

In the Privy Council

ON APPEAL FROM THE COURT OF APPEAL OF
BRITISH COLUMBIA

BETWEEN

W. T. JOHNSON, TRUSTEE OF THE ESTATE
OF THEO. FRONTIER AND COMPANY
LIMITED, IN BANKRUPTCY - (*Plaintiff*) *Respondent*

AND

ISAAC WILLIAM CANNON SOLLOWAY,
HARVEY MILLS, SOLLOWAY MILLS
AND COMPANY LIMITED, AND SOLLOWAY
MILLS (B. C.) LIMITED - - - (*Defendants*)

ISAAC WILLIAM CANNON SOLLOWAY
(*Defendant*) *Appellant*.

RECORD OF PROCEEDINGS

Messrs. Farris, Farris, Stultz & Sloan,
Vancouver, B. C.,
Solicitors for Appellant.

G. L. Fraser, Esq.,
Vancouver, B. C.,
Solicitor for Respondents.

In the Privy Council

ON APPEAL FROM THE COURT OF APPEAL OF
BRITISH COLUMBIA

BETWEEN

W. T. JOHNSON, TRUSTEE OF THE ESTATE
OF THEO. FRONTIER AND COMPANY
LIMITED, IN BANKRUPTCY - (Plaintiff) Respondent

AND

ISAAC WILLIAM CANNON SOLLOWAY,
HARVEY MILLS, SOLLOWAY MILLS
AND COMPANY LIMITED, AND SOLLOWAY
MILLS (B. C.) LIMITED - - - (Defendants)

ISAAC WILLIAM CANNON SOLLOWAY
(Defendant) Appellant.

RECORD OF PROCEEDINGS

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IN THE SUPREME COURT OF BRITISH COLUMBIA

RECORD

*In the
Supreme Court
of British
Columbia.*

Endorsement
on Writ.
Sept. 17, 1930.

BETWEEN:

W. T. JOHNSON, Trustee of the Estate of Theo.
Frontier and Company, Limited, in Bankruptcy,

Plaintiff.

—AND—

ISAAC WILLIAM CANNON SOLLOWAY,
HARVEY MILLS, SOLLOWAY MILLS AND
COMPANY, LIMITED, and SOLLOWAY
MILLS (B.C.) LIMITED,

10

Defendants.

ENDORSEMENT ON WRIT

The Plaintiff's claim is for damages for breach of trust and return of all moneys paid by Theo. Frontier and Company Limited to the Defendants or any of them, together with interest thereon at five per cent. (5%) per annum from the date of such payment or payments, until judgment; alternatively, damages for fraud and return of all moneys paid by Theo. Frontier and Company Limited to the Defendants or any of them, together with interest thereon at 20 five per cent. (5%) per annum from the date of such payment or payments until judgment.

Dated—September 17th, 1930.

RECORD

*In the
Supreme Court
of British
Columbia.*

Amended
Statement
of Claim.
Sept. 2, 1931.

AMENDED STATEMENT OF CLAIM

(Writ issued the 17th day of September, A.D. 1930)

1. The Plaintiff is the Trustee in Bankruptcy of the Estate of Theo. Frontier and Company Limited, duly appointed by order of this Honourable Court on the 18th day of September, A.D. 1929.

2. The Defendants, Isaac William Cannon Solloway and Harvey Mills, are stock brokers, who at all times material to this action carried on a stock brokerage business in partnership and reside sometimes in the City of Toronto in the Province of Ontario and sometimes in the City of Montreal, in the Province of Quebec. 10
The said Defendants are also being sued as directors and officers of the Defendant, Solloway Mills and Company Limited. The Defendant, Solloway Mills and Company Limited, is a corporation duly incorporated under the laws of the Dominion of Canada with a chain of offices throughout the said Dominion and a place of business in the City of Vancouver, in the Province of British Columbia. The Defendant, Solloway Mills (B.C.) Limited, is a corporation duly incorporated under the laws of the Province of British Columbia, and has a place of business in the said City of Vancouver.

2(a) The said Theo. Frontier and Company Limited employed 20
the Defendant, Solloway Mills & Company Limited, as its brokers to buy and sell divers mining and oil shares on those exchanges where such shares were listed or traded in. Two accounts were maintained by the said Theo. Frontier & Company Limited and the said Defendant to record the orders to buy or sell shares which were given by the said Theo. Frontier & Company Limited to the said Defendant, one account being called a "cash" account, which recorded the buying or selling of shares for cash and the immediate delivery of certificates in pursuance thereto from the said Theo. Frontier & Company Limited 30
to the said Defendant or vice versa and the other account being an "open" or "Margin" account, which recorded the buying and selling orders of the said Theo. Frontier & Company Limited for shares dealt in on "margin," in which transactions it was understood and agreed that the said Theo. Frontier & Company Limited would pay approximately one-third of the purchase price, and the balance of the purchase price would be advanced by the said Defendant and the certificates for shares intended to be purchased would be held in the possession of the said Defendant as security for its advances. The said Theo. Frontier & Company Limited in the belief that the said Defendant was buying and selling shares according to the contract 40
with it, deposited "marginal" payments from time to time with the

said Defendant, full particulars of such payments are in the books of account of the said Defendant and are well known to it. As further security for supposed advances by the said Defendant in connection with marginal purchases which the said Theo. Frontier & Company Limited believed were actually being made, it deposited with the said Defendant share certificates of divers companies, full particulars of which are in the books of account of the said Defendant and are well known to it. The Plaintiff as well has full particulars of the shares so deposited, which exceed three folios, inspection of which the De-

10 fendants may have at any time.

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 In the
 Supreme Court
 of British
 Columbia.
 Amended
 Statement
 of Claim.
 Sept. 2, 1931.
 (Cont'd)

The said Defendant, without the knowledge or consent of the said Theo. Frontier & Company Limited and in violation of its duty as broker for the said Theo. Frontier & Company Limited and in breach of trust, practiced fraud upon the said Theo. Frontier & Company Limited, particulars of which are as follows:

- 20 (AA) The Defendant was engaged in conducting that kind of gambling business popularly known as a "bucketshop"; that is to say, ostensibly it was carrying on business as a stockbroker, but in reality, while it accepted orders of customers, including the orders of the said Theo. Frontier & Company Limited, it neither bought nor sold stocks in compliance therewith, but when the transaction was closed, it either paid or received from its customers' gains or losses or credited or debited its customers on its books as determined by the fluctuation in prices on the stock exchanges where such shares were listed.
- 30 (BB) The said Defendant fraudulently converted the money paid by the said Theo. Frontier & Company Limited on account of supposed marginal purchases to its own use and wrongfully and in fraud of the said Theo. Frontier & Company Limited charged the said Theo. Frontier & Company Limited a brokerage commission on supposed purchases of shares which were never in fact made, and further charged the said Theo. Frontier & Company Limited interest on the unpaid purchase price for shares, when in fact no such purchases on margin were made.
- 40 (CC) The said Defendant entered into fraudulent arrangements with other brokers who were members of the Vancouver Stock Exchange, the Calgary Stock Exchange and the Standard Mining and Stock Exchange, whose names are well known to the said Defendant and include Denbigh, Dickinson & Greathed, A. J. Brown and Randall & Company, for the purpose of carrying out the buying and selling of orders on the Vancouver Stock Exchange, the Calgary Stock Exchange and the Standard Mining and Stock Exchange, in a fraudulent manner. In such cases, buying

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of Claim.
Sept. 2, 1931.
(Cont'd)

and selling orders of the said Theo. Frontier & Company Limited and its other customers which appear to have been duly executed on the Exchange where such shares were listed were made in pursuance of an agreement arrived at before the opening of the Exchange between the said Defendant and the said brokers, and were in fact and intended to be "fictitious" or "wash" sales. Particulars of these allegations are well known to the said Defendant and the said "wash" sales at times material to this action were identified by the said Defendant by means of special marks inscribed on their printed order forms which are in its custody or power. 10

(DD) The said Defendant at times material to this action, wrongfully converted shares which it may have purchased at times material to this action for the said Theo. Frontier & Company Limited and its other customers who dealt in such shares on the same material days and maintained what is termed a "short" position in such shares, that is to say, the said Defendant did not have in its possession or under its control sufficient shares to be in a position to fill or cover the order or orders of the said Theo. Frontier & Company Limited for such shares as well as the orders of its other customers for the same shares, or alternatively, at times material to this action, were "short" in shares for which orders to purchase were given by the said Theo. Frontier & Company Limited; the practice or system of the said Defendant being to keep in its possession only about one-third of what was required to fill or cover the orders of its customers who had purchased such shares on margin. Full particulars of these allegations are in the books of account of the said Defendant and are well known to it. 20 30

(EE) The said Defendant in fraud of the said Theo. Frontier & Company Limited and its customers, actively traded in shares which had been purchased by the said Theo. Frontier & Company Limited against the interest of the said Theo. Frontier & Company Limited and its other customers who were dealing in the same shares at times material, for the purpose of making a profit for itself as against the interest of the said Theo. Frontier & Company Limited and its other customers. Particulars of these allegations and the shares in question are all within the knowledge of the said Defendant. 40

2(b) The Defendant, Isaac William Cannon Solloway, was at all times material to this action a director of the said Defendant and the principal shareholder and the Defendant, Harvey Mills, was a director and paid official of the said Defendant, and both the said

Solloway and the said Mills conceived or directed the fraudulent policy or practice or system of the said Defendant and participated in it, or alternatively had knowledge of the fraudulent policy, practice or system or of the breaches of trust which were taking place.

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 Columbia.

3. In or about the month of April, A.D. 1928, and in each and every ensuing month thereafter, until the date of the said bankruptcy, as aforesaid, Theo. Frontier & Company Limited at divers times gave to the Defendants orders to buy and sell mining and oil stocks, which were listed or traded in on the Vancouver Stock Exchange, the Cal-
 10 gary Stock Exchange and the Standard Stock and Mining Exchange of Toronto or all or some of them. Full particulars of such buy and sell orders are contained in the duplicate "confirmation" slips, in the possession of the Defendants. The Plaintiff has in his possession all "confirmation" slips covering such buy and sell orders, inspection of which the Defendants may have at any time.

Amended
 Statement
 of Claim.
 Sept. 2, 1931.
 (Cont'd)

4. The Defendants, in breach of their duty as the said Theo. Frontier & Company Limited's broker, failed to purchase the shares specified in the buying orders of the said Theo. Frontier & Company Limited, and the said "confirmation" slips notifying the said Theo.
 20 Frontier & Company Limited of the alleged purchase of shares as therein described were false and fictitious.

5. Alternatively, if the Defendants purchased any of the shares in compliance with the orders of Theo. Frontier & Company Limited, they sold or otherwise dealt with such shares without the knowledge or consent of the said Theo. Frontier & Company Limited, or alternatively converted the said shares to their own use, and the said Defendants with respect thereto have neglected and failed to account to the said Theo. Frontier & Company Limited or to the Plaintiff for the proceeds thereof. Full particulars thereof are in the books of account
 30 and records of the Defendant.

6. From and after the said month of April, A.D. 1928, and at many times material to this action, the said Theo. Frontier & Company Limited deposited share certificates with the Defendants as collateral security for the marginal account of the said Theo. Frontier & Company Limited. Full particulars of such shares, together with the respective dates of their deposits are contained in the "Stock Register" book of the Defendant, Solloway Mills & Company Limited. The Plaintiff has as well full particulars of such shares and the dates of their deposit with the Defendants. Such particulars exceed three
 40 folios and may be inspected by the Defendants at any time.

7. The Defendants, in breach of their duty as the broker of the said Theo. Frontier & Company Limited and without its knowledge or consent, sold or otherwise disposed of such collateral security and

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 of British
 Columbia.
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 of Claim.
 Sept. 2, 1931.
 (Cont'd)

have neglected and failed to account to the said Theo. Frontier & Company Limited or to the Plaintiff for the proceeds thereof. Full particulars and the date or dates of such sale or sales or other disposition or dispositions of such shares appears in the "Stock Register" book of the Defendants, Solloway Mills & Company Limited, and the amount of amounts received by the Defendants is or are the prevailing prices on those respective dates on the Exchange or Exchanges where such shares were listed or traded in.

8. At divers times material to this action, the said Theo. Frontier & Company Limited paid to the Defendants on account of the purchases of shares as aforesaid or as further security for the account of the said Theo. Frontier & Company Limited, the sum of Two Hundred and Thirty-eight Thousand, Five Hundred and Eighty-nine Dollars and Thirty-six Cents (\$238,589.36). Full particulars of this amount are in the books of account of one or more of the Defendants, The Plaintiff has full particulars of the said amount, including the dates when paid and the amounts from time to time paid. Such particulars are in the books of account of the said Theo. Frontier & Company Limited and exceed three folios. The Defendants may have inspection of the said books at any time. 10 20

9. Alternatively, the Defendants, Isaac William Cannon Solloway and Harvey Mills, as directors of Solloway Mills & Company Limited, "fraudulently conspired" with the said Solloway Mills & Company Limited to commit the wrongful acts hereinbefore set forth to the damage of the said Theo. Frontier & Company Limited.

WHEREFORE THE PLAINTIFF CLAIMS:

(a) A declaration that the shares ordered to be purchased by the said Theo. Frontier & Company Limited were never purchased as agreed, that the said "confirmation" slips covering such alleged purchases were false or fictitious, and a cancellation of any and all liability with respect thereto on the part of the said Theo. Frontier & Company Limited. 30

(a) 1. Return of all moneys paid on margin account and the value of all securities deposited to secure the same.

(a) 2. Damages in an amount equal to the marginal payments as aforesaid plus the value of the securities so deposited.

(b) That an account be taken and enquiries directed to ascertain what, if any, shares were purchased by the Defendants in accordance with the order of the said Theo. Frontier & Company Limited,

and the date or dates such shares were sold or otherwise disposed of by the Defendants.

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*In the
Supreme Court
of British
Columbia.*

Amended
Statement
of Claim.
Sept. 2, 1931.
(Cont'd)

(c) Repayment of the sum of Two Hundred and Thirty-eight Thousand, Five Hundred and Eighty-nine Dollars and Thirty-six Cents (\$238,589.36) together with interest thereon on the amounts making up such sum from the dates such amounts were paid until payment or judgment.

(d) The sum of Fifteen Thousand, One Hundred and Ninety-seven Dollars (\$15,197.00) or such other sum as the Defendants received from the sale or conversion of the shares which the said Theo. Frontier & Company Limited deposited with the Defendants as collateral security, together with interest thereon at five per cent. (5%) per annum from the date or dates the amount or amounts making up the said sum of Fifteen Thousand, One Hundred and Ninety-seven Dollars (\$15,197.00) was or were received until payment or judgment.

(e) Alternatively, an accounting of all transactions between the said Theo. Frontier & Company Limited and the Defendants.

(f) Alternatively, the sum of Two Hundred and Sixty-six Thousand, One Hundred and Twenty-five Dollars and Sixty-seven Cents (\$266,125.67) damages.

PLACE OF TRIAL: VANCOUVER, British Columbia.

DATED at Vancouver, B.C., this 2nd day of September, A.D. 1931.

"Fraser & Murphy"
Solicitors for the Plaintiff.

To the above named Defendants,
And to Messrs. Farris & Company, their solicitors.

FILED AND DELIVERED by Fraser & Murphy, Solicitors for the above named Plaintiff, whose place of business and address for service is 719 Stock Exchange Building, 475 Howe Street, Vancouver, B.C.

RECORD

*In the
Supreme Court
of British
Columbia.*

Demand for
Particulars of
Statement of
Claim.

DEMAND FOR PARTICULARS OF STATEMENT OF CLAIM

The Defendants Isaac William Cannon Solloway, Harvey Mills and Solloway Mills & Company Limited demand particulars of paragraph 9 of the Statement of Claim herein, and specifically full and detailed particulars of the fraudulent conspiracy therein alleged.

AND TAKE NOTICE that if such particulars are not furnished within five days of the service of this demand upon you, an application will be made to the Court to compel you to furnish such particulars.

DATED at Vancouver, B.C., this 22nd day of September, 1930. 10

"Farris, Farris, Stultz & Sloan"
Solicitors for the Defendants.

To the Plaintiff
And to Messrs. Fraser & Murphy, his Solicitors.

RECORD

*In the
Supreme Court
of British
Columbia.*

ANSWER TO DEMAND FOR PARTICULARS

Answer to
Demand for
Particulars.

In answer to the demand of the Defendants, Isaac William Cannon Solloway and Harvey Mills, two of the above named Defendants, for particulars, the Plaintiff says that the said Defendants as Directors of Solloway Mills & Company Limited had full knowledge of the breaches of trust herein alleged, and conspired or connived with the officers and servants of the said Solloway Mills and Company Limited in the commission thereof.

DATED at Vancouver, B.C., this 23rd day of October, A.D.
10 1930.

"G. L. Fraser"
Solicitor for the Plaintiff.

To the Defendants:
And to their Solicitors, Messrs. Farris, Farris, Stultz & Sloan.

RECORD

*In the
Supreme Court
of British
Columbia.*

Amended
Statement of
Defence.
13th Oct., 1931.

AMENDED STATEMENT OF DEFENCE

1. The Defendants specifically deny each and every allegation of fact contained in Paragraph 2 of the Amended Statement of Claim herein.

2. The Defendants specifically deny each and every allegation of fact contained in Paragraph 2(a) of the Amended Statement of Claim herein and further deny that they or any of them practiced fraud in any of the particulars set out in the said paragraph or at all.

3. The Defendants specifically deny each and every allegation of fact contained in Paragraph 2(b) of the Amended Statement of Claim herein and further deny that the Defendant Company carried 10
out any fraudulent policy, practice or system as alleged or directed at all and further deny that they or any of them conceived or directed any fraudulent policy, practice or system as alleged or at all.

4. The Defendants specifically deny each and every allegation of fact contained in Paragraph 3 of the Amended Statement of Claim herein.

5. The Defendants specifically deny each and every allegation of fact in paragraph 4 of the Amended Statement of Claim herein and deny that they failed to purchase the shares specified in the Plaintiff's buying orders, as alleged in the said paragraph, or at all and 20
say that such orders were carried out and executed honestly and bona fide and according to the rules, customs and usages of the Vancouver Stock Exchange and other exchanges wherever the said shares were being traded. The Defendants further deny that the confirmation slips were false and fictitious, as alleged in the said paragraph 4 or at all.

6. The Defendants specifically deny each and every allegation of fact in paragraph 5 of the Amended Statement of Claim herein. The Defendants further deny that they sold, or otherwise dealt with any shares of the Plaintiff, without the knowledge or consent of the 30
Plaintiff as alleged in the said paragraph 5, or at all, and further deny that they converted any of the said Plaintiff's shares to their own use as alleged, or at all.

7. The Defendants specifically deny each and every allegation of fact in paragraph 6 of the Amended Statement of Claim herein.

8. The Defendants specifically deny each and every allegation of fact in paragraph 7 of the Amended Statement of Claim herein. The Defendants further deny that they sold or otherwise disposed of any collateral security, the property of the Plaintiff, without his knowledge or consent, as alleged in the said paragraph 7, or at all. 40
If the Defendant Solloway Mills & Company Limited sold any shares deposited by Theo. Frontier & Company Limited as collateral security,

it did so pursuant to its contract with the said Theo. Frontier & Company Limited and Theo. Frontier & Company Limited (in Bankruptcy) and pursuant to the customs and usages of the Vancouver Stock Exchange and the said Theo. Frontier & Company Limited received full credit therefor on the books of the Defendant Company.

9. The Defendants specifically deny each and every allegation of fact in paragraph 8 of the Amended Statement of Claim herein.

10. The Defendants specifically deny each and every allegation of fact contained in paragraph 9 of the Amended Statement of Claim and further specifically deny that Solloway & Mills fraudulently conspired with Solloway Mills & Company Limited to commit any wrongful acts to the damage of the said Theo. Frontier & Company Limited as alleged in the said paragraph or at all.

11. In the alternative, and in answer to the whole of the Amended Statement of Claim herein, the Defendants say that on or about the 16th day of October, 1929, the Plaintiff and the Defendant Solloway Mills & Company Limited met in the City of Kamloops, Province of British Columbia, and agreed the figures on either side and stated an account between them. It was then found that there was a balance of approximately \$65,000.00 due from the Plaintiff to the Defendant Solloway Mills & Company Limited, and certain shares standing to the credit of the Plaintiff with the Defendant Solloway Mills & Company Limited. Thereupon the Plaintiff, with the consent in writing of the inspectors of the Estate of Theo. Frontier & Company Limited in Bankruptcy, ordered the Defendant Solloway Mills & Company Limited to sell the said shares, and agreed to pay the balance due the said Company after the sale of the shares aforesaid.

12. The Defendants plead the provisions of the Bankruptcy Act.

DATED at Vancouver, B.C., this 13th day of October, A.D. 1931.

"Farris, Farris, Stultz & Sloan"
Solicitors for the Defendants.

To the Plaintiff,
And to Messrs. Fraser & Murphy,
His Solicitors.

FILED AND DELIVERED by Farris, Farris, Stultz & Sloan,
Solicitors for the Defendants, whose place of business and address
for service is Suite 1508 Standard Bank Building, 510 Hastings
Street, West, Vancouver, B.C.

RECORD
In the
Supreme Court
of British
Columbia.
Amended
Statement of
Defence.
13th Oct., 1931.
(Cont'd)

RECORD

*In the
Supreme Court
of British
Columbia.*

Reply and
Joinder of
Issue.

REPLY AND JOINDER OF ISSUE

1. The Plaintiff denies each and every allegation of fact contained in the Statement of Defence herein, except insofar as the same contains admissions.

2. In the alternative, and in further answer to Paragraph 9 of the Statement of Defence, the Plaintiff says that if the parties agreed to the figures as stated in the account between them and gave any orders to the Defendant to sell the said shares and entered into any agreement to pay the balance due, such agreement was entered into on the part of the Plaintiff without knowledge of the breaches of 10 trust and fraud alleged in the Statement of Claim herein.

DATED at Vancouver, B.C., this 28th day of October, A.D. 1930.

"G. L. Fraser"
Solicitor for the Plaintiff.

To the Defendants,
And to Messrs. Farris, Farris, Stultz & Sloan,
their Solicitors.

AFFIDAVIT OF DOCUMENTS

I. W. C. SOLLOWAY

I have no documents relating to this action in my possession as all documents are in the possession, custody and control of the Defendant Solloway Mills & Company Limited.

"I. W. C. Solloway"

Sworn at British Vice Consulate, Cannes, France

This 6th day of October, 1931.

Before me:

10 "W. G. Taylor"
British Pro Consul.

(Seal)

RECORD

*In the
Supreme Court
of British
Columbia.*

Affidavit of
Documents.
I. W. C.
Solloway.
6th Oct., 1931.

RECORD

*In the
Supreme Court
of British
Columbia.*

Affidavit of
Documents.
Harvey Mills.
12th Oct., 1931.

AFFIDAVIT OF DOCUMENTS

HARVEY MILLS

I, Harvey Mills, of the City of Seattle, in the State of Washington, one of the United States of America, one of the above-named Defendants, make oath and say as follows:

1. I have in my possession or power the documents relating to the matters in question in this action set forth in the first and second parts of the first schedule hereto.

2. I object to produce the said documents set forth in the second part of the first Schedule hereto.

10

3. I have had, but have not now in my possession or power the documents relating to the matters in question in this Suit, set forth in the second Schedule hereto.

4. That the last mentioned documents were last in my possession or power on or about the dates they bear.

5. According to the best of my knowledge, information and belief, I have not now and never had in my own possession, custody or power, or in the possession, custody or power of my solicitors or agents, solicitors or agent, or in the possession, custody or power of any other persons or person on my behalf, any deed, account, book of account, voucher, receipt, letter, memorandum, paper or writing, or any copy of or extract from any such document, or any other document whatsoever, relating to the matters in question in this action, or any of them, or wherein any entry has been made relative to such matters or any of them, other than and except the documents set forth in the said first and second Schedule hereto, and the pleadings and other proceedings in the action.

20

Sworn before me at the
City of Seattle, in the
State of Washington, U.S.A.,
the 12th day of October,
A.D. 1931.

}
}
}

"Harvey Mills"

30

"Thomas M. Askren"
A Notary Public in and for the
State of Washington.

(SEAL)

RECORD

*In the
Supreme Court
of British
Columbia.*

Affidavit of
Documents.
Harvey Mills.
12th Oct., 1931.
(Cont'd)

THE FIRST SCHEDULE:

THE FIRST PART THEREOF: Showing documents in my possession which I do not object to produce.

Nil.

THE SECOND PART: Showing documents in my possession which I object to produce.

Nil.

THE SECOND SCHEDULE:

SHOWING documents which I have had, but have not now in my possession or power.

Nil.

RECORD

*In the
Supreme Court
of British
Columbia.*

Affidavit of
Documents.
Solloway Mills
& Co., Ltd.
Oct. 13th 1931.

AFFIDAVIT OF DOCUMENTS

SOLLOWAY MILLS & COMPANY LIMITED

October 13th, 1931.

I, James Forsyth Macdonald, of the City of Vancouver, in the Province of British Columbia, agent of the above-named Defendant Solloway Mills & Company Limited, make oath and say as follows:

1. The Defendant Solloway Mills & Company Limited has in its possession or power the documents relating to the matters in question in this action set forth in the first and second parts of the first Schedule hereto.

10

2. The said Defendant Company objects to produce the said documents set forth in the second part of the first Schedule hereto on the ground that such documents would tend to criminate the said Defendant Company.

3. The said Defendant Company has had, but has not now in its possession or power the documents relating to the matters in question in this suit, set forth in the second Schedule hereto.

4. According to the best of my knowledge, information and belief, the said Defendant Company has not now, and never had, in its own possession, custody or power, or in the possession, custody or power of its solicitors or agents, solicitor or agent, or in the possession, custody or power of any other persons or person on its behalf, any deed, account, book of account, voucher, receipt, letter, memorandum, paper or writing, or any copy of or extract from any such document, or any other document whatsoever relating to the matters in question in this suit, or any of them, or wherein any entry has been made relative to such matters, or any of them, other than and except the documents set forth in the said first and second Schedules hereto.

20

Sworn before me at the City of Vancouver, in the Province of British Columbia, this 13th day of October, A.D. 1931.

"J. F. Macdonald"

30

"G. C. Tarr"

A Commissioner for taking affidavits within British Columbia.

THE FIRST SCHEDULE:

THE FIRST PART THEREOF: Showing documents in the possession of the Defendant Company which it does not object to produce.

Nil.

THE SECOND PART: Showing documents in the possession of the said Defendant Company which it objects to produce:

All documents in its possession relevant to the pleadings in this action.

RECORD

*In the
Supreme Court
of British
Columbia.*

Affidavit of
Documents.
Solloway Mills
& Co., Ltd.
Oct. 13th, 1931.
(Cont'd)

10

THE SECOND SCHEDULE:

SHOWING documents which the said Defendant Company has had but has not now in its possession or power:

The Defendant's Company's records are incomplete but details are not yet available.

RECORD

*In the
Supreme Court
of British
Columbia.*

Affidavit of
Documents.
Solloway Mills
& Co., Ltd.
Oct. 31st, 1931.

AFFIDAVITS OF DOCUMENTS
SOLLOWAY MILLS & COMPANY LIMITED

I, James Forsyth Macdonald, of the City of Vancouver, in the Province of British Columbia, Agent of the above-named Defendant Company, make oath and say as follows:

1. The Defendant Company has in its possession or power the documents relating to the matters in question in this action set forth in the first and second parts of the first Schedule hereto.

2. The Defendant Company objects to produce the said documents set forth in the second part of the First Schedule hereto on the ground that such documents would tend to criminate the Defendant Company. 10

3. The Defendant Company has had, but has not now in its possession or power the documents relating to the matters in question in this Suit, set forth in the second Schedule hereto.

4. According to the best of my knowledge, information and belief, the said Defendant Company has not now, and never had, in its own possession, custody or power, or in the possession, custody or power of its solicitors or agents, solicitor or agent, or in the possession, custody or power of any other persons or persons on its behalf, any deed, account, book of account, voucher, receipt, letter, memorandum, paper or writing, or any copy of or extract from any such document, or any other document whatsoever relating to the matters in question in this suit, or any of them, or wherein any entry has been made relative to such matters, or any of them, other than and except the documents set forth in the said first and second Schedules hereto. 20

Sworn before me at the City of Vancouver, in the Province of British Columbia, this 31st day of October, A.D. 1931. }

"J. F. Macdonald"

30

"G. C. Tarr"
A Commissioner for taking affidavits
within British Columbia.

RECORD

*In the
Supreme Court
of British
Columbia.*

Affidavit of
Documents.
Solloway Mills
& Co., Ltd.
Oct. 31st, 1931.
(Cont'd)

THE FIRST SCHEDULE:

THE FIRST PART THEREOF: Showing documents in the possession of the Defendant Company which it does not object to produce:

Correspondence and blanket sell order from Trustee in Bankruptcy of Plaintiff Company Correspondence between Solicitor and Client.

THE SECOND PART: Showing documents in the possession of the Defendant Company which it objects to produce:

1. Buy and sell slips
2. Copies confirmations
3. Clearing House sheets
4. Ledger Sheets
5. Stock Registers

THE SECOND SCHEDULE:

SHOWING documents which the Defendant Company has had but has not now in its possession or power.

20 Original of copies of documents in First Schedule.

RECORD

*In the
Supreme Court
of British
Columbia.*

Notice of
Production of
Copies of
Documents on
Trial.
Nov. 14th, 1931.

NOTICE OF PRODUCTION OF COPIES OF
DOCUMENTS ON TRIAL

TAKE NOTICE that the Plaintiff intends, on the hearing of the trial of this action, to give in evidence as proof of the contents, the following copies of documents or letters:

1. Copy of a letter from the Defendant, Isaac William Cannon Solloway to the Defendant, Harvey Mills, dated September 7, 1928.
2. Copy of a letter from the Defendant, Isaac William Cannon Solloway to the Defendant, Harvey Mills, dated September 17, 1928.
3. Copy of a letter from the Defendant, Harvey Mills to the Defendant, Isaac William Cannon Solloway, dated September 17, 1928. 10
4. Copy of a letter from the Defendant, Harvey Mills to the Defendant, Isaac William Cannon Solloway, dated September 20, 1928.
5. Copy of a letter from the Defendant, Isaac William Cannon Solloway to the Defendant, Harvey Mills, dated September 22, 1928.
6. Copy of a letter from the Defendant, Harvey Mills to the Defendant, Isaac William Cannon Solloway, dated May 21, 1929.
7. Copy of a letter from the Defendant, Harvey Mills to the Defendant, Isaac William Cannon Solloway, dated November 5, 1929. 20
8. Photostatic copy of letter from the Defendant, Isaac William Cannon Solloway to the Defendant, Harvey Mills and one Staats, undated, from Jasper, Alberta.
9. Copies of all minutes of the Defendant Company at times material to this action.

AND FURTHER TAKE NOTICE that the above recited documents may be inspected by you at the office of G. L. Fraser, 719 Stock Exchange Building, 475 Howe Street, Vancouver, B.C., between the hours of 9:00 a.m. and 5:00 p.m. on Monday or Tuesday, the 16th and 17th days of November, A.D. 1931, respectively. 30

DATED at Vancouver, B.C., this 14th day of November, A.D. 1931.

"G. L. Fraser"
Solicitor for the Plaintiff.

To the Defendants,
And to Messrs. Farris & Company, their Solicitors.

NOTICE TO PRODUCE AT TRIAL

RECORD

TAKE NOTICE that you are hereby required to produce and show to the Court on the trial of this action all books, papers, letters, copies of letters, and other writings and documents in your custody, possession, or power, containing any entry, memorandum, or minute relating to the matters in question in this action, and particularly the following:

*In the
Supreme Court
of British
Columbia.*

Notice to
Produce at
Trial.
Nov. 15th, 1931.

- (1) All the books and documents of the Vancouver Office of the Defendant Company.
- 10 (2) Correspondence and blanket sell order from Trustee in Bankruptcy of Plaintiff Company.
- (3) Correspondence between Solicitor and Client.
- (4) Buy and sell slips.
- (5) Copies confirmations.
- (6) Clearing House Sheets.
- (7) Ledger Sheets.
- (8) Stock Register.
- (9) The Toronto ledger or house account showing the long or short positions of the Defendant, Solloway Mills & Company Limited,
- 20 in various stocks listed on the Standard Mining and Stock Exchange.
- (10) The Calgary ledger or house account showing the long or short position of the Defendant, Solloway Mills & Company Limited, in various stocks listed on the Calgary Stock Exchange.
- (11) The Vancouver ledger or house account showing the long or short position of the Defendant, Solloway Mills & Company Limited, in various stocks listed on the Vancouver Stock Exchange.
- (12) Minute Book of the Defendant, Solloway Mills & Company Limited, and its subsidiary, the Ontario Company of the same name.
- 30 (13) Certificate of Incorporation of the Defendant, Solloway Mills & Company Limited.
- (14) Correspondence passing between the Defendant, Isaac William Cannon Solloway, and the Defendant, Harvey Mills, which was put in as exhibits at the criminal trial of the Defendants, Isaac William Cannon Solloway and Harvey Mills, at the City of Calgary, Province of Alberta, early in 1930.
- (15) Letter from the Defendant, Isaac William Cannon Solloway, at Jasper Park, Province of Alberta, to the Defendant, Harvey Mills, and one Staats, which was put in as an exhibit at the second criminal trial of the Defendants, Isaac William Cannon Solloway
- 40 and Harvey Mills, at the City of Toronto, Province of Ontario.

DATED the 15th day of November, A.D. 1931.

"G. L. Fraser"
Solicitor for the Plaintiff.

To the Defendants,
And to Messrs. Farris & Company, their solicitors.

RECORD

*In the
Supreme Court
of British
Columbia.*

Order to
Examine
Frontier for
Discovery.
Nov. 24th, 1931.

ORDER

BEFORE THE HONOURABLE
MR. JUSTICE D. A. McDONALD
IN CHAMBERS:

} Tuesday the 24th day of
November, A.D. 1931.

UPON the application of the Defendants AND UPON hearing Gordon McG. Sloan, Esq., on behalf of the Defendants and G. L. Fraser, Esq., on behalf of the Plaintiff AND UPON reading the affidavit of R. S. Stultz, sworn the 12th day of November, 1931, and filed herein, and the exhibits therein referred to AND UPON reading the pleadings and proceedings had and taken herein,

10

IT IS ORDERED that the Defendants may orally examine for discovery Theodore Frontier, an Officer of Theo. Frontier & Company Limited touching his knowledge of the matters in question in this action,

AND IT IS FURTHER ORDERED that upon being served with a copy of an appointment as provided in that behalf and a subpoena and \$35.00 conduct money, the said Theodore Frontier do attend for such examination for discovery before the District Registrar of this Honourable Court at the Court House in the City of Vancouver, in the Province of British Columbia, on Wednesday the 2nd day of December, A.D. 1931, at the hour of 2:30 o'clock in the afternoon, and at any adjournment thereof.

20

Costs of this application to be costs in the cause.

Checked
"S. V. L."
Appd. as amended
"G. L. F."
"J. F. M. D. R."

"D. A. McDONALD" J.

Entered
Nov. 27, 1931
Order Book, Vol. 155 Fol. 16.
Per 'S. V. L.'

30

Minutes filed:

AFFIDAVIT OF DOCUMENTS

Solloway Mills & Co. Ltd.

November 26, 1931.

RECORD

*In the
Supreme Court
of British
Columbia.*Affidavit of
Documents.
Solloway Mills
& Co., Ltd.
Nov. 26th, 1931.

I, PERREN MINTER SEABORN, of the City of Toronto, in the Province of Ontario, Secretary of the above-named Defendant Solloway Mills & Company Limited, make oath and say:

1. The said Defendant Company has in its possession or power the documents relating to the matters in question in this action set forth in the first and second parts of the first schedule hereto.
- 10 2. The said Defendant Company objects to produce the said documents set forth in the second part of the first Schedule hereto.
3. That the said Defendant Company objects to produce the said documents referred to in Paragraph 2 hereof, on the grounds that the said documents would tend to criminate the said Defendant Company.
4. The said Defendant Company had, but has not now in its possession or power the documents relating to the matters in question in this Suit, set forth in the second Schedule hereto.
5. That the last mentioned documents were last in the possession
20 or power of the said Defendant Company on the following dates:
 - (a) The Toronto Trading Ledgers—except for the period of May 1st to October 12th, 1929—on or about the 5th day of October, 1931;
 - (b) Certificate of Incorporation—some date prior to the month of January, 1930;
 - (c) Vancouver Trading Ledger—on or about the month of July, 1931.
- 30 6. The Toronto Trading Ledgers, with the exception of the Ledger covering the period from May 1st, 1929, to October 12th, 1929, were filed as Exhibits at a trial of an action in the Supreme Court of Ontario between D. B. Rochester as plaintiff and I. W. C. Solloway, Harvey Mills, Solloway Mills & Company Limited (Dominion); and Solloway Mills & Co., Limited (Ontario), as defendants, on or about the 5th day of October, 1931, and the said documents are now in the custody of the Supreme Court of Ontario. The trial of the said Action commenced on the 2nd day of October, 1931, and

RECORD
 In the
 Supreme Court
 of British
 Columbia.
 Affidavit of
 Documents.
 Solloway Mills
 & Co., Ltd.
 Nov. 26th, 1931.
 (Cont'd)

proceeded until the 9th day of October, 1931, and was adjourned sine die.

7. The Vancouver Trading Ledger was seized by the Crown in the month of July, 1931, and was sent by the Crown to the City of Vancouver in the Province of British Columbia and has not been returned to the said Defendant Company.

8. The Certificate of Incorporation of the Defendant Solloway Mills & Company Limited was lost some time prior to the month of January, 1930, and cannot be found.

9. The correspondence passing between the Defendant Isaac William Cannon Solloway and the Defendant Harvey Mills, and a letter from the Defendant Isaac William Cannon Solloway at Jasper Park, Province of Alberta, to the Defendant Harvey Mills, and one Staats, which were put in as exhibits at the Criminal Trial of the Defendants Isaac William Cannon Solloway and Harvey Mills at the City of Toronto, in the Province of Ontario early in 1930, have never been in the custody or control of the said Defendant Company. I believe that the said Correspondence was, prior to the month of January, 1930, located in private files of the Defendants Isaac William Cannon Solloway and Harvey Mills at the office of Solloway Mills & Company Limited, incorporated under the laws of the Province of Ontario, at the City of Toronto, but such correspondence has never been in the control of the said Defendant Company, or Solloway Mills & Company Limited, incorporated under the laws of the Province of Ontario. Such correspondence was seized by the Crown in the Province of Ontario on or about the month of January, 1930, and has never been returned to the said Defendant Company, or to Solloway Mills & Company Limited, incorporated under the laws of the Province of Ontario, and as all documents which have been returned by the Crown were delivered to me as Secretary of the said Defendant Company, and Solloway Mills & Company Limited, incorporated under the laws of the Province of Ontario, I believe the said correspondence has not been returned to Isaac William Cannon Solloway or to Harvey Mills.

10. The said Defendant Company has not now nor has it ever had possession or control of the Minute Book of Solloway Mills and Company Limited, incorporated under the laws of the Province of Ontario.

11. According to the best of my knowledge, information and belief, the said Defendant Company has not now and never had in its possession, custody or power, or in the possession, custody or power of its solicitors or agents, or in the possession, custody or power of any other persons or person on its behalf, any deed, account, book of account, voucher, receipt, letter, memorandum, paper or writing, or

any copy of or extract from any such document, or any other document whatsoever, relating to the matters in question in this action, or any of them, or wherein any entry has been made relative to such matters or any of them, other than and except the documents set forth in the said first and second Schedules hereto, and the pleadings and other proceedings in the action.

RECORD
 In the
 Supreme Court
 of British
 Columbia.

Affidavit of
 Documents.
 Solloway Mills
 & Co., Ltd.
 Nov. 26th, 1931.
 (Cont'd)

SWORN before me at the
 City of Toronto, in the
 Province of Ontario this 26th
 10 day of November, A.D. 1931. } "P. M. Seaborn"

"John Earl Lawson"
 A Commissioner for taking Affidavits
 within the Province of Ontario.

THE FIRST SCHEDULE:

THE FIRST PART THEREOF: Showing documents the said Defendant Solloway Mills & Company Limited does not object to produce:

1. Correspondence between the Plaintiff and the Defendant Solloway Mills & Company Limited.
- 20 2. Sell order Plaintiff and Inspector of bankrupt estate to Defendant, Solloway Mills & Company Limited.

THE SECOND PART: Showing documents in the possession of the Defendant Company which it objects to produce:

1. Buy and sell slips.
2. Copies of confirmations.
3. Clearing house sheets.
4. Ledger Sheets.
5. Stock registers.
- 30 1929. 6. Toronto Trading Ledger, from May 1st, 1929 to October 12,
7. 3 Trading Ledgers—Calgary Office.
8. Minute Book.

THE SECOND SCHEDULE:

SHOWING documents which the said Defendant has had but has not now in its possession or power:

1. Originals of copies of documents referred to in the first Schedule hereto.
2. The Toronto Trading Ledgers, except for period May 1st—
 Oct. 12th, 1929.
- 40 3. Certificate of Incorporation, of the said Defendant Company.
4. Vancouver Trading Ledger.

RECORD

*In the
Supreme Court
of British
Columbia.*

Proceedings
at Trial.
Dec. 7th, 1931.

PROCEEDINGS AT TRIAL.

IN THE SUPREME COURT OF BRITISH COLUMBIA

K. 1444/30

(Before the Honourable Mr. Justice Fisher)

Vancouver, B.C.,
December 7, 1931.

BETWEEN :

W. T. JOHNSON, Trustee of the Estate of Theo. Frontier
and Company Limited, in Bankruptcy, Plaintiff, 10

—AND—

ISAAC WILLIAM CANNON SOLLOWAY,
HARVEY MILLS, SOLLOWAY MILLS,
AND COMPANY LIMITED and SOLLOWAY
MILLS (B.C.) LIMITED, Defendants.

PROCEEDINGS AT TRIAL.

December 7, 1931.

G. L. FRASER, ESQ., appearing for the Plaintiff. 20

W. B. FARRIS, ESQ., and
G. McG. SLOAN, ESQ., appearing for the Defendants.

Mr. Fraser: I am appearing for the plaintiff, my lord.

Mr. Farris: I am appearing, with Mr. Sloan, for the defendants. Just before the case proceeds I wish to bring to the attention of the Court a letter received from my friend dated October 2nd, addressed to our firm. (Reading). Now, my lord, prior to this trial without prejudice to our rights, we allowed my friend, Mr. Fraser, to make an examination of the documents. So that there can be no insinuation in regard to these documents, I might state first that the documents of Solloway Mills, as your lordship might be aware, are of considerable volume. These documents have been here in Vancouver from the 30

police court to the county court, in various trials. They were being examined by the Government auditors. They were—at the time they were taken to this number in the Standard Bank Building, Mr. McGee was in the Labor Temple when they were shipped, and Mr. Macdonald was in the Standard Bank Building. All documents that were received by Solloway Mills, were open to Mr. Fraser's inspection. I have Mr. McGee and Mr. Macdonald here, so that if the question arises I am quite willing to have them go under oath and be submitted to cross-examination as to their knowledge of these books. There
 10 are no other persons representing Solloway Mills who had access to these books. I might also state, my lord, so that your lordship will perhaps be somewhat patient during the progress of the trial—I think in this case I will try your lordship's patience because I feel it my duty to very strictly put my friend to the proof of every statement that he seeks to prove in this action. I may say, my lord, quite frankly, that I have no sympathy with the plaintiff in the action.

RECORD
 —
*In the
 Supreme Court
 of British
 Columbia.*
 —
 Proceedings
 at Trial.
 —
 Discussion,
 Court and
 Counsel.
 Dec. 7th, 1931.

Mr. Fraser: What is this my friend is—

Mr. Farris: I am stating my position my lord, as a right.

Mr. Fraser: There is no jury here, my lord.

20 Mr. Farris: I am not opening. I am going to state that I will not consent to anything and I wish to repeat that I have no sympathy with these actions. They are merely brought on technical grounds, and for that reason I intend to use every technical defence we have, as against the technical ground they have. Now that is my position, which is pretty clear. If they were coming here to ask for any judgment I would be quite in sympathy with them, but that is not the case.

Mr. Fraser: My lord, in most of these actions I have been faced with plenty of technical defences—

The Court: Now, just about this action, Mr. Fraser.

30 Mr. Fraser: My lord, as to these books. My friend has promised to call these two witnesses—

Mr. Farris: No. I have promised to have them here.

The Court: Unless it is common ground, any statement of facts must be proved.

Mr. Fraser: As to these documents, I am going to call a witness that they were all put together by the Government auditor and put in a special box, and I think this witness will give evidence to the effect that that box was put in the Crone Storage, and that is the last we

RECORD

*In the
Supreme Court
of British
Columbia.*

Proceedings
at Trial.

Opening,
Mr. Fraser.
Dec. 7th, 1931.

have seen of them. However, that is anticipating the story. We will come to that later.

I think first, my lord, I should open, unless your lordship would sooner not hear me, outlining the facts of the case. Because I think it will enable your lordship to follow the evidence more closely, and you will not find it so confusing. My lord, the facts are very simple. There are simply two or three items or charges we are making of bucketing, and all the evidence will revolve around those charges. The plaintiff, my lord, was a company carrying on business—I mean, the plaintiff is a trustee in bankruptcy of Theo. Frontier & Company Limited. Theo. Frontier & Company Limited was a brokerage house in Kamloops, and among other things bought and sold stocks and shares. A contract was entered into between Theo. Frontier & Company Limited and Solloway Mills & Company Limited, and as your lordship will see, from about the middle of 1928 until the latter part of 1929, extensive orders to buy and sell stock were given by Theo. Frontier & Company Limited to the Defendant Solloway Mills & Company Limited. Now the stocks in question, my lord, were stocks which were listed on the three recognized exchanges on which the Defendant dealt. Those were the Vancouver Stock Exchange, the Calgary Stock Exchange, and the Standard Mining Stock Exchange at Toronto. We allege, my lord, that the Defendant bucketed all orders; and that was done in a variety of ways, chiefly in two ways, and I will be leading evidence in connection with the bucketing of those orders in two different ways.

Mr. Sloan: What do you mean by orders? Yours, or everybody's?

Mr. Fraser: Everybody, including ourselves. I think your lordship will come to the conclusion after hearing the evidence, that the Defendant company never bought a share for anybody. They bought and sold shares for themselves. Certainly in connection with our marginal purchases they never bought a share for us. I will show your lordship by the evidence, that this defendant company was dealing purely and simply for itself—for its, what we call its house account, endeavoring to make a profit on the rise and fall of the market, and the customers were simply the instrument to enable it to make a profit. Now, my lord, I was going to point out two ways by which we allege these orders were bucketed. Number one: They did not, in pursuance of the contract—when I say 'they' Solloway Mills & Company Limited, did not in a great many instances buy the shares on the stock exchange, although they sent out to the plaintiff confirmations which your lordship will see, telling the plaintiff that they had bought shares on the Vancouver Stock Exchange. What they would do, my lord, is simply put in a selling confirmation directly from their house account. They had to make a bookkeeping entry, and they would

sell the shares right out of their house account to the plaintiff, but notify the plaintiff in their confirmation to the plaintiff, that these shares had been bought on one of the recognized stock exchanges. But in effect they were what is known in brokerage language, 'going short' and selling the shares out of their house account. Now, my lord, the other method—and of course the result was the same, it caused a short position—was in bucketing orders over the Vancouver Stock Exchange through the assistance or the connivance or the employment of other brokers, who are termed 'jitney brokers' or 'agent
10 brokers.'

RECORD
 In the
 Supreme Court
 of British
 Columbia.
 Proceedings
 at Trial.
 Opening,
 Mr. Fraser.
 Dec. 7th, 1931.
 (Cont'd)

My lord, as this evidence is confusing, I would like to explain just how that was done. This is the most difficult part of the evidence to follow, this method of bucketing orders over the stock exchange.

Mr. Sloan: The difficult thing is the construction you put on it.

Mr. Fraser: What happened, my lord, as I will show in evidence, and I will give your lordship possibly a concrete case to illustrate my point. A client would come in to Solloway Mills and give them an order to buy 1000 shares of Home Oil. They would phone up, or put an order with a jitney broker—they would tell that agent
20 broker to go on the stock exchange and sell 1000 shares of Home Oil. They would have their floor man, Solloway Mills would have their floorman on the floor of the exchange, and he would buy that 1000 shares of Home Oil. Now my lord, if a client went down to the stock exchange and asked whether his order had been filled on the exchange, they would say "Yes, we bought that 1000 shares of Home Oil from this broker." Denbigh Dickinson, or one of these agent brokers. Now so far there would be nothing to criticize. But what they did, my lord,
30 off the exchange—they sold to this agent broker 1000 shares of Home Oil and allowed him a one-tenth commission for the services. So that this agent broker, my lord, could take this 1000 shares of Home Oil which he got off the exchange, and sell it on the exchange, to Solloway Mills.

Mr. Farris: That is, he could not sell it to anybody else but Solloway Mills?

Mr. Fraser: He might. But I will show in some cases, some other broker might get it, but in most cases Solloway Mills would get that order. There was a risk of somebody else getting it, but in most cases on each order Solloway Mills got a large part of it, and I will show in many cases they got the order.

40 Now, my lord, you will see so far there is a balance. Solloway Mills has bought from the other broker 1000 shares of Home Oil on the exchange. He has delivered off the exchange 1000 shares of Home Oil to this agent broker. So that as between this agent broker

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and Solloway Mills there is a balance on shares. But they have an order from a client to buy 1000 shares, which they must fill. They send that client a confirmation saying "We have bought your shares on the exchange," and would balance their books, put in their books a house confirmation selling those shares out of the house account. So that, my lord, in these what are termed "washes," you have the four confirmations. You have a buy on the exchange by Solloway Mills from this agent broker; you have the sale off the exchange from Solloway Mills to this agent broker; you have the confirmation notifying the client that they have bought that 1000 shares; and you have got the sale of 1000 shares from their house account to this client. So that as far as their books are concerned, they are balanced. Now, my lord, the reason for doing it that way, is for your lordship—I have this observation to make, that the effect of that is the same as though they had not bought the shares, and sold direct from the house account. If that client was suspicious and came to Solloway Mills and said "Did you buy my shares on the stock exchange?", they could say "Yes, here is a confirmation from this agent broker."—Den-
 high Dickinson, or Randall; "We bought it on the exchange." And
 of course the client would not know anything about the transactions
 which took place off the exchange. So that system, my lord, enabled
 them to ostensibly buy the shares on the exchange, so that this client
 could not suspect that anything was wrong.

Now, my lord, I think it may be well here—my learned friend in all of these trials, and will be—before your lordship—my learned friend has endeavored, and will before your lordship, to say—

Mr. Farris: I submit, my lord, my friend cannot tell what we are going to do.

Mr. Fraser: Well, there is surely no harm in that, my lord.

The Court: Well, you are outlining your own case, Mr. Fraser. 30

Mr. Fraser: Yes; but there is this feature, my lord, that I should draw to your attention, as there is no jury here, and it is going to make it easier to follow the evidence—

Mr. Farris: I have no objection to my friend stating everything in his position, but I do object to his stating what we are going to do.

The Court: No. I think the objection is well taken.

Mr. Fraser: Very well, my lord. Well, practically the evidence will revolve around those two points, the short sale in those two ways; in one way direct from the house with no attempt to fill the order, and the other way I have mentioned.

Now there is a further feature. I told your lordship that with regard to this plaintiff and the other customers, they have not bought a share. The whole system, my lord, was to conduct a bucket shop and to trade for profit, and in all of the shares in which this plaintiff dealt, Theo. Frontier & Company Limited, they were short many thousands of shares. Now your lordship will bear in mind that these shares are not earmarked. They are all street certificates, and they were never in a position to deliver those certificates had their customers made demand upon them.

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- 10 There is one further point, my lord, in connection with the contract between these two parties. There were two accounts maintained; a cash account and a margin account. Now the cash account covered transactions where the certificates, the physical certificates, were delivered to Theo. Frontier & Company Limited, with draft attached. They delivered the certificates and were paid for them by a draft. And it might be well to mention here that our rights of recovery may be nominal so far as the cash account is concerned. I am not suggesting, my lord, that I am admitting or electing in any way to accept that position. Your lordship may come to the conclusion on the auth-
- 20 orities, that so far as the cash account is concerned, our rights of recovery are nominal. But as to the margin account—your lordship I suppose, knows that on margin you simply buy on instalments. We paid so much down, one-third, and they were supposed to hold the stocks for us. As to the marginal purchases, the amount we sent down as appears, something over \$100,000—

The Court: I may say with regard to that, I would prefer you would lead a little evidence to throw some light on that matter.

- Mr. Fraser: Yes, my lord. So that there were two accounts, the marginal account and cash account. That is our position in
- 30 reference to that.

The Court: And also as to the meaning of any terms they used currently; would you lead some evidence that the notes will show the meaning the witnesses attach to them.

Mr. Fraser: Yes, my lord. Now, my lord, I would ask your lordship to refer to paragraph 2A of the statement of claim.

Mr. Farris: The amended statement 2A?

Mr. Fraser: Yes; 2A. That recites what I have already stated—

The Court: I have no 2A in this statement of claim.

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Mr. Fraser: There was an amended record filed, my lord. Possibly your lordship has not got it.

The Court: You might look at this, will you please, Mr. Registrar.

Mr. Fraser: This is the old record. An amended record was filed. It must be there. Possibly your lordship can follow this. In 2 (a) we recite the contract between the parties, and the two accounts. And then 2 (AA); or just before 2 (AA) paragraph, "The said defendant without the knowledge or consent of the said Theo. Frontier & Company Limited, and in violation of its duty as broker for the said Theo. Frontier & Company Limited, and in breach of trust, practised fraud upon the said Theo. Frontier & Company Limited, particulars of which are as follows: 10

Paragraph (AA). Now, my lord, I allege a bucket shop, and I think I should read this, because it gives your lordship some idea of what a bucket shop really is.

The Court: You are reading now a (AA)?

Mr. Fraser: Yes. (Reading paragraph 2 (AA) and 2 (BB). I should have drawn that to your lordship's attention in my opening. That is just another item of fraud. It does not go to the question of relief. They notified us that they had bought those shares on the exchanges where they were listed, and charged us brokerage for doing so. Of course, that is what a brokerage firm is supposed to do. It is supposed to buy shares on the stock market and charge a brokerage for their service. They did not buy the shares on the stock exchange, but nevertheless charged a brokerage. 20

The Court: And no relief is asked as to that?

Mr. Fraser: No, my lord, we are asking for a return of the money with interest, that we paid on the margin account; and as to the cash account, as I say, our relief there may be nominal, but I am going to deal with that in my argument when I come to the argument later. 30

Mr. Sloan: What about the brokerage you got?

Mr. Fraser: We got no brokerage.

Mr. Sloan: You got ten thousand.

Mr. Fraser: (CC). (Reading paragraph 2 (CC), statement of claim). And then it goes on, my lord, to allege in what manner those sales were washed. Then (DD) I would like to read, my lord. (Reading paragraph 2 (DD)). That is simply alleging that they were

at all times material, in the shares in which we dealt, in a short position. Then paragraph (EE) is important when we come to consider the law. I submit it is an elementary proposition of law that the broker must not trade against his customer. (Reading paragraph 2 (EE).)

Now, my lord, there is just one further point. In this action your lordship will see that Isaac William Cannon Solloway and Harvey Mills, two of the directors of this company, and who were the guiding spirits, are joined, and we are asking for the same relief against these directors. Paragraph 2 (b). (Reading said paragraph).

Mr. Farris: Do I understand my friend that he is asking for an accounting and so on against Solloway Mills as individuals, or damages?

Mr. Fraser: I have recited the facts there.

Mr. Farris: You said you are asking some remedy, and I would like to know what it is.

Mr. Fraser: I am asking for the return of my money.

Mr. Farris: From them as individuals?

Mr. Fraser: From the three defendants. I would ask my friend to produce the books—I gave him notice to produce, my lord, to produce the books and the records of the Vancouver office, and the house account of the Calgary and Toronto offices; the minute book of the defendant company and the other documents which I specified in my notice to produce.

Mr. Sloan: My lord, we take the same position on the trial as we took on the similar proceedings before you on other occasions, that the company cannot be compelled to produce the documents, on the ground that they tend to criminate us. Mr. Seaborn, as secretary of the company, has sworn an affidavit in which he swears to the documents my learned friend refers to; some of them by the way, we haven't got at all in our possession or control.

The Court: Well, in my ruling, I did not deal with how the matter stands at trial.

Mr. Sloan: No. That is the position before your lordship to determine. Seaborn, secretary of the company, takes the position in paragraphs 2 and 3 of his affidavit on production, that the documents would tend to criminate the defendant company, and therefore privilege is claimed. Now, my lord, I do not think it is necessary for me

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to do any more than quote the pleadings on the question of whether or not these documents would tend to criminate. Because one of two positions must be correct. Either the documents are relevant on the pleadings, or they are not. If they are relevant on the pleadings, why, of course, they are incriminating. If they are not relevant on the pleadings, then, of course, we are not concerned with them at all. So we only need concern ourselves with documents which are relevant on the pleadings. We are charged with practically every crime in the calendar which a stock broker can be charged with. We are charged in paragraph 2 (AA) with bucketting, which is, of course, a criminal charge; fraudulent conversion of money, and some of the documents relevant to the issue on the pleadings is bound to tend to criminate. I have not got to go very far in that suggestion. Bray, at page 321 says this: (Reading). So there can be no doubt we are given this protection as enunciated by Bray, unless we are forced by statute to produce. That principle was enunciated in *Webster and Solloway Mills*. the case which your lordship had before you. (1930) 3 W.W.R. at page 445, and I think the headnote very clearly enunciates the principle there. It is a judgment of the Court of Appeal, Alberta. (Reading headnote in judgment). 10 20

The Court: Was not my view of the other matter along the lines that there was no protection there? Was not my view in the other matter which you refer to, along the lines there was no protection ordered there, whereas at the trial there was protection?

Mr. Sloan: I am going to get to that in a moment, my lord. I can only argue so much at a time. Your lordship's decision in the *Lockett versus Solloway Mills* case, (1931) 3 W.W.R. 309. There my friend applied for inspection of documents prior to the trial, and the same point was argued before your lordship, and your lordship made this observation: (reading). That strengthens the position here. 30 Now, my lord, the only question which takes away from us our privilege, at the same time putting a cloak around our shoulders, is the "Evidence Act." Now, that Evidence Act either compels us to answer, or it does not. It does not compel us to answer, and I submit our position is perfectly sound, we cannot be compelled to furnish the books. Section 5 is the governing section. It says: (Reading), That is all there is. No witness shall be excused from answering any question. Now, my lord, where is the witness here? There is no witness in the box; there is no witness claiming the protection of this Act; there is no question being asked, there is none to be answered. Where 40 is the witness who can be compelled to answer? Now, unless that Act compels me to produce these books, I cannot be compelled to produce them, because the law is very clear.

The Court: It seems to me at the trial a party in the position of defence, then they are protected. At that time and place it did not

seem to me he had the protection, but at the trial he has a protection.

Mr. Sloan: Yes, he has protection against being prosecuted for anything he may say, but the protection is given to him in one way and taken away in another. The Court says to him "You must answer the question, but I will say to you you will not be prosecuted in answering." Now that is what the Act says. Now here my learned friend, by mere notice to produce—that is all we are arguing now—there has no subpoena been served, there is no witness in the box. My learned friend is attempting to force me to produce the books of Solloway Mills & Company, which by their very essence must tend to criminate. Now, as your lordship has held in the Lockett case, and as Mr. Justice McDonald held—

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The Court: It has been held in regard to interlocutory proceedings where the situation may be such where a person may be left without protection. But on the trial—

Mr. Sloan: To whom can your lordship give the protection? There is no witness to give protection to.

Mr. Fraser: Put one in the box.

Mr. Sloan: We are not going to put one in the box. There is
20 no witness in the box to whom you can give protection, my lord.

The Court: One of those cases to which you referred, and which I had before me, said that the matter was different at the trial. It is fundamental, in some of those cases there is a difference.

Mr. Sloan: There is a difference if you have a witness. This Act does not say anything about the production of documents. The Ontario Act does. It says we can be compelled to produce documents, but our Act stops short there, and so does the Canada Act. "No witness shall be excused from answering any question." Now Bray says very clearly that is a presumption. I can give your lordship several
30 cases on that. I thought it would be unnecessary as far as this point is concerned. (Reading citations from Bray at page 314, and discussing the Lowten case cited there). Let us assume that somebody, for reasons best known to themselves, takes these documents and lays a charge against Solloway Mills.

The Court: You are protected.

Mr. Sloan: I am not protected.

The Court: The distinction was made right in one of those cases; how the matter would stand on interrogatory, and how it would stand at a trial.

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Mr. Sloan: No, with all respect, your lordship, I would not be protected. I am not protected, with great respect, because I say while I am protected you cannot prosecute me for anything that I produce in court, and because unless you get the protection of the Evidence Act you are not protected at all, and your lordship has no jurisdiction to give me protection under the Evidence Act, because I am not a witness, not a litigant refusing to produce a document, which is an entirely different thing altogether. I know the reference your lordship has in mind. Here is what it says. *In the Webster case*, page 447. (Reading *Webster vs. Solloway Mills*, above cited). There is what your lordship has in mind. If my learned friend had subpoenaed an officer of the defendant company, or one of the defendants themselves, and you had him before you, your lordship then has control over him, and can say to him as a witness, "You bring those in." But you are not in that position, and the Evidence Act does not apply to bare production. Mr. Justice W. A. Macdonald in the *Blumberger case* ordered the documents in. He ordered them in on the ground that there was some indefiniteness, there had not been a proper affidavit filed claiming protection. That was the only ground on which they were admitted. I asked leave to file an affidavit. That was the only ground on which they were ordered in. Probably my friend may give Mr. Justice Murphy's judgment in the Lockett case, but with respect to your lordship, I want to point out his lordship misconstrued the situation; his lordship first made a ruling that the documents should not be admitted, and then he changed his viewpoint later on and said he would let them in by somebody proving them by extraneous evidence. With great respect to his lordship I propose to read his judgment. (Reading judgment of Mr. Justice Murphy in *Lockett vs. Solloway Mills*).

I want to point out a distinction. Mr. Farris brings to my attention that in the Lockett case there were no personal defendants, there was merely this company. So that if you read his lordship's reasoning there, with that view, it would be far more favorable than it would be at first blush. We have Solloway and Mills personally in this action. The question of conviction there is another matter, because Solloway-Mills have not been convicted in British Columbia.

Mr. Fraser: There was a stay of proceedings.

Mr. Sloan: There was a stay of proceedings, there was no conviction. And there is no one else here who can be brought physically into the witness box. I submit on all the principles, that your lordship has no jurisdiction to force me to bring these documents into court, because there is no protection you could afford, and I am not compelled by statute or rule of court having the force of a statute, or anything on earth which abrogates my common law protection, which has been in force for centuries. The learned judge points out very clearly, (Reading judgment). Just exactly the situation before your

lordship. So that his lordship's reasoning, insofar as it is relevant to this case, is certainly not against me, and I think it is entirely in my favor when you regard the distinction between the two cases. As I said to your lordship a moment ago, and as I repeat again, your lordship not having the power to afford me any protection—

The Court: Just a moment. You see in the Lockett matter, that was before me as an interlocutory matter, a person or a party might be in a position where no protection was given, but at the trial the protection is given.

10 Mr. Sloan: Will your lordship tell me what case your lordship is referring to.

The Court: I would say the Evidence Act.

Mr. Sloan: Well, show me the Evidence Act, show me where the Evidence Act gives me protection.

The Court: I have considered whilst you were going over those cases; it would seem to me those cases would make a distinction between a matter as it stood on those interlocutory proceedings, and at the trial.

20 Mr. Sloan: Yes, because you could get the defendant there before the court. Once you can get an officer before the court, you can compel him to produce. Where is the witness you can give the protection to? The Dominion Act is the same as this, except it uses the word "Person" instead of 'witness.' But you have no person before you in the witness box; you have no witness before you in the witness box. The Dominion Act does not extend the other, it only has the word 'person' instead of 'witness.' The Ontario Act goes that far, because they realized the difficulty of the hiatus in our own Act and the Dominion Act. The Ontario Act does compel the production of documents but our Act does not, neither does the Canada Evidence Act. If your lordship can put your finger on any section of the Evidence Act to show under that, that you can, sitting here, grant protection against the production of any incriminating documents, then I am quite willing to bow to your lordship's ruling. But where is that section? The Evidence Act is very clear, that you must have a witness before you before that protection can be accorded to the witness in his answer. Now I stand here and I say that I am entitled to that protection by common law, unless it has been abrogated by statute, and I cannot be compelled to produce, because no protection can be afforded me. I can get your lordship that Lowten case, which is a very
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40 old case.

The Court: If you please, Mr. Sloan, according to the Domin-

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ion Act which has the word 'person' instead of 'witness', and then you go on to the expression "shall be excused from answering any questions," you submit that does not apply to the production of documents. But the authorities along that line in Bray there; with regard to the production of a document, Bray says "There would seem to be ample authority for the general proposition that the privilege obtained equally in regard to the production of documents as to answers on interrogatories." So, if I may be permitted to say so, I do not follow you when you say that any protection I afford is only in the case of questions being answered, because Bray says it applies also in regard to the production of documents. 10

Mr. Sloan: I see your lordship's difficulty now. With great respect, your lordship is not quite clear on the fundamental principle here. If you will remember here Bray is using the privilege there in a certain sense as privilege or protection. He says documents are privileged from production as well as answers on interrogatory. That is, they are privileged from that ruling by which no man can be compelled to incriminate himself. Now, unless that privilege has been abrogated by statute, that privilege is still in existence. If you will read Bray, he talks about privilege from production of documents. 20 He does not speak of protection, he speaks of privilege. The Evidence Act does not give me anything. It takes a right away from me. The Evidence Act is not an Act extending my rights, it is an Act limiting my rights; it is an Act abrogating a common law privilege. It takes away that very privilege which Bray says is mine. That is my whole argument.

The Court: On what principle does Bray carry over the privilege from answering, to production?

Mr. Sloan: Let us assume the Evidence Act is not in existence at all for the moment. Then, under the common law I am absolutely 30 protected from answering any questions orally in the box, or making discovery on interrogatory, or producing documents which tend to criminate me. Now I have that privilege. The courts accord me that privilege by virtue of common law. I cannot be compelled if I stand in the box; if there were no Evidence Act in existence, if I stand in the box and I am asked incriminating questions, I can refuse to answer, and I cannot be compelled to answer. Nor can I be compelled to produce incriminating documents. Nor could I be compelled to answer an incriminating interrogatory. Now the Evidence Act comes along. The Evidence Act does not apply to my answers on interrogatory. His 40 Lordship, Mr. Justice W. A. Macdonald, decided that in the Blumberger case. He said a man who is being interrogated is not a witness under the Evidence Act. Therefore my argument to your lordship is this, neither does the Evidence Act refer to the production of docu-

ments. The only one of those three to which the Evidence Act has any relation is the witness in the witness box.

The Court: I do not quite follow you, that where Bray carries forward the privilege from answering to production, and then when you come into section 5 of the Dominion Evidence Act you submit that that cannot be carried forward from answering to production.

Mr. Sloan: My lord, the Act has nothing to do with it. Bray is building his reference there on the old common law principle, where they were not compelled to produce in court an incriminating document.

The Court: It is not by virtue of a Provincial act that a person gets protection, because it must be given to him as against criminal proceedings by virtue of the Dominion Act, and the phraseology is such that you might say it is by virtue of the two Acts combined, but not by virtue of a single Act. And then you find that any party shall be excused from answering any questions; it does not say, a witness; and your submission is you cannot carry over the principle into production, it must be confined to answers.

Mr. Sloan: No, that is not my position here at all, my lord. My position is that there is the old common law principle enunciated in Webster and Solloway Mills; one cannot be compelled to incriminate himself; that for centuries has been firmly established as a principle of our common law. What your lordship is doing with great respect, and it is no doubt my fault for not clearly expressing myself—your lordship is confusing the distinction between privilege and protection. Now the Evidence Act takes away the privilege but it confers a protection. It takes away my common law privilege to refuse to answer when I am a witness, and it confers on me with its left hand, a protection against my answer. That principle is always there except insofar as it has been abrogated by specific and apt enactment. In the Lowten case—let us assume they did have the Evidence Act in the days of the Lowten case in England. The executor was asked to produce a document in court. He said “No, I won’t, because it would tend to incriminate me.” The Lord chancellor held this, that even then it had been established for centuries—this was in 1818—that you cannot compel a man to bring into court an incriminating document. Let us assume this Evidence Act had been there in those days, before the court. Counsel would have said “This Evidence Act applies here, and therefore this common law protection or privilege in refusing to criminate himself, has been taken away.” Now, if that Act said that in so many express words, it would be right. But that Act only refers to a witness who is in the witness box, and therefore those apt, express words, do not exist at all. (Quoting judgment in Lowten

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case). That Act does not take away from that man something which the common law has shrouded him with for centuries. The common law has given him that protection. It gives him the privilege, the protection of refusing to produce documents or answer incriminating interrogatories, or giving incriminating evidence. Now, you must give him in return for that, something showing that he cannot or will not be prosecuted. Get away from those words 'protection' and 'privilege' altogether. He says, I have a privilege under the common law, of refusing to answer. The Court says, that privilege is taken away from you by the Evidence Act, because you are a witness; but we do not strip you bare altogether, but we say that having taken that privilege away from you and forcing you to answer, we will not use those answers against you. But there is not a jot or tittle of that takes away your privilege of refusing to produce documents. It would be a startling thing, my lord, if the thing which has been so fought for throughout the centuries by witnesses and people, counsel and judges and everyone else,—and that protection has been accorded them by the common law, by precedent, it has grown up through the centuries and become an inviolate and inviolable rule—how could that privilege be taken away except by the most express enactment? No common law right can be taken away except in express and apt words. The words must be specific, and if they are ambiguous they are read in favor of the common law rights, not against. And I say there is nothing in that Act which takes away from me my privilege which existed from time immemorial, because I am not a witness and I am not seeking protection in questioning. I cannot stress your lordship any more on that. 10

The Court: You might let me see the Dominion Act.

Mr. Farris: May I ask, my lord,—I am rather at a loss to follow this argument of my friend. I don't know what question is being asked which comes under the Act. Surely there must be some question asked of some person? 30

Mr. Fraser: My lord, the whole point at issue is, I submit, with respect, whether my friend is protected by the Evidence Act. Aside from all the questions of fact which I am going to draw your lordship's attention to, it does not matter anyway, when he cannot claim any protection. If, as a matter of judicial discretion your lordship would not give it. My first point is, my lord, I want to draw to your lordship's attention that the defendants, Solloway-Mills, the individuals, have filed an affidavit showing they have the documents, and the only documents I am asking production of are the documents of the defendant company, so we are within the four walls of the Lockett case. Now your lordship stated a moment ago that the Evidence Act extended by fair implication to the question of the production of documents, according to the reference in Bray. And there is the further 40

reference in '*Taylor on Evidence*', Volume 2, 11th edition, at page 1006. The pages are numbered at the bottom. Now there was an English Act which is almost word for word identical with our Canada Evidence Act. I will read the Act. (Reading).

Mr. Farris: That says 'the witness' does not.

Mr. Fraser: It is dealing with the question of the production of documents.

Mr. Sloan: By a witness.

Mr. Fraser: It does not say a witness, at all.

10 Mr. Farris: It refers to the witness there.

Mr. Fraser: Certainly it refers to a witness.

Mr. Farris: Well, you said it did not.

Mr. Fraser: My friend says this refers to a witness. Certainly it includes a witness. Then again, my lord, in the *Attorney-General vs. Kelly*, 10 W.W.R. (1916) at page 131. I am reading from the judgment at the bottom of page 139. (Reading), Now with your lordship's permission, I would like to refer you to a passage from Mr. Justice Murphy—just before I do, my lord, there are two further references which I would draw your attention to. In Taylor, the same
20 edition, at page 1001 and 1002, (reading).

Now, we have this company, my lord, they have already been convicted, and Mr. Justice Murphy in this court has held that he apprehends there is no danger, and in his judicial discretion he refuses to give them protection. (Reading judgment of Murphy J.) Now it is the same allegation in this case as it was in that, of bucketing, and it is a matter of judicial discretion. Then, my lord, he goes on to talk of the Evidence Act. (Reading judgment).

Mr. Sloan: So far as the *Attorney-General and Kelly* case is concerned, it does not advance the matter one way or another. If
30 your lordship is going to consider the *Attorney-General and Kelly* case, I am going to take time to discuss it.

The Court: I have followed your argument Mr. Sloan, that the privilege might be carried forward from answers to interrogatories; within the Act it could not be carried forward. There is a suggestion in the Kelly case that the spirit of the Act would carry it forward.

Mr. Sloan; It is not the Act which gives me protection. It is

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the common law. I have argued this thing as if this Act was not in existence at all. The Act does not help me, it hinders me. The common law is my shield and buckler. The Evidence Act is not a help, it is a hindrance. I am claiming protection under the common law.

The Court: It means that these two Acts, the Provincial and Dominion Act, would not afford you protection with respect to the production of documents. That is what your submission is?

Mr. Sloan; Exactly. It is the common law that gives me protection, not the Act. The Act takes that protection away from me. That is my submission. My protection is under the common law; that Act has nothing to do with my protection; I am seeking common law protection, not a statutory protection. Your lordship and I are misunderstanding each other. I am not seeking statutory protection at all, I am relying on the common law protection which has come down to me through the centuries, which is just as inherent in British justice as the fact that a prisoner is entitled to the benefit of the doubt, and which is just as inherent as that a man is innocent until he is found guilty. That is not statutory, it is common law. That statute is not an extending statute at all. It takes something away from me. It takes away my common law rights. Let us deal with that Attorney-General and Kelly case. (Reading judgment). 10 20

The Court: Your submission goes this far, does it not, that if a party were called as a witness and asked to produce a document, that the Court could not give him protection under section 5?

Mr. Sloan: I do not say anything of the kind. I say if the witness goes into the box. I am not prepared to accede to that because I think that would be straining the thing too far.

The Court: Assuming that there is nothing for him to be asked about—

Mr. Sloan: He has got to be asked something, my lord. 30

The Court: Where the documents are being asked for, that they might be produced, your submission before me has been that protection, using that as meaning protection given under section 5, is not applicable to the production of documents.

Mr. Sloan: No, I don't argue that at all. In the case of *Webster and Solloway Mills*—

The Court: Well, that is what you are objecting to. In the Webster case where it says the spirit is strictly applicable to the pro-

duction of documents. That is what I am asking, where Bray carries over from answers to the production of documents. This would carry over the protection given by section 5, from answering questions, to the production of documents. Now I understand you to say no.

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Mr. Sloan: No, I do not go as far as that. I do not have to go as far as that. I am going to concede for the purpose of this argument that if your lordship had a witness in this box, an officer of Solloway Mills Limited, you would say "Produce the documents and I will give protection and give your company protection." I would
10 concede that, but I will not concede that your lordship could compel me to produce documents in the case, and compel me to answer questions, because you have no witness there. Solloway and Mills are not in that box, and I certainly will not concede that, because I think it would be betraying the principle that has been coming down to me through the centuries. I will concede that if you had a witness in the box you could compel him to produce the documents. There are two
20 protections: There is the statutory protection and there is the common law protection. I am relying upon the common law protection and you cannot take away that unless you give me the statutory protection, and you cannot give the statutory protection because I am not a witness.

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The Court: You use the word protection in both cases. In one it is really protection, which is really privilege against the production of documents.

Mr. Sloan: No; it is the privilege against the production of documents, which may tend to criminate. If it was not in any Act, I would have the old common law protection, applicable as I said before, in three distinct branches.

The Court: Protection against the production of documents
30 which might be criminating, or protection as in section 5, against criminal proceedings?

Mr. Sloan: There are three things on which I can claim my protection. I could claim my protection in the witness box against answering incriminating questions under the common law. Your lordship does not dispute that for a moment. A witness in the box under the common law can refuse to answer a question; a witness in the box can refuse to produce a document; that is under the *Lowten case* and under Taylor there. A person being examined under interrogatories can take that protection. Now, the Act is passed, and the
40 only one of those three classes to which it has any reference is the witness in the box. It does not compel a man to answer questions under interrogatory; it does not take away his common law privilege

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of refusing to answer, because he is not a witness when he is being examined on interrogatory, consequently the Act has no reference to him at all. You can compel a witness to answer when he is in the box. Then we come to the third class. The Act does not extend to the third branch, which is the production of documents, any more than it extends to the answering of interrogatories. That Act is only designed to meet one of those three instances. The witness in the box, on interrogatory, and the production of documents. It has torn away the cloak from the witness and abrogated his protection; it has gone the length of taking away his common law privilege but it has gone the length of taking away his privilege of refusing to answer interrogatories, and I am submitting to your lordship that it has not gone the length of taking away the right to refuse to produce documents, because it does not use that language at all. It does not even mention documents, any more than it mentions interrogatories. (Reading judgment *Webster vs. Solloway Mills*) (Paragraph 1464 of *Taylor on Evidence*). 10

The Court: Production of certain documents has been asked for from the defendant by the plaintiff. The documents asked for are the documents of the defendant company. As I look on the matter, 20 and the history of what might be called privilege and protection, it might be said that in the early history of the matter a person was allowed to claim privilege, or what has sometimes been called protection, against the production of documents that might tend to incriminate him; protection against answering questions which might tend to incriminate him. And then the question arose as to whether such privilege or protection as called, would be applicable to the production of documents, and the principle was carried over undoubtedly, as would appear from *Bray on Testimony*, page 314, that it 30 obtained equally in regard to the production of documents as to answers to interrogatories or questions. Following the matter through, we have the expression used that the spirit of the statutes afforded protection, the word 'protection' being used somewhat different there, being a protection against criminal proceedings that might arise through incriminating evidence being given by answers. A question may arise then in the same way, as to whether the protection afforded there goes so far as to extend to the production of documents as well as to answers to questions. My view would be that in the same way as the privilege is carried over to the production of documents as well as to the answering of questions, that the protection afforded 40 under the Provincial and Dominion Acts being read together, would require also the production of documents. Now, in this matter before me I would be of the same view as my brother Murphy, to this extent: that the documents being asked for, of a company as my brother Murphy says in his judgment in the *Lockett* case to which reference has been made—I would say that I cannot believe the law is so power-

less that because the defendant is a corporation and it cannot be brought into the witness box physically, that it is in any better position than a defendant who is a person who could be served, and I would order the production of the documents, and grant protection.

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Mr. Sloan: My lord, there is one feature arises out of that. In the notice to produce, my friend has asked me for documents which it is impossible to produce. I want to put myself on record here now. My friend is asking us to produce the Toronto trading ledgers, certificates of incorporation of the company, and the Vancouver trading ledgers, and Mr. Seaborn in his affidavit to which I previously referred, says—(Reading affidavit). I wired down to these people to send out the Toronto ledger referred to, that is one which was not filed, and they wired back as follows: (Reading telegram which is marked Exhibit 1).

(TELEGRAM READ, MARKED EXHIBIT NO. 1)

Mr. Fraser: I am objecting to the telegram, my lord. It is not evidence. I have got the evidence showing that the Toronto trading ledger for a certain period, three Calgary trading ledgers, and the minute book, are in their possession.

Mr. Sloan: They don't say anything about a minute book.

Mr. Fraser: They say they are in their possession. I say they admit that they have got the Vancouver trading ledger and they don't know where it is, but they produce a Toronto trading ledger for a certain period, and three Calgary trading ledgers—

The Court: I think it is now time to adjourn until 2:30.

(COURT ADJOURNED AT 1:10 P.M. UNTIL 1:30 P.M.)

(PROCEEDING RESUMED AT 2:30 P.M. PURSUANT TO
ADJOURNMENT)

Mr. Farris: My lord, I find myself somewhat at a loss in view of your lordship's ruling, to just know what steps to take to protect our clients under the Evidence Act. Paragraph 5, which your lordship has before you, provides that we shall not be compelled to answer any questions provided with respect to any questions the witness objects to answer upon the ground that the answer might tend to criminate him—now that is the only protection we can get. I mean there has to be a definite objection to answer that particular question. Now in view of your lordship's ruling I find myself absolutely at a loss to know, to object to any question when there is no question put to any

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witness. Therefore how would I ask the Court's protection. Perhaps your lordship will assist me in it, but I cannot see any possible way of doing it.

The Court: In my view the principle was applicable to the production of documents, and therefore section 5 becomes operative.

Mr. Farris: Assuming that, my lord, but that having been the case I can only ask for the protection of the Court in regard to questions asked, to specific questions asked, in the second part of that section. That is the only way I can get protection.

The Court: I have given you direction with regard to the production of documents. 10

Mr. Farris: But my lord, I submit with all respect, that I must ask for protection on a particular question asked. Now, how can I ask the protection of this Court without any question being asked? I frankly cannot see how I can do it.

The Court: I have made my ruling.

Mr. Farris: I am not questioning your lordship's ruling, but I am asking your lordship to assist me in getting that protection. I submit now, my friend must ask some questions of some person, even with your lordship's ruling, so that I can object, and then get your lordship's protection. 20

The Court: Well, I have ordered the production of the documents.

Mr. Fraser: I am asking my friend to produce those books here, my lord, and there are certain books which apparently are not here, although they are disclosed in their affidavit of documents. Under the decision of the case of *Dwyer vs. Collins*, reported in 21 L. J. Exchequer 225. I am reading from the *English and Empire Digest* my lord. (Reading) "The object of a notice to produce a document is merely to give the opposite party sufficient opportunity to peruse it . . ." I am asking my learned friend if he has the Vancouver house account in his possession or in court. 30

Mr. Farris: We have not such an account.

Mr. Fraser: I ask my friend if he has any documents in court in connection with the Vancouver office prior to the month of November, 1928?

Mr. Sloan: We have all the documents brought up here my

learned friend requested us to bring, except the Vancouver house account.

Mr. Fraser: Well, I want it on the record. I have seen these books and I have good reason to believe there are no documents of the Vancouver office prior to the month of November, 1928.

Mr. Sloan: No documents other than the clients' ledger sheets.

Mr. Fraser: I ask my friend if he has in his possession, or has produced, the confirmations covering Grandview and George Copper at times material to this action.

10 Mr. Farris: With the exception of the three months referred to in my letter they are here, I believe.

Mr. Fraser: And that is—

Mr. Farris: January, February and I think March, 1929.

Mr. Fraser: My learned friend could find out. I would like it to go on the record.

Mr. Farris: We have not buy and sell confirmations for George Copper and Grandview for the months of January, February, March and April of 1929, and I do not know where they are.

20 Mr. Fraser: Now I understand that certain house accounts are missing from the 9th to the 29th of March, 1929.

Mr. Farris: I do not know of any being missing.

The Court: I did not hear you. What was your answer?

Mr. Farris: I do not know of them being missing.

Mr. Fraser: Well, I ask my friend to kindly ascertain. The file is here.

Mr. Sloan: I am instructed that they are here. The file of stuff is ten feet high. We have produced everything we were told.

Mr. Fraser: I can deal with that later.

30 Mr. Sloan: I think the proper position to take is, we have obeyed your lordship's order by bringing these in here, surely.

The Court: The answer apparently is that they are here, Mr. Fraser.

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Mr. Sloan: I am instructed that Mr. Murphy, my friend's partner, went into the office where these documents were kept, in Vancouver, and told the clerk in charge here the documents he wanted, enumerated them, and they were segregated and brought here, and they are here.

Mr. Fraser: We will easily ascertain. I am instructed that the House confirmations for that period are not here. I will ask my friend to produce the three Calgary trading ledgers.

Mr. Farris: They are not here.

Mr. Fraser: They are not here?

10

Mr. Farris: No.

Mr. Fraser: And the Toronto house ledger, which is in their possession according to the affidavit of Mr. Seaborn.

Mr. Farris: It is not here.

Mr. Fraser: Well, my lord, as to that I am going to draw the following facts to your lordship's attention. That Toronto trading ledger—

Mr. Farris: I might say that those are in court in Toronto at the present time, under subpoena. We wired Toronto on receipt of notice and we were advised that they were all under subpoena, either on file in the court in Toronto or under subpoena in the Toronto court, and therefore they are beyond our control in bringing them here. 20

Mr. Fraser: My lord, I want to draw these facts to your lordship's attention. On the 1st of October of this year your lordship made an order—

The Court: Well, but now if you please Mr. Fraser—if I understand Mr. Farris correctly he says that certain documents are at present in court in Toronto or are under subpoena to bring them there, and are beyond the control of the company. That is what Mr. Farris meant? 30

Mr. Farris: That is what I said as counsel in this action.

The Court: Now will you deal with what the rules would say to that, assuming that to be so, unless you contradict.

Mr. Fraser: Well, my lord, my friend has produced a wire, and

the genuineness of the wire I am not disputing. It is a reply to Mr. Farris.

The Court: What position according to your submission, would the matter be in if those documents are in court in Toronto?

Mr. Fraser: If they are, my lord?

The Court: They could not be in both places at one time, so what would your submission be?

10 Mr. Fraser: If those documents were properly in court, impounded in court and subpoenaed, I do not think your lordship could do much in the way of giving an order against this company, but I am to submit to your lordship that as far as this court is concerned, the defendant company has these documents in its possession. I am not casting any reflection on my friend, but I am on his clients. At the last moment to produce a wire—and I want your lordship to ignore the wire and to treat these documents as in their possession and to make an order accordingly.

20 The Court: Well, but if you please, I am instructed by counsel that they are in receipt of a wire reading as has been read. Now that might not prove the contents of the wire, but if you were challenging the truth of it and asking me for any order on the assumption that it was not true, it would seem, subject to what you have to say, that I should have some evidence before me as to how the matter stands. If you are not accepting the statement of counsel, there should be some evidence. For example, if it is brought to my attention that I have reason to believe that these documents were in court in Toronto, you could hardly submit that I could make some order.

Mr. Fraser: I am charging against these defendants, bad faith.

The Court: Well, you put your submission, Mr. Fraser.

30 Mr. Fraser: I have the evidence, my lord, the records of this court.

Mr. Farris: Now, my lord, I would refer your lordship to the affidavit of Seaborn.

Mr. Fraser: I am coming to that.

The Court: You wish to lead evidence to show where these documents are?

Mr. Fraser: Yes, and to show that this is just an attempt to

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evade the issue at the last minute by the production of the wire. I want to show your lordship the trouble I have had with that Toronto house account. On the 1st of October, 1931, your lordship made an order that the defendant company make an affidavit of documents. That is the first step, my lord.

The Court: The date of that?

Mr. Fraser: The 1st of October. On the 15th of October Mr. James F. Macdonald made an affidavit of documents, and 1, my lord, is documents which they don't object to produce; documents in their possession which they object to produce, all documents in its possession relevant to the pleadings in this action. Now, my lord, I could not accept that affidavit and I applied to your lordship on the 19th of October and your lordship made an order that they make a further and better affidavit, specifying all the documents in its possession or power, which were relevant, which they objected to produce. On the 31st of October Mr. Macdonald made a further affidavit of the documents which they do not object to produce; certain correspondence between the trustee in bankruptcy and themselves. And documents which were relevant but which they objected to produce on the ground that they would tend to incriminate, were some buy and sell slips, copies confirmations, clearing house sheets, ledger sheets and stock register. I want to pause here, my lord, to say that there is no mention of house account. My friend will on this trial contend "Oh, we may have been short in Vancouver, but we had these stocks in Calgary and Toronto; we were short in Vancouver, but we were long in Calgary and Toronto." And I want to find out where those house accounts are which would show the position in Calgary and Toronto. Now, I have specific information that there were certain documents in their possession, and I applied to Mr. Justice D. A. McDonald under the rules and said I suppose they had the house accounts in their possession, and I specified the Vancouver house account, Calgary house account, the Toronto house account, the minute book and certain further material correspondence. Now this is the important feature: there were these three house accounts, certain correspondence which was put in in the criminal trial in Alberta and one letter which was put in in the criminal trial in Toronto, and the minute book of the defendant company—

Mr. Farris: With all due respect I do not see where this argument is leading to. My learned friend has already cited an authority, a decision explaining the position, namely that all the notice to produce gives, was an opportunity of producing these documents here, and if we don't produce them, the only rights it gives them is the right to give secondary evidence concerning the same. Now when each document comes in, if we have not it here, then we can argue on his right to give secondary evidence at that time.

The Court: I will hear Mr. Fraser.

Mr. Fraser: On the 6th of November, my lord, Mr. Justice D. A. McDonald made an order that they specify whether those documents were in their possession or power—the ones I have recited—the Toronto, Calgary and Vancouver house accounts, the minute book and the correspondence. He gave them eleven days, my lord, to do so, that is from the 6th of November.

The Court: Simply to say whether they were in their possession?

10 Mr. Fraser: Yes; and if they were not, what had happened to them. That is under the rules. They must state whether they are in their possession, and if not, where are they, or when they will have them. He gave them eleven days, and they did not get that affidavit out here in eleven days, and I made a motion to strike out their defence, and my learned friend, on the application to strike out the defence, produced a wire and read it to his lordship Mr. Justice McDonald reading as follows:

20 “Re Frontier, Toronto ledger exhibits filed in action Rochester versus Solloway Mills, at Toronto.” That is only part of it, your lordship will see, from the subsequent affidavit. Part of it was filed in that action.

“Except for period May first to October twelfth nineteen twenty-nine, in our possession.

Now that is a wire stating that they had part of it in their possession.

The Court: Read that again.

30 Mr. Fraser: “Re Frontier, Toronto ledger exhibits filed in action Rochester versus Solloway Mills, at Toronto. Except for period May first to October twelfth nineteen twenty-nine, in our possession.”

Mr. Sloan: What is the date of the telegram?

Mr. Fraser: It is the 26th of November, (Reading)

“Three Calgary ledgers our possession. Vancouver ledgers seized by Crown July thirty-first and not returned. Minute book both companies in our possession. Certificate of incorporation lost.”

That is the one I asked for, my lord.

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This is the correspondence I was referring to in the Calgary and Toronto trial.

"Re your letter, correspondence seized by Crown in Toronto and not returned."

Now on the faith of that, and in the belief that they would come out, I did not press my application to strike out their defence. But, my lord, I wrote Mr. Farris on the 26th of November, as follows: (Reading)

"I have a copy of a wire you received yesterday. . . ."

The Court: Oh, well, if you please, Mr. Fraser—

10

Mr. Fraser: (Reading) "I made a copy of the wire you received today. . . ."

Mr. Sloan: So far as my learned friend is referring to myself, I appeared on that motion and there was certainly no understanding of any copies of any correspondence being produced on this trial.

Mr. Fraser: (Reading) "As to the Vancouver ledger account and correspondence mentioned in the previous wire. . . . I am getting in touch with the Attorney-General of Ontario through my agents in Toronto, and will advise you further."

Now, my lord, a few days ago—it might possibly be a week, or a few days—this affidavit came along from Mr. Seaborn, and for the first time we have an affidavit from them as to the documents in their possession, specified, and I only need trouble your lordship as to the house account, Toronto trading ledger from May 1st, 1929 to October 12th, 1929, which is material to this action, three trading ledgers Calgary office, and minute book.

The Court: I don't follow you there.

Mr. Fraser: Number six was the Toronto trading ledger from May 1st, 1929, to October 12th, 1929; three is trading ledger Calgary, and the minute book. That affidavit was sworn on the 26th of November. They said that those were in their possession and power. They claimed privilege with regard to them, but they said, "we have them." As I say, I have had that affidavit in my possession for three or four days.

30

The Court: So according to that affidavit those documents you have just mentioned were in their possession but privilege claimed?

Mr. Fraser: Yes, on the 26th of November. Now, my lord, I have an affidavit from Edward Morgan which arrived this morning, saying that—

Mr. Farris: I object to any affidavit.

The Court: Yes, please. I wish to follow you Mr. Fraser, as to what, if I am to go into the question anyway, just the documents—how you can get before me an affidavit, or even wires, as to where they are.

Mr. Fraser: I will accept that ruling, my lord. Then my learned friend cannot introduce that wire.

The Court: As I said before, he has referred to the fact that he has a wire, but as I pointed out that does not prove that the statements
10 contained in the wire are so.

Mr. Fraser: No, I see that, my lord. All I want to do is to show you the bad faith of this company.

Mr. Farris: I object to that statement. My friend has no right to make such a statement.

The Court: In the meantime it is not necessary to go over that. May I ask what your submission is as to how I am to determine, if I must determine, where these are? It would seem to me there would have to be evidence called before me. I could not just take letters and wires and come to a conclusion, and base some order upon it. I would
20 have to have some evidence, as you would agree, would you not? For example, if I was satisfied that there were certain documents in the Toronto court, then it would seem that some adjournment could take place until those documents would be available. But unless you had some authority to say how I could order that the documents in court in Toronto should be produced in court in Vancouver—

Mr. Fraser: I entirely agree with your lordship, with this qualification: if your lordship is satisfied that the documents are not in their possession, by having been bona fide handed out under subpoena—but I ask your lordship to bear in mind that on November 26th
30 there is not one suggestion of those documents being under subpoena. The documents are not here, and at the last moment, on the eve of the trial, these vital documents—my learned friend walks in with a wire and he says “Oh, they have been subpoenaed according to our wire from our agents at Toronto.”

The Court: Well, what is your application?

Mr. Fraser: Well, I want your lordship to assist me in the fair trial of this action.

The Court: Well, I hardly like the way you put that.

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Mr. Fraser: Well, your lordship, I mean this—

The Court: I have ordered the production of certain documents by the defendant. Is it your suggestion now—there is the statement on the part of the defendant that certain documents are not in their possession, but in the court in Toronto. If you were to lead evidence to prove that that is not so, I would hear the evidence. I would think that is my duty. But if there is no evidence forthcoming—it might be said that there is no evidence before me that they are in Toronto, but as to where they are, I would have to have some evidence from one or both of you. That is, I cannot accept, unless counsel agree to accept 10
it themselves, wires and letters; I cannot accept them as evidence; as proof of the contents of the wires.

Mr. Fraser: I am in this position; I see your lordship's dilemma and I want your lordship to appreciate my position. Until this morning on the opening of the trial these documents are in their possession according to their own affidavit. They say "we have the Toronto house account, Calgary house account and the minute book; we have got the Calgary ledgers intact; we have the Toronto ledger from May to November, 1929, and we have the minute book." Your lordship has ordered them to produce them; they came along with a wire at the 20
eleventh hour and say "we are very sorry. Our agents in Toronto advise us that four of those documents apparently are now missing." I cannot say any more, my lord.

The Court: With regard to missing documents?

Mr. Fraser: They say one I have is under subpoena.

Mr. Sloan: Both of them.

Mr. Fraser: There is nothing about the Calgary ledger accounts, my lord. They admit that they are in their possession, and they are not here; they say under subpoena to produce Toronto trading ledger May to October 1929—that was the one that was in their possession. 30
They now, at the last moment, say it is under subpoena, and they now say that the Dominion minute book is in the case of Rochester.

The Court: The wire has been read into the minutes.

Mr. Fraser: No, not this wire.

The Court: Well then, you are bringing the contents of the wire before me.

Mr. Fraser: I say it is not evidence at all, but if your lordship is listening to counsel's statements, I must refer to it.

The Court: As I said, I am accepting the statement of counsel unless you contradict it, that he is in receipt of a certain wire reading as follows, which I thought had been read into the notes, but I am not accepting that as proof of what is said in the wire.

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Mr. Fraser: The wire says that the minute book and the Toronto ledgers in question for this period, that on November 26th was in their possession; that those two documents were in their possession on November 26th. They now say that they are filed as exhibits, but the Calgary ledgers, my lord—

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10 The Court: What about the Calgary ledgers?

Mr. Fraser: —are still in their possession; and there is no suggestion that they are in any court or cannot be here.

The Court: Well, then, if you please, Mr. Farris, my order will cover the production of the Calgary ledgers.

Mr. Farris: I will ask your lordship not to make any ruling until I am heard. I am entitled to be heard in this matter. It is rather an important matter.

The Court: But that is common ground, is it, that the Calgary ledger is still in your possession?

20 Mr. Farris: No. The only information I have is this wire, which I will read to your lordship. (Reading wire) Now all of those documents are in Toronto.

The Court: In your possession?

Mr. Farris: In possession of us or in the court.

The Court: If they were in your possession—

Mr. Fraser: They say they are in their possession. That is the affidavit of Mr. Seaborn.

30 The Court: Well, I know that. I want first, if you please, what documents are in the possession of the defendant as common ground. Is it common ground between counsel? That is what I want to know first of all.

Mr. Farris: As far as I know the Calgary ledgers are in Toronto or on their way out here, I don't know which. They may be in subpoena under the Rochester action—I don't know. The only intimation I have had in that regard is the wire I have read your lordship.

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The Court: Now what documents is it suggested are in court in Toronto?

Mr. Farris: It is suggested that all of the Toronto documents are in court in Toronto.

Mr. Fraser: No, my lord, are under subpoena.

Mr. Farris: Either in court or under subpoena. The Seaborn affidavit, which you have read already, states that several of the documents are in court there. (Reading affidavit). But my learned friend, it seems to me, is starting out with his usual tactics in these cases, and endeavoring to throw a little mud to start with—

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The Court: No—but if you please, assuming that certain documents are in your possession and that certain other documents are in court in Toronto, and certain other documents are under subpoena, what are the rights of the parties?

Mr. Farris: My friend opened up discussing his rights, and he referred to the case of Dwyer vs. Collins. At any rate the decision in that case was that—he started out to ask us if we had certain documents in our possession or in court. We replied that we had not. It then gave him the privilege of giving secondary evidence. Now, my lord, whether or not we have been guilty of negligence, or for whatever reason the documents have been destroyed, the notice to produce is for the purpose of giving us opportunity of bringing into Court the original documents, and now if we don't bring those original documents into court, by so failing to do my friend is just put in the position of being able to give secondary evidence to prove the contents by copies. Now my friend, in this case is endeavoring to throw mud as per usual. My friend has known that there were certain documents in Toronto, certain documents that we wanted to get evidence upon. My friend knows the rules of court, knows that he had a right to go to Toronto and take commission evidence, find out what was in those documents.

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The Court: I would ask you to distinguish in your argument the documents in your possession and documents in court elsewhere or under subpoena.

Mr. Farris: Well, as far as defendant's position is concerned, we are given a notice to produce at the eleventh hour, documents scattered all over this country, and documents which have been carried from court to court or seized. To bring documents from Toronto here, I submit my friend should have given us ample time.

The Court: Do you seriously submit if you have documents in 40

your possession, that you can simply appear at the trial and say "We don't produce them," and the only right the other side has is to produce copies in evidence. Is that what you say?

Mr. Farris: I do say that.

The Court: Even if you had them in your possession?

Mr. Farris: Even if we had them in our possession.

The Court: That you could refuse to produce them? And the other side has the right to produce copies?

Mr. Farris: If my friend wants to overcome that position, he
10 has the right to serve some particular officer with a subpoena duces
tecum to bring those documents here. My friend, Mr. Sloan, has just
given me a citation. I refer to Phipson on Evidence, the last library
edition, at page 523, which deals with notice to produce, and says:
(Reading).

The Court: No, if you please I have ordered the production of
certain documents.

Mr. Farris: Then, my lord, I will have to ask for two weeks
adjournment to comply with your lordship's order, because certain of
those documents are in Toronto. Your lordship cannot order me to
20 produce documents here in five minutes, which are in Toronto.

The Court: No; subject to what Mr. Fraser says I would rather
agree.

Mr. Farris: And I submit that your lordship, all your lordship
is able to do in that is to order the documents to be produced with the
notice to produce. Your lordship cannot extend the powers of the
notice to produce. The object of the notice to produce is to enable the
adversary to have the documents in court, and if he does not, to enable
his opponent to give secondary evidence thereon, so as to exclude argu-
ment if the latter has not taken reasonable means to procure the
30 original. Now that is all there is in a notice to produce. In other
words, what your lordship should order is this—as I take your lord-
ship's order, your lordship says that when we are served with notice
to produce, what we say is "We are not entitled to produce them, we
claim privilege"; then your lordship says "No, you are not entitled to
privilege. You are in the same position as any other defendant in an
action." I think that is as far as your lordship's decision will go.

The Court: And I order the production of the documents.

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Mr. Farris: Your lordship orders that we are not entitled to claim privilege on the ground that they may tend to incriminate us.

The Court: Just please confine yourself to the question of the documents in your possession. I have ordered their production, and you say they are in Toronto.

Mr. Farris: I did not understand that your lordship has ordered production ;there has been no subpoena, no material filed before your lordship as we claim.

The Court: Well, I made an order that the documents be produced here. 10

Mr. Farris: With all due deference, as I understand it, we ask for the privilege of producing those documents under the notice to produce. That was our application was it not? And upon that application your lordship held that we were not entitled to privilege, that we were entitled to comply with the ordinary notice to produce. In other words, my lord, if I may be permitted to suggest, the farthest your lordship could make an order would be—Supposing we had not claimed any privilege, that your lordship's order goes so far as to say "Here, you are to produce those documents on the same basis as if no privilege had been claimed." I think that, my lord, is a fair interpretation of your lordship's order to produce. 20

The Court: In other words your submission is, if you had documents in your possession that I have ordered you to produce, and the other side had no way of getting on with the matter, the only rights they have in the absence of production by you, is to adduce in evidence copies which they haven't got.

Mr. Farris: They could subpoena those documents. I suggest this, supposing that we had not claimed privilege for the production of those documents, that we had made no application for privilege—then the matter would come before your lordship. Your lordship then could only have dealt with it on the ordinary notice to produce. Now because we claim privilege, and your lordship says "No, you cannot have the privilege," surely your lordship's order does not extend farther than if we had not claimed it. I do not think your lordship surely would suggest that you have the power to do that, I submit with the greatest respect. Your lordship will remember that my learned friend in opening started to ask if we had certain documents here; he stated to your lordship the reason why. He said, because he had to establish, he asked us those questions in order to establish his right to give secondary evidence of those. That was his submission to start with, and that was his reason for asking those questions. This reading of all these affidavits and documents and all the rest of it, has no bearing whatever 30 40

upon it, and I submit that your lordship is not in a position to make any order at the present time, one way or the other. If my friend comes before your lordship and applies to adjourn the trial and asks for the production of those documents from Toronto, and shows ground upon which your lordship can order the production of these documents here in court, or asks for a commission to examine those documents which are in court, then that is a different matter. But my friend has not asked for any such order, nor has he filed the material or established the basis to make such an application. So I submit we
 10 are just in the position now of the ordinary notice to produce. If we do not produce those documents, that my friend now has a right to go ahead and give secondary evidence, and as my friend has had full opportunity of knowing where these documents were, has had ample time, notice about all these documents, he could have taken a commission in Toronto and there would have been no question about it. Because he has fallen down in his preparation of the case there is no reason why we should in any way be criticized in connection with it.

Mr. Fraser: My lord, I only have one remark to make. Here are the Calgary—

20 The Court: First, as to the documents that the defendants have in their possession here, what is your submission? You have heard Mr. Farris apparently submit that the only rights you would have, even with regard to such documents, is to give secondary evidence.

Mr. Fraser: I say that my friend cannot be serious in that contention. I say this: if the defendant admits that he has documents in his possession relevant to this action, he may stand up in court and say "I refuse to produce them, I won't produce them," very important relevant documents, and my only rights would be to give secondary evidence—what if I cannot give secondary evidence?

30 The Court: Then what are your rights according to your submission?

Mr. Fraser: My rights are to ask the court to make an order to strike out the defence.

The Court: Are you applying for that?

Mr. Fraser: Yes, my lord.

The Court: That is with regard to documents which the defendant admits are in his possession here, not being produced, you apply to strike out the defence?

Mr. Fraser: Yes, my lord.

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The Court: With regard to any other documents what do you say your rights would be?

Mr. Fraser: Well I say it is a matter for your lordship. If your lordship thinks they are acting in good faith, and it is impossible for them to produce them, any order your lordship would make would be in your lordship's discretion. If your lordship feels that those other documents have been impounded in court and cannot be produced, I do not think your lordship can make an order; but as to the Calgary house account—

The Court: You must confine the matter now. At least I have 10 asked you now to speak to the second phase, in regard to any other documents not in their possession in the court or impounded. Do you make any application with regard to those at all?

Mr. Fraser: No, my lord. If your lordship feels on the evidence—

The Court: There is no evidence before me.

Mr. Fraser: No, my lord; there is an admission which is a record of this court.

The Court: With regard to documents which it is contended are in court in Toronto, assuming for the moment that they are, what do 20 you submit your rights are?

Mr. Fraser: I do not ask for any order as to those.

The Court: Or any adjournment?

Mr. Fraser: No, my lord. Of course, if my friend wants an adjournment—I am not suggesting an adjournment.

The Court: Then your application is to strike out the defence on the ground that the defendants have not complied with the order I have made for the production of documents in their possession?

Mr. Fraser: To go further, have not complied with my notice 30 to produce on the 13th of November, 1931.

Mr. Farris: I will ask my friend to show an authority for striking out a defence for not complying with notice to produce.

The Court: Tell me clearly and distinctly, if you please, what application you are making.

Mr. Fraser: I am asking, my lord, that the defence of these defendants be struck out, on the ground that the Calgary house accounts, which according to the affidavit of an officer of the company deposed on the 26th of November, 1931, as in their possession; combined with my letter of the same date, which is now in the record, stating that that was wanted at the trial and would they send it right away.

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The Court: On the ground that—I have followed you; what is your ground? You are submitting now what ground on which the
 10 defence of the defendants should be struck out?

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Mr. Fraser: On the ground that I gave them this notice to produce these documents, and they admit they are in their possession. Your lordship has ordered that all documents in their possession should be produced. They have not produced this house account and I am now asking—

Mr. Sloan: Call them by their name.

Mr. Fraser: The Calgary house account; and I am now asking that the defence be struck out.

Mr. Farris: That only applies to the company, of course. You
 20 cannot strike out the defence of the other defendants. I do not think my lord, that I have anything to say. I think it is a most remarkable proceeding.

The Court: Well, if you please, I have ordered the production of documents which you admit to be in your possession. Do I understand you are refusing to produce the documents in your possession?

Mr. Farris: No, my lord.

The Court: Well, then, I order you to produce the documents in your possession.

Mr. Farris: Your lordship has not given me an opportunity, I
 30 say that as far as the Calgary house account, the Calgary ledgers are in Toronto.

The Court: Well, of course, what is your position in regard to that.

Mr. Farris: The documents I referred to are all in Toronto. They have been wired for and as far as I know are either in Toronto or on their way out here. Now, I submit this, that I do not think your lordship intended to order us to produce here in court documents which are in Toronto—

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The Court: Or on their way. My order would include documents in your possession, but if they are in Toronto or on their way here, there should be time given, and I would give you time for their arrival here.

Mr. Farris: As to that I have not any complaint at all. I have no argument. Your lordship has so ordered. As I say, there was no application made to your lordship for such an order, there was no material—

The Court: Well, I have ordered their production. 10

Mr. Farris: There was no material before your lordship to make such an order, but your lordship has made such order without such material. We surely do not have to have them here in court. We sent out and got the others which were in town.

The Court: It appears to me a reasonable objection. Assuming that my order has been made for the production of all documents in the possession of the defendant here, now objection is made that some of those documents are in Toronto or on their way here. Have you anything to say why I should not adjourn the matter for a reasonable time, for those documents to arrive here? 20

Mr. Fraser: Yes, my lord. Rather than face an adjournment I would go on, risk a trial rather than have an adjournment. Of course, an adjournment suits my friend, but it does not suit me. And my lord, there is not one suggestion of those documents being on their way and I would ask your lordship to bear that in mind.

The Court: I am assuming that counsel has taken the responsibility in telling me that those documents are not here—

Mr. Farris: I accept that responsibility as counsel, and so stated to your lordship. 30

The Court: Assuming that they are in Toronto the order that I would make, if you do not wish to go on without them, would be that the trial stand adjourned for a reasonable time until they could be brought here. But if you prefer to go on immediately without them—

Mr. Fraser: Well, my lord, I am going to proceed without the documents, if your lordship asks me, puts me in the position—

The Court: I have made an order that they be produced, and it is common ground that they are in Toronto, and you moved to strike out the defence, and my position would be it seems to me a reasonable one, that I would grant an adjournment if you so desire, for a reasonable time within which they should be brought here from Toronto. 40

But if you prefer to go on rather than to wait, then the trial shall proceed.

Mr. Fraser: There is only one thing I would like to draw your lordship's attention to. Although it is common ground that the documents are in Toronto, your lordship is bearing in mind that they had notice to produce that house account and my letter of twelve days ago asking them to have these documents here.

The Court: You prefer to have the matter go on?

Mr. Fraser: Yes, my lord.

10 The Court: Very well, the trial will proceed.

Mr. Fraser: I will call Mr. Beck.

GEORGE LEWIS BECK, a witness called on behalf of the plaintiff, being first duly sworn, testified as follows:

Mr. Fraser: My lord, before we go on in this trial, there is a possibility of it lasting five days. I don't know, but this Dominion minute book and this house account—I think if your lordship made an order now that they be sent for tonight by air mail, we would have them here before the termination of the trial. I ask for that order.

20 Mr. Farris: I will say this, my lord, that I will be very glad to wire tonight to Messrs. Slaght & Cowan.

DIRECT EXAMINATION BY MR. FRASER:

Q. You were formerly associated with Solloway Mills & Co. Ltd.? A. I was.

Q. When did you first become associated with them? A. In February, 1928—no February, 1929.

Q. February, 1929? A. Yes—

Q. And what were your duties at that time? A. I started in as clerk in the securities department.

30 Q. As clerk in the securities department? A. That is right.

Q. And how long did you occupy that position? A. Until the fall of that year.

Mr. Farris: Well, my lord, in the first place I think that before my friend has any right to give evidence of what happened in Solloway Mills, I think he should establish some connection between Solloway Mills and his client, that there was some contractual relation of some nature.

The Court: I suppose you undertake to do that, Mr. Fraser?

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Mr. Fraser: Well, I would not succeed in the action unless I did, my lord. But surely as to what occurred—

The Court: Well, go on.

Mr. Fraser: Q. You continued in that position until when?

A. Until the fall of 1929.

Q. You were there are— A. Clerk in the securities department.

Q. And then what was your position? A. In charge of the securities department.

The Court: Will you speaker louder, please. 10

A. I was placed in charge of the securities department.

Q. You were formerly a clerk? A. Yes.

Q. And then you were placed in charge? A. Yes.

Mr. Fraser: Q. When were you in charge? A. In the fall of 1929.

Q. Just tell his lordship what your duties were in the securities department? A. In the securities department we received in all stocks and bonds and industrial stocks deposited for collateral from clients and from other brokers, clearing house, and from all the branches, and stocks to be delivered to the same parties. These stocks 20 were registered and kept a record of in our department there; with the assistance of the clerks of the securities department I kept the record of those deliveries and receipts and records of all stocks that passed through our hands.

Q. Was there any daily record kept of the stocks on hand? A. Yes; each certificate that came into the office was recorded in the stock register.

Q. I want you to look and see if the stock register is here, Mr. Beck. A. Yes, this is our stock register of the Vancouver office. (Indicating). 30

Q. Were there any other stock registers? A. Well, the stock lists in those days were all divided up into small books so that they would be more easy to handle.

Mr. Fraser: Are these all the stock registers my friend is producing?

Mr. Sloan: There are some more, but as I understand, Mr. Murphy set out all they wanted.

Mr. Fraser: Q. You can identify those as stock registers? A. I identify those stock registers.

(DOCUMENTS PRODUCED MARKED EXHIBITS 40
 No. 1, 2 and 3, RESPECTIVELY)

The Court: You know Mr. Fraser what your instructions are in regard to this matter. If you would have the witness explain the use, as far as—

Mr. Farris: Now, my lord, I am objecting to those books going

in as volumes in that way. I submit that my friend will have to pick from those stock registers, only those particular things which concern this action, and I am objecting to anything going in that is not directly applicable to this action. I do not want a whole bundle of stuff put in and then afterwards try and figure out what is necessary to this action and what is not.

The Court: Well, can counsel not segregate them?

Mr. Fraser: We have, as we did in the other actions, prepared a synopsis of these records; but as in the Lockett trial they were all
10 put in and identified.

The Court: That is the registers were put in?

Mr. Fraser: Yes. And then it was admitted that the synopsis we prepared—

Mr. Farris: I have not agreed to any such thing. I object. I object to you saying something else happened in some other case with some other counsel present. I was not on the Lockett trial.

The Court: Well, the procedure in any case may be cited now.

Mr. Farris: Well, I submit that there is only one procedure and that is to follow the ordinary rules of evidence and put in only those
20 documents which are evidence in the action, and not to put in any other documents.

The Court: Assuming that in that collection of registers only certain pages thereof are relevant, it may be necessary to have the stock registers go in and those pages be marked. Of course, I can very well imagine that there will be other sheets which would disclose the private affairs of other people, with which we would not be concerned.

Mr. Farris: That may be true, but in that case only those pages should be marked. Unless we agree rather than tearing out the pages
30 the whole book should go in. But my friend should put in the pages only which are evidence in this action, and not a lot of material which apparently has no bearing on the action, which would be allowed to go in and afterwards we would find some different meaning is taken out of it altogether. My friend has referred to a certain action. In the action, in the McGee action in which I was, I agreed to the necessary documents going in upon a general basis, and then in the argument after the trial there was something brought up which I had no thought of agreeing to as being in there at all—

The Court: So far as it was relevant, of course, you would agree
40 that it is admissible?

Mr. Farris: As far as it is relevant and properly proved. The point, as I said in opening, that in this action with respect, I am urging that the strict rules of evidence be followed, and that my friend put in the evidence in the ordinary method, relevant matters only, to go in.

The Court: No, Mr. Fraser, just relevant matters.

Mr. Fraser: I am only putting in what is relevant, my lord.

The Court: They may be segregated and have a list prepared.

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Mr. Fraser: These documents are very relevant, all of them.

The Court: You mean every page of Exhibit 1 you submit is relevant?

Mr. Fraser: No; important. May I put it that way?

The Court: There may be page after page referring to the business of other people.

Mr. Fraser: It is relevant in this way; I am alleging that this is a bucket shop. Now, my lord, in connection with that, and I have set out that they were bucketing, and it is in the pleadings, not only Mr. Frontier's orders but all orders.

The Court: Your submission is that all pages are relevant?

Mr. Fraser: Yes, my lord. Before I can succeed in this action I have to show that they were victimized by the bucketing, but I am first showing the system, and then I am going to link that system up, that they suffered by that system, but in proof of this system all these books are relevant.

The Court: And all the pages are relevant.

Mr. Fraser: We prepared a synopsis, but I adopt your lordship's argument.

The Court: There may be pages referring to the business of other people.

Mr. Fraser: Would you tear them out of the ledger? Those are produced as their books, my lord.

The Court: I would not suggest tearing them out. Frequently we have a ledger marked, and then just certain pages therein marked.

Mr. Fraser: That will be done. Once a ledger goes in and they are marked, then we have this synopsis digest so far as his claim is concerned.

The Court: Well, I will allow the ledger to go in, and the witness to explain the system.

Mr. Farris: My lord, there is no general allegation of the conversion of everyone's stock. Now surely we cannot have put in here a mass of material of that sort. We have to sort them, as I say. My learned friend says he has a synopsis. It is true he may have a synopsis suiting him but he may change that synopsis ten minutes after this goes in.

The Court: I think Mr. Farris should know throughout the trial, or finally anyway, which pages are covered.

Mr. Fraser: He has had all the information. He has got it before him now.

The Court: You are speaking of the synopsis.

Mr. Fraser: My lord, a synopsis has been prepared. Two weeks ago we agreed that I would prepare a synopsis, and all those figures have been checked by his own witness.

Mr. Farris: I am not accepting this synopsis at all. I stated that at the opening. I am not accepting this synopsis. I am insisting

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on my rights as counsel, that my friend prove his case in the ordinary way.

The Court: I am allowing the registers to be filed and I am asking for a synopsis to be prepared, and the matters, items that are admitted by counsel to be relevant, would be shown.

Mr. Farris: Is your lordship holding that that ledger contains all entries regardless of whether they apply to this action or not, whether they have any bearing indirectly or directly on this action.

The Court: I am ruling that the registers may be marked as
10 exhibits.

Mr. Farris: That is a general register dealing with all of these accounts. We have not even had described what this register is.

The Court: It is called a stock register. Those are already marked as Exhibits 1, 2 and 3.

Mr. Farris: My objection will be noted, my lord, to all three. We are only dealing with one. I did not notice we were dealing with two and three.

The Court: I thought they were of the same classification.

Mr. Farris: I don't know. They have not been produced to me
20 yet. I haven't seen them.

The Court: They were marked as they were tendered.

Mr. Farris: Well, they were not produced to the witness at the time.

The Court: Very well, will you produce 1 to the witness first.

Mr. Farris: I would like to know, my lord, what particular branch of the action these books are being put in in connection with.

The Court: Just a moment. Ask the witness.

Mr. Fraser: Q. Witness, can you identify this document? A. Yes, I can.

30 Q. What is it? A. Stock register of oil stocks received by Solloway Mills & Co. Ltd.; just the oil stocks dealings from M to Z.

Q. A register of the oil stocks from M to Z? A. Yes.

The Court: Now, have you anything further to say Mr. Farris?

Mr. Farris: Yes, my lord, I have to say this: that there is nothing in the pleadings which would justify this book going in as evidence. The only paragraph is paragraph 7 of the amended Statement of Claim. (Reading paragraph 7). Now I submit, with all respect, my lord, that that register and all inclusive registry of other people's dealings, ought not to be produced and put in in that general way, but only the portions of that stock books which apply to that particular paragraph can
40 go in as evidence. I make that my objection.

The Court: Mr. Fraser, the stock register produced, to which the witness is now referring, is the stock register or one of them, mentioned in paragraph 7?

Mr. Fraser: It covers that. I am putting it in for two reasons. To show the receipt of my collateral that was sent down to them. That stock register shows the receipt of our certificates—these three. These

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are the relevant ones. And then I am putting it in on the further ground, to show the system.

Mr. Farris: In what paragraph are you pleading system?

Mr. Fraser: In paragraph 2 (AA), bucket shop.

Mr. Farris: That is not system.

Mr. Fraser: I am going to show your lordship from these stock registers that no certificates were earmarked for any individual client, but they were simply bought and sold from the house, and to show that system some reference is necessary to these stock registers. I only have this to say in connection with the system. I have alleged the system. I want to prove the system, that they were conducting a bucket shop. There is no jury here. Unless I can show, as I say, we were damaged by that system, we cannot succeed, and I am going to show the system through this witness and through their own books, and then endeavor to tie it up with the plaintiff. 10

The Court: Then the register may now be marked as Exhibit 1. Do you wish to go on with the witness with that Exhibit 1, or do you wish to put in, lead another?

Mr. Farris: Do I understand that my learned friend is instructed by your lordship to, before the trial is over—that these are just put in generally, but that he must identify each page. For instance, it sometimes happens there is an appeal taken. It will be a very cumbersome and lengthy appeal book to have to copy all these documents out, which have no bearing whatever on this action. 20

The Court: I may give some direction in regard to that later on. In the meantime the stock register has been admitted and has been marked Exhibit 1. Will you ask the witness with regard to any other stock registers.

Mr. Fraser: Q. What is this document, witness? A. This is the stock register of mining stocks from M to Z received by Solloway Mills. 30

Mr. Farris: Same objection, my lord.

The Court: Admitted as number 2.

Mr. Fraser: Q. What is that document, witness? A. That is the record of the mining stocks from A to L received by Solloway Mills & Company.

Mr. Farris: There is just one further objection. Those are being put in as against the defendant Solloway Mills & Company Limited. There are two individual defendants, Solloway and Mills, and those surely cannot be put in as Exhibits against the defendants Solloway and Mills, only as against the company. 40

Mr. Fraser: If I can tie these up with the other defendants, I propose to do so.

The Court: The document is admitted. The register is admitted as evidence.

Mr. Farris: Not as against the individual defendants. They are admitted as against the defendant Solloway Mills and Company

because the company has produced them. That is the only thing. These may offer evidence against them because they come from the defendant Solloway Mills & Company's possession, but they are not in the possession, nor is there any evidence as far as these documents are concerned, as against the individual defendants.

The Court: There may be evidence led to connect the other two defendants.

Mr. Farris: That is true, my lord. But throughout this action it will be necessary from time to time to take objection to the evidence.

10 The Court: And you are making that objection, that those three—

Mr. Farris: There is no evidence whatever to connect up these books. These books may well be marked for identification as against the two individual defendants, Solloway and Mills, but there has been no proof as against Solloway and Mills that they had any connection with Solloway Mills, as individuals. I submit, with all respect, that your lordship has admitted them as Exhibits against Solloway Mills & Company Limited, but they will be marked for identification as against the defendants, Solloway and Mills.

20 The Court: No, I will not do that. They are evidence in this case.

Mr. Farris: As evidence against all defendants?

Mr. Fraser: Q. I would like you to explain to his lordship just what these books disclose. Take an entry and point out to his lordship— A. The first entry discloses on September 24th, 1928, stocks five thousand for 200 shares Grandview Mine registered in the name of D. J. S. Duns.

30 The Court: May I ask if evidence is being led as to who the defendants Isaac William Cannon Solloway and Harvey Mills, are, in the action; they are with the defendant company and there will be evidence as to that?

Mr. Fraser: Yes, my lord.

Q. This is the number of the certificate, number of shares, and this is the name of the party who has the shares? A. The certificate is registered in—

Q. That is the date, the certificate, and from whom received?

A. That was received from the transfer office.

Q. And then there is this column here, to whom delivered? A. To whom the stock has been delivered.

40 Q. Is that same system followed with all stocks received? A. The same with all stocks received and entered in this register.

Q. There is no distinction between stocks received from clients and stocks received from the clearing house—they are all entered in this book? A. All entered in the same registers.

Q. Can you identify this document, witness. A. Yes, I can identify these as copies of the clearing house sheets, showing the record of all stocks bought and sold on the Vancouver Exchange.

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Q. What month is it? A. It is for the month of May, 1929.

Q. All stocks you say bought and sold on the Vancouver Exchange, by whom? A. By Solloway Mills & Company.

Q. Who prepared those clearing house sheets? A. Prepared by one of the clerks in the office.

The Court: Q. What is that? A. Prepared by one of the clerks in the office.

DOCUMENT MARKED EXHIBIT NO. 4)

Mr. Fraser: Q. By the way, in your department, the securities department, did you have anything to do with these clearing house sheets? A. Yes, they were prepared by one of the clerks in the securities department.

Q. Under your supervision? A. Yes.

Q. What is that document? A. This is the copy of the clearing house sheet showing record of all stocks bought and sold by Solloway Mills & Company through the Vancouver Stock Exchange for the month of June, 1929.

DOCUMENT MARKED EXHIBIT NO. 5)

Q. And similarly were these clearing house sheets prepared in the securities department? A. All prepared in the securities department.

Q. That was prepared in the securities department? A. Yes, they were.

Q. (Showing document). A. Those are also copies of all stocks bought by Solloway Mills & Company through the Vancouver Stock Exchange for the month of July, 1929.

(DOCUMENT MARKED EXHIBIT NO. 6)

Q. By the way, to your knowledge, did anybody else have a copy of these? A. Not this—

Q. What about the Vancouver Stock Exchange? A. The Vancouver Stock Exchange got two copies.

Q. They got two copies of these? A. They did.

Q. (Showing document). A. These are copies of the clearing house sheets showing all stocks bought and sold by Solloway Mills & Company Limited, through the Vancouver Stock Exchange during the month of August, 1929.

(DOCUMENT MARKED EXHIBIT NO. 7)

Mr. Farris: I presume, my lord, it is understood that my objection to these documents applies the same as to the stock registers.

The Court: Very well.

Mr. Fraser: Q. (Showing document). A. These are also copies of the clearing house sheets showing all stocks bought and sold by Solloway Mills & Company Limited through the Vancouver Stock Exchange for the month of September, 1929.

(DOCUMENT MARKED EXHIBIT NO. 8)

Q. (Showing document). A. These are copies of the clearing house sheets showing all stocks bought and sold by Solloway Mills & Company Limited through the Vancouver Stock Exchange for the 10 month of April, 1929.

(DOCUMENT MARKED EXHIBIT NO. 9)

Q. (Showing document). A. These are copies of the clearing house sheets showing all stocks bought and sold by Solloway Mills & Company Limited through the Vancouver Stock Exchange for the month of March, 1929.

(DOCUMENT MARKED EXHIBIT NO. 10)

Q. (Showing document). A. Records of copies of the clearing house sheets, showing stocks bought and sold by Solloway Mills & Company Limited through the Vancouver Stock Exchange for the 20 month of February, 1929.

(DOCUMENT MARKED EXHIBIT NO. 11)

Q. (Showing document). A. Copies of clearing house sheets showing all stocks bought and sold by Solloway Mills & Company Limited through the Vancouver Stock Exchange for the month of January, 1929.

(DOCUMENT MARKED EXHIBIT NO. 12)

Q. (Showing document). A. Copies of clearing house sheets showing all stocks bought and sold by Solloway Mills & Company Limited through the Vancouver Stock Exchange for the month of December, 1928. 30

(DOCUMENT MARKED EXHIBIT NO. 13)

Q. (Showing document). A. Copies of clearing house sheets showing all stocks bought and sold by Solloway Mills & Company Limited for the month of November, 1928.

(DOCUMENT MARKED EXHIBIT NO. 14)

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Q. All those clearing house sheets which have gone in were all prepared in the securities department? A. Securities department.

Q. Under your supervision? A. Yes.

Q. And copies went to the clearing house, you say? A. Copies went to the clearing house.

Q. Do you know anything about off-exchange transactions—that were cleared by brokers off the exchange? A. Well, off-exchange transactions, I know there was such a term used, and that occasionally it was practised by some of the brokers.

The Court: Q. What is that? 10

Mr. Farris: I submit this witness, he is giving now expert evidence as to certain practice. I think he should qualify himself as an expert, because just being a security clerk in the securities department.

The Court: Well, he was in charge of the securities department.

Mr. Farris: That does not give him a knowledge of general brokerage business.

Mr. Fraser: Q. What I am getting at—were off-exchange transactions recorded in those sheets, to your knowledge? A. No; off-exchange transactions were not recorded on those sheets. 20

Q. Were they reported to the exchange, do you know? Do you know anything about that? A. An off-exchange transaction is supposed to be reported to the clearing house.

Q. I want to know, would they go on the clearing house sheets? A. No, not necessarily, at all.

Q. Well, do you know? A. That they went on those sheets?

Q. How would they clear through the clearing house? Do you know how they would clear, or whether the clearing house would have a record of that.

The Court: Q. Well, do you know? Yes or no, do you know? 30

A. No.

Mr. Fraser: Q. If you don't know I can possibly get it from somebody else.

The Court: He says "No."

Mr. Fraser: Q. Would you mind stepping down here and identifying these? Do you recognize this carton? A. Yes, the cartons have been used by the Vancouver office of Solloway Mills & Company.

Q. Do you know the contents? A. These are for keeping in duplicate confirmations. These compartments and envelopes were used for keeping duplicate confirmations of all business transacted each day; also slips showing delivery and receipt of stocks to clients and to branches. 40

Q. You had better explain to his lordship first what you mean by confirmation. A. A confirmation is a confirming to your clients that we complied with his instructions either buying, or selling to him through the Exchange, certain stocks. If stocks are bought and sold,

they would confirm to the client through the confirmation, showing the number of shares.

Mr. Farris: I understand this witness was just in the securities department.

Mr. Fraser: Q. Had you anything to do with the confirmation?

A. We had copies of every confirmation in the securities department.

Q. You say you sent to every client a confirmation of the purchase or the sale of stock, did you? A. We did.

10 Q. What are these confirmations here in this particular carton? Are they clients' confirmations?

Mr. Farris: Now, my lord, surely we are not going to have the general clients' confirmations. They are the confirmations of Theo. Frontier Company; that is the only question we are concerned with here.

The Court: Mr. Fraser, there may be confirmations with regard to one hundred people here. Do you say you wish to have those marked as Exhibits here?

Mr. Fraser: Yes, my lord.

20 The Court: Well, would not one be sufficient for any system you are proving? The witness says they are sent to the client for stocks bought or sold. Should I cumber the record then with copies of confirmation slips sent to a great many people?

Mr. Fraser: Just for this reason: if my friend will admit that there is something like two or three thousand confirmations from the house—buys and sells from the house account.

Mr. Farris: I don't understand you.

Mr. Fraser: I want my friend to admit that at times material to this action the trading from the house account ran into thousands and thousands of confirmations, the number of shares.

30 Mr. Farris: I am not making any admission about the house account, whatever.

The Court: Well then Mr. Fraser wishes to prove it.

Mr. Farris: I am asking him to prove it individually.

The Court: Would this witness know. Just ask him what you asked Mr. Farris to admit now. Ask this witness if he can testify to that.

Mr. Fraser: Q. Can you say during your tenure of office from 1929, give the Court any idea as to the number of confirmations on trading from the house account?

40 Mr. Farris: Well now, my lord, I object to that question. It is most unfair, a leading question. There has been no suggestion yet that there was any trading from the house account, and he certainly cannot get it in that way.

The Court: I am not allowing you to lead this witness or to put words into his mouth, Mr. Fraser.

Mr. Fraser: I just asked him what these are.

The Court: He has told you that they are confirmations, and

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then you wish to have a certain matter of fact admitted by Mr. Farris, which he has refused to admit. Therefore, you may go on to prove it so far as it is relevant, not by asking leading questions, but—

Q. Will you explain what is in this carton here?

Mr. Farris: Well, now my lord, that certainly is not a proper question.

The Court: He has told me, has he not, that they are confirmation slips.

Mr. Farris: Yes; but there is a whole box of things brought in here, which have been sorted out, and my friend asks him what is in that carton. Now I don't know what is in that carton. Until he has gone through it he cannot say. He can say what is in that box or carton, but not before he has looked through it. 10

The Court: Well, if he wishes to do so he can look at them. Go through the documents then, if you please, before you answer.

Mr. Fraser: Q. You told his lordship that these confirmations were sent out to clients, did you? A. Yes, I did.

Q. Were there any house account confirmations—

Mr. Farris: That is a leading question. He should ask him what kind of confirmations. 20

Mr. Fraser: Q. Well, were there different kinds of confirmations? A. Yes.

Q. Explain to the court all the different kinds of confirmations that came into your department. A. There was buy confirmations which were mailed to clients; buy confirmations which are mailed to other correspondents; buy confirmations mailed to other branches; and there were confirmations made for the house account of the Vancouver office; there were also selling confirmations for the same parties.

Q. Now, during 1929, can you give any evidence as to the number of selling confirmations from the house? A. No. I can't. 30

Q. Are there any confirmations in this package which I am producing to you, are there any confirmations there? A. Yes, there are confirmations in this envelope.

Q. Buy and sell? A. Buy and sell confirmations, yes.

Q. For clients, or the house? A. For the house account.

Q. I want you to look through half a dozen more and see if there are any more house confirmations.

Mr. Farris: It will save continual objection, my lord—to these particular documents I am specifically objecting to on behalf of I. W. C. Solloway and Harvey Mills. What ever value they are I admit they can be marked as Exhibits against the company when they are proved; but how they can be admitted as against Solloway and Mills as individuals, I cannot see. I can only see how they could be marked for identification as against the two individuals. The position is quite different because one is a company and the others are individuals. They did certain things as officers or they conspired to do certain 40

things, and the remedy I submit in argument will be an entirely different remedy than the remedy against the company.

The Court: Mr. Fraser, you are undertaking to lead evidence showing what connection the two defendants, individuals, had with the company and with this box.

Mr. Fraser: Certainly, my lord. If I don't I cannot succeed.

Mr. Farris: Yes, but I think the ordinary procedure in that case—I do not think they are actually proved to go in as Exhibits.

10 The Court: I may have an Exhibit before me which is admitted on its face alone. Now then, it will be open to you to argue if there is no evidence led which connects the defendants, or makes them evidence against the defendants, to argue that it is not evidence against the defendants.

Mr. Farris: That will apply all the way through.

20 The Court: Now Mr. Fraser, let me have it clear between counsel so that there will be no misunderstanding. You can easily understand the situation where a document is produced and marked, there will be only three or four documents that would be evidence against only one defendant unless the other defendants were connected up with them. Mr. Farris is going to argue that these documents, even if they were evidence against the company, are not evidence against the individual.

Mr. Fraser: I put it this way: I am introducing these documents; unless I can by some evidence, tie those documents up with these individual defendants, I have not made out my case against them.

The Court: Very well.

Mr. Fraser: Q. Have you gone through this carton? A. I have. This carton contains buy and sell confirmations of the house account from July, 1929 to November, 1929.

30 ((CARTON MARKED EXHIBIT NO. 15))

Q. Now this one here, this carton?

Mr. Farris: I think my friend should at least enlighten us a little bit on that. He has a whole carton of documents. He says they are buy and sell slips on certain dates. He might at least give us some little idea yet even as to what application they have to this case.

Mr. Fraser: I will be very glad to do so. I am simply going to show they were running a bucket shop. I am going to show your lordship that all the trading was done for the house; clients were an incidental factor in their lives.

40 Mr. Farris: My friend has not yet given any intimation as to what these particular documents contain, or what they are proving. He has stated in a general way certain things he hopes to prove in the action.

The Court: Exhibit 15 contains what? The documents will speak for themselves. But surely, Mr. Fraser, some witness can tell

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me what it contains.

Mr. Fraser: The witness has stated that this carton which has gone in now as Exhibit 15, contains all the buy and sell confirmations for the house from July to November.

Q. What about this carton here? A. This carton here contains buy and sell confirmations for the house account for the months of April, May and June, 1929.

(CARTON MARKED EXHIBIT NO. 16)

Q. (Showing carton). A. This carton contains buy and sell confirmations slips for the house account for the months of January, February and March, 1929. 10

Mr. Sloan: The mere fact that this witness was not in our employ in January, '29, at all, makes no difference to him. He goes on to identify documents he knows nothing about.

The Court: It is suggested that the witness was not there, Mr. Fraser.

Mr. Fraser: Q. When were you working with Solloway Mills? A. In February, 1929.

Mr. Farris: You did not take charge of these until the fall of 1929. 20

Mr. Fraser: Q. Can you identify these in February, 1929? A. Yes, that is part of February, and for March, 1929.

The Court: Just a moment. What is your submission with regard to witness identifying a carton after he left their employ? Would your submission be that he could identify them from any of the documents there? Upon what ground? They are produced, of course, by the company. You suggest that you are leading evidence from this witness as to what they are.

Mr. Fraser: I am just giving double proof as a matter of fact. These documents are all produced under your lordship's order. 30

The Court: And this witness looks at them and he says they are during a certain period, and he identifies them as being so and so; and then he looks at the others made when he was not there, and you are asking him about those, to identify those, are you not?

Mr. Fraser: Yes.

Q. Witness, did you ever have occasion to refer back to the house confirmations prior to the time you were there? A. No, not to house confirmations exactly. I had frequent occasion to refer back to confirmations that came from the branch office, and at that time the house confirmations were all kept together. I had often seen them, I know, every month in 1929. 40

Q. Have you looked up January, 1929 confirmations? A. I did.

Q. Are they the same confirmations that were used when you were there? A. They were.

Mr. Fraser: I will prove the earlier dates by another witness. I am just proving, by reason of the objection I want double proof that they were identified by former employees.

Mr. Farris: As far as we are concerned these documents are only produced here under your lordship's order, and that is the only way they are here.

Mr. Sloan: By courtesy of the Court.

The Court: Assuming the documents are produced and I wish to know what those documents are, someone should tell me what those documents are, and this witness is telling me.

Mr. Farris: I want to make it clear, my lord. My learned friend says he was proving these documents in case your ruling this morning was wrong, and I say this: we are only producing them here on your lordship's order, so that the double proof is not helping him any, because they are brought here under your lordship's order; we produced them and we are not waiving any rule.

Mr. Fraser: Q. (Showing carton). A. This carton contains buy and sell confirmations, receipt and delivery slips for stock certificates, receipts for cash received—

20 Q. The confirmations alone is all I am asking. A. It includes confirmations for the month of April, 1928, and the month of November, 1929.

Mr. Sloan: During the time he was not employed by us at all.

The Witness: Confirmations for accounts Denbigh, Dickinson & Greathed.

Mr. Farris: Q. What period is that? A. All months from April, 1928, to November, 1929.

Mr. Farris: You will notice your lordship he is dealing with confirmations practically a year before he was employed by us.

30 The Court: Q. You had access to them while you were in their employ? A. Yes, your lordship, I quite frequently had occasion to refer to them.

(CARTON MARKED EXHIBIT NO. 18)

Q. Who are Denbigh Dickinson & Greathed?

A. Brokers in Vancouver; members of the Vancouver Stock Exchange. This bundle are buy and sell confirmations for date March 18th, 1929.

Mr. Fraser: Q. In what stock? A. They appear to be all for the stock of Dalhousie.

40 Q. And are these clients' confirmations, and house, can you tell me? A. Apparently for clients, branch offices, for brokers and correspondents.

Q. Now house account? A. No, there does not appear to be any house account amongst these.

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(DOCUMENTS MARKED EXHIBIT NO. 19)

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Q. Just for Dalhousie? A. Those are buy and sell confirmations for April 15th, 1929.

Mr. Farris: I do not know anything about these house confirmations. I think my friend should surely enlighten us some way as he goes along.

The Court: Well, I had some enlightenment at the beginning, and I presume I will get more light as we go along. Ask the witness to illustrate a little more.

Mr. Fraser: Q. Just explain to his lordship, witness, these 10 confirmations.

The Court: Take that Exhibit. The last Exhibit is 19.

Mr. Fraser: Q. Take Exhibit 19 and explain how these confirmations are made use of.

Mr. Farris: I think that my learned friend might also refer to what part of the statement of claim he is endeavoring to prove.

The Court: No, if you please. Just tell me what those are; explain it so that I can understand the matter. Ask the witness, Mr. Fraser.

Mr. Fraser: Q. Explain those to his lordship. A. Those 20 are duplicates of the confirmation slips sent to the clients.

The Court: Q. Well now, begin with that. That I have would be what? A. Exhibit 19. The client would tender to Solloway Mills a buy or sell order, to buy or sell certain stocks on the Vancouver Exchange. Solloway Mills & Co. would purchase that stock on the Vancouver Stock Exchange at a certain price; they would then confirm that purchase to the client.

Q. By—? A. By confirmation voucher.

Q. A copy of which—? A. A copy of which is here.

Q. Is here? A. The original was sent to the client showing 30 the number of shares sold the name of the stock and the price it was sold at, or the price it was bought at; showing the net purchase or selling price, then showing the commission on the transaction, leaving the net amount to be paid or to be received by the client.

Q. You would find that on the one here? A. You would find all that information on every one of those vouchers.

Q. Well then, other brokers, what about them? A. Well, other brokers—

Q. Confirmation to other brokers, is that the way you put it?

A. Yes. 40

Q. That expression was used and we might just as well follow it as I go along. What do you mean when you say Exhibit 19 contains confirmations? A. In regard to these brokers.

Q. In regard to what? A. To the brokers. And there is one here picked out at random, showing confirmation of a transaction of 500 shares of Dalhousie to Denbigh Dickinson & Greathed, purchased,

selling price 9.00, so the amount of the transaction is \$4500 less commission \$3.75 and tax \$1.35, leaving a net balance of \$4494.90.

Q. And the same kind of confirmation slip that has gone to a client? A. Exactly the same kind of confirmation slip.

Mr. Fraser: Before you finish that. I am going into these brokers' confirmations. I told your lordship that we would endeavor to prove that sales on the exchange with these brokers, were washed off the exchange.

10 Q. Now you might tell his lordship—did you have any conversations with any official in your office in regard to buys and sells off the exchange, or buys and sells with other brokers? A. Yes.

Q. Just tell his lordship what instructions, if any, you received. A. I was informed that—

Q. By whom? A. The chief traders of the Vancouver office.

Q. Who were they?

The Court: Q. The chief trader of the Vancouver office? What Vancouver office? A. Solloway Mills & Co. Ltd.

Mr. Farris: May I just interrupt. May I ask how late your lordship is going to sit?

20 The Court: We will perhaps adjourn now, if counsel wish to do so. What time in the morning, 10:30 or 11?

Mr. Farris: I prefer 11, to close at 4:30.

The Court: Is that satisfactory, Mr. Fraser?

Mr. Fraser: Yes, my lord.

(COURT ADJOURNED AT 4:35 P.M. UNTIL 11 A.M.)

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(COURT RESUMED PURSUANT TO ADJOURNMENT
11 A.M.)

GEORGE L. BECK Resumes the Stand

30 Mr. Fraser: All the books and documents I think we need, are in court now, and a synopsis showing the effect of those books, or showing how we were the victims of this system has been prepared, and by arrangement between Mr. Farris and myself—about two weeks ago Mr. Farris had to go away and he agreed without prejudice to his rights that I might go in, and with my accountant—

Mr. Farris: I did not agree as to the synopsis. I agreed that my friend should go in and have full access to the books.

40 Mr. Fraser: I went in without prejudice to my learned friend's rights, and I submitted the synopsis to my learned friend since, and it was checked by Mr. McGee and Mr. McKenzie. That was done by four accountants. I asked my learned friend this morning—those figures were corrected—certain minor changes were made and corrected in the report, and I asked my learned friend to submit that the

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synopsis are correct representation of the Exhibits now in court. If he does not do that, I suppose I could go in the box, as I supervised it all. If he has objection to that I will have to have two accountants to repeat all the work that has been done, and I will have to ask leave for them to take out certain confirmations, and it will take at least a day.

The Court: What do you say, Mr. Farris?

Mr. Farris: I cannot say that it is a true representation, not so far as the original. I want to see each confirmation as it comes in, because my submission is that the synopsis has shown what is a false appearance, and therefore I cannot agree to the synopsis. 10

The Court: Mr. Fraser, you will have to go along.

Mr. Fraser: Will my learned friend do this: his witnesses have checked all these figures, and I would like to call one and put him in the box, my learned friend undertaking not to cross-examine on any other point than that.

Mr. Farris: I am not undertaking any such thing.

Mr. Fraser: I would ask leave to take out the confirmations to an adjoining room, and the accountants can check them.

The Court: I do not suppose there is any objection to that? 20

Mr. Farris: No.

The Court: It might be done with some officer of the court with them. Could someone be available.

The Clerk: I will phone the chief clerk, my lord.

Mr. Farris: They are a respectable firm of accountants, and I do not suggest that that is necessary.

The Court: Very well.

Mr. Farris: You do not want one?

The Court: No.

Mr. Fraser: Q. We were on the question of confirmations to these agent brokers. 30

The Court: The reporter can let me have what you said.

Mr. Fraser: Q. We were on the question last night, of agent brokers, and I am going to lead some evidence on that topic now. Do you know if the defendant company had any agent brokers? A. Yes, they had several.

Q. Can you name them? A. I can name some of them, Denbigh, Dickinson & Greathed.

Q. Yes? A. S. W. Randall & Co.

Q. Randall? A. Yes; the Continental Securities Corporation. 40

Mr. Farris: I think this witness should lay the foundation for all this evidence by showing what opportunity he had for having knowledge of this.

The Court: Q. Would you know that, Mr. Beck? A. Yes, I would.

Mr. Fraser: Q. How did you know? A. I was informed of the fact by the head trader.

Q. Who was the head trader? A. Mr. Willins and Mr. McKenzie.

Q. Were they superior officers to you? A. Yes.

The Court: Q. In the defendant company? A. Yes.

Mr. Farris: I am pointing out that this person does not know from personal knowledge; it is hearsay.

The Court: I hardly think it is hearsay, Mr. Farris.

Mr. Fraser: I am going to tie it up. It is of no value unless I do. I am going to show that this man was instructed by these people
10 to make arrangements—

Mr. Sloan: Supposing he was instructed by the office boy— unless he shows he had authority to bind the company.

Mr. Fraser: I said the chief trader.

The Court: You did begin with that, Mr. Fraser.

Mr. Sloan: The rules of evidence have got to be obeyed some- time or other.

Mr. Fraser: Q. You said you had certain instructions from Mr. McKenzie and Mr. Willins? A. I did.

The Court: Q. And who were they with regard to you? A.
20 They were the chief traders in the Vancouver office of the defendant company.

Q. Chief traders. Tell me what that is?

A. Traders are the representatives of Solloway Mills & Co., that do the buying and selling on the Vancouver Stock Exchange. The chief traders are in charge of all those representatives in the chief office of the defendant company.

Mr. Fraser: Q. Was any buying and selling done in the house account, to your knowledge? A. There was.

Q. Who had charge of that? A. That was handled in Van-
30 couver by the chief traders.

Q. They did that as well? A. Yes.

Q. You say that you received certain instructions from them in respect to agent brokers? A. I did.

Q. Tell his lordship what your instructions were.

A. I was instructed that certain of these brokers were made agents of the defendant company in Vancouver.

Q. The ones you have named? A. The ones I have named.

Q. Were there any others? A. There was one other firm
40 the name I don't remember.

Q. Was A. J. Brown an agent broker, to your knowledge? A. If he was, it was before I joined the service of the company.

Q. Tell what instructions you had first from these chief trad- ers? A. That arrangements had been made with these agents for the purpose of washing and crossing sales, and buying and selling orders over the Vancouver Stock Exchange, and in one case, one of those brokers named to me—I was instructed to go and see the Securi- ties department.

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Mr. Farris: This man is making these statements—I would like to have the particular person he told, and the time and place.

The Court: Yes, Mr. Farris is entitled to that.

Mr. Fraser: Q. Who told you? A. Mr. McKenzie.

The Court: Q. Where, and when, to the best of your recollection?

Mr. Fraser: Q. You do not know the day and hour, but Mr. Farris would like it. To the best of your recollection, when did you receive instructions from Mr. McKenzie? A. With regard to the one company, the Continental Securities, approximately around December, 1929. 10

The Court: Q. Where would you be at that time?

A. I was in charge of the securities department of the defendant company.

Q. Would that be in the office? A. In the office, my lord.

Mr. Fraser: Q. Are you familiar with the system of the defendant company with regard to these washes, as you call them? A. I am.

Q. I want you to explain this—were you familiar in the summer and fall of 1929? A. I was. 20

Q. Just explain the system to his lordship. By the way, I give you the confirmations for May 29th, 1929, and the clearing house sheet for that date, and I want you to explain to his lordship the system of washes with other brokers.

The Court: Are you speaking of one particular date?

Mr. Fraser: Yes, May 29th, 1929, in the stock the plaintiff dealt in. A. From this confirmation—

The Court: Now, if you would illustrate that on my desk.

Mr. Fraser: Q. Take it up to his lordship's desk and show it to him. 30

The Court: Q. Very well, now. A. From these three confirmations it would appear that the defendant company in Vancouver had received instructions to purchase on the Vancouver Stock Exchange, first for Theo. Frontier & Co., 100 shares of Associated, and a second 1000 shares for Theodore Frontier, and third 50 shares for Mrs. Maisie Graham. All these three transactions were performed on the Vancouver Stock Exchange on that date, showing that 50 shares were purchased from Miller Court & Co. at a price of \$4.25.

The Court: Q. You are referring to the clearing house sheet. It had better be marked. 40

(DOCUMENT REFERRED TO MARKED EXHIBIT NO. 4)

A. In Exhibit 4 it shows 50 shares bought from Miller Court at a purchase price of \$4.25, which would fill that order for that client. It then shows there were 100 shares bought from Gelletly & Co. at a purchase price of \$4.45, which takes care of that confirmation, and

then they show where a 1000 shares were bought from Denbigh, Dickinson & Greathed, at a purchase price of \$4.45.

Mr. Fraser: Q. Denbigh, Dickenson & Greathed were one of the agent brokers? A. Yes, they were one of the agent brokers.

The Court: Yes.

A. In the ordinary course of business, why, that would have ended the bookkeeping entry for the office, but this 1000 shares that were bought from Denbigh, Dickenson & Greathed were in turn sold back to them off the Exchange which nullified the transaction.

10 Mr. Sloan: That is putting a construction on a document which is within your lordship's province. He says that it nullifies the transaction. I do not mind him giving the facts, but he should not draw inferences.

Mr. Fraser: Q. Show the confirmation which shows as a fact that the shares were sold off the Exchange?

A. This confirmation here.

The Court: Identify it.

Mr. Fraser: Q. Describe it?

The Court: So as to distinguish it from the others.

20 A. This is a confirmation to the agent brokers Denbigh Dickenson & Greathed and it says on here that the 1000 shares at \$4.45 were sold back to them off the Exchange.

Mr. Fraser: Q. Is there anything indicating the sell back, any symbol indicating the sell back? A. Yes; it is marked on here "sold to."

The Court: Q. You are calling that a confirmation in the same way as the other three?

Mr. Fraser: Q. A broker's confirmation? A. A broker's confirmation.

30 The Court: Q. The one with Denbigh, Dickenson & Greathed is a broker's confirmation? A. A broker's confirmation.

Mr. Fraser: Q. By the way, are these white confirmations the buy or sell confirmations? A. They are buy confirmations. The blue one is a sell confirmation.

Q. There is one sell confirmation you have in your hand marked No. 5. Explain what that is?

A. A sell confirmation here showing there were 1200 shares of Associated Oil at \$4.45 and 50 shares at \$4.25 which were sold from the house account.

40 Q. Is that a house confirmation? A. Yes, a house confirmation.

Q. Why do you say it is a house confirmation and not a client or broker's confirmation? A. The client and house confirmation have the name and address on the top and a broker's confirmation has the name of the broker. On the house confirmation there is no name on it at all.

Mr. Fraser: You see on the upper left-hand corner of the con-

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firmation the name of the client appears or the broker.

The Court: Yes.

Q. The original of this that has Denbigh, Dickinson & Greathed, No. 1 on it, would be sent to them?

A. Would be sent to Denbigh, Dickinson & Greathed.

Q. And this copy was found among the papers of the defendant company? A. It was.

Q. And this document that has five on it is found among the papers of the defendant company? A. Yes.

Q. Would there be an original corresponding to this? A. No, 10 there would be no original at all.

Mr. Fraser: Q. Is there any house confirmation sent out of the office at all? A. No house confirmation sent out of the office at all.

Q. Following his lordship's question, the client's confirmation, where did the original go? A. The original was mailed to the client.

Q. And a copy kept? A. One copy kept in the office.

Q. And all these copies went to the security department? A. Yes, we have copies of all confirmations in the security department 20

Q. What is the object of sending the confirmations to the security department? A. In certain confirmations you have to make delivery of the stock and you have to have some record. For instance, this one, Mrs. Masie Graham, this indicated that she wanted immediate delivery as soon as she paid for it.

Q. You had charge of all securities? A. Yes.

The Court: Q. I notice that two have "delivery" on them and the other is "open," explain that? A. Open account is a margin account where the client is buying the stock and depositing one-third of the purchase price of the stock. 30

Mr. Fraser: Q. No actual delivery of the certificate was contemplated at the time? A. Yes.

Q. They had to pay in full before they would get delivery? A. Yes.

Q. What do the delivery confirmations show? A. Show that immediate delivery was contemplated.

Q. Was the stock paid for in full? A. It would be before the stock was delivered.

Q. Are some of them marked "delivery," cash? A. Yes.

Q. The terms are synonymous, are they? A. Yes. 40

Q. Now, these house transactions, No. 5 here, do they appear on the Vancouver Stock Exchange?

A. No, they don't.

Q. And these sells, off the Exchange to Denbigh, Dickinson, do they appear in the records of the Vancouver Stock Exchange? A. No, they don't.

The Court: Q. You know that? A. Yes, I do. There is no

record on these Clearing House forms.

Mr. Fraser: Can you explain to his lordship on that system, does that make a balance of your books that 1,000 shares to Theo. Frontier? Explain that to his lordship and if so how the balance exists? A. The first part of the entry is where 1,000 shares were bought through the Stock Exchange and sold to Theo. Frontier and both, they eventually balanced that, but then their entry on the Vancouver Stock Exchange is balanced with this washed sale, where the stock was sold back to them on the Exchange.

10 Mr. Farris: I object to the term "washed sale." He can say "sold back."

Mr. Fraser: My friend hates the word "washed."

The Court: If you please, it might not be the proper term.

Mr. Farris: I submit that it is not capable for this witness to say.

Mr. Fraser: Q. Did those sales off the Exchange have any particular meaning in your brokerage house, or in brokerage circles?

A. Yes.

20 Q. Don't tell us yet until his lordship permits you to do so. Did sales off the Exchange have any meaning in brokerage parlance?

The Court: Do you object to that, the meaning?

Mr. Farris: No.

The Court: Q. Tell me, answer the question? A. Yes, they did have a meaning, these sales sold off the exchange. They were to quash the sales or purchases made on the Vancouver Stock Exchange.

Mr. Fraser: Q. What is that? A. They were to quash the purchases or sales made through the Vancouver Stock Exchange.

The Court: The crosses.

30 Mr. Farris: I want the witness to be sure that he knows what he is saying.

Mr. Fraser: Nothing turns on it.

Q. You were explaining the balance to his lordship on those confirmations when I interrupted you?

40 A. The 1,000 shares bought through the Stock Exchange were balanced with the 1,000 shares sold back to Denbigh, Dickinson & Greathed off the Exchange. Then they also confirmed 1,000 shares to Messrs. Theo. Frontier & Company. They sold the 1,000 shares and the balance on that day, they have this entry from the house account showing 1,000 shares from house account which balances these entries. There are four complete entries.

Q. What are the four complete entries? A. The first is the 1,000 shares bought through the Vancouver Stock Exchange, and sold back to Denbigh, Dickinson & Greathed off the Exchange.

Mr. Farris: Q. Does it say "sold back to"?

The Court: "Sold to."

Mr. Farris: A very different thing. I want you to tell this witness that he is drawing conclusions from the evidence that are not in accordance with the facts.

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Mr. Fraser: He has to explain the system.

The Court: Stick to what the facts were according to your knowledge? A. Those are the facts.

Q. You used the expression "sold off the Exchange," is that true? A. Yes, there is no record through the Vancouver Stock Exchange of this "sold to."

Mr. Fraser: Q. The records speak for themselves, is there a sale of that 1,000 shares on the records of the Vancouver Stock Exchange for that day?

A. No, no record at all of Associated, of 1,000 shares as being 10 sold.

Q. On the Exchange? A. On the Exchange, no.

Q. I want you to complete your illustration to his lordship of the system of balancing of the three confirmations?

Mr. Sloan: We may assume that my learned friend is going to show this system had something to do with Frontier. It may be applicable to 99 per cent. of the clients. Let us assume that—

The Court: Theo. Frontier is on two of the documents used.

Mr. Sloan: That is only a minor transaction. My friend is introducing a system and not a transaction. 20

The Court: Do you submit that he is not entitled to prove a system if it is related to the plaintiff?

Mr. Sloan: As long as it is related to us. He has to tie it to us during the proceedings. He is trying to illustrate the system because of the plaintiff's innocence. He has to tie the system to us, that is the trouble.

The Court: You may go on, Mr. Fraser.

Q. By the expression "sold off the Exchange," you simply mean that you find no record of that sale in the records of the Vancouver Stock Exchange? A. Yes, that is right. 30

Q. And you find a document which has on it for example here, "Denbigh, Dickinson & Greathed sold to?" A. "Sold to" 1,000 shares.

Mr. Fraser: Q. Were 1,000 shares delivered to Denbigh, Dickinson from the securities department? A. There would be 1,000 shares delivered to Denbigh, Dickinson.

Q. I want you to explain it so his lordship will have it clearly. You were saying the balance there—

The Court: Just a moment, Mr. Fraser. Couldn't you take a transaction where you were submitting that the plaintiff company 40 were interested and follow it right through?

Mr. Sloan: That is just the point, the burden is on him to prove each incident.

Mr. Fraser: May I state what I am going to do?

The Court: For example, you call my attention to (1) "sold to Denbigh, Dickinson"—well, if you would take—you have one here Frontier—now, if you would take one of them and follow it right through.

Mr. Fraser: The witness can do that.

The Court: Q. Yes. You have a confirmation slip there of Theo. Frontier. Can you begin with one of them? A. I can, your lordship.

Q. Very well? A. In this first case Theo. Frontier placed with Solloway, Mills, of Vancouver, an order to buy 1,000 shares of Associated Oil on the Vancouver Stock Exchange. The defendant company purchased through Denbigh, Dickinson & Greathed the 1,000 shares at a purchase price of \$4.45 through the Vancouver
10 Stock Exchange. In turn—

The Court: Q. Now, on the same day—

Mr. Fraser: Q. As the confirmation— A. As the confirmation shows.

Q. I think you had better stop there. His lordship wants you to go step by step. They bought 1,000 shares on the Stock Exchange. That means they would receive 1,000 shares from Vancouver Stock Exchange?

A. They would receive in the ordinary course 1,000 shares through the Clearing House of the Vancouver Stock Exchange. They
20 also sold 1,000 shares of Associated Oil at \$4.45, of which there is no record on the Vancouver Stock Exchange.

Mr. Sloan: There is a record of that buy on the Vancouver Stock Exchange of \$4.45.

Mr. Fraser: It is so complicated, I wish that my friend would not interrupt.

Mr. Sloan: It is complicated all the more by not putting it in chronological order to the witness.

The Court: Go on.

A. From these two confirmations we would deliver to Denbigh,
30 Dickinson, 1,000 shares of Associated Oil on payment of \$4,443.65.

Mr. Fraser: Q. Was that made through the Clearing House?

A. Now, this would be made direct to Denbigh, Dickinson & Greathed, the delivery of this stock on payment of that amount. Then in turn we would tender to the Vancouver Stock Exchange our cheque for \$4,450.

Q. To the Vancouver Stock Exchange? A. Cheque for \$4,450.00 and would receive from them the 1,000 shares of Associated Oil which Denbigh, Dickinson & Greathed would have delivered to the Stock Exchange.

40 The Court: Very well.

Mr. Fraser: Q. Does that balance the transaction that far?

A. Insofar as the confirmation to Denbigh, Dickinson on the Vancouver Stock Exchange that would balance the transaction. We had received \$4,443.65.

Q. Through the Exchange? A. No, from Denbigh, Dickinson direct on delivery of the 1,000 shares and we would in turn deliver \$4,445 to the Vancouver Stock Exchange and receive 1,000 shares back again.

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Mr. Farris: The witness is making a circuit which seems very simple. He should explain that when Denbigh, Dickinson sell on the Exchange any shares, whether it is this 1,000 or for Solloway Mills, or anybody else, that there are forty or fifty other brokers who have an equal right to buy those shares.

The Court: Q. Is that true? A. Yes.

Mr. Fraser: Q. That is the trouble with these interruptions. Does that make any difference on your balance? A. No difference at all.

Q. Explain why it makes no difference? 10

A. Well, if another broker had, instead of Denbigh, Dickinson & Greathed had sold 1,000 shares of Associated Oil on the Exchange, it would still make no difference, because we have already sold to Denbigh, Dickinson & Greathed the 1,000 shares and in any case if Solloway Mills or the defendant company only bought part of that stock through the Vancouver Stock Exchange it would not make any difference because they would still have to deliver the 1,000 shares.

Mr. Farris: Well, now, let him explain—

Mr. Fraser: If this witness is allowed to go on and explain without these continual interruptions. My friend will have ample opportunity to cross-examine. 20

Mr. Farris: The matter is as involved as the witness is.

Mr. Fraser: Those are the observations that are confusing the issue.

The Court: Go on.

A. I should explain where the defendant company would deliver the stock to Denbigh, Dickinson direct and receive back from them through the Vancouver Stock Exchange—there would be an exchange of cheques for the same value less commission allowed the agent broker and tax on the sale of the stock. There is commission \$5 and tax \$1.35. 30

Mr. Fraser: Q. Was there any special commission allowed to the agent broker? A. Yes, a commission of one-tenth.

Q. For performing this service? A. Yes.

Q. Explain how this No. 5 confirmation comes into this picture? A. Well, they have confirmed the purchase of 1,000 shares of Theo. Frontier and Company and to balance the entry they sell from the house account at the same price 1,000 shares to make a balancing entry in our books in the office.

Mr. Fraser: Does your lordship follow? 40

The Court: You may go on.

A. That would complete the whole transaction.

Mr. Fraser: This No. 5, that is the house sell confirmation, is it? A. Yes.

Q. Would those be recorded, or the result of that be recorded in any document in your office? A. It would be recorded in the house ledger.

Q. What effect would that have on the house ledger, would it make long or short? A. It would make a short position of that amount of stock.

The Court: Have you the house ledger?

Mr. Fraser: That is the Vancouver house ledger which is not produced, my lord.

The Court: Well, now, apparently counsel take a different view of the transaction or effect of it. Is there any objection to both of you helping me now by giving me—by throwing any light you can on this evidence that I have. I find it somewhat difficult to follow just that. Mr. Fraser has a certain view of that and I assume Mr. Farris has another. Couldn't you just give me that shortly now so that it would be of some assistance?

Mr. Fraser: I can state it to the witness and ask him if that is an accurate representation of the system?

The Court: Mr. Farris has suggested, for example, that there is something that made all the difference in the world.

Mr. Fraser: That was a suggestion.

The Court: May I have his suggestion now?

20 Mr. Fraser: He suggested that and I ask you to ignore it in the meantime.

The Court: I don't want to at the present, if I can carry it along as to what the suggestion of the defendant is about the matter. It might clarify the situation for me as I go along.

Mr. Fraser: This witness has stated that it has no effect on the system at all. My learned friend on cross-examination may bring out something different and then it may be time to explain to your lordship whether or not our views coincide. The witness at present has stated what the system is, that there was a buy on the Exchange and a sell
30 off the Exchange, a notification to the client they had bought the shares for him and a sale in the house. That is as simple as A, B, C.

The Court: Now, what do you suggest, Mr. Farris, very shortly?

Mr. Farris: If your lordship will permit me to ask one or two questions.

The Court: Then you prefer to leave it until then?

Mr. Farris: I think it would be wiser because we will cover that in cross-examination. I might say this much, to enlighten your lordship that the effect the witness draws is entirely erroneous. Your lordship has asked me that and that is my suggestion. When the matter
40 goes through the Exchange it does not matter whether it is a buy from Denbigh, Dickinson or John Jones, it is a proper buy, and what they did in the house account is a different matter. They may be long or short, and that is for my friend to prove and he has not proved anything up to date.

The Court: You may go on.

Mr. Fraser: Q. Did you see the Vancouver house account from time to time? A. I have.

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Q. During what period? A. From January, 1929, until December of that year.

Q. You had occasion to see the Vancouver house account? A. Yes, referred to it often.

Q. Under what circumstances would you have the need of referring to the house account? A. Well, at one time my duties were to prepare what was termed a trading sheet, and on this trading sheet was shown the Vancouver house position.

Q. How often was this trading sheet prepared? A. Daily.

Q. And shows the house position of various stocks? A. Yes. 10

Q. To whom did you give the trading sheet? A. The trading sheet was handed to the chief traders.

Q. The chief traders of the defendant company? A. Of the defendant company.

Q. Can you tell his lordship whether the defendant company were long or short on A. P. Consolidated, these stocks I have mentioned.

Mr. Farris: That is a very broad question. I think he should establish his knowledge whether he would be able to tell whether the defendant company was long or short. 20

The Court: Whether he has seen it.

Mr. Farris: That is only one part of the company's position. The company's business was from Toronto to Vancouver. They had 42 offices and he must be able to give the position of the whole.

Mr. Fraser: I am talking of the Vancouver house account.

Q. Have you looked at the Vancouver house account? A. I have.

Q. Are you able to say whether it was long or short on certain stocks?

Mr. Farris: That has no bearing on the case at all. 30

The Court: He has seen the books.

Mr. Farris: That may be, unless my friend is going to show or say the house account was short and that we had not the stock on hand which my friend must do if this evidence is to be of value.

The Court: Are you submitting I should not have evidence of the Vancouver house account?

Mr. Farris: Unless my friend is going to connect it up with the whole position.

The Court: I can admit evidence from the Vancouver house account from this witness. 40

Mr. Farris: What relevancy has it unless my friend connects with the entire position of the company and unless my friend undertakes to say that it is a step connecting it up with the entire business.

The Court: This business was being carried on in the Vancouver office and certain books and documents were there, and subject to what you might say I think I would be entitled to evidence as to how those books appear, so that the house account can be seen.

Mr. Farris: This is a Dominion company with forty-two offices,

and my friend is trying to show a short position of the company. He might as well produce—

The Court: Apparently evidence is going to be led to show a short position for the term that this witness had access to that book.

Mr. Farris: That has no relevancy unless he shows the entire position of the company. It is like taking one sheet out of a book and saying I am going to prove this.

The Court: These are from the books in the Vancouver office.

Mr. Farris: But, they are only one leaf so to speak of the entire
10 books, and unless my friend is going to prove the entire books, then this is not proper evidence because the Vancouver books might show one thing, Calgary another and Toronto another, and St. John books another and Halifax another, and unless my friend is going to give a complete picture of the thing, what I am asking is that he undertakes to give it, otherwise it is not relevant.

The Court: The plaintiff's dealings were through the Vancouver office and there are certain books there and this witness is called to testify as to what those books show.

Mr. Farris: Might I give this illustration, we have in Canada
20 banks who have certain funds deposited with them. Now, in an action against one of the banks where they were alleging the bank was bankrupt, would it be proper evidence to bring into court, for instance, say, the Royal Bank, to bring evidence in court and prove that at the corner of Main and Hastings the Royal Bank of Canada branch did not have sufficient funds on hand to pay the depositors of the bank, that they were in that position, when the funds might be in the main office or at Montreal.

The Court: I am not prepared to agree that that is entirely
30 analogous, for example, if this witness can give evidence as to whether the position shown by the books was short or long, it might be a question of onus, whether the onus be on you to show if you wished to show that through transactions elsewhere that the position was otherwise, but do you submit that the plaintiffs have to follow you in all your transactions elsewhere?

Mr. Farris: I think there is no question about that. They are alleging what is in effect a criminal offence. Now, a criminal offence cannot be proved by just proving—

The Court: Assuming the plaintiff was dealing with the Vancouver office books show certain things, you submit that it is not
40 evidence unless you bring in Calgary, Toronto and other books?

Mr. Farris: With all respect, I do not think it matters. It is open for argument.

The Court: If you suggest then in spite of what Vancouver books show that your position was otherwise.

Mr. Farris: No, I submit not. Surely, if we were trying the Royal Bank of Canada for bankruptcy and one branch of the Royal Bank I showed had not enough to pay depositors, your lordship would

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not lean to that argument for one moment, and because it happens to be Solloway Mills and not the Royal Bank of Canada—I say there is no difference in principle.

The Court: I do not take kindly to your putting it that way.

Mr. Farris: I am sorry.

The Court: The transactions are different.

Mr. Farris: A customer is dealing with the Hastings and Main branch of the Royal Bank, but nevertheless the Royal Bank of Canada has its head office in Montreal with branches all over Canada. Solloway Mills are a company with head office in Toronto and they ran a branch in Vancouver. If I instruct the head office— 10

The Court: I am not depriving you of the right to argue now, you may do so later.

Mr. Farris: I would ask that I be allowed to, subject to my objection, and with the right to perhaps by cross-examination on the matter clear it up, so I would ask that my rights be reserved on that.

The Court: I would like to rule on the admissibility as we go along. It seems to me that this evidence is admissible but I am not depriving you of the right to argue that that does not prove what it is sought to say it does prove. Very well. 20

Mr. Fraser: Have you knowledge of the long or short position of A. P. Con.? A. Yes.

Mr. Sloan: When?

Mr. Fraser: At any period material to the action. Q. Say from February, '29, to October, '29? A. Yes. The Vancouver house account showed a short position in A. P. Con.

Q. I don't suppose you know the number of shares they were short? A. No.

Q. Were they appreciably short? A. Yes, many thousands.

Q. Can you say, and I am talking— 30

Mr. Farris: Now, this is a matter surely—if my friend proceeds with the evidence properly, I would not have any objection.

Mr. Fraser: If we only had the house account here.

Mr. Farris: My friend is examining on an account and if he has copies of the accounts, he should bring them.

Mr. Fraser: I am giving secondary evidence as to the house account.

Mr. Farris: I am prepared to let you give secondary evidence and not object to it, providing you are able to get it from a man who is able to tell, but you cannot give it in general broad terms. 40

The Court: This witness, as I followed him, was having prepared daily under his direction reports.

Mr. Farris: That is true. This witness goes this far, he is not saying that they showed a long or short position, but when he comes to saying there were thousands of shares or hundreds of shares, if he does that he must be able to say that on June 29 they were short so many shares and on June 28th.

- The Court: He might not be able to.
- Mr. Sloan: Then he should confine himself to the general statement of whether they were short or long.
- The Court: For instance, I might be interested at another time as to whether they were long.
- Mr. Fraser: I will ask that question. May I get my position clear? Surely with this witness, he was one of my learned friend's employees, and not my witness.
- Mr. Farris: Don't say that.
- 10 Mr. Fraser: I am endeavoring to give secondary evidence.
- Mr. Farris: I won't object if my learned friend will say they are his witnesses. They were employees of the company and they have been divulging things that were obtained during the course of the employment.
- The Court: Go on, Mr. Fraser, I am giving certain directions.
- Mr. Fraser: Q. Cotton Belt.
- The Court: Q. With regard to A. P. Con., immediately after October 29, would the position be otherwise. A. No.
- Q. It continued? A. It continued to be short.
- 20 The Court: Next one?
- Mr. Fraser: I am talking about the same time.
- Mr. Farris: I am drawing attention to this that this witness swears he did not know anything about it until October, '29. A. No.
- Q. When did you leave there? A. April, 1930.
- Mr. Fraser: Q. Can you pick the position of the house account, from January, 1929, to October, 1929? If you know, from what month? A. From April, 1929, until October and November, 1929.
- Q. From April, '29, to November. I am asking you as to your knowledge of the various stocks that I will mention, Cotton Belt? A.
- 30 That I cannot give for that period.
- Q. Associated Oils? A. Short position.
- Q. A short position. Are you able to say whether it was appreciably short or not. They come later? A. No, I cannot say.
- Q. You know they were short? A. Yes.
- Q. Were they ever to your knowledge long? A. Not to my knowledge.
- Q. Devenish? A. A short position.
- Q. I want you in each case to state whether it was considerable, if you know or not? A. Considerable, considerably short.
- 40 Q. Were they ever to your knowledge during that period long on Devenish? A. No.
- Q. Fabyan? A. I cannot remember the position now.
- Q. Freehold? A. Considerably short during that period.
- Q. Ever to your knowledge long? A. No.
- Q. George River? A. A short position.
- Q. Can you say the extent? A. No, I cannot give the extent.
- Q. Were they ever to your knowledge long? A. No.

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Mr. Farris: Q. You say they were never long? A. Not to my recollection.

Mr. Fraser: Q. Grandview? A. A short position, considerably short.

Q. Have you any idea of the extent of the shortage on Grandview? Have you ever seen the figures during that period? A. Yes.

Q. What would you say their short position was, I mean, not in figures? A. A short position of hundreds of thousands of shares.

Q. Were they ever to your knowledge long? A. No.

Q. Golconda? A. A short position.

The Court: Q. What is your answer? A. A considerably short position.

Mr. Fraser: Q. Ever to your knowledge long? A. Yes.

Q. Home Oil? A. Considerably short.

Q. And the same questions I am asking in each case were they ever to your knowledge long? A. No.

Q. Illinois Alberta? A. Considerably short. They were not long during that period to my knowledge.

Q. Mayland? A. Considerably short. They were not long during that period either.

Q. Mercury Oil? A. Considerably short, no long position to my knowledge.

Q. Mohawk? A. I cannot give the position on that.

Q. Oregon Copper? A. A short position.

Q. Ever to your knowledge long? A. I would rather not answer that question to that one. I cannot remember definitely.

Q. Pend Oreille? A. Considerably short, no long position to my knowledge.

Q. Reeves Macdonald? A. Considerably short, no long position.

Q. Southwest Petroleum? A. Considerably short, no long position to my knowledge.

Q. Topley Richfield? A. A short position.

Q. Whitewater? A. A short position. I do not make any further statement than that.

Q. What about Topley Richfield? A. A short position; I make no further statement than that.

Q. Do you know what the system of the defendant company was with respect to shares listed solely on the Vancouver Stock Exchange?

A. Shares listed solely on the Vancouver Stock Exchange, they were all held for all branches. They were usually sent out to Vancouver to be held by Vancouver.

The Court: The reporter will have to read that. (Reporter reads: "Do you know what the system of the defendant company was with respect to shares listed solely on the Vancouver Stock Exchange? A. Shares listed solely on the Vancouver Stock Exchange, they were all held for all branches. They were usually sent out to Vancouver to be held by Vancouver").

The Witness: The shares listed on Vancouver Stock Exchange were held by the Vancouver office. Any other shares any other branch may have had were sent to Vancouver office.

Mr. Fraser: Q. Have you any knowledge as to what the policy of the defendant company was on the question of a client taking a short position? A. No client was allowed to take a short position at all with the defendant company.

Q. Does that apply from January or February, 1929, to October, 1929? A. It applied from early spring, 1929, and thereon while I
10 was with the company.

Q. How do you know that? A. Instructions were issued to that effect.

Q. By whom? A. By the Western General Manager.

Q. Who is he? A. Mr. J. F. Macdonald.

Q. Is Mr. Macdonald in court? A. Yes.

Q. Is Mr. W. K. McGee in court? A. Yes.

Q. What was his position with the defendant company? A. Mr. McGee was the accountant.

Q. Chief accountant? A. Chief accountant in the Vancouver
20 office.

Q. And you mentioned Mr. MacKenzie, the floor trader. Was he there when you were there? A. He was one of the head traders with Mr. Willins, the two of them.

Q. Is he in court? A. Yes.

Q. Have you any knowledge as to whether the defendant company farmed out any of its business?

Mr. Farris: I do not know what that has got to do with it?

Mr. Fraser: It has a lot to do with it.

The Court: You might show me the relevance of it. I must
30 know as you go along whether it is relevant or not.

Mr. Fraser: Yes, my lord, I will not press the question.

The Court: Very well. Next question.

Mr. Fraser: Q. These certificates that you received—you received certificates, did you not, from the Clearing House? A. Yes, we did.

Q. And you got certificates from clients from time to time for use as collateral? A. From clients, yes.

Q. How were they deposited? Did they come to the securities department? A. Yes, received by the securities department.

40 Q. How were they dealt with?

Mr. Farris: I object to this. This is the general dealing with the customers' other securities. I do not see what it has got to do with this.

The Court: I do not see how the certificates deposited are relevant.

Mr. Fraser: With respect to all certificates. I am showing a fraudulent system.

The Court: You might begin with the plaintiff's certificates and

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allege or submit that they did the same thing in the same way with the others. Take the plaintiff's certificates.

Mr. Fraser: Q. Deal first with certificates, collateral received from Theo. Frontier Limited, or any other client. Was there a system in connection with them? If so, explain it? A. For all mining stocks being received, it was placed in stock with the rest of the certificates we had on hand.

Q. Can you tell me about any certificates coming from Theo. Frontier? Were any certificates received from the plaintiffs, earmarked for him? A. None whatever. 10

Q. Was any earmarking done for any clients? A. No.

The Court: These are the certificates that Theo. Frontier deposited there with the defendant company?

Mr. Fraser: I am dealing with that and I want to show—

The Court: Then may I ask the witness this question, what was done with the certificates?

Mr. Fraser: I do not suppose this witness is able to tell.

The Court: Q. Where were they put? Who got them?

Mr. Fraser: Q. Who would get the certificates in the office in the ordinary course of business? A. They would be received by one of the clerks in the department who was detailed to receive the securities from clients and brokers and the Clearing House. 20

Q. Where would they be? A. They would all be placed in a receptacle or special box made for them.

Q. Did you have special box for Theo. Frontier? A. No, they were all placed in one common box.

Q. Most of them coming from Frontier would have his name on them? A. No, they would have no name on them at all. They would not have Theo. Frontier's name at all.

Q. How would you use them, how would they be endorsed? 30

The Court: This certificate being for what?

A. Street certificate.

Q. What is a street certificate? A. A street certificate duly endorsed and witnessed and the signature guaranteed. Then it becomes the same as an ordinary dollar bill. It is just a bearer certificate.

Q. That would be for certain shares? A. Yes, each certificate covering a certain number of shares.

Q. There would be nothing on the certificate that you would get from the plaintiff to indicate that he was the owner of the certificate? 40

A. No, there would be nothing at all. There may be an exceptional case. There might be a certificate registered in his name, but the majority of them were ordinary street certificates with nobody's name on them but blank and duly endorsed and the signature witnessed and guaranteed. They were acceptable.

Q. And you say that the certificates received from the plaintiff might go in the receptacle where other certificates of other clients went? A. They would, yes.

Q. A person just looking over them would not find anything to indicate who had deposited them with the defendant? A. No, not on the certificate. There would be nothing to show who deposited it.

Q. Explain this stock register? Would they give a record of the street certificates? A. Yes, they give a record of the street certificates, and they would only record from whom we received that particular certificate.

Q. That was your record? A. Yes.

10 Mr. Fraser: Q. But these certificates that you got from the plaintiff or any other client you say were simply like dollar bills. You treated them as currency. A. Yes. Certificates from the Clearing House were dealt with in the same way.

The Court: I do not follow the question.

Mr. Fraser: Certificates received from the Vancouver Clearing House, were they dealt with in the same way? A. In exactly the same manner.

Q. Any earmarking of those? A. No, none whatever.

Q. As to persons? A. No.

20 The Court: Q. You would receive others from the Clearing House in what connection? A. On the stock bought on the Vancouver Stock Exchange, we would receive certificates from the Vancouver Clearing House and they would be registered in the stock register and placed in a receptacle and there would be no marking on them to show who they were received from.

The Court: You must assume that I do not know very much about these matters.

Mr. Fraser: They got certificates in two ways. They would come from clients direct or from the Clearing House.

The Court: Let the witness explain.

30 Mr. Fraser: Q. That is what he has said. Is that right? A. Yes, they would receive certificates from clients who wished to sell certain stocks and they would be received and registered in the stock register and just placed in the box for that purpose, and the same thing applies to certificates of the defendant company, which they had bought through the Vancouver Stock Exchange. They would be received from the Clearing House and entered in the stock register and filed in the same box.

40 Q. You show me from the stock register one example from a client and another example received from the Vancouver Clearing House? A. Exhibit 3.

Q. Can you take the plaintiff, can you take one referring to the plaintiff? A. Yes, I am just looking for one now. Here is one. This shows on March 23rd, 1929.

Q. What exhibit number is that? A. Exhibit 3. It shows certificate 2021 for 100 shares of George River Gold Mines registered in the name of R. R. Steves received from Theo. Frontier & Company.

Q. And the entry under "to whom delivered" would indicate it

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was delivered— A. To George Oldox, and delivered March 25th.

Q. Show me the entry with regard to delivery from the Vancouver Clearing House? A. Here is an entry March 22nd, certificate 1555 for 500 shares registered in the name of J. A. Boyd, received from Vancouver Clearing House on March 22nd and delivered back to the Clearing House March 23rd.

Mr. Farris: Where does that apply to Theo. Frontier?
 A. 2021, 100, Theo. Frontier.

Mr. Fraser: Q. Where is there one for 100 in Theo. Frontier's account, that is what his lordship was asking? 10

The Court: Q. That is helpful, what you are giving me, if you can give me an example of one of Frontier's certificates coming from the Clearing House? A. That would be hard to do to show any certificates coming from the Clearing House to be delivered to Theo. Frontier & Company. It might be received from the Clearing House, but that particular certificate may not be delivered to Theo. Frontier. They might take any certificate to deliver to him.

Mr. Farris: Q. Where is the one received from the Clearing House? A. The one received from the Clearing House would be put in the box. 20

The Court: Q. All examples given on this page, March 22nd and 23rd, 1929, were delivered to the Clearing House. Can you show me one where it is otherwise received than from the Clearing House? Where it was received from the Clearing House? A. Here is certificate for 250 shares delivered from the Clearing House and delivered to Hing on April 22nd and another one delivered to Calgary March 22nd.

Mr. Fraser: Q. While you are here I want you to explain this to his lordship, this clearing sheet, exhibit 5, showing the buys and sells on the Clearing House of Solloway Mills, and what certificates, if any, were received from the Clearing House. Take June 11th, 1929. Just explain the delivery system of the Clearing House? A. These five sheets, my lord, show the transactions on June 11th, 1929. On this side— 30

Q. On the left-hand side? A. On the left-hand side it shows the stock sold to various brokers, the number of shares sold and the names of the stock.

Q. And Solloway Mills? A. Yes.

Q. To the various brokers? A. Yes.

Q. These are all brokers' names? A. Yes. 40

Q. What is on the right-hand side? Under the heading "To take from"? A. The right-hand shows the number of shares bought from the various brokers.

Mr. Farris: Q. Do I understand all these shares bought from the Clearing House, you got a certificate from the Clearing House? A. No, not necessarily. I will show you that in a moment. They also show the purchase price paid and the purchase price received and the total price of the certificates.

- Mr. Fraser: Q. Take the stock A. P. Consolidated—
- The Court: Have you any objection to taking this sheet?
- Mr. Fraser: It is exhibit 5, June 11th. It goes from June 1st.
- The Court: Yes, that is the first sheet to June 11th. There are five sheets? A. Yes. This is the first sheet.
- Mr. Fraser: Q. I see on the Vancouver Stock Exchange you sold some A. P. Con. to various brokers and bought A. P. Consolidated from various brokers? A. Yes.
- Q. I want you to tell his lordship how those shares were cleared.
- 10 A. This is the recapitulation here.
- The Court: Q. Now, you are referring to something else. A. Yes, referring to certificates.
- Q. The same date? A. Yes, the same date. We are taking A. P. Con., for example, and showing how we would deliver these shares in one parcel to one broker and how we would receive them and we also on the same date bought 100 shares back. To facilitate matters and make it easier, instead of delivering that 100 shares to the Clearing House and receiving back, it makes for extra work, that one offsets that entry. Now the same thing would apply to that fifty
- 20 shares which we sold, it would offset the fifty shares we bought.
- Q. All you got from the Clearing House was the net balance one way or the other? A. Yes.
- Q. It is like a Clearing House in a bank? A. Yes.
- Q. That is what the Clearing House is for? A. Yes.
- Q. You cleared on the net balance, whether you owed shares to them or they owed shares to you? A. We cleared on that balance.
- Mr. Farris: Q. And that is for actual transactions going over the exchange? A. Yes.
- Mr. Fraser: You told his lordship the system of—and I meant
- 30 to ask you before—of buying stock on the exchange and selling off to agent brokers off the exchange, was there any system the reverse of that, in selling off the exchange and buying back on the exchange. A. That is the reverse of the other.
- The Court: What is that? A. That is the reverse system. They could use it both ways.
- Mr. Fraser: Q. Did they to your knowledge? A. Yes.
- Q. During what period? A. The period from February, 1929, until April—
- Q. To your knowledge while you were there? A. Yes, while
- 40 I was there.
- Mr. Fraser: My learned friend is getting for me a book called a teller's blotter.
- Mr. Farris: What?
- Mr. Fraser: The teller's blotter. It was in the notice to produce and through inadvertence he did not bring it along. He is getting it. That concludes my evidence from this witness subject to what I have to say about that book.

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CROSS-EXAMINATION BY MR. SLOAN:

Q. In dealing with this transaction of May, 1929, that is the one before his lordship, in which you were giving the example of confirmation forms, it is true, is it not, that there was enough stock bought by Solloway Mills & Company Limited on the Exchange that day to take care of Theo. Frontier & Company's orders at that price? A. On that order?

Q. Yes? A. Bought on the Exchange?

Q. Yes? A. Yes.

Mr. Sloan: Q. I want to read one or two of your answers 10 given in the Lockett case. Do you remember the Lockett case a few days ago? A. Yes.

Q. Your memory would be quite clear then. I want to read, and rather than stop at every question and answer and ask you whether it is correct, I want you to stop me and tell me if it is not correct.

Mr. Fraser: You had better put the question and answer and ask him if it is correct.

The Court: That is the better way. You listen and if it does not seem correct, say so.

Mr. Sloan: Q. I am reading from page 66 of the transcript: 20

"Q. Isn't this true, that the protection of the customer—that is why there has been this insistence of these stocks being put on the Exchange that that is the protection of the customer? A. Yes.

"Q. Everybody has an equal show at it. That is right, isn't it? "A. That is true.

"Q. For instance, if I go into Solloway Mills and ask them to buy for me 1000 shares of Home Oil, and it should happen that one of Solloway Mills' brokers should put up 1000 shares on the Exchange, and another broker should buy it, another Solloway Mills' man, the protection would be there to the customer, wouldn't it? A. 30 "It would, yes.

"Q. Everybody has an equal chance, and whether it is buying or selling that is so, isn't it? A. Yes.

"Q. Now, if I go to Solloway Mills and tell them to buy 1000 shares on the Stock Exchange for me, of Home Oil, and Solloway Mills' broker comes on the floor and buys it from one of these brokers—what were the names you mentioned? A. Continental Securities.

"Q. That would be an open transaction on the floor of the Exchange? A. It would."

A. Pardon me, read that again.

"Q. Now if I go in to Solloway Mills and tell them to buy 1000 shares on the Stock Exchange for me, of Home Oil, and Solloway Mills' broker comes on the floor and buys it from one of these brokers 40 "what were the names you mentioned? A. Continental Securities."

"Q. That would be an open transaction on the floor of the Exchange? A. It would."

A. It would be, yes.

"Q. The Court: Q. You mean by that that anybody, apart from these men, it would be open to any other member of the Exchange to put the thing at a lower price? A. It would be, yes."

The Court: You are able to follow this? A. Yes.

Mr. Sloan: Q. "Q. So that as far as I would be concerned as a customer, I would get a full run for my money, assuming that the Clearing House delivered those shares? A. Yes."

"Q. What difference does it make to me as customer whether Solloway Mills sells short that day or not as long as I get my shares bought over the Exchange? A. Will you just put that question again?"

"Q. I say, as long as I place my order with Solloway Mills and they buy 100 or 1000 shares on the Exchange, and the clearance is made through the Clearing House and those shares come in and I get them, what difference does it make to me whether behind the scenes Solloway Mills sell on some transaction 1000 shares short that day?"

20 "A. It would not make any difference at all providing you got delivery of your stock."

"Q. And there would have to be a clearance of 1000 shares that Solloway Mills bought that day on the Exchange or they would be turned out of the Exchange? A. There would have to be delivery—

"Q. There had to be deliverance to the Clearing House of that amount? A. Yes."

You gave those answers to the questions and they are correct are they not? A. Yes.

30 "Q. Now, clearing up one or two minor points as we go along this one-tenth commission you refer to being paid to agents is recognized by the Vancouver Stock Exchange, is it not? A. That is the amount fixed by the Stock Exchange."

Mr. Fraser: Q. What for?

Mr. Sloan: For the one-tenth commission for agent brokers. I am talking of the one-tenth commission.

The Court: Q. You spoke of the one-tenth commission for agent brokers for doing certain work? A. Yes.

Q. Now, then, you are being asked about that.

40 Mr. Sloan: Q. I say that rule is recognized by the Vancouver Stock Exchange, is it not? A. Whether it is theirs, I could hardly swear to, Mr. Sloan. I am not familiar with all the rules of the Stock Exchange.

Q. We will get somebody else who is familiar with it. You told us about the short position of the house. I want to see what you mean by short position. We had that before in the Lockett case. I am read-

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ing from page 39 and the same procedure applies to what I am reading now as I read before:

"Now, as a matter of fact, all a short position means in regard to the house as far as the records of buying and selling is concerned, is that they have sold more than they bought, isn't that so? A. Yes.

"Q. Say, during a certain month, that the house takes a short position during that month, it would mean in that month that they sold more than they bought? A. Yes.

"Q. Or if they took the long position it would mean they had bought more than they sold? A. Yes." 10

That is correct? A. Yes.

Q. The house was speculating itself? A. Yes.

Q. Now, so far as shortage is concerned, it is a fact Solloway Mills & Company, as suggested by Mr. Farris, had forty odd offices scattered throughout Canada? A. Yes.

Q. You have no conception, of course, of the position of the Calgary office of the company? A. No.

Q. You have no conception of the Toronto position of the company? A. No.

Q. Toronto is where the head office was? A. Yes. 20

Q. And there were stocks being shipped back and forth between these offices daily? A. Yes, there would be stock in transit at all times. There was a tremendous amount of buying and selling.

Q. All you are talking about when you are talking of the long and short position, you are talking of the company's own trading account in the Vancouver market, is that right? A. I assume that is practically what it amounts to.

Q. Yes, I want to read one or two more questions and answers:

"Q. Isn't this a fact, that if I am selling—I am Solloway Mills and for all you know I may have 10,000 shares in my head office at Toronto, that is where you would expect them to be if I had a surplus, wouldn't you—at the head office? A. Yes. 30

"Q. Now, I am here selling these shares, and they might appear short in your record here in Solloway Mills, you see, might be sold short, as far as your records are concerned here, and yet as far as the total shares that I own here and in Toronto I might be long? A. Quite true.

"Q. Quite true, yes.

"The Court: Q. Well, as I understood you, that transaction that I outlined would not go in this security record at all?" 40

That has nothing to do with it.

"I say supposing there is an actual sale on the Exchange here, I may have shares coming in every day from Toronto to meet that situation? A. Yes.

"Q. I mean, sometimes I would not bother getting them in unless there was a demand here to force that action. Q. Quite true.

"That is, assuming I am appearing short here, in that at any time

"I could get them from Toronto? A. Yes.

That is true. You gave those answers and they are correct? A. Yes, that last question where I said that is quite true. That would be assuming that Toronto had stocks to deliver and called for them. We would have to assume Toronto had the stock.

Q. It is quite in order for you to assume they had the basement full, for all you knew? A. At times they may have had the basement full.

Q. So far as you know you don't know anything about the Toronto position, of your personal knowledge? A. No, I have no personal knowledge of the Toronto position.

Q. You remember in this last action telling us about how Sollo-way Mills stood in Vancouver, that their position was that they were short on Big Missouri? A. Yes.

Q. And Mr. Farris started cross-examining you. Do you remember what you said on that occasion? A. No.

Q. Isn't it quite possible you were mistaken about Big Missouri in this short position? A. Yes, it might be that I happened to make an error.

20 Q. And that applied to the stock that you referred to today? A. Yes, but I stated to the best of my ability and knowledge the answer was correct.

Q. It was not part of your duty to keep an eye on the short position of the company. A. No.

Q. That was merely an incident of the daily operations. A. Yes.

Q. We are thinking back to three years ago, and you are attempting to give the short or long position of the company from time to time. That is the position? A. Not the short position exactly, but 30 just stating that they were short.

Q. That is subject to the same answer that you gave in the Lockett case, that you might be mistaken, isn't that right? A. Oh, yes.

Q. Now, these certificates that you said came in with Theo. Frontier's name, they would also be endorsed by him as street certificates? A. They would be, yes.

The Court: So that they would be used in the same way as street certificates.

40 Mr. Sloan: Q. Assuming I am a client in Portland and I want to sell 1000 shares of stock, and I wire you to sell 1000 shares of Home Oil, and you know me as a responsible citizen, your company would go on the market and sell 1000 shares of Home Oil? A. Yes.

Q. And make delivery? A. Not necessarily.

Q. You would post a B-5? A. Yes, delayed delivery.

Q. And you would possibly make delivery if you did not want 10 to post a B-5? A. They would, but—

Q. In this case? A. They would deliver the stock if they had

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it on hand.

Mr. Fraser: A B-5, perhaps it would be better to explain it.

A. In this case, referring to the defendant company, they would deliver the certificate to the Stock Exchange, if they had it on hand.

Q. Explain the B-5? A. B-5—it is the practice among brokers, and it is authorized by the Vancouver Stock Exchange, where there is an incident like this, where delivery of the stock is in the mail, and the selling broker has not the stock to deliver, they may tender the Stock Exchange a B-5, which is similar to a promise to deliver on a certain date these 1000 shares.

Mr. Sloan: Until the stock is delivered they would be taking a short position against them, and a B-5 would be posted? A. No, it would not be a short position at all.

Q. There are some questions that I overlooked at page 190:

“Q. Now, supposing on the 14th November that it happened “that you didn’t have enough shares on hand to meet the nominal or “technical requirements of all your clients, if they all asked at once, “you see, and supposing that there was a rush on you that day and “there was more asked for than you had, you would probably wire to “Toronto and Calgary to send them to you? A. Not Calgary, 20
“Toronto.

“Q. To Toronto, which is the head office? A. Which is the “head office.

“Q. And you no doubt would get them from there? A. Yes.

“Q. Yes, and it might be that by an arrangement with other “brokers, for the few days it would take to get them out here, that you “would borrow them from other brokers until they came from Tor-
onto? A. Yes, that was often the case.”

Was that true? A. Was any particular stock mentioned?

Q. No? A. I should have in that case explained. In that 30
case they traded in both Calgary, Vancouver or Toronto and you might get them from there, but if it was in Toronto only you would have to get them from Toronto.

Mr. Fraser: Q. Vancouver stock? A. Unless it was traded in Vancouver, Calgary and Toronto. If it was traded in Vancouver alone it would not be sent to Toronto for because it would not be there. It would not be there in the first place.

Mr. Sloan: Q. Page 60:

“The Court: Q. Well, were there occasions on which there “was no stock bought at all; or would you tell me that is so. That they 40
“received an order for stock, but they would not even go through the “form of cross on the Exchange but just make an entry in the books?
“A. No, your lordship, I could not swear to that.

“The Court: Well, that is what Mr. Fraser has been putting to “you.

“Q. There were not two systems, but only the cross system of “balancing the books? A. That is the only system they use. Where

"they could say to a client where that had been sold on the Exchange.
 "There was just the two systems, but they were using the one to my
 "knowledge.

"Mr. Fraser: Q. So that I will get it clear. Is it your evidence
 "that there is just the one system; that there always was sufficient
 "stock on the Exchange but those purchases on the Exchange were
 "neutralized by off the Exchange transactions? A. Yes.

"Q. That is what you say? A. Yes."

10 That is correct? A. The answer I gave then was correct. Since
 then the reason why I did not make any statement there that the other
 system was used that although I was aware of the fact, I could not
 prove it and did not know what my status in court was to claim it was,
 so I have no proof of it.

Q. You cannot swear to it now? A. I have seen reports since
 that prove that is the case, though.

What reports? A. Clearing House sheets.

Q. In this case? A. Not necessarily in this case, but in the
 Lockett case.

Q. We are not talking about the Lockett case.

20 Mr. Fraser: You are examining on it.

Mr. Sloan: No, I am asking if these answers he gave are true.

Mr. Fraser: In the Lockett case.

The Court: Q. Mr. Sloan has been reading a question and
 answer given by you. Do you wish to say anything more in regard
 to your answer? A. Yes, your lordship. In that case I just made
 the statement, although I would not swear they used the other system
 for the reason I have already stated, that I was aware of the fact, but
 I could not prove it myself in court. I had no documents to prove it
 with.

30 Mr. Sloan: You were asked—

Mr. Fraser: Let him finish.

A. Since I made that statement I have seen records and docu-
 ments of the defendant company were shown to me and which showed
 me they used that other system.

Mr. Fraser: Q. What other system? A. Of selling direct
 from house account to the client without entry in the Vancouver Stock
 Exchange.

Mr. Sloan: Q. You are not alleging that in this particular case.

The Court: In this case?

40 Mr. Sloan: The case at bar, that there is any document filed
 here which indicates that is so, is there? A. I can say—I do not
 know that all the documents are here unless I went through and
 searched.

Q. You can do that. There is nothing here to your knowledge
 to indicate that at the present time?

The Court: You said just now you had seen documents of the
 defendant company, are they here? A. I don't know whether they

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are here. This was in the Lockett case that I saw the documents.

(Reporter reads: "Q. There are some questions that I overlooked at page 190. . . This was in the Lockett case that I saw the documents").

The Court: You have just heard what the reporter read? A. Yes.

Q. Are those documents you have seen of the defendant company in court now? A. I cannot say.

Q. Can you tell? A. I might, if I searched through the records.

Q. Find out and let me know.

Mr. Farris: He can search now.

Mr. Sloan: Yes, I will keep him for months, if he is changing his evidence in the Lockett case. I will reserve any cross-examination on that.

Mr. Fraser: I suggest that you go ahead with the teller's blotter.

The Court: Would you place at my disposal the pages you have been reading from?

Mr. Sloan: Yes.

Mr. Fraser: Q. Do you identify this? A. Yes, this book is what we call the teller's blotter, used in the securities department by the clerks that were handling the receipts and deliveries of stocks. 20

Q. Are there any entries there in your own handwriting, or is that the book that was there when you were in the securities cage?

A. Yes, the book was there when I was in the securities cage. I think I made entries in here if I can find one off-hand.

Q. You know that you made entries in this book? A. Yes.

Q. What did you call this book? A. Teller's blotter.

Q. What was the object of it, what does it disclose? A. It shows the stock on hand at the end of each day's business, and also shows the number of certificates received each day and the certificates delivered out by the Vancouver office, which it shows at the end of each day's business, the number of shares on hand and each stock. 30

Q. It shows the number of certificates on hand, in what column? A. In the last column of figures. It is marked in here "On hand."

Q. Show it to his lordship? A. Referring to this page it shows when this sheet was started on May 13th, that is Associated Oil. It shows at the commencement of business 5,880 shares on hand. It shows we received 500, 600, 650 shares that day. At the end of the day a total of 6,530 shares in certificates being delivered May 13th. May 14th, it shows delivery of 1250 shares, receipts of 350 shares, leaving a net of 5630 shares. 40

The Court: Q. You get the 5630 how? A. At the commencement of business on the 14th there were 6530 on hand, and we delivered out to clients or branches 1250 shares.

Mr. Farris: Speak up. I cannot hear you.

A. At the commencement of business on May 14, we had 6530 shares of stock on hand, and on that date we delivered out 1250 shares.

The Court: Leaving a balance of 5280? A. Yes, but we also received 350 shares which gives a balance of 5630 shares.

The Court: That is Exhibit 20.

(TELLER'S BLOTTER MARKED EXHIBIT NO. 20)

Mr. Fraser: Q. I want you to tell his lordship the shares on hand of Grandview on the 7th of October, 1929? A. At the close of business that date?

Q. Yes, at the beginning of the day and the shares received and delivered and the balance at the end of the day? A. On Grandview
10 on the 7th of October, 1929, in Vancouver office there were 37,770 shares on hand. We delivered on the 7th of October, 3000 shares on that date, and on that same date we received 5000 shares, and at the end of the day showed a balance of 39,770 shares on hand.

Q. I want you to take October 17th, 1929, in Grandview, and deal with that similarly? A. On the commencement of business October 17th, 1929, we had 30,355 shares on hand and on that date we delivered 1400 shares and we received then 2500 shares, and at the end of the day showed a balance of 31,455 shares on hand.

Mr. Farris: Q. There is just one question while I think of it,
20 on the ledger does that show the shares coming in from brokers and in transit and to be received? A. Just the shares actually in the record.

Mr. Sloan: It is a physical record.

Mr. Fraser: Q. My learned friend asked you about the number of offices in Canada? A. Yes.

Q. Do you know how many—do you know in how many offices the company traded?

Mr. Sloan: I should think that my learned friend should wait
30 until the cross-examination is closed rather than have re-examination in the middle of it. It does not seem to me to be proper.

The Court: I think that would be better, Mr. Fraser. Just a moment. Perhaps, Mr. Farris, you might, perhaps—you have not made it clear, that where you have given me—take Grandview on the 7th of October, at the beginning of the day, there were 30,770, then you delivered 3000 and received 5000? A. Yes, your lordship.

Q. Now, it might be so on that day, but if on any day you had a situation such as you spoke of, where you were short here, and wired to Calgary or Toronto and received certain shares in the course of time, would they be entered on the day they came in as received?
40 Yes, they would be entered on the date they were received by Vancouver office.

Mr. Farris: The point I was making was that there might be shares owing by brokers, which is very customary, and he said they would not be entered in. They might have coming from R. P. Clark & Company 10,000. Gelletly might owe 10,000. All these other

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brokers are not shown, although the records show as a physical record for that day.

Mr. Fraser: Q. When did this book on Grandview start. A. I think May, 1929.

Q. And shows the certificates from May, 1929, until when? A. Going right through until July, 1930.

Q. From May, 1929, to July, 1930? A. To July 9th, 1930.

Q. That shows receipts of all shares that came into the securities department? A. Yes, shows receipts of all securities.

Q. So if any other shares came from other offices or brokers or Timbuctoo they would be shown in there- A. Yes.

The Court: 2:15.

(COURT ADJOURNED UNTIL 2:15 P.M.

OF THE SAME DAY)

2:30 P.M.

(COURT RESUMED PURSUANT TO ADJOURNMENT)

GEORGE L. BECK resumes the stand.

Mr. Fraser: These confirmations, Mr. McGee has gone down them, there has been some misunderstanding as to what was brought up here, the confirmations used in the Lockett case, or there was, something which this witness saw in this case. 20

Mr. Farris: The question asked was whether or not, in these documents filed there was anything he could identify to verify his statement.

The Court: The question was with regard to the books in evidence in this case.

Mr. Farris: Yes, not in regard to other documents at all.

Mr. Fraser: I assume, my lord, all the confirmations are here, but my learned friend, Mr. Murphy, from my office just told the company to bring up the confirmations for certain days. I did not know that they were not here. 30

The Court: You want to put some documents in evidence.

Mr. Fraser: Yes, I want all the confirmations.

Mr. Farris: I think it would be better for my friend to get a truck and bring everything up here. We have a room full of documents.

The Court: Counsel should be able to arrange that.

Mr. Fraser: I want the confirmations covering the days I made the synopsis. I thought that Mr. Murphy told them we wanted those days.

The Court: They will be forthcoming shortly.

Mr. Farris: We brought everything that you asked for. If

there is anything you want I would like to know specifically exactly what you want.

Mr. Fraser: Is it clear to my friend?

Mr. Farris: Q. You have not been able to find anything in these documents now in evidence in support of your statement on the stand this morning?

The Court: To support the position this morning—you had better refer definitely to it.

Mr. Farris: Q. You said that there were certain documents which disclosed another system other than buying on the Exchange, that is, selling direct from the house to the client? A. Yes, I was looking through for certain documents on certain dates that we understood were in court, but were not.

It was only the date that you were looking for? A. Yes.

Q. But we are discussing now, Mr. Beck, a system in an isolated case. Is there anything in these documents that would indicate a general system, that is, a wholesale system of selling from the client, from the house to the client direct. You know there is not any such thing? A. There is no doubt, if I went on and searched through, I could find numerous entries disclosing that system used.

Q. You understand my question. You are quite intelligent. You understand I am saying it was not the general system to sell from the house to the client direct. I am not suggesting that one day that did not happen in a rush, days of big business that that did not happen, but I am suggesting to you that system was not generally followed or recognized, and you know it, if you know anything about the office at all.

Mr. Fraser: Let him answer, Mr. Farris. Don't you ask the question and answer it.

A. No, it was not a system that was followed generally.

Q. What do you mean followed generally? A. They used the other system of using brokers in preference.

Mr. Farris: Q. As a matter of fact the system used by Solloway Mills was, as you stated in the previous trial and again stated this morning with the one qualification, the system was that orders were to be filled over the Exchange, regardless of what they might have done by selling to brokers behind the scenes. When an order came in that went to the trading department, and in turn by the trading department to the Exchange to be filled? A. Yes.

Q. That was the general system, and any trading that went over the Exchange, the Exchange kept a record of it, and you either received from the clearing house shares purchased over the Exchange or the credit of the one balanced with the other transaction, is that right? A. That is right.

Q. So that any client, Frontier or otherwise, his purchases in accordance with the general system were made—I am not now discussing the fact that there might not have been some sales made to

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other brokers, I am not discussing that for the minute, we will forget that, but so far as buying over the Exchange for the customer, the system was that all orders were to be filled over the Exchange.

Mr. Fraser: Do you know that?

Mr. Farris: No, my friend should not.

The Court: Please, Mr. Fraser, do not interrupt cross-examination of the witness.

Q. If you do not understand the question you can tell me, but otherwise go on with your answer. A. Yes, it is quite true, Mr. Farris, that they wished for all orders to be put through the Stock Exchange. 10

Mr. Fraser: Q. They wished for it? A. Yes, they preferred all orders to go through the Stock Exchange.

Mr. Farris: Q. And that was the system, and it was only in case of a rush that that system was not followed.

The Court: Q. Is that so or not?

Mr. Farris: Q. You can answer yes or no. A. Yes, it would be so.

Q. Now, Mr. Beck, in regard to the sale through a jitney broker, supposing that the house account had, say, 10,000 shares of Home Oil that it wanted to dispose of, and supposing they called up say, Denbigh, Dickinson and said "Sell 2,000 shares of Home Oil over the Exchange," supposing that order went in, say,—what time does the Exchange open—ten o'clock as a rule? A. 10:00 or 10:30. 20

Q. Supposing they telephoned to Denbigh, Dickinson at 10:25 and told them that they wanted to sell 2,000 shares of Home Oil, that would be legitimate? A. Asking Denbigh, Dickinson to sell for them 2,000 shares?

The Court: You are asking a question of law there.

Mr. Farris: In accordance with the practice of Exchange? A. Yes. 30

Mr. Fraser: Q. Do you know the practice of the Exchange?

Mr. Farris: Please, Mr. Fraser—

The Court: I do not like interruptions of cross-examination.

Mr. Fraser: If this witness knows about the practice of the Exchange, that is all I want to be protected on.

Mr. Farris: Q. You know something about the practice of the Exchange, you are here as an expert witness to tell about everything? A. I know some of the practices of the Exchange.

Q. And you know that is a recognized practice of the Exchange? A. Yes, it was permissible. 40

Q. I say that would be perfectly proper for Solloway, Mills, a perfectly proper practice for Solloway, Mills to telephone an order to Denbigh Dickinson at 10:25 to sell 2,000 Home Oil? A. Yes.

Q. And the Exchange recognized a commission on that sale of what, one-tenth? A. One-tenth.

Q. Now, if Denbigh, Dickinson sold those 2,000 shares, they

would report to Solloway, Mills, wouldn't they? A. Yes.

Q. Yes, and that night—

The Court: Q. Are there any rules and regulations of the Stock Exchange that would be of assistance to me?

Mr. Farris: It is our intention to call Mr. Sprange, the secretary of the Stock Exchange, later, on those matters.

Q. Then you would send down to Denbigh, Dickinson, the 2,000 shares they had sold for you? A. Yes.

Q. And Denbigh, Dickinson in turn would turn those into the 10 clearing house? A. Deliver them back to the clearing house.

Q. Now, that is all perfectly legitimate. Now we will go one step further. At 11:00 a customer telephones in to you to buy 2,000 shares of Home Oil, and your trader goes on the floor, that is, Solloway, Mills' trader goes on the floor, with an order to buy 2,000 shares of Home Oil for Mr. Jones, we will say. Denbigh, Dickinson offer 2000 shares of Home Oil for sale and Solloway, Mills buy 2,000 shares, buy them for John Jones, is there anything wrong with that? A. No.

Q. And Solloway, Mills then find that they are getting the 20 same 2,000 shares back that they had given Denbigh, Dickinson to sell? A. Yes, they could do.

Q. On the other hand, what might happen is this, Solloway, Mills might give an order to Denbigh, Dickinson to sell 2,000 shares. They might have the order to buy 2,000 that I have mentioned. Denbigh, Dickinson might sell the 2,000 that Solloways gave to Miller, Court, and Miller, Court might buy those instead of Solloway, Mills?

A. Yes.

Q. And Gelletly & Company might also have 2,000 shares to 30 sell and Solloway, Mills could have bought the 2,000 shares from Gelletly. That might happen? A. Yes.

Q. Very easily, and there would be nothing wrong with that at all? A. No.

Q. We will come back to the item you referred to in 1929, in May.

Mr. Farris: My learned friend Mr. Sloan has to prepare for another case tomorrow, so I ask the court to excuse him.

Q. Now, this is an exhibit—

The Court: It is not an exhibit yet.

Mr. Fraser: You had better have it marked.

40 Mr. Farris: Confirmation slips of May 29th, for Associated Oils.

Mr. Fraser: They were sufficiently identified as Associated Oils of May 29th.

(DOCUMENTS MARKED EXHIBIT NO. 21)

Mr. Farris: Q. Now, the blue, what is that? A. The selling.

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Q. That is the selling from the house account? A. Yes, from the house account.

Q. This was sold to another broker? A. No, not necessarily to another broker. I take it from these it was sold to Theo. Frontier & Company.

Q. But not sold direct. This was bought over the Exchange—did you check up to see?

The Court: I went over those five documents with the witness before, did I not? I would like the witness to come up here and let me follow the cross-examination about that. 10

Mr. Farris: Q. This confirmation to Theo. Frontier 1,000 Associated Oil. Can you find whether 1,000 shares of Associated Oil were bought over the Exchange that day? A. Yes, from Denbigh, Dickinson & Greathed.

Q. Does this blue sheet, the selling slip, does that indicate where that went to? A. No, it does not indicate. There is nothing on there indicating to which account it was sold to.

Q. You don't know whether it went to Denbigh, Dickinson & Greathed?

Q. You don't know where it was sold? A. No, just sold to 20 fill in buy orders.

Q. I know, but I am asking you sold to whom or by whom it was sold? A. It was sold by the Vancouver office.

Q. To whom?

The Court: That is the document marked 5, that is the blue form. Tell me all you can from this, please? A. To go back, we mentioned about 1,000 shares, this one being bought. It shows 1,000 shares being bought over the Stock Exchange for Denbigh, Dickinson & Greathed, but that does not necessarily mean that it is being bought for Theo. Frontier. 30

Mr. Farris: Q. What does this indicate? A. That it was being sold to Denbigh, Dickinson.

Q. On the Exchange? A. No.

Q. Where was it sold? A. Just sold off the Exchange direct to them.

Q. In other words, the case would be that Denbigh, Dickinson were employed as agent brokers to sell 1,000 shares? A. Yes.

Q. And when the words "sold to" a broker are used all it means that the broker was employed to sell 1,000 shares, doesn't it? A. Yes. 40

Q. Now, let us follow this through, do you know whether or not the same 1,000 share certificates which was purchased from Theo. Frontier came back as sold to Denbigh, Dickinson & Greathed? A. Just put that question.

Q. Do you know whether or not the 1,000 share certificates given to Denbigh, Dickinson & Greathed came back through the Clearing Exchange to fill the order of Theo. Frontier? A. Why

not, they could have just taken out 1,000 of Associated from their office, delivered it to Denbigh, Dickinson & Greathed who in turn would deliver it to the Clearing House and the Clearing House deliver it back to Solloway Mills. The same certificates would go around in a circle.

Q. Let me ask about that? A. I should not say the same certificates. It may be that when Denbigh, Dickinson & Greathed delivered that 1,000 shares into the Clearing House, the Clearing House may not give back the exact shares, but they would give back 1,000 shares.

Q. They would give you 1,000 or credit for it to make up the debit, or credit balance as the case may be? A. Yes.

Q. We will take this, for instance—

The Court: Q. You see there is one of those five documents has no name at the top.

Mr. Farris: That is the record of the sale from the house which Mr. Beck has explained.

Q. Take this particular transaction with Denbigh, Dickinson. In this case Solloway Mills have given Denbigh, Dickinson 1,000 shares of Associated haven't they? A. Yes, they have.

Q. They at the same time gave an order to buy 1,000 shares for Theo. Frontier? A. Yes.

Q. Now, there is no reason why—you have told us already why Solloway Mills should not sell 1,000 shares if they had those shares to sell.

Mr. Fraser: He did not say that at all.

Mr. Farris: Yes.

The Court: If you have not said that, you may correct counsel.

Mr. Farris: He has already said so. I am not in the habit of making statements recklessly.

Mr. Fraser: I know that you did not do it purposely.

Mr. Farris: He made the statement. You can look at the record.

Q. Supposing Denbigh, Dickinson put that 1,000 shares up for sale, every broker and agent would have the right to bid for them?

A. Yes.

Q. And that 1,000 shares might have gone to Miller, Court or to Gelletly as I have already illustrated? A. Yes, it might have gone to any one of them.

Q. Now, if Miller Court had bought that 1,000 shares instead of Solloway Mills there would be nothing wrong with that, would there? A. No.

Q. And if Solloway Mills had bought the 1,000 shares for Theo. Frontier from Gelletly there would be nothing wrong with that? A. No.

Q. If it happened that Solloway Mills also bought either part or all of the order that Denbigh, Dickinson were selling, it would not make any difference, would it?

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The Court: To whom—it would not make any difference to whom?

Mr. Farris: To the client, whether they bought from Gelletly, Denbigh, Dickinson or Miller Court.

Q. Would it? Do be frank? A. You are going on the assumption that Solloway Mills were actually selling 1,000 shares on hand, that they wanted to sell.

Q. Absolutely. A. If you are going on that assumption, it is quite all right.

Q. They would buy back from Denbigh, Dickinson? 10

Mr. Fraser: Q. You can explain it as far as you want.

Mr. Farris: No, not unless you know something.

The Court: Q. Have you any explanation that you want to make?

Mr. Farris: Not theories.

Q. You have already told Mr. Sloan that you knew nothing about the general state of Solloway Mills' holding of shares, did you or did you not?

The Court: In other parts?

Mr. Farris: Q. That is, Solloway Mills & Company as a 20 whole? A. No.

Q. The office of the company was simply a branch office, was it not? A. Yes, branch office.

Q. And those dealings with Solloway Mills were dealings with Solloway Mills as a company, were they not? A. Yes.

Q. And the company was a Dominion company having its head office in Toronto? A. Yes.

Q. With some forty or forty-two branches from Halifax to Victoria? A. Yes.

The Court: I have that. 30

Mr. Farris: Q. Now, witness, I want to find out from you if you know what is recognized as being short stock, or what I am more anxious to get at what is not short and what is recognized as stock on hand. I think it has been fairly well defined in various courts, but I will just ask you if you recognize these elements; it does not necessarily mean in order not to be short that you must have the actual physical certificates in your possession, does it? A. No.

Q. You may have shares loaned to other brokers on call? A. Yes.

Q. You may have shares owing from the Clearing House? A. 40 Yes.

Q. You may have shares in transit? A. Yes.

Q. You may have shares in transit, in transfer houses, in offices? A. Yes.

Q. You may have shares on call from the treasury of companies? A. Yes, they may have.

Q. So that in order to ascertain whether or not there is a short

position, whether Solloway Mills had a short position in any stock it would be necessary to ascertain the entire amount of shares owed or on call by all of the clients of Solloway Mills all over Canada; it would be necessary to know all of the shares that Solloway Mills had in each and every branch office; it would be necessary to know the amount they had on call; it would be necessary to know—just say yes instead of nodding? A. Yes.

Q. It would be necessary to know what treasury shares they had on call? A. Yes.

10 Q. What shares they had in transit? A. Yes.

Q. I have mentioned the shares on call. It would be necessary to do all those things to establish the short position? A. In the whole company, Dominion wide.

Q. By the way, I presume, of course, you were conscientious and honest in your work with Solloway Mills? A. Yes.

Q. And you had no intention so far as your work was concerned and your duties there of being a party to a wrong doing? A. No.

Q. And so far as you knew, during your time with Solloway Mills did you ever know of a single customer of Solloway Mills being
20 done out of a cent? A. No, I cannot say.

Q. Let me ask you this question, Mr. Beck, if a client was buying shares on the market and Solloway Mills were selling shares at the same time that the client was buying, wouldn't that benefit the client who was buying the shares? A. If Solloway was selling the same time that the client was buying?

Q. Yes? A. Yes, in having a market that would tend to keep the price at the same level.

Q. And if Solloway Mills were buying shares at the time the client was selling the client would get a better price for them than if
30 Solloway Mills were not buying? A. Yes, they would.

The Court: May I ask counsel if there is—as to what extent the short position may be established. May I ask counsel if there is any decision in our own courts bearing on the establishment of the short position.

Mr. Farris: I cannot imagine how there would be. It must depend on the facts and the evidence brought out.

The Court: Has there been a case before the court where evidence was led as to the short position locally, and not evidence as to how they stood in other matters.

40 Mr. Fraser: Yes, Mr. Justice Murphy in the Lockett case dealt with this point.

The Court: Have you the judgment.

Mr. Fraser: Yes.

Mr. Farris: I don't read that judgment in that way.

Mr. Fraser: I intend to raise it in the argument.

Mr. Farris: With all due respects to Mr. Justice Murphy—well, that is for the argument.

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The Court: If you please, Mr. Farris—you suggest as to the matters concerned in the questions and answers put to and answered by the witness—I think I was following you there, and if there is any similar position in any other court dealt with by the court I will be pleased to have it.

Mr. Farris: I have looked through the evidence in the Lockett case and there is no evidence similar to what has been given here today.

Mr. Fraser: I was in the case and I know something about it.

Mr. Farris: I have the evidence before me. I really accept the evidence—frankly I prefer it to my learned friend's recollection of the evidence. 10

The Court: The reasons for judgment in some other case might have dealt with the situation.

Mr. Fraser: I have a number of decisions on the point, a number of decisions on the point of the burden of proof.

Mr. Farris: I am sorry, my lord, I will have to look through this evidence. Mr. Beck was called and recalled a number of times.

Q. By the way, Mr. Beck, during the time you were there, you were extremely busy, were you not? A. Yes, we were quite busy. 20

Q. At first you were on day duty and then you were put on night duty? A. Yes, at first on day duty for two or three days and then I went to night duty.

Q. It kept you jumping in your own particular department? A. Yes.

Q. You did not have much time going around checking up the additional staff? A. No.

Q. You had a staff up to 100? A. Yes, close to 150.

The Court: Q. How many of them were under your supervision? A. At times as many as fifteen in the Securities Department. 30

Mr. Farris: Q. The house account, of course, was not under your— A. No.

Mr. Fraser: Q. Under your what?

Mr. Farris: Q. —supervision or jurisdiction? A. No.

Q. Solloway Mills during that time there was just a milling crowd, everybody jumping sideways? A. Yes.

Q. There was hardly much time to keep up with your own work without looking at anybody else's work? A. Yes.

Q. You gave evidence on the Lockett action and you identified in this trial what was exhibit 60 in the Lockett trial and which has been marked exhibit 6 in this action. I want to ask you now if you are able to swear positively that that is the Clearing House sheet of Solloway Mills at that time and I am drawing your attention to the fact that you gave evidence in respect of that in the Lockett action and you were cross-examined on it by my brother, Mr. J. W. deB. Farris? A. Yes, I still adhere to the original statement that these 40

were copies of Clearing House sheets made up in the Vancouver office of Solloway Mills.

Q. I am referring to page 38 of the Lockett evidence: "Now, I happened to pick this at random, exhibit 60, what does this purport to be A. For July, 1929."

Is that what is in front of you? A. Yes.

Q. "What does that purport to be? A. A copy of the clearing house transactions.

Q. Now, did you have anything to do with the preparation of that document? A. No.

Q. Would you pledge your oath that it is a document you remember seeing in the office of Solloway Mills? A. Not the typewritten copy, no. But there is copies in handwriting and there is some of these will be identified.

Q. In what way would you be able to identify them? A. I will remember the person's handwriting.

Q. You will remember it as having been written by that person in the office? A. Yes.

Q. Let us understand that. I don't think you quite mean that. I don't think you understand my question. You have no independent memory of having seen any of these documents in the office of Solloway Mills, have you? A. I have had no independent—

Q. I take this document 60 first. Can you say, "Yes, I remember seeing that document in Solloway Mills' office"? A. I would say not a typewritten copy.

Q. I mean even taking the written ones, would you say you saw that there? A. Yes.

Q. Are these documents you would see? A. Oh, yes.

Q. You would see them? A. I would have occasion to refer to them practically every day.

Q. Now, when you look at the writing, do you remember this document there, or do you merely say you saw a document similar to that? How do you know but that somebody has written that document last week? A. Well, that I don't know.

Q. Do you know whose writing that is on this page? A. No, not on this page.

Q. I will write "Beck" on here to identify it, the page we are referring to. Now, see if you can find a page of which you recognize the writing? A. I believe that sheet to be written by—

Q. Do you recognize the writing, or are you looking at the initials? A. I did not know there were initials on.

Q. Whose writing do you think that is? A. A man by the name of Mr. Austin.

Q. And he at one time worked for Solloway Mills, did he? A. He did.

Q. Now, supposing that I had got Mr. Austin to prepare a sheet like this, say, a month ago, and we changed the original deliber-

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ately, you see, and the figures, and we put the checks on here and the names on here. Have you any remembrance of the document to say which is the original and which is the other? A. No, none whatever if they were made out by the same man.

Q. Have you seen this document prior to going into court? A. No, I have not, not that particular document, no.

Q. Now, I suppose what you have said about these two that I have picked at random applies to all the other documents that have gone in in the same way, does it? A. It would do."

Do you remember being asked those questions and giving those 10 answers? A. I do.

Q. And they are correct? A. Yes.

Q. And your position is the same today? A. It is, it would have to be.

Q. Now, I want you to look at exhibits 1, 2 and 3. I want you to refer to the pages there and the items that are in any way referring to the plaintiff Theo. Frontier so we will know what those particular items apply to so far as this action is concerned.

The Court: Is the volume paged or under dates?

Mr. Farris: Yes, I do not know so far as your lordship is concerned, but so far as I am concerned they are not much use unless you subtract them, showing that they are connected with this case. 20

A. You are referring to the same page that you referred to this morning.

The Court: Q. Bring the book up here. You are referring to what exhibit? A. Exhibit 3.

Q. Very well.

Mr. Farris: Q. What page are you referring to and what exhibit? A. The pages are not numbered.

The Court: Q. You identify it by the date? A. By the date. 30

Mr. Farris: What date? A. March 23rd, 1929.

The Court: Q. That was already referred to? A. It was, this morning.

Mr. Farris: Q. What did you find there that has to do with this action? A. It shows here that 200 shares of George River Gold Mine were received from Theo. Frontier on that date.

Q. That is all that indicates? A. Yes.

Q. And that is all there is in that case referring to the action?

The Court: Do not put it that way.

Mr. Fraser: It speaks for itself, my lord. 40

The Court: You are asking the witness if there is anything on this page referring to this action. I might have to consider that.

Mr. Farris: The witness is the one who has been brought in to identify these books as referring to this action. Surely he is the man to give us the information as to what there is in this action.

The Court: For example, on the page which he referred I find

the word "Greathed," for example. There might be some piece of evidence there.

Mr. Farris: That is what I want to get at.

Mr. Fraser: I can tell my learned friend what it is, first, as to the system, the system in regard to collateral as it came in, from collateral to the Clearing House, No. 2, I gave my friend a list of the collateral we deposited. My learned friend has a list of the collateral in that book.

The Court: 1, 2, 3. Those books, you mean? A. Exhibit 3.

10 Mr. Fraser: If my friend wants the list I will give it.

Mr. Farris: I want to find out what is in these documents. I prefer the documents for themselves, knowing what I have got to meet. I took a certain thing for granted before and then found that a different construction was placed on the document later on.

The Court: Do you submit any one witness called in the witness box might say in what way any particular exhibit—

Mr. Farris: This particular witness was brought in to identify the document for that purpose. Now, this witness does not know. Then that is all right.

20 Mr. Fraser: Then why the worry?

Mr. Farris: Some witness has to come in to prove the connection between these books and the action. I do not say one witness, but either one or a series of witnesses. I want to take each witness and find what he knows. That is what I want to know.

The Court: You may go on.

Mr. Farris: Q. I want you to find as far as you know any reference in exhibits 1, 2 and 3 relative or material to the issue in this action? A. It would be impossible to do it in five minutes.

Mr. Farris: I don't care. We are here if it takes all season.

30 Mr. Fraser: Surely, the documents speak for themselves. There is no use of my friend being capricious.

Mr. Farris: My friend thinks that anything that is not suitable to him is capricious. This action would soon be over if I accepted judgment like that, admitted judgment like that.

The Court: Direct the witness' attention to some particular matter, to some particular phase of the matter and ask about it.

Mr. Farris: I want to find out why the books are here and what bearing they have on this action.

40 The Court: The witness identifies it as a book of the company and is referring to item after item. If you wish to refer to the book, you may do so.

Mr. Farris: What other items do you find in this book referring to Theo. Frontier & Company?

The Court: Could I not have a synopsis of the items in here that refer definitely—

Mr. Fraser: Yes, I am calling a witness.

Mr. Farris: You did not say that before. I am quite willing.

The Court: Very well. I think that would be helpful to me, if

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someone were prepared to call my attention to the various items referring to the plaintiff.

Mr. Farris: I take it this witness does not know.

The Court: If you please, I do not wish you to put it that way.

Mr. Farris: I understood that my friend was calling a witness and that this witness did not know, that, therefore, he was going to call a witness on the matter who was more familiar with that phase of it than this witness. I have to find out what this witness knows.

Mr. Fraser: I am calling this witness to prove the system. I have a chartered accountant. 10

The Court: Mr. Farris did ask, directly referring to the plaintiff. You are calling another witness on that point.

Mr. Fraser: Yes, and my friend has known this for three days.

Mr. Farris: I have not any further questions of this witness.

Mr. Fraser: I have a question or two.

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RE-DIRECT EXAMINATION BY MR. FRASER:

Q. My learned friend gave you an illustration, Mr. Beck, of Solloway Mills giving a buy or selling order to another broker? A. Yes.

Q. In that hypothetical case of Solloway Mills giving another broker a selling order and buying on the Exchange themselves, would there be any house account slips or record on the books covering the transaction? A. Yes, if Solloway Mills were selling through another broker, as Mr. Farris stated, two thousand shares for their own account, there would have to be a record go through the house account. 20

Q. Buying or selling for a client? A. Buying or selling for a client there would be no house account record.

Q. And there are house account records in this case you referred to his lordship? A. Yes. 30

Q. My learned friend referred to the forty-nine branches. In how many offices in Canada did the defendant company trade, do you know? A. Yes.

Q. How many? A. Three.

Q. Where were they? A. Toronto, Vancouver and Calgary, with the exception that when the office was opened in Seattle, there was the Stock Exchange in Seattle.

Mr. Farris: Before my friend continues, there was one point I overlooked.

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RE-CROSS-EXAMINATION BY MR. FARRIS: 40

Q. You referred to wash sales this morning and I did not ask you concerning that. What do you understand to be a wash sale? A. Well, it is where one sale nullifies another sale.

Q. Hasn't a washed sale an established meaning in stock exchange transactions, or do you know? A. Yes, they have—

Q. Isn't this what a wash sale—

Mr. Fraser: Q. You may finish it if you wish.

The Court: I do object to you interfering with the cross-examination because there is an expression used "wash sale" and Mr. Farris is asking fairly what the witness is saying and I am trying to follow.

10 Mr. Fraser: I am sorry, the only reason is that he was cutting the witness off.

Mr. Farris: The witness had answered my question.

The Court: No, but you may go on and make any observation.

Mr. Farris: I am following up with my conception of wash sale and I was going to ask if that was correct.

The Court: When you are asking a question I wish you would allow the witness to answer the question and make any explanation he wishes before you interrupt him.

Mr. Farris: I asked him if he knew what a wash sale was. Surely that does not require explanation.

20 The Court: He answered responsively to the question.

Mr. Farris: Yes, that does not require explanation as to why he knows or does not know.

The Court: I prefer you to go on and if he is not responsive I will endeavor to have him respond to the question.

Mr. Farris: He was, and I was going on to the real question.

Q. Did you have anything further to say. I asked if you knew what a wash sale was? A. No, nothing further.

Q. You have no further comment to make? A. No, I think not.

30 Q. As I understand a wash sale is where one purchases for the purpose of forcing up or down the price of stocks. Transactions are put through back and forward, that is, I will buy and you will sell, we will buy back and forth, and there is no transaction at all. It is simply apparently a lot of sales going through when in fact there are no sales at all, for the purpose of affecting the rise or fall of shares. Isn't that a wash transaction? A. Yes, that can be termed a wash transaction also.

40 The Court: Q. You are using the term "wash sale" and asking about the meaning and the suggestion that it had on the Stock Exchange.

Mr. Farris: Yes, and I understand you agree that the term or meaning of wash sale— A. Yes.

The Court: You were using it in that sense?

A. Not exactly in that sense although I fairly believe it can be used in that sense.

Q. How were you using it? A. They were making one sale against another which would nullify each other.

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Mr. Farris: Q. Now, a cross sale, you know what a cross sale is, do you not? A. Yes.

Q. A cross sale is one sale against another? A. Yes.

Q. Which nullifies one, as you would express it? A. Yes.

Q. Do you know whether or not a cross sale is a recognized proper method of making a sale by the Exchange?

A. Well, in the hypothetical case you drew a while back in the examination—

Q. I was not dealing with cross sales then. You know a cross sale is made, don't you? Is this not a cross sale, that a broker—a cross sale is made by the same broker. He goes on the floor of the Exchange and he has an order to buy 1,000 shares of Home Oil at \$10 and also has an order to sell at \$10. That is put over the horn, or announced to the Exchange that this is a cross and he has to make a cross, and if nobody bids higher for the order he has to sell or offers at a lower price what he is offering for sale, that goes through as a cross? A. Yes.

Q. And that is a perfectly legitimate transaction? A. Yes.

Q. And after all it appears that the real test is that he is dealing upon the Exchange and receives— 20

The Court: I would like you to follow that up, the same broker is there with an order to sell and an order to buy. Would you be good enough to ask this witness if he is going to put through a cross sale, the procedure from the beginning to the end so that I can follow it somewhat.

Mr. Farris: Q. That would be put up on the floor and if there were no other bids made the broker would then cross one order with the other? A. Yes.

Q. And that would be a cross sale? A. Yes.

Q. Which would be perfectly legitimate? A. Yes. 30

Q. And he would have bought from himself and sold to himself, that would really be the effect of it? A. Yes.

Q. He would have bought 1,000 shares of Home Oil from himself and sold 1,000 shares to himself? A. Yes.

The Court: Q. How does it stand with regard to the two people the one from whom he has the order to buy and the other the order for sale?

Mr. Farris: He would come back to the office and confirm having bought 1,000 shares and to the client to whom he had the order for sale he would confirm as having sold? A. Yes. 40

The Court: Q. And what would have taken place in the meantime is what you have described as a cross sale on the floor of the Exchange? A. Yes.

Mr. Farris: Q. I was going to carry it further with the dealings on the Exchange. The real value of the Exchange is that so long as orders are put over the floor of the Exchange it insures the client getting the best price, that is either for the sale of shares or the purchase of them? A. That is the purpose of an Exchange.

- Q. And that so long—
- The Court: I do not know that I follow. If the same broker has an order to buy and an order to sell—
- Mr. Farris: I think I could possibly explain it a little clearer.
- The Court: You must get it from the witness, unless it is common ground with Mr. Fraser.
- Mr. Farris: I think it is. A broker goes on the floor of the Exchange, he has an order to sell at \$1, 100 shares, and he has an order to buy—
- 10 The Court: There would be no reserve price.
- Mr. Farris: He has an order to buy 100. It is announced on the floor of the Exchange that so and so wishes to cross the sale at \$1. Every other member of the Exchange has the right to buy those shares half a point higher. Just correct me if I am wrong.
- Q. For instance, if a broker offers to pay a point or half a point more than the man making a cross, then he gets the 100 shares for sale. If he offers to sell for half a point less, then the reverse follows and the cross does not go through, and if some other broker intervenes—
- 20 The Court: The cross does not go through and then each client receives confirmation according to the actual sale.
- Mr. Farris: Q. That is the system as I have described? A. Yes, that could be used.
- Q. That is the system to make a cross? A. Yes, although so far as the half point, I do not know whether that is correct.
- Q. It is somewhere around that, that is the system used? A. That is the system. It is a legitimate cross.
- Q. Now, what difference would there be, Mr. Beck, in affecting—
- 30 The Court: May I ask, are those cross sales frequent during the day on the Exchange?
- Mr. Fraser: The Clearing House sheet shows them. They are very infrequent.
- Mr. Farris: At times they are quite frequent and at other times not so frequent? A. It depends on the amount of business.
- Q. Now, Mr. Beck, I do not know whether you know this or not, the effect of a cross sale somewhat slows up operations on the floor of the Exchange. They have to stop to take these announcements? A. Yes.
- 40 Q. Now, supposing that instead of making a cross sale in the manner I have intimated on the floor of the Exchange, a broker instead of going in himself with a sell in one hand and a buy in the other employs an agent broker to sell and he has a buy—
- The Court: What is that?
- Mr. Farris: Q. Instead of a broker going on the floor of the Exchange with in his right hand an order to buy and in his left hand an order to sell and makes the cross on the floor of the Exchange he

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goes with the order to buy, but instead of himself selling he employs a jitney broker or agent broker to sell for him.

Mr. Fraser: My learned friend has been over this once.

The Court: I will allow you to go on.

Mr. Farris: What is the difference between that and making a cross sale on the floor so far as the client is concerned?

Mr. Fraser: That is a legal question.

The Court: I will allow the question.

A. Well, the price may vary on the stock.

Mr. Farris: Q. And may vary on the cross sale if it does not go through. A. Yes, if it does not go through. 10

The Court: I want to follow you there, please, according to a cross sale you have told me someone would be doing that on the floor of the Exchange and they would let you have an opportunity of saying whether you would give more or less, isn't that so? A. Yes.

Q. If it is done without doing that, what is the position if it is done the way Mr. Farris suggests is the position? A. Then the agent broker that has been given the order to sell those 100 shares he just offers on the floor 100 shares of that stock for sale and he would have to take whatever is bid for them. If one firm bids \$1 or another \$1.05, or whoever is there first with the bid, it completes the sale. It may not be crossed with different companies at all. 20

Q. That also applies on the floor when you have a buy, it may not go through and the cross does not go through? A. It might.

Mr. Farris: Q. We will say that Solloway Mills' trader goes on the floor with certain stock, 100 shares of Associated at which they have an order to buy at \$1 and an order to sell at \$1. Now, they go on the floor of the Exchange and they announce a cross at \$1. Every other broker has a right to either pay higher for the stock for sale or to sell lower than the stock is for sale? A. Yes. 30

Q. If there are no other bids then the cross goes through? A. Yes.

Q. Now, take the next step, instead of going in with an order to buy in the right hand and an order to sell in the left hand, Solloway Mills' trader goes on the floor of the Exchange with an order to buy 100 shares of Associated at \$1, Denbigh, Dickinson, their agent broker goes on the floor to sell 100 shares at \$1. What happens if there are no other bids? A. The sale is complete.

Q. At \$1 and exactly the same position is arrived at as if it was made as a cross sale on the floor? A. Yes. 40

Q. And, if there is a different price, it goes to somebody else, as if there was a different price in the cross? A. Yes.

Q. And you arrive at exactly the same result? A. Yes.

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RE-DIRECT EXAMINATION BY MR. FRASER:

Q. Taking that last question, you have an order to buy and an order to sell from a client? A. Yes.

Q. Solloway Mills go on the floor of the Exchange with a buy

order and give a selling order to their agent broker Denbigh, Dickinson? A. Yes.

Q. And the transaction is completed on the floor of the Exchange? A. Yes.

Q. In your records that day would there be selling confirmations from the house in connection with that transaction? Am I clear on that? A. Just a minute, I am going through the stages, buy confirmations and sell confirmations.

10 Q. You have a client who wants to buy 100 shares of Home Oil and a client who wants to sell 100 shares of Home Oil? A. Yes.

Q. You have one who wants to sell 100 shares of Home Oil at \$1 and one who wants to buy 100 shares at \$1. You go on the Stock Exchange and give a selling order to the agent broker to Denbigh, Dickinson, and that is sold by Denbigh, Dickinson to Solloway Mills, there being no other bidder and the transaction is closed on the Exchange. Are you following me? A. Yes.

Q. When you go back to your records, your confirmations that day, are there any selling confirmations from the house? A. No.

20 Q. My learned friend was going to refer to the Big Missouri. You saw that in the Lockett case. Mr. Magee brought it up.

Mr. Farris: I do not know what my learned friend wants yet. I asked you in court what you wanted and you said probably you could get it from the witness. The witness said that it was not the general system and I let the question go and did not go any further.

The Court: What was it you wanted?

Mr. Fraser: You will remember before lunch—

The Court: You can say.

Mr. Fraser: I want the confirmations for Big Missouri for March 7th? A. Yes, that was the date, March 7th.

30 Mr. Farris: What else?

Mr. Fraser: That was all from this witness.

Mr. Farris: I will have to send down for it.

Mr. Fraser: I thought that someone had gone down for them?

Mr. Farris: No.

The Court: If there is anything else.

Mr. Farris: Mr. Magee is the one who can get them. I would like him in court, though.

40 Mr. Fraser: You can get it later. I want all the buy confirmations contained in the document which has been handed to you, and which have all been checked by Mr. McGee.

Mr. Farris: They are here.

Mr. Fraser: I understand they are all here.

The Court: Counsel says they are.

Mr. Farris: If my learned friend will furnish us with a list of what he wants, we will have them here at eleven o'clock tomorrow morning, and be glad to furnish you with everything you want.

The Court: That would be a good way, Mr. Fraser.

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Mr. Fraser: Yes, only I do not want you to think I did not do it.

The Court: You may do it again.

Mr. Fraser: Q. When was the first time you ever ascertained that the defendant company was selling from the house?

Mr. Farris: That is not re-examination. It is entirely new ground and I did not cross-examine on it.

Mr. Fraser: Excuse me, my learned friend brought out just before the noon recess about these two systems. I am asking him the first time he knew. 10

Mr. Farris: He has not said yet that he did know. I object to the form of the question and the question.

Mr. Fraser: Q. Did you know at any time whether they were selling stocks direct from the house account to clients, was it within your knowledge? A. I was aware of the fact.

Q. When did you become aware of the fact? A. Shortly after I started—as I stated this morning at the last trial I did not know what my position would be in court. I said in court that I would not swear to it. I did not know what you were trying to prove.

Q. Did you say that the defendant company preferred selling over the Stock Exchange. Is that what you say? A. Yes. 20

Q. These crosses on the Exchange, when they were made by Solloway Mills on buys and sells to themselves—you remember Mr. Farris asked you about those? A. Yes.

Q. They would appear in this Clearing House sheet, would they not? A. Yes.

Q. As sells to Solloway, Mills? A. Yes.

Mr. Farris: Q. Just a moment, now, are you sure about that, your last statement. Mr. McKenzie instructs me that is not the case. I want you to consider that very carefully because Mr. McKenzie was the trader. You probably know Mr. McKenzie, and he has just told me that is not the case. 30

The Court: I do not think you are entitled to put it that way.

Mr. Farris: I am instructed that is the case.

Q. I want you to find out one of those, find me one single one. What I am informed is this, Mr. Beck, that they do not appear in those Clearing House sheets, but that they appear in the records of the Stock Exchange, but not the Clearing House sheet of Solloway Mills.

The Court: Q. What do you say about that, Mr. Beck? 40

A. I will have to amend my statement. I was under the impression that—I knew that all—that there was a record of every transaction that appeared in the Stock Exchange, was listed with the Stock Exchange. I was under the impression that it was listed on the Clearing House sheet as well.

Q. I am informed that such is not the case. I can quite see how you would be mistaken. I was under the same impression? A. I

was under that impression. I knew there ought to be some record.

Q. You understand that they keep a record in the Exchange, but not on these sheets. You would not dispute that. A. No.

(Witness aside).

ROBERT W. GLASS, a witness called on behalf of the plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. FRASER:

Q. You were formerly employed by the Defendant Solloway
10 Mills & Company Limited? A. I was.

Q. When did you first join them? A. September 1st, 1928.

Q. And continued until when? A. September, 1929.

Q. About a year? A. Yes.

Q. When you first went there what were your duties? A. In charge of the securities department.

Q. You were in charge when you first went there? A. Yes.

Q. In September, 1928? A. Yes.

Q. How long did you continue in charge of the securities- Did you say securities? A. Yes.

20 Q. That is the position the last witness had? A. I believe so.

Q. How long did you remain in charge of the securities department? A. Until January, 1929.

Q. And then, what position did you assume? A. I took charge of the confirmation department until September, 1929.

Q. Just tell me as shortly as you can what your duties were, what the confirmation department did with respect to client's orders and how the confirmations were made out. A. The confirmations were made from buying and selling orders sent to the confirmation department from the trading room. They were made originally in
30 three copies, latterly in four copies. The first copy was sent to the client, the second copy was used for the business, balancing off the day, and the third copy went to the securities cage for delivery and receipt of stocks.

Q. From what document, if any, were those confirmations prepared? A. They were prepared from the copies of actual orders.

Q. What are orders? A. Orders are, buying and selling orders given by clients to the company for execution.

Q. And are the orders filled before the confirmations are made? A. Yes, they are filled in the trading room.

40 Q. These orders are filled in the trading room? A. Yes.

Q. And then the order would come from the trading room to the confirmation department? A. Yes.

Q. And then, you made out the confirmations? A. Yes.

Q. Reference has been made to some of these house confirma-

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tions. Were there orders to buy and sell from the house coming to your department? A. Yes.

Q. You made out these confirmations, did you? A. Yes.

Q. By the way, these confirmations here, Mr. Glass, are you able to identify any of these confirmations? A. Yes, those are the confirmations made by the confirmation department.

Mr. Farris: Which one do you identify now? I want him to identify and have marked the particular one he identifies? A. I identify those as being made in the confirmation department of Sollo-way Mills. 10

Mr. Farris: I want to have this particularly marked.

The Court: The witness took them from what exhibit?

Mr. Fraser: This has never been marked.

The Court: It is going in now.

The Clerk: It will be exhibit No. 22.

The Court: These five sheets, for example, I was taking for granted were in as a group and it was found later that they were not in, until they were marked as exhibit 21. These are new then.

Mr. Farris: So far as this witness is concerned, I am insisting, I want each sheet identified by him particularly and mark each one as a separate exhibit. 20

The Court: This then is exhibit—

The Clerk: Exhibit 22.

(DOCUMENT REFERRED TO MARKED EXHIBIT NO. 22)

Mr. Fraser: I am putting in the remainder of the confirmations in bundles and would ask the learned registrar if he would mark them all.

The Court: You had better put them in one at a time, hadn't you?

Mr. Fraser: This is a bundle of confirmations marked 16-18th March, 1929. 30

(DOCUMENTS MARKED EXHIBIT NO. 23)

(BUNDLE OF CONFIRMATIONS FEBRUARY 14th, 1929,
 MARKED EXHIBIT NO. 24)

(BUNDLE OF CONFIRMATIONS APRIL 18TH, 1929,
 MARKED EXHIBIT NO. 25)

(BUNDLE OF CONFIRMATIONS MARCH 16-18TH, 1929,
 MARKED EXHIBIT NO. 26)

(BUNDLE OF CONFIRMATIONS MARCH 13TH, 1929,
 MARKED EXHIBIT NO. 27)

- (BUNDLE OF CONFIRMATIONS, APRIL 23RD, 1929,
MARKED EXHIBIT NO. 28)
- (BUNDLE OF CONFIRMATIONS JANUARY 26TH, 1929,
MARKED EXHIBIT NO. 29)
- (BUNDLE OF CONFIRMATIONS JUNE 19TH, 1929,
MARKED EXHIBIT NO. 30)
- (BUNDLE OF CONFIRMATIONS JUNE 17TH, 1929,
MARKED EXHIBIT NO. 30)
- 10 (BUNDLE OF CONFIRMATIONS APRIL 25TH, 1929,
MARKED EXHIBIT NO. 31)
- (BUNDLE OF CONFIRMATIONS JULY 19TH, 1929,
MARKED EXHIBIT NO. 32)
- (BUNDLE OF CONFIRMATIONS SEPTEMBER 5TH, 1929,
MARKED EXHIBIT NO. 33)
- (BUNDLE OF CONFIRMATIONS MAY 29TH, 1929,
MARKED EXHIBIT NO. 34)
- (BUNDLE OF CONFIRMATIONS JANUARY 22ND, 1929,
MARKED EXHIBIT NO. 35)
- 20 (BUNDLE OF CONFIRMATIONS DECEMBER 22ND, 1928,
MARKED EXHIBIT NO. 36)
- (BUNDLE OF CONFIRMATIONS JANUARY 21ST, 1929,
MARKED EXHIBIT NO. 37)
- (CARTON OF MISCELLANEOUS CONFIRMATIONS
MARKED EXHIBIT NO. 38)
- (BUNDLE OF CONFIRMATIONS CONTAINED IN A
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Mr. Fraser: Exhibit 39 is a bundle of confirmations for days that are not material to this action. Some of them are not.

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Mr. Farris: Why not put those papers in?

Mr. Fraser: I am not putting them in.

Q. Now, you say, Mr. Glass, that these orders came daily from the house account and you prepared these confirmations from them?

A. They came from the trading room.

Q. I beg your pardon. Were any of these orders you received from the trading room in any way specifically marked or distinguished from the others? A. You mean distinguished to me, that is from the house account?

Q. That had any distinguishing mark on them as distinguishing them from the usual run of orders? A. There were no clients' names mentioned on them, just the name of the stock and the price. 10

Q. What did you treat those as? A. House account orders.

Q. And you filled up the house account confirmations from those, did you? A. Yes.

The Court: What is that?

A. We filled up the house account confirmations from those.

Mr. Fraser: Q. Have you any knowledge of any system of stocks being bought on the Exchange and being sold off the Exchange? A. Yes. 20

Q. Explain what information or knowledge you have of that state of affairs? A. There were cases known in my department as either purchases or sales in which the transaction was crossed on the Exchange and a certain method was used in order to clear those.

Q. Now, just explain what knowledge you have of that system and what documents came in by reason of the system? A. The first knowledge I would have of it would be the receipt of the floor Exchange slip—the Exchange floor slip at least. Then I would receive the confirmation.

The Court: Show me one of those? 30

Mr. Fraser: They apparently are not in existence. They are not here anyway.

The Court: Very well.

A. Then I would receive an order made out to the broker with whom the cross had taken place, either to buy or sell the stock as the case might be.

Mr. Farris: I am informed that we have some floor Exchange slips and I will have Mr. McGee bring them here tomorrow.

The Court: Anything more?

A. There would be a house entry with that as well. 40

Mr. Fraser: Was there any distinguishing mark on the floor slip in connection with that cross with the agent broker? A. Yes, there was a distinguishing mark on the floor slip. It was marked with two straight lines.

The Court: I ought to be shown that.

Mr. Fraser: If we have them. Most of them are gone, lost or destroyed.

The Court: It is not a question of most—is there one?

Mr. Farris: This witness has not been able to find them before. He had inspection and admitted afterwards that he did not see them.

The Court: Have you seen floor slips with these two marks that you have referred to? A. Yes.

Q. Those floor slips are Vancouver Stock Exchange floor slips?

A. Those are exchanged on the floor between brokers.

Mr. Fraser: Q. And after they are exchanged on the Vancouver Stock Exchange by brokers they come back to the office of
10 Solloway Mills?

Mr. Farris: I object to my friend leading this witness in the slightest degree. With this witness I do.

Mr. Fraser: Q. What happens after they are exchanged on the floor of the Stock Exchange? A. They are brought back to the trading room of Solloway Mills. They are later segregated. The self to self sales are taken out. The cross sales or purchases are taken out and orders were made up by one of the clerks in the trading room covering all cross transactions.

Q. Go on from there? A. The Exchange floor slips were
20 then sent to the confirmation department to be made up into broker's notes. From there they went into the basement for filing purposes.

Q. What about these confirmations? A. They were included in the day's business.

Q. These confirmations now exhibits in court, they were made from what?

The Court: Q. The floor slips were then sent to the confirmation department to be made up into what?

A. To be made up into what are known as Clearing House sheets and brokers notes.

Q. And then they are filed in the basement? A. Yes.
30

Mr. Fraser: Q. Referring you, Mr. Glass, to Exhibit 31, buy and sell confirmations, Associated Oil, were those prepared in your department? A. Yes, that was prepared in my department. It has my own initials on it.

Q. Exhibit 21, the buy of 100 shares for Theo. Frontier has your initials on it, has it? A. Yes, that one also.

Q. Two of them have your initials on them? A. Yes.

Q. There is one here, Denbigh, Dickinson & Greathed, sold to, 1,000 shares of Associated? A. Yes.

Q. What meaning if any has that, "sold to" there on that confirmation? A. That is taken up on the debit side of the balance. It was put through on a debit note and the wording on the original confirmation is erased by that mark underneath that, and substituted "sold to" in its place.
40

Q. So far as delivery of the shares is concerned, what do those confirmations indicate? A. Nothing at all in the delivery of shares.

Q. Nothing as to the delivery of the shares? A. No.

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Q. What is the system of confirmation? Those are the confirmations for Associated for that day. I can give you the Clearing House list, if you like, and I want you to explain what happened on that day, in the light of those confirmations and Clearing House sheets. Are you able to say that of your own knowledge—are you able to say what happened on that date, having before you those confirmations and Clearing House sheets? A. No, and I will tell you the reason I am not able to, I do not know if those are the confirmations on Associated for that day.

Q. That is the only reason? A. Yes. 10

Q. Did you have occasion while you were employed to refer to the Vancouver house account? A. Of Solloway Mills?

Q. Yes? A. At times.

Q. How frequently? A. In the early part of my employment with them quite frequently and latterly not very often.

Q. We will say in the first part of the year, 1929? A. I did refer to it quite often in that period.

Q. In the course of your duty? A. Yes.

Q. Why would you have to refer to it? A. Because the entries that went to make up the house account were in my department and 20 sometimes it was necessary to alter some of the entries.

Q. Would you be able to give me the long or short position of certain stocks. A. Not definitely.

Q. Not definitely now? A. No.

Mr. Farris: He did not say not definitely now, he said not definitely. A. I cannot give with any definiteness now, the shortage.

Mr. Fraser: Q. Do you know whether the defendant company was long or short in Grandview? A. I do.

Q. What was their position in Grandview? A. At what 30 period?

Q. At any period from the beginning of 1929 until October, 1929?

Mr. Farris: I object to this question unless this witness first establishes that he knew.

The Court: He said he remembered Grandview.

Mr. Farris: My friend, I submit, is putting the answer to the question. They had offices throughout Canada. He is not being asked about the defendant's position in Canada. If so, all right. He is putting what is the broad position of the defendant company. 40

Mr. Fraser: I said the Vancouver house account.

Q. Confining yourself to the Vancouver house account—I thought I had made it quite clear—can you give me the position of the defendant company so far as the Vancouver house account is concerned at any time from the beginning of January, 1929, until October, 1929? A. Yes, I have seen the Vancouver house account for Grandview. At the end of January it was over 850,000 shares short.

Q. A. P. Consolidated? A. I could not give the exact figures for that.

Q. Do you know definitely and positively whether they were short any shares? A. Yes, I do.

Q. Were they short? A. Yes, they were short.

Q. Associated Oil? A. They were short on that.

Q. Cotton Belt? A. I could not say.

Q. Devenish? A. Yes.

Q. Short? A. Yes.

10 Q. Can you state roughly whether the shortages were appreciable or not. A. I have seen those things different times and all the entries to make up the account went through my hands and naturally I was seeing them from day to day and I could not help but know how the company was trading, whether short or long. As to the exact figures I could not say.

Were they short to an appreciable extent in Devenish during that period? A. I would say they were.

Q. Fabyan? A. At certain times Fabyan was short.

20 Q. Freehold? A. Yes.

Q. George River? A. Yes.

Q. Golconda? A. Yes, short.

Q. Home Oil? A. Yes, at times Home Oil was short.

Q. Illinois Alberta? A. Yes.

Q. Mayland? A. Yes.

Q. Mercury? A. Yes.

Q. Mohawk? A. Not latterly that I know of.

Q. You have no knowledge latterly? A. No.

Q. Oregon Copper. A. Oregon Copper was short.

Q. Pend Oreille? A. Yes, short.

30 Q. Reeves Macdonald? A. Yes, short.

Q. Regent? A. Short.

Q. Southwest Petroleum? A. Short.

Q. Topley Richfield? A. At times short.

Q. Whitewater? A. They were short.

Q. Confining yourself again to the Vancouver office, are you able to give his lordship any idea of the amount of stocks on hand compared to the amount of stocks which you would have to deliver to marginal customers if they made their demand? A. I could do that for the period between September, 1928, and January, 1929.

40 Q. Yes? A. After that time I could not do it.

Q. During that period? A. Between that period they varied according to different stocks, I would say on the average between 30 to 50 per cent. of the stock on hand in relation to the stocks carried along by clients on the ledger.

Q. What did you mean by that 30 to 50 per cent.? A. I say, the ratio of stock on hand would be in the neighborhood of 30 to 50 per cent. of the actual stock being carried for clients on the ledgers.

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Mr. Farris: That is carried on margin for clients? A. Carried either way.

Mr. Fraser: Q. What was the other way, besides on margin?
A. Cash or margin. Cash stock was supposed to be delivered in—well, when a client makes a request for it, within approximately two days.

Q. I am producing two confirmations. Can you identify those confirmations? Is that the printed form that was used? A. Yes.

The Court: This is not enclosed.

Mr. Fraser: Yes. 10

Q. That is the original confirmation that went to the client.
A. Yes, that is the original confirmation that went to the client, although those were made after my period of occupation with the company.

Q. Are they identical? A. They are identical with the forms of Solloway Mills & Company.

Mr. Farris: After he left? A. The form is identical with the form in use at the time I was there.

Mr. Fraser: Q. The originals of these went to clients? A. Yes. 20

Q. Instead of having Theo. Frontier, if you had John Smith you would put his name instead? A. Yes.

Q. The printed matter on those was the same? A. Yes, the typewritten matter was always different.

Q. Yes, the different stocks and different prices? A. Yes.

(CONFIRMATIONS MARKED EXHIBIT NO. 40)

Q. Those confirmations, if the stock was bought in Calgary, would it show the Exchange where it was bought? A. Yes, on the face of the confirmation.

Q. Where? A. In one corner of the confirmation. 30

Q. And if it were bought in Toronto? A. It would be marked Toronto.

Q. And if it was bought in Vancouver? A. There is no mark on it.

Q. And that mark would appear in your duplicate, would it not? A. Yes.

CROSS-EXAMINATION BY MR. FARRIS:

Q. You have been in court all day? A. Most of the time.

Q. And you have heard the evidence of Mr. Beck, the preceding witness. A. Some of it, not all. 40

Q. You were here during the cross-examination? A. Some of it.

Q. You have been here all afternoon? A. No, I have not been here all afternoon.

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Q. You do not know what part of the cross-examination you came in. You came here the latter part? A. I was here in the back.

Q. Could you hear what he said? A. In some cases.

Q. You are not prepared to disagree with what Mr. Beck says as to what you did hear? A. No, I don't think so.

Q. That is all. Oh, there is just one question I wish to ask, Mr. Glass. You said there was 30 to 50 per cent. stock kept on hand all the time in the Vancouver office?

The Court: Now—

10 A. I said during the period.

Mr. Fraser: That is not what he said at all.

The Court: Just a moment, I will have the reporter look it up. I was interested in that and just so we may have it correct the reporter will be good enough to see what he said about that 30 to 50 per cent.

(Reporter reads: "Confining yourself again to the Vancouver office, are you able to give his lordship any idea of the amount of stocks on hand compared to the amount of stocks which you would have to deliver to marginal customers if they made their demand? A. I could do that for the period between September, 1928, and January,

20 1929. Q. Yes? A. After that time, I could not do it. Q. During that period? A. Between that period they varied according to different stocks, I would say on the average between 30 to 50 per cent. of the stock was on hand in relation to the stocks carried along by clients on the ledger. Q. What did you mean by that 30 to 50 per cent? A. I say, the ratio of stock on hand would be in the neighborhood of 30 to 50 per cent. of the actual stock being carried for clients on the ledgers. Mr. Farris: That is carried on margin for clients.

A. Carried either way. Mr. Fraser: Q. What was the other way, besides on margin? A. Cash or margin. Cash stock was supposed 30 to be delivered in—well, when a client makes a request for it, within approximately two days").

Mr. Farris: Q. The amount owing by the clients on their ledger accounts would be about 30 to 50 per cent., wouldn't it? A. I have no idea.

Q. They were carried on a one-third margin mostly? A. Sometimes.

Q. So according to your figures during this time there would be stock on hand to represent the amount as paid up by the client?

A. I could not say that.

40 Q. If it is one-third one way and thirty to fifty per cent. the other way, it is practically the same thing? A. I am giving figures on stock balances taken off by themselves.

Q. You did not check the ledger account, but you did know that they were carried on one-third margin? A. These were not checked on the ledger account.

Q. You did know that they were carried on one-third margin? A. Yes.

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Q. And a big portion of the business was margin business? A. Yes, mostly.

Q. You knew that? A. Yes.

(Witness aside)

Mr. Fraser: I am going to read at this stage the discovery of Mr. Willins, one of the chief traders.

Mr. Farris: I am objecting to that being read. I would suggest that that stand over to tomorrow for argument, because my learned friend was going to take that particular argument, and I have not had time to go into the authorities on that, because I was not figuring 10 taking that.

The Court: Is that satisfactory, Mr. Fraser?

Mr. Fraser: Is Mr. Smith here?

Mr. Farris: It seems to me my friend should at some time attempt to show some contract between his client and the company.

Mr. Fraser: My lord, I want to finish up the question of the system. I am going to tie it up. I want to get in all the evidence on the system. I am trying not to confuse your lordship.

The Court: You prefer to put in the examination for discovery now, do you, before going any further? 20

Mr. Fraser: Yes.

The Court: Then we had better adjourn until 11 o'clock tomorrow.

(4:15 P.M. COURT ADJOURNED UNTIL 11 A.M.

DECEMBER 9th, 1931).

Vancouver, B. C., December 9th, 1931, 1:00 a.m.

(COURT RESUMED PURSUANT TO ADJOURNMENT)

Discussion,
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Mr. Fraser: My lord, I propose to put in the Examination for Discovery of W. E. Willins, the chief trader in the Vancouver office for the defendant company. 30

Mr. Farris: I desire to object to that. Before the adjournment took place my learned friend said he desired to put in evidence, as I understood him, from the examination of Willins with the object of proving a system of bucketting. My first submission is that my learned friend cannot bring evidence to contradict his own witness. I might point out to your lordship that my friend's case—

The Court: Sometimes one witness may testify to something in a different way, or along certain lines, and be contradicted.

Mr. Farris: That is all right; but my learned friend has proved there were no instructions, by his own witness, and in fact one Glass, 40 such as is alleged. And there are two points to my friend's case, one, bucketting, which is a distinct type of case, and the other is conversion. Bucketting is where the orders are never put through, never intended

to be put through, in other words, to use a familiar expression, they were written on the cuff.

The Court: What is that?

Mr. Farris: Written on the cuff, that is, there were never any transactions at all. That is bucketting, when they did not go to the Exchange, did not buy a share, and my friend's opening words were that the defendants bucketted all orders, never bought a share for anybody. Now, in that he was quite right in stating that, because that is what he would have to prove to prove a system, otherwise he
10 must deal with the individual case. It might be there is a difference between a system and an individual case. A system is where it is 100 per cent. Here there can be no question that that applies—

The Court: Perhaps I might help you by expressing myself, when you are speaking along those lines, I can visualize a person putting in orders from time to time, now, then you see there might be some of those orders perhaps might be—

Mr. Farris: Might be bucketted.

The Court: If you are bucketting those orders—

Mr. Farris: But then that is not a system. Your lordship has
20 very aptly expressed it.

The Court: I do not know that I was deciding it, but when you come to consider—

Mr. Farris: When you come to that question, you may prove an individual order was bucketted, but you cannot say because some were bucketted, unless there was a system, that the whole thing was bucketted. I might make it clear what I mean by bucketting. In the old days they had offices, they had wires and apparently everything was carried on as a stock brokerage office, but there was no carrying out of orders on the Exchange. They apparently wired in to the office, but no
30 orders ever went over any exchange. They simply traded in differences. That is what the bucket shop term was derived from. But Mr. Fraser stated he was going to prove that we never dealt in these shares, that we bucketted all orders and never bought any shares. We have his own witness Beck stating that was not the system; the system was to buy on the Exchange. You had the witness Glass who said he thinks that it would be approximately 30 to 50 per cent., which breaks up the system of bucketting. My learned friend is not out of court in regard to that, because the evidence would show a considerable proportion we bought on the Exchange, and re-sold them. That comes
40 into a different class of case. That comes into the category of conversion which he must deal with independently and prove, if he can, that we wrongfully converted any shares after they were bought. That is another division of his case. There are really three distinct features to the case, my learned friend first attempted to prove a system, that is, where 100 per cent. were bucketted. He must do that in order to get in under the general system. At present his evidence prevents

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him from showing there was a general system. He cannot do that, but that does not prevent him from giving evidence and showing individual cases were bucketted, or that stock, after it was purchased, was converted, but he cannot come in with a blanket and by proving a certain thing, then saying everything was done that way unless he proves the whole system, and from his own witnesses he has proved that was not the system. Therefore I submit now that no evidence can be given as to a system of bucketting, because he has already proved that system did not exist.

The Court: Counsel may correct me, but as I recall the evidence so far I have not any evidence to elucidate the amount of orders given by the plaintiff. 10

Mr. Farris: There have not been any order or amount of orders given in the plaintiff's case. That makes the case rather awkward. My friend has started in rather at the wrong end to prove his case. He is working backward, with all deference to my learned friend. That is one thing, but I was submitting that he cannot now give evidence of system as he has proved there was not any system. My next point is—

The Court: I do not know that I quite follow you, and I might as well analyze it now. There was evidence led trying to establish a system as applied to some orders. 20

Mr. Farris: That could not be applied to some orders. A system must apply 100 per cent. All they can come and do is to give the individual orders and show what took place.

The Court: For example, on another phase of it, there has been evidence led tending to show the defendant company was short of certain stock.

Mr. Farris: Yes, but that comes into the question of conversion. The short position only comes into question on the question of conversion. It has nothing to do with bucketting at all. That goes to the question of conversion. My learned friend is trying to confuse the two. 30

The Court: I am trying to analyze it now somewhat.

Mr. Farris: Possibly I have confused your lordship. I will try again, and make it clear as I see it, having had some experience in these things for the last two years, on and off. I say there are two definite charges made in the statement of claim, both are alleging criminal offences. One is of bucketting, and the other is of conversion. Now, bucketting is where the orders were never filled at all, never any attempt to fill them, such as I described the bucket shops to your lordship where there was no buying at all, simply a matter of bookkeeping, and the order never went on the Exchange. Then we have from the witness Beck, that they did go on the Exchange, and it was their system to buy and fill the orders of the clients. Once that is done then there is no bucketting. That ended the bucketting, but after that, and this is what my learned friend is alleging, after they had bought these 40

shares on the Exchange then they sold them or disposed of them in some way, and that was conversion. If he can establish that, that is true. I am only dealing now with the question of system which my learned friend is attempting to prove. System is not 50 per cent. System is not 75 per cent. System is 100 per cent. He stated in his opening he was going to prove system, that is, that 100 per cent. of the shares were bucketted, and we never bought a share for anyone. That has been absolutely disproved by his own witnesses. I say that prevents him from putting in the material en masse and that he is now

10 in the position where he is still not stopped from proving certain orders were bucketted, but he must prove in each individual case the bucketting of those orders. His system is gone. Then as to conversion he must prove, as in any criminal trial, he must prove these shares were converted, and it is only in the conversion of the shares where the short position applies. My learned friend is confusing the whole issue, and insisting upon mixing up bucketting and conversion, and no doubt that is much easier for him, but the law is entirely different, and he is dealing with an entirely different class of action. Now, dealing with this particular discovery, it is in your lordship's discretion first whether

20 a past officer's discovery shall be read, or whether he shall be called as a witness. Your lordship has seen two past officers brought here by the plaintiff, brought into Court to give evidence. It would have been just as proper to have examined those two witnesses by discovery as these particular witnesses, and to have brought in the evidence of these men as admissions against the company. I think having heard them your lordship would have certainly not allowed those witnesses to have been examined on discovery, or to have had their discovery used as admissions against the company, and I say the same thing applies to these two particular witnesses he is examining who were past officers.

30 The Court: Mr. Willins was the chief trader, was he not?
 Mr. Farris: Mr. Willins was the chief trader, and Mr. Duns the assistant manager.
 The Court: It is common ground he was a past officer?
 Mr. Farris: Oh, yes, no question about that. I just take the further point that under the rules, I refer your lordship to marginal rule 370-C1. (Reading).
 The Court: That deals with whether an order should go for his examinations, or whether he should be examined at all, but having been examined, there are two or three rules which say—

40 Mr. Farris: Yes, possibly that is so.
 The Court: Whether or not it shall be used at the trial. If you please, what is the rule about using it?
 Mr. Farris: "Such examination or any part may be used at the trial if the trial judge so orders."
 The Court: If I may say so, I am asked now to say whether the examination shall be used? The examination has been taken. Now the rule says it may be used.

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Mr. Farris: If you so order.

The Court: You admit it is discretionary.

Mr. Farris: Yes, but I do say that only contemplates one past officer's evidence being used, that is, an examination having taken place. Now I come to the point which I think is absolutely fatal, and I refer your lordship to 370-I, rule 3 (reading). You cannot come into court with half of an examination. I think the reason for that is very clear that on examination for discovery—

The Court: You might let me see a copy of the rules.

Mr. Farris: On an examination for discovery, the plaintiff in this case examining the defendant, the defendant has a right to re-examine that witness to clear up points in the discovery. I do not think there can be any question of that. For instance, a witness might state something, but on re-examination would clear that up, and give an entirely different construction. That is the reason for re-examination. 10

In this case no re-examination has been permitted because the examination has never been closed. These examinations were adjourned sine die without the completion of them, and having not been completed they are not the examinations within the meaning of the road and therefore cannot be brought into court at the present time. I do not think, my lord, I can add anything to that. I do not think there is any possible answer to that. 20

Mr. Fraser: First, my lord, on the question of Beck and Glass, there is no evidence these men were past officers. They were employees. Your lordship will remember when I got an order for the examination of Mr. Willins, an order made by your lordship that was contested to the Court of Appeal as to whether or not he was a past officer.

The Court: It is common ground now that Mr. Willins is a past officer. 30

Mr. Fraser: Yes, my lord. But my learned friend stated Mr. Beck and Mr. Glass were past officers. There is certainly no evidence of that. As to my friend's statement as to Mr. Glass' evidence, of course, your lordship recollects what it is. I should say my recollection is entirely different from Mr. Farris'. I asked Mr. Beck in direct examination when he ascertained for the first time orders were being bucketted direct from the house to client and he said it was after the Lockett trial he found out that this was the practice in vogue.

Mr. Farris: No, he didn't make any such statement. 40

Mr. Fraser: I know my learned friend does not agree with anything I say.

Mr. Farris: No. I agree with certain statements, but I do not agree with statements which are not correct.

The Court: I have that queried by you, Mr. Farris.

Mr. Fraser: Your lordship may have to get a transcript of the evidence. My recollection of the Glass evidence is that not until after

the Lockett case did he know of this system of bucketting direct from the house to the client.

The Court: You went into another system of bucketting.

Mr. Fraser: That is the one which has to do with other brokers. You remember Mr. Sloan asked Mr. Beck about his recollection of bucketting and he said there was only one system—Mr. Beck said he thought there was only one system and that system was concerned with other brokers, but he found out from the Lockett trial they were bucketting orders direct from the house to the client. Then my friend
10 said I want you to give us illustrations which show that and my learned friend was told of the Big Missouri, and so far as I know those have not yet been produced in court.

Mr. Farris: Everything is here that you asked for.

Mr. Fraser: They were not in court then. My recollection is that there were no records produced in court which show bucketting direct by the house as well as bucketting over the Exchange by means of other brokers or agent brokers. The witness Glass said—he used these words—they preferred, he said, as far as he knew, to fill the orders on the Exchange. I remember his words and I asked him in
20 re-examination and he used the word “preferred.” He was simply giving his knowledge. I suppose most of those employees in all honesty believed they were filling orders. These were only employees. Mr. Farris could ask them, did they think the system was that they were filling orders and he honestly believed that. But these are past officers or people who knew the real inside workings. I am not relying on Mr. Beck’s evidence or Mr. Glass’ evidence on that part of the bucketting from the house. These past officers whose examinations I want to put in and the books when I come to them will prove conclusively this system of bucketting and how the plaintiff was victimized by it. Now,
30 my learned friend, my lord, has made some reference to the examination of Mr. Willins. After going to the Court of Appeal and getting an order that he was a past officer I continued with the examination of Mr. Willins. You remember your lordship made the order and then granted a stay. Then I went to the Court of Appeal and the Court of Appeal—

The Court: Then you submit you went on with the examination.

Mr. Fraser: No, I did not then, because your lordship granted a stay.

The Court: But after the Court of Appeal.

Mr. Fraser: After the Court of Appeal, I went on.

The Court: I follow you.

Mr. Fraser: And there were certain questions he would not answer on the advice of counsel and I intended to apply to the chamber judge with respect to those questions, but then the time of the trial came so close and I simply did not apply with respect to those questions.

Mr. Farris: I don’t think it makes any difference what my learned friend’s reasons were.

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Mr. Fraser: I am not giving reasons, I am telling the fact.

Mr. Farris: The fact is it was adjourned.

Mr. Fraser: Sine die.

Mr. Farris: It was not completed. It is perfectly ridiculous to say that that is an examination.

Mr. Fraser: Mr. Willins is in court. If my learned friend is dissatisfied with any of these answers, he is his witness and he can call him right now and put him in the box and can ask him these questions.

The Court: You might deal with that point. It was adjourned 10 sine die. That is common ground.

Mr. Fraser: Yes, there is no question about that.

The Court: How do you submit the matter stands—

Mr. Fraser: I never heard of a practice—

The Court: Supposing you never heard of it, what do you submit?

Mr. Fraser: Marginal rule 370-1, I believe it is.

Mr. Farris: Yes.

Mr. Fraser: My lord, 370-1 (3) days: (Reading). My learned friend has the right of re-examination. There is no question about 20 that.

The Court: The examination was adjourned sine die, that is while you are examining or cross-examining.

Mr. Fraser: Yes, my lord, and the examination, cross-examination or re-examination shall be conducted as nearly as it would be at the trial.

The Court: There has been held an examination for discovery or cross-examination.

Mr. Fraser: Yes.

The Court: You are in the midst of your cross-examination 30 when the matter is adjourned sine die.

Mr. Fraser: Well, my lord—

The Court: But were you in the midst of your cross-examination when the matter was adjourned sine die?

Mr. Fraser: Yes and no, my lord.

The Court: What is that?

Mr. Fraser: I had finished all my cross-examination with the exception of one question. On the one question which the witness refused to answer, I said, I am going to apply with respect to that question, and the examination— 40

The Court: You did not apply.

Mr. Fraser: I did not apply.

The Court: Assuming you had applied and been refused, Mr. Farris' position would be, as I follow this, if you are going to be in the position to apply to the trial judge to use the examination you have to have that examination and attend on that examination and give the other side the opportunity of examining.

Mr. Farris: Re-examining.

The Court: Re-examining.

Mr. Fraser: Well, my lord, you will see all the way through this examination—

The Court: But on that clear-cut position, what do you say?

Mr. Fraser: I say it is a matter clearly for your lordship, if your lordship believes that these questions and answers which were given by this witness are incomplete, and they might have been cleared up by re-examination, your lordship could order the witness to be examined
10 now.

The Court: But do you submit I am to look at them first in order to see whether the examination should be used or not.

Mr. Fraser: Yes, my lord. It is a matter of discretion.

Mr. Farris: So that my learned friend will not be misled, my position is this: It is discretionary with your lordship when the examination has been completed, but when it is not completed, there is no discretion with your lordship. I argue on two points: First, I ask your lordship, in view of the circumstances, not to exercise your discretion; and, secondly, there is not an examination over which your
20 lordship has any power at all.

Mr. Fraser: No, my lord, the whole point is this rule is decided in—in the first case your lordship decides whether you shall use your discretion. The rule says the examination shall be held and that it may be either, with your lordship's permission, used against the defendant or against the officer. It goes on to say it is a right—

The Court: Mr. Farris' submission is the rule would not be applicable or give the judge discretion to use or allow those questions to be used if the examination itself were not completed. The examination has not been completed by re-examination and therefore the trial
30 judge has no power of discretion.

Mr. Fraser: That is Mr. Farris' submission. I say your lordship has discretion to allow the examination in though there has been no re-examination on any of those questions. It is an absolute discretion vested in your lordship, even if there is no re-examination, unless my learned friend has been hurt. I would go this far with my friend. Allow these question to go in and put Mr. Willins in the box and I will not cross-examine him if he wants to make any explanation. That is a matter for my learned friend. He can put Mr. Willins in the box and have him explain any of these questions he likes.

Mr. Farris: I would also waive that right, but I am not waiving anything. I am simply saying it cannot go in.

Mr. Fraser: Then it comes to this question of your lordship's discretion. If your lordship feels there should be any re-examination as to these questions, or rather the answers and that my friend should have an opportunity of explaining I am perfectly agreeable that Mr. Willins should be placed in the box and give that explanation now. As a matter of fact, on no examination which I have conducted in any of

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these actions has my friend ever re-examined.

Mr. Farris: That is not correct. You will find on the first page of the examination—

Mr. Fraser: I think it is quite clear that even where there is re-examination your lordship can throw out the re-examination and can say that the re-examination had nothing to do with the examination.

Mr. Farris: Our rights cannot be thrown out, though.

Mr. Fraser: It is a question of whether my learned friend's contention here is one of substance, or one simply on technical grounds. In regard to this examination, I am willing to be put on any terms your lordship sees fit. Mr. Willins is in court. He is a past officer. If he wants to explain any answers he made, I would allow him to go into the box and make any explanation necessary of these questions. 10

Mr. Farris: My lord, in reply, all I have to say is this. We have a right, a right which is given to us, and there is no rule which permits your lordship to take away that right. When the examination was adjourned to have that question answered, my friend might have gone on and asked further other questions. It was for my friend to notify us he did not intend to, and if we wanted to proceed with the examination we would have had our opportunity. Nothing of that was done, and I submit there has been no examination within the meaning of the rule taken place. Therefore there is no power in your lordship to deal with it. 20

Mr. Fraser: My learned friend has sat back—

Mr. Farris: I am not talking about what I have done—

Mr. Fraser: When you are talking about conduct—

The Court: Just a moment. May I ask if an application was made, Mr. Fraser, to compel Mr. Willins to answer the questions, or was it just launched and not gone on with?

Mr. Fraser: No. It was not launched at all. The time got so short that I abandoned it. 30

The Court: You abandoned it. You mean it was never launched?

Mr. Fraser: No, my lord, it was never launched. Has your lordship seen Rule No. 370-R?

Mr. Farris: 370-R just refers to an examination, that is all, when an examination has taken place.

The Court: In this matter—

Mr. Fraser: My lord, if your lordship is going to rule against me in this matter, I was wondering if your lordship would reserve the matter until after lunch. 40

The Court: I do not need to hear you. I have listened to the argument of Mr. Farris on all the points raised. I might say it is a serious objection, but I have only to deal with the point raised under 370-I. It seems to me he has raised a serious question. It is common ground that while what has been decided to be cross-examination on behalf of the plaintiff was taking place, the examination was adjourned sine die. Apparently counsel on behalf of the plaintiff intended to

apply to compel an answer to some questions which Mr. Willins refused to answer. This intention was abandoned, and he did not apply, and the examination for discovery was not further proceeded with. Under those circumstances counsel for the defendant submits that in any event, as trial judge I have no power under Marginal Rule 370-C to order that the examination or any part thereof may be used as evidence at the trial, as no examination or no complete examination has really taken place, so as to make the rule operative. Although I feel it might be open to argument, my view is the rules must be reasonably interpreted, so as to give effect to the spirit or real intention. It seems to me such spirit or real intention is only given effect to by saying that under such circumstances if the defendant wishes to have Mr. Willins re-examined, before the examination could be considered as complete or as one which could be used at the trial, the defendant should have asked or insisted upon the right to have the examination concluded to provide such opportunity, and the defendant would undoubtedly have had no difficulty in being allowed to re-examine. Defendants not having taken such step, my view is that the defendants cannot be heard now to raise this objection I over-rule all the objections which have been made against this examination, and I order the examination or parts of it as desired to be considered.

Mr. Fraser: I propose to put in, my lord, questions 1 to 51, 63 to 75.

The Court: I prefer that you give me the questions as you have them, 1 to 51, and then read them.

Mr. Fraser: Yes, my lord, 1 to 51, the Examination of William Egerton Willins, past officer of the defendant company.

Mr. Farris: I again take the objection, my lord, that any admission made by Willins certainly cannot be evidence against Solloway or Mills as individuals. Admissions made on examination by an officer of a company certainly cannot be evidence against individuals.

The Court: Now, if you please, Mr. Fraser, I would like to hear you upon that phase of the matter. In one or two cases I have had, for example, an action brought against a company and an individual and dispute came where the examination of the officer of the company was being put in, the point has been raised in a similar way that was not evidence as against the individual, and in one case I remember I so held, and I think, although the matter was argued at first, both counsel, if I correctly remember, on the authority of a certain case as applied to the circumstances of that particular case, that they thought that was a correct ruling. Now, in his case perhaps you might tell me shortly, without going into the evidence, that on your statement of claim you are suing Isaac William Cannon Solloway and Harvey Mills as directors and officers of Solloway Mills & Company Limited and also as individuals.

Mr. Fraser: As individuals. They are directors and officers my lord, and they are personal defendants.

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The Court: Now, then, you have come to where you are putting in the examination for discovery of a past officer of the company. In what way do you submit that that examination can be used as evidence against the individuals?

Mr. Fraser: I might not be able to, my lord, but my learned friend is protected.

The Court: Your submission might be, and you can tell me whether or not it is, in the course of the evidence, some evidence may be led which would make it so that the law would allow the use of the examination for discovery against those two defendants, or one of them, as an individual; or are you simply asking to put it in now as against the defendant company? 10

Mr. Fraser: I am in this position. I am inclined to agree with your lordship and Mr. Farris that it cannot be read against the personal defendants. I am not making that admission. That will be a matter for argument. My friend has objected and he is protected, but if I can show your lordship later—

Mr. Farris: But my lord—

The Court: I have ruled, as I said, in another case that it would be evidence against the company only, but one difficulty I see here is for all I know, unless counsel tell me it may be there has been evidence given of such a nature that the rule would allow the use of the examination for discovery as against individuals as well as against the company. Perhaps I can leave that open. 20

Mr. Farris: I would prefer to have it ruled on.

The Court: I have not heard the evidence yet.

Mr. Farris: But here is a principle being established.

The Court: You would be entitled to know, Mr. Farris, before the plaintiff closes his case whether or not the examination is being used against the individuals. 30

Mr. Fraser: I will do that, my lord.

Mr. Farris: It seems to me I am entitled to know now whether my learned friend is trying to use this as against Solloway and Mills.

The Court: I think you are entitled to know whether the plaintiff is so applying, but you go further and say that you are entitled to a ruling.

Mr. Farris: A ruling upon that, because it is a rather startling proposition to be even suggested, to my mind, that an admission by some officer of a company could be used against some individual. To give an illustration, supposing I did not happen to be acting for the defendants, there might be independent lawyers acting for each defendant, the other defendants. Those other lawyers acting for the other defendants would not attend, would not have any right to cross-examination or re-examine Willins on the examination for discovery. Only the defendant company would have the right to appear and re-examine. 40

Mr. Fraser: To save time, I will not read it against the personal defendants.

- Mr. Farris: That is all right, then.
- The Court: Then you are only applying to use this examination as against the defendant company.
- Mr. Fraser: Yes, my lord.
- The Court: Very well.
- Mr. Fraser: I am reserving what rights I have to call this witness as against the defendants personally, not as an officer of the company, but as a witness.
- 10 Mr. Farris: It seems to me if my friend is thinking of calling him—he apparently has this witness in court, and is considering calling him as a witness.
- The Court: I have given my ruling.
- Mr. Farris: But that was without that statement by my learned friend. I think my friend should inform the court.
- The Court: I am not so sure I agree with you. There might be a situation—not referring to this particular case—but I can visualize a situation where counsel though he had certain evidence from an officer, past officer of a defendant company which he wished to use, and there might be other phases of the matter upon which he might
- 20 wish to call the man as a witness.
- Mr. Farris: As I have stated, the matter is technical. I was simply calling this to your lordship's attention in view of his statement, and if your lordship, in your discretion—
- The Court: Even with that statement by counsel, that he may be considering calling him as a witness I would still accept the examination.
- Mr. Fraser: I am now at question 4, my lord. (Continues reading) 63 to 75, 91 to 93. Those are statements the witness Beck referred to, my lord. 155 to 180—oh, I beg your pardon, 131 to 136. Here, my
- 30 lord, we come to these crosses with other brokers. I gave the witness an opportunity after a long argument to put it in his own words.
- Mr. Farris: There is a question, my lord, if there had been an opportunity of re-examination the witness would certainly have been re-examined on that.
- Mr. Fraser: 155 to 180. This is the selling out of the plaintiff's account by means of agent brokers. "You might have to deliver shares to him over the exchange," it says, but it should be "He would have to deliver them back off the exchange."
- The Court: Is that common ground?
- 40 Mr. Farris: No.
- Mr. Fraser: My lord, it is the only way it makes sense.
- The Court: It must be read as it is in the transcript unless you both agree.
- Mr. Fraser: Very well, my lord. (Continues reading). Here again it is "He," it should be "We." That is obvious (continues reading) . . . just the same as buying a bond today." Now, going right on—we had an argument there, but going to 163 to 180. 188 to 200. I

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skip the argument between Mr. Sloan and myself.

The Court: Then you go to 197.

Mr. Fraser: 196, and then we have an argument.

The Court: Then it is 197.

Mr. Fraser: He does not give an answer to that. "The Witness: As far as Frontier is concerned, Frontier was just filling orders" down to and including 200.

I call Miss Nuyens.

LOUISE C. NUYENS, a witness called
 on behalf of the plaintiff, being first 10
 duly sworn, testifies as follows:

Mr. Farris: My friend told me yesterday he was going to apply to put in the evidence of Mr. Duns. It might be, having had this argument, and your lordship having over-ruled me, I might overlook taking objection. I just want it noted that my objections apply to Duns as well as Mr. Willins.

DIRECT EXAMINATION BY MR. FRASER:

Louise C.
 Nuyens,
 Direct Exam.
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20

Q. Miss Nuyens, you were at times material to this action an employee of Theodore Frontier & Company Limited? A. Yes.

Q. What were you doing in his office. Just roughly what were you doing. A. My duties were those of a stenographer, and I at all times material to this action was very familiar with the books.

Q. Were orders given by your company from time to time to Solloway Mills & Company Limited?

The Court: What is that?

Mr. Fraser: Q. Were orders sent down to Vancouver to Solloway Mills & Company Limited by Theodore Frontier & Company 30 Limited? A. Yes.

The Court: At what time?

Mr. Fraser: Q. When you were there did you get orders, do you remember, from time to time when you were there, were orders to buy and sell given? A. As far as I remember from the 1st of May, 1928, to the middle of September, 1929.

The Court: Q. That is the period during which you were in the office there?

Mr. Fraser: Q. Were you in the office of Theodore Frontier & Company Limited then? A. Yes. 40

Q. Now, here is one confirmation—my learned friend has a copy of it—are those the forms of confirmation you got—possibly I had better use this. Are those the forms you got from the defendant company, selling confirmations? A. Yes, the blue ones were the selling confirmations.

Q. Have those been marked in any way by you. Do you remem-

ber seeing those particular ones? A. Yes, those are my initials on them.

Q. Now, the buying ones—

The Court: Is that an exhibit?

Mr. Fraser: I am going to make it an exhibit.

A. The white slips are confirmations of the buying orders.

Q. And at all times that you were with Theodore Frontier & Company as an employee, these were the forms you received, were they? the original confirmations? A. Yes, they were the forms we
10 received.

Mr. Farris: What exhibit is that?

Mr. Fraser: What exhibit is that?

(DOCUMENTS MARKED EXHIBIT NO. 41)

Mr. Fraser: There is one thing I want to draw to your lordship's attention now in this exhibit, the printed notice at the bottom: "Purchases or sales are made subject in all respects to the rules, by-laws and customs existing at the time at the Exchange where executed." Then, "It is further understood—" but that is in connection with another matter. "Purchases or sales are made subject in all respects to the
20 rules, by-laws and customs existing at the time at the Exchange where executed." Now, you sent down collateral from time to time, did you not, to Solloway Mills? When I say you, I mean Theodore Frontier & Company Limited. A. Yes.

Mr. Fraser: There are only a few shares of collateral, my lord, that I am complaining about as being converted. I have given my learned friend a list, and I am now going to pick them out of these books. You might step down here if you would, Miss Nuyens.

The Court: Have you formed a list on which counsel can agree?

Mr. Fraser: Yes, I have a list, your lordship, I have to first
30 prove it.

Q. I am showing you Exhibit 3, Miss Nuyens; have you seen this book before? A. Yes, I have.

Q. Exhibit 3, you might read to his lordship these three entries here on December 18th, 1928; what do they show? A. They show that certificates for 1000 Grandview—

Q. Give the numbers of the certificates. A. 4823 for 1000 shares of Grandview.

Q. Received from whom? A. Received from Theodore Frontier.
40 tier.

The Court: You are going to give me a list of these afterwards?

Mr. Fraser: Yes, my lord.

Q. What is the second one? A. Certificate 7367 for 100 shares of Grandview received from Theodore Frontier & Company Limited.

Mr. Farris: What page in the book is this?

The Court: December 18th, 1928, is it not?

Mr. Fraser: Yes, under Grandview.

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Q. What is the third one? A. Certificate number 7140, I think it is for 200 shares of Grandview received from Theodore Frontier & Company Limited.

Q. Did you send down certificates at that time? A. Yes, we did.

Q. Have you checked your records in your books. A. Yes.

Q. Do they agree with this? A. Yes.

Mr. Farris: What is that again, December what? A. The 18th December, 1928.

Mr. Farris: Under Grandview in what Exhibit? 10

Mr. Fraser: Exhibit 3.

Q. Where is that list of yours? A. October 29th, 1928, that would be October 30th in this book.

Q. You sent down new certificates, or rather how many certificates did you send at that time? A. Two certificates, one for 500 and one for 1000 shares.

Q. Have you found those in this Exhibit 3? A. Yes.

Q. Yes, 1500 shares received.

The Court: The date, please. You are reading Exhibit 3?

Mr. Fraser: Exhibit 3 on October 30th, 1928. 20

Q. Does Exhibit 3 show on that date the receipt from you of 1500 shares of Grandview? A. Two certificates, one for 500 and one for 1000.

Mr. Farris: I do not follow fully. I presume he is trying to prove the list of collateral he sent down.

Mr. Fraser: The collateral we sent down and never got back. It was sold out. Mr. McGee checked them and agreed.

Mr. McGee: I didn't check anything.

Mr. Fraser: He said he had.

Mr. Farris: Where is this shown on this list you got? 30

Mr. McGee: This is the list.

Mr. Fraser: This is what I gave him.

Mr. Farris: This is what you are proving now, is it?

Mr. Fraser: Yes.

Q. How many have you dealt with? A. I have dealt with the 500 in two certificates, that is one for 500 and one for 1000, and we have dealt with 1300 composed of three certificates one for 100, one for 200 and one for 1000.

Q. Were any other Grandview shares sent down according to your records? A. Yes. There is one on February 6th, 1929. 40

Q. February 6th, 1929?

Mr. Farris: I want to see if I cannot help to facilitate this in some way. I didn't know what this statement was before. Is this all the collateral you allege?

Mr. Fraser: Yes, \$5000—6800 shares of collateral sold Reeves-Macdonald, and that was sent down by us, and we have found a note of it in your book where it was received, and it was sold out.

Mr. Farris: If this witness will just state in general terms, and say these were sent down as shown by our books, I am willing to have that done without going through the list.

The Court: Has the witness gone through the books?

Mr. Fraser: Yes, she has.

The Court: Then ask her.

Mr. Fraser: Q. This list of collateral, Miss Nuyens, you have seen this before? A. Yes.

Q. That was sent down to Solloway Mills? A. Yes.

10 Q. And you have seen the record of the receipt of it in their books? A. Yes.

Q. Which are now in court? A. Yes.

The Court: Very well.

Mr. Farris: She can put that in in the meantime.

(DOCUMENT MARKED EXHIBIT NO. 42)

Mr. Fraser: Now, did you prepare, or do you know from your books how much was sent down on margin account? Have you a statement? A. You have a statement, Mr. Fraser, showing the amounts as I found them in our books.

20 Q. Have you found those margin payments in the Exhibits now in court in the defendants' books? A. Yes, I have.

Mr. Farris: They are all in the ledger sheets. The ledger sheets were not put in. If my friend wants to put those ledger sheets in—

Mr. Fraser: All right, I will put them in.

Q. You found all these payments contained in these ledger sheets, have you? A. Yes, I have.

(LEDGER SHEETS REFERRED TO MARKED EXHIBIT NO. 43).

30 Q. Can you tell his lordship what was sent down on margin account, just the total? A. \$120,063.48.

Q. Did you get any of that back? Was any of that money returned? A. We received one cheque for \$5000.

Q. On what date does it appear? A. Sometime in January, 1929, I don't know the exact date.

Q. Is that a letter you received from the defendant company? A. Yes, that is a letter we received.

Mr. Fraser: I will have occasion to refer to this in argument. I don't think there is any need of my reading it now.

40 LETTER DATED JULY 12th, 1928, FROM DEFENDANT COMPANY TO THEODORE FRONTIER & COMPANY LTD., MARKED EXHIBIT NO. 44).

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Q. Do you recognize that letter? A. Yes, that is a letter we received from the defendant company in July, 1928.

The Court: Speak more loudly. What is the date? A. Letter received from Solloway Mills & Company, July 16th, 1928.

(LETTER MARKED EXHIBIT NO. 45)

Mr. Fraser: Q. Is that a letter you received from the defendant company? A. Yes, dated August 6th, 1928.

(LETTER MARKED EXHIBIT NO. 46)

Q. Do you identify that letter? A. Yes.

Q. This is a letter from the defendant to Theodore Frontier & Company of October 6th, 1928? A. Yes. 10

(LETTER MARKED EXHIBIT NO. 47)

Q. There is one here, it is not in order of date. Is that a letter you received? A. Yes, we received that.

Mr. Fraser: I am sorry I have it out of date, my lord, it is July 25th, 1928, from the defendant company to Theodore Frontier & Company.

(LETTER MARKED EXHIBIT NO. 48).

Q. Can you identify this one? A. Yes, Mr. Fraser.

(LETTER DATED JULY 18th, 1928, FROM DEFENDANT COMPANY TO THEODORE FRONTIER & COMPANY LIMITED, MARKED EXHIBIT NO. 49). 20

Q. And this one? A. Yes.

(LETTER DATED SEPTEMBER 25th, 1928, FROM THE DEFENDANT COMPANY TO THEODORE FRONTIER & COMPANY LIMITED, MARKED EXHIBIT NO. 50).

Q. Do you identify this one, Miss Nuyens? A. Yes, Mr. Fraser.

Mr. Farris: I do not want to be continually interrupting, and objecting on behalf of the defendant Solloway and the defendant Mills that none of this is admissible against them. I am taking the general objection up to the end of the trial that none of this is applicable to the defendant Solloway or the defendant Mills. To save me making 30

continual objections, with your lordship's permission, I would like to take that position.

The Court: Very well.

Mr. Fraser: A further letter from the defendant to Theodore Frontier & Company, December 8th, 1928? A. Yes.

(LETTER REFERRED TO MARKED EXHIBIT NO. 51).

Q. You identify this? A. Yes.

Q. A letter January 19th, 1929, from the defendant company to Theodore Frontier & Company? A. Yes.

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10 (LETTER MARKED EXHIBIT NO. 52).

Q. I forget whether I asked you, Miss Nuyens, this collateral which has gone in, did you receive it back? A. No, not any of those that are included in that list.

Q. You did not receive any of that stock back at all? A. No.

The Court: This is referring to Exhibit 42, is it?

Mr. Fraser: Yes, my lord.

The Court: Did not receive any of that back? A. No, your lordship.

Mr. Fraser: Q. And prior to the date of the bankruptcy, were
20 any selling orders given by Theodore Frontier & Company Limited?
A. None whatever.

The Court: Perhaps you would ask her—will there be evidence as to the items making up the total of the \$120,063.48?

Mr. Fraser: There is the evidence in now, my lord, that we sent it down to them, and it is in their books.

The Court: As to details?

Mr. Fraser: Oh, yes, my lord. I have a statement which I have given my learned friend.

The Court: Very well. We might adjourn then, until 2:15 p.m.

30 (COURT ADJOURNED AT 1:00 UNTIL 2:15 P.M.)

2:30 p.m.

(PROCEEDINGS RESUMED PURSUANT TO
ADJOURNMENT).

The Court: If you please, gentlemen, in reference to something referred to this morning during the reading of the examination for discovery of Mr. Willins. It was suggested by Mr. Farris, referring specifically to one answer, that possibly some re-examination of Mr. Willins might have taken place, for example, on that particular question. I understand that Mr. Willins is in the city, and available.

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Mr. Fraser: He is in court, my lord.

The Court: I now give Mr. Farris the opportunity, if he so desires, to apply for an order that Mr. Willins should attend further on examination for discovery, to be examined by Mr. Farris, if he so desires, during the course of the trial.

Mr. Farris: I would want to consider my position on that, my lord.

Mr. Fraser: I will attend at any time, my lord.

LOUISE C. NUYENS resumes the stand:

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CROSS-EXAMINATION BY MR. FARRIS:

10

Q. Miss Nuyens, is it? A. Yes.

Q. You were the stenographer and bookkeeper, I understand, of Theo. Frontier & Company? A. Yes, sir, I was.

Q. You had general charge of their accounts and are familiar with the accounts of Theo. Frontier & Company? A. I am.

Q. That company is in liquidation or bankruptcy? A. Yes.

Q. And Mr. Johnson is the trustee in bankruptcy? A. Yes, he is.

Q. When did that company go into bankruptcy? A. On the 18th September, 1929. 20

Q. Where did the company, prior to going into bankruptcy, carry on business? A. I don't understand your question.

Q. Where was its office? Where did it carry on its business?

A. In the city of Kamloops.

Q. What was its location? A. On the corner of Victoria Street and 4th Avenue.

Q. Was there any advertising in connection with this business?

The Court: That is, in British Columbia?

Mr. Farris: Yes.

Q. Did they have any advertising of the name Theo. Frontier? 30

A. No, the firm was Theo. Frontier & Company Limited.

Q. Did they have any sign on the building in respect to the business? A. You mean in connection with the—?

Q. Advertising it?

The Court: If you please, you should understand that question, witness.

A. Well, yes. They were real estate and insurance agents and stockbrokers.

Mr. Farris: Q. Did they advertise themselves as representatives or agents of any other stockbrokers? A. No. 40

Q. I am informed, so that you will understand the question, that on the roof or the building there was an advertisement referring to Solloway Mills. A. Well, of course, in their stock transactions they dealt to a great extent—

Q. I am asking you whether there was any advertisement referring to them as being a representative or agent?

The Court: You had better limit it to individual questions; there might be an advertisement on the door, or in the newspaper.

Mr. Farris: Yes, I am coming to the newspaper later on.

Q. I am instructed that some place on the door, or on the roof, that Theo. Frontier advertised himself as carrying on a stock and bond business, and as representative of Solloway Mills. You must know whether there was such an advertisement. A. Yes, there was a sign
10 on the roof of the building, but I don't know just exactly what was on the sign.

Q. But the name Solloway Mills was mentioned? A. Yes.

Q. Are your initials L. N. A. Yes.

Q. I am producing a letter dated April 26th.

Mr. Fraser: My lord, there is one issue in connection with this cross-examination of this witness, and I might as well put myself on record. My learned friend is going to contend that Theo. Frontier & Company Limited—I don't know what his idea is—they were agents of Solloway Mills in some way in Kamloops, and this issue came before
20 Mr. Justice D. A. McDonald in Chambers.

Mr. Farris: I think my learned friend should take the objection when I have asked an improper question in examination.

Mr. Fraser: My learned friend knows that he is going to refer—

The Court: Are you objecting to the question or not?

Mr. Fraser: Yes. The matter was referred to—

The Court: You are objecting to the questions with regard to what?

Mr. Fraser: Any questions whatever that would tend to show that Theo. Frontier & Company Limited was anything but a customer
30 of Solloway, Mills & Company Limited. If your lordship looks at my statement of claim, you will see that it is a claim of Theo. Frontier & Company Limited, by the Trustee in Bankruptcy for Theo. Frontier & Company Limited, against these defendants, and there is not one suggestion in the statement of defence that he was acting up there in any other capacity than as a customer or a principal, so far as Solloway Mills were concerned.

The Court: You used the expression "principal?"

Mr. Fraser: Well, as a customer; he was simply a customer. Now, my learned friend—

40 The Court: Your allegations would be along the line that he was a customer?

Mr. Fraser: Yes.

The Court: And then there is a denial.

Mr. Fraser: There is a denial that he was a customer—No, we say he was treated—we allege that he was a customer.

The Court: I assume there is a denial of that.

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Mr. Fraser: There is a denial that he is a customer, yes.

The Court: Well, that is in issue.

Mr. Fraser: That is in issue.

Mr. Farris: I might say, so there will be no misunderstanding about the position, this is an action brought under the Bankruptcy Act—I am sorry, I thought my learned friend had finished.

Mr. Fraser: My learned friend made an application to examine Theo. Frontier—

Mr. Farris: I have not come to that.

The Court: You are putting before me now that you object to 10 any questions whatever showing that plaintiff was anything else but a customer?

Mr. Fraser: Yes, and I say that there is nothing in the pleadings whatever—if my learned friend wants to rely on any defence that Theo. Frontier & Company Limited was their agent in Kamloops, or anything of that nature, it should have been expressly pleaded and I would have met that issue. But there has not been one suggestion of it in the pleadings until about three days ago, when the application came before Mr. Justice McDonald.

The Court: For what? 20

Mr. Fraser: To examine Theo. Frontier & Company Limited, and he was directed to answer certain questions along the line my learned friend is now asking.

The Court: On the pleadings as they stood?

Mr. Fraser: Yes. Now, His Lordship, Mr. Justice D. A. McDonald—

Mr. Farris: Now, I submit that the question of that examination, the time to go into it will be when I have attempted to put the examination in. I am not doing that at the present time, but examining the witness. I submit that my learned friend has no right to anticipate and to take objections. 30

The Court: Unless there is some ruling of the Court that would be of assistance to me as to the relevancy of the question with regard to agencies.

Mr. Farris: There is only this ruling, that his lordship ordered the questions answered, but he did it with some doubt and referred it to the trial judge, whether they should be admitted or not, so it was left wide open.

The Court: Mr. Fraser has not finished yet.

Mr. Farris: I submit the objection should not be made until I 40 have asked an improper question.

The Court: You asked about the advertising.

Mr. Farris: I want to say this: We have pleaded the provisions of the Bankruptcy Act. Now I refer your lordship—I am doing this so there will be no misunderstanding—this is not any technical objection. This is a matter going to the entire substance.

The Court: As I see it at present there may be a line of ques-

tions along the line suggested, tending to show that the plaintiff was then a customer. Now, Mr. Fraser objects that has not been treated so that you can lead evidence. It might be better for me to hear all that Mr. Fraser has to say.

Mr. Farris: I am sorry. I thought he had finished.

The Court: Any reference to a decision in chambers on the matter would not be of assistance unless it is apparent it was dealing with the same issue that I am dealing with now.

Mr. Fraser: The application, my lord, was to compel Mr. Frontier to—

The Court: Now I have that in mind. Was there any ruling or decision as to the relevancy of the question?

Mr. Farris: Yes, my lord, there is this observation—have you the transcript there? Just as I stated, there is nothing in the transcript. It is Mr. Fraser's interpretation of what took place.

Mr. Fraser: There are no written reasons. His lordship said that Mr. Frontier should attend and answer these questions, although he said: "You can put it in the strongest way you like; I express very grave doubts as to the relevancy of these questions, but I will have the questions answered, and then let the trial judge determine."

The Court: Now I have the issue before me what do you say as to the relevancy of these pleadings?

Mr. Fraser: I say there is nothing in the pleadings to justify the defence now being set up. A mere denial that we were agents—a mere denial that we were a customer does not enable them to set up an affirmative defence, "We admit we were dealing with you, but you were acting for somebody else in Kamloops, or you were our agents up there." We say we were a customer. They simply deny it. All I have to prove is that we had a contract with them. They say "Oh, you did not make a contract." They are in fact setting up "We made a contract, we, Solloway Mills, made a contract with certain people in Kamloops."

Mr. Farris: I don't think my learned friend knows where we are at, at all. If he would not anticipate until we have stated our position, I think we would get along better.

The Court: Of course you have asked a question as to the advertising.

Mr. Farris: We are dealing here, my lord, with an account of some \$115,000. The plaintiff must prove that we are entitled—supposing for instance we eliminated all questions, all ordinary questions that are involved in this action—supposing it was a straight question of account, we are entitled to find out whether or not we owe that money. We are entitled more particularly in this case because it is a trustee in bankruptcy. I am not saying, nor are we alleging, that any—I am saying this generally speaking—that Theo. Frontier was not a customer, but I want to find out.

The Court: Just a minute. Yes?

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Mr. Farris: But I am suggesting this, my lord, that a large portion of this account that is claimed is not properly chargeable because it is not by way of being a customer at all, and I want to now find out how much of this amount Theo. Frontier is entitled to, if he is entitled to anything. We have pleaded the Bankruptcy Act.

The Court: Of course, but are you raising the point that the plaintiff—

Mr. Farris: I am raising this point very frankly, and I think I can establish it on cross-examination, that there is not ten per cent. of the account they have claimed, that Theo. Frontier is entitled to bring action for at all, and I have the right to bring that out, and I surely do not have to be limited in my questions leading up to that point. 10

The Court: Your submission would be that the plaintiff is not the proper plaintiff?

Mr. Farris: For a large portion of the account; and as I say we have pleaded the Bankruptcy Act; Section 43 is one of the Sections of the act. Now the bankrupt only, or the assignee only, has the right to bring an action or defend any proceedings relating to the property of the debtor. Now Section 23 defines what the property of the debtor is. 20

The Court: The particular sections were not pleaded.

Mr. Farris: No, but we pleaded the Bankruptcy Act. As a matter of fact, it is a matter of law and we don't need to plead it at all. They did not demand particulars of what sections we were relying on. We pleaded the whole Bankruptcy Act.

The Court: It is better pleading if you specify it.

Mr. Farris: Possibly. The property of the debtor divisible, (Citing Section). We don't plead affirmatively agency or anything else. They are now bringing their claim and I am now cross-examining to find out how much of this account belongs to them, and I am leading up to it with these questions, and surely I have that right in cross-examination. 30

The Court: You would be entitled to put the plaintiff to the proof that he was the proper plaintiff with respect to all the claims made.

Mr. Farris: And having put in general evidence to that effect, I am proceeding to cross-examine on that position, whether or not a statement made by this young lady is correct, whether those are the conditions of Theo. Frontier or not. 40

The Court: You are attacking the rights of the plaintiff on the ground that the plaintiff represented the defendant?

Mr. Farris: No, it is all interwoven.

The Court: Mr. Fraser submits that the pleadings should clearly state that.

Mr. Farris: It is all interwoven. It is in cross-examination. How can I bring out all the facts in cross-examination unless I find

out exactly what the position is? Just to give you a concrete illustration—

The Court: There might be something, one letter or one transaction—

Mr. Farris: To give you an illustration of our position here, where it is absolutely essential we should go to the bottom of this. If there is an agency—

The Court: It should be specifically pleaded.

10 Mr. Farris: For instance, here there is Dr. Irving, who has an account. Dr. Irving recognizes Solloway-Mills as the principal in the thing, goes to Theo. Frontier and has it relayed down to Vancouver, and supposing by some chance your lordship should give judgment for the plaintiff in this action, tomorrow in respect to that item Dr. Irving can come down here and sue us for the amount, and it goes to the whole essence of the thing.

The Court: You might be at liberty to take out a certain transaction referred to in the proceedings along something like the lines you suggest.

20 Mr. Farris: But I can only bring that out by cross-examination. The Court: But you take a wide field.

Mr. Farris: I do not think so. I don't have to come right down to the issue like I do in direct examination. If I am to be handicapped so I cannot cross-examine upon this material matter, frankly, there is no use of my proceeding with the examination at all. I will say that quite frankly to the court. It does seem to me if I am prepared to ask the questions—I have disclosed my position I think quite frankly to the court, and I submit—

The Court: You mean with regard to the particular transactions herein?

30 Mr. Farris: I say very frankly if they are entitled to anything in this action, that Frontier themselves, if the accounts are analyzed and we are going into it, and I am permitted to cross-examine properly, that I doubt if five per cent., or two per cent., or any of it is the property of Frontier & Company.

Mr. Fraser: It is nonsense.

Mr. Farris: My learned friend says it is nonsense. Then why object to my going into it?

Mr. Fraser: We will be here until Doomsday.

40 Mr. Farris: I am prepared to stay here until Doomsday, if necessary, because it is an important matter and not a matter of the convenience of my learned friend.

The Court: There might be items he might prove and others he might not.

Mr. Farris: He has put in his general proof with his principal witness, and I am attempting to break that witness down, and surely I have the right to do it? I do not see that there are any different rules

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about breaking the witness down as to the amount owing, in this particular action, than any other.

The Court: It is right for me to know what you are examining upon. Is it a matter of credibility?

Mr. Farris: No, it is to the essence, the very thing that I say she has put in, particularly and boldly, the \$115,000 or \$120,000.

The Court: And sent down by the plaintiff to the defendant.

Mr. Farris: And we say we don't owe it. We never received the moneys. I have the right to show in that that only part of those moneys came from Theo. Frontier. The others came from clients and representatives, and insofar as the other amounts are concerned I do not have to set up agency, because it may be that the claim of agency—

The Court: Would not be the property of the plaintiff divisible amongst his creditors, as trustee, as assignee?

Mr. Farris: Yes, I have the right to find out what the difference is. Supposing tomorrow this judgment is given and every one of these clients comes down and brings an action against us for the same amount? We are absolutely helpless; this judgment is not a bar to us at all unless I can go into this matter. There can be no question about that.

The Court: Please make it more clear.

Mr. Farris: Take, for instance—

The Court: If the name of Frontier was there acting as your representative with regard to only one transaction—

Mr. Farris: Or acting as agent for a disclosed principal, the client could sue the disclosed principal, and as a matter of fact would have no action against Frontier & Company.

The Court: There might be a point of law there, too, as to in which party the right of action would lie. If you as defendant were dealing with Frontier, the right of action might lie in Frontier; the money came from Frontier. However, as to whether the evidence should be led?

Mr. Farris: I submit, my lord, surely I am entitled to cross-examine, to go into this account. The Act says they cannot sue in respect of trust property. Part of this money is trust property. It does not vest in the trustee.

The Court: I see. Even if I were allowing cross-examination on those lines, I am not committing myself at present as to whether there would be a right of action in the plaintiff?

Mr. Farris: I would submit that would be a matter of argument at the end. I submit that should be a matter of argument at the conclusion of the trial, and I did not come here prepared at this time to argue this point. I am simply doing it without preparation on that point in order to show what the relevancy is, and to show what I will argue at the conclusion of the trial. Your lordship may be against me when the argument comes, but in the meantime, if I have not the right to go in to bring out the case and endeavour to break down and show

that Theo. Frontier & Company, regardless of anything else, had practically nothing coming to them—I might as well throw up my hands and simply take no further part; I do not see how I can be of any assistance to the court.

The Court: I will hear Mr. Fraser.

Mr. Fraser: Your lordship has put the issue very squarely, and that is this: Do the pleadings allow cross-examination on this issue? That is the whole point.

10 The Court: And I am considering seriously what Mr. Farris says as to your showing with regard to the property which you are claiming, that you are the party in whom the right of action lies with regard to any particular portion thereof, and it is submitted that Mr. Farris should be at liberty to cross-examine, to show that you would not be entitled to the judgment, any or all of it.

Mr. Fraser: That is the issue.

The Court: I can imagine there would be transactions where evidence might be led on that; although apparently between plaintiff and defendant, the plaintiff was really acting for the defendant with a third party.

20 Mr. Fraser: Quite true.

The Court: Now, with regard to that matter, do you submit Mr. Farris would not be allowed to delve into it?

Mr. Fraser: On the pleadings, if he has raised the issue.

The Court: You are claiming you are entitled to the money?

Mr. Fraser: Yes, this witness has sworn this much money—

The Court: And the plaintiff is the trustee in bankruptcy. It is suggested he would be only entitled to sue for money divisible among the creditors of Frontier.

30 Mr. Farris: Supposing we put it this way: We do not admit the plaintiff's claim, but put him to the proof of the claim.

The Court: A straight denial.

Mr. Farris: We would have been entitled to come in and cross-examine.

Mr. Fraser: This witness has sworn this money was sent down by Frontier & Company to the defendants, and I submit that on the pleadings—

The Court: It could be suggested that was money people gave to him thinking they were dealing with Solloway-Mills.

Mr. Fraser: Quite so.

40 The Court: Would not the other side be allowed to delve into that?

Mr. Fraser: No, my lord.

The Court: The very fact you have sent it down—

Mr. Fraser: All he can cross-examine on if we pleaded we sent the money down is the question of where it was received, whether that money came down, when it was received, who sent it down, and those sort of questions. But he cannot go into the question of that was

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not your money without he alleges it. Now, what does my learned friend base as the foundation for going into these matters, "Oh, I have pleaded the Bankruptcy Act, my lord." He says "If I had not pleaded the Bankruptcy Act I could not go into these things.

Mr. Farris: I did not say any such thing.

Mr. Fraser: He said, "I have pleaded the Bankruptcy Act, and that enables me to go into this issue." In the case of *Griffiths vs. Canonica*, 5 British Columbia Reports 1896, at page 67, and Chief Justice Davie, at page 71, talks about pleading statutes, my lord. He said the only statute you can set up is the *Statute of Limitations* or the *Statute of Fraud*, but he never heard of a general statute being pleaded. The law is that you must plead the facts which bring you within the statute. 10

The Court: You would have to show your right to what you are asking?

Mr. Fraser: We have.

The Court: Not only with regard to one item, but any items for which you are acting—

Mr. Fraser: May I get this out of the way? This defendant pleaded the Land Registry Act; Chief Justice Davie; "He has, it is true, claimed the benefits of the Land Registry Act, but all mention of the facts to bring him within the protection of 35 are absent." 20

The Court: Certainly, Mr. Fraser, as far as I can follow the matter, I would not make an imaginary difficulty for myself. But I would not leave the matter in such a position, if I can prevent it, that perhaps someone else can sue these defendants on the same particular transaction for the same particular amount.

Mr. Fraser: Of course, my lord, all these people have filed claims in bankruptcy. My learned friend knows there is no danger of that. That is hypothetical, something he is putting up to you; but that does not change the law. There has been no threat by anybody else to sue Solloway-Mills. All those claims are in bankruptcy, but that does not affect the question before your lordship. 30

The Court: You would have to show me the right of action is vested in the plaintiff in regard to each transaction which you are claiming?

Mr. Fraser: No, my lord, under the authority which I am going to show your lordship.

The Court: I had evidence this morning of \$127,000, and I assume there will be a list of various items, transactions. It may be suggested in any event the plaintiff would not be entitled to recover, say, \$5,000 of that. 40

Mr. Fraser: May I put it this way in answer to your lordship's question. If A. gives to B. \$5,000.00 and A. sues B. for \$5,000—

The Court: I will still leave it open for my consideration, whether the right of action is vested in you or not. But I am considering whether the evidence is admissible, not that I am making up my

mind that the right of action would not be in you.

Mr. Fraser: As I understand your lordship, one right of action in us, but only as to a certain portion. But if I sue A. for \$5,000, and A. pleads the non-receipt of that money, if A. denies that he got the \$5,000, all that A. can do is to dispute the sending down of all money and the receipt of it. A. cannot set up that part of that money which I sent down belongs to C. or D. or anybody else, unless he expressly sets it up. He can only deal with the facts in issue. We, allege we sent down all that money. This witness has sworn it was all sent down
10 by Theo. Frontier & Company Limited.

Mr. Farris: I am challenging that statement.

Mr. Fraser: I say he cannot go into the items unless there is a plea on the record.

The Court: What plea do you suggest?

Mr. Fraser: The Bankruptcy Act to this extent; it is true we received by you the sum of \$130,000 or \$120,000, but half of that, or \$90,000, or \$70,000, was not your money; they were trust funds. He should have pleaded, "We admit receipt of that money, but some or all of that money was not yours." Then I could have gone into it, but
20 all he says is he denies we sent this money down to him. I say to bring him within the Bankruptcy Act he should have said, "Some of the funds you sent down are not the property of the debtor." Then the whole thing would be open to him. That was the point before Mr. Justice D. A. McDonald, where he said he had grave doubts whether some of these questions were admissible.

Mr. Farris: My lord, on Monday I put that burden of proof on my learned friend. We simply put that in as notice to him we were going to rely upon that. My learned friend must come in and prove that every single item is the property of the bankrupt before he can
30 bring action. He has brought it in a general way, and I am going to show that it was not the property of the bankrupt at all.

The Court: In the meantime I am allowing the question.

Mr. Fraser: Your lordship, subject to my objection.

The Court: Now, if you wish, Mr. Fraser, a definite ruling during the trial so as to guide your own conduct—

Mr. Fraser: I just put in a blanket objection, my lord. It is only a question of saving time.

Mr. Farris: Q. Are these initials yours? A. Yes, Mr. Farris.

40 Q. Do you recognize that letter? A. Yes.

Mr. Fraser: I point out that these letters have never been produced in the affidavit of documents.

Mr. Sloan: They were produced in the affidavit of documents.

Mr. Fraser: My learned friend can point out where.

The Court: They should have been disclosed.

Mr. Farris: There was no reason for non-disclosure. We have

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said all the correspondence was available. They have had access to all our documents.

Mr. Fraser: That is not correct. There has been no correspondence disclosed that I have seen, between the plaintiff and the defendant, in the defendant's possession.

Mr. Farris: I will say this, that the plaintiff has had a great deal more access to our documents than we have had.

Mr. Sloan: I dictated the letter. (Reading from affidavit of documents). That includes the company in bankruptcy.

The Court: You may go on, Mr. Farris.

Mr. Farris: This is a letter dated April 26th, 1928, written by Frontier & Co. to Solloway Mills:

"Dear Sir: We beg to acknowledge receipt of your letter of the 25th inst. and note your remarks. We wish to take the opportunity of thanking you for same, and as soon as we are ready to start business with your firm we will do so. At the present time, however, we are trying to get our accounts straightened up with W. F. Irwin Co. Ltd., which is quite a job, but as soon as this is completed, which we expect will be by the end of this month, we will write you again advising you when to start the C.N.D. service."—

C.N.D. is the wire service between Solloway Mills' office and Frontier's office—

"Regarding your visit here it will be a great pleasure indeed to have the opportunity of meeting you or Mr. Mills, and during this visit we would like to take the matter up with you as to running a little ad for your firm, with our name as your agents."—

Do you remember if that ad was run or not? A. I could not say.

Q. There was an ad run? A. I do not know.

Q. You had nothing to do with that? A. No.

—"In our local paper. We believe that if it was known that we were representing you in Kamloops and that we were willing to accept orders on margin, we would be able to furnish your firm with a lot of business. Up until now we have been doing a strictly cash business and of course to a certain extent the business has been limited. When you intend to come to Kamloops, if it is at all possible we would appreciate it if you would let us know a little in advance so that the writer could be in town, as often we are called away to the country on some other business, and we would very much like to meet either you or Mr. Mills."

Mr. Fraser: Before you put that in, this letter was before there was any contract made. This is discussing a preliminary contract at a time prior to the time material to this action. I object to it on that ground too.

Mr. Farris: Surely there must be some basis of dealing between the defendant and the plaintiff.

(LETTER FILED AS EXHIBIT NO. 3)

The Court: The objection of Mr. Fraser is noted.

Mr. Farris: Q. You recognize that letter, do you? (Producing)

Mr. Fraser: I have seen that one.

Mr. Farris: Q. You recollect that, Miss? A. Well, I don't remember Mr. Farris, whether I wrote that letter or not. My initials
10 are not on it and I don't remember writing it.

Q. But it is on the Frontier paper and similar in type to the last one? A. Yes, it is from our office.

The Court: There is not any doubt about it is there Mr. Fraser?

Mr. Fraser: No, except they are all going in subject to my objection.

(LETTER READ AND MARKED EXHIBIT NO. 4)

Mr. Farris: I would ask my learned friend to produce the reply to that letter dated April 25th, 1928. That is the reply your firm received?

20 The Court: Mr. Fraser admits it.

Mr. Farris: Oh, yes.

The Court: May I ask counsel would there be an order giving leave to the plaintiff to bring the action?

Mr. Fraser: No, my lord, it is not necessary by statute.

Mr. Farris: Q. Pursuant to that arrangement, the Solloway Mills wire was put into your office? A. We had no wire put into the office.

Q. You had the C.N.D. service that brought in daily bulletins or hourly bulletins on the condition of the market. A. Yes.

30 Q. You were carrying on an active business at that time in the stock market in Kamloops? A. Yes.

Q. And as the orders came in from the clients they were in turn relayed to the Solloway Mills' office? A. No, I would not say that. Frontier & Co. Ltd. were a client of Solloway Mills & Co.—

Q. Yes, I know.

Mr. Fraser: Just let her finish.

The Witness: We bought stocks from Solloway Mills & Co. and in turn resold them to our clients.

Mr. Farris: Now Miss Nuyens, do you mean to say that you
40 bought those stocks without any orders from clients, and then after you bought them you in turn sold them to clients? A. When we put an order in, we might have had certain orders from clients—

Mr. Farris: Now—

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Mr. Fraser: Let the witness finish.

Mr. Farris: Please do not interrupt.

The Court: Let the witness finish.

The Witness: I say we may have had orders for certain or all of an order which we sent in to Solloway Mills & Co. On the other hand we might only have had an order for a small percentage of the order we sent in.

Mr. Farris: Q. You put in this Exhibit 41. What is this handwriting, Joseph McCutcheon? What does that mean? A. It means that that client had on that day an order to sell 100 shares of United. 10

Q. And that was sent down to Solloway Mills?

The Court: You are referring to—?

Mr. Farris: Exhibit 41. It is very fortunate—Take the next one A. R. Fields. What does that indicate? That indicates you had an order from A. R. Fields?

Mr. Fraser: You take time to explain. I don't want my learned friend to shut the witness off.

The Court: The witness has not started.

Mr. Fraser: He asked her another question.

Mr. Farris: I have helped her along. 20

The Court: You take your time. If you wish to add anything to your answers when Mr. Farris interrupts you, you may let me know, so that I will see that you have an opportunity.

The Witness: This confirmation means that on that day we had an order from this party—

Mr. Farris: Q. A. R. Fields?

The Court: Do not interrupt her.

Mr. Farris: Q. The party is A. R. Fields? A. —to sell 250 at no doubt whatever price we would get, and the fact that they are separate confirmations for these amounts is really to help us in our own account, our clients' accounts. 30

Q. Go on to the next one. What is the next one? A. It is also a sell confirmation.

The Court: Speak more loudly. A. It is a sell confirmation for 1,500 Grandview sold for the account of A. R. Fields.

Mr. Farris: Q. Go on to the next one. A. Of course, I may add that this statement—as far as Solloway Mills & Co. are concerned, these names mean nothing to them. They have no records on their books who these accounts were for.

Q. Now, Miss Nuyens— 40

The Court: Now, Mr. Farris—

Mr. Farris: I do not think she should give us a lecture—

The Court: I will make a direction that when the witness is answering, you should not interrupt her, and if I see that she is not answering responsively to the question I will endeavor to stop her, but so far—

Mr. Farris: My lord, I submit as counsel, that when a witness,

asked a question, proceeds to give an entirely irrelevant—

The Court: That is if the answer is not relevant and it is not by way of explanation.

Mr. Farris: And I say the answer the witness gave had no relevancy whatever to the question I asked, and I surely have a right to interrupt.

The Court: I don't agree there.

Mr. Farris: I was asking what this document shows. I am asking her to go through the documents, and then when I get through
10 with them she can make any explanation she likes.

The Court: No. She may do so as they come there, one by one.

Mr. Farris: Q. What do you find on the next one? A. I said that the names written here in pencil, refer to our own clients and that as far as Solloway Mills are concerned, well, they don't concern them at all, and that—

Mr. Farris: My lord I am objecting to this woman giving legal decisions.

The Court: Please.

The Witness: And the reason why the orders were probably
20 sent in in small orders like this, was to help us in posting them to our own clients, with less difficulty.

The Court: Will you let me see the Exhibit now, please.

Q. When would the A. R. Field in lead pencil be written on the second sheet of this Exhibit 41? A. After we received the confirmation, in order to post the amount of the sale or the purchase, whatever it might be, we marked this.

Q. Where? A. Frontier & Co. Ltd.

Q. Is that your handwriting 'A. R. Fields'? A. Yes.

Q. On the second sheet of this Exhibit. Well, you see that. A.
30 Yes; they are all the originals. They are all separate confirmations.

The Court: Very well, Mr. Farris.

Mr. Farris: Might I start at the beginning, my lord, because I would like to have the notes consistent, because there may be other courts where these matters should be straightened out, and I would like with your lordship's permission to go over this again.

The Court: Very well.

Mr. Farris: Q. Looking at Exhibit 41 Miss Nuyens, what does the word McCutcheon mean—indicate—on that confirmation slip? A. That is the name of a client we had.

Q. From whom this order was put in? A. Yes; who came
40 to us and wanted to sell 100 shares of United.

The Court: May I ask if McCutcheon is typewritten or lead pencil?

Mr. Farris: Lead pencil

Q. And this order was in turn relayed by you to Solloway Mills? A. Amongst others.

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Q. I am not talking about others. I am talking about this one particular order.

The Court: Yes. Please answer that.

A. Yes, that order was sent to Solloway Mills.

Mr. Farris: Q. Now take the next one. What do you find on that? A. Oh, a sell confirmation for 250 shares of Spooner Oil.

Q. For whom? A. Sold for the account of A. R. Field.

Q. Was that relayed by you to Solloway Mills? A. Yes.

Q. Take the next order. What do you find? A. Sell confirmation for 1,500 shares of Grandview. 10

Q. Who is this for? A. For the account of A. R. Field.

Q. What was done with that? Was that forwarded to Solloway Mills to be carried out? A. Yes.

Q. Take the next one? A. Sell confirmation for 200 shares of Grandview.

Q. Yes? A. For the account of J. M. Van Buskirk.

Q. Was that forwarded to Solloway Mills to be carried out? A. Yes.

Q. All right. Take the next one. What do you find on the next one? A. Sell confirmation for 500 shares of Sterling Pacific. 20

Q. For whom? A. For William Smith.

Q. What was done with that? A. The order was sent to Solloway Mills.

Q. Take the next one? A. Sell confirmation for 50 shares of International Nickel for the account of William Smith.

Q. What was done with that? A. It was sent to Solloway Mills to be sold.

Q. Next? A. Sales confirmation for 45 shares of Noranda for the account of William Smith, sent to Solloway Mills for sale.

Q. The next? A. Sale confirmation for 300 shares of Grandview for the account of Robert Alexander. 30

Q. Yes. What was done with it? A. Sent to Solloway Mills for sale.

Q. Next? A. 1,500 shares Grandview to be sold for the account of S. Soens.

Q. Now come to the next. The next is purchase confirmation? A. Yes.

Q. Now what do you find on that? A. It is a confirmation of 100 shares—showing the purchase of 100 shares of Kootenay King.

Q. For whose account? A. S. F. Jones. 40

Q. Purchased by whom? A. Theo. Frontier & Co. Ltd.

Q. Through whom? A. Solloway Mills & Co.

Q. The next? A. Buy confirmation for 500 shares of Mohawk.

Q. For whose account? A. The account of Mrs. J. Marshall.

Q. Whose confirmation is it? A. Solloway Mills.

Q. The next? A. Buy confirmation for 100 shares of Mo-

hawk for the account of L. Baker, purchased through Solloway Mills & Co.

Q. Yes, the confirmation is Solloway Mills & Company's confirmation? A. They all are Mr. Farris.

Q. What do you find in the next? A. A buy confirmation for 100 shares of Mohawk. The majority of those buy confirmations are delivery, which means that they were paid for outright and we probably received delivery of the stock.

Q. And you delivered them to the client?

10 Mr. Fraser: Did you hear what he said?

A. When we received them, yes. Buy confirmation for 1,000 shares of Mohawk for the account of L. L. Wolfe. The next is a sell confirmation for 50 shares of A. P. Consolidated for the account of B. S. Perry.

Q. Yes. A. Sell confirmation for 100 shares of United for the account of B. S. Perry.

Q. Those are all Solloway Mills confirmations? A. Yes.

20 Q. Dealt with through your office? A. They are addressed to our office. 100 shares of Mercury sold to the account of J. McCutcheon.

Q. And all these confirmations for buys or sells, were dealt with through Solloway Mills and were for clients of your company. Is that correct?

Mr. Fraser: In this bundle.

Mr. Farris: Q. In 41? A. Yes.

Q. This bundle, 41? Are those all the same date? A. No, they are not.

30 Q. And I suppose a great deal of the business done by Frontier with Solloway Mills and your clients was done on the same basis as shown by Exhibit 41? A. Yes, I think so.

Q. And a large portion of the claim in this action is made up as a result of similar transactions?

The Court: Would she know that?

Mr. Farris: She is the bookkeeper. She has been brought here to prove the account.

The Court: Well, do you know that? A. What was the question?

40 Mr. Farris: Q. I say a large proportion of this claim of \$120,000 of which you approved this morning, is made up of debit balances or credit balances, as the result of those various transactions? A. Well, the money we sent down was sent down after demands for margin had been made to us.

Q. In respect of clients' accounts such as you read there Exhibit 41? A. In respect to our own account.

Q. In respect to clients' accounts, I am asking you?

Mr. Fraser: She said her own account.

Mr. Farris: Q. In respect of your own company; it was sent

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down in so far as clients' accounts were concerned? You know what I am asking you? A. Yes, it was sent down to cover our own entire account.

Q. And to cover the amounts owing by your clients? A. Yes.

Q. As a matter of fact it is set out in the letter of agreement; Solloway Mills agreed to carry your clients on a thirty-three and a third per cent. margin? A. I don't know anything about the agreement, Mr. Farris.

Q. It has gone in.

Mr. Fraser: We will have it here. Do not answer any questions unless you put it before her. 10

Mr. Farris: Q. "We will deal with you on margin on the basis of thirty-three and a third, and we would also ask you to at all times endeavor to keep your margin no lower than one-third, and if possible to request your clients to put up an amount in excess of that figure."

There is no misunderstanding about that?

A. No, we were requested to keep up our margin and we requested our clients in turn, to keep their margins up.

Q. You, from time to time let Solloway Mills know your position and the clients' position, and furnished a list of those clients? 20

A. We never did so far as I know.

Q. Is that not typewritten—

Mr. Fraser: I would like to see that. That has not been produced.

Mr. Farris: Everything has been produced to my learned friend.

Mr. Fraser: Have you asked her about it.

Mr. Farris: I am just letting her look at it.

A. I don't remember making up this list. I don't think I made it up myself, and I don't remember ever having seen it. 30

Q. Let me ask you this: You know—I suppose you are familiar with the names of your clients? A. Most of them, yes.

Q. Was R. L. Andrews a client of yours? A. Yes.

Q. R. H. Aitken? A. For a short time.

Q. William Abson? A. Yes.

Q. A. E. Alton? A. Yes.

Q. Mrs. E. W. Alton? A. Yes.

Q. R. B. Askew? A. Yes.

Q. R. D. Alton? A. Yes.

Q. Dr. J. Aylwin? A. Yes.

Q. R. Adams? A. Yes. 40

Q. Bral? A. Yes.

Q. William Brennan? A. Yes.

Q. Alex. Bethune? A. Yes.

Q. Mrs. L. Sadlier-Brown? A. Yes.

Q. M. Sadlier-Brown? A. Yes.

Q. Bral and Sainas? A. Yes.

- Q. S. W. Barton? A. Yes.
- Q. J. R. Broadley? A. Yes.
- Q. J. Bann? A. I don't remember that one.
- Q. Mrs. L. T. Blair?
- Mr. Fraser: We admit that Theo. Frontier & Co. had a lot of clients in Kamloops, if this will shorten it.
- Mr. Farris: No. I am interested in this particular document.
- The Court: Will you admit those included in the list?
- Mr. Fraser: If my learned friend wants to know if we had
10 clients, I will admit that we had a lot of clients in Kamloops.
- The Court: You may go on.
- Mr. Farris: Q. I am asking you to look through this list carefully, and see if that is not a list of your clients' position at some time in your office, because you were familiar with the books.
- The Court: Some of them.
- Mr. Farris: She can surely, as the bookkeeper—she has identified out of a long list, all except one, which is more than I could do out of our own office. There are pages of them and I just read off a few.
- The Court: It seems to me Mr. Fraser, you should be able to
20 admit if those were clients of Frontier & Co.
- Mr. Fraser: I have never heard of or seen the document. I know we had a number of clients in Kamloops. I will admit anything to save time.
- The Court: They are all set out in the list.
- Mr. Fraser: I don't know who they are, my lord, frankly, but I will admit that Frontier & Co. Limited—
- The Court: That is the same as you said before. You can go on Mr. Farris.
- Mr. Fraser: If my learned friend wants an admission I will be
30 glad to accommodate him.
- Mr. Farris: I want to find out from this witness. I want you to go through and look at that list carefully. You put in Exhibit 47. This may refresh your memory a little as to that statement.
- "Please also check the attached statements and let us hear from you further. We think it would be a good idea if you would continue to send us your statement as you were doing when you first started business with our company."
- Q. I am asking you if the statement that was referred to in Exhibit 47, is not the statement which you have in front of you? A.
40 Evidently not. This statement is dated September 5th, 1929, and that letter is dated—
- Mr. Farris: Q. I am asking you if it was not a similar statement?
- The Court: You did not ask that.
- Mr. Farris: I am asking her now? A. I cannot say at all.
- Q. Have you any idea what statement was referred to in that letter. After all, you were in charge, and your memory is very, very

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excellent on most of the things. A. I think that this letter refers to a statement of our stock position.

Q. A statement of our stock position? A. Yes.

Q. They would have a statement of your stock position? A. Yes, but we generally sent them a statement at the end of every month showing our entire account and the stock position.

Q. Your entire clients' position? A. Our whole account.

Q. And that is what this is, is it not?

Mr. Fraser: I object to that question. That speaks for itself.

Mr. Farris: Q. I am asking you if that document is not a statement of your entire account? A. I expect at the time that this is made—

Mr. Fraser: I object to that statement.

Mr. Farris: You want her to answer; let her answer.

Mr. Fraser: She does not know what this document is.

The Court: This document has not been marked at all.

Mr. Farris: I am trying to get it marked.

The Court: And get it proved through this witness?

Mr. Farris: Yes.

The Court: And you have made several attempts.

Mr. Farris: And I will continue until I find she can prove it or she cannot. 20

The Court: She said at the first it refers to a list, and it would not appear from the notes what that list was.

Mr. Farris: She has got some studying to do there, and I am asking her to go through and study it, because she is familiar with their business and the method of sending out accounts.

The Court: Is it suggested that is prepared in the office of Theo. Frontier & Co?

Mr. Farris: Yes, and sent to us. 30

The Court: The witness may be asked if she prepared that statement.

Mr. Farris: She said she did not prepare it. She was in general charge there.

The Court: Q. Would you say that was prepared in the office of Frontier & Co., that statement that has been put before you? A. Yes, your lordship, it is.

Mr. Farris: I will ask that be marked as an Exhibit.

(DOCUMENT MARKED 56)

The Court: What is the date of that? 40

Mr. Farris: September the 5th, 1929.

Mr. Fraser: A similar objection, my lord.

Mr. Farris: Q. Now you gave credit to Solloway Mills for \$5,000 in the statement you put in. There was \$120,000 paid less \$5,000 which you got a cheque back for? A. Yes.

Q. You got other cheques? A. No, not that I can remember.

Q. Did you not get a monthly cheque from Solloway Mills for commissions or half commissions on these transactions? A. I understand that owing to the extent of our account there was some agreement made—I don't know whether in writing or verbally—that we would only be charged half commission, and the confirmations came through with the full commission charged, and at the end of the month we received a rebated cheque for half of those commissions.

10 Q. They gave you a cheque every month for half of the commissions, did they not? A. Yes.

Q. So that while you paid in to Solloway Mills the sum of \$120,000, which was all you paid in less the \$5,000 you got back, you also got monthly cheques back from them as well? A. Yes, for half the brokerage.

The Court: For—? A. For half the brokerage.

Mr. Fraser: They were charged full brokerage, my lord.

The Court: What do you wish to say?

20 Mr. Fraser: I don't like to interrupt, but the witness said at first they were charged full brokerage, and half of it was remitted, and my learned friend said you got a cheque back for half of it. It is a half truth; it is a half truth, but they had been originally charged full commission and Mr. Farris puts a legal construction upon it.

Mr. Farris: I wish you would let me go on.

Mr. Fraser: You are not being fair.

The Court: Q. Do you understand Mr. Farris' question?

30 A. I think so. I can only say we were charged full commission, and on account of the size of our account there was an understanding we would really only be charged half commission. The confirmations came through with the full commission charged and we were sent a cheque at the end of the month rebating half the commission paid.

Mr. Farris: Q. There was a straight arrangement made that you were to get half commission, being Exhibit 55?

The Court: You are not asking her to interpret it?

Mr. Farris: No. It is very clear.

Q. What you did when you sent out your confirmations to your clients—you charged the full commission did you not? A. We charged the same commission as had been charged to us.

Q. And then at the end of each month you got back from Solloway Mills a cheque for half of that commission?

40 Mr. Fraser: What commission?

Mr. Farris: Q. That you had been charged with. Surely you are not stupid enough not to understand that.

The Witness: Yes, that is all right.

Mr. Farris: Q. And you only paid including the full commission to Solloway Mills, the sum of \$120,000, everything, clients and everything? A. Yes, I think that would be right.

Q. And you got back very substantial cheques from Solloway

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Mills at the end of each month? A. I don't recall the amounts.

Q. I will suggest one month; January, 1929. You may remember that, and I am suggesting in that month you got a cheque of \$3,090.57? A. It is possible.

Q. I am suggesting in February you got approximately \$2,000 back? A. That may be right.

The Court: Counsel should be able to agree.

Mr. Fraser: Yes, I will be glad to prepare a statement.

Mr. Farris: Q. In March you got back \$4,500?

Mr. Fraser: If you can tell the witness—she is a wonder if she 10
can carry it in her mind.

The Court: This witness has said she cannot remember definitely, and Mr. Fraser is prepared to admit—

Mr. Fraser: Tonight, my lord, we will have a statement made in our office, of any commission we ever got from Solloway Mills, and the dates.

The Court: That is satisfactory, Mr. Farris?

Mr. Sloan: Who will prepare that statement?

Mr. Fraser: Miss Nuyens can prepare it tonight and my learned 20
friend can cross-examine upon it. My learned friend has a copy in his books in his office, and we may be able to compare—

Mr. Farris: I have just handed Miss Nuyens what our books show.

Mr. Fraser: We will check it up with ours.

Mr. Farris: Q. Now Miss Nuyens, when you are preparing this statement I wonder if you could prepare a statement showing how much of this \$120,000 that you sent down was your client's money and how much the property of Theo. Frontier's? A. No, you cannot, because it all came out of the bank account of Theo. Frontier & Co. Ltd. 30

Q. That is you would put your clients' money if you were buying shares from Solloway Mills, put your clients' money into the bank and send one cheque? A. We sent our cheques down as required, to cover margin.

The Court: Of Theo. Frontier & Co. Ltd.? A. Yes.

Mr. Farris: Q. For your clients as well as Theo. Frontier?

A. For our entire account.

The Court: The cheques were drawn on Theo. Frontier in the bank? A. Yes.

Q. You were in the habit of depositing the moneys to the— 40

Mr. Farris: Q. —Theo. Frontier & Co. were doing trading on their own, were they not?

Mr. Fraser: Finish your question.

Mr. Farris: Q. I am asking you this. You can give any explanation afterwards.

The Court: That is right enough. Try to answer the question as directly as you can, and then make any explanation.

Mr. Farris: Q. I am saying that Theo. Frontier was doing trading or speculating on their own account apart from the orders which they were putting through as shown by Exhibit 41? A. Well, yes. In our clients' ledger Theo. Frontier & Co. Limited would appear just the same as any other client.

Q. And Theo. Frontier & Co. had an account of their own, a trading account, and the clients had a trading account?

Mr. Fraser: With whom?

The Witness: We had separate accounts for each client.

10 Mr. Farris: Q. And of the amount claimed from Solloway Mills a portion—I am not asking how big a portion it is—a portion of that claim is made up through Theo. Frontier's own trading account, and part of it through these individual clients. That is correct, is it not?

Mr. Fraser: Let her answer.

Mr. Farris: Please be quiet.

The Witness: It would be but the entire amount was sent down by Theo. Frontier & Co. Ltd.

20 Mr. Farris: Q. I know, you have told us that a dozen times, Miss Nuyens. Now please do not repeat that any more unless it is particularly asked for. I want to ask—

Mr. Fraser: You can say what you like, witness, in spite of what Mr. Farris says.

The Court: I hardly agree with "say what you like." It must be responsive.

Mr. Fraser: My learned friend has suggested she cannot repeat that again. She can tell what she believes her answer—

30 Mr. Farris: I don't think this witness needs any particular coaching from my learned friend and I am objecting to his continued interruptions. This witness is a very, very clever and capable witness.

The Court: It is better not to interrupt cross-examination.

Mr. Farris: I have no hesitation in saying one of the cleverest witnesses I have ever seen in the witness box.

Q. Now, Miss Nuyens, I am asking you, part of this account which is being claimed, if it is not made up in two ways: of the moneys received from clients for the purchase of stocks and from moneys sent out by Theo. Frontier out of their own treasury, that is the property of Theo. Frontier?

40 The Court: But she has told me that this \$120,000 came from the bank account of Frontier & Co.

Mr. Farris: My lord, with all due deference, I think I have asked a very proper question here, a question which goes to the whole essence of this action. This matter may go further, and I am asking—

The Court: I am not objecting to your asking the question, but I am pointing that out.

Mr. Farris: I am trying to find out where the money came from in that account.

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Q. Where did the money in the bank account come from? Whose money was it? They are under the Bankruptcy Act. I don't wish to argue the case between questions.

The Court: Go on with your question. Are you not asking her to decide a legal question there?

Mr. Farris: No; I am asking her as as to the facts.

The Court: So far as it is a question of fact I will allow it.

Mr. Farris: That is a matter of argument later, whether that constitutes a right of action.

The Court: This witness is not telling the Court what the law is. 10

Mr. Farris: I am not saying that.

The Court: So far as you are not asking that—

Mr. Farris: I am only dealing, getting its actual, physical handling of the money, where it came from and where it went and whose it was.

Mr. Fraser: Whose it was is a long question.

The Court: I will allow the question in that form so far as it relates to a question of fact.

Mr. Farris: Q. Now, will you answer the question?

A. Well, clients brought in money, naturally, for the purchase of stocks. That money was deposited in our general account and when demands for margin were made by Solloway Mills & Co. to cover our entire account, cheques were issued out of our bank account to cover the margin required. 20

Q. Did you keep a trust account of clients' money? A. No.

Q. You intermingled clients' money with your own? A. It was all put in one general account.

Q. And when you sent an order to Solloway Mills to buy, as shown in Exhibit 41—you sent down to Solloway Mills to buy shares—you would get from your client the thirty-three per cent. margin on the amount of the cost of those shares as shown by Solloway Mills' confirmation slip, would you not? A. Yes. 30

Q. And you in turn forwarded that or other money to Solloway Mills to take care of that one-third margin? A. Well, that would be included in a certain time—at a certain time—for margin.

Q. I am asking you to answer my question first, and then explain it. Every margin account you had with Solloway Mills had to be covered with one-third—every margin buy you had with Solloway Mills had to be covered by one-third cash? A. Yes, that is the practice.

Q. And you got from your clients a third cash to cover it? A. Yes, in most cases. 40

Q. And you deposited the money you so got, in the bank in the general account of Theo. Frontier? A. Yes.

Q. And from time to time, to carry that third, you forwarded that money to Solloway Mills? A. Yes.

Q. In addition to handling clients' accounts, you were also handling orders of your own; that is Theo. Frontier & Co. Ltd. were specu-

lating on the market as well, and that was covered in a separate account in your books as Theo. Frontier trading account? A. It was carried in the ledger just the same as any other client's account.

Q. I suppose you could not tell me, of course, what proportion that is to the whole trading that was done? A. I could not give any figures at all.

Q. Do you know whether or not you were advertising yourselves in Kamloops as agents for Solloway Mills? A. I don't know, but I don't think we were.

10 Q. I am reading from question 41, questions asked for Mr. Frontier.

The Court: If you please, what do you propose to do now?

Mr. Farris: I am going to ask her whether she agrees with this question or answer.

The Court: I disallow the question. I am quite clear upon the point; you cannot bring before me in an indirect way something said by some other party, and ask this witness if that is true or false. I am quite clear upon that. That is not before me yet is it, Mr. Farris?

Mr. Farris: I beg pardon?

20 The Court: What you are going to read is not yet before me?

Mr. Farris: No, my lord. I will put it in this way. Miss Nuyens, Mr. Frontier was the head of this company? A. Yes.

Q. If Mr. Frontier —

The Court: Cannot you just ask—leave out anything—

Mr. Farris: I was only going to put in this way—

The Court: If I may be permitted to refer to the case of the—

Q. Do you think—I just ask you if you can give any idea that possibly ten per cent.— A. I could not say, Mr. Farris.

30 Mr. Farris: I don't know that I understood whether my learned friend is abandoning any claim to the cash deliveries or not, because if not, I propose to go into it. As I understand, his whole claim is down to this one amount.

Mr. Fraser: We are not abandoning anything. You had better ask your question. I will make certain admissions along certain lines.

Mr. Farris: Q. You had two accounts had you Miss Nuyens?

A. Yes. We had a cash account and an open account.

Q. Now the cash account was for shares purchased outright?

A. Yes.

40 Q. And for those shares purchased outright you got the shares back? A. Yes, we received delivery. The stocks were sent to us with draft attached. We paid for the draft and delivered the stocks to whoever they belonged to.

Q. So all clients got all the shares and that was closed up so far as the cash account was concerned? A. Yes.

Q. And your company had no interest in that one way or another? A. No. These were automatically closed up.

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Mr. Farris: That is all subject to my learned friend bringing in the statement tomorrow.

RE-EXAMINATION BY MR. FRASER:

Q. This Exhibit 41 which my learned friend examined you upon, Miss Nuyens, you said some of them has in pencil certain names?

A. Yes.

Q. Those were the clients of Theo. Frontier & Company Limited? A. Yes, they were.

Q. Now, when you received this order from Solloway Mills, and all the orders in Exhibit 41, to whom was it addressed? A. 10 They were addressed to Theo. Frontier & Company Limited.

Q. They were all of them addressed to Theo. Frontier & Company Limited? A. Yes.

Q. Did you send out any orders to those clients that you had sold shares?

Mr. Farris: Orders or confirmations?

The Witness: Yes, we sent them a statement that such-and-such stocks had been either bought or sold.

Mr. Fraser: Q. That is an order given, sent to your customers in Kamloops, similar confirmation that Theo. Frontier & Company had 20 sold or bought shares? A. Yes, we sent our customers a statement showing that we had sold for their account, or bought for their account, certain shares.

Q. At any time did you send down the names of any of your clients to buy or sell shares in their names? A. No, we did not.

Q. All the buying and selling of shares was done in the name of Theo. Frontier & Company Limited? A. Yes.

Q. And then you resold them to your clients in Kamloops? A. Yes.

Mr. Farris: Now, don't lead the witness. 30

Q. What did you do after you got these confirmations from Solloway Mills Limited? A. We recorded all buy confirmations. We advised our clients that we had sold or bought for their account certain shares.

Q. Did you ever send to any of your customers in Kamloops any of these confirmations?

Mr. Farris: That is not a proper question.

The Court: It might be by way of rebuttal.

Mr. Farris: He can ask what they did with them.

Mr. Fraser: Q. Were these confirmations sent? Surely I can 40 ask that.

The Court: You had better put it the other way. Mr. Fraser might be right.

Mr. Sloan: He cannot suggest it, that is the thing.

Mr. Fraser: Q. I am asking if it may or may not be the case.

Were any of Theo. Frontier Limited's—were any of Solloway Mills' confirmations, Exhibit 41, or any of the confirmations you have seen in court sent to your clients in Kamloops?

The Court: I will allow that question.

A. No, they were not. If one of those confirmations were received from Solloway Mills, we are still, I presume so, still in court and the trustee has charge of them.

Mr. Fraser: But the originals, they are here in court? A. Yes.

10 Q. You mean I have? A. You have the only confirmations received from Solloway Mills & Company.

Q. And they were never delivered to your customers in Kamloops? A. No.

Q. With regard to Exhibit 41, you told me with regard to the lead pencil writing, "A. R. Field," that is in your handwriting? A. Yes.

Q. Is that so with regard to the lead pencil writing of names on the others, too? A. Yes.

20 Q. Do you know what I am referring to? A. Yes, I think so. You mean these names for folio names appearing in the confirmations?

Q. The first one, please? A. James McCutcheon.

Q. Is that your handwriting? A. Yes.

Q. The next, that "A. R. Field," is that yours? A. Yes.

Q. Running right through, you can see there is something in lead pencil written on each one? A. Yes.

Q. That is your handwriting? A. Yes.

30 Q. When did you write that in? A. When we received the confirmations in the morning. It was generally the day after the purchase or sale was made that we received these confirmations from Solloway Mills. We would go through our own orders to buy and sell to find out whose order it was and these notations were merely put on here so that I would know which account to credit or debit, as the case may be.

The Court: Next question.

Mr. Sloan: There is one question before my learned friend goes on.

The Court: You may re-examine.

40 Mr. Fraser: Q. And then these names which appear on Exhibit 41, those clients of yours, after you put these names on, did you send them out confirmations. A. Yes, we did.

Q. And what were the confirmations you sent them?

Mr. Sloan: Now, they must have a copy of them. I ask that copies be produced. I would like to see that.

Mr. Fraser: Q. Were the confirmations sent in form similar to the confirmations you received from Solloway Mills? A. No, you might not term them confirmations. It was merely a statement showing their account from the last balance.

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Q. Was it a statement that you had bought or sold these stocks for them? A. No.

Q. Was Solloway Mills' name on the confirmations? A. No.

Mr. Sloan: She says that they have no confirmation.

Mr. Fraser: Q. I mean on these statements to clients? A. No, they were statements from Theo. Frontier & Company Limited.

Q. I notice in one of the exhibits in, I have not been able to put my finger on them—well, I suppose it speaks for itself. Referring to Exhibit 56, dated the 5th of September, 1929, do you ever remember, prior to this date, receiving a demand from Solloway Mills for a list of your customers? A. No, I don't. As a matter of fact, I did not know or did not remember that that list had ever been sent, but I do think that is the only one that had been sent. 10

Q. Now, did you charge your customers in Kamloops a commission when you sent them these statements? A. We charged them the same brokerage as was charged to us on the confirmations from Solloway Mills.

Q. Now, this money that you got from the customers, you told Mr. Farris it was put in your general account. A. Yes.

Q. What cheques, besides these margins came to Solloway Mills —by the way, were all the payments sent down to Solloway Mills by cheques, or did you deliver the money, do you remember? A. I think they were all sent down by cheques with the exception of the last two. They were made by the trustee. There were drafts for those. 20

Q. Drafts or cheques? A. Yes.

Q. You never sent down currency at any time? A. No.

Q. Were any other cheques issued on this general account except cheques issued in favor of Solloway Mills. A. Yes, it was our general banking account.

Q. Well, tell his lordship just what cheques would be issued out of that account? A. Well, there would be cheques for wages and rent—all the current expenses. 30

Q. Now, my learned friend asked you about commission account. You understand what that is? A. Yes, Mr. Fraser.

Q. Were those shares in the commission account delivered direct from Solloway Mills to customers in Kamloops? A. No, they were ordered by Theo. Frontier Limited and delivered to them.

Q. And Theo. Frontier paid for them? A. Yes.

Q. And you treated them in the same way as customers?

Mr. Sloan: If my learned friend would let the witness give the answers, it would be better. 40

Mr. Fraser: Q. What happened after you received these shares on commission account. You say they were paid for by Solloway Mills & Company Limited? A. No, they were paid for by Theo. Frontier.

Q. Then what happened? A. Then on payment of the purchase price, the certificates were delivered to the client.

Q. On payment of the purchase price by your customer to you?
A. To us.

Q. By the way, did you have order forms as distinct from these statements you sent out when a client came into your office? A. Yes, we had buy and sell slips.

Q. Did they have the name of Theo. Frontier Company Limited or Frontier Limited. A. The name of Theo. Frontier Limited was on them.

Q. When a client came in, would he sign the order? A. Yes,
10 the general practice was that the client signed the order.

Mr. Fraser: That is all, thank you.

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RE-CROSS-EXAMINATION BY MR. FARRIS:

Q. You had no seat on the Exchange, did you? A. No, Mr.
Farris.

Q. I mean, when I say "you," I am referring to Theo. Frontier
& Company, they hadn't any seat on any exchange? A. No.

Q. So they had to buy through some other company or broker-
age concern having a seat on the exchange? A. Yes.

Q. You could only order out commission stocks when a client
20 ordered you to do so? A. Yes, the majority of the buying and sell-
ing was done on margin, but when a client wished to buy a stock out-
right it was put through our commission account.

Q. He would put up the money and you would instruct Solloway
Mills to send up the stock and when the stock came up you would notify
the client it was there and would give him the stock? A. In some
cases he would not pay until he got delivery.

Q. Then you would notify him that it was there and he could
have it upon payment? A. Yes.

Q. It was purely an agency business?
30 Mr. Fraser: Here is a question of law again.

The Court: I will allow the question.

Mr. Farris: It was done purely on an agency business, this
commission stock, was it not? A. I suppose you might term it that,
although we were not obliged to buy the stock from Solloway Mills
& Company. We could buy those from any company who had a seat
on the Exchange.

Q. I am saying that so far as the client was concerned, it was
purely agency business, and the client knew that you were buying it
40 from somebody else? A. They came in and asked us to buy certain
stocks?

Q. Kamloops does not have an exchange? A. No.

Q. So that they all knew in Kamloops that you were dealing
with someone else, that you had to deal with someone else? A. Yes,
although the clients were dealing direct with Frontier & Company
Limited.

Q. In some cases clients brought in other collateral? A. Yes.

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Q. Did you sell some of that collateral and put the money in the bank? A. No.

Q. That collateral was sent right direct down to Solloway Mills?

A. No, a client would come in and endorse certain collateral security to us as collateral on their account.

Q. Yes? A. In many cases that collateral was merely put in the bank in Kamloops and held for them there until such time as they cleaned up their account and requested delivery of the stock, or until such time as their account was sufficiently margined to allow that stock to be delivered. 10

Q. Money was borrowed against the collateral and sent down to take care of the account in the bank at Kamloops? A. Yes, in the name of Theo. Frontier.

Q. Theo. Frontier used this collateral to borrow money to send down to Solloway Mills to protect their account? A. Yes, it was the same as collateral given to Theo. Frontier as protection on the client's account.

Q. In regard to the statements you sent out, you have seen some of the statements sent out by Solloway Mills, their ledger statements showing at the end of the month cash balance so and so, long so much 20 and short so much. A. Yes.

Q. Is that one of the statements you sent? A. Yes; we sent a similar statement monthly.

Q. A ledger statement? A. Yes, showing the debit and credit balance.

Q. But you did not send out confirmations. "This day we have bought for your account through Vancouver," or "Toronto" or some other place, a confirmation of buy and sell, such as contained in Exhibit 41? A. You mean to Solloway Mills & Company.

Q. To the client? A. No, we sent them our own which I refer 30 to as a statement, showing that we had bought or sold certain stock.

Q. Monthly? A. No, as the orders were placed.

Q. Can you get me a copy of one of those orders? A. Of one of those statements?

Q. Yes? A. I do not know whether there are any at hand or not, although I presume the trustee has all those.

Q. The trustee is here A. Yes.

Q. Will you endeavor to try and get a copy of those statements that you sent out.

The Court: You should be able to because you were really 40 leading evidence with regard to that. Mr. Farris would be entitled to one right there.

Mr. Fraser: A. Did you keep copies? A. Yes, in Kamloops.

Q. I have not seen one.

Mr. Farris: If not, I suggest that you can get one from Kamloops. It can leave Kamloops tonight.

Mr. Fraser: Q. You sent out monthly statements to custom-

ers? A. No, we sent out statements whenever an order went in to buy or sell.

Q. Did you send out monthly statements to show how the account stood? A. No, from time to time certain clients who had fairly large accounts would want full statements from the beginning, or from the last statement, showing the balance from the last statement and what the transactions were since that time.

Q. You mean statements of account with Theo. Frontier? A. Yes.

10 Q. Did all clients notify you that you must buy from Solloway Mills & Company? A. No mention was made as to how we were to make the purchase for them.

Mr. Farris: Did you take all the orders as well as being book-keeper and stenographer? A. I was not the only employee specially—

The Court: You admit that she was pretty competent.

Mr. Farris: Getting better all the time.

The Court: Q. Finish the answer? A. In 1928 and the first part of 1929 I took practically all the orders.

20 Mr. Fraser: Q. From your customers? A. From our customers.

Q. They did not care where the stocks were bought as long as you bought them? A. Yes.

Mr. Farris: Now—

The Court: Question disallowed.

Mr. Fraser: That is all, Miss Nuyens.

(Witness aside).

Mr. Fraser: The secretary of the Vancouver Stock Exchange Discussion.
is here under subpoena duces tecum.

30 The Court: Very well.

Mr. Fraser: I will not call him, but I will ask him to produce the documents.

Mr. Farris: You had better swear him first.

Mr. Fraser: I do not have to.

The Court: Any objection?

Mr. Fraser: Yes, there will be more objections.

The Court: You may have a point to get over some of this ground. Is it admitted that the witness will have to be sworn?

40 Mr. Farris: I do not know how, but a witness is never heard without being sworn. My friend's advice is so startling.

Mr. Fraser: I may be wrong. Of course, I usually am according to my friend. I doubt that under subpoena duces tecum you have to swear the witness. You simply ask him without being sworn to produce the documents named in the subpoena.

Mr. Farris: Somebody else will have to identify them.

The Court: I think I would agree if you propose to call someone

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else to identify them, but in producing them is he going to identify them.

Mr. Fraser: They are here and I am going to ask him if these are they.

Mr. Farris: That does not do any good.

Mr. Fraser: I am putting them in as exhibits. I just want it on the record that they are here. I can ask the witness—

Mr. Farris: You cannot ask anything else.

The Court: If someone attends with certain books and you had a witness already sworn in the box who was prepared to identify those as the documents, then that seems to be in order, but simply to have someone—so far as you have gone now is that the books are in court. 10

Mr. Fraser: That's all, but possibly the position is not clear. I can ask this witness if he has brought to the court certain documents and that goes on the record.

The Court: If you wish to do so, I direct that he be sworn.

Mr. Fraser: May I give you the authority?

The Court: Yes.

Mr. Sloan: The latest authority where there is a decision is the *Shannon vs. King* case which I imagine would be binding upon you.

The Court: I am always open. 20

Mr. Sloan: Consistency is a jewel.

The Court: Although I was reading something the other day where the judgment said the court was open to reversing itself on further light, although some courts have taken a different position until they were over-ruled in a higher court.

Mr. Sloan: I would never admit I was wrong, my lord.

Mr. Fraser: Here is the reference I have, my lord, it is *Taylor on Evidence*, Volume II., 11th Edition, page 980:

"Such being the importance which is properly attached to the right of cross-examination, it is not surprising that questions should occasionally arise as to whether the witness has been so called by the one party as to entitle the other party to exercise this right. And here it is clear, that if the witness be called under a subpoena duces tecum, merely for the purpose of producing a document, which either requires no proof, or is to be identified by another witness—" 30

The Court: Exactly.

Mr. Fraser: May I state my position.

The Court: Yes, go on.

Mr. Fraser: —"he need not be sworn." 40

The Court: If these be on production, if Mr. Farris admits that to be the position, or if there is a witness in the box who can identify them, the party producing them need not be sworn.

Mr. Fraser: I am going to produce a witness to identify the documents. In the meantime I want them in court.

The Court: I take no cognizance of them in the meantime until

the witness is in the witness box. You would agree, Mr. Farris?

Mr. Farris: Yes, there is no question about that position.

The Court: Just for my personal reference, perhaps you would be good enough, if you remember the case where the expression occurs that the books are simply there so as to be produced.

Mr. Sloan: I don't just recollect that off-hand.

The Court: Very well.

Mr. Sloan: My lord, I think the rule as I recollect it as to a subpoena duces tecum, you first get the witness and then produce the 10 books. My learned friend is reversing the procedure and starting at the back door.

Mr. Farris: As per usual.

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FRANCIS GORDON COOPER, a witness
called on behalf of the plaintiff, being
first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. FRASER:

Q. What is your occupation? A. I am a clerk in the office of the chartered accountants George A. Touche & Company.

Q. They are an international firm of auditors, are they? A. Yes, sir.

Q. I understand that you have gone through the confirmations that are filed as exhibits in the Court House and the Clearing House sheets for certain days.

The Court: Are you proving the witness' experience?

Mr. Fraser: No, I am just saying that this man checked certain documents and these are the results.

Mr. Farris: I object. I want him to produce the documents. I do not want him to produce a synoptic statement worked out by a method.

Mr. Fraser: Q. Are they here? A. They are there in the box.

Q. Come over here. A. P. Consolidated on the 4th of February, 1929, did you check up the confirmations in Exhibit 39?

Mr. Sloan: What exhibit is the witness being examined on?

The Court: 39.

The Clerk: Everything in the box is 39.

Mr. Fraser: I think, my lord, Exhibit 39, as stated to your lordship, includes confirmations on days material to this action and they were all put in one bundle. I am dealing with certain specified 40 documents on those dates taken out of 39, and I think they should be marked separately.

The Court: They will be Exhibits 39-A, "B," "C," and so on.

Mr. Fraser: I produce a number of confirmations here. Did you go through all that bundle? A. Yes, sir.

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Q. A. P. Consolidated? A. Yes.

Q. On what date? A. February 14th, 1929.

Q. Did you check each confirmation? A. We checked it with the list on that synoptic.

Q. You checked it with the synopsis now produced? A. Yes.

Mr. Fraser: I ask that that be marked for identification.

Mr. Farris: I object to that. I object to any synopsis being marked as an exhibit.

Mr. Fraser: Q. Did you check this confirmation on that date?

The Court: He may have made some memo. at the time, maybe elsewhere.

Mr. Fraser: Q. Tell his lordship what you did with this bundle of confirmations? A. First, we took the buy confirmations and checked them with the list of buy confirmations on this synoptic.

Mr. Farris: Never mind the synoptic.

Mr. Fraser: He says that he compared all the confirmations with this synoptic. A. Yes, we checked all the sell confirmations.

Mr. Farris: That is only a memo.

The Court: Is there any argument on the synopsis?

Mr. Farris: The way it is set up.

Mr. Fraser: This synopsis has been used in other courts.

Mr. Farris: That is why I object. It is for your own benefit and does not represent a true picture.

Mr. Fraser: All these confirmations are synopsisized and set forth in this document.

The Court: And it is suggested by Mr. Farris that they may give a wrong impression of the situation.

Mr. Fraser: Each confirmation is set forth, the result of it is in this synopsis here and it has been duly checked.

The Court: Otherwise you would take the witness over the matter and he would say that was the result of his observation.

Mr. Fraser: He would say that these confirmations are all set forth in this synopsis here, instead of when I come to argue—

The Court: It is a question of convenience.

Mr. Fraser: That is all, instead of adding up all these confirmations in court.

The Court: If Mr. Farris insists you will have to go ahead.

Mr. Fraser: He has done it and I am now trying to have this witness state that in this condensed from these confirmations are set forth and he has added up the number of shares, the number of confirmations for the house and for clients.

The Court: He has done something you might ask the court to do or in your argument—

Mr. Fraser: Some I have done myself. It is a question of mathematics. Perhaps I had better explain.

Mr. Farris: I do not know whether all those confirmations are there.

Discussion.

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- The Court: If it is a matter of convenience.
- Mr. Farris: If it is I will be glad to help. It is a matter of convenience to my learned friend and it will be a greater convenience to him if we consented to judgment.
- Mr. Fraser: May I explain.
- The Court: Don't bring the synopsis before me until I rule.
- Mr. Fraser: It is to explain—
- The Court: It seems to me that you will have to go on.
- Mr. Fraser: I want to get the position clear. I do not think
 10 your lordship appreciates what this synopsis is.
- Mr. Sloan: We did not in the other two trials, we do now.
- The Court: For example, I have here one exhibit, 39, and the witness can follow through and point out matters to which you wish to call my attention and then if the synopsis it just a summary or total of that—
- Mr. Fraser: That is all it is.
- The Court: Mr. Farris suggests that the synopsis you propose to put in might be giving a wrong impression or different impression.
- Mr. Fraser: If this synopsis in any shape or form gives a wrong
 20 impression or does not contain what is in the confirmation, if my friend will point that out—they have been set forth in chronological order and the totals added up. When I come to the argument, if something concrete like that is not in, I would have to take them all and add them up, or your lordship would have to add them up, which would take half an hour for each bundle of confirmations and the argument might go on indefinitely. What we have done here, as in other cases, we have simply set out the confirmations in chronological order. If my learned friend wants additions or amendments his witness can check them all. They have told me that they are accurate.
- 30 Mr. Farris: I don't think they said any such thing. They have not told me because I have not discussed it with them.
- Mr. Fraser: They have with me.
- Mr. Farris: That is an improper thing.
- Mr. Fraser: As my learned friend pointed out in the first case, the court insisted that some sort of synopsis be prepared. I do not know how I will state the point.
- The Court: You are illustrating some point from your point of view. I take it if it appears different from what it otherwise would be, you would not be at liberty to do that.
- 40 Mr. Fraser: I agree. If I could explain what this is. It is simple mathematics, that is all it is. These house confirmations are set out and the number of shares and the prices with the client's confirmation, the name of the client and the number of shares and the price. They are all put under one another and added up. I am just asking that these additions—that is all that I am asking, that the number of house confirmations that day be added up and the price and the number of confirmations.

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Mr. Farris: If my learned friend makes a synopsis for every day I am prepared to agree, but I am not prepared to let him pick out ten or fifteen days out of two years' dealings and come in with a synoptic report and say that is a true representation.

Mr. Fraser: Of those days.

Mr. Farris: I am not agreeing to any synoptic report. It is not a true report. I told my friend that before the trial started, that I would not agree. I do not know any clearer way of stating it now. The only way that I will agree to it is that your lordship directs it to go in. 10

The Court: A synopsis of the entire period.

Mr. Farris: And each day, because the position is changing from day to day.

Mr. Fraser: My answer to that is that we have picked out at random about fifteen days.

Mr. Sloan: My friend is not sincere in that.

Mr. Fraser: I have picked out fifteen or twenty days. My learned friend I gather from his argument will submit that the synopsis is accurate for those days.

Mr. Farris: I do not admit anything. I will admit a synopsis 20 for the whole period if it is checked.

Mr. Fraser: My friend's position is this, you have picked out stocks for certain specified days and prepared a synopsis for those days. It is not fair you should have picked out all the days and gone through all the days and made a synopsis. I say, my lord, that it may be that what appears on these specified days did not happen on the other days. That is a matter for your lordship, but here are certain specified days.

The Court: You could lead evidence as to what happened on certain specified days. 30

Mr. Fraser: I could take one day.

The Court: Do that first.

Mr. Fraser: I have taken twenty days and for these days we have all the confirmations and I am asking that these confirmations with the specified days, or I am stating, are properly represented in the synopsis. I will concede that on other days I do not know what happened but I say on these specified days this synopsis accurately represents the transactions for those days. My learned friend objects and says that on other days other things may have happened.

The Court: That is the only objection he would have, that the 40 synopsis is not showing the entire period.

Mr. Farris: I say that it does not show a true picture of the situation.

The Court: For these particular days that he wishes to put in that would be a true picture.

Mr. Farris: I say it cannot be a true picture, the synopsis did not show a true picture.

The Court: Why:

Mr. Farris: Because it is not a true picture, and if it is not, it is a false representation.

The Court: Is it a true picture of how it stands that day?

Mr. Farris: I do not know. I have not checked it, for the simple reason these deals would only be a certain time and would not be a true picture. I am satisfied that it would have a very very prejudicial effect.

10 The Court: Would it, if it points out what you say?

Mr. Fraser: It is for the court to say.

Mr. Farris: I have taken objection to it. We have endeavored to meet my learned friend in all these matters, matters of convenience, and, frankly, to date convenience has resulted in certain judgments, and I am not agreeing to convenience to the detriment of my client and I do not think the question of convenience should enter into the matter at all.

The Court: I will give a ruling in the morning on the matter, although I may wish to hear some more evidence from the witness before I do. Eleven o'clock tomorrow.

20 (4:40 P.M. COURT WAS THEREUPON ADJOURNED
UNTIL 11 A.M. DECEMBER 10, 1931).

Vancouver, B. C., December 10, 1931, 11 a.m.

(COURT RESUMED PURSUANT TO ADJOURNMENT)

FRANCIS J. COOPER resumed stand.

The Court: Q. You prepared what you call a synoptic report of certain confirmations on certain days? A. No, sir, we have just checked that report with the confirmation it is purported to have been made up from.

30 Q. By "we" you mean— A. Myself and the others in our office.

Q. What was the first and last days? Could you give me that?

Mr. Fraser: Can you tell by this to refresh your memory?

A. The first and last days the synoptic covers?

Q. Yes, how many days have you? How many days did you check? A. Some days are down here twice.

Mr. Fraser: Would it be all right to give the days and the stocks?

The Court: How many days did you get? Mr. Fraser—perhaps counsel could agree. You said fifteen or twenty, which is it?

40 Mr. Fraser: I could tell, my lord, from this. I am afraid I would have to read. I have taken three or four stocks on one day.

The Court: If I remember what you said--

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Mr. Fraser: February 14th, 1929; March 13th, 1929; April 15th, 1929.

The Court: What was the first?

Mr. Fraser: February 14th, 1929; March 13th, 1929; April 15th, 1929; May 29th, 1929; December 22nd, 1928; March 15th, 1929; January 26th, 1929; November 19th, 1929; January 16th, 1929; January 22nd, 1929; November 19th, 1929—oh, I gave you that, 1928, I gave you that. That should be 1928—November 19th, 1929; February 15th, 1929; January 19th, 1929; April 8th, 1929; July 19th, 1929.

Q. Now, all but four—tell his lordship which of those you did check? A. We did not get confirmations for Devenish on March 15th, 1929.

Q. Have you got the confirmations for any other stock on that date? A. No.

Q. You did not get Devenish, March 15th? A. Grandview, January 16th, 1929, and Pend Oreille on February 15th, 1929.

Mr. Farris: Q. What do you mean, you did check that or did not? A. We did not. Reeves Macdonald, January 19th, 1929; and the same stock February 15th, 1929.

The Court: Q. How long would it take to check a similar number of days? A. A similar number to all these days or these five?

Q. You have given me fourteen days. How long would it take to prepare a similar synoptic report for another fourteen days?

Mr. Fraser: He could not do that. We have taken out all these confirmations.

The Court: Mr. Fraser, I have you as saying you have taken twenty days for those days you had all the confirmations.

Mr. Fraser: That is true, my lord.

The Court: For twenty days.

Mr. Fraser: I do not know how many there are.

The Court: Q. You say these are the days?

Mr. Fraser: Yes.

The Court: You qualify that by saying there are three days, with respect to which certain transactions are not checked.

Mr. Fraser: Not by this witness. They have been checked, but not by this witness. All but four—this witness has not checked—but they have been checked.

The Court: You have a synoptic report showing all the confirmations?

Mr. Fraser: Those I have mentioned, all those days.

The Court: Very well. How long would it take to prepare a similar report for a similar number of days.

Mr. Fraser: About a week. What we did, my lord, I will have to explain, this is Exhibit 34. It is a day's business for May 29th, 1929, in all stocks. Let us assume the plaintiff dealt in Grandview on that date. We would have to go through all this day's business and

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pull out all the Grandview, out of that, and then take the house account for May 29th and pull out all the Grandview, and then the agent brokers and pull out all the Grandview, and they have to be put together and checked and put into synoptic. Now, these bundles here, what we have taken, the days and have given you all the documents.

The Court: It is not common ground. Anything said by Mr. Fraser will have to be proved. I will have to show how they are selected.

10 Mr. Fraser: That day, the plaintiff dealt in this stock.

The Court: How were these selected?

Mr. Fraser: In no particular way.

Mr. Farris: I do not agree with that. I suggest they were picked out, particularly on days that were not favorable to us, and on days that were not favorable to you, you passed them out, which I am instructed by Mr. McGee, who is present.

The Court: Very well, it is not common ground between counsel.

Mr. Fraser: May I put it this way. Assuming my learned friend—may I state my position this way, assuming as my learned friend suggests—

20 The Court: I am only concerned with how you did this accounting?

Mr. Fraser: May I make one further observation?

The Court: Very well.

30 Mr. Fraser: I do not think I did not make myself clear and I am sorry if I seem to labor this so much. Let us assume, for the sake of argument, that this plaintiff dealt for 100 days. I pick out one day and it shows a very unfavorable state of affairs so far as the defendant is concerned, and I put that in as my day and I do not put in the other 99, your lordship does not know whether the other 99 are good days or not. I have put in the bad day. The books are all here and I put in one day and I simply say that goes to the weight. You say, "Mr. Fraser, you put in one day. It shows that day the orders were not properly bought and sold. That is not sufficient." I submit that I have the right to put that in. Your lordship might say, "Don't you put in one day, I am not going to give judgment on the one day." Instead of that I have given you ten or fifteen days.

40 The Court: It is suggested that you chose days that might be termed favorable to yourself. Now, I am considering the advisability of having a similar number of days in a synoptic report prepared if it does not take too long.

Mr. Fraser: Yes, my lord.

The Court: In other words, that you lead evidence as to a certain number of days and put in your synoptic report—under the direction of the court, if necessary the same people could prepare a synoptic report for a similar number of days.

Mr. Fraser: May I put it this way: It comes down to the burden of proof, my lord.

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The Court: Just a moment, you stated yesterday somewhat along these lines; it may be that what appeared on these specified days would not be the same on the other days, but that you had taken a certain number of days and for those days you had all confirmations.

Mr. Fraser: Yes.

The Court: And that you were stating that the confirmations on those specified dates are all properly represented in the synopsis, and you conceded that on other days you did not know what had happened, but that on those specified days the synopsis accurately represented the transactions on those days. If I followed Mr. Farris correctly, he would agree that the synoptic report you wish to put in represents correctly the transactions on those specified days, but suggests that you have selected days which might show the matter favorable to the inference you wish to be drawn, whereas if one went over the whole period and had synoptic reports for the whole period one might get a different impression. 10

Mr. Fraser: That is what he submits.

The Court: It would seem better to me to have a synoptic report for the entire period, but that seems a practical impossibility.

Mr. Fraser: It is, my lord. 20

The Court: The only practical way and fair way to me would seem to be and it would seem advisable that I should have some assistance by way of synoptic reports as to a certain number of days, that is, if you have selected so many days, that I should select a synoptic report to be prepared for a similar number of days, and if Mr. Farris wished to have the privilege of naming the days he could do so, and I would so direct, and if he did not wish to take any part in that I would direct and name a similar number of days.

Mr. Fraser: May I put it this way: I put in twenty days and I say they were picked at random—my learned friend says they were not—I put in twenty days and I say they are accurately representative of those days. I expected my friend to bring in an equal number of days and to say, "Here, Mr. Fraser is putting in twenty days, I am putting in twenty." 30

Mr. Farris: We are not proving your case.

Mr. Fraser: It is a question of the burden of proof, I say. If I figured out twenty days, I have Mr. Justice Murphy's judgment to assist me.

The Court: If there was any suggestion that those twenty days were selected after observing the results and considering the more favorable ones to you, it seems to me the court might get a wrong impression, whereas I might direct a synoptic report to be prepared for a certain number of days selected by myself, but, of course, you have a synoptic report prepared for a certain number of days. 40

Mr. Fraser: My lord, my learned friend went east two weeks ago and allowed me to investigate the books and prepare certain days.

Mr. Farris: I gave access to the books.

Mr. Fraser: That was the first time I knew what the result would be. I could not know before that. I had four accountants. I did not check these days. That was the first time I knew what these confirmations were going to disclose. We have never been able to get inspection. I asked Mr. George A. Touche and Mr. Murphy to pick out certain stocks which appeared on days that Frontier dealt in those stocks. My learned friend was given the synopsis for four days before the trial.

10 The Court: It seems to me that I should have the assistance of the synoptic for a certain number of days.

Mr. Farris: I am not agreeing. Take, for instance, in the Mackee action.

The Court: I am not asking you to agree, but have I put your submission correctly, that you say the synoptic reports, although they may be correct on those specified dates, might give the court a wrong impression, unless similar synoptic reports are put in for all the period.

Mr. Farris: For all the period.

The Court: That is your submission?

Mr. Farris: Yes.

20 Mr. Fraser: The answer to that surely would be that it is preposterous.

The Court: Because it would take too long to prepare it.

Mr. Fraser: No, because the plaintiff dealt for thousands of days in thousands of stocks. The law is clear if I show that their conduct generally is tainted with fraud, in substance, tainted with fraud, the whole contract goes by the board, otherwise in 1000 transactions 900 may be fraudulent and 100 bona fide. Can a defendant cover up fraud by actually buying stock certain days—generally speaking if a contract is tainted with fraud the whole thing goes by the board. I admit for the sake of argument that on one day they did buy the stocks. I admit that for the sake of argument, but I say if your lordship comes to the conclusion if the contract is tainted with fraud it is a question of the burden of proof and the whole contract goes by the board and a fraudulent defendant cannot cover up the fraud by one day buying certain stocks. I am quite prepared right today—of course, it is for your lordship—

The Court: From your point of view, would you be satisfied to have a synoptic report put in for one day?

40 Mr. Fraser: Yes. I would let you pick the stocks and the date. I am prepared to have the accountants start at any five days your lordship states and will be glad to get the confirmations out. You name the stocks and the days and we will prepare the synopsis for you before the trial is over. We have four reputable accountants and it can be checked by my learned friend's employees. I am prepared to do that. My friend had ample opportunity of putting in other days if he wanted them. I picked out a number of days and I say that that is all I had to do. I am prepared and I ask you not to pick out too many days.

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We will go to work now and get them for your lordship.

Mr. Farris: My learned friend, with his tendency to generosity, is endeavoring at all times, with respect, to cloud the issue. My learned friend said if the contract was tainted with fraud—now, my learned friend knows very well indeed that each transaction is in itself a contract itself.

Mr. Fraser: I am not making any such submission.

Mr. Farris: If you do not know, you surely should.

Mr. Fraser: If that is all, you are wrong in your law.

Mr. Farris: My friend is dealing with a general contract. For 10
 instance, if there was a contract given on a particular date to buy
 10,000 shares of stock and it is shown that in that contract there was
 some fraud, that contract might be set aside, but I have here Exhibit
 41. Your lordship will see that there is a specific order, a specific con-
 tract in each order and on each day. Some days there are twenty
 contracts entered into on the one day. On Tuesday, I will go this
 far, that on Tuesday, and I am only admitting it for the purposes of
 the argument, that on Tuesday, assuming that Theo. Frontier sent
 down twenty orders and that they were bucketted or converted after-
 ward, or there was fraud with them in any way, that Tuesday's trans- 20
 actions might be set aside, but on Wednesday a new order is sent down
 to buy 1000 shares of Home Oil; that 1000 shares of Home Oil is
 bought, put aside and kept for that customer without any suggestion
 of wrongdoing. It matters not what happened the day before or the
 day after, what happened in that particular contract. My learned
 friend is endeavoring, and he did not endeavor to do it in the Mackee
 action because he realized he had to go through the whole thing and
 it would have brought everything in dispute.

Mr. Fraser: That is a different action.

Mr. Farris: It is of the same nature and there is no difference 30
 what ever. My learned friend realized that and there was not so many
 transactions, but my learned friend when he undertook to come into
 court he knew what he would have to meet. He knew well of these
 many transactions and he knew the burden was on him of proving
 that, and now he comes into court at the last minute with ten or twenty
 days and says I am going to rest my case on this, because there might
 have been something wrong on these days and therefore you have to
 assume that in over a million transactions in this case that every one
 of those million transactions are wrong, and purely as a matter of con-
 venience and saving expense to my friend, and not a matter of justice 40
 at all—my friend comes in here in the same position as a man in a
 criminal action. The fraud must be proved beyond a reasonable doubt
 and must be proved in respect of each and every contract entered into.

The Court: I am not ruling just now as to the inference to be
 drawn from the evidence, I am ruling now as to the admissibility of
 the evidence. I must make a ruling as to the evidence and not as to the
 inference to be drawn.

Mr. Farris: I would ask you not to. I want to argue that later. The only reason I am stating this is because I thought you would like to have my viewpoint. My friend stated his viewpoint and I am just giving you my angle which will be in my argument at the conclusion. If your lordship will just note in these confirmation slips each one is "We have sold this day 200 shares," that is a contract complete in itself. Now, just as an illustration, in the synoptic report, we are getting my learned friend submitting to us certain synoptic reports.

The Court: With regard to certain days.

10 Mr. Farris: Yes.

The Court: I may direct that similar report be prepared for a similar number of days that you may name.

Mr. Farris: This is one of the days furnished by my learned friend. The figures added originally show favorably to my learned friend and when the figures were checked they showed favorably to us and my learned friend is not putting it in.

Mr. Fraser: Are you giving evidence? What is the day?

Mr. Farris: November 28th, 1928.

The Court: Do you want it in?

20 Mr. Farris: No, I must take the position that every day is necessary. While I would be glad to assist the court, still I feel that it is prejudicial to my position.

The Court: November 19th, 1928, is one of the days.

Mr. Farris: On Fabyan. This is dealing with Fabyan stock.

Mr. Fraser: The reason is we got no commission on Fabyan stock on that day. I do not think it is a margin account. If it is a commission account, that may be the reason it is left out. May I say this, that if my learned friend's argument is sound that I have to attack every transaction and only have given a synopsis for these days, why is he worried if I must attack every transaction? I have not

30 done so. Why all the alarm?

Mr. Farris: My learned friend says that he is going to deal with those days and abandon the other days. I am prepared to admit the synoptic report.

The Court: You are trying to ask me to accept—

Mr. Fraser: By reason of trading on these days, this contract is tainted with fraud. If my friend can rebut that presumption—

Mr. Sloan: We are not presuming an inference.

Mr. Fraser: I am going to argue that if I am wrong, my friend
40 does not need to worry. I point out this, I do not think your lordship should direct me to put in any other days. If your lordship directs, that, I will do so, but I say this, if your lordship picks any days, I would ask for the sake of expense to cut down the number of days you pick, because it is a great labor to go through two or three thousand confirmations. I have had stenographers for hours typing them out. It will take ten days with four girls. I want to put myself on record. I, of course, have this to say, if your lordship directs me to put in any

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other day, I will do so, subject to my objection that I do not think I should be asked. The burden is on my friend to put in any other days, or show your lordship on any other days that the transactions were proper. For what it is worth, I say on certain specified days, this is the state of affairs, and for my learned friend to argue that it is not a fair representation of the whole thing, I refer you to the judgment of Mr. Justice Murphy in the Lockett trial.

Mr. Farris: I will be very glad to refer to that judgment when the time comes, my lord.

The Court: You submit, Mr. Fraser, it is a fair representation 10
 —I wish your exact words. Perhaps the reporter will read what you said.

(Reporter reads: "I want to put myself on record. I, of course, have this to say, if your lordship directs me to put in any other days, I will do so, subject to my objection that I do not think I should be asked. The burden is on my friend to put in any other days, or show your lordship on any other days that the transactions were proper. For what it is worth, I say on certain specified days, this is the state of affairs, and for my friend to argue that it is not a fair representation of the whole thing, I refer to the judgment of Mr. Justice Murphy 20
 in the Lockett trial").

Mr. Farris: I might point out that my friend referred to the Lockett case. Mr. Sloan has just shown me the transcript where it was admitted the synopsis was a proper synopsis of the documents in court. I have made no such admission.

Mr. Fraser: I was in that case, and we picked out certain specified dates, and Mr. J. W. deB. Farris admitted the synopsis covered those days accurately. It is just the same situation as here.

Mr. Farris: He did not do any such thing.

Mr. Fraser: Give me the record and I will read it. 30

Mr. Farris: I will read it. Mr. Sloan is getting it.

Mr. Fraser: I put myself clearly there.

Mr. Sloan: The court says there: "I cannot accept a statement
 "of that kind as evidence. My position is this: There are certain docu-
 "ments here in court which are very voluminous and I want somebody
 "to make a synopsis of them and I will adjourn the court to have it
 "done unless it is admitted these synopsis that are here are correct.
 "As to whether there should be other documents produced or not, I
 "am not concerned with that, but if they are produced, they must be
 "proven, but my position is I have a mass of documents there that I 40
 "cannot go into and I will adjourn the court for the purpose of getting
 "someone to go in to them."

The Court: What was the result?

Mr. Sloan: The result was that we agreed to admit the docu-
 ment.

Mr. Fraser: Excuse me, my lord, I happened to be in that trial.

Mr. Sloan: The record goes on: "Mr. Farris: I will assist the
 "court in every way, my lord, because I do not want this thing unneces-

“sarily held up. I would hold it up on anything that I could permanently accomplish something in doing so, but there is no sense of doing anything that will hold it up unnecessarily, and I will put my statement in this way: I will admit, under instructions from the officials of the company who are checking up on this, that the documents in court have been accurately recorded in this memoranda which are submitted here, but I want it definitely understood that that is entirely without prejudice to any suggestion that all the documents that should be in those envelopes are there.

10 “The Court: Well, I do not see that you have to add the latter.

“Mr. Farris: I probably don’t.

“The Court: All this court is asking you to do—and I am not asking you, but in order to prevent an adjournment—if the defendants will admit that the documents that are here in court are properly synopsisized in the proposed exhibit, that will help me.

“Mr. Farris: Well, I think probably the chances are—that is so, but if I had not taken the other position it might have been rightly taken against me later and be assumed that everything is there, but I am not making any statement like that.

20 “The Court: I am not making assumptions, nor stating what the assumption should be, but my position is this: There are certain documents here, and it is impossible for this court to go through them all and in the second place I am incapable of doing it, or have them properly synopsisized. A synopsis has been made by one side and if it is not admitted on the other side, the court will adjourn.

“Mr. Farris: I think I have covered everything that your lordship wants.

30 “The Court: I understand you to admit that these documents do properly synopsisize these documents. Now, as to the effect of that, apart from that admission, I have nothing to say, and I am not going to do, because it is not a proper thing for me to say.

“Mr. Farris: That is satisfactory.

“The Court: All right.

“Mr. Fraser: I want my position to be clear—this synopsis, I understand, and I think Mr. Farris understands, does not include all these books, but the synopsis is prepared for some of these documents in court.”

Mr. Fraser: Yes.

Mr. Sloan: Certainly.

40 “The Court: Insofar as these synopses do apply to some of these documents, they are correct. That is your position.

Mr. Fraser: Yes, my lord.”

Mr. Fraser: That is exactly what I said. I took certain days and covered those particular days.

The Court: You admit, Mr. Fraser, unless counsel agree that the synopsis properly synopsisizes the documents it purports to do, you will have to prove it.

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Mr. Fraser: I will have to.

The Court: Mr. Farris is not making any admission.

Mr. Fraser: I will have to prove it for those particular days that are in there, for those particular days, simply for what they are worth. I will point out to your lordship that they have all been checked by Mr. McGee and Mr. McKenzie and Mr. McGee and Mr. McKenzie have stated to me, and they will be in the box.

The Court: Just a moment. The evidence will have to be led.

Mr. Fraser: Is my learned friend objecting to the accuracy of these documents for the days in question? 10

Mr. Farris: I am. I am objecting to the accuracy of everything.

The Court: In this matter Mr. Fraser applies to put in what have been called synoptic reports of transactions on certain specified days. It is submitted by Mr. Fraser that the synoptic reports to be tendered properly synopsis some of the documents in court, but this is not admitted by counsel on behalf of the defendant.

It would appear that counsel on behalf of the plaintiff has taken a certain number of days and submits that for those days the synopsis would show all the confirmations on those specified days properly. It is suggested by counsel on behalf of the defendant that those days may have been selected designedly and in such case I feel that I should have the assistance of the synoptic reports with regard to the days that have been prepared and that I should direct that similar synoptic reports should be prepared for all of the confirmations on three other dates, it being understood before any synoptic report is adduced in evidence that it is established that such report properly synopsis some of the documents in court. Assuming that the following three days are business days for which there would be confirmations I would select the days, naming the days as follows: December 20th, 1928; October 19th, 1928; 20

Mr. Fraser: There are no confirmations, my lord. All the confirmations prior to November, 1928, it is in evidence are missing, my lord. 30

The Court: They begin on November 1st, do they?

Mr. Fraser: Mr. Murphy thinks November 19th they start, my lord. My learned friend will know.

Mr. Farris: Do you know?

Mr. McGee: I do not know. It is November some time. It is not the 1st of November.

The Court: Instead of October 19th, 1928, the date will be November 27th, 1928, and the other date, June 19th, 1929. 40

Mr. Fraser: Just two dates?

Mr. Farris: Three; December 20th was the other one.

The Court: I direct the preparation of synoptic reports showing all the confirmations for those three days.

Mr. Fraser: You mean of stocks the plaintiff dealt in, my lord?

The Court: Yes. Very well. You may go on, Mr. Fraser.

Would it be better to have the information for those three days prepared before we go on with what you have?

Mr. Fraser: I think the best thing to do, my lord, if we have done all this work, then I am going to be faced with proving it. I think that we will have to take the noon hour to have this accountant do it properly, so that he can come into court and swear to it properly that it was taken from each bundle.

10 Mr. Farris: Just before we go on with this. There was a point raised in regard to this, with regard to your lordship's ruling as to the examination of Willins. Frankly, I find myself somewhat in a difficulty to know just what to do. I, of course, with all due respect to your lordship's ruling in reference to the evidence going in, I still feel with due respect it is a matter that may be the subject of argument before a higher court and I do not wish to prejudice my position in regard to an appeal in that regard. At the same time there is a question, question 135 which on the face of it without explanation looks rather serious. Mr. Willins is here and I might ask him for his explanation. I did not discuss the question with him one way or the other. If I might suggest to your lordship that you ask Mr. Willins, who is in court and is still under oath in his examination, as to his explanation as to that, it might obviate any difficulty and I would still preserve my rights.

20 The Court: I do not wish to adopt any unusual procedure in this matter, but I wish to do all my duty in the matter and with respect to what Mr. Farris has taken the liberty of saying, that there might be an appeal I may also refer to that and I would say that I am trying to do my utmost to avoid the possibility of any basis for a new trial. I still feel that I am right in the ruling that I made, but in order to avoid the possibility of any suggestion of an injustice in the matter, I have given, and I repeat I give Mr. Farris the right to apply to have the examination for discovery of Mr. Willins reopened before the examining officer, the Registrar, and any answers made would then become part of the examination for discovery and available for use in the usual way.

30 Mr. Fraser: I would attend at the noon recess, my lord, if my friend wants to.

Mr. Farris: Yes, my position, right or wrong at the present time—this examination has gone in and now there is a further examination and if your lordship were by any chance wrong in the ruling, and I should be right in my contention—

40 The Court: Are you making the application now? Are you applying that Mr. Willins attend for examination?

Mr. Farris: If it is done without prejudice to my other position taken yesterday that the examination has gone in improperly, if that is done without prejudice to my right in that regard I would like to do it. I am afraid I cannot waive my position in that regard, I view that matter so seriously.

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The Court: I will not make any bargains with counsel as suggested.

Mr. Farris: I am not suggesting a bargain, I am simply trying to protect and at the same time save my position. I will have to consider it further with your lordship's permission.

Mr. Fraser: If it meets with your approval I would like to put Mr. Cosgrove in the box. There is just one question I would like to ask him and let him get away.

MARK COSGROVE, a witness called on behalf of the Plaintiff, being first 10
 duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. FRASER:

Q. Mr. Cosgrove, you are a solicitor practising in the Supreme Court of British Columbia? A. Yes.

Q. And I believe you had in your possession—or did you ever have in your possession the minute book of the defendant company?

Mr. Farris: My lord—

Mr. Fraser: Let me ask the question.

Mr. Farris: I object right now. I want to put this position: Mr. Cosgrove was the officer appointed under the Security Frauds Act and without the consent of the Attorney-General, I take the position that he cannot divulge any information that he obtained in his position as the officer under the Security Frauds Prevention Act, and if he is being asked, he should be asked if he got it under and by virtue of that position and then my objection would be noted. 20

The Court: You might ask him the capacity in which he obtained it.

Mr. Fraser: I would sooner put my question.

The Court: Put the question, but please do not answer, Mr. Cosgrove, until I rule. 30

Mr. Fraser: Q. Have you had, Mr. Cosgrove, in your possession the minute book of the defendant company Solloway Mills & Company—I was going to ask that question—

Mr. Farris: Now, my lord.

The Court: The minute you are referring to, Mr. Fraser.

Mr. Fraser: Yes, my lord.

The Court: Well, Mr. Fraser, you might ask Mr. Cosgrove in what capacity he was acting or how he was connected with the matter.

Mr. Fraser: Does your lordship direct me to ask that?

The Court: Yes. 40

Mr. Fraser: Q. Please state how you became associated or came in contact with the defendant company or any of its officials.

The Court: Or the books.

Mr. Fraser: Q. Or what you did. You had better tell the whole story? A. I was appointed special representative—

The Court: You are not objecting?

Mr. Farris: No.

A. I was appointed special representative of the Attorney-General of British Columbia under the Security Frauds Prevention Act in September, 1930, and prior to that I had acted as counsel for the Province of British Columbia holding a watching brief on the trial of Solloway, Mills in Alberta, at Calgary. In June, 1931, by reason of an order of the Court of Appeal of the Province of British Columbia, I acted in the capacity as Crown counsel representing the Province of British Columbia on the prosecution of Solloway Mills.

10 Mr. Fraser: Q. Still under the Security Frauds Prevention Act? A. No. I ceased acting under the Security Frauds Prevention Act in June, 1931. I was acting under the Security Frauds Prevention Act from September, 1930, to June, 1931.

Q. Just go on from there with respect to the minute book of the defendant company.

The Court: Q. In that way you came in contact with the books of the company? A. I did, my lord, yes, in all three capacities, if I may put it that way.

20 Mr. Farris: My objection is that any information he received as Security Frauds Prevention Officer cannot be given without the consent of the Attorney-General. That is so stated in the Act. I have not the Act with me and I did not know that this was coming up.

The Court: What is the section of the Act?

Mr. Fraser: I am getting the Act. Two judges have ruled on this point. However, I am not asking you to give any information. I am asking you to state—

Mr. Farris: I am going to argue the point. I want my objection noted. While two judges may have ruled on it, the Appeal Court has not.

30 The Court: Then I will follow the ruling of my brother judges in the matter and admit the evidence. Mr. Farris' objection has been noted. Very well.

Mr. Fraser: Q. You might go on? A. Will you ask me the question, I am sorry.

40 Q. You were acting as Crown counsel in the Court of Appeal. Did you have occasion to receive in your possession the minute book of the defendant company at that time? A. I first saw the minute book of the defendant company in Calgary in June, 1930, while acting as counsel for the Province of British Columbia on the Solloway Mills case.

Q. Tell me what kind of a book it was. Describe it to the best of your ability? A. It is a book of approximately foolscap size covered with—I do not know whether it was leather or a composition. It was somewhat the same covering as this Bible, imitation leather I would imagine it to be, having stamped on it in gold letter the name of Solloway, Mills & Company Limited. It was in two volumes, type-written.

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Q. The minutes were typewritten? A. Yes, loose leaf apparently. The minutes had been typed on loose leaves and sealed in this book.

Q. You saw that in Calgary. Did you have occasion to see it again? A. Yes, it was delivered to me in June, 1931, by Edwards Morgan & Company, Crown accountants for the Province of Ontario. It was mailed to me or expressed to me—expressed probably.

Q. Then what? Trace what happened to the book after you got it? A. The book was held in my custody until the preliminary hearing of the charge against Solloway Mills & Company Limited at which time— 10

Q. In Vancouver? A. In Vancouver, at which time it was produced by me and admitted in evidence by the magistrate on the preliminary hearing. It remained then in the custody of the court until the case was finally disposed of, and on the order of his honour Judge Ellis it was delivered to me and I returned it to—

Q. When, Mr. Cosgrove? A. Some time in July, 1931.

Q. July of this year? A. I think it was July. It may have been August—I would not like to say—July or August of this year it was returned to me by the court and I forwarded or returned it to Edwards Morgan & Company, Crown accountants for the Province of Ontario. I made copies of the minutes, or had copies made. 20

Q. By whom? A. By my stenographer.

Q. What is her name? A. Miss Chipping.

Q. How do you spell it? A. C-h-i-p-p-i-n-g.

Q. She is a stenographer in your employ? A. Yes.

Q. How long has she been employed by you? A. About two years.

Q. Is she a capable girl? A. Yes.

Q. An experienced stenographer? A. Yes. 30

Mr. Farris: You would not suggest inefficiency in Mr. Cosgrove's office.

Mr. Fraser: You might. I have to cover these points.

The Court: No admission is being made apparently.

Mr. Fraser: Have you any other evidence in connection with the minute book?

Q. The only other point that occurred to me was the identification of the minute book. Mr. Mason, the secretary-treasurer of Solloway Mills & Company identified the book for me in Calgary as being the book of Solloway Mills & Company. 40

Mark Cosgrove,
 Cross-Exam.
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CROSS-EXAMINATION BY MR. FARRIS:

Q. These various documents in court, do you recognize them?
 A. Yes, I do.

Q. The various documents at the trial at Calgary—some of the documents down in Calgary were in charge of the late Mr. Shaw?

A. Yes, some of them were.

Q. They have been from court to court—to the court here? A. Yes, some were in Calgary and Toronto and then here.

Q. And they were in the Labor Temple Building, were they not, Mr. Cosgrove? A. Yes, that is where I had my office.

Q. And they were in the possession of the Provincial Income Tax Officer who had access to them? A. I don't think they were in his possession—they had access to them.

10 Q. The Dominion had access to them? A. I could not say that, I do not know.

Q. Were any of these documents back in the east at all? A. Without looking at them, I could not say.

Q. You mean speaking generally they were brought from the East. You got some of them in Toronto? A. Yes.

Q. Some in Vancouver and so on? A. Yes.

Q. They had been more or less gathered up and were moving from place to place all over Canada? A. Yes, that is right.

Q. That is all, thank you.

RE-DIRECT EXAMINATION BY MR. FRASER:

20 Q. While these documents were in your possession, Mr. Cosgrove, as special representative of the Province of British Columbia, did you take care of the custody of them. Did you have them in charge? A. Yes.

Q. Were they under lock and key? A. Yes.

Q. What efforts did you make to see that they were properly guarded and preserved? A. I maintained a man in charge of the books day and night all the time.

Q. Do you know what the books were that went from the Vancouver office to Calgary? A. Oh, I think I could—

30 Q. I mean roughly? A. Yes, I could say what books went to Calgary roughly.

Q. Did the whole of the Vancouver books go to Calgary? A. No.

Q. Do you know what days they went down? A. I could not say from memory. I can check that and give you the exact days. The most of those envelopes and the cases there that I see here—

Q. Exhibit 23? A. I cannot see what exhibit they are, but most of those did not go to Calgary. There was very little of that stuff went to Calgary.

40 Q. Exhibit 34? A. Yes, very little of that went to Calgary. Without examining each parcel I could not say what one.

Q. Do you know what these exhibits are? A. Daily confirmations.

Q. For that day? A. Yes.

Q. You say not many of those went to Calgary? A. No. A

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very little number.

Q. Have you seen the Vancouver account of the defendant company? A. Yes, part of it.

Mr. Farris: This is not re-examination.

Mr. Fraser: I ask leave to ask the question.

The Court: Very well.

A. Covering two months of 1929.

Mr. Fraser: Q. Do you know what months? A. November and December.

Q. Do you know where those are now? A. They are in 10 Toronto.

Q. What about the house account prior to October, 1929? A. November and December?

Q. What about the months prior to that in the house account? A. Well, I never saw them.

Q. Did you make efforts to obtain them?

Mr. Farris: Surely my friend cannot cross-examine his own witness.

Mr. Fraser: I am not.

Mr. Farris: The question is are those—

20

Mr. Fraser: Do not answer until I put the question.

Q. Have you had any conversation with any officer of the defendant company about the Vancouver house account?

The Court: Question allowed?

A. Will I answer.

Q. Yes? A. Yes.

Mr. Fraser: Q. What conversation have you had respecting it? A. I have asked Mr. McGee and Mr. Macdonald if they knew where it was and they said no.

Q. All right, thank you.

30

(Witness aside)

Francis Gordon
 Cooper,
 Direct Exam.
 Dec. 10th, 1931.

FRANCIS G. COOPER, a witness on behalf of the Plaintiff, resumes the stand:

CONTINUATION OF DIRECT EXAMINATION BY MR. FRASER:

Q. Now, Mr. Cooper, you have a synopsis there in front of you? Have you? A. Yes.

Q. What stocks have you checked with the documents in court here, the confirmations in court? Just name the stocks and the days that you have checked the documents in court? A. The confirmations that are in court? 40

Q. Yes? A. A. P. Con. on February 14th, 1929.

Q. Go slowly? A. The same stock on March 13th, 1929; A. P. Consolidated on April 15th, 1929; Associated Oils May 29th,

1929; Cotton Belt December 22nd, 1928; Fabyan March 13th, 1929; Freehold March 13th, 1929; George River January 26th, 1929; Grandview November 19th, 1928; Golconda February 14th, 1929; Home Oil February 15th, 1929; Illinois Alberta March 13th, 1929.

The Court: What was the date? A. For Illinois Alberta?

Q. Yes? A. March 13th, 1929; Mayland February 14th, 1929; Mercury May 29th, 1929; Mohawk January 22nd, 1929; Oregon Copper January 22nd, 1929; Pend Oreille November 19th, 1928; Regent March 13th, 1929; Southwest Petroleum April 18th, 1929; 10 Southwest Petroleum July 19th, 1929; Topley Richfield February 14th, 1929; Whitewater February 14th, 1929; Whitewater March 13th, 1929. That is all.

Mr. Fraser: Q. Now, with respect to those stocks you have enumerated on those days, does the synopsis you now have correctly represent the confirmations in Court? A. Yes.

Q. Did you check the Clearing House statements that are now in court as exhibits with that synopsis? A. Yes.

Q. Does the synopsis correctly represent the transactions on the Vancouver Clearing House as appearing on those exhibits on 20 those days? A. Yes, except in one or two small corrections which we have marked here in pencil.

Q. You have included them in there? A. We have included them in here.

The Court: You ask to have that put in then?

Mr. Fraser: Yes, for those days. The other days will be in, will be admitted, but they are not proved yet. There are other days included in the synopsis. I will not refer to them, I admit they are not proved yet, but as to the days he has mentioned, I will ask that the synopsis be filed.

30 The Court: On your undertaking to prove the others, the synopsis may be marked.

(DOCUMENT REFERRED TO MARKED EXHIBIT NO. 57)

Mr. Fraser: I will ask my learned friend to produce the confirmations for Devenish on March 15th, 1929.

(DOCUMENTS REFERRED TO PRODUCED)

Mr. Fraser: I would ask my learned friend—

The Court: As to these confirmations of March 15th, are they produced?

Mr. Fraser: Yes.

40 Mr. Farris: It is referred to in the synopsis.

Mr. Fraser: Yes, it is. I am going to prove it by another witness.

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RECORD (DOCUMENTS REFERRED TO MARKED EXHIBIT NO. 58)

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Q. Confirmations for Grandview January 16th, 1929.

Mr. Farris: We have not got those.

Mr. Fraser: Q. Were these confirmations shown to you yesterday for January 16th, 1929? A. No, I showed Mr. McGee the list and he said he had them all.

Mr. Farris: Except the Grandview.

Mr. Fraser: I would ask my friend to state where the Grandview confirmations are for January 16th, 1929.

Mr. Farris: I have no knowledge where they are. 10

Mr. Fraser: They are not produced here in court.

Mr. Farris: If they were in court. I would not say. I did not know where they were.

Mr. Fraser: That is all I want. The confirmations for Pend Oreille for February 15th, 1929.

(DOCUMENTS PRODUCED AND MARKED EXHIBIT NO. 59)

Mr. Fraser: I would ask my learned friend to produce the confirmations for Reeves Macdonald on January 19th, 1929.

(DOCUMENTS PRODUCED AND MARKED EXHIBIT NO. 60) 20

Mr. Fraser: And Reeves MacDonald for February 15th, 1929. I see there are two. That is Exhibit 59.

Mr. Farris: I say in producing these we produce all we have or know of on that date, but as your lordship gathered from the cross-examination of Mr. Cosgrove there may have been documents lost in shuffling around. I do not say there are, but I am taking that position in case they are not there. We are only producing what we have here without any admission as to correctness.

The Court: Mr. Cooper is going to be recalled, I presume. 30

Mr. Farris: On the question of other days.

Mr. Fraser: When I check the other days. Does my friend want me to recall him?

Mr. Farris: I may want to cross-examine him.

Mr. Fraser: I will recall him then.

(Witness aside)

LOUISE C. NUYENS, a witness on behalf of the Plaintiff, recalled.

Louise C.
Nuyens,
Direct Exam.
Dec. 10th, 1931.

DIRECT EXAMINATION BY MR. FRASER:

Q. You are still under oath. His lordship asked you to produce 40

copies of the buy and sell forms you used in connection with your business in Kamloops. What are those Miss Nuyens? You had better take one. What is the document I am producing now to you? A. It is merely an order from a client to us to buy for his account 500 shares of Spooner at \$1.75.

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Q. What is this? A. This is an order from a client of Theo. Frontier & Company Limited to buy for his account, that is for the account of the client, 400 shares of Spooner at \$3.90 or better, or rather to sell. This is the sell slip.

Louise C.
Nuyens,
Direct Exam.
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(DOCUMENT REFERRED TO MARKED EXHIBIT NO. 62)

Q. His lordship also asked if you had forms of confirmations. Tell his lordship what this document is I am producing? A. This is a copy of a statement, or not a copy, it is the original statement we used to show our clients the position of their accounts. It shows the balance as from the last statement and then any transactions made in any stock, bought or sold since the last statement was issued. It shows the date on which a purchase or sale was made, the number of shares bought or sold, the name of the stock and the price at which it was bought or sold.

Q. It speaks for itself. You are just reading from the statement? A. Yes.

(DOCUMENT REFERRED TO MARKED EXHIBIT NO. 63)

Mr. Fraser: My lord, your lordship asked me to agree on the commission. Unfortunately I have not the books here. The books containing the commission are not in my possession. We 'phoned to Kamloops. I do not know if they can find them there now. I am asking my learned friend if he will have his witnesses point, where in the books those items are, and I think I will be instructed to agree they are accurate. I will do that at noon recess, if my learned friend will tell me, or have Mr. McGee show me where in the books the figures are, and I will accept the figures.

The Court: Very well, counsel may confer during the adjournment.

Mr. Fraser: Q. There is one thing while this witness is here in this synopsis, my lord, exhibit 57, those marginal payments which I think were admitted are set out at the time they were sent down. You have checked, have you not, those margin payments?

A. Yes, they have been checked in the books of Theo. Frontier Limited and also the ledger sheets of Solloway Mills & Company.

Q. Now in as exhibits? A. Yes.

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Q. Those are the dates and amounts? A. Yes.

The Court: Referring to the last page.

Mr. Fraser: Page 75 of the synopsis, the page before the last.

CROSS EXAMINATION BY MR. FARRIS:

Q. Miss Nuyens, did you not, when you got a confirmation back from Solloway Mills of an order having been bought or sold, did you notify your client? A. Just what do you mean?

Q. Did you notify your client when the shares had been bought or sold, that you had bought them? You did not wait until you sent out the monthly or weekly statement. Did you notify the client at once? A. They were notified by that statement. 10

Q. I know, but did you notify—

Mr. Fraser: Let her finish.

A. They were notified by that statement just as soon as we had completed the purchase or sale, and that statement was sent out to them immediately.

Mr. Farris: Q. Do you mean to say you sent out this statement exhibit 63. Supposing you bought 100 shares of stocks today and 100 shares tomorrow or for a week past and you got your notification back from Solloway Mills that the shares had been bought, do you mean to say that you sent out one of those statements every day to your client? A. Yes, we did. 20

Q. And that was your confirmation to your client? A. Yes.

Q. That is what I want to find out about.

Mr. Fraser: That is all.

Mr. Farris: I understand that Miss Nuyens will be here. We are hunting up the brokerage cheques at the noon time. She will be here?

Mr. Fraser: She will be here all day. She is asking to leave tonight. These witnesses are down here at considerable expense and have to leave their work. 30

(Witness aside)

Mr. Fraser: I will call Mr. Frank E. Smith.

Frank E. Smith
 Direct Exam.
 Dec. 10th, 1931.

FRANK E. SMITH, a witness on behalf
 of the Plaintiff, being first duly
 sworn, testified as follows:

DIRECT EXAMINATION BY MR. FRASER:

Q. What is your occupation, Mr. Smith? A. Accountant.

Mr. Farris: Now, my lord, as to this particular witness, I want to make an objection. I understand that this witness was employed as an officer under Mr. Cosgrove under the Security Frauds Prevention Act and any evidence he gives I will certainly take objection to, because in the previous case where Mr. Cosgrove's evidence was admit- 40

ted, it was admitted on an entirely different basis than that of an employee, because Mr. Cosgrove was the preventing officer himself and the court, Mr. Justice W. A. Macdonald, or Mr. Justice Gregory, I have forgotten which, ruled that he stood in a different position than an employee. I understand this witness was an officer under the Security Frauds Prevention Act.

Mr. Fraser: We had better find out what he was.

Mr. Farris: I am being frank with the court. I understand now the situation was—

10 Mr. Fraser: I do not know what his occupation was. I am going to find out if I can.

Mr. Farris: I am taking the position in advance.

The Court: I had better have evidence, if it is not common ground as to what the position was.

Mr. Farris: And if he was employed under the Security Frauds Prevention Act.

The Court: You can find out.

Mr. Fraser: I really do not know.

Mr. Farris: Ask him if he was employed under the Security
20 Frauds Prevention Act.

Mr. Fraser: Q. What was your occupation or relation to the books of the defendant company—when did you first become associated with them? A. In January, 1931, I was employed by Messrs. Butter & Chiene, the chartered accountants in Vancouver to do work in connection with the investigation of Solloway, Mills' books.

The Court: Q. They were investigating for whom?

A. For the Provincial Government in regard to—it was a criminal investigation.

Mr. Farris: Q. Under the Security Fraud Prevention Act?
30 A. Yes.

Mr. Fraser: Q. Messrs. Butter & Chiene were employed under the Security Fraud Prevention Act to your knowledge? A. Yes.

Q. And you were employed by Messrs. Butter & Chiene? A. I was employed by them.

The Court: Now, what authority have you?

Mr. Farris: I am just looking up the Security Fraud Prevention Act.

Mr. Fraser: Here it is, section 10.

The Court: And just so I will have your line of examination,
40 Mr. Fraser, you might ask one question to begin with. Please do not answer, Mr. Smith, until I rule.

Mr. Fraser: As to Grandview. I am going to ask this witness, the Grandview confirmations were in his possession and are now missing. I am going to ask him what he had to do with them and to whom he delivered them?

The Court: All right. Now, Mr. Farris.

Mr. Farris: I refer to the Statutes of British Columbia, 1930,

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chapter 64, being the Security Frauds Prevention Act, Part II, Section 10, Subsection 4:

“Disclosure by any person other than the Attorney-General, his representative or the registrar without the consent of any one of them of any information or evidence obtained, or of the name of any witness examined or sought to be examined under subsection 1 shall be constituted an offence.”

Disclosure of any information received in that position constitutes an offence against the Act and makes him subject to penalty under the Act. 10

The Court: You might let me see the section. The section apparently reads: “Disclosure by any person other than the Attorney-General, his representative, or the registrar without the consent of any of them, of any information or evidence obtained, or the name of any witness examined or cross-examined under subsection 1 constitutes an offence.”

What do you say, Mr. Fraser?

Mr. Fraser: Two short answers. The first is that the Act has been held by the Court of Appeal to be ultra vires insofar as it purports to confer authority in any one to collect information for a criminal prosecution. The Court of Appeal held that it was beyond the jurisdiction of British Columbia. The second point which was submitted to his lordship, Mr. Justice Gregory, was that the Act contemplates this, if I am appointed to investigate the books of the Vancouver Hotel or any other person within the purview of the Act I must not go out on the street corners and say, “By Jove, I had an investigation into the books of that company and they certainly looked very bad.” It would be against public policy, but I submit the Act never contemplated or intended to prevent witnesses giving evidence in court. It says that any evidence or data collected from the books, that they must not go out and disclose it. It says “If you do, you are liable to an offence,” and quite properly so, but in court where the administration of justice is being carried on, can your lordship read into that section a prohibition against any witness giving testimony in court as to anything he discovered. I submit not. 20 30

There are two points, that the Act is ultra vires and that so far as it prevents this witness from giving any information, and the second point is, if I am wrong in that, that in any event the spirit of the Act never contemplated that any person who was appointed a representative should not be prevented from giving evidence in court, but was simply to prohibit that person from going on the street corners or anywhere else and disclosing what he learned under the Act. 40

Mr. Farris: Answering the first point, the Court of Appeal did not hold that the Act was ultra vires. It held that the Attorney-General had gone beyond his competence for the purpose of using the Act to cause criminal evidence to be given. The second point, they decided it was not ultra vires owing to the fact that there was a decision

of the Alberta Court that the Act was ultra vires and that the matter was going to the Privy Council, so that our Appeal Court did not take the responsibility of holding that the Act was ultra vires. I do not think your lordship would want to, with this brief argument, to undertake to do so.

The Court: Did my brother, Gregory, rule on that?

10 Mr. Farris: Yes, he distinguished the case of Mr. Cosgrove and said that applied to the representative, that Mr. Cosgrove could be compelled to answer, that he was in an entirely different position to another witness, and that the Act was not a prohibition against a representative. Mr. Cosgrove was allowed to give evidence on that basis. When any other witness was brought up, the question was, I thought, under the Security Fraud Prevention Act and Mr. Justice Gregory stopped him very quickly.

Mr. Fraser: Who was it?

Mr. Farris: I think Mr. Mayland was it?

A: There was a Mr. Mayland.

The Court: You put it clear cut, that is the exact point dealt with.

20 Mr. Farris: Yes, on the question of guilt.

The Court: On the question Mr. Mayland was called.

Mr. Farris: Mr. Mayland was called and the point was raised and his lordship stopped him from giving evidence and then found it was not to be given in connection with that at all and it was all right. I took the point and his lordship gave very considerable thought to the question, and then he came back.

The Court: Could a transcript of that be got?

30 Mr. Farris: I presume so. I presume we could dig it up. That was in the Mackee action. That is quite available. It will take some little time to go through the transcript. It was a long drawn-out action.

The Court: There might be a question along the lines suggested by Mr. Fraser of intending to prevent a person subpoenaed in court.

Mr. Farris: Surely your lordship would not make an order directing this witness to answer. It does not say, "Save and except such evidence as may be given in court." Here is the position, if I saw fit, and I go out of this court room, and this witness proceeds to answer, and you compel him to answer, he must answer, but I can immediately go down and lay an information against him.

The Court: To cover a witness in court?

40 Mr. Fraser: There is nothing protecting him.

Mr. Farris: It does not say save and except such evidence as may be given under the direction of the court. It says any witness who divulges it. He cannot divulge it in court under oath, the information he has got. What can be a more complete divulging of this—

The Court: Was that point dealt with by Mr. Justice Gregory?

Mr. Farris: Yes, and he only permitted Mr. Cosgrove to give evidence. Mr. Cosgrove, I might point out, was the representative.

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The Court: Your submission is that unless he had been held to be a representative as stated in subsection 4, my brother, Gregory, would have held he would have no right to give evidence, as he would be guilty of an offence under that section 4.

Mr. Farris: Yes, I say even then his lordship gave it some considerable consideration before he permitted Mr. Cosgrove to give it.

The Court: Do you agree, Mr. Fraser?

Mr. Fraser: No.

The Court: Make it clear in what you disagree as to that statement by Mr. Farris. 10

Mr. Fraser: My friend has answered his own question. With regard to Mr. Cosgrove, he put it on two grounds. Now, he says that he went on the ground that the spirit of the Act is that you cannot give the evidence anywhere, in court or anywhere else, that the spirit and meaning of the Act is such that this witness cannot give evidence anywhere.

Mr. Farris: Without consent.

Mr. Fraser: Yes, Mr. Justice Gregory ruled on that and he said that Mr. Cosgrove could give evidence in court in spite of the Act. He said it did not cover the question of giving testimony in court. 20

Mr. Farris: I beg your pardon.

Mr. Fraser: My learned friend will have a reply.

The Court: Do you agree that I can get a transcript of what was said; do you or not?

Mr. Fraser: My learned friend had a transcript made every day in court and I think he has a transcript. I say on the first point, my learned friend agrees, that you cannot give evidence in court, that Mr. Justice Gregory answered that, because Mr. Cosgrove did give evidence. The only other point is, is this gentleman in the witness box a representative? The other argument goes by the board, because Mr. Justice Gregory ordered the evidence to be given. 30

The Court: What is your submission?

Mr. Fraser: I say he is in a different position. I say he is a representative under the Act. That is the only point. My friend must show that he is not a representative under the Act and the spirit of the Act is not broad enough to cover a representative or person in the position of this witness.

Mr. Farris: May I see the Act a moment. I think I can deal with that question simply. Read it and read it properly.

The Court: Just a moment. Do you submit this witness is a representative, do you or do you not? 40

Mr. Fraser: I say that I do not have to. If he is not a representative under the Act he is not covered by the Security Frauds Prevention Act, but he is in the position of any other witness, so, for the purpose of the Act, I admit he is a representative. My learned friend, my lord, is in this position: He has got to submit to your lordship that this man is a representative and if he is not, he is in the same category

as any other witness. I am assuming that this man is a representative. If so, section 10 says: "The Attorney-General, or any person or persons to whom as his representative or representatives he may in writing delegate authority—"

If he is not a representative. I have nothing more to say. I say he is an ordinary witness.

Mr. Farris: I started to say that Mr. Cosgrove produced his authority and pointed out that he was a representative delegated in writing by the Attorney-General. This person has got information
10 under and by virtue of the Security Frauds Act and not by virtue of an appointment as representative.

The Court: I had better have a copy of that section.

Mr. Farris: Subsection 1 reads:

"The Attorney-General or any person or persons to whom as his representative or representatives he may in writing delegate—"

That is a representative.

The Court: You had not read that.

Mr. Farris: Not originally. That is subsection 1 of section 10. Now, subsection 4, it never occurred to me that my friend would raise
20 such a point, that is the reason I did not read it.

"Disclosure by any person other than the Attorney-General, his representative, or the registrar—"

Now, his representative is the person to whom the authority is delegated by writing. Any other person employed, such as this person was employed, and Mr. Cosgrove, his lordship held that he was the representative and that he might disclose without the consent of the Attorney-General, but as to an individual who is other than a representative, or the Attorney-General there can be no question, he can only give that information by consent of the Attorney-General. It
30 might be for public or other reasons. It might be in this very case this man might have disclosed some information already. He is brought here. How could my friend know what he was going to give, if it were proper for him to give this evidence. It is very simple to do it if in the mind of the Attorney-General who had used this very very strict Act having very wide powers, if he wanted to allow somebody to give out that information, it is a very simple thing to do, all he has got to do is get the consent of the Attorney-General to give the evidence and it can be given. The Attorney-General is the chief Crown officer of the Province and if it is proper that he should give evidence, and
40 there is power to give the evidence, because he can consent to it, or can consent to his stating to the public—

Mr. Fraser: On the objection under subsection 4, the whole thing is for your lordship's discretion. If you lordship holds that this Act prohibits this witness giving evidence in court, then the point as to giving secondary evidence will not be lost. If this is intended to defeat the Evidence Act, I say that it defeats the administration of justice.

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Mr. Farris: This was an extraordinary power taken unto the Attorney-General and the Attorney-General has the right to waive that in order that justice may be done.

The Court: Your submission is that he could prevent it. That is the way you put it; that consent could be obtained and if the consent was not forthcoming that the evidence could not be given in court.

Mr. Farris: Or anywhere. This is an extraordinary power given the Attorney-General to investigate certain things. It is an Act that goes beyond any Act ever drawn and it is very proper that there should be the greatest precaution, because in this case, as I just pointed out, it goes one step further, dealing with the question of cross-examination. 10

The Court: It is common ground, Mr. Fraser, that this information or evidence was obtained under subsection 1 of section 10 of the Act.

Mr. Fraser: I do not know as to that, as to how he got it.

The Court: I had better have that. I would like to have it definitely whether or not the information was obtained under subsection 1 of 10 of the Security Frauds Prevention Act.

Mr. Fraser: Yes, you should have that.

Mr. Farris: Might I be permitted to cross-examine on that? 20

Mr. Fraser: Q. Have you got any information—do not answer until the objection is ruled on.

The Court: Do you think you should lead him?

Mr. Fraser: No, my lord.

Q. Have you any information in regard to the stock, Grandview—do not answer until his lordship has ruled—have you any information as to the stock, Grandview, or with respect to the confirmations covering Grandview, confirmations of the defendant company, which information or evidence you have obtained other than under the Security Frauds Prevention Act. Do not answer that. 30

Mr. Farris: I do not see any objection to that question.

The Court: Q. Do you follow the question?

Mr. Fraser: I will put it again.

The Court: The reporter will read it. If you do not follow, let me know.

The Reporter: "Have you any information in regard to the stock, Grandview—do not answer until his lordship has ruled—have you any information as to the stock, Grandview, or with respect to the confirmations covering Grandview, confirmations of the defendant company, which information or evidence you have obtained other than under the Security Frauds Prevention Act. Do not answer that." 40

The Court: Q. Do you follow the question? A. Yes.

Q. You may answer it? A. I have information in respect to the confirmation that I got, other than under the Security Frauds Prevention Act.

The Court: Do you wish to cross-examine?

Mr. Farris: Yes, I think I would like to ask this witness in that regard.

CROSS-EXAMINATION BY MR. FARRIS:

Q. Now, Mr. Smith, you were employed by Buttar & Chiene, working under the Security Frauds Prevention Act? A. Yes.

You checked these confirmations at that time? A. Yes.

Q. And you got information regarding them and knew where they were and so on? A. Yes.

Q. Now, absolutely independent of your knowledge obtained in 10 that way, did you get any information in regard to these confirmations? A. I have information as to confirmations—

Q. I mean, which is in no way based on information gained in your position of trust under the Security Frauds Prevention Act? A. I would say so, yes.

Q. How did you obtain this information? A. The information I have, so far as confirmations, I am not talking of the contents of the confirmations, but the physical confirmations, I got that information after the investigation under the Security Frauds Prevention Act was completed.

20 Q. I see. A. The physical confirmations, not the contents of them.

RE-DIRECT EXAMINATION:

Mr. Fraser: Q. As to the physical confirmations, tell his lordship what your knowledge is of those confirmations and what your evidence is in respect of them?

The Court: Questions allowed.

A. I made up an analysis of the daily operations.

Mr. Farris: Now, my lord—

30 A. I am not going—

Mr. Farris: I object to that. Any analyses that were made.

Mr. Fraser: Q. Did you ever have any confirmations—do not give the contents of them—did you ever have any confirmations covering Grandview in your possession or power after the proceedings under the Security Frauds Prevention Act had terminated? A. Well, I would not say I had them in my possession or power, but I saw them.

Q. Under what circumstances did you see them? First, Mr. Smith, how many did you see or were they all together, or throughout the four corners of the woods? A. They were all together in a box.

Q. In length, were they, or placed end by end? A. Yes.

40 Q. How many of them. If you can, give the extent of the contents? A. They were in a box about that long, 4½ to 5 feet and about a foot wide.

Q. Confirmations similar to these? A. Yes.

Q. Confirmations similar to the exhibits contained in exhibit 39?

A. Yes.

Q. And they were put end to end? A. That is correct.

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Q. And when they were put end to end like that, you say about three feet? A. About five feet.

Q. Do you know, and again, independently of the Security Frauds Prevention Act, what period those confirmations cover?

Mr. Farris: That is dealing with the contents. He has already sworn that he did not know anything as to the contents except under the Security Frauds Prevention Act.

Mr. Fraser: Q. I say independently of the Security Frauds Prevention Act, do you know?

The Court: I allow the question. He put it independently of the Security Frauds Prevention Act. 10

Mr. Farris: The witness has sworn that he has no knowledge of the contents other than under the Security Frauds Prevention Act and now my friend is cross-examining on it.

The Court: Not as to the contents, but as to the period, what these confirmations were—not as to the contents, but what period.

Mr. Farris: That could only be shown from the documents themselves, and that is part of the contents.

Mr. Fraser: How do you know they are not marked?

The Court: As to the date, I will allow that, otherwise they might not be identified as the documents at all. 20

A. The period from December, 1928, to April-May, 1929.

Mr. Fraser: Q. Who, by the way, built this box that you speak of in which they were in? A. My son happened to build it.

Q. Is there anything peculiar about the box itself? A. No, it was just boards put together.

Q. About five feet long.

The Court: I have that.

Mr. Fraser: Q. Under what circumstances did you see this box of confirmations, where, first? A. This was after any contact I had with them under the Security Frauds Prevention Act, I mean. 30

Q. Yes? A. After they were returned to the Labor Temple from the Court House.

Q. Do you know in whose possession they were in then? A. When they were returned?

Q. Yes? A. My understanding, Solloway Mills.

Q. Did you see them in the Labor Temple Building? A. Yes.

Q. Were there any officials or subofficials of Solloway Mills there? A. Yes.

Q. Who were in the building? A. Mr. Macdonald, Mr. McGee and occasionally Mr. Mackenzie. 40

Q. Are those men in court now? A. Mr. Macdonald is.

Q. Mr. McGee has been in court and Mr. Mackenzie? A. Oh, yes, they have been.

Q. How did you come to see the confirmations at that time? A. They were brought in along with other documents that were returned from the Court House.

Q. Did you see them again after that? A. I saw them until they were taken away.

Q. Did you see them being taken away? A. I did.

Q. When? A. Along the first part of October. I think it was the first week in October.

Q. Of this year? A. Of this year.

Q. Who were present when they were being taken away besides yourself? A. I was there and Mr. McGee was there and the two men that were taking out the rest of the documents from the room.

10 Q. Do you know who they were? A. No, I don't know who they were.

Mr. Farris: I cannot see the relevancy of this evidence.

Mr. Fraser: I am trying to show it.

Mr. Sloan: You say that you have not got it and that you can lead secondary evidence on it. This does not advance you any.

Mr. Fraser: Q. The last time you saw this box, who had it? A. It was on a truck being used by the men to take the other documents out of the office.

20 Q. And it was being taken out to this truck? A. A small truck, I mean.

Q. From the office? A. Yes.

Q. In the presence of Mr. McGee? A. Mr. McGee was there, yes.

Q. That was the last that you have seen of them? A. Yes.

Mr. Fraser: I want to give secondary evidence on the contents, but your lordship will rule first as to the admissibility under the Security Frauds Prevention Act.

Mr. Farris: I have some questions.

RE-CROSS-EXAMINATION BY MR. FARRIS:

30 Q. Who was in charge of the documents for the Government, was Mr. Coleman there? A. Yes, he was there.

Q. He was in charge, was he not? A. I would not say so, no.

Q. Was he over you, or you over him? A. We were each together.

Q. Now, did you follow those documents from the room down on to the truck? A. I never saw them after they left the door of the room.

Q. There was a great many boxes and hampers, a whole room full of books? A. A large number.

40 Q. And a lot of boxes? A. A lot of boxes.

Q. Mr. McGee took this matter up with you, didn't he, as to this missing bunch? A. Mr. Macdonald mentioned it to me and said they had disappeared.

Q. You told him your impression was that they had gone with the rest of the documents? A. I said they had.

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Q. Didn't you tell him you thought they had gone with the other documents? A. No.

Q. Were you present when they were discussing it with Mr. Coleman? A. No.

Q. If Mr. Coleman said those documents never—

The Court: Now, Mr. Farris—anything Mr. Coleman said is not before me.

Mr. Farris: Q. Did you discuss it with Mr. Coleman? A. Yes, after this matter.

Q. Did he not suggest to you those documents had not come 10 back to the Court House at all? A. No.

Q. You know that Mr. McGee went to Mr. Coleman and Solloway Mills were endeavoring in every way to locate that box.

Q. You know that they took it up with the truck company, and you did, too, I suppose? A. I did not. I made no enquiry.

Q. You do know that Solloway Mills representatives were making every effort to locate the box for several days and were enquiring everywhere? A. Yes.

Q. That is all.

The Court: You are applying now to give secondary evidence 20 on the contents, Mr. Fraser?

Mr. Fraser: Yes, I assume that you will have to rule under the Security Frauds Prevention Act.

The Court: Through what witness?

Mr. Fraser: Through this witness.

The Court: Do you think, Mr. Farris, you could obtain for me a transcript of the judgment of my brother, Gregory?

Mr. Farris: Yes. I am not sure that I will be able to get it before the court opens at 2:15.

The Court: You are anxious to go on with this before the other 30 evidence?

Mr. Fraser: I do not want to keep Mr. Smith. There is the expense.

The Court: He is from where?

Mr. Fraser: Vancouver. I could leave it until tomorrow morning.

(1 P.M. COURT ADJOURNED UNTIL 2:30 P.M.)

(2:30 P.M. COURT RESUMED PURSUANT TO
 ADJOURNMENT)

Discussion,
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Mr. Farris: My lord, during the adjournment, at your request, 40 I have looked up the proceedings in regard to what took place in the Mackee action before his lordship, Mr. Justice Gregory.

The Court: Yes. That is the Mackee action.

Mr. Farris: Yes. This is at page 97, Friday, May 15th.

“The Court: I have looked at this matter and consulted my brother judges who were available and have come to the conclusion that this Act does not in any way prevent me from having Mr. Cosgrove give his evidence. I cannot see that it does. With great deference, I cannot agree with the decision of Mr. Justice D. A. McDonald.”

Mr. Justice D. A. McDonald had held to the contrary that they could not examine Mr. Cosgrove.

10 “—if I have it clearly before me. He apparently decided otherwise on this Act—at least, expressed that opinion. So far as the decision of Mr. Justice Fisher is concerned, that does not cover the case at all. That was a case where the books were not in the possession of the parties so he could not order discovery. The Criminal Code has wiped away, so far as it can do so, the old rule which stayed a civil action until the criminal actions were disposed of, and that is now a matter for the Provincial Act. There is no Provincial Act I know of except this present Act. The Court of Appeal has already refused to stay the proceedings in this case, so I feel I must allow it. It seems to me quite clear, 20 too, in the decision that was referred to in the court of Alberta, or rather the ruling of Mr. Justice Ives, there seems to me to come strictly within this act, because there the report which it was sought to cross-examine on in full was a report distinctly made under this Act, so it came within it. The previous case is distinct, it seems to me, from this civil action. All this officer does is produce the books and any information we get, we get from our own inspection of these books and papers.”

Now, I mentioned Mr. Mayland. I was quite sure I was right in that. Mr. Mayland was produced in reference to these books.

30 The Court: He was going to give evidence as to the contents.

Mr. Farris: Yes, and this is right on that point.

“The Court: But you must not ask questions as to what they contain. If it is a question of identifying documents, you can ask him. That is subject to your objection.”

There is no “if” answer about it. I was quite sure when I stated it to your lordship.

Mr. Fraser: You see, my lord, in this case I was seeking, in the Mackee case, I was seeking from Mr. Mayland certain information in respect to these books.

40 The Court: As to the contents.

Mr. Fraser: Yes, I quite admit that is not relevant in this case because they speak for themselves.

The Court: But, was the court deciding it was inadmissible owing to this section of the Act?

Mr. Fraser: I submit not. I asked you to go through there from the beginning. In this case I am asking for secondary evidence.

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The Court: The transcript discloses what happened immediately before.

Mr. Farris: There is no question about that. My learned friend knows it.

Mr. Fraser: This point was never before Mr. Justice Gregory.

Mr. Farris: My learned friend knows it was as evidence before him. I cannot understand him stating that it was never before Mr. Justice Gregory. That was argued over, Mr. Cosgrove's evidence and Mr. Justice Gregory adjourned and consulted with his brother judges.

Mr. Fraser: I say that point was never argued before Mr. Justice Gregory. The transcript speaks for itself, I concede that I cannot give evidence of a written document, but I ask to give secondary evidence in this case as the document is missing. In this case, the transcript speaks for itself and I ask you to decide whether the matter was ever before Mr. Justice Gregory. 10

The Court: I understood at adjournment, if it was agreeable, the matter would be decided tomorrow morning. If I may be permitted to say so, to clarify the situation, your submission is that under subsection 4, although a person may be subpoenaed to court to give evidence in a civil case in regard to information received by him in the course of employment under section 10-1 that he could not disclose anything without being guilty of an offence. That is your point? 20

Mr. Farris: Yes.

The Court: And that he would be guilty of an offence according to your submission and that I could not ask him to disclose anything here.

Mr. Farris: Which would make him liable to be prosecuted for divulging it, that the court cannot be a party to ordering a man to do something illegal according to the statute.

The Court: Of course, your submission is that the subsection is not qualified in this way: That is, it does not say unless subpoenaed or ordered by a court to do so. 30

Mr. Farris: Yes.

The Court: And your submission is that nothing like that can be read into it.

Mr. Farris: Yes, there is the statute in plain English. I do not see how the language can be any more plainer.

The Court: What do you say as to the suggestion that that section can be taken for granted? Of course, if he is ordered or subpoenaed or ordered to give evidence in court— 40

Mr. Farris: I cannot see how any such thing can be so, where any other exception can be taken in words. It says "shall not divulge without the consent of the Attorney-General."

I am referring now, I want to make it clear—my friend said this was never discussed, the Security Frauds Prevention Act was never discussed. Both Mr. J. W. deB. Farris and myself were on this particular case. I will read the whole context.

“Direct examination by Mr. Fraser:” (page 143)

“Mr. W. B. Farris: Now, my lord, I understand Mr. Malins is employed by Mr. Cosgrove under the Security Frauds Act, that Mr. Malins has never received any consent to give any evidence or any information which he has received by virtue of his position, and while your lordship ruled in regard to Mr. Cosgrove, if Mr. Malins, who is in his employ, divulges any information which he has received, he is guilty of an offence under the Act, and I submit that he cannot be ordered to give any evidence.”

10 After several months, I do not think my language is very much different than what it is here today.

“Mr. Fraser: I am not asking—I am not going to ask this witness to give any evidence, I am just going to ask this witness—and possibly it is unnecessary, but I don’t want to be met with any formal objections—”

Mr. Fraser: That is the whole point.

The Court: It might be inferred from what Mr. Fraser says that the court did not direct.

Mr. Farris: I will read on:

20 “I do not want to be met with any formal objections later on—that these confirmations which are now exhibits were handed over to Mr. McCrindle, chartered accountant of George A. Touche & Company, and Mr. McCrindle received from him all these confirmations and the stock registers.”

You will remember I said this morning while his lordship ruled, it went off on some other point.

“I think, Mr. Fraser, the position is this.”

That is by the court.

30 “The Court: I think, Mr. Fraser, the position is this—this is the ruling I am going to make, I have already ruled as to Mr. Cosgrove, he, it seems to me, clearly does not come within the statute. This gentleman may be a little different, but I would not permit him to state here—give any information that he has acquired. If he can identify and produce a document and without giving any information from the documents themselves, that is all right. If that is all you are asking, I will allow you to do it.

“Mr. Fraser: Yes, that is all I want.

40 “The Court: But you must not ask questions as to what they contain. If it is a question of identifying documents, you can ask him. That is subject to your objection.”

That is just exactly as I stated it to your lordship. It is clear that he differentiates between Cosgrove and Malins. Mr. Fraser could not ask him questions. He permitted him to ask as to that point.

The Court: Let me see the statute?

Mr. Fraser: Here you are, my lord.

The Court: Before you say anything further, Mr. Fraser—I do not want to trouble counsel too much about this matter—Mr.

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Farris, your submission is that the Legislature under section 10 was empowering the Attorney-General or any person who was his representative in writing, that he may delegate authority to examine any property and so on. The Legislature has given that power and it is your submission that the meaning of subsection 4 is that any information obtained under subsection 1 of that section 10 could not be disclosed by any person in court without the consent of the Attorney-General, his representative, or the Registrar, unless the person called was the Attorney-General, the representative or the Registrar.

Mr. Farris: Yes, just to give an illustration of the necessity for that, the suggestion that my learned friend, Mr. Sloan, made to me this morning— 10

The Court: That leaves it in this way, if I may say, the Registrar of Companies, he could come and there would be no prohibition against him saying or giving evidence in court.

Mr. Farris: That I understand Mr. Justice Gregory's ruling.

The Court: There was no prohibition against him. He could come, and there would be no prohibition against anyone held to be a representative, he could come and of his own consent can disclose in open court the information, but apart from those three— 20

Mr. Farris: No under-strapper can do it.

The Court: No one else without consent from him can disclose in court.

Mr. Farris: No under-strapper can do it. It might be a case where patent rights or perhaps trade secrets were involved and other litigation and things concerning that and some fellow who had been in under the Security Frauds Prevention Act, some young fellow, an under-strapper there, would dig up this information in his position there.

The Court: You would agree that he could do it with the consent of the Attorney-General, his representative or the Registrar? 30

Mr. Farris: There is no question about that. In my statement before Mr. Justice Gregory, no doubt it was said that they have not the consent there, I say the first thing that they must prove is that they have the consent and then they can go and give the evidence and I cannot say a word. It is only limited to the consent and very properly so. Here they are going in under the most drastic provision in the world to give the innermost thoughts of a man, his absolute inner secrets of business, and then you have somebody come on a subpoena, to go and give evidence. It is against public interest. 40

The Court: He can do that with the consent of any of the three.

Mr. Farris: Of those officers, but only with their consent.

The Court: And the protection by the discretion, is invested in one of those three.

Mr. Farris: Yes, they being public officers and who are charged with this particular responsibility and if they say in their opinion it is all right, the Legislature has apparently reposed enough confidence

in them, that they act for the public as a whole and if it is in the public interest that information may be divulged they give consent, but on the other hand they say in the interests of the public—

The Court: You say they have to qualify it?

Mr. Farris: They would have to say, it would have to go this far, unless by consent of the Attorney-General, his representative, the Registrar, or unless directed by a judge of a court—I do not think I can add anything further.

10 Mr. Fraser: I have only this to say, for the moment, for the purposes of my argument, the Security Frauds Prevention Act is a law of the land and is—

The Court: Here it is part of the law of the land.

Mr. Fraser: Just until I come to that—any witness who appears in court, your lordship can make him answer any questions germane to the issue.

The Court: There is an expression under section 10, the Attorney-General, and any person and so on is authorized to do so and so and so and so and is compelled to give evidence and produce documents, records, and things as is vested in the Supreme Court or a
20 Judge thereof, for the trial of civil causes.

Mr. Fraser: I am directing my attention to the spirit of the Act to see what is included. I want you to treat the Security Frauds Prevention Act as if it were not passed, to arrive at the scope of what the Act is. If the Act were not there your lordship could make any witness answer questions under the rules of court, germane to the issue.

The Court: And without the Security Frauds Prevention Act the witness may not have been able to obtain the information.

30 Mr. Fraser: First, we have a ruling of the court that he must answer everything. If your lordship says that you even think it is not germane, your lordship on the question of credibility could compel the witness to answer. My learned friend's argument is that the Security Frauds Prevention Act intervenes and prevents—

The Court: It first enables someone to get information that they otherwise might not get.

40 Mr. Fraser: Yes, my learned friend says the Security Frauds Prevention Act steps in and prescribes the evidence this witness can give. He says that he cannot give evidence that he got under the Security Frauds Prevention Act. It is for your lordship to determine whether the spirit and intent of that Act is to prevent the giving in court of any evidence that parties got under the Act. If your lordship finds that evidence obtained under the Security Frauds Prevention Act should not be given in court, then, of course, my argument fails.

The Court: It does not mean that if it says without the consent, qualify as you go along.

Mr. Fraser: That is common ground. Let us assume this that there is a very relevant fact, to see what the intent is, the very rele-

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vant fact to see what witness has the Attorney-General refused to give permission, and only evidence in existence—

The Court: And the representative, and the Registrar.

Mr. Fraser: Both have refused. The only evidence in existence is the evidence this witness has. Do you think the intent of the Act is that this witness cannot come into court and give evidence of that fact, because that is the only evidence. If your lordship thinks the Legislature intended to sweep away the ordinary rights of courts of law and cut down evidence, I have nothing more to say, but I say, my lord, if the Legislature intended to prescribe the administration of justice it would have said so in clear language and my learned friend does not say that he shall not give the evidence. I say it is the other way. If the Act intended this evidence should not be given in court, it would say that it shall not be disclosed in a court of law or elsewhere. If the language of the Act is not broad, then, my lord, it was never intended to cut down the rights of the court as to compelling a witness to answer in court. The burden is on my friend to show the meaning of the Act. On the other point, I think my friend—we are not possibly directing ourselves to the same point. I say that Mr. Justice Gregory—

The Court: I have the transcript and I can satisfy myself.

Mr. Fraser: I am endeavoring to give secondary evidence.

Mr. Farris: Of the contents of a document.

Mr. Fraser: Yes, of the contents of the documents themselves before Mr. Justice Gregory. The documents before him I could not give evidence of. I am endeavoring now to give secondary evidence of the documents before your lordship.

Mr. Farris: My learned friend suggests that the Act is wiping away something. My learned friend challenges the fact that the Act gives extraordinary powers, so extraordinary that I think we could have possibly successfully argued that the Act was ultra vires on that account, of getting—and it is only evidence obtained under that Act we are complaining about, and it is only that evidence obtained by those extraordinary rights that the Act says shall not be diverted.

The Court: You may go on examining about something else.

DOROTHY CHIPPING, a witness called
 on behalf of the Plaintiff, being first
 duly sworn, testified as follows:

Dorothy
 Chipping,
 Direct Exam.
 Dec. 10th, 1931.

DIRECT EXAMINATION BY MR. FRASER:

Q. What is your occupation Miss Chipping? A. Stenographer.

Q. You are engaged in the office of Mr. Mark Cosgrove, barrister? A. Yes.

Q. How long have you been employed with him? A. One year and five months.

Q. Have you got a certificate, or any diploma, or anything of that nature? A. Yes, I have one for shorthand work.

Q. And you are engaged daily in conducting Mr. Cosgrove's clerical work, are you? A. Yes.

Q. Do you remember Mr. Cosgrove handing you the—

Mr. Farris: Now, I do not want any suggestions to this witness.

Mr. Fraser: Q. Was any document handed to you by your employer, Mr. Cosgrove, in connection with Solloway Mills & Company Limited? A. Yes.

Q. What document? A. The Dominion—the minutes of the Dominion company of Solloway Mills.

Q. And did you make copies of those minutes? A. Yes, I did.

Q. You gave a copy to me, did you not? A. Yes.

Q. Is this a copy of the minutes that you transcribed? A. Yes, that is a copy which I transcribed directly from the minute book.

Mr. Fraser: I put this in.

Mr. Farris: Just a minute.

20 Mr. Fraser: My learned friend has a copy.

Mr. Farris: I object to that going in until I have had the opportunity to cross-examine the witness.

The Court: Well, I have the evidence of this witness before me now. Have you any objection to Mr. Farris cross-examining?

Mr. Fraser: I suppose not, my lord.

CROSS-EXAMINATION BY MR. FARRIS:

Mr. Farris: Q. Miss—what is your name? A. Chipping.

30 Q. Do you know whether these are the minutes, copy of the minutes of the defendant company in this action, or of the Solloway Mills Ontario Company?

Mr. Fraser: Possibly I had better finish the examination, my lord.

Mr. Farris: Just be quiet. I don't want you to interrupt.

The Witness: Would you mind repeating the question?

Mr. Farris: Q. Do you know whether or not these are copies of minutes of Solloway Mills, defendant in this particular action, or Solloway Mills the Ontario company, Solloway Mills provincial company? A. I was under the impression it was the Dominion company.

40 Q. Do you know? A. Yes; it was the Dominion company.

Q. How do you know that? A. Because the words were on the cover of the book, the minute book.

Q. The words were on the cover of the minute book? A. Yes.

Q. What did the minute book cover show? A. Solloway Mills & Company Limited, Dominion Company.

Q. Now are you sure of that, Miss Chipping? I want you to think very carefully. A. Yes, I am sure.

Q. It does not appear anywhere else in the minutes that this is

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the Dominion Company? A. I believe I provided a plain sheet of paper on the front of each copy, with the words which were on the cover.

Q. These were loose-leaf books, were they not? A. No, I think—

Q. This is a loose-leaf minute book? A. No, it was bound.

Q. It was bound? A. Yes.

Q. Are you sure of that? Mr. Cosgrove said it was a loose-leaf book.

Mr. Fraser: No; excuse me, my friend should not say that. 10

Mr. Farris: I said, I think so. My friend, Mr. Sloan, instructs me that is what he said.

Mr. Fraser: Your lordship will remember what was said.

Mr. Farris: Loose leaf, that is what I am informed. We will have the notes checked up. At any rate, the minutes you got this from was from a bound book? A. I believe so.

The Court: Q. It was what Mr. Cosgrove gave you, was it?

A. Yes.

The Court: You may mark that as an Exhibit.

(DOCUMENT MARKED EXHIBIT NO. 64) 20

Mr. Fraser: That is all, thank you Miss Chipping.

(Witness aside)

Discussion,
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Mr. Fraser: My lord, in connection with these days which your lordship gave, these three days; to facilitate matters my friend Mr. Murphy just brought up all our confirmations, and without going through every confirmation it is impossible for me to say whether the Frontier Company dealt with Solloway Mills on those days—without going through every confirmation. What I could do, my lord—

The Court: Well, you have done something, apparently had a 30 synopsis prepared in regard to fourteen or fifteen days, and I asked for a similar synopsis to be prepared with regard to three days, the dates of which I gave. What is the difficulty?

Mr. Fraser: There is no difficulty except this: it may turn out that on those days Mr. Frontier did not deal with the company at all. What I am willing to do is this,—I have all the confirmations here. I would let my friend or your lordship—I could tell your lordship at once all the days in that month on which he dealt.

The Court: I said all the stocks he dealt with.

Mr. Fraser: I am not making myself clear. On those three days 40 that your lordship named, Theo. Frontier & Company may not have transacted any business with Solloway Mills, and we might go all through his work and find nothing and your lordship might want three other days, and we would have to do the same thing over again. Does your lordship appreciate my point?

The Court: No.

Mr. Fraser: Well then, let me express it again.

The Court: You first told me, if you please Mr. Fraser, that you were giving me—I have your own words as I thought. I will go over what I understood you to say. I have it that you stated, Mr. Fraser, it might be that what appeared on these specified days would not be the same on the other days. But I have taken fifteen or twenty days, and for these days we have all the confirmations, and I am assuming that the confirmations on those specified days are properly
10 represented in the synopsis. I will concede on some days I don't know what happened, but I say that on those specified days, this synopsis accurately represented transactions on those days. Then it was suggested by Mr. Farris that you might have taken those dates designedly, and my view was that in addition to the information with regard to those days you should give me a similar synoptic report with regard to three other days.

Mr. Fraser: I am willing to do that, my lord.

The Court: Now just so that you may not select the days. If you can give me a list of fifty days, I will take three days out, so that
20 I know you are not working designedly as suggested.

Mr. Fraser: I do not think, my lord, I am afraid I have not made myself clear. Those three days are all right, and it may be that those days that Frontier dealt on. But you see, your lordship, I don't know, and to find out whether Frontier dealt on those days I would have to go through every confirmation here.

Mr. Farris: I am instructed by Mr. McGee that Frontier did buy on those days.

Mr. Fraser: Then, my lord, this is the very point. I will ask your lordship to do this: to now name three other days about the
30 same time, and I would allow Mr. Murphy and my accountant and Mr. McGee to bring out those dates.

The Court: Why? I do not follow you, Mr. Fraser. You have brought before me, or wish to bring before me, a synopsis for fifteen days, and I have asked you to let me have similar report on three days that I have given.

Mr. Fraser: That is all right, and Mr. McGee now says that on those dates Theo. Frontier dealt. But I am asking my lord—since your lordship made that order there has been just the noon recess and we have not had access to those books, and in this case we are charging
40 fraud, and I am asking your lordship to name three days—

The Court: The synoptic reports that you have are prepared from the books in court?

Mr. Fraser: Yes, my lord, but not the three days your lordship mentioned. They are down in their possession. I am not making any suggestion. I have the utmost confidence in Mr. Farris, but I am asking your lordship to name another three days and allow Mr. Murphy and Mr. McGee go down together—

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Mr. Farris: Does my friend suggest for one minute that there has anything been done with these documents?

Mr. Fraser: No, Mr. Farris, I am not.

Mr. Farris: Well, I think that is a most improper statement.

Mr. Sloan: I resent as strongly as I can that Mr. McGee or any of the officers, including myself—

Mr. Fraser: This fact stands undisputed: that documents are missing. That is before the Court now, and I am asking if your lordship will pick out another three days, any three days your lordship likes, and allow Mr. Murphy to go down with Mr. McGee and pick out the business of those three days. That is all I am asking. 10

The Court: How is it that that could not have been done before?

Mr. Farris: I think my friend could very well find out, and I don't like that to go out with that suggestion of the possibility or probability of some action of that kind being done. I can hardly use any language in court to properly describe my friend's attitude, and I know of no other counsel who would make such a suggestion but my learned friend.

Mr. Fraser: Thanks for the bouquet. 20

The Court: Just a moment. The evidence can be given with regard to three days.

Mr. Farris: And he could very easily check up whether or not those documents are there.

The Court: Evidence can be given with regard to the books from which the synoptic reports of those three days are made.

Mr. Fraser: All I am asking your lordship now, is to name three days, and we will go down and pick out from the books of the defendant company, the business of those three days, with Mr. Murphy and Mr. McGee. 30

Mr. Farris: Your lordship has given three days, and named three days. To suggest that my friend would change those three days because we had an opportunity of changing them, I say with all respect, is not only unfair to us—

The Court: Where are these books of which you speak?

Mr. Farris: They are locked up in a room in the Standard Bank Building, available only to our firm, and Mr. McGee and Mr. Macdonald who are in court.

Mr. Fraser: And Mr. McKenzie.

Mr. Farris: No, not Mr. McKenzie. 40

The Court: I ask that those books containing information on those three days be brought here now, brought so that I have them in the custody of the court.

Mr. Fraser: May I have Mr. Murphy go?

The Court: Mr. Murphy may also go.

Mr. Fraser: Mr. McKenzie is here, and he can go down too.

Mr. Farris: Mr. McKenzie is not in our employ.

Mr. Fraser: In the meantime I could read some discovery. You have no objection to that?

The Court: We can go on in the meantime, and Mr. Murphy and Mr. McGee will go.

Mr. Fraser: I will read the discovery of Mr. Duns.

Mr. Farris: I am objecting to that, my lord, on the same ground that I objected to Mr. Willins.

The Court: It is admitted that Mr. Duns is a past officer, is it? That is common ground?

10 Mr. Farris: There is no common ground between us whatever, my lord, after my friend's recent statement—less than before, after my friend's recent statement.

The Court: Well, he was examined as a past officer.

Mr. Farris: Yes, he was examined as a past officer.

The Court: Is Mr. Duns in court, Mr. Fraser, or in town available?

The Registrar: He was here yesterday but I don't see him today.

Mr. Farris: Mr. Duns is in no way employed by us.

20 The Court: You are making the same objection?

Mr. Farris: Yes.

The Court: Well, I wish to inquire whether Mr. Duns is in the city and available for further examination.

Mr. Fraser: He was in court yesterday. I think that is common ground.

30 The Court: In this matter I make the same ruling as I did in connection with the application to use the examination of Mr. Willins, and I also make it clear that I not only would hear an application by Mr. Farris, but would hear favorably an application by him, to give effect to it, if he wished to have Mr. Duns or Mr. Willins attend for further examination before the Registrar, in which case any further examination would be part of the examination for discovery, and could be so under the rules.

Mr. Sloan: My lord, there is a further point concerning Mr. Duns' examination which may be raised at this point. Your lordship will remember that you directed the examination of Willins before the amended statement of defence was filed in this particular case. From that order I took an appeal in the Court of Appeal, and the scope of these rules was argued at some length before the Court.

40 The Court: In regard to the examination of Mr. Duns?

Mr. Sloan: No, my lord, the scope of the rule was canvassed at considerable length, and Mr. Justice Martin who gave the judgment of the Court, held or stated in his reasoning, that the rule was intended to permit the examination of one past officer. Now, I understand my friend has already tendered earlier, the examination of one past officer, and is now attempting to have the examination of a second past officer used as evidence. This might be conceded, although

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I do not think I have to concede; the examination for discovery of a second past officer may be had for the purpose of discovery only, that is finding out, fishing if you like, because that is about all these have been so far, but such examination—

The Court: You raised a somewhat similar point as to the order going, did you not?

Mr. Sloan: As to the order going, before Mr. Justice D. A. McDonald, not before your lordship at any length. I did not make it before the Court of Appeal at all because the examination of Duns was not before the Court of Appeal. But Mr. Justice Martin indicated 10 in his judgment that the rule contemplated one examination only, and one officer could be examined, not any more than one. His lordship did not give his judgment on the specific rule. He gives that as an indication of the scope of the whole spirit and intent of the rules; indicated that only one officer could be examined.

The Court: There might be cases where you could only get certain information from past officers.

Mr. Sloan: Oh, yes. My learned friend has not suggested that here at all. That was one of the reasons I objected to any questions in the Willins examination. My friend was going over the same ground 20 with both witnesses. But that is not the point. My learned friend cannot examine six or eight or ten witnesses of corroboration. He must make a selection, and as I say, I might concede this, that you can examine more than one for the purpose of information only. For instance, suppose he examined "A". He gets some information from "A", who says "I cannot give you any more; you can get it from 'B' ". Well, "B" says "You can get it from 'C' ". He goes to "C" and examines him and he might use "C's" discovery on the trial, but he cannot use "A" and "B", because that is discovery examination. So I am raising that point; and the rule is very clear. I am going to read 30 it, Section 1, of 273. (Reading).

The Court: I remember you calling my attention to that express phraseology; my mind was directed to it.

Mr. Sloan: My mind has been directed on the ruling of Mr. Justice Martin, in the argument last session in which I was counsel.

Mr. Farris: I might say that I was present in court, and Mr. Justice Martin gave the judgment of the court, and he gave a very lengthy judgment, citing many cases. In fact he stated to the court that he had read, I think, some forty cases before preparing his judgment. 40

The Court: I have read that judgment.

Mr. Farris: That specifically found that it could only apply to one examination; and that that was what he based his judgment upon, that your lordship was wrong in ordering the examination before the pleadings were completed.

The Court: And that is all he decided.

Mr. Farris: No, but he decided on that basis.

Mr. Sloan: The Court of Appeal judges are entitled to respect and should be followed—

The Court: If you please, Mr. Sloan, the judgment only decides the point before the court.

Mr. Sloan: But he indicated very clearly that that was the intent and scope of the rule. I am presuming your lordship will over-rule him, but I am raising it to be protected under the rule.

The Court: Well, I hardly like what you say.

10 Mr. Sloan: Your lordship ruled against me on this before, and will probably take the same view of it. I am only taking objection now on the same point, so that the matter can be argued again. I am not by any means attempting to be impertinent to your lordship.

The Court: I think Mr. Sloan was good enough to put before me, or perhaps send in a copy of the recent judgment. Or in some way—I found it on my table and I am satisfied that those were the reasons for judgment that I read. I remember them mentioning of the forty cases that he had been through, and I drew that note upon that judgment of his having decided the point I now have to decide. I over-rule the objection on the further point, and allow the examination for
20 discovery to be read.

Mr. Fraser: The questions on the examination of David Gardner Septimus Duns, past officer of the defendant company. Questions 1 to 18; 118 to 150—

Mr. Sloan: Before my friend gets on something else, there is a point of course, I am not conceding—that Theo. Frontier referred to there as plaintiff, is not Theo. Frontier & Company Limited. I do not want that to be conceded by the fact of my silence.

Mr. Fraser: It is obvious.

Mr. Sloan: You may say so. I don't think it is.

30 Mr. Fraser: Questions 207 and 208 (reading above questions). Now, my lord I am going to tender in evidence copies of certain letters. Either my friend Mr. Farris, or Mr. Sloan are going to take the argument.

Mr. Sloan: Well, if my friend is going to tender them now, probably Mr. Farris will take that argument.

(Recess of ten minutes, after which proceedings resumed).

Mr. Fraser: I am applying, my lord, to introduce as evidence in this case, a number of letters passing between Solloway and Mills.

The Court: That is from the company?

40 Mr. Fraser: No, between them as individuals. Certain letters passing between Solloway and Mills as individuals, as evidence without any proof thereof. And my application is made under Section 46 of the Evidence Act. Revised Statutes of B. C., 1924, Chapter 82. The Act reads, my lord, Section 46: "In any action or proceeding where telegrams, letters, shipping bills. . . "(Reading section).

Now, my lord, these letters in question, I gave notice under the Act. The notice is dated the 14th of November, 1931: "Take notice

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that the plaintiff intends, on the hearing of the trial in this action, to give in evidence as proof of the contents the following copies of documents or letters." Then, my lord, I set out the letters in question. "And further take notice that the above recited documents may be inspected by you at the office of G. L. Fraser, 713 Stock Exchange Building, 475 Howe Street, Vancouver, B.C., between the hours of 9 a.m. and 5 p.m. on Monday or Tuesday the 16th and 17th days of November, 1931." Following that my learned friend requested copies of all those documents from our office, and thereupon copies were given.

Mr. Sloan: You might say that I advised Mr. Murphy that we were not accepting those as proper copies, although we asked for them as a matter of courtesy, to be examined. It does not say that the notice should be in writing at all.

Mr. Fraser: Now, my lord, the whole question apparently is this: my learned friend asked for copies of those, and they were given to them. I say that the giving of those copies is inspection within the meaning of the Act. I heard my friend say that he just asked for copies, without admitting or denying them. That may be true. In any event, they were given copies.

Mr. Farris: Mr. Sloan says that he told Mr. Murphy that he would not admit them as copies.

Mr. Sloan: As a matter of fact, it is quite clear in my recollection, because Mr. Murphy and I had a little tiff over it. I asked them to be sent over to my office so that I could make copies. My friend Mr. Murphy told me he would not trust me with them. He said no, they would not allow them away from their possession. So I said I will have some stenographer go into his office and copy them. I said my asking for them was merely for the purpose of our brief.

Mr. Fraser: And you took copies.

Mr. Sloan: Yes, we took copies merely as a courtesy.

The Court: (Reading section 46). Unless the parties give notice within four days after the time mentioned therein, that they intend to dispute the correctness or genuineness of the copies—does counsel say that that was done?

Mr. Sloan: I don't say that the exact date. I would not swear to the exact day, but I told my friend Mr. Murphy just exactly what I have stated here, that we were not waiving any of our rights. I was merely requesting these as a courtesy, for our brief, and we were not admitting them because we did not know anything about them; we had not seen the originals, knew nothing about them, and we were not admitting anything about them.

Mr. Fraser: I ask my friend, did he tell Mr. Murphy, that he intended to dispute the originals? Make it clear.

Mr. Sloan: I did not use such formal language as in the Act, no. But I gave my friend in so many words, not the exact language.

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He understood quite clear in that we were not in any sense accepting those documents.

Mr. Farris: And that we did not know what the originals contained, and in accepting the copies we were accepting them without prejudice to any of our rights.

Mr. Sloan: As a matter of courtesy for our brief. As a matter of fact, I asked them to send them over to our office so that we could have copies made of them ourselves, and he said no, we can't do that.

10 The Court: Do I understand that the position taken by counsel, Mr. Farris and Mr. Sloan, is that the plaintiff was given notice that they intended to dispute the correctness or genuineness of the copies at the trial or proceedings—to dispute the originals?

Mr. Farris: Yes, my lord.

The Court: Now, Mr. Fraser.

Mr. Fraser: I will put Mr. Murphy in the box and ask him. I will call Mr. Murphy.

The Court: Just a moment. You are undertaking them to prove that you are within Section 46?

Mr. Fraser: Yes, my lord.

20 The Court: And is it common ground—I assume it is common ground up to this point, is it?

Mr. Farris: There is another point not common ground, my lord. The first part of the Section altogether,—these letters I submit in any case, do not come within Section 46 at all. That is another matter of argument which I will come to when the time comes.

The Court: But as to the service of the notice that Mr. Fraser read. Is that admitted?

Mr. Farris: Yes, we were served.

The Court: Very well, then.

30 Mr. Fraser: I call Mr. Murphy.

The Court: This is a statement made by counsel you understand, the defendant. Do you submit that I should not accept the statement of counsel, and if plaintiff should be called that counsel representing the defendant is going to be called?

Mr. Fraser: No, my lord.

Mr. Sloan: If my friend, Mr. Murphy disputes my word, I would be very glad to go into the box myself, because my recollection is very clear.

40 Mr. Fraser: I want to know from Mr. Sloan what he said, definitely, so that I can have it down.

The Court: If you please. I asked counsel if he definitely—using the phraseology of the Section—and you heard what I was told. Do you not submit that I should accept that?

Mr. Fraser: My lord, I will accept Mr. Sloan's statement, but I would like to get it down so that I will have it. I want to have it, all those facts. Possibly he will give a short statement so that I could take it down. I want Mr. Sloan to state what he told Mr. Murphy.

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The Court: I asked him if he gave notice in these terms. (reading Section 46).

Mr. Farris: No. We did not say—whether those words were actually used. But we state we did use words that brought it within the meaning and the effect of those words.

The Court: Did you do that, or not?

Mr. Farris: I say we did that which complies with that Section, and that is all we have to do. All we have to do is to put him on his notice; that is all that requires. It does not say that the notice shall be given in these words. Section 46 requires them to be put on notice. Mr. Sloan stated that he told Mr. Murphy that he was not admitting these documents; that we had not the originals; that we could not admit the originals, and as for the copies, that we were only asking for copies, for courtesy, for use in our brief. And I say that as a matter of law, that comes within that notice as required by Section 46, that my friend was then put on notice. He knew we had not the originals; he knew we were not going to admit them and we were not waiving any of our rights. Now, if that is not coming within Section 46—I do not think Mr. Sloan did indicate the statute, and read Mr. Murphy the following words, the bare, actual words which have been read now, to go and read those exact words to him and say “This is our position in this matter.” But I say so long as he gave notice which implied what has to be done under that Section, then he has given sufficient notice. 10

The Court: So far as Mr. Farris has made a statement of facts, you accept his statement?

Mr. Fraser: All I am asking, my lord—

The Court: Well, do you, or do you not?

Mr. Fraser: I don't know what was said.

The Court: Mr. Farris has just told you. 30

Mr. Fraser: Mr. Farris was not there. It was Mr. Sloan. I want Mr. Sloan to state what he said to Mr. Murphy and I want to take it down, what he said to Mr. Murphy, and then it is a question of argument whether that is notice to us under the Act.

Mr. Farris: I have given that statement, Mr. Sloan's statement, in concise words, and if my learned friend disputes it, why all right.

Mr. Fraser: I will accept every word, if you will state it so that I can take it down, exactly what he said.

The Court: I think Mr. Sloan can state what was stated. 40

Mr. Sloan: My lord, it is impossible for me to remember the exact phraseology. I would not be frank with the Court in even endeavoring to try to. But I asked Mr. Murphy for the copies of these documents for the purpose of preparing our brief, which is a courtesy among counsel in Vancouver. My learned friend, of course, will not dispute that counsel hand their documents from side to side, so that their brief may be made complete. And for that purpose I asked Mr.

Murphy for the copies of those documents. Mr. Murphy stated that their office was busy working overtime; that he had not any spare documents—had not any spare copies. And I asked him if the documents could be taken away for the purpose of making copies in my office. He said “No” because Mr. Fraser was working upon them personally. I then said “Are you inferring we are going to do anything with those documents?” I didn’t know whether my friend was really sincere in his suggestion or not. I am giving you this from recollection. I told Mr. Murphy, I said “It would be quite understood
 10 between us that in getting these copies from you, I am admitting nothing about them. We preserve all our rights. I am merely getting these for the purpose of our brief on the trial.” And I said we had not seen the originals and did not know anything about them. The originals were not in our possession, as my friend well knew; the originals were in the possession of the Crown officers of Ontario, and it was impossible for us to admit the genuineness, because we didn’t have them. That was all known to my friend. That is the best of my recollection of the gist of the conversation. I cannot pretend—it would be idle for me to say that I remember the exact phraseology,
 20 but that was the whole conversation with him, and that was all of it. He was put on his notice and guard then, that we were not admitting any of those documents.

Mr. Fraser: I accept every word Mr. Sloan states, as being accurate. I have always found Mr. Sloan very fair. On that admission, I say, my lord, that they did not object within the meaning of the Act, to the use of these letters. Mr. Sloan, the defendant company, should have followed the statutory terms in writing and said within four days of the time of inspection, that they would dispute the correctness or genuineness of the copies at the trial or proceedings and we
 30 would be put to the proof of the originals. Now there is no suggestion on Mr. Sloan’s part that he told us anything of the kind. He asked, as a common courtesy, to get the copies. I knew he did not have the originals; I admit that. But I say my friend did not, within the meaning of Section 46, give the required notice that they dispute those documents and required proof of the original, on their own admission.

Mr. Farris: My lord—

The Court: I do not need to hear you further, Mr. Farris. I find that Mr. Sloan objected, or gave the notice within the meaning of this section, and my ruling is that the copies cannot be used without
 40 further proof, as asked by Mr. Fraser.

Mr. Fraser: I will call Mr. Johnson.

WILLIAM T. JOHNSON, the Plaintiff herein,
 being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. FRASER:

Q. What is your occupation, Mr. Johnson? A. I am an accountant.

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Mr. Farris: Now, my lord, Mr. McGee is not here; perhaps you might tell us just what the nature of the evidence is.

Mr. Fraser: Just to prove that the trustee in bankruptcy—

Mr. Farris: Oh, I beg your pardon; Mr. McGee is here.

Mr. Fraser: Q. You are an accountant in Kamloops, are you?

The Court: Perhaps the court had better know.

Mr. Farris: Mr. McGee is in court, my lord.

Mr. Fraser: I am tendering, my lord, the assignment in bankruptcy, appointing Mr. Johnson the trustee in bankruptcy, duly certified by the Registrar in Bankruptcy.

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(DOCUMENT MARKED EXHIBIT NO. 65)

Q. Was any claim made against the bankrupt estate by Solloway, Mills & Company Limited? A. There was.

Q. Was it allowed? A. It was not.

Q. It was disallowed? A. Disallowed.

CROSS-EXAMINATION BY MR. FARRIS:

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Q. The claim was withdrawn, wasn't it, Mr. Johnson? A. I disallowed the claim within the specified time, Mr. Farris.

Q. It had been withdrawn before that, hadn't it? A. No, not to my knowledge.

20

Q. By the way, you are familiar with the premises of Theo. Frontier & Company, are you? A. I am.

Q. Are you familiar with the sign on the roof? A. I have seen his sign.

Q. Do you know what it says? A. It is taken down now. It is two years since I saw it.

Q. Did it have anything like these words, "Agent for Solloway Mills"? A. No, not agent.

Q. What did it say about Solloway Mills? A. Subject to correction, and it is taken from memory only, I think the word used was correspondent.

30

Q. Solloway Mills' name was used in connection with their business. That is all, thank you.

Mr. Fraser: One further question, Mr. Johnson. You instructed me to commence this action, did you not? A. I did.

Mr. Fraser: I am going to put in a copy.

Mr. Farris: I don't see what that goes in for. I am not suggesting my learned friend is acting without authority. I assume when he issued the writ he had the proper authority.

Mr. Fraser: Under the Bankruptcy Act there might be some dispute.

40

The Court: Well, perhaps you might ask for any admission that you wish Mr. Farris to make.

Mr. Fraser: Q. I was properly intrusted by the trustee and inspectors to proceed against this company and Solloway and Mills personally as well? A. Yes.

Mr. Farris: Just one question.

The Court: Is this admission being made?

Mr. Farris: I am not suggesting Mr. Fraser was not properly instructed.

The Court: Well, then, that admission is made.

Mr. Farris: I am not suggesting that it is a proper action: I am simply saying that Mr. Fraser is instructed; that is all I am admitting.

Q. Mr. Johnson, when Theo Frontier went into business, that was before Solloway Mills had any trouble? A. When he went into business?

Q. When he went into liquidation or into bankruptcy, Solloway Mills was still running strong at that time? A. So far as I know, yes.

Mr. Fraser: Q. You were authorized by the inspectors to launch the action for the estate? A. I was, yes.

(Witness aside).

Mr. Farris: My lord, I am in rather a difficult position. Tomorrow I have to attend a funeral in Bellingham, tomorrow afternoon. My friend tells me that unless he changes his mind his evidence is through, with the exception of the examination for discovery, of Mr. Mills. It will be impossible in any case, to conclude argument tomorrow. My friend, Mr. Sloan, can be here tomorrow morning and if there is any additional evidence coming up—

The Court: Is it satisfactory to Mr. Fraser to have it adjourned?

Mr. Farris: I have asked Mr. Fraser to adjourn, but he has not agreed to it. Mr. Sloan tells me he has a trial on in the morning.

The Court: If you please, Mr. Fraser, if no witnesses are being inconvenienced, do you have any objection to this going over until Monday?

Well, my lord, these witnesses—

The Court: Are there any witnesses?

Mr. Fraser: There is one feature that I have to discuss with my clients, and I am going to discuss it with them tonight, and I may call two further witnesses from Kamloops.

The Court: Well, can we go on and have them called now?

Mr. Fraser: No, my lord. I do not want to do that until I consider my position.

Mr. Farris: I will say this: if there are two witnesses that have to start back to Kamloops, I would be willing to pay their witness fees to stay over until Monday.

The Court: A little consideration has to be given, Mr. Fraser.

Mr. Fraser: Yes, my lord, I realize that. I am acting under instructions in this matter, and my friend knows my position. Personally we have had no trouble over these matters, but these people are

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in town and instruct me to try and get the matter terminated as soon as possible.

The Court: What further expense would be involved if the matter goes over until Monday?

Mr. Fraser: Just these two witnesses staying over.

The Court: And their expenses while they are here?

Mr. Fraser: Yes, my lord.

The Court: And Mr. Farris is undertaking—

Mr. Farris: I will be very glad to be responsible.

Mr. Fraser: No, I do not want my friend to do that. It is very 10
 kind of him—

The Court: Well, with the understanding they will be paid if Mr. Fraser wishes them paid, I will order the case stand adjourned until Monday. But there are one or two matters to which I wish to refer before—

Mr. Fraser: May I speak, my lord? I may be able to consent—yes, my lord, that is satisfactory.

The Court: Very well, then. Counsel were referring to pages 97 and 144 of the transcript of some evidence in the Mackee action. I would appear to have 144 but not 97. 20

Mr. Farris: There is one other matter that I want to speak to my lord. I have considered the point, the question of Mr. Willins, and while I hate to give up my position, my lord, I feel that the matter of having that question explained is absolutely necessary. It may save time if we had Mr. Willins attend here, rather than us going up to the Court House on that one question. Mr. Willins is here.

The Court: He can go before the Registrar on Monday morning before 10 o'clock.

Mr. Farris: What I was suggesting, to save time—I want to ask him—if he is in court now—I can do it because he is already sworn, 30
 what he means by one question. That can be done right now if your lordship will permit it, and just take it as part of the examination.

Mr. Fraser: May I ask your lordship to follow the procedure outlined by your lordship. I will appear any time on adjournment.

Mr. Farris: All right, then, Saturday morning at a time to be agreed between my friend and myself; at any time before the opening of court at 11 o'clock Monday morning.

The Court: If you please, with regard to the documents from which a synoptic report is to be made for the three days that I asked to be made—may I ask counsel where those documents are? 40

Mr. Farris: They are here. I presume they have got to be marked as exhibits. They have been checked by Mr. Murphy.

Mr. Fraser: No. He just went down and brought them up.

Mr. Farris: They are in the custody of the court. We do not want to have the custody any longer.

Mr. Fraser: I am putting them in as exhibits.

(DOCUMENTS MARKED EXHIBITS No. 66, 67 AND 68)

The Court: And the synoptic report with regard to the three days mentioned, will be made in the interval then?

Mr. Fraser: I will have it in the interval.

The Court: Very well, 11 o'clock on Monday.

(COURT ADJOURNED 4:20 P.M. UNTIL 11 A.M.

DECEMBER 14)

Vancouver, B. C., December 14, 1931, 11 a.m.

(COURT RESUMED PURSUANT TO ADJOURNMENT)

10 . Mr. Farris: My lord, in reference to the examination of the witness Willins, I think that questions 230 and 231 should go in as explanation of question 135 which was put in by my friend—should go in with that as his explanation. 230, my lord, of the examination of Mr. Willins.

The Court: Just a moment.

Mr. Farris: I think you have it there, your lordship.

The Court: And the one that has already been put in?

Mr. Farris: Is 135. Your lordship will find this, I think—

The Court: Yes, 230?

20 Mr. Farris: 230 and 231.

The Court: I direct that they be read.

Mr. Farris: (Reading discovery).

Mr. Fraser: I want the rest of it, your lordship, to go in. My lord, questions 232 on to the end.

The Court: Just a moment. Very well, I direct that they be read to the end. That would be on to and including 242.

Mr. Fraser: Yes, my lord.

The Court: Very well.

Mr. Fraser: Shall I read it, my lord?

30 The Court: Yes.

Mr. Fraser: (Reading discovery).

The Court: I think now I should dispose of the point raised at the time Mr. Smith was in the witness box. The plaintiff seeks to lead evidence from the witness, Frank E. Smith, and the objection is raised to the admissibility of such by Mr. Farris on behalf of the defendant, relying upon section 10, and especially subsection 4 of such section of the Security Frauds Prevention Act, being Chapter 64, Statutes of British Columbia of 1930. In reply Mr. Fraser submits that the Act, namely, the Security Frauds Prevention Act, is ultra vires. No
40 authority has been cited holding that our Security Frauds Prevention Act as a whole or this particular section is ultra vires, and I would not give effect to that submission. Mr. Fraser also submits that the sec-

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tion or subsection relied upon by the defendant only applies to disclosure to persons other than in court. It would appear that an investigation by the Attorney-General was proceeding under Section 10 of the Security Frauds Prevention Act, and that in the course of such investigation certain accountants or other experts were appointed by the Attorney-General to examine documents and so on, such power being given under subsection 2 of said section 10. Mr. Smith would appear to have been employed by such accountants and very frankly admits that the information now sought to be disclosed was obtained in the course of his employment under the Security Frauds Prevention Act. It would seem to me that disclosure by Mr. Smith would be disclosure by a person other than the Attorney-General, his representative or the Registrar. The section would seem to me, also, to make it clearly an offence for any such person to disclose, without the consent of the Attorney-General, his representative, or the Registrar, or any one of them, any evidence so obtained. It is not contended here by the plaintiff that the consent of the Attorney-General, his representative, or the Registrar, has been given. Mr. Fraser's submission would involve reading into subsection 4 an exception which does not appear to me to be there. It seems to me that if Mr. Smith were to disclose any information or evidence so obtained that he would be guilty of an offence under such subsection 5, and I would, therefore, not allow him to disclose or give evidence as to the confirmations or contents of the documents referred to in his evidence. 10 20

Mr. Fraser: My lord, I would like it formally on record in regard to your lordship's ruling in regard to these letters. I suppose I should tender each one and have your lordship rule they are not admissible, but I would like myself on record as having tendered these letters as, if not, your lordship's ruling—

The Court: Perhaps the dates of the letters should be given. 30

Mr. Fraser: They are the letters referred to as passing between Solloway and Mills.

The Court: So there would be no question as to the identity of the letters in case—

Mr. Fraser: I will give your lordship more authorities in point on that. This is a letter Solloway to Mills dated September 7th, 1928; letter Solloway to Mills dated September 17th, 1928. There is no question, my lord, because they appear in the notice under the Evidence Act that I gave, and I am tendering those, my lord.

Mr. Farris: Tendering letters referred to in the notice. 40

Mr. Fraser: Yes. I will call Mr. Rennie.

The Court: If you please, Mr. Fraser, and also Mr. Farris—counsel may correct me if my impression is not correct—with regard to Exhibit 57, at the time it was marked as an exhibit—

Mr. Farris: Exhibit 57, what is that?

The Court: The synoptic report. My understanding of the matter was that Mr. Fraser undertook to read evidence as to the cor-

rectness of the items set out as compared with the books and documents.

Mr. Fraser: Yes, my lord, I have done that with respect to certain stocks already.

The Court: Yes, I was going to ask if counsel could tell me what are the items with respect to which evidence has not been read, or it is not intended to read evidence.

Mr. Fraser: I am going to read all of it, my lord.

The Court: Well, may I ask if all of the proof—or evidence as
10 to the details of the statement set out on page 75—

Mr. Fraser: Yes, my lord, Miss Nuyens—that was admitted, the amounts there that were paid in on those dates, she swore they appeared in the books of Theo. Frontier & Company Limited and Solloway Mills & Company.

The Court: That is so.

Mr. Farris: Well, I don't admit that that condition of affairs existed, but I admit that those items—I don't question Miss Nuyens' evidence on that. She had checked the books of Solloway Mills and found—well, there was no admission, that is her evidence as to that.

20 The Court: And then her evidence as to page 76—

Mr. Fraser: I haven't proved the collaterals, I am doing that, this morning, my lord.

Mr. Farris: By the way, my friend was to—

Mr. Fraser: I have got that for you, Mr. Farris.

The Court: Just a moment, I would like the witness—I think it was Mr. Cooper, to identify in the books or show me where I find in the books or documents filed certain items referred to in the synoptic report. Mr. Cooper, was it?

30 Mr. Fraser: I am calling him later in the morning, my lord. I will call him now, my lord. He is here.

The Court: Very well. And I would like to ask you, Mr. Fraser, about a matter such as this—and if it is not common ground between counsel, of course, evidence will have to be led; would you admit, Mr. Fraser, that there would be items or cases—transactions in which Frontier & Company might send in an order for certain shares to the defendant company, for shares to be bought on margin, assuming that sufficient margin was either then or later put up, that those shares were actually bought to that number, anyway, that later Frontier & Company gave an order for the sale of the particular shares, and
40 that they were sold and the proceeds thereof accounted for. Would you concede—if it is not common ground there would have to be evidence as to that—that there might be or there was as a matter of fact some cases like that.

Mr. Fraser: My lord, I can answer it in this way: First, my lord, I am going to show from the evidence now and my argument later on that they never bought a share for Theo. Frontier & Company Limited. Assuming I am wrong, and your lordship holds that they

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did buy a share, I will admit this, my lord, that we put in orders to buy and they notified us they had bought.

The Court: Confirm them.

Mr. Fraser: Yes, we put in orders to sell, we have got confirmations that they had sold. I am going to show in my argument, my lord, that these confirmations to buy and sell were mere bucket notices, and that as far as they are concerned we are wiping them all out, and we want our margin money back. We are not asking for profits or losses on these at all, my lord, we say these were simply bucket notices notifying that certain things had been done. 10

The Court: You say all of them?

Mr. Fraser: All of them, bucket notices, I call them, all wiped out and we want our margin money back.

Mr. Farris: Of course, my lord, on that point—do I understand my friend to state that his position is that they are really seeking a repudiation of the contract and a return of the moneys?

Mr. Fraser: My friend wants to get me to make certain admissions of law, I am saying the facts are these, my lord: That these orders which we gave to buy and the confirmations which received that they had bought, orders which we gave to sell and the confirmations that they sent us notifying that they had sold were simply bucketting entries, and I am going to ask your lordship to ignore them and only to take— 20

The Court: Now, you are asked this as a question of fact, if Frontier & Company gave an order for the purchase of so many shares—certain stock and certain shares—and that day confirming with the confirmation that was sent to him—Frontier—he bought, would they be earmarked in any way?

Mr. Fraser: Oh, no, my lord, that is common ground.

The Court: That is common ground with you. 30

Mr. Fraser: And this further, my lord, this is a point of law whether—

The Court: It is not admitted by you then, Mr. Fraser, that the evidence before me would show any dates on which confirmations were sent to Frontier & Company that those shares had actually been bought and later sold when sale confirmations were sent.

Mr. Fraser: I am going to take this position in argument, my lord: I think I will be able to satisfy your lordship with respect to that, that they neither bought nor sold a share for Theo. Frontier. My second alternative plea, my lord, will be, if my friend can point out any one, say, where they had a bought or sold transaction, that does not help him, because the whole construction is tainted with fraud, because in the start of the business it is conclusive they hadn't bought or sold; but I have no hesitation in stating this, I will be able to show your lordship that they never bought or sold a share on margin. Of course, on the margin transactions, my lord, they don't need to deliver shares. They did not buy or sell a share for us. 40

The Court: Now, if you please, subject to what counsel may say, and they are at liberty to express themselves on that, it would seem to me as though I might have to have all the documents showing the buy and sell confirmations on the days and in respect to the shares which Frontier & Company dealt with, whereas as it is now, if I follow correctly, the only documents I have with regard to the buy and sell confirmations are with respect to those contained in the synoptic report.

10 Mr. Fraser: Your lordship has all the days' buys for all the clients and then the days that we have selected and your lordship selected.

The Court: Yes, but I haven't for the other days.

Mr. Fraser: No, they are not here, but, my lord—

The Court: Would there be any objection—although I can imagine they might be very enormous—that those also should be filed.

Mr. Fraser: I would like them filed, my lord, in this way, there is no use bringing them here, I would send over for all the books and documents—

The Court: I notice the evidence in that case, Mr. Fraser, you said that all the confirmations were here—

20 Mr. Farris: Only the confirmations on those particular days, my lord.

Mr. Fraser: I think that is right, covered by the synopsis, I think. It may have been badly worded by me, but I don't think in any case we have got all the confirmations.

Mr. Farris: They were not asked for, it was only on those particular days, my lord.

Mr. Fraser: I think that is all I need in law to satisfy your lordship.

30 The Court: Yes, but I am coming to a position where I would want to satisfy myself from all the buys and sell confirmations as to just how the matter stood.

Mr. Farris: Of course, that is my argument, my lord, that is the position I take. My friend is taking the position that he does not feel it is necessary for him to do that. It is surely a responsibility on my friend as he said when he was putting in the synoptic report, if he did not succeed in that. Now, he is taking the responsibility for only going to these days. I submit with all respect, my lord, that my friend surely knows, because he is trying to prove, and if he wants to take that chance, that is surely up to him.

40 Mr. Fraser: I am quite prepared to stand on the evidence I have put in, but naturally I would be very glad and I would like an order that all these buys on all the days referred to in this action be filed as an exhibit. The only trouble is, my lord, it will clutter up the court room; but they are down there in the Standard Bank Building in my friend's control or possession. I would be very glad to let them remain there and be marked if that could be physically done properly. I would be glad to have that, in fact, I would like your lordship to make an

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order along those lines. The reason I haven't put them all in, my lord, it is only for convenience in bringing all these books here, and your lordship can see these big cartons here, they take up a lot of room, but I am only too pleased if we could have it done without too much inconvenience.

The Court: I can appreciate the fact that without the synoptic report I might have difficulty in following some of them, but I would have them as part of the record, they would be there available for examination by the court.

Mr. Fraser: My lord, I would suggest this, in view of what your lordship has said, that the registrar and the stenographer, and your lordship, Mr. Farris and myself, proceed to the Standard Bank Building and have those documents produced and marked. 10

Mr. Farris: My lord, I am not going to accept the responsibility of keeping these documents down in our custody. If they once come into the custody of the court, then they must come into the custody of the court.

The Court: Well, I see your point, Mr. Farris. Well, I might consider the matter during the forenoon and make some direction with regard to that. 20

Mr. Fraser: I will call Mr. Lockhart.

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WILLIAM LOCKHART, a witness called
 on behalf of the plaintiff, being first
 duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. FRASER:

Q. Where are you employed, Mr. Lockhart? A. Crone Storage.

The Court: Q. What was your answer? A. Crone Storage.

Mr. Farris: My lord, I am just informed by Mr. Findlay that Mr. Lockhart has been subpoenaed here about the question of these documents moving. I submit that is not relevant evidence. My friend has given us notice to produce these documents. These are the documents that were lost somewhere. I submit it is not a relevant issue to try out here what has become of these documents. 30

The Court: You admit they have been lost?

Mr. Farris: Oh, we didn't bring them here at all, that is what we stated earlier, and that places him in the position of giving secondary evidence, and any further evidence can't be necessary, that is all he can give, that is evidence to entitle him to give secondary evidence. Now I admit he is in a position to give secondary evidence of it—because if that is the case, I mean we have got to go into a trial of an entirely different issue. 40

The Court: There is no question about the identity of the documents that Mr. Fraser is seeking—?

Mr. Farris: No, they were demanded, and as I say, we haven't them here, and we haven't the documents. Now, if an issue is to be directed as to what became of these documents, I would certainly want to call witnesses, and this is not a relevant issue because it has no bearing on the action at all. The documents are not here.

The Court: What do you say, Mr. Fraser?

Mr. Fraser: I say this, my lord, that these documents—

The Court: Mr. Farris admits the position is now such that you would be at liberty to give secondary evidence with regard to them.

10 Mr. Fraser: Yes, my lord.

The Court: Is that all you wish to do?

Mr. Fraser: Your lordship, I am not giving secondary evidence now; I am trying to show that the documents are available and they should be here, and they were delivered—

The Court: You are not in a position, then, to give secondary evidence?

Mr. Fraser: No, my lord. The only witness I had was Mr. Smith about the Grandview and George Copper that were in these books. Now, my lord, this is an action for fraud, and I am—

20 The Court: What do you wish, then, to lead evidence to?

Mr. Fraser: I will try to prove, my lord, that these documents were delivered on a certain day into the custody of the defendants.

The Court: Well, it may be admitted.

Mr. Farris: No, because we —

The Court: That is not admitted?

Mr. Farris: No, I say this is not a relevant issue. My friend surely—because it is Solloway & Mills my friend endeavours to disregard all the rules of evidence.

30 The Court: Wait, your submission is—what you admit is simply that—

Mr. Farris: The documents are not produced, that puts him in the position to give secondary evidence. If he can't give secondary evidence, that is the end of the matter. My friend has not taken the ordinary courses which are taken to get evidence into the court, and he can't take any third course.

The Court: In the circumstances, it would be necessary to prove their delivery.

40 Mr. Farris: No, because we have admitted that the documents are not available, that they were lost, we haven't them in our possession. Now, my friend is attempting to cloud up the issue by bringing in certain evidence. I haven't any hesitation in stating this to your lordship, that Mr. Magee and Mr. Macdonald are both prepared, and I stated at the opening of the court—to submit themselves to cross-examination. They were the two men that had these documents, and these two men are prepared to swear that they have never seen these documents and never had anything to do with them.

Mr. Fraser: Well, put them in the box then.

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Mr. Farris: I am not going to put them in the box subject to cross-examination on other matters as to the whole angle. I stated at the opening of the trial I was prepared to allow them to be cross-examined on that one point.

The Court: Of course, if Mr. Fraser is taking the position that you still had the documents, and that he was not in a position to give secondary evidence on them, then there might be an issue there, Mr. Farris.

Mr. Farris: No, but that is not part of this issue. I know of no procedure that gives him that right, to call witnesses for that purpose. The only effect, my lord, of a notice to produce is the effect of giving them the right to give secondary evidence of it. Now, when my friend is in that position, the mere fact that he is not—he has fallen down in getting some of his evidence in, that he is going to resort to certain methods, certainly—

The Court: If you were refusing to produce documents that were in your possession, then my ruling in that instance at the beginning of the trial would affect that.

Mr. Farris: Would affect that.

The Court: Now, then, it may be that Mr. Fraser is submitting that he can prove that you are in that position with regard to these documents, and are refusing to produce them; would you submit that he would not be entitled to lead evidence to prove that if he could?

Mr. Farris: No, I say he can't, because your lordship would then be trying a separate issue. For instance, this evidence is not germane to the main issue at all. Before your lordship could decide on that matter—I will just point out the position we are getting into—before your lordship could decide upon that matter, your lordship would then have to hear evidence from us.

The Court: There might be a trial within a trial.

Mr. Farris: It is a trial within a trial. Now, I know of no procedure in court for such a trial within a trial, and I say I object to anything that is not regular being done. But that, surely, is the position. Before your lordship could decide, we would have to have the evidence. Now, I don't want to call defence witnesses in the middle of the plaintiff's case to disprove some particular part of the plaintiff's case. Your lordship is not in a position to make any ruling on it. It may be quite true that at the end of this trial we may decide that my friend has failed to prove his case at all, and we may not want to call witnesses, which is quite possible, and in the circumstances it is very probable.

The Court: Well, if it were a trial within a trial, if that were the proper procedure, then the evidence would be limited to what was necessary to dispose of that issue.

Mr. Farris: If there are any rules permitting that trial within a trial. There are certain cases, my lord—

The Court: If you were in possession of the documents you

admit my ruling in the earlier part of the trial would govern that. Well, it seems to me, subject to what you have to say, Mr. Fraser is taking the position that you are in possession, that you have those documents, and that he can prove that they were delivered to you.

Mr. Farris: The only point I am making is this, my lord, that this is not evidence on the issue, and I know of no rules of court to permit such procedure. My friend in commenting upon it, can use such comment as he wants to, but to bring in this extraordinary procedure, I can see that it is going to lead to all kinds of precedents being established. It means that every subsidiary issue of a trial—that there can be a trial within a trial.

The Court: That is where the other side might not be in a position to give secondary evidence of the documents that they contended were in your possession, or in the possession of the other side.

Mr. Farris: If you can't give secondary evidence, then I submit, my lord, that that is the end of it. If he wants to—he can make such comment and ask your lordship to draw such conclusions, but I submit—if my friend can show me any authority or any rule that this procedure is regular, I haven't any objection to any procedure that is regular, and prepared to meet the issue, if there is an issue which we can meet, and that is provided by the rules of court, so we all know exactly where we are proceeding, on what basis we are proceeding. I don't want to come here in court, I am not in a position—I do happen to be in the position to meet this issue, but I don't know what the next issue is going to be—turn up a few minutes later, where we will have to have another trial within a trial. I am here to meet certain pleadings, and it is only by accident that I happen to have the witnesses here to meet and controvert any evidence that might be given in this case. That is only an accident.

The Court: As to that, I would have to make a finding of fact as to what the facts were.

Mr. Farris: Suppose this position occurred, my lord—and, as I say, after all the rules of court have been very, very carefully laid down, they have been carefully worked out, and with all respect, I submit that it is very, very dangerous to introduce new rules unless there is some provision or precedent for so doing. If my friend can show me any rule that will permit a trial within a trial—there are certain trials—

The Court: To decide a point.

Mr. Farris: There are certain trials within trials, there is the trial, for instance of the person accused of being insane, whether he is ready to go on trial, there is a commission to be taken in calling the jury; there is sometimes a trial whether a man is competent to sit on a jury, these things are provided for, and as far as I know these are the only things that are provided for. We are here to meet the issue, and there are certain pleadings, and the statement of claim—

The Court: I do not know that that statement—Mr. Farris,

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just on the point, assuming Mr. Fraser wished to lead evidence to establish that the defendant has these documents, and he is not in a position to give secondary evidence?

Mr. Farris: All right, my lord, I ask him under what authority, where is the authority? As I say, supposing these witnesses did not happen to be here, supposing they had gone to Timbuktu, which might have been the case, and I came in here to court without any suggestion of a matter of this kind, and I am confronted with evidence of that kind of which I am not advised or given notice—

The Court: Then the matter would be in the same position if I allowed a trial within a trial and you were not in a position to meet that, and the only evidence before me was that the defendant had the documents, or that they were delivered to them, then Mr. Fraser might move for judgment along the same lines. 10

Mr. Farris: My lord, surely when I come into court I am entitled to look in the pleadings to know what I am going into court to meet? Surely no counsel is asked when he comes into court to be able to have witnesses and to meet every extraneous matter that may be brought up in the course of that trial, where there are no pleadings dealing with it, unless there is some very pointed rule which gives that right, which would be—As I say, it would be to upset our whole court procedure. We don't know where we are going. We come up here on one issue, there is no cross-examination of parties on this, and we are going into a trial of extraneous matter. It seems to me, my lord, with all respect, that there must be— 20

The Court: Well, it may be extraneous matter, or it may be a trial within a trial, if I were to allow it, or something that you might not be prepared to meet.

Mr. Farris: My lord, I am saying this, I am not objecting provided there is any rule or authority that it is a regular course. I am not agreeing to anything, my lord, in this case that is not regular, and just doing it as a matter of good-fellowship with me on this, that or the other thing. I have taken that position. I think your lordship will agree that I have been at least consistent on that; and I say this, that if there is any regular procedure here—any ordinary procedure we are working under, so I know how to meet it, and know what the issue is— 30

The Court: Do you mean this, if it were a case where you were not able to call any evidence, and the matter then stood that the only prima facie evidence on it was that the documents were in the possession of the other side, then I assume that some step would be taken by the plaintiff upon the assumption that the matter was practically in the same position as it was with regard to the documents that you had admitted to be in your possession, and which you refused to produce? 40

Mr. Farris: Yes, my lord, but that is an issue we have a right to meet. I say I might have a hundred witnesses that I could get, if I were notified and knew that was part of the issue on this trial.

The Court: I can follow you there.

Mr. Farris: I have a right to come in and know what I am going to meet, and to have my witnesses and to have my case prepared for that. I say that my friend is simply endeavouring to becloud the issue, which I submit, with all respect, is the only chance that he has of succeeding at all in the action.

The Court: In other words, your submission is that his only right is to serve you with notice to produce certain documents, and then he is in a position to give secondary evidence thereon, and that is
10 his only right?

Mr. Farris: It is his only remedy—at least, there may be others, my lord, but I will say that I know of no other remedy. If my friend can show any rule that permits it in this court, I am quite willing to meet it and call my evidence, but I don't want to get in the position of going into an issue which is not an issue, and which never should be in court, and of being a party to establishing a precedent, which I can see, if followed, means that the whole history of trials will be destroyed, because you will never know when you get into court what extraneous matter may be raised. I mean, this is just one thing, but if a precedent
20 is established in this case it may be established in twenty other different things, so that trials, instead of being confined within the limits of the pleadings, become a wide-open, rough-and-tumble fight without regard to the rules of court or to pleadings. I haven't any hesitation at all in saying that I would be very glad to meet any issue of that kind if it can be done under the rules of court. That is all I ask, that we be confined to the rules of court procedure.

Mr. Fraser: My lord, what I have to say will be very short. In the affidavit of documents these confirmations were admittedly in their possession. On the day of the trial I gave notice to produce them.
30 At the trial, or a day or two afterwards, my friend Mr. Farris says, "We haven't got them—they are gone." That is the first notification I have of them.

The Court: What are your rights?

Mr. Fraser: Yes, my lord. Now, first, my lord—

The Court: What are your submissions?

Mr. Fraser: Yes, my lord. First, my lord, as far as Mr. Farris is concerned, I am absolutely satisfied Mr. Farris does not know where these documents are, or anybody in his firm—there is no question about that. In spite of all the little brickbats that are thrown between
40 us, there is no suggestion of that, my lord; but I am charging these defendants with fraud.

The Court: You mean on the pleadings?

Mr. Fraser: On the pleadings, and bad faith. Now, my lord, the first notification I had that these documents I asked to be produced are not here was when I got that notice. They are not here, and counsel comes into court and says, "My client instructs me they are not here."

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The Court: What are your rights, in your submission?

Mr. Fraser: I say I have the right to bring witnesses into the box.

The Court: You would have a right to give secondary evidence of it, but you are not in a position to do so?

Mr. Fraser: Yes, and I say, my lord, I am going to ask on this trial that you draw every inference possible against these wrong-doers. I have three witnesses who can swear—at least, I have never spoken to them—

The Court: You seek to lead evidence? 10

Mr. Fraser: —that these documents were delivered back to the defendants.

The Court: Now, if you please, in what way would the matter stand? Do you submit that I would then have a trial within a trial? What is the next step, according to your submission?

Mr. Fraser: My friend's witnesses are here, and he will put them—

The Court: In the midst of your case?

Mr. Fraser: Yes, my lord.

The Court: Just a moment. You submit that in the midst of 20 your case these defendants should call evidence, and that there will be a trial within a trial?

Mr. Fraser: It is not a trial within a trial.

The Court: Well, but the defendants would then have to call evidence in the midst of your case?

Mr. Fraser: Well, not necessarily.

The Court: Well, how far would I get then?

Mr. Fraser: My lord, after my case is closed and they call their defence and don't call any evidence to rebut or answer these witnesses' testimony, then I would say to your lordship these vital documents 30 have disappeared, and they were in their possession, they put no one in the box to controvert these witnesses' statements, and I am going to ask your lordship to draw every possible inference from that fact against them.

The Court: Is that as far as you can go then?

Mr. Fraser: Yes, my lord.

The Court: With regard to that?

Mr. Fraser: Yes, my lord. I say that these documents—this is the first time I knew they were not in their possession, when my friend told me two or three days ago. 40

Mr. Farris: The first time anyone knew they were not in our possession is when we went over there and we could not find them in the room.

The Court: Mr. Farris, what would you say as to the right of the plaintiff to carry that a little further, and show that they were delivered to you on a certain day?

Mr. Farris: I don't think he had that right at all.

The Court: Well, it might not be a trial within a trial while the plaintiff is giving his evidence, but that the plaintiff could lead evidence that they were delivered to you.

Mr. Farris: But, my lord, here is the position we are being put in—just let us consider the position. We have then got to go and call evidence, which we may decide not to call, on one point. We have got to call to contradict that particular thing, opening up our witnesses to cross-examination on a point that is extraneous to the matter.

10 The Court: Now, just on that, it might be relevant for simply —subject to what you have to say—for the plaintiff to show that these documents were in your possession. For example, some inference might be drawn, or it is suggested that some inference might be drawn in cases where witnesses were not called by one side or the other, and in some way it might be suggested that evidence might be led to prove that you had certain documents delivered to you on a certain day.

Mr. Farris: The most that can be done, my lord, is that my friend has the right to argue as to any inference that there may be about these missing documents.

20 The Court: Well, in some cases a party might be at liberty to prove that such and such a person was present at the time of the accident, that he was in the employ of the other side and he was not called. Well, here it may be somewhat similar, that the plaintiff seeks to prove that certain documents were delivered to you on a certain day.

Mr. Farris: Yes, but where in the pleadings is it pleaded? I mean, after all my friend can only give evidence of what is in the pleadings. My friend cannot go outside the pleadings to give evidence. Where in the pleadings does it allege that we destroyed or did away with or received certain documents, which is part of the case of proving fraud? I know of no rule, my lord, I am frank, I may be wrong
30 about it—

The Court: It may not be a trial within a trial, Mr. Farris; it may be just a case where the plaintiff might be at liberty to lead evidence to prove that these documents were delivered to you on a certain day.

Mr. Farris: No my lord, I know of no rule, I am making that statement, I know of no rule of law that permits either side to give evidence upon matters which are not enclosed in the four walls of the pleadings.

40 The Court: Well, that might be relevant, subject to what you have to say.

Mr. Farris: Well, how can it be relevant? It is not alleged. In order to be relevant there must be an allegation which is either admitted or denied. If it is relevant evidence we are entitled to come into court and be prepared to meet it. I think that is recognized as the basis of the pleadings, that we have the right to come into court to meet any evidence that is given, that there is a document which you have got to meet, there is an allegation of the plaintiff. Now, that is

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what you have got to cross-examine on in discovery; you have your discovery; you know from your discovery, you know from the pleadings what witnesses you may need to bring. Now, supposing, if it is relevant, if it is evidence that we are entitled to know as counsel, that from the pleadings we are entitled to meet that evidence on the trial. If it is not relevant evidence then it can't be given. If it is relevant evidence, as I say, we are entitled to find out from the pleadings that we are entitled to meet that, and we are entitled to bring here our witnesses prepared to meet every allegation that is set out in the statement of claim. Could any counsel anticipate that we are to have to meet evidence of this kind? It might have been true that Mr. McGee and Mr. Macdonald might have gone to Toronto, but they are in the city. 10

The Court: You were served with notice to produce these documents, were you not?

Mr. Farris: We were served with notice to produce these documents, and what is the effect of the notice to produce these documents? The effect of a notice to produce—

The Court: Well, these documents apparently are relevant.

Mr. Farris: Not necessarily. 20

The Court: What is that?

Mr. Farris: Not necessarily. Not necessarily at all, we might if they were here be able to show that much.

The Court: You are in a position of anticipating their relevancy because you have been served with a notice to produce.

Mr. Farris: All right. Suppose we have been served with a notice to produce, we know just that, we were only served with a notice to produce, and we did not produce those documents, what does that mean? It means only that they have the right to give secondary evidence of these documents. 30

The Court: Is that the only right?

Mr. Farris: That is the only right.

Mr. Fraser: That would be a fine state of the law, if the hands of the court may be so tied.

Mr. Farris: My friend comes on with this talk of his of the fine state of the law, the courts are so tied, he has used that so many times—the point is, I submit, my friend perhaps could redraft the pleadings according to the rules of court, but my contention, so long as he has not done so—

The Court: I am asking you now not to direct your mind to the question of a trial within a trial, but just as to the right of the plaintiff to trace these documents to you. 40

Mr. Farris: The only right the plaintiff has, my lord, is to give evidence upon the pleadings. Where in the pleadings has he alleged that we have destroyed documents and so on? Then he could have given evidence that certain documents had been received by us and destroyed by us, then he could have given evidence, but not unless he had pleaded it. It can't go to work in any way, shape or form—

The Court: Sometimes, as I say, it is suggested in some cases that an inference could be drawn from the absence of the calling of a witness who was available to one side or the other during the course of the evidence, it might be evidence led to prove that such and such a party was present at the time.

Mr. Farris: That may be true, but only on relevant matters—only on relevant matters. Only as to the relevancy, no wrong inference—

10 The Court: Well, it is suggested that these documents are relevant, and it is attempted to give evidence to trace these relevant documents to your possession.

Mr. Farris: That may be true, but there is machinery provided for that, and there is no machinery provided for a case such as my friend is trying to set up before the court. It is not a question of what perhaps we might like to do, but as I say the rules of court have not been provided for isolated cases, the rules of court have been provided for generalization—have been prepared for the general good of the public, and on that basis of these rules litigants may come into court, and so the rules for discovery interrogatories have all gone along those
20 lines, that litigants can come into court know what the issues are, and the issues they have to meet. Evidence can only be given on these issues. Your lordship is not sitting here to give any judgment upon whether or not certain documents were in our possession, there are no pleadings on that, your lordship has said—

The Court: It might be well to know whether any inference can be drawn from evidence that I find is led at the trial that they were delivered to you but not produced at the trial.

Mr. Farris: No, my lord, I submit that is not part of the—we have got to meet everything they have here to give evidence on, if it
30 is relevant. It must be shown somewhere in the pleadings. I ask your lordship to look through these pleadings and say to me as counsel how could I anticipate that witnesses are going to be called to show that some document has been delivered to the defendant company. How could I, as counsel, be expected to have witnesses here and to meet that. I mean we have had thousands—a thousand employees, we have had millions of documents, if your lordship has to go that far, there may be some other documents, it might be, that we haven't got. We might be compelled to go from one end of Canada—chase all over 1000 cases and then chase through all these documents in order that
40 that issue may be properly tried. I mean the mere fact that it is shown, as perhaps it may be, does not change the principal, and I am just pointing out to your lordship what a field would be opened up, a field that would mean that it is unsafe to go into court on any issue if you are going to depend on the pleadings, because evidence can be led apart from pleadings altogether. I don't know, my lord, how I can assist your lordship any more. I have endeavoured to make it—because I frankly view such procedure, as a member of the court, with

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very very great alarm, apart from this case, as I see it.

The Court: As the matter now appears to me it would seem to be a case where I have to consider where the practice would allow a trial within a trial, my view is that the plaintiff is entitled to lead evidence as to the documents in question being delivered or not to the defendant.

Mr. Fraser: Q. You said you were employed by Crone Storage? A. Yes, sir.

Q. Who are Crone Storage? A. 760 Beatty Street.

Q. What do they do? A. Moving.

Q. Moving? A. Yes.

Q. And did you receive certain instructions in connection with documents of Solloway Mills & Company? A. Yes, I did.

Q. Speak up so his lordship can hear you. A. Yes, sir, I did. There was two long boxes—

Q. First I want to get the instructions roughly? A. Well, I couldn't just tell you it, but I got instructions from the despatcher.

Q. What month, do you know? This is December, was it last month. A. I think it was last month, yes.

The Court: Q. Speak up please, witness. A. Last month I think it was. I am not sure of the date.

Mr. Fraser: Q. In pursuance of certain instructions where did you go? A. Went to the Workmen's Compensation Building.

Q. The Workmen's Compensation Building? A. On Dunsmuir and Homer Streets.

Q. On Dunsmuir and Homer Streets, Vancouver? A. Yes.

Q. Did you see anybody there? A. I seen two or three fellows that belonged to Solloway Mills & Company.

Q. Did you recognize these gentlemen? A. Yes.

Q. Do you recognize any of the gentlemen here? A. Yes.

Q. They were what—what were they doing there? A. They were looking after the goods that we were taking out.

The Court: Q. How many did you see then? A. Well, I don't know them by name.

Mr. Farris: The gentlemen he is referring to is Mr. McGee and Mr. Macdonald.

The Witness: Mr. McGee was there.

The Court: Mr. McGee and Mr. Macdonald, yes, of the defendant.

Mr. Fraser: Q. Now, just tell his lordship just exactly what you did when you got there. A. Well, we went up there to take—

Q. Who is "we"? You were alone? A. No, there was one more.

Q. What is the name? A. Mr. Rennie.

Q. He is in court, is he? A. Yes.

Q. Well, what did you do? A. We took the boxes down in the building there and took them to the Standard Bank Building. Mr.

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McGee was over at the other end when we took the stuff over, and we took—Mr. Macdonald was there first, but he sent for Mr. McGee.

Q. Where—at the Standard Bank Building? A. At the Standard Bank Building, yes.

Q. Yes? A. And we took the stuff from there, it was all taken in the room there, over to the Standard Bank Building.

Q. Now, going back to the Workmen's Compensation Building, do you recognize any of these documents here? A. Well, it was pretty hard to recognize them the way they are not, the way they are
10 done up there, but they are all shoved in boxes—

Q. First, how many wooden boxes were there? A. There was quite a bunch of them in square wooden boxes.

Q. Do you remember any of the boxes that were not square, wooden boxes? A. Yes, I can remember two.

Q. What kind. Describe what kind of boxes they were? A. Well, five feet long, about 14 inches high and 14 inches wide.

Q. Do you see these confirmations that are exhibits in court?
A. Yes.

Q. How much wider—compare the width of these boxes with
20 these documents? A. Well, they might be a little wider than that.

Q. A little wider than that? A. Yes.

Q. And about five feet long? A. About five feet long, I would think.

Q. How many boxes of the description were there? A. Well, I remember two.

Q. What happened to these boxes? A. Well, Mr. McGee—the bottom was loose in the boxes.

Q. What? A. The bottom of the boxes was loose.

Q. Yes? A. And we had to go down to the warehouse for
30 our own hamper, and Mr. McGee took these papers out—he was careful with these papers because he put them in the hamper.

Q. Took these papers out of these two wooden boxes? A. Out of these two wooden boxes and put them in the hampers, and kept them in piles, and those hampers were strapped down and we took them over to the Standard Bank Building and they were put in a room there.

Mr. Fraser: All right.

CROSS-EXAMINATION BY MR. FARRIS:

Q. Were the sheets like this—this Exhibit 43—that Mr. McGee
40 came and put in the hampers so they wouldn't get upset—mixed up and out of order? A. Well, they were like that, yes.

Q. Yes? A. As far as I can remember.

Q. Yes, now—

The Court: What is that?

Mr. Farris: Ledger sheets, my lord.

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Plaintiff's Case.

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Direct Exam.
Dec. 14th, 1931.
(Cont'd)

Wm. Lockhart,
Cross-Exam.
Dec. 14th, 1931.

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*In the
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*Proceedings
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Plaintiff's Case.

*Wm. Lockhart,
Cross-Exam.
Dec. 14th, 1931.
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The Court: Yes.

Mr. Farris: Q. Now, there was a big lot of stuff there—what is your name? A. Lockhart.

Q. Lockhart, you brought over two big boxes to the vaults one day? A. Yes.

Q. And one the next day? A. One the next day?

Q. Yes? A. I don't think so.

Q. One on Saturday morning? A. I finished the job, I think only four and a half or five hours on it altogether.

Q. There was one other came over Saturday morning, do you know anything about that? A. Yes, I finished the job. 10

Q. That is two days—two different days? A. I can't remember two different days.

Q. You don't remember two different days? A. No.

Q. Your recollection of things, just as you are concerned, is just a job, and you received a bunch of documents and that is all— A. No, we have got to look after that stuff when we put it in.

Q. Yes, but I say you may be sorting it out, you didn't attempt to know anything that is—get the number of boxes? A. Only what we are told by the gentlemen. 20

Q. And there was amongst them material that you had to bring over, some in hampers and some in boxes— A. No, there was no hampers—well, there was some in hampers when we went there, and there was some put in hampers, too, after we got there.

Mr. Fraser: Q. Was everything taken from the Labor Temple to the Standard Bank Building? A. Everything, yes, absolutely.

Mr. Farris: Q. That is, everything you saw? A. Well, everything that was in the room.

Q. But you didn't go all through the Labor Temple? A. Yes, we went through the rooms we were told about in the building. 30

Q. Well, you say everything was taken away, everything was not taken from one room there? A. Well, it may be some was there left filled.

Q. No, there were other documents that were left there—some boxes and documents. Now, I am instructed, Mr. Lockhart, that the firm of Denbigh, Dickinson's documents—some of them were left there.

The Court: You state so. Ask him.

Mr. Farris: Q. Do you know that? A. I never seen them. I never seen more than what was on the floor— 40

Q. You wouldn't say that is not true? A. I couldn't say it wasn't true, I haven't seen any.

Mr. Fraser: Q. By the way, were you told by anybody from Solloway Mills what documents to take—any of these employees? A. Mr. McGee told us what to take.

Q. Did you take everything that he told you to take? A. Everything.

Mr. Fraser: That is all, thank you.

(Witness aside).

Mr. Fraser: I call Mr. Rennie.

JAMES RENNIE, a witness called on behalf
of the plaintiff, being first duly sworn,
testified as follows:

DIRECT EXAMINATION BY MR. FRASER:

- Q. Where are you employed, Mr. Rennie? A. Crone Storage.
- Q. Did you hear the last witness—
- 10 The Court: No, I would rather you would ask the questions.
- Mr. Fraser: Yes, my lord.
- Q. You remember attending the Standard Bank Building—I mean the Labor Temple some weeks ago? A. Yes.
- Q. In connection with taking documents of Solloway Mills & Company? A. Yes.
- Q. Do you remember seeing any of the gentlemen who are now in the Court in that room? A. Yes.
- Q. Do you see these gentlemen here.
- Mr. Fraser: Do you know who he knows?
- 20 A. Well—
- Q. Did he give you his name? A. I heard the name.
- Q. What was it? A. Mr. McGee—I forget his name now.
- The Court: He identifies Mr. McGee.
- Mr. Fraser: Q. You identify this gentleman sitting at the desk? A. Yes.
- Mr. Farris: Don't point out the man, Mr. Fraser.
- Mr. Fraser: No, my friend doesn't wish me—
- The Court: You must make it clear for the notes, Mr. Fraser.
- Mr. Fraser: Q. What did you do while you were at the build-
- 30 ing, Mr. Rennie? A. Well, I helped pack out a lot of big boxes.
- Q. Do you remember the wooden boxes in particular? A. Yes.
- Q. Do you remember wooden boxes about five feet long a little wider than these confirmations? A. Yes.
- Q. Do you remember how many there were? A. There were two, as far as I can remember.
- Q. Two of these? A. Yes.
- Q. Do you remember any document like these exhibits—anything in these two wooden boxes?
- 40 The Court: What exhibits? Identify them by the number.
- Mr. Fraser: Exhibit 39. Exhibit 19. Do you remember any papers and documents like these in these wooden boxes? A. I know there were some like that—yes.

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Mr. Farris: The witness says they were like exhibit—

The Court: 43.

Mr. Farris: 43.

Mr. Fraser: Q. Do you remember any documents like these?

Mr. Farris: My friend should not cross-examine his own witness.

Mr. Fraser: I am putting the question.

The Court: I will allow the question.

Mr. Fraser: Q. Do you remember any documents like these, witness, that you took? A. Yes, there was one box something like that. 10

Q. In one of these wooden boxes that you spoke of? A. Yes.

Q. Now, what did you do with those boxes and documents in that building? A. Well, we took them from the Compensation Building to the Standard Bank Building.

Q. Were any of these documents pointed out to you as the ones that should be moved? Did you receive instructions which one to take, or did you take everything there? A. No, we was told what to take.

Q. By this gentleman, Mr. McGee, or somebody else in the building? A. This young gentleman here— 20

Q. Which one do you mean, this young gentleman here—the young gentleman? A. Yes.

Q. Mr. McGee; and you took back to the Standard Bank Building what he instructed you to take? A. Yes.

CROSS-EXAMINATION BY MR. FARRIS:

Q. But you quite agree—you heard the last witness, do you agree with that, that the material was taken out of these two wooden boxes, that the confirmations were out of them? A. Yes, they were taken out of the two wooden boxes and put into hampers.

Q. Into hampers? A. Yes. 30

Q. And what was put into the hampers was like these ledger sheets that I pointed out to you? A. Yes.

Q. Now, since these documents were lost, and before this trial, Solloway Mills had taken this up with you and the other driver to ascertain from you—try to locate the missing boxes, did they not? A. No, sir.

Q. You don't know that—did your firm report that to you? A. Yes.

Q. Yes? A. A couple of days ago.

Q. Yes, that they were looking for them and inquired from you as to what you knew about them? A. Yes. 40

The Court: Speak up, please witness.

Mr. Farris: The witness says yes.

Q. How many boxes altogether did you take over, do you know?

A. I don't know. There was quite a few.

Mr. Farris: There were quite a few boxes, that is all.

Jas. Rennie.
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Mr. Fraser: That is all, thank you, witness.

(Witness aside).

Mr. Fraser: I am going to tender in evidence the discovery of Solloway Mills—one of the defendants.

Mr. Farris: I understand your lordship has ruled that we can only give evidence—that is, we have to take any evidence in proving any loss—we can only give evidence in defence, that we are entitled to give evidence specifically in regard to these documents.

10 The Court: Well, I would rather rule on that when I come to the matter. My ruling was—

Mr. Farris: My point is, your lordship is not committing us now—

The Court: No.

Mr. Fraser: I am going to call Mr. Simons first. He wants to get away.

VICTOR A. SIMONS, a witness called on behalf of the plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. FRASER:

20 Q. What is your occupation, Mr. Simons? A. I am chief clerk at the Vancouver Stock Exchange.

Q. How long have you been chief clerk at the Vancouver Stock Exchange? A. Since the beginning of January—the end of January, 1928.

Q. Since the end of January, 1928? A. Yes.

Q. You are still employed? A. Yes.

Q. As chief clerk? A. Yes.

30 Q. Are you an authority on the rules and regulations of the Vancouver Stock Exchange? A. No, I am not. That doesn't come under my jurisdiction.

Q. What are your duties at the Vancouver Stock Exchange? A. I am an accountant, and I look after the record of all the—I look after the record of all the transactions that take place on the floor of the Exchange.

Q. When you say all the transactions, does that include what are known as crosses on the Vancouver Stock Exchange? A. Yes.

Q. They are all recorded, are they? A. Yes, sure.

Q. In what books, if any? A. In books that are called transaction books.

40 Q. I will produce a book here. Is this a transaction book (handing document to witness). A. Yes, that is a transaction book.

Q. Just tell shortly—did you make these up? A. Yes, I made these up.

Mr. Fraser: I am putting this in, my lord, this is—

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Q. Tell his lordship what it is—for what dates? A. This is the transaction book—

Mr. Farris: I am taking objection to any books going in which are not our books and not in our custody or control. I know of no reason why the books of somebody else should be used as evidence against us.

Mr. Fraser: Q. Are those official records of the Vancouver Stock Exchange? A. Yes, they are.

The Court: Just a moment, please. Well, Mr. Fraser, what do you submit? 10

Mr. Fraser: I say, my lord, that these official records of the Vancouver Stock Exchange—

The Court: Kept by the witness?

Mr. Fraser: Kept by this witness himself, are evidence of what happened on the Exchange on that date, and of course it is material, and pleaded.

The Court: Q. Are all the entries by yourself, Mr. Simons? A. I beg your pardon?

Q. All the entries by yourself? A. Well, I won't say that all of them are— 20

Q. Under your direction? A. They are under my direction, yes.

Mr. Fraser: Q. And what proportion would you say are actually entered by you? A. Well, the major proportion would be entered by me, but when the work got too heavy I had to have someone do them under my supervision.

Mr. Fraser: Does your lordship allow this in?

Q. What date—

The Court: Just a moment. There is no doubt, Mr. Farris, the witness could refresh his memory from the use of that book, from entries made by himself, and the question whether the books themselves could be filed as evidence might be a question. What do you say about that, Mr. Fraser. These are books that might be said of a third party—of the Vancouver Stock Exchange. The witness, as far as any of it is made by himself—made under his supervision, might be able to refresh his memory. Of course it would be a long way about for him to give them orally rather than simply to produce the books, but as to the books kept by a third party, can they be filed? 30

Mr. Fraser: May I ask another question before I make any further statements, my lord? 40

Q. Just tell me—I think you have possibly told his lordship what these documents include—these transactions on the Vancouver Stock Exchange, if any? A. They include all the sales and purchases of different members of the Exchange.

Q. Different brokers on the Exchange? A. Yes.

Q. Are the transactions—

Mr. Farris: Of course I am objecting to all this evidence as well.

The Court: I will allow the question.

Mr. Fraser: Q. Do you know Solloway and Mills? A. You mean the members themselves, or the company?

Q. Did you know their trader on the Stock Exchange? A. Yes.

Q. Would his business be included in this book with other members of the Vancouver Stock Exchange? A. Yes.

Q. That would be included there? A. Yes.

Q. How long after the trades on the Exchange are made—how long after that are they put in your physical records? A. They may be typewriting them as soon as the session is over.

Mr. Fraser: I submit, my lord, that the transactions of these defendants themselves on the Exchange—and of course it is only in that respect I am saying that, are admissible against them. It may be a question as to the weight of the evidence, my lord; I submit it is admissible, the contents of that record.

The Court: As to the transaction itself, that is on the Stock Exchange?

Mr. Fraser: With other brokers. This is the official record of the defendants on the Vancouver Stock Exchange, and it is evidence against them.

The Court: I will allow it to be marked as an exhibit.

Mr. Farris: I am taking the same objection to all of this—the books that are being produced.

The Court: The reporter will note that.

Mr. Farris: Thank you.

Mr. Fraser: Q. What period does this document I am now producing cover? A. The period between the 1st October, 1929, and the—

Q. Excuse me, witness. I think I will get it in order of date if you don't mind. I am producing this document, Mr. Simons. What period—

The Court: That is the first one?

Mr. Fraser: Yes, my lord.

The Court: What period?

Mr. Fraser: Q. What period does that cover, witness? A. Between the 4th September, 1928, and the 29th December, 1928.

(DOCUMENT MARKED EXHIBIT NO. 69)

Q. I am producing this record. What period does that cover?
A. From the 2nd January, 1929, to the 28th March, 1929.

(DOCUMENT MARKED EXHIBIT NO. 70)

Q. I am producing that record, what period does that cover, Mr. Simons? A. Between the dates of April 2nd, 1929, and May 15th, 1929.

(DOCUMENT MARKED EXHIBIT NO. 71)

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Q. I am producing that record. What period does that cover,
 Mr. Simons? A. May 16th, 1929, to June 28th, 1929.

(DOCUMENT MARKED EXHIBIT NO. 72)

Q. I am producing that record. What period does that cover,
 Mr. Simons? A. July 2nd, 1929, to September 30th, 1929.

(DOCUMENT MARKED EXHIBIT NO. 73)

Q. I am producing that record. What period does that cover,
 Mr. Simons? A. October 1st, 1929, to November 30th, 1929.

(DOCUMENT MARKED EXHIBIT NO. 74)

V. A. Simons,
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CROSS-EXAMINATION BY MR. FARRIS:

10

Q. Mr. Sprange is your superior officer, is he, Mr. Simons?
 A. Yes.

Q. He was subpoenaed in court last week with these documents,
 was he not? A. I think he was.

The Court: That might be admitted.

Mr. Fraser: Yes, I do, my lord.

The Court: Very well.

Mr. Farris: Q. Now, these documents you produce from—
 you are not on the floor of the Exchange, are you? A. No.

Q. You say you are not on the floor of the Exchange? A. No. 20

Q. You make up these records from slips sent from the floor of
 the Exchange, or some official on the floor of the Exchange? A.
 Yes.

Q. You don't know anything about the original transactions at
 all, you are taking the record of that man on the Exchange? A. I
 take these from the bookkeeping slips when they come up from the
 Exchange.

Q. From your man on the Exchange? A. Yes.

Q. Now, you know that a lot of your documents were seized by
 the Crown in connection with the Solloway Mills case, don't you, Mr. 30
 Simons? A. I know that there were quite a few documents taken
 away from our Exchange.

Q. And you know that you have tried to get them back from the
 Crown, and they have been lost and have not been able to get them
 back, don't you? A. Yes.

Q. They made an effort to get them and they haven't been able
 to get them? A. Yes.

Q. And for use in the same way as the Solloway Mills docu-
 ments? A. Yes.

Mr. Fraser: That is all, thank you.

40

(Witness aside).

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Mr. Farris: My lord, I submit now that these books can't be

used, because the witness admits now he is not making them from the original records, he only makes them from a third person that sent them in—some person on the floor of the Exchange, sending them up, and he makes them from some slips, not the original documents at all.

The Court: Objection over-ruled.

Mr. Farris: Did you say objection over-ruled or noted?

The Court: Over-ruled.

Mr. Fraser: Examination of Mr. Mills, my lord.

- 10 Mr. Farris: As to the examination of Mr. Mills, my lord, I wish to, on behalf of the defendant Solloway Mills Limited and as to Solloway, object to any admissions being made by Mills being used as evidence either against the company or the individual. Mr. Mills is not examined as an officer of the company, but in his individual capacity of a defendant. I think your lordship has already ruled on this matter, that admissions made by one defendant is apt to be used as admissions against another defendant. In any case, that is, I think, without submitting any authority, well-recognized law.

The Court: As an individual, not as an officer.

- 20 Mr. Farris: Yes, and I am simply taking the position that any admissions made are not admissions as against either of the other defendants. I don't think my friend will dispute that.

Mr. Fraser: My lord, I would sooner not go on record. I am leaving it to you. He is a director of this defendant company as well as an individual.

The Court: He was examined individually. He was not examined as an officer.

Mr. Fraser: I think that is accurate, my lord.

The Court: Well, that is only evidence as against himself.

- 30 Mr. Fraser: Well, my lord, I just didn't want to make the admission. Your lordship has the discovery.

The Court: Yes.

Mr. Fraser: In this transcript, my lord, I will have to refer to the pages that are at the bottom, because it is not like our numbering of questions.

Mr. Farris: I wonder if my friend, just for convenience, might state the pages that he is going to read from first, and then I can check over while he is reading it as to whether I want to put in any explanatory.

- 40 Mr. Fraser: Yes, certainly: Pages 1 to 5, line 28; page 8, line 4, to page 11, line 26; page 13, line 7 to page 14, line 9; page 17, line 4 to page 38 line 29; page 51, line 14 to page 58, line 12—

The Court: Well, I have to page 58 line 21.

Mr. Fraser: Yes, I can't read my own writing here, my lord. Subject to that, I will have to give you that later. It may be 50 to 55, but I have it, I know, when I come to read it; so that may be wrong, my lord. The next is page 58, line 12, to page 59, line 13. Page 61, line

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- RECORD 14 to page 62, line 18. Page 66, line 22, to page 67, line 4. Page 71, line 2 to 18. I start reading—
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- Mr. Farris: That is all?
- Mr. Fraser: Yes, subject to that one page.
- Mr. Farris: Yes, I understand.
- Mr. Fraser: Page 1 to 5, line 28.
- The Court: Very well, you may read it.
- Mr. Fraser: (Reading transcript).
- Mr. Farris: I object to that going in, my lord. Your lordship has already ruled that you can't put questions of that kind. I have reserved all my right of objection to the trial on this examination so that I can object to any. 10
- The Court: How far further did your objection go, Mr. Farris.
- Mr. Farris: I object to any questions dealing with the evidence given by Kimmerly on the Calgary trial.
- The Court: You had better just follow along and let me know.
- Mr. Farris: Well, he is at the top of page 32. I object to that.
- The Court: "And you remember Mr. Kimmerly giving this evidence."
- Mr. Farris: Yes, I object to that now, I object to giving that evidence, "You remember Mr. Kimmerly giving this evidence, 'Mr. Mills was interested in how I filled the orders'"—I object to that. "Do you remember Mr. Kimmerly giving any evidence in regard to your being interested in the trading in Vancouver. . . . Regarding me being interested, no." I object to that. 20
- The Court: Down to "Regarding me being interested." Is that what you object to, to line 24—from 5 to 24.
- Mr. Farris: Yes.
- The Court: Mr. Fraser, have you anything to say to that?
- Mr. Fraser: My lord, I submit—I finally did put the submission before, and questioned him at the trial. That is all, my lord. 30
- The Court: I rule that you are not at liberty to put in from 5 to 24 on page 32.
- Mr. Fraser: Very well, 5, my lord, to line—
- The Court: Yes, to line 24.
- Mr. Fraser: Does your lordship wish to adjourn.
- Mr. Farris: I would suggest if this is my friend's last witness, that we might finish it, and then meet later on in the afternoon when I have a chance to consider—to give us a few more minutes, perhaps, to think over the argument in the meantime. I don't know whether it is— 40
- The Court: Do you wish to give them a few minutes' time?
- Mr. Fraser: If your lordship likes.
- Mr. Farris: Is this my friend's last witness?
- Mr. Fraser: No, I have got other witnesses to call, my lord.
- The Court: Very well, then, we will adjourn until 2:30.

(COURT ADJOURNED AT 1:05 UNTIL 2:30 P.M.)

Vancouver, B.C., December 14, 1931, 2:30 p.m.

(COURT RESUMED PURSUANT TO ADJOURNMENT)

Mr. Farris: So that I will not overlook the matter in reference to the commission I asked Miss Nuyens about, my learned friend has agreed that this commission shall be as follows: July 1928, \$15.80; August, \$128.21; August, \$239.29; September, \$531.28; October \$393.56; November, \$426.91; December, \$507.50; then in 1929, January, \$3,090.57; January, \$46.08; February, \$1,936.75; March, \$4,533.51; April, \$1,620.68; May, \$1,533.95; June, \$77.65; June, \$594.08; July, \$419.94; August, \$268.43; September, \$97.70, a total of \$16,461.89.

(DOCUMENT PRODUCED MARKED EXHIBIT NO. 75)

Mr. Fraser: Page 32, line 25, your lordship ruled out.

(Referring to depositions of Harvey Mills). From line 4 to line 25, your lordship ruled out.

The Court: Yes.

Mr. Fraser: Commencing at line 25 "Do you remember communicating with Mr. Kimmerly (Reading to line 12, page 33). . . .
20 in what regard the answer was given."

Mr. Farris: I object to that as well, because that clearly is dealing with the evidence given in the Calgary trial.

The Court: Apparently the witness is being asked about communicating with Kimmerly. I will allow it.

Mr. Fraser: (Reading at line 15, page 33) "Mr. Farris: No, but I am protecting the interest. . . . (to line 21, page 34). . . . and you showed 9,500 at 76—"

Mr. Farris: I object to that. He is quoting from something. He does not show the witness the full letter he is quoting from. It
30 was something that was a copy of something. I do not think it is fair.

The Court: I think the witness can be asked along the lines here and I so rule.

Mr. Fraser: (Reading at line 20, page 34.) "This particular day you had a buying order. . . . (to line 14, page 36). . . . but I am objecting to the question." I want to put that letter in. It is part of the record. That one was not identified and made part of the exhibit for some reason or other, but it was clearly intended to be put in. Does my friend object?

Mr. Farris: Yes, I do not know what it is.

40 Mr. Fraser: Possibly the correspondence before your lordship—I wrote to the court reporter. He marked certain exhibits, but that one was not marked. I think the letter was sent to the Registrar and that one sent to the court reporter it may be at the end of the examina-

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tion, the letter I wrote regarding that. On the 26th of November I wrote the court reporter.

Mr. Farris: What is the letter? I don't know what the letter is. Let me see the letter itself. I want to see what the letter is.

Mr. Fraser: The 7th of September, 1928.

Mr. Farris: I do not know where it is. It is not attached to my copy of the transcript.

The Court: Now, if you please, Mr. Fraser, subject to hearing what you may say on the point, I would be inclined to the view that unless Mr. Mills identified the letter as having been received by him it could not be put in. 10

Mr. Fraser: This was a letter he remembered receiving from Mr. Solloway on September 7th.

The Court: Later on towards the bottom of the page he says, "I don't remember this particular letter."

Mr. Fraser: That is not the one.

Mr. Farris: He does not prove the other at all.

The Court: Does he prove the other one at all, the one you are asking about?

Mr. Fraser: The proof of it is on page 36, between line 7 and line 14. 20

The Court: He says, "Yes, I remember this." That is the letter you want to have put in. He seems to say, "I remember this."

Mr. Fraser: Mr. Farris said that subject to his objection it could go in.

Mr. Farris: Yes, I did that.

The Court: It would seem to me that he identified that letter and that that should be admitted.

Mr. Fraser: I am reading that letter. It is part of your record, my lord. 30

The Court: The next exhibit in the examination for discovery is 2. There had been one already marked, I assume.

Mr. Fraser: This should have been marked. This is really the one I am reading now of September 8th, 1928.

The Court: There was no previous exhibit marked 1.

Mr. Fraser: No.

The Court: That will be 1 to the examination for discovery. Do you wish it given another number now, Mr. Fraser? I generally adopt that practice. Exhibit 1 to the examination for discovery is now exhibit 76. 40

Mr. Farris: I am drawing attention to the fact there might have been a dozen letters of September 7th.

The Court: He says, "I remember this." I assume the document was being handed about and it seems to me he identified it.

Mr. Farris: Does he identify this document that is going in?

The Court: He says, "Yes, I remember this."

Mr. Fraser: My friend knows all the letters were produced to

him and were allowed in subject to my friend's right to comment on them as being relevant.

I am reading this letter of September 7th, 1928, from Winnipeg, Manitoba. "My Dear Harvey." Has your lordship the letter?

The Court: You may read it.

(LETTER MARKED EXHIBIT NO. 76)

Mr. Fraser: "I have a very high opinion of Bury—and he and Matthew work together and no one else in the office know their business. What the Calgary office needs when they move into new quarters is a good aggressive business getter. I will likely be able to pick up a good man in the East to fill in this gap.

I miss you. I shall be very glad when we are together again. You certainly have been a great fixer for me this summer and I know while you are in the Calgary section, that you will look after my interest.

I am very proud of the Winnipeg office and it will work out all right in time. Hicks is selling some of our Associated Oil and Gas stocks. Treat this confidential for it is not necessary for Lowery or his gang to know. The stock that we are selling we are buying a lot cheaper from Lundy and his friends and, of course, we are selling the stock to some people here to be delivered when we receive delivery, so that we will make a good profit on this deal and it will help out the Winnipeg office."

The rest is about grain and I do not need to read it unless my friend wishes.

Mr. Farris: No.

Mr. Fraser: Now, going on at page 36, line 15: "Q. I produce what purports (to line 22, page 36). . . A. Yes."

Mr. Farris: I understand really that letter does not go in.

The Court: No, he does not identify it.

Mr. Fraser: May I read it first.

The Court: Don't read it, but show me where he identifies it.

Mr. Fraser: (Line 9, page 36) "Do you remember a letter of that nature (to line 5, page 37). . . (Witness inspects portion referred to)."

The Court: If you please now I will just follow through.

Mr. Fraser: Yes.

The Court: You are reading some more there, are you?

Mr. Fraser: Yes, as far as line 23 on page 37. (Reads to line 23 on page 37).

Mr. Fraser: Yes, my lord, that is all.

Mr. Farris: I object to all that material going in, from where my learned friend has read, to line 10, page 38.

The Court: That is to line 9 here.

Mr. Fraser: Page 37, line 23, that is the end of the reference

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to that letter. That is the only evidence I have of his identifying it.

The Court: I disallow the admission of the letter.

Mr. Fraser: Yes, my lord. Now, line 24, page 37, we are coming to the next letter or letters.

Mr. Farris: It is the same letter.

Mr. Fraser: No, there are two. This is the first one, exhibit 2.

Mr. Farris: My mistake, my lord, I thought it was the same letter.

Mr. Fraser: The first letter was from Solloway to Mr. Mills of September 17th, that is exhibit 2, which your lordship has ruled out as not being properly identified. Now, I go to another on the same date. 10

Mr. Farris: This is from Mills to Solloway.

Mr. Fraser: Yes. Line 24 page 37 "Are you prepared to admit those are copies. . . (to line 30, page 37) "dated the 17th of September, 1928. . ."

The Court: Just a moment, please.

Mr. Farris: I also take the position, my lord, that there is no basis for giving secondary evidence of those letters, that no basis was established for the copy. I do not know that they are very important anyway. I am just asking you to note my objection in regard to them. I am making the formal objection. 20

The Court: Very well, you may continue reading.

Mr. Fraser: At the top of page 38, "Can you identify that as a copy. . . (reading to line 9, page 38) A. Yes, this is familiar to me."

I am reading that letter, my lord, from Mr. Mills.

The Court: It is apparently at lines 10, 11 and 12 that he remembers that letter of September 17th.

Mr. Farris: From himself to Solloway. 30

Mr. Fraser: I stopped at line 9. It stops there.

The Court: From 10 on is with regard to another letter?

Mr. Fraser: Yes.

The Court: Very well, I will admit that letter of September 17th, 1928. Was that marked at that time?

Mr. Fraser: Yes, and made part of your lordship's transcript.

The Court: That will now be Exhibit 77.

Mr. Farris: I also take the further position that none of these letters are relevant or material to this particular issue.

Mr. Fraser: (Letter referred to read) and marked. 40

(LETTER MARKED EXHIBIT NO. 77)

The Court: Now, if you please, do you wish the copy taken out and marked?

Mr. Fraser: I can put in a separate copy.

Mr. Farris: I would like it taken out of the record any of the

letters your lordship has ruled out. I think that they should come out of the record that your lordship has.

The Court: Yes. There is on the examination for discovery a file, that the Registrar I assume may have attached thereto, and there may be some of these exhibits that I have ruled out.

Mr. Fraser: That is the only one you have. There is no other.

The Court: Any documents I have ruled out as exhibits should be taken out.

Mr. Fraser: Yes, my lord, there is just the one letter.

10 The Court: It seems to me it would be better to have the Registrar mark this 77 now.

Mr. Fraser: Yes. I will take out that one letter that has been ruled out.

I am at page 38 lines 10 to 12 inclusive. (Reads).

(LETTER REFERRED TO READ AND MARKED EXHIBIT NO. 78)

Mr. Fraser: The next are lines 13 to 16 inclusive on page 38. (Reads lines 13 to 16 on page 38). I am only reading a portion of that, a letter from Mr. Solloway to Mills. The third paragraph on the first page of the letter: "I have had a couple of hard days at head office working with Cooper and Shaver re Parliament Buildings. The ticklish part to get over is that they do not like auditor. We have to give them a statement which is quite all right, but we do not like to chance our auditors. It is nothing to worry about as we all feel quite capable of handling the situation.

20 "I hope you have a little luck in handling Lowery as we certainly would like to get some of this Associated stock for delivery. We have sold about 75,000 shares at 65c a share. I am anxious that Lowery shall not get wise that we have done this. Keep in touch with the situation regarding him." Then the last paragraph:

30 "I am anxious that Calgary and Vancouver do not carry too many stocks for until such times as we know where we stand with the Ontario Government we may have to carry more stocks than ever in Toronto. At the present time, among Toronto, Calgary and Vancouver offices we must be carrying about \$5,000,000 worth of stocks."

The Court: That will be Exhibit 79.

(LETTER REFERRED TO MARKED EXHIBIT NO. 79)

Mr. Fraser: That is the first page, and the third page of that letter.

40 Mr. Farris: There is only one page to that letter.

Mr. Fraser: That is right.

The next is the letter referred to on page 38, lines 17 to 22. (Reads lines 17 to 22, page 38).

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The first page of that letter. It is a letter from Mr. Mills to Mr. Solloway. I am not going to read it all, but on the second page the fourth paragraph.

Mr. Farris: I need not take special objection to each letter. I presume it is understood my objection applies to all these letters.

The Court: Yes.

Mr. Fraser: (Reading). "I received a very pleasant surprise in looking over our stock position here. With the present market prices, we are probably less than \$740,000 to the bad, compared to \$2,500,000 over a month ago or so. 10

"I am also convinced that the trading should be left alone here as much as possible in the hands of Bury and Matthew. I am attempting to get closer relations between Bury and Kimmerly by having Bury send in to Shaughnessy, Masson and yourself a review of what has taken place in the past few months, with the different problems they have had to contend with, and also Kimmerly's so-called interference in their trading.

"I am also writing a letter to Masson regarding our financial position here, giving the reasons for the wide fluctuations in our bank balance and also in our stocks." 20

(LETTER REFERRED TO MARKED EXHIBIT NO. 80)

The next is line 23, page 38, lines 23 to 29.

"And the letter from you to Mr. Solloway, November 5th, 1929?"

A. Yes, I remember this letter.

Q. Now, having got over these letters—" I had better read the letter first. It is a letter dated November 5th, 1929, from Mr. Mills to Mr. Solloway.

The Court: I do not find a copy of that here.

Mr. Farris: Apparently it was not marked.

Mr. Fraser: It must have gone in. 30

Mr. Farris: I don't think you put it in.

Mr. Fraser: It is not marked, my lord.

The Court: Apparently not. Let me see this, Mr. Registrar.

Mr. Farris: I do not think that was put in.

Mr. Fraser: Apparently I neglected to mark it, my lord. It is not. I am reading page 38, lines 23 to 29.

(Read lines 23 to 29, page 38).

Now, my lord, page 51, line 14 to page 53 line 21.

The Court: What was that?

Mr. Fraser: Page 51, line 14 to line 21, page 53. (Reads). 40

Now, page 58, line 12 to page 59, line 13. (Reads).

Mr. Farris: I think that the next question should go in. It is explanatory.

Mr. Fraser: He says he does not know.

Mr. Farris: I know. That should be shown.

“What was the policy of your company with respect to shares which were listed on both exchanges?”

The Court: You wish a direction that I allow the question and answer to be allowed in?

Mr. Farris: Yes.

The Court: I direct that the question beginning, “What was the policy of your company?” and the answer to be read.

Mr. Fraser: (Reads line 14 to line 15, page 59).

The Court: That carries to the end of line 19, page 59.

10 Mr. Fraser: Yes, my lord. Page 61, line 14, to page 62, line 18. (Reads line 15, page 61, to line 30, page 61).

The Court: You mean the witness.

Mr. Fraser: Yes.

Mr. Farris: I object to that.

The Court: Does he identify it?

Mr. Farris: That is what he is coming to. Your lordship will look about the middle of the page he says: “Do you remember dictating a letter or wire or sending instructions along that line to Mr. Matthew? A. I don’t remember it. I may have. That is another
20 one of these bad answers I am giving, I know, but it is not clear in my mind.”

The Court: Unless he identifies the letter, I would not admit it. Is there any other place?

Mr. Farris: Yes. “Mr. Farris: “You will just have to say you don’t remember.

Mr. Fraser: Q. You have no recollection whatever at this time? You have no recollection whatever of ever having written, dictated, wired or spoken to Mr. Matthew? A. No, I don’t.”

30 Mr. Fraser: I read one excerpt of this letter.

Mr. Farris: Which says that he does not remember.

Mr. Fraser: He goes further and says, “I don’t remember, I may have.”

The Court: I would not allow it on that. I disallow that part. That would be from—

Mr. Farris: From line 19, page 61 to all of 62.

The Court: Of course, I am allowing the question to the witness as to whether or not he remembers. You are entitled to have—in my view Mr. Fraser would be entitled to have the question whether or not he remembers, so that the question and answer—

40 Mr. Farris: How can you put in that unless you put in what he remembers about? He asks him to identify the letter and he says no. I submit that automatically rules out that question and answer, because he ties it up by reading part of the letter.

The Court: Just a moment. In my view from line 15 on page 61 to line 18 on page 62, that should not be admitted. I disallow that.

Mr. Fraser: Page 66 is the next, my lord, line 22.

The Court: Just a moment, please. Yes. Now, if you please,

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gentlemen, I would just like to go back to the ruling which I gave as to certain lines on page 61. The questions and answers from line 15 to line 27 on page 61 that I had ruled out, now, I wish counsel to discuss this if they wish to. As I remember the practice a counsel is at liberty to ask a question if he remembers writing or anything. I do not think it is necessary to show the document to him and he is entitled to an answer from the witness to such a question as that beginning on line 15 before the document is shown to him. Then, I am quite clear that from line 28 on where he then puts before him apparently a letter and the witness does not identify it, that from there to line 18 on page 62 should be excluded. 10

Mr. Farris: My lord, I quite agree with your lordship. I had not noticed that until I read it over. I am quite agreeable that from 15 to 27, if my friend wants to put that in, that it is quite proper. I did not know that it was all so connected together. That is quite proper to be in if my friend wants to put it in.

The Court: If you want to put in lines 15 to 27 on page 61 you are at liberty to do so.

Mr. Fraser: In view of the exclusion of the other, there is no occasion for putting that in. 20

The Court: Very well, from line 15 page 61 to line 18 on page 62. Very well. Page 66.

Mr. Fraser: Page 66, line 22. (Reads line 22 page 66 to line 4 page 67).

Mr. Farris: That is referring to another letter marked as an exhibit.

Mr. Fraser: Yes.

The Court: Could you tell me which one?

Mr. Fraser: Yes, I have already read it.

Mr. Farris: You do not identify it as to date. 30

Mr. Fraser: It is the letter of September 22nd, 1928, from Sol-loway to Mills. The last paragraph.

Mr. Farris: Exhibit 79.

Mr. Fraser: The last paragraph of exhibit 79 I was directing his attention to.

The Court: Yes.

Mr. Fraser: Then page 71, lines 3 to 18. (Reads).

Mr. Farris: Now, the next two questions should go in, telling how he treated him as a client.

The Court: Yes, I direct those to be read. 40

Mr. Fraser: (Reads lines 19 to 28).

Mr. Farris: I think, my lord, the re-examination should go in, as explaining Mr. Mills' attitude and his reason for knowing nothing of the matter.

The Court: What is termed your cross-examination.

Mr. Farris: Yes, it should be re-examination.

The Court: I direct that that be read then.

- Mr. Fraser: I just formally put my objection on the record.
- The Court: Very well.
- Mr. Farris: Starting at the head words "cross-examination" on page 73. (Reads line 16, page 73, to line 30, page 74). That is all.
- Mr. Fraser: I would like the last two lines to go in, my lord.
- Mr. Farris: That is where we waived the signing. There is no question as to that. I am not objecting as to that, such as has gone in.
- The Court: Very well. I might say in order that if any higher court ruled that any documents that I excluded should be included, that although it might be advisable for it to be taken out of the record, it should be marked for identification, so that there will be no doubt as to the identification of the documents. Very well.
- Mr. Fraser: There are certain interrogatories, questions and answers of Mr. Solloway that I am going to put in. The first interrogatory is:
- "(1) In a certain action in the Supreme Court of British Columbia, numbered M. 108/30 between William H. Mackee, plaintiff, and Solloway, Mills & Company Limited, defendant—"
- Mr. Farris: I take the same position that these are not evidence against either the company or Mills.
- The Court: I make the same ruling in regard to that. I would like to have a copy of them.
- Mr. Fraser: Interrogatory No. 1:
- "In a certain action in the Supreme Court of British Columbia, numbered M. 108/30, between William H. Mackee, plaintiff, and Solloway, Mills & Company Limited, defendant, Royden Stanley Stultz, barrister and solicitor of the City of Vancouver, Province of British Columbia, swore an affidavit in which he stated in paragraph 1 as follows:
- 'I am a member of the firm of Farris, Farris, Stultz & Sloan, solicitors for the above-named defendant.'
- Is the said Royden Stanley Stultz to your knowledge a member of the firm of Farris, Farris, Stultz & Sloan?"
- The defendant's answer as to interrogatory No. 1 is: "My answer is yes."
- Interrogatory No. 4:
- "The said Royden Stanley Stultz further declared:
- 'I am informed by Mr. W. B. Farris, K.C., that Harvey Mills was formerly a partner of the said Solloways and a member of the said defendant company and from the time of his severance from the said defendant company, was a director and paid official of the said company.'
- At what date did the said Harvey Mills become your partner and during what period did such partnership continue?
- When did Harvey Mills become a member of Solloway, Mills & Company Limited?"

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When did the said Harvey Mills become a director of the said Solloway Mills & Company Limited and when did he cease to be a director and paid official of the said company?"

The answer to that interrogatory is as follows:

"As to interrogatory No. 4 my answers are:

- (a) Harvey Mills became my partner in 1928;
- (b) The partnership continued until in or about the month of May, 1928;
- (c) Harvey Mills became a member of Solloway Mills & Company Limited on its incorporation in or about the month of May, 1928;
- (d) Harvey Mills became a director of the said company on or about the same date and ceased to be a director in or about the month of May, 1930."

Interrogatory No. 5:

"In an interlocutory appeal in the said action, the said Royden Stanley Stultz swore an affidavit in which he alleged as follows:

"That I am further informed by the said W. B. Farris, K.C., that he was one of the Counsel for the defence of the said Solloway and Mills in the Alberta courts and that one of the principal Crown, contentions, which was not disputed by the defence, was that Solloway, Mills & Company Limited, was the alter ego of the accused Solloway and Mills and the Courts of Alberta so found."

Is it true that the defendants, Isaac William Cannon Solloway and Harvey Mills, were the alter ego of the defendant, Solloway Mills & Company Limited?"

Mr. Farris: In reference to that question, I submit the only part that can be given is the answer. My learned friend cannot get in evidence by putting in statements in that manner.

The Court: My ruling is that the part of interrogatory 5 reading as follows: "Is it true that the defendants, Isaac William Cannon Solloway and Harvey Mills, were the alter ego of the defendant, Solloway Mills & Company Limited?"—may be put in, and the answer to that.

Mr. Fraser: "As to interrogatory No. 5, I refuse to answer on the ground that the answer might tend to criminate me and on the further ground that such question involves the determination of a point of law." Then I am going to put in 6, 7, 8 and 9. I am putting all those in and the answer. The answer in each case is a refusal to answer, because the answer tends to incriminate and involve a point of law.

"(6) If the answer to the last preceding interrogatory be 'nay,' were the said defendants, Isaac William Cannon Solloway and Harvey Mills at any time material to this action the alter ego of the defendant Solloway Mills & Company Limited?"

Then the answer to that is:

"In answer to interrogatory 6 of the interrogatories herein, my answer is that such interrogatory is answered by No. 5 hereof."

Interrogatory No. 7:

"If the answer to the last preceding interrogatory be 'yea,' state the period?"

Then the answer is:

10 "In answer to interrogatory 7 of the interrogatories herein, my answer is that such interrogatory is answered by No. 5 hereof."

Interrogatory No. 8:

"If the answer to the interrogatory numbered 6 be 'Nay,' was the defendant, Isaac William Cannon Solloway, at any time material to this action, the alter ego of the defendant Solloway Mills & Company Limited?"

The answer to that is:

20 "In answer to interrogatory 8 of the interrogatories herein, my answer is that such interrogatory is answered by No. 5 hereof."

Interrogatory No. 9:

"If the answer to the last preceding interrogatory be 'yea,' state at what period or time the said defendant, Isaac William Cannon Solloway, was alter ego of the defendant Solloway Mills & Company Limited?"

The answer to that is as follows:

"In answer to interrogatory 9 of the interrogatories herein, my answer is that such interrogatory is answered by No. 5 hereof."

30 I will call Mr. Cooper.

FRANCIS GORDON COOPER, a witness
on behalf of the plaintiff, recalled for
further examination, testified as follows:

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DIRECT EXAMINATION BY MR. FRASER:

Q. Mr. Cooper, you are familiar with Exhibit No. 57? A. Yes.

Q. Do you remember now what stock it was you had not checked? A. What, for confirmation?

40 A. We never received any confirmations for Grandview on January 16th.

Q. What year? A. 1929.

Q. Have you received those now? A. No.

The Court: Q. Have you any objection to the witness just

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ticking that? A. Yes, I have it marked there.

Mr. Farris: Oh, so that it can be identified. Mark it "A," I would suggest.

The Court: Very well.

Mr. Fraser: By the way, on January 16th—what date is it? A. January 16th, 1929.

Q. On Grandview? A. Yes.

Q. Have you checked the Clearing House transactions on that date? A. Yes.

Q. The exhibits from Solloway, Mills, the books in court? A. 10
 Some of the Clearing House entries were got from Solloway Mills own books and some were got from the actual Stock Exchange records, which are in court also.

Q. When you got your transaction from the actual Clearing House records, what did they show as distinguished from Solloway Mills as Clearing House records? A. There are some entries, sales from Mills to Mills, a sale by Mills and a buy by Mills of the same amount, those show in the summary, but not in Solloway's own Clearing sheet.

Q. Whenever his lordship finds in the synopsis Mills to Mills, 20
 the transaction is taken from the Vancouver Exchange sheet? A. From the Vancouver Exchange sheet rather than Solloway Mills own sheet.

Q. How many are there, roughly, Mills to Mills, can you say, or do you know? A. Possibly about ten.

Q. And they are all set out in the synopsis where you found them? A. Yes.

Q. You say you have not got the confirmations for— A. Grandview, January 16th, 1929.

Q. Name the others? A. All the other stocks? 30

Q. That you have not got the confirmations for that are included in that synopsis? A. We got the confirmations for every one except Grandview on January 16th.

Q. They are included in the synopsis? A. Right.

Q. Have you checked all the confirmations with exhibit 57? A. Yes.

Q. And that accurately represents or visualizes the confirmations, does it? A. Yes.

Mr. Farris: Just before going on, as I gather from this witness all the synoptic reports have been put in and that they have received 40
 all the confirmations with the exception of one day, in January, on the 16th of January. A. On one stock on that date.

Q. On one stock on that date? A. Yes.

Q. That is the only confirmation that is missing. The reason I mention this, my lord, is—

The Court: Q. You are clear on that? A. Yes, Mr. McGee stated to us those confirmations were missing. We did not get those

for January 16th.

Mr. Farris: The reason I bring this up is that we have had a lot of discussion about missing documents. If that is the only date on which the documents are missing, so that there will be no question about it, I am prepared to accept his statement on that day, as if the confirmations were there.

The Court: That is fair, Mr. Fraser? You accept it?

Mr. Fraser: Very well.

10 Mr. Farris: Yes, the reason I am doing it, I intend to ask your lordship if there is any suggestion in your lordship's mind that Mr. Macdonald or Mr. McGee in any way—you will see how important those documents are, and when those are the only documents omitted, if there is any reflection cast upon Mr. Macdonald or McGee about those particular documents, I do not desire to call any defence in the case as I do not feel that it is necessary, but, they are important, of course, and if there is any doubt, these gentlemen are in court, and you can call them in case there is any reflection on them.

20 Mr. Fraser: Mr. Macdonald is a personal friend of mine and I am casting no reflection on his personal integrity, or Mr. McGee. I am pointing out these documents are not here, that were in their possession and delivered to them. I do not know who is to blame. I want to put myself on record so far as Mr. Macdonald or Mr. McGee's integrity goes, that there is no suggestion they would have anything to do with it. These documents were delivered into their possession and somebody is liable to be committed for not having these documents in court and I am going to read from the judgment of Mr. Justice Murphy on that. I think that my friend ought to put these gentlemen in the box.

30 Mr. Farris: They are here and his lordship can ask for them to be called. I think that is the proper way.

The Court: I am not directing that they be called.

Mr. Farris: The only reason that they can be brought in and evidence given is in accordance with your lordship's direction that these documents be produced. If anybody is in contempt for not producing the documents to your lordship, these are the gentlemen responsible. I think, your lordship, it would be very proper if there is any question about it that your lordship should ask them for their explanation and have them give it under oath. I also drew attention to the fact at this point that there is no—

40 The Court: Of course, my order would simply cover documents in the possession of the defendant.

Mr. Farris: Yes, and Mr. Fraser suggests these gentlemen had the documents.

The Court: Not at the time the order was made.

Mr. Farris: Not at the time the order was made.

The Court: No. There is no suggestion they had it at the time I made the order in court.

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Mr. Fraser: No, my lord, but the suggestion I make is that these documents were delivered back into their custody on a certain date, and the defendants have officials and others and somebody should give an explanation as to these Grandview documents.

The Court: I am not making any direction.

Mr. Fraser: Mr. Farris, this witness has prepared a list of stocks on the three days your lordship mentioned, and we have had them transcribed.

The Court: Would you ask the witness about them?

Mr. Fraser: My learned friend has not seen them yet. I will see that he gets them tonight. I will see that they are correct. They have been checked, I understand. 10

Mr. Farris: These have been checked?

Mr. Fraser: Are they accurate, are they right?

Mr. Farris: Yes.

Mr. Fraser: Q. Take them stock by stock on the dates in question and tell his lordship? A. The first date is November 27th, 1928.

Mr. Farris: I presume that these can be put in the same way as the other synopses. He will swear that these are correct synopses of those dates? 20

Mr. Fraser: Yes.

A. National Silver.

The Court: Q. You are saying they are correct? A. I say the synopses agrees with the confirmations and the Clearing sheets in court.

The Court: Very well. That can be marked now and the witness can go on.

(DOCUMENT REFERRED TO MARKED EXHIBIT No. 81) 30

Mr. Fraser: Q. Now, this synopses, so there will be no misunderstanding as to the Exchange transactions, you compared both with the Clearing House Exchange records and the Clearing House records of Solloway Mills & Company Limited? A. Yes.

Q. And you have got all of the transactions in that synopsis? A. Yes.

Q. And that applies to the synopsis in as exhibit 57? A. Yes.

The Court: There are some questions I wish to ask the witness, Mr. Farris. Perhaps you would prefer to reserve your cross-examination until then. 40

Mr. Farris: Thank you, yes.

The Court: Let me have exhibit 57, please. Perhaps, witness, you might come up here beside me. Now, referring to page 2 of exhibit 57 where I find buy confirmation for February 14th, 1929, customer A. J. Brown (sold to) No. of shares 3,000; total 3,000; price \$1.05, less brokerage \$6, tax 90c. Show me the original document in

court from which you get that please? A. You would like me to get the confirmation?

Q. Yes, and have the original document marked as the next exhibit. It may be part of the present exhibit, but it can also be marked separately? A. I did not hear the question you were asking.

The Court: Will you please read the question, Mr. Reporter?

(Reporter reads: "Yes, and have the original document marked as the next exhibit. It may be part of the present exhibit, but it can also be marked separately?")

10 The Court: Q. If that document is taken from a number of documents in a certain exhibit, will you give me the exhibit number from which it is taken?

Mr. Fraser: From exhibit 39.

The Court: It is taken from exhibit 39. Then it will be exhibit 39-A.

Mr. Farris: It would be better to have that marked individually.

Mr. Fraser: I would suggest that you keep them together.

The Court: Yes, it can be marked 39-A.

Mr. Farris: Yes. A. It is the top confirmation there. Let me
20 see the synoptic.

The Court: 39-A then, Mr. Clerk.

(DOCUMENT REFERRED TO MARKED EXHIBIT No. 39-A)

Q. And the item on page 2, house 500, price \$1? A. Do you wish that one?

Mr. Fraser: The same day.

The Court: Q. Yes, on page 2, exhibit 57. A. There are two items in one confirmation. 500 and 250, both of them.

(DOCUMENT REFERRED TO MARKED EXHIBIT No. 39-B)

Q. Then on page 3 of exhibit 57, the item A. J. Brown, (bought
30 from) 1,000, price \$1. Show me that, please? It would be from the sell confirmations on February 14th, 1929.

(DOCUMENT PRODUCED AND MARKED EXHIBIT
No. 39-C)

Q. I am referring to page 4 of this exhibit 57 headed "Vancouver Clearing House sheet for February 14th, 1929. Bought of Broker, A. J. Brown, No. of Shares 1,000, Price \$1.05." Show me from what that is taken? A. It will take a minute or two. I have to go through the Exchange record.

Q. Very well? A. There is the item, the first one on the sheet.

40 Q. You are now referring to exhibit 6. What number is that?
A. Exhibit 11.

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Q. Mark the page to which you are referring then 11-A? A. The page does not show. It is February 14th, the first sheet.

Q. Opposite the item—show me the item, if you please? A. Brokerage, A. J. Brown, 1,000 A. P. Con, \$1.05.

(DOCUMENT MARKED EXHIBIT No. 11-A)

Q. And on page 5 as to the "buy" confirmations for March 13th, 1929. Customer Theo. Frontier & Company, No. of Shares 300, Price \$3.50. Will you show me that, please? What exhibit are you referring to now? A. Exhibit 39, from the box, there. Theo. Frontier, 300 at \$3.50.

10

(DOCUMENT REFERRED TO MARKED EXHIBIT No. 39-D)

Q. On page 7 of the same exhibit 57, giving the A. P. Consolidated sell confirmations for March 13th, 1929, towards the bottom of the page, Theo. Frontier, No. of shares 100, price \$3.40? A. (Produces).

Q. That is taken from exhibit 39? A. Yes.

(DOCUMENT REFERRED TO MARKED EXHIBIT 39-E)

Q. And then, if you please, on page 9, A. P. Consolidated Vancouver Clearing House sheet for March 13th, 1929, show me the documents from which that is taken? The information on that page 9, if it is all on one? A. It will be, yes. I will have to use one of these records.

Q. You are referring now to exhibit what number? A. 70. Do you wish to see it on the sheet?

Q. Yes, please? A. There it is, my lord, it goes through from there to about there.

Q. That book, exhibit 70, goes by dates, does it? A. Yes.

Q. And the dates are in sequence there? A. Yes.

Q. This is March 13th, 1929, as shown on the page? A. Yes, it is shown there and to the end of March. At the end of each session, A.M. session and the P.M. session, immediately thereafter.

Q. And these items on page 9 are? A. Are shown here, yes, sir, this is the seller and this the buyer. We find Devenish, Mills bought from Branson Devenish Pete. We will get down until we have found all the A. P. Con bought by Mills on that date.

Q. The first item, Hamilton 200 shares, price \$3.50, show me that, please? A. Yes.

Q. That is on the second page? A. No, the third page.

Q. Now, the date is March 13th, 1929? A. Yes, A.M. session.

Mr. Fraser: Q. Mr. Cooper, on one or two days, the Clearing House sheets of Solloway Mills & Company Limited were not pro-

40

duced. Do you know the two dates? A. Yes, March 13th, 1929, and April 15th, 1929.

Q. Their Clearing Sheets were not produced for those two dates? A. Yes.

Q. And on those two dates you took the house transactions from this exhibit here, the Clearing House report? A. Yes, that is why I took that last, March 13th.

Q. Were the Clearing House sheets of Solloway Mills produced? You took the transactions from there? A. Yes.

10 Q. And compared it with these two, both? A. Yes.

The Court: Those two dates are March 13th— A. And April 15th, and March 13th, on Solloway Mills sheets, there are six sheets, on Solloway Mills records. There should be six and one is missing. We had to go to the Clearing House record for the full record. April 15th was not on hand at all.

CROSS-EXAMINATION BY MR. FARRIS:

Q. In the last exhibit you filed—by the way, my learned friend, Mr. Fraser, stated that it is shown that Solloway Mills never did buy or never did sell a share. I want you to look at the last exhibit under
20 National Silver for November 27th and just tell his lordship what that record shows.

Mr. Fraser: It speaks for itself.

Mr. Farris: I am asking this witness to explain.

The Court: I will allow that question. It may assist me.

Mr. Fraser: What page?

Mr. Farris: It is under the new record of National Silver, for the day his lordship is asking about.

The Court: Let me see a copy of it. That is exhibit No. 81.

Mr. Farris: I will pass up the copy furnished to me for you to
30 look at. A. Do you wish to know what it shows?

Q. Yes, explain to his lordship what it shows? A. There were no buy confirmations given out on that day, but there was one sell confirmation given to Theo. Frontier for 500 shares at 18c. It shows no shares were bought on the Exchange that date, but 500 shares were sold on the Exchange to Lennard, Poisson & Company.

Q. So that on that day, on that particular stock, the only transaction was a sale, not for Frontier, and there was an order confirming Frontier's sale.

Mr. Fraser: Well, my lord, it speaks for itself.

40 The Court: I will allow the question.

Mr. Farris: That is right. A. According to this sheet, yes.

Q. When you prepared this other synoptic report, it was suggested to you that you should prepare it at random that you just did that. I am suggesting that is not the case, that you took some twenty or thirty days and that you discarded the days that were not favorable. That is correct. You discharged the days that were not favorable? A. No, Mr. Farris.

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Q. I am going to ask you to find from exhibit 39, I think it is there, the sale confirmations for July 19th, 1929.

Mr. Fraser: Is this in the synopsis?

Mr. Farris: No. I am going to show on that date, I am telling you what it will—

Mr. Fraser: Ask him if he knows?

Mr. Farris: Here is a date that is familiar, March 13th. A. March 13th?

Q. Yes, March 13th, 1929. I am suggesting to you that shows on March 13th the only transaction Pend Oreille was an order for 20 10 shares for Frontier at 10.75, and the Clearing House record show that 20 shares were bought from Miller Court at 10.75.

The Court: Will you please read the question, Mr. Reporter? (Reporter reads question).

A. I have the information here. I don't know about the Clearing House records.

Mr. Farris: Q. Check it up with the Clearing House records.

Mr. Fraser: If my learned friend suggests those transactions appears on the Exchange and this witness approves, I will accept his statement to save time going through there, and if his witnesses 20 checked that, and those transactions are on the Exchange records for that day I will accept that statement.

Mr. Farris: That is correct.

Mr. Fraser: I will accept that statement. I want the position clear.

The Court: The question there, if you please, Mr. Fraser, if you are not prepared to make the statement—

Mr. Fraser: I will admit the statement.

The Court: You have made a certain admission.

Mr. Fraser: I will admit it is on the Vancouver Stock Exchange 30 if my learned friend says so. There were transactions between Solloway, Mills and other brokers which, if the shares had been bought for Frontier, would cover those orders.

The Court: Is that it?

Mr. Farris: The admission I want—on March 13th, 1929, Solloway, Mills only sent out a confirmation for one block of shares of Pend Oreille; the confirmation to Frontier was for 20 shares purchased at the price of 10.75; that was on that date, and that was the only shares dealt in, in Pend Oreille on that date, and on that date they bought on the Exchange 20 shares of Pend Oreille from Miller, Court 40 for 10.75 balancing the transaction.

The Court: Do you make that admission or not?

Mr. Fraser: Yes, with this reservation, and I think my friend will agree that according to these confirmations in court tally with the confirmations on the Vancouver Stock Exchange.

Mr. Farris: Yes.

Mr. Fraser: Yes, I will admit that for Pend Oreille that day.

Mr. Farris: On July 19th, those 400 shares of A. P. Con. were purchased; that confirmations for the purchase of 400 shares were sent out. One to the Interior Investment Company for 100 at \$4.03, 200 to Frontier & Company at \$4.03, and one to Theo. Frontier for \$4.06, and on that same date 400 were purchased at \$4.03 and 100 at \$4.06.

The Court: Do you make that admission?

Mr. Fraser: I do not know as to that stock on that day. What I would be glad to do for my learned friend, to save time, in the morning, I will make every admission that is necessary.

10 Mr. Farris: I will take these three stocks, because your lordship asked whether or not these records showed at any time any of these stocks, and I will ask my learned friend to admit that sometimes they had bought stock apart from the general and principal business. I have picked out four days on four stocks when there were several other transactions.

Mr. Fraser: What date?

Mr. Farris: One day is the 27th of November, and there are three days. The other day is February 14th, 1929, in reference to Duthie.

20 Mr. Fraser: I want the days, and I will check them. The only one we are interested in is this day.

The Court: You have been asked to make certain admissions and Mr. Farris will let you know what admissions he wants, and if you are not prepared to make them, Mr. Farris desires to lead evidence.

Mr. Farris: I want to do it with this witness.

Mr. Fraser: I will let him know anything they wish.

The Court: Never mind that, we might save time by letting that stand until tomorrow morning.

Mr. Farris: Yes.

30 Mr. Fraser: What days do you want?

Mr. Farris: A. P. Con. July 19th, 1929, Pend Oreille March 13th, 1929.

Mr. Fraser: That is in.

Mr. Farris: That you have admitted, and Duthie, February 14th, 1929.

The Court: The reporter might be good enough to give me a transcript of the admissions that have been asked for, then the cross-examination of this witness can be continued tomorrow.

40 Mr. Farris: Yes. I have not any further cross-examination if those are admitted. I don't know that my learned friend has further evidence or not.

The Court: Now, as to what might be termed the balance of these confirmations or documents from which the synoptic report is taken with regard to certain dates—I do not wish to come to any conclusion or to indicate at this time any view at all as to whether or not it would be necessary for me to peruse all those other confirmations or documents from which a partial synoptic report as to certain dates

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has been prepared, but it seemed to me, although I appreciate that it involves cluttering up the record with an almost unheard of perhaps number of exhibits. It seems to me without expressing any opinion that all those confirmations and documents should be before me if I should find it necessary to peruse them.

Mr. Fraser: The responsibility, I guess, is mine, and I am so satisfied that when I come to it on the evidence that there was not one share purchased for this plaintiff, that if I do not succeed in showing you conclusively that the burden of proof is removed from this that your lordship will decide against me. I have no hesitation in saying 10
 on the evidence in there is not one share on the evidence that was bought for any client, including Theo. Frontier. So all the records in the world before your lordship would not change that position.

The Court: I would like to ask you this, Mr. Farris, with regard to those dates you just now mentioned with regard to which you are asking certain admissions, July 19th, for example, 1929, are the documents in court?

Mr. Farris: They are in court, my lord. It is the same with regard to all of them. I have only taken from the documents in court, all of exhibit 39. I think it is probably only fair to say at this stage— 20
 I do not know how long my friend's evidence is going to be. There was some question of the Toronto books, that is, the Calgary ledger, and I voluntarily undertook to wire Toronto to endeavor to have those books sent out. This message has just been passed to me in the last moment or two. The ledger sheets have now arrived and are at our office and they are here and I have carried out my undertaking with the court.

The Court: They are available for inspection?

Mr. Farris: I want to look over them and my friend can have them first thing in the morning. I have just received word that this 30
 express parcel arrived. I wired for the books. They have come in since I left the office this morning.

The Court: Mr. Fraser, so far as your evidence on the face of the matter I mentioned, you do not wish to lead any evidence as to the balance of the documents with a view to having them put in.

Mr. Fraser: No, my lord. I am quite prepared to allow them to go in, but I say if they are in they will not assist any further than the documents in court. If it were not for the inconvenience of putting them in, I would like to have them here. They could be stored some- 40
 where but they take up a lot of room, but I do not think I need the rest of the books in, but if your lordship—

The Court: You are not asking to have them put in?

Mr. Fraser: No, my lord.

The Court: Under the circumstances I make no direction on the matter. I am expressing no view or coming to no conclusion on the issue involved.

Mr. Fraser: As at present advised—I suppose I may change my

mind before the case is over. I am putting in, my lord, a statement of collateral. I think my learned friend is agreeing to the figures.

Mr. Farris: This statement is in reference to collateral. I am willing for this to go in under two conditions, without the proof of them, first, that these shares were sold in pursuance of instructions of Theo. Frontier and, secondly, that these shares and the proceeds of these shares when sold and credited to Theo. Frontier's account shall stand in the same position as the moneys which were paid. In other words, what I might suggest is that my learned friend could add—
 10 eliminate the collateral altogether and add to the amount referred to on page 75 of the synopsis the amount of \$5,064.75 as being the cash payment and it would save any question. Otherwise, I would want to examine whoever proves this item on how the collateral was received.

Mr. Fraser: I cannot make any such admission. Miss Nuyens has sworn in court—

The Court: Then it is a matter of evidence.

Mr. Fraser: No, it is already in. Miss Nuyens swore this collateral was delivered to Solloway Mills & Company Limited on these dates, and that the amount is in their books. Now, that is all the
 20 admission I want.

Mr. Farris: I am not admitting anything. I have given my friend the advantage of that, of putting that in added to the amount claimed which is \$5,000. More than that, I am asking my friend to have Miss Nuyens here for cross-examination on it tomorrow. This matter is important and I am asking for the recall of Miss Nuyens, which I think I am entitled to on this particular matter.

The Court: Is Miss Nuyens available?

Mr. Fraser: She has gone back.

The Court: She can be back again.

30 Mr. Fraser: No. I am satisfied with the evidence.

The Court: No, but just a moment—she was examined and cross-examined.

Mr. Farris: Yes, and she was to be recalled in regard to other matters which I allowed to go. She was to be recalled and was put aside.

The Court: The transcript will show whether that is the case. I do not remember. If that is so, Mr. Fraser, it is a question—

Mr. Fraser: My recollection—if necessary I will get the document. I will state what my recollection of the evidence is. I asked
 40 Miss Nuyens what collateral of Theo. Frontier & Company was in the hands of Solloway Mills at the time the account was sold out and we produced these records and she completed all of them, but my learned friend stood up and said that to save time if we would give him a statement, which they have had for two weeks, of the collateral in the hands of Solloway Mills at the date of the selling out. I will agree to it, the books are here.

Mr. Farris: I will not dispute that, but when I was cross-exam-

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ining Miss Nuyens on the question of the account as to commission, Miss Nuyens was stood aside to check it up.

The Court: No, it was for a statement of commission, and that has been put in.

Mr. Fraser: And admitted.

Mr. Farris: The point is this, that we are dealing with credits under this.

The Court: Am I right in assuming that was all Miss Nuyens was to come back for?

Mr. Farris: No, because I had not finished the cross-examination 10 and I want to establish—

The Court: Did you stipulate for that at the time?

Mr. Farris: No, because I presumed Miss Nuyens was going to be here. I would have gone on and asked her in regard to this collateral. I would have asked then to examine her whether or not any collateral came in from clients. I do not hesitate in saying this that under the Bankruptcy Act, my learned friend must prove what is in the estate and what the estate is and I want to ask Miss Nuyens if any collateral came in on the same basis as did the cash from clients.

The Court: Why did you not ask that at the time she was here? 20

Mr. Farris: Because I went on the matter that was the subject of the question as to the commissions which were paid from month to month and it was just at the lunch hour and I said that I would check it up and I stopped there and that was the end of it. I was not figuring on Miss Nuyens leaving.

Mr. Fraser: Mr. Farris in my presence said that she would not be needed, and I sent her back to Kamloops.

Mr. Farris: No, I told her I would not let her go and my friend knows that that statement to the court is false.

Mr. Fraser: My friend in my presence told her that she was not 30 needed any more.

Mr. Farris: I said no such thing, I told Miss Nuyens we were not going to let her go.

The Court: It would have been better for the matter to have been brought to my attention that she could go away. It involves some expense.

Mr. Farris: I cannot see why my learned friend cannot accept the admissions I am prepared to make and allow them to add to that the amount of the payments and the matter of the \$5,064. I ask that that be treated in the same manner as cash paid. 40

The Court: If that admission is not made, what you submit is that you wish the right to re-examine Miss Nuyens.

Mr. Farris: To show that it was part of the client's account and not altogether from Frontier.

Mr. Fraser: I want your lordship also to remember that on the close of the court Thursday Mr. Farris said that for personal reasons he could not be here on Friday and your lordship asked about the

witnesses and I said I would keep two of them here and the rest would go back. My learned friend knew at that time Miss Nuyens was going back and this is the first I ever heard of it. I also suggested that my learned friend ask Miss Nuyens about the collateral.

The Court: If there has been any misunderstanding between counsel, or between counsel and the court as to any witness not being available during the balance of the trial, why it seems to me as though I would have to give counsel the opportunity to have a witness recalled, because it would be very inadvisable to not allow each side every opportunity to examine the witnesses that are called. It would be unfortunate if a witness has to be brought back from some distant place through some misunderstanding.

Mr. Farris: It shows, my lord, how wise it is, the policy of not admitting anything or agreeing to anything at all.

The Court: If there is any likelihood of the witness being required, it had better be determined. That may be determined tonight in order that she be notified to come back.

Mr. Farris: My learned friend's statement as to Miss Nuyens, that I said Miss Nuyens could go away, I wish to say this, my lord, that that is a statement I made in the heat of examination. All I can say is what my recollection is, and my recollection as to what took place, and all our recollections are subject to—

The Court: I do feel, if I may be permitted to say so, what Mr. Fraser perhaps thought at the close on Thursday—counsel may have had the impression that any other witnesses except those two that he had in mind, would not be available.

Mr. Farris: It is so easy to have misunderstandings. I do not wish to make any reflection.

The Court: I have no idea what two witnesses Mr. Fraser understood would be here.

Mr. Farris: I wish to make my position clear, I do not wish to make that emphatic statement and I withdraw that. I wish to state so far as my recollection is concerned, that I have no recollection of telling Miss Nuyens she could go away, but even if that were the case, it would be a question of expense, of terms. I consider the matter important enough, that I would insist on having Miss Nuyens.

The Court: If you find you have not cross-examined on that point?

Mr. Farris: Yes.

The Court: You could not determine that now and let me know?

Mr. Farris: I cannot without a transcript of the evidence. If I had it, perhaps I could. I have Miss Nuyens' cross-examination here. I believe I can do that in a minute.

My lord, I have just had this information, what our books show: "Mr. Fraser: We will check it up with ours"—I am reading from page 19—

The Court: Of the transcript as made for you by the reporter

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as to the evidence taken on this trial?

Mr. Farris: Yes. "Mr. Fraser: Tonight, my lord, we will have a statement made in our office of any commission we ever got from Solloway, Mills, and the dates—" and he cross-examined upon it. "My friend has a copy in his books in his office, and we may be able to compare—check it up with ours." "Mr. Farris: Now, Miss Nuyens, when you are preparing this statement I wonder if you could prepare a statement showing how much of this \$120,000 that you sent down was of your clients' money and how much the property of Theo. Frontier's." I have no reference whatever in the cross-examination to the cross-examination on this particular point of collateral. If my friend can find it, I can't. 10

Mr. Fraser: I think, my lord, this cross-examination starts at the time we put in those selling out confirmations. The earlier part of the cross-examination—this is not the complete examination, I think.

Mr. Farris: No, it is all of it. That is another cross-examination, because I asked here—because the first question I asked Miss Nuyens was as to her initials on a certain document. You will see that is where it starts. I took up the full cross-examination and then you will find this full cross-examination. 20

Mr. Fraser: I have a distinct recollection, because I was following it at the time—Mr. Farris asked about collaterals there. However, if necessary, I am going to have a copy of her evidence taken anyway—direct and cross-examination.

The Court: If you please, Mr. Farris, then are you asking that this witness be returned?

Mr. Farris: I must ask that, my lord, because I think this is a very important part of the case. For instance, if it is all clients' collateral, my friend has no action with regard to that; so that your lordship will see the importance of it. 30

The Court: Well, any additional expense incurred in coming back, what position do you propose to take.

Mr. Farris: I say this, my lord, if I am responsible for the witness going away—

The Court: You can settle as between you anything said by counsel to each other.

Mr. Fraser: My lord, I would like my friend to state to the court—my recollection is very clear, but I might be wrong—at the close of the case Miss Nuyens came over to the desk and asked Mr. Farris if he were finished with her. I have a distinct recollection of Mr. Farris, after paying her a compliment about her evidence, saying "You can go, I am finished with you." 40

The Court: Assuming for a moment that counsel had said that—

Mr. Fraser: Well, if it is a question of expense, I will be very glad, my lord, I think my friend will stand the expense of her coming back—

Mr. Farris: I said no, the mountains are very fine here, and this is a good place to be, and you can enjoy yourself very well here. That is my recollection of what took place. I may be wrong, but I think Mr. Sloan was present. It is so easy to make a mistake as to that, but I would not go so far as to say it, I am only saying what my recollection is of what took place.

The Court: Well, I will direct that arrangements be made so that if necessary Miss Nuyens is here for further examination. Can you make that arrangement?

10 Mr. Fraser: Oh, yes, we can have her here tomorrow morning.

The Court: Very well. I hope counsel will be able to agree as to the expense, otherwise I will have to settle it; but I do not like counsel to have any misunderstanding and asking the court to settle some trifling matters between them.

We will adjourn then until 11 o'clock tomorrow.

(4:50 P.M. COURT ADJOURNED UNTIL DECEMBER 15TH,
1931 AT 11:00 A.M.)

Vancouver, B. C., December 15, 1931.

(PROCEEDINGS RESUMED PURSUANT TO
20 ADJOURNMENT)

Mr. Farris: My lord, in reference to the little incident of yesterday—my learned friend has satisfied me that I apparently had made some statements along the lines he suggested. I regret exceedingly having in the heat of the moment used, perhaps, hard language—

The Court: Well, that relieves me of a certain amount of responsibility. May I ask counsel about one or two matters. In Exhibit 57, page 75, I find the words "net cost." Is that correct? At the foot of the page.

30 Mr. Fraser: Oh, no. That should be net amount. I do not know why "cost" is in there.

The Court: And on page 74, the word "Home."

Mr. Fraser: That should be "house." I meant to ask the witness yesterday as to that.

The Court: That is common ground between counsel?

Mr. Farris: I think so.

The Court: And on page 73, the same?

Mr. Fraser: Yes.

40 The Court: And may I ask Mr. Fraser what evidence have I with regard to cash payments apart from money paid in cash on account of margins.

Mr. Fraser: There is no evidence of the amounts, my lord. The only evidence is that they did, from time to time, buy stocks on cash, and got the certificates for them.

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Discussion.
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The Court: Well then, I have no items making up the total of \$238,589.36, as set out in paragraph 8.

Mr. Fraser: Oh, no. I am going to ask your lordship for judgment for \$115,063.48, plus the value of the collateral, less the amounts of the commissions, which were admitted at \$16,000.

Mr. Farris: Miss Nuyens is here. Am I to proceed with her?

The Court: Yes, very well.

Mr. Fraser: \$16,461.89 was the amount of the commission that we admitted.

LOUISE C. NUYENS, being recalled, testified as follows: 10

CROSS-EXAMINATION BY MR. FARRIS:

Louise C.
Nuyens,
Recalled,
Cross-Exam.
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Q. You are still under oath, Miss Nuyens. Miss Nuyens, with respect to the list of collateral securities, sent to Solloway Mills—

Mr. Fraser: Would you object to me first proving this?

Mr. Farris: No. That did not come in yesterday. You had better put in copies. That is my copy.

Mr. Fraser: Q. I am producing what purports to be a list of the collateral sent down by your company. You checked—did you check those with the collateral in the books of Solloway Mills & Company Limited? A. Yes, I did. 20

Q. Did you get those securities back? A. No, not all of these on this list.

Q. Did I ask you whether, prior to bankruptcy, you had given any orders to sell it? A. No, no orders were given concerning these certificates at all.

Q. Speak up, please. No orders were given concerning these certificates at all? A. That is right.

Q. Prior to the bankruptcy? A. Yes.

Q. And you did not get them back from Solloway Mills & Company Limited? A. No. 30

The Court: I would like to be shown where in the books of the defendant company these are to be found.

Mr. Farris: I am not disputing that.

Mr. Fraser: Grandview, my lord, may be found in—

The Court: Well, just show me one.

Mr. Fraser: In line number 1, Exhibit 3, under Grandview, the date appeared on the statement, October 3rd; and you will find certain certificates December 18th, February 6th and February 20th—does your lordship want me to point out—(Indicating on document). That means number 1, Exhibit 3, under the heading of Grandview; 40 this shows on December 18th.

The Court: You gave me a date, October.

Mr. Fraser: There are different dates; October, December and February. December 18th the statement shows 1,300 sent down to

Solloway Mills on that date. The 1,300 shares appear under Grand-view, certificates 4823 for 1,000, 7367 for 1,000—

Mr. Farris: No, for 100.

Mr. Fraser: No—for 100. I beg your pardon.

The Court: Well, just follow the one. Where is it shown as sold. Is that common ground also between counsel?

10 Mr. Fraser: Well, it shows here, the date. I told my friend that the account was closed out October 17th; that these orders were given to sell and accounts were closed out by Solloway Mills, and those were the prices that were received, and we have confirmation of those dates.

Mr. Farris: And there is no dispute between us as to that.

The Court: Very well.

Mr. Fraser: There is a short one here: Continental Securities. That is still Exhibit 3. You will see the three certificates of Continental Securities for 19 and 10 shares, in Exhibit No. 3 (Reading 3).

Mr. Farris: Has that been marked as an Exhibit?

Mr. Fraser: I will put that in now.

The Registrar: Exhibit 82.

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20 (DOCUMENT MARKED EXHIBIT NO. 82)

The Court: Your claim, as set out in the statement of claim with regard to the collateral, was \$15,197.

Mr. Fraser: Yes, my lord.

The Court: Well, as it appears in Exhibit 57 on the date of selling out, the price was \$5,098.

Mr. Farris: \$5,064.75. That is the correct figure as shown by Exhibit 82.

Mr. Fraser: That is right, my lord.

30 The Court: Your claim, Mr. Fraser, in connection with the collateral securities, then, is what?

Mr. Fraser: \$5,064.75, on page 76.

The Court: And not \$15,000?

Mr. Fraser: That is correct. Page 76 of the synopsis. That should be changed.

The Court: \$117.50 should be \$72.50 and \$290.00 should be \$217.50.

Mr. Farris: I think we can take Exhibit 82 as being the correct amount, because that shows an itemized account.

Mr. Fraser: Yes, that is satisfactory.

40 The Court: Very well.

Mr. Farris: Q. Miss Nuyens, in the carrying on of the business of Theo. Frontier & Company, sometimes shares were accepted from clients to cover their margin accounts in lieu of cash? A. Yes, as collateral security.

The Court: What is that question?

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(Question read by reporter)

The Court: You went over some of that ground before.

Mr. Farris: Not in reference to the shares. That is what I am dealing with now.

Q. And in some cases those shares were in turn forwarded to Solloway Mills as collateral security for their margin account? A. Yes.

The Court: Q. That is, shares that you received from those that you call your clients? A. Yes, my lord.

Q. Were sent down to Solloway Mills? A. Yes. 10

Mr. Farris: And I presume the shares referred to in Exhibit 82 were shares of that class? A. Well, they might be, and they might not. They might be certificates that were brought in by clients, or they might be certificates held by the company.

The Court: Q. Which company? A. The Theo. Frontier Company Limited; and sent down to Solloway Mills as collateral security.

Mr. Farris: Q. Is there any way of telling them whether or not those were the shares of clients, or the company? A. Well, clients might bring in certain certificates— 20

Q. I am asking you—

Mr. Fraser: Just let her finish.

A. —and we might use those same certificates and send them down to Solloway Mills to apply on our margin accounts, and then later the client might come back and want delivery of their stocks. We would give them shares that we held, that we had on hand. So that in the case of this list—

The Court: Of the same stock? A. Of the same stock, yes. So that this list, it would be pretty well safe to say that now there are practically none, if any, of the stocks still actually belonged to clients of Theo. Frontier & Company Limited. 30

Mr. Farris: Q. Now why would that be the case? A. Well, because a client, on closing out his account, or bringing his margins up to date, he naturally wants his stocks that he held outright, returned to him.

Q. Yes, but these stocks were put up by way of margin, to protect their margin account. They would not be returned to him if they were gone out? A. Well, they would be if the client himself put up sufficient margin to cover his account.

Q. I know; but these shares were put up as margin, in lieu of the cash, you have told us? A. Well, they were given to us as collateral security. 40

Q. As collateral security? A. Yes.

Q. And if their account was closed out those shares would be sold for the benefit of the client, wouldn't they? A. If it was necessary to cover his account.

Q. And those shares were put in with Solloway Mills, in order to protect the general account of the clients of the Theo. Frontier

Company, and of their own particular trading account, the same as the cash? A. Yes.

Q. And there is no difference in the position of those shares and the cash that was put up, was there? A. Well, as I see it—

Q. I am asking you now if you know of any different method of handling it, not of your opinion as to the law or anything else. I am just asking you as to the facts.

The Court: You have told me that the money came in and was deposited in the bank to the credit of Frontier & Co. Now the shares
10 that came in—now please follow the shares.

Mr. Farris: Q. When shares were brought in there by clients in lieu of cash margin, you might either send those shares to Solloway Mills or hold them in your office, or borrow from the bank on those shares? A. Yes.

Q. And the shares referred to in Exhibit 82, were apparently shares brought in by way of margin in lieu of cash? A. Some would be.

Q. And you cannot tell which would be and which would not be? A. Well, I know in one particular case where they are not
20 stocks belonging to clients or stocks brought in by clients.

Mr. Fraser: Q. Which one is that? A. Continental Insurance Company. That particular stock was never brought in by a client.

Mr. Farris: Q. Where did that stock come from? A. It was held by Mr. Frontier.

Q. Well, was it purchased out of the funds of that general account? A. As far as I know it belonged to Mr. Frontier personally.

Q. I am asking you whether it was purchased by a cheque out of that general account that you have told us about? A. I don't
30 know.

Q. You don't know? A. No.

Q. You cannot tell us whether that was the case or not. Do you know how long he held it? A. No. I think he had it before he joined the firm at all.

Q. And, outside of that you cannot tell us? A. Well, except as I said, that any clients who had brought in stock—

Q. Yes, I understood you. You have told us that.

That is all, thank you.

RE-EXAMINATION BY MR. FRASER:

40 Mr. Fraser: Q. Just two questions Miss Nuyens. These certificates that were brought in—referring again to that Exhibit 82—were they endorsed by your customers? A. Yes, they were endorsed and turned in to Theo. Frontier Company Limited, just the same as cash.

Q. Was there any earmarking of those certificates? A. No, there was no marking at all.

Mr. Fraser: There is one further question that is not pertain-

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ing to this, that I would like to ask, with leave of the Court.

The Court: Well, you may not answer until—

Mr. Fraser: Q. Don't answer, Miss Nuyens, until you are directed. Can you tell me where the majority of your trading was done, that is on what Exchange?

The Court: Any objection.

Mr. Farris: Does she know?

The Court: Do you know that? A. Yes.

Mr. Fraser: Q. How would you know?

The Court: Well, she says she knows. It is a matter of cross- 10
 examination. You may answer the question.

A. The bulk of the trading was done on the Vancouver Stock Exchange.

Mr. Fraser: The Vancouver Stock Exchange? A. Yes.

Q. Take the Toronto Stock Exchange, what would you say as to the proportion of trading? Would it be large, or small, or— A. It would be very small.

Mr. Fraser: That is all, thank you.

(Witness aside)

Discussion,
 Dec. 15th, 1931.

The Court: If you please, I would like to ask counsel if it is not 20
 common ground—where there has been what is called sale confirmations sent to Frontier & Company, would there be cases where I will find correspondence from Frontier to Solloway Mills, or would they be all cases where the margins, not having been apparently advanced, that they were apparently sold?

Mr. Fraser: You mean the accounts sold out at the end?

The Court: Well, take any one particular transaction.

Mr. Fraser: I think this is common ground; that in each case we put an order in to sell, we got a confirmation notifying us that a sale had been made. 30

The Court: There are cases like that?

Mr. Fraser: They are in as Exhibits, my lord.

The Court: Now then, are there any cases where you did not put in an order to sell, but you did not forward sufficient margin, and the stock was apparently sold and sale confirmations sent to you?

Mr. Fraser: That is just at the end, when the account became under-margined, they eventually sold us out.

The Court: Well, about what percentage of transactions?

Mr. Fraser: Well, the whole account was closed out.

The Court: The whole that was left? 40

Mr. Fraser: The whole that was left, that is it. Those confirmations, I think most of them were in.

The Court: These transactions went on, did they not, for about a year and a half?

Mr. Fraser: Yes.

The Court: And, during the course of that time, according to

evidence led, about \$120,000 had been sent by way of margin. Now what I am asking you is, there would be some transactions where you had kept the margin sufficient, and there came a time when you gave an order to sell and you received a sale confirmation from the defendant. Then there might be other cases where you, having apparently received a buy confirmation for so much of a certain kind of stock, that you did not advance sufficient margin, and did not say anything, but later received a sale confirmation.

Mr. Fraser: No, there is no case of that at all. We may have been under-margined, but they always fulfilled all our mandates until October, 1929, when we could not carry on any further, and the account was sold out. Up to that time, I think it is common ground, that all our orders we put in, we were notified that they had been filled, and all our orders to sell, we were notified that they had been sold.

The Court: You had not been in default?

Mr. Fraser: If we were, they allowed the account to run on. The account was always in existence and all our orders were always filled until October, 1929. I am going to call evidence on October 29th as to how the matter stood. I will call Mr. Willins.

The Court: There will be evidence of how matters stood on the stock that was then pending?

Mr. Fraser: Of how the account stood.

The Court: Will I find that in the books of the defendant company?

Mr. Fraser: I am calling a witness to show,—

WILLIAM EDGERTON WILLINS, a witness
called on behalf of the plaintiff, being first
duly sworn, testified as follows:

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DIRECT EXAMINATION BY MR. FRASER:

Q. What is your occupation, Mr. Willins? A. At the present time?

Q. Yes. A. I am connected with a brokerage firm.

Q. You are in the brokerage business? A. Yes.

Q. You were, at one time, employed by Solloway Mills & Company Limited? A. Yes.

Q. When did you first join Solloway Mills & Company Ltd.?

A. In April, 1928.

Q. What were your duties at that time?

The Court: Q. April, when? A. 1928. I was employed on the order desk.

Mr. Fraser: Q. Did your duties subsequently change? A. Yes.

Q. Well, what duties did you eventually take on? A. In the latter part of 1928, approximately October or November, I was ap-

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pointed chief trader for the Vancouver office.

Q. Chief trader for the Vancouver office? A. Yes.

Q. Well then, how long did you remain a trader at the Vancouver office? A. Until such time as the office finally closed.

Q. That would be roughly, early in 1930? A. In 1930, yes.

Q. Now, just generally, tell his lordship what your duties were as chief trader of the Vancouver office? A. The object of my position was to see that all the client's orders, both buys and sells, were filled, and to buy and sell stocks from time to time at advantageous times for our house. 10

Q. When you say to buy and sell at advantageous times to the house, I would like you to explain to his lordship when an advantageous time occurred to buy for the house? A. Well, if the stock looked particularly low in price on the Exchange it would be an opportune time possibly to purchase same. Likewise, if a stock was selling at what might be termed an inflated value, that was an opportune time to sell the stock.

Q. Now, to illustrate, Home Oil might go to \$20, and if you considered that an inflated value you would sell that stock for the house? A. That is right. 20

Q. At \$20? A. Yes.

Q. And the house would receive \$20 if you sold it over the Exchange, would it not? A. Yes.

Q. And if that stock dropped to \$10 you would buy it in, or you would buy it in a deflated value, rather? A. Yes, that would be the object; always trading with the idea of a profit.

Q. And the difference between what you sold it at and what you bought it in at would be the profit for the house? A. That is right.

Q. I think you told me on discovery— 30

Mr. Farris: Well, now—don't.

Mr. Fraser: Q. Well, was there a large accumulation of shortages? A. Yes, there was an accumulation of shortages.

Q. How were those shortages created? Was it from buying and selling to the house? I will put it this way: Were there occasions when stocks were not filled for the clients over the Vancouver Stock Exchange? A. Yes.

Q. And those shares would be sold to the clients from the house account? A. In that particular case, yes.

Q. Do you mean orders to purchase? A. Yes. 40

Q. Orders to purchase given by clients were not filled on certain occasions over the Vancouver Stock Exchange? A. Yes, that is correct.

Q. And those client's orders were filled from your house account? A. Yes.

The Court: Q. Are you familiar enough with the books to show me transactions in the books? A. No, your lordship, I am

not. I had nothing to do at all with the books; never did, while I was in the Vancouver office.

Mr. Fraser: Q. And that transaction would—

Mr. Farris: Don't lead the witness.

Mr. Fraser: Q. Well, would that transaction cause a short position? A. Yes, it would.

The Court: Is Mr. Cooper in the room?

Mr. Fraser: I could have him here. Of course, I can give your lordship plenty of illustrations from the synopsis of the sales direct
10 from the house.

The Court: Very well.

Mr. Fraser: Q. You remember your evidence on discovery with regard to agent brokers? A. Yes.

The Court: Would you be entitled to—very well.

Mr. Farris: Well, my lord, I don't think it is right to cross-examine on his discovery.

Mr. Fraser: I am not cross-examining.

The Court: What is your question? Please go on to your question. Is it necessary to refer to what he said on examination for
20 discovery?

Mr. Fraser: Only for this reason, I feel this witness is going to tell me what he believes to be the facts.

The Court: Well, you go on, ask him.

Mr. Fraser: Yes, but I submit I should be allowed a certain amount of latitude in examining this witness. I have attended the trials at Toronto of Solloway-Mills, when Crown counsel in the criminal cases were allowed a great advantage.

The Court: Mr. Fraser, if you please, will you go on with the next question.

30 Mr. Fraser: Q. I asked you if you remembered your evidence on discovery, Mr. Willins, with regard to agent brokers? A. Yes.

Q. You remember that? A. Yes.

Q. And what you said was—

The Court: Well, what is your question now?

Mr. Fraser: I am going to use all that evidence.

The Court: Well, that may not be before me.

Mr. Fraser: Yes, my lord.

Q. Well, you employed agent brokers, didn't you?

Mr. Farris: Don't lead the witness.

40 Mr. Fraser: Q. Were agent brokers employed to your knowledge? A. Yes, we employed different brokers to execute orders for us, yes.

Q. And were buying and selling orders given to those agent brokers? A. Yes.

Q. For your house? A. yes.

Q. And did that create a short position when that was done?

A. Well, it just depends. A buying order, it would create a long

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position; if it was a selling order it would not necessarily create a short position if we happened to be long in that particular stock.

Q. I want you to take a case of this kind. You have a buying order for 1,000 shares of Home Oil for Mr. Smith, a client, and you gave a selling order to an agent broker, Denbigh-Dickinson. You would go on the stock exchange, buy that stock from Denbigh-Dickinson, and I find in the house confirmations for that day a selling confirmation for the same number of shares to Mr. Smith, and a sale off the exchange to the agent broker, Denbigh-Dickinson. If I find those confirmations on that day does that show that the house went short? 10

Mr. Farris: Just what does it show?

Mr. Fraser: Q. What does it show? A. Well, the ultimate result of a transaction of that nature—

The Court: Q. What does it show? A. The ultimate result of a transaction of that nature would show that the firm, Solloway-Mills, had sold some of the so-called Home Oil to one of their clients.

Mr. Fraser: Q. That who had sold what? A. Solloway-Mills had sold to one of their clients— 20

Q. From their house? A. Yes.

Q. Well, can you give his lordship an illustration that actually took place while you were trading of the employment of these agent brokers, where the result was that the house went short? I have given you that illustration. A. I think that is a fair illustration that you gave, Mr. Fraser.

Q. And that was done regularly, was it, during 1928 and 1929? A. Particularly during 1929, during the 'bull' market, yes.

Q. Now, from the fall of 1928 and during 1929—By the way, who was chief trader for Canada? A. George Kimberley. 30

Q. Were you in touch with him from time to time? A. Yes, I was.

Q. By what means? A. The usual means that we had available, telegrams; the usual means we had available, which was our telegraph system. We had private wires in the office.

Q. Did he ask for information from time to time?

Mr. Farris: Well, now.

The Court: Ask him what the practice was.

Mr. Fraser: Q. Did you receive any letters from Mr. Solloway from time to time? A. Yes. 40

Q. Relevant to trading matters? A. Yes, on general matters, yes, relative to trading.

Q. And any other communications by any other means? A. Yes, I have had wires from him, I suppose. I don't recollect any specific ones.

Q. Relative to trading? A. Yes, it would be relative to trading.

- Q. Any wires relative to the position of the house in Vancouver stocks? A. No, I could not specifically say that, no.
- Q. You don't recollect? A. No, I don't recollect. It is two years ago now.
- Q. Was Mr. Solloway ever in Vancouver? A. Yes.
- Q. Say from the time you became trader. When did you first become trader? A. In October or November, 1928.
- Q. Say, from October or November, 1928, to November, 1929, did you ever see Mr. Soloway in Vancouver? A. Yes.
- 10 Q. Roughly, how many times? A. I don't know. I suppose—I would not swear it was—I suppose twice or three times during that period. I would not be sure of that.
- Q. Did Mr. Solloway ever speak to you personally? A. Yes.
- Q. In the Vancouver office? A. Yes.
- Q. Pertaining to matters of trading? A. Yes, we had discussed trading in the Vancouver office, yes.
- Q. Have you discussed the position in the Vancouver office in their various stocks with Mr. Solloway. A. Yes.
- Q. Did Mr. Solloway know that the Vancouver office was short
20 in a number of active stocks? A. I believe he was aware of the—
The Court: The question in that form is objectionable.
- Mr. Fraser: Q. What conversations, if any, did you have with Mr. Solloway relative to the Vancouver office house account being short in active stocks? A. Well, it was general. He would naturally be interested in what we were doing out here, and he would ask me certain questions relative to the stocks that we were trading in, and I used to endeavour to give him the information when he asked for it.
- Q. Now, did you see Mr. Solloway anywhere else? Were there any executive meetings of the Vancouver office? A. I would
30 not call them executive meetings.
- Q. Well, I would like you to tell me if you had any other meetings then except these meetings in your office? A. Yes, I saw Mr. Solloway on what you might call social visits at his hotel.
- Q. Alone? A. I have seen him alone there, yes.
- Q. Pertaining to business? A. Yes.
- Q. Business discussion? A. Yes.
- Q. Where? A. In the Vancouver Hotel.
- Q. Whereabouts in the Vancouver Hotel—in the rotunda or
40 Mr. Solloway's suite, do you mean? A. In Mr. Solloway's suite, yes.
- Q. And what was discussed there? A. Well, we discussed trading, general market conditions.
- Q. Did you produce on that occasion the Vancouver house account? A. No.
- Q. Did you produce any documents showing the trading position of the Vancouver house account? A. Quite possible that I had a recap. or summary of our position, yes.

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Q. Would you have the position of the Calgary house account.

A. No.

Q. The Toronto house account? A. No.

Q. Did you have any data covering the house account? A.
 No.

Q. The Toronto house account? A. No.

Q. Did he have the Vancouver house account there himself?

A. Only the information that I would give him.

Q. Had he any other material dealing with the Vancouver house
 account? A. Well, he had a general report on all the system which 10
 was made up by Kimberley.

Mr. Farris: Q. Well, just tell what you saw yourself, that he
 produced to you. A. Well, I am referring to that, Mr. Farris.

Mr. Fraser: Q. What was that he produced—a general report
 of the whole system? A. Yes, he had a report on the whole system,
 the position of the whole system, yes.

Q. And what was the position—

Mr. Farris: Well, now, when was this conversation? I want
 this witness tied down to date and time, and the exact contents of 20
 the document.

Mr. Fraser: Surely my friend can cross-examine this witness
 later.

The Court: Q. Give the approximate time, as near as you can.

A. Well, I don't remember the time, your lordship. It was
 around, I imagine, in August or September in 1929, and on another
 occasion earlier on in the year. I speak of 1929. This is two years
 ago, and there is lots of things happened since then.

Mr. Fraser: Q. Well, now, I want the witness to go back on
 this question. That is a general statement. Do you say that indicated
 the position of the defendant company throughout Canada? A. 30
 Well, Mr. Solloway had the position. We discussed the matter of
 closer co-operation from time to time on these matters, and naturally
 Mr. Solloway had the—he had the information relative to the other
 offices, and it was with the idea of helping me that these discussions
 took place, but specific words or specific figures or anything like that,
 I cannot remember that now.

Q. Did you see this statement that was produced? A. Yes,
 I was surprised of the effect of all we were talking about. I cannot
 remember for certain, but they were—

Q. Well, what was the position, from the papers you saw, in 40
 Canada in the most active stocks, or in all active stocks?

Mr. Farris: I object to that question. This man is attempting
 to prove what the contents of these documents were.

The Court: Well, they were mentioned apparently in conversa-
 tion. Mr. Fraser is leading up to the statements that took place be-
 tween the two parties, with documents before them, as I recall it.

Mr. Farris: Well, that is my objection. I ask that my objection be noted.

The Court: You can ask him about the statement.

Mr. Fraser: Q. You stated that in conversations the position of the defendant company came up? A. Yes.

The Court: What was said about the position?

Mr. Fraser: Q. Yes, what was said about the position of the defendant company throughout Canada? A. I don't recollect any particular comments, what was said about it, but the idea was—

10 Mr. Farris: Never mind giving ideas; just what was said.

Mr. Fraser: Q. Don't answer this, witness, until I put the question: Could you tell from the documents that were present, that were produced by Mr. Solloway, and from your conversation, the position of the defendant company in active stocks? A. No, I could not specifically say that.

Q. Are you able to say whether the defendant company were long or short?

Mr. Farris: No, I object to that; that is cross-examination. My learned friend has got his answer and he cannot cross-examine his
20 own witness.

The Court: Well, I will allow the question as to what the position was.

Mr. Fraser: Q. Are you able to say whether the position was long or short? A. Yes.

Q. What was it? A. It was short.

Q. Now, are there any other conversations you had had with Mr. Solloway in Vancouver? A. No, I don't recollect any other ones.

Q. There is nothing further you can recollect that may have
30 been said to you by Mr. Solloway in Vancouver about any matters pertaining to trading? A. No.

Q. About any matters that would bear on this action? A. No.

Q. Are there any documents, or have any documents been produced than what you mentioned that would bear on this action? A. No.

The Court: Produced when, do you mean?

Mr. Fraser: Q. At any of these interviews with Mr. Solloway? A. No, I don't know of anything else.

Q. You were down to Calgary, I think you told me, on your
40 discovery. Do you remember when that was? A. Yes, I was in Calgary in either September or October in 1929.

Q. How long were you in Calgary? A. Two weeks.

Q. Two weeks? A. Yes.

Q. Who was the manager of the Calgary office at that time?

A. Mr Mills.

Q. What were you doing in Calgary?

The Court: That is the defendant Mr. Mills?

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Mr. Fraser: Q. The defendant, Mr. Harvey Mills? A. Yes.

Q. Who asked you to go down to Calgary? A. I went down there to relieve Mr. Bury.

Q. Who is Mr. Bury? A. He was a trader in the Calgary office.

Q. Who asked you to go down to Calgary? A. I don't specifically remember. I had instructions in the Vancouver office to go down there. I don't remember who gave the instructions.

Q. You say to relieve Mr. Bury? A. Yes.

Q. What duties did you assume down there? 10

The Court: Well, he said that Mr. Bury was the Calgary trader.

Mr. Fraser: I am sorry, I didn't hear, my lord.

Q. That is right is it? A. That is correct.

Q. And you were trader in the Calgary office for two weeks?

A. Yes, during the time Bury was away.

Q. In complete charge of the trading? A. Yes, I suppose I could put it that way. There was nobody else interfered with me.

Q. Did you see the Calgary house account during that period?

A. Yes, I did.

Q. Daily? A. No, I would not say daily. It was available, 20 if I cared to look at it.

Q. Well, do you remember specifically looking at it? A. Yes.

Q. What was the position of the Calgary office in active stocks—long or short, are you able to say? A. I am not able to say, Mr. Fraser, no. It is—

Q. Are you able to say whether, at this time, whether they were long in any stocks? A. No.

Q. Are you able to say whether they were short in any stocks?

A. Yes, they were short in some stocks.

Q. They were short in some stocks? A. Yes. 30

Q. Did you discuss, while you were there—had you any discussion with Mr. Mills with regard to trading while you were there? A. Not—no, I don't recollect having any specific conversation with him relative to that, no.

Q. Any conversation with Mr. Mills regarding the Calgary house account? A. No, I don't recollect anything, no. It is quite possible that we talked about the values of the companies, or at least the values of the stocks of companies and so far as they were producing; and there was considerable development in Turner Valley at that time, and it is quite possible we discussed relative to them, but relative 40 to the actual position I certainly recollect no conversation.

Q. Did you ever see Mr. Mills looking at the Calgary house account? A. No.

Q. Was Mr. Solloway in Calgary while you were there? A. No.

Q. Have you ever had any discussion with Mr. Solloway in Calgary? A. No, not during that particular time.

- Q. I mean while you were trader there. Had you, any time prior to that? A. No.
- Q. Had you at any time material to this action? A. No.
- Q. Have you gone east at all in connection with the business of the company? A. Yes, I was in—down to Toronto, yes.
- Q. When? A. October, 1929.
- Q. October, 1929? A. I believe that is the time—I am not positively sure of that. It was either September or October.
- 10 Q. How long were you in Toronto? A. Approximately ten days.
- Q. Who asked you to go down to Toronto? A. I believe it was the same condition under which I went down to Calgary. I got instructions from the office, from whom I couldn't tell you.
- Q. You got instructions from the Vancouver office? A. Yes.
- Q. Were any instructions given—you mean from Mr. Macdonald, the manager? A. I would not be sure of that. It would likely be just a memorandum on my desk, supposed to go down to Toronto on a certain date.
- 20 Q. Did you know why you were going down, or were you told why you were going down? A. I believe it was to give me a better insight into the business.
- Q. And you went down subsequently, did you? A. Yes.
- Q. Who did you see in Toronto? A. I saw the Toronto office, the heads of the different departments with Mr. Kimberly.
- Q. Were there any particular meetings, were there any gatherings there at all in Toronto that you were invited to, any executive meeting? A. Oh, we had some discussion down there, yes.
- 30 Q. Do you remember any particular discussions you had. The Toronto office is on Yonge Street, isn't it? A. Yes, I believe it is. I don't know Toronto very well. That was the first time I was down there, and I believe it was Yonge Street where the office was.
- Q. Did you have any meetings in Yonge Street? A. No.
- Q. Did Mr. Solloway live in Toronto? A. No.
- Q. Was he living there then? Was he there when you went down there? A. Yes, he was there.
- Q. Mr. Solloway was in Toronto at that time? A. Yes.
- Q. And Mr. Mills? A. No.
- The Court: Q. What is the answer? A. No.
- 40 Mr. Fraser? Q. Did you see Mr. Solloway in Toronto? A. Yes.
- Q. Where was he staying?
- The Court: Well, does that assist me, Mr. Fraser?
- Mr. Fraser: I think so, my lord. I don't know.
- Q. I am trying to fix the time, if I can find out, they had a meeting? A. He was staying at the King Edward Hotel.
- Q. Did you see Mr. Solloway in the King Edward Hotel? A. Yes.

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Q. Anybody else present? Do you remember any meeting with Mr. Solloway and anybody else being present? A. Yes, we had a meeting there, yes.

Q. Who? A. Mr. Kimberly and Mr. Parkes and myself and Mr. Solloway.

Q. Who is Mr. Parkes? A. He was Kimberly's assistant in Toronto.

Q. Mr. Solloway, Mr. Parkes, Mr. Kimberly and yourself? A. Yes.

Q. Anybody from Calgary? A. No. 10

Q. By the way, did you take the Vancouver house account down with you when you went? A. No.

Q. Was the Vancouver house account at the meeting? A. No, not the house account.

Q. Was there any other document then there relative to the Vancouver house account? A. Yes, they had a statement of the Vancouver position down there, yes.

Q. Produced at the meeting? A. Yes.

Q. Was the Calgary house account there? A. I wouldn't swear to that. 20

Q. Was there any statement showing the position of the Calgary house account there? A. No, I couldn't swear to that either.

Q. Was the Toronto house account there? A. Yes, that was there, yes.

Q. That was there? A. A statement of it. There were no books.

Q. A statement of the Vancouver house account, and you are not sure about Calgary? A. No.

Q. And a statement of the Toronto house account? A. Yes.

Q. Did you have a house account showing the total position of the three branches—by the way, you only dealt, you only traded on three exchanges, Vancouver, Calgary and Toronto? A. No, we were members of the Buffalo at the time and Seattle. 30

Q. Did you maintain a house position in Buffalo and Seattle? A. I could not tell you, I had nothing to do with it.

Q. I beg pardon? A. I could not tell you, I had nothing to do with it.

Q. Did you have—did the defendant company have a house account covering their consolidated position? A. I would not be sure of that. They had the statement there of the consolidated position at this particular time you are talking about. 40

Q. On this interview they had that, a statement showing their consolidated position? A. Yes.

Q. Was the position of the Vancouver house account discussed at that meeting? A. Yes.

Q. What did it show, with respect to being long or short? A. It showed short and long. Some stocks long and some stocks short.

Q. What stocks did it show long? A. I couldn't specifically tell you, Mr. Fraser. I don't remember now.

Q. Did it show stocks short? A. Yes.

Q. What about the Toronto house account? A. The same would apply there, I suppose. I don't recollect the figures now.

Q. Well, do you recollect prepared statement showing the Toronto position?

Mr. Farris: He has told you.

Mr. Fraser: Q. Do you recollect.

10 Mr. Farris: Now, my lord, surely that is cross-examination of this witness.

The Court: Mr. Fraser, you should exhaust the memory of this witness further, should endeavour to without leading him, and then you are at liberty to direct his attention to any particular topic.

Mr. Farris: I submit when my friend gets an answer, and when he says he doesn't recollect or doesn't know, that my friend is not in a position to cross-examine the witness on that. He must take the direct answer given and not cross-examine, which he is attempting to do now.

20 The Court: Mr. Fraser, you are not at liberty to cross-examine, Mr. Fraser: I appreciate that, my lord.

Q. Now, first, going back to these statements. You said there was a statement there covering the Vancouver position. That is right, isn't it? A. Yes.

Q. Well, for what period? A. Well, it would be as up to date as it would be possible to have it up to date in the month prior to this discussion. There would be no object in having it there if it wasn't.

Q. And that applies to the other statements that were produced there, does it? A. Yes.

30 Q. Generally speaking, what would you say was the position of the defendant company from the conversations and from the documents produced. Put it this way: Did you know the practice, or did you mention the practice at that meeting, or was it discussed, from the conversations and from the documents produced, of the defendant company with respect to stocks?

Mr. Farris: That is not a proper question. He must tell what the conversations were.

40 The Court: If the counsel finds that he has exhausted, apparently, the memory of the witness, and still not exhausted the particular topic, I think the rule is clear that he is then entitled to direct the attention of the witness to any particular topic, trying to avoid leading him.

Mr. Farris: That is not my objection at all. He is not asking him now as to the topic, he is asking him of the impressions that he gained from conversations.

The Court: You may not ask about impressions, Mr. Fraser.

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Mr. Farris: Well, I say he can direct to the topic, but he must ask as to what was said.

The Court: Read the question, Mr. Reporter, please.
(Reporter reads last preceding question).

The Court: I will allow that question. The question asked as read by the stenographer may be put then. Did you hear the question?

Mr. Fraser: I will put the question to you now having been read by the stenographer. That is not quite definite, I think I should put the question in a proper form so that we know what it is.

Q. From the conversations that you had at that meeting, and 10
from the documents which were present at that meeting, are you able to state to his lordship what the policy or practice was of the defendant company with respect to active stocks?

Mr. Farris: Now, there is the question that I am objecting to. That must be what impression he formed from the conversation.

The Court: Well, I disallow the question in that form, Mr. Fraser. If you please, the witness is speaking of the time when certain parties are there, and certain documents are there. Ask him, to begin with, what was said, please, Mr. Fraser, and then you can direct his attention then to any particular topic. 20

Mr. Fraser: Q. To the best of your ability, witness, what was the discussion at this meeting?

Mr. Farris: Not what was the discussion, what was said?

Mr. Fraser: What is the difference between discussion and conversation?

Q. What was said at this meeting in your presence by Mr. Solloway or Mr. Kimberly or—what was this other man's name? A. Mr. Parkes.

Q. Mr. Parkes. Were you all present together? A. Yes.

Q. What was the discussion between you? A. We had a 30
general discussion on—

The Court: Q. Well, tell me, please, what was said?

A. Your lordship, I could not give the specific conversation. We had a discussion on the matter of trading. The idea was to trade and have some unanimity or continuity between the different offices.

Q. Well, tell me so far as you can, what was said? A. That is about the limit of my recollection of it. I can only go into it in a very general way.

The Court: Now you may direct his attention if you wish.

Mr. Fraser: Q. Was there any discussion on the matters of 40
trading? A. Yes.

Q. Was there any discussion on the position of the defendant company in various active stocks? A. Yes.

Q. Are you able to tell—

The Court: What was said, then, if you please?

Mr. Fraser: Q. What was said about the position? A. No, I would not—I could not answer that question. I could not make a

statement under oath that I would be right on it. I don't remember.

Q. Are you able to say whether it was stated, whether it was discussed at that time, whether the house was long or short? A. Yes.

Q. Was the house long or short in all active stocks?

Mr. Farris: Now, that is an entirely different question. He must state what was said.

The Court: Put it the other way.

Mr. Fraser: Q. Had you any discussion about the short position? A. Yes.

Q. Is it the case—

The Court: What were they. What was the discussion as to the short position?

Mr. Fraser: Q. What was the discussion as to the short position?

Mr. Farris: What was said?

A. I don't remember of any specific conversation relative to that. The matter was on trading, which naturally took in all those points. I can only give you the information in a general way as far as my recollection is.

Mr. Fraser: Q. Is it the case that the Vancouver office was short in all active stocks?

Mr. Farris: He has answered it already.

Mr. Fraser: I am just coming up to that.

Mr. Farris: This witness has sworn that the statement showed that the Vancouver house was long and short.

Mr. Fraser: Not exactly, now. He says the statement showed short in all active stocks.

Mr. Farris: This witness has said that the statement he discussed with Solloway showed that it was both long and short in stocks.

The Court: I will allow the question as to what was said between this witness and Mr. Solloway as to the short and long position of stocks:

(Reporter reads: "Is it the case that the Vancouver office was short in all active stocks").

The Court: I will allow that question.

A. Yes, they were short in the majority of active stocks.

Mr. Fraser: Q. Did you draw that to Mr. Solloway's attention when you were in Toronto? A. No.

Q. Would he know that from the records that would be before him?

Mr. Farris: That would be—?

Mr. Fraser: Q. Well, were there records before Mr. Solloway that would show that? A. Yes.

Q. Did you see the records which were produced covering the Toronto house account? A. Oh, yes, I saw them.

Q. Did they show a short position? A. I can only answer

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that in exactly the same way as I answered the other one.

Q. Take the majority of the Toronto stocks. Did they show a short position?

The Court: Of course this document, apparently, Mr. Farris, lay before them at the time.

Mr. Farris: I cannot imagine cross-examination better illustrated than is being done with this witness right now. This witness has not been declared a hostile witness, and my learned friend is cross-examining this witness on these matters. I cannot submit a better illustration of cross-examination than my learned friend is following. 10

The Court: Mr. Fraser, you have not made any request that this witness should be treated as a hostile witness.

Mr. Fraser: I think your lordship has quite properly kept me within the points.

Mr. Farris: Questions can be direct questions and still be cross-examination. If there are questions which go to try to make a witness give any answers different to the one he has already given, that is cross-examination. Cross-examining, leading questions, is not necessarily part of cross-examination. Many questions in cross-examination are asked as direct questions. But as I understand cross-examination it is an examination which tends to change certain answers the witness has given. Now this witness has given certain answers— 20

The Court: Now, what is the question?

(Reporter reads question: "Take the majority of the Toronto stocks. Did they show a short position").

The Court: I will allow that question.

Mr. Fraser: Q. What is your answer? A. My answer is this, your lordship, they were short and long stocks.

The Court: Well, as to the majority of the stocks? A. The majority of the stocks showed short. 30

Mr. Fraser: Q. Can you tell me at this time the name of any Toronto stock that was long? A. No.

Q. I beg your pardon? A. No.

Q. Did you say there was a statement covering the Calgary—

Mr. Farris: He said he did not know of any statement.

Mr. Fraser: Q. Was there any document before the meeting showing the position of the defendant company in Calgary?

Mr. Farris: He has told you already that he did not know of any such statement.

The Court: Have we had that? 40

Mr. Fraser: I did not know that; with all these interruptions.

Mr. Farris: My friend asked the witness if the Calgary house account was there, and if there was any record or statement of the Calgary account there, and the witness replied that he did not know, he could not state.

Mr. Fraser: Q. Was there any document at this meeting showing the position of the Calgary house account? A. I don't recollect

any document of the specific position of the Calgary house account, no.

Q. What do you mean, the specific position? A. Well, there was a statement there covering the consolidated positions.

Q. Did that statement show Calgary? A. No, it showed the consolidated positions.

Q. Now, this consolidated position—in the majority of active stocks was the defendant company short? A. They were long and short; long and short on different stocks. I don't remember any
10 specific stock.

Q. Can you recall on the majority? A. No. I would not swear to the majority, no, not on the consolidated position.

Q. Can you give me the name of one stock in which they were long in the consolidated position? A. No, and likewise I would not swear to one stock they were short.

Q. Now, I want to ask a few questions. First, did Mr. Solloway take a very active part in these discussions. I am talking about the Toronto ones? A. Yes, Mr. Solloway took a part in it like the rest of us. We were all talking about the matter.

20 Q. Would it be fair to say he was actively interested? A. Yes.

Q. Now, coming down to this house account, witness, you state that the defendant company was short in most—

Mr. Farris: What house account are you talking about?

Mr. Fraser: The Vancouver.

Q. You state the defendant company was short in most active stocks in Vancouver? A. As far as the Vancouver office is concerned, yes.

Q. Now, is it fair to say that you are—I want the meaning of this word "short" explained.

30 Mr. Farris: Yes, ask him if he knows what "short" is.

The Court: Well, you would say you did, wouldn't you?

The Witness: Yes, your lordship.

The Court: Well, now, the next question.

Mr. Fraser: Q. What does it mean? A. Well, from a purely brokerage point of view "short" means, as the result of selling some particular securities or stocks with the intention, which you are compelled to have to buy in at some future date.

Q. You have sold stocks you have not got? A. That is the right idea, I imagine.

40 Q. Now, to illustrate. I am assuming that you were short 10,000 shares of Grandview. Is it true to say that those 10,000 shares were owed by you, Solloway Mills, either to customers or other brokers? A. Yes.

Q. They would be short 10,000? A. Yes.

Q. And it was your practice—was it your practice to make buys in the house account? A. They were made daily. I had nothing to do—

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Q. But you knew they were made daily? A. Yes.

Q. And this short position that you had in certain stocks, was that after you had made allowances for all shares that you might get from other brokers or from the clearing house? A. I don't follow that, Mr. Fraser.

Q. Well, I am stating, taking this case where you were short 10,000 shares of Grandview? A. Yes.

Q. I say that shortage of 10,000 in those, even after allowing for shares to be received from other quarters—you made allowance for shares to be received from the clearing house or other brokers, and then on the one side you make allowance for shares to be received from other quarters, the clearing house, and other shares to be delivered to the clearing house and other brokers, and the amount is the shortage. Is that right? A. Yes. 10

Q. Let us assume that you are short 10,000 shares of Grandview at a time. Does that mean that you have received the money for those 10,000 shares you have sold? A. It just depends, Mr. Fraser. Supposing we had borrowed them from another broker, naturally that other broker, in loaning that stock to us, would want the market value, which would be \$1.00, therefore we would have sold them for \$1.00 which would be \$10,000, which would be turned over to the broker from whom we borrowed them, for his protection. 20

Q. Those stocks would be on hand in the house account? A. It just depends. We borrowed a lot of stocks from other brokers for the purpose of trading.

Q. Those would be stocks on hand, would they?—

Mr. Farris: My friend should confine himself to the rules of evidence.

The Court: Questions tending to make the witness say something different to what he has said would be along the line of cross-examination. 30

Mr. Fraser: I am not trying to do that. I am saying is this not a fact as well. That is not contradicting. What he says and what I say may be absolutely true.

Q. The stock that you had on hand in your cage, would those stocks be owed to clients or other brokers.

Mr. Farris: What is that question?

Mr. Fraser: Would stocks that you have on hand be stocks that you had borrowed from the brokers. Put it this way.

Q. We have got Grandview, and I am assuming that you are short in Grandview. Now, if you have any Grandview stock in your cage, it is not a fact—or does that stock belong to brokers or other customers? A. Yes, it belongs to other clients or other brokers, yes. 40

Q. Do you know whether the defendant company was long or short in Grandview?

Mr. Farris: In Vancouver.

Mr. Fraser: Q. In Vancouver; in the Vancouver office? A. Yes.

Q. What was the position? A. It varied, Mr. Fraser.

The Court: Q. What was that? A. It varied.

Mr. Fraser: Q. Well, were they ever short to your knowledge? A. Yes.

Q. Was Theo. Frontier & Company, to your knowledge, an active trader in Grandview? A. Well, I don't specifically remember any orders from Frontier. They were trading the same as any other client with us. I do remember that in a few of the orders they did place with us they were active traders in Grandview.

Q. Without giving me the exact number of shares, I want you to state to the best of your recollection the maximum number of shares they were short in Grandview? A. I could not give that.

Q. Referring again to the house account, witness, you have got stocks coming in from brokers, have you not, in making up this house account—By the way, you had a daily trading sheet, hadn't you? A. Yes.

Q. Prepared by the securities department? A. Yes.

Mr. Fraser: I would ask my friend to produce that for me.

Mr. Farris: My lord, I am not producing this. This is a document which is in our possession only by virtue of the fact that it was a document put in on some other trial, and we are preparing a bill for, and we only have the document for that purpose. I am not producing it; I am admitting it as being a document of the defendant company.

The Court: Do you want that marked, Mr. Fraser?

Mr. Fraser: Q. Is that a sample of the trading sheet you had? A. It was the same style, yes, to what I used to receive.

Q. And what was the purpose of this trading sheet? A. It showed the stocks—the purpose of the trading sheet was to show the stocks, and the nature of the stocks to be received, and the stocks to be delivered from the Vancouver office at the close of business each day.

(DOCUMENT MARKED EXHIBIT NO. 85)

Q. And why did you need a trading sheet of that description?

Mr. Farris: He hasn't said he needed one yet.

Mr. Fraser: Q. Did you need the trading sheet to carry out your duties as trader? A. That was an innovation as far as I was concerned, of Mr. Kimberly's.

Q. Was it needed in connection with your trading? A. Yes, I found it useful insofar as—supposing Frontier, for example, or any other client, put in a large selling order, I could tell from that sheet the stock on hand, and knowing that, I had to deliver through the clearing house, and I could tell whether it would be advisable to

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look to some other office for deliveries. I used it for trading information too.

Q. For the house? A. Yes.

Q. This exhibit shows stocks on hand, stocks to be received, that would be stocks to be received from brokers? A. Brokers.

Q. Clearing house? A. Yes.

Q. Other offices? A. Yes.

Q. And then stocks to be delivered. That would be delivered to whom? A. To brokers, to the clearing house, or to other branch offices.

Q. And would the house account, if there was a shortage, take up the balance? A. If the bookkeeping was correct, and there were no errors it should. It should balance out the difference, yes.

Q. Have you had any conversation with Mr. Mills other than while you were in Calgary.

Mr. Farris: He asked him that already. He has already gone over that with the witness once.

Mr. Fraser: Q. Have you discussed trading with Mr. Mills in Vancouver? A. No, I cannot say that I have.

Q. In Toronto? A. No.

The Court: I have a note, Mr. Fraser. He does not recollect any conversations with Mr. Mills re house account. That was the time I think he was in Calgary.

Mr. Fraser: Are there any conversations that you have had with Mr. Mills that you have not disclosed here, relative to this action? A. No.

CROSS-EXAMINATION BY MR. FARRIS:

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Q. Mr. Willins, you could be short on stock and yet have shares for every stock and every share you were short, could you not? A. I don't understand you, Mr. Farris.

Q. I will put it this way: Supposing I want to go short in a stock. I can go to Mr. McKenzie and borrow 10,000 shares, of say, Grandview, take it in to you and sell 10,000 Grandview. I am short, am I not? A. That is right.

Q. 10,000 shares. And I borrowed the stock from somebody else for the purpose of making that sale? A. Yes.

Q. Now, that is a very common practice in brokerage offices, is it not? A. It is a proper practice.

Q. And those shares borrowed would not show in the house account at all, would they, because you were short that many shares? A. Yes.

Mr. Fraser: Well, just ask him.

A. You mean the house account?

Mr. Farris: Q. Yes, it would not be shown in the house account it would just show you short? A. It would show short 10,000 shares in the house account.

Q. Suppose you went and borrowed from, say R. P. Clark & Company 10,000 of Grandview and sold those over the Exchange, your house account would show you as being 10,000 shares of Grandview short? A. Yes.

Q. And yet as far as your house is concerned those shares that you have borrowed from Clark, you have put up the full money for them and every single requirement of the Stock Exchange, or the Stock Exchange rules would have been complied with? A. That is correct.

10 Q. And the client's position would in no wise have been affected.

Mr. Fraser: What client?

Mr. Farris: A client of your house would be in no wise affected?

A. Not in that particular transaction, no.

Mr. Fraser: That is a legal question for your lordship to decide.

Mr. Farris: Q. Now, did you have anything to do—you did at one time—with the sales organization of Solloway Mills, did you not? A. Yes, the first part of my employment.

Q. And you were familiar with their policy in reference to the sales, were you not? A. Yes.

20 Q. That is they had floor men? A. Yes.

Q. I am putting this question to you: Was it not the policy of Solloway Mills, and their instruction to all of their floor men, not to use what we might call high-pressure methods with those desiring to buy or to advise clients as to one stock or another to buy. A. Yes, I think it certainly was the policy of Solloway Mills as far as the Vancouver office was concerned, and that is the only office I am able to speak of.

Q. That the clients should get their own information and buy as they pleased without any direction from Solloway Mills? A. Yes.

30 Q. Now, you spoke to my learned friend with reference to cooperation with Kimberly, from the Vancouver to the Toronto office. I suppose you know what arbitrage is, Mr. Willins? A. Yes.

The Court: Is that a new term?

Mr. Farris: I will ask the witness to explain that, my lord.

A. Well, it is the buying of stocks on one market and the selling of them on another market with the intention of making a profit.

Mr. Fraser: For whom: a profit for whom? A. For the particular individual handling the transaction.

40 Mr. Farris: That is a method employed by brokerage houses and by clients of brokerage houses, is it not? A. Yes.

Q. That is, for instance, take this market, this Vancouver market? A. Yes.

Q. If a stock were selling at a high price on the Toronto market we will say—we will take Home Oil, for instance—Home Oil would be selling on the Toronto market at say \$20. You felt that it was a strong market and that there was not the same interest in Vancouver. You might sell at the opening of the market there, eight o'clock Van-

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cover time, on the Toronto market, say a thousand shares of Home Oil at \$20. A. Yes.

Q. Hoping that when the Vancouver market opened that you would get a lower— A. That was the intention.

Q. And if the Vancouver market opened at \$18 you would endeavour to buy 1000 shares? A. At \$18.

Q. At \$18, to cover what you had sold in Toronto? A. Yes.

Q. There is a big volume of business done that way, is there not, Mr. Willins? A. Yes, especially during an active market.

Q. And during your period of trading you did a great deal of 10 arbitrage, didn't you? A. Yes, we did considerable.

Q. Mr. Willins during the market of 1929 when that rush was on the office of Solloway Mills was a terribly congested, crowded place? A. Yes.

Q. I mean more like a mad house than anything else at times? A. Yes, that is true.

Q. You had in the office over 100 employees? A. Yes, considerably at the highest point.

Q. Around 150 employees? A. Yes.

Q. And the clients were in there jumping over themselves to get 20 their orders filled, were they not? A. Yes, that is correct.

Q. And after the exchange closed in many cases they would come to demand that their orders be filled regardless of where they were filled, did they not? A. Yes, that is correct.

Q. And in such cases they knew, of course, that the exchanges were closed, and they were given their confirmations knowing that it had not been bought on the Exchange? A. Yes, they should have known the condition.

Q. Now, you have already stated in discovery which is in evidence, that every endeavour was made by your company, or Solloway 30 Mills & Company to put all orders of their clients over the Exchange? A. Yes. I speak of the Vancouver office by myself there it was always my endeavour.

Q. Well, you will understand unless I ask you about other offices that I am not confining my remarks entirely to the Vancouver office. And I think you have stated that it was only to accommodate clients when it was physically impossible to get the orders through that the orders did not go over the exchange.

Mr. Fraser: I object to that.

The Court: Question allowed.

Mr. Farris: Q. Is that right? A. Yes, that is correct. It was always the intention to try and put everything through the exchange. 40

Q. Now, you were a member of that company, trading. Do you know of anything during your time, of any act done to the detriment of your client Solloway Mills?

Mr. Fraser: That is a point of law, my lord.

- Mr. Farris: I am asking if he knows of any.
- Mr. Fraser: I object to the question.
- The Court: Well, Mr. Farris, it is pretty far fetched.
- Mr. Farris: I am asking him if as a fact, if he knows anything detrimental to a client done by Solloway Mills. Clients were always given the best possible fills, were they not?
- The Court: Best possible what?
- Mr. Farris: Fills.
- Q. That is, there was an endeavour to get the best price for the
10 client when he wanted to sell, and the best price when he wanted to buy. That was the policy of Solloway Mills, was it not? A. Yes, that is so.
- Q. At any time to your knowledge while you were there, when clients demanded stocks were they not always supplied with the stocks?
- A. Well, I had nothing to do with the security department myself relative to the delivery of stocks, but at no time did it come to my knowledge that there was any complaint.
- Q. Through the failure to deliver stocks? A. Yes.
- Q. Now, the employment of agent brokers is a perfectly proper
20 procedure, is it not? A. Yes.
- Q. They are paid a commission which is allowed by the exchange?
- Mr. Fraser: Again, those are points of law. I am objecting.
- The Court: What is your question?
- Mr. Farris: I am asking about the employment of agent brokers, if that was a proper procedure according to Stock Exchange practice.
- The Court: I may ask you if there are rules of the Stock Exchange.
- Mr. Fraser: They speaker for themselves.
- 30 The Court: Have you the rule book?
- Mr. Farris: I haven't any rules with me, my lord.
- Mr. Fraser: I have.
- Mr. Farris: Those are the rules of the Vancouver Stock Exchange?
- Mr. Fraser: There are certain amendments noted, but my learned friend and I will agree on the proper dates?
- Mr. Farris: Q. You are familiar with these rules, Mr. Willins?
- A. Yes, in a general way.
- Q. And you have made a study of that in reference to agent
40 brokers? A. Yes.
- Q. You know that it is printed in these rules.
- The Court: Just allow me a second or so, Mr. Farris, please.
- Mr. Farris: Q. Well, I have got to find out first the reason for the employment of these agent brokers. That was on account of the large volume of business which you did, Mr. Willins, was it not?
- Mr. Fraser: Well, I object.
- The Court: Question allowed.

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A. Yes, that was the reason.

Mr. Farris: Q. Then the reason for the employment of agent brokers is that sometimes you did not want to disclose to the brokers just where you were buying or selling stocks, isn't that a fact, Mr. Willins? A. Yes, that would be another reason, too.

Q. Because when you went on the floor with a big order to sell, and they knew that you had that order to sell the other brokers might endeavour to beat you down in the price? A. Yes, that would be a good reason for using agent brokers, yes.

Q. And very often in order not to disclose your hand on the floor of the Exchange you will have agent brokers buying when you are selling, or vice versa, in order to get the best price for any selling or buying of stocks you are dealing with? A. Yes.

Mr. Farris: I refer your lordship to page 25, 27, section 1.

The Court: Just read that, please.

(Mr. Farris reads section in rule book).

(RULE BOOK MARKED EXHIBIT NO. 85)

Q. And all the agent brokers employed by Solloway Mills, of course, were active members of the Exchange, otherwise they could not trade on the Exchange for you? A. That is correct. 20

RE-DIRECT EXAMINATION BY MR. FRASER:

W. E. Willins,
Re-Direct
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Q. Now, first on the question of agent brokers—you employed agent brokers you told my learned friend when there was a big rush of business and you wanted to farm out orders? A. Yes.

Q. Were agent brokers employed when you wanted to cover up an accumulated shortage for the house? A. Yes, I gave buying orders from time to time to agent brokers when stocks were cheap and it looked like a judicious time to buy.

Q. For the house? A. For the house, yes.

Q. And that applies to selling for the house? A. Yes. 30

Q. My learned friend asked about borrowing a thousand shares or ten thousand shares from R. P. Clark. You remember that— A. I remember the question.

Q. That it was a perfectly proper thing to do, to borrow 10,000 shares from another broker? A. Yes.

Q. If 10,000 shares are borrowed from another broker would you be liable to refund those shares? A. Yes, they would be loaned on call; unless otherwise specified, in which event Mr. Clark—I believe that name was mentioned as an example—if he was in a position to call us any-time, when delivery would be made. 40

Q. And you were under obligation, of course, to refund those shares? A. Yes.

Q. And you had the shares on hand if you had not sold them?

A. Yes, that would be the natural supposition.

Q. Therefore, would your position in any way be affected by that transaction? I mean would your long or short position be in any way affected by borrowing 10,000 shares? A. Not if they had not been sold, no.

Q. If you had them on hand? A. Yes.

Q. Your position would not be in any way affected? A. No.

Q. And if you sold them you told my learned friend you would be 10,000 short? A. Yes.

10 Q. Now, I want to produce Exhibit 37, and it is admitted that these are—

Mr. Farris: What is this? This is not re-examination.

Mr. Fraser: Yes, it is arising out of the employment of agent brokers. Exhibit 57, page 74. It has been admitted that these are the buys for the house on that day.

Mr. Farris: I know nothing that has been admitted in this case.

Mr. Fraser: Well, it has been proved that this actually represents transactions in Grandview on that date. Those are the buys, 20,000 shares, the second item bought for 22½c.

20 Q. Do you see that? A. Yes.

The Court: Please ask him just what that means to him.

Mr. Fraser: Then I want to note in the sales on the Vancouver Stock Exchange, to Greathed, 15,000 shares at 22½.

The Court: Where is that?

Mr. Fraser: That is under sales on the Vancouver Stock Exchange, 15,000 at 22½; that is the third and fourth transaction? A. Yes.

Q. Now, must explain what those transactions represent.

30 Mr. Farris: My lord, just to draw your lordship's attention to page 74. I cannot see where that has any relation to Frontier at all; that there are any Frontier shares bought or sold on that date.

Mr. Fraser: October the 17th. The exhibits are in.

Mr. Farris: There is no name Frontier here.

Mr. Fraser: It shows the house transactions.

Mr. Farris: I know, but what has that got to do with Frontier transactions on another date.

Mr. Fraser: My learned friend cross-examined Miss Nuyens on the exhibit filed.

The Registrar: I haven't got any of those filed on that date.

40 Mr. Farris: Just while I think of it, I may interrupt before it leaves my mind. The question of those three that you were going to check up.

Mr. Fraser: Yes, I have them here. I am going to file them.

Mr. Farris: Are they as I stated?

Mr. Fraser: I believe they are accurate.

Mr. Fraser: Do you remember, Mr. Allen, those that had the

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names written on; Mr. Farris asked the witness what those names represented.

Mr. Farris: I think that is Exhibit 41.

Mr. Fraser: Q. If I am able to file an exhibit in court, Mr. Willins, showing a client has sold on that day 20,000 shares at 22½, a sale confirmation notifying a client that you had sold 20,000 shares of Grandview at 22½, would that be one of the cases where you had given a buying order to an agent broker to cover up an accumulation of shortage?

Mr. Farris: That is not a proper question. 10

The Court: Question allowed. What is your answer?

A. Well, I don't really, your lordship, I don't understand these figures the way they are put down, I don't pretend to understand them. If Mr. Fraser would care to give me the question again without referring to the figures I may be ready to answer it.

Mr. Fraser: Q. Put it this way: A client—

The Court: Well, show him the original document.

Mr. Fraser: I thought it was filed. But I will state the question hypothetically and then if I haven't proved it, it does not apply to this case. 20

Q. If I am able to file in court a selling confirmation notifying Theo. Frontier that on October 17th, 1929, they sold 20,000 shares at 22½, that in the selling confirmation there is a sale to Greathed, a Broker—no, bought from at 22½ and a sale on the Stock Exchange to Greathed of 20,000 shares at 22½, what does that represent? A. It represents that I have given the Vancouver office—it represents a trading of the Vancouver office, given to this particular agent broker an order to purchase 20,000 shares of particular stock. It also shows that we had a selling order for 20,000 shares of that same stock which was handled by our own floor man. 30

Q. Would that reduce or increase your short position? A. The fact that we had made a purchase through an agent broker would reduce our short position, yes.

(Witness aside).

The Court: Shortly before we adjourned last night, Mr. Farris was asking you to make certain admissions and the matter was to be looked up.

Mr. Fraser: Well, it is our admission here. We have got all the confirmations of those dates, and the statement, they have been checked by our accountant, and Mr. McGee can check them over. 40

Mr. Farris: I understand that that agrees with the figures that you stated.

Mr. Fraser: I am told by the chartered accountant that they are accurate.

(COURT ADJOURNED AT 1:10 P.M. UNTIL 2:30 P.M.)

(2:30 P.M. COURT RESUMED PURSUANT TO
ADJOURNMENT)

Mr. Farris: My learned friend, and the auditors and ourselves have checked those accounts last night, and my friend has prepared a synopsis of them. I would like that filed as an exhibit.

(DOCUMENT MARKED EXHIBIT NO. 85)

Mr. Fraser: I am putting in, my lord, confirmations covering Grandview on October 17th, 1929, and two copies of confirmations on the same date, taken from the defendant's book on that date.

10 (DOCUMENT MARKED EXHIBIT NO. 86)

Mr. Fraser: I call Mr. Pyper.

JOHN R. PYPER, a witness called on behalf of the plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. FRASER:

Q. What is your occupation, Mr. Pyper? A. General broker.

Q. And where do you carry on business? A. Kamloops.

The Court: Q. Where? A. Kamloops, my lord.

Mr. Fraser: Q. How long have you been engaged in the brokerage business? A. Well, stock brokerage business about a little over a year.

Q. Had you any dealings with Theo. Frontier & Company Limited? A. I had.

Q. At any time on behalf of Theo. Frontier & Company Limited did you ever see any officer of the defendant company, Solloway Mills & Company Limited? A. Yes, I did.

Q. Do you remember when? A. On the 10th September, 1929.

Q. Whom did you see? A. I saw Mr. Willins in company with Mr. Sjoquist and Mr. Galloway.

Q. You and Mr. Sjoquist and Mr. Galloway saw Mr. Willins in Vancouver? A. Yes, we did.

Q. What did you say to Mr. Willins first. You had better say—A. We asked—

Q. First, did you tell him who you represented? A. We did. We asked for the manager, and the manager was away and we got Mr. Willins who was acting manager at the time. And we told him that we were representing Theo. Frontier & Company Limited of Kamloops, and we had come down about his account.

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Q. While you were there was any money paid to Mr. Willins or Solloway Mills & Company Limited? A. Not on that date.

Q. Not on that date. Following that interview was there any money paid? A. Yes, there was.

Q. How much? A. We came to an arrangement with Solloway Mills—

Mr. Farris: Any moneys is included in the statement you have already given.

Mr. Fraser: Yes.

Q. When was the next money paid after that interview? A. 10 Well, the first money paid in after the interview was on the 13th September, 1929.

Q. Is that a receipt you got from Mr. Willins? (Showing to witness). A. Well, actually who this receipt came from, what actual official of Solloway Mills I could not tell you, because I did not actually pay that cash to him.

Q. Do you remember that receipt? A. I remember that receipt. That was given to me immediately the people who paid the money came back to Kamloops.

Q. Who paid the money? A. Mr. Sjoquist and Mr. Clark 20 were sent down, Mr. Clark is a lawyer in Kamloops—was sent down to pay the money.

(DOCUMENT MARKED EXHIBIT NO. 87)

The Court: Q. That is a receipt for how much money? A. \$20,000, my lord.

Mr. Fraser: Q. Was there any subsequent money paid? A. Yes.

Q. Under what circumstances? A. Solloway Mills & Company—

Mr. Farris: I don't see the object of this, my lord. These are 30 not disputed as being the amount paid to the defendants.

The Court: As set out in Exhibit 57.

Mr. Farris: Yes, on page 75.

The Court: What is the intention of this?

Mr. Fraser: It is further evidence of those payments, and I want the documents in, my lord.

The Court: Very well.

Mr. Fraser: Q. Can you identify that document? A. Yes, I can.

Q. What is that? A. It is a draft for \$6000.00 drawn by 40 Solloway Mills & Company on Theo. Frontier Company Limited dated September 16th, 1929.

The Court: Q. What date? A. September 16th, 1929.

(DOCUMENT MARKED EXHIBIT NO. 88)

Mr. Fraser: Q. And this? A. This is a draft for \$9000.00 dated October 4th, 1929, drawn by Solloway Mills & Company and W. T. Johnson, trustee, Theo. Frontier & Company Limited, Kamloops.

(DOCUMENT MARKED EXHIBIT NO. 89)

Q. Have you any knowledge at the time these payments were made, or any time, that the orders of Theo. Frontier & Company Limited were not being filled on the Exchange? A. No.

10 Q. Had you any knowledge that for the same period shares which they notified you which they had bought on margin were not in their possession and control? A. No.

Q. Now, later in Kamloops did you—that would be in October—around October 17th, did you see any officers of Solloway Mills there? A. Yes, We saw Mr. Finley.

Q. Who is Mr. Finley. A. He was an employee of Solloway Mills & Company Limited. I didn't know what capacity he was employed in. He and Mr. Gordon Sloan came to Kamloops with regard to the affairs of Theo. Frontier Limited.

20 Q. Now, in pursuance of what happened, what happened to your account; what arrangement was arrived at with respect to your account? A. When these officers were in Kamloops?

Q. Yes? A. The account was sold out. ...

Q. At the time the account was sold out did you have any knowledge that any of your orders, that is orders of Theo. Frontier & Company Limited, had not been filled on the Exchange? A. None whatever.

Q. Had you any knowledge at that time that any shares which they notified you they had bought on margin had not been bought on margin? A. We had not.

30 CROSS EXAMINATION BY MR. FARRIS:

Q. You are one of the inspectors of the estate, are you not? A. Yes.

Q. Prior to the commencing of this action, the receiver was granted an order of the court permitting him to examine all documents of Solloway Mills; that was in June of 1930 or thereabouts? A. June of 1930?

Q. Yes? A. Just I didn't get your question.

40 Q. I say under an order of the court the trustee in bankruptcy examined the books of Solloway Mills before he started action? A. Yes, I understand so.

Q. They had an accountant in for some time? A. Yes.

Q. And had full access to the books of Solloway Mills? A. Well, just what books they had access to, Mr. Farris, I really could not tell you.

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Q. You did not hear any complaint of the trustee, that they did not have access to them all? A. Well, we left that to—

Q. I am instructed that they had access to them all under order of the court.

Mr. Fraser: No. Excuse me. Ten days. I got leave to inspect ten days.

Mr. Farris: Well, that is all you asked for.

Mr. Fraser: That is all he gave me.

Mr. Farris: That is all, thank you.

Mr. Fraser: Just a minute. What date do you say that was in 1930?

Mr. Farris: May or June, 1930.

Mr. Fraser: Q. At that time do you remember the inspectors instructing me to investigate the accounts? A. Yes, I do.

Q. Up to that time—that was on in the summer of 1930, was it not? A. Yes.

Q. At that time had you any knowledge that your orders had not been purchased on the Vancouver Stock Exchange? A. No.

Q. Had you any knowledge at that time that the shares which they notified you they had bought were not in fact bought? A. No. 20

(Witness aside).

Mr. Fraser: That is all. That is the case, my lord, for the plaintiff.

The Court: You were to let me know just how the account stood at that time.

Mr. Fraser: I don't follow you, my lord.

The Court: When the account was sold out as the last witness put it, how did it stand then?

Mr. Fraser: I will recall Mr. Pyper.

JOHN R. PYPER, recalled. 30

EXAMINED BY MR. FRASER:

J. R. Pyper,
Recalled,
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Q. The account was sold out in October, the 17th, was it, in 1930? A. Yes.

Q. Was it an open running account? A. Yes.

Q. I mean there was no suggestion by Solloway Mills at that time that the account had been sold out earlier? A. Oh, no.

Q. And the account was in existence as a running account A. Oh, yes, it was. The agreement that we made with Mr. Willins on—

The Court: Q. Well, but Frontier & Company apparently owed the defendant, or the defendant company? A. Frontier & 40 Company owed the defendant company.

Q. How much apparently? A. Well, I could not give you the exact figures.

Mr. Farris: It was somewhere around \$30,000, when the claim was filed with the Registrar. Is that not right?

Mr. Fraser: I will admit this, that we owed—

The Court: How much?

Mr. Farris: I think it was around \$28,000 or \$30,000.

Mr. Fraser: It would show on the statement. Of course, your lordship will understand, my statement would be that that account would be a bookkeeping entry. We say we did not owe them anything. I don't think it will show, my lord, for this reason.

10 Mr. Farris: It shows that is after the selling out; it shows a balance after the selling out, to the credit after the sale of that collateral security, showed the balance owing by Theo. Frontier & Company to the defendant company of \$31,077.26, after everything, marginal securities and collateral securities were sold out, \$31,077, and some cents.

The Court: Very well.

Mr. Farris: That is all, thank you.

(Witness aside)

20 Mr. Farris: My lord, I suggested that I was going to call a witness whose name I mentioned, but I frankly confess, I have made up my mind that as far as I can see—I don't know what my friend will be able to do in his argument—but I can see no case that has been proved against the defendant at all and therefore I am not calling evidence. I would suggest to the court if I might, that there is a great many exhibits. We have been in this case for nearly a week now, over a week, and we could not possibly finish the argument today. It would take a day's argument; it would probably be completed tomorrow. If the court adjourned until tomorrow when we shall be able to make our argument, giving us a chance to refresh ourselves on the various documents and points, it would probably save time, rather than proceeding without having these properly placed together.

30 The Court: Well, you do not think we could finish today with the argument.

Mr. Farris: My argument alone will take more than a day, and I presume my friend, while I am not calling evidence, I presume he will have to open up with his argument. I would not imagine that my argument would be less than two to three hours.

40 The Court: It might be of some assistance to me if Mr. Fraser would go on. You agree that you begin the argument. It would be of some assistance to me if Mr. Fraser would go on for a few minutes and give me his view points and then continue tomorrow. Or would you prefer to—

Mr. Fraser: My lord, the task is quite a formidable one of collecting all my thoughts and trying to put them in coherent shape.

The Court: Perhaps I might begin with a few questions before you begin your argument and then we may go on tomorrow. You

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have told me, Mr. Fraser, that your claim is for \$115,062.48.

Mr. Farris: I have the figures here, the claim worked out. I think these figures would answer your lordship's question. The amount my friend is claiming \$120,063.48, less \$5,000 remitted by Solloway Mills to Theo. Frontier and plus the amount of \$5,064.75 which is alleged to be obtained from the sale of collateral, making a total claim of \$120,128.23, less the commissions admitted \$16,461.89; or making a net total claim of \$103,666.34. I think that is right, Mr. Fraser. Those figures have all been checked.

Mr. Fraser: Exhibit 57, my lord, the synopsis, page 75; with this addition I am asking for interest at 5 per cent. from the dates those moneys were paid. 10

The Court: On the dates those amounts shown on page 75 were paid.

Mr. Fraser: Yes, my lord.

The Court: That is on the \$5,064.75.

Mr. Fraser: Yes, my lord, since October 17th, 1929, at 5 per cent. And then allowing that credit for commissions of which my learned friend speaks.

The Court: Now, if you like, Mr. Fraser, you might start from where you submit the transactions first began that you complain of. For example, as to the cash transactions, what do you say about that. I have no details of any cash transactions as distinguished from the transactions that have been called marginal. 20

Mr. Fraser: Well, as to the cash transactions, your lordship, our remedy is only possibly nominal damages.

The Court: On what ground?

Mr. Fraser: That the cash account admittedly was a separate account and although we are not admitting that the shares were bought on the Exchange, I will go this far for the sake of argument, that I have not proved any damages other than nominal damages with respect to the cash account. As Miss Nuyens points out the shares in fact were received and although those shares may not have been bought on the Vancouver Stock Exchange, nevertheless we got them and it might be, and I am conceding for the purpose of argument that our damages there would be purely nominal. 30

The Court: Now, on the margin transactions.

Mr. Fraser: The margin transactions I am going to argue that the whole thing—your lordship will understand that we got no shares. They were supposed to hold them there. Of course, you don't get them until you pay for them. I am going to say, your lordship, that they never bought a share for us; that the whole transaction was tainted with fraud from beginning to end and that there is a burden on my friend to show— 40

The Court: Well, is your cause of action according to your submission based on fraud, or is it based upon non-carrying out of the contract?

Mr. Fraser: I think I could take both grounds. I am going to follow a judgment of Mr. Justice Murphy who held that independently of fraud, the whole contract is vitiated.

The Court: Well, have you reasons for that judgment?

Mr. Fraser: I have them here. My lord, what I have done in this case, I have not completed my argument. I was going to put it in such shape so that I could take your lordship step by step, give you the separate heading and quote proper law under those headings. I do not like to embark on the whole thing—

10 The Court: Can you give me any case that you might be referring to now, so that I could have an opportunity of perusing it?

Mr. Fraser: I am going to refer to the judgment of Mr. Justice Murphy in the Lockett case, *Lockett vs. Solloway Mills*.

The Court: Are the reasons for judgment available?

Mr. Fraser: They are in, I think, the last Western Weekly Reporter.

Mr. Farris: I would ask your lordship in considering this case in the meantime to consider that with an open mind, because I am going to have a great deal to say about the judgment in the Lockett case.

The Court: Very well; I will.

Mr. Farris: In the first place, taking the Lockett judgment, I not only propose to argue that the law is bad and show your lordship with regard to that—

The Court: In the meantime there is no objection to me reading it?

Mr. Farris: No, excepting that I am pointing out that I am not accepting the judgment as applying to this case, having any applicability to the case, and consequently I think that I can convince your lordship that the judgment is thoroughly bad in law from beginning to end.

Mr. Fraser: It is in the Western Weekly Reporter, the last one or two. I have a copy here if your lordship wishes.

The Court: Is there any other recent judgment?

Mr. Fraser: I have authorities, but they are in my friend's library and I have not brought them here. I have a copy of Mr. Justice W. A. Macdonald's in the Blumberger case. I am going to refer to that.

The Court: Could I be furnished with a copy of the reasons for judgment in that?

Mr. Fraser: Yes, my lord, I have a copy here. There is a case my lord—that is in my friend's library.

Mr. Farris: I may say that I will be very glad to let you have Meyers if we have it in the office and it is available.

Mr. Fraser: *Sunderland and Solloway-Mills*; that is a case your lordship heard, reported in the Court of Appeal, establishing your lordship's judgment; 1931, 2 Western Weekly Reports, page 46. I am

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going to use that on the question of burden of proof.

The Court: We might adjourn now. We can finish by beginning at eleven tomorrow?

Mr. Farris: I would think so.

Mr. Fraser: I suppose Mr. Farris has no objection—I will open up, but I am not going to deal with the question of contract; I mean your plea under the Bankruptcy Act, I assume I will have a right to reply to that.

Mr. Farris: I think my friend should at least establish his case. It may be that his lordship won't call on me for reply. 10

Mr. Fraser: I would point out this to Mr. Farris. The question of who has the right to open—Mr. Justice Gregory and Mr. Justice Murphy held that my friend should open, but he said he thought it would be more convenient for me to open first, and I agreed to it. On the other point, I think my friend should open on the Bankruptcy Act and let me reply, because, strictly speaking I do not think I should have to open first on that.

Mr. Farris: My only point on that is that frankly on the Bankruptcy Act, I put myself in my friend's position to endeavour to find out how he was going to come within the Bankruptcy Act. 20

The Court: You plead the Bankruptcy Act, and so it would seem it would be more convenient to myself to hear what you had to say along those lines, and then Mr. Fraser reply to that.

Mr. Farris: I am quite agreeable to that. But the point I was making, it isn't a question whether we pleaded anything at all. He must establish, in order to bring the action under the Bankruptcy Act, that he is bringing that action in accordance with the Bankruptcy Act, whether we plead it or not. Suppose we sit back and tell them we put the plaintiff to the proof of his case, the point I was making that frankly I cannot see where my learned friend has in any way established his right to judgment in face of the Bankruptcy Act and in the face of the evidence. As I say, I have tried to put myself in the position of my learned friend to meet that case, and I frankly cannot find any argument that I could make that would escape the Bankruptcy Act, and I would like to see what possible argument he has, that he is going to escape the Bankruptcy Act. If your lordship desires that I should open I will be very glad to. 30

The Court: Very well. We will adjourn until Eleven o'clock.

(COURT ADJOURNED AT 3:05 P.M. UNTIL 11:00 O'CLOCK
 THE FOLLOWING DAY) 40

December 16th, 1931, 11:00 a.m.

(PROCEEDINGS RESUMED PURSUANT TO
 ADJOURNMENT)

Mr. Fraser: My lord, I neglected before the case closed to ask my friend about the Calgary House account. I just checked over my notes last night, and found I omitted to ask him about it. I would like leave to file that house account.

The Court: Any objection?

Mr. Farris: Yes, my lord, I have. I haven't paid any attention to it. He instructed me last night that the case was closed, and I sent it back to Toronto, where they wanted it, and I presume it has gone back to Toronto.

10 The Court: Well, I would consider giving leave to produce it in evidence if it might be called a slip of counsel.

Mr. Farris: I am just informed that they are here, my lord, but they are not in court. I haven't them here.

The Court: Very well.

Mr. Fraser: These Calgary house ledgers—there are three of them, I understand. I ask for leave to file them.

The Court: I give leave to file them.

Mr. Farris: May we adjourn for half an hour, my lord?

20 Mr. Fraser: Could they not be filed at noon, and I go on with my argument?

Mr. Farris: Yes, if my friend is prepared to go on with the argument without referring to these books.

The Court: I do not know what reference he proposes to make to them. Perhaps the matter should be kept in order.

Mr. Farris: If my friend is not making any reference to them in argument, I am quite willing to have them filed, but I don't want after hearing his argument to be told he is to have a new argument.

Mr. Fraser: No, but all I could do would be to call Mr. Willins and have him explain the ledgers, that is all.

30 The Court: Very well then; adjourn for half an hour.

(COURT ADJOURNED AT 11:00 A.M. AND RESUMED AT 11:45 A.M.)

Mr. Fraser: I call Mr. Willins.

W. E. WILLINS, recalled.

DIRECT EXAMINATION BY MR. FRASER:

Q. I produce to you what has been produced as one of the Calgary Ledger statements. Have you seen that before? A. No, I haven't seen that before.

40 Q. Can you tell from looking at that document, from your knowledge of the system of the defendant company, what the red items indicate? Take the first page. You are looking now at Calmont? A. Calmont, yes. The red, the items in red indicate, I am referring to Calmont on the balance column, indicate the amount in

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credit and the red items in the column position indicate the amount of stock short at any particular striking of the balance.

Q. That applies throughout that exhibit, does it? Look at it generally. It would appear to be the same. A. On the red, yes. But in numerous places, and in the same columns I have mentioned it has in black ink which would indicate the office debit balance and the long position.

Q. You are looking at— A. Kelvinator.

Q. That is a refrigerator. Was that a stock trading on any of the stock exchanges? A. Not as far as I was concerned. For Cal- 10
 gary, I could not speak for Calgary.

Q. Is that an industrial stock? A. I imagine it is. It looks like one of the Industrial stocks, yes, I couldn't swear.

Q. In the position there it is short 100 and long 100 and then nil? A. It is flat and then long 100 and then the account is closed out.

Q. Was it customary to keep the position in regard to industrial stocks not listed on Calgary, Vancouver or Toronto? A. On any stock Solloway Mills were interested in, it would show in a ledger or record such as this. 20

Q. That is the first you have heard of that Kelvinator? A. Yes, the first time I knew that was on the books.

Mr. Fraser: I file that as an exhibit.

(DOCUMENT MARKED EXHIBIT NO. 90)

Q. And I produce now this document. Is that the same kind of an exhibit as the exhibit that has gone in as No. 90? First, have you seen that before? A. Yes, this is the same—I would not swear this is the same book. It is a similar book to what I saw when I was in Calgary, yes.

Q. A similar book to what you saw when you were in Calgary? 30
 A. Yes.

Q. And do your remarks apply similarly to that book as to the last exhibit? A. Yes, except that the arrangement of the columns is a little different.

Q. So that his lordship will have it—the last column, does that show the position of the defendant company? A. That shows the position in the Calgary office of the defendant company, yes.

Q. If it is in red it is a short position of shares, if it is in black ink or blue ink it is in a long position in Calgary, is that right? A. Yes, that is correct. 40

Mr. Fraser: I file that as an exhibit, too.

(DOCUMENT MARKED EXHIBIT NO. 91)

Q. By the way, I would like to ask you, is the money represented

by your short position contained in these exhibits? Do you understand my question? A. Yes, the money is.

The Court: That is Exhibit 91; what page?

Mr. Fraser: Q. Page 165? A. Yes.

Q. That shows you were short 213,833 shares of Alberta-Pacific? A. No, that is money.

Q. That is money shortage? A. Yes.

Q. That is that was your profit on the short sale? A. Not necessarily profit, no.

10 Q. I thought you said the last column was— A. Exactly; that is what I say now, because credit balance or receipts from the sale of the certain amount of stock.

Q. Short? A. Short there, yes.

Q. I thought you said this other exhibit in the last column showed the number of shares short? A. I passed the remark in my testimony that the arrangement of the columns were different.

Q. Where in that exhibit is the share position? A. There is the share position.

20 Q. In the first column? A. The share position is in the middle of the book. There is the share position and there is the credit balance.

Q. On page 165, the first column in red figures? A. That is the share position.

Q. And the last column is the— A. Is the amount of money.

The Court: Q. Now, you might just show me that, witness please. Speak up so that the reporter can hear you.

A. This figure here is the amount of stock, shown in red. This is the proceeds of the sale of that stock, this column here.

Q. At the end of the page, in red? A. Yes.

Q. The side of the page? A. Yes.

30 Mr. Fraser: I would like to show your lordship in Exhibit 90 where the share column—

The Court: Q. Referring now to Exhibit 90, A. P. Con., just read it. A. \$323,081.52 is the receipts of the sale of 137,288 shares of A. P. Consolidated. This is the stock short. This is the money received for the sales. That is where the difference in the arrangement of the column comes (indicating).

CROSS-EXAMINATION BY MR. FARRIS:

40 Q. If stocks have been borrowed to go short they would not be shown on these books, Mr. Willins? If they had borrowed stocks from other brokers to have gone short, it would not be shown on these ledger, would it? A. Yes, it would be shown.

Q. How would it be shown? A. Providing the borrowing of the stock be shown through the account of Solloway-Mills it would show on these records.

Q. How would it be shown, because that only shows short posi-

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tion or long position, and they would still be shown short or long, even if they had borrowed the stock? A. Do you want me to give an example?

Q. I am asking you; answer my question. A. It would show.

Q. How would it show? For instance, if they had borrowed 10,000 shares of stock from Stobie-Forlong in Calgary, how would it be shown? I want you to show it in the ledger where it would be shown

The Court: What is that, Mr. Farris?

Mr. Farris: I asked the witness to point out to me where that would be shown in that ledger? A. I am assuming that we are borrowing the stock with the intention of selling. 10

Q. Speak up. A. I am assuming that we are borrowing the stock with the intention of selling it, and have sold it.

Q. All right; take that assumption. Show me where you would find any record in this of having borrowed ten, twenty or thirty thousand shares of Alberta-Pacific from Stobie-Forlong? A. There would be no record in this book of the actual borrowing of the stock.

Q. That is what I am asking you. It would show no record of the borrowing? A. No record, no.

Q. And from that book you could not tell whether stock had been borrowed from Stobie-Forlong or not? A. No. 20

Mr. Fraser: But you told us yesterday that the house position includes stocks to be received and stocks to be delivered, and the position at the end is the net balance.

Mr. Farris: I didn't say that at all.

Q. So that those books show nothing of the stocks that you might have borrowed, that the Calgary house might have borrowed from Stobie-Forlong or anybody else? A. That is absolutely correct, Mr. Farris.

Q. And more than that, as I understood you yesterday to say that you might be short, we will say, 100,000 shares of Grandview, and your house position would show you 100,000 short, and yet you would have borrowed that stock from R. P. Clark & Company, or some other company, for the purpose of selling, and you would be short, wouldn't you? A. We would be short, yes. 30

Q. And your house account would show it short? A. Yes.

Q. The mere fact that you had borrowed the stock from somebody else would not change that short position a particle? A. No.

Q. And nothing in those records would so indicate? A. Nothing in this book would show. 40

(Witness aside)

(ARGUMENT BY MR. FRASER)

(PROCEEDINGS ADJOURNED AT 1:05 P.M. UNTIL
 2:30 P.M.)

December 16, 1931, 2:30 p.m.

(PROCEEDINGS RESUMED PURSUANT TO
ADJOURNMENT)

(ARGUMENT BY MR. FRASER)

(PROCEEDINGS ADJOURNED AT 4:30 P.M. UNTIL 11 A.M.,
DECEMBER 17, 1931)RECORD
—
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—
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at Trial.
—
Argument,
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December 17, 1931, 11 a.m.

(PROCEEDINGS RESUMED PURSUANT TO
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10 (ARGUMENT BY MR. FRASER)

(1 P.M. COURT ADJOURNED UNTIL 2:15 P.M.)

(2:15 P.M. COURT RESUMED PURSUANT TO
ADJOURNMENT)

(ARGUMENT BY MR. FARRIS)

(4:35 P.M. COURT ADJOURNED UNTIL DECEMBER 18,
1931, AT 10:30 A.M.)

December 18, 1931, 10:30 a.m.

(COURT RESUMED PURSUANT TO ADJOURNMENT)

(ARGUMENT BY MR. FARRIS)

20 (1 P.M. COURT ADJOURNED UNTIL 2:30 P.M.)

(2:30 P.M. COURT RESUMED PURSUANT TO
ADJOURNMENT)

(ARGUMENT BY MR. FARRIS)

(ARGUMENT BY MR. FRASER)
(4:30 P.M.)

(C. A. V.)

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EXCERPT, EXAMINATION FOR DISCOVERY OF
 W. E. WILLINS:

1. Q. You are Mr. William Egerton Willins? A. Yes.
2. Q. And you have been sworn for this examination? A. Yes.
3. Q. When did you join the defendant company, Solloway, Mills & Company Limited? A. In April, 1928.
4. Q. Throughout the examination I am going to call them the defending company.
 What were your duties at that time, Mr. Willins? A. When I was first employed by the company I was on the order desk, taking orders from clients. 10
5. Q. And how long were you in that position? A. Until the latter part of—
6. Q. Roughly will do? A. The latter part of 1928.
7. Q. And then what duties did you assume? A. I assumed the position of trader for the firm in Vancouver.
8. Q. Now, just tell me what your duties as trader were? A. I was supposed to—I did give the—call in the orders to the Exchange to buy or sell stocks as were placed by clients, and placed over the wire, if any Toronto, or Calgary orders, my duties were to see that they were properly placed and gotten off on the wire. 20
9. Q. That is, the defendant company traded on three exchanges? A. Yes.
10. Q. Vancouver— A. Calgary and Toronto.
11. Q. And those are the only three exchanges on which they traded? A. No, at one time they had a membership in the Produce Exchange in New York, but, however, I am not familiar with that, so I can only say from my knowledge—
12. Q. There were only three exchanges then? A. Yes. 30
13. Q. That is right, is it it not? A. Yes.
14. Q. Calgary, Toronto and Vancouver? A. Yes.
15. Q. And if a client came into the Vancouver office and gave you an order to purchase a stock listed on the Toronto Stock Exchange it was part of your duty to see that that wire was sent off to the Toronto office for execution there? A. Yes.
16. Q. Is that right?
 Mr. Sloan: They didn't give Mr. Willins the order. You said give you the order, you mean give the company the order.
- Mr. Fraser: 17. Q. Well, I am referring all the way through —they gave the order—the order came under your jurisdiction. 40
- Mr. Sloan: Not every client it came from, if it came from the floor trader, that is the clerk.
- Mr. Fraser: 18. Q. Well, the order eventually reached your department? A. Yes.
- Mr. Sloan: Yes, that is it.
- Mr. Fraser: 19. Q. From the customers room? A. And I pass it over to the telegraphing department—

20. Q. And they fill it? A. Exactly.
21. Q. You take complete charge of the filling of that order?
A. No, I don't take charge of it. I made sure that the order was sent over the telegraph system or private wire connection and looked for a confirmation if it was possible to fill the order at the other end.
22. Q. And if a confirmation was received, it would be received by you? A. Through my department, yes.
23. Q. That is a confirmation filling the order? A. Yes.
24. Q. Now, I think you told me in the former examination you
10 were termed chief trader of the Vancouver office? A. That is right.
25. Q. And from time to time I think you also said you discussed matters of trading with one George Kimberley of Toronto who was chief trader for Canada?
Mr. Sloan: He didn't say discussed with at all.
Mr. Fraser: Well, I am asking him if he did.
Mr. Sloan: No, he said he had stated before. He said before he was under George Kimberley's direction.
Mr. Fraser: I will examine this witness, if you don't mind.
Mr. Sloan: Don't misquote what he said.
- 20 Mr. Fraser: He is quite capable of explaining or correcting any misapprehension I may leave with him.
26. Q. Do you remember what you said before with regard to Mr. Kimberley? A. No, I don't.
27. Q. Well, did you collaborate with Mr. Kimberley in respect to trading matters? A. Kimberley more or less passed over the position to me when he went east.
28. Q. He was trader in Vancouver before you? A. Prior to my being appointed as chief trader, yes.
29. Q. Now, after he went to Toronto Mr. Kimberley became
30 trader for Canada, did he not? A. I believe that is so.
30. Q. And were you in communication with him from time to time? A. From time to time, yes.
31. Q. By what? A. By the usual means of getting in touch with one another from Toronto to Vancouver.
32. Q. What were they? Did you telephone to him? A. Telegraph—mostly telegraph instruction or telegraph advices.
33. Q. Telephone? A. From time to time, yes, I did talk to him on the telephone.
34. Q. About trading matters? A. Yes.
35. Q. And any personal visits to or from Mr. Kimberley? A.
40 Mr. Kimberley came out in 1929 during the big market to assist me in organizing the means of handling the tremendous amount of business we had.
36. Q. Now, I don't know when the big market was—roughly what was it? A. I would say shortly after the turn of the year—the first of the year until round about—it is approximately out here as I recollect two months from say the 1st of February.
37. Q. 1929? A. 1929, yes.

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38. Q. And he went into matters of the handling of trading on the Vancouver Stock Exchange and how to handle— A. He took charge during that time and I only became an assistant of his.

39. Q. Did he innovate any new system at all? A. At that time we were having lines in the office and he did put in systems that were worked—mechanical systems that expedited the transaction of business.

40. Q. Anything aside from mechanical, did he innovate any new trading practice? A. No, it seemed that he was carrying on the same way as he has always carried on in conducting the business. 10

41. Q. Was that similar to the Toronto branch or the Calgary branch?

Mr. Sloan: How does he know?

A. I couldn't—

Mr. Fraser: Well, Mr. Sloan, I don't want these interruptions, if you don't mind. I think it is most unfair. I am asking for his own knowledge and I don't want to have to rehearse these things.

A. I have no experience of the Toronto office whatsoever.

42. Q. I didn't ask you.

Mr. Sloan: Well, the objection is based on this, the first question you asked is, have you any knowledge of the Toronto and Calgary office. 20

Mr. Fraser: I didn't ask you that.

43. Q. Did you discuss with Mr. Kimberley the practice in vogue in Calgary and Toronto during this visit? A. Yes, in casual conversations.

44. Q. Well, I would think so? A. Yes.

45. Q. Well, you did discuss it then? A. Yes, oh, yes.

46. Q. Now, from the discussions do you remember whether the trading practices in the Calgary and the Toronto offices were similar or dissimilar to the Vancouver trading practices? A. They appeared to be the same. 30

47. Q. Now, who were your superiors in the Vancouver office? Who were you under, if anybody? A. Well, J. F. Macdonald was my—was the general—at least, was the manager of the Vancouver office, and I think he was the only one, from a discipline point of view I had to—

48. Q. From a discipline point of view? A. A discipline point of view, I had to take orders from.

49. Q. And what about Mr. Duns? A. Mr. Duns, while he was here was in the same capacity, I would say. I know that I always respected his word, if I was off somewhere, well, I would make myself clear—always respected his word as an employee of the firm. 40

50. Q. Now, did you discuss with either of these officials matters of trading practice? A. No.

51. Q. The answer is no? A. No.

63. Q. I think you told me in your last examination that you

did trade for the house? A. Yes.

64. Q. And if stock were high you sold them for the house, and if stocks were low, you possibly bought them for the house. That is correct, is it not? A. That is correct.

65. Q. And in 1929 you did a big—you were trading in a large way in all active stocks, were you not? A. Yes.

66. Q. For the house? A. Yes.

67. Q. And you had a house account at that time—the Vancouver office did? A. Yes.

10 68. Q. Showing the position of the Vancouver office in those various stocks. A. Yes, the Vancouver office.

69. Q. Now, you were considerably short, were you not, in most of the active stocks in the Vancouver office?

Mr. Sloan: When?

Mr. Fraser: 70. Q. During this active period in 1929, first?

Mr. Sloan: Of course, I think that my friend should confine himself to his pleadings.

Mr. Fraser: Well, at times material to this action, which include—in case there is any dispute about that, Mr. Sloan—

20 Mr. Sloan: I am not disputing the time, I am disputing the shares.

Mr. Fraser: Well, shares which are material to this action, I think—

Mr. Sloan: Where are they? I don't see them set out in the pleadings.

Mr. Fraser: We will get them.

71. Q. You have a general idea of the shares that Theo. Frontier & Company traded in, have you not?

Mr. Sloan: That is not sufficient. That is too general.

30 Mr. Fraser: 72. Q. Have you any knowledge of the shares in which Theo. Frontier & Company traded in, Mr. Willins? A. To the best of my recollection they traded in possibly almost every stock that was handled—listed in Canada at that time.

73. Q. I think that is so. Now, with respect to their stocks we are dealing first with the active market of 1929, did your company have a long or short position?

Mr. Sloan: I want that question limited to the Vancouver office, because you are using the word "company."

40 Mr. Fraser: 74. Q. Yes, did the Vancouver house account show a long or short position? A. A short position.

75. Q. And did that continue generally throughout 1929? A. Yes.

* * * * *

91. Q. Now, in your department, Mr. Willins, wasn't it the case that you kept daily statements, what we call daily trading sheets? A. I had a statement of the stocks on hand sent up from the security department every day, yes.

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92 Q. And in the last column of that daily trading sheet wasn't your house position shown in that style? A. The Vancouver house position?

93. Q. Yes, the Vancouver house position? A. Yes.
 * * * * *

131. Q. Do you know of any practice along that line? If you do, explain it to me. A. I will explain the practice, yes. Supposing that the market rallies tremendously on any stocks, my duty was to go ahead and sell some of these stocks with the intention of making a profit, and that is the reason that an agent broker or an agent, or what you call an agent broker, would get some selling orders. For instance, we might have a very large order on any stock from a client— 10

132. Q. A buying order? A. Buying order from a client, it might be advisable to give to an agent broker a selling order in order that somebody might have the stock—the stock particularly at a price. That was the intention, to the best of my knowledge, and to my own only knowledge or intention, as I saw it. We were either short or long stocks from time to time, as it happens, in view of all the evidence that you have, and your knowledge of the game, that we were short many stocks, which, as it happens, came out from your evidence. That is the best answer I can give, and that is my best belief, Mr. Fraser. 20

133. Q. Well, I am sure, Mr. Willins—I am not questioning your honesty. A. No, I am saying what is—I want you to look over that question that you asked me before and see how difficult it is to try to answer a question like that, because it does not even fit in with my idea of it, you see.

134. Q. Well, I understand what you said, that that practice that you have told me now was the practice as you understood it, that is what caused or would cause a short position? A. It would eventually end up—it proved to end up with a large short position. 30

135. Q. Now, isn't it a fact that during the fall or summer of 1929—early 1929—the stocks were not bought on the exchange at all, but were sold right out of your house? A. That is so, yes.

136. Q. And that would create a short position as well? A. Yes.

* * * * *

155. Q. All right. A. It is quite possible that, as I say, we accumulated a short position, it is quite possible, when there is a heavy liquidation coming in from sell-outs—margin sell-outs, that I did give agent brokers buying orders which could not help but be of benefit to those clients who were being sold out. It supported the market. 40

156. Q. I understand you, Mr. Willins, there is only one point—I think it is obvious, but I want to get it clear on the record—that if you sold out a client there would be a selling confirmation selling the client out? A. Yes.

157. Q. And if that was done through an agent broker, and you had a bought from confirmation buying those same shares back

from that agent broker, that is your position with respect to that broker, isn't it? You might have to deliver shares to him over the exchange, but you would have to deliver them back off the exchange?

A. Exactly, except for one thing, and that is this, that it was never our practice—except in this particular case, where Frontier might have a very large account, and he might have given selling orders—my recollection of that is not clear—he might have given selling orders for selling out this account to an agent broker. It was never the practice, and it was—never at any time do I recollect selling out except through our own facilities on the exchange by our own men when we were closing out accounts. It is also quite possible that at that time, while I was selling out accounts, especially this particular period when this Frontier account was liquidated, it is quite possible that I did give buying orders to agent brokers to help support the market, incidentally covering up an accumulation of shortage.

158. Q. That is the idea, but you can't be expected to remember that now, but the confirmation would show it? A. The confirmation would show it, yes.

159. Q. If they had these symbols on them? A. Yes.

20 Mr. Sloan: My friend is using the word symbol there.

Mr. Fraser: 160. Q. Well, I mean sold or bought from, you understand that? A. I understand that, Mr. Fraser.

Mr. Sloan: Symbols are words.

Mr. Fraser: 161. Q. These words had a symbolic meaning, had they not, Mr. Willins? A. Well, they mean that the transaction was not cleared in the usual practice as over the exchange, they were cleared through another broker, that is what they mean, just the same as buying a bond today.

162. Q. Now, in the Mackee case, Mr. Willins—

30 Mr. Sloan: My friend, as I said before—

Mr. Fraser: We will come down to the practice then.

Mr. Sloan: Get down to the practice and forget the Mackee case.

Mr. Fraser: 163. Q. Down to practice again, you have answered this, but I want to go a little further, Mr. Willins: If you had orders to buy 70,000 shares of Grandview, and you only bought on the exchange that day 40,000, of course the house would go short then—

40 Mr. Sloan: You don't need to bother answering those questions, because they are self-evident in the first place, and secondly, they are purely hypothetical and don't need to be answered.

Mr. Fraser: 164. Q. Well, that was the practice during the bull market, was it not, to go short in that way, Mr. Willins, if you thought the stock was all right? A. Well—from my point of view more with the idea than anything else to keep away frantic people wanting orders filled.

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165. Q. That is the only way you could fill the orders? A. I would say that, yes.

168. Q. And you just filled them from the house account and the house would take up a short position? That is right, is it not? A. That would be the bookkeeping end of it, yes.

167. Q. Now, there are two or three formal questions I want to get, Mr. Willins.

Mr. Sloan: These are probably the ones that have the most sting in them, so you had better watch them.

Mr. Fraser: 168. Q. These confirmations, Mr. Willins, were marked to indicate the exchange they were in, where the shares were bought, except the Vancouver confirmations didn't show any exchange? A. That is right. 10

169. Q. All that you bought in Calgary or Toronto, the notation of the exchange was put on the confirmation? A. That is right, and the reason for that was that the brokerages were different, you see.

170. Q. The brokerage on the three exchanges? A. Yes, the three were different, yes.

171. Q. If a Toronto stock was bought for a Vancouver client, the Vancouver office filled out the confirmation and put in the brokerage—put in the Toronto brokerage? A. That is right, except that the order was executed and filled to receive a confirmation over the wire to this office. 20

172. Q. And then this office filled out the amount of the commission? A. Exactly.

173. Q. And another of these formal questions with the sting in them, shares which were bought, for instance, Home Oil or any other shares which you bought for clients, or which you received from clients as collateral, were all put in one pot, were they not? A. Yes. 30

174. Q. And then you had your daily trading sheet or your teller's ledger to show the amount of stock that you had on hand? A. Yes, that is right.

Mr. Sloan: What is the book you call it—what is the expression you use?

The Witness: Trading sheet. The other one, I am not in a position to answer the other one, because I don't know anything about it, but the trading sheets did show what we had on hand, yes, in the Vancouver office.

Mr. Fraser: 175. Q. And if a stock got high, such as Home Oil, and you decided as a trader to sell that stock, you would use these certificates for delivery which were in this common pool? A. Yes. 40

176. Q. There was no earmarking of certificates? A. No.

177. Q. They were all treated as street certificates? A. Yes.

Mr. Sloan: They were street certificates.

Mr. Fraser: 178. Q. And so treated. If there were no earmarking of certificates so far as price was concerned, I mean if you

got 100 shares of Home Oil in for one client, and he had bought his at \$20, and you had bought on the same day another 100 shares for another client at \$21—A. They are only worth what the market is.

179. Q. Then the shares were not in any way earmarked as to price? A. They are only worth what the market was at the close or the opening the following day.

180. Q. Well, they were not earmarked as to price? A. No, there would be no object in doing it.

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10 188. Q. And the practice was to keep in Vancouver certificates which were traded in on the Vancouver Stock Exchange? A. As far as possible, yes.

189. Q. Well, that is what I was getting at. I possibly did not make myself clear. A. Yes, you did not—at least, I possibly missed your point.

190. Q. Say you bought from me 100 shares Sudbury Basin, which was a Toronto stock? A. Yes.

191. Q. And you confirmed—on margin? A. Yes.

20 192. Q. Would you bring my 100 shares out to the Vancouver office? A. No.

193. Q. Probably would keep that—A. Leave it in Toronto, exactly.

194. Q. That is the way I understood it, yes.

Mr. Sloan: I imagine it applied to Vancouver stocks that were bought on the Toronto market.

Mr. Fraser: Well, I assume it did.

195. Q. Well, did it not, Mr. Willins? A. Yes.

30 196. Q. Now, is it within your knowledge that a great number of Frontier's orders in this case were not filled on the Vancouver Stock Exchange?

Mr. Sloan: What is this now?

Mr. Fraser: That great number of orders which were placed with your firm or company for Frontier were not filled on the Vancouver Stock Exchange, that is, orders to buy on the Vancouver Stock Exchange and which you confirmed as bought, that for one reason or other you hadn't bought them on the Exchange.

Mr. Sloan: Do you ask if he knows?

Mr. Fraser: Well, I did.

Mr. Sloan: Give him any stock in one day.

40 Mr. Fraser: 197. Q. Have you any information as to any stock?

Mr. Sloan: No, not information at all, it is personal knowledge.

Mr. Fraser: Any knowledge that has come back to him—personal knowledge, sure, that is either by him or any of the salesmen.

Mr. Sloan: My friend does not like to be bound within reasonable limits of cross-examination.

The Witness: I am only speaking in answer to Mr. F.

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Mr. Sloan: Well, generalities don't matter.

The Witness: As far as Frontier is concerned, Frontier was just filling orders—

Mr. Fraser: 198. Q. What do you mean, it was just another customer? A. It was just—

199. Q. It was just one of your— A. He was just a client, practically.

200. Q. And you remember he was one of the largest customers? A. Just another customer as far as we were concerned.

EXCERPT FROM EXAMINATION FOR DISCOVERY, 10
 D. G. S. DUNS:

Excerpt,
 Exam. for
 Discovery of
 D. G. S. Duns.

1. Q. You are David Gardner Septimus Duns? A. That is right.

2. Q. And at times material to this action you were an officer of the defending company, Solloway Mills & Company Limited? A. Yes.

3. Q. What was your official position? A. Assistant manager.

4. Q. Of the Vancouver office? A. The Vancouver office, yes.

5. Q. When did you become assistant manager? A. Oh, let me see—

6. Q. Roughly? A. About the middle of 1929—July, 1929.

7. Q. Were you engaged by the defendant company prior to that date? A. Oh, yes, right from the beginning of time—April 10th, 1928, until they ceased business.

8. Q. Which was— A. June 28th, 1930.

9. Q. Now, that is from April, 1928, on, and as shortly as you can, what positions did you hold until you became assistant manager? A. I was accountant there for—I think Christmas.

10. Q. Christmas, 1928? A. 1928.

11. Q. And following, in 1929, what was your officé? A. Office manager.

12. Q. Office manager and then you became assistant manager? A. That is correct.

13. Q. And you were under Mr. Macdonald? A. Under Mr. Macdonald, yes.

14. Q. Was he your only superior officer? A. Yes.

15. Q. Mr. Macdonald was— A. I reported direct to him. I never had anything to do with the people in the East, you know, 40 apart from inter-office communications.

16. Q. With whom did you communicate in the East? A. Mr. Masson.

17. Q. Mr. Kimberly? A. No, I never wrote to Kimberly at all, never—never one word.

18. Q. Who was Mr. Masson? A. He was secretary of the company.

* * * * *

118. Q. Now, in regard to Theo. Frontier, Mr. Duns, he was a broker in Kamloops, was he not? A. Yes.
119. Q. And I think you told me in the earlier examination as far as your company was concerned, he was treated just like any other large customer? A. Yes, he was our principal.
120. Q. He was your principal and you treated him in your books as another customer? A. Another client.
121. Q. But in view of the fact that his account was a large one you had a special arrangement in regard to brokerage with him?
- 10 A. We paid him half brokerage as a result of his voluminous business.
122. Q. And from time to time you wrote to him for margin just like you would any other customer? A. Oh, yes.
123. Q. And he had two accounts, had he not, margin account and an open account? A. An open account and a cash account.
124. Q. An open account and a cash account? A. That is correct.
125. Q. And the open account is— A. The margin account.
126. Q. And the cash account is—A. Well, with a draft, stocks to be paid on delivery, yes.
- 20 127. Q. Delivery of the stocks with a draft attached? A. D. O. P.
128. Q. I beg your pardon? A. Documents on payment.
129. Q. What you mean is, that you would buy shares for which he put in orders on the exchange if those shares were listed? A. That is correct.
130. Q. And the confirmations would show the exchange unless it was a Vancouver purchase? A. Yes.
131. Q. In which case there would be no symbol or mark showing that it was bought on any exchange, it would merely be blank?
- 30 A. The name would be blank.
132. Q. If it was Toronto it was marked? A. S. M. or Tor.
133. Q. Now, did Frontier send any collateral to your knowledge—as security for his margin accounts? A. Yes, from time to time, I think so.
134. Q. Do you know the system with respect to your company's dealings with collateral? A. Yes, it was that we took the stock in and registered it and put it in the book.
135. Q. Now, where did you register the collateral? A. In the stock register.
- 40 136. Q. In what you call—that was those large volumes? A. Yes.
137. Q. Mines and oils? A. Yes.
138. Q. The oils were kept in one or more registers and the mines in one or more registers? A. That is correct.
139. Q. And they were entered in that register under the heading of the stock in question? A. That is correct.
140. Q. And they showed the date on which the stock was

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received and the date on which it was delivered? A. Yes.

141. Q. Now, is it fair to state that the system was that collateral as received—certificates, rather, as received were placed in one pool? A. Yes.

142. Q. All Home Oil collateral was placed in one pool? A. Placed in—under that heading or division in the books, you see.

143. Q. In the security books? A. In the security books.

144. Q. And that was handed out indiscriminately by your company as needed, to fill orders, or as deliveries had to be made to other customers? A. It was not—I don't get your point—not indiscriminately. I mean to say we might use the stocks to make deliveries just in the same manner as a bank will hand you a \$10 bill that you had the day before— 10

145. Q. Would this be a fair way to describe your system: I might put in a thousand shares of Home Oil on one day, that would be delivered to you as collateral on my account, you would place this in the security cage in the Home Oil bin? A. Yes.

146. Q. And the next day Solloway Mills might sell a thousand shares short—they might have to make delivery to another client and my certificates would be handed out in fulfillment of that short order, or in fulfillment of certain deliveries that you would have to make? A. We would make use of the certificates for this reason, that you put that up as collateral and you have only a certain amount of equity in there, and when the time comes if we pay up the balance of your equity, why, we deliver you a thousand shares, of course, and we will register it in your name if you want it. 20

147. Q. But just to go back to my certificate, that would be quite possible, wouldn't it? A. It would be possible to use the certificate we sent in.

148. Q. For collateral? A. Oh, yes, to make delivery until possibly we get all our stock back from the clearing house. 30

149. Q. Say Solloway Mills made a short sale, that was done wasn't it, to your knowledge? A. They took up that position from time to time, yes.

150. Q. So it would be quite possible for them— A. It would be quite possible for that certificate to be used, yes, to make deliveries.

* * * * *

207. Q. Do you remember when his account was closed out in 1929? A. Yes. 40

208. Q. I think it was September or October? A. It was October.

* * * * *

230. Q. I am just telling you that; I know you will attend. A. All right.

Mr. Sloan: I think my friend should be willing to put up the money—\$3.50—for the purpose of having him here.

Mr. Fraser. Well, you may not have to attend if the court so orders. The question of the \$3.50 will be considered. That is all in the meantime.

EXAMINATION ADJOURNED SINE DIE.

EXCERPT FROM EXAMINATION FOR DISCOVERY OF DEFENDANT MILLS:

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H. Mills.

Mr. Fraser: Mr. Farris is agreeing to Mr. Mills being sworn according to the oath in the form prescribed by the laws of the State of Washington, and will not take any objection to the oath not having
10 been administered according to the laws of the Province of British Columbia, and Mr. Farris is also agreeing that no objection will be taken to the fact that the stenographers are not sworn.

Mr. Farris: That is all right.

QUESTIONS BY MR. FRASER:

Q. You are Harvey Mills? A. Yes.

Q. One of the defendants in this action, W. T. Johnson against I. W. C. Solloway, Harvey Mills, Solloway Mills & Company Limited, and Solloway Mills Limited? A. Is that the action?

Mr. Farris: That is the action, yes. A. Yes.

20 Q. And you have been sworn for this examination? A. Yes.

Q. Now, I am going to refer to the defendant company throughout, which is the Dominion company, Mr. Mills. That was incorporated the latter part of 1927—the 31st of October, 1927. Roughly, that is correct, is it not? A. I think so.

Q. And I notice early in 1928, May, 1928, the company took over the partnership business which was formerly carried on by yourself and the defendant Solloway? A. Yes.

Q. And you and Mr. Solloway received jointly from the Dominion company 25,000 shares, less the qualifying shares—there
30 were five qualifying shares? A. Yes.

Q. What, by the way, was the capital of the Dominion company? A. I don't know.

Q. Well, were any other shares issued besides this 25,000 shares? A. No.

And they had a par value, I believe, of \$10 per share. Do you remember that? A. No.

Q. And you and Mr. Solloway became directors of that company in the latter part of December, 1927; you were secretary-treasurer, I believe, and Mr. Solloway was president? A. I guess so. I
40 don't know.

Q. Well, you remember you became a director after the incorporation of the company? A. Yes, some time.

Q. Secretary-treasurer—didn't you take an office? A. No, I never did that, I don't believe. I might have.

Q. I have a copy of the minutes. A. I might have acted as

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that in one meeting or something like that. There was very few meetings I ever attended.

Q. Well, I have a copy of the minutes here, and they show you became secretary-treasurer of the company and Mr. Solloway became president shortly after incorporation. You don't remember that? A. I always understood Mrs. Webster was secretary-treasurer, and after her L. L. Masson was secretary-treasurer. It is news to me that I was ever secretary-treasurer.

Q. Now, in May, 1928, G. W. Staats was elected to the board. Do you remember Mr. Staats? A. Oh, yes, yes. 10

Q. Is that approximately when he became a member of the board? A. Well, I was in the West then. I don't know what happened then. I guess he was a director, though.

Q. Well, do you remember when he became a director, roughly—how long after incorporation? A. No, because I left for the West in February and did not get back until November of 1928.

Q. You don't remember receiving any word from the East informing you of the fact that Mr. Staats had been elected to the board? A. Absolutely not.

Q. No. A. No. That is, I don't remember of receiving any. 20

Q. Now, in August, 1928, that is the year after incorporation, do you remember Mr. Staats getting 4000 shares from the Dominion company? A. I saw that he did afterwards, yes.

Q. When do you mean, afterwards? A. When I returned from the West.

Q. That would be in the latter part of 1928? A. Yes.

Q. You were in Calgary in the early part of 1928, at the opening of the Calgary office? A. Yes. Calgary, Vancouver and Winnipeg.

Q. And then you went East the latter part of 1928 and you were informed or became apprised of the fact that Mr. Staats was elected to the board and got 4000 shares from the company? A. Yes. 30

Q. Is that correct? A. Yes.

Q. Do you know what he paid for those shares? A. No, I do not.

Q. Do you know what office he took? A. General manager.

Q. And at that time, my instructions are, that you were Vice-President. That would be the latter part of 1928? A. That is what I understand I was. 40

Q. I cannot hear you, Mr. Mills. A. That is what I understand I was.

Q. Then the latter part of 1928 you were instrumental in having the Quebec company incorporated—Solloway Mills and Company Limited. Do you remember that? A. That was all done while I was away.

Q. No, this was in August, 1928, after you got back.

Mr. Farris: He said he did not get back until November, 1928.

Q. Well, do you remember the Quebec company being formed on your return? A. When I returned East from my trip.

Q. And do you remember whether you were a director? A. No, I don't remember.

Q. Whether you were a director of the Quebec company? A. No.

Q. And the head office of the Quebec company was where? A. I don't know that.

10 Q. And then, do you remember the incorporation of the Ontario company of Solloway Mills and Company Limited the latter part of December, 1928? A. Yes.

Q. And the head office of that company was where? A. Toronto, I believe.

Q. In fact, these branches—the Quebec branch and the Ontario branch were directed from the head office in Toronto? A. Yes.

* * * * *

Q. Mr. Mills, I am instructed that on the 12th day of November, 1929, there was a meeting of the directors of Solloway Mills and
20 Company Limited in the Royal Bank Building, Montreal, Quebec, at 2 o'clock in the afternoon, and I am instructed the minutes say: "The chairman then produced to the meeting a transfer of 4000 fully paid shares of the capital stock of the company from I. W. C. Solloway and Harvey Mills jointly to I. W. C. Solloway, also transfer of 20,995 fully paid shares of the capital stock of the company from Solloway and Mills jointly to Mr. Solloway." What have you to say about those instructions of mine; is that correct; is that the time that the transfer of the shares held by you and Mr. Solloway jointly were
30 transferred to him? A. That is the time the transfer took place at that meeting, yes. It was merely delayed because I was in the West.

Q. And then later in 1929 provincial companies were formed in British Columbia, Alberta, Saskatchewan, Manitoba and the Maritime provinces. A. I understand so, yes.

Q. And is it the fact that those provincial companies were controlled by the Dominion company? A. I don't know.

Q. Now, in the latter part of 1928 I notice that Mr.—at least I am instructed—that Mr. Staats resigned as general manager.

Mr. Farris: Now, what has this to do with the dealings, Mr. Fraser? I don't see anything in the pleadings that has anything to
40 do with Mr. Staats—

Mr. Fraser: I am going to show he was actively associated with the affairs of the company and had knowledge of them.

Mr. Farris: That Mr. Staats did?

Mr. Fraser: That Mr. Mills did—had knowledge of the practice and policy of the company and the business which was carried on, and was one of the controlling factors in the company.

Q. Mr. Staats resigned, did he not, as general manager in the

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latter part of 1928? A. Yes.

Q. And you became at that time the general manager and the treasurer? A. I may have.

Q. Well, after Mr. Staats resigned, don't you remember being appointed general manager? A. No.

Q. You don't remember that? A. No, I didn't know that until I read the minute books a year later.

Q. Well, you know it now? A. Yes.

Q. And you know now after he resigned you were vice-president, as well, of the company? A. If the minute book says so, yes. 10

Q. Well, do you know now of your own knowledge whether you were or not? A. No, I don't.

Q. You know you were general manager, but you don't know you were at that time vice-president? A. I don't know for sure. I could not swear.

Q. Do you know for sure whether or not you were a director at that time? A. Yes.

Q. You know that for sure. Now, do you remember, after the resignation of Mr. Staats as general manager, his 4000 shares being transferred to you and Mr. Solloway? A. Yes. 20

Q. Now, you remember early in 1929 that you and Mr. Solloway got about \$50,000 each from the company; forty-nine thousand odd were the figures? A. Yes.

Q. Do you remember that? A. Yes.

Q. Do you remember what that was for? A. It was—

Q. You don't seem to remember. To assist your memory—it was for special service rendered from the middle of May, 1928, to the end of May, 1928; for travelling expenses and for services rendered? A. Yes, that is what it was.

Q. And then do you remember from January, 1929, on, Mr. 30 Solloway was voted a salary of sixty thousand a year, and you were voted a salary of ten thousand a year? A. Yes.

Q. That is correct, is it not? A. Yes.

Q. Now, we come to November, 1929, again. You know now that according to the minutes your joint interest in this 25,000 shares and in this 4000 shares was transferred to Mr. Solloway? A. Yes.

Q. What did you receive for that?

Mr. Farris: Don't answer that question.

You refuse to answer, do you, Mr. Mills? A. Yes.

Q. What you received from Mr. Solloway? A. Yes. 40

Q. Did you receive anything from the company?

Mr. Farris: Refuse to answer.

A. No, I didn't; I didn't.

Mr. Fraser: Well, now, you are answering.

Mr. Farris: Well, that is all right. I will withdraw my objection.

Q. Did you receive anything from the company? A. No.

Q. How long did this salary run on of ten thousand a year that was voted on the 1st of January, 1929, or in January, 1929? A. Well, I would say it ran on until some time in—

Q. Well, did it run on until 1930? A. Yes.

* * * * *

Q. Taking the period of April, 1928, that is when you came out to the Calgary branch—you opened the Calgary branch, did you not, of the Dominion, did you not? A. No.

10 Q. At that time there wasn't a provincial incorporation? A. I believe that was opened under the partnership.

Q. Well, it was eventually taken over by the Dominion company? A. Yes.

Q. Now, what were your duties in connection with the opening of that branch? Just tell me what you did? A. I bought furniture, and I leased the building, and equipped the board room, and ordered supplies. That was about my duties.

Q. Did you install the staff? A. No.

20 Q. Who put in the staff; who was the manager there when it opened? A. Mr. William Matthews.

Q. Who appointed Mr. Matthews? A. Mr. Staats.

Q. That was your general manager in Toronto? A. Yes.

Q. And was Mr. Allan Bury there then? A. Yes.

Q. And who appointed Mr. Bury? A. Mr. Matthews.

Q. Was Mr. Cochran there then? A. No.

30 Q. When did he come on the scene? Q. I believe the latter part of 1929.

Q. Who was the trader in Calgary? A. Allan Bury.

* * * * *

30 Q. Referring to what purports to be a letter from yourself to Mr. Solloway in May, 1929, I will ask you now whether you remember having said anything like this to Mr. Solloway, from Calgary: "I received a very pleasant surprise in looking over the stock position here. With the present market prices, we are probably less than \$740,000 to the bad, compared to two and one-half million over a month ago or so. I am also convinced that the trading should be left alone here as much as possible in the hands of Mr. Bury and Mr. Matthews. I am attempting to get closer relation between Bury and Kimberly." Do you know a man named Kimberly? A. Yes.

Q. Who is Kimberly? A. He is chief trader in Toronto.

40 Q. "I am attempting to get closer relations between Bury and Kimberly by having Bury send in to Shaughnessy"—who was Mr. Shaughnessy? A. General manager.

Q. During what period, roughly? A. 1929.

Q. "Masson—" who was he? A. Secretary-treasurer.

Q. During what period? A. 1929.

Q. "I am attempting to get closer relations between Bury and Kimberly by having Bury send in to Shaughnessy, Masson and your-

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self a review of what has taken place in the past few months, with the different problems they have had to contend with, and also Kimberly's so-called interference in their trading." Do you remember that excerpt?

Mr. Farris: I instruct the witness not to answer the question on the ground that the answer would tend to incriminate him.

Mr. Fraser: I am going to point out to Mr. Farris that under our rules of practice which have been passed on by the Supreme Court, that Mr. Mills is amply protected by taking advantage of the Canada and British Columbia Evidence Act. And, Mr. Farris knows that the court has passed on that point. It is a question of my going back and getting an order—Mr. Farris still insists, of course. I can't compel you to answer. 10

Mr. Farris: Yes, I insist upon my instruction.

Q. You refuse to answer the question do you, Mr. Mills? A. On the advice of counsel.

Q. Now, did you from time to time—

Mr. Farris: It is on the advice of counsel it would tend to incriminate him.

Q. In 1929, Mr. Mills, you opened up the Calgary office—early 20 in 1928 you have told me? A. Yes.

Q. And then you came out as manager of the Calgary office did you not, for three months? A. In 1929.

Q. In August, September and October, wasn't it, 1929; around there? A. Yes.

Q. And now, during those periods, or at any time, did you send a report to the head office regarding matters of trading with the Calgary office? A. I don't remember.

Q. You don't remember having sent in anything in respect to trading? A. No. 30

Q. Or having given any report? So there will be no misunderstanding as to what the word "trading" means, did you, from time to time, advise the head office as to the position of your Calgary office on various stocks? A. I don't remember.

Q. Do you know what I mean? My question does not confuse you? You know what "position" means? A. Yes.

Q. The long or short position A. Yes.

Q. You don't remember having given any information to the head office in regard to those matters? A. No.

Q. Is that your answer? A. Yes. 40

Q. And then you came down to Vancouver, did you not, after you opened the Calgary office? A. Yes.

Q. And what did you do in Vancouver.

Mr. Farris: Are you asking now as to what he did in connection with his office?

Q. Are you under any misapprehension, Mr. Mills? A. No, I purchased the furniture there and arranged for the building of the

board, and went through much the same operations as I did in Calgary.

Q. And who was appointed manager there? A. Mr. J. F. Macdonald.

Q. And who was assistant manager- A. I don't know.

Q. Do you remember Mr. Dunn—was he installed at that time— A. Yes.

* * * * *

10 Q. Who appointed those officials? A. Mr. Staats appointed Mr. Macdonald and Mr. Macdonald appointed Mr. Dunn, probably in 1929, as assistant manager, I believe.

Q. And did you have nothing to do with those matters at all? A. No.

Q. Who arranged for the lease of the premises? A. Mr. Staats. I was with Mr. Staats at the time.

Q. Mr. Staats came out, did he, from Toronto? A. Yes.

Q. Then you and Mr. Staats did it jointly? A. The lease, yes.

Q. You were consulted with—Mr. Staats consulted you? A. Yes.

20 Q. You were the superior officer, or did you consider yourself Mr. Staats' superior officer as far as your relations to the company were concerned? A. I believe I did.

Q. And as the office was opened and the various details in connection with the opening of the office were arranged, you conferred with him from time to time, did you not—he consulted you? A. Well, Mr. Staats returned to Toronto before the office was opened.

Q. And left the matter to you did he? A. Yes.

Q. Now, who was appointed trader in Vancouver A. Mr. Willins.

30 Q. Was he there first? I thought Mr. Kimmerly was there first? A. He was.

Q. At the inception? A. Yes.

Q. And then the early part of 1929 he went to the head office, did he not? A. I don't remember when.

Q. Do you remember when Mr. Willins was appointed? A. Not exactly, no.

Q. Do you remember roughly? A. I should judge sometime in 1928.

Q. Now, offices were also opened in Victoria? A. Yes.

40 Q. And in Seattle, Washington? A. Yes.

Q. And you looked after the opening and the putting on their feet of those offices? A. No.

Q. Nothing to do with those? A. No.

Q. Nothing to do with the Victoria office? A. No.

Q. Did you ever make a report to the head office with regard to whether you should engage Caslen & Company, or Huntings & Company? A. I don't remember.

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Q. Do you remember flying over to Victoria? That is quite an unusual incident? A. Not in my life it is not.

Q. You don't remember flying to Victoria in connection with prospects there or looking over the office, in 1928? A. I flew there a number of times.

Q. Just answer the question, Mr. Mills. A. Not in that connection, I do not.

Q. You don't remember writing any letters in connection with flying over and attending to the opening of the Victoria office in the latter part of 1928? A. No, I don't remember that. 10

Q. How is your memory, Mr. Mills, reasonably good? A. I think so.

Q. Now, from time to time, that is 1928, 1929, you visited all these branches throughout the country, I am instructed, and sent in reports, whether by telephone or letter or telegraph doesn't matter,—to the head office and to Mr. Solloway. A. I, by no means, visited all of them, or not even part of them.

Q. Well, you visited Winnipeg from time to time? A. Yes.

Q. Regina? A. Yes.

Q. Saskatoon? A. Yes. 20

Q. Edmonton? A. Yes.

Q. Calgary? A. Yes.

Q. Vancouver? A. Yes.

Q. Victoria? A. I was in the Victoria office once for less than half an hour.

Q. And Seattle? A. The same applies there.

Q. Well, then, the situation of Victoria and Vancouver, when you visited those branches, you made reports back to the head office and to Mr. Solloway? A. In some cases.

Q. And did you advise them as to the trading position of these various branches? A. If I did at any time it was from information I would receive from a conversation I had with the manager or the trader. I do not recollect any particular instance of doing it. 30

Q. Now, so that will be all clear,—it is rather a double-barrelled answer,—when you went to these different branches did you discuss their position with its trader or its manager,—or, I should say, their traders or their managers of the respective branches?

Mr. Farris: Well, that is just a matter of his duties?

Q. Did you discuss with your managers or your traders of the respective branches I have mentioned with the exception of Victoria and Seattle, their trading position? That is surely a simple question? 40

A. Just which offices do you refer to.

Q. Well, confine it to Calgary and Vancouver. A. I may have in the course of a general conversation learned something from the manager or the trader that I may have passed on to Mr. Solloway or to Mr. Staats.

Q. Now, I didn't ask you that, Mr. Mills. I asked you first, did

you have conversations with the managers or the traders at Vancouver and Calgary with respect to their trading position. Now, you can say you don't remember or yes or no, surely? A. Well, yes, I did.

Q. During 1928 and 1929. I think I should, in fairness, mention here, Mr. Farris, and Mr. Mills, it has taken you a long time to answer some of these questions. They are very simple. A. Well, they are not simple.

Q. In 1928 and 1929—two years? A. Well, you can give me five years —

10 Q. You say those are the only two years you were connected with the company.

Mr. Farris: In answer to that remark, so that you may know Mr. Mills' position, Mr. Mills at no time had anything to do with the trading, and any information he got,—Mr. Mills at no time had anything to do with trading. And any conversation he had is apart from his duties, and was in a general discussion, and he has a perfect right to take all the time needed to consider whether he had any general discussions or not.

A. Yes, I want to be as fair as I can be, and that is just what I would like you to understand. That when I was doing that there, I was doing something I was not supposed to,—it was not my duties.

Q. That is for the Court to decide. You may think so and you may be right, but I think you are wrong. You have gotten to this extent now, what you did discuss with the managers, and with the traders the trading position of the Vancouver and Calgary branches. Now, I have asked you,—if you want to take the time to answer, do so,—did you have these discussions during 1928 and 1929? A. I am sure I had them in 1929. I don't remember what happened in 1928. I was very busy.

30 Q. Now, did you know that the Vancouver and Calgary branches had house accounts? A. Yes.

Q. In 1928 and 1929? A. Yes.

Q. And would you just explain what this house account is that these branches maintained? A. Well, it was the long and short position.

Q. The long and short position of the defendant company in the stocks that were being delivered or traded in? A. In certain stocks. I could not name them all.

40 Q. Well, is it fair, Mr. Mills, to say that the long or short position of the company was kept in the house account in all active stocks? A. Yes.

Q. And I suppose you would call Royalite an active stock? A. Sometimes it was and sometimes it was not.

Q. Well, would you be able to say,—I will name half a dozen stocks, say, Royalite, Mayland, Home Oil, Calmont, Dalhousie, Grandview, A. P. Consolidated, Baltic, Advance Oils, Associated Oils, United Oils, those were active stocks? A. Yes, they were.

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Q. And a house account would be maintained on those stocks; house position?

Mr. Farris: Well, does he know.

Q. Do you dispute that? A. They may have been long or short. I don't know. They were active stocks, I know.

Q. And you said it kept its position with regard to active stocks?
 A. Yes.

Q. Well, you know with respect to A. P. Consolidated, do you not, that they were short 100,000 shares at one time? A. I know they were short the stock. I don't know how many. 10

Q. I am suggesting at one time they were short 100,000 shares, and that you had knowledge of it in 1928 or 1929? A. They may have been.

Q. Well, do you know? You don't have to answer if you don't.
 A. I don't know the exact number at all.

Mr. Farris: You must only tell, Mr. Mills, so there will be no question about it, the things you actually know from your own personal knowledge. If you don't know from your own personal knowledge, say you don't know.

Mr. Fraser: Well, I assume he will give his own knowledge 20 here.

The Witness: I am trying to do that.

Q. I don't care about the number, but roughly, within ten or fifteen or twenty thousand shares, if you like—roughly in 1928 and 1929, your company was short at least 100,000 shares?

Mr. Farris: Now, I want the date.

Q. In either of those years at any time?

Mr. Farris: I object to that unless you give the time they were short.

Q. I am asking you this question, Mr. Mills, in the years 1928 30 and 1929 have you any knowledge of the defendant company being short in A. P. Consolidated in the neighborhood of 100,000 shares?

A. They may have been at one time short that much—

Q. (By Mr. Farris): Well, do you know,—you say may have been—

Mr. Fraser: Well, never mind—

Mr. Farris: I want him to answer from his personal knowledge.

Mr. Fraser: I am going to strenuously object to Mr. Farris prompting this witness or suggesting any answers. He has told him once he is answering from his own personal knowledge. I think that 40 is sufficient.

A. I remember of it coming out in the Court trials that they were short that many shares.

Q. You mean the Calgary prosecution? A. Yes.

Q. I am asking you, before that,—before there was any thought of the Calgary prosecution, had you any personal knowledge that your company was short in the neighborhood of 100,000 shares or anything

like it? A. Well, I would not want to say to the number of shares. I know they were short.

Q. A considerable number of shares we will put it that way? A. Yes. And then, again, they may have been long at some period.

Q. I have no doubt about that. You can add that if you like. But, that was not the question. You don't know that they were ever long in A. P. Consolidated of your own knowledge? A. I don't know, no.

Q. And you know you got caught short in United in 1928 and 10 1929? A. I heard that, yes.

Q. You don't know that of your own knowledge? A. Not until I came back from my trip.

Q. When? A. Sometime in May of 1929. I had been away for four months.

Q. And you discussed it with whom? A. I guess Mr. Solloway told me that.

Q. And what did he tell you? A. That we lost some money on United.

Q. About half a million dollars? A. I don't remember the 20 amount.

Q. Was it anything in the neighborhood? A. Well, it was a lot of money.

Q. And tell me what he told you about the position on United, and how they got caught?

Mr. Farris: I object to that question.

Q. Subject to my friend's objection—

Mr. Farris: I instruct the witness not to answer the question.

Mr. Fraser: You are instructing the witness not to answer the question?

30 Mr. Farris: Yes.

Mr. Fraser: On what ground?

Mr. Farris: I don't think any discussion between him and Mr. Solloway as to the position on United has anything to do with the matter.

Mr. Fraser: That is one of the stocks in which the plaintiff dealt, and if they were short at times it is material to this action. And also, I am probing his knowledge of the matter.

Mr. Farris: Anything Mr. Solloway said to him is not evidence against him, and it certainly cannot be evidence against Mr. Solloway 40 who is not here and examined on it.

Mr. Fraser: Quite true. It is not evidence against Mr. Solloway, but, I am asking the question to fix knowledge of Mr. Mills,—his knowledge of the trading position of this company.

Mr. Farris: He has already told you he knew nothing about it. That he was away at the time and only heard of it afterwards.

Mr. Fraser: I object to this statement that Mr. Farris makes.

Mr. Farris: That is what he stated.

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Mr. Fraser: He made no such statement. You instructed the witness not to answer. Now, is that the position still?

Mr. Farris: I say he has already stated that he was away at the time and knew nothing about it except afterwards Mr. Solloway told him something about it. And I object now to any conversations between Mr. Solloway and Mr. Mills at that time.

Mr. Fraser: So it will be clearly in the record, Mr. Farris objects to Mr. Mills giving any conversation he had with Mr. Solloway,—when was it,—in the middle of 1928 with regard to their position on United Oils. 10

Mr. Farris: My objection is clearly stated, and I do not have to have it restated for you.

Mr. Fraser: Well, I want to be clear, Mr. Farris, because I do not want to go back and have any confusion if I have to apply.

Mr. Farris: You heard the objection.

Q. You refuse to answer the question, Mr. Mills, do you? A. On the advice of Mr. Farris.

Mr. Fraser: The witness refuses on the advice of Mr. Farris to answer the question.

Mr. Farris: I also take the further position on that question 20 that the answer would tend to incriminate the witness.

Q. Now, you opened an office in Buffalo, did you not? A. Yes.

Q. When was that? A. Early in 1928.

Q. And you gave instructions to Mr. Masson in connection with the opening of that office, did you not? A. I may have, yes.

Q. Now, I think you have already said Mr. Kimmerly was the trader in Vancouver when the office was opened in 1928? A. Yes.

Q. And I am instructed that he received instructions from you with regard to trading matters. That Mr. Kimmerly so swore on the Calgary trial? A. I don't think he did. 30

Mr. Farris: Now, produce that statement. I don't think Mr. Kimmerly did state that.

Q. First, before I do, Mr. Mills, I am instructed that you instructed Mr. Kimmerly with regard to trading matters in the Vancouver office in 1928. What have you to say about that?

Mr. Farris: Now, just before you answer that question. Mr. Fraser has already stated that he has received his instructions as the result of evidence given by Mr. Kimmerly on the Calgary trial. I would like that statement read to the witness.—Mr. Kimmerly's statement before you answer that question. 40

Q. I am instructed by my clients that you instructed Mr. Kimmerly in regard to trading at the Vancouver office.

Mr. Farris: I object to that question, because, with all due respect,—I do not want to say my learned friend is not stating the truth, but I have enough common knowledge of the matter to know what the situation is, and before any question is answered in that matter I

would ask Mr. Fraser to read Mr. Kimmerly's statement.

Mr. Fraser: First, I take the position I do not have to disclose from where my instructions come. I am going to ask the question, and if you wish you can instruct him not to answer.

Mr. Farris: I have already instructed him in that regard, until you produce that statement of Mr. Kimmerly's.

Q. You refuse to answer, Mr. Mills? So there will be no doubt when they bring in the record. A. Yes.

Mr. Farris: Are you producing Mr. Kimmerly's statement?

10 Mr. Fraser: Yes; but I am not waiving my position on the other matter.

Q. You remember the Calgary trial in 1930? A. Yes.

Q. Do you remember Mr. Kimmerly giving evidence? A. Yes.

Q. Do you remember communicating with Mr. Kimmerly in any way with regard to fills that were being made in Vancouver and kicks being received? A. I might have done that. A client may have complained—

20 Q. Never mind the "may have's"—in law we have to have definite answers.

Mr. Farris: Mr. Mills is giving you a proper answer. The question is very unfair. I remember the situation quite well. Mr. Mills had written a letter from Calgary—

Mr. Fraser: I object to this. I object to Mr. Farris making any suggestions to this witness—

Mr. Farris: Just be fair, and bring in the entire evidence upon which you are examining. Don't bring in half a question and half an answer and then ask the witness about that.

30 Mr. Fraser: I am not trying to trap the witness.

Mr. Farris: I say it is an unfair question, because I remember the full circumstances of the matter, and I remember in what regard the answer was given.

Mr. Fraser: And Mr. Farris, you must also remember you are not being examined here.

Mr. Farris: No, but I am protecting the interest of my client.

Mr. Fraser: I will start again, and I will ask that the examination be adjourned, if you are going to interrupt and suggest answers to this man.

40 Mr. Farris: You put your questions fairly and properly and they won't be objected to. But, as long as you put them unfairly and improperly they will be objected to.

Q. I am asking you again, Mr. Mills, if you remember having any communications at all with Mr. Kimmerly with regard to trading in Vancouver? A. I can truthfully say I don't remember.

Q. You don't remember anything with respect to trading; is that what your answer is? A. Yes.

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Q. Do you remember anything about—do you remember informing Mr. Kimmerly about some bad fills in Home Oil he had made?

A. If you will allow me to explain—

Q. You can explain all you like.

Mr. Farris: Just answer his question, Mr. Mills, if you remember or not.

A. I don't remember that particular instance of Home Oil, no.

Mr. Farris: Well, that is all.

A. When was this, 1928 or 1929?

Q. At any time during 1928 or 1929. (Witness makes no response).

Q. Now, I am instructed that you wrote to Mr. Kimmerly as follows:

Mr. Farris: Have you the letter?

Mr. Fraser: No, I have not.

Q. And you have no letters? A. No.

Q. "This particular day you had a buying order for 12,500, and you showed 9,500 at 76, and the sheet showed only 6,700 sold at that figure." Do you remember a letter of that kind? A. Can you read the preceding part of it?

Q. That is all I can read. Do you remember any letter you wrote to Mr. Kimmerly—

Mr. Farris: No, read the whole letter.

Mr. Fraser: That is all I have. I have not got the whole letter.

Mr. Farris: Well, if you haven't got the whole letter, you must have had a copy of it. I don't see why you bring excerpts of letters and ask him concerning a part of it.

Mr. Fraser: Well, he doesn't have to—you can answer you don't remember. Very simple. I don't know why you are taking all the time, though. A. I don't remember.

Q. You don't remember anything of that nature at all? A. No.

Q. Do you remember anything of this nature: "Re: Home Oil, the stock you filled at 305 this morning does not show on our board at all. As long as the thought of something wrong is in their minds, they will be sure to look at the sheets when they arrive. I appreciate what you are up against at that end, but you must also look at these things from clients' points of view." Do you remember any letter of that kind, or excerpt of that nature? A. Yes, I do.

Q. You remember that one? A. Yes.

Q. Was that a letter you wrote to Mr. Kimmerly? A. It was a letter I wrote to Mr. Kimmerly from Calgary. I believe it was Calgary. I am not sure.

Q. And what prompted you to write that letter? A. To the best of my recollection the manager of the Calgary office or the trader of the Calgary office complained about a fill that the clients—that a Calgary client had had, and they said that—it seems that Mr. Bury

was not getting along very well with Kimmerly, and the manager asked me to write Kimmerly and see what I could do.

Q. Mr. Kimmerly was then in Vancouver? A. Yes.

Q. Yes? A. And he gave me the information on it, and I wrote it.

Q. You kept Mr. Solloway posted from time to time, did you not, after you made these various visits of inspection to the various branches? A. I would write him from time to time, yes.

Q. And now I am producing what purports to be a copy of a letter dated the 7th of September, 1928, from Mr. Solloway. (Hands document to Mr. Farris). Do you remember a letter of that nature?

A. Yes, I remember that.

Mr. Farris: I am objecting to that going in. It may go in subject to my objection. I am not instructing him not to answer, but I am objecting to the question.

Q. I produce what purports to be a copy of a letter from Sol. Do you know who Sol. would be? A. Very likely Mr. Solloway.

Q. Mr. Solloway, the defendant, was popularly known as "Sol."? A. Yes.

Q. Sent to "Dear Harvey." Your Christian name is Harvey?

A. Yes.

Q. September 17, 1928. Do you remember receiving a letter along those lines?

Mr. Farris: I am objecting to the question, but I am not instructing the witness not to answer.

((Letter referred to marked Exhibit 2 on examination of Harvey Mills)).

A. I don't remember this particular letter. I might have received it, but I don't remember. There is nothing in there that would bring it back clearly to my mind that I did receive that letter.

Q. Let us take this paragraph which I have marked with a pencil, to save you reading it, and to the notation "A" on it.

(Witness inspects portion referred to).

Q. Do you remember Mr. Solloway advising you anything along those lines? A. No. No I remember that statement in the Calgary trial, but the letter I don't remember.

Q. And at the Calgary trial you didn't remember receiving that letter? A. No, I don't.

Q. Now, do you remember this part which I have marked "B"? (Witness inspects portion of letter referred to).

A. The same answer applies there.

Q. But, there are parts of that letter that are familiar to you?

A. Only through the Calgary trial.

Q. Does that strike you as being a copy of a letter that was used at the Calgary trial? A. Yes.

Mr. Fraser: Now, are you prepared to admit those are copies,

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Mr. Farris, having inspected them—letters passing to and from Mr. Mills and Mr. Solloway?

Mr. Farris: Well, now, to your question, you ask what you want to ask. They are all in the same class. Just refer to each letter.

Q. I am producing a letter dated the 17th of September, 1928, from yourself to Mr. Solloway. Can you identify that as a copy?

Mr. Farris: I am objecting generally to these copies being produced and the questions in regard to them, and will take the position at the trial that the answers given in respect thereto may tend to incriminate the witness, and reserving the right to object at the trial to the production of these particular letters and to the answers. Now, subject to my objections, the witness may answer the questions. 10

A. Yes, this is familiar to me.

Q. Now, this is a copy of a letter from you to Mr. Solloway dated September 20, 1928? A. Yes, I remember this letter.

Q. And an incomplete copy of a letter—the closing part was merely personal—dated September 22, 1928, from Mr. Solloway to you? A. I believe I received this.

Q. A letter from you to Mr. Solloway, May 21, 1929? A. Yes.

Mr. Farris: My objection of course applies to all these letters. 20

Mr. Fraser: Yes.

Mr. Farris: I think we made that clear.

Q. And the letter from you to Mr. Solloway, November 5, 1928?

A. Yes, I remember this letter.

Q. Now, having got over these letters, Mr. Mills, you do not dispute that matters of trading were discussed with Mr. Solloway by you? A. Well, inasmuch as they are in the letters—

Q. Now, I am suggesting, Mr. Mills, that you know and did know that the company was short in a great many other active stocks, a number of which I have recited to you. A. From time to time I knew they were, yes. 30

Q. And how did you know that? A. Well, the managers might tell me, or the traders might tell me.

Q. Did you ever look at the house accounts in Vancouver or Calgary? A. I wouldn't know what I was looking at if I was looking at them.

Q. Well, did you? A. Well, I did not.

Q. That is better. You never looked at the Vancouver house account in any stock A. No. 40

Q. And you never looked at the Calgary house account? A. No, I didn't even know where it was kept.

Q. At any time you were in the office you never saw the Calgary house account? A. No.

Q. Did you ever see the house account at the head office? A. No.

Q. Did you ever discuss with any official at the head office the position of your company with regard to active stocks, including Mr. Solloway? A. I might have discussed it with Mr. Solloway.

Q. Well, did you? A. Yes.

Q. Well, there is one answer. And is it a fact that within your knowledge, with respect to most of those active stocks, that the prevailing policy of your company was to be short? A. No, not within my knowledge.

10 Q. Would you say the prevailing policy—what would you say the prevailing policy was with respect to these stocks; to be long? A. Well, my understanding was that they were taking a trading position. They may be long or short.

Q. At any time to your knowledge or from your discussions—at any time in 1928 or 1929 was your company—was Solloway Mills & Company Limited, the Dominion company, short in any of these active stocks? A. They certainly were.

Mr. Farris: I object to the question on the grounds you must refer to a particular stock in issue in this action.

Mr. Fraser: Do you want me to name them again?

20 Mr. Farris: No, I am asking the specific stock you are referring to, and the time.

Mr. Fraser: All right. He has already answered that in all active stocks that they certainly were short in 1928 or 1929.

Mr. Farris: No, he didn't say that.

Q. Is that your answer? A. I said short or long.

Q. And that you also said they were short at certain times?

A. I didn't say that, I don't believe; I said they were short all along.

Mr. Fraser: Would you repeat that question and answer?

30 Question and answer repeated as follows: "Q. At any time to your knowledge or from your discussions—at any time in 1928 was your company—was Solloway Mills & Company Limited, the Dominion company, short in any of these active stocks? A. They certainly were."

Q. You don't want to change that, do you? A. No, that is all right.

* * * * *

Q. Have you any knowledge that it was the practice of your company not to allow clients to go short? A. Yes, I know there was general instructions issued—

40 Q. With your knowledge? A. I read the instructions.

Q. Go on—general instructions given as to what? A. That—I don't remember the wording of it.

Q. No, give me the purport of it. You would be a genius if you remembered every word. A. That except—I believe that the instructions would read something to the effect that only experienced traders, or some such thing as that, should be allowed to go short.

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Excerpt,
Exam. for
Discovery of
H. Mills.
(Cont'd)

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That they should not—salesmen should not encourage or allow every client to sell stock short.

Q. And that was your knowledge of the practice during 1928 and 1929? A. That was the instructions that I read, yes.

Q. During that period? A. I believe that was in 1929.

Q. Have you knowledge as to where the certificates of stocks were kept? For instance, a stock that was listed on the Calgary Stock Exchange, where would the certificates be lodged, in head office, at Calgary or Vancouver? A. Do you mean the certificates?

Q. Yes. Was there any practice or custom or policy with regard to your company in keeping stocks that were listed solely with the Calgary Stock Exchange? A. If the stock was listed on the Calgary Exchange, the certificates would be kept there. 10

Q. If the stock was listed on the Vancouver Stock Exchange, the certificates would be kept there? A. Yes.

* * * * *

Mr. Fraser: Q. Now, in this letter to Mr. Mills, I notice Mr. Solloway said—he gave you certain instructions with regard to the stock on hand. Do you remember that, that they were not anxious “to carry too many stocks,” but in the meantime they had to carry a number of stocks in Ontario because the government there was apparently making investigations.” Do you remember that letter? A. I remember that letter. 20

Q. You remember that? A. Yes.

Q. Was it within your knowledge that the practice at that time was not to carry so many stocks? A. From what Mr. Solloway said in that letter, yes.

* * * * *

Q. What do you know about this account of Frontier? Have you gone into it? A. No, I really don't know anything about it. 30

Q. Did you know he was a client of yours, Theodore Frontier? A. I did, yes.

Q. Or the company was a client of yours? A. I met Mr. Frontier once in Vancouver and had lunch with him or dinner with him.

Q. Didn't he tell you his company was trading with your company? A. No.

Q. What did he say? A. I understood he was just a client of ours at that time.

Q. Well, you treated him just like any other client? A. Yes. 40

Q. Is that right? A. I went out to dinner with him.

Q. You knew that Frontier was carrying his business in Kamloops and collecting orders in Kamloops? A. I didn't know anything. I knew he was a broker there at the time. He was talking to me about real estate in— He wanted to sell me a ranch.

Q. So he did not discuss his brokerage business with you there then? A. No.

RECORD

* * * * *

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Re-Examination.

QUESTIONS BY MR. FARRIS:

Excerpt,
Re-Exam.
Discovery of
H. Mills.

Q. I think, Mr. Mills, you stated— I am asking you if this is correct, whether you did state that you only discussed the trading position in a very general way? A. Yes.

10 Q. Did you, from your personal knowledge or at any time have knowledge of your trading position?

Mr. Fraser: I object to this question and to the answer of the witness. The witness has already been asked that and answered it.

Mr. Farris: I am re-examining, which I have a right to do.

Q. Did you at any time have any knowledge, personal knowledge of your stock position, your trading position or whether you were short or long on any stock except the knowledge that you would get from hearsay? A. That is all.

Q. Did you at any time ever check up your stocks on hand? A. No.

20 Q. Would any person have knowledge of the stock position or could have knowledge of the stock position, exact position at any time, do you know? A. From an individual office?

Q. No. I mean of your position any day or any hour? A. Well, I don't know that.

Q. You don't know that? A. No.

Q. In 1929 you were abroad for how long? A. Four months.

Q. And when you came back you had contracted, I believe you say— A. Tick fever.

Q. What was it? A. Tick fever.

30 Q. And you were practically an invalid for how long after that? A. About two months.

Q. At any time during the affairs of this company or the partnership did you ever direct the policy? A. No.

Q. Had you any knowledge whatever of the brokerage business prior to 1927? A. No.



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REASONS FOR JUDGMENT

FISHER J.

The plaintiff brings the action herein as Trustee of the Estate of Theo. Frontier and Company, Limited, in Bankruptcy, against Solloway Mills and Company, Limited, and Solloway and Mills as individuals or directors.

On behalf of the defendants it is further submitted that the plaintiff cannot bring or maintain the action and section 43, subsec. (c) and section 23 of the Bankruptcy Act are relied upon. Under section 43, subsec. (c) the Trustee may, with the permission in writing of the Inspectors, which was obtained here, bring an action relating to the property of the debtor and section 23 defines or refers to such property as that which is divisible amongst the creditors and states that it shall not include property held by the debtor in trust for any other person. Counsel on behalf of plaintiff contends that anything recovered in this action would be properly divisible amongst the creditors of the said bankrupt though he admits that while Frontier and Company, carrying on a brokerage business in Kamloops, B. C., were sending moneys from time to time to the defendant Company to buy shares moneys were also being paid to Frontier & Company by other parties with orders to purchase some of the said shares. Counsel on behalf of the plaintiff submits that Frontier and Company became a large customer of the defendant Company while buying or speculating in stocks for themselves and also other parties who, according to the contention of the plaintiff, were the customers or clients of Frontier and Company. On the other hand Counsel for the defendant submits that Frontier was the agent of defendant Company and that the right of action, if any, would lie in each client. Exhibits 53, 54, 55 are particularly referred to, being letters passing between the parties at the time the arrangements were made between them. It may be noted that in the letter of April 21st, 1928 (Exhibit 54) Theo. Frontier and Company wrote as follows:

"As stated in our previous letter we still have our connection with W. F. Irwin Company and we will retain this connection until we hear definitely from you as to what arrangements can be made with your firm.

"At the present time we are getting C.N.D. service twice a day which is very helpful to us. They pay one-half

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of this and service and we pay one-half and the commission is also divided on a fifty-fifty basis. Messrs. Irwin & Co. pay for their own wires and we pay for ours. The same thing applies to the drafts. They pay for their drafts when drawing on us and we pay for our drafts when drawing on them. In this way the expenses are also divided on a fifty-fifty basis."

On the 25th April, 1928, the defendant Company wrote in reply to the above letter a letter reading in part as follows (Exhibit 55): 10

"Referring to your letter of 21st instant and also to your earlier letter, we are prepared to handle your account on the terms mentioned by you, that is, we will pay half C.N.D. service and divide commission on a fifty-fifty basis. We will draw on you at our expense, and you will draw on us at your expense. We will deal with you on margin on the basis of 33 $\frac{1}{3}$ % with interest at 8 per annum on the unpaid balance. We might state that the 7% rate mentioned by you applies only to accounts in our Toronto office. 20

"We deal only in mining and oil stocks listed on the Vancouver Stock Exchange, Calgary Stock Exchange, and the Standard Stock & Mining Exchange at Toronto.

* * * * *

"In all your orders be careful to specify, "Buy" or "Sell", "Open Order" or "Day Order," and "Cash" or "Open Account." We would ask you to scrutinize carefully the class of stock your clients will wish carried on margin. We do not wish to accept any order on this basis where the price is below 25c per share. We would also ask you to at all times endeavor to keep your margin no lower than one-third, and if possible, to request your clients to put up an amount in excess of that figure. 30

* * * * *

"Upon your advising that these arrangements are satisfactory to you we shall get in touch with the C.N.D. service so that we may take care of our half of the cost."

It must be admitted by plaintiff that the commission was either divided as suggested in the correspondence or that a rebate was given from time to time by the defendant Company to Frontier and Company which amounted to the substantial sum of \$16,461.89, and there is also some evidence tending to show that Frontier and Company at one time wished to advertise themselves locally as agents for the defendant firm. It may be noted, however, that in a letter of January 40

19th, 1929, the defendant Company enclosed sample of the "buy" and "sell" slips used in their office but stated as follows:

"So that there will be no confusion it will be necessary for you to have these slips printed with your own firm name at the top instead of Solloway Mills and Company Limited as on the enclosed copies."

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It may also be noted that the defendant Company in its correspondence and dealings treated the account as one between the defendant Company and Frontier and Company from time to time stating that the account was undermargined. The buy and sell confirmations (see Exhibit 41) used by the defendant Company were addressed to Frontier and Company and stated that defendant Company had bought or sold as the case might be "for your account" which would mean for the account of Frontier and Company. On the other hand the buy and sell orders given by the clients of Frontier and Company Limited (see Exhibit 61 and 62) were addressed to Frontier and Company Limited. When the defendant Company was claiming that the account was under-margined and asking for a settlement it is apparent from the Exhibits 87-88 and 89 that it dealt direct with Frontier and Company or the Trustee and filed a claim with the Trustee against the Estate. Mr. Duns, examined as a past-officer of the Company, says in his examination for discovery that Frontier was "our principal" and that the Company wrote to him for margin just like it would any other customer though it paid him half brokerage as a result of his voluminous business. It is also to be noted that on October 17th, when the defendant Company purported to sell out the securities which had been deposited by Frontier and Company on account of margin, no attempt was apparently made by the defendant Company to identify any one of the securities as the property of any individual client of Frontier and Company, but the amount apparently received was applied on the general indebtedness of Frontier and Company. From all this it would appear to me that the right of action would lie in Frontier and Company, but it is further submitted by Counsel on behalf of the defendants that moneys given to a stock-broker to purchase stock are trust funds and the decision of my brother, W. A. Macdonald, in re R. P. Clark and Company (1931) 3 W.W.R. p. 79 is cited. On the other hand Counsel for the plaintiff contends that in any event these moneys cannot be followed; that they have lost their identity and that at the time Theo. Frontier and Company went into bankruptcy all it held was a chose in action. Counsel on behalf of defendant takes the position that at the time of the bankruptcy the shares of all the various clients had not been sold by Solloway Mills and Company and that these shares could be followed and identified and reference is made to Exhibit 63 being one of the statements sent out by Frontier and Company to one of its clients showing stocks

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bought and sold for him, but the contention of the plaintiff is that the stocks were never bought at all by the defendant Company for the plaintiff or its clients and that it was continually short in all the active stocks in which Frontier and Company dealt. For reasons hereinafter more fully set out I find that this contention of the plaintiff is well founded. It may be noted that the securities forwarded by Frontier and Company to the defendant Company, being duly endorsed, were treated as street certificates and became the same as ten dollar bills as Mr. Duns, a past-officer of the defendant Company, says in his examination for discovery. I have also noted that Certificate No. 38734 for 25 shares of McLeod received from Theo. Frontier on February 6, 1929, and apparently not sold out until October 17, 1929, (see Exhibit 82) would appear, according to an entry in the Stock Register (Exhibit No. 1) to have been delivered to another party on February 7th, 1929. I am satisfied that there were no shares ear-marked for either Frontier and Company or any of their clients at the time of the bankruptcy and, in my opinion, both the moneys and the securities forwarded by Frontier and Company to the defendant Company had in any event long before the bankruptcy so lost their identity that they could not be followed or identified as the property of any individual client of the bankrupt and all that remained was a right of action on the part of the Trustee for the benefit of the estate. 10 20

This brings me to the consideration of the cause of action alleged herein which may be shortly stated as follows: The contract between the defendant Company and Frontier and Company may be described as one under which the defendant Company was to purchase and carry for the plaintiff shares of stock on payment by Frontier and Company of a percentage (1/3) on the purchase money of the stock called "margin" and Frontier and Company was to keep up its margin in case of a fall in the value of the stock and it is apparent that it was agreed that the defendant Company, which was also to sell for Frontier as ordered, would either advance or borrow the money to take care in the meantime of the balance of purchase money for which Frontier and Company would pay interest at 8 per cent. 30

The plaintiff's transactions, which were many during the period in question, extended from in or about the month of April, 1928, to about the date of the bankruptcy, which was the 18th September, 1929, for and during which time the Frontier Company sent the sum of \$120,063.48 (in addition to certain securities) to be applied on the open or margin account and confirmation slips are produced confirming the filling of "buy" and "sell" orders given from time to time. The Plaintiff contends that the defendant Company did not buy or sell stock for the plaintiff as ordered and that the Company never had and did not carry any stock ear-marked for the plaintiff but were, as it is termed, "short" on the various stocks in which the plaintiff 40



dealt. The plaintiff contends that in a great many cases the stock was never bought at all by the defendant Company and in any event was not bought for Frontier and Company in accordance with the contract as it was not ear-marked, but the certificates, if and when bought, were thrown into what has been called a bin or cage. From the cases of *Long v. Smiley* (1913) 23 Ont. W.R. 229 and *Cartwright v. McInnes in fra* it might be argued that the defendant Company, under certain circumstances, might be justified in not allotting certificates to its particular customers, if the defendant Company had at all times on hand sufficient to deliver to the plaintiff and the rest of the clients the stocks ordered, but if it was not in such a position, or, in other words, was "short," my view is that it is not justified in doing so as it substitutes the personal liability of perhaps an insolvent broker for the real security of the stock which it cannot do. See *Sutherland v. Cor* (1884) 6 Ont. Rep. 505. One of the issues therefore to be decided in this case is whether or not it is fair inference from the evidence that the defendant Company was "short" on the stocks in which the plaintiff dealt. It would appear from the evidence that the defendant Company was in the habit of using the services of agent brokers and the number of documents produced with the symbolic words "sold to" or "bought from" thereon indicate that on numerous occasions the defendant Company would purport to buy or sell shares on the Vancouver Stock Exchange for the plaintiff and other clients through one of these agent brokers and sell to or buy from the same broker the same number of shares at the same price off the Exchange, such latter transactions not appearing in the Stock Exchange records at all contrary to the Stock Exchange rules which are to be deemed part of the contract. See *Cartwright v. McInnes* (1931) S.C.R. 425. There is also evidence that sometimes the shares were not bought on the Exchange at all, but were sold right out of the house. The effect of these practices is apparent from the material before me. In this connection reference might be made to the evidence given by W. E. Willins on his examination for discovery as a past-officer of defendant Company, reading in part as follows:

"Q. Do you know of any practice along that line? If you do, explain it to me. A. I will explain the practice, yes. Supposing that the market rallies tremendously on any stocks, my duty was to go ahead and sell some of those stocks with the intention of making a profit, and that is the reason that an agent broker or an agent, or what you call an agent broker, would get some selling orders. For instance, we might have a very large order on any stock from a client—

"Q. A buying order? A. Buying order from a client, it might be advisable to give to an agent broker a selling order in

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order that somebody might have the stock—the stock particularly at a price.

* * * * *

“Q. Well, I understand what you said, that that practice that you have told me now was the practice as you understood it, that is what caused or would cause a short position? A. It would eventually end up—it proved to end up with a large short position.

“Q. Now, isn't it a fact that during the fall or summer of 1929—early 1929—the stocks were not bought on the exchange at all, but were sold right out of your house? A. That is so, yes. 10

“Q. And that would create a short position as well? A. Yes.”

Elsewhere in his examination (Ans. 157) speaking of the time when the Frontier account was liquidated, Mr. Willins says:

“It is quite possible that I did give buying orders to agent brokers to help support the market, incidentally covering up an accumulation of shortage.” 20

I pause here to note that I have not overlooked the fact that the evidence of Willins, as given at the trial, and also upon his later examination for discovery, is somewhat different from evidence given by him on his original examination for discovery but I must consider his evidence along with the documentary evidence before me from which it is quite apparent that there was a real “accumulation of shortage,” e.g., the “Teller's blotter” (Exhibit 20) which indicates the actual “physical” position as to share certificates, shows that on October 17, 1929, when the account of Frontier and Company was liquidated, the defendant Company on that day had at the beginning of business 30,355 shares of Grandview, delivered 1400, received 2500, having at the close of that day's business 31,455 shares on hand and yet it purported to sell for Frontier alone that day 54,100 shares of Grandview (see Exhibit 86). In connection with this stock (Grandview) Exhibit 57, pp. 28-31, relating to transactions on January 16, 1929, might also be noted according to which buy confirmations had been sent out for that day showing 16,000 shares bought for Frontier and 40,000 shares for other customers, making a total of 56,400, whereas only 43,050 shares are shown as having been bought on the Vancouver Stock Exchange, but 24,700 shares, as shown on p. 30, as having been sold out of the house that day. The evidence of Willins and that of the witnesses Beck and Glass, at one time employed by the defendant Company, would also indicate that continually there was a definitely “short” position at Vancouver in the active stocks traded in by Frontier and Company. Then Calgary House Ledgers (Exhibits 90 and 40

91) are produced in which, according to the evidence of Mr. Willins, the position of the defendant Company, whether long or short, is shown and it is quite obvious from those exhibits that there was what Counsel for plaintiff has called "a colossal shortage" in some of the stocks dealt in by Frontier and Company. I think sufficient evidence has also been given to establish a prima facie case as to a short condition existing in the Toronto office of defendant Company. During the period herein, therefore I find that the defendant Company was continually in a short position with respect to all the active stocks in which Frontier and Company was dealing. I am satisfied that the real situation continuing generally throughout such period was that the defendant Company had not possession of all the shares of stock it had undertaken to buy and hold for Frontier and Company and other customers. Nevertheless the evidence shows that on some days the defendant Company did actually buy and sell sufficient shares to take care of all the orders in accordance with the confirmations sent out. It is also admitted by the plaintiff that during the period in question there were many cash transactions in the course of which Frontier and Company received certificates for shares according to the buy confirmations. As the plaintiff's case is not based upon conversion of the shares but upon "bucketting" of the orders by the defendant Company, Counsel for the defendant Company submits that in any event the evidence shows that some of the orders were fulfilled by the defendant Company for the plaintiff in strict accordance with the orders received and that therefore the plaintiff must fail as in order to make out his cause of action the plaintiff must prove that every transaction claimed by the defendant Company to have been made was fictitious or in any event that the plaintiff can only succeed on the alternative claim for money had and received with respect to particular transactions actually shown by the evidence not to have been carried out in accordance with the terms of the contract. It must be remembered, however, that I have found that the defendant Company was continually short in all active stocks traded in by the Frontier Company. I also find from the evidence that even where stocks were duly purchased on the exchange they were not ear-marked or allotted to any particular customer, but were immediately consigned to the particular securities cage or bin for the stock so purchased. Such a system simply meant that the defendant Company kept on hand in such bin sufficient to meet the demands of margin and cash customers, but, the Company being short as aforesaid, the system was contrary to the law which regulates the transactions between broker and customer and substitutes the personal liability of perhaps an insolvent broker for the real security of the stock. (See *Sutherland v. Cox supra*). My view therefore is that even where stocks were delivered to Frontier and Company the transaction was not carried out in accordance with the terms of the contract. It must also be noted that the witness Beck states that clients were not allowed to sell short while it is apparent

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that the defendant Company, acting as their broker, was doing so, and, as I find, was selling short against its own clients' accounts. I have already referred to the practice of the defendant Company in selling from their house account. Clients would be charged at the current price and a fair inference is that the defendant Company was gambling against its clients and hoping to make a profit at their expense.

Having given due consideration to the fact that not all the orders were "bucketted," I am satisfied that the margin transactions reported to Frontier and Company were, for the most part, fictitious and throughout the whole series of dealings based upon the cash and securities deposited as margin the defendant Company was failing to execute the plaintiff's orders in the expectation of making a profit for itself through the fluctuation of the market. Under such circumstances I do not think that the plaintiff in order to make out his cause of action must prove that every transaction claimed by the defendant Company to have been made was fictitious. In this connection reference might be made to certain American authorities and before citing them I might refer to what the Court said in *R. P. Clark case supra.* at p. 83:

"A number of authorities were submitted, but, in considering them, I deemed it most important to bear in mind the difference between the manner in which stockbrokers conduct their business in Canada as compared with England. This distinction was referred to by Anglin, J. (now Chief Justice of Canada) in *Clarke v. Baillic* (1911) 45 S.C.R. 50 at 76, as follows:

"It is common knowledge that the business of stockbrokers in this country is conducted in a manner more closely resembling that which prevails in the United States, and particularly in the State of New York, than that which obtains in England. Many customs and usages of English brokers are unknown in Canada and many practices prevalent in our markets, which have come to us from the United States, would not be recognized on the London Stock Exchange. For this reason, and also because of a dearth of English authority (see R. 70 of the London Stock Exchange, *Stutfield*, 3rd ed., p. 45), I have drawn for authorities, perhaps more freely than is usual in our courts, upon American sources."

Upon the facts as I have found them in this case certain American authorities would seem to be applicable. In 26 American and Eng. Encyc., p. 1066, para. 3, reads as follows:

"Where a broker does not obey his clients orders—in making actual sales and purchases, but reports to him fictitious trans-

actions, the client may recover from the broker any money or other securities deposited as margins or any payments made to the broker in settlement of such transactions; and it is not necessary for the client, in order to recover, to show that all of the transactions were fictitious.”

Prout v. Chisholm 21 N.Y. App. Div. 54 is cited as authority for this statement in which case the Court said in part as follows:

10 “In the years 1891 and 1892 the plaintiff was a customer of the defendants, and through them speculated in stocks. During this period he deposited with the defendants as margins, or to secure them against loss, in fulfilling orders, \$29,000 in money and railroad bonds of the par value of \$15,000. The transactions of the plaintiff through the defendants’ firm were very numerous. It is stated that they approximated in number 2,000. At the end of the dealings between the parties the defendants claimed that the plaintiff’s deposit, or margin, had been exhausted, and that he was indebted to them in a large sum. The plaintiff claims that at this time he discovered that the transactions reported to him by the defendants as made in the fulfillment of his orders were 20 fictitious; that as a matter of fact they neither bought stock when he ordered a purchase nor sold stock when he ordered a sale. Thereupon he instituted this action; and in it he sought to recover the money paid the defendants and the value of the securities deposited with them.

* * * * *

30 “The court was also asked to charge that, in order to make out his cause of action, the plaintiff must prove that every transaction claimed by the defendants to have been made was fictitious; and also that, to render a verdict in favour of the plaintiff for the sum demanded by him, the jury must be satisfied of the same fact, that is, that every one of the transactions was fictitious. We think this refusal was right. To make out the plaintiff’s cause of action it was not necessary to prove that every transaction was fictitious; but if any of them were fictitious he was entitled to have such transactions rejected from the accounts. Nor, to entitle him to recover the whole sum demanded in the complaint, was it necessary that all the transactions represented by that account should have been unreal.”

In *Fiske v. Doucette* 92 N.E. Rep. 455 at p. 458 the Court said:

40 “Although there was evidence that in a number of transactions the defendant did have in his control certificates for the stock purchased for the plaintiff’s account, yet to many there was

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either no such evidence, or definite evidence that he did not have them. The whole series of dealings based upon the bonds deposited with the defendant was thus tainted with illegality and the plaintiff is entitled to recover. *Way v. Greer* 196 Mass. 237-245, 81 N.E. 1002; *Kennedy v. Welch* 196 Mass. 592-595, 83 N.E. 11; *Embrey v. Jamieson* 131 U.S. 336, 9 Sup. Ct. 776, 33 L. Ed. 172.”

In *Greene v. Corey et al* 97 N.E. Rep. 70 at p. 72 Sheldon, J. said:

“The broker, to put himself right in such a case as the one now before us, must show that he has under his control, free from the just demands of other customers and available for delivery to the particular customer whose case is in question, the stocks of which that customer upon payment will be entitled to demand delivery. This is the doctrine declared in *Fiske v. Doucette, supra*, and we adhere to it.”

I have therefore to consider what relief if any the plaintiff is entitled to and have no hesitation in holding that under the circumstances the plaintiff has not lost the right to relief by any settlement made by or on his behalf as any such settlement was made in ignorance of what had transpired. In *Sutherland v. Cox et al supra* it was held that the defendants having failed to carry out the agreement to purchase and carry the stock for the plaintiff, the latter was entitled to receive back from the defendants the money paid as margin. In *Prout v. Chisholm, supra* the Court elsewhere said:

“It is, therefore, wholly immaterial in this case whether in fact the plaintiff suffered any loss by the failure of the defendants to execute his orders, or whether as a matter of fact the plaintiff is better, or at least no worse off than if his orders had been executed. A broker, agent or servant cannot speculate on the orders of his employer or master If, therefore, they fail to execute the plaintiff’s orders in the expectation of making a profit for themselves through the fluctuation of the market, they were not only subject to condemnation as gambling, but were guilty of fraud. We think the trial court erred in speaking of this as mere legal fraud. The conduct of the defendants, if the charges made against them by the plaintiff were established, was dishonest and fraudulent, in morals as well as law. Even had they acted in good faith, and for the purposes of executing the plaintiff’s orders, either sold to the plaintiff their own stock or bought from him his stock, the plaintiff would have had the right, at his election, to repudiate the transaction. . . . If this be the rule, even where a broker acts in good faith towards his principal, it applies with much greater force to a case where the broker pur-

10 posely fails to execute the principal's order, and the principal, instead of having the stock ordered to be purchased, has simply the personal responsibility of the broker to make good any profits that might have accrued on the purchase had the purchase been actually effected. The matter, however, is too clear to require or even justify further discussion. The sole right of the defendants to retain the plaintiff's money was to pay them for their commissions on purchases or sales, and to reimburse them for losses on those dealings. If there were no such dealings, the plaintiff had the right to reclaim his money and securities."

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 (Cont'd)

20 As was held by the Court in the *Prout case* so I would hold in the present case on my findings that the defendant Company was guilty of fraud. I also hold that the whole series of dealing was tainted with fraud and the plaintiff has the right to repudiate and be relieved from any liability and to recover the money paid to the defendant Company and the value of the securities deposited with it. I think such right remains unaffected even though the cash transactions are considered part of the same series of dealings. If the cash transactions should be so considered it might be argued that Frontier and Company having

20 taken delivery of certain shares upon payment of the cash required, the plaintiff cannot now repudiate the dealings as a whole, having parted with at least some of the shares so taken. Reference might be made here, however, to a portion of the judgment of Anglin J. (now Chief Justice) in *Clarke v. Bailie*, supra where at p. 92 he says:

30 "The defendants are, of course, entitled in an equitable accounting to credit for the value of the shares at the time they were so accepted. But they cannot insist on the plaintiff's returning or tendering a return of such shares before suing for such accounting. If, in circumstances such as those of this case, a broker had this right, he might put a client, who had innocently parted with shares so taken over, in a position of serious difficulty; he might effectually deprive him of his right of action. The broker, whose misconduct has led to such a difficulty, cannot complain if his client elects to retain the securities giving him credit in the accounting for their market value when received."

40 If in the present case the contract with regard to the margin transactions must be considered as including the cash transactions then I would hold that the principle stated in the above citation from the *Clarke case* should be applied as otherwise, as suggested, the broker might put the client who had innocently parted with shares so taken over in a position of serious difficulty and effectually deprive him of his right of action. On the other hand, if the cash transactions should be considered separately, I see no good reason for the application of the principle, for though, as already indicated, I do not think that they

RECORD

*In the
Supreme Court
of British
Columbia.*

Reasons for
Judgment,
Fisher J.
(Cont'd)

were carried out strictly in accordance with the orders given on account of their being dealt with under the fraudulent system prevailing as aforesaid, nevertheless delivery of shares was made practically forthwith and under the circumstances I cannot see that any actual damage could be shown in an accounting to have been sustained as a result of the wrongful performance of a contract covering the cash transactions alone or that an action would be maintainable solely in connection therewith to establish a right to a nominal recovery. My own view is that the plaintiff's right to relief in connection with the margin transactions may be considered without reference to the cash transactions but if this view is incorrect then I would hold that in any event the plaintiff is entitled to repudiate, claim an accounting and give the defendant credit in the accounting for the market value of the shares when received which, as a matter of fact, would be the same (or practically the same) as the amount with which the account would be debited in connection with such shares so that the net amount to be recovered by the plaintiff would not be affected. 10

There is still to be decided, however, the question whether or not the plaintiff is entitled to judgment against the individual defendants as well as against the Company. 20

In the *Prout* and other cases above mentioned in which the right of the plaintiff to recover from the defendant, to whom the money was paid, was upheld, the question as to the liability of directors in case of the defendant being a Company was not discussed. In view of the decision in *Salomon v. Salomon* (1897) A.C. 22 (See also *McKee v. Soloway Mills* (1931) 2 W.W.R. 929) the individual defendants as directors cannot be considered as being the Company to which the moneys in question herein were paid. It is clear, however, that conduct on the part of the defendant similar to that here has been treated as fraud and breach of trust in the cases above referred to. It is clear also that a director who is a party to a fraud or the commission of any other wrong is personally liable for damage resulting (See *Masten and Fraser Company Law* p. 629). In the present case I find on the evidence admissible against the individual defendants respectively that each of them took an active part in the operation of the affairs of the defendant Company and in bringing about the co-operation necessary for the short selling as aforesaid and that each of them knew of the short position of the Company with respect to at least some of the active stocks traded in by the Frontier Company and other clients. Under such circumstances I think they must both be deemed to be parties to the wrong done to the clients and liable for the resulting damage. Counsel for the defendants contends that the plaintiff cannot repudiate and at the same time claim damages. In this connection reference might be made to the case of *Frankenburg v. Great Horseless Carriage Company* (1900) 1 Q.B. 504 where Lindley, M.R., says at p. 508: 30 40



10 “It is an action brought by a gentleman against a company and its directors—I say nothing at present about the executors of a deceased—for what? Simply for relief to which he is entitled in respect of an improperly issued prospectus. That is the foundation of his claim. His relief is various in detail; but that is one cause of action in the wide sense, apart from all technicalities. He says, “You have all, both company and directors, been guilty of a breach of your duty or obligation to me in issuing this prospectus to me.” What conceivable injustice or irregularity is done in bringing one action against all those who have done that which he complains of? It is true that, as against the company, he does not ask for damages; but he asks for rescission of contract, because by rescission he will get all he wants as against the company—that is, he will get rid of his shares and get his money back. The company may, however, be in such a state of impecuniosity that it cannot give him his money back, and therefore he asks for damages against the directors.”

RECORD

*In the
Supreme Court
of British
Columbia.*

Reasons for
Judgment,
Fisher J.
(Cont'd)

At p. 510 Romer, L.J. says:—

20 The remedy given to the plaintiff who applied for shares and had shares allotted to him on the faith of that improper prospectus is different as against the several defendants, but not so much in substance as in form. As against the company his remedy is rescission and repayment of the purchase money with interest. As against the directors who issued the prospectus his remedy is one of damages, because the prospectus as against them was fraudulent, and he may not by the relief against the defendant company get full compensation by way of damages for the injury he has sustained.”

30 In *Johnson v. Johnson* (1913) 18 B. C. 563 at p. 572, Macdonald, C.J.A. says:—

“The appellants’ counsel contended that no loss or damage had been proven in this case. I think it sufficiently appears from the evidence that the loss and damage suffered by Clark, assuming that he was entitled to succeed at all, was the amount of money he had paid for his shares, namely, \$2,500. He is within the *Frankenburg case* above mentioned and not *McConnel v. Wright* (1903), 1 Ch. 546, and *Shepherd v. Broome* (1904) A.C. 342, where the shareholders still held their shares and were suing for their losses without seeking cancellation.”

40 In the present case the Frontier Company paid over the margin money and deposited the securities upon receipt of reports of fictitious transactions and I think the measure of damages would be the amount

RECORD
 In the
 Supreme Court
 of British
 Columbia.
 Reasons for
 Judgment,
 Fisher J.
 (Cont'd)

of money so paid and the value of the securities deposited. Interest at 5% per annum should also be allowed (See *Underhill on Trusts* 7th Edition p. 460). As to the value of the securities it may be noted that I have already found that the defendant company dealt with them in the same way as currency. The defendant company might still contend however that ultimately it had the right to sell the securities of Frontier & Company but this right of course would only arise if the defendant company had honestly bought and sold in accordance with the orders of Frontier and Company and that the latter company had allowed itself to become 'under-margined.' I have found otherwise, however, and on my findings the defendant company never had the right to sell the said securities. The defendant company gave credit for such securities on the 17th day of October, 1929, in the amount of \$5,064.75, and, as the plaintiff would appear to have elected to accept the said Company's figures as of such date, I adopt this basis of valuation. 10

There will therefore be judgment in favour of the plaintiff against all defendants for the sum of \$103,666.34 with costs and interest at 5 per cent. per annum from the date of each respective payment as shown on page 75 of Exhibit 57 and interest on the said sum of \$5,064.75 from October 17th, 1929, with an adjustment or off-set with regard to interest (from the date of each respective payment) upon the sums of \$5,000.00 and \$16,461.89 admitted by plaintiff to have been received from the defendant company. 20

15th February, 1932.

"A. I. Fisher, J."

B.C.L.S.
\$1.10

Vancouver,
Feb. 25, 1932.
Registry

RECORD

*In the
Supreme Court
of British
Columbia.*

Judgment.
Mr. Justice
Fisher.

JUDGMENT.

BEFORE THE HONOURABLE MONDAY, the 15th day of
MR. JUSTICE FISHER February, A.D. 1932.

THIS action having come on for trial before the Honourable Mr. Justice Fisher on the 7th, 8th, 9th, 10th, 14th, 15th, 16th, 17th and 18th day of December, A.D. 1931, in the presence of Mr. G. L. Fraser, of counsel for the Plaintiff, and Mr. Wendell Farris, K.C., and Mr. Gordon McG. Sloan, of counsel for the Defendants, and judgment having been reserved until this day; UPON READING
10 the pleadings and proceedings had and taken herein; UPON HEARING the evidence adduced and what was alleged by counsel aforesaid,

THIS COURT DOTH ORDER AND ADJUDGE that the Plaintiff recover from the Defendants, Isaac William Cannon Solloway, Harvey Mills and Solloway Mills and Company Limited, the sum of One Hundred and Eighteen Thousand and Eighty-six Dollars and Forty-four Cents (\$118,086.44).

AND THIS COURT DOTH FURTHER ORDER AND ADJUDGE that the Plaintiff recover from the said Defendants his costs of this action, to be taxed.

20 BY THE COURT:

“H. Brown”

Checked
“S. V. L.”

“A.I.F.” J.

Dep. DISTRICT REGISTRAR.

Approved
“Gordon McG. Sloan.”

“J.F.M.” D.R.

(SEAL)

30

Entered
Feb. 25, 1932.
Order Book Vol. 28 Fol. 168
Per “A. L. R.”



RECORD

*In the
Supreme Court
of British
Columbia.*

Notice of
Appeal.

NOTICE OF APPEAL

TAKE NOTICE that the Defendants intend to appeal and hereby appeal from the Judgment of the Honourable Mr. Justice Fisher made herein the 15th day of February, A.D. 1932, whereby it was ordered and adjudged that the Plaintiff recover from the Defendants damages in the sum of \$118,086.44,

AND FURTHER TAKE NOTICE that a motion will be made to the Court of Appeal at its sittings at the City of Victoria, B.C., on Tuesday the 7th day of June, A.D. 1932, at the hour of 11 o'clock in the forenoon, or so soon thereafter as Counsel may be heard, on behalf of the Defendants for an order setting aside the said Judgment of the Honourable Mr. Justice Fisher and dismissing the Plaintiff's action, upon the following among other grounds:— 10

1. The Judgment is against the law.
2. The Judgment is against the evidence, and the weight of evidence.
3. The learned Judge erred in compelling production of the books of the Defendant Company.
4. The learned Judge erred in admitting the books of the said Defendant as evidence. 20
5. The learned Judge erred in holding that the books of the said Defendant were admissible without any proof.
6. The learned Judge erred in overruling the objection of Counsel for Defendant that as the said books would tend to criminate the said Defendant an order could not be made compelling production.
7. The learned Judge erred in holding that the Evidence Act in any way abrogated the common law privilege against production claimed by the Defendant Company.
8. The learned Judge erred in not holding that the Plaintiff had failed to make out the case raised in his pleadings. 30



9. The learned Judge erred in admitting irrelevant evidence and did not disclaim its having had any influence on his mind before giving his judgment.
10. The learned Judge erred in not holding that Frontier & Company could not have brought this action in any capacity other than that of Trustee.
11. The learned Judge erred in holding that the Plaintiff could bring and maintain this action.
- 10 12. The learned Judge erred in not holding that the alleged cause of action herein did not vest in the Trustee in Bankruptcy under the provisions of the Bankruptcy Act.
13. The learned Judge erred in holding that the Plaintiff had a right of action herein for the benefit of the Estate of Theo. Frontier and Company.
14. The learned Judge erred in admitting the evidence of Beck and Glass, or any evidence to prove an alleged system.
- 20 15. The learned Judge erred in finding that the Defendant Solloway Mills & Company Limited was "short" shares traded in by Frontier and Company.
16. The learned Judge erred in holding that there was sufficient evidence led to establish "short" condition existing in the Toronto Office of the Defendant Company.
17. The learned Judge erred in finding that the Defendant Company was continually in a short position with respect to all the active stocks in which Frontier & Company was dealing.
18. The learned Judge erred in holding that the Defendant Company was gambling against its clients.
- 30 19. The learned Judge erred in holding that the margin transactions reported by the Defendant Company to Frontier & Company were for the most part fictitious and that the Defendant Company failed to execute the orders of Frontier & Company.
20. The learned Judge erred in holding that the Defendant Company had been guilty of "bucketting" in connection with the stocks dealt in by Frontier & Company.

RECORD

*In the
Supreme Court
of British
Columbia.*

Notice of
Appeal.
(Cont'd)

RECORD
*In the
Supreme Court
of British
Columbia.*
Notice of
Appeal.
(Cont'd)

21. The Learned Judge erred in giving Judgment for the Plaintiff for stock transactions between Frontier & Company and the Defendant Company when no evidence was adduced to prove "bucketting" in connection therewith and when such transactions were not specifically attacked by the Plaintiff.
22. The learned Judge erred in holding that the Defendant Company was guilty of fraud.
23. The learned Judge erred in holding that the whole series of dealings between the Defendant Company and Frontier & Company was tainted with fraud. 10
24. The learned Judge erred in giving Judgment against the Defendants, I. W. C. Solloway and Harvey Mills personally.

DATED at Vancouver, B. C., this 29th day of February, A.D. 1932.

"Farris, Farris; Stultz & Sloan"
Solicitors for the Defendants.

To the Plaintiff,
And to Messrs. Fraser & Murphy,
Its Solicitors.



RECORD

*In the
Court of Appeal
for British
Columbia.*

Reasons for
Judgment of
the Honourable
the Chief
Justice,
4th Oct., 1932.

COURT OF APPEAL

REASONS FOR JUDGMENT OF
THE HONOURABLE THE CHIEF JUSTICE
OF BRITISH COLUMBIA

This is an action arising out of stock transactions between the bankrupt and the defendants. Some of the transactions were made for cash and the Judge held that they were distinctly not a factor in the case. He said:

10 “My own view is that the plaintiff’s right to relief in connection with the margin transactions may be considered without reference to the cash transactions.”

20 And with this I entirely agree. I think he was quite right in his view with reference to the margin transactions. The defendants fail to prove that they had performed their duties according to law, in respect to these transactions. They were bound when they undertook the business to buy according to respondent’s orders, to pay the difference between the margin and the cost of the shares and account on that basis. The defendants did not do that. They have failed to show that they bought as they were instructed and accounted as they were bound in law to do. Their transactions were, I think, bucketshop transactions. At all events they have failed to prove the contrary. Their entries in their books were fraudulent purporting to show purchases and sales of shares which were never purchased or sold.

Therefore, I think, the learned Judge came to the right conclusion and the appeals should be dismissed.

“J. A. Macdonald, C. J.”

VANCOUVER, B. C.

4th October, 1932.



RECORD

*In the
Court of Appeal
for British
Columbia.*

Reasons for
Judgment of
the Honourable
Mr. Justice
Martin,
Oct. 4th, 1932.

COURT OF APPEAL

REASONS FOR JUDGMENT OF
THE HONOURABLE MR. JUSTICE MARTIN

Vancouver, B. C., 4th October, 1932

In my opinion, the learned judge below has reached the right conclusion upon the facts before us and therefore this appeal should be dismissed.

“Archer Martin, J. A.”



RECORD

*In the
Court of Appeal
for British
Columbia.*

Reasons for
Judgment of
the Honourable
Mr. Justice
McPhillips,
Oct. 4th, 1932.

COURT OF APPEAL

REASONS FOR JUDGMENT OF
THE HONOURABLE MR. JUSTICE McPHILLIPS

This again is a typical case of brokers failing in their duty and refusing to make proper discovery of dealings had on behalf of clients—quite unmindful of the fiduciary position in which they are in the transaction of brokerage business and failure to adhere to the practice called for upon the Stock Exchange and the recognized rules binding upon all brokers. The learned trial judge has exhaustively and ably dealt with all the evidence and applied the law thereto correctly in my opinion and his conclusion was properly arrived at in view of all that was adduced before him. I cannot say that he arrived at any wrong conclusion—on the contrary I am convinced that the learned judge arrived at a conclusion which after full argument in this Court remains unshaken. I do not see any necessity to particularize the points of evidence which entitled the judgment of the learned trial judge—the judgment appealed from is clear to demonstration with no defence capable of being given effect to—in truth no defence in law was forthcoming. Therefore in my opinion the appeal should be dismissed.

“A. E. McPhillips, J. A.”

VANCOUVER, B. C.

4th October, 1932.

RECORD

*In the
Court of Appeal
for British
Columbia.*

Reasons for
Judgment of
the Honourable
Mr. Justice
M. A.
Macdonald,
Oct. 4th, 1932.

COURT OF APPEAL

REASONS FOR JUDGMENT OF
THE HONOURABLE MR. JUSTICE M. A. MACDONALD

I agree with the trial judge that the respondent, as trustee in bankruptcy, may maintain this action; also that in respect to the defendant, the incorporated company, the judgment should stand. I cannot agree, however, that the directors of the company, who were actively engaged in carrying on its business, are personally liable in damages either on the ground of agency (i.e. that the company was the agent of the defendant directors) or that the directors being in control personally directed that illegal acts should be committed. Directors who participate in a fraud or the commission of a tort are personally liable but whatever the proper view may be on the question of burden of proof on the facts disclosed in the action against the company on this point the burden is on the respondent to establish the liability of the directors for active misfeasance in office and that burden has not been discharged. To this extent the appeal should be allowed. 10

“M. A. Macdonald, J. A.”

VANCOUVER, B. C.

October 4th, 1932.

20



B. C. L. S.
\$1.10

Victoria,
Dec. 7, 1932.
Registry

COURT OF APPEAL

RECORD

*In the
Court of Appeal
for British
Columbia.*

Formal Judgment of the
Court of
Appeal,
Oct. 4th, 1932.

CORAM:

THE HONOURABLE THE CHIEF JUSTICE OF BRITISH
COLUMBIA,

THE HONOURABLE MR. JUSTICE MARTIN,

THE HONOURABLE MR. JUSTICE McPHILLIPS,

THE HONOURABLE MR. JUSTICE M. A. MACDONALD.

VANCOUVER, B. C., the 4th day of October, A.D. 1932.

(SEAL)
Court of Appeal

10 THIS appeal from the judgment of the Honourable Mr. Justice
Fisher, dated the 15th day of February, A.D. 1932, awarding the
Plaintiff the sum of One Hundred and Eighteen Thousand and
Eighty-six Dollars and Forty-four Cents (\$118,086.44) and costs of
action which were taxed at the sum of Five Thousand Four Hundred
and Thirty-nine Dollars and Sixty-one Cents (\$5,439.61), coming on
for hearing on the 16th and 17th days of June, A.D. 1932, in the
presence of Mr. W. B. Farris, K.C., of counsel for the Defendants
(Appellants) Isaac William Cannon Solloway, Harvey Mills and Sol-
loway Mills and Company Limited, and Mr. G. L. Fraser, of counsel
for the Plaintiff (Respondent) W. T. Johnson, Trustee of the Estate
20 of Theo. Frontier and Company Limited, in Bankruptcy; and it ap-
pearing from what was alleged by both counsel that a winding up
order was granted against the Appellant, Solloway Mills and Com-
pany Limited, on the 23rd day of March, A.D. 1932, and that J.
Alphonse Turcotte was appointed Liquidator of the said Appellant,
Solloway Mills and Company Limited, on the 18th day of April, A.D.
1932; and that the said J. Alphonse Turcotte was represented by Mr.
W. B. Farris, K.C.; UPON READING the Notice of Appeal and
the Appeal Books herein; and UPON HEARING what was alleged
by counsel aforesaid,

30 THIS COURT DOTH ORDER AND ADJUDGE that this
appeal be and the same is hereby dismissed, and the judgment of the



RECORD
*In the
Court of Appeal
for British
Columbia.*
Formal Judgment of the
Court of
Appeal,
Oct. 4th, 1932.

Honourable Mr. Justice Fisher dated the 15th day of February, A.D. 1932, be and the same is hereby affirmed.

AND THIS COURT DOTTH FURTHER ORDER AND ADJUDGE that the Defendants (Appellants) do pay to the Plaintiff (Respondent) his costs of the appeal forthwith after taxation thereof.

BY THE COURT.

“B. H. TYRWHITT DRAKE”

Registrar.

App'd.

“Gordon McG. Sloan”

“W. B. Farris”

“J. A. M.” “O. B.”
 C. J. D. R.

10

Entered Vol. 4 Fol. 451

Date 7/12/32

By “O. B.” D. R.

(SEAL)
Court of Appeal

Victoria,
Dec. 23, 1932.
Registry

Law
\$1.10
Stamps

COURT OF APPEAL

RECORD

*In the
Court of Appeal
for British
Columbia.*

Final Order
Granting
Leave to
Appeal to
Defendant
Solloway.
Dec. 16th, 1932.

CORAM:

THE HONOURABLE THE CHIEF JUSTICE OF BRITISH
COLUMBIA,

THE HONOURABLE MR. JUSTICE GALLIHER,

THE HONOURABLE MR. JUSTICE McPHILLIPS,

THE HONOURABLE MR. JUSTICE MACDONALD.

VANCOUVER, B. C., the 16th day of December, 1932.

UPON MOTION made unto this Court this day for a final order
granting the appellant Isaac William Cannon Solloway leave to appeal
10 from the judgment of this Court, pronounced herein on the 4th day
of October, 1932, to His Majesty in his Privy Council, AND UPON
reading the order made herein on the 21st day of October, 1932,
granting the said Solloway conditional leave to appeal, and the Certifi-
cate of the Registrar of this Court at Victoria certifying that the said
Solloway has made due compliance with the conditions imposed on
him by the said order AND UPON reading the affidavit of Virginia
Harris sworn the 15th day of December, A.D. 1932, and filed herein
and the exhibits therein referred to AND UPON hearing Gordon
McG. Sloan, Esq., of Counsel for the said Solloway and E. C. Mayers,
20 Esq., K.C., of Counsel for the Respondent.

(SEAL)
Court of Appeal

THIS COURT DOTH ORDER AND DECLARE that final
leave to appeal to His Majesty in his Privy Council, from the judg-
ment of this Court pronounced herein on the 4th day of October, 1932,
be and is hereby granted to the said Appellant Isaac William Cannon
Solloway.

BY THE COURT.

“B. H. Tyrwhitt Drake”
Registrar.

30 “E. C. M.”
“J. F. M.” “M. A. M.”
D. R. J. A.

Entered Vol. 4, Fol. 454
Date: 23/12/32.
By “G. H. M.”

RECORD

In the
Supreme Court
of British
Columbia.

Exhibit 57.

EXHIBIT 57.

A. P. CONSOLIDATED

BUY CONFIRMATIONS FOR FEBRUARY 14, 1929.

Customer—	No. of Shares	Price	Customer—	No. of Shares	Price	
Theo. Frontier	500	1.05	C. A. Mitchell	500	1.05	
" "	100	1.00	Mrs. A. B. Miller	800	1.05	
" "	300	1.05	Interior Develop-			
" "	200	1.02	ment Co.	500	1.05	
" "	300	1.02	J. J. Birrigo	4000	1.00	10
" "	500	1.00	E. N. Bagshaw	100	1.05	
" "	200	1.06	Chaffey Fraser	500	1.05	
" "	100	1.05	Campbell & McLeod	200	1.05	
" "	200	1.05	" " "	200	1.05	
" "	200	1.05	" " "	100	1.06	
" "	100	1.05	" " "	500	1.05	
" "	100	1.05	W. J. Irwin	50	1.00	
" "	500	1.05	Calgary Office	700	.68	
" "	75	1.05	" " "	500	.67	
Total	3375		" " "	270	.69	20
Faulkner	600	1.00	" " "	50	1.00	
Interior Develop-			Young	300	1.00	
ment Co.	1000	1.05	Willson	1000	1.05	
Mrs. Housby	1000	1.00	C. R. Webb	50	1.00	
G. R. Hughes	500	1.00	G. H. Ferguson	3000	1.00	
G. Nairn	100	1.00	Total	19,050		
Interior Develop-			A. J. Brown			
ment Co.	200	1.05	(Sold to)	3000	1.05	30
Hunning & Co.	100	1.05	(Less Bkg. 6.00,			
" " "	100	1.05	Tax .90)			
Hume (Interior				3000		
Dev. So.)	500	1.05	House	50	.69	
R. Marshall	200	1.06	House	500	1.00	
Interior Develop-			House	250	1.05	
ment Co.	1000	1.05	House	2707	1.00	
Langley	500	1.00	Total	3457		40
R. Krause	300	1.05	TOTAL	28,882		
" "	200	1.00				
Kitchum	200	1.05				
A. P. Sturdy	700	1.05				

EXHIBIT 57.

A. P. CONSOLIDATED

SELL CONFIRMATIONS FOR FEBRUARY 14, 1929.

	Customer—	No. of Shares	Price	Customer—	No. of Shares	Price
10	C. Goodman	500	1.00	A. J. Brown (Bought From)	250	1.05
	Miss G. Howey	500	1.05	A. J. Brown (Bought From)	1000	1.00
	O. Hughes	500	1.00			
	E. S. Salked	200	1.00	Total	2250	
20	C. S. Salked	300	1.00			
	Richmond Price	200	1.05	House	500	.67
	H. G. Newman	21	1.00	"	270	.69
	A. G. Meekison	250	1.05	"	200	.68
	Miss L. B. McKenzie	300	1.05	"	500	.68
	H. E. Turtle	500	1.00	"	200	1.02
	G. A. Thornbury	100	1.05	"	4500	1.00
	William Dove	50	1.05	"	1875	1.05
	Chaffey Fraser	300	1.00	"	500	1.05
	V. A. Wardle	100	1.00	"	1000	1.05
30	F. A. Walker	3686	1.00	"	4100	1.05
	Calgary Office	50	.69	"	1000	1.00
	(Transfer)					
	Calgary Office	1000	1.00	Total	13,225	
	Calgary Office	1000	1.00			
	Total	9507				
	A. J. Brown (Bought From)	1000	1.00	TOTAL	24,982	

RECORD
 In the
 Supreme Court
 of British
 Columbia,
 Exhibit 57
 (Cont'd)

EXHIBIT 57.

A. P. CONSOLIDATED

VANCOUVER CLEARING HOUSE SHEET FOR FEBRUARY
 14, 1929, SHOWING ALL TRANSACTIONS IN THIS
 STOCK ON THE VANCOUVER STOCK
 EXCHANGE.

Bought of Broker—	No. of Shares	Price	Sold to Broker—	No. of Shares	Price	
A. J. Brown	1000	1.05	Gelletly & Company	3000	1.00	
A. J. Brown	2000	1.05	Miller Court	200	1.02	10
Beaton & Company..	500	1.00	A. J. Brown	1000	1.00	
Gelletly & Company	2000	1.00	A. J. Brown	1000	1.00	
Gillespie Hart	500	1.00	A. J. Brown	250	1.05	
Hogg & Company....	500	1.05	B. C. Bond	150	1.05	
Hogg & Company....	500	1.06				
James & Wood	500	1.02				
Lennard Poissen	500	1.00				
Steele & Son	1000	1.05				
Steele & Son	500	1.05				
	<u>9500</u>	<u> </u>		<u>5600</u>	<u> </u>	20

EXHIBIT 57.

A. P. CONSOLIDATED

BUY CONFIRMATIONS FOR MARCH 13, 1929.

RECORD

*In the
Supreme Court
of British
Columbia.*Exhibit 57
(Cont'd)

Customer—	No. of Shares	Price	Customer—	No. of Shares	Price
Theo. Frontier & Co.	300	3.50	J. D. Meekison	100	3.40
“ “ “	200	3.40	Toronto Office	50	3.60
“ “ “	200	3.50	“ “	100	3.50
10 Total	700		“ “	300	3.60
			“ “	100	3.60
			“ “	10	3.60
F. S. Taylor	100	3.60	“ “	50	3.60
Jas. Thomson	20	3.50	Toronto Office	10	3.40
H. E. Torey &			“ “	50	3.50
P. Pontages	200	3.60	“ “	50	3.50
J. Welsh	250	3.60	“ “	100	3.50
Wm. C. Wilson	100	3.50	“ “	100	3.50
H. P. Wilson	100	3.50	“ “	50	3.50
Winnipeg Office	50	3.50	“ “	25	3.50
20 “ “	50	3.50	W. T. Money	150	3.50
“ “	100	3.60	Interior Developm't	200	3.55
Ceperley Rounsefell	1000	3.60	R. G. Nichols	200	3.50
“ “	60	3.50	Oscar A. Olson	400	3.50
Sydney Anderson	100	3.40	Regina Office	200	3.40
J. S. Bancroft	200	3.60	“ “	100	3.50
A. Barrett	900	3.65	I. Sabbath	200	3.65
“ “	100	3.60	Saskatoon Office	400	3.60
Jas. Baty	400	3.55	“ “	300	3.60
John Budden	20	3.60	“ “	100	3.40
30 P. R. Bushnell	100	3.50	“ “	100	3.40
Jas. Cunningham	100	3.60	“ “	25	3.50
Roy P. Clarke	500	3.50	“ “	100	3.50
Chaffey Fraser	900	3.65	Saskatoon Office	100	3.40
“ “	100	3.60	J. W. Smith	400	3.40
“ “	100	3.60	S. S. Smith	50	3.40
R. P. Dunn	100	3.65	T. H. Steele	50	3.60
M. A. Eady	200	3.65	Toronto Office	100	3.50
Miss Mary Ehlers....	100	3.60	“ “	100	3.50
Edmonton Office	50	3.50	“ “	100	3.50
40 “ “	100	3.40	“ “	200	3.50
“ “	50	3.40	“ “	50	3.50
“ “	100	3.50	“ “	50	3.60
Hunnings & Co.....	150	3.60	“ “	50	3.50
Betty-Gordon	100	3.50	“ “	50	3.50
Mrs. H. Grant	50	3.50	“ “	50	3.50
R. Hamilton	100	3.40	“ “	50	3.60
V. W. Haylett	300	3.60			
J. W. Head	50	3.65			
F. C. Lightbody	300	3.50	Total	12,970	
50 A. S. Linforth	200	3.55			
M. Luckton	200	3.55			
J. W. Marsh	100	3.50	TOTAL	13,670	

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Exhibit 57
(Cont'd)

EXHIBIT 57.

A. P. CONSOLIDATED

SELL CONFIRMATIONS FOR MARCH 13, 1929.

Customer—	No. of Shares	Price	Customer—	No. of Shares	Price	
E. W. Templeton	100	3.60	Edmonton Office	25	3.50	
F. J. Tushey	200	3.40	Hunnings & Co.	500	3.40	
J. R. Whelpston	50	3.50	“ “	200	3.60	
Winnipeg Office	200	3.50	“ “	100	3.55	
“ “	50	3.50	“ “	200	3.60	
D. R. Anderson	500	3.50	“ “	500	3.60	10
A. C. Armour	500	3.40	Robert Fiddes	250	3.60	
Interior Develop- ment Co.	1000	3.50	H. Gantschi	300	3.50	
L. H. Beamish	200	3.40	E. W. Hards	1000	3.50	
J. W. Beattie	100	3.55	Theo. Frontier	100	3.40	
A. S. Burke	100	3.40	“ “	75	3.40	
E. J. Bush	200	3.55	“ “	100	3.50	
A. W. G. Clark & Legingham	500	3.60	F. Tely	300	3.55	
Campbell & McLeod	200	3.50	E. F. Laws	200	3.40	
“ “	100	3.40	H. S. Lechtzier	1000	3.40	
“ “	100	3.40	H. W. McLean	100	3.60	20
“ “	100	3.50	A. W. Nelson	50	3.50	
“ “	100	3.50	R. G. Nichols	250	3.60	
“ “	100	3.60	D. Ostrosser	100	3.50	
“ “	100	3.50	A. E. Parlow	100	3.40	
Chaffey Fraser	500	3.50	Regina Office	10	3.50	
Campbell & McLeod	100	3.60	Saskatoon Office	150	3.40	
H. E. DeWolfe	500	3.40	Sheppard & McIntosh	1000	3.40	
C. G. Dixon	100	3.40	G. L. Sunderland	200	3.75	30
Edmonton Office	50	3.40	Total	12,360		

EXHIBIT 57.

A. P. CONSOLIDATED

SELL CONFIRMATIONS FOR MARCH 13, 1929.

(2)

Customer—	No. of Shares	Price	Customer—	No. of Shares	Price	
Denbigh Dickinson (Bought from)	2100	3.50	A. J. Brown (Bought from)	2100	3.50	40
Denbigh Dickinson (Bought from)	300	3.40	Total	6,300		
Denbigh Dickinson (Bought from)	1800	3.50	TOTAL	18,660		

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Exhibit 57
(Cont'd)

EXHIBIT 57.

A. P. CONSOLIDATED.

VANCOUVER CLEARING HOUSE SHEET FOR MARCH 13,
1929, SHOWING ALL TRANSACTIONS IN THIS
STOCK ON THE VANCOUVER STOCK
EXCHANGE.

	Bought of Broker—	No. of Shares	Price	Sold to Broker—	No. of Shares	Price
	Hamilton	200	3.50	Hamilton	100	3.50
10	Hogg	500	3.50	Greathead	2100	3.50
	Miller	500	3.50	Pennock	900	3.65
	"	1000	3.60	Greathead	300	3.40
	"	200	3.55	"	1800	3.50
	Oliver	1000	3.60	Miller	200	3.40
	Pennock	200	3.55	Jukes	1100	3.40
	"	900	3.65	Gelletly	600	3.40
	"	500	3.65	Steele	200	3.40
	Gelletly	200	3.40	Cartwright	500	3.40
	"	100	3.40	Pennock	200	3.40
20	Jukes	600	3.40			
	Total	5900		Total	8000	

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EXHIBIT 57.

A. P. CONSOLIDATED.

BUY CONFIRMATIONS FOR APRIL 15, 1929.

Customer—	No. of Shares	Price	Customer—	No. of Shares	Price
Theo. Frontier	100	3.75	G. E. Merrifield	100	3.85
“ “	10	3.85	S. R. Kennon	50	3.85
			Mrs. E. M. Lee	500	3.71
Total	110		E. F. Laws	200	3.85
Calgary Office	50	3.75	I. Gibson	100	3.75
“ “	300	3.80	D. Fraser	100	3.75
“ “	100	3.85	S. G. Freeze	200	3.75
“ “	20	3.75	Mrs. A. D. Fairgrieve	50	3.75
Toronto Office	200	3.80	W. Fairgrieve	550	3.70
“ “	50	3.75	R. Jones	100	3.70
Winnipeg Office	200	3.71	G. R. Hughes	300	3.71
“ “	100	3.73	“ “	300	3.71
“ “	50	3.75	J. Dunham	200	3.73
“ “	100	3.75	G. H. Diaman	100	3.80
“ “	500	3.80	B. A. Doffner	100	3.70
“ “	100	3.71	Dawson Bros.	200	3.80
Saskatoon Office	200	3.80	C. G. Dixon	100	3.75
Regina Office	100	3.85	J. P. Cowley	500	3.75
“ “	200	3.80	Miss D. Jones	100	3.85
“ “	15	3.80	W. S. Brener	200	3.75
“ “	20	3.75	F. L. Berry	75	3.75
Edmonton Office	200	3.80			
“ “	100	3.71	Total	10,530	
C. Fraser	100	3.71	Sold to Den-		
H. P. Wilson	100	3.85	high Dickinson.....	200	3.75
Mr. Hume	200	3.75	Sold to Den-		
Campbell & McLeod	500	3.72	high Dickinson.....	500	3.73
“ “	100	3.75	Sold to Koch	50	3.25
“ “	100	3.80			
“ “	400	3.80	Total	750	
E. H. Wood	100	3.85	House	200	3.85
Hunnings & Co.	100	3.75	“	1700	3.78
“ “	200	3.71	“	350	3.85
“ “	500	3.75	“	700	3.75
“ “	100	3.75	“	200	3.74
G. Wellband	50	3.80			
E. C. Stone	300	3.80	Total	3,150	
W. J. Perkin	100	3.85			
C. Peterson	100	3.85	TOTAL	14,540	
B. Patterson	50	3.75			
S. J. Nasmith	500	3.80			
C. V. Millward	100	3.80			

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Exhibit 57
(Cont'd)

EXHIBIT 57.

A. P. CONSOLIDATED.

SELL CONFIRMATIONS FOR APRIL 15, 1929.

	Customer—	No. of Shares	Price	Customer—	No. of Shares	Price
	Theo Frontier & Co.	50	3.78	P. M. Ray	100	3.78
	“ “ “	100	3.78			
	“ “ “	400	3.75	Total	3,875	
10	Total	550		Bought from		
	Sheppard & McIntosh	100	3.75	Adjustment a/c.....	50	3.25
	Sheppard & McIntosh	50	3.75	Bought from Den- high Dickinson	300	3.70
	Saskatoon Office ...	100	3.78	(plus bkg. 1.20)		
	“ “	100	3.78	House	300	3.70
	Mullholand	100	3.71	“	150	3.71
20	W. J. Winter	100	3.75	“	500	3.72
	C. A. Ward	50	3.78	“	100	3.73
	W. J. Anwin	100	3.75	“	165	3.75
	J. Tierney	100	3.71	“	650	3.85
	W. H. Sim	150	3.71	“	2215	3.80
	W. Riley	200	3.75	“	660	3.85
	D. C. Mackay	200	3.80	“	25	3.78
	F. Monahan	1000	3.78	“	200	3.80
	D. Leddy	200	3.71	“	1000	3.80
	G. W. Ledingham ...	100	3.71	“	800	3.75
30	L. O. Griffin	300	3.75	“	300	3.77
	Falding & Co. Ltd.	500	3.75	“	350	3.66½
	M. C. Hunt	25	3.78	Total	7,415	
	Clark & Ledingham	100	3.71			
	H. Bouts	50	3.80	TOTAL	12,190	
	R. D. Afflick	50	3.78			
	P. M. Ray	100	3.78			

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EXHIBIT 57.

A. P. CONSOLIDATED.

VANCOUVER CLEARING HOUSE SHEET FOR APRIL 15,
 1929, SHOWING ALL TRANSACTIONS IN THIS
 STOCK ON THE VANCOUVER STOCK
 EXCHANGE.

Bought from Broker—	No. of Shares	Price	Sold to Broker—	No. of Shares	Price	
Clarke	200	3.71	Greathead	300	3.70	
“	300	3.75	Poisson	50	3.70	10
“	1000	3.78	“	450	3.80	
“	700	3.78	Miller	400	3.75	
“	200	3.73	“	500	3.75	
“	200	3.74	Irwin	400	3.75	
Miller	1000	3.75	Continental	100	3.73	
“	200	3.80	Gelletley	50	3.75	
“	500	3.71	Gillespie	300	3.77	
Lennard Poisson ...	450	3.80	Crabb	100	3.80	
“	50	3.70	Brown	1000	3.80	
Irwin	500	3.71	“	200	3.80	20
“	200	3.73	“	200	3.80	
Gelletley	250	2.70	Clarke	200	3.71	
“	250	3.75	“	100	3.71	
Continental	100	3.73	“	200	3.75	
Pennock	500	3.74	“	700	3.78	
J. C. Hogg	500	3.85	“	1000	3.78	
Greathead	200	3.75	“	200	3.73	
“	500	3.73	“	500	3.74	
Brown	1000	3.80	J. C. Hogg	200	3.85	
Randall	100	3.71				30
“	200	3.70				
“	100	3.73				
<hr/> Total	<hr/> 9,200		<hr/> TOTAL	<hr/> 7,150		

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EXHIBIT 57.

ASSOCIATED OILS.

BUY CONFIRMATIONS FOR MAY 29, 1929.

Customer—	No. of Shares	Price	Customer—	No. of Shares	Price
Theo. Frontier	1000	4.45	Denbigh Dickinson		
“ “	100	4.45	(Sold to)	1000	5.00
Total	1100		Total	1000	
10 Mrs. M. Graham	50	4.25	(Less Bkg. 5.00, Tax 1.35)		
Total	50		TOTAL	2150	

ASSOCIATED OILS.

SELL CONFIRMATIONS FOR MAY 29, 1929.

Customer—	No. of Shares	Price
House	1200	4.45
House	50	4.25
20 TOTAL	1250	

EXHIBIT 57.

ASSOCIATED OILS.

VANCOUVER CLEARING HOUSE SHEET FOR MAY 29, 1929,
SHOWING ALL TRANSACTIONS IN THIS STOCK
ON THE VANCOUVER STOCK EXCHANGE.

Bought of Broker—	No. of Shares	Price	Sold to Broker—	No. of Shares	Price
Miller	50	4.25	Miller	50	4.25
30 Gelletly	100	4.45	Gelletly	100	4.45
Greathead	1000	4.45	“	100	4.45
TOTAL	1150		TOTAL	250	

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EXHIBIT 57.

COTTON BELT.

BUY CONFIRMATIONS FOR DECEMBER 22, 1928.

Customer—	No. of Shares	Price	
Theo. Frontier & Co.	1000	.40	
A. J. Brown (Sold to)	1000	.40	(Less Bkg. 1.00, Tax .30)
TOTAL	2000		

COTTON BELT

10

SELL CONFIRMATIONS FOR DECEMBER 22, 1928.

Customer—	No. of Shares	Price
A. F. Alcorn	1000	.40

COTTON BELT

VANCOUVER CLEARING HOUSE SHEET FOR DECEMBER
22, 1928, SHOWING ALL TRANSACTIONS IN THIS
STOCK ON THE VANCOUVER STOCK
EXCHANGE.

Bought of Broker—	No. of Shares	Price	Sold to Broker—	No. of Shares	Price	
A. J. Brown	1000	.40			Nil	20

EXHIBIT 57.
DEVENISH—MARCH 15, 1929.

BUY CONFIRMATIONS SENT BY SOLLOWAY MILLS
TO CUSTOMERS.

	Customer—	No. of Shares	Price		Customer—	No. of Shares	Price
	Theo. Frontier	100	2.10		Miss E. Sutherland..	50	2.10
	“ “	300	2.10		Mrs. J. C. Thomas...	25	2.10
	“ “	50	2.10		Winnipeg Office	50	2.10
10	“ “	50	2.10		“ “	100	2.10
	“ “	200	2.25		“ “	100	2.10
	“ “	200	2.00		“ “	100	2.10
	“ “	500	2.00		“ “	100	2.10
	“ “	50	2.00		“ “	200	2.10
					“ “	100	2.10
	Total	1450			“ “	50	2.10
	G. Lockett & Co.	1000	2.10		Toronto Office	200	2.10
	S. Adkins	500	2.10		“ “	100	2.10
20	A. D. Baker	25	2.10		Winnipeg Office	500	2.10
	J. I. Brown	50	2.10		“ “	200	2.10
	J. H. Brown	50	2.10		Blake Hunt	50	2.10
	W. R. Brown	100	2.10		J. Arseno	200	2.20
	Campbell & McLeod	100	2.10		A. A. Arnold	1000	2.20
	T. H. Clack	100	2.10		L. E. Arnold	100	2.20
	Edmonton Office ...	20	2.10		G. Lockett & Co.....	100	2.20
	“ “	1000	2.10		R. L. Brown	50	2.20
	“ “	40	2.10		F. F. Butchers	50	2.20
	A. Erickson	50	2.10		B. Crann	200	2.20
30	A. J. Linforth	200	2.10		W. Edmunds	75	2.20
	L. M. Muir	50	2.10		W. F. Laws	200	2.20
	Mrs. D. K. McClellan	25	2.10		F. E. McArthur	1000	2.20
	A. McKay	50	2.10		J. A. Jackson	100	2.20
	W. H. Griffin	100	2.10		A. S. Fraser	100	2.20
	Jas. Hall	200	2.10		W. N. Parkin	200	2.20
	A. Harris	100	2.10		Sheppard & McIntosh	100	2.20
	D. H. Hornby	40	2.10		Mrs. J. A. Shirra....	50	2.20
	Hunnings & Co.	50	2.10		G. J. Vaux	200	2.20
	W. J. Francis	100	2.10		Winnipeg Office	100	2.20
40	Dr. H. Grant	50	2.10		“ “	100	2.20
	E. S. Gourlay	50	2.10		“ “	100	2.20
	F. Perry	100	2.10		“ “	50	2.20
	Miss R. Perry	50	2.10		“ “	50	2.20
	Regina Office	100	2.10		“ “	200	2.20
	“ “	200	2.10		“ “	50	2.20
	Sheppard & McIntosh	200	2.10		“ “	50	2.20
	Sheppard & McIntosh	100	2.10		Geo. Woodcraft	50	2.20
					Calgary Office	5325	.90
					“ “	1915	1.00

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EXHIBIT 57.

DEVENISH—MARCH 15, 1929.

BUY CONFIRMATIONS SENT BY SOLLOWAY MILLS
TO CUSTOMERS.

(2)

Customer—	No. of Shares	Price	Customer—	No. of Shares	Price	
Mrs. E. Blythe	500	2.15	A. Rennison	100	2.15	
H. Biber	200	2.00	H. C. Samis	1000	2.00	
G. B. Beaton	25	2.05	P. Schell	50	2.05	10
J. Arseno	200	4.06	J. C. Sulley	100	2.00	
A. G. Arbique	100	2.00	Sheppard & McIntosh	100	2.00	
E. J. Bush	100	2.00	Sheppard & McIntosh	200	2.00	
Wm. Cashion	100	2.25	J. A. Staines	100	2.25	
C. Fraser	200	2.00	Mrs. E. Stirk	50	2.25	
W. Clarkson	100	2.00	A. C. Tomlinson	50	2.15	
H. R. N. Corbett	1000	2.00	Vallance	50	2.00	
Edmonton Office	50	2.00	R. Verge	50	2.25	20
" "	100	2.00	G. H. Wheeler	25	2.25	
J. B. Eberts	300	2.00	Winnipeg Office	50	2.15	
A. Eugene	500	2.05	" "	100	2.15	
T. Lovedar	100	2.15	" "	100	2.15	
W. Marr	100	2.00	" "	50	2.15	
Mrs. B. Matheson	50	2.00	" "	100	2.25	
R. Mathieson	50	2.00	" "	50	2.25	
W. H. Griffin	100	2.00	" "	100	2.25	
J. E. Hall	500	2.25	" "	50	2.25	
Hunnings & Co.	100	2.15	" "	100	2.25	
Jameson & Gray	100	2.00				
G. Giroday	50	2.05				30
Mrs. W. H. Parkin..	100	2.05				
J. W. Penterluth	100	2.00				
			TOTAL	20,000		

EXHIBIT 57.

DEVENISH—MARCH 15, 1929.

SELL CONFIRMATIONS SENT BY SOLLOWAY MILLS
TO CUSTOMERS.

	Customer—	No. of Shares	Price	Customer—	No. of Shares	Price
	Toronto Office	100	2.10	S. Belcher	100	2.10
	“ “	100	2.10	C. G. Beaching	1000	2.10
	“ “	200	2.10	S. Ayanian	100	2.10
10	“ “	400	2.10	G. Sparling	100	2.20
	Calgary Office	400	2.10	Chaffey Fraser	400	2.20
	“ “	100	2.10	T. T. Bonner	30	2.20
	Winnipeg Office	500	2.10	S. Barron	500	2.20
	“ “	500	2.10	Toronto Office	200	2.00
	“ “	100	2.10	“ “	1100	2.00
	H. W. Watts	100	2.10	“ “	100	2.00
	E. Trains	100	2.10	“ “	100	2.00
	A. Stewart	200	2.10	“ “	100	2.00
20	O. P. Smith	100	2.10	“ “	1100	2.00
	“ “	100	2.10	“ “	400	2.00
	“ “	100	2.10	“ “	200	2.00
	“ “	100	2.10	“ “	100	2.00
	O. Smith	200	2.10	“ “	300	2.00
	Sheppard & McIntosh	200	2.10	“ “	100	2.00
	Sheppard & McIntosh	100	2.10	“ “	100	2.00
	Sheppard & McIntosh	100	2.10	“ “	200	2.00
30	I. A. Shaw	100	2.10	“ “	200	2.00
	H. W. Robertson	50	2.10	“ “	50	2.00
	Mrs. S. B. Parker	100	2.10	“ “	100	2.00
	H. Galbraith	200	2.10	“ “	100	2.00
	Jameson Gray	1000	2.10	“ “	300	2.00
	F. J. Hogan	25	2.10	“ “	300	2.00
	Mrs. W. Haslett	50	2.10	“ “	100	2.00
	J. P. McLeod	100	2.10	“ “	100	2.00
	C. Moore	100	2.10	“ “	200	2.00
	H. Spencer Lewis	25	2.10	“ “	100	2.00
40	J. Martin	100	2.10	“ “	500	2.00
	S. Lorin	100	2.10	“ “	1000	2.00
	W. J. Labelle	500	2.10	“ “	200	2.00
	C. G. Dixon	100	2.10	“ “	300	2.05
	W. A. Clerch	100	2.10	“ “	20	2.05
	Chaffey Fraser	92	2.10	“ “	100	2.05
	G. A. Buttomy	100	2.10	Thos. Wyndham	500	2.00
	S. K. Breckenridge..	200	2.10	S. Wright	200	2.15
	Mrs. J. H. Bennett..	1000	2.10	W. Wood	100	2.25
				C. Weymyss	200	2.00

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EXHIBIT 57.

DEVENISH—MARCH 15, 1929.

SELL CONFIRMATIONS SENT BY SOLLOWAY MILLS
TO CUSTOMERS.

(2)

Customer—	No. of Shares	Price	Customer—	No. of Shares	Price
A. Stewart	200	2.25	M. McLean	100	2.00
L. Stevens	100	2.05	W. A. Clerch	100	2.25
Sheppard & McIntosh	100	2.00	Chaffey Fraser	50	2.15
Sheppard & McIntosh	100	2.00	“ “	1000	2.00
S. G. Freeze	100	2.05	H. Cairns	200	2.25
H. Jones	100	2.05	J. Bruce	100	2.25
D. H. Hornby	25	2.25	Mrs. M. B. Bowles....	50	2.05
T. H. Holman	100	2.00	W. B. Bower	300	2.25
A. G. Haines	50	2.15	C. G. Beaching	100	2.15
J. Martin	150	2.05	S. Anderson	150	2.15
F. M. Bonnell	100	2.25			
			TOTAL	23,317	

10

RECORD

*In the
Supreme Court
of British
Columbia.*

Exhibit 57
(Cont'd)

EXHIBIT 57.

DEVENISH—MARCH 15, 1929.

TRANSACTIONS OF VANCOUVER STOCK EXCHANGE
BETWEEN SOLLOWAY MILLS AND OTHER
BROKERS.

Bought from Broker—		No. of Shares	Price	Sold to Broker—		No. of Shares	Price
	Denbigh Dickinson..	1000	2.10	Denbigh Dickinson..	2000	2.10	
	Hogg & Co.	800	2.25	Hogg & Co.	300	2.25	
10	Miller Court	500	2.15	Miller Court	200	2.00	
	Randall	100	2.20	" "	100	2.00	
	Branson	200	2.20	" "	200	2.00	
	Branson	3000	2.00	" "	200	2.00	
	Denbigh Dickinson..	1000	2.20	Branson Brown	500	2.00	
	" "	200	2.05	" "	3050	2.00	
	Gelletly	1000	2.15	" "	500	2.00	
	Steele & Co.	1500	2.20	A. J. Brown	100	2.00	
				Continental	100	2.00	
				" "	300	2.00	
				Clark	200	2.25	
				" "	300	2.00	
				Denbigh Dickinson..	1000	2.20	
				" "	200	2.05	
				" "	100	2.00	
				Gelletly	1000	2.15	
				" "	100	2.00	
				Lennard Poisson	100	2.00	
				Miller Court	1000	2.15	
				Oliver	100	2.00	
				Steele & Son	500	2.20	
				James & Wood	100	2.00	
				" "	200	2.00	
20	Total	9,300		TOTAL	12,450		

RECORD

*In the
Supreme Court
of British
Columbia.*

Exhibit 57
(Cont'd)

EXHIBIT 57.

FABYAN.

BUY CONFIRMATIONS FOR MARCH 13, 1929.

Customer—	No. of Shares	Price	Customer—	No. of Shares	Price	
Theo. Frontir & Co.	200	.16	Mrs. Ada A. Gray	500	.14½	
			Manual Graff	500	.14½	
Total	200		F. Chatterton	250	.15	
Jas. R. Murray	1000	.14½	A. C. Duncan	250	.15	
J. A. Wright	100	.15	L. Carlson	200	.16	10
Winnipeg Office	700	.16	Bedford Davidson...	2000	.14½	
Jas. S. Webster	500	.15½	P. Eckersley	500	.15½	
R. H. Ward	1000	.14½	Harry Ashton	100	.16	
D. McIntyre	250	.15	H. E. Appleyard	1000	.15½	
MacGregor & Elliott	200	.16	Edmonton Office ...	200	.15	
Miss C. Paulson	100	.15	" "	100	.15	
W. N. Parker	400	.15	" "	100	.15	
Mrs. Eva B. Olheiser	400	.15	" "	500	.14½	
C. Rastod	200	.15	W. Barrass	300	.15	
Regina Office	500	.14½	Total	13,550		20
Toronto Office	1000	.14½				
Toronto Office	600	.16				
Mrs. Clara Ham	100	.16	TOTAL	13,750		

FABYAN.

SELL CONFIRMATIONS FOR MARCH 13, 1929.

Customer—	No. of Shares	Price	
Regina Office	200	.16	
G. A. Smith	2000	.15½	
TOTAL	2200		30

RECORD

*In the
Supreme Court
of British
Columbia.*Exhibit 57
(Cont'd)

EXHIBIT 57.

FABYAN.

VANCOUVER CLEARING HOUSE SHEET FOR MARCH 13,
1929, SHOWING ALL TRANSACTIONS IN THIS
STOCK ON THE VANCOUVER STOCK
EXCHANGE.

	Bought of Broker—	No. of Shares	Price	Sold to Broker—	No. of Shares	Price
10	Nanson	1900	.16	Jukes	2000	.15½
	"	1500	.15½			
	"	2000	.14½			
	"	2550	.15			
	"	4000	.14½			
	TOTAL	11,950				

RECORD
 In the
 Supreme Court
 of British
 Columbia.
 Exhibit 57
 (Cont'd)

EXHIBIT 57.

FREEHOLD.

BUY CONFIRMATIONS FOR MARCH 13, 1929.

Customer—	No. of Shares	Price	Customer—	No. of Shares	Price	
Theo Frontier & Co.	1000	1.55	M. W. Alpen	100	1.55	
“ “ “	500	1.55	J. H. Creighton	100	1.55	
Total	1500		Total	3650		10
W. Hansher	400	1.60	Denbigh Dickinson			
Fred Stacey	200	1.60	(Sold to)	500	1.60	
Mrs. Sheasgreen	50	1.55	(Less Bkg. 1.00,			
G. S. Sauft	1000	1.55	Tax .15)			
Regina	200	1.55	Denbigh Dickinson			
Calgary	300	1.55	(Sold to)	1800	1.55	
Denbigh Dickinson..	500	1.60	(Less Bkg. 3.60,			
F. E. Lewis	100	1.65	Tax .54)			
C. C. Kenning	200	1.60	Total	2300		20
Maj. H.R.N. Cobbett	500	1.60	TOTAL	7450		

SELL CONFIRMATION FOR MARCH 13, 1929.

Customer—	No. of Shares	Price	
Interior Develop- ment Co.	100	1.55	
Denbigh Dickinson (Bought from)	500	1.60	
TOTAL	600		30

EXHIBIT 57.

FREEHOLD.

VANCOUVER CLEARING HOUSE SHEET FOR MARCH 13,
 1929, SHOWING ALL TRANSACTIONS IN THIS
 STOCK ON THE VANCOUVER STOCK
 EXCHANGE.

	Bought of Broker —	No. of Shares	Price	Sold to Broker —	No. of Shares	Price
10	Greathead	1800	1.55			Nil
	“	500	1.60			
	TOTAL	2300				

RECORD
 In the
 Supreme Court
 of British
 Columbia.
 Exhibit 57
 (Cont'd)

EXHIBIT 57.

GEORGIA RIVER.

BUY CONFIRMATIONS FOR JANUARY 26, 1929.

Customer—	No. of Shares	Price	Customer—	No. of Shares	Price
Theo. Frontier & Co.	200	.41	E. A. Hudson	700	.40
Chaffey Fraser	500	.41			
G. R. Hughes	1000	.40	TOTAL	2400	

EXHIBIT 57.

GEORGIA RIVER.

10

SELL CONFIRMATIONS FOR JANUARY 26, 1929.

Customer—	No. of Shares	Price
House	1400	.40

GEORGIA RIVER.

VANCOUVER CLEARING HOUSE SHEET FOR JANUARY
 26, 1929, SHOWING ALL TRANSACTIONS IN THIS
 STOCK ON THE VANCOUVER STOCK
 EXCHANGE.

Bought of Broker—	No. of Shares	Price	Sold to Broker—	No. of Shares	Price	20
Gelletly	700	.41	Branson	700	.40	
Miller	1000	.40				
TOTAL	1700					

EXHIBIT 57.
GRANDVIEW.

BUY CONFIRMATIONS FOR NOVEMBER 19, 1928.

RECORD
In the
Supreme Court
of British
Columbia.
Exhibit 57
(Cont'd)

Customer—		No. of Shares	Price	Customer—		No. of Shares	Price
	Theo. Frontier & Co.	500	.60		Calgary Office	200	.60
	“ “ “	2500	.59		“ “	3000	.59½
	“ “ “	1000	.59¾		“ “	500	.59½
	“ “ “	500	.59½				
10	Total	4500			Total	6450	
	W. Boyd	500	.59		W. F. Irwin		
	E. G. Cullen	500	.60		(Sold to)	500	.59
	L. J. King	500	.59½		(Less Bkg. .50,		
	Miss Grace Rae	300	.59½		Tax .09)		
	Winnipeg Office	100	.60		W. F. Irwin		
	Wm. Scott	250	.60		(Sold to)	1500	.59
	E. F. C. Salmon	200	.60		(Less Bkg. 1.50,		
20	Calgary Office	200	.59½		Tax .24)		
	“ “	200	.59½		Total	2000	
					TOTAL	12,950	

SELL CONFIRMATIONS FOR NOVEMBER 19, 1928.

Customer—		No. of Shares	Price	Customer—		No. of Shares	Price
	Campbell & McLeod	1000	.59		Calgary Office	200	.59½
	A. A. Dykstra	500	.60		W. F. Irwin		
	D. A. Davidson	100	.60		(Bought from)	200	.59½
	Theo. Frontier & Co.	500	.60		W. F. Irwin		
	E. S. Linabury	500	.59½		(Bought from)	500	.59½
30	Calgary Office	500	.59½				
	“ “	500	.59½		TOTAL	5500	
	“ “	1000	.59				

RECORD

*In the
Supreme Court
of British
Columbia.*

Exhibit 57
(Cont'd)

EXHIBIT 57.

GRANDVIEW.

VANCOUVER CLEARING HOUSE SHEET FOR NOVEMBER
19, 1928, SHOWING ALL TRANSACTIONS IN THIS
STOCK ON THE VANCOUVER STOCK
EXCHANGE.

Bought of Broker—	No. of Shares	Price	Sold to Broker—	No. of Shares	Price	
Clark	1000	.59	Irwin	500	.59½	
“	500	.60	“	200	.59½	10
“	500	.59½	Clark	500	.60	
Gelletly	500	.59¾	“	100	.60	
Irwin	1500	.59	Irwin	500	.59¼	
“	500	.59	Nanson	500	.60	
“	200	.60	Whittaker	2000	.59½	
Clark	300	.60				
“	300	.59½				
Denbigh Dickinson..	500	.59½				
Gelletly	250	.60				
Whittaker	3000	.59½				20
TOTAL	9050		TOTAL	4300		

EXHIBIT 57.
GRANDVIEW.

BUY CONFIRMATIONS FOR JANUARY 16, 1929.

RECORD

*In the
Supreme Court
of British
Columbia.*

Exhibit 57
(Cont'd)

	Customer—	No. of Shares	Price	Customer—	No. of Shares	Price
	Theo. Frontier	1000	.82½	Sold to A. J. Brown	10000	.83
	“ “	4000	.83	(Less Bkg. 15.00)	_____	_____
	“ “	5000	.84			
	“ “	1000	.83	Total	10,000	
10	“ “	1000	.84			
	“ “	4000	.85			
	Total	16,000		Sold to W. F. Irwin	2000	.83
				(Less Bkg. 3.00)	_____	_____
	C. D. MacKintosh	1000	.80	TOTAL	2000	
	Canadian Bank					
	of Commerce	200	.80			
	John Kandal	500	.82	House	4000	.79
	W. B. Farris	2000	.82	“	1000	.80
20	“ “	2000	.81	“	2500	.82½
	Calgary Office	500	.82½	“	2500	.83
	Winnipeg Office	500	.84	“	1000	.79
	A. Ruoces	500	.83	House	5500	.80
	W. Robi	5000	.83	“	700	.82
	E. D. Kellman	500	.83	“	1000	.82½
	C. W. Hodgson	2000	.83	“	2000	.83
	B. F. Harmer	1000	.83	“	500	.83½
	Campbell & McLeod	400	.83	“	1500	.85
	J. S. Burton	2000	.83	“	3000	.82
30	Calgary Office	500	.84	“	1300	.84
	“	500	.84	“	1250	.83
	C. C. Beeching	1000	.84	“	1000	.79
	W. Robi	1000	.85	“	500	.84½
	Miss Revolta	500	.85	Total	29,250	
	W. Nesbit	200	.85			
	Martin McHale	500	.85	Total	97,650	
	G. Mill	500	.85			
	Interior Develop-					
	ment Co.	1000	.85			
40	G. R. Hughes	500	.85			
	W. Elliott	1000	.85			
	D. A. Davidson	100	.85			
	W. H. Mackee	1000	.82½			
	“ “	1000	.83			
	“ “	3000	.84			
	E. R. Sugarman	10000	.83			
	TOTAL	40,400				

RECORD

*In the
Supreme Court
of British
Columbia.*

Exhibit 57
(Cont'd)

EXHIBIT 57.

GRANDVIEW.

SELL CONFIRMATIONS FOR JANUARY 16, 1929.

Customer—	No. of Shares	Price	Customer—	No. of Shares	Price	
Theo. Frontier	4500	.80	R. Rusch	500	.83	
“ “	500	.79	C. H. Daniels	500	.83	
“ “	3000	.79	V. Curran	500	.83	
“ “	2000	.80	Campbell & McLeod	500	.83	
“ “	10000	.83	A. L. Hopper	500	.85	10
			J. M. Anderson	200	.85	
Total	20,000		Calgary Office	500	.85	
			Total	18,900		
F. Campbell	1000	.78	House	2600	.85	
“ “	500	.79	“	2500	.84	
“ “	3500	.80	“	3000	.83	
Miss Revolta	500	.79	“	500	.82½	
Campbell & McLeod	1000	.79	“	2500	.82	
“ “ “	1500	.79	“	1200	.80	20
Phillip M. Ray	1000	.79	“	1000	.82½	
Calgary Office	500	.79	“	3500	.84	
Interior Develop- ment Co.	500	.82	“	3500	.85	
G. S. Brown	200	.82	“	400	.83	
E. M. Lee	1000	.82½	“	1000	.81	
K. Sturgeon	500	.82½	“	2000	.83	
Stan Adkins	1000	.82½	“	1000	.78	
Interior Develop- ment	1000	.82½	Total	24,700		
Interior Develop- ment	1000	.83	Total	63,600		30
J. V. Saurier	1000	.83				

EXHIBIT 57.
GRANDVIEW.

RECORD

*In the
Supreme Court
of British
Columbia.*

Exhibit 57
(Cont'd)

VANCOUVER CLEARING HOUSE SHEET FOR JANUARY
16, 1929, SHOWING ALL TRANSACTIONS IN THIS
STOCK ON THE VANCOUVER STOCK EXCHANGE.

	Bought From Broker—	No. of Shares	Price	Sold to Broker—	No. of Shares	Price
10	Beaton & Company	1000	.83	B. C. Bond	1000	.80
	" " "	2000	.83	Clarke & Company	1000	.80
	Branson Brown	1000	.83	Denbigh Dickinson	500	.78
	A. J. Brown	10000	.83	Gelletly & Company	1500	.79
	Clark & Company ..	500	.83½	Hogg & Company ..	500	.79
	" " " ..	1000	.83	Irwin & Company ..	500	.80
	" " " ..	5000	.84	" " ..	1000	.78
	" " " ..	1500	.85	Miller Court	1000	.80
	" " " ..	2000	.82	" " ..	500	.78
	Guardian Stock	1000	.79	Oliver & Company ..	1500	.79
20	Gillespie Hart	500	.83			
	" "	500	.83			
	W. G. Hopper	300	.84			
	Irwin & Company ..	1000	.83			
	" " " ..	2000	.83			
	" " " ..	1000	.85			
	Lennard Poisson	1000	.85			
	" " " ..	1000	.84			
	" " " ..	1000	.81			
30	Miller Court	1250	.83			
	" "	1000	.82½			
	" "	3000	.83			
	" "	1000	.83			
	" "	2000	.83			
	" "	1000	.82			
	Randall & Company	500	.84½			
	Total	43,050		Total	9000	

RECORD
 In the
 Supreme Court
 of British
 Columbia.
 Exhibit 57
 (Cont'd)

EXHIBIT 57.

GOLCONDA.

BUY CONFIRMATIONS FOR FEBRUARY 14, 1929.

Customer—	No. of Shares	Price	Customer—	No. of Shares	Price	
Theo. Frontier & Co.	500	1.49	Denbigh Dickinson			
			'Sold to'	700	1.49	
Total	500		(Less Bkg. 1.40			
Mrs. J. E. Watson ..	1000	1.49	Tax .21)			
Calgary Office	200	1.48	W. H. Irwin 'Sold to'	2000	1.48	10
Calgary Office	200	1.49	(Less Bkg. 4.00			
A. J. Brennan	300	1.49	Tax .60)			
C. A. Hamilton	200	1.49	Total	4900		
R. R. Garnett	200	1.48	House	500	.49	
R. H. Stout	1000	1.49	House	2000	1.48	
Regina Office	2000	1.48	Total	2500		
Total	5100					
A. J. Brown 'Sold to'	2000	1.48				
(Less Bkg. 4.00						20
Tax .60)						
A. J. Brown 'Sold to'	200	1.48				
(Less Bkg. .40						
Tax .06)			Total	13,000		

GOLCONDA.

SELL CONFIRMATIONS FOR FEBRUARY 14, 1929.

Customer—	No. of Shares	Price	Customer—	No. of Shares	Price	
W. Worrall	500	1.48	House	100	1.49	30
Calgary Office	100	1.49	House	2200	1.48	
Hunnings & Co.	500	1.49	House	2000	1.48	
" "	500	1.49	Total	4300		
" "	500	1.49				
" "	1000	1.49				
Mair & Stewart	200	1.48				
Total	3300		Total	7600		

EXHIBIT 57.

GOLCONDA.

RECORD

*In the
Supreme Court
of British
Columbia.*Exhibit 57
(Cont'd)VANCOUVER CLEARING HOUSE SHEET FOR FEBRUARY
14, 1929, SHOWING ALL TRANSACTIONS IN THIS
STOCK ON THE VANCOUVER STOCK EXCHANGE.

	Bought of Broker—	No. of Shares	Price	Sold to Broker—	No. of Shares	Price
	A. J. Brown	2000	1.48	Clarke & Company	500	1.48
	A. J. Brown	200	1.48	Guardian	1000	1.49
10	Denbigh Dickinson	700	1.49			
	Irwin	2000	1.48			
	Total	<u>4900</u>				
	Guardian	2000	1.49			
	Guardian	2000	.10			
	Total	<u>4000</u>				
	Total	<u>8900</u>		Total	<u>1500</u>	

RECORD

In the
Supreme Court
of British
Columbia.

Exhibit 57
(Cont'd)

EXHIBIT 57.

HOME OIL.

BUY CONFIRMATIONS FOR APRIL 15, 1929.

Customer—	No. of Shares	Price	Customer—	No. of Shares	Price
Theo. Frontier	10	23.50	Denbigh Dickinson		
“ “	50	23.90	‘Sold to’	100	23.75
	—		(Less Bkg. 2.00, Tax .03)		
Total	60				10
Calgary Office	25	23.50	S. W. Randall & Co.		
“ “	20	23.50	‘Sold to’	950	23.50
“ “	5	23.40	(Less Bkg. 19.00, Tax .30)		
“ “	100	23.90	S. W. Randall & Co.		
“ “	150	23.90	‘Sold to’	405	23.25
“ “	80	23.90	(Less Bkg. 8.10, Tax .15)		
Toronto Office	1050	23.00	S. W. Randall & Co.		
Winnipeg Office	25	23.50	‘Sold to’	100	23.60
“ “	20	23.50	(Less Bkg. 2.00, Tax .03)		20
Saskatoon Office	100	23.50	S. W. Randall & Co.		
“ “	20	23.50	‘Sold to’	450	23.50
“ “	20	23.50	(Less Bkg. 9.00, Tax .15)		
“ “	5	23.50	S. W. Randall & Co.		
Regina Office	30	23.50	‘Sold to’	120	23.50
Edmonton Office	20	23.50	(Less Bkg. 2.40, Tax .06)		
McGregor and Elliott	30	23.40	S. W. Randall & Co.		
Sturdy	100	23.50	‘Sold to’	100	23.70
McRae	500	23.50	(Less Bkg. 20.00, Tax .30)		30
W. R. Tracey	100	23.00	S. W. Randall & Co.		
E. P. Salvage	100	23.25	‘Sold to’	100	23.55
J. W. Sutherland	100	23.90	(Less Bkg. 2.00, Tax .03)		
Dr. P. P. Smith	50	23.90	S. W. Randall & Co.		
L. Sugler	100	23.50	‘Sold to’	480	23.75
H. Rittenhouse	20	23.40	(Less Bkg. 1.40, Tax .03)		
A. J. Kimberley	20	23.90	S. W. Randall & Co.		
D. M. Lamont	100	23.25	‘Sold to’	150	23.90
H. P. Gatrell	25	23.25	(Less Bkg. 2.00, Tax .03)		
Miss E. Elson	40	23.90	S. W. Randall & Co.		
	—		‘Sold to’	170	23.50
			(Less Bkg. 20.00, Tax .30)		40
Total	2955		Denbigh Dickinson		
			‘Sold to’	100	23.90
			(Less Bkg. 2.00, Tax .03)		
Denbigh Dickinson			Total	3300	
‘Sold to’	20	23.00			
(Less Bkg. .40, Tax .03)			House	30	23.50
Denbigh Dickinson			“	100	23.25
‘Sold to’	20	23.40	“	230	23.75
(Less Bkg. 1.40, Tax .03)			Total	360	50
Denbigh Dickinson					
‘Sold to’	35	23.40	Total	6675	
(Less Bkg. .70, Tax .03)					

EXHIBIT 57.

HOME OIL.

SELL CONFIRMATIONS FOR APRIL 15, 1929.

Customer—	No. of Shares	Price	Customer—	No. of Shares	Price
Toronto Office	400	23.50	"	700	23.00
W. R. Tracey	100	23.90	"	100	23.50
House	100	23.00	"	570	23.50
"	170	23.50	"	100	23.60
10 "	100	23.55	"	405	23.25
"	100	23.70	"	350	23.50
"	480	23.75	"	600	23.50
"	50	23.90	"	175	23.50
"	100	23.00	"	55	23.40
"	120	23.50	"	100	23.25
"	100	23.75			
"	560	23.90	Total	5535	

RECORD

*In the
Supreme Court
of British
Columbia.*

Exhibit 57
(Cont'd)

RECORD
 In the
 Supreme Court
 of British
 Columbia.
 Exhibit 57
 (Cont'd)

EXHIBIT 57.

HOME OIL.

VANCOUVER CLEARING HOUSE SHEET FOR APRIL 15,
 1929, SHOWING ALL TRANSACTIONS IN THIS STOCK
 ON THE VANCOUVER STOCK EXCHANGE.

Bought of Broker—	No. of Shares	Price	Sold to Broker—	No. of Shares	Price	
Clarke	400	23.00	Clarke	100	23.50	
Continental	300	23.00	"	100	23.00	
"	100	23.00	"	100	23.00	10
Hogg	150	23.00	Wolverton	40	23.90	
Randall	100	23.50	Steele	100	23.00	
"	80	23.75	"	100	23.50	
"	50	23.75	"	50	23.00	
"	100	23.75	Continental	100	23.00	
"	150	23.90	Hogg	250	23.00	
"	700	23.50	"	100	23.50	
"	30	23.50	Poisson	50	23.00	
"	125	23.25	Brown	50	23.00	
"	100	23.25	Powell	200	23.50	20
Greathead	100	23.90	Miller	100	23.50	
"	20	23.00				
"	20	23.40				
"	35	23.40				
Total	<u>2560</u>		Total	<u>1440</u>		

EXHIBIT 57.
ILLINOIS ALBERTA.
BUY CONFIRMATIONS FOR MARCH 13, 1929.

RECORD

*In the
Supreme Court
of British
Columbia.*

Exhibit 57
(Cont'd)

	Customer—	No. of Shares	Price	Customer—	No. of Shares	Price
	Theo. Frontier & Co.	500	1.75	J. G. McLean	100	1.75
	“ “ “	50	1.75	MacGregor & Elliott	200	1.75
	“ “ “	50	1.80	“ “	100	1.75
	“ “ “	100	1.75	“ “	200	1.80
10				“ “	300	1.80
	Total	700		Mrs. L. M. Muir	25	1.75
	Mrs. W. E. Gladstone	400	1.80	Mrs. E. Munro	25	1.80
	H. S. Y. Galbraith ..	500	1.75	Dr. Wm. Morris	100	1.80
	Duncan Fraser	300	1.75	M. A. Miller	200	1.75
	F. Fransen	20	1.75	Angus	100	1.75
	Miss Fierheller	50	1.80	D. Atkinson	50	1.80
	Mrs. A. Fillmore	200	1.75	M. Booker	100	1.75
	Hunnings & Co.	1000	1.75	W. L. Bonhane	10	1.75
	“ “	50	1.75	R. Beaumont	1000	1.75
20	“ “	100	1.80	G. Beaton	25	1.75
	“ “	450	1.80	A. Barratt	1000	1.75
	“ “	300	1.75	“ “	1000	1.80
	“ “	50	1.80	J. S. Burton	500	1.80
	“ “	200	1.75	A. J. Brady	700	1.70
	H. M. Harrington	100	1.80	K. E. Bowen	200	1.75
	W. Hausler	300	1.80	J. W. Duncan	50	1.75
	R. Hamilton	200	1.75	G. Callahan	50	1.80
	E. J. Jardine	100	1.75	C. Fraser	100	1.80
	E. M. Jackman	25	1.75	“ “	300	1.80
30	Mrs. M. Hutton	100	1.75	“ “	100	1.80
	A. A. Nevison	50	1.75	Campbell & McLeod	100	1.75
	Dr. Neville	200	1.75	“ “	100	1.75
	G. Nairn	100	1.80	J. W. Creighton	100	1.75
	Y. Nakajawa	500	1.75	Mrs. R. Coghlan	100	1.75
	Calgary Office	500	1.75	Edmonton Office	200	1.75
	Toronto Office	50	1.75	“ “	150	1.75
	“ “	100	1.75	“ “	100	1.75
	N. Sangster	250	1.80	“ “	100	1.75
	R. Robertson	100	1.75	G. Enrico	100	1.75
40	Regina Office	100	1.75	Edmonton Office	150	1.80
	K. Roy	300	1.70	D. Campbell	300	1.75
	Miss H. Rae	50	1.75	“ “	100	1.75
	F. Stouling	100	1.75			
	Mrs. E. Stirk	25	1.75	Total	16,805	
	Mrs. J. Shirras	25	1.75	Denbigh Dickinson		
	J. W. Shellshear	200	1.75	‘Sold to’	1100	1.80
	J. E. Madill	100	1.75	(Less Bkg. 2.20, Tax .33)		
	S. Loran	100	1.75	Denbigh Dickinson		
	A. S. Wooten	100	1.80	‘Sold to’	2000	1.75
50	J. Wood	100	1.75	(Less Bkg. 4.00, Tax .60)		
	Winnipeg Office	200	1.75			
	E. C. Wilkinson	100	1.75	Total	3100	
	E. J. West	200	1.75			
	N. Weicker	500	1.75	Total	20,605	
	W. R. Vye	100	1.75			
	Miss V. Marshall	75	1.75			

RECORD
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EXHIBIT 57.

ILLINOIS ALBERTA.

SELL CONFIRMATIONS FOR MARCH 13, 1929.

Customer—	No. of Shares	Price	Customer—	Shares No. of	Price
W. H. Griffiths	100	1.80	J. S. Bancroft	300	1.80
G. R. Hughes	500	1.80	J. A. Bourques	2000	1.75
G. C. Pratt	500	1.75	J. Cuthill	100	1.75
S. Scott	200	1.75	M. DeLeon	500	1.75
A. Theodore	500	1.75	Edmonton Office ...	250	1.65
Manning	200	1.80	B. C. A'Court	500	1.75
W. Milk	200	1.75	Denbigh Dickinson		
G. Matz	30	1.80	'Bought for'	500	1.75
G. Assimes	500	1.80	(Plus Bkg. 1.00)		

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ILLINOIS ALBERTA.

VANCOUVER CLEARING HOUSE SHEET FOR MARCH 13,
1929, SHOWING ALL TRANSACTIONS IN THIS STOCK
ON THE VANCOUVER STOCK EXCHANGE.

Bought of Broker—	No. of Shares	Price	Sold to Broker—	No. of Shares	Price
Burke	500	1.75	Gelletly	700	1.80
Gelletly	1400	1.80	Greathead	500	1.75
Greathead	2000	1.75	Gelletly	200	1.75
Jukes	1000	1.80	Miller	300	1.75
Miller	500	1.75	Steele	500	1.75
"	1000	1.75			
Greathead	1100	1.80			
Jukes	1000	1.65			
"	2000	1.75			
"	200	1.75			
"	300	1.70			
Steele	1500	1.75			
Wood	100	1.75			
Randall	100	1.80			
TOTAL	12,700		TOTAL	2200	

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EXHIBIT 57.

MAYLAND.

BUY CONFIRMATIONS FOR FEBRUARY 14, 1929.

Customer—	No. of Shares	Price	Customer—	No. of Shares	Price
Theo. Frontier & Co.	100	3.70	Denbigh Dickinson		
			(Sold to)	500	3.70
Total	100		(Less Bkg. 2.00, Tax .15)		
10 Winnipeg Office	50	3.50	A. J. Brown	1000	3.55
N. Weicker	100	3.65	(Less Bkg. 4.00, Tax .30)		
F. A. Walker	500	3.65	A. J. Brown		
H. M. Geddes	50	3.50	(Sold to)	800	3.50
M. C. McLeod	50	3.50	(Less Bkg. 3.20, Tax .24)		
Campbell & McLeod	200	3.55	A. J. Brown		
"	300	3.65	(Sold to)	500	3.65
W. R. Boney	50	3.70	(Less Bkg. 2.00)		
F. Berto	100	3.70	A. J. Brown		
L. M. Deither	600	3.50	(Sold to)	500	3.70
20 J. Cuthill	100	3.50	(Less Bkg. 2.00, Tax .15)		
A. G. Meekison	300	3.70	Total	3300	
A. G. Meekison	100	3.70	House	300	3.40
E. A. Leslie	20	3.70	House	1400	3.50
D. A. Lamont	200	3.70	House	1150	3.50
G. McBeau	75	3.70	House	1050	3.55
G. Nairn	100	3.65	House	300	3.40
B. A. MacDonald	75	3.70	House	100	3.70
S. A. Robinson	25	3.65	Total	4,300	
G. W. Scott	150	3.65			
30 G. W. Scott	400	3.70	House		
W. H. Sim	100	3.50	House		
Sheppard & McIntosh	50	3.70	TOTAL	11,945	
Mrs. T. Gourlay	200	3.55			
Mrs. H. Gourlay	300	3.65			
Mrs. Houseby	50	3.70			
Total	4245				

RECORD

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EXHIBIT 57.

MAYLAND.

SELL CONFIRMATIONS FOR FEBRUARY 14, 1929.

Bought of Customer—	No. of Shares	Price	Customer—	No. of Shares	Price	
Mrs. E. J. Walker....	500	3.50	A. J. Brown			
Toronto Office	250	3.55	(Bought from)	800	3.50	
Toronto Office	500	3.55	(Plus Bkg. 3.20)			
Toronto Office	100	3.65	Total	800		10
Calgary Office	100	3.55	House	75	3.70	
Winnipeg Office	300	3.65	House	1200	3.50	
Winnipeg Office	200	3.70	House	500	3.70	
C. Fraser	400	3.50	House	200	3.70	
Miss P. Patterson....	100	3.55	House	600	3.40	
R. G. Robertson	200	3.50	House	400	3.55	
L. Schultz	1000	3.50	House	575	3.65	
D. W. V. Smitherin- gale	200	3.50	House	820	3.70	
Falding & Co. Ltd..	500	3.65	House	100	3.70	20
J. V. Hardy	100	3.55	Total	4470		
R. Hodson	200	3.50	TOTAL	9920		
Total	4650					

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(Cont'd)

EXHIBIT 57.

MAYLAND.

VANCOUVER CLEARING HOUSE SHEET FOR FEBRUARY
14, 1929, SHOWING ALL TRANSACTIONS IN THIS
STOCK ON THE VANCOUVER STOCK EXCHANGE.

	Bought of Broker—	No. of Shares	Price	Sold to Broker—	No. of Shares	Price
	A. J. Brown	800	3.50	Pennock & Co.	100	3.70
10	Total	800	—	Clarke & Company..	300	3.65
	A. J. Brown	500	3.65	Clarke & Company..	200	3.50
	A. J. Brown	1000	3.55	Lennard Poisson ...	75	3.70
	A. J. Brown	500	3.70	Lennard Poisson ...	100	3.70
	Clarke & Co.	100	3.65	A. J. Brown	800	3.55
	Denbigh Dickinson..	500	3.70	Crabbs	100	3.65
	Miller Court	300	3.65			
	Total	2900	—			
20	TOTAL	3700	—	TOTAL	1675	—

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 In the
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 (Cont'd)

EXHIBIT 57.

MERCURY.

BUY CONFIRMATIONS FOR MAY 29, 1929.

Customer—	No. of Shares	Price	Customer—	No. of Shares	Price
Theo. Frontier & Co.	20	1.50	Dr. Dan McLennan..	500	1.39
Total	20		Total	1350	
Calgary Office	100	1.40	House	100	1.37
“ “	200	1.39	Total	100	
“ “	400	1.35	TOTAL	1470	
C. R. Ward	100	1.40			
A. T. Dudley	50	1.40			

MERCURY.

SELL CONFIRMATIONS FOR MAY 29, 1929.

Customer—	No. of Shares	Price	Customer—	No. of Shares	Price
Campbell & McLeod	100	1.40	G. J. Spencer	100	1.38
“ “	100	1.40	“ “	200	1.37
“ “	100	1.40	“ “	500	1.39
Theo. Frontier	50	1.30	“ “	200	1.37
“ “	100	1.32	Denbigh Dickinson		
G. W. Ledingham	400	1.40	(Bought from)	500	1.39
“ “	100	1.41	(Plus Bkg. 1.00)		
“ “	100	1.36	House	100	1.38
“ “	400	1.35	“	50	1.40
R. D. Sutherland	200	1.35	TOTAL	3300	

EXHIBIT 57.

MERCURY.

VANCOUVER CLEARING HOUSE SHEET FOR MAY 29,
 1929, SHOWING ALL TRANSACTIONS IN THIS STOCK
 ON THE VANCOUVER STOCK EXCHANGE.

	Bought from Broker—	No. of Shares	Price	Sold to Broker—	No. of Shares	Price
	S. Burke	200	1.35	Clarke	50	1.40
	“ “	100	1.37	“	200	1.35
10	“ “	300	1.39	“	100	1.38
	“ “	20	1.50	S. Burke	100	1.35
	Branson	100	1.40	“ “	100	1.36
	Clarke	200	1.35	“ “	200	1.37
	“	50	1.40	“ “	100	1.37
	Gelletly	100	1.40	“ “	100	1.41
				“ “	100	1.39
				“ “	100	1.37
				Crabbs	200	1.35
				“	100	1.38
20				“	400	1.40
				Brown	100	1.40
				Greathead	500	1.39
				James and Wood	100	1.35
				Gelletly	200	1.40
	TOTAL	1070		TOTAL	2750	

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 (Cont'd)

EXHIBIT 57.

MOHAWK.

BUY CONFIRMATIONS FOR JANUARY 22, 1929.

Customer—	No. of Shares	Price	Customer—	No. of Shares	Price
Theo. Frontier & Co.	250	.11	R. Fleming	1000	.11
			J. S. Burton	1000	.11
Total	250		Total	12,600	
M. Sangster	4000	.11			
Calgary Office	300	.11	Denbigh Dickinson		
“	1000	.10¾	(Sold to)	2000	.11
Winnipeg Office	300	.10⅞	House	500	.10⅞
Edmonton Office	1000	.10⅞	Total	2500	
“	2000	.10⅞	TOTAL	15,350	
Canadian Bank					
of Commerce	1000	.11			
Hunnings & Co.	1000	.11			

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MOHAWK.

SELL CONFIRMATIONS FOR JANUARY 22, 1929.

Customer—	No. of Shares	Price	Customer—	No. of Shares	Price
W. Wilson	2000	.11	W. G. Hopper		
W. T. Money	2000	.11	(Bought from) ...	1000	.10¾
Campbell & McLeod	500	.10⅞	House	300	.10⅞
W. G. Hopper			“	6300	.11
(Bought from) ...	250	.11	TOTAL	12,350	

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EXHIBIT 57.

MOHAWK.

VANCOUVER CLEARING HOUSE SHEET FOR JANUARY
 22, 1929, SHOWING ALL TRANSACTIONS IN THIS
 STOCK ON THE VANCOUVER STOCK EXCHANGE.

Bought of Broker—	No. of Shares	Price	Sold to Broker—	No. of Shares	Price
Nanson Rothwell	3000	.107½		Nil	
Steele	1000	.11			
	4000	—			
10 TOTAL	4000				

RECORD

*In the
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Exhibit 57
(Cont'd)

EXHIBIT 57.

OREGON COPPER.

BUY CONFIRMATIONS FOR JANUARY 22, 1929.

Customer—	No. of Shares	Price	Customer—	No. of Shares	Price	
Theo. Frontier & Co.	200	1.20	Hunnings & Co.....	400	1.20	
“ “ “	50	1.20	“ “	200	1.20	
			“ “	400	1.20	
Total	250		G. C. Egg	100	1.20	
			Total	7950		10
Sheppard & McIntosh	500	1.20	A. J. Brown (Sold to)	2000	1.19	
Sheppard & McIntosh	2000	1.20	(Less Bkg. 4.00, Tax .30)			
Saskatoon Office	100	1.20	W. F. Irwin & Co. (Sold to)	600	1.20	
Geo. Plant	500	1.20	(Less Bkg. 1.20, Tax .09)			20
Geo. Nairn	100	1.20	Total	2600		
Winnipeg Office	250	1.20				
Mr. Tilly	300	1.20	House	3000	1.15	
T. Campbell	100	1.20	“	600	1.20	
Mr. Tilly a/c., G. Lampard	800	1.20	“	2000	1.19	
J. B. Barclay	100	1.20	“	2300	1.15	
Stan Adkins	500	1.20	“	700	1.23	
Interior Develop- ment Co.	100	1.20	“	400	1.25	
Interior Develop- ment Co.	200	1.20	“	300	1.15	30
Interior Develop- ment Co.	200	1.23	Total	9,300		
Interior Develop- ment Co.	100	1.23				
Hunnings & Co.....	500	1.23	TOTAL	20,100		
“ “	500	1.19				

EXHIBIT 57.

OREGON COPPER.

SELL CONFIRMATIONS FOR JANUARY 22, 1929.

	Customer—	No. of Shares	Price	Customer—	No. of Shares	Price
	Faldin & Co.	2000	1.15	R. H. Stewart	10200	1.20
	F. L. Hicks	200	1.15	“ “	1000	1.23
	Wm. Boyd	200	1.25	J. Stirrat	200	1.21
	A. J. Linforth	600	1.20			
10	“ “	400	1.21	Total	35,600	
	C. Fraser	200	1.23	House	6600	1.20
	H. T. Cooper	100	1.20	“	500	1.19
	E. C. DeCou	200	1.25	“	2000	1.23
	G. Toepfer	100	1.15	“	400	1.19
	E. H. Wood	1000	1.15	“	600	1.20
	Miss M. Seymour....	200	1.25	“	2000	1.19
	G. A. Share	1000	1.21	Total	12,100	
	“ “	500	1.23			
	R. H. Stewart	10800	1.15	TOTAL	47,700	
20	“ “	2400	1.16			
	“ “	4300	1.19			

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EXHIBIT 57.

OREGON COPPER.

VANCOUVER CLEARING HOUSE SHEET FOR JANUARY
22nd, 1929, SHOWING ALL TRANSACTIONS IN THIS
STOCK ON THE VANCOUVER STOCK EXCHANGE.

Bought of Broker—	No. of Shares	Price	Sold to Broker—	No. of Shares	Price	
A. J. Brown	2000	1.19	Branson	400	1.16	
Clark	100	1.23	“	400	1.25	
Irwin	600	1.20	Cartwright & Crickmore	200	1.20	10
Pennock	200	1.23	Clark	5000	1.15	
Randall	500	1.23	“	5000	1.20	
			“	1000	1.20	
			“	200	1.25	
			“	200	1.19	
			“	500	1.23	
			Poisson	1000	1.20	
			“	100	1.20	
			Miller	1000	1.16	20
			“	1000	1.20	
			“	500	1.15	
			Oliver	300	1.20	
			Pennock	700	1.21	
			“	1000	1.19	
			“	1000	1.19	
			“	1000	1.23	
			“	500	1.23	
			Pierce	1000	1.16	
			Powell	1000	1.15	30
			Randall	2000	1.15	
			“	300	1.20	
			“	1000	1.19	
			“	500	1.19	
			“	500	1.20	
			“	1000	1.23	
			“	400	1.21	
			“	500	1.21	
			“	200	1.19	
			“	500	1.20	40
			“	300	1.20	
			“	400	1.19	
TOTAL	<u>3400</u>		TOTAL	<u>30,600</u>		

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EXHIBIT 57.

PEND OREILLE.

BUY CONFIRMATIONS FOR NOVEMBER 19, 1928.

Customer—	No. of Shares	Price
Theo. Frontier & Co.	10	10.00
Mrs. C. E. Ferguson	50	10.00
TOTAL	60	

10

SELL CONFIRMATIONS FOR NOVEMBER 19, 1928.

Customer—	No. of Shares	Price
John Patterson	50	10.00

VANCOUVER CLEARING HOUSE SHEET FOR NOVEMBER
19th, 1928, SHOWING ALL TRANSACTIONS IN THIS
STOCK ON THE VANCOUVER STOCK EXCHANGE.

Bought of Broker—	No. of Shares	Price	Sold to Broker—	No. of Shares	Price
Mills	50	10.00	Mills	50	10.00

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(Cont'd)

EXHIBIT 57.

PEND OREILLE.

BUY CONFIRMATIONS FOR FEBRUARY 15, 1929.

Customer—	No. of Shares	Price	Customer—	No. of Shares	Price	
Theo. Frontier	10	14.00	Toronto	100	14.00	
Theo. Frontier	25	14.50				
Theo. Frontier	200	14.50	Total	1,770		
Total	235					
Chaffey Fraser	50	14.50	Sold to			10
Chaffey Fraser	50	14.00	A. J. Brown	100	14.00	
D. Critney	50	14.50	(Less Bkg. 1.50)			
L. H. Earle	50	14.00	Sold to			
Hardman	400	14.50	A. J. Brown	600	14.45	
Hunnings & Co.	20	14.25	Total	700		
Hunnings & Co.	40	14.25				
Mr. Idiens	50	14.50	House	100	14.45	
W. J. LaBelle	100	14.00	"	100	14.00	
Wilson	500	14.45	"	200	14.45	20
W. F. Wright	10	14.50	"	10	14.25	
Elliott	200	14.50	"	200	14.20	
Winnipeg Office	100	14.00	"	40	14.25	
"	20	14.00	Total	650		
Calgary Office	30	14.50	TOTAL	3,355		

EXHIBIT 57.

PEND OREILLE.

SELL CONFIRMATIONS FOR FEBRUARY 15, 1929.

Customer—	No. of Shares	Price	Customer—	No. of Shares	Price
A. C. Armour	200	14.00	Bought from		
A. C. Armour	100	14.25	A. J. Brown	200	14.00
F. C. Bushell	20	14.25	(Plus 3.00)		
Chapin	10	14.25			
10 H. L. Combe	25	13.95	Total	200	
W. T. Fairgrieve	200	14.25			
Hunnings & Co.	100	14.00	House	25	14.00
Hunnings & Co.	100	14.00	"	600	14.45
Evlyn Plant	100	14.45	"	615	14.50
P. O. Seffern	200	14.00			
P. O. Seffern	300	14.25	Total	1,240	
M. Swanson	25	14.00			
M. A. Van Roggen..	80	14.00			
Bank of Montreal...	100	14.45			
20 Bank of Montreal...	530	14.00			
Total	2,090		TOTAL	3,530	

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EXHIBIT 57.

PEND OREILLE.

VANCOUVER CLEARING HOUSE SHEET FOR FEBRUARY
 15th, 1929, SHOWING ALL TRANSACTIONS IN THIS
 STOCK ON THE VANCOUVER STOCK EXCHANGE.

Bought of Broker—	No. of Shares	Price	Sold to Broker—	No. of Shares	Price	
A. J. Brown	600	14.45	A. J. Brown	200	14.00	
A. J. Brown	100	14.00	Gelletly	25	14.00	
			Miller Court	200	14.25	10
Total	700		“ “	100	14.25	
			“ “	20	14.25	
Denbigh Dickinson..	25	14.00	“ “	400	14.00	
Hogg	100	14.50	“ “	180	14.00	
Miller Court	50	14.00	“ “	100	14.25	
Miller Court	300	14.50	“ “	100	14.25	
			Steele & Son	25	13.95	
Total	475					
TOTAL	1,175		TOTAL	1,350		

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REEVES McDONALD.

BUY CONFIRMATIONS FOR JANUARY 19, 1929.

Customer—	No. of Shares	Price	Customer—	No. of Shares	Price
Theo. Frontier	500	3.65	Sold to		
			W. G. Hopper	500	3.75
Total	500		Total	500	
W. H. Mackee	1000	3.75	House	650	3.75
10 G. R. Cosway	1000	3.75	“	250	3.65
D. A. Davidson	100	3.80	“	50	3.50
C. S. Galloway	40	3.65	Total	950	
Mr. Sturdy	200	3.65	TOTAL	4,490	
Calgary Office	200	3.80			
Total	2,540				

REEVES McDONALD.

SELL CONFIRMATIONS FOR JANUARY 19, 1929.

Customer—	No. of Shares	Price	Customer—	No. of Shares	Price
20 R. P. Beattie	50	3.75	House	100	3.70
Campbell & McLeod	150	3.65	“	400	3.80
T. Goldbloom	500	3.75	“	1200	3.75
E. Hearsay	50	3.50	“	240	3.65
R. N. Parham	250	3.75	Total	1,940	
Winnipeg Office	500	3.75	TOTAL	3,440	
Total	1,500				

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REEVES McDONALD.

VANCOUVER CLEARING HOUSE SHEET FOR JANUARY
19th, 1929, SHOWING ALL TRANSACTIONS IN THIS
STOCK ON THE VANCOUVER STOCK EXCHANGE.

Bought from Broker—	No. of Shares	Price	Sold to Broker—	No. of Shares	Price
Miller Court	500	3.65	Beaton	100	3.70
Miller Court	200	3.75	Miller Court	100	3.80
Miller Court	1000	3.75	Miller Court	200	3.75
			Miller Court	250	3.75
40 TOTAL	1,700		TOTAL	650	

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 (Cont'd)

EXHIBIT 57.

REEVES McDONALD.

BUY CONFIRMATIONS FOR FEBRUARY 15, 1929.

Customer—	No. of Shares	Price	Customer—	No. of Shares	Price	
Frontier	50	4.25	W. E. Baxter.....	100	4.25	
“	100	4.25	F. R. Baxter	200	4.25	
“	200	4.25				
	<hr/>	<hr/>	Total	4,850		
Total	350					10
Wilson	1000	4.25	Sold to			
C. C. Young	125	3.99	A. J. Brown	200	3.95	
McKinnon	300	4.20	(Less Bkg. .80)			
W. H. Mackee	1000	4.00	Sold to Den-			
Pollard	100	4.25	high Dickinson ...	1000	4.25	
G. C. Pratt	200	4.25				
B. E. Stokes	25	4.25	Total	1,200		
Sheppard & McIntosh	100	3.95	House	150	3.95	
Hunnings	200	4.25	“	25	3.99	20
J. Gray	50	3.95	“	100	4.00	
E. M. Lee	200	4.25	“	200	4.15	
Louden	200	4.25	“	400	4.20	
W. S. Maxwell	200	3.95	“	25	4.00	
Mitchell	100	4.25	“	450	4.00	
F. E. McArthur.....	100	3.99	“	225	4.25	
Chaffey Fraser	100	4.25				
F. R. Baxter	100	3.99	Total	1,575		
H. R. Baxter	100	4.25	TOTAL	7,975		30
T. S. Baxter	100	4.25				
“	250	4.25				

EXHIBIT 57.

REEVES McDONALD.

SELL CONFIRMATIONS FOR FEBRUARY 15, 1929.

RECORD
 In the
 Supreme Court
 of British
 Columbia.
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 (Cont'd)

Customer—	No. of Shares	Price	Customer—	No. of Shares	Price
T. P. Vance	250	4.25	Calgary Office	100	3.95
J. G. Turgeon	300	4.00	Toronto Office	200	4.25
R. W. McClung	100	4.25			
T. H. Clack	100	4.00	Total	3,975	
10 Colarch	400	3.90			
I. P. Cowley	100	4.25	House	1000	4.25
L. H. Earle	200	4.00	"	1225	4.25
W. Fairgreave	500	4.25	"	1000	4.25
Campbell & McLeod	150	4.00	"	200	3.99
"	50	4.25	"	800	4.00
"	100	4.25	"	100	4.20
"	1000	4.25	"	200	4.20
R. G. Beattie	50	4.00	"	25	4.25
A. C. Armour	100	4.00	"	50	3.95
20 Edmonton Office	50	4.00	Total	4,600	
Saskatoon Office	100	4.25			
"	100	3.95	TOTAL	8,575	
Winnipeg Office	25	4.00			

REEVES McDONALD.

VANCOUVER CLEARING HOUSE SHEET FOR FEBRUARY
 15th, 1929, SHOWING ALL TRANSACTIONS IN THIS
 STOCK ON THE VANCOUVER STOCK EXCHANGE.

Bought from Broker—	No. of Shares	Price	Sold to Broker—	No. of Shares	Price
30 Brown	100	3.99	Miller Court	400	4.00
"	200	3.95	"	100	3.90
Clark	200	4.20	"	300	3.90
"	200	4.25	"	800	4.25
Gelletly	200	4.15	"	1000	4.25
Lennard Poisson	200	4.20	"	1600	4.25
Miller Court	150	3.95	"	300	3.50
"	800	4.25	Clark	200	4.00
"	100	3.95			
"	50	3.99			
40 "	300	4.00			
"	1000	4.25			
"	200	4.25			
"	100	4.25			
TOTAL	3,800		TOTAL	4,700	

RECORD

*In the
Supreme Court
of British
Columbia.*

Exhibit 57
(Cont'd)

EXHIBIT 57.

REGENT.

BUY CONFIRMATIONS FOR MARCH 13, 1929.

Customer—	No. of Shares	Price	Customer—	No. of Shares	Price	
Theo. Frontier & Co.	500	1.30	G. Mare Graham	100	1.25	
" " "	500	1.30	Manuel Graff	100	1.55	
" " "	700	1.30	S. G. Gourlay	200	1.00	
" " "	200	1.50	E. C. Gosnell	300	1.60	
" " "	100	1.55	" "	50	1.50	1C
" " "	200	1.25	Miss M. Gill	100	1.60	
" " "	500	1.25	" "	100	1.30	
" " "	50	1.60	Interior Develop-			
" " "	50	1.50	ment	100	1.55	
" " "	50	1.50	H. Gantschi	200	1.00	
" " "	100	1.30	" "	200	1.50	
" " "	500	1.30	W. H. Galbraith	100	1.30	
Total	3450		G. B. Fraser	200	1.00	
Hunnings & Co.	100	1.00	H. Fogg	100	1.30	
" " "	500	1.50	Ethel Fisher	50	1.00	20
" " "	200	1.55	Toronto Office	200	1.25	
" " "	100	1.55	" "	100	1.30	
" " "	100	1.55	" "	100	1.30	
" " "	100	1.55	" "	500	1.30	
" " "	100	1.65	" "	100	1.30	
" " "	100	1.55	" "	100	1.30	
" " "	200	1.00	" "	200	1.30	
" " "	100	1.20	" "	100	1.30	
" " "	100	1.00	" "	100	1.30	30
" " "	100	1.00	" "	200	1.30	
" " "	100	1.00	" "	100	1.25	
" " "	100	1.00	" "	200	1.25	
" " "	100	1.00	" "	200	1.00	
E. J. Jardine	1000	1.00	Sheppard &			
Jamieson & Gray	200	1.50	McIntosh	50	1.55	
Mrs. M. M. Jackson	50	1.20	Sheppard &			
Mrs. M. Hutton	100	1.00	McIntosh	1000	1.30	
Thor Horshange	50	1.30	J. W. Shellshear	300	1.10	
F. Tily	250	1.50	Ida Sheasgreen	50	1.50	40
Mrs. N. Holling-			Saskatoon Office	50	1.30	
worth	100	1.30	" "	25	1.30	
Mrs. N. Holling-			" "	100	1.25	
worth	100	1.30	" "	80	1.60	
R. Hamilton	200	1.30	" "	2000	1.60	
Geo. Guile	200	1.30	" "	100	1.60	
B. D. Griffin	500	1.60	" "	100	1.50	
" "	500	1.50	Sarah Rogers	50	1.20	

EXHIBIT 57.

REGENT.

BUY CONFIRMATIONS FOR MARCH 13, 1929.

(2)

	Customer—	No. of Shares	Price	Customer—	No. of Shares	Price
	W. Riley	200	1.25	Jean Maitland	20	1.30
	K. Ray	300	1.00	John Magness	100	1.00
	Chas Peterson	200	1.30	M. Luckton	100	1.55
10	T. D. O'Farrell	100	1.50	Geo. Lace	200	1.20
	T. H. O'Farrell	100	1.00	V. T. Labelle	500	1.10
	Mrs. H. G. Newman	250	1.30	“	500	1.00
	Winnipeg Office	400	1.00	J. A. McLeod	500	1.25
	“	100	1.00	E. McLeod	50	1.60
	“	100	1.00	Miss A. McLean	200	1.30
	“	100	1.00	D. C. McKenzie	300	1.20
	“	100	1.00	W. S. McKellar	100	1.55
	“	200	1.20	“	100	1.00
	“	100	1.00	D. McIntyre	50	1.30
20	“	100	1.55	M. McHale	100	1.25
	“	100	1.55	MacGregor & Elliott	500	1.30
	“	150	1.55	“	500	1.30
	“	100	1.60	“	500	1.30
	“	100	1.50	“	200	1.30
	“	100	1.55	“	500	1.60
	“	100	1.55	“	400	1.50
	“	200	1.30	“	500	1.55
	“	200	1.30	“	200	1.55
	“	100	1.25	“	500	1.50
30	“	100	1.50	“	500	1.50
	Interior Develop-			“	100	1.65
	ment Co.	50	1.60	“	500	1.60
	S. Willoughby	50	.95	“	200	1.00
	Mrs. S. Willoughby	25	.95	Interior Develop-		
	Alfred Williams	100	1.00	ment Co.	50	1.60
	F. Tily	250	1.50	F. Tily	1000	1.70
	F. J. Whitchell	100	1.00	A. C. Armour	1000	1.00
	A. Weston	100	1.30	C. U. Appleyard	500	1.20
	F. Tily	500	1.70	G. V. Amiel	200	1.60
40	Mrs. J. C. Thomas....	25	1.30	Chaffey Fraser	1000	1.00
	J. Taylor	100	1.00	“	2000	1.50
	H. Stoutenburg	100	1.00	“	100	1.30
	E. Spencer	200	1.25	Campbell & McLeod	200	1.60
	E. C. Kitcham	500	1.30	A. Crump	100	1.25
	“	500	1.10	Robt. Crichton	100	1.25
	W. D. Keith	500	1.55	C. W. Appleyard....	500	1.20
	J. T. Whitebeck	500	1.10	Dr. K. L. Craig	200	1.25

RECORD
 In the
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 (Cont'd)

EXHIBIT 57.

REGENT.

BUY CONFIRMATIONS FOR MARCH 13, 1929.

(3)

Customer—	No. of Shares	Price	Customer—	No. of Shares	Price
Mrs. R. R. Bonny			J. A. Ward Bell	1000	1.50
Castle	10	1.50	L. H. Beamish	500	1.50
Continental			Edmonton Office ...	50	1.25
Securities	600	1.25	“ “	100	1.30
T. E. Colter	20	1.50	“ “	1000	1.00
J. Clark	100	1.00	Bedford Davidson....	500	1.00
A. W. Clark &			B. A. Doffuer	100	1.10
G. W. Ledingham	1000	1.60	J. C. Dill	100	1.00
Eva Christie	100	1.00	F. B. Dill	100	1.25
“ “	100	1.55			
John Cuthill	100	1.20	Total	41,555	
E. J. Bush	200	1.50	Denbigh Dickinson		
P. J. Burde	200	1.00	(Sold to)	1000	
Miss M. M. Bower..	100	1.00			
T. T. Boner	50	1.30	Total	1000	
“ “	100	1.10			
Mrs. E. Blygh	500	1.30	TOTAL	46,005	

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EXHIBIT 57.

REGENT.

SELL CONFIRMATIONS FOR MARCH 13, 1929.

	Customer—	No. of Shares	Price	Customer—	No. of Shares	Price
	Theo. Frontier	300	1.00	Sheppard & McIntosh	100	1.50
	“ “	700	1.50	Sheppard & McIntosh	100	1.50
	“ “	50	1.50	O. P. Smith	200	1.50
	“ “	500	1.30	Winnipeg Office	250	1.00
10	“ “	1000	1.30	“ “	200	1.30
	“ “	100	1.50	“ “	300	1.30
	Total	2650		E. C. Ketcham	500	1.00
	W. T. Fairgrieve	100	1.30	Robert Mathieson....	50	1.10
	“ “	100	1.50	Interior Develop- ment Co.	100	1.50
	Hunnings & Co.	300	1.30	E. E. Aston	500	1.30
	Calgary Office	2000	1.00	A. A. Arnold	800	1.30
	“ “	100	1.00	“ “	200	1.50
20	“ “	100	1.20	C. G. Dixon	100	1.50
	“ “	200	1.20	Chaffey Fraser	700	1.20
	“ “	100	1.20	“ “	1300	1.00
	“ “	400	1.20			
	“ “	200	1.00			
	“ “	500	1.25			
	“ “	100	1.00			
	“ “	2200	1.50			
	“ “	800	1.60			
	“ “	1000	1.55			
	“ “	500	1.50			
30	“ “	2000	1.50	(Bought from)		
	“ “	1000	1.50	Denbigh Dickson..	3300	1.25
	“ “	300	1.00	“ “ ..	5000	1.30
	“ “	300	1.30	“ “ ..	2800	1.00
	“ “	100	1.50	“ “ ..	2200	1.60
	Calgary Office	100	1.50	“ “ ..	2800	1.55
	“ “	800	1.50	“ “ ..	1000	1.60
	“ “	1500	1.25	“ “ ..	5000	1.50
	“ “	700	1.20	“ “ ..	700	1.30
	“ “	2300	1.00	“ “ ..	300	1.50
	“ “	500	1.10	“ “ ..	2000	1.30
40	“ “	500	1.10			
	“ “	350	1.00			
				TOTAL	24,550	
				TOTAL	25,100	

RECORD
 In the
 Supreme Court
 of British
 Columbia.
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EXHIBIT 57.

REGENT.

VANCOUVER CLEARING HOUSE SHEET FOR MARCH 13,
 1929, SHOWING ALL TRANSACTIONS IN THIS STOCK
 ON THE VANCOUVER STOCK EXCHANGE.

Bought of Broker—	No. of Shares	Price	Sold to Broker—	No. of Shares	Price	
Cartwright	500	1.60	Poisson	200	1.60	
"	300	1.60	Wood	100	1.50	
"	300	1.60	Irwin	1000	1.50	10
"	500	1.70	Oliver	400	1.60	
Gelletly	1000	1.70	Greathead	1000	1.60	
"	200	1.65	Irwin	200	1.50	
Greathead	1000	1.55	Greathead	5000	1.50	
Pinckard	600	1.60	"	2800	1.55	
"	1000	1.60	"	5000	1.50	
"	1000	1.50	Miller	1000	1.60	
Steele	1000	1.60	Greathead	2200	1.60	
"	800	1.55	"	300	1.50	
"	100	1.60	"	100	1.30	20
"	100	1.55	"	700	1.30	
Miller	250	1.25	"	2000	1.30	
"	2200	1.20	Hogg	200	1.25	
"	1000	1.00	Greathead	3300	1.25	
"	2000	1.00	Miller	700	1.20	
"	500	1.00	Greathead	2800	1.00	
Poisson	600	.95	Hogg	100	1.00	
"	500	1.00	Oliver	100	1.00	
Steele	300	1.25	Gelletly	100	1.00	
TOTAL	15,270		TOTAL	29,300		30

RECORD

*In the
Supreme Court
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EXHIBIT 57.
SOUTH WEST PETROLEUM.
BUY CONFIRMATIONS FOR APRIL 18, 1929.

Customer—	No. of Shares	Price	Customer—	No. of Shares	Price
Theo. Frontier & Co.	50	5.25	Chaffey Fraser	200	4.75
			R. P. Leach	20	4.75
Total	50		Total	470	
Iva C. Wood	100	5.25			
10 Canadian Bank of Commerce	50	5.25			
Canadian Bank of Commerce	100	5.25	TOTAL	520	

SELL CONFIRMATIONS FOR APRIL 18, 1929.

Customer—	No. of Shares	Price	Customer—	No. of Shares	Price
H. W. Watts	50	5.25	Bought from Toronto	20	4.75
Saskatoon Office	100	5.25	Total	220	
20 Total	150		House	300	5.25
			"	100	5.25
Bought from Toronto	200	4.75	TOTAL	770	

VANCOUVER CLEARING HOUSE SHEET FOR APRIL 18th,
1929, SHOWING ALL TRANSACTIONS IN THIS STOCK
ON THE VANCOUVER STOCK EXCHANGE.

Bought of Broker—	No. of Shares	Price	Sold to Broker—	No. of Shares	Price
30 Clark	50	5.25	Continental	200	5.25
"	150	5.25	"	100	5.25
"	200	5.00	Branson	50	5.25
			Clark	200	5.00
			"	50	5.25
			"	150	5.25
			TOTAL	750	

RECORD
 In the
 Supreme Court
 of British
 Columbia.
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 (Cont'd)

EXHIBIT 57.
 SOUTH WEST PETROLEUM.
 BUY CONFIRMATIONS FOR JULY 19, 1929.

Customer—	No. of Shares	Price	Customer—	No. of Shares	Price	
Theo. Frontier & Co.	200	6.00	Denbigh Dickinson			
“ “ “	100	6.00	‘Sold to’	30	6.00	
			(Less Bkg. .23, Tax .60)			
Total	300					
Calgary Office	100	6.00	Total	30		10
S. R. McKenzie	50	6.00				
J. B. Biddons	150	6.00				
J. V. Saunier	30	6.00				
Total	330		TOTAL	660		

SELL CONFIRMATIONS FOR JULY 19, 1929.

Customer—	No. of Shares	Price	Customer—	No. of Shares	Price	
D. L. Munro	30	6.00	Denbigh Dickinson			
G. W. Scott	150	6.00	‘Bought from’	150	6.00	20
“ “ “	350	6.00	(Plus Bkg. 1.13)			
Denbigh Dickinson			Denbigh Dickinson			
‘Bought from’	100	6.00	‘Bought from’	200	5.00	
(Plus Bkg. .75)			(Plus Bkg. 10.50)			
Denbigh Dickinson						
‘Bought from’	50	6.00	Total	1030		
(Plus Bkg. .38)						

VANCOUVER CLEARING HOUSE SHEET FOR JULY 19th,
 1929, SHOWING ALL TRANSACTIONS IN THIS STOCK
 ON THE VANCOUVER STOCK EXCHANGE. 30

Bought of Broker—	No. of Shares	Price	Sold to Broker—	No. of Shares	Price
Denbigh Dickinson	30	6.00	Denbigh Dickinson..	120	6.00
			“ “ ..	50	6.00
			“ “ ..	200	6.00
			“ “ ..	100	6.00
			“ “ ..	150	6.00
			Total	620	

RECORD

*In the
Supreme Court
of British
Columbia.*Exhibit 57
(Cont'd)

EXHIBIT 57.

TOPLEY RICHFIELD.

BUY CONFIRMATIONS FOR FEBRUARY 14, 1929.

Customer—	No. of Shares	Price	Customer—	No. of Shares	Price
Theo. Frontier & Co.	100	.50	Oliver Lacey	500	.49
Winnipeg Office ...	1000	.49	S. Swoboda	200	.49
A. Wallace	100	.49	H. D. Robinson	100	.50
B. Burke	200	.50			
10 O. S. Atkins	200	.50	Total	2400	

SELL CONFIRMATIONS FOR FEBRUARY 14, 1929.

Customer—	No. of Shares	Price
House	400	.50
House	800	.49
Total	1200	

VANCOUVER CLEARING HOUSE SHEET FOR FEBRUARY
14th, 1929, SHOWING ALL TRANSACTIONS IN THIS

20 STOCK ON THE VANCOUVER STOCK EXCHANGE.

Bought of Broker—	No. of Shares	Price	Sold to Broker—	No. of Shares	Price
Miller Court	1000	.49		Nil.	
Oliver & Company ..	200	.50			
Total	1200				

RECORD
 In the
 Supreme Court
 of British
 Columbia.
 Exhibit 57
 (Cont'd)

EXHIBIT 57.
 WHITEWATER.

BUY CONFIRMATIONS FOR FEBRUARY 14, 1929.

Customer—	No. of Shares	Price	Customer—	No. of Shares	Price
Theo. Frontier & Co.	100	1.11	A. J. Brown 'Sold to'	800	1.15
" " "	100	1.13	(Less Bkg. 1.60,		
" " "	800	1.15	Tax .24)		
Total	1000		House	100	1.15
			Total	900	
			TOTAL	1900	

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SELL CONFIRMATIONS FOR FEBRUARY 14, 1929.

Customer—	No. of Shares	Price
House	800	1.15
G. R. Hughes	100	1.15
Total	900	

VANCOUVER CLEARING HOUSE SHEET FOR FEBRUARY 20
 14th, 1929, SHOWING ALL TRANSACTIONS IN THIS
 STOCK ON THE VANCOUVER STOCK EXCHANGE.

Bought of Broker—	No. of Shares	Price	Sold to Broker—	No. of Shares	Price
A. J. Brown	800	1.15		Nil.	
Miller Court	100	1.13			
Wolverton	100	1.11			
Total	1000				

EXHIBIT 57.

WHITEWATER.

BUY CONFIRMATIONS FOR MARCH 13, 1929.

Customer—	No. of Shares	Price	Customer—	No. of Shares	Price
Theo. Frontier & Co.	100	1.00	J. G. Maw	100	1.00
			Saskatoon Office	20	1.00
Total	100		Total	120	
			TOTAL	220	

10

SELL CONFIRMATIONS FOR MARCH 13, 1929.

Customer—	No. of Shares	Price	Customer—	No. of Shares	Price
Edmonton Office	420	1.00	Denbigh Dickinson		
			'Bought from'	220	1.00
Total	420		Total	220	
			TOTAL	640	

20

VANCOUVER CLEARING HOUSE SHEET FOR MARCH 13,
1929, SHOWING ALL TRANSACTIONS IN THIS STOCK
ON THE VANCOUVER STOCK EXCHANGE.

Bought from Broker—	No. of Shares	Price	Sold to Broker—	No. of Shares	Price
	Nil		Denbigh Dickinson	220	1.00
			Clarke & Co.	200	1.00
			Total	420	

RECORD

*In the
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of British
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Exhibit 57
(Cont'd)

EXHIBIT 57.

GRANDVIEW.

BUY AND SELL CONFIRMATIONS, BROKERS AND
HOUSE, OCTOBER 7th, 1929.

Customer—	No. of Shares	Price	Customer—	No. of Shares	Price	
Buyers			Sellers			
House	25,000	.26	Greathead			
“	500	.28	‘Bought from’	10,000	.26	
“	500	.27	S. W. Randall Co.			10
			Ltd ‘Bought from’	15,000	.26	

VANCOUVER CLEARING HOUSE SHEET FOR OCTOBER
7th, 1929, SHOWING ALL TRANSACTIONS IN THIS
STOCK ON THE VANCOUVER STOCK EXCHANGE.

Broker—	No. of Shares	Price	Broker—	No. of Shares	Price	
Hart	25,000	.27	“	1000	.26	
Cartwright	500	.27	Miller	500	.26	
Miller	1000	.27	Irwin	500	.26	
Oliver	1000	.26	Gelletly	2000	.26	20
Randall	15,000	.26	Greathead	10,000	.26	
Crabbs	1000	.26	Gelletly	1000	.26	
“	500	.26	Randall	10,000	.26	
Irwin	1000	.26	Adams	500	.26	

EXHIBIT 57.

GRANDVIEW.

BUY AND SELL CONFIRMATIONS, BROKERS AND
HOUSE, OCTOBER 17th, 1929.

	Customer— Buys	No. of Shares	Price	Customer— Sells	No. of Shares	Price
	House	1700	.20 $\frac{1}{4}$	Greathead		
	“	20,000	.22 $\frac{1}{2}$	‘Bought from’	20,000	.22 $\frac{1}{2}$
10	“	5000	.20	Greathead		
	“	5000	.22	‘Bought from’	5000	.23
	“	10,000	.22 $\frac{1}{2}$	S. W. Randall		
	“	15,500	.23	‘Bought from’	5000	.22
				S. W. Randall		
				‘Bought from’	10,000	.22 $\frac{1}{2}$
				S. W. Randall		
				‘Bought from’	15,500	.20
				House	11,600	.23
20				“	900	.22 $\frac{1}{2}$
				“	100	.23 $\frac{1}{4}$

VANCOUVER CLEARING HOUSE SHEET FOR OCTOBER
17th, 1929, SHOWING ALL SELL TRANSACTIONS IN
THIS STOCK ON THE VANCOUVER STOCK EXCHANGE.

	Broker—	No. of Shares	Price	Broker—	No. of Shares	Price
	Oliver	200	.23	“	1000	.22
	Hamilton	500	.22 $\frac{1}{2}$	Greathead	5000	.22 $\frac{1}{2}$
	Greathead	5000	.23	Randall	3000	.23
	“	15,000	.22 $\frac{1}{2}$	Miller	500	.23
30	Gelletly	1000	.22 $\frac{1}{2}$	Gerser	1000	.23
	Jukes	1000	.22 $\frac{1}{2}$	Randall	5000	.22 $\frac{1}{2}$
	Irwin	1000	.22 $\frac{1}{2}$	“	5000	.23
	Randall	5000	.23	Irwin	250	.24
	“	5000	.22	Taylor	200	.23
	“	5000	.22 $\frac{1}{2}$	“	100	.23
	Adams	500	.23	Jukes	2000	.22
	Irwin	2000	.22	Hamilton	1600	.23 $\frac{1}{4}$
	Crabbs	3000	.22			

RECORD

*In the
Supreme Court
of British
Columbia.*

Exhibit 57
(Cont'd)

EXHIBIT 57.

THEO. FRONTIER CO. LTD.

Statement showing sums remitted to Solloway Mills & Co. Ltd., on Margin for period from 15 July, 1928, to 8 Oct., 1929, and verified as being received in books of Solloway Mills & Co. Ltd.

1928		1929	
July 16	\$ 1,000.00	Sept. 19	6,000.00
July 3	888.00	Sept. 26	500.00
Aug. 13	954.99	Oct. 8	9,000.00
Aug. 16	1,000.00		<u>120,063.48</u> 10
Oct. 18	4,000.00		
Nov. 9	679.74		
Dec. 11	7,500.00		
1929		Less sum paid by Solloway Mills & Co. Ltd. Theo. Frontier & Co.	
Jan. 24	10,000.00	January, 1929	5,000.00
Jan. 30	10,000.00		
Feb. 8	10,000.00	Net amount remitted	<u>\$115,063.48</u>
Feb. 18	10,000.00		
Feb. 27	5,000.00	Collateral	<u>5,064.75</u> 20
Mar. 27	10,000.00		
April 10	10,000.00		
April 29	1,200.00		
July 11	340.50	Less Commission	<u>120,128.23</u>
Sept. 5	2,000.00		
Sept. 12	20,000.00		<u>103,666.34</u>

RECORD
 In the
 Supreme Court
 of British
 Columbia.
 Exhibit 57
 (Cont'd)

EXHIBIT 57.

STATEMENT OF COLLATERAL IN HANDS OF SOLLOWAY
 MILLS & CO. LTD., AND SOLD TO DATE OF SELING
 OUT OF ACCOUNT.

Stock—	No. of Shares on Hand	Date of Selling Out	Price as per Confirmation	Total
Grandview	6,800	Oct. 17, 1929	.22½	1,530.00
10 Continental Insurance Co.	33	Oct. 18, 1929	91.25	3,011.25
Reeves McDonald	100	Oct. 17, 1929	1.50	150.00
McLeod	50	Oct. 17, 1929	2.35	72.50
Amulet	100	Oct. 17, 1929	2.90	217.50
				<u>\$5,064.75</u>

1444/30
 SUPREME COURT OF B. C.
 VANCOUVER REGISTRY

Exhibit 57.
 20 Johnson vs. Solloway-Mills

Put in by P. Date 10/12/31
 "W. H. A."
 Registrar.

RECORD

*In the
Supreme Court
of British
Columbia.*

Exhibit 64.
(Excerpt)

EXHIBIT 64

(EXCERPT)

MINUTES of a meeting of the Provisional Directors of SOLLOWAY, MILLS & CO., LIMITED (Private Company), held at the office of Miller & Hunter, 59 Yonge Street, Toronto, at the hour of 10 o'clock in the forenoon on the 2nd day of November, 1927.

Present:

Henry Gordon Donley,
John Elton Pritchard,
Frederick Gerald Fitzgerald, 10
Henry Joseph Donley,
Joseph Aloysius Kennedy,

being all the Provisional Directors.

On motion duly made and seconded and unanimously carried Mr. H. J. Donley was elected Chairman.

On motion duly made and seconded and unanimously carried Mr. J. A. Kennedy was elected Secretary of the meeting.

All the Provisional Directors being present, the notice calling the meeting, which appears on the preceding page of this Minute Book, was read and an acknowledgment of receipt thereof signed by all the Provisional Directors and the meeting declared to be regularly called and properly constituted. 20

A letter from the Department of the Secretary of State was read advising that the Letters Patent incorporating the Company would bear date the 31st day of October, 1927 and a copy of the Letters Patent, when received, was directed to be inserted at the commencement of this minute book.

On motion duly made and seconded and carried unanimously it was resolved that the names of the signatories to the Memorandum of Agreement and Stock Book accompanying the application for incorporation be entered upon the books of the Company as shareholders in respect of the shares subscribed for by them respectively as follows: 30

1444/30
SUPREME COURT OF B. C.
VANCOUVER REGISTRY

Exhibit No. 64
Johnson vs. Solloway Mills

Put in by P. Date 10/12/31
"W. H. A."
Registrar. 40

MINUTES OF A MEETING of the Board of Directors of SOLLOWAY MILLS & CO. LIMITED (Private Company) held at the Office of Millar & Hunter, 59 Yonge Street, Toronto, on the 7th day of December, 1927, at the hour of 9:30 o'clock in the forenoon.

RECORD
In the
Supreme Court
of British
Columbia.

Exhibit 64.
(Excerpt)
(Cont'd)

Present:

10 Henry Gordon Donley,
John Elton Pritchard,
Frederick Gerald Fitzgerald,
Henry Joseph Donley, and
Joseph Aloysius Kennedy.

being all the Directors of the Company.

Also present:

I. W. C. Solloway,
Harvey Mills and
Howard Fisher.

The President took the chair and the Secretary acted as Secretary of the meeting.

20 All the Directors being present and having waived notice of the calling of the meeting, notice of the calling of the meeting was dispensed with and the meeting was declared to have been regularly called and properly constituted.

The Minutes of the last meeting were read and directed to be signed as correct.

Mr. H. J. Donley tendered his resignation as President and Director of the Company and stated that he had transferred his qualifying share to I. W. C. Solloway. The resignation of Mr. Donley was accepted and directed to be annexed to the minutes.

30 The transfer of the said share to Mr. Solloway was approved and directed to be registered and the old certificate cancelled and a new certificate issued in the name of Mr. Solloway.

It appearing that Mr. Solloway possessed the necessary share qualification, he was on motion duly made and seconded, elected to the Board. Mr. Solloway then took his place on the Board and on motion took the chair.

Mr. J. A. Kennedy then tendered his resignation as Director and Secretary of the Company and stated that he had transferred his qualifying share to Mr. Harvey Mills. The resignation was accepted and directed to be annexed to the minutes.

RECORD
 In the
 Supreme Court
 of British
 Columbia.
 Exhibit 64.
 (Excerpt)
 (Cont'd)

The transfer of the said share to Mr. Harvey Mills was approved of and directed to be registered and the old certificate cancelled and a new certificate issued in the name of Mr. Harvey Mills.

It appearing that Mr. Harvey Mills possessed the necessary share qualifications, he was on motion duly made and seconded, elected to the Board. Mr. Mills then took his place on the Board.

Upon motion duly made, seconded and carried unanimously Mr. Harvey Mills was appointed Secretary and also Treasurer of the Company. Mr. Mills from here on acted as Secretary of the meeting.

Mr. J. E. Pritchard then tendered his resignation as Director of the Company and stated that he had transferred his qualifying share to Mr. Howard Fisher. The resignation was accepted and directed to be annexed to the minutes. 10

The transfer of the said share to Mr. Howard Fisher was approved of and directed to be registered and the old certificate cancelled and a new certificate issued in the name of Mr. Howard Fisher.

It appearing that Mr. Howard Fisher possessed the necessary share qualifications, he was on motion duly made and seconded, elected to the Board. Mr. Fisher then took his place on the Board.

Mr. F. G. Fitzgerald then tendered his resignation as Director of the Company and stated that he had transferred his qualifying share to James K. Paisley. The resignation was accepted and directed to be annexed to the minutes. 20

The transfer of the said share to Mr. J. K. Paisley was approved of and directed to be registered and the old certificate cancelled and a new certificate issued in the name of James K. Paisley.

Mr. H. G. Donley then tendered his resignation as Director of the Company and stated that he had transferred his qualifying share to Mr. Charles Tully. The resignation was accepted and directed to be annexed to the minutes. 30

The transfer of the said share to Charles Tully was approved of and directed to be registered and the old certificate cancelled and a new certificate issued in the name of Mr. Charles Tully.

Upon motion duly made, seconded and unanimously carried, Mr. I. W. C. Solloway was elected President of the Company.

The Chairman pointed out that there were two vacancies on the

Board. Upon motion duly made and seconded Mr. James K. Paisley and Mr. Charles Tully were elected to the Board.

RECORD

*In the
Supreme Court
of British
Columbia.*

There being no further business the meeting adjourned.

“I. W. C. Solloway”
Chairman.

Exhibit 64.
(Excerpt)
(Cont'd)

“Harvey Mills”
Secretary.
(SEAL)

RECORD
 In the
 Supreme Court
 of British
 Columbia.

Exhibit 64.
 (Excerpt)
 (Cont'd)

MINUTES of a Meeting of the Board of Directors of SOLLOWAY MILLS & CO. LIMITED, (Private Company) held at the office of Millar & Hunter, 59 Yonge Street, Toronto, on the 30th day of May, 1928, at the hour of 10 o'clock in the forenoon.

Present:

I. W. C. Solloway,
 Harvey Mills,
 Howard Fisher,

Also present:

G. W. Staats,
 M. V. Webster.

10

The President occupied the chair and the Secretary acted as Secretary of the meeting.

The Chairman read to the meeting the waiver of notice and the consent to the holding of the meeting signed by all the directors.

The Chairman submitted to the meeting the resignation of James K. Paisley as a Director of the company. Upon motion duly seconded the resignation of Mr. Paisley was accepted.

The Chairman submitted to the meeting a transfer of the share of stock held by James K. Paisley, in favour of G. W. Staats. Upon motion duly seconded the said transfer was approved of and Mr. G. W. Staats was directed to be recorded on the Shareholders' Register as the holder of one share, and the officers of the company were directed to cancel certificate No. 009 and issue a new certificate in lieu thereof. 20

Upon motion duly seconded Mr. G. W. Staats was elected to fill the vacancy on the board by reason of the resignation of Mr. Paisley.

The Chairman submitted to the meeting the resignation of Charles W. Tully as a director and officer of the company. Upon motion duly seconded the resignation of Mr. Tully was accepted. 30

The Chairman stated to the meeting that Charles W. Tully had transferred the share of stock held by him, represented by Certificate No. 010, to M. V. Webster. Upon motion duly seconded the said Transfer was approved of and M. V. Webster was directed to be recorded on the Shareholders' Register as the holder of one share, and the officers of the company were directed to cancel Certificate No. 010 and issue a new certificate in lieu thereof.

The Chairman pointed out that there was a vacancy on the Board by reason of the resignation of Charles W. Tully. Upon motion duly seconded Mrs. M. V. Webster was elected and appointed a Director of the Company in the place and stead of Charles W. Tully, resigned.

RECORD
 In the
 Supreme Court
 of British
 Columbia.

Mr. Howard Fisher then tendered his resignation as a Director of the Company. Upon motion duly seconded the resignation of Mr. Fisher was accepted.

Exhibit 64.
 (Excerpt)
 (Cont'd)

The Chairman submitted to the meeting a transfer of the share of stock held by Mr. Howard Fisher represented by Certificate No. 10 008, in favour of Colonel John A. Cooper. Upon motion duly seconded the said transfer was approved of and Colonel John A. Cooper was directed to be recorded on the Shareholders' Register as the holder of one share, and Certificate No. 008 was directed to be cancelled and a new certificate issued to Colonel John A. Cooper.

Mr. Harvey Mills then tendered his resignation as Secretary and Treasurer of the Company. Upon motion duly seconded the resignation of Mr. Harvey Mills as Secretary and Treasurer of the Company was accepted.

Upon motion duly seconded and carried unanimously Mrs. M. V. 20 Webster was appointed Secretary and Treasurer of the Company.

There being no further business the meeting adjourned.

"I. W. C. Solloway"

Chairman.

Secretary.

RECORD
 In the
 Supreme Court
 of British
 Columbia.
 Exhibit 64.
 (Excerpt)
 (Cont'd)

MINUTES OF A MEETING of the Board of Directors of SOLLOWAY MILLS & CO. LIMITED, (Private Company), held at the office of Millar & Hunter, 59 Yonge Street, Toronto, on the 31st day of May, 1928, at the hour of 3 o'clock in the afternoon.

Present:

I. W. C. Solloway,
 G. W. Staats,
 Col. John A. Cooper and
 M. V. Webster.

The President occupied the chair and Miss Webster acted as 10
 Secretary of the meeting.

The President filed with the Secretary a waiver of notice and consent to the holding of the meeting signed by Harvey Mills. Upon motion duly seconded the meeting was declared to have been regularly called and properly convened.

The Chairman explained that the Company had been incorporated for the purpose of taking over the business carried on by himself and Harvey Mills under the name style and firm of Solloway Mills & Co. He submitted to the meeting a proposed agreement between himself, Harvey Mills and the Company and a draft of proposed By-law 20
 No. 5 authorizing the Company to purchase the business upon the basis of the agreement and authorizing the Company to enter into the agreement and authorizing the officers to do all things necessary to carry out the intention of the agreement. The agreement and By-laws were then considered by the meeting, and after consideration the By-law was proposed, seconded and carried unanimously as By-law No. 5 of the Company. Mr. Solloway refrained from voting on account of being interested as a partner in Solloway Mills & Co.

The Chairman also explained to the meeting that it was advisable to pass a further Borrowing By-law in the form required by The 30
 Royal Bank of Canada. He submitted to the meeting a proposed By-law, being By-law No. 6 of the Company, which appears as a schedule to the minutes of this meeting. After consideration the said By-law was proposed, Seconded and carried unanimously.

There being no further business the meeting adjourned.

(SEAL)

"I. W. C. Solloway"
 Chairman.

"M. V. Webster"
 Secretary.

THIS AGREEMENT made in duplicate this.....day of
May, 1928.

RECORD

*In the
Supreme Court
of British
Columbia.*

BETWEEN

I. W. C. SOLLOWAY and HARVEY MILLS
carrying on business under the name, style and firm
of Solloway, Mills & Company, hereinafter called
"the Vendors"

Exhibit 64.
(Excerpt)
(Cont'd)

OF THE FIRST PART:

—and—

10 SOLLOWAY MILLS & CO. LIMITED, a Com-
pany incorporated under the laws of the Dominion
of Canada, having its head office at the City of
Toronto, in the Province of Ontario, hereinafter
called "the Purchaser"

OF THE SECOND PART.

WITNESSETH that in consideration of the undertaking and
agreements hereinafter expressed, the Vendors and Purchaser have
agreed as follows:

1. The Vendors agree to sell, transfer, assign, convey and de-
20 liver to the Purchaser and the Purchaser agrees to buy and receive
and pay for as a going concern all the assets and property of the
business carried on by the Vendors and including without in anywise
limiting the foregoing words, the good-will of the said business, trade
accounts, marginal accounts, all seats on stock exchanges and mem-
berships thereof, and all effects and property whatsoever of every
nature and kind and wheresoever situate belonging to the said firm
for the price and subject to the terms and conditions hereinafter set
out.

2. The sale and purchase hereby made shall take effect as of the
30 31st day of May, 1928, on the basis of the balance sheet certified to
by G. O. Merson & Company, as of 31st January, 1928, hereto
annexed.

3. The Vendors covenant and agree that the business and
affairs of the firm will be carried on in the usual course of business
until the consummation of the sale herein provided for and that the
liabilities of the firm will not be increased except in the usual course
of business, and that the Purchaser shall be entitled to all benefits and
advantages accruing from the business since the 31st day of January,
1928, and assume all obligations incurred since that date.

40 4. (a) The Vendors hereby subscribe for 24,995 shares of the

RECORD
In the
Supreme Court
of British
Columbia.
Exhibit 64.
(Excerpt)
(Cont'd)

capital stock of the Purchaser, the same being shares without nominal or par value at Ten Dollars (\$10.00) per share, all such shares to be issued and delivered to the Vendors or their nominees.

The Purchaser hereby accepts such subscription and allots the share subscribed for, such shares to be issued and delivered to the Vendors or their nominees.

(b) A part consideration payable by the Purchaser for the assets and property hereby purchased, is the sum of Two Hundred and Fifty Thousand Dollars (\$250,000.00) which is hereby applied by the Vendors and accepted by the Purchaser in full payment for the shares above subscribed for and also in full payment for the five shares of no par value by the applicants for Letters Patent incorporating the Purchaser; all such shares are to be free from liabilities for calls or otherwise and the stock certificates therefor are to declare the said shares fully paid up and non-assessable, and the Purchaser hereby releases the Vendors from all liability in respect of the said shares. 10

(c) As a further part consideration for the sale and purchase hereby made, the Purchaser covenants and agrees to pay, satisfy and discharge all liabilities and obligations of the Vendors of every nature and kind whatsoever, and to indemnify and save harmless the Vendors and each of them therefrom. 20

(d) As a further part consideration of the sale and purchase hereby made, the Purchaser shall pay all costs and expenses of and incidental to this agreement and to the carrying out of the terms and provisions thereof including the expenses in connection therewith and the expenses of the Vendors in connection with the division between them of the full proceeds of the sale.

5. IT IS UNDERSTOOD AND AGREED that the seats on stock exchanges and all membership thereof shall be transferred to the nominee or nominees of the Purchaser and that such nominees shall execute declarations of trust that they hold such seats and memberships for the benefit of the Company, and that the Company is entitled to receive all profits and advantages accruing therefrom and to the purchase price in the event of any sale thereof. 30

6. The Vendors and Purchaser covenant, promise and agree to do all things and execute all documents useful or necessary for the purpose of giving effect to the intention of this agreement.

IN WITNESS WHEREOF this agreement has been executed.

SIGNED, SEALED AND DELIVERED } SOLLOWAY MILLS & CO. LIMITED 40
In the presence of: } "I. W. C. Solloway"
President.
Secretary.

MINUTES of a meeting of the Board of Directors of SOLLOWAY MILLS & CO. LIMITED, (Private Company), held at the head office of the Company on the 23rd day of August, 1928, at the hour of 3 o'clock in the afternoon.

RECORD
In the
Supreme Court
of British
Columbia.

Present:

G. W. Staats,
Col. John A. Cooper,
Mrs. M. V. Webster.

Exhibit 64.
(Excerpt)
(Cont'd)

Neither the President, nor the Vice-president being present,
10 upon motion duly seconded Mr. Staats was appointed chairman of
the meeting. Mr. Staats took the chair and pointed out that there were
two Directors absent, namely Messrs. I. W. C. Solloway and Harvey
Mills, and that waivers of notice and consents to the holding of the
meeting had been received from them.

The Chairman pointed out that a direction had been received
from Messrs. Solloway and Mills authorizing the Company to issue
a certificate for 4,000 shares of the capital stock of the Company to
G. W. Staats. Upon motion duly seconded the transfer of 4,000
20 shares to Mr. Staats was approved of and the officers of the Company
were directed to sign and issue a certificate therefor to Mr. Staats.

The Chairman pointed out that it had been found desirable to
alter Paragraph 4 of the By-law No. 6 as to persons authorized to
sign for and on behalf of the Company. After consideration para-
graph 4 of By-law No. 6 was amended to read as follows:

30 "That until notified to the contrary in addition to the Presi-
dent, Vice-President, Secretary-Treasurer or the General
Manager the following persons be and are hereby author-
ized and empowered to do any and all of the aforesaid acts
for and on behalf of the Company at the following
Branches but without authority to delegate signing author-
ity except to appoint person or persons to receipt for re-
turned or paid vouchers, stock etc., and sign the Bank's
regular form of verification, namely:

The Chairman pointed out that Mr. Solloway was President and
that Mr. Mills was Vice-President of the Company. He further
pointed out that the By-laws provided for the appointment of one or
more Vice-Presidents and that it had been found desirable to appoint
a Second Vice-President. Upon motion duly seconded Mr. G. W.
Staats was appointed Second Vice-President of the Company.

40 The Chairman pointed out that it was desirable to put some

RECORD
 In the
 Supreme Court
 of British
 Columbia.
 Exhibit 64.
 (Excerpt)
 (Cont'd)

limit on the amounts that Branch Managers might give to charities. The following resolution was then proposed, seconded and carried unanimously:

“Be it resolved that all Branch Managers be notified that all “subscriptions to charities amounting to over \$10.00 must “be referred to the General Manager or one of the officers of “the Company before being granted.”

The General Manager submitted reports covering the Company’s operations for the months of June and July. The reports were considered and were directed to be copied in the Minute Book. 10

There being no further business the meeting adjourned.

“M. V. Webster”

Secretary.

MINUTES OF MEETING of Directors of SOLLOWAY MILLS & COMPANY LIMITED, held at the Head Office of the Company, Victoria Street, Toronto, on Tuesday the 20th day of November, at the hour of 3 o'clock in the afternoon.

*In the
Supreme Court
of British
Columbia.*

Exhibit 64.
(Excerpt)
(Cont'd)

Present:

I. W. C. Solloway,
Harvey Mills,
John A. Cooper,
G. W. Staats,
Mrs. M. V. Webster.

10

The President occupied the chair and Mrs. Webster acted as Secretary of the meeting.

The Chairman explained to the meeting that in connection with the premises upon which the company's business is carried on in the City of Sherbrooke, Quebec, that it was necessary for the company to guarantee payment of the rental in respect of the said premises by Maurice J. Bouliane to Charles F. Olivier and Valere A. Olivier and produced to the meeting the form of guarantee required.

After some discussion the following resolution was moved,
20 seconded and carried unanimously.

RESOLVED that the company guarantee payment by Maurice J. Bouliane to Charles F. Olivier of the City of Sherbrooke of the rental in respect of premises No. 52 Wellington Street North in the City of Sherbrooke under transfer of lease dated the 16th of October, 1928, at the rate of \$135.00 a month for a period of three years and five months from the 1st of November, 1928, and also payment by the said Maurice J. Bouliane to Valere A. Olivier of the sum of \$4,717.15 payable in 41 monthly payments of \$115.00 each due and payable at the same time as the rent before mentioned and that the
30 form of guarantee shown to the meeting be executed by the company under its seal and the hands of its proper officers on that behalf.

There being no further business the meeting then adjourned.

(SEAL)

"I. W. C. Solloway"
President.

"Harvey Mills"
Secretary.

RECORD

*In the
Supreme Court
of British
Columbia.*

Exhibit 64.
(Excerpt)
(Cont'd)

MINUTES OF MEETING of Directors of the Firm of SOLLOWAY, MILLS & COMPANY LIMITED, held at the Head Office of the Company, Victoria Street, Toronto, on Tuesday the 27th day of November at the hour of 3 o'clock in the afternoon.

Present:

I. W. C. Solloway,
Harvey Mills,
John A. Cooper,

The President occupied the chair and Harvey Mills acted as Secretary of the meeting. 10

The Chairman explained to the meeting that he had received the resignation of G. W. Staats as General Manager and Vice-President of the Company.

Upon motion duly seconded and carried unanimously the resignation of Mr. G. W. Staats as General Manager, Vice-President and a Director of the Company, was accepted.

The Chairman then notified the meeting that he had received the resignation of Mrs. M. V. Webster, a Director, and Secretary and Treasurer of the company.

Upon motion duly seconded and carried unanimously the resignation of Mrs. M. V. Webster as a Director and Secretary and Treasurer of the company was accepted. 20

It was moved, seconded and carried unanimously that Mr. Harvey Mills be appointed General Manager and Treasurer of the Company.

It was moved, seconded and carried unanimously that Mr. L. L. Masson be appointed Secretary of the Company.

There being no further business the meeting then adjourned.

"I. W. C. Solloway"
President. 30

(SEAL)

"Harvey Mills"
Secretary.

MINUTES OF MEETING of the Board of Directors of Solloway Mills & Company Limited held at the King Edward Hotel, Toronto on the 29th day of November, 1928 at 1:30 o'clock in the afternoon.

RECORD
 In the
 Supreme Court
 of British
 Columbia.

Present:

I. W. C. Solloway,
 Harvey Mills,
 John A. Cooper,

Exhibit 64.
 (Excerpt)
 (Cont'd)

The President occupied the chair and Mr. Harvey Mills, Vice-
 10 President of the Company acted as Secretary of the meeting.

All the Directors of the Company being present, Notice of calling the meeting was waived and the meeting was declared to have been regularly called and properly constituted.

The Chairman pointed out to the meeting that in view of the amalgamation of the Canadian Bank of Commerce and the Standard Bank of Canada, it was necessary to pass a new borrowing by-law in the form required by the Canadian Bank of Commerce. He submitted to the meeting proposed By-law No. 9 of the company being a borrowing by-law Canadian Bank of Commerce form.

20 Upon the said by-law being considered, upon motion duly seconded and carried unanimously the said by-law was passed and ordered to be signed, and sealed with the corporate seal of the company.

The Chairman further stated that it was deemed advisable to pass a new borrowing by-law in the form required by the Royal Bank of Canada. He submitted to the meeting proposed by-law No. 10 being a borrowing by-law, Royal Bank of Canada form.

30 Upon the said by-law being considered, upon motion duly seconded and carried unanimously the said by-law was passed and ordered to be signed, and sealed with the corporate seal of the company.

The Chairman pointed out to the meeting that section (3) of By-law No. 1 of the Company provided that the affairs of the Company should be managed by a Board of five Directors and that it had been deemed advisable to decrease the number of Directors from five to three.

The Chairman then submitted to the meeting, By-law No. 1, being a by-law decreasing the number of Directors from five to three.

RECORD
 In the
 Supreme Court
 of British
 Columbia.
 Exhibit 64.
 (Excerpt)
 (Cont'd)

Upon the said by-law being considered, upon motion duly seconded and carried unanimously the said by-law was passed and ordered to be signed, and sealed with the corporate seal of the company.

It was moved, seconded and carried unanimously that as soon as By-law No. 11 had been approved by the shareholders of the company that a copy of the said by-law certified by the seal of the company, be deposited in the Department of the Secretary of State, of Canada, and published in the Canadian Gazette.

The Chairman then produced to the meeting a transfer of 4000 10 shares from G. W. Staats to I. W. C. Solloway and Harvey Mills jointly.

It was moved, seconded and carried unanimously that the said transfer be approved and directed to be registered in the books of the company, the old certificate cancelled and a new certificate therefor issued to I. W. C. Solloway and Harvey Mills, jointly.

The Chairman also produced to the meeting a transfer of one share of stock from G. W. Staats to Lawrence Leslie Masson.

Upon motion duly seconded and carried unanimously the said transfer was approved and directed to be registered in the books of 20 the company and the old certificate cancelled and a new certificate issued to Lawrence Leslie Masson.

The Chairman also produced to the meeting a transfer of one share of stock from Mrs. M. V. Webster to Lawrence Smith Eckardt.

Upon motion duly seconded and carried unanimously the said transfer was approved, directed to be registered in the books of the company, the old certificate cancelled and a new certificate issued to Lawrence Smith Eckardt.

There being no further business the meeting then adjourned.

"I. W. C. Solloway" 30
 President.

(SEAL)

"L. L. Masson"
 Secretary.

MINUTES OF MEETING of Directors of SOLLOWAY
MILLS & CO., LIMITED, held at the Head Office of the Company,
Metropolitan Building, Toronto, on Tuesday, the 19th day of March,
1929, at the hour of 12 o'clock noon.

RECORD
*In the
Supreme Court
of British
Columbia.*

Present:

I. W. C. Solloway,
Colonel J. A. Cooper.

Exhibit 64.
(Excerpt)
(Cont'd)

All the Directors of the Company being personally present except
Mr. Harvey Mills and he and the other directors having waived
10 notice of the meeting and consented to the holding of the same, notice
calling the meeting was waived and the meeting was declared to be
regularly held and properly constituted for the purpose of carrying
on the business of the company.

The President, Mr. Solloway, acted as Chairman, and Colonel
Cooper as Secretary of the meeting.

The minutes of the last meeting of the Directors were read, and
upon motion duly seconded and carried unanimously were adopted
and ordered to be signed as correct.

The President reported to the meeting that the Company took
20 over the business, assets and goodwill etc. of the partnership Sollo-
way, Mills & Company as of the 31st of May, 1928, and that there
were included in the statement of the assets of the said partnership
as taken over certain moneys paid out to I. W. C. Solloway and Har-
vey Mills in lieu of salaries, expense accounts and remuneration for
special services to the partnership and that since the 31st of May,
1928, the Company had paid out to I. W. C. Solloway and Harvey
Mills certain other moneys in lieu of salaries, expense accounts and
remuneration for special services rendered up to the 31st of Decem-
ber, 1928, the total of all amounts shown in the assets and paid out
30 being as follows:

I. W. C. Solloway	\$49,878.65
Harvey Mills	\$49,878.65

Upon motion duly seconded and carried unanimously it was re-
solved that the amounts shown in the statement of the assets of the
partnership taken over by the Company as of the 31st of May, 1928,
as having been paid to I. W. C. Solloway and Harvey Mills be written
off as moneys paid to and received by the said I. W. C. Solloway and
Harvey Mills in lieu of salaries, expense accounts and remuneration
for special services on account of the partnership from the com-
40 mencement of the partnership to the 31st of May, 1928, and that the

RECORD
 In the
 Supreme Court
 of British
 Columbia.
 Exhibit 64.
 (Excerpt)
 (Cont'd)

portion of the said moneys paid to I. W. C. Solloway and Harvey Mills from the 31st of May, 1928 to the 31st of December, 1928, be voted and paid to the said I. W. C. Solloway and Harvey Mills for salaries, expense accounts and remuneration for special services rendered to the company to the 31st of December, 1928, and that from the 1st of January, 1929, the salaries of the said I. W. C. Solloway, President of the company, and Harvey Mills, Vice-President of the said company, be and the same are fixed at the sum of \$60,000.00 and \$10,000.00 per year respectively.

There being no further business the meeting then adjourned. 10

"I. W. C. Solloway"
 President.
 (SEAL)

"L. L. Masson"
 Secretary.

"John A. Cooper."

RECORD

*In the
Supreme Court
of British
Columbia.*Exhibit 64.
(Excerpt)
(Cont'd)

MINUTES OF MEETING of Directors of SOLLOWAY MILLS & COMPANY LIMITED, held at the Royal Bank Building, in the City of Montreal, Quebec, on Tuesday, the 12th day of November, 1929, at the hour of 2 o'clock in the afternoon.

Present:

I. W. C. Solloway,
Harvey Mills,
Harold Hendrickson.

All the Directors of the company being personally present and
10 having waived notice and consented to the holding of the meeting,
notice calling the meeting was waived and the meeting was declared
to be regularly held and properly constituted for the purpose of car-
rying on the business of the company.

The President occupied the chair, and Mr. Hendrickson acted as
Secretary of the meeting.

The minutes of the last meeting of the Board were read and upon
motion duly seconded and carried unanimously were adopted and
ordered to be signed as correct.

The Chairman then produced to the meeting a transfer of four
20 thousand fully paid shares of the capital stock of the company from
I. W. C. Solloway and Harvey Mills jointly to I. W. C. Solloway, and
also a transfer of twenty thousand, nine hundred and ninety-five
(20,995) fully paid shares of the capital stock of the company from
I. W. C. Solloway and Harvey Mills jointly to I. W. C. Solloway.

Upon motion duly seconded and carried unanimously the said
transfers were approved and directed to be recorded in the books of
the company, and the officers of the company were directed to issue a
certificate for the said shares to the said I. W. C. Solloway.

There being no further business, the meeting then adjourned.

30

"I. W. C. Solloway"
President.

(SEAL)

"H. Hendrickson"
Secretary.

RECORD
 In the
 Supreme Court
 of British
 Columbia.
 Exhibit 64.
 (Excerpt)
 (Cont'd)

MINUTES OF MEETING of Directors of SOLLOWAY, MILLS & CO., LIMITED, held at the Royal York Hotel, in the City of Toronto on Saturday, the 14th day of December, 1929, at the hour of 10:30 o'clock in the forenoon.

Present:

I. W. C. Solloway,
 Harold Hendrickson,
 L. L. Masson (Secretary of the Company).

All the Directors of the Company being personally present with the exception of Harvey Mills, who signified his inability to attend and consented to the holding of the meeting in his absence, notice calling the meeting was waived and the meeting was declared to be regularly held and properly constituted for the purpose of carrying on the business of the Company. 10

The President, Mr. Solloway, occupied the chair, and Mr. Masson, the Secretary of the Company, acted as Secretary of the meeting.

The Chairman reported to the meeting that he has been assured by the auditor of the Company, who was present at the meeting, that the Company had made sufficient profits during the past year to enable the Directors to declare a dividend of \$30.00 per share upon the issued capital stock of the Company. 20

It was moved, seconded and carried unanimously THAT a dividend of \$30.00 per share upon the issued capital stock of the Company be and the same is hereby declared, and that the same be paid forthwith.

The President reported to the meeting that it was necessary to pass a resolution empowering certain persons to execute transfers of stock certificates registered in the name of the Company.

Upon motion duly seconded and carried unanimously IT WAS RESOLVED that the President, Vice-President, Secretary and Treasurer of the Company, and Frank L. Shaughnessy and Lawrence L. Masson, or any one of them, or any other person designated in writing by any one of the aforesaid officers or persons under the seal of the Company, be and they are hereby empowered to execute on behalf of the Company transfers under seal of any stock certificates registered in the name of the Company. 30

There being no further business, the meeting then adjourned.

"I. W. C. Solloway"
 President.

(SEAL)

"H. Hendrickson"
 Secretary.

"L. L. Masson"
 Sec.-Treas.

40

MINUTES OF MEETING of Directors of SOLLOWAY, MILLS & CO., LIMITED held at the office of the President, Royal Bank Building, Montreal, on Monday, the 23rd day of December, 1929, at the hour of 12 o'clock noon.

RECORD
In the
Supreme Court
of British
Columbia.

Present:

I. W. C. Solloway,
Harvey Mills,
Harold Hendrickson.

Exhibit 64.
(Excerpt)
(Cont'd)

10 All the Directors of the Company being present in person and having waived notice of the meeting and consented to the holding of the same, notice calling the meeting was waived and the meeting was declared to be regularly held and properly constituted for the purpose of carrying on the business of the Company.

The President, Mr. Solloway occupied the chair, and Mr. Hendrickson, the Assistant Secretary acted as Secretary of the meeting.

The Minutes of the last meeting of the Board were read and upon motion duly seconded and carried unanimously were adopted and ordered to be signed as correct.

20 The Chairman then submitted to the meeting By-law No. 17, being a by-law authorizing the sale of the goodwill, business and undertaking of this Company in connection with its general brokerage and financial business carried on in the Province of British Columbia to Solloway, Mills (B. C.) Limited for the consideration set out in the said by-law, and authorizing the Directors of the Company to settle and enter into the agreement and do all things which may be necessary to carry out the said sale.

30 Upon the said by-law being considered, upon motion duly seconded and carried unanimously, the said by-law was passed and ordered to be signed and sealed with the corporate seal of the Company.

The Chairman then submitted to the meeting By-law No. 18, being a by-law authorizing the sale of the goodwill, business and undertaking of this Company in connection with its general brokerage and financial business carried on in the Province of Alberta to Solloway, Mills (Alberta) Limited for the consideration set out in the said by-law, and authorizing the Directors of the Company to settle and enter into the agreement and do all things which may be necessary to carry out the said sale.

Upon the said By-law No. 18 being considered, upon motion duly

RECORD
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 (Excerpt)
 (Cont'd)

seconded and carried unanimously, the said by-law was passed and ordered to be signed and sealed with the corporate seal of the Company.

The Chairman then submitted to the meeting By-law No. 19, being a by-law authorizing the sale of the goodwill, business and undertaking of this Company in connection with its general brokerage and financial business carried on in the Province of Saskatchewan to Solloway, Mills (Saskatchewan) Limited for the consideration set out in the said by-law, and authorizing the Directors of the Company to settle and enter into the agreement and to do all the things which may be necessary to carry out the said sale. 10

Upon the said By-law No. 19 being considered, upon motion duly seconded and carried unanimously, the said by-law was passed and ordered to be signed and sealed with the corporate seal of the company.

The Chairman then submitted to the meeting By-law No. 20, being a by-law authorizing the sale of the goodwill, business and undertaking of this Company in connection with its general brokerage and financial business carried on in the Province of Manitoba to Solloway, Mills (Manitoba) Limited for the consideration set out in the said by-law, and authorizing the Directors of the Company to settle and enter into the agreement and do all the things which may be necessary to carry out the said sale. 20

Upon the said By-law No. 20 being considered, upon motion duly seconded and carried unanimously the said by-law was passed and ordered to be signed and sealed with the corporate seal of the Company.

The Chairman then submitted to the meeting By-law No. 21, being a by-law authorizing the sale of the goodwill, business and undertaking of this Company in connection with its general brokerage and financial business carried on in the Maritimes to Solloway, Mills (Maritimes) Limited, for the consideration set out in the said by-law, and authorizing the Directors of the Company to settle and enter into the agreement and do all things which may be necessary to carry out the said sale. 30

Upon the said By-law No. 21 being considered, upon motion duly seconded and carried unanimously the said by-law was passed and ordered to be signed and sealed with the corporate seal of the Company.

Mr. Harold Hendrickson tendered his resignation as a Director 40

of the Company and on motion duly seconded and carried unanimously his resignation was accepted.

It was moved, seconded and carried unanimously that Mr. Lawrence L. Masson be and he is hereby appointed a Director of the Company in the place and stead of Harold Hendrickson, resigned.

There being no further business, the meeting then adjourned.

“I. W. C. Solloway”
President.
(SEAL)

“H. Hendrickson”
Secretary.

RECORD

*In the
Supreme Court
of British
Columbia.*

Exhibit 64.
(Excerpt)
(Cont'd)

RECORD

*In the
Supreme Court
of British
Columbia.*

Exhibit 64.
(Excerpt)
(Cont'd)

SOLLOWAY MILLS & CO. LIMITED

(Dominion Company)

MINUTES OF SPECIAL GENERAL MEETING of Shareholders of Solloway, Mills & Co., Limited held at the Royal Bank Building, Montreal, on Monday, the 23rd day of December, 1929, at the hour of 12:30 o'clock in the afternoon.

Present:

I. W. C. Solloway,
Harvey Mills,
Harold Hendrickson.

10

All the Shareholders of the Company being personally present with the exception of L. L. Masson and Lawrence S. Eckardt and all the Shareholders including the said L. L. Masson and Lawrence S. Eckardt having waived notice of the meeting and consented to the holding of the same, notice calling the meeting was waived and the meeting was declared to be regularly held and properly constituted for the purpose of carrying on the business of the Company.

The President, Mr. Solloway, occupied the chair, and the Assistant Secretary, Mr. Hendrickson, acted as Secretary of the meeting.

The Minutes of the last meeting of Shareholders were read and upon motion duly seconded and carried unanimously were adopted and ordered to be signed as correct. 20

The Chairman then submitted to the meeting By-law No. 17, being a by-law authorizing the sale to Solloway, Mills (B.C.) Limited, a company incorporated under the laws of the Province of British Columbia, of the goodwill, business and undertaking of this Company in connection with its general brokerage business carried on by this Company in the Province of British Columbia, all as set out in the said by-law, and for the consideration therein mentioned.

Upon motion duly seconded and carried unanimously it was resolved that the said By-law No. 17 passed by the Directors on the 23rd day of December, 1929, and now submitted to this meeting, be ratified, approved and confirmed. 30

The Chairman then submitted to the meeting By-law No. 18, being a by-law authorizing the sale to Solloway, Mills (Alberta) Limited, a company to be incorporated under the laws of the Province of Alberta, of the goodwill, business and undertaking of this Company in connection with its general brokerage business carried on by this Company in the Province of Alberta, all as set out in the said by-law, and for the consideration therein mentioned. 40

Upon motion duly seconded and carried unanimously it was resolved that the said By-law No. 18 passed by the Directors on the 23rd day of December, 1929, and now submitted to this meeting, be ratified, approved and confirmed.

RECORD
 In the
 Supreme Court
 of British
 Columbia.

The Chairman then submitted to the meeting By-law No. 19, being a by-law authorizing the sale to Solloway, Mills (Saskatchewan) Limited, a company to be incorporated under the laws of the Province of Saskatchewan, of the goodwill, business and undertaking of this Company in connection with its general brokerage business carried
 10 on by this Company in the Province of Saskatchewan, all as set out in the said by-law, and for the consideration therein mentioned.

Exhibit 64.
 (Excerpt)
 (Cont'd)

Upon motion duly seconded and carried unanimously it was resolved that the said By-law No. 19 passed by the Directors on the 23rd day of December, 1929, and now submitted to this meeting, be ratified, approved, and confirmed.

The Chairman then submitted to the meeting By-law No. 20, being a by-law authorizing the sale to Solloway, Mills (Manitoba) Limited, a company to be incorporated under the laws of the Province of Manitoba, of the goodwill, business and undertaking of this Company
 20 in connection with its general brokerage business carried on by this Company in the Province of Manitoba, all as set out in the said by-law and for the consideration therein mentioned.

Upon motion duly seconded and carried unanimously it was resolved that the said By-law No. 20 passed by the Directors on the 23rd day of December, 1929, and now submitted to this meeting, be ratified, approved and confirmed.

The Chairman then submitted to the meeting By-law No. 21, being a by-law authorizing the sale to Solloway, Mills (Maritimes) Limited, a company to be incorporated under the laws of the Province
 30 of Nova Scotia, of the goodwill, business and undertaking of this Company in connection with its general brokerage business carried on by this Company in the Maritimes, all as set out in the said by-law and for the consideration therein mentioned.

Upon motion duly seconded and carried unanimously it was resolved that the said By-law No. 21 passed by the Directors on the 23rd day of December, 1929, and now submitted to this meeting, be ratified, approved and confirmed.

There being no further business, the meeting adjourned.

40

(SEAL)

"I. W. C. Solloway"
 President.

"H. Hendrickson"
 Secretary.

RECORD

*In the
Supreme Court
of British
Columbia.*

Exhibit 54.

EXHIBIT 54.

THEO. FRONTIER & CO.

Kamloops, B. C.,
April 1st, 1928.

Messrs. Solloway, Mills & Company,
545 Granville Street,
Vancouver, B. C.

ATTENTION MR. J. F. MACDONALD.

Dear Sir,—

We beg to acknowledge receipt of your letter of the 18th instant, 10
for which we thank you.

As stated in our previous letter, we still have our connection with
W. F. Irwin Company, and we will retain this connection until we
hear definitely from you as to what arrangements can be made with
your firm.

At the present time we are getting N.N.D. service twice a day,
which is very helpful to us. They pay one-half of this service, and we
pay one-half, and the commission is also divided on a 50/50 basis.
Messrs. Irwin & Co., pay for their own wires, and we pay for ours. 20
The same thing applies to the drafts, they pay for their drafts when
drawing on us, and we pay for our drafts when drawing on them.
In this way the expenses are also divided on a 50/50 basis.

If you require any reference or information regarding this firm,
you can obtain same from the Bank of Montreal.

Trusting to hear from you further, and thanking you in anticipa-
tion,

We wish to remain,

Yours very truly,

Theo. Frontier & Co.,
"Theo. Frontier."

1444/30

SUPREME COURT OF B. C.
VANCOUVER REGISTRY

30

Exhibit No. 54.

Johnson vs. Solloway Mills

Put in by D. Date 9/12/31.

"W. H. A."

Registrar.

EXHIBIT 55.

SOLLOWAY MILLS & COMPANY

Theo. Frontier & Co.,
386 Victoria St.,
Kamloops, B. C.

545 Granville Street,
Vancouver, B.C., Canada,
April 25, 1928.

RECORD

*In the
Supreme Court
of British
Columbia.*

Exhibit 55.

Dear Sirs:

Referring to your letter of 21st inst. and also to our earlier letter, we are prepared to handle your account on the terms mentioned by you, that is, we will pay half C.N.D. service and divide commission on a fifty-fifty basis. We will draw on you at our expense, and you will draw on us at your expense. We will deal with you on margin on the basis of 33-1/3% with interest at 8% per annum on the unpaid balance. We might state that the 7% rate mentioned by you applies only to accounts in our Toronto Office.

We deal only in mining and oil stocks listed on the Vancouver Stock Exchange, Calgary Stock Exchange, and the Standard Stock & Mining Exchange at Toronto. We are sending under separate cover a copy of the Mining Handbook of Canada, which may be of use.

In all your orders be careful to specify "Buy" or "Sell," "Open Order" or "Day Order," and "Cash" or "Open Account." We would ask you to scrutinize carefully the class of stock your clients will wish carried on margin. We do not wish to accept any order on this basis where the price is below 25c per share. We would also ask you to at all times endeavor to keep your margin no lower than one third, and if possible, to request your clients to put up an amount in excess of that figure.

In the near future Mr. Mills or the writer will be in Kamloops, and will take pleasure in calling upon you. Upon your advising that these arrangements are satisfactory to you we shall get in touch with the C.N.D. service so that we may take care of our half of the cost.

Yours truly,

"J. F. Macdonald."

JFM/PL.

1444/30

SUPREME COURT OF B. C.

VANCOUVER REGISTRY
Exhibit No. 55
Johnson vs. Solloway-Mills

Put in by D. Date 9/12/31.
"W. H. A."
Registrar.

RECORD

*In the
Supreme Court
of British
Columbia.*

Exhibit 53.

EXHIBIT 53.

THEO. FRONTIER & CO.

386 Victoria Street,
Kamloops, B. C.,
April 26th, 1928.

Messrs. Solloway, Mills & Company,
545 Granville Street,
Vancouver, B. C.

ATTENTION MR. MACDONALD.

Dear Sir,—

10

We beg to acknowledge receipt of your letter of the 25th instant, and note your remarks. We wish to take the opportunity of thanking you for same, and as soon as we are ready to start business with your firm, we will do so. At the present time, however, we are trying to get our account straightened up with W. F. Irwin Co., Ltd., which is quite a job, but as soon as this is completed, which we expect will be by the end of this month, we will write to you again, advising you when to start the C.N.D. service.

Regarding your visit here. It will be a pleasure indeed to have the opportunity of meeting you or Mr. Mills, and during this visit we would like to take the matter up with you, as to running a little add for your firm with our name as your agents, in our local paper. We believe that if it was known that we were representing you in Kamloops, and that we were willing to accept orders, on margin, we would be able to furnish your firm with a lot of business. Up until now, we have been doing a strictly cash, business, and of course, to a certain extent the business has been limited. When you intend to come to Kamloops, if it is at all possible, we would appreciate it if you would let us know a little in advance, so that the writer could be in town, as often we are called away to the country on some other business, and we would very much like to meet either you or Mr. Mills.

Trusting same will be found in order,

We wish to remain,

Yours very truly,

“Theo. Frontier & Co.”

“Theo. Frontier.”

TF/LN

1444/30

SUPREME COURT OF B. C.

VANCOUVER REGISTRY
Exhibit 53.

Johnson vs. Solloway-Mills

Put in by D. Date 9/12/31.

“W. H. A.”

Registrar.

40

EXHIBIT 75.

Monies paid Theo. Frontier for half Brokerage.

	July 1928	15.80
	Aug. "	127.21
	Aug. "	239.29
	Sept. "	531.28
	Oct. "	393.56
	Nov. "	426.91
	Dec. "	507.50
10	Jan. 1929	3,090.57
	Jan. "	46.08
	Feb. "	1,936.75
	Mar. "	4,533.51
	Apr. "	1,620.68
	May "	1,533.95
	June "	77.65
	June "	594.08
	July "	419.94
	Aug. "	268.43
20	Sept. "	97.70
		<hr/>
		\$16,445.81
		<hr/>
		46.08
		<hr/>
		\$16,461.89

RECORD

*In the
Supreme Court
of British
Columbia.*

Exhibit 75.

1444/30
SUPREME COURT OF B. C.
VANCOUVER REGISTRY

30 Exhibit No. 75.
Johnson vs. Solloway-Mills

Put in by D. Date 14/12/31.
"W. H. A."
Registrar.

RECORD

*In the
Supreme Court
of British
Columbia.*

Exhibit 48.

EXHIBIT 48.

SOLLOWAY MILLS & COMPANY LIMITED

545 Granville Street,
Vancouver, B.C., Canada,
July Fifth, 1928.

Messrs. Theo. Frontier & Co. Ltd.,
Kamloops, B. C.

Dear Sirs:—

We have before us your favor of 4th inst., with reference to the
filling of an order on Big Missouri. 10

It is evident that our clerk, in reading your telegram, took it to
mean that the order was open and in due course it was filled. Since
this was in error, we have arranged to cancel the order and are put-
ting correcting entries through our books.

We would suggest that in future every order you send us contain
the two words "Day Open," "Open Open," "Day Cash" or "Open
Cash," as the case may be. It is only a matter of one more word and
if this arrangement is strictly adhered to there cannot possibly be any
misunderstanding.

Trusting that this suggestion meets with your approval, we are, 20

Yours very truly,

SOLLOWAY MILLS & COMPANY LIMITED,

"By George W. Kimmerly."

GWK:LP.

1444/30

SUPREME COURT OF B. C.

VANCOUVER REGISTRY

Exhibit No. 48.

Johnson vs. Solloway-Mills

Put in by P. Date 9/12/31.

"W. H. A."

Registrar.

30

RECORD

*In the
Supreme Court
of British
Columbia.*

Exhibit 44.

EXHIBIT 44.

SOLLOWAY MILLS & COMPANY LIMITED.

July Twelfth, 1928.

Theo. Frontier and Co. Ltd.,
Kamloops, B. C.
Dear Sirs:—

10 Replying to your letter of July 10th we wish to advise that we have your order to buy 25 Sunloch at 2.50 before us. To date, we have been unable to fill this order. While the market has been around this figure, it has been difficult to pick up this odd lot. Until further advice we will hold same as an open order.

Relative to your order to buy 10 shares of Ribstone Oil at 1.00 or better, would you kindly advise us if you refer to London Ribstone, as you know, there are two companies, Ribstone and London-Ribstone.

Thanking you in anticipation, we are,

Yours very truly,

SOLLOWAY MILLS & COMPANY LIMITED,

Per "W. E. Willins."

WEW/L.P.

20 1444/30
SUPREME COURT OF B. C.
VANCOUVER REGISTRY

Exhibit No. 44.

Johnson vs. Solloway Mills

Put in by P. Date 9/12/31.

W. H. A.
Registrar.

RECORD
In the
Supreme Court
of British
Columbia.
Exhibit 45.

EXHIBIT No. 45.
SOLLOWAY MILLS & COMPANY

July 16th, 1928.

Theo. Frontier and Co. Ltd.,
Kamloops, B. C.
Dear Sirs:—

With reference to your letter of July Twelfth, regarding C. N. D. Service on Toronto stocks, we beg to advise you that, owing to instructions of the Canadian National and Canadian Pacific Telegraph Companies, it will be impossible for us to include Toronto stocks in our British Columbia C. N. D. service, as all C. N. D. wires quoting Toronto stocks must show the point of origin as Toronto and naturally take Toronto C. N. D. rating of \$7.50 per week. 10

The only alternative we can suggest is that we wire you collect, daily, quotations on Noranda, Amulet and Sherritt Gordon. This service will cost you approximately \$3.00 per week; in lieu of this, we could mail you, daily, complete report, showing bid and asked prices and also total sales for the day, as issued to the newspapers here. This would reach you early the following morning, but would serve the same purpose as quotations wired you after the Toronto market 20 is closed.

We appreciate your business and want to be of all the service we can to you, to assist you in building up a clientele, and after you have given this matter further consideration, we shall be glad to hear from you again, advising what you wish to do.

Yours very truly,

SOLLOWAY MILLS AND COMPANY LIMITED.

“D. G. S. Duns.”

DGSD:C
1444/30
SUPREME COURT OF B. C.
VANCOUVER REGISTRY
Exhibit No. 45.

30

Johnson vs. Solloway Mills
Put in by P. Date 9/12/31
W. H. A.
Registrar.

EXHIBIT 49.

SOLLOWAY MILLS & COMPANY

RECORD

*In the
Supreme Court
of British
Columbia.*

July 18th, 1928.

Exhibit 49.

Theo. Frontier & Co. Ltd.,
Kamloops, B. C.
Gentlemen:—

Replying to your July 17th letter, we would advise you, as follows:—

Transactions on Vancouver and Calgary Stock Exchanges,
10 when:—

Par Value of Stock is \$100.00—Tax is	.03	per share.
do	1.00	do .03 per 100 shares, or any part of 100 shares.
do	.50	do .03 per 200 shares, or any part of 200 shares.
do	.20	do .03 per 500 shares, or any part of 500 shares.
do	.10	do .03 per 1000 shares, or any part of 1000 shares.
20 Stock of No Par Value.....	do	.03 per \$100.00 or any fraction thereof.

Transaction on Standard Mining Exchange, Toronto, the Sales Tax is SIX CENTS, instead of THREE CENTS, and works along the same scale, as above.

Trusting this information will be helpful to you, we are,

Yours very truly,

“W. L. McRAE”

SOLLOWAY MILLS AND COMPANY LIMITED.

LMcR:C

30 1444/30
SUPREME COURT OF B. C.

VANCOUVER REGISTRY
Exhibit No. 49.

Johnson vs. Solloway Mills

Put in by P. Date 9/12/31

W. H. A.

Registrar.

RECORD

*In the
Supreme Court
of British
Columbia.*

Exhibit 46.

EXHIBIT 46.

SOLLOWAY MILLS & COMPANY

545 Granville Street

Vancouver, B. C., Canada

August Sixth, 1928.

Messrs. Theo. Frontier and Co. Ltd.,
Kamloops, B. C.
Gentlemen:—

RE: BOWENA COPPER.

Replying to your letter of August Fourth, we wish to advise you 10
that the last sale made on Bowena Copper, applying to your original
order, was at SIX & A HALF CENTS.

Upon receipt of your further instruction, we changed your order
to "Market"; the best offer we could get was TEN CENTS and we
hesitated to buy same at this price, it being THREE & A HALF
CENTS above the previous sale—and very little trading.

Until further instructions, we are cancelling this order.
Thanking you, we are,

Yours very truly,

"W. E. Willins"

20

SOLLOWAY MILLS AND COMPANY LTD.

WEW/C

1444/30
SUPREME COURT OF B. C.
VANCOUVER REGISTRY

Exhibit No. 46.
Johnson vs. Solloway Mills

Put in by P. Date 9/12/31
"W. H. A."
Registrar.

30

EXHIBIT 76.

RECORD

Winnipeg, Manitoba,
September 7, 1928.

*In the
Supreme Court
of British
Columbia.*

Exhibit 76.

My Dear Harvey:—

I was very pleased to learn from you last night that you are feeling much better. I know you are anxious to get East, but at the same time I am sure you will stay in Calgary until you have made a real job of the new office there. From the way things are shaping up in Turner Valley, I think our Calgary Office will be a big money-
10 maker this winter.

Matthew puts in a lot of time checking up on the books and other office details. This is work which, of course, he should leave for McDonald, but he likes to do the work because it gives him full knowledge of everything that goes on in the office. Therefore, I wish you would have a talk with McDonald and suggest that he let Matthew assume this checking up of the daily business and let McDonald give more of his time to talking to the clients and digging up business in a general way, although, of course, at the same time McDonald can see that each member of the staff is getting proper instructions as to the
20 best method of doing their work.

I have a very high opinion of Bury, and he and Matthew work together, and no one else in the office know their business. What the Calgary Office needs when they move into new quarters is a good aggressive business getter. I will likely be able to pick up a good man in the East to fill in this gap.

I miss you. I shall be very glad when we are together again. You certainly have been a great fixer for me this summer and I know while you are in the Calgary section, that you will look after my interests.

30 I am very proud of the Winnipeg Office and it will work out alright in time. Hicks is selling some of our Associated Oil & Gas Stock. Treat this confidential for it is not necessary for Lowery or his gang to know. The stock that we are selling we are buying a lot cheaper from Lundy and his friends, and, of course, we are selling the stock to some people here to be delivered when we receive delivery, so that we will make a good profit on this deal and it will help out the Winnipeg Office.

40 I like Downes—I think he will be alright, and after seeing the Western crop standing in stooks from Calgary to Winnipeg, I am more than ever confident that we made the right step when we went into the grain business. I see no reason why in a few years we should

RECORD
*In the
Supreme Court
of British
Columbia.*
Exhibit 76.
(Cont'd)

not be one of the largest grain houses in Canada, and that it will pay us to spend some money to work up this business. I am also confident that we have made excellent investments in the Turner Valley and that we should just sit tight on everything for another year. Keep me in touch as much as possible on conditions in Calgary Oil Stocks, commencing November.

* * * * *

Sincerely yours,

I. W. C. Solloway.

1444/30

10

SUPREME COURT OF B. C.
VANCOUVER REGISTRY

Exhibit No. 76.
Johnson vs. Solloway Mills

Put in by P. Date 14/12/31.
W. H. A.
Registrar.

EXHIBIT 77.

September 17, 1928.

RECORD
 In the
 Supreme Court
 of British
 Columbia.
 Exhibit 77.

I. W. C. Solloway.

Dear Sol:—

Received your most interesting letter this morning, and would say you have covered a lot of ground.

I wrote to Bill regarding him going East, but have not received a reply yet. I am sure he will not find much difficulty in getting away, and doing as you wish.

10 Since being here, I have more or less marked time, as they have not made very great progress in the alterations of our new place. Starting today, though, I am stepping on the gas, and hope to get some real action by the end of the week. I have received from Vancouver plans of Logan & Brian's order desk, and also of their carrier system connecting the order desk with the confirmation clerk upstairs, which has a simple arrangement of wire baskets to send confirmations from the order desk to the confirmation clerk. I have also talked to the architect re changing the front of the office. May do something with that, without it costing us a great deal of money.

20 Since I have been here I have carefully gone over a great number of accounts, and find this office in very good shape. Regarding staff accounts, this office is much like all the rest of them, inasmuch as most of the staff are buying, without sufficient margins, and it will take some time for them to have these adjusted. I consider it a very good move on the part of Staats in sending out letters to all Managers, requesting no more trading amongst those with salaries of less than \$50.00 per week. In the case of this office, I asked Toronto to wait until the end of the month before transferring staff accounts, as by that time most of them will have their accounts cleaned up.

30 I have also studied Bury's job, and I am convinced that things are all right regarding him. I believe that Bury is a very capable boy, and if at any time he should be taken sick, Macdonald would be able to handle the position temporarily. In case, for any reason, we should lose him, we could bring Willens from Vancouver, who would make a very good man.

40 I am making arrangements with Atkinson in Winnipeg for us to ship possibly three-quarters of the stocks we have on hand, and have them keep same in their vault in Winnipeg. At the present time we have stocks in three banks, costing us around \$300.00 per year for safety deposit space. Of course, I know what you will think of this

RECORD
 In the
 Supreme Court
 of British
 Columbia.
 Exhibit 77.
 (Cont'd)

is that we should not have any stocks on hand, but it is thoroughly understood here that when the time comes we will feed them out as fast as we can. The stock situation here is very bad on account of the great quantities that we handle. As you know, it would be a very simple matter for several thousand shares of any stock to be lost, and it would be a long time before we would discover it. I believe by cutting this quantity of stocks we have on hand in this office, to a limit, we may overcome this chance of a loss.

I am certainly more than pleased to hear what you say of Staats and Fisher, and also to know that you have found the organization to be running so smoothly on your return. I imagine you will find it rather ticklish in getting rid of blank. 10

I have just called MacWilliam on the Mayland, and he has no further information on Mayland, excepting that they are down a little over 2800 feet, and it is looking very good. We have paid them to date \$95,000. There is practically no market for the stock. When we shot it up to \$1.75, we were met with about eight or ten thousand selling orders, mostly from Toronto. We have these selling orders on hand at the present time, and in the event of the Mayland making a strike, we will buy that stock ourselves, as we will have the first information. 20

Have just heard McLeod are going to use a diamond drill to go deeper in their well. This stock will very likely go to 4.50 or less on that news. We are attempting to sell about two thousand shares in Vancouver around \$5.10 at this time. Our average on McLeod is about \$5.00 on account of the large selling we did between \$4.00 and \$4.50.

Kimmerly is still sick at Vancouver, and Macdonald tells me Williams is holding down his job very well. As you probably have noticed, the Vancouver office is having the best month up to this time. 30

I am feeling in the very best of health, and apparently have not much more to worry about.

Then he mentions he is anxious to hear about the health of Mr. Solloway's family.

I have certainly missed you very much since you left, as I believe you and I got closer together the last two months in Vancouver than we have ever been before. The only worries I have in my mind at the present are over yourself—whether you are too busy and are holding up under the strain. I don't believe I will be able to leave here until about October 15th. 40

I also note what you say about the new Security Act in Ontario. I am inclined to believe as you do that we should give some publicity to the fact that we will not accept cheap stocks on margin, not only in Ontario, but all through the West, as I tried to impress on you in Vancouver the feeling towards us is not very good on that account. I am sure with Col. Cooper and Shaver on the job, we should be well taken care of, and no doubt if you watch the political end of our business, it should help a lot.

RECORD
 —
*In the
 Supreme Court
 of British
 Columbia.*
 —
 Exhibit 77.
 (Cont'd)

10 Try and procure a copy of "The Dominion Law Reports," July 16th, 1928, No. 3 D. L. R., page 5, published by the Canada Law Book Company Ltd., 234 Bay St., Toronto.

1444/30
 SUPREME COURT OF B. C.
 VANCOUVER REGISTRY

Exhibit No. 77.
 Johnson vs. Solloway Mills

Put in by P. Date 14/12/31.
 W. H. A.
 Registrar.

EXHIBIT 78.

RECORD

*In the
Supreme Court
of British
Columbia.*

Exhibit 78.

September 20, 1928.

Dear Sol:—

“Received your letter from Montreal this morning, and I also understand why you did not receive my letter at the Blackstone, on account of your being there only one day.

* * * * *

I have been in Lowery's company a great deal the past two weeks, and I believe that both yourself and Stedman rather under-estimate Lowery's ability. I do know that such men as Pat Burns and Geo. 10
Bell here in Calgary have the utmost confidence in Lowery's ability to put the Associated deal over. I am also quite sure that Clancy in Winnipeg has learned of our selling some of this stock, and has informed Lowery. Stedman wired yesterday asking Lowery why not do away with Baltac and have one company. This, Lowery absolutely will not think of, as there are two separate drilling contracts and also it seems as though the financing of both companies, from the vendors point-of-view is a separate thing. In Stedman's wires to Lowery he has been rather vague as to the disposition of these 200,000 shares. 20
Lowery tells me that he would be entirely reasonable if he knew what was being done with these shares, but under no circumstances would he allow his own, or any vendors stock to be sold, without his crowd getting rid of a like amount. Lowery has the utmost confidence in me, and if there is any way you wish me to work with Lowery I will do my best. He is quite angry at Stedman, and I believe it would be better for you to either write or wire him yourself.”

The next paragraph is merely about finding a house in Montreal.

“We are coming along very nicely with the new office, in fact, today Garvie will probably be in starting work. The barber shop only moved out last night. There is still considerable plastering to do— 30
both on the ground floor and upstairs. I am going to do as you suggest, and make it one of the finest offices in the West. It does not look, at this time, as though I will be able to leave here before October 15th. I am certainly very anxious to get back to Toronto, and get acquainted with the business there again, and also with the staff.

“I am in touch with MacWilliam every day regarding Mayland, but at the present time there is no news, as they have had some slight casing trouble and are at a depth of 2840 feet.

“Received a letter from Bill yesterday, and everything is OK

at his end. Have also noted your pencilled enclosure of your letter, and will do as you suggest. Bill, in his letter, mentioned that he would much rather hear from me than get the kind of letters that you send him. They must be good!

RECORD
 In the
 Supreme Court
 of British
 Columbia.

“Received a copy of a letter from Macdonald, which he sent you re Castle, and believe we could secure a much better correspondent in Hunnings. Believe we should arrange with Macdonald to finish up business with Castle, and have Hunnings take our wire.

Exhibit 78.
 (Cont'd)

10 “The Calgary Office is doing a fair business, and we are anticipating a very big business when we move downstairs.”

1444/30
 SUPREME COURT OF B. C.
 VANCOUVER REGISTRY

Exhibit No. 78.
 Johnson vs. Solloway Mills

Put in by P. Date 14/12/31.
 W. H.A.
 Registrar.

RECORD

EXHIBIT 79.

September 22, 1928.

*In the
Supreme Court
of British
Columbia.*

Exhibit 79.

“Dear Harvey:—

“I have just received your nice long letter of September 17th and want to say that I greatly appreciate all the news you gave me. I am also glad to know that you have given the Calgary Office and our business there such close attention.

“I am looking forward with a great deal of pleasure to seeing you and Bill in the East. Everything will be alright. I have given the situation considerable thought and when you both arrive I will be 10 ready to take a holiday.

“I have had a couple of hard days at head office working with Cooper and Shaver re Parliament Buildings. The ticklish part to get over is that they do not like our auditors. We have to give them a statement, which is quite alright, but we do not like to change our auditors. It is nothing to worry about, as we all feel quite capable of handling the situation.

“Let me hear from you often. Things are running most satisfactorily, and I feel that I can do some good work in the Eastern offices and get some ideas over. I then figure on making another trip 20 West just before Christmas, probably in December, to make sure that our Western offices get away to a good start for the winter’s business.

“I hope you have a little luck in handling Lowery as we certainly would like to get some of this Associated Stock for delivery. We have sold about 75,000 shares at 65 cents a share. I am anxious that Lowery shall not get wise that we have done this. Keep me in touch with the situation regarding him.

“I am beginning to like the wheat business. We are arranging to put in a wire in Toronto, Chicago and Winnipeg. This will give us two separate wires and will be insurance against a breakdown on 30 any one line. It means a lot of extra expense but I believe it will pay. I am also confident that we will build up a good wheat and corn business in Toronto.

“Riordan certainly has wonderful corn dope. They have made money continuously for the past seventeen years and had we followed their dope on corn for the last thirty days we could have made a lot of money. They are a very fine firm and I think we have made a valuable connection.

“I am anxious that Calgary and Vancouver do not carry too many stocks, for until such time as we know where we stand with the 40

Ontario Government we may have to carry more stocks than ever in Toronto. At the present time, among Toronto, Calgary and Vancouver offices, we must be carrying about \$5,000,000 worth of stocks."

The balance is merely personal.

RECORD
In the
Supreme Court
of British
Columbia.
Exhibit 79.
(Cont'd)

1444/30
SUPREME COURT OF B. C.

VANCOUVER REGISTRY
Exhibit No. 79.

10 Put in by P. Date 14/12/31.
W. H. A.
Registrar.

RECORD

*In the
Supreme Court
of British
Columbia.*

Exhibit 50.

EXHIBIT 50.

SOLLOWAY MILLS & COMPANY LIMITED

545 Granville Street

Vancouver, B. C., Canada

September 25th, 1928

Messrs. Theo. Frontier and Co. Ltd.,
Kamloops, B. C.
Gentlemen:—

We have your letter of September 22nd, with reference to statements of account, and are enclosing, herewith, statements for the 10 month of August, covering your Cash Account and also your Open Account, with stock statements attached thereto.

We cannot understand why you did not receive a statement for the month of August ere this, as, you no doubt are aware, it is our policy to issue monthly statements to all clients.

Trusting the attached statements will enable you to reconcile your books, we are,

Yours very truly,

"D. G. S. Duns"

SOLLOWAY MILLS AND COMPANY LTD. 20

DGSD/C

Encls.

1444/30
SUPREME COURT OF B. C.
VANCOUVER REGISTRY

Exhibit No. 50.
Johnson vs. Solloway Mills

Put in by P. Date 9/12/31.
W. H. A.
Registrar.

30

EXHIBIT 47.

545 Granville Street
Vancouver, B. C., Canada

RECORD

*In the
Supreme Court
of British
Columbia.*

Exhibit 47.

October Sixth, 1928

Messrs. Theo. Frontier and Co. Ltd.,
Kamloops, B. C.
Gentlemen:—

Replying to your letter of October Fourth, regarding stock position, we have checked your account, thoroughly, and are enclosing
10 statements of your open and cash account stocks to October Fifth.

We have been unable to reconcile "Planet" stock and would be glad if you would send us a reconciliation according to your books.

Please also check the attached statements and let us hear from you, further. We think it would be a good idea if you would continue to send us your statement, as you were doing when you first started business with our Company.

Yours very truly,

"D. G. S. Duns"

SOLLOWAY MILLS AND COMPANY LTD.

20 DGSD:C
Encls.

1444/30
SUPREME COURT OF B. C.
VANCOUVER REGISTRY

Exhibit No. 47.
Johnson vs. Solloway Mills

Put in by P. Date 9/12/31.
W. H. A.
Registrar.

RECORD

EXHIBIT 82.

*In the
Supreme Court
of British
Columbia.*

Exhibit 82.

Stock—	No. of Shares.	Certificate Number.	Date Received by Solloway Mills.	Date Frontier Notified Account Sold Out.	Price at Date Sold Out.	Total Received Solloway Mills.
Grandview	500	4615	Oct. 30/28	Oct. 17/29	.22	110.00
“	1000	5591	Oct. 30/28	Oct. 17/29	.22	220.00
“	1000	4823	Dec. 18/28	Oct. 17/29	.22	220.00
“	100	7367	Dec. 18/28	Oct. 17/29	.22	22.00
“	200	7140	Dec. 18/28	Oct. 17/29	.22	44.00
“	2500	7078	Feb. 6/29	Oct. 17/29	.22	550.00
“	1000	6381	Feb. 6/29	Oct. 17/29	.22	220.00
“	500	1185	Feb. 20/29	Oct. 17/29	.22	110.00
	<u>6800</u>					10
Continental						
Insurance Co.	4	F31563	Oct. 30/28	Oct. 18/29	91.25	365.00
“	19	F42224	Oct. 30/28	Oct. 18/29	91.25	1733.75
“	10	F40790	Oct. 30/28	Oct. 18/29	91.25	912.50
	<u>33</u>					
Reeves McDonald ...	100	0067	Nov. 18/28	Oct. 17/29	1.50	150.00
	<u>100</u>					
McLeod	25	38734	Feb. 6/29	Oct. 17/29	2.35	58.75
“	25	41226	Feb. 6/29	Oct. 17/29	2.35	58.75
	<u>50</u>					20
Amulet	25	M02535	Feb. 20/29	Oct. 17/29	2.90	72.50
“	75	T11964	Feb. 20/29	Oct. 17/29	2.90	217.50
	<u>100</u>					
						<u>5064.75</u>

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SUPREME COURT OF B. C.
VANCOUVER REGISTRY

Exhibit No. 82.
Johnson vs. Solloway Mills

30

Put in by P. Date 15/12/31.
W. H. A.
Registrar.

EXHIBIT 3.
STOCK REGISTER

(Excerpt)

from Exhibit 3

NAME OF STOCK

Grandview

DATE	NO. OF CERT.	NO. OF SHARES	NAME	DATE OF CERT.	FROM WHOM RECEIVED	TO WHOM DELIVERED	DATE
1928 Sept. 21.	4989.	1000.	John G. Humphreys	10/7/28	J. G. Humphreys	C.H.	Oct 4
"	4990.	1000.	"	10/7/28	"	C.H.	Oct 4
21	2514.	500	Miss E. Young	21/2/28.	C.W. Clarke	C.H.	Oct 12
	1467	1000	W. H. Duckerson	2/1/28	C.H.	Theo Frontier	Sept 24
	5410	1000	A. F. Hankinson	8/16/28	C.H.	C.H.	Sept 29
	2024	1000	S. H. F. Leonard	2/16/28	C.H.	Gas A Jenkins	Sept 29
	2078	1000	H. M. Gilbertson	2/16/28	C.H.	C.H.	Oct 4
	1496	1000	Gillespie H. H.	2/1/28	Castlebo Cash op.	A. J. Brown	Sept 22
	2727	900	E. B. Buckmore	2/27/28	"	X	
	3134	100	L. W. Turnbull	3/7/28	"	Calgary	Sept 22
22	774	500	H. Wier	1/25/28	P. O. Seppin	D. D. G.	Oct 9
	4692	500	V. E. Rice	3/16/28	"	"	" 9
	2549	500	B. Hewitt	2/23/28	"	"	" 9
	1521	500	P. L. Sandberg	2/2/28	"	J. Guman	Oct 10
	1742	500	Angus MacPhee	2/14/28	"	"	" 10
	5358	200	D. B. Manley	8/10/28	"	C.H.	Sept 24
	2006	300	B. Hewitt	2/16/28	"	R. F. Coath	" 24
"	5641	100	W. A. Swift	20/9/28	Trif Off	Bank of Montreal	Sept 25
	5642	200	D. S. Lewis	20/9/28	"	C.H.	Sept 25
	5643	200	"	20/9/28	"	A. J. Brown	Sept 26

EXHIBIT 81.

NATIONAL SILVER

BUY CONFIRMATIONS FOR NOVEMBER 27, 1928.

RECORD
 In the
 Supreme Court
 of British
 Columbia.
 Exhibit 81.

Customer—	No. of Shares	Total	Price
	Nil		

SELL CONFIRMATIONS FOR NOVEMBER 27, 1928.

10	Customer—	No. of Shares	Total	Price
	Theo. Frontier	500		.18

VANCOUVER CLEARING HOUSE SHEET FOR NOVEMBER
 27, 1928, SHOWING ALL TRANSACTIONS IN THIS
 STOCK ON THE VANCOUVER STOCK
 EXCHANGE.

Bought of Broker—	No. of Shares	Total	Price
	Nil		
Sold to Broker—	No. of Shares	Total	Price
Lennard Poisson	500		.18

20 1444/30
 SUPREME COURT OF B. C.
 VANCOUVER REGISTRY

Exhibit No. 81.
 Johnson vs. Solloway Mills

Put in by P. Date 14/12/31.
 W. H. A.
 Registrar.

RECORD

*In the
Supreme Court
of British
Columbia.*

Exhibit 81.
(Cont'd)

EXHIBIT 81.

INTERNATIONAL NICKEL NEW
BUY CONFIRMATIONS FOR NOVEMBER 27, 1928.

Customer—	No. of Shares	Total	Price
Theo. Frontier	50		37.90 Toronto
“ “	50		37.75 Toronto
	—	100	
B. Townshend	50		37.90 Toronto
	—	50	
Total.....		150	

10

SELL CONFIRMATIONS FOR NOVEMBER 27, 1928.

Customer—	No. of Shares	Total	Price
Bought from Toronto.....	50		37.75
“ “ “	50		37.90
“ “ “	50		37.90
Total.....	—	150	

EXHIBIT 81.
GRANDVIEW.

BUY CONFIRMATIONS FOR NOVEMBER 27, 1928.

RECORD
In the
Supreme Court
of British
Columbia.
Exhibit 81.
(Cont'd)

Customer—	No. of Shares	Price	Customer—	No. of Shares	Price
Frontier	1000	.55½	W. F. Irwin (Sold to)	500	.56
Total	1000		(Less Bkg. .50, Tax .09)		
10 Connor	1500	.55	Total	500	
Ayanian	100	.56			
Sam Levi	1000	.55			
Randall	500	.56			
"	200	.56			
Patterson	200	.55½			
Total	3500		TOTAL	5000	

SELL CONFIRMATIONS FOR NOVEMBER 27, 1928.

Customer—	Shares	Price	Customer—	No. of Shares	Price
20 Toronto Office	1500	.55	House	100	.56
W. F. Irwin (Bought from)	500	.55	"	1000	.55
Total	2000		"	1000	.55
			"	1000	.55½
			"	500	.56
			Total	3600	
			TOTAL	5600	
30					

VANCOUVER CLEARING HOUSE SHEET FOR NOVEMBER
27, 1928, SHOWING ALL TRANSACTIONS IN THIS
STOCK ON THE VANCOUVER STOCK
EXCHANGE.

Bought of Broker—	No. of Shares	Price	Sold to Broker—	No. of Shares	Price
Irwin & Company....	500	.56	Branson Brown	1000	.55
Miller Court	300	.56	Irwin	500	.55
"	200	.55½	Steele & Son	100	.56
40 Mills	1500	.55½	Mills	1500	.55½
"	1000	.55½	"	1000	.55½
TOTAL	3500		TOTAL	4100	

RECORD
 In the
 Supreme Court
 of British
 Columbia.
 Exhibit 81.
 (Cont'd)

EXHIBIT 81.

FALCONBRIDGE.

BUY CONFIRMATIONS FOR NOVEMBER 27, 1928.

Customer—	No. of Shares	Price
Frontier	100	5.10
(Toronto)		
Hunter	50	5.10
(Toronto)		
TOTAL	<u>150</u>	<u> </u>

10

SELL CONFIRMATIONS FOR NOVEMBER 27, 1928.

Customer—	No. of Shares	Price
Bought from		
Toronto	50	5.10
Bought from		
Toronto	100	5.10
TOTAL	<u>150</u>	<u> </u>

20

(Toronto Stock. No Exchange Sheet).

EXHIBIT 81.

SUNLOCH

BUY CONFIRMATIONS FOR DECEMBER 20, 1931.

Customer—	No. of Shares	Price
Nathan Kagnoff	100	3.50

SELL CONFIRMATIONS FOR DECEMBER 20, 1931.

Customer—	No. of Shares	Price
10 Theo. Frontier & Co.	200	3.60
J. T. MacGregor	300	3.50
TOTAL	<u>500</u>	<u> </u>

VANCOUVER CLEARING HOUSE SHEET FOR DECEMBER
 20, 1931, SHOWING ALL TRANSACTIONS IN THIS
 STOCK ON THE VANCOUVER STOCK
 EXCHANGE.

Bought of Broker—	No. of Shares	Price	Sold to Broker—	No. of Shares	Price
20 Nil			Poisson	100	3.50
			“	100	3.50
			“	100	3.60
			“	100	3.60
			TOTAL	<u>400</u>	<u> </u>

RECORD
 In the
 Supreme Court
 of British
 Columbia.
 Exhibit 81.
 (Cont'd)

EXHIBIT 81.

McLEOD.

BUY CONFIRMATIONS FOR DECEMBER 20, 1928.

Customer—	No. of Shares	Price	Customer—	No. of Shares	Price	
Theo. Frontier & Co.	10	6.65	A. S. Wyllie	50	6.60	
T. Boden	50	6.60	House	50	6.50	
W. T. Fairgrieve	25	6.65	“	100	6.50	
W. Hoyle	25	6.65				
Winnipeg Office	10	6.65	TOTAL	320		10

SELL CONFIRMATIONS FOR DECEMBER 20, 1928.

Customer—	No. of Shares	Price	
House	100	6.60	
“	65	6.50	
“	50	6.65	
“	10	6.65	
“	50	6.60	
“	10	6.65	
TOTAL	285		20

VANCOUVER CLEARING HOUSE SHEET FOR DECEMBER
 20, 1928, SHOWING ALL TRANSACTIONS IN THIS
 STOCK ON THE VANCOUVER STOCK
 EXCHANGE.

Bought of Broker—	No. of Shares	Price	Sold to Broker—	No. of Shares	Price	
Gelletly	25	6.65	Oliver	65	6.50	
Mills	10	6.65	Gelletly	25	6.65	
“	10	6.65	Miller	50	6.60	
“	50	6.60	Mills	10	6.65	
			“	10	6.65	
			“	50	6.60	
TOTAL	95		TOTAL	210		30

RECORD

*In the
Supreme Court
of British
Columbia.*Exhibit 81.
(Cont'd)

EXHIBIT 81.

INTERNATIONAL NICKEL NEW.

BUY CONFIRMATIONS FOR DECEMBER 20, 1928.

Customer—	No. of Shares	Price	Customer—	No. of Shares	Price
Frontier	50	43.75	Mair & Stewart	100	43.70
(Toronto)			(Toronto)		
Sold to Toronto	10	44.00			
(Less Tax)			TOTAL	160	

10 SELL CONFIRMATIONS FOR DECEMBER 20, 1928.

Customer—	No. of Shares	Price	Customer—	No. of Shares	Price
Bought from Toronto	50	43.75	Sheppard & McIntosh	10	44.00
Bought from Toronto	100	43.70	(Toronto)		
			(Toronto Stock. No Exchange Sheet).		

RECORD
 In the
 Supreme Court
 of British
 Columbia.
 Exhibit 81.
 (Cont'd)

EXHIBIT 81.

CALMONT.

BUY CONFIRMATIONS FOR JUNE 19, 1929.

Customer—	No. of Shares	Price	Customer—	No. of Shares	Price
House Account	10	3.15	E. M. Deacon	100	3.20
“ “	150	3.18	E. F. Kilsby	100	3.20
“ “	700	3.20			
“ “	10000	3.25	TOTAL	11,060	

SELL CONFIRMATIONS FOR JUNE 19, 1929.

10

Customer—	No. of Shares	Price	Customer —	No. of Shares	Price
Hazel McLeod	300	3.20	Theo. Frontier	275	3.20
Campbell & McLeod	100	3.20	Crann	100	3.20
Winnipeg	100	3.20	“	100	3.18
J. Dunham	100	3.20			
E. C. DeCou	50	3.18	TOTAL	1125	

VANCOUVER CLEARING HOUSE SHEET FOR JUNE 19,
 1929, SHOWING ALL TRANSACTIONS IN THIS STOCK
 ON THE VANCOUVER STOCK EXCHANGE.

20

Bought of Broker—	No. of Shares	Price	Sold to Broker—	Shares	Price
R. P. Clark	150	3.18	R. P. Clark	150	3.18
“ “	500	3.20	“ “	500	3.20
“ “	25	3.20	“ “	50	3.25
“ “	50	3.25	“ “	100	3.20
B. C. Bond	10	3.15	“ “	100	3.20
R. P. Clark	100	3.20	Miller Court	100	3.20
“ “	100	3.20	T. Steele	100	3.20
T. Steele	100	3.20			
TOTAL	1035		TOTAL	1100	

30

RECORD

*In the
Supreme Court
of British
Columbia.*Exhibit 81.
(Cont'd)

EXHIBIT 81.

SHERRITT GORDON.

BUY CONFIRMATIONS FOR JUNE 19, 1929.

Customer—	No. of Shares	Price
House Account	220	7.20
Sold to Toronto	50	7.15
(Less Tax .06)		
Sold to Toronto	50	7.30
(Less Tax .06)		
TOTAL	320	

10

SELL CONFIRMATIONS FOR JUNE 19, 1929.

Customer—	No. of Shares	Price	Customer—	No. of Shares	Price
A. R. Marchesie	50	7.30	Bought from Toronto	250	7.20
(Toronto)			Bought from Toronto	50	7.30
Theo. Frontier	50	7.15			
(Toronto)			TOTAL	370	

20

(Toronto Stock. No Exchange Sheet).

RECORD
 In the
 Supreme Court
 of British
 Columbia.
 Exhibit 81.
 (Cont'd)

EXHIBIT 81.

HARGAL.

BUY CONFIRMATIONS FOR JUNE 19, 1929.

Customer—	No. of Shares	Price	Customer—	No. of Shares	Price
Theo. Frontier	100	1.49	J. F. Burns	200	1.50
	<u> </u>	<u> </u>	Calgary Office	200	1.47
Total	100		Total	500	
S. R. McKenzie	100	1.49	TOTAL	600	

10

SELL CONFIRMATIONS FOR JUNE 19, 1929.

Customer—	No. of Shares	Price
Interior Develop- ment Co.	50	1.48
Calgary Office	200	1.50
TOTAL	<u> </u>	250

VANCOUVER CLEARING HOUSE SHEET FOR JUNE 19, 20
 1929, SHOWING ALL TRANSACTIONS IN THIS STOCK
 ON THE VANCOUVER STOCK EXCHANGE.

Bought of Broker—	No. of Shares	Price	Sold to Broker—	No. of Shares	Price
C. M. Oliver	200	1.50	W. F. Irwin	100	1.50
A. J. Brown	200	1.49	C. M. Oliver	100	1.50
Miller Court	200	1.47	A. J. Brown	50	1.48
“ “	100	1.49	Miller Court	100	1.49
TOTAL	<u> </u>	700	TOTAL	<u> </u>	350

30

EXHIBIT 81.

MOHAWK.

BUY CONFIRMATIONS FOR JUNE 19, 1929.

Customer—	No. of Shares	Price
Theo. Frontier	100	.03½

SELL CONFIRMATIONS FOR JUNE 19, 1929.

10

Customer—	No. of Shares	Price
Denbigh Dickinson (Bought from)	100	.03½
(Plus Bkg. .20)		
W. B. Allan	100	.03½

VANCOUVER CLEARING HOUSE SHEET FOR JUNE 19,
 1929, SHOWING ALL TRANSACTIONS IN THIS STOCK
 ON THE VANCOUVER STOCK EXCHANGE.

Bought of Broker—	No. of Shares	Price	Sold to Broker—	No. of Shares	Price
	Nil		Denbigh Dickinson..	100	.03½

RECORD
*In the
Supreme Court
of British
Columbia.*
Exhibit 51.

EXHIBIT 51.

SOLLOWAY MILLS & COMPANY

545 Granville Street

Vancouver, B. C., Canada

December Tenth, 1928

Messrs. Theo. Frontier and Co. Ltd.,
Kamloops, B. C.
Gentlemen:—

At prevailing market prices, your account is under-margined to
the extent of \$15,000.00. 10

We shall be pleased to receive your cheque, in this amount, by
return mail.

Yours very truly,

“D. G. S. Duns”

SOLLOWAY MILLS AND COMPANY LIMITED.

DGSD:C

1444/30
SUPREME COURT OF B. C.
VANCOUVER REGISTRY

Exhibit No. 51.
Johnson vs. Solloway Mills

20

Put in by P. Date 9/12/31.
W. H. A.
Registrar.

EXHIBIT 52.

SOLLOWAY MILLS & COMPANY

545 Granville Street

Vancouver, B. C., Canada

January 19th, 1929

Messrs. Theo. Frontier and Co. Ltd.,
Kamloops, B. C.

Gentlemen:—

We are enclosing sample of the buy and sell slips used in our
10 Office, as requested in your January 17th letter.

So that there will be no confusion, it will be necessary for you to
have these slips printed with your own firm name at the top, instead
of "Solloway Mills and Co. Ltd.," as on the enclosed copies.

When orders have been filled, the number of shares and the price
is written under the space marked "Order Completed" and ringed.

Yours very truly,

"D. G. S. Duns"

SOLLOWAY MILLS AND COMPANY LIMITED.

DGSD:C

20 1444/30
SUPREME COURT OF B. C.
VANCOUVER REGISTRY

Exhibit No. 52.
Johnson vs. Solloway Mills

Put in by P. Date 9/12/31.
W. H. A.
Registrar.

RECORD
*In the
 Supreme Court
 of British
 Columbia.*
 Exhibit 39A.

EXHIBIT 39 A.
 A. J. Brown
 SOLD TO Feb. 14, 1929
 3000 A. P. Con. 1.05 3150.00 Less Brok. 6.00
 Tax .90 3143.10
 M delivery

Exhibit 39B.

EXHIBIT 39 B.
 Feb. 14, 1929 500 A. P. Con. 1.00 500.00
 250 1.05 262.50
 762.50 10

Exhibit 39C.

EXHIBIT 39 C.
 A. J. Brown
 Bought from Feb. 14, 1929
 1000 A. P. Con. 1.00 1000.00 Plus 2.00 1002.00
 B. Delivery

Exhibit 39D.

EXHIBIT 39 D.
 Theo. Frontier & Co.
 Mar. 13, 1929
 300 A. P. Con. 3.50 1050.00 12.00 1062.00 20
 B Open

Exhibit 39E.

EXHIBIT 39 E.
 Theo. Frontier
 March 13
 100 A. P. Con. 3.40 340.00 4.00 .03 355.97

RECORD
*In the
Supreme Court
of British
Columbia.*
Exhibit 61.

EXHIBIT 61.

THEO. FRONTIER & CO. LTD.

FINANCIAL AGENTS

386 Victoria Street
Kamloops, B. C.

Phone 273

Feb. 25th, 1929.

BUY For my Account On
Risk as Undernoted
500 Shares Spooner @ 1.75

10 Day or Open Order
Outright or Open Account
Name
Address
Salesman

Order Completed

"W. Smith."

No. 1302

1444/30
SUPREME COURT OF B. C.
20 VANCOUVER REGISTRY

Exhibit No. 61.
Johnson vs. Solloway-Mills

Put in by P. Date 10/12/31.
"W. H. A."
Registrar.

RECORD
 In the
 Supreme Court
 of British
 Columbia.
 Exhibit 22.

EXHIBIT 22.

Joseph G. Maw Box 680 Armstrong, B. C. 100 Whitewater C. Open	1.00	100.00	2.00	March 13/29. 102.00	

Theo. Frontier & Co. 100 Whitewater B. Open	1.00	100.00	2.00	Mar. 13, 1929. 102.00	

Saskatoon Office 20 Whitewater Delivery H.	1.00	20.00		March 13, 1929. 20.00	10

Edmonton Office 420 Whitewater A Open	1.00	420.00	.15	Mar. 13, 1929. 419.85	

Denbigh, Dickinson & Greathed BOUGHT FROM 220 Whitewater A Delivery	1.00	220.00	Plus .44	Mar. 13, 1929. 220.44	20

1444/30
 SUPREME COURT OF B. C.
 VANCOUVER REGISTRY
 Exhibit No. 22.
 Johnson vs. Solloway Mills

Put in by P. Date 8/12/31.
 "W. H. A."
 Registrar.

Figures underlined in red were all
in red ink on original document.

Alta Pacific Cons from folio 10

Year	Date	Description	Balance	Debit	Credit	Balance
1929						
Apr	12	Ford	163332			23129598
	13	4639 ✓	158693	17462 45 ✓		21383353
		✓ 2285 ✓	160978	8427 00 ✓		
		✓ <u>100</u> ✓	161078	360 00 ✓		22262053
	15	550 ✓	160528	2112 50 ✓		
		✓ 669 ✓	159859	2634 05 ✓		
		✓ <u>5125</u> ✓	164984	19919 25 ✓		23779323
	16	14165 ✓	150819	53119 25 ✓		
	17	5633 ✓	145186	21121 00 ✓		16355298
	18	2755 ✓	142431	10606 75 ✓		
		✓ <u>2080</u> ✓	144511	7904 00 ✓		16085023
	19	1840 ✓	142671	7022 00 ✓		
		✓ 180 ✓	142491	675 00 ✓		
	20	4167 ✓	138324	15979 85 ✓		13717338
	22	1295 ✓	137029	4979 50 ✓		
		✓ <u>150</u> ✓	137179	585 00 ✓		13277888
	23	<u>1860</u> ✓	139039	7145 50 ✓		13992438
	24	<u>1560</u> ✓	140599	5951 75 ✓		14587613
	25	1215 ✓	139384	4783 25 ✓		
		✓ <u>215</u> ✓	139599	827 75 ✓		14192063
	26	645 ✓	138954	2532 75 ✓		
		✓ <u>220</u> ✓	139174	858 00 ✓		14024588
	27	820 ✓	138354	3116 00 ✓		
		✓ <u>455</u> ✓	138809	1751 75 ✓		13888163
	29	55 ✓	138754	211 75 ✓		
		✓ <u>100</u> ✓	138854	390 00 ✓		13905988
	30	75 ✓	138779	296 25 ✓		
		✓ <u>2513</u> ✓	141292	9999 45 ✓		14876308
May	1	1702 ✓	139590	7584 80 ✓		
		✓ <u>5685</u> ✓	145275	24285 25 ✓		16546353
	2	140 ✓	145135	655 25 ✓		
		✓ <u>3885</u> ✓	149020	18676 75 ✓		18348503
	3	2839 ✓	146181	13267 30 ✓		17021773

491
 EXHIBIT 20.
 (Excerpt)
 Teller's Blotter

Associated

			Dr.	Cr.	on Hand			D.	Cr.	Bal
May	13	On Hand	▼		5880	May 20.	Invd			5400
		Rec		500			O.b.	100		5300
		In. blq.		100			J.D.		25	
		✓		50	6530		"		800	
	14	Out	1250		5280		Rec		100	
		I.b.		300			✓		200	6425
		In. Spt		50	5630	21	J.D.		20	
	15	Rec.		200			Rec.		100	6545
		✓		200			Reg.	300		6245
		out. blq.	100			22	B.S.		75	
		In. lq		500			In. b.		100	6420
		out. Spt.	280		6150		OD.	20		
	16	Del.	50				O.b.	200		6000
		In. blq.		300			Reg.	200		6100
		Reg	100				J.D.		100	
		Out Spt	900		5400	23	OD	100		6000
	17	Reg	200				B.S.		10	
		Out Spt	100				I.b.		100	6110
		Reg	100			27	J.D.		100	
		Rec.		400			✓		50	6360
		I. b.		400	5800		Reg	500		5860
	18	O. b.	200				OD	50		5810
		Rec		100	5900	28	J.D.			
	20	Reg	400				I.b.		200	
		B. S.		100	5400		J.D.		100	6110

EXHIBIT 20.

Teller's Blotter (Excerpt)

Grandview

1929	Forward			1828 0	1929	Forward			3730
Oct 29	Rec. Tor.		1000	1928 0	Nov. 2	Rec Sea	1000		4730
	Req d	600		1868 0		✓ c	500		5230
	IC		2000	2068 0		IC	1000		6230
	✓		1200	2188 0	4	OC	1000		5230
	✓		100	2198 0		Req. d	2000		3230
30	Req. Humming	3300		1868 0		Rec. Whg.	100		4330
	✓ regn	200		1848 0		✓ Sea	1000		4430
	✓ d	7450		1103 0		✓ con.	100		3930
	Rec. by		2200	1323 0		Req. regn.	500		2430
	✓ c		500	1373 0		✓ Sea	1500		2230
	Req. e	5000		873 0		✓ c	200		2880
	OC	2600		613 0		IC	150		3780
	Adj re Mrs Gregor's		1000	713 0		✓ OC Req. d	400	1400	3380
	✓ re Robertson's regn		500	763 0	5	Rec. e		75	3455
	IC		500	813 0	5	Req. c	100		3355
31	Req. c	300		783 0		IBS	50		3405
	✓ shk	3700		413 0		IC	1000		4405
Nov 1	Rec DO of		1500	563 0	6	Req. regn	500		3905
	Req. regn	500		513 0		Rec IB	500		4405
	✓ Mc Lys.	1000		413 0		Req. Cy. ad.	200	200	4205
	✓ Crmel.	100		403 0		✓ Campbell	300		3905
	✓ d	3600		43 0	7	Req. d	200		4105
	Rec. c		300	93 0		✓ c	1000		3905
	IC		3000	373 0					2905

RECORD
*In the
Supreme Court
of British
Columbia.*
Exhibit 62.

EXHIBIT 62.

THEO. FRONTIER & CO. LTD.

FINANCIAL AGENTS

386 Victoria Street
Kamloops, B. C.

Phone 273

May 8th, 1929.

SELL For My Account On
Risk as Undernoted.

400 Shares Spooner @ 3.90

10 Day or Open Order
Outright or Open Account
Name
Address
Salesman

“Sawallay.”

Order Completed

4434

1444/30
20 SUPREME COURT OF B. C.
VANCOUVER REGISTRY

Exhibit No. 62.
Johnson vs. Solloway Mills

Put in by P. Date 10/12/31.
“W. H. A.”
Registrar.

RECORD

*In the
Supreme Court
of British
Columbia.*

Exhibit 80.

EXHIBIT 80.

May 21, 1929 (?)

Dear Sol:

I may as well give you my impressions, starting with Winnipeg, regardless of what you have already learned from Shaughnessy.

At the Winnipeg office I am sure Don will be able to get the books in very good shape within a couple of weeks. They are very badly in need of a man such as Furry to have charge of the salesmen on the floor. The situation there is very bad from several viewpoints. The men have had no training whatever, and the whole thing is sadly disorganized. In regard to appointing a Manager there, I do not believe either A. or B. would be the type of men we need. I would suggest a man of Mr. Matthew or Mr. Macdonald's type as Manager for Winnipeg. With the experience that Mr. Furry is gaining in the West, I am sure that he can be of great help in Winnipeg. I told A. that we would continue on acting without a Manager for a few weeks and see how the office shaped up then. The day I was there they had a large crowd of people in the office and it appeared to me as though they should be doing five or six hundred dollars a day business, where they are only doing \$150.00 to \$200.00. I am leaving the matter of a Manager entirely up to you.

At Regina, I was very much pleased with the layout of the office, the Manager and the entire staff, and the books there are in perfect shape and I believe they will continue to be, unless they get a tremendous rush of business. Hosie is an excellent man and very well thought of in Regina. Snider is going to do very good work there, and I believe he should be left there for at least two months. Regina, should in time, be an office paying every bit as well as Edmonton. Of course, I am leaving Saskatoon and Edmonton until a later date when I will be feeling better.

When I arrived in Calgary Sunday morning Dr. Stedman and Bury met us at the train, and later on we came over to the office. I certainly did get the thrill of my life when I walked into this wonderful office, but it was nothing to be compared to the way I felt when I saw the enormous crowds on Monday. Alexander has made a very good job of the whole building. We are expecting to get the Examiner out in the matter of two weeks, when I will see that your suggestion is carried out as to the lay-out of the offices on the second floor. They have done a wonderful job of the basement, and have already rented the front space to a high-class barber shop at a rental of \$150.00 per month. The elevator will not be put in for some time yet, but when

it is, we will arrange for dividing up the top floor into offices to let, which should bring in a good income.

RECORD

*In the
Supreme Court
of British
Columbia.*

Exhibit 80.
(Cont'd)

In regard to Gallagher, I am telling him today that I believe he should make his permanent home here. Up to date I am sure he has done a first-class job here. You seem to have been under the impression that the Staff handle him easily, and that he was rather—, but I am sure this is not the case at present. I have told him that he has a big job in front of him, organizing this office as you would want it organized, and I feel sure he is perfectly capable of handling this job in a big way. In a few weeks time, after I have assured myself that Gallagher is all that I believe him to be, I believe, if he is willing to make his permanent home here, it might be a good policy to offer to finance him in a home the same as we did with . As you know, it is impossible to secure any place to live, without buying. I would like your views on this matter.

In regard to the old office there is only one way of us breaking anywhere even, and that is to rent the office to a broker of the type of Dallas. We are, at the present time, paying about \$750.00 per month for that location and believe we could make a deal with Dallas for possibly \$900.00 per month. In renting it to him we could have an agreement that he could not put in an outside wire, and I believe the business alone that we would secure from him would be far more than any business that we may lose through renting it to him. We have tried to rent it several times to merchants, but the most we can possibly get it seems, is \$500.00 per month. I have talked it over with the architect regarding putting a stairway in, and renting the upstairs as offices, but find that is not practical, as the stairway would use too much valuable frontage. Would also like to know what you think of this matter.

I am thoroughly disgusted with Fraser's work as far as I can see from here. My idea at the present time before talking to Fraser, is that we could have Webber handle all the advertising from Calgary, Edmonton and Saskatoon and Regina. He is not an advertising man, I know, but being a newspaper man he has a foundation for this work.

I received a very pleasant surprise in looking over our stock position here. With the present market prices, we are probably less than \$740,000 to the bad, compared to two and one-half million over a month ago or so.

I am also convinced that the trading should be left alone here as much as possible in the hands of Bury and Matthew. I am attempting to get closer relations between Bury and Kimmerly by having Bury send in to Shaughnessy, Masson and yourself a review of what has taken place in the past few months, with the different problems

RECORD
 In the
 Supreme Court
 of British
 Columbia.
 Exhibit 80.
 (Cont'd)

they have had to contend with, and also Kimmerly's so-called interference in their trading.

I am also writing a letter to Masson regarding our financial position here, giving the reasons for the wide fluctuations in our bank balance and also in our stocks.

Regarding telegraph operators, I believe Calgary operators are probably better than at any other Branch, and from my talks and observations, believe they can be thoroughly trusted.

I expect to go to Vancouver the latter part of this week and will have a show-down with D. If half the stories that x x has told me regarding him are true, he should certainly be put in his place. I believe I can handle this situation to your satisfaction. I am also very anxious for the auditors in Vancouver to get started on their work. I do not believe they will find much wrong in this office as regards securities lost etc. It is much more likely that something of that nature might happen in Vancouver than here. 10

I am anxious to receive your letters, which are on the way to me at the present time, and will follow your instructions closely. I believe that within two or three weeks time, my health will be very much improved and I will also have a real grasp of the entire situation in the West. 20

Regarding Stedman, I have changed my previous ideas of him. I now really believe that he is doing a fine work and is a real asset to the Organization. He is on the job here every day and takes a keen interest in our business.

Kindest regards to yourself, Mrs. Solloway and the family.

Very truly yours,

1444/30
 SUPREME COURT OF B. C.
 VANCOUVER REGISTRY

Exhibit No. 80.
 Johnson vs. Solloway Mills

Put in by P. Date 15/12/31.
 "W. H. A."
 Registrar.

EXHIBIT 21.

RECORD

May 29th. *							
	1200	Associated	4.45			5430.00	
	50	"	4.25			212.50	
						<u>5552.50</u>	

*In the
Supreme Court
of British
Columbia.*
Exhibit 21.

Mrs. Maisie Graham,
5751 Vine St. May 29, 1929.

10	50	Associated	4.25	212.50	2.50	215.00
	B Delivery					

Theo. Frontier May 29, 1929.

	100	Associated Oil	4.45	445.00	5.00	450.00
	R. Open					

Theo. Frontier May 29/29.

	1000	Associated Oil	4.45	4450.00	50.00	4500.00
	E. Open					

Denbigh Dickinson &
Greathed No. 1.

20	SOLD TO					May 29th.
				Less		
	1000	Associated Oil	4.45	4450.00	5.00 1.35	4443.65
	W. Delivery					

1444/30
SUPREME COURT OF B. C.
VANCOUVER REGISTRY

Exhibit No. 21.
Johnson vs. Solloway Mills

Put in by P. Date 8/12/31.

30 "W. H. A."
Registrar.

RECORD

*In the
Supreme Court
of British
Columbia.*

Exhibit 4.
(Excerpt)

EXCERPT EXHIBIT 4.

THE VANCOUVER STOCK EXCHANGE

CLEARING HOUSE

SOLLOWAY, MILLS & CO.

Transaction date
May 29/29

Office Copy

Clearing Date
May 31/29

Sheet No. 1

To Deliver to

10

Broker	No. Shares	Stock	Price	Amount	Cert. No.
Miller	50	Assoc. Oil	4.25	212.50	
Gelletly	100	Assoc. Oil	4.45	445.00	
"	100	Assoc. Oil	4.45	445.00	

To Take from

Broker	No. Shares	Stock	Price	Amount	
Miller	50	Assoc. Oil	4.25	212.50	
Gelletly	100	Assoc. Oil	4.45	445.00	
Great'hd	1000	Assoc. Oil	4.45	4450.00	20

RECORD

*In the
Supreme Court
of British
Columbia.*

EXHIBIT 63.

Phone 273
Mr. E. P. Coles,
Monte Creek, B. C.

Statement

P.O. Box 122 Exhibit 63.

In Account With

THEO. FRONTIER & CO. LTD.

Real Estate, Insurance and Financial Agents

386 Victoria Street

KAMLOOPS, B. C.

10 Clients are Kindly Requested to Make Payments Promptly
June 11th, 1929.

Date	Bght. Sold	Stock	Price	Bkg.	Debit	Crdt.	Mar. Bal.
May 22		Balance as per last statement					125.46
May 27		Interest to date			1.93		
June 10	50	A. P. Con.	4.00	2.53		197.47	
June 12	50	Spooner	1.50	2.00	77.00		Cr. 70.08
							6.92
		Over Margin					
							\$123.08

20 1444/30
SUPREME COURT OF B. C.
VANCOUVER REGISTRY

Exhibit No. 63.

Johnson vs. Solloway Mills

Put in by P. Date 10/12/31.

"W. H. A."

Registrar.

RECORD
 In the
 Supreme Court
 of British
 Columbia.
 Exhibit 85.

EXHIBIT NO. 85.

A. P. CONSOLIDATED.

BUY CONFIRMATIONS FOR JULY 19, 1929

Customer—	No. of Shares	Price	Customer—	No. of Shares	Price	
Theo. Frontier & Co.	100	4.03	G. W. Marriott	100	4.09	
" " "	100	4.03	" " "	50	3.99	
" " "	100	4.06	O. Hughes	50	4.08	
			H. R. Ripstien	50	4.08	
Total	300		Denbigh Dickinson			10
Interior Investm't Co.	50	4.00	(Sold to)	50	3.97	
" "	100	4.03				
" "	200	4.00	Total	1325		
Sheppard McIntosh	50	4.00	House	1000	3.91	
Winnipeg Office	25	4.00	"	100	3.90	
" "	50	3.97	"	15	3.92	
Calgary Office	100	3.97	"	200	3.87	
" "	100	3.98				
" "	100	3.99	Total	1315		
T. W. Cox	100	3.95	TOTAL	2940		20
Mrs. C. Parkinson	100	4.00				
Mrs. I. C. MacDonald	50	3.92				

SELL CONFIRMATIONS FOR JULY 19, 1929.

Customer—	No. of Shares	Price	Customer—	No. of Shares	Price	
Interior Investm't Co.	25	4.04	Denbigh Dickinson			
McGregor & Elliott	200	4.08	(Bought from)	300	4.08	
Calgary Office	100	4.00	Denbigh Dickinson			
" "	1000	4.04	(Bought from)	1000	4.04	30
" "	500	4.07	Denbigh Dickinson			
" "	600	4.02	(Bought from)	300	4.00	
" "	500	4.09	Mary Frost	50	4.04	
" "	400	4.00	Dr. C. S. Dawe	100	4.04	
Denbigh Dickinson			J. W. Peacock	200	4.10	
(Bought from)	500	4.07	Winnipeg Office	50	4.10	
Denbigh Dickinson			(Brought forward 7675)			
(Bought from)	200	4.10	Winnipeg Office	100	4.00	
Denbigh Dickinson			Sheppard & McIntosh	100	4.10	
(Bought from)	600	4.02	"	25	4.04	40
Denbigh Dickinson			Saskatoon	200	4.00	
(Bought from)	50	4.10				
Denbigh Dickinson			Total	425		
(Bought from)	500	4.09	TOTAL	8100		
Denbigh Dickinson						
(Bought from)	500	4.00				

VANCOUVER CLEARING HOUSE SHEET FOR JULY 19,
1929 SHOWING ALL TRANSACTIONS IN THIS STOCK
ON THE VANCOUVER STOCK EXCHANGE.

RECORD
in the
Supreme Court
of British
Columbia.
Exhibit 85.
(Cont'd)

Bought of Broker—		No. of Shares	Price	Sold to Broker—		No. of Shares	Price
	Branson	100	3.95	Denbigh Dickinson	600	4.02	
	"	100	3.92	" "	200	4.10	
	Continental	25	4.00	" "	500	4.07	
	Denbigh Dickinson	50	3.97	" "	50	4.10	
10	Gelletly	200	4.00	" "	500	4.09	
	"	200	4.00	" "	500	4.00	
	Miller	100	3.98	" "	1000	4.04	
	"	25	3.90	" "	300	4.08	
	Oliver	100	3.97	" "	300	4.00	
	Taylor	150	3.99	Continental	25	4.00	
	"	100	4.03	Gelletly	200	4.00	
	Clark	200	4.08				
	"	100	4.08				
	Gelletly	100	4.06				
20	Miller	100	4.02				
	"	200	4.03				
	"	200	4.03				
	Taylor	100	4.09				
	Total	2350		TOTAL	4175		

RECORD
 In the
 Supreme Court
 of British
 Columbia.
 Exhibit 85.
 (Cont'd)

EXHIBIT 85.

PEND OREILLE.

BUY CONFIRMATIONS FOR MARCH 13, 1929.

Customer—	No. of Shares	Price
Theo. Frontier & Co.	20	10.75

SELL CONFIRMATIONS FOR MARCH 13, 1929.

Customer—	No. of Shares	Price	
Mrs. A. B. McKenzie	20	11.40	
Chaffey Fraser	50	10.50	
Total	70		10

VANCOUVER CLEARING HOUSE SHEET FOR MARCH 13,
 1929, SHOWING ALL TRANSACTIONS IN THIS STOCK
 ON THE VANCOUVER STOCK EXCHANGE

Bought of Broker—	No. of Shares	Price	Sold to Broker—	No. of Shares	Price	
Miller	20	10.75	C. E. Brown	20	11.40	
"	100	10.50	Miller	275	10.50	20
			Hogg	25	10.50	
Total	120		Total	320		

RECORDED
 In the
 Supreme Court
 of British
 Columbia.
 Exhibit 85.
 (Cont'd)

EXHIBIT 85.

DUTHIE.

BUY CONFIRMATIONS FOR FEBRUARY 14, 1929.

Customer—	No. of Shares	Price
Theo. Frontier & Co.	500	.52

SELL CONFIRMATIONS FOR FEBRUARY 14, 1929.

Nil.

VANCOUVER CLEARING HOUSE SHEET FOR FEBRUARY
 10 14, 1929, SHOWING ALL TRANSACTIONS IN THIS
 STOCK ON THE VANCOUVER STOCK EXCHANGE

Bought of Broker—	No. of Shares	Price	Sold to Broker—	No. of Shares	Price
Miller Court	500	.52			Nil.

1444/30
 SUPREME COURT OF B. C.
 VANCOUVER REGISTRY

Johnson vs. Solloway Mills

20 Put in by P. Date 15/12/31.
 "W. H. A."
 Registrar.

RECORD
 In the
 Supreme Court
 of British
 Columbia.
 Exhibit 85.
 (Cont'd)

CALGARY TRADING POSITION AS SHOWN
 IN EXHIBITS 90 AND 91.

The Calgary Ledgers show Calgary office short in shares traded in by Plaintiff at all times material to the action with the following exceptions:

Associated — Long position at all times

Home Oil	.....April	long	90	
"	.....May	short	3099	
"	.....June	"	1807	
"	.....July	"	2367	10
"	.....Aug.	"	4505	
"	.....Sept.	"	2711	
"	.....Oct.	"	1878	
Mayland Oil	.....Feb.	long	6125	45,499.11
"	.....Mar.	"	3385	65,814.11
"	.....Apr.	"	11102	
"	.....May	"	20054	
"	.....June	"	20194	
"	.....July	"	19959	26,739.61
"	.....Aug.	"	25229	20
"	.....Sept.	"	25249	

The Calgary Office had no position in Mining Stocks dealt in by Plaintiff.

Calmont

These two columns in red ink
on original document

DATE	BOUGHT	SOLD	PRICE	DR.	CR.	BALANCE	POSITION
1929							
Aug 31		Bal. Forward				38970958	52.942
Sep 3		1110			557220	39528178	54.952
4		25	4.92		12300		
✓		80	4.95		39600		
✓		165	5.00		82500		
✓		20	5.05		10100		
✓	100		Feb	44000			
✓	300		4.80	144000			
✓	270		4.87 1/2	141375			
✓	12		4.85	5820			
✓		10	4.90		4900		
✓		5	4.95		2475		
✓		35	4.92 1/2		17238	39362096	53.690
✓	30		5.00	15000			
✓	325		4.45	144625			
✓	30		4.47 1/2	13426			
✓		250	4.50		112500		
✓		100	4.55		45500		
✓		40	4.47		17880		
✓		20	4.60		9200		
✓		35	4.41		15435	39389560	53.750
7	165		4.70	77550			
✓	100		4.60	46000			
✓		50	4.50		22500		
✓		50	4.65		23250		
✓		10	4.80		4800	39316560	53.595
9	70		4.57	34210			
✓		5	4.62		2310		
✓		320	4.65		148800		
✓		1225	4.66		570850		
✓		300	4.67		140100		
✓		100	4.67 1/2		46750		
✓		15	4.70		7050		
✓		10	4.60		4600	40202745	55.495
10	470		60000	38000		40164745	55.025
✓	200		4.00	80000			
✓	150		3.95	59250			
✓	720		3.80	273600			
✓	600		3.97 1/2	238500			
✓	5		3.90	1950			
✓		300	4.05		121500		
✓		720	3.85		277200		
✓		200	3.82 1/2		76500	39986645	54.570
11	300		4.02 1/2	80500			
✓	100		4.03	40300			
✓		270	4.00		108000		
✓		210	4.05		85050		
✓		30	4.10		12300	40071195	54.780

1444/30
SUPREME COURT OF B. C.
VANCOUVER REGISTRY
Exhibit No. 90
Johnson vs. Solloway Mills
Put in by P. Date 16/12/31
W. H. A.
Registrar

EXHIBIT 56.

RECORD

		Theo. Frontier & Co., Kamloops, B.C. Clients Acts as at Sept. 5/29.		In the Supreme Court of British Columbia. Exhibit 56.	
	Name & Address	Margin Stock	Cash Stocks	Dr. Bal.	Under Margin
	R. Alexander, Black Pool, B.C.		3000 Grandview	675.37	675.37
	R. L. Andrews 5903 Larch St., Vancouver, B.C.	100 Dalhousie			
10	R. H. Aitken	100 Noble Five 100 Reeve's McD.	100 Ruth Hope	341.10	224.60
	Wm. Abson	50 Br. Dom.	100 Grandview	40.10	13.85
	H. E. Alton		100 Grandview	18.10	18.10
	Mrs. E. W. Alton	10 Freehold 20 McDougal N	200 Grandview	62.85	38.85
	R. B. Askew	100 A P Cons		197.55	.....
	R. H. Alton	100 Mid West		25.60	.....
	Dr. J. Aylwin ...	100 Regent		26.70	1.70
	F. Adams	50 McDougal N 200 Illinois Alta.		207.95	91.70
20	H. Abson	50 Br. Domin.		23.15	.....
	A. E. Andrews ...	20 Dalhousie		38.25	2.25
	P. Austin	25 United		10.00	.....
	T. Bral	300 Assoc. Oil 100 South W. P. 400 United 50 McDoug. Ex	Short	10,171.12	9,466.12
	Wm. Brennan	200 Baltac 200 Sunlight 200 Associated	2000 Grandview	3,494.35	2,839.35
30	Alex. Bethune ...		500 Grandview	75.55	75.55
	Mrs. L. Sadlier- Brown	200 Regent		55.15	3.15
	N. Sadlier-Brown	200 Sunlock	1100 Grandview	1,324.25	1,129.25
	Bral & Sainas ...	100 South W. P. 300 A. P. Cons.		851.25	.....
	S. W. Barton	30 Dalhousie 50 Illinois Alta. 50 Spooner		107.50	.....
40	J. R. Bromley ...	50 Illinois Alta.		17.70	.....
	J. Bann	100 Br. Domin. 100 Mercury		349.40	241.90
	Mrs. L. T. Blair ..	200 Mid West		62.35	2.35
	K. M. Brown	100 Br. Domin.		161.49	108.99
	G. D. Brown	50 Regent		15.70	2.70
	F. J. Bayliss	100 Br. Domin. 200 Calmont		395.80	.....
	Mrs. Alice Bral ..			11.35	.....
50	R. H. Campbell ..	500 Mid West 300 Hargal 300 Br. Domin.	3000 Grandview	978.40	378.40
	C. A. Crysdale ...	100 Sunlock 200 Whitewater	500 T. Richfield		

RECORD

*In the
Supreme Court
of British
Columbia.*

Exhibit 56.
(Cont'd)

EXHIBIT 56. (Cont'd)

Name & Address Vancouver, B C	Margin Stock	Cash Stocks	Dr. Bal.	Under Margin
	100 Sterling Pac		298.45	.....
F. W. Carr	100 Mercury		25.45	25.45
L. Coyne		100 Devenish	266.65	266.65
Dr. H. G. Chish'lm Tranquille, B C	100 Sherritt Gor	500 Grandview	368.30	18.30
J. A. Crawford	25 Reeves McD 10 Pend Oreille 50 McLeod 40 A. P. Cons. 10 Home	300 Grandview	424.40	49.50 Under
Mrs. E. Cheesman	100 Reev's McD.		42.80	.....
E. P. Coles	70 Spooner	400 Grandview	7.40	.....
A. C. Carr	50 Br. Domin.		18.00	.....
Wm. Crossley			8.50	81.50
Miss M. Carment	40 Br. Domin.		17.35	..... 20
H. J. Clemson	100 Hargal		75.70	.....
Mrs. D. Collier ..	100 Illinois Alta.		38.35	.....
Mrs. J. J. Carment	Mrs J. J. Carment	30 Illinois Alta.	11.40	.....
C. H. Charfield ..	25 Dalhousie		41.75	.....
Barney Cooper	100 Sterling Pac		225.00	118.50
Ed. Docker	50 A. P. Con. 50 United		126.60	47.35
Miss H. R. Dixon Moncton, N.B.	2 Noranda 100 Illinois, Alta. 150 Br. Domin. 100 Mercury	200 T. Richfield 250 Grandview		30
			719.00	480.75
V. J. Deakin	100 Sherritt Gor		418.60	63.60
Tranquille, B C				
Geo. S. Dawson....	100 Spooner		88.30	23.30
S. W. Davis.....		200 Grandview	39.60	39.60
Walhachin, B.C.				
Miss Jeanne Drouin	50 Br. Domin.		75.70	50.70 40
Wm. Douglas.....		1000 Grandview	521.90	521.90
Miss Duke	50 Baltac		84.40	.....
Mrs. Evelyn S. Dunn	100 Illinois Alta.			
934 Pacific St. Vancouver, B.C.	100 Br. Domin.		114.30	21.80
J. Duncanson	50 Br. Domin. 50 Spooner		60.95	1.80
W. O. Ellis	10 Noranda 5 Int. Nickel		474.25	45.00 50
Mrs. G. H. Ellis....	5 Int. Nickel		99.70	.....
D. P. Emson	50 United		33.00	.....
Tranquille, B.C.				

EXHIBIT 56. (Cont'd)

					RECORD
Name & Address	Margin Stock	Cash Stocks	Dr. Bal.	Under Margin	<i>In the Supreme Court of British Columbia.</i>
Theo. Frontier (Company)	4350 Br. Domin.	1000 Topley			Exhibit 56. (Cont'd)
	475 Spooner	250 Signal Hill			
	700 Sunloch	450 Blk Diam'd			
	235 McLeod	100 Madison			
	450 Reeves McD	1000 Ore. Cop.			
10	1550 Illinois Alta.	22600 Grandview			
	1100 A. P. Cons.				
	260 So. West P.				
	75 McDougal N				
	200 Mercury				
	35 Home				
	400 Vulcan				
	400 Freehold				
	40 Pend Oreille				
	1000 Golconda				
20	400 Associated				
	300 Sunlight				
	500 Baltac				
	100 Mayland				
	200 Regent				
	80 Quemont				
	50 Geo. Copper				
	200 Calmont				
	500 United	(\$24,680.75)	63,072.39	50,732.00	
30	Ferguson Bro.	100 Spooner			
		100 Br. Domin.			
		100 United			
		100 Mercury	213.45	.....
	Weston Frost	200 McDoug. N.			
		100 Spooner			
		50 Mid West			
		100 Mayland	3,629.20	2,924.20	
	A. R. Field	200 Spooner	592.45	462.45	
	J. Ferguson	10 Pend Oreille	34.60	9.00	
	James Fill	100 Br. Domin.			
40		400 Grandview			
		100 T. Richfield	323.95	271.00	
	Bert Fiddes	200 Grandview	108.30	108.30	
	Kelowna				
	Wm. Franks	300 Mid West	115.80	25.80	
	Herb. Fromhart..	25 McD'g'l Ex.			
		50 Illinois Alta.	49.35	.....
	Cecil Gower	500 Grandview	96.65	96.65	
	Arch. Galloway....	300 So. W. Pete.			
		100 Home	1,760.25	60.00	
	N. Gammond	500 Grandview	344.20	344.20	
50	G. Garfield	50 Dalhousie			
		200 Mid West	135.15	.....
	Mrs. L. G. Gray....	30 Freehold	16.15	.....
	W. S. Groat	80 Com'nw'lth	38.90	.....
	Tranquille, B.C.				
	C. B. Hambling....	100 Sherritt Gor			
		1500 Grandview			
		500 Great West	863.00	508.00	

RECORD

EXHIBIT 56. (Cont'd)

*In the
Supreme Court
of British
Columbia.*

Exhibit 56.
(Cont'd)

Name & Address	Margin Stocks	Cash Stocks	Dr. Bal	Under Margin
Geo. M. Harman.. Princeton, B.C.	100 Wright H. 100 M'n'g. Corp. 200 Illinois Alta.	1000 Grandview		
F. Hartline	100 Illinois	1000 Grandview 500 Rufus Arg.	910.15 884.85	574.00 844.85
C. M. Hampton....	100 Br. Domin. 100 Mercury	200 Grandview	719.15	601.00
L. Herod	100 Calmont	150 Great West	662.85	312.85
P. Herod	500 Mid West 200 Regent 50 Home 200 Calmont	2000 Grandview 150 Great West 500 Devenish		
W. J. Ham		300 Grandview 350 Oregon C.	197.38	197.38
Mrs. P. Herod	200 Illinois Alta. 100 Regent	500 Grandview	223.50	117.50
Mrs. James Hall..		100 Topley R. 200 Grandview	50.40	50.40
Percy D. Harris....	50 Illinois Alta.	50 Devenish	29.70	9.70
Miss R. Homfray	100 A. P. Con. 100 Calmont 100 Spooner 200 Okalta, new		772.70	.....
Dr. R. W. Irving..	1000 Spooner 275 McDoug. N.	13000 Grandview	2,996.25	2,146.87
R. W. Irving (Trust)	600 Vulcan 600 Illinois Alta. 200 Reeves McD	500 Grandview	1,788.80	1,104.00
E. Jodouin	100 Mercury	250 Grandview	395.60	340.60
W. H. Joll	100 Spooner	200 Blk. Diam.	108.20	43.20
Kamloops Auto Camp Ltd.	100 Mercury	250 Grandview 200 Topley R.	781.35 157.75	726.35 87.75
T. Kuzma	200 Golconda		2.50	2.50
G. F. Kennedy Westwold		500 Grandview	262.55	262.55
Lendrum (Co.)....				
Miss M. E. Lauder	30 Noranda 300 Sherritt Gor 100 Spooner 100 McDoug. N.	1000 Grandview	3,456.50	1,286.50
G. Walter Lyons..	50 Calmont	250 Grandview	176.80	51.80
A. N. Low	1300 Whitewater			
Tranquille, B.C.	100 Dalhousie 100 Home 200 Spooner		1,108.70 148.40	.....
A. D. Lapp, Dr.... Tranquille, B.C.			102.40	82.40
R. Lansburg	50 Illinois Alta.		87.00	.....
Chas. E. Lawrence	50 Calmont			

EXHIBIT 56 (Cont'd)

				RECORD	
Name & Address	Margin Stocks	Cash Stocks	Dr. Bal.	Under Margin	<i>In the Supreme Court of British Columbia.</i>
A. R. Levi	50 Sherritt Gor		189.60	11.00	Exhibit 56. (Cont'd)
Tranquille, B.C.					
Mrs. Thos. Little			6.50	6.50	
W. A. Lammers ..					
Chase					
10 C. Lake	100 United		47.65	.....
(Tranquille)					
H. A. B.					
Motherwell	200 Reeves McD	300 Grandview			
Tranquille, B.C.	100 Sherritt Gor				
	50 Pend Oreille				
	100 Freehold				
	20 Home				
	100 Illinois Alta.				
	100 Spooner				
	200 Com'nw't'h				
20	50 Geo. Cop.				
	200 Whitewater		1,356.25	.....
D. Menzies		400 Grandview	72.10	72.10	
Mrs. A. L.					
Marshall					
C. J. Miller	150 Illinois Alta.		53.25	.....
C. Martinson .....			.38	.38	
G. E. Malcolm	100 Regent		13.65	.....
W. Jas. Moffat....	100 Mid West				
	90 McDoug. Ex				
30	50 McDoug. N.		224.40	.....
A. R. Muirhead...	100 Regent		63.60	37.60	
Mrs. J. A. Moore	50 McDoug. N.				
	200 Br. Domin.		104.90	.....
Leslie J. Moore....	100 Br. Domin.				
	100 Illinois Alta.		71.10	.....
Mrs. Ruby					
Manchester	100 Mercury		51.05	.....
Alex. McIsaac	100 Freehold				
Birch Isl., B.C.	20 Home	2000 Grandview	304.30	.....
40 J. H. McKinnon..		500 Grandview	85.05	85.05	
J. A. H.					
McQuarrie	100 Illinois Alta.				
	10 C. N. S. Ins.	Stock @ \$20.00	134.30	.....
W. A. McGill	100 Regent	250 Grandview	70.95	45.00	
D. H. McLean		100 Top. Rich.	155.00	155.00	
Miss Yvonne					
McMillan	100 Br. Domin.	250 Grandview	474.80	367.30	
	100 Mercury				
S. A. McQuarrie	100 Regent	100 Top Rich.	38.85	12.85	
50 Dr. T. P.					
McGowan		200 Grandview	7.86 Cr.		
Tranquille, B.C.					
M. McKenzie	1000 Br. Domin.	1000 Grandview			
	500 Illinois Alta.		1,025.30	300.30	
Mrs. May M.					
McLellan	50 Br. Domin.		14.55	.....

RECORD

EXHIBIT 56. (Cont'd)

*In the
Supreme Court
of British
Columbia.*

Exhibit 56.
(Cont'd)

Name & Address	Margin Stocks	Cash Stocks	Dr. Bal.	Under Margin
Miss M. McKibbin	25 Spooner			
	50 Illinois Alta.		36.25	.....
G. F. McPherson..	200 McDoug. Ex			
	100 Illinois Alta.			
	100 Spooner		266.20	.....
A. T. McDonnell..	100 Calmont		156.20	.....
Jas. McCutcheon..	100 Mercury			10
Tranquille, B.C.	200 United			
	200 Baltac		523.71	166.71
Dr.G.R. Nimmons	150 United	100 Ruth Hope		
	200 Illinois Alta.			
	500 Spooner			
	500 Br. Domin.		1,836.75	1,038.75
	50 McDoug. N.			
Miss C. L. Nuyens	100 Br. Domin.	300 Grandview	538.35	43.35
	100 Mercury		13.80	13.80
Robt. Negrean.....		1000 Grandview	33.60	Cr. 20
Dr. A.G. Naismith			35.11	Cr.
A. E. Nadin		500 Grandview	90.15	90.15
C. F. O'Connor				
Edmonton, Alta				
Mrs. C. F.				
O'Connor		500 Grandview	89.95	89.95
Edmonton, Alta				
Eugene Osland			1.02	Cr.
B. S. Perry	50 Br. Domin.			
	50 A. P. Cons.			30
	100 United			
	50C. & E. Land			
	50 Richfield		608.20	216.25
J. R. Pyper	200 C. & E.	2000 Grandview		
	150 S. W. Pete.	300 Devenish	1,569.63	599.63
A. D. Paull	50 Illinois Alta.			
	100 United		82.25	.....
Mrs. E. Proudlock	25 A. P. Con.			
	25 Calmont		86.30	.....
M. V. Ryan	20 McLeod	500 Grandview	135.32	95.32
Vancouver, B C				40
Harry Sainas	50 Spooner		761.85	696.85
Kamloops, B C				
Wm. Smith	450 Spooner			
Kamloops, B C	100 C & E			
	100 Sherritt Gor			
	45 Noranda			
	50 Int. Nickel			
	500 Sterling Pac			50
	30 Pend Oreille			
	200 Br. Domin.			
	100 Calmont		6,372.95	.....

EXHIBIT 56. (Cont'd)

				RECORD	
Name & Address	Margin Stocks	Cash Stocks	Dr. Bal.	Under Margin	<i>In the Supreme Court of British Columbia.</i>
Geo. Sainas,		1500 Grandview	973.30	973.30	Exhibit 56. (Cont'd)
Kamloops, B C					
A. Sorenson	200 Reeve's McD.	1000 Grandview			
Kamloops, B C	400 Illinois Alta.		1,468.33	1,138.33	
A. Sunderland	100 Illinois Alta.		116.70	86.70	
Kamloops, B C					
10 W. H. Stout	100 McLeod				
Kamloops, B C	200 Spooner		1,825.30	1,495.30	
W. G. Sparks		650 Grandview			
		150 Ruth Hope			
		250 Topl'y Rich	501.50	501.50	
A. E. Sjoquist	100 A. P. Con.				
Kamloops, B C	500 Br. Domin.				
	10 Home				
	50 Assoc. Oil		863.70	51.55	
	200 United		227.05	227.05	
20 Thos. H. Sugden		1000 Grandview			
Kamloops, B C					
D. W. Strachan ..					
Dewdney, B. C.		3000 Grandview	1,404.10	1,404.10	
H. Strevens,	100 Illinois Alta.				
Kamloops, B.C.	100 Br. Domin.				
	100 Regent		112.55	.....
E. C. M. Shaw					
Mission, B. C.		100 Grandview	54.65	54.65	
Adam Schmidt ..	100 Regent				
30 Kamloops, B. C.	50 Spooner		162.70	104.20	
John F. Smith	1 Noranda	100 Grandview			
	2 Int. Nickel				
	100 Illinois Alta.		313.45	187.05	
E. E. Sutton	100 Midwest				
N. Kamloops	50 Assoc. Oil				
	350 United				
	50 Calmont		267.35	.....
Mrs. S. Soens		3000 Grandview	541.70	541.70	
Chas. Stevens		200 Devenish	40.45	40.45	
40 C. Simons	50 Illinois Alta.		18.20	.....
H. Stephens		75 Devenish	13.25	13.25	
V. Svienson .....			.35	.35	
A. E. Shaw	100 Pend Oreille		289.65	25.00	
Syndicate "A"		Cr. Bal.	14.10	.....
J. Trevors,	100 Sunlock	9000 Grandview			
Tranquille, B C	500 Whitewater		1,740.75	1,520.75	
A. H. Thacker,					
Kamloops, B C		250 Grandview	45.20	45.20	
F. Turner		100 Grandview	21.40	21.40	
50 Mjr. R. M. Taylor	100 A. P. Con.				
	100 Calmont		312.80	.....
R. M. Turner	50 Sterling Pac				
	50 Calmont		207.60	27.60	
Wm. Thompson,					
Tranquille, B C		500 Grandview	90.30	90.30	

RECORD

EXHIBIT 56. (Cont'd)

*In the
Supreme Court
of British
Columbia.*
Exhibit 56.
(Cont'd)

Name & Address	Margin Stock	Cash Stocks	Dr. Bal.	Under Margin
Tranq. Min. Synd A. K. Taylor, Monte Creek ..	100 Br. Domin. 50 Mercury		38.65 18.70	..........
L. D. Urquhart, Kamloops, B C		100 Grandview 100 Ruth Hope	122.35	122.35
R. F. Ure, Kamloops, B C	25 A. P. Con.		40.15	..... 10
J. Vanbuskirk, Kamloops, B C		2000 Grandview	575.55	575.55
R. Valentine, Tranquille, B.C.	500 Whitewater		126.25	.....
R. L. Van, Kamloops B C	75 Br. Domin. 50 A. P. Con. 70 United 50 Spooner 30 Southwest P 60 Calmont 50 Sunlight		557.10	80.00
Gerald Ward	500 Illinois Alta.	500 Grandview	293.10	93.10
W. B. Williamson North Bend B C	200 Whitewater		61.75	13.00
E. V. Whiting, Westwold, B C	150 Mercury 50 Br. Domin.		84.80	.....
Chas. M. Wagget, Kamloops, B C	50 Reeve's McD. 20 McLeod 40 Dalhousie	50 Oregon C.		
Miss S. L. Wright	600 Whitewater	2000 Grandview	517.34 574.30	363.00 426.30 30
Dr. S. A. Wallace Kamloops, B C	100 Merc. 25 Home		354.57	.....
Miss B. Wagget	12 Dalhousie			
J. Wilkinson	10 McDoug'll E			
Blue Rive, B C	10 Dalhousie 100 Midwest		56.40	.....
Mrs. D. Wallace, Kamloops, B C	50 Home		471.95	.....
E. J. White, Kamloops, B C	100 Illinois Alta. 100 Br. Domin.		67.55	..... 40
M. P. Wetherall, Kamloops, B C	200 A. P. Con. 100 Calmont		849.85	157.82
B. W. Wolf	100 Illinois Alta.		39.55	.....

1444/30

SUPREME COURT OF B. C.
VANCOUVER REGISTRY

Exhibit No. 56.

Johnson vs. Solloway Mills

Put in by D. Date 9/12/31.

"W. H. A."

Registrar.

50

RECORD

EXHIBIT 88.

*In the
Supreme Court
of British
Columbia.*
Exhibit 88.

\$6000.00	Due.....	Vancouver, B. C., Sept. 16, 1929.	
	At Sight.....	Pay to the order of	
		THE ROYAL BANK OF CANADA,	
Excise Stamp 2c		Vancouver, B. C.	
		Six Thousand Dollars.....	Dollars
Value received and charge to account of			
		Solloway, Mills & Co. Ltd.	10
		"W. L. McRae," Accountant	
		"W. E. Reynolds," Cashier	
To Theo. Frontier & Co. Ltd. Kamloops, B. C.		The property of The Royal Bank of Canada T.B.R/S 3611 Vancouver, B. C.	
The Royal Bank of Canada B. C. 3463 Kamloops, B. C.			20
		The Royal Bank of Canada PAID Sept. 19, 1929. 11 <hr/> 300 Kamloops, B. C.	
		ENDORSEMENT ON BACK	30
		Pay to the Order of Any Bank or Banker The Royal Bank of Canada 11 Vancouver, B. C.	
	<hr/> 4		
	1444/30		
	SUPREME COURT OF B. C. VANCOUVER REGISTRY Exhibit No. 88.		40
	Johnson vs. Solloway Mills Put in by P. Date 15/12/31. "W. H. A." Registrar.		

EXHIBIT 65.

LAND REGISTRY ACT.

I HEREBY CERTIFY that the paper writing hereto attached is a true and correct copy of the document deposited in my Office on the 26th day of November, 1930, and now in my custody of which it purports to be a copy as examined by me.

AS WITNESS my hand and Seal of Office at Kamloops, B. C., this 5th day of December, 1931.

10

“R. A. Branden”
Registrar.

Compared by
“V. & F. C.”

1444/30
SUPREME COURT OF B. C.
VANCOUVER REGISTRY

Exhibit No. 65.
Johnson vs. Solloway Mills

20 Put in by P. Date 10/12/31.
“W. H. A.”
Registrar.

RECORD

*In the
Supreme Court
of British
Columbia.*

Exhibit 65.
(Cont'd)

EXHIBIT 65.

CERTIFICATE TO BE ENDORSED ON ASSIGNMENT.

I, Richard Murray McGusty, Official Receiver of District No. 4, hereby certify that William Teasadle Johnston of Kamloops was at a meeting of creditors held on the second day of October, 1929, at the Plaza Hotel, Kamloops, duly appointed Trustee of the estate of Theo. Frontier & Company Limited, authorized assignors.

“R. M. McGusty”

Official Receiver.

Vernon Registry
Oct. 7, 1929.

10

Examined and Certified to be
a True Copy:

“R. M. McGusty”
Official Receiver.

EXHIBIT 65.

RECORD

THIS INDENTURE made in duplicate this 17th day of September, 1929.

*In the
Supreme Court
of British
Columbia.*

Exhibit 65.

IN PURSUANCE OF "THE BANKRUPTCY ACT"

BETWEEN:

<p>10 Law Stamp \$1.00 Vernon Registry Sept. 18, 1930. Examined and Certified to be a True Copy:</p>	<p>THEO. FRONTIER & COMPANY LIMITED, a corporation duly organized and carrying on business pursuant to the laws of British Columbia, and having its head office at the City of Kamloops, in the said Province, and (hereinafter called the Debtor) of the First Part,</p> <p style="text-align: right;">OF THE FIRST PART.</p> <p style="text-align: center;">—and—</p> <p>hereinafter called "the Trustee" of the second part.</p> <p style="text-align: right;">OF THE SECOND PART.</p> <p style="text-align: center;">—and—</p>
---	--

20 WHEREAS the Debtor is insolvent and desires to assign and abandon all its property for distribution among his creditors in pursuance of the said Act.

NOW THEREFORE THIS INDENTURE WITNESSETH that the debtor doth hereby assign, convey and assure unto a Trustee to be appointed by its creditors, and to his successors and assigns forever, all its property which is divisible among his creditors under and by virtue of the said Act.

30 To have and to hold all the said property unto and to the use of the said Trustee his successors and assigns on the trusts and to and for the uses, intents and purposes provided by the said Act.

Signed and sealed at the City of Kamloops in the Province of British Columbia in the presence of:

Witness:—
"C. H. Dunbar"
Solicitor
Kamloops, B. C.

THEO. FRONTIER & CO. LTD.
"Theo. Frontier" Pres.
"Wm. Brennan" Sec.

RECORD
*In the
Supreme Court
of British
Columbia.*
Exhibit 65.
(Cont'd)

EXHIBIT 65.

Canada
Province of British Columbia

I, Clyde Harvey Dunbar of the City of Kamloops in the Province of British Columbia, solicitor, make oath and say.

1. That I was present and saw the within Indenture and duplicate thereof, duly signed, sealed and executed by Theo. Frontier & Company Limited, one of the parties thereto, at the City of Kamloops in the Province of British Columbia.

2. That I know Theo. Frontier and William Brennan respectively 10 the President and Secretary of the said Company and each of them is of the full age of twenty-one years.

3. That I am a subscribing witness to the said Indenture and duplicate.

Sworn before me at the
City of Kamloops in the
Province of British Columbia
this eighteenth day of
September A.D. 1929.

"Ernest Clark"
A Barrister etc.

"C. H. Dunbar"

20

Examined and Certified to be a
True Copy:
R. M. McGusty,
Official Receiver in
Bankruptcy.

Filed the 26th day of Nov., 1930,
at the hour of 11:00 a.m.
R. A. Braden,
Registrar.
J. R.

30

EXHIBIT 40.

NATION-WIDE CHAIN OF PRIVATE AND CORRESPONDENTS' OFFICES CONNECTED BY PRIVATE WIRES.

SOLLOWAY, MILLS & CO., LIMITED

STOCKS
BONDS
GRAIN
TELEPHONES:
SEYMOUR 2688

SPECIALISTS IN MINES, OILS, GRAIN & INDUSTRIALS
I. W. C. SOLLOWAY — A. E. IRVINE — R. J. CAMERON
MEMBERS STANDARD STOCK AND MINING EXCHANGE
OFFICIALS OF THE COMPANY ARE ALSO MEMBERS OF THE
CHICAGO BOARD OF TRADE, WINNIPEG GRAIN EXCHANGE
CHICAGO CURB EXCHANGE ASSOCIATION
WINNIPEG GRAIN & PRODUCE EXCHANGE CLEARING ASSOCIATION
GRAIN DIVISION, VANCOUVER MERCHANTS' EXCHANGE
VANCOUVER STOCK EXCHANGE, CALGARY STOCK EXCHANGE
SEATTLE STOCK EXCHANGE
545 GRANVILLE STREET,
VANCOUVER, B.C.

MONTREAL, OTTAWA,
BROCKVILLE, HAMILTON,
BUFFALO, N.Y., LONDON,
WINNIPEG, BRANDON,
SASKATOON, CALGARY,
EDMONTON, VANCOUVER,

THREE OFFICES IN TORONTO:
METROPOLITAN BLDG.
19 KING ST. EAST
ADELAIDE AT BAY

40

TO . Theo Frontier & Co.,
c/o J. R. Pyper.

DATE Oct. 7, 1929.

WE HAVE THIS DAY **SOLD** FOR YOUR ACCOUNT AND RISK AS UNDERNOTED:

SHARES	SECURITY	PRICE	AMOUNT	BROKERAGE	TAX	NET AMOUNT	SOLD TO
44,000	Grandview	.26-	11,440.00				Sg-15
4,000	"	.27-	1,080.00				
			12,520.00	240.00	48.00	12,232.00	
R.	Open						

PURCHASES OR SALES ARE MADE SUBJECT IN ALL RESPECTS TO THE RULES, BY-LAWS AND CUSTOMS EXISTING AT THE TIME AT THE EXCHANGE WHERE EXECUTED; AND ALSO WITH THE DISTINCT UNDERSTANDING THAT THE ACTUAL DELIVERY IS CONTEMPLATED, AND THAT THE PARTY GIVING THE ORDERS AGREES TO THESE TERMS. IT IS AGREED BETWEEN BROKER AND CUSTOMER THAT ALL SECURITIES FROM TIME TO TIME CARRIED IN THE CUSTOMER'S MARGINAL ACCOUNT, OR DEPOSITED TO PROTECT THE SAME MAY BE LOANED BY THE BROKER, OR MAY BE PLEDGED BY HIM, EITHER SEPARATELY OR TOGETHER WITH OTHER SECURITIES, EITHER FOR THE SUM DUE THEREON OR FOR A GREATER SUM, ALL WITHOUT FURTHER NOTICE TO THE CUSTOMER. IT IS FURTHER UNDERSTOOD THAT ON MARGINAL BUSINESS THE RIGHT IS RESERVED TO CLOSE TRANSACTIONS WITHOUT FURTHER NOTICE WHEN MARGINS ARE UNSATISFACTORY.

FORM 19-CFN-2

KINDLY NOTE REMARKS ON BACK

SOLLOWAY, MILLS & CO. LIMITED

NATION-WIDE CHAIN OF PRIVATE AND CORRESPONDENTS' OFFICES CONNECTED BY PRIVATE WIRES.

SOLLOWAY, MILLS & CO., LIMITED

STOCKS
BONDS
GRAIN
TELEPHONES:
SEYMOUR 2688

SPECIALISTS IN MINES, OILS, GRAIN & INDUSTRIALS
I. W. C. SOLLOWAY — A. E. IRVINE — R. J. CAMERON
MEMBERS STANDARD STOCK AND MINING EXCHANGE
OFFICIALS OF THE COMPANY ARE ALSO MEMBERS OF THE
CHICAGO BOARD OF TRADE, WINNIPEG GRAIN EXCHANGE
CHICAGO CURB EXCHANGE ASSOCIATION
WINNIPEG GRAIN & PRODUCE EXCHANGE CLEARING ASSOCIATION
GRAIN DIVISION, VANCOUVER MERCHANTS' EXCHANGE
VANCOUVER STOCK EXCHANGE, CALGARY STOCK EXCHANGE
SEATTLE STOCK EXCHANGE
545 GRANVILLE STREET,
VANCOUVER, B.C.

MONTREAL, OTTAWA,
BROCKVILLE, HAMILTON,
BUFFALO, N.Y., LONDON,
WINNIPEG, BRANDON,
SASKATOON, CALGARY,
EDMONTON, VANCOUVER,

THREE OFFICES IN TORONTO:
METROPOLITAN BLDG.
19 KING ST. EAST
ADELAIDE AT BAY

40

TO . Theo Frontier & Co.,
c/o J. R. Pyper,
Kamloops, B. C.

DATE Oct. 8 1929.

WE HAVE THIS DAY **SOLD** FOR YOUR ACCOUNT AND RISK AS UNDERNOTED:

SHARES	SECURITY	PRICE	AMOUNT	BROKERAGE	TAX	NET AMOUNT	SOLD TO
2000	Grandview	.26-	520.00	10.00	2.00	508.00	Sg-15
W	Open						

PURCHASES OR SALES ARE MADE SUBJECT IN ALL RESPECTS TO THE RULES, BY-LAWS AND CUSTOMS EXISTING AT THE TIME AT THE EXCHANGE WHERE EXECUTED; AND ALSO WITH THE DISTINCT UNDERSTANDING THAT THE ACTUAL DELIVERY IS CONTEMPLATED, AND THAT THE PARTY GIVING THE ORDERS AGREES TO THESE TERMS. IT IS AGREED BETWEEN BROKER AND CUSTOMER THAT ALL SECURITIES FROM TIME TO TIME CARRIED IN THE CUSTOMER'S MARGINAL ACCOUNT, OR DEPOSITED TO PROTECT THE SAME MAY BE LOANED BY THE BROKER, OR MAY BE PLEDGED BY HIM, EITHER SEPARATELY OR TOGETHER WITH OTHER SECURITIES, EITHER FOR THE SUM DUE THEREON OR FOR A GREATER SUM, ALL WITHOUT FURTHER NOTICE TO THE CUSTOMER. IT IS FURTHER UNDERSTOOD THAT ON MARGINAL BUSINESS THE RIGHT IS RESERVED TO CLOSE TRANSACTIONS WITHOUT FURTHER NOTICE WHEN MARGINS ARE UNSATISFACTORY.

FORM 19-CFN-2

KINDLY NOTE REMARKS ON BACK

SOLLOWAY, MILLS & CO. LIMITED

NATION-WIDE CHAIN OF PRIVATE AND CORRESPONDENTS' OFFICES CONNECTED BY PRIVATE WIRES.

SOLLOWAY, MILLS & CO., LIMITED

STOCKS
BONDS
GRAIN
TELEPHONE:
SEYMOUR 2688

SPECIALISTS IN MINES, OILS, GRAIN & INDUSTRIALS
I. W. C. SOLLOWAY — A. E. IRVINE — R. J. CAMERON
MEMBERS STANDARD STOCK AND MINING EXCHANGE
OFFICIALS OF THE COMPANY ARE ALSO MEMBERS OF THE
CHICAGO BOARD OF TRADE, WINNIPEG GRAIN EXCHANGE
CHICAGO CUBS EXCHANGE ASSOCIATION
WINNIPEG GRAIN & PRODUCE EXCHANGE CLEARING ASSOCIATION
GRAIN DIVISION, VANCOUVER MERCHANTS' EXCHANGE
VANCOUVER STOCK EXCHANGE, CALGARY STOCK EXCHANGE
SEATTLE STOCK EXCHANGE
425 GRANVILLE STREET,
VANCOUVER, B.C.

MONTREAL, OTTAWA,
BROCKVILLE, HAMILTON,
BUFFALO, N.Y., LONDON,
WINNIPEG, BRANDON,
SASKATOON, CALGARY,
DORCHSTER, VANCOUVER.
OFFICES IN TORONTO:
METROPOLITAN BLDG.,
19 KING ST. EAST
ADELAIDE AT BAY

86

TO . Theo Frontier
Kamloops B. C.

Oct. 17, 1929.
DATE

WE HAVE THIS DAY **SOLD** FOR YOUR ACCOUNT AND RISK AS UNDERNOTED:

SHARES	SECURITY	PRICE	AMOUNT	BROKERAGE	TAX	NET AMOUNT	SOLD TO
13000	Grandview	.22	2860.00 ✓				23000 Denbigh
32600	"	.22½	7335.00 ✓	270.50	54.10	11825.40	2100 Irwin
8500	"	.23	1955.00 ✓				1000 Celletly
			12150.00 ✓				3000 Clark
							500 Guardian
							20000 Randall
							4000 Crabbs
							500 Adams
	Open HP						

Sy-15

PURCHASES OR SALES ARE MADE SUBJECT IN ALL RESPECTS TO THE RULES, BY-LAWS AND CUSTOMS EXISTING AT THE TIME AT THE EXCHANGE WHERE EXECUTED, AND ALSO WITH THE DISTINCT UNDERSTANDING THAT THE ACTUAL DELIVERY IS CONTEMPLATED, AND THAT THE PARTY GIVING THE ORDERS AGREES TO THESE TERMS. IT IS AGREED BETWEEN BROKER AND CUSTOMER THAT ALL SECURITIES FROM TIME TO TIME CARRIED IN THE CUSTOMER'S MARGINAL ACCOUNT, OR DEPOSITED TO PROTECT THE SAME MAY BE LOANED BY THE BROKER, OR MAY BE PLEDGED BY HIM, EITHER SEPARATELY OR TOGETHER WITH OTHER SECURITIES, EITHER FOR THE SUM DUE THEREON OR FOR A GREATER SUM, ALL WITHOUT FURTHER NOTICE TO THE CUSTOMER. IT IS FURTHER UNDERSTOOD THAT ON MARGINAL BUSINESS THE RIGHT IS RESERVED TO CLOSE TRANSACTIONS WITHOUT FURTHER NOTICE WHEN MARKING AND UNSATISFACTORY.

KINDLY NOTE REMARKS ON BACK

SOLLOWAY, MILLS & CO. LIMITED

FORM 10-C.P.N.-2

Denbigh Dickinson & Greathed.
No 1.

BOUGHT FROM.
#####

Vancouver, B. C. Oct 17 1929

Oct. 17 1929.

86

20000	Grandview	.22½	4500.00				
5000	"	.23	1150.00				
			5650.00	51.25		5681.25	

W Delivery

DB

86

Oct. 17, 1929

20,000	Grandview	.22½	4500.00
5,000	do	.23	1150.00
			5650.00

19

527
EXHIBIT 41. (Excerpt)

NATION-WIDE CHAIN OF PRIVATE AND CORRESPONDENTS' OFFICES CONNECTED BY PRIVATE WIRES.

SOLLOWAY, MILLS & CO., LIMITED

STOCKS
BONDS
GRAIN

TELEPHONES:
SEYMOUR 2688

SPECIALISTS IN MINES, OILS, GRAIN & INDUSTRIALS
I. W. C. SOLLOWAY — A. E. IRVINE — R. J. CAMERON
MEMBERS STANDARD STOCK AND MINING EXCHANGE
OFFICIALS OF THE COMPANY ARE ALSO MEMBERS OF THE
CHICAGO BOARD OF TRADE, WINNIPEG GRAIN EXCHANGE
CHICAGO CURS EXCHANGE ASSOCIATION
WINNIPEG GRAIN & PRODUCE EXCHANGE CLEARING ASSOCIATION
GRAIN DIVISION, VANCOUVER MERCHANTS' EXCHANGE
VANCOUVER STOCK EXCHANGE, CALGARY STOCK EXCHANGE
SEATTLE STOCK EXCHANGE
545 GRANVILLE STREET,
VANCOUVER, B.C.

MONTREAL, OTTAWA,
BROCKVILLE, HAMILTON,
BUFFALO, N. Y., LONDON,
WINNIPEG, BRANDON,
SASKATOON, CALGARY,
EDMONTON, VANCOUVER.

THREE OFFICES IN TORONTO:
METROPOLITAN BLDG.
19 KING ST. EAST
ADELAIDE AT BAY

TO . Theo Frontier .

S. 30.
S. Jones - # 5147.

DATE Sept. 9, 1929.

WE HAVE THIS DAY **SOLD** FOR YOUR ACCOUNT AND RISK AS UNDERNOTED:

SHARES	SECURITY	PRICE	AMOUNT	BROKERAGE	TAX	NET AMOUNT	SOLD TO
1500	Grandview	.33	495.00	15.00	1.50	478.50	

Open

PURCHASES OR SALES ARE MADE SUBJECT IN ALL RESPECTS TO THE RULES, BY-LAWS AND CUSTOMS EXISTING AT THE TIME AT THE EXCHANGE WHERE EXECUTED; AND ALSO WITH THE DISTINCT UNDERSTANDING THAT THE ACTUAL DELIVERY IS CONTEMPLATED, AND THAT THE PARTY GIVING THE ORDERS AGREES TO THESE TERMS. IT IS AGREED BETWEEN BROKER AND CUSTOMER, THAT ALL SECURITIES FROM TIME TO TIME CARRIED IN THE CUSTOMER'S MARGINAL ACCOUNT, OR DEPOSITED TO PROTECT THE SAME MAY BE LOANED BY THE BROKER, OR MAY BE PLEDGED BY HIM, EITHER SEPARATELY OR TOGETHER WITH OTHER SECURITIES, EITHER FOR THE SUM DUE THEREON OR FOR A GREATER SUM, ALL WITHOUT FURTHER NOTICE TO THE CUSTOMER. IT IS FURTHER UNDERSTOOD THAT ON MARGINAL BUSINESS THE RIGHT IS RESERVED TO CLOSE TRANSACTIONS WITHOUT FURTHER NOTICE WHEN MARGINS ARE UNSATISFACTORY.

FORM 19-CFN-2

KINDLY NOTE REMARKS ON BACK

SOLLOWAY, MILLS & CO. LIMITED

NATION-WIDE CHAIN OF PRIVATE AND CORRESPONDENTS' OFFICES CONNECTED BY PRIVATE WIRES.

SOLLOWAY, MILLS & CO., LIMITED

STOCKS
BONDS
GRAIN

TELEPHONES:
SEYMOUR 2688

SPECIALISTS IN MINES, OILS, GRAIN & INDUSTRIALS
I. W. C. SOLLOWAY — A. E. IRVINE — R. J. CAMERON
MEMBERS STANDARD STOCK AND MINING EXCHANGE
OFFICIALS OF THE COMPANY ARE ALSO MEMBERS OF THE
CHICAGO BOARD OF TRADE, WINNIPEG GRAIN EXCHANGE
CHICAGO CURS EXCHANGE ASSOCIATION
WINNIPEG GRAIN & PRODUCE EXCHANGE CLEARING ASSOCIATION
GRAIN DIVISION, VANCOUVER MERCHANTS' EXCHANGE
VANCOUVER STOCK EXCHANGE, CALGARY STOCK EXCHANGE
SEATTLE STOCK EXCHANGE
545 GRANVILLE STREET,
VANCOUVER, B.C.

MONTREAL, OTTAWA,
BROCKVILLE, HAMILTON,
BUFFALO, N. Y., LONDON,
WINNIPEG, BRANDON,
SASKATOON, CALGARY,
EDMONTON, VANCOUVER.

THREE OFFICES IN TORONTO:
METROPOLITAN BLDG.
19 KING ST. EAST
ADELAIDE AT BAY

TO . Theo Frontier

S. J. Jones # 3614

DATE Sept. 7 1929.

WE HAVE THIS DAY **BOUGHT** FOR YOUR ACCOUNT AND RISK AS UNDERNOTED:

SHARES	SECURITY	PRICE	AMOUNT	BROKERAGE	TOTAL	BOUGHT FROM
100	Kootenay King.	.35	35.00	2.00	37.00	

ask.
Delivery

PURCHASES OR SALES ARE MADE SUBJECT IN ALL RESPECTS TO THE RULES, BY-LAWS AND CUSTOMS EXISTING AT THE TIME AT THE EXCHANGE WHERE EXECUTED; AND ALSO WITH THE DISTINCT UNDERSTANDING THAT THE ACTUAL DELIVERY IS CONTEMPLATED, AND THAT THE PARTY GIVING THE ORDERS AGREES TO THESE TERMS. IT IS AGREED BETWEEN BROKER AND CUSTOMER, THAT ALL SECURITIES FROM TIME TO TIME CARRIED IN THE CUSTOMER'S MARGINAL ACCOUNT, OR DEPOSITED TO PROTECT THE SAME MAY BE LOANED BY THE BROKER, OR MAY BE PLEDGED BY HIM, EITHER SEPARATELY OR TOGETHER WITH OTHER SECURITIES, EITHER FOR THE SUM DUE THEREON OR FOR A GREATER SUM, ALL WITHOUT FURTHER NOTICE TO THE CUSTOMER. IT IS FURTHER UNDERSTOOD THAT ON MARGINAL BUSINESS THE RIGHT IS RESERVED TO CLOSE TRANSACTIONS WITHOUT FURTHER NOTICE WHEN MARGINS ARE UNSATISFACTORY.

FORM 19-CFN-2

KINDLY NOTE REMARKS ON BACK

SOLLOWAY, MILLS & CO. LIMITED

EXHIBIT 89.

RECORD

*In the
Supreme Court
of British
Columbia.*

Due..... Vancouver, B. C., Oct. 4, 1929.

.....Demand.....Pay to the order of
THE ROYAL BANK OF CANADA, Vancouver, B. C

Exhibit 89.

Excise
Stamp 2c

Nine Thousand 00/100 Dollars

Value received and charge to account.

10	To W. T. Johnson Trustee Theo. Frontier & Co. Ltd. Estate Kamloops.	Solloway Mills & Co. Ltd. "W. L. McRae" Accountant. "W. E. Reynolds" Cashier.
	The Property of The Royal Bank of Canada TB.R./S 3817 Vancouver, B. C.	The Royal Bank of Canada PAID Oct. 7, 1929. 11 <hr/> 1380 Kamloops, B. C.

20 Accepted Oct. 7, 1929.
Payable at
Royal Bank
Kamloops, B. C.
W. T. Johnson
Trustee

ENDORSEMENT ON BACK

30 Pay to the Order of
Any Bank or Banker
The Royal Bank of Canada
11 Vancouver, B. C.

4

1444/30
SUPREME COURT OF B. C.
VANCOUVER REGISTRY

Exhibit No. 89.
Johnson vs. Solloway Mills

"W. H. A."
Registrar.

RECORD

*In the
Supreme Court
of British
Columbia.*

Exhibit 42.

EXHIBIT 42.

STATEMENT OF COLLATERAL IN HANDS OF
SOLLOWAY MILLS & CO. LTD. AND SOLD TO
DATE OF SELLING OUT OF ACCOUNT.

Stock—	No. of Shares	Date of Selling Out	Price as per Confirmation	Total
Grandview	6,800	Oct. 17, 1929	.221½	1,530.00
Continental Insurance Co.	33	Oct. 18, 1929	91.25	3,011.25
Reeves McDonald	100	Oct. 17, 1929	1.50	150.00
McLeod	50	Oct. 17, 1929	2.35	117.50
Amulet	100	Oct. 17, 1929	2.90	290.00
				\$5,098.75

1444/30
SUPREME COURT OF B. C.
VANCOUVER REGISTRY

Exhibit No .42.
Johnson vs. Solloway Mills

Put in by P. Date 9/12/31.
"W. H. A."
Registrar.

20

EXHIBIT 92.

September 11, 1930.

W. T. Johnson, Esq.,
Trustee, Theo. Frontier & Co. Ltd., in Bankruptcy,
Kamloops, B. C.

Dear Sir:

10 This is our permission in writing for you to commence an action in the Supreme Court of British Columbia against Isaac William Cannon Solloway, Harvey Mills, Solloway Mills and Company Limited and Solloway Mills (B. C.) Limited, in connection with matters relating to the property of Theo. Frontier and Company Limited, and more particularly in connection with all matters arising out of the dealings and transactions between Isaac William Cannon Solloway, Harvey Mills, Solloway Mills and Company Limited and Solloway Mills (B. C.) Limited and the said Theo. Frontier and Company Limited, and to prosecute the said action and all proceedings therein and all appeals therefrom until final judgment or settlement.

20 "F. R. Pyper"
"O. Galloway"
"A. E. Sjoquist"

Inspectors of the Estate of
Theo. Frontier & Company Limited,
In Bankruptcy.

1444/30
SUPREME COURT OF B. C.
VANCOUVER REGISTRY

30 Exhibit No. 92.
Johnson vs. Solloway Mills
Put in by P. Date 18/12/31.
"W. H. A."
Registrar.

RECORD

*In the
Supreme Court
of British
Columbia.*

Exhibit 83.

EXHIBIT 83.

STOCK STATEMENT NO. 1.

	Final Bal.	Balance	On Hand	To be Rec'd	To be Del'd	
Amer. Min. & Milling						
Aurum Mines						
Bayview						
Beaver Silver		1600	1200	400		
Big Missouri		1298	568	1030	300	
Bluebird						10
Cork Province	13775		12525	1250		
Cotton Belt						
Dalhousie Mining						
Dunwell						
Duthie						
George Copper		227	277	100	150	
George Enterprise						
George River		1060	1060			
Gladstone						
Golconda		300	100	1650	1450	20
Grandview		6130	7530	800	2200	
Independence						
Indian						
Inter C. & C.						
Jack Waite Cons.						
Kootenay Flo.						
Kootenay King		850	850			
Lakeview						
Leadsmith						
L. & L. Glacier Creek						30
Los Angeles		50	50			
Lucky Jim						
Marmot Metals		11000	11000			
Marmot River Gold						
Mohawk		350	150	1500	2000	
Morton Woolsey New.		2090	2090			
National Silver						
Noble Five		40	40	100	100	
Oregon Copper		1125	1125			
Pend Oreille		410	795	250	35	40
Pioneer						
Planet						
Porter Idaho						
Premier Border						

EXHIBIT 83. (Cont'd)

STOCK STATEMENT NO. 2.

RECORD

*In the
Supreme Court
of British
Columbia.*Exhibit 83.
(Cont'd)

	Final Bal.	Balance	On Hand	To be Rec'd	To be Del'd
		525	75	450	
		540	565	100	125
		4050	4550		500
		100		500	400
10					
		1200	300	900	
		30	20		
		35	135		100
20		13400	12900	500	
		2000	650	1350	
		67	33		100
		30550	30550	1000	1000
		1177	3092	200	2115
		4000		5600	1600
		900	900		
30					
		252	252	1200	1200
		1300	1120	200	
		223	2373	60	2210
		70	595		525
		468	785	600	1653
40		1305	1305		
		1050	800	250	
		1145	1145		

RECORD

*In the
Supreme Court
of British
Columbia.*

Exhibit 83.
(Cont'd)

EXHIBIT 83. (Cont'd)

STOCK STATEMENT NO. 2.

	Final Bal.	Balance	On Hand	To be Rec'd	To be Del'd
Hargal		356	56	1300	1000
Home		385	200	185	
Homestead					
Illinois Alberta	3383		1693	1700	
London Ribstone					
Lowery					10
Mayland	108		508		400
Mercury	637		1162		525
Mid West					
Mill City	14878		14878	50	50
Model					
McDougal Old	590		90	500	
McDougal Segur New	130		130		
McLeod	76		276	650	850
Okalta Common					
Okalta Pfd.					20
Regent	709		709		
Royalite	38		38		
Signal Hill					
Southwest Pete	1800		1800	10	10
Spooner	513		513		
Sterling Pacific	125		675		800
Sunlight					
Turner Valley					
United New	1775		1575	200	
Vanalta					30
Vulcan					
Wainwell					
Merland	Nil			500	500

1444/30

SUPREME COURT OF B. C.
VANCOUVER REGISTRY

Exhibit No. 83.
Johnson vs. Solloway Mills

Put in by P. Date 15/21/31.
"W. H. A."
Registrar.

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