

103, 1930

In the Privy Council

No. of 1930.

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

BETWEEN :

THE STEEL COMPANY OF CANADA, LIMITED, and JAMES T. ROGERS
and GEORGE C. COPPLEY, on behalf of themselves and all other
holders of Preference Stock of the Defendant, The Steel Company
of Canada, Limited.

(Defendants) APPELLANTS,

AND

THOMAS RAMSAY and FRANCIS A. MAGEE, suing on behalf of
themselves and all other holders of Ordinary Stock of The Steel
Company of Canada, Limited,

(Plaintiffs) RESPONDENTS.

RECORD OF PROCEEDINGS

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London, E.C. 3.

For the Appellant.

BLAKE & REDDEN,

17 Victoria Street,
London, S.W.1.

For the Respondent

PRESS OF
THE HUNTER-ROSE CO., LIMITED
TORONTO, ONT.

RECORD OF PROCEEDINGS.

In The Privy Council

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(*Plaintiffs*) RESPONDENTS.

RECORD OF PROCEEDINGS

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No. 1
Amended Statement of Claim

IN THE SUPREME COURT OF ONTARIO

(Writ issued the 28th day of December, 1928)

BETWEEN :

THOMAS RAMSAY and FRANCIS A. MAGEE, suing on behalf of themselves and all other holders of Ordinary Stock of The Steel Company of Canada, Limited,

Plaintiffs,

AND

THE STEEL COMPANY OF CANADA, LIMITED, and JAMES T. ROGERS and GEORGE C. COPPLEY, on behalf of themselves and all other holders of Preference Stock of the Defendant, The Steel Company of Canada, Limited,

Defendants.

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Court of
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No. 1.
Statement
of Claim,
28th Decem-
ber, 1928.

NOTE.

*Parts under-
lined show
amendments
made pur-
suant to
orders dated
27th Feb-
ruary, 1929
and 13th
March, 1929.
(Rec. pp.
141-142)*

10

AMENDED STATEMENT OF CLAIM.

1. The Plaintiffs reside in the City of Hamilton in the County of Wentworth, and are the holders of both Preference and Ordinary Stock of The Defendant, The Steel Company of Canada, Limited. The Defendant,
20 The Steel Company of Canada, Limited, is a Company incorporated under the provisions of "The Companies Act" (Canada) and has its Head Office in the said City of Hamilton. The Defendants, James T. Rogers and George C. Coppley, reside in the said City of Hamilton and are owners of Preference Stock of the Defendant, The Steel Company of Canada, Limited.

2. By Letters Patent, bearing date the 8th day of June, 1910, issued under the provisions of The Companies Act, passed by the Parliament of Canada, the Defendant Company was incorporated for the purposes, among other things, of manufacturing and dealing in iron, steel and all other metals, from the ore to the finished products thereof, and also to manufacture and
30 deal in all goods, wares and merchandise in which iron or steel or any other metal is or may be used. By the said Letters Patent the Defendant Company was incorporated under the name of "CANADIAN STEEL CORPORATION, LIMITED."

3. By Supplementary Letters Patent, bearing date the 22nd day of June, 1910, the name of the Defendant Company was changed from Canadian Steel Corporation, Limited, to The Steel Company of Canada, Limited, but the said supplementary letters patent did not in any other respect alter or modify the provisions of the said Letters Patent, and the said Letters Patent

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—continued.

remained otherwise unchanged until the granting of Supplementary Letters Patent bearing date the 16th day of November, 1928, which are hereinafter more particularly referred to.

4. The Letters Patent referred to in the second paragraph hereof as to the capital stock of the Defendant Company provide as follows :—

“The capital stock of the said Company shall be Twenty-five Million dollars divided into Two hundred and fifty thousand shares of One hundred dollars each, subject to the increase of such capital stock under the provisions of the said Act. Of which two hundred and fifty thousand shares, One hundred thousand shares of One hundred dollars, each, that is to say, Ten million dollars be created and issued as preference stock and the same when so issued shall have preference and priority as follows :—

“(a) In case of liquidation, dissolution or winding up of the Company, the holders of such shares shall be entitled to repayment in preference to ordinary shareholders of the amount of the par value of said shares and any arrears of dividends thereon and also the net profits of the Company, which it shall from time to time be determined to distribute are to be applicable first to the payment of a fixed cumulative preferential dividend at the rate of seven per cent. per annum on the capital paid-up on the said preference shares and the holders of such shares shall participate rateably with the holders of the issued ordinary shares in the distribution of net profits after the holders of the Ordinary shares shall have received dividends equal to those paid on the preferred shares;

“(b) No dividends shall be paid on the ordinary shares until after the Company shall have created and have to the credit of a reserve fund a sum equal to at least one year's dividend on the then issued preference shares.”

5. By a notice, accompanied by a circular letter addressed by the Defendant Company to the shareholders of the Defendant Company bearing date the 22nd day of October, 1928, and to which for greater certainty the Plaintiffs crave leave to refer more particularly at the trial of this action, the Defendant Company called a special general meeting of its shareholders to be held on the 14th day of November, 1928, for the following stated purposes, namely :

“(a) To consider and, if approved, to pass a resolution ratifying and confirming with or without modification By-law No. 19 subdividing the 100,000 shares of Preference Stock of the par value of \$100 each into 400,000 shares of Preference Stock of the par value of \$25 each, and subdividing the 150,000 Ordinary Shares of the capital Stock of the Company of the par value of \$100 each into 600,000 Ordinary shares of the par value of \$25 each, and giving each class of Shares one vote in respect of each new share. All the rights, preferences and priorities attaching to the Preference Stock

“as set out in the Letters Patent incorporating the Company
 “shall remain undisturbed and shall attach to the new Preference
 “Shares.

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“(b) To consider and, if approved, to pass a resolution authoriz-
 “ing the Directors to apply for Supplementary Letters Patent
 “amending and varying the provisions of the Letters Patent incor-
 “porating the Company and the Letters Patent Supplementary
 “thereto relative to its Ordinary Capital Stock changing the par
 “value Ordinary Shares of the Company from 600,000 fully paid
 “Ordinary Shares of the par value of \$25 each to 600,000 fully paid
 “Ordinary Shares without nominal or par value, maintaining for
 “the no par value shares all the rights attaching to the said Ordinary
 “Shares of the par value of \$25.

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 ber, 1928.

—continued.

10

“(c) To consider and if approved, pass any and all resolutions
 “and give all such authorizations and directions that may be neces-
 “sary or desirable in connection with the foregoing.”

6. The Plaintiffs allege that the calling of the meeting referred to in the
 preceding paragraph hereof for the first time put the Plaintiffs upon enquiry
 as to what were the legal rights of the holders of Preference and Ordinary
 20 Stock of the Defendant Company as they then existed.

7. The Plaintiffs further allege that after the receipt of the notice
 calling the meeting referred to in the fifth paragraph hereof and upon obtain-
 ing copies of the Letters Patent incorporating the Defendant Company and
 of the Letters Patent Supplementary thereto the Plaintiffs ascertained that
 the dividends on the Ordinary Stock of the Defendant Company were cumula-
 tive and thereupon threatened to institute legal proceedings for the purpose
 of restraining the Defendant Company should the Defendant Company
 attempt to pass a resolution which would in any way alter or affect the rights
 of the holders of Ordinary Stock to claim that dividends on the Ordinary
 30 Stock were cumulative and that arrears of dividends aggregating approximately
 43½% must be paid on the Ordinary Stock of the Defendant Company before
 the holders of Preference Stock received dividends pro rata with the holders
 of Ordinary Stock in excess of 7% per annum.

8. The Plaintiffs further allege that at the instigation of the Plaintiffs
 and with the consent of the Defendant Company and for the express purpose
 of preserving to the holders of Ordinary Stock whatever rights they then had
 in regard to the payment of arrears of dividends, the resolution proposed to
 be passed by the shareholders of the Defendant Company at the said Special
 40 General Meeting thereof held on the said 14th day of November, 1928, was
 altered to read as follows, namely :—

“That the President and Secretary of this Company be and they
 “are hereby authorized in the name of this Company to apply for
 “Supplementary Letters Patent amending and varying the pro-
 “visions of the Letters Patent incorporating the Company and the
 “Letters Patent Supplementary thereto relative to its Ordinary
 “capital stock, changing the 600,000 ordinary shares of the par

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ber, 1928.
—continued.

“value of \$25 each into 600,000 Ordinary Shares without nominal or
“par value and reserving and maintaining at all times for the
“shares of each class, preference and ordinary, all the rights attaching
“to the shares of the par value of \$100 as originally created pro-
“vided that such rights shall be proportionately reduced having
“regard to the fact that each preference and each ordinary share as
“originally created has been subdivided into four shares of the par
“value of \$25 each with the sole exception that every shareholder
“shall be entitled to one vote for each new share, whether preference
“or ordinary, held by him.”

10

9. The Plaintiffs further allege that the altered resolution set out in the preceding paragraph hereof was unanimously passed by the shareholders of the defendant Company at the said meeting held on the 14th day of November, 1928.

10. The Plaintiffs allege that the stock certificates heretofore issued by the Defendant Company are ambiguous and erroneous and without any warrant of authority therefor might be construed to imply that dividends on the Ordinary Stock of the Defendant Company are non-cumulative.

11. The Plaintiffs further allege that Supplementary Letters Patent issued under the provisions of the aforementioned Act, and bearing date the 16th day of November, 1928, confirm By-law Number 19 passed by the Defendant Company converting its 100,000 shares of Preference Stock of the par value of \$100 each into 400,000 shares of Preference Stock of the par value of \$25 each and convert 150,000 Ordinary Shares of the par value of \$100 each into 600,000 shares of the par value of \$25 each and confirm the resolution set out in the eighth paragraph hereof converting the said 600,000 shares of Ordinary Stock of the par value of \$25.00 each into 600,000 shares having no nominal or par value, but the respective rights of the holders of Preference and Ordinary stock as originally constituted have been by the said Supplementary Letters Patent duly preserved.

20

30

12. According to the balance sheet of the Defendant Company for its fiscal year, ending on the 31st day of December, 1927, the Defendant Company had available for dividends, after making due allowances for depreciation and all similar items properly chargeable against profits, accumulated undistributed profits amounting to the sum of \$10,898,685.00.

13. The Plaintiffs allege that the net earnings of the Defendant Company are sufficient to have enabled the Defendant Company to pay dividends equivalent to 7% per annum upon its Ordinary Stock since the date of the incorporation of the Defendant Company, after creating the reserve fund referred to in the Fourth paragraph hereof.

40

14. Notwithstanding the allegations hereinbefore made the Directors of the Defendant Company at a meeting of Directors held in the City of Montreal on the 19th day of December, 1928, passed resolutions declaring two dividends of 50c. and 18¾c. respectively per share on its Preference Stock consisting of shares of the par value of \$25.00 each and two dividends of

50c. and 18¾c. respectively per share on its Ordinary Stock having no nominal or par value stating that the dividend of 50c. per share for each class of stock was a quarterly dividend and being at the rate of \$2.00 per share per annum or equivalent to a dividend of 8% per annum on both the Preference and Ordinary Stock as originally created. The dividend of 18¾c. per share was stated to be a special dividend.

15. Notwithstanding the protest of the Plaintiffs that the declaration and payment of said dividends on the Defendant Company's Preference Stock was illegal, in that not more than 7% per annum can legally be paid on
 10 the Preference Stock of the Defendant Company until the aforementioned arrears of dividends on the Ordinary Stock shall have been paid, disbursement of the said dividend will be made on the 1st day of February, 1929, unless the Defendant Company is restrained from making any payment on that date in excess of 25c. per share on its Preference Stock of the par value of \$25.00 per share by Order of this Honourable Court.

THE PLAINTIFFS THEREFORE CLAIM :—

1. An Injunction restraining the Defendant Company from paying any dividend upon its Preference Stock in excess of 7% per annum until such time as the Defendant Company shall have declared and paid dividends upon
 20 its Ordinary Stock equal per share in amount to the dividends previously paid on its Preference Stock, having due regard, however, to the fact that for each Ordinary share of the par value of \$100.00 as originally constituted there are now issued and outstanding four shares of Ordinary Stock having no nominal or par value and that their relationship to the Preference Stock has been maintained and preserved by each share of Preference Stock of the par value of \$100 as originally constituted having been converted into four shares of Preference Stock, of the par value of \$25.00 each, and by the Supplementary Letters Patent creating such change.

2. An Injunction restraining the Defendant Company from continuing
 30 to issue stock certificates for both its Preference and Ordinary Stock which incorrectly state the rights and limitations relating to both classes of stock as defined by the Letters Patent incorporating the Defendant Company and the Letters Patent Supplemental thereto.

3. A declaration by this Honourable Court construing the said Letters Patent and Supplementary Letters Patent relative to the rights of both the
holders of Preference and Ordinary Stock of the Defendant Company with respect to the declaration and payment of dividends on both of said classes of stock by the Defendant Company and directing that all of the holders of both of said classes of stock of the defendant Company and the Defendant
 40 Company shall be bound thereby.

4. Their costs of this action and those of the Defendants, James T. Rogers and George C. Copley to be paid by the Defendant Company.

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—continued.

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ber, 1928

—continued.

5. Such further and other relief as to this Honourable Court may seem meet and as the circumstances of the case may require.

The Plaintiffs propose that this action shall be tried at the City of Toronto, in the County of York.

DELIVERED this 28th day of December, 1928, by Messrs. Holmested & Sutton, 904 Royal Bank Building, Toronto, Solicitors for the Plaintiffs who reside at the City of Hamilton.

No. 2.
Statement
of Defence,
30th March,
1928.

No. 2
Statement of Defence

1. The Defendants admit the allegations contained in paragraphs 1 to 5 10 (inclusive) of the Statement of Claim.

2. The Defendants admit that the resolution set out in paragraph 8 of the Statement of Claim was unanimously passed by the shareholders of the defendant company on 14th November, 1928, and that Supplementary Letters Patent were issued on 16th November, 1928, confirming By-law No. 19 passed by the defendant company converting its preference stock into shares of the par value of twenty-five dollars (\$25.00) each and its ordinary stock into shares of no nominal or par value.

3. The Defendants admit that the directors of the defendant company on 19th December, 1928, declared dividends of 50c. and 18 $\frac{3}{4}$ c. per share 20 respectively on the company's preference and ordinary stocks and they allege that the directors were entitled to declare such dividends and that in doing so they violated no rights of the ordinary shareholders of the company.

4. The Defendants deny the allegations contained in paragraph 10 of the Statement of Claim and they allege that each preference and ordinary stock certificate issued by the company since its organization correctly described the rights of the shareholders with respect to dividends in the following language :

“The preference shares carry a fixed cumulative preference dividend payable out of the profits of the company applicable to dividends 30 at the rate of seven per centum (7%) per annum on the capital paid up thereof. They rank both as to dividends and assets in priority to all ordinary shares. If, after providing for the payment in any year of the dividend on the preference shares and any balance due for cumulative dividends for preceding years, there remain any surplus net profits, any and all such as are not in the opinion of the directors required for the purposes of the company will be applicable to dividends on the ordinary shares for such year to the extent of but not exceeding seven per centum (7%) on the capital paid up 40 thereon when and as from time to time the same may be declared by the directors. The remainder of any such surplus net profits shall then be applicable to the payment of further dividends equally per share upon both the preference shares and the ordinary shares, but no dividends shall be paid on the ordinary shares until after the

company shall have created and have to the credit of a reserve fund a sum equal to at least one year's dividend on the then issued preference shares, the whole as provided in the Letters Patent incorporating the Company."

5. The Plaintiffs and all persons who, since the organization of the company have held either preference or ordinary shares in the company's capital stock, have accepted said stock certificates as correctly stating the rights of shareholders with regard to dividends.

6. Save as herein admitted, the defendants deny all allegations contained
10 in the Statement of Claim.

DELIVERED this 30th day of March, 1929, by Messrs. Tilley, Johnston, Thomson & Parmenter, Solicitors for the Defendants.

No. 3
Reply

1. The Plaintiffs join issue upon the First, Second, Fourth, Fifth and Sixth Paragraphs of the Defendants' Statement of Defence.

2. In answer to the Third Paragraph of the Defendants' Statement of Defence the Plaintiffs allege that it was represented by the Defendant Company that the payment of the dividends referred to in the Third Paragraph
20 of the Defendants' Statement of Defence did not constitute a payment of dividends either to the holders of the Preference or Ordinary Stock in excess of \$1.75 per share per annum or at a rate equivalent to 7% per annum on the Preference and Ordinary Stock of the Defendant Company when both had a par value of \$100.00 per share.

DELIVERED this 4th day of April, 1929, by Messrs. Holmested & Sutton, 904 Royal Bank Building, Toronto, Solicitors for the Plaintiffs.

TRIAL PROCEEDINGS

Before the Honourable Mr. Justice Orde, without a Jury, at Toronto, Ontario,
May 27th, 1929

30 R. S. ROBERTSON, K.C., }
A. W. HOLMESTED, } *Counsel for Plaintiffs.*

W. N. TILLEY, K.C., }
C. F. H. CARSON, } *Counsel for Defendants.*

HIS LORDSHIP : Ramsay *v.* Steel Company of Canada.

MR. ROBERTSON : I appear, with Mr. A. W. Holmested, for the plaintiffs,
and Mr. Tilley and Mr. Carson for the defendants.

HIS LORDSHIP : What is the action about ?

MR. ROBERTSON : The action, my Lord, is really in essence between two
40 classes of shareholders, between the common shareholders as represented by the plaintiffs—they sue on behalf of themselves and other holders of the ordinary stock and then the Steel Company of Canada is added as a defendant,

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No. 2.
Statement
of Defence,
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No. 3.
Reply, 4th
April, 1929.

No. 4.
Opening
proceedings
at trial,
27th May,
1929.

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Supreme
Court of
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No. 4.
Opening
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at trial,
27th May,
1929.

—continued.

a necessary defendant, and certain individuals were then appointed to represent the other class, the preferred shareholders.

HIS LORDSHIP : They are appointed by an order ?

MR. ROBERTSON : Yes, my Lord; I shall put the order in later. The matter they are disputing about is the distribution of the profits of the company between them. The important matter, the deciding matter, of course, is the charter itself. It is in the charter itself, and not in a by-law, that the relations between the shareholders and their relations to profits are defined. There is no by-law dealing with it.

HIS LORDSHIP : Are there different classes of shareholders ?

10

MR. ROBERTSON : The ordinary and preferred.

HIS LORDSHIP : The plaintiffs are the ordinary ?

MR. ROBERTSON : The plaintiffs are the ordinary and the defendants other than the Steel Company are the preferred. There are not many facts in dispute, and of course no fact as to the charter. I think it might be convenient if I now called your Lordship's attention to the words of the charter upon which this matter turns. They are set out in paragraph 4 of the Statement of Claim.

HIS LORDSHIP : Is this a Federal or a Provincial Company ?

MR. ROBERTSON : A Dominion Company, my Lord, incorporated in 1910, so that it is the Act of that date, I suppose that one refers to—not that it makes any difference, I think, particularly.

The words of the charter, after stating first that the capital stock shall be twenty-five million dollars divided into two hundred and fifty thousand shares of one hundred dollars each, subject to the increase, and so on, of which two hundred and fifty thousand shares, one hundred thousand shares of one hundred dollars each, that is to say, ten million dollars, are to be preference stock and the same when so issued shall have preference and priority as follows :

“(a) In case of liquidation, dissolution or winding up of the Com- 30
pany”—of course, that is not the event we are dealing with—
“the holders of such shares shall be entitled to repayment in preference to
“ordinary shareholders of the amount of the par value of said shares and
“any arrears of dividends thereon and also the net profits of the Company
“which it shall from time to time be determined to distribute are to be
“applicable first to the payment of a fixed cumulative preferential divi-
“dend at the rate of seven per cent. per annum on the capital paid up on
“the said preference shares and the holders of such shares shall partici-
“pate rateably with the holders of the issued ordinary shares in the
“distribution of net profits after the holders of the Ordinary shares shall 40
“have received dividends equal to those paid on the preferred shares.”

Now if I might pause just for a moment to show your Lordship how the question on those words arises : The Company has, from its inception, paid seven per cent. on the preferred shares, and has paid it annually, except in one year when they paid I think three and one-half per cent., but made it up in the next year. The Company did not always pay a dividend on the common

stock. For some years at the first there were no dividends paid on common stock at all. Then they paid six per cent., and later seven.

HIS LORDSHIP : When did they begin paying ?

MR. ROBERTSON : They began to pay in the year 1916; they then paid four per cent. In the next two years they paid six per cent. each year, and then from 1919 on they have paid seven per cent.

HIS LORDSHIP : No further dividend—

MR. ROBERTSON : But there has been no further distribution of profits. They have never reached that stage until just now. That is what gives rise
10 to this action.

HIS LORDSHIP : Just tell me this : are the common shareholders suggesting that they are entitled to be paid back for all those years before—

MR. ROBERTSON : That is one way of putting it. We say we are entitled to have our share of the profits made equal to theirs before they again participate.

HIS LORDSHIP : Covering all the years when there was—

MR. ROBERTSON : Well, I would not put it that way myself; I would not say covering years; I would say we are entitled to be paid out of the profits— not profits year by year, but the general profits of the company, we are entitled
20 to be paid as much as they.

HIS LORDSHIP : The first year of the company's business there is profit enough to pay seven per cent. to the preference shareholders, and not enough to pay a dividend to the common shareholders at all; the next year there are ample profits to pay a seven per cent. dividend to the preference shareholders, another seven per cent. to the ordinary shareholders, and there is another seven to divide. You say that you would be entitled to all that before the preference shareholders would get any, because you had had nothing the previous year ?

MR. ROBERTSON : Yes, your Lordship has the point. We say that we
30 have the same total interest in profits as they have when there are enough to pay us both, that they have a right to be paid first but they have not a right to be paid more if there is plenty on both.

HIS LORDSHIP : You must add the profits to the dividend from year to year—

MR. ROBERTSON : Of course, the charter does not say anything about annual dividends.

HIS LORDSHIP : A hundred years from now you would be entitled to have made up any arrears during the whole of those previous—

MR. ROBERTSON : Well, I would not call it arrears at all, but your Lord-
40 ship has the point; your Lordship has the effect of what we contend.

HIS LORDSHIP : I know what you mean, yes.

MR. ROBERTSON : I do not put it that way in putting my case. The company did build up a very substantial—

HIS LORDSHIP : Mr. Robertson, I just want you to keep this in mind as being my off-hand view. That means that whenever a distribution of profits is to be made, that particular distribution is to be dealt with in this way, that it means nothing else.

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No. 4.
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MR. ROBERTSON : I am not attempting to argue my point of view at all to your Lordship at the moment, and I will submit, and I think when your Lordship comes to read the words of the charter carefully and to consider them your Lordship will see, that there is only one meaning really possible.

HIS LORDSHIP : Now, is there any evidence at all ? It is all documentary, I suppose, practically.

MR. ROBERTSON : I want to show just exactly how the action arises. The company has now acquired a very substantial surplus, some twelve million dollars. It had three million of a surplus back in 1915, when we were getting no dividends at all, but it now has a surplus of twelve million, and the proportion of that that would be now applicable to the common shares before the preferred shareholders would come in, is a very large sum of money. 10

HIS LORDSHIP : You are not seeking here, of course, to compel directors to declare a dividend.

MR. ROBERTSON : No, all we ask is to declare that they cannot do what they proceeded to do. What the directors proceeded to do in December last was to pass a resolution declaring a dividend which would be at the rate of eight per cent. on both common and preferred, and a similar dividend which they said was special in its nature, of one and three-quarters per cent.

HIS LORDSHIP : To both ? 20

MR. ROBERTSON : Yes. So that they were——

HIS LORDSHIP : What you are objecting to is the additional one and the one and three-quarters that is going to the preferred shareholders.

MR. ROBERTSON : Yes. My friends say I am misunderstanding the net effect of it all; I thought I had it right. What they did was exactly this : the shares had, by supplementary letters patent, been changed in character, or in amount rather; the \$100 shares were converted each into four \$25 shares.

HIS LORDSHIP : Both common and preferred ?

MR. ROBERTSON : Yes. Then the common were still further, at the same time, by the same supplementary letters patent, created into shares of no par value, but expressly reserved to them the same rights in every respect as they would have had had they remained \$25 shares. Then, that having been done, the directors paid or directed to be paid a dividend, a quarterly dividend, of fifty cents per share, that is two dollars a year on a \$25 share, or at the rate of eight per cent. per annum, on the shares instead of seven per cent. Upon that this action is brought, and I shall put in the orders of representation and so on. 30

First I put in an order of the 27th of February, 1929, made by the Master, in the action, adding J. Orr Callaghan and George C. Copley on behalf of themselves and all other holders of preference stock, as parties defendant. They were authorized to defend for preferred shareholders. 40

EXHIBIT 1 : Order adding J. O. Callaghan and G. C. Copley as parties defendant, (Feb. 27th, 1929.)

MR. ROBERTSON : Then on the 13th of March, 1929, another order is made by the Master, striking out the name of J. Orr Callaghan and substituting James T. Rogers, and then he and Copley are to represent the preferred shareholders.

EXHIBIT 2 : Order substituting J. T. Rogers for J. O. Callaghan as party defendant, (March 13th, 1929.)

MR. ROBERTSON : Then there was an injunction motion made, an application for an interim order. The order is of the 17th of January, 1929, adjourning the motion for an injunction until the trial without prejudice to the rights of either party to this action.

EXHIBIT 3 : Order adjourning motion for injunction, Jan. 17th, 1929.

MR. ROBERTSON : In connection with that, the understanding between the parties is set out in a letter from Mr. Strachan Johnston to Mr. Holmsted.

10 HIS LORDSHIP : I do not see why a thing like that should necessarily be an exhibit in the trial, except as to the question of costs.

MR. ROBERTSON : I was only calling attention to it by reason of something that was said at the time which I understood was covered by the letter.

MR. TILLEY : It is covered by the letter.

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HENRY SANDERS ALEXANDER, Sworn. Examined by Mr. Robertson:

Q. Mr. Alexander, you are the Secretary of the Steel Company of Canada ?

A. Yes, sir.

20 MR. ROBERTSON : I put in a certified copy of the Letters Patent incorporating the Company; these are dated the 8th of June, 1910. The Company was incorporated, my Lord, under the name of Canadian Steel Corporation, Limited, but, as set forth in the pleadings and admitted in the pleadings, that was later changed by supplementary letters patent to The Steel Company of Canada, Limited.

EXHIBIT 4 : Certified copy of letters patent.

30 MR. ROBERTSON : Then I put in further supplementary letters patent dated the 16th of November, 1928. These are the letters patent, my Lord, that change the shares from \$100 shares to \$25 shares, and increase them by four times, and also change the common stock after it has been multiplied by four times in number, to non-par-value stock. The letters patent contain these words :

“All of the rights, preferences and priorities attaching to the preference stock as set out in the Letters Patent incorporating the company shall remain undisturbed and shall attach to the new preference shares, provided that the new preference shares shall have one vote in respect of each new share.”

Then another proviso is introduced further down; that is, after dealing with the ordinary shares, there is a further proviso :

40 “Reserving and maintaining at all times for the shares of each class, preference and ordinary, all the rights attaching to the shares of the par value of \$100 as originally created; provided that such rights shall be proportionally reduced having regard to the fact that each preference and each ordinary share as originally created has been subdivided into four shares of the par value of \$25 each, with the sole exception that every shareholder shall be entitled to one vote for each new share, whether preference or ordinary, held by him.”

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EXHIBIT 5 : Copy of supplementary letters patent changing \$100 shares to \$25 shares, etc.

MR. ROBERTSON : Q. Mr. Alexander, the Company shortly after its incorporation and at some time in the year 1910 proceeded to the allotment of shares—in 1910 ? A. Yes.

Q. At that time the Company allotted 64,963 of its preferred shares ?

A. Yes, sir.

Q. And 115,000 of its common shares ? A. Yes.

Q. And the shares were all paid up ? A. Yes, sir.

Q. They were all allotted as paid-up shares ? A. Yes, sir. 10

Q. And there have been no shares, either preferred or common, allotted since ? A. No, sir.

MR. ROBERTSON : With reference to the by-laws of the Company, I have here copies of by-laws—these are the ones I propose to put in—Nos. 3, 6, 8 and the amendment to 8, as on this sheet—it is really a new 8—then No. 19, which is the by-law that authorized the application for the last supplementary letters patent; and by-law No. 20, passed on the 14th of November, 1928, which deals with the issue of share certificates.

EXHIBIT 6 : Copies of by-laws Nos. 3, 6, 8, 19 and 20.

MR. ROBERTSON : Q. With reference to the by-laws of the company, 20 Mr. Alexander, I am informed—and you will say whether I am correctly informed—that there is no by-law, never has been a by-law, regulating the payment of dividends; there has been no by-law, for example, that said the dividends shall be paid quarterly or half-yearly, but dividends have been dealt with from time to time as declared by the resolution declaring them?

A. Yes; not to my knowledge.

Q. You do not know of any by-law dealing with it ? A. No, sir.

HIS LORDSHIP : I think it would be very unusual to have one. It is not customary, is it ? As I understand it, I don't care whether it is a bank or anything else, each dividend is declared from time to time by a positive 30 resolution of the directors.

MR. ROBERTSON : I think they do this at times. There is a general by-law that I have put in, that is a general by-law of the Company authorized by the shareholders delegating it to the directors to pay dividends; that is, that is one of the things that the directors have to do, the payment of dividends.

HIS LORDSHIP : That is a work of supererogation, is it not ? I thought they had the right to declare dividends as they saw fit.

MR. ROBERTSON : I rather thought they did, too; but it is sometimes in the by-law by which it is delegated to them to pay them, it is supplemented by words saying that they may pay them quarterly or semi-annually or 40 annually as they see fit. It was merely to show that the matter had not been dealt with by by-law at all that I asked the question.

HIS LORDSHIP : I suppose a by-law of that sort may be a protection to a board of directors against criticism on the part of the shareholders, but apart from that I do not see what—

MR. ROBERTSON : Of course, I do not want your Lordship to think that we are basing our action on any absence of it.

HIS LORDSHIP : No.

MR. ROBERTSON : Q. Also, with reference to the form of stock certificate that was used prior to November, 1928, I understand that there is no by-law or resolution or minute showing that the directors at any time ever approved of or dealt with the form of the stock certificate ?

A. No, not to my knowledge.

Q. Well, you have endeavoured to find out ? A. Yes.

Q. You cannot find any ? A. Cannot find any.

HIS LORDSHIP : Does anything turn upon the form of the stock certificate here ?

MR. ROBERTSON : Your Lordship will hear something about it I think, from my friend.

Q. Then I want you to verify, if you will, Mr. Alexander, a resolution of the directors of the 5th of October, 1921. I will put in this copy if you are able to verify it.

A. Well, I could not identify it without the other book.

HIS LORDSHIP : You are not putting in every resolution, are you ?

MR. ROBERTSON : Oh, no.

HIS LORDSHIP : I suppose it can be admitted that every dividend that was declared was declared by resolution.

MR. ROBERTSON : This is dealing with a special circumstance, and dealing not with the preferred but with the common, I believe. The point of this resolution is this, my Lord, that at a particular time in 1921 the company found itself in this position, that for that particular year it had not earned enough money, that is, the profits for that year were not enough to pay both the seven per cent. to the preferred and the dividend that they had been in the habit of paying to the common. By this resolution that matter is discussed and dealt with, and they determine to nevertheless pay the dividend on the common. That is, in other words, it was made up to some extent from accrued profits. The same thing happened the next year as to payment, but without any formal resolution. This is the resolution, of the 5th of October, 1921—I may put this in ?

MR. TILLEY : Yes.

MR. ROBERTSON : “The Secretary reported sales of Company for year
“and also submitted statements of financial condition of Company as at
“Aug. 31st, 1921, and cash in banks this date as per statements attached
“hereto, all of which under present conditions of business were considered
“satisfactory and although the dividends at the rate of 7% on both classes of
“our stock would not likely be earned for the nine months of the year to
40 “September, 30th 1921, the Board were unanimously of the opinion that the
“dividends for the quarter ending Sept. 30th, 1921, on both classes of stock
“at the rate of 7% per annum should be declared and were justified in view
“of the excellent financial position of the Company.

“Moved by Sir Thomas White,

“Seconded by Senator White,

“That dividend of one and three-quarters per cent. on the issued and fully-
“paid ordinary shares of the Company be declared for the quarter ending

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“Sept. 30th, 1921, payable November 1st, 1921, to shareholders of record at
“close of business, October 10th, 1921. Carried.

“Moved by Sir Thomas White,

“Seconded by Senator White,

“That a dividend of one and three-quarters per cent. on the issued and fully-
“paid Preference shares of the Company be declared for the quarter ending
“Sept. 30th, 1921, payable November 1st, 1921, to shareholders of record at
“close of business October 10th, 1921. Carried.”

EXHIBIT 7 : Extract from Directors' Minutes, 5th Oct., 1921.

MR. ROBERTSON : Q. As to the dividends that your company has paid, 10
Mr. Alexander, in the year 1910 the company had a financial career of only
six months, and you paid a dividend of three and one-half per cent. for that
six months, or at the rate of seven per cent. per annum ? A. Yes, sir.

Q. On the preferred stock ? A. Yes.

MR. TILLEY : My friend's question said it was for a half year three and
one-half per cent. I do not understand that to be correct. It was two
quarterly payments amounting to—

MR. ROBERTSON : I don't know whether they were quarterly or not.

Q. Do you know whether they were ? A. I presume they were two 20
quarterly payments.

MR. ROBERTSON : All I am concerned in is that it was at the rate of seven
per cent. per annum for that period.

MR. TILLEY : That is all right.

MR. ROBERTSON : Q. Then, beginning with January, 1911, on to the
end of 1928, the company has paid a dividend to the preferred shareholders
at the rate of seven per cent. per annum except in two years ? A. Yes, sir.

Q. And in one of those years it was less and in the other more ?

A. Yes, sir.

Q. That is, in the year 1914 the dividend paid was at the rate of three 30
and one-half per cent. per annum ? A. Yes, sir.

Q. And in 1916 that was made up to the preferred shareholders by
paying them ten and one-half per cent. ? A. Yes, sir.

Q. And, except for that variation, until the end of 1928 it has been
uniformly seven per cent. ? A. Yes, sir.

Q. Then, dealing with the common shareholders, until the year 1916
they received no dividend at all ? A. No, sir.

Q. Then in 1916 the common shareholders were paid a dividend at the
rate of four per cent. ? A. Well, I have not got the figures here.

HIS LORDSHIP : That has been checked by the other side, and it is not 40
objected to.

WITNESS : I have seen that statement; I think it is all right.

MR. TILLEY : You can read from it. We will let you know if it is wrong.

MR. ROBERTSON : Q. It is four per cent. in 1916 ? A. Yes, sir.

Q. Six per cent. in the years 1917 and 1918 ? A. Yes, sir.

MR. TILLEY : If you let the witness see it as you go along, he has checked
it and he can tell.

WITNESS : This is the same statement as that ?

MR. ROBERTSON : Yes.

MR. TILLEY : Four per cent. in 1916.

MR. ROBERTSON : Q. Four per cent. in 1916; six per cent. in 1917 and 1918 ? A. Yes, sir.

Q. And uniformly seven per cent. in each year down to and including 1928 ? A. Yes, sir.

HIS LORDSHIP : Seven per cent. for all those years; is that it ?

MR. ROBERTSON : Yes, beginning with 1919.

WITNESS : Of course, there was a dividend payable on February 1st of 10 this year. Was that included in this statement ?

MR. ROBERTSON : Q. No, I understand not.

A. That was not included in this statement ?

Q. No. There was a dividend declared on the 19th of December, 1928, but not payable until sometime in 1929, and that is not included in these figures ? A. No.

HIS LORDSHIP : Q. Is the company's financial year coterminous with the calendar year ? A. Yes, sir.

Q. The 31st of December is the end of your year ? A. Yes, sir.

MR. ROBERTSON : Q. You have checked over the figures in the state- 20 ment that you have before you ? A. Yes, sir.

Q. And do they correctly set out what they purport to state ?

A. Yes, sir.

MR. ROBERTSON : I may put that in, then, perhaps—

MR. TILLEY : Well, I do not see that we are concerned with all those figures.

MR. ROBERTSON : Oh, I think so.

MR. TILLEY : Nor with your notations on them.

MR. ROBERTSON : We have not notations; we have headings.

MR. TILLEY : These headings, I don't know what—

MR. ROBERTSON : Well, I have asked the witness, and I thought he had— 30

MR. TILLEY : I do not see that we are concerned with all the financial figures of the company at all, and that is what this statement professes to do, if your Lordship will look at it.

MR. ROBERTSON : It is a very convenient way of setting out the financial story that we are now concerned in.

MR. TILLEY : We are not concerned with the financial story; we are concerned with the rights of the two classes of shareholders, and that does not depend upon actual results.

HIS LORDSHIP : If Mr. Robertson conceives that the total amount of 40 earnings and so on has any bearing upon this case, I suppose he is entitled to put it in, but it has not yet been proved.

MR. ROBERTSON : I thought the witness had proved it now.

HIS LORDSHIP : I suppose you could put in the balance sheet of every year. It might be cumbering the record.

MR. ROBERTSON : I think it is very important, my Lord, for me to show the position that has existed from time to time when the—

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HIS LORDSHIP : Do you think the total amount of profits—has it any bearing on the case ?

MR. ROBERTSON : I think so.

HIS LORDSHIP : On this question of whether there is a twelve million dollar reserve or a twenty-five million dollar reserve ? If there is enough to pay the dividends that the directors have seen fit to declare, what difference does it make what the amount—

MR. ROBERTSON : It makes this point very plain indeed, my Lord, that if the contention of the defendants is correct then it lies entirely, not upon the terms of the charter, but within the discretion of the board of directors, to say what the common shareholders are to get. I am going to argue, and I will submit authority to your Lordship for the proposition, that such a result is, if at all possible, to be avoided in construing any charter, to lead to a result where the directors would say that between shareholders there would be some inequality that the charter does not expressly provide for, that that is unreasonable, and the charter should not be read that way. 10

HIS LORDSHIP : Whether the total earnings have any bearing on the point at issue might be a nice question. I do not think I should rule out that evidence if you think in justice to your clients it should go in. It may not strictly be relevant, but it gives a sort of background and atmosphere. 20

MR. TILLEY : My friend says he has a statement which is a compilation of reports. If the annual reports are to be put in they should be put in, and not summarized in this way. Let us have the report if it is to go in.

HIS LORDSHIP : Otherwise I think this witness would have to verify every figure there.

MR. ROBERTSON : I think, my Lord, if I have asked the witness, who is the Secretary of the Company and knows its records, and he says he has verified this from the company's records, and he says it is correct, surely I do not have to cumber the record with annual reports from which this is made.

MR. TILLEY : I do not know that my friend is at all relieved from the duty of putting in his original evidence. If the annual reports are evidence, let them go in. 30

HIS LORDSHIP : I do not suppose the annual report is evidence of anything except being a report. I suppose the witness can state that the earnings were so-and-so without producing a document that says so. I do not see any objection to this method of giving the evidence, but it is incomplete from your point of view, Mr. Tilley, and should be supplemented.

MR. TILLEY : Your Lordship sees, there is a column here, "Ordinary dividends unpaid." Now, I do not know how the witness is undertaking to say that is correct. 40

HIS LORDSHIP : That does not mean anything.

MR. TILLEY : I do not see why my friend should be allowed to put a picture of annual reports. This is just taken from the annual reports, he says. If he wants the annual reports let him put them in.

HIS LORDSHIP : That is just a memorandum for the purpose of reference; it is not part of the—

MR. ROBERTSON : I submit I do not have to put in annual reports.

HIS LORDSHIP : I quite agree, Mr. Robertson, you do not have to put in annual reports; but I do not think it is right for you to put in something that kind of glosses it over and treats it as something owing to these shareholders.

MR. TILLEY : There is a column, "Total Ordinary Dividends in Arrears."

MR. ROBERTSON : I have not any objection whatever to taking off the two last columns. They are only intended to illustrate a result, and of course do not appear in the books that way. I am willing to take them off.

HIS LORDSHIP : Can't they be ruled out in some way, or the statement re-made without them ?

10 MR. ROBERTSON : Yes.

HIS LORDSHIP : Have it go in without those columns even ruled out; have them eliminated completely. Those figures are mere memoranda which counsel might put upon his brief.

MR. TILLEY : I certainly object to those columns.

HIS LORDSHIP : Those are not taken from any books of the company ?

MR. ROBERTSON : No.

HIS LORDSHIP : Can that be done ? Can't the statement be re-made ?

MR. ROBERTSON : Oh, yes; it can be torn off or ruled out.

HIS LORDSHIP : Are they the last two columns ?

20 MR. ROBERTSON : Yes.

HIS LORDSHIP : Is there any objection to that, if those two columns are cut off, Mr. Tilley, if the witness verifies the other figures as being from the books of the company ?

MR. ROBERTSON : I think the last three columns might come off.

MR. TILLEY : Your Lordship sees what difficulty we create when people are putting in statements to which they give their own appropriate headings. Now, we have got a column here headed "Amount Available for Dividends," which includes all the surplus earnings of the company, although it is in brick and mortar and plant and machinery—

30 HIS LORDSHIP : That might all be so; they might borrow the money to pay it with. That is perhaps an unfortunate expression. It is surplus, I suppose, above what is necessary to pay the capital and debts of the company. I do not know what "Amount Available for Dividends" means. It is profits.

MR. TILLEY : This is merely taken from the annual reports, and all I understand the witness says is that he has checked this to see that it agrees with the annual reports. If that is so, let us have the annual reports.

40 HIS LORDSHIP : I do not like that heading. I do not misunderstand it, but somebody might. It gets in the record, and it looks as if it was admitted, and there was an amount available for dividends. As I understand it, there is no such thing as an amount being available for dividends until the directors declare it to be so.

MR. ROBERTSON : The objection there is to putting in the annual reports is this, my Lord, that they are long, there are a good many of them, and this case is of sufficient importance to justify one expecting that it might reach the stage sometime where the exhibits would need to be printed. Now, if the Steel Company had to print these books, their surplus would certainly be reduced somewhat.

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MR. TILLEY : What books ? These annual balance sheets ?

MR. ROBERTSON : There is more than the sheets in it. You were speaking about the reports.

MR. TILLEY : I don't care about what people said at meetings and so on.

MR. ROBERTSON : My friend is not taken by surprise by this statement. Mr. Holmested tells me that he has had it some little time, and was given it with the information that it was proposed to use it at the trial.

MR. TILLEY : Now I am objecting to it being used.

HIS LORDSHIP : Surely it is possible to get this statement put into such shape that it would be satisfactory to both sides, and I quite approve of something like this going in rather than putting in all the annual financial statements. 10

MR. ROBERTSON : If my friend wants any of the headings changed to something else that involves any admission, such as the heading "Amount Available for Dividends" changed to "Surplus," I am quite agreeable.

HIS LORDSHIP : Is that surplus in the sense of a reserve or profit and loss? You see, many companies have a way of transferring from the credit of profit and loss something to the reserve or surplus account, which is a sort of way of saying that it passes into the permanent capital of the company, although not strictly speaking of that character. 20

MR. ROBERTSON : This company, of course, has other reserves. For example, they have a very substantial reserve for depreciation, and one or two other reserves.

HIS LORDSHIP : A reserve for depreciation having once been so treated, I should think is hardly available for dividends.

MR. ROBERTSON : They have an insurance reserve, an employees' reserve, welfare and benefit reserve, and then the item of sundries is the sort of thing that might perhaps go in that category.

HIS LORDSHIP : Ordinarily, in the every-day working of a joint stock company, dividends are declared on the amount to the credit of profit and loss. 30 If the company sees fit to transfer something from the credit of that account to reserve, it is an indication that it does not intend to use that for the purpose of dividends. There is nothing to prevent the company, as far as I know—except perhaps such corporations as banks—from taking the amount out of reserve and putting it back into profit and loss.

MR. ROBERTSON : This item that is headed in the schedule as amount available for dividends appears in the company's financial statement as "Balance Profit and Loss."

HIS LORDSHIP : That is what I would assume.

MR. TILLEY : I think that if we are to have these extracts or summaries 40 of the annual statements put in, we should have what the shareholders got each year with regard to the way the company's business was carried on. Let us have them put in.

HIS LORDSHIP : Mr. Robertson does not want to prove what he is trying to prove in that way. I do not think I can prevent him proving it in some other way. I do not think it is a case of primary and secondary evidence at all, but I do think that you are quite right in objecting to these headings to some of the

columns. I do not think that kind of heading ever appears in any balance sheet such as you have there.

MR. ROBERTSON: I quite concede that this heading had better be changed.

HIS LORDSHIP: If that column that is called profits available for dividends is really the amount from year to year of the balance to the credit of profit and loss, why not head the column that way?

MR. ROBERTSON: I am quite willing.

HIS LORDSHIP: Failing that, the only thing I can see is for the witness to simply state these things, and I will take them down in my notebook. I
10 would rather not do that.

MR. ROBERTSON: I have changed that heading to read "Balance Profit and Loss."

HIS LORDSHIP: Now, in that shape is there any other objection, apart from Mr. Tilley's general objection that the balance sheets should go in rather than this memorandum?

MR. TILLEY: No.

Mr. McMaster points out to me that this statement is not correct yet. I don't know where the column "Amount Available for Dividends" comes from, except a computation my friends have made. The column that is
20 headed "Surplus Carried Forward," is, I understand, what appears in the annual statement as the profit and loss item. But the amount available for dividends—for instance, 1928, \$13,482,081—does not come from the annual statement at all, and I do not know what it is.

HIS LORDSHIP: Nobody swears to that as constituting something—

MR. ROBERTSON: Mr. Tilley says there is some figure here that is not right.

MR. TILLEY: Why not put in the annual statement? I do not see why the bundle cannot be put in, and then they are self-explanatory, and the items are explained in the addresses to shareholders. These were all sent to all the
30 shareholders, these printed reports with everything that is in them sent to all shareholders, and therefore it is a thing that is properly to be put in if the statement is put in; it is the explanation of the statement. It is a bagatelle in what we are dealing with here.

HIS LORDSHIP: Are all the annual statements here?

MR. TILLEY: Yes, they have a set of them.

HIS LORDSHIP: Why not put them in, then? We are wasting a lot of time over them.

MR. ROBERTSON: May I then substitute for the exhibit I was putting in, a similar exhibit—that is, identical exhibit—except that the year 1928 does
40 not appear on it.

HIS LORDSHIP: Now show it to Mr. Tilley and see what he says about it. A statement of this sort, unless it is accurate, ought not to go in.

MR. ROBERTSON: The one that is now handed me is one that was marked as an exhibit on some examination, I see.

MR. TILLEY: Are these figures all from the annual statement? I do think, if we are to have a summary of these statements put in, that we should not avoid the reports themselves merely because some person may have to

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print them sometime. It seems to me rather a small ground on which to put it. Now I have been given a new statement, and under the heading "Surplus Carried Forward" they have brought it down to 1927, they have got just the same headings, and they have got "Amount Available for Dividends 12,000,000." and "Surplus Carried Forward, 10,000,000." We have just backed it up one year.

HIS LORDSHIP : Is the set of annual reports from 1910 here ?

MR. ROBERTSON : I do not understand that anybody says that the figure for 1927 is not as it appears in the annual report as printed. Does anybody say that ?

MR. TILLEY : There is no difference between these two except the last year is left off one of them.

MR. ROBERTSON : Yes, but it is the last year that I understood you to say was incorrect.

MR. TILLEY : No, no, it was the column. I just wanted it explained. I don't know what it is. It is not a separate item in our books.

MR. ROBERTSON : I do not, of course, understand why this witness would say he had checked it and found it correct.

HIS LORDSHIP : The whole thing is getting into a mess. The desire to shorten the thing is really lengthening it, and it is unfortunate that somebody put these columns in with the headings upon them in—

MR. ROBERTSON : Well, these are the figures, if they are correct. Of course, if they are not correct I do not want them in. If they are correct they are all I want in from the report.

HIS LORDSHIP : If objected to, they cannot go in unless proved by this witness, and I think he must swear to every figure in them. He may do that comprehensively; he may say he has compared them all with the books of the company and that they are accurate.

MR. ROBERTSON : He has already made the comprehensive statement that he has checked it and finds that the figures are correct. I was not cross-examining him, of course. This is no surprise to anybody on the other side. They have had this statement with an explanation of what it was prepared for.

HIS LORDSHIP : It is unfortunate that what seems to be a neat point should be complicated by a difficulty of this sort.

MR. ROBERTSON : I do not think, my Lord, that the neat point is put with all its force until the facts are before the Court.

HIS LORDSHIP : That is true; but I think, to save time, I am going to insist upon the annual statements being put in, and I do not care who calls for them; I am going to ask for them myself. It so often happens that counsel prepare a statement and put their own gloss upon it, with some idea; I do not know what the idea is, but it is annoying. This statement is not going in as Exhibit 8.

MR. ROBERTSON : Well, I proposed, my Lord, after verifying the reports, to ask the witness again to verify the statement. I think the statement, with proper headings, will be of assistance to the Court.

HIS LORDSHIP : Put in the reports first.

MR. ROBERTSON : Q. I show you, Mr. Alexander, certain printed reports; are you familiar with them ?

A. Yes, sir.

Q. Do you recognize them ? A. Yes, sir.

MR. ROBERTSON : Does your Lordship desire that they should go in as one exhibit ?

HIS LORDSHIP : One exhibit, yes.

MR. ROBERTSON : I show you the reports for 1910, 1911, 1912, 1913, 1914, 1915, 1916, 1917, 1918, 1919, 1920, 1921, 1922, 1923, 1924, 1925, 1926, 1927 and 1928 ? A. Yes.

Q. Those are all the annual reports that this company has issued ?

A. Yes, sir.

Q. And these are the reports that were approved by the company's board of directors ? A. Yes, sir.

Q. They were approved by the company's board of directors and presented to the shareholders ? A. Yes, sir.

Q. At their annual meetings ? A. Yes, sir.

MR. TILLEY : And approved by the shareholders.

MR. ROBERTSON : Well, I do not know that the shareholders approved. 20 You can ask him.

MR. TILLEY : All right.

EXHIBIT 8 : Annual reports from 1910 to 1928 inclusive.

MR. ROBERTSON : Q. I show you, Mr. Alexander, a statement, the original statement from which the typewritten document we were looking at a few moments ago, containing a summary of annual figures taken from the reports, was made. I have stricken out in this sheet that I am now showing you, entirely, the column that in the other paper was headed "Amount Available for Dividends"—that is, I have not only struck out the heading, but the figures as well—and also the columns at the right hand side that we had torn 30 off the other exhibit. What do you say, then, Mr. Alexander, as to whether the figures not stricken out on that report correctly show what they purport to show as appearing in the annual reports ?

HIS LORDSHIP : I do not see any objection to that. The accuracy of his statement that that is correct can be checked from the reports themselves ?

WITNESS : Yes, sir.

MR. ROBERTSON : Q. It does ? A. Yes, sir.

HIS LORDSHIP : Does that include 1928 ?

MR. ROBERTSON : No, my Lord.

EXHIBIT 9 : Comparative statement of earnings and distributions.

MR. ROBERTSON : Then I was proposing to put in some letters. Perhaps 40 I may put in these copies as one exhibit, my Lord.

MR. TILLEY : I fail to see how the correspondence that was carried on just before the action was commenced, is material to the issue we have to decide.

HIS LORDSHIP : I am puzzled to know how it can have anything to do with it.

MR. TILLEY : Of course, nothing that could be written at that date is going to change the situation.

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HIS LORDSHIP : As an admission on the part of the defendants ?

MR. ROBERTSON : I do not know how far my friend intends to press the defence he has set upon the record, that is, that the matter has been somewhat precluded by the acts of the parties. I would have thought that the matter really must depend upon the charter. I would have thought that it did depend upon the charter, and that what the people did afterwards among themselves would not have anything to do with it.

HIS LORDSHIP : Well, what is the defence ? Are you putting this in in order to meet some defence that has been raised ?

MR. ROBERTSON : I want to show exactly how the matter did arise, and it was convenient to do it in this way. Your Lordship will see paragraph 5 of the defence. 10

HIS LORDSHIP : I see that paragraph 4 sets forth the form of the stock certificates that were issued, upon which appears a statement as to the rights of the respective shareholders. Then paragraph 5 reads :

“The plaintiffs and all persons who, since the organization of the company have held either preference or ordinary shares in the company’s capital stock, have accepted said stock certificates as correctly stating the rights of shareholders with regard to dividends.”

I should say that is a pretty hard defence to make out as a matter of law. 20

MR. ROBERTSON : Well, it was rather to put the plaintiffs on comfortable ground as to their having always, whenever the question arose, and as soon as it arose, taken the position that the rights that they had were what they are now contending they were. It is rather in that view that I am now suggesting that your Lordship should see this correspondence. The correspondence just does that.

HIS LORDSHIP : This is correspondence between the parties having reference to the claims that were set up in this action, I suppose.

MR. ROBERTSON : I beg your pardon ?

HIS LORDSHIP : I say this is correspondence between the parties or some of them having reference to the claims that are set up in this action. 30

MR. ROBERTSON : Yes, my Lord.

HIS LORDSHIP : It may not have very much bearing upon their rights, but I suppose in a sense it is relevant. If you think it should go in, I do not think I can object. It is like letters often put in demanding payment, and so on; they do not mean anything.

MR. ROBERTSON : Well, of course, the matter arose in a different way from that—

HIS LORDSHIP : Oh, I understand. I am just putting a parallel case.

MR. ROBERTSON : October 15, 1928, from A. B. MacKay to Ross H. McMaster, the President of the Company : 40

“I have recently returned from England and notice by the Press that a split in the shares, or increase in dividends of your Company is freely discussed.”

“As a shareholder of Common Stock, I would like to be assured that no further disbursements over 7% be made to the Preferred shareholders until

“the Common shareholders shall have received a total payment at the rate of 7% per annum since the Incorporation of the Company.

“I am shortly returning to England and would appreciate an early reply.”

Then Mr. McMaster replied to Mr. MacKay by letter of October 16, 1928, suggesting that he see him :

“When you are passing through Montreal on your return to England, I will be very glad to have conversation with you.

“I do not understand the situation to which you refer but I shall be happy to discuss this, or any other matters of mutual interest with you.”

10 Then Mr. MacKay writes on October 20, saying what day he returns to England.

MR. TILLEY : Mr. Robertson, I notice that those are taken from carbon copies, and the name of the President is not on them. I think we had better write the name of the President on them, so that if they come to be printed—

HIS LORDSHIP : They have the signature at the bottom ?

MR. TILLEY : No signatures on the bottom.

HIS LORDSHIP : Carbon copies are put in, and they do not mean anything; you have to guess at who wrote them.

20 MR. ROBERTSON : The 24th of October, 1928, from Mr. McMaster to Mr. MacKay, just this at the end of it ;

“I was anxious to tell you that the changes we are proposing to make in the capital structure of the Company will be done in such a way as to preserve intact all of the rights of the respective shares.”

HIS LORDSHIP : I do not see how it binds anyone, for Mr. McMaster to say what the company would do, or as to the rights of the parties — it would not affect anybody ; it would not bind the company.

MR. ROBERTSON : I do not suppose my friend proposes to contend that anything that took place in connection with the supplementary letters patent affected this case.

30 HIS LORDSHIP : That correspondence is going in, is it ?

MR. ROBERTSON : Yes. I was going to put this with it, my Lord, a notice from the Company to its shareholders of October 22, 1928, covering generally what was accomplished by by-law No. 19, and setting out a copy of the by-law. With that is a letter by the President, Mr. McMaster, to the shareholders, or “Copy of Notice Issued to Press”, it is headed, and in it he says :

“The next quarterly dividend when declared payable February 1st, 1929, on the new shares, both Preference and Ordinary will be Fifty cents per share.”

40 That is the first indication of the intention to pay a larger dividend.

HIS LORDSHIP : What that meant was, a notification to the shareholders that the preferred shareholders were going to get one per cent. more, and you say that they must not get it until you are paid——

MR. ROBERTSON : Yes, it was a distinct notice that——

HIS LORDSHIP : I understand. That is the first notification that they were going to increase the preferred share dividend by one per cent. Of course,

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it is obvious that they could not do that for that year or that quarter without giving you the equivalent, and that is admitted by the defendants.

MR. ROBERTSON : That is, we were both going to get fifty cents per share at that time.

HIS LORDSHIP : The defendants, I suppose, say, "we can give the preferred shareholders seven per cent. without reference to the common shareholders, but the moment we begin to increase it we must bring the common shareholders up to the same level. We can give the preferred shareholders seven without giving the common any, but we cannot give the preferred eight without giving the common eight." 10

MR. ROBERTSON : Well, that is what they were proposing to do at this time. December 10, 1928, from Mr. Holmsted to Mr. McMaster—

MR. TILLEY : There is a letter of November 10, which Mr. Ramsay sent to us, being his letter to Mr. MacKay.

MR. ROBERTSON : My friend hands me a copy of letter from the plaintiff Thomas Ramsay to Mr. MacKay, of November 10.

MR. TILLEY : This letter was sent to us, the duplicate of the letter was sent to us.

MR. ROBERTSON : "Replying to your favor and recent conversations, "Mr. Peene and myself called to see Mr. H. Champ, and his explanation to "us regarding the split proposed, was made very clear to us, that it could not "be arranged in any other way. A change in capital other than what is now "existing, would make it as a Bonus which would then be taxable. Of course "there would have been a split of 5 for 1 at \$20.00 per share and have not "changed the Capital, but the usual course is \$25.00 shares. 20

"According to their legal advice the back dividends on the ordinary "shares, so claimed by you, cannot be collected, and if fought for would only "create a big legal fight, costly to both sides, and in my opinion very detri- "mental to our Company, in which I am so heavily interested.

"You know very well, that in the past our Company has been very ably 30 "managed and it is in my opinion that it will continue to be, and a fight "over back dividends would be harmful to the Company.

"Looking and weighing the facts above noted, both Mr. Peene and myself "have decided that for the best of all concerned, not to take any part in this "matter.

"In my opinion I think you would be very foolish not to coincide with "the recapitalization as outlined, and that the shareholders be unanimous in "carrying same at the meeting."

Then the letter of December 10th :

"On behalf of my clients, Mr. A. B. MacKay of Hamilton, et al., I beg 40 "to notify you that if the Directors of your Company attempt to declare "dividends in excess of 7% per annum on the \$25.00 par value Preference "Stock of your Company until after the holders of the ordinary stock of your "Company have received cumulative dividends equivalent to the dividends "previously paid on preference stock, it will be claimed by my clients that "such proposed distribution is illegal and my clients will, by action at law,

“seek to restrain such a proposed distribution of profits and seek a declaration as to their rights.

“I would appreciate a very early reply to this letter.”

Then Mr. McMaster replied on December 11th :

“Acknowledging your letter seventh instant having regard numerous legal questions contained therein consider appropriate refer you to our legal adviser R. C. McMichael of Brown Montgomery and McMichael Montreal.”

Letter from Mr. McMichael to Mr. Holmsted, December 19th :

10 “I have to thank you for your letters of the 14th instant.

“The Directors have passed resolutions at the meeting held today declaring additional dividends on both classes of the new shares. The dividends are at the rate of 50c. per share for the quarter ending December 31st, 1928, and also an additional dividend on each class of shares of 18¾c. per share. The object was to give shareholders dividends at the rate of \$2.00 on the new shares for the year 1928. The dividends are payable February 1st, 1929, to shareholders of record at the close of business on January 19th, 1929.”

Then they refer to their solicitors. That is the whole of that exhibit.

20 HIS LORDSHIP : Q. As a matter of bookkeeping, how would that dividend be charged up ? Is that taken into account in the 1928 balance sheet ?

A. Yes, it is set out.

Q. That is, a dividend declared and owing to the shareholders but not yet paid ? A. Yes.

Q. The object is not only to give the fifty cents, at the rate of eight per cent. on the \$25.00 shares, but to make up, for the whole of 1928, for the three preceding quarters, the equivalent amount ; is that it ?

A. Yes, that is right.

EXHIBIT 10 : Correspondence, etc.

30 MR. ROBERTSON : Then the resolution, November 14th, 1928, that is set out in the statement of claim, paragraph 8. I was going to ask my friend if we could not agree that that was a resolution that both sides collaborated upon——

MR. TILLEY : Well, it was passed, anyway.

MR. ROBERTSON : Then they agreed that that language would cover the point that they were discussing in their correspondence.

MR. TILLEY : That is the resolution that was passed. I do not know what more can be said about it than that.

MR. ROBERTSON : Well, I think just what I said more about it.

40 MR. TILLEY : Well, it was agreed to and passed; put it that way.

MR. ROBERTSON : All right.

Q. There was of course, in fact, Mr. Alexander, a resolution passed of the 19th of December, 1928, declaring dividends as set forth in the letter I read a few moments ago ? A. Yes, sir.

Q. From Mr. McMichael to Mr. Holmsted ? A. Yes, sir.

Q. That was done on the 19th of December ? A. Yes, sir.

HIS LORDSHIP : That was the concrete thing which gives rise to this

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action. That had better go in. Is that set forth in the statement of claim ?

MR. ROBERTSON : I haven't a copy of it.

HIS LORDSHIP : Well, that is the cause of all the trouble, technically.

It is the passing of that resolution that gives you a right to action if you have any.

MR. ROBERTSON : I have of course established the facts. I have not the formal resolution; I do not happen to have a copy of it.

HIS LORDSHIP : Has anybody a copy of it ?

MR. ROBERTSON : Perhaps the witness could read it from the minute book into the notes. 10

MR. TILLEY : We can get a copy.

HIS LORDSHIP : Put a copy in, instead of having it read into the evidence. I would like to have it that way, because I do not see the transcript, and I may want to examine it. That will be Exhibit 11, at all events.

MR. ROBERTSON : Q. This is a copy of an extract from your minutes ?

A. Yes, sir.

Q. It correctly sets forth the resolution declaring the dividend of December, 1928 ? A. Yes, sir.

EXHIBIT 11 : Extract from minutes giving resolution declaring dividend of December, 1928. 20

MR. ROBERTSON : Then I have here a list of the holdings of the directors, that my friend has furnished Mr. Holmsted.

MR. TILLEY : I submit the holdings of directors are not at all material.

MR. ROBERTSON : Oh, I think so; it is the directors who have taken this action.

HIS LORDSHIP : There is no suggestion of bad faith here, is there ?

MR. ROBERTSON : No, I would think not, but it does serve to point this, that I will contend to your Lordship that on the construction of this charter contended for by the defendants the directors would have the power to materially alter not only the amount of the dividends but the proportions in which the two classes of shareholders should share in profits; that it is important to show that the board that did assume to act in December last was a board which was more interested in preferred stock than in common stock—I mean personally; that is, a man does not have to be a fraudulent person to have— 30

HIS LORDSHIP : Where do you get the legal foundation for any such proposition ? If the majority of stockholders of a company see fit to elect a board of directors who will say that they prefer to put all the profits back into the working capital of the company and deprive a minority of any dividends, I have always understood there was no law to prevent it. 40

MR. ROBERTSON : We are not concerned here, of course, with the question of dividends or no dividends; we are concerned here with the question of in what proportion shall a certain part of the profits be divided between these two classes. We say the directors have chosen at this particular time to divide certain of the profits.

HIS LORDSHIP : That is the way in which you seek to put your statement, but that is not as I understand it. Subject to what you may say about that,

my reading of this charter,—there is just the one reading I have made of it, since I have come into court here—gives me this view of it, that just as ordinary shareholders are in the hands of the directors so far as dividends are concerned, all that this charter was intended to do was to protect the ordinary shareholders against the excessive payment to the preferred shareholders; and if the directors ever saw fit to declare that the preferred shareholders should get more than seven per cent., then the common shareholders in that particular year must get an equivalent amount, and the seven per cent. as well. It was a safeguard against distribution, intended, I think, really to protect the preferred shareholders against an excessive distribution as amongst the common shareholders. That is what it looks like to me.

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MR. ROBERTSON : I do not at all desire to argue the case at the present time. I am going to submit to your Lordship that that is not the view that the Court should take of this charter nor of the rights of these shareholders, and I am of course presenting my case having it in mind that I am supporting the contention I propose to make. Now, what I submit to your Lordship is this : we say that if the charter is to be read as your Lordship has just now suggested it might be read, it would mean this, that a board of directors might for a long time, although there was plenty of money available, keep the common shareholder out of a dividend, he would have none at all; he could not complain unless he could prove bad faith, he could not complain that they were building up reserves. But when they come to deal with that fund, he at once becomes interested, and, giving the charter the reading your Lordship gives it, it would mean this, that the directors, having chosen to withhold any dividend to common shareholders for a more or less period of time, could then at their own discretion start in to pay. Opinions might differ as to what was wise to do, but the particular board of the day would start in to divide this accumulated surplus, and according to their own particular ideas of how much should be divided at the particular time, of when that division should commence, they would substantially vary the amounts of that dividend payable among the two classes of shareholders. Now, I submit that the Legislature never intended any such thing. What right should a board of directors have to say, "We will choose to keep the common shareholder without his dividend for a long period of years?" He is deprived absolutely of any interest then—

HIS LORDSHIP : It may be all morally wrong, it may be reprehensible—you are putting a rather extreme case, but it may be that it is within the power of the directors to do that.

MR. ROBERTSON : My argument will be this to your Lordship, that the courts have decided before now that in such circumstances the courts, if at all possible, should not give that reading to the articles, that it should not be left—

HIS LORDSHIP : Are you suggesting that there is law for the principle that the Court may interfere in the conduct and the management of the company because of the respective holdings of the directors as between common and preferred shareholders? I have never heard of such a thing.

MR. ROBERTSON : That is not what I am putting at all.

MR. TILLEY : That is not my friend's case. My friend is not asking for

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any such relief. What my friend is asking for is interpretation of the letters patent and the declaration as to the rights of the parties, the two classes of shareholders. When my friend comes to his argument as to that, whatever is available to him as to what might be the situation with regard to the holdings of directors, he has that fully; but how is the matter to be dealt with merely because of their holdings on a particular day?

HIS LORDSHIP : Is there any allegation here in the statement of claim as to the respective holdings of the directors ?

MR. ROBERTSON : I do not think so.

MR. TILLEY : And there is no relief asked for as to it. Whatever my friend can argue as to the possibility, he has that argument, but we are not concerned at all with their actual holdings at a certain date, and, anyway, it is only the holdings on the books. I suppose if it is material we would have to go into all the other holdings that they have which are not on the books. 10

HIS LORDSHIP : I do not suppose we could go into that; but it does seem to me that an issue based upon this fact is not raised upon these pleadings, and I do not see how it is pertinent to the point as it is raised.

MR. ROBERTSON : It is relevant in this way, I submit : the Steel Company appears as a defendant and joins with the defence of the other defendants, takes the same position. I think it is important for me to show here that the Steel Company in so defending in this action is being directed by a board of directors whose interests are that way. 20

HIS LORDSHIP : I do not think that is of any consequence. The company is made a party to the action, because it is affected by the Court's judgment upon the distribution of its own assets, but it is really only a stake-holder as a corporation.

MR. ROBERTSON : If the company had taken that position I could not have said what I did. The company did not take the position of stake-holder; the company has taken sides, and I desire to show that it took sides under the direction of a board that was interested. It would be a very different matter here if the company had come in as your Lordship suggests it might have, and had said, "We are indifferent," but it has not done that. 30

HIS LORDSHIP : I cannot see that it is relevant.

MR. ROBERTSON : Well, I will tender the evidence.

HIS LORDSHIP : I do not think it is pertinent to the issues raised here.

MR. ROBERTSON : The evidence I am tendering, my Lord, is evidence to show the shareholdings of the board of directors of common and preferred stock.

MR. TILLEY : On the books.

MR. ROBERTSON : Yes.

HIS LORDSHIP : Well, I do not think it is relevant to the issues raised by the pleadings. No case has been made out in the statement of claim based upon any such fact as this. 40

MR. ROBERTSON : I think that is all from this witness.

CROSS-EXAMINED by Mr. Tilley :

Q. Mr. Alexander, you were asked about the issue of the stock, and you said that it was all fully paid. I understand that it was issued at a time when certain companies were brought together to form this new company ?

A. Yes, sir.

Q. And the capital stock of the defendant company was issued in connection with the taking over of these subsidiary companies ? A. Yes, sir.

Q. And, if I am right, I think the securities issued consisted not only of stock, but of bonds of the new company too ? A. Yes, sir.

10 Q. So that the securities included bonds, preferred stock and common stock ? A. Yes, sir.

Q. These plaintiffs were shareholders in what company that was taken over ?

MR. ROBERTSON : Is that a matter of any moment here ?

HIS LORDSHIP : I do not see how that is relevant. They are suing on behalf of themselves and all other shareholders.

MR. TILLEY : I just want to identify by a concrete case. I can take any other person's case.

20 Q. Let me put it this way, Mr. Alexander; we will evade the particular question as to these two shareholders. All the stock that was so issued was issued and exchanged with the shareholders of these subsidiary companies that were taken over ? A. Yes, sir.

Q. And that is how these two plaintiffs were, as many others, shareholders in these other companies ? A. Yes, sir.

Q. And then did they all get some preferred and some common stock ?

A. Yes, sir.

Q. In connection with taking over the assets of the different companies ?

A. Yes, sir.

Q. And were they given certificates showing their share holdings ?

30 A. Yes, sir.

Q. Now are those (produced) the forms of certificates that were then issued ? A. Yes, sir.

Q. These are the forms of certificates; one form for preferred stock and the other form for common stock ? A. Yes, sir.

Q. And were those forms used for all stock that was issued prior to the alteration in the capital structure at the end of 1928 and beginning of 1929 ?

A. Yes, sir.

Q. There were no shares held except under certificates similar to either the preferred or common that you have now produced ? A. Yes, sir.

40 MR. TILLEY : Those will be the next exhibit.

EXHIBIT 12 : Form of old certificates.

MR. TILLEY : Now, I am not stopping to refer to the form of certificate for the moment, because we can argue that later, but that was the situation.

HIS LORDSHIP : Q. Let me ask just one question : As shares were transferred, as I presume they were from time to time, old certificates given up and cancelled and new ones issued, did the new ones take the same form ? That is the form of certificate that has been used for all——

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A. Yes.

MR. TILLEY : Q. For the original holders and for all transferees of the original holders ? A. Yes, sir.

Q. Up to the alteration in the capital structure by dividing up the shares, and then were certificates issued in a somewhat modified form—I do not know that anything turns on those—I have samples of them here; probably we had better put them in. These are the new certificates, are they not ?

A. Yes, sir.

Q. For preferred and common ? A. Preferred and common, yes, sir.

MR. ROBERTSON : My friend is putting in the new certificates now. 10

MR. TILLEY : I am not relying on them. I do not care whether they are in or out.

MR. ROBERTSON : Well, why put them in ?

MR. TILLEY : Only to show that the same rights have been preserved. I am not going to argue that by anything that has happened in this reorganization of the shares the rights have been altered.

MR. ROBERTSON : I would think we hardly need to put them in, do we ?

HIS LORDSHIP : Do you think they are relevant, Mr. Tilley ?

MR. TILLEY : I was putting them in merely to show—

HIS LORDSHIP : Of course, you have raised in your statement of defence 20 the form of these certificates. If they inaccurately set forth what the rights of the parties are, I do not see how anybody is bound by them.

MR. TILLEY : Well, possibly not; but all I wanted to show was that the original certificates was in that form, and I wanted to show how the matter stands when the action is brought.

MR. ROBERTSON : I do not object to the first, but as to the second, as they are since the action and nobody relies upon them and nobody sets up anything on them, we had better leave them out.

MR. TILLEY : No, no, they are not since the action.

HIS LORDSHIP : Unless the form of the certificate operates by way of 30 estoppel, it is of no consequence. You could have a company that might be going on for years and no certificates ever issued. It is the share register that is the important thing.

MR. ROBERTSON : Of course, the certificates we are now debating are not certificates that he relies on for anything of that kind; they are not the certificates set up in the statement of defence. He has put them in already and I have not objected. But the later ones are not pleaded, and I cannot see that they have anything to do with the case.

HIS LORDSHIP : Oh, what difference will it make ? I will assume that they have gone on printing the same stuff on the new certificates as there were 40 on the old ones, with the exception of the value of the shares, and that the common stock is of no par value.

MR. ROBERTSON : Well, of course, they do not read that way.

MR. TILLEY : I think we had better have the actual reading in.

MR. ROBERTSON : I don't care two pins, except so far as they load up the record.

MR. TILLEY : Then a little loading won't hurt.

MR. ROBERTSON : Well, we have loaded it substantially already at your suggestion. They are utterly irrelevant, I think.

HIS LORDSHIP : I do not think they are relevant at all, but in cross-examination very often things are allowed in that—oh, let them in.

MR. ROBERTSON : Your Lordship will note my objection, of course.

HIS LORDSHIP : Oh, yes.

EXHIBIT 13 : Forms of new certificates.

MR. TILLEY : Q. Mr. Alexander, down to this date all certificates representing either preferred or common shares have taken the form of either
10 the old or the new certificates that we have now referred to ? A. Yes, sir.

Q. And then from time to time as transfers were made, the old certificates were handed in and surrendered and new certificates issued ?

A. Yes, sir.

Q. And I think you said that all the shareholders would receive both preference and common stock, on the original launching of the company ?

A. Yes, I think so.

Q. Then you were asked about the dividends, and I understand that in the first year of the company's existence, 1910, there was a period only of six months ? A. Yes, sir.

20 Q. And that at that time you declared two quarterly dividends at the rate of seven per cent. per annum ? A. Yes, sir.

Q. And the second quarterly dividend would be declared in December but payable on in February ? A. Yes, sir.

Q. And was it shown as a liability at the end of the year, the amount of the dividend ? A. Yes, sir.

Q. And then was that practice continued down to 1928 ? A. Yes, sir.

Q. The final declaration in December was one payable in the following year and carried through as a liability ? A. Yes, sir.

30 Q. Have the dividends on both preferred and common always been declared and paid quarterly whenever they were declared and paid ?

A. Yes, sir.

Q. You have never had any half-yearly dividends or yearly dividends ?

A. No, sir.

Q. Always quarterly ? A. Yes, sir.

Q. And that applies to both preferred stock and common stock ?

A. Yes, sir.

HIS LORDSHIP : Just what is the wording of the resolution declaring those dividends ? Does that say out of the profits for a certain period, or how ? How does that last one read that was put in ? Sometimes dividends
40 are declared in anticipation of profits; that is, there having been no balance sheet—for instance, bank dividends every quarter, the first dividend in the year, not based upon—

MR. ROBERTSON : This reads this way :

“That a dividend of fifty cents (50c.) per share upon the new preference shares of the Company of the par value of \$25.00 each be and the same is hereby declared for the quarter ending December 31st, 1928, and that an additional and further dividend of eighteen and three-

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“quarter cents ($18\frac{3}{4}$ c.) per share upon the said preference shares be and
“the same is hereby declared, which dividends shall be payable February
“1st, 1929, to shareholders of record at the close of business on January
“19th, 1929, and that the proper officers of the Company be and they
“are hereby authorized and instructed to give due notice of such dividends
“and to pay the same when due.”

HIS LORDSHIP : Every quarter; I do not know that that means out of the profits. I suppose it might mean out of the profits earned during the year. Of course, that sort of thing, while it does not affect the company, is very important when it comes to the question of apportionment and so on, which often arises on the death of shareholders, what proportion of profits have been earned up to the time of his death, and so on. What the directors have done has some bearing on the determination of that question. 10

MR. TILLEY : Q. Mr. Alexander, on going over the minutes of the company I notice that some declarations of dividends say that the dividend is to be payable out of the earnings of the year; do you remember that ?

A. I do not remember.

HIS LORDSHIP : It seems to me that something may turn upon that, in the interpretation of the power of the directors under this clause of the charter.

MR. ROBERTSON : Whether much turns upon it when they were not exceeding the seven per cent. may perhaps— 20

HIS LORDSHIP : Of course, directors presumably declare dividends out of profits; they have no power to do it otherwise.

MR. ROBERTSON : But there is nothing to prevent them declaring them out of reserves.

HIS LORDSHIP : But dividends are sometimes declared out of anticipated profits, and the question of declaring it out of reserves has in the past had some bearing on the question of income tax. Sometimes the particular chest from which the directors see fit to draw the money to pay the dividends affects the rights of other people. 30

MR. ROBERTSON : Your Lordship will remember that the resolution that I put in in 1921 is a case where they did resort to the reserves. That is, the dividend on common stock then was not entirely paid out of the current earnings.

HIS LORDSHIP : I suppose, so far as this action is concerned, it only involves that last declaration; it does not matter what they did in previous years. Perhaps we are worrying ourselves unnecessarily about the point. It is only the last declaration, the one of December last, that really is involved here, because there has been no infringement of the plaintiffs' rights, if they have been infringed at all, by any earlier dividend; so that the parties are only concerned and I am only concerned with the wording of that last resolution. 40

MR. TILLEY : That has been put in.

HIS LORDSHIP : That has been put in; so perhaps the point I have raised is of no consequence except as it may arise from that resolution. It does not say anything about the particular period from which the profits are derived which are made the basis of the dividend, but I should assume that

it meant the profits of 1928, because it refers to that period. The shareholders of record on the 19th of January—is that what it says?

MR. TILLEY : Of record on the 19th of January, 1929.

MR. ROBERTSON : I would not think one could tell what they were coming from.

MR. TILLEY : Q. I notice this, Mr. Alexander, in this minute book, that there is a difference in the wording of the ordinary dividend and the preferred. The preferred says a dividend be declared to shareholders of record on a certain date, and the common dividend is the same, but there is added there “such dividend is declared out of the earned profits of the current year.” That is in the year what? A. 1918.

HIS LORDSHIP : Is that of any consequence, what they did in the past? I do not see how what they chose to do then, or their resolutions before, can affect the wording of this one.

MR. TILLEY : I do not think so.

Q. Now, Mr. Alexander, while there is no general by-law covering or controlling the declaration of dividends, as you told my friend, the directors each quarter passed the dividend resolution? A. Yes, sir.

Q. Whenever a dividend is declared? A. Yes, sir.

Q. And made it payable on a date fixed by the resolution.

MR. ROBERTSON : An equal part of the seven per cent. each quarter.

MR. TILLEY : Q. And when seven per cent. was being paid in the year, it would be one-fourth of the seven per cent. paid each quarter? A. Yes.

Q. And then there were two years when there were exceptional conditions; do you happen to have the resolutions on these occasions? A. Do you mean for the preferred?

Q. Yes? A. I believe they were 1914 and 1916. Is this where the deferred dividends—

Q. Yes, the deferred dividends.

MR. ROBERTSON : 1914 and 1916 were the two years when the preferred varied.

MR. TILLEY : Well, I will look it up and ask him later; we won't stop now.

WITNESS : It was in 1916; I can find it for you in a moment.

MR. TILLEY : Q. Well, it will only take a moment. You can hunt it up, and then we will put it in afterwards. Now, Mr. Alexander, the balance sheets and annual reports which have been filed as Exhibit No. 8 for the whole period, are these reports as they were mailed to shareholders? A. Yes, sir.

Q. Did every shareholder get a copy? A. Yes, sir.

Q. Including the explanation made by the President or the Board of Directors of the balance sheets? A. Yes, sir.

Q. Reporting on the company's progress? A. Yes, sir.

Q. That was mailed to every shareholder? A. Yes, sir.

Q. Preferred and common? A. Yes, sir.

Q. Were these reports as presented to shareholders approved by directors? A. Yes, sir.

Q. On all occasions? A. Yes, sir.

Q. And then when they were presented to shareholders were they

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approved by shareholders? A. Yes, sir.

Q. On all occasions—at the meeting of shareholders?

A. At the meeting of shareholders, yes.

Q. Without any dissent, I understand? A. Yes, sir.

Q. That is all, thank you.

HIS LORDSHIP: Any re-examination?

MR. ROBERTSON: No, my Lord.

HIS LORDSHIP: Q. Mr. Alexander, I understood you to tell Mr. Tilley that when the company was formed in 1910 all the stock that was then issued was issued to shareholders, preferred and common together? 10

A. It was given in exchange for other shares.

Q. I understand that, yes. I suppose that since then there have been a great many transfers of both preferred and common stock? A. Yes.

Q. And that the transfer of the common has not always coincided with the transfer of the preferred? A. No, sir.

Q. I mean, the proportionate holdings of the original shareholders have been considerably altered? A. Yes, sir.

Q. And I suppose there are now many common shareholders who hold no preferred stock? A. Yes, sir.

Q. And there are many preferred shareholders who hold no common 20 stock? A. Yes, sir.

Q. That is all.

MR. TILLEY: Might I ask just one question?

HIS LORDSHIP: Yes.

MR. TILLEY: Q. Mr. Alexander, the shares, both preferred and common, are listed on the Exchange? A. Yes, sir.

Q. Both on Toronto and Montreal Stock Exchanges? A. Yes, sir.

Q. And have been all throughout the company's life? A. Yes, sir.

Q. And they are actively dealt in? A. Yes, sir.

Q. The shares are not identified by the certificates at all; that is to 30 say, it is a certificate for so many shares? A. For so many shares, yes.

Q. The shares themselves are not identified by number? A. No.

Q. So that you keep track of the individual shares? A. No sir.

Q. That is all, thank you.

(Witness retires.)

HIS LORDSHIP: Is that all your case?

MR. ROBERTSON: I was intending to call each of the plaintiffs, to show that they were substantial stockholders—nothing more.

HIS LORDSHIP: If a man had one share, he would have as much right as if he held a thousand. 40

MR. ROBERTSON: Well, I do not want to appear here as a person who is trafficking in a lawsuit.

(Adjourned at 1.00 p.m. until 2.15 p.m.)

(On resuming at 2.15 p.m.):

MR. TILLEY: Mr. Alexander is not here, but Mr. Alexander pointed out to me the two resolutions with regard to dividends, the first one in 1914,

the second one in 1916. I have not copies of them. Probably I might just read it into the record. I have shown it to my friend. The 1914 resolution, October 6th, 1914, is the date of the meeting of directors :

10 “After a very thorough discussion as to payment of dividend, in view
 “of the financial statement submitted and the general condition of
 “business and no immediate prospect for early improvement, it was
 “resolved that the directors having considered the financial condition
 “of the company and the outlook of business for balance of the year,
 “considered it inadvisable to pay the preferred dividend on the stock
 “due on November 1st, and management be authorized to send a circular
 “to shareholders to that effect.”

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Then fastened to that page is a printed circular of October 7th, 1914; I assume it is the circular referred to. It reads :

20 “To the preferred shareholders of the Steel Company of Canada, Limited.
 “In view of the conditions created by the war, the general financial
 “stringency and the consequent serious falling off in the business, the
 “directors of the Steel Company of Canada, Limited, at their meeting
 “yesterday decided to defer the payment of the dividend on the preferred
 “stock which is due on November 1st. The dividends on the preferred
 “stock of this Company are cumulative and just as soon as the business
 “of the country improves and the earnings of the company warrant it
 “the deferred dividend will be paid.

“Hamilton, Oct. 7th, 1914.

C. F. WILCOX, *President.*”

Then in 1916, at a meeting of directors held on March 24th, 1916, there appears the following minute, under the heading of “Preferred Dividend No. 19” :

30 “Moved by Mr. Hobson, seconded by Mr. Birge :
 “That a dividend of one and three-quarters per cent. be declared
 “upon the preferred shares of the company for quarter ending March
 “31st, 1916, together with three and one-half per cent. being balance in
 “full of the deferred dividends, all of the above to be paid on the 1st of
 “May, 1916, to shareholders of record at the close of business, April 14th,
 “1916. Carried.”

That seems to be the complete action taken.

MR. ROBERTSON : My friend does not need to prove that formally. I admit that it goes in as if the witness were in the box verifying it.

MR. TILLEY : I just wanted to ask Mr. Alexander a question, but he will be here, and if he does not come I won't bother.

40 THOMAS RAMSAY, Sworn. Examined by Mr. Robertson :
 Q. Mr. Ramsay, you are one of the plaintiffs ? A. Yes.
 Q. Are you a stockholder of long standing in this company ? A. Yes.
 Q. When did you first become a shareholder ? A. From the beginning.
 Q. In 1910 ? A. Yes, 1910, and I was in it prior to that.
 Q. Have you increased your holdings from time to time ? A. Yes.
 Q. At the time of the commencement of this action how did you stand ?
 A. In shares ?

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Q. Yes? A. 73 preferred.

Q. I beg your pardon? A. 73, I think it was, preferred shares.

Q. How many common? I say at the beginning of this action?

A. Oh, at the beginning of the action?

Q. Yes? A. Oh, I had 954 of the preferred and 3,078 of the common.

Then there is——

HIS LORDSHIP : Q. 954 preferred and—— A. 3,078 of the ordinary shares.

Q. That is, of their present value?

MR. ROBERTSON : No, that is not so, my Lord; he is not giving it that 10 way.

Q. Those are the shares before conversion, those are \$100 shares?

A. Those are \$100 shares.

MR. TILLEY : Q. Before they were split up?

A. Yes, before they were split up. Then there is 600 that I have in W. H. McGill's.

MR. ROBERTSON : Q. That is, you have got some shares in the name of your broker? A. Yes.

Q. Some 600 further common shares? A. Some 600 further common shares. 20

Q. I see you have been always acquiring new shares and not disposing of any? A. I have not sold any.

CROSS-EXAMINED by Mr. Tilley :

Q. Mr. Ramsay, Mr. Alexander told us this morning, and I assume it applies to you, and I just want to use your own case as an illustration, that you got both preferred and common shares originally? A. Yes.

Q. Do you happen to remember how many, roughly? A. In 1910?

Q. Yes? A. I think it was 73 preferred.

Q. And? A. No common.

Q. How was it you did not get common? 30

A. Well, I can't tell you. We had——

Q. Some arrangement amongst yourselves and the shareholders?

A. Oh, no. We had some trouble—we went through the ledger to take this up, and then we had to go to the cash-book in order to get these quantities of shares. I may have had some——

Q. Well, I am told you all had some common?

A. Well, yes, I think there was.

Q. But you have no record of it?

A. I have no record of the common at that date.

Q. But you are not suggesting that you did not get common at that 40 time? A. No.

Q. You were a shareholder in one of the purchased companies? A. Yes.

Q. Or the merging companies? A. Yes.

Q. Or whatever word is to be used; called what?

A. The Hamilton Blast Furnace Company.

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Q. And that joined up with two or three other companies and made the larger company ?

A. That joined up then—the name was changed to the Hamilton Steel and Iron Company, and then from there to the Steel Company of Canada.

Q. And then the shareholders in the old companies turned in their shares and got the new shares of the merger company ? A. That is right.

Q. And you have been a holder of both classes of shares from that time till now ? A. Yes.

10 Q. That was the way it was carried out with the others ? A. Yes.

Q. You have never sold any shares, I am told ?

A. No, I have not sold any.

Q. Confidence always increasing ? A. Always.

Q. That is all.

(Witness retires.)

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FRANCIS ALBERT MAGEE, Sworn. Examined by Mr. Robertson :

Q. Mr. Magee, you also are a plaintiff ? A. Yes, sir.

Q. And you are a holder of both preferred and common shares of the Steel Company of Canada ? A. The company that I represent is.

20 Q. Well, you have personally some shares ?

A. I have some shares of my own.

Q. And you have had them for some time ? A. Yes, sir.

Q. You have both preferred and common of your own ? A. Yes, sir.

Q. You have had that for a long time ? A. No, not of my own.

Q. Your company has had shares for a long time ?

A. Yes, sir, since the inception of the company.

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CROSS-EXAMINED by Mr. Tilley :

Q. That is to say, you have a company that carries on a business ?

A. An investment company.

Q. And your interests are in your company ?

30 A. The company's interests are my interests.

Q. And you have a couple of shares in your own name just to qualify you ? A. Yes, sir.

Q. Or to stand in your personal name ? A. Yes, sir.

Q. But you got your interest just the same as the other plaintiffs said; you got it on the merger ? A. Yes, sir.

Q. And you got both preferred and common at that time ? A. Yes, sir.

Q. And you have been holding them ever since ? A. Ever since.

Q. Of course, there were a year or two or three years that the company did not earn its bond interest, weren't there ?

40 A. I am not prepared to say that, sir.

Q. I thought you would study the balance sheet ?

A. I am not sure about the bond interest.

Q. Well, it would be close to that, wouldn't it ?

A. It might have been.

Q. Then since the war the company has been quite prosperous ?

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A. Quite.

Q. That is all, thank you.
(Witness retires.)

MR. ROBERTSON : That is the case, my Lord.

HIS LORDSHIP : Defence.

MR. TILLEY : I just wanted to ask Mr. Alexander one question. I think its all shown by the balance sheet.

HENRY SANDERS ALEXANDER, Recalled. Cross-Examined by

Mr. Tilley :

Q. We have put in, Mr. Alexander, the resolutions with regard to the 1914 dividend that you showed us just at the adjournment. The situation in 1914, I suppose, is disclosed by the balance sheet, but roughly I understand the company at that time did not earn its bond interest—or about that time ?

A. Well, I do not know without referring to the figures.

Q. Can't you give it by your recollection of the figures ?

A. Have you got a 1914 statement ? (Mr. Tilley hands statement to witness.) Yes, that is right. They did not earn the bond interest.

Q. In 1914 ? A. In 1914.

Q. Can you say how it was for 1913 ?

HIS LORDSHIP : Q. You mean it did not earn enough to pay the bond interest in full ? A. Yes.

Q. Or was there a maximum loss that year in operating ?

A. There was a deficit after the bond interest was paid.

MR. TILLEY : Q. You mean, it did not pay the bond interest in full ?

A. It did not pay the bond interest in full.

HIS LORDSHIP : Q. After paying it in full it left a deficit ?

A. Yes, left a deficit. It paid the bond interest in 1913. There was enough to pay the bond interest in full in 1913.

MR. TILLEY : Q. How much over ? A. Thirty thousand, practically.

Q. \$30,000 over ? A. Over it, after the bond interest.

Q. 1915 ? A. 1915 there was \$1,200,000.

Q. That is to say, there were the lean years, and then in 1915 the war activities brought about a different condition in the company ? A. Yes, sir.

Q. That is all, thank you.

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RE-EXAMINED by Mr. Robertson :

Q. You are not quite right, are you, Mr. Alexander, about 1913, first of all ? 1913, I see, according to the statement that was filed, your gross profits were \$1,640,000, and your bond interest was only \$480,000 ?

A. In 1913 ?

Q. 1913; carried \$965,000— A. In 1913 ?

Q. Yes ? A. Well, here is the amount of the bond interest.

Q. Yes, I know.

MR. TILLEY : Q. How much is the bond interest ?

A. The bond interest is 480, and the profits 511.

MR. ROBERTSON : Q. That is, after deducting the bond interest it is 511 ? A. After the bond interest had been paid in full there was a balance of 511,000.

Q. After you had paid your bond interest and after you had paid dividends on the preferred stock at the rate of seven per cent., amounting to \$454,000, there was a balance to the credit of \$511,000 ?

A. Yes; that is after the bond interest had been paid in full—

MR. TILLEY : And preferred dividends ?

A. And preferred dividends; there was a balance of \$511,000.

10 MR. ROBERTSON : Q. So that was not a lean year at all, was it ?

MR. TILLEY : Well, there are the figures.

MR. ROBERTSON : Well, you would give it as a much smaller sum.

Q. The next year your gross profits were \$539,811; that is right, isn't it ? A. Yes.

Q. Then your bond interest was \$521,138 ? A. Yes, 521, yes.

HIS LORDSHIP : What year is that ?

MR. ROBERTSON : That is 1914.

WITNESS : 1914.

MR. ROBERTSON : That is the year in which there was a deficit finally.

20 Q. Then of course your gross profits were enough to take care of your bond interest, but before striking your balance you took off an item of \$104,475, which is put in as sundries ? A. Yes.

HIS LORDSHIP : That is put down in the balance sheet as underwriting bonds in the Steel Company of Canada, Limited.

WITNESS : Underwriting bonds.

MR. ROBERTSON : Q. That is what that is for ? A. Yes, \$104,000.

Q. And it was the deduction of that as well as the bond interest that reduced your gross profits to a deficit of \$85,802 ? A. \$313,172.

30 Q. \$313,172, after the payment of dividends; but I am not asking anything about after the payment of dividends. I say after paying your bond interest and paying the underwriting of bonds, then you had a deficit of some \$85,802 ? A. Yes.

MR. TILLEY : In 1915.

WITNESS : 1914.

MR. ROBERTSON : That is 1914.

MR. TILLEY : Q. Was there anything written off for depreciation that year ? A. Well, I presume so.

MR. TILLEY : Well, don't presume anything.

MR. ROBERTSON : I think there was.

40 HIS LORDSHIP : It looks as if a small sum had been. I am looking at the 1913 statement, and there is an item, depreciation, renewal and improvement fund, \$491,000 odd, and for 1914 the same item is \$489,000 odd.

WITNESS : Approximately \$7,000 written off for depreciation in 1914.

MR. ROBERTSON : That is all.

(Witness retires.)

HIS LORDSHIP : That is the end of your case, is it ? Are you calling any evidence at all, Mr. Tilley ?

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MR. TILLEY : No, my Lord.
HIS LORDSHIP : Then I had better hear Mr. Robertson.

(ARGUMENT.)

JUDGMENT RESERVED.

Certified,
R. N. DICKSON, C.S.R.,
Official Reporter, S.C.O.

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No. 9

Reasons for Judgment of Orde, J.A.

No. 9.
Reasons for
Judgment
of Orde, J.A.
23rd August,
1929.

The action was brought originally by the plaintiffs suing on behalf of all 10
the holders of Ordinary Stock of the Steel Company of Canada, Limited,
against the defendant Company alone, but by two orders the two individual
defendants were added, and were authorized to defend the action for the
benefit of themselves and all other holders of preference stock of the defendant
company.

The action raises the question as to the right of the directors of the
company to declare and pay to the holders of preferred stock any dividend
in excess of 7 per cent. per annum until such time as the company shall have
paid dividends upon its ordinary stock equal per share in amount to the
dividends previously paid on its preference stock, all as I shall more fully 20
hereinafter set forth.

The company was incorporated on the 8th June, 1910, by Letters Patent
under the Dominion Companies Act (then chapter 79 of R.S.C., 1906), under
the name of "Canadian Steel Corporation, Limited." On the 22nd June,
1910, by Supplementary Letters Patent, the company's name was changed
to "The Steel Company of Canada, Limited." The Company's powers were
extensive, being generally to manufacture and deal in iron, steel and all other
metals from the ore to the finished product thereof and to manufacture and
deal in all goods, wares and merchandise in which iron or steel or any other
metal might be used. It was also given many other powers, some of a nature 30
allied to the manufacture of iron and steel and others quite outside what might
be deemed within the limits of such a business, but nothing turns on this.

There were also most of the usual powers as to the acquisition of the
business or the shares of other companies, etc. There was no express power
to acquire the business or the shares of any particular named person or com-
pany.

The authorized capital was \$25,000,000, divided into 250,000 shares of
\$100 each, of which 100,000 shares of \$100 each, or \$10,000,000 in all, were to
be created and issued as preference stock, and it was provided that such
preference stock "when so issued shall have preference and priority as follows : 40

“(a) In case of liquidation, dissolution or winding up of the Company, the holders of such shares shall be entitled to repayment in preference to ordinary shareholders of the amount of the par value of said shares and any arrears of dividends thereon and also the net profits of the Company which it shall from time to time be determined to distribute are to be applicable first to the payment of a fixed cumulative preferential dividend at the rate of seven per cent. per annum on the capital paid up on the said preference shares and holders of such shares shall participate rateably with the holders of the issued ordinary shares in the distribution of net profits after the holders of the ordinary shares shall have received dividends equal to those paid on the preferred shares;

10

“(b) No dividends shall be paid on the ordinary shares until after the Company shall have created and have to the credit of a reserve fund a sum equal to at least one year’s dividend on the then issued preference shares.”

The questions raised by this action turn upon the meaning and effect of the foregoing provisions as to the dividends to which the holders of preferred and of ordinary shares are respectively entitled.

20 Immediately after the incorporation and organization of the Company in 1910, 64,963 shares of preferred stock amounting to \$6,496,300 and 115,000 shares of ordinary or common stock amounting to \$11,500,000 were allotted and issued, and all were fully paid. No further shares have been allotted or issued, but by Supplementary Letters Patent issued on the 16th November, 1928, a by-law dated the 22nd October, 1928, which was duly confirmed at a meeting of shareholders held on the 14th November, 1928, and a Special Shareholders’ resolution duly passed at the same meeting were confirmed. The effect of the by-law and Shareholders’ Resolution, and of the Supplementary Letters Patent confirming them, was firstly to subdivide the 100,000
30 authorized preference shares and the 150,000 authorized ordinary shares, of the par value of \$100 each into 400,000 preference shares and 600,000 ordinary shares respectively with a par value of \$25 each, and then, secondly, to declare that the 600,000 ordinary shares of the par value of \$25 each should be converted into 600,000 shares without nominal or par value. Beyond the fact that every shareholder was to have one vote for each new share, whether preference or ordinary, held by him, no change in the relative rights attaching to the shares of the par value of \$100 as originally created was made all such rights being expressly reserved and maintained.

40 The subdivision of each share into four new shares made no change in the paid-up capital of the company, no further stock being allotted or issued. The company’s balance sheet of the 31st December, 1928, which appears in its Annual Report for 1928 (part of Exhibit 8), gives the issued capital stock as 259,852 of preference shares of \$25 each, amounting to \$6,496,300 and 460,000 ordinary shares of no par value, but as representing \$11,500,000 of paid up capital, as before.

The business of the company appears to have produced a profit in every year since its incorporation, except the year 1914, when, after paying the

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interest on its bonds and the $3\frac{1}{2}$ per cent. dividend upon the preference shares, there was left a deficit for that year of \$313,172.47. There were, however, accumulated profits sufficient to take care of this deficit and to leave at the end of 1914 the sum of \$1,258,430.58 at the credit of profit and loss account.

From the time the company commenced business on the 1st July, 1910, to the 31st December, 1927, dividends at the rate of seven per cent. per annum upon the preference shares were duly declared and paid. These declarations and payments were made regularly from time to time having regard to the company's financial year (which corresponded with the calendar year), except that during 1914 only $3\frac{1}{2}$ per cent. was declared. The remaining $3\frac{1}{2}$ per cent. for that year was, however, duly declared and paid in 1916, as during that year the preference shareholders received $10\frac{1}{2}$ per cent. For the six months between the 1st July, 1910, and the 31st December, 1910, the preference dividend was of course $3\frac{1}{2}$ per cent. only. The total dividends to the preference shareholders for the $17\frac{1}{2}$ years down to the 31st December, 1927, amounted therefore to $122\frac{1}{2}$ per cent. or \$122.50 per share.

Upon the ordinary shares no dividends were declared until 1916. In that year and thereafter down to the 31st December, 1927, dividends were declared as follows :—

In 1916.....	4 per cent.
In 1917.....	6 per cent.
In 1918.....	6 per cent.

and in each of the 9 years from 1919 to 1927, both inclusive, 7 per cent. or in all..... 63 per cent.

making a total per centage received by the ordinary shareholders during the same period of $17\frac{1}{2}$ years..... 79 per cent.
or \$79 per share.

During the year 1928, three quarterly dividends of $1\frac{3}{4}$ per cent. each were declared and paid both upon the preference shares and upon the ordinary shares. These were for the first three-quarters of the year, that is, to the 30th September, 1928.

On the 19th December, 1928, the Directors passed two resolutions, declaring dividends upon the preference and ordinary shares respectively to be payable upon the 1st February, 1929, to shareholders of record at the close of business on the 19th January, 1929. Each resolution is in the same terms as to the respective classes of shares, and declares a dividend of 50 cents per share upon each of the new shares (that is, the shares as dividend under the Supplementary Letters Patent of the 16th November, 1928), "for the quarter ending December 31st, 1928," and "an additional and further dividend of $18\frac{3}{4}$ cents per share." Multiplying each of these sums by 4, in order to bring the percentage up to that payable upon the old shares, the dividend so declared to each shareholder, preferred and ordinary, amounted to \$2.75 per share, or $2\frac{3}{4}$ per cent. This, added to the dividend of \$5.25 or $5\frac{1}{4}$ per cent. already paid in 1928 for the first three quarters thereof, made a total dividend of

\$8.00 or 8 per cent. payable to each shareholder. This proposal to distribute to the preference shareholders a dividend of 1 per cent. in excess of the 7 per cent. cumulative preferential dividend fixed by the Company's Charter, without first paying to the ordinary shareholders what they claim they are entitled to by way of dividend, provoked this action.

The dividends covered by this resolution though payable in 1929, are deemed to be declared as part of the business of 1928, being shown in the balance sheet for that year (as the last quarterly dividend in each of the Company's previous business year had always been shown) as a liability of
10 that year's business.

With the circular letter to the shareholders of the 22nd October, 1928, calling the Special General meeting to consider the proposed subdivision of the shares, etc., was sent a copy of a notice, stated to have been issued to the press, which, among other things, announced that the next quarterly dividend when declared, payable the 1st February, 1929, would be 50 cents per share on the proposed new (or subdivided) shares, both preference and ordinary. This announcement brought about some correspondence between the officers of the company and certain of the holders of ordinary shares who protested
20 against any increase in the rate of dividend upon the preference shares, until the ordinary shareholders had received what they termed "back dividend" or "cumulative dividends" sufficient to make the total dividends paid upon the ordinary shares, since the incorporation of the company, equal in percentage per share to the total received for the same period by the preference shareholders.

Notwithstanding these protests, the Directors on the 19th December, 1928, passed the resolutions above mentioned, and on the 28th December, 1928, the plaintiffs launched this action.

The foregoing facts disclose all that is necessary to understand the issue raised between the two classes of shareholders, but the pleadings set up some
30 other matters, as to which some evidence was given at the trial which may or may not have a bearing upon its determination. Some of the matters so raised seem to me to have no relevancy to the point in question.

The statement of claim in addition to a statement in substance of the facts which I have already recited, refers to the terms of the notice of the 22nd October, 1928, calling the special meeting of shareholders for the 14th November, 1928, and alleges by the 6th paragraph thereof, that that notice "for the first time put the plaintiffs upon enquiry as to what were the legal rights of the holders of preference and ordinary stock of the defendant company as they then existed." By par. 7, they allege that they then procured a copy of the
40 company's charter and "ascertained that the dividends on the ordinary shares of the defendant company were cumulative." Counsel for the plaintiffs did not, of course, suggest at the trial that a shareholder could rely upon lack of actual knowledge of the provisions of his company's charter as a ground for any relief either as against the company or as against a fellow shareholder.

Par. 7 further alleges the threat of legal proceedings to restrain any attempt by the company to "alter or affect the rights of the holders of ordinary stock to claim that dividends on the ordinary stock were cumulative and

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that arrears of dividends aggregating approximately 43½ per cent. must be paid on the ordinary stock of the defendant company before the holders of preference stock received dividends, pro rata with the holders of ordinary stock in excess of 7 per cent. per annum." The 43½ per cent. is the difference between the 122½ per cent. and the 79 per cent. above mentioned.

Par. 8 alleges that at the instigation of the plaintiffs and with the consent of the defendant company (by which I presume is meant the consent of the Directors or of the other shareholders at the meeting), and for the express purpose of preserving to the holders of ordinary stock whatever rights they then had in regard to the payment of arrears of dividends, the resolution proposed to be passed was altered to the form in which it was passed, and that it was so passed unanimously. 10

I cannot see the relevancy of these allegations. Whether or not the resolution in the form proposed by the directors might, if passed, have been prejudicial to the ordinary shareholders, is of no consequence now. It is the resolution actually passed that counts. No argument was put forward at the trial that the rights of the preference shareholders had been prejudicially affected by it.

Par. 10 alleges that the stock certificates theretofore issued are ambiguous and might be construed to imply that dividends on the ordinary stock are non-cumulative. This allegation in effect anticipated one of the defences set up by the defendants. 20

By paragraphs 12 and 13 it is alleged that according to its balance sheet of the 31st December, 1927, the Company had available for dividends, after making due allowances for depreciation and all similar items properly chargeable against profits, accumulated undistributed profits of \$10,898,684.74, and that the net earnings are sufficient to have enabled the company to have paid dividends equivalent to 7 per cent. per annum upon its ordinary stock since its incorporation after creating the reserve fund equivalent to one year's dividend upon the then issued preference shares, as required by the charter. 30

This statement as to the surplus shewn by the balance sheet for 1927 is correct. The balance sheet shews the allowance for depreciation, etc., before arriving at the amount above mentioned. The balance sheet for 1928 shews a net surplus of \$12,042,376.20.

The relief claimed by the plaintiffs is as follows :

"1. An injunction restraining the Defendant Company from paying any dividend upon its Preference Stock in excess of 7% per annum until such time as the Defendant Company shall have declared and paid dividends upon its Ordinary Stock equal per share in amount to the dividends previously paid on its Preference Stock having due regard, however, to the fact that for each Ordinary share of the par value of \$100.00 as originally constituted there are now issued and outstanding four shares of Ordinary Stock having no nominal or par value and that their relationship to the Preference stock has been maintained and preserved by each share of Preference Stock of the par value of \$100 as originally constituted having been converted into four shares of Pre- 40

ference Stock, of the par value of \$25.00 each, and by the Supplementary Letters Patent creating such change.

"2. An injunction restraining the Defendant Company from continuing to issue stock certificates for both its Preference and Ordinary Stock which incorrectly state the rights and limitations relating to both classes of stock as defined by the Letters Patent incorporating the Defendant Company and the Letters Patent Supplemental thereto.

10 "3. A declaration by this Honourable Court construing the said Letters Patent and Supplementary Letters Patent relative to the rights of both the holders of Preference and Ordinary Stock of the Defendant Company with respect to the declaration and payment of dividends on both of said classes of stock by the Defendant Company and directing that all of the holders of both of said classes of stock of the Defendant Company and the Defendant Company shall be bound thereby.

"4. Their costs of this action and those of the Defendants, James T. Rogers and George C. Copley, to be paid by the Defendant Company.

20 "5. Such further and other relief as to this Honourable Court may seem meet and as the circumstances of the case may require."

The material defences set up are two. It is alleged, firstly, that the directors were entitled to declare the dividends they did by the resolutions of the 19th December, 1928, "and that in doing so they violated no rights of the ordinary shareholders," and, secondly, that each preference or ordinary stock certificate issued by the company since its organization "correctly described the rights of the shareholders with respect to dividends in the following language :—

30 "The preference shares carry a fixed cumulative preference dividend payable out of the profits of the company applicable to dividends at the rate of seven per centum per annum on the capital paid-up thereof. They rank both as to dividends and assets in priority to all ordinary shares. If, after providing for the payment in any year of the dividend on the preference shares and any balance due for cumulative dividends for preceding years, there remain any surplus net profits, any and all such as are not in the opinion of the directors required for the purposes of the company will be applicable to dividends on the ordinary shares for such year to the extent of but not exceeding seven per centum (7%) on the capital paid up thereon when and as from time to time the same may be declared by the directors. The remainder of any such surplus net profits shall then be applicable to the payment of further dividends

40 equally per share upon both the preference shares and the ordinary shares but no dividends shall be paid on the ordinary shares until after the company shall have created and have to the credit of a reserve fund a sum equal to at least one year's dividend on the then issued preference shares, the whole as provided in the Letters Patent incorporating the Company,"

and that the plaintiffs and all persons who since the organization of the company have held either preference or ordinary shares "have accepted said

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stock certificates as correctly stating the rights of shareholders with regard to dividends.”

In addition to the documentary evidence establishing the facts already related, certain by-laws of the company were put in as to the issue and signing of stock certificates and as to the powers of the Directors to declare dividends and otherwise. There is nothing in any of these additional by-laws which in my opinion, affects the issue.

Evidence was given that all the present paid up capital stock of the company issued in 1910 was allotted in payment for the assets of the businesses which were taken over and became the consolidated business of the company. 10
Whether the assets so acquired came to the company in the form of property or as shares in existing companies or partly of each, was not stated, but the form in which the assets were so acquired is of no consequence. It was stated that all the vendors got both preference and ordinary shares. As these shares passed into the hands of individuals the preferred and ordinary shares could hardly have been held in quite the same proportions by the respective shareholders, having regard to the fact that there were issued 64,963 preference and 115,000 ordinary shares. So that the statement of the company's secretary that they all received both preference and ordinary shares must be taken in a general sense and not as indicating an allotment of preference and ordinary 20
shares in the same relative proportions to each allottee. The shares have since been traded in and frequently transferred. The plaintiff Ramsay holds a large number of both preference and ordinary shares and has increased the holdings which he acquired when the company was organized. It was either given in evidence or stated by counsel that the policy of the Directors is that of the preferred shareholders and it is to be presumed that the latter also hold a sufficient number of ordinary shares to control the election of the board, because if all the ordinary shares were held by persons having no interest in the preferred dividends they could easily outvote the preferred class. So far 30
as the past is concerned this is of no consequence if the views of the defendants prevail, for in that case it will be impossible for any board of directors upon any future distribution of profits to make up to the ordinary shareholders even out of accumulated profits, for the lean years that have passed without correspondingly increasing the dividends upon the preference shares beyond 7 per cent. per annum. In other words, no matter how large the future dividends may be, the aggregate percentage paid since the incorporation of the company to the preferred class will always exceed that paid to the ordinary class by at least 43½ per cent., because no dividend in any year to the ordinary shareholders would ever exceed that paid to the preferred shareholders.

The question which I am called upon to answer has given me much 40
anxious thought. A great many cases were cited upon the argument, but I have not found any of them very helpful. So far as they are applicable to this case they serve merely as examples of the application of well known general principles. It could hardly be expected that a decision construing precisely similar language in a company's charter would be available. And so I find myself obliged to interpret the special provisions of this charter as to

the relative rights of the two classes of shareholders almost wholly as a mere matter of construction

Before proceeding to discuss these provisions, it may not be amiss to state a few general principles governing the declaration of dividends. Dividends can be declared out of profits only, and in companies incorporated as this is, only by the directors. If the majority of shareholders are not satisfied with the distribution of profits made or proposed by the directors then in office, their only remedy is to replace the directors when and as the company's constitution permits, by others who will carry out their wishes. Dividends are
 10 ordinarily a mere distribution of profits generally, and unless there is something in the Company's constitution limiting the powers of the directors, need not be referable to any particular year or other period of time, nor need they be paid out of the profits of any particular year or other period. Ordinarily the shareholders through their directors may distribute among themselves all the accumulated profits of their company whenever and as often as they please, provided that in determining what are profits they are careful to make no inroad upon the company's capital.

When preference shares, duly created and issued, are declared to be entitled to a fixed, cumulative preferential dividend at a certain rate per annum,
 20 any further participation in the profits of the company is impliedly negatived and if the right to any further participation is to be granted it must be distinctly so stated.

There is nothing in the company's charter here limiting the declaration of dividends to the profits made by the company in any particular year, so that subject to the right of the preferred shareholders to be first paid out of profits their fixed cumulative preferential dividend at the rate of seven per cent. per annum to the date of the distribution and the retention in a reserve fund of "at least one year's dividend on the then issued preference shares,"
 30 there is nothing in the charter to prevent the directors at any time distributing all the surplus accumulated profits among the shareholders in accordance with its special provisions in this regard. When I use the expression "at any time" I am not overlooking the fact that the state of the company's books or some other exigency of its business might make it necessary to have some regard to the close of the then current financial year.

Upon the opening of the case before me and throughout the trial, I was inclined to the view, to which I several times gave expression, that upon a fair reading of the special provisions of the charter in question here, the contentions of the plaintiffs were unsound and that the right of the ordinary shareholders to have their dividends brought up to an equality with those of the
 40 preferred shareholders before the latter could further participate in the profits must be confined to the particular sum which the directors then saw fit to distribute. In other words, that all that had gone before was a closed book. But after much consideration, I have come to the conclusion that my earlier view was wrong and that the construction contended for by the plaintiffs is the correct one.

Whatever the intention of those who framed the charter may have been, the real meaning and effect must be gathered from the language of the special

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clause itself with due regard to the general principles already mentioned and not otherwise. The clause provides for the creation and issue, out of the authorized capital stock, of ten million dollars as preference stock and then declared in par. (a) the nature and extent of its preference and priority.

Paragraph (a) is divided into three distinct parts. *First*, it declares that upon the liquidation, dissolution or winding up of the company the holders of the preference shares are to be entitled preferentially to the repayment of the amount of the par value of their shares and any arrears of dividends thereon. *Secondly*, it provides in effect that they are to be paid a fixed cumulative preferential dividend at the rate of seven per cent. per annum out of any net profits which it may from time to time be determined to distribute in priority to any other shareholders. This provision, while confining the question whether or not profits shall be distributed at all to the judgment and discretion of the directors, establishes the right of the preferred shareholders to be first paid their dividends and all arrears thereof before any distribution can be made to the other shareholders. If the clause stopped there, it is settled law that the preferred shareholders could not participate further in the distribution of profits. They would be in truth, though technically not, until legally distributable, the property of the ordinary shareholders to be enjoyed either when and as the directors might decide to distribute them or upon the ultimate liquidation, dissolution or winding up of the company. The clause proceeds to give to the preferred shareholders a right to participate in the further profits of the company, but only after certain conditions have been satisfied, and the main, if not the only, issue, involved in this action is to determine what those conditions are. This *third* provision is as follows: "And the holders of such shares shall participate rateably with the holders of the issued ordinary shares in the distribution of net profits after the holders of the ordinary shares shall have received dividends equal to those paid on the preferred shares."

I was at first inclined to the view that that provision was linked up with the earlier one and was controlled by it. But I have reached the conclusion that it is really a broad, general declaration as to the respective rights of the preferred and ordinary shareholders in all the net profits after the cumulative preferred dividends have been provided for. There is nothing in the earlier portion of the clause which grammatically controls the direct and simple declaration contained in the third provision. If those who framed the clause had really intended to limit the rights of the ordinary shareholders in the surplus profits as contended by the defendants, it would have been such a simple thing to have said so. It is inconceivable that they would have chosen this language to express that intention.

There are in the provision two words which are utterly inconsistent with the views of the defendants, namely, the words "dividends" and "those" in the concluding portion of the clause "shall have received dividends equal to those paid on the preferred shares." If it was intended to confine the right of the ordinary shareholders to be placed upon an equality with the preferred class before the latter could further participate in the balance of net profits then immediately distributable, the words above quoted would have been in

the singular, and the phrase would have read, "shall have received a dividend equal to that paid on the preferred shares."

The construction urged by the defendants really places the directors in a position to work the grossest injustice to the ordinary shareholders by the simple method of periodically declaring no dividend to them. Once that is done there is no future remedy, and that the consequent loss to the ordinary shareholders may be serious may be easily exemplified. Suppose that the directors decide that the accumulated profits are sufficient to justify dividends to all the shareholders of 10 per cent. per annum over a period of two years.

10 If they see fit to distribute this at the rate of 10% in each of the two years, the preferred shareholders would, upon their present paid up shares, receive in all \$1,299,260, and the ordinary shareholders \$2,300,000, a total distribution of \$3,599,260. But if in the first year a dividend of seven per cent. only is declared upon the preferred shares and none on the ordinary, and the balance of the fund is then distributed the next year, the loss to the ordinary shareholders and the corresponding gain to the preferred is a fairly large sum, approximately \$290,000. Seven per cent. upon \$6,496,300 of preferred stock for the first year would be \$454,741 and for two years \$909,482. This sum deducted from the \$3,599,260 above mentioned would leave \$2,689,778 avail-

20 able for further distribution in the second year. Now according to the contention of the defendants the ordinary shareholders would be entitled to receive out of this a dividend of 7 per cent., amounting to \$805,000, and the balance, amounting to \$1,884,778, would be divided rateably among all the shareholders. This would mean a dividend of slightly more than 10.478 per cent., so that the preferred shareholders for the two years would receive 24.478 per cent. while the ordinary shareholders would receive 17.478 over the two year period instead of 20 per cent. each, at the mere whim of the directors. The difference, namely, 2.522 per cent. upon \$11,500,000 of ordinary stock would amount in effect to a loss to the holders thereof of more than \$290,000,

30 which sum would go into the pockets of the preferred shareholders merely because the directors had seen fit to postpone the distribution of any profits to the ordinary shareholders for a year. If this is the meaning of the provision in question then it clearly places it in the power of the directors to distribute the profits in a manner enormously to benefit the preferred shareholders.

Having regard to the general rule already mentioned which excludes preferred shareholders from any share of profits beyond their fixed cumulative preferential dividend, unless the right to further participation is expressly granted, I am of the opinion that the language of the charter falls far short of

40 expressing any intention to cut down the rights of the ordinary shareholders in the surplus profits to the extent contended for by the defendants. If the provision fails to give that right explicitly or is ambiguous then it ought not to be so interpreted as to increase the preference already expressly given to the preferred stock and so make it possible to cut down the equitable right of the ordinary shareholders to all the surplus profits beyond what is necessary in order to give a just and reasonable meaning to its language.

The interpretation of the defendants, if applied strictly, really goes

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beyond what I think upon the argument they were willing to admit. The declarations of dividends may be made at any time, and there is no rule requiring them to be made annually or quarterly or at any other elapsed period of time. If the right of the ordinary shareholder to be placed upon an equality with the preferred shareholder before the latter is to share in the surplus is confined to the profits then declared by the directors to be released for distribution, and three quarterly dividends of, say, $1\frac{3}{4}$ per cent. have during a calendar year been paid to the preferred shareholders and none to the ordinary, and the directors desire to make a larger distribution for the fourth quarter, what happens if, after paying the preferred shareholders $1\frac{3}{4}$ per cent. to make up their fixed cumulative dividend, the surplus exceeds $1\frac{3}{4}$ per cent. on the ordinary stock? If the defendants' view is correct, then after paying the ordinary shareholders $1\frac{3}{4}$ per cent. in order to give them the same rateable share out of that particular distribution the remainder must be rateably distributed to all the shareholders, preferred and ordinary. That is clearly the result if the defendants are right. And there is no justification for saying that the ordinary shareholders would be entitled upon that last quarter's distribution to have 7 per cent. before the preferred shareholders could participate. If the defendants' argument does not go that length the basis for their contention disappears completely, for there is nothing in the language of the clause to support the view that the equality in the dividend rate to which the ordinary stock is to be brought before the preferred shareholders can further participate is referable to a year or any other particular period of time. As already stated, there is nothing in the charter requiring the preferential dividend to be declared yearly or at all. Seven per cent. per annum is merely a declaration of the rate, and it might just as well and as effectively have been declared to be $3\frac{1}{2}$ per cent. per six months, or $1\frac{3}{4}$ per cent. per quarter. The equality intended to be given to the ordinary shareholders before the preferred shareholders can participate is, in my judgment, a rateable equality in dividends to all "those" theretofore "paid on the preferred shares" and not merely an equality to the particular preferred dividend then declared. 10 20 30

The question was asked by defendants' counsel: what would happen if there had been or were now a further issue of ordinary shares out of the unissued authorized capital? Would such new shares be entitled to share in the profits on the same footing as the old shares and so to share to the extent of $43\frac{1}{2}\%$ before the preferred shareholders would further participate, notwithstanding that they were still in the treasury of the company unissued during part of the period covered by the so-called arrears of $43\frac{1}{2}$ per cent. upon the ordinary stock. This seems a formidable argument, put in this way. Apart from some express power given by the Companies Act to issue such new shares with rights as to dividends inferior to those of the old shares, I know of no power in the company when declaring dividends to discriminate between old and new issues of stock. The difficulty, if it is a difficulty, might perhaps be overcome by the issue of the new shares as "deferred stock" under Section 56 of the Companies Act (R.S.C. 1927, ch. 27). But quite apart from that aspect of the question, this suggested difficulty is really none at all, for the situation does not differ materially from that in which any joint stock company (whether 40

it has an outstanding issue of preferred stock or not) is placed which has built up a large accumulation of undivided profits and decides to add to its paid-up capital by the issue of new stock. Except in those cases where the stock is allotted and issued to the existing shareholders, common sense usually dictates the policy of the company and the new shares are issued at a premium sufficient to offset the additional value given to the stock by the accumulated profits. The new shares would then of course receive dividends on the same footing as the old, but without gaining any undue advantage thereby.

I do not overlook the fact that in the present case the issue of additional
 10 ordinary shares at par or at too low a premium might affect the excess dividends coming to the preferred shareholders, but I think the common interest of both preferred and ordinary shareholders would be sufficient to protect them against any such contingency. In any case, I do not consider the contention of sufficient weight to affect the meaning of the special clause in question, as I understand it. If the issue of further ordinary shares presents any real difficulty, that cannot be helped. The company might perhaps extricate itself by obtaining supplementary Letters Patent.

There remains to be considered the other ground of defence, namely,
 20 that the ordinary shareholders are estopped by the special declaration as to the respective rights of the two classes of shareholders appearing in the company's share certificates. The only authority cited on the argument which at all nearly approaches this case was *Ontario Jockey Club v. McBride* (1927), A.C. 916. But there is no parallel between that case and this. There the question was substantially whether or not a shareholder who had acquired and held his shares upon what was in effect a distinct agreement with the company that he could not transfer them except upon certain terms, could transfer them to another in breach of the agreement so as to entitle the transferee against the will of the company to be registered as a shareholder. The
 30 question, if treated as one of contract, arose out of a bargain between the then shareholder and the company, of which contract the transferee had notice. If treated as an estoppel, it arose by the action or conduct of the shareholder as between himself and the company and he being estopped from transferring except upon the terms to which he had agreed with the company, his transferee with notice acquired no right to be registered.

The rights of shareholders and the title to their shares do not ordinarily depend upon the issue of stock certificates at all but upon registration in the share register and upon the terms of the charter. One may be the owner of stock in a company and never receive a certificate at all. Section 56(2) of the Companies Act requires that certificates for preference shares created by
 40 by-law shall set forth fully the terms and provisions of such by-law and that if not so set out, the restrictions and limitations shall not be deemed to qualify the rights of the holders thereof. Whether or not that subsection is applicable where the preference shares are created by Letters Patent is not necessary to determine. The issue here is one between two classes of shareholders, and I do not know upon what principle it can be said that the language of the stock certificates issued by the Company can alter or affect rights conferred by the charter before the stock was issued. The rights of the two classes of

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 1929.

—continued.

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shareholders do not depend upon the wording of the stock certificates at all. This is not to say, that a particular holder of preferred shares who has acquired them from another holder upon the faith of that other's stock certificate and without notice may not have acquired some rights by way of estoppel against the company itself. I am not dealing with any such issue here. Here it is argued that the ordinary shareholders by their acceptance of stock certificates which declared their rights to be less than those given by the charter, are thereby estopped as against the other shareholders. This is carrying the principle of estoppel beyond its limits as I understand them. There is no privity between the ordinary and the preferred shareholders. It must be difficult in any case to apply the doctrine of estoppel to a whole class and in favour of another class. So much depends upon the circumstances of each case as to the extent of the knowledge of the person setting up the estoppel, and how far he was affected by the act of the person alleged to be estopped, etc. And it is difficult to see how there could be established a common standing-by of the whole class of ordinary shareholders while the whole class of preferred shareholders acted in consequence thereof to their own prejudice. The fact that many of the members of the company hold both classes of stock presents an added difficulty. 10

Nor do I see how the principle of "contemporaneous exposition" can be invoked. The case might possibly be different if the ordinary shareholders had stood by and allowed the directors to pay increased dividends on the preferred stock, but instead of acquiescing, the ordinary shareholders promptly took action the moment any such payment was suggested. There is no room whatever for the application here of any such principle as that raised by the second ground of defence. 20

The plaintiffs are therefore, in my opinion, entitled to judgment to the following effect :

1. Declaring that by the terms of the Letters Patent and Supplementary Letters Patent regulating the respective rights of the holders of Preference and Ordinary shares the holders of Preference shares are not entitled to participate in any distribution of the net profits of the defendant Company in excess of their fixed cumulative preferential dividend at the rate of seven per cent. per annum until the total dividends declared upon the ordinary stock since the incorporation of the company shall be equal as to the rate thereof to that theretofore paid and declared upon the preference stock. 30

2. Declaring that the declaration of dividends upon the preferred stock by the resolution of the directors of the 19th December, 1928, was to the extent of 25 cents per share of the par value of \$25 each beyond the power of the defendant company and of its directors and is invalid. 40

3. Directing, if the plaintiffs deem it necessary, that in so far as any such excess in the dividends so declared upon the preferred shares, either by that resolution or any subsequent resolution, has been paid, the payments so made in excess shall be duly taken into account by a corresponding reduction in the next dividend declared.

4. An injunction restraining the defendant company and its directors from paying any dividends to the preferred shareholders except in accordance

with the declaration hereinbefore set forth, and also from issuing stock certificates containing any statement of the respective rights of the preferred and ordinary shareholders not in accordance with such declaration.

5. The costs of the plaintiffs and of the defendants Rogers and Copley are to be paid by the defendant company.

No. 10

Formal Judgment of Orde, J.A.

IN THE SUPREME COURT OF ONTARIO.

10 THE HONOURABLE } Friday, the 23rd day of
 MR. JUSTICE ORDE, } August, 1929
BETWEEN :

THOMAS RAMSAY and FRANCIS A. MAGEE, suing on behalf of themselves and all other holders of Ordinary Stock of The Steel Company of Canada, Limited,

Plaintiffs,

AND

20 THE STEEL COMPANY OF CANADA, LIMITED, and JAMES T. ROGERS and GEORGE C. COPPLEY, on behalf of themselves and all other holders of Preference Stock of the Defendant, The Steel Company of Canada, Limited,

Defendants.

1. THIS ACTION coming on for trial the 27th day of May, 1929, before this Court at the Sittings holden at Toronto for the trial of actions without a jury, in the presence of Counsel for all parties; upon hearing read the pleadings and proceedings herein, and upon hearing the evidence adduced and what was alleged by Counsel aforesaid, this Court was pleased to direct this action to stand over for judgment and the same coming on this day for judgment;

2. THIS COURT DOTH DECLARE that by the terms of the Letters Patent incorporating the Defendant Company and the Supplementary Letters
30 Patent issued thereto bearing date the 16th day of November, 1928, regulating the respective rights of the holders of preference and ordinary shares of the Defendant Company, the holders of preference shares are not entitled to participate in any distribution of the net profits of the Defendant Company in excess of their fixed cumulative preferential dividend at the rate of Seven per cent. per annum until the total dividends declared upon the ordinary stock since the incorporation of the Defendant Company shall be equal as to the rate thereof to that theretofore paid and declared upon the preference stock, and doth order and adjudge the same accordingly.

3. And the parties hereto by their Counsel having consented thereto,
40 THIS COURT DOTH DECLARE that notwithstanding the foregoing declaration all dividends heretofore declared and paid on the preference and ordinary

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shares of the Company shall be deemed to have been validly declared and paid though not in accordance with the said declaration in the preceding paragraph hereof contained and doth order and adjudge the same accordingly.

4. AND THIS COURT DOTH FURTHER ORDER AND ADJUDGE that, save as aforesaid, the Defendant Company and its Directors be and they are hereby restrained from paying any dividends upon its preference stock except in accordance with the declaration hereinbefore set forth, and also from issuing stock certificates containing any statement of the respective rights of the preference and ordinary shareholders not in accordance with such declaration.

5. AND THIS COURT DOTH FURTHER ORDER AND ADJUDGE that the Defendant Company do pay to the Plaintiffs and to the Defendants James T. Rogers and George C. Copley their costs of this action forthwith after taxation thereof. 10

JUDGMENT signed this 11th day of October, 1929.

“E. HARLEY,”

Senior Registrar, S.C.O.

Entered J. B. 42, Pages 53-4

October 11th, 1929

L. G.

No. 11

20

Notice of Appeal

No. 11.
Notice of
Appeal,
31st August,
1929.

TAKE NOTICE that the defendants appeal to a divisional court from the judgment pronounced by the Honourable Mr. Justice Orde on the 23rd day of August, 1929, and ask that the said judgment may be revised and that judgment should be entered dismissing the action upon the following among other grounds :

- (1) The respective rights of the holders of preference and ordinary shares have been wrongly declared.
- (2) The declaration of dividends upon the preferred stock made by resolution of the directors of the 19th of December, 1928, was valid. 30
- (3) The learned judge erred in disregarding the language of the company's share certificates.
- (4) An injunction should not have been granted and the action should have been dismissed.

DATED the 31st day of August, 1929.

TILLEY, JOHNSTON, THOMSON & PARMENTER,

Solicitors for the Defendants.

To MESSRS. HOLMESTED & SUTTON,

Solicitors for the Plaintiffs.

40

No. 12
Reasons for Judgment of First Divisional Court

(MULOCK, C.J.O., MAGEE, J.A., HODGINS, J.A., MIDDLETON, J.A., GRANT, J.A)

RAMSAY, <i>et al</i> , <i>vs</i> THE STEEL COMPANY OF CANADA, LIMITED, <i>et al</i> ,	}	W. N. TILLEY, K.C., and C. F. H. CARSON, <i>for the Defendants (Appellants)</i> , R. S. ROBERTSON, K.C., and L. V. SUTTON, <i>for the Plaintiffs (Respondents)</i> ,
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First Divi-
sional Court,
(Mulock,
C.J.O.) 17th
March, 1930.

10 MULOCK, C.J.O.:—This is an appeal by the defendants from the judgment of Orde, J. A. The sole question involved in this action is what (after payment of a fixed cumulative preferential dividend at the rate of 7% per annum on the capital paid up on the preference shares and after the maintenance of the reserve fund hereafter mentioned) are the rights of the holders of preference shares and the holders of ordinary shares respectively in respect of any balance of net profits of the company from time to time declared by the directors for distribution as dividends amongst the shareholders.

The holders of preference shares contend that any dividend declared by the directors is to be deemed a dividend for a year and that after payment
20 thereout to each holder of ordinary shares of a sum equal to one year's dividend of 7% per annum on the amount paid up on his ordinary shares, the remainder, if any, is divisible rateably between the two classes of shareholders.

The holders of ordinary shares claim to be entitled to receive dividends equal in gross amount to those paid to the holders of preference shares before the latter become entitled to anything beyond 7% per annum computed from the time when they paid up for their shares.

The holders of preference shares have been paid dividends at the rate of 7 per cent. per annum on their shares during all the years of the company's existence. The holders of ordinary shares have not, the total amount of
30 dividends paid to each holder of ordinary shares being 43½% less than that paid to each holder of preference shares.

The company was incorporated by Letters Patent dated the 8th day of June, 1906, under The Companies' Act, R.S.C. cap. 79, and shortly thereafter it began and has ever since continued in business. The Letters Patent contain the following provisions :

40 “The capital stock of the said company shall be Twenty-five Million dollars divided into Two hundred and fifty thousand shares of One hundred dollars each, subject to the increase of such capital stock under the provisions of the said Act of which two hundred and fifty thousand shares, One hundred thousand shares of One hundred dollars, each, that is to say, Ten million dollars be created and issued as preference stock and the same when so issued shall have preference and priority as follows: “(a) In case of liquidation, dissolution or winding up of the Company, the holders of such shares shall be entitled to repayment in preference to

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ordinary shareholders of the amount of the par value of said shares and any arrears of dividends thereon and also the net profits of the Company which it shall from time to time be determined to distribute are to be applicable first to the payment of ~~fixed~~ cumulative preferential dividend at the rate of 7% per annum on the capital paid up on the said preference shares and the holders of such shares shall participate rateably with the holders of the issued ordinary shares in the distribution of net profits after the holders of the ordinary shares shall have received dividends equal to those paid on the preferred shares.

“(b) No dividends shall be paid on the ordinary shares until after 10 the Company shall have created and have to the credit of a reserve fund a sum equal to at least one year’s dividend on the then issued preference shares.”

The Letters Patent declaring that the holders of preferential shares are to be entitled to “payment of a fixed cumulative preferential dividend at the rate of 7% per annum,” but for what follows they would be entitled to nothing further (*Wills v. United Lankart Plantations Co. Ltd.* (1914), A.C. 11), and the whole remainder of net profits when declared for distribution would go to the holders of ordinary shares. But the Letters Patent declare that the holders of preference shares shall be entitled to share rateably with the holders of ordinary 20 shares “after the holders of the ordinary shares shall have received dividends equal to those paid on the preference shares.”

The meaning of these words appears to me free from any ambiguity and perfectly plain. In my opinion the holders of ordinary shares are entitled to be paid dividends equal in amount to all those paid to the holders of preferred shares before the latter become entitled to participate further.

Mr. Tilley sought to give to the word “dividends” a meaning of which, in my opinion, it is not susceptible. He argued that the word “dividends” mean yearly dividends, and that when (there being no arrears) the preferred holders received in any year their fixed yearly dividend of 7% and the ordinary share- 30 holders received 7% on their paid-up capital, the latter had received “dividends equal to those payable on the preferred shares,” and that thereupon the preferred shareholders became entitled to participate rateably with the ordinary shareholders in the balance available for distribution.

The contract between the company and the shareholders is created by the Letters Patent. They speak of dividends, not yearly dividends, and there is, I think, no justification for reading into them words that might modify their plain and real meaning. Section 80 of The Companies’ Act (R.S.C. 1906, Chap. 79) says that “the Directors may from time to time make by-laws as to the following matters declaration and payment of dividends.” 40 plain and real meaning. Section 80 of The Companies’ Act says that “the Directors may from time to time make by-laws as to the following matters declaration and payment of dividends.”

The Statute does not speak of dividends having relation to any period of time. The directors may declare dividends at regular or irregular periods, monthly, quarterly, yearly or otherwise or not at all, according to the condition of the company’s affairs. The payment of a dividend, in my opinion, merely

means a distribution of net profits having regard to the then state of the company's affairs and not to any period of time. (*Henry vs. The Great Northern Railway Co.*, 1857, 1 DeG. & J. 637; *Allen vs. London & Enniskillen Railway*, 1877, 25 W.R. 524; *Crawford vs. North Eastern Railway Co.*, 3 K. & J. 736).

I agree with the trial judge that "the equality intended to be given to the ordinary shareholders before the preferred shareholders can participate is, in my judgment, a ratable equality in dividends to all those theretofore paid on the preferred shares and not merely an equality to the particular preferred dividend then declared." (64 O.L.R. at pp. 340, 341)

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10 It was also argued for the defendant that the language of the Letters Patent as to the preferred shareholders being entitled to participate in dividends after payment of their 7% should be interpreted having regard to a certain stock certificate issued by the company. It appears that shortly after the allotment of shares to both classes of shareholders, the company issued to each shareholder a stock certificate worded as follows :—

20 "The preference shares carry a fixed cumulative preference dividend payable out of the profits of the company applicable to dividends at the rate of seven per centum (7%) per annum on the capital paid up thereof. They rank both as to dividends and assets in priority to all ordinary shares. If, after providing for the payment in any year of the dividend on the preference shares and any balance due for cumulative dividends for pre-
ceding years, there remain any surplus net profits, any and all such as are not in the opinion of the directors required for the purpose of the company will be applicable to dividends on the ordinary shares for such year to the extent of but not exceeding seven per centum (7%) on the capital paid up thereon when and as from time to time the same may be declared by the directors. The remainder of any such surplus net profits shall then be applicable to the payment of further dividends equally per share upon
30 both the preference shares and the ordinary shares but no dividends shall be paid on the ordinary shares until after the company shall have created and have to the credit of a reserve fund a sum equal to at least one year's dividend on the then issued preference shares, the whole as provided in the Letters Patent incorporating the Company."

40 There was no by-law, resolution or minute of the directors showing that they had authorized or approved of this form of certificate. Nor was there anything to show by what authority it came to be issued. But it continued to be used until the issue of Supplementary Letters Patent on the 16th of November, 1928. According to the view which I have above expressed, this certificate does not correctly declare the rights of the holders of preference shares as created by the Letters Patent, and I agree with the reasons of the learned Trial Judge for holding that the rights of the shareholders as declared by the Letters Patent are not affected by the certificate and I think this appeal should be dismissed with costs.

The supplementary letters patent of the 16th of November, 1928, after sub-dividing the shares of both classes, contains these words :

"Reserving and maintaining at all times for the shares of each class

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preference and ordinary, all the rights attaching to the shares of the par value of \$100.00 as originally created.”

These words are open to the construction that at the date of the issue of the supplementary letters patent the rights of each class of shareholders in the sub-divided shares were to be the same as in the original shares of \$100.00 each.

I am inclined to the view that such is the meaning of the words in question, and if that be a correct interpretation of them, then such rights were unaffected by the stock certificate above referred to, upon which the defendants rely.

MAGEE, J.A.:—I agree.

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HODGINS, J.A.:—As I view it, the provisions of the charter seem to con- 10
template, and to be dealing with, a situation arising when the directors are
considering a distribution of profits and they contain a direction indicating
the rights of the two classes of shareholders who would be interested therein
as to the proposed division.

These profits are such as shall be “determined to be distributed,” by the
Directors, and this determination is to be arrived at “from time to time.”
The profits so described are to be paid first to the extent of 7% *per annum* to
the preferred shareholders, such dividend to be a fixed cumulative and pre-
ferential one.

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sional Court
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Who is to be entitled to what remains is not definitely dealt with, but the 20
right of the preferential shareholders to any part of it is expressly postponed
until after the holders of the ordinary shares “shall have received dividends
equal to those paid on the preferred shares.”

After that event has happened, preference and ordinary shareholders
share equally.

There is in these provisions, an implication that the surplus of the desig-
nated net profits, over and above the 7% preferred dividend per annum, will
be paid to the ordinary shareholders to such an extent that they shall get
dividends equal to those paid on the preferred shares. This is to my mind a
direction *ad hoc* and refers to the per annum payment and is to be applied 30
from time to time, and as and when profits are being distributed.

If so read, it amounts to a direction that if the preferred shareholders
receive their stipulated 7% per annum, they can receive no more of the profits
then in process of distribution until the holders of ordinary shares shall have
received thereout dividends equal to those which, out of these profits, are
paid on the preferred shares, namely, to the extent of 7% per annum. This
interpretation allows full meaning to be given to the expression “holders of
ordinary shares” as being those who, as present holders, are properly entitled
to a dividend, and the words “paid on the preferred shares” as meaning the
“payment” definitely provided for in the same clause, that is what is directed 40
to be paid per annum out of the net profits, in priority to anything else.

It cannot be denied that the language creates difficulty if not confined
to the action of the directors at one time and in relation to one sum of profits
then to be distributed by them, and if the reference to the prior charge is not
governed by the words “per annum.”

If read as if it was to be applied to a continuous course of action dealing with an uninterrupted flow of profits and capable of being applied to a changing list of ordinary shareholders, it would produce curious results, requiring it to be ascertained whether the holders of ordinary shares in all previous years had received dividends equal to those paid on the preference shares and if not who were entitled to the shortage, much as in the case of *First Garden City Limited v. Bonham, -Carter* (1928) 1 Ch. 13, where such a distribution is held to be specially directed.

10 Further complications would ensue if there were an increase in the capital in the form of ordinary shares which would then on one construction of the words "equal dividends" further postpone the right of the preferred shareholders to benefit equally with ordinary shareholders in any surplus over the dividends on each class.

In deciding what is the meaning of the words "shall have received dividends equal to those paid on the preferred shares" three meanings may possibly be given to the word "equal," *i.e.* (1) equal in point of the right attached to the Senior shares; (2) equal to the dividend in point of amount paid on each occasion when a dividend is paid on the preferred shares; (3) equal in point of the per annum rate.

20 It seems to me that unless a dividend is expressly made cumulative and preferred, the right to such dividend must be determined at some specific point of time, when the Company can identify the holders of those shares to be benefited, who then are the only ones to be reckoned with. In dealing with a charter which suggests or implies that, when dealing with a specific distribution, equality in any further distribution between preferred and ordinary shares depends upon a condition precedent as here, the Court should lean to a construction which would enable a company to deal finally with its profits on each occasion in which it has determined to declare dividends, as between the different classes of those who are then its shareholders.

30 The meaning of the clause in question which commends itself to me is equality in the *per annum* rate, which would produce under that construction, equality in such distribution of the yearly, half-yearly or quarterly dividends paid at the 7% per annum rate. This would be a situation which would accord with business practice, and would work out an equal division of profits between the two classes of shares, giving to each a dividend at the rate of 7% per annum, and yet preserving priority. Thus construed it would accord with the provisions more clearly stated in the cases of *In re Espuela Land and Cattle Co.* (1909), 2 Ch. 187, *In re Fraser v. Chalmers* (1919), 2 Ch. 114, and *In re Nat. Telephone Co.* (1914), 1 Ch. 755, where the resolution
40 provided that after the second cumulative preference shares had received their 6% per annum and after the ordinary shares had received 6% "out of the profits of each year" there should be equality between the two classes of shares.

A distinction has been drawn in certain cases between the right to be paid a dividend, the extent and rate of which are specified, and, in words or in effect, charged upon capital and surplus in winding up and/or on the net profits from time to time, ~~and~~ ^{with} a right arising upon the allocation of profits

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for dividends to a certain share thereof. In this case the preference shareholders have the right first mentioned, and by reason of it either a preferential and cumulative charge on the profits is created for their dividend, or there is a contract between the company and the preferred shareholders that it shall be so treated. This I take to be the effect of the original letters patent. But I think the same result would follow if their rights arose only on the setting apart of a specified amount for dividend purposes. See *Ferguson v. Buchanan* (1920) S.C. 154; *Bishop v. Smyrna Co.* (1895), 2 Ch. 265; *Collaroy v. Giffard* (1928) Ch. 144.

The ordinary shareholders have only the second right. 10

The absence of any charge or declaration of like effect in favour of the ordinary shareholders naturally leads to the conclusion that they had no such right to a cumulative dividend. That is not conclusive, but having in mind that the rights of preference and priority given to shareholders should be definitely and fully stated in the articles of association or by the contract made when the shares are issued, and that when that is done, their rights are established and often definitely limited thereby, it is singular that without any such definite and precise statement ordinary shareholders can acquire exactly similar rights to priority and to (so-called) arrears without anything which can be "so definitely pointed to so as to suggest that it contains the whole of what the shareholder is to look to from the Company," per Haldane, L.C., in *Will v. United Lankat Co.* (1914) A.C. 11. 20

They cannot go back to previous periods and claim a present right to a sum equal to any cumulative charge of the preference shareholders as determined from year to year. Such a sum must of necessity be paid on any occasion out of the then allocated profits and any equality, as it strikes me, can only be equality in the 7% dividend paid the preference shareholders for the period which the dividend covers.

The case of *In re Wakely* (1920) 2 Ch. 205 (C.A.) as I read it contains statements which suggest and justify the construction I adopt. They indicate that an annual cumulative and preferential dividend at a fixed rate is not, when a declaration is made so as to include amounts not declared in previous years, to be treated as including a sum designated as arrears, but as a dividend calculated at the annual rate, the amount being determined by the application of that rate to the shortage of previous years so as to answer the requirement of the cumulative provision. 30

The capital of the company in the *Wakely* case was divided into 2,000 preferred ordinary shares, and 5,500 deferred ordinary shares.

Clause 5 of the memorandum of association, omitting non-essentials, was as follows:— 40

"The profits or other moneys of the company available for dividend which it shall from time to time be determined to distribute are . . . to be applicable first to the payment of a fixed cumulative dividend at the rate of 6 per cent. per annum on the capital paid up on the said preferred ordinary shares; secondly, to the payment of a fixed cumulative dividend at the rate of 12 per cent. per annum on the capital paid up on the said

deferred ordinary shares; thirdly, of the surplus one-sixth shall be applicable to the payment of a further dividend on the said preferred ordinary shares ratably as aforesaid, and five-sixths shall be applicable to the payment of a further dividend on the said deferred ordinary shares ratably as aforesaid.”

Younger, L.J. (now Lord Blanesburgh) dealt with Clause 5 and the following article :

10 “Article 119 : The directors may, with the sanction of the company in general meeting, from time to time declare a dividend to be paid to the members in accordance with their rights and interests in the profits and other moneys available for that purpose.”

He considers that (p. 227):

20 “A cumulative preferred dividend is, in my opinion, correctly described as one which gives to the holder of the preferred share *pari passu* with all other holders of shares of the same class a right to receive out of a fund of profits made available for dividend under the articles of the company, and in priority to the holders of all junior shares in it, a sum measured by the percentage rate and the period of time over which the dividend has not been paid in whole or in part. The dividend when paid—not being in any true sense in arrear up to that moment—is paid out of the fund then made available for its payment for the year or other financial period of the company in which it is paid. It is not paid in respect of any previous period of non-payment—when it was neither due nor payable—it is paid exactly in the same way as is a dividend at the same time paid out of any residue of the dividend fund to holders of ordinary shares in respect of which there has been no distribution for a period as long or it may be even longer.”

(In this last paragraph he is speaking of the ordinary shares which were also cumulative). He continues :

30 “In other words, in respect of the time with reference to which dividends are paid, there is no difference between a cumulative preference and an ordinary dividend. Each is a dividend for the year or other financial period of payment; that the preferred dividend is preferential, fixed, and cumulative means only this, that these are the factors by which the priority and the amount of the share of the dividend fund appertaining to the preference shareholder are ascertained.”

In the same case Lord Sterndale, M.R., said, at pp. 216-7 :

40 “The shareholders, in my opinion, acquire no right to any dividend until there are, in the language of Clause 5 of the memorandum, ‘profits or other moneys of the company available for dividend which it shall from time to time be determined to distribute’ when these conditions are fulfilled the shareholders acquire the right to add to the dividend for the year the same amount for each year in which no dividend has been paid. If this be correct, the dividend which is paid is not in respect of each year but in respect of the year in which profits are declared for division, the amount being by virtue of the cumulative clause determined by the whole amount of dividends unpaid.”

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He speaks thus of the declaration of the dividends in question (pp. 217-218):—

“They seem to me to be declarations of an interim dividend of 18 per cent. and 24 per cent., and a final dividend of 3 per cent. and 18 per cent. for the year, with an explanation that this amount is made up by taking into account the unpaid dividends of former years, and if so they are in accordance with what I think was the only declaration which the directors had power to make. As I have before pointed out, if they bear the meaning contended for by the respondents—that is, that the declaration was in respect of each year—I think they exceeded the powers of the directors, and if so they cannot alter the legal position of the shareholders.” 10

Lord Warrington (then L.J.) at page 222 :—

“When profits are available and the company determines to distribute them, it is the shareholder who is then entitled to the shares who takes the dividend, and not the person entitled to them in past years, though the dividend may in the case of cumulative dividend be large enough to cover the amount which would have been paid in past years if there had been profits available, but which was not paid because there were no such profits.”

Having regard to the foregoing, I have arrived at the conclusion that these words “equal dividends” are ambiguous and present questions similar to that 20 which troubled the Judicial Committee in *Dominion Coal Co. v. Dominion Iron and Steel Co.*, 25 T.L.R. 309, 1909 A.C. 293, and the English Court of Appeal in *Patent Castings Syndicate Ltd. v. Etherington* (1919), 2 Ch. 254, and our Supreme Court in *Can. National Fire Ins. Co. v. Colonsay*, 1923, S.C.R. 688. The word “equal” in respect to dividends must relate to some aspect of a dividend, namely to its amount, rate or seniority, and brings it, I think, within the class of cases which warrant the application of the doctrine of *contemporanea ex-positio*, because to use the words of Lord Bacon, “there is some collateral matter out of the deed that breedeth the ambiguity.” Lord Halsbury in delivering 30 judgment in the case of *Van Diemen’s Land Co. vs. Table Cape Marine Board* (1906) A.C. 92, 98, said that “contemporaneous exposition is not confined to user under the deed, and that all circumstances which can tend to show the intention of the parties whether before or after the execution of the deed itself may be relevant.” Lord Atkinson, who quoted in *Watcham v. East Africa Protectorate* (1919, A.C. 533) the language above mentioned, laid it down that in the case of a modern instrument extrinsic evidence may be given not only to identify the subject matter to which it refers but where in its language there is a latent ambiguity evidence may be given of user under it to show the sense in which the parties used the language they employed and what was their 40 intention as revealed by their language interpreted in that sense.

In *Doe vs. Ries* (1832) 8 Bing 178, 181, Tindal, C.J., in reference to a modern document said “if the words of the instrument be ambiguous we may call in aid the acts done under it as a clue to the intention of the parties.”

Park, J., in a later case, *Chapman v. Bluck* (1838) 4 Bing. N.C. 187, 193,

said that "the intention of the parties must be collected from the language of the instrument and may be elucidated by the conduct they have pursued."

The evidence offered in this regard consists of the issue on the one hand and the retention on the other hand of the share certificates dealing with the rights of the ordinary as well as those of the preferred shareholders under the original charter of the company. We are informed by counsel, I have no doubt correctly, that there are many original shareholders both ordinary and preferred who still hold these original certificates, and that those who have become shareholders by transfer have also acquired by that transfer the original certificates and still hold them. These certificates are found in Exhibit 12 at the trial. The important wording is as follows :—

"The preference shares carry a fixed cumulative preference dividend payable out of the profits of the Company applicable to dividends at the rate of Seven Per Cent. (7%) per annum on the capital paid up thereon. They rank both as to dividends and assets in priority to all ordinary shares. If after providing for the payment in any year of the dividend on the Preference Shares and any balance due for cumulative dividends for preceding years there remain any surplus net profits any and all such as are not in the opinion of the Directors required for the purposes of the Company will be applicable to dividends on the ordinary shares for such year to the extent of but not exceeding Seven Per Cent (7%) on the capital paid up thereon when and as from time to time the same may be declared by the Directors. The remainder of any such surplus net profits shall then be applicable to the payment of further dividends equally per share upon both the Preference Shares and the Ordinary Shares but no dividends shall be paid on the Ordinary Shares until after the Company shall have created and have to the credit of a reserve fund a sum equal to at least one year's dividend on the then issued Preference Shares the whole as provided in the Letters Patent incorporating the Company."

These words appear in both the preference and in the ordinary share certificates. When it is considered that these certificates were issued immediately after incorporation; that while they were in the possession of the original holders, ordinary dividends were not paid during the years 1910, 1911, 1912, 1913, 1914, 1915, and that in the year 1916 only 4% was paid as against 10½% to the preferred shareholders, and in the years 1917 and 1918 only 6% was paid to the ordinary shareholders as against 7% to the preferred shareholders, and that in four of the earlier years the 7% dividend was paid to the preferred shareholders and nothing to the ordinary shareholders, it is not unreasonable to draw the conclusion that the terms in which both the Company and all its shareholders understood the meaning of the words "equal dividends" involved equality of rate and nothing beyond.

In the Supplementary Letters Patent issued on the 16th of November, 1928, the following words occur :

"all the rights, preferences and priorities attaching to the preference stock as set out in the Letters Patent incorporating the Company shall remain undisturbed and shall attach to the new preference shares provided that

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the new preference shares shall have one vote in respect of each new preference share.”

These words followed the clause which subdivided both the preference and ordinary shares.

Further, the Supplementary Letters Patent after confirming the resolution of the Company for the conversion and sub-division of the shares contain the words :

“and reserving and maintaining at all times for the shareholders of each class, preference and ordinary, all the rights attaching to shares of the par value of \$100 *as originally created.*” 10

In the new certificates issued after the granting of these Supplementary Letters Patent on the 16th of November, 1928, there appears a clause referring to the Supplementary Letters Patent as follows :

“Reserving and maintaining at all times for the shares of each class, preference and ordinary, all the rights attaching to the shares of the par value of \$100, *as originally created.*”

Whatever, therefore, the true meaning of the words “equal dividends” is, it is clear that those now claiming a construction more extensive than I feel able to adopt have, both in the Supplementary Letters Patent and in the new certificates, established the standard by which their rights are to be adjudged, 20 namely, the provisions under which the shares were originally created. After much consideration I have come to the conclusion that in construing these rights, the Court can look at the original certificates issued, the fact of their distribution, and retention without objection by the shareholders, many of whom at present hold them, the transfer of shares to later shareholders under precisely the same terms and the course of the Company in its distribution of dividends, as indicating that the construction which I adopt is the one which, judging by the acts which parties did under them in respect of their rights as originally created, is the correct one.

I do not, however, place my judgment upon this latter ground. Apart 30 from it altogether, my opinion is that the true construction of the words of the charter limits the ordinary shareholders to dividends equal but only in the per annum rate of 7% to those payable to the preference shareholders.

It is with great respect and I regret I am constrained to differ from my brother Orde in his construction of the original Letters Patent, regarding, as I do, the declaration in his judgment in paragraph 2 thereof, as an adoption of the view that the ordinary shareholders should be paid an amount equal in all respects to what has been paid to the holders of the preference shares from the date of the incorporation of the defendant company and that they are not limited to the rate of 7% per annum. 40

I think the appeal succeeds, and that the judgment in appeal should be set aside and a declaration made restricting the rights of the ordinary shareholders in accordance with the views I have expressed.

MIDDLETON, J.A.:—I am of opinion that this appeal fails. I should, however, like to express my reasons in my own way.

Reduced to its simplest form the contention of the appellants is that when the directors in any year pay the 7% upon the preferred stock of the company and think it inexpedient to declare a dividend upon the common stock and wise to retain in the coffers of the company undivided profits that have been earned, the right of the holders of the common stock to share in these proceeds so as to get a dividend equal to that paid on the preference stock is gone, and that if in any succeeding year there is ample on hand to pay a dividend of 7%
 10 on the entire stock, preferred and common, and also enough to make good the inequality suffered by the holders of the common stock in the previous year, this surplus cannot be made use of for that purpose but must be then divided pro rata among all the shareholders.

It is enough to say "it is not so written in the bond."

Prima facie all shareholders share pro rata. Preference stock has the special rights and privileges given to it by the instrument of its creation, here the Charter. The only preference is that it is entitled to a dividend of 7% per annum cumulative. In all else there is to be equality. The company and its directors are not given any power to give any greater privilege to either kind of
 20 stock. What the appellants argue is that by delaying the declaration of dividends upon common stock the directors may give a greater right to the holder of preference stock.

The second argument put forward is that by the form of the endorsement of the stock certificate greater rights are given to the holders of preferred stock than those offered by the Charter. If it is sought to maintain this as an actual change in the rights of the holders of the preferred stock then the argument fails for nothing can override the provisions of the Charter in this way. Save as provided by the Charter itself, preferred stock can only be issued by virtue of a directors' by-law confirmed by a shareholders' by-law at a meeting duly
 30 called in which the shareholders' by-law is carried by a stipulated majority. The directors cannot create preferred stock by any such simple means as printing a statement upon the back of the stock certificate.

If this argument is put forward as an estoppel, several answers are obvious,—first, an estoppel is personal and exists only in favour of the individual setting it up. It cannot be set up in a class action. Secondly,—These plaintiffs acquired their preference stock before any stock certificate was issued. They did not purchase the stock upon the faith of the certificates upon which they now rely. Thirdly,—That which is relied upon is the action of the directors or of some officer of the company. Whoever is responsible for
 40 the certificate was as much the agent of the plaintiffs as the agent of the defendants. This cannot create an estoppel. Fourthly,—That which is relied upon is in no sense the action of the company. The directors have a strictly limited authority. They cannot alone issue preferred stock so no representation by them can affect the rights of the holders of preference stock. These are governed by the by-laws and by the Charter. Before there can be an estoppel by reason of the action of the directors, it must be shown that that which is relied upon would be within their power.

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GRANT, J.A.:—The plaintiffs, on behalf of themselves and all other holders of ordinary shares of the Steel Company of Canada, seek to restrain the defendant company and its Board of Directors “from paying any dividend upon its Preference Stock in excess of 7 per cent. per annum until such time as the Defendant Company shall have declared and paid dividends upon its Ordinary Stock equal per share in amount to the dividends previously paid on its Preference Stock,” with due regard for the changes which were made in the par value of the shares respectively as a result of the issue of supplementary letters patent providing therefor.

The learned trial Judge (Orde, J.A.) was of opinion that upon the proper interpretation of the language of the letters patent, the plaintiffs were entitled to their injunction, and he so declared. By that interpretation it was held that no dividends could be declared or paid to the holders of preference shares, in addition to or in excess of the 7 per cent. cumulative dividend to which they were entitled, unless and until there should have been declared and paid to the holders of common or ordinary shares further dividends, amounting in the aggregate to 43½ per cent. upon the capital paid up thereon. In other words, that upon each common share there must be declared and paid a further dividend or dividends sufficient in amount to make the total sum of the dividends paid upon such common share equal in the aggregate to the total sum which has heretofore been paid upon each preference share, before any further dividend can be declared and paid upon such preference share.

The pertinent paragraphs of the charter or letters patent of the company are set forth in the reasons of the learned trial Judge, but may be repeated for convenience of reference. They read as follows :—

“The capital stock of the said Company shall be twenty-five Million dollars divided into Two hundred and Fifty thousand shares of One hundred dollars each, subject to the increase of such capital stock under the provisions of the said Act. Of which two hundred and fifty thousand shares, One hundred thousand shares of One hundred dollars, each, that is to say, Ten million dollars be created and issued as preference stock and the same when so issued shall have preference and priority as follows :

“(a) In case of liquidation, dissolution or winding up of the Company, the holders of such shares shall be entitled to repayment in preference to ordinary shareholders of the amount of the par value of said shares and any arrears of dividends thereon and also the net profits of the Company which it shall from time to time be determined to distribute are to be applicable first to the payment of a fixed cumulative preferential dividend at the rate of seven per cent. per annum on the capital paid up on the said preference shares and the holders of such shares shall participate rateably with the holders of the issued ordinary shares in the distribution of net profits after the holders of the ordinary shares shall have received dividends equal to those paid on the preferred shares;

“(b) No dividends shall be paid on the ordinary shares until after the Company shall have created and have to the credit of a reserve fund a sum equal to at least one year’s dividend on the then issued preference shares.”

As the Company was incorporated under the Companies Act of Canada in the year 1910, subject to the provisions of that Statute as it then stood, (R.S.C. 1906, Ch. 79), the rights in respect of dividends, of the preferred and common shareholders fall to be determined by the construction which must be placed upon the paragraphs above quoted from its letters patent. With the deepest respect for the opinion of those who think otherwise, a somewhat careful study of the matter has led me to the conclusion that the construction of these paragraphs is by no means simple.

As was stated by Lord Haldane in *Will vs. United Lankat Plantation Co.*,
10 1914, A.C. 11, at page 15 :

“The point in dispute is one of construction, and construction must always depend on the terms of the particular instrument; it is only to a limited extent that other cases decided upon different documents afford any guidance. I make that observation because a good deal of authority has been cited in the course of the argument, and reference has been made to dicta of various learned judges. But in all those cases they were dealing with documents which were different from those we have to construe, and our primary guide must be the language of the documents we have before us.”

20 In that case the provision in the articles stating the rights of the holders of preference shares reads as follows :—

“That the new shares be called preference shares and that the holders thereof be entitled to a cumulative preferential dividend at the rate of 10 per cent. per annum on the amount for the time being paid up on such shares; and that such preference shares rank, both as regards capital and dividend, in priority to the other shares.”

The shares in question were new shares, issued subsequently to the original stock issue, and upon special terms, and the House of Lords held that this provision set forth the entire statement of the rights of holders of such
30 preference shares, and that they were not entitled to participate further in the profits of the company notwithstanding the general provision contained in another article to the effect that “the profits of the company available for distribution . . . shall be distributed as dividend among the members in accordance with the amounts paid on the shares held by them respectively.”

In other words, as there was nothing in the articles to indicate that the holders of preference shares were to be entitled to any further dividends beyond those specifically directed to be paid to them, a mere general provision for the distribution of profits among the shareholders was not considered to have effected any alteration in that regard.

40 As was stated further by the Lord Chancellor at the bottom of page 17 :

“Shares are not issued in the abstract and priorities then attached to them; the issue of shares and the attachment of priority proceed *uno flatu*; and when you turn to the terms on which the shares are issued you expect to find all the rights as regards dividends specified in the terms of the issue. And when you do find these things prescribed it certainly appears to me unnatural to go beyond them, and to look to the *general provisions* of an article which is only to apply if nothing different is said.”

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The learned Lord Chancellor found one or two other features in the articles of the company then under consideration which, in his opinion, fortified the interpretation of which he approved.

As the paragraph quoted from the letters patent in the case at bar, contains express provisions for the further participation, by way of dividend, in the net profits of the company by the holders of preference shares, although the conditions upon which the right to so participate are not, in my opinion, expressed in clear terms, the Lankat decision and others based upon somewhat similar states of facts, have no direct bearing upon the decision of the present case, which must be determined upon the language of the charter. 10
In other words, we must interpret, as best we can, this language which expressly provides for further participation by holders of preference shares, and the decisions in cases in which there were no provisions for such further participation, and such right was sought to be established by inference, or in some similar manner, are not of any material assistance. So also with cases in which, for lack of any express provision as to further participation, the decision was reached with the assistance of the *prima facie* rule that all shareholders in a company were entitled to be treated alike. No recourse can be had to any *prima facie* rule for the reason that there is here an express statement that the holders of preference shares are to participate further; what the 20
Court has to find out is, what are the terms or conditions upon or under which the right to further participation shall arise.

The question in dispute between the parties to this action, arose under the following circumstances. In the month of December, 1928, the Board of Directors of the defendant company passed resolutions declaring two dividends on both preferred and common shares (as such shares were constituted as a result of the issue of Supplementary Letters Patent) by which the alleged right of the common shareholders to be paid the arrears of dividends on their shares (claimed to be 43½%) calculated from the time of the Company's inception, was ignored. By such resolutions, a dividend at the rate of 7% 30
was declared on the common, as well as on the preferred, and a further dividend also, upon each of the two classes of shares. The latter is objected to by the plaintiffs, who say, in effect : "You cannot declare or pay this or any dividend, beyond 7% per annum, on preference shares, unless and until you shall have first declared and paid 43½% on the paid-up capital of the common shares so that the total percentage paid on the common, from the incorporation of the Company down to the present time, shall be equal to the total percentage paid on the preferred shares."

As supporting this claim the holders of common shares rely upon the following words in the latter part of paragraph (a) (*supra*) in the charter : 40

"And the holders of such shares shall participate rateably with the holders of the issued ordinary shares in the distribution of net profits after the holders of the ordinary shares shall have received dividends equal to those paid on the preferred shares."

It is of interest to read what is contended for by the plaintiffs in their pleading, as the effect of the above provision in the Letters Patent. In paragraph 7 of the statement of claim they say (after stating that they had

obtained and examined copies of the Letters Patent and Supplementary Letters Patent):

10 “the plaintiffs ascertained that the dividends on the ordinary stock of the defendant company were *cumulative* and thereupon threatened to institute legal proceedings for the purpose of restraining the Defendant Company should the Defendant Company attempt to pass a resolution which would in any way alter or affect the rights of the holders of Ordinary Stock to claim that dividends on the Ordinary Stock were *cumulative* and that *arrears of dividends* aggregating approximately 43½% must be paid on the Ordinary stock of the Defendant Company before the holders of Preference stock received dividends pro rata with the holders of Ordinary stock in excess of 7% per annum.”

Again, in paragraph 8 :

“for the express purpose of preserving to the holders of Ordinary Stock whatever rights they then had in regard to the payment of *arrears of dividends*, the resolution proposed to be passed was altered to read, etc.”.

Also, in paragraph 10, they state :

20 “The Plaintiffs further allege that the stock certificates heretofore issued by the Defendant Company are ambiguous and erroneously and without any warrant of authority therefor might be construed to imply that dividends on the Ordinary Stock of the Defendant Company are *non-cumulative*.”

Paragraph 13 reads as follows :

“The Plaintiffs allege that the net earnings of the Defendant Company are sufficient to have enabled the Defendant Company to pay dividends equivalent to 7% per annum upon its Ordinary Stock since the date of the incorporation of the Defendant Company, after creating the reserve fund referred to in the Fourth paragraph hereof.”

30 In paragraph 15 they again refer to :

“the aforementioned arrears of dividends on the Ordinary Stock”;

and by paragraph 1 of the prayer, the plaintiffs ask :

“(1) An injunction restraining the Defendant Company from paying any dividend upon its Preference Stock in excess of 7% per annum until such time as the Defendant Company shall have declared and paid dividends upon its Ordinary Stock equal per share in amount to the dividends previously paid on its Preference Stock.”

40 It is manifest from the above that the plaintiffs by their pleadings, were claiming to be entitled to cumulative dividends at the same rate (7% per annum) as those expressly provided by the Charter to be paid to holders of preference shares, and that, dividends at such rate not having been paid to them in respect of all the years which had elapsed since the issue of the shares, the amount by which they fell short constituted “arrears” which had to be made up before there could be any further participation by holders of preference shares.

Mr. Robertson, of counsel for the plaintiffs, not only did not support this claim as set up by his clients in their pleading, but, on the contrary, stated

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to us that the plaintiffs were not claiming to be entitled to cumulative dividends or that the $43\frac{1}{2}\%$ constituted arrears of dividends to which the plaintiffs were entitled in respect of any specified number of years or definite period of time. His contention was that the plaintiffs' rights were rather of what might be called a negative character; that is the right, according to his contention, to object to the payment of further dividends, to the preferred shareholders, in excess of the 7% unless and until the $43\frac{1}{2}\%$ be first paid to the holders of ordinary shares. He stated quite frankly that, notwithstanding the fact that there were ample net profits out of which payment of the $43\frac{1}{2}\%$ could be made by the company to the ordinary shareholders, yet the latter had no right to call upon the company for payment, of the whole or of any portion, conceding that the Board of Directors were not bound to pay any dividend to the ordinary shareholders. In this I think he was right, as I have not found any support of the contrary view either in the language of the Charter itself, or in general law applicable. 10

The Plaintiffs' counsel, however, sought in another manner to reach the same result as would have followed if the claim set up by the pleading, namely, that the dividend right of the ordinary shares was cumulative, were allowed. In substance, he stated the plaintiffs' position thus: that the holders of preference shares were limited in their rights in respect of dividends, the company being a going concern, to what is given to them expressly, by the language of the Charter; and that subject thereto, the holders of ordinary shares were entitled to all the remaining net profits of the company as and when the same might be distributed in the way of dividends. In this view, after payment to the preferred shareholders of the 7% per annum, cumulative, (subject to the provisions in respect of a reserve fund in paragraph b) the ordinary shareholders would be entitled to the remaining net profits on distribution, subject only to the further right of preferred shareholders to participate after the ordinary shareholders had received their $43\frac{1}{2}\%$ to make their return from their shares equal to the return theretofore obtained by the preferred shareholders. It will be noted that the result is exactly the same as if the Charter provided that the holders of ordinary shares were to be entitled to a cumulative dividend of 7% per annum, and I cannot see that the mere fact that the claim is expressed by counsel in a manner differing from that in which it is set up in the pleading, can in any way alter its character. If effect be given to it, the holders of ordinary shares would be entitled to what is in fact a cumulative dividend, payable whenever a further distribution of the net profits comes to be made. Such a right attached to ordinary shares is very unusual, and, in my opinion, would require clear language for its support. That the holders of such ordinary shares would be compelled to wait for their accumulated dividends, until the directors see fit to declare them, would not make them in any way peculiar, as preferred shareholders are in exactly the same position. The latter receive their "cumulative" dividends only as and when the directors think proper to declare and pay them. 20 30 40

Further, it is of importance to bear in mind that it does not vitally concern the company, whether or not the plaintiffs' contention is valid, as the dividends do not constitute any liability unless and until they are declared. It is to the

preference shareholders that the plaintiffs' contention is of vital importance, and, as between the two classes of shareholders, the allowance of the plaintiffs' claim would, to my mind, make the common shares clearly cumulative, as to dividends. The preference shareholders have exactly the same interest in the surplus after payment of the common share dividend as common shareholders, being entitled to participate rateably therein.

In so far as they touch upon the matter, the provisions of the Companies' Act of Canada, as it was in 1910 (R.S.C., 1906, Ch. 79), seem to be against rather than in favour of the plaintiffs' contention. Secs. 47 and 49 are as follows :—

“47. The directors of the company may make by-laws for creating and issuing any part of the capital stock as preference stock, giving the same such preference and priority, as respects dividends and in any other respect, over ordinary stock as is by such by-laws declared.

“2. Such by-laws may provide that the holders of shares of such preference stock shall have the right to select a certain stated proportion of the board of directors, or may give them such other control over the affairs of the company as is considered expedient.

“49. Holders of shares of such preference stock shall be shareholders within the meaning of this Part, and shall in all respects possess the rights and be subject to the liabilities of shareholders within the meaning of this Part : Provided that in respect of dividends, and in any other respect declared by by-law as authorized by this Part, they shall, as against the ordinary shareholders, be entitled to the preferences and rights given by such by-law.”

By the interpretation section 3 (d) it is provided that :—

“3 (d). ‘shareholder’ means every subscriber to or holder of stock in the company, and includes the personal representatives of the shareholder;”

At the time of the incorporation of this company, the statute did not give the wide powers as to creation of different classes of stock that are now conferred by R.S.C. 1927, Cap. 27, Sec. 56. The only shares which (by the Statute) could be given any special rights or privileges, were preference shares.

Ferguson v. Buchanan (1920) Sess. Cas. 154, was cited as an instance in which common or ordinary shares were held entitled to a cumulative dividend. The facts, however, were radically different and in a most material particular.

The pertinent clause was worded as follows :

“That out of the profits of the Company, after making due provision for Depreciation and Reserve Fund, the holders of ‘A’ Preference Shares shall be entitled to receive, as a first charge thereon, a cumulative preferential dividend at the rate of eight per centum per annum, on the capital for the time being paid up on such shares; the holders of ‘B’ Preference Shares shall be entitled to receive, as a second and postponed charge, a preferential dividend at the rate of five per centum per annum on the said shares; and the holders of Ordinary Shares shall be entitled to receive, as a third and postponed charge a preferential dividend at the rate of two and a half per cent. per annum on the said shares;”

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The Lord Justice Clark lays emphasis upon the provision that the dividends payable, were to be charges upon the profits of the Company, and were, each, explicitly stated to be “*preferential*.”

On page 158, after mentioning that the views of Sir Francis Palmer and Lord Wrenbury were in agreement, he quotes with approval, the statement from Stroud: “A preference dividend is *prima facie* cumulative, so that failure of profits wherewith to pay it in any one year, will be made good out of any profits that may be made in a subsequent year.”

Again, after stating that this effect is strengthened in the case under consideration, by the dividend being made a charge on the profits, he expresses the view on page 159, that the use of the word “preferential” would alone involve that it was cumulative; and, lower down, he says, that the ordinary meaning of the word “preference” imports that it should be cumulative. 10

This *prima facie* meaning of the word “preference” or “preferential” was expressly assented to by the other members of the Court, and relied upon as establishing the rights of holders of “B” shares and ordinary shares to cumulative dividends.

That the use of the word “preference” or “preferential” will *prima facie*, make the dividend cumulative, has been similarly held in subsequent decisions.

In the case at bar, neither “preferential” (or preference) nor “cumulative” is to be found in use with respect to ordinary or common shares, and the basis for the Ferguson decision is lacking. 20

Other decisions much relied upon in the plaintiffs’ support, were *Allen vs. Londonderry & Enniskellen Ry. Co.*, 25 W.R. 524; *Corry vs. Londonderry* (1860), 29 Beaver 263; and *Henry vs. Great Northern Ry.*, 1 De. G. & J. 606. The decision in the Allen case rested upon the Corry judgment and this again upon the Henry decision. In the Henry case, the pertinent provision was that certain preference shares should bear “5 per cent. interest or preference dividend in perpetuity,” and that certain other preference shares should be entitled to dividends at a given rate “in preference to the payment of dividends on the ordinary shares.” It was held that the dividends on the preference shares were cumulative. 30
~~were cumulative.~~

It was in this decision (at p. 643) that Knight Bruce, L.J., gave his illustration of a partnership, which has been so frequently referred to in later cases.

In the Corry case, the rights of holders of preference shares were under consideration. In the provisions with respect thereto, the words “interest” and “dividend” were both used. It is manifest, from a perusal of the decision, that the holders of these preference shares were deemed to be entitled to arrears, by reason of the special provisions governing their issue. In the Allen case, Jessel, M.R., said that, a similar question as to ordinary stock was “exactly decided in the case before him” by Lord Romilly in the Corry case, as the holders of the ordinary shares were to receive a dividend “of the same amount.” These decisions rest upon their special facts, and do not, in my opinion, afford any sufficient foundation for the plaintiffs’ claim in the case at bar which must be upheld or must fall, by virtue of the language of the Charter in question. 40

That the shareholders, whether preferred or ordinary, have no rights in respect of the profits of the Company, save as and when these (or any portion of them) are set apart for distribution by the declaration of dividends, is elementary. The profits are the property of the Company, which is a legal entity, altogether separate and distinct from the holders of its stock.

The Gramophone &c. Ltd. v. Stanley (1908) 2 K.B. 89, contains very clear statements of the law, and has frequently been referred to in subsequent decisions. The Court held that the English Company, which held all the shares in a certain German Company, was not liable for income tax upon the profits of the German Company, save only as to such part thereof as was actually distributed as dividends. It is made abundantly clear that the holder of shares, has no *inchoate* or other right in the profits of the Company, any more than in any other of its assets. His right is to his dividend, as and when declared in accordance with the provisions of the Charter or by-laws governing the same.

10 Holders of shares cannot compel the company or the directors to declare or pay to them any part of the profits as dividends.

It is only as and when the directors "determine to distribute" profits, and only with respect to such portion of them as are so "determined to be distributed," that the rights of the shareholders become operative, and I think this may furnish the key to the solution of the problem in this case. In other words, in my opinion, it is only with respect to such portion of the net profits as the directors may from time to time determine to distribute, that the latter part of the operative clause (lastly above quoted) is assuming to deal, and in respect of which the rights of holders of common shares, are being stated.

Adverting to the particular charter provisions with which we have here to deal, I note in the first place that these purport to outline the rights of holders of preference stock, of which, it is stated, at the outset, "the same when so issued shall have preference and priority as follows:" Be it noted that they are to have both *preference* and *priority*. In case of liquidation, etc., the holders are to have repayment, in *preference* to ordinary shareholders, of the amount of the par value of the shares and any arrears of dividends thereon. Then follow the provisions as to dividends. I note first that there is no provision for distribution of net profits generally; it is only such net profits of the Company "which it shall from time to time be determined to distribute," that are being dealt with. There is no parallel with cases in which the "profits" of the Company are to be distributed, such as in *Eving vs. Israel & Oppenheimer Ltd.* (1918) 1 Chy. 101, where it was provided that "the profits of the Company in each year should be applicable, etc.", and Eve, J., held that "profits" meant the credit balance in the profit and loss account of each year," following the Scots decision in *Paterson vs. Paterson* (1916), 53 S.L.R. 404 & (1917 54 S.L.R. 19). The "net profits" then "which it shall from time to time be determined to distribute" are to be applicable *first* "to the payment of a fixed cumulative preferential dividend at the rate of seven per cent. per annum on the capital paid up on the said preference shares." Note that, although the word "preferential" *prima facie* imports that the dividend shall be cumulative, yet, to make it quite certain and that there may be no possi-

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sional Court
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bility of misconstruction, the clause contains the word "cumulative" as well. I note also that it uses the word *first*, clearly implying that further provision is to follow, for the application of what may remain of such net profits as it had been "determined to distribute," and as a part of the same sentence it provides that "the holders of such (*i.e.*, preference) shares shall participate ratably with the holders of the issued ordinary shares in the distribution of net profits after the holders of the ordinary shares shall have received dividends equal to those paid on the preferred shares." The "net profits" here referred to are clearly the net profits "which it shall from time to time be determined to distribute" for several reasons, namely: because those are the only net profits which the paragraph purports to deal with at all, and this forms part of the sentence in which the net profits are so defined; and because previously it had been stated how these were *first* to be applicable and this provision follows in regular sequence; and also because, on general principles, it is only in respect of net profits which it is "determined to distribute" that shareholders have any dividend rights. 10

If the plaintiffs' claim that they are entitled to dividends at the rate of seven per cent. per annum from the time of the Company's incorporation is well founded, it seems to me strange that the Charter does not use apt words to provide therefor. It seems strange also, that such an unusual provision 20 should appear incidentally only, in a paragraph setting out the rights of holders of preference shares, and not in a paragraph inserted for the express purpose which the plaintiffs put forward as the intention. It would have been a simple matter to have stated, after the provision for payment of a cumulative preferential dividend on the preference shares, that "Second, subject to the provisions of para. (b) the holders of issued ordinary shares shall next be entitled to a fixed cumulative dividend at the said rate of seven per cent. per annum; and then to have provided for ratable participation by both classes of holders in any further net profits "determined to be distributed." It must be recognized that this is the effect which the judgment of the learned 30 trial judge has, under the existing circumstances. As there are sufficient net profits to provide for payment of 7% on the ordinary shares, from the inception of the Company, holders of such shares, by the judgment, would receive, under an entirely different set of words, exactly the same returns as would be received by preferred shareholders for whom that result is produced by using apt words, commonly used to bring about that result.

In other words, if the Charter was intended to produce that result, why did it use the apt words, which could not be misconstrued, in the first part of the sentence, and then in the next part use such equivocal language to express exactly the same meaning. The draughtsman shews in the first part, that he 40 knows the appropriate and apt words that would clearly express his intention, and then proceeds, in the latter part, to use entirely different words. It seems to me that this use of such different language, and in the same paragraph, is reasonably to be taken as an indication that a different result was intended to be produced. As the right of preferred shareholders to a fixed cumulative preferential dividend at 7% per annum from the incorporation of the Company was stated in clear and plain words, I do not see why the right to a similar

dividend on the part of ordinary shareholders, is not stated in similarly clear and plain words, if that was the intention. And when other and very different words are used, then I think it is but reasonable to conclude that some other intention was had in mind, if the language is reasonably and equally capable of other interpretation. It must also be recognized, if the judgment stands, that holders of common shares, under the present circumstances as above mentioned, will receive exactly the same returns upon their shares, as will holders of preference shares, notwithstanding the express provision that the latter were to have both "preference and priority." In other words, holders
 10 of preference shares would have *priority* only, as to their dividend of seven per cent., and not a "preference" also, being merely paid first. If that was the intention, and the preference was to be enjoyed (as well as the priority), only when there was not sufficient to pay on both classes of stock, the 7% dividend, I do not know why the Charter does not so state. If that were the intention the lengthy and involved provisions, which have given rise to this litigation, would, in large part, have been unnecessary.

In this connection, I have been interested to read the form of declaration, which the learned trial Judge deemed essential to express, in clear language, what, in his opinion, was intended by the language of the Charter. (*Vide*,
 20 declaration at close of judgment.):

"the holders of Preference shares are not entitled to participate in any distribution of the net profits of the defendant Company in excess of their fixed cumulative preferential dividend at the rate of seven per cent. per annum until the total dividends declared upon the ordinary stock since the incorporation of the company shall be equal as to the rate thereof to that theretofore paid and declared upon the preference stock."

If I may so state, without disrespect, the declaration does not bear any very marked resemblance to the language of which it purports to express the intention, and I do not see any way in which the declaration could safely be
 30 shortened. The forms in which the plaintiffs endeavour to express what they put forward as the intention of the Charter in this regard, are equally lengthy, and equally unlike the language used in the document itself. It seems to me that the very fact that so many words have to be supplied in order to make it clear that the intention of the Charter is what the plaintiffs contend, argues very strongly against their contention.

It seems to me also, that the words used in that clause upon which the plaintiffs rely, are capable of two or more interpretations; "after the holders of the ordinary shares shall have received dividends equal to those paid on the preferred shares." Does this mean the "holders" of ordinary shares
 40 collectively? If it does, then they have already received upwards of a million dollars more, as appears by the statement put in as Ex. 9. Or it may mean equal in rate, *i.e.*, at 7%, and, in my opinion, this is what it was intended to mean. That is, that out of the net profits which it was "determined to distribute" after payment of the 7% to preferred shareholders, all common shareholders should also receive dividends of 7%, which would thus be "equal to those paid" on the preferred shares.

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sional Court
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With great respect for the contrary view of the learned trial Judge, I am not impressed with the fact that the draughtsman has used the plural in this clause, where he uses the words "*dividends* equal to those." The whole paragraph is not drawn with such strict and careful regard for exactness of expression as to call for rigid interpretation. In the very next paragraph (b) dealing with the same subject matter, a plural is used where it is quite apparent that the singular is intended. "No dividends shall be paid on the ordinary shares until after the Company shall have created, etc. . . . a reserve fund, etc." Manifestly, it means that no *dividend* is to be paid on ordinary shares until the specified reserve fund is first provided for; unless the draughtsman, 10 because there were to be numerous holders of ordinary shares, referred to the distribution made to them, as "dividends" paid to "holders of ordinary shares." If that be so in the one case of using the plural, why not in the other ?

It is urged for the plaintiffs that dividends are not necessarily payable with respect to any particular period of time, and that is undoubtedly the abstract legal position in that regard. But it is also true that dividends are usually declared with respect to such a definite period, as annually, or half-yearly, or quarterly, and in the present case, paragraph (b) lends support to the defend- 20 ant's position, in that, in providing for a reserve fund, it states that it is to be "at least equal to one *year's dividend* on the then issued preference shares." This seems to me to indicate that the draughtsman, in referring to the dividends on preference shares, had in mind the "7% per annum" to which holders thereof were entitled in priority, and that holders of common shares were intended to receive in the order stated, out of the net profits which were "determined to be distributed" an equal dividend, that is, 7%.

Counsel for the defendant also contended that the stock certificates which were issued to all shareholders, both preferred and common, shortly after the grant of the Letters Patent, should be looked at, as contemporaneous exposi- 30 tion of a clause which is couched in ambiguous language.

The same form of certificate was used down to the time of the grant of the Supplementary Charter. As I am not convinced in my own mind that we are entitled, under the circumstances of this case, to look at or consider the form of the stock certificate, for such purpose, I prefer not to express any opinion in that regard.

For the reasons which I have given, I would allow the defendants' appeal and dismiss the action, both with costs.

No. 13.
Formal Judgment of First Divisional Court

IN THE SUPREME COURT OF ONTARIO.

THE HONOURABLE THE CHIEF
JUSTICE OF ONTARIO,
HONOURABLE MR. JUSTICE MAGEE,
HONOURABLE MR. JUSTICE HODGINS,
HONOURABLE MR. JUSTICE MIDDLETON,
HONOURABLE MR. JUSTICE GRANT,

Monday, the 17th day
of March, 1930

*In the
Supreme
Court of
Ontario.*

No. 13.
Formal
Judgment of
First Divi-
sional Court,
17th March,
1930.

10 BETWEEN :

THOMAS RAMSAY and FRANCIS A. MAGEE, suing on behalf of
themselves and all other holders of Ordinary Stock of The Steel
Company of Canada, Limited,

Plaintiffs,

[SEAL OF
S.C.O.]

AND

THE STEEL COMPANY OF CANADA, LIMITED, and JAMES T.
ROGERS and GEORGE C. COPPLEY, on behalf of themselves and
all other holders of Preference Stock of the Defendant, The
Steel Company of Canada, Limited,

20

Defendants.

1. UPON MOTION made unto this Court on the 25th, 26th and 27th days
of November, 1929, by Counsel on behalf of the Defendants by way of appeal
from the judgment pronounced by the Honourable Mr. Justice Orde on the
23rd day of August, 1929, herein, in presence of Counsel for the Plaintiffs,
and upon hearing read the pleadings, the evidence adduced at the trial, and
the judgment aforesaid, and upon hearing what was alleged by Counsel
aforesaid, and judgment upon the motion having been reserved until this day,

2. THIS COURT DOTH ORDER that this appeal be, and the same is hereby
30 dismissed;

3. AND THIS COURT DOTH FURTHER ORDER that the Plaintiffs do
recover from the Defendants their costs of this appeal forthwith after taxation
thereof.

"H.W.F."

26/3/30.

Entered O.B. 110, Page 491,
March 26th, 1930.

"E.B."

"E. HARLEY,"

Senior Registrar,

S.C.O.

*In the
Supreme
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No. 14
Order of
Middleton,
J.A., 31st
March, 1930.

No. 14.
Order of Middleton, J.A.
IN THE SUPREME COURT OF ONTARIO.

THE HONOURABLE MR. JUSTICE } Monday, the 31st day
MIDDLETON, In Chambers, } of March, 1930.

BETWEEN :

THOMAS RAMSAY and FRANCIS A. MAGEE, suing on behalf of
themselves and all other holders of Ordinary Stock of The Steel
Company of Canada, Limited,

Plaintiffs, 10

[L.S., \$1.40]

AND

THE STEEL COMPANY OF CANADA, LIMITED, and JAMES T.
ROGERS and GEORGE C. COPPLEY, on behalf of themselves and
all other holders of Preference Stock of the Defendant, The Steel
Company of Canada, Limited,

Defendants.

1. UPON the application of counsel for the defendants, in the presence
of counsel for the plaintiffs, upon hearing read the judgment of the First Divi-
sional Court of the Appellate Division of the Supreme Court of Ontario
pronounced herein on the 17th day of March, 1930, the reasons for said judg- 20
ment, the affidavit of C. F. H. Carson filed and the bond of the Dominion of
Canada General Insurance Company dated the 28th day of March, 1930,
filed and upon hearing what was alleged by counsel aforesaid and it appearing
that the defendants have, under the provisions of the Privy Council Appeals
Act, R.S.O. 1927, Chapter 86, a right to appeal to His Majesty in His Privy
Council;

2. IT IS ORDERED that the said bond be and the same is hereby approved
as good and sufficient security that the defendants herein will effectually
prosecute their appeal to His Majesty in His Privy Council from the said
judgment of the First Divisional Court and will pay such costs and damages 30
as may be awarded in case the said judgment is confirmed;

3. AND IT IS FURTHER ORDERED that an appeal by the said defendants
herein to His Majesty in His Privy Council from the said judgment of the
First Divisional Court be and the same is hereby admitted.

4. AND IT IS FURTHER ORDERED that the costs of this application shall
be the costs in the said appeal.

Entered O.B. 111, Pages 372-3.

March 31st, 1930.

"L.G.

"E. HARLEY,"

Senior Registrar, S.C.O.

PART II
EXHIBITS

Exhibit 4.

(Plaintiffs' Exhibit)

**Letters Patent incorporating Defendant Company under the name
"Canadian Steel Corporation Limited."**

CANADA.

By the Honourable CHARLES MURPHY,
Secretary of State of Canada.

10 To all to whom these presents shall come, or whom same may in any wise
concern : GREETING :

WHEREAS, in and by the 1st part of Chapter 79 of the Revised Statutes of
Canada, 1906, and known as "The Companies' Act," it is amongst other things,
in effect enacted, that the Secretary of State may, by Letters Patent, under his
Seal of office, grant a charter to any number of persons, not less than five, who
having complied with the requirements of the Act apply therefor, constituting
such persons, and others who thereafter become shareholders in the Company
thereby created, a Body Corporate and Politic for any of the purposes or
objects to which the Legislative Authority of the Parliament of Canada
20 extends, except the construction and working of Railways or of Telegraph or
Telephone lines, or the business of Banking and the issue of paper money or
the business of Insurance, or the business of a Loan Company, upon the
Applicants therefor establishing to the satisfaction of the Secretary of State
due compliance with the several conditions and terms in and by the said Act
set forth and thereby made conditions precedent to the granting of such
Charter.

AND WHEREAS, CHARLES SEWARD WILCOX, CYRUS ALBERT BIRGE and
ROBERT HOBSON, all of the City of Hamilton, in the Province of Ontario,
Manufacturers; LLOYD HARRIS, of the City of Brantford, in the said Province
30 of Ontario, Manufacturer; and HERBERT SAMUEL HOLT, of the City of Mon-
treal, in the Province of Quebec, Civil Engineer, have made application for a
Charter under the said Act, constituting them and such others as may become
shareholders in the Company thereby created a Body Corporate and Politic,
under the name of

"CANADIAN STEEL CORPORATION, LIMITED,"

for the purposes hereinafter mentioned, and have satisfactorily established
the sufficiency of all proceedings required by the said Act to be taken, and the
truth and sufficiency of all facts required to be established previous to granting
of such Letters Patent, and have filed in the Department of the Secretary of
40 State a duplicate of the Memorandum of Agreement executed by the said
applicants in conformity with the provisions of the said Act.

NOW KNOW YE, that I, the said Charles Murphy, Secretary of State of
Canada, under the authority of the hereinbefore in part recited Act, do by

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Exhibits.
Ex. 4.
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—continued

these Letters Patent, constitute the said Charles Seward Wilcox, Cyrus Albert Birge, Robert Robson, Lloyd Harris and Herbert Samuel Holt, and all others who may become Shareholders in the said Company, a Body Corporate and Politic, by the name of

"CANADIAN STEEL CORPORATION, LIMITED"

with all the rights and powers given by the said Act and for the following purposes and objects, namely :—

(a) To manufacture and deal in iron, steel and all other metals from the ore to the finished products thereof, and also to manufacture and deal in all goods, wares and merchandise in which iron or steel or any other metal is or may be used; 10

(b) To carry on the trades or businesses of colliery proprietors, coke manufacturers, paint and colour grinders, oil and colour men, manufacturers and dealers in cements, oils, paints, pigments and varnishes and other chemical and industrial preparations of every description in all their respective branches;

(c) To purchase, lease or otherwise acquire natural gas lands, mines, mining rights, metalliferous lands and timber lands, timber limits and water powers and any interest therein and to explore, work, exercise or develop and turn to account the same;

(d) To search for, get, work, raise, make merchantable and deal in natural gas, timber, iron, coal, ores, brick earth, bricks, cement and other metals, minerals and substances and their products; 20

(e) To crush, win, get, quarry, smelt, calcine, refine, dress, amalgamate, manipulate and prepare for market, buy and sell natural gas, timber, ore, metal and mineral substances of all kinds and to carry on any other metallurgical operations which may seem conducive to any of the company's operations;

(f) To buy, sell, manufacture and deal in minerals, plant, machinery, implements, conveniences, provisions and things capable of being used in connection with metallurgical and other operations which the company may carry on or be interested in or required by workmen and others employed by the company; 30

(g) To construct, carry out, maintain, improve, manage, work, contro and superintend any roads, ways, pipe lines, tramways and railway sidings¹ on lands owned or controlled by the Company, bridges, reservoirs, water-courses, aqueducts, wharves, furnaces, sawmills, crushing works, hydraulic works, electrical works, factories, warehouses, shops, dwelling houses and other works and conveniences which may seem directly or indirectly conducive to or convenient for any of the objects of the company and to contribute to, subsidize or otherwise aid or take part in any such operations; 40

(h) To manufacture, buy, sell and supply light, heat, and power of every kind and description, and to carry on the works of a gas company in all its branches. Provided, however, that any sale, distribution or transmission of electric, pneumatic or other power or force or gas for the purposes of light, heat or power beyond the lands of the company shall be subject to local and municipal regulations in that behalf; and to deal with, manufacture and render saleable coke, coal, tar, pitch, asphaltum, ammoniacal liquor, and

other residual products obtained in the manufacture of any article which the company is authorized to manufacture or deal in;

(i) To apply for, purchase or otherwise acquire any trade marks, patents, licenses, concessions and the like conferring any exclusive or non-exclusive or limited right to use or any secret or other information as to any invention which may seem capable of being used for any of the purposes of the company or the acquisition of which may seem calculated directly or indirectly to benefit the company and to use, exercise, develop, or grant licenses in respect of or otherwise turn to account the property rights, or
 10 information so acquired;

(j) To develop and turn to account any land acquired by the company or in which it is interested and in particular by laying out and preparing the same for building purposes, constructing, altering, pulling down, decorating, maintaining, fitting up and improving buildings and conveniences and by planting, paving, draining, farming, cultivating, letting on building lease or building agreement and by advancing money to and entering into contracts and arrangements of all kinds with builders, tenants and others;

(k) To buy, sell and manufacture, refine, manipulate, export and import and deal in all substances, apparatus and things capable of being used
 20 in any such businesses as the company is authorized to carry on or required by any customers of or persons having dealings with the company;

(l) To carry on any other business whether manufacturing or otherwise which may seem to the company capable of being conveniently carried on in connection with the company's businesses or calculated directly or indirectly to enhance the value of or render profitable any of the company's property or rights;

(m) To acquire or undertake the whole or any part of the business, property and liabilities of any company carrying on any business which the company is authorized to carry on, or possessed of property suitable for the
 30 purposes of this company and to pay therefor in fully paid up or partly paid up preference or ordinary shares of the company or in the bonds, debentures or other securities of the company;

(n) To enter into partnership or any arrangement for sharing profits, union of interest, co-operation, joint adventure, reciprocal concession or otherwise with any company carrying on or engaged in or about to carry on or engage in any business or transaction which this company is authorized to carry on or engage in, or any business or transaction capable of being conducted so as directly or indirectly to benefit this company. And to lend money to, guarantee the contracts of or otherwise assist, any such person and
 40 to take or otherwise acquire shares and securities of any such company, and to sell, hold, re-issue with or without guarantee, or otherwise deal with the same;

(o) To take or otherwise acquire and hold shares in any other company having objects altogether or in part similar to those of this company, or carrying on any business capable of being conducted so as directly or indirectly to benefit this company, notwithstanding the provisions of Section 44 of the said Act;

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Exhibits.
Ex. 4.
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ing Defend-
ant Com-
pany under
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Steel Cor-
poration,
Limited."
June 8th
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—continued

*In the
Supreme
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Ex. 4.
Letters
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incorporat-
ing Defend-
ant Com-
pany under
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—continued

(p) To enter into any arrangements with any authorities, government, municipal, local or otherwise, that may seem conducive to the company's objects or any of them, and to obtain from any such authority, any rights, privileges, and concessions which the company may think it desirable to obtain, and to carry on or exercise and comply with any such arrangements, rights, privileges and concessions;

(q) To establish and support or aid in the establishment and support of associations, institutions, funds, trusts and conveniences calculated to benefit employees or ex-employees of the company (or its predecessors in business) or the dependents or connections of such persons, and to grant pensions and allowances, and to make payments towards insurance and to subscribe or guarantee money for charitable or benevolent objects or for any exhibition, or for any public, general or useful object; 10

(r) To promote any company or companies for the purpose of acquiring all or any of the property and liabilities of this company or for any other purpose which may seem directly or indirectly calculated to benefit this company;

(s) Generally to purchase, take on lease or in exchange, hire or otherwise acquire any real and personal property, and any rights or privileges which the company may think necessary or convenient for the purposes of its business; 20

(t) To construct, acquire and operate vessels, steamboats, and barges and to carry on the business of lumbermen, vessel agents, cartage system, cartage agents, wharfingers, warehousemen and forwarders;

(u) To invest and deal with the moneys of the company not immediately required in such manner as may from time to time be determined;

(v) To lend money to customers and others having dealings with the company and to guarantee the performance of contracts by any company;

(w) To remunerate any company for services rendered or to be rendered to the company in placing or assisting to place or guaranteeing the placing of any of the shares in the company's capital, or any bonds, debentures or other securities of the company, or in or about the formation or promotion of the company or the conduct of its business; 30

(x) To sell or dispose of the whole or any part of the assets and undertaking of the company as a going concern or otherwise for such consideration as the company may think fit and in particular for shares, bonds, debentures or securities of any other company having objects altogether or in part similar to those of this company;

(y) To adopt such means of making known the products of the company as may seem expedient and in particular by advertising in the press, by circulars, by purchase and exhibition of works of art or interest, by publication of books, and periodicals and by granting prizes, rewards and donations; 40

(z) To obtain any provisional order or Act of Parliament for enabling the company to carry any of its objects into effect, or for effecting any modification of the company's constitution, or for any other purpose which may seem expedient and to oppose any proceedings or application which may seem calculated directly or indirectly to prejudice the company's interests;

(aa) To sell, improve, manage, develop, exchange, lease, enfranchise,

dispose of, turn to account, or otherwise deal with all or any part of the property and rights of the company;

(bb) To do all such other things as are incidental or conducive to the attainment of the above objects;

(cc) To do all or any of the above things as principals, agents, contractors, trustees or otherwise and by or through trustees, agents or otherwise and either alone or in conjunction with others;

(dd) The word "Company" in clauses "a" to "cc" both inclusive shall be deemed to include any person, partnership or other body of persons whether
 10 incorporated or not incorporated, and whether domiciled in Canada or elsewhere, and the objects specified in each of said clauses shall be in no wise limited or restricted by reference to or inference from the terms of any other clause or the name of the company;

(ee) To amalgamate with any other Company having objects altogether or in part similar to those of this company;

(ff) To distribute any of the property of the company in kind among the shareholders;

The operations of the company to be carried on throughout the Dominion of Canada and elsewhere.

20 The place within the Dominion of Canada which is to be the chief place of business of the said company is the City of Hamilton, in the Province of Ontario.

The capital stock of the said company shall be TWENTY-FIVE MILLION DOLLARS divided into TWO HUNDRED AND FIFTY THOUSAND shares of ONE HUNDRED DOLLARS each, subject to the increase of such capital stock under the provisions of the said Act of which two hundred and fifty thousand shares, one hundred thousand shares of one hundred dollars each, that is to say, Ten Million dollars be created and issued as preference stock and the same when so issued shall have preference and priority as follows :—

30 (a) In case of liquidation, dissolution or winding up of the company, the holders of such shares shall be entitled to repayment in preference to ordinary shareholders of the amount of the par value of said shares and any arrears of dividends thereon, and also the net profits of the company which it shall from time to time be determined to distribute are to be applicable first to the payment of a fixed cumulative preferential dividend at the rate of seven per cent. per annum on the capital paid up on the said preference shares and the holders of such shares shall participate ratably with the holders of the issued ordinary shares in the distribution of net profits after the holders of the ordinary shares shall have received dividends equal to those paid on the
 40 preferred shares;

(b) No dividends shall be paid on the ordinary shares until after the company shall have created and have to the credit of a reserve fund a sum equal to at least one year's dividend on the then issued preference shares.

That the said applicants are to be the first or provisional directors of the said company.

PROVIDED ALWAYS that nothing in these presents expressed or contained shall be taken to authorize the construction and working of railways, or of

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ing Defend-
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pany under
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—continued

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Exhibits.
Ex. 4.

Letters
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ing Defend-
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pany under
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—continued

Part Ex. 12.
Form of
Cumulative
Preference
Share
Certificate
Issued from
1910 to 1928.
1910

telegraph or telephone lines, or the business of banking, and the issue of paper money, or the business of insurance or the business of a loan company by the said company.

GIVEN under my hand and seal of office at OTTAWA, this eighth day of June, 1910.

[L.S.]

CHAS. MURPHY,
Secretary of State.

Part Exhibit 12.

(Defendants' Exhibit)

Form of Cumulative Preference Share Certificate Issued from 1910 to 1928. 10

THE STEEL COMPANY OF CANADA, LIMITED.

Head Office, Hamilton, Canada.

Authorized Capital \$25,000,000. Shares One Hundred Dollars Each.
Divided into 100,000 7% Cumulative Preference Shares and 150,000 Ordinary Shares.

THIS CERTIFIES THAT

owner of _____ is the
fully paid up and
non-assessable CUMULATIVE PREFERENCE Shares of the capital stock of The
Steel Company of Canada, Limited, of the par value of One Hundred Dollars 20
(\$100) each, transferable only on the books of the Company in person or by
attorney and upon surrender of this certificate. The Preference Shares carry
a fixed cumulative preference dividend payable out of the profits of the Com-
pany applicable to dividends at the rate of Seven Per Cent. (7%) per annum
on the capital paid up thereon. They rank both as to dividends and assets
in priority to all Ordinary Shares. If after providing for the payment in any
year of the dividend on the Preference Shares and any balance due for
cumulative dividends for preceding years, there remain any surplus net pro-
fits any and all such as are not in the opinion of the Directors required for the
purposes of the Company will be applicable to dividends on the Ordinary
Shares for such year to the extent of but not exceeding Seven Per Cent. (7%) 30
on the capital paid up thereon when and as from time to time the same may
be declared by the Directors. The remainder of any such surplus net profits
shall then be applicable to the payment of further dividends equally per
share upon both the Preference Shares and the Ordinary Shares, but no
dividends shall be paid on the Ordinary Shares until after the Company shall
have created and have to the credit of a reserve fund a sum equal to at
least one year's dividend on the then issued Preference Shares the whole
as provided in the Letters Patent incorporating the Company. This certi-
ficate shall not become valid until countersigned by the Transfer Agent and
by the Registrar of the Company. IN WITNESS WHEREOF the Company has 40
caused this certificate to be signed by its duly authorized officers this

Secretary.

"R. H. McMaster"

President.

Part Exhibit 12.

(Defendants' Exhibit)

Form of Ordinary Share Certificate Issued from 1910 to 1928.**THE STEEL COMPANY OF CANADA, LIMITED.**

Head Office, Hamilton, Canada.

Authorized Capital \$25,000,000. Shares One Hundred Dollars Each.

Divided into 100,000 7% Cumulative Preference Shares
and 150,000 Ordinary Shares.*In the
Supreme
Court of
Ontario.**Exhibits.
Part Ex. 12.
Form of
Ordinary
Share
Certificate
Issued from
1910 to 1928.
1910*

THIS CERTIFIES THAT _____ is the owner
 10 of ONE HUNDRED fully paid up and non-assessable ORDINARY Shares
 of the capital stock of The Steel Company of Canada, Limited, of the
 par value of One Hundred Dollars (\$100) each, transferable only on the books
 of the Company in person or by attorney and upon surrender of this certificate.
 The Preference Shares carry a fixed cumulative preference dividend payable
 out of the profits of the Company applicable to dividends at the rate of Seven
 Per Cent (7%) per annum on the capital paid up thereon. They rank both
 as to dividends and assets in priority to all Ordinary shares. If after providing
 for the payment in any year of the dividend on the Preference Shares and any
 20 balance due for cumulative dividends for preceding years there remain any
 surplus net profits any and all such as are not in the opinion of the Directors
 required for the purposes of the Company will be applicable to dividends on
 the ordinary shares for such year to the extent of but not exceeding Seven Per
 Cent. (7%) on the capital paid up thereon when and as from time to time the
 same may be declared by the Directors. The remainder of any such surplus
 net profits shall then be applicable to the payment of further dividends equally
 per share upon both the Preference Shares and the Ordinary Shares, but no
 dividends shall be paid on the Ordinary shares until after the Company shall
 have created and have to the credit of a reserve fund a sum equal to at least
 one year's dividend on the then issued Preference Shares, the whole as pro-
 30 vided in the Letters Patent incorporating the Company. This certificate
 shall not become valid until countersigned by the Transfer Agent and by the
 Registrar of the Company. IN WITNESS WHEREOF the Company has caused
 this certificate to be signed by its duly authorized officers this

Secretary.

"R. H. McMASTER"

*President.***Part Exhibit 6.**

(Plaintiffs' Exhibit)

Part of By-law Number 6 of Defendant Company.*Part Ex. 6
Part of
By-Law
Number 6 of
Defendant
Company
13th June
1910*

40 *Section 1.* The Board of Directors shall have the management of all
 the property and business affairs of the Company.

Section 2. The Board of Directors shall have power :—

(a) To call a meeting of the Shareholders whenever they deem it neces-
 sary, in the manner provided by By-law 1 of these By-laws.

*In the
Supreme
Court of
Ontario.*

Exhibits
Part Ex. 6.
Part of
By-law
Number 6 of
Defendant
Company.
13th June
1919.

—continued

(e) To declare dividends out of the profits.
(f) To borrow money and incur such indebtedness as they may deem necessary, and to authorize the making, drawing or acceptance of bills of exchange and promissory notes on behalf of and for the purposes of the Company; Also to give, or cause to be given to any Bank or Banks, from time to time, as collateral security for any loans or advances and the interest thereon, Warehouse Receipts, Bills of Lading and securities under Section 88 of The Bank Act, or other collateral securities on or covering all or any of the personal property of the Company.

Section 3. It shall be the duty of the Board of Directors :—

10

(a) To cause to be kept a complete record of its meetings and acts.
(b) To present a full statement of the affairs and financial position of the Company at the regular annual meeting of the Shareholders.

Part Ex. 6.
Part of
By-law
Number 8 of
Defendant
Company.
13th June
1910

Part Exhibit 6.

(Plaintiffs' Exhibit)

Part of By-law Number 8 of Defendant Company.

Section 1. Each shareholder shall be entitled to a certificate showing the number of shares of the capital stock held by him, which shall be under the seal of the Company, and shall be signed by the President, or Vice-President or by a Director or an official appointed for the purpose, and by the Treasurer and countersigned by a duly appointed transfer agent. 20

Part Ex. 6
Part of
By-law
Number 3 of
Defendant
Company.
24th August
1910

Part Exhibit 6.

(Plaintiffs' Exhibit)

Part of By-law Number 3 of Defendant Company.

Section 2. WHEREAS it is deemed expedient for the due carrying on of the business of The Steel Company of Canada, Limited, to have a rubber stamp bearing thereon the facsimile signature of its President, and the use of which stamp is to be and is authentic when placed upon Interim Certificates which afterwards have to be signed by Transfer Agent and Registrar.

NOW THEREFORE the Directors of The Steel Company of Canada, Limited, 30
enact as follows :—

That the President of The Steel Company of Canada, Limited, be and is hereby authorized to sign Interim Certificates, which afterwards have to be signed by Transfer Agent and Registrar, through and by means of a rubber stamp bearing thereon a facsimile signature of the said President of said Company.

ENACTED this 24th day of August, 1910.

Part Exhibit 8.

(Plaintiffs' Exhibit.)

Extracts from Annual Report, 1910.

BALANCE SHEET AS AT DECEMBER 31ST, 1910

In the
Supreme
Court of
Ontario.

Exhibits.

Part Ex. 8.
Extracts
from Annual
Report,
1910.

ASSETS		LIABILITIES	
COST OF WORKS owned and operated by the Company, including shares of the Montreal Rolling Mills Company.....		CAPITAL STOCK, AUTHORIZED—	
	\$21,775,858.93	100,000 shares of \$100 each, Pfd. Stock.....	\$10,000,000.00
INVESTMENTS in other Companies.....	93,950.00	150,000 " " \$100 " Com. "	15,000,000.00
	\$21,869,808.93		\$25,000,000.00
CURRENT ASSETS—		ISSUED—	
Inventories.....	\$ 4,553,291.91	64,963 shares of \$100 each, Pfd. Stock.....	\$ 6,496,300.00
Accounts Receivable.....	2,183,877.69	115,000 " " \$100 " Com. "	11,500,000.00
Bills Receivable.....	94,735.85		\$17,996,300.00
Cash.....	162,519.86	6 PER CENT. FIRST MORTGAGE AND COLLATERAL TRUST BONDS—	
	6,994,425.31	Authorized.....	\$10,000,000.00
DEFERRED CHARGES TO OPERATIONS	6,931.39	Issued.....	\$ 6,850,000.00
INSURANCE, ETC., UNEXPIRED	23,355.71	LESS held in Treasury.....	500,000.00
			\$ 6,350,000.00
		BONDS OF MONTREAL ROLLING MILLS CO.	500,000.00
		MORTGAGE , payable M. Hogan Est.....	30,000.00
			6,880,000.00
		CURRENT LIABILITIES—	
		Accounts Payable.....	\$ 1,554,580.77
		Bills Payable.....	1,972,372.44
		Dividend payable Feb. 1st, 1911.....	113,685.25
			3,640,638.46
		RESERVE FUNDS—	
		Blast Furnace Relining Fund.....	\$ 22,050.98
		Reserve for Accidents.....	5,542.46
		Depreciation and Improvement Fund.....	104,071.11
			131,664.55
		SURPLUS—	
		Balance, as per Profit and Loss Account.....	245,918.33
			\$28,894,521.34
	\$28,894,521.34		\$28,894,521.34

Part Exhibit 8.

(Plaintiffs' Exhibit.)

Extracts from Annual Report, 1910.

STATEMENT OF PROFIT AND LOSS FOR SIX MONTHS
ENDING DECEMBER 31ST, 1910*In the
Supreme
Court of
Ontario.*

Exhibits.

Part Ex. 8.
Extracts
from Annual
Report,
1910.
—continued.

	Profits from operations for 6 months ending December 31st, 1910, after deducting charges for Repairs and Maintenance.		\$ 783,664.94
	Less Fund for Depreciation and Renewal of Plants.		104,071.11
10			<hr/>
	Balance.		\$ 679,593.83
	Less 6 months' Interest on Bonds of The Steel Company of Canada.	\$ 190,500.00	
	Less 6 months' Interest on Bonds of Montreal Rolling Mills Co.	15,000.00	
	Less Interest on Mortgage, H. Hogan.	805.00	
		<hr/>	206,305.00
			<hr/>
			\$ 473,288.83

DIVIDENDS

20	1 $\frac{3}{4}$ per cent. on Preferred Stock for quarter ending September 30th, 1910.	\$ 113,685.25	
	1 $\frac{3}{4}$ per cent. on Preferred Stock for quarter ending December 31st, 1910.	113,685.25	
		<hr/>	227,370.50
			<hr/>
			\$ 245,918.33

Part Exhibit 8.

(Plaintiffs' Exhibit.)

Extracts from Annual Report, 1911.

BALANCE SHEET AS AT DECEMBER 31ST, 1911

In the
Supreme
Court of
Ontario.
—
Exhibits.
Part Ex. 8.
Extracts
from Annual
Report,
1911.

ASSETS		LIABILITIES	
COST OF WORKS owned and operated by the Company, including shares of the Montreal Rolling Mills Company.....		CAPITAL STOCK, AUTHORIZED—	
	\$21,934,838.04	100,000 shares of \$100 each, Pfd. Stock.....	\$10,000,000.00
INVESTMENTS in other Companies.....	123,328.10	150,000 " " \$100 " Com. "	15,000,000.00
	\$22,058,166.14		\$25,000,000.00
CURRENT ASSETS—		ISSUED—	
Inventories of Raw Material, Finished Products, etc.....	\$ 4,512,844.38	64,963 shares of \$100 each, Pfd. Stock.....	\$ 6,496,300.00
Accounts Receivable.....	2,104,440.68	115,000 " " \$100 " Com. "	11,500,000.00
Bills Receivable.....	59,331.84		\$17,996,300.00
Cash.....	165,953.98	6 PER CENT. FIRST MORTGAGE AND COLLATERAL TRUST BONDS—	
	6,842,570.88	Authorized.....	\$10,000,000.00
DEFERRED CHARGES TO OPERATIONS	6,426.85	Issued.....	\$ 7,500,000.00
INSURANCE, ETC., UNEXPIRED	8,385.77	LESS held in Escrow for redemption of Montreal Rolling Mills Co.'s Bonds....	500,000.00
			\$ 7,000,000.00
		BONDS OF MONTREAL ROLLING MILLS CO.	500,000.00
		MORTGAGE, payable H. Hogan Estate..	30,000.00
			7,530,000.00
		CURRENT LIABILITIES—	
		Accounts Payable.....	\$ 1,444,476.97
		Bills Payable.....	993,275.00
		Dividend Payable Feb. 1st, 1912.....	113,685.25
			2,551,437.22
		RESERVE FUNDS—	
		Relining and Rebuilding Funds.....	\$ 31,942.86
		Reserve for Accidents.....	10,196.81
		Contingent Fund.....	8,001.90
		Depreciation, Renewal and Improvement Fund.....	204,071.11
			254,212.68
		SURPLUS—	
		Balance as per Profit and Loss Account.....	583,599.74
			\$28,915,549.64
	\$28,915,549.64		

Part Exhibit 8.

(Plaintiffs' Exhibit.)

Extracts from Annual Report, 1911.

STATEMENT OF PROFIT AND LOSS FOR YEAR
ENDING DECEMBER 31ST, 1911

	Profits for the year ending December 31st, 1911, after deducting charges for Repairs, Main- tenance and Improvements, amounting to \$404,453.11.....	\$1,373,522.81	
10	Less Fund for Depreciation, Renewal and Im- provement of plants.....	100,000.00	
	Balance.....		\$1,273,522.81
	Less Interest on Bonds of The Steel Company of Canada, Limited.....	\$ 410,490.40	
	Less Interest on Bonds of The Montreal Rolling Mills Co.....	30,000.00	
	Less Interest on Mortgage, H. Hogan Estate... .	1,610.00	
	Less Underwriting and Stamping of Bonds of The Steel Company of Canada, Ltd.....	39,000.00	
20			481,100.40
			<u>\$ 792,422.41</u>

DIVIDENDS

	1 $\frac{3}{4}$ per cent. on Preferred Stock for quarter ending March 31st, 1911.....	\$ 113,685.25	
	1 $\frac{3}{4}$ per cent. on Preferred Stock for quarter ending June 30th, 1911.....	113,685.25	
	1 $\frac{3}{4}$ per cent. on Preferred Stock for quarter ending September 30th, 1911.....	113,685.25	
30	1 $\frac{3}{4}$ per cent. on Preferred Stock for quarter ending December 31st, 1911.....	113,685.25	
			454,741.00
			<u>\$ 337,681.41</u>
	Add balance brought forward December 31st, 1910.....		245,918.33
			<u>\$ 583,599.74</u>

In the
Supreme
Court of
Ontario.

Exhibits.

Part Ex. 8.
Extracts
from Annual
Report,
1911.

—continued.

Extracts from Annual Report, 1912.

BALANCE SHEET AS AT DECEMBER 31st, 1912

ASSETS		LIABILITIES	
COST OF WORKS owned and operated by the Company.....	\$23,396,505.61	CAPITAL STOCK, AUTHORIZED—	
INVESTMENTS in other companies.....	129,662.40	100,000 shares of \$100 each, Pfd. Stock.....	\$10,000,000.00
	<u>\$23,526,168.01</u>	150,000 " " \$100 " Com. "	15,000,000.00
Inventories of Raw Material and Finished Products	\$ 4,637,353.98		<u>\$25,000,000.00</u>
Accounts Receivable	2,973,137.37	ISSUED—	
Bills Receivable	78,958.70	64,963 shares of \$100 each, Pfd. Stock.....	\$ 6,496,300.00
Cash	318,439.60	115,000 " " \$100 " Com. "	11,500,000.00
	8,007,889.65		<u>\$17,996,300.00</u>
DEFERRED CHARGES TO OPERATIONS	8,818.57	BONDS, 6 PER CENT. FIRST MORT- GAGE AND COLLATERAL TRUST	
INSURANCE UNEXPIRED	5,782.48	BONDS—	
		Authorized.....	\$10,000,000.00
		Issued.....	\$ 8,000,000.00
		LESS held in Escrow for redemption of Montreal Rolling Mills Co.'s Bonds....	500,000.00
			<u>\$ 7,500,000.00</u>
		BONDS OF MONTREAL ROLLING MILLS CO.	500,000.00
			<u>\$ 8,000,000.00</u>
		CURRENT LIABILITIES—	
		Accounts Payable.....	\$ 1,730,651.27
		Bills Payable.....	2,174,590.00
		Dividend Payable February 1, 1913.....	113,685.25
			<u>4,018,926.52</u>
		RESERVE FUNDS—	
		Relining and Rebuilding Funds.....	\$ 72,925.48
		Reserve for Accidents.....	12,117.15
		Contingent Fund.....	33,746.85
		Depreciation, Renewal and Improve- ment Fund.....	354,071.11
			<u>472,860.59</u>
		PROFIT AND LOSS SURPLUS	1,060,571.60
			<u>\$31,548,658.71</u>
	<u>\$31,548,658.71</u>		<u>\$31,548,658.71</u>

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80

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Part Exhibit 8.
(Plaintiffs' Exhibit.)
Extracts from Annual Report, 1912.

**STATEMENT OF PROFIT AND LOSS FOR YEAR
ENDED DECEMBER 31ST, 1912**

	Profits for the year ended December 31st, 1912, after deducting charges for Repairs, Main- tenance and Improvements, amounting to \$464,162.75	\$1,547,039.77	
10	Less Fund for Depreciation, Renewal and Im- provement of Plants	150,000.00	
			\$1,397,039.77
	LESS INTEREST—		
	Bonds of The Steel Company of Canada, Ltd. \$	434,917.80	
	Bonds of The Montreal Rolling Mills Company	30,000.00	
	Mortgage, Estate of Henry Hogan	409.11	
			465,326.91
			\$ 931,712.86
	LESS DIVIDENDS—		
20	Dividend No. 7, quarter ended March 31, 1 $\frac{3}{4}$ per cent	\$ 113,685.25	
	Dividend No. 8, quarter ended June 30, 1 $\frac{3}{4}$ per cent	113,685.25	
	Dividend No. 9, quarter ended Sept. 30, 1 $\frac{3}{4}$ per cent	113,685.25	
	Dividend No. 10, quarter ended Dec. 31, 1 $\frac{3}{4}$ per cent	113,685.25	
			454,741.00
			\$ 476,971.86
30	Add balance brought forward Dec. 31st, 1911		583,599.74
			\$1,060,571.60

*In the
Supreme
Court of
Ontario.*

Exhibits.
Part Ex. 8.
Extracts
from Annual
Report,
1912.
—continued.

Part Exhibit 6.
(Plaintiffs' Exhibit)

Amendment to By-law Number 8 of Defendant Company.

The Directors of The Steel Company of Canada, Limited, ENACT AS
FOLLOWS :—

The first paragraph of Sect. 1 of By-law No. 8 commencing with the words
"Each shareholder" and ending with the words "Transfer Agent" is hereby
repealed and the following enacted in its stead :

- 40 1. Each shareholder shall be entitled to a certificate showing the number
of shares of the capital stock held by him which shall be under the seal of the
Company and shall be signed by the President, or by a Vice-President, or by a
Director, and by the Treasurer or Secretary or Assistant Secretary, or Assis-
tant Treasurer, and countersigned by a duly appointed Transfer Agent and
Registrar.

ENACTED this 25th day of November, 1913.

Part Ex. 6.
Amendment
to By-law
Number 8 of
Defendant
Company.
20th Nov-
ember, 1930.

Part Exhibit 8.

(Plaintiffs' Exhibit.)

Extracts from Annual Report, 1913.

BALANCE SHEET AS AT DECEMBER 31ST, 1913

In the
Supreme
Court of
Ontario.

Exhibits.

Part Ex. 8.
Extracts
from Annual
Report,
1913.

ASSETS		LIABILITIES	
COST OF WORKS owned and operated		CAPITAL STOCK,	
by the Company.....	\$24,334,037.22	AUTHORIZED—	
INVESTMENTS in other Companies.....	261,599.73	100,000 shares at \$100 each, Preferred.....	\$10,000,000.00
	<u>\$24,595,636.95</u>	150,000 shares at \$100 each, Common.....	15,000,000.00
			<u>\$25,000,000.00</u>
CURRENT ASSETS—			10
Inventories of Raw Materials and		ISSUED—	
Finished Products.....	5,900,743.80	64,963 shares at \$100 each, Preferred.....	6,496,300.00
Accounts Receivable.....	1,551,482.46	115,000 shares at \$100 each, Common.....	11,500,000.00
Bills Receivable.....	67,222.78		<u>\$17,996,300.00</u>
Cash.....	182,617.16		
	<u>7,702,066.20</u>	BONDS, 6 PER CENT. FIRST MORT-	
STOCK OF THE COMPANY purchased		GAGE AND COLLATERAL TRUST	
and held in trust for Employees.....	85,929.45	BONDS—	
DEFERRED CHARGES TO OPERATIONS	15,185.52	Authorized.....	\$10,000,000.00
INSURANCE UNEXPIRED	7,347.87	Issued.....	\$ 8,000,000.00
		LESS held in escrow for redemption	20
		of Montreal Rolling Mills' Bonds.....	500,000.00
			<u>\$ 7,500,000.00</u>
		BONDS OF MONTREAL ROLLING	
		MILLS COMPANY	500,000.00
			8,000,000.00
		CONVERTIBLE PROMISSORY NOTES—	
		Due July 1st, 1915, 1916, 1917.....	1,200,000.00
		CURRENT LIABILITIES—	
		Accounts Payable.....	\$ 1,726,024.16
		Bills Payable.....	1,229,740.00
		Dividend Payable February 1st, 1914.....	113,685.25
			<u>3,069,449.41</u>
		RESERVE FUNDS—	
		Relining and Rebuilding Funds.....	\$ 35,308.92
		Reserve for Accidents.....	11,108.38
		Contingent Fund.....	30,825.12
		Depreciation, Renewal and Improve-	
		ment Fund.....	491,571.11
			<u>568,813.53</u>
		PROFIT AND LOSS SURPLUS	1,571,603.05
			<u>\$32,406,165.99</u>
	<u>\$32,406,165.99</u>		

Part Exhibit 8.

(Plaintiffs' Exhibit.)

Extracts from Annual Report, 1913.

STATEMENT OF PROFIT AND LOSS FOR YEAR
ENDED DECEMBER 31st, 1913*In the
Supreme
Court of
Ontario.*

Exhibits.

Part Ex. 8.
Extracts
from Annual
Report,
1913.

—continued.

	Profits for the year ended December 31, 1913, after deducting charges for Repairs, Main- tenance and Improvements, amounting to \$516,084.46		\$1,640,010.79
10	Less Fund for Depreciation, Renewal and Im- provement of Plants	\$ 137,500.00	
	Less Sunnyside Works, written off Plant Account	56,738.34	
			<u>194,238.34</u>
			\$1,445,772.45
	LESS INTEREST—		
	Bonds of The Steel Company of Canada, Ltd.	\$ 450,000.00	
	Bonds of the Montreal Rolling Mills Co.	30,000.00	
			<u>480,000.00</u>
			\$ 965,772.45
	LESS DIVIDENDS—		
20	Dividend No. 11, quarter ended March 31st, 1913, 1 $\frac{3}{4}$ per cent.	\$ 113,685.25	
	Dividend No. 12, quarter ended June 30th, 1913, 1 $\frac{3}{4}$ per cent.	113,685.25	
	Dividend No. 13, quarter ended September 30th, 1913, 1 $\frac{3}{4}$ per cent.	113,685.25	
	Dividend No. 14, quarter ended December 31st, 1913, 1 $\frac{3}{4}$ per cent.	113,685.25	
			<u>454,741.00</u>
			\$ 511,031.45
30	Add balance brought forward Dec. 31st, 1912		1,060,571.60
			<u>\$1,571,603.05</u>

Part Exhibit 8.

(Plaintiffs' Exhibit.)

Extracts from Annual Report, 1914.

BALANCE SHEET AS AT DECEMBER 31ST, 1914

In the
Supreme
Court of
Ontario.
—
Exhibits.
Part Ex. 8.
Extracts
from Annual
Report,
1914.

ASSETS		LIABILITIES	
COST OF WORKS owned and operated		CAPITAL STOCK,	
by the Company.....	\$24,433,648.99	AUTHORIZED—	
INVESTMENTS in other Companies.....	317,578.01	100,000 shares at \$100 each, Preferred.....	\$10,000,000.00
	<u>\$24,751,227.00</u>	150,000 shares at \$100 each, Common.....	15,000,000.00
			10
Inventories.....	\$ 5,209,918.88	<u>\$25,000,000.00</u>	
Accounts Receivable.....	1,043,173.98	ISSUED—	
Bills Receivable.....	127,269.96	64,963 shares at \$100 each, Preferred.....	6,496,300.00
Cash.....	99,407.26	115,000 shares at \$100 each, Common.....	11,500,000.00
	<u>6,479,770.08</u>		\$17,996,300.00
STOCK HELD IN TRUST	53,532.19	BONDS, 6 PER CENT. FIRST MORT-	
DEFERRED CHARGES TO OPERATION	11,830.51	GAGE AND COLLATERAL TRUST	
INSURANCE UNEXPIRED	6,451.84	BONDS—	
		Authorized.....	\$10,000,000.00
		Issued.....	\$ 8,850,000.00
		LESS held in escrow for redemption	20
		of Montreal Rolling Mills' Bonds.....	500,000.00
			<u>\$ 8,350,000.00</u>
		BONDS OF MONTREAL ROLLING	
		MILLS COMPANY	500,000.00
			8,850,000.00
		CONVERTIBLE PROMISSORY NOTES—	
		Due July 1st, 1915, 1916, 1917.....	1,200,000.00
		CURRENT LIABILITIES—	
		Accounts Payable.....	\$ 655,337.33
		Bills Payable.....	720,290.00
			1,375,627.33
		RESERVE FUNDS—	
		Relining and Rebuilding funds.....	\$ 54,409.25
		Reserve for Accidents.....	7,792.49
		Contingent Fund.....	61,876.62
		Depreciation, Renewal and Improve-	498,375.35
		ment Funds.....	<u>622,453.71</u>
		PROFIT AND LOSS SURPLUS	1,258,430.58
			40
			<u>\$31,302,811.62</u>
			<u>\$31,302,811.62</u>

\$31,302,811.62\$31,302,811.62

Part Exhibit 8.

(Plaintiffs' Exhibit.)

Extracts from Annual Report, 1914.

STATEMENT OF PROFIT AND LOSS FOR YEAR

ENDED DECEMBER 31st, 1914

Profits for the year ended December 31st, 1914, after deducting charges for Repairs, Main- tenance and Improvements, amounting to \$341,587.11.....		\$ 539,811.15
10	LESS INTEREST—	
	Bonds of The Steel Company of Canada, Limited.....	\$491,138.12
	Bonds of The Montreal Rolling Mills Co.....	30,000.00
	Underwriting of Bonds of The Steel Company of Canada, Limited....	104,475.00
		<u>\$625,613.12</u>
	LESS DIVIDENDS—	
20	Dividend No. 15, quarter ended March 31st, 1914, 1 $\frac{3}{4}$ per cent. . .	\$113,685.25
	Dividend No. 16, quarter ended June 30th, 1914, 1 $\frac{3}{4}$ per cent. . .	113,685.25
		<u>227,370.50</u>
		852,983.62
	Deficit for the year.....	<u>\$ 313,172.47</u>
	Add balance brought forward, December 31st, 1913.....	1,571,603.05
		<u>\$1,258,430.58</u>

*In the
Supreme
Court of
Ontario.*

—
Exhibits.

Part Ex. 8.
Extracts
from Annual
Report,
1914.

—continued

Part Exhibit 8.

(Plaintiffs' Exhibit.)

Extracts from Annual Report, 1915.

In the
Supreme
Court of
Ontario.

Exhibits.

Part Ex. 8.
Extracts
from Annual
Report,
1915.

CONSOLIDATED BALANCE SHEET AS AT DECEMBER 31st, 1915

ASSETS		LIABILITIES	
COST OF WORKS owned and operated by the Company.....	\$24,528,087.71	CAPITAL STOCK, AUTHORIZED—	
INVESTMENTS in other companies.....	258,822.43	100,000 shares at \$100 each, Preferred.....	\$10,000,000.00
	\$24,786,910.14	150,000 shares at \$100 each, Common.....	15,000,000.00
CURRENT ASSETS—			\$25,000,000.00
Inventories of Raw Materials and Finished Products.....	\$ 5,725,777.37	ISSUED—	
Accounts Receivable.....	3,824,681.21	64,963 shares at \$100 each, Preferred.....	\$ 6,496,300.00
Bills Receivable.....	63,049.73	115,000 shares at \$100 each, Common.....	11,500,000.00
Cash on hand and in banks.....	182,691.92		\$17,996,300.00
	9,796,200.23	BONDS, 6 PER CENT. FIRST MORT- GAGE AND COLLATERAL TRUST BONDS—	
STOCK OF THE COMPANY , Purchased and held in Trust for Employees.....	34,433.08	Authorized.....	\$10,000,000.00
DEFERRED CHARGES TO OPERATIONS	17,176.86	Issued.....	\$ 8,850,000.00
INSURANCE UNEXPIRED	9,534.92	LESS held in escrow for redemption of Montreal Rolling Mills Co. Bonds.	500,000.00
			8,350,000.00
		BONDS OF MONTREAL ROLLING MILLS COMPANY	500,000.00
		CONVERTIBLE PROMISSORY NOTES—	
		Due July 1, 1918, 1919, 1920.....	1,200,000.00
		CURRENT LIABILITIES—	
		Accounts Payable.....	\$ 1,849,446.23
		Bills Payable.....	135,000.00
		Dividend Payable Feb. 1st, 1916.....	341,055.75
			2,325,501.98
		RESERVE FUNDS—	
		Relining and Rebuilding Funds.....	\$ 128,894.89
		Reserve for Accidents.....	19,063.60
		Contingent Fund.....	122,977.47
		Depreciation, Renewal and Improve- ment Fund.....	898,375.35
		Bond Sinking Fund.....	88,500.00
			1,257,811.31
		SURPLUS—	
		Balance as per Profit and Loss Account.....	3,014,641.94
			\$34,644,255.23
	\$34,644,255.23		

Part Exhibit 8.

(Plaintiffs' Exhibit.)

Extracts from Annual Report, 1915.

STATEMENT OF PROFIT AND LOSS FOR YEAR
ENDED DECEMBER 31ST, 1915*In the
Supreme
Court of
Ontario.*

Exhibits.

Part Ex. 8.
Extracts
from Annual
Report,
1915.

—continued.

	Profits for the year ended December 31st, 1915, after deducting charges for Repairs, Main- tenance and Improvements		\$3,230,452.36
10	Less Fund for Depreciation, Renewal, and Im- provements of Plants	\$ 400,000.00	
	Less Bond Sinking Fund, accrued for the half year, to December 31st, 1915	88,500.00	
		<hr/>	488,500.00
			<hr/>
			\$2,741,952.36
	LESS INTEREST—		
	Bonds of The Steel Company of Canada, Ltd. \$	501,000.00	
	Bonds of The Montreal Rolling Mills Co.	30,000.00	
		<hr/>	531,000.00
			<hr/>
			\$2,210,952.36
20	LESS DIVIDENDS—		
	Dividend No. 17, quarter ended Sept. 30th, 1915, 1 $\frac{3}{4}$ %	\$ 113,685.25	
	Dividend No. 18, quarters ended:		
	September 30th, 1914, 1 $\frac{3}{4}$ %	113,685.25	
	December 31st, 1914, 1 $\frac{3}{4}$ %	113,685.25	
	December 31st, 1915, 1 $\frac{3}{4}$ %	113,685.25	
		<hr/>	454,741.00
			<hr/>
			\$1,756,211.36
	Add balance brought forward December 31st, 1914		1,258,430.58
			<hr/>
30	Balance, Profit and Loss, December 31st, 1915		\$3,014,641.94

Part Exhibit 8.

(Plaintiffs' Exhibit.)

Extracts from Annual Report, 1916.

In the
Supreme
Court of
Ontario.

Exhibits.

Part Ex. 8.
Extracts
from Annual
Report,
1916.

CONSOLIDATED BALANCE SHEET AS AT DECEMBER 31st, 1916

ASSETS	LIABILITIES
COST OF WORKS owned and operated by the Company.....	CAPITAL STOCK, AUTHORIZED—
\$24,980,219.04	100,000 shares at \$100 each, Preferred..
INVESTMENTS in other companies, and Company's own Bonds acquired for Sinking Fund.....	150,000 shares at \$100 each, Ordinary..
766,877.88	\$25,000,000.00
\$25,747,096.92	10
SINKING FUND ASSETS—	ISSUED—
Cash in hands of Trustee.....	64,963 shares at \$100 each, Preferred..
3.83	115,000 shares at \$100 each, Ordinary..
CURRENT ASSETS—	\$17,996,300.00
Inventories of Raw Materials and Finished Products.....	BONDS, 6 PER CENT. FIRST MORTGAGE AND COLLATERAL TRUST BONDS—
\$ 5,848,822.05	Authorized.....
Accounts Receivable.....	\$10,000,000.00
3,551,158.75	Issued.....
Bills Receivable.....	\$ 8,850,000.00
95,843.15	LESS held in escrow for redemption of Montreal Rolling Mills Co. Bonds
Cash on hand and in banks.....	500,000.00
1,553,658.78	\$ 8,350,000.00
\$11,049,482.73	LESS redeemed through Sinking Fund
War Bonds, Loans and Other Securities.....	172,700.00
1,336,009.30	\$ 8,177,300.00
\$12,385,492.03	BONDS OF MONTREAL ROLLING MILLS COMPANY.....
STOCK OF THE COMPANY purchased and held in Trust for Employees.....	500,000.00
20,306.73	8,677,300.00
DEFERRED CHARGES TO OPERATIONS—	CONVERTIBLE PROMISSORY NOTES—
Insurance and other Expenses paid in advance.....	Due July 1, 1918, 1919, 1920.....
26,022.25	845,000.00
	CURRENT LIABILITIES—
	Accounts Payable, including provision for War Tax for 1916.....
	2,779,034.20
	Bills Payable.....
	4,000.00
	Preferred Dividend No. 22, payable Feb. 1st, 1917.....
	113,685.25
	2,896,719.45
	40
	RESERVES—
	Furnace Relining and Rebuilding Reserve \$
	189,794.69
	Reserve for Accidents to Employees....
	25,000.00
	Contingent Reserve.....
	193,829.30
	Betterment and Replacement Reserve..
	953,526.68
	\$ 1,362,150.67
	Bond Sinking Fund Reserve.....
	253,954.00
	Depreciation Account.....
	1,500,000.00
	3,116,104.67
	SURPLUS—
	Balance as per Profit and Loss Account.
	4,647,497.64
	50
<u>\$38,178,921.76</u>	<u>\$38,178,921.76</u>

Part Exhibit 8.
(Plaintiffs' Exhibit.)
Extracts from Annual Report, 1916.

*In the
Supreme
Court of
Ontario.*

**STATEMENT OF PROFIT AND LOSS FOR YEAR
ENDED DECEMBER 31st, 1916**

Exhibits.
Part Ex. 8.
Extracts
from Annual
Report,
1916.

—continued

Profits for the year ended December 31st, 1916, after deducting charges for Repairs, Main- tenance and Improvements, and providing for War Tax, 1915-1916.....		\$5,021,391.53
10	Less Reserve for Bond Sinking Fund.....	\$ 165,454.00
	Reserve for Depreciation.....	601,624.65
		767,078.65
		\$4,254,312.88
LESS INTEREST ON BONDS—		
	The Steel Co. of Canada, Limited.....	\$ 495,819.00
	The Montreal Rolling Mills Co.....	30,000.00
		525,819.00
		\$3,728,493.88
LESS DIVIDENDS ON PREFERRED SHARES—		
20	Dividend No. 19, for the quarters ended:	
	March 31st, 1915, 1 $\frac{3}{4}$ %.....	\$ 113,685.25
	June 30th, 1915, 1 $\frac{3}{4}$ %.....	113,685.25
		\$ 227,370.50
	March 31st, 1916, 1 $\frac{3}{4}$ %.....	113,685.25
	Dividend No. 20, for the quarter ended June 30th, 1916, 1 $\frac{3}{4}$ %.....	113,685.25
	Dividend No. 21, for the quarter ended Sept. 30th, 1916, 1 $\frac{3}{4}$ %.....	113,685.25
30	Dividend No. 22, for the quarter ended Dec. 31st, 1916, 1 $\frac{3}{4}$ %.....	113,685.25
		\$ 682,111.50
DISTRIBUTION ON ORDINARY SHARES		
	For the year 1916.....	460,000.00
		1,142,111.50
		\$2,586,382.38
	Transferred to Betterment and Replacement Reserve.....	953,526.68
		\$1,632,855.70
	Add balance brought forward Dec. 31st, 1915.....	3,014,641.94
		\$4,647,497.64
	Balance, Profit and Loss, December 31st, 1916.....	\$4,647,497.64

Part Exhibit 8.

(Plaintiffs' Exhibit.)

Extracts from Annual Report, 1917.

CONSOLIDATED BALANCE SHEET AS AT DECEMBER 31st, 1917

In the
Supreme
Court of
Ontario.

—

Exhibits.

Part Ex. 8.
Extracts
from Annual
Report,
1917.

ASSETS		LIABILITIES	
COST OF WORKS owned and operated by the Company.....		CAPITAL STOCK, AUTHORIZED—	
	\$25,267,810.95	100,000 shares at \$100 each, Preferred..	\$10,000,000.00
INVESTMENTS in other companies and Company's own Bonds acquired for Sinking Fund.....		150,000 shares at \$100 each, Ordinary..	15,000,000.00
	725,794.57		<u>\$25,000,000.00</u>
	\$25,993,605.52		10
SINKING FUND ASSETS—		ISSUED—	
Cash in hands of Trustee.....	4.64	64,963 shares at \$100 each, Preferred..	\$ 6,496,300.00
CURRENT ASSETS—		115,000 shares at \$100 each, Ordinary..	11,500,000.00
Inventories of Raw Materials and Finished Products, less reserve.....	\$ 8,008,655.64		<u>\$17,996,300.00</u>
Accounts Receivable.....	4,121,185.64	BONDS, 6 PER CENT. FIRST MORTGAGE AND COLLATERAL TRUST BONDS—	
Bills Receivable.....	100,380.75	Authorized.....	\$10,000,000.00
Call Loans to Stockholders secured by Collateral since paid.....	231,200.00	Issued.....	\$ 8,850,000.00
Cash on hand and in banks.....	1,370,844.29	LESS held in escrow for redemption of Montreal Rolling Mills Co. Bonds	500,000.00
	<u>\$13,832,266.32</u>		<u>\$ 8,350,000.00</u>
War Bonds and Other Securities.....	2,648,712.95	LESS redeemed through Sinking Fund	353,853.32
	16,480,979.27		<u>\$ 7,996,146.68</u>
STOCK OF THE COMPANY—		BONDS OF MONTREAL ROLLING MILLS CO.	
Held in Trust for Employees.....	206,869.53		500,000.00
DEFERRED CHARGES TO OPERATIONS—			8,496,146.68
Insurance and other Expenses paid in advance.....	26,830.91		30
		CONVERTIBLE PROMISSORY NOTES—	
		Due July 1st, 1918, 1919, 1920.....	270,000.00
		CURRENT LIABILITIES—	
		Accounts Payable, including Provision for War Tax.....	\$ 3,191,814.88
		Bills Payable.....	2,000.00
		Unclaimed Dividends.....	7,080.50
		Preferred Dividend No. 26, payable Feb. 1, 1918.....	113,685.25
		Ordinary Dividend No. 4, payable Feb. 1, 1918.....	172,500.00
			<u>3,487,080.63</u>
		RESERVES—	
		Furnace Lining and Rebuilding Reserves.	\$ 337,171.26
		Reserve for Accidents to Employees....	48,096.93
		Contingent Reserve.....	338,141.62
		Betterment and Replacement Reserve..	2,360,013.21
		Fire Insurance Reserve.....	40,000.00
			<u>\$ 3,123,423.02</u>
		Bond Sinking Fund Reserve.....	431,485.07
		Depreciation Account.....	2,706,000.00
			<u>6,260,908.09</u>
		SURPLUS—	
		Balance as per Profit and Loss Account.	6,197,854.47
			<u>\$42,708,289.87</u>
	<u>\$42,708,289.87</u>		<u>\$42,708,289.87</u>

Part Exhibit 8.
(Plaintiffs' Exhibit.)
Extracts from Annual Report, 1917.

*In the
Supreme
Court of
Ontario.*

STATEMENT OF PROFIT AND LOSS FOR THE YEAR ENDED DECEMBER 31ST, 1917—		Exhibits. Part Ex. 8. Extracts from Annual Report, 1917.
	Profits for the year ended Dec. 31st, 1917, after deducting charges for Repairs, Maintenance and Improvements, and providing for War Tax.....	\$6,040,318.83
	LESS RESERVES—	
	Bond Sinking Fund.....	\$ 177,531.07
	Depreciation.....	806,000.00
10	Depreciation Furnace "A".....	400,000.00
		1,383,531.07
		\$4,656,787.76
	LESS INTEREST ON BONDS—	
	The Steel Co. of Canada, Limited.....	\$ 485,203.40
	The Montreal Rolling Mills Co.....	30,000.00
		515,203.40
		\$4,141,584.36
	LESS DIVIDENDS ON PREFERRED SHARES—	
	Dividend No. 23, for quarter ended March 31st, 1917, at 1¾%.....	\$ 113,685.25
20	Dividend No. 24, for quarter ended June 30th, 1917, at 1¾%.....	113,685.25
	Dividend No. 25, for quarter ended Sept. 30th, 1917, at 1¾%.....	113,685.25
	Dividend No. 26, for quarter ended Dec. 31st, 1917, at 1¾%.....	113,685.25
		\$ 454,741.00
	LESS DIVIDENDS ON ORDINARY SHARES—	
	Dividend No. 1, for quarter ended March 31st, 1917, at 1½%.....	\$ 172,500.00
	Dividend No. 2, for quarter ended June 30th, 1917, at 1½%.....	172,500.00
	Dividend No. 3, for quarter ended Sept. 30th, 1917, at 1½%.....	172,500.00
	Dividend No. 4, for quarter ended Dec. 31st, 1917, at 1½%.....	172,500.00
		\$ 690,000.00
30		1,144,741.00
		\$2,996,843.36
	Transferred to Betterment and Replacement Reserve.....	\$1,406,486.53
	Transferred to Fire Insurance Reserve.....	40,000.00
		1,446,486.53
		\$1,550,356.83
	Balance brought forward Dec. 31st, 1916.....	4,647,497.64
	Balance Profit and Loss, Dec. 31st, 1917.....	\$6,197,854.47

—continued

Part Exhibit 8.
(Plaintiffs' Exhibit.)
Extracts from Annual Report, 1918.

CONSOLIDATED BALANCE SHEET AS AT DECEMBER 31ST, 1918

*In the
Supreme
Court of
Ontario.*
—
Exhibits.
Part Ex. 8.
Extracts
from Annual
Report,
1918.

ASSETS	LIABILITIES
COST OF WORKS owned and operated by the Company.....	CAPITAL STOCK, AUTHORIZED—
\$26,932,703.94	100,000 shares at \$100 each, Preferred..
COAL LANDS	\$10,000,000.00
1,089,694.37	150,000 Shares at \$100 each, Ordinary..
INVESTMENTS in other Companies and Company's own Bonds acquired for Sinking Fund.....	15,000,000.00
1,187,174.99	\$25,000,000.00
\$29,209,573.30	ISSUED—
SINKING FUND ASSETS—	64,963 Shares at \$100 each, Preferred..
Cash in hand of Trustees.....	\$ 6,496,300.00
31.77	115,000 Shares at \$100 each, Ordinary..
ADVANCES to Subsidiary Companies....	11,500,000.00
314,106.72	\$17,996,300.00
CURRENT ASSETS—	BONDS, 6 PER CENT. FIRST MORTGAGE AND COLLATERAL TRUST BONDS—
Inventories of Raw Materials and Finished Products less Reserve.....	Authorized.....
\$ 6,691,929.88	\$10,000,000.00
Accounts Receivable.....	Issued.....
5,085,467.90	\$ 8,850,000.00
Bills Receivable.....	LESS held in escrow for redemption of Montreal Rolling Mills Co. Bonds
130,238.95	500,000.00
Cash on hand and in Banks.....	\$ 8,350,000.00
805,828.51	LESS redeemed through Sinking Fund
\$12,713,465.24	548,753.32
Other Securities.....	\$ 7,801,246.68
3,214,893.24	BONDS OF THE MONTREAL ROLLING MILLS COMPANY
15,928,358.48	500,000.00
STOCK OF THE COMPANY—	BONDS OF THE WESTERN COKE CO.
Held in Trust for Employees.....	450,000.00
189,369.53	8,751,246.68
DEFERRED CHARGES TO OPERATIONS—	CONVERTIBLE PROMISSORY NOTES—
Insurance and other Expenses paid in advance.....	Due July 1st, 1919 and 1920.....
11,391.25	180,000.00
	30
	CURRENT LIABILITIES—
	Accounts Payable, including provision for War Tax.....
	\$ 3,408,629.21
	Bills Payable.....
	2,000.00
	Unclaimed Dividends.....
	9,339.75
	Preferred Dividend No. 30, payable February 1, 1919.....
	113,685.25
	Ordinary Dividend No. 8, payable February 1, 1919.....
	172,500.00
	3,706,154.21
	RESERVES—
	Furnace Relining and Rebuilding Reserves.....
	\$ 530,847.19
	Reserve for Accidents to Employees...
	58,876.93
	Contingent Reserve.....
	403,621.63
	Betterment and Replacement Reserve..
	2,360,013.21
	Fire Insurance Reserve.....
	100,000.00
	Employees Pension Reserve.....
	100,000.00
	\$ 3,553,358.96
	ond Sinking Fund Reserve.....
	616,537.19
	Depreciation Account.....
	3,526,632.00
	7,696,258.15
	SURPLUS—
	Balance as per Profit and Loss Account.
	7,322,872.01
\$45,652,831.05	\$45,652,831.05

Part Exhibit 8.
(Plaintiffs' Exhibit.)
Extracts from Annual Report, 1918.

*In the
Supreme
Court of
Ontario.*

STATEMENT OF PROFIT AND LOSS FOR THE YEAR ENDED DECEMBER 31ST, 1918		Exhibits.
	Profits for the year ended December 31st, 1918, after deducting charges for Repairs, Maintenance and Improvements, and providing for Inventory Reserve and War Tax, but before providing for Depreciation and Bond Interest.....	\$5,367,120.01
10	Deduct —Excess Cost of Construction of Coke Ovens and other Plant due to War Conditions.....	1,434,450.55
		\$3,932,669.46
	LESS RESERVES—	
	Bond Sinking Fund.....	\$ 185,052.12
	Depreciation.....	802,687.00
		987,739.12
		\$2,944,930.34
	LESS INTEREST ON BONDS—	
	The Steel Company of Canada, Limited.....	\$ 473,921.80
	The Montreal Rolling Mills Company.....	30,000.00
20	The Western Coke Company.....	11,250.00
		515,171.80
		\$2,429,758.54
	LESS DIVIDENDS ON PREFERRED SHARES—	
	Dividend No. 27, for quarter ended March 31st, 1918, at 1 $\frac{3}{4}$ %.....	\$ 113,685.25
	Dividend No. 28, for quarter ended June 30th, 1918, at 1 $\frac{3}{4}$ %.....	113,685.25
	Dividend No. 29, for quarter ended Sept. 30th, 1918, at 1 $\frac{3}{4}$ %.....	113,685.25
	Dividend No. 30, for quarter ended Dec. 31st, 1918, at 1 $\frac{3}{4}$ %.....	113,685.25
		\$ 454,741.00
	LESS DIVIDENDS ON ORDINARY SHARES—	
30	Dividend No. 5, for quarter ended March 31st, 1918, at 1 $\frac{1}{2}$ %.....	172,500.00
	Dividend No. 6, for quarter ended June 30th, 1918, at 1 $\frac{1}{2}$ %.....	172,500.00
	Dividend No. 7, for quarter ended Sept. 30th, 1918, at 1 $\frac{1}{2}$ %.....	172,500.00
	Dividend No. 8, for quarter ended Dec. 31st, 1918, at 1 $\frac{1}{2}$ %.....	172,500.00
		\$ 690,000.00
		1,144,741.00
		\$1,285,017.54
	Transferred to Fire Insurance Reserve.....	\$ 60,000.00
	Transferred to Employees' Pension Reserve.....	100,000.00
		160,000.00
		\$1,125,017.54
40	Balance brought forward Dec. 31st, 1917.....	6,197,854.47
	Balance Profit and Loss, Dec. 31st, 1918.....	\$7,322,872.01

Part Ex. 8.
Extracts
from Annual
Report,
1918.

—continued.

Part Exhibit 8.
(Plaintiffs' Exhibit.)
Extracts from Annual Report, 1919.

CONSOLIDATED BALANCE SHEET AS AT DECEMBER 31ST, 1919

ASSETS	LIABILITIES
COST OF WORKS owned and operated by the Company.....	CAPITAL STOCK—AUTHORIZED—
\$27,382,151.45	100,000 Shares at \$100 each, Preferred.. \$10,000,000.00
INVESTMENTS in Coal, Ore and other Companies and Company's own Bonds, including those acquired for Sinking Fund.....	150,000 Shares at \$100 each, Ordinary.. 15,000,000.00
3,734,545.88	\$25,000,000.00
\$31,116,697.33	ISSUED—
SINKING FUND ASSETS—	64,963 Shares at \$100 each, Preferred.. \$ 6,496,300.00
In hand of Trustees.....	115,000 Shares at \$100 each, Ordinary.. 11,500,000.00
39.42	\$17,996,300.00
ADVANCES to Subsidiary Companies....	BONDS, 6 PER CENT. FIRST MORTGAGE AND COLLATERAL TRUST BONDS—
687,652.60	Authorized.....
CURRENT ASSETS—	\$10,000,000.00
Inventories of Raw Materials and Finished Products less Reserve.....	Issued.....
\$ 5,503,833.91	\$ 8,850,000.00
Accounts Receivable.....	LESS held in escrow for redemption of Montreal Rolling Mills Co. Bonds..
4,310,211.79	500,000.00
Bills Receivable.....	\$ 8,350,000.00
21,736.56	LESS redeemed through Sinking Fund
Cash on hand and in Banks.....	737,774.65
2,076,403.26	\$ 7,612,225.35
\$11,912,185.52	6 PER CENT. BONDS OF THE MONTREAL ROLLING MILLS CO.....
Other Securities.....	500,000.00
2,884,209.38	5 PER CENT. BONDS OF THE WESTERN COKE CO.....
\$14,796,394.90	450,000.00
SECURITIES SET ASIDE FOR SPECIAL PURPOSES—	8,562,225.35
Stock of the Company held in Trust for Employees.....	CONVERTIBLE PROMISSORY NOTES—
\$ 281,902.03	Due July 1st, 1920.....
Victory Bonds deposited with Trustees for retirement of Western Coke Co. Bonds.....	30,000.00
450,000.00	30
Victory Bonds appropriated for Employees' Pension Fund.....	CURRENT LIABILITIES—
305,245.00	Accounts Payable, including provision for War Tax, 1919.....
1,037,147.03	\$ 3,185,270.00
DEFERRED CHARGES TO OPERATIONS—	Bills Payable.....
Insurance and other Expenses paid in advance.....	2,000.00
22,457.87	Unclaimed Dividends.....
	10,344.25
	Preferred Dividend No. 34, payable February 1st, 1920.....
	113,685.25
	Ordinary Dividend No. 12, payable February 1st, 1920.....
	287,500.00
	3,598,799.50
	40
	EMPLOYEES' PENSION FUND APPROPRIATION.....
	305,245.00
	RESERVES—
	Furnace Relining and Rebuilding Reserves.....
	\$ 637,313.11
	Reserve for Accidents to Employees....
	68,573.25
	Contingent Reserve.....
	509,853.64
	Betterment and Replacement Reserve..
	2,360,013.21
	Fire Insurance Reserve.....
	150,000.00
	\$ 3,725,753.21
	Bond Sinking Fund Reserve.....
	809,267.75
	Depreciation Account.....
	4,437,495.98
	8,972,516.94
	SURPLUS—
	Balance as per Profit and Loss Account.....
	8,195,302.36
	\$47,660,389.15
<u>\$47,660,389.15</u>	<u>\$47,660,389.15</u>

Part Exhibit 8.
(Plaintiffs' Exhibit.)
Extracts from Annual Report, 1919.

*In the
Supreme
Court of
Ontario.*

**STATEMENT OF PROFIT AND LOSS FOR YEAR
ENDED DECEMBER 31st, 1919**

Exhibits.
Part Ex. 8.
Extracts
from Annual
Report,
1919.

10	Profits for the year ended December 31st, 1919, after deducting charges for Repairs, Main- tenance and Improvements, and providing for Inventory Reserve and War Tax, 1919, but before providing for Depreciation and Bond Interest.....		\$4,000,940.05
	LESS RESERVES—		
	Bond Sinking Fund.....	\$ 192,730.56	
	Depreciation.....	911,133.98	
		1,103,864.54	
			\$2,897,075.51
	LESS INTEREST ON BONDS.....		514,904.16
			\$2,382,171.35
	LESS DIVIDENDS—		
20	Preferred at 7% per annum.....	\$ 454,741.00	
	Ordinary at 7% per annum.....	805,000.00	
		1,259,741.00	
			\$1,122,430.35
	Transferred to Employees' Pension Reserve....	\$ 200,000.00	
	Transferred to Fire Insurance Reserve.....	50,000.00	
		250,000.00	
			\$ 872,430.35
	Balance brought forward Dec. 31st, 1918.....		7,322,872.01
			\$8,195,302.36
	Balance Profit and Loss, Dec. 31st, 1919.....		

—continued.

In the
Supreme
Court of
Ontario.

Exhibits.
Part Ex. 8.
Extracts
from Annual
Report,
1920.

Part Exhibit 8.

(Plaintiffs' Exhibit.)

Extracts from Annual Report, 1920.

CONSOLIDATED BALANCE SHEET AS AT DECEMBER 31st, 1920

ASSETS	LIABILITIES
COST OF WORKS owned and operated by the Company.....	CAPITAL STOCK, AUTHORIZED—
INVESTMENTS in Coal, Ore and other Companies, and Company's own Bonds, including those acquired for Sinking Fund	100,000 Shares at \$100 each, Preferred
4,167,922.64	7% Cumulative.....
\$32,545,106.96	150,000 Shares at \$100 each, Ordinary..
SINKING FUND ASSETS—	\$25,000,000.00
In hands of Trustees.....	10
ADVANCES to Subsidiary Companies....	ISSUED—
954,557.57	64,963 Shares at \$100 each, Preferred
CURRENT ASSETS—	7% Cumulative.....
Inventories of Raw Materials and Finished Products less Reserve.....	115,000 Shares at \$100 each, Ordinary..
4,804,469.64	\$17,996,300.00
Accounts Receivable.....	BONDS, 6 PER CENT. FIRST MORTGAGE AND COLLATERAL TRUST BONDS—
Bills Receivable.....	Authorized.....
Cash on hand and in Banks.....	\$10,000,000.00
Secured Call Loan guaranteed by a Trust Company.....	20
1,000,000.00	Issued.....
\$11,962,112.51	LESS held in escrow for redemption of Montreal Rolling Mills Co. Bonds..
Other Securities.....	500,000.00
\$15,496,018.68	\$ 8,350,000.00
SECURITIES SET ASIDE FOR SPECIAL PURPOSES—	LESS redeemed through Sinking Fund
Stock of the Company held in trust for Employees.....	\$ 7,407,608.00
319,110.78	6 PER CENT. BONDS OF THE MONTREAL ROLLING MILLS CO.—
Victory Bonds deposited with trustees for retirement of Western Coke Co. Bonds.....	Due May 1st, 1923.....
450,000.00	500,000.00
Victory Bonds appropriated \$300,000.00 for Employees' Pension Fund and Unexpended Revenue.....	5 PER CENT. BONDS OF THE WESTERN COKE COMPANY—
319,818.84	Due January 1st, 1924.....
\$ 1,088,929.62	450,000.00
DEFERRED CHARGES TO OPERATIONS—	\$ 8,357,608.00
Insurance and other Expenses paid in advance.....	CURRENT LIABILITIES—
35,144.61	Accounts Payable including provision for Income Tax, 1920.....
	\$ 4,157,450.79
	Bills Payable.....
	350,129.30
	Unclaimed Dividends.....
	2,579.50
	Preferred Dividend No. 38 payable February 1, 1921.....
	113,685.25
	Ordinary Dividend No. 16 payable February 1, 1921.....
	201,250.00
	\$ 4,825,094.84
	EMPLOYEES' PENSION FUND, APPROPRIATION.....
	319,818.84
	RESERVES—
	Furnace Relining and Rebuilding Reserves\$
	739,579.65
	Reserves for Accidents to Employees...
	82,906.14
	Contingent Reserve.....
	557,387.91
	Betterment and Replacement Reserve..
	2,140,084.73
	Fire Insurance Reserve.....
	200,000.00
	\$ 3,719,958.43
	Bond Sinking Fund Reserve.....
	1,009,871.09
	Depreciation Account.....
	5,150,179.38
	\$ 9,880,008.90
	SURPLUS—
	Balance as per Profit and Loss Account.
	8,740,965.79
	\$50,119,796.37
	\$50,119,796.37

\$50,119,796.37

Part Exhibit 8.
(Plaintiffs' Exhibit.)
Extracts from Annual Report, 1920.

*In the
Supreme
Court of
Ontario.*

STATEMENT OF PROFIT AND LOSS ACCOUNT FOR THE YEAR ENDED DECEMBER 31ST, 1920		Exhibits.
Profits for the year ended December 31st, 1920, after deducting charges for Repairs, Maintenance, and Improvements, and providing for Inventory Reserve and Income Tax, 1920, but before providing for Depreciation and Bond Interest.....		Part Ex. 8.
	\$3,924,041.52	Extracts from Annual Report, 1920.
Deduct Excess Cost of Construction due to abnormal Building Costs during 1920.....	652,255.35	—continued.
	\$3,271,786.17	
10 LESS RESERVES—		
Bond Sinking Fund.....	\$ 200,603.34	
Depreciation.....	712,683.40	
	913,286.74	
	\$2,358,499.43	
LESS INTEREST ON BONDS.....	503,095.00	
	\$1,855,404.43	
LESS DIVIDENDS—		
Preferred at 7% per annum.....	\$ 454,741.00	
Ordinary at 7% per annum.....	805,000.00	
	1,259,741.00	
	\$ 595,663.43	
20 Transferred to Fire Insurance Reserve.....	50,000.00	
	\$ 545,663.43	
Balance brought forward Dec. 31st, 1919.....	8,195,302.36	
Balance Profit and Loss, Dec. 31st, 1920.....	\$8,740,965.79	

Exhibit 7.
(Plaintiffs' Exhibit)
Extract from Directors' Minutes, 5th October, 1921.

*Ex. 7.
Extract from
Directors'
Minutes,
5th October,
1921.*

30 The Secretary reported sales of Company for year, and also submitted statements of financial condition of Company as at August 31st, 1921, and cash in banks this date as per statements attached hereto, all of which under present conditions of business were considered satisfactory, and although the dividends at the rate of 7% on both classes of our stock would not likely be earned for the nine months of the year to September 30th, 1921, the Board were unanimously of the opinion that the dividends for the quarter ending September 30th, 1921, on both classes of stock at the rate of 7% per annum should be declared and were justified in view of the excellent financial position of the Company.

40 Moved by Sir Thomas White,
Seconded by Senator White,

“That dividend of one and three quarters per cent. on the issued and fully paid ordinary shares of the Company be declared for the quarter ending September 30th, 1921, payable November 1st, 1921, to shareholders of record at close of business October 10th, 1921.” Carried.

Moved by Sir Thomas White,
Seconded by Senator White,

50 That a dividend of one and three quarters per cent. on the issued and fully, paid Preference shares of the Company be declared for the quarter ending September 30th, 1921, payable November 1st, 1921, to shareholders of record at close of business October 10th, 1921”. Carried.

Part Exhibit 8.
(Plaintiffs' Exhibit.)
Extracts from Annual Report, 1921.

CONSOLIDATED BALANCE SHEET AS AT DECEMBER 31ST, 1921

*In the
Supreme
Court of
Ontario.*
—
Exhibits.
Part Ex. 8.
Extracts
from Annual
Report,
1921.

ASSETS	LIABILITIES
COST OF WORKS owned and operated by the Company.....	CAPITAL STOCK, AUTHORIZED—
\$28,880,119.48	100,000 Shares at \$100 each, Preferred
INVESTMENTS in Coal, Ore and other Companies, and Company's own Bonds, including those acquired for Sinking Fund	7% Cumulative..... \$10,000,000.00
3,928,538.63	150,000 Shares at \$100 each, Ordinary..
\$32,808,658.11	15,000,000.00
SINKING FUND ASSETS—	\$25,000,000.00
In hands of Trustees.....	
41.61	ISSUED—
ADVANCES to Subsidiary Companies....	64,963 Shares at \$100 each, Preferred
1,134,357.33	7% Cumulative..... \$ 6,496,300.00
CURRENT ASSETS—	115,000 Shares at \$100 each, Ordinary..
Inventories of Raw Materials and Finished Products less Reserve.....	11,500,000.00
\$ 4,847,666.83	\$17,996,300.00
Accounts Receivable.....	BONDS, 6 PER CENT. FIRST MORTGAGE AND COLLATERAL TRUST BONDS—
2,370,853.01	Authorized and Issued, due July 1, 1940.
Bills Receivable.....	\$10,000,000.00
156,424.05	LESS held in Treasury
Cash on hand and in Banks.....	1,150,000.00
1,006,754.11	LESS held in escrow for redemption of Montreal Rolling Mills Co. Bonds.
Secured Call Loans guaranteed by Trust Companies.....	500,000.00
261,250.00	LESS redeemed through Sinking Fund
\$ 8,642,948.00	1,162,492.00
Other Securities.....	\$ 7,187,508.00
3,064,666.36	6 PER CENT. BONDS OF THE MONTREAL ROLLING MILLS CO.—
\$11,707,614.36	Due May 1st, 1923.....
SECURITIES SET ASIDE FOR SPECIAL PURPOSES—	500,000.00
Stock of the Company held in trust for Employees.....	5 PER CENT. BONDS OF THE WESTERN COKE CO.—
\$ 284,110.78	Due January 1st, 1924.....
Victory Bonds deposited with trustees for retirement of Western Coke Company Bonds.....	450,000.00
450,000.00	\$ 8,137,508.00
Victory Bonds appropriated \$300,000 for Employees' Pension Fund and Unexpended Revenue.....	CURRENT LIABILITIES—
328,133.94	Accounts Payable including provision for Income Tax 1921.....
1,062,244.72	\$ 840,036.88
DEFERRED CHARGES TO OPERATIONS—	Unclaimed Dividends.....
Insurance and other Expenses paid in advance.....	3,190.75
24,248.35	Preferred Dividend No. 42 payable February 1, 1922.....
	113,685.25
	Ordinary Dividend No. 20 payable February 1, 1922.....
	201,250.00
	\$ 1,158,162.88
	EMPLOYEES' PENSION FUND APPROPRIATION.....
	328,133.94
	RESERVES—
	Furnace Relining and Rebuilding Reserves.....
	\$ 935,068.48
	Reserves for Accidents to Employees...
	93,584.90
	Contingent Reserve.....
	602,102.31
	Betterment and Replacement Reserve..
	1,993,132.81
	Fire Insurance Reserve.....
	200,000.00
	\$ 3,823,888.50
	Bond Sinking Fund Reserve.....
	1,222,674.31
	Depreciation Account.....
	5,771,979.87
	\$10,818,542.68
	SURPLUS—
	Balance as per Profit and Loss Account..
	8,298,516.98
\$46,737,164.48	\$46,737,164.48

Part Exhibit 8.
(Plaintiffs' Exhibit.)
Extracts from Annual Report, 1921.

**STATEMENT OF PROFIT AND LOSS ACCOUNT
FOR YEAR ENDED DECEMBER 31ST, 1921**

*In the
Supreme
Court of
Ontario.*

—
Exhibits.
Part Ex. 8.
Extracts
from Annual
Report,
1921.

—
—continued.

	Manufacturing Profits for the year ended Dec. 31, 1921, after deducting charges for Repairs, Maintenance and providing for Inventory Reserve and Income Tax, 1921, but before providing for Depreciation and Bond Interest.	\$1,778,661.10
10	Interest and Income from Securities and Investments	374,704.94
		\$2,153,366.04
	LESS RESERVES—	
	Bond Sinking Fund	\$ 212,803.22
	Depreciation	621,800.49
		834,603.71
		\$1,318,762.33
	LESS INTEREST ON BONDS	501,470.14
		\$ 817,292.19
20	LESS DIVIDENDS—	
	Preferred at 7% per annum	\$ 454,741.00
	Ordinary at 7% per annum	805,000.00
		\$1,259,741.00
	Deficit for the year	442,448.81
	Balance brought forward December 31, 1920	8,740,965.79
		\$8,298,516.98
	Balance, Profit and Loss, December 31, 1921	\$8,298,516.98

Part Exhibit 8.
(Plaintiffs' Exhibit.)
Extracts from Annual Report, 1922.

*In the
Supreme
Court of
Ontario.*

Exhibits.
Part Ex. 8.
Extracts
from Annual
Report,
1922.

CONSOLIDATED BALANCE SHEET AS AT DECEMBER 31ST, 1922

ASSETS		LIABILITIES	
COST OF WORKS owned and operated by the Company.....	\$29,121,568.80	CAPITAL STOCK, AUTHORIZED—	
INVESTMENTS in Coal, Ore and other Companies, and Company's own Bonds, including those required for Sinking Fund	4,171,203.38	100,000 Shares at \$100 each, Preferred 7% Cumulative.....	\$10,000,000.00
	<u>33,292,772.18</u>	150,000 Shares at \$100 each, Ordinary..	15,000,000.00
SINKING FUND ASSETS—			<u>\$25,000,000.00</u>
In hands of Trustee.....	36.43	ISSUED—	
ADVANCES to Subsidiary Companies....	960,678.87	64,963 Shares at \$100 each, Preferred 7% Cumulative.....	\$ 6,496,300.00
CURRENT ASSETS—		115,000 Shares at \$100 each, Ordinary..	11,500,000.00
Inventories of Raw Materials and Finished Products, less Reserve.....	\$ 5,405,702.19		<u>\$17,996,300.00</u>
Accounts Receivable.....	2,503,936.01	BONDS, 6 PER CENT. FIRST MORTGAGE AND COLLATERAL TRUST BONDS—	
Bills Receivable.....	116,530.81	Authorized and Issued, due July 1, 1940.	\$10,000,000.00
Cash on hand and in Banks.....	633,201.54	LESS held in Treasury.....	1,150,000.00
Secured Call Loans guaranteed by Trust Companies.....	256,478.28	LESS held in escrow for redemption of Montreal Rolling Mills Co. Bonds..	500,000.00
	<u>\$ 8,915,848.83</u>		<u>\$ 8,350,000.00</u>
Other Securities.....	3,413,710.79	LESS redeemed through Sinking Fund	1,400,185.33
	<u>12,329,559.62</u>		<u>\$ 6,949,814.67</u>
SECURITIES SET ASIDE FOR SPECIAL PURPOSES—		5 PER CENT. BONDS OF THE MONTREAL ROLLING MILLS CO.—	
Stock of the Company held in Trust for Employees.....	\$ 249,110.78	Due May 1st, 1923.....	500,000.00
Victory Bonds deposited with Trustees for retirement of Western Coke Company Bonds.....	450,000.00		<u>30</u>
Victory Bonds appropriated \$300,000.00 for Employees' Pension Fund and Unexpended Revenue.....	332,022.23	6 PER CENT. BONDS OF THE WESTERN COKE CO.—	
	<u>1,031,133.01</u>	Due January 1st, 1924.....	450,000.00
DEFERRED CHARGES TO OPERATIONS—			<u>\$ 78 99,814.67</u>
Insurance and other expenses paid in advance.....	60,465.78	CURRENT LIABILITIES—	
		Accounts Payable, including provision for Income Tax, 1922.....	\$ 1,868,350.42
		Bills Payable.....	235,333.34
		Unclaimed Dividends.....	3,574.75
		Preferred Dividend No. 46, payable February 1st, 1923.....	113,685.25
		Ordinary Dividend No. 24, payable February 1st, 1923.....	201,250.00
			<u>2,422,193.76</u>
		EMPLOYEES' PENSION FUND APPROPRIATION.....	<u>332,022.23</u>
		RESERVES—	
		Furnace Relining and Rebuilding Reserve.....	588,664.74
		Reserve for Accidents to Employees....	71,519.03
		Contingent Reserve.....	531,225.13
		Betterment and Replacement Reserve..	1,842,207.08
		Fire Insurance Reserve.....	200,000.00
			<u>\$ 3,233,615.98</u>
		Bond Sinking Fund Reserve.....	1,460,097.40
		Depreciation Account.....	6,388,229.50
			<u>11,081,942.88</u>
		SURPLUS—	
		Balance as per Profit and Loss Account..	7,942,372.35
			<u>\$47,674,645.89</u>
			<u>\$47,674,645.89</u>

Part Exhibit 8.
(Plaintiffs' Exhibit.)
Extracts from Annual Report, 1922.

*In the
Supreme
Court of
Ontario.*

**STATEMENT OF PROFIT AND LOSS ACCOUNT
FOR YEAR ENDED DECEMBER 31st, 1922**

Exhibits.
Part Ex. 8.
Extracts
from Annual
Report,
1922.

—continued

	Manufacturing Profits for the year ended 31st December, 1922, after deducting charges for Repairs, Maintenance and providing for Income Tax, 1922, but before providing for		\$1,962,169.24
10	Depreciation and Bond Interest.....		333,028.11
	Interest and Income from Securities and Invest- ments.....		<u>333,028.11</u>
			\$2,295,197.35
	LESS RESERVES—		
	Bond Sinking Fund.....	\$ 237,423.09	
	Depreciation.....	677,558.21	
			<u>914,981.30</u>
			\$1,380,216.05
	LESS INTEREST ON BONDS.....		<u>476,619.68</u>
			\$ 903,596.37
20	LESS DIVIDENDS—		
	Preferred at 7% per annum.....	\$ 454,741.00	
	Ordinary at 7% per annum.....	805,000.00	
			<u>1,259,741.00</u>
	Deficit for the year.....		\$ 356,144.63
	Balance brought forward December 31st, 1921.....		<u>8,298,516.98</u>
	Balance, Profit and Loss, December 31st, 1922.....		<u>\$7,942,372.35</u>

Part Exhibit 8.
(Plaintiffs' Exhibit.)
Extracts from Annual Report, 1923.

*In the
Supreme
Court of
Ontario.*

**CONSOLIDATED STATEMENT OF PROFIT AND LOSS ACCOUNT
FOR YEAR ENDED DECEMBER 31ST, 1923**

Exhibits.
Part Ex. 8.
Extracts
from Annual
Report,
1923

—continued.

10	Manufacturing Profits for the year ended December 31st, 1923, after deducting charges for Repairs, Maintenance and providing for Income Tax, 1923, but before providing for Depreciation and Bond Interest		\$2,996,580.10
	Interest and Income from Securities and Investments		287,887.71
			\$3,284,467.81
	LESS RESERVES—		
	Bond Sinking Fund	\$ 277,651.52	
	Depreciation	677,236.93	
			954,888.45
			\$2,329,579.36
	LESS INTEREST ON BONDS		441,962.96
20			\$1,887,616.40
	LESS DIVIDENDS—		
	Preferred at 7% per annum	\$ 454,741.00	
	Ordinary at 7% per annum	805,000.00	
			1,259,741.00
	Surplus for the year		627,875.40
	Balance brought forward December 31st, 1922		7,942,372.35
			\$8,570,247.75

Part Exhibit 8.

(Plaintiffs' Exhibit.)

Extracts from Annual Report, 1924.

CONSOLIDATED BALANCE SHEET AS AT DECEMBER 31ST, 1924

In the
Supreme
Court of
Ontario.
—
Exhibits.
Part Ex. 8.
Extracts
from Annual
Report,
1924.

ASSETS			LIABILITIES	
COST OF WORKS owned and operated by the Company.....	\$29,731,134.84		CAPITAL STOCK, AUTHORIZED—	
COST OF COAL, ORE AND OTHER PROPERTIES , and Investment in Company's own Bonds, including those acquired for Sinking Fund.....	3,577,529.77		100,000 Shares at \$100 each, Preferred	
	<u>\$33,308,664.61</u>		7% Cumulative.....	\$10,000,000.00
ADVANCES to Ore Companies.....	1,324,937.81		150,000 Shares at \$100 each, Ordinary..	15,000,000.00
SINKING FUND ASSETS—				<u>\$25,000,000.00</u>
In hands of Trustee.....	29.87		ISSUED—	
CURRENT ASSETS—			64,963 Shares at \$100 each, Preferred	
Inventories of Raw Materials and Finished Products, less Reserve.....	\$ 6,011,731.05		7% Cumulative.....	\$ 6,496,300.00
Accounts Receivable.....	2,231,047.24		115,000 Shares at \$100 each, Ordinary..	11,500,000.00
Bills Receivable.....	70,443.16			<u>\$17,996,300.00</u>
Cash on hand and in Banks.....	593,578.06		BONDS, 6 PER CENT. FIRST MORTGAGE AND COLLATERAL TRUST BONDS—	
Secured Call Loans, guaranteed by Trust Companies.....	734,378.85		Authorized and Issued, due July 1, 1940.	\$10,000,000.00
	<u>\$ 9,641,178.36</u>		LESS held in Treasury.....	1,649,904.00
Victory and War Loan Bonds.....	3,462,344.35			<u>\$ 8,350,096.00</u>
	<u>13,103,522.71</u>		LESS redeemed through Sinking Fund	1,909,476.49
SECURITIES SET ASIDE FOR SPECIAL PURPOSES—				6,440,619.51
Stock of the Company held in Trust for Employees.....	\$ 88,227.20		CURRENT LIABILITIES—	
Victory Bonds appropriated \$300,000.00 for Employees' Pension Fund and Unexpended Revenue.....	340,775.44		Accounts Payable, including provision for Income Tax, 1924.....	\$ 1,031,803.27
	<u>429,002.64</u>		Unclaimed Dividends.....	5,480.50
DEFERRED CHARGES TO OPERATIONS—			Preferred Dividend No. 54, payable February 1st, 1925.....	113,685.25
Insurance and other Expenses paid in advance.....	86,041.94		Ordinary Dividend No. 32, payable February 1st, 1925.....	201,250.00
	<u>\$48,252,199.58</u>			<u>1,352,219.02</u>
			EMPLOYEES' PENSION FUND APPROPRIATION.....	340,775.44
			RESERVES—	
			Furnace Relining and Rebuilding Reserves.....	\$ 858,368.59
			Reserves for Accidents to Employees....	95,271.84
			Contingent Reserve.....	546,540.49
			Betterment and Replacement Reserve..	1,881,470.21
			Fire Insurance Reserve.....	200,000.00
				<u>\$ 3,581,651.13</u>
			Bond Sinking Fund Reserve.....	2,008,961.34
			Depreciation Account.....	7,696,656.70
				<u>13,287,269.17</u>
			SURPLUS—	
			Balance as per Profit and Loss Account.	8,835,016.44
				<u>\$48,252,199.58</u>
				<u>50</u>

Part Exhibit 8.
(Plaintiffs' Exhibit.)
Extracts from Annual Report, 1924.

*In the
Supreme
Court of
Ontario.*

**CONSOLIDATED STATEMENT OF PROFIT AND LOSS ACCOUNT
FOR YEAR ENDED DECEMBER 31ST, 1924**

—
Exhibits.
Part Ex. 8.
Extracts
from Annual
Report,
1924.

	Manufacturing Profits for the year ended December 31st, 1924, after deducting charges for Repairs, Maintenance, and providing for Income Tax, 1924, but before providing for	
10	Depreciation and Bond Interest	\$2,510,826.96
	Interest and Income from Securities and Investments	356,483.68
		\$2,867,310.64
	LESS RESERVES—	
	Bond Sinking Fund \$ 271,212.42	
	Depreciation 677,401.41	
		948,613.83
		\$1,918,696.81
	LESS INTEREST ON BONDS	394,187.12
		\$1,524,509.69
20	LESS DIVIDENDS—	
	Preferred at 7% per annum \$ 454,741.00	
	Ordinary at 7% per annum 805,000.00	
		1,259,741.00
	Surplus for the year	\$ 264,768.69
	Balance brought forward December 31st, 1923	8,570,247.75
	Balance, Profit and Loss, December 31st, 1924	\$8,835,016.44

—continued.

Part Exhibit 8.

(Plaintiffs' Exhibit.)

Extracts from Annual Report, 1925.

CONSOLIDATED BALANCE SHEET AS AT DECEMBER 31st, 1925

In the
Supreme
Court of
Ontario.

Exhibits.

Part Ex. 8.
Extracts
from Annual
Report,
1925.

ASSETS	LIABILITIES
COST OF WORKS owned and operated by the Company.....	CAPITAL STOCK, AUTHORIZED—
\$29,914,620.50	100,000 Shares at \$100 each, Preferred
COST OF COAL, ORE AND OTHER PROPERTIES , and Investment in Company's own Bonds, including those acquired for Sinking Fund.....	7% Cumulative.....
3,335,755.81	150,000 Shares at \$100 each, Ordinary..
	\$25,000,000.00
ADVANCES to Ore Companies.....	ISSUED—
\$33,250,376.31	64,963 Shares at \$100 each, Preferred
SINKING FUND ASSETS—	7% Cumulative.....
In hands of Trustee.....	115,000 Shares at \$100 each, Ordinary..
31.93	\$ 6,496,300.00
CURRENT ASSETS—	11,500,000.00
Inventories of Raw Materials and Finished Products, less Reserve.....	\$17,996,300.00
\$ 5,621,533.17	BONDS, 6 PER CENT. FIRST MORTGAGE AND COLLATERAL TRUST BONDS—
Accounts Receivable.....	Authorized and Issued, due July 1, 1940.
3,458,551.95	LESS held in Treasury.....
Bills Receivable.....	\$10,000,000.00
87,250.38	1,649,904.00
Cash on hand and in Banks.....	\$ 8,350,096.00
577,302.78	LESS redeemed through Sinking Fund
Secured Call Loans.....	2,172,689.86
1,238,154.39	6,177,406.14
\$10,982,792.67	CURRENT LIABILITIES—
Victory and War Loan Bonds.....	Accounts Payable, including provision for Income Tax, 1925.....
4,049,448.74	\$ 2,016,484.38
15,032,241.41	Unclaimed Dividends.....
SECURITIES SET ASIDE FOR SPECIAL PURPOSES—	5,832.25
Stock of the Company held in Trust for Employees.....	Preferred Dividend No. 58, payable February 1st, 1926.....
\$ 46,464.22	113,685.25
Victory Bonds appropriated \$400,000.00 for Employees' Pension Fund and Unexpended Revenue.....	Ordinary Dividend No. 36, payable February 1st, 1926.....
441,324.04	201,250.00
487,788.26	2,337,251.88
DEFERRED CHARGES TO OPERATIONS—	EMPLOYEES' PENSION FUND APPROPRIATION
Insurance and other Expenses paid in advance.....	441,324.04
52,081.64	RESERVES—
\$50,193,707.41	Furnace Relining and Rebuilding Reserves.....
	\$ 888,041.08
	Reserves for Accidents to Employees...
	94,750.97
	Contingent Reserve.....
	573,391.56
	Betterment and Replacement Reserve..
	1,881,470.21
	Fire Insurance Reserve.....
	200,000.00
	\$ 3,637,653.82
	Bond Sinking Fund Reserve.....
	2,290,604.68
	Depreciation Account.....
	8,019,582.94
	13,947,841.44
	SURPLUS—
	Balance as per Profit and Loss Account.
	9,293,583.91
	\$50,193,707.41

Part Exhibit 8.
(Plaintiffs' Exhibit.)
Extracts from Annual Report, 1925.

*In the
Supreme
Court of
Ontario.*

**CONSOLIDATED STATEMENT OF PROFIT AND LOSS ACCOUNT
FOR YEAR ENDED DECEMBER 31ST, 1925**

Exhibits.
Part Ex. 8.
Extracts
from Annual
Report,
1925.

Manufacturing Profits for the year ended December 31st, 1925, after deducting charges for Repairs, Maintenance, and providing for Income Tax 1925, but before providing for		
10	Depreciation and Bond Interest	\$2,825,606.71
	Interest and Income from Securities and Investments	335,057.47
		\$3,160,664.18
	LESS RESERVES—	
	Bond Sinking Fund \$ 281,643.34	
	Depreciation 682,171.61	
		963,814.95
		\$2,196,849.23
	LESS INTEREST ON BONDS	378,540.76
20		\$1,818,308.47
	LESS DIVIDENDS—	
	Preferred at 7% per annum \$ 454,741.00	
	Ordinary at 7% per annum 805,000.00	
		1,259,741.00
		\$ 558,567.47
	Transferred to Employees' Pension Reserve	100,000.00
		\$ 458,567.47
	Surplus for the year	8,835,016.44
	Balance brought forward December 31st, 1924	8,835,016.44
	Balance, Profit and Loss, December 31st, 1925	\$9,293,583.91

—continued.

Part Exhibit 8.
(Plaintiffs' Exhibit.)
Extracts from Annual Report, 1926.

*In the
Supreme
Court of
Ontario.*

CONSOLIDATED BALANCE SHEET AS AT DECEMBER 31st, 1926

Exhibits.
Part Ex. 8.
Extracts
from Annual
Report,
1926.

	ASSETS		LIABILITIES
	COST OF WORKS owned and operated by the Company.....	\$30,937,868.51	CAPITAL STOCK, AUTHORIZED—
	COST OF COAL, ORE AND OTHER PROPERTIES , and Investment in Company's own Bonds, including those acquired for Sinking Fund.....	10 3,201,371.42	100,000 Shares at \$100 each, Preferred 7% Cumulative.....
	ADVANCES to Ore Companies.....	\$34,139,239.93	150,000 Shares at \$100 each, Ordinary..
	SINKING FUND ASSETS—	1,393,985.09	\$25,000,000.00
	In hands of Trustee.....	65.38	CAPITAL STOCK ISSUED—
	CURRENT ASSETS—		64,963 Shares at \$100 each, Preferred 7% Cumulative.....
	Inventories of Raw Materials and Finished Products, less Reserve.....	\$ 5,582,101.34	115,000 Shares at \$100 each, Ordinary..
	Accounts Receivable.....	3,180,050.15	\$ 6,496,300.00
	Bills Receivable.....	73,787.86	11,500,000.00
	Cash on hand and in Banks.....	498,785.11	\$17,996,300.00
	Secured Call Loans.....	738,534.10	BONDS, 6 PER CENT. FIRST MORTGAGE AND COLLATERAL TRUST BONDS—
		\$10,073,258.56	Authorized and Issued, due July 1, 1940.
	Victory and War Loan Bonds.....	5,219,396.85	LESS held in Treasury.....
		15,292,655.41	\$ 8,350,096.00
	SECURITIES SET ASIDE FOR SPECIAL PURPOSES—		LESS redeemed through Sinking Fund
	Stock of the Company held in Trust for Employees.....	\$ 134,539.00	5,909,299.43
	Employees' Pension Fund:		CURRENT LIABILITIES—
	Victory Bonds.....	\$400,000.00	Accounts Payable, including provision for Income Tax, 1926.....
	Cash.....	48,115.87	Unclaimed Dividends.....
		448,115.87	Preferred Dividend No. 62, payable February 1st, 1927.....
	Employees' Welfare and Benefit Fund		Ordinary Dividend No. 40, payable February 1st, 1927.....
	Victory Bonds.....	100,000.00	201,250.00
		682,654.87	2,415,790.04
	DEFERRED CHARGES TO OPERATIONS—		FUNDS APPROPRIATED—
	Insurance and other Expenses paid in advance.....	40 41,292.40	Employees' Pension Reserve.....
			Employees' Welfare and Benefit Reserve
			548,115.87
			RESERVES—
			Furnace relining and Rebuilding Reserves.....
			Reserves for Accidents to Employees...
			Contingent Reserve.....
			Betterment and Replacement Reserve..
			Fire Insurance Reserve.....
			\$ 909,469.10
			73,776.35
			659,368.15
			1,860,470.21
			200,000.00
			\$ 3,703,083.81
			Bond Sinking Fund Reserve.....
			Depreciation Account.....
			2,582,874.41
			8,231,374.65
			14,517,332.87
			SURPLUS—
			Balance as per Profit and Loss Account.
			10,163,054.87
			\$51,549,893.08
		<u>\$51,549,893.08</u>	<u>\$51,549,893.08</u>

50

Part Exhibit 8.
(Plaintiffs' Exhibit.)
Extracts from Annual Report, 1926.

*In the
Supreme
Court of
Ontario.*

**CONSOLIDATED STATEMENT OF PROFIT AND LOSS ACCOUNT
FOR THE YEAR ENDED DECEMBER 31ST, 1926**

Exhibits.
Part Ex. 8.
Extracts
from Annual
Report,
1926.

—continued.

	Manufacturing Profits for the year ended December 31st, 1926, after deducting charges for Repairs, Maintenance, and providing for Income Tax 1926, but before providing for		
10	Depreciation and Bond Interest		\$ 3,247,606.27
	Interest and Income from Securities and Investments		396,684.84
			\$ 3,644,291.11
	LESS RESERVES—		
	Bond Sinking Fund	\$ 292,269.73	
	Depreciation	760,208.26	
			1,052,477.99
			\$ 2,591,813.12
	LESS INTEREST ON BONDS		362,601.16
			\$ 2,229,211.96
20	LESS DIVIDENDS—		
	Preferred at 7% per annum	\$ 454,741.00	
	Ordinary at 7% per annum	805,000.00	
			1,259,741.00
			\$ 969,470.96
	Transferred to Employees' Welfare and Benefit Reserve		100,000.00
			\$ 869,470.96
	Surplus for the year	\$ 869,470.96	
	Balance brought forward December 31st, 1925		9,293,583.91
			\$10,163,054.87
30	Balance, Profit and Loss, December 31st, 1926		\$10,163,054.87

Part Exhibit 8.
(Plaintiffs' Exhibit.)
Extracts from Annual Report, 1927.

CONSOLIDATED BALANCE SHEET AS AT DECEMBER 31st, 1927

*In the
Supreme
Court of
Ontario.*
—
Exhibits.
Part Ex. 8.
Extracts
from Annual
Report,
1927.

ASSETS		LIABILITIES	
COST OF WORKS owned and operated by the Company.....	\$31,849,258.97	CAPITAL STOCK, AUTHORIZED—	
COST OF COAL, ORE AND OTHER PROPERTIES , and Investment in Company's own Bonds, including those acquired for Sinking Fund.....	3,464,677.38	100,000 7% Cumulative Preference Shares of \$100 each.....	\$10,000,000.00
	\$35,313,936.35	150,000 Ordinary Shares of \$100 each..	15,000,000.00
ADVANCES to Ore Companies.....	1,499,557.23		\$25,000,000.00
SINKING FUND ASSETS—		CAPITAL STOCK ISSUED—	
Cash in hands of Trustee.....	78.03	64,963 7% Cumulative Preference Shares of \$100 each.....	\$ 6,496,300.00
CURRENT ASSETS—		115,000 Ordinary Shares of \$100 each..	11,500,000.00
Inventories of Raw Materials and Finished Products, less Reserve.....	\$ 5,206,916.36		\$17,996,300.00
Accounts Receivable.....	3,184,487.94	BONDS, 6 PER CENT. FIRST MORTGAGE AND COLLATERAL TRUST BONDS—	
Bills Receivable.....	90,926.81	Due July 1, 1940, authorized and Issued.	\$10,000,000.00
Cash on hand and in Banks.....	572,516.25	LESS held in Treasury.....	1,649,904.00
Secured Call Loans.....	680,000.00		\$ 8,350,096.00
	\$ 9,734,847.36	LESS redeemed through Sinking Fund.	2,716,369.91
Victory Bonds and approved Securities.	5,259,279.72		5,633,726.09
	14,994,127.08	CURRENT LIABILITIES—	
SECURITIES SET ASIDE FOR SPECIAL PURPOSES—		Accounts Payable, including provision for Income Tax, 1927.....	\$ 1,623,603.66
Stock of the Company held in Trust for Employees.....	\$ 29,270.83	Unclaimed Dividends.....	8,488.75
Employees' Pension Fund:		Preference Dividend No. 66, payable February 1st, 1928.....	113,685.25
Victory Bonds, Approved Securities and Cash.....	566,655.82	Ordinary Dividend No. 44, payable February 1st, 1928.....	201,250.00
Employees' Welfare and Benefit Fund			1,947,027.66
Victory Bonds and Cash.....	106,416.66	FUNDS APPROPRIATED—	
	702,343.31	Employees' Pension Reserve.....	\$ 566,655.82
DEFERRED CHARGES TO OPERATIONS—		Employees' Welfare and Benefit Reserve	106,416.66
Insurance and other Expenses paid in advance.....	48,503.62		673,072.48
		RESERVES—	
		OPERATING RESERVES:	
		Furnace Relining and Rebuilding, and other Operating Reserves.....	\$ 1,058,752.72
		Accidents to Employees.....	83,207.78
		Contingent Reserve.....	751,827.91
			1,893,788.41
		PLANT RESERVES:	
		Depreciation Account.....	\$ 8,582,157.87
		Bond Sinking Fund.....	2,886,017.72
			11,468,175.59
		APPROPRIATED SURPLUS:	
		For Betterments and Replacements..	\$ 1,847,770.65
		For Fire Insurance Reserve.....	200,000.00
			2,047,770.65
		SURPLUS—	
		Balance as per Profit and Loss Account.	10,898,684.74
			50
	\$52,558,545.62		\$52,558,545.62

Part Exhibit 8.
(Plaintiffs' Exhibit.)
Extracts from Annual Report, 1927.

*In the
Supreme
Court of
Ontario.*

**CONSOLIDATED STATEMENT OF PROFIT AND LOSS ACCOUNT
FOR THE YEAR ENDED DECEMBER 31ST, 1927**

Exhibits.
Part Ex. 8.
Extracts
from Annual
Report,
1927.

10	Manufacturing Profits for the year ended December 31st, 1927, after deducting charges for Repairs, Maintenance, and providing for Income Tax 1927, but before providing for Depreciation and Bond Interest.....	\$ 3,166,280.64	
	Interest and Income from Securities and Investments.....	395,513.84	
		\$ 3,561,794.48	
	LESS RESERVES—		
	Bond Sinking Fund.....	\$ 303,143.31	
	Depreciation.....	816,989.53	
		1,120,132.84	
		\$ 2,441,661.64	
	LESS INTEREST ON BONDS.....	346,290.77	
20		\$ 2,095,370.87	
	LESS DIVIDENDS—		
	Preference Shares at 7% per annum.....	\$ 454,741.00	
	Ordinary Shares at 7% per annum.....	805,000.00	
		1,259,741.00	
		\$ 835,629.87	
	Transferred to Employees' Pension Reserve.....	100,000.00	
		735,629.87	
	Balance brought forward December 31st, 1926.....	10,163,054.87	
		\$10,898,684.74	
	Balance, Profit and Loss, December 31st, 1927.....		

—continued.

Part Exhibit 8.
(Plaintiffs' Exhibit.)
Extracts from Annual Report, 1928.

CONSOLIDATED BALANCE SHEET AS AT DECEMBER 31st, 1928

*In the
Supreme
Court of
Ontario.*
—
Exhibits.
Part Ex. 8.
Extracts
from Annual
Report,
1928.

ASSETS		LIABILITIES	
COST OF WORKS owned and operated by the Company.....	\$33,286,214.87	CAPITAL STOCK, AUTHORIZED—	
COST OF COAL AND ORE PROPERTIES , and Investment in Company's own Bonds, including those acquired for Sinking Fund.....	2,944,385.37	400,000 7% Cumulative Preference Shares of \$25.00 each.....	
	<u>\$36,230,600.24</u>	600,000 Ordinary shares of no par value.....	10
ADVANCES to Ore Companies.....	1,269,537.25	CAPITAL STOCK ISSUED—	
SINKING FUND ASSETS—		259,852 7% Cumulative Preference Shares of \$25.00 each.....	\$ 6,496,300.00
Cash in hands of Trustee.....	42.38	460,000 Ordinary Shares of no par value..	11,500,000.00
CURRENT ASSETS—			<u>\$17,996,300.00</u>
Inventories of Raw Materials and Finished Products, less Reserve.....	\$ 5,658,016.43	BONDS, 6 PER CENT. FIRST MORTGAGE AND COLLATERAL TRUST BONDS—	
Accounts Receivable.....	3,920,128.77	Due July 1st, 1940, Authorized and Issued	\$10,000,000.00
Bills Receivable.....	36,888.17	LESS held in Treasury.....	1,649,904.00
Cash on hand and in Banks.....	537,909.89		20
Secured Call Loans.....	1,150,000.00		<u>\$ 8,350,096.00</u>
	<u>\$11,302,943.26</u>	LESS redeemed through Sinking Fund	2,999,571.24
Victory Bonds and Approved Securities.....	6,122,604.53		5,350,524.76
	17,425,547.79	CURRENT LIABILITIES—	
SECURITIES SET ASIDE FOR SPECIAL PURPOSES—		Accounts Payable, including provision for Income Tax, 1928.....	\$ 2,716,453.21
Stock of the Company held in Trust for Employees.....	\$ 3,598.34	Unclaimed Dividends.....	9,447.75
Employees' Pension Fund:		Preference Dividend No. 70, payable February 1st, 1929.....	178,648.25
Victory Bonds, Approved Securities and Cash.....	671,021.39	Ordinary Dividend No. 48, payable February 1st, 1929.....	316,250.00
Employees' Benefit Plan Fund:			3,220,799.21
Victory Bonds, Approved Securities and Cash.....	226,734.44	FUNDS APPROPRIATED—	
	901,354.17	Employees' Pension Reserve.....	\$ 671,021.39
DEFERRED CHARGES TO OPERATIONS—		Employees' Benefit Plan Reserve.....	226,734.44
Insurance and other Expenses paid in advance.....	52,755.73		897,755.83
		RESERVES—	
		OPERATING RESERVES:	
		Furnace Relining and Rebuilding, and other Operating Reserves.....	\$ 1,322,222.75
		Accidents to Employees.....	98,235.24
		Contingent Reserve.....	783,246.90
			2,203,704.89
		PLANT RESERVES:	
		Depreciation Account.....	\$ 8,938,365.98
		Bond Sinking Fund.....	3,200,336.53
			12,138,702.51
		APPROPRIATED SURPLUS:	
		For Betterments and Replacements..	\$ 1,829,674.06
		For Fire Insurance Reserve.....	200,000.00
			2,029,674.06
		SURPLUS—	
		Balance as per Profit and Loss Account.	12,042,376.30
			50
			<u>\$55,879,837.56</u>
			<u>\$55,879,837.56</u>

Exhibit 8
(Plaintiffs' Exhibit.)
Extracts from Annual Report, 1928.

*In the
Supreme
Court of
Ontario.*

**CONSOLIDATED STATEMENT OF PROFIT AND LOSS ACCOUNT
FOR YEAR ENDED DECEMBER 31st, 1928**

Exhibits.
Part Ex. 8.
Extracts
from Annual
Report,
1928.

—continued

	Manufacturing Profits for the year ended December 31st, 1928, after deducting charges for Repairs, Maintenance, and providing for Income Tax 1928, but before providing for		
10	Depreciation and Bond Interest	\$ 4,051,705.81	
	Interest and Income from Securities and Investments	454,776.29	
		\$ 4,506,482.10	
	LESS RESERVES—		
	Bond Sinking Fund	\$ 314,318.81	
	Depreciation	1,079,240.20	
		1,393,559.01	
		\$ 3,112,923.09	
	LESS INTEREST ON BONDS	329,527.53	
20		\$ 2,783,395.56	
	LESS DIVIDENDS Paid and Reserved—		
	Preference Shares	\$ 519,704.00	
	Ordinary Shares	920,000.00	
		1,439,704.00	
		\$ 1,343,691.56	
	LESS TRANSFERRED—		
	To Employees' Pension Reserve	\$ 100,000.00	
	To Employees' Benefit Plan Reserve	100,000.00	
		200,000.00	
30	Surplus for the year	\$ 1,143,691.56	
	Balance brought forward December 31st, 1927	10,898,684.74	
	Balance, Profit and Loss, December 31st, 1928	\$12,042,376.30	

*In the
Supreme
Court of
Ontario.*

Part Exhibit 10.

(Plaintiffs' Exhibit)

Letter A. B. MacKay to Ross H. McMaster.

HAMILTON, ONT.,

Box 331,
October 15th, 1928.

Exhibits.
Part Ex. 10.
Letter A. B.
MacKay to
Ross H.
McMaster.
15th October
1928

ROSS H. McMASTER, ESQ.,
Pres. Steel Company of Canada,
MONTREAL, QUE.

DEAR MR. McMASTER :—

10

I have recently returned from England and notice by the Press that a split in the shares, or increase in dividends of your Company is freely discussed.

As a shareholder of Common Stock, I would like to be assured that no further disbursements over 7% be made to the Preferred shareholders until the Common shareholders shall have received a total payment at the rate of 7% per annum since the Incorporation of the Company.

I am shortly returning to England and would appreciate an early reply.

Yours faithfully,

"A. B. MacKAY."

Part Exhibit 10.

(Plaintiffs' Exhibit)

Letter Ross H. McMaster to A. B. MacKay.

October 16th, 1928.

A. B. MacKAY, ESQ.,
P.O. Box 331,
Hamilton, Canada.

DEAR MR. MacKAY :—

I have received your letter of the 15th inst.

When you are passing through Montreal on your return to England, I will be very glad to have conversation with you.

I do not understand the situation to which you refer, but I shall be happy to discuss this, or any other matters of mutual interest with you.

Yours very truly,

"R. H. McMaster,"

President.

Part Ex. 10.
Letter
Ross H.
McMaster
to A. B.
MacKay.
15th October
1928

20

30

Part Exhibit 10.

(Plaintiffs' Exhibit)

Letter A. B. MacKay to Ross H. McMaster.

MacKay Building,
Hamilton, Canada,

October 20th.

*In the
Supreme
Court of
Ontario.*

—
Exhibits
Part Ex. 10.
Letter A. B.
MacKay to
Ross H.
McMaster.
20th October
1928.

DEAR MR. McMASTER :

Thanks for yours of the 16th. Will you please let me know what day
next or following week you will be in Montreal. We return to England via
10 New York November 7th, but I have to visit Montreal before sailing.

Yours very truly,

(Sgd.) A. B. MacKAY.

Part Exhibit 6.

(Plaintiffs' Exhibit)

By-law Number 19 of Defendant Company.

Part Ex. 6.
By-law
Number 19
of
Defendant
Company.
14th Nov-
ember 1928.

WHEREAS the authorized Capital Stock of The Steel Company of Canada,
Limited, consists of Twenty-five Million Dollars (\$25,000,000) divided into
Two Hundred and Fifty Thousand (250,000) shares of One Hundred Dollars
(\$100) each of which :

20 (a) One Hundred Thousand (100,000) shares of One Hundred Dollars
(\$100) each were created and authorized to be issued as Preference Stock
with the preference and priority provided in the Letters Patent incorporating
the Company, of which Sixty-four Thousand Nine Hundred and Sixty-three
(64,963) shares have been issued fully paid and the balance of Thirty-five
Thousand and Thirty-seven (35,037) shares remain unissued.

(b) The remaining One Hundred and Fifty Thousand (150,000) shares
of One Hundred Dollars (\$100) each are Ordinary shares of which One Hun-
dred and Fifteen Thousand (115,000) shares have been issued fully paid and
30 remain unissued.

BE IT ENACTED AND IT IS HEREBY ENACTED as By-law No. 19 of the
Company, as follows :—

(1) That the One Hundred Thousand (100,000) shares of the par value
of One Hundred Dollars (\$100) each at present constituting the Preference

*In the
Supreme
Court of
Ontario.*

Exhibits
Part Ex. 6.
By-law
Number 19
of
Defendant
Company.
14th Nov-
ember 1928

—continued

Capital Stock of the Company be sub-divided into Four Hundred Thousand (400,000) shares of the par value of Twenty-five Dollars (\$25) each, so that the Preference Capital Stock of the Company shall consist of Four Hundred Thousand (400,000) shares of the par value of Twenty-five Dollars (\$25) each, with the preference and priority provided in the Letters Patent incorporating the Company. All of the rights, preferences and priorities attaching to the Preference Stock as set out in the Letters Patent incorporating the Company shall remain undisturbed and shall attach to the new Preference Shares, provided that the new Preference Shares shall have one vote in respect of each new share.

10

(2) That the One Hundred and Fifty Thousand (150,000) Ordinary Shares of the par value of One Hundred Dollars (\$100) each at present constituting the Ordinary Capital Stock of the Company, be subdivided into Six Hundred Thousand (600,000) shares of the par value of Twenty-five Dollars (\$25) each, so that the Ordinary Capital Stock of the Company shall consist of Six Hundred Thousand (600,000) shares of the par value of Twenty-five Dollars (\$25) each, provided that the new Ordinary shares shall have one vote in respect of each new share.

AND THAT the Directors of the Company be and they are hereby authorized (upon approval of this By-law by the shareholders as required by the Companies' Act, Canada) to apply for Supplementary Letters Patent subdividing the Capital Stock as aforesaid; and further to take all steps and do all things deemed necessary to carry into effect this By-law.

20

ENACTED at meeting of Board of Directors October 22nd, 1918. Confirmed at Special Shareholders' Meeting, November 14th, 1928.

Part Exhibit 10.

(Plaintiffs' Exhibit)

Notice to Shareholders.

THE STEEL COMPANY OF CANADA, LIMITED.

Hamilton, October 22nd, 1928. 30

TO THE SHAREHOLDERS OF

THE STEEL COMPANY OF CANADA, LIMITED :

DEAR SIR OR MADAM :

You are hereby notified that a Special General Meeting of the Shareholders of The Steel Company of Canada, Limited, will be held at the Head Office of the Company in the City of Hamilton, in the Province of Ontario, on Wednesday, the 14th day of November, 1928, at the hour of 11 o'clock in the forenoon, for the following purposes :

Part Ex. 10.
Notice to
Shareholders
(with copy
of By-law
No. 19 and
Notice
issued to
Press
attached
22nd Oct-
ober 1928

(a) To consider and, if approved, to pass a resolution ratifying and confirming with or without modification By-law No. 19 subdividing the 100,000 shares of Preference Stock of the par value of \$100 each into 400,000 shares of Preference Stock of the par value of \$25 each, and subdividing the 150,000 Ordinary Shares of the Capital Stock of the Company of the par value of \$100 each, into 600,000 Ordinary Shares of the par value of \$25 each, and giving each class of Shares one vote in respect of each new share. All the rights, preferences and priorities attaching to the Preference Stock as set out in the Letters Patent incorporating the Company shall remain undisturbed and shall attach to the new Preference Shares.

(b) To consider and, if approved, to pass a resolution authorizing the Directors to apply for Supplementary Letters Patent amending and varying the provisions of the Letters Patent incorporating the Company and the Letters Patent supplementary thereto relative to its Ordinary Capital Stock changing the par value Ordinary Shares of the Company from 600,000 fully paid Ordinary Shares of the par value of \$25 each 600,000 fully paid Ordinary Shares without nominal or par value, maintaining for the no par value shares all the rights attaching to the said Ordinary Shares of the par value of \$25.

(c) To consider and, if approved, pass any and all resolutions and give all such authorizations and directions that may be necessary or desirable in connection with the foregoing.

By order of the Board,

"H. S. ALEXANDER,"

Secretary.

P.S.—If you are unable to attend this Meeting in person, kindly sign and return the enclosed proxy to the Secretary of the Company in the enclosed envelope. Do not omit to have your signature witnessed.

NOTE.—A copy of By-law Number 19 (Rec. p. 127) and a copy of the following notice to the press issued October 22nd, 1928, were attached to the foregoing notice of meeting mailed to shareholders.

Part Exhibit 10.

(Plaintiffs' Exhibit)

Notice Issued to Press.

THE STEEL COMPANY OF CANADA, LIMITED.

Hamilton, October 22nd, 1928.

At the Meeting of the Board of Directors of The Steel Company of Canada, Limited, held to-day in Toronto, a By-law was enacted authorizing a change in the Capital structure of the Company whereby the par value of the Preference Shares is to be changed from \$100 per share to \$25 per share. Each Preference shareholder will be entitled to a Certificate for four Preference shares for each one Preference share now held and in the case of the Ordinary Shares each Ordinary shareholder will be entitled to a Certificate for four no par value shares for each one share of the present Ordinary shares, the whole upon surrender of their outstanding Certificates.

*In the
Supreme
Court of
Ontario.*

Exhibits
Part Ex. 10.
Notice to
Shareholders
(with copy
of By-law
No. 19 and
Notice
issued to
Press
attached
22nd Oct-
ober 1928.

—continued

Part Ex. 10.
Notice
Issued to
Press.

*In the
Supreme
Court of
Ontario.*

Exhibits.
Part Ex. 10.
Notice
Issued to
Press.

—continued

All of the rights, preferences and priorities presently attaching to the existing shares shall attach to the new shares, preserving in each case the existing relative voting strength and all other rights of both Preference and Ordinary shares.

A Special General Meeting of the Shareholders will be called at the General Office of the Company, Hamilton, on Wednesday, November 14th, 1928, to ratify the proposed changes and to authorize the Board of Directors to apply for the necessary Supplementary Letters Patent.

The next quarterly dividend when declared payable February 1st, 1929, on the new shares, both Preference and Ordinary, will be Fifty cents per share.

In the course of the present month the Company is planning to establish a Sickness Benefit Plan combined with Death Indemnities for the benefit of the employees and their families. 10

“ROSS H. McMASTER,”
President.

Part Ex. 10.
Letter
Ross H.
McMaster
to A. B.
MacKay.
24th Oct-
ober 1928

Part Exhibit 10.

(Plaintiffs' Exhibit)

Letter Ross H. McMaster to A. B. MacKay.

October 24th, 1928.

A. B. MACKAY, Esq.,
P. O. Box 331,
Hamilton, Canada. 20

DEAR MR. MACKAY :

Your letter of October 20th was forwarded to me at Hamilton, where I was yesterday. I made numerous enquiries to get in touch with you, but found you were in Toronto.

I will be in New York on Friday and Saturday at a meeting of The American Iron and Steel Institute, but expect to be here all next week, and will be glad to see you at any time.

I am anxious to tell you that the changes we are proposing to make in the capital structure of the Company will be done in such a way as to preserve intact all of the rights of the respective shares. 30

Yours very truly,
“R. H. McMASTER”
President.

Part Ex. 10.
Telegram
Ross H.
McMaster
to A. W.
Holmested.
8th Novem-
ber 1928

Part Exhibit 10.

(Plaintiffs' Exhibit)

Telegram Ross H. McMaster to A. W. Holmested.

Montreal, November 8th, 1928.

A. W. HOLMESTED,
Holmested & Sutton.

ACKNOWLEDGING YOUR LETTER SEVENTH INSTANT HAVING REGARD NUMEROUS 40

LEGAL QUESTIONS CONTAINED THEREIN CONSIDER APPROPRIATE REFER YOU TO OUR LEGAL ADVISER R. C. MCMICHAEL OF BROWN MONTGOMERY AND MCMICHAEL MONTREAL.

“ROSS. H. McMASTER.”

In the Supreme Court of Ontario.

Exhibits.
Part Ex. 10.
Telegram
Ross H.
McMaster
to A. W.
Holmsted.
8th Nov-
ember 1928.

Part Exhibit 10.

(Plaintiffs' Exhibit)

Letter Thomas Ramsay to A. B. MacKay.

November 10th, 1928.

—continued

10 MR. A. B. MacKAY,
MacKay Building,
Toronto, Ont.

DEAR SIR :—

Replying to your favor and recent conversations, Mr. Peene and myself called to see Mr. H. Champ, and his explanation to us regarding the split proposed, was made very clear to us, that it could not be arranged in any other way. A change in capital other than what is now existing, would make it as a Bonus which would then be taxable. Of course there could have been a split of 5 for 1 at \$20.00 per share and have not changed the Capital, but the usual course is \$25.00 shares.

Part Ex. 10.
Letter
Thomas
Ramsay
to A. B.
MacKay.
10th Nov-
ember 1928.

20 According to their legal advice the back dividends on the ordinary shares, so claimed by you, cannot be collected, and if fought for would only create a big legal fight, costly to both sides, and in my opinion very detrimental to our Company, in which I am so heavily interested.

You know very well, that in the past our Company has been very ably managed, and it is in my opinion that it will continue to be, and a fight over back dividends would be harmful to the Company.

Looking and weighing the facts above noted, both Mr. Peene and myself have decided that for the best of all concerned, not to take any part in this matter.

30 In my opinion I think you would be very foolish not to coincide with the recapitulation as outlined, and that the shareholders be unanimous in carrying same at the meeting.

Yours very truly,
(Sgd.) THOS. RAMSAY.

Part Exhibit 6.

(Plaintiffs' Exhibit)

By-law Number 20 of Defendant Company.

Part Ex. 6.
By-law
Number 20
of Defendant
Company.
14th Nov-
ember 1928.

Each shareholder shall be entitled to a certificate showing the number of shares of the capital stock held by him.

40 The certificates for shares of the Capital Stock of the Company shall be in such form as the Board of Directors may by resolution from time to time approve, and such certificates shall be signed by the President or a Vice-President and by such other person or persons as the Board of Directors may

*In the
Supreme
Court of
Ontario.*

Exhibits.
Part Ex. 6.
By-law
Number 20
of Defendant
Company.
14th Novem-
ber 1928

—continued

by resolution, from time to time, appoint for that purpose, and countersigned by a duly appointed Transfer Agent and Registrar.

The signature of the President or a Vice-President may be printed, engraved or lithographed signature shall be valid and binding upon the Company and shall for all purposes be deemed the signature of such President or Vice-President, and this provision shall apply even though such officer may not hold office at the date of the issuance of the certificate.

All certificates surrendered to the Company shall be cancelled and no new certificate shall be issued until the former certificate or certificates for the same number of shares of the same class has or have been surrendered or cancelled, without prejudice to the cases in which bonds of indemnity may be accepted covering the issue of new certificates to replace certificates mutilated, lost or destroyed. 10

ENACTED at Meeting of Board of Directors, November 14th, 1928.
Confirmed at Annual Meeting.

Part Exhibit 5.

(Plaintiffs' Exhibit)

Supplementary Letters Patent to Defendant Company.

Part Ex. 5.
Supplemen-
tary Letters
Patent to
Defendant
Company.
16th Novem-
ber 1928

CANADA.

By the HONOURABLE FERNAND RINFRET,
Secretary of State of Canada. 20

To all to whom these Presents shall come, or whom the same may in anywise concern,

GREETING :—

Whereas THE STEEL COMPANY OF CANADA, LIMITED, a Company duly incorporated under the provisions of the first part of Chapter 79 of the Revised Statutes of Canada, 1906, and known as "The Companies Act," under the name of CANADIAN STEEL CORPORATION, LIMITED;

And whereas by Supplementary Letters Patent dated the twenty-second day of June, One thousand nine hundred and ten, the name of the said Com- 30
pany was changed from that of CANADIAN STEEL CORPORATION, LIMITED, to that of THE STEEL COMPANY OF CANADA, LIMITED;

And whereas the said Company has applied by Petition to me, the Secretary of State of Canada, for the issue of Supplementary Letters Patent under the provisions of the first part of Chapter 27 of the Revised Statutes of Canada, 1927, and known as "The Companies' Act," confirming a By-law of the said Company passed on the twenty-second day of October, One Thousand Nine Hundred and Twenty-eight, and duly approved by at least two-thirds of the votes cast at a Special General Meeting of the shareholders of the Company duly called for considering the same, and held at the City of Hamilton on the 40
fourteenth day of November, A.D. 1928, subdividing the one hundred thousand (100,000) preference shares and the one hundred and fifty thousand (150,000) ordinary shares, all of the par value of One Hundred (\$100.00) Dollars each, into four hundred thousand (400,000) preference shares and six hundred

thousand (600,000) ordinary shares, all of the par value of Twenty-five (\$25.00) Dollars each;

And whereas the said company, under the authority of a Resolution to such effect passed by at least two-thirds of the votes cast at a Special General Meeting of the shareholders of the Company duly called for considering the same, and held at the City of Hamilton, on the fourteenth day of November, 1928, has applied by Petition to me, the Secretary of State of Canada, for the issue of Supplementary Letters Patent under the provisions of the said Act amending and varying the provisions of the Letters Patent incorporating
 10 the said Company, dated the Eighth day of June, one thousand nine hundred and ten, as hereinafter set forth; and has satisfactorily established the sufficiency of all proceedings by the said Act required to be taken, and the truth of all facts by the said Act required to be established previous to the granting of such Supplementary Letters Patent.

NOW KNOW YE THAT I, FERNAND RINFRET, Secretary of State of Canada, by virtue of the power vested in me by the said Act, and of any other power or authority whatever in me vested in this behalf, do by these my Supplementary Letters Patent confirm the said by-law of the said Company, passed on the said twenty-second day of October, in the year of Our Lord one thousand
 20 nine hundred and twenty-eight, and duly approved as aforesaid, subdividing the one hundred thousand (100,000) preference shares and one hundred and fifty thousand (150,000) ordinary shares, all of the par value of One Hundred (\$100.00) Dollars each, into four hundred thousand (400,000) preference shares and six hundred thousand (600,000) ordinary shares, all of the par value of Twenty-five (\$25.00) Dollars each. All of the rights, preferences and priorities attaching to the preference stock as set out in the Letters Patent incorporating the company shall remain undisturbed and shall attach to the new preference shares, provided that the new preference shares shall have one vote in respect of each new share.

AND FURTHER KNOW YE THAT I, FERNAND FINFRET, Secretary of State of Canada, by virtue of the power vested in me by the said Act, and of any other power or authority whatever in ME vested in this behalf, do by these my Supplementary Letters Patent confirm the said resolution of the said Company, passed on the said fourteenth day of November, in the year of Our Lord one thousand nine hundred and twenty-eight, by amending and varying the provisions of the Letters Patent incorporating the said Company, dated the Eighth day of June, One thousand nine hundred and ten, by converting the six hundred thousand (600,000) ordinary shares of the capital stock of the said Company of the par value of Twenty-five (\$25.00) Dollars each into
 40 six hundred thousand (600,000) ordinary shares without nominal or par value, and reserving and maintaining at all times for the shares of each class, preference and ordinary, all the rights attaching to the shares of the par value of \$100 as originally created; provided that such rights shall be proportionally reduced having regard to the fact that each preference and each ordinary share as originally created has been subdivided into four shares of the par value of \$25 each, with the sole exception that every shareholder shall be entitled to one vote for each new share, whether preference or ordinary, held

*In the
Supreme
Court of
Ontario.*

Exhibits.
Part Ex. 5.
Supplemen-
tary Letters
Patent to
Defendant
Company.
16th Nov-
ember 1925.

—continued

*In the
Supreme
Court of
Ontario.*

Exhibits.
Part Ex. 5.
Supplementary
Letters
Patent to
Defendant
Company.
16th Nov-
ember 1928

—continued

by him. Provided, however, that the unissued shares without nominal or par value may be issued and allotted for such consideration as may be determined by the Board of Directors not exceeding Twenty-five (\$25.00) Dollars per share.

Given under my hand and seal of office at Ottawa, this sixteenth day of November, 1928.

“THOMAS MULVEY,”
Under-Secretary of State.

[L.S.]

Part Exhibit 10.

(Plaintiffs' Exhibit)

Letter A. W. Holmested to Ross H. McMaster.

10

Part Ex. 10.
Letter A. W.
Holmested
to Ross H.
McMaster.
10th Dec-
ember 1928

December 10th, 1928.

ROSS H. McMASTER, ESQ.,
President, The Steel Company of Canada, Ltd.
Montreal, Que.

DEAR SIR :—

On behalf of my clients, Mr. A. B. MacKay, of Hamilton, *et al.*, I beg to notify you that if the Directors of your Company attempt to declare dividends in excess of 7% per annum on the \$25.00 par value Preference Stock of your Company until after the holders of the ordinary stock of your Company have 20 received cumulative dividends equivalent to the dividends previously paid on preference stock, it will be claimed by my clients that such proposed distribution is illegal and my clients will, by action at law, seek to restrain such a proposed distribution of profits and seek a declaration as to their rights.

I would appreciate a very early reply to this letter.

Yours truly,

“A. W. HOLMESTED.”

H/M.

Part Exhibit 10.

(Plaintiffs' Exhibit)

Letter R. C. McMichael to A. W. Holmested.

30

Part Ex. 10.
Letter R. C.
McMichael
to A. W.
Holmested.
19th Dec-
ember 1929

BROWN, MONTGOMERY & McMICHAEL.
The Royal Bank Building,
Montreal, 19th December, 1928.

A. W. HOLMESTED, ESQ.,
Messrs. Holmested & Sutton,
Royal Bank Building,
Toronto, Ont.

DEAR MR. HOLMESTED :

Re STEEL COMPANY OF
CANADA, LIMITED.

40

I have to thank you for your letters of the 14th instant.

The Directors have passed resolutions at the meeting held to-day declaring additional dividends on both classes of the new shares. The dividends

are at the rate of 50c. per share for the quarter ending December 31st, 1928, and also an additional dividend on each class of shares of $18\frac{3}{4}$ c. per share. The object was to give shareholders dividends at the rate of \$2.00 on the new shares for the year of 1928. The dividends are payable February 1st, 1929, to shareholders of record at the close of business on January 19th, 1929.

Messrs. Tilley, Johnston, Thomson & Parmenter are representing the Company. My correspondence has been with Mr. Strachan Johnston, K.C., in that firm. It occurred to me that you would want to know who is representing the Company so as to facilitate any proceedings you may wish to launch
10 of connection with this matter.

Yours very truly,

"R. C. McMICHAEL."

RCM/MD.

*In the
Supreme
Court of
Ontario.*

Exhibits.
Part Ex. 10.
Letter R. C.
McMichael
to A. W.
Holmsted.
19th Dec-
ember 1924

—Continued

Exhibit 11.

(Plaintiffs' Exhibit)

Extract from Minutes of Directors' Meeting.

Ex. 11.
Extract from
Minutes of
Directors'
Meeting.
19th Dec-
ember 1928.

It was moved by Mr. Brown,

Seconded by Senator White, and resolved :

"That a dividend of fifty cents (50c.) per share upon the new preference
20 shares of the Company of the par value of \$25.00 each be and the same is
hereby declared for the quarter ending December 31st, 1928, and that an
additional and further dividend of eighteen and three-quarter cents ($18\frac{3}{4}$)
per share upon the said preference shares be and the same is hereby declared,
which dividends shall be payable February 1st, 1929, to shareholders of
record at the close of business on January 19th, 1929, and that the proper
officers of the Company be and they are hereby authorized and instructed to
give due notice of such dividends and to pay the same when due."

Carried.

It was

Moved by Senator White,

30 Seconded by Mr. Brown, and resolved :

"That a dividend of fifty cents (50c.) per share upon the new Ordinary
shares of the Company without any nominal or par value be and the same is
hereby declared for quarter ending December 31st, 1928, and that an additional
and further dividend of eighteen and three-quarter cents ($18\frac{3}{4}$) per share
upon the said ordinary shares be and the same is hereby declared which
dividends shall be payable February 1st, 1929, to shareholders of record at
the close of business on January 19th, 1929; and that the proper officers of
the Company be and they are hereby authorized and instructed to give due
40 notice of such dividends and to pay the same when due."

Carried.

In the
Supreme
Court of
Ontario.

Part Exhibit 13.
(Defendants' Exhibit)

Form of Cumulative Preference Share Certificate issued after 1928.

Exhibits.
Part Ex. 13.
Form of
Cumulative
Preference
Share
Certificate
issued after
1928.

THE STEEL COMPANY OF CANADA, LIMITED.
AUTHORIZED SHARE CAPITAL.

400,000 Cumulative Preference Shares of the par value of \$25 each and
600,000 Ordinary Shares without nominal or par value.

THIS CERTIFIES THAT

is owner of One Hundred fully paid and non-assessable
CUMULATIVE PREFERENCE SHARES of the capital stock of The Steel Company 10
of Canada, Limited, of the par value of Twenty-five Dollars (\$25) each,
transferable only on the books of the Company in person or by attorney upon
surrender of this certificate properly endorsed. The Preference Shares carry
a fixed cumulative preference dividend payable out of the profits of the Com-
pany applicable to dividends at the rate of Seven Per Cent (7%) per annum
on the capital paid up thereon. They rank both as to dividends and assets
in priority to all Ordinary Shares. If after providing for the payment in any
year of the dividend on the Preference Shares and any balance due for cumula-
tive dividends for preceding years there remain any surplus net profits any and all 20
such as are not in the opinion of the Directors required for the purposes of the
Company will be applicable to dividends on the ordinary shares for such year
to the extent of but not exceeding One Dollar and Seventy-five Cents (\$1.75)
per Ordinary Share issued and outstanding when and as from time to time the
same may be declared by the Directors. The remainder of any such surplus
net profits shall then be applicable to the payment of further dividends
equally per share upon both the Preference Shares and the Ordinary Shares,
but no dividends shall be paid on the Ordinary Shares until after the Company
shall have created and have to the credit of a reserve fund a sum equal to at
least one year's dividend on the then issued Preference Shares, the whole as
provided in the Letters Patent incorporating the Company and in the Supple- 30
mentary Letters Patent.

Every Shareholder is entitled to one vote for each share, whether Pre-
ference or Ordinary held by him.

This certificate shall not become valid until countersigned by the Transfer
Agent and registered by the Registrar of the Company.

IN WITNESS WHEREOF the Company has caused this certificate to be
signed by its duly authorized officers this

This certificate is transferable either in Montreal or Toronto.

Incorporated
1910

40

.....
Secretary.

.....
President.

ENDORSEMENT ON NEW CERTIFICATES.

The provisions of the Letters Patent incorporating the Company and of the Supplementary Letters Patent relative to the Capital Stock are as follows :

The Capital Stock of the said Company shall be TWENTY-FIVE MILLION DOLLARS divided into TWO HUNDRED AND FIFTY THOUSAND shares of ONE HUNDRED DOLLARS each, subject to the increase of such Capital Stock under the provisions of the said Act, of which two hundred and fifty thousand shares, one hundred thousand shares of One Hundred Dollars each, that is to say, Ten Million Dollars, be created and issued as preference stock and the same when so

10 issued shall have preference and priority as follows :—

(a) In case of liquidation, dissolution or winding up of the Company, the holders of such shares shall be entitled to repayment in preference to ordinary shareholders of the amount of the par value of said shares and any arrears of dividends thereon and also the net profits of the Company which it shall from time to time be determined to distribute are to be applicable first to the payment of a fixed cumulative preferential dividend at the rate of seven per cent per annum on the capital paid up on the said preference shares and the holders of such shares shall participate ratably with the holders of the issued ordinary shares in the distribution of net profits after the holders of the

20 ordinary shares shall have received dividends equal to those paid on the preferred shares;

(b) No dividends shall be paid on the ordinary shares until after the Company shall have created and have to the credit of a reserve fund a sum equal to at least one year's dividend on the then issued preference shares.

By By-law No. 19 of the Company confirmed by Supplementary Letters Patent, the said 100,000 Preference Shares of the par value of \$100 each were subdivided into 400,000 Preference Shares of the par value of \$25 each, and the said 150,000 Ordinary Shares of the par value of \$100 each were subdivided into 600,000 Ordinary Shares of the par value of \$25 each. The said

30 By-law provides that all the rights, preferences and priorities attaching to the Preference Shares as set out in the Letters Patent incorporating the Company shall remain undisturbed and shall attach to the new Preference Shares.

By Supplementary Letters Patent pursuant to a resolution of the Shareholders of the Company, the said 600,000 Ordinary Shares of the par value of \$25 each were changed into 600,000 Ordinary Shares without nominal or par value, and reserving and maintaining, at all times, for the shares of each class, Preference and Ordinary, all the rights attaching to the shares of the par value of \$100, as originally created; provided that such rights shall be proportionately reduced, having regard to the fact that each Preference and each

40 Ordinary Share, as originally created, has been subdivided into four shares of the par value of \$25 with the sole exception that every shareholder shall be entitled to one vote for each new share, whether Preference or Ordinary, held by him.

*In the
Supreme
Court of
Ontario.*

—
Exhibits.
Part Ex. 18.
Form of
Cumulative
Preference
Share
Certificate
issued after
1928.

—continued

*In the
Supreme
Court of
Ontario.*
—
Exhibits.
Part Ex. 13.
Form of
Cumulative
Preference
Share
Certificate
issued after
1928.

For Value Received hereby sell, assign and transfer unto Shares
of the Capital Stock represented by the within Certificate, and do hereby
irrevocably constitute and appoint
Attorney to transfer the said stock on the Books of the within named Company
with full power of substitution in the premises.

Dated 19
In the presence of

Part Exhibit 13.
(Defendants' Exhibit)

10

—Continued

Form of Ordinary Share Certificate Issued after 1928.

Part Ex. 13.
Form of
Ordinary
Share
Certificate
Issued after
1928.

THE STEEL COMPANY OF CANADA, LIMITED.
AUTHORIZED SHARE CAPITAL.

400,000 Cumulative Preference Shares of the Par Value of \$25 each, and
600,000 Ordinary Shares without Nominal or Par Value.

THIS CERTIFIES THAT

is the owner of ONE HUNDRED fully paid and non-assessable ORDINARY SHARES
of the capital stock of THE STEEL COMPANY OF CANADA, LIMITED, without
nominal or par value transferable only on the books of the Company in person
or by attorney upon surrender of this certificate properly endorsed. The
Preference Shares carry a fixed cumulative preference dividend payable out
of the profits of the Company applicable to dividends at the rate of Seven
per cent. (7%) per annum on the capital paid up thereon. They rank both
as to dividends and assets in priority to all Ordinary Shares. If after pro-
viding for the payment in any year of the dividend on the Preference Shares
and any balance due for cumulative dividends for preceding years there
remain any surplus net profits any and all such as are not, in the opinion of the
Directors, required for the purposes of the Company will be applicable to
dividends on the Ordinary Shares for such year to the extent of but not exceed-
ing One Dollar and Seventy-five Cents (\$1.75) per Ordinary Share issued and
outstanding when and as, from time to time, the same may be declared by the
Directors. The remainder of any such surplus net profits shall then be appli-
cable to the payment of further dividends equally per share upon both the
Preference Shares and the Ordinary Shares, but no dividends shall be paid on
the Ordinary Shares until after the Company shall have created and have to
the credit of a reserve fund a sum equal to at least one year's dividend on the
then issued Preference Shares, the whole as provided in the Letters Patent
incorporating the Company and in the Supplementary Letters Patent.

Every Shareholder is entitled to one vote for each Share, whether Pre-
ference of Ordinary, held by him.

This certificate shall not become valid until countersigned by the Transfer
Agent and registered by the Registrar of the Company.

IN WITNESS WHEREOF the Company has caused this certificate to be
signed by its duly authorized officers this

THIS CERTIFICATE IS TRANSFERABLE EITHER IN MONTREAL OR TORONTO.
 Incorporated
 1910

.....
 Secretary.

“R. H. McMASTER”
 President.

*In the
 Supreme
 Court of
 Ontario.*

— Exhibits.
 Part Ex. 13.
 Form of
 Ordinary
 Share
 Certificate
 Issued after
 1928.

ENDORSEMENT ON NEW CERTIFICATES.

The provisions of the Letters Patent incorporating the Company and of the Supplementary Letters Patent relative to the Capital Stock are as follows :

The Capital Stock of the said Company shall be TWENTY-FIVE MILLION
 10 DOLLARS divided into TWO HUNDRED AND FIFTY THOUSAND shares of ONE
 HUNDRED DOLLARS each, subject to the increase of such Capital Stock under
 the provisions of the said Act, of which two hundred and fifty thousand shares,
 one hundred thousand shares of One Hundred Dollars each, that is to say, Ten
 Million Dollars, be created and issued as preference stock and the same when so
 issued shall have preference and priority as follows :—

(a) In case of liquidation, dissolution or winding up of the Company,
 the holders of such shares shall be entitled to repayment in preference to
 ordinary shareholders of the amount of the par value of said shares and any
 arrears of dividends thereon and also the net profits of the Company which
 20 it shall from time to time be determined to distribute are to be applicable first,
 to the payment of a fixed cumulative preferential dividend at the rate of Seven
 per cent. per annum on the capital paid up on the said preference shares and
 the holders of such shares shall participate ratably with the holders of the
 issued ordinary shares in the distribution of net profits after the holders of the
 ordinary shares shall have received dividends equal to those paid on the pre-
 ferred shares;

(b) No dividend shall be paid on the Ordinary Shares until after the
 Company shall have created and have to the credit of a reserve fund a sum
 equal to at least one year's dividend on the then issued Preference Shares.

30 By By-law No. 19 of the Company confirmed by Supplementary Letters
 Patent, the said 100,000 Preference Shares of the par value of \$100 each were
 subdivided into 400,000 Preference Shares of the par value of \$25 each, and the
 said 150,000 Ordinary Shares of the par value of \$100 each were subdivided
 into 600,000 Ordinary Shares of the par value of \$25 each. The said By-law
 provides that all the rights, preferences and priorities attaching to the Pre-
 ference Shares as set out in the Letters Patent incorporating the Company
 shall remain undisturbed and shall attach to the new Preference Shares.

40 By Supplementary Letters Patent pursuant to a resolution of the share-
 holders of the Company the said 600,000 Ordinary Shares of the par value of
 \$25 each were changed into 600,000 Ordinary Shares without nominal or par
 value, and reserving and maintaining, at all times, for the shares of each class,
 Preference and Ordinary, all the rights attaching to the shares of the par value
 of \$100 as originally created; provided that such rights shall be proportion-
 ately reduced, having regard to the fact that each Preference and each Or-
 dinary Share, as originally created, has been subdivided into four shares of

—continued

*In the
Supreme
Court of
Ontario.*

the par value of \$25 with the sole exception that every shareholder shall be entitled to one vote for each new share whether Preference or Ordinary, held by him.

Exhibits.
Part Ex. 13.
Form of
Ordinary
Share
Certificate
Issued after
1928.

For Value Received hereby sell, assign and transfer unto Shares
of the Capital Stock represented by the within Certificate, and do hereby
irrevocably constitute and appoint
Attorney to transfer the said stock on the Books of the within named Com-
pany with full power of substitution in the premises.

—continued

Dated 19 10
In the presence of

Ex. 3.
Order of
Rose, J.
17th Jan-
uary 1929

Exhibit 3.
(Plaintiffs' Exhibit)
Order of Rose, J.

IN THE SUPREME COURT OF ONTARIO.

THE HONOURABLE MR. JUSTICE ROSE } Thursday, the 17th day of
January, A.D. 1929.

BETWEEN :
THOMAS RAMSAY and FRANCIS A. MAGEE, suing on behalf of themselves and
all other holders of Ordinary Stock in the Steel Company of Canada, Limited,
Plaintiffs, 20

AND

THE STEEL COMPANY OF CANADA, LIMITED,
Defendant.

1. UPON motion made this day unto this Court on behalf of the Plaintiffs for an Injunction; and upon hearing read the Affidavit of the Plaintiff, Francis A. Magee, filed, and the Exhibits therein referred to, and upon hearing Counsel for both parties and both parties by their Counsel undertaking to expedite the trial of this action and consenting hereto,

2. THIS COURT DOTH ORDER that the motion for an Injunction do stand adjourned until the trial of this action, without prejudice to the rights of either of the parties to this action,

3. AND THIS COURT DOTH FURTHER ORDER that the Defendant be at liberty to apply at any time before the delivery of the Defendant's Statement of Defence to this action to add a holder or holders other than the Plaintiffs, of the Defendant's preference stock as a party or parties Defendant to this action, 30

4. AND THIS COURT DOTH FURTHER ORDER that the costs of an incidental to this motion be reserved to be disposed of at the trial or other final disposition of this action.

In the Supreme Court of Ontario.

“D’ARCY HINDS,”
Assistant Registrar.

Exhibits.
Ex. 3.
Order of Rose, J.
17th January 1929
—Continued

Exhibit 1.

(Plaintiffs’ Exhibit)

Order of Assistant Master.

IN THE SUPREME COURT OF ONTARIO

10 G. A. DREW, ESQ., ASSISTANT MASTER. }

Wednesday, the 27th day
of February, A.D., 1929.

Ex. 1.
Order of Assistant Master.
27th February 1929.

BETWEEN :

THOMAS RAMSAY and FRANCIS A. MAGEE, suing on behalf of themselves and all other holders of Ordinary Stock of The Steel Company of Canada, Limited,

Plaintiffs,

AND

THE STEEL COMPANY OF CANADA, LIMITED,

Defendant.

20 UPON the application of the Plaintiffs, upon hearing read the affidavit of Arthur Wellesley Holmested, filed, and the Exhibits therein referred to and upon hearing Counsel for all parties,

1. IT IS ORDERED that the Writ of Summons and the proceedings herein be amended by adding J. Orr Callaghan and George C. Copley on behalf of themselves and all other holders of Preference Stock of the Defendant, The Steel Company of Canada, Limited, as parties Defendant.

2. AND IT IS FURTHER ORDERED that the said J. Orr Callaghan and George C. Copley be and they are hereby authorized for the purposes of this action to defend the same on behalf of and for the benefit of themselves
30 and all other holders of Preference stock of the Defendant, The Steel Company of Canada, Limited.

3. AND IT IS FURTHER ORDERED that the Plaintiffs be at liberty to deliver an amended Statement of Claim within one week from the date hereof and that the Defendants be at liberty to deliver their Statements of Defence within ten days from the delivery of the amended Statement of Claim.

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

“G. A. DREW,”
Assistant Master.

*In the
Supreme
Court of
Ontario.*

Exhibits.
Ex. 2.
Order of
Master.
18th March
1929

Exhibit 2.
(Plaintiffs' Exhibit)
Order of Master.

IN THE SUPREME COURT OF ONTARIO

THE MASTER : } Wednesday, the 13th of March, 1929.

BETWEEN :

THOMAS RAMSAY and FRANCIS A. MAGEE, suing on behalf of themselves and all other holders of Ordinary Stock of The Steel Company of Canada, Limited,

Plaintiffs, 10

AND

THE STEEL COMPANY OF CANADA, LIMITED, and J. ORR CALLAGHAN and GEORGE C. COPPLEY, on behalf of themselves and all other holders of Preference Stock of the Defendant, The Steel Company of Canada, Limited,

Defendants.

UPON the application of the plaintiffs and the solicitors for the plaintiffs and for the defendant, The Steel Company of Canada, Limited, consenting hereto:

1. IT IS ORDERED that the Writ of Summons, Statement of Claim 20 and proceedings herein be amended by striking out J. Orr Callaghan as a party defendant and substituting James T. Rogers, and that the said James T. Rogers and George C. Copley on behalf of themselves and all other holders of Preference Stock of the defendant, The Steel Company of Canada, Limited be parties defendant.

2. AND IT IS FURTHER ORDERED that the said James T. Rogers and George C. Copley be and they are hereby authorized for the purposes of this action to defend the same on behalf of and for the benefit of themselves and all other holders of Preference Stock of the defendant, The Steel Company of Canada, Limited. 30

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

“CHARLES GARROW”,
Master.

Exhibit 9.

(Plaintiffs' Exhibit)

Comparative Statement of Earnings and Distribution of Defendant Company

In the
Supreme
Court of
Ontario.
—
Exhibits
Ex. 9
Comparative
Statement
of Earnings
and Distri-
bution of
Defendant
Company

Year	Gross Profits	Depre- ciation	Bond Sinking Fund	Interest on Bonds	Fire in- surance Reserve	Emp- poyees Pension Reserve	Em- poyees Welfare and Benefit Reserve	Sundries	Earnings After Pro- visions	Preferred Dividends		Ordinary Dividends		Surplus Carried Forward
*1910	783,665	104,071		206,305					473,289	3½	227,371			245,918
1911	1,373,522	100,000		442,100				39,000	792,422	7	454,741			583,599
1912	1,547,039	150,000		465,326					931,713	7	454,741			1,060,571
1913	1,640,011	137,500		480,000				56,738	965,773	7	454,741			1,571,603
1914	539,811			521,138				104,475	† 85,802	3½	227,371			1,258,430
1915	3,230,452	400,000	88,500	531,000					2,210,952	7	454,741			3,014,641
1916	5,021,391	601,625	165,454	525,819				953,526	2,774,967	10½	682,111	4	460,000	4,647,497
1917	6,040,318	1,206,000	177,531	515,203	40,000			1,406,486	2,695,098	7	454,741	6	690,000	6,197,854
1918	5,367,120	802,687	185,052	515,172	60,000	100,000		1,434,451	2,269,758	7	454,741	6	690,000	7,322,871
1919	4,000,940	911,134	192,731	514,904	50,000	200,000			2,132,171	7	454,741	7	805,000	8,195,301
1920	3,924,041	712,684	200,603	503,095	50,000			652,255	1,805,404	7	454,741	7	805,000	8,740,964
1921	2,153,366	621,800	212,803	501,470					817,293	7	454,741	7	805,000	8,298,516
1922	2,295,197	677,558	237,423	476,620					903,596	7	454,741	7	805,000	7,942,371
1923	3,284,467	677,237	277,652	441,963					1,887,615	7	454,741	7	805,000	8,570,245
1924	2,867,310	677,401	271,212	394,187					1,524,510	7	454,741	7	805,000	8,835,014
1925	3,160,664	682,172	281,643	378,541		100,000			1,718,308	7	454,741	7	805,000	9,293,581
1926	3,644,291	760,208	292,269	362,601					2,129,213	7	454,741	7	805,000	10,163,053
1927	3,561,794	816,989	303,143	346,290		100,000			1,995,372	7	454,741	7	805,000	10,898,684
	54,435,399	10,039,066	2,886,016	8,121,734	200,000	500,000	100,000	4,646,931	27,941,652	122½	7,957,968	79	9,085,000	

* 6 months.

† Deficit.

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