciation rather than a trading company pure and simple.

Q.—You did trade in and out?

A.—Only to a very small measure.

Q.—Where did you get your profits from under which you thought you were going to pay your dividends in the last year?

30 A.—The profits from which the dividend was paid was derived from income, both in the way of interest on bonds, call loans and dividends.

Q.—Where did you get this item on the statement produced yesterday as D-130 styled "Investment Reserve \$164,492.42"? Where did that take its origin from?

A.—My memory of it is the securities sold at a profit.

Q.—That is, you got this item of \$164,492.42 into your annual statement as representing the resale at a profit on securities which you bought with your capital funds?

40 A.—Yes.

Q.—That did not have anything to do with dividends, did it?

A.—No.

Q.—So there must have been some considerable activity in trading to produce these figures of \$164,492.42 during the year that your Company was in operation?

A.—Well, my memory is that there was not a great deal of trading.

HERBERT C. FLOOD (for Defendants), Cross-Examination.

Q.—Looking at this Statement Exhibit D-130, the Annual Report of Investment Foundation, will you tell me whether you have allowed anything for Income Tax against that item of \$164,000 odd?

A.—I cannot tell, but I would imagine there has been. It was made up by P. S. Ross & Sons.

10 Q.—Having further considered the matter, will you tell whether any Income Tax has been allowed against and to establish the item of \$164,492.42 in the Annual Statement, under the title of “Investment Reserve”?

A.—I do not think the Statement requires any further deduction.

Q.—Has it been taken off, or not, to establish those figures?

A.—That I cannot tell.

Q.—Looking at the Statement of Operations—the Profit and Loss Statement—it shows net profits of \$132,954.80 before deduction of Income Tax. That is quite clear?

20 A.—Yes.

Q.—That Income Tax would be about 8 per cent, would it not?

A.—I do not know what the exact amount would be.

Q.—At 8 per cent it would require a deduction of about \$10,000?

A.—That has not been passed by the Auditor.

Q.—Taking it as presented by you to His Lordship yesterday.

A.—I do not know the exact deduction. I cannot tell you.

Q.—Does it not run 8 per cent?

A.—8 per cent, I think.

30 Q.—8 per cent of \$132,000 would be something in the vicinity of \$10,000?

A.—There may be other considerations there that I do not know of.

Q.—If there is an item of \$10,000 for Income Tax, it is not taken off, on the face of this Statement?

A.—If one is required, it is not taken off.

Q.—If you took it off, your profits after allowing for the dividend for the year would be something in the vicinity of \$6,000?

A.—Quite.

40 Q.—There is another item in regard to which I would like some explanation. On the credit side of your Annual Statement you have an item of Accrued Interest and Dividend, \$16,713.88?

A.—Yes.

Q.—Can you tell me whether that means dividends which have actually been received in cash by your Company?

A.—I cannot, but I would imagine those are dividends declared

HERBERT C. FLOOD (for Defendants), Cross-Examination.

and not yet paid. It is a usual corporate item, after they are declared, to show them in the assets side.

Q.—Although the cheques have not come in?

A.—No, but the dividend has been officially declared by the Company.

10 Q.—I put it to you that there is included in that item of \$16,713.88 not only dividends which have actually been declared but which have not been received, but a pro rata of dividends for a period for which dividends have not been declared?

A.—No.

Q.—Are you quite certain of that?

A.—Absolutely.

Q.—Looking at the Statement, on its face you had a very thin margin—something like \$5,000 or \$6,000—after paying your dividend in the last year, assuming there is \$10,000 due for Income Tax?

20 A.—Assuming that.

Q.—This Corporation, with \$3,000,000, would have in it a surplus of some \$5,000 or \$6,000 last year, without providing for the dividend on the preferred?

A.—After paying out \$110,584.46 in dividends.

Q.—On the assets side of the Statement there is an entry of investment securities at cost, \$2,471,560.29?

A.—Yes.

Q.—That means if you had bought a stock at \$100 a share, and today it is down to \$30, you would still be crediting yourselves with \$100?

30 A.—Yes.

Q.—And that, I presume, is what is intended to be covered by the note:

“ After taking into consideration the amount at the credit of Investment Reserve, the market value of the securities owned by the Company at the close of the Fiscal Year showed a depreciation from book value of \$142,912.87, or 5.78 per cent ”?

A.—Yes.

40 Q.—That would have the effect of also wiping out this \$164,000 odd?

A.—Yes.

Q.—In other words, on the face of your own Statement your Investment Reserve of \$164,492.42 is wiped out, and you have a deficit of \$142,912.87 at the end of your fiscal year? On market value. If it is not that, what is it?

A.—But, you cannot take one side a profit, and the other side a

HERBERT C. FLOOD (for Defendants), Cross-Examination.

loss. From the book value of \$2,471,560, after deducting \$164,000, there is a loss of \$142,912.87, or 5.78 per cent, on the year's operation.

Q.—In other words, by taking your securities at cost, having regard to their market value at the time this Statement was made up, March 31st, 1930, you had lost this \$164,492.42 item of reserve, and you had also a deficit of \$142,912.87?

10 A.—That is merely a matter of bookkeeping. You cannot take one side a profit, and the other side a loss.

The net result in the year's operation is that the securities that were purchased show a net depreciation of 5.78 per cent.

Q.—That is the amount of securities which have been turned over, and sold, and replaced—or is it more as an impairment of your position to the extent of 5.78 per cent?

A.—That is an accounting question, which I am not competent to answer.

Q.—As President of the Company you cannot explain it?

20 A.—Not as an accountant.

Q.—But, I am not asking you as an accountant; I am asking you as President.

A.—It is an accounting practice, and I am not competent to answer.

Q.—When was the last dividend declared by this Company?

A.—I am not quite sure, but I think it was March 31st.

Payable on April 15th; I should think to stockholders of record on March 31st.

30 Q.—And, that dividend was declared?

A.—Yes.

Q.—You have been asked by my learned friend Mr. Campbell as to your opinion of the prospects of this Company. Can you give us, with all the wisdom that has come to you from your experience, an approximation of a date upon which the common shares of this organization may be expected to return anything to the persons who have invested money in them?

40 A.—That depends, of course, a good deal on business conditions. My own opinion would be that inside of two years the common stock should be worth at least at much as or more than it netted the Company.

Q.—That is \$15 a share?

A.—Yes. On a conservative statement.

Q.—I am fairly sure you have never given evidence before, because you frequently make the mistake of not answering the question put to you. You see you have not answered the question I asked at all. I asked you:

HERBERT C. FLOOD (for Defendants), Re-Examination.

You have been asked by my learned friend Mr. Campbell as to your opinion of the prospects of this Company. Can you give us, with all the wisdom that has come to you from your experience, an approximation of a date upon which the common shares of this organization may be expected to return anything to the persons who have invested money in them?

10 A.—That is almost an impossible question to answer.

Mr. McKeown: I think so too, and that is what the Executors should have realized.

Re-examined by Mr. Campbell, K.C., of Counsel for defendants.

Q.—You told my learned friend Mr. McKeown in cross-examination that as at September 30th Investment Foundation, Limited, had upwards of \$2,000,000 out on call?

20 A.—Yes.

Q.—And that at the end of October it had reduced the amount out on call to, I think you said, about \$650,000?

A.—Yes.

Q.—The difference between those amounts had been disposed of in what manner during the month?

A.—Different securities had been purchased.

Q.—Speaking generally, were the purchases made before or after the October crash?

A.—After the October crash.

30 Q.—Do you remember the date of the October crash?

A.—I think the low point in October was the 27th, or the 28th.

Mr. Montgomery: The 29th.

By Mr. Campbell (continuing):

Q.—In any event, the October crash was a very bad crash, was it not?

A.—Yes.

40 Q.—A wide open break, almost without precedent?

Mr. McKeown: Of course, Mr. Campbell, Mr. Flood is your own witness. However, you are doing pretty well.

Witness (answering question).—Yes, that is correct.

By Mr. Campbell (continuing):

HERBERT C. FLOOD (for Defendants), Re-Examination.

Q.—Was it the judgment of your Board of Directors that it was an appropriate time to buy after that break?

A.—Yes.

Q.—And, if, in fact, there was afterwards a lower level reached, did other people besides yourself make the same mistake of believing the bottom had been reached then?

A.—Yes.

10 Q.—And, of course, it is always easier to be wise after the fact, is it not?

A.—Yes.

Q.—Nobody told you, when you bought in October, that there was going to be another serious break in November?

A.—I am extremely sorry no one told me.

20 Q.—You told us Sir Mortimer Davis, Incorporated, paid \$65.00 a unit for the units which it purchased, and that the Directors' common shares that were purchased in the names of Lord Shaughnessy and Mr. Jennison ———

Mr. McKeown: He did not say that. He does not know anything about it.

Mr. Campbell: They were purchased in their names. Mr. Flood said he did not know whose money it was.

Of course, this has been proved in the case, but I hope to prove it again.

30 Mr. McKeown: But, do not presuppose any knowledge of that on the part of the witness, because he has sworn he does not know.

Mr. Campbell: He said he did not know for whom they were purchased.

By Mr. Campbell (continuing):

40 Q.—According to the records of the Company they were purchased in the name of Lord Shaughnessy and in the name of Mr. Jennison?

A.—Yes.

Q.—At \$15 a share for the Directors' shares?

A.—Yes.

Q.—Did anybody, as far as your recollection goes, get a better price on the issue of those securities?

A.—No.

HERBERT C. FLOOD (for Defendants), *Re-Examination.*

Q.—What was the ordinary price of the units to the public?

A.—\$70.00.

Q.—You said something about what have been called the Directors' shares having special rights. What were the special rights attached to the Directors' shares?

A.—There was no free common, except in very special cases. Practically none was sold to anybody else but a Director. In the
10 case of the Director's stock, with the purchase of common shares they had also a warrant entitling them to buy one share of common stock at \$20, good until November 1st, 1933.

Q.—So the warrants attached to the Directors' shares were practically double the warrants attached to the other common shares, including the units?

A.—Yes.

Q.—Those special rights attached to what you call the Directors' common shares were, as I understand your testimony, only
20 attached to the shares taken up by the members of the Board of Directors?

A.—There was a warrant for half a share of common attached in each one of the units.

Q.—But the Directors' rights were double that?

A.—Yes.

Mr. McKeown: Double zero.

By Mr. Campbell, continuing:
30

Q.—Instead of the half share, there was a warrant to take up a new share at \$20 within the date allotted for other Directors' common subscribed for?

A.—Yes.

Q.—Was that warrant right of share for share allotted to other than those Directors' shares?

A.—No.

Q.—You were asked by my learned friend Mr. McKeown about
40 the personality of various members of your Board of Directors, and you mentioned among the local Directors the name of Mr. Severe Godin. For the purpose of identification will you please tell us who is Mr. Godin?

A.—He is President of the Société des Placements.

Q.—And closely associated in a business way with what particular gentleman?

A.—Sir Herbert Holt.

HERBERT C. FLOOD (for Defendants), Re-Cross-Examination.

Q.—Your attention has been called by Mr. McKeown to what was the position of the Investment Foundation, on paper, as at November 30th, 1929. According to the figures which have been put in, at this date, as a matter of arithmetic there was an apparent loss, at the market value, over the cost price of those securities purchased by the Company?

A.—Yes.

10 Q.—But in fact has that loss been taken by the Company?

A.—No.

Q.—Was it ever a realized loss?

A.—No.

Q.—In the same way, taking your balance sheet Exhibit D-130, has the Company actually incurred a loss of 5.78%?

A.—No.

Q.—You have not sold the securities, and taken the loss?

A.—No.

20 Q.—And that impairment, or depreciation, of 5.78% is a calculation based on the supposition that the shares had then been sold out and the loss taken?

A.—Yes.

Q.—Who are the Auditors of Investment Foundation Limited?

A.—P. S. Ross & Sons.

Mr. McKeown: Of course, we are not going to try every firm of Auditors in this case. I do not think my learned friend should go any further along this line, and bring in the name of P. S. Ross & Sons.

30

By Mr. Campbell, continuing:

Q.—And the report of P. S. Ross & Sons, under date April 17th, 1930, is attached to and forms part of Exhibit D-130?

A.—Yes.

Re-cross-examined by Mr. McKeown, K.C., of Counsel for plaintiffs.

40 Q.—Those securities of Investment Foundation Limited—the units and the common—are not listed anywhere?

A.—No.

Q.—They are just dealt in over the counter?

A.—Occasionally, yes.

Q.—There are no quotations for those units, which cost the public \$70 and which were cheap at \$65 to this Estate?

A.—I have bought some at \$55.

HERBERT C. FLOOD (for Defendants), Re-Re-Examination.

Q.—We bought some at \$65 ourselves, but that is not any information. When did you buy the ones you speak of?

A.—I bought some at \$55. I would not say the exact date. Within the thirty days.

Q.—Thirty days from now?

A.—Yes.

Q.—How many?

10 A.—I cannot tell exactly. I think it was 385 units.

Q.—Are you the Mr. Flood who wrote the letter giving a quotation of \$50 on those units?

A.—If I wrote the letter, yes.

Q.—What has been the current quotation on those units?

A.—There has been no current quotation.

Q.—At the present time would you be prepared to buy those 1,500 units of this Estate at \$55?

A.—I believe they could be placed.

20 Q.—Would you buy them?

A.—I am not prepared to make a commitment, no.

Q.—What about this common stock, subject to all those warrants? Is there any quotation for the common?

A.—There has been some sold at \$10.

Q.—When?

A.—That I cannot tell you exactly.

Q.—Last summer?

A.—No. Since the break.

Q.—Did you buy any of them?

30 A.—No. I think our Managing Director bought them.

Q.—How many?

A.—I am not sure. I have forgotten the amount.

Q.—As a matter of fact, do you know anything about it or is it just a conversation you heard?

A.—I sold them to him.

Re-re-examined by Mr. Campbell, K.C., of Counsel for defendants.

40 Q.—Will you look at the list of common shareholders, which you have before you, and verify whether in fact all the members of the Board of Directors have, either in their own names, or in the names of their nominees, at least 1,000 shares of common stock?

A.—Yes, you are correct.

Q.—Would you mind telling us how many units your own firm holds, according to the list of units before you?

A.—4,317 units.

HERBERT C. FLOOD (for Defendants), Re-Re-Examination.

Q.—And, how many do Flood, Barnes & Company hold?

A.—1456, at that date.

By Mr. McKeown:

10 Q.—Will you say, from those shareholders lists which you have before you, whether Lord Shaughnessy or Mr. Jennison own any stock at all other than those two blocks of 1,500 common in the name of each of them, to which we referred at the commencement of your cross-examination this afternoon?

A.—Not to my knowledge.

By the Court:

Q.—Can you tell me how much the various Directors of this Company have put of their cold cash into the Treasury of the Company?

20 A.—Varying amounts. My partners and myself put in, in common stock

Q.—(Interrupting.) How much cold cash did you get for it?

A.—\$15 a share. About \$22,500 each in common stock. Then I would have to make at some certain date a certain amount of money that was put in units, which I would have to check up at a certain date, as it changes.

By Mr. Campbell:

30 Q.—Did you take your common shares at the same price as Lord Shaughnessy and Mr. Jennison?

A.—Yes.

By the Court:

Q.—What about the other Directors?

A.—All at the same price.

By Mr. McKeown:

40 Q.—But not all the same number of shares?

A.—Not all the same number of shares.

Q.—How many shares did you own?

A.—I took up 1,500 shares. I can give it to you exactly, I think.

Mr. Campbell: The evidence is that every Director has at least 1,000 of the common shares.

HERBERT C. FLOOD (for Defendants), Re-Re-Examination.

Mr. McKeown: That is not correct, Mr. Campbell.

Mr. Campbell: Then, 999.

Mr. McKeown: Not even that. Try again.

Mr. Campbell: Either personally or in his name?

10 Mr. McKeown: No, you are wrong again. Here, for instance, is Mr. Monn, with 500 shares; and Mr. Mara, with 750.

Witness: They all originally subscribed for 1,500.

Mr. McKeown: Then they sold them.

Witness: They gave some to their friends.

20 Mr. McKeown: They should have put them up with a package of tea.

His Lordship: Of course, tea is so much cheaper now that they do not give premiums with it.

Witness: Mr. Potter, in the name of Flood, Potter & Company, 1,500 shares, which he paid \$15 for—that would be \$22,500.

30 Mr. Barnes, 1,501 shares at \$15.
Mr. Belknap, 1,000 shares, \$15,000.
Mr. Cameron, 1,000 shares, \$15,000.
Mr. Chadburn, 1,000 shares, \$15,000.
Mr. Frank Common, 1,000 shares.

In the cases of Mr. Common, Mr. Barnes and myself, we had an additional one share in the original Incorporation.

40 Hon. Mr. Kerr, 1,000 shares, \$15,000.
Mr. Rossiter—it does not appear in his name at the moment—1,000 shares: the same consideration.
Myself, 1,500 shares—1,504—the four are the Incorporation, \$22,560.
Mr. Godin, 1,000 shares, \$15,000.
Mr. Oliver Hall, 1,000 shares, the same consideration.
Mr.—Pash—Mr. Hepburn is there as a partner of Mr. Pash, and the 1,500 was split between the three partners.
Mr. Jennison, 1,500 shares—\$22,500.

HERBERT C. FLOOD (for Defendants), Re-Re-Examination.

By Mr. McKeown:

Q.—Cash?

A.—Cash.

Mr. L. A. Lovett, K.C., 1,000 shares, \$15,000.

10 Mr. McMurray originally bought 1,500 shares, and paid \$22,500. This record shows 1,350 shares.

Mr. H. E. Monn, Halifax, 600 shares, \$9,000.

Mr. Mara, of Mara, McCarthy & Company, 750 shares, for which he paid \$15 a share.

Mr. McCarthy, Mr. Mara's partner, 750 shares.

Q.—He is not a Director?

A.—He is now: since that Statement.

Q.—Whom did he replace?

20 A.—I think we just added him. I do not think he replaced anybody.

By the Court:

Q.—That is twenty. Are they all the Directors?

A.—Mr. D'Eyencourt, 800 shares.

Mr. N. A. Timmins, 1,000 shares.

Q.—That was all paid in cash?

A.—Yes.

30 There was a lot of common shares subscribed for by the Directors originally, some of which they gave to their friends. According to my memory it amounted to \$1,050,000.

Aud further deponent saith not.

WALTER M. KEARNS (for Defendants), Examination-in-Chief.

On this 20th day of May, 1930, personally came and appeared:—

WALTER M. KEARNS

10 of the city of Montreal, Auctioneer, aged 63 years, called as a witness on behalf of Defendants, having been first duly sworn, doth depose and say:

Examined by Mr. Holden, K.C., Counsel for Defendants:

Q.—Mr. Kearns, have you had experience in handling and dealing in high-class furniture?

A.—I have, sir.

Q.—In what way?

A.—Through the medium of catalogue sales especially.

20 Q.—Just what is a catalogue sale?

A.—A catalogue sale is a sale of high-class furniture and the catalogues are distributed to various parts of Canada as well as the United States.

Q.—Do you mean you print a catalogue?

A.—Yes, we do.

Q.—It is a printed catalogue you distribute?

A.—We do.

Q.—Is it cheap furniture or good furniture that is sold on catalogue?

30 A.—It is very good class, very high-class furniture.

Q.—How long have you been holding these catalogue sales?

A.—For the past 25 years.

Q.—Your place of business is on University Street in this city?

A.—1240 University, corner of Cathcart.

Q.—What is the comparative condition as to the people who attend these catalogue sales and the people who attend the ordinary periodic auction sales?

A.—In the catalogue sales we have a very discriminating audience.

40 Q.—During the 25 years how often have you held these high-class sales?

A.—We hold them at periods of about five a year.

Q.—With that experience did you attend, at my request, at Lord Shaughnessy's residence in order to examine and put a value on certain furniture?

A.—We did, sir, on the 6th of March.

Q.—Did you personally?

WALTER M. KEARNS (*for Defendants*), *Examination-in-Chief*.

A.—I did.

Q.—Did you make a written report?

A.—I did.

Q.—Will you produce as D-131 your written report made at the time?

A.—I do.

10 Q.—Did my partner, Mr. Collins, go with you?

A.—Yes, he did, sir.

Q.—Who besides Mr. Collins indicated this furniture to you as being furniture that came from Pine Avenue?

A.—Lord Shaughnessy.

Q.—I see that the first item in your report is a Circassian walnut extension dining table with extra leaves, five burnt spots on top, as if done with cigarettes or cigars, \$150. Was it from the point of view of your experience of these high-class furniture sales that you put that value?

20 A.—It was.

Q.—And the next item is ten single Circassian walnut chairs to match table, Louis XV. reproductions, \$150. Is the same thing true with regard to that item?

A.—Yes, there was some damage to the covering of the chairs.

Q.—And then you have below that two arm chairs to match, \$50. Is the same thing true with regard to that?

A.—Yes.

30 Q.—“Frames I find to be in very fair condition, but the covering part badly worn, so defective that total recovering would be absolutely necessary.” Two single mahogany chairs, Chippendale design reproductions \$100.” Is the same thing true with regard to that?

A.—They were in good order.

Q.—I mean from the point of view as to the articles of furniture?

A.—Yes.

Q.—Was the same thing true as to the last item, “French gilt ottoman, needle point top, \$250,” making \$700 in all?

A.—Yes.

40 Q.—Is that your signature there?

A.—Yes, that is mine.

Q.—If you had not valued these articles from the point of view of high-class furniture, but had rather done it from the point of view of ordinary auction sales would there have been a difference in value?

A.—There would.

Q.—The ordinary auction sale valuation, I suppose, is lower?

WALTER M. KEARNS (*for Defendants*). *Cross-Examination.*

A.—It is lower.

Q.—How long did it take you to attend to this valuation, do you remember?

A.—From the time I left my office until I returned it was about one hour and a half.

Q.—So what do you think was the time you spent on examining the furniture?

10 A.—I would consider about one hour in the examination and valuation.

Cross-examined by Mr. McKeown, K.C., Counsel for Plaintiff:

Q.—You have been conducting an auction room for many years, as you stated. I think you said 25?

A.—No, sir; 40.

20 Q.—You have spoken of five sales which you hold during the year, catalogue sales?

A.—About five a year.

Q.—How many ordinary auction sales? Daily?

A.—Weekly.

Q.—Weekly?

A.—Yes, in our store, as well as outside of our store.

Q.—Do you concede that in auction sales, even in catalogue sales, it is difficult to get the equivalent of what might be obtained at private sales?

A.—As a rule at catalogue sales we receive very fair prices.

30 Q.—I am speaking of the principle of auction sales, generally. Is it not a fact that auction sales generally do not bring to the owner of the furniture as much as could be obtained by private sales?

A.—In many cases they do in the catalogue sales.

Q.—In many cases they do not, too?

A.—In some cases they do not.

Q.—You have brought over furniture from the other side, have you not?

A.—No.

40 Q.—Have you not had catalogue sales of furniture that is represented as belonging to English and Scotch Estates?

A.—I have had consignments from the other side but not brought over.

Q.—Anyhow it arrived and it was sold by you, included in your catalogue sales?

A.—Included in our catalogue sales, yes.

WALTER M. KEARNS (for Defendants), Cross-Examination.

Q.—Have you not seen many occasions—are those sales without reserve, those catalogue sales?

A.—In most cases, yes.

Q.—Are they announced as being unreserved sales or announced as being sales with an upset price?

A.—No, they are not announced as being unreserved.

10 Q.—What do you do when you find a thing has not brought enough? Do you turn it in or withdraw it?

A.—We do not do that.

Q.—What do you do?

A.—We trust to another article selling high enough to compensate it.

Q.—You sell it therefore, unreservedly, to the last or highest bidder?

A.—As long as there is a bid.

20 Q.—You put up an article for sale and as long as there are bids on it they get it. If the audience appreciates it and bids on it you sell it? If there is one bid you sell it to one bidder?

A.—Not necessarily so, no.

Q.—What do you do? Withdraw it after some one bids on it? I mean is that your practice?

A.—No.

Q.—Your practice is to sell it to any bona fide bidder after it is offered for sale?

A.—Sell it and trust to the other articles.

30 Q.—You, in your experience, I take it have seen many articles sold for a pittance of their real value?

A.—In ordinary sales, yes.

Q.—In catalogue sales too?

A.—Very seldom.

Q.—In any event, the valuations which you have given in your report D-131 and which you have supported here by your oath today represents your idea of what might have been obtained if put up under the hammer in your auction at a catalogue sale?

A.—Yes.

Q.—You did not go to Sir Mortimer's residence?

40 A.—No.

Q.—You did not know Sir Mortimer Davis at the time this furniture came?

A.—No.

Q.—In fixing these valuations, which are insignificant as compared with some figures given by the architect of the building, by a New York representative of the concern which built the furniture,

WALTER M. KEARNS (*for Defendants*), *Cross-Examination*.

you are not taking into consideration the replacement value of the furniture?

Mr. Campbell, K.C.: I do not think my learned friend is correct in his description of it.

10 Mr. McKeown, K.C.: I asked him to cover that very point. I have contrasted his figures which are as bad as Fraser's, in contrast with the evidence given by the architect, and the man who built the furniture.

The Witness: There is this difference between a replacement sale—

By Mr. McKeown, K.C.:

Q.—Will you be good enough to answer the question?

20 A.—Yes.

Q.—Just listen to it and be kind enough to answer it and do not give me any argumentative replies which are not answers to the question. I am the only one allowed to argue.

A.—I appreciate that fact.

Question read as follows:

30 “In fixing these valuations which are insignificant as compared with some figures given by the architect of the building, by a New York representative of the concern which built the furniture, you are not taking into consideration the replacement value of the furniture?”

A.—No, I am not.

Q.—Nor are you taking into consideration the fact that this particular dining room furniture had been designed and built to match the permanent panelling of the dining room from which it was taken. That is not a consideration with you?

40 A.—I was asked to make a sale valuation and if the sideboard and the china cabinet and other pieces were not there I had to take that into consideration.

Q.—Is Lord Shaughnessy a customer of yours?

A.—Well, Lord Shaughnessy has bought from me years ago but not in recent years.

Q.—Did you supply any furniture for their own residence occupied by them on Peel Street?

A.—We probably have years ago; not in recent years.

WALTER M. KEARNS (for Defendants), Cross-Examination.

Q.—There is one article there you valued at \$250, ottoman, needlepoint?

A.—Yes.

Q.—You are not an art dealer?

A.—Well, I could not tell you. I hardly term myself that, no.

10 Q.—Is it not a fact that that ottoman which you have referred to is Aubuisson tapestry?

A.—I don't know.

Q.—If it is it is a valuable piece of furniture?

A.—It is not an old piece. It is a modern piece.

Q.—Assuming it is Aubuisson tapestry, even if it is modern, is not its value far in excess of \$250 in 1929?

A.—If it is very old Aubuisson tapestry it would be worth very much more than that.

Q.—How much more?

A.—Perhaps about \$750, if it is old. I am not quite certain.

20 Q.—You don't know whether it is Aubuisson tapestry or not?

A.—I don't know that anybody can tell you that. It is a floral top needlepoint ottoman.

Q.—You put these Chippendale chairs in at \$50 apiece?

A.—Yes.

Q.—Have you ever sold Chippendale chairs for more than \$50 in your sales?

A.—Not very often; I have sold them for less.

Q.—So you got those high?

30 A.—I got them high, yes.

Q.—Are these figures which you have given us the figures which would be netted by the owner after charges off or are these the knock down prices of the sale?

A.—Considered after charges are off.

Q.—How much are the charges?

A.—15%.

Q.—Does that include cartage?

A.—No, not cartage.

Q.—What did the cartage amount to?

40 A.—Only a trifle, about \$5 at the most.

Q.—So that these figures which you have given us on your own statement, to reflect the knock down prices of the sale, would require to be advanced \$105? That is 15% of the \$700?

A.—Yes.

Q.—That would give your own figures, according to you \$805, as being the amount for which they would be bought at your catalogue sale?

WALTER M. KEARNS (for Defendants), Cross-Examination.

A.—Yes.

Q.—Did this 15% include the catalogue charges as well as the auctioneer's fees?

A.—Yes, catalogue, advertising, and other charges.

And further deponent saith not.

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SIR JOHN AIRD (for Defendants), Examination-in-Chief.

On this 20th of May 1930, personally came and appeared

SIR JOHN AIRD,

of the city of Toronto, Bank President, aged 75, called as a witness
on behalf of Defendants, having been first duly sworn, doth depose
10 and say:

Examined by Mr. Campbell, K.C., Counsel for Defendants:

Q.—Sir John, you are at present the President of the Canadian
Bank of Commerce?

A.—Yes.

Q.—How long have you been connected with that Bank?

A.—Fifty-two years.

Q.—During how many of those years have you occupied one of
20 the higher executive positions in the Bank?

A.—In 1899 I went to Winnipeg as manager of their main office
and then became Superintendent a few years afterwards of the
western branches, Manitoba, Saskatchewan and Alberta. I remain-
ed there until 1911 and I came back to Toronto after as practically
acting General Manager; my predecessor, Mr. Laird, having been
very ill. He died in the interval between that and the time I was
appointed General Manager.

Q.—When did you ultimately become General Manager?

A.—In 1915.

Q.—How long did you occupy that position?

A.—Well, I was General Manager and then in the dual position
of General Manager and Vice-President and General Manager and
President. I think it was in 1926 or 1927.

Q.—First of all, for the purposes of the record and with all be-
coming modesty, is it fair to say that the Canadian Bank of Com-
merce is one of the leading Canadian banking institutions?

A.—Well, we are regarded as what they call one of the big three.

Q.—Have you branches all over Canada?

A.—We have upwards of 750 to 800 branches in Canada and
40 some foreign branches.

Q.—I think it is already in evidence in this case that Lord
Shaughnessy, one of the Defendants, is a member of the Board of
Directors of your Bank?

A.—That is so, yes.

Q.—Do you recall when he became a Director?

A.—Some two years ago, I think.

SIR JOHN AIRD (for Defendants), Examination-in-Chief.

Q.—At the time he became a Director did you go into the matter of his qualifications yourself?

Mr. Geoffrion, K.C.: Objected to. He may be quite well qualified in the opinion of Sir John Aird as one of the numerous Directors of the Canadian Bank of Commerce, and not be in the light of present events as put before Your Lordship, qualified to be one of
10 the three, and chief Executor of this Estate. If we are going to begin to get opinions of people who dealt with Lord Shaughnessy—it is like the evidence of good character in criminal cases. This is not a jury trial and I suggest this evidence is quite irrelevant, and leads us to endless speculation of outsiders as to what he is worth in a certain career.

Mr. Campbell, K.C.: It is relevant as to whether Lord Shaughnessy, speaking in general terms, does or does not enjoy the confidence of the business community. They have brought some evidence to prove by newspaper articles by unknown writers that Lord
20 Shaughnessy does not enjoy the confidence of the business community. I am entitled, I think, and if my learned friend does not object, I might put the question in that form, whether in the opinion of the witness, Lord Shaughnessy does enjoy the confidence of the business community.

Mr. Geoffrion, K.C.: The evidence we made was directed to a certain definite point, namely, that rightly or wrongly one of the things that made the stock fall down that as reflected by newspaper
30 publicity people interested in the Alcohol Company were critical of his management, and that was a straight fact and one of the contributing elements to the falling of the stock, and we tried to link it with direct evidence of internal administration, showing it was the consequence of what he had done. To take and get the opinion of everybody around here as to whether a certain gentleman enjoys the confidence of the community, if we examine the community on that point it may belong. We might examine some of the minority shareholders of the Alcohol Company, and we will have to go into that.
40 They are more interested than Sir John Aird, who runs a Bank and does not have it run by Lord Shaughnessy. He can run the Bank as if Lord Shaughnessy was not there but the minority shareholders of the Alcohol Company have their business run by Lord Shaughnessy, and they are much more pertinent witnesses, and if Your Lordship admits that he will start a regular roll call of the minority shareholders to see what they think of his standing in the business community.

SIR JOHN AIRD (for Defendants), Examination-in-Chief.

Mr. Campbell, K.C.: I do not attach any particular significance to the question. I suppose it is a reasonable deduction from the fact of Lord Shaughnessy being elected to the Board of Directors of the Canadian Bank of Commerce that in the opinion of the Bank he did enjoy the confidence of the community. I do not wish to prolong the agony of the somewhat long drawn out litigation.

10 The Court: I thought Sir John Aird was called as a witness to say that the account of the Alcohol Company or of Sir Mortimer Davis with the Canadian Bank of Commerce is well looked after, and so on.

Mr. McKeown, K.C.: We have evidence on that already.

The Court: Objection reserved.

20 Mr. Campbell, K.C.: To avoid controversy I will withdraw the question.

By Mr. Campbell, K.C.:

Q.—When, Sir John, did the Canadian Bank of Commerce first have any business relations with Sir Mortimer Davis Incorporated and or Canadian Industrial Alcohol Limited?

A.—It was in 1925, July, I think.

30 Q.—Did you personally have to do with the matter at that time? Did it come to your personal attention?

A.—Yes.

Q.—Will you give us, in a word, the circumstances under which your Bank took over these accounts?

A.—I had been advised by our Montreal manager that Sir Mortimer Davis had had some differences with his banker, and desired to make a change, and in making that change, however, he wished to have an immediate decision and for that reason I came down myself, having authority to close with him on the spot.

Q.—Did you see Sir Mortimer himself?

40 A.—Yes.

Q.—With what result?

A.—Before I came down I had been furnished with——

Mr. Geoffrion, K.C.: We are concerned with the result only. Sir John has been a witness before, even before a trying institution known as a Parliamentary Committee, and I suggest he is now only asked the result.

SIR JOHN AIRD (for Defendants), Examination-in-Chief.

Mr. Campbell, K.C.: I am asking him to explain what led to the taking over of these accounts by the Canadian Bank of Commerce. Will you continue your reply?

The Witness: I had been furnished with the copies of the various balance sheets in the concerns in which Sir Mortimer was interested, the Alcohol Company, and the Incorporated Company, and
10 after examining all these with him I decided we would take up the accounts.

By Mr. Campbell, K.C.:

Q.—At that time were you aware that Sir Mortimer was spending a good deal of his personal time abroad?

A.—Yes, that question came up and naturally I discussed with him the question of the management during his absence, and I was then informed that Lord Shaughnessy would be the man in charge,
20 the senior officer in charge.

Q.—Both of the Incorporated Company and the Industrial Alcohol Company?

A.—All his companies.

Q.—Now it is in evidence that in fact as the result of these conversations with Sir Mortimer Davis your Bank did take over the account?

A.—Yes.

Q.—Subsequent to the taking over, did these companies become borrowers from your Bank? It is in evidence they were borrowers
30 for quite a substantial amount?

A.—Yes.

Q.—Running into, I think it was, \$3,000,000 for the Incorporated Company, and \$2,000,000 or more for the Alcohol Company with its subsidiaries?

A.—Yes.

Q.—At times these borrowings ran into \$5,000,000 or \$6,000,000?

A.—Yes. Not \$5,000,000 or \$6,000,000. \$4,000,000 or \$5,000,-
000 I think.

Q.—Including the Incorporated Company?
40

A.—Yes.

Q.—Subsequent to these interviews that you had with Sir Mortimer personally at the time your Bank took over the accounts, did you have any more recent interviews with Sir Mortimer in reference to the affairs of his companies?

A.—It was my practice to come to Montreal two or three times

SIR JOHN AIRD (for Defendants), Examination-in-Chief.

a year. As a rule I would look up a man like Sir Mortimer and have general discussion about his business.

Q.—When did you have occasion to see him? Personally, I mean?

A.—To see Sir Mortimer last?

Q.—Yes.

A.—I saw Sir Mortimer the day he died, in Cannes, France.

10 Q.—On that occasion you happened to be there, I take it?

A.—I was on my usual trip, calling on our Holland correspondents. Sir Mortimer had expressed a wish at one time if I was ever in Europe to call and see him, and when he heard I was there he asked me to come over and see him, which I did.

Q.—Did you have a business conversation with him?

A.—Yes. I was with him for several hours during the day.

Q.—At his villa, in Cannes?

A.—Yes. I had lunch with him.

20 Q.—Did he discuss the question of the management of his Montreal companies, Sir Mortimer Davis Incorporated and Alcohol?

A.—We discussed the general business of his companies and he expressed——

30 Mr. Geoffrion, K.C.: I did not object until now because the question was only whether there was a discussion and not what it was. On that point I would like to put an objection. If my learned friend is driving at anything which will help in the interpretation of the Will or what were the duties of the Executors under the Will, I put my objection on the ground the Will must speak for itself. If it is not to prove that, I will have to make an objection as to the general relevancy, and I would ask in what respect the conversation with Sir Mortimer on the day of his death can be of any relevancy; and the only question before Your Lordship is whether the Defendants have been faithful to their trust, and are they competent to fulfil it.

The Court: So far I cannot find out one way or the other whether the question is relevant.

40

Mr. Campbell, K.C.: I only wish Mr. Geoffrion had been here to argue the objection I made when Lady Davis was being examined. That was the very ground of my objection, to some testimony which Lady Davis tried to introduce and which Your Lordship reserved, so that I take it Your Lordship will reserve this one also.

The Court: Reserved.

SIR JOHN AIRD (for Defendants), Examination-in-Chief.

By Mr. Campbell, K.C.:

Q.—Will you finish your answer:

A.—I discussed with him the general business of his companies and he expressed satisfaction with the way they were being managed.

Q.—Did he refer to any person in particular?

10 A.—He referred to Lord Shaughnessy. He had mentioned that his intention was to devote less time himself to the management of the business and that he intended to take it easier. He mentioned his horses and that he was going to Paris with his horses, and that he was able to do this as he had every confidence of the business being capably managed while he was away. That is about the general answer.

Q.—That is the gist of the conversation?

A.—Yes.

20 Q.—Did you, as the banker of these companies, offer any criticism to him of the way the business had been conducted?

A.—No. We were satisfied the business was running satisfactorily.

Q.—This was the day on which he actually died. Did he appear to be in good health at the time of the interview?

A.—I think I never saw Sir Mortimer look better than he did that day in the morning, and during the afternoon, up to the time I left him.

30 Q.—Speaking in general terms as President of the Canadian Bank of Commerce, with which the Canadian Industrial Alcohol Company Limited has done its banking over the last four or five years, what do you say as the company's banker, in reference to the general executive management of the company?

40 Mr. Geoffrion, K.C.: Objected to. We want a judgment from the Superior Court in this case, not from any witnesses, no matter how exalted they are. If my learned friend wants to limit his question to whether the Bank is satisfied, that is quite different; but between the Bank being satisfied with the account, and the manager passing, in general questions, giving an opinion on the general management of a company, and, I suppose, of the parent company, it is simply asking Sir John Aird, who has chosen perhaps a better career than Your Lordship, to step on the Bench and give judgment in your place.

Mr. Campbell, K.C.: We have already had a judgment from Mr.

SIR JOHN AIRD (for Defendants), Examination-in-Chief.

George McDonald in the box. Mr. Justice George McDonald construed the Will, told us what it meant and many other things.

10 Mr. Geoffrion, K.C.: It implied the way he read the Will. It was only an indication to the Court whether his opinion was based on the premises of the Will. Then he was asked for a remedy. Now they are asking as to whether the management was good.

Mr. Campbell, K.C.: I am asking him as to his opinion, as the Company's banker. It may help Your Lordship. After all we are attacked for incompetence of management of the Alcohol Company; that goes to the root of the matter. It does not bind Your Lordship, but it may be helpful to Your Lordship as an opinion of the Company's banker.

20 Mr. Geoffrion, K.C.: It will not have the slightest effect on the case and I make my objection.

The Court: Objection reserved.

(Question read as follows: "Speaking in general terms as President of the Canadian Bank of Commerce, with which the Canadian Industrial Alcohol Company, Limited, has done its banking over the last four or five years, what do you say as the Company's banker, in reference to the general executive management of the company?")

30

The Witness: Well, of course, in taking up any important account, one of the first things we consider is the management and if we did not think the management was satisfactory, we naturally would not take it up. In this case we have had the account; we have always been satisfied we were safe in carrying it under the management that existed.

By Mr. Campbell, K.C.:

40 Q.—Who is the Montreal manager of the chief branch of the Canadian Bank of Commerce in Montreal?

A.—The President, P. C. Stevenson.

Q.—There have been filed in this case, in this record, as Exhibits P-129 and P-136, two letters signed by Mr. P. C. Stevenson, manager of the Canadian Bank of Commerce at Montreal, addressed to Lord Shaughnessy, which I will ask you to take communication of, unless

SIR JOHN AIRD (for Defendants), Examination-in-Chief.

you are already familiar with their contents. You have seen these letters before, have you?

A.—Yes.

Q.—In reference to the affairs of Sir Mortimer Davis Incorporated, and the Canadian Industrial Alcohol and its subsidiaries?

A.—Yes.

10 Q.—I put before you copies of these letters if you wish to refer to them, but if you are already familiar with the contents will you tell me whether there is any inaccuracy in Mr. Stevenson's definition of the attitude of the Bank, or whether he has correctly set forth the attitude of the Bank in these letters?

Mr. Geoffrion, K.C.: The letters are there. The letters are written on behalf of the Bank. It is for us to suggest there was a lack of authority. Unless there is some ulterior purpose it is one of the most useless questions I ever heard.

20

Mr. Campbell, K.C.: These letters are from the local manager or the President of the Bank. I think I am allowed to ask him whether the management of the Bank has correctly defined the situation.

The Witness: Yes, I think Mr. Stevenson has correctly set forth the views of the Bank:

30 By Mr. Campbell, K.C.:

Q.—Will you look in particular at a letter of March 28th, on Exhibit P-136, addressed by Mr. Stevenson to Lord Shaughnessy, and will you for the purpose of the question which I propose to put, read into the record the two paragraphs——

Mr. Geoffrion, K.C.: Don't read anything.

By Mr. Campbell, K.C.:

40

Q.—. . . which I have indicated in pencil on the copy in your hands.

Mr. Geoffrion, K.C.: My learned friends are hoping fondly they will be able to make their evidence this way and on account of the way it was done before, they will prevent us from cross-examining through fear of the consequences.

SIR JOHN AIRD (for Defendants), Examination-in-Chief.

Mr. Campbell, K.C.: I have no fear of the consequences.

Mr. Geoffrion, K.C.: I am simply calling Your Lordship's attention to the obvious endeavour, useless from the point of view of evidence for my learned friend to put before Your Lordship where, in the interest of the Estate, we will not dare cross-examine on, or put us in the other alternative of bringing forth events which Your
10 Lordship thought should be discussed in camera. The letters are there. We are not denying they have been studied. The burden is on us to make all that evidence so the obvious purpose is one of those I have suggested. Your Lordship will appreciate the position we are in. We are not in position to get in a fight with our bankers because the bankers have put us in a position where we cannot afford to. That is one of the points where the evidence is absolutely useless, and at least here I would ask for a strict ruling, as my learned friend should show the relevancy of the question before it is put.

20 Mr. Campbell, K.C.: The question flows from a question I put. I am entitled to ask Sir John more specifically on the points I am touching on now. My learned friends have for 35 or 40 days entertained Your Lordship and the public with a wide-open attack on Lord Shaughnessy's management. Surely we might be allowed a day or two to rectify that situation in Your Lordship's mind, and one of the people who might be allowed to express an opinion is the witness in the box, who is the Company's banker. I have no objection to my learned friend going as far as he likes——

30 Mr. Geoffrion, K.C.: It is not your money that is involved.

Mr. Campbell, K.C.: The reputation of the defendant is seriously involved.

Mr. Geoffrion, K.C.: My learned friend has not given any reason. The witness has sworn that he is satisfied with him; he has written he is satisfied with him; he has endorsed again these letters. It is perfectly useless and my learned friend cannot invent any reason
40 that can stand argument why they should go on. They are playing with our money. That is the way he is earning \$60,000 a year as an Executor.

Mr. Campbell, K.C.: I want to read two extracts from them. We have already read extracts into the record through the last good many weeks of this trial. I was proposing to read extracts into the record and ask Sir John about that in particular.

SIR JOHN AIRD (for Defendants), Examination-in-Chief.

Mr. Geoffrion, K.C.: My learned friend knows perfectly well in some instances letters were not read but only filed for certain reasons. It is again one of these extremely flimsy pretexts. He knows perfectly well my objection is not that they should not be read into the record. The question is whether these extracts, chosen by my learned friend, and chosen extracts by us, should be read here. Obviously, it is not their money. They think they should wreck the temple before they finish.

Mr. Campbell, K.C.: My learned friend has spent some weeks in trying to wreck the temple. If there is anything left of it now we will try and rebuild what is left. This cannot help to complete the destruction but might help in Your Lordship's mind or anybody else's mind to show the attack on Lord Shaughnessy because it goes to the root of the whole matter and surely I am entitled to ask Your Lordship to listen to the opinion of the Company's banker in the box on that essential.

Mr. Geoffrion, K.C.: He has given it ten times. He has written it and repeated it.

The Court: What we are interested in knowing is really the question you want to ask after the extracts have been read. The letters are in the record anyway.

Mr. Geoffrion, K.C.: He asked the previous question generally, whether these letters showed the position of the Bank. It is only a pretext to read them in.

Mr. Campbell, K.C.: In view of all that has been read into the record surely it is time we had a chance to read something in.

Mr. Geoffrion, K.C.: It is an extremely serious responsibility for counsel to take. It is not your money.

(Question read: "Will you look in particular at a letter of March 24th, on Exhibit P-136, addressed by Mr. Stevenson to Lord Shaughnessy, and will you for the purpose of the question which I propose to put, read into the record the two paragraphs which I have indicated in pencil on the copy in your hands?")

By Mr. Campbell, K.C. (continuing):

Q.—They are as follows, dated March 24th, addressed to Lord Shaughnessy:

SIR JOHN AIRD (for Defendants), Examination-in-Chief.

10 “Insofar as our position of creditor and holder of securities is concerned, it is in our opinion undesirable that any change should be made in the direction and management of the companies as this would have the effect of disrupting the business at a most critical period. Having in view the probable results of the proposed legislation referred to in our letter to you of the 21st March, it would appear to us that your knowledge of the operations of the distillery business which form the basis of the undertakings of all the companies concerned, should be involved at this juncture. As we have further business relations with the companies concerned, our first condition would be efficient management, and in this connection should be satisfied if you retain the position which you now occupy, untrammelled by any additional restrictions.”

20 Having regard more particularly to these two paragraphs which have been read into the record, did that in particular define the attitude of the Canadian Bank of Commerce towards those enterprises of which it is the banker?

A.—Yes.

Q.—Some evidence has been made in this case about a falling off in the profits of Canadian Industrial Alcohol during the Company's last financial year ending September 30th, 1929. You were aware of that fact, I take it?

A.—Yes.

30 Q.—In your judgment, to what was that attributable? Was it attributable to management or to other conditions, and if so, what?

Mr. Geoffrion, K.C.: Objected to.

The Court: I understand the Canadian Bank of Commerce is also the banker of Hiram Walker?

Mr. Campbell, K.C.: I am coming to that.

40 The Witness: Well, what affected the business adversely was, in my opinion, the increased competition and the adverse legislation which had been rumoured both in Canada and the United States, and those, I think, were the material things that affected the progress of the company.

By Mr. Campbell, K.C.:

SIR JOHN AIRD (for Defendants), Examination-in-Chief.

Q.—Did you consider it any reflection on the efficiency of the management?

A.—Yes.

Q.—It has been stated, as His Lordship reminded me, that the Canadian Bank of Commerce are the bankers for Hiram Walker and Gooderham and Worts, Limited. Is that a fact?

A.—No, we never were.

10 Q.—Was the Canadian Bank of Commerce interested in promoting any merger between Hiram Walker, Gooderham and Worts, Alcohol or anybody else?

A.—No, never has been.

Q.—Having mentioned the matter of merger, Sir John, would you be willing to express an opinion on the abstract question of the advisability of a merger between the leading distillery companies in the distillery business in Canada today?

20 Mr. Geoffrion, K.C.: I put the general objection.

The Court: It all depends on the term “merger.”

The Witness: Of course there are mergers and mergers. Some are advantageous and some are not. We recently had in Montreal two or three mergers, I think, that have been advantageous.

By Mr. Campbell, K.C.:

30 Q.—First of all, have you banked for the other distillery concerns and brewery concerns than Canadian Industrial Alcohol?

A.—We have been bankers for a great many breweries and distilleries at different times.

Q.—From your knowledge of the distillery business and its present conditions, speaking as an abstract proposition, do you think that a merger is advantageous, desirable or undesirable, in the interests of the industry?

40 Mr. Geoffrion, K.C.: The same objection.

The Witness: I could not express an opinion as to whether a merger of the Walker people with the Davis companies is desirable, without seeing the figures of the other company, but on the general appearance, of course the business of a distillery company at present is a precarious business, I think, and one would have to go into it very carefully before reaching a decision as to whether it was desirable.

SIR JOHN AIRD (for Defendants), Cross-Examination.

By Mr. Campbell, K.C.:

Q.—I suppose, as His Lordship has suggested, it would depend on the terms?

A.—Yes.

10 Crossed-examined by Mr. Geoffrion, K.C., Counsel for Plaintiffs:

Q.—When you met Sir Mortimer on the day of his death, you discussed, I presume, the position of his companies and his affairs generally with your bank?

A.—We referred to that, yes.

Q.—I don't know if I remember what were the loans then outstanding in large measure. I mean the items.

A.—There would be considerable amounts.

20 Q.—Do you know connected with what operations or secured by what securities?

A.—I could get you that information.

Q.—Can you remember now? Do you remember now? I know we can get the information, but I want to know whether you remember it again.

A.—I could not give you in detail.

Q.—Do you remember any big items that were outstanding between the Bank and Sir Mortimer Davis?

A.—I cannot say I recall that, because we had no anxiety.

30 Q.—You do not recall them. That is what I want to know.

A.—Not at that time.

Q.—I will try to refresh your memory. Do you remember having loans that had been made on McNish debentures on the occasion of the McNish venture?

A.—They were made on McNish debentures.

Q.—At what time?

A.—I forget the date.

Q.—They were made before Sir Mortimer's death?

A.—Yes.

40 Q.—Therefore outstanding at the time?

A.—Yes.

Q.—That was a loan in order to buy in McNish?

A.—Guaranteed by McNish debentures, yes.

Q.—I am instructed there are \$2,250,000?

A.—\$2,250,000 I think.

Q.—On your branch in New York?

A.—That loan was carried in New York at the time.

SIR JOHN AIRD (for Defendants), Cross-Examination.

Q.—Was that discussed at the time?

A.—I could not say. As I say, the discussion with Sir Mortimer Davis was in a general way as to the conduct of the account and how it was operating.

Q.—Was there any discussion or any reference made to means made to reduce it?

A.—Yes.

10 Q.—You would be the first banker who would not ask his client to reduce his loan?

A.—Not if it was running satisfactorily.

Q.—Can you tell me if there was any discussion about that or the elimination of the McNish loan?

A.—Not with me.

Q.—Not at that time?

A.—I don't think so.

20 Q.—Was there any discussion about any other loan but Alcohol "B" stock?

A.—Not that I recall.

Q.—The Montreal loan of over a million dollars. No discussion?

A.—As I say the discussion with him was general as to business.

Q.—In other words, you did not discuss your loans to him, but you discussed Lord Shaughnessy?

A.—We discussed the general business of the company.

Q.—Lord Shaughnessy was referred to but your own loans were not? Your loans were not discussed at all?

A.—We had no anxiety as to that.

30 Q.—Did you discuss Lord Shaughnessy and not the loans?

A.—No. I brought that up. Sir Mortimer said he was going to take things much easier.

Q.—He had been taking them easier. His presence in Canada was very infrequent?

A.—Yes.

Q.—It was difficult for him to take things easier?

A.—He was trying to rid himself of the responsibility of the management.

40 Q.—He had done that before, I understand?

A.—Well, he had to a certain extent, but he was going to relieve himself more.

Q.—Can you tell me in what respect he was doing it more than before? Do you know to what extent he was taking an interest in the management before?

A.—He visited Canada occasionally.

SIR JOHN AIRD (for Defendants), Cross-Examination.

Q.—What this involved was he was going to stop his visits to Canada?

A.—I think he had that in contemplation.

Q.—We have had it from you that you have been satisfied with the situation since Sir Mortimer's death. Inasmuch as you were satisfied the morning of his death, you are still satisfied with the situation as it was before his death. Did you ever know that since
10 Sir Mortimer's death the Alcohol Company had published balance sheets, namely 30th of September, 1928, and 30th of September, 1929, and that those balance sheets did not disclose all the liabilities of the Company, direct, contingent or by way of guarantee?

A.—I saw the balance sheets. The bank had knowledge.

Q.—The bank had knowledge, therefore, I understand from you since you answer in that form, that you are not prepared to deny that you knew the balance sheets did not disclose all the liabilities?

A.—We knew that we had a guarantee.

20 Q.—You saw the balance sheets, and knew that you held a guarantee. You have refused twice to answer my question direct, so I take it that you did not know the balance sheets did not disclose the guarantee?

A.—That the bank did not disclose——

Q.—That the balance sheets did not disclose the guarantee? It would have been very easy to have given a straight answer to my question.

A.—If it was not printed on the balance sheets.

30 Q.—Then, with that information, I suspect, if it was not printed on the balance sheets, the balance sheets would not have disclosed it. I could have deduced that even without your help, Sir John. I will modify my question. You stated you saw the balance sheets. You also said that you knew of these liabilities. I asked you if the balance sheets disclosed the liabilities, and you decline to answer: Did the bank know that these balance sheets which it saw, did not disclose these liabilities which it knew of?

40 A.—Of course, the balance sheets you are referring to are printed balance sheets. Those printed balance sheets would not be the balance sheets that the bank would see. They would be copies of those balance sheets.

Q.—Do you mean to say that the copies would be inaccurate or different?

A.—No.

Q.—I suppose you would assume that they were the same?

A.—Yes.

Q.—And I have no doubt that if a client offered you a balance

SIR JOHN AIRD (for Defendants), Cross-Examination.

sheet, as a copy, and then published another balance sheet to the public, you being a Bank Manager would know immediately that they were two different balance sheets?

A.—There is this difference, that we had the knowledge.

10 Q.—I know you had the knowledge, that is why I ask you the question.

A.—We would not be concerned with what it was.

Q.—You would not be concerned with whether the Company published a misleading balance sheet? That is your position as a Banker?

A.—We would be concerned.

Q.—Why then do you say you would not be?

A.—Because I say we had knowledge of it. The Bank had knowledge.

20 Q.—If you had knowledge that would not mean that the public know. I will put it to you for the last time: Did the Bank, knowing of these liabilities, knowing of this balance sheet, know that this Company on those dates was publishing balance sheets to the public that did not disclose the true situation as known to the Bank?

A.—I do not think that the Bank realized that.

Q.—Why did you not tell me that a little earlier. I have asked you that five times?

A.—Because I wished to explain to you that we had knowledge of it ourselves.

30 Q.—Don't you think you might have answered that question at first. So, you do not think the Bank realized that. In other words, you say that the Bank saw the difference but did not realize what the difference was?

A.—Not at that time.

Q.—And if you had realized it, you would still give your unqualified approval to the Management?

A.—Yes.

40 Q.—In other words, finding out that the Management was publishing deceptive balance sheets, would not detract from your approval of the Management?

Mr. Campbell: I do not think that is a fair way to put the question. I submit it is not fair to imply by the question that there were other irregularities. It may be legal or it may be illegal. Your Lordship will decide that after we have argued the question. The only thing the balance sheets failed to show was an indirect liability to the Canadian Bank of Commerce. My submission is my learned

SIR JOHN AIRD (for Defendants), Cross-Examination.

friend is putting his questions in a way that would suggest there were other irregularities.

Mr. Geoffrion: In answer to my learned friend, I call that an obviously deceptive balance sheet. Sir John is quite capable of taking care of himself without the help of my learned friend. If he thinks the balance sheet is not deceptive, now he knows the fact.
10 Let him say so.

Mr. Campbell: Sir John is entitled to know what you contend was omitted from the balance sheet.

Mr. Geoffrion: He knows it; I have told him.

By Mr. Geoffrion:

- 20 Q.—What is your answer?
A.—We did not consider that the Company was giving the Bank misleading statements.
Q.—That is your answer?
A.—Yes.
Q.—Did you know, or did you ever learn, that the Management of the Alcohol Company was carrying its bank overdrafts among Bills payable in its statement to outside Directors, the statement by the Company's bookkeeper, so that the Directors would not know there was a bank overdraft: Did you know that fact?
30 A.—The Bank would not enquire into the details.
Q.—Suppose that fact were put before you, would you still give the unstinted praise to Lord Shaughnessy's management, assuming that he would be responsible for it?
A.—Yes, in view of the way the account was operating with the Bank.
Q.—Now we understand each other. I see your point of view, Sir John. You are interested purely and simply from the Bank's point of view?
40 A.—Yes.
Q.—You told us you had a lot of other clients, distillers and beer people?
A.—Yes, in years gone by.
Q.—Now, you are in the "Water"?
A.—No. We still have brewery accounts.
Q.—The breweries are having the same trouble as the distillers?
A.—Well, I think some of them are?

SIR JOHN AIRD (for Defendants), Cross-Examination.

Q.—I mean as regards legislation, the indignation of the United States?

A.—I do not think the difficulties of the breweries are so great as they are with the alcohol companies.

Q.—The United States position is the same?

A.—Pretty much the same.

10 Q.—And the Canadian legislation to meet the United States is the same?

A.—Not exactly.

Q.—I mean Canadian legislation directed to helping out the United States?

A.—Oh, yes.

Q.—I have no doubt in Canada you can drink beer, but I am simply saying that the Canadian legislation directed towards helping out the United States prohibition experiment is the same for beer as whiskey?

20 A.—I think it is.

Q.—And the legislation, of course, is the same. We know by the straw vote conducted by the Literary Digest that many people are in favor of beer and against whiskey?

A.—We hope so.

Q.—And then there is competition in beer also, is there not?

A.—Yes.

Q.—Then, their troubles are a great deal similar?

30 A.—No, I would not think so, because the consumption of beer is a domestic consumption mostly.

Q.—Canadians do not drink whiskey?

A.—Some do.

Q.—I made a terrible noise about certain letters which may not mean as much after all as I thought. My learned friend has chosen to read to you two paragraphs of a letter of yours of the 24th of March, 1930, which letter is already filed in the record. There is also another letter filed in the case. In fact, this interesting correspondence begins, does it not, on the 21st of March, 1930?

A.—About that, I think.

40 Q.—Have you got the letter of the 21st of March before you? This letter is already of record in the case, this letter with three other letters of the same date all signed by Mr. Stevenson, your Manager, except that one is signed by C. J. Stevenson, Agent?

A.—P. C. Stevenson.

Q.—There is one letter from Montreal signed by Mr. P. C. Stevenson, your Manager here?

A.—Yes.

SIR JOHN AIRD (for Defendants), Cross-Examination.

Q.—And there is one signed on the same date by Mr. P. C. Stevenson. There is a fourth signed by Mr. C. J. Stevenson, Agent, New York?

A.—Yes, he is our Agent at New York.

Q.—The three last short letters are evidently a sudden, immediate call on the Sir Mortimer Davis Incorporated for several million dollars due your Bank?

10 A.—Yes.

Q.—Sudden, twenty-four hours to find six or seven million dollars. That was the pleasant prospect accompanied by the explanatory letter of the 21st of March?

A.—Yes.

Q.—You have already said that you did not reproach Mr. Stevenson. I will read from the long letter that explains the reason of the call. The letter reads:

20 “ Right Honorable Lord Shaughnessy, K.C.,
President, Sir Mortimer Davis Incorporated.

Dear Sir:

30 Having regard to the uncertainty which has arisen recently as to the value of the securities held by this Bank for its advances to your Company, the Bank has today demanded payment for its loans. In view of the disquieting effect of the litigation which is now pending and of the uncertainty with regard to the proposed legislation at Ottawa relating to the export business of distilleries and of the various claims of the Dominion Government made against distilleries, and as we understand it, made against Industrial Alcohol Limited, the Bank has been reviewing its position.”

Then, there is a long analysis of the securities and so on, then this paragraph:

40 “ In view of the fact that all of the issued capital stock of Consolidated Distilleries is said to be owned by Industrial Alcohol Company and that over fifty-one per cent of the Class “A” Stock of the latter Company is owned by Sir Mortimer Davis Incorporated, it is obvious that your Company is interested in the whole situation disclosed above as well as in connection with its own indebtedness to the Bank. The Bank is not desirous of embarrassing any of these Companies with which it has business relations, nor does it desire in any way to interfere with the

SIR JOHN AIRD (for Defendants), Cross-Examination.

purpose of the litigation as obviously its position in this respect must be that of an impartial observer. The result, however, of the litigation and of the other circumstances referred to above has been to change materially in a very short time the situation of all concerned, and does not justify the Bank in taking any risks in the matter.”

10 Do I read correctly from that letter?

A.—Yes.

Q.—And therefore, you are on the 21st of March an impartial observer, and you suggest that this litigation is damaging to the loan to the Company?

A.—It was not helpful.

Q.—The letter in the last paragraph goes on to say:

20 “ In the event that satisfactory arrangements can be made to remove the menace of the present litigation and insure to the satisfaction of the Bank that the operations of the various Companies can be continued without further hindrance, then the Bank will be pleased to consider with your Company (Sir Mortimer Davis Incorporated) and with the other Companies concerned the advisability of making new loans with which to enable the various Companies concerned to continue their business operations.”

30 Am I right that in that letter you were calling your demand loans, stating you would not renew two notes for a substantial amount and saying you would refuse all further credits unless your conditions were complied with. I want to avoid reading the other paragraph. That is right, is it not?

A.—The letter speaks for itself.

Q.—I think you will find that is correct. Of course, I did not want to emphasize the details, because we know peace was restored between the Bank and the Company, but I simply want to emphasize this point particularly as to the “ impartial observer ” position.

40 Then, I will read to you a letter from Mr. McKeown to Messrs. Meredith, Holden and Company which has already been filed, and which letter is dated March 22nd, 1930, Exhibit P-134, a copy of which was sent to you. The letter reads:

“ Messrs. Meredith, Holden, Heward and Holden,
215 St. James Street, Montreal.

Dear Sirs:

I have yours of the 22nd instant enclosing copies of letters from the Canadian Bank of Commerce and agree that the com-

SIR JOHN AIRD (for Defendants), Cross-Examination.

10 munications are important and obviously urgent. The existing situation is the result of the administration of the Estate, the Incorporated Company and the Alcohol Company by your clients. They alone have the power in view of their control to apply the remedy if any exists. I trust that they know of a remedy consistent with their duty under the Will to preserve the control of the Alcohol Company and they will apply it; if not, I suggest that their main elementary duty is to resign at once and thus satisfy the Bank.

 My clients are satisfied that if the necessary power is made available and the new Executors and Directors properly chosen the matter can be taken care of, even if the Bank, notwithstanding the settlement of the lawsuit (which it suggests would satisfy it) should insist upon its demands.”

20 Then, there is a letter addressed to Mr. Stevenson of date 22nd of March, 1930, Exhibit P-135, in which Lord Shaughnessy writes to Mr. Stevenson enclosing, among others, this letter from Mr. McKeown to Messrs. Meredith, Holden and Company, Advocates, which I have just read. Then, in the third paragraph it is stated:

 “ From this letter you will see that they imply that a settlement of the lawsuit by the resignation of myself and Mr. Reaper and the appointment of new Directors would satisfy the Bank.” Then, it goes on:

30 “ In view of the interpretation given to your letter as expressed in the letter from the attorneys of the Plaintiffs, it is important that in the interests of all concerned that the Bank should define its attitude in this respect and elucidate that part of your letter relating to the carrying on of these Companies without hindrance after the removal of litigation and more particularly as to whether it is the desire of the Bank in the event above referred to that the Companies should be carried on under myself and the present Management or otherwise.”

40 Then comes Mr. Stevenson’s letter from which my learned friend has read an extract in which, after having said on the 21st that you were an impartial observer between the litigants you say, as my learned friend pointed out on the 24th, it is in your opinion undesirable that any change should be made in the appointment and management of the Companies: My summary is correct so far? I should add that since then the Bank and Lord Shaughnessy have restored either peace or a truce. That is right?

SIR JOHN AIRD (for Defendants), Cross-Examination.

A.—Well, we have reached a fresh understanding as to the carrying on of the business and making fresh advances.

And further deponent saith not.

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ALEXANDER M. REAPER (*for Defendants*), *Examination-in-Chief*.

On this twentieth day of May, in the year of Our Lord one thousand nine hundred and thirty, personally came and appeared

ALEXANDER M. REAPER,

10 of the City and District of Montreal, a witness already sworn and examined on behalf of the Plaintiffs, who, being now called as a witness on behalf of the Defendants, deposes as follows:

Examined by Mr. Campbell, K.C., of Counsel for Defendants:

Q.—You are one of the Defendants in this case, and you have already been examined and cross-examined at very great length?

A.—Yes.

20 Q.—I do not propose to take you over the ground you have already covered, but I want to file through you one or two additional Exhibits, and I would like to ask you to explain how it is that we are unable to offer to the Court the testimony of Mr. Smith, of Messrs. Price, Waterhouse & Company, who followed this case through the first two months or thereabouts of its progress?

A.—Mr. Smith had not been very well during the last week or two he was here. Then he took ill, and had to lay up, and I understand he is likely to be away from the office for some time.

Q.—My instructions are that his doctors have declared it to be quite impossible for Mr. Smith to be examined?

30 A.—That is my information, yes.

Q.—Mr. Smith is the member of the firm of Price, Waterhouse & Company who has more particularly had to do with the Incorporated Company?

A.—More particularly, yes.

Q.—And it was he who was here through the early stages of this case for the purpose of following the evidence, with a view to testifying himself?

A.—Yes.

40 Q.—There was one statement I had expected Mr. Smith to put in, and which I will ask you to file. Will you please produce and file, as Exhibit D-132, a Supplementary Exhibit showing a statement of percentages of general and administration expenses and operating profits to gross revenue for the ten years ending September 30th, 1929?

A.—I do.

Q.—Do the figures shown on this Exhibit D-132 under the heading of "Gross Revenue" in the first line across the page correspond

ALEXANDER M. REAPER (for Defendants), Examination-in-Chief.

with the figures given for the same item in the Exhibits already filed as D-17 and D-18?

A.—Yes, they are the same figures.

Q.—And the same thing would be true for the items of administration expense across the page?

A.—Yes.

10 Q.—And the item of operating profit, or loss?

A.—Yes.

Q.—Have you verified whether those statements are correct according to the books of the Company?

A.—I have.

Q.—And, are they correct?

A.—Yes.

20 Q.—Will you please look at the Statement Exhibit D-132, and follow with me the new material which is added on it in the third item from the top of the page, called "Percentage of Administration Expense to Gross Revenue." I understand this practically covers the history of Sir Mortimer Davis Incorporated, from 1920 to 1929?

A.—Yes.

Q.—The first year, 1920, what was the percentage of administration expense to gross revenue?

A.—15.69%.

Q.—What was the percentage the second year, 1921?

A.—25.95%.

Q.—The third year, 1922, what was the percentage?

A.—59.29%.

30 Q.—The fourth year, 1923 what was the percentage?

A.—27.17%.

Q.—And, the fifth year, 1924, what was the percentage?

A.—13.07%.

Q.—What was the average percentage of administration expense to gross revenue during the first five years of the Company's history?

A.—22.40%.

40 Q.—That was before the days of Lord Shaughnessy's administration? Those five years were before Lord Shaughnessy's time?

A.—Yes. He only came in 1924.

Q.—What position did he occupy in 1924?

A.—He was General Counsel.

Q.—Taking now the five years thereafter: 1925, 1926, 1927, 1928, and 1929, who was in active charge of the Executive management of Sir Mortimer Davis Incorporated, during that period?

ALEXANDER M. REAPER (for Defendants), Examination-in-Chief.

A.—Lord Shaughnessy was from the end of 1925. This 1925 period would be before his time as Vice-President.

Q.—Apart from the months of October, November, and December, 1925, or October and November, and part of December, 1925, for the balance of that period who was in charge?

A.—Lord Shaughnessy.

10 Q.—Take the financial year 1925, and tell me what was the percentage of administration expense to gross revenue?

A.—12.66%.

Q.—What was the percentage of administration expense to gross revenue in 1926?

A.—12.01%.

Q.—According to the Exhibits you have filed, 1927 was the year in which a stock dividend was declared?

A.—Yes.

20 Q.—I want you to deal with the situation both including the stock dividend at the price it was entered in the books, and also excluding it. First of all, including the stock dividend of 1927 at the price it was entered in the books, \$5 a share, what was the percentage in 1927, taking into account the stock dividend at \$5 a share?

A.—6%.

Q.—And, excluding the stock dividend? That is, considering only the cash revenue—what was the percentage?

A.—10.15%.

30 Q.—What was the percentage of administration expense to gross revenue in 1928?

A.—7.02%.

Q.—And, what was the percentage in 1929?

A.—6.27%.

Q.—Comparing the last five years, 1925, 1926, 1927, 1928 and 1929, with the previous five years, where the average was 22.40%, what was the average of administration expense to gross revenue, excluding the stock dividend, during the last five years?

A.—9.07%.

40 Q.—And, what was the average, including the stock dividend?

A.—8.16%.

Q.—Taking the next line on Exhibit D-132, under the heading "Operating Profit or Loss," what do the red figures shown for the years 1920, 1921, 1922 and 1923 indicate?

A.—Losses.

Q.—A loss on operations?

A.—Yes.

ALEXANDER M. REAPER (for Defendants), Examination-in-Chief.

Q.—Then, in 1924 there was a profit?

A.—Yes.

Q.—Of how much?

Mr. McKeown: You were all over that in connection with Exhibits D-17 and D-18.

10 Mr. Campbell: But, I am coming to another series of percentages.

Witness (answering question)—\$241,372.90 profit in 1924.

By Mr. Campbell (continuing):

Q.—Taking the five years as a period, what was the result on operation—profit, or loss?

20 A.—There was a loss.

Q.—Of how much?

A.—\$476,935.58.

Q.—What was the percentage of operating profit to gross revenue, taking the first four years, 1920, 1921, 1922 and 1923? According to this Exhibit, as there was a loss made there would obviously be no percentage of profits?

A.—Yes.

Q.—What was the percentage of profit in 1924?

A.—36.75%.

30 Q.—Averaging the five years, what was the percentage of profit, or was there a loss?

A.—There was a loss.

Q.—So, there could be no percentage of profit?

A.—No.

Q.—Coming now to the second period of five years; did each year in that period show a profit, or a loss?

A.—Each year showed a profit.

Q.—What was the operating profit in 1925?

40 A.—\$171,300.14.

Q.—What percentage did that operating profit bear to gross revenue?

A.—25.26%.

Q.—What was the operating profit in 1926?

A.—\$224,225.29.

Q.—What percentage did that bear to gross revenue?

A.—33.35%.

ALEXANDER M. REAPER (for Defendants), Examination-in-Chief.

Q.—Again I ask you to divide the year 1927, before taking in the stock dividend, and after doing so. Deal, first of all, with before taking credit for the stock dividend, and tell me what was the operating profit in 1927, excluding the stock dividend?

A.—\$247,815.86.

Q.—What was the percentage of operating profit to gross revenue?

10 A.—37.72%.

Q.—Including the credit for the stock dividend at \$5 a share (as it was taken into the books) what was the operating profit in 1927?

A.—\$701,854.86.

Q.—What was the percentage of operating profit to gross revenue that year?

A.—63.17%.

Q.—In 1928 what was the operating profit?

20 A.—\$454,705.72.

Q.—And, what was the percentage of operating profit to gross revenue?

A.—49.29%.

Q.—What was the operating profit in 1929?

A.—\$711,910.71.

Q.—What was the percentage of operating profit to gross revenue?

A.—61.80%.

30 Q.—Averaging the five years, 1925, 1926, 1927, 1928 and 1929, and excluding the stock dividend, what would be the percentage of operating profit to gross revenue?

A.—44.34%.

Q.—And including and taking credit for the stock dividend, at \$5 a share, what would be the percentage?

A.—41.91%.

Q.—As against what for the previous five years?

A.—A loss.

40 Q.—Reference has been made a number of times to the meeting of the Board of Directors of the Incorporated Company which was held on October 1st, 1924, and I think extracts from the Minutes have either been filed or have been read into the record. I will ask you to produce and file, as Exhibit D-133, a complete copy of the Minutes of that meeting of Directors?

A.—I will.

Q.—Will you also file, as Exhibit D-134, a certified copy of the Minutes of the meetings of Shareholders held the same day to confirm the action of the Directors in reference to the matters noted?

ALEXANDER M. REAPER (for Defendants), Examination-in-Chief.

A.—I will.

Q.—Reference has been made in the testimony of several witnesses to the meeting of Executors of the Estate Sir Mortimer Davis, held October 18th, 1929, but as far as my search into the record goes I do not think you filed a copy of the Minutes of that meeting. I will, therefore, ask you please to prepare, and file as Exhibit D-135, a Certified Copy of the Minutes of the meeting of Executors held
10 October 18th, 1929.

A.—I will.

Q.—During the course of the testimony of Mr. Flood the question has come up in regard to the common shares (which have been called the Directors' common shares) of Investment Foundation, Limited. Will you please tell us who has the certificate for the shares standing in the name of Lord Shaughnessy and in the name of Mr. Jennsion?

A.—I have them in the office, endorsed by the parties.

20 Q.—Endorsed in blank?

A.—Endorsed in blank.

Q.—Have you at any time been without those certificates, have you held them at all times?

A.—I have held them.

Q.—Ever since they were issued?

A.—Ever since we received them, yes.

Q.—Some questions were put—and I am not clear that the point was sufficiently covered—in regard to the market for McNish Debentures after they were listed on the Montreal Stock Exchange.
30 Can you tell me the extent of the total reported tradings on the Montreal Stock Exchange in McNish Debentures from the time they were listed, in the autumn of 1929, until the institution of proceedings in this case, January 18th, 1930?

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

A.—\$28,775.

40 By Mr. Campbell (continuing):

Q.—Par value?

A.—Yes; \$28,775 worth.

Q.—Par value?

A.—Yes.

Q.—Have you the range of prices?

A.—Yes.

ALEXANDER M. REAPER (for Defendants), Cross-Examination.

Q.—What was the high, and what was the low?

A.—The high was \$3.75, and the low was \$3.50.

Q.—That is, in that period?

A.—During that period.

Q.—What was the price at which they had been issued by McNish, and taken up by the shareholders of Alcohol?

A.—\$4.50.

10

Cross-examined by Mr. McKeown, K.C., of Counsel for plaintiffs.

Q.—Just two questions in regard to Exhibit D-132. This has been built up to show the percentage of administration expense to gross revenue, and the percentage of operating profit to gross revenue, during those ten years?

A.—Yes.

20

Q.—And to show in one instance that the administration expense went down in percentage, and that the ratio of profits went up?

A.—That is what the result is.

Q.—I am only going to take you over one year, because we already understand from you that this new Exhibit, D-132, is based upon Exhibit D-17?

A.—Yes, and the other one as well.

Q.—Exhibits D-17 and D-18?

A.—Yes.

30

Q.—Which have been covered by you at length in your cross-examination as a witness for the Plaintiffs and then in your re-examination?

A.—Yes.

Q.—Please look at the year 1929, the last fiscal year—that means the year ending September 30th, 1929, does it not?

A.—Yes.

Q.—The gross revenue for that year was \$1,151,944.29?

A.—Yes.

40 Q.—I put it to you that of that sum Alcohol alone contributed \$974,994.26. Is that right?

A.—I have not just the figure. It is not separated there.

Q.—That includes the bonus and the regular dividend in the twelve months?

A.—That is approximately right.

Q.—Therefore, in 1929 the revenue outside of Alcohol was only \$176,950.03. Is that right?

A.—Yes, I think so. I would have to check the figures.

ALEXANDER M. REAPER (for Defendants), Cross-Examination.

Q.—Will you please check them?

A.—I will have to do that afterwards.

Q.—Then your answer is yes, subject to verification?

A.—Yes.

Q.—If we eliminate Alcohol (and we have reached the stage now where we have to eliminate it) your administration of that Company amounted to \$72,312.85?

10 A.—Yes.

Q.—Against revenues, outside of Alcohol, of \$176,950.03?

A.—Yes.

Q.—And in that amount of \$176,950.03 were included the Liggett & Myers dividends, which have disappeared for the future?

A.—No. They belong to the Estate.

Q.—You are right in regard to that. I withdraw the question.

It includes the return on the \$880,000 of call loans, which are no longer with us?

20 A.—No, I think not. They are taken as a deduction against the interest charges. It is taken as a credit against interest charges.

Q.—Have you dealt with the McNish debentures in the same way?

A.—I imagine the McNish debentures would be there.

Q.—Will you look at the Statement, Exhibit D-17, and say whether the item of McNish debentures is included in the remaining figure of \$176,950.03 revenues of the Incorporated Company?

A.—Yes, it is.

Q.—What does it amount to?

30 A.—Approximately \$148,000.

Q.—Therefore, we would be brought down to a balance of \$28,950 of revenue from all other sources except Alcohol and McNish?

A.—Approximately.

Q.—And, if we went a step further and took off the dividend from the Royal Bank stock, \$13,190, we would be down to \$15,760 of gross revenue for the remaining items?

A.—Yes.

40 Mr. Campbell: And, if you took off all the sources of revenue you would not have anything left.

Mr. McKeown: I quite understand that, but I do not want to make it any more ridiculous than it is.

By Mr. McKeown (continuing):

Q.—To sum up the situation for 1929: excluding from this

ALEXANDER M. REAPER (for Defendants), Cross-Examination.

enormous revenue of \$1,151,944.29 established by my learned friend Mr. Campbell, first, the Alcohol dividend; next, the McNish interest; then the Royal Bank dividend; those figures would shrink from \$1,151,944.29 to \$15,760. Is that right?

A.—Yes. Of course, that would apply to the other years, if you were going to treat them the same way.

Q.—And we would be left all the time with the same operating
10 cost of \$72,312.85 to run this Company?

A.—I do not know. That might be a question.

Q.—In point of fact, we have now arrived at a time when the Alcohol dividend is not being paid?

A.—Correct.

Q.—So, at one fell swoop off goes an item of \$974,994.26, as against last year?

Mr. Campbell: I object to the question.

20 Mr. McKeown: Of course, I understand my learned friend does not like it, but he cannot help it.

Mr. Campbell: My point is the question embodies an incorrect reproduction of the evidence made. The fact is that in this financial year two dividends were paid by the Alcohol Company, which will enter into this current financial year; and there is no certainty there will not be another dividend, or more than one dividend. My learned friend in framing his question is misinterpreting or misap-
30 plying the evidence heretofore made, although he purports to be re-producing the evidence.

By Mr. McKeown (continuing):

Q.—So, at one fell swoop off goes an item of \$974,994.26, as against last year? For the purpose of my question I am speaking of the prospect for the next twelve months from the present moment that the Alcohol dividend continues not to be paid.

40 A.—If the Alcohol dividend was not paid for a full year, and the income for the year was the same as shown in that Statement, then the difference would be that amount.

Q.—And, the operating of this Company would likely run along at the same figure of \$72,312.85?

Mr. Campbell: I do not think my learned friend is entitled to discuss what the future operating costs are going to be. How can the witness be asked what the future operating costs of this or any

ALEXANDER M. REAPER (for Defendants), Cross-Examination.

other company are going to be? I do not think he knows, or that anyone in this Court room knows, or can anticipate.

Mr. McKeown: I would not like to imagine they are going to be any worse.

10 Mr. Campbell: No, but they may be a lot better.

By Mr. McKeown (continuing):

Q.—The operating of this Company would likely run along at the same figure of \$72,312.85?

A.—That is a little difficult to say. I think it would be reduced to some extent.

20 Q.—Would that reduction likely come about by the reduction of any of the salaries of the present officials of the Company? Have they taken any steps in that direction?

A.—It has not been considered yet. But, there is one item of \$10,000 out.

Q.—What is that?

A.—The contribution to Jewish philanthropies.

30 Q.—We did not learn until today (and even then only by accident) of the fact that the shares belonging to the Incorporated Company—the Directors' common—instead of being registered in the name of the Incorporated Company appear to stand registered, for some reason or another, in the name of Lord Shaughnessy and in the name of Mr. Jennison.

A.—They do stand in their names, yes.

Q.—They only require one share to qualify them as Directors. If that was the object, why allow this block of stock, which cost the Estate \$45,000, to stand in the names of persons who do not own it, subject to seizure or anything else that might happen?

A.—They are endorsed in blank.

Q.—But, that does not make any difference as a question of law. Do you know what is the purpose of it?

40 A.—No. Those shares were got simply to qualify them as Directors. I understand all the Directors took a certain block of stock.

Q.—How long after you bought those units did you buy those Directors' shares?

A.—I think it was practically all arranged at the same time, but the common shares, or Directors' shares, were delivered later than the units.

Q.—It came out in one of the Exhibits that, I think in the April,

ALEXANDER M. REAPER (for Defendants), Cross-Examination.

1929, Statement of the Incorporated Company, an item of \$45,000 appeared for the 3,000 common shares at \$15. Do you remember that?

A.—Yes.

Q.—That was a payment made by the Company to whom?

A.—To Investment Foundation, Limited, I think.

Q.—You think?

10 A.—I am not quite sure it was.

Q.—Will you be good enough to produce the cheque by which that \$45,000 was disbursed, and file it as Plaintiffs' Exhibit P-261?

A.—I will.

Q.—Was it all done by one cheque?

A.—One cheque.

Q.—Are there any other of the securities supposed to be held by this Estate or by the Incorporated Company which are held in the name of persons who do not own them?

20 A.—I do not think so, with the exception of in some cases a qualifying Directors' share or a few shares.

Q.—Do you realize the difference between qualifying a Director with one share and the action of holding out an individual to the world as being qualified with 1,500 shares as his own property?

A.—I do not know that that was thought about. They thought, as the shares were not paying dividends yet, there was no object in changing them for the time being.

30 Q.—Do you know whether under the terms under which those shares were purchased or issued in the name of Lord Shaughnessy and of Mr. Jennison, they are assignable?

A.—They can be transferred.

Q.—Can they be transferred or sold immediately, or is there any restriction on them?

A.—There is no restriction on them.

Q.—Then, why have they not been put into the name of the Incorporated Company?

A.—I think I explained that.

Q.—What did you say when you explained it?

40 A.—I said as there was no dividend being paid on the stock they did not see any special object in having them transferred in the meantime.

Q.—That is the only explanation you have to offer?

A.—Yes.

Q.—My learned friend, Mr. Campbell, asked you to produce a copy of the Minutes of the Meeting of Executors held October 18th, 1929, and you undertook to produce such copy as Exhibit D-135?

A.—Yes.

ALEXANDER M. REAPER (for Defendants), Cross-Examination.

Q.—Was there not a Meeting of the Directors written up as of that date also?

A.—There is a Minute of that date, yes.

Q.—Will you complete the happenings of that day by preparing, and producing as Plaintiffs' Exhibit P-262, a copy of the Minutes of the Directors' Meeting of October 18th, 1929?

A.—Yes, I will.

10 Q.—Speaking of the market for McNish debentures, I think you said there was only \$28,775 par value of those debentures dealt in from the time they were listed, in the fall of 1929, up to the date of the institution of the suit?

A.—Yes.

Q.—They were listed some time in October, 1929?

A.—October 17th, I think.

Q.—And the suit was instituted about January 18th, 1930?

A.—Yes.

20 Q.—That would represent a period of about three months?

A.—Yes.

Q.—Is it not true that at the time the McNish debentures were issued, in the fall of 1927, to the shareholders of Alcohol, that the independent shareholders of Alcohol as of that date took up the whole of their quota of those debentures?

A.—I think practically all the shareholders did, although there was a small balance not taken up.

Q.—An insignificant balance?

A.—Yes, I think so.

30 Q.—That is to say, there was sufficient interest in those McNish debentures in October, 1927, for the independent shareholders to exercise their rights to take up those debentures at \$4.50 each?

A.—Yes.

Q.—And, from October, 1927, until October, 1929, there was no listing of those debentures where they could be dealt in?

A.—No. I think that has been explained.

Q.—In point of fact, what those independent shareholders took up of McNish debentures in October, 1927, would represent 49 per cent or thereabouts of the total issue of McNish debentures?

40 A.—Yes.

Q.—You know that at that time the exercise of the rights of the shareholders of Alcohol to take up the McNish debentures was very strongly recommended by the Banks and other financial institutions?

A.—I do not know about the Banks.

Q.—At that time there was no difficulty about having Banks accept those McNish debentures as collateral for carrying loans against them?

ALEXANDER M. REAPER (for Defendants), Re-Examination.

A.—We did not have any difficulty.

Q.—You did not have any difficulty in taking two and a half million dollars of those debentures to New York and borrowing two and a quarter million dollars against them at 4½ per cent?

A.—That is right.

10 Re-examined by Mr. Campbell, K.C., of Counsel for defendants.

Q.—Will you please look at Exhibit D-132 again and tell me the average operating profit per annum for the five years ending September 30th, 1928?

A.—\$358,691.78.

Q.—Does that include, or exclude, the stock dividend?

A.—Including the stock dividend.

Q.—Excluding it, for the purpose of my question, what was the average operating profit per annum?

20 A.—If you exclude the stock dividend, the average for the five years was \$267,883.98.

And further deponent saith not.

30

40

NOTE.—The following evidence, down to page 2427, line 10, was taken before the evidence of the witnesses Ewing, Flood, Kearns, Aird and Reaper printed on pages 2117 to 2209 *ante*.

— 2210 —

LORD SHAUGHNESSY (*for Defendants*), *Examination-in-Chief*.

On this May 6th, 1930, personally came and appeared

WILLIAM JAMES LORD SHAUGHNESSY,

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

Examined by Mr. Holden, K.C., Counsel for Defendants:

Q.—Lord Shaughnessy, are you one of the Defendants in this action?

A.—I am.

Q.—And the other Defendant is Mr. A. M. Reaper, who has given a long deposition already in this case?

A.—Yes.

Q.—You received the cable message from Lady Davis, informing you that her husband, Sir Mortimer Davis, had died on the 22nd of March, 1928?

A.—I received a cable to that effect, yes.

Q.—Where was his will at that time?

A.—He had redrafted and executed a will in London, some time in the November previous, and I was under the impression that the will was at the office of Linklaters and Paines, his solicitors in London. It subsequently turned out to be in Paris.

Q.—What did you do to find it and get it?

A.—I cabled to Linklaters and Paines immediately and asked them to send under registered mail in the safest way possible the original of the will. I received a cable from them that I think they did not have it, and I think we cabled Mr. Kandalraft in Paris and received word the will had been mailed or was being mailed.

Q.—Do you know when you received that cable from Mr. Kandalraft?

A.—Just a few days after Sir Mortimer's death. I do not remember the exact date; somewhere about the 24th or 25th of March probably.

Q.—Do you know when you received the Will?

A.—With expedition as soon as it could have got out. As a matter of fact, the Will came out under seal addressed to Lady Davis, not to be opened until her arrival and that is the way the Will came.

Q.—Was it opened on her arrival?

A.—On her arrival it was opened.

LORD SHAUGHNESSY (*for Defendants*), *Examination-in-Chief.*

Q.—What did you learn from Lady Davis as to what was being done with the body of Sir Mortimer?

A.—Lady Davis sent a cable to me that she was coming out with the remains of Sir Mortimer on the “Mauretania.” I think, sailing on the 31st of March, or thereabouts.

Q.—On hearing of that, did you do anything with regard to an undertaker here?

10 A.—Well, I made arrangement with Wray and Company here to make preparations to receive the body in Montreal on its arrival from New York. I understand it was to be buried here.

Q.—Did they do so?

A.—They did.

Q.—What did you hear from the Plaintiffs as to the sailings of both Plaintiffs for this side?

A.—Oh, there was a little doubt about the sailing of Lady Davis owing to the fact that Mr. Mortimer Davis and his wife were sailing on the same ship. There was some little mix-up as to that. I do not
20 remember much what it was. It might have changed the sailing but ultimately Lady Davis did come on the “Mauretania” with the remains.

Q.—Did Mortimer B. follow on a later boat?

A.—Mortimer B. followed on a later boat.

Q.—What was done with regard to the coffin or the casket for the body before it left Europe?

A.—My understanding was that a casket had been obtained at Cannes and Sir Mortimer’s remains placed in it, and subsequently
30 Mr. Mortimer Davis, through some agency, had purchased a more elaborate bronze casket and the body was transferred from the original casket to the new one, and came out on the “Mauretania” in the new casket.

Q.—Do you know who ordered the first one?

A.—I think Lady Davis.

Q.—Did you go to meet Lady Davis, who accompanied the remains of the late Sir Mortimer?

A.—I went to New York and met Lady Davis.

Q.—When was that, do you know?

40 A.—Oh, about the 5th or 6th of April, I would think.

Q.—1928?

A.—Yes.

Q.—What did you do there and then?

A.—Well, I made arrangements then for the transportation of the remains to Montreal. I saw the undertakers there and had the body transferred from the ship to the train. We came up that night and made these arrangements. That is about all.

LORD SHAUGHNESSY (*for Defendants*), *Examination-in-Chief*.

Q.—I suppose Wray and Company met the body here?

A.—Yes, on arrival.

Q.—What did you do with regard to the funeral?

A.—Well, I made arrangements with Wray about the funeral and then I made arrangements with the synagogue in connection with the burial service.

10 Q.—Whom did you see, do you remember?

A.—I saw several. I saw the Rabbi, Mr. Stern, I think his name was, and I saw Mr. Somer and discussed it with them.

Q.—And the funeral occurred, as already testified, on the 12th of April?

A.—Yes.

Q.—Did you make any arrangements for the reading of the Will at the family conference?

20 A.—The Will was read in Sir Mortimer's house on the night of the funeral by Mr. Phillips, the Notary, in the presence of the whole family.

Q.—What did you do with regard to having the Will probated?

A.—We put it in the hands of our solicitors, I think your firm, and we put it in the hands of Mr. Phillips to collaborate, and he obtained probate, I think, on the 18th of April.

Q.—Mr. Phillips, the Notary?

A.—Yes.

Q.—On the 18th of April the Will was probated?

A.—Yes.

30 Q.—Lord Shaughnessy, will you state to the Court, please, broadly what was the position of Sir Mortimer's Estate, the situation of his Estate at the time of his death? I do not mean geographically but the financial position of his Estate?

A.—Well, at the time of Sir Mortimer's demise it first became an Estate. It is a difficult thing to really analyze properly but up to that time he had operated the Estate with the Incorporated Company solely and absolutely, in consequence of which the Estate was practically bereft of resources; it had not very many resources. If I remember correctly the Estate consisted largely of almost solely
40 of bonds and shares in Sir Mortimer Davis Incorporated.

Q.—In addition to these securities what was there?

A.—In addition to these securities there was some cash received, about \$160,000 which was owed to the Estate by Sir Mortimer Davis Incorporated and various other small sums. Then there was about \$29,000 in bank, \$28,000 of which was in England. There was about \$437,000. In addition to that there were the three speculative accounts held in New York by Bamberger, Liggett and

LORD SHAUGHNESSY (*for Defendants*), *Examination-in-Chief*.

Myers, Victor Talking Machine and Tobacco Products. These were held on margin and the equity and these if sold would have amounted to \$540,000. There was the Liggett and Myers in the bank here, amounting to about \$260,000, but the situation was that the available cash was extremely small; the obligations were large, with Succession Duties and Legacies, and some scheme had to be devised where the liabilities of the Estate would be met without the cash necessary to meet them. The sale of these stocks would have brought in a certain amount but at a meeting of the Executors it was decided only two of these stocks would be sold; Liggett and Myers retained. This is the Estate in Canada.

In France Sir Mortimer had his villas, which were entailed by usufructuary and he had the racing stable, of a value of about three million francs. They were the total assets in France.

In England there was a bank account of about \$28,000 to his credit.

Those were about the resources when he died. There were some other small ones, a few shares of the Royal Bank, the Mount Royal Club, and the St. Bruno. I am leaving those out.

Q.—What was the situation with regard to obtaining money to pay the Succession Duties?

A.—First of all there were the Succession Duties. We had no idea what they were. There was Income Tax, about \$80,000, which had to be paid. There were payments to be made to the Y.M.H.A. building, \$290,000; there were legacies, \$400,000 and something; annuities \$180,000 a year. The annuities and the Y.M.H.A. Building—some of them were pressing because the people were depending on them and we had to find the money for them. The scheme of arrangement we had was we would advance from the Incorporated Company sufficient to carry on these pressing liabilities. The full amount of the Succession Duties would be ascertained then we would have paid the Succession Duties, Legacies and various other charges, to clean up the situation, and adjusted the accounts between the Estate and the Incorporated Company.

Q.—With regard to the Succession Duties, Mr. Reaper has gone into great detail in answer to Plaintiffs' counsel, as well as in cross-examination, with regard to what was done for a long period. Will you tell the Court in a general way what Mr. Reaper did, what you ascertained the amount the Succession Duties would need?

A.—We first of all made an inventory of the Estate as far as we could, taking into consideration all the assets. It was difficult to make a complete one on account of the assets situated abroad.

Q.—In this connection did you have any assistance?

LORD SHAUGHNESSY (*for Defendants*), *Examination-in-Chief*.

A.—Mr. Phillips helped us on the situation. We tried to get an extension of time from the Government for filing the statement.

Q.—Why did you want the extension?

10 A.—Because of the properties situated outside; we had to calculate on the basis of the shares, the real value of the shares of the Societe Davisco; we had to try and find out what the value of the horses was, the racing stable. There were various things which delayed us in trying to get a final statement. We were refused this extension and we wanted to put in a statement to the best of our ability which we qualified under the circumstances.

Q.—When you got the statement in in that form, and the government received it, there was, as has been testified, a serious difference between you, the Executors, and the Provincial government. What was the amount at issue between you and the government with regard to the value of your assets and the amount of your liabilities? What was at issue in that respect?

20 A.—Well, when we put in the statement we had previously had Price-Waterhouse and Company value the stock of Sir Mortimer Davis Incorporated, which they valued at \$170 a share. That was included in our statement to the government. Subsequently we had an interview with Mr. Begin, I think it was, and, Mr. Begin was very dubious as to whether there was not something phoney about this statement. He told me they expected they would get a great deal more from the statement as they saw it. I said “What do you want?” Mr. Begin suggested we give him a copy of the Balance Sheet mentioned in the statement. Some of the companies were expanding. We had to proceed to get the best information we could for Mr. Begin, which was subsequently furnished to him. We did not hear very much more about the situation, until we received the bill, I think, late in the autumn, showing an amount greatly in excess of what we expected to pay.

Q.—I think that was the following year?

A.—The following year, probably.

30 Q.—How much in excess? I mean, taking the increase in the value of your assets together with the decrease in liabilities disallowed?

40 A.—They had taken some liabilities and decreased them by nearly \$2,000,000; they had taken from our assets and increased the value of Sir Mortimer Davis stock from \$170 to \$280 a share. The total increase amounted to an increase of \$7,000,000 in actual value. It was over \$7,000,000.

Q.—What amount would that represent, that difference be-

LORD SHAUGHNESSY (*for Defendants*), *Examination-in-Chief*.

tween you? What amount would that represent, approximately, in Succession Duties?

A.—We figured around \$650,000.

Q.—If the sworn statement that the Executors had prepared and put in had been accepted by the government that is to say, if that seven and one-half million dollars difference in valuation in liabilities had not existed, would the Succession Duties have been promptly paid?

A.—Yes, I think they would. We had the money to pay them.

Q.—Why did the Executors not accept the government's valuation and the government's deductions in liabilities?

A.—Because we did not think they were just. There were a great many cases where they were obviously wrong. We had not an opportunity to go into it carefully and could not find out how they based this huge figure of \$280 per share. We wanted more information before we would accept it.

Q.—With such information as you have had from the beginning, are you and Mr. Reaper still of the opinion that your valuation of the liabilities is correct?

A.—I think we are. We found a great many discrepancies, in such information as we had been able to get from the government, which seemed to be absolutely obvious; the wrong calculations and too high valuations on stocks.

Q.—Whose calculations were wrong?

A.—Theirs; the government's. I think we still persist in the idea our calculation is correct.

Q.—Having that conviction, what is your view as to whether it is better with a creditor who is claiming these Succession Duties, more than he is entitled to, to see him and try to get him to be reasonable before you pay him anything?

A.—We worked with the idea it would be better to get the thing settled and pay it all at once.

Q.—To get the amount settled?

A.—To get the amount settled, because if we paid it on account it lessened our chances on the final settlement. That is the view we took and we were not suffering any damage in that, because we were saving interest. If we made a payment on account, we would have to make loans, and inasmuch as we were getting $6\frac{1}{4}$ per cent or $6\frac{1}{2}$ per cent on that money and only paying the government five per cent, we were not losing anything on that.

Q.—On the amount of the call loan?

A.—On the amount of the call loan, which we would have to use probably for the payment of the Succession Duties.

LORD SHAUGHNESSY (*for Defendants*), *Examination-in-Chief.*

Q.—Could you pay the legacies before you paid the Succession Duties?

A.—I think not.

Q.—Let me ask you as to your personal relations in connection with the late Sir Mortimer Davis. When did you first have any special relationship with, or contact with Sir Mortimer Davis?

10 A.—Well, I had known Sir Mortimer Davis somewhat intimately nearly all my life, ever since I was a very small boy. I never had any particular business relationship with him until about 1920. In 1920 Sir Mortimer engaged me on a retaining fee per annum while I was attached to the firm of Meredith and Company, to be available to consult with the various heads of his different corporations on legal matters, from time to time, and I was on that retainer up to the time I joined him permanently.

By Mr. Geoffrion, K.C.:

20

Q.—In 1920?

A.—Yes.

By Mr. Holden, K.C.:

Q.—Up to the time you joined him permanently?

A.—Up to the time I joined him permanently in 1924 I was on that arrangement.

30 Q.—Under the agreement of September 17th, 1924, already produced?

A.—Yes.

Q.—I am not sure if it is in the record when you were admitted to the Bar of the Province of Quebec?

A.—1910.

Q.—When did you become a King's Counsel?

A.—1920, I think

40 Q.—Did you join the firm of Campbell, Meredith and Company as it then was, at once, upon admission to the Bar?

A.—I did, yes.

Q.—Were you with the same firm right along until you went with Sir Mortimer in 1924?

A.—I was.

Q.—State briefly how it came about that you gave up the active practice of law and joined Sir Mortimer Davis under that agreement of September 17th, 1924?

LORD SHAUGHNESSY (*for Defendants*), *Examination-in-Chief*.

Mr. Geoffrion, K.C.: Objected to, as being a written contract.

The Witness: In 1922, Sir Mortimer Davis approached me with a view of my going into his corporation permanently and discussed the matter with me on several occasions. At that time I did not quite make up my mind and I finally decided I did not care to go in and I told him so.

10

By Mr. Holden, K.C.:

Q.—Do you know about what time in 1922? Would that be early or late in the year?

20

A.—It was during the summer time, I think. . In 1924 he wrote me from Cannes asking me directly if I would give up the practice of law and go into his corporation permanently, setting forth the advantages he expected would derive from it, and so on, and asked me not to do anything about the letter, but to wait until he came out. He was coming out in April or May, and we would talk it over when he came out here. When he came out here during that whole summer we discussed the question of going in, and the terms of this particular contract, which was finally made on the 17th of September, 1924, under which I was employed permanently.

Q.—Did you consult with friends as to taking it?

A.—I consulted with various friends, with Mr. Meredith and Mr. Beatty, one or two people, as to the advisability of the move before I made my decision.

30

Q.—That was Mr. Meredith, your senior partner at the time? and Mr. Beatty, the President of the C.P.R.?

A.—Yes.

Q.—Lord Shaughnessy, apart from your offices and directorships in Sir Mortimer Davis Incorporated, and the companies connected with it, I would ask you please to put on this record what are the chief other directorates you hold?

A.—I am a Director of the Canadian Pacific Railway Company.

By the Court:

40

Q.—Since when?

A.—Since 1919; the Canadian Bank of Commerce since 1927, I think, or 1926. I am not quite sure of that, 1926 or 1927, about then; the Yorkshire Insurance Company—I have been a director since about 1922, and I think in 1926 I became Chairman of the Board.

LORD SHAUGHNESSY (*for Defendants*), *Examination-in-Chief*.

By Mr. Holden, K.C.:

Q.—Speak a little louder. You became Chairman of the Board?

A.—I became Chairman of the Board in 1926. The Lake of the Woods Milling Company—I have only been on that Board for about a year; the West Kootenay Light and Power Company.

10 Q.—Since about when?

A.—I have been on that Board for 12 or 14 years.

Q.—These are the chief ones?

A.—These are the chief ones.

Q.—During Sir Mortimer Davis' lifetime what was his custom as to getting whatever money, ready money, he wanted?

A.—Well, Sir Mortimer would simply cable that he required a certain amount of money, and I, the Incorporated Company—we had to find it. That was the general custom. We stepped out—we had the Bank put it to his credit wherever he chose to have it put, either in Cannes or in London.

20 Q.—That would be charged up to him in the Incorporated Company's books?

A.—In the Incorporated Company's books.

Q.—As a loan?

A.—Yes, as an advance.

Q.—At that time, what did he own in shares of the Incorporated Company, do you know?

A.—The exact number I would not be able to say. He owned approximately—well, we considered 90 per cent of the Incorporated Company.

30 Q.—From the time of the incorporation of the Incorporated Company which, I think, was in 1919?

A.—At the time of the incorporation he owned it all. Subsequently Mr. Waddell got five per cent; subsequently five per cent was put in trust for me, which I would have in September 1929 under this contract of September 1924.

Q.—Apart from that, he personally owned all the shares?

A.—He owned all the shares and the balance of the notes too, until he put them in trust.

40 Q.—Will you tell the Court what Sir Mortimer was in the habit during his lifetime of doing regarding investments and investigations concerning prospects, mining or otherwise, and that kind of thing?

Mr. Geoffrion, K.C.: Objected to as irrelevant.

The Witness: Sir Mortimer's was essentially a psychology that believed in making a lot of money out of money. He never fancied

LORD SHAUGHNESSY (*for Defendants*), *Examination-in-Chief*.

conservative investments at all. For instance, he would not buy bonds or would not buy very sound preferred stocks and so on. He believed with the ability and the vision he possessed, he could very safely take hold of old enterprises that required capital and management, or new enterprises requiring development—he could make a great deal more that way than he could by investing in what is generally accepted as conservative securities.

10

By Mr. Holden, K.C.:

Q.—But in the Incorporated Company?

A.—No, practically all the investments of the Company consisted of investments of that nature, with the exception of the Royal Bank stock, which would hardly be classed in that category.

Q.—Was he or was he not inclined to investigate and to prospect in that kind of thing?

20

A.—He was more particularly wedded to mining. He had been in a great many mining ventures in Cobalt, Porcupine and certain parts of the United States. He was very keen on mining. He had lost a lot of money and I think it annoyed him and he thought he was going to get it back out of a mine some day. That was the spirit that seemed to operate on him at all events.

Q.—We all know the bulk of the assets of Sir Mortimer Davis Incorporated consisted in shares of the Industrial Alcohol Company?

30 Mr. Holden, K.C.: My Lord, this is a new branch and rather a long one. I think if it suits Your Lordship we will adjourn now.

Whereupon an adjournment was taken until May 7th, 1930, at 10.30 o'clock A.M.

And on this seventh day of May, in the year of Our Lord one thousand nine hundred and thirty personally came and reappeared the said witness

40

WILLIAM JAMES LORD SHAUGHNESSY

and his examination was continued as follows:—

By Mr. Holden, K.C.:

Q.—Before taking up the subject matter of your deposition; you have just pointed out to me that on page 94 of the transcription

LORD SHAUGHNESSY (for Defendants), Examination-in-Chief.

of yesterday's evidence it reads: "In addition to those securities there was some cash received." What did you say?

A.—"Cash receivable."

Q.—It goes on: "About \$160,000 which was owed to the Estate by Sir Mortimer Davis, Incorporated, and various other small amounts. Then there was about \$29,000 in Bank, \$28,000 of which was in England. There was about \$437,000"—as the transcription
10 reads. What did you say?

A.—Of the \$29,000 of cash all told there was more than \$28,000 in England, and \$437 in Montreal.

Q.—That phrase "There was about \$437,000" should read "\$437"?

A.—Yes.

Q.—And, that was the cash on hand in Canada?

A.—In Canada.

Q.—At the adjournment we referred to the fact that the great
20 bulk of the assets of the Incorporated Company consisted of shares in Canadian Industrial Alcohol Company, Limited?

A.—Yes.

Q.—And that the great bulk of the Estate was shares in the Incorporated Company?

A.—Yes.

Q.—Will you state as briefly as you can, but state to the Court, what is the particular character of this industry of the Canadian Industrial Alcohol Company?

A.—That is a broad question, but I will try to give it as briefly
30 as I can.

The business of the Canadian Industrial Alcohol Company can be divided into two categories: the manufacture and sale of Alcohol for industrial and commercial purposes, and the manufacture and sale of beverage alcohol—whiskies, and gins—alcohol beverages.

The industrial portion of the business is comparatively small. The market for industrial alcohol is quite limited.

Q.—Am I right that industrial alcohol is alcohol for any other purposes than beverage purposes?

A.—Yes: for commercial and industrial purposes.

40 With the number of distilleries supplying that market demand the percentage of business for each distillery is comparatively small.

The big end of the business—the most profitable, and the one of greatest volume—is the manufacture and sale of alcohol for beverage purposes—beverage alcohol.

Q.—What is the condition in Canada with regard to the number of distilleries now making beverage alcohol, compared with what there were a while ago?

LORD SHAUGHNESSY (*for Defendants*), *Examination-in-Chief*.

A.—The number of distilleries has increased very considerably in the last five years. I am giving this simply from memory, but I think in 1925 there were about eighteen distilleries operating under licenses from the Government: today I think there are twenty-nine.

Q.—When a new distillery gets a license, and organizes and sets to work, how long does it take before its product is a substantial consideration in the market competition for the sale of beverage alcohol?

10 A.—All those distilleries do not manufacture beverage alcohol, although most of them do. Some of them only manufacture the commercial and industrial alcohol.

In respect to the ones which manufacture beverage alcohol, the Government Regulations do not permit them to use any whisky or beverage spirits for beverage purposes unless it is matured for at least two years.

Q.—So, am I right that in a new distillery competitor in the market that got going in the manufacture of alcohol in 1927, for instance, its product would not be in active competition until 1929?

20 A.—Not until 1929, at least. I might qualify that by saying that—three or four years old. The regulations in some ports do not permit of the importation of any beverage spirits under three years old: Nassau in the Bahamas, for instance.

Q.—I think you mentioned 1926 as about the date when the increase occurred in the number of distilleries?

A.—It went on from 1925 to the present date, really.

Q.—You have pointed out to the Court that the important element in this industry is the sale of beverage alcohol. I think we should have it on this record where, and of what character, is the market for the beverage product of the Canadian Industrial Alcohol Company?

30 A.—Unofficially, it is generally supposed that the large consumption takes place in the territory to the south of us.

Q.—You say “generally supposed.” It may be injurious to the industry in some way: I do not know; But I feel it my duty to ask you to state the facts, in view of the litigation which has been instituted and is now being tried. In point of fact where and of what character, is the market for the beverage alcohol?

40 A.—The market for beverage alcohol can be divided into three categories, firstly, the domestic market—that is the beverage alcohol, whiskys, gins, etc., sold to the Commissions of the Provinces of Canada.

Q.—That is what we call the Liquor Commissions?

A.—The Liquor Commissions.

The second activity is what is known as duty paid export—that

LORD SHAUGHNESSY (*for Defendants*), *Examination-in-Chief*.

is beverage alcohol sold for export over the Detroit River at the border at Windsor.

Q.—When you say “over the Detroit River,” that is for export southwards?

A.—We assume that.

10

Mr. Geoffrion: They are entitled to carry it right through to Mexico, if they wish.

Witness (continuing) The third category is beverage spirit exported in bond—that is, exported to foreign countries permitted to import, such as St. Pierre Miquelon, Nassau, for some time Cuba, Belize in Central America, and some other ports.

Q.—And, the Colony of Newfoundland?

20

A.—There is some exported to Newfoundland.

Q.—Take St. Pierre Miquelon, for instance: is there more liquor exported to St. Pierre Miquelon than would be required for the consumption of its inhabitants?

Mr. Geoffrion: The witness cannot say that. No one can say what is the consumption of liquor of the inhabitants of St. Pierre Miquelon.

Witness: Answering your question, Mr. Holden, I would say yes, unless they use it for bathing pools.

30

By Mr. Holden, continuing,

Q.—Seriously speaking, what is the character of this industry from the point of view of stability, reliability, steadiness, and that kind of thing?

A.—Most precarious.

Q.—I should have asked you at the outset, did those characteristics you have been giving to the Court apply to this industry and this Company before the death of Sir Mortimer Davis, as well as now?

40

A.—Oh, yes, they always have applied. They were a little smoother during his lifetime, but they were there; at least, they were in the offing.

Q.—You have just stated it is a most precarious business. Has that characteristic become better or worse within the last year or two?

A.—Very decidedly worse.

LORD SHAUGHNESSY (*for Defendants*), *Examination-in-Chief*.

The precariousness of the business is due to the fact that it is a business conducted in a commodity largely purchased by people who have no right to purchase it; who take tremendous risks in purchasing it; and who change from day to day.

Q.—What was the second category to which you referred?

A.—The second category to which I referred was the export over the Detroit River—the duty paid export.

10 Q.—The Detroit River business?

A.—Yes.

Q.—What is the situation with regard to that business today, and what has it been for the past year, compared with what it was previously? I mean, as to the conditions surrounding it?

A.—Commencing in the early part of 1929—January and February—that business was sorely crippled. Today it is killed.

Q.—What were the causes of that change, broadly speaking?

A.—The main cause was a combined action by the Ontario
20 Liquor Commission and the Department of Excise at Ottawa. The Ontario Liquor Commission prohibited, in January or February, 1929, (I am not quite sure of the month, but it was about that time) the storing of liquor on the docks at Windsor, which had been theretofore used by the Distilleries, on the claim that it was contrary to the provisions of the Ontario Liquor Law. Coincident with that the Department of Excise at Ottawa decided to limit the number of docks that could be used, and to place those docks under the direct supervision of Federal Officers.

30 Q.—What was the effect of those coincident activities of the Provincial and Federal Governments?

A.—It greatly curtailed the shipments, through hampering and impeding the facilities.

Q.—And, did that affect the business of the Canadian Industrial Alcohol Company?

A.—Very materially, and far more than the other businesses.

Q.—Why do you say it affected the Canadian Industrial Alcohol Company's business far more than the business of the other Companies?

40 Mr. McKeown: He said other businesses.

By Mr. Holden (continuing):

Q.—Other businesses. My learned friend corrects me.

A.—The method of using docks prior to this action by those Governments permitted of storing all excess of liquor on these docks, to be purchased and taken as required. When this was prohibited,

LORD SHAUGHNESSY (*for Defendants*), *Examination-in-Chief*.

the Walker Company, for instance, being on the Detroit River, could use their distillery for the same purpose; so also could the D.C.L., which had a warehouse on the river.

Q.—By “D.C.L.” you mean Distillers-Seagram?

A.—Distillers-Seagram. They had a distillery on the river.

10 The Canadian Industrial Alcohol Company, geographically situated as it was, at Corbyville, was in the position that it took some considerable time to get to Windsor a shipment which was ordered, and consequently we were not able to avail ourselves of any sudden order that might arise, as the other people were.

Q.—About what time did this new handicap arise with regard to your Company?

A.—It began to show itself in February and March, 1929; though we hoped by efforts we were making to offset it. It made a
20 very material difference in the volume of sales.

Q.—In addition to those Federal and Provincial activities, what was the effect of the legislation and the threat of legislation now being realized with regard to the Canadian control of the border?

A.—The threat of legislation as to the closing of the border, or the prohibitions against shipment, or the clearance of vessels—

Q.—(interrupting) This is Canadian legislation?

A.—Yes, Canadian legislation—had some effect upon the business of the Company for the reason that it caused apprehension among the buyers. But, it had a far greater effect upon the securities
30 of the Company.

Q.—The market price of the securities of the Company?

A.—The market value of the securities.

Q.—You say it had some effect on the volume of business?

A.—Yes, it had some effect on the volume of business.

Q.—What has been the fact, say, during the past few months or the past year, with regard to the activities on the southern side of the border as to prevention and control of export shipments in that direction, compared with what those activities had been previously?

40 A.—With the election of Mr. Hoover as President of the United States, and the programme upon which he went into office against his opponent, Mr. Smith, there was a tremendous increase of vigilance in the United States against the import of alcoholic liquors.

Q.—Had that any effect upon your Company's business?

A.—Yes, very decidedly.

Q.—Mr. Lawrence has shown by the figures that there was a reduction in your Company's sales last year as compared with the

LORD SHAUGHNESSY (*for Defendants*), *Examination-in-Chief*.

previous year. What, in fact, was the cause, or what were the causes, of reduction?

A.—One of the principal causes, as I have just explained, was the falling off of this border business; which is by long odds the profitable business. Another cause was increased vigilance, causing in many cases a big loss of cargoes on the high seas. Arrests and indictments of operators in the United States—

10

Q.—(interrupting). Indictments issued in the United States?

A.—In the United States.

Q.—Have the United States issued indictments against others apart from operators?

A.—Oh, yes.

Q.—For example, what other classes have indictments been issued against?

A.—There have been indictments issued against distilleries, in some cases—officers of distillers.

20

Q.—You mean of Canadian distilleries?

A.—Yes.

Q.—Does that include Directors?

A.—It is difficult to know whether it does or not. I think the Hiram Walker Company was indicted, and its President, Mr. Hatch, was indicted.

Q.—That is an indictment issued in the United States?

30

A.—Yes. I am not sure whether it was the Hiram Walker Company, or the Gooderham-Worts Company, that was indicted. It was either one or the other, or both.

Q.—Had you finished your answer as to the causes of the reduced sales last year?

A.—It is a very large question. There are so many causes. It is hardly covered only by the border business and the indictments. There was a great deal of trouble with storms. The weather was very bad for a while, and boats could not go out.

Q.—What was the condition as to the comparative available stocks of your Company and your competitors this year as compared with previous years?

40

Mr. McKeown: Is not that a trifle leading?

Witness: In 1928 the demand was very heavy. In 1925 our Company went through a very perilous year—if not as bad as this

LORD SHAUGHNESSY (*for Defendants*), *Examination-in-Chief*.

year, it was pretty nearly as bad—as a consequence of which we did practically no manufacturing.

By Mr. Holden (continuing):

Q.—When?

10 A.—In 1925. And there had been very little manufacturing in 1924, and not very much in 1926, owing to the necessity of curtailing manufacturing expense as much as possible to get out of the somewhat difficult position in which we were in 1925. The result was that in 1928 we were very short of matured whisky, and consequently I had to buy some to fill the market demand.

Q.—What was the position amongst your competitors as to their available supplies last year, and previous years—during the last few years?

20 A.—The Hiram Walker Company existed for many many years, manufacturing only one type of Canadian whisky, known to the trade as Canadian Rye. That is their Canadian Club Whisky, and Imperial Whisky.

Q.—Those are the trade names?

A.—The trade names of their Canadian Rye.

Up to 1927 Hiram Walker & Sons had never manufactured any American type of Rye whisky or Bourbon whisky.

Q.—Then what did they do?

30 A.—Either in the end of 1926, or in 1927, they commenced to manufacture those American types of whisky—the Bourbon and the American Rye—and their supplies came into the market in the end of 1928 or the beginning of 1929, and, of course, created a competition which had theretofore not existed.

Q.—Was that a substantial new competition?

A.—It was a new competition, unquestionably.

Q.—But, was it substantial?

A.—Yes.

40 The other distillery; the D.C.L.—

Q.—(interrupting). Which we have been calling, I think, Distillers-Seagrams?

A.—Yes.

After building their plant at Lasalle, just outside Montreal, commenced a very extensive programme of manufacturing of Ameri-

LORD SHAUGHNESSY (*for Defendants*), *Examination-in-Chief*.

can type whisky and Bourbon, somewhere around 1927, or in 1927, and they also came into the market as a competitor in the end of 1928 and the beginning of 1929. Really they were a little later, and I should say there were mostly felt in 1929.

Q.—Had that new competition an effect on your sales?

A.—Naturally, because theretofore we were practically alone. We were the first to manufacture this American type and Bourbon,
10 and we were practically alone, with a good demand. Then there were two other concerns from whom it could be obtained.

Q.—Coming back to my question: have you given the main causes of the reduced sales, or is there anything else to which you would like to draw the attention of the Court?

A.—I think I have covered it fairly widely.

Q.—A great deal of stress has been laid by our opponents not only on the reduced sales, but also on the fall in the market value of the securities of Canadian Industrial Alcohol Company. To what
20 was that fall in market value due?

A.—It is a very difficult thing to say to what that fall was actually due, but I can give my own ideas as to causes which unquestionably contributed to that fall.

One has to go back fairly far—to the period preceding the so-called Customs Probe at Ottawa.

Q.—About when was that?

A.—1926-27. Then there was a further Judicial Investigation, I think in 1927-28. I think they finished the Judicial Investigation sometime in 1927. I am not very clear on the dates.

30 Q.—You were saying you had to go back before that?

A.—Yes. Before that the securities of those Beverage Companies were looked upon as investment securities, because the people who held those securities felt the money was being made out of commercial and industrial alcohol. As soon as publicity was given to the nature of the business of those Companies—

Q.—(interrupting). Given how?

40 A.—Given out by the press. Those proceedings were all open proceedings, and they were reported every day in the press.

As soon as the nature of the business was disclosed, the character of the security changed to a highly speculative security.

Q.—Instead of an investment security?

A.—Instead of an investment security. And people bought them, and sold them, not so much with the idea of keeping them but more to make a turn.

LORD SHAUGHNESSY (*for Defendants*), *Examination-in-Chief*.

Following that, the recommendations of the Customs Committee contained, among other things—

Q.—(interrupting): Was that as a result of the Probe?

10 A.—As a result of the Probe. These recommendations contained, among other things—

By Mr. Geoffrion:

Q.—(interrupting): You are speaking of the Control Probe?

A.—Yes. Those recommendations contained, among other things, the recommendation that the border be closed, that clearance be stopped to vessels operating in the Detroit River—

By Mr. Holden:

20 Q.—(interrupting): That is, that it be closed?

A.—As has been done by legislation.

Q.—In Canada?

A.—Yes.

Q.—Apart from any United States action?

A.—Yes.

That caused, unquestionably, apprehension among the holders of those securities.

30 The press commenced to devote considerably more space to the liquor question, and aroused a great deal more public interest in the distillery companies as a result of those two enquiries.

Q.—Can you give the Court an approximate idea of what date you are now referring to?

A.—I am speaking, as far as I can, in the sequence of events. That was after the Customs Probe was over.

Q.—So, we are now down to about—

A.—(interrupting): This would be some time around the middle of 1928.

And the business of the distilleries, and the liquor situation in general, commenced to be everybody's business.

Q.—When you said a moment ago the press commenced to devote considerably more space to and arouse interest in the matter, was that a helpful interest to the market price, or what was the character of the press notoriety and the interest it aroused?

A.—It was a detrimental interest as far as the securities were concerned, because it called attention to the fact, constantly and

LORD SHAUGHNESSY (*for Defendants*), *Examination-in-Chief*.

repeatedly, that the border was going to be closed, and this would have a serious effect on the earnings of the Companies, and so on.

That was the nature of the press comment.

In the beginning of 1929—or around February or March, 1929—that sequence of events caused apprehension and nervousness in the distillery securities, and that was when those securities commenced to drop owing to those threats.

10 Q.—Do you know about when it was first mooted that the Canadian Government was considering closing the Canadian side of the border?

A.—The first time it came up was the recommendation of the Customs Probe, and it was argued pro and con.

Q.—Would that be towards the end of 1928?

A.—No, it was earlier than that.

Q.—About when?

A.—1927.

20 By Mr. Geoffrion:

Q.—1926, was it not?

A.—The Customs Probe was 1926. The Judicial Enquiry was later.

By Mr. Holden (continuing):

30 Q.—What I am referring to is when there was talk of actual legislation?

A.—That was mooted over a period of years; for some considerable time. It was always held as a Sword of Damocles over the industry.

Q.—About when did we hear there was legislation being promoted by the Canadian Government? Actual legislation started?

40 A.—Actual legislation—not the present Session of Parliament, but the Session before. The question came squarely before the House, and Mr. Euler made the statement that he was not in favor of taking any such action. That was followed by a statement by the Prime Minister, that he was.

Q.—About when would it be that the Prime Minister stated he was in favor of it?

A.—In the last Session of Parliament.

Q.—Approximately what date?

A.—I would have to look it up. I could not remember the day he made the statement.

LORD SHAUGHNESSY (*for Defendants*), *Examination-in-Chief*.

Q.—Do you remember when the session ended?

A.—No. It was some time early in 1929.

Q.—Some time in 1929?

A.—Yes.

Mr. Geoffrion: We can get all those dates with accuracy, if they are important.

10 By Mr. Holden (continuing):

Q.—What was the condition after this press notoriety?

A.—After the culmination of all this gossip and discussion the securities of the Distillery Companies commenced to fall.

Q.—About when?

A.—About February or March, 1929.

20 While the others fell, the securities of the Canadian Industrial Alcohol Company got an added push, which sent them down possibly a little lower than the others.

Q.—To what do you refer when you say that?

30 A.—When I say that I mean: while I was in England, I think in May or June, 1929, Industrial Alcohol stock commenced falling quite appreciably. I cabled several times to try to find out the cause, and I was informed that the newspapers were stating that the Company was in a precarious condition, not earning much money, and so on and so forth. Then when I came back, in June, I found out that certain Directors and Officers of the Company had gone to prominent brokers with offices all over Canada, and had sold their holdings in the Company, which unquestionably had a very detrimental effect on our securities in particular.

Q.—You have referred to the newspaper Articles which have been admitted under reserve of our objections. Without asking you to discuss the figures which your co-Executor, Mr. Reaper, has discussed fully, I would ask you to state to the Court whether those newspaper Articles were justified by the facts, were correct, and were useful as newspaper news.

40 A.—They were not entirely justified, in toto. Anybody who was familiar with the business of our Company could have told a newspaperman that the curtailment of facilities on the border had made a difference in our business and our sales; but, to assume that we were not going to pay our dividend, or to make a deliberate misstatement that we had had trouble with the Liquor Commission, was untrue and should not have been published without verification. Mr. Cordeau denied it specifically in a letter.

Q.—Denied what?

LORD SHAUGHNESSY (*for Defendants*), *Examination-in-Chief*.

A.—That there was trouble with the Liquor Commission.

Q.—Which was stated in the newspapers to have occurred?

A.—Yes.

Q.—He denied the fact?

A.—Yes. He denied it voluntarily.

Q.—Was that soon after the publication?

10 A.—Yes, very soon after. As soon as he read it, I think.

Q.—Is there anything else you think you should add in answer to my question as to the causes of the movements of the securities on the market before October and November, 1929, when the general market slump occurred?

A.—Those contributing causes: first of all, there was a general depression in all distillery stocks. As I say, our stock in particular had an extra impetus through the action of some of the officers and directors. The number of shares of stock they sold does not make much difference, but the fact that they sold them, and that

20 information being conveyed from Halifax to Vancouver, unquestionably made a difference in our stock.

Q.—I understand you to state that the fact that a Director or important officer sells is the serious fact, not the quantity he does sell?

A.—It seems to me if I were a broker dealing in a security, and a director of a company, followed by a director and an officer of the Company shortly afterwards, walked in and sold material holdings, I would be inclined to advise my branch offices all over Canada: “You had better get your clients out of Industrial Alcohol,

30 because there is something wrong in Denmark.”

Q.—Because those Directors and officers were selling?

A.—Because those Directors and officers sold their stock.

Q.—Then came the general slump. You agree with the witnesses already heard that it was the most unusual catastrophe in the financial world?

A.—Yes.

Q.—Was it any ordinary slump?

A.—No; I should think it was an extraordinary slump.

40 Q.—In addition to the quantity of sales, and in addition to the movements of the stock market, the Plaintiffs' Pleadings and some of the evidence attacks you with regard to what has been called the merger. Will you please tell the Court as briefly as you can, but explain the situation now and hitherto as regards what has been called the merger?

A.—I think the facts have been pretty well covered. There might be a misconception as to whether this merger would ever

LORD SHAUGHNESSY (*for Defendants*), *Examination-in-Chief*.

have gone through or not. I could not say that it would. It was discussed by Mr. Lash and myself quite academically.

Q.—Approximately when did it first come up?

A.—In the alcohol business those sort of things are repeatedly coming up; discussions about working arrangements; discussions about activities in certain markets, and so on, are always coming up. We discuss those things among ourselves, for the benefit of the industry at large.

Q.—About when did Sir Mortimer himself consider acquiring Hiram Walker shares?

A.—In 1926.

Q.—About when did what is now being called the merger become visible in the air of possibilities?

A.—The first time anything was discussed—I would not call it a merger discussion—was when Mr. Lash called on me some time in October, 1929.

Q.—That is Mr. John F. Lash, K.C.?

A.—Yes.

Q.—Who gave evidence here?

A.—Yes. Stating that he represented nobody but himself.

Q.—Was that here in Montreal?

A.—In Montreal, in my office. He asked me some general questions as to what I felt about the general situation.

Q.—Was he then a Director of Hiram Walker-Gooderham & Worts?

A.—He made it perfectly plain that he had not consulted the Board of Directors, and that he did not come there officially in any way. He came simply to call and discuss this question of what was generally the best thing for the industry. We discussed the subject quite academically. We came to no particular agreement of any kind. Then Mr. Lash went away.

Subsequently to that Mr. Lash came in one day with Mr. Morrow. . . .

Q.—(Interrupting) Can you say about when that would be?

A.—That would be some time in November.

Q.—November, 1929?

A.—November, 1929. And asked me if I thought that a working combination or amalgamation of those Companies would be beneficial.

Q.—What Companies?

A.—Our Company, and the Hiram Walker Company, and the D.C.L.

Q.—That is, Distillers-Seagram?

LORD SHAUGHNESSY (*for Defendants*), *Examination-in-Chief*.

A.—Yes.

I said I had not given the matter much thought, and I did not know whether it would be or not. That had been the plan adopted in Great Britain to stabilise the industry, putting the Companies under one tent, and I did not know whether that plan was feasible or workable here. It would require a great deal of study, and so on. They then asked me if I could let them have a balance sheet of our Company, and I gave them an old balance sheet, the one of 1928.

Q.—Was that one which had been published?

A.—Yes, the year before. The 1929 balance sheet was not yet ready.

Q.—The balance sheet you gave them was the published Balance Sheet?

A.—For the year previous, yes. We discussed it, and they asked me some questions about it.

20 Subsequently to that Mr. Morrow came in . . .

Q.—(interrupting): Who is he?

A.—He is associated with Walker's. He is a Director, I think, of Walker's. He came in and discussed the matter again.

Q.—About when would that be?

A.—Some time in November.

Q.—1929?

A.—1929.

Q.—Did he come alone?

30 A.—Yes. He happened to be there, and I saw him at the Club. He asked me if I could see him for a few minutes, and I said yes. He told me he had communicated by telephone with Mr. Ross and Mr. Hurd. Mr. Ross is President of the Distillers-Seagram Company. He lives in Scotland. He is also President of the Distillers Corporation, the big English Company.

Q.—Who is Mr. Hurd?

A.—He is connected with Distillers-Seagram Company, also with D. C. L. in England, which owns the stock of that Company.

40 Mr. Morrow said they were rather receptive of the idea, and they were sending young Mr. Ross out here to discuss it further.

Question—Is he the son of the Mr. Ross whom you have just mentioned?

A.—Yes.

I heard nothing further for some time, until I think, it must have been the end of November, when Mr. Lash came to see me again. He suggested that if anything were to be done the value of the capital stocks of the Companies should be brought to a common

LORD SHAUGHNESSY (*for Defendants*), *Examination-in-Chief*.

denominator, to see what could be worked out. He suggested that we appoint an independent auditor, one who was not connected with any of the Companies, to accomplish that purpose. He asked me if I could give him one of the latest Balance Sheets of the Company. The Balance Sheet was not ready, but I told him as soon as it was printed I would let him have a copy, and I did so as soon as it was printed.

10 Q.—Was that the Balance Sheet which was being prepared for publication?

A.—Yes.

I let him have the Balance Sheet.

Subsequently I received a letter from Mr. Lash.

Q.—About when do you suppose this would be?

A.—The letter is filed. I do not remember the date. In any event, I received a letter from him, enclosing a letter from Clarkson Dilworth & Company, the accountants, in which they asked for certain extended information in explanation of the Balance Sheet.

20 Q.—That is, the Auditors asked?

A.—Yes. From each of the three Companies. That was after the Balance Sheet was sent. I should think it would be some time in December.

Q.—I was looking for the Exhibit in my memorandum. I think it was in the month of December.

A.—I think it would have been, because the Balance Sheet was not given to them for some time.

Q.—In any event, you say you received those letters?

30 A.—Yes.

Q.—What did you do then?

A.—I agreed to prepare the information the Auditors required, and I telephoned to Mr. Lash and said: “While I am prepared to submit this to Auditors who will keep the thing strictly confidential, I am not prepared to hand this information to the other component parts to this discussion.”

Q.—That is to the other two Distilleries?

40 A.—Exactly. Mr. Lash said he thought that was probably quite fair. I suggested that this information should be handed by our Company to the Auditors without either of the others getting communication of the other’s information. And, that was the method adopted.

Q.—I see by the list that the letter of Mr. Lash to you is Exhibit P-215, and is dated December 27th, 1929?

A.—Yes. It was about then.

LORD SHAUGHNESSY (*for Defendants*), *Examination-in-Chief*.

Q.—And the letter from Clarkson & Company to Mr. Morrow is Exhibit P-216, and is dated December 26th, 1929?

A.—Yes.

Q.—What happened when Mr. Lash accepted your suggestion as to the confidential character of the information to be given to the Auditors?

10 A.—I sent Mr. Lawrence, our Secretary, with the information.

Q.—You mean Mr. Lawrence, Secretary of the Canadian Industrial Alcohol Company?

A.—Yes. I sent him with instructions to hand this information to the Auditors and not to communicate it to any of the other parties.

Q.—Where did you send him?

A.—To Toronto.

Q.—To the Head Office of those independent Auditors?

A.—Yes. To see Colonel Gordon.

20 Q.—Colonel Gordon is a partner in the Clarkson firm of Auditors?

A.—Yes.

Mr. Lawrence went to Toronto, and I understand carried out his instructions.

Q.—Did he so report to you?

A.—Yes, he so reported to me.

Q.—Did the Clarkson firm get the information from the other Companies, as well as from your Company?

30 A.—Yes, it was delivered in the same way by one other Company—not the Distillers-Seagram. They had fallen out of the picture by that time. The understanding I had was that they were coming in later, if anything happened.

Q.—The result of the work of the Clarkson firm, the Auditors, has been filed as an Exhibit?

A.—The Statement they compiled may be. I do not think I have ever read it.

Q.—But they did compile a Statement?

A.—Yes, they did.

40 Q.—What happened after that, so far as you and your Company were concerned, with regard to the proposal of Mr. Lash and the others in his Company, concerning a so-called merger? What transpired since the Clarkson Statement was prepared?

A.—The Clarkson Statement was prepared. I had not received a copy of it. One evening Mr. Lash telephoned me and said he was coming down with Mr. Hume and Mr. Morrow.

Q.—He telephoned from Toronto?

LORD SHAUGHNESSY (*for Defendants*), *Examination-in-Chief*.

A.—Yes. He said he would like very much to see me the next morning, if possible.

Q.—Do you know about when that would be?

A.—That was in January.

Q.—Of this year?

A.—Yes. I think it was a day or so after the Writs in this
10 Action were issued.

Q.—After the service of the Writ?

A.—After the service of the Writ.

I said: “ All right. You had better come up and breakfast with me, and whatever we have to say we will say then.” They did not come up, but they came shortly afterwards.”

Q.—To your house?

A.—Yes. I said: “ This thing is off. An Action has been instituted, and we cannot discuss this affair any further.”

Q.—Since then have you done anything more in regard to the
20 so-called merger?

A.—No, nothing.

Q.—I should ask you this also: from the outset to today have you ever made any promises, or bound your Company in any way, in regard to the so-called merger?

A.—Not at all. Not in any way.

Q.—What was your attitude as President of the Canadian Industrial Alcohol Company? Were you seeking to sell it, or anything of the kind, or what was your attitude?

A.—My attitude was to find if the situation warranted, and I
30 was rather inclined to think it might be a good thing. My attitude was to find the situation with regard to the amalgamation of those Companies, and how they stood comparatively one with the other. Whether a merger would have gone through or not would, of course, have been a matter that would have had to be very carefully discussed afterwards with the Directors of the Company, and by the Directors of Sir Mortimer Davis, Incorporated, and so on. It could not have been done otherwise than in that way. The predominating thought behind this was that a situation or an action of that kind
40 might possibly obviate a situation which might always be called the curse of Canadian commerce.

Q.—What do you mean?

A.—The competition between Companies which have accumulated large stocks, with a curtailment of market.

Q.—What do you mean when you say large stocks?

A.—Large stocks of merchandise, with a curtailment of market;

LORD SHAUGHNESSY (*for Defendants*), *Examination-in-Chief.*

which has in my experience on almost every occasion in this country caused a price war and loss of profits to all Companies concerned.

Q.—Did you have that aspect of it in mind at the time?

A.—I had that aspect in mind at the time, because with the large volume of business in 1927 and 1928 the Distillery Companies had manufactured very large stocks, and one channel of the disposition of those stocks was to be closed, and increased vigilance and
10 increased difficulty was curtailing the possibility or the probability of sales, and it appeared to me that, rather than go through the experience the Pulp and Paper Companies and various kindred industries have gone through, that an ounce of prevention might be better than a pound of cure, and that the situation warranted, at least, being investigated and discussed.

Q.—Did you then consider it your duty, as President of the Canadian Industrial Alcohol Company, to hear what they had to say?

A.—I thought so, yes.

20 Q.—Did you ever at any stage of the discussions, or at any time, make any promises, conditional or otherwise, as to the basis on which a merger would be made, if it were decided on?

A.—None whatever. I have not the faintest idea today what the basis might have been. I never examined carefully the Statement made by Clarkson, Dilworth & Company, and I do not know whether it is right or wrong.

30 Q.—Had the suggestions that were made to you, and the discussions, gone far enough to make it necessary yet for you to examine that Statement?

A.—No. Had the Action not intervened, unquestionably I would have examined that Statement very carefully.

Q.—When you say “Had the Action not intervened,” are you speaking of this lawsuit?

A.—Yes. When the lawsuit came I felt we would drop the whole thing. It was not important.

40 Q.—Up to the time this lawsuit was served upon you and Mr. Reaper, was there anything in connection with those suggestions and discussions that you should have communicated to your co-Executor, Lady Davis, which you did not communicate?

Mr. Geoffrion: I object to this as being a matter for the Court to determine. The witness may state what his negotiations and communications were, and the Court will draw the inference.

By Mr. Holden, continuing:

LORD SHAUGHNESSY (*for Defendants*), *Examination-in-Chief*.

Q.—I did not mean in a legal sense. I mean as President, and in a practical sense.

Mr. Geoffrion: It makes no difference. This is a practical case.

His Lordship: It is a question of appreciation.

10 Mr. Geoffrion: The witness may relate his version of the negotiations in detail.

His Lordship: I am inclined to think the negotiations were not sufficiently far advanced.

20 Witness: It is difficult for me to say whether I should have or not. I did not consider that we had made any real headway in the thing at all, and that there was any tangible information that I could communicate to either the Directors of the Alcohol Company or to Lady Davis, my co-Executor.

By Mr. Holden, continuing:

Q.—As far as it went, was it a matter that was being discussed and handled by the Board of the Alcohol Company, or simply by its President?

30 A.—I handled the negotiations myself, but I discussed the general question with my Vice-Presidents, Mr. Lauster and Mr. Wilmore, from time to time.

Q.—You say “I handled the discussions myself.” Just what do you mean by that?

A.—I had all the interviews with Mr. Lash and Mr. Morrow.

Q.—In view of the allegations, and some evidence tending in the same sense, to the effect that you were going to ruin the Alcohol Company by this merger, I should ask you if the matter had gone further, if the lawsuit had not intervened, and so on, what would you have done with regard to discussion of that kind of thing before your Company would have been committed to any merger?

40 A.—I could not possibly have proceeded without first discussing such proposed arrangement as might have been submitted in tangible form with Lady Davis and Mr. Reaper, my co-Executors, and Sir Mortimer Davis, Incorporated, as the controlling interest in the stock. Subsequently, if they were agreeable, or thought the thing was good, I would have to submit it to the Board of Directors of the Alcohol Company, because the Board of Directors of the Alcohol

LORD SHAUGHNESSY (*for Defendants*), *Examination-in-Chief*.

Company would have had to submit it to the shareholders and get their opinion.

By the Court:

10 Q.—Did Mr. Lash ever hint to you that the basis on which he proposed the amalgamation of the Companies was to give the Industrial Alcohol Company \$2,000,000 in cash, and to exchange shares at the valuation fixed by the Clarkson firm?

A.—He did say that, but not as an offer of any kind. He did say that might be a basis, and I jokingly said to him: “I have not seen the Statement. In any event, I think you are talking through your hat,” or something like that.

Q.—Did it appeal to you as a basis?

A.—No, it did not.

20 Q.—Did you make a counter-proposition as to what basis you would suggest?

A.—None whatever.

By Mr. Holden, continuing:

Q.—I am not sure whether you have testified on the point or not, but to be sure I will ask you to tell His Lordship whether you favored or not a merger, if it could be arranged on what you considered a suitable basis?

30 A.—I was inclined to feel, for the reasons I have already stated, that in the present condition of the industry and the present circumstances an amalgamation of that kind might be advantageous, on proper terms.

By the Court:

Q.—Would the fact that Mr. Hume, Mr. Hatch and Mr. Rainer had prominent positions in the Hiram Walker-Gooderham & Worts Company have interfered with the merger?

40 A.—The conduct, or whatever it may be decribed as, of Messrs. Hatch, Hume and Rainer towards our Company and so on, in business is sometimes more or less forgotten. It did not depreciate in any way from their capabilities as officers and executives of the Walker Company; and, after all, I was thinking more of the benefit of the industry rather than of personal animosities or anything of that kind that may have existed.

By Mr. Holden, continuing:

LORD SHAUGHNESSY (*for Defendants*), *Examination-in-Chief*.

Q.—During the nearly two years since Sir Mortimer's death have conditions in the industry changed any with regard to the bearing of the question of a merger, or something of that kind, upon your Company's future?

A.—They have changed in the respects I have mentioned: that a very much larger quantity of alcohol spirits has been manufactured, and the channel of distribution or sale has been curtailed.

10 Q.—What would be the result, in your opinion, if these two Companies, at any rate—and three, if possible—were working together, instead of as competitors and rivals; provided it was on a suitable basis?

A.—First of all, it would effect a great economy in general management. Secondly, it would obviate what seemed probably perhaps to be a very vigorous competition in the same market, which, as a result of the closing of the border, is bound to come about.

20 Q.—What is your answer to my question as to whether the result would be beneficial, or otherwise, to your Company if it was working with the others, on a suitable basis, instead of working against them?

A.—It would stabilize prices, which is an important thing in any industry in Canada.

30 Q.—Looking at the Will of Sir Mortimer Davis, which has been produced as Plaintiffs' Exhibit No. 1, I would point out for the purpose of my question that Sir Mortimer, in Article 23 of the Will, charged you and your fellow Trustees and Executors to take an active and energetic interest in the management of his Estate, and to carry out the policies he had laid down, and particularly to conserve the capital of his Estate and not to sacrifice the same by premature liquidation. Have you intended and endeavored to carry out that provision?

Mr. Geoffrion: I object to the question as illegal.

Mr. Holden: I do not know how else I can put it.

40 Mr. Geoffrion: You may establish the facts, and the Court will decide whether Lord Shaughnessy has in fact made appropriate and proper endeavors to do it.

Mr. Holden: Of course, my question is merely introductory. I intend to ask him next what he did.

Mr. Geoffrion: I you ask him what he did, it may be different.

LORD SHAUGHNESSY (*for Defendants*), *Examination-in-Chief*.

Mr. Holden: If we give Lord Shaughnessy credit for common honesty, he will say he did. When he has answered that, I will then ask him to tell the Court what he did.

Mr. Geoffrion: Of course the answer will be "Yes," but I am sure such an answer can carry absolutely no weight in this case. In any event, my objection is of record, and I will not take up Your
10 Lordship's time discussing it.

Mr. Campbell: Lady Davis gave an equally competent answer.

Mr. Geoffrion: If we are to start looking for precedents, I do not know where we will finish. I am trying to avoid losing time, so I simply put my objection. The answer will not carry us anywhere.

20 By Mr. Holden, continuing:

Q.—Looking at the Will of Sir Mortimer Davis, which has been produced as Plaintiffs' Exhibit No. 1, I would point out for the purpose of my question that Sir Mortimer, in Article 23 of the Will, charged you and your fellow Trustees and Executors to take an active and energetic interest in the management of his Estate, and to carry out the policies he had laid down, and particularly to conserve the capital of his Estate and not to sacrifice the same by premature liquidation. Have you intended and endeavored to carry out that provision?
30

A.—With due humbleness, I have, to the best of my knowledge.

Q.—What have you done in order to carry out the policies laid down by Sir Mortimer Davis? I do not mean in detail, but I would like you to give the Court a general idea?

A.—Generally speaking, simply to continue the enterprises and policies which had been commenced prior to his death and which I conceived to be the policies he desired carried out.

Q.—Taking, for example, the present Cadillac Coal Company, what would you say with regard to what the Executors—or the majority of them, in any event—have done in that connection?
40

A.—We had this coal property, situated at Lethbridge, which had been leased to one Donaldson.

Q.—Which coal property are you speaking of now?

A.—Federal Coals. Which had been leased to one Donaldson on the basis of royalty payment.

Q.—Was this during Sir Mortimer's lifetime?

A.—During Sir Mortimer's lifetime.

LORD SHAUGHNESSY (*for Defendants*), *Examination-in-Chief*.

Q.—About when did that occur?

A.—The lease was made many years ago, and ran on from time to time. Sir Mortimer had in mind . . .

Mr. Geoffrion: I object to any reference to justify the conduct of the Executors to any oral or written testimony not in the form of a Will. Executors cannot remake a Will by referring to outside documents. The Will alone stands.

Witness (continuing answer)—Sir Mortimer had in mind acquiring other property.

By Mr. Holden, continuing:

Q.—Are you speaking about coal property?

A.—Coal property. And endeavoring to do something in the coal industry.

Q.—Why acquire other coal property?

A.—The Federal was not big enough. It was a small mine, and was hardly big enough to produce economically. It was recommended by Mr. Poillon . . .

Q.—(interrupting)—Who is he?

A.—The mining engineer who looked after Sir Mortimer's mining interests and the mining interests of the Incorporated Company.

Q.—Was he retained by that Company during Sir Mortimer's lifetime?

A.—Yes. Mr. Poillon recommended the acquisition of a property which was contiguous to the Federal property and which belonged to the Hon. Robert Rogers. The Incorporated Company had already had an option on this property previously, which had expired.

Q.—On the Rogers property?

A.—On the Rogers property.

Q.—When you reach the time of Sir Mortimer's death, will you please say so, because I would like to distinguish between what happened before and what happened after?

A.—What I am telling you now was before his death. Sir Mortimer was communicated with about the property.

Mr. Geoffrion: If there was any communication, I suppose it would be in writing, and we should have it.

Witness: There is a letter he wrote in which he pointed out

LORD SHAUGHNESSY (*for Defendants*), *Examination-in-Chief*.

something to the effect of the Rogers property being peddled about, or something of the kind.

Mr. Geoffrion: I have not been able to be present all the time during the hearing of this case, but I do not want any references to be made to documents which are not filed. Of course, they would be filed subject to my general objection. I do not want to repeat the
10 objection every minute, but I rely on it.

Witness (continuing answer)—He suggested that the property should be drilled.

By Mr. Holden, continuing:

Q.—That is, the Rogers property?

A.—Yes. Sir Mortimer communicated by this self-same letter a possible set-up.

20 Q.—Perhaps you could give us just the general situation, not in detail as to correspondence.

Mr. Geoffrion: My learned friend's case is to try to justify the behavior of the defendants as Executors by the past instructions given by Sir Mortimer before his death. There is a very serious question of law as to whether that is good in law. It is a matter of argument, and I have made my objection.

30 Then there is the question of fact. As Sir Mortimer was in Europe, practically everything, if not everything, would appear by documents, the contents of which should not be paraphrased by any witness. If the documents are of record, the Court will interpret them.

By Mr. Holden:

Q.—Was Sir Mortimer here at least once a year?

A.—He was, yes.

Q.—And sometimes more than once?

40 A.—In 1926 he made two visits here.

Mr. Geoffrion: Of course, whenever anything was done orally it is very easy for Lord Shaughnessy to say it was orally, but as it would be mainly in writing, and in this case we are referring to a letter, I think I must insist on the rule being applied, that when a document is referred to, its contents cannot be related. The document must be put before us.

LORD SHAUGHNESSY (*for Defendants*), *Examination-in-Chief*.

His Lordship: Of course, the documents speak for themselves.

By Mr. Holden, continuing:

10 Q.—I am not asking you to relate what was in Sir Mortimer's letter, but I would like you to tell the Court what was the position just before and at the time of Sir Mortimer's death with regard to the situation which has now developed in the Cadillac Coal Company?

Mr. Geoffrion: I think the matter is sufficiently important to verify whether the document is filed or not.

In the meantime I would like it to be taken that the objection I made formerly to going beyond the terms of the Will applies to all evidence of that class.

20 Mr. Holden: I am not basing the question on the letter being filed. I am just answering the suggestion that it was not filed.

Mr. Geoffrion: If it is not filed, I would say the only way to refer to the letter is to have it.

By Mr. Holden, continuing:

30 Q.—What I am aiming at now is not to discuss any correspondence or particular details, but to ask you to give the Court the main features as to what you did with regard to carrying on the policies of Sir Mortimer Davis as referred to in Article 23 of the Will?

Mr. Geoffrion: If my learned friend instructs the witness to say what he did in the endeavor to carry on the policies, and then asks him later on the question of justification, it may be all right.

By Mr. Holden, continuing:

40 Q.—I did not intend you to refer to any letters, or details, or instructions, except as they may be necessary to make clear your carrying on of those policies, and in connection just now with the present Cadillac Coal Company?

A.—I obtained another option on the Rogers property, for the purpose of drilling it.

Q.—You were then President of the Incorporated Company?

A.—Not then. I had got the option, I think, before Sir Mor-

LORD SHAUGHNESSY (*for Defendants*), *Examination-in-Chief*.

timer died; I am not quite sure. Either before he died, or immediately afterwards.

Q.—Was the option obtained for the Incorporated Company?

A.—Yes. It was an open option, without the payment of anything.

Q.—Were you an officer of that Company then?

A.—Yes.

10

By Mr. Geoffrion:

Q.—That is on the Rogers property?

A.—Yes. That was just about the time Sir Mortimer died. Anything done subsequently was done after his death.

By Mr. Holden, continuing:

20 Q.—What is the bearing of what you have done with regard to the Cadillac Coal Company since Sir Mortimer's death upon his policies before his death?

A.—What I conceived to be carrying out his policies before his death. I conceived it to be carrying out his policies.

Q.—Have you any reason to change your mind in that regard now?

A.—No.

30 Mr. Geoffrion: Of course, my objection applies to that. It is a matter for the Court, not for the defendants.

By Mr. Holden (continuing):

Q.—Before I pass on to the next point: so far as you can see and know today, what is the prospect with regard to the Cadillac Coal Company and its future?

A.—I think the prospect is exceedingly good.

Q.—Have you taken a personal interest in it, and in its organization and incorporation?

40 A.—I have. I have looked into it very carefully. We have a very good coal mining property, with an exceptionally good seam. We have mechanized the production of coal, which has not heretofore been done in Alberta. We are producing coal at very low cost, and the market for that coal is increasing constantly, and I think it is quite reasonable to say that the future is bright.

Q.—What did Sir Mortimer think about Canadian coal fields out there?

LORD SHAUGHNESSY (*for Defendants*), *Examination-in-Chief*.

A.—As he expressed himself, he was bullish on the situation.

Q.—The Jennison Company has also been referred to and used as a weapon of attack by the plaintiffs in their case. What bearing has the Incorporated Company's Investment Company upon the question of Sir Mortimer's policies during his lifetime?

10 A.—Sir Mortimer, for a year or a year and a half before he died, was constantly harping on me to start a Financial Company.

Mr. Geoffrion: Is that in letters also?

His Lordship: There are some.

By Mr. Holden (continuing):

Q.—Did he personally mention it to you?

20 A.—Yes, repeatedly. He wanted to get a Financial man of experience and ability to take charge of the Financial Department that we were going to inaugurate in our own establishment.

Q.—That is, the Incorporated Company?

A.—Yes.

30 In any event he wanted to be in the position where financial projects of importance would be brought to him, and he would have somebody in touch with the Financial world. It was clear it was too much for Mr. Reaper and myself to do and handle the other, and his idea was to interest somebody else. We discussed it at great length on several occasions, and he wrote me a great many letters about it.

Mr. Geoffrion: Are they filed?

Mr. Holden: Some are. I do not know if they all are.

Witness (continuing answer): He instructed me at one time to go to New York and try to get some man there, to whom he was willing to pay a very large salary—I think he said \$50,000 a year.

By Mr. Holden (continuing):

40 Q.—Did you go?

A.—I went to New York, and saw a man there, but he was otherwise engaged. I spoke to Mr. Mather, of the National City Company here

Q.—(Interrupting): Was this before, or after, Sir Mortimer's death?

A.—After Sir Mortimer's death.

LORD SHAUGHNESSY (*for Defendants*), *Examination-in-Chief*.

Q.—Was your trip to New York before his death?

A.—My conversation with Mr. Mather was before his death.

Q.—And your trip to New York was before his death?

A.—Yes, before his death.

Q.—What was the situation at the time of his death?

A.—I am leading up to it.

Q.—Go ahead.

10 A.—Going up on the train to Toronto one night I sat next Mr. Frank Common, one of Mr. Montgomery's partners and we got discussing financial things, and I asked him if he knew of anybody in the financial business or anybody who could do that kind of thing, who could organize a company or something or other, and he asked me if I knew Mr. Jennison. I said I did not. He said, "Well I think he is a very capable fellow and he might be just the man you want. I will send him around to see you."

Q.—Is that Clark S. Jennison?

20 A.—Yes, sir, Clark S. Jennison. Mr. Jennison came to see me. I had a long discussion with Mr. Jennison. I must say I was impressed by his knowledge of what was required. I do not say I expected he was going to do tremendous things; he had only come here. He had been attached to various organizations in the United States, and appeared to have a knowledge of the financial situation. I asked him with whom he had been connected.

Mr. Geoffrion, K.C.: All this testimony of conversations everywhere is objected to for the same reason as given before.

30 The Witness (continuing): I asked him with whom he had been connected and he mentioned among other firms the firm of **Goethals in New York**. I wrote a letter to Colonel Goethals and asked about Jennison and subsequently received a letter back from Colonel Goethals that was not too complimentary.

By Mr. Holden, K.C.:

Q.—Is that letter filed?

40 A.—The references I got at first were not too complimentary. I then consulted with other people here and found out he had done important work for certain companies here. I asked one or two companies and they all appeared to have a very high opinion of his ability. I then discussed with Jennison the prospect of carrying on the plans Sir Mortimer and I had in mind, and after some discussion we came to the conclusion it was probably better to work it through his company rather than create a financial department of our own.

LORD SHAUGHNESSY (*for Defendants*), *Examination-in-Chief*.

Q.—Had he already incorporated the company?

A.—He had the company incorporated, he told me.

Q.—Was that a Canadian company?

A.—Yes; C. S. Jennison.

Q.—Was that before the death of Sir Mortimer Davis?

A.—It was after his death, this part of it.

10 Q.—Do you know he had it incorporated at the time of Sir Mortimer's death?

A.—I don't know. We discussed it.

Mr. Holden, K.C.: We will have a copy of the Letters Patent.

20 The Witness (continuing): So the suggestion was he might get started and he had offices—I don't know whether he had actually rented the offices or not, but he was about to rent some offices, and he needed something to start on so we advanced him \$10,000 on a note which it was agreed if we did not go any further he would take up, and if we decided to go further it would form part of any arrangement we might make.

Mr. Geoffrion, K.C.: Surely I am entitled under the ordinary application of law that what is in writing shall be proved by the writing, not otherwise.

By Mr. Holden, K.C.:

30 Q.—Was this arrangement made by you with Jennison in person or by correspondence?

Mr. McKeown, K.C. We asked Mr. Reaper to produce that letter; it is not produced yet; we want it now.

Mr. Holden, K.C.: My learned friend has closed his case.

40 Mr. McKeown, K.C.: Not at all. It is down here as a numbered Exhibit. It has not arrived yet. Mr. Reaper is here and we want it.

Mr. Holden, K.C.: If my learned friend wishes to apply to reopen his case to get the letter we have no objection.

Mr. McKeown, K.C.: We do not have to apply to reopen.

Mr. Geoffrion, K.C.: The Exhibit was promised and numbered,

LORD SHAUGHNESSY (*for Defendants*), *Examination-in-Chief*.

to be produced. My learned friend knows when I call on the witness to file it it should be filed and we do not need to reopen to put the witness in the box to produce the documents.

Mr. Holden, K.C.: Mr. Geoffrion says it has been numbered and so on.

10 Mr. Geoffrion, K.C.: My objection is more general than that. I say the record is in that very unsatisfactory condition that we never know what is in writing or what is oral; the cross-examination will be endless. We will have to go over every step of this while, if we simply get every document filed as we go on, probably there will be no cross-examination on that point at all, and I simply insist on the elementary rules of law. Whether the witness is testifying to something oral or in writing, he should not be allowed to say what
20 suggest I am entitled to have my learned friend follow that rule.

By Mr. Holden, K. C.:

Q.—Was that arrangement as to the loan personal or by correspondence?

A.—That was personal.

Whereupon an adjournment was taken until 2:30 o'clock p.m.

30

On this May 7th, 1930:

WILLIAM JAMES LORD SHAUGHNESSY,

re-appeared and continued his evidence as follows (*examination-in-chief*).

40 By Mr. Holden, K.C.:

Q.—Before we go on with what I was discussing with you, I should ask you this. I omitted to ask it. The Court knows already that Lady Davis was in Europe. I understand the only other Executor available to you for most of the time has been Mr. Reaper, the other defendant?

A.—Yes.

LORD SHAUGHNESSY (*for Defendants*), *Examination-in-Chief*.

Q.—Have you been in contact and in conference with Mr. Reaper in Estate matters since Mr. Mortimer's death constantly?

A.—Yes.

10 Mr. Geoffrion, K.C.: I think there was submitted to Your Lordship an objection on my part calling for the correspondence to which there had been reference. That point would have to be settled by Your Lordship pretty early and may as well be now. My difficulty is this: it is of some importance,—I do not say vital importance—but is of some importance that we should have a distinction between that which passed by word of mouth and that which passed by telegram or letter between Sir Mortimer and the Executors. It may be important; it is bound to be important, important enough to take care of that aspect of the case in the evidence. The way the story is being related makes it undoubtedly more consecutive. In cross-examination my first question would have to be, in respect of all these things: Will you give me all the letters or telegrams on
20 which you rely? I suppose there will have to be an adjournment to get them. When I get them there will have to be an adjournment to read them. It seems to me whatever his testimony would be in respect to something that would be claimed to be in writing, that the writing should be then put in; otherwise he is claiming it to be oral conversation, because he is not entitled to relate what is in the document except in certain circumstances. It will delay my friends in classifying the correspondence and we must have that delay some time, and if I have it, then I would be ready to cross-examine immediately.

30 Mr. Holden, K.C.: I have given very careful consideration before today to that very question. We have been over 30 days in hearing the plaintiffs' evidence and after careful consideration I came to the conclusion with my own counsel's approval, that the procedure we were now adopting was the best way for the information of the Court to handle Lord Shaughnessy's evidence, namely what I propose to do is to have Lord Shaughnessy tell what he has done as one of the Executors and then he might produce before he leaves the box the letters we consider should be produced in con-
40 nection with the story, subject to any other letters our opponents may feel it important to have. I do submit that our opponents or ourselves should not interrupt or interfere with the story on the fact of what he did, whether they were letters or not, until that story has been given, and that we then should produce what we think should be produced and our opponents will then have full opportunity to produce anything they think relevant. It is a good many days now since we turned over at the request of our opponents every-

LORD SHAUGHNESSY (*for Defendants*), *Examination-in-Chief*.

thing our clients know of in the way of correspondence, and it is a very large body of correspondence, and I do not think it would help Your Lordship any or would be in accordance with my duty to my clients if I attempted to weed out and discuss that correspondence when Lord Shaughnessy is endeavouring to give this Court the story of what he has done since the death of Sir Mortimer.

10 Mr. Geoffrion, K.C.: As long as Lord Shaughnessy confines his **evidence strictly to what he did, that, of course, has nothing to do** with instructions or precedents as of course we are dealing with what he did since the death, and he says he is acting under instructions given under alleged similar circumstances. **I cannot object to** my learned friend making evidence of what Lord Shaughnessy did. If what he did was subject to agreement it would be a special case, but as a general proposition my objection now does not apply to what he is relating since his death. My objection is to what Sir
20 Mortimer approved during his lifetime. When Lord Shaughnessy tells us that he has done that, and if Mr. Holden asks him the question, if what was done was expressly complied contained in written messages from Sir Mortimer Davis, these should be filed. When he testifies now without filing the instructions he does not refer to what was done.

Mr. Holden, K.C.: If my learned friend will take a note of any such reference I think he will be perfectly able to prepare for cross-examination. If you divide your examination in two parts, first
30 what Lord Shaughnessy has done, and the reasons he has done such and such a thing—

By Mr. Holden, K.C.:

Q.—I asked you a moment ago whether you had been in contact and in conference with the only other Executor who lives here. What was your answer?

A.—All the actions that we took were discussed carefully between Mr. Reaper and myself at all times.

40 Q.—For the purpose of the record, your office is in the Canada Cement Building?

A.—Yes.

Q.—Where is Mr. Reaper's office?

A.—Next door to mine.

Q.—You don't mean the next building, but the same building, on the same floor?

A.—Yes.

LORD SHAUGHNESSY (*for Defendants*), *Examination-in-Chief*.

Q.—We were discussing before the noon adjournment the Cadillac Coal Company and the Incorporated Company's investment in that connection. I just want to ask you this: It has been already proved what has been done since Sir Mortimer's death with regard to the incorporation, organization and so on, of this new company. Why did you say that this carries out the policies of Sir Mortimer? To sum the matter up, is my information—

10

Mr. Geoffrion, K.C.: I object to summing up because I don't like my learned friend summing it up or the defendant summing it up.

Mr. Holden, K.C.: It is too bad my learned friend has not been on our side for the last 35 days.

The Court: I have no objection when you are finished Lord Shaughnessy's story of what he has done you should begin over again operation by operation and ask him his authority or his justification for doing what he has done.

20

Mr. Geoffrion, K.C.: When it is in writing I want the writing.

Mr. Holden, K.C.: What I really had in mind was not the same thing Your Lordship has in mind and I will not press the question. I expected Lord Shaughnessy to say it was in accordance with the policies adopted personally by Sir Mortimer in his lifetime. At any rate I will not press that. We will come to the correspondence letter.

30

By Mr. Holden, K.C.:

Q.—In addition to the Cadillac Coal Company the Incorporated Company since Sir Mortimer's death has invested in the capital stock of the Jennison Company. Will you tell the Court what you and Mr. Reaper as the majority of Directors of the Incorporated Company have done in that regard, not too lengthily if you can avoid it; from the beginning what happened?

40

A.—As I said this morning, Mr. Jennison was given \$10,000 on the security of a note and stock of his Company.

Q.—You said "given"?

A.—It was to get started. We purchased preferred stock of his company with a bonus of common shares for the sum of \$50,000.00.

Q.—What happened with regard to the \$10,000 that you had already advanced?

LORD SHAUGHNESSY (*for Defendants*), *Examination-in-Chief*.

A.—That was included in the purchase price.

Q.—You had to pay him the balance only?

A.—We had to pay him the balance only.

Q.—What is the present position, the position of the Jennison Company as far as you know?

10 A.—The only thing I know at present is somewhat hearsay, is what Mr. Jennison told me.

Mr. Geoffrion, K.C.: Objected to. What his company, the Incorporated Company, may do I submit may be useful for the Court to know. Is he the President of the Jennison Company?

The Witness: He is, of his own company.

20 Mr. Holden, K.C.: What the President of that company told him may or may not be justification, but it is relevant, I submit, to this issue.

Mr. Geoffrion, K.C.: It is irrelevant *prima facie*. Jennison is full of life.

The Court: The question is whether on the strength of Jennison's statement Lord Shaughnessy made further advances or was satisfied his money was safe.

30 Mr. Geoffrion, K.C.: If he made a further advance I quite appreciate the statements made to him which induced the advance to be made would be quite material in excuse of his good faith. I understand what is his present opinion of the present situation, from the report of Jennison, does not justify what he did then or condemn it at all, because it was not a moving factor in his opinion.

Mr. Holden, K.C.: Our opponents have made a great outcry—

The Court: I have dismissed so many objections I will dismiss this one too.

40 By Mr. Holden, K.C.:

Q.—State what he told you?

A.—He has completed, I understand, a financial deal or amalgamation which will be most profitable to the Jennison Company.

Q.—And therefore to its shareholders?

A.—And therefore to its shareholders.

LORD SHAUGHNESSY (*for Defendants*), *Examination-in-Chief*.

By the Court:

Q.—Did you get that verbally or in writing?

A.—I got that verbally.

Q.—Lately?

10 A.—Lately. He had practically completed it before he went.

By Mr. Holden, K.C.:

Q.—Did you make inquiries with regard to Jennison before purchasing finally \$50,000 of the capital stock?

A.—I did, yes.

Q.—Tell the Court what you did in that connection?

20 A.—When the first report on Jennison, as I said this morning, was not satisfactory, I consulted with Mr. Malcolm McAvity, who represents the Iselin interests of New York, and various enterprises, and I asked him about Jennison. He had had considerable business dealings with him.

Q.—Are the Iselin interests important financially?

A.—Oh, yes, very.

Q.—I want it on the record.

30 A.—He told me that Jennison had done some work for the Canada Steamships, and I asked Mr. Coverdale if he knew about Jennison and he said he did; he was a very able fellow; he had always been very satisfactory as far as he was concerned, and I think I consulted Governor Smith of Vermont, who lives near Jennison. I spoke to him one day about him. As a matter of fact, I interviewed Jennison and asked him under what circumstances he had severed his connection with Goethals and Company, and the answer that he gave me indicated to me that possibly the criticism of Colonel Goethals was not entirely unprejudiced, and on that I made up my mind it was perfectly fair to deal with Jennison.

Q.—When you said at the outset the first report you had was not entirely satisfactory, did that refer to Colonel Goethals?

40 A.—It referred to Colonel Goethals, yes.

Mr. Geoffrion, K.C.: Is the letter filed?

Mr. Holden, K.C.: No.

Mr. Geoffrion, K.C.: We will call for the filing of the letter.

Mr. Holden, K.C.: We will file it.

LORD SHAUGHNESSY (*for Defendants*), *Examination-in-Chief*.

Mr. Campbell, K.C.: Suppose Mr. Reaper makes a list of the letters and we will give them to you at the adjournment?

Mr. Geoffrion, K.C.: Certainly.

By Mr. Holden, K.C.:

10 Q.—Have you had any reason to regret this investment in the Jennison Company?

A.—No material reason.

Q.—What, in your opinion, is the prospect——

Mr. Geoffrion, K.C.: He told us. He told us everything by hearsay.

The Witness: Well, the prospect as far as Sir Mortimer Davis
20 Incorporated was concerned, would very largely depend on how the connection of Jennison is going to be proceeded with in the future.

By Mr. Holden, K.C.:

Q.—The success of his company's business?

A.—The success of his company's business.

Q.—Now, the third investment of the Incorporated Company which has been criticized by the plaintiffs and their Counsel is the Investment Foundation Limited, in which the Incorporated Company
30 invested money. Tell the Court why the company invested that money and what was done in that connection?

A.—Well, that investment flowed out of the Jennison matter. It was considered important if we were to carry through this financial connection that we should establish financial connections with some group of people who were closely connected with financial affairs, and the Board of Directors of the Investment Foundation Company would be probably the most able young financial men in Montreal, men who were closely associated with financial affairs, and it was
40 considered advisable to make that connection for that purpose.

Q.—Was that in accordance with the policies of Sir Mortimer in his lifetime?

Mr. Geoffrion, K.C.: Objected to, unless any written evidence of such policy is filed.

Mr. Holden, K.C.: Here is Lord Shaughnessy, who has had in-

LORD SHAUGHNESSY (*for Defendants*), *Examination-in-Chief*.

timate connection with Sir Mortimer for so many years preceding his death, and I think for what it may be worth it is a relevant question to ask him, apart from any correspondence, whether it was in accordance with Sir Mortimer's view.

10 The Court: I think Lord Shaughnessy did not intend to deviate from Sir Mortimer's instructions——

By Mr. Holden, K.C.:

Q.—What was done with regard to Investment Foundation Limited?

A.—We purchased a certain block of units, preferred stock and common stock in that corporation.

Q.—What is your anticipation as to the future of that connection?

20 A.—It is very difficult to tell the future, Mr. Holden, but it would appear to be sound.

Q.—Now, passing to another provision of Sir Mortimer Davis' Will, Article 15 of the Will provides that

30 “ except where otherwise decided by my Trustees and Executors, or to make payment of particular legacies as provided for in this Will, I direct that the capital of said revenue of my Estate shall remain absolutely vested in the hands of my Trustees and Executors for a period of at least 50 years from the date of my death during which period no beneficiary shall be entitled to demand any partition of my Estate. My Trustees and Executors may, in their absolute and uncontrolled discretion, make partitions of my Estate partial or entire prior to the expiration of the period above named, should they consider it desirable and proper to do so, but not otherwise.”

And then the Article goes on:

40 “ In explanation of this provision of my Will I desire to state that the greater part of my Estate consists of notes or debentures and shares of Sir Mortimer Davis Incorporated, a company presently organized under the laws of the province of Quebec. In this Company is vested the control of several important undertakings, all of which I believe by proper management will greatly increase in value and thus yield in capital and revenue a great benefit to my Estate.”

LORD SHAUGHNESSY (*for Defendants*), *Examination-in-Chief*.

Another paragraph:

10 “ To disturb the organization of this Company would result in the depletion of its resources and the perfect 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.”

That is an important Article, and I ask you in the first place—I think it is already on the record—that you and Mr. Reaper were two of the Directors of that Company, and later Lady Davis was elected a third Director. That is right, is it not?

A.—Yes.

20 Q.—Has Sir Mortimer Davis Incorporated been carried on in the manner desired by the majority of the Directors?

A.—Yes.

Q.—Then Article 22 of the Will provides:

“ That the books and accounts of my Estate are to be kept in the office of Sir Mortimer Davis Incorporated and all Meetings are to be held and business transacted in that office unless agreed to otherwise by all my said Trustees and Executors.”

30 Have the books and accounts of the Estate been kept and are they now kept in the office of Sir Mortimer Davis Incorporated?

Mr. Geoffrion, K.C.: There is no criticism as to the place where the books are kept in this suit.

Mr. Holden, K.C.: I had particularly in mind if the whole matter should be turned over to a Trust Company. We all know the methods of Trust Companies as to records and so on.

40 Mr. Geoffrion, K.C.: When the Judge has maintained this action, whether it will be a Trust Company or an individual, the remedy is easy. The Trust Company will move the office of Sir Mortimer Davis Incorporated where it wants it to be moved.

Mr. Holden, K.C.: I do not think it is worth the time we are taking to discuss it, but I do think it is sound and relevant.

By Mr. Holden, K.C.:

LORD SHAUGHNESSY (*for Defendants*), *Examination-in-Chief*.

Q.—Did you answer that?

A.—They were kept in the office of the company.

Q.—Are all Meetings and business transacted in that office?

A.—All in that office.

Q.—The office of the Incorporated Company is on the same floor of the Canada Cement Building as your personal office and Mr. Reaper's office?

10 A.—My personal office and Mr. Reaper's office constitute the office of Sir Mortimer Davis Incorporated.

Mr. Geoffrion, K.C.: So the office, including the Executors', could constitute the office of Sir Mortimer Davis Incorporated.

By Mr. Holden, K.C.:

Q.—The rest of the floor, I understand, is occupied by the Canadian Industrial Alcohol?

20 A.—And subsidiaries, and some other tenants.

Q.—There are some other tenants?

A.—Yes.

Q.—I am not sure how clearly it is on the record so I will ask you when, in fact, were you first elected to the Board of the Canadian Industrial Alcohol Limited?

A.—In 1921.

Q.—Did you hold any other office than Director before you became President?

30 A.—I was Vice-President of the Company during part of the year 1925.

Q.—In 1925 you became President of the Alcohol Company?

A.—At the Annual Meeting in December, 1925, I became President.

Q.—Have you been President ever since?

A.—Ever since.

Q.—And still President?

A.—Yes, so far.

40 Q.—Have you personal holdings or shares in that company?

A.—I have some shares.

Q.—Do you remember how many shares?

A.—About 3,400 shares.

Q.—About 3,400. Are they both classes?

A.—They are both classes.

Q.—Do you remember how many voting shares? What we call "A" shares?

LORD SHAUGHNESSY (*for Defendants*), *Examination-in-Chief*.

A.—I have 2,000 voting shares, I think. The balance is non-voting.

Q.—When did you become a shareholder in your own right in Canadian Industrial Alcohol, do you remember?

A.—Oh, back somewhere around 1920; between 1920 and 1921, I think. I am not quite certain of that date. I have it for a long time.

10 Q.—You mean approximately?

A.—Yes, I have it for a long time.

Q.—With regard to the shares of Canadian Industrial Alcohol, as I understand it our opponents agree that the Executors were not able, under the Will, to sell the voting or “ A ” shares, but they complain with regard to the failure to sell the “ B ” shares. Tell the Court the situation as you see it in that regard as to why the Directors of the Incorporated Company, or the majority of them, have not sold the “ B ” shares of the Alcohol Company?

20 A.—Well, first of all it must be considered that at the time of Sir Mortimer’s death, shortly after his death up until the beginning of 1929, both the “ A ” shares and the “ B ” shares of Alcohol had a very considerable value which we had no reason to believe would decrease in any respect. The “ B ” shares could be sold under the provisions of the Will, but it was not practicable to sell a large block amounting to 55,000 or 60,000 “ B ” stock on the market for “ B ” shares. We sold some, some 6,000 shares, but it was quite impracticable without seriously affecting the market price of the “ B ” stock, for which the market was very limited, to sell large quantities of “ B ” stock; in addition to which had Sir Mortimer Davis Incorporated, owning a majority interest of the “ A ” stock or voting stock, 30 which was its principal asset, attempted to throw blocks of Alcohol stock of any description or kind on the market and the fact became known, it would have had a very detrimental effect upon all the securities of that Company since the public would have immediately come to the conclusion that the Davis Corporation was getting out.

Q.—That would include “ A ”?

A.—Including “ A ”; very materially.

Q.—Of which the Incorporated Company held over half?

40 A.—Exactly. The “ B ” stock could have been sold if it could have been sold at all through some private arrangement or some pool operation. We did not consider it advisable to start any pool operation, and we never received at any time any offer from anybody at any price for any quantity of the “ B ” shares.

Q.—Did you hear Mr. O’Brien, the stock broker, give evidence under reserve of our objections, as to what the late Murray Williams had said and done?

LORD SHAUGHNESSY (*for Defendants*), *Examination-in-Chief*.

A.—I heard Mr. O'Brien's evidence.

Q.—Will you state to the Court what happened between you and Mr. Murray Williams, the late Murray Williams, as briefly as you can, but enough to give the Court the circumstances of what occurred?

10 A.—I had two interviews with the late Murray Williams, one interview at my house one afternoon after the baseball match.

Q.—Do you know about when that would be?

A.—It was some time in the summer of 1928. It might have been June, probably, because it was after the baseball match and that is the time they start playing. Somewhere in June, anyway. At that interview Mr. Williams expressed disappointment at the action of the " B " stock in the market. It was lagging. There was not much interest taken in it. There was not much on the market.

Q.—Had his firm then any instructions from your Company in that connection?

20 A.—They used to do stock broking for us, yes.

Q.—And for Sir Mortimer, of course?

A.—They had, previous to his death, yes; and he suggested the market might be helped if we purchased from time to time.

Q.—With buying Sir Mortimer Davis Incorporated?

30 A.—With buying Sir Mortimer Davis Incorporated, " B " stock, which he felt confident could be realized upon later at possibly a profit. I was not in accord with that view. I could not see why we should accumulate more " B " stock when we had " B " stock. Well, as a matter of fact, I did not concur in that opinion. I heard nothing from Mr. Williams for some considerable time, but later, in the autumn, I think of 1928, he telephoned me one night just before I was leaving the office, a quarter past five or five o'clock, asking if he could drop in and see me for a minute. He came in. He then told me he thought he could get together two or three brokers in New York and I think he mentioned the name of Cutten and Company as one of them, who might make a proposition with regard to our " B " stock. I asked him what that proposition was likely to be if he got them together, and he said in all probability they would require options at various prices on blocks of 10,000 shares each, starting at a price, I think, some 10 points below the market price, and graduated on a scale up. I laughingly said I did not see why they should expect us to sell stock away below the market price. In any event, when the proposition came along I would have to deal with it, and that is all that was heard of it.

40 Q.—And now you never heard anything since with regard to such a proposition?

LORD SHAUGHNESSY (*for Defendants*), *Examination-in-Chief*.

A.—Never heard anything more from Mr. Williams

Q.—Was there any definite offer in these interviews with Mr. Williams?

A.—None whatever. I myself attempted to sell “ B ” stock in New York.

Q.—When do you suppose that was?

10 A.—That would have been during the summer of 1928.

Q.—What did you do there?

A.—I saw two stock broking firms, M. J. Meehan and Company and Harris Winthrop and Company, but these firms had an idea they would like to get a large block of the “ A ” stock as well to list on the New York Exchange to help them work on the market, and attached the condition if they were going to enter into it that the “ B ” stock would have to be converted into “ A ”, and that would have meant we would have to retain the “ B ” as voting stock, in order to maintain control, and we were not able to make any progress further.

20 Q.—What was the intention of the Directors with regard to the “ B ” stock if you thought you could get a suitable price for it??

A.—I think if we could have got a suitable price we would have sold it. I think that was the intention.

Q.—What did you do about a block of 5,000 shares?

A.—O’Brien and Williams, I thought, bought 5,000 shares from us, but it turned out they took 5,000 shares for sale in the market. I don’t remember when.

30 Q.—Was it after Sir Mortimer’s death?

A.—Yes. They sold 4,200 shares at a price we fixed. I think we fixed the price at 45. They sold 4,200 and retained the balance of the shares for some very considerable period and sent them back to us. They could not sell them at that price. I might explain in connection with the “ B ” stock, My Lord, the loan from the Bank of Commerce which was incurred during Sir Mortimer’s lifetime for the taking up of the “ B ” stock by the Company and the McNish debentures, was secured by “ A ” stock, but the policy which we would probably have pursued had we sold “ B ” stock would be that we would have paid off a portion of the Bank loan relating to the “ B ” stock. Therefore, we would be left with the equity between the purchase price and whatever we sold at.

40 Q.—Plaintiffs allege the female plaintiff gave a Power of Attorney to you and to Mr. Reaper on the 4th of May, 1928, “ At the suggestion of Defendant Shaughnessy ”. That is at your suggestion? Will you tell the Court what happened with regard to that Power of Attorney so far as you are concerned?

LORD SHAUGHNESSY (*for Defendants*), *Examination-in-Chief*.

A.—So far as I can remember in connection with that, Lady Davis told me she was going away and she would not be back. I consulted Mr. Phillips.

Q.—About when would this be?

A.—That would be some time in the beginning of May, possibly earlier.

10 Q.—Not long after Sir Mortimer's death?

A.—No, and I discussed with Mr. Phillips what should be done and he said a Power of Attorney should be given.

Q.—Mr. Phillips is a Notary?

A.—Yes. Lady Davis came to my office one day. My impression is that Mr. Phillips was there with the Power of Attorney. I am not terribly sure of that. I think he was there. I suggested possibly this Power of Attorney could be given to her brother as she felt she wanted to put certain responsibility into the hands of her brother when she was going away. Mr. Phillips pointed out the
20 Power of Attorney would have to be given to the co-Executors under the Articles of the Civil Code, or Mr. Phillips suggested that her brother might be given a Power of Attorney to represent the inventory of the Estate and one was given. That Power of Attorney had already been drawn, I think, in favor of your firm, but was subsequently changed and given to Curran.

Q.—Was Lady Davis present when Mr. Phillips pointed out that the Power of Attorney from her as Executor could not be given to her brother?

30 A.—That is my impression, that Mr. Phillips pointed out it would have to be given to a co-Executor.

Q.—At any rate, after he pointed that out, she executed the Power of Attorney that has been filed?

A.—Yes.

Q.—It has already been proved that after giving the Power of Attorney, Lady Davis returned to Europe. Before she returned, did she request, or stipulate, or suggest that any reports or communications of any kind should be made by you or Mr. Reaper, or both of you, to her after giving that Power of Attorney?

40 A.—No.

Q.—Mr. Reaper has already testified as to what was sent her, as also Lady Davis, and as to what she got afterwards. If she had asked for anything else, what would you have done?

A.—Obviously I would have given it to her. I would have sent it to her with pleasure.

Q.—Referring to another allegation in the plaintiffs' declaration, the plaintiffs make certain allegations with regard to you and

LORD SHAUGHNESSY (*for Defendants*), *Examination-in-Chief*.

Lady Davis having met in London, England, in May, 1929, and particularly with regard to the Jennison matter. Let me ask you first, what were the circumstances of your meeting, or meetings, in London at that time?

10 A.—On May 12th, 1929, my wife and I were down in the country visiting my daughters at school, and arrived back at the Ritz Hotel in London in the evening about six o'clock. When we arrived there, the hall porter said that Lady Davis had arrived, and had rather expected that I would have got accommodation for her, but when I got to my room I found a wire she had sent, that I had not received. I had left before the wire came, so my wife and I went up to Lady Davis' room and saw her, and we had a chat with her, and I think I asked her, "Why this sudden idea of going out to America", because we had left her in Paris about two weeks before, and she had not said anything about it. She told me she was going out to visit her brother who was not too well.

20 The next day, Monday, the 13th, Lady Davis and I lunched together at the Ritz Hotel. After lunch I told her there were one or two things that I had to bother her with, and could we have a conference, so we went up to her room and there discussed matters in connection with affairs here, but more particularly some letters that I had from Mr. Candelas, the Paris Solicitor, referring to things about the Villa, and incidentally I submitted to her three drawings of a proposed Memorial to Sir Mortimer—a proposed Memorial here—and asked her to pick out the one she thought most proper, which she did. It was then we discussed the Jennison matter. I told
30 her briefly about the Jennison situation, what we had done, and after that she raised a question about her passport, that she had a Canadian passport, she was afraid that there might be some trouble if she did not get it vised, and to make sure of the thing, I took the passport over to the American Consul's office, Mr. Holstead, who used to be here, and had them write a letter which cleaned up the passport situation, and I went back to the hotel and delivered it.

Q.—Did she already have her accommodation?

A.—Her accommodation was all arranged then.

40 That evening my wife and Lady Davis, and a friend of hers, a gentleman called Aldo, and myself, dined at the Embassy Club, dined and danced, and stayed there until probably two o'clock, when we came home.

Q.—Was that the extent of your having met Lady Davis in London during May, 1929?

A.—That was all, because she sailed the next morning, and I went down to the station to see her off to Southampton.

Q.—In view of the allegation contained in paragraph 28 of the

LORD SHAUGHNESSY (for Defendants), Examination-in-Chief.

plaintiffs' declaration that, " Alarmed at your announcement of policy for the future administration of the Estate, female plaintiff left for Montreal immediately ". Let me ask you, were your interviews, or any of them, the cause of her leaving for America?

A.—I had no reason to suppose that. She never expressed any alarm.

10 Q.—Before she met you, did she already have her accommodation?

A.—Yes.

Mr. Geoffrion: The witness has said so already.

By Mr. Holden:

Q.—At those interviews, or any of them, did you state that you were paying Jennison \$20,000 a year?

20 A.—No, I did not state that we were paying it. I probably said that Jennison under our agreement was to get a salary of \$20,000 a year.

Q.—From whom?

A.—From his own Company.

Q.—From the Jennison Company?

A.—Yes.

Q.—Did you mention the figure of \$150,000,000 in connection with this enterprise?

30 A.—No. I have no recollection of mentioning any such figure at any time to anybody.

Q.—If you had mentioned a figure of that amount, would you recollect it?

A.—I should think so.

Q.—During the evening at the Embassy Club, was that a business meeting or what was the character of that meeting?

A.—It was purely social. We were dining and dancing.

Q.—When were your business discussions?

A.—In the afternoon.

40 Q.—As to the party of four that you have mentioned being at the Club in the evening, did all four of you sit together?

A.—Yes.

Q.—At the table?

A.—Yes.

Q.—The plaintiffs have also alleged that you improperly took certain furniture that was in the dining room of the Pine Avenue house of the late Sir Mortimer Davis. Please tell the Court what occurred in that regard?

LORD SHAUGHNESSY (*for Defendants*), *Examination-in-Chief*.

A.—In April or May, before Lady Davis sailed for Europe, after her husband's funeral——

Mr. Geoffrion: I might put here an objection, in view of what the answer inevitably will be.

(Objection reserved.)

10

By Mr. Holden:

Q.—That would be April or May, 1928?

A.—Yes. In my house one evening, I casually asked Lady Davis whether it was likely that any more furniture would go over to France, as some furniture and some silver had been taken under Sir Mortimer's instructions before his death, and had been shipped over to France, and arrived just about the time of his death, and she said
20 no, that there was no such intention, no such arrangement, and I then mentioned quite casually that the dining room furniture was dining room furniture that I required, I wanted, and that I might probably take it over as a memento, as I had more of a sentimental interest in it probably than someone who would buy it at auction, or buy it with the contents of the house.

Q.—One moment: When you say a memento, in what connection do you say that?

A.—I had been left a legacy of \$1,000 to buy mementoes.

Q.—That is, clause 4 of Article 8 of the Will, which reads: "To
30 my friend, the said Lord Shaughnessy, a legacy of \$1,000 wherewith to purchase a memento". That is what you refer to?

A.—Yes.

Q.—Excuse me interrupting you. Will you continue?

A.—Lady Davis did not express her disagreement. I do not remember whether she said all right or not, but I think she implied that that would meet with her wishes.

Q.—Are you sure she did not object?

A.—She did not object.

I did nothing about it because, at that time, the furniture had
40 not been valued, and it was not until after the valuation came that I made up my mind I would carry that through.

Q.—Is that the sworn valuation before Notary Phillips which has already been referred to?

A.—Yes. I spoke to Mr. Reaper about it, and told him I thought I would take it over in payment of the legacy, but I did feel that the valuation placed upon it by the valuator was somewhat low. It was done for Succession Duties.

LORD SHAUGHNESSY (*for Defendants*), *Examination-in-Chief*.

Q.—Do you remember about what that valuation was?

A.—Around \$400—I think it is \$300 or something around there, something very low, and I went up to the house subsequently and saw Godsall, at the Pine Avenue house.

Q.—The Sir Mortimer Davis house?

A.—The Sir Mortimer Davis house; and I was going to take
10 over this furniture, and made arrangements to take it, and send the van up, and I asked him to send a memorandum to Mr. Reaper of just exactly what went, and then I asked Mr. Reaper to hold the matter of the legacy in abeyance until such time as the Succession Duties were paid, as I hoped they would be paid. I hoped it would not take as long as it did to adjust the matter between myself and the Estate.

Q.—Was the dining room furniture put in your dining room at your own home?

A.—Yes.

Q.—Can you tell the Court how often Lady Davis has been there
20 to dinner since that furniture was put in your dining room?

A.—My recollection is that she was at dinner twice, and at luncheon once.

Q.—The luncheon was in that same room?

A.—Yes, during the month of June last.

By Mr. Geoffrion:

Q.—1929?

30 A.—1929.

By Mr. Holden:

Q.—Was anything said about the furniture?

A.—No, nothing.

Q.—Nothing more than what you have told us?

A.—No.

Q.—Have you as yet ever tried to claim anything as a balance
of the legacy?

40 A.—No, I have never discussed the legacy.

Q.—The plaintiffs have also thought best to make allegations with regard to a Rolls-Royce automobile. In the first place, what kind of car, and in what condition was this Rolls-Royce which belonged to the Estate?

A.—When I was up at the garage one day, I noticed this car, which I knew very well as having belonged to Sir Mortimer, an old Rolls-Royce car.

LORD SHAUGHNESSY (*for Defendants*), *Examination-in-Chief*.

Q.—This was after his death?

A.—This was after his death—up on hurdles, without any wheels on it. I asked Godsall if the car would run.

Q.—Who is Godsall?

A.—He is the chauffeur up there.

Q.—Of the Estate?

10 A.—Yes.

Q.—Sir Mortimer's chauffeur?

A.—Sir Mortimer's chauffeur. He said he thought it would, and I said, "Well, I would like to try it out and see if anything could be done with it, and I may sell it or something if it does not cost too much to put it in repair", so he took it out and took me for a ride one Saturday afternoon, to try the car out, and then I suggested that I would run it for a bit and see if it would run all right, and find out if it could be put in a proper state of repair without too much cost. I told him to send it down to my garage, which he did, and my
20 chauffeur took me out, and took my family out on several occasions, principally from my office to the baseball park, because we were cautioned not to go much further, because the tires were not very good and might blow out or something. After running it a short time on trips from my office to the baseball park, I left for Europe, I think, in July.

Q.—May I ask you now when the new license was obtained. Was that before you left or after?

A.—I think that license was obtained before I left.

30 Q.—You might tell the Court what happened?

A.—My chauffeur suggested I had better get a license, because he was frightened of being held up on the old license. We had no license; there was no license on the car; and he made out the form and handed it to me, and I signed it, and the license was obtained.

I might point out that possibly I was very wrong in not examining the form more carefully, when he put my name in as the owner when I actually was not. I simply signed the thing and gave it to him, and he took out the license.

40 Q.—Did you notice when you signed that you were signing over a printed word "Owner"?

A.—I did not see that. I signed the thing quickly and handed it to him.

Q.—What was your purpose in signing that application?

A.—Simply because he told me he wanted to get a license. He could not get a license for a short time, he had to get it for the whole year.

Q.—Why did he want a license?

LORD SHAUGHNESSY (*for Defendants*), *Examination-in-Chief*.

A.—To run the car around.

Q.—Do you know when the last license had expired?

A.—I really did not know much about the license until comparatively shortly before this case, but I have heard in Court that the license expired in 1928, I think. I do not think it was renewed. The car was not used by me after July, 1928.

10 Q.—Your own chauffeur made this suggestion——

By the Court:

Q.—1928, did you say?

A.—July, 1928, when I went to Europe. I had it in my garage on hurdles again for some considerable time, and then sent it back.

By Mr. Holden:

20 Q.—Was it put on hurdles in your garage before you left for Europe?

A.—Afterwards, the chauffeur put it up, he did not want to have it standing. I told him it would cost too much to put it in repair.

Q.—What investigation or inquiry did you make before you decided it would cost too much?

A.—I ran it a bit, and then asked him what he thought would have to be spent on it, and there were so many things it seemed to me it would be asking people too much to try and put it in repair.

30 Q.—And after you came back from Europe, what was done with the car?

A.—It was in my garage for some considerable time, and then sent back to the garage on Pine Avenue.

Q.—It is still on hurdles in the garage?

A.—It was on hurdles.

Q.—It has already been proved that it was a very old model. Had it a self-starter?

A.—No.

Q.—What automobile, or automobiles, had you personally?

A.—I had two.

40 Q.—Do you remember at that time what they were? What cars were they?

A.—One was a Rolls-Royce, and the other was McLaughlin.

Q.—You had those at the time you took over this car and tested it as you have described?

A.—Yes.

Q.—Allegations have been made and some evidence has been adduced with regard to you and your family having paid visits to the

LORD SHAUGHNESSY (for Defendants), Examination-in-Chief.

Estate's property at Ste. Agathe since Sir Mortimer's death. In the first place, what was the situation between you and Sir Mortimer before his death, with regard to the Ste. Agathe property?

A.—Sir Mortimer had very often expressed the wish that I should go to Ste. Agathe whenever I felt like it, that he felt the house ought to be used, and after his death I went up there once or twice with my family.

10 Q.—And when you went after his death, was the Estate put to any expense as a result of your visits?

A.—None that I know of, except the occupation, the wear and tear of the occupation of the house.

Q.—Apart from wear and tear. Did you pay whatever had to be paid?

A.—I took my own provisions, and did all that. Probably the services the people had rendered there to me during the time we were there might be considered an expense, something of that kind.

20 Q.—It has already been testified to, that the produce and so on were charged up to you?

A.—I paid for that.

Q.—Do you remember how many visits you made after Sir Mortimer's death?

A.—There were two anyway.

Q.—To what extent?

A.—One week-end, and then, I went up one week-end and my wife and I came back, and my children remained for three or four days longer. Those two I distinctly remember. There may have
30 been others.

Q.—Now Lord Shaughnessy, I do not want to discuss, and I should not, as I conceive it, discuss the merits of the other action that has been instituted against you, concerning your agreement with Sir Mortimer of the 17th of September, 1924, but I should ask you this: Will you tell the Court as briefly as you can the main features why you gave up the actual practice of law and assumed the position and connections that have now culminated in your Executorship and so on in this Estate?

40 Mr. Geoffrion: We object to this as tending to prove against the terms of a written agreement, or alternately as not tending to prove anything relevant to the case.

His Lordship: It is all in the agreement.

Mr. Geoffrion: It is a written agreement. I made my objection alternately.

LORD SHAUGHNESSY (*for Defendants*), *Examination-in-Chief*.

Mr. Holden: I had in mind the facts leading up to the making of the agreement.

His Lordship: Of course, it is not likely that Lord Shaughnessy would have given up a lucrative practice of law without some substantial inducement or some substantial offer. I see no objection to his answering the question.

10

Mr. Geoffrion: I have no objection to my learned friend going on with it under reserve but I am simply stating my objection.

His Lordship: Objection reserved.

Witness: Sir Mortimer Davis, who was a great friend of my father's, and a great friend of mine, held out to me advantages that would be derived by me through making the change. We had always got on very well, and he offered me substantial considerations for giving up what then was, at all events, a rising practice of law, to go in with him and take hold of his interests, and after some discussion the consideration culminated in the Agreement as executed on the 17th of September.

20

By Mr. Holden:

Q.—Did you hesitate and consider, or what was the situation from your own point of view?

A.—Well, I had considered the matter once before, and naturally I took some time to consider it.

30

Q.—As a result of suggestions from whom?

A.—Naturally I took some time to consider the matter in 1924 when he first broached it to me.

Q.—Allegations, and some evidence, have been made with regard to what happened when Lady Davis, with you and Mr. Reaper, signed the Agreement in connection with that contract of yours of the 17th of September, 1924, with Sir Mortimer. Will you tell the Court what occurred when Lady Davis signed that Agreement of the 5th of May, 1928?

40

A.—Sir Mortimer and I had agreed before he died verbally——

Mr. Geoffrion: I object to any evidence as to the admissibility of oral testimony and to contradict or vary the terms of a written agreement.

Mr. Holden: The only reference that need be made by Lord

LORD SHAUGHNESSY (*for Defendants*), *Examination-in-Chief*.

Shaughnessy to the Agreement is, insofar as it is necessary to explain what occurred between him and Lady Davis.

Mr. Geoffrion: It is not commercial. My objection is there.

(Objection reserved.)

10 Witness (continuing): It had been understood between Sir Mortimer and I that the same provision would apply to my Agreement as applied to all the Alcohol Company Officers' Agreements, and to Mr. Waddell's Agreement, and which he thought had been incorporated in my Agreement, in case anything should happen to me while still in the employ of the Company I would have earned the proportion of the stock which I was entitled to. When he died, I had nothing indicating that, and I drew this Agreement and discussed the matter with Mr. Reaper

20 By Mr. Holden:

Q.—Excuse me. You said, “ I drew this Agreement ”. You are now referring to the Agreement of the 5th of May, 1928?

A.—That is the one I drew. I discussed with Mr. Reaper, and I think he or I executed it, and I went up to the Ritz Carlton to see Lady Davis, and explained the provisions of the Agreement to her, and just what it was meant to cover, and she said she understood it, and I told her that if anything happened to me I would
30 probably lose the benefit of that Agreement that Sir Mortimer and I had.

By the Court:

Q.—Do I understand, Lord Shaughnessy, that the only new thing in the Agreement was a protection to you in the event of your dying before the 17th of September?

A.—That was all.

40 Mr. Geoffrion: The difficulty we are drifting into is, that nothing can be justified by conversation.

Witness: There is another clause about the salaries of the Alcohol Company, which was also understood. That was only to clear the situation up.

Mr. Holden: My reason for asking the question was that Lady

LORD SHAUGHNESSY (*for Defendants*), *Examination-in-Chief*.

Davis gave her recollection of what occurred. That is what I am really aiming at, what occurred between Lord Shaughnessy and Lady Davis at the time Lady Davis signed the Agreement.

(Objection reserved.)

10 Witness: I explained the situation to her and what it was. She seemed to comprehend it and signed the Agreement.

By Mr. Holden:

Q.—The evidence already shows that the Incorporated Company advanced a substantial amount of money to the Estate. Why did the majority of the Executors do that?

20 A.—Well, in the position in which we found ourselves to carry on the pressing liabilities of the Estate, we really could not do otherwise. We had to raise money in the Estate.

By the Court:

Q.—The Estate had to sell or borrow?

A.—The Estate had to sell or borrow.

By Mr. Holden:

Q.—To settle pressing liabilities?

30 A.—Annuities.

Q.—Were those liabilities ascertainable in one lump sum at one given time?

A.—They were accruing liabilities from time to time, periodically.

40 We had to devise some method of carrying on the Estate. We had already sold two of the speculative things and raised some money that way, the Tobacco Products stock and the Victor Talking Machine stock. It had been decided to hold the Liggett and Meyers, because of probable eventual increase in market price, and there was really nothing much else in the Estate that could be sold. The balance really consisted of the bonds and shares of the Sir Mortimer Davis Incorporated.

Our idea was, that we would advance these liabilities to the Estate, and as soon as we could get Succession Duties paid and so on, we would make an adjustment between the Estate and the Company of capital and of revenue by way of dividend and capital adjustments, but conditions changed in the interval.

LORD SHAUGHNESSY (*for Defendants*), *Examination-in-Chief*.

Q.—When you say, “ We”, you refer to Mr. Reaper and yourself?

A.—Yes.

Q.—Did you have discussions with Mr. Reaper before this was done?

A.—Yes, many discussions.

10 Q.—I think it has already been referred to, but I will ask you this. Will you state briefly what your plan in that connection included as to the proportion of dividends, if they had been paid, that would have gone to Sir Mortimer or his Estate for the period ending the 17th of September, 1929? What did you intend in that regard?

A.—We intended to regulate the thing by the payment of a dividend which would take care of the revenue, by an adjustment of capital to take care of the capital

20 Q.—Excuse me, that was another point, but what I have in mind is this. There is a letter already filed—I won’t refer to the letter at the moment. I am not producing it at the moment.

Mr. Geoffrion: Can’t you put your question, Mr. Holden, without being leading?

By Mr. Holden:

Q.—Will you look at the letter already filed as Exhibit D-74, and state whether you signed the letter of which that is a copy?

30 A.—Yes, I signed the original of which that purports to be a copy.

Q.—I see that that letter reads:

“ I take this means to put on record the understanding I had with you some months ago ”.

Will you tell the Court briefly what that was? What took place when the understanding was arrived at that you refer to there?

Mr. Geoffrion: Objected to as being oral testimony.

40 His Lordship: I suppose it speaks for itself.

Mr. Holden: It refers to a previous understanding.

Mr. Geoffrion: That is where my objection comes in.

His Lordship: It refers to an understanding between Lord Shaughnessy and Mr. Reaper.

LORD SHAUGHNESSY (*for Defendants*), *Examination-in-Chief*.

Mr. Geoffrion: Our objection to that is, this was done after we threatened to sue.

Mr. Holden: They deny the understanding, I want the defendant, Lord Shaughnessy, to state what occurred.

10 Mr. Montgomery: It is a self-serving declaration.

Mr. Geoffrion: That is trying to prove something, relying on the assurance of an associate, or of a dead man. Nothing can be proved that way.

(Objection reserved.)

By Mr. Holden:

20 Q.—Explain to the Court the circumstances with regard to the understanding that is therein referred to?

A.—Before leaving for the West—I think I left on the 5th of September, 1929—Mr. Reaper suggested to me that the Estate owed the Company on revenue some \$350,000 or \$360,000, something in that vicinity, and suggested that it might be a good thing to declare a dividend for the amount to clean up that revenue situation, and I asked him about what the balance was. The 1929 balance sheet would not be prepared until after the 30th of September, of course. In 1928 one showed a small amount of actual revenue \$250,000 or something
30 available for dividend, and I said I thought it would be better to wait until the balance sheet was made on September 30th, 1929, and declare the dividend then. He pointed out to me, however, that on September 17th my contract would come into force, and I would receive the bonds and shares of the Company, and that as the owner of those shares, I would be entitled to a portion of the dividend, so I told him that that would be adjusted, that I would not take that as a payment to me; we would consider the dividend having been declared when the amount we intended to pay had been paid by dividend, an adjustment would be made then.

40 Q.—An adjustment with whom?

A.—With the Estate.

Q.—In view of the provision in the Agreement of the 17th of September, 1924, by which Sir Mortimer was entitled to a dividend?

A.—Yes.

Q.—How did you come to write that letter?

A.—I wrote that letter on the advice of my Attorneys. That is a lawyer's letter.

LORD SHAUGHNESSY (*for Defendants*), *Examination-in-Chief*.

Q.—When you told them those facts they told you to put it in writing?

A.—They told me to put in writing.

By Mr. Geoffrion:

10 Q.—Had you told them that you were being threatened with suit then?

A.—I don't know whether I told them that or not. It is quite possible.

By Mr. Holden:

20 Q.—You referred to taking care of capital requirements, and taking care of revenue requirements of the Estate. I did not intend to refer my question to that, but I would ask you now to explain to the Court what you and Mr. Reaper, the majority of the Executors, planned and proposed in that connection?

A.—We proposed to advance such sums of capital and revenue as were immediately necessary to the Estate.

Q.—Who would make the advances?

A.—The Incorporated Company, and then, when Succession Duties and those different payments were ascertained, what we had to pay, then arrangements would be made to pay off the Succession Duties and the legacies, and make an adjustment of capital and revenue between the Company and the Estate.

30 Q.—Did you ever feel that all the revenue of the Incorporated Company had to go to the Estate as revenue of the Estate so that any resulting surplus would go to the two plaintiffs?

A.—I did not feel that that was in accordance with the provisions of the will.

Q.—Did you take advice on that?

40 Mr. Geoffrion: I object. That is all very well. That is going to lead to a very extraordinary situation. Once sued you may as well say, we took advice from every party in the case, then, why go to a Judge.

Mr. Holden: I won't press that. I did not mean after suit.

Mr. Geoffrion: After trouble. After the thing was done.

Mr. Holden: I won't press the question.

LORD SHAUGHNESSY (*for Defendants*), *Examination-in-Chief*.

By Mr. Holden:

Q.—What is the fact as to any dividends having ever been declared by Sir Mortimer Davis Incorporated?

A.—There never have been any declared.

Q.—When was it incorporated?

10 A.—In 1919.

By the Court:

Q.—During Mr. Waddell's time, were there any dividends declared?

A.—No, there were no dividends.

By Mr. Holden:

20 Q.—Have the Executors made any philanthropic expenditures apart from what was promised and incurred and approved by Sir Mortimer during his lifetime?

Mr. Geoffrion: Same objection. My objection remains.

His Lordship: What were the expenditures incurred then, we we will say?

30 Mr. Geoffrion: They have been proved over and over again. It is the same old story of adding to the will. We will argue the beauty of that principle.

Mr. Holden: Having already argued it very fully and having failed to show that Lady Davis could add to the will what Sir Mortimer said to her concerning the probable income, is in under reserve.

Mr. Geoffrion: That is to explain her disappointment and the reasons why she is protesting. That is quite different.

40 His Lordship: Objection reserved.

By Mr. Holden:

Q.—Have you as Executors made any?

A.—No.

LORD SHAUGHNESSY (for Defendants), Examination-in-Chief.

Mr. Geoffrion: Was the authority in writing or orally. If it is in writing I want it filed. Mr. Holden, is it suggested the authority for these charities is oral or written?

Mr. Holden: I made no attempt

10 Mr. Geoffrion: I thought there was something slipping in there.

Mr. Holden: I did not say "authorized". I was not referring to the authorization by Sir Mortimer of expenditures later. I was asking as to whether they were incurred by him before he died.

Mr. Geoffrion: Promised, not incurred.

Mr. Holden: My wording may be improved by my learned friend, but the purpose is clear.

20 His Lordship: You mean as to the Y.M.H.A.?

Mr. Geoffrion: The Y.M.H.A. is the largest amount, and I am stating my objection that if there was any promise,—my learned friend used the word "Promised", or if there was any incurring—if he prefers using the word "Incurring" or anything else he chooses, and it is in writing, I now call for the writing. I am waiting for my learned friend to declare there is no writing.

30 Mr. Holden: I am not making any declaration.

Mr. Geoffrion: I am entitled to a declaration.

Mr. Holden: I have asked the witness whether he and Mr. Reaper, the majority of the Executors, have made any philanthropic disbursements that were not incurred.

His Lordship: You may ask what philanthropic disbursements they have made.

40 Mr. Holden: That is all in the evidence. I don't know if Lord Shaughnessy can give that offhand immediately, but it is all in the evidence.

Mr. Geoffrion: I am entitled to call for any writing or declaration. There is none at present. My learned friend says he has

LORD SHAUGHNESSY (for Defendants), Examination-in-Chief.

nothing to say. This is no game of hide and seek. I am calling for the writing. Why does my learned friend want to hide it from us.

Mr. Holden: Surely my learned friend can get from cross-examination whatever information he wants to the answer given under reserve of the objection by the witness.

10 Mr. Geoffrion: When it is a question whether secondary evidence is being made legally, or oral evidence being made illegally, different forms of legality may lead to different decisions. We never know what the Courts may hold, and I am entitled to know now, under objection to the evidence, what this is—is it an attempt to prove by the witness a document, or is it an attempt to prove an oral opinion, and I may say this goes to the legality, not to cross-examination, and I think my learned friend should give me a reason for refusing to declare whether there is any writing.

20 Mr. Holden: I asked the question; it was objected to and the objection was reserved. The answer was given and my learned friend now wants to go further into that matter. To be candid, I do not see what my learned friend is talking about.

Mr. Geoffrion: I know what my learned friend is talking about.

30 Mr. Holden: The question was asked this defendant in the witness box whether he and his associate Executors have made any philanthropic expenditures that were not incurred—I forget my wording—incurred at least by Sir Mortimer during his lifetime, and he said no.

Mr. Geoffrion: I have made an objection in the meantime.

Mr. Holden: The objection was reserved and the answer was given.

40 His Lordship: Do you intend to leave it at that or do you wish to go further.

Mr. Holden: I do not wish to go any further.

Mr. Geoffrion: My learned friend is very much afraid of the situation then.

Mr. Holden: I feel cheerful in spite of my fear.

LORD SHAUGHNESSY (*for Defendants*), *Examination-in-Chief*.

By Mr. Holden:

10 Q.—The plaintiffs have thought best to allege—they allege in paragraph 60 “ That defendant Shaughnessy has unlawfully, wrongfully and fraudently kept female plaintiff uninformed as to his administration of the direct and indirect assets of the Estate at times meeting her legitimate demands for information with menaces ”. Is that, or any part of it true?

A.—Never to my knowledge did I ever menace Lady Davis on any demand.

Q.—Have you kept her misinformed—I will take it piecemeal. Have you refused her any information she ever indicated she wanted?

A.—Never.

Q.—I should ask you for the purpose of the record, have you done anything fraudulent with regard to her relation to you as her fellow Executor?

20 A.—No.

Q.—Have you ever menaced her?

A.—No.

Mr. Geoffrion: My learned friend might put a general question, “ Is everything in the declaration untrue and everything in the plea true ”.

30 Mr. Holden: My learned friend may make a suggestion of that kind, but it is a serious matter to be brought before the Courts and to give additional publicity to all these allegations.

Mr. Geoffrion: If it hurts your feelings, I will withdraw the remark.

Mr. Holden: It does not hurt my feelings, but my feelings have been hurt all through by the allegations made against our clients.

By Mr. Holden:

40

Q.—Then again in paragraph 65:

“The plaintiffs allege that defendant Shaughnessy has systematically withheld from the plaintiff important information with reference to the administration both of the Incorporated Company, and of the Alcohol Company and McNish Brothers ”.

LORD SHAUGHNESSY (for Defendants), Examination-in-Chief.

You have already testified that you were willing to give her any information.

Then, they go on to allege:

“ And has moreover deliberately deceived her on many occasions ”.

10 Is that true?

A.—No, it is not, not on any occasion.

Q.—And then they think fit to allege further in that paragraph:

“The defendant Shaughnessy is at the present time (that would be in January last) surreptitiously carrying on negotiations, having for their object the sale or merger of the Alcohol Company ”.

20 His Lordship: We have had all those facts.

Mr. Holden: I won't take up much time with this.

By Mr. Holden:

Q.—Have you done anything surreptitious in connection with the so-called merger?

30 A.—I have given all the facts to His Lordship as to exactly what happened in connection with the merger. I do not consider that there was anything surreptitious about it. I never intended anything to be surreptitious.

(And it now being 4:40 P.M., the further examination of Lord Shaughnessy was continued until Thursday, the eighth day of May instant at 10.30 A.M.)

On this May 8th, 1930,

40

WILLIAM JAMES LORD SHAUGHNESSY

reappeared and continued his evidence as follows (examination-in-chief):

Mr. Holden, K.C.: May it please the Court, in considering last night what my duty was for the continuation of Lord Shaughnessy's

LORD SHAUGHNESSY (*for Defendants*), *Examination-in-Chief*.

deposition, I came to the conclusion in view of the objections made that I had not yet produced the letters, that it would be better to produce them before dealing with the plaintiffs' accusations against the defendants, and while there was a tremendous lot of correspondence that we gathered together at the demand of our opponents and submitted to them, we, with our clients, have tried to select the letters which we submit will be of assistance to Your Lordship in
10 this litigation under the issues as joined, and I propose to produce them by Lord Shaughnessy now.

By Mr. Holden, K.C.:

Q.—The first letter that I ask you to produce as Exhibit D-111 is an introductory letter. I will not read it. It is dated August 14th., 1924, from Sir Mortimer to you with regard to your contract which was subsequently entered into on the 17th of September, 1924?

A.—Yes.

20 Q.—Will you produce as D-112 a letter from Sir Mortimer to you of the 20th August, 1924?

A.—I do.

Q.—I will ask you to read into the record a part of this. It is a short letter. I will read the whole letter into the record in view of what has been established. The letter reads:

“August 20th, 1924.

My dear Will:

30 I have your communication of July 18th with enclosure, which to me looks fair, but before accepting same would like to discuss the matter further with you personally.”

That enclosure, I understand, was a draft of an agreement a draft of the agreement that was afterwards signed between you?

A.—I think it was.

Q.—The letter goes on (reading):

40 “ I am quite willing as I stated to you to secure you in any way that is fair in case of anything happening to me. The main object in having you join the Davis Corporation——”

that is the Incorporated Company?

A.—Yes.

Q.—(Reading):

LORD SHAUGHNESSY (*for Defendants*), *Examination-in-Chief*.

10 “ —is for you to be there and look after its interests, after I pass on to some other place where no one knows. Therefore, for my own protection I must see that you are safely installed. I am going to Ste. Agathe this afternoon, returning Monday, and on Tuesday go by motor to Saratoga. I expect to return to Montreal on Sunday, August 31st. By that time I suppose you will have finished your holiday.

With best wishes,

Sincerely yours,

MORTIMER DAVIS.”

You received that letter before you signed your contract of the 17th of September, 1924?

A.—Yes.

20 Q.—Will you produce as D-113 a letter from Sir Mortimer to you of the 17th of November, 1925?

A.—I do.

Q.—I think I better read this. I should say that I never approved of the reading habit, but now that so many dozens of letters have been read into the record, it might mislead Your Lordship or any Court that is considering the matter into thinking that they were of no importance. Will you read the letter, in view of the custom that has been established in this trial, into the record? The letter reads:

30 “ Paris, November 17th, 1925.

My dear Will:

I am in receipt of your letter of November 4th. I cabled you today as follows:

‘ Waddell remuneration until May first stop wish his resignation as trustee to my trust deeds.

DAVIS.’

40 I cannot understand why he would bring this question up as I distinctly told him his remuneration would continue until May.

Marler: He certainly has been a great disappointment and I might state has diminished very much in my estimation. A man must be truthful, whether it is in politics or private life. When he was considering going into politics and asked my advice I strongly urged him to keep out of it, as I told him when

LORD SHAUGHNESSY (*for Defendants*), *Examination-in-Chief*.

10 I gave him the interest in Davis Corporation I had in mind he could work into commercial matters as well as carrying on his profession. Privately, as far as I am concerned he is out of the picture. I might also state I do not expect any help from Mr. Waddell as he certainly in the six years he has been connected with me has acquired very little commercial knowledge, notwithstanding his egotism. I mention these things so that you can understand the position. Now that Marler is out of politics he will no doubt try to run the Davis Corporation. As mentioned before, the responsibilities rest entirely on you and all you have to do is to cable me any commercial condition arising that you are in doubt.

20 With Lauster, Poillon and others, you have good material to work with, but I am very strongly convinced that you must have a young man who has some vision and a commercial mind, as an understudy; otherwise if you unfortunately should get ill or if you want to take a holiday you would not be in position to do so. This I leave to you as it is as much to your interest as it is to mine.

I am now feeling well and leaving the 1st of December for the villa, where we are remaining for the winter.

I trust that you and your wife and the children are well. With my kindest regards and best wishes, I am

M. B. DAVIS."

A postscript in his own handwriting:

30 "Directors should not be told or showed too much."

That is D-113?

A.—Yes.

Q.—Will you produce, please, as Exhibit D-114 a short letter, more of a memorandum, all in the handwriting of Sir Mortimer, dated November 21st, 1925?

A.—I do.

40 Q.—I am going to read it. I should say in connection with this Exhibit that it looks like a part of another communication, but I have been unable to find in all the mass of correspondence anything else belonging to that memorandum. Do you know of any other part of it?

A.—No, I do not, Mr. Holden. I think it was probably enclosed with another letter, something of that kind.

Q.—Will you read this memorandum in Sir Mortimer's handwriting into the record? It reads as follows:

LORD SHAUGHNESSY (*for Defendants*), *Examination-in-Chief*.

“ The party giving this information, why not give the figures? We must find out who is giving out private information and eliminate him.

M. B. DAVIS.”

“ P.S.—There must be no information of any kind.”

10 The Court: Do you think the case will turn upon that letter?

Mr. Holden, K.C.: I do not think it will at all, but in view of the criticisms that have been made, I think it is only fair to the defendants to show that the late Sir Mortimer Davis, whose Estate it was, of course, instructed and impressed upon them.

By Mr. Holden, K.C.:

20 Q.—Will you produce as Exhibit D-115 another letter, all in Sir Mortimer’s handwriting, dated November 23rd, 1925, and addressed to Sir Mortimer Davis, Incorporated?

A.—Yes.

Q.—This letter reads as follows:

“ Hotel Plaza Athénée,

November 23rd, 1925.

Sir Mortimer Davis, Incorporated,

30

Gentlemen:

I cabled the other day about information being given out about Industrial Alcohol Company. I notice today in O’Brien and Williams’ letter to their clients mention about our earnings for October. Now I won’t tolerate any such action. Anyone giving information against my repeated instructions will be dismissed at once.

Yours truly,

40

M. B. DAVIS.

P.S.—Any Director you will ask to resign who you find dishonorable enough to use or give private information. We seem to be the only company where our private affairs are public.

D.”

LORD SHAUGHNESSY (*for Defendants*), *Examination-in-Chief*.

Mr. Geoffrion, K.C.: If the letters are there, you will give them to us?

Mr. Holden, K.C.: Yes.

Mr. Geoffrion, K.C.: If they are, you will give them to us. If they are not, we will apologize.

10

By Mr. Holden, K.C.:

Q.—Will you produce as D-116 a letter, all in Sir Mortimer's handwriting, dated 9th December, 1925, marked "Personal"?

A.—I do.

Q.—It reads as follows:

20

" Hotel Plaza Athénée,

Paris, December 9th, 1925.

Personal

My dear Will:

30

I am leaving this afternoon for the villa. When you receive this letter you will have had your Annual Meetings. Remember you are the responsible head and don't let your Directors know any more than is necessary. Most of them are only thinking and care for the stock end of the proposition, and will play with the stock. W. is the same as other Directors——"

Might I ask what Director had you whose name commences with "W"?

A.—What was the date? I don't remember.

Q.—December, 1925.

A.—That would probably refer to Mr. Waddell, who was a Director until the Annual Meeting in December, 1925.

40

Q.—(Reading):

" ——His crowd at the lunch club seem to be able to pump him dry. He is so conceited (Johnny Know-it-all) makes him an easy mark.

I suppose the auditors have made their report of the Davis Company. Do get a clever secretary, one who will work in and

LORD SHAUGHNESSY (*for Defendants*), *Examination-in-Chief.*

be of considerable help to you. If you get the right one we can pay him well.

With my best wishes,

Yours sincerely,

10

MORTIMER DAVIS.

P.S.—W. opinion on things is poor for the reason he is too lazy to work on detail and has a banker's mind which I regret in six years has not improved for the reason he knows it all.

You should take W. offices as he will not use them enough and I don't propose to pay rent for nothing."

20 Will you now produce another letter in Sir Mortimer's handwriting addressed to you and dated at Cannes on Friday, December 8th, 1925, as Exhibit D-117?

A.—I do.

Q.—I will read it into the record. It reads:

" Les Glaieuls,
Friday, December 18th, 1925.

My dear Will:

30 I noticed in the report of Directors' Meeting that Mr. Waddell resigned as President, also as Director. I mentioned in my letter to him, stating that I thought it was to his interest to remain a Director. However, we will manage to get along without him. I want to impress upon you that you must not take advice of anyone that is not familiar with the detail of the business. It was a mistake to put outside people on the Alcohol Company Board. The Tobacco Company has only men who take an active part. However, some day we will correct this condition. Now I wish to mention for your own interest as well as mine the importance of having a good understudy. If not you will only tie yourself down and if anything should happen we would both
40 suffer. Mortimer is motoring down from Paris and I am waiting to see him. He just telephoned he would be here at 12 this evening. The weather is quite cool for here, but is filling up.

I trust you and your family are well and wish you everything that is good for the coming year.

Sincerely yours,

MORTIMER DAVIS."

LORD SHAUGHNESSY (*for Defendants*), *Examination-in-Chief*.

Will you now produce as Exhibit D-118 a copy of a letter from you to Sir Mortimer Davis, dated May 12th, 1927?

A.—I do.

Q.—It reads as follows:

“ May 12th, 1927.

Dear Sir Mortimer:

10 I have spent some considerable time investigating the oil situation in Alberta and in that connection have had many interviews with the C.P.R. officials and also those of the Imperial Oil Company. Generally speaking, they are unanimous in the idea that oil will be discovered some time or another in that province, but up to the present the wells that have been uncovered do not appear to be, even the best of them, more than bare commercial prospects, the production in every case being quite small. I used a man, Garland, who came in to see me, to obtain
20 minute information for me on the field and through him I obtained a very good idea of everything which has been done up to the present.

In connection with his research he submitted to me a proposition whereby we could secure for \$25,000——”

and I might say in reading this I am doing it because of the answer which Lord Shaughnessy received from Sir Mortimer.

30 “ ——the absolute control of the Mawassin Oil Company, which is now operating some wells in the Wainwright district, one of which is producing about 50 barrels a day. I sent Poillon out there to look into the corporate construction of the company and also to report on other properties and I found that while they appear to be well located, they are operating under leases obtained from other people, under which they are compelled to build a dehydrating plant and to drill certain other wells within a certain length of time, all of which would mean an expenditure in order to fulfil these obligations of about \$150,000, which I consider a great deal too much to put into any proposition unless sufficient results were shown to warrant it. I therefore
40 turned this scheme down.

During the investigation, however, I ran across a man called Cunningham who is employed by the C.P.R. as Efficiency Expert, and who, I was informed, was possessed of certain valuable information concerning this oil field. Poillon and I got in touch with Cunningham, when he told the following story: Prior to the war he was sent to Lethbridge to look into the question of coal mines, particularly in the Crows Nest district.

LORD SHAUGHNESSY (*for Defendants*), *Examination-in-Chief*.

10 and while there he made the acquaintance of a German chemist called Von Oslo, who was out there on behalf of the German Government looking into the question of deposits of potash. While they were there, a miniature oil boom took place at Calgary, caused by the discovery of the then called 'Dingman' well, and oil immediately began to attract everyone's attention. Cunningham and Von Oslo made a very careful survey of the whole country, and Von Oslo, who was apparently an expert, got some very valuable field notes on formations, locations, etc., for his own purposes and which would probably in the ordinary course of events have been turned over to the German Government. These notes consisted in the locating of spots where, in the opinion of Von Oslo, the best chances were of obtaining oil. War broke out and after much difficulty Von Oslo was permitted to return to Germany, and as he regarded the outbreak of war as the end of all things, he turned all his information over to Cunningham to use as he liked. Cunningham made various attempts to get large oil companies interested in the development of the C.P.R. lands, and had he been successful was prepared to turn over all his information to them. The Hudson's Bay Company, however, headed him off by making an agreement with the Marland Company for drilling and the C.P.R. officials came to the conclusion that one big company in the field was sufficient, and Cunningham was instructed to do nothing further, and the information remained in his vault. He claims that every prediction Von Oslo made in connection with the field has proved correct and consequently he considers this information of great value. Von Oslo is now dead.

30
40 After discussing the matter fully, I made the following agreement with Cunningham: He is to submit to us all his information to enable us to study it carefully and after investigating, if we decide to take up any of the locations indicated in his notes, we will give him a 7½% interest in his locations, we to retain the other 92½%, and we will pay him the sum of \$5,000 for the information. If we sell the rights at any time he will participate to the extent of his 7½% in the amount received, but should we decide to drill on any of the locations either ourselves or by means of any other company, he will participate to the extent of 7½% in the royalties which would be obtained in the event of employing others, or in any companies which we might form ourselves for the purpose of drilling. If we do not decide to take up any locations we are under no obligations whatever to him, except that we undertake not to disclose to anyone any of the information submitted.

LORD SHAUGHNESSY (for Defendants), Examination-in-Chief.

10 In this way we can become possessed of very valuable locations at a very small cost and can either hold these locations or prospect and sell at a very large profit in the event of oil being discovered in large quantities, in our vicinity, or develop them as we see fit, and it seems to me it is the advisable plan. I have, outside of this agreement, taken over two sections by lease from the C.P.R. in the Wainwright field, which we will hold at a small cost of one dollar per acre per annum for rental, and I am sending Poillon out to investigate locations furnished by Cunningham. In this way we will be in the field and with the huge development which will take place this summer we might reap some benefit.

On the other hand, if nothing should arise, our total loss would only be the \$5,000 paid to Cunningham and the rentals for the locations in question.

20 I shall advise you of the result of Poillon's investigation when his report is obtained."

And I understand you received as answer to that letter the letter from Sir Mortimer to you of the 25th of May, 1927, which I ask you now to produce as Exhibit D-119.

A.—I do.

Q.—This is fairly long. It is important in view of the attacks made on us and I am afraid we have to read it. I will now read this Exhibit D-119 into the record:

30 " Claridge Hotel, London,

May 25th, 1927.

Right Hon. Lord Shaughnessy, K.C.
Montreal.

My Dear Will:

40 " I have received your interesting communication of the 12th May and I believe you are on the right track to secure a large tract of oil-bearing land. There is no question in my mind even as layman that there is oil in the west as commonsense would tell one the oil land does not cut off at the boundary. The main thing is to take up " large tracts of land and when the boom comes sell, for that is the way millions have been made in southern California. Without risk we cannot expect to accomplish anything.

LORD SHAUGHNESSY (*for Defendants*), *Examination-in-Chief*.

10 Poillon to my mind is a lazy fellow. In other words, thinks he knows more about other people's business than they know themselves. As a matter of fact, I feel it would be better to have some reliable engineer who has some enterprise and grit. I understand the International Nickel Company have found a big percentage of copper in their nickel mine. We have, as you know, about 2,000 acres of land very close to the International Nickel Company's property with good mineral surface indications. It would be well to spend some money by prospecting this land during this season. There have been lots of opportunities for Poillon to get something for us during the past five years, but he has not done anything. We were practically the first in Porcupine. We must have people about us that bring results, not talk and making excuses.

In your communication of the 11th May you informed me of the Billings-Olcott Company."

20 A.—That is a new York stock broking concern.

Q.—I think you mentioned that already.

A.—No, that is not a firm that I mentioned.

Q.—(Reading, continuing):

30 "I do not consider it any advantage to sell a block of stock in the New York market." It invariably comes back. Besides, we don't want to sell 'a large block.' It is being distributed for investment and getting stronger. I cannot see any advantage. It is surprising how well our stock is distributed and as far as the Davis Corporation is concerned, what they have sold has been at very good prices and on the whole we had been most successful from the investor's standpoint as well as our own. I still believe we should continue to sell at the present price 29-30, and if we should get below 50%, I believe we could buy back cheaper. As you know our programme we do not propose paying out our earning, but propose accumulating same and putting it in stock.

40 I have been here ten days and have had the necessary information about Distillers. I can say this much, that the Distillery Trust have got things tied up in such a way that I take off my hat to them as they can give the Standard Oil and Tobacco fellows "cards and spades." The more I think of the whole situation the more I have made up my mind on the necessity of having a Scotch whiskey distillery firm as a nucleus and to gradually develop it and do all our export trade from here. Up to now the best company to my mind and most suitable for

LORD SHAUGHNESSY (*for Defendants*), *Examination-in-Chief*.

10 our purpose is Robert McNish Company Limited of Glasgow and London, who make Doctor's Special Liqueur Whiskey, 'a brand that was a strong seller in the United States before prohibition, and I believe also in Canada. They have connections all over the world, but cannot spread in a big way owing to the fact of limited capital. I have seen one of the brothers, the other one being in Norway, and he will call on me in a few days. My impression of the one I have seen is a man of 60 and looks 50, that he is and thinks of nothing but his business. He is thoroughly informed of the whiskey trade and everyone in it, reminds me of myself of 40 odd years in the Tobacco business. A nucleus of that kind with a small investment to start, to feel our ground for a year or two, with a gradual improving of their organization by having younger men at the selling end of their business will be much better than taking on a large concern like 'White Horse' where you have to buy them on a 6 per cent investment and invest large sums. As soon as the other brother returns they will call again and I will discuss the matter with them. He seemed to be delighted that I sent for him and feels that an affiliation with us means their business would grow very rapidly. He is well informed on everything relative to whiskey throughout the world; a good solid business man of the old stock that needs some young blood. I told him we would want to buy 70-80 per cent of their business, and they would have to keep the balance. As soon as I get a written option I will have Deloitte, Plender and Company here check up their statements and keep you informed of everything that is being done, and it would also be well as we progress to have Wilmore come over and post himself on the conditions of the Scotch whiskey trade here——"

20

30

Q.—That is one of your Vice-Presidents of the Alcohol Company?

A.—Yes.

40 Q.—(Continuing reading):

“——as he is the only practical man who could check up for us.

When you come over in June I hope to have things arranged so that we will be able to go right ahead and I shall not do

LORD SHAUGHNESSY (*for Defendants*), *Examination-in-Chief*.

anything definite until we investigate and discuss the matter together.

With my kindest regards and best wishes,

Yours sincerely,

M. B. DAVIS.”

10 Then there are two long postscripts.

A.—They are only confirmations of cables.

Q.—Will you produce as Exhibit D-120 a letter of Sir Mortimer from Claridge’s, London, addressed to you, dated 31st May, 1927?

A.—I do.

Q.—In this letter I see that Sir Mortimer, after confirming a long cable message that he sent you with regard to his taking an option on the McNish business or the McNish shares of stock discusses further the McNish prospects which, I think, should be in the
20 record, but I do not need to ask you to read it at the moment, and then commencing on page three will you read what he further says in this letter? It reads as follows:

“ I size the whole Scotch whiskey industry as nothing but a pure advertising proposition with naturally the proper blend——”

and I will ask you later if you will explain and put on the record what that means, “ the proper blend.” The letter goes on:
30

“ It is very simple to the big capital investment in plant that we had to make in Canada——”

“ Similar ” is what he meant, evidently.

“ The Scotch whiskey industry has been well nursed by the Scotchmen and I consider with our influence we should make a huge success in this venture.”

40 Then after discussing McNish further in detail the letter ends with the following paragraph:

“ What will strike you of this proposition is the loss eventually of the Dewar agency of J. M. Douglas——”

J. M. Douglas became a subsidiary?

LORD SHAUGHNESSY (*for Defendants*), *Examination-in-Chief*.

A.—That is an agency company that the Industrial Alcohol Company owned.

Q.—(Continuing reading):

10 “ \$15,000—\$20,000 we make on this which is uncertain; our helping our competitor is bad business so I would just drift along until the question arises from Dewar. We can then state if we think it necessary our position. Meanwhile get ‘ Doctor’s Special ’ in Ontario as there is a great deal in getting our merchandise in at the start.

With my best wishes and kindest regards,

Yours sincerely,

M. B. DAVIS.”

The record shows that the Dewar agency was lost.

20 A.—The Dewar agency was taken from us when Kelly was appointed to look after the brands of the Distillers Corporation in Canada. That agency was turned over to him then.

Q.—When Kelly accepted his new job?

A.—Exactly. His new job was to promote the sale of all the brands exported to Canada by the Distillers Corporation Limited of Great Britain, and that was one of the brands, and that was given to him when he took over his new job.

Q.—Will you now produce as Exhibit D-121 an original letter from you to Sir Mortimer Davis dated 25th July, 1927.

30 A.—I do.

Q.—It reads as follows:

“ Green Park Hotel, London,

25th July, 1927.

Sir Mortimer Davis,
Deauville, France.

40 Dear Sir Mortimer:—”

This was written from London?

A.—Yes.

Q.—(Reading):

“ Dear Sir Mortimer: I had a long conference with McNish this morning—”

LORD SHAUGHNESSY (*for Defendants*), *Examination-in-Chief*.

this letter is important in view of the attacks and complaints and faults found with the defendants in connection with Robert McNish.

10 “ I had a long conference with McNish this morning and we went carefully over all statements submitted for the purpose of arriving at a basis of value. In view of the agreement to fix the market value of stock, the assets valued in the report of Messrs. Deloitte and Company must be increased by the amount of about £10,000 making a total valuation of assets £41,144——”

You say in this letter “ In view of the agreement ”?

A.—The question first arose——

Q.—Was that an agreement made by Sir Mortimer?

A.—That was the agreement with McNish's and Sir Mortimer.

20 The question was whether they would give the cost price or the market price for the stock.

Q.—It was the agreement he made?

A.—Yes.

Q.—(Continuing reading):

“—— of this amount we take 90 per cent.”

That is under that agreement?

A.—That is under that agreement.

30 Q.—“ Or £38,029.12.0 on payment of which they would deliver to us——

A.—5,875 shares of 6% cumulative stock £1 par value.

B.—9,000 ordinary shares of £1 par value. An agreement is drawn up embodying the above and also the other terms of the option of June 1st, 1927.”

Were all the details in that agreement arranged by Sir Mortimer himself?

A.—Sir Mortimer took an option on the company and then exercised the option. That was subsequently, anyway.

Q.—(Reading):

40 “ I have given careful consideration to the matter of the large flotation which you have in mind and I am afraid we may experience some slight difficulty by reason of your desire to have all but two of the Directors resident in Canada, but I shall advise you further on this point when we have seen the solicitors tomorrow. The question of the large flotation such as you mention gives me some concern for two reasons. First of

LORD SHAUGHNESSY (*for Defendants*), *Examination-in-Chief*.

all because at present the company is too small to warrant any such issue and its earning power wholly insufficient, but of course these may be overcome by the guarantee of the Alcohol Company.

10 Secondly, the problem of placing their goods in all the Com-
missions and establishing export connections is not by any
means an easy one, and will take some time to work out even
with the greatest enthusiasm as can be brought to bear on the
question. I was wondering whether it would not be more ad-
visable for the time being at least to increase the capital by
£1,000,000 authorized, in order to give us time on my return to
carefully survey the situation and form our own conclusions as
to the prospect of ultimate success, this particularly in view of
the fact that from inquiries I have made I find that their brand
is not much of a seller even in London. McNish assures me that
20 he can procure sufficient capital to carry on until things are
properly started and the fear that I have is that in the event
of our not being able to sell the quantity of stock which I have
hoped to over a period of time, the Alcohol company would be-
come involved in a liability by way of guarantee which would
be of a serious nature. Briefly, my point is that we should have
some opportunity of testing out the possibility of making a
great success of this brand before involving ourselves in heavy
obligations in that respect. I do not want you to think from
this that I am not in sympathy with the idea as on the con-
trary I consider that if successful it would be a great stroke, but
30 the large flotation which you have suggested could be taken with
much more safety after we have sized up the situation rather
than before. I will keep you fully advised as to each step and
will do nothing towards closing without your approval.

Trusting you are feeling much better and with deepest
regards to Eleanor,

Yours very sincerely,

40

SHAUGHNESSY."

Q.—After writing those important suggestions and criticisms I
understand you got a letter which I now ask you to produce as Ex-
hibit D-122 from Sir Mortimer to you dated July 27th, 1927?

A.—I do.

Q.—Will you read this letter in the record, please?

It reads as follows:

LORD SHAUGHNESSY (*for Defendants*), *Examination-in-Chief*.

“ Royal Hotel, Deauville,

27th July, 1927.

My Dear Will:

I have your communication of the 25th instant and I telegraphed you immediately as follows:

10

‘ Answering letter have given proposition sufficient thought and do not see any reason to change. Please carry out instructions stop agreed to give McNish £1,000 not £10,000, difference between his figures and Wilmore’s you have option.’

20

The valuation of assets was made between Wilmore and McNishs, and if ‘ over market price ’ we deduct; if ‘ under market price ’ it was to remain the same. You will see this in the option or at any rate it was definitely understood, but I agreed you will remember to give McNishs £1,000 not £10,000, the amount he claims from Wilmore so that there is a difference of £9,000 according to your statement.

I can see by the tone of your letter that you are timid with this proposition which surprises me.

Firstly, I know McNish’s brand is not a big seller; otherwise their volume of business would be considerably more.

30

Secondly; the money we will get to develop this industry I have explained to you several times the advantages of and the risks to my mind is ‘ nil ’ except the actual loss in the development of McNishs if it was not a success; besides, the money can always be used or loaned outside and the interest earned.

40

Thirdly; what you seem to forget is that we have got to go into the Scotch whiskey business whether we want to or not and if you are going to face your competitor with a shot gun there is not much chance for you as money talks in commerce. The question we have got to decide is ‘ Is McNishs’ business a nucleus to work on. Colonel McNish is a blender, his brother as a salesman for a certain class of people and also to guide us, having had years of experience in the way of past history of the trade, and their knowledge of all the details (but for a team of up-to-date progressive and aggressive merchants they are not nor am I banking on their being such) and I have made up my mind without telling them to put a real live wire in the concern; if it is not Thornton it will be somebody else. I want this deal advanced without any delay as I consider it is a very oppor-

LORD SHAUGHNESSY (*for Defendants*), *Examination-in-Chief*.

tune time to raise the necessary money viz.: £1,000,000, and I want you to bear in mind that it is not 'an overnight dream' as this proposition has been in my mind from the time I became aware that the Combine had bought a Canadian Distillery. I have given it the utmost consideration and am quite satisfied that I am right and fully decided to go ahead."

10 Q.—Will you produce as D-123 letter to you from Sir Mortimer of the 14th of November, 1927. We better read it.

"My Dear Will:

20 I am certainly disappointed and grieved at Mortimer's behaviour and I have had my lawyer here make a codicil to my Will which I will send to you as soon as I get something definite as to Mortimer's actions. I have decided to let him stew in his own mess and to forget him. Do not re-elect him as Director of the Davis Company or to any directorship he holds and stop the allowance at once."

(Mr. Geoffrion, K.C.: Objected to as irrelevant.)

By Mr. Holden, K.C.:

Q.—(Continuing reading):

30 "Also keep the houses closed."

Mr. Geoffrion, K.C.: I want to put the responsibility clearly on my learned friend for this thing and I am putting in my objection to it as irrelevant. I have put my objection and did not argue it. There it is. My learned friends can do as they like with it.

By Mr. Holden, K.C.:

40 Q.—The letter, after further personal remarks, deals with McNish and other matters that have been referred to by the plaintiffs, and we will therefore file it without further comment. I might say in asking you to produce the next cable that I do so because of the criticisms that have been made. This is with regard to the furniture.

Mr. Campbell, K.C.: Should not you, before you pass on, read the next sentence of the last letter?

LORD SHAUGHNESSY (*for Defendants*), *Examination-in-Chief*.

By Mr. Holden, K.C.:

Q.—I have to point out in reference to Exhibit D-123 before I pass on, seeing the habit has been established in this trial, that it specially refers to the Pine Avenue property and the Ste. Agathe property and in that connection the letter reads:

10 “ I wish the houses to be heated and kept clean as it does not pay to do otherwise, as they will only depreciate, and I may tell you if I get a fair offer for these places I would seriously consider selling. Joseph is not of much use in selling, but we cannot very well go by him. At the same time I would have a man like Ewing. Don't put signs ' For Sale ' up. It should be done privately. The agents must be given to understand that the commission would be paid to the one who sells. In other words, we are not obligated to any one agent.”

20 Coming back to Exhibit D-124, will you produce as D-124 copy of a letter from Mr. A. M. Reaper. I intended to read that letter Exhibit D-123 and I stopped on account of certain personal matters and I have one other extract I should read under the circumstances. In the letter D-123 Sir Mortimer wrote you:

30 “ Johnston of Greenshields and Andrew Holt dined with us last night and I told them you were going to form the Davis Finance Corporation shortly as I considered there was a very good opening for a finance company as the only people now were the National City, Gundy, and Dominion Securities. The main thing is to get a man, who I trust we will be able to get very soon.”

40 Q.—You produced as D-124 the letter from Mr. Reaper to Sir Mortimer, copy of a letter of the 5th of January, and the three sheets of a list of articles, and the copy of the telegram attached to that letter. I do not need to read it all, but I will state there is a report by Mr. Reaper to Sir Mortimer that a large quantity of furniture and other household effects had been shipped out of the Pine Avenue house to Europe, and the telegram in that connection. Will you now produce as Exhibit D-125 the letter from Sir Mortimer to you of the 30th of January, 1928?

A.—Let me have a look at it.

(Counsel hands letter to witness.)

LORD SHAUGHNESSY (*for Defendants*), *Examination-in-Chief*.

A.—I do.

Q.—Will you read the letter into the record? It reads as follows:

“ Les Glaieuls,

30th January, 1928.

10 My Dear Will:

Mr. R. W. McGrath of London (who is connected with Mr. Richard Guinness in the city) has been known to me for some time. Both he and his wife are staying at the villa. In conversation I told Mr. McGrath our views respecting the Davis Finance Corporation. He quite agrees with me that there is an opening for Canadian securities in England, and the Finance Corporation we are about to form would be of benefit to his people and ourselves by having an English end work in conjunction with our proposed corporation.

20 The administrative part of the corporation would be that McGrath would be the head of the English corporation and devote his time exclusively to their interests. Our man, who I suppose you have in view, would look after the Canadian interests. They would work together by acquainting themselves with conditions on both sides. The capital, of course, is an after consideration, but McGrath is of opinion £250,000 sterling would be sufficient to start with as he claims, and I quite agree with him, that too much capital in a finance company of that kind is a detriment to start with for the reason that you have to earn

30 a reasonable interest on your capital. It would be a 50-50 proposition and both sides would contract to hold 100 per cent for a considerable term of years, and in the event of any of the original shareholders dying the existing shareholders would have the right to purchase their shares at a fair valuation in proportion to their holdings.

Please let me know by cable what you think of this idea so that I can give the matter further consideration. So far as the United States end is concerned it would be well not to form any affiliation until we get well under way and think it advisable to do so. Mr. Guinness and McGrath run a big group of

40 trust companies in the city.

With my best wishes,

Yours sincerely,

M. B. DAVIS.”

LORD SHAUGHNESSY (*for Defendants*), *Examination-in-Chief*.

Then I would ask you to produce as Exhibit D-126 the last letter I am filing, from Sir Mortimer to you before his death, being a letter of the 12th of February, 1928, about four weeks before he died. Will you read it into the record? It reads as follows:

“ Les Glaieuls.

10 My Dear Will:

I confirm my telegram of today as per enclosed copy.

20 PUBLICITY: Kelly should try and get the big buyers to see the magnitude of our plant; besides the consuming public do not realize we have the largest and best equipped plant in the world. If you take Scotch whiskey distillers they practically have not got anything as they are only blenders and when they advertise themselves as distillers it means they have a very small distillery in some place in Scotland, which is only a small percentage of their production, which means that their proposition is simply an advertising selling one, the same as McNishs'. I would start a campaign telling the public through the Press or by other methods who we are and what we are doing. I notice the DuPont people advertising Canadian Industries, which they control (McMaster's companies).

30 ORGANIZATION: I am not anxious as I can see that our interests are being so diversified that we have not got as yet enough people to look after same. In other words, increased efficiency. I would, as I have often stated, sooner have two or three spare men with ability than money in the bank.

40 SALES TAX: COCHRAN: FINANCE CORPORATION: I trust you will look out for a man for the Finance Corporation. I expect to have a proposition shortly from a financial group who will put up 50-50 capital in this company with us. Personally I am not keen. Perhaps it would be as well to start off ourselves before taking anyone in with us. We can decide when I hear from this English group.

With my best wishes and kindest regards,

Yours sincerely,

W. B. DAVIS.”

LORD SHAUGHNESSY (for Defendants), Examination-in-Chief.

Mr. Holden: For the convenience of the Court I would state before leaving the Exhibits I am filing in the way of correspondence with Sir Mortimer, that there have also been already filed the following letters between Lord Shaughnessy and Sir Mortimer: Exhibit D-58, letter from Sir Mortimer to Lord Shaughnessy of the 3rd of January, 1928; Exhibit D-59, another letter from Sir Mortimer to Lord Shaughnessy of the 14th of February, 1928, and as Exhibit
10 D-63 another letter from Sir Mortimer to Lord Shaughnessy of the 8th of March, 1928.

Also, as Plaintiffs' Exhibits the following letters: P-230, letter from Sir Mortimer to Lord Shaughnessy of the 21st of May, 1927; P-231, letter from Sir Mortimer to Lord Shaughnessy of the 25th of May, 1927; P-232, letter from Sir Mortimer to Lord Shaughnessy of the 24th of December, 1927, and P-233, letter from Sir Mortimer to Lord Shaughnessy of the 10th of March, 1928.

20 By Mr. Holden:

Q.—You have already referred in your evidence to the fact that you were not entirely satisfied with the first information that you obtained regarding Mr. Jennison for your purposes, and I would ask you now to produce as Exhibit D-127, a letter from the late Colonel George W. Goethals to you, dated the 10th of December, 1927?

A.—I do.

Q.—And will you produce as Exhibit D-128 a copy of your letter of the 17th of December, 1927, to which D-127 is an answer?

30 A.—Yes, sir.

His Lordship: Was Lord Shaughnessy inquiring about Jennison before Sir Mortimer's death?

Mr. Holden: Yes, he was inquiring about Jennison before Sir Mortimer's death.

This, my Lord, covers this subject.

His Lordship: Well, we will adjourn now and resume at 2.30
40 P.M.

LORD SHAUGHNESSY (*for Defendants*), *Examination-in-Chief*.

And on this 8th day of May, 1930, at 2.30 P.M., personally came and reappeared

WILLIAM JAMES LORD SHAUGHNESSY

10 and his examination-in-chief was continued by Mr. Holden, K.C., of Counsel for defendants as follows:

By Mr. Holden:

Q.—I referred yesterday, Lord Shaughnessy, to the allegations the plaintiffs have made in connection with your contract of the 17th of September, 1924; I should have asked you then, but I will do so now: When the contract period was completed, and you got the consideration stipulated in the contract, was there any attack as to that
20 contract of any kind by anybody?

A.—None whatever. There never was.

Q.—When did you first hear of any attack by anybody with regard to your rights under that contract?

A.—The first time that I received any intimation of an attack as to the legality of the contract was at a conference with you, Mr. Holden, and Mr. Campbell, when it was suggested to me that such action would be taken. That was just prior to the service of the writ.

Q.—We reported to you what the lawyers on the other side had said to us?

30 A.—Yes, that is the report I got.

Q.—The plaintiffs have filed under Exhibit Number 12 certain letters which include letters to you and to Mr. Reaper of the 21st of November, 1929: Those two letters are in the same words. I will just read one to you. This letter reads:

“ November 21st, 1929.

Right Honorable Lord Shaughnessy:

40 I am instructed by Lady Eleanor Davis to demand the immediate relinquishment by you of the office of joint Executor and Trustee under the last will of her husband, the late Sir Mortimer Davis, as also of all offices presently held by you in Sir Mortimer Davis Incorporated, and all Corporations which it controls, including Canadian Industrial Alcohol Company Limited, and in default of prompt compliance with this demand to institute on her behalf appropriate proceedings for your removal for cause from each of such offices. As the matter is most

LORD SHAUGHNESSY (*for Defendants*), *Examination-in-Chief*.

urgent I must ask that you let me hear from you not later than Monday next, November 25th, as to whether the present demand will be acceded to by you.

Yours sincerely,

(Signed) W. K. McKEOWN."

10

There is no mention of that point in that letter. Was it before, or after, you received that letter that your lawyers told you that the plaintiffs' lawyers had mentioned it?

A.—It was after I received that letter when I took legal advice, that it was suggested to me at a conference with yourself and Mr. Campbell—it was suggested to me that it was threatened that an attack would be made on the legality of my contract.

Q.—Did we tell you from whom we had learned that?

20 A.—I think you said you had learned it through the medium of plaintiffs' attorneys.

Q.—And then, as we know, it is referred to in the plaintiffs' declaration.

With reference to those letters in Exhibit D-12 I have just referred to, the Court already knows that you and Mr. Reaper refused to comply with their demands that you abandon your Executorships and so on. Let me ask you, is there any other request that Lady Davis made before that, that you ever refused or neglected to comply with?

30

A.—None that I could mention, no.

Q.—You do not know of any?

A.—I do not know of any, except possibly the request for representation on the Board, which caused an altercation; I don't know whether it would come under that category.

Q.—Well, you want to be careful and not get the record wrong—you are quite right. Did you agree to her having a Director looking after her interests when she was in Europe?

40

Mr. Geoffrion: Could you not ask him what he agreed to? I object to this as suggestive.

By Mr. Holden:

Q.—My learned friend properly objects to the form of my question. Will you tell the Court what, in connection with her request for a Director on the Board of the Incorporated Company to look after

LORD SHAUGHNESSY (*for Defendants*), *Examination-in-Chief*.

her interests when she was in Europe, you were willing to agree to, and what did you object to?

10 A.—Well, on or about the 24th of June, 1929, Lady Davis, at an interview at my office, asked if I had any objection to her having a representative represent her on the Board of the Sir Mortimer Davis Incorporated. I suggested that was an unusual and surprising request in all the circumstances, and one that would have to be carefully considered, and I did suggest that possibly she might want her brother, but she said no, and I then explained that I did not consider that it was altogether necessary that she should have a representative represent her, and to bring outside interests into this Corporation, which had always been conducted by Sir Mortimer and those immediately employed by him, that it was at least an innovation, and would have to be carefully thought over, but I think I expressed the desire to do anything I could in the matter to please her.

20 Subsequently, I discussed the matter with Mr. Reaper, and I think I said we were quite agreeable to that if she insisted upon it.

Q.—Excuse me, you say you were quite agreeable to that?

A.—To a representative.

Q.—What did you understand as to what she herself would do with regard to her Directorship?

A.—I understood that somebody would be substituted for her.

Q.—And then, what happened after you expressed your willingness on that basis to comply with her wishes?

30 A.—After that, she telephoned me, a day or so later, and asked me if I had any objection to Mr. Donaldson being nominated as a Director.

Q.—Who was Mr. Donaldson?

A.—She meant Mr. Donaldson, the General Manager of the Montreal Trust Company, and it was over the phone. There was somebody in my office at the time, and I said, “That creates somewhat of a complication which I cannot discuss over the phone, but if we could meet I could explain about the difficulty of Mr. Donaldson.”

40 She came to my office afterwards, and I explained to her why, in my opinion, Mr. Donaldson was not a good choice. I think I said I had nothing personal against Mr. Donaldson—I know him, and have always had the highest respect for him, but owing to the relationship which had existed during Sir Mortimer’s lifetime with interests which Mr. Donaldson represented, I felt that it would not be appropriate to have Mr. Donaldson as a member of the Board of Directors of Sir Mortimer Davis Incorporated, and I think I said that in those circumstances and for those reasons, I did not think he should be suggested.

Q.—Before you go on, let me ask you this: You heard Lady

LORD SHAUGHNESSY (*for Defendants*), *Examination-in-Chief*.

Davis' statement as to what you said to her as being your reason for objecting. Do you remember that she said something in that regard?

A.—I remember the statement she made.

Q.—Did you make that statement?

A.—I have no recollection of making any such statement.

Q.—If you had made any such statement, would you recollect it?

10 A.—I should think so, yes—the statement you refer to is in connection with Mr. Montgomery?

Q.—Yes, did you make that statement?

A.—No, I did not.

By the Court:

Q.—Did you mention Sir Herbert Holt?

A.—I did mention Sir Herbert Holt.

20 By Mr. Holden:

Q.—I think, in view of what is already on the record, I should ask you to tell the Court a little more definitely why you felt that Mr. Donaldson, in his position, and with his connections, should not be a Director of the Incorporated Company?

A.—During Sir Mortimer's lifetime, and more particularly in connection with his divorce, Sir Herbert Holt, who was a great personal friend of his first wife, played some part in the proceedings, and was ultimately appointed to represent the first Lady Davis as a
30 Trustee under the Marriage Settlement.

Q.—That is Lady Henrietta Meyer Davis?

A.—That is, the first Lady Davis. Sir Mortimer resented this, and the relationship between himself and Sir Herbert was, to say the least, not amicable.

At the time of the absorption of the Union Bank by the Royal Bank, it became necessary for Sir Mortimer Davis Incorporated and the Industrial Alcohol Company, and various interests of Sir Mortimer, to make new banking arrangements——

40 Q.—They had theretofore banked with the Union Bank?

A.—With the Union Bank.

Q.—Do you know for how long?

A.—For many years.

Sir Mortimer was not desirous of placing the account in the Royal Bank——

Q.—You say "placing the account". You mean allowing it to remain?

LORD SHAUGHNESSY (*for Defendants*), *Examination-in-Chief.*

A.—Of allowing it to remain in the Royal Bank when it was absorbed, on account of that lack of amicability between them.

Q.—Sir Herbert Holt being the President of the Royal Bank?

A.—Yes. Knowing this situation which existed——

Q.—I should add too for the record, that Sir Herbert Holt is President of the Montreal Trust Company?

10 A.—Sir Herbert Holt is President of the Montreal Trust Company.

Knowing the situation which existed, I did not feel that it was fair to induce an element into Sir Mortimer Davis Incorporated and its allied interests which, during Sir Mortimer's lifetime, at least, bore that relationship with him, and that was my reason. I had no reason whatever against Mr. Donaldson personally and I told Mr. Montgomery so very distinctly at a subsequent interview.

Q.—Then, when Lady Davis, or her Counsel suggested Mr. George C. McDonald, what attitude did you take in that regard?

20 A.—I was quite willing to accept Mr. McDonald.

Q.—Why was he not appointed?

A.—A controversy arose over the question as to whether McDonald would be appointed to the Board in addition to Lady Davis, or whether McDonald was going to be substituted for Lady Davis.

Our idea was, that Lady Davis would resign, and McDonald be appointed to look after her interests. Her idea was that McDonald would be added to the Board with her, and that was the controversy.

Q.—Were you and Mr. Reaper willing that she should be replaced by Mr. George C. McDonald?

30 A.—Absolutely.

Q.—When did you first learn of her desire to remain on the Board in addition to her new nominee?

A.—I think in a telephone conversation I assumed, or took it for granted, that she was going to resign. She told me she had no such intention, it was never her understanding of the arrangement.

Q.—You said something that showed that understanding on her part?

A.—Yes.

40 Q.—Do you know when that would be?

A.—That was a few days after she suggested Mr. McDonald should be appointed.

Q.—Why were you not in favor of Lady Davis and her new nominee being appointed Directors of the Incorporated Company?

A.—It didn't seem to me that there was any call for one of the Executors having two representatives on the board, when the others were only one each.

LORD SHAUGHNESSY (*for Defendants*), *Examination-in-Chief*.

Q.—When Lady Davis asked, I think, in the latter part of last summer, for additional statements from the Auditors, did you delay in ordering them, or what did you do in compliance with her request?

10 A.—I received a long letter from Lady Davis which, I think, is filed on record, in which she asked for abundant information and numerous statements. The request came in sometime in August—
about the end of July or beginning of August, sometime about then, or maybe late in August, I am not quite sure.

Q.—Late in the month of August?

A.—Late in the month of August.

The books of the Incorporated Company are, as a rule, every year audited shortly after the end of the fiscal year, the 30th of September, and I wrote to Lady Davis a letter, which I think is also of record, and suggested it might be more practicable to wait until the general audit of the books was made, and when it was made,
20 it would be made in a form to produce the statements that she requested, and suggesting that might save trouble and expense, and possibly save two audits, and I received a reply that she wanted those statements immediately.

Q.—When you say, “Those statements”, to what statements do you refer?

A.—The statements indicated in the letter.

Q.—Statements earlier than the end of the fiscal year of the Company?

30 A.—Yes.

The matter was put in the hands of Mr. Reaper who, I understand, communicated with the Auditors, and I know of no particular unnecessary delay.

Q.—And when the Auditors got the instructions, did they act with reasonable promptness?

40 A.—I think they did. I think just at the time they got the instructions, they were very busy. It is a time, I think, when a great many of the books of the important institutions are audited, and I think they were extremely busy, and it took them some days to get a man on the job, but I have in mind that it was proceeded with without undue delay.

Q.—Was Lady Davis any later getting copies of those statements than you or Mr. Reaper?

A.—I do not think so.

Q.—You all got them at the same time?

A.—I think so.

Q.—Before leaving this subject I think I should ask you this:

LORD SHAUGHNESSY (*for Defendants*), *Examination-in-Chief*.

From the time of Sir Mortimer's death, on the 22nd of March, 1928, until the latter part of last summer, had you at any time any reason to think that Lady Davis was dissatisfied or critical of you and Mr. Reaper as her fellow Executors?

A.—I never had the slightest reason to even imagine anything of the kind until, I would say, probably June 24th last.

10 Q.—You and Mr. Reaper are also attacked with regard to the McNish Company. We have filed this morning certain letters, some of which indicate clearly Sir Mortimer's personal connection with the Investment made in the McNish Company, so I will ask you to state briefly what the situation was in regard to McNish before, and at the time of the Investment?

A.—The Robert McNish Company Limited was a comparatively small whiskey blending business.

Q.—Before you go on, I think it should be on the record what whiskey blending consists of. What does that mean?

20 A.—In Great Britain, while the large Scotch whiskey producers—you may call them in themselves distillers, they are actually not distillers in the sense that that word is known here. The distillers of Scotch whiskey are spread all over Scotland, hundreds of them in various sections of the country.

Q.—When you say "Distillers"

A.—The men who actually make the Scotch whiskey, who distill it.

Q.—The actual distillers?

30 A.—The actual distillers are spread all over various parts of Scotland.

Q.—What are they? Individuals?

A.—They are small people, very small people, who distill small quantities of Scotch malts, as we call them, which are characterized largely by the locality in which they are distilled, Highland Malts, Isley Malts and various malts of that kind. They have a particular character according to the place in which they are distilled.

Q.—Do you mean there are really a large number of those?

A.—There are a tremendous number of them.

40 Now then, the large firms, like Dewar's, Buchanan's, White Horse and these different people, purchase their malts from these small distillers. Sometimes they probably use fourteen different kinds of malts taken from fourteen different sections of Scotland to make one blend.

Q.—You say they probably use. You are now speaking of the big manufacturers?

LORD SHAUGHNESSY (*for Defendants*), *Examination-in-Chief*.

A.—The big manufacturers, Dewar's, Buchanan's, White Horse, Johnnie Walker.

A.—They purchase these malts from these small distillers, and make their own blend, using certain proportions of malts from certain localities, and the net result is, Dewar's or Johnnie Walker or Black and White, whatever it happens to be, and they are what they call blenders. They do not distill the malt themselves.

10 Q.—The brands, including the well known brands, such as you have mentioned, are the result of blends?

A.—Blends, all of them, and these big people do distill through grain spirits, which we call a neutral spirit, which is added to the malts to complete the finished product.

Q.—As this is added to the malts, they require

A.—They require a small distillery. Those malts are known in the trade as single whiskey.

20 Q.—Is that a recent development in the Scotch whiskey business?

A.—No. It has been going on for centuries.

Q.—It has a long history?

A.—Yes.

Q.—What is the name of that Company?

A.—Robert McNish and Company Limited.

Q.—Where is their head office?

A.—Their head office is now in London. It was in Scotland.

Q.—I interrupted you, you were saying they were blenders?

30 A.—They are blenders, similar to these other blenders I have spoken of, who put out a blend known as Duffty Special formerly in those early days; now Robert McNish Special Liqueur Whiskey is a similar process. It is a blend of several types of Highland whiskies.

Q.—What I want is a brief summary of the history of the Alcohol's present connection with McNish, how it came about?

40 A.—It was during the summer of 1927, or the early spring, that Sir Mortimer, in Europe, felt it to be very important that we should have a Scotch whiskey company, that the Industrial Alcohol Company should have a Scotch Whiskey Company, and he negotiated first of all with various larger concerns and then, finally with the McNish Brothers, the two men who owned this Robert McNish and Company Limited; they were blenders putting out a very reputable brand, which had been known for a good many years, but doing a comparatively small business compared to some of the other blenders.

Q.—When you say they owned the business, they owned the shares?

LORD SHAUGHNESSY (*for Defendants*), *Examination-in-Chief.*

A.—Well, it was all owned by themselves, and members of their family; an option was given to Sir Mortimer on ninety per cent of the capital stock of the company on certain terms and conditions depending upon a balance sheet which would be drawn by Deloitte, Pender and Haskins

10 Q.—They are the Chartered Accountants of the Alcohol Company?

A.—They are the Chartered Accountants of the Alcohol Company.

Q.—Who discussed and arranged with the McNish Brothers the terms of the option?

A.—Sir Mortimer did.

Q.—Personally?

A.—Yes, and eventually an option was drawn, the price to be paid dependent upon what was revealed by the balance sheet which was ultimately prepared by the Auditors.

20 Q.—When you heard of it, what had you to do or to say with Sir Mortimer with regard to this new venture?

A.—I had some correspondence by letter and by cable (I think they were filed this morning) with Sir Mortimer concerning this matter, and I went to France in June of 1927 and consulted with him and the McNish's and examined the option, and then he sent me over to England to revamp the balance sheet. A new balance sheet had to be struck, and I attended to that with the Auditors, and subsequently attended to the final contract which was drawn up by Solicitors in London embodying the terms of the option.

30 Q.—Did you encourage Sir Mortimer in that venture, or what opinion did you form, and what attitude did you take with regard to it?

A.—My feelings in the matter, I think, are clearly indicated by a letter which was produced this morning. I was not at all adverse to the proposition, but I was nervous about the large capitalization which was proposed.

40 Q.—That letter shows, as I understand it, that you tried your best to get him to test it and consider the matter further before closing?

A.—I thought it better to operate it as a small concern for awhile, and gradually build it up, to see what opportunities it offered before placing a large liability, and a consequent liability on the Canadian Industrial Alcohol Company, who guaranteed the security.

Q.—And did he accede to your suggestion?

LORD SHAUGHNESSY (*for Defendants*), *Examination-in-Chief*.

A.—No. He gave them consideration, but he had other ideas. The matter was proceeded with according to his plan.

Q.—Will you tell the Court why the Directors of your Company have not sold the McNish Debentures. What is the situation in that regard? The McNish Debentures are owned by

10 A.—Sir Mortimer Davis Incorporated as a shareholder of the Alcohol Company owns a large portion of the McNish Debentures. The McNish Debentures were issued to shareholders of the Alcohol Company.

Q.—I would like to get this clear: It was the Canadian Industrial Alcohol Company that finally contracted with McNish and bought securities of the McNish Company?

A.—We guaranteed the securities, and then issued the McNish Debentures, as a special privilege for the shareholders of the Alcohol Company, I think, in the proportion of one Debenture of McNish for one share of Alcohol.

20 Q.—Who arranged for the guarantee?

A.—The guarantee was given by the Canadian Industrial Alcohol Company.

Q.—At whose instigation?

A.—At the instigation of the Board of Directors of that Company on Sir Mortimer's instructions.

Q.—“Instigation” perhaps was not the right word—Sir Mortimer's instructions?

A.—Yes.

30 Q.—And then, the McNish Company issued these Debentures which were available to the shareholders of the Alcohol Company?

A.—Yes.

Q.—I did not make my question clear, because I did not have it clear in my own mind: After these McNish Debentures were issued by the McNish Company, and made available to the shareholders of the Canadian Industrial Alcohol Company, what did Sir Mortimer Davis Incorporated do with regard to its rights as a shareholder of the Alcohol Company?

40 A.—Sir Mortimer was here at the time, I think, when the McNish Debentures were being issued, and he arranged that a number of Debentures to which Sir Mortimer Davis Incorporated was entitled to as a shareholder of the Alcohol Company, together with the number of Debentures that I was entitled to as a shareholder, the number of shares that Lady Davis was entitled to, that his brother, Mr. Melville Davis was entitled to, that Mr. Curran was entitled to, and Mr. Mortimer Davis was entitled to, would be all lumped in one subscription.

LORD SHAUGHNESSY (*for Defendants*), *Examination-in-Chief.*

Q.—Mr. Curran is Lady Davis' brother?

A.—Yes.

Q.—It was all lumped

A.—In one subscription, and arrangement made with the Bank to furnish the money to take up the whole thing.

Q.—What Bank?

A.—With the Canadian Bank of Commerce.

10 Q.—You say Sir Mortimer made that arrangement himself?

A.—Sir Mortimer made that arrangement, and he saw Mr. Logan, the General Manager of the Bank, and arranged to obtain the money in New York, as a loan in New York, on account of more advantageous interest.

Q.—And who actually borrowed the money?

A.—Sir Mortimer Davis Incorporated borrowed it.

Q.—For all of those holdings?

A.—For all of those holdings.

20 Q.—The bulk of the rights belonged to Sir Mortimer Davis Incorporated?

A.—Oh yes.

Q.—Their rights were very much larger?

A.—Oh, their rights were very large.

Q.—Larger than the rights of the others you have mentioned?

A.—A proportion of over fifty one per cent of the Alcohol stock.

30 Q.—When Sir Mortimer Davis Incorporated borrowed the money, and the McNish Debentures were so acquired for all the rights of the different people you have mentioned, what was done on the books of the Incorporated Company to show the relation of the other persons whose rights had been so exercised?

A.—The amount which each of the other individuals owed for the Debentures was debited against them in the books of Sir Mortimer Davis, Incorporated.

Q.—With regard to the McNish Debentures that were so bought by Sir Mortimer Davis, Incorporated, in your right, you personally, have you paid your debt to the Incorporated Company in that connection?

40 A.—I have comparatively recently.

Q.—And I think I should ask you at the same time: Later on, the Incorporated Company bought Alcohol " B " shares for various persons?

A.—Yes.

Q.—Including the Company itself?

A.—Yes.

LORD SHAUGHNESSY (*for Defendants*), *Examination-in-Chief.*

Q.—Have you paid the Company for your part of that indebtedness?

A.—Yes. I did so at the same time as I paid for the Debentures.

Q.—Coming back to the McNish Debentures, I think you have said that Sir Mortimer Davis, Incorporated, under its own rights acquired a large block of those Debentures?

A.—Yes, a large block.

10 Q.—Have those Debentures been sold by the Incorporated Company?

A.—No, they have not.

Q.—Why not?

A.—Well, there has never been a market for the sale of those Debentures. It has been practically impossible to sell them. The dealings have been very very small, and then the price has not been particularly advantageous at the present moment.

20 Q.—Have the Directors been watching for an opportunity to sell?

A.—Yes, we have been watching the market. The market is very small.

Q.—Would you have sold at a proper price if you could?

A.—I think at a proper price we would have, unquestionably. It was the intention to sell them if we could get a proper price, and if the market was capable of absorbing them.

Q.—The Exhibit D-82 already filed was signed by you, but is that the contract that you say Sir Mortimer arranged?

A.—Will you let me see it, Mr. Holden?

30 Q.—I said, signed by you. It was signed by the Alcohol Company per you as President?

A.—Yes, that appears to be the contract of purchase of the McNish stock.

Q.—Where was it signed?

A.—In London, England.

Q.—Where was Sir Mortimer at the time it was signed?

A.—In France.

Q.—Is this the contract that you have testified to that was negotiated and arranged for?

40 A.—Precisely.

Q.—Including the arrangement contained in paragraph 9 of the contract at page five of the Exhibit, reading: "The purchaser," that is, Canadian Industrial Alcohol Company Limited, "shall procure that each of the vendors shall be appointed a Managing Director of the Company for a term of three years from the first August, One thousand nine hundred and twenty-seven, with a remuneration," and so on?

LORD SHAUGHNESSY (*for Defendants*), *Examination-in-Chief*.

A.—Yes. There was another contract between the McNish Company and these two gentlemen covering that clause.

Q.—That was procuring what the Company promised to procure?

A.—Yes.

Q.—Do you remember if Sir Mortimer Davis became an officer of McNish?

10 A.—Yes. I think he was Chairman of the Company.

Q.—Chairman of the Board?

A.—I think so.

Q.—You and Mr. Reaper are attacked with regard to the fact that the Pine Avenue house and land of Sir Mortimer's Montreal residence have not been sold. Have efforts been made to sell it?

A.—Oh, yes, efforts have been made to sell it. It has been put into the hands of every prominent real estate people, for sale. Offers have been received for the purchase, but none of them were high enough to be acceptable to the Executors.

20 A.—When you say, not high enough to be acceptable to the Executors, does that include Lady Davis?

A.—Yes.

Q.—I should ask you to state for the record, what real estate agents have been endeavoring to find a purchaser for the Executors?

A.—H. Joseph and Company, Ewing and Ewing, Ernest Pitt and Company. I think probably some others, I cannot remember, but it is a free-for-all.

30 Q.—You and Mr. Reaper are criticized, because you did not have a display sign reading "For sale" on that property. Tell the Court why you did not have a sign?

A.—There was a sign put up there at one time—there were two signs, two very large signs, one put on the front lawn, which is at the corner of Pine Avenue and Peel Street, and the other put over on the other side by Henry Joseph and Company, and we considered that they marred the looks of the property, and in any event, as Joseph did not have the exclusive rights to sell the property, everybody would have had a right to put up a sign, and it would have been very unsightly.

40 Q.—I think I should ask you for the record, what class of property that house and land comprise, with reference to properties that have "For sale" cards and signboards and so on—what is the character of this property?

A.—This is such a prominent property, such a valuable property, a beautiful property, the fact that it has been in the market, I should think it is very widely known. I don't know whether it needed any further advertising.

LORD SHAUGHNESSY (*for Defendants*), *Examination-in-Chief*.

Q.—And being a beautiful property of that character, is it a help, or is it suitable to put display signs reading “ For sale ” and that kind of thing on such a property?

A.—Not in my opinion. I am not a real estate man, but I would not think so.

Q.—And we know by the Exhibits filed this morning that Sir Mortimer expressed the same opinion?

10 A.—I don't know that his opinion was exactly that. My interpretation may not be right, but Sir Mortimer had expressed his intention of selling the property if he got an offer. I do not think he wanted it generally known that the property was in the market for sale, and I think that was largely the reason why he suggested a sign should not be put on at that time.

Q.—In Exhibit D-123, below the middle of the first page he says, “ Don't put ‘ For sale ’ signs up. It should be done privately.’ You mean, if I understand you, that what he had particularly in
20 mind was a desire to keep it private?

A.—The fact that he would have sold if he got an offer, but he did not want it noised about that he had it in the market.

By Mr. Geoffrion:

Q.—It was not then in the hands of other agents?

A.—No, only in Joseph's hands.

Q.—Did you and Mr. Reaper consider the question whether in trying to sell a property of that character it was advisable in the
30 interests of the Estate to put up signboards on the property?

A.—We did not consider it advisable in the circumstances. I might say the signs were put up, at all events on Pine Avenue, without my knowledge. There was no suggestion to me that the sign was going to be put there.

Q.—You mean the ones which were put up by Henry Joseph & Company?

A.—Exactly.

Q.—And they were afterwards removed, I understand?

A.—They were afterwards removed.

40 Q.—After your consideration of the matter will you tell the Court whether, in your opinion, a property of that character, value and location is sold by the casual passerby seeing a sign, or whether it is other considerations that bring about the sale?

A.—I would not think the casual passerby would have enough money to purchase the property. One or two might, but not many.

Q.—Will you state briefly what is the character of the Ste. Agathe property?

LORD SHAUGHNESSY (*for Defendants*), *Examination-in-Chief*.

A.—The Ste. Agathe property is a very large property; I am speaking now of the extent of land.

Q.—A great acreage?

A.—Yes. With a large stone house. A very handsome summer residence.

Q.—Do you know the acreage?

10 A.—I really do not know the exact acreage, but there is a great deal of land.

Q.—It is a large country estate?

A.—A large area, yes.

By the Court:

Q.—Do you know when it was built, and how much it cost?

20 Witness: The Ste. Agathe house?

His Lordship: Yes.

A.—I do not think I can say. I do not know actually how much it cost.

By Mr. Holden:

Q.—It is not a cheap or ordinary construction, I understand.

30 A.—No; it is a very well-built property.

By Mr. Geoffrion:

Q.—I am told it was built about twenty years ago?

A.—About twenty years ago. It is a very fine stone building—a very substantial building. It is a very nice house.

By Mr. Holden (continuing):

40 Q.—Apart from the large acreage and the handsome stone house to which you have referred, am I right there are a number of cottages, barns and buildings of different kinds?

A.—Yes, there are a number of cottages and outbuildings on the farm. There are also two very good lakes for fishing.

Q.—Have the Executors been endeavoring to sell that property?

A.—Oh, yes.

Q.—Why were the Executors not willing to lease that property?

LORD SHAUGHNESSY (*for Defendants*), *Examination-in-Chief*.

A.—We did not think it would help the sale of a property of that description to lease it, the idea being that once a property becomes leasable the possibilities of a sale diminish tremendously.

Q.—Have you ever had an offer of the amount the Executors were willing to accept for that property?

A.—No. We have had offers, but never the amount we were willing to accept.

10 Q.—Reference has been made in the evidence to what was called an option on the Paris residence for Sir Mortimer Davis. What do you know of the situation in that regard?

A.—I do not know a great deal about it. I remember Sir Mortimer contemplated at one time purchasing a house in Paris, and there was some interchange of cables between himself and people on the other side; but I am not very familiar with that. I do not know whether he had an option or not. He had a Secretary here, and most of the business was conducted by his Secretary, and I think the
20 cables were sent by his Secretary.

Q.—What have the Executors been doing with regard to continuing expenses on the Pine Avenue property and the Ste. Agathe property?

A.—We have spent such sums on the properties as we considered necessary to keep them in a proper state of repair and to prevent deterioration.

Q.—If you did not keep them in repair and prevent deterioration, what effect would it have on the prospect of selling them?

30 A.—A large property like that would depreciate very considerably through deterioration.

Q.—Am I right that is a very important element in trying to sell them?

A.—Yes, very.

Q.—Reference was made by one of the witnesses for the plaintiffs to the situation at the St. Hyacinthe Distillery—one of the subsidiaries of the Alcohol Company, as I understand it.

A.—Yes.

40 Q.—And to the transfer of the brands from St. Hyacinthe to Corbyville. What was, and is, the situation with regard to that subsidiary and the present condition of affairs there?

A.—We operated that plant as a bottling plant for some time, and put out certain brands which were known as the St. Hyacinthe brands of various types of whisky.

Q.—What do you mean by a bottling plant?

A.—We would send the whisky down from Corbyville, and

LORD SHAUGHNESSY (*for Defendants*), *Examination-in-Chief*.

bottle it at St. Hyacinthe, for export to various ports. It would have the brand names of the St. Hyacinthe Distillery.

Q.—Am I right in understanding that the St. Hyacinthe Distillery was owned by a separate subsidiary company?

A.—A subsidiary company, yes.

10 Q.—What is the name of that company?

A.—The Consolidated Distilleries.

Q.—That Company owned the St. Hyacinthe Distillery?

A.—Yes.

Q.—About how long had the St. Hyacinthe Distillery been in existence as a distillery?

A.—For many many years. It is one of the oldest distilleries in Canada. It used to be known in the early days as The St. Hyacinthe Distilling and Vinegar Company. It has been in existence for a great many years. It is quite a small plant.

20 Q.—Did it belong to Consolidated Distilleries, Ltd., your subsidiary, during the lifetime of Sir Mortimer Davis?

A.—Yes.

Q.—You said it was a bottling plant?

A.—Yes.

Q.—Until about when?

A.—I think it would be about the end of 1928, or some time around then, when we found that bottling costs were a little too heavy at St. Hyacinthe and we could bottle it at Corbyville, with the facilities we had there, so much cheaper. As you bottle in volume
30 you reduce your costs.

Q.—At Corbyville?

A.—At our plant in Corbyville, Ontario.

Q.—That was where the distilling was done?

A.—Yes. So we stopped St. Hyacinthe as a bottling plant, and for a time bottled their brands at Corbyville.

Q.—You mean the brands that had hitherto been bottled at the St. Hyacinthe Distillery?

A.—Yes.

40 Q.—What did the witnesses mean when they spoke of the transfer of the brands to Corbyville?

A.—That the brands were taken over and bottled at Corbyville.

By the Court:

Q.—What was left at St. Hyacinthe then?

A.—Industrial alcohol. We store industrial alcohol and grain spirits in tanks there.

LORD SHAUGHNESSY (*for Defendants*), *Examination-in-Chief*.

By Mr. Holden (continuing):

Q.—Another matter referred to in the plaintiffs' evidence was an increase, on the record in any event, in your salary as President of Sir Mortimer Davis, Incorporated, and an increase in the salary of Mr. Reaper as Vice-President and Secretary-Treasurer. Will you tell the Court, please, why those changes were made in the salaries?
10 Deal with your own, first.

A.—There was no actual increase in the salary.

Q.—You are now speaking of your own?

A.—Speaking of my own. The situation was I received a salary and a bonus every year.

Q.—What was the amount of your salary?

A.—\$20,000 salary, and \$5,000 bonus.

Q.—That was in the lifetime of Sir Mortimer?

A.—Yes.

Q.—I think the record shows one year you got a \$10,000 bonus?
20 A.—Yes.

A.—Yes.

Q.—And the other years \$5,000?

A.—Yes. I simply suggested to Mr. Reaper that we just make it straight salary, instead of being salary and a bonus each year.

Q.—So, when your salary was made \$25,000, was there any intention or question of giving you a bonus as well?

A.—Not besides the \$25,000, no.

Q.—The \$25,000 was to replace the bonus?

A.—To cover the salary and bonus which had been the practice
30 ever since I had been there.

Q.—Do you remember about when the salary and bonus were so changed to a salary alone?

A.—I think in January, 1929.

Q.—What was the financial condition of this Incorporated Company at that time?

A.—We were in sound financial condition.

Q.—What was the condition in regard to its revenues from Alcohol?

A.—It was getting substantial revenues from Alcohol.

Q.—When was the special bonus from the Alcohol Company to its shareholders?
40

A.—At the end of 1928.

By Mr. Campbell:

Q.—Paid in January, 1929?

A.—Declared in December, 1928, and paid in January, 1929.

LORD SHAUGHNESSY (*for Defendants*), *Examination-in-Chief*.

By Mr. Holden (continuing):

Q.—You referred to that change, which did not constitute an increase of your own salary—

Mr. Geoffrion: Do you say, did not increase?

10 By Mr. Holden (continuing):

Q.—Which you point out was not an increase in your annual receipt of moneys?

A.—Yes.

Q.—What was the situation with regard to Mr. Reaper, your Vice-President and Secretary-Treasurer?

A.—Mr. Reaper's salary had been raised at the end of 1926.

Q.—What was he then in the Company?

20 A.—Secretary-Treasurer of the Company. Sir Mortimer Davis had often suggested to me that Mr. Reaper was not getting enough.

Mr. Geoffrion: Of course, this evidence is being made subject to the same general objection to oral testimony, and also upon the ground that this is not pleaded.

Witness (continuing answer): Sir Mortimer had often suggested to me that Mr. Reaper was not getting enough, and felt he ought to be paid more. He did a great deal of personal work for Sir
30 Mortimer, and so on. Sir Mortimer had suggested his salary should be \$10,000 when it was raised in 1926, but it was left at \$7,500.

By Mr. Holden (continuing):

Q.—Mr. Reaper was then Secretary-Treasurer of the Company?

A.—Yes.

Mr. Geoffrion: Was that suggestion by letter?

40 By Mr. Holden (continuing):

Q.—When did Mr. Reaper become Vice-President as well?

A.—In 1929. And it was then his salary was raised to \$10,000.

Q.—Was Mr. Waddell an earlier Vice-President of the Incorporated Company?

A.—Yes.

Q.—And then President, I understand?

LORD SHAUGHNESSY (*for Defendants*), *Examination-in-Chief.*

A.—No, he was not President.

Q.—What was his salary at the last, before he retired?

A.—\$25,000 a year.

Q.—All in the form of salary?

A.—Yes.

10 Q.—A good deal has been said in the plaintiffs' evidence with regard to the Asbestos Corporation of Canada, and the Consolidated Asbestos Company. I think I should ask you to tell the Court briefly what the real situation was, and is, in that regard?

A.—Sir Mortimer Davis Incorporated owned an interest of about 70 per cent of the capital stock of a Company known as the Consolidated Asbestos, Limited—

Q.—(Interrupting) To what period are you referring now?

A.—I am referring to prior to 1926.

20 Consolidated Asbestos, Limited, owned an interest of about 60 per cent of the capital stock of an asbestos company known as the Federal Asbestos Company. When the Asbestos Corporation of Canada, which now exists, was formed—

Q.—(Interrupting) About when would that be?

A.—In 1926. It commenced operating in February, 1926. The formation took about eight months during 1925 to negotiate.

30 The Asbestos Corporation of Canada was an amalgamation of some eight asbestos companies in the Province of Quebec, and among those companies which were absorbed into the Asbestos Corporation of Canada were the Consolidated Asbestos and the Federal Asbestos. The terms of purchase entailed turning over both the Consolidated Company and the Federal Company to the new Corporation, free and clear of all liability.

Q.—I do not want to interrupt you, except to ask you to indicate at the proper time where Sir Mortimer Davis' interest came in.

A.—Through the ownership of the stock of Consolidated Asbestos.

Q.—When you speak of turning over those companies, do you mean the securities, or the assets?

40 A.—The physical assets: plant, mines, and all physical assets. The capital stock was not turned over.

By Mr. Geoffrion:

Q.—It was their physical assets that were included in the valuation?

A.—Yes.

LORD SHAUGHNESSY (*for Defendants*), *Examination-in-Chief*.

By Mr. Campbell:

Q.—The physical assets turned over free and clear?

A.—Yes.

Sir Mortimer Davis Incorporated had advanced about \$1,100,000 in cash to this Consolidated Company, and was guarantor on the **Bank** indebtedness of both Companies to the extent of about
10 \$750,000 more.

By Mr. Holden (continuing):

Q.—That advance and that guarantee were before Sir Mortimer's death?

A.—Long before Sir Mortimer's death, yes. The whole amalgamation was completed before his death.

20 These Companies also had bond issues, and some considerable bills payable—trade indebtedness—all of which had to be satisfied before the properties were turned in to the new Corporation. In order to do this it was necessary to borrow money from the Bank to pay up these various species of indebtedness.

Q.—Necessary for whom?

A.—Necessary for the Consolidated Asbestos and the Federal Asbestos to borrow money to clear off the liabilities.

30 It was carefully calculated, at prices which those bonds and shares might realize in the future, just what would be required as a purchase price to meet those liabilities. I think the bonds were taken at 90, the preferred stock at 80, and the common shares at 25. Based on that prospective value, the deal was made with the new Corporation; and the properties purchased for bonds, preferred shares, and common shares in the Asbestos Corporation, Limited. Those securities, however, were all hypothecated to the Bank to secure the advances necessary to pay off the liabilities.

Q.—Hypothecated by Consolidated Asbestos and Federal Asbestos?

A.—Hypothecated by Consolidated Asbestos and Federal Asbestos.

40 It was then necessary to sell, whenever we could, at a price not less than the price we had fixed (otherwise we would have owed money) those bonds and preferred shares, and such of the ordinary shares as were necessary to be sold; and the remainder of the ordinary shares would then be divided among the shareholders of Consolidated Asbestos, Limited, and Federal Asbestos, Limited, in proportion to their holdings.

Q.—What was the situation at the time of Sir Mortimer's death?

LORD SHAUGHNESSY (*for Defendants*), *Examination-in-Chief*.

A.—At the time of Sir Mortimer's death we had sold practically all the bonds of Consolidated Asbestos and Federal Asbestos, apart from a small amount remaining—\$40,000 or so. All the preferred stock had been sold, and some of the ordinary shares had been sold.

During Sir Mortimer's visit here in 1927 we were selling some of the common shares, and he stopped us selling them. He felt they were going to be much more valuable, and that we should not sell
10 them. As I say, we had sold all the bonds, and the preferred stock, and some proportion of the common shares, and had reduced the liability from somewhere about \$2,100,000 to about \$45,000.

Q.—What is the position now, and what has it been since Sir Mortimer's death?

A.—The securities have been in the Bank. The actual position was that the Consolidated securities were practically free because the Consolidated account had been extinguished as far as their liabilities were concerned.

The Federal securities are still hypothecated for the balance
20 owing the Bank—around \$45,000. But a complication arises, inasmuch as the Consolidated owns the Federal interest and it is difficult to know what proportion of the Federal stock the Consolidated Company will get as a shareholder. The situation is more or less intermingled in the Bank.

Q.—Am I right that apart from what you have been speaking of there was a purchase in Sir Mortimer's lifetime of 5,000 shares of Asbestos Corporation of Canada?

A.—Yes. By Sir Mortimer's instructions the Incorporated
30 Company purchased 5,000 shares of stock, which we hold.

Q.—Is that common stock?

A.—Common stock.

Q.—What have you to say with regard to the complaint made against you and Mr. Reaper that those shares had not been sold?

A.—We considered those shares were shares Sir Mortimer desired to keep. They were bought for an investment.

Q.—What was Sir Mortimer's view with regard to this Asbestos venture altogether?

A.—He was very optimistic in the Asbestos situation. I think
40 that is clearly demonstrated by the fact that he put \$1,100,000 of cash into Consolidated, and guaranteed their Bank loan, and carried the Company on notwithstanding that for some time he was losing about \$30,000 a month owing to the conditions in the industry and a price war which ensued after the war. He always insisted that the asbestos industry could be made something, and that was why he was anxious to put his companies into this amalgamation, because he felt that would be a solution.

LORD SHAUGHNESSY (*for Defendants*), *Examination-in-Chief*.

By Mr. Campbell:

Q.—What did you pay for your 5,000 shares?

A.—Around 20, or 21.

By Mr. Holden (continuing):

10 Q.—Broadly speaking, what has been the history of the market for the sale of those shares since Sir Mortimer's death?

A.—I think that was the ski run, which has been referred to.

His Lordship: We have a graph of that.

By Mr. Holden (continuing):

Q.—It has not been a favorable market from then on?

20 A.—For a while the market was all right; but the asbestos industry suffered misfortunes, and the stock dropped.

By the Court:

Q.—Has the last Annual Meeting revealed anything?

A.—Since the last Annual Meeting there has been a change in the Directorate.

Q.—Has there been any change in the policy, or any change in the outlook?

30 A.—I understand the President was more optimistic. The position of that Company simply is a question of finding more ore or rock, and that is what they have been working on lately; with some results, according to his report.

Q.—The Incorporated Company owns 5,000 shares?

A.—The Incorporated Company owns 5,000 shares, that we bought.

Q.—Is that all it owns?

40 A.—No, that is not all it owns, because the Incorporated Company will participate in its proportion of the purchase price of the Consolidated Asbestos and the Federal Asbestos which comes to it in the form of Asbestos Corporation shares.

By Mr. Campbell:

Q.—The 5,000 shares are all it owns directly?

A.—The 5,000 it owns outright; not in the Bank.

By Mr. Holden (continuing):

LORD SHAUGHNESSY (*for Defendants*), *Examination-in-Chief*.

Q.—Later on those other rights will accrue?

A.—Yes, when distribution is made.

By the Court:

Q.—That does not give you a controlling interest in the Company at all?

10 A.—Oh, no, Your Lordship. The total amount of common stock alone which was given for the two properties, the Federal and the Consolidated, was 44,000 shares. From that number must be deducted the shares going to other shareholders, the 30 per cent of Consolidated and the 40 per cent of Federal outstanding; and the total issued common shares of the Asbestos Corporation are 200,000 shares. So it would be nothing like control.

By Mr. Holden (continuing):

20 Q.—When you say it gave nothing like control, you are referring to control of the Asbestos Corporation?

A.—Yes.

Q.—What is the situation with regard to the control of the Consolidated?

A.—The Incorporated Company owns 70 per cent of the Consolidated stock. As a matter of fact, I am a little incorrect on that—I had forgotten. I think the preferred shares of the Asbestos Corporation vote, or have voting rights.

30 By Mr. Geoffrion:

Q.—The Estate, directly or indirectly, has no preferred?

A.—No, that was all sold. And no bonds.

By Mr. Holden (continuing):

Q.—What was Sir Mortimer's intention with regard to those 5,000 common shares so purchased? Was it speculative, or for investment?

40 A.—As far as we knew he bought them for investment. He was optimistic on the future of the Asbestos industry.

Q.—Critical reference has been made to the fact that the Directors of the Incorporated Company bought and sold certain Alcohol Company shares. Will you please tell the Court what was done in that regard, and why?

A.—It has been the practice during the whole time of my connection with the Incorporated Company—

LORD SHAUGHNESSY (*for Defendants*), *Examination-in-Chief*.

Q.—(Interrupting) During Sir Mortimer's lifetime?

A.—During Sir Mortimer's lifetime—occasionally to support the market on Alcohol shares to some small extent if it looked weak in the morning, and to buck it up a little by buying a few shares. For a while we did buy a few shares, and then we stopped.

Q.—After Sir Mortimer's death?

A.—After his death.

10 Q.—Did you buy and sell?

A.—We bought and sold.

Q.—With the result on the right side?

A.—There is a Statement showing that there was a profit on the general transactions.

Q.—When discussing the McNish situation and the McNish Company's debentures I referred to the fact that the Incorporated Company also later on bought for itself and for various persons certain "B" shares of the Alcohol Company?

20 A.—Yes.

Q.—About when would that be?

A.—Some time in 1928. March or April, 1928.

Q.—Just before Sir Mortimer's death?

A.—Just before Sir Mortimer's death.

By the Court:

Q.—They were issued as of March 1st, 1928?

A.—I think so.

30 By Mr. Holden (continuing):

Q.—Will you tell the Court briefly what was done in that regard?

A.—That was an issue of shares made to the shareholders of the Industrial Alcohol Company in the proportion, I think, one share for eight, at \$20 a share. They were non-voting shares. 123,000 odd shares were issued.

40 Q.—I presume the Canadian Industrial Alcohol Company obtained the necessary powers from Ottawa to issue those new shares?

A.—Yes, the legal formalities were all attended to.

Q.—And the shares were made available to the shareholders of the Company?

A.—Yes.

Q.—What action did Sir Mortimer Davis, Incorporated, take with regard to those rights, and the rights of others in that connection?

LORD SHAUGHNESSY (*for Defendants*), *Examination-in-Chief*.

A.—Practically the same action as had previously been taken in connection with the debentures. The rights of the same people were taken up in the same way.

By Mr. Geoffrion:

- 10 Q.—You mean the McNish debentures?
A.—The McNish debentures.

By Mr. Holden (continuing):

- Q.—Were they the same individuals—the same persons?
A.—The same persons.
Q.—And those rights were exercised by the Incorporated Company for that Company and those persons?
A.—Precisely.
20 Q.—And the amounts borrowed and used for the persons were charged up to them?
A.—Yes.
Q.—And, as you have said, you have paid yours back recently?
A.—Yes. At the same time as I took up the debentures.
Q.—Will you tell the Court the situation with regard to the Alcohol “ B ” shares so acquired by the Incorporated Company? I understand they were acquired just before Sir Mortimer’s death?
A.—Yes: they were acquired in March, I think.
30 Q.—What have the Executors done since Sir Mortimer’s death with regard to selling those shares, and what has been the situation in that respect?
A.—I think I explained that yesterday, Mr. Holden.

Mr. Geoffrion: We have been through all that. Lord Shaughnessy told us he went to New York, and so on.

Mr. Holden: Yes, you are quite right. I certainly did not intend to go over it again.

40 By Mr. Holden (continuing):

Q.—Criticisms have been made of the money expended with regard to certain explorations, and things of that kind. Will you tell the Court, please, the situation before Sir Mortimer’s death, and since his death, with regard to that kind of venture and expenditure?

LORD SHAUGHNESSY (*for Defendants*), *Examination-in-Chief*.

Mr. Geoffrion: This was certainly touched upon by my learned friend already, although perhaps not as exhaustively.

Witness: I do not believe I touched on it.

10 The first property I will deal with is Sudbury. Sir Mortimer owned for many years, and transferred to the Incorporated Company, a mine at Sudbury, Ontario. This mine is situated on what they call the Sudbury contact; that is the nickel contact which is in the form of a basin around a lake. It is situated not very far from a mine which, I think, has fallen into disuse and is not being operated any more. This mine was formerly owned by the Mond Nickel Company, and now is owned by the International Nickel Company.

It is not anywhere near the Frood Mine, which is some miles away from this locality.

20 The situation with regard to that location is this: there has been nickel found in that district by the International Nickel Company and the Mond Nickel Company, and Sir Mortimer felt that it was reasonably possible that there should be nickel in this mine of his.

By Mr. Holden (continuing):

Q.—When you say “ this mine of his ” what do you mean?

30 A.—The mine of the Incorporated Company—this mine situated at Sudbury, which Sir Mortimer owned for many years, and transferred to the Incorporated Company.

He instructed me to get a report on it.

Q.—About when do you think that would be?

A.—I think that would be some time in 1926. Mr. Poillon was not available, but I got his partner, Mr. Poirier, to go up there and examine the situation, and he examined the property—only a surface examination. He did not think much of it, and he came back and so reported.

40 Subsequently, in 1927, when Sir Mortimer was out here he discussed the matter with Mr. Poillon, and he still felt that an exhaustive survey should be made of that property. It was consequently decided to diamond drill it, and after Sir Mortimer’s death it was diamond drilled, unfortunately without any very good results. When Mr. Cochrane joined our organization

Q.—(Interrupting): When would that be?

A.—Shortly after Sir Mortimer’s death.

Q.—Who chose him?

LORD SHAUGHNESSY (*for Defendants*), *Examination-in-Chief*.

A.—Sir Mortimer chose him. Sir Mortimer appointed him, and he came out here to report. He was appointed an officer of the Company by Sir Mortimer before he died, but I think he did not get here until after Sir Mortimer's death.

10 He examined the property, and repeated to me that he felt not at all satisfied with the exhaustiveness of the former drilling, and he thought further drilling should be done; explaining that most of the valuable ore found in that vicinity was found at depth, and that very frequently one had to go through quite a mass of comparatively ordinary ore before getting to anything rich bearing. That, I believe, was the experience of the Froid mine.

I asked him casually how much it would cost, and if it would cost a great deal.

Nothing was done about any further drilling. We did not drill any more.

Q.—Did he say it was going to cost a great deal?

20 A.—It would have cost quite a lot.

By Mr. Geoffrion:

Q.—Nothing followed from the Cochrane conversation?

A.—No.

By Mr. Holden (continuing):

Q.—You enquired as to the cost?

30 A.—Yes, we discussed the cost, and I said we would not go ahead and drill it.

The drilling in that property was, of course, the principal exploration expense.

Then we had some claims at Chibougamou, and some men went in there, I think, to get some samples for Mr. Cochrane, or Mr. Cochrane went in himself. There was some expense incurred in connection with that.

40 Q.—What were Sir Mortimer's suggestions and instructions, and what was his attitude, with regard to explorations and investigations of that kind?

A.—As I said yesterday Sir Mortimer had a peculiar penchant for mining, and he bitterly complained that Mr. Poillon did not bring him any mines. He always had a very great optimism in respect of natural resources in Canada—oil, and mines, and things of that kind—and he was constantly having men go about and look into new districts. If any report came as to a mining centre being opened up,

LORD SHAUGHNESSY (*for Defendants*), *Examination-in-Chief*.

he wanted a man to go in and look into anything that might be a prospect, and so on.

Q.—Reference has also been made to items referring to oil leases. What was the position before, and after, Sir Mortimer's death, in that regard?

10 A.—The oil situation, I think, was fairly well outlined by the letter I wrote, which was read this morning.

Subsequently to that letter I went over to France, and at Deauville I showed Sir Mortimer the maps and plans I had indicating the sections of territory that we contemplated leasing. I may say that at that time he wanted to lease a very much larger part, but I think he was probably confused; or probably had in his mind the rentals in the United States, which are very considerably less than the rentals here. When he found out it would cost one dollar per acre per annum to lease those properties, he was content with the amount I had indicated. So, we leased them. We leased some from
20 the Canadian Pacific Railway, some from the Government, some from the Calgary & Edmonton Land Company, and simply held them, our idea being that we would endeavor to interest some important oil organization in the properties from the point of view of having them drill them on a royalty basis.

Q.—Are you now speaking of before Sir Mortimer's death, or since?

30 A.—It started before his death. We took up the properties before his death—that is we had them on lease, and endeavored to work them out according to the purpose for which they had been acquired. But, we were not successful. We took the matter up with several Oil Companies; we discussed it with the Marland Oil Company, and with some California Oil Company, and with another one, the name of which I have forgotten now, but we could not get those people to go in and drill the properties, so we gradually allowed the leases to lapse.

40 As a matter of fact, investigations showed that outside of a certain section of the country, the Turner Valley, so called (immediately outside of Calgary) there has been very little oil discovered in the Canadian West, and those locations which were considered very promising a year or so ago have now proved to be not very productive.

(And it being 4:30 o'clock the further examination of the witness is continued to Friday, May 9th, at 10:30 o'clock in the forenoon.)

LORD SHAUGHNESSY (*for Defendants*), *Examination-in-Chief*.

On this ninth day of May, in the year of Our Lord, One thousand nine hundred and thirty, personally came and reappeared

WILLIAM JAMES LORD SHAUGHNESSY

10 and his examination-in-chief was continued as follows:

By Mr. Holden:

Q.—Considerable evidence has been made with regard to the organization of the Canadian Industrial Alcohol Company, and in that connection, after numerous references from our opponents and their witnesses, I must here ask you to tell the Court, in the first place, when did the late Sir Mortimer Davis first become interested in the liquor business?

20 A.—Sir Mortimer Davis became interested in the liquor business by reason of the purchase of a large amount of stock of the H. Corby Distillery Company very many years ago.

A.—And did he carry that Company on for a time?

A.—The H. Corby Distillery Company was carried on as a distillery company until 1918.

Q.—Where was its distillery?

A.—At Corbyville, Ontario.

Q.—That is where the distilleries are now?

30 A.—The present plant of the Canadian Industrial Alcohol Company.

Q.—And what occurred in 1918?

40 A.—In 1918, under a War Measures Act, passed by the Dominion Government, the manufacture of beverage spirits was prohibited. This was, of course, a serious thing for the H. Corby Distillery Company, which, up to that time, had not been very successful. Sir Mortimer Davis, Incorporated, then the Canadian Industrial Alcohol Company Limited, which had for its object the manufacture and sale of commercial or industrial alcohol only, and the plant, properties, machinery, etc., of the H. Corby Distillery Company was transferred to the Canadian Industrial Alcohol Company, but the stock in trade, that is, the whiskey and spirits in storage belonging to the H. Corby Distillery Company, was not transferred to the Industrial Alcohol Company, but remained as an asset of the H. Corby Distillery Company.

The Corby Distillery Company was then put into liquidation, and subsequently, that stock in trade was sold at very high prices, and returned a very handsome dividend on the stock.

LORD SHAUGHNESSY (*for Defendants*), *Examination-in-Chief*.

Q.—And the proceeds of that sale would be distributed to the shareholders?

A.—Would be distributed among the shareholders of the Alcohol Company.

Q.—And then, when did the Canadian Industrial Alcohol Company commence to manufacture and deal in beverage alcohol?

10 A.—Somewhere about 1921. I am giving that as a rough date; at all events, when the War Measures Act was abrogated, and it was permissible to manufacture spirits for beverage purposes, another company was formed, the Consolidated Distilleries Limited, to take hold of the beverage end of the business.

Q.—When you say “take hold,” do you mean to manufacture?

A.—They did actually manufacture; it was more of a selling agency, the idea being to separate the two companies, and not to operate as a beverage company under the Canadian Industrial Alcohol Company. That was, I think, the predominant idea.

20 Q.—And then, was the distilling done by the Canadian Industrial Alcohol Company, and the selling by the Consolidated Distilleries?

A.—The situation has always been that the distilling has been done by the Canadian Industrial Alcohol Company, and they sell the spirits when distilled to the Consolidated Distilleries, which in turn sold to the trade.

Q.—Before Sir Mortimer’s death, what was broadly the organization of the Canadian Industrial Alcohol Company Limited, including its Sales Department?

30 A.—There was a President and a Vice-President, and a Sales Manager.

Q.—How long had you been President before Sir Mortimer’s death?

A.—Since December, 1925.

Q.—He died on March 22nd, 1928?

A.—Yes. There was one Vice-President; he had provision in our by-laws for four, but only one had been appointed up to the time of Sir Mortimer’s death.

40 Q.—Who was that?

A.—Mr. Lauster.

Q.—Had he been Vice-President some time before Sir Mortimer’s death?

A.—Some time, yes; a year or so.

Q.—What was the rest of the organization?

A.—Then there was a Sales Department under Mr. Kelly, who was at that time Sales Manager, and also a Sales Department for

LORD SHAUGHNESSY (*for Defendants*), *Examination-in-Chief*.

Industrial Alcohol under Mr. Kaestner, and then, of course, there was the organization of the various subsidiary plants, the St. Hyacinthe, and the one at Winnipeg, and Wisser's and so on.

Q.—And was there under Mr. Kelly and Mr. Kaestner in their two sales department a proper staff?

A.—Yes.

10 Q.—Then Sir Mortimer died, as we know, on the 22nd of March, 1928; up to the time of the institution of the present action, was there any change in the organization of the Canadian Industrial Alcohol Company, including the organization and running of the Sales Department?

A.—The only change was the resignation of Mr. Kelly.

Q.—That did not take effect until after this action?

A.—It took effect on the first of February, 1930.

Q.—After this action was served?

A.—Yes.

20 Q.—You are speaking of the Sales Department?

A.—Of the Sales Department.

Q.—What was Colonel Gaudet in the Organization, apart from a Director?

A.—Colonel Gaudet was appointed Vice-President of the Company in 1929, to take charge of the Engineering and Construction work.

Q.—Had he been connected with the Company before?

A.—Yes, for a number of years.

Q.—Before Sir Mortimer's death?

30 A.—Yes. He was appointed a Vice-President in 1929 to take charge, more particularly, of the development of the industrial end.

Q.—I propose a little later to take up the question briefly of his leaving, so we will not go into that just now. You have just mentioned Mr. Kelly actually left on the first of February, 1930?

A.—He actually left a little before that. His resignation took effect then. He gave up his duties before that; he went on a holiday.

Q.—But, on the 1st of February, he ceased to be an officer of the Company?

40 A.—On the first of February, he ceased to be an officer of the Company.

Q.—Will you tell the Court why he left? What occurred between you and him in that connection?

A.—Mr. Kelly came to see me one day, and told me that he had been offered a very lucrative and important position by the Distillers Corporation Limited, that is, the big Distillery Trust in Great Britain. Apparently they decided upon the policy of having

LORD SHAUGHNESSY (*for Defendants*), *Examination-in-Chief*.

an organization here in this country to promote the sale of their brands, of their commodities, and they offered Mr. Kelly the management of this organization at a very handsome salary, and he asked me my opinion of it, and in the circumstance I could not but admit that it was a very advantageous thing for him, and he consequently accepted it.

10 Q.—I understand the salary was considerably better than what you felt you could pay him?

A.—Yes, it was a very good salary.

Q.—Did he give any other reasons?

A.—He did. He gave as one reason, which I thought a very sound one, that a sales manager, or whoever is in charge of sales of the Industrial Alcohol Company, by the nature of his business, runs a certain risk, and he felt that simply devoting himself to the sales of commodities to the various Commissions in Canada and so on would be a very nice job, and probably less hazardous than the one
20 he had, and he wished to avail himself of that position.

Q.—That is a little vague, “ runs a certain risk, and hazardous ”. I must ask you to tell the Court more fully what he and you had in mind as constituting that risk?

A.—Well, if one can get an idea of the people with whom the whiskey companies here have to deal, and the circumstances under which they have to deal with them, dealing with people who are not allowed to buy commodities, there is a certain element of risk in interviewing those men, and following up their connections, and negotiating with them and so on; there is an element of risk.
30

Q.—Would the effect of foreign indictments being issued, that you have already referred to, form a part of that consideration?

A.—That came as a result of that type of business in case of other distilleries.

Q.—Did Mr. Kelly say anything to you about the present dispute?

Mr. McKeown: Is not that a little bit leading?

40 By Mr. Holden:

Q.—And the litigation that has resulted?

A.—He did give as a reason for considering favorably this new position, that he had heard rumors that trouble might ensue, which might have the effect of causing apprehension and so on, and probably a little bit of unrest in the organization.

Q.—Do you mean he was referring to the present suit?

LORD SHAUGHNESSY (*for Defendants*), *Examination-in-Chief*.

A.—He was referring to what culminated in the present litigation.

Q.—Apart from Mr. Kelly's resignation, which took effect on the 1st of February, has there been any change in the organization and administration of the Company, including its Sales Department since Sir Mortimer's death?

10 A.—Naturally after the resignation of Mr. Kelly, something had to be done to replace him ultimately.

Q.—Excuse me, if I interrupt you; we will come to that later. At the time of his resignation, was there anything else before that, that constituted a change in the organization since Sir Mortimer's death?

A.—No, none.

Q.—You were saying that his resignation required something to be done; will you tell the Court what was done?

20 A.—I think I might preface what I have to say by saying that the function of the Sales Manager, or Vice-President in charge of sales, or even of the salesmen in this peculiar business, is not an easy one. Any salesman cannot sell whiskey under existing conditions; they must be thoroughly familiar with the people to whom they are selling, those peoples' connections, and the ramifications of the operations of the business, and they must familiarize themselves with clients and agents and so on, and it takes some time for a man to work in, to get himself into a position to control a sales organization of that type.

30 Q.—Is it an ordinary matter of selling goods in the usual commercial sense?

A.—No, it is not. It is a surreptitious operation.

Q.—Special?

A.—Special and unusual. It is selling of a very unusual character.

Q.—I interrupted you. You were going on to say what?

40 A.—Mr. Kelly had had an assistant, a Mr. Flannagan, who had been there for a great many years; he has been with our Company fourteen years. He was just as familiar with the clientele and their connections and the interests of the trade as Mr. Kelly was, but I was not sure whether Mr. Flannagan could suddenly step into that important position, and we had at Corbyville a Mr. McCram, whom Mr. Wilmore informed me that had a great deal of experience in selling

Q.—Excuse me interrupting you: How long has Mr. Wilmore been with the Company?

A.—Mr. Wilmore was with the Company in the very early

LORD SHAUGHNESSY (*for Defendants*), *Examination-in-Chief*.

days, and then he left, and then he came back again. In my experience he has been with the Company since, I think, 1927.

Q.—That is, when he came back?

A.—He came back when Mr. Hume resigned, that is when he came back. He had been with the Company previously though some years before.

Q.—And he has been Vice-President for some time?

10 A.—He has been Vice-President since 1929. He recommended that Mr. McCram should be brought to Montreal and allowed to familiarize himself with the business, educate himself as to the Selling Department and these ramifications I have mentioned.

Q.—Did you state what Mr. McCram had been doing previously?

20 A.—Mr. McCram some years ago had represented some large distilleries in the United States, and had had considerable experience in selling whiskey, and he came to us really temporarily in the beginning, to go to Hamburg to examine some whiskey we were buying, and when he returned Mr. Wilmore suggested he could help him as an assistant at Corbyville, so he was taken on our staff in that capacity, and he has been assistant to Mr. Wilmore in the operation of the plant up to the time I brought him down to put him in the selling end.

Q.—And then, you got this recommendation from Mr. Wilmore, and what did you do?

30 A.—I decided then, without making a hasty decision to appoint anybody, that I would like McCram to familiarize himself with the Department and so on, and subsequently I would find out which one of the two was the better, and make an appointment when I had made up my mind as to who should fill it.

Q.—And in the meantime who was in charge pro tem?

A.—Mr. Lauster was generally in charge with these two working under him. Those were the instructions I gave Mr. Lauster, that he should keep an eye on the Sales Department.

Q.—Am I right that Mr. Lauster is the Senior Vice-President?

A.—Mr. Lauster is the Senior Vice-President.

40 Q.—How long has Mr. Lauster been connected with Sir Mortimer Davis?

A.—For some considerable time. Mr. Lauster came into our organization as the President of the Wiser Company, when it was absorbed by the Canadian Industrial Alcohol Company.

Q.—Is that called Wiser's Distillery Limited?

A.—Wiser's Distillery Company Limited.

Q.—Do you remember about when that was absorbed?

LORD SHAUGHNESSY (*for Defendants*), *Examination-in-Chief*.

A.—I should think around 1922 or 1923, somewhere about there.

Q.—Long before Sir Mortimer's death?

A.—Yes, long before Sir Mortimer's death.

Q.—If this litigation had not been instituted, and the trial during the last two months had not been going on, would the business of the litigation and trial have any effect upon your carrying out
10 your plan as to the organization and construction of the Sales Department, and, in fact, as to the carrying on of the Company's business?

Mr. Geoffrion: I object to this as being a matter of opinion, and also as leading.

His Lordship: Objection reserved.

Mr. Geoffrion: As to the question, whether this suit may have
20 any effect on the running of this Company, I think the Court is able to pass on that without the opinion of the interested party. At all events, my objection is there.

By Mr. Holden:

Q.—In view of the objection made, I am not asking for the opinion of the witness, I am asking what, in fact, has been the effect?

Witness: Naturally the institution of the action, first of all,
30 necessitated my attendance here at Court every single day for upwards of two months and a half, which has not given me very much opportunity to control things at the office, in addition to which a great many of the officers have been called down here, and a considerable amount of unrest has been caused up there, that I must confess that on going back there every day as I do, I consider they are doing remarkably well under the circumstances.

Q.—Before leaving the matter of the Alcohol Company's organization and business, I should ask you this: You have referred to
40 what I might call the domestic customer, that is to say, the Government Liquor Commissions. Is there a Government Liquor Commission in every Province of Canada?

A.—In every Province but one now.

Q.—Which is the exception?

A.—Prince Edward Island.

Q.—Apart from the duty paid export and the other export busi-

LORD SHAUGHNESSY (*for Defendants*), *Examination-in-Chief.*

ness, am I right that the only available business in Canada is the sales to the Liquor Commissions?

A.—Yes, that is all.

Q.—Who is in charge of that part of the business?

A.—Mr. Kelly and Mr. Flanagan were in charge of it, and Mr. Flanagan and Mr. Lauster are in charge of it now for Quebec; but
10 and we have Mr. Gazen for Ontario—Gazen and Mr. Scott for Ontario,
and we have Mr. Saunders in Manitoba, Mr. Smith in British Columbia and Mr. Rose for the Maritime Provinces.

Q.—There is another matter that has been referred to; in fact, a witness for the plaintiffs has produced certain statements with regard to withdrawal of liquor from excise. I want you first to tell the Court what excise is in relation to the business of the Canadian Industrial Alcohol Company? In the first place, does that Company have to get a license to carry on its business?

A.—Any Company manufacturing spirits must have a license
20 from the Government to operate a distillery.

Q.—Is that an annual matter?

A.—An annual matter.

Q.—When the Company has got its license, under what conditions can it manufacture, store and sell its output?

A.—It manufactures, stores and sells its output completely under the domination of the Federal Government, the Excise Department. The Excise Department takes hold of it when the grain is delivered, and weighs the grain.

Q.—The grain being the raw material?

A.—The grain is the raw material from which spirits are obtained for fermentation.
30

Q.—Are there representatives of the Canadian Government Excise actually at the distillery?

A.—Yes, actually at the distillery.

Mr. Geoffrion: We will admit that.

By Mr. Holden:

40 Q.—They are there permanently?

A.—They are there permanently. They are appointed to the distillery by the Dominion Government and reside there.

Q.—If, and when, your Company sells and ships its product, what has the Excise to do with that?

A.—After the mash is decided upon from which the spirit is made, that is, the mash for the fermentation, the yield is then checked up by the Excise people to see how much alcohol we have got out

LORD SHAUGHNESSY (*for Defendants*), *Examination-in-Chief*.

of how much grain, and that is all stored in bonded warehouses, which are directly under the control and supervision of these Government officials, and no alcohol is permitted to be taken out unless the duty is paid, except in the case of exporting to foreign ports, who are permitted to import. In that case a bond is furnished by the exporter for double the duty, and on production of evidence of the receipt of that in the port by a landing certificate signed by the
10 proper Custom official of the port of entry, that bond is cancelled.

Q.—And hitherto when you sold for export, and your exporter purchaser was not in a position owing to the foreign destination to produce such a landing certificate, is that what is called duty paid export?

A.—Yes, that is the duty paid. The duty was paid on exports of that description rather than putting up a bond which could never be cancelled, because we could never obtain the landing certificate.

Q.—And it is that business which will be affected by the new Canadian legislation you have referred to?

20 A.—Exactly.

Q.—You referred to the Excise requirements in connection with goods sold and shipped. The plaintiffs' Government witness produced two Exhibits, P-208 and P-214, and explained that they showed withdrawals of liquor. Am I right in the first place, that that means that the withdrawal is the record of a permit to remove some of the manufactured alcohol from the Company's warehouse?

A.—That is just the Government record of what quantity of spirits has been withdrawn, duty paid on it from these bonded warehouses.

30 Q.—I said the Company's warehouse. It is the bonded warehouse?

A.—The Government bonded warehouse.

Q.—Does that, then, mean, or can the Court infer . . .

Mr. McKeown: Let him do his own explaining. Don't put the words in the witness' mouth.

40 Mr. Holden: My learned friend cannot very well judge my question until I put it. If my learned friend will exercise a little patience he will find that his objection is not necessary.

By Mr. Holden:

Q.—Does that mean, and can we infer necessarily, that because the alcohol is withdrawn it has been sold?

LORD SHAUGHNESSY (*for Defendants*), Examination-in-Chief.

Mr. Geoffrion: I object to this as leading. The Court can draw its own inference.

(Objection reserved.)

10 A.—The statement that was submitted here by the Government officer, as I said, merely shows the quantity of spirits withdrawn from the bonded warehouse. It does not in any respect indicate sales for various reasons. In the first place, spirits might be withdrawn from bonded warehouses to be bottled and shipped somewhere on consignment, and would not be sold at all.

Q.—You said “ Might be.” Are they, in fact, withdrawn for that purpose?

A.—If they were withdrawn for consignment to be sent to the port for consignment, they would appear on that Government statement as having been withdrawn from the warehouse.

20 Q.—Do the Companies, in fact, withdraw liquor from bonded warehouses for bottling at other places sometimes?

A.—Very often. In our case, for instance, we will withdraw from bonded warehouse a quantity of spirits to send to Prescott to be bottled by the Wiser Company. The Government immediately charges us nine dollars duty on that, and we debit that nine dollars against Prescott, but it goes into the bonded warehouse at Prescott. Subsequently, that might be sent back to Corbyville. It would then be withdrawn from the bonded warehouse at Prescott, and the nine dollars duty would then be debited back to Corbyville, and it would
30 be replaced in the bonded warehouse at Corbyville, but both those withdrawals would show on the Government statistics. Then, subsequently, that might be withdrawn again to be bottled by us and sold, and there would be a third entry covering the same amount of spirits.

Q.—Before you actually sold?

A.—Before we actually sold. I do not mean it would be bottled at Prescott. It might be shipped to Prescott in barrels and then not bottled there, but shipped back in barrels again to Corbyville.

Q.—Would that mean paying the duty more than once?

A.—No, it does not actually mean that. The Government
40 changes the duty, changes the responsibility for duty from Corbyville to Prescott when it arrives there. As it comes in under bond, it is still under their control. They check it when it goes back, but the duty would have to be paid when it was taken over.

By Mr. Geoffrion:

Q.—The last exit?

LORD SHAUGHNESSY (*for Defendants*), *Examination-in-Chief*.

A.—The last exit.

By Mr. Holden:

Q.—My reason for asking you the last question was, you stated, if it is taken out for bottling, and taken out on consignment. Is it a purely hypothetical question, or is liquor, in fact, taken out by the
10 Companies for these purposes?

A.—It is taken out by all Companies and shipped on consignment from time to time.

Q.—And there is no knowing when it will actually be sold?

A.—No.

Q.—What would have to be added to the Exhibits P-208 and P-214 in order for the Court to know what quantities were sold at the times referred to?

A.—It would be impossible for the Government official by those statistics to indicate in any way the sales, as the Government is only
20 familiar with the quantity of spirits ex-warehoused.

A.—Withdrawn from the bonded warehouse either for sale or for consignment, or for denaturing.

Q.—Or for bottling?

A.—Oh, on consignment would be for bottling, or denaturing would be for industrial purposes.

Q.—We referred a few moments ago to the fact that Colonel Gaudet left the Canadian Industrial Alcohol Company. He has testified himself, and I would ask you briefly to state what occurred in connection with Colonel Gaudet and his leaving?
30

A.—On my return from Europe in June 1929, I was informed that during my absence, and without communicating with me, Colonel Gaudet sold substantially his holdings in the Company.

Q.—That is, the Canadian Industrial Alcohol Company?

A.—Canadian Industrial Alcohol Company shares. I spoke to Colonel Gaudet about it. We had a disagreement as to the nature of his action. I considered it one which, as Vice-President and Director, he should not have done.

Q.—Is that what you told him?

A.—That is what I told him. I considered it a very serious
40 matter. Colonel Gaudet endeavored to explain it. I gave the matter consideration. I discussed with the other Vice-Presidents, and finally arrived at the conclusion that in the circumstances I should ask Colonel Gaudet to resign.

Q.—And the correspondence that has been filed was exchanged?

A.—Precisely.

Q.—A good deal has been said about Mr. Henry Joseph's

LORD SHAUGHNESSY (*for Defendants*), *Examination-in-Chief*.

resignation, and a newspaper clipping has been filed with regard to an interview reported to have been had by the reporter with him. I must ask you to tell the Court what occurred, so far as you are concerned, with regard to those circumstances?

10 A.—Mr. Joseph had been connected with the Company for a great many years, and was a friend of Sir Mortimer Davis, and when I was in England last year, and when Mr. Lauster arrived in Eng-
land, he informed me that Mr. Joseph had sold all his stock. On
my return to Canada I spoke to Mr. Joseph one day about it and
asked him what was his idea in selling the stock under the circum-
stances which he did, and he told me he was getting out of business,
that he intended to travel a great deal, and I think he said withdraw-
ing from certain Canadian connections that he had, and so on, and
I then asked him if he proposed to resign from the Company, and
he said he did, that he would write me a letter about it. I think the
next day or so I received a letter from him tendering his resignation.

20 Q.—And before that article appeared in the newspaper with re-
gard to his alleged statement to the reporter, had you any knowledge
of anything of that kind on his part?

A.—Absolutely none. I saw Mr. Joseph pretty nearly every day
and discussed the Company quite freely with him and never heard
any suggestion of any dissatisfaction.

Q.—A large number of newspaper clippings were filed under
reserve of objections made by defendants Counsel, and as they are
in the record I will ask you to tell the Court, so far as you can con-
ceive, what was the cause of these newspaper articles?

30 Mr. Geoffrion: I object to opinions of the witness. I don't say
that the answer should not go in. There may be facts that are
relevant, but there might be something more.

(Objection reserved.)

40 A.—It would be very difficult for me to ascribe any cause to
the publication of those articles, inasmuch as they were published
when I was away from the city. I did not know anything about them
until I arrived in Vancouver last summer, when I received a message
from Mr. Kelly, a telegram to the effect that uncomplimentary
articles had been published about me, and about the Company, in
the press, and that it had an effect on the stock market or something
of that kind. I then sent a message from Vancouver as soon as I
could telegraph back, to Mr. Reaper, and asked him to see that it
was published in the press, and I really did not have an opportunity
to read any of the articles until I arrived back here in October.

LORD SHAUGHNESSY (*for Defendants*), *Examination-in-Chief*.

I then published a rather complete statement as to some of the facts alleged, most particularly as to the resignation of the Directors, and the circumstances under which they resigned, and statements as to the failure of the Company to earn its dividend, and one or two other things; but as to the cause which led up to that, I am absolutely ignorant.

10 Q.—Do you know of any reasonable and proper grounds for these articles?

A.—I do not. I considered at the time, and I still consider that they were most unjustified and unfair, inasmuch as any of the statements made in these articles could very easily have been verified.

Q.—When you say verified, what do you mean?

A.—They could have found out. They could have communicated with me.

Q.—When Messrs. Joseph, Decarie and Marler had all resigned, certain new Directors were appointed, I think you have already
20 testified, or perhaps it was Mr. Reaper. Why did you feel it necessary to appoint Directors to bring the Board up to the number of eight after the resignation of those gentlemen?

A.—We filled the Board up from employees of the Company, of course, the understanding being that they would remain there simply subject to the ratification of the Annual Meeting. They had remained there because we have not had any Annual Meeting.

Q.—What was the necessity to bring the Board up to eight?

A.—In order to comply with the By-Laws.

Q.—In order to comply with the By-laws which fixes a minimum
30 of eight?

A.—Yes.

Q.—Was it, and is it, contended that those appointments made in that way, would be necessarily permanent?

A.—Well not. As they are filling vacancies, they can only be there until ratification by the shareholders at the Annual Meeting.

By the Court:

40 Q.—When is the next Annual Meeting?

A.—It has been delayed until June 25th, when I hope it will be held.

By Mr. Holden:

Q.—A good deal of reference and criticism has been made by our opponents to the fact that certain meetings of heads of Depart-

LORD SHAUGHNESSY (*for Defendants*), *Examination-in-Chief.*

ments of the Alcohol Company were discontinued. Will you tell the Court what was, and what now is, the situation with regard to that matter?

A.—The Company never had an Executive Committee. This present Company never had an Executive Committee.

Q.—When you say the present Company, to what Company do you refer?

10 A.—The Present Canadian Industrial Alcohol Company Limited. The By-laws do not provide for an Executive Committee in the ordinary sense that Executive Committees are known, but it was the practice to sit around the table and thresh out various things and discuss various matters of business with the heads of Departments. That had been the practice for sometime. We found, however, that information was getting out, and sometimes it was more advisable to discuss certain phases of the business with the people particularly concerned. The meetings were not exactly discontinued; we held meetings and discussed policies, that is, the Vice-Presidents and myself in our own office from time to time, but the formal meetings that were held weekly were discontinued.

20 Q.—When you say “ We held meetings,” does that refer to the President and various Vice-Presidents?

A.—Yes.

(Mr. Geoffrion: I object to this as leading and suggestive.)

By Mr. Holden:

30 Q.—I will change my question. The meetings that were discontinued, consisted of whom? The meetings previously held?

A.—The Sales Manager, the head of the Industrial Department and the Vice-Presidents.

Q.—And did they all meet together?

A.—They all worked together.

Q.—They met together?

A.—They met together formally on a stated day each week.

Q.—And since those were discontinued, what has been done?

40 A.—When any important question of policy arose and had to be decided, a meeting would be held between myself and the Vice-Presidents, and if it was industrial, with the industrial head, and so on, and the policy defined.

Q.—And have conferences of that kind actually been held?

A.—Oh, yes, repeatedly, continuously.

Q.—Not, I suppose, however, when you are down here in Court?

A.—No, that is impossible.

LORD SHAUGHNESSY (*for Defendants*), *Examination-in-Chief*.

Q.—I am referring to your actual presence in Court?

A.—I cannot hold a meeting while I am here.

10 Mr. Geoffrion: That is an extremely enlightening question, there was no meeting held when Lord Shaughnessy was here. I do not think my learned friend intended that when he first put the question.

Mr. Holden: That is what I intended, but I do not insist that it was very useful or enlightening. It was more in the line of the questions that have been put by our opponents throughout this trial.

Mr. Geoffrion: I don't think you will find any example that approaches this one.

20 Mr. McKeown: I think that surpasses them from the point of view of uselessness.

Mr. Holden: Perhaps I did surpass them, I don't know.

Mr. McKeown: You sure did.

By Mr. Holden:

Q.—Reference has been made to the loss of certain liquor agencies. What is the situation of the Alcohol Company in that regard?

30 A.—The Alcohol Company owns an Agency Company, J. M. Douglas and Company, which really had those agencies, and some of those agencies,—Burnett's agency, for instance, was taken away when the D.S.L. who owned the brand opened up in Canada; they transferred to their own people.

Q.—When they opened up in Canada?

A.—When they started in Canada they transferred that agency to their own people.

Q.—Was that before Sir Mortimer's death?

40 A.—Oh, yes, long before Sir Mortimer's death. Then, in the ordinary course of events, we rather expected to lose the Dewar agency as well, as that was one of their brands, but the Dewar people kept with us until Mr. Kelly was appointed to take care of all their brands out here, and then the agency was transferred to him.

Then, there was a champagne brand, which was discontinued, the Roederer champagne was discontinued. That was not a very valuable agency.

LORD SHAUGHNESSY (*for Defendants*), *Examination-in-Chief*.

Q.—What is the character generally of the tenure of such agencies?

A.—Sometimes they are for three years, sometimes from year to year. They vary in the agency contracts.

Q.—Reference has been made to a settlement that was agreed to with Mr. Marler when he ceased to be a shareholder of the Incorporated Company?

10 A.—Yes.

Q.—Will you tell the Court the situation with regard to the settlement which was made with Mr. Marler?

A.—When Mr. Marler sold his shares in the Incorporated Company, and he represented that he felt if he resigned from the Trusteeships under these Trust Deeds, one of which carried an indefinite remuneration, and the other remuneration from the time of Sir Mortimer's death, of \$2,000 a year, that he should be compensated in some way for that, I discussed the matter with him; I was not altogether in agreement with that in the beginning, but I wrote to Lady Davis and mentioned that he had raised this point about extra remuneration, and it might be necessary to do something in that connection. I received no reply, so took it for granted it was all right, and went ahead and settled with him.

20 Q.—Reference has also been made to certain remarks in one of the written reports of the Auditors, which report is filed as Exhibit D-53, concerning the amount of the proceeds of cancelled shares in the Incorporated Company in connection with your contract, this Exhibit, D-53, being the report of the Auditors for the year ending 30th of September, 1925: What was the situation in that regard?

30 A.—That notation was made there, I think, because Mr. Waddell had represented to Sir Mortimer that in his opinion my shares were not entitled to that distribution—

Mr. McKeown: We object to any evidence tending to contradict a report which is in the archives of the Company, of which Lord Shaughnessy has been in possession for the last five years. We also object to it as hearsay, of what Mr. Waddell told the Auditors.

40 Mr. Holden: I am afraid my learned friend's recollection has suffered from the length of time we have been here, because it does not refer to the Auditors' report proper, but it is in the Auditors' letter. It is really the letter attached to the report, and in that letter the Auditors wrote, "We understand that the beneficiary (that is, Lord Shaughnessy) "under the Trust does not wish to participate." It does not say he is not entitled to it, he does not wish to participate in the distribution of this amount of \$172,250, and under these cir-

LORD SHAUGHNESSY (for Defendants), Examination-in-Chief.

cumstances it would seem that any steps which may be necessary should now be taken to have that amount transferred to the credit of Sir Mortimer B. Davis." Where it says, "The Auditors understand that Lord Shaughnessy did not wish to participate," I submit it is not only proper, but useful to have Lord Shaughnessy state what the circumstances were.

10 Mr. McKeown—He cannot come in and report the conversation between Mr. Waddell and the Auditors.

Mr. Holden: I submit this is the first time that my learned friend has taken that stand.

Mr. McKeown: Not at all. It is elemental. You want to bring in what he thinks Mr. Waddell told the Auditors. That is the worst kind of hearsay.

20 His Lordship: Am I to assume, then, that there was a sum of \$172,000 to be distributed amongst the shareholders?

Mr. McKeown: No. This was the position in a word. On the first of October, or the 30th of September, 1924, this Company declared what we say was a stock dividend of sixty-five per cent. to its then shareholders, including Sir Mortimer, Mr. Marler, this account of Marler and McLean in Trust, and Mr. Waddell.

30 Mr. Holden: Do you mind if I say a word?

Mr. McKeown: I do mind very much. Just take your seat.

Witness: I think I can straighten it out better than anybody.

40 Mr. McKeown: It is a very simple position. They declared this distribution of sixty-five per cent., which is actually right to the last decimal on the outstanding stock, and on the same day, and at the same meeting, they undertook to reduce their capital and to have the Company repurchase these shares, which they had just issued for cash, and they did not have the cash exactly at that time, so they credited to each one of these shareholders who was indicated, the amount in that respect. There were credited the 2,375 shares mentioned in Lord Shaughnessy's contract, a sum of \$162,500—

His Lordship: The shares that were in Trust in the hands of Marler and McLean.

LORD SHAUGHNESSY (for Defendants), Examination-in-Chief.

Mr. McKeown: Yes, and the contract states that all dividends should belong to Sir Mortimer during the five-year period, and we were in the five-year period, and what this document says is that it is Sir Mortimer's money and that this witness in the box did not care to take it. Lord Shaughnessy may say whatever he likes about it, but he certainly cannot say what Mr. Waddell told the Auditors.

10 Mr. Campbell: Might I add a word of additional explanation. My learned friends have been at great pains to persuade Your Lordship that this whole transaction was a reduction of capital. On the day when Lord Shaughnessy's contract was signed, the 17th of September, 1924, he became vested, subject to the conditions of that contract, with roughly a five per cent interest in the Company as it stood on that day—not as it stood some weeks later, as it stood on that day. Then, subsequent to that day, this reduction in capital took place and, as one of the elements of that reduction in capital, a
20 sum of \$162,500 was put to the credit of Lord Shaughnessy's Trustees, that is, the Trustee under Lord Shaughnessy's agreement on the books of the Company. Mr. Waddell was credited with his amount, and was subsequently paid in cash. Sir Mortimer was credited with his amount and was subsequently paid in cash.

His Lordship: Did Sir Mortimer own the shares unconditionally, or only conditionally?

Mr. Campbell: They were his subject to the condition of his
30 contract. He became the owner, the potential owner of them if he fulfilled the terms of his contract, if there were any additional shares issued, he was to get his proportion.

His Lordship: Subsequently to that, was Waddell in absolute possession of his shares?

Mr. Campbell: Yes, and he got his money, Sir Mortimer got his money. This amount was never credited. Your Lordship will remember that from 1924 until 1929 this amount at all times re-
40 mained at the credit of Lord Shaughnessy's Trustees.

Mr. McKeown: Not Lord Shaughnessy's Trustees.

His Lordship: Lord Shaughnessy was conditional owner of these shares and the question as to whether being the conditional owner of shares, he was entitled to the benefit accruing to the actual shareholders is a question of law.

LORD SHAUGHNESSY (*for Defendants*), *Examination-in-Chief*.

Mr. Campbell: And my submission is that Your Worship must have regard to the course of dealing with the parties as to the time that during Sir Mortimer's lifetime he never acted on this suggestion. If Sir Mortimer had wished to give effect to this suggestion in this Auditors' report, that amount would have been transferred from Marler and McLean to Sir Mortimer Davis. That is what they say should have been done here, and yet, it was not done, and the whole
10 course of dealings shows that Sir Mortimer Davis and Lord Shaughnessy gave a different interpretation to this suggestion, and at all times that amount remained at the credit of these Trustees until the termination of the contract period, when it was paid to Lord Shaughnessy, as we believe, in accordance with his contract.

His Lordship: Assuming Lord Shaughnessy to have any rights under that contract of the 17th of September, 1924, the question is whether he did, or did not, renounce those rights. The report of the Auditors would seem to show that Lord Shaughnessy had renounced
20 those rights.

Mr. Holden: It is quite clear, I submit, what that was. My question refers to the sentence that he wrote on that letter.

His Lordship: If Lord Shaughnessy had no rights, whether he renounced them or not—if he had rights, he said he had, he is at liberty to say the Auditors were wrong.

Mr. McKeown: We had no objections to that, but he cannot
30 state what Waddell told the Auditors. That is the only part we are objecting to now.

Mr. Geoffrion: We do not object to the question, but in answering, Lord Shaughnessy was beginning to repeat a conversation on the part of Mr. Waddell, and that is the only part we are objecting to.

Mr. Holden: I submit it is necessary that Lord Shaughnessy should explain what occurred.
40

Witness: I am thoroughly familiar with it. I was there all the time.

Mr. Holden: As my learned friends evidently do not question the facts, I would therefore ask Lord Shaughnessy to continue to state the facts which concern this participation which the Auditors stated, they understood, he did not wish to take part in.

LORD SHAUGHNESSY (*for Defendants*), *Examination-in-Chief*.

By Mr. Holden:

Q.—Let me ask you this: Did the Auditors correctly understand your wishes or not?

A.—No, they did not. The situation really required more explanation.

Q.—I hope you will have the chance to give it now without interruption. Will you go ahead now and give the explanation?

Witness: Of what was done?

Counsel: Well, the whole circumstances.

Mr. Geoffrion: Without hearsay.

Witness: I was present all the time at all the conferences, and knew exactly what was done.

During the year 1924, Sir Mortimer had made drawings on the Company in capital, substantial drawings. When he returned to Canada in 1924, the question was taken up with him by Mr. Marler in my presence, as to how an adjustment could be made in the capital of the Company which would compensate the other shareholders for the withdrawal of assets that he had made.

Mr. Geoffrion: I will put in here an objection, but which won't take as much time. We object to oral testimony.

Objection reserved.

A.—It was a difficult thing to deal with. Mr. Brodie, the Auditor of the Company, was called in conference; the matter was discussed at great length, and eventually it was decided that in order to equalize the situation as between Sir Mortimer and the other shareholders of the Company, the assets of the Company would be written up, the capital would be increased in value, and shares would be issued to the shareholders in the proportion of their holdings to the extent of that increase.

The net result was that 1,650 shares would be the proportion of Mr. Waddell's interest; some 300 shares would be the proportion of Mr. Marler's interest, and 1,650 shares, as they calculated it, would be the amount which would be placed in Trust with the other shares of the Company already in Trust with my Trustees, forming the proportion I would be entitled to, assuming my contract were fulfilled.

LORD SHAUGHNESSY (*for Defendants*), *Examination-in-Chief*.

The next operation was a reduction of capital, and these shares were bought back by the Company for cash. Mr. Waddell received the par value of his 1,650 shares, namely, \$152,500 in cash. Mr. Marler received his \$32,500, whatever it was. I don't remember exactly how many shares Mr. Marler had, but he did receive cash for his shares in any event. At least, my Trustees were credited with \$162,500, which was the proportion which I would receive if I fulfilled my contract, and the balance was put to Sir Mortimer's credit on the books of the Company, thereby extinguishing his already incurred indebtedness to the Company and creating a further drawing account on capital for him, and the other shareholders did not suffer, because the whole matter had been settled. That was the method adopted for putting the other shareholders in the same position as Sir Mortimer.

By the Court:

20 Q.—What became of the actual money that had been set aside towards those shares that were in Trust?

A.—That money was held in the Incorporated Company during the whole five years of the pendency of the contract, and was paid to him last September when my contract was fulfilled.

By the Court:

30 Q.—In whose name did that money appear on the statements of the Incorporated Company?

A.—On the statements of the Incorporated Company, it always appeared as a credit to Marler and McLean, the Trustees under my agreement.

By Mr. Holden:

Q.—What have you to say with regard to the Auditors writing in this letter that they understood that you did not wish to participate?

40 A.—When this was done, Sir Mortimer spoke to me——

Q.—Excuse me. When you say, "When this was done," what do you mean?

A.—After this operation.

Mr. Geoffrion: I take it that my objections are general. I won't repeat them each time.

LORD SHAUGHNESSY (*for Defendants*), *Examination-in-Chief*.

By Mr. Holden:

Q.—Was this after the execution of your contract?

A.—The whole transaction was done after my contract was executed. Sir Mortimer told me that Mr. Waddell had raised the question that I was not, strictly speaking, entitled to that benefit which accrued to all the shareholders inasmuch as the drawings that
10 that operation were intended to cover, had been made before I went into the Corporation. I joined the Corporation on September 17th, 1924. The drawings of Sir Mortimer of cash had been made previously—

Q.—Excuse me. When you say drawings by Sir Mortimer, you refer to the advances the Company gave him?

A.—The amount of money he had drawn out of the Company in capital in 1924, which this operation placed back and equalized towards the other shares.

20 Q.—Before your contract he owed that amount?

A.—Yes.

Mr. McKeown: What amount? Not that amount?

Witness: The amount of drawings.

Mr. Holden: My learned friend should surely wait his turn.

By Mr. Holden:

30 Q.—Well, Lord Shaughnessy, after this interruption, will you continue?

A.—I did not demur to them. I said, whatever Sir Mortimer felt was all right, but to my mind I rather felt that I was, perhaps, entitled to it, and he sent the Auditor in to see me, and I discussed the matter with the Auditor. I told the Auditor I did not want anything I was not entitled to, but I felt, perhaps, there was some grave question; the Auditor agreed with me, the suggestion coming from him that while the drawings had been made by Sir Mortimer before
40 I went in, it was merely a transfer of the assets of the Corporation from the Corporation coffers into Sir Mortimer's coffers, and as long as Sir Mortimer was able to pay it back, the assets were exactly the same after he drew as they had been before, and when I had gone in on September 17th, I took my five per cent., or the interest represented by those shares of the assets which existed at that time, one of which was Sir Mortimer's debt.

Q.—You say, "I took"; you mean the Trustees?

LORD SHAUGHNESSY (*for Defendants*), *Examination-in-Chief.*

A.—The Trustees took for me under my rights, and I then discussed the matter with Sir Mortimer. It was quite well understood that that was the situation, that I was entitled to it and it was carried that way ever since. The Auditor told me he would have to put it in the statement as a credit to Marler and McLean, unless I executed some transfer or some renunciation, and I simply told him I was not going to renounce anything I was entitled to.

10 Q.—Then, did it appear periodically in the statement?

A.—It always appeared, not only in the annual statement, but always in the monthly statement, and was sent to Sir Mortimer.

Q.—As what?

A.—As of the amount of money owing to Marler and McLean under that Trust Agreement.

Q.—Were statements sent to Sir Mortimer each month up to the time of his death?

A.—I think they were.

20 Q.—Mr. Reaper has already testified as to that?

A.—Yes.

Q.—Then, from at least the fall of 1925 until he died, in March, 1928, he would, each month, have seen the credit to your Trustees of this amount?

A.—I think the monthly statements were sent to him only from the time Mr. Reaper came into the organization, in January, 1926, but from then on they were.

Q.—From January, 1926?

A.—He received monthly statements.

30 Q.—Did he ever take exception to it being so credited?

A.—None whatever.

Q.—What in the end, in fact, was his attitude in that regard, after you went into the matter as you have explained?

A.—He was quite satisfied it was owing to me.

40 Mr. Campbell: Your Lordship will remember that when Mr. Reaper was examined this monthly balance was read into the record. Mr. Montgomery has asked me not to file all these monthly statements. I have no objection to filing them, if there is any utility in it, but the figures that appear in them of every month, beginning in 1926, were read into the record in the course of Mr. Reaper's testimony.

Mr. McKeown: They are of no importance whatever.

Mr. Campbell: Always showing this original amount with the

LORD SHAUGHNESSY (*for Defendants*), *Examination-in-Chief*.

interest accumulating to its credit. Your Lordship will find that in the course of Mr. Reaper's testimony. We have here the monthly statements and if they are of any utility, we can file them. They are very bulky, so if they are not needed for anything else, there is no necessity for filing them.

10 By Mr. Holden:

Q.—Some reference has been made to the fact that Sir Mortimer, in a letter written shortly before his death, mentioned that he was planning to spend three months in London concerning the McNish Company, and the reference, in my opinion, indicated a desire to criticize the Executors for not having carried out that intention, or something of that kind. What was the situation in that regard, and what have the Executors done?

20 A.—Sir Mortimer, when he took on the McNish Company, I think, intended to devote a considerable amount of attention to it. I think that is what the reference meant—that he would go to London and work on the McNish matter. He had appointed these two McNish brothers as Managing Directors under contract, but I think he intended to supervise himself, or, possibly, after he got it started, to get somebody else to supervise it. He was not very well, and I do not think he went over there much, for some months previous to his death, and eventually died without his plan being carried out.

30 In the summer of 1928 I went to England to look into the McNish matter and the situation with regard to McNish brothers and myself was not quite the same as the situation with regard to McNish brothers and Sir Mortimer, inasmuch as Sir Mortimer had negotiated the deal with them, and knew them very well. I did not know them particularly well, I had only met them once, but we sat down and discussed methods and means of carrying on the business. They felt confident they could carry it on all right, and we decided upon policies and programmes and so on, with which they were rather more familiar than I was, because I was not very
40 familiar with the method of doing business in Great Britain, and they carried on.

They had committed themselves for large expenditures; commitments had been made during Sir Mortimer's lifetime, large offices, tremendous advertising contracts spreading over a period of time, all of which was part of the preconceived plan of Sir Mortimer to make this a great Company, and which was probably a very sound method. It would entail tremendous expenditure in adver-

LORD SHAUGHNESSY (*for Defendants*), *Examination-in-Chief*.

tising to put that Company into the market, put its goods into the market, and the results of the advertising which were very strenuous and very expansive have not yet been felt, but we hope it will be felt in the future.

The large amount of money which was raised in connection with the McNish Company, this million pounds of capital, was used for carrying on some of these advertising campaigns.

10 Q.—Was that raised during Sir Mortimer's lifetime?

A.—Yes, with the proceeds of the Debentures. A substantial amount was put into these stocks, these single whiskies, that I explained about yesterday, for blending purposes.

Q.—Is that what you call malts?

A.—Malts and grain alcohol all of which is a great asset, and it is constantly increasing in value, the older it gets, but the problem appears to be to allow these men, at all events, for a time to carry out the original policy which they discussed with Sir Mortimer, and with which they were thoroughly familiar, and they have been
20 for the last two years trying to carry it out.

The McNish statement, I think, indicates that the greater portion of the large expenditure and loss in the Company has been due to these very heavy commitments in advertisements, the fruits of which we have not yet received, and the interest on the Debentures. Apart from that, the McNish Company even in its ordinary trade has not done badly.

Q.—When you speak of all these large commitments for advertising, were they made before Sir Mortimer's death?

30 A.—They were nearly all made before his death; they were made with a big advertising agency for a period of years. I am not sure whether it was two years or three years.

Last year, when Mr. Lauster and I were over there, we curtailed as much as we could some of this advertising. Of course, a great deal of it must go on, because that is the plan that has been conceived to carry that Company through to success; we are curtailing some of the expenditures. We curtailed some of the expenditures in connection with the office overhead and so on, but
40 each year something else arises.

Q.—The Court has had put before it the figures with regard to McNish. What have you to say as the President controlling the Company, as to the practical situation and the future, with regard to McNish?

A.—It is a pretty difficult thing to forecast the future. The McNish Company was unfortunate in this respect; it was launched in 1928 when the Scotch whiskey industries in Great Britain got

LORD SHAUGHNESSY (*for Defendants*), *Examination-in-Chief*.

into a rather bad way from 1928 to 1929; Mr. Ross, the President of Distillers Corporation, at the Annual Meeting made this statement, that the consumption had decreased tremendously owing to heavy taxation and excise, and the personal taxation on the unfortunate people in Great Britain, which made it difficult for them to pay the high prices for whiskey, and the result is that the local consumption has fallen off a great deal. The McNish Company
10 came in for that adverse condition, and is laboring under it now. They all are; in addition to which, we have cast our bread upon the waters in the way of advertising to a very large extent, from which we have not been able to derive as much benefit as we would have liked, because, coincident with heavy expenditures and advertising, we ran into an abnormal poor condition in the trade, but I do not see any reason why the McNish Company ultimately should not succeed.

All the big companies, the Dewar Company, Walkers, the
20 Buchanan Company, started exactly in the same way. The Dewar people spent fabulous sums of money in creating their Company, and that is the way those blending companies are created.

Q.—Reference has been made to an increase that took place in your salary in the Canadian Industrial Alcohol Company?

A.—That was done in 1929 when the positions of Vice-Presidents were filled and definite departments allocated to each Vice-President. Mr. Lauster was the General Vice-President and had supervision over everything; Mr. Wilmore was put in charge of Production of all the distilleries and manufacturing; Mr. Kelly,
30 Vice-President in Charge of Sales; Colonel Gaudet was made Vice-President to supervise industrial alcohol. All salaries at that time were put on different basis, they were all increased.

And it now being 12.30 p.m. the Court adjourned until 2.30 p.m.

And at 2.30 o'clock in the afternoon, May 9th, 1930, personally came and reappeared the said Witness,

40 WILLIAM JAMES LORD SHAUGHNESSY

and his examination was continued as follows:

By Mr. Holden, K.C.:

Q.—I find in looking over my notes that, while you and I together referred to the fact that the Directors who replaced Messrs.

LORD SHAUGHNESSY (*for Defendants*), *Examination-in-Chief*.

Joseph, Marler and Decary are only in office until the next Annual Meeting, I did not ask you what were the views of the majority of the Directors of the Incorporated Company as controlling the voting stock of the Alcohol Company as to getting some outside Directors, apart from officers and officials of the Company, when the election came around?

10 A.—We were decided upon getting outside Directors. I interviewed some three or four gentlemen, sounding them out, to find if they would care to come upon the Alcohol Board—prominent business men.

Q.—Have you done anything more in that regard since this litigation started?

A.—No. I consulted with two or three gentlemen, and some of them took the matter under consideration; but, the trouble started subsequently and I was not able to make any further progress.

20 Q.—What do you mean by “the trouble”?

A.—As Mr. Lash described it: rumors of wars—and ultimately the litigation.

Q.—When the Directors who replaced Messrs. Marler, Joseph and Decary were elected, was it intended that they should be re-elected at the Annual Meeting as a permanency?

A.—They knew perfectly well they were simply there to fill a gap until definite arrangements could be made.

Q.—I think you already pointed out that gap was so filled as a result of advice you obtained from your lawyers?

30 A.—Yes. I filled up the Board, with employees, until an Annual Meeting could be held.

Q.—Lady Davis testified, if I understood her aright, that at an interview with you you told her that the arrangement made with the Jennison Company would prevent, or interfere (or some such thing) with her and the other Plaintiff getting their surplus revenue under the Will for a number of years. Did you say that?

40 A.—No, I never made any such statement to Lady Davis. I think I did on repeated occasions tell her that possibly until the Succession Duties, the legacies, and things of that kind were settled there would be no surplus revenue in the Estate.

Q.—But, you did not tell her what I have put in my question?

A.—No, I never told her anything in connection with the Jennison Company that that prevented it in any way.

Q.—There was also evidence as to what occurred at a meeting between you and Lady Davis on the 18th October last, I think it

LORD SHAUGHNESSY (*for Defendants*), *Examination-in-Chief*.

was, with regard to the merger. What did you tell Lady Davis with regard to the merger?

10 A.—That was a meeting of Executors, I think, we had. Lady Davis had already written to me enquiring as to whether Jennison had gone to Europe to complete a merger or absorption of the McNish Company or the Alcohol Company, and I had answered in that respect. She raised the question again at this meeting, and I told her emphatically that Jennison had gone about his own business, and not on any business connected with the Alcohol Company. She did mention something about a merger.

Q.—I am not speaking of a merger with McNish.

A.—She spoke about merger generally. I did tell her that Dr. Kauffman had come in with two friends one day, and had discussed something about whether the Incorporated Company was willing to sell its stock, or something of the kind: but those people would not tell me whom they represented, and they did not appear
20 to be serious, and nothing came of it.

I think I also explained to her, or suggested, there might be some overtures from other quarters: to which she replied: "I do not object to your negotiating, because I feel you will not sell the Company for nothing; you have a 5% interest.

Q.—Mr. S. G. Turnbull was not only a witness, but other reference was made to him, and I want to ask you something in regard to him. Am I right he is the Purchasing Agent and Treasurer?

A.—Yes, of the Canadian Industrial Alcohol Company.

30 Q.—How long has he been with Sir Mortimer Davis' Companies?

A.—For many years. Mr. Turnbull is, I think, one of the oldest employees we have.

Q.—How long have you known him?

A.—I have known him, I should think, since 1920, or 1921.

Q.—What have you to say as to his ability, usefulness, reliability, and so on?

40 A.—Mr. Turnbull, in his capacity, is particularly useful, and very competent. He has been a very loyal and very efficient officer of the company during the time he has been with it. He performed his duties in a most admirable way.

Q.—What was he at the time of Sir Mortimer's death?

A.—He was Purchasing Agent up to some time in, I think it must have been, 1927; when Sir Mortimer chose him to go to Europe to become attached to the McNish Company in some capacity. Subsequently he came back here, and Sir Mortimer

LORD SHAUGHNESSY (*for Defendants*), *Examination-in-Chief*.

instructed that he should be taken back in the same position he occupied in our Company before he left.

Q.—When you say Sir Mortimer instructed he should be taken back, it only refers to his having filled the position in the McNish Company in the meantime?

10 A.—He filled some position in the McNish Company, but, judging from a letter which has been produced, not entirely satisfactorily. I do not know what his duties were, but as far as my experience has been concerned he has been a most efficient and admirable officer of our Company, and, so far as I know in connection with the affairs of the Canadian Industrial Alcohol Company Sir Mortimer shared that view.

By the Court:

Q.—He did not get along with the McNish people?

20 A.—I really do not know, your Lordship. I do not know really what were the reasons for sending Mr. Turnbull back.

Q.—Who were the officers of the McNish Company?

A.—Sir Mortimer Davis, in his lifetime, was Chairman. Colonel George McNish was Vice-Chairman. Colonel George McNish and Mr. John McNish (his brother) were the joint Managing Directors. Then there were various subordinate officials. Mr. Parrot was, I think, Secretary of the Company. Those were Scotchmen, except Sir Mortimer.

Q.—From the other side?

30 A.—Yes. Mr. Parrott was taken over from here. He went over at the same time as Mr. Turnbull.

Subsequently Mr. Hersey was connected with the Company.

Q.—Has Mr. Parrott remained on the other side?

A.—No, he has come back.

By Mr. Holden (continuing):

40 Q.—Will you tell the Court, please, what was your idea at the outset, as one of the Executors of Sir Mortimer Davis, as to working out the problems of the Estate? I mean, of course, at the outset—before all this litigation.

A.—When Sir Mortimer died (as I think I have already explained) the Estate had heavy obligations owing to his death. Succession Duties, legacies, and various things to be paid, under the terms of his Will, and very little, if any, resources with which to pay them.

LORD SHAUGHNESSY (*for Defendants*), *Examination-in-Chief*.

As I said, there were three accounts held on margin, in which there was some equity. I think I gave a list of the assets the other day. The bulk of the Estate, however, consisted in bonds and shares of Sir Mortimer Davis, Incorporated.

Q.—When you say “very little resources” I understand you are speaking of cash resources?

10 A.—Cash resources.

The idea was that the pressing needs of the Estate—the immediate liabilities—would be taken care of by the Incorporated Company, which was the only source of revenue of the Estate—the only source of cash—and that the Succession Duties would ultimately be settled and paid, and the legacies paid, and after that an adjustment would be made between the Estate and the Company on capital and on revenue; and subsequently to that, if all went well, there would probably be, with those capital liabilities out of the way, certain annual revenues coming in which could be disbursed, in the opinion of
20 the Directors of Sir Mortimer Davis, Incorporated, as to quantity, to the Estate.

Q.—You have already explained the reasons for the falling off in sales of the Alcohol Company, and, of course, that Company’s important connection through the Incorporated Company with the Estate; and you have explained the reasons for the drop in the market value of the securities of the Alcohol Company. What effect did those facts have upon your working out your problems?

A.—Of course when Sir Mortimer died the Alcohol Company
30 was going through a very unprecedented era of prosperity, and the securities were valuable in the market. The earnings were very large, and I think we were very optimistic as to the future of the Alcohol Company. We had no warning then as to the conditions which intervened subsequently and which resulted in this drop of earnings, and that, of course, was a material consideration in working out the Estate problems.

Q.—And at the time of Sir Mortimer’s death, and for a while after, what was your own view with regard to the prosperity, and so on, of the Canadian Industrial Alcohol Company?

A.—Judging from the fact that the business was so enormous
40 during the year 1928—and Sir Mortimer died in March, 1928—up to that time, and beyond that time, and till the end of the fiscal year 1928 the demand was so enormous that we were compelled actually to purchase outside in order to supply the demand. The indications were that the business would continue to prosper. There was no reason to feel the contrary.

Q.—Were you hopeful yourself?

LORD SHAUGHNESSY (*for Defendants*), *Cross-Examination.*

A.—Decidedly.

Q.—What steps did you take towards the end of last year along the line of working out the plan? And, when I say you I mean did the Directors of the Company call a meeting, or give notice?

Witness: The Directors of the Incorporated Company?

10 Counsel: Yes.

A.—The Directors of the Incorporated Company gave notice of a Meeting for the purpose of declaring a dividend to adjust matters between the Estate and the Company up to that time. This notice is filed of record.

Q.—The notice and the amended notice are filed as Exhibits?

A.—Yes.

20 There was an amended notice issued for the reason that the Auditors had pointed out that some of the accumulated surplus of the Company was a capital surplus, and also the charges against the Estate—the disbursements by the Estate—were capital disbursements. It was then decided to make a distribution by way of dividend to cover revenue, and by way of capital adjustment to cover capital.

Q.—Did you also take legal advice with regard to that amended notice?

A.—We did.

Q.—Why were not those resolutions adopted?

30 A.—The meetings were never held, actually: they were adjourned from time to time. The litigation, or the very imminent litigation, interfered with the carrying out of the scheme.

Q.—And, subsequently, the actual litigation?

A.—Yes.

Cross-examined by Mr. Geoffrion, K.C., of Counsel for Plaintiffs.

40 Q.—If you will allow me, Lord Shaughnessy, I will start with my Declaration, and I will first refer to the automobile. As I gather from both your Plea and your statement made under oath in chief, your position is that you took that automobile to see if it was worth repairing in order to sell it?

A.—Yes, to find a purchaser.

Q.—As far as you are concerned you never took it at the time as a purchaser?

A.—No, I could not: I was an Executor.

Q.—You knew that according to law you had no right to purchase?

LORD SHAUGHNESSY (*for Defendants*), *Cross-Examination.*

A.—Yes.

Q.—Of course, you are familiar with the Article of the Code?

A.—I could not buy it myself. I knew that.

Q.—What did you say to Mr. Godsall, the chauffeur of the late Sir Mortimer Davis, when you told him to deliver over this automobile to your own chauffeur, or to your garage?

10 A.—I asked Mr. Godsall first of all whether the machine would run. It was on hurdles at the time. Godsall said yes, he thought it would. Then I asked him if he would run me out in it, to see how it ran, and he took me for a drive one afternoon in it. Then I told him to send it down to my garage, that I was going to keep it for a while and try it out, and see if it was worth what would have to be spent on it in order to get it into a condition where it could be sold.

Q.—Then, I take it what you said was that you wanted to have it sent to your garage to try it, and see what would have to be spent on it so that it would be sold?

20 A.—So that I might find a purchaser.

Q.—When this automobile was delivered, according to those instructions, to your chauffeur, you tried it with your chauffeur? In other words, your chauffeur tried the automobile, with you in it?

A.—He drove me several times.

Q.—What did you tell your chauffeur about it?

30 A.—I asked him to run it, and we ran it several times. He took me from the office to the baseball grounds, and I would enquire from him from time to time how it was running, and so on. There was some question about the tires not being very good, and it being dangerous to go any distance. I think I put an old set of tires on the back wheels.

By Mr. Holden:

Q.—Whose tires?

A.—My own. I had an old set of tires, which I put on the back wheels.

By Mr. Geoffrion (*continuing*):

40 Q.—What explanation did you give him of this new arrival in the family?

A.—I told him to try it out. I told him the car was coming down from up above—Sir Mortimer's car. He knew the car very well. I told him the car was coming down, and that I was going to use it for a while to see if it was any good.

Q.—For what purpose?

LORD SHAUGHNESSY (*for Defendants*), *Cross-Examination.*

A.—I do not know whether I told him it was for the purpose of sale or not. I cannot remember that.

Q.—You did not tell him you were buying it?

A.—No.

Q.—You never spoke to him in any way that he should believe you were buying it?

10 A.—No.

Q.—What is the name of that chauffeur?

A.—Matthews.

Q.—Is he still in your employ?

A.—Yes.

Q.—How many years has he been with you?

A.—He has been with me about four or five years.

Q.—You have other cars?

A.—Yes, I have two other cars.

Q.—You have a Rolls Royce car?

20 A.—Yes.

Q.—Sir Mortimer's car was a Rolls Royce?

A.—A Rolls Royce touring car.

Q.—Is yours a touring car, or a limousine?

A.—A limousine.

Q.—Is your other car a touring car?

A.—It is what they call a sedan. A small McLaughlin car.

Q.—Is your Rolls Royce an older or a more recent model than the Sir Mortimer Davis car?

30 A.—I should think they are about the same age, although I am not quite sure of that. When I bought mine it was completely overhauled at the Rolls Royce works in England, and made practically new.

I should think they would be about the same age.

Q.—Godsall told us the other one had been practically made new also?

A.—I do not know. There seemed to be a great deal to be done to it.

40 Q.—Of course, you appreciate the fact that there is at least one difficulty in your way in connection with that position, and it is—whatever we may call it—Exhibit P-39, which bears your signature?

A.—I quite realize that.

Q.—Therefore, it becomes necessary for me to take you on it. Did you go to the Motor Vehicle Service?

A.—No.

Q.—You sent this man Matthews?

A.—Yes.

LORD SHAUGHNESSY (*for Defendants*), *Cross-Examination.*

Q.—He brought this paper?

A.—Yes.

Q.—In whose handwriting are the entries on this paper Exhibit P-39?

A.—I should think they were in his handwriting. In any event, they are not in mine.

10 Q.—You know that this document contains the words:

“I, the undersigned, being duly sworn do declare and say that this information and the answers given in the above application are true, to the best of my knowledge and belief, and I have signed—Shaughnessy.”

You remember subscribing that?

A.—Yes.

20 Q.—When you put your signature “Shaughnessy” did you or did you not notice that you were signing a statement that you had been duly sworn, and that what you were saying was true to the best of your knowledge and belief?

A.—I do not think I can say I noticed it. Unquestionably I signed it. I signed a yellow slip probably hurriedly and handed it back to the chauffeur. I think he gave it to me, and said something about a license, and asked me to sign it, and I signed it and handed it back to him.

30 Q.—Do you mean to say, or suggest that when putting your signature on the document you did not notice the words immediately above the signature “I, the undersigned, being duly sworn, do declare and say that the information and answers given in the above application are true, to the best of my knowledge and belief, and I have signed.” Do you state you did not notice those words?

A.—I realize those words are there, and it was probably intensely stupid of me to sign it without reading it; but I have signed licenses quite frequently for motor cars, and I know what they are, and I simply sign them.

40 Q.—If you know what they are, you must know they contain an oath that the answers are true?

A.—That is quite true; but, as I say, I signed a yellow document that was put before me, without carefully considering what was in the body of the document.

Q.—I am investigating that question of carefulness, and that is why I am pressing you. That is why I am putting the question. If you have often signed licenses surely you must know they contain

LORD SHAUGHNESSY (*for Defendants*), *Cross-Examination.*

a declaration under oath to the effect that what the person says in the application is true.

A.—Unquestionably it does contain it.

Q.—Then, you knew those words were there?

A.—I cannot say I did know they were there, in this particular case. What I will say is this: I have signed the printed form a good many times, but I did not read carefully the information con-
10 tained in the body of the document, which was filled in by the chauffeur.

Q.—But, I have not reached that point yet. I am now dealing with the words immediately above your signature: “I, the under-
signed, being duly sworn, do declare and say that the information and answers given in the above application are true, to the best of my knowledge and belief.” That is what I am on now.

A.—I unquestionably signed under those words, but whether I knew they were there or not, or whether I could distinctly say I read
20 them and signed with the full knowledge they were there, I could not say.

Q.—You have told me you signed many applications before?

A.—For my own cars, yes.

Q.—Therefore, you must have seen the document, or a similar document, often. How could the very words above your signature have escaped you?

A.—In signing those license application forms one sometimes is a little casual about signing them and does not read carefully what
30 they are. I knew they were for the purpose of obtaining a license.

Q.—Do you draw a distinction between an application for a license and other documents when you are signing them? Is this the only kind of document you sign carelessly?

A.—Unfortunately I have probably signed a great many docu-
ments carelessly.

Q.—Therefore you quite often carelessly sign documents stat-
ing that you are under oath?

A.—I was not under oath.

Q.—You say you were not under oath? You were not sworn?

A.—No, I was not.
40

Q.—As a matter of fact you were not sworn?

A.—No.

Q.—And you still cannot tell us whether or not in previous license applications you noticed the words in print, right above your signature “Being duly sworn” ?

A.—I may have noticed them. I did not read it carefully. I cannot say I carefully examined the document.

LORD SHAUGHNESSY (*for Defendants*), *Cross-Examination.*

Q.—But, I am not speaking of the document. I am speaking of those five words: “Being duly sworn do declare.”

A.—I say the document was handed to me, and I signed it, possibly without reading it carefully. As to the five words above the signature, I do not believe I read them carefully.

Q.—But, those words do not need to be read carefully. The most careless man looking at them would know their meaning. Did you notice them at all, or to any extent. One does not require much care to know the meaning of the words: “I, the undersigned, being duly sworn.” Did you absolutely fail to notice them, or did you notice them carelessly, or did you notice them carefully, or are you unable to answer?

A.—I think I can truthfully say I did not notice them.

Q.—Not at all?

A.—Not at the time I signed the document.

Q.—You think you can truthfully say you did not notice them at all?

A.—I did not notice them when I signed the document.

Q.—Of course, you appreciate the fact that if you had noticed them it would have been most improper for you to have signed the document without being sworn?

A.—I think probably it would.

Q.—Have you any doubt about it?

A.—I think you will probably find it is done a great many times for Motor Vehicle Licenses.

Q.—Not in my experience. In any event, I am not the witness. Do I take it your view is it is quite a proper thing to state over your signature that you were sworn, when, as a matter of fact, you were not?

A.—I would not like to argue the propriety of it exactly.

Q.—In any event, you now say, after a little wrangling, that you think you can say you did not notice those words at all?

A.—I do not think I did.

Q.—Are you sure you did not?

A.—I am pretty sure I did not.

Q.—Are you absolutely sure you did not?

A.—I can say yes, I think I am absolutely sure I did not notice them particularly.

Q.—What did you think you were signing?

A.—An application for a license.

Q.—You did not think you were signing an affidavit: you thought you were signing an application for a license?

A.—Yes, an application for a license.

LORD SHAUGHNESSY (*for Defendants*), *Cross-Examination.*

Q.—In whose name?

A.—My own name.

Q.—Was it your car?

A.—I was signing for a license, because the chauffeur was under apprehension or felt it might lead to arrest or something under the By-laws if a license were not obtained. He could not get one for part of a year, so he took one out for the whole year, and he handed me the printed yellow slip to sign, and I signed it.

Q.—I am not concerned with the color, and I am not concerned with whether it is printed or not, nor am I concerned with whether it is for part of the year or for the whole year. Did you want a license in your name, or in the name of the Estate? You had received a car which you say was still the car of the Estate?

A.—I was paying for the license, and I signed the application, and I did not notice in the body of it that it was represented I was the owner.

Q.—But, I have not reached that yet. I am on the other point. Why did you take out a license in your own name for a car which according to your version, was a car belonging to the Estate? Because you paid for the license?

A.—Yes, I paid for the license.

Q.—Why should you pay for the license when you were using the car as an Executor?

A.—I was running the car.

Q.—But, why should you pay for the license? You were running the car in the interests of the Estate?

A.—I was running the car.

Q.—But, it was a nuisance to you, and you were using it as part of your work. Why should you pay for the license? You do not know? You did not pay for the insurance?

A.—No.

Q.—Why the distinction between the license and the insurance?

A.—I did not know the insurance was put on it.

Q.—You must have assumed there was insurance on that car?

A.—There was insurance, then it was taken off, and then put on again, as I understand.

Q.—I did not see any evidence of that in your own books. I thought the insurance must have been continued in the name of the Estate, while you were running the car. It might have been done through your chauffeur, not yourself: Is that correct?

A.—I am not familiar enough with the history of the insurance to say.

Q.—You have not answered my question as to why you took

LORD SHAUGHNESSY (*for Defendants*), *Cross-Examination.*

that license in your name and not in the name of the Estate. It was only an application for a license for a car that you were going to run for a short time for the Estate to find out whether it was worth selling, or whether it would be scrapped?

10 A.—That is difficult to understand. A license was necessary, and the chauffeur suggested the license should be taken out, and I signed the application. I did not give much thought to it at the time.

Q.—Of course, you are a barrister, a King's Counsel, and a business man of experience. I am suggesting this, and I think it is admitted. You have been managing this Estate, and you have been a lawyer for many years. If you can get away from this signature by this mere statement of yours, can you tell me when a person cannot get away from his signature? If it is sufficient for a man who signs something to come and say: "I did not read it," when is a writing good for anything?

20 A.—I think had I been meticulous I should have carefully considered the situation of the license, and I would have read this document very carefully, and would have corrected such errors as I felt existed in it, and possibly I would have had it executed by the Executors of the Estate. But, as I told you, I was not meticulous..

30 Q.—But, that is not an answer which carries us anywhere. If a man is shown a document which he has signed, and which happens to be against his interest, and if this document contains a statement to the effect that he took an oath (and on your theory this particular document we are now dealing with is not any different from any other) and he can afterwards get rid of it by simply saying "I was not meticulous," what would be the use of any writing? Can you find a single instance worse than yours in that respect?

A.—I am not trying to get away from the document. I admit I signed it, and I am not trying to deny it. Whatever may be the effects of that document, I probably am responsible.

Q.—The document says: "Purchased from Sir Mortimer Davis' Estate?"

A.—It does.

40 Q.—I am dealing with the question of what are the facts. This document, over your signature, purporting to be under oath, says you purchased this car from Sir Mortimer Davis Estate. I would like to know if you can get away from that as a fact, when can we hold any man on any document he has signed?

A.—I am not trying to get away from it or anything else.

Q.—That is your answer to my question?

A.—That is my answer to your question.

LORD SHAUGHNESSY (*for Defendants*), *Cross-Examination.*

Q.—Can you explain to me another difficulty in the way of testimony today. Where did your chauffeur discover you had purchased this car from Sir Mortimer Davis' Estate?

A.—I cannot answer as to where anybody else discovered anything.

10 Q.—But, you are the person who told your chauffeur why you were bringing the car there. You told me a few minutes ago that you spoke to him in such a way that he could not think you were purchasing it. Now I want to know where your chauffeur discovered you had purchased it, or why did he imagine you had purchased it when, according to your previous testimony, he knew you had not?

A.—I think that is a matter for him to answer.

Q.—It is for him to explain how he got the idea you had purchased the car, when he knew you had not? He will have to explain that.

20 A.—I should think he will have to explain that. I cannot suggest it to you.

Q.—You cannot conceive of any explanation?

A.—No.

Q.—Were you astounded when you saw your chauffeur had made you say you had purchased the car, when he knew you had not?

A.—I did not know of this until some time afterwards.

Q.—You knew of it when we filed it in this case?

A.—Yes.

30 Q.—Were you not then very much surprised that your chauffeur had dared to make you state you had purchased the car, when he knew from you that you had not?

A.—Yes. I asked him about that, and I think he said an owner had to be put in, and not being very familiar with the situation, as I was going to sign the application, he stuck my name in.

Q.—He might have said simply it was yours, without saying you had purchased it?

A.—He might.

Q.—You think that is his explanation?

40 A.—I do not know what his explanation is. I cannot suggest his explanation.

Q.—I thought you asked him.

A.—He put in my name, because he had to put in the name of the owner.

Q.—And, therefore, he put in the name of somebody he knew was not the owner? You have another little difficulty, I think, in

LORD SHAUGHNESSY (*for Defendants*), *Cross-Examination*.

your way. Mr. Godsall is the chauffeur whom you told to send the car to your place. He testified, at page 25:

“ I drove Lord Shaughnessy with the car on Saturday. Lord Shaughnessy said he would take the car and keep it himself. He thought he would prefer to keep it himself than a stranger should get the car. That was the remark that was passed.”

10

Do you deny having said that?

A.—I did not say that to Godsall. Not in respect to the car.

Q.—You are sure you did not say it?

A.—No, I did not.

Q.—You say you did not say it in respect to the car. Did you say it about something else?

A.—I did, about the furniture, I think.

Q.—Not in respect to the car?

20

A.—No.

Q.—Sometimes in answering you say you did not do a thing, and when I press you you say you are not sure. Are you sure in regard to this?

A.—I will be more definite, then.

Q.—You are sure now?

A.—Yes.

Q.—And, you deny having used the words which Godsall attributes to you?

30

A.—Yes.

Q.—Of course these words “ I would rather keep it than let a stranger have it ’ imply a purchase, as you know?

A.—I do not know. It is a matter of argument. Whether it implies purchase or not, I do not know.

Q.—Your purpose was to try it to see whether the repairs needed were such that it would not be worth repairing?

A.—Yes.

Q.—You tried it several times?

A.—Yes.

40

Q.—And, you came to the conclusion that it did not justify being repaired?

A.—That too much money would have to be spent on it to make it really a proposition except as it stood.

Q.—Then you decided to scrap it?

A.—Yes, I sent it back to the garage.

Q.—And, it has been there for two years, and there has not been the slightest effort made to sell it yet?

LORD SHAUGHNESSY (*for Defendants*), *Cross-Examination.*

A.—I do not know whether Godsall has made any efforts or not.

Q.—If you wanted Godsall to try to sell it you might have left it there in the beginning. Did you make the slightest effort, and, if so, what, to sell it during those two years?

A.—No, I have not.

Q.—Therefore, we may take it that—unless here again you are blocked by the Succession Duties, and waiting until they are paid—
10 you decided, as it was not worth repairing, that it should be scrapped?

A.—I do not really know what you mean by scrapped? It was sent back to the garage, as it was in the beginning.

Q.—And left there?

A.—Yes.

Q.—And, for all we know it may remain there for all eternity?

A.—As it was for some years before Sir Mortimer died.

Q.—Do you think that is a reason why you should leave it until
20 the Trust ends, forty-eight years from now?

A.—I do not know, I am sure.

Q.—Did it never strike you that you might try to sell it without repairing it?

A.—I do not think that car could be sold without repairing, except at a very great sacrifice in price, except practically as a very old second-hand car. I do not think one would realize very much on it.

Q.—Of course you did not and do not hope to sell it as a new car?

A.—Oh, no, it could not be sold as a new car. There are a great many defects in it.

Q.—Did you not think it was worth while trying to sell it by
30 making an effort to sell it unrepaired as a second-hand car?

A.—I do not know. We did not make any particular effort to sell it.

Q.—Not only did you not make any particular effort, but you made no effort at all?

A.—No. We did not make any effort.

Q.—In the meantime, you are carrying \$3,600 insurance on it?

A.—I understand there is some insurance on it.

40 Mr. Campbell: Not \$3,600 now.

Mr. Geoffrion: At that time.

By Mr. Geoffrion (continuing):

Q.—At that time you were carrying \$3,600 insurance on it?

A.—Yes.

LORD SHAUGHNESSY (*for Defendants*), *Cross-Examination*.

Q.—The policy is of April 18th, 1928, for one year, for \$3,600: after the death of Sir Mortimer?

A.—I think so, yes. I think that is the policy. \$50.00 premium.

Q.—I am not objecting to the premium. The next year it was thought fit to reinsure it, and as it was getting older and depreciating rapidly it was reinsured for the sum of \$2,000?

A.—I think so, yes.

10 Q.—In May, 1929: according to Exhibit P-30?

A.—I think it was, yes.

Q.—In the meantime it was carried in the inventory of Mr. Fraser, for Succession Duties, at \$2,500?

A.—I think that is about the amount.

Q.—And in the meantime it was not thought worth while by you to go to a dealer in second-hand cars and ask him if he could get something for it?

20 A.—It might have been worth while doing it, but we did not do it.

Q.—The idea never dawned on you?

A.—No.

Q.—But, you took it out and tried it for a year or so?

A.—I did not try it for a year. I tried it for a short time. I had it a short time.

Q.—As we are dealing largely with a question of credibility, I have to go deeper into it. You gave orders to bring the car to your place immediately after the departure of Lady Davis for Europe in May, 1928?

30 A.—Yes.

Q.—And, it was returned in the middle of September, 1929?

A.—Yes.

Q.—When it was returned war was very imminent between Lady Davis and you? In September, 1929, amicable relations were ended and there were threats of a suit?

A.—I would not say that. Not then.

Q.—Had she not, on August 8th, suggested she would go to Court?

40 A.—There was no definite notice of anything at that time.

Q.—Are you willing to take the responsibility for saying that at that time everything was perfectly calm? In other words, you had no fear of litigation from Lady Davis?

A.—I cannot say at that time I felt litigation was imminent. We had had a disagreement. She had made statements, said something about the Courts. Sometimes people make these threats without carrying them out.

LORD SHAUGHNESSY (*for Defendants*), *Cross-Examination.*

Q.—There was trouble between you at that time?

A.—A disagreement.

Q.—Which she told you might lead to litigation?

A.—Precisely.

Q.—The car had been over a year and a half in your garage?

A.—Yes.

Q.—You had used it how many times, about?

10 A.—I don't remember, but the car came to my garage some time in May, 1928, and I used it until I went away in July, 1928. It was never used after that. In July, 1928, it was put up on hurdles in my garage, not used after that.

Q.—You are quite sure you did not use it after?

A.—After July, 1928.

Q.—Can you tell us how many times you used it?

A.—Yes. About twelve times.

20 Q.—How long does it take to try a car to know what repairs it needs, for an experienced chauffeur?

A.—I do not know. I am not an experienced chauffeur. I could not tell you.

Q.—What was the use of your trying it then?

A.—My chauffeur was trying it.

Q.—Could not you have any faith in Godsall?

A.—Godsall tried it out one day.

Q.—You had experience by your chauffeurs instead of Godsall?

A.—Yes.

30 Q.—Godsall has been trying it all his life?

A.—He knew the motor well.

Q.—He is a good chauffeur. You have no criticism to offer about him as a chauffeur?

A.—No.

Q.—Is your chauffeur a better chauffeur than Godsall?

A.—I would not like to say.

Q.—What was the use of Godsall having used the car to try it and getting your chauffeur to try it with you in it, in order to determine what repairs were needed?

40 A.—I don't know that I put any time limit on it. I was just trying it and it was put up in my garage.

Q.—A dozen times?

A.—Perhaps that.

Q.—To find out whether it was worth repairing?

A.—Yes.

Q.—Did you not think your chauffeur, with Godsall helping, with the help of the second chauffeur of Sir Mortimer and possibly

LORD SHAUGHNESSY (*for Defendants*), *Cross-Examination*.

another chauffeur, might have found out in general if the motor was worth repairing, and that would save the necessity of taking it out a dozen times?

A.—I think possibly they could.

Q.—I understand there was also liability insurance to protect in case of accident when using the motor?

A.—Yes.

10 Q.—That also was paid by the Estate?

A.—That was.

Q.—Now in Montreal there are a lot of dealers in second-hand cars?

A.—I imagine there are; I don't know anything about that.

Q.—You imagine there are?

A.—I imagine there are.

Q.—You have bought second-hand cars yourself, too, have you?

20 A.—No, I have not, no, except the Rolls-Royce; that was a second-hand car.

Q.—It never dawned on you it would have been an easy way out of it after having had the opinion of the two chauffeurs of Sir Mortimer, after having had one try with your own chauffeur, to send it over to some dealer, knowing they had failed or you had failed, in concluding you would put it under repair?

A.—I am quite prepared to agree that I could have done that.

Q.—I am instructed by a connoisseur in motor cars, who is near me, that the Rolls Royce people have their own agency to dispose of their second-hand cars?

30 A.—I know they have a place in Montreal.

Q.—Those people might have been able to advise you as to the possibilities of that Rolls Royce car, within an hour or two?

A.—Possibly they could.

Q.—What were the repairs needed?

A.—What I was told was the wheels would have to be changed, and there was something wrong with one of the tanks; it had no self-starter; there was something in connection with the carburetor would have to be changed.

40 Q.—Did you get any estimate of what that would cost?

A.—I never got an estimate.

Q.—Of course I take it from your testimony that all your chauffeur did, as I understood you to say earlier, was to give you a list of what repairs were needed to put it in first class condition, and it was your decision it was not worth repairing?

A.—No.

Q.—You seem to have given a tremendous amount of attention

LORD SHAUGHNESSY (*for Defendants*), *Cross-Examination*.

to that particular part of the Estate, the automobile, driving 12 or 15 times in it?

A.—Well, I don't know that that would be particular attention.

Q.—Compared with the attention you gave to the other parts of the Estate?

A.—That is your opinion, Mr. Geoffrion.

10 Q.—No, it is a suggestion, that is all. I will come to the next point, the furniture. You told us when I began to examine you on the motor that you knew a purchase by a Trustee was illegal. How do you explain your defence in purchasing the set of furniture?

A.—I was taking the furniture over, the compensation to be the legacy I was left under the Will.

Q.—Do you make the suggestion the Will says "I leave you \$1,000 with which to purchase certain articles?" You are using that \$1,000 to purchase if in your view of the Will the purchase was legal.

20 A.—My conception of it at the time was as an Executor of the Estate. I do not think in all circumstances he is generally supposed to purchase anything from the Estate, but if any debt was created by a document, a Will, in favour of an Executor, he had the right to accept money or anything else in extinguishment of that debt.

Q.—Your idea was while you could not purchase from the Estate, if the testator left you a thousand dollars to purchase something, then you could purchase from the Estate?

A.—I could take from the Estate either the thousand dollars or something its equivalent.

30 Q.—The same element which prevents the sale as a Trustee because he is the valuator of what he buys, seems to apply here also?

A.—This was not taken until it was valued.

Q.—Valued for Succession Duties?

A.—Yes.

Q.—Your theory is you have the right to buy from the Estate provided you buy at the valuation for Succession Duties?

40 A.—I do not necessarily say the value for Succession Duties was the absolute value. The valuation being made for Succession Duties I believe might be low, but subsequently I felt another valuation would have to be made.

Q.—When I put you the question whether the Executor making the valuation was the reason why the Executors were not allowed to buy, you answered there was a valuation by somebody else. If that valuation does not count, why refer to it?

A.—You are getting me to admit the Executor is the valuator.

LORD SHAUGHNESSY (*for Defendants*), *Cross-Examination*.

I don't know that he is. The Executor accepts the value of an expert, I should think, and would be guided largely by that value.

Q.—The Executor can buy, according to you, provided he gets some outsider to value?

A.—No, I don't think he can buy. In my opinion—the theory I worked on at all events is that an Executor can accept from the Estate the equivalent of the legacy provided he comes under the provisions of the legacy, and it seems to me the most feasible way to settle the whole matter concerning that would be to have that valued by somebody who knows something about it. There was a valuation made by Fraser Brothers for Succession Duties.

Q.—You say it was a fair valuation?

A.—I do not say that.

Mr. Holden, K.C.: He said the opposite to what my learned friend says.

20 By Mr. Geoffrion, K.C.:

Q.—Let us come back to it.

A.—I said I felt being made for Succession Duties that valuation was possibly low, and that a subsequent valuation would be made.

Q.—We will have it you bought subsequent to a subsequent valuation, and the first valuation does not count?

A.—I do not agree on that word "bought."

30 Q.—We will leave that out. You took, with the intention to pay according to some subsequent valuation?

A.—I felt the \$350 that Fraser Brothers had put on it was not a proper valuation, and subsequently after the Succession Duties were paid, when it could be done, it would be valued.

Q.—You say an Executor cannot purchase but the Executor under the legacy has got his thousand dollars, it is a memento, and he has a right to take something from the Estate at the valuation by a valuator whom he chooses?

40 A.—I did not choose the valuator. I think the valuator was chosen by Mr. Phillips. I would have to be satisfied the valuation was correct; so would the other Executors.

Q.—You and Mr. Reaper were the only ones to choose the valutors?

A.—Yes.

Q.—That is your defence on that point?

A.—Yes.

Q.—The second point I want to draw your attention to, did it

LORD SHAUGHNESSY (*for Defendants*), *Cross-Examination.*

not seem to you the last thing to take, assuming you had the right to do what you did, the last thing to take was the furniture built especially to fit the dining room? When you were trying to sell the house, and you thought it important to keep it in condition; to the extent of running the conservatory?

10 A.—I felt the furniture would be sold by auction at some time or other or else might be sold as contents of the house, and the furniture, while it is suitable for the room it is in, it is suitable for a great many rooms of that kind.

Q.—You would not have taken it in payment otherwise?

A.—No, I don't think it made any difference particularly.

Q.—You are standing on maintaining the conservatory for the only purpose of giving the house an attractive appearance for selling it, and you dismantled the dining room by taking out very expensive furniture built purposely for that room?

20 A.—I don't think the conservatory was only kept going on account of giving the house a handsome appearance. There were plants and things we had there and we kept it going until some decision would be arrived at.

Q.—Was the selling of the plants delayed by the Succession Duty difficulty?

A.—I don't think so. We were trying to get a good price.

Q.—What efforts were made to sell the plants?

30 A.—We had, I believe, offers for the plants that were very low. There was a difference of opinion between Lady Davis and myself as to the plants.

Q.—What efforts did you make to sell the plants?

A.—I did not make any. I understand Godsall got an offer and Mr. Reaper received an offer.

Q.—At all events, subject to your statement that offers may have been received and declined, were received possibly and declined for the plants, the conservatory was only kept for the appearance of the house?

A.—It had to be kept going for the general scheme of the house.

40 Q.—The scheme of the house I cannot understand. For the purpose of the sale of the house?

A.—To keep the property from deteriorating.

Q.—Do you think once the conservatory would have deteriorated it would be proper to dismiss the gardener and empty the conservatory? Would that have deteriorated the house very seriously?

A.—I don't think it would particularly.

Q.—Is there anything else but maintaining that conservatory to facilitate the sale of the house?

LORD SHAUGHNESSY (*for Defendants*), *Cross-Examination*.

A.—I think we decided we would keep the situation going as it was when Sir Mortimer died, and keep these orchids and plants, but the gardener had to look after the plants.

Q.—It implied the dining room set remaining in the dining room?

A.—I don't think that it did that.

10 Q.—If it did entail keeping the plants in the conservatory, why not the furniture in the dining room?

A.—I cannot answer that.

Q.—About that price, you say you were not satisfied with the price fixed by the auctioneer, governed by auctioneering principles for Succession Duty purposes?

A.—I think it was low.

Q.—Have you ever given any thought to the prices you should pay?

20 A.—I had decided and am still decided that a valuation should be made of the furniture, and then when it comes to the settlement of the legacy, that price would be taken into consideration.

Q.—You, in any case, could not pay more than \$1,000?

A.—No.

Q.—Whatever you would be giving beyond that distinction that it was not worth more than \$1,000, you admit it would be illegal to admit to, say, more than \$1,000 for this furniture. You would be paying beyond your legacy.

A.—If the furniture were found to be on subsequent valuation more than \$1,000, I would probably not.

30 Q.—You would have to return it?

A.—I would have to return it.

Q.—After two or three or four years, so far as you can say?

A.—I might be able to settle for the rental in the meantime.

Q.—If it happened that the valuator found this was worth more than \$1,000 you would have to return it?

A.—Yes.

Q.—And then you would have to make some adjustment after having had the enjoyment of it for a number of years too?

40 A.—That is a suggestion.

Q.—Do you see any other way out?

A.—That would be, I should think, the logical method of dealing with it.

Q.—You say it is legitimate to purchase because you do not think it is worth more than a thousand dollars?

A.—No, I do not.

LORD SHAUGHNESSY (*for Defendants*), *Cross-Examination*.

Q.—That is the reason why you think, therefore, it is legitimate to purchase?

A.—Well, I don't say a legitimate purchase.

Q.—I don't want to quibble on the use of the word in question. Equally I say your position is there. I will argue its purchase not based on your using the word. I want to get a straight explanation if you have it.

10 A.—Precisely.

Q.—Apparently I was not following this case so carefully. It has been so brief, I regret it. I understand there is some Chippendale furniture?

A.—There were some chairs and a small stool ———

Q.—The same reason applies?

A.—The valuation included the whole thing.

Q.—I was on the price question. You say you must wait some time to have a valuation made by somebody and if that valuation
20 is under \$1,000 you will debit this against your thousand dollars?

A.—Precisely.

Q.—And so far as you can say if the valuation is over \$1,000 you will send back the furniture and make some adjustment for rental of it during the time?

A.—Yes.

Q.—What I want to understand is when is that to happen? What has prevented its having happened before? The legacy is not paid. The legacy is still in the coffers of the Estate. The furniture
30 is in your place. You seem to be well paid.

A.—The Estate still has the thousand dollars.

Q.—But you have the furniture?

A.—I have the furniture.

Q.—If the furniture was worth \$900 ———

A.—Some time the Estate will pay me \$100; \$900 will cover the furniture.

Q.—Is that the only answer you can give to my question? Why has not the valuation been made earlier?

A.—The idea was we were optimistic enough to think the Succession Duties would be settled, and the idea was to defer it until
40 the Succession Duties are settled. I find these will not be settled until the Succession Duty question is settled. It might be now.

Q.—Why not before?

A.—Because we are in hopes of getting the Succession Duties settled. Then we would have had a valuation later which might or might not be in accordance with the Succession Duties valuation, which would have been very small.

LORD SHAUGHNESSY (*for Defendants*), *Cross-Examination*.

Q.—As a matter of fact, they never challenged that valuation?

A.—No.

Q.—They never challenged that?

A.—No, they never did.

Q.—Is it not important for your case there should be absolutely no entry, no evidence in the books or records of the Estate as regards this form of settlement? There is none, is there?

10 A.—No, I don't think there is, except the memorandum which was sent down at the time the furniture came to my house, by Godsall to Mr. Reaper, to indicate what furniture had been taken.

Q.—All there is is a memorandum by Godsall who delivered to you a certain number of pieces?

A.—Yes.

Q.—Though that fact would be all in evidence, the furniture is at your place?

A.—Yes.

20 Q.—There is nothing in the books or records of the Estate showing this transaction?

A.—There is no agreement except the memorandum. This furniture was sent to my house.

Q.—When you got your valuation made say, in two and one-half years, or in two years—when you have the valuation made in two years, will you ask the valuator to bring himself back to the time when he took the value of the furniture, or value the furniture then?

A.—I imagine the valuator could take that into account.

30 Q.—Take what into account?

A.—The value at the time the furniture was moved out.

Q.—Try and find out by inspecting the furniture then in what condition it must have been and what it was worth when you took it out? He would have to know that in the meantime. He would have to do that, or in other words it would not be fair.

A.—No, it would not be fair. The depreciation from the time I took it would have to be taken into account.

Q.—Has the Estate got an auditor?

A.—Yes, Price, Waterhouse and Company.

40 Q.—Of course, no auditor could by any process whatever have discovered or detected the disappearance of this as an Asset of the Estate?

A.—I don't know. I don't think he knew anything about it.

Q.—Until you chose to have your valuation to credit against your legacy there was no control by the auditor of the subject?

A.—No, he would not have known about it unless he was told.

Q.—I am reminded that you had one case of offset between a

LORD SHAUGHNESSY (for Defendants), Cross-Examination.

legacy and a debt in the Clark case, and that was entered in the books. Is that right?

A.—I think that was, yes.

Q.—Why not enter in the books the offset as to your transactions?

A.—That transaction was closed; mine was not.

Q.—It was closed pretty well for you. You had the furniture.

10 A.—They had the thousand dollars.

Q.—The other one too?

A.—That was a payment across.

Q.—It was a cross entry?

A.—I could not make a cross entry because I did not have the value of the furniture.

Q.—Why not have it valued?

A.—We had it valued before, but I did not think the value was a fair one.

Q.—It was easy to get the fair value?

20 A.—We did that subsequently.

Q.—You did not get it yet?

A.—Oh, yes, we got it.

Q.—I thought it was not done yet. You got a fair valuation?

A.—I have an idea of the valuation.

Q.—That is quite news. Do you mean you have had a valuation made? By whom?

A.—A valuation has been made of the furniture.

Q.—One you consider fair?

30 A.—Yes.

Q.—By whom?

A.—Mr. Kearns, I think.

Q.—Mr. Kearns?

A.—Yes.

Q.—You did not tell us that before?

A.—That was for the purposes of the case. You asked me if any valuation had been made. I felt bound to tell you that there has been a valuation made.

Q.—When?

40 A.—I think it was made some months ago.

Q.—During the suit?

A.—For the purposes of the suit.

Q.—Have you got it here? Can we see it? You are entitled to keep it if it is for the purposes of the suit.

A.—I have not got it here. I think it is in the office.

Q.—Now I am talking of the valuation for the purpose of the purchase. I am talking of that valuation and I want to know from

LORD SHAUGHNESSY (*for Defendants*), *Cross-Examination*.

you whether that valuation has been made. Do you accept—have you ever considered whether you should or not accept the Kearns valuation, from that point of view?

A.—I think the Kearns valuation was a fair one.

10 Q.—Did you decide to accept that before I began to cross-examine you?

A.—It would be part of the evidence in the suit, and I think at the conclusion of the suit and when judgment is rendered, the valuation would be accepted or not by the Court.

Q.—The Court might or might not accept the valuation?

A.—Possibly I had a right to wait until then.

Q.—I am asking you one other thing. Have you accepted this valuation for the purposes of this contract?

A.—I have done nothing about it.

20 Q.—Why did you not have a valuation made for the purposes of this transaction long before the suit was taken, and make cross-entries as in the Clark case?

A.—In the Clark case there was a settlement effected.

Q.—There could have been one made?

A.—There may have been one.

Q.—Why not?

A.—On account of the value placed by Fraser Brothers.

Q.—You told us the Succession Duties were a bagatelle on this item?

A.—It would have been small.

30 Q.—You know your legacy still appears as a full liability of the Estate?

A.—Yes.

Q.—For the reason you just gave, it has not received the same treatment the Clark legacy did?

A.—No, there has not been a settlement of it.

Q.—I am instructed to suggest to you that you have received in connection with that legacy from the plaintiff, Mortimer Davis, Junior, a watch and chain and match box in platinum that belonged to Sir Mortimer Davis?

40 Mr. Holden, K.C.: The plaintiff has made his case. Somebody thought best to make allegations in the declaration ———

Mr. McKeown, K.C.: Don't get off to any false point. They are not in the declaration.

Mr. Holden, K.C.: In the declaration, in the answer to plea they thought best to allege this about the watch, which we feel and

LORD SHAUGHNESSY (*for Defendants*), *Cross-Examination*.

showed by our declaration in reply is a scandalous allegation. My present submission is that it does not certainly arise out of the examination-in-chief, and they have closed their case without choosing to make any evidence on this allegation. It is absolutely unfair, improper and illegal to bring it up now when they have not made their evidence on it in their case.

10 Mr. Geoffrion, K.C.: I would like to tell my learned friends they are losing their time by using this term "scandalous." There is no sense in the objection if it is not in the answer to plea. If it is not in the declaration we can make that in rebuttal.

Question read.

The Witness: Some time in May, the end of April, 1928, when I visited Mr. Mortimer Davis in the hospital in New York after he had an operation, he gave me a watch and chain which belonged to
20 his father, as a keepsake, but there was absolutely no connection between that and the legacy, and in the hospital the legacy was never discussed.

By Mr. Geoffrion, K.C.:

Q.—Your position is that this gift, souvenir, that had belonged to Sir Mortimer and which young Mortimer Davis gave you had no connection with the legacy at all, and was not discussed? That
30 is your position? You deny it was given in payment of that?

A.—Specifically.

Q.—I am instructed to put you this, that some time ——

A.—I was going to complete that answer. I might answer Lady Davis gave me a very handsome gold cigarette box, which also is not connected with the legacy.

Q.—We are not relying on that. Some time in April or May, 1928, I am instructed that you stated to young Mortimer Davis, Junior, plaintiff, and to Lady Davis, that you did not care for the thousand dollar legacy but decided in lieu thereof to receive from
40 among the jewelry of the late Sir Mortimer Davis which had already been bequeathed to his son, some souvenir he had used personally, and that then in lieu of that legacy you were given and accepted this platinum watch, chain and match box, having belonged to the Testator?

A.—I deny that.

Q.—It was in the hospital in New York?

LORD SHAUGHNESSY (*for Defendants*), *Cross-Examination.*

A.—It was in the hospital in New York when I received the watch and chain. He was in bed.

Q.—There was there Mortimer Davis, Junior, who was the donor of the souvenir, Lady Davis, and Dan Young, of the Canada Life?

A.—Lady Davis was there. I am not sure whether Mortimer Davis' wife was not there at the time.

10 Q.—You deny any connection?

A.—I deny there was any connection.

Q.—You admit the gift, but deny there was any connection?

A.—Yes.

Q.—There was no reference to the legacy of the thousand dollars at that interview?

A.—No.

Q.—No discussion at that interview?

A.—Never. I thanked him very much. I thought it was very kind of him. I took it in that spirit.

20 Q.—I have to put you this question to close this subject. I am in a hurry to get another question. My suggestion to you is that the true facts are these. You took the furniture and you took the automobile?

A.—Under certain circumstances.

Q.—The question of when and how much you would pay is one we know nothing about. When threats of war between Lady Davis and you began you had the two things in your possession. Lady Davis had seen the furniture and had not seen the motor, and you decided to return the motor and use the furniture in payment, as an after-thought. You deny that, I suppose?

30

A.—Absolutely.

Whereupon an adjournment was taken until Friday, May 16th, at 10:30 o'clock A.M.

40 And on this nineteenth day of May, in the year of Our Lord one thousand nine hundred and thirty, personally came and re-appeared the said witness,

WILLIAM JAMES LORD SHAUGHNESSY

and his cross-examination was continued as follows:

By Mr. Geoffrion, K.C.:

LORD SHAUGHNESSY (*for Defendants*), *Cross-Examination*.

Q.—Did you succeed your father as a Director of the Canadian Pacific Railway Company? Of course I know he was President, and was also a Director of the Company, and I would like to ask you if you succeeded him, or were you appointed previous to or long after his retirement?

A.—I was appointed previous to his retirement. I did not succeed to him actually on the Board of Directors.

10 Q.—Of course, everyone knows your father had been President of the C.P.R. for many years, but I would like to have the fact of record.

A.—Yes, he was.

Q.—You were appointed to the West Kootenay Company some years after, I think you told me?

A.—Very many years ago.

Q.—But, it was after being appointed to the Board of the C.P.R.?

20 A.—No, it was long before that.

Q.—The West Kootenay Company is a subsidiary, or indirectly a subsidiary, of the C.P.R.?

A.—Indirectly.

Q.—You were appointed in the Yorkshire Company to replace your father?

A.—No; my father was never connected with it.

30 Q.—You spoke of an increase in the number of Distilleries between certain years, which I confess I have forgotten, from eighteen to twenty-nine. Do you remember being asked in connection with that?

A.—Yes.

Q.—And, you spoke of an increase from eighteen to twenty-nine?

A.—Yes.

Q.—Was that increase gradual?

A.—Of course, those are just approximate figures. I think I said there were eighteen Distilleries in 1925, and at the present time there are twenty-nine.

Q.—Was the increase a gradual one—some coming every year?

40 A.—Coming every year, yes.

Q.—Has there been much of an increase during recent years?

A.—Not recently. During 1929 there has not been much of an increase.

Q.—The increase would be in 1926, 1927, and 1928?

A.—Yes.

Q.—Approximately averaging?

A.—There were some coming into the field all the time.

LORD SHAUGHNESSY (*for Defendants*), *Cross-Examination.*

Q.—Let me see if I understand you well on the question of the closing of the Detroit gate for duty-paid business. You had to meet with two Government Orders: one Federal, and one Ontario?

A.—Yes.

Q.—If I understand you well the Federal Order consisted in restricting the docks or wharves from which this sort of shipment could be made?

10 A.—Precisely. And extra supervision.

Q.—While the Ontario Order forbade warehousing on the docks?

A.—Yes.

Q.—Therefore, it forbade warehousing on those docks to which the Federal restriction applied?

A.—Yes.

Q.—And, you say this affected you because you did not have any warehouse near?

20 A.—We had no warehouse on the Detroit River, and no Distillery, when our competitors had a Distillery there.

Q.—The Walkers had a Distillery there?

A.—Yes, right on the Detroit River.

Q.—Where was it in respect to Windsor?

A.—At Walkerville; practically on the Detroit River. Walkerville is just a suburb of Windsor—just a continuation of Windsor.

Q.—What distance was it from the docks in regard to which the Dominion Government had restricted the shippers?

A.—A very short distance. Within trucking distance.

30 Q.—About how many miles?

A.—I would not 'be able to say exactly. A matter of probably three or four miles; may be less.

Q.—Where was the distillery of Distillers-Seagrams?

A.—I think at Amherstburg, but I am not quite certain of that.

Q.—What distance would that be from those docks?

A.—I am not quite sure about that. Within trucking distance.

Q.—What do you mean by trucking distance?

A.—They could get goods there very quickly by means of a truck. It would be a matter of a few hours—an hour or so.

40 Q.—How far was your nearest warehouse or distillery?

A.—We were away down at Corbyville, some distance away.

Q.—How far?

A.—Quite far. Quite a distance.

Q.—When did this happen?

A.—To the best of my recollection it happened around the end of January, or February, 1929.

LORD SHAUGHNESSY (*for Defendants*), *Cross-Examination.*

Q.—Had there been any warnings or rumblings that you anticipated something of the sort?

A.—Not for any material time.

I attended a meeting in Toronto with Sir Henry Drayton, when the matter was brought up. I think that would be some time in January, 1929. It was suggested then such an action would be taken.

Q.—That was in January, 1929?

10 A.—Yes.

Q.—Of course when you heard of that you anticipated it would put your competitors at an advantage?

A.—Yes, we felt that.

By the Court:

Q.—Were your competitors present at that meeting?

A.—They had seen Sir Henry Drayton before I did.

By Mr. Geoffrion (continuing):

20 Q.—I think you stated in chief that you devoted some thought to the idea of trying to meet the situation?

A.—Yes.

Q.—What was your plan?

A.—We first contemplated purchasing a piece of property and putting up a warehouse there, but there were difficulties in the direction of getting a bonded warehouse. We then made application for a Distillery License for a distillery on the border, and I think that application is still at Ottawa.

30 Subsequently, when it was perfectly clear the border was to be stopped altogether, we felt it would not be economical to go ahead with those plans, because the business was going to be stopped anyway.

Q.—And your contemplated effort to meet that advantage of your competitors was not pursued further when you saw they were going to lose the advantage by the complete closing of the border?

A.—Yes, quite so.

Q.—And that came shortly afterwards?

40 Q.—This applied to what I would call your “cash and carry” business?

A.—Yes.

Q.—That is only part of your duty-paid business? Is there not a substantial duty-paid business apart from that?

A.—No, not substantial. That is the major part of the duty-paid business.

Q.—It is suggested to me that you get quite substantial orders which are not on that basis, with arrangements that the goods will be

LORD SHAUGHNESSY (*for Defendants*), *Cross-Examination.*

sold ready for delivery at a certain time? Let me put it this way: the competition you had to meet was that when a sudden order came in requiring immediate delivery they were there, and you were not?

A.—That was the condition.

Q.—If I have not put it correctly, please let me know.

A.—That is correct.

10 Q.—On the other hand, did you not have quite a substantial portion, or quite a reasonable portion, of your duty-paid business in this way: that a man would give you a big order and tell you in advance when he would be there to get it?

A.—I would not say any big orders. No particularly big orders. At other ports we did small business with duty paid, but nothing in the proportions of the Detroit River business.

Q.—But I am not now dealing with the Detroit River boundary. Did you get those duty-paid orders in advance?

20 A.—Prior to this situation arising, the practice was we might get an order two or three days before from somebody in Detroit, and we would have the stuff there. We would have it on the docks we were using, and those people who were buying it would be obliged to take it from the docks. We were able to fill their orders very promptly. After this was closed, and we were not permitted to store any more on the docks, the order would have to come several days before to enable us to ship the goods from Corbyville to the docks; whereas the other people could supply them in the usual way.

30 Q.—But was there not a noticeable percentage of the duty-paid business in which the order came some days in advance so that you could actually fill it?

A.—Yes, we did some duty-paid business. Our business did not completely go, but it was very materially reduced.

Q.—About how long after the putting into force of the restrictions you have mentioned, both from Ontario and from Ottawa, did the actual closing of the Detroit River come about?

A.—The actual closing has not taken place yet. I think the actual prohibition comes into force on the 1st of June. But the trade was restricted all the time.

Q.—You get some duty-paid business through other outlets?

40 A.—Yes, but it is small.

Q.—What percentage? How would you compare the Detroit River business with the others put together?

A.—Detroit was very much larger.

Q.—One half of all?

A.—More than that.

Q.—I would like now to take you on certain dates, as far as you can give them to me, about the rumblings before the warnings of

LORD SHAUGHNESSY (*for Defendants*), *Cross-Examination.*

trouble for the liquor trade into the United States. It began, I understand, by a parliamentary enquiry into the Customs?

A.—I think that was the start of it.

Q.—There was quite a lot of evidence in regard to the trade then?

A.—A great deal.

Q.—I happened to have been mixed up in it in some way as a
10 lawyer, and if I remember correctly your Company, among others, was disclosed as not being, strictly speaking, what its name suggested, an industrial alcohol Company?

A.—Certainly that is the fact.

Q.—And the public learned of that?

A.—The public learned it, unquestionably.

Q.—And learned of the trade?

A.—Yes.

Q.—And learned, among other things, that some people in Par-
20 liament and elsewhere were agitating for measures to restrict this trade with the United States?

A.—Precisely.

Q.—I think you mentioned the fact that something was recommended in that Report. I do not want to put it all in.

A.—There was a Report made by the Parliamentary Committee which sat to enquire into the situation, and at the end of the sitting, when they rendered their Report, they recommended the closing of this trade. That was one of their recommendations.

Q.—This was a Parliamentary recommendation?

Q.—That was in 1926, I think.
30

A.—Yes, 1926.

Q.—This hectic session at which the Government was defeated. When this Parliament came in was in the summer of 1926?

A.—The summer of 1926, I think.

Q.—After the election there was a Royal Commission?

A.—Yes, a Judicial Commission.

Q.—At which the Hon. Mr. Rowell was the attorney in charge
of the Inquisition—the Grand Inquisitor of the trade?

A.—The Chief Factor, yes.

Q.—This began in 1927, I understand?
40

A.—Yes.

Q.—And the Commission travelled around the country?

A.—Yes.

Q.—And a good deal of evidence, going more fully into the activities of your trade, was made?

A.—Yes.

LORD SHAUGHNESSY (*for Defendants*), *Cross-Examination*.

Q.—And all those things were very much in the papers everywhere?

A.—Very much.

Q.—Can you tell me approximately when the Report of that Commission came in, or if there was anything material in that Report of a nature to hamper your trade or to threaten future hampering of your trade?

10 A.—My recollection is there was nothing added to what had already been there. The question of sales tax was made rather prominent as a result of that Royal Commission, but I think was very much misunderstood by the general public, and reflected to some extent on our Company.

Q.—At all events, they were practically the same recommendations as the recommendations of the Parliamentary Committee?

A.—As I remember it. I have not read the Report carefully recently, but I think the situation was about the same.

20 Q.—We will assume you are right, and if we find there is a mistake we will correct it.

A.—Very well.

Q.—This enquiry proceeded in 1927?

A.—Yes.

Q.—I am instructed that the enquiry was finished in June, 1927. I do not say the Report was made, but the enquiry was over.

A.—It might have been. It would be hard for me to say. I think it finished in the summer of 1927.

30 Q.—And the Report would be a few months after—in the fall, I suppose?

A.—The Report came out afterwards.

Q.—Some time in the fall, I suppose?

A.—I think so.

Q.—When was the announcement by Hon. Mr. Mackenzie King in the House, of which you spoke?

A.—That was later still.

40 From the time those recommendations were made there was a constant agitation about this business being done on the border, and I think during two sessions the people who were adverse to trafficking with the United States and so on filed numerous petitions calling upon the Government to take action. I think it was some time during 1928—probably the summer of 1928—when the matter came up in the House in some way or other, calling upon the Government to take immediate steps to comply with those petitions and stop the traffic. At that time the Minister of Customs, if I remember rightly, Mr. Euler, made a statement to the effect that he saw no particular reason for action being taken by the Canadian authorities, inasmuch

LORD SHAUGHNESSY (*for Defendants*), *Cross-Examination*.

as the American authorities were not too serious about preventing the influx of this commodity into their own country. I think he also pointed out that it could not be done by Order-in-Council. I am speaking now purely from memory; I have not examined the documents. My recollection is he said it would have to be done by an Act of Parliament.

10 It recurred from time to time in the House, and was discussed and given quite a lot of prominence. It was also discussed in the public press. The question of what the Government would do was very widely discussed. Finally, as I remember it, some statement was made by the Prime Minister to the effect that steps would be taken or something would be done in that connection.

Q.—That would be the session of 1928?

A.—1928 is my recollection of it.

Q.—You were in Canada then, I think?

20 A.—I was here, because I was getting the Parliamentary proceedings, and a list of the petitions, and so on. I was watching them carefully.

Q.—That would be the early summer, May or June, 1928?

A.—It would be later than that. I think I sailed for Europe in July, 1928.

Q.—Then, it may have been June?

A.—It may have been June.

Q.—The Hoover election, we all know, was in November, 1928?

A.—Yes.

30 Q.—But the fight had taken place some time before?

A.—Yes.

Q.—And during the fight Mr. Hoover's attitude was not in any doubt?

A.—No.

Q.—And the Republicans claimed there was no doubt as to Mr. Hoover's election, and they proved to be right?

A.—They proved to be right, in any event.

40 Q.—When did you first hear of the Walkers and the Seagrams going into the United States brands? You told us they went into those brands, and I think you said they began manufacturing in 1927?

A.—Dealing first with the Walker Company: During the years when it was owned by the Walker family—that is, up until the end of 1926 (I am not very clear as to exactly when Mr. Hatch and his associates bought the Walker Company, but I think it was the end of 1926). Up to that time the Walker Company had not manufactured a general line of brands of American whisky and Bourbon whisky;

LORD SHAUGHNESSY (*for Defendants*), *Cross-Examination.*

they had confined themselves entirely to the Canadian type of whisky. When Mr. Hatch and his associates purchased the Walker Company, shortly after they got organized (which would probably be in the first few months of 1927—probably March or April, 1927) they commenced to manufacture Walker's Bourbon Whisky and Walker's American Rye, and I think they put up Walker's Gin. They
10 branched out into practically the same brands as we had theretofore manufactured, sometime around February or March, 1927.

Q.—You were keeping well informed as to what was happening among your rivals?

A.—Yes, we have to. We try to get what we can, but it is not very easy.

Q.—And that was about the time you learned of that?

A.—Yes.

By the Court:

20

Q.—That would be ready for sale in 1929?

A.—It would be ready for sale in 1929.

By Mr. Geoffrion (continuing):

Q.—When did you learn of the same policy being adopted by Seagrams?

30 A.—When the Distillers Corporation of Great Britain formed the Company Distillers-Seagrams, in 1926, I think, they built a large plant at LaSalle, just outside of Montreal, which took some time to construct. I think they were a little later in 1927 in manufacturing their American whiskys than were the Walker's, but they commenced some time during the summer of 1927.

Q.—Of course just as they did in regard to you, you kept fully informed as to what was happening in regard to them?

A.—We knew their plant was there, and they were manufacturing. They were mashing a good many bushels per day. It was not a secret.

40 Q.—When was the Will of the late Sir Mortimer Davis opened in Montreal? In May, was it not?

His Lordship: April 18th.

Witness: It was probated on April 18th.

By Mr. Geoffrion (continuing):

LORD SHAUGHNESSY (*for Defendants*), *Cross-Examination.*

Q.—About the middle of April?

A.—Yes.

Q.—And I understand you remained in Montreal until July?

A.—Until July, 1928, yes.

Q.—When in July did you leave for Europe?

A.—I think it was the 9th of July. The beginning of July.

10 Q.—When did you return?

A.—In 1928 I came back at the end of September.

Q.—Was it the end of September, or the beginning of October?

A.—I think the end of September. I think I actually arrived here on or about September 29th.

Q.—Were you with your family?

A.—Yes, I had my family over there.

Q.—It was a holiday trip—a pleasure trip?

20 A.—Not entirely. It was not altogether a pleasure trip. I actually went over on business. Of course, as far as the family was concerned it was a pleasure trip.

Q.—Have you any objection to stating the nature of your business?

A.—I had business in Paris with Mr. Candelaft in connection with Estate matters. Then I had business in London in connection with the McNish Company. I was kept pretty well occupied for a good part of the time. Of course, naturally there was some part of it that was pleasure.

Q.—But I am only dealing with the part of the time you spent on business. What was your business with Mr. Candelaft in Paris?

30 A.—There were a great deal of accounts payable by the Estate, which he wanted to check up with me. I went over a lot of accounts and different things with him. Then there was some question in connection with the Succession Duties Office in France, with which I was not very familiar and with which I wanted to familiarize myself. We spent some considerable time together. I think I was about a week or a week and a half in Paris discussing things with him.

Q.—You went to London in connection with the McNish affair?

A.—In London I was working on the McNish matter.

Q.—What was there to do in London?

40 A.—I was not very familiar with the real organization of the McNish at that time. Sir Mortimer Davis had supervised all the details, and had organized the thing completely himself, and I wanted to look into it and see what was being done and how they were operating, and I kept in pretty close touch with them all the time I was there.

Q.—How long were you there?

A.—I used to go to the McNish office practically every day.

LORD SHAUGHNESSY (*for Defendants*), *Cross-Examination.*

Q.—How long were you kept in London by the McNish affairs? You might have happened to stay in London for other purposes, but I would like to know how long you were kept there in connection with McNish?

A.—I stayed there until I found out what their policies were, and how they were operating. I also interviewed salesmen, and so on.

Q.—You cannot say how long?

10 A.—No.

Q.—The rest of the time you went to the seashore?

A.—I went to visit Lady Davis at Deauville for some time, I think.

Q.—Were not these all matters that could have been treated or covered by correspondence?

A.—No, they could not. You cannot get proper information and get to know the people running a Company by correspondence. You see, I did not know the McNish people very well.

20 Q.—Which McNish people?

A.—The McNish brothers. I only met them once before that, and I did not know them very well.

Q.—And it was either a matter of their coming over to see you, or your going to see them?

A.—It was better to go to see them and to be on the spot where they were and see what they were doing.

Q.—You did not absent yourself again in 1928-29 until the next summer? You remained in Montreal for the remainder of 1928?

A.—Yes.

30 Q.—And also the early part of 1929?

A.—Yes.

Q.—When was your next trip to Europe?

A.—In March, 1929.

Q.—Would it be in the early part of March, or in the middle of March, or at the end of March?

A.—The end of March.

Q.—When did you return?

A.—I think I arrived here on June 8th.

Q.—Were you with your family again this time?

40 A.—I only had my wife along this time.

Q.—Was this a business trip, or a pleasure trip?

A.—A business trip.

Q.—What was the purpose of it?

A.—It was again a McNish situation. I went over to work out a problem in connection with McNish. Of course, it was partly pleasure. When I say it was a business trip, I do not mean it was solely business—it was not business all the time?

LORD SHAUGHNESSY (*for Defendants*), *Cross-Examination.*

Q.—What was the McNish difficulty that brought you over at that rather important time?

A.—The difficulty appeared to be that the McNish Company had not done quite as well as we hoped it would, and I went over to see what could be done to curtail expenses and so on. They had taken rather extravagant offices, and they were spending a great deal of money in advertising. Of course, that was part of the general scheme.

10 In conferred with them as to what could be done to meet certain liabilities: interest on bonds, and so on—and what could be done to curtail expenses. I had quite a long session with them, and we decided on a policy of selling off some of the stock—some of the single whiskys—we owned, with a view to reducing the debentures, if possible, by buying them in. I sent for Mr. Lauster, a Vice-President of the Company, who was more familiar with that technical branch than I was, and I had to wait in England until Mr. Lauster came over, to introduce him to the McNish's and to make him familiar with the situation, and I had to stay there a little time with him: 20 I delayed my visit a little on that account. Then I left there, leaving Mr. Lauster to continue with the sale of the stock.

Q.—At all events, we have it, it was partly business and partly pleasure?

A.—Yes.

Q.—I would like now to take you on Mr. Jennison. I think you have filed a letter of Colonel Goethals, of the Panama Canal?

A.—Yes. I think he had something to do with the Panama Canal.

30 Q.—Have you filed your letter to Sir Mortimer on the subject?

A.—I do not know whether it is filed or not.

Q.—Or, Sir Mortimer's answer?

A.—I do not remember.

Q.—Then we will file all the letters together, so that they will come in.

You did not make any enquiry from R. G. Dun & Company about Jennison?

A.—No, I did not.

40 Q.—After the unfavorable report of Colonel Goethals, your enquiries were limited to Mr. Coverdale, Governor Smith, and Mr. McAvity?

A.—Yes.

Q.—What specific information did you get from Mr. Coverdale? Had he had any experience with Mr. Jennison?

A.—I spoke to Mr. Coverdale one night in the Mount Royal Club about Jennison, and asked Mr. Coverdale if he knew him. He

LORD SHAUGHNESSY (*for Defendants*), *Cross-Examination.*

said he knew him, and that he had something for him. I asked him if he considered Jennison to be a bright, industrious fellow, and all right; and he said yes, he always had.

Q.—You did not ask any details of what Jennison had done for him?

A.—No.

10 Q.—Who was Governor Smith, and what was he Governor of?

A.—The late Governor of Vermont.

Q.—He was, and still is, a neighbor of Jennison's?

A.—I think he lives near Jennison, yes.

Q.—I understand Jennison owns a farm near Governor Smith?

A.—Yes.

Q.—What did Governor Smith report?

A.—He said he had known Jennison a long time, and, as far as he knew, he was all right.

20 Q.—Did he state anything about his farm being mortgaged to the hilt?

A.—No, I do not think so. I did not ask him that.

Q.—Did he say anything about Jennison not meeting his payments promptly in his village, or town, or wherever they lived together?

A.—No.

Q.—You have told us all Governor Smith said to you?

A.—Yes.

Q.—He did not speak of any of Jennison's ventures?

30 A.—No.

Q.—Mr. McAvity was one of the co-Directors with you in the Company?

A.—Yes. He went in with Jennison. He joined with Jennison.

Q.—In the Jennison Company?

A.—Yes.

Q.—So, we may take it he has the same knowledge as you have?

A.—I think so.

Q.—Of course, he did not put in \$100,000?

A.—No.

40 Q.—Did he report any special experience, or was what he said to you merely a general recommendation of Jennison?

A.—He reported that he had had some dealings with him in connection with some Coal Companies, and that he was impressed with him and thought he was a man of force.

Q.—His report was only general?

A.—General, yes.

LORD SHAUGHNESSY (*for Defendants*), *Cross-Examination*.

Q.—Can you tell me when the Jennison Company was incorporated?

A.—I understood the Charter had been obtained before he discussed the matter with me. That was the representation he made, at all events—that he already had a Charter for the Company when he came to see me.

10 Q.—The first time? The first loan, or the subscription for the shares?

A.—I think it was the first time.

Q.—We have the Charter here, from which we can check the date. This Charter purports to be of June 20th, 1928.

A.—At all events, he told me he had a Charter.

Mr. Geoffrion: I think I would like to put this Charter of record.

20 Mr. Campbell: Is there any object in filing the Charter. We already have a very formidable record, and perhaps my learned friend might not be under the necessity of filing the Charter unless there is something else in it which is important, beyond the matter of the date.

Mr. Geoffrion: So far I think the date is the only important element. All I want to prove is the date.

30 Mr. Holden: We are prepared to acknowledge the date as certified to.

Mr. Geoffrion: At the suggestion of my learned friends for the plaintiffs I think it might be as well to file the Charter.

By Mr. Geoffrion (continuing):

Q.—Will you please file, as Plaintiffs' Exhibit P-246, the Charter of the Jennison Company, Limited, dated June 20th, 1928?

40 A.—Yes.

Q.—In connection with Mr. Jennison, you stated, at page 164, that he had completed (as you understood) a financial deal or amalgamation which would be most profitable to the Jennison Company. Have you any detail of it, or did he give you any details of it?

A.—Yes, he did. The amalgamation that he is interested in, I think, is an amalgamation of breweries in Northern Ontario, and he had completed the amalgamation of some of those Breweries.

LORD SHAUGHNESSY (*for Defendants*), *Cross-Examination*.

Mr. Geoffrion: Of course, it is understood that this evidence is being made subject to my objection in regard to hearsay evidence.

Witness (continuing answer): The amalgamation was completed before he left for England, I understand, in respect of certain of those Breweries, but there were certain others to be added and he went over to England to arrange finances about adding the others.
10 He had a few Breweries here, as he told me, completed.

By the Court:

Q.—That was before he left for England this spring?

A.—Yes, Your Lordship.

Q.—Is he back?

A.—I do not think he is back yet. He will be back soon.

20 By Mr. Geoffrion (continuing):

Q.—The matter does not seem to be closed yet?

A.—I do not know whether the balance of it is closed or not. Up to the present I only know what he told me.

Q.—Do you know what the Jennison Company is called upon to do? Is it merely a commission business?

A.—I think they get a certain amount of money for the services they perform, and I think there is a certain amount of stock.

30 Q.—In other words, they would be paid for services in stock and in money?

A.—I do not know what they have as an arrangement.

Q.—But, there is no question of the Davis Estate, or the Davis Incorporated Company, or the Jennison Company, financing the undertaking?

A.—No.

Q.—In fact, the Jennison Company has no funds to finance it, and in the present condition of affairs the Davis Company is not in a financing mood?

40 A.—No, they are not.

Q.—You stated somewhere in your examination-in-chief that you saw no reason for selling the “ B ” shares of the Alcohol Company—I am not attempting to quote your exact words—because the future seemed to be rosy, and you did not see anything to fear about them in the future?

A.—I do not think I said that. What I said was that at the time of Sir Mortimer’s death there did not appear to be any reason for

LORD SHAUGHNESSY (*for Defendants*), *Cross-Examination.*

selling them at a loss, because things were in very good shape at that time. That was the year in which we made the finest profits we have ever made.

Q.—What do you mean by “ at a loss ”?

A.—I mean 10 points below market price, or something of that kind.

10 Q.—But there was no objection to selling them at market price?

A.—I think if we could have sold them at market price we would gradually have sold them.

Q.—The market prices change from day to day?

A.—Yes. But, at a good price I think we would have sold them. As a matter of fact, we did make efforts to sell them.

Q.—They cost much less than the market price?

20 A.—Yes, that is quite true; but the shareholders of the “ B ” stock who had participated in the issue through the actuation of Canadian Industrial Alcohol and Sir Mortimer Davis would not have welcomed Sir Mortimer Davis selling that stock, on which they had made a profit, at 10 points below the market price and hurting their security.

Q.—Your answer is limited to selling at 10 points below the market?

A.—At a loss. There was no reason to suppose then there was any object in selling.

Q.—Your answer is you did not see any reason for selling at 10 points below the market?

A.—No.

30 Q.—The words “ At a loss ” are rather obscure. You mean at a loss below the market price?

A.—I mean below the market.

Q.—The market could and would vary from day to day?

A.—Yes.

Q.—You saw nothing of an alarming nature in the future?

A.—At the time of Sir Mortimer’s death we did not see anything of really an alarming nature, no.

40 Q.—At the time of Sir Mortimer’s death, we have, in the first place, that under the Parliamentary Commission of 1926 there was a recommendation by a Committee to Parliament that this trade be stopped?

A.—Yes.

Q.—There was, in the second place, the disclosure to the public of the fact (which you suggest is very damaging) namely that this was not an industrial Company, but another sort of Company, living chiefly off a trade which was illicit in the neighboring country?

LORD SHAUGHNESSY (*for Defendants*), *Cross-Examination.*

A.—Yes.

Q.—And we also have what I think you told us in your testimony, that on account of the very fact that the bulk of the business is for delivery in a country where it is against the law, it is in a difficult and risky position—in other words, of its nature it is a difficult and risky business, and the purchasers are changing and difficult to get at.

10 A.—Yes, it is a precarious business.

Q.—You also had the news that the Walker Company and the Seagram Company were preparing in the two years following 1927 to compete with you in United States brands?

A.—Yes.

Q.—And you also had the fact that beginning in 1925 the number of Distilleries were increasing gradually?

A.—Yes.

Q.—In fact you said the chief increase was in 1926, 1927, and
20 1928?

A.—Yes.

Q.—You had all those facts at the date of Sir Mortimer's death. Do you not think they were of a nature to induce you, without absolutely smashing the market, to get rid of the shares at a substantial profit over their cost, as quickly as you could?

A.—I will answer you in this way; those were rumors—nothing had been done. The business on the border was going on just as well as, and even better than, it had ever gone on. No action has been taken on the Government Report until now. In regard to the
30 increase in the number of Distilleries, we had our own ideas as to how they would last. They went on for some considerable time in the trade, but now, for instance, some of them are dropping out and are not able to continue.

Those things you mentioned were factors in the trade, but I think were not factors that would cause anybody to get panicky and sell a lot of stock.

If they were very material, may be we should have sold the "A" stock as well. While those things had their effect over a term
40 of years (and we can now see the effect of them) at that time there was nothing done, so there was no particular reason for rushing out to sell stock—even if we could have sold it.

Q.—But, the question of whether you could or could not is an entirely different one. You might have said "We wanted to sell it, but we could not", but you did not say that?

A.—I do not say I thought we should.

Q.—Therefore, that is your answer in respect to the factors I

LORD SHAUGHNESSY (*for Defendants*), *Cross-Examination*.

have enumerated; the Report to Parliament; the competition in your trade from two powerful competitors; the large increase in the number of your other competitors; and the discovery by the public that your chief business was in breach of the law of the country where you were selling—and you say you meet all those factors by the answer you have given me?

10 Mr. Holden: Not the country where he was selling.

By Mr. Geoffrion (continuing):

Q.—The country where the ultimate consumer was?

A.—Yes.

Q.—My learned friend Mr. McKeown calls my attention to page 111 of your testimony, where you dealt with that point under examination by my learned friend Mr. Holden. You were asked:

20 “ Q.—Seriously speaking, what is the character of this industry from the point of view of stability, reliability, steadiness and that kind of thing?

A.—Most precarious ”.

A.—It is most precarious.

Q.—(Continuing citation):

30 “ Q.—I should have asked you at the outset did those characteristics you have been giving to the Court apply to this industry and this Company before the death of Sir Mortimer Davis, as well as now?

A.—Oh, yes, they always have applied. They were a little smoother during his lifetime, but they were there—at least they were in the offing.

Q.—You have just stated it is a most precarious business. Has that characteristic become better or worse within the last year or two?

40 A.—Very decidedly worse. The precariousness of the business is due to the fact that it is a business conducted in a commodity largely purchased by people who have no right to purchase it, who take tremendous risks in purchasing it, and who change from day to day.”

I have your explanation as to that, in any event.

A.—Yes.

LORD SHAUGHNESSY (*for Defendants*), *Cross-Examination.*

Q.—Later on, previous to the Report, there was the Report of the Royal Commission?

A.—Yes.

Q.—And shortly after the death of Sir Mortimer Davis, there was Mr. Hoover's election, and Mr. Mackenzie King's declaration?

A.—Yes.

10 Q.—May I take another point of view. Do you not think those very disquieting signs might have had something to do with Sir Mortimer's decision to create the " B " stock?

A.—No.

Q.—At all events, if he created " B " stock, instead of making it all " A " stock, it was because he wanted to be able to sell it and still keep control of the Company?

A.—Possibly that was his idea: that he wanted to have stock to sell.

Q.—Was there any other reason?

20 A.—I think he probably created the " B " stock because he ultimately expected to sell it.

Q.—Therefore, if he created the " B " stock for the purpose of selling it, and still keeping control of the Company; if he had sold it, all the objections you have suggested would have arisen—every one of the objections you have suggested would have arisen after Sir Mortimer had sold?

A.—Not if he had sold at a proper price.

Q.—But the price has nothing to do with it. I am speaking from the point of view of time.

30 A.—If the " B " stock could have been sold at or about the market price, without affecting materially the price of the " B " stock on the market and crashing the market, I think had Sir Mortimer been alive he would have sold it; and I am quite satisfied we would have.

Q.—Surely Sir Mortimer knew what you say would be the consequences of selling?

A.—I do not know exactly to what consequences you are referring.

40 Q.—What you knew about the consequences of selling the " B " stock was just as much known to him as to you?

A.—I imagine they were.

Q.—And he created that stock with the intention of selling it?

A.—Some day or other, but under certain conditions.

Q.—And those same objections would exist now after two years, and in ten years, and in one hundred years from now?

LORD SHAUGHNESSY (*for Defendants*), *Cross-Examination.*

A.—In that industry they will always exist as long as present conditions endure.

Q.—Therefore, the objection you suggest is a permanent objection against selling?

A.—I do not think I quite understand you. I am speaking of the precariousness of the business.

10 Q.—But the precariousness of the business was there at that time. First we have the fact that Sir Mortimer created this “ B ” stock—

A.—(Interrupting) So that he might be able to sell it at some time, if he so chose, without losing?

Q.—Your suggestion is that selling by the Estate would depress the market? Selling by Sir Mortimer would depress the market in the same way?

A.—In the circumstances in which we found ourselves, it would have, unquestionably.

Q.—And, in any circumstances?

20 A.—Not if there was a very broad market. If there was a big market you could, perhaps, get rid of 60,000 shares of stock without depressing the market.

Q.—But you were in a boom market?

A.—25,000 shares were dealt in in one year.

Q.—I am only speaking of the “ B ” stock?

A.—Yes. What would happen to the market? I think there were 45,000 shares dealt in the whole year before.

30 Q.—But you do not know what would happen, because you did not try?

A.—We did try. We sold some.

Q.—Do you believe, or did you believe then, you would have a greater boom market for many years than you had at that time?

A.—There was a big market, but not for alcohol “ B ” stock; it was listless, it was lagging, and there were very few shares dealt in.

Q.—May I point out to you that your shares did not sell because you put a high price on them and never lowered it?

Witness: For that particular block?

40 Counsel: If you had depressed the price a few points the stock might have sold.

A.—I do not know. That is hypothetical.

Q.—In any event, you did not try?

A.—The brokers did not try.

Q.—They had no authority to try?

A.—No.

Q.—As I understand it, all you did was to go to New York and try to interest brokers there?

LORD SHAUGHNESSY (*for Defendants*), *Cross-Examination.*

A.—I went to New York and discussed it with brokers there, to see what could be done.

Q.—Do you not think that is a stock more difficult to sell in New York than in Montreal, considering the nature of the business?

A.—No, it was not really. It was an industrial alcohol stock.

Q.—And you think the nature of the business did not make any difference in the United States in 1928?

10 A.—In any event, they were quite prepared to discuss the matter.

Q.—But they did not sell it?

A.—No, because a snag arose in the conversion of the " B " stock.

Q.—Do you positively say Mr. Williams offered to take options on the stock at 10 points on the market?

A.—No, he did not.

Q.—I thought you said he had offered to take options from you?

20 A.—No.

Mr. Williams told me he might be able to get two or three brokerage houses in New York to form a pool to take up the " B " stock. When I asked him the method that would be adopted, the price, and so on, he suggested he would require options on certain blocks at certain prices.

Q.—I thought you said 10 points under the market?

A.—I think he started about there. That was the first option for the first lot of shares.

Q.—Did not that sound to you as insane?

30 A.—It did not sound attractive, but brokers will, of course, make what they can.

Q.—Is it not the business of a broker to take up an option of that sort to make money out of it?

A.—He might take up the first option, and he might not take up the second if he does not make money out of the first.

Q.—He is there to make a profit?

A.—I should think he would be.

40 Q.—I thought I heard during the course of these proceedings a letter read from Sir Mortimer Davis to you saying he objected to going to American brokers because stock sold over there always came back here?

A.—That was in connection with another proposition.

Q.—Is not that principle applicable to both?

A.—The circumstances were extraordinary. There was no market for the " B " stock here, and it could not be sold, and the arrangement I was trying to make was with a view to getting a broader market for the " B " stock, and the idea of listing it on the Exchange

LORD SHAUGHNESSY (*for Defendants*), *Cross-Examination.*

in New York occurred to me. I talked it over with the brokers, and found it would have to be converted, and so on. That was in connection with a proposition that was made about "A" stock some years before.

Q.—The theory of Sir Mortimer was that it was bad business to sell it in New York, because it always came back here?

10 A.—At that time he did not feel like selling any of his "A" stock, because it would come back here.

Q.—You do not see any particular reason why that would apply to "A" stock and not to "B" stock?

A.—A thing may apply at one time, and not at another. Because a man uses some words, or says something, some years before, does not mean those conditions exist forever.

Q.—Your point is that what Sir Mortimer said some years before his death does not mean that the same conditions would justify the same thing afterwards?

20 A.—No, I do not say that. Sir Mortimer had an offer, or an offer was made for some large block of his "A" stock. He had great faith in the "A" stock. He was afraid if those people bought it they would dump it on this market. I do not think there was any suggestion of loss at that time.

That was not at all the same proposition as I had in mind. My proposition entailed creating a market in New York for the sale of that stock.

Q.—In other words, listing it?

A.—Yes.

30 Q.—With the American laws as they are, you hoped this stock could have been listed in New York?

A.—It has been done—Walker's is listed on the Curb; and they are a distilling company, not an industrial alcohol company.

Q.—You have 125,000 shares of "B" stock?

A.—123,000.

By Mr. Campbell:

Q.—That is, in all?

40 A.—Yes.

Q.—That is the full issue?

A.—Yes, the full issue.

By Mr. Geoffrion, continuing:

Q.—Let us now come to the payment of some hundreds of thou-

LORD SHAUGHNESSY (*for Defendants*), *Cross-Examination.*

sands of dollars to the Hebrew Young Men's Association. You have no written authority whatever for that?

A.—No; that was arranged by Sir Mortimer before he died.

Q.—There is no written evidence of it?

A.—No Deed of Gift.

Q.—Or no written evidence?

A.—No; it was a verbal understanding between Sir Mortimer
10 and this Committee.

Q.—The other gifts you made since Sir Mortimer's death were made on your own initiative?

A.—They were made by ourselves—the Incorporated Company.

Q.—As a matter of fact, for the Hebrew Young Men's Association you had to increase the amount which, according to your information, Sir Mortimer had already authorized?

A.—Sir Mortimer authorized the increase of the amount at a meeting, held at his house, between the members of the Committee and himself, at which meeting I was present. He then instructed
20 me to carry that out.

Q.—Where was that?

A.—In Montreal, at the Pine Avenue house, one Sunday morning.

Q.—About when?

A.—Just before he sailed for Europe in 1927. The land had already been bought before he died.

Q.—The land had already been bought in the name of the Estate?

A.—The land was bought in the name of the Incorporated Com-
30 pany.

Q.—Did you not have to make another increase after the death of Sir Mortimer?

A.—No, we only made one increase. There was only one increase made, under his instructions.

Q.—I suppose you do not admit what Colonel Gaudet says in regard to telling you that he wanted to sell a part of his stock, and you agreed?

A.—No, I do not admit that.

Q.—You deny it?
40

A.—Yes.

Q.—Mr. Joseph had sold his stock previous to Colonel Gaudet selling his?

A.—Yes, I think he had commenced.

Q.—He sold more than Colonel Gaudet sold?

A.—Yes, he sold more.

Q.—And he sold everything?

LORD SHAUGHNESSY (*for Defendants*), *Cross-Examination*.

A.—I think Mr. Joseph eventually sold out all the stock he had.

Q.—Colonel Gaudet sold only part of his stock before his dismissal?

A.—Yes; a substantial part.

By Mr. Campbell:

10 Q.—Mr. Joseph retained 100 shares?

A.—Yes, he did, for a while. Out of 5,000, he retained about 100.

By Mr. Geoffrion, continuing:

Q.—I take it from your evidence that you met Mr. Joseph after he had begun selling this stock, and when he was nearly through selling it, and you remained quite friendly with him and there was no blame attached to him?

20 A.—When I came back in June, 1929, he had sold it all but 100 shares.

Q.—And, according to your testimony, you did not in any way blame him?

A.—Oh, yes, I did, indeed.

Q.—I have read your testimony, and I find no evidence in it of your having blamed him.

30 A.—But I did blame him. I took the matter up with Mr. Joseph, and I was probably indignant, and I asked him why on earth he had sold his stock. I could not see any reason why he had done that while I was away. As I said in my testimony, he gave me an answer to the effect that he was travelling a good deal, and so on. I asked him if that would be followed by his resignation, and he said it would. I did not say I concurred in his act, or was not displeased, because I was displeased.

Q.—Do you state that when you related the incident in your examination-in-chief you blamed Mr. Joseph in any way? I do not find any trace of it in your deposition.

A.—I certainly did blame him, and I say it now.

40 Q.—I took it from your evidence-in-chief that you simply asked him why he had done it, and he told you he wanted to withdraw, and that there was not any appearance of protest or anything of the kind on your part?

A.—There was a very great protest, and very hard feeling for all last summer.

Q.—As a result of that?

A.—Yes.

LORD SHAUGHNESSY (*for Defendants*), *Cross-Examination*.

Q.—While the reference is being looked up, in order to save time I will come back to the other question. You say you deny ever having allowed Colonel Gaudet to make a partial sale of his stock. I refer you to a letter of Colonel Gaudet's, dated July 5th, 1929 (Exhibit P-170), in which he says:

10 “ While this stock was my private property uncondition-
ally, 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.

20 Complying with your desire, I not only kept ‘ an interest
in the Company,’ but I have kept and now hold \$25,000 of
stock, an amount which is in excess, I believe, of the shares
held by any Director of the Company 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.”

I have your answer of July 6th, and I find absolutely no denial
of that statement in your letter.

30 A.—No, I did not deny the statement. He denied it himself,
practically.

Q.—That is your answer?

A.—He anticipated a denial, because he said, “ You cannot now
go back on that statement made in your office.” That was the first
time I had heard of the statement.

Q.—In your answer, written the day after, you did not say a
word about the statement?

A.—No.

Q.—You did not think it was necessary?

40 A.—No.

Q.—I understand your Company has more Distilleries through-
out the country than have either the Walker people or the Seagram
people?

A.—Yes, we have.

Q.—Quite a number more.

A.—Yes. We have five Distilleries in all.

Q.—And how many have they?

LORD SHAUGHNESSY (*for Defendants*), *Cross-Examination.*

A.—Walker's have two; and I think Distillers-Seagram have two, although I am not quite sure.

Q.—Does the same thing apply to warehouses? Have you more warehouses than they have?

A.—Yes, we have more warehouses. Some of their warehouses are larger than ours, but we have more in number than they have.

Q.—And more bottling plants?

10 A.—We have a bigger bottling plant, I think.

Q.—Have you several?

A.—Yes. We have a bottling plant at Wisser's, one at Corbyville and one at St. Hyacinthe.

Q.—And you have bigger plants, and more in number, than they have?

A.—Yes.

Q.—Can you tell me what actual experience in selling Mr. Flanagan had before Mr. Kelly left?

20 A.—Mr. Flanagan had a very long experience in selling. Mr. Flanagan was assistant to Mr. Rainer, when Mr. Rainer was in the Sales Department, and he continued with Mr. Kelly when Mr. Kelly was in the Sales Department. He had the experience over some number of years.

Q.—You are positive Mr. Flanagan was assistant to those gentlemen in the Selling Department?

A.—Yes.

Q.—He had actual selling experience?

A.—Yes, unquestionably he had selling experience.

30 Q.—I am instructed his experience was only clerical.

A.—No, not at all. He has had a great deal of selling experience.

Q.—Who are the men who are with him now in the Selling Department? Who are in charge of the Sales today?

A.—Mr. Lauster is supposed to have general supervision of sales. Mr. Flanagan and Mr. McCram are supposed to be in the Sales Department. Then there are the two Messrs. Stormont, and Mr. Rose. Of course, he is an outside man; he goes down to the Maritime Provinces.

40 Then there are the various organizations in Ontario, British Columbia, Manitoba and so on.

Q.—Has Mr. Lauster ever had any experience until recently in actual selling?

A.—Oh, yes.

Q.—Had the Messrs. Stormont any experience in selling?

A.—Yes. They have been selling ever since the Company was started.

Q.—As regards the payment to Mr. Marler for his shares, I am

LORD SHAUGHNESSY (*for Defendants*), *Cross-Examination.*

instructed the facts are as follows—and you will please tell me if you have any correction to make:

10 Mr. Marler told you that he wanted to resign from his Trusts some time in November, 1928; that, as a separate proposition, he asked the Estate to purchase his 500 shares. He said he wanted \$200 per share, which he claimed was less than the value. You answered \$170 per share was the value set by the Auditors. You suggested that as he was giving up the Trusteeship, and thus saving to the Estate the fees to which he was entitled, that you might pay more than \$170 viewing the transaction as a whole, namely the purchase of the shares and the resignation as Trustee. Mr. Marler replied that he would not take anything for resigning as Trustee, but he wanted \$100,000 for his stock, and that you could arrange it as you liked. That you then wrote him. Have you a copy of the letter?

A.—I think it is filed.

20 Q.—That you then wrote him setting out a valuation of the shares at \$170. That he replied by letter in which he stated he was taking \$100,000 for his shares. Have you that reply?

A.—It is filed also, I think.

Mr. Holden: I think my learned friend's question should be divided into chapters. It is very long.

Mr. Geoffrion: I have a statement of the circumstances. I have no objection to dividing it up, if you wish.

30 Witness: I think I can follow it.

By Mr. Geoffrion, continuing:

40 Q.—Then you met again, and you stated to Mr. Marler: “ We will give you \$100,000 for your shares, but the difference between \$170 and \$200, namely \$15,000, will have to be treated in some particular way.” Mr. Marler replied that you could treat the \$15,000 as you liked, provided it was understood that as far as he was concerned he was taking nothing for resigning as Trustee, and that he was only taking for his shares. Then two cheques were drawn, one for \$85,000 and one for \$15,000—the \$85,000 cheque being drawn by the Estate, and the \$15,000 cheque being drawn by the Company.

A.—Mr. Marler came to see me, and stated that he wanted to sell his stock. He asked me what we were prepared to give him for it. I told him that the price set by the Auditors was \$170 a share, and that was the only price we could deal with. I also explained that

LORD SHAUGHNESSY (for Defendants), Cross-Examination.

that price would have to be fixed by a Shareholders' Meeting at the end of the year, because that was provided for by the by-laws.

That was all that transpired at the first interview.

Mr. Marler came back to see me again, and asked me if we would take over his bonds. I said: "No, I do think we could do that." Then he said he was entitled to compensation under certain Trust Deeds, and he thought in giving up this compensation he was
10 entitled to get something for it. We argued the matter, and finally I told him other Trustees would have to be appointed, and unless some other arrangements were made they would have to get the fees if he was not going to do the work, and if they were, and so on. He said: "There is nothing to prevent me staying on those Trust Deeds, then." I said: "No." He said: "I would much prefer to sever my connection altogether. He insisted that he felt he was entitled to some compensation for getting off those Trust Deeds.

Lady Davis and I had even discussed the matter about Mr. Marler.

20 Q.—But I am not taking you on your discussions with Lady Davis.

A.—It seemed to me to be advantageous to have Mr. Marler get off, because the relationship between Mr. Marler and Sir Mortimer's affairs was a little strained owing to the fact that at one time he had been Sir Mortimer's more or less confidential adviser, and had been his Notary, and an Executor of his Will; and when Sir Mortimer died he was not. The first time it was disclosed to Mr. Marler that he was not an Executor of the Will he was very angry,
30 and resented it very much. He felt influence had been used against him, and so on. He came to see me in a very perturbed way about the whole thing one day.

I think it was generally agreed between Lady Davis, Mr. Reaper and myself that if Mr. Marler's shares could be purchased, and Mr. Marler out of the Company, and so on, it would be of advantage to the Company, and I wrote Lady Davis on November 5th to that effect, and received no answer.

Of course, your question is very long, therefore my answer must be long.

40 Mr. Marler said extra compensation should be given to him.

Q.—I was taking you only on what happened between you and Mr. Marler.

A.—That is what happened. Mr. Marler said extra compensation would have to be given to him.

Q.—You denied, if I remember well, any reference to a plan of having a \$150,000,000 Estate or company being discussed with Lady Davis in connection with the Jennison affair?

LORD SHAUGHNESSY (*for Defendants*), *Cross-Examination.*

A.—I deny ever using the figure of \$150,000,000 with anybody under any circumstances.

Q.—Anybody? Waddell or anybody else, or \$100,000,000 also?

A.—No, I deny that too.

Q.—You were examined on the question of the stock dividend of Sir Mortimer Davis Incorporated subsequently redeemed. It is common knowledge I think this used to be a well known and successful method of getting around the Income Tax?

10 A.—That could be a method of getting around the Income Tax. In this particular case it was not, because Sir Mortimer was out of town.

Q.—Do you mean the increasing of the stock in 1924 in the Incorporated Company?

A.—Yes. It was done really for the purpose of paying back capital which Sir Mortimer had drawn down from the company, creating a Capital Drawing Account for him, compensating the other shareholders for that loss of assets.

20 Q.—It was made as a capital withdrawal on account of Income Tax?

A.—He withdrew it in capital. Anything he would withdraw as a matter of fact was capital.

Q.—In other words, the company was so managed there appeared no revenue although the stock was increasing by leaps and bounds?

A.—Yes.

30 Q.—I suggest to you, Sir Mortimer, like many others we know of, managed to run his Estate or Company so as to have no revenue, and call that Capital Account?

A.—The distribution was made that way. It was really to replace capital he had taken down *quo ad* the other shareholders.

Q.—Therefore you do not admit this operation, that the company had proposed to manage the books kept that everything appeared to be capital and no revenue, and therefore it had to be done that way for that purpose?

A.—It is a fact the withdrawals were on capital prior to my time and subsequently.

40 Q.—They were on capital so the company showed no profit?

A.—Surpluses did appear from time to time later, but the drawings of Sir Mortimer were against capital.

Q.—If there had been profit that would have been against profit, but as the books showed no profit they were drawn on capital?

A.—Yes.

Q.—You were in those days connected as general counsel of the Company?

LORD SHAUGHNESSY (for Defendants), Cross-Examination.

A.—Yes, I was general factotum; counsel and secretary also. That was in 1925.

Q.—As regards the legal aspect and the manner of doing things you were like any other lawyer, I suppose; you were the one who advised?

A.—I do not think I was particularly consulted in the matter.

10 Q.—Perhaps he knew it already and did it out of his knowledge of the law?

A.—I do not know about his law, but he did what he wanted to do anyway.

Mr. Campbell, K.C.: I think there is an impression being left about the question of there being no dividend for the company. That is true up to 1924 when Lord Shaughnessy took hold. There were from that time substantial net profits shown on the Balance Sheet. My learned friend Mr. Geoffrion is saying there was no available profit shown. That is not shown.

20

By Mr. Geoffrion, K.C.:

Q.—This change took place when Sir Mortimer started to live in Europe?

A.—The change actually started when the Company began to get some revenue. You have your statements on that.

Q.—My point is that it happens to be when Sir Mortimer moved to Europe?

30 A.—He went to Europe in 1923. I was not with the Company then.

Q.—The latter part of 1923?

A.—Some time in 1923.

Q.—As a matter of fact, he purchased his villa and settled definitely as an owner of the Estate in France in 1924?

A.—The last Income Tax return he made as a citizen of Canada was in 1924. In the 1923 Income Tax he was supposed to have been residing in Cannes, in France.

40 Q.—Well, now, I would like to take you on as to the controversy about whether Mr. McDonald would replace Lady Davis on the Directorate or be added to it?

A.—Yes.

Q.—What was the order of facts there? Will you repeat it to me, please?

A.—Well, I think it was the beginning of July, the 9th, I think. I think I said in examination-in-chief the 24th of June, but I made a mistake in the date. That was not the time. That was another

LORD SHAUGHNESSY (*for Defendants*), *Cross-Examination*.

interview. It was on the 9th of July. I think Lady Davis came to see me at the office and asked me if I had any objection to her being represented on the Board of Directors of Sir Mortimer Davis Incorporated, and I said it was an unusual request, and so on; the matter would have to be thought over very carefully too, and that Mr. 10 Reaper and I would try to meet her as much as we could. Subsequently, she telephoned me and asked me if I would accept Mr. Donaldson as the nominee. As I stated, I said that raised a complication.

Q.—I don't want to go into the reasons for it.

A.—Some time after she telephoned me and asked me if I would accept Mr. McDonald. I think she telephoned. I said "Yes, Mr. McDonald would be all right." It was the first interview we discussed the question of Mr. Waddell going on. I think she said she did not object to that, something like that.

20 Q.—When would that be?

A.—I think the 9th of July. Subsequently it was brought to my attention that the by-laws of the Company provided that at each Annual Meeting the number of Directors would be fixed to be not less than three, and that these Directors would hold office for the balance of the year, and it appeared to me we could not without going through extraordinary machinery immediately increase the Board by the addition of Mr. Waddell, and I wrote Lady Davis immediately and sent her a copy of the By-laws. I subsequently over the phone asked Lady Davis or at all events I had in 30 mind she was going to resign and Mr. McDonald was going to replace her. She said she had no intention of resigning.

Q.—You told us you were looking for the by-laws?

A.—Mr. Reaper showed me the by-laws, and it seemed to me some machinery would have to be adopted to increase the Board.

Q.—If you thought there was not going to be any increase —

A.—I knew if Mr. Waddell came on there would be an increase.

Q.—And Mr. McDonald?

A.—Yes.

Q.—You cannot give us the date of that?

40 A.—I don't remember the date exactly. It was just around that time, some time around that time.

Q.—I am instructed you are the person who offered Mr. Waddell the position?

A.—I spoke to Mr. Waddell about it.

Q.—You suggested Mr. Waddell to Lady Davis?

A.—Yes, I think I spoke to her about it.

Q.—She was asking for one, not for two?

LORD SHAUGHNESSY (*for Defendants*), *Cross-Examination.*

A.—I suggested to her, inasmuch as Mr. Waddell had a large interest in the Company, it might be well to ask him to become a Director to protect his own interest.

Q.—At that time you were under the impression there would be no increase in the number of Directors?

A.—As far as Lady Davis was concerned I thought so, yes.

10 Q.—Why consult the by-laws about it?

A.—Because we would have an increase of Directors if Mr. Waddell came on.

Q.—You wanted him put on yourself?

A.—I did not want him put on. I suggested he might be put on.

Q.—You suggested adding a fourth one and Lady Davis was going to be replaced?

A.—Lady Davis was going to be replaced.

Mr. Geoffrion, K.C.: We are about to take the witness on the
20 letters and my learned friend has not got them yet.

Whereupon an adjournment was taken until 2:30 o'clock P.M.

On this May 19th, 1930, at 2:30 P.M.,

WILLIAM JAMES LORD SHAUGHNESSY

30 re-appeared and continued his evidence as follows (in cross-examination):

By Mr. Geoffrion, K.C.:

Q.—Lord Shaughnessy, in mentioning your trips I forgot to take you on the Canadian Pacific Railway's September trip. It was in September, 1929?

A.—The Directors' trip was in September, 1929, yes.

40 Q.—That lasted about one month?

A.—That lasted about one month. I left on the 5th of September and came back on the 5th of October.

Q.—That is the annual inspection trip of the President?

A.—Yes.

Q.—To which he invites some Directors and some friends?

A.—Exactly.

Q.—In connection with your increase in salary I will put you

LORD SHAUGHNESSY (*for Defendants*), *Cross-Examination*.

this question; would you at the end of 1929, and in view of the results of that year have thought it proper to vote yourself a bonus?

Mr. Campbell, K.C.: Is this the financial year?

By Mr. Geoffrion, K.C.:

10 Q.—The calendar year?

A.—The end of the calendar year or the financial year of 1929 did not indicate such profits as would probably warrant the increases in salaries, but at the commencement of 1929 the situation was such that bonuses and increases in salaries were quite in order on the showing of the Company.

20 Q.—You justified your increase in salary by invoking the precedent of the bonuses given you. In view of the difference between the salary and a bonus I am suggesting to you if there had not been an increase in salary you would not give yourself a bonus at the end of the year?

A.—I was given a bonus in the Incorporated Company quite independent of what the results happened to be. In 1924 when the results were not as promising I got a bigger bonus than I did in any other year.

Q.—In 1924 you suggest as not being a promising year, but it was a good year in the appreciation of the value of the stock?

A.—It was a good year for appreciation.

30 Q.—Better than 1929, considerably, as regards appreciation of the stock?

A.—I think it was better in 1924 than it was in 1929.

Q.—In 1924 it went up and in 1929 it went down?

A.—That I am not sure of.

Q.—We have got the statements here.

A.—Yes.

Q.—I have here the evidence that you gave concerning the Henry Joseph incident. It is rather short and I will read your answer at page ~~37~~: 2342.

40 “ Mr. Joseph had been connected with the Company for a great many years and was a friend of Sir Mortimer Davis, and when I was in England last year and when Mr. Lauster arrived in England he informed me that Mr. Joseph had sold all his stock. On my return to Canada I spoke to Mr. Joseph one day about it and asked him what was his idea in selling the stock under the circumstances which he did, and he told me he was getting out of business, that he intended to travel a

LORD SHAUGHNESSY (*for Defendants*), *Cross-Examination.*

great deal, and I think he said he was withdrawing from certain Canadian connection that he had, and so on, and I then asked him if he proposed to resign from the Company, and he said he did, that he would write me a letter about it. I think the next day or so I received a letter from him tendering his resignation."

10 I do not see any suggestion there that you are very reproachful to him as to having sold his stock?

A.—Mr. Joseph and I severed diplomatic connections practically then and were very cool to each other during the whole summer, and it increased, culminating in the interview which he gave to the papers, since when I have not spoken to Mr. Joseph.

Q.—Was not the period of your coolness after that interview?

A.—No, it was when he sold his stock and resigned from the Company.

20 Q.—Before that article appeared in the paper had you any knowledge of anything being done on his part?

A.—Absolutely none. I saw Mr. Joseph pretty nearly every day, discussed the Company quite freely with him and never heard any suggestion outside of that.

Q.—Do those answers suggest any misunderstanding between you two before the newspaper articles?

A.—There was no question a misunderstanding did arise and it was very prevalent all last summer.

30 Q.—Can you file the cheque that was drawn for the advance to Jennison? We have not got the exact date of the advance. Please file it as Exhibit P-247?

A.—Yes.

Q.—There is a Resolution limiting the management of the Incorporated Company's powers as to investments below \$10,000. In other words, none above \$10,000 could be made without Sir Mortimer's consent. That has been referred to but not filed. Will you file that as P-248?

A.—Yes.

40 Q.—Resolution limiting investments to \$10,000?

A.—Yes.

Q.—I want you to file and read, according to the practice in this case, a few letters or extracts from letters. Here is a letter, October 28th, 1926, from Sir Mortimer addressed to you from Paris.

A.—May I see it before it is filed?

Q.—Yes. (Reading):

LORD SHAUGHNESSY (for Defendants), Cross-Examination.

“ My dear Will:

Sent you cable in answer to yours Wednesday October 27th re bank:

10 Object strongly to putting ourselves in the position of borrowing such a large amount from any bank, especially when the future might require borrowing for working capital. Besides, is it not permanent money as a bond or preferred stock. Banks are all alike. When things are going good they will give you the accommodation, but when things look a little grey watch out for the pistol. I am speaking of 40 odd years of experience.

20 My cable today states fully my views and I do not intend to change them. If we cannot put the ‘ W ’ deal through on those lines we will have to forego it. The promoters that we were giving the option to could not put the deal through at the price because it did not show sufficient earnings. They peddled it all over London, which is bad. Of course they did not have Alcohol Company behind the deal. The only company that could handle the deal would be the merger, and no doubt they turned it down, so we need not worry about anyone else that cannot be financed at the present price demanded.

P.S. Watch Hatch. I notice he is advertising a cheap whiskey. If necessary get Wiser after him.”

30 I want to file another letter as Exhibit P-250. I will not take them in their order. I have not now, Lord Shaughnessy, the letter of the 24th of October, 1926, so I will take the others. I will take you on the letter of January 6th, 1927, from Sir Mortimer to you. Unfortunately you have made a mark on the original which my learned friends do not care for, so we will put in a copy instead. At all events, I might use the original.

Mr. Holden, K.C.: I do not know whether the marks are important.

40 Mr. Geoffrion, K.C.: The marks are purely and simply to indicate to me what I should read. It was simply a labor-saving device for me to know what I had to read.

The Court: A labor-saving device would be welcome.

By Mr. Geoffrion, K.C.:

LORD SHAUGHNESSY (*for Defendants*), *Cross-Examination*.

Q.—This P-250, either the original or a copy of a letter from Sir Mortimer to Lord Shaughnessy, of the 6th of January, 1927, also from Paris. The entire letter is filed, but I will only read an extract:

10 “ Therefore do keep me advised by cable of any important decisions to be made regarding our affairs, so that you will have received the expression of my views before deciding any serious question, and in addition see that I am furnished with cables indicating the price of our stock.”

Another letter I would like to file as P-251 of the 13th of January, 1927, from Sir Mortimer to you, which I file in its entirety, but I will only read this phrase:

20 “ Keep me informed in detail by weekly letter explaining what is going on. This will put me in position to advise you. If you want to cable me any important decision you may want to make. As stated in my previous communication, we must get authentic information as to what our competitors are doing. It is of as great importance to us as what we ourselves are actually doing. If you yourself have not got time to send me this weekly letter, have someone do it for you.”

I would file as Exhibit P-252 letter from Sir Mortimer Davis dated February 26th, 1927, from which I will read this extract:

30 “ I have cabled you in the following terms this morning:
Davisco Montreal

Sell up to 28,000 shares at 28 to 30 or better. Telegraph details daily.”

I would file as Exhibit P-253 letter from Sir Mortimer to you of the 10th of March, 1927, from which I will read this short extract:

40 “ I confirm the following telegrams exchanged between us; mine dated 7th instant reading:

Am not sufficiently informed concerning present and future business conditions and competitors' movements. Cable. Hope you are better.”

I file another letter as Exhibit P-254 dated 1st April, 1927, from Sir Mortimer to you, from which I will read this extract:

LORD SHAUGHNESSY (*for Defendants*), *Cross-Examination*.

“ I am much disappointed that I do not hear from you oftener, as I expected a letter at least once a fortnight. Since my departure in over three months I have only received three letters from you, which naturally keeps me guessing as to what is going on.”

10 I file as P-255 letter from you to Sir Mortimer dated April 30th, 1927, of which I will only read an extract:

20 “ With regard to my letters I am sorry that you do not appear to have received as many as you have liked. In order to check up, however, my records show that I wrote you as follows: January 3rd, 18th, 24th, February 10th. I was then laid up until March 20th, when it was impossible to write. I wrote again, however, on March 29th, April 6th and 11th, and am endeavouring to write you now once a week to keep you fully informed.”

I will file another letter, Exhibit P-256, dated 2nd November, 1927, from Sir Mortimer to you, from which I will read this extract:

“ Please keep me posted about everything so that I can be conversant with matters.”

I will file as Exhibit P-257 letter of November 26th, 1927, from which I will read the following extract:

30 “ Under the above plan it would be necessary for us to subscribe for about 63,000 shares of this stock, which would cost us \$1,260,000, on the re-sale of which, at between 35 to 38 (taking what I considered the low figure) we would realize about \$1,000,000 instead of some \$3,000,000 which would be realized by the stock bonus method.”

40 This phrase is incomplete. Would you look at it and tell us whether it does not refer to the “ B ” stock? I don’t know if I stated in my question to you that this was a letter from you to Sir Mortimer?

A.—That does refer to the “ B ” stock. At that time when we were issuing “ B ” stock we had every reason to anticipate it would rate in the market with equal fervour and with equal price of the “ A,” but it did not prove that in this case.

Q.—I suggest on this chart it appears to have done pretty nearly as well?

LORD SHAUGHNESSY (*for Defendants*), *Cross-Examination*.

A.—We won't argue about that.

Q.—We will argue by and by. I will admit there is some difference between the "A" and the "B."

A.—Not as a rule. Liggett and Myers—sometimes the "B" is ahead of the "A."

Q.—As a general proposition?

10 A.—The situation curiously enough in the United States, with regard to two stocks, where one has curtailed itself and does not get the same privilege—as a rule "B" ranks after the "A." In our case, they got paid exactly the same dividend. They ranked absolutely *pari passu* in the event of liquidation.

Q.—The next letter I would file is Exhibit P-258, letter from you to Sir Mortimer, dated February 24th, 1928. I will read an extract beginning on the last line of page two, "Financial Company":

20 "I have been working on this matter, but unfortunately have not been able to secure the type of man required. I spoke to Clarkes Bachelder, who at one time managed the Guarantee Trust Company here, and who is a particularly able finance man. He was somewhat receptive and agreed to give the matter his consideration, but unfortunately after our conversation he was appointed a Vice-President of the Chase Securities of New York and consequently would not sever his connection with that organization. I have located another man, C. S. Jennison, who had a good reputation here among the financial houses and who I must say impressed me very favourably as a very active, 30 capable and intelligent man. At our interview he mentioned the fact that he had been connected with various financial houses in the United States and that he was at one time a Vice-President of the firm of George Goethals of New York, probably the biggest investigating engineering company in the world. As I had in the past known Colonel Goethals (who unfortunately has since died), I wrote him a personal letter asking him confidentially to give me his opinion of Jennison. He wrote me in reply he was unquestionably a very careful and industrious man, but that during their association he did not entirely trust him. 40 This was a keen disappointment to me inasmuch as I really believed that we had secured the right man for our purpose, but of course under the circumstances I could not go any further, as I feel quite sure you agree with me that the first essential in a man to work for us must be scrupulous integrity, and which to my mind is far more important than abundant brains.

I have got another man in view who has been connected

LORD SHAUGHNESSY (*for Defendants*), *Cross-Examination.*

with the National City Company, and I expect to see him next week, when I will report the result.

10 I am sorry that I appear to have been slow on this matter, but to get a man of some experience, mature and capable, is not easy. I can get a great many young men just commencing, but of course they would be no good to organize and administer a company, it being necessary for the man to have had a considerable number of years' experience in order to understand the details of the company we have in mind."

I suppose to these questions your answers will be " Yes " unless my learned friends state I have misquoted the letters?

A.—As to filing the letters?

Q.—Yes, as to the description of them and the extracts?

A.—Approximately right, I think.

20 Mr. Holden, K.C.: I think the only way is to postpone the re-examination on the letters and I will borrow them from Mr. McKeown after they are filed.

By Mr. Geoffrion, K.C.:

Q.—I have two more letters and that is all. I will ask you to file as P-259 a letter from you to Sir Mortimer dated January 9th, 1926, from which I will read only this extract:

30 " In the meantime I think we require a man with business office experience to supervise a methodical business system involving filing of correspondence, prompt dealing with correspondence and accounts, careful checking of books and vouchers, and general administration in order to assist and check the annual audit. As the company is a holding one, there is not a great deal of routine work to be done, but as our interests are liable to increase it would help considerably to have a man familiar with detail in order to keep all our affairs up to date, in order that information concerning the exact position of any matter
40 will be readily available when required. For this purpose I have been considering the possibilities of engaging Reaper, who was was the Asbestos Company. I have had a great deal of work with him in connection with the completing of that transaction and I cannot adequately express the help he has given me, nor the high opinion I have formed of his knowledge of method and detail. It is true he is not a young man nor does he possess a

LORD SHAUGHNESSY (*for Defendants*), *Re-Examination*.

great deal of initiative, but he is conscientious, honest and careful, and would help me more than I can tell."

A.—I am taking it for granted these are authentic letters. I have not seen any.

10 Q.—That is why you should answer subject to the fact I did not pass you a single paper, to be checked by your attorneys. I quite understood the "Yes" you gave there might be withdrawn if my learned friends find out there is anything wrong.

Re-examined by Mr. Holden, K.C., of Counsel for defendants.

20 Q.—May it please the Court, I will ask Lord Shaughnessy questions in re-examination, as they have been brought up in these last letters. I think I will save the Court's time by looking them over during the adjournment and I will see if there is anything to be asked in connection with these letters. There are a large number of letters we will get from our opponents and we will be ready to ask a few more questions.

Lord Shaughnessy, I have referred frequently to the female plaintiff, Lady Davis. As to the male plaintiff, Mortimer B. Davis, have you ever at any time before the service of this action had any complaint or criticism of any kind from him?

A.—None whatever, nor from his attorney, Mr. Hyde, who has been acting for him.

30 Q.—Reference has been made somewhere to certain burnt spots on the dining room table?

Mr. Geoffrion, K.C.: That was a long time ago, in the beginning.

By Mr. Holden, K.C.:

Q.—I should have asked in chief. It is a small matter, but were those burns there when the table was moved?

40 A.—Yes, there were several burns on the table before it came down.

Q.—I mean, had any been added since?

A.—No.

Q.—The five distilleries of the Canadian Industrial Alcohol Company and the bottling plants have been referred to in the cross-examination. Were those five distilleries in existence before Sir Mortimer's death?

LORD SHAUGHNESSY (*for Defendants*); *Re-Examination.*

A.—Oh, yes. They were all owned by the Company before he died. We bought no distilleries since he died.

Q.—Is that as a matter of fact true with regard to the special bottling plants?

A.—Yes.

10 Mr. Holden, K.C.: Well, we will look at these overnight.

By the Court:

Q.—Lord Shaughnessy, how is that the year 1928 was probably the best year Alcohol ever had or will ever have in the presence of all these ominous signs?

20 A.—The handwriting was somewhat on the wall, but nothing had taken place which interfered at all with the business, and the business had reached—I might say the border and ocean business had reached a pretty high zenith. It was going very strong. The culmination of the thing was all these different things, the different actions taken in 1929. Otherwise, the probability is business would increase year by year. In 1928 we had the very peak year because we were about the only people with good American and Bourbon whiskey in the market, and we had the situation more or less to ourselves. Afterwards, when these other companies came in with their competition, it naturally affected the business, and all these other catastrophies happened in 1929. While the omincus signs were indicated, there had been no effect.

30 Q.—When did the effect show?

A.—Commencing February, 1929, our earnings began to drop off. In November, 1928, after our fiscal year of 1928—in December, 1928—we had particularly big months; we had very big months; then a little less, and by especially the month of March, 1929, we began to see the trend down.

Q.—What do you consider is the future of Alcohol?

40 A.—It is a difficult thing to say what the future might be. At the moment things are looking much brighter; the situation requires a different method of doing business, revamping all around, and as they gradually work on and get their organization perfected and get back to where they were in the old days, it might be possible business will come back again.

Q.—Have you any plan in contemplation in the reorganization of the Company?

A.—To reconstruct the organization unquestionably there are things that will have to be done to meet these exigencies. In our particular company we have met them now, because we have receded

LORD SHAUGHNESSY (*for Defendants*), *Re-Cross-Examination*.

from that particular business and developed other business fairly well, and at present we are fairly well equipped, and it is not going to take a great deal of reorganization to help us out. With some ameliorations and improvements we can carry on.

Q.—The other people are not so well situated—Distillers' Corporation?

A.—The Walker people are not.

10 Q.—Did you ever speak to Sir Mortimer about Jennison accepting that particular position?

A.—I never spoke to him about Jennison because I had not discussed the matter with Jennison when Sir Mortimer left in 1927. I wrote him that letter, and as I said before, I might have done him an injustice. Goethals' letter might not have been unprejudiced and I changed my mind.

Q.—The first money was handed to Jennison in Sir Mortimer's lifetime?

20 A.—No.

Re-cross-examined by Mr. Geoffrion, K.C., of Counsel for plaintiffs.

Q.—Your ocean business has produced a very large proportion of your business?

A.—Only recently.

Q.—How many years ago?

A.—Within the last two years only.

30 Q.—Two years?

A.—Before that the border business was very largely the business.

Q.—You say during the last two years the ocean business has been the largest?

A.—During the year 1928 it was particularly large. In 1927 not quite so much. In 1926 the border business was extremely large.

Q.—In 1928 the big business was the ocean business?

40 A.—Not the big business. It was pretty well divided then. The ocean business was beginning to come on. By the end of 1928 the ocean business had accumulated largely and there was border business being done. The big profit is in the border business.

Q.—When did you start to develop the ocean business?

A.—I think we started to try to develop the ocean business in 1926. I worked as hard as I could then on it.

By the Court:

Q.—What do you call the ocean business?

LORD SHAUGHNESSY (for Defendants), Re-Cross-Examination.

A.—Well, shipments to Nassau, the Bahamas, Belize, Cuba, various places, in bond, and St. Pierre Miquelon. The other was over the Detroit River, which we did principally.

And further for the present deponent saith not.

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LORD SHAUGHNESSY (*for Defendants*), *Re-Cross-Examination*.

Mr. Geoffrion: We would ask permission to recall Lord Shaughnessy for further cross-examination in order to ask him some questions with regard to certain letters and documents.

10 Mr. Campbell: We have no objection. He can file them with the permission of the Court.

And on this twenty-first day of May, in the year of our Lord one thousand nine hundred and thirty, personally came and reappeared

WILLIAM JAMES LORD SHAUGHNESSY

and he was further cross-examined by Mr. Geoffrion, K.C., of Counsel for plaintiffs.

20 By Mr. Geoffrion:

Q.—Lord Shaughnessy, I simply wish to ask you to file some documents and letters, and to read into your deposition some extracts.

Will you please file as Exhibit P-263, cable from Sir Mortimer to you, of date March 9th, 1927, from which I will only read one phrase. It reads:

“ Please write me fully business weekly. Davis.”

A.—Yes, I do.

30 Q.—Will you also please file as Exhibit P-264 cable from Sir Mortimer to you, dated 7th of December, 1927, which reads:

“ Answering your letter 26th ultimo consider your suggestion very favourably stop price stock today returns three per cent stop would be necessary to hold stock at forty to forty two get confidential opinion from good financial man would be necessary at the proper time create propaganda telling public future and present condition of company stop do not consider non-voting detriment and shares should sell at same price as is done in the United States.”

40 You identify this as “ B ” stock?

A.—“ B ” stock.

Q.—(Reading):

“ Hatch’s is a stock proposition stop telegraph decision stop if you have to buy American whiskey owing to old age it might change present formula.”

LORD SHAUGHNESSY (for Defendants), Re-Cross-Examination.

Will you please also file as P-265 the translation of a cable in code from you to Sir Mortimer dated December 9th, 1927, reading:

10 “ After consultation financial people feel issuance new stock on terms contained my letter alone might have detrimental effect market and make difficult keep stock present price. My final suggestion is carry through issuance as contemplated and in addition put all stock \$1.50 per annum basis. This will only increase dividend requirements by about \$230,000 all told which can easily be earned and will have effect create incentive shareholders take up new stock at same time holding up price. If you agree will act accordingly.”

That refers also to “ B ” stock.

A.—To “ B ” stock.

20 Q.—Will you file a cablegram, as Exhibit P-266, from Sir Mortimer to you, dated December 10th, 1927, reading:

“ If as you state your increased dividend requirements 1928 will be only about \$230,000 agree. Who did you consult ”?

A.—Yes, I do.

Q.—Will you file as Exhibit P-267 another cablegram, which deals with McNish, from Sir Mortimer to you, dated November 11th, 1927, reading as follows:

30 “ What percentage of Debentures were taken up outside of ours ”?

That refers to McNish Debentures, does it not?

A.—That refers to McNish Debentures.

Q.—Will you file as Exhibit P-268 a cablegram from you to Sir Mortimer dated November 14th, 1927, reading as follows:

40 “ Bank has agreed to make advance for the purpose of taking up Debentures in New York funds interest at four and one half per cent per annum.”

A.—I do.

Q.—Will you file as Exhibit P-269 another cablegram from you to Sir Mortimer, dated November 16th, 1927, reading as follows:

“ 940,000 debentures subscribed for today out of total of 969,000 expect others will be in within next few days.”

LORD SHAUGHNESSY (*for Defendants*), *Re-Cross-Examination*.

That also refers to McNish Debentures?

A.—That refers to McNish Debentures.

Q.—Will you file as Exhibit P-270 another cablegram from Sir Mortimer to you, dated 6th of December, 1927, the translation reading:

“ When are you listing McNish Debentures?”

10 A.—I do.

Q.—Will you file as Exhibit P-271 the translation of the cablegram of the 9th of January, 1928, from Sir Mortimer to you, the translation reading as follows (I will only read the end of it):

“ When do you list Debentures?”

A.—I do.

20 Q.—Will you file as Exhibit P-272 translation of another cablegram from Sir Mortimer to you dated 31st January, 1928, reading:

“ Why are not certificates good for England? Have arranged market part of debentures in London think that by listing in London and selling at a premium will be good advertisement for McNish whiskey for England.”

A.—I do.

30 Q.—Will you file as Exhibit P-273 cable from Sir Mortimer to you dated 2nd February, 1928, reading:

“ Have decided not to list debentures English market until established in Canada.”

That also refers to the McNish Debentures?

A.—That refers to McNish Debentures.

40 Q.—Will you file as Exhibit P-274 cable from Sir Mortimer to you dated 21st February, 1928, from which I will read an extract:

“ When will debentures be listed have brokers keep them between one hundred and one hundred and five also let Montreal brokers arrange quotations on London Exchange.”

That also relates to McNish debentures, of course?

A.—Yes.

Q.—Now, I come to two letters on a different subject. I will read just one phrase from a letter from Sir Mortimer to you of January 22nd, 1927. The phrase reads:

LORD SHAUGHNESSY (*for Defendants*), *Re-Cross-Examination*.

“Germs have been exterminated and we do not want to run the risk of evolving and fostering any more.”

What is meant by “Germs”?

A.—I will have to read the whole letter to get the gist of it.

Q.—I suggest to you that these are the same germs which were referred to by you in a letter written earlier in the same month and
10 which is already filed?

A.—I think that probably referred to certain people whom Sir Mortimer had an idea were disloyal.

Q.—Do you remember the letter which was filed in which you referred to certain people as germs?

A.—I do not remember.

Mr. Campbell: I do not think Lord Shaughnessy used that term.

20 By Mr. Geoffrion:

Q.—It referred to people who left your employ?

A.—Yes.

Q.—I want to read an extract to you from a letter of yours to Sir Mortimer of date January 24th, 1927—I will hand the whole letter to your attorneys. The extract reads as follows:

30 “I am sorry that the exit of Hume has caused such an upheaval but I intend to get a staff of men who will be loyal to their organization and work for it even to the exclusion of self interests if I have to change the whole crowd. We have had too many scalpers and “Get Rich Quick Wallingfords” imbued with the desire to help themselves at all costs no matter whether the Company suffered or not, and no organization can be efficient with that type of officer. I know you will worry a great deal, but I can conscientiously say that I am more confident than I have ever been of the future, since with the combination we now have there is no danger of information going to our competitors and we can run our own show.”
40

Here is another letter from Sir Mortimer to you dated April 2nd, 1927, which reads:

“This is one of the many tricks of Hatch’s. He requires very close watching. I trust that we have now killed all the disloyal germs in the organization and that our business will be

LORD SHAUGHNESSY (*for Defendants*), *Re-Cross-Examination*.

kept to ourselves. I shall give strict instructions throughout the organization that anyone giving away the Company's business will be dismissed without notice."

There are a series of letters, and I believe I can shorten it by summing them up. It is in respect of the reference to the plaintiff, Mortimer Davis Junior. I wish to put to you, that beginning April
10 29th, 1929, there were on his behalf, and through his attorney, requests for statements of the Estate's operations and affairs. I will ask you to file as one Exhibit, P-275, these letters and documents.

Will you file as Exhibit P-275 a series of documents composed of the following:

A letter by the attorney for plaintiff, Mortimer Davis, dated April 29th, 1929, to Mr. Reaper.

An answer by Mr. Reaper of May 2nd, 1929.

A letter by the same attorney, Mr. Hyde, to you of June 10th,
20 1929.

Another letter from the same attorney, Mr. Hyde, to you of July 3rd, 1929.

A third letter from the same attorney, Mr. Hyde, to you dated July 23rd, 1929.

An answer by Mr. Reaper to this attorney of August 8th, 1929.

A.—Yes, I do.

Q.—Have we in the records so far, or did you give us all the correspondence you had with Mr. Marler in respect of his resignation and the purchase of shares and so on?

30 A.—I think so.

Mr. Campbell: I have no knowledge of any other.

Mr. McKeown: Your knowledge is of no use at all, Mr. Campbell.

Mr. Campbell: We have told you that we do not know of the existence of any others. If there are any we will be glad to give them to you. If you have any knowledge of the existence of others, if you
40 will give us the information you have, it may facilitate our looking for them.

By Mr. Geoffrion:

Q.—I am instructed that there is an answer by Mr. Marler (Exhibit P-93), a letter to him from Lord Shaughnessy dated November 3rd, 1928. Will you please see if there is or not?

LORD SHAUGHNESSY (*for Defendants*), *Re-Cross-Examination*.

A.—I will look it up.

Q.—That question remains open?

A.—Yes.

10 Mr. Holden: We will not now take the time, and delay the Court, in going over all these letters. We will, however, go over them, and if it is necessary we will ask Lord Shaughnessy any further questions we may decide are advisable. There is also the matter of the witness Jennison who has not yet returned, and we may have an application to make with regard to him should he return in time, otherwise the evidence for the defendants is submitted.

His Lordship: What about Mr. Smith?

20 Mr. Holden: Mr. Smith is very ill, and I am sorry to say that for our clients' sakes there is no possibility of his being well enough, at least before the argument is completed.

Mr. Campbell: I think that should be part of our reserve. Mr. Brodie, Mr. Smith's partner, informs us that Mr. Smith is very seriously ill and it is utterly impossible for him to testify in his present condition.

30 Mr. Holden: There are three reservations, namely, if we find it necessary to ask Lord Shaughnessy further questions in view of the production of these new exhibits. The second reserve is, if Mr. Jennison should return in time we would like to be allowed to make application to examine him, and the third is, if we should be fortunate to have Mr. Smith, if his state of health will permit, in order to examine him. With those reservations the evidence for the defence is submitted.

LADY DAVIS (*for Plaintiffs in Rebuttal*), *Examination-in-Chief*.

EVIDENCE ON BEHALF OF PLAINTIFFS IN REBUTTAL

On this twenty-first day of May, in the year of Our Lord, One thousand nine hundred and thirty, personally came and re-appeared:

ELEANOR CURRAN

10 presently of the city of Montreal, the widow of the late Sir Mortimer B. Davis, a witness called on behalf of the Plaintiffs in Rebuttal, who being duly sworn doth depose and say as follows:

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

Q.—You have been in Court, Lady Davis, while Lord Shaughnessy testified on behalf of the defence in the present case?

A.—Yes.

20 Q.—You have heard his evidence?

A.—Yes.

Q.—In referring to the interview, or so-called meeting of October 18th, 1929, Lord Shaughnessy has said something which might make it appear that he had suggested that there were other people with whom he was in negotiation for a merger of Alcohol?

30 Mr. Campbell: My Lord, I may as well make my objection at the outset, and it is this, that this is not, I submit, properly rebuttal. Lady Davis has already told us in her cross-examination about that very interview, and I submit that her testimony on the subject has been given and I want to make the general objection that my learned friends are not entitled in rebuttal to go into anything that has already been covered in their examination-in-chief, and it is my submission this has already been gone into exhaustively, and I ask Your Lordship to so rule.

40 Mr. McKeown: The evidence of Lord Shaughnessy I am referring to is contained on page 2358 of the evidence of the defence in which he said in answering Examining Counsel: "I think I also explained to her satisfaction there might be some overtures from other quarters: To which she replied "I do not object to your negotiating because I feel you will not sell the Company for nothing: You have a five per cent interest."

Mr. Campbell: I asked Lady Davis that very same question. I asked her if she did not say that, and she has already testified on the subject.

LADY DAVIS (for Plaintiffs in Rebuttal), Examination-in-Chief.

His Lordship: Her memory may come back to her. I will allow the question under reserve and you can cross-examine her.

Witness: No, he did not. He virtually denied any negotiations of any sort.

By Mr. McKeown:

10

Q.—You heard Lord Shaughnessy's evidence to the effect that his conversation with you concerning the matters of the Incorporated Company in London occurred in the afternoon at the Hotel and not at the Embassy Club?

20

A.—That is not so. He did come to my sitting room that afternoon and he brought Minutes of a Meeting of the McNish Company, I think it was. As a matter of fact, I did not read it. I asked him what it was, and he told me, and I signed it without even looking at it. He also brought some sketches of tombstones, and he asked me to choose one for my husband's grave, which I did, but nothing was said about Jennison. The Jennison conversation took place in the Embassy Club.

Q.—When you refer to the Jennison conversation do you mean the conversation you had with Lord Shaughnessy at the Embassy Club in regard to Jennison or to the incident which afterwards developed?

A.—The conversation that took place at the Embassy Club that night.

30

Q.—Lord Shaughnessy has given evidence suggesting that in April or May, at his residence, he casually mentioned to you something about the dining room furniture, and that he might take it over. Did any such conversation take place?

Mr. Campbell: I make the same objection. Lady Davis has been fully questioned about this before Your Lordship and on discovery, and I submit she cannot add anything to her testimony now by repeating it.

40

Mr. McKeown: It was never heard of until Lord Shaughnessy gave the evidence in the box.

Mr. Campbell: I asked her if she had ever discussed the matter with Lord Shaughnessy, and she said no repeatedly.

Mr. Montgomery: Your examination on discovery could not deprive us of the right of rebuttal.

LADY DAVIS (*for Plaintiffs in Rebuttal*), *Examination-in-Chief*.

Mr. Campbell: I object to it as not being rebuttal.

His Lordship: There was certainly nothing brought up before me on that point. There may be something on discovery. I will allow the evidence under reserve.

10 Mr. Montgomery: In any event, it cannot be suggested that the examination on discovery can eliminate evidence in rebuttal.

His Lordship: Objection reserved.

Witness: No. He also said in his evidence that he suggested if I wanted any of the furniture sent to France; that is absolutely untrue.

By Mr. McKeown:

20 Q.—Was there ever any such conversation either about furniture going to France or of his taking the dining room furniture over at any time?

A.—Absolutely not.

By the Court:

30 Q.—Was there any decision of the Executors before your departure for France with regard to what was to be done with the contents of either the Pine Avenue house or the St. Agathe property?

A.—No, Your Lordship.

By the Court:

Q.—There was no consultation between you and the Executors as to whether it was to be sold at auction, or catalogue sale, or left in the premises?

A.—No.

40 By Mr. McKeown:

Q.—Lord Shaughnessy has already said in the course of his examination, referring to the purchase of the Marler stock, and he has suggested that he had discussed that subject to you prior to the transaction which went through with Mr. Marler in November 1928?

A.—No, I heard nothing.

LADY DAVIS (for Plaintiffs in Rebuttal), Examination-in-Chief.

Mr. Campbell: I renew my objection and I make the further objection, that as I recall it, that is not Lord Shaughnessy's testimony. His testimony was in regard to any exchange of correspondence which took place, and my submission is that that has already been gone into in chief, and is therefore irrelevant.

10 By the Court:

Q.—Was there any discussion or consultation among the Executors between the time of the arrival of Sir Mortimer's body and your departure for the other side, in regard to the answer in which the Succession was to be liquidated, with the exception of that evening which is recorded as of the 25th of April?

By the Court:

20 Q.—That was the only serious conversation you had with Lord Shaughnessy and Mr. Reaper in regard to the way the Succession was to be administered?

A.—Yes; but I mean it was so understood between Lord Shaughnessy and my husband. They had frequently discussed the affairs in front of me, and we knew perfectly well that the only source of income of the Estate was the Sir Mortimer Davis Incorporated, and I think for Lord Shaughnessy to suddenly assume that he was going to treat it as a Company, and keep the Estate in debt, in order to keep the Company prosperous, is something that should
30 not be thought of.

Mr. Campbell: Naturally, My Lord, I have no objection to your question, but I submit the witness is not answering the question. With great respect, I submit she is making a speech. It is not an answer to the question Your Lordship put, and it is not proper for Lady Davis to go into.

40 His Lordship: What I want to know is, whether the minutes of the meeting of April 25th, 1928, which took place some days previously, record the only decision of decisions taken by the Executors before Lady Davis' departure, with regard to the course to be followed in regard to the administration of the Estate. Perhaps the question has already been answered.

Mr. Campbell: There was only one formal meeting of which records were kept.

LADY DAVIS (*for Plaintiffs in Rebuttal*), *Examination-in-Chief*.

His Lordship: Apart from that meeting was there anything which could amount to even an informal meeting?

Mr. Campbell: No.

By Mr. McKeown:

10 Q.—Now, Lady Davis, do you remember that Mortimer Davis, Junior, was operated on for the removal of his tonsils in a hospital in New York sometime in the latter part of April, or beginning of May?

A.—Yes.

Q.—Did you call upon him at the hospital?

A.—Yes, I went to see him at the hospital, and I brought him his father's jewellery.

Q.—Had he in mind to sail for Europe very shortly?

20 A.—Yes. I think he sailed either that night or the next day.

Mr. Campbell: Before Mr. McKeown puts his next question, which I have no difficulty in anticipating, I want to record my objection to the admissibility of any verbal evidence of what purports to be, according to the pleadings, a renunciation by Lord Shaughnessy to his cash legacy of a thousand dollars. My submission is that Lady Davis has not by her testimony proven any renunciation. My learned friends were entitled to get that renunciation from Lord
30 Shaughnessy in the witness box if they could, but they did not succeed.

Mr. Geoffrion: There are two answers to that. The first is, this is not proof of renunciation. It is a defence against a charge that certain furniture was taken in payment of that legacy and the objection to oral testimony would kill their case if it kills ours. We objected to oral testimony as to taking the furniture in payment of the legacy, which is a purchase under the Code. If they can make evidence on one side under reserve, we are certainly entitled to do
40 so on our side under reserve, and Your Lordship will decide ultimately whether you will admit the one and if so, you will no doubt admit the other. The second reason is, we have from Lord Shaughnessy a commencement of proof par ecrit since he admitted he has got them.

His Lordship: Oh, yes, we all know that.

LADY DAVIS (for Plaintiffs in Rebuttal), Examination-in-Chief.

By Mr. McKeown:

Q.—Was Lord Shaughnessy in New York at the time you have just been referring to?

A.—Yes.

10 Q.—Prior to the occasion that you handed over the jewellery of the late Sir Mortimer Davis to his son at the hospital, had Lord Shaughnessy ever spoken to you with reference to the clause in the will under which Sir Mortimer bequeathed him the sum of one thousand dollars wherewith to purchase a memento?

A.—Yes.

Q.—What did he say in that connection?

20 Mr. Campbell: There is absolutely nothing in the pleadings, and the pleadings are very voluminous, to suggest the introduction of any proof of some other declarations Lord Shaughnessy may have made. I submit it is not proper rebuttal. Surely, my learned friend is not going to start a new case not even suggested in his allegations in the course of his rebuttal testimony. I submit the evidence offered does not arise out of the pleadings, and is not proper rebuttal.

30 Mr. McKeown: This is one time I am right up with Mr. Campbell. He says it is not pleaded. It is pleaded in paragraph 24 of Lord Shaughnessy's plea, replying to our charge in paragraph 34, and which he has some very extraordinary allegations. Paragraph 34 of defendant Shaughnessy's plea reads:—

40 “Defendant Shaughnessy by agreement with the other Executors, including female plaintiffs, received a dining room table, various chairs and a tabouret, in part satisfaction of the bequest made to him in article 8, clause 4 of the Will, wherein he was bequeathed a legacy of \$1,000, “Wherewith to purchase a memento,” and it was agreed by the female plaintiffs that the said articles of furniture were appropriate in part satisfaction of said legacy, and furthermore that the female plaintiff not only declared her consent and approval before the removal of said articles of furniture, but on frequent occasions thereafter, in visiting the residence of defendant Shaughnessy and viewing the said articles, declared her entire approval and concurrence in what had been done.”

That is the plea of Lord Shaughnessy. Our answer under which

LADY DAVIS (for Plaintiffs in Rebuttal), Examination-in-Chief.

we seek to make this evidence properly in rebuttal is the answer made to that paragraph 34 in which we say:—

10 “ The pretence that the appreciation by defendant Shaughnessy of the furniture, etc., was ‘ In part satisfaction ’ of the legacy of \$1,000, ‘ Wherewith to purchase a memento ’ is a mere afterthought put forward by defendant Shaughnessy in bad faith, in an effort to shield himself from the consequences of his illegal conduct in that connection.”

Mr. Campbell: I submit my learned friend is not entitled to read these allegations to the witness.

Mr. McKeown: I am arguing the case to the Court. You have raised the question that it is irrelevant and I am showing that it is not.

20

Mr. Campbell: You are communicating to Lady Davis information which I submit she is not entitled to at this stage.

Mr. Montgomery: It is her own plea. Don't you think she knows it?

Mr. Campbell: I object to this being read to Lady Davis.

30 Mr. McKeown: I am answering your objection and while I am answering, Mr. Campbell, please keep quiet.

Mr. Campbell: In answering you have given to the witness the substance of the answer which you propose she shall give to the question.

40 Mr. McKeown: I am making my argument before the Court, and incidentally trying to get you to take a seat for a moment. We further allege that on May 9th, 1928, defendant declared to plaintiff that he would not avail himself of the legacy of \$1,000, but desired in lieu thereof to receive it from among the jewellery of the late Sir Mortimer Davis, all of which had been bequeathed to the male plaintiff, some object which had been personally used by the testator during his lifetime, and thereupon the male plaintiff gave the male defendant a platinum watch, chain and match box worth approximately \$1,000, which was accepted by the defendant Shaughnessy in lieu of the bequest of \$1,000, etc.

LADY DAVIS (*for Plaintiffs in Rebuttal*), *Examination-in-Chief*.

I submit there is nothing in the whole case where the issue has been more clearly and absolutely raised than upon the question which I have just submitted to Lady Davis.

Mr. Campbell: Have you finished, Mr. McKeown, I don't want to interrupt you?

10 Mr. McKeown: I submit the question should be answered and that Mr. Campbell's objection should be overruled.

Mr. Campbell: My learned friend has already asked Lady Davis, and she has already denied that she held the conversation referred to. He asked her a moment ago if in Lord Shaughnessy's house a conversation was held regarding the dining room furniture, and she has already denied it. Now, as far as I can see my learned friend is proposing to offer evidence on an entirely new subject and
20 which I fail to find in the pleadings. That is the ground of my objection.

His Lordship: I will allow the question under reserve.

Question read: What did he say in that connection?

A.—Lord Shaughnessy asked me if I would ask Mr. Mortimer to give him something that belonged to his father, some personal piece of jewellery, that he preferred that, to purchasing something for a \$1,000. There was more of sentiment attached to it.
30

By Mr. McKeown:

Q.—Was this prior to the visit to the hospital?

A.—Yes.

Q.—Have you any definite recollection where that conversation took place?

A.—No, I have not. It might have been when the jewellery
40 was being appraised.

By the Court:

Q.—In Montreal?

A.—In Montreal. Or it might have been at dinner with Lord Shaughnessy.

LADY DAVIS (*for Plaintiffs in Rebuttal*), *Examination-in-Chief*.

By Mr. McKeown:

Q.—You saw Lord Shaughnessy quite frequently at that time?

A.—Yes.

Q.—Did you act upon Lord Shaughnessy's suggestion to which you have just referred, and speak to Mr. Mortimer Davis?

10 A.—Yes, when I brought the jewellery to Mr. Davis I told him what Lord Shaughnessy had asked me, and Mr. Davis said "yes." He even asked me to suggest what I thought he should give to Lord Shaughnessy.

Q.—He asked you to suggest?

A.—Yes.

Q.—And what followed?

A.—I suggested that Mr. Davis should give him his watch and chain, and attached to the watch and chain was a platinum match box.

20 Q.—What metal was the watch and chain made of?

A.—Platinum.

Q.—Was any decision arrived at that time, or was it left in abeyance, or what was done just at that time?

A.—Yes. Shortly after that, the same afternoon, Lord Shaughnessy arrived to see Mr. Davis, and Mr. Davis gave him the watch and chain and match box in my presence.

Q.—Who else was present at the moment, and immediately before the handing over of the platinum watch, chain and match box?

30 A.—In Mr. Davis' room in the hospital his wife was there, and Mr. Young was there.

Q.—Mr. Daniel Young of the Canada Life Insurance Company who is now present in Court?

A.—Yes, there may have been some others.

Q.—Were you there?

A.—Yes, I was there, and Lord Shaughnessy.

40 Q.—On that occasion, and in the presence of these persons whom you have named, was any reference made to the matter of the \$1,000 bequest?

A.—Well, I repeated Lord Shaughnessy's words, exactly as I remembered them, to Mr. Davis.

Q.—You repeated them in the presence of these people?

A.—They were there.

Q.—And Lord Shaughnessy was there too?

A.—Yes.

Q.—And did you repeat these words to Mortimer Davis, Junior?

LADY DAVIS (for Plaintiffs in Rebuttal), Examination-in-Chief.

A.—Yes.

Q.—And it was followed as you say, by the handing over of the jewellery?

A.—Yes.

Q.—These objects of jewellery passed through from the Estate to Mortimer Davis as part of the assets of the late Sir Mortimer Davis?

10 A.—Yes.

Q.—And they were valued and reported for Succession Duty purposes and matters of that kind?

A.—Yes.

Q.—Do you know who made the valuation in Montreal?

A.—Birks.

Q.—Will you refer to the letter written by Henry Birks and Sons Limited at Montreal, well-known jewellers here, addressed to Mr. A. M. Reaper, Executor, Estate Sir Mortimer Davis Incorporated, dated October 1st, 1929, and which reads:—

20

“ The following is a copy of the valuation we placed on the jewellery belonging to the Estate of Sir Mortimer Davis Incorporated for Succession Duties and including the three following items:—Platinum match box, \$150, platinum watch \$400, platinum chain, \$100.”

That would be a total of \$650?

A.—Yes.

30 Q.—Are the match box, watch and chain referred to in the letter I have just shown you, the same objects which were turned over by Mortimer Davis, junior, in the hospital, to Lord Shaughnessy on the occasion to which you previously referred?

A.—Yes.

Q.—These values which have just been indicated to you are values as stated in that letter, for Succession Duty purposes. Do you know anything of the cost of these particular objects?

40 Mr. Campbell: I object to this as not the best evidence. If it is of any consequence, I submit there is better evidence than that from Lady Davis.

Mr. McKeown: She may know something about it.

His Lordship: If you want to establish anything as to the

LADY DAVIS (for Plaintiffs in Rebuttal), Examination-in-Chief.

cost you will have to ask Messrs. Birks, from whom they were purchased. However, I will reserve the objection.

A.—Yes, I do.

By Mr. McKeown:

10 Q.—Do you know what Sir Mortimer paid for these three objects?

A.—In the vicinity of a thousand dollars.

Q.—Do you know where they were purchased?

A.—In France.

Q.—They were paid for in francs?

A.—Yes.

Q.—And purchased by Sir Mortimer, and delivered to him in France?

20 A.—Yes. I purchased the chain.

Q.—Do you know anything about the purchase of those objects personally, from your direct personal knowledge?

A.—Yes.

Q.—Which of the objects?

A.—The watch and match box.

Q.—Take the ones you were identified with personally?

A.—I purchased the chain from a dealer called Ben Simon, on Rue Royale.

30 Q.—In Paris?

A.—In Paris.

Q.—What did it cost?

A.—I think about \$200.

Q.—When?

A.—In 1924.

Q.—Do you know anything of the circumstances of the purchase of the watch and match box?

40 A.—Yes. The watch was purchased at Courtiers, in 1925.

Q.—And the match box?

A.—The match box was also purchased at Courtiers. It was made to order.

Q.—Do you know what was paid for the watch and match box?

A.—I telegraphed, and the answer came back—I think it was approximately \$700 or \$800, with the rate of exchange.

Q.—You cabled?

LADY DAVIS (*for Plaintiffs in Rebuttal*), *Cross-Examination.*

A.—I cabled Courtiers.

Q.—To confirm the purchase price?

A.—Yes.

Q.—Then, did you make enquiries as to the ruling rates of exchange at the dates of the purchases?

A.—Yes.

10 Cross-examined by Mr. G. A. Campbell, K.C., of Counsel for Defendants:

Q.—Lady Davis, in your testimony, you referred to a conversation with Lord Shaughnessy on the 18th of October, 1929, at which he denied the existence of negotiations?

A.—Yes.

Q.—Is it not a fact, and have you not already testified that that denial had reference to Mr. Jennison's activities?

20 A.—No. It was a general denial of any merger of any sort.

Q.—Had you not suggested to Lord Shaughnessy that Mr. Jennison had gone to Europe to negotiate a merger?

A.—I had heard so, and I communicated by letter to Lord Shaughnessy, and I also asked him at a meeting when Jennison came up, and he denied it. He also denied a merger of any sort. He said no one had come to see him about any merger of any sort at all. Then, when I questioned him further, I laughed, because I had been told that a man called Heinz had come to see him; he admitted that he had come to see him. He said it was nothing, he had no representation with Heinz.

30 Q.—He told you then that some people had come to see him?

A.—Only Mr. Heinz had come to see him, he had no representation; no one else had come to see Lord Shaughnessy, and there were no negotiations of a merger at any time, or with any one.

Q.—Did he not tell you that someone had come with Mr. Heinz?

A.—No, he did not.

Q.—Were you not told that Doctor Kauffman had come with Mr. Heinz?

40 A.—No.

Q.—And a Mr. Bevan?

A.—No.

Q.—And did he not refer to Mr. Bevan in your conversation?

A.—I referred to Mr. Bevan, because Lord Shaughnessy said that Mr. Heinz was connected with the Bigue Company, and I had a report on this Bigue Company, and I asked him if that was the Company Mr. Bevan was in.

LADY DAVIS (for Plaintiffs in Rebuttal), Cross-Examination.

Q.—And did he not inform you that Mr. Bevan had been one of those who had come to see him, that they were not serious?

A.—No, he did not. He said Mr. Heinz, a Jewish gentleman, had come to see him.

10 Q.—You have referred again to an interview to the Embassy Club in London, and as I understand it you still adhere to your recollection that this business conversation that took place between you and Lord Shaughnessy was at the Embassy Club in the evening after dinner, and not at the afternoon conversation that you had with Lord Shaughnessy after lunch?

A.—I still insist that it was at the Embassy Club.

Q.—The evening at the Embassy Club was a dinner dance, was it not?

A.—Yes.

Q.—There were four persons present?

A.—Four persons.

20 Q.—One of the four was a stranger—I mean a stranger to the Davis family?

A.—You mean, not a relation? He was a friend.

Q.—I mean not related. I should have used that term—a person not related to the Davis family, who would have no interest?

A.—He was dancing with Lady Shaughnessy at the time.

Q.—And you were dancing with Lord Shaughnessy?

A.—No. I was sitting down talking to Lord Shaughnessy.

30 Q.—This was while you and Lord Shaughnessy were sitting out a dance, was it?

A.—Yes.

Q.—That this conversation took place?

A.—Exactly.

Q.—And this formidable proposal about launching a \$150,000,-000 company out of the Davis Estate revenues was launched on you while sitting out a dance at the Embassy Club. Is that your statement?

A.—Exactly.

Q.—How long had your afternoon interview lasted?

40 A.—Probably twenty minutes.

Q.—Are you quite sure it did not last longer than that?

A.—I am quite sure.

Q.—In any event, that is your recollection, and you testify that it was in the evening and not in the afternoon?

A.—Yes.

By the Court:

LADY DAVIS (for Plaintiffs in Rebuttal), Cross-Examination.

Q.—How long did the evening conversation last?

A.—It was not merely a business conversation. It was told in most enthusiastic terms about this great discovery they had made.

By the Court:

10

Q.—That conversation was held between you and Lord Shaughnessy exclusively while Lady Shaughnessy and the friend was not there?

A.—Yes.

By the Court:

Q.—How long did that conversation dealing with the affairs of the Company last?

20 A.—A very few minutes.

By the Court:

Q.—Shorter than the conversation in the afternoon? .

A.—Well, very much shorter.

By Mr. Campbell:

Q.—It was just while you were sitting out a dance while the others danced?

A.—Exactly.

30 Q.—And then, the others came back to the table?

A.—Exactly.

Q.—You have spoken of a conversation in April or May, at which Lord Shaughnessy, if I understand your testimony, intimated that instead of taking \$1,000 cash, he wanted to get in satisfaction of his legacy some article that was connected with Sir Mortimer personally?

A.—Some piece of jewellery.

Q.—Did he restrict it to jewellery?

A.—He did.

40

Q.—I suggest to you that he did not restrict it to jewellery, that what he suggested was, he wanted some article associated with Sir Mortimer?

A.—I suggest to you you are mistaken, Mr. Campbell, what he said was jewellery.

Q.—At any rate, it is your recollection, and Lord Shaughnessy's recollection happens to differ. Can you give us approximately the date of that conversation?

LADY DAVIS (*for Plaintiffs in Rebuttal*), *Cross-Examination.*

Witness: About the jewellery?

Counsel: Yes.

A.—No, I cannot.

Q.—As to this conversation to which you referred?

10 A.—No, I cannot.

Q.—Do you know where it occurred?

A.—No, I do not remember. I said that. I don't know where it took place.

Q.—You do not even know when or where?

A.—I know it took place prior to the visit to the hospital naturally.

A.—And that was prior to May, 1928?

A.—It was prior to April 27th, because we found out from the hospital that it was April 27th that Mr. Mortimer was there.

20 Q.—So this conversation took place shortly after the funeral service?

A.—Yes, after Sir Mortimer's funeral.

Q.—Can you recall the exact date of the interview in New York?

Witness: When Mr. Davis was ill?

Counsel: Yes.

30 A.—No, I cannot. I think it was the 26th or 27th of April.

Q.—You have obtained that information from some other source, recently?

A.—From the hospital.

Q.—But you have no personal recollection of the date?

A.—Well, I knew that it was at that time.

Q.—But I am asking you whether you would be able to say if it was the 26th, 27th, 28th or 30th?

A.—Not without verifying it.

40 Q.—Where did this conversation take place? Did it take place in a room in the hospital where Mr. Mortimer Davis was?

A.—Yes.

Q.—What hospital?

A.—I am sorry, I do not remember the name. I know the hospital, but I do not remember the name.

Q.—Do you remember the hour of the day?

A.—I should think it was in the afternoon.

LADY DAVIS (*for Plaintiffs in Rebuttal*), *Re-Examination*.

Q.—Can you be more precise?

A.—Is it so important?

Q.—It has some consequence.

A.—No, I do not remember.

Q.—I take it you do not remember any of the other events of that particular day?

A.—They did not seem important until this matter came up.

10 Q.—As a matter of fact, you did not attach any importance to this particular thing at the time, did you—this little incident at the time? I am speaking as to the importance that you attached to it at the time?

Witness: The importance about Mr. Davis mentioning to Lord Shaughnessy?

Counsel: Yes.

20 A.—No, I did not consider it very important.

Q.—What exactly was said by Lord Shaughnessy on the occasion when these articles were delivered to him?

A.—As I remember it, he said, “Thank you.” He seemed very grateful.

Q.—Is that all he said?

A.—That is all I remember he said.

Q.—Did you hear the exact words Mr. Mortimer Davis used?

30 A.—That Mr. Mortimer Davis used? Mr. Mortimer Davis understood ———

Q.—Never mind what he understood. I ask you if you recollect the exact words. I understood you to say you did not?

A.—I did not. I did not pay any attention to it.

Q.—I take it Sir Mortimer had used this jewellery from the time he purchased it, the chain in 1924, bought by yourself, and the watch and match box in 1925?

A.—Yes, constantly.

40 Re-examined by Mr. W. K. McKeown, K.C., of Counsel for plaintiffs.

Q.—Now Lady Davis, in cross-examination Mr. Campbell pressed you as to whether Lord Shaughnessy’s suggestion of the character of the article which he wished to have was, or was not, jewellery. Following the delivery to Lord Shaughnessy of the watch, did you have any further conversation with Lord Shaughnessy which would enable you to make certain of the character of property Lord

LADY DAVIS (for Plaintiffs in Rebuttal), Re-Examination.

Shaughnessy had in view, in his conversation to which you referred in chief?

10 Mr. Campbell: I have two grounds of objection, My Lord. First of all, it is not re-examination on my cross-examination, and secondly, there is nothing in the pleadings about any such thing. They are now proposing, as I understand it, to make some evidence
10 of an admission of some kind which Lord Shaughnessy apparently would have made at some time. In my submission, if they propose to offer such evidence, it was their business to have alleged it. It does not arise out of my cross-examination and is not rebuttal and is not covered by the pleadings.

20 Mr. McKeown: I think I could justify it as being re-examination out of Mr. Campbell's attempt to distort that conversation with Lady Davis about jewellery into, possibly, something to be argued later on about dining room furniture. That is where that thought
20 came in, because it did not enter into my mind while Lady Davis was in the box.

Mr. Campbell: If it is not justified by the record I won't succeed in persuading His Lordship that it is.

His Lordship: I will reserve the objection.

30 Witness: Yes. Later on Lord Shaughnessy said he was disappointed, he had hoped that Mr. Mortimer would have given him one of the pearls that belonged to his father.

By Mr. McKeown:

Q.—What was the nature of those pearls? Were they mounted pearls?

A.—Yes. They were studs.

40 Q.—Will you again refer to the letter of Henry Birks and Sons, of October 1st, 1929, addressed to Mr. Reaper, incorporating the valuation made of Sir Mortimer's jewellery ———

Mr. Campbell: Show her the list and let her pick them out. Don't pick them out yourself for her.

Mr. McKeown: That is what Lord Shaughnessy wanted to do.

Mr. Campbell: He did not succeed, and I hope you will not.

LADY DAVIS (for Plaintiffs in Rebuttal), Re-Cross-Examination.

By Mr. McKeown (continuing question):

And say whether the same refers to any pearls, and if so, read the reference into the record together with the valuation made thereon?

A.—The first item is a black pearl stud, \$3,500; the second item is a white pearl stud, \$4,000.

10 — Re-cross-examined by Mr. C. A. Campbell, K.C., of Counsel for defendants.

Q.—As you understood it, these two pearl studs were what Lord Shaughnessy hoped Mr. Mortimer would have given him in payment of his \$1,000 legacy?

A.—Yes.

Q.—And they were valued for Succession Duty purposes at \$7,500?

A.—Yes.

20 Q.—And what was their real value?

A.—They were black pearls. They were bought some time ago. As a matter of fact, I bought them myself, and I should think that pearls have increased in value a great deal, and I should think today a black pearl would be worth at least \$6,000, the white pearl probably \$10,000.

Q.—Was he to get both the black pearls, or only one?

A.—One of black and one of white.

Q.—So he was going to get one black and one white?

30 A.—I think his hope was for one or the other.

Q.—You do not think he hoped for both?

A.—I do not know how ambitious he was.

Q.—Did he say to you that he hoped for both?

A.—No, he said he had hoped that Mortimer would have given him one.

Q.—Did he express any preference for black or white?

A.—No, he did not.

Q.—Can you recall when this conversation took place?

A.—Yes.

40 Q.—When?

A.—I think it was at the time of Mr. Mortimer losing a black pearl; it was sometime after.

Q.—That might have been any time since Sir Mortimer's death. Was it this year or the year before?

A.—It was not this year.

Q.—Are you sure of that?

A.—I am quite sure of that.

LADY DAVIS (for Plaintiffs in Rebuttal), Re-Cross-Examination.

Q.—I think we can both be sure it was not in 1930?

A.—No.

Q.—Was it in 1929?

A.—I think it was in 1929.

Q.—When?

A.—I cannot remember exactly.

Q.—That is as near as you can get to it?

10 A.—That is as near as I can get to it.

By Mr. McKeown:

Q.—Do you remember whether it was in Montreal or in Europe?

A.—It was in Europe.

By Mr. Campbell:

20 Q.—Who did you say were present in the room in the hospital on the occasion you have mentioned when this gift of jewellery by Mr. Mortimer Davis to Lord Shaughnessy was made?

A.—Mr. Young, Mrs. Mortimer Davis, Lord Shaughnessy and myself.

Q.—For purposes of identification, who is Mrs. Mortimer Davis?

A.—Mr. Mortimer Davis' wife.

Q.—What was her maiden name?

A.—I don't know what her maiden name was.

30 Q.—Will you look at the marriage certificate which I now exhibit to you ———

Mr. McKeown: Is not that a little bit too much of a good thing?

Mr. Campbell: It is not, I am entitled to establish the identity of the lady.

40 Mr. Geoffrion: I have no time to read that certificate, and I don't know what is in it, but I object to it as irrelevant. It may be quite harmless and useless or anything, but I do not want to read it if I have not got to.

His Lordship: Apart from the fact that it only has a little bearing on the case I do not see what use it is.

Mr. Geoffrion: I would like to know in what way it is pertinent.

LADY DAVIS (for Plaintiffs in Rebuttal), Re-Cross-Examination.

Mr. Campbell: I am entitled to establish her identity.

Mr. Geoffrion: Then, it is not a matter for cross-examination of Lady Davis. There must be some reference in the examination-in-chief in order to allow you to put that question.

10 Mr. Campbell: In Lady Davis' examination-in-chief she referred to the presence of this lady and I wish to establish her identity.

Mr. Geoffrion: She is his wife. The date of the marriage is immaterial, and I object. I do not understand the purpose of my learned friend's question, and I object most strenuously. If my learned friend insists on his question and will not disclose to us his real reason, we do not care, but I have made my objection and will let it stand.

20 His Lordship: I really do not see the slightest use for the question.

Mr. Geoffrion: I suggest that it is clearly illegal on its face and that it should be struck out.

Mr. Campbell: It is distinctly relevant in my submission, certainly to one aspect of the case which possibly I may have to recall Lady Davis and put to her, if the Court permits me. Has Your
30 Lordship ruled on the point?

His Lordship: I am willing to hear your argument.

Mr. Campbell: My submission is that it is relevant. I wish to establish the identity of this lady, because it is relevant to evidence already made in the record. I should possibly have established the identity at the time. If I have to ask leave to recall Lady Davis in cross-examination of her own testimony, I will make that application, but it is to prove the identity of Mr. Mortimer B. Davis' wife.

40 His Lordship: What is the use of putting that document at the mercy of the public?

Mr. Campbell: I do not intend to put the document in. I was submitting it to Lady Davis, because she said she could not give the name.

LADY DAVIS (for Plaintiffs in Rebuttal), Re-Cross-Examination.

By the Court:

Q.—Are you sure Mrs. Mortimer Davis is the same lady who was mentioned before in your examination?

A.—Yes.

10 Mr. Geoffrion: At present the objection is well taken. It does not arise from the examination-in-chief. If my learned friend wants to make a motion to re-open his case in defence, we will argue that motion.

His Lordship: I do not see the object of putting this in at all. That document will not establish the identity of the lady.

Mr. Campbell: In my submission it does establish the lady's identity quite distinctly.

20 His Lordship: If you insist, I will allow you to identify the lady, but she is identified as far as I am concerned.

Mr. Campbell: I want to identify the lady for the purpose of the case.

30 His Lordship: I will allow you to identify the lady if you insist upon it. The Court of Appeals may be more curious than I am to know about it.

Mr. McKeown: We might identify some other people quite well.

Mr. Campbell: I am asking the name and nothing else. I do not propose to do anything else.

His Lordship: If you really ask the name, you don't identify it.

40 Mr. Campbell: Then I might have to ask a supplementary question.

Mr. Geoffrion: I cannot see what my learned friend is driving at. He wants to make a sensation in the papers. You cannot deny it, it is true.

Mr. Campbell: I do not deny it. I am asking the information

LADY DAVIS (for Plaintiffs in Rebuttal), Re-Cross-Examination.

for the purpose of the record. It is relevant both to this examination, and it is relevant to Lady Davis' other testimony in regard to this famous \$400,000 codicil that she was adding to her husband's will.

10 His Lordship: You might very well ask Lady Davis (and I will allow that question) whether the Mrs. Mortimer Davis in question who was in the room at the hospital on the 27th of April, 1928, is the lady who is mentioned in the correspondence between her and Sir Mortimer Davis which is referred to in her previous examination.

Mr. Campbell: I will put the question in Your Lordship's form.

By Mr. Campbell:

20 Q.—Is that the lady?
A.—Yes.

And further deponent saith not.

30

40

DANIEL YOUNG (for Plaintiffs in Rebuttal), Examination-in-Chief.

On this twenty-first day of May, in the year of Our Lord one thousand nine hundred and thirty, personally came and appeared

DANIEL YOUNG

of the City and District of Montreal, Insurance Manager, aged 40
10 years, a witness produced and examined on behalf of the plaintiffs
in Rebuttal, who being duly sworn, deposes as follows:

Examined by Mr. McKeown, K.C., of Counsel for plaintiffs:

Q.—You reside in Montreal?

A.—Yes.

Q.—What is your occupation?

A.—Manager Canada Life Assurance Company.

Q.—That is, Manager of the Montreal Office?

20 A.—For the Province: Provincial Manager.

Q.—How long have you held that position?

A.—About ten or eleven years.

Q.—Do you know Mr. Mortimer Davis, Jr., one of the plaintiffs
in this case, now present in Court?

A.—I do.

Q.—Did you know his late father, Sir Mortimer B. Davis?

A.—Yes.

Q.—Do you also know Lady Davis, the other plaintiff, here
30 present in Court?

A.—I do.

Q.—And, do you know Lord Shaughnessy, one of the defendants,
also present in Court?

A.—Yes, I do.

Q.—Did you happen to be in New York towards the latter part
of April, 1928, on an occasion when Mr. Mortimer Davis, jr., was
confined to hospital there?

A.—I was, yes.

Q.—Do you remember the name of the hospital?

40 A.—I think it was the Park West Hospital.

Q.—Did you visit the hospital?

A.—Yes.

Q.—Was Mr. Mortimer Davis in bed?

A.—He was, yes.

Q.—Who were the others in the room?

A.—There were Lady Davis, Lord Shaughnessy, Mrs. Mortimer
Davis, Mr. Davis, and myself.

DANIEL YOUNG (for Plaintiffs in Rebuttal), Examination-in-Chief.

Q.—Did you see objects of jewellery exposed in the hands of anyone there on that occasion?

A.—Yes, there was quite a lot of jewellery.

Q.—What did you understand was the occasion of the presence of that lot of jewellery?

A.—I do not know. I thought it was a division, or something of that sort. I did not pay much attention to it. I knew Mort was receiving some, and his wife seemed to be receiving some.

Q.—Did you see anything delivered to Lord Shaughnessy on that occasion?

A.—Yes.

Q.—What was it?

A.—I saw a watch, and a chain, and something on the end of it, handed to Lord Shaughnessy.

Q.—By whom?

A.—I cannot recollect. I think it was by Mrs. Davis, jr.

Q.—In the presence of others?

A.—Of everybody.

Q.—This was in a small hospital room?

A.—It was quite a large room.

Q.—A private room in the hospital?

A.—Yes.

Q.—Was everything that was said in that room on that occasion within earshot of all those present?

A.—Yes, I think it would be, if one wanted to listen.

Q.—You think the physical act of handing over the watch, chain, and match box into the hands of Lord Shaughnessy was actually made by Mrs. Davis, jr.?

A.—I think so, yes, but I am not sure of that.

Q.—Mr. Mortimer Davis, jr., was in bed?

A.—Yes.

Q.—Will you tell us, apart from seeing that physical delivery of the watch, chain and match box, whether anything else occurred or was said by any one there which strikes your mind still today?

A.—Nothing definite. There were so many things said.

Q.—Did anything in relation to that

Mr. Campbell (interrupting): Do not lead your witness, Mr. McKeown.

Q.—Did anything in relation to that watch, chain and match box, which you saw handed over to Lord Shaughnessy, occur?

A.—There was some mention of \$1000, but whoever said it, I do not know.

DANIEL YOUNG (for Plaintiffs in Rebuttal), Examination-in-Chief.

Q.—Is that clear in your mind?

A.—It is clear.

Q.—But, as you said, you do not remember who spoke in that connection?

Q.—But, it was audible to all those present?

A.—I think it may have been, yes.

10 Q.—Can you remember what the \$1000 concerned, or had to do with?

A.—No, not at all.

Q.—And what you have told us is really the best of your recollection at this late date after the incident?

A.—Yes.

Mr. Campbell, K.C., of Counsel for defendants, declares he has no cross-examination to make of the witness.

20 By the Court:

Q.—Can you fix the date?

A.—I was in New York from April 21st, to May 1st, 1928.

Q.—Did you go to the hospital to pay a friendly call, or did you go there to talk business?

A.—I was there every day, both paying friendly calls and on business.

Q.—When you entered the room were the parties you have mentioned already there?

30 A.—No, I was there first.

Q.—Who arrived next?

A.—I arrived with Mrs. Davis, jr.

Q.—You entered with her?

A.—Yes, I entered with her.

Q.—How long did you remain before anyone else came?

A.—It may have been half an hour, or three quarters of an hour.

Q.—Who came in next?

A.—I think it was Lady Davis, and Lord Shaughnessy.

40 Q.—Did they come together?

A.—To my recollection, I think they did.

Q.—And, Lady Davis brought the jewellery?

A.—Yes.

Q.—And the jewellery was examined?

A.—There was a list of jewellery, and they were checking it off.

Q.—Did Mr. Mortimer Davis make a distribution of the jewellery?

DANIEL YOUNG (for Plaintiffs in Rebuttal), Examination-in-Chief.

A.—No, I think it was just a question of checking the jewellery before him.

A.—And, after checking it did he give anything to his wife, or to anyone but Lord Shaughnessy?

A.—No, I do not think so.

Q.—How long did the interview last?

10 A.—To my recollection, it would take half an hour or three quarters of an hour.

Q.—And, it was at the end of that operation he gave the watch and chain to Lord Shaughnessy?

A.—It was during the operation.

Q.—Who left the room first?

A.—At that time I think Lord Shaughnessy left the room. I am not quite sure of that, but I think so.

Q.—Did Lady Davis go with him, or did she remain?

A.—I think she remained, but I am not quite sure.

20

And further deponent saith not.

30

40

MORTIMER B. DAVIS (for Plaintiffs in Rebuttal), Examination-in-Chief.

On this twenty-first day of May, in the year of Our Lord, one thousand nine hundred and thirty personally came and appeared

MORTIMER B. DAVIS

10 residing at the Mount Royal Hotel, Montreal, aged 29 years, a witness produced and examined on behalf of the Plaintiffs in Rebuttal, who, being duly sworn deposes as follows:

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

Q.—You are the only son of the late Sir Mortimer B. Davis, whose Estate is concerned in the present litigation?

A.—Yes.

Q.—And, you are one of the plaintiffs in this Action?

A.—Yes.

20 Q.—Are you the Mortimer Davis, jr., referred to in the Will of the late Sir Mortimer B. Davis?

A.—Yes.

Q.—I wish to question you simply upon one subject. You were in Court this morning during the hearing of the testimony of Lady Davis and of Mr. Young?

A.—Yes.

30 Q.—They referred to the fact that you were ill in a hospital in New York in the latter part of April, 1928. Can you tell me exactly when you were in the hospital?

A.—From April 24th to April 27th, 1928.

Q.—From what have you verified the dates?

A.—A copy of the receipt and bill from the hospital.

Q.—You now exhibit this bill to the Court?

A.—I do.

Q.—What was the occasion of your stay in the hospital?

A.—A tonsillitis operation.

Q.—Were your tonsils removed?

A.—Yes.

40 Q.—Do you remember that while you were in the hospital on that occasion the jewellery which had been left to you by your late father under his Will was turned over to you?

A.—Yes, Lady Davis brought it to the hospital and turned it over to me.

Q.—Do you remember whether there was a list which went with the objects?

A.—Yes, there was a list.

MORTIMER B. DAVIS (for Plaintiffs in Rebuttal), Examination-in-Chief.

Q.—Were the objects checked up against the list on that occasion?

Mr. Campbell: Do not lead your witness, Mr. McKeown.

Witness: Yes, they were checked up that afternoon.

10 By Mr. McKeown (continuing):

Q.—Were you able to be up, or were you in bed?

A.—I was not able to be up. I was in bed at the time.

Q.—Do you remember how long this was after the actual operation?

A.—I cannot say the day of the actual operation, but I was pretty sick at the time.

Q.—Do you remember there were a platinum watch, chain and
20 match box amongst the jewellery?

Mr. Campbell: I think I am entitled to ask my learned friend not to lead his witness. The witness is one of the plaintiffs, and he should not be led. The whole form of the questions hitherto have been leading, in my submission.

Mr. McKeown: And, you have been wrong every time.

30 By Mr. McKeown (continuing):

Q.—Will you please tell His Lordship what happened after Lady Davis arrived with the jewellery?

A.—She mentioned to me that Lord Shaughnessy was going to call at the hospital, and that he would like a piece of my father's jewellery as a remembrance; and I believe he called the same day, shortly after. He mentioned about the \$1,000 bequest of my father, and said he did not want to go out and purchase a memento—a pin, or a piece of jewellery—and he asked if I would give him something in remembrance of my father, and I gave him the watch, and
40 the chain, and the match box, he seemed very pleased about it.

Q.—I take it you delivered the watch, chain and match box over to Lord Shaughnessy immediately?

A.—Yes.

Q.—They were the watch, chain, and match box which have been referred to as being in platinum?

A.—Yes.

MORTIMER B. DAVIS (for Plaintiffs in Rebuttal), Cross-Examination.

Q.—Who were present during the conversation, and particularly the part of it which you have attributed to Lord Shaughnessy?

A.—Lady Davis, Lord Shaughnessy, Mrs. Davis, Mr. Young, and myself.

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

10

Q.—Can you fix the exact date of this interview?

A.—I cannot, very well. It was between the 24th and the 27th.

Q.—You do not remember which day it was?

A.—No. I was very sick at the time.

By the Court:

Q.—When were you operated upon?

20

A.—The 24th.

Q.—The day you entered the hospital?

A.—Yes.

By Mr. Campbell:

Q.—And, you were still a pretty sick man when this interview took place?

A.—Yes, I was not feeling very well at the time.

30 Q.—And, I take it you were not paying much attention to what people said?

A.—Oh, I was well enough for that.

Q.—Well enough to sit up and take notice?

A.—Well enough to take notice. I was not sitting up. I was in bed.

Q.—Did you sit up and take notice?

A.—I was in bed at the time.

Q.—Mr. Young has told us Lady Davis and Lord Shaughnessy came into the room together. Is that your recollection?

40 A.—I do not remember that.

Q.—You do not remember the order in which they entered?

A.—No, I do not.

Q.—I understood from the testimony of Lady Davis that she had told you some time before that Lord Shaughnessy wanted to receive a memento of your father?

A.—The day she brought the personal jewellery of my father she mentioned it.

MORTIMER B. DAVIS (for Plaintiffs in Rebuttal), Cross-Examination.

Q.—Was not this the same day as you gave the watch?

A.—Yes.

Q.—So, Lady Davis mentioned to you the same day that Lord Shaughnessy wanted to receive some of those articles as a memento of your father?

A.—Yes; a remembrance of my father.

10 Q.—Then, why was it necessary for Lord Shaughnessy to tell you that himself?

A.—He came in shortly afterwards, I believe.

Q.—Did he ask you for the watch and chain?

A.—First he mentioned about the \$1,000 legacy. He did not ask me for anything in particular—any piece of jewellery in particular. He asked me if I would give him something in remembrance of my father.

Q.—Do you testify he referred to the \$1,000 legacy first?

A.—Yes.

20 Q.—All this jewellery had been bequeathed to you under the Will, had it not?

A.—Yes.

Q.—You were not obliged to pay the legacies?

A.—I was not obliged, no.

Q.—There was no obligation at all that you should give your property in payment of the legacy, was there?

A.—Well, Lord Shaughnessy was a great friend of my father, and I knew that; and I did not see any harm in giving it.

Q.—Did he offer to transfer the \$1,000 to you?

30 A.—No.

Q.—You did not suggest that he should transfer the \$1,000 to you?

A.—No, I did not mention it.

Q.—Are you sure he mentioned it?

A.—Yes, I remember it.

Q.—In what words? Tell me his exact words?

40 A.—He said that he did not want to go out and purchase a memento of \$1,000, and would I give him something in remembrance of my father—a piece of jewellery.

Q.—Did not that strike you as being a very extraordinary thing for Lord Shaughnessy to say?

A.—No, I did not think so.

Q.—You did not think it was extraordinary for him to ask you to give him a memento?

A.—No. I knew he was a great friend, as well as a business connection, of my father.

MORTIMER B. DAVIS (*for Plaintiffs in Rebuttal*), *Cross-Examination*.

Q.—I think it would have been a very appropriate thing for you to offer to give it to Lord Shaughnessy, and I suggest that was what was done—that you offered to give Lord Shaughnessy a memento of your father. Is not that what happened?

A.—He mentioned the \$1,000. I remember that very well.

10 Q.—But, let us not talk about different things. Is it not a fact that you offered to give Lord Shaughnessy a remembrance or memento of your father, in the shape of certain articles of jewellery?

A.—No

Q.—You did not offer?

A.—No.

Q.—He asked for it first?

A.—Yes.

Q.—He asked for it first?

A.—Yes.

Q.—You are sure of that?

20 A.—Yes.

Q.—You are quite clear on it?

A.—Very, yes, sure.

Q.—And, it did not strike you as being a very remarkable thing for Lord Shaughnessy to ask you?

A.—I did not think so, at the time, no.

Q.—Had Lady Davis not told you before that this was going to happen?

A.—Yes, she mentioned it shortly after she turned the jewellery over to me at the hospital.

30 Q.—Was this all at one interview, or were there two interviews?

A.—All on the same afternoon.

Q.—Lady Davis mentioned that Lord Shaughnessy wanted to receive some article of jewellery as a remembrance of your father?

Q.—Who selected the watch and the chain? You?

A.—Well, I do not remember. I think I selected the watch and chain, but I do not remember. There were a lot of things there at the time, and I cannot remember.

Q.—You did not give Lord Shaughnessy his pick?

40 A.—I do not remember, at the time.

Q.—You do not remember whether you put the things on a table and asked him to help himself?

A.—No, I do not think I did. I do not remember.

Q.—You do not remember whether he suggested he would rather have the pearl studs?

A.—He did not mention them at all.

Q.—Have you any recollection as to just what you said to him?

MORTIMER B. DAVIS (for Plaintiffs in Rebuttal), Cross-Examination.

A.—No, I cannot recollect.

Q.—Have you any recollection as to just what he said to you?

A.—I just remember him mentioning about the \$1,000 legacy, and then he asked for a piece of jewellery in remembrance of my father.

Q.—And, that is all you can remember about it; a reference to the \$1,000 legacy, and then he asked you for a piece of jewellery?

10 A.—He said he did not want to go out and purchase a memento, and he thought he would like to have a piece of my father's jewellery as a remembrance.

Q.—But, this had all been told you by Lady Davis?

A.—Yes.

Q.—Then, why was it necessary for Lord Shaughnessy to repeat it?

A.—He mentioned it at the time.

Q.—It is a very extraordinary thing to me that Lord Shaughnessy should have come and asked you to give him those articles.
20 In any event, you have no explanation to give in regard to that?

A.—No.

Q.—And, you insist that you did not offer him a remembrance of your father?

A.—No, because Lady Davis mentioned it to me before he arrived.

Q.—And, you were ready for his request?

A.—Yes.

Q.—You were anticipating his request?

30 A.—Yes, I thought it would happen.

Q.—Can you tell us the order in which the persons in that room entered on that occasion?

A.—I am afraid I did not remember.

Q.—And, I take it you do not remember the day of the week, or the day of the month, except from your hospital bill?

A.—It was between the 24th and the 27th.

Q.—You have seen that from the hospital bill, but you have no recollection of it otherwise? You did not know it before you saw the hospital bill?

40 A.—I knew it was either the end of April, or the beginning of May, 1928.

Q.—Do you remember the day of the week?

A.—No.

Q.—Or, the hour of the day?

A.—I remember it was during the afternoon.

By the Court:

MORTIMER B. DAVIS (for Plaintiffs in Rebuttal), Cross-Examination.

Q.—You do not remember whether it was the day of your operation, or the day after?

A.—It was not the day of the operation.

Q.—You said Lady Davis mentioned Lord Shaughnessy's request to you before Lord Shaughnessy arrived?

A.—Yes.

10 Q.—How long was she there before Lord Shaughnessy?

A.—I believe Lady Davis was in the room, and I think (although I cannot say for certain) that Mrs. Davis and Mr. Young were in the room.

Q.—Mr. Young stated your wife was there when he arrived, and then he had a long chat with you, and then Lady Davis came in with or without Lord Shaughnessy. Mr. Young also said the whole matter in connection with the jewellery lasted about half an hour. Can you tell us how long of that half hour was spent before Lord Shaughnessy arrived?

20 A.—I cannot remember exactly.

Q.—You remember what was done immediately upon Lady Davis' arrival was the checking up of the jewellery with the list she had brought?

A.—Yes.

Q.—Do you remember who handed the watch, the chain, and the match box to Lord Shaughnessy?

A.—I think I handed them over myself, but I am not sure.

Q.—And you cannot tell how long Lady Davis was in the room before Lord Shaughnessy arrived?

30 A.—I do not remember.

Q.—Did he request you to give him the watch and chain before he said anything about the legacy of \$1,000?

A.—I believe he mentioned the legacy before I handed him the watch.

Q.—Had you selected the watch and chain before Lord Shaughnessy's arrival?

A.—No, I did not select anything at first.

40 Q.—So, when Lord Shaughnessy made his request to you, according to your statement you looked into the jewellery and picked out the watch and chain and handed them to him?

A.—Yes. We just looked it over.

Mr. McKeown: That concludes the rebuttal evidence, Your Lordship.

Mr. Holden: We will look through the correspondence, as we have already stated, and I presume the best way would be for me

MORTIMER B. DAVIS (for Plaintiffs in Rebuttal), Cross-Examination.

to let Your Lordship know if we have any further evidence to offer.
I do not know yet whether there will be any sur-rebuttal.

His Lordship: I will be at your disposal.

Mr. Holden: Then, this completes the evidence, unless we have
some sur-rebuttal to offer after looking through the correspondence.
10 Unless we let Your Lordship know in the meantime, I take it
the case will be adjourned to June 4th for argument.

His Lordship: Very well.

And further deponent saith not.

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