

In the Privy Council

No. of 1937.

ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO

BETWEEN:

THE CANADIAN SHREDDED WHEAT COMPANY, LIMITED
(Plaintiff) Appellant,

—AND—

KELLOGG COMPANY OF CANADA LIMITED AND SOLOMON
BASSIN, CARRYING ON BUSINESS UNDER THE NAME, STYLE AND
FIRM OF BASSIN'S CUT-RATE STORES,
(Defendants) Respondents.

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In the Supreme Court of Ontario

BETWEEN

THE CANADIAN SHREDDED WHEAT COMPANY, LIMITED

Plaintiff,

—AND—

KELLOGG COMPANY OF CANADA LIMITED and SOLOMON
BASSIN, carrying on business under the name, style and firm of
BASSIN'S CUT-RATE STORES,

Defendants.

IN THE SUPREME COURT OF ONTARIO

Writ issued the 1st day of June, 1934.

BETWEEN:

THE CANADIAN SHREDDED WHEAT COMPANY, LIMITED
Plaintiff,

—AND—

KELLOGG COMPANY OF CANADA LIMITED and SOLOMON
BASSIN, carrying on business under the name, style and firm of
BASSIN'S CUT-RATE STORES,

Defendants. 10

No. 1

STATEMENT OF CLAIM

*In the
Supreme Court
of Ontario*
No. 1
Statement of
Claim
26 June, 1934.

1. The plaintiff is a company incorporated under the laws of the Province of Ontario, and has its head office at the City of Niagara Falls in the said Province. The defendant Kellogg Company of Canada Limited is a duly incorporated company, having its head office at the City of London, Ontario, and the defendant Bassin resides in the City of Toronto and carries on a grocery business at 2334 Bloor Street West in the said City, and a branch thereof at 401 Jane Street in the said City.

2. In or about the year 1893 Cereal Machine Company, a company 20
incorporated under the laws of the State of Colorado, U.S.A., commenced the manufacture and sale in the United States of America of a whole wheat biscuit, an edible product, and continued the same until the year 1900. In or about the year 1898 the said company commenced the sale of the said whole wheat biscuit in the Dominion of Canada and continued the same until the year 1900. On or about the 17th day of May, 1900, the name of the said Cereal Machine Company was duly changed to Shredded Wheat Company.

3. In or about the year 1900 The Natural Food Company, a company
incorporated under the laws of the State of New York, acquired and succeeded 30
to the business and goodwill of Shredded Wheat Company, and thereafter continued the manufacture of the said whole wheat biscuit in the United States of America and the sale of the same throughout the United States and the Dominion of Canada. In or about the year 1908, the name of the said The Natural Food Company was duly changed to Shredded Wheat Company.

4. Immediately after its incorporation the plaintiff commenced the construction of a factory at Niagara Falls, Ontario, for the purpose of manufacturing the said whole wheat biscuit for sale throughout the Dominion of

Canada and Great Britain, the said factory being completed and opened for business on July 1st, 1905. Prior to the opening of the said factory and the commencement of manufacturing there, the plaintiff acquired from said The Natural Food Company machinery for manufacturing the said whole wheat biscuit, which machinery was subsequently installed in the said factory, and also acquired from said The Natural Food Company the goodwill of its business in Canada.

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5. Since the acquisition by the plaintiff of the Canadian goodwill of The Natural Food Company, the plaintiff has continuously carried on, and is
10 still carrying on, the business of manufacturing the said whole wheat biscuit at its plant at Niagara Falls, Ontario, and selling the same throughout the Dominion of Canada.

6. From the time of the first sale of the said whole wheat biscuit by Cereal Machine Company in the Dominion of Canada in the year 1898, and continuously down to the present time, the said whole wheat biscuit has been described and sold by said Cereal Machine Company and its successors under the name "Shredded Whole Wheat Biscuit" or "Shredded Wheat Biscuit" or "Shredded Wheat." In the United States of America, during the whole period
20 from 1893 to the present date, the said whole wheat biscuit has been described and sold by Cereal Machine Company and its successors under the same names, "Shredded Whole Wheat Biscuit" or "Shredded Wheat Biscuit" or "Shredded Wheat."

7. The plaintiff since it first commenced business has continuously expended large sums of money in advertising the said whole wheat biscuit under the names "Shredded Whole Wheat Biscuit," "Shredded Wheat Biscuit" and "Shredded Wheat," and in pushing and promoting the sale thereof in the Dominion of Canada. In addition to the moneys expended by the plaintiff for advertising, the said Cereal Machine Company and its successors expended very much larger sums for advertising in the United States of America, and a
30 substantial part of such advertising which appeared in magazines, periodicals, newspapers, etc., circulated throughout the Dominion of Canada.

8. The said whole wheat biscuit has always been made from whole wheat of the highest grade and quality, and has always been made with great skill and care and with particular regard to purity and cleanliness, and during all of said period Cereal Machine Company and its successors in the United States have spent large sums of money in scientific investigation for the purpose of continually maintaining, improving and perfecting the method of manufacture and quality of said product, and the plaintiff has received the benefit of such investigation and has paid its proportionate share of the cost thereof, and the
40 product manufactured and sold by the plaintiff in the Dominion of Canada has been throughout the same as that sold in the United States.

9. At all times since 1905 the plaintiff has had a manufacturing plant at Niagara Falls, Ontario, where said product has been and is being made, and said plant has been open to the public and the complete process of the manufacture of said product has been disclosed to the public. The plaintiff has employed guides at said plant at Niagara Falls, Ontario, and said guides conduct visitors throughout the said plant and explain in detail the various processes of manufacture. The said plant is visited and inspected by many thousands of persons annually. In or about the year 1928, in order to provide facilities for taking care of its increasing business, the plaintiff constructed a new manufacturing plant at Niagara Falls, Ontario, at a cost of approximately 10
\$750,000.00.

10. From the beginning of the manufacture of said whole wheat biscuit by the plaintiff's said predecessors and continuously until the present time, the said whole wheat biscuit has been manufactured for sale and consumption, without material alteration or change, in a distinctive and peculiar shape and appearance. The said biscuit has been produced and baked so as always to present an appearance at once recognized and readily distinguishable from any other product ever before manufactured either from wheat or any other article. The said whole wheat biscuit of the plaintiff is composed and built up solely of filaments of wheat and is fashioned in a distinctive form, it being 20
substantially rectangular and having rounded top and bottom surfaces and sharply severed ends and having the filaments of which it is composed arranged substantially parallel and its entire surface being browned by baking and rendered crisp and palatable.

11. As a result of the extensive advertising of the said product by the plaintiff in Canada and by Cereal Machine Company and its successors in the United States, and the efforts to promote its sale, and the excellent quality of the article itself, the sales thereof have increased and grown in the Dominion of Canada from 1,979 Cases in the year 1898, to a maximum of 332,229 Cases in the year 1919. Since the year 1919 the sales in each year, excepting the 30
years 1921 and 1933, have exceeded 250,000 Cases, and in each of the years 1927 to 1931 inclusive exceeded 300,000 Cases. In the year 1921 the sales were 227,185 Cases and in the year 1933, 248,247 Cases. Each case contains thirty-six packages of biscuits and each package contains twelve biscuits. From the year 1906 to 1933 inclusive, the total sales by the plaintiff exceeded \$21,000,000.00, and in ten of the years between 1918 and 1932 exceeded \$1,000,000.00 per year.

12. Continuously during the period that the plaintiff and its predecessors have carried on said business in Canada, the said whole wheat biscuit product has been formed and baked in the form and condition hereinbefore 40
stated, and said biscuit has become known during said period to the general public, by reason of its particular and distinctive shape, appearance and structure as hereinbefore described, and also by reason of the high quality

of said biscuit. For many years past said biscuit has come to have, and now has, a special and secondary significance and meaning to the public by reason of the facts hereinbefore set out and thus to mean and signify only in Canada the said biscuit of the manufacture and sale of the plaintiff.

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13. Continuously during the said period that the plaintiff and its predecessors have carried on said business in Canada, the said biscuit of the plaintiff and its predecessors has been associated by the public in Canada with the plaintiff's said predecessors and the plaintiff as the sole source of manufacture by its particular form and appearance and by the words and terms
10 "Shredded Whole Wheat Biscuit" and "Shredded Wheat Biscuit" and "Shredded Wheat," the said words and terms having been originally adopted and used by the plaintiff's predecessors to identify the said particular product manufactured and sold by the plaintiff and its predecessors in Canada, and by Cereal Machine Company and its successors in the United States.

14. By application dated April 29th, 1927, the plaintiff applied to the Commissioner of Patents at Ottawa for registration of the words "SHREDDED WHEAT" as a specific trade mark to be used in connection with the sale of biscuits and crackers, and such application was granted and the said trade mark registered on March 20th, 1928. By application dated
20 April 3rd, 1929, the plaintiff applied to the Commissioner of Patents at Ottawa for registration of the words "SHREDDED WHEAT" as a specific trade mark to be applied to the sale of Cereal Foods cooked or prepared for consumption, and such application was granted and the said trade mark registered on July 3rd, 1929.

15. On January 15th, 1924, the Shredded Wheat Company (the New York Corporation) registered in the United States Patent Office the said trade mark consisting of the words "Shredded Wheat" as applied to the sale of biscuits and crackers, and on or about May 25th, 1926, the said Company registered in the United States Patent Office the trade mark consisting of the
30 words "Shredded Wheat" for biscuits, crackers and cereal foods, cooked or prepared for consumption.

16. The said words "Shredded Wheat" have been so associated with the product of the plaintiff and its predecessors in Canada, that they have been indicative of source or origin continuously through said entire period, from their adoption to the present time, and have grown to be the trade mark of the plaintiff in the Dominion of Canada, and are the symbol of its goodwill and its commercial signature. The said trade mark has for many years been indicative of the worth and high quality of the plaintiff's said biscuit product as a pure and wholesome food for human consumption, and the said words have
40 only the meaning in the public mind throughout the Dominion of Canada, and are only applied to one specific thing by the general public, namely, the said well-known specific article of food, marketed for so many years by the plaintiff's predecessors and the plaintiff in Canada.

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17. The said words "Shredded Wheat" did not apply to, nor have they been nor are they used in respect of any article or thing whatsoever, either in respect of food for human consumption or otherwise other than the said biscuit, except as used by the defendants as hereinafter referred to. The said words have no meaning whatsoever in the public mind in the Dominion of Canada except in their association with the said product of the plaintiff, and said words and association with the said whole wheat biscuit of the plaintiff and its distinctive well-known form and appearance have long since acquired in Canada a secondary meaning and special significance in respect of source or origin for said product of plaintiff. 10

18. For many years plaintiff and its said predecessors have continuously associated with said biscuit product in Canada the words and terms "Shredded Whole Wheat Biscuit," "Shredded Wheat Biscuit" and "Shredded Wheat," together with a cut, representation or picture of plaintiff's said distinctive form of biscuit in order more closely to associate said words and terms in the minds of members of the public with the actual biscuit when out of the carton and with plaintiff in Canada as the source or origin.

19. A large percentage of the stores and restaurants which purchase plaintiff's said biscuit product separate the same from the cartons or containers in which they are packed by the plaintiff and display the same in windows, glass globes, and other transparent containers, and in bowls, dishes and saucers, without any mark of identification thereon or associated therewith, and when so separated, displayed and exhibited, the public, by reason of said continuous and extensive advertising and education, immediately recognize said biscuit product as "Shredded Whole Wheat Biscuit," "Shredded Wheat Biscuit" or "Shredded Wheat," the product of the plaintiff. Very large numbers of plaintiff's said biscuit are individually served in restaurants, hotels, boarding houses, etc., to the ultimate consumer without any mark of identification thereon or associated therewith, and said biscuit, by reason of its well-known distinctive form, shape, colour, structure, substance, quality and general appearance and character, is known to such ultimate consumer as the biscuit of the plaintiff. When the ultimate consumers order Shredded Whole Wheat Biscuit, Shredded Wheat Biscuit or Shredded Wheat, they intend, and for many years have intended, the well-known biscuit product of the plaintiff and no other article. 20 30

20. Through the many years of use of the said biscuit of plaintiff, obtained by consumers upon their request by the words above stated, the public has developed a confidence in the manufacture, quality, purity and food value of plaintiff's product, and the terms "Shredded Whole Wheat Biscuit," "Shredded Wheat Biscuit" and "Shredded Wheat" mean to the public the said familiar product of the plaintiff alone, and not a product of similar appearance made and sold by any other person, and the supplying to a purchaser of any product, having a similar appearance but coming from a 40

different source, upon his ordering by any of the said names above stated, constitutes a deception upon him, and such other product being unknown to a purchaser it would not be the article of food that he had intended to receive.

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21. During said period from 1898 to the present time, except as hereinafter stated, no person, firm, corporation or association has engaged in the manufacture or sale of a whole wheat biscuit made in the shape, form, colour, structure and appearance of plaintiff's product.

22. Since some time in the month of April, 1934, the defendant Bassin has been offering for sale and selling at his said grocery store, 2334 Bloor Street West, biscuits manufactured by Kellogg Company of Battle Creek, Michigan, in the United States, which said biscuits simulate the whole wheat biscuit of the plaintiff in particular and distinctive shape, appearance and structure, and packaged in packages or cartons upon which is displayed the words "Shredded Whole Wheat Biscuit" on each side, each end, and the top and bottom of said carton. The biscuits so offered for sale and sold by the defendant Bassin were purchased by him from the defendant Kellogg Company of Canada Limited, and the said defendant Kellogg Company of Canada Limited has sold the said biscuits manufactured by Kellogg Company of Battle Creek to others in the Dominion of Canada, the particulars of such other sales being unknown to the plaintiff at the present time.

23. The said product of the Kellogg Company is an imitation of the appearance of the product manufactured by the plaintiff, in that it closely simulates the same in height, measurement and circumference, colour, structure and formation, differing in appearance only in that it is somewhat shorter at the fragile ends, and is devised to appear like the genuine but contains less wheat. The purpose of the defendant Kellogg Company of Canada Limited in marketing in Canada said article designated as "Shredded Whole Wheat Biscuit" is to take advantage of and appropriate to itself the goodwill and trade names of plaintiff established through years of effort and at large financial expenditure for advertising and in educating the public, as well as the recognized reputation of plaintiff as the source or origin of a unique product of the highest quality.

24. The use of the words "Shredded Whole Wheat Biscuit" as applied to the sale of the biscuit manufactured by the Kellogg Company of Battle Creek, and sold by the defendants as hereinbefore set out, is an infringement of the plaintiff's said registered trade marks consisting of the words "SHREDDED WHEAT."

25. The sale by the defendants of Kellogg Company's biscuit, made in imitation of the well-known biscuit of the plaintiff without means thereon of identification of the source or origin, facilitates the palming and passing off

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of the said Kellogg Company's biscuit as and for the said biscuit of the plaintiff by proprietors of restaurants, hotels, boarding-houses and other establishments, when individual biscuits are served independently of the carton.

26. The plaintiff's said biscuit is sold direct by the plaintiff to wholesale grocers, chain store warehouses and department stores' headquarters and is also sold to jobbers throughout the Dominion of Canada. The plaintiff's said product, with the above exceptions, is sold to retailers by jobbers who consist largely of wholesale grocers. The plaintiff's said biscuit is sold by approximately ninety-nine per cent. of the retail grocery stores in Canada and by an even larger percentage of the retail grocery stores in Ontario, and is sold 10 by all departmental stores and chain stores having grocery departments. It is also sold by the majority of fruit stores, delicatessen stores and butcher stores, and is known to practically the whole of the purchasing public in Canada as the product of the plaintiff Company.

27. The said product of the plaintiff is purchased to a very considerable extent by housewives, either personally or through servants or children often of tender age who are not close observers of packages or labels and who may be readily deceived by the presence on the carton of the Kellogg Company of the words "Shredded Whole Wheat Biscuit" as displayed thereon.

28. The defendants and each of them threatens to continue and, unless 20 the plaintiff obtains relief from this Honourable Court by way of injunction restraining the defendants from so doing, will continue to infringe the plaintiff's said registered trade marks by the use of the words "Shredded Whole Wheat Biscuit," and will continue to offer for sale and sell the said product of the Kellogg Company in imitation of the appearance of the product manufactured and sold by the plaintiff.

29. By reason of the wrongful acts of the defendants as aforesaid the plaintiff has suffered damages.

THE PLAINTIFF THEREFORE CLAIMS:

1. An injunction restraining the defendants and each of them, their 30 and each of their officers, servants, agents and employees, from infringing the plaintiff's said registered trade marks by the use of the words "Shredded Wheat" or "Shredded Whole Wheat" or "Shredded Whole Wheat Biscuit," or any words only colourably differing therefrom, in connection with the sale of biscuits or crackers or cereal foods cooked or prepared for consumption, and from using or selling any biscuit, whether made of wheat or otherwise in the form and appearance of the said product manufactured and sold by the plaintiff, or any form or appearance only colourably differing therefrom, or any form or appearance which is calculated to deceive the purchasing public, and particularly from using or 40

selling biscuits in the form or appearance of the said biscuit manufactured by the Kellogg Company of Battle Creek;

2. \$25,000.00 damages or, in the alternative, profits as the plaintiff may elect;

3. The costs of this action;

4. Such further and other relief as the nature of the case may require and to the Court may seem just.

The plaintiff proposes that this action be tried at the City of Toronto.

DELIVERED this Twenty-sixth day of June, 1934, by BLAKE, LASH,
10 ANGLIN & CASSELS, 2400 Canadian Bank of Commerce Building, 25 King
Street West, Toronto, Ontario, Solicitors for the Plaintiff.

*In the
Supreme Court
of Ontario*

No. 1
Statement of
Claim
26 June, 1934.
—continued

No. 2

STATEMENT OF DEFENCE

1. The defendant Kellogg Company of Canada, Limited, admits that it manufactured and sold to its co-defendant, and the defendant Bassin admits that he offered for sale and sold under the name "Kellogg's Shredded Whole Wheat Biscuit" a shredded wheat food product of the same kind as a shredded wheat food product manufactured and sold by the plaintiff and called by it from time to time "Shredded Whole Wheat Biscuit," "Shredded Wheat
20 Biscuit" or "Shredded Wheat."

No. 2
Statement of
Defence
5 September, 1934.

2. The said first mentioned food product did not simulate any distinctive shape, appearance or structure of a shredded whole wheat biscuit to which the plaintiff was entitled to the exclusive use. It did not imitate the plaintiff's product in appearance as alleged in paragraph 23 of the statement of claim or at all, and was not devised to appear like the plaintiff's product or for the purpose of taking advantage of or appropriating any goodwill or other right of the plaintiff.

3. The products of the plaintiff and the Kellogg Company are both products of the character described in a certain patent No. 52,428, granted on
30 the 27th day of May, 1896, to one Henry D. Perky, who in the said patent alleged himself to have invented and to be entitled to a monopoly of the right to manufacture and sell "a food or bread composed of superposed or massed layers or deposits of comparatively dry, externally rough, porous sinuous

*In the
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No. 2
Statement of
Defence
5 September, 1934.
—continued

threads or filaments of cooked whole wheat containing intermixed the bran, starch and gluten of the entire berry and which is free from leavening or raising material or other products.”

4. According to the disclosure of the said patent the method of preparing the said food or bread is to boil whole wheat berries for about an hour so as to remove the “extreme outer silicious coating and adherent extraneous matter,” and to dry the berries partially and to pass them between compression rollers from which they are discharged in the form of “light, porous and tender threads or filaments,” which may be disposed in layers so as to form the mass which, when baked, constitutes the food or bread in respect of which the monopoly described is claimed. 10

5. The said patent also disclosed and asserted a monopoly of the right to make and use an apparatus adapted for the production of the food or bread above described.

6. The natural and indeed inevitable form of the food or bread covered by the said patent, whether made on the apparatus disclosed therein or on any apparatus adapted for its production in a unit adapted for convenient use as a cereal, is that of a small loaf composed of filaments which adhere more closely together at two edges of the loaf and between such edges are more widely separated, assuming an arcuate path. This natural and inevitable form was the subject of a design registration made by the said patentee Henry D. Perky in the United States of America on September 17th, 1895, such registration bearing the number 24,688. 20

7. The Kellogg Company’s product in question and the whole product of the plaintiff company intended like that of the Kellogg Company for use as a cereal or so-called breakfast food, corresponds in appearance to the article of which a representation is attached to the said design registration.

8. The said Henry D. Perky on the 13th day of August, 1901, obtained a further patent, No. 72,695, for improvements in apparatus adapted for the manufacture of a food product of the kind aforesaid, and by a further patent granted to The Natural Food Company, as assignee of the said Henry D. Perky, on the 9th of August, 1904, No. 88,690, the said The Natural Food Company obtained a monopoly of the right to make a food product made up of superposed filaments of grain and consisting of a baked mass of a different form and appearance from that shown in the United States design patent No. 24,688 above referred to in that the filaments of the unit were locked together at a series of points at short distances apart. 30

9. The only two forms of unit in which the plaintiff has sold shredded wheat biscuit are forms similar to those described in paragraphs 6 and 8, and the last mentioned form is one adapted for use as a cracker rather than as a 40

cereal. For units in such form there has never been the same wide demand as for units in the first mentioned, or cereal form.

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10. The apparatus which the Kellogg Company uses for the production of its food product in question is very similar to, if not identical with that shown in patent No. 72,695, and the form of said product is that which is the inevitable result of the operation of said machine. The Kellogg Company has never made or distributed units of the product in the form covered by patent No. 88,690.

No. 2
Statement of
Defence
5 September, 1934.
—continued

11. The plaintiff and its predecessors in title became and remained the owners of the three patents aforesaid, Nos. 52,428, 72,695 and 88,690, and the plaintiff's predecessors in title also became and remained the owners of the design registration No. 24,688 and of the rights thereby conferred.

12. Insofar as this action is based upon the alleged similarity of the product manufactured and sold by the Kellogg Company of the United States and that manufactured by the plaintiff, the plaintiff's claim is for a declaration that it is entitled in perpetuity to the rights originally acquired by it and by its predecessors in title under the patents referred to and to even wider rights than those secured to its predecessors in title by virtue of the design registration aforesaid, this notwithstanding that all such rights have long since expired.

13. The Kellogg Company has nevertheless differentiated the appearance of its product from that of the corresponding product manufactured by the plaintiff insofar as it is possible to effect such a differentiation having regard to the character of the process and machinery by which such product is made and to the nature of the product itself; the Kellogg Company's purpose in so doing has not been merely to avoid taking advantage of the consumer's familiarity with the plaintiff's product but to enable it to establish a goodwill for its own product and to secure a market for that product on its own merits.

14. The Kellogg Company has accordingly made its product of a different shape, size and colour from that commonly sold by the plaintiff. The Kellogg Company's unit instead of being, like the plaintiff's, an oblong having its longer side approximately one and a half times its shorter, is almost square and contains substantially less material than is contained in the plaintiff's unit. It is moreover in the baking process made as much darker than the plaintiff's unit as is possible consistently with gustatory necessities.

15. The trade mark registrations referred to in paragraph 14 of the statement of claim as having been made by the plaintiff of the words "Shredded Wheat" as a specific trade mark to be used in connection with the sale of biscuits and crackers and of cereal foods, cooked or prepared for consumption, are invalid on the ground that the plaintiff was not at the dates of such registrations respectively entitled to the exclusive use of the words "Shredded

Wheat" as a trade mark on the wares described or any wares and that the said words did not contain the essentials necessary to constitute a trade mark properly speaking.

16. From about the year 1895 onwards the words "shredded wheat" were used not only by the public but by the plaintiff and its predecessors in title to describe a food product made of wheat in the form of shreds or filaments, and when in 1927 the plaintiff first applied for the registration of the words "Shredded Wheat" as a trade mark, such words were universally regarded as describing a product having the characteristics aforesaid and the exclusive right to use them as a trade mark was incapable of being obtained 10 by any manufacturer for the purpose of distinguishing his product from that of other manufacturers of shredded wheat biscuits.

17. In patent No. 72,695 above referred to the step of producing a continuous filament from processed berries of grain is referred to by Henry D. Perky, the predecessor in title of the plaintiff, as "shredding the grain," and in patent No. 88,690 the object of the invention thereby intended to be covered is described as being the production of "a cracker of filamentous or shredded wheat or other grain."

18. In United States patents obtained by the said Henry D. Perky and acquired by the plaintiff's predecessors in title similar expressions frequently 20 occur. Thus, in United States patent No. 520,496, dated May 29th, 1894, the filaments of grain are several times referred to as "films, strings or shreds." In patent No. 521,810, dated June 26th, 1894, reference is made to the delivery into a receptacle of cereals of "shredded or filamentous form." In patent No. 532,286, dated January 8th, 1895, relating to the preparation of biscuits, especially from wheat, reference is made to a machine "to receive the shredded or threadlike product in layers." In patent No. 532,480, dated January 15th, 1895, there are frequent references to shreds or threads made from wheat grains with a view to the preparation of biscuits. In patent No. 532,481, dated 30 January 15th, 1895, there is described a machine "for reducing grain to threadlike or shred-like form." In patents No. 532,697 and No. 532,698, dated January 15th, 1895, there are references to "grain or other material to be shredded" and to the reduction of grain to a "shredded or thread-like form." In patent No. 533,552, dated February 5th, 1895, a like reference to the reduction of grain to shredded or thread-like form appears, and there is a reference to a "shredder." In patent No. 533,554, dated February 5th, 1895, "threads or shreds" of cereal foods are referred to. The object of the invention covered by patent No. 571,284, dated November 10th, 1896, is stated to be a machine 40 "for the reduction of grain in large quantities to thread-like or shredded form wherein the exterior and interior portions of the grain berries are properly commingled and suitable rapid disposition of the reduced product in layers sectionally divided and arranged for convenience in the manufacture of biscuits or forms of bread is effected." In patent No. 571,285, dated November 10th, 1896, reference is made to a mechanism "for making biscuit forms

such as I have described in my design patent No. 24688 of September 17th, 1895," and the material is referred to as "the shredded or filamentous product." Patent No. 598,745, dated February 8th, 1898, relates to a machine in which "grain and especially wheat" is reduced to "shreds" with a view to "com-mingling the exterior coats and gluten layer of the grain berry with its interior portion or starch." In patent No. 614,338, dated November 15th, 1898, the invention is stated to relate to means "whereby grain, and especially wheat in its entire or berry form" is dealt with by "shredding devices," "shredding-heads" or "roll-shredders." Like references to "wheat in its entire or berry form," "shredding rolls" and "shreds" are made in patent No. 618,288, dated 10 January 24th, 1899, relating to a machine for making a food product thereout. In patent No. 625,696, dated May 23rd, 1899, the object of the invention is stated to be to reduce "cereals from the grain or berry form to continuous layers of shreds or thread-like form," and the product is referred to as being "in the form of continuous threads or shreads." In patent No. 678,127, dated July 9th, 1901, reference is made to a mechanism for reducing material "such for instance, as wheat. . . to shred or thread-like form" and depositing this on a receiver "in sufficient quantity for the thickness of biscuits," and patent 20 No. 681,656, dated August 27th, 1901, is said to relate to "machines for cutting shredded wheat and other food preparations into regular and uniform sections."

19. Moreover the plaintiff, until the year 1927, did not seek to use the words "shredded wheat" as a trade mark; it on the 8th day of June, 1912, applied for and on December 23rd, 1912, secured the registration No. 73/17815 of a specific trade mark consisting of the representation of a platter containing a spoon and a shredded wheat biscuit of the character shown in the United States design registration No. 24,688, to be used in connection with the sale of shredded cereal biscuits. This was the only mark put forward by the plaintiff as a trade mark until that time. The words "shredded wheat" were used by 30 them in their advertising and on their packages only in a descriptive sense.

20. The plaintiff's predecessor in title, the Shredded Wheat Company (the New York corporation), referred to in paragraph 15 of the statement of claim and formerly known as the Natural Food Company, had also before the year 1927 caused to be registered in the United States three trade marks as follows, namely:

(a) No. 85,186, registered January 30th, 1912, consisting of a representation of a platter containing a spoon and a shredded wheat biscuit similar to that attached to Canadian registration No. 73/17815 for use in connection with wares in class No. 46, foods and ingredients of foods, and the application contained a disclaimer by the applicant company which asserted that by its application "no claim" was "made to the representation of a shredded wheat biscuit." 40

(b) No. 89,071, registered November 5th, 1912, consisting of a representation of a building surmounted by the words "The Home of

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No. 2
Statement of
Defence
5 September, 1934.
—continued

Shredded Wheat” for use in connection with “shredded wheat in class No. 46, foods and ingredients of foods.”

(c) No. 218,593, registered August 17th, 1926, consisting of a representation of a platter containing two shredded wheat biscuits of the kind shown in United States design registration No. 24,688, for use in connection with the sale of biscuits, crackers and cereal foods, cooked or prepared for consumption.

21. Apart altogether from the common, general, popular use of the words “shredded wheat” or “shredded wheat biscuit” to denote a product having the general characteristics of the products of the plaintiff and the Kellogg Company in the statement of claim referred to, the plaintiff has been and was in and before the year 1927 estopped by reason of the facts hereinbefore alleged from asserting that the words “shredded wheat” were capable of appropriation by it as a trade mark to denote wares of its manufacture. 10

22. On April 29th, 1927, when the plaintiff company made its application for the registration of the words “Shredded Wheat” as a trade mark the said words were already on the register as a trade mark for use in connection with the sale of biscuits and crackers, having been registered as No. 161/36195 by the Shredded Wheat Company (the New York corporation aforesaid) on the 13th day of September, 1924, on an application made on the 7th day of March, 1924. The plaintiff was for this reason not entitled to the exclusive use of the said words as a trade mark for the class of goods in question at the time of its said application and was not entitled to obtain the registration of the said mark pursuant to the said application, which should have been refused by reason of the earlier registration already on the register. 20

23. The registration applied for by the plaintiff was also invalid and void by reason of the descriptive character of the words “shredded wheat” and of the irregularity and insufficiency of the material laid before the Commissioner of Patents in support of the said registration.

24. Insofar as this action is based upon the use by the defendants of the words “Shredded wheat,” “shredded wheat biscuits” or “shredded wheat whole biscuits” to denote the product manufactured and/or sold by them, the plaintiff’s claim is to appropriate to itself as a trade mark the name which for a generation, and in fact from the beginning of the manufacture thereof, has been the popular, common, universally used name of products of the kind in question. 30

25. The defendants admit that the plaintiff company has for some thirty years been manufacturing and selling in Canada a food product of the kind generally known as shredded wheat biscuit or shredded whole wheat biscuit, and that such biscuit is a popular and widely used article of food; the defendants also admit that during such period no other manufacturer in Canada 40

except the Kellogg Company has manufactured any like shredded wheat product. The defendants have no knowledge of the details of the commercial history of the plaintiff company and otherwise than as aforesaid puts the plaintiff to the proof of the allegations in paragraphs 1 to 11 inclusive, 26 and 27 of the statement of claim.

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No. 2
Statement of
Defence
5 September, 1934.
—continued

10 26. The defendants deny that the plaintiff's shredded wheat biscuit has ever had any distinctive or peculiar shape or appearance except the natural and inevitable shape and appearance of a product of the kind in question manufactured on machines covered by the said patent monopolies owned by the plaintiff and except the special shape and appearance of the product described in the patent No. 88,690 above referred to. The shape, appearance and structure of the plaintiff's product with which the public has become familiar is consequently the shape, appearance and structure of an article of the kind in question not of a product manufactured by the plaintiff as compared with like products manufactured by other manufacturers, and the defendants accordingly deny the allegations in paragraph 12 of the statement of claim.

20 27. The defendants further deny that the words "shredded whole wheat biscuit," "shredded wheat biscuit" and "shredded wheat" were ever adopted by the plaintiff or its predecessors in title to identify products as being of their manufacture; they also deny that the said words or the plaintiff's biscuit have been associated by the public with the plaintiff as the sole source of manufacture, and accordingly deny the allegations in paragraphs 12, 16, 17, 18 and 20 of the statement of claim.

28. The defendants submit that the allegations in paragraph 15 of the statement of claim are irrelevant and that the said paragraph should be struck out.

30 29. The defendants deny that when a shredded wheat biscuit is exhibited separately from a carton the purchaser of it associates or is entitled to associate it with any particular manufacturer and accordingly denies the allegations in paragraph 19 of the statement of claim.

30. The defendants say that the product of the Shredded Wheat Company (the New York corporation) and its successor National Biscuit Company, has from time to time been supplied to consumers in Canada, and accordingly denies the allegations in paragraph 21 of the statement of claim.

40 31. The defendants deny that the biscuits manufactured and/or sold by them constitute an infringement of any rights of the plaintiff as alleged in paragraph 24 of the statement of claim or at all, and further deny the allegations in paragraph 25 of the statement of claim; they allege that the absence of any mark indicating the origin on the plaintiff's biscuits, as in the case of the biscuits of the Kellogg Company, is due to the practical impossibility of effectively or adequately causing any such mark of origin to appear thereon.

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Defence
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—continued

32. All of the food products of the defendant company have been sold in Canada in a distinctive form of carton and get-up having no similarity whatever to the carton and get-up in which the plaintiff's products are sold.

33. If any confusion arises between the product of the plaintiff and that of the Kellogg Company, such confusion is due only to the inevitable correspondence in general appearance of a prepared shredded wheat product of the kind in question, and the defendants submit that the plaintiff cannot assert a claim in perpetuity to the monopoly of a right to manufacture and sell a product of a particular kind which has once been patented by its predecessors in title and is produced by processes and with machines also formerly the subject of patent monopolies. 10

DELIVERED this 5th day of September, 1934, by O. M. BIGGAR,
609 Victoria Building, Ottawa, Solicitor for the Defendants.

No. 3

REPLY AND JOINDER OF ISSUE

No. 3
Reply and
Joinder of Issue
14 September, 1934.

1. The plaintiff alleges that the facts set out in paragraph 6, 7, 18 and 20 of the Statement of Defence even if true, which the plaintiff does not admit but denies, are not relevant to the issues involved in this action and do not constitute any defence to the plaintiff's claim.

2. The plaintiff admits that the words "Shredded Wheat" as a Specific Trade Mark to be used in connection with the sale of biscuits and crackers were registered in the name of Shredded Wheat Company (the New York Corporation) on or about September 13th, 1924. The plaintiff alleges that the application for such registration was made inadvertently and without a proper appreciation on the part of the said New York Corporation that the goodwill of the business in the Dominion of Canada had been acquired by the plaintiff in or about the year 1905 and that the said New York Corporation was not the owner or proprietor of the said Trade Mark. Upon the attention of the said New York Corporation being called to these facts the said New York Corporation at once petitioned the Commissioner of Patents to cancel the said registration and said registration was cancelled in due course and before the application of the plaintiff for registration was allowed. 20 30

3. The plaintiff joins issue with the defendants upon their Statement of Defence.

DELIVERED this 14th day of September, 1934, by Blake, Lash, Anglin & Cassels, 2400 The Canadian Bank of Commerce Building, 25 King Street West, Toronto, Solicitors for the Plaintiff.

PROCEEDINGS AT OPENING

IN THE SUPREME COURT OF ONTARIO

BETWEEN:

THE CANADIAN SHREDDED WHEAT COMPANY, LIMITED,
Plaintiff,

—AND—

10 KELLOGG COMPANY OF CANADA LIMITED AND SOLOMON
BASSIN, CARRYING ON BUSINESS UNDER THE NAME, STYLE AND FIRM
OF BASSIN'S CUT-RATE STORES,
Defendants.

Tried before the HONOURABLE MR. JUSTICE McTAGUE at the Non-Jury
Sittings held at Toronto, County of York; commencing on Monday, March 2,
A.D. 1936, at 11.00 o'clock a.m.

*In the
Supreme Court
of Ontario*
No. 4
Proceedings at
Opening

APPEARANCES:

R. C. H. CASSELS, K.C., for the Plaintiff.

O. M. BIGGAR, K.C.

AND

RUSSEL S. SMART, K.C.

} for the Defendants.

20 MR. CASSELS: This action is brought, my Lord, for an injunction to
restrain the defendant the Kellogg Company of Canada Limited from manu-
facturing or selling an article under the name of "Shredded Wheat" or in the
shape or form of the so-called "Shredded Wheat Biscuit" of the plaintiff.
The Prayer for relief is as follows:

30 "1. An injunction restraining the defendants and each of them their
and each of their officers, servants, agents and employees, from infringing
the plaintiff's said registered trade marks by the use of the words
'Shredded Wheat' or 'Shredded Whole Wheat' or 'Shredded Whole Wheat
Biscuit,' or any words only colourably differing therefrom, in connection
with the sale of biscuits or crackers or cereal foods cooked or prepared
for consumption, and from using or selling any biscuit, whether made of
wheat or otherwise in the form and appearance of the said product manu-
factured and sold by the plaintiff, or any form or appearance only colour-
ably differing therefrom, or any form or appearance which is calculated

to deceive the purchasing public, and particularly from using or selling biscuits in the form or appearance of the said biscuit manufactured by the Kellogg Company of Battle Creek.”

Also a claim for damages and costs.

After the writ was issued a motion was made for an interlocutory injunction. That motion was argued before the Honourable Mr. Justice Hope in June, 1934, and at the conclusion of the argument my friend Mr. Smart, who appeared for the defendants, gave an undertaking as follows:

“ . . . the defendants by their Counsel without in any way admitting the plaintiff’s claim undertaking that they will withdraw from sale all of the said whole wheat biscuits now on the Canadian market and will not sell any of the said whole wheat biscuits in Canada until the trial or other final disposition of this action.” 10

Then:

“1. THIS COURT doth not see fit to make any order, save that the plaintiff shall be at liberty to move for the issue of an injunction in the event that the defendants or either of them should fail to carry out and observe the terms of the undertaking hereinbefore set out. . . .”

I think I should put in that Order as an exhibit, my Lord.

EXHIBIT No. 1: Order of the Honourable Mr. Justice Hope, dated 20 Wednesday, 27th June, 1934.

Then I should say, my Lord, that the evidence of wholesale and retail grocers and of consumers of Shredded Wheat has been taken on Commission in Winnipeg, Regina, Calgary and Vancouver, and also in Saint John and Halifax. It had been my intention to call witnesses at the trial from Ontario and Quebec but my friends have made these admissions:

“For the purposes of the trial of this action the defendants admit:

“1. That, if Wholesale and Retail Grocers and consumers of the plaintiff’s product Shredded Wheat in the Provinces of Ontario and Quebec were examined as witnesses, they would testify that the same conditions exist in those Provinces as exist in the other Provinces of Canada as described by the witnesses who have been examined on commission in such other Provinces, and that the same effect shall be given to this admission as would be given to the evidence of such persons if they had been examined as witnesses and had so testified. 30

“2. The facts alleged in paragraphs 2 and 3 of the Statement of Claim, and that by agreement made between The Natural Food Company and the Plaintiff, dated February 11th, 1905, the Plaintiff acquired from The Natural Food Company the goodwill of its business in Canada.”

EXHIBIT No. 2: Admissions by defendants dated October 5, 1935.

HIS LORDSHIP: The first Admission, Mr. Cassels, has to do with the evidence of grocers or wholesalers and retailers from Ontario and Quebec?

MR. BIGGAR: Yes, my Lord.

HIS LORDSHIP: And the second Admission is an admission as to paragraphs 2 and 3 of the Statement of Claim?

MR. CASSELS: Yes, my Lord, it is really the chain of title of the plaintiff company. Perhaps I might read those paragraphs, as they are not very long:

10 "2. In or about the year 1893 Cereal Machine Company, a company incorporated under the laws of the State of Colorado, U.S.A., commenced the manufacture and sale in the United States of America of a whole wheat biscuit, an edible product, and continued the same until the year 1900. In or about the year 1898 the said company commenced the sale of the said whole wheat biscuit in the Dominion of Canada and continued the same until the year 1900. On or about the 17th day of May, 1900, the name of the said Cereal Machine Company was duly changed to Shredded Wheat Company."

20 "3. In or about the year 1900 The Natural Food Company, a company incorporated under the laws of the State of New York, acquired and succeeded to the business and goodwill of Shredded Wheat Company, and thereafter continued the manufacture of the said whole wheat biscuit in the United States of America and the sale of the same throughout the United States and the Dominion of Canada. In or about the year 1908, the name of the said The Natural Food Company was duly changed to Shredded Wheat Company."

Then the Admission goes further and is to the effect that in 1905 the Canadian Shredded Wheat Company, the plaintiff in this action, acquired the goodwill and the business of The Natural Food Company in the Dominion of Canada.

30 HIS LORDSHIP: In 1905?

MR. CASSELS: Yes. The plaintiff company was incorporated in December, 1904, and commenced business in July, 1905, as your Lordship will see from the evidence.

Then I put in, my Lord, a certified copy of registration of trade-mark made on March 20, 1928. The registration is made by the Canadian Shredded Wheat Company, Limited, of the words "Shredded Wheat," to be applied to the sale of Biscuits and Crackers. The Trade Mark Register Number is 198, and the Folio Number is 43550, registered on March 20, 1928.

40 EXHIBIT No. 3: Certified true and correct copy of Specific Trade Mark "Shredded Wheat"—as registered in The Trade Mark Register No. 198, Folio 43550, in accordance with "The Trade Mark and Design Act," by the Canadian Shredded Wheat Company, Limited, on March 20, 1928, dated 2nd May, 1934.

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Then, my Lord, I put in another certified copy of a second registration in The Trade Mark Register No. 214, Folio 46703, dated July 3, 1929, the Trade Mark consisting of the words "Shredded Wheat" to be applied to the sale of cereal foods cooked or prepared for consumption. Your Lordship will recall that in Exhibit No. 3 reference was made to Crackers and Biscuits, and this is for cereal foods cooked or prepared for consumption.

EXHIBIT No. 4: Certified true and correct copy of a Specific Trade Mark as registered in The Trade Mark Register No. 214, Folio 46703, in accordance with "The Trade Mark and Design Act," by The Canadian Shredded Wheat Company Limited, on July 3, 1929, dated May 30, 1934. 10

Then Mr. Wallace, who had been connected with the Shredded Wheat Company in the United States from about 1898, and subsequently with the plaintiff company in Canada from 1905 until 1926, was at the time the manager of the Shredded Wheat Company in England, was out here partly on business and partly on vacation in the fall of 1934, and was examined as a witness de bene esse under an Order of the Court made with the consent of my friend, and I shall read that evidence to your Lordship:

"The examination of EDWIN L. WALLACE, as a witness de bene esse on behalf of the Plaintiffs, taken pursuant to Order of the Master in Chambers, dated the 15th day of October, A.D. 1934, before me, John Bruce, Special Examiner, at my Chambers in the City Hall, Toronto, on the 25th day of October, A.D. 1934. 20

MR. R. C. H. CASSELS, K.C., Counsel for Plaintiffs.
MR. RUSSEL S. SMART, K.C., Counsel for Defendants.

Plaintiff's
Evidence
No. 5
Edwin L. Wallace
Examination
de bene esse.

The said EDWIN L. WALLACE having been duly sworn and examined, deposed as follows:

BY MR. CASSELS:

1. Mr. Wallace, where do you reside? A. Welwyn Garden City, Hertfordshire, England. 30

2. Q. And what is your business? A. Managing Director for the Shredded Wheat Company Limited of England.

3. Q. Is that an English Company? A. Yes, it has got an English Charter.

4. Q. How long have you held that position? A. Since the first of September, 1929.

5. Q. When was the English company formed? A. In 1908—previous to my residence in England.

6. Q. 1908? A. Yes—the Charter is dated 1908—I could not give you the exact month and date.

7. Q. Prior to 1929 when you became Managing Director of the English Company, what were you doing? A. I went to England, I arrived there on the 19th of January, 1924, to erect the English Plant—at least, superintend the erection of the English plant, and instal the machinery, and train the operators.

8. Q. And did you do that? A. Yes.

9. Q. When did the English Plant first come into production? A. In 10 November, 1925, we made our first Shredded Wheat, and the formal opening was on the 12th of March, 1926.

10. Q. And what position had you between that time and the time when you became Managing Director? A. Works Manager. I had charge of the production and distribution.

11. Q. Then I understand that you are over in the United States and Canada on a holiday, at the present time, is that right? A. Well, part for holiday and part for business.

12. Q. And you are returning to England—when? A. I am sailing on November 2nd on the steamship Georgic.

20 13. Q. When did you first have any connection with this Shredded Wheat business? A. It was in the autumn of 1896 I believe in the early part of September—I have no record of the exact date.

14. Q. What was your first connection with the business? A. In the Production Department, as what they call a “Pan Man”, putting the pans on the table for the—well, a group of workers we would call “Peelers”—men who would peel it from the boxes in which it was made and place it in the pans for baking.

15. Q. Where was that? A. In Worcester, Mass.

30 16. Q. Who was operating the plant? A. It was the Cereal Machine Company at that time.

17. Q. Was Mr. Perky connected with the company? A. Yes—Henry D. Perky—he was the head of the firm.

18. Q. Have you any knowledge as to how long that plant had been operating prior to the time that you went there? A. I would say a little over a year, but I could not be sure, because I did not know much about it.

19. Q. How long did you continue in that position at the Worcester Plant? A. Well, they closed down about—I think it was in about the first of December—or along the last of November or the first of December, they closed the plant.

40 20. Q. Of what year? A. 1896.

21. Q. For what reason did they close? A. They had every available space filled full of finished product, and they were having difficulty in marketing it, and so the plant was closed.

22. Q. How long were they closed? A. I came back on the 16th of February, 1897.

23. Q. That was not a very long shut-down? A. No.

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of Ontario*

Plaintiff's
Evidence

No. 5
Edwin L. Wallace
Examination
de bene esse.

—continued

*In the
Supreme Court
of Ontario*

Plaintiff's
Evidence

No. 5
Edwin L. Wallace
Examination
de bene esse.

—continued

24. Q. After you came back in February, how long did you continue at that plant? A. Until they moved to Niagara Falls. I arrived in Niagara Falls on the 13th of June, I think, in 1901.

25. Q. And were you still with the same company? A. Yes—well, they had changed their name.

26. Q. To what? A. The first change was to the Shredded Wheat Company—now I could not tell you the date—because only being an ordinary operative—

27. Q. Well, just give us your memory of it as well as you can—was it changed to the Shredded Wheat Company prior to when they moved to Niagara Falls? A. Yes, and then was again changed to the Natural Food Company; that was the name they were operating under—they changed when we moved to Niagara Falls. 10

28. Q. Had the company a plant at Niagara Falls? A. Yes, they built a plant—I came there to instal the machinery in 1901, and the factory was about half completed.

29. Q. When did operations commence—manufacture or production commence, in the Niagara Falls plant? A. In August, 1901, the plant was not completed, but we operated a machine, and made Shredded Wheat in August, 1901. 20

30. Q. You are speaking of Niagara Falls, New York, are you? A. Yes.

31. Q. And how long did you continue with the company at Niagara Falls, New York? A. Well, until they started working on the Canadian Plant, which was about November, 1904—when I had my first connection with the Canadian business.

32. Q. Can you say whether the company—the United States Company, was selling any of its product in Canada, prior to the erection of the Canadian Plant? A. They were.

33. Q. Can you say to what extent? A. No, I could not tell you.

34. Q. Could you say when they first commenced to sell in Canada? 30
A. I could not tell you that, because I had nothing to do with the sales end of it.

35. Q. You do know that they were selling in Canada prior to the erection of the plant at Niagara Falls, Ontario? A. I believe the idea of them erecting the Canadian plant was first thought of when the Dumping Act went into force about a year before they started that. I do not know just the terms of the Dumping Act, but it increased the tariff coming into Canada, and I believe that is what started them thinking about it.

36. Q. At any rate, you say in November, 1904, they started to put up a Canadian factory? A. Yes, they bought a factory at Niagara Falls, 40
Ontario.

37. Q. Had you anything to do with that factory? A. I had charge of the overhauling of the building, and the installing of the machinery, and starting the plant.

38. Q. When did that Canadian plant at Niagara Falls, Ont., first commence operating commercially? A. They were ready to operate on

July 1st, 1905, but on account of the holiday, Dominion Day—and as some of the mechanics were from the American plant, they decided not to start until after the 4th of July, so that they could all have their holidays—we actually started operating on the 5th of July, 1905.

39. Q. What position did you hold with the Canadian Company after they started operating on July 5th, 1905? A. Superintendent.

40. Q. You were Superintendent? A. Yes.

41. Q. How long did you continue there? A. Until the first of January, 1924, when I was sent to England.

10 42. Q. Did you hold the same position throughout all that period?
A. Yes.

43. Q. Superintendent of the plant? A. Yes.

44. Q. Had you anything to do with the selling end of the business?
A. No.

45. Q. What were your duties as superintendent? A. I had charge of the operating; the buying of the wheat, and delivering of the goods; orders came to the Toronto office, which was in charge of Mr. John Hewitt at that time, and were sent from there to the American office, and then were telephoned from the American office to the Canadian, and were filled; I had charge of
20 shipping and handling all the stuff to the customers.

46. Q. Did you ship the product to the customer, or through the Toronto office? A. No, we shipped the product to the wholesale customers.

47. Q. Were the sales limited to the wholesale customers? A. Yes.

48. Q. What kind of business did these wholesale customers carry on, generally speaking? A. Just ordinary wholesale grocers' business.

49. Q. Can you tell us what parts of Canada these shipments were made to? A. To all parts. That is, all habitable parts of course.

50. Q. Do you know what became of Mr. Perky? A. Yes, he sold out his interest to a group of men at Niagara Falls, New York—I could not
30 give you the year—it was soon after the Niagara Falls, New York, plant was in operation, and he finally died.

51. Q. Do you know when he died? or about when—I do not want the exact date; has he been dead a long time? A. I should say about 1904, but I could not say that is accurate—that is my memory.

52. Q. Well then, during the period that you were at Niagara Falls, Ontario, which I take to be from the latter part of 1904, to 1924, did the Canadian plant operate continuously? A. Yes.

53. Q. Were any changes made in the plant during that period? A. No radical changes—just because of the growth and development of the
40 business.

54. Q. What changes were necessitated because of the growth of the business? A. Well, for instance, when we started operating there, we had a sales schedule for the first year of about—I think it was 65 cases a day—It was very small.

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55. Q. A case being—what? A. At that time fifty cartons in a case, like that one (indicating).

56. Q. How many biscuits to a carton? A. Twelve.

(CARTON MARKED EXHIBIT 1)".

MR. CASSELS: I do not seem to have the carton which was marked, my Lord. Perhaps my friend would allow me to put in another carton?

MR. BIGGAR: Yes.

MR. CASSELS: It is more or less the same as that which I now show you, my Lord. There are some slight changes. I will put it in later as Exhibit No. 5. Then:

"57. Q. You say you started with 65? A. Sixty-five cases per day, and before the end of the first year we had increased it, because trade increased, and we packed by hand from the racks at first, because we did not have enough business to warrant the installation of a big packing and sealing machine—about 1907 we installed a packing table—connected it up with the sealing machine which we had, and afterwards used that instead of packing by hand.

58. Q. Can you describe to us the process by which this Shredded Wheat Biscuit is made? A. Yes. When the wheat arrives at the factory it is usually stored and drawn from the storage accommodation as needed, and it passes through a process of cleaning—which is nine operations—nine distinct operations—what we call nine operations, because each machine sometimes does two or three particular things. Then it is cooked and cured—

59. Q. Cooked for how long? A. About twenty minutes, until the starch in the centre of the grain is dissolved. After the curing process it is carried by—we call them 'Worm Conveyors', but I think they call them 'Screw Conveyors' here—it is spiral, anyway—to the shredding machine and distributed over twenty-nine pairs of rolls, and these rolls are geared, so that they run together, and draw the wheat into the groove—one of the rolls being grooved, and the other being smooth; then as the rolls revolve they form it into fibrous filament, and it drops to a conveyor chain travelling underneath the rolls, and is carried to the panner, and this machine consists of two chains, running together that press and form the biscuit—they also contain a series of knives—

60. Q. How is that done? A. They shape the top of the biscuit by pressing.

61. Q. That is, pressing these fibrous filaments? A. Yes, pressing the fibrous filaments together; these filaments have been called 'Shreds,' because of the name given to the product—Shredded Wheat. In reality, technically, I do not think they are a shred, because they are crushed into this form, and not torn.

62. Q. These rolls that you speak of; how close together are they—what space is there between them—I suppose there is an upper and a lower roll?

A. No; they run side by side, and the pressure is very great. There is no way we can measure it. I could not tell you the exact pressure, but the rolls are pushed together, the tension being formed by two $\frac{7}{8}$ th screws that are drawn up with a wrench practically as tight as a man can draw them by hand, so they are under severe pressure to crush the wheat into the filament.

63. Q. I think you said one of the rolls was smooth and one was grooved? A. Yes.

64. Q. How far apart would those grooves be? A. Twenty grooves to the inch.

10 65. Q. What is the width of the grooves? A. I could not give you that—the depth varies from twenty to twenty-four thousandths in the roll we are using at the present time.

66. Q. Is there any difference in the rolls you are using at the present time, and the rolls which were used—say when the Canadian plant started into operation? A. No, we were using that type of roll when the Canadian Plant started.

20 67. Q. Now, could the wheat, as it goes through between these rolls—could it go through between the grooves that you speak of, or must it all go through where the grooves are? A. It must all go through the grooves on account of the extreme pressure on the rolls.

68. Q. What is the size of the machine—what is the length of the rolls? A. The rolls are four inches in length, and $5\frac{1}{8}$ th in diameter—when they are new.

69. Q. You say the machine has twenty-nine pairs of rolls? A. Yes, twenty-nine pairs of rolls.

70. Q. Has the company—the Canadian Shredded Wheat Company Limited—is that the name? A. Yes—I do not know whether they have changed it—that was the name when I was there.

30 71. Q. Has it, at any time during your connection with it, made any other production than this Shredded Wheat? A. We made a Triscuit at one time, which is—well, it is like a biscuit—the same shape as an ordinary sweet biscuit—I think two inches by two and a quarter, but I would not be positive about that. It is flat; cooked by contact instead of radiation—the regular shredded wheat is cooked by radiation, but these are cooked by contact—on an electric stove—like a waffle.

72. Q. Did the Triscuit constitute any considerable portion of the business of the company? A. No, a very small portion. We have some trade, but it has never developed like the Shredded Wheat.

40 73. Q. Was there any change in the method of manufacturing during the period that you were at the Canadian Plant? A. Nothing of any account.

74. Q. Since you left the Canadian plant, and went to England, have you visited the Canadian Plant at all? A. Yes, about every two years.

75. Q. And have you been at the plant recently, while you were on this trip out to this side? A. Yes, I was there last week.

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76. Q. Are you familiar with the operation as it is carried on now at the Canadian Plant? A. Yes, in a general way.

77. Q. Would you say that there has been any change in the method of operating since you left and went to England? A. Yes, there is.

78. Q. What is that? A. They are now operating an automatic machine which shreds, bakes and evaporates the shredded wheat, and delivers it to the packing table.

79. Q. And that is new since you— A. Well, they were experimenting with a machine of this type in the Buffalo Avenue plant at Niagara Falls, New York, for several years prior to my going to England, but no commercial machine was erected until after I was in England, and then it was erected in the Canadian factory, and it is in operation there now. 10

80. Q. Does that new machine make any difference in the process of manufacture, other than it is all done by the one machine—that all the steps are done by the one machine, instead of being done by different machines or by hand? A. The process is different, but the product is practically the same.

81. Q. Now, I show you this package of what is called Shredded Wheat—can you recognize it? A. Yes.

82. Q. Can you recognize it? A. Yes. 20

83. Q. What is it? A. It is the regular carton of Shredded Wheat manufactured by the Canadian Shredded Wheat Company Limited (referring to Exhibit 1).

84. Q. We will just open it. I ask you to look at the contents of the carton, Exhibit 1? A. Yes.

85. Q. I ask you if that is the product such as is manufactured by the plaintiff company at Niagara Falls, Canada? A. It is.

86. Q. How long has that product been manufactured and sold in that form? A. Well, ever since I have been connected with the company.

87. Q. Does that apply to the product of the United States Company also? A. Yes. 30

88. Q. There has been no change in the article itself? A. No.

89. Q. Shape or appearance? A. No, or method of production; that is, that has any bearing on the quality of the product itself.

90. Q. Or any bearing on the appearance of it? A. The automatic machine bakes them a trifle more at the bottom.

91. Q. What does that result in? A. The brown that you see there at the bottom of the biscuit.

92. Q. In other words, when they use the automatic machine the bottom of the biscuit— A.—is toasted a little more than they are in the old process. There is only a slight difference. 40

93. Q. Well, then, you told us that the name of the original company was the Cereal Machine Company? A. Yes.

94. Q. That was subsequently changed to the Shredded Wheat Company? A. Yes.

95. Q. And again, later on, to the Natural Food Company? A. Yes.

96. Q. Were there any further changes in the name of the United States Company? A. Yes, it was changed again to the Shredded Wheat Company—I could not give you the date. I do not remember.

97. Q. Could you give me any approximate date? A. I am afraid I could not. It was after we were operating in Niagara Falls, New York; after that plant was operating.

98. Q. Then the Canadian Company, I think you told us, that it originally had the name of the Canadian Shredded Wheat Company, Limited? A. Yes.

10 99. Q. And has there been any change in that? A. Not to my knowledge.

100. Q. Well, you would know I take it? A. I believe I would. I do not think any change has ever been made. Every carton I have seen since I have been in England that is produced in the Canadian factory has been marked "Canadian Shredded Wheat Company Limited,"—which is the name they have always had, as far as I know.

20 101. Q. Well, then, this carton that you speak of—Exhibit 1—can you tell me how long that carton has been in use? A. Well, this particular carton has only been in use I should say since about 1929 or 1930—the first one I saw of that type, with the full sized biscuit on here (indicating on Exhibit 1) I believe was in 1931, and they had been running for some time then—that is as near as I can remember the date.

102. Q. Well, then, do you know what carton was in use prior to the adoption of this Exhibit 1? A. It was similar to this, but it did not show the full sized biscuit on here (indicating)."

MR. CASSELS: This is not quite the same; there are some changes in the colouring, but it indicates the type of biscuit.

"103. Q. Is that the only difference? A. That is the only one I can detect.

30 104. Q. I show you another carton—can you say whether that carton was in use by the plaintiff company at any time? (Handing to witness). A. This was the carton that was in use when I was with the Canadian Company, and it was subsequently changed to this type. (CARTON PRODUCED AND MARKED EXHIBIT 2)."

MR. CASSELS: Carton Exhibit 1 on the examination de bene esse will be Exhibit 5 at the trial.

EXHIBIT No. 5: Carton marked Exhibit No. 1 on examination de bene esse of Edwin L. Wallace.

40 MR. CASSELS: And Carton No. 2 on the examination de bene esse will be Exhibit No. 6 at the trial.

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EXHIBIT No. 6: Carton marked Exhibit No. 2 on examination de bene esse of Edwin L. Wallace.

MR. SMART: I suppose the evidence clears up which is which. There are two biscuits. Exhibit 6 is the earlier one.

MR. CASSELS: Yes, and Exhibit 1 on the examination was the carton which he says was in use in 1929. Then—

“105. Q. Was that carton, Exhibit 2, in use throughout the whole of the time that you were at the Canadian plant? A. No. Previous to the erection of this building (Indicating on carton) it showed a different picture.”

MR. CASSELS: I think he was indicating on this carton. 10

HIS LORDSHIP: He says that the full sized biscuit was left off the earlier carton.

MR. CASSELS: Yes, but there was a change when they added to the building; they made a change in the picture of the building. Then:—

“106. Q. When you say ‘This building?’ A. This wheat silo building.

107. Q. That is a building— A.—that stores the wheat.

108. Q. On the left hand side of the picture that you are pointing to? A. Yes. I do not know as I could describe from memory just what it was—it showed a little square building in the place where this building sets.

109. Q. Apart from that, was the carton during your time, substantially the same as this one, Exhibit 2? A. Yes, I believe that building was erected in 1920-21—that wheat storage building—as near as I can remember, about that time, and when it was completed the plates were changed for making the cartons to show the new building. 20

110. Q. Then I notice on both these cartons, Exhibit 1 and Exhibit 2, there is a picture of Niagara Falls? A. Yes.

111. Q. Can you say whether the cartons have always had a picture of Niagara Falls on them? A. Yes, ever since we have been manufacturing at Niagara Falls we have had a picture of the Falls.

112. Q. And has the plaintiff's product—the Shredded Wheat Biscuit, 30 has it always been sold in cartons, such as this package, Exhibit 1? (Indicating). A. Yes.

113. Q. It has never been sold in bulk? A. It is sold in bulk some times in England.

114. Q. I am speaking of Canada? A. No, in Canada I have never known it to be sold in bulk.

115. Q. Always in a carton, and always with the same number of biscuits in the carton? A. Yes.

116. Q. And that is—what? A. Twelve.

117. Q. And again, always sold in cases? A. Yes. I believe they 40 did at one time use a wrapping process; I could not tell you about that, because I only heard of it through a source that I could not say was accurate—that is since I have been in England—they experimented with some kind of a wrapping machine instead of the case, but I do not believe there were any, or very few, if any, put on the market in that type of container.

118. Q. Now can you tell us whether any steps were taken throughout your period of employment at the Canadian Plant—to improve the quality of the product? A. Well, there was very little change of any kind made in the product, because every part of the wheat kernel is contained in the product—we take nothing away—and it is very difficult to make any change.

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119. Q. There was some evidence given as to some—I do not know whether you would call it a 'Research Department' or some Department; I am not sure whether it was the Canadian Company or the United States Company, which devoted its time to the study of the conditions under which the Shredded Wheat Biscuit was made, and so on. Had you anything to do with that? A. No.

120. A. As far as you know, the product is the same now; practically the same now; as it always has been since 1905? A. Yes.

121. Q. Then can you say, Mr. Wallace, as to whether the plant at Niagara Falls, Ontario, was visited by the public to any extent? A. Yes, they have always shown visitors through there; always did when I was there in Canada.

122. Q. And to what extent would you say that visitors were shown through the plant? A. Well, probably thousands go through every year.

123. Q. Probably thousands are shown through there every year? A. Yes.

124. Q. Did you keep any record of the number of visitors that you had? A. No, we never did at the Canadian plant.

125. Q. Did you in any way invite the public to come and inspect the plant? A. They did some, in their advertising, but probably not to the extent that they do at the present time.

126. Q. You are speaking now of the Canadian Plant? A. Yes, of the Canadian plant.

127. Q. Do you know whether that was so at the plant of the Niagara Falls, New York? A. They have always encouraged visitors to go there, and invited them.

128. Q. When visitors went to the Canadian plant, what was done? A. Well, we took them through; if there was a big crowd of visitors came, especially if they were tourists going to the American side—we asked them to go through the American plant, which was practically the same as ours—because they had better facilities for taking care of big crowds. We never refused admittance to anyone—always took people through.

129. Q. When you say you took people through—who took them through? A. Sometimes I went through and explained the process to them myself, or the girl from my office used to do it.

130. Q. When people went through the plant, did you give away samples of the Shredded Wheat Biscuit to them? A. Yes, quite often we did.

131. Q. Just as an advertising matter, I suppose? A. Yes.

131. Q. In England, is the article which is made there, the Shredded Wheat Biscuits which are made there, is it the same article as the biscuit which is contained in this carton, Exhibit 1? A. Yes.

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132. Q. And made by the same process? A. It is made by the older type of process—we have no automatic machine in England.

133. Q. Had you to do at all with the development of the machine which we have been speaking of—the machine for making this product? A. Yes, I had.

134. Q. To what extent? A. Well, during the early part of my employment with the company they were developing an automatic machine for the production of Shredded Wheat, and it was operated for several months, and then discarded because it was not practicable. Later the present automatic panning and production machine was developed, and was a success. 10

135. Q. Now you have spoken of the cleaning of the wheat. I think you said there were—was it in connection with the cleaning of the wheat that you said there were nine processes? A. Nine separate processes of dry cleaning.”

MR. CASSELS: This is Exhibit No. 1 on Wallace's examination, and Exhibit No. 5 at trial.

Then:—

“136. Q. What was the object of that? A. To remove all foreign substances from the wheat, and see that no dirt or dust of any kind was adhering to the kernels when it went to the cooking department. 20

137. Q. Why was it necessary to go through nine separate processes to attain that end? A. Well, to be sure that the product was pure, and there was no foreign matter in it.

138. Q. What would you say about the product after it had been through these different processes of cleaning? A. Well, I would say it was as clean as it is humanly possible to make it.

139. Q. Is there any special quality of wheat which is used in making the Shredded Wheat biscuit? A. The best quality of wheat for the production of shredded wheat is the pure white wheat, and that is what we use in England. 30

140. Q. Well, what do you call pure white wheat—I am not a wheat man? A. There are many varieties of wheat—some is red, and some is amber, and the kernels are different shape, but what we have tried to get as nearly as possible, is a pure white wheat.

141. Q. Do you get that wheat in Canada? A. No.

142. Q. You do not? A. No, it is very rarely that we get even a load of pure white wheat in Canada.

143. Q. You spoke a little while ago of the Peelers; the men who removed the biscuit from the pans—was that after the cooking of the biscuit? A. Yes, after the cooking and shredding process. 40

144. Q. Well then, what was the next step after they were removed from the pan? A. After they were placed on the pans they went to the oven for baking, and later to the evaporator, to take the surplus moisture.

145. Q. The peeling was not done until after these processes had been gone through? A. Peeling was done at the conclusion of the shredding process. The original mode of manufacture, as I have before stated, was to

make the biscuit in boxes, and the peelers were the men that pulled them from these boxes, and put them on the pans ready for the baking.

146. Q. Boxes consisting of what? A. Wooden boxes that hold two dozen shredded wheat biscuits. They were used in place of the present conveyor chains, which gathers up the shreds and takes it to the pan.

147. Q. How is the cooking done? A. You mean at the present time, and in the Canadian plant?

148. Q. Well, start back at the time when the Canadian plant started, and then you can tell us if there has been any change? A. They are cooked
10 in what we term a cooking kettle, but which in reality is a boiler made of quarter inch boiler plate, and the wheat is sealed up in there. A certain amount of water placed in it by steam turned into the kettle, and there is a cylinder—a monol metal cylinder in the kettle. The wheat is placed in the cylinder, and the cylinder revolves during the cooking process so that every part of the wheat will be subject to the same temperature, and it will be cooked evenly throughout.

149. Q. How can you tell how long to cook it? A. By testing the wheat after it is cooked—they break open the kernels to see if the starch in
20 the centre of the kernel is dissolved, or if there is still any hard substance there.

150. Q. Now, have there been any changes in that since 1905? A. No, except that some instruments have been added to the kettle for determining the exact temperature inside, but there has been no change in the real process of cooking since 1905.

151. Q. Is the cooking of the wheat—the correct cooking of the wheat—is that an important feature of the process of making the biscuit? A. Yes.

152. Q. What is the result if the cooking is not properly done? A. If it is not cooked enough it shows white threads in the finished product—if it is cooked too much the wheat becomes soft and sticky, and does not form a straight shred; that is, they are crinkley, and does not rise, and it does not
30 make a good product unless the wheat is cooked absolutely right.

153. Q. Could you tell me, as a practical man, whether a biscuit, similar to this shredded wheat biscuit, having the same properties as the shredded wheat biscuit, could be made in any other form than that shown in this biscuit shown in the carton? A. Yes, it could be.

154. Q. Can you say how that can be done? A. Well, you could make it shorter than this one, or by spacing the knives on the cutter chains, and the rims of the pressing links, different; you could make several different shapes.

155. Q. If you wished to produce a biscuit in commercial quantities,
40 made of shreds, the same as are incorporated in this biscuit, Exhibit 1, only a different shape, you could do so? A. Yes.

156. Q. Tell me before we leave it, in connection with the English plant, do you have any visitors there? A. Yes, we do.

157. Q. To what extent? A. Well, we invite them in our advertising to come to the factory, and we have, for about ten months of the year, we average from seventy-five to a hundred visitors per day.

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158. Q. Now, with your experience in connection with the manufacture and sale of this product—Shredded Wheat Biscuit—will you tell us what your understanding is, if you have any, of the meaning of the term—Shredded Wheat, or Shredded Wheat Biscuit—to the purchasing and consuming public?"

Then Mr. Smart objects, my Lord, and there is some argument, and the ruling is that the question is admitted subject to objection. I do not know whether my friend wants to say anything about that now.

MR. SMART: I am repeating the objection as stated there.

HIS LORDSHIP: I suppose at this juncture we might as well state a ruling.

MR. SMART: That kind of question begs the issue that your Lordship 10 has to determine, so I suppose if it is noted subject to objection that will be sufficient.

HIS LORDSHIP: Yes.

MR. CASSELS: Then he gives his answer for what it is worth:—

"A. Well, I believe that it conveys to the general public the meaning of a product that we produce, which has been called Shredded Wheat for so many years, and has been made in practically the same way through all these years.

160. Q. When you say 'Which we produce?' A. The Shredded Wheat Company.

161. Q. Of course there are three companies; we have been speaking of 20 the United States Company, The Canadian Company, and the English Company; would you say that applies to all the companies? A. I believe so.

162. Q. Can you say, in a general way, what the course of sales of this product has been over a period of years?—as to quantities, I mean? A. Well, it has been a constant increase except for one or two of the depression years.

163. Q. It has been constantly increasing? A. Yes, except perhaps for those years of depression we have recently gone through in this country and in the United States. In our English plant the increase has been constant.

164. Can you speak at all as to what advertising and the extent of adver- 30 tising which has been done in Canada—the advertising of this product—Shredded Wheat? A. Only that it has been advertised continually for a great many years—I have never had anything to do with the advertising or sales in Canada during my connection with the Canadian Company; I was always in the factory end of the business.

165. Q. Do you know whether the Canadian Company, as part of its advertising campaign, ever distributed samples of the Shredded Wheat product to the public? A. Yes, they did for many years.

166. Q. Can you say to what extent? A. Well, how do you mean— as a percentage of the output?

167. Q. No—was it done in large quantities? A. Yes, they have 40 always had crews of sampling men and boys from the time they started the plant in Canada when my first connection was with the Canadian Company, as long as I was here that was done.

168. Q. And what about England? A. We have two sampling crews going there continually all the year round.

169. Q. What would be the extent of the distribution of the product in that way?—not in proportion to the total business, but in actual quantities?

A. Well, our crews handle about two thousand, they average about two thousand or two thousand five hundred samples distributed by each crew in a day.

170. Q. A sample consisting of what? A. Two shredded wheat biscuits in a little carton.

171. Q. What about Canada up to the time you left here? A. Well, I had nothing to do with the sampling; I could not tell you just the extent of it.

10 I do not remember the amount we produced; I know they had several crews working all over Canada.

172. Q. Can you tell us as to the length of time that this Shredded Wheat Product will retain its qualities as a food product? A. Well, it will keep for years if it is kept in a dry place. I have some in my office now that are more than ten years old.

173. Q. And has that been in your office throughout that time? A. Yes; the first biscuits we produced in the English plant were in a glass jar in my office, and they are in perfect condition.

20 174. Q. These glass jars—are they air-tight jars? A. I would not say they were air tight; it is just an ordinary tin screw top; they keep the product dry, that is the main thing. An air tight container is not so good for the keeping qualities of our product as the cartons we use.”

MR. SMART: Then the cross-examination, my Lord:—

“CROSS-EXAMINATION BY MR. SMART.

175. Q. When the Canadian Plant was first started up, I understand that you had an office in Toronto, and that your office was under the direction of the American Company, is that correct? A. The office was in charge of Mr. John Hewitt, but his instructions came from the American side.

30 176. Q. How long did that continue? A. Until his death—I could not tell you the date.

177. Q. Do you know the number of years? A. As I remember it was about five or six—I could not tell you the date, but roughly that time.

178. Q. You spoke of seeing the product of the Canadian factory in England—how did that happen? A. Well, for many years we produced Shredded Wheat for England in the Canadian factory.

179. Q. Did that continue after you started the factory there? A. No.

180. Q. Do you still get some? A. No, there was nothing—after the early part—well, after the middle of the year 1926 I do not think there was any shipped.

40 181. Q. What you saw in England was only what was produced here before 1926? A. And up to the middle of that year.

182. Q. And then in Canada, before the Canadian factory was in active operation, the Shredded Wheat Biscuits were supplied from the American factory? A. Yes.

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182. Q. And did they continue to ship some? A. Not after the factory started.

183. Q. Not when you were rushed with orders? A. No.

184. Q. Now, Mr. Perky, to whom you have referred, took out a number of patents on the process, and the machines? A. Yes.

185. Q. I think the method of preparing the wheat, and shredding it, that you have described, is that contained and described in this Canadian Patent 52428, of which I show you a copy? (Handing to witness). A. This patent covers the original method of cooking, and refers to the system of shredding in between the grooved and the smooth roll in use at the present time." 10

MR. SMART: That Patent will be filed as Exhibit No. 7, my Lord.

EXHIBIT No. 7: Certified true and correct copies of the original specification and drawings remaining on record, duplicate copies of which were attached to Patent No. 52428, bearing date the 27th day of May, 1896, and granted to Henry D. Perky for "Cereal Food or Bread," dated January 3, 1936.

MR. SMART: Then:—

"186. Q. I understand that there are a succession of these shredders, 20 and the shreds from the shredders are gathered on to a belt, and is then formed by chains which you previously described? A. Yes.

187. Q. And that assembly of chains and knives to cut the ribbon of shredded wheat is shown in this patent No. 72695, of which this is a copy? (Handing to witness). A. Yes."

MR. SMART: I will file as Exhibit No. 8 Patent No. 72695, dated August 13, 1901.

EXHIBIT No. 8: Certified true and correct copies of the original specification and drawings remaining on record, duplicate copies of which were attached to Patent No. 72695 30 bearing date the 13th day of August, 1901, and granted to Henry D. Perky for "Machines for making Biscuit and other articles," dated January 3, 1936.

HIS LORDSHIP: What is the date of Patent No. 52428?

MR. SMART: May 27, 1896, my Lord.

HIS LORDSHIP: That is not a patent on machinery?

MR. CASSELS: On the process, I think.

MR. SMART: It is a patent on the process of cooking the wheat berries and then putting them between this smooth roll and the grooved roll referred to by the witness, and shown in figure 5, and it contains claims. The first 40 claim is on the product and reads in this way:—

"1. A food or bread composed of superposed or massed layers or deposits of comparatively dry, externally rough, porous, sinuous threads or filaments of cooked whole wheat containing intermixed the bran, starch

and gluten of the entire berry and which is free from leavening or raising material or other products.”

Then the second claim is on the process, that is, first cooking and then shredding as the witness described.

HIS LORDSHIP: Then the third claim is on the apparatus for doing that, and Exhibit No. 8 is a patent on certain machinery?

MR. SMART: Yes, my Lord. The threads come out on to a ribbon and then they are cut across, and they go on to be baked. It is to the apparatus for doing that, that the second patent is directed.

10 Then continuing at the bottom of page 30:—

“188. Q. Now that patent, in addition I think shows a pneumatic arrangement for keeping the formed biscuits on the chain until they can be dropped on to the pan, and I would ask you if that was used by your company while you were connected with it? A. Yes, it is being used at the present time.

189. Q. Now you said that, technically, in regard to Shredded Wheat —‘Shredded’ is not accurate, because the wheat berry is crushed. I presume that you did not intend to say that each berry was formed into a single shred? A. No.

20 190. Q. It would break up into a number of individual shreds? A. I really think that what happens in the process of manufacture is that these kernels being all tumbling over on the rolls, one blends into the other, because we can take out continuous shreds several feet long sometimes, which contains more wheat than would be contained in one berry.

191. Q. Speaking in a popular sense, the term ‘Shred’ as applied to this, is reasonably accurate and descriptive, is it now? A. It is not; I do not think you could consider it descriptive of the product—I think it is called ‘Shredded,’ because Mr. Perky, or someone connected with the company previous to my being connected with it, gave the Product the name of
30 ‘Shredded Wheat’—and I think it was more for that reason that these filaments have been termed ‘Shreds’—because the process is really the crushing of the wheat rather than shredding.

192. Q. I am asking you, would you go so far as to say that ‘Shredding’ is not an apt term to apply to that? A. It is not an accurate term.

193. Q. I did not say ‘Accurate’—I said ‘Apt’—an apt term? A. No, I do not think it is.

194. Q. Do you think anyone would have any difficulty in understanding what you meant if you called this a ‘Shred?’ A. Unless they were familiar with the product I think they would have difficulty, because as I
40 understand the word ‘Shreds’ it means sort of torn to shreds or something of that kind.

195. Q. Does this not look like a product that has been torn to shreds? A. Well, that would depend on what the product was; I do not know how you could tear a wheat berry into shreds.

196. Q. I did not say a wheat berry into shreds—I said—does this not look like a product which had been torn into shreds? A. Well, I cannot

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think of any product that could be torn into shreds that would resemble the filament in a shredded wheat biscuit.

197. Q. Well, I have seen cabbage shredded, have you not? A. No, I do not believe I ever have. I have seen sauerkraut, but I do not know how they do it.

198. Q. Well, does this not look like a shred of sauerkraut except for the difference in material, when it is finished? A. Oh, there is quite a difference.

199. Q. As far as its physical form is concerned? A. Well, there is a similarity, but there is quite a difference, I think, between it. 10

200. Q. Is it not true that the Shredded Wheat Company in this country and in the United States, in its advertising during all these periods, refers to 'Shreds?' A. Yes.

201. Q. And used the term to describe that part of the product? A. Yes.

202. Q. And has described these machines as shredders? A. Yes.

203. Q. You were examined as a witness in the case in the United States, between the National Biscuit Company and the Kellogg Company in the District Court of the District of Delaware, I think on August 4th, 1932? A. Yes. 20

204. Q. And I suppose I can take it that what you said on that examination was a correct statement of the facts? A. Yes.

205. Q. Dealing with the past, if there was any difference between what you said then, and what you say now, your memory would likely be better then than it is now? A. I calculated to speak the truth in both cases.

206. Q. In question 21 you were asked:

Q. In what capacity were you employed by the Cereal Machine Company: And you said: A. First on the Production Table as pan man and peeling man, putting the shredded wheat from the boxes that they were made in on to the trays for baking; that was my first employ- 30
ment.

That was your evidence? A. Yes.

207. Q. Then you were examined as to your duties in Niagara Falls, you were asked at Question No. 36:

Q. What were your duties there?
and your answer was:

A. I installed all of the production machinery on the second floor; the shredding floor, excepting what was installed under contract by the people who furnished it.

That was your answer? A. Yes. 40

208. Q. Then you were asked at Question 46:

Q. What were your duties after the equipment of the Buffalo Avenue Plant? A. I carried on there as production foreman—or, rather, as shredder foreman, for about—until about the end of 1904. It was November or December, 1904.

A. Yes, that is correct.

209. Q. Then in question 86; you were asked:

Q. When you went with the Cereal Machine Company, what was the product of that company called? A. Shredded Wheat.

Then in question 87—

Q. Was there any other word connected with it? A. Why I have heard Mr. Perky say in his lectures that it was a whole-wheat bread; that the so-called staff of life was not a perfect product, that he believed that this product should be called the whole-wheat bread or the real staff of life; but the name 'Shredded Wheat' was generally used to describe the product.

10

That was your evidence? A. Yes.

210. Q. Then you were shown a carton, which is Exhibit 1 here, and which was similar to Exhibit 1, I take it? A. Yes.

211. Q. And was marked Exhibit 1 on that examination? A. Yes.

212. Q. And you were asked question 91:

Q. Mr. Wallace, I take from Plaintiff's Exhibit 1, an article, and ask you what it is? A. A shredded wheat biscuit.

213. Q. That was one of those biscuits like in Exhibit 1 here? A. Yes.

214. Q. Well then you were asked in question 118:

20

Q. Will you describe a little more particularly what you mean by shredding? What does that do to the wheat? A. Well, the whole wheat kernels, which have been previously cooked and cured, are drawn between these rolls, one of which is smooth, and the other grooved. The rolls are subjected to a considerable pressure, which draws this wheat out into filaments or fibres, which have always been known as shreds, although, in reality, technically, I suppose they are not shreds, but shreds, and shredded wheat are names that have been connected with it ever since I can remember.

That is correct? A. Yes, that is correct.

30

215. Q. Then question 119:

Q. Is the wheat in any way torn or cut by the machinery, or is it pressed? A. Well, it is more pressed than cut, although the grooves are sharp and the pressure seems to string them out into shreds, and the berries or kernels of wheat blend into each other, so that there is more or less a continuous thread in the groove. We have often taken a thread two or three feet long, composed of one kernel of wheat blended into another, and so on, although they do break at intervals.

That is your evidence? A. Yes.

216. Q. Then the next question, 120:

40

Q. What effect upon the wheat does this process have? A. Nothing except to force it into this fiber or shred.

That is your evidence? A. Yes.

217. Q. Then question 161—still on my direct examination, you were asked:

Q. Has there been any substantial change in the shredding apparatus? A. No, the shredders all work exactly the same as they did in the original process.

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That is correct? A. Yes.

218. Q. Then question 176:—

Q. What kind of wheat is used in the manufacture of this product?

A. Well, pure white wheat is the best for shredded wheat. Sometimes they have to use other kinds. But they should use at least seventy-five per cent. of whole white wheat to make the best product.

That is correct? A. Yes.

219. Q. Then in question 214:

Q. Is the correct cooking of the wheat important in the process of the manufacture of shredded wheat? A. Yes, very important. Under- 10
cooking makes the wheat —shows white starch fiber in the wheat; and over-cooking makes it sticky and soft, so that it does not make a perfect shred—cannot be dry cured. If it is over-cooked you cannot cure it into good condition in shredding, that makes it a good product.

That is correct? A. Yes.

220. Q. Then question 216:

Q. Is it necessary, in the course of the manufacture of shredded wheat, to have experienced men? A. Yes. It does not take long to teach a man how to make shredded wheat, but it is necessary that they know some few fundamental points. 20

That is correct? A. Yes.

221. Q. Then question 222:

Q. Is the form in which this biscuit has been, and is now being manufactured, the only practicable form in which the biscuit could and can be made? A. It is the most practicable with our machinery. But it could be made in many different designs.

Is that correct? A. Yes.

222. Q. Then you were asked something in regard to the production of the Quaker Oats Company, and in cross question No. 348, you were asked:

Q. Such as the Quaker Oats people make into a rosette? A. Well, 30
that is not a shred. That is more of a ribbon than a shred; but the Williamson Bird's Nest Biscuit that was made many years ago was a shred, and the Kellogg product is a shred.

That was your answer? A. Yes.

223. Q. Then you were asked in regard to the shape of the biscuit. Question 350:

Q. Do you know the process of making that bird's nest product?

A. No.

That is correct? A. Yes.

224. Q. Then in question 351, 352, 353 and 354: 40

Q. Is that what you had in mind? A. No. But there are many ways you could make this into different forms.

Q. Such as what? A. Well, you could make them in a loaf, like bread. You could make them in a long strip of shreds, eight or ten inches long and narrower than this. Or you could make them in different shapes —make them as they are there, or shorter.

Q. You can make them long, like a loaf of bread? A. Yes.

Q. Would that be susceptible of being cut up into slices? A. No, it would not be so good. I do not think there is anything more practicable than the way we do it. There are other ways in which it could be done.

Those were your answers? A. Yes.

225. Q. Then cross question No. 379:

Q. The length of the biscuit, as represented by this sample in Plaintiff's Exhibit 1, is the standard length, is it, during your time with the plaintiff and its predecessors? A. Yes, that has always been the length.

10

That was your answer? A. Yes.

226. Q. And that is the length shown in our present Exhibit 1? A. Yes.

227. Q. And the Quaker Oats Biscuit that I referred to a few moments ago, that is what you term a 'Muffet' is it? A. Yes.

228. Q. Then in our other case—Re-direct question 479:

Q. In speaking of other forms of making Shredded Wheat Biscuit, I think we mentioned Triscuit. Is that another form of manufactured wheat product? A. Well, it is a manufactured shredded wheat product, but it is decidedly different from the shredded wheat biscuit that we have in question.

20

That is your answer? A. Yes.

229. Q. Well now, that baking on both sides in the automatic machine in Canada, was that before or after you left? A. They had started it before I left, but it was only done in an experimental way.

230. Q. Do you do that in England? A. We have been experimenting in England with our older process to try and get it, and we have been successful, but not to the extent that they have with the automatic machine.

30

231. Q. Do you think it makes a more attractive appearance? A. I believe it does: although we have had criticisms of it from the trade, which of course we get in any change which you make in a product—but I believe it is an improvement.

232. Q. You were speaking of a picture of Niagara Falls on the Carton; what was the purpose of that? A. I do not know; just to connect it up with Niagara Falls for advertising purposes is the only reason that I can see. I do not know.

233. Q. Then I notice on Exhibit 1—that has the 'twelve Biscuits' printed on it for the first time; the other cartons before that did not have the 'Twelve Biscuits' printed on? A. Yes, that is correct.

40 234. Q. Was there any reason for that? A. They changed it—I believe at one time the weight was put on—I do not know whether it is now or not.

235. Q. Do you know any reason for that change? A. I do not know what their reason was for doing it in this country.

236. Q. Well, in the United States, do you know? A. As a matter of fact, I do not know whether they put the weight on—or the 'Dozen Biscuits' in the United States. I do not think I noticed it.

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237. Q. Now, the product you make in England is the same as here, I understand? A. Practically.

238. Q. And the same process of manufacture? A. Yes.

239. Q. You advertise it there to some extent, do you not? A. Yes.

240. Q. I have a sample of your advertising, issued in May, in the Listener—the 30th of May, 1934. Perhaps you can identify it? (Handing to witness). A. Yes.

(MARKED EXHIBIT 3)"

MR. CASSELS: I take the objection that the advertisement of the English company in England is not relevant to the issue here in Canada. What the English company may have done I do not know, but my submission is that it has no bearing on the Canadian situation. 10

HIS LORDSHIP: Of course, Mr. Cassels, I would not know that at the moment. It would seem to me that perhaps this issue goes back some way. I will admit it subject to objection.

MR. SMART: This witness had been asked about advertising in England, and this cross-examination bears on his views as to what these words mean. Exhibit No. 3 on the examination de bene esse will be Exhibit No. 9 here.

EXHIBIT No. 9: Page vii of "The Listener," issue of May 30, 1934, containing advertisement for "Shredded Wheat." 20

MR. SMART: This advertisement reads:—

"WHAT IS THE SECRET IN THE SHREDS:

"There is more, far more, in the unique 'shredding' process employed in the production of Shredded Wheat than many would imagine. It is this process which makes this splendid cereal the most vital, the most valuable, the most health-giving whole wheat food in the world. The 'shredding' process, combined with those of steam cooking and baking, renders every particle of the wheat easily digested by breaking down the starch cells, distributing the vitamins, carbohydrates and the vital bran elements evenly throughout. Thus the whole secret of 'shredding' is to give you a whole wheat food which has the quality not only of lightness but of 100% food value and digestibility. It supplies everything the body needs for complete sustenance and energy." 30

It indicates the way in which the term "shredding" has been applied to the process. Then:—

"241. Q. And the facts stated in that advertisement, I take it, are correct? A. They are correct to a point, but whether that is a shred or a filament, there is some difference of opinion as to that, but my own is that it is not really a shred, but it is called 'Shred' because that name has been given to it.

242. Q. And that is the way you describe it to the public? A. Yes. 40

243. Q. Then similar language, I think, has been used in the advertising in the United States and Canada; and on the cartons used from time to time. I have here what is an appendix from the Brief filed in the United States—

an extract from a lot of the advertising or advertising matter. Perhaps you will glance over that and see if that is the way you understand the product, during the period you have been associated with the company, has been advertised and described? (Handing to witness). A. This is the advertising that has been carried on for many years. I also notice they give the reason in here for the picture of Niagara Falls on the carton. Page 203. (MARKED EXHIBIT 4)."

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MR. SMART: Exhibit No. 4 on the examination de bene esse will be marked Exhibit No. 10 at the trial. Then perhaps we can refer to that document in argument. It contains extracts from the advertising, and is a more convenient way of dealing with it than putting in the bulky advertising.

EXHIBIT No. 10: Ten printed sheets containing extracts from Advertising matter.

MR. SMART: Then, continuing:—

"244. Q. I notice that many of these publications, such as the Saturday Evening Post, Ladies Home Journal, and Good Housekeeping—circulate in Canada as well as in the United States? A. Yes.

245. Q. As to the shape of the biscuit, you suggested for one thing, that the length is something that could be changed? A. Yes.

20 246. Q. And as to the width, have you ever made any experiments to determine whether it is practicable to change the width of the biscuit? A. Well, it could be done quite easily.

247. Q. My question was, had you ever made any experiments? A. No—not to my knowledge.

248. Q. Is there not a limitation due to the length of the filament? A. There is a limitation, but there is a wide range of widths that you could make it.

249. Q. If it were too long, the filament would break? A. Yes.

30 250. Q. On the other hand, you want sufficient width between the sides to enable the filament to bake properly on the top? A. Yes, and to arch over and make a strong product that may be safely shipped. There is a limit to the practical width of Shredded Wheat Biscuits for commercial purposes.

251. Q. And there is a limit to the practical narrowness? A. Yes, of course.

252. Q. I gather that while you were in Canada you had practically no contact with the purchasing public? A. No, I did not."

BY MR. CASSELS:

"RE-DIRECT EXAMINATION BY MR. CASSELS.

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40 253. Q. There is one question following the questions which were read into the record—question 222 was read into the record, of the witness's evidence taken in the United States action. I would like to ask as to question 223—in question 223 you were asked:

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Q. If you were asked to produce in commercial quantities a biscuit with shreds or filaments like shredded wheat, but in an entirely different shape, so as to be readily distinguishable from shredded wheat biscuit like those in Exhibit 1, could you do it? A. Yes.

Is that correct? A. Correct.

254. Q. Just one question which I think I overlooked; In what name has this product, similar to that contained in Exhibit 1, been sold, throughout the period that you have been connected with the Shredded Wheat Company, and its predecessors? A. The name has always been Shredded Wheat or Shredded Whole Wheat.

255. Q. And has the word 'Biscuit' entered into it at any time? A. Yes.

256. Q. In what way? A. It is sometimes spoken of as a Shredded Whole Wheat Biscuit, or Shredded Wheat Biscuit.

257. Q. And sometimes as Shredded Wheat alone? A. Yes.

258. Q. You say that while you were in Canada you had no contact with the purchasing public—to whom do you refer as the purchasing public? A. Well, the consumer of Shredded Wheat—the actual consumer.

259. Q. Were the actual consumers purchasers of the product from the Canadian Shredded Wheat Company Limited? A. No.

260. Q. Who were the purchasers? A. The Wholesale grocers.

261. Q. Did you have any contact with them? A. Only that we shipped the product to them when the orders were given to us at the factory."

MR. CASSELS: Then, my Lord, I should have put in before I read that deposition a sample of the defendants' product. You will notice that in paragraph 1 of the Statement of Defence it is stated:—

"1. The defendant Kellogg Company of Canada, Limited, admits that it manufactured and sold to its co-defendant, and the defendant Bassin admits that he offered for sale and sold under the name 'Kellogg's Shredded Whole Wheat Biscuit' a shredded wheat food product of the same kind as a shredded wheat food product manufactured and sold by the plaintiff and called by it from time to time 'Shredded Whole Wheat Biscuit,' 'Shredded Wheat Biscuit,' or 'Shredded Wheat.' "

MR. CASSELS: I do not know whether my friend wants to qualify that admission that it was manufactured in Canada?

MR. SMART: As a matter of fact, it should read: "manufactured in Battle Creek."

MR. CASSELS: It was not manufactured in Canada?

MR. SMART: No.

MR. CASSELS: My friend says I need not formally prove this package of Kellogg Biscuit.

EXHIBIT No. 11: Package of Kellogg's Shredded Whole Wheat Biscuit.

Then, as I stated in opening, there were witnesses examined on Commission in various places, and I suppose I should read that evidence. I shall commence with the evidence taken in Winnipeg.

The Registrar handed package containing carton of Shredded Wheat and evidence taken on Commission at Winnipeg to counsel for plaintiff.

MR. CASSELS: I think there was a different carton marked as an exhibit on the execution of each of the Commissions. I do not suppose there is any use in cumbering the record with all these packages?

HIS LORDSHIP: I would not think so.

MR. SMART: No, if they are like Exhibit 5 we can make a note that they are similar to Exhibit 5. We can check it as we go along.

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MR. CASSELS: Then, my Lord, I will read the evidence of John A. Campbell, James M. Mollison, James Mackie, and Hugh G. McLean, witnesses on behalf of the plaintiff, had and taken before Joseph L. Donovan, Commissioner, pursuant to an order issued out of this honourable Court on the 15th day of January, 1935, in the Master's Chambers, in the Law Courts Building, in the city of Winnipeg, in the Province of Manitoba, on the 2nd day of April, A.D. 1935, at the hour of 10.30 o'clock in the forenoon.

"PRESENT: Mr. R. C. H. Cassels, K.C., appeared for the Plaintiff, and Mr. Russell S. Smart, K.C., appeared for the Defendants.

It is agreed between counsel present that the depositions be taken in shorthand by the said Commissioner, and afterwards by him extended on the typewriter, and that the reading over and signing of the transcript by the witnesses be dispensed with.

The Commissioner took the prescribed oath. Then:—

JOHN ALEXANDER CAMPBELL, being first duly sworn, testified as follows:
DIRECT EXAMINATION BY MR. CASSELS:

Q. Mr. Campbell, you reside in Winnipeg, I understand? A. Yes.

Q. What is your business? A. Manager of a retail grocery.

Q. What is the name of it? A. Campbell Grocery Limited.

Q. How long have you been in the grocery business? A. Forty years.

Q. Always in Winnipeg? A. Yes.

Q. What is the nature of your business, a retail business exclusively?
A. Exclusively retail; family retail.

Q. Where is the business situated? A. Corner of Sherbrook and Wolsley streets.

Q. Would you describe the class of business, I mean is it what we call a first class? A. A family business.

Q. A family business? A. Yes.

Q. How are your sales made, generally speaking, through the purchasers coming to the store, and to some extent telephone orders? A. Our business is about seventy-five per cent. telephone, and twenty-five per cent. counter.

Q. Has your company handled an article which is known as Shredded Wheat? A. Oh, yes.

Q. Could you say for how long? A. Thirty-five years.

Q. Have you handled it continuously during that period? A. Oh, yes.

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Q. Could you tell me in a general way what the extent of your sales have been? A. No, I could not very well tell you that in percentage.

Q. No, but I mean could you say whether your sales have been in large quantities or small quantities? A. Fairly large.

Q. Could you say approximately what they would amount to say per month, or per year? A. They run between 2 and 3 cases a month in some seasons; in other seasons, a case a month.

Q. A case consists of what? A. Thirty-six packages.

Q. And a package contains how many of the so-called biscuits? A. Twelve biscuits.

Q. By what company is the shredded wheat you speak of manufactured and sold? A. Well, we buy ours exclusively through the jobbers here.

Q. You buy through the jobbers? A. Yes.

Q. But can you tell me by whom the article is made? A. By the Shredded Wheat Company of Niagara Falls. We always looked on them as the manufacturers.

Q. Have you known in the course of your business experience of any other article, any food article, which has been sold under a similar name to that? A. Not the same name, no.

Q. Have you known of any other article which has been sold in the trade, or which your company has handled, which resembles in any way the product which is known as Shredded Wheat? A. We handled a product called "Muffets," which is similar to it.

Q. Similar in what respect? A. In the texture, and the same quality of process, I would imagine—could I say that?

Q. Is it made out of wheat? A. Yes.

Q. What about the appearance of it? A. A different shape.

Q. A different shape? A. A different shape.

Q. The Muffet, as I understand it, is a round article? A. Yes, a round article.

Q. And that is made by the Quaker Oats people? A. I believe it is at the present time.

Q. I show you a package, Mr. Campbell, can you identify that? A. Yes.

Q. Will you tell us what that is? A. That is a package of Shredded Wheat biscuits.

Q. That is the article of which you have been speaking in giving your evidence, and which you say you have been handling for some thirty-five years? A. Yes.

(Package of Shredded Wheat biscuits, referred to, produced and marked Exhibit 1.)"

MR. CASSELS: We can put on the notes that this exhibit is similar, if it is similar, to Exhibit 5.

MR. SMART: It is similar to Exhibit 5.

MR. CASSELS: Could we put on the notes that Exhibit 1 of the examination of Mr. Campbell is similar in all respects to Exhibit 5 already in?

10

30

40

HIS LORDSHIP: Yes.

MR. CASSELS: Then:—

“Q. Has the Shredded Wheat article, as contained in this package, Exhibit 1, always been made in the same shape and form as you see there in this carton? A. Yes.”

MR. CASSELS: I suppose we should say the carton and the contents thereof?

MR. SMART: Yes.

MR. CASSELS: Then:—

10 “Q. Throughout your whole experience? A. As far as I know it has been always the same.

Q. What about the carton, has it been the same as this one we have here?

A. Same shaped carton, only the printing has been different on it.

Q. What about the picture of Niagara Falls which appears on the carton?

A. That is changed now to a new—they have a different picture on it (indicating). This has always been the same.

Q. But the picture of the Falls has always been the same? A. Yes.

Q. And the carton has always had that picture on it? A. Oh, yes.

20 Q. Mr. Campbell, when customers are ordering this article, by what name do they call it? A. Shredded Wheat.

Q. Is that the invariable practice? A. Yes, sir. It is the only name we know it by.

Q. That is the only name you know it by? A. And the public.

Q. And if you receive an order, let us say by telephone, for shredded wheat, what is it you supply to your customers? A. Shredded Wheat, this article here.

Q. This article which we have here marked as Exhibit 1? A. Yes.

30 Q. Is there now or has there been at any time during your experience in business any other article which would answer to that name of Shredded Wheat? A. Not in my particular case.

Q. What would you say, having regard to your experience in the business, that the name ‘shredded’ denotes? What does it mean?

MR. SMART: I object to your putting it as widely as that. He can only give evidence as to his own experience and knowledge.

MR. CASSELS: I said having regard to his own experience.

MR. SMART: You cannot ask him to speak for others.

MR. CASSELS: I think it is a fair question I suppose it can be taken subject to your objection. I think the witness is qualified to express a view on that.

40 Q. Let me ask you first, having regard to your experience in the business, what does the name ‘Shredded Wheat’ mean to you? A. It means nothing more than the form of process that the biscuit is made in, which is shredded wheat made into biscuit form.

Q. By whom? A. By the Shredded Wheat Company.

Q. Of Niagara Falls? A. Yes.

*In the
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Plaintiff's
Evidence

No. 6
John Alexander
Campbell
Examination.

—continued

Q. You say it is a shredded wheat; what do you mean by that? A. By the appearance of it, and the manner in which it is made.

Q. Do you know how it is made? A. Well, I have never seen it made, but I understand the process pretty well.

Q. You say you understand the process. Is your understanding it is a shredding process? A. A shredding, yes.

Q. I am informed it is not, Mr. Campbell.

MR. SMART: Don't correct the witness. A. You see, from the style and nature of the biscuit there are shreds.

Q. Well, I see—

10

MR. SMART: Please, I object; don't lead the witness.

Q. I really want to know the witness' knowledge, that is all. A. I have never been through the factory. I could not give you the technical method of manufacturing it.

Q. What, Mr. Campbell, having regard to your knowledge of the business, and the fact you have been in the grocery business for all these years, would you say in your opinion the name 'Shredded Wheat' means to the public generally, the purchasing public generally?

MR. SMART: That is an objectionable question. He is speaking of what the name means to somebody else. He can tell what he knows about it himself, 20 but he can't tell what is another person's mind.

MR. CASSELS: I submit, Mr. Commissioner, that he is qualified to express an opinion as to that.

THE COMMISSIONER: I will allow the question, subject to it being ruled on by the trial judge. A. It means nothing more or less than one of the many breakfast foods, cereals.

Q. Which one of the many breakfast foods or cereals? A. That is a pretty hard question to answer; there are so many breakfast foods.

Q. Are there many breakfast foods known by the name of shredded wheat? A. No, not outside of this one.

30

Q. Not outside of this one, Exhibit 1? A. No, not outside of that.

Q. In what form do you supply the article Shredded Wheat? Altogether in the cartons such we have here? A. Yes.

Q. You do not sell any individual biscuits? A. No, just the packages.

Q. Have you heard of the Kellogg shredded wheat? A. No, not until this morning.

Q. Has it been, so far as your knowledge goes, on the market in this part of the country? A. I have never been offered it.

Q. Do you know of it having been on sale anywhere else in this part of the country? A. No."

40

MR. SMART: Then:—

"CROSS-EXAMINATION BY MR. SMART:

Q. These muffets you spoke of, Mr. Campbell, in what way were they similar to the shredded wheat? A. Much the same in texture as the shredded wheat.

Q. Were they made from shredded wheat? A. They were made from wheat, I wouldn't say shredded wheat.

Q. You said it was similar? A. Yes.

Q. A wheat biscuit might be just an ordinary cracker? A. No, it is shredded.

Q. But not in the form of a biscuit? A. It is in the form of a round thing, practically the stamp of this, only a different shape. A thick biscuit.

Q. Shredded wheat in different form? A. Yes, in different shape.

10 Q. I gathered as far as this form of biscuit is concerned made from the shredded wheat—how would you describe the shape of this biscuit? A. This is an oblong biscuit.

Q. You have never had any shredded wheat in the oblong form except this article of this company? A. No.

Q. You buy it from the jobber? A. Yes.

Q. Just order it by the name 'Shredded Wheat?' A. Yes.

Q. There is no other name by which you could order it? A. No, there is not."

*In the
Supreme Court
of Ontario*

Plaintiff's
Evidence

No. 6
John Alexander
Campbell
Cross-examination
— continued

MR. CASSELS: Then I read the direct examination of James Muir Mollison:—

20 "JAMES MUIR MOLLISON, being first duly sworn, testified as follows:

No. 7
James Muir
Mollison
Examination

DIRECT EXAMINATION BY MR. CASSELS:

Q. Mr. Mollison, you reside in Winnipeg? A. I do.

Q. And have for some years? A. 23 years.

Q. What is your business? A. Retail grocer.

Q. Where is your business carried on? A. Corner of Notre Dame and Langside Streets.

Q. How long have you been engaged in that business? A. I have been about 28 years in the retail grocery business.

30 Q. How much of that 28 years in Winnipeg? A. Twenty-two or twenty-three, I am not sure.

Q. Where were you before that? A. In the Old Country.

Q. What part of the Old Country? A. Scotland; Perthshire, Scotland.

Q. Are you the head of your business? A. Yes.

Q. What is the nature of the business that you carry on there? A. Groceries.

Q. Retail groceries? A. Retail groceries.

Q. Is there any description of the kind or class of business you carry on?
A. Retail groceries, confectionery, fruits.

40 Q. Do you make sales, as a rule, through the customer coming to the store and buying, or do you make them by telephone orders, or how? A. About fifty per cent.

*In the
Supreme Court
of Ontario*
—
Plaintiff's
Evidence
—
No. 7
James Muir
Mollison
Examination
—continued

- Q. About fifty per cent. by telephone? A. And fifty per cent. by cash customers.
- Q. When the customer comes to the store? A. Yes.
- Q. Are you familiar with the article which is known as shredded wheat?
- A. Yes. Not through the article itself, but through handling the package.
- Q. You handle it in your business? A. In my business, yes.
- Q. For how long have you handled it? A. About twenty-eight years.
- Q. Did you handle it in the Old Country before you came out here?
- A. I did.
- Q. And in this business here in Winnipeg continuously since you first 10 started? A. Yes.
- Q. From whom do you purchase the article? A. Through the whole-sale.
- Q. What approximately is the extent of your sales of shredded wheat?
- A. About three cases a month, I would imagine, for the twelve months in the year.
- Q. A case contains how much? A. Thirty-six packages to the case.
- Q. And each package contains what? A. About twelve biscuits.
- Q. This package here which is in front of you, and marked Exhibit 1 on Mr. Campbell's examination, is the article about which you have been 20 speaking? A. Yes.
- Q. Do you sell it exclusively in the carton? A. In the carton exclusively.
- Q. You do not sell the individual biscuits? A. No.
- Q. What do you say as to the shape and appearance of the articles throughout the period that you have been speaking of, and speaking of the article itself? A. Sort of oblong, the shape of the biscuit.
- Q. Have there been any changes in the form or changes in the appearance of the biscuit during the period you speak of? A. Not that I know of.
- Q. What about the carton? A. The carton has been the same until 30 lately. If I remember rightly there is a blue band on it now, with a different colour.
- Q. You are not speaking of this carton we have here, Exhibit 1? A. No.
- Q. You say just recently there has been a change? A. I could not be positive, but I think there is a sort of blue band around it.
- Q. Have you had any of the cartons you speak of now? A. Yes.
- Q. Over what period? A. Just about a week ago I opened one.
- Q. What about the picture of Niagara Falls which is on this carton, Exhibit 1? A. That is still the same.
- Q. Has that always been there on the carton? A. Yes, that has always 40 been there. If I remember right they have a rose on the new package.
- Q. When people order this article, Exhibit 1, by what name do they call it? A. Shredded wheat.
- Q. Is that the invariable practice? A. That is the invariable name, shredded wheat.
- Q. Is it known by any other name? A. No.

Q. When you receive an order for shredded wheat, what do you supply?
A. Shredded wheat.

Q. This article we are dealing with now? A. Yes.

Q. What would you say, Mr. Mollison, as to the meaning of the name shredded wheat, having regard to your experience in this business? What does the name mean to you? A. It just means what it looks like on the picture.

Q. You mean this article here, Exhibit 1? A. Yes.

10 Q. Have you ever known of any other article being on the market having the same name? A. Not the same name, no. I have known of muffets, but they are the nearest.

Q. That article 'Muffets' is still under the name of 'Muffets'? A. Yes. Nothing else under the name of shredded wheat.

Q. Have you known of any article on the market similar in appearance and shape to the biscuit, or whatever you call it, which is contained in this carton, Exhibit 1? A. Yes, muffets.

Q. You say they are similar in appearance and shape? A. They are similar in appearance; the shape is a little different.

Q. What is the shape? A. Muffets are more round.

20 Q. Muffets are round? A. Yes. I haven't handled them for years. I only had one or two cases in the store. I haven't had them for a long, long time.

Q. Muffets are made by whom? A. Quaker Oats Company.

Q. Apart from Muffets have you known of any other article which is similar in shape and appearance to this article, this shredded wheat biscuit we are talking of? A. No.

Q. Have you heard of Kellogg's Shredded Wheat? A. Not until yesterday.

30 Q. Have you known it to be on the market at all? A. No, not in Winnipeg.

Q. You haven't handled it yourself? A. No, I haven't handled it.

Q. Do you use Shredded Wheat yourself as an article of food? A. I do not; they do at the home.

Q. How is it purchased? In cartons? A. In the cartons.

Q. Who would you say as a rule, speaking generally, makes the purchases from your store—not speaking of telephone orders—actual purchases when people come in, is it the so-called Mrs. of the house, or housewife? A. The lady of the house would send a child with a note, or the child might come in and ask for it.

40 Q. Has that happened frequently? A. Yes.

Q. If a child comes in to your store and asked for shredded wheat, what do you give him or her? A. We give her shredded wheat; we can't give her anything else.

Q. You mean this article here (indicating Exhibit 1)? A. Yes, that article there."

MR. SMART:—

“CROSS-EXAMINATION BY MR. SMART:

Q. I gather you have never had any other article made of shredded wheat but this Exhibit 1? A. No.

Q. And these muffets, why did you say they were similar? A. In appearance they are similar.

Q. That is, they have the shredded— A. They have the shreds, and the appearance is much similar to the picture you see on the box there.

Q. You sell Kellogg's products, too? A. Yes.

Q. I suppose you sell a good deal of Kellogg's corn flakes? A. Yes. 10

Q. Probably more of that than shredded wheat? A. Yes.

Q. All of Kellogg's products have a distinctive package with the word 'Kellogg's' in red? A. Yes.

Q. Green border, and so on? A. Yes.

Q. And they are well known and highly regarded in the trade? A. Yes.

Q. You spoke of 'Niagara Falls' appearing always on the package, Exhibit 1. Does that phrase, 'Home of Shredded Wheat,' also appear? A. I couldn't be sure of that. I haven't paid any particular attention.

Q. Have you ever been to Niagara Falls to see the Shredded Wheat being made? A. No, I haven't. 20

Q. You have of course other oblong biscuits, wheat and other things? A. No, I don't think so.

Q. I mean flat biscuits like soda crackers? A. Oh, yes, we have.

Q. I suppose you have wheat crackers? A. Several varieties, but not in the same shape as that.

Q. They are not raised up the way Shredded Wheat is? A. No.

Q. Not like a loaf? A. No.”

MR. CASSELS: Then I read the direct examination of Mr. James Mackie: “JAMES MACKIE, a witness on behalf of the plaintiff, being first duly sworn, testified as follows: 30

DIRECT EXAMINATION BY MR. CASSELS:

Q. Do you reside in Winnipeg? A. Yes.

Q. Have you lived here for some years? A. The last ten years.

Q. What business are you engaged in? A. With the Rapid Grip & Batten Limited, engravers.

Q. Are you familiar, Mr. Mackie, with an article known as Shredded Wheat? A. Yes, sir.

Q. In what connection are you familiar with it? A. We use it in our home.

Q. You are not in the business of selling it? A. No, sir. 40

Q. How long have you known this article? A. I have been married the last ten years, and I do not think our cupboard has ever been without it.

Q. I show you this package or carton which is in front of you, Exhibit 1 on Mr. Campbell's examination, is that the article you speak of? A. Yes, I can tell by the Niagara Falls; I always notice that.

Q. From whom do you purchase this article? A. From any retail grocer.

Q. Has there been any change so far as you know in the shape or appearance of the biscuit itself which is contained in this carton, Exhibit 1? A. No, sir, I don't think there has been any change in it for the last number of years.

10 It has always been the same shape, same package, and packed the same way.

Q. To what extent have you been using it? Is it a common article of food in your family? A. Yes, sir, I would say it is used on an average of twice a week in our home, both by myself and my children.

Q. Do you ever purchase it in any other way than contained in the carton, of which Exhibit 1 is a specimen? A. No.

Q. By what name is the article known to you? A. Shredded wheat.

Q. When you order a supply of this article to be furnished to your home, by what name do you order it? A. 'Shredded Wheat'—'a package of shredded wheat.' As a matter of fact, last Saturday I did the purchasing for my wife. I went out to the store, and there is the order as she has it there. I crossed it off as I bought the articles. It is marked '1 package of Shredded Wheat.'

Q. Have you ever known it by any other name than Shredded Wheat? A. No, sir.

Q. What would you say that the name 'Shredded Wheat' means to you, Mr. Mackie? A. It means, I guess you would call that a cake of shredded wheat cereal.

Q. A cake or biscuit? A. Or biscuit.

Q. Manufactured by any particular concern? A. Shredded Wheat
30 Company, Niagara Falls.

Q. Have you ever been at Niagara Falls? A. No, sir.

Q. Have you ever known of any other article on the market having the same name as this, namely, 'Shredded Wheat?' A. No, sir.

Q. Have you known of any other article which is similar in shape and appearance to the biscuit which is contained in this carton, Exhibit 1? A. I have never seen one.

Q. Have you ever used this shredded wheat otherwise than in your own home? A. Yes, sir, when I was travelling on the road I frequently had it for my breakfast in the morning.

40 Q. That would be in a hotel or restaurant? A. Hotel and restaurant both.

Q. By what name have you ordered it? A. Shredded Wheat.

Q. When you have ordered Shredded Wheat under those circumstances what has been supplied to you? A. Always a cake of shredded wheat.

Q. That is, this article right here? A. Yes. In the restaurants in most of the small towns they just reach up and get it out of the package.

*In the
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of Ontario*

Plaintiff's
Evidence

No. 8
James Mackie
Examination
—continued

Q. In the hotel how is it served? A. It is served on a plate to you. They will ask you generally if you want it steamed or dry.

Q. But you do not see it coming out of the package? A. No, you do not see it coming out of the package.

Q. When you have ordered shredded wheat under those circumstances in hotels or restaurants have you ever been served with anything other than this article we have here, Exhibit 1? A. No, sir. You can always generally tell the taste of it. If you are a consumer of it at all you would know it."

No. 8
James Mackie
Cross-Examination

MR. SMART:

"CROSS-EXAMINATION BY MR. SMART:

10

Q. What other cereals do you use in your home? A. We have porridge, cream of wheat, corn flakes, grape-nut flakes.

Q. Kellogg's Corn Flakes? A. Not necessarily. We do not ask for any particular brand of corn flakes.

Q. This is the only brand of shredded wheat? A. That is the only one we know of.

BY MR. CASSELS:

Q. There are various brands of corn flakes? A. Yes, I realize that. With the corn flakes several different companies are putting different ads out, but in buying them it don't necessarily have to be any particular brand.

20

Q. Do you ever ask your children to get your groceries from the store? A. No, our boy is not old enough yet. He is only seven."

No. 9
Hugh George
McLean
Examination

MR. CASSELS: Then I read the direct examination of Hugh George McLean:—

"HUGH GEORGE MCLEAN, a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. CASSELS:

Q. Do you reside in Winnipeg, Mr. McLean? A. Yes.

Q. You have for some years? A. Seventeen years.

Q. What business are you engaged in? A. Saskatchewan Pool 30 Elevators.

Q. Are you familiar with the article known as Shredded Wheat? A. Yes, I am.

Q. In what way have you become familiar with it? A. Through the use of it.

Q. Through the use of it? A. Yes.

Q. You have not been engaged in the business of selling it at all? A. No.

Q. Where have you used it? A. Just in our own home, and on holidays.

Q. How long have you known of it? A. I have known of it ever since we came to the city. We used it seventeen years ago.

Q. You have used it more or less continuously during the past seventeen years? A. Yes.

Q. To what extent have you used it? A. As a breakfast cereal.

Q. Do you recognize this carton in front of you there, Exhibit 1? A. Yes.

Q. Is that the article of which you have been speaking? A. Yes.

Q. Have you purchased it always in the carton? Or have you ever purchased it in bulk? A. We always purchased our cereals in the carton.

10 Q. Can you say whether during the period you speak of there has been any material change in the shape or appearance of the biscuit itself which is contained in the carton? A. No, sir, it is the same.

Q. What about the carton itself? A. The carton is just the same as far as I can recall.

Q. Are there any features or illustrations on the carton that are particularly familiar to you? A. Yes, sir, Niagara Falls.

Q. Has that always been on the carton so far as you know? A. Yes, sir.

Q. Have you ever been at Niagara Falls? A. No, sir.

20 Q. When you order this article from the grocer by what name do you describe it? A. Shredded wheat.

Q. Have you ever known it described in any other way? A. No, sir.

Q. Then what to you does the name shredded wheat mean? A. A product or biscuit made by the Canadian Shredded Wheat Company.

Q. Have you ever known of any other article being on the market similar in shape or appearance to this shredded wheat biscuit? A. No, sir.

Q. Did I ask you to the extent of which you used this shredded wheat? A. Yes, sir, I use it as a cereal.

Q. Have you ever had occasion to use it or order it outside of your own home? A. No, sir."

*In the
Supreme Court
of Ontario*

Plaintiff's
Evidence

No. 9
Hugh George
McLean
Examination

—continued

30 MR. SMART: Then:—

"CROSS-EXAMINATION BY MR. SMART:

Q. What other cereals do you use in your home? A. We have Rice Crispies occasionally; Red River cereal.

Q. Is that a Kellogg product, Rice Crispies? A. Yes.

Q. Do you use Kellogg's corn flakes at all? A. No, we don't.

Q. All of the shredded wheat you ever bought was made by the Canadian Shredded Wheat Company? A. Yes.

Q. You never heard of any other being on the market? A. No.

40 Q. That is the only name by which you know it? A. Canadian Shredded Wheat, yes.

Q. And that to you describes the product? A. Yes."

No. 9
Hugh George
McLean
Cross-Examination

EXHIBIT No. 12: Record of evidence of John A. Campbell, James M. Mollison, James Mackie and Hugh G. McLean, taken before Joseph L. Donovan, Commissioner, at Winnipeg, Manitoba, on April 2, A.D. 1935.

MR. CASSELS: The next examinations were taken in Regina, my Lord. I suppose we had better check the material forwarded. We can check the package of Shredded Wheat with Exhibit 5.

MR. SMART: Yes, it is similar.

EXHIBIT No. 13: Record of the examination viva voce of J. Strathdee, W. J. Braine, C. S. May, N. J. Taylor and J. Heatley, on Wednesday, April 3, A.D. 1935, before Sydney Inch, Commissioner, at Regina, Saskatchewan.

MR. CASSELS: I read the direct examination of James Strathdee:—

“JAMES STRATHDEE—SWORN:

EXAMINED BY MR. CASSELS:

1. Q. Mr. Strathdee, you reside in the city of Regina, I understand?
A. I do.
2. Q. And you have for some years? A. Yes.
3. Q. What business are you engaged in? A. That of a wholesale grocer.
4. Q. Could you tell us the name of your business, company or firm?
A. Campbell, Wilson & Strathdee, Limited, affiliated with Campbell Bros. & Wilson, of Winnipeg. It is Campbell, Wilson & Strathdee Ltd. out of Regina and Swift Current of course.
5. Q. Is your main office here in Regina? A. In Regina, yes.
6. Q. And you have a branch office in Swift Current? A. Yes.
7. Q. How long, Mr. Strathdee, have you been engaged in that business of a wholesale grocer, or connected with it? A. Personally?
8. Q. Yes, personally? A. About 24 years.
9. Q. Was the business organized prior to the time you first became connected with it? A. Oh, yes, the business was organized in 1881 or -82.
10. Q. One of the pioneers in the West? A. Yes.
11. Q. And the firm you mentioned in Winnipeg, has that been in existence for a long time too? A. Over fifty years.
12. Q. Then your business as I understand, or the business of your company, is a wholesale grocery business? A. Yes.
13. Q. And throughout what territory do you operate? A. Well, that is a little difficult to say, the territory is zoned, that is on account of the

distributing points, and freight rates, etc., governs that. We operate in some districts quite far afield.

14. Q. Is your business carried on pretty well throughout the province of Saskatchewan? A. Yes, I would say entirely within the province but more particularly in South-western Saskatchewan. We do some business in the North, of course.

15. Q. Mr. Strathdee, are you familiar with the company called The Canadian Shredded Wheat Company Ltd? A. I have known of them for a few years.

10 16. Q. How long? A. Quite a long time ago.

17. Q. Would you say your knowledge of them goes back to the time when you first engaged in the wholesale Grocery business? A. I cannot think of that. Cereals have come to the front in recent years. I could not say how long. I would say 25 years.

18. Q. And has your company been a purchaser and a seller of the products of Canadian Shredded Wheat Company Ltd.? A. Yes.

19. Q. By what name is that product of theirs known? A. Shredded wheat.

20 20. Q. Is there any other name for it so far as your knowledge goes? A. Not to my knowledge.

21. Q. I show you a carton or package, can you identify that, Mr. Strathdee? A. Yes.

22. Q. What is that? A. Shredded Wheat.

23. Q. Is that the article about which you have been speaking and which you have known for about 25 years? A. It looks very much like it. I would say it is identical.

ENTERED AS EXHIBIT 1 TO THE COMMISSION EVIDENCE.

30 24. Q. How do your customers refer to this article? When your customers order this product, similar to Exhibit 1, by what name do they order it? A. Shredded wheat.

25. Q. And if a customer orders from you or your company Shredded Wheat, what article do you supply them with? A. This is the only one of the kind we have.

26. Q. When you say 'this,' you mean Exhibit 1, this package? A. Yes, it is the only shredded wheat we handle.

27. Q. Have you ever known in your experience in the wholesale grocery business of any other article which has been called by that name? A. No. We have never handled any other.

28. Q. You never have? A. No.

40 29. Q. Have you ever known of any other? A. Well sir, I have heard there was another put out similar, but I haven't seen it.

30. Q. To what are you referring now, Mr. Strathdee? A. I do not know. Just another shredded wheat. I haven't seen it.

31. Q. Then during this period we are speaking of has the article, the Shredded Wheat, or Shredded Wheat Biscuit as it is sometimes called, has it

always been made in the same shape and form and with the same appearance as we find it in Exhibit 1? A. Yes, yes, that is the Shredded Wheat I have always known.

32. Q. There never has been any change so far as you know? A. No. They make another product, Triscuit.

33. Q. Is that similar to this (indicates Exhibit 1)? A. No.

34. Q. What about the carton in which the so called biscuits are packed, can you say whether it has always been the same? A. I think in similar form, any that I can recall. I don't recall any other form.

35. Q. Do you remember any particular feature, or features, which 10
have always appeared on the carton, so far as your memory serves you? A. No. I never really examined it, I never really examined the carton.

36. Q. Do you know where this shredded wheat is manufactured? A. I have always been led to believe Niagara Falls.

37. Q. Have you ever noticed the picture of Niagara Falls on the back of the carton? A. No. I can see it now. You know we handle a lot of different lines. We are not like a retail business, we don't always take a package up and study it.

38. Q. I can appreciate that, Mr. Strathdee. Then what does the name Shredded Wheat convey to you? What does it mean to you when you 20
hear the name 'Shredded Wheat'? A. Shredded Wheat biscuits, just like these. (Indicates Exhibit 1). That is the only thing I know in the nature of these.

39. Q. That is Shredded Wheat in the shape and form of these in the carton Exhibit 1? A. Yes.

40. Q. Have you known at any time in your experience of any other article which has been on the market and which is similar in shape and appearance to this biscuit which is enclosed in the carton, Exhibit 1? A. I cannot recall any others."

BY MR. SMART:

30

"CROSS-EXAMINED BY MR. SMART.

41. Q. What other cereals do you handle? A. Oh, a great many. We practically handle a full line.

42. Q. I suppose you have handled Kellogg's various products? A. Yes.

43. Q. For many years? A. Yes.

44. Q. About as long as you have handled Shredded Wheat? A. Well no, I could not answer that question offhand. I have known them all.

45. Q. And they always have the word 'Kellogg' in red on them? A. They always have the word 'Kellogg' on. I am quite familiar with the word. 40
I know there is green in connection with the package.

45A. Q. And the word 'Kellogg'? A. Yes.

46. Q. I suppose the sales of their products would be at least equal to that of Shredded Wheat? A. Greater. They have a large variety of goods.

47. Q. This product has always been bought and sold by the name of Shredded Wheat, Exhibit 1? A. Yes.

48. Q. And that is a good descriptive name for it? A. Anybody who asks us for Shredded Wheat would get this. You never think of anything else.

49. Q. You have never had any other Shredded Wheat in your stocks? A. No."

*In the
Supreme Court
of Ontario*

Plaintiff's
Evidence

No. 10
James Strathdee
Cross-Examination
—continued

MR. CASSELS: Then I read the direct examination of W. Gordon Braine:

No. 11
W. Gordon Braine
Examination

10 "W. GORDON BRAINE, Sworn:

EXAMINED BY MR. CASSELS:

1. Q. I understand you reside in Regina? A. Yes.

2. Q. And have you resided here for some years? A. I have been here since 1916.

3. Q. What business are you engaged in? A. Retail Grocery since 1918.

4. Q. Do you know the plaintiff company in this action, the Canadian Shredded Wheat Company Ltd.? A. Just their traveller.

5. Q. You know their traveller? A. Yes.

20 6. Q. In the course of your business have you purchased and sold the product put out by that company? A. What do you mean by that? The corn flakes or this particular thing you are speaking of?

7. Q. Do you know what product they do put out? A. I think I know the majority of them, not all, but the majority of their products, corn flakes, pep, bran-flakes—

8. Q. I did not know they made those? A. What? Kellogg's Corn Flakes?

9. Q. I am speaking of the plaintiff company, the Canadian Shredded Wheat Company Limited? A. Oh, pardon me. I know of this article.

30 10. Q. By this article you mean this product contained in this carton which we will mark Exhibit 1 in your evidence? A. Yes.
CARTON ENTERED AS EXHIBIT '1.'"

MR. CASSELS: That is similar to Exhibit 5?

MR. SMART: Yes.

MR. CASSELS: It is agreed that the carton shown to this witness is the same as Exhibit 5 at the trial. Then:

"11. Q. And that is known as what? A. Shredded Wheat.

12. Q. How long have you handled this shredded wheat? A. Ever since I have been in business.

13. Q. How long have you been handling this shredded wheat? You say ever since you have been in business? That is, you say, since 1918?
A. Yes.

14. Q. Now during the period you have been handling this article has there been any material change in the shape or appearance of the so-called biscuit itself which is contained in this carton, Exhibit 1? A. I don't think so. I am not positive of that because I don't use it myself. The box has had a change in the wrapper which I would say was about five years ago when this shredded wheat picture was put on.

15. Q. You say there was a change in the carton about five years ago? 10
A. Yes.

16. Q. Prior to the time you speak of, five years ago, what was the difference? A. I think there was just the picture of the plant without the picture of the biscuit.

17. Q. The picture of the biscuit was not there? A. Yes. That is my recollection.

18. Q. Are there any other features of the carton, the illustrations of the carton, with which you are familiar? A. The picture of the Falls has always been on. I don't think there has been any difference except that.

19. Q. Except that the picture of the biscuit itself has been put on 20
one side? A. Yes.

20. Q. Overlapping the picture of the building? A. Yes.

21. Q. By what name is this article contained in Exhibit 1 known in your business? A. Shredded Wheat.

22. Q. Is any other name ever given to it? A. I guess somebody will occasionally ask for 'Whole Wheat Biscuit.'

23. Q. And if they ask for that— A. Or Shredded Wheat Biscuit. Sometimes Whole Wheat Biscuit and sometimes Shredded Wheat Biscuit.

24. Q. If they ask for Whole Wheat Biscuit what would you supply them with? A. I would ask do they mean Shredded Wheat. 30

25. Q. If they ask for Shredded Wheat what do you supply them with?
A. This (Indicates Exhibit 1.).

26. Q. This article Exhibit 1? A. Yes.

27. Q. What about Shredded Wheat Biscuit, what do you give them if they ask for that? A. They would get this. (Again indicates Exhibit 1).

28. Q. During your time in the grocery business has that article (Exhibit 1) ever been known by any other name than that of Shredded Wheat or Shredded Wheat Biscuit? A. Not to my knowledge.

29. Q. And when any customer orders from you Shredded Wheat, what do you supply them with? A. Shredded Wheat. 40

30. Q. This article contained in Exhibit 1? A. Yes.

31. Q. Then, what does the name Shredded Wheat mean to you, Mr. Braine? A. It just means this package and nothing else. (Indicates Exhibit 1).

32. Q. How is your business conducted, is it largely through the personal attendance of customers or is there a certain amount of telephone

orders sent in? A. Pretty close to forty or fifty per cent. of my orders is over the telephone.

33. Q. And when customers come to your store for goods as a rule do they come themselves or do they sometimes send others? A. There is a great deal of sending children there, children with notes.

34. Q. If a child comes to you with a note asking for shredded wheat, what does the child get? A. Shredded Wheat.

35. Q. This article Exhibit 1? A. Yes, I haven't anything that would take the place of that except muffets, which is an entirely different
10 article. It is as though it was run out in a ribbon and then wound. It is a small biscuit, a round biscuit about that size. (Indicates).

36. Q. That means nothing when it is put down in the notes, what size do you indicate, would you say about two inches in diameter? A. About two and a quarter inches in diameter, but it is like a ribbon and is wound round and round. It is entirely different. I imagine it is made from the same stuff. At least I don't think there would be much difference.

37. Q. Who is that made by? A. By the Quaker Oats Company.

38. Q. And by what name is it invariably known? A. Muffets.

39. Q. Is your business confined to any particular district in the city
20 of Regina or is it pretty well spread out? A. I am in the North-west corner.

40. Q. Are you personally a consumer of this article? (Indicates Exhibit 1). A. You mean in my family?

41. Q. Do you eat it yourself? A. No.

42. Q. Have you ever had occasion to order it in hotels or restaurants or anything like that? A. No, I don't think so."

BY MR. SMART:

"CROSS-EXAMINED BY MR. SMART:

43. Q. You sell other varieties of breakfast foods? A. Yes.

44. Q. A good deal of Kellogg's goods? A. Yes.

30 45. Q. You are familiar with their package? A. Yes.

46. Q. The red name and green border? A. Yes.

47. Q. When you said that these Muffets were made from the same stuff what did you mean by that? A. I meant they were the same in appearance, as far as I know. They tasted the same.

48. Q. The Wheat is shredded in the Muffets? A. Yes.

49. Q. And have you any whole wheat biscuits that are not shredded?
A. No, I only carry the two lines.

50. Q. Which? A. Shredded Wheat and Muffets.

51. Q. You have never carried in stock any other Shredded Wheat?
40 A. Not to my recollection.

52. Q. Have you ever seen the process of the manufacture or shredding of the wheat? A. No, I have never been in the factory at all.

*In the
Supreme Court
of Ontario*

Plaintiff's
Evidence

No. 11
W. Gordon Braine
Examination

—continued

No. 11
W. Gordon Braine
Cross-examination

*In the
Supreme Court
of Ontario*

Plaintiff's
Evidence

No. 11
W. Gordon Braine
Cross-Examination
—continued

53. Q. There is no other name for this except shredded wheat to identify the product? A. No, not as far as I know.

54. Q. That is a good descriptive name for it? A. I suppose so. I never saw the process so that I do not know."

BY MR. CASSELS:

No. 11
W. Gordon Braine
Re-examination

"RE-EXAMINED BY MR. CASSELS:

55. Q. When you say the wheat is 'shredded,' what do you mean by that? A. I have no idea how the thing is made, but I presume it is shredded up.

56. Q. You do not know the process? A. I do not know the process at all. 10

57. Q. You do not know whether the wheat is shredded or whether it is not? A. Only the name 'Shredded Wheat' I inferred from that that it was."

MR. CASSELS: Then I read the direct examination of CLIFFORD S. MAY:

No. 12
Clifford S. May
Examination

"CLIFFORD S. MAY, Sworn:
EXAMINED BY MR. CASSELS:

1. Q. You live in the city of Regina. Do you? A. Yes.

2. Q. Have you lived here for some years? A. I have been in the city six years. 20

3. Q. What is your business? A. Grocer.

4. Q. What kind of Grocer, wholesale or retail? A. Retail.

5. Q. Altogether retail? A. Yes.

6. Q. How long have you been in that business? A. You mean on my own or how long have I worked in groceries?

7. Q. Both? A. I have been in the retail grocery business for over twenty years. On my own for the last five.

8. Q. Where were you in the retail business before you came to Regina? A. Melfort, Saskatchewan.

9. Q. Exclusively? Your experience is limited to Melfort and Regina, Saskatchewan? A. And Plunkett, Sask. 30

10. Q. How long were you there? A. I was in Plunkett for about a year.

11. Q. And you have been on your own in Regina for about 5 years? A. Yes.

12. Q. Are you familiar with The Canadian Shredded Wheat Company Limited? A. As the maker of Shredded Wheat Biscuit, that is all.

13. Q. You have known of them? A. Yes.

14. Q. Have you ever seen their plant? A. No.
 15. Q. Do you handle in your business the product of that company?
 A. Yes, Shredded Wheat.
 16. Q. I show you now a package or carton, can you identify it? A. It
 is the same carton and the same biscuit as I sell as Shredded Wheat.

*In the
 Supreme Court
 of Ontario*

Plaintiff's
 Evidence

No. 12
 Clifford S. May
 Examination

—continued

ENTERED AS EXHIBIT '1.'

MR. CASSELS: That is the same carton, my Lord, as the other witnesses in Regina mentioned and is the same as Exhibit No. 5. Then:—

- 10 "17. Q. It is the same as the Shredded Wheat you buy and sell in your
 store? A. Yes.
 18. Q. From whom do you buy? From the Wholesale Grocers? A.
 Yes, from the Wholesale Grocery.
 19. Q. How long have you known this article? A. Over twenty
 years.
 20. Q. That is all the time you have been in the grocery business?
 A. Yes. I have known it in the store business for twenty years.
 21. Q. Can you tell me, so far as your recollection goes, whether there
 has been any change in the shape and appearance of the biscuit itself during
 the time you have known it? A. No. As I remember it it has been a biscuit
 20 of that nature ever since I have known it.
 22. Q. It always has had the shape and appearance of the biscuit in
 Exhibit No. 1? A. Yes, as I remember it.
 23. Q. Do you remember whether there has been any change in the
 carton in which the biscuit has been packed? A. No, I don't know that I
 do. I know there is a new carton out now a little different in color.
 24. Q. That is just in the last few days? A. Yes, I do not remember
 any previous difference.
 25. Q. Are there any features of the illustrations on this carton that
 you can recognize as having been on the carton during the time you have
 30 known it? A. Yes, that picture of the Falls and the picture of the plant,
 the building.
 26. Q. They have both been on? A. Yes, I do not know that it is
 the same picture but anyway a picture of the building.
 27. Q. Do you buy this product altogether in the carton? A. Yes.
 28. Q. And sell it in the same way? A. Yes.
 29. Q. There is no purchase or sale of it in bulk? A. No.
 30. Q. Now if customers of yours order Shredded Wheat, what do you
 you give them? A. A package similar to this.
 31. Q. A package similar to the carton Exhibit 1? A. Yes.
 40 32. Q. Is there any other article which is known by the same name?
 A. Not that I know of.

*In the
Supreme Court
of Ontario*
—
Plaintiff's
Evidence
—
No. 12
Clifford S. May
Examination
—continued

33. Q. If people, customers of yours, ask you for Shredded Wheat, what do you give them? A. This article there (Indicates Exhibit 1).

34. Q. Is that the name by which it is always called? A. Shredded Wheat or Shredded Wheat Biscuit.

35. Q. How is your business conducted? Is it largely through personal attendance of customers at your store or over the telephone? A. Both ways.

36. Q. I presume most of your customers are women? A. Yes.

37. Q. Is it the customer herself who comes to the store or does she send some one else? In some cases does she send someone else? A. Yes, 10 she might send someone on an errand, a boy or girl often.

38. Q. Does the person who comes on the errand, speaking generally, ask for what is wanted or do they bring written orders for what is wanted? A. In most cases they ask for it.

39. Q. And if they ask for Shredded Wheat this (indicating Exhibit 1) is the article you say you would give them? A. Yes.

40. Q. Are you a consumer of this Shredded Wheat at all? A. I eat it sometimes, yes.

41. Q. In your own home? A. Yes.

42. Q. Have you ever had occasion to order it in restaurants or hotels? 20 A. Yes, I have done.

43. Q. And when you have ordered it what has been served to you? A. A biscuit similar to that (indicates biscuit in Exhibit 1).

44. Q. How is it served? A. Usually with cream.

45. Q. Is it served in the carton? A. No, out of the carton.

46. Q. In a dish? A. Yes.

47. Q. And on those occasions, ordering it in that way, have you seen the carton out of which the biscuit has been taken? A. I would in some instances. Not every time, though.

48. Q. Did I ask you if you had ever been to the plant of The Canadian 30 Shredded Wheat Company Limited? A. Yes, you asked me. No, I haven't."

No. 12
Clifford S. May
Cross-Examination

BY MR. SMART:

"CROSS-EXAMINED BY MR. SMART:

49. Q. I suppose you sell a large quantity of Kellogg's products? A. Yes, I sell some of their products.

50. Q. How are their products marked? A. The name "Kellogg" is on all of them and they have their trade marks.

51. Q. In connection with the packages themselves, are there two colorings? A. Not on all packages. Kellogg, the name is usually in red.

52. Q. You say the word "Kellogg" is in red on the package? A. Yes, 40 the word "Kellogg" is usually in red.

53. Q. You haven't had any other kind of Shredded Wheat in your stock except that made by The Shredded Wheat Company of Canada?
A. No, not Shredded Wheat.

54. Q. You know of no other name to describe this biscuit other than 'Shredded Wheat'? A. No."

*In the
Supreme Court
of Ontario*

Plaintiff's
Evidence

No. 12
Clifford S. May
Cross-Examination
—continued

MR. CASSELS: I read the direct examination of Mr. N. J. TAYLOR:

"N. J. TAYLOR, Sworn:

"EXAMINED BY MR. CASSELS:

1. Q. You reside in Regina, Mr. Taylor? A. Yes.
- 10 2. Q. And you have for some years? A. Since 1909.
3. Q. What business are you engaged in? A. Finance.
4. Q. You are not in the grocery business or anything like that? A. No.
5. Q. Are you familiar with the name of the plaintiff company, The Canadian Shredded Wheat Company Ltd.? A. I am.
6. Q. How long have you known of that company? A. Oh, for some years.
7. Q. Are you familiar with the product which is manufactured and sold by that company? A. I am.
8. Q. By what name is that product known to you? A. Shredded
20 Wheat.
9. Q. How have you become familiar with it? A. As a consumer. I have been using it for years. We use it in our own home.
10. Q. During the time you have known the product and have been a consumer of it has there been any material change in the shape or appearance of the biscuit itself? A. I haven't noticed any.
11. Q. It has always appeared to be similar to this biscuit I show you now, taken out of this package here? (Indicates package). A. It has.

PACKAGE OR CARTON ENTERED AS EXHIBIT '1.'"

No. 13
N. J. Taylor
Examination

MR. CASSELS: That again is the same carton, my Lord, as Exhibit No. 5.
30 Then:—

"12. Q. By what name has this article been known to you during this period of years? A. As Shredded Wheat.

13. Q. Do you know of any other article which has been described by a similar name, Shredded Wheat? A. I haven't any knowledge of any other.

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Plaintiff's
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No. 13
N. J. Taylor
Examination
—continued

14. Q. And what does the name Shredded Wheat convey to you?
A. Oh, the breakfast food of that shape and size. This biscuit here (indicates Exhibit 1).

15. Q. Have you been familiar with the carton in which this Shredded Wheat is packed? A. Yes.

16. Q. Could you say during the years you have known it that there has been any material change in the decoration or illustrations on the carton?

A. No, I could not, it all looks the same to me as I remember it.

17. Q. Are there any particular features of the illustrations which you remember as having been on the carton during the years you have known it? 10
A. No, not outside the picture of the biscuit itself. It has always been set out in colors.

18. Q. Have you had occasion to order Shredded Wheat in any hotels or restaurants or places of that kind. A. Yes.

19. Q. And under what name have you ordered it when you wanted it? A. Shredded Wheat.

20. Q. How has it been served to you ordinarily, served in the carton?
A. No, brought in on a plate.

21. Q. When the Shredded Wheat is brought to you in a plate in that way do you see the carton out of which it has been taken? A. You mean 20 do I visualize it?

22. Q. Do you see the waiter, or who ever it is, take it out of the package and put it on the plate for you? A. No, I don't recall having done so.

23. Q. If you ordered Shredded Wheat and got any other article than this article which we find here in Exhibit 1, what would be your re-action?
A. If they brought me something I had not ordered naturally I would not be pleased with it. If a man orders something naturally he wants what he ordered.

24. Q. And if you ordered Shredded Wheat, what would you expect to get? A. I would expect to get that article there. (Indicates Exhibit 1)." 30

No. 13
N. J. Taylor
Cross-Examination

BY MR. SMART:

"CROSS-EXAMINED BY MR. SMART:

25. Q. You referred to the words 'Shredded Wheat' as indicating a breakfast food of that shape and form (indicates Exhibit) in one of your answers? A. Yes.

26. Q. I suppose by the form you include the shredded character of the wheat as well? You did not just mean the external shape? A. No, I would have in mind that it would be shredded, the texture as well.

27. Q. And the texture would be the shredding of the wheat? A. Yes."

MR. CASSELS: Then I read the direct examination of Mr. JOHN J. HEATLEY:—

*In the
Supreme Court
of Ontario*

“JOHN J. HEATLEY, Sworn:
EXAMINED BY MR. CASSELS:

Plaintiff's
Evidence

No. 14
John J. Heatley
Examination

—continued

1. Q. You reside in Regina? A. Yes.
2. Q. And have for some years? A. Since the spring of 1931.
3. Q. Are you engaged in the grocery business? A. No, in the cartage business.
4. Q. Are you familiar with the plaintiff Company, The Canadian
10 Shredded Wheat Company Limited? A. Yes.
5. Q. Are you familiar with the product manufactured and sold by that company? A. Yes.
6. Q. How have you come to be familiar with it? A. Oh, just experimenting around. We tried one breakfast food and then another. It has been more or less popular in the house for quite a while.
7. Q. Your interest has been as a purchaser and consumer of the article? A. Yes.
8. Q. Not as a seller of it? A. No.
9. Q. Do you recognize this carton I show you now which we will mark
20 Exhibit '1' to the examination? A. Yes.

ENTERED AS EXHIBIT '1'.”

MR. CASSELS: That again is the same carton as Exhibit 5, my Lord. Then:—

“10. Q. What do you recognize it as? A. As a carton of Shredded Wheat.

11. Q. Can you say during the years you have known the article whether there has been any material change in the carton or the illustrations on the carton, so far as your memory goes? A. Not to any extent. It could be identified as a carton of Shredded Wheat. I do not know whether or not
30 there has been any change.

12. Q. Are there any features of the illustrations on the carton which you particularly have in mind as having been on the carton during the time you have known it? A. Just the general set up, the colour, shape and size, they are the same, I think.

13. Q. During the period you have known the article has there been any material change in the shape or appearance of the article itself, the biscuit itself. I am showing you one taken from the carton Exhibit 1? A. None that is noticeable, that is as far back as I can remember.

14. Q. When you have ordered this article by what name have you
40 ordered it? A. Shredded Wheat.

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Plaintiff's
Evidence
No. 14
John J. Heatley
Examination
—continued

15. Q. Do you know of any other article which has been on the market which would answer to that description? A. No.

16. Q. Have you had occasion to order Shredded Wheat in hotels and restaurants? A. Yes, that is where I became familiar with it first.

17. Q. How is that served to you in hotels and restaurants? A. In a deep plate, a deep soup plate.

18. Q. That is out of the carton? A. Yes, out of the carton. Oh yes.

19. Q. And when in a hotel or restaurant you order Shredded Wheat what do you expect to have served to you? A. This product, this here (indicates Exhibit 1), this Canadian Shredded Wheat product. 10

20. Q. Similar to what is contained in Exhibit 1? A. Yes.

21. Q. Have you had occasion to order the Shredded Wheat outside the city of Regina? A. Oh, yes.

22. Q. When you have been travelling? A. Yes, when I have been on the road."

No. 14
John J. Heatley
Cross-Examination

BY MR. SMART:

"CROSS-EXAMINED BY MR. SMART:

23. Q. I think you said you became first acquainted with it through ordering it in restaurants or hotels? A. Yes.

24. Q. When it would appear on the menu as Shredded Wheat— 20
A. As a breakfast food.

25. Q. You did not then know who made it, when you first ordered it?
A. No, I did not know the name of the manufacturer when I first ordered it.

26. Q. The name, Shredded Wheat, meant it was a particular kind of breakfast food? A. Yes.

27. Q. Later you found out that that kind of breakfast food was made by the Canadian Shredded Wheat Company Ltd.? A. Yes."

MR. CASSELS: That is the end of the Regina evidence, my Lord.

HIS LORDSHIP: We shall adjourn until 2.30.

Whereupon the Court adjourned at 1.05 o'clock p.m. until 2.30 o'clock 30 p.m.

Upon resuming at 2.30 o'clock p.m.:

MR. CASSELS: I think we had finished the evidence taken on Commission in Regina, my Lord, when we adjourned for luncheon.

The next stop was at Calgary, Alberta, where evidence was taken before Mr. George H. Taylor, the Official Court Reporter, who is named as Commissioner and who has made an affidavit. I do not think I need bother your Lordship about that. The evidence taken at Calgary will be marked Exhibit No. 14.

EXHIBIT No. 14: Record of evidence of LOUIS PETRIE, FREDERICK GEORGE BULL, LLEWELLYN THORNE MCLANDRESS, WILLIAM H. CUNNINGHAM and GEORGE FREDERICK MITCHELL, taken before Mr. GEORGE H. TAYLOR, Commissioner, at Calgary, Alberta, on the 4th day of April, A.D. 1935.

*In the
Supreme Court
of Ontario*
—
Plaintiff's
Evidence
—continued

MR. CASSELS: The first witness called was LOUIS PETRIE:—

“The said LOUIS PETRIE having been duly sworn and examined, deposited as follows:

No. 15
Louis Petrie
Examination

10 BY MR. CASSELS:

Q. Mr. Petrie, you reside in Calgary? A. Yes sir.

Q. And have for some years? A. Constantly since 1907.

Q. What business are you engaged in? A. Grocery, wholesale.

Q. Wholesale groceries. Are you in the retail business at all? Or, exclusively in the wholesale business? A. Well, Louis Petrie Limited is exclusively wholesale.

Q. How long have you been in that business? A. Since 1912.

Q. And all during that time in Calgary? A. Yes.

Q. Were you engaged in a similar business before that? A. Yes.

20 Q. Where? A. I was with the Hudson's Bay Company in Winnipeg, Calgary, Victoria and Kenora.

Q. How far back does your connection with the grocery business go? A. I hardly like to tell you. Well my first connection with the grocery business was in Brantford, Ontario, about '80 or '81, I am just not sure.

Q. 1881? A. Yes, well, I came to this country in 1886. I came to Calgary in 1886 first.

Q. Do you know the Plaintiff, in this action, the Canadian Shredded Wheat Company Limited? A. Oh yes.

Q. Have you done business with that company? A. Yes.

30 Q. Are you familiar with the product which is manufactured by that company? A. Yes, sir.

Q. How long have you known the Company or done business with it? A. Well, of course, I have not done business directly with the Company until 1912 but I have sold the product long before that.

Q. You have sold the product, can you say how far back? A. Well I do not think I could definitely but it was the latter part of the last Century, I know that.

Q. I show you a package Mr. Petrie, can you identify it? A. Yes, it looks almost the same, although I believe there has been some slight change in the lithographing has there not? The colouring is practically the same as it has always been as far as I can remember.

40 Q. I was going to ask you whether there had been as far as you remember any material change in this carton or package? A. Well I cannot say that

positively but it seems to me in the early days the package was somewhat different from this. Of course, I think we got the goods from the United States in the earlier period. How long has the Canadian Factory been operating?

Q. I think since 1905 or 1906? A. I think I am almost certain I sold the American product in Winnipeg. It seems to me the package was a little bit darker than that although the colouring was very similar. Not very much change if any but I thought it was probably a little darker.

Q. You identify this, do you, as a package of shredded wheat, the product of the Canadian Shredded Wheat Company Limited? A. Yes, sir.

CARTON IN QUESTION IS NOW MARKED EXHIBIT '1'."

10

MR. CASSELS: The carton is here, my Lord, and as far as I can see it is exactly the same as Exhibit 5. We can note that Exhibit 1 on the examination of Mr. Petrie is the same as Exhibit 5, including the package and contents. Then:—

"Q. During this period you speak of have you been continuously or more or less continuously buying and selling this product? A. Oh yes.

Q. Of the Canadian Company? A. Yes.

Q. I show you one of the biscuits which is enclosed in the package, Exhibit '1,' and I ask you Mr. Petrie if there has been any material change in the shape or appearance of the biscuit during the time you have known it? 20
A. No, I would say not. As far as I can remember, it has always been the oval shaped biscuit.

Q. Then by what name has this product been known? A. Well they generally ask for a shredded wheat biscuit.

Q. During what period has that been so? A. Or shredded wheat, for instance, a dealer will say 'Send me a case of shredded wheat.'

Q. During what period has that been so to your knowledge? A. Well I think it has been the case during all the period that I have sold it.

Q. Do you know of any other name by which this article has been known? A. No. Shredded wheat, or Shredded wheat biscuits, they always ask for. 30

Q. Then if a dealer orders Shredded Wheat from you or from your Company what do you supply to him as a result of the order? A. That package.

Q. This package. Do you sell the article at all outside of the package? Or altogether in cartons? A. Altogether in cartons. Of course, we sell less than cases. Some sell by the dozen.

Q. But you do not sell the article— A. Never broke a package.

Q. Never a broken package? A. No.

Q. Have you known of any other product on the market during the years you speak of which has been known by that name, Shredded Wheat? A. No, 40
I cannot say that I have. We have sold Kriscuits, of course, made by the same Company."

MR. SMART: That should be "Triscuits."

MR. CASSELS: Yes, it should be "Triscuits." Then:—

"Q. But that is a different article is it not? A. Yes, a different article, although I think very similar is it not. I have not seen Kriscuits for a long time. I do not think it sells now.

Q. I am asking you if you remember it, if you do not all right. Do you know of any other article which has been on the market during your time which has been similar in shape and appearance to this Shredded Wheat biscuit that I show you, taken from this Exhibit '1'? A. No. I do not
10 think I have ever seen a similar product. I have certainly never sold one anyway. There are so many cereal products made you have to think twice.

Q. I asked you a few minutes ago about the package. Are there any particular features on the package or carton, Exhibit '1', that you remember as having been there throughout this period. A. No, I do not know that there is anything different, any more than I thought possibly there had been a change in the colouring slightly. As far as I can remember, there has always been a picture of the biscuit on the package and as I said before I thought that at one time the package was a trifle darker in colour than this but that may not be the case.

20 Q. What about the illustration on the ends of the package, have you any recollection of it? A. Well I think that possibly this has been changed a little.

Q. When you say this, do you mean— A. I am referring to the ends, the picture of the Falls here.

Q. The picture of Niagara Falls? A. I daresay it has been on the package ever since it has been manufactured in Canada, I do not know for sure.

Q. I only want to know what your recollection is Mr. Petrie. A. Well it seems to me it is the same package we have been handling right along.

30 Q. Do you know where this product is made? A. Well I understand at Niagara Falls, Ontario.

Q. Have you ever been to the Plaintiff Company's plant there? A. No, I have not.

Q. Or to the plant of the United States Company on the other side of the river? A. No, I never have been in their plant.

Q. This perhaps may be repetition. What would you say the name 'Shredded Wheat' means to you, Mr. Petrie? A. Well just what the package looks like, Shredded Wheat, not a composite affair, it is more or less shredded. The same as you see Shredded cocoanut, you would define shredded cocoanut as different from other grades of cocoanut.

40 Q. Yes, and I believe someone said shredded codfish? A. Yes, there is shredded codfish, of course.

Q. This article that we have here, which is Exhibit '1,' I gather that is your understanding of what shredded wheat is?

MR. SMART: Well he has already told us. A. Yes, that is the way I would define it as being something different from other forms of cereal products or method of preparation."

*In the
Supreme Court
of Ontario*

Plaintiff's
Evidence

No. 15
Louis Petrie
Examination

—continued

BY MR. SMART:

"CROSS-EXAMINATION OF THE SAME WITNESS BY MR. SMART:

Q. You sell Kellogg's cereals too I presume? A. Yes.

Q. They are always marked with the word 'Kellogg'? A. Yes.

Q. In red, do you remember the package? A. Yes, they—their products are all—

Q. You sell a good many of them compared to shredded wheat? A. Well I have a great many varieties of course.

Q. They are well known and highly regarded? A. Yes.

Q. And this Kriscuit is that made of shredded wheat? A. Well it is 10 made by the Shredded Wheat Company, is it not, Kriscuit.

Q. Yes, but is it a shredded wheat product? A. Yes, I think so, I cannot tell you the difference between Kriscuit and a shredded wheat biscuit. But there might be some difference. Although I do not think it sells at all now. We have not got it at all now. I have not seen it for a long while and I have not been asked for it. It is a little different shape I think.

Q. You spoke of seeing the American package in Winnipeg. What time would that be about? A. Well that would be prior to 1905.

Q. That is all, thank you. A. Now I should say 1907 when I left the Hudson's Bay Company. Of course, I have been selling it ever since Shredded 20 Wheat came on the market."

MR. CASSELS: Then I read the direct examination of FREDERICK GEORGE BULL, my Lord:—

"The said FREDERICK GEORGE BULL, having been duly sworn and examined, deposed as follows:

BY MR. CASSELS:

Q. Mr. Bull, you reside in Calgary? A. Yes.

Q. For how long have you resided there? A. I came in 1912. I was away for about 20 months and I have been in Calgary ever since.

Q. 20 months about when? A. In 1920 I left for B.C. and I was up 30 there about 20 months and then came back to Calgary.

Q. What business are you engaged in? A. Merchant, groceries and fruit.

Q. Retail or wholesale? A. Retail.

Q. How long have you been engaged in that business? A. 18 years, that is in this country.

Q. Were you engaged in that business before you came to this country? A. Just a short time.

Q. Where, in England? A. Yes.

Q. Are you familiar with the Plaintiff Company, the Canadian Shredded 40 Wheat Company Limited? A. Well, I cannot say I am familiar with the company. I am familiar with the product.

Q. You are familiar with the product, what is that product. A. Shredded Wheat.

Q. I show you a package, Mr. Bull, can you tell us what that is? A. Well, that is a shredded wheat biscuit put up by the Company down at Niagara Falls.

Q. Have you been handling this product in your business? A. Yes, all along.

Q. Did you handle it or was it handled by the concern you were with in England? A. No, I do not think so.

10 Q. But you have handled it here? A. Ever since I have been in Calgary.

Q. I would like you to look at that package and tell me whether during the years you have known this product there has been any material changes in the package or the decoration or illustrations on the package? A. Well I think there has been a little change in the colour more.

Q. In the which? A. In the colour of the package.

Q. Yes. A. But I do not remember that there is any great change. As far as I know I believe it has always had the picture on there.

Q. Yes. A. Of the Falls.

20 Q. The picture of the Falls which appears on either end of the package? A. On both ends.

Q. Have you ever been at the Company's plant at Niagara Falls? A. No, I have not.

Q. I show you one of the so-called biscuits taken from this package which we will mark as Exhibit '1' and I ask you during the period that you have known it has there been any material change in the shape or appearance of the article? A. Not to my knowledge.

CARTON IS NOW MARKED EXHIBIT '1'."

30 MR. CASSELS: That carton marked as Exhibit No. 1 on the examination is similar to Exhibit 5, my Lord. Then:—

"Q. By what name is this product known in the business? A. Shredded wheat. That is what all the customers when they want it they always ask for shredded wheat.

Q. And when you get an inquiry for shredded wheat or an order for shredded wheat, what do you supply the customer with? A. Just that package and nothing else. Because I have nothing else anything like it in the store.

Q. Have you ever known of any other article on the market similar in appearance or shape to this biscuit? A. Never.

40 Q. Contained in this package? A. I have never seen one.

Q. How is your business conducted, Mr. Bull. I mean is it largely through the attendance of your customers at the store or through telephone orders or how? A. Telephone to a great extent.

*In the
Supreme Court
of Ontario*

Plaintiff's
Evidence

No. 16
Frederick George
Bull
Examination

—continued

*In the
Supreme Court
of Ontario*
Plaintiff's
Evidence
No. 16
Frederick George
Bull
Examination
—continued

Q. To a great extent. A. Yes, more by telephone than by customers coming in.

Q. If you received a telephone order do you deliver it? A. Yes.

Q. And when this article we have here, Exhibit '1', is asked for, by what name is it asked for? A. Shredded wheat, every time, without exception.

Q. Has there ever been to your knowledge any other article on the market which has been known by a similar name? A. Not to my knowledge, no.

Q. When people come to the store, customers come to your store, do they come personally as a rule or do they send someone? A. Well, sometimes they will come personally but the majority of cases they send their children. It is true we have quite a few adults come in but the children come generally. I tell you early in the morning we sell shredded wheat, when they are getting ready for breakfast, I find.

Q. And when the children come to the store, how do they order whatever is wanted? A. Most generally two shredded wheat.

Q. Do they ever ask for shredded wheat? A. Oh yes, they ask for it.

Q. And when they do what do you supply them with? A. I supply them with that packet or one similar to it.

Q. Exhibit '1'? A. Yes."

BY MR. SMART:

"CROSS-EXAMINATION OF THE SAME WITNESS BY MR. SMART:

Q. Have you never had any other shredded wheat in your store? A. Never.

Q. You have other cereals though? A. Oh yes, we have Quaker cereals and Kellogg cereals.

Q. What cereals do Kellogg's have? A. Corn flakes, bran flakes and all bran.

Q. You have had those during the same period you have had— A. No, some of them, because some of them have not been on the market as long as this. Well, I have never handled them if they were on the market it was unknown to me I will admit Corn Flakes, yes. But when you come down to all bran that was more recent.

Q. And Corn Flakes, what kind of a package are they? A. Well you know, flatter than that and a little bit taller.

Q. And with Kellogg's name on it in red? A. Kellogg's.

Q. In red? A. Well, now yes I believe it is in red, yes, I think it is in red. I would not be definite on that.

Q. Rather a distinctive form of package? A. Yes, it is very conspicuous. We handle today the Quaker but Kellogg's is much more conspicuous.

Q. And the same kind of package with all their goods except for the name? A. Yes.

Q. That is all."

No. 16
Frederick George
Bull
Cross-Examination

MR. CASSELS: Then I read the direct examination of LLEWELLYN THORNE McLANDRESS:—

*In the
Supreme Court
of Ontario*

“The said LLEWELLYN THORNE McLANDRESS, having been duly sworn and examined, deposed as follows:

Plaintiff's
Evidence

By MR. CASSELS:

Q. You reside in Calgary, do you, Mr. McLandress? A. Yes.

Q. And have for how long? A. Since 1920.

Q. 1920? A. Yes.

Q. What business are you engaged in? A. Grocery and meat and fruit.

10 Q. Is that a retail business? A. Yes.

Q. Have you been engaged in that business continuously since 1920?

A. 1921.

Q. 1921. Before you came to Calgary but what business were you in?

A. General store, country.

Q. Do you know the Plaintiff Company, the Canadian Shredded Wheat Company Limited? A. Oh I just know them the same as I know a lot of other Cereal Companies.

Q. Do you stock that Company's product in your business? A. Shredded Wheat we do.

20 Q. You say yes? A. Shredded Wheat, we do, yes. I do not know what else they may have.

Q. I show you this package and ask you if you can tell me what that is?

A. Well that is what we sell over the counter for Shredded Wheat.

Q. That is what you sell over the counter for Shredded Wheat? A. Yes.

CARTON IN QUESTION IS NOW MARKED EXHIBIT '1'.”

MR. CASSELS: Exhibit No. 1 on the examination is similar to Exhibit No. 5 here, my Lord. Then:—

30 “Q. Does that come from the Plaintiff Company, The Canadian Shredded Wheat Company Limited? A. I would expect so. I have never made any inquiries.

Q. By what name is this article in this package Exhibit 1 known? A. Shredded Wheat, only.

Q. Shredded Wheat only? A. Yes.

Q. When your customers order shredded wheat from you what do you supply them with? A. Shredded wheat.

Q. This article that we have here? A. Yes.

Q. Exhibit “1”? A. Yes, that is the only one I ever saw offered.

Q. Is it ever spoken of by any other name than Shredded wheat?

A. No, not to me.

40 Q. Now during the period that you have known the article can you tell me whether there has been any material change in the carton, in the illustrations or so on? A. I could not say. I cannot say that I can see any

*In the
Supreme Court
of Ontario*
Plaintiff's
Evidence
No. 17
Llewellyn Thorne
McLandress
Examination
—continued

differences. I can just recall seeing the picture of the building on there in the early days. I was kind of interested in the building on account of seeing it on there and I have been in the place. Not this one but the American Plant.

Q. What about the illustrations on the ends of the package. Can you speak as to them whether you know these illustrations have been there or not?

A. Well, I have admired them, I have been at the Falls so many times, Niagara Falls. It reflected me kind of back to that place.

Q. The question I asked you was whether you recollect that picture of the Falls having appeared on the package during the time you have known it?

A. Well I would say for a long while. How long I never had occasion to— 10

Q. Oh yes. Then I show you one of the biscuits contained in this package Exhibit "1", can you tell me whether there has been any material change in the shape or appearance of the biscuit itself during the time you have known it? A. No, except I have had some probably a little darker or a little lighter but that is probably the cooking.

Q. You say you might have seen it a little darker or a little lighter? A. Yes, in the colour, but not in the shape.

Q. You say you have seen the plant at Niagara Falls? A. New York.

Q. Not the Canadian Plant? A. No.

Q. How long ago? A. I came out West in 1905, it was previous to that. 20

Q. Previous to 1905? A. Yes.

Q. And that plant— A. Was in operation that day and I saw the stuff made.

Q. Beg pardon? A. The plant was in operation when we were there. There was an exhibition made for anybody. There was an excursion to see that plant at Niagara Falls, New York. And I saw that stuff made and boxed right there.

Q. And was that the same article we have here Exhibit "1"? A. Yes, precisely.

Q. How is your business conducted? Is it largely by personal attendance of your customers or is it by telephone? A. Telephone sixty per cent. 30

Q. Sixty per cent. you say would be by telephone? A. Yes.

Q. You make delivery do you when you have telephone orders? A. Yes, I have a boy.

Q. Do you have any experience with children coming to the store with orders? A. More than we do with adults.

Q. And when children come how do they ordinarily tell you what it is they want to get? A. Well if it is corn flakes or shredded wheat or bran flakes they tell you and you are taking your life in your own hands to substitute. 40

Q. What? A. You are taking your life and your business in your hands to substitute.

(CARTON AND CONTENTS ARE NOW MARKED EXHIBIT 1.)"

BY MR. SMART:

“CROSS-EXAMINATION OF THE SAME WITNESS:

BY MR. SMART:

Q. What operations did you see when you were at Niagara Falls? A. I seen the wheat washed in the first place and put through some sort of a process and then shredded.

Q. It is shredded? A. Yes, I think that is it. I can't say I was very much interested. I was a railroad agent at that time.

Q. Did you see how it was made into biscuits? A. No, we saw the
10 wheat being shredded and cooked, in pans.

Q. You have never had any other shredded wheat in your store? A. No sir.”

BY MR. CASSELS.:

“RE-EXAMINATION OF THE SAME WITNESS:

BY MR. CASSELS:

Q. You say—when you say you saw the wheat being shredded what do you mean by that? A. Well if you saw a turnip or a carrot shredded.

Q. Do you remember what the process was, how it was done? A. I do not think I would say or put in evidence that I can tell you how they
20 shredded it 35 years ago. I have been selling it for 28 years.

Q. You do not know just exactly what the process is which produces this article? A. No, I went through the biscuit plant here three years ago and saw them making soda biscuits there and I cannot tell you very much just that far back, let alone 35 years ago.”

MR. CASSELS: Then I read the direct examination of WILLIAM H. CUNNINGHAM, my Lord:—

“The said WILLIAM H. CUNNINGHAM, having been duly sworn and examined, deposed as follows:

30 BY MR. CASSELS:

Q. Mr. Cunningham, do you reside in Calgary? A. Yes, sir.

Q. What business are you engaged in? A. I am in the automobile business, the Packard Alberta Company.

Q. You are not in the grocery business? A. No.

Q. Have you any knowledge of the product of The Canadian Shredded Wheat Company Limited? A. Yes.

Q. In what way have you become familiar with it? A. Through using it possibly for the last 15 years.

Q. Using it where particularly? A. At my home particularly.

*In the
Supreme Court
of Ontario*

Plaintiff's
Evidence

No. 17
Llewellyn Thorne
McLandress
Cross-Examination

No. 17
Llewellyn Thorne
McLandress
Re-examination

No. 18
William H.
Cunningham
Examination

Q. In your own home? A. Yes.

Q. Have you had occasion to purchase the article yourself? A. Yes, it comes from my grocer, I have often brought it home myself, of course.

Q. I show you this package which we will mark as Exhibit '1' and I ask you if you can identify it and tell us what it is? A. Yes, I can, by the Niagara Falls as a package of Shredded Wheat.

CARTON IN QUESTION IS NOW MARKED EXHIBIT '1'."

MR. CASSELS: That package marked Exhibit 1 is the same carton as was marked Exhibit 1 on the examination of the other Calgary witnesses, and is the same as Exhibit 5 here, my Lord. Then:— 10

“Q. You can identify that as a package of shredded wheat? A. Yes, I can.

Q. Do you know by whom that article is made? A. I imagine by the Shredded Wheat Company of Canada.

Q. During the period that you have known this article, have there been, so far as you remember, any material changes in the package or the illustrations which appear on the package? A. Possibly, I do not remember this part here.

Q. Which is that? You are referring to the side which has only printing on it? A. Yes, I do not remember that at all. 20

Q. You do not remember the language on it? A. No.

Q. What about the opposite side with the picture of the building and the biscuits? A. Yes, I do remember that.

Q. And the illustrations on the end? A. Yes, I do.

Q. You say they have been on the package throughout this period you have known it? A. Some part of the package. Yes. Niagara Falls has been more or less a National point that shredded wheat have always brought out, being manufactured in Niagara Falls I imagine.

Q. Have you been at Niagara Falls? A. Yes.

Q. Have you seen the Company's plant there? A. No. 30

Q. Then I show you one of the biscuits taken from this package, Exhibit '1', can you tell me whether that is the article which you have been accustomed to use? A. Yes, it certainly is.

Q. During the time that you have used it have there been any material changes in the shape or appearance of the article? A. No. Just exactly the same biscuit I have always used.

Q. Have you ever known any other article on the market which has been called by the name Shredded Wheat? A. Not to my knowledge.

Q. And when you go into a store and ask for Shredded Wheat, what is it you expect to get? A. Shredded wheat. 40

Q. This article Exhibit '1'? A. Yes, this is the only one I have ever known so I naturally would not know of any other.

Q. Have you had occasion to order shredded wheat in hotels or restaurants? A. Yes, quite often. I have my breakfast quite often downtown at the Club Cafe on 8th Avenue and that is what I get for shredded wheat.

Q. How is that served to you? In the restaurants or hotels? A. In an ordinary individual bowl, I like bananas with my shredded wheat.

Q. It is not served in the carton? A. No, they have, I believe, individual packages, I think. I have noticed them in restaurants, where you break your own package, but that I am not quite sure of.

10 Q. But generally speaking. A. That biscuit is the way it is served in an individual bowl.

Q. When you order in that way do you see the package or carton from which the biscuit is taken? A. No. When you order shredded wheat I expect, you naturally expect to get shredded wheat because I have never known anything other than that particular biscuit. I mean as far as I know there has never been anybody else in Canada bring out Shredded Wheat.

MR. SMART: No cross-examination."

*In the
Supreme Court
of Ontario*

Plaintiff's
Evidence

No. 18
William H.
Cunningham
Examination

—continued

MR. CASSELS: Then I read the direct examination of GEORGE FREDERICK MITCHELL, my Lord:—

No. 19
George Frederick
Mitchell
Examination

20 "The said GEORGE FREDERICK MITCHELL, having been duly sworn and examined, deposed as follows:

BY MR. CASSELS:

Q. Mr. Mitchell, do you reside in Calgary? A. Yes, sir.

Q. And have you for some years? A. Oh, since about 1911.

Q. What business are you engaged in? A. I am working with the Johnston Storage Company.

Q. You are not in the grocery business then? A. No, sir.

Q. Have you any knowledge of the product of The Canadian Shredded Wheat Company Limited? A. No, I have never seen or heard tell of it.

30 Q. Have you any knowledge of the product or article known as shredded wheat? A. No sir, I cannot say that I have. Well, of course, you are referring to that there.

Q. I am asking you the question if you have any knowledge of an article known as shredded wheat? A. Yes,

Q. In what way have you acquired that knowledge? A. By consuming it, sir.

Q. You are a consumer of it are you? A. Yes sir.

Q. Have you been for some time? A. I have been eating it on and off now for several years past.

40 Q. Would you like to say how long approximately? A. It has been for a number of years I know that. Both when I have been boarding out and keeping house myself.

*In the
Supreme Court
of Ontario*
Plaintiff's
Evidence
No. 19
George Frederick
Mitchell
Examination
—continued

Q. I show you this package or carton, can you identify that in any way and say what it is? A. Yes, that is the package.

Q. This package, when you say this package, do you mean that is the package you have been accustomed to getting? A. That is what I have been obtaining from the grocery store.

CARTON IN QUESTION IS NOW MARKED EXHIBIT '1.'

MR. CASSELS: Exhibit 1 on the examination is similar to Exhibit 5 here, my Lord. Then:—

“Q. And this article or so called biscuit which is contained in the packet of which I show you one, is that the article that you have been consuming? 10
A. That is the one, sir.

Q. During the period that you have been a user of this article have you noticed any material changes in the design or get up of the package in which the shredded wheat is packed. Take a look at it and see if you have any recollection of any material changes or not? A. Well, there is a particular thing there that always struck me, was Niagara Falls.

Q. You are referring now to the picture of Niagara Falls? A. Yes.

Q. Which appears on the ends of the package? A. Yes.

Q. And has that been there as far as your memory goes? Throughout the period you have known the article? A. I could never remember of any 20
change, sir.

Q. Can you tell me whether during the period you have been a consumer of this article or a user of it whether there has been any material change in the shape or the biscuit itself? A. I cannot recollect of any change from the originals, sir.

Q. Have you ever been at the Shredded Wheat Company's plant?
A. No, sir.

Q. When you order this article, Exhibit '1,' by what name do you call it? A. I ask for a packet of shredded wheat.

Q. Do you know it by any other name than that? A. Well, of course 30
in asking for anything you do not usually give the full name, Canadian Shredded wheat. You ask for a packet of shredded wheat. I have never been offered anything else.

Q. When you have asked for shredded wheat this article Exhibit 1 is what you have served to you? A. That is what I have been getting.

Q. Have you had occasion to order shredded wheat in hotels or restaurants and places like that? A. Yes, occasionally and this is the identical same shaped biscuit that I have been getting.

Q. When you order in an hotel or restaurant, what is your experience as to how that has been served to you. Has it been served in the package or 40
carton? A. No, it is put on your dish, with cream. A jug of cream beside it and you help yourself.

Q. It is served to you in a dish? A. In a dish, yes.

Q. Have you any means on these occasions of seeing from what package or what kind of a package the biscuit is taken? A. No, I cannot say that I have.

Q. And the biscuit or shredded wheat which has been served to you under those conditions is it this biscuit? A. To the best of my knowledge it has been without exception the shape of that biscuit there.

Q. You say that biscuit there, you are referring to the biscuit contained in the package Exhibit '1.'? A. Yes.

10 Q. Thank you, that is all."

*In the
Supreme Court
of Ontario*

Plaintiff's
Evidence

No. 19
George Frederick
Mitchell
Examination

—continued

BY MR. SMART:

"CROSS-EXAMINATION OF THE SAME WITNESS:

BY MR. SMART:

Q. Do you use other cereals? A. Oh, Cream of Wheat and Corn Flakes.

Q. Whose Corn Flakes? A. Let me see, I presume it would be Kellogg's.

Q. You have known Kellogg's Corn Flakes as long as you have Shredded Wheat? A. Well now possibly I think I have, because I go into the grocer and ask him 'Give me,' well I ask for a package of that, for your week-end groceries, that I want, you will look at the r presumably it would be Kellogg's, yes.

Q. You—but you have never had any other Shredded Wheat? A. No. Not to my knowledge, sir.

Q. That is all, thanks."

No. 19
George Frederick
Mitchell
Cross-Examination

MR. CASSELS: Then there is an admission attached to that Cor my Lord. We had intended examining some witnesses at Edmonton, but it was pretty cold, so we decided to go right on to Vancouver. at the end is:—

30 "Counsel for all parties admit that the evidence of the witness the plaintiff propose to examine on Commission at Edmonton, would have been to the same effect as the evidence which has been given by the witnesses who have been examined at Winnipeg, Red Deer, Calgary, and agree that at the trial the Court shall deal with the evidence involved as though such evidence had been given."

HIS LORDSHIP: Is that a special document? It is not attached to a copy of the Commission evidence.

MR. CASSELS: As a matter of fact, the Commissioner forgot to write out for it.

40 MR. SMART: We can agree now that the Admission was made

*In the
Supreme Court
of Ontario*

Plaintiff's
Evidence
—continued

MR. CASSELS: Then I shall read the Commission evidence taken at Vancouver, British Columbia, my Lord.

EXHIBIT No. 15: Record of Evidence of WALTER NORVAL MCPHEE, ELMER RICHARDSON EDWARDS, CECIL CLAUDE ELLIOTT and THOMAS FRANCIS McDOWELL, taken before FRANCIS MILLAR CHALDECOTT, Esq., at Vancouver, B.C., on April 8, A.D. 1935.

MR. SMART: The package enclosed with the Commission evidence is the same as Exhibit 5, my Lord.

No. 20
Walter Norval
McPhee
Examination

MR. CASSELS: I read the direct examination of WALTER NORVAL 10
MCPHEE, my Lord:—

“WALTER NORVAL MCPHEE, a witness called on behalf of the Plaintiff, being first duly sworn by the Commissioner, testified as follows:

DIRECT EXAMINATION BY MR. CASSELS:

1. Q. You reside in Vancouver? A. Yes.
2. Q. And you carry on business there? A. As buyer for Kelly, Douglas & Company.
3. Q. What business does Kelly, Douglas carry on? A. Wholesale grocery.
4. Q. How long have you been connected with the wholesale grocery 20
business? A. You mean in Vancouver, or altogether?
5. Q. Take Vancouver first and then if we can go back of that, all right?
A. In Vancouver, since 1912; 23 years.
6. Q. And always in the same line? A. Yes, all my life.
7. Q. Prior to 1912 what was your business? A. I was in the whole-
sale grocery business in Scotland.
8. Q. How long? A. Since I left school; since I was 14.
9. Q. Can you give us a date for that? A. I guess so.
10. Q. Oh, approximately? A. Oh, about 1903.
11. Q. Since about 1903? A. About 30 years all told. 30
12. Q. Do you know the plaintiff company, the Canadian Shredded
Wheat Company Limited? A. Just that we have done business with them.
13. Q. What has been the nature of the business you have done with
them? A. My business is simply buying from them.
14. Q. What have you been buying from them? A. Only two lines,
Shredded Wheat and Triscuit.
15. Q. How would the two lines compare in volume? A. Well,
Triscuit is negligible. Shredded Wheat is 99.99 per cent.
16. Q. Have you been buying Shredded Wheat from the plaintiff
company during the whole period you speak of? A. No, just since about— 40
I came back from overseas in 1919, and since about 1922 I have been buying
from them.

17. Q. Have you ever visited the company's plant at Niagara Falls?
A. No. I have been there, but I never visited the plant.

18. Q. Could you tell us in a very general way what the extent of your purchases of Shredded Wheat have been? A. You mean as to volume?

19. Q. Yes, in a general way. A. Up to about two years ago we bought pooled cars, but in the last two years we have been buying straight cars.

20. Q. How frequently would that be? A. 600 cases to the car, during the summer months about every six weeks.

21. Q. Then I show you a package or carton, Mr. McPhee. Can you
10 identify that? A. Oh, yes.

22. Q. What is it? A. Shredded Wheat Biscuit.

23. Q. That is a package or carton of Shredded Wheat Biscuit? A.
Yes.

(CARTON REFERRED TO MARKED EXHIBIT 1.)

24. Q. Is that the article which you say you have been buying during
this period? A. Yes.

25. Q. Did you have any experience with Shredded Wheat in Scotland
before you came here? A. Yes, yes, we had.

26. Q. Did you buy it over there? A. No. I was on the road for a
20 little while. I was mostly in the warehouse. I was on the road occasionally.

27. Q. In what way did you have any experience with Shredded Wheat
at that time? A. Oh, just in the matter of filling orders.

28. Q. Did the company for which you worked handle it? A. Yes.

29. Q. During the time that you have known this article, can you say
whether to your knowledge there has been any changes in the package or
carton on which the Shredded Wheat Biscuit is packed? A. Not to my
knowledge, no.

30. Q. Are there any features in the illustrations or decorations on the
carton that you can particularly remember as having been there during the
time you have known it? A. No, I cannot say I do. I remember this end
quite clearly.

31. Q. What do you mean by 'this end'? A. The Falls.

32. Q. The illustration of Niagara Falls? A. Yes.

33. Q. That is on both ends of the carton? A. Yes, and of course I
know the description of the biscuit inside—this.

34. Q. You are referring when you say 'this' to the picture of the
Shredded Wheat Biscuit? A. Yes.

35. Q. You recollect that as having been on the carton? A. Yes.

36. Q. You say on the end there is a picture of Niagara Falls? A. Yes,
40 both ends the same, I remember distinctly.

37. Q. So far as you remember, that has always been on the carton?
A. Yes.

38. Q. Now by what name has this article been known during the
period you have known it? A. The general trade name, Shredded Wheat.

*In the
Supreme Court
of Ontario*

Plaintiff's
Evidence

No. 20
Walter Norval
McPhee
Examination

—continued

*In the
Supreme Court
of Ontario*

Plaintiff's
Evidence

No. 20
Walter Norval
McPhee
Examination

—continued

39. Q. And under what name have you bought it for your company.
A. Under Shredded Wheat. That is how we list it in our price book.

40. Q. And when any customers of your company order the article by what name do they order it? A. Shredded Wheat.

41. Q. Have you ever known any other article on the market which was known by the same name? A. No.

42. Q. I show you one of the so-called biscuits taken from the carton, Exhibit 1. During the time you have known the article, has there been any change in the shape or appearance of the biscuit? A. Not whatsoever, so far as I can see. 10

43. Q. I show you this biscuit taken from the carton, Exhibit 1. Would there be any doubt in your mind as to what it is? A. None whatever.

44. Q. If you were shown this biscuit and asked what it was, how would you describe it? A. Shredded Wheat.

45. Q. I suppose your business is exclusively with the retailers, is it? A. Yes.

46. Q. Do you sell to the consumers at all? A. No, except you consider mining camps and logging camps consumers, which they actually are.

47. Q. You do sell direct to them? A. Yes. They are recognized direct buyers. 20

48. Q. Is the article described in the same way? A. Always described that way, yes.

49. Q. Are you a consumer of Shredded Wheat yourself? A. No. I have eaten it, but as a regular diet, no."

No. 20
Walter Norval
McPhee
Cross-Examination

BY MR. SMART:

"CROSS-EXAMINATION BY MR. SMART:

50. Q. I gather from what you said there is no other name for this biscuit than Shredded Wheat? A. No other name in the trade. We don't as a rule use the word biscuit, just Shredded Wheat.

51. Q. You have not known of any other biscuit made from shredded wheat? A. No. 30

52. Q. Of corn flakes, have you more than one kind of corn flakes? A. Yes, there are about four corn flakes in this market.

53. Q. Whose is the best known? A. Kellogg's.

54. Q. You have other products of Kellogg's? A. Oh, yes, many.

55. Q. Would the volume of Kellogg's Corn Flakes be greater in sales than Shredded Wheat? A. Taking corn flakes alone, it would be a question I would have to check up. I think corn flakes have a larger volume of sale.

56. Q. All Kellogg's goods are sold in distinctive packages? A. Kellogg's, yes. Some of their newer lines are breaking away from the old style. 40

57. Q. But they all have the word 'Kellogg's' in red? A. Yes.

58. Q. And the dark green marking? A. Yes, some of the newer packages. There is one out just now that is rather a little departure.

59. Q. But during this whole period you have known of corn flakes?
A. Yes.

60. Q. Now have you ever seen Shredded Wheat in any other form than in this form of biscuit? A. No. The only thing we have had that might be considered a competitor is Quaker Muffins, made in the same shape and the same style of composition, I would judge.

61. Q. In what sense the same style of composition? A. Of the same
10 straw-y nature.

62. Q. But it is like a ribbon rolled up? A. Yes.

63. Q. More like a ribbon? A. Yes, in the original form, made in a kind of round patty.

64. Q. That is all. (Witness aside)."

MR. CASSELS: Then I read the direct examination of ELMER RICHARDSON EDWARDS, my Lord:—

"ELMER RICHARDSON EDWARDS, a witness called on behalf of the Plaintiff, being first duly sworn by the Commissioner, testified as follows:

DIRECT EXAMINATION BY MR. CASSELS:

20 65. Q. Do you live in Vancouver, Mr. Edwards? A. Yes.

66. Q. Have you for some years.? A. I have lived here for six years.

67. Q. What is your business? A. Red & White grocer.

68. Q. How long have you been in that business? A. Three years
here.

69. Q. Before you came here, where were you? A. I came from North Battleford, Saskatchewan, where I was in charge of a Red & White grocery there.

70. Q. How long were you there? A. Two and a half years. I was
30 at both places.

71. Q. Prior to that, what were you doing? A. I have been a grocery man and drygoods man all my life, since I was 13 years old.

72. Q. How long could we say that was—30 years? A. 39 years.

73. Q. You say that you have been in the grocery business during the whole time? A. Yes. I started as a delivery boy for my uncle when I was 13. I am 52 today.

74. Q. Delivery boy in what line of business? A. General store.

75. Q. Then do you know the plaintiff company, the Canadian Shredded Wheat Company Limited? A. I know their product very well.

40 76. Q. What is that product? A. Shredded Wheat.

77. Q. How long have you known it? A. To my knowledge, as far back as 30 years I know I have been selling Shredded Wheat.

*In the
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Plaintiff's
Evidence

No. 20
Walter Norval
McPhee
Cross-Examination
—continued

No. 21
Elmer Richardson
Edwards
Examination

78. Q. Have you ever been at Niagara Falls? A. Yes.

79. Q. Have you ever been over the Shredded Wheat Company's plant. A. No, I was there as a boy.

80. Q. I show you a package or carton. Can you identify that? A. Most decidedly.

81. Q. What is that? A. A package of Shredded Wheat, or a package that should contain Shredded Wheat.

(CARTON REFERRED TO MARKED EXHIBIT 1.)"

MR. CASSELS: And Exhibit 1 on the examination is the same exhibit as in the examination of the last witness, and is similar to Exhibit 5 here. 10
Then:—

"82. Q. What do you say it does contain? A. That is Shredded Wheat. I had it for breakfast and that looks very much like what I had.

83. Q. By what name is this article known? A. Known as Shredded Wheat.

84. Q. Is there any other article, or has there been any other article on the market, so far as you know, that had the same name? A. Not to my knowledge.

85. Q. Or any similar name? A. No, not to my knowledge. I have never seen it. 20

86. Q. When customers order this article from you, or from your company, by what name do they order it? A. Shredded Wheat.

87. Q. During the time you have known this article, can you tell me whether there has been any material change in the get-up and appearance of the carton containing the Shredded Wheat? A. Yes. Previously it did not have the 'Shredded Wheat' on there.

88. Q. Let us get that. It does not mean anything when read in the notes. A. If I remember right the original carton did not have this Shredded Wheat on there.

89. Q. The picture of the actual biscuit on the front? A. Yes, if I 30 recall rightly, and I think I am correct in that.

90. Q. Are there any other features of the decorations or illustrations on the carton which you recollect as having been on the carton? A. No, I don't think so. I know the old Niagara Falls has been on there for a good long time, and the factory has been on there, but if I can recall rightly this has been put on.

91. Q. You mean the picture of the Shredded Wheat? A. Yes, that has been put on there. I don't know how long it has been there, but I know it has been changed.

92. Q. You say the picture of Niagara Falls has been there a long time? 40
A. As long as I remember. It is the same old Shredded Wheat package.

93. Q. The picture appears on both ends? A. Yes. They may have changed in some respects, but it has always had Niagara Falls on it.

94. Q. I show you one of the so-called biscuits taken from this carton, Exhibit 1. Can you tell me whether during the period you have known it there has been any material change in the shape or appearance of the biscuit?

A. I don't think so. I don't think there has been any change. I have never noticed any. It has always been the same.

95. Q. I am only asking for your recollection. A. Yes, that is, so far as I know I don't think it has ever changed.

10 96. Q. Have you ever known any other article on the market similar in appearance and shape to this Shredded Wheat biscuit? A. No, I have never seen anything. I never have.

97. Q. And when a customer orders Shredded Wheat from you, what do you supply him with? A. That package of Shredded Wheat.

98. Q. You are referring to Exhibit 1? A. Yes.

99. Q. I suppose, or I have gathered from something you said, you are also a consumer of Shredded Wheat? A. Yes.

100. Q. Regular? A. Oh, yes, oh, yes, I could tell you a lot about what I think of Shredded Wheat as a real diet in the morning.

20 101. Q. We are not here to advertise the merits of the article. Where do you usually consume it—in your own home? A. Yes, I am a married man.

102. Q. Did you ever have occasion to order it in a hotel or restaurant? A. No. I don't travel at all.

103. Q. Your consumption is limited to your own home? A. Oh, yes.

104. Q. Do you do the ordering of it for your home yourself? A. Yes.

105. Q. And by what name do you order it? A. Shredded Wheat.

In fact I take a package off the shelf and take it home when I want Shredded Wheat.

106. Q. That is all."

30 BY MR. SMART:

"CROSS-EXAMINATION BY MR. SMART:

107. Q. You spoke of there being nothing on the market of similar shape and appearance. In what sense do you refer to that? A. I do not know of anything else like Shredded Wheat, of that particular product.

108. Q. But there are oblong biscuits? A. Oblong biscuits of that shape? I never came across them.

109. Q. Hotel rolls, have you never seen them in that shape? A. That is not a breakfast food, is it?

40 You are talking of Shredded Wheat.

111. Q. And a breakfast food made of wheat that is shredded, that is what you are referring to? A. Yes.

112. Q. That is what gives it the distinctive appearance? A. Yes.

113. Q. You have sold Kellogg's breakfast foods? A. Yes.

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Plaintiff's
Evidence

No. 21
Elmer Richardson
Edwards
Examination

—continued

No. 21
Elmer Richardson
Edwards
Cross-Examination

*In the
Supreme Court
of Ontario*
Plaintiff's
Evidence
No. 21
Elmer Richardson
Edwards
Cross-Examination
—continued

114. Q. Corn flakes? A. Yes.
115. Q. I suppose during all the period you sold Shredded Wheat you sold Kellogg's products? A. Yes.
116. Q. They have a good reputation and are well known? A. Yes, are well known people. (Witness aside)."

MR. CASSELS: Then I read the direct examination of CECIL CLAUDE ELLIOTT, my Lord:—

"CECIL CLAUDE ELLIOTT, a witness called on behalf of the Plaintiff, being first duly sworn by the Commissioner, testified as follows:

DIRECT EXAMINATION BY MR. CASSELS:

117. Q. Do you reside in Vancouver? A. Yes. 10
118. Q. Have you for some years? A. Six years.
119. Q. What business are you engaged in? A. Duplicating machines and office supplies.
120. Q. You are not in the grocery business? A. No, have never been connected with it.
121. Q. Have you heard of the plaintiff company, the Canadian Shredded Wheat Company Limited? A. Yes.
122. Q. In what connection have you known them? A. From the cereals they manufacture, and I have also done business with them. 20
123. Q. What is the cereal the plaintiff company manufactures? A. Breakfast cereal, Shredded Wheat.
124. Q. Is that the name by which the cereal is known?
MR. SMART: 125. Q. To you? A. To the best of my knowledge, yes.
MR. CASSELS: 126. Q. In what capacity have you known the cereal—as a consumer? A. Yes, as a consumer.
127. Q. How long have you known it? A. I think my first acquaintance was soon after I came to Canada, over 20 years ago.
128. Q. Have you been more or less a continuous user of it during that 30 period? A. Yes.
129. Q. Where do you use it—in your own home? A. My own home, yes.
130. Q. I show you a package or carton, Mr. Elliott. Can you identify that for me? A. That is very familiar. It is the only package, so far as I know, that it has been put up in, particularly with the picture of Niagara Falls and the factory.

(CARTON REFERRED TO MARKED EXHIBIT 1)."

MR. CASSELS: And that carton is similar to Exhibit 5, my Lord. Then:

No. 22
Cecil Claude
Elliott
Examination

"131. Q. This is a package of the article which you speak of as having consumed more or less for the past 20 years? A. Yes. I have never seen it packed any other way.

132. Q. I was going to ask whether you see any material change in the package or decorations on the package during the period you have known it? A. No, not that I know of.

133. Q. You spoke of the picture of the Falls, I think? A. So far as I know that has always been one of the features of the package.

134. Q. That is the picture which appears on each end of the packet?
10 A. Yes.

135. Q. And during the time you have known it has there been any material change in the shape or appearance of the so-called biscuit which I show you and which is taken from this package, Exhibit 1? A. No, it has always been of similar appearance so far as I recall.

136. Q. Have you know any other article, food article I mean, which is similar in shape and appearance to this biscuit? A. No, not at all.

137. Q. Then when you order this article, Exhibit 1, by what name do you call it? A. Shredded Wheat.

138. Q. And has that always been the same so far as you know? A.
20 Yes.

139. Q. Have you ever known any other article which has had the same or a similar name? A. No.

140. Q. Have you had occasion to order this article in hotels or restaurants? A. Yes, quite frequently.

141. Q. And when you order it, do you order it by that same name? A. Yes, Shredded Wheat.

142. Q. And how is it served to you in hotels or restaurants? A. In hotels, it is brought in on a plate. Often in a restaurant it is taken from a shelf from behind the counter.

30 143. Q. Do you see it when you order it in a hotel or restaurant, do you see the package or carton from which the biscuit is taken? A. Sometimes in the smaller restaurants. I never have in hotels, to my knowledge.

144. Q. When you order it in a hotel it is just served to you on a plate? A. Generally.

145. Q. And you do not see the package from which it comes? A. No."

BY MR. SMART:

"CROSS-EXAMINATION BY MR. SMART:

146. Q. What other breakfast cereals are you in the habit of using?
A. Rolled oats and bran are about the only thing.

40 147. Q. You never use corn flakes? A. Very, very seldom. I don't like them. It is a matter of taste.

148. Q. You know the Kellogg Corn Flakes? A. Yes, I know of them. I have eaten them, of course. I have eaten nearly everything.

149. Q. This is the only Shredded Wheat you have known of? A. Yes.

150. Q. That is all. (Witness aside)."

*In the
Supreme Court
of Ontario*

Plaintiff's
Evidence

No. 22
Cecil Claude
Elliott

Examination

—continued

No. 22
Cecil Claude
Elliott
Cross-Examination

MR. CASSELS: Then I read the direct examination of THOMAS FRANCIS McDOWELL, my Lord:—

“THOMAS FRANCIS McDOWELL, a witness called on behalf of the Plaintiff, being first duly sworn by the Commissioner, testified as follows:—

DIRECT EXAMINATION BY MR. CASSELS:

151. Q. Do you reside in Vancouver, Mr. McDowell? A. Yes.
 152. Q. And have you for some years? A. Yes.
 153. Q. How long? A. Over 30 years.
 154. Q. What business are you engaged in? A. Grocery.
 155. Q. How long have you been in that business? A. Over 30 years. 10
 156. Q. Wholesale business or retail business? A. Retail.
 157. Q. Exclusively retail? A. Yes.
 158. Q. Do you know the plaintiff company, the Canadian Shredded Wheat Company Limited? A. Yes.
 159. Q. In what way have you known it? A. Buying their goods and selling them.
 160. Q. And what are the goods that you have bought from them and sold? A. This package here.
 161. Q. You are referring to this package, which we will mark Exhibit 1 on your examination? A. Yes. 20

(CARTON REFERRED TO MARKED EXHIBIT 1).”

MR. CASSELS: That again is the same carton as was Exhibit 1 in the evidence of the other Vancouver witnesses, and is similar to Exhibit 5 here, my Lord. Then:—

- “162. Q. By what name is that article known? A. Shredded Wheat.
 163. Q. Have you been selling Shredded Wheat more or less generally throughout the period you speak of? A. I think I have all the time. I think it was on the market when I started business. It has been many years.
 164. Q. When customers order this article from you, by what name do they call it? A. Shredded Wheat. 30
 165. Q. During the time you have known this Shredded Wheat, can you tell me whether there has been any material change in the get-up or decoration of the package or carton? A. I don't think there has been any change at all. I remember it so well by the Niagara Falls mark on it here.
 166. Q. You mean the picture of Niagara Falls? A. Yes.
 167. Q. The picture appearing on both ends? A. Yes, and this building here.
 168. Q. First of all, the picture of Niagara Falls, that appears on both ends of the carton, doesn't it? A. Yes.
 169. Q. And you say the building, the picture of the building? A. The 40 picture of the building was there.

170. Q. Which is on what we might call the front of the package? A. Yes. I don't remember of any change.

171. Q. So far as your recollection goes, has that picture of Niagara Falls always been on the package? A. Yes.

172. Q. Then I show you one of the biscuits taken from this packet, Exhibit 1. Can you tell me if there has been any material change in the shape or appearance of the biscuit during the time you have known it? A. No change to my knowledge.

173. Q. Have you known any other article on the market similar in
10 shape and appearance to this Shredded Wheat biscuit? A. No.

174. Q. Have you known any other article called by the name Shredded Wheat, or any similar name? A. No.

175. Q. Are you a consumer of the article yourself? A. Yes, I have used it.

176. Q. In your own home? A. In my own home.

177. Q. Have you had occasion to order it in hotels or restaurants? A. I don't think so.

178. Q. When your customers order this article, by what name do they order it? A. Shredded Wheat.

20 179. Q. If a customer orders Shredded Wheat, what do you supply the customer with? A. This package here.

180. Q. This package, Exhibit 1? A. Yes.

181. Q. Have you ever been to Niagara Falls? A. Yes.

182. Q. Have you seen the company's plant there? A. No, I do not remember it. I was only there a short time.

183. Q. Have you known any other package similar in appearance to this Shredded Wheat package, Exhibit 1? A. No."

BY MR. SMART:

"CROSS-EXAMINATION BY MR. SMART:

30 184. Q. You also sell Kellogg's products, do you? A. Yes.

185. Q. Do you remember their packages, the distinctive form? A. Yes.

186. Q. Kellogg's Corn Flakes? A. Yes.

187. Q. They have printed 'Kellogg's' on them? A. Yes.

188. Q. Have you sold that during the whole time you have been in business? A. I have sold it ever since it came on the market.

189. Q. And substantially the same quantity as Shredded Wheat, or do you sell more of Kellogg's? A. There are more corn flakes sold in proportion to the—

190. Q. Than Shredded Wheat? A. No.

40 191. Q. But you have never had any other shredded wheat than that made by the Canadian Shredded Wheat Company Limited? A. No.

192. Q. That is all. (Witness aside)."

*In the
Supreme Court
of Ontario*

Plaintiff's
Evidence

No. 23
Thomas Francis
McDowell
Examination

—continued

No. 23
Thomas Francis
McDowell
Cross-Examination

MR. CASSELS: Then, my Lord, I examined witnesses in Saint John, New Brunswick. I notice in the Saint John Commission they call the Plaintiff the "The Canada Shredded Wheat Company, Limited." It should be "The Canadian Shredded Wheat Company, Limited."

HIS LORDSHIP: I do not think that will make any difference.

MR. CASSELS: I do not think so; it was taken in this action; there is no doubt about that.

EXHIBIT No. 16: Record of evidence of FRED T. BARBOUR, STANLEY EVERETT CLARKE, MRS ALICE LILIAN STUBBS, MRS. ISABELLA S. CLARKE and E. ROY ROBERTSON, taken 10 before BLANCHE WHITEHEAD, Commissioner, at Saint John, New Brunswick, on Friday, June 7, 1935.

MR. CASSELS: This package enclosed with the Saint John Commission evidence is slightly different, my Lord, from the other packages. I do not think it is materially different, but it has this blue decoration on it; otherwise I think it is the same. Perhaps it had better go in as an exhibit.

EXHIBIT No. 17: Specimen carton of The Canadian Shredded Wheat Company Limited, filed with evidence taken on Commission, at Saint John, N.B.

MR. CASSELS: I read the direct examination of FRED T. BARBOUR, my 20 Lord:—

"FRED T. BARBOUR, Sworn:

EXAMINED BY MR. CASSELS:

Q. You reside in Saint John? A. I do.

Q. And have for a number of years? A. Fifty-two years.

Q. And what is your business? A. Wholesale grocer.

Q. What firm or company are you with? A. G. E. Barbour Company Limited.

Q. And how long have you been connected with that Company? A. 30 Thirty-five years.

Q. What position or office do you hold with the Company? A. Vice-president.

Q. And have held that position for how long? A. Twenty years.

Q. And before that? A. I was an understudy.

Q. What does the business of the Company consist of—wholesale groceries? A. Wholesale groceries, tea and manufacturing grocery specialties.

Q. Is that business carried on in Saint John exclusively? A. Saint John—we have four branches, St. Stephen, Fredericton, Woodstock and Edmundston.

Q. And the main head office is in Saint John? A. Saint John.

Q. Do you know the plaintiff company, The Canada Shredded Wheat Company, Limited? A. I do.

Q. In what way do you know them? A. We have done business with them for many years.

Q. Can you say for how many years approximately? A. At least twenty-five or thirty years.

Q. And what is the nature of the business you have done with the Company? A. Buying shredded wheat.

10 Q. Is there any other product of that Company that you have dealt in?
A. Very little—occasionally Triscuit.

Q. To what extent has your Company been a purchaser of shredded wheat? A. You mean in volume?

Q. In a general way, yes? A. Over a thousand cases a year.

Q. Would that be average? A. It would run more than that. It would be about 1,500 cases a year average.

Q. And a case consists of how many packets? A. Three dozen.

Q. And the package I think contains 12 of the so-called biscuits? A. I can't tell you that. We have a package right here in front of us.

20 Q. Then this product that you speak of of the plaintiff Company is it known by any other name than shredded wheat? A. Not that I know of.

Q. When you order the product do you order it by that name? A. Shredded Wheat.

Q. And when your customers order from you do they order by the same name? A. Shredded wheat.

Q. And what would you say the name shredded wheat means to you?
A. It means the product of the Canadian Shredded Wheat Company.

Q. Do you know where that Company carries on its manufacturing business? A. Niagara Falls.

30 Q. I show you a carton—is that the article that you have been speaking of? A. Yes.

(Package of Shredded Wheat entered as Exhibit No. 1).

Q. Have you known of any other product which has been on the market during the time you speak of which has been known by the name of shredded wheat? A. No.

Q. Do you know of any product which has been on the market which is similar in shape and appearance to the shredded wheat article? A. No.

40 Q. I show you, Mr. Barbour, one of the so-called biscuits taken from this carton Exhibit 1, and I ask you whether or not there has been any change in the shape and appearance of that article during the years that your firm has been dealing in it? A. Not to my knowledge.

Q. Then do you know whether there has been any change or changes in the carton in which the biscuit is packed? A. I am under the impression that they have improved the package in the last few years—given it a little more attractive appearance.

*In the
Supreme Court
of Ontario*

Plaintiff's
Evidence

No. 24
Fred T. Barbour
Examination

—continued

Q. Are there any features of the get-up of this package or carton, Exhibit 1, which to your knowledge have been on the carton since you have known it?
A. As far as I can remember it has always had a picture of the factory at Niagara Falls and been made of this cardboard. It had a very similar shape and appearance as far as I remember."

MR. CASSELS: That picture of a dish with two biscuits in it seems to be a new feature of the package marked Exhibit 17 here, my Lord. Then:—

"Q. Any other features that you remember? A. I think it has always had this package on the side here.

Q. You refer to the dish with the two biscuits in it? A. Yes, and I 10 think it had a picture of Niagara Falls.

Q. The picture with the two biscuits in it on the reverse side from the side having the picture of the factory on it? A. Yes, and I think it had a picture of the Falls on it.

Q. Are you a consumer of shredded wheat at all? A. I am.

Q. And have you had occasion to order it in hotels or restaurants or places of that kind? A. Not that I remember lately. I order it at home quite often.

Q. When you order it at home I suppose it is purchased in the package?
A. Yes. 20

Q. When you want it for your own home how do you order this article—or does somebody else do that ordering? A. Well it comes from the warehouse. We send up two or three packages of shredded wheat. My wife would order over the telephone: 'Send up half a dozen packages of shredded wheat.'"

BY MR. SMART:

"CROSS-EXAMINED BY MR. SMART:

Q. What was this Triscuit that you mentioned? A. As far as I know, Triscuit is very similar to shredded wheat, only rolled a little thinner and toasted harder. 30

Q. How do you mean similar—in what way is it similar? A. It is shredded wheat rolled together.

Q. Flattened out? A. Yes.

Q. And have you known of any other product on the market in which the wheat was shredded as in this product? A. Muffits are somewhat similar—the only one I know of.

Q. As far as the biscuit is concerned made of shredded wheat, this is the only one you have handled? A. Yes.

Q. You handle Kellogg's products? A. Yes.

Q. Kellogg's Corn Flakes? A. Yes. 40

Q. I suppose the sale of those is about on the same scale as shredded wheat? A. Oh considerably higher.

A. And extending over about the same period? A. Pretty hard to remember that. My impression is that shredded wheat is older. I remember shredded wheat before Kellogg's corn flakes.

Q. But the word Kellogg is well known in connection with breakfast foods? A. Oh yes.

Q. Their name is well known in connection with breakfast foods? A. Oh yes.

10 Q. When you refer to the shape and appearance of this biscuit do I understand you to mean the wheat has always been shredded in that form as shown? A. As far as I remember.

Q. Have you ever seen the process? A. Yes.

Q. At Niagara Falls? A. Yes.

Q. What part of it did you see? A. I was through their factory.

Q. What process of manufacturing? A. I presume I saw it all—some years ago.

Q. That is you saw the cooking and the shredding of the wheat? A. Yes.

20 Q. And the term shredded then is aptly applied to the process? A. I would think so."

BY MR. CASSELS:

"RE-EXAMINED BY MR. CASSELS:

Q. When you say the term shredded is aptly applied to the process do you suggest that the wheat is actually shredded? A. It is some years ago—

Q. As far as you can to describe— A. I would not like to. It would be more or less a guess. It must be ten years or so since I was there. I would rather you would not put this in evidence. I do not remember the process. I am only giving my impression.

30 A. That is an impression."

MR. CASSELS: I read the direct examination of STANLEY EVERETT CLARKE, my Lord:—

"STANLEY EVERETT CLARKE, Sworn:

EXAMINED BY MR. CASSELS:

Q. Mr. Clarke, you reside in Saint John? A. Yes, one of the suburbs of the City—Renforth.

Q. What is your business? A. I am a representative of the Royal Print & Litho Company of Halifax—selling lithographing and printing.

40 Q. You are not in the grocery business? A. No, not at all except as a consumer.

*In the
Supreme Court
of Ontario*

Plaintiff's
Evidence

No. 24
Fred T. Barbour
Cross-Examination
—continued

No. 24
Fred T. Barbour
Re-examination

No. 25
Stanley Everett
Clarke
Examination

*In the
Supreme Court
of Ontario*
Plaintiff's
Evidence
No. 25
Stanley Everett
Clarke
Examination
—continued

Q. Do you know the plaintiff in this action, The Canada Shredded Wheat Company, Limited? A. Yes, just through their product, Shredded Wheat.

Q. In what way do you know the product? A. Well I have been eating it for a great many years and am familiar with their package.

Q. I show you a package. Is that the package you speak of? A. Yes, that is the one.

Q. When you speak of shredded wheat or when you order shredded wheat what is it that you refer to? A. That is what I am expecting to get—that package with that type of biscuit.

(Package of Shredded Wheat marked as Exhibit 1)."

10

MR. CASSELS: That is the same package as has been filed here as Exhibit 17, my Lord. Then:—

“Q. And does the name shredded wheat convey any other meaning to you than that? A. No, not at all. I have never seen it in any other form.

Q. Do you know of any other article which has been on the market at any time which is being called by that name? A. No, I don't.

Q. I show you one of the packages taken from this package—”

MR. CASSELS: That should read: “—one of the biscuits taken from this package,” my Lord—

“Exhibit 1—is that the article you have been speaking of? A. That 20 is the one, yes, known as shredded wheat, and the one I expect to get when I ask for shredded wheat.

Q. During the time you have been a consumer of this article has there been any material change in the shape or appearance of the article itself? A. I don't think so, no, it looks the same to me.

Q. Where have you consumed this shredded wheat biscuit? A. Well, in my own home and also in hotels and restaurants and on the trains. I travelled outside for quite a while you know.

Q. When you order shredded wheat in a hotel or restaurant or on a train what is it you expect will be served to you? A. I expect the same familiar 30 biscuit that I have in my own home—Shredded Wheat.

Q. How is it served as a rule in hotels and restaurants? A. I have usually had it served just in dishes. I do recall on one occasion having it served in the small individual boxes—two biscuits in a box. That was I think on a dining car of a train, but on most other occasions just served in a dish without any identification at all.

Q. Had you any means or opportunity of seeing the package or carton from which the biscuits had been taken before they were served to you? A. No.

Q. Are you familiar with this carton, Exhibit 1? A. Yes. 40

Q. And during the years you have known this article has there been any material change in the decoration or get-up of the carton? A. No, there has

been a slight change in coloring, but as I recall the old package had the same picture of Niagara Falls on it and a somewhat smaller building.

Q. Are there any other features that you recognize as having been on it during the time you have known it? A. It seems to me that the package today is very much the same as it has been through a number of years with, I say, minor changes in coloring and possibly a little difference in lettering.

Q. You remember the picture of Niagara Falls as having been on the carton all the time? A. Yes.

10 Q. And a picture of the building? A. I think perhaps the picture of the building was a little different but I remember its being on the package.

Q. Have you ever heard of this article being called by any other name than shredded wheat? A. No, I haven't.

Q. And do you know of any similar article which has been on the market under any other name? A. Only the product known as Muffits, which is supposed to be of similar material but quite different in shape and design.

Q. Made by whom, do you know? A. No, I don't. I believe it to be made by the Quaker Oats Company, but I am not sure of that."

*In the
Supreme Court
of Ontario*

Plaintiff's
Evidence

No. 25
Stanley Everett
Clarke
Examination

—continued

BY MR. SMART:

"CROSS-EXAMINED BY MR. SMART:

20 Q. Do you use Kellogg's Corn Flakes? A. Occasionally—yes—not as often.

Q. You referred in the beginning of your answers to that type of biscuit. What were you referring to? A. Well the form of it. The fine shred built in a biscuit that shape. I am only a layman. I do not know really what it is composed of. I am familiar with the shape.

Q. You said that the Muffits were made of similar material. In what way is the material similar? A. In that—I believe they are supposed to be made of whole wheat.

Q. Is the wheat shredded? A. No, I don't think so.

30 Q. This is the only biscuit with the wheat shredded that you have known of? A. That I know of—yes."

BY MR. CASSELS:

"RE-EXAMINED BY MR. CASSELS:

Q. When you say that this is the only biscuit you have known with the wheat shredded, what do you mean by that. Do you know the process by which it is made? A. No, I don't. I have never seen the method of making it at all.

Q. You have not visited the plaintiff's plant at Niagara Falls? A. No."

No. 25
Stanley Everett
Clarke
Cross-Examination

No. 25
Stanley Everett
Clarke
Re-examination

MR. CASSELS: Then I read the direct examination of Mrs. ALICE LILIAN STUBBS:—

“MRS. ALICE LILIAN STUBBS, Sworn.

EXAMINED BY MR. CASSELS:

Q. Mrs. Stubbs, you reside in St. John? A. Yes.

Q. You are not in business at all are you? A. No, I am a housewife—keeping house.

Q. Do you know the plaintiff Company in this action, The Canadian Shredded Wheat Company Limited? A. Only through buying their shredded wheat biscuits and I was through their plant. 10

Q. Where? A. In Niagara on the American side.

Q. Not the Canadian Company? A. No, I looked up last night. It was a coincidence. I got a card—you see the date—it is a very old card, when I was there. You can read what is on it. It is a little description of what they gave me. I have never been in the Canadian plant. That was in 1908. They took me through and treated me to the shredded wheat biscuit.

Q. Is that the first time you became acquainted with this shredded wheat product? A. No, I had been eating it from a child. We always had it in our home. Before I was married I went out to visit an aunt in Buffalo. I asked her when I got there something about shredded wheat and she said 20 she would take me through the factory—that is all.

Q. We can take it you have been familiar with this shredded wheat product since before 1908? A. Yes.

Q. Then during this period you speak of have you been purchasing this article pretty consistently, regularly? A. Regularly—we don't eat it all the time. We eat other foods.

Q. Off and on through that whole period? A. Yes, oh yes.

Q. I show you a package or carton, Mrs. Stubbs. Is that the article you have been speaking of? A. That is it. The only one I ever saw like it was those round biscuits—I don't know what they call them. 30

Q. Muffits? A. Yes. I never saw any like that other than the shredded wheat.

Q. Have you always known this article which is in the carton marked Exhibit 1 under the name you speak of? A. Shredded wheat—yes.

Q. Have you ever known it described by any other name? A. No, not to my knowledge.

Q. Then have you known of any other article on the market which has been called by the same name, shredded wheat? A. No.

Q. I show you one of the biscuits taken from this carton, Exhibit 1, and ask you whether during the years you have known it there has been any 40 material change in the shape or appearance of the biscuit? A. Not that I can see from here—no, exactly like that.

Q. And have you known of any other article similar in shape and appearance to this biscuit taken from Exhibit 1? A. No.

Q. And when you order this article for your home by what name do you describe it? A. Just a box of shredded wheat.

Q. During the time you have known it have there been any material changes in the get-up or appearance of the package in which the biscuits are packed? A. I can't answer that because I don't know. I never took particular notice. It was the shredded wheat I was looking at.

Q. Any features of the illustration on the package I show you, Exhibit 1, which you remember? A. No, I am on my oath. It doesn't look just like the same sized package. There may have been different colorings on the box.
10 I couldn't say to that.

Q. Have you had occasion to order this article, shredded wheat, in restaurants or hotels—places like that? A. No.

Q. You consume it only in your own home? A. Only in my own home.

Q. And when you order a package or a box of shredded wheat what is it you expect to have delivered to you or given to you? A. Shredded wheat.

Q. This article—Exhibit 1? A. Absolutely.”

*In the
Supreme Court
of Ontario*

Plaintiff's
Evidence

No. 26
Mrs. Alice Lilian
Stubbs

Examination
—continued

MR. CASSELS: And it is the same “Exhibit 1” as was mentioned in the evidence of the other witnesses at Saint John, and is Exhibit 17 here, my Lord.

BY MR. SMART:

No. 26
Mrs. Alice Lilian
Stubbs
Cross-Examination

20 “CROSS-EXAMINED BY MR. SMART:

Q. This post card I observe has on the face a picture of Niagara Falls and a picture of the package? A. I got that right at Niagara Falls.

Q. It has at the top in large letters the words ‘It is all in the shreds’?
A. Yes.

Q. And did you see the shredding process while there? A. Yes, went right through—treated us to the biscuits. Another biscuit—I have never had them since—a little shop put strawberries on this biscuit and it was very nice.

Q. At the bottom of this post card I observe it says ‘Shredded Wheat —biscuit and triscuit’? A. Yes.

30 Q. So you had the shredded wheat in the form of a biscuit and a triscuit?
A. Yes.

Q. Do you remember the machines which shredded the wheat at all?
A. Oh I don't think I could. That is a good many years ago.

Q. Did it come out in the form of a ribbon? A. No, I can't tell you. I know they came down long sheds and packed them right into the boxes and sealed without their hands touching them.

Q. This muffin, was that also made? A. I don't know anything about that. I know they came around to the doors and gave us samples of this round hard biscuits. I never used them—didn't like them.

40 Q. Was the wheat shredded in that? A. I couldn't tell you. I was not interested enough to take that in.

*In the
Supreme Court
of Ontario*

Plaintiff's
Evidence

No. 26
Mrs. Alice Lilian
Stubbs
Cross-Examination
—continued

Q. As far as you are concerned that is the only biscuit with the wheat shredded that you have had? A. Yes.

Q. And that is a good name for it? A. I think so."

MR. CASSELS: I read the direct examination of MRS. ISABELLA S. CLARKE, my Lord:—

"MRS. ISABELLA S. CLARKE, Sworn:

EXAMINED BY MR. CASSELS:

Q. Mrs. Clarke you reside in Saint John, I understand? A. Yes.

Q. And have for some years? A. Thirty-five.

Q. Do you know the plaintiff in this Action, The Canada Shredded 10 Wheat Company, Limited?"

MR. CASSELS: The word "Canada" instead of "Canadian" again appears, my Lord. Then:—

"A. I know of them.

Q. And in what connection do you know of them? A. Well the fact that I have been using shredded wheat for a good many years and through their agent here.

Q. And when you speak of using their shredded wheat to what do you refer? A. Well I always ask for shredded wheat, expecting to get the same thing I have been buying for years.

Q. I show you a carton or package and ask you is that the article to which you refer? A. Well that package is a little different from the old one.

Q. Can you say what the differences or what the difference is? A. It seems to me the other package had just the building on the front.

Q. That is the picture of the biscuit itself was not there? A. I don't think so.

Q. And what about the ends of the package? A. They look different. I don't know what the difference is.

Q. Different in what way—was there not a picture of Niagara Falls on the old package. Just your memory? A. It might be.

Q. I show you one of the biscuits taken from this package, Exhibit 1. Can you say if that is similar to the article that you have been using? A. Yes it looks like shredded wheat.

Q. Has there been any material change in the shape or appearance of the article since you first knew it? A. Well, it doesn't look quite as big.

Q. This one I show you now does not look quite as big? A. No.

Q. Any other change that you notice? A. No, I can't say that there is.

Q. When you order this article that you speak of as being shredded wheat made by the plaintiff company, by what name do you order it? A. Shredded wheat.

No. 27
Mrs. Isabella S.
Clarke
Examination

20

30

40

Q. And when you order shredded wheat what is it you expect to get?
A. I expect to get shredded wheat that I have been buying.

Q. Similar to this article, Exhibit 1? A. Yes.

Q. Have you ever known of any other article on the market which has been called by the same name or a similar name? A. No, I have never seen anything.

Q. Have you known of any article on the market which is similar in shape and appearance to this biscuit taken from the package Exhibit 1?
A. No. I never have.

10 Q. And you say you have been using this for approximately how long?

A. Oh well, twenty years, I suppose.

Q. Have you had occasion to order this shredded wheat in hotels or restaurants—places like that? A. No. I don't think I ever have.

Q. Your use of it has been limited to your own home? A. Yes."

*In the
Supreme Court
of Ontario*

Plaintiff's
Evidence

No. 27
Mrs. Isabella S.
Clarke
Examination

—continued

BY MR. SMART:

"CROSS-EXAMINED BY MR. SMART:

Q. I think you told us you never had had any other make of shredded wheat than this? A. No, not that I know of.

20 Q. You expect to get this kind of biscuit when you ask for shredded wheat? A. Yes.

Q. One with shreds and packed like that? A. The same as I have always been getting.

Q. Never had anything different? A. No.

Q. Always been the same kind of shreds? A. Yes.

Q. Have you ever seen the biscuits made? A. I have seen them working with them here Exhibition time—they used to have a little machine.

Q. What did that machine do? A. Just showed you how they shredded it. I don't think they made the biscuits. Had this machine they put the kernels through and shredded it.

30 Q. The term shredded wheat aptly describes the biscuit? A. Yes, I would think so."

MR. CASSELS: I read the direct examination of E. ROY ROBERTSON, my Lord:—

"E. ROY ROBERTSON, Sworn:

EXAMINED BY MR. CASSELS:

Q. Mr. Robertson, you reside in Saint John? A. Yes.

Q. And have for some years? A. All my life.

Q. What is your business? A. Grocery business.

Q. Wholesale or retail? A. Retail.

No. 28
E. Roy Robertson
Examination

*In the
Supreme Court
of Ontario*
Plaintiff's
Evidence
No. 28
E. Roy Robertson
Examination
—continued

Q. Exclusively retail? A. Well we do some jobbing in a small way—
retail.

Q. Generally speaking a retail business? A. Yes.

Q. How long have you been engaged in that business? A. Over thirty
years.

Q. What is the name of the business; carried on in your own name?
A. Yes—E. R. Robertson.

Q. Has that name been the same since you started? A. Well prac-
tically speaking—I was in partnership with my brother for a few years. We
ran E. R. & H. C. Robertson. 10

Q. Your brother dropped out and since then you have carried on under
E. R. Robertson? A. Yes.

Q. Do you know the plaintiff Company, The Canada Shredded Wheat
Company, Limited? A. Oh, yes.

Q. Have you dealt in the products of that Company at all? A. As long
as I can remember I have sold shredded wheat.

Q. Shredded wheat you say is a product of the plaintiff Company?
A. Yes, my idea would be that anything marked shredded wheat would be
the Shredded Wheat Company.

Q. Then I show you a carton or package Mr. Robertson. Is this the 20
article that you have been speaking of? A. Yes.

Q. And you say ever since you have been in the business you have been
selling this shredded wheat product? A. Yes, as far back as I can remember
we have sold shredded wheat.

Q. Is the article known by any other name at all? A. Never heard it
called anything else but shredded wheat.

Q. Have you known of any other article on the market which has been
called by the same name? A. No, I have never seen any other.

Q. I show you one of the so-called biscuits taken from this package,
Exhibit 1, and ask you if that is the shredded wheat biscuit that you have been 30
speaking of? A. Yes, I have eaten lots of them.

Q. You are a consumer of the shredded wheat as well? A. Yes.

Q. During the years that you have known it has there been any material
change in the shape or appearance of the biscuit? A. Not to my knowledge,
no. I don't think there has ever been any change.

Q. Has there been any material change in the get-up of the carton or
package during the years you have known it? A. Very very little. The
shape of the container is exactly the same. There might be some little differ-
ence in the design of it.

Q. Are there any features or illustrations on the carton which you can 40
recollect as having been there throughout this period? A. I believe this
(indicating) has always been on the carton.

Q. To what are you referring? A. The picture of Niagara Falls on
the two ends of the carton. The only change I can see is a little in the coloring.
I think on the front it might have been changed. I am not sure of that.

Q. What about the picture of the building or factory? A. I don't think there has been any change in that—not to my knowledge.

Q. Have you during these years known of any other article which has been on the market which has been called by the same name? A. No, I have never known any.

Q. Have you known of any other article on the market which has been similar to the shape and appearance of the biscuit which is contained in Exhibit 1? A. No, I don't know of any other.

10 Q. When customers order this article from you by what name do they call it? A. Shredded wheat.

Q. And when you receive an order for shredded wheat what do you serve the customer with? A. This product here.

Q. Exhibit 1? A. Certainly.

Q. How is your business conducted? Is it mostly the customer attending at the store and purchasing the goods or to some extent by telephone? A. We get a large proportion of our business by telephone.

Q. Do you care to put any percentage on the telephone business? A. Never made any real check up but I imagine that perhaps 40 per cent. of our business would come over the phone.

20 Q. When the customer wants this article that we have been speaking of by what name does the customer call it? A. Always shredded wheat. Occasionally they say shredded wheat biscuit—generally use the term shredded wheat.

Q. Have you any experience in your business with people sending children to the store for orders? A. Well, we have lots of children come to the store for things. I don't know just what you mean?

Q. That does happen that the lady of the house sometimes sends her children for orders? A. Oh, yes.

30 Q. Can you say how the orders are given in a case of that kind? A. You mean—

Q. Do they bring written orders or just give you personal orders? A. Sometimes they call the product by name—sometimes have it written on a slip and on a rare occasion might possibly bring the end of the carton if they don't want to write it out. That doesn't happen very often but it has happened.

Q. What has been the extent of your business in shredded wheat generally speaking, how much of it would you handle in the course of a year? A. I would think roughly between fifty and sixty cases possibly.

40 Q. That would be in the neighborhood of five cases a month? A. Something like that.

Q. You say you have been a consumer of shredded wheat also? A. Oh yes, we have used a lot of it in our home.

Q. Have you had occasion to order it at all in hotels, or restaurants or places like that? A. No, I don't think I have."

*In the
Supreme Court
of Ontario*

Plaintiff's
Evidence

No. 28
E. Roy Robertson
Examination
—continued

MR. CASSELS: Exhibit 1 on the examination of Robertson is the same as Exhibit 17 here, my Lord.

BY MR. SMART:

"CROSS-EXAMINED BY MR. SMART:

Q. You handle Kellogg's Corn Flakes? A. Yes.

Q. During most of the period you have been handling shredded wheat?
A. Yes, I think so.

Q. In about the same quantities? A. No, I would say the corn flakes were the biggest seller in Saint John.

Q. How are the corn flakes asked for—by what name? A. Generally 10 ask for Kellogg's.

Q. Don't just ask for corn flakes? A. Not all the time—most of the time ask for a name.

Q. But with shredded wheat no other name to describe the product than shredded wheat? A. No.

Q. Is it always asked for by that name? A. Yes.

Q. You know of no other name to describe it than shredded wheat?
A. No—shredded wheat. As I say you occasionally hear it described as shredded wheat biscuit."

HIS LORDSHIP: I think counsel are now entitled to a ten minute recess. 20
Recess from 3.50 p.m. to 4.00 p.m.

MR. CASSELS: Then I read the evidence taken on Commission at Halifax, Nova Scotia, my Lord.

EXHIBIT No. 18: Record of evidence given by J. W. PAYZANT, W. B. HOPGOOD, J. M. NEVILLE and H. D. GOODWIN, before Mr. LEMART S. WHINYARD, Acting Commissioner, on June 10, A.D. 1935.

MR. CASSELS: The package filed as Exhibit No. 1 in Halifax is the same as Exhibit No. 17 here, my Lord.

I now read the evidence taken on Commission in Halifax, my Lord:— 30

"J. W. PAYZANT, being duly sworn, testified as follows:

EXAMINED BY MR. CASSELS:

Q. You live in Halifax, I understand? A. I live in Dartmouth, doing business in Halifax.

Q. Have you lived here all your life, more or less? A. Yes.

Q. What is your business? A. Wholesale grocer.

Q. Under what name is your business carried on? A. Payzant & King.

Q. How long has that business been established? A. About seventy years.

Q. How long have you been connected with it? A. Eighteen years.

Q. Is the business limited to Halifax or do you do business throughout the Province of Nova Scotia? A. Throughout the Province and certain export business.

Q. Are you familiar with the Plaintiff Company, the Canadian Shredded Wheat Co.? A. Yes.

Q. In what way have you known that Company? A. Having sold
10 their product for many years.

Q. Their product being what? A. A cereal, shredded wheat.

Q. How long, to your knowledge, has your firm been handling this product? A. It goes back beyond my memory. I should say certainly ever since they were making it in Canada.

Q. I understand the Canadian factory was built in 1905; your memory would not go back that far? A. No, but my father would handle it.

Q. This product you speak of as 'shredded wheat' is this package, L/1, the article you speak of? A. Yes."

*In the
Supreme Court
of Ontario*

Plaintiff's
Evidence

No. 29
J. W. Payzant
Examination

—continued

MR. CASSELS: That is the same, my Lord, as Exhibit No. 17, but not
20 quite the same as Exhibit No. 5. I suppose we do not need to put it in.
Then:—

“Q. Has this product always been sold under the same name? A. Yes.
always.

Q. Have you known of any other name being given to it? A. No.

Q. Have you ever known of any other product on the market which is known by the same name or similar name? A. No.

Q. When customers order this article from your firm by what name do they describe it? A. As shredded wheat.

Q. And when they order shredded wheat, is this the article you supply
30 them with? A. Yes.

Q. What is the extent of your firm's business in this shredded wheat in respect to volume? A. About four or five hundred cases a year, I could not say exactly.

Q. I show you now one of the so-called biscuits taken from this package, Exhibit L/1, and ask if, during your experience of this article, there has been any material change in the shape or material of the biscuit? A. There has never been any change to my knowledge.

Q. You think this exhibit taken from L/1 is the same, for all practical purposes, as it always has been? A. Yes.

40 Q. Do you know if there have been any changes in the carton as far as your memory goes? A. No.

Q. Have all the features on the carton been there during the time you have known the article? A. There would be no change; I don't remember any change at all.

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Plaintiff's
Evidence

No. 29
J. W. Payzant
Examination
—continued

Q. Are there any features of the illustrations that you particularly remember as having been there? A. The particular one is the picture of the article itself and Niagara Falls; I well remember them; they are associated with the package. The name has always been there.

Q. To you, Mr. Payzant, what does the name 'shredded wheat' mean? A. Shredded wheat is the name of the cereal put up in this package by the Shredded Wheat Company.

Q. Have you ever known of any other product on the market which is similar in shape or appearance to this biscuit taken from the package, Exhibit L/1? A. No." 10

No. 29
J. W. Payzant
Cross-Examination

BY MR. SMART:

"CROSS-EXAMINED BY MR. SMART:

Q. During the period you have been connected with the business have you sold Kellogg's Toasted Corn Flakes? A. Yes, in about equal quantities.

Q. Under what name do the corn flakes go? A. Kellogg's Corn Flakes; there are other brands.

Q. There are other goods of Kellogg's? A. Yes.

Q. Always associated with the name Kellogg? A. Yes."

No. 30
William B.
Hopgood
Examination

MR. CASSELS: Then I read the direct examination of WILLIAM B. HOPGOOD, my Lord:— 20

"WILLIAM B. HOPGOOD, being duly sworn, testified as follows:—

EXAMINED BY MR. CASSELS:

Q. You reside in Halifax? A. Yes.

Q. And have for some years? A. Fifty-two years.

Q. You carry on business in Halifax? A. Yes.

Q. What is your business? A. Grocery business.

Q. What kind of grocery business? A. Wholesale and retail.

Q. Is the business carried on exclusively in Halifax? A. Mostly in Halifax, yes.

Q. How long have you been in that business? A. Fifty-two years the 30 business has been in operation.

Q. How long have you been connected with it? A. Thirty-nine years.

Q. Do you know the Canadian Shredded Wheat Company, Ltd.? A. Yes.

Q. In what way have you known the Company? A. Ever since they started in Canada.

- Q. What was your relation? A. Buying the product and re-selling it.
- Q. What is the product known as? A. Shredded wheat.
- Q. Do you know if it is ever called by any name other than shredded wheat? A. No, only shredded wheat.
- Q. What does the name shredded wheat mean to you? A. It means the shredded wheat biscuit.
- Q. Made by any particular concern? A. The Canadian Shredded Wheat Co.
- 10 Q. I show you this carton, L/1, is that the article you have been speaking of? A. Yes, for years and years. I think they have changed the label in front, the color. Below the picture of the factory there is a dark blue strip; I think there was a white one. That is the only change; I can see in the package where they put a little color in.
- Q. Are there any features on the package you particularly remember as having been there? A. Niagara Falls I think has always been there and the package itself, the 'Shredded Wheat' is what you look at.
- Q. I show you one of the biscuits taken from L/1 and ask whether, according to your recollection, there has been any material change in the shape or appearance of the biscuit itself? A. There has been no change.
- 20 Q. When your customers order this article from you by what name do they call it? A. Shredded wheat biscuit.
- Q. And when you get an order for shredded wheat biscuit what do you supply your customers with? A. That article right there.
- Q. What is the extent of your business in this shredded wheat article in a general way; would it run into hundreds of cases in a year? A. We have the Acadia Stores, too; that is part of our business.
- Q. Is that a chain store? A. Yes.
- Q. Is that conducted exclusively in Halifax or through the province? A. In both.
- 30 Q. Do you do a fairly extensive business? A. Yes; we generally get thirty or thirty-five cases when a car comes in.
- Q. Have you ever known any other article on the market which has been called by the name 'shredded wheat'? A. No, I don't know any other.
- Q. Do you know any other article on the market similar to the shape and appearance of this biscuit which I take from package L/1? A. No, it is the only thing.
- Q. Are you a consumer of shredded wheat? A. Yes.
- Q. Do you have it in your own home? A. Yes.
- Q. Do you ever have occasion to order it in hotels? A. Yes.
- 40 Q. How is it served to you? A. On a plate.
- Q. When you order it in a hotel, do you see the package in which it comes? A. No, I have never seen the package."

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Plaintiff's
Evidence

No. 30
William B.
Hopgood
Examination

—continued

*In the
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BY MR. SMART:

"CROSS-EXAMINED BY MR. SMART:

Plaintiff's
Evidence

No. 30
William B.
Hopgood
Cross-Examination

Q. During the period you have sold this, you have also sold Kellogg's Corn Flakes? A. Yes.

Q. In about equal quantities? A. Just about as much, I should think.

Q. Have you corn flakes other than Kellogg's? A. Yes, we have Quaker Corn Flakes.

Q. You have no other shredded wheat? A. No.

Q. There is no other name to describe the product other than 'Shredded wheat'; it is a good name to describe it? A. Yes." 10

No. 31
John M. Neville
Examination

MR. CASSELS: Then I read the direct examination of JOHN M. NEVILLE, my Lord:—

"JOHN M. NEVILLE, being duly sworn, testified as follows:

EXAMINED BY MR. CASSELS:

Q. You reside in Halifax? A. Yes.

Q. What is your business? A. Stationery, Connolly's Ltd.

Q. You are not in the grocery business? A. No.

Q. Are you familiar with the article commonly known as shredded wheat? A. Yes, I have eaten it for a number of years.

Q. Your knowledge of it is as a consumer of it? A. Yes. 20

Q. Do you know by whom that product is made? A. Yes, as I have seen it on the box, it is made at Niagara Falls by the Shredded Wheat Company.

Q. Are you a frequent consumer? A. Spasmodically, off and on.

Q. In your own home? A. Yes.

Q. And also on the road? A. Yes, we get it.

Q. This article you have been speaking of, is this package, L/1, a sample?

A. That is what I have always had, L/1.

Q. Have you ever heard this article described by any other name than shredded wheat? A. No.

Q. Do you know of any other article which has been on the market using the same name? A. I have heard of Kellogg's; I have heard the name Kellogg's Shredded Wheat. 30

Q. Where did you hear that? A. Round town different places.

Q. In the United States or Canada? A. In Halifax.

Q. Have you ever seen it? A. No, not to know it.

Q. Apart from that, Kellogg's, do you know of any other article sold under the name of shredded wheat? A. No.

Q. During the time you have known it have there been any material changes in the package, the decorations or illustrations on the package?

A. Not that I notice. 40

Q. Are there any features on the package you particularly remember as having been there? A. The building and the picture of the shredded wheat.

Q. Anything else? A. The Niagara Falls.

Q. You remember that? A. Yes.

Q. Have these features always been on the package as far as you remember? A. Yes.

Q. I show you one of the biscuits taken from package L/1. Has there been any material change or shape in the biscuit itself during the time you have known it? A. No, not that I have known of.

10 Q. When you order this article of shredded wheat in a hotel or restaurant—you have ordered it in Halifax? A. Yes.

Q. How is it served to you? A. With cream.

Q. In a package? A. No, in a dish.

Q. Do you see the package from which the biscuit is taken? A. No.

Q. You just order the shredded wheat and it is served to you in a dish?

A. Yes.

Q. Have you known of any other article that is similar in shape and appearance to this biscuit taken from package L/1? A. No.

20 Q. When you hear the name Shredded wheat or use the name shredded wheat what does that mean to you? A. The only thing I know is just what I see, that article there."

BY MR. SMART:

"CROSS-EXAMINED BY MR. SMART:

Q. You use the words 'shredded wheat' to describe this kind of article?

A. Yes.

Q. You have never seen any of Kellogg's shredded wheat? A. I might have eaten it and not known the difference.

Q. When served to you in a restaurant, it might be Kellogg's? A. Yes.

Q. You use the words to describe the product you want? A. Yes.

30 Q. Have you used Kellogg's Corn Flakes? A. No.

Q. You don't eat the corn flakes? A. No."

BY MR. CASSELS:

"RE-EXAMINED BY MR. CASSELS:

Q. You said you used the words 'shredded wheat' to describe the kind of article you want to get? A. Yes.

Q. Is there any other article besides Exhibit L/1 that answers to that name? A. Just the one as I know of."

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Plaintiff's
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No. 31
John M. Neville
Examination
—continued

No. 31
John M. Neville
Cross-Examination

No. 31
John M. Neville
Re-examination

MR. CASSELS: I read the direct examination of H. D. GOODWIN, my Lord:—

“H. D. GOODWIN, being duly sworn, testified as follows:

“EXAMINED BY MR. CASSELS:

Q. Do you reside in Halifax? A. Yes, sir.

Q. What business are you engaged in? A. Office Specialty Manufacturing Co.

Q. You are not in the grocery business? A. No.

Q. Are you familiar with the article commonly known as shredded wheat? A. Yes. 10

Q. In what way do you know it? A. As a consumer.

Q. Have you known it for some years? A. Since I was about that high; twenty years ago.

Q. This article you speak of is that what I hand you now; is that a sample of it? L/1. A. That is the package I have always seen.

Q. Have you ever known it to be described by any other name than shredded wheat? A. No, shredded wheat, that is all.

Q. Have you known of any other article than has been known by that name? A. No, that is the only one I know of.

Q. When you want this article by what name do you describe it to the storekeeper or where you order it? A. Just shredded wheat. 20

Q. I am showing you one biscuit taken from package L/1; have you known of any other article similar in shape or appearance to this biscuit? A. I never heard of any other; that is the biscuit I know.

Q. During the years you have known it, has there been any difference in shape or appearance? A. No.

Q. What about the package or carton, any material change in the decoration or get up of the package? A. I never noticed particularly. I remember the picture of the falls that appears on it.

Q. Do you know by whom this article is manufactured? A. The Shredded Wheat Company as far as I know; no other name that I heard of. 30

Q. Have you had occasion to order shredded wheat in restaurants and hotels? A. Yes.

Q. When you order it there do you order it by some name? A. Yes, shredded wheat.

Q. How is it served? A. One or two biscuits in a bowl with cream on top.

Q. On these occasions do you see the package from which the biscuit is taken? A. No.”

BY MR. SMART:

40

“CROSS-EXAMINED BY MR. SMART:

Q. Do you eat Corn Flakes too? A. Yes.

Q. Have you had Kellogg's Corn Flakes? A. Yes.

Q. Do you know the name Kellogg's? A. Yes, when you think of corn flakes you think of Kellogg's.

Q. There are other corn flakes? A. Kellogg's is the only one I know?"

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Plaintiff's
Evidence

No. 32

H. D. Goodwin
Cross-Examination
—continued

MR. CASSELS: That concludes the Commission evidence, my Lord. Again I would like to refer to the Admissions filed as Exhibit No. 2. I had intended calling witnesses from Ontario and Quebec, but my friends admit the following:

"For the purposes of the trial of this action the defendants admit:

10 1. That, if Wholesale and Retail Grocers and consumers of the plaintiff's product Shredded Wheat in the Provinces of Ontario and Quebec were examined as witnesses, they would testify that the same conditions exist in those Province as exist in the other Provinces of Canada as described by the witnesses who have been examined on commission in such other Provinces, and that the same effect shall be given to this admission as would be given to the evidence of such persons if they had been examined as witnesses and had so testified."

WILLIAM J. MORRISSEY, Sworn:

EXAMINED BY MR. CASSELS:

20 Q. You are an officer of the plaintiff company, The Canadian Shredded Wheat Company Limited, are you not? A. Yes.

Q. What position do you hold? A. Assistant-Treasurer.

Q. How long have you held that position? A. Thirteen years.

Q. Were you with the company before that? A. Yes, since 1913.

Q. What position or positions did you hold before you held the position of Assistant-treasurer? A. Clerk and bookkeeper in the accounting department.

Q. From 1913 down to the present time? A. Yes.

30 Q. Can you tell us what the sales of the article known as Shredded Wheat by the plaintiff company have amounted to since the company started in business? A. Yes, sir. Our first record of sales in Canada was in 1898.

Q. That is before the Canadian company was formed? A. Yes, the Canadian company was formed in 1904 and production started there in 1905.

MR. CASSELS: My Lord, the witness has prepared a statement of which I could give my friend a copy, and perhaps it would be convenient for your Lordship to have a copy of it put in after the witness has given his evidence.

Q. What do you find? A. Our total sales through the year 1934 amount to 6,203,379½ cases.

Q. That is commencing in 1898? A. Yes, through 1934.

Q. What did they amount to in 1898? A. 1979 cases.

No. 33
William J.
Morrissey,
Examination

Q. And in 1934? A. 280,015 cases.

Q. And have you a tabulation there showing the sales in cases each year during that period? A. Yes, sir.

Q. Then can you speak as to the amount of sales in dollars? A. The total sales in dollars up through 1905 we have not got because that was sold through the American company, but from 1905 to 1934 our total sales were \$22,057,716.16.

Q. What did they amount to in 1906, which I understand is the first year you have? A. \$122,540.75.

Q. And in 1934? A. \$952,296. 10

Q. And you have a tabulation of the amount of the sales in dollars each year during that period? A. Yes.

Q. These figures which you have given us in cases and dollars, do they refer to the product Shredded Wheat only? A. Yes, Shredded Wheat only.

Q. That does not include any Triscuit sales? A. No.

Q. Can you tell us what has been expended during this period on advertising the Shredded Wheat product? A. From 1906 to 1934 inclusive a total of \$3,717,923.48.

Q. That is from what year? A. 1906 through 1934.

Q. What was the figure in 1906? A. \$31,214.07. 20

Q. And in 1934? A. \$102,670.

Q. Have you a tabulation showing the amount expended in each year?
A. Yes.

Q. Are these three tabulations all on one sheet? A. Yes.

MR. CASSELS: Perhaps we might put that tabulation in, my Lord.

HIS LORDSHIP: Have you any objection?

MR. BIGGAR: No, my Lord.

EXHIBIT No. 19: Plaintiff's statement of sales and advertising expenses for the years 1898 to 1934 inclusive.

MR. CASSELS:—Q. First of all, to whom are the sales made, to what class of purchasers? A. To the wholesale trade. 30

Q. Is that exclusively? A. No, in later years through the chain stores as well.

Q. What about departmental stores? A. Yes, they would be included in what we call chain stores.

Q. To whom you sell direct? A. Yes.

Q. Do the wholesalers, chain stores and departmental stores embrace the whole of your customers? A. Yes.

Q. Can you tell us the nature of the advertising of this product shredded wheat which has been done? A. Well, newspaper, magazine and trade paper work in the black and white advertising, and field work consisting of sampling, store sales and shredder demonstrations. 40

Q. Explain what you mean by those? Of course, I understand what the newspaper advertising is. What proportion of your total so-called black and

white advertising would be newspaper advertising? A. About 90 per cent.; we do very little trade paper advertising.

Q. What is the second item you mentioned? A. Magazines and trade papers.

Q. So that I suppose magazines and trade papers would constitute about 10 per cent.? A. Yes.

Q. And samples? A. House-to-house samples and field work. Of our total appropriation the sampling and general field work would be about 25 per cent.; about 25 per cent. of the total spent for sampling and field advertising.

10 Q. Exactly what do "sampling" and "field work" mean? A. We classify our advertising in two ways: the straight newspaper, magazine and trade papers or black and white advertising, and then the field work that we do with crews in the cities and country in house-to-house sampling, some store sales, and also the shredder demonstrations.

Q. When you say "house-to-house sampling" what does that mean? What do your men do in that connection? A. We put a crew into a town and they deliver a two-biscuit sample to every home in the town they are sampling.

20 Q. What do your demonstrations consist of? A. It might be a food demonstration at a food show, serving shredded wheat or minute shredder demonstrations in departmental stores or show windows, showing how they make shredded wheat.

Q. Has that been done to a considerable extent? A. Yes, it has.

30 Q. Are you able to say what class of stores generally handle this product, not speaking now of the wholesalers or the chain stores or departmental stores to which you sell direct? To whom or to what class of store does the wholesaler sell? What class of store handles your product retail? A. I think almost every store that handles food products would handle shredded wheat, grocery stores, delicatessen stores, almost any place that you could buy articles of food, any kind of store that would sell food.

Q. You say they would. Could you say, if you know—if you do not know, say so—how general that is? Could you say in percentages what percentage of stores that handle food would handle your product? I want you to speak of your own knowledge, if you have it? A. No, I could not answer that, Mr. Cassels.

Q. This advertising that you speak of, Mr. Morrissey, extends over what territory? A. All of the dominion from the Maritimes to Vancouver.

Q. All of the Dominion of Canada? A. Yes.

40 CROSS-EXAMINATION BY MR. BIGGAR:

Q. Would you be good enough to tell me what you have included in these shredded wheat sales? I mean what was it exactly that was sold for this number of dollars and this number of cases. A. Shredded Wheat.

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Plaintiff's
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No. 33
William J.
Morrissey
Examination

—continued

No. 33
William J.
Morrissey
Cross-Examination

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Plaintiff's
Evidence

No. 33

William J.
Morrissey
Cross-Examination
—continued

Q. What was the article, please describe it? A. I cannot describe it other than that it is our shredded wheat biscuit that we manufacture.

Q. You mean a shredded wheat biscuit of the size and character of those that are contained in these packages? A. Yes.

Q. And nothing else? A. Nothing else.

Q. Only the biscuits of that size and shape and character? A. That is all.

Q. Is there more than one size of biscuits of that character, or only one? A. Just one.

Q. That is a biscuit about four and a half inches between the two open ends, and somewhere about two and a quarter inches between the two closed ends? A. Yes. 10

Q. What is a shredder demonstration? A. A shredder demonstration is a miniature shredding machine that we put on in demonstrations in which we show how the wheat is run through the rolls and formed into the biscuit that we bake and turn out.

Q. Do I understand then that a shredder demonstration is a demonstration of the shredding of wheat with some special type of machine that is adapted to do that work? A. I am not mechanically inclined; I only know it as a shredder. 20

Q. Is that the type of machine, that white machine that is standing here? A. Yes, that is a shredder demonstration machine.

Q. And you have these machines of that type going about the country showing the people how the shredding of wheat is done, is that it? A. How the biscuits are made; that is what we use.

Q. That is what I want to know. Does this machine do any more than shred the wheat? It does not bake it or make it into biscuits? A. No, it just forms it into the green biscuit or wet biscuit.

Q. So really what it does is to shred the wheat only? I am looking at the machine and I infer from its character that it does nothing but make the shreds? A. Yes, that is so. It makes the biscuit in the green form. 30

Q. Are you quite right about that? I see a machine which looks to me as if it were adapted to make the shreds and I see lying on it a mould into which those shreds could subsequently be put for the purpose of turning them into biscuits or cutting them into the raw sized biscuits? A. Yes.

Q. But really the machine proper does not do anything but make the shreds? A. That is all we call it, a shredder.

Q. That is all it does? A. Yes.

Q. You take the shreds away from the machine when the wheat has been shredded and then you form the biscuits in that mould that I see on the machine? A. Yes. 40

Q. So both of those are sent about to show how these raw biscuits are made? A. That is right.

Witness withdrew.

DR. EARL T. OAKES, Sworn:

EXAMINED BY MR. CASSELS:

Q. Dr. Oakes, what is your business or profession? A. I am a graduate doctor of philosophy, having taken my work in chemistry; I am manager of the production department of the National Biscuit Company at the present time, having charge of production in engineering.

Q. How long have you held that position? A. About one year.

Q. What was your occupation before that? A. Previous to that I was assistant production manager. Previous to that I was chief chemist of the
10 company. Previous to that I was production manager of shredded wheat, in charge of the production of shredded wheat in the five different bakeries of the company.

Q. How far back does that take you? A. To 1929.

Q. Before that were you with the National Biscuit Company? A. Yes. I came with the biscuit company in 1919 just after I was released from the army.

Q. In what capacity? A. In the capacity of research development in chemistry. Then I spent seven years in the bakeries of the company in New York and then I went to Shredded Wheat.

Q. Was that at the time the National Biscuit Company acquired control
20 of the Shredded Wheat Company? A. Yes.

Q. That is to say, of the United States Shredded Wheat Company?
A. Yes.

Q. And you say that was in 1929? A. Yes.

Q. And then you did what, from that time? A. I was in charge of Shredded Wheat until October, 1932. Then I was chief chemist of the company for about a year and a half.

Q. That is of the National Biscuit Company? A. Yes.

Q. Are you familiar with the process by which the shredded wheat is made? A. Yes.

Q. I understand and we have here a model machine of some kind which
30 carries out that process to a certain point? A. Yes.

Q. Are you able to demonstrate to his Lordship just how that operation is carried out? A. Yes.

MR. CASSELS: I would like your Lordship to see some of the wheat put through this machine.

Q. I understand this machine is one that is used at exhibitions and fairs and places of that kind to demonstrate the process? A. Yes.

MR. CASSELS: Would your Lordship care to see the demonstration?

HIS LORDSHIP: Yes.

40 WITNESS: In the production machine the rolls are about four inches long and a little over five inches in diameter. There are 29 of them one behind the other and an endless belt running along underneath the rolls. One roll is smooth and one roll is grooved. The rolls are pressed together just until the smooth roll fits evenly against the ridges of the grooved roll. Then the two rolls turn at the same speed from one master gear (witness operated machine).

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Plaintiff's
Evidence

No. 34
Dr. Earl T. Oakes
Examination

*In the
Supreme Court
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—
Plaintiff's
Evidence
—
No. 34
Dr. Earl T. Oakes
Examination
—continued

Here we reciprocate the receiver back and forth underneath the rolls to pile up a pile of threads comparable to the 27 or 28 or 29 rolls that are in operation (witness demonstrates putting threads through receiver at top of machine).

MR. SMART: Q. There is a scraper on the groove? A. Yes, we call it a comb, the teeth of which fit into the grooves and plough the threads out of the grooves.

MR. CASSELS: Q. These wheat berries you are putting in there have been cleaned? A. These have been cleaned and boiled so that there is no extraneous matter in them, and the boiling has been carried out until the starch has been completely gelatinized. We usually test that by cutting a wheat berry in two. These have not been quite thoroughly boiled because there is a little white core of ungelatinized starch (witness stopped machine). Now we take these out and put them into the form and press them out and cut them into miniature biscuits. 10

Q. That is what you would call a bad batch? A. Yes.

HIS LORDSHIP: Q. It is a green biscuit? A. Yes. (witness repeats former demonstration). We get a little bit longer thread, practically endless if we put it through like this (demonstrating). If some of the tension is taken off the rolls instead of getting a thread we get a sheet (demonstrating). You have here a product more in the nature of the muffet product. 20

HIS LORDSHIP: Is that because the comb does not work— A. No, sir, it is because the smooth roll does not quite come up to touch the ridges of these grooves and allows it to fill in all the way across. This sometimes happens in the summer time when the air is heavy and they have difficulty in holding the biscuit up to the panner chain by suction. They will run through one set of rolls with the tension off just enough to give them a sheet instead of the separate threads, and that gives them something for the suction to hold the biscuit up until it is carried along to the pan (demonstrating).

MR. CASSELS: I do not know just how we are going to get that on the record, my Lord. I suppose we could mark this machine as an exhibit and take it away. 30

HIS LORDSHIP: Whatever the witness has said is already on the record, I assume.

MR. CASSELS: Then this machine on which you have just been giving us a demonstration is smaller in all respects than the machines in the factory except as to size and the fact that there is only the one pair of rolls compared with 29 in the factory—is that correct? A. Yes, essentially it is the same thing.

Q. I notice that while you were demonstrating the machine you took some of the threads in one instance and ribbons in another instance and put them back into the hopper and put them through the rolls again. Can that be done as a matter of practice? A. Yes. 40

Q. If the wheat has gone through the rolls once can the resulting product be put back through the rolls? A. That is a regular procedure in the bakery itself in the panning of the biscuits from the shredder to the pan or the handling

of the pans to the oven; if a biscuit is misplaced or thrown out of line you cannot pick it up and straighten it and bake it because it destroys the formation of the biscuit. Those are picked off the pans and put in a box and then taken back to the shredder and fed back into certain heads that have the hoppers open enough to feed in by hand rather than by conveyer.

Q. In what condition does that product come out after being put through the second time as compared with the product which comes out for the first time? Is there any difference? A. Yes, there is a little difference. In some ways it is perhaps a little smoother and nicer looking biscuit than the
10 other. I have some that have been made that way if you care to see them.

Q. Yes, I think we could see them? A. (Witness produces package).

Q. What have you here, Dr. Oakes? A. This biscuit has been made from wheat that has first been run through the shredder and then fed back in through the hoppers so that it is entirely made of re-shredded wheat. It is, as I stated, a smoother and more finished looking biscuit than the other.

MR. CASSELS: Perhaps we had better have that package marked as an exhibit.

HIS LORDSHIP: We had better get them into a dry place.

WITNESS: They will keep indefinitely.

20 MR. SMART: Can we have one of those out of the package?

HIS LORDSHIP: The whole container might go in as an exhibit.

MR. CASSELS: Are they all the same in this container? A. Yes.

Q. All made of the wheat which has been through the rolls twice?
A. Yes.

EXHIBIT No. 20: Container containing specimens of re-shredded biscuit.

Q. You spoke just now of the muffets which have been referred to on a number of occasions during the evidence which was read into the record. Are you familiar with that product? A. Yes.

30 Q. I hand you a package. Can you say what that is? A. A package of muffets.

Q. Perhaps you might show one of those muffets to his Lordship? A. (Witness complied).

Q. Can you tell us how that article is made? A. Yes, sir; it is made with the wheat shredded and simply rolled up into a roll.

Q. And is the wheat in that article, that muffet, similar to the wheat in the plaintiff's shredded wheat biscuit? A. Very similar, yes; there is an indication of not having quite so much tension on the rolls so that it is almost a web instead of single threads that come through.

40 Q. What gives you that indication? A. Some of the threads are tied together, running one into the other a little bit.

Q. Can you say as to whether the material which that biscuit is made from is substantially the same as the material of which the shredded wheat biscuit is made? A. It is substantially the same.

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Q. Do you know the process by which the muffet is made? A. No, sir; I have never seen it made.

Q. Are you familiar, Dr. Oakes, with Canadian patent No. 72695? A. Yes.

Q. And are you familiar with the machine of that patent? A. Yes.

Q. Can you say whether on the machine of that patent the shredded wheat biscuit, that is to say the plaintiff's biscuit, could be made in any other shape or form than that in which it has been made during the period of years of which we have been speaking? A. It can be made in different forms.

Q. Why do you say that? Have you ever made it in different forms? 10
A. We have made it in different forms, yes.

Q. On that machine? A. We have made it on that machine all except the cutting of it in different forms.

Q. What do you say as to the cutting of it in the different shapes and forms on the machine? A. It is merely a matter of the shape in which the knives are made for cutting, changing the shape of the knives would change the shape of the biscuit and give you a different shaped product.

Q. You say you have made the biscuit in other shapes? A. Yes.

Q. By hand, I think you said? A. Yes.

Q. After the biscuit came from the machine? A. We merely formed 20
them by hand, cut them by hand.

Q. Can you show his Lordship any other forms in which you have made it?

HIS LORDSHIP: Mr. Cassels, were you offering the muffet as an exhibit?

MR. CASSELS: Yes, I am putting it in, my Lord.

EXHIBIT No. 21: Package of muffets.

WITNESS: I have here a round bun-shaped biscuit that is made from the product of the machine having applied a different type of knife to it. Also a triangular or horn-shaped piece; it is also a diamond-shaped piece.

MR. CASSELS: We might put all these in as one exhibit afterwards. 30

WITNESS: There is no restriction on the shape of the biscuit that can be made, as far as I know.

MR. CASSELS: Q. What do you say as to its commercial possibilities? Could the biscuit be made in the different shapes commercially? A. Yes.

Q. How would the expense compare? A. There would be practically no difference in the expense.

Q. Would it require any substantial expenditure to change the knives in the machine, as you have said can be done? A. No, sir; not compared to the total cost of the machine. It would be a very minor change.

Q. How many samples have you put in? A. Three. 40

Q. What is in this box? A. There are others of the same shape.

MR. CASSELS: We could put them all in that box and file them as Exhibit 22.

EXHIBIT No. 22: Package containing vari-shaped biscuits.

Q. Are you familiar, Dr. Oakes, with the defendant's biscuit? A. Yes.

Q. I hand you a carton of the defendant's biscuit complained of in the action. There is one in as an exhibit but this is another one of the same kind. What do you say in regard to it as compared with the biscuit of the plaintiff?

A. It appears to have been made in much the same way and much the same form and shape.

Q. Can you say whether it is made on the same machine? A. I believe—

Q. I do not want your belief? A. No, sir; I cannot say as to that.

10 Q. Does the texture of the biscuit appear to be the same as that of the plaintiff's biscuit, substantially the same? A. Very much so, yes.

Q. Do you notice any difference in the appearance or size of it? A. It is a shorter biscuit than ours is, and perhaps a little more compact.

Q. Have you any knowledge as to the extent to which the defendant's biscuit has been on the Canadian market? A. No, sir.

Q. Are you familiar with the Canadian patent No. 52428, that is the original Perky patent on the process—I think it was put in as Exhibit 7—covering the food or bread of the Perky invention? A. Yes.

20 Q. How far does that patent take you in the manufacture of the completed biscuit? Take your time and read it through.

HIS LORDSHIP: Mr. Cassels, I might ask if the evidence of this witness will be lengthy?

MR. CASSELS: I think he will be some little time, my Lord.

HIS LORDSHIP: Then I think this would be an appropriate time to adjourn until tomorrow morning at ten-thirty. (Witness stood aside).

Whereupon the court adjourned at 5.00 o'clock p.m. until 10.30 o'clock a.m. on Tuesday, March 3, A.D. 1936.

Upon resuming on Tuesday, March 3, A.D. 1936, at 10.30 a.m.

DR. EARL T. OAKES resumed the stand.

30 EXAMINATION CONTINUED BY MR. CASSELS:

Q. Dr. Oakes, I would like you to describe to his Lordship exactly what is done in the process of making this shredded wheat biscuit, starting at the beginning? A. Particularly in Canada?

Q. Yes? A. The wheat is purchased from the farmers and wheat elevators in the province of Ontario—it is an Ontario-grown product—and brought out to the plant where it is put into bins. These bins hold about 20,000 bushels of wheat. We have capacity for storing about 200,000 bushels in these different bins. Then since wheat from one farm to another varies and from one elevator to another varies, it is blended at the bakery so that out of
40 these 20,000 bushels three or four of them will be pooled at one time into one stream, and this one stream will go into a blended bin, and from that it is taken to the cleaning machines where all the extraneous matter is taken out. First

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it goes through a so-called receiving separator which allows the wheat to fall through a coarse screen, and the material larger than the wheat grains is screened off. Another screen allows the material finer than the wheat grains to go through, and the wheat grains are carried on the screen. From there it goes to cutter disc machines that pick the wheat out kernel by kernel and that principally separates it from the grains of oats that usually accompany the wheat. Then it goes to a stoning machine where by virtue of the difference in gravity between the stones and the wheat the stones are shaken out of the lighter wheat berries. Very often the little pebbles are much the same size as a grain of wheat and the receiving and milling separators do not take them out. Then it goes to a scouring machine where the outside of the kernel is brushed by a set of revolving brushes to take off any dust and fuzz that may be clinging to the wheat. Then it goes to another set of cutter disc machines that separate the small round black cockle berries from the wheat. Then the wheat is conveyed to the cookers and a weighed amount dumped into the cooker, and water is run in. 10

Q. Up to this point that is the end of the cleaning of the wheat? A. Yes. The wheat and water having been introduced into the cooker, which consists of an outside drum with an inside perforated revolving shell, the wheat being inside the perforated shell or drum, the whole equipment is sealed up and the cooking proceeds under a slight steam pressure. After the wheat is thoroughly cooked the water is drawn from the cooker and the wheat is emptied into what is known as a cooling or curing machine. There the wheat falls through a long tower, with the thickness of about an inch or an inch and a half between the walls of the tower. Through this thin sheet of wheat as it goes down a draught of air is drawn to remove the excess moisture on the outside of the wheat and to cool the hot wheat as it goes through. The cooled and partially dried wheat is then stored in tanks of about 200 bushel capacity. After a period of about ten to sixteen hours, depending upon the temperature of the weather, these tanks are emptied into similar tanks on the floor below. This serves to aerate and mix the wheat without mechanical agitation. Of course, in the cooking of the wheat, although it has been thoroughly cooked and has absorbed approximately fifty per cent. of water, the berry is still intact and firm enough to withstand ordinary pressure, but still soft enough so that they may be crushed in the fingers. Any conveying or agitation that is applied to the wheat must be such as not to break the outside of the berry or crush it. 20 30

From the second storage tanks the wheat is conveyed on a belt spread out in another thin film over which a magnet is suspended. This magnet is for the purpose of removing any metallic particles that may in any way have entered the stream of wheat after having come from the cleaning equipment. 40

From this wide belt the wheat is conveyed in a scroll conveyor or screw conveyer, a worm conveyer. This worm conveyer extends along the top of the shredding machine and over each of the hoppers which supply each of the twenty-nine sets of rolls there is an opening from this scroll or worm conveyer into the individual hopper above each set of rolls. These rolls are mounted tandem, one behind the other or one in front of the other. Starting from the

back of the machine, the wheat goes into the first hopper supplying the first set of rolls, and so on, until it gets to the front of the machine. Each of these sets of rolls are identical, one being smooth and the other grooved. Each is controlled by a separate clutch so that you can cut one roll out without interfering with the rest of it. Not all of these twenty-nine sets of rolls are in operation all the time. Usually from twenty-five to twenty-seven rolls are required to give the proper weight to the biscuit. The other two rolls are in the nature of emergency rolls so that if something happens to one set of rolls the damaged set can be cut out and the good set cut in without interfering

10 with the production of the machine as a whole.

In starting in the morning the machine is cool and the wheat is introduced into the hoppers, the clutches are thrown in, and as the machine warms up the rolls expand and become tighter together. The operator must adjust each set of rolls to the proper tension, and as they warm up he is continually releasing the tension on each set of rolls until it is just enough to give the proper character to the shredding.

Q. How can he tell as to the tension that is required? A. As soon as he commences to get a ribbon he knows he has not enough tension and pulls the tension out just enough to cut that ribbon into threads. Due to the fact

20 that these rolls are made of extremely hard steel with the tension that is applied to them the grooved roll cuts into the smooth roll so that the smooth roll gradually wears a set of grooves. Then the rolls must be taken out and the surface re-surfaced and trued up. The grooved rolls are re-dressed, and they are then returned to the machine. The grooved roll is in a stationary setting; the smooth roll has the screws through which the tension is applied. They must be faced as absolutely true as can be or one side will cut harder than the other, and you will have a ribbon on one side and clear cutting on the other side, and the result would be a rapid wearing of the rolls. The rolls themselves being very expensive—a set costing over \$50 and there being

30 twenty-nine sets in the machine—it is imperative not only for good working in the manufacture of the biscuit but also for economical operation, that they receive great care. Then as the wheat falls from the rolls it is received on a travelling chain belt which consists of separate lengths about two and a half inches wide.

HIS LORDSHIP: Q. Pardon me, does that mean crosswise? A. No, sir. The belt itself is four inches wide, just the width of the rolls. (Witness demonstrates upon machine). These rolls would be four inches wide and the belt running underneath would be just wide enough, the same as this is just wide enough to take the shreds from these rolls; the belt itself would be wide

40 enough to take the four inch material from the other rolls, but the links themselves would be about two and a half inches in space the same as a narrower one.

MR. CASSELS: Q. "This" does not mean very much on the notes? A. If you will let me have the Patent we were discussing yesterday (Exhibit 8) I think there is a drawing showing the chain between the two hoppers. In Figure 2 of Patent No. 72695 there are shown two down spouts to two hoppers (CCC). Underneath these hoppers and back of the wheels shown in front of

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them is a chain mounted on little rollers. The chain consists of small buckets the sides of which are shown about an inch high with separations at the rollers. Those separations extend clear through the chain. Each of those little buckets are separate. The wheat from the first set of rolls is received on this sectional bucket chain at the back of the machine. The chain moves continuously, and when it passes under the second set of rolls it receives another layer of material, and so on, until it reaches the front of the machine with the twenty-five, twenty-six or twenty-seven layers of wheat. At that point in this same drawing there is an endless chain underneath the machine which has a set of knives that come up from underneath, and the knives are brought through the slots between these buckets that have been previously described, raising the twenty-six or more layers of wheat slightly. Then on the top there is another chain— 10

HIS LORDSHIP: Q. Raising it? A. As they come up to these slots they protrude about one-eighth of an inch.

Q. The knives? A. The knives come through there to the extent of about one-eighth of an inch, and of course that slightly raises the material. Then there is a somewhat similar chain on the top of the machine which is also endless and carries knives on each link. The knives from the top chain articulate with the knives from the bottom chain, and as they proceed along together they are forced together tight enough to squeeze the biscuits apart at that point, and act in the nature of a cutting machine. The knives are flat on the surface and really pinch the biscuit off rather than cut it. This gives a selvage edge to the biscuit which ties the wheat together from one side and the other. On the top chain each of those links, which are about two and a half inches wide—I will correct that; they are about three inches wide—instead of the top link being a solid piece it is a little screen, and as it passes along a suction is applied through an air chamber through this metal screen to the biscuit, so that the biscuit is held on the upper chain. The lower cutter chain turns back away from the bucket conveyer chain, and a little later the bucket conveyer chain turns away from the top chain, and the top chain proceeds with the biscuit suspended from these screened links. 20 30

This top chain carries the biscuits along until they get over a pan, and when they get over there the suction is suddenly released and an air pressure applied so that they are dropped on to the pans beneath. It is in this dropping that occasionally a portion of the biscuit may stick to the upper knife, particularly in hot weather; and if the wheat is a little sticky and biscuits drop on the pans out of line with the rest of the biscuits it is almost impossible to straighten them without so deforming them that they could not be packed after they are baked. The so-called "cripples" are picked off the pans and put into a box and taken back to the machine and run through the rolls a second time, thus avoiding the baking of material that later would be wasted. In this way it is used as first class material. After the biscuits are placed on the pans, with four rows of biscuits to a pan, the pans are placed in what are known as reel ovens. 40

Q. By hand? A. Yes, sir. These reel ovens are sort of Ferris-wheel type ovens. As the shelves revolve an empty shelf comes into position for loading. When the oven is completely loaded it is closed for a period of approximately ten minutes. A second oven is loaded while the first one is baking. When the first one has finished baking the pans are removed from each shelf in order, and fresh pans of biscuits are placed on the shelves as they are emptied. From the ovens the pans are placed in racks. These racks are placed in a drying tunnel and conveyed through this tunnel for a period of about an hour. The biscuits come from the drying tunnel in approximately a

10 bone-dry condition. They are allowed to cool for a few minutes on the floor. Then they are taken to the packing table where the pans are run in single file between two rows of packing operatives, who place the biscuits in the cartons, twelve biscuits to each carton. The cartons are then placed in a conveyer and taken to the sealing machine where ribbon strips are applied to both sides of the cartons to seal them up. From there the cartons are taken to a casing unit where they are placed thirty-six in a case and the case is sealed up.

Now, in Canada we also operate the latest development which is identical with that already described up to the point of taking the biscuits from the machine to the oven. There the biscuits are dropped on to narrow pans,

20 each pan being about four and a half inches wide, just the width of the length of one biscuit. Twelve of these biscuits are placed on one pan and the pan sent ahead. Then the next pan is loaded with twelve biscuits, and so on.

Q. Each narrow pan contains twelve biscuits? A. Yes, sir; just one row across. These pans, some 1500 to 2000 of them, are linked together in a continuous chain, and from the machine where the pans are loaded they are conveyed through a baking chamber, passing back and forth four or five times. From the baking chamber they pass into a drying chamber, making thirteen passes through that chamber. When they come out from that chamber the biscuits are thoroughly baked and dried. Then the biscuits are

30 raked off on to a packing table, and packed substantially the same as has been described, the difference being that instead of pans containing four rows of biscuits handled by hand into a reel oven the biscuits are introduced on to these single pans which are chained together and driven through the oven without handling at all.

MR. CASSELS: Q. You described these cutting knives, the knives which come up from underneath and the knives which come down, and said it was really rather a pressing together than a cutting of the material? A. Yes.

Q. Is there anything in the practice or in the patent which calls for any particular shape of these knives? A. No, sir; not anything in the patents.

40 Q. And in practice? A. In practice it happens that we have adopted a knife that we have found satisfactory but not necessary, and have continued with it.

Q. What do you say as to the importance of these various steps that you have described in the manufacture of the finished product? A. We have found that there is no step in any of this procedure that can be neglected without detracting from the quality of the finished product. That applies to

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every operation from the selection of the wheat, the cleaning of it, to the maintenance of the machine and the operation of it, the handling of the pans. Perhaps one of the most difficult points in all the operation is to get operators who will keep their machines adjusted to the proper tension and who will remove the worn rolls as often as is necessary to keep the machine in good condition.

Q. Are any efforts made to improve the quality of the biscuit, or do you just carry on the way it has always been done? A. Well, we have constantly made efforts to improve the quality of the biscuit. This machine that I have described as being the latest development, and in operation in our Canadian plant, cost well over \$1,000,000 to develop, and was developed slowly with the idea of improving the quality of the product. 10

Q. What about the question of temperature during the various steps? A. Well, of course that is very important in the cooking of the wheat. It must be cooked at a particular temperature and for a particular length of time; forcing the cooking tends to cook the outside of the wheat more rapidly than will allow you to have the heat penetrate to the inside before the outside becomes mushy, and as soon as the outside becomes soft enough to break then your whole structure breaks down and you cannot convey it or handle it in any way. This also has a bearing on the moisture content of cooked wheat. 20 Wheat ordinarily runs 13 per cent. moisture as it is received at the bakery and stored, and during the cooking process it absorbs almost 50 per cent. of water so that it is almost half water and half solid material. Now, if that varies more than a per cent. one way or the other you cannot do a good job in making a biscuit.

HIS LORDSHIP: Q. That is how you get underweight bread, is it not? A. Yes. The temperatures in the oven, of course, have a great deal to do with the resulting biscuit. We have recording thermometers on every operation so that each day these recording thermometers—the record is taken off and inspected by the management of the plant to see that everything is carried 30 out right. Of course, during the day he inspects them frequently, and the man in charge is constantly inspecting them. I might say that in the evaporation and drying out of the biscuit if the temperature is not well controlled, and the time also, there is a tendency to form rancid biscuits very quickly; the biscuits develop rancidity very rapidly after that, and the quality is completely destroyed.

BY MR. CASSELS:

Q. You have described this process as it is practised in the Shredded Wheat Company plant. Could this so called shredded wheat biscuit be made by any other process? A. (No response.) 40

Q. Apart from the patents altogether could you get the same result in any other way? A. You mean to get exactly the same shape of biscuit we have and the same character, and so on?

Q. I mean the same character; I do not mean necessarily the same shape? A. Well, I do not see any reason why you should not get the same character and the same shape both, if you wanted it, by other machinery. Of course

my experience has been entirely with the ordinary cracker baking and bread baking equipment up to the time I went to the Shredded Wheat Company, and I was rather astonished at the complete divergence of development in the two industries. Had we developed the thing with our experience as cracker and bread bakers we would undoubtedly have used entirely different methods of attaining substantially the same end. Nothing in the making of shredded wheat has made use of any of the developments in cracker baking or bread baking.

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Q. You say you could get the same results by using those methods?
10 A. Yes, sir. As a matter of fact we do substantially the same thing in a much more economical way in manufacturing pretzel sticks. There we have a corrugated roll and a smooth roll, or in some cases a pair of corrugated rolls except that the corrugations instead of being open a twentieth of an inch deep, as they are in the rolls for shredded wheat, are about three thirty-seconds of an inch deep. They roll out tiny sticks exactly as these rolls roll out tiny threads, and being larger we call them sticks, pretzel sticks.

HIS LORDSHIP: Q. Double corrugations? A. Either double or single corrugations; it is not material whether they have two rolls corrugated or one corrugated and one smooth.

20 MR. CASSELS: Q. When we spoke of muffets, the products of the Quaker Oats Company, I think you said you didn't know the method by which muffets are made? A. No.

Q. Could you make muffets or a similar article on the machine of this patent? A. I have seen the patent for the machine for making muffets and it is in many ways similar to the one in use for making shredded wheat. We could use the machine for making muffets, yes.

Q. How would you do that? A. Simply loosen the tension on the rolls so that we have the wheat coming out in the form of a ribbon and use spindles to roll this ribbon on until we get the desired diameter and lay them on a pan
30 and bake them.

Q. You say there is a patent on the process for making muffets? A. Yes, on the machinery.

Q. Do you know whose invention that was? A. I think it was Mr. Henry D. Perky's invention, the same as the inventor of our shredded wheat machine. His son later developed the process from those original patents.

Q. Can you tell us whether any additions have been made to the plant at Niagara Falls, Ontario, in recent years. A. Immediately before we took the plant over the Shredded Wheat Company had completed an entirely new building to house this so called automatic oven that I described at the last.
40 We put that into operation in March, 1929, when I went up there. The complete new plant is a unit in itself, and the automatic oven is operated in that and the old plant is operated with the same two reel ovens.

Q. Is that a substantial addition? A. It doubles the capacity.

Q. What do you say, Dr. Oakes, as to these terms "shredding" and "shredded," as to whether those words describe the process of making this biscuit or describe the biscuit when made? A. They do not in any way

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describe the process nor the biscuit. If one had never seen a shredded wheat biscuit and you told him he would have shredded wheat for breakfast in the morning he could like awake all night and think about what shredded wheat was going to be like and he would not have the vaguest idea, so from that standpoint it is not in any way a description. In the manufacture the smooth and grooved rolls turn at the same rate of speed. The peripheries travel the same linear speed, therefore there is no slipping of one against the other and no tearing or rending of the berry at all; it is purely and simply a rolling process the same as rolling steel in a steel mill or rolling corrugated paper or glass or anything else.

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CROSS-EXAMINATION BY MR. BIGGAR:

Q. Would you be good enough to tell me what the material is that is in the pan after the operation of the machine that you operated for us yesterday?

A. If I understand you correctly, it is wheat, sir.

Q. Just wheat? A. Yes.

Q. No other word is necessary? You have told all you know about it when you have said it is wheat? A. So far as the material is concerned it is only wheat. We add nothing to it and take nothing away.

Q. What is the difference, if any, between the material that goes in and the material that comes out of the pan? A. I should correct that because it is wheat plus added water in the cooking. 20

Q. What is the difference between the material that goes into the machine and the material that comes out? A. It is exactly the same material.

Q. Is it in the same condition? A. Yes, sir; I would say so.

Q. No change of any kind, visual or physical? A. Yes, physical.

Q. What word describes the difference before and after it goes through the machine? A. I should say it is in the form of threads or filaments when it comes out, "filaments" perhaps describes it better than anything else.

Q. Yes, give me an adjective? A. Filamentous.

Q. I find a patent of Mr. Perky's, No. 88,690, granted on November 14, 1903, which begins as far as the substantive part of the patent is concerned, as follows:— 30

"The object of the invention is to provide a cracker of filamentous or shredded wheat."

You disagree with Mr. Perky that the word "shredded" is an alternative or synonym for filamentous? A. I do not think so, except by a wide stretch of imagination.

Q. You disagree? A. Yes.

HIS LORDSHIP: You may put the patent in.

MR. BIGGAR: Yes, it is Patent No. 88,690, bearing date 9th August, 1904. 40

EXHIBIT No. 23: Certified true and correct copies of original specification and drawing remaining on record, duplicate copies of which were attached to Patent No. 88,690 dated August 9, 1904, and granted to The Natural Food Company, assignee of Henry D. Perky, for "Crackers," dated 3rd January, 1936.

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Q. Now I want to call your attention to Exhibit 6. This is one of the Canadian Shredded Wheat Company's cartons which was put in by my friend and begins:—

10 "Shredded wheat is one hundred per cent. whole wheat and is made digestible by cooking in steam, shredding and baking."

Is that a true statement? A. No, sir; I would not say there is any shredding about the process except in so far as we have applied an inapt term to this procedure.

Q. You would think that was an incorrect statement? A. Yes.

Q. I find later on the same carton the following:—

"The crispness of the shreds promotes thorough mastication."

Is that an incorrect statement? A. The crispness of the biscuit in its form does promote thorough mastication.

20 Q. Is it a correct statement to say that the crispness of the shreds promotes thorough mastication? A. I do not think it is a correct term to apply "shreds" to these filaments of biscuit.

Q. You mean that you disagree with the company and you disagree with Mr. Perky who invented the process and the article, and you disagree with Mr. Morrissey who preceded you in giving evidence? A. In so far as I maintain that this is not a shredding operation, I do.

Q. Then you do not refer to that machine on which you gave us a demonstration as a shredder, as Mr. Morrissey does? A. Yes, I do.

Q. It is not a shredding machine? A. I call it a shredder.

30 Q. But not a shredding machine? A. Yes, I will call it a shredding machine, but it is not a shredding machine because I call it so.

Q. I find that difficult to follow? A. Perhaps I can explain it in this way: We have machines in the biscuit industry that we call peeling machines, but they do not peel.

Q. You say this is a shredding machine or a shredder? A. No, sir; I said it call it that but that does not make it a shredder.

HIS LORDSHIP: Q. Just as there are corn plasters that are not plasters? A. Yes, and they do not have corns.

BY MR. BIGGAR:

40 Q. Why do you misquote it? A. Because everybody practically that I have had anything to do with around this equipment calls it that.

Q. And as a matter of fact it has been called a shredder or a shredding machine or shredding rolls for something like thirty-five to forty years? A. I should judge so; my knowledge goes back to 1929.

Q. Has any other name been applied to the machine as far as you know? A. My experience dates back to 1929.

Q. Did you ever hear anybody refer to this machine as anything else except a shredding machine or a shredder or the rolls as anything else but shredding rolls? A. Yes, I could refer to many names I have heard repeated by operators who could not operate the machine in bad weather!

Q. That is not the kind of term you could mention in court. Tell us some other alternative name that you can mention in court? A. I do not recall any specific name.

Q. Is there any? A. I do not know; I do not recall any.

Q. Why do you object to describing the material that comes from the machine as having been shredded? A. Shredding to me indicates a tearing or rending operation and there is no tearing or rending in this operation. 10

Q. You are philosophizing. You have agreed that this has been called a shredding machine for years and years? A. Yes.

Q. Would you also agree that the material that has gone through the machine has been described as shredded equally generally? A. No, sir; I think it has been designated as shredded but not described.

Q. We will not quarrel about the difference between "designated" and "described." Would you say you designated a four-legged animal as a horse or called it a horse? A. I would say I call it a horse.

Q. But not to describe it as a horse? A. No, I do not think that is a 20 correct description of him.

Q. Coming back to that statement in Exhibit 6, Dr. Oakes, that shredded wheat is one hundred per cent. whole wheat and is made digestible by cooking in steam, shredding and baking, I understand that you object to the term "shredding" but I want to find out why you object or your company objects to our use of the word "shredded wheat," and I am putting it to you this way, that if you described these biscuits you would describe them by several adjectives, would you not? In the first place, you would call them steam cooked, as this does: "made digestible by cooking in steam." They are steam cooked? A. Yes, sir. 30

Q. Then some word that indicates that they have been handled through a shredding machine or shredder, that they have been altered in shape and form in the way that that material which you put through this machine here was altered? There would have to be some word that would describe that? A. I would think it would be handy to have such a word.

Q. Then you describe them as "baked" in the words of Exhibit 6, or you might substitute "toasted"? A. I do not think toasted would quite describe it fully.

Q. You would rather use the word "baked"? A. In the ordinary sense of the industry we would use "baked." 40

Q. Then you would use the expression "whole wheat"? A. It could be used.

Q. It is in fact used? A. Yes, and it is whole wheat.

Q. And, as a matter of fact, if you did not have the word "whole" in your description or designation of the product would not be quite complete because the product is whole wheat and not merely wheat? A. Wheat

cannot be anything but whole wheat. If you want to get down to fine terms it is a superfluous adjective, I would say.

Q. At all events you think the use of the word "wheat" carries the whole idea of nothing being removed from the wheat berry? A. If you take anything away from it it is no longer wheat, and in that sense it is adequate.

Q. Then you would add the word "biscuit"? A. No, I would not.

Q. I find on Exhibit 6 "twelve biscuits"? A. I wonder if you find that tied up with "shredded wheat"?

10 Q. It says "The original shredded wheat" and a picture of a saucer with a biscuit in it and a spoon marked "copyright 1911 by the Shredded Wheat Company" and a trademark underneath, and then goes on with the word "twelve" and the figure "12" in parenthesis, and "biscuits"? A. Yes.

Q. Are they not biscuits? A. In the easy sense of the word they can be termed biscuits.

Q. Would you have described your article fully without using the word "biscuits"? A. I do not think I can answer that truthfully because, referring back to my own initiation into this business, I had conceived of biscuits as being something entirely different. I see no reason why they cannot be
20 termed "shredded whole wheat biscuit" if you want to.

Q. At any rate, it does make a complete description if you call them "steam cooked" and then some word that indicates the shredding and "baked whole wheat biscuits"? A. I would think that was the intention.

Q. You would not quarrel with anybody using the whole of the wheat berry in the product describing it as wheat? A. I would not think so.

Q. Or as whole wheat? A. I would not think so.

Q. Or describing a product cooked with steam as having been steam cooked? A. I would not think so.

Q. Or a product that had been baked as having been baked? A. I do
30 not think so.

Q. So it really boils down to this, that you do not like our use of the word "shredded"? A. I do not care what word you use.

Q. You think we are not entitled to designate our biscuit by the same word that you have designated your biscuit? A. I do not think so.

Q. And that is the word "shredded"? A. "Shredded" does not describe our biscuit.

HIS LORDSHIP: Are you not asking him to testify on a matter of law?

MR. BIGGAR: It is narrowing the issue. That is the reason I am putting it in that way, my Lord. I observe on Exhibit 6 that this product which it
40 contains is called "Shredded Whole Wheat"? A. Yes.

Q. And I observe that the large carton which holds eight small cartons and which you have beside this machine has nothing on the outside except the words "Shredded Whole Wheat"? A. Yes, sir.

Q. That is true. And before I leave that I had better make it clear to you that the machine which you demonstrated today is the same machine that

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I referred to yesterday in cross-examining Mr. Morrissey? A. As I recall it, it is the same type, it is the same type of machine.

Q. Now, referring to Exhibit 17 do you know, Dr. Oakes, when the package Exhibit 17 was first used, the one with the blue below the building?

A. My recollection is not exact on it, but I would say it is some time within the last three or four years.

Q. As a matter of fact, judging from the evidence on commission that has been read, it had not penetrated to Western Canada at the time of the execution of that commission, but had penetrated to the Maritime Provinces?

A. That is possible.

Q. It is as recent as that? A. Yes, sir. I might say that these changes are put into execution at a time when we have used up certain supplies already on hand, so that although they may have been planned some months previously the flow of material through the bakery determines the time when they are actually put into use.

Q. Now, Mr. Morrissey has given us figures with regard to the sale of shredded wheat. While you were their manager, or in charge, as you told us, or production manager for shredded wheat, was there any other produce besides these biscuits which contained the same kind of material as comes through this shredding machine and which you put in the pan in demonstrating the machine? Is there any other product of the company which was made of that same material? A. In Canada, no sir.

Q. At any time? A. No, sir.

Q. In the United States? A. Yes.

Q. What is that? A. Triscuit.

Q. Was that made throughout the time that you had to do with the company? A. Yes.

Q. Is Triscuit sold in Canada? A. Yes.

Q. Manufactured at Niagara Falls, New York? A. Yes.

Q. And sold through the Canadian Shredded Wheat Company? A. Yes; it is partly processed in New York and partly processed in Canada.

Q. I want to show you the patent Exhibit 23 and ask you whether the material described in that patent is what you have now told us is sold as Triscuit? A. Yes, sir; it does.

Q. That accurately describes the product which is sold as Triscuit? A. It describes the product.

MR. BIGGAR: Perhaps I can ask a question or two that would indicate the character of the difference.

Q. Triscuit is, as described in the patent, a cracker rather than a biscuit, is it not? A. Well, there again you are getting into rather deep water; we call our parent company the National Biscuit Company and we are taken to task for the products we make, some say they are crackers, cookies or something else. Under our ordinary understanding of the term "cracker" it would not be a cracker.

Q. But it is called a cracker in the patent? A. I do not recall; I imagine it is.

Q. I find that it refers at the beginning to providing a cracker of filamentous or shredded wheat, and the claim is a cracker composed of superposed filaments of grain, etc.? A. Yes.

Q. I will put the difference this way and we will not get into trouble about the designation of words or what words designate your meaning: The difference between these two products is that while shredded wheat biscuit is a product which is light and porous and considerably thicker after baking than before, the Triscuit is a thin product with no considerable or comparable porosity. Am I not right? A. Substantially; I see no objection to that.

10 Q. I thought not.

MR. BIGGAR: Perhaps your Lordship would like to see the little picture in the patent which indicates the nature of it. The top one is a plan view of the product called "Triscuit" and in the middle of the page there is a sectional view (hands Exhibit 23 to his Lordship).

MR. BIGGAR: Yes, my Lord, I have a little book of advertising which my friend admits both as to dates and publication. The book might be marked Exhibit 24.

20 EXHIBIT No. 24: Booklet containing ten photostatic copies of advertisements appearing in Globe newspaper from February, 1908, to April, 1913.

MR. CASSELS: I have checked the copies with the originals, my Lord.

MR. BIGGAR: Q. I find on February 19, 1908, an advertisement of Triscuit described as: "The delicious Shredded Whole Wheat Toast." Is that a proper description of Triscuit? A. No, sir.

Q. No? A. No, sir.

Q. For the same reason as before? A. Yes.

Q. That it is a designation but not a description? A. Yes.

30 Q. It is used here not as a designation but as a description, you see: "Triscuit, The Delicious Shredded Whole Wheat Toast." Do you persist in saying that is not a description of Triscuit? A. Yes.

Q. Then an advertisement dated February 29, 1908:—

"You Can Get a Dainty Luncheon Ready in a Jiffy with Triscuit.

It is Shredded Whole Wheat compressed into a wafer and used as a toast."

Is that a proper description of "Triscuit"? A. No, sir.

40 Q. And on April 19, 1913, nearly five years later: "Food science has taught us that there is much body-building nutriment in the whole wheat grain which we do not get in white flour. The only question is how to make the whole wheat grain digestible. That problem has been solved in the making of Triscuit, the shredded whole wheat wafer. It is the whole wheat, steam-cooked, shredded, compressed into a wafer and baked—the maximum of nutriment in the smallest bulk." Do you suggest that the company persisted from 1908 to 1913 in mis-describing this product? A. That does not describe it.

Q. It does not describe it? A. No, sir.

Q. Would you say it was a mis-description? A. Yes.

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Q. Coming back for one minute to Exhibit No. 6, I want to call attention to one other statement on it, on its side at the bottom: "It is all in the shreds"—that is between inverted commas as if it were a statement by the Canadian Shredded Wheat Company: "It is all in the shreds." Now, what is the significance of that statement to your mind? A. It signifies to me that an advertising man took liberal poetic license and ascribed a lot to the product that was not there.

Q. But what was all in the shreds? A. I have no idea; I did not write it; I do not know what he had in mind.

Q. I am asking you what it conveys to you, who knew a great deal more than the public? A. This was written long before I had anything to do with the Shredded Wheat Company. Actually we know that by reducing this to a fine form it offers a tremendously increased surface area to the digestive juices, and therefore digestion, since it proceeds by the action of the juices on the surfaces of the food, proceeds fairly readily. Beyond that I could not say.

Q. You mean it really conveys nothing to you about what is all in the shreds? A. It conveys no definite—

Q. Do you suggest that that statement is quite meaningless? A. No, it has a certain meaning.

Q. What does it mean to you? A. I read back into it the digestive process. To a technical man it means anything in the form that offers a tremendous surface to the digestive juices, offers its food values to ready digestion.

Q. It conveys to you that by reason of the shredding of this material and the extension of the area to which the digestive juices can be applied therefore it is particularly easily digestive and satisfactory from the digestive point of view? A. The larger the surface exposed to digestion the more readily digestion takes place.

Q. And that is due to the shredding? A. No; reducing it to a large area.

Q. What does the word "shreds" mean? A. Tearing, rending apart; you speak of tearing to shreds and rending in shreds.

Q. But as applied to this material? A. Drawing it out into fine filaments.

Q. As you know, the United States Company has used a similar expression: "It is all in the shreds" a great many times? A. I believe it has.

Q. You are now the manager of the production department of the National Biscuit Company? A. Yes.

Q. And your jurisdiction extends to the operations of the company in the United States? A. Yes.

Q. And through the Canadian Shredded Wheat Company in Canada? A. Yes.

Q. And through the English company in Great Britain? A. Yes.

Q. Now, am I not right in thinking that the palatable characteristics of shredded wheat biscuit as distinguished from Triscuit depend a good deal upon a light and porous character? A. No, sir.

Q. They do not? A. No.

Q. It would be just as satisfactory, would it, if it were a solid and not an open mesh and light material? A. No, sir.

Q. Then its satisfactory character as a food does depend upon its light and porous structure? A. No, sir.

Q. Mr. Perky, I find in Patent No. 88690, Exhibit 23, it says:

“It has also been found that when the material is compressed by a mashing action, its filamentous structure, upon which depends its light and porous character, is injured.”

10 A. You are speaking of Triscuit now.

Q. No, I am speaking of the reason for the avoidance of mashing? A. I think you have a little misconception about Triscuit. It is not mashed.

Q. I am reading from the beginning of the specification in which he is describing or professing his reasons— A. I am sorry; I do not understand.

Q. He uses some expressions which indicate that it is undesirable to mash the material of which biscuits of wheat filaments are made because the filamentous structure is thereby injured and upon that filamentous structure depends the light and porous character of the biscuit? A. I understood you to differentiate between Triscuit and Shredded Wheat on that basis. There
20 is no such distinction.

Q. Are you quite definite that the palatable and satisfactory characteristics of the shredded wheat biscuit do not depend on its light and porous character? A. Not of the biscuit, no.

Q. It would be just as satisfactory as if it were solid material? A. No, if it were ground up material it would be just as satisfactory. If the particles constituting the biscuit in the large form were separated by crushing and reduced to a mere handful as compared to the biscuit proper it would be just as palatable. Many people prefer to eat it that way; they just grab a biscuit and break it up.

30 Q. Would it not be just as satisfactory a commercial product? A. I could not say because I have never tried to manufacture it or market it in that way.

Q. I am still in a little difficulty. My experience is—I may be quite wrong—that when you mash up a shredded wheat biscuit you do get a light and porous pile of brittle short filaments? A. Yes.

Q. Then it still has a light and porous character after being broken up?
A. Each of the filaments retains its porous character. The fact that it is raised into a large bun or is compressed into a flat piece has nothing to do with its digestibility. When the material containing half water and half wheat
40 solids is placed in the oven at about 543 degrees temperature the result is an explosive change of the moisture to steam which in forcing its way out leaves the material in porous filaments. Whether the filaments are allowed to contract and draw up into a more or less rounded shape with a large space between each of the filaments or whether the filaments are held down or mashed to pieces has nothing to do with the digestibility of the material,

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because after all once you take it in your mouth and chew it and break it up there is no difference from breaking it up in the first place.

Q. But it is true that if you allow these filaments to adhere to one another and become an agglutinous mass and cooked together by baking you would not have a satisfactory product? (No response).

Q. I say if you did you would not have as satisfactory a product? A. In so far as you reduce the surface area you have destroyed the availability for quick digestion.

Q. I understood that in your process you have to keep these filaments separate and independent of one another in order to get the satisfactory result that you are seeking to attain? A. Yes, sir. 10

Q. I want you to look, if you will, at these odd shaped biscuits that you produced yesterday (Exhibit 22). Taking the triangular one, the filaments are adherent along both edges, are they not? A. Yes.

Q. And along those edges you have reduced the area available for attack by the digestive juices because you have little pieces of filaments not being independent of one another? A. I do not think you have done quite that. The knives that cut this biscuit are, as I have stated before, not really knives at all but blunted surfaces about one-eighth of an inch wide. Those knives come together and squeeze the biscuit tight enough to exude out at the sides. Now the thickness of that film is less than one twenty-four thousandth of an inch and therefore it in itself exposes less than the filaments themselves in a twenty-four thousandth of an inch groove. 20

Q. You put it that the filaments at that seam or selvage are just as independent of one another and expose just as much surface as the rest of the biscuit? A. Expose the surface, yes.

Q. With the same length of filament there is the same amount of exposure? A. I believe so.

Q. And you do not think it makes any difference whether they are adherent along that selvage or not? A. No, if it is so thin that it offers the same surface area per gram or ounce of weight it is the same. 30

Q. You say it does not matter from the point of view of the advantage of the biscuit how much selvage is given? A. Determined by the thickness of that selvage. So far as the digestive element is concerned it is the surface area exposed per gram of material that determines digestion.

Q. Does it make, in your opinion, no difference whatever how much selvage you have in a given biscuit? A. I think it makes a difference in some other ways, but not as to digestibility.

Q. Not as to digestibility? A. Not necessarily.

Q. Speaking, of course, of a selvage of the same thickness in two biscuits, but one longer than the other. That, you think, does not affect the digestibility? A. Not necessarily. 40

Q. If it were thicker in one biscuit than another it would affect the digestibility? A. To a slight extent.

Q. Adversely? A. Yes.

Q. In what other way does the presence of the selvage affect the biscuit?
 A. Well, of course, if you want to consider you have an extremely wide selvage stretching out to half an inch wide or more—

Q. The length of the selvage we are talking about? A. I cannot see where that has anything to do with it.

Q. It does not affect the biscuit at all? A. I do not see that it does. Nothing occurs to me now to indicate that it does.

Q. You do not think from the point of view of palatability it is undesirable to have more selvage than you need to have? A. I do not see the
 10 connection.

Q. It does not affect the palatability at all to have a great deal of selvage instead of just a little selvage? A. I do not see any connection.

Q. If you tell me you do not, that is the end of it. A. No, I do not, sir.

Q. So that you do not think that from the point of view either of digestibility or of palatability these three types of round, diamond shaped and triangular biscuits, all of which have more selvage than your ordinary biscuits, are objectionable on those grounds? A. As a matter of fact I have tried to get our company to allow us to manufacture some of those forms because I see advantages in them over our own.

20 Q. And they have not taken your view? A. No.

Q. That is much the same as to your view of the word "shredded"? A. I cannot see that.

Q. Now, I call your attention to the triangular biscuit and I will ask you to tell me in the first instance whether there are the same number of layers of what we may designate but not describe as "shredded wheat" right through?
 A. Yes, there are.

Q. Then I call your attention to the fact that the biscuit is of a lighter and more porous structure at the open end or base of the triangular than at the point of the triangular? A. That is true for the biscuit but not for the
 30 material. The shreds are intact on both ends of that.

Q. Would you say as a matter of fact that there is no more adherence of the shreds to one another at the pointed end of this biscuit than at the open end, the base of the triangular? A. I cannot see the particular biscuit you have there, but there is no—

Q. You had better look at this biscuit and tell me whether at the pointed end there is more adherence of the individual shreds to one another than at the other. A. I would not say there is any more. It would require a dissection of the biscuit to determine that.

Q. We have more than one sample. I do not object to your dissecting
 40 it to make sure? A. Right up to there they are all intact (breaks biscuit).

Q. There is no more adherence of shreds at the point which you have now arrived at? A. No. Each one is separate from the other as shown on the break up of the biscuit.

Q. And there is no adherence of the shreds? A. No, sir.

Q. Now, it is true also of the diamond shaped one and the round one that there are the same number of layers throughout the width of the biscuit?

A. Yes.

Q. And the width is the long way of each of these biscuits, is it not. (No response).

Q. No, not quite. When you speak about the width you speak about the width of the stream of this material that we must not call "shredded wheat"? A. You speak of the width as from one selvage edge to the other, and when you speak of the width of the flow of the material it is the long way of the biscuit.

Q. Let us get that quite clear. In order to clear up that possible point of misunderstanding give me the width, length and thickness of your biscuit when the three dimensions are indicated as on that little sketch that I am handing to you. That is the ordinary biscuit. Put a note at the bottom "before and after baking"? A. These dimensions will be approximate.

Q. I imagine you can give them to me quite accurately before baking and approximately accurately after baking, can you not? A. On the chart that you have given me the length of the biscuit would be approximately four inches before baking and slightly less than that, if anything, after baking.

Q. That dimension is a dimension measured along the stream of the material carried on the belts? A. No, it is measured crosswise of the material.

Q. I thought you gave me the length. You gave me the width? A. No, I have given you the length as you have pictured it here.

Q. Then I am sorry. Crosswise, that is right. You are quite right. It is across the stream of the material. I put it lengthwise. Now, the width along the stream of the material on the belt? A. About $2\frac{3}{4}$ inches.

Q. Before or after baking? A. Before baking.

Q. And after? A. Something over 2 inches.

Q. And the thickness? A. About an inch before baking and around 30 two inches after baking.

Q. That is to say, it nearly doubles the thickness during baking? A. Yes.

Q. And it shortens in length? A. Not particularly. I gave you four inches in length before baking and possibly slightly under four inches after baking but it is not a sensible change in dimensions.

Q. It has very little shortening and in width there is a substantial shortening from two inches to two and three-quarter inches.

MR. BIGGAR: I will file that diagram as Exhibit No. 25, my Lord.

EXHIBIT No. 25: Diagram indicating length, thickness and width of plaintiff's biscuit before and after baking.

Q. Coming back to our round biscuit and our diamond shaped biscuit, I observe that both those biscuits are thickest in the middle of the stream, as it were, along the line of the filaments or threads, while they are thinnest at the points—you will agree with that? A. Yes.

Q. Why is it? A. Because they are pressed down at the selvage edge to hold them together.

Q. And does the heat reach the centre of each part of the biscuit easily notwithstanding that difference in the structure? A. I would say so, yes.

Q. You think the centre filaments at the thin end are just as much cooked as the centre ones in the middle? A. The centre of the biscuit is not baked in any event; there is an uneven baking on any of these biscuits whether this type or any other type; the baking is done in about twenty minutes and when the biscuit goes into the oven green with forty-five per cent. to fifty per cent. of water in them, they come out of the oven with still twenty-two to twenty-five per cent. of water in them, and that is mostly in the centre of the biscuit; so that in any event no biscuit is ever baked completely in the oven.

Q. My question is: was there any difference, to your mind, in the extent of the baking of the central filaments at the thinnest and the thickest portion of them? A. Probably not, if you are speaking of the filaments on the outside of the biscuit. If you are speaking of the filaments on the inside of the biscuit, yes.

Q. I am speaking of the middle ones, the inside ones, both at the thinnest and thickest portion of the biscuit? A. There is always a difference in baking.

Q. Which would be more baked? A. Always the inside of the biscuit is not baked; it is not baked at all in the middle of the biscuit.

Q. You are speaking of the biscuit from both points of view? A. Yes, top and bottom, and side to side.

Q. And the extremities top and bottom and the sides are always baked more? A. Yes.

Q. Just to clear up a difficulty. I thought you told my friend that your biscuits were in the oven for ten minutes—just now you told me twenty minutes? A. No, sir; I said that the oven was closed for ten minutes while the biscuits were baking, but they are also baking for ten minutes during which the oven is being loaded, a total of twenty minutes.

Q. So that really it is twenty minutes during half of which time the oven is open? A. Yes.

Q. I thought you told my friend that at one stage of the process a difference of one per cent. of the moisture made a substantial difference in the character of the product? A. Yes.

Q. Just now you told me that when they went into the oven they had a moisture content of between forty-five and fifty per cent.? A. Yes.

Q. That seems a large margin. Can you give as large a margin as that? A. It could perhaps be narrowed down, but in the winter time when the temperature of the machinery in the room and the tanks is low the wheat will carry a larger percentage of moisture than in the summer time.

Q. You make determinations all the time? A. Yes.

Q. And your actual determinations show a range all the way from forty-five to fifty degrees? A. At a particular season of the year the moisture

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content must be kept within one per cent. plus or minus in order to get good operating conditions.

Q. And do you vary the oven temperature or the length of time in the oven? A. No; that is not varied.

Q. No matter how moist the material may be? A. That is true.

Q. And the oven temperature you told me, I think, was 540 degrees?

A. Approximately 540 degrees.

Q. Before we leave these particular biscuits, you have never made a biscuit of that kind on the machine with a belt? A. Yes, they are made on the machine but formed by hand. 10

Q. You have never had cutters to do it? A. No.

Q. And as a matter of fact, you would have to re-design that machine to cut those biscuits in those forms? A. No.

Q. Perhaps you would look at patent No. 72649 (Exhibit 8).

HIS LORDSHIP: I think at this stage we might take a little recess.

Recess from 12.20 p.m. to 12.30 p.m.

MR. BIGGAR: Q. We were speaking, Dr. Oakes, about the re-designing of this machine and you explained to his Lordship that the upper cutters came downwards and the lower cutters rose upwards to meet them so as to pinch 20 portions of the stream of the biscuits? A. Yes.

Q. Now, those cutters come together in intervals between what you have described as buckets, but I think you would more accurately describe them as platforms? A. That would describe them, yes.

Q. And the shape of the platforms would have to be entirely altered if you had the cutters coming across in any way other than that shown in the patent? A. No, sir; they would not.

Q. I do not understand why not. You have got a belt as shown in the patent consisting of a number of rectangular moving platforms, each separated by a narrow interval through which the cutters rise and fall. Am I right 30 about that? A. You do not have to change that belt; you change it or not if you like.

Q. I cannot see how the cutters can go through the platforms? A. They do not have to go through the platforms unless you want them; that happens to be a method that was used, a method entirely foreign to biscuit making practice, and if we were to employ the other method we would simply not carry the material through quite so far on this platform belt, and we would handle it slightly different at the end with the different shaped cutters.

Q. In other words, you re-design the machine? A. No. We re-design that particular part of the machine. 40

Q. You would re-design part of the machine, the part of the machine that has to do with the making of the form of the biscuits? A. Yes, it has nothing to do with the machine of the patent.

Q. You mean it has nothing to do with the shredding rolls? A. It has nothing to do with any part of the machine except the shape of the knives and the application of them.

Q. That is the only part that is relevant to the question? A. But there is nothing in the patent about the shape of the knives at all.

Q. This machine we are talking about consists in the first place of a series of shredding rolls through which the material is passed and after which it is fed to a moving belt consisting of rectangular platforms? A. Yes.

Q. And it moves that belt of rectangular platforms and through intervals between the platforms the cutters rise and fall to cut it into biscuits? A. Yes.

Q. Direct your attention to that part of it that relates to the belt and the cutters. You agree with me that that would have to be re-designed if
10 you were to adopt any alternative form of biscuit to the one we have? A. No, not any alternative form, some of the forms.

Q. Which forms? A. Your triangular shape could be handled on this machine without any change.

Q. Is that the only one? A. I think it is entirely possible to handle your round biscuit on that.

Q. No change in the platforms or their shape? A. Well, I would say that that would be a matter of engineering design that would be determined if you went into making such a machine.

Q. I suggest to you that it would be a matter of re-designing the machine?
20 A. Possibly; I do not know.

Q. Do you mean that you are not qualified to deal with that kind of question? A. I can see that it would be entirely possible to make these without re-designing the machine.

Q. That is what I want to know. When I began to probe that you told me you adopted a different method altogether similar to that which is followed in the manufacture of ordinary biscuits? A. But you did not ask me if it could be done without changing the machine.

Q. Tell me why it would not be necessary to re-design this machine, to alter the shape of the platforms, and make a substantial difference in the
30 machine? A. I would use for the circular biscuit a circular knife on the top cutter chain and would do away with the bottom cutter chain entirely and press the top knife down on the metal bottom of the cutter chain or panner chain.

Q. You have abolished the lower cutter chain altogether and the cutters no longer come through the intervals between the platforms but you do not describe that as re-designing the machine? A. No.

Q. Do you designate it as re-designing the machine? A. I am sorry; I do not intend it in that way. Taking off the lower cutter chain is not re-designing the machine, in my understanding of the word. It is removing
40 part of it.

Q. It is making the machine work in a different way? A. I would say so.

Q. I think we agree again except on the question of the meaning of words about which apparently we have a great deal of difficulty. What I call re-designing and you do not you say applies to the round biscuits and diamond-shaped biscuits? A. Yes.

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Q. But not, you say, to the triangular? A. For the triangular you would use the same knives and simply put in a transverse knife on the same machine.

Q. But you have again re-designed the platforms? A. No.

Q. How are the diagonal knives going to go through the square platforms?

A. It is not necessary. They will use the bottom of the platform to cut against. It is the same principle in use in making biscuits. We never have two knives coming through the biscuits.

Q. For the triangular biscuit you do away with the lower cutters?

A. No.

Q. How do they get through the platforms? A. Your lower knife for the triangular biscuit would come through the platform and come through here (indicating) and meet the upper chain exactly as it is now. You would have an additional knife diagonally across which would cut on to the platform of the conveyer.

Q. In other words, you would leave the present rising and falling cutters to work as they do now? A. Yes.

Q. And you would interpose a fresh set of cutters on the upper chain that would cut down through the material to the platform? A. Yes.

Q. But would have no lower cutter to meet it? A. Yes.

Q. Again I would call that re-designing, but you would not? (No response).

Q. You would not? A. I do not think I would call that re-designing the machine.

Q. Now, in addition to this change in the machine which may or may not be re-designing, you would have a considerable amount of waste in the case of both the round biscuits and the diamond shaped biscuits? A. Not necessarily in the case of the diamond shaped biscuits; there would be some waste in the round biscuit.

Q. There again I am afraid I find it difficult to follow you. I am afraid I shall have to trouble you for the diamond shaped biscuit again. Your stream is indicated by the lie of the top series of filaments or shreds, is it not? A. Yes.

Q. How are you going to get that shape without waste? A. Simply set your knives on a bias instead of at right angles to the travel of the material.

Q. Wait a moment. This particular thing is cut on four sides. How are you going to get that shape without waste? A. It depends on the angle on which you place these.

Q. How are you going to get that kind of biscuit without waste? A. If your knife comes across from one side to the other like that you have a diamond shaped biscuit.

Q. Let us discuss that particular type of biscuit? A. You asked for a diamond shaped biscuit.

Q. I showed you that biscuit for the purpose of having the discussion directed to something that we can see? A. My answer is to put my knives on a bias, on an angle.

Q. You would have to have four knives? A. Not necessarily.

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Q. For that biscuit you show a biscuit that has been made with four cutters? A. Yes.

Q. How would you make that biscuit on this machine without waste?
A. I would simply take in the two end knives.

Q. And leave the open part at the two ends? A. Yes.

Q. So that really you would have much the same thing in the way of a change in the machine as in the case of the triangular biscuit, the only difference being that in this case each set of cutters would be paralleled to the next while in the triangular biscuit it would be every second set that would parallel?

10 A. In the triangular biscuit you would have two parallel knives with one diagonal knife in between. Is that what you mean?

Q. Yes, in other words there would be a diagonal one in between each?

A. And here you would simply have two diagonal knives.

Q. Have you not got a diamond shaped biscuit with only two selvage edges? A. No, sir.

Q. You never made one like that? A. Yes, I believe we have.

Q. That you believe you have does not carry us very far. Did you or did you not? A. My recollection is that we did. I could not give you a definite date; I would not say that we have, would not press that point.

20 Q. But with the round biscuit there would be no way of avoiding waste?
A. Yes.

Q. How? A. We have made biscuits by taking the stream of shreds and pouring them over the end of the bucket conveyer into a round receptacle.

Q. I did not sufficiently limit my question. We are talking about this particular machine shown in this patent with certain changes that you have admitted were necessary which you do not but I do call re-designing. Confine yourself to that machine? A. With this machine, and this would be more of a re-design than the others—

30 Q. And in addition to whatever re-designing was necessary you would have a considerable amount of waste? A. No, not if you design it in certain ways.

Q. Tell me how you could possibly design this machine so as to cut round biscuits out of the stream of material without waste? It would be a great help to a lot of cooks who have rolled out some cookie dough? A. As the stream is carried along at the end of the machine with the layer of material on it, it turns back and the material is fed into a circular tube.

40 Q. That is an entirely different kind of machine. That has no cutter chain like this one has; that is a moulding machine that you are describing and not a cutting machine at all? A. I think I stated that the machine would have to be re-designed at that end of it to do this work.

Q. In order to avoid waste you would have to make a practically new machine? A. No.

Q. Your platforms would not be any longer necessary, your cutters and cutter chains would not any longer be necessary, and no sets of cutters meeting through the stream. You are going to mould this material after it gets to the

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end of the belt—is not that what you are telling us? A. That sounds rather complicated, but it represents a minor cost of the machine.

Q. Have I described accurately what you are telling us? A. No, sir.

Q. Let us get this quickly: You have abolished the upper and lower cutter chains and all cutters? A. Yes.

Q. And you do not need any rectangular platforms for your belt. You can have a continuous belt because there is no necessity for intervals or holes in it? A. There are some difficulties I do not quite follow, but that would be essentially true.

Q. And you propose to take the stream of that material off the end of 10 that belt and dump it into some kind of mould? A. Feed it into the mould.

Q. Until the mould becomes full? A. Yes.

Q. And then form your biscuit in that mould? A. Yes.

Q. And then substitute a new mould? A. Things would probably be worked out on a continuous operating plan.

Q. You would get an entirely different kind of biscuit, too, would you not? A. You would get substantially what you have there in your round biscuit.

Q. I do not see how you would lay the filaments parallel in this round 20 biscuit? A. Possibly this would not be as parallel as that.

Q. Would they be parallel at all if you were emptying them into a mould longitudinally as they came off the end of the belt? A. Probably not.

Q. Then you would not have a thing like this round biscuit? A. I did not understand that you asked me if I made a round biscuit like that.

Q. I thought I said this round type of biscuit? A. If you want that round type of biscuit the way we make it we would have scrap.

Q. A considerable amount of scrap? A. Approximately twenty-five per cent.

Q. And that scrap would have to be either thrown away or returned to 30 the shredding rolls? A. Yes.

Q. And when it is returned to the shredding rolls you get a material coming through the shredding rolls for a second time which is somewhat different from the material that you get when the wheat is put through the shredding rolls only once? A. You mean in physical character?

Q. Yes? A. Slightly different, yes.

Q. It is a difference analogous to that which you get in bread dough according to the number of times you knead it? A. I do not think you can compare it quite accurately that way.

Q. But it is analogous, is it not? A. It would be stretching the analogy, 40 I would say.

Q. As a matter of fact, you would describe it as a doughier material? A. That is probably correct.

Q. The bran lies on the surface of the filaments or shreds? A. No, I do not think so.

Q. And slightly more resistant, would it not be? I mean it would require slightly longer to cook? A. You mean to bake?

Q. Yes? A. No. As a matter of fact, it does not.

Q. Would it require harder edges? Would the selvages be harder, more rigid? A. After they are baked? I do not think so.

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Q. I am going to ask you to look at a sample of your own biscuits and a sample of these re-processed biscuits that you produced. The re-processed ones are Exhibit 20, and I think the others must be Exhibit 5. I am going to ask you to compare these two biscuits, one from Exhibit 20, which I shall put on my left, and one from Exhibit 5, which is on my right and vice versa so far as your right and left are concerned. You said to my friend Mr. Cassels
10 that the re-processed biscuit was smoother and nicer-looking. Do you adhere to that? A. It is smoother. It depends on what you term nicer-looking. It is a smoother biscuit, with a smoother top.

MR. BIGGAR: Perhaps your Lordship would like to examine the specimens from Exhibit 20 and Exhibit 5.

Q. The same number of layers in both those? A. Yes.

Q. And I observe that the re-processed biscuit is, I think, both thicker and shorter, that is along the stream, than the single processed biscuit? A. Yes, sir.

Q. What is the reason for that difference? Is it a difference in the char-
20 acter of the material? A. The re-processed material has longer lengths to each particular part of the thread or filament, each filament in the re-processed material is longer than the other; the shorter filaments are in the single processed biscuit and lose their tension when they start to arch up.

Q. The stream in both cases is cut off at exactly the same intervals? A. Yes; but that does not mean that the filament is intact from one selvage edge to the other. It may be broken one or more times from selvage edge to selvage edge, whereas in the re-processed biscuit most of the filaments are likely to be unbroken from one selvage to the other.

Q. And they arch more? A. Yes.

30 Q. By reason of the difference in the material and their tenuity.

Q. I seem to observe that the doubly processed biscuit is much heavier in its lower half than the singly processed biscuit? A. I could not say that that would be a characteristic of all biscuits. These biscuits vary from one shelf to another as to how much springs up on top and how much settles to the bottom.

Q. You agree with me that all those you have produced show that difference in characteristic? A. I think that would characterize it fairly well.

Q. Then the selvage on the doubly processed biscuit is more solid and apparently more rigid in structure than the selvage in the singly processed
40 biscuit? A. It is exactly the opposite, sir, in these cases.

Q. You think it is? A. Yes.

Q. Have you looked at them closely? A. Do you mind if I demonstrate?

Q. By all means? A. (Witness breaks biscuits).

Q. You are exercising a great deal of power there? A. The selvage in the re-processed biscuit breaks clean and free; and this leaves part on one side and part on the other.

Q. The selvage in the re-processed biscuit is more coherent than in the singly processed biscuit? A. No, it is just the opposite. If you look at the selvage edge on the re-processed biscuit it is so narrow that it has disappeared, whereas in the singly processed biscuit one edge is still there in its original width. You have scarcely any selvage edge there.

MR. BIGGAR: Your Lordship might care to examine those samples. You may have a different view about them.

WITNESS: Personally I do not think there is a point one way or the other on that.

MR. BIGGAR: Q. I beg your pardon? A. Personally I do not think 10 there is a point one way or the other on that.

Q. You mean there really is no difference? A. So little as not to be a point.

Q. You have had a good deal of experience in the making of ordinary biscuits? A. Yes.

Q. And some of those are made of flour, are they not? A. Yes.

Q. Which is part of the wheat ground? A. Yes.

Q. And some of those are made of what is called whole wheat flour? A. Yes.

Q. Which is the whole of the wheat ground? A. Yes. 20

Q. In addition to the grinding of wheat to make whole wheat you have a product which has been described as flaked wheat, have you not? A. Not that I have any knowledge of; we have no such product.

Q. But there is such a product? A. Yes.

Q. So flaking is one way of commercially preparing wheat as well as grinding? A. Yes.

Q. And another way of doing it is puffing, is it not? A. Yes.

Q. And another way of doing it is cracking, is it not? A. Yes.

Q. Now, what is the other way? Give me the word that describes the other way of doing it in addition to grinding, flaking, cracking and puffing? 30 A. There may be dozens of other ways, for all I know.

Q. Is there any other commercial way except one? A. Of doing what?

Q. Making wheat ready for use as a food commercially? A. You could roll it. You could crush it.

Q. I didn't know that that was done commercially. There is rolled wheat, is there? A. Yes.

Q. Any other? A. I do not know what others you could get.

Q. What others do you know of? After all, you have had a very wide experience in the use of wheat? A. My experience in the milling of wheat is comparatively limited. 40

Q. Let me put the question in another way: Grinding, cracking, flaking, puffing and rolling, and what about this process? A. Rolling?

Q. What is the word that describes this process in the same way as grinding, cracking, flaking, puffing and rolling? A. This is rolling.

Q. Rolling? A. Yes, this is rolling wheat.

Q. Is that what you meant when you said the rolled wheat? A. There are different ways of rolling it. You speak of flaking, and the flaking is done by rolling.

Q. And there are different ways of grinding? A. Yes.

Q. And rolling is used for making muffets and making these biscuits. Give me a way that applies only to these biscuits that corresponds with grinding, flaking, cracking, puffing and rolling? A. I am afraid I cannot do that.

Q. No word? A. No, sir; I have no word for it.

10 HIS LORDSHIP: I think we shall adjourn now.

Whereupon the court adjourned at 1.05 o'clock p.m. until 2.30 o'clock p.m.

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Upon resuming at 2.30 o'clock p.m.

DR. EARL T. OAKES resumed the stand.

RE-EXAMINATION BY MR. CASSELS:

Q. Dr. Oakes, this morning there was some reference made to the porosity of the biscuit. Is there a distinction between the porosity of the biscuit and the porosity of the filaments of which the biscuit is made up? A. Yes.

Q. Does it make any difference how far apart the filaments are in the made up biscuit as affecting porosity? A. Not affecting the porosity of the
20 filaments, no.

Q. Does it make any difference from any point of view except that perhaps it would make the biscuit more bulky? A. That is the only point; it makes the biscuit more bulky and it takes up more space; but it does not affect the digestibility of the biscuit itself because you have destroyed all that open texture when you eat the biscuit, as I pointed out this morning.

Q. When you speak of the porosity of the filaments of which the biscuit is made, what do you mean by that? A. They, of course, have a porous structure due to the fact that they have so much moisture in the material as it goes into the biscuit and in the oven, and the rapid baking of it at a high
30 temperature and the rapid drying out of the material leaves a sponge-like texture to the filaments.

Q. As I understood you, you said the middle of the biscuit is not baked either in the case of the biscuit material that has been processed twice or the material processed only once. What do you mean by that? A. In baking the biscuit twenty minutes where there is approximately 50 per cent. of moisture in the material the outside shell of that biscuit is baked and fairly dry but the inside of it has almost as much moisture as when it went into the oven, so that the average moisture content of this shell which is pretty well baked and the inside part that is not baked runs about 22 per cent. to 24 per
40 cent. of water. So that as long as there is that much water in the inside of the biscuit the temperature cannot go sensibly above 212 degrees, which we would not term a baking temperature.

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Q. Does that water remain in the biscuit when it is turned out as a finished article? A. No. On removal from the oven the biscuit is placed in racks which are placed in drying tunnels, and for the period of an hour high drying air is caused to flow through the tunnel which causes the biscuits to dry out so that they are practically free from moisture when they come from the tunnel.

Q. Then you said, I think, that in making the biscuit in a circular form as is shown in Exhibit 22 there would be 25 per cent. scrap? A. Yes, sir.

Q. What about that scrap? Can that be used? A. We use scrap continuously and re-process it in our operations, and it is a universal practice 10 in biscuit making to use the scrap over again, conveying it back to the machine and processing it the same as the original material.

Q. What do you say as to the relative cost of using the scrap for making the biscuit in such a way that there is no scrap or practically no scrap left over? A. It does not materially affect the cost; the scrap is handled by a "scrap return" and worked into the fresh material without additional cost.

Q. Then reference was made to the Triscuit. Could you say roughly what proportion the Triscuit bears to the total business of the Shredded Wheat Company? A. Well, it is in the nature of perhaps 2 per cent. or 3 per cent. 20 of the total.

Q. What are the differences between the method of manufacturing the Triscuit and the shredded wheat biscuit? A. The wheat is prepared in the same way as for the shredded wheat biscuit. It goes through the same sort of machine with the exception that we use a fewer number of rolls, say 14 pairs of rolls instead of 25, making a thinner layer. Then the rotary cutting wheel marks that in the middle so that it is cut down the middle and the whole sheet is picked up 36 inches long and carried over waffle plates and dropped on them; then a top plate fits over that, heat being applied to both the top and bottom waffle irons and carried along between the two irons until the baking is finished. It comes out completely dry without any evaporation 30 afterwards. The two waffle irons counteract the tendency of the biscuit to puff up and hold it flat. There is no mashing together of the particles; the filaments still retain their identity.

MR. CASSELS: That is all, thank you.

MR. BIGGAR: There was one point the witness touched upon in re-examination, on the question of the cost of re-process that I would like to ask a question about.

HIS LORDSHIP: Very well.

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RE-CROSS-EXAMINATION BY MR. BIGGAR:

Q. You say that the scrap could be worked in without additional cost? 40
A. Yes.

Q. What do you mean by that? Do you mean it costs nothing to take the scrap back and put it through the shredding rolls? A. Yes, sir.

Q. It involves labour, does it not? A. No, sir.

Q. How do these boxes that you referred to get back to the shredding rolls? A. I testified in the first place that if we were to make a round biscuit we could re-handle that scrap without additional cost; I did not intend to be testifying about the re-handling of the crippled biscuits, as I described this morning.

Q. I am sorry, Dr. Oakes, but I cannot follow how you can take some material from the end of a process and pass it through the process again without any expense at all? A. I said without sensibly increasing the cost.

10 Q. No. You said without any additional cost. I put it to you that it costs something for labour? A. (No response).

HIS LORDSHIP: I think the witness said the cost was not materially affected.

MR. BIGGAR: "Without additional cost" are the words he used to my friend Mr. Cassels according to my note.

HIS LORDSHIP: I think he also used the other phrase.

MR. BIGGAR: Q. The position now in regard to that is this, that the amount that you happen to re-process is negligible, is it not? A. It is not—

20 Q. Would it exceed one-quarter of one per cent. of the amount passed through originally? A. It is in the order of one per cent., perhaps.

Q. It would be below rather than above, would it not? A. It is very small; it is around one per cent.; I would not say it would be much above or much below.

Witness withdrew.

WILLIAM JOHN WILCOX, Sworn:

EXAMINED BY MR. CASSELS:

Q. You reside in Toronto, I think? A. Yes.

Q. And you are an officer of the Canadian Shredded Wheat Company?

A. Yes.

30 Q. What position do you hold with that company? A. Vice-president and Sales-manager.

Q. How long have you been with the company? A. Since 1913.

Q. What positions have you held successively during that period from 1913 to the present time? A. Salesman, Assistant-sales-manager, Sales-manager, and Vice-president.

Q. Are you familiar with the marketing of the product of the plaintiff company? A. Yes, sir.

40 Q. To whom and to what class of people is the product sold? I am speaking of the product known as shredded wheat. A. Wholesale grocers, chain stores and departmental stores.

Q. Is there any sale to the retailers? A. Do you mean by our company or by the wholesale grocers?

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Q. By your company? A. Not directly to the retail grocers, no.

Q. Can you tell us to what class of people the product is sold by the wholesale grocers, the people who purchase from the plaintiff company? A. They sell to retail grocers and chain stores, delicatessen stores, fruit stores, and in some cases butchers who handle small lines of groceries as well as meats.

Q. Can you give us any idea to what extent the stores of the kind you describe handle this product? A. I made a tabulation in 1934 that showed approximately 99 per cent.

Q. 99 per cent. of the stores of the class you have described handle the shredded wheat product? A. Yes. 10

Q. Is that throughout Canada? A. From coast to coast, yes.

Q. What about restaurants? Do they purchase your product? A. I believe, Mr. Cassels, mostly every restaurant in Canada handles shredded wheat.

Q. From whom does the restaurant purchase? A. From the wholesale grocers.

Q. Can you tell me in a general way how the product is handled in restaurants?

MR. BIGGAR: He cannot speak generally.

MR. CASSELS: I think so. 20

Q. What do your duties involve? What do you do? A. I travel from coast to coast.

Q. How frequently? A. Sometimes as often as twice a year.

Q. Whom do you visit on those trips? A. I visit our customers, Mr. Cassels.

Q. Have you occasion to see the handling of this product in the various places in which it is sold to the public? A. Yes.

Q. How do you say it is handled in a general way? I suppose there are different ways, but tell us how the restaurant people deal with this article? A. In the majority of cases it is brought in on a cereal dish or plate. 30

Q. Is the carton containing the biscuit brought in where there is an individual order given for shredded wheat? A. Very seldom, Mr. Cassels.

Q. Is there any display made of the shredded wheat biscuit in these places? A. In the restaurants, Mr. Cassels?

Q. Yes? A. Very seldom.

Q. What about in the retail stores? A. In the retail stores it is largely displayed.

Q. How is it displayed? A. Both on shelves, counters and windows.

Q. In the cartons? A. Yes.

Q. Have you had occasion to order shredded wheat in hotels and restaurants? A. Every morning, sir. 40

Q. Every morning when you are away, I suppose? A. Yes.

Q. Do you breakfast at home when you are in Toronto? A. Yes, sir.

Q. And when you order shredded wheat in a hotel or restaurant how is it served to you? A. In most cases on a cereal dish.

Q. What do you mean by that? A. Well, the biscuits are taken out of the carton, presumably in the kitchen, and brought in on a dish.

Q. Is the carton seen by you? A. No, sir, very seldom.

Q. You said that according to a tabulation you had made approximately 99 per cent. of the stores of the class you have described handle this product? A. That was in 1934.

Q. And that was throughout the whole dominion? A. 'Yes.

Q. Have you any figures as to Ontario as compared with the rest of Canada? A. Our figures in Ontario proved a little larger than that.

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10 CROSS-EXAMINED BY MR. SMART:

Q. The Kellogg products have an equally wide distribution? A. I presume so; I have no actual figures.

Q. But you have met them in your travels to different places? A. I have met them.

Q. You have met them from coast to coast? A. I have met their representatives.

Q. And in the stores you visited and sold your product you also saw various Kellogg products such as corn flakes? Perhaps you recognize this package I now show you? A. Yes.

20 EXHIBIT No. 26: Specimen carton: "Kellogg's Corn Flakes."

Q. And "Kellogg's All Bran?" A. I have seen that package, sir.

EXHIBIT No. 27: Specimen carton: "Kellogg's All Bran."

Q. And "Kellogg's Wheat Krispies"? A. I do not think I have seen that generally.

Q. But you have seen it? A. Yes, but not generally.

EXHIBIT No. 28: Specimen carton: "Kellogg's Wheat Krispies."

Q. And "Kellogg's Rice Krispies"? A. Very, very seldom.

Q. But you have seen it? A. Yes.

EXHIBIT No. 29: Specimen carton: "Kellogg's Rice Krispies."

30 Q. And "Kellogg's Whole Wheat Flakes"? A. Not very generally, either.

EXHIBIT No. 30: Specimen carton: "Kellogg's Whole Wheat Flakes."

Q. And "Kellogg's Pep Bran Flakes"? A. Not very generally.

EXHIBIT No. 31: Specimen carton: "Kellogg's Pep Bran Flakes."

Q. Kellogg's Corn Flakes is the one most widely distributed? A. Yes.

MR. SMART: That is all, thank you.

Witness withdrew.

MR. CASSELS: That is the plaintiff's case, my Lord.

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DEFENCE

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MR. BIGGAR: My Lord, I think perhaps the defendants' case might be commenced by putting in some documents. In the first instance there is a certificate of registration of the trademark consisting of a design of a saucer with a thing that looks like a shredded wheat biscuit and a spoon in it. That registration was made on December 23, 1912. The registration number is No. 73, folio 17815, 1912. The application for that registration is made by Alexander J. Porter, Vice-president, The Canadian Shredded Wheat Company, Limited, for the registration of a specific trademark to be used in connection with the sale of Shredded Cereal Biscuit, and the mark is described as consisting of a picture of a shredded wheat biscuit in a dish. 10

HIS LORDSHIP: The words "shredded wheat" are not in quotation marks.

MR. BIGGAR: No, my Lord. The mark is substantially that, if not identically that, which appears on Exhibit 6 on the end, and is described as a trade mark or alternatively—it is a little difficult to say—as copyrighted in 1911 by The Shredded Wheat Company. Those words appear above the word "trademark". That is the only place where the word "trademark" appears on that carton. As a matter of fact, my Lord, the only time that the word "trademark" appears on any of the cartons that have been put in is on the carton Exhibit 17, where the words "shredded wheat" are described as "trademark registered" and that carton bears a different picture of a saucer, because the saucer shown on Exhibit 17 has two biscuits and no spoon in the dish; but the words "shredded wheat" are not described as a trademark except in Exhibit 17, which came into use two or three years ago in the maritimes, and Dr. Oakes said it was two or three years ago. 20

EXHIBIT No. 32: Certified true and correct copy of Specific Trade Mark as registered in The Trade Mark Register No. 73, Folio 17815, in accordance with "The Trade Mark and Design Act," by The Canadian Shredded Wheat Company, Limited, on December 23, 1913, dated 12th June, 1934. 30

The next exhibit is a certificate with regard to the registration of a trademark on September 27, 1927, as No. 161, Folio 36,195. That registration is shown as being cancelled on the 27th September, 1927.

HIS LORDSHIP: That is the registration date, is it not?

MR. BIGGAR: Oh, I beg your pardon. It was registered on September 13, 1924, and cancelled on the 27th September, 1927. That; my Lord, was a registration made by The Shredded Wheat Company of Niagara Falls, New York of the words: "Shredded Wheat" in special block letters to be used in connection with the sale of biscuits and crackers. 40

EXHIBIT No. 33: Certified true and correct copy of Specific Trade Mark as registered in The Trade Mark Register No. 161, Folio 36195, in accordance with "The Trade Mark and Design Act," by The Shredded Wheat Company on September 13, 1924, and cancelled in accordance with the 18th section of the Trade Mark and Design Act, on September 27, 1927, dated June 12, 1934.

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The next document is a copy certified by the Commissioner of Patents of
10 the File Wrapper relating to the registration of Exhibit 33. I need not trouble
your Lordship with all the documents—there is a great deal of correspondence
—but that file begins with a communication on the 24th March, 1934, from a
firm of lawyers in New York enclosing the application under what is described
as Rule 10, to which I shall refer your Lordship later, and that covered a
declaration by one F. L. Monin, Secretary of The Shredded Wheat Company,
who said that he was the Secretary of the company which was applying for the
registration of the words "Shredded Wheat" as a specific trademark in connec-
tion with the sale of biscuits and crackers, and went on to say that "on or about
the 1st January, 1894, my said company adopted the said trademark and used
20 it in Canada by directly applying it to the packages" and so on; and that since
that date the use of it had been uninterrupted and still continued, and that no
other person used it; and that it has been used exclusively by the company.
The Commissioner asked for affidavits under Rule 10, and the result was that
affidavits were supplied from people in Quebec, Montreal, Toronto and
Ottawa, to the effect that the declarant—I said they were affidavits but they
are really declarations, my Lord—was well acquainted with the Shredded
Wheat Company, and to the respective knowledge of each that company had
used the name "Shredded Wheat" as a trademark in connection with biscuits
and crackers for a certain number of years, and that their use of it had been
30 exclusive. The Commissioner asked for further affidavits and got further
affidavits from Vancouver, from Calgary, from Regina and from Winnipeg to
the same effect. That was the ground upon which the filing was done. I
shall refer your Lordship to one of the letters.

HIS LORDSHIP: That declaration is by the Secretary of the American
company?

MR. BIGGAR: Yes, and it was the American company that was applying
for this registration, and he said the American company had used it continu-
ously since 1894.

40 EXHIBIT No. 34: Certified true and correct copy of Patent and Copy-
right Office File No. 117994, dated March 26, 1924, re
application for registration of a Specific Trade Mark
—"Shredded Wheat," which was registered in the
name of THE SHREDDED WHEAT COMPANY,
under No. 36195, dated November 12, 1935, with
photostatic copies of declarations attached.

Then, my Lord, there is a further registration made on the 20th March, 1928, No. 198-43550. That is an application by The Canadian Shredded Wheat Company for the same mark.

MR. CASSELS: That is already in.

MR. BIGGAR: Perfectly true.

MR. CASSELS: Exhibit No. 3, I think.

MR. BIGGAR: Quite right. What I am going to put in is a File Wrapper with regard to that registration, the correspondence with regard to it.

MR. CASSELS: The record file?

MR. BIGGAR: That begins with a letter from Messrs. Osler, Hoskin & Harcourt dated June 15, 1927, enclosing the application and saying that the United States company's application would be withdrawn. There is a good deal of material in the file. I can pick out the relevant parts, possibly: On August 24 the Commissioner of Patents advised the applicants (Messrs. Osler, Hoskin & Harcourt) that the mark had already been registered by the American company and that the application was consequently refused. 10

Then there is a letter of September 23, 1927, from Messrs. Larmonth & Olmsted, the Ottawa agents of Messrs. Osler, Hoskin & Harcourt, saying they had several interviews with the Commissioner and enclosed a new application for the registration. As a matter of fact that new application, as it turned out, was never acted upon; but they also enclosed a withdrawal of the earlier application by the United States company. 20

Then they said, on November 30, 1927, that they enclosed a number of affidavits under Rule 10.

Then on December 13, 1927, the Commissioner sent to Messrs. Osler, Hoskin & Harcourt a communication saying:

"Shredded wheat products are not the exclusive property of manufacture of Canadian Shredded Wheat Company and the words 'Shredded Wheat' are purely descriptive of the products. If the products are otherwise than shredded wheat then the mark is misleading." 30

"The affidavits accompanying this application do not give weight to this application because a buyer in asking for shredded wheat does not naturally mean the product of the Canadian Shredded Wheat Company Limited, but simply infers that the article which he wishes to buy is shredded wheat and if he wishes to procure a certain brand he naturally asks for that brand.

"The Trade Mark sought would impose a great restriction on those manufacturing shredded wheat products and would restrain them in stating the quality of goods they were selling.

"The application is refused and a refund cheque will be mailed to you on request for same. 40

"A copy of your application is herewith enclosed."

That was followed by some further correspondence, and then there is a letter to the Acting Commission of Patents reading as follows:—

“When in Ottawa Monday last I had intended to take up and discuss with you, not only the trademark I then went for, but the ‘Shredded Wheat’ trademark, but as the office understood from our agent in Ottawa, Mr. Larmonth, that the matter was progressing normally, and that there was no difficulty in the way, I did not think it necessary to waste your time.

10 “I was very much disturbed this morning to receive a formal notification that the application had been refused. I understand from Mr. Larmonth that the matter is being re-opened, and trust that no difficulties will occur in the granting of our application. If they do, I would much appreciate it if, before a final ruling against us were made, you would give me an opportunity of discussing the matter with you, although I trust this will not be necessary, and the matter will be disposed of in the routine way.”

On the 16th December, 1927, two days later, the Acting Commission of Patents wrote as follows:—

“Dear Mr. Osler:

Re: Trade Mark Application No. 135,636, ‘Shredded Wheat.’

20 “I am in receipt of your letter of the 14th instant in the above. “I shall give the case my personal attention and you may rest assured that any doubt in the matter will be resolved in favour of the applicant.”

And it was, my Lord; but there is nothing on the file to indicate for what reason it was resolved in favour of the applicant, and the ruling previously given was withdrawn or reversed.

HIS LORDSHIP: Perhaps on the basis of a good rule in equity?

MR. BIGGAR: Perhaps so, my Lord.

30 The other point to be noted with regard to that file is that of the persons who made affidavits in support of the application one was the same individual who had made an affidavit on the application of the United States company, Mr. Hugh Blain, formerly President of Eby-Blain Limited and now director of National Grocers Company, Limited, of the City of Toronto in the County of York, who declared that he had known that the words or name “Shredded Wheat” was the trademark of the American company for a great many years, and that it was the mark of the Canadian company.

MR. CASSELS: He did not distinguish between them as the American company and the Canadian company.

MR. BIGGAR: No.

40 Then two others of the affidavits were made by the same houses as the affidavits that had been made on the first application. The first was by Louis Petrie of Calgary and the second by H. S. Bate of Ottawa.

EXHIBIT No. 35: Certified true and correct copy of Patent and Copyright Office File No. 135636, dated June 18, 1927, re application for registration of Specific Trade Mark —“SHREDDED WHEAT,” in the name of The Canadian Shredded Wheat Company, Limited, dated 12th June, 1934, with declarations, etc., attached.

Now, my Lord, there are certain things that perhaps in another kind of case it would be proper to refer to without putting in evidence at all, but here where we are concerned with the meaning of a word at certain times it may be proper to deal with it as evidence, and there are three items that I am going to suggest on that basis: The first is an article from Chambers Journal, Volume 3, No. 113, dated January 27, 1900. That is an English publication.

HIS LORDSHIP: Is it an extract?

MR. BIGGAR: No. What I propose to mark is photostatic copies of two pages of the publication.

HIS LORDSHIP: Of Chambers Journal? 10

MR. BIGGAR: Yes, my Lord.

MR. CASSELS: I cannot quite see how this is evidence. I suggest it is something to which my friend may refer in his argument or cite to your Lordship; but it certainly does not prove any fact. It is merely an article dealing with the production of shredded wheat and does not prove anything.

HIS LORDSHIP: I doubt its relevancy. Is it not hearsay.?

MR. BIGGAR: I do not mind if I can refer to it in argument; but I do not want it suggested afterwards that it should have been dealt with as evidence. The fact which I am really relying upon being proved by the introduction of the document in evidence is that this issue of Chambers Journal 20 has been in the Public Library in Toronto since about the year 1909.

MR. CASSELS: I am prepared to admit the fact that Chambers Journal has been in the Public Library here since that date, but still I submit this is not evidence. It is something to which my friend may refer in argument, but it proves no facts.

HIS LORDSHIP: An ancient document?

MR. BIGGAR: Not quite that. You see, my Lord, after all one of the contentions of the defendant is that these words "Shredded Wheat" were purely descriptive, and it seems to me that records or publications going back a long way, in which they were then treated as descriptive, is some evidence 30 of that issue.

HIS LORDSHIP: I will admit them subject to objection, Mr. Cassels. I think I have a right to take judicial notice of them if they were referred to in argument.

EXHIBIT No. 36: Photostatic copy of Chambers's Journal, Sixth Series:
"The Advent of Shredded Wheat Biscuit." (2 sheets).

MR. BIGGAR: The article is an article called "The Advent of Shredded Wheat Biscuit," and it discusses at some length the way in which shredded wheat biscuit is made, and how pure an article it is. It gives an analysis thereof as follows:— 40

	Raw Wheat	Shredded Wheat Biscuit
“Moisture.....	10.60	10.57
Ether extract.....	1.75	1.03
Fibre.....	2.40	2.58
Ash.....	1.75	2.65
Proteins.....	12.25	12.06
Soluble starch and other carbohydrates.....	71.25	71.11”

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10 Then the author becomes almost lyric at the conclusion of the article:—
“Milk and honey and shredded wheat,
Is a dainty meal a king might eat.”

I need not trouble your Lordship with all the words that the author uses. The next document of the kind is one to which I have not called my learned friend’s attention but he is probably familiar with it. It is Volume 30 of the Reports of the Appellate Court of the District of Washington. That book—I made inquiry this morning—was received in the Osgoode Hall Library on the 26th November, 1908.

MR. CASSELS: I do not know what that is, my Lord.

20 MR. BIGGAR: I am going to tell you what it is now. I am not saying what it is in it for the moment, but if it is admissible your Lordship will find in it a disposition of an appeal from the Patent Office by the Court of Appeal in the case of the Natural Food Company, Appellant, and William E. Williams, Respondent. The report is at page 348 of the volume I have cited.

HIS LORDSHIP: The Natural Food Company is a predecessor company?

MR. BIGGAR: That is the predecessor company of this present plaintiff.

30 MR. CASSELS: I must confess, my Lord, that I have not heard of putting in decisions of a foreign court as part of the record in a case. As a precedent or something to be referred to in argument that is done very frequently, as in the case of this other article, but I cannot see how the report of the judgment can be made part of the record in this case.

HIS LORDSHIP: What the Appellate Court might have to say about Natural Food might be only hearsay.

MR. CASSELS: Yes, just as Mr. Samuel Vyle’s article is hearsay.

40 MR. BIGGAR: It does not make very much difference. If my friend is satisfied that we can raise it in argument we might as well have raised it here, for it comes to the same thing. The appeal was from the decision of the Patent Office revising the Natural Products’ application for the registration of the words “Shredded Whole Wheat” as a trademark, and in the course of the judgment the Court says that the words aptly and accurately describe an article of food which, according to the testimony, has been produced by Williams and others for more than ten years, Williams being respondent and adverse in interest to the Natural Food Company.

HIS LORDSHIP: That is a different matter entirely, Mr. Biggar. I do not see how that is admissible. You now have the plaintiff in a position of having to meet something which he might know nothing about.

MR. CASSELS: We were not a party to it, my Lord. The Canadian company had acquired the Canadian goodwill of the Natural Food Company long before this case was decided. And, of course, it is a United States decision.

HIS LORDSHIP: The significance of that, as I see it, is to get in hearsay evidence of prior use?

MR. BIGGAR: I was not putting it on that ground, my Lord.

HIS LORDSHIP: But it has that effect.

MR. BIGGAR: It has that effect even if I refer to it in the argument; the effect of it is not different.

HIS LORDSHIP: I think you had better reserve that until argument. 10

MR. BIGGAR: The point on which I am a little afraid I might have difficulty in that event is to show that the book was in Canada in 1908.

MR. CASSELS: Putting it in does not prove that.

MR. BIGGAR: I am asking you to concede that. That is what the librarian tells me, that it has been in Osgoode Hall Library since 1908; its accession number was 1903.

MR. CASSELS: I do not question my friend on that.

MR. BIGGAR: The third matter of the kind is Volume 22 of the Oxford English Dictionary under the words "shred" and "shredded" appearing at page 772 of that volume. 20

MR. CASSELS: I object to that going in as part of the record. I have told my friend I am quite willing to admit the photostatic copy of the page of the dictionary for whatever purposes it may be used rather than make him bring the whole big volume here, but I do not see that it proves anything. It is something that the editor of the dictionary, I assume, wrote and put in the dictionary. He may be right or wrong.

HIS LORDSHIP: Or something that a Court may go to to inform itself without it being in evidence at all.

MR. CASSELS: Yes. Your Lordship is entitled to go to dictionaries to find out the meaning of words, but it is not something to be put in to prove 30 a fact.

MR. BIGGAR: The point again is the date upon which the book was available in Ontario, and that book was received in the Osgoode Hall Library on the 8th July, 1915. It is with that fact that I am really concerned.

HIS LORDSHIP: I think an admission will suffice there without putting the document in.

MR. CASSELS: I know the work was published in England in 1914, so I suppose that is right.

HIS LORDSHIP: I take it that you are prepared to admit the date?

MR. CASSELS: Yes, I would like to check it for my own satisfaction. 40 I am not questioning my friend.

MR. BIGGAR: I think your Lordship might be glad to have the copy of the page for convenience of reference.

HIS LORDSHIP: Yes.

MR. BIGGAR: As a matter of fact, the actual word for which it is introduced is the word "shredded" at the top of the column of page 772, saying it

is the past participle of the word "shredded" (which see) which means "divide, cut, or turn into shreds," and then follows this in small type: "shredded wheat—the grain of wheat cut by machinery into long filaments."

HIS LORDSHIP: The date of the publication is 1914?

MR. BIGGAR: Yes.

HIS LORDSHIP: It may help you or it may not.

MR. BIGGAR: Quite so, my Lord.

MR. CASSELS: That is not going in as an exhibit?

HIS LORDSHIP: No.

10 MR. BIGGAR: There are certain documents from the United States which are referred to in the Statement of Defence and which I submit I am entitled in the circumstances to put in. They are documents relating to patents applied for by the predecessor in title of the plaintiff.

MR. CASSELS: I object.

HIS LORDSHIP: Let me have the record for a moment.

MR. CASSELS: Your Lordship will see in the Reply we have pleaded that these matters are not relevant to the issues in this action.

HIS LORDSHIP: What paragraph, Mr. Biggar? Is it paragraph 18?

MR. BIGGAR: Yes, my Lord. First in paragraph 6, last sentence:—

20 "This natural and inevitable form was the subject of a design registration made by the said patentee Henry D. Perky in the United States of America on September 17th, 1895, such registration bearing the number 24,688."

HIS LORDSHIP: Do you object?

MR. CASSELS: Yes, I object to these United States patent and registrations. There was no similar design or registration in Canada, and my submission is that what was done in the United States in the way of taking out design patents has no bearing whatever on the issues involved in Canada. For example, in the United States design patents are good for fourteen years, 30 and during the time that patent was outstanding no one had the right to make a design of such patent. There was never such patent in Canada and anybody had the right to make a biscuit in that form.

HIS LORDSHIP: Your objection is entirely on the basis of its relevancy?

MR. CASSELS: I submit that what was done in the United States is not relevant in any way to the Canadian situation. The fact that they had design patents in the United States, I submit, has no bearing on the rights of the parties in Canada. There is a case in the Quebec courts—I think it was the Castoria case—to the effect that because there had been a patent on the article "Castoria" in the United States therefore it was not open to anybody 40 to make the article in Canada and to call it by its name; but the court brushed that aside and said the United States patent had no bearing on the Canadian situation. That is my submission in this case.

HIS LORDSHIP: We might as well deal with it all at once.

MR. BIGGAR: Yes. There is a series of United States patents referred to in Paragraph 18 of the Defence. They are all patents issued to the plaintiff's predecessors in title before the sale to the plaintiff took place.

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MR. CASSELS: But all issued in the United States.

MR. BIGGAR: Oh, yes.

HIS LORDSHIP: The facts are set out in your Reply:

“The plaintiff alleges that the facts set out in paragraphs 6, 7, 18 and 20 of the Statement of Defence even if true, which the plaintiff does not admit but denies, are not relevant. . . .”

It is entirely on that basis that you are objecting to the admission of these documents, Mr. Cassels?

MR. CASSELS: Yes, that the United States patents, design patents, and so on, have no bearing on the issues here, and that these issues must be dealt 10 with without reference to the situation in any other country.

HIS LORDSHIP: Are the patents to which you refer in these various paragraphs in the United States all to predecessors in title?

MR. BIGGAR: Yes, they are all relevant to the predecessors in title of the Canadian Shredded Wheat Company.

MR. CASSELS: I do not think that is correct. The Cereal Machine Company is the predecessor in title, not Perky.

MR. BIGGAR: The Cereal Machine Company got their patents from Perky.

HIS LORDSHIP: I will admit them subject to objection. 20

MR. BIGGAR: Then I have to raise a question which is slightly different as to the documents in paragraph 20. The ground on which I put that is this, that having regard to the evidence which has been given by the plaintiff's witnesses it is perfectly clear that while these two companies are separate corporate organizations they are really one administrative entity. They certainly are now, but it appears in my submission that they have always been so.

HIS LORDSHIP: That is hardly consistent with your interpretation of the cancellation of the trademark?

MR. BIGGAR: I was really dealing with the cancellation as a matter of 30 history, my Lord: the considerations which were relevant to the question of cancellation or no cancellation may be quite different to those that are relevant to the question of admissibility of this evidence. I am really taking no position with regard to the propriety or otherwise of that cancellation, but simply pointing out as a matter of history that they did make an application which they subsequently said was made inadvertently and unsoundly and cancelled it.

HIS LORDSHIP: Paragraph 18 has to do with the registration of trademarks.

MR. BIGGAR: No, my Lord; number 18 refers to patents.

HIS LORDSHIP: Paragraph 20 has to do with the registration of trade 40 marks, the earliest of which is dated January 30, 1912, and the last of which is dated August 17, 1926; and these are all registrations by the United States company.

MR. BIGGAR: Yes, my Lord.

HIS LORDSHIP: I rule against you on that.

MR. BIGGAR: Very good, my Lord. The binder I have includes those paragraph 20 documents, and I will have to take those out before I file the other documents.

HIS LORDSHIP: That will be Exhibit 37.

EXHIBIT No. 37: Binder 1610-1—U.S. Design, T.M. and Patents mentioned in Defence.

Recess from 3.45 to 3.50 p.m.

HIS LORDSHIP: Mr. Biggar, before you proceed, the contents of Exhibit 37 do not appear to be certified.

10 MR. BIGGAR: No, my Lord. That is all arranged with my friend.

MR. CASSELS: I agree to that, my Lord.

MR. BIGGAR: They are printed copies.

MR. CASSELS: Printed by the United States Patent Office.

HIS LORDSHIP: Yes, they appear to be.

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RICHARD S. POOLE, Sworn.

EXAMINED BY MR. BIGGAR:

Q. Mr. Poole, I understand you have been with the Kellogg Company in Battle Creek since 1910? A. Yes.

20 Q. And you have been Assistant Superintendent in charge of production since 1931? A. Yes.

Q. And your duties include the supervision of all the company's products generally? A. Yes.

Q. Of which there are a number of cereal products? A. Yes.

Q. One being corn flakes and another being the product in question here? A. Yes.

Q. And part of your duties, I understand, involves the development and advertising of automatic machinery? A. Yes. I have been actively engaged in the designing of automatic machinery for a good many years during that time.

30 Q. And you have patented certain machinery? A. Yes, I have two or three patents on machinery for the packing and processing of cereals.

Q. Have you looked at the Perky patent No. 72695 and patent No. 52428? A. I would like to see them.

Q. I think they are Exhibits 7 and 8? A. I have looked over patent No. 72695 and I have looked through patent No. 52428.

Q. What do you say with regard to the correspondence with or divergence from the apparatus and product described in these patents and the apparatus which you used and the product which you put out as "Shredded Wheat Biscuit"? A. They are absolutely the same in design.

40 Q. The apparatus is the same in design? A. Yes.

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Q. And the product, is it the kind of product described in the earlier of those two patents? A. Yes.

Q. Now, how is the size and shape of the shredded wheat biscuit determined? A. How is the size and shape determined?

Q. Yes? A. By the lengths of the cutters on the chain, and the width of the stream coming from the shredders, and the amount of material put through the cutters at the time they cut off.

Q. Speaking generally, is the process you follow the same or different from that which has been described by Dr. Oakes as practised by the plaintiff? A. It is practically the same. 10

Q. Why is a biscuit made of a particular size? A. We arrived at our sized biscuit in regard to shape and method of making as the most economical way of making that biscuit and manufacturing it.

Q. What about the length of it, that is to say the dimensions along the stream of material? A. Well, that is not as limited as perhaps the width would be. In other words, the length of the stream could be any given dimension, but more preferably the one that would be a certain portion for a serving.

Q. Perhaps I mislead you. I think I used the dimension wrongly. The dimension along the length of the stream, the width of the biscuit.

HIS LORDSHIP: Q. Along the stream and across the biscuit? A. Could I have a biscuit so that we could talk in the terms of the biscuit? Are you referring to with the stream? 20

MR. BIGGAR: Q. Yes, along the filaments? A. That particular dimension is quite limited.

Q. What limits it? A. The shreds are stretched out on the machine. If the shred is too long between the squeezing off or the sealing of the sides then the shred is more liable to break and crumple up. If the distance is too short it does not allow it to properly puff and becomes more of a hard massy biscuit.

Q. You speak of the tendency of the shred to break up when it is too long. What effect would that have on the biscuit as a biscuit? A. It would gradually increase to a point that would not be commercial at all, if it was too long. 30

Q. Up to what point could you extend that dimension consistently with getting a commercially practicable biscuit? A. Well, in all of our experiments we arrived at this dimension of two and three-quarters inches.

Q. As what? A. As the ideal length.

Q. From your experience can you tell me by how much it would be possible to increase that length consistently with getting a practical biscuit? A. I would say that any increase would gradually increase the amount of strength of the biscuit, and they would be more fragile. 40

Q. "Increase"? A. Decrease the strength and make a more fragile biscuit.

Q. How much loss of strength could you afford consistently with having a practical biscuit? A. Well, really none, for the simple reason that right now in the bottom of the package of the shredded wheat biscuit and the Kellogg

shredded wheat biscuit there is evidence of a lot of shreds in the package from shipping, and anything we did to make it more fragile would cause more shreds to appear in the bottom of the package, more shreds would break off.

Q. What about the breakages in the biscuit in transit now? A. They are very fragile, and we have even gone so far as to introduce a new corrugated padded separator for the packing of the biscuits so that it would take the jar from the shipping.

Q. When you speak of a separator what do you mean, exactly? A. I refer to the pad that is between the layer of biscuits in the box.

10 Q. There would be a number of those separators in a given carton, would there? A. Yes, one between each layer.

Q. How many layers are there in a carton? A. In our carton there are five layers of three biscuits or fifteen to the box.

Q. And the weight of the biscuits? A. The weight of the biscuits is approximately 84/100ths of an ounce.

Q. Each biscuit? A. Yes.

Q. So that your fifteen biscuits weigh how much? A. Twelve and a half ounces.

20 Q. Take the other alternative, of shortening the biscuit in that dimension, what would be the effect of that? A. If the biscuit were shortened it would limit the amount of puffing in the raising of the biscuit.

Q. Why is that not to be desired? A. Well, it is our aim to make our biscuit as fluffy as we possibly can and still ship it.

Q. You want it fluffy, why? A. We feel if we can toast through more layers of shreds the more fluffy we make it, and make it more represent the toast.

30 Q. When you toast do you toast at a temperature and for a time similar to or different from that which Dr. Oakes said is customary so far as the plaintiff is concerned? A. I wish we could toast them in as quick time as they do. I marvelled at the testimony, for our toasting time in our ovens is an average of fifty minutes. We attempt and do make provision to toast both top and bottom, and we inspect our biscuits with a magnifying glass in order to make sure that the proper moisture is in the biscuits at all times, and that it is not solid and crusty when you see down through the biscuit with the magnifying glass.

Q. Is the most palatable and desirable part of the biscuit that in which the filaments or shreds adhere together or the part where they are separate?

MR. CASSELS: I suppose that is a matter of taste.

HIS LORDSHIP: It is somewhat leading.

40 MR. BIGGAR: I put it alternatively.

HIS LORDSHIP: Yes.

WITNESS: We design our biscuit to meet the demands of the consumer. We make our contact through our salesmen. We try to design a biscuit of the highest quality that will meet the demand of the consumer to the greatest possible degree. In doing it we have created our standards to a point that we are very particular regarding the moisture of the grain going to the shredder

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and the handling of the biscuit from the shredder to the baking oven so that we can build up a biscuit that is porous with no hard edges that will become gummy when you chew them.

Q. And what we have been calling the selvage or seam—do you aim to make that thick and hard or the reverse? A. We have done everything possible to make it as near like the rest of the biscuit as we can for the simple reason that it is an objectionable piece of the biscuit, the selvage edge, if it— is too hard and gummy; we have even had cases where there have been complaints by customers of a broken tooth from a hard edge on the selvage.

Q. What is the size to which you cut the row of biscuit before toasting? 10

A. Length of stream?

Q. Yes? A. Two and three-quarter inches.

Q. And when you have completed the toasting, what is its length? A. Approximately two and a half or two and a quarter inches.

Q. Down half an inch? A. Yes, down half an inch.

Q. Taking the next dimension, the thickness of the biscuit from top to bottom, what affects the size in that dimension? A. The number of shreds that are put into the stream.

Q. That determines it? A. Yes, that determines it.

Q. But on what do you decide how many shreds or layers of shreds to 20 put in? A. The weight.

Q. What do you mean by the weight? A. Well, we have a certain weight that has to be put into the package and we arrive at that by the number of shreds that would hold together.

Q. Why do you have a particular number of shreds? A. We have arrived at it by experimenting.

Q. What determined the experiment? A. That which would hold together in the toasting and make a good solid biscuit.

Q. Suppose that you increase its thickness, what would be the result? Would it be an advantageous or disadvantageous one? A. If we increased 30 it you would not get the puff that you do, or you would not be able to toast as nearly through the biscuit as you do with the present amount of threads.

Q. And if you reduced the size in that dimension? A. It would be a very fragile article.

Q. And you say you determined this dimension by experiment? A. Yes.

Q. And what is the size of the raw piece in that dimension as you make it?

A. Three-quarters of an inch now as they come from the shredders.

Q. And after having been toasted? A. It raises to about approximately I would say one inch and three quarters or one inch and a half.

Q. What about the third dimension, the width? A. Of the stream? 40

Q. Yes. A. Our biscuit is three inches.

Q. How is that arrived at? A. Well, we tried to make it distinguishable from the shredded wheat biscuit.

Q. Do you mean by reducing the size? A. Yes.

Q. Was there any other consideration? How far was it possible or practicable to reduce the size? A. There is one explanation I can make,

that the ends of the biscuit are not protected with a seam like the sides are, and that if you went much less than that it would greatly increase the amount of broken shreds in the bottom of the box for the same amount of weight.

Q. Would it have any other effect so far as the consumer is concerned?

A. Only that they would have to have more biscuits for one helping.

Q. What about your present size so far as helpings are concerned? A. Well, they could be put in a dish without being broken up.

Q. What is the relation of the present biscuit in its present size to a helping? A. Well, we feel that one biscuit is a helping.

10 Q. How much, if at all, farther could you reduce it consistently with having enough in the biscuit? A. I would say that that would be a matter of opinion, but we arrived at that as an adaptable size.

Q. Having regard to the other two dimensions? A. Yes.

Q. What is the width of your biscuit in the raw? A. Three inches.

Q. And when it has been toasted? A. Approximately two and three quarter inches.

Q. There is a slight decrease? A. Yes, sir.

20 Q. To what extent would the loss by the friability of the open ends of the biscuit be greater in your biscuit or less in your biscuit than in the plaintiff's biscuit? A. Are you talking per weight?

Q. No, the friability at the open ends? You have fifteen biscuits, have you not? A. In our package of twelve and a half ounces there are fifteen biscuits or thirty ends. In the plaintiff's package, if I recall rightly, there are twelve biscuits, or twenty-four ends; therefore it would be increased by that percentage.

Q. What about the question of waste in the making of biscuits of the present size and shape? To what extent is there waste of material in between the shredders and the oven? A. In between the shredders and the oven?

Q. Yes? A. There is practically none.

30 Q. Is there any? A. It is less than one per cent. in our plant.

Q. And as far as you are concerned what is done with that waste? A. We sell it for feed.

Q. What causes the waste? A. About the only thing that can cause the waste is the arrangement of biscuits along the line of processing.

Q. Do you mean on the belt, or what do you mean? A. In the shredding and in the handling of the biscuits and transferring from the vacuum to the pan, from the top chain to the pan, but it is very small.

Q. And you say you do not use that waste again at all? A. Absolutely not.

40 Q. Have you any particular reason for not making any further use of it? A. It changes the texture of the wheat and makes it more of a solid shred; it is quite noticeable under a glass, the difference between the two. It is also a poor practice to use it on account of the cleanliness of the material and it is quite possible for people to be too cautious in saving. It is altogether a poor practice to use it, we feel in our plant; we sell it for wheat waste, for hog feed.

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—continued

Q. Dr. Oakes has told us something about certain other forms of biscuit. Would you indicate your views with regard to say, first, the diamond shaped biscuit which he showed us? A. I would like to see one of those, if I am to talk about it.

Q. Here is one? A. This biscuit has a seam on four sides which has a knife-like cutting edge, and there are hard particles that would be very objectionable so far as the standards in our plant are concerned.

Q. What about the distance along the line of the shreds? How does that differ from the optimum distance, the distance between the points of attachment of the shreds? A. It is attached on four sides, and we attach it 10 only on two; the distance is comparative.

Q. Tell me how that biscuit compares as a satisfactory biscuit with the biscuit in the normal form, and why? A. I would say there is no comparison at all.

Q. Tell me on what grounds you base that opinion? A. This biscuit has four sealed sides; it has hard edges; and by the sealing of these sides it does not allow it to puff and make a curve that an ordinary biscuit would make. The particular way he has made this biscuit there would be considerable waste, because it is not made with a stream in any way.

Q. What about the convenience of the cooking of the shreds of that 20 biscuit from outside inwards? A. It would be harder to penetrate with your heat.

Q. Would there be any difference in the rapidity of penetration of heat? A. It would be entirely sealed; I would say there would be perhaps a good bigger percentage of sealed edges than what the other biscuit or other biscuit has.

Q. What about the triangular biscuit? Would you like a complete one? A. Yes.

Q. Tell us how that compares from the commercial point of view with the standard biscuit? A. I would hate to present an article like that to my 30 company to have them okay as a standard. You have twice the length of hard shreds that an ordinary biscuit has, or approximately that.

Q. What about the cooking of it? A. It is practically sealed for any penetration at all.

Q. You mean the pointed end? A. Yes, from the pointed end penetration is impossible, and the end would be very fragile, which was proven in this one I am handling, that broke off. This particular biscuit was made with one straight knife and one diagonal running with the chain.

Q. What do you say about the difficulty or ease of making biscuits of that kind on your machine? A. Our machine would have to be entirely re- 40 designed. About the only thing we could salvage on this particular machine would be the shredding units themselves. The belts, cutting knives, and the bottom and top would all have to be re-designed. The fact is that a series of entirely new cutters would have to be introduced.

Q. Now, the third type of biscuit that Dr. Oakes talked to us about this morning was not a circular but a round biscuit. What about that? A. Re-

garding the designing, that is making it on a machine, the same thing would be true. It would have a sealed edge entirely encircling the biscuit the same as the diamond shaped biscuit. In addition there would be the feed loss in our particular plant that would make it absolutely out of the question.

HIS LORDSHIP: Q. What loss? A. The feed loss from the scrap that would have to be cut from the straight stream to form this particular biscuit.

MR. BIGGAR: Q. And the feed loss would be in what order or percentage? A. I have not figured it. Dr. Oakes stated 25 per cent.

Q. And you do not disagree with that? A. No. It would be a question. You use the biscuit itself as 100 per cent. or the square. That is cut off. In that particular case in order to put out one hundred pounds of biscuit you would have to use more than one hundred and twenty-five pounds of wheat to make it.

Q. Roughly speaking, of the cost of the biscuit finished and ready for shipment, what proportion is incurred between the feeding into the shredding rolls and the delivery at the oven? A. Of the entire packed biscuit?

Q. Yes. A. Approximately between 35 and 40 per cent.; it fluctuates from one to the other.

Q. How would that part of the cost be affected by the attempt to re-process some 25 per cent. of scrap? A. If we were forced to re-process 25 per cent. of our material that would increase our costs on the processing 10 per cent. or approximately that.

Q. On what part of the processing? A. On the shredding of it, because it would have to be re-shredded, re-handled, granted that you could handle it without any labour.

Q. What would that involve, the attempt to handle it without labour? How could it be handled without labour? A. I really cannot conceive how it could be handled without any labour at all. You have a system of conveyers, worm conveyers or belt conveyers, but they do not run by themselves; they have to have attendants. It does incur labour to operate machinery.

Q. If you include labour would you make any alteration in that figure of 10 per cent.? A. It would be slightly increased, yes.

Q. What about the packaging of odd-shaped biscuits, round, triangular and diamond shaped? A: It would necessitate more difficulty and trouble than we have. We have an automatic packing machine, and there is no lost space in our package. It is put into chutes, in a regular shaped package, and discharged out of these chutes on to a conveyer semi-automatically. If we were to make a biscuit such as has been introduced it would not only necessitate re-designing that particular machine but would also make an odd package with lost room and it would be hard to handle.

Q. I hand you a sample that I think you had made up. Tell me what those are? A. This sample contains two biscuits, one Shredded Wheat Company biscuit and one Kellogg Shredded Wheat biscuit, one of the plaintiff's and one of the defendants'.

Q. And that is put up so that they can be readily compared without going into two packages? A. Yes.

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MR. BIGGAR: I thought perhaps your Lordship might find that convenient for reference.

EXHIBIT No. 38: Package containing specimen of plaintiff's biscuit and specimen of defendants' biscuit.

CROSS-EXAMINATION BY MR. CASSELS:

Q. Mr. Poole, I understood you to say that in your manufacture of biscuits you follow the process of the Canadian Patent No. 52428? A. I said they were the same as described in this process.

Q. And do you follow that process right through to the end? A. We have additional automatic machinery that is not listed that we designed in our plant for the handling of the biscuit from the cutter chain to the panning machine. 10

Q. Is that machinery different from the machinery of the Patent No. 72695? A. From the point where the top vacuum chain, as we call it, picks it off the bottom pan chain or the chain with platforms on. We carry on there with a different design for delivering them on to the pans.

Q. Take Patent No. 52428 which describes the process, that process ends, as I understand it, with the wheat coming through the rolls? A. Yes, sir.

Q. And as I recollect it the inventor states that when the process has reached the point where the wheat has come through the rolls and is in a green state it is edible and may be consumed as food. That is correct, is it not? A. We—

Q. I am asking the question. Please answer it. That is correct, is it not? A. I do not recall the exact words the inventor states in the patent I would be glad to look it up: "The food as discharged from the rolls is ready for use without further cooking, or it can be shaped for baking in various ways." We bake it.

Q. You bake it? A. Yes.

Q. And according to the inventor that could be done in various ways? A. Yes, that is what he states. 30

Q. And you have chosen to select the same way and the same form as the Canadian Shredded Wheat Company, Limited, has been using during all these years? A. We tried several ways in the process, but that is what we arrived at.

Q. Am I correct in this, that however you arrived at it you have chosen to select the same form and shape as has been used by the plaintiff company during the past thirty years or more with the exception of a slight shortening of the length of the biscuit? A. I do not know whether I am using the word "length" correctly? A. In other words, the size is slightly different, but the machine itself is practically the same. 40

Q. You still have not answered the question: Is it not a fact that although the inventor states that the food can be cooked for baking in various ways you have chosen to select the same shape and form as the shape and form of the plaintiff's biscuit with the exception of the shortening of the length? A. Yes, with the exception of the shortening of the biscuit.

Q. I would like you to describe just what the process is that you follow, taking the various steps from the beginning, as Dr. Oakes did in dealing with the plaintiff's product? A. The wheat is first shipped into our elevator and cleaned.

10 Q. Let me interrupt you for a moment: Are you in Canada or are you in the United States? A. The United States.

Q. Have you had anything to do with the Canadian plant? A. I am in there occasionally for inspection.

Q. There is a plant at London, Ontario? A. Yes.

Q. Proceed? A. The wheat is stored in our bins and cleaned properly. Then it is cooked in what we term by trade name the Laing cooker, which has an inner reel. When the wheat is put in there a certain portion of water is put into it and it is cooked twenty minutes with the water. Then the water is run out of the cooker and it is cooked five minutes in steam. From there it
 20 goes through Hume dryers and elevated to tempering bins and allowed to temper and age for twenty hours. Then it is conveyed to the shredders by the use of the worm or screw conveyers. Then it is put through the shredder rolls of which we have a battery of twenty-seven. We use twenty-two to make our stream. On the carrier chain it is conveyed under the shredders until the twenty-two shreds are accumulated on that pan chain. Then it comes in contact with the cutters, of which there are two. There is the cutter chain or vacuum chain on top and the cutter chain on the bottom which comes up through the pan chain. When the ends of these cutters come together the bottom cutter leaves and the vacuum is introduced into the chambers on the
 30 top chain, which picks the biscuit off the pan chain. At that point the pan chain leaves the top cutter chain and the vacuum cutter chain goes on until it arrives at the panning machine which oscillates at the same speed as the cutter chain. At this time the vacuum is cut off from the top chain and vacuum is introduced to a vacuum chamber on the bottom and the pan chain itself moves the pans ahead one step. From there the pans are conveyed to the oven and put in the squirrel cage oven and allowed to rotate until properly toasted. Then they are discharged from the oven and conveyed to the drying tunnel, as Dr. Oakes calls it. We leave them in the evaporator for around an hour and fifteen minutes. We aim to keep our biscuits before packing at
 40 around two per cent. moisture. From there they are conveyed to the packing machine, past the girls. As the biscuits are conveyed past the girls on a conveyer there is another conveyer that conveys the chutes. The girls fill the chutes. Then the carton is put over the chutes. The bottom of the carton is sealed. The ejector inside of the chute discharges both the carton and the biscuits on to a conveyer belt and the conveyer belt conveys them to the top sealer, and from the top sealer to the packer who packs them in the case.

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Q. That is the complete process from the time the wheat is run into your elevator until the cartons or cases are sent out? A. There might be some minor detail I have left out, but that is how I describe it.

Q. In the so-called shredders are your rolls both grooved? A. One roll is grooved and the other is smooth.

Q. Then you spoke of the porous biscuit, and I understood you to refer to the spaces between the filaments or threads of wheat which form the biscuit, is that correct? A. Do you mean the distance between the shreds in the biscuit?

Q. Yes, you spoke as though there was some advantage in having a substantial air space between the filaments or threads which go to make up the biscuit. I think you said you could look through them? A. You can. 10

Q. Do you claim that there is any advantage in that? A. Well, it allows your heat to get through so that you can toast through the first layer. The shreds with a twentieth thousands between them allows the heat to toast through the top layer to a certain degree into the biscuit, whereas if it were a solid mass it would be more like the crust on bread.

Q. After the biscuit is completely made is there any advantage in having the filaments or threads widely separated as compared with being adjacent to one another? A. Yes. 20

Q. In what way? A. It would be easier to toast through it.

Q. But after the product is completed and ready to go into the carton? A. I do not see how it could be arrived at, to open it up after it had been toasted or to close it after you had toasted it.

Q. Am I right, that any advantage you claim for that is with respect to the cooking or baking of the biscuit? A. With respect to being able to make an eatable biscuit.

Q. You have spoken of these different forms of biscuit which Dr. Oakes has made. Have you tried at any time to make any forms of biscuit of that kind? A. Yes, we have. 30

Q. When? A. We tried it through 1932. We have experimented with different shapes and sizes several times.

Q. Did you change your machines in order to do that? A. We did it in an experimental way. We found it would not be practicable to change the machines we had.

Q. You never tried to make a change in the machine in order to get a different form or shape of biscuit? A. We built the machine and designed it in our plant, and could see no way of doing it.

Q. You designed it to make the biscuit in the same shape as the shape of the plaintiff's biscuit? A. Yes, we designed it to make the biscuit we are making. 40

Q. You spoke of the selvage being objectionable, and I think you said you had had complaints about people having broken their teeth in eating them? A. Yes.

Q. Have you had many complaints of that kind? A. There have been two or three that came to my attention.

Q. The biscuit was so hard that the people would break their teeth on it?
A. The selvage edge would be objectionable, the hard particles.

Q. That is on your regular commercial biscuit? A. Yes, that would come about when the wheat was too wet or something like that. It always appears along the selvage edge of the biscuit.

Q. Did I understand you to say that you considered one of your biscuits is a helping? A. That is what we arrived at in the size of the biscuit.

Q. You do not regard two biscuits as a helping, as I understand the plaintiff does? A. No, sir.

10 Q. When your biscuits are served in a restaurant how many would be given to a customer who asked for your biscuit? A. I have never asked for our biscuits in the stores.

Q. As I understand it your company has not manufactured this shredded wheat biscuit in Canada? A. No, sir.

Q. And any biscuits which have been sold in Canada have been imported from the United States? A. I have no knowledge of that part of the business.

Q. I suppose you know whether there have been sales in Canada? A. I have not any knowledge; I am in the manufacturing and have supervision in the manufacturing. So far as sales and sales promotion is concerned I
20 have no knowledge.

Q. Do you tell us seriously that you do not know whether there have been any exports from the Battle Creek plant to Canada? A. I can truthfully say I have no knowledge of that branch of the business.

Q. If there had been any exports to any large extent would you have known of them? A. There would be no definite procedure by which I would know about it.

Q. Would you have known about it if there had been any large quantity of biscuit exported from the United States to Canada? A. Not necessarily.

Witness withdrew.

30 Whereupon the Court adjourned at 4.45 o'clock p.m. until 10.30 o'clock a.m. on Wednesday, March 4, 1936.

Upon resuming on Wednesday, March 4, A.D. 1936, at 10.30 a.m.

WILLIAM P. PENTY, Sworn:

EXAMINED BY MR. SMART:

Q. Mr. Penty, I understand you have been engaged with the Kellogg Company of Battle Creek since 1910. Is that correct? A. Yes.

Q. And since 1928 you have been in charge of the experimental department in supervision of the processing and quality of the product? A. Yes, sir.

40 Q. Is it your duty to devise new products? A. Yes, sir.

Q. You have heard Mr. Poole's evidence yesterday? A. Yes, sir.

Q. With regard to process? A. Yes.

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—continued

Q. Does that accurately describe your process? A. Yes, sir.

Q. You also heard his evidence with regard to the limitations on the size and shape of the biscuit. Will you tell me whether or not you agree with what he said on that—? A. I agree with the testimony of Mr. Poole.

Q. Have you examined the re-processed biscuits contained in Exhibit 20, which Dr. Oakes produced? A. Yes, sir.

Q. Have you also made some shredded wheat biscuits in your own plant? A. Yes, double shredded.

Q. Re-processed twice? A. Yes.

Q. Will you compare that biscuit which is taken out of Exhibit 20 with 10 the ordinary shredded wheat biscuit which is contained in Exhibit 5? I will give you one of Exhibit 5. Just to refer to one as Exhibit 20, and the other as Exhibit 5, Exhibit 5 being the plaintiff's ordinary product, and Exhibit 20 being the re-processed product? A. The biscuit from Exhibit No. 5 is a lighter biscuit, more porous, would be easier to toast, and much easier to eat than the biscuit which is double processed from Exhibit 20.

Q. Any other differences between the two? A. It is harder substance in the double processed biscuit than there is in the biscuit from Exhibit 5, which would make it harder to eat, harder substance to eat than it would 20 from the more porous biscuit from Exhibit 20.

Q. Can you tell me anything in a comparative way as to the difference in weight? A. The biscuit made from the double-processing of the shreds runs heavier with the same amount of shreds than it would just being processed once.

Q. Have you any comparative figures on that? A. I have a carton of biscuits which I made personally from double processed shreds, and the fifteen biscuits weigh 15 ounces, whereas our regular biscuits, fifteen biscuits weigh 12½ ounces.

Q. What about the selvage or joining edge on the side of Exhibit 5? A. The substance of the side and edges of the re-processed biscuits are harder 30 than on the original biscuits from Exhibit 20.

HIS LORDSHIP: Q. You are referring to Exhibit 20. Will you repeat that evidence again? A. The seam on the biscuit of Exhibit 20 is much harder, the substance, than in the biscuit from Exhibit 5, which is objectionable from the standpoint of eating.

MR. SMART: Q. You observed Dr. Oakes breaking two biscuits, Exhibit 20 and Exhibit 5, in his hand? A. Yes.

Q. What conclusion would you draw from that demonstration that he made? A. When Dr. Oakes broke the biscuit—

MR. CASSELS: I do not know that the witness' conclusions from what 40 Dr. Oakes did have any weight as evidence, or are admissible.

HIS LORDSHIP: I suppose it is offered, Mr. Cassels, as expert evidence, tending to help the Court.

MR. SMART: One witness on the stand makes a demonstration; your Lordship and myself may draw certain conclusions from that but, surely, it is

helpful to have a statement of the conclusions which an expert, or one familiar with that sort of thing, would draw from what the witness did.

HIS LORDSHIP: I think I will admit it.

MR. SMART: Q. Will you proceed with your answer? A. It took more effort to break the biscuit from Exhibit 5 than it did from Exhibit 20, showing that it was a harder, more firm biscuit.

Q. Which was the harder? A. The double processed, Exhibit 20.

Q. You stated it the reverse way before? A. I beg your pardon.

10 Q. It took more effort then, to break Exhibit 20, that is, the double-processed biscuit? A. Yes.

Q. Just to illustrate the process used by the Kellogg Company which has been described by Mr. Poole, can you produce some photographs of the apparatus that you use? A. Yes.

Q. This is a binder of photographs. Perhaps you will describe these? A. No. 1 is a photograph showing our Biscuit Shredding heads, the conveyor, and hopper containing the wheat ready for the shredding rolls.

No. 2 is a photograph showing a set of our Shredding Rolls.

No. 3 is a photograph showing the wheat shreds as they come from the Shredding Rolls on to carrier belt below.

20 No. 4 is a photograph showing the shreds which have been removed from the carrier belt.

No. 5 is a photograph showing shreds taken from the carrier belt under shredders and placed on a pan to show the shreds.

No. 6 is a photograph showing the front of one of our ovens; the doors are closed.

No. 7 is a photograph showing the perforated steel biscuit pan loaded with shredded whole wheat biscuits being placed in oven.

No. 8 is a photograph showing a close-up of biscuits on perforated pans as they leave the ovens.

30 No. 9 is a photograph showing our shredded whole wheat biscuit on the perforated pan which allows the heat to penetrate through so as to toast the bottom of biscuit as well as the top.

No. 10 is a photograph which shows our biscuit packing line, also showing our semi-automatic packing machine.

No. 11 is a photograph showing a close-up view of our packing line, also showing the carton being placed with flaps open over the packing block containing the fifteen biscuits.

No. 12 is a photograph showing the biscuits being discharged from the packing blocks into the cartons.

40 EXHIBIT No. 39: A binder containing 12 photographs of various apparatus in the defendant's plant.

CROSS-EXAMINED BY MR. CASSELS:

Q. Why do you say the conclusion you came to from the demonstration which Dr. Oakes gave was that it required more force to break the biscuit

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of Exhibit 20 than the biscuit of Exhibit 5? A. I see by the effort that the Doctor made that it did. He also made the remark at the time when he was breaking it. I sat right there.

Q. I did not hear the remark. However, that is the impression you got from what he did? A. From the effort he put in, it was much harder, sir, and they also are much firmer.

Q. And what examination did you make of these biscuits; that is, the re-processed biscuit as compared with the biscuit in Exhibit 5, in order to determine— A. The examination, sir, is from the appearance of them. From Exhibit 5 it is very porous, quite fluffy biscuit; it has a tendency to show 10 the outer brand; and on Exhibit 20 the double process, it is more of a doughy substance, and they are firmer, and closer together.

Q. That is to say, the threads are closer together? A. Closer together and more doughy substance.

Q. I asked Mr. Poole yesterday as to the extent of your sales of the Kellogg biscuit in Canada. He said he knew nothing about that. Do you know about that? A. No, sir, nothing whatsoever.

Q. Can you tell me what proportion of the total cost of manufacturing these biscuits is taken up in the rolling or shredding process? A. No, sir, I cannot. 20

The witness withdrew.

No. 37A
Discussion.

MR. BIGGAR: There are certain other advertisements of which we have not got photostatic copies, but of which we have typewritten copies, and which my friend has had an opportunity to check, and is prepared to admit, where the material is similar to what is already before your Lordship in the advertising exhibit, but there are some additional statements in this fresh material. I would be quite satisfied to quote one or two of the statements and leave it, on the ground that it might be more convenient to have the actual matter even if it is in typewriting.

MR. CASSELS: I think if my friend is going to refer to it at all, he had 30 better put it in.

EXHIBIT No. 40: Additional advertising matter of plaintiff company, filed by counsel for the defendant.

MR. BIGGAR: If your Lordship would allow me to refer to the question of these United States trademarks, under paragraph 18 of the statement of defence, there is one point that I perhaps should have made at the time about them. Your Lordship will observe from the statement of claim, and particularly paragraphs 6 to 8, and paragraph 11, that the plaintiff has made allegations about the United States situation and its relation to the Canadian one, not only before 1905 but after. The last sentence of paragraph 6 is that, 40 "In the United States of America, during the whole period from 1893 to the present date, the said whole wheat biscuit has been described and sold by Cereal Machine Company and its successors under the same names, 'Shredded Whole Wheat Biscuit'," and so on.

Then the last sentence of the next paragraph—:

“In addition to the moneys expended by the plaintiff for advertising, the said Cereal Machine Company and its successors expended very much larger sums for advertising in the United States of America, and a substantial part of such advertising which appeared in magazines, periodicals, newspapers, etc., circulated throughout the Dominion of Canada.”

Then the next paragraph:—I need not trouble about the beginning, but the second part of the first sentence:—

10 “—during all of said period, Cereal Machine Company and its successors in the United States have spent large sums of money in scientific investigation,” of which the plaintiff has received the benefit, and has paid its proportionate share of the cost.

Then at the beginning of paragraph 11:—

“As a result of the extensive advertising of the said product by the plaintiff in Canada and by Cereal Machine Company and its successors in the United States,”

certain results followed.

20 It seemed to me, in view of those allegations, it might be properly suggested that the conduct of that Cereal Machine Company which has done this advertising and so on was really relevant here—I mean its conduct in respect to the registration of trade-marks.

HIS LORDSHIP: In other words, your suggestion would be, Mr. Biggar, that the registrations referred to in paragraph 20 of the statement of defence are relevant on that basis?

MR. BIGGAR: Having regard to these allegations in the statement of claim.

HIS LORDSHIP: Mr. Cassels, what have you to say about that?

30 MR. CASSELS: My Lord, we have alleged that the Canadian Company has had the benefit of the research work which the United States Company has done, and that we have contributed a portion of the cost. We have also alleged that the advertising which the United States Company has done to some extent came into Canada, and I presume has been beneficial to the Canadian Company, but I do not see what that has to do with the registration of trade-marks which the United States Company has made in the United States. That has not come into Canada; that has nothing to do with the Canadian situation. The registrations were made long after the Canadian Company had acquired the Canadian goodwill of the business, and the registrations have no effect.

40 HIS LORDSHIP: I am not so much concerned about the other paragraphs cited to me by Mr. Biggar as I am about paragraph 6 of the statement of claim. There, there is an allegation that in the United States of America during the whole period from 1898 to the present date, the said whole wheat biscuit has been described and sold by Cereal Machine Company and its successors under the same name. There is a distinct allegation concerning which I am inclined to think that the defendant has some right to put the trade marks in.

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Discussion.

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Discussion.
—continued

I would just like to hear from you on that. I think the other paragraphs are not so important.

MR. CASSELS: We do say that the article has been sold under those names during that whole period.

HIS LORDSHIP: You say it has been described?

MR. CASSELS: Yes, but even so, I would submit the trade-mark registrations have no bearing on that.

HIS LORDSHIP: Except that there is contained in them undoubtedly a description.

MR. CASSELS: Presumably. I do not know, my Lord. My submission 10 is, of course, as I stated yesterday, that the Canadian situation is distinct from the United States situation. Possibly in the early stages of the case when we may have made some allegations as to the situation in the United States—

HIS LORDSHIP: I would be in entire agreement with you if it were not for the pleading.

MR. CASSELS: Of course, the pleading was drawn up, and perhaps I had not as much knowledge of the case as I have now, but that is my submission that the Canadian situation is a distinct situation and is not really affected by either patents or registration of trade-marks made in the United States.

HIS LORDSHIP: Assuming there is an agreement as to certification and 20 so on, I will admit the documents purely on the basis of evidence of the description. That is the only purpose.

MR. BIGGAR: Quite so.

MR. CASSELS: We can include it with the other Exhibits.

MR. BIGGAR: The registrations are, first, 85,186, of January 30, 1912, which is an application for a trade-mark corresponding to the Canadian trade-mark that has already been put in; that is to say, the dish with the biscuit and the spoon in it. That states that that trade-mark has been adopted by the applicants, and that no claim is made to the representation of a shredded 30 wheat biscuit.

Then the next one is No. 89,071, dated November 5, 1912. That is an application for a picture of a building with the words, "The Home of Shredded Wheat," above it; and the application states that that trade-mark has been adopted by the applicants for Shredded Wheat.

The third one is No. 216,593, of August 17, 1926, and that is an application for the picture of the saucer with two biscuits in it. The picture corresponds to the picture on one side of our carton, Exhibit 20. I mean ours in the sense of its being an exhibit, not in the sense of its being the defendant's.

HIS LORDSHIP: You have not gone that far.

MR. BIGGAR: No. That last registration is said to be, "For Biscuits, 40 Crackers and Cereal Foods cooked or prepared for consumption."

My Lord, I find that the copy of the binder of that United States material that was handed in yesterday was a copy that was really a brief copy, and is marked, but we had ready a copy for the Court that is complete. This copy still includes those things that were torn out of the other copy. So if I just substitute one for the other of Exhibit 37, this one has got everything in it now.

That is the case for the defendants.

MR. CASSELS: Your Lordship, I would ask the indulgence of the Court to allow me to call Mr. Wilcox again, not in reply, but on a point which I neglected to cover in examining him yesterday.

HIS LORDSHIP: Very well.

*In the
Supreme Court
of Ontario*

Defendants'
Evidence

No. 37A
Discussion.

—continued

WILLIAM JOHN WILCOX, Recalled:

EXAMINED BY MR. CASSELS:

Plaintiff's
Evidence

No. 38
William John
Wilcox
Recalled
Examination

Q. Mr. Wilcox, when did you first know of this Kellogg biscuit by name of Kellogg's Shredded Whole Wheat Biscuit, being on the Canadian market?

10 A. 1934, sir.

Q. Was that at the time when the biscuit was purchased from the defendant Bassin? A. Yes.

Q. Had you been aware of the fact that the biscuit had been on the United States market before that? A. Yes, sir.

Q. Had you been on the lookout for it in Canada? A. Yes, our entire sales organization were on the look-out for it.

Q. And the first of the defendant's biscuits which you found were the ones which are in question here, the ones alleged to have been purchased from Bassin, and which is admitted by the defendant? A. Yes.

20 CROSS-EXAMINED BY MR. SMART:

No. 38
William John
Wilcox
Recalled
Cross-Examination

Q. And you immediately began the action as soon as you found—
A. We reported it to our legal department, sir.

Q. You were aware that the parties were in litigation in the United States? A. Yes.

Q. That was why you were watching here? A. Yes.

Q. And that litigation terminated favourably to the defendant in the United States? A. I have not heard, sir.

MR. CASSELS: Do not say terminated.

30 MR. SMART: Q. Have you not heard that? A. I think I got your question right. You asked me was it terminated.

Q. Yes, that is right? A. I have not heard.

Q. Perhaps you will tell me the interval that elapsed between the time when you found the defendant's Shredded Whole Wheat Biscuit on the market and the time when you brought suit? A. Let me get your question again?

Q. How long an interval between the time you found the biscuit, the Kellogg Shredded Whole Wheat Biscuit, on the Canadian market, and the time when you brought suit? A. I think it was a very short time, sir. I cannot tell you the exact dates.

40 Witness withdrew.

REPLY

*In the
Supreme Court
of Ontario*

Plaintiff's
Evidence
in Reply

No. 39
Dr. Earl T. Oakes
Examination

DOCTOR EARL T. OAKES, Recalled:

EXAMINED BY MR. CASSELS:

Q. Dr. Oakes, you have heard the evidence of Mr. Penty and of Mr. Poole yesterday. What do you say as to the re-processed biscuit, Exhibit 20, compared with the biscuit of Exhibit No. 5, as to porosity and so on?

MR. BIGGAR: May I suggest that question has been already opened by my learned friend in chief when he first called this witness? He cannot, I submit, split his case on that point.

MR. CASSELS: I do not think I asked that witness as to that. He put in these re-processed biscuits as having been made by him, but the question of the comparison of the two was not gone into. 10

HIS LORDSHIP: I think, in view of the evidence that has been offered by the defence, you may develop that, not simply reiterate the evidence.

MR. CASSELS: I do not think the witness dealt with this, as I recollect.

HIS LORDSHIP: He dealt with it to some extent in cross-examination.

MR. BIGGAR: Your Lordship will find on examination in chief after the demonstration he refers to Exhibit 20 and describes the character of the biscuit, says that it is smoother and nicer-looking. Then your Lordship may remember I cross-examined him at some length on the difference between the re-processed and the single-processed biscuit. The comparison was made in chief between the singly and doubly-processed biscuit. 20

HIS LORDSHIP: He said the demonstrator was essentially the same as the machines in the factory. Threads going back into the machine is usual. Sometimes when the threads are put back the result is a smoother biscuit. I think I will admit this evidence.

MR. CASSELS: I will just ask the witness if he has anything to say in regard to the statement that Exhibit 5 was a lighter and more porous biscuit, easier to toast and to eat.

Q. What is your view as to that, Dr. Oakes? A. I believe it would be very difficult to get any great difference between the two biscuits in that respect. 30

Q. Can you speak as to the weight? A. The weight is the same.

Q. Mr. Penty has stated he observed that you used more force to break the selvage of the biscuit Exhibit 20 than to break the selvage of the biscuit Exhibit 5. Have you anything to say as to that? A. That is not true.

Q. Can you tell me, Dr. Oakes, what proportion of the cost of manufacturing these biscuits—the complete manufacture from the purchase of the wheat to the time that the biscuits are packaged ready for shipment—what proportion of the cost of that is taken up in putting the wheat through the rolls or shredders, as they have been called? A. Less than one per cent. 40

Q. Have you made a calculation as to that? A. Yes, sir.

Q. And the cost, I suppose, commences at the purchase of the wheat?

A. Yes.

Q. And ends with the packing of the biscuit? A. Yes.

Q. And you say it is less than one per cent.

HIS LORDSHIP: Q. Less than one per cent. of the cost is in what process, Doctor? A. In the so-called shredding cost.

MR. CASSELS: Q. Can you tell me whether any of the biscuits of the plaintiff's manufacture which go on the market are without re-processed wheat in them? A. Well, it is possible that some do, but most of them have re-processed wheat in them.

*In the
Supreme Court
of Ontario*

Plaintiff's
Evidence
in Reply

No. 39
Dr. Earl T. Oakes
Examination

—continued

CROSS-EXAMINED BY MR. BIGGAR:

10 Q. Dr. Oakes, did I understand you (I imagine I did not) to retract the statement I understood you to make before when you were examined by my friend that the biscuits were smoother and nicer-looking, or more finished, when they were made out of re-processed material? A. I did not retract that statement.

Q. I thought I probably mis-heard. That is a correct statement?

A. I should perhaps modify it by—nicer-looking—it depends on individual preference for the looks of a thing. It is certainly smoother. It is definitely indicated smoother.

20 Q. What I am really asking you is whether what you said before conveyed a false impression to me. My impression was that you told us the biscuit made out of re-processed material was a more satisfactory biscuit because it was more finished, it was smoother, and that it was nicer-looking? A. I am afraid I did not say it was more satisfactory.

Q. If you conveyed that impression, it was a wrong impression? A. Satisfaction in regard to a biscuit is a difficult thing to define. We have—

Q. I do not want to argue with you? A. What would be satisfactory to you, in other words, might not be satisfactory to me, or vice-versa.

30 Q. When you said it was smoother and nicer-looking, you did not mean that it was preferable by reason of its smoother appearance? A. Not necessarily.

Q. Or that it was preferable by reason of its being nicer-looking? A. Not necessarily.

Q. Or that it was preferable by reason of its being more finished? A. Not necessarily.

Q. I do not see what significance the statements have, then. Can you suggest any possible significance for them? A. It was merely a statement of the physical characteristic of the biscuit.

Q. Because you told us, did you not, that the expense of re-processing was negligible? A. Yes.

40 Q. So if the biscuit was preferable if it was made out of re-processed material, you would certainly re-process all your material, wouldn't you, and make your biscuits wholly out of re-processed material? A. That is possible.

No. 39
Dr. Earl T. Oakes
Cross-Examination

Q. Is there any doubt about that? You would if these biscuits were preferable, and the expense of re-processing was negligible? A. Yes, sir.

Q. There is no doubt? A. Yes, sir.

Q. Why is there a doubt? If you got a better product for no greater cost wouldn't you resort to it? A. In all of the six hundred or seven hundred varieties of goods that we put on the market, those that have a certain history behind them, and have a certain acceptance in the public's mind and desires—it is very dangerous to change the character of them so far as we are concerned.

Q. I now see that if you re-process to change the character you might lose your market for the present biscuit? A. We would not lose it. We might affect it.

Q. Might adversely affect it? A. Possibly, and might affect it the other way.

Q. It is a different biscuit? A. It is a different biscuit, yes.

Q. On the other point, when you say that the cost of the so-called shredding process is one per cent. of the total, you are including the cost of the material? A. Oh, no, sir. I am speaking entirely of the cost of processing at that point.

Q. I am wanting to find out what 100 per cent. is. Is the cost of material included in 100 per cent.? A. Yes, sir.

Q. 100 per cent. includes the cost of material? A. Yes.

Q. And it includes the cost of selling the product, does it not? A. No, sir, not in those figures.

Q. I will have to get you to analyze that for me a little, because I find it very difficult to understand. There are only three processes in the preparation of these biscuits, are there not? There is the cooking, there is the shredding, and there is the packing? A. There are a number of other processes besides that.

Q. You call the unfinished ones processes too, do you? Because, after all, I understood that the tempering that intervenes between the cooking and the shredding was nothing but letting the material lie in a bin for so many hours. I cannot imagine that that is an expensive thing to do? A. I am speaking of the cleaning of the wheat, unloading of the wheat and carrying of it all the way through to the finished product. It includes all of the cost of manufacture up to the point that the goods are placed in the—

Q. Will you tell me—perhaps I need not go through the whole series to find out what the cost of each is. I suppose you know? A. Yes.

Q. Of each process? A. Yes.

Q. Where does the bulk of that 100 per cent. come from? A. In the packing of the biscuit.

Q. Approximately what proportion of the total expense? A. Nearly half.

Q. How much of it is the cost of the material? A. I should correct that. I am speaking then of the labour. Actually as to the cost, it would be in the nature of say, 4 per cent.

Q. We have not got very much yet accounted for, only five altogether. My question was, where does the bulk of this cost come? A. The bulk of it comes in the cost of the wheat and cost of containers.

Q. How much is the cost of the wheat of the 100 per cent? A. That varies with the price of the wheat itself.

Q. But you are giving a figure, and we are speaking of the 100 per cent. that you are taking. Of the 100 per cent. you are taking, how much of it represents the cost of the wheat? A. About 70 per cent. I should say—70 to 75.

10 Q. Now we have 30 per cent. left. Do you say that only one-thirtieth of your total cost of handling that material is involved in the shredding and the cutting of the biscuits? A. I can get it down more simply than that if you would like to have it.

Q. Answer me that question first? A. Yes, sir, I still say so.

Q. And four-thirtieths in the packing? A. Yes.

Q. So that five-thirtieths makes and packs the biscuits? A. No, sir.

Q. It does according to your statement. How much is in the baking? What percentage corresponding to one per cent. for the shredding and cutting, and 4 per cent. for the packing? A. You will have about 4 per cent. in pack-

20 ing, less than 1 per cent. in the actual shredding.

Q. Shredding and cutting? A. It is the same thing, extra labour.

Q. I don't mean cutting the wheat; I mean cutting the biscuit? A. It is the same thing. One man tends the machine. That is all the labour there is attached to that, and it takes 17 girls and 7 men to do the packing alone, so it is considerably under 1 to 4 ratio on the shredding operation.

Q. You are not allowing anything for the machine? A. You have your power costs on the machine.

Q. You are not taking anything for the cost of the machine? A. The original cost, no sir.

30 Q. Give me a corresponding figure about the baking, will you? A. It takes five men to do the baking.

Q. All right, express it in terms of men, if you are taking it just on labour costs? A. Yes, it takes five men to do the baking.

Q. Express it all in terms of men. Just give me the number of men throughout, will you. A. 3 men in the wheat elevator; 2 men in the wheat cleaning room; 2 men in the cooking room. Let me go back—1 man in the wheat elevator; 1 man in the cleaning room; 1 man in the cooking; 1 man attending the shredder; 10 girls to pack. I am speaking now in the same unit. It takes a different number on the automatic unit and the different unit—

40 I am keeping it to the automatic unit. 10 girls to pack; 1 sealing operator, a man; 1 filling cases; 1 stitching cases; 1 man piling cases.

Q. That was the basis on which you arrived at your figure of 1 per cent.?

A. Yes, and it is understood that my 1 per cent. was on the basis of total cost.

HIS LORDSHIP: Q. Your cost there is what you would define as factory cost, cost of material and cost of labour, depreciation, and those various elements, but leaving out administration and selling expense? A. That is

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Supreme Court
of Ontario*

Plaintiff's
Evidence
in Reply

No. 39
Dr. Earl T. Oakes
Cross-Examination
—continued

*In the
Supreme Court
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Plaintiff's
Evidence
in Reply

No. 39

Dr. Earl T. Oakes
Cross-Examination
—continued

right. We have a separate selling organization from the production end of it. We are entirely separate from selling. We know how much it costs us to produce, and the selling of it is an entirely different set-up.

MR. BIGGAR: Q. It does not include anything for overhead at all?

A. Yes, sir, it does include overhead. We include power, light and heat, overhead and everything else in that.

Q. I do not know whether it is worth while analyzing that.

Witness withdrew.

MR. CASSELS: That is the reply, my Lord.

ARGUMENT.

10

JUDGMENT RESERVED.

No. 40
Reasons for
Judgment of
McTague J.
30th March, 1936.

No. 40

REASONS FOR JUDGMENT

S.C.O.

CANADIAN SHREDDED WHEAT
COMPANY, LIMITED

v.

KELLOGG CO. OF CANADA
LIMITED AND SOLOMON
BASSIN.

TRIAL AT TORONTO.

Copy of Reasons for Judgment of
McTAGUE J., delivered March
30th, 1936.

R. C. H. CASSELS, K.C., for the
Plaintiff.

O. M. BIGGAR, K.C., and R. S. 20
SMART, K.C., for the Defendants.

Action for infringement of registered trade-mark and for passing off.

The plaintiff is an incorporated company with head office at Niagara Falls, Ontario, and engages in the manufacture and sale of whole wheat biscuits. The defendant Kellogg Company of Canada, Limited, is an incorporated company with head office at London, Ontario, and engages in the manufacture and sale of many cereal products. The defendant Bassin is a merchant carrying on business in Toronto, Ontario.

The plaintiff alleges that since the month of April, 1934, Bassin has been offering for sale biscuits manufactured by Kellogg Company of Battle Creek, 30 Michigan, the biscuits being described by the plaintiff as simulating "the whole wheat biscuit of the plaintiff in particular and distinctive shape, appearance and structure and packaged in packages or cartons upon which is displayed the words 'Shredded Whole Wheat Biscuits' on each side, each end and the top and bottom of the carton." The plaintiff further alleges that Bassin purchased the biscuits from Kellogg Company of Canada, Limited.

The defendant Kellogg Company of Canada, Limited, admits that it manufactured and sold to its co-defendant Bassin, who in turn offered for sale and sold to the public a product known as "Kellogg's Shredded Whole Wheat Biscuit" said by the defendant to be "a shredded wheat food product of the same kind as the shredded wheat food product manufactured and sold by the plaintiff." The defendant denies that it has simulated the shape, appearance or structure of the plaintiff's biscuit, and denies also that the plaintiff is entitled to the exclusive use of the word "shredded" as applied to shredded wheat biscuits, or to any descriptive shape or design of the biscuit known as a
10 shredded wheat biscuit.

In view of the admission of sale of the Kellogg shredded whole wheat biscuit by the defendant Bassin it will not be necessary to continue to distinguish between the defendants; so that where the word "defendant" is used hereafter it may be taken as meaning only the defendant Kellogg Company of Canada, Limited.

It is admitted that the Cereal Machine Company, a company incorporated under the laws of the State of Colorado, U.S.A., commenced the sale of a whole wheat biscuit in Canada about the year 1898. It has been proved that the plaintiff acquired the rights to manufacture and sell the biscuit in Canada
20 and commenced to do so in the year 1905. The defendant further admits that during these years the product has been called "shredded whole wheat biscuit," and "shredded wheat biscuit," or "shredded wheat."

On the 27th day of May, 1896, one Henry D. Perky obtained Dominion of Canada Patent No. 52428 for "cereal food or bread." The first paragraph of the claim reads as follows:

"A food or bread composed of superposed or massed layers or deposits of comparatively dry, externally rough, porous, sinuous, threads or filaments of cooked whole wheat containing intermixed the bran, starch and gluten of the entire berry and which is free from leavening or raising material or other
30 products."

On the 13th day of August, 1901, Perky obtained Dominion of Canada Patent No. 72695 for "machines for making biscuit and other articles." The plaintiff succeeded to the benefit of the patents and as a result enjoyed what has been described in some of the cases as a legal monopoly during the lives of the patents in making what were known practically from the beginning as shredded wheat biscuits. Since these patents, of course long since expired, the article and machines covered by them have fallen into public domain. If this was the simple case and no other features intervened any manufacturer would have the right to utilize the machines and manufacture and sell the
40 article covered by Patent 52428 providing he did not do so in a manner calculated to deceive the public by "passing off" his goods as the goods of the plaintiff.

But the case here is not so simple. The plaintiff took the precaution long after the expiry of the patents to procure for itself two specific trade-mark registrations No. 198 dated 20th day of March, 1928, and No. 214 dated the 3rd day of July, 1929, the first of the words "shredded wheat" as applied to

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biscuits and crackers, and the second of the words “shredded wheat” as applied to the sale of cereal foods cooked or prepared for consumption. It is in part on these registrations that the plaintiff relies for relief in the action.

The first issue to be determined then is whether or not the registrations in question are valid, or rather whether the words “shredded wheat” are capable of being properly registered or not. That the Court has power to review the validity of registration has long been established: see *Partlo v. Todd* (1888) 17 S.C.R. 197.

Channel Limited v. Rombough et al [1924] S.C.R. 600, is authority for the proposition that a person cannot obtain an exclusive right to use, by registering it as a trade-mark, a word in common use as a descriptive word of the character and quality of the goods in connection with which it was used. In that case it was held that the registration of such a word as “O-Cedar” as a trade-mark does not prevent the use by any person of the word “Cedar” as applied to goods manufactured for a similar purpose. 10

Is the word “shredded” a common word purely descriptive of the character of the goods in connection with which it is used? That it is a common word there can be no question. An examination of the Oxford Dictionary, 1914 Edition, shows that it has been used since long before the time of Chaucer. The plaintiff says it is a suggestive word but not a merely descriptive one. It has been used by the plaintiff and its predecessors in title for years in a purely descriptive sense, not only in advertising but in documents of a formal and legal character as well. The plaintiff applied for and obtained a specific trade-mark, No. 73, dated the 23rd day of December, 1912, which consists of a picture of a shredded wheat biscuit in a dish, and in the registration said “to be applied to the sale of shredded cereal biscuit.” Such a word as “shredded” as applied to “whole wheat” or “biscuit” has no characteristic of what is known as a “fancy” name. It must be taken as purely descriptive: see *Cellular Clothing Co. v. Maxton & Murray*, [1899] A.C. 326, the judgment of Lord Shand at page 338 dealing with the word “cellular.” See also *Horlick’s Malted Milk Co. v. Summerskill* (1916) 33 R.P.C. 108, the judgment of Lord Cozens-Hardy, M.R. at page 113, dealing with the word “malted”. 20 30

But the plaintiff sets up that the word “shredded” as used in connection with wheat, whole wheat or wheat biscuits, has acquired a secondary meaning in the trade, so that when it is now used it has come to mean peculiarly the goods of the plaintiff. A great number of witnesses have been examined on commission in the principal cities of Canada. The general effect of their evidence is that whenever the words “shredded wheat” are used they mean to the witnesses the goods of the plaintiff. In *Cellular Clothing v. Maxton & Murray* (supra), Lord Davey deals with a similar situation in these words, at p. 343: 40

“But there are two observations which must be made: one is that a man who takes upon himself to prove that words, which are merely descriptive or expressive of the quality of the goods, have acquired the secondary sense to which I have referred, assumes a much greater burden—and, indeed, a burden

which it is not impossible, but at the same time extremely difficult, to discharge—a much greater burden than that of a man who undertakes to prove the same thing of a word not significant and not descriptive, but what has been compendiously called a ‘fancy’ word.

10 “The other observation which occurs to me is this: that where a man produces or invents, if you please, a new article and attaches a descriptive name to it—a name which, as the article has not been produced before, has, of course, not been used in connection with the article—and secures for himself either the legal monopoly or a monopoly in fact of the sale of that article for a certain time, the evidence of persons who come forward and say that the name in question suggests to their minds and is associated by them with the plaintiff’s goods alone is of a very slender character, for the simple reason that the plaintiff was the only maker of the goods during the time that his monopoly lasted, and therefore there was nothing to compare with it, and anybody who wanted the goods had no shop to go to, or no merchant or manufacturer to resort to except the plaintiff.”

He then goes on to quote Fry, L.J., in *Siegert v. Findlater* (1878) 7 Ch. D. 801 at page 813:

20 “That is, my Lords, a matter of express decision in the case of a patent. If a man invents a new article and protects it by a patent, then during the term of the patent he has, of course a legal monopoly; but when the patent expires all the world may make the article, and if they may make the article they may say that they are making the article, and for that purpose use the name which the patentee has attached to it during the time when he had the legal monopoly of the manufacture. But the same thing in principle must apply where a man has not taken out a patent, as in the present case, but has a virtual monopoly because other manufacturers, although they are entitled to do so, have not in fact commenced to make the article. He brings the article before the world, he gives it a name descriptive of the article; all the world 30 may make the article and all the world may tell the public what article it is they make, and for that purpose they may *prima facie* use the name by which the article is known in the market.”

On the branch of the issue having to do with infringement of the trademark the conclusion must be that the words whose use is complained of, are common words merely descriptive and have not acquired a secondary meaning in such manner as to give the plaintiff the relief sought: see also *Standard Ideal Co. v. Standard Sanitary Manufacturing Co.* [1911] A.C. 78.

40 In addition to the words being purely descriptive, the very name of the article manufactured by the plaintiff is “shredded wheat.” This is not a name designed to distinguish the article manufactured by the plaintiff from the same article as manufactured by some one else; it is the very name of that which is manufactured. The plaintiff cannot retain the exclusive right to such a name: see *Linoleum Manufacturing Company v. Nairn* (1878) L.R. 7 Ch. D. 834, also *The Magnolia Metal Company v. The Atlas Metal Company, et al* (1897) 14 R.P.C. 389. Had the plaintiff chosen to designate the article manufactured by it by some “fancy” name it would no doubt be entitled to the

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protection asked: see *The Bayer Co. v. American Druggists' Syndicate*, [1924] S.C.R. 558 which follows in *re Chesebrough's Trade-Mark "Vaseline"*, [1902] 2 Ch. 1, and *Burberrys v. J. C. Cording & Co.* (1909) 26 R.P.C. 693. In the Bayer case the article manufactured was acetyl salicylic acid but the name given to its acetyl salicylic acid by the plaintiff was "aspirin."

This leads to a consideration of the second branch of the case on "passing off." Regardless of patents and trademarks, no man can pass off his goods as those of another. In *Reddaway vs. Banham*, [1896] A.C. 199, Lord Halsbury at page 204 puts it thus:

"The principle of law may be very plainly stated, and that is, that nobody has any right to represent his goods as the goods of somebody else." 10

Again at page 207, the Lord Chancellor puts the principle in the following words:

"It would be impossible, for instance to say that a trader could not describe his goods truly by enumerating the particulars of what they consisted, unless such description was calculated to deceive and make his goods pass as the goods of another. What in each case or in each trade will produce the effect intended to be prohibited is a matter which must depend upon the circumstances of each trade and peculiarities of each trade."

On the question of "passing off" in the present case there are two different 20 phases of the sale of the defendant's shredded whole wheat biscuits to be considered, the direct sale to wholesale grocers, chain store warehouses, department stores and jobbers in cartons, and the indirect sale of individual biscuits independently of the carton by proprietors of restaurants, hotels and boarding houses to ultimate consumers.

Neither party sells its biscuit otherwise than in cartons. The defendant's carton is in the usual red and green colour used in the sale of its various other cereal products. The word "Kellogg's" is in bold script. The plaintiff's cartons are quite unlike the defendant's. They are differently coloured and are featured by representations of Niagara Falls and of the plaintiff's factory 30 nearby. The Plaintiff's carton contains 12 biscuits and the defendant's contains 15. There is little difficulty in arriving at the conclusion that from this view-point the defendant cannot be charged with "passing off": see *Smith's Potato Crisps Limited v. Paige's Potato Crisps Limited* (1928) 45 R.P.C. 132.

The second phase of the matter presents more difficulty. The plaintiff produced what may be described as a pillow shaped biscuit. The defendant's biscuit is of smaller size but is practically the same shape. No doubt there is a probability that a customer of a restaurant expecting to receive the plaintiff's product when asking for shredded wheat would be deceived on 40 receiving the defendant's shredded whole wheat biscuit. Much of the plaintiff's evidence at the trial was directed to showing that the defendant could quite readily change the shape of its biscuit so as to render deception of this character impossible. The defendant on the other hand put in evidence that it had gone as far as was commercially practicable in distinguishing its biscuit from that of the plaintiff. To put upon the defendant the burden of altering

the design in the manner suggested by the plaintiff would likely result in unknown additional commercial costs and thus tend to restrain free competition.

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30th March, 1936.
—continued

The case most favourable to the plaintiff's contention is *William Edge & Sons v. William Niccolls & Sons*, [1911] A.C. 692. The matter there before the Court was a patent taken out by the plaintiff's predecessors for parcelling up blue or other colour in a porous bag with a handle attached to it, so that the colour could be dissolved in water without staining the hands of the operator. The bags bore no name but the "get-up" of which the stick
10 was the distinctive feature had become identified in the mind of the public with the plaintiff's goods. The defendants exactly imitated the get-up of the plaintiff's goods except that they attached to the bags a label bearing their name. In spite of the fact that the patent had been revoked for some eighteen years it was held that the defendant's get-up was calculated to deceive, the addition of the label in the circumstance not being a sufficient distinction and the plaintiffs were granted an injunction in modified terms.

The very same issue as here was dealt with by a United States Court in a case of *Shredded Wheat Co. v. Humphrey Cornell Co.* (1918) 250 Fed. Rep. 960. The Court there would not require the defendant to alter the shape of
20 the biscuit, but did impose the obligation of labelling or marking the individual biscuits. But in a subsequent case of *National Biscuit Co. v. Kellogg Co.* (1935) 24 U.S. Patent Quarterly, 138, where almost the same evidence was offered by the defendant regarding the size and shape of the biscuits as in the case at bar it was held that the requirements of the Court in *Shredded Wheat Co. v. Humphrey Cornell Co.* has been fully satisfied by the reduction in the size of the biscuits.

In *William Edge & Sons v. William Niccolls & Sons*, *supra*, there was exact imitation of the "get-up" even to the stick and all of the sales of the product of both plaintiff and defendant were over the counter. In the case
30 at bar a comparatively small part of the plaintiff's sales is in the form of the unpackaged biscuit. The defendant's "get-up" is quite different from plaintiff's though the biscuit itself apart from the "get-up" resembles the plaintiff's except that it is smaller in size. *William Edge & Sons v. William Niccolls & Sons*, *supra*, would not seem to be applicable in the circumstances here.

On all of the evidence the conclusion which must be reached is that the form of the biscuit is merely the natural form it should take having in mind the fragile material of which it is composed. To require the defendant to change the form of its biscuit, or to label each individual biscuit, would be to
40 impose an obligation too doubtful as to cost and would go too great a distance in assuring the plaintiff of some continuance of the monopoly which it cannot further enjoy by patent or trade-mark.

In the result the action fails on all grounds and should be dismissed with costs.

JUDGMENT

IN THE SUPREME COURT OF ONTARIO.

THE HONOURABLE, { MONDAY, THE THIRTIETH DAY
MR. JUSTICE MCTAGUE { OF MARCH, A.D. 1936.

BETWEEN:

THE CANADIAN SHREDDED WHEAT COMPANY,
LIMITED,

Plaintiff, 10

—AND—

(SEAL)

KELLOGG COMPANY OF CANADA LIMITED
and SOLOMON BASSIN, carrying on business under
the name, style and firm of BASSIN'S CUT-RATE
STORES,

Defendants.

1. This action coming on for trial on the 2nd, 3rd, 4th and 5th days of March, 1936, at the Sittings holden at Toronto for the trial of actions without a Jury, in the presence of Counsel for all parties, upon hearing read the pleadings and hearing the evidence adduced and what was alleged by Counsel 20
afore-said, this Court was pleased to direct this action to stand over for Judgment and the same coming on this day for Judgment.

2. THIS COURT DOTH ORDER AND ADJUDGE that this action be and the same is hereby dismissed with costs, including the costs of the Motion for an injunction on which the Order of the Honourable Mr. Justice Hope, dated the 27th day of June, 1934, was made, and the costs of the Motion to take the depositions of E. L. Wallace on which the Order of the Master dated the 15th day of October, 1934, was made, and of taking such depositions there- 30
under, to be paid by the Plaintiff to the Defendants forthwith after taxation thereof.

JUDGMENT SIGNED THIS 30TH DAY OF APRIL, 1936.

“D'ARCY HINDS,”
Registrar.

Entered J. B. 66 Page 233,
May 1st, 1936.
R.M.

In the
Supreme Court
of Ontario

No. 41
Judgment of
McTague J.
30th March, 1936.

NOTICE OF APPEAL

IN THE SUPREME COURT OF ONTARIO.

THE COURT OF APPEAL.

BETWEEN:

THE CANADIAN SHREDDED WHEAT COMPANY, LIMITED
Plaintiff.

—AND—

10 KELLOGG COMPANY OF CANADA LIMITED and SOLOMON
BASSIN, carrying on business under the name, style and firm of
BASSIN'S CUT-RATE STORES,
Defendants

TAKE NOTICE that the plaintiff appeals to the Court of Appeal from the judgment pronounced by the Honourable Mr. Justice McTague on the 30th day of March, 1936, and asks that the said judgment may be reversed and that judgment should be entered for an injunction restraining the defendants from infringing the plaintiff's registered trade marks by the use of the words "Shredded Wheat" or "Shredded Whole Wheat" or "Shredded Whole Wheat Biscuit," or any words only colourably differing therefrom in connection
20 with the sale of biscuits or crackers or cereal foods cooked or prepared for consumption, and from using or selling any biscuit or other food product in the form and appearance of the product manufactured and sold by the plaintiff, or in any form or appearance only colourably differing therefrom, or any form or appearance which is calculated to deceive the purchasing public, and for damages and costs, upon the following grounds:

1. The said judgment is contrary to the evidence and the weight of evidence.
2. The learned Judge erred in holding that the word "Shredded" as applied to whole wheat or biscuits is descriptive and not the proper subject
30 of a trade mark.
3. The learned Judge erred in holding that the words "Shredded Wheat," "Shredded Whole Wheat" and "Shredded Whole Wheat Biscuit" are common words merely descriptive and have not acquired a secondary meaning denoting the product of the plaintiff.
4. The learned Judge erred in holding that the very name of the article manufactured by the plaintiff is "Shredded Wheat" and that such name is not designed to distinguish the article manufactured by the plaintiff from the same article as manufactured by someone else, and that the plaintiff cannot retain the exclusive right to such name.

*In the
Court of Appeal
for Ontario*
—
No. 42
Notice of Appeal
18th April, 1936.
—continued

5. The learned Judge erred in holding that the form of the biscuit as manufactured by the plaintiff is merely the natural form it should take and that the defendant Kellogg Company of Canada Limited is entitled to make its biscuit in the same shape or form as that of the plaintiff's biscuit, and is not required to distinguish the individual biscuit as made by the said defendant from the individual biscuit as made by the plaintiff.

6. The learned Judge held that there is a probability that a customer of a restaurant expecting to receive the plaintiff's product when asking for "Shredded Wheat" would be deceived on receiving the defendant's "Shredded Whole Wheat Biscuit," but erred in holding that the defendant Kellogg Company of Canada Limited should not be compelled to alter the design of its biscuit or otherwise distinguish it from the biscuit of the plaintiff in order to avoid such deception. 10

7. The learned Judge erred in failing to appreciate the fact that the subject matter of Canadian Patent No. 52428 is not the biscuit as manufactured by the plaintiff, and that the patentee nowhere described any such article.

8. The learned Judge should have held that the word "Shredded" is not descriptive of the article made by the plaintiff nor of the process by which it is made, and that the words "Shredded Wheat" constitute a good and valid trade mark of which the plaintiff is the proprietor. 20

9. The learned Judge should have held that the words "Shredded Wheat," "Shredded Wheat Biscuit" and "Shredded Whole Wheat Biscuit" even if originally descriptive, have by long user by the plaintiff and its predecessors acquired a secondary meaning and denote to the trade and to the public the product of the plaintiff or of a particular manufacturer, and that the words "Shredded Wheat" were properly registered as a trade mark.

10. The learned Judge should have held that the shape and form of the plaintiff's biscuit had similarly acquired a secondary meaning and that the defendant Kellogg Company of Canada Limited is not entitled to make its product in the same shape and form or in any shape and form only colourably differing therefrom. 30

11. And upon such further and other grounds as Counsel may advise.

DATED at Toronto this 18th day of April, 1936.

BLAKE, LASH, ANGLIN & CASSELS,
Solicitors for the Plaintiff.

To:
MESSRS. SMART & BIGGAR,
Solicitors for the Defendants.

And to:
MESSRS. McWHINNEY & BROWN,
Their Toronto Agents.

REASONS FOR JUDGMENT

*In the
Court of Appeal
for Ontario*

C.A.
CANADIAN SHREDDED WHEAT

v.
KELLOGG COMPANY OF CANADA
10 LIMITED, et al.

Copy of Reasons for Judgment of
Court of Appeal (Latchford,
C.J.A., Riddell, Middleton,
Masten and Henderson J.J.A.),
delivered November 30th, 1936.

R. C. H. CASSELS, K.C., for the
Plaintiff.
O. M. BIGGAR, K.C., and R. H.
SMART, for the Defendants.

Argued September 30th and October 1st, 1936.

RIDDELL J.A.: Recognizing that we are bound to administer the law as we find it, and are not at liberty to apply our own views of what would be right, I find myself unable to differ from the conclusions of the learned Trial Judge, and think that the appeal must be dismissed with costs.

No. 43
Reasons for
Judgment
—Riddell, J.A.

MIDDLETON J.A.: An appeal from the judgment of the Honourable Mr. Justice McTague dated 30th March, 1936, whereby the action was dismissed with costs.

Reasons for
Judgment
—Middleton, J.A.

The plaintiff for many years manufactured whole wheat biscuits and sold them under the name "Shredded Wheat Biscuit" and kindred names, manufacturing these biscuits under certain patents which have long since expired. After the expiry of the patents it continued to manufacture and sell the biscuits in question.

The defendant The Kellogg Company of Canada, Limited, and its parent company incorporated under the laws of the United States, have manufactured and sold in Canada the product in question in accordance with the provisions of the expired patents and this action is brought for the purpose of obtaining an injunction.

The facts giving rise to the litigation are fully and carefully set forth in the judgment appealed from and need not be here repeated.

It is trite law, as well stated in Kerly on Trade Marks, 6th ed., p. 45:

"Where an article has been introduced as new and has been first manufactured under a patent, the name by which it is known becomes common property so soon as the expiration of the patent right puts an end to the monopoly in the manufacture and sale of the article, and although the name may have down to that time identified the goods with the maker of them, it is no longer available for him as a trademark or trade name."

This is well illustrated by *Linoleum Manufacturing Company v. Nairn*, (1878) 7 Ch. D. 834, where an injunction was sought by the manufacturers of linoleum to prevent the use of the trade name "linoleum". There Fry J. held that the name under which the goods were manufactured and placed

upon the market “only secondarily means the manufacture of the plaintiffs, and has that meaning only so long as the plaintiffs are the sole manufacturers. In my opinion, it would be extremely difficult for a person who has been by right of some monopoly the sole manufacturer of a new article and has given a new name to the new article, meaning that new article and nothing more, to claim that the name is to be attributed to his manufacture alone after his competitors are at liberty to make the same article. It is admitted that no such case has occurred, and I believe it could not occur.”

This law has never been doubted or questioned heretofore.

The same conclusion flows from decisions in the United States. In the 10
Singer Manufacturing Company v. June Manufacturing Co., (1896), 163 U.S.R. 169, at p. 185, the Court said:

“It is self evident that on the expiration of a patent the monopoly created by it ceases to exist, and the right to make the thing formerly covered by the patent becomes public property. It is upon this condition that the patent is granted. It follows, as a matter of course, that on the termination of the patent there passes to the public the right to make the machine in the form in which it was constructed during the patent It equally follows from the cessation of the monopoly and the falling of the patented device into the domain of things public, that along with the public ownership of the device there must 20
also necessarily pass to the public the generic designation of the thing which has arisen during the monopoly, in consequence of the designation having been acquiesced in by the owner, either tacitly, by accepting the benefits of the monopoly, or expressly by his having so connected the name with the machine as to lend countenance to the resulting dedication.”

The same thing in substance was said by the same Court in *Holzapfel's Co. v. Rahtfen's Co.* (1901) 183 U.S.R., at p. 10:

“When the patent expired the exclusive right to manufacture the article expired with it, while the name which described it became, under the facts of the case, necessarily one of description and did not designate the manufacturers. 30
. The words thus became public property descriptive of the article, and the right to manufacture it was open to all by the expiration of the English patent.”

It is here contended that the similarity of the article produced, the biscuit, is a holding out which is objectionable as offending against the principles of fair trade. The article is of necessity itself similar, notwithstanding the endeavour of the plaintiff to show that it might be manufactured in a different shape. The article is marketed in cartons which are totally dissimilar and distinctive. No case whatever is made of “holding out.” The defendant company, and its parent organization in the United States, have a long history 40
behind them and every endeavour is made in the carton to indicate the true source of the manufactured article.

It is some satisfaction to know that this judgment is entirely in accord with the decision of the District Court of the United States in *National Biscuit*

Co. v. Kellogg, January 11th, 1935, a copy of which has been handed to us.
The appeal must be dismissed with costs.

HENDERSON, J.A. agreed with Middleton, J.A.

MASTEN, J.A.: On the hearing of the appeal I inclined to the view that on the expiry of the plaintiff's patents the public (including the plaintiff) was in the same position as though no patents had ever existed, and that as no one for many years availed himself of the right to manufacture and sell the product under the name of Shredded Wheat, the plaintiff was entitled to build up and attach a secondary meaning to that name as indicating its manufacture, in
10 the same way as if no patents had ever existed.

I think that the term "shredded wheat" is not descriptive of the process of manufacture for the wheat is mashed not shredded, but I do think that it is descriptive of the product and that fact tends to increase the difficulty of the plaintiff in establishing a secondary meaning that "shredded wheat" means the plaintiff's product.

But apart from this difficulty on consideration of the reasons of my brother Middleton, which I have had the privilege of perusing, and on perusal of the cases cited by counsel, I reach the same conclusion as my brother and refrain from any re-statement of his reasons. I should add, however, that I have
20 derived additional assistance from the judgment of Parker J. in *Burberrys v. J. C. Cording & Co.* (1909) 26 R.P.C. 693.

If this view is correct then the plaintiff's trade-marks are invalid.

With respect to the plaintiff's "passing off" claim, I observe that the patents (Exhibits 7, 8 and 23) cover the biscuit known as "Shredded Wheat" also the process of manufacture and the machinery used in that process. They have all expired long ago and the exclusive right which the plaintiff and its predecessor enjoyed under them have become *publici juris*. The defendant is consequently entitled to make and use the process and the patented machine employed by the plaintiff prior to the expiry of the patents. In so doing the
30 machine produces a biscuit of the same size and shape as that manufactured by the plaintiff. That seems to me to be a *prima facie* answer to any claim based on the shape, size and general "get-up" of the product. The *prima facie* right is no doubt subject to the qualification that if as a matter of fact the evidence establishes that the defendant's "get-up" is designed to appropriate that of the plaintiff's with a view to deceiving the public and is calculated so to do, then the *prima facie* right of the plaintiff falls to the ground: *William Edge & Sons v. William Niccolls & Sons* [1911] A.C. 693. I think that in this case in view of the reduction in size of the biscuit and the "get-up" of the defendant's cartons the plaintiff fails to bring its claim within the purview
40 of the *Edge* case, and I have grave doubts whether the defendant is bound to make such changes in the appearance of the biscuit as to make it less acceptable to users or more expensive to produce commercially.

For these reasons which are in large measure only a repetition of the admirable reasons of the trial judge, I would dismiss the appeal with costs.

LATCHFORD, C.J.A. agreed with Masten, J.A.

*In the
Court of Appeal
for Ontario*

Reasons for
Judgment
—Henderson, J.A.

No. 43
Reasons for
Judgment
—Masten, J.A.

Reasons for
Judgment
—Latchford, C.J.A.

(\$2.30 Law Stamps).

*In the
Court of Appeal
for Ontario*

No. 44

No. 44
Order of the Court
of Appeal for
Ontario
30th November,
1936

OF
ORDER ~~FOR~~ THE COURT OF APPEAL FOR ONTARIO
IN THE SUPREME COURT OF ONTARIO

THE HONOURABLE THE CHIEF JUSTICE IN APPEAL THE HONOURABLE MR. JUSTICE RIDDELL THE HONOURABLE MR. JUSTICE MIDDLETON THE HONOURABLE MR. JUSTICE MASTEN THE HONOURABLE MR. JUSTICE HENDERSON	}	MONDAY, THE 30TH DAY OF NOVEMBER, A.D. 1936.
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BETWEEN:

10

THE CANADIAN SHREDDED WHEAT COMPANY
LIMITED,

(Plaintiff) Appellant;

—AND—

(SEAL)

KELLOGG COMPANY OF CANADA LIMITED and
SOLOMON BASSIN, carrying on business under the
name, style and firm of BASSIN'S CUT - RATE
STORES,

(Defendants) Respondents. 20

UPON motion made on the 30th September and the 1st October, 1936, unto this Court by Counsel on behalf of the Plaintiff in the presence of Counsel for the defendants by way of appeal from the judgment pronounced by the Honourable Mr. Justice McTague of the High Court on the 30th day of March, 1936, the trial of this action having taken place on the 2nd, 3rd, 4th and 5th days of March, 1936, and judgment having been reserved until that day, the said judgment dismissing this action with costs, upon hearing read the pleadings and proceedings in this action, the evidence adduced at the trial and the said judgment, and upon hearing counsel for both parties,

1. THIS COURT DOTH ORDER that this appeal be and the same is 30 hereby dismissed with costs, to be paid by the plaintiff to the defendants forthwith after taxation thereof.

"D'ARCY HINDS,"
Registrar S.C.O.

Approved,
B.L.A. & C.

Entered O.B. 160, pages 383-4
December 11, 1936.
H.F.

(Law Stamps \$1.40)

No. 45

ORDER

**IN THE SUPREME COURT OF ONTARIO.
IN THE COURT OF APPEAL FOR ONTARIO.**

*In the
Court of Appeal
for Ontario*

No. 45
Order of
Middleton, J.A.,
approving security
and admitting
appeal by
Plaintiff
4th January, 1937.

THE HONOURABLE MR. JUSTICE MIDDLETON.

{ MONDAY, THE 4TH DAY OF
JANUARY, 1937.

BETWEEN:

10

THE CANADIAN SHREDDED WHEAT COMPANY
LIMITED
Plaintiff (Appellant);

—AND—

{ Seal
Supreme Court
of Ontario. }

KELLOGG COMPANY OF CANADA LIMITED and
SOLOMON BASSIN, carrying on business under the
name, style and firm of BASSIN'S CUT - RATE
STORES,
Defendants (Respondents).

20 UPON the application of Counsel for the plaintiff in presence of Counsel
for the defendants, upon hearing read the judgment herein of the Court of
Appeal for Ontario dated the 30th day of November, 1936, and the Bond of
the Canadian Surety Company dated the 30th day of December, 1936, filed
and notice of filing thereof with admission of service endorsed thereon and the
affidavit of Edwin L. Wallace filed in support of the motion, and upon hearing
what was alleged by Counsel aforesaid, and it appearing that the said plaintiff
has under the provisions of the Privy Council Appeals Act, being Chapter 86
of the Revised Statutes of Ontario, 1927, a right of appeal to His Majesty in
His Privy Council:

30 1. IT IS ORDERED that the said Bond be and the same is hereby
approved and allowed as good and sufficient security that the plaintiff herein
will effectually prosecute its appeal to His Majesty in His Privy Council from
the said judgment of the Court of Appeal for Ontario, and will pay such costs
and damages as may be awarded in case the said judgment is affirmed.

2. AND IT IS FURTHER ORDERED that the appeal by the said
plaintiff herein to His Majesty in His Privy Council from the said judgment
of the Court of Appeal for Ontario be and the same is hereby admitted.

3. AND IT IS FURTHER ORDERED that the costs of this applica-
tion shall be costs in the said appeal.

40 W.E.M.
J.A.

"D'ARCY HINDS,"
Registrar,
S.C.O.

Entered O.B. 159, page 573-4,
Jan. 5/37.
E.B.

*In the
Supreme Court
of Ontario*

Exhibits

Exhibit No. 1
Order of Hope J.
June 27, 1934.
(Filed by Plaintiff).

**PART II
EXHIBITS**

EXHIBIT No. 1. (Law Stamps \$1.60)

IN THE SUPREME COURT OF ONTARIO.

THE HONOURABLE MR. JUSTICE HOPE. { WEDNESDAY, THE 27TH DAY OF JUNE,
1934.

BETWEEN:

THE CANADIAN SHREDDED WHEAT COMPANY, LIMITED,
Plaintiff,

—AND—

KELLOGG COMPANY OF CANADA LIMITED and SOLOMON 10
BASSIN, carrying on business under the name, style and firm of
BASSIN'S CUT-RATE STORES,
Defendants.

UPON MOTION made unto this Court this day by Counsel for the plaintiff, for an order restraining, until the trial or other final disposition of this action, the defendants and each of them, their and each of their officers, agents, servants, employees and workmen, from directly or indirectly selling a whole wheat biscuit made in imitation or simulation of the whole wheat biscuit of the manufacture and sale of the plaintiff of particular and distinctive shape, appearance and structure; from using upon cartons or other containers, advertisements or otherwise the names "Shredded Whole Wheat Biscuit," 20
"Shredded Wheat Biscuit" or "Shredded Wheat" in connection with the sale of any food product, whether in biscuit form or otherwise; from using in advertisements or upon cartons or other containers a cut or picture of a biscuit of the particular and distinctive shape, appearance and structure of the plaintiff's biscuit, either alone or in association with the words above mentioned; from using upon cartons or other packages, or in advertisements or otherwise, the plaintiff's registered Trade Mark consisting of the words "SHREDDED WHEAT" or any simulation thereof, and from passing-off 30
any food product, whether in biscuit form or otherwise, as and for the product of the plaintiff, in presence of Counsel for the defendants, upon hearing read the Notice of Motion, the Writ of Summons, the affidavits of William John Wilcox, Jessie M. Herron, Walter Glen Lumbers, John Medland, Thomas Herbert Kinnear and David Ward filed in support of the Motion, and the Exhibits therein referred to, and the depositions of the said William John Wilcox, Walter Glen Lumbers, John Medland, Thomas Herbert Kinnear and David Ward, upon their cross-examinations upon the said affidavits, and the exhibits therein referred to, and the Certificates of Registration of the words "SHREDDED WHEAT" to be used as a specific trade mark in connection with the sale of biscuits and crackers and of cereal foods cooked or prepared for consumption, and upon hearing what was alleged by Counsel for all parties, 40

and Counsel for the defendants having stated that the sales in Canada of the whole wheat biscuits manufactured by Kellogg Company of Battle Creek, Michigan, U.S.A., sample packages of which are marked as Exhibit "B" to the affidavit of William John Wilcox, and as Exhibit "1" to the affidavit of Jessie M. Herron, have been very small, and the defendants by their Counsel without in any way admitting the plaintiff's claim undertaking that they will withdraw from sale all of the said whole wheat biscuits now on the Canadian market and will not sell any of the said whole wheat biscuits in Canada until the trial or other final disposition of this action.

- 10 1. THIS COURT doth not see fit to make any order, save that the plaintiff shall be at liberty to move for the issue of an injunction in the event that the defendants or either of them should fail to carry out and observe the terms of the undertaking hereinbefore set out, and that the costs of this motion be reserved to be disposed of by the Trial Judge.

Entered O.B. 143, pages 371-2,
September 24, 1934
H.F.

"D'ARCY HINDS,"
Registrar S.C.O.

*In the
Supreme Court
of Ontario*

Exhibits

Exhibit No. 1
Order of Hope J.
June 27, 1934.
(Filed by Plaintiff).

EXHIBIT No. 2.

20 IN THE SUPREME COURT OF ONTARIO.

BETWEEN:

THE CANADIAN SHREDDED WHEAT COMPANY, LIMITED,
Plaintiff.

—AND—

KELLOGG COMPANY OF CANADA LIMITED and SOLOMON
BASSIN, carrying on business under the name, style and firm of
BASSIN'S CUT-RATE STORES,
Defendants.

ADMISSIONS

- 30 For the purposes of the trial of this action the defendants admit:
1. That, if Wholesale and Retail Grocers and consumers of the plaintiff's product, Shredded Wheat, in the Provinces of Ontario and Quebec were examined as witnesses, they would testify that the same conditions exist in those Provinces as exist in the other Provinces of Canada as described by the witnesses who have been examined on commission in such other Provinces, and that the same effect shall be given to this admission as would be given to the evidence of such persons if they had been examined as witnesses and had so testified.
2. The facts alleged in paragraphs 2 and 3 of the Statement of Claim,
40 and that by agreement made between The Natural Food Company and the Plaintiff, dated February 11th, 1905, the Plaintiff acquired from The Natural Food Company the goodwill of its business in Canada.
- DATED the 5th day of October, 1935.

"SMART & BIGGAR,"
Solicitors for the Defendants.

Exhibit No. 2
Admissions by
Defendants
October 5, 1935.
(Filed by Plaintiff).

EXHIBIT No. 7.

DOMINION OF CANADA.

(COAT OF ARMS)

PATENT OFFICE.

Certified to be true and correct copies of the original specification and drawings remaining on record in this office, duplicate copies of which were attached to Patent No. 52,428 bearing date the 27th day of May, 1896, and granted to Henry D. Perky, for "Cereal Food or Bread."

(Application for which was filed Dec. 4, 1895.)

As witness the seal of the Patent Office hereto affixed at the City of Ottawa 10
in the Dominion of Canada this 3rd day of January in the year of our Lord
one thousand nine hundred and thirty-six.

[SEAL]

"J. T. MITCHELL,"
Commissioner of Patents.

To All Whom It May Concern:

Be it known that I, HENRY D. PERKY, a citizen of the United States, residing at Boston in the County of Suffolk and State of Massachusetts, manufacturer, have invented and discovered certain new and useful improvements in Cereal Food and Bread, and in the manufacture or preparation of the same, and I do hereby declare that the following is a full, clear and exact 20
description thereof, reference being had to the accompanying drawings, in which:—

Figure 1 is a general view of apparatus for boiling and drying the grain;

Figure 2 is a sectional view of the boiler on line x-x, Figure 1.

Figure 3 is an end view of the drying frame with cage therein.

Figure 4 is a section of a machine for reducing the cooked and dried grain to form the desired product;

Figure 5 is a detail of parts of the same.

The object of the invention is the economic production of a cereal food or bread, which will be wholesome, inviting in appearance, and palatable; such 30
production being accomplished without the addition of injurious properties or compounds and without taking from the grain any of the beneficial qualities provided by nature, and presenting the same in convenient form for service as a superior article of food, without the aid of experts or skilled labor now required to produce bread.

*In the
Supreme Court
of Ontario*

Exhibits

Exhibit No. 7
Certified copy of
the original speci-
fication and draw-
ings attached to
Patent No. 52, 428,
dated 27 May, 1896,
granted to
Henry D. Perky for
"Cereal Food or
Bread."
January 3, 1936.
(Filed by
Defendants).

The usual methods practiced in the manufacture of flour, and the resultant bread therefrom, are such as to detract from the natural and healthful properties possessed by the grain in its original state, while the addition of leavening or raising material, to render the bread light is also detrimental, while the entire method consumes a large amount of time and labor.

According to the improved method which I am now about to describe, of preparing grain food, the wheat or other cereal is taken in the berry form, and after being cleaned and thoroughly washed, is boiled for about one hour, the grain still remaining in the berry form at the close of this operation. The
 10 boiling in addition to cooking the grain thoroughly removes therefrom the extreme outer silicious coating and adherent extraneous matter, and also destroys all insect life and removes the traces thereof. Before removal from the boiler, the grain is seasoned with salt. The wheat, still in grain or berry form, is, nevertheless, just after the boiling, quite soft and its interior, or starchy portion especially, is watery. It can be easily mashed between the finger and thumb, and is not in condition for proper compression until its inner and outer portions are brought more upon an equality in point of consistency. To which end, the grain being removed from the boiler, is allowed to dry for some hours, from twelve to twenty hours being usually sufficient,
 20 until the interior of the berry has, from the loss of some of its water, become more consistent. The grain should be pretty constantly stirred or agitated during this part of the process, to hasten the drying out action, and to prevent incipient fermentation. I prefer, therefore, to dry out the grain in rotating wire-clith barrels or cage tumblers, as hereinafter described.

The berries should now have sufficient interior consistency to enable their outer and interior portions to be effectively incorporated with each other, such incorporation being accomplished by passing the grain between compression rollers, one or both of which is provided with a series of fine circumferential grooves, whereby the berries are mashed, and their outer bran coats, gluten
 30 layers, and starchy interior portions thoroughly incorporated together and forced into the grooves of the roller or rollers, whence the resultant food is discharged by means of a comb or scraper in light, porous and tender threads or filaments into a pan or other receptacle, or upon a moving receiver whereby they may be disposed in layers.

The food as discharged from the rolls is ready for use without further cooking, or it can be shaped for baking in various ways.

The food presented is a purely cereal product, and all the parts of the berry are given to the consumer in attractive form. No chemical change is set up therein by the use of ferments or other foreign ingredients, and the
 40 percentage of water in the food is much less than in ordinary bread.

The article as produced is a food or bread composed of superposed or massed layers or deposits of comparatively dry, externally rough, porous, sinuous threads or filaments of cooked whole wheat, containing intermixed

*In the
Supreme Court
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Exhibits

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granted to
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January 3, 1936.
(Filed by
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—continued

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(Filed by
Defendants.)

—continued

the bran, starch and gluten of the entire berry, and which is absolutely free from leavening or raising material or their products.

Suitable apparatus which may be employed in carrying out the above described process is illustrated in the accompanying drawings and comprises a boiler, suitable rotary wire cloth or perforated holding cages or tumblers adapted to be placed in said boiler, rotating mechanism therefor, drying frames also adapted to receive the holders or cages and rotate the same, a travelling hoist or carrier to move the holders or cages from the boiler to the drying frames, and a reducing or compressing machine for reducing the cooked and dried grain.

10

The letter A designates the boiler, which is usually constructed with double walls and a steam chamber A¹ between said walls, for the application of heat.

Across the boiler at an interval from each other a little greater than the length of the cage or holder B, designed to be rotated therein, are transverse supports C, which are provided with open bearings D, for the reception of the journal portions E, of the shaft F of said cage. The shaft is provided with end extensions G beyond the supports C, and with a toothed wheel H which is keyed thereon.

The boiler is provided with a short power shaft I, having a pinion a, designed to engage the toothed wheel H of the cage, when the latter is in position in said boiler. This shaft and pinion are placed at one side of the boiler, or so as not to interfere when the cage is being lifted from its bearings out of the boiler.

20

The cage may be strongly constructed, with slotted ends, having stout end plates to secure it to its shaft, strong galvanized wire screen forming its cylindrical body portion. In one side an opening is provided to receive a suitable head or cover. The shaft I is provided with fast and loose pulleys, and may be turned by a band from a line shaft. A waste opening or pipe at the bottom of the boiler should be provided in order that the water may be drawn off when desired.

30

At any convenient distance from the boiler are located the drying frames or supports M, of which there is usually a series. Each of these frames or supports is provided with open bearings for the journal portions of the cage shaft, and with a linion c, similar to the pinion a, of the boiler, being carried by a shaft d, adapted to be rotated by belting to a line shaft.

Overhead and extending from above said drying frames to a position above the boiler, is an elevated track N upon which runs a carrier P, which is about as long as the cage. This carrier or traveller P is provided at each end with a fall and tackle T, having at its lower end a hook adapted to engage the end extension G of the cage shaft. Differential or check blocks are preferably used in these falls in order that the cage may be held at any height automatically. Instead of a track, a crane or other carrier device may be employed.

40

A single boiler will serve for a number of cages and drying frames, the boiling being accomplished in a short time compared with the period required for drying out the grain.

The reducing machine J, has a pair of parallel cylinders or rolls J¹ which are journaled to rotate in neat contact with each other and between which the cooked and dried grain is fed from the hopper K. Said rolls are driven by means of gear K¹, and in one or both is formed a series of fine, circumferential grooves. A discharging comb or scraper is provided for the grooved roll or rolls whose teeth travel in the said grooves and remove the product
10 therefrom. L¹ is a suitable receptacle or moving belt upon which the product falls as it is discharged by the said comb or combs.

Having thus described my invention, what I claim as new and desire to secure by Letters Patent, is:

1. A food or bread composed of superposed or massed layers or deposits of comparatively dry, externally rough, porous, sinuous threads or filaments of cooked whole wheat containing intermixed the bran, starch and gluten of the entire berry and which is free from leavening or raising material or other products.

20 2. The process of reducing cereals for food, consisting, first, in cooking the grain with seasoning material, after it has been thoroughly cleaned, without destroying the whole berry form, second, partially drying the grain with agitation until its interior and exterior portions are of substantially the same consistency, and finally, compressing the grain to intimately commingle or incorporate together the outer or bran coats, gluten layers and starchy, interior portions in the form of porous, rough filaments or threads, substantially as specified.

30 3. Apparatus for the preparation of cereals for food, consisting of a boiler, its rotating mechanism, holding cages or tumblers adapted to be rotated in said boiler, drying frames adapted to receive said cages and rotate the same, and means for transferring the cages from the boiler to the drying frames, together with a reducing machine for reducing the cooked and dried grain to filamentous or thread-like form, substantially as specified.

"HENRY D. PERKY,"
Boston, May 6, 1895.

Signed in the presence of

"MARTIN L. CATE."
"MARY E. VAUGHAN."

This is the specification referred to in the affidavit of Henry D. Perky, hereto annexed.

40

"MARTIN L. CATE,"
Notary Public.

(SEAL)

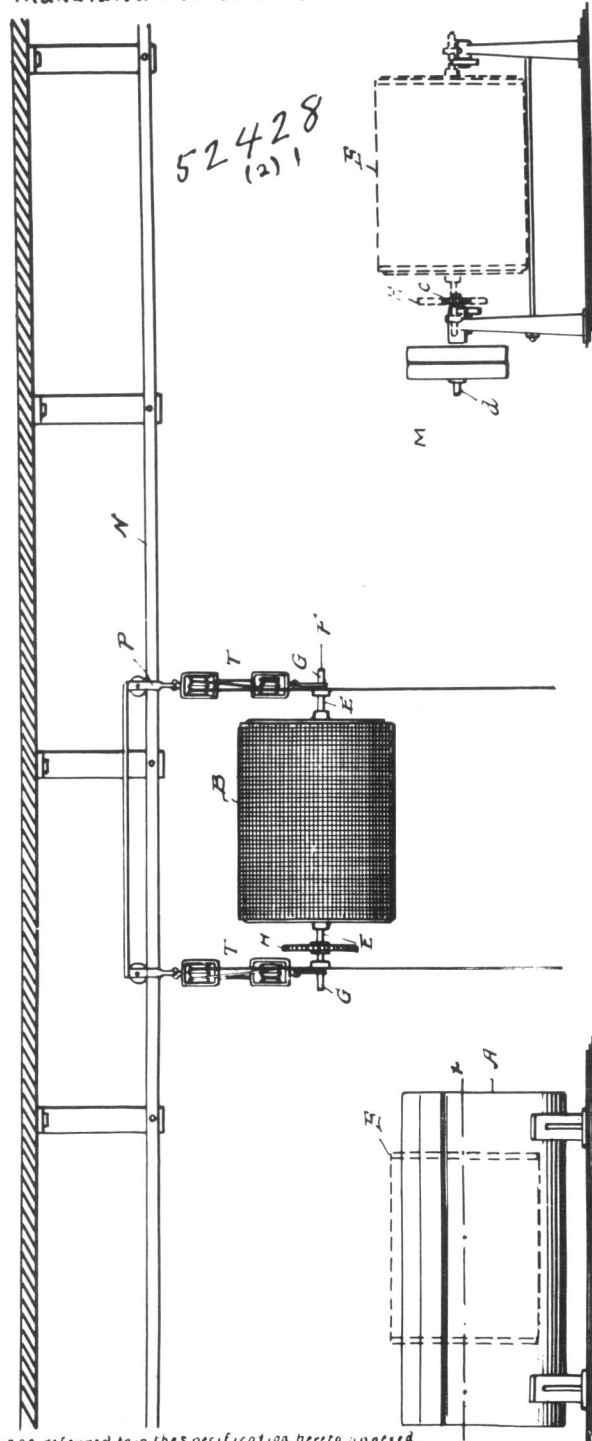
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—continued

Manufacture of Cereal Food or Bread.

Fig. 1.



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 January 3, 1936.
 (Filed by Defendants.)

—continued

Certified to be the drawings referred to in the specification hereto annexed
 Washington D.C., U.S.A., May 6 1895

WITNESSES:
Geo. M. Anderson
Philip C. Massi

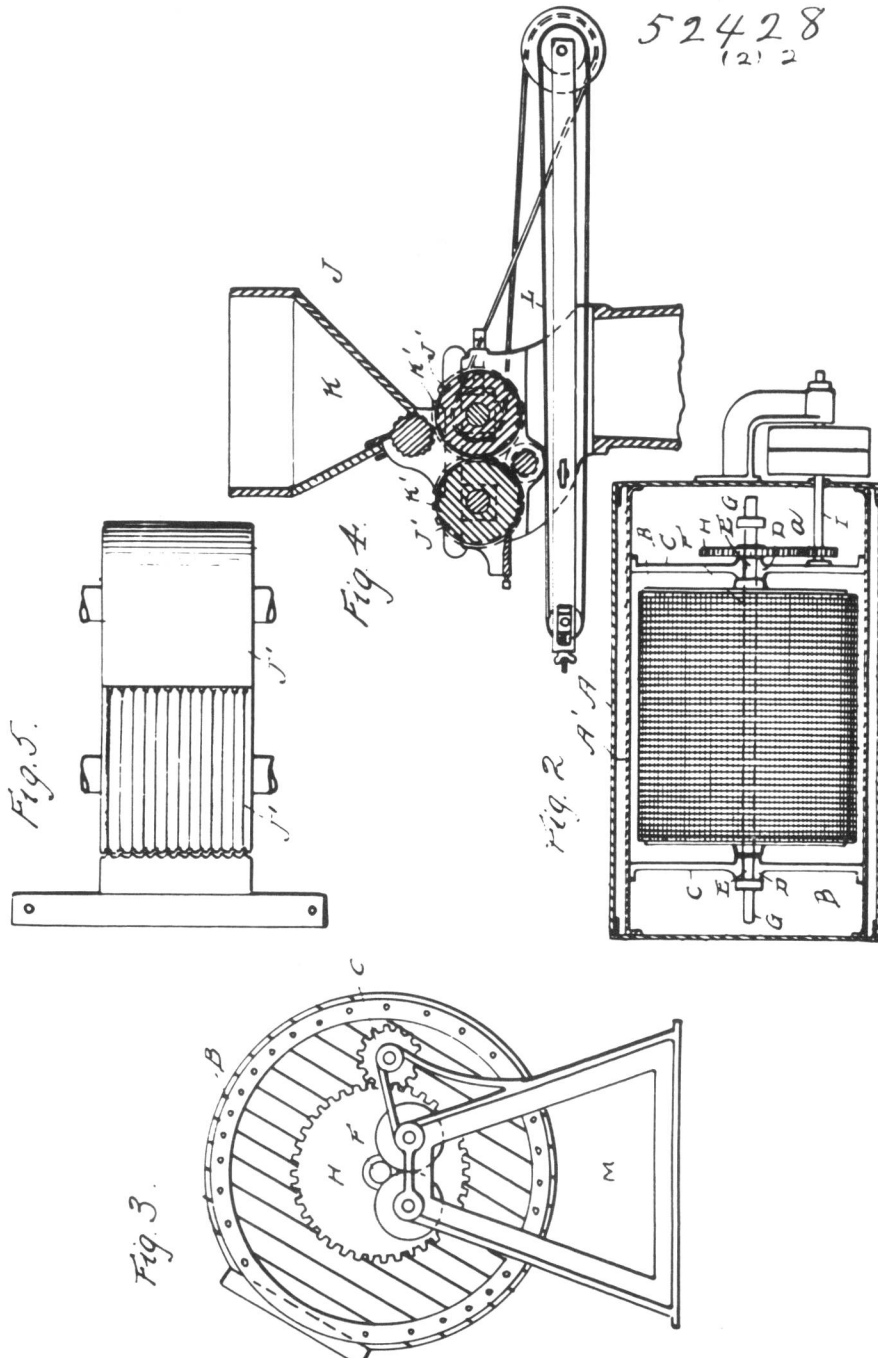
INVENTOR:
Henry D. Perky
 by *Edward Wilkingsby Anderson*
 Attorney

Manufacture of Cereal Food or Bread.

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—continued



Certified to be the drawings referred to in the specification hereunto annexed.
Washington D.C. U.S.A. May 6 1895

WITNESSES:
Geo. H. Anderson
Philip Massi.

INVENTOR:
Henry D. Perky
by Edward Willoughby Anderson
Attorney

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other articles."
Jan. 3, 1936.
(Filed by
Defendants)

EXHIBIT No. 8.

DOMINION OF CANADA.

(COAT OF ARMS)

PATENT OFFICE.

Certified to be true and correct copies of the original specification and drawings remaining on record in this office, duplicate copies of which were attached to Patent No. 72,695, bearing date the 13th day of August, 1901, and granted to Henry D. Perky, for "Machines for Making Biscuit and Other Articles."

(Application for which was filed March 18, 1901.)

10

As witness the seal of the Patent Office hereto affixed at the City of Ottawa in the Dominion of Canada this 3rd day of January in the year of our Lord one thousand nine hundred and thirty-six.

"J. T. MITCHELL,"

Commissioner of Patents.

(SEAL)

SPECIFICATION.

To All Whom it May Concern:

Be it known that I, HENRY D. PERKY, of the City of Niagara Falls, County of Niagara, in the State of New York, United States of America, Manufacturer, having invented certain new and useful

20

IMPROVEMENTS IN AND RELATING TO MACHINES FOR
MAKING BISCUIT AND OTHER ARTICLES.

do hereby declare that the following is a full, clear and exact description of the same:

In the accompanying drawings, illustrating this invention—

Figure 1 is a plan view.

Figure 2 is a side elevation of part of the machine.

Figure 3 is a side elevation of the other part of the machine.

Figure 4 is a transverse view partly in section.

Figure 5 is a transverse section of the pneumatic chamber, valve-work and links. 30

Figure 6 is a side view partly in section showing links.

Figure 7 is a plan view of the bottom or valve seat plate of the pneumatic chamber.

Figure 8 is a longitudinal section of the same.

Figure 9 is a plan view of the upper cutter or suction link.

Figure 10 is a sectional view of the same.

Figure 11 is a plan view of the trough or carrier link.

Figure 12 is a side view of the same.

Figure 13 is a plan view of the lower cutter link.

40

The invention relates mainly to the preparation of articles of food, and particularly to the formation and distribution of crackers, biscuits, and the like, in regular order, as in panning the same, for baking, the object being not only to facilitate the preparation of food in large quantities, but also to promote its sanitary character by avoiding all handling.

The invention consists, in providing a pneumatic transfer in combination with a carrier; in the novel construction and combinations of parts constituting a pneumatic transfer or distributor; in the novel construction and combinations of parts constituting a continuously acting cutting and panning
 10 machine wherein the transfer is made by a pneumatic device, and, finally, in the novel construction and combinations of devices for the purposes set forth, all as hereinafter more particularly described.

In the accompanying drawings, the letter *a* designates frame-work of substantial character, and preferably of iron.

b, represents an endless feeding belt or carrier, consisting of short sectional plates or troughs 1, in which the ribbon of food material is conveyed, being usually fed thereto by a series of reducing machines at *c, c, c*, or in any other desirable manner.

When reducing machines, such as are indicated in the drawings, are
 20 employed, it is designed that the ribbon or continuous layer of material shall be formed by shredding the grain, previously boiled and partly dried, into filaments, through the action of finely grooved rolls. In such a combination, therefore, when the material is fed in a continuous manner, to the endless belt *b*, it is intended that the grain shall not be touched by hand from the time it is grown in the field until after it is cooked and ready for use as food.

The short sectional plates or troughs 1, of the endless carrier *b*, are provided with rollers 2, 2, in order that they shall travel freely on the ways or tracks *p*, provided in the framing. Between the sectional plates or troughs 1, 1,
 30 is a narrow interval of separation 3, for the passage of devices, which serve to divide the ribbon of food material into sections.

d, represents the lower endless divider or cutter chain, which consists of a belt of links 4, having rollers which serve to facilitate their movement on the ways or tracks *q*, of the framing, these ways or tracks having a slight arch or rise at 6, whereby an upward movement of the cutter links 4, is gradually effected, in order to cause the separator blades of said links to pass upward through the intervals of separation 3, of the feeding belt or carrier *b*. Each link 4, is provided with a blade 7, which is transversely arranged in the link body and secured thereto, either rigidly or adjustably, as may be found desirable.

40 The links of the lower divider belt or chain *d*, are arranged to break joints with the trough links 1, in order that the blades of the former shall have proper position to pass upward through the interval between said trough links.

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Compared with the length of the feeding carrier *b*, the lower divider chain is short, being designed only to assist in effecting the separation of the material on the carrier chain into sections.

e, represents the endless chain of suction links 8, 8, which are provided with rollers, to facilitate their movement on the tracks or ways *r*, of the framing. In the construction shown in the drawings, this endless chain *e*, is arranged above the carrier *b*, and is geared to move at the same rate of speed therewith, as is also the lower divider chain *d*.

Each link 8, of the chain *e*, carries a divider blade 9, which may be rigidly secured to its frame, or may be made adjustable or even removable, as in some cases it may be desirable to include the length of several links in a section of the food material on the carrier. The section link 8, consists of a rectangular tubular or open frame, its upper portion having an opening *f*, communicating with a passage 10, through the link, the lower portion of said passage being also open but covered or guarded by a wire cloth or foraminous bearing 11, the design being to allow air to pass upward, or downward, through the link freely as may be required in the operation of the machine. The upper surface of the link 8, is designed to move along in approximate contact with a valve seat *g*, as indicated, in the framing, said valve seat being provided for use in connection with a transverse reciprocating valve plate 12. 10

The endless suction chain *e*, extends beyond the endless carrier *b*, and the endless divider chain *d*, sufficiently to include the pneumatic chamber or chambers 13, 14. Usually a single pneumatic chamber, 13, will be sufficient, this being a suction or exhaust chamber, kept in exhausted condition by means of a suitable exhaust fan, the passage to which is indicated at *k*. But if the food sections are of such character that they adhere too closely to the wire cloth bearings 11, of the suction links, it may be necessary to employ the pressure chamber 14, which is provided with a connection to a blower fan. An opening for the admission of atmospheric air, when the suction is cut off, will, however, usually prove sufficient to release the biscuit or cracker section 30 from the wire cloth bearing 11, which should be treated with paraffine.

The valve plates 12, are arranged in series, in ways or seats *h*, of the frame, these being located in the lower portion or bottom of the pneumatic chamber. The number of valve plates may be equal to, or more than the number of biscuits or food sections designed to form a row on the pan or receiver. Each valve plate is designed to operate in conjunction with a link of the suction chain, above described, as such link comes into position, or nearly into position, below it.

The series of valve plates corresponds with the series of openings *m*, of the pneumatic chamber, and such series is of suitable length to correspond 40 with the length of a pan or receiver, such as is indicated at 15, so that when these openings or suction passages are closed by means of the valve plates, the food sections will be deposited on the pan or receiver in a row. Besides the

openings *m*, openings *n*, are provided in the bottom of the first portion of the pneumatic chamber. The latter openings are not provided with valve plates, as they are designed to be in continuous action, serving to convey the food sections or biscuits, from the carrier, to the valved portion of the pneumatic chamber where the depositing operation is effected.

The valve plates 12, are provided with air passages or openings 16, and with stop or cut-off portions 17.

Below that portion of the pneumatic chamber, which is provided with valves, is located a travelling receiver on which the biscuit are deposited.

10 For this purpose I may use a pan carrier table 18, which consists of an adjustable frame, provided with bearings for the shafts of the sprocket wheels *s*, which carry the transverse sprocket chains 19, or endless carriers on which the pans or trays are laid. These sprocket chains are intermittently operated by means of a pawl 20, and a ratchet wheel 21, of which one of the teeth indicated at *t*, is longer circumferentially than the other teeth, in order to provide sufficient movement of the pans, where they lie adjacent to each other, to pass from the last row of biscuit sections of a filled pan to the place of deposit on the succeeding pan where the first row of biscuit sections is to be dropped.

The ratchet wheel is operated through the pawl 20, and pivoted connection 22, by the crank or eccentric 23, which is carried on the end of the shaft 5, which also carries a series of circular cams 24, 24, each of which corresponds to one of the valve plates. The cams 24, are each formed with a circumferential depression *v*, the depression of each succeeding cam being a little longer than that of the preceding cam, and so arranged that while the rear inclines 25, are in line with each other and designed to operate together, the forward inclines 26, are spirally arranged so that they will act in succession. A series of arms 27, are pivoted to the framing or to the wall of the pneumatic chamber, said arms corresponding in number to the valve plates and being provided with projections *z*, whereby they engage the circular cams hereinbefore referred

30 to. The free ends of these arms are designed to engage projections or arms of the valve plates 12, and serve to give motion to said plates when the cams are rotating. Reverse motion is given to the valve plates by means of springs 28, arranged on the stems of the valve plates, said springs engaging arms 29 of the framing through perforations in which the stems pass. The valve plates are adjustable, the stems being threaded and provided with nuts for the purpose.

The shaft 5, carrying the cams, is operated from the shaft of the end sprocket wheel 31, of the endless chain *e*, by means of bevel gearing indicated at 32.

40 Under the arrangement indicated, while the valves are opened, successively, to avoid waste of the exhaust, they are closed, simultaneously, so that a row of biscuit or food sections is dropped from the links of the pneumatic belt *e*, to the receiver or to the pan on the carrier table.

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The connecting arm or rod 33, which extends from the eccentric 23, to the pawl 20, is usually pivoted at *w*, to provide for lateral play, which is advisable in order to allow adjustment of the pan carrier frame, to accommodate said frame to the drop movement of the valves. This adjustment may be effected by the hand screw 34, having a pivotal seat in the framing.

The operation may be described as follows:

The trough carrier links, conveying the ribbon of food material as it is formed thereon by deposit from the reducing machines, or other feeding devices, move along the tracks of the framing, and pass between the lower divider chain and the suction belt. The links of these belts being provided with knives or blades which operate, preferably by a pressing or abutting movement, serve to subdivide the band or ribbon of food material into sections. After this subdivision, the lower chain of cutter links leaves the work, and the chain of trough-links, having conveyed the food sections under the pneumatic chamber, also leaves the work. The biscuits or food sections being now taken up by the exhaust, and being carried in contact with the wire cloth bearings 11, along under the pneumatic chamber, reach the valved portion, which is normally closed by the mechanism. As each link of the chain *e*, comes under the series of valves, a valve is opened, continuing the suction, until a sufficient number of biscuits has been carried along the valved portion to form a row, when the valves are closed, simultaneously, and all the biscuit of said row are dropped or deposited on the pan or receiver below. This pan or receiver remains stationary long enough to receive the row of biscuits, and is then moved, transversely, by the action of the ratchet and pawl mechanism, the proper distance to attain a position to receive the next row of biscuits, and the action of the valves being repeated, a second row of biscuits is deposited alongside the first row. In the construction illustrated, four rows of biscuits are apportioned to each pan, and the fourth ratchet tooth is made sufficiently longer than the others to allow, in the movement of the pan carrier chains, for the interval between the pans.

It will be observed that the drop motion of the valves, wherein they simultaneously close off the exhaust, is intermittent, taking place in the intervals of the intermittent motion of the pan carrier. In other words, when the pan carrier is still, the simultaneous cut off, or drop motion, of the valves takes place quickly enough to allow time for the drop of the biscuits to the pan before the latter is again shifted. To effect this movement of the valves and the movement of the pan carriers, the cam shaft is usually connected to the shaft of the end pulley of the chain *e*, by means of bevel gearing. In some cases, however, the receiver may have continuous movement.

The machine may be run by means of power applied to a shaft 35, and gearing 36, operating the shafts of the sprocket wheels 37, of the feeding chain; 38, of the lower cutter chain, and 39, of the pneumatic chain.

Having now particularly described and ascertained the nature of my said invention, and in what manner the same is to be performed, I declare that what I claim is:—

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1. A pneumatic panning or distributive depositing machine, consisting of an endless belt, having open sections provided with foraminous bearings, and adapted to operate in connection with a continuous feed, a moving receiver, and means for taking the material from the endless belt by suction and depositing such material on the receiver, substantially as specified.

10 2. A pneumatic panning or distributive depositing machine, comprising an endless feed belt, a moving receiver, means for taking the material from the endless feed belt by suction, and means for depositing such material in regular order in rows or lines on such receiver, substantially as specified.

3. The combination with a travelling carrier or feed belt composed of trough links separated by intervals, of a lower chain cutter belt and an upper chain cutter belt, operating in the intervals between the trough links, the tracks of the frame, whereby the movements of the belts are controlled, and the sprockets and gear devices, whereby the belts are connected to move at the same rate of speed, substantially as specified.

20 4. A machine for forming and depositing in regular order sections of food material, comprising a continuous carrier, or feed chain belt of trough links separated by intervals between such links, a lower cutter chain belt and an upper cutter chain belt of open links operating in the intervals between the trough links, an exhaust chamber having valved openings adapted to act in connection with the upper chain belt, a travelling receiver, and mechanism for operating the parts, substantially as specified.

"HENRY D. PERKY,"
January 14, 1901,
Worcester, Mass.

Signed in the presence of:

30 "LEWIS C. MUZZY," Notary Public.
"EDWARD W. ANDERSON," Attorney-at-Law.

BISCUIT MAKING MACHINE

(5) 1

72695

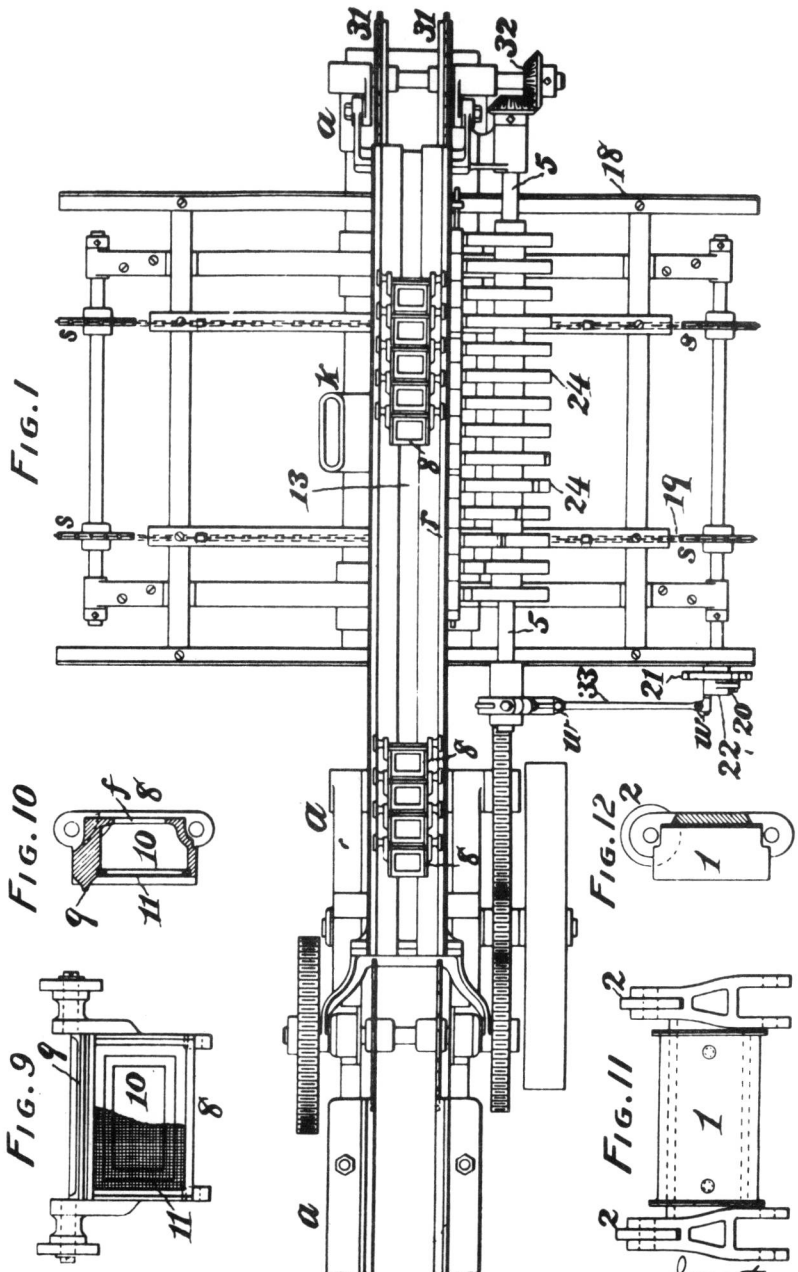
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Jan. 3, 1936.

(Filed by
Defendants)

—continued



Certified to be the drawing referred
to in the specification herewith annexed.

Witness:
Attest:
E. H. ...

Washington, D.C. U.S.A. January 14, 1901

Inventor
Henry D. Perky
by Henry D. Perky
Atty

BISCUIT MAKING MACHINE.

(5)2

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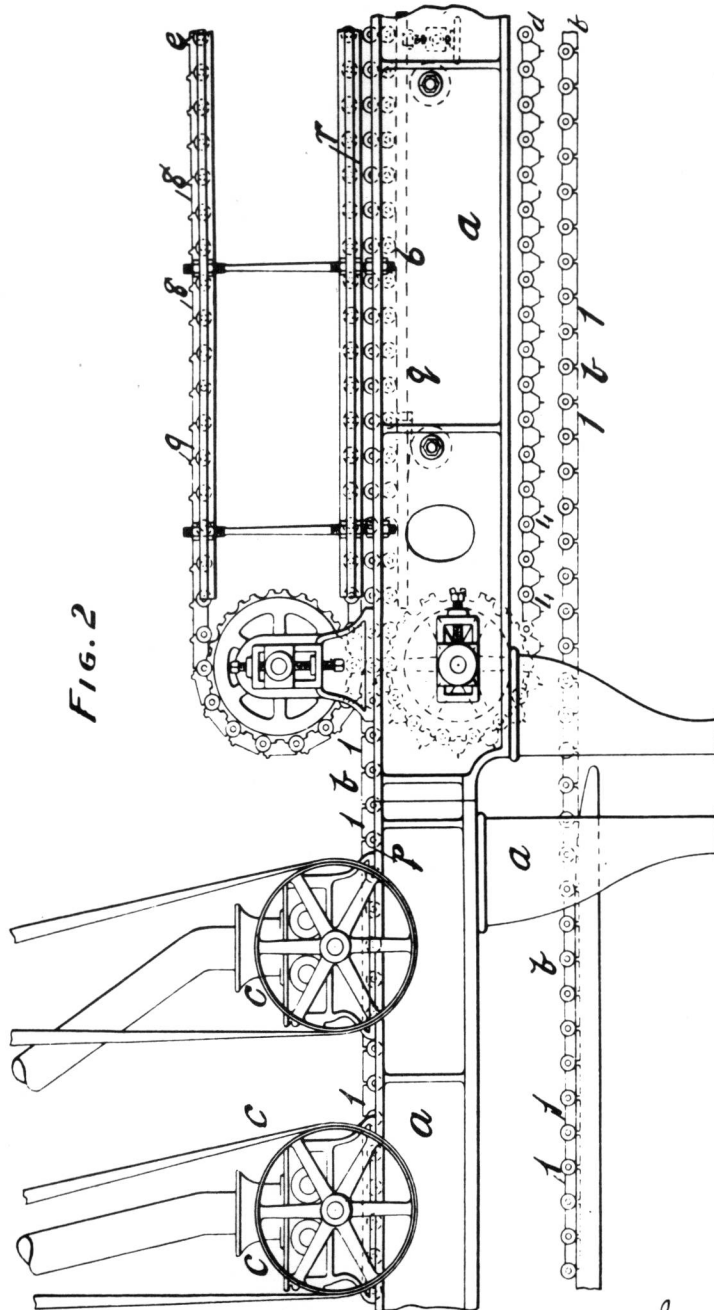


FIG. 2

Certified to be the drawing referred to in the specification hereto annexed

Washington, D.C. 10th January 1901

Inventor
Henry D. Perky

by Henry (Att.)

Witnesses:
J. H. ...
W. ...

BISCUIT MAKING MACHINE

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(Filed by
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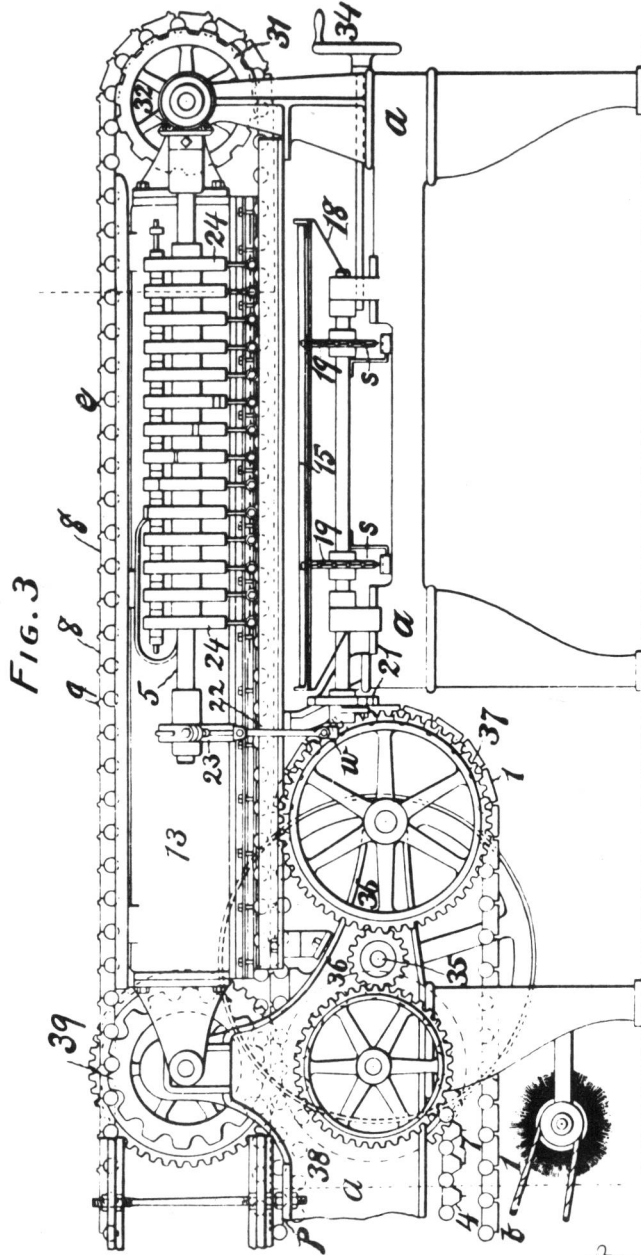


FIG. 3

Witness:
[Signature]

*Certified to be the original as entered
in the specifications hereto annexed.*
Washington, D.C. 14th January 1936

Inventor,
Henry D. Perky
[Signature]

BISCUIT MAKING MACHINE.

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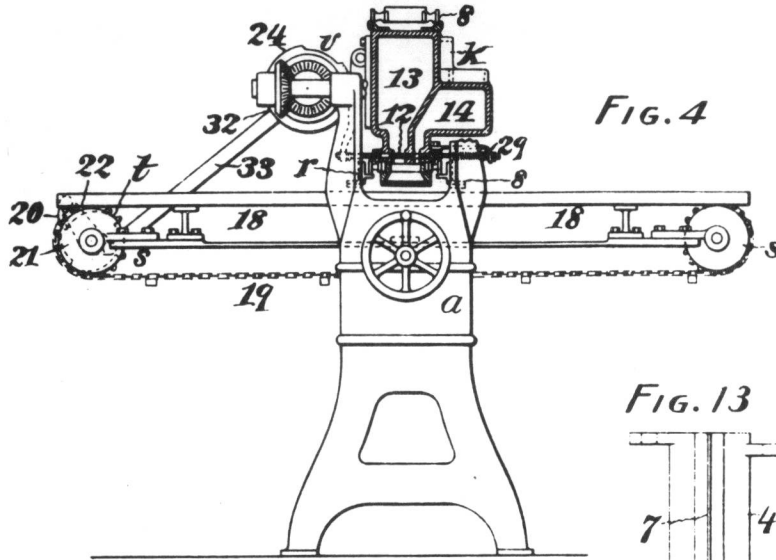


FIG. 4

FIG. 13

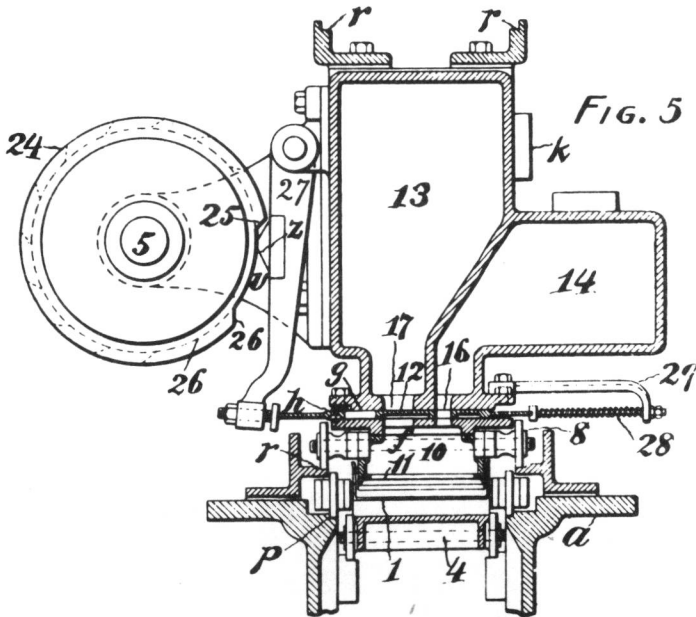
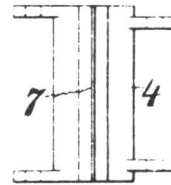


FIG. 5

Witnesses:
Attest

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to in the specification herewith annexed
Washington, D.C. 11th January 14/1901

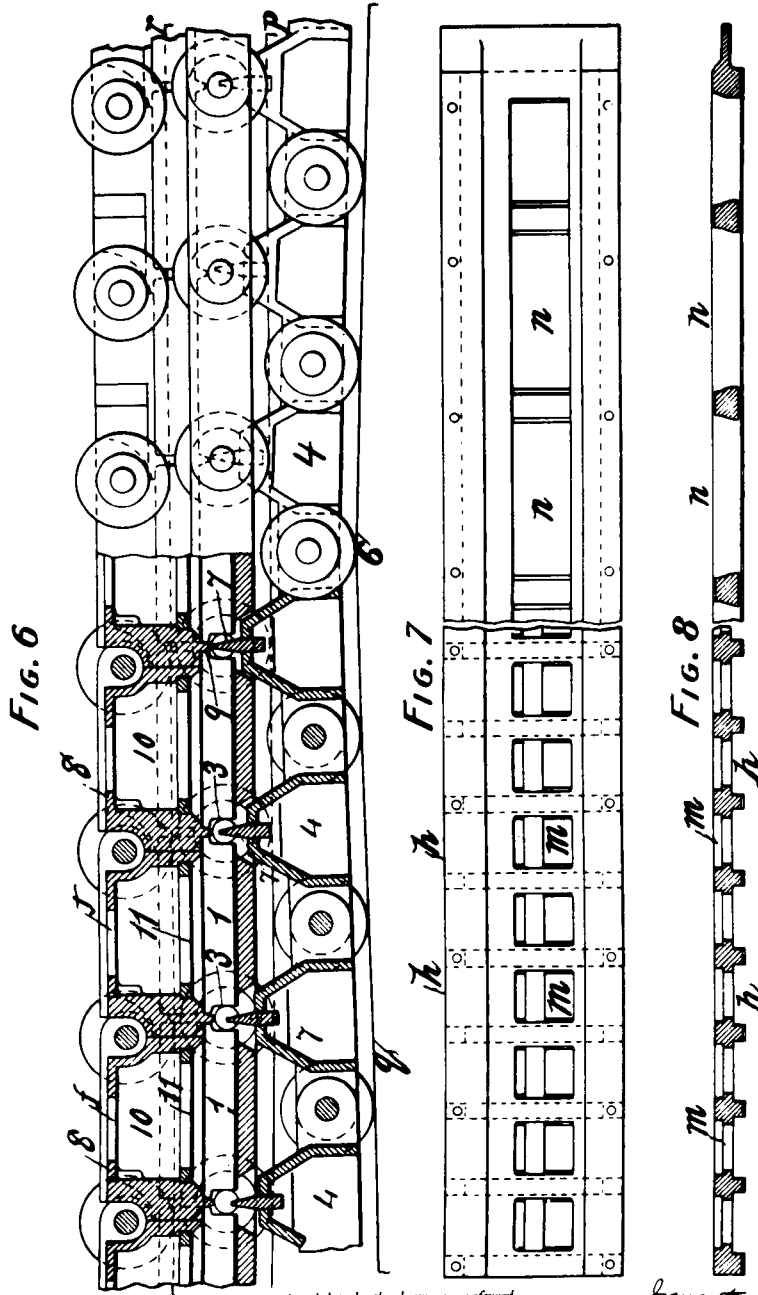
Inventor,
Henry D. Perky.
by Henry C. Hill

BISCUIT MAKING MACHINE.

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to in the specification herewith annexed

Witness:
Arthur
[Signature]

Washington D.C. 14th January 14, 1901

Inventor
Henry D. Perky
by [Signature]
[Signature]

EXHIBIT No. 23.
DOMINION OF CANADA.
(COAT OF ARMS)
PATENT OFFICE.

*In the
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of Ontario*

Exhibits

Exhibit No. 23
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original specifica-
tions and drawings
attached to Patent
No. 88,690, dated
August 9, 1904,
granted to The
Natural Food
Company, assignee
of Henry D. Perky,
for "Crackers"
January 3, 1936.
(Filed by
Defendants)

Certified to be true and correct copies of the original specification and drawing remaining on record in this office, duplicate copies of which were attached to Patent No. 88,690, bearing date the 9th day of August, 1904, and granted to The Natural Food Company, assignee of Henry D. Perky, for "Crackers."

10 (Application for which was filed Nov. 14, 1903.)

As witness the seal of the Patent Office hereto affixed at the City of Ottawa in the Dominion of Canada this 3rd day of January in the year of our Lord one thousand nine hundred and thirty-six.

"J. T. MITCHELL,"

Commissioner of Patents.

(SEAL)

To All Whom it May Concern:

Be it known that I, Henry D. Perky, of the City of Niagara Falls, in the County of Niagara, and State of New York, United States of America, gentleman, having invented certain new and useful improvements in crackers, for which I have obtained a patent in the United States No. 713,795, bearing date November 18, 1902, do hereby declare that the following is a full, clear and exact description of the same, reference being had to the accompanying drawing, in which:

Figure 1 is a plan view of the cracker. Figure 2 is a section on the line 2 2, Figure 1. Figure 3 is an end view of the cracker.

The object of the invention is to provide a cracker of filamentous or shredded wheat or other grain; and the invention consists in the novel formation of the cracker, whereby it is given compact and definite shape, while the fibrous or light structure is preserved with sufficient strength for use as an article of food of the character indicated.

In baking biscuits of wheat filaments, it has been found that there is a tendency for the biscuit to become loose or somewhat open in its middle portion, owing to the swelling in the baking, and such loose structure is not suitable for the flattened or cracker form. It has also been found that when the material is compressed by a mashing action, its filamentous structure, upon which depends its light and porous character, is injured. In order to remedy these conditions and provide a cracker of suitable structure, the article is made in sufficiently thin and flattened form of the filaments, which extend in a more or less undulating manner in one direction, superficial ribs being provided extending in the direction of the filaments and between these ribs elongated depressions having in their bottoms locking indentations. To effect this, the

*In the
Supreme Court
of Ontario*

Exhibits

Exhibit No. 23
Certified copy of
original specifica-
tions and drawings
attached to Patent
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granted to The
Natural Food
Company, assignee
of Henry D. Perky,
for "Crackers"
January 3, 1936.
(Filed by
Defendants)
—continued

filamentous material having its fibers or filaments extending in one direction is laid between baking-irons having teeth studding their inside surfaces in such manner that while the filamentous material is held between the irons during the baking by the approximation of the points of the teeth, the filamentous structure is preserved, the pressure between the points being sufficient to cause the locking of the filaments by direct attachment to each other at regular intervals, so that the cracker will hold its form. In this structure, it will be readily seen that as the material is distributed with its fibers extending in a more or less undulating manner in one direction, the intervals between the teeth of the baking-irons will permit the filaments to extend therein in such a way that the cracker will be provided with superficial ribs *a*, extending in the direction of the filaments. Between these ribs, the cracker will be provided with elongated or channel-form depressions *b*, in the bottoms of which are series of pointed or somewhat pointed indentations *c*, which are caused by the pressure of the points of the teeth of the baking-irons. These indentations are distributed throughout the cracker and show the only places where the material is compressed with any degree of force, the general filamentous structure remaining inviolate, but presenting a close arrangement, which while it does not entirely eliminate the interstics between the filaments as actual compression, would nevertheless reduce the interstics sufficiently to give the article the flattened or cracker character designed. At the same time, the short binding filaments made between the attachment points in series have more strength to sustain the form of the article than if they extended loosely across its entire breadth. The baking-iron whereby this cracker is prepared, is shown in my pending application, Serial No. 24,205, series of 1900. These irons are studded on their inside surfaces with beveled teeth, which when the irons of a set or pair are placed together approximate contact with each other at their points only. The arrangement of teeth is preferably regular, as indicated, and the teeth are made long enough to provide sufficient depth in the intervals between them to avoid mashing the filamentous material, which is thus enabled to preserve its normal light character, the binding being effected at the locking indentations by the approximate contact of the points of the teeth.

What I claim as my invention, and desire to secure by Letters Patent, is:—

A cracker composed of superposed filaments of grain, which are locked together at a series of points at short distances apart by utilizing the adhesive nature of the material at such points, while leaving the filaments comparatively free from one locking point to another in such manner as to provide an open structure of even nature on both sides of the article.

Niagara Falls, Sept. 24th, 1903.

"HENRY D. PERKY." 40

Signed in the presence of:

"ALEXANDER J. PORTER,"

Niagara Falls, N.Y.

"HECTOR W. MACLEAN,"

Niagara Falls, N.Y.

Crackers.

88690

*In the
Supreme Court
of Ontario*

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tions and drawings
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(Filed by
Defendants)

—continued

Fig. 1.

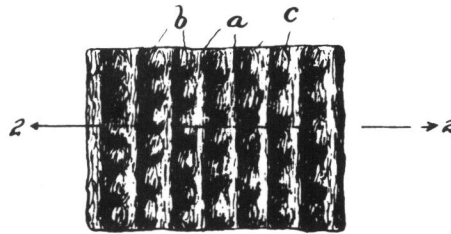


Fig. 2.



Fig. 3.



Witnesses

Certified to be the drawing referred to in the

Inventor

specification hereunto annexed

Henry D. Perky

*R. A. Roswell,
H. S. Sidney*

Washington D. C. Sept. 24, 1903

by Roswell, Clark & Co.

*his
Attorney.*

EXHIBIT No. 32.

DOMINION OF CANADA.

(COAT OF ARMS)

PATENT OFFICE.

Certified to be a true and correct copy of a Specific Trade Mark as registered in The Trade Mark Register No. 73, Folio 17815, in accordance with "The Trade Mark and Design Act," by The Canadian Shredded Wheat Company Limited, on December 23rd, 1912.

As witness the seal of the Patent Office hereto affixed at the City of
10 Ottawa in the Dominion of Canada this 12th day of June, in the year of our
Lord one thousand nine hundred and thirty-four.

(Seal)

"THOS. L. RICHARD,"
Commissioner of Patents.

CANADA.

THIS IS TO CERTIFY that this TRADE MARK (Specific) to be applied to the sale of Shredded Cereal Biscuit, and which consists of a picture of a Shredded Wheat biscuit in a dish, as per the annexed pattern and application,

has been registered in "THE TRADE MARK REGISTER No. 73, FOLIO 17815," in accordance with "THE TRADE MARK AND DESIGN ACT,"
20 by

THE CANADIAN SHREDDED WHEAT COMPANY, LIMITED,
of Niagara Falls, Province of Ontario,

on the 23rd day of December, A.D. 1912.

DEPARTMENT OF AGRICULTURE,
(Copyright and Trade Mark Branch),
Ottawa, Canada, this 23rd day of December, A.D. 1912.

(Signed) GEO. F. O'HALLORAN,
Deputy of the Minister of Agriculture.

To the Minister of Agriculture,
Ottawa, Canada.

30 I, Alexander J. Porter, Vice President of the Canadian Shredded Wheat Company, Limited, of Niagara Falls, in the Province of Ontario, Dominion of Canada, hereby request you to register, in the name of the Canadian

*In the
Supreme Court
of Ontario*

Exhibits

Exhibit No. 32
Certified copy of
Specific Trade
Mark, registered in
Trade Mark
Register No. 73,
Folio 17815, by
The Canadian
Shredded Wheat
Company, Limited,
on Dec. 23, 1913.
June 12, 1934.
(Filed by
Defendants).

*In the
Supreme Court
of Ontario*

Exhibits

Exhibit No. 32
Certified copy of
Specific Trade
Mark, registered in
Trade Mark
Register No. 73,
Folio 17815, by
The Canadian
Shredded Wheat
Company, Limited,
on Dec. 23, 1913.
June 12, 1934.
(Filed by
Defendants).

—continued

Shredded Wheat Company, Limited, a Specific Trade Mark to be used in connection with the sale of Shredded Cereal Biscuit, which I verily believe is the property of said Company, on account of its having been the first to make use of the same.

I hereby declare that the said Specific Trade Mark was not in use to my knowledge by any other person, firm or corporation than The Canadian Shredded Wheat Company, Limited, at the time of its adoption thereof.

The said Specific Trade Mark consists of a picture of a shredded wheat biscuit in a dish.

A drawing of the said Specific Trade Mark is hereunto annexed.

10

Signed at Niagara Falls, New York, this 8th day of June, 1912, in the presence of the two undersigned witnesses.

“ALEXANDER J. PORTER,”

Vice-President of

The Canadian Shredded Wheat Company, Limited.

Witnesses:

“E. M. BRYDGES.”

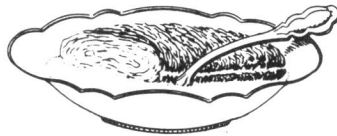
“FRED MASON.”

(Seal)

*In the
Supreme Court
of Ontario*

Exhibits

Exhibit No. 32
Certified copy of
Specific Trade
Mark, registered in
Trade Mark
Register No. 73,
Folio 17815, by
The Canadian
Shredded Wheat
Company, Limited,
on Dec. 23, 1913.
June 12, 1934.
(Filed by
Defendants).
—continued



Proprietor.

The Canadian Shredded Wheat Company Limited.

*by Edward W. Anderson
Attorney*

Witnesses

Stuart Hilder.

*George M. Anderson
17815-73*

EXHIBIT No. 34.

DOMINION OF CANADA.

(COAT OF ARMS)

PATENT OFFICE.

*In the
Supreme Court
of Ontario*

Exhibits

Exhibit No. 34
 Certified copy of
 Patent Office File
 No. 117994, dated
 March 26, 1924, re-
 lating to Specific
 Trade Mark No.
 36195, with photo-
 static copies of de-
 clarations attached.
 Nov. 12, 1935.
 (Filed by
 Defendants).

CERTIFIED TO BE a true and correct copy of Patent and Copyright Office File No. 117994, dated March 26th, 1924, re application for registration of a Specific Trade Mark "SHREDDDED WHEAT," which was registered in the name of THE SHREDDDED WHEAT COMPANY, under No. 36195.

AS WITNESS the seal of the Patent Office hereto affixed at the City of
 10 Ottawa in the Dominion of Canada this 12th day of November, in the year
 of our Lord one thousand nine hundred and thirty-five.

(Seal)

"J. T. MITCHELL,"
 Commissioner of Patents.

117,994

13th September, 1924.

Gentlemen:

TRADE MARK No. 36195, re "SHREDDDED WHEAT" in favour of
 THE SHREDDDED WHEAT COMPANY, of Niagara Falls, N.Y., U.S.A.

Messrs. LANGNER, PARRY, CARD & LANGNER,
 900 F. Street, N.W.,
 20 Washington, D.C., U.S.A.

THE TRADE-MARK AND DESIGN ACT.

IN THE MATTER of an Application to register a Specific Trade-Mark to
 be used in connection with the sale of Biscuits or crackers, consisting of
 the name SHREDDDED WHEAT, filed March 28, 1924, Ser. No. 117994.

I, JOSEPH L. HETHERINGTON, of the City of Halifax, do solemnly
 declare:

1. That I have carried on business at the said City of Halifax, for about
 thirty-five years, and I am well acquainted with the applicant, The Shredded
 Wheat Company, having known it for about twenty years.

30 2. That to my knowledge it has used the name SHREDDDED WHEAT
 as a Trade-Mark in connection with Biscuit or crackers, sold by it in the said
 City of Halifax, for about twenty years, and to the best of my knowledge and
 belief, its user of the said trade-mark has been exclusive.

*In the
Supreme Court
of Ontario*

Exhibits

Exhibit No. 34
Certified copy of
Patent Office File
No. 117994, dated
March 26, 1924, re-
lating to Specific
Trade Mark No.
36195, with photo-
static copies of de-
clarations attached.
Nov. 12, 1935.
(Filed by
Defendants).
—continued

3. That the said name used by the said applicant as a Trade-Mark has acquired a distinctive and secondary meaning denoting and distinguishing the goods manufactured or sold by the said Company.

And I make this solemn declaration conscientiously believing it to be true, and knowing that it is of the same force and effect as if made under oath, and by virtue of the Canada Act.

Declared before me at Halifax, this 14th day of July, A.D. 1924.

“J. L. HETHERINGTON.”

“W. C. MACDONALD,”
Barrister Supreme Court of Nova Scotia
and Notary Public for said Province.

10

THE TRADE-MARK AND DESIGN ACT.

IN THE MATTER of an Application to register a Specific Trade-Mark to be used in connection with the sale of biscuits or crackers consisting of the name SHREDDED WHEAT, filed March 28, 1924, Ser. No. 117994.

I, GEO. C. RAE, of the City of Winnipeg, Buyer for the Western Grocers Ltd., do solemnly declare:

1. THAT I have carried on business at the said City of Winnipeg for about twenty years, and I am well acquainted with the applicant, The Shredded Wheat Company, having known it for about 20 years.

20

2. THAT to my knowledge it has used the name SHREDDED WHEAT as a Trade-Mark in connection with biscuit or crackers sold by it in the said City of Winnipeg for about twenty years, and to the best of my knowledge and belief its users of the said Trade-mark has been exclusive.

3. THAT the said name used by the said applicant as a Trade Mark has acquired a distinctive and secondary meaning denoting and distributing the goods manufactured or sold by the said Company.

AND I make this solemn declaration conscientiously believing it to be true, and knowing that it is of the same force and effect as if made under oath and by virtue of the Canada Evidence Act.

“GEO. C. RAE.”

30

DECLARED before me at the City of Winnipeg, this 6th day of August, A.D. 1924.

“S. B. RICHARDS,”

Commissioner for Oaths in and for the
Province of Manitoba.

THE TRADE-MARK AND DESIGN ACT.

IN THE MATTER of an Application to register a Specific Trade-Mark to be used in connection with the sale of Biscuits or Crackers, consisting of the name SHREDDED WHEAT, filed March 28, 1924. Ser. No. 117994.

WE, MACDONALD'S CONSOLIDATED LTD., of the City of Regina, Sask., do solemnly declare:—

1. That we have carried on business at the said City of Regina for about four years, and we are well acquainted with the applicant, The Shredded Wheat Company, having known it for about 15 years.

10 2. That to our knowledge it has used the named SHREDDED WHEAT as a Trade-mark in connection with Biscuit or Crackers, sold by it in the said City of Regina for many years, and to the best of my knowledge and belief, its user of the said Trade-mark has been exclusive.

3. That the said name used by the said applicant as a Trade-mark has acquired a distinctive and secondary meaning denoting and distinguishing the goods manufactured or sold by the said Company.

And I make this solemn declaration conscientiously believing it to be true, and knowing that it is of the same force and effect as if made under oath, and by virtue of the Canada Act.

20 MACDONALDS CONSOLIDATED LIMITED,
"HUGH B. CRAWFORD,"
Manager.

Declared before me at Regina, this 19th day of July, A.D. 1924.

"S. J. MACCRAE,"

Commissioner for Oaths in and for the
Province of Saskatchewan.

THE TRADE-MARK AND DESIGN ACT.

IN THE MATTER of an Application to register a Specific Trade-mark to be used in connection with the sale of Biscuits or Crackers, consisting of the name SHREDDED WHEAT, filed March 28, 1924. Ser. No. 117994.

30 I, HAROLD V. LEWIS, Clerk, of the City of Calgary, do solemnly declare:—

1. That I have carried on business at the said City of Calgary for about 13 years, and I am well acquainted with the applicant, The Shredded Wheat Company, having known it for about 13 years.

2. That to my knowledge it has used the name SHREDDED WHEAT as a Trade-mark in connection with Biscuit or Crackers, sold by it in the said City of Calgary for about 13 years, and to the best of my knowledge and belief, its user of the said Trade-mark has been exclusive.

*In the
Supreme Court
of Ontario*

Exhibits

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Patent Office File
No. 117994, dated
March 26, 1924, re-
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Trade Mark No.
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Nov. 12, 1935.

(Filed by
Defendants).

—continued

*In the
Supreme Court
of Ontario*

Exhibits

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Certified copy of
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March 26, 1924, re-
lating to Specific
Trade Mark No.
36195, with photo-
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clarations attached.
Nov. 12, 1935.

(Filed by
Defendants).

—continued

3. That the said name used by the said applicant as a Trade-mark has acquired a distinctive and secondary meaning denoting and distinguishing the goods manufactured or sold by the said Company.

And I make this solemn declaration conscientiously believing it to be true, and knowing that it is of the same force and effect as if made under oath, and by virtue of the Canada Act.

“HAROLD V. LEWIS,”
(with Louis Petrie Limited).

Declared before me at City of Calgary, in the Province of Alberta, this 11th day of July, A.D. 1924.

“ARTHUR N. LEDGER,”
A Commissioner for Oaths.

10

THE TRADE-MARK AND DESIGN ACT.

IN THE MATTER of an Application to register a Specific Trade-mark to be used in connection with the sale of Biscuits or Crackers, consisting of the name SHREDDED WHEAT, filed March 28, 1924. Ser. No. 117994.

WE, KELLY, DOUGLAS & Co., LTD., of the City of Vancouver, B.C., do solemnly declare:—

1. That we have carried on business at the said City of Vancouver, for about 28 years, and I am well acquainted with the applicant, The Shredded 20 Wheat Company, having known it for about twenty years.

2. That to my knowledge it has used the name SHREDDED WHEAT as a Trade-mark in connection with Biscuit or Crackers, sold by it in the said City of Vancouver for about twenty years, and to the best of my knowledge and belief, its user of the said Trade-mark has been exclusive.

3. That the said name used by the said applicant as a Trade-mark has acquired a distinctive and secondary meaning denoting and distinguishing the goods manufactured or sold by the said Company.

And I make this solemn declaration conscientiously believing it to be true, and knowing that it is of the same force and effect as if made under oath, and 30 by virtue of the Canada Act.

“KELLY, DOUGLAS & CO., LTD.,”
“W. R. W. McINTOSH,”
General Manager.

Declared before me at Vancouver, B.C., this 11th day of July, A.D. 1924.

“A. L. McWILLIAMS,”
Notary Public or Commissioner for Oaths.

LANGNER PARRY CARD & LANGNER
900 F Street N.W.,
Washington, D.C.

*In the
Supreme Court
of Ontario*

Exhibits

August 22, 1924.

Commissioner of Patents,
Trade Mark & Copyright Department,
Ottawa, Canada.

(Patent Office, Canada,
Aug. 25, 1924.)

Exhibit No. 34
Certified copy of
Patent Office File
No. 117994, dated
March 26, 1924, relat-
ing to Specific
Trade Mark No.
36195, with photo-
static copies of de-
clarations attached.
Nov. 12, 1935.

(Filed by
Defendants).

—continued

10 Sir:—

re: Shredded Wheat Co. Trade-mark Application
"SHREDDED WHEAT" filed March 28, 1924.
No. 117994.

Responsive to the Official Letter dated June 25th, we herewith submit declarations as evidence of user in the Provinces of Halifax, Winnipeg, Regina, Calgary and Vancouver.

We presume that these declarations will complete the evidence necessary in support of the application, and that we may expect the certificate of registration to issue.

20

We are, Sir,
Your obedient servants,
LANGNER PARRY CARD & LANGNER,
Per "JOHN PARRY."

CJA.VS.
encls.

117,994
Gentlemen:—

25th June, 1924.

30 Your letter of the 20th instant, enclosing four declarations by dealers in Quebec, Ottawa, Toronto and Montreal, in connection with the application of the Shredded Wheat Company, of Niagara Falls, N.Y. These declarations only evidence user in the Provinces of Quebec and Ontario, and if your clients could furnish us with further declarations by dealers in Halifax, Winnipeg, Regina, Calgary and Vancouver, we would be in a position to give this application further favourable consideration.

Your obedient servant,

V. QUAGLIA,
for Commissioner of Patents.

Messrs.
Langner, Parry, Card & Langner,
900 F. Street, N.W.,
Washington, D.C., U.S.A.

*In the
Supreme Court
of Ontario*

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Defendants).

—continued

THE TRADE-MARK AND DESIGN ACT.

IN THE MATTER of an Application to register a Specific Trade-mark to be used in connection with the sale of Biscuits or Crackers, consisting of the name SHREDDED WHEAT, filed March 28, 1924. Ser. No. 117994.

I, H. N. BATE & SONS, LIMITED, of the City of Ottawa, do solemnly declare:—

1. That I have carried on business at the said City of Ottawa for about 70 years, and I am well acquainted with the applicant, The Shredded Wheat Company, having known it for about 20 years.

2. That to my knowledge it has used the name SHREDDED WHEAT 10 as a Trade-mark in connection with Biscuit or Crackers, sold by it in the said City of Ottawa for about 20 years, and to the best of my knowledge and belief, its user of the said Trade-mark has been exclusive.

3. That the said name used by the said applicant as a Trade-mark has acquired a distinctive and secondary meaning denoting and distinguishing the goods manufactured or sold by the said company.

And I make this solemn declaration conscientiously believing it to be true, and knowing that it is of the same force and effect as if made under oath, and by virtue of the Canada Act.

H. N. BATE & SONS, LIMITED, 20
"A. GRENNICH BATE," Secretary.

Declared before me at Ottawa, this 10th day of June, A.D. 1923.

"ALBERT B. ULLETT,"
Notary Public.

THE TRADE-MARK AND DESIGN ACT.

IN THE MATTER of an Application to register a Specific Trade-mark to be used in connection with the sale of Biscuits or Crackers, consisting of the name SHREDDED WHEAT filed March 28, 1924. Ser. No. 117994.

I, HUGH BLAIN, of the City of Toronto, do solemnly declare:—

1. That I have carried on business at the said City of Toronto for about 30 fifty-four years, and I am well acquainted with the applicant, The Shredded Wheat Company, having known it for about twenty years.

2. That to my knowledge it has used the name SHREDDED WHEAT as a Trade-mark in connection with Biscuit or Crackers, sold by it in the said

City of Toronto for about twenty years, and to the best of my knowledge and belief, its user of the said Trade-mark has been exclusive.

3. That the said name used by the said applicant as a Trade-mark has acquired a distinctive and secondary meaning denoting and distinguishing the goods manufactured or sold by the said Company.

And I make this solemn declaration conscientiously believing it to be true and knowing that it is of the same force and effect as if made under oath, and by virtue of the Canada Act.

“H. BLAIN.”

10 Declared before me at Toronto, this 10th day of June, A.D. 1924.

“HENRY J. WRIGHT,”
Notary Public.

*In the
Supreme Court
of Ontario*

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Defendants).
—continued

THE TRADE-MARK AND DESIGN ACT.

IN THE MATTER of an Application to register a Specific Trade-mark to be used in connection with the sale of Biscuits or Crackers, consisting of the name SHREDDED WHEAT, filed March 28, 1924. Ser. No. 117994.

I, EMILE CHAPUT, of the City of Montreal, do solemnly declare:—

1. That I have carried on business at the said City of Montreal, for over ten years, and I am well acquainted with the applicant, The Shredded Wheat
20 Company, having known it for over ten years.

2. That to my knowledge it has used the name SHREDDED WHEAT as a Trade-mark in connection with Biscuit or Crackers, sold by it in the said City of Montreal for over ten years, and to the best of my knowledge and belief, its user of the said Trade-mark has been exclusive.

3. That the said name used by the said applicant as a Trade-mark has acquired a distinctive and secondary meaning denoting and distinguishing the goods manufactured or sold by the said Company.

And I make this solemn declaration conscientiously believing it to be true, and knowing that it is of the same force and effect as if made under oath,
30 and by virtue of the Canada Act.

“EMILE CHAPUT.”

Declared before me at Montreal, this 11th day of June, A.D. 1924.

“LEO. DUROCHER,”
Notary Public,
C.C.S.—Dist. of Montreal.

*In the
Supreme Court
of Ontario*

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Patent Office File
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March 26, 1924, re-
lating to Specific
Trade Mark No.
36195, with photo-
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clarations attached.
Nov. 12, 1935.

(Filed by
Defendants).

—continued

THE TRADE-MARK AND DESIGN ACT.

IN THE MATTER of an Application to register a Specific Trade-mark to be used in connection with the sale of Biscuits or Crackers, consisting of the name SHREDDED WHEAT, filed March 28, 1924, Ser. No. 117994.

I, JOSEPH STEPHANUS ROYER, of the City of Quebec, do solemnly declare:—

1. That I have carried on business at the said City of Quebec, for about 30 years, and I am well acquainted with the applicant, The Shredded Wheat Company, having known it for about 20 years.

2. That to my knowledge it has used the name SHREDDED WHEAT 10 as a Trade-mark in connection with Biscuit or Crackers, sold by it in the said City of Quebec for about 20 years, and to the best of my knowledge and belief, its user of the said Trade-mark has been exclusive.

3. That the said name used by the said applicant as a Trade-mark has acquired a distinctive and secondary meaning denoting and distinguishing the goods manufactured or sold by the said Company.

And I make this solemn declaration conscientiously believing it to be true, and knowing that it is of the same force and effect as if made under oath, and by virtue of the Canada Act.

“J. S. ROYER,” General Manager, 20
J. B. Renaud & Cie. Inc.,
Quebec City.

Declared before me at this 9 day of June, A.D. 1924.

“V. CHATEAUVERT, J.P.,”
Notary Public.

LETTERHEAD OF LANGNER, PARRY, CARD & LANGNER
 900 F Street, N.W.
 Washington, D.C.,

(Registrar of Copyrights, Trade Marks, etc.,
 June 23, 1924.)

June 20, 1924.

Commissioner of Patents,
 Trade-mark & Copyright Department,
 Ottawa, Canada.

*In the
 Supreme Court
 of Ontario*

Exhibits

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 Patent Office File
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 relating to Specific
 Trade Mark No.
 36195, with photo-
 static copies of de-
 clarations attached.
 Nov. 12, 1935.
 (Filed by
 Defendants).

—continued

10 Sir: RE: The Shredded Wheat Co. Trade Mark Application
 "Shredded Wheat," Ser. No. 117,994

In response to the official letter dated April 24th, we herewith submit four declarations as to user by prominent dealers in Quebec, Toronto, Ottawa and Montreal.

If further declarations are required as to user in any other of the cities in Canada same will be furnished, but as our clients have selected what appeared to be the most important cities, probably the evidence furnished will suffice to meet requirements.

We are, Sir,

Your Obedient Servants,

"LANGNER PARRY CARD & LANGNER."

CJA/GG.

117,994

24th April, 1924.

Gentlemen:

Adverting to the trade mark application "Shredded Wheat," I would ask to be furnished with a statutory declaration as to user by a prominent dealer in each of several of the leading Cities of Canada as required by circular 10.

I have the honour to be, Gentlemen,

Your obedient servant,

30

Registrar of Trade Marks.

Messrs.
 Langner, Parry, Card & Langner,
 900 F. Street North West,
 Washington, D.C., U.S.A.

*In the
Supreme Court
of Ontario*

Exhibits

TRADE-MARK AND DESIGN ACT.

In the matter of an Application to register a Specific Trade-mark to be used in connection with the sale of Biscuits or Crackers consisting of the words "SHREDDED WHEAT."

I. F. L. MONIN, Secretary, of the Shredded Wheat Company, do solemnly declare:—

1. That I am the Secretary of the Shredded Wheat Company, the applicants for registration of the words "Shredded Wheat" as a specific trademark in connection with the sale of biscuits or crackers.

2. That on or about the first day of January, 1894, my said Company 10 adopted the said trademark and used it in Canada by directly applying it to the packages or cartons containing the biscuits or crackers offered for sale in open market. That since said date the use by my company of the said trademark has been uninterrupted and still continues.

3. That no other person has with the knowledge or consent of my said company used the said mark in Canada in connection with the sale of the goods.

4. Goods bearing the said mark have been extensively sold by my said company in Canada during the aforesaid period, the total value of which cannot be accurately ascertained over so long a period, but has amounted to some Hundreds of Thousands of Dollars. 20

5. The use of the said mark has extended throughout the Dominion of Canada and my said company have had a factory at Niagara Falls, Ontario, for a great number of years.

6. The amount expended by my said company in advertising the said mark in Canada cannot be accurately ascertained, but it has amounted to several Thousands of Dollars.

7. That the words "SHREDDED WHEAT" have been exclusively used by my said company to distinguish their goods from the goods of other manufacturers and dealers and the said words have acquired a distinctive and secondary meaning denoting and distinguishing the goods manufactured or 30 sold by my said company, and the use of such name or word by any other manufacturer or dealer in connection with similar goods, would not only lead to confusion, but would be calculated to mislead the public.

And I make this solemn declaration conscientiously believing it to be true, and knowing that it is of the same force and effect as if made under oath, and by virtue of The Canada Evidence Act.

"F. L. MONIN."

Declared before me at Niagara Falls, New York, this 7th day of March, A.D. 1924.

"M. JENNING," 40
Notary Public.

(SEAL)

Certificate Filed in Niagara County.

Exhibit No. 34
Certified copy of
Patent Office File
No. 117994, dated
March 26, 1924, re-
lating to Specific
Trade Mark No.
36195, with photo-
static copies of de-
clarations attached.
Nov. 12, 1935.

(Filed by
Defendants).

—continued

CANADA
TRADEMARKS

*In the
Supreme Court
of Ontario*

Exhibits

Exhibit No. 34
Certified copy of
Patent Office File
No. 117994, dated
March 26, 1924,
relating to Specific
Trade Mark No.
36195, with photo-
static copies of de-
clarations attached.
Nov. 12, 1935.

(Filed by
Defendants).

—continued

POWER OF ATTORNEY.

The undersigned, The Shredded Wheat Company, of Buffalo Avenue, Niagara Falls, New York State, U.S.A., a corporation of the State of New York., hereby appoints LANGNER, PARRY, CARD & LANGNER, 900 F. Street, N.W., Washington, D.C., with full power of substitution and revocation to prosecute application for the registration of its trademark in the Dominion of Canada, to make alterations and amendments therein, to sign
10 the drawings, to receive the certificate of registration and to transact all business in the Department of Trade and Commerce, Ottawa, Ontario, Canada, connected herewith.

Signed at Niagara Falls, New York State, this 7th day of March, 1924.

THE SHREDDED WHEAT COMPANY,

“By F. L. MONIN,”

Secretary.

(CORPORATE SEAL)

To the Commissioner of Patents,
Ottawa.

LPCL/160:21.

20

DEPARTMENT OF TRADE AND COMMERCE.

Copyright & Trade Mark Branch.

\$25.00

No.

(Patent & Copyright Office,
Mar. 26, 1924.)

Received from———LANGNER, PARRY, CARD & LANGNER

the sum of———Twenty-five———xx Dollars.

Trade Mark Fee.

“J. P. BEAUDOIN,”

Accountant.

“C.C.”

30

*In the
Supreme Court
of Ontario*

Exhibits

Exhibit No. 34
Certified copy of
Patent Office File
No. 117994, dated
March 26, 1924, re-
lating to Specific
Trade Mark No.
36195, with photo-
static copies of de-
clarations attached.
Nov. 12, 1935.
(Filed by
Defendants).
—continued

LETTERHEAD—LANGNER, PARRY, CARD & LANGNER
900 F. Street, N.W.
Washington, D.C.,

(Registrar of Trade Marks, Copyrights, etc.,
Mar. 26, 1924.)
March 24, 1924.

Commissioner of Patents,
Trade-Mark & Copy-right Bureau,
Ottawa, Canada.

Sir:

RE: The Shredded Wheat Co., T. M. Appln.
"Shredded-Wheat"

10

Enclosed herewith please find documents for a specific trade-mark application in the name of the Shredded Wheat Co. for the word "Shredded Wheat" in respect of biscuits or crackers.

Included in the documents is a declaration under Rule X as evidence of the user of the mark in Canada.

A draft on the bank of Montreal for \$25.00 (Canada) is enclosed for the application fee.

We are, Sir,

20

Your Obedient Servants,

CJA/HF
\$25.00.

"LANGNER, PARRY, CARD & LANGNER."

EXHIBIT No. 33.

DOMINION OF CANADA.

(COAT OF ARMS)

PATENT OFFICE.

Exhibit No. 33
Certified copy of
Specific Trade
Mark Register No.
161, Folio 36195,
by The Canadian
Shredded Wheat
Company on
September 13,
1924, and cancelled
on September 27,
1927.
June 12, 1934.
(Filed by
Defendants).

CERTIFIED to be a true and correct copy of a Specific Trade Mark as registered in The Trade Mark Register No. 161, Folio 36195, in accordance with "The Trade Mark and Design Act," by The Shredded Wheat Company, 30 on September 13th, 1924, and cancelled in accordance with the 18th section of the Trade Mark and Design Act, on September 27th, 1927.

AS WITNESS the seal of the Patent Office hereto affixed at the City of Ottawa in the Dominion of Canada this 12th day of June, in the year of our Lord one thousand nine hundred and thirty-four.

(SEAL)

"THOS. L. RICHARD,"
Commissioner of Patents.

In the
Supreme Court
of Ontario

Exhibits

Exhibit No. 33
Certified copy of
Specific Trade
Mark Register No.
161, Folio 36195,
by The Canadian
Shredded Wheat
Company on
September 13,
1924, and cancelled
on September 27,
1927.

June 12, 1934.
(Filed by
Defendants).

—continued



Canada

This is to Certify that this Trade Mark

(Specific) to be applied to the sale of Biscuits or Crackers, and
which consists of the words:

"SHREDDED WHEAT",

as per the annexed pattern and application,

*has been registered in The Trade Mark Register No. 161,
Folio 36195, in accordance with "The Trade Mark and
Design Act" by*

THE SHREDDED WHEAT COMPANY,
of Niagara Falls, State of New York,
United States of America,

on the 13th day of September, A.D. 1924,

Patent and Copyright Office
(Copyright and Trade Mark Branch)
OTTAWA, CANADA

this 13th day of September, A.D. 1924.

(Signed) Geo. F. O'Halloran,

COMMISSIONER OF PATENTS

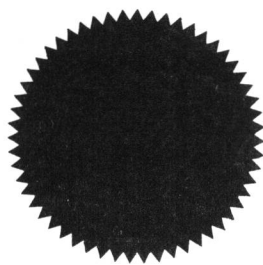


Exhibit No. 33
Certified copy of
Specific Trade
Mark Register No.
161, Folio 36195,
by The Canadian
Shredded Wheat
Company on
September 13,
1924, and cancelled
on September 27,
1927.

June 12, 1934.
(Filed by
Defendants).
—continued

TRADEMARKS

APPLICATION FOR REGISTRATION OF
A SPECIFIC TRADEMARK

WE, The Shredded Wheat Company, of Niagara Falls,
State of New Ycrk, U.S.A.

hereby request you to register in our name a Specific Trade
Mark to be used in connection with the sale of biscuits or
Crackers.

which we verily believe is ours on account of having been
the first to make use of the same.

We hereby declare that the said Specific Trademark
was not in use to our knowledge by any other persons than
ourselves at the time of our adoption thereof.

The said Specific Trademark consists of the words
"SHREDDED WHEAT"

A drawing of the said Specific Trademark is here-
unto annexed.

Signed at *Niagara Falls, New York State*
this *7th* day of *March* 192*4* in the presence of
the two undersigned witnesses.

THE SHREDDED WHEAT COMPANY

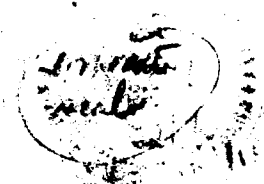
[Signature]
Secretary

Witnesses:
[Signature]
[Signature]

TO THE COMMISSIONER OF PATENTS, OTTAWA.

LPOL/161:21

36195-161



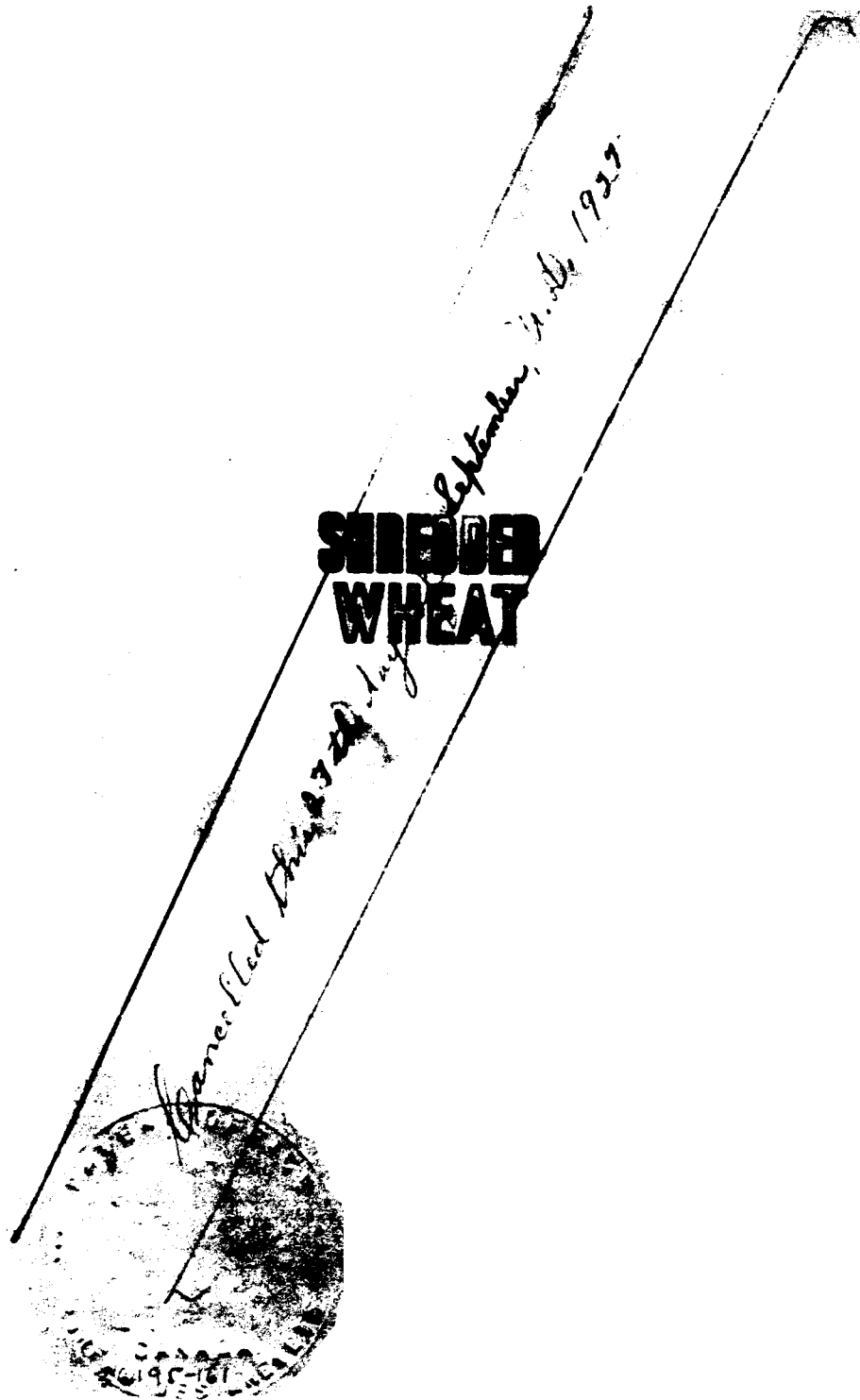
In the
Supreme Court
of Ontario

Exhibits

Exhibit No. 33
Certified copy of
Specific Trade
Mark Register No.
161, Folio 36195,
by The Canadian
Shredded Wheat
Company on
September 13,
1924, and cancelled
on September 27,
1927.

June 12, 1934.
(Filed by
Defendants).

—continued



CANCELLATION.

In accordance with the 18th section of the Trade Mark and Design Act, the Trade Mark here entered on Folio 36195, of Register No. 161, is hereby cancelled.

Record No. 135,636.

Patent and Copyright Office,
(Copyright and Trade Mark Branch),
Ottawa, Canada, this 27th day of Sep-
tember, A.D. 1927.
10 Trade Mark "Shredded Wheat.

(Signed) THOS. L. RICHARD,
Commissioner of Patents.

*In the
Supreme Court
of Ontario*

Exhibits

Exhibit No. 33
Certified copy of
Specific Trade
Mark Register No.
161, Folio 36195,
by The Canadian
Shredded Wheat
Company on
September 13,
1924, and cancelled
on September 27,
1927.
June 12, 1934.
(Filed by
Defendants).
—continued

EXHIBIT No. 35.

DOMINION OF CANADA.

(COAT OF ARMS)

PATENT OFFICE.

CERTIFIED to be a true and correct copy of Patent and Copyright
Office File No. 135636, dated June 18th, 1927, re application for registration
of a Specific Trade Mark "SHREDDED WHEAT," in the name of The
Canadian Shredded Wheat Company Limited.

Exhibit No. 35
Certified copy of
Patent Office File
No. 135636, dated
June 18, 1927,
relating to applica-
tion for registration
of Specific Trade
Mark "SHREDDED
WHEAT" in the
name of The
Canadian Shredded
Wheat Company,
with declarations,
etc., attached.
June 12, 1934.
(Filed by
Defendants).

AS WITNESS the seal of the Patent Office hereto affixed at the City of
20 Ottawa in the Dominion of Canada this 12th day of June, in the year of our
Lord one thousand nine hundred and thirty-four.

"THOS. L. RICHARD,"

Commissioner of Patents.

(SEAL)

*In the
Supreme Court
of Ontario*

Exhibits

LETTERHEAD—OSLER, HOSKIN & HARCOURT
Dominion Bank Building
Toronto, 2,

(Commissioner of Patents, Ottawa
Mar. 26, 1928)

March 24th, 1928.

Exhibit No. 35
Certified copy of
Patent Office File
No. 135636, dated
June 18, 1927,
relating to applica-
tion for registration
of Specific Trade
Mark "SHREDDED
WHEAT" in the
name of The
Canadian Shredded
Wheat Company,
with declarations,
etc., attached.
June 12, 1934.

(Filed by
Defendants).

—continued

Thos. L. Richard, Esq.,
Acting Commissioner of Patents,
Ottawa, Canada.

Dear Sir:

re: "SHREDDED WHEAT" Trademark
Your File 135,636—Our File 4768

10

We thank you for your letter of March 20th enclosing us certified dupli-
cate of Trademark No. 43550 re "SHREDDED WHEAT."

Yours very truly.

"OSLER, HOSKIN & HARCOURT."

AWL/JM.

{ Canada
Received
"D" Mar. 26, 1928
{ Commissioner of Patents. }

20

Circular No. 1.

LETTERHEAD

PATENT AND COPYRIGHT OFFICE.
Copyright and Trade Mark Branch.

File No. 135,636

Ottawa, Canada, 20th March, 1928.

Gentlemen:

I beg to forward you the herewith enclosed certified Duplicate of TRADE
MARK No. 43550, re "SHREDDED WHEAT", in favour of THE CAN-
ADIAN SHREDDED WHEAT COMPANY LTD.

30

Your obedient servant,

"THOS. L. RICHARD,"
Acting Commissioner.

Messrs. Osler, Hoskin & Harcourt,
Dominion Bank Bldg.,
Toronto 2, Ont.

LETTERHEAD--OSLER, HOSKIN & HARCOURT
 Dominion Bank Building
 Toronto, 2,

(Commissioner of Patents, Ottawa
 Mar. 3, 1928.)

March 2nd, 1928.

Thos. L. Richard, Esq.,
 Acting Commissioner of Patents,
 Trademark and Patent Office,
 10 Ottawa, Canada.

Dear Sir:

re: "SHREDDDED WHEAT" Trademark,
 Our File No. 4768.

*In the
 Supreme Court
 of Ontario*

Exhibits

Exhibit No. 35
 Certified copy of
 Patent Office File
 No. 135636, dated
 June 18, 1927,
 relating to applica-
 tion for registration
 of Specific Trade
 Mark "SHREDDDED
 WHEAT" in the
 name of The
 Canadian Shredded
 Wheat Company,
 with declarations,
 etc., attached.
 June 12, 1934.
 (Filed by
 Defendants).
 --continued

I confirm my conference with you yesterday.

On September 23rd, 1927, our Ottawa agent handed to you formal applica-
 tion of the American Company for cancellation of the mark "SHREDDDED
 WHEAT" as applied to biscuits and crackers registered in the name of such
 Company under date of September 13th, 1924, in Register No. 161, at Folio
 136195.

20 I further confirm our conference yesterday and state that I withdraw the
 application for "SHREDDDED WHEAT" as applied to biscuits, crackers and
 cereal foods cooked or prepared for consumption. This leaves the file open,
 as I understand, for application of the Canadian Company, namely The
 Canadian Shredded Wheat Company Limited, for registration of the trade-
 mark "SHREDDDED WHEAT" as applied to biscuits and crackers, duplicate
 of which application, formerly returned to us under date of August 24th, 1927,
 I delivered to you yesterday so as to put in the hands of the Department the
 application in duplicate as required.

30 If, by any chance, the fee on this application has been returned, or has
 not been received by the Department, I will, of course, remit it promptly.

I would be glad to hear from you that the trademark as now applied for
 by the Canadian Company, applicable to biscuits and crackers, has been duly
 registered.

Yours very truly,
 "BRITTON OSLER."

BO/JM.

*In the
Supreme Court
of Ontario*

16th December, 1927.

Exhibits

Exhibit No. 35
Certified copy of
Patent Office File
No. 135636, dated
June 18, 1927,
relating to applica-
tion for registration
of Specific Trade
Mark "SHREDDED
WHEAT" in the
name of The
Canadian Shredded
Wheat Company,
with declarations,
etc., attached.
June 12, 1934.

(Filed by
Defendants).

—continued

Dear Mr. Osler:—

Re: Trade Mark Application No. 135,636
"Shredded Wheat."

I am in receipt of your letter of the 14th instant in the above.

I shall give the case my personal attention and you may rest assured that any doubt in the matter will be resolved in favour of the applicant.

Yours very truly,
(Sgd.) THOS. L. RICHARD,
Acting Commissioner of Patents. 10

Britton Osler, Esq.,
c/o Messrs. Osler, Hoskin & Harcourt,
The Dominion Bank Bldg.,
Toronto 2, Ont.

LETTERHEAD—OSLER, HOSKIN & HARCOURT

Dominion Bank Building,
Toronto 2,

(Commissioner of Patents, Ottawa,
Dec. 15, 1927.)

Thos. L. Richard, Esq.,
Acting Commissioner of Patents,
Ottawa, Canada.

December 14th, 1927. 20

Dear Mr. Richard:

Re: "SHREDDED WHEAT" TRADEMARK
Our File No. 4768.

When in Ottawa Monday last I had intended to take up and discuss with you, not only the trademark I then went for, but the "Shredded Wheat" trademark, but as the office understood from our agent in Ottawa, Mr. Larmonth, that the matter was progressing normally, and that there was no difficulty in the way, I did not think it necessary to waste your time. 30

I was very much disturbed this morning to receive a formal notification that the application had been refused. I understand from Mr. Larmonth that the matter is being re-opened, and trust that no difficulties will occur in the granting of our application. If they do, I would much appreciate it if, before a final ruling against us were made, you would give me an opportunity of discussing the matter with you, although I trust this will not be necessary, and the matter will be disposed of in the routine way.

BO/JM.

Yours very truly,
"BRITTON OSLER".

LETTERHEAD—LARMONTH & OLMSTED
Ottawa, Canada,

(Commissioner of Patents, Ottawa,
Dec. 16, 1927.)

December 15th, 1927.

Thomas L. Richard, Esq.,
Acting Commissioner of Patents,
Ottawa.

Dear Sir:

10 Re: SHREDDED WHEAT—YOUR FILE 135636.

Referring to the interview I had with you yesterday, I may say that to-day I received from my principals, Messrs. Osler, Hoskin & Harcourt, your letter of December 13th, refusing the application.

Yesterday you said the matter would have to be reopened and I think this should be done as from the facts, I submit, that this trade mark should be allowed for the following reasons:

The applicants, the Canadian Shredded Wheat Company, Limited, were the first to use this mark, and their right to it was recognized by your office as a Trade Mark, was granted to them on the 23rd day of December, 1912.
20 See Trade Mark Register 73, Folio 17815. This Mark was specific to the sale of Cereal Biscuits and consisted of a picture of a Shredded Wheat in a dish.

The new application is by the same Company and consists of the words "Shredded Wheat" and is specific to the sale of biscuits, crackers and cereal foods cooked or prepared for consumption. There is really a very slight difference in this application and the Canadian Shredded Wheat Company Limited, have certainly proved that the words "Shredded Wheat" have been identified solely with their commodity for over Twenty-five (25) years as proved by the affidavits sent to you in our letter of November 30th.

When you wrote to Messrs. Osler, Hoskin and Harcourt on August 24th,
30 you advised them that the words "Shredded Wheat" had been registered on the 13th of September, 1924, by the Shredded Wheat Company of Niagara Falls, New York, Register 161, folio 36195. Here again your Office recognized the right to the words and in our letter to you of September 23rd, 1927, we sent a petition from this Company praying that the Mark in register 161, folio 36195 be cancelled.

This I think makes the way clear for our application and I submit that we have every reason to ask that it be granted.

Yours very truly,

NGL/DJ.

"NORMAN G. LARMONTH".

40 P.S.—We return herewith the copy of the application which you sent to Messrs. Osler and Company in your letter of December 13th.

*In the
Supreme Court
of Ontario*

Exhibits

Exhibit No. 35
Certified copy of
Patent Office File
No. 135636, dated
June 18, 1927,
relating to applica-
tion for registration
of Specific Trade
Mark "SHREDDED
WHEAT" in the
name of The
Canadian Shredded
Wheat Company,
with declarations,
etc., attached.
June 12, 1934.
(Filed by
Defendants).

—continued

*In the
Supreme Court
of Ontario*

Exhibits

Exhibit No. 35
Certified copy of
Patent Office File
No. 135636, dated
June 18, 1927,
relating to applica-
tion for registration
of Specific Trade
Mark "SHREDDED
WHEAT" in the
name of The
Canadian Shredded
Wheat Company,
with declarations,
etc., attached.
June 12, 1934.
(Filed by
Defendants).
—continued

The Canadian Shredded Wheat Co., Ltd.,
per—Messrs. Osler, Hoskin & Harcourt,
Dominion Bank Bldg.,
Toronto 2, Ont.

PATENT OFFICE,
Canada.

Ottawa, Dec. 13th, 1927.

Please find papers herewith enclosed, and below a communication from the Examiner in charge of your application, Serial No. 135,636, for

SHREDDED WHEAT.

"THOS. L. RICHARD",
Acting Commissioner.

10

Shredded Wheat products are not the exclusive property of manufacture of Canadian Shredded Wheat Company and the words "Shredded Wheat" are purely descriptive of the products. If the products are otherwise than shredded wheat then the mark is misleading.

The affidavits accompanying this application do not give weight to this application because a buyer in asking for shredded wheat does not naturally mean the product of the Canadian Shredded Wheat Company, Limited, but simply infers that the article which he wishes to buy is shredded wheat and if he wishes to procure a certain brand he naturally asks for that brand.

The Trade Mark sought would impose a great restriction on those manu- 20
facturing shredded wheat products and would restrain them in stating the quality of goods they were selling.

The application is refused and a refund cheque will be mailed to you on request for same.

A copy of your application is herewith enclosed.

The copy of application mailed to applicant must be returned to this office with each letter in reply to official action.

Any communication respecting this application should give the serial number and should be addressed to "The Commissioner of Patents, Ottawa."

DOMINION OF CANADA.

*In the
Supreme Court
of Ontario*

Exhibits

TRADEMARK AND DESIGN ACT.

Exhibit No. 35
Certified copy of
Patent Office File
No. 135636, dated
June 18, 1927,
relating to applica-
tion for registration
of Specific Trade
Mark "SHREDDED
WHEAT" in the
name of The
Canadian Shredded
Wheat Company,
with declarations,
etc., attached.
June 12, 1934.
(Filed by
Defendants).
—continued

APPLICATION FOR REGISTRATION OF A SPECIFIC TRADEMARK

We, The Canadian Shredded Wheat Company Limited of the City of
Niagara Falls in the Province of Ontario, Canada, hereby request you to
register in the name of The Canadian Shredded Wheat Company Limited a
specific trademark to be used in connection with the sale of biscuits, crackers
and cereal foods cooked or prepared for consumption which we verily believe
is ours on account of our having continuously used the same for more than
10 twenty-two years and having succeeded to all the Canadian business, good-
will, trademarks and trade names of the company which was the first to make
use of the same.

We hereby declare that the said specific trademark was not in use to our
knowledge by any other person than ourselves at the time of our adoption
thereof.

The said specific trademark consists of the words "SHREDDED
WHEAT."

A drawing of the said specific trademark is hereunto annexed.

Signed at the City of Niagara Falls in the State of New York, one of the
20 United States of America, this 29th day of April, 1927, in the presence of the
two undersigned witnesses.

Witnesses:

"J. W. LANGMUIR"

"PEARL ROYER."

(SEAL)

} THE CANADIAN SHREDDED WHEAT
COMPANY LIMITED,

"CHAS. H. BROWN, JR.,"
Vice-President.

To:

The Commissioner of Patents,
Ottawa, Canada.

30 (SEAL)

SHREDDED WHEAT.

In the
Supreme Court
of Ontario

Exhibits

THE TRADEMARK AND DESIGN ACT.

IN THE MATTER of an application to register a specific Trademark consisting of the name or words "SHREDDED WHEAT."

Exhibit No. 35
Certified copy of
Patent Office File
No. 135636, dated
June 18, 1927,
relating to applica-
tion for registration
of Specific Trade
Mark "SHREDDED
WHEAT" in the
name of The
Canadian Shredded
Wheat Company,
with declarations,
etc., attached.
June 12, 1934.

(Filed by
Defendants).

--continued

I, CHARLES H. PETERS, of Messrs. Baird & Peters of the City of St. John in the Province of New Brunswick, DO SOLEMNLY DECLARE:

1. THAT I have been engaged in the wholesale grocery business in the City of St. John continuously for a period of forty-one years and am well acquainted with the applicant, The Canadian Shredded Wheat Company Limited, having known such Company for about twenty-five years.

2. THAT to my personal knowledge The Canadian Shredded Wheat Company Limited has used the words or name "SHREDDED WHEAT" as a trademark in connection with a cereal food cooked or prepared for consumption in biscuit form sold by it in the said City of St. John for about twenty-five years, and that the wholesale grocery business with which I have been continuously engaged for the above period has purchased and resold the said cereal food continuously for the said period of twenty-five years in large quantities, such resale being made not only to retail grocers within the said City of St. John but also to retail grocers throughout the Province of New Brunswick, and to the best of my knowledge and belief the user of the said Trademark by The Canadian Shredded Wheat Company Limited has been exclusive.

3. THAT the said words or name "SHREDDED WHEAT" used by the said applicant as a trademark have acquired a distinctive and secondary meaning designating and distinguishing the goods manufactured and sold by The Canadian Shredded Wheat Company Limited.

AND I make this solemn declaration conscientiously believing it to be true and knowing that it is of the same force and effect as if made under oath and by virtue of The Canada Evidence Act.

Province of New Brunswick.

Declared before me at the City of Saint John, in the County of Saint John, this 27th day of September, 1927.

"F. F. ANGLIN,"

A Commissioner, etc.

"CHARLES H. PETERS."

30

(SEAL)

THE TRADEMARK AND DESIGN ACT.

IN THE MATTER OF an application to register a specific trademark consisting of the name or words "SHREDDED WHEAT."

*In the
Supreme Court
of Ontario*

Exhibits

Exhibit No. 35
Certified copy of
Patent Office File
No. 135636, dated
June 18, 1927,
relating to applica-
tion for registration
of Specific Trade
Mark "SHREDDED
WHEAT" in the
name of The
Canadian Shredded
Wheat Company,
with declarations,
etc., attached.
June 12, 1934.

(Filed by
Defendants).
—continued

I, LEWIS KING PAYZANT, of Messrs. Payzant & King, of the City of Halifax, in the Province of Nova Scotia, DO SOLEMNLY DECLARE:

1. THAT I have been engaged in the wholesale grocery business in the City of Halifax continuously for a period of Fifty years and am well acquainted with the applicant, The Canadian Shredded Wheat Company Limited, having known such Company for about twenty-five years.

10 2. THAT to my personal knowledge The Canadian Shredded Wheat Company Limited has used the words or name "SHREDDED WHEAT" as a trademark in connection with a cereal food cooked or prepared for consumption in biscuit form sold by it in the said City of Halifax for about twenty-five years, and that the wholesale grocery business with which I have been continuously engaged for the above period has purchased and resold the said cereal food continuously for the said period of twenty-five years in large quantities, such resale being made not only to retail grocers within the said City of Halifax but also to retail grocers throughout the Province of Nova Scotia, and to the best of my knowledge and belief the user of the said trademark by The
20 Canadian Shredded Wheat Company Limited has been exclusive.

3. THAT the said words or name "SHREDDED WHEAT" used by the said applicant as a trademark have acquired a distinctive and secondary meaning designating and distinguishing the goods manufactured and sold by The Canadian Shredded Wheat Company Limited.

AND I make this solemn declaration conscientiously believing it to be true and knowing that it is of the same force and effect as if made under oath and by virtue of The Canada Evidence Act.

Declared before me at the City of
Halifax, in the County of Halifax, this } "LEWIS KING PAYZANT."
30 30 day of September, 1927.

"WALTER MacBAIN,"

A Notary Public duly appointed, residing and practising in and for the Province of Nova Scotia.

(SEAL)

*In the
Supreme Court
of Ontario*

Exhibits

Exhibit No. 35
Certified copy of
Patent Office File
No. 135636, dated
June 18, 1927,
relating to applica-
tion for registration
of Specific Trade
Mark "SHREDDED
WHEAT" in the
name of The
Canadian Shredded
Wheat Company,
with declarations,
etc., attached.
June 12, 1934.

(Filed by
Defendants).

—continued

THE TRADEMARK AND DESIGN ACT.

IN THE MATTER OF an application to register a specific trade-
mark consisting of the name or words "SHREDDED WHEAT."

I, ZEPHIRIN HEBERT, President of Hudon-Hebert-Chaput Ltee., of
the City of Montreal in the Province of Quebec, DO SOLEMNLY DECLARE:

1. THAT I have been engaged in the wholesale grocery business in the
City of Montreal continuously for a period of forty-six years and am well
acquainted with the applicant, The Canadian Shredded Wheat Company
Limited, having known such Company for about twenty-five years.

2. THAT to my personal knowledge The Canadian Shredded Wheat 10
Company Limited has used the words or name "SHREDDED WHEAT" as a
trademark in connection with a cereal food cooked or prepared for consumption
in biscuit form sold by it in the said City of Montreal for about twenty-five
years, and that the wholesale grocery business with which I have been con-
tinuously engaged for the above period has purchased and resold the said cereal
food continuously for the said period of twenty-five years in large quantities,
such resale being made not only to retail grocers within the said City of
Montreal but also to retail grocers throughout the Province of Quebec, and to
the best of my knowledge and belief the user of the said trademark by The
Canadian Shredded Wheat Company Limited has been exclusive. 20

3. THAT the said words or name "SHREDDED WHEAT" used by the
said applicant as a trademark have acquired a distinctive and secondary
meaning designating and distinguishing the goods manufactured and sold by
The Canadian Shredded Wheat Company Limited.

AND I make this solemn declaration conscientiously believing it to be
true and knowing that it is of the same force and effect as if made under oath
and by virtue of The Canada Evidence Act.

Declared before me at the City of }
Montreal, in the County of Hochelaga, }
this 26th day of September, 1927. }

"ZEPHIRIN HEBERT."

30

"O. BOURDON",
Commissioner Supreme Court,
District of Montreal.
A Commissioner, etc.

THE TRADEMARK AND DESIGN ACT.

IN THE MATTER OF an application to register a specific trademark consisting of the name or words "SHREDDED WHEAT."

*In the
Supreme Court
of Ontario*

Exhibits

Exhibit No. 35
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of Specific Trade
Mark "SHREDDED
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name of The
Canadian Shredded
Wheat Company,
with declarations,
etc., attached.
June 12, 1934.
(Filed by
Defendants).

—continued

I, H. GERALD BATE, President of the H. N. Bate & Sons, Limited, of the City of Ottawa, in the County of Carleton, DO SOLEMNLY DECLARE:

1. THAT I have been engaged in the wholesale grocery business in the City of Ottawa continuously for a period of 75 years and am well acquainted with the applicant, The Canadian Shredded Wheat Company Limited, having known such Company for about twenty-five years.

10 2. THAT to my personal knowledge The Canadian Shredded Wheat Company Limited has used the words or name "SHREDDED WHEAT" as a trademark in connection with a cereal food cooked or prepared for consumption in biscuit form sold by it, in the said City of Ottawa, for about twenty-five years, and that the wholesale grocery business with which I have been continuously engaged for the above period has purchased and resold the said cereal food continuously for the said period of twenty-five years in large quantities, such resale being made not only to retail grocers within the said City of Ottawa but also to retail grocers throughout the Province of Ontario, and to the best of my knowledge and belief the user of the said trademark by
20 The Canadian Shredded Wheat Company Limited has been exclusive.

3. THAT the said words or name "SHREDDED WHEAT" used by the said applicant as a trademark have acquired a distinctive and secondary meaning designating and distinguishing the goods manufactured and sold by The Canadian Shredded Wheat Company Limited.

AND I make this solemn declaration conscientiously believing it to be true and knowing that it is of the same force and effect as if made under oath and by virtue of The Canada Evidence Act.

Declared before me at the City of Ottawa, }
in the County of Carleton, this 29th day of } "H. G. BATE".
30 September, 1927. }

"ALBERT B. ULLETT, J.P.,"
A Commissioner, etc.

*In the
Supreme Court
of Ontario*

Exhibits

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Wheat Company,
with declarations,
etc., attached.
June 12, 1934.
(Filed by
Defendants).

—continued

THE TRADEMARK AND DESIGN ACT.

IN THE MATTER OF an application to register a specific trade-
mark consisting of the name or words "SHREDDED WHEAT."

I, HUGH BLAIN, formerly President of Eby-Blain Limited, and now
Director of National Grocers Company Limited, of the City of Toronto, in
the County of York, DO SOLEMNLY DECLARE:

1. THAT I have been engaged in the wholesale grocery business in the
City of Toronto continuously for a period of 45 years and am well acquainted
with the applicant, The Canadian Shredded Wheat Company Limited, having
known such Company for about twenty-five years. 10

2. THAT to my personal knowledge The Canadian Shredded Wheat
Company Limited has used the words or name "SHREDDED WHEAT" as a
trademark in connection with a cereal food cooked or prepared for consumption
in biscuit form sold by it in the said City of Toronto for about twenty-five
years, and that the wholesale grocery businesses with which I have been
continuously engaged for the above period have purchased and resold the said
cereal food continuously for the said period of twenty-five years in large
quantities, such resale being made not only to retail grocers within the said
City of Toronto but also to retail grocers throughout the Province of Ontario,
and to the best of my knowledge and belief the user of the said trademark by 20
The Canadian Shredded Wheat Company Limited has been exclusive.

3. THAT the said words or name "SHREDDED WHEAT" used by the
said applicant as a trademark have acquired a distinctive and secondary
meaning designating and distinguishing the goods manufactured and sold by
The Canadian Shredded Wheat Company, Limited.

AND I make this solemn declaration conscientiously believing it to be true
and knowing that it is of the same force and effect as if made under oath and
by virtue of The Canada Evidence Act.

Declared before me at the City of }
Toronto, in the County of York, this 24th }
day of September, 1927. }

"H. BLAIN"

30

"GRANT COOPER",
A Commissioner, etc.

THE TRADEMARK AND DESIGN ACT.

IN THE MATTER OF an application to register a specific trademark consisting of the name or words "SHREDDED WHEAT."

*In the
Supreme Court
of Ontario*

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Mark "SHREDDED
WHEAT" in the
name of The
Canadian Shredded
Wheat Company,
with declarations,
etc., attached.
June 12, 1934.
(Filed by
Defendants).
—continued

I, FREDERICK SMYE, President of Balfour, Smye & Company, of the City of Hamilton in the County of Wentworth, DO SOLEMNLY DECLARE :

1. THAT I have been engaged in the wholesale grocery business in the City of Hamilton continuously for a period of twenty years and am well acquainted with the applicant, The Canadian Shredded Wheat Company Limited, having known such Company for about twenty years.
- 10 2. THAT to my personal knowledge The Canadian Shredded Wheat Company Limited has used the words or name "SHREDDED WHEAT" as a trademark in connection with a cereal food cooked or prepared for consumption in biscuit form sold by it in the said City of Hamilton for about twenty years, and that the wholesale grocery business with which I have been continuously engaged for the above period has purchased and resold the said cereal food continuously for the said period of twenty years in large quantities, such resale being made not only to retail grocers within the said City of Hamilton but also to retail grocers throughout the Province of Ontario, and to the best of my knowledge and belief the user of the said trademark by The Canadian
20 Shredded Wheat Company Limited has been exclusive.

3. THAT the said words or name "SHREDDED WHEAT" used by the said applicant as a trademark have acquired a distinctive and secondary meaning designating and distinguishing the goods manufactured and sold by The Canadian Shredded Wheat Company Limited.

AND I make this solemn declaration conscientiously believing it to be true and knowing that it is of the same force and effect as if made under oath and by virtue of The Canada Evidence Act.

Declared before me at the City of
Hamilton, in the County of Wentworth }
30 this Fourth day of October, 1927. } "WM. F. SMYE."

"THOMAS HOBSON,"
A Commissioner, etc.

THE TRADEMARK AND DESIGN ACT.

*In the
Supreme Court
of Ontario*

Exhibits

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of Specific Trade
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WHEAT" in the
name of The
Canadian Shredded
Wheat Company,
with declarations,
etc., attached.
June 12, 1934.
(Filed by
Defendants).

—continued

IN THE MATTER OF an application to register a specific trade-
mark consisting of the name or words "SHREDDED WHEAT."

I, JOHN MUNRO DILLON, Sole Proprietor of A. M. Smith & Company,
of the City of London, in the County of Middlesex, DO SOLEMNLY
DECLARE:

1. THAT I have been engaged in the wholesale grocery business in the
City of London continuously for a period of fifty years, and am well acquainted
with the applicant, The Canadian Shredded Wheat Company Limited, having
known such Company for about twenty-five years. 10

2. THAT to my personal knowledge The Canadian Shredded Wheat
Company Limited has used the words or name "SHREDDED WHEAT" as
a trademark in connection with a cereal food cooked or prepared for consump-
tion in biscuit form sold by it in the said City of London for about twenty-five
years, and that the Wholesale grocery business with which I have been con-
tinuously engaged for the above period has purchased and resold the said cereal
food continuously for the said period of twenty-five years in large quantities,
such resale being made not only to retail grocers within the said City of London
but also to retail grocers throughout the Province of Ontario, and to the best
of my knowledge and belief the user of the said trademark by The Canadian 20
Shredded Wheat Company Limited has been exclusive.

3. THAT the said words or name "SHREDDED WHEAT" used by the
said applicant as a trademark have acquired a distinctive and secondary
meaning designating and distinguishing the goods manufactured and sold by
The Canadian Shredded Wheat Company Limited.

AND I make this solemn declaration conscientiously believing it to be
true and knowing that it is of the same force and effect as if made under oath
and by virtue of The Canada Evidence Act.

Declared before me at the City of }
London, in the County of Middlesex, this }
22nd day of September, 1927. }

"J. M. DILLON." 30

"J. P. MOON,"
A Commissioner, etc.

THE TRADEMARK AND DESIGN ACT.

IN THE MATTER OF an application to register a specific trademark consisting of the name or words "SHREDDED WHEAT."

*In the
Supreme Court
of Ontario*

Exhibits

Exhibit No. 35
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Mark "SHREDDED
WHEAT" in the
name of The
Canadian Shredded
Wheat Company,
with declarations,
etc., attached.
June 12, 1934.
(Filed by
Defendants).

—continued

I, F. G. BOUSER, occupying the position of buyer with Codville Company, wholesale grocers, of the City of Winnipeg, in the Province of Manitoba, DO SOLEMNLY DECLARE:

1. THAT I have been engaged in the wholesale grocery business in the City of Winnipeg continuously for a period of twenty years and am well acquainted with the applicant, The Canadian Shredded Wheat Company
10 Limited, having known such Company for about twenty years.

2. THAT to my personal knowledge The Canadian Shredded Wheat Company Limited has used the words or name "SHREDDED WHEAT" as a trademark in connection with a cereal food cooked or prepared for consumption in biscuit form sold by it in the said City of Winnipeg for about twenty years, and that the wholesale grocery business with which I have been continuously engaged for the above period has purchased and resold the said cereal food continuously for the said period of twenty years in large quantities, such resale being made not only to retail grocers within the said City of Winnipeg, but also to retail grocers throughout the Province of Manitoba, and
20 to the best of my knowledge and belief the user of the said trademark by The Canadian Shredded Wheat Company Limited has been exclusive.

3. THAT the said words or name "SHREDDED WHEAT" used by the said applicant as a trademark have acquired a distinctive and secondary meaning designating and distinguishing the goods manufactured and sold by The Canadian Shredded Wheat Company Limited.

AND I make this solemn declaration conscientiously believing it to be true and knowing that it is of the same force and effect as if made under oath and by virtue of The Canada Evidence Act.

Declared before me at the City of }
30 Winnipeg, in the Province of Manitoba, }
this 12th day of November, 1927.

"F. G. BOUSER."

"C. W. CHAPMAN,"
A Commissioner, etc.

*In the
Supreme Court
of Ontario*

Exhibits

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name of The
Canadian Shredded
Wheat Company,
with declarations,
etc., attached.
June 12, 1934.
(Filed by
Defendants).
—continued

Received Nov. 12, 1927.
Cameron & Heap, Limited.
per

THE TRADEMARK AND DESIGN ACT.

IN THE MATTER OF an application to register a specific trade-
mark consisting of the name or words "SHREDDED WHEAT."

I, S. G. BURTON, occupying the position of Manager, with the Cameron
Heap Company, Limited, wholesale grocers, of the City of Regina, in the
Province of Saskatchewan, DO SOLEMNLY DECLARE:

1. THAT I have been engaged in the wholesale grocery business in the 10
City of Regina continuously for a period of Twenty years and am well
acquainted with the applicant, The Canadian Shredded Wheat Company
Limited, having known such Company for about twenty years.

2. THAT to my personal knowledge The Canadian Shredded Wheat
Company Limited has used the words or name "SHREDDED WHEAT" as
a trademark in connection with a cereal food cooked or prepared for consump-
tion in biscuit form sold by it in the said City of Regina for about twenty years,
and that the wholesale grocery business with which I have been continuously
engaged for the above period has purchased and resold the said cereal food
continuously for the said period of twenty years in large quantities, such resale 20
being made not only to retail grocers within the said City of Regina but also
to retail grocers throughout the Province of Saskatchewan and to the best of
my knowledge and belief the user of the said trademark by The Canadian
Shredded Wheat Company Limited has been exclusive.

3. THAT the said words or name "SHREDDED WHEAT" used by the
said applicant as a trademark have acquired a distinctive and secondary
meaning designating and distinguishing the goods manufactured and sold by
The Canadian Shredded Wheat Company Limited.

AND I make this solemn declaration conscientiously believing it to be
true and knowing that it is of the same force and effect as if I made under oath 30
and by virtue of The Canada Evidence Act.

Declared before me at the City of
Regina, in the Province of Saskatchewan,
this 14th day of November, 1927. }

"S. G. BURTON."

"S. LEIGH,"

A Commissioner, etc.

THE TRADEMARK AND DESIGN ACT.

IN THE MATTER OF an application to register a specific trademark consisting of the name or words "SHREDDED WHEAT."

*In the
Supreme Court
of Ontario*

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Exhibit No. 35
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name of The
Canadian Shredded
Wheat Company,
with declarations,
etc., attached.
June 12, 1934.
(Filed by
Defendants).

—continued

I, LOUIS PETRIE, occupying the position of buyer with the Louis Petrie Company, wholesale grocers, of the City of Calgary, in the Province of Alberta, DO SOLEMNLY DECLARE:

1. THAT I have been engaged in the wholesale grocery business in the City of Calgary continuously for a period of fifteen years and am well acquainted with the applicant, The Canadian Shredded Wheat Company
10 Limited, having known such company for about fifteen years.

2. THAT to my personal knowledge The Canadian Shredded Wheat Company Limited has used the words or name "SHREDDED WHEAT" as a trademark in connection with a cereal food cooked or prepared for consumption in biscuit form sold by it in the said City of Calgary for about fifteen years, and that the wholesale grocery business with which I have been continuously engaged for the above period has purchased and resold the said cereal food continuously for the said period of fifteen years in large quantities, such resale being made not only to retail grocers within the said City of Calgary but also to retail grocers throughout the Province of Alberta, and to the best of
20 my knowledge and belief the user of the said trademark by The Canadian Shredded Wheat Company Limited has been exclusive.

3. THAT the said words or name "SHREDDED WHEAT" used by the said applicant as a trademark have acquired a distinctive and secondary meaning designating and distinguishing the goods manufactured and sold by The Canadian Shredded Wheat Company Limited.

AND I make this solemn declaration conscientiously believing it to be true and knowing that it is of the same force and effect as if made under oath and by virtue of The Canada Evidence Act.

Declared before me at the City of
30 Calgary, in the Province of Alberta, this
14th day of November, 1927.

"LOUIS PETRIE."

"W. B. GRAVELEY,"
A Commissioner, etc.

*In the
Supreme Court
of Ontario*

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WHEAT" in the
name of The
Canadian Shredded
Wheat Company,
with declarations,
etc., attached.
June 12, 1934.

(Filed by
Defendants).

—continued

CANADA.

PROVINCE OF BRITISH COLUMBIA

To Wit:

THE TRADEMARK AND DESIGN ACT.

IN THE MATTER OF an Application to register a specific trademark consisting of the name or words "SHREDDED WHEAT."

I, HARRY MADDISON, of # 325 Water Street, in the City of Vancouver, in the Province of British Columbia, Wholesale Department Manager of Hudson's Bay Company, DO SOLEMNLY DECLARE:

1. I have been engaged in the wholesale grocery business continuously for a period of 17 years, and I am well acquainted with the applicant, The Canadian Shredded Wheat Company Limited, having known such Company for the said 17 years. 10

2. From the year 1910 to the year 1916 I was sales manager at Edmonton, Alberta, for A. Macdonald Company Limited, Wholesale Grocery company, and from 1916 to 1922 I was manager for the same company at Calgary, Alberta, and from 1922 to 1925 I was manager at Vancouver, B.C., for the same Company, but handling both the Vancouver and Victoria branches of that Company.

3. In the year 1925 I was appointed by Hudson's Bay Company its Wholesale Department Manager at Calgary, Alberta, and in 1926 I was made that company's wholesale department manager for the Province of British Columbia, with headquarters at Vancouver, B.C., which position I now retain. 20

4. To my personal knowledge the Canadian Shredded Wheat Company Limited has used the words or name "SHREDDED WHEAT" as a trademark or distinguishing name in connection with a cereal food cooked or prepared for consumption in biscuit form and sold by it in the Provinces of Alberta and British Columbia for 17 years to my knowledge, and the wholesale grocery businesses with which I have been continuously engaged for the above period of 17 years have purchased and resold the said cereal food continuously for the said period of 17 years in large quantities, such resale being to retail grocers in the cities and towns throughout the Province of Alberta and in the Cities and Towns throughout the Province of British Columbia, and also to concerns who buy wholesale, like logging contractors and the like, in both of the said Provinces, and I have kept among my records price lists extending over the said period of 17 years showing the prices at which I have bought and sold the said "Shredded Wheat" cereal food. 30

5. To the best of my knowledge and belief the user of the said trademark by The Canadian Shredded Wheat Company Limited has been exclusive.

6. The said words or name "Shredded Wheat" used by the said applicant as a trademark have acquired a distinctive and secondary meaning designating and distinguishing the goods manufactured and sold by The Canadian Shredded Wheat Company Limited. 40

And I make this solemn declaration conscientiously believing it to be true and knowing that it is of the same force and effect as if made under oath and by virtue of "The Canada Evidence Act."

Declared before me at the City of Vancouver, in the Province of British Columbia, this 24th day of November, 1927.

"HARRY MADDISON".

"ERIC R. THOMSON",

A Notary Public in and for the Province of British Columbia.

In the Supreme Court of Ontario

Exhibits

Exhibit No. 35
Certified copy of Patent Office File No. 135636, dated June 18, 1927, relating to application for registration of Specific Trade Mark "SHREDDED WHEAT" in the name of The Canadian Shredded Wheat Company, with declarations, etc., attached. June 12, 1934. (Filed by Defendants).

—continued

10

(LETTERHEAD—LARMONTH & OLMSTED.)

Ottawa, Canada,

(Commissioner of Patents, Ottawa.

Nov. 30, 1927.)

Canada.

Received.

Dec. 1, 1927.

Commissioner of Patents.

November 30th, 1927.

The Commissioner of Patents,
Trade Mark & Copyright Branch,
Ottawa.

20

Dear Sir:

Re: SHREDDED WHEAT TRADE MARK.

Some weeks ago we filed with you an application for Trade Mark "Shredded Wheat," and as the mark came under Rule 10 you asked us to submit affidavits. We beg to enclose herewith the following affidavits:

- C. H. Peters St. John, N.B.
- L. K. Payzant Halifax, N.S.
- Z. Hebert Montreal, P.Q.
- H. G. Bate Ottawa, Ontario.
- Hugh Blain Toronto, Ontario.
- F. Smye Hamilton, Ontario.
- J. M. Dillon London, Ontario.
- F. G. Bouser Winnipeg, Man.
- S. G. Burton Regina, Sask.
- L. Petrie Calgary, Alta.
- H. Maddison Vancouver, B.C.

30

We would be obliged if this matter could receive your earliest attention.

Yours truly,

LARMONTH & OLMSTED.

Per "N.G.L."

NGL/DJ.

40 Encl.

*In the
Supreme Court
of Ontario*

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WHEAT" in the
name of The
Canadian Shredded
Wheat Company,
with declarations,
etc., attached.
June 12, 1934.

(Filed by
Defendants).

—continued

DOMINION OF CANADA.

IN THE MATTER OF The Trademark and Design Act and
IN THE MATTER OF the specific trademark consisting of
the words "SHREDDED WHEAT."

WHEREAS The Shredded Wheat Company, a corporation duly organized and existing under the laws of the State of New York, one of the United States of America, by application dated the 7th day of March, 1924, applied for registration of the words "Shredded Wheat" as a specific trademark in its name with the result that on the 13th day of September, 1924, registration of the said specific trademark was accordingly made in Trademark Register 10
161 at Folio 36195.

AND WHEREAS The Canadian Shredded Wheat Company Limited, a company duly organized and existing under the laws of the Province of Ontario has taken exception to the said registration of the said trademark in the name of The Shredded Wheat Company on the ground that the said specific trademark, together with all the business in Canada and the goodwill of such business in connection with which such said specific trademark is and has been used in and throughout the Dominion of Canada, belongs to The Canadian Shredded Wheat Company Limited and that The Shredded Wheat Company has no right or color of title to the said specific trademark or any right to 20
registration thereof in its name.

AND WHEREAS The Shredded Wheat Company admits that it had no right to apply for or obtain the said registration of the said trademark in its name, and that it applied for such registration in error and by reason of confusion arising out of the fact that The Canadian Shredded Wheat Company Limited is a company entirely subsidiary to The Shredded Wheat Company.

AND WHEREAS The Shredded Wheat Company consents to cancellation of the said registration of the said trademark in its name in order that The Canadian Shredded Wheat Company Limited may apply for and obtain 30
registration of the said specific trademark.

NOW THEREFORE The Shredded Wheat Company hereby petitions, in pursuance of Section 18 of The Trademark and Design Act, that the trademark consisting of the words "SHREDDED WHEAT" and the registration thereof in the Canadian Register of Trademarks in Register No. 161 at folio No. 36195 be cancelled.

IN WITNESS WHEREOF The Shredded Wheat Company has hereunto affixed its corporate seal and caused this petition to be signed by its proper officers this 29th day of April, 1927, in the presence of the two undersigned witnesses.

Witnesses:

"FLORENCE D. HOGAN".
"PEARL ROYER".

{ THE SHREDDED WHEAT COMPANY. 40
"WM. J. MORRISSEY", Treasurer.
"W. C. SCHNEIDER", Secretary.

PATENT AND COPYRIGHT OFFICE
Copyright and Trade Mark Branch.

*In the
Supreme Court
of Ontario*

\$5.00

No. 105251.

Exhibits

Received from _____ LARMONTH & OLMSTED _____
the sum of _____ FIVE _____ Dollars.
Trade Mark Fee.

Exhibit No. 35
Certified copy of
Patent Office File
No. 135636, dated
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tion for registration
of Specific Trade
Mark "SHREDDED
WHEAT" in the
name of The
Canadian Shredded
Wheat Company,
with declarations,
etc., attached.
June 12, 1934.
(Filed by
Defendants).
—continued

"J. P. BEAUDOIN,"
Accountant.

(Patent and Copyright Office,
Sept. 26, 1927.)

10

PATENT AND COPYRIGHT OFFICE.
Copyright and Trade Mark Branch.

\$5.00

No. 105251.

Received from _____ LARMONTH & OLMSTED _____
the sum of _____ FIVE _____ Dollars
Trade Mark Fee.

"J. P. BEAUDOIN,"
Accountant.

(Patent and Copyright Office,
Sept. 26, 1927.)

20

(LETTERHEAD—LARMONTH & OLMSTED.)
Ottawa, Canada,

Sept. 23rd, 1927.

The Commissioner of Patents,
Trade Mark & Copyright Branch,
Ottawa.

Dear Sir:

Re: TRADE MARK SHREDDED WHEAT
YOUR FILE 135636.

30 We have before us your letter of August 24th to Messrs. Osler, Hoskin & Harcourt, in which you returned one copy of their application to register the Trade Mark Shredded Wheat for Biscuits and Crackers and in your letter you advised that the word Shredded Wheat had been registered by the Shredded Wheat Company of Niagara Falls, New York on the 13th of September, 1924.

*In the
Supreme Court
of Ontario*

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June 12, 1934.
(Filed by
Defendants).

—continued

We have had several interviews with you in connection with this and we now enclose herewith a new application for registration of the Trade Mark Shredded Wheat as a specific trade mark applicable to the sale of Biscuits, Crackers and Cereal Foods Cooked or prepared for Consumption. The Canadian Company has used this mark for more than 22 years and when the application of the American Company was filed in September of 1924 it was filed in error and that Company has executed a Petition praying that under Section 18 of the Trade Mark and Design Act that their registration in register 161 folio 13695 be cancelled. We enclose that Petition herewith, in duplicate.

We would be obliged if this matter could receive your early attention and the certificate issued to the Canadian Shredded Wheat Company Limited. The application which we filed herewith is in substitution of the earlier one which only asked for a specific Trade Mark as to Biscuits and Crackers. We also enclose cheque for Five (\$5.00) Dollars, the additional fee required.

Yours truly,
LARMONTH & OLMSTED.
Per "N.G.L."

NGL/DJ.
Encls.

Canada.
Received.
Sept. 27, 1927.
Commissioner of Patents.

20

The Canadian Shredded Wheat Co.,
Ltd.
per—Messrs. Osler, Hoskin & Harcourt,
Dominion Bank Bldg.,
Toronto 2, Ontario.

TRADE MARKS AND DESIGNS.

PATENT OFFICE,
Canada.

Ottawa, August 24, 1927.

Please find below a communication from the Examiner in charge of your application, Serial No. 135,636 for "Shredded Wheat."

"THOS. L. RICHARD,"
Acting Commissioner.

Your application for the registration of the above Specific Trade Mark is met by Specific Trade Mark 36195/161, in connection with the sale of biscuits or crackers, consists of the words "Shredded Wheat," registered by the Shredded Wheat Company of Niagara Falls, N.Y., 13th September, 1924.

It is refused and a refund cheque will be mailed to you on request for same. A copy of your application is herewith enclosed.

Any communication respecting this application should give the serial number and should be addressed to "The Commissioner of Patents, Ottawa."

(SEAL)

PATENT AND COPYRIGHT OFFICE.
Copyright and Trade Mark Branch.

*In the
Supreme Court
of Ontario*

\$25.00.

No. 103579.

Exhibits

Received from _____ OSLER, HOSKIN & HARCOURT _____
the sum of _____ TWENTY-FIVE _____ Dollars.

Exhibit No. 35
Certified copy of
Patent Office File
No. 135636, dated
June 18, 1927,
relating to applica-
tion for registration
of Specific Trade
Mark "SHREDDED
WHEAT" in the
name of The
Canadian Shredded
Wheat Company,
with declarations,
etc., attached.
June 12, 1934.

Trade Mark Fee.

"J. P. BEAUDOIN,"
Accountant.

(Patent and Copyright Office,
Jun. 17, 1927.)

10

(LETTERHEAD—OSLER, HOSKIN & HARCOURT)
Dominion Bank Building,
Toronto 2,

(Filed by
Defendants).
---continued

(Canada.
Received.
Jun. 18, 1927.

(Patent Office, Canada,
Jun. 17, 1927.)

Commissioner of Patents.)

June 15th, 1927.

Registrar of Trademarks,
Ottawa, Canada.

20

Dear Sir:

Re: "SHREDDED WHEAT" TRADEMARK,
Our File No. 4768.

We are instructed to act on behalf of The Shredded Wheat Company, an American corporation in whose name the trademark "Shredded Wheat" is registered as a specific trademark to be used in connection with the sale of biscuits and crackers.

The Canadian Shredded Wheat Company Limited is a subsidiary of the above named American company and we are instructed on behalf of the American company to apply to withdraw their registration in favour of registration by the Canadian company, and we are instructed on behalf of the Canadian company to file the enclosed application, for registration, in their name, of the said mark.

We enclose the application accordingly, with required fee, and would be much obliged if you could deal with this matter at your earliest convenience.

Yours truly,

"OSLER, HOSKIN & HARCOURT."

BO/JM.
Enclosure.
(SEAL)

*In the
Supreme Court
of Ontario*

Exhibits

Exhibit No. 3
Certified copy of
Specific Trade
Mark "SHREDDED
WHEAT" registered
in Trade Mark
Register No. 198,
Folio 43550 by The
Canadian Shredded
Wheat Company,
Limited, on March
20, 1928.
May 2, 1934.
(Filed by Plaintiff).

EXHIBIT No. 3.

DOMINION OF CANADA.

(COAT OF ARMS)

PATENT OFFICE.

CERTIFIED TO BE a true and correct copy of a Specific Trade Mark—
"SHREDDED WHEAT,"—as registered in The Trade Mark Register No.
198, Folio 43550, in accordance with "The Trade Mark and Design Act," by
the Canadian Shredded Wheat Company, Limited, on March 20th, 1928.

AS WITNESS the seal of the Patent Office hereto affixed at the City of
Ottawa in the Dominion of Canada this 2nd day of May, in the year of our 10
Lord one thousand nine hundred and thirty-four.

"THOS L. RICHARD,"
Commissioner of Patents.

(SEAL)

CANADA.

THIS IS TO CERTIFY that this Trade Mark (Specific) to be applied to
the sale of Biscuits and Crackers, and which consists of the words:

"SHREDDED WHEAT"

as per the annexed pattern and application, has been registered in The Trade
Mark Register No. 198, Folio 43550, in accordance with "The Trade Mark 20
and Design Act," by The Canadian Shredded Wheat Company Limited, of
the City of Niagara Falls, Province of Ontario, on the 20th day of March,
A.D. 1928.

Patent and Copyright Office,
(Copyright and Trade Mark Branch),
Ottawa, Canada.
this 20th day of March, A.D. 1928.

(SEAL)

(Signed) THOS. L. RICHARD,
Acting Commissioner of Patents.

DOMINION OF CANADA.

TRADEMARK AND DESIGN ACT.

*In the
Supreme Court
of Ontario*

Exhibits

Exhibit No. 3
Certified copy of
Specific Trade
Mark "SHREDDED
WHEAT" registered
in Trade Mark
Register No. 198,
Folio 43550 by The
Canadian Shredded
Wheat Company,
Limited, on March
20, 1928.
May 2nd, 1934.
(Filed by Plaintiff).
—continued

APPLICATION FOR REGISTRATION OF A SPECIFIC TRADEMARK.

We, The Canadian Shredded Wheat Company Limited of the City of Niagara Falls in the Province of Ontario, Canada, hereby request you to register in the name of The Canadian Shredded Wheat Company Limited a specific trademark to be used in connection with the sale of biscuits and crackers which we verily believe is ours on account of our having continuously used the same for more than twenty-two years and having succeeded to all the Canadian business, goodwill, trademarks and trade names of the company which was the first to make use of the same.

We hereby declare that the said specific trademark was not in use to our knowledge by any other person than ourselves at the time of our adoption thereof.

The said specific trade mark consists of the words "SHREDDED WHEAT."

A drawing of the said specific trademark is hereunto annexed.

Signed at the City of Niagara Falls in the State of New York, one of the United States of America, this 29th day of April, 1927, in the presence of the two undersigned witnesses.

Witnesses:

"J. W. LANGMUIR."
"PEARL ROYER."

{ THE CANADIAN SHREDDED WHEAT
COMPANY, LIMITED,

"CHAS. H. BROWN, JR.,"
Vice-President.

To:

The Commissioner of Patents,
Ottawa, Canada.

(SEAL)

30

(SEAL) (SEAL)

SHREDDED WHEAT.

*In the
Supreme Court
of Ontario*

Exhibits

Exhibit No. 4
Certified copy of
Specific Trade
Mark registered
in Trade Mark
Register No. 214,
Folio 46703,
by The Canadian
Shredded Wheat
Company, Limited,
on July 3rd, 1929.
May 30, 1934
(Filed by Plaintiff).

EXHIBIT No. 4.

DOMINION OF CANADA.

(COAT OF ARMS)

PATENT OFFICE.

CERTIFIED TO BE a true and correct copy of a Specific Trade Mark as registered in The Trade Mark Register No. 214, Folio 46703, in accordance with "The Trade Mark and Design Act," by The Canadian Shredded Wheat Company Limited, on July 3rd, 1929.

AS WITNESS the seal of the Patent Office hereto affixed at the City of Ottawa in the Dominion of Canada this 30th day of May, in the year of our 10 Lord one thousand nine hundred and thirty-four.

"THOS. L. RICHARD,"
Commissioner of Patents.

(SEAL)

CANADA.

THIS IS TO CERTIFY that this Trade Mark (Specific) to be applied to the sale of Cereal Foods Cooked or prepared for consumption, and which consists of the words:

"SHREDDED WHEAT,"

as per the annexed pattern and application, has been registered in The Trade Mark Register No. 214, Folio 46703, in accordance with "The Trade Mark and Design Act," by The Canadian Shredded Wheat Company Limited, of the City of Niagara Falls, Province of Ontario, on the 3rd day of July, A.D. 1929.

Patent and Copyright Office,
Ottawa, Canada.

(Copyright and Trade Mark Branch). (Signed) THOS. L. RICHARD,
this 3rd day of July, A.D. 1929. Commissioner of Patents.

(SEAL)

DOMINION OF CANADA.

*In the
Supreme Court
of Ontario*

Exhibits

TRADEMARK AND DESIGN ACT.

Exhibit No. 4
Certified copy of
Specific Trade
Mark registered
in Trade Mark
Register No. 214,
Folio 46703,
by The Canadian
Shredded Wheat
Company, Limited,
on July 3rd, 1929,
May, 30, 1934.
(Filed by Plaintiff).
—continued

APPLICATION FOR REGISTRATION OF A SPECIFIC TRADEMARK.

We, THE CANADIAN SHREDDED WHEAT COMPANY LIMITED, of the City of Niagara Falls in the Province of Ontario, owners of the trademark "Shredded Wheat" to be used in connection with the sale of biscuits and crackers registered in Trademark Register No. 198, Folio 43550, hereby request you to register in the name of The Canadian Shredded Wheat Company Limited a specific trademark to be used in connection with the sale
10 of cereal foods cooked or prepared for consumption which we verily believe is ours on account of our having continuously used the same for more than twenty-two years and having succeeded to all the Canadian business, goodwill, trademarks and trade names of the company which was the first to make use of the same.

We hereby declare that the said specific trademark was not in use to our knowledge by any other person than ourselves at the time of our adoption thereof.

The said specific trademark consists of the words "SHREDDED WHEAT."

20 A drawing of the said specific trademark is hereunto annexed.

Signed at the City of Niagara Falls in the State of New York, one of the United States of America, this 3rd day of April, 1929, in the presence of the two undersigned witnesses.

Witnesses: { THE CANADIAN SHREDDED WHEAT COMPANY, LIMITED,
"M. J. LEACOCK".
"L. D. KIDD". "A. G. BIXLER," President.

To:
The Commissioner of Patents,
Ottawa, Canada.

30

(SEAL)

(SEAL) SHREDDED WHEAT.

EXHIBIT No. 24.

*In the
Supreme Court
of Ontario*

Exhibits

Exhibit No. 24
Booklet of ten
photostatic copies
of advertisements
in *The Globe* from
February, 1908, to
April, 1913.
(Filed by
Defendants).

I, GERALD SANAGAN, of the City of Toronto, in the County of York, make oath and say as follows:

That I did on the fifteenth day of November, 1935, search the files of the *Globe* newspaper at the Office of the said newspaper at Toronto, Ontario, and did ascertain that the photostatic copies of advertisements annexed hereto and marked Exhibit A, B, C, etc., are true copies of advertisements published in the *Globe* newspaper of Toronto, Ontario, on the following days:

Exhibit A—February 19th, 1908.

Exhibit B—February 26th, 1908.

10

Exhibit C—February 29th, 1908.

Exhibit D—February 26th, 1910.

Exhibit E—January 25th, 1913.

Exhibit F—February 15th, 1913.

Exhibit G—April 12th, 1913.

Exhibit H—April 16th, 1913.

Exhibit I—April 19th, 1913.

Exhibit J—April 26th, 1913.

Sworn before me at the City of Toronto,
in the County of York, this 15th day of Nov-
ember, 1935.

“GERALD SANAGAN.” 20

“ROSS C. TAYLOR,”

A Commissioner, etc.

In the
Supreme Court
of Ontario

A

Exhibits

Exhibit No. 24
Booklet of ten
photostatic copies
of advertisements
in The Globe from
February, 1908, to
April, 1913.
(Filed by
Defendants).
—continued

A
Gerald Saragan
15th. Nov 35
R. C. Taylor

**Live the Simple Life by Eating a
Clean, Pure, Simple Food. That's**

TRISCUIT

The delicious Shredded Whole Wheat Toast, contains
the greatest amount of nutriment with the least tax on
the digestive system. More wholesome than white flour
bread or crackers and more easily digested.

Triscuit for a tasty luncheon. Biscuit for breakfast.

All grocers, 18c a carton, 2 for 25c.

TM

In the
Supreme Court
of Ontario

B

Exhibits

Exhibit No. 24
Booklet of ten
photostatic copies
of advertisements
in The Globe from
February, 1908, to
April, 1913.

(Filed by
Defendants).

—continued

B
Bernard Sanagan
15th Nov. 35
R. C. Taylor

For the Energy to Do "A Man's
Work" Every Day--Breakfast on

SHREDDED WHEAT

It's a natural food, insuring
good digestion, clear brain and
a healthy body full of vim and
energy. Contains all the tis-
sue-building elements of whole
wheat, steam cooked, shred-
ded and baked. Furnishes
more nourishment than meat
and is easily digested.

Begin the Day Right With a Breakfast of **Blacuit** and **Hot**
Milk. All grocers, 13c a carton, 2 for 25c.

*In the
C Supreme Court
of Ontario*

Exhibits

Exhibit No. 24
Booklet of ten
photostatic copies
of advertisements
in The Globe from
February, 1908, to
April, 1913.

(Filed by
Defendants).

—continued

Exhibit C
Gerald Stinson
15th Nov 1913
Wm. C. Taylor

**You Can Get a Dainty Luncheon
Ready In a Jiffy With**

TRISCUIT

It is Shredded Whole Wheat compressed into a wafer and used as a toast. Superior to white flour bread, crackers or pastries. Makes the sweetest, crispest toast. Delicious with cheese or preserves.

Always Triscuit Toast for Luncheon. Biscuit and Milk for Breakfast.

All grocers, 13c a carton, 2 for 25c.

768

In the
Supreme Court
of Ontario

Exhibits

Exhibit No. 24
Booklet of ten
photostatic copies
of advertisements
in The Globe from
February, 1908, to
April, 1913.

(Filed by
Defendants).

—continued

D

Gerald Magan
15
Wm. C. Taylor

The Energy of Buoyant Youth

Why not maintain the vigor and strength of youth indefinitely by eating plenty of Shredded Wheat?

SHREDDED WHEAT BISCUITS

are clean, wholesome and nourishing—made of the whole wheat, steam-cooked, shredded and baked in the cleanest and finest food factory in the world—just the food for these chilly spring days when old Nature is doing her best to revitalize your system.

Try Shredded Wheat for breakfast once and you'll readily acquire the healthy, invigorating Shredded Wheat habit.

Shredded Wheat Biscuit with hot milk, a little cream and a dash of salt certainly does make a nourishing and wholesome breakfast.

The only "Breakfast Cereal" made in biscuit form.

THE CANADIAN SHREDDED WHEAT CO., LIMITED
NIAGARA FALLS, ONT.

In the
Supreme Court
of Ontario

E

Exhibits

Exhibit No. 24
Booklet of ten
photostatic copies
of advertisements
in The Globe from
February, 1908, to
April, 1913.
(Filed by
Defendants).
—continued

A Hot Dish for a Cold Day



It is not easy to warm a poorly nourished body. Heat and strength do not come from over-coats or flannels. Bodily warmth and vigor come from foods that are rich in blood-making, tissue-building material.

SHREDDED WHEAT

is all fuel-food—no waste, no indigestible material to clog the system and tax the vitality. Two Shredded Wheat Biscuits, heated in the oven and served with hot milk and a little cream, for breakfast, will supply all the heat and strength needed for a half day's work. Not "pre-digested," but "ready-to-digest," not compounded, flavored or "treated" with anything—just plain, whole wheat, steam-cooked, shredded and baked a crisp, golden brown. It makes delicious combinations with baked apples, stewed prunes or other fruits, fresh or preserved.

MADE IN CANADA
A CANADIAN FOOD FOR CANADIANS

The Canadian Shredded Wheat Company, Limited
Niagara Falls, Ont.

Toronto Office: 40 Wellington Street East

P-28

This is Exhibit E referred to in the affidavit of

Ernest Sargan

Sworn to on 15th Nov. 1935

Ronald Jay

A Hot Dish for a Cold Day



It is not easy to warm a poorly nourished body. Heat and strength do not come from over-coats or flannels. Bodily warmth and vigor come from foods that are rich in blood-making, tissue-building material.

SHREDDED WHEAT

is all fuel-food—no waste, no indigestible material to clog the system and tax the vitality. Two Shredded Wheat Biscuits, heated in the oven and served with hot milk and a little cream, for breakfast, will supply all the heat and strength needed for a half day's work. Not "pre-digested," but "ready-to-digest," not compounded, flavored or "treated" with anything—just plain, whole wheat, steam-cooked, shredded and baked a crisp, golden brown. It makes delicious combinations with baked apples, stewed prunes or other fruits, fresh or preserved.

MADE IN CANADA

A CANADIAN FOOD FOR CANADIANS

The Canadian Shredded Wheat Company, Limited
Niagara Falls, Ont.

Toronto Office: 49 Wellington Street East

P. 73

F
In the
Supreme Court
of Ontario

Exhibits

Exhibit No. 24
Booklet of ten
photostatic copies
of advertisements
in The Globe from
February, 1908, to
April, 1913.

(Filed by
Defendants).

—continued

file
F
Gerald Lanson
15th Nov. 1913
R. W. Taylor

C

In the
Supreme Court
of Ontario

Exhibits

Exhibit No. 24
Booklet of ten
photostatic copies
of advertisements
in The Globe from
February, 1908, to
April, 1913.

(Filed by
Defendants).

—continued

Gr
Bread Magazine
15th Nov. 35
P. G. Taylor

YOUR DOCTOR

doesn't know your stomach as well as you do—he hasn't lived with it as long as you have—but he will tell you that a well-cooked cereal eaten every morning for breakfast will strengthen the digestive organs and keep the bowels healthy and active. And if he is wise he will recommend

SHREDDED WHEAT

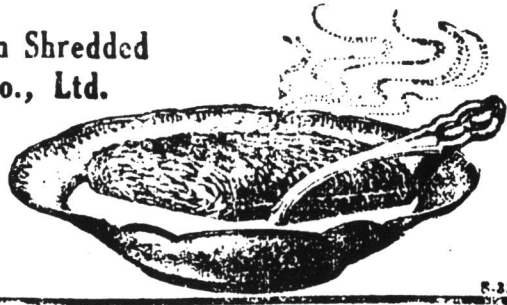
for this purpose because it is the whole wheat made digestible by steam-cooking, shredding and baking. Make your "meat" Shredded Wheat.

For breakfast heat the Biscuit in the oven a few moments to restore crispness; then pour hot milk over it, adding a little cream; salt or sweeten to suit the taste. It is deliciously nourishing and wholesome for any meal with stewed prunes, baked apples, sliced bananas, preserved peaches, pineapple or other fruits. At your grocer's.

MADE IN CANADA
A CANADIAN FOOD FOR CANADIANS

The Canadian Shredded
Wheat Co., Ltd.

Niagara Falls
Ont.
Toronto Office:
49 Wellington St.
East



R-33

In the
Supreme Court
of Ontario

Exhibits

Exhibit No. 24
Booklet of ten
photostatic copies
of advertisements
in The Globe from
February, 1908, to
April, 1913.

(Filed by
Defendants).

—continued

H
beard v. mayan
15th Nov 35
A. Ross C. Taylor

Won Its Favor Without a Flavor

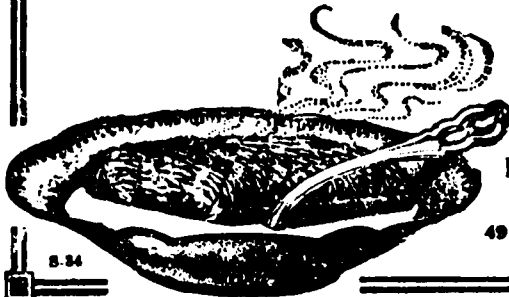
When you eat a breakfast cereal you want to do your own flavoring or seasoning. That's the reason you will choose

SHREDDED WHEAT

for your morning meal. It is a natural, elemental food made of the whole wheat steam-cooked, shredded and baked a crisp, golden brown. It is not flavored or treated or compounded with anything and hence keeps indefinitely in the market—the standard cereal food eaten all over the world.

For breakfast heat the Biscuit in the oven a few moments to restore crispness; then pour hot milk over it, adding a little cream; salt or sweeten to suit the taste. It is deliciously nourishing and wholesome for any meal with stewed prunes, baked apples, sliced bananas, preserved peaches, pineapple or other fruits. At your grocer's.

MADE IN CANADA
A CANADIAN FOOD FOR CANADIANS



The Canadian
Shredded
Wheat Co., Ltd.
Niagara Falls, Ont.
Toronto Office:
49 Wellington Street East

In the
Supreme Court
of Ontario

Exhibits

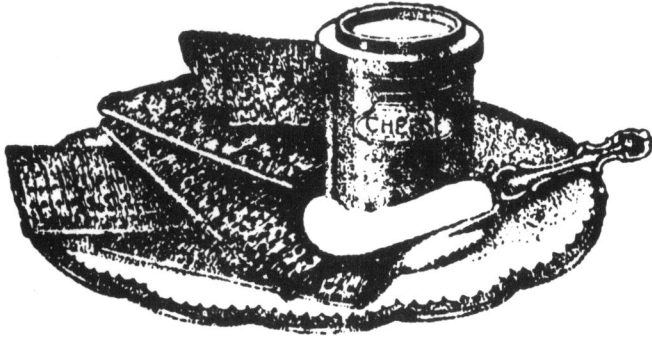
Exhibit No. 24
Booklet of ten
photostatic copies
of advertisements
in The Globe from
February, 1908, to
April, 1913.

(Filed by
Defendants).

—continued

*1
bound in 1913
15
H. B. Taylor*

The Crisp, Tasty Toast



Food science has taught us that there is much body-building nutriment in the whole wheat grain which we do not get in white flour. The only question is how to make the whole wheat grain digestible. That problem has been solved in the making of

TRISQUIT

The Shredded Whole Wheat Wafer

It is the whole wheat, steam-cooked, shredded, compressed into a wafer, and baked—the maximum of nutriment in smallest bulk. Many people prefer it to ordinary bread toast. Heated in the oven to restore its crispness it is delicious for luncheon, or for any meal, with butter, potted cheese or marmalades.

“THE TOAST OF THE TOWN”

Made of the Choicest Selected Canadian Wheat
A Canadian Food for Canadians

Made by
The Canadian Shredded Wheat Company, Limited
Niagara Falls, Ont.

Toronto Office: 49 Wellington Street East

In the
Supreme Court
of Ontario

Exhibits

Exhibit No. 24
Booklet of ten
photostatic copies
of advertisements
in The Globe from
February, 1908, to
April, 1913.

(Filed by
Defendants).
—continued

J
... Gerald Langdon
15th Nov 35
St. Brice G. Taylor

OUR EMPLOYER—

the Canadian Housewife—we work for her
all the year 'round, making every day in the
year half a million

SHREDDED WHEAT BISCUITS

for the health and happiness of her family, simplifying her housekeeping problems and relieving her of worry and care. In making Shredded Wheat Biscuit we steam-cook the grains of whole wheat, draw them out into delicate, filmy shreds, form them into little loaves or Biscuit and bake them a crisp, golden brown. Because of its biscuit form you can do so many things with Shredded Wheat which you cannot do with other breakfast cereals.

For Breakfast heat the Biscuit in the oven a few moments to restore crispness; then pour hot milk over it, adding a little cream; salt or sweeten to suit the taste. It is deliciously nourishing and wholesome for any meal with stewed prunes, baked apples, sliced bananas, preserved peaches, pineapple or other fruits. At your grocer's.

MADE IN CANADA
A CANADIAN FOOD FOR CANADIANS



The Canadian
Shredded
Wheat Co., Ltd.
Niagara Falls, Ont.

Toronto Office:
49 Wellington Street East

EXHIBIT No. 40.

I, GERALD SANAGAN, of the City of Toronto, in the County of York, Student-at-Law, make oath and say as follows:

1. THAT I examined the Toronto "Globe" newspapers which were published between May 1st, 1913, and April 30th, 1915, inclusive, and copied therefrom the "Shredded Wheat" advertisements appearing in the Toronto "Globe" newspapers between those dates.

2. THAT to the best of my knowledge, information and belief, the writings attached hereto are true copies of all the "Shredded Wheat" advertisements appearing in the Toronto "Globe" newspapers between the aforesaid dates, upon the dates indicated herein.

Sworn before me at the City of Toronto }
in the County of York, this 18th day of } "GERALD SANAGAN."
November, 1935.

"ROSS C. TAYLOR,"
A Commissioner, etc.
A Notary Public. (SEAL)

*In the
Supreme Court
of Ontario*

Exhibits

Exhibit No. 40
Additional
advertising
matter of
Plaintiff
Company.
(Filed by
Defendants).

SHREDDED WHEAT ADVERTISEMENTS.

May 1, 1913—April 30, 1915.

20 The advertisements of this period are all two columns by about eight inches, with the exception of a few which are three columns by about five and a half inches (as indicated herein). In all, the letters in the name Shredded Wheat are about 3/4 inch deep. Beginning with the first advertisement in 1915, the name The Canadian Shredded Wheat Company, Limited, is omitted.

(SEAL)

Sat. May 3, 1913.

THE CONSUMER'S DOLLAR

30 will go a long ways with a wise selection of foods that supply the greatest amount of nutriment with the least tax upon the digestive organs. The consumer's dollar will purchase ninety-two

SHREDDED
WHEAT
BISCUITS

each one of which makes a complete, warm, nourishing meal when eaten with hot milk and a little cream. Contains more real nutriment than milk or eggs, is more easily digested and costs much less.

*In the
Supreme Court
of Ontario*

Exhibits

Exhibit No. 40
Additional
advertising
matter of
Plaintiff
Company.
(Filed by
Defendants).

—continued

For breakfast heat the Biscuit in the oven a few moments to restore crispness; then pour hot milk over it, adding a little cream; salt or sweeten to suit the taste. It is deliciously nourishing and wholesome for any meal with stewed prunes, baked apples, sliced bananas, preserved peaches, pineapple or other fruits. At your grocer's.

MADE IN CANADA

A CANADIAN FOOD FOR CANADIANS

(cut of bowl The Canadian Shredded Wheat Co., Ltd.,
containing Niagara Falls, Ont.
S.W. Biscuit) Toronto Office: 49 Wellington Street East.

10

(SEAL)

Wed., May 7, 1913—same as Apl. 2, 1913.

Sat., May 10, 1913.

REAL WHOLE WHEAT BREAD.

The digestibility of whole wheat bread is a much debated question—but there is no question about the nutritive value or digestibility of

TRISCUIT

the Shredded Wheat wafer, a crisp, tasty toast containing all the body-building material in the whole wheat grain, steam-cooked, shredded, compressed into a wafer and baked a crisp, golden brown. It is a delicious "snack" for 20 luncheons or for any meal with butter, soft cheese, peanut butter or marmalades.

Made of the Highest Grade Canadian Wheat

A Canadian Food for Canadians

Made by

Canadian Shredded Wheat Company, Limited,

Niagara Falls, Ontario

Toronto Office: 49 Wellington Street East

(SEAL)

Wed., Aug. 13, 1913.

DON'T BE SATISFIED
with merely making your mouth water over this combination—

**SHREDDED
WHEAT**
With Sliced Peaches and Cream

10 Make your stomach happy by crisping one or more Shredded Wheat Biscuits in the oven, then cover the Biscuits with some luscious Canadian sliced peaches and cream, and you have a dish that is not only pleasing to the palate, but more wholesome and strengthening than heavy meats or starchy vegetables. Always heat the Biscuit in the oven to restore crispness. For breakfast serve with milk or cream or fresh fruits of any kind.

MADE IN CANADA.
A CANADIAN FOOD FOR CANADIANS.
The Canadian Shredded Wheat Company, Limited
Niagara Falls,
Ontario

(cut of bowl containing
S.W. Biscuit)

Toronto Office:
49 Wellington St. East
(SEAL)

20

Sat., Aug. 16, 1913.

**THREE
MEALS** (cut of bowl containing S.W. Biscuit)
A DAY

are three too many if they are not appetizing, wholesome and nourishing. Cut out heavy meats and starchy vegetables for a while—eat

**SHREDDED
WHEAT**
With Sliced Peaches or Other Fruit

30

Shredded Wheat is a natural, elemental food made out of the whole wheat, steam-cooked, shredded and baked a crisp, golden brown. For health and stomach comfort in the warm days nothing can equal this combination. It supplies the maximum of nutriment with the least tax upon the digestion. Make your meat Shredded Wheat.
Always heat, etc.

MADE IN CANADA.
A CANADIAN FOOD FOR CANADIANS
The Canadian Shredded Wheat Company, Limited
Niagara Falls, Ontario
Toronto Office: 49 Wellington Street East

40

(SEAL)

*In the
Supreme Court
of Ontario*

Exhibits

Exhibit No. 40
Additional
advertising
matter of
Plaintiff
Company.
(Filed by
Defendants).
—continued

*In the
Supreme Court
of Ontario*

Exhibits

Exhibit No. 40
Additional
advertising
matter of
Plaintiff
Company.
(Filed by
Defendants).
—continued

Wed., Aug. 20, 1913.

BETTER THAN MEAT
MORE EASILY DIGESTED
COSTS MUCH LESS

All the body-building elements in the whole wheat grain, steam-cooked, shredded and baked into crisp, golden brown Biscuits or little loaves. The world's universal staple breakfast cereal. Try

SHREDDED
WHEAT

for breakfast or for any meal with sliced peaches and cream or with any fresh 10 fruits. The combination not only gives the maximum of nutriment in smallest bulk, but keeps the stomach sweet and clean and the bowels healthy and active. Always clean, always pure, always wholesome.

Always heat, etc.

MADE IN CANADA
A CANADIAN FOOD FOR CANADIANS

The Canadian Shredded Wheat Company, Limited
Niagara Falls, Ontario. (cut of bowl containing S.W. Biscuit)
Toronto Office: 49 Wellington St. East.

(SEAL) 20

Sat., Aug. 23, 1913.

(cut of plate containing Triscuits, jar of cheese
and knife)

THE CALL OF THE OPEN

The call of the open is particularly alluring in Canada with its vast areas of wild woods, lakes and streams. To get the full joy of the outdoors, however, you must leave household care and business worry at home and take

TRISCUIT

with you. A box of this crisp Shredded Whole Wheat wafer will supply all the strength-giving nutriment needed for a day's tramp in the woods or an 30 excursion on land or sea. It is delicious when toasted and eaten with butter, soft cheese or marmalades. The maximum of nutriment in smallest bulk.

MADE IN CANADA
A CANADIAN FOOD FOR CANADIANS

The Canadian Shredded Wheat Company, Limited,
Niagara Falls, Ontario
Toronto Office: 49 Wellington Street East

(SEAL)

Wed., Aug. 27, 1913.

“THE DAY’S CATCH”

Whether at work or at play the “day’s catch” does not count if your stomach goes out of business and your capacity to enjoy the good things of life is taken from you

SHREDDED
WHEAT

not only contains every element needed to repair waste tissue and restore strength to jaded nerves but it is retained and digested by the most delicate stomach. A food for athletes and invalids, for children and grown-ups.

Always heat, etc. Try it with peaches and cream.

MADE IN CANADA
A CANADIAN FOOD FOR CANADIANS

The Canadian Shredded Wheat Company, Limited

Niagara Falls, Ontario.

(cut of Bowl containing S.W. Biscuit)

Toronto Office: 49 Wellington Street East.

(SEAL)

Sat., Aug. 30, 1913.

THE HAPPY HEALTH HABIT

is not easy to acquire when the appetite is fickle and the digestive powers are weak. The surest way to get Summer comfort and palate joy is to drop heavy meats and starchy vegetables and eat

SHREDDED
WHEAT

With Sliced Peaches or Other Fruit

a dish that is appetizing, satisfying and easily digested. It supplies the maximum of nutriment and keeps the bowels healthy and active. Delicious for breakfast or for any meal.

For breakfast heat the Biscuit in the oven to restore crispness, then cover with sliced peaches or other fruit and serve with milk or cream; sweeten to suit taste. Shredded Wheat is ready-cooked, ready-to-serve.

MADE IN CANADA
A CANADIAN FOD FOR CANADIANS

The Canadian Shredded Wheat Comapny, Limited

Niagara Falls, Ontario

(cut of bowl containing S.W. Biscuit)

Toronto Office:

49 Wellington Street East.

(SEAL)

*In the
Supreme Court
of Ontario*

Exhibits

Exhibit No. 40
Additional
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matter of
Plaintiff
Company.

(Filed by
Defendants).

—continued

*In the
Supreme Court
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Wed., Sept. 3, 1913.

A GRAIN OF WHEAT

Exhibits
Exhibit No. 40
Additional
advertising
matter of
Plaintiff
Company.
(Filed by
Defendants).
—continued

A grain of wheat contains all the elements that are needed to completely nourish the human body and to sustain at top-notch efficiency all the mental and physical powers. When you eat a wheat food be sure you get all the wheat in a digestible form. In making

SHREDDED
WHEAT

we make all these elements digestible by steam-cooking, shredding and baking into crisp, golden brown Biscuits. Two Shredded Wheat Biscuits with sliced 10
peaches or other fresh fruit will supply all the nutriment needed for a half-day's work.

Always heat, etc.

MADE IN CANADA
A CANADIAN FOOD FOR CANADIANS

The Canadian Shredded Wheat Company, Limited
Niagara Falls, Ontario
(cut of bowl containing S.W. Biscuit) Toronto Office:
49 Wellington Street East
(SEAL) 20

Sat., Sept. 6, 1913.

CRISP AND SNAPPY
FULL OF "CHEWS"
FULL OF NUTRIMENT
TRISCUIT

the Shredded Whole Wheat wafer, which contains all the body-building elements in the whole wheat grain made digestible by being steam-cooked, shredded, compressed into a wafer and baked by electricity crisp and brown—a delicious, wholesome substitute for white flour bread, toast or crackers. A delicious snack for luncheons, for the bungalow in the woods, for automobile 30
trips, for excursions on land or sea. It should always be heated in the oven to restore crispness and served with butter, soft cheese or marmalades.

MADE IN CANADA
A CANADIAN FOOD FOR CANADIANS

The Canadian Shredded Wheat Company, Limited
Niagara Falls, Ontario
Toronto Office: 49 Wellington Street East

(SEAL)

	Wed.,	Sept. 10, 1913—same as	Aug. 13
	Sat.	“ 13	“ “ “ 16
	Wed.,	“ 17	“ “ “ 20
	Sat.	“ 20	“ “ “ 23
	Wed.,	“ 24	“ “ “ 27
	Sat.,	“ 27	“ “ Sept. 3
	Wed.,	Oct. 1	“ “ “ 6
	Sat.	“ 4	“ “ Aug. 13
	Wed.	“ 8	“ “ “ 20
10	Sat.	“ 11	“ “ “ 23
	Wed.,	“ 15	“ “ “ 27
	Sat.,	“ 18	“ “ Sept. 3

*In the
Supreme Court
of Ontario*

Exhibits

Exhibit No. 40
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matter of
Plaintiff
Company.
(Filed by
Defendants).
—continued

(SEAL)

Wed., Oct. 22, 1913.

BUILDING
AN
EMPIRE

(cut of bowl containing S.W. Biscuit)

Every loyal Canadian is an “Empire Builder,” He is anxious to add to the health and prosperity of the Dominion. But you can’t build an Empire out of lands and mines and railroads alone. You have to build an Empire with men—and the way to make men is to give growing youngsters a food that builds strong and sturdy bodies. Such a food is

SHREDDED
WHEAT

It contains all the material in the whole wheat grain made digestible by steam-cooking, shredding and baking. It is better than mushy porridge because it induces thorough mastication and thus develops sound teeth and insures perfect digestion. A food to study on, to play on, to work on.

Always heat, etc. Try Toasted Triscuit, the Shredded Wheat wafer for luncheon, with butter, cheese or marmalade.

The Canadian Shredded Wheat Company, Limited
Niagara Falls, Ontario
Toronto Office: 49 Wellington Street East

(SEAL)

*In the
Supreme Court
of Ontario*

Sat., Oct. 25, 1913.

WHO BAKES YOUR BREAD?

Did you ever visit the shop where your bread is baked? Are you sure it is clean and sanitary? Do you know that the baker selects pure materials of highest quality? You run no risk if you make your bread

SHREDDED
WHEAT

It is the real "staff of life," being made in Canada from the whole wheat grain, steam-cooked, shredded and baked under conditions that insure its absolute purity and cleanliness. More nourishing than meat or eggs, costs less and is much more easily digested. Supplies the warmth and strength that are needed for the chilly days. 10

Always heat, etc. Try toasted, etc.

The Canadian Shredded Wheat Company, Limited

Niagara Falls, Ontario

Toronto Office:

49 Wellington Street East.

(cut of bowl containing S.W. Biscuit)

(SEAL)

Wed., Oct. 29, 1913.

READY FOR THE CHILLY DAYS?

20

The best protection against sudden changes of temperature is the robust vigor that comes from a nourishing food that is easily digested, that contains in well-balanced proportion all the material for giving warmth and strength to the body. Fortify yourself against cold and exposure by eating

SHREDDED
WHEAT

the food that supplies in digestible form all the proteids and heat-making units that are needed for work or play in any climate. Its daily use is an easy solution of the servant problem because it is ready-cooked and ready-to-serve and is delicious in combination with all kinds of preserved fruits. 30

Always heat, etc. Try Toasted TRISCUIT, etc.

The Canadian Shredded Wheat Company, Limited

Niagara Falls, Ontario.

(cut of bowl containing S.W. Biscuit)

Toronto Office:

49 Wellington Street East.

(SEAL)

Exhibits
Exhibit No. 40
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(Filed by
Defendants).

—continued

Sat., Nov. 1, 1913.

“EAT MORE BREAD”

of course you should “eat more bread”—and less meat—but be sure your “bread” contains all the body-building material in the whole wheat prepared in digestible form. The only “bread” that fulfils all the requirements is

SHREDDED
WHEAT

10 It is made in Canada of Canadian whole wheat steam-cooked, shredded and baked. It is a natural, elemental food and is not treated or compounded with anything. Its purity, cleanliness and food value stand unchallenged, being endorsed by the highest health and dietetic authorities in Canada and the United States.

Always heat, etc. Try toasted, etc.

The Canadian Shredded Wheat Company, Limited

(cut of bowl containing S.W. Biscuit)

Niagara Falls, Ontario

Toronto Office:

49 Wellington Street East.

(SEAL)

Wed., Nov. 5, 1913.

20

MAKING MORE DOLLARS

Canada is “making” money. The government has to print more dollars every year to meet the demands of business prosperity—but the dollar you make must have purchasing power if it adds to your health and comfort. For a Canadian dollar you can get one hundred.

SHREDDED
WHEAT
BISCUITS

30 and that means a hundred wholesome, nourishing breakfasts. If you add coffee, milk and cream, a deliciously nourishing Shredded Wheat breakfast should not cost over five cents. Shredded Wheat Biscuit is ready-cooked and ready-to-serve—a boon to busy housewives and growing children.

Always heat, etc. Try, etc.

The Canadian Shredded Wheat Company, Limited

Niagara Falls, Ontario.

Toronto Office:

49 Wellington Street East.

(cut of bowl containing S.W. biscuits)

(SEAL)

*In the
Supreme Court
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*In the
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of Ontario*

Sat., Nov. 8, 1913.

Exhibits

Exhibit No. 40
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Company.

(Filed by
Defendants).

—continued

NOT "RAISED" WITH YEAST

You can "raise" a loaf of white flour bread with yeast—but you can't "raise" husky robust Canadian youngsters in that way. The best food for growing boys and girls is

SHREDDED WHEAT

It contains no yeast, no fats, no chemicals of any kind—just pure whole wheat steam-cooked, shredded and baked. The crisp, brown Biscuits are not only deliciously appetizing, but they encourage thorough chewing, which makes them better than porridge for growing youngsters. A Shredded Wheat Biscuit with cream and sliced bananas makes a wholesome, nourishing meal and will give all the strength needed for a half-day's work or play. 10

Always heat, etc. Try, etc.

The Canadian Shredded Wheat Company, Limited
Niagara Falls, Ontario
Toronto Office: 49 Wellington Street East
(cut of bowl containing
S.W. Biscuit)

(SEAL) 20

Wed., Nov. 12, 1913.

(cut of bowl containing
S. W. Biscuit)

A HOT DISH FOR A COLD DAY

During the chilly autumn weather it is best to start the day with a warm meal that not only gives stomach comfort, but supplies the greatest amount of body-building material with the least tax upon the digestion. Keep the body warm and strong by eating

SHREDDED WHEAT

30

the food that fortifies you against sudden changes of temperature and which contains more real body-building nutriment than meat or eggs and costs much less. After you have tried all the others you will come back to Shredded Wheat—always the same price—always clean—always pure—always the same.

Always heat, etc. Try Toasted TRISCUIT, etc.

The Canadian Shredded Wheat Company, Limited
Niagara Falls, Ontario.
Toronto Office: 49 Wellington Street East.

(SEAL) 40

Sat., Nov. 15, 1913—same as Wed., Oct. 22.

Wed., Nov. 19

TRY TRISCUIT TO-DAY
(cut of dish containing
Triscuits, cheese, knife)

Food science has taught us that there is much body-building nutriment in the whole wheat grain which we do not get in white flour. The only question is how to make the whole wheat grain digestible. That problem has been solved in the making of

TRISCUIT

10

The Shredded Whole Wheat Wafer

It is the whole wheat, steam-cooked, shredded, compressed into a wafer and baked—the maximum of nutriment, in smallest bulk. Many people prefer it to ordinary bread toast. Heated in the oven to restore its crispness, it is delicious for luncheon, or for any meal with butter, potted cheese or marmalades.

“THE TOAST OF THE TOWN”

Made of the Choicest Selected Canadian Wheat

Made by

The Canadian Shredded Wheat Company, Limited

Niagara Falls, Ontario

Toronto Office: 49 Wellington Street East

20

(SEAL)

Sat., Nov. 22—same as Oct. 25.

Wed., Nov. 26—same as Oct. 29.

Sat., Nov. 29—same as Nov. 1.

Wed., Dec. 3, 1913.

REAL
WHOLE WHEAT TOAST

The digestibility of ordinary whole wheat bread is a much debated question—but there is not question about the nutritive value or digestibility of

30

TRISCUIT

the Shredded Wheat wafer, a crisp, tasty toast containing all the body-building material in the whole wheat grain, steam-cooked, shredded, compressed into a wafer and baked a crisp, golden brown. It is a delicious “snack” for luncheons or for any meal with butter, soft cheese, peanut butter or marmalades.

Made of the Highest Grade Canadian Wheat

A Canadian Food for Canadians

Made by

The Canadian Shredded Wheat Company, Limited

Niagara Falls, Ontario

Toronto Office: 49 Wellington Street East

40

Sat. Dec., 6, 1913—same as Nov. 5

Wed., Dec. 10, 1913—same as Nov. 8

Fri., Dec. 12, 1913—same as Nov. 12

(SEAL)

*In the
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(Filed by
Defendants).
—continued

Sat., Feb. 28, 1914—same as Oct. 22, 1913
Tues., Mar. 3, 1914—same as Nov. 1, 1913
Thur., Mar. 5, 1914—same as Nov. 19, 1913

Sat., Mar. 7, 1914.

“HER POCKET-BOOK”

may have just as many dollars in it, but they don't go as far as they did a few years ago. The richest woman in the world cannot buy anything more wholesome of more nutritious than

SHREDDED
WHEAT

10

It contains all the body-building nutriment in the whole-wheat grain, and being in little loaf form it is so easy to prepare with it a deliciously nourishing meal at a cost of four or five cents. Try it with sliced bananas or stewed prunes.

Always heat the Biscuit in oven to restore crispness. Two Shredded Wheat Biscuits with hot milk or cream will supply all the energy needed for a half day's work. Deliciously nourishing when eaten in combination with baked apples, stewed prunes, sliced bananas, canned or preserved fruits. Try toasted Triscuit, the Shredded Wheat wafer for luncheon with butter, cheese or marmalade.

The Canadian Shredded Wheat Company, Limited 20
Niagara Falls, Ontario
Toronto Office: (cut of bowl containing S.W. Biscuit)
49 Wellington Street East.

(SEAL)

Tues., Mar. 10, 1914.

SIXTY-SIX PER CENT.

According to the latest statistics the retail prices of the “principle articles of food” in forty cities advanced sixty-six per cent. in fourteen years. The price of

SHREDDED
WHEAT

30

in all that time has remained the same, and it is just as strengthening and sustaining as it was fourteen years ago—a complete, perfect food, supplying more real body-building nutriment than meat or eggs and costing much less. Your grocer sells it.

Always heat, etc.

The Canadian Shredded Wheat Company, Limited
Niagara Falls, Ontario.
(cut of bowl containing S.W. biscuit) Toronto Office:
49 Wellington Street East.

Thur., Mar. 12, 1914—same as Nov. 5, 1913
Sat., Mar. 14, 1914—same as Dec. 3, 1913

40

(SEAL)

Tues., Mar. 17, 1914.

YOUR "GENERAL MANAGER"

The wise man leaves the management of his house to his real General Manager—the wife who buys the food and who makes a study of its nutritive value. The housewife who knows

SHREDDED
WHEAT

has already solved the servant problem and the problem of the high cost of living. Its daily use means health and strength and decreased household expense. Combined with sliced bananas, stewed prunes or other fruits it furnishes the highest food value at the lowest cost. Make it your "meat" for a few days and see how much better you feel.

Always heat, etc.

The Canadian Shredded Wheat Company, Limited

Niagara Falls, Ontario.

(cut of bowl containing S.W. Biscuit)

Toronto Office:

49 Wellington Street East.

Thur., Mar. 10, 1914—same as Oct. 22, 1913

Sat., Mar. 21, 1914—same as Mar. 7, 1914

20 Tue., Mar. 24, 1914—same as Nov. 19, 1913

(SEAL)

Thur., Mar. 26, 1914.

A GOOD BREAKFAST FOR FIVE CENTS

The food that supplies the greatest amount of digestible nutriment at smallest cost is

SHREDDED
WHEAT

the only breakfast cereal made in Biscuit form. Contains all the body-building material in the whole wheat grain made digestible by steam-cooking, shredding and baking. Two Shredded Wheat Biscuits, eaten with hot milk and a little cream, make a complete, perfect meal at a cost of four or five cents. Ready-cooked, ready-to-serve.

Always heat, etc.

The Canadian Shredded Wheat Company, Limited

Niagara Falls, Ontario.

(cut of bowl containing S.W. Biscuit)

Toronto Office:

49 Wellington St. East.

(SEAL)

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Company.
(Filed by
Defendants).
—continued

Sat., Mar. 28, 1914.

NO KITCHEN WORRY
No servant problem in the house where
SHREDDED
WHEAT

is known. We do all the work and all the worrying for you when you serve Shredded Wheat Biscuit. Made of the choicest, selected Canadian Wheat steam-cooked, shredded and baked—a Canadian food for Canadians. Our Kitchen is your kitchen.

Always heat, etc.

10

The Canadian Shredded Wheat Company, Limited

Niagara Falls, Ontario.

Toronto Office:

49 Wellington Street East.

(cut of bowl containing S.W. Biscuit)

(SEAL)

Tues., Mar. 31, 1914—same as Mar. 10, 1914.

Thur., Apl. 2, 1914—same as Dec. 3, 1913.

Sat., Apl. 4, 1914.

THAT HUNGRY BOY

must have something besides bread-and-butter-and-jam and books and sermons 20
to grow on, to study on, to play on. For growing youngsters nothing equals

SHREDDED
WHEATS

the food that builds muscle, bone and brain—a natural elemental food—contains no yeast, no baking powder, no chemicals of any kind—just the pure whole wheat grain steam-cooked, shredded and baked. Better than porridges for children.

Always, heat, etc.

The Canadian Shredded Wheat Company, Limited

(cut of bowl containing S.W. Biscuit)

Niagara Falls, Ontario.

Toronto Office:

49 Wellington Street East.

30

(SEAL)

Tue., Apl. 7, 1914.

NOT "BLEACHED"!

The United States Department of Agriculture has met defeat in its efforts to prevent the bleaching of white flour with chemicals. The controversy over bleached flour does not disturb the household that knows

SHREDDED
WHEAT

It contains all the body-building nutriment in the whole wheat grain, is not "bleached" nor "treated" nor "compounded" with anything—just the pure
10 wheat steam-cooked, shredded and baked.

Always heat, etc.

The Canadian Shredded Wheat Company, Limited

Niagara Falls, Ontario.

Toronto Office:

49 Wellington Street East.

(cut of bowl containing S.W. Biscuit)

(SEAL)

Thur., Apl. 9, 1914—same as Mar. 17, 1914.
 Sat., Apl. 11, 1914—same as Mar. 7, 1914.
 Tue., Apl. 14, 1914—same as Nov. 19, 1913.
 20 Thur., Apl. 16, 1914—same as Mar. 26, 1914.
 Sat., Apl. 18, 1914—same as Mar. 28, 1914.
 Tue., Apl. 21, 1914—same as Mar. 10, 1914.
 Thur., Apl. 23, 1914—same as Dec. 3, 1913.
 Sat., Apl. 25, 1914—same as Apl. 4, 1914.
 Tue., Apl. 28, 1914—same as Apl. 7, 1914.
 Thur., Apl. 30, 1914—same as Mar. 17, 1914.
 Sat., May 2, 1914—same as Mar. 7, 1914.
 Tue., May 5, 1914—same as Nov. 19, 1913.
 Thur., May 7, 1914—same as Mar. 26, 1914.
 30 Sat., May 9, 1914—same as Mar. 28, 1914.
 Tue., May 12, 1914—same as Mar. 10, 1914.
 Thur., May 14, 1914—same as Dec. 3, 1913.
 Sat., May 16, 1914—same as Apl. 4, 1914.
 Tue., May 19, 1914—same as Apl. 7, 1914.
 Thur., May 21, 1914—same as Mar. 17, 1914.
 Sat., May 23, 1914—same as Mar. 7, 1914.
 Thur., May 26, 1914—same as Nov. 19, 1913.
 Thur., May 28, 1914—same as Mar. 26, 1914.
 Sat., May 30, 1914—same as Mar. 28, 1914.
 40 Tue., June 2, 1914—same as Mar. 10, 1914.
 Thur., June 4, 1914—same as Dec. 3, 1913.
 Sat., June 6, 1914—same as Apl. 4, 1914.
 Tue., June 9, 1914—same as Apl. 7, 1914.
 Thur., June 11, 1914—same as Mar. 17, 1914.

(SEAL)

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Defendants).
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matter of
Plaintiff
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(Filed by
Defendants).
—continued

Sat., June 13, 1914.

**GIVE
NATURE A
CHANCE**

(cut of bowl containing S.W.
covered with strawberries)

The road to health and strength and palate-joy is through a return to simple
foods like

**SHREDDED
WHEAT**

With Strawberries or Other Fruits

Cut out meat and potatoes for a while and try this dish—a dainty, delicious, 10
nourishing dish. Because of its porous shreds and its biscuit form Shredded
Wheat combines most naturally and deliciously with all kinds of fresh fruits.

Heat one or more Biscuits in the oven to restore crispness; then cover with
berries or other fresh fruit; serve with milk or cream and sweeten to suit the
taste. Better than soggy white flour “short-cake”; contains no yeast, no
baking powder, no fats, no chemicals of any kind—just the meat of the golden
wheat, steam-cooked, shredded and baked.

The Canadian Shredded Wheat Company, Limited
Niagara Falls, Ontario
Toronto Office: 49 Wellington Street East

(SEAL) 20

Sat., June 20, 1914.

(cut of bowl containing
S.W. Biscuit covered
with strawberries)

**THE
BRIGHTEST
DAY OF
THE YEAR**

is the day you start with a breakfast of

**SHREDDED
WHEAT**

With Strawberries or Other Fruits

30

A return to this simple, wholesome, nourishing diet after a season of heavy
foods means renewed mental and physical vigor—a cleansing of the cobwebs
from the brain. It keeps the stomach sweet and clean and the bowels healthy
and active.

Heat one, etc.

The Canadian Shredded Wheat Company, Limited
Niagara Falls, Ontario.
Toronto Office: 49 Wellington Street East

(SEAL)

Tues., June 23, 1914.

(cut of bowl containing
S.W. Biscuit covered
with strawberries)

MAKE
THIS YOUR
"MEAT"

*In the
Supreme Court
of Ontario*

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(Filed by
Defendants).

—continued

A nourishing, satisfying, strengthening dish that tempts the palate and gives stomach comfort after the digestive organs have wrestled with high-proteid foods—

SHREDDED
WHEAT

10

With Strawberries or Other Fruits.

Nothing so delicious, nothing so easily digested, nothing so easy to prepare. The only breakfast cereal that combines naturally with berries and other fruits.

Heat one, etc.

The Canadian Shredded Wheat Company, Limited
Niagara Falls, Ontario
Toronto Office: 49 Wellington Street East

(SEAL)

Mon., October 19, 1914.

20

MADE IN CANADA

In these troublous times when the valor and brawn of Canada are springing to the defence of the mother country it is a good time for loyal Canadians to stand by the industries from which come the wealth and prosperity of the Dominion

SHREDDED
WHEAT

is made in Canada of choicest Canadian wheat. It is premier among all wheat foods—a real Empire builder because it makes sturdy, robust men and women. It is ready-cooked and ready-to-serve—always the same quality—always the same price.

30

For breakfast heat the biscuit in oven to restore crispness and then pour hot milk over it, adding a little cream. Salt or sweeten to suit the taste. Better than mushy porridges that are bolted down without chewing. A hot, nourishing breakfast for a chilly day. Deliciously nourishing for any meal with sliced bananas, baked apples or canned or preserved fruits of any kind.

The Canadian Shredded Wheat Company, Limited
Niagara Falls, Ontario.
Toronto Office:
49 Wellington Street East.

(cut of bowl containing S.W. biscuit)
(SEAL)

*In the
Supreme Court
of Ontario*

Sat., Jan. 16, 1915.

3 col.

MADE IN CANADA

Exhibits

Exhibit No. 40
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matter of
Plaintiff
Company.

(Filed by
Defendants).
—continued

Full of “pep” and “snap”! The man who cuts out meat and other heavy foods and starts the day with

SHREDDED WHEAT

will be surprised at the mental “pep” and “snap” he is able to put into his work. He will feel a mental buoyancy and lightness that can never come from high-proteid foods. Shredded Wheat builds strong, brainy men who are fit to fight the battles of the Empire.

Shredded Wheat is made in two forms, Biscuit and Triscuit—the Biscuit for breakfast with milk or cream, or with fruits; Triscuit, the wafer-toast, delicious for luncheon with butter or soft cheese, or for any meal as a substitute for white flour bread.

10

(cut of bowl containing
S.W.)

MADE AT

NIAGARA FALLS, ONTARIO

Toronto Office: 49 Wellington Street East

(SEAL)

Tues., Jan. 19, 1915.

MADE IN CANADA

20

There are wheat foods and wheat foods, some “flaked,” some “krumbled,” some “puffed,” some ground into meal—but there is only one

SHREDDED
WHEAT

It is made at Niagara Falls of the choicest selected Canadian whole wheat, steam-cooked, shredded and baked. It is made in little loaf form so the housewife can so serve it in many ways—a staple breadstuff as well as a breakfast cereal—always pure, always the same price.

Shredded Wheat is made in two forms, etc.

Made at
Niagara Falls, Ontario.
Toronto Office:
49 Wellington Street East.

(cut of bowl
containing S.W.)

30

(SEAL)

Sat., Jan. 23, 1915.

3 col.

MADE IN CANADA

Make your "meat" Canadian Wheat—but be sure it is the whole wheat prepared in a digestible form—that's what you get when you eat SHREDDED WHEAT, the food that puts you on your feet. It is not what you eat, but what you digest that makes muscle, bone and brain. SHREDDED WHEAT is a complete food for building the perfect human body. Ready-cooked and ready-to-serve.

Shredded Wheat is made, etc.

10 Made at
Niagara Falls, Ontario.
Toronto Office:
49 Wellington Street East.

(cut of bowl
containing S.W.)

(SEAL)

Tues., Jan 26, 1915.

MADE IN CANADA

The Bread that Builds Brain and Brawn must be made of the whole wheat grain—white flour bread will not do it—neither will the so-called "whole wheat flour bread." The only real whole wheat bread is

20 TRISCUIT

It is made of the whole wheat grain, steam-cooked, shredded, compressed into a wafer and baked by electricity. All the meat of the golden wheat prepared in its most digestible form and smallest bulk. A wholesome substitute for white flour bread—a delicious snack for luncheon with butter or soft cheese—crisp, snappy, strengthening and satisfying.

Made at Niagara Falls, Ontario
Toronto Office: 49 Wellington Street East

(SEAL)

Sat., Jan. 30, 1915.

MADE IN CANADA

30 Woman's work is never done, but the woman who knows the nutritive value and culinary uses of SHREDDED WHEAT can find time for other duties, pleasures and obligations outside of the kitchen. The servant problem does not disturb her—nor does the unexpected guest. SHREDDED WHEAT is ready-cooked and ready-to-serve—so easy to prepare a delicious, nourishing meal with it in a few minutes.

Shredded Wheat is made in two forms, etc.

40 Made at
Niagara Falls, Ontario.
Toronto Office:
49 Wellington Street East.

(cut of bowl
containing S.W.)

(SEAL)

*In the
Supreme Court
of Ontario*

Exhibits

Exhibit No. 40
Additional
advertising
matter of
Plaintiff
Company.

(Filed by
Defendants).

—continued

*In the
Supreme Court
of Ontario*

Tues., Feb. 2, 1915.

Exhibits

Exhibit No. 40
Additional
advertising
matter of
Plaintiff
Company.
(Filed by
Defendants).
—continued

MADE IN CANADA

Canada grows the wheat and we make it into a wholesome nourishing easily digested food by steam-cooking, shredding and baking.

SHREDDED WHEAT

is made of choicest selected Canadian wheat. Contains all the body-building material in the whole wheat grain and nothing else, a pure whole wheat food—the maximum of nutriment at smallest cost. A Canadian food for loyal Canadians.

Shredded Wheat is made in two forms, etc.

10

(cut of bowl
containing S.W.)

Made at
Niagara Falls, Ontario
Toronto Office:
49 Wellington Street East.
(SEAL)

Sat., Feb. 6, 1915.

(cut of bowl containing S.W.)

MADE IN CANADA

Send the boy to school with bodily vigor and mental vim that will put him to the front in study or play. You can't build the boy out of sermons and books alone. Give him

SHREDDED
WHEAT

A hot nourishing dish containing all the muscle-building, brain-making material in the whole wheat grain made digestible by steam-cooking, shredding and baking. Warm the Biscuit in oven and pour hot milk over it and you have a deliciously nourishing, warm breakfast.

Shredded Wheat is made, etc.

Made at Niagara Falls, Ontario
Toronto Office: 49 Wellington Street East

30
(SEAL)

Tues., Feb. 9, 1915.

MADE IN CANADA

Do you know Triscuit? It is the Shredded Whole Wheat Wafer. Try this whole wheat toast a few days instead of white flour bread toast and see how much better you feel.

TRISCUIT

heated in the oven to restore crispness and then served with butter is a delicious snack for luncheon or for hungry "kiddies." It is in a class by itself. It has everything in it that growing youngsters need and they like to chew it because
10 of its crispness and tastiness.

Made at
Niagara Falls, Ontario
Toronto Office: 49 Wellington Street East

(SEAL)

*In the
Supreme Court
of Ontario*

Exhibits

Exhibit No. 40
Additional
advertising
matter of
Plaintiff
Company.

(Filed by
Defendants).
—continued

Sat., Feb. 13, 1915.

3 col.

MADE IN CANADA

A man is as old as his arteries. The walls of the arteries grow thick and hard through a constant high-proteid diet. Cut out heavy meats for a while and eat SHREDDED WHEAT. It will postpone old age and help you keep the
20 buoyancy and vigor of youth. Contains all the body-building material in the whole wheat grain in its most digestible form. It contains the bran coat—Nature's laxative for keeping the bowels healthy and active—Why not be "a youngster at fifty?"

Shredded Wheat is made, etc.

(cut of bowl
containing S.W.)

Made at
Niagara Falls, Ontario
Toronto Office:
49 Wellington Street East.

(SEAL)

*In the
Supreme Court
of Ontario*

Tues., Feb. 12, 1915.

MADE IN CANADA

Exhibits
Exhibit No. 40
Additional
advertising
matter of
Plaintiff
Company.
(Filed by
Defendants).
—continued

Are you ready? Could you stand the physical test—the test that sets the standard for military service as well as working efficiency? Get in good muscular trim by eating

SHREDDED
WHEAT

Contains all the body-building, brain-making material in the whole wheat grain made digestible by steam-cooking, shredding and baking. Try it for ten days and you will get a new grip on life—new vim and energy for the day's work. A Canadian food for Canadians. 10

Shredded Wheat is made, etc.

Made at
Niagara Falls, Ontario
Toronto Office:
49 Wellington Street East.

(cut of bowl
containing S.W.)

(SEAL)

Sat., Feb. 20, 1915.

3 col.

MADE IN CANADA

“Nothing to Eat but Shredded Wheat” would be no hardship to the man who 20 knows the nutritive value of this whole wheat food.

SHREDDED WHEAT

contains all the body-building material in the whole wheat prepared in a digestible form. The richest man in the country cannot buy anything more wholesome or more nutritious. Two Shredded Wheat Biscuits make a complete, perfect meal—and it is ready-cooked and ready-to-serve.

Shredded Wheat is made, etc.

(cut of bowl
containing S.W.)

Made at
Niagara Falls, Ontario
Toronto Office: 49 Wellington Street East

30

(SEAL)

Tues., Feb. 23, 1915—same as Feb. 9, 1915.

Sat., Feb. 27, 1915.

*In the
Supreme Court
of Ontario*

MADE IN CANADA

Exhibits

Join "the live-a-little-longer movement" by cutting out heavy, indigestible foods—the kind that harden the arteries and put the liver out of business. SHREDDED WHEAT supplies all the nutriment needed for building the perfect body and for keeping the mental and physical powers at top-notch efficiency, with the least tax upon the digestion. It is ready-cooked and ready-to-serve—always the same quality, always the same price.

Exhibit No. 40
Additional
advertising
matter of
Plaintiff
Company.
(Filed by
Defendants).
—continued

Shredded Wheat is made, etc.

10 Toronto Office:
49 Wellington Street East

Made at
Niagara
Falls,
Ontario

(cut of bowl containing S.W.)

(SEAL)

Tues., Mar. 2, 1915.

3 col.

MADE IN CANADA

Nature's laxative is cellulose—the woody fibre that is found in many vegetables and in the bran coat of the whole wheat grain. It serves the useful function of promoting "bowel exercise." You find it in

SHREDDED WHEAT

in a form that does not irritate the intestines. It is combined with carbohydrates and mineral salts that build the perfect human body—all prepared in a digestible form—more nourishing than meat and costs much less.

Shredded Wheat is made, etc.

(cut of bowl containing S.W.)

Made at Niagara Falls, Ontario
Toronto Office: 49 Wellington Street East.

(SEAL)

*In the
Supreme Court
of Ontario*

Sat., Mar. 6, 1915.

MADE IN CANADA

Exhibits
Exhibit No. 40
Additional
advertising
matter of
Plaintiff
Company.
(Filed by
Defendants).
—continued

Such stomach comfort! On a cold day when there is work to do that calls for mental vigor and physical fitness nothing touches the spot like

SHREDDED
WHEAT

served with hot milk and a little cream. Better than mushy porridges that are bolted down without chewing. You have to chew Shredded Wheat—that's the reason it's so good for the "kiddies." It develops sound teeth, strong muscles and good brain.

10

Shredded Wheat is made, etc.

(cut of bowl
containing S.W.)

Made at
Niagara Falls, Ontario.
Toronto Office:
49 Wellington Street East.

(SEAL)

-
- Tues., Mar. 9, 1915—same as Jan. 26, 1915.
 - Sat., Mar. 13, 1915—same as Jan. 16, 1915.
 - Tues., Mar. 16, 1915—same as Jan. 19, 1915.
 - Sat., Mar. 20, 1915—same as Jan. 23, 1915.
 - Tues., Mar. 23, 1915—same as Jan. 26, 1915.
 - Sat., Mar. 27, 1915—same as Jan. 30, 1915.
 - Tues., Mar. 30, 1915—same as Feb. 2, 1915.
 - Sat., Apl. 3, 1915—same as Feb. 6, 1915.
 - Tues., Apl. 6, 1915—same as Feb. 9, 1915.
 - Sat., Apl. 10, 1915—same as Feb. 13, 1915.
 - Tues., Apl. 13, 1915—same as Feb. 16, 1915.
 - Sat., Apl. 17, 1915—same as Feb. 20, 1915.
 - Tues., Apl. 20, 1915—same as Feb. 9, 1915.
 - Sat., Apl. 24, 1915—same as Feb. 27, 1915.
 - Tues., Apl. 27, 1915—same as Mar. 2, 1915.

20

30

(SEAL)

Exhibit No. 9
Page VII of
"The Listener",
containing adver-
tisement for
"Shredded Wheat"
May 30, 1934.
(Filed by
Defendants)

30 MAY 1934

THE LISTENER

What is the Secret in the Shreds?

No. 9

*The Supreme Court of Ontario
Shredded Wheat v. Kellogg
This Exhibit is a copy of
the original
filed in
May of March 1935*



**WHOLE
WHEAT IN ITS BEST
FORM - BRAN EVENLY
DISTRIBUTED - EASY
DIGESTIBILITY - 100%
FOOD-VALUE**

There is more, far more, in the unique "shredding" process employed in the production of Shredded Wheat than many would imagine. It is this process which makes this splendid cereal the most vital, the most valuable, the most health-giving whole wheat food in the world. The "shredding" process, combined with those of steam cooking and baking, renders every particle of the wheat easily digested by breaking down the starch cells, distributing the vitamins, carbohydrates and the vital bran elements evenly throughout. Thus the whole secret of "shredding" is to give you a whole wheat food which has the quality not only of lightness but of 100% food value and digestibility. It supplies everything the body needs for complete sustenance and energy. Ready to serve with milk, fruits, honey or cream. 8d. per pkt. (in U.K.).

SHREDDED WHEAT

MADE BY THE SHREDDED WHEAT CO., LTD., WELWYN GARDEN CITY, HERTFORDSHIRE, *Pratts*
*Canada Shredded Wheat
is a food of 100% food value
deteriorated in its
preparation by
taken up to me on the 19th
for
A.D. 1934
John Brown
Special Examiner*

EXHIBIT No. 10.

being advertising matter marked as Exhibit No. 4 to the examination de bene esse of Edwin L. Wallace.

*In the
Supreme Court
of Ontario*

Exhibits

Exhibit No. 10
Ten printed sheets
containing extracts
from advertising
matter.

(Undated)
(Filed by
Defendants).

APPENDIX C.

Plaintiff's Cartons, Pamphlets and Advertisements Use Words "Shredded Wheat," in Descriptive Sense, Not as Trade-mark.

Plaintiff's carton (Exhibit D228, R. 1182) reads:

10 "The Original Shredded Wheat. It's all in the Shreds. Shredded Wheat is made of the whole wheat and is made digestible by steam-cooking, shredding and baking, contains all of the elements necessary for building, nourishing and sustaining the human body."

Plaintiff's pamphlet (Exhibit D229, R. 1183) reads in part:

20 "How shall we prepare the whole wheat so that its body-building elements may be digested and formed into healthy tissue, bone and brain? That question was solved by the man who invented Shredded Whole Wheat Biscuit. In making Shredded Wheat the whole wheat grains are first thoroughly cleaned, then cooked in steam, then drawn out into filmy shreds, then baked in ovens at a high temperature. The crispness of the shreds encourage thorough chewing, and that insures perfect digestion. That's the reason Shredded Wheat is such a perfect food for children. It makes sound teeth and healthy gums. They like the crisp, flavory shreds of the baked whole wheat, and it is so much better for them than mushy porridges."

Plaintiff's book of recipes (Exhibit D230, R. 1183-4) reads:

30 "Only plump whole grains of choice, sun-ripened wheat go into Shredded Wheat. Nothing added, nothing taken away. All the bran, the minerals, the vitamins Nature stores in this perfect cereal food are retained in Shredded Wheat.

Shredded Wheat brings you wheat in its most digestible form. The plump whole grains are steamed to break down all the starch cells, insuring quick digestibility. Then they are drawn into long, filmy shreds, so porous they will readily absorb more than four times their own weight in milk. Layer upon layer, the shreds form biscuits. Then—unsalted, unsweetened—they march into the ovens. And these tempting shreds of whole wheat are baked to a crisp and appetizing golden-brown."

Plaintiff wrote (Exhibit D227, R. 1180):

40 "We invite you to visit The Home of Shredded Wheat, either at Niagara Falls, or at Oakland, Calif. Your trip through the bright, clean bakeries will be an interesting experience, and competent guides will show you how the plump, sun-ripened whole wheat grain is steam-cooked, drawn into filmy, porous shreds and baked into crisp, nutritious Shredded Whole Wheat Biscuit. Bring your friends with you! A treat is in store for you."

*In the
Supreme Court
of Ontario*

Exhibits

Exhibit No. 10
Ten printed sheets
containing extracts
from advertising
matter.

(Undated).
(Filed by
Defendants).
—continued

Plaintiff's advertisement (Exhibit D226, R. 1178) appearing at R. 1173-74, reads:

"You Mustn't Grow Old.

Nature never intended us to grow old. Keeping the arteries soft and pliant is a matter of intelligent food selection and rational exercise. Avoid hardening of the arteries and the self-poisoning that comes from undigested foods by eating

SHREDDED WHEAT

By our shredding process we have developed a food that is thoroughly and completely digested in the stomach and intestines, supplying all the lime-salts that make good teeth, also bran for keeping the colon clean and healthy. Youngsters like the tasty crispness and the nutlike flavour of the baked wheat. Nothing better for them to grow on or play on—a salt-free food—you season it to suit your own taste. 10

When you ask for Shredded Wheat be sure you get the original Shredded Wheat you have always eaten, made at Niagara Falls, N.Y. It has taken twenty-five years to perfect and develop this clean, wholesome, nutritious whole wheat food. Made in a form and size that is most convenient whether eaten as a simple 'breakfast cereal' or in combination with fruits or creamed vegetables. Imitations are never as good as the original. 20

If you ask for Shredded Wheat and receive a different Shredded Wheat from that which you have always eaten (made in Niagara Falls, N.Y.), kindly write us at the Home Office and receive a copy of our booklet, 'The Happy Way to Health'."

Made for twenty-five years by
"The Shredded Wheat Company,
Niagara Falls, N.Y."

Plaintiff's advertisement (R. 1168) reads:

"Made at Niagara Falls. Look for the picture of Niagara Falls on the end of the carton when you buy Shredded Wheat Biscuit. Any other shredded wheat that may be offered you is merely a poor imitation of the only original Shredded Wheat, the kind your customers have always bought, the kind that stands up in the market, always clean, always pure, always the same. Made only at Niagara Falls, New York, in the cleanest, finest food factory in the world." 30

(See testimony of Col. DeWeese, page 199).

The following are excerpts from some of plaintiff's advertisements in evidence:

"All body-building material in the whole wheat steam-cooked, shredded and baked in the finest, cleanest food factory in the world." 40
Shredded wheat is

"—just whole grains of wheat steam cooked, shredded and baked to a crisp, golden brown. . ."

“It is the whole wheat and nothing but the wheat, steam-cooked, shredded and baked in the cleanest, finest food factory in the world.”

“Triscuit is the shredded wheat wafer. . . ”

“. . . whole wheat grain, steam-cooked, shredded and baked.”

“. . . the whole wheat grain, steam-cooked, shredded and baked. . . ”

“It is the shredding process that puts the ‘eat’ in whole wheat.”

“The crisp, flavory shreds of oven-baked whole wheat. . . ”

“Have you tasted our new Triscuit? . . . It is the whole wheat steam-cooked, shredded, pressed into a wafer and baked in electric ovens.”

10 “It’s all in the Shreds.”

“It is through the cooking and shredding process used in making Shredded Wheat that the whole wheat is prepared in its most digestible form.”

“. . . the whole wheat cleaned, steam-cooked, shredded and baked. . . ”

“. . . the whole wheat made digestible by steam-cooking, shredding and baking.”

“. . . the outer bran coat is scattered along the shreds in infinitesimal particles. . . ”

20 “In making Shredded Wheat we make all these elements digestible by steam-cooking, shredding and baking into crisp, golden brown biscuits or ‘little loaves’.”

“In making Shredded Wheat Biscuit we steam-cook the grains of whole wheat, draw them into delicate, filmy shreds, form them into little loaves or Biscuits and bake them to a crisp, golden brown.”

“. . . just pure wheat made digestible by steam-cooking, shredding and baking in crisp, golden brown Biscuits.”

“. . . just pure, whole wheat, steam-cooked, shredded and baked.”

30 “. . . the whole wheat grains made digestible by steam-cooking, shredding and baking. The delicate, porous shreds of baked wheat . . . The shredding process compels into discard all broken, small and defective grains. . . ”

“Try toasted Triscuit, the shredded wheat wafer, for luncheon. . . ”

“Contains all the body-building elements of the whole wheat grain, steam-cooked, shredded and baked in convenient little loaves.”

“Triscuit . . . is made of perfect whole grains of wheat cooked in steam, shredded, compressed into wafer form and baked in electric ovens.”

“Shredded wheat is the whole wheat grain—steam-cooked, shredded and baked in convenient little loaves.”

40 “Steam-cooked grains of whole wheat, shredded and baked in handy loaves. . . ”

“Every biscuit is filled with the wholesomeness of whole wheat—made easy to serve and easy to eat in crisp, oven-baked shreds.”

*In the
Supreme Court
of Ontario*

Exhibits

Exhibit No. 10
Ten printed sheets
containing extracts
from advertising
matter.

(Undated).

(Filed by
Defendants).

—continued

Exhibits

Exhibit No. 10
Ten printed sheets
containing extracts
from advertising
matter.

(Undated)
(Filed by
Defendants).

—continued

“ . . Crisp, flavoury shreds of whole wheat. . . ”

“All the goodness of the whole wheat grain made digestible by steam cooking, shredding and baking.”

“ . . the whole wheat grain steam-cooked, shredded and baked in crisp, brown, tasty little loaves.”

“It is the whole wheat steam-cooked, shredded and baked—nothing added, nothing taken away.”

Saturday Evening Post, July 4, 1908:

“ . . just pure whole wheat cleaned, steam-cooked, shredded and baked.”

10

“Triscuit, the shredded wheat Toast.”

Saturday Evening Post, August 1, 1908:

“The whole wheat steam-cooked, shredded and baked. . . ”

Saturday Evening Post, September 12, 1908:

“ . . Triscuit (the shredded wheat wafer) . . ”

Saturday Evening Post, June 12, 1909:

“ . . the whole wheat cleaned, steam-cooked, shredded and baked. . . ”

Saturday Evening Post, July 29, 1911:

“It is through the cooking and shredding process used in making Shredded Wheat that the whole wheat is prepared in its most digestible form.”

20

Good Housekeeping, June, 1924:

“ . . Triscuit . . is the whole wheat steam-cooked, shredded, pressed into a wafer and baked in electric ovens.”

Good Housekeeping, March, 1925:

“It’s all in the shreds.”

Good Housekeeping, June, 1925:

“ . . whole wheat grain, steam-cooked, shredded and baked into convenient little loaves.”

Good Housekeeping, Sept., 1925:

“Whole wheat, steam cooked and shredded for digestibility; baked into convenient ‘little loaves.’ ”

30

Good Housekeeping, Oct., 1925:

“Steam-cooked grains of whole wheat, shredded and baked in handy loaves. . . ”

Good Housekeeping, Nov., 1925:

“Shredded wheat is the whole wheat grain—steam-cooked, shredded and baked in convenient little loaves.”

“Triscuit . . is made of perfect whole grains of wheat cooked in steam, shredded, compressed into wafer form and baked in electric ovens.”

40

Ladies’ Home Journal, Mar., 1927:

“Every shred gives golden health.”

Good Housekeeping, Nov., 1928:

“ . . crisp, flavory, oven baked shreds of whole wheat. . . ”

Good Housekeeping, Sept., 1929:

“Those crispy shreds give teeth and glands their needed daily dozen.”

Good Housekeeping, June, 1930:

“ . . . flavoury shreds of baked whole wheat.”

NATURAL FOOD COMPANY

“In Shredded Whole Wheat Biscuit and Triscuit all the nutritive material in the whole wheat is retained and made digestible by steam cooking, shredding and baking.”

“It’s all in the shreds.”

10

“Shredded Whole Wheat Biscuit. It contains all the nutritive elements of the whole wheat grain, cooked and drawn into fine porous shreds. . . .”

“There’s Life and Health in Every Shred.”

“You can’t shred anything but perfect whole grains of cooked wheat. That’s the reason we have to clean the wheat so thoroughly before shredding it. We then cook it and draw it into light, porous shreds. . . .”

“There’s health and strength in every shred of it—‘shreds of life’ for the dyspeptic. . . .”

“Triscuit is the new shredded whole wheat cracker—”

20

“ . . . the whole wheat berry made digestible by the shredding process.”

“ . . . the whole wheat, steam-cooked, and drawn into fine porous shreds. . . .”

“Triscuit, the shredded whole wheat cracker. . . .”

“Such a food is shredded whole wheat, made of the best white wheat that grows, cleaned, cooked, drawn into light porous shreds and baked.”

“Every detail in the process of cleaning, cooking and shredding wheat is open to the world. . . .”

“Triscuit is the shredded wheat wafer. . . .”

30

“ . . . the whole wheat grain, made digestible by cooking, shredding and baking.”

“Shredded Wheat is made of the finest wheat that grows, cleaned, steamed, cooked, and drawn into fine porous shreds.”

“Triscuit is the shredded whole wheat cracker. . . .”

“ . . . the whole wheat berry made digestible by the shredding process.”

“Contains all the muscle-making, brain-building elements in the whole wheat grains, made digestible by steam-cooking, shredding and baking.”

40 Saturday Evening Post, March 24, 1906:

“Such a food is shredded whole wheat, made of the best white wheat that grows, cleaned, cooked, drawn into light porous shreds and baked. . . .”

*In the
Supreme Court
of Ontario*

Exhibits

Exhibit No. 10
Ten printed sheets
containing extracts
from advertising
matter.

(Undated).
(Filed by
Defendants).

—continued

*In the
Supreme Court
of Ontario*

Exhibits

Exhibit No. 10
Ten printed sheets
containing extracts
from advertising
matter.

(Undated).
(Filed by
Defendants).
—continued

“Every detail in the process of cleaning, cooking and shredding wheat is open to the world. . . .”

“ . . . you can’t shred anything but perfect, whole grains of cooked wheat.”

“Triscuit is the shredded wheat wafer. . . .”

Saturday Evening Post, May 5, 1906:

“Triscuit is the shredded whole wheat cracker . . .”

“It’s all in the shreds.”

Saturday Evening Post, June 16, 1906:

“ . . . the rich, flesh-forming, muscle-making elements stored in the 10 outer coats of the wheat berry made digestible by the shredding process.”

Saturday Evening Post, September 17, 1906:

“ . . . the whole wheat berry made digestible by the shredding process.”

“Triscuit is the shredded wheat wafer. . . .”

“It’s all in the shreds.”

Ladies’ Home Journal, October, 1908:

“ . . . made digestible by steam-cooking, shredding and baking.”

“It’s all in the shreds.”

Saturday Evening Post, July 6, 1907:

“ . . . the whole wheat grain, made digestible by steam-cooking, 20 shredding and baking.”

Ladies’ Home Journal, July, 1908:

“ . . . the whole wheat steam-cooked, shredded and baked.”

“It’s all in the shreds.”

NATIONAL BISCUIT CO.

Good Housekeeping:

“They like the crisp, crunchy shreds of baked whole wheat.”

Good Housekeeping:

“The crisp, oven-baked shreds of whole wheat . . .”

Atlanta-Georgian, May 6:

“and there’s nourishment in every shred.”

30

Christian Science Monitor, July 15:

“The flavory shreds blend with the juices of the berries. . . .”

Philadelphia Ledger (e), Sept. 8:

“Selected wheat is steam-cooked, shredded and thoroughly baked. That’s all there is to Shredded Wheat.”

Newport News Times Herald, Jan. 26:

“Shredded Wheat is just pure whole wheat, steam-cooked, shredded and baked. . . .”

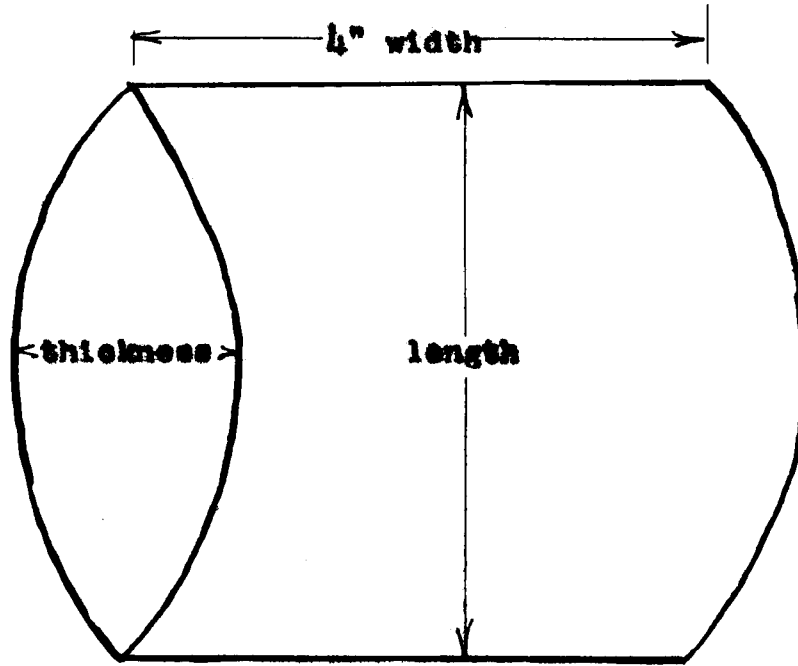
“Shredded for easy digestion.”

40

“Shredded Wheat is whole wheat—simply steam-cooked, shredded and toasted. . . .”

Exhibit No. 25

Exhibit No. 25
Diagram indicating
length, thickness of
plaintiff's biscuit
before and after
baking.
(Undated).
(Filed by
Defendants).



Plaintiff's Biscuit:

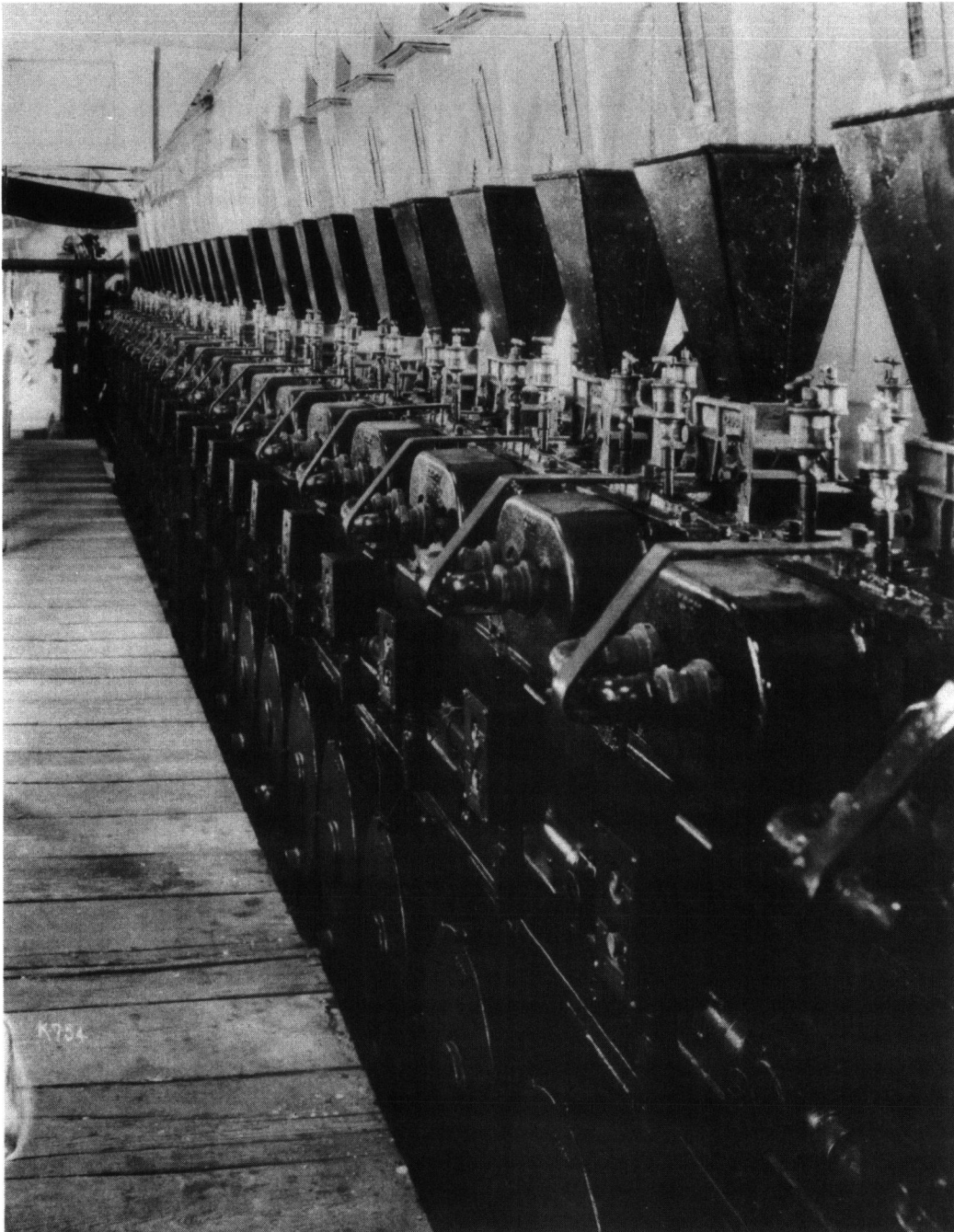
	Before Baking	After Baking
Length	4"	4"
Thickness	1"	2"
Width	2 ³ / ₄ +"	2 +"

*In the
Supreme Court
of Ontario*

Exhibits

Exhibit No. 39
Binder containing
12 photographs of
various apparatus
in Defendant's
plant.

(Undated).
(Filed by
Defendants).



#1 - A Photograph showing our Biscuit Shredding heads, conveyor, and hopper containing the wheat ready for shredding.

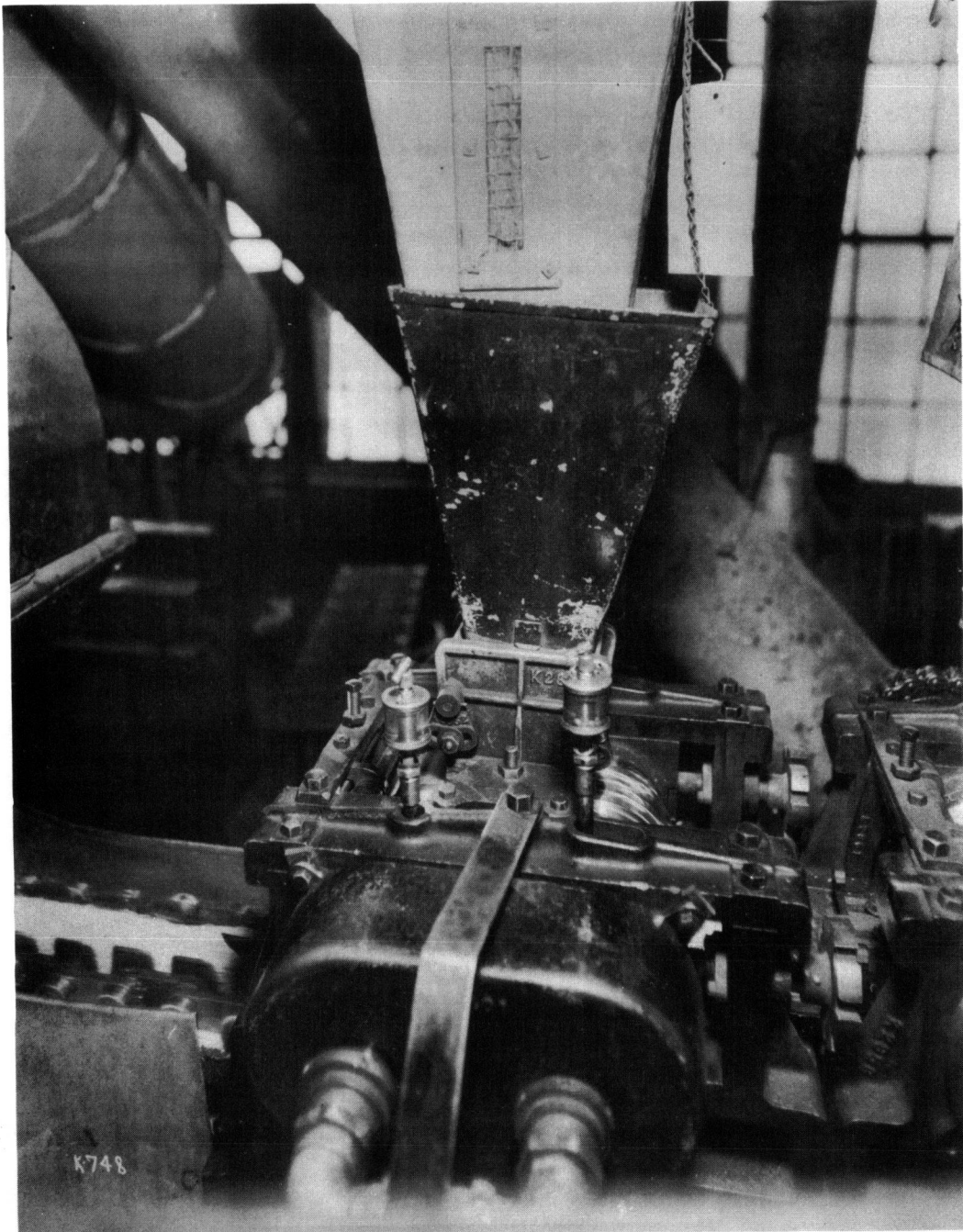
*In the
Supreme Court
of Ontario*

Exhibits

Exhibit No. 39
Binder containing
12 photographs of
various apparatus
in Defendant's
plant.

(Undated).
(Filed by
Defendants).

—continued



#2 - A Photograph showing a set of our
Shredding Rolls.

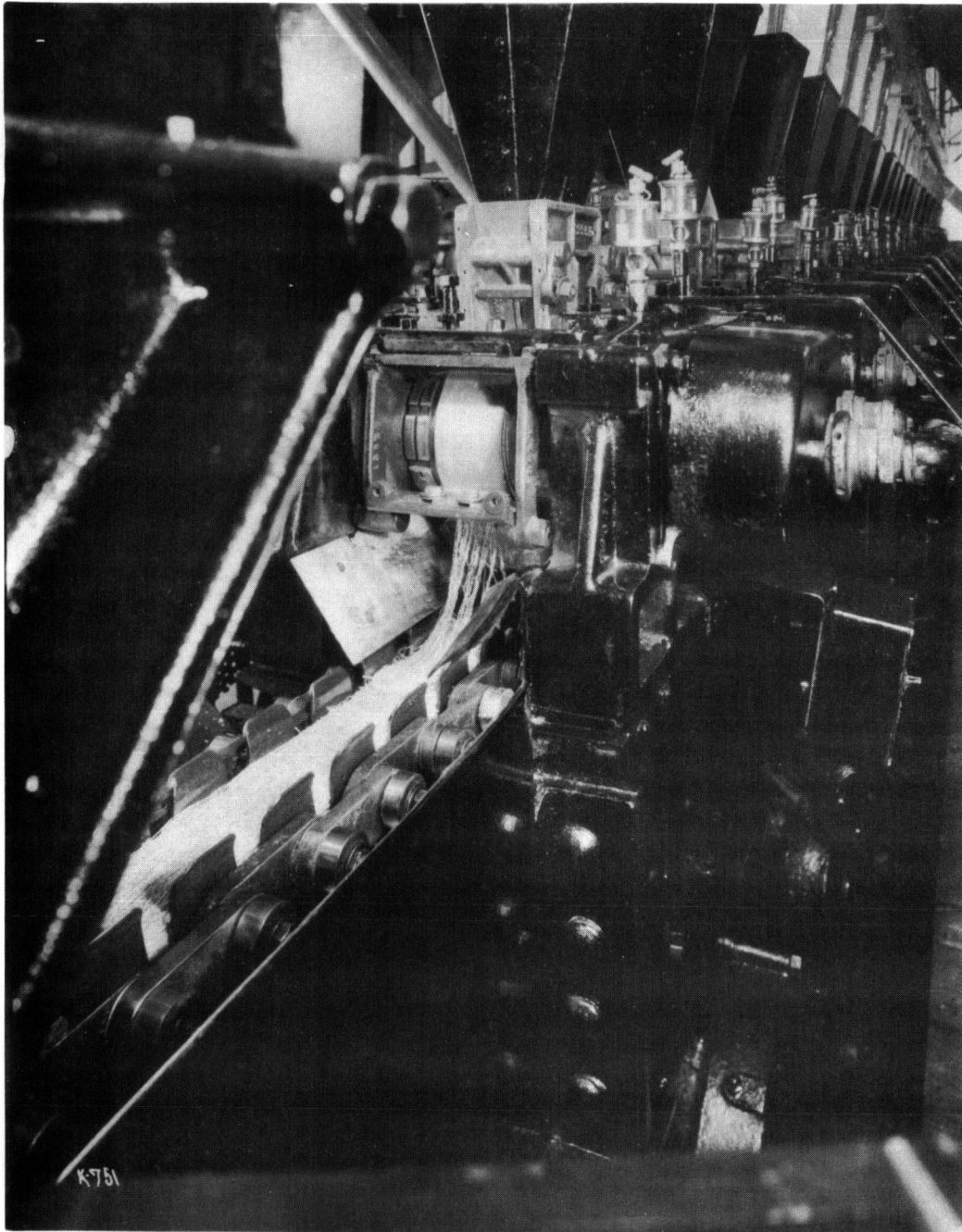
*In the
Supreme Court
of Ontario*

Exhibits

Exhibit No. 39
Binder containing
12 photographs of
various apparatus
in Defendant's
plant.

(Undated).
(Filed by
Defendants).

—continued



#3 - A Photograph showing the wheat shreds as they come from the Shredding Rolls onto carrier belt below.

*In the
Supreme Court
of Ontario*

Exhibits

Exhibit No. 39
Binder containing
12 photographs of
various apparatus
in Defendant's
plant.

(Undated).
(Filed by
Defendants).

—continued



#4 - A Photograph showing the shreds which have been removed from the Carrier Belt.

*In the
Supreme Court
of Ontario*

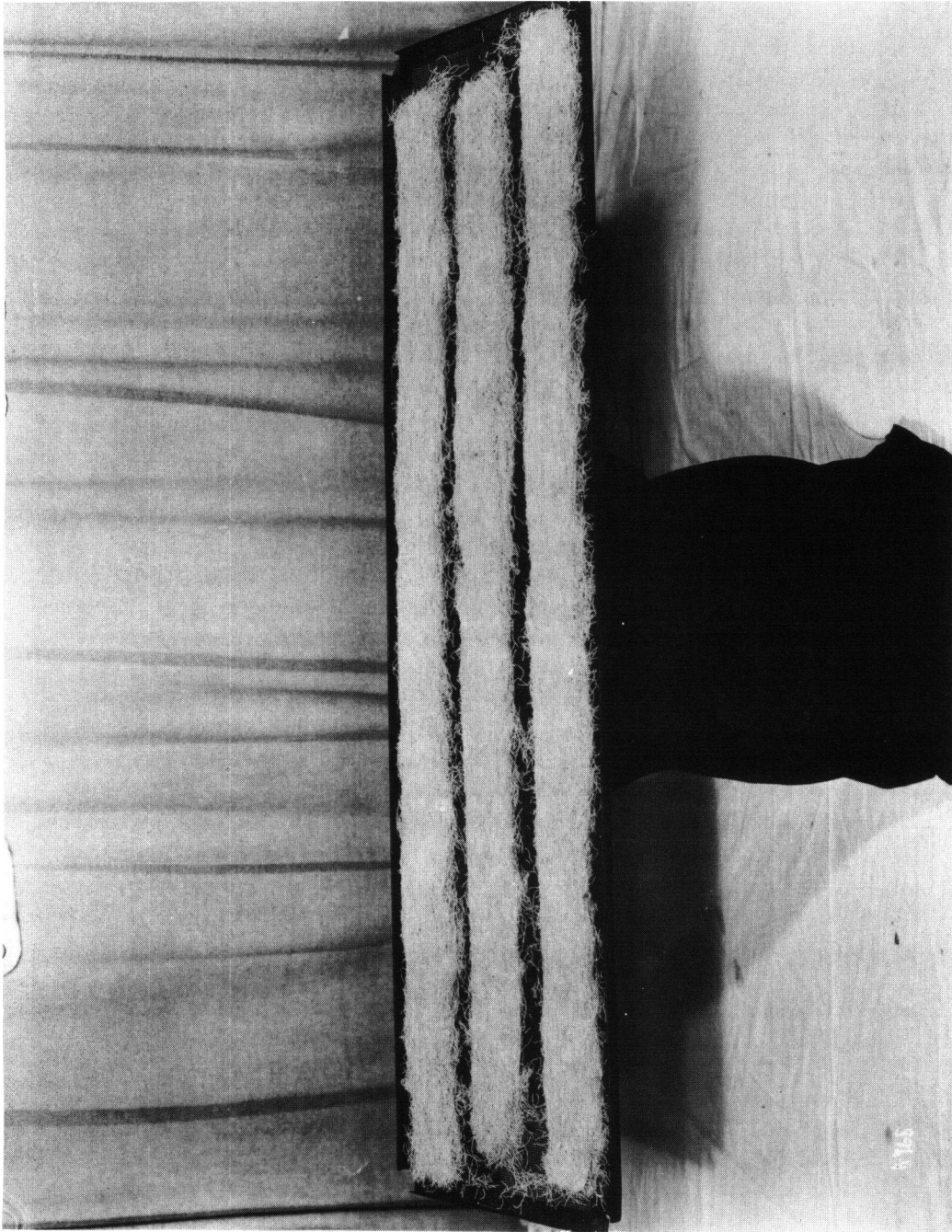
Exhibits

Exhibit No. 39
Binder containing
12 photographs of
various apparatus
in Defendant's
plant.

(Undated).

(Filed by
Defendants).

—continued



#5 - A Photo-
graph showing
shreds taken from
the carrier belt
under shredders
and placed on a
pan to show the
shreds.

*In the
Supreme Court
of Ontario*

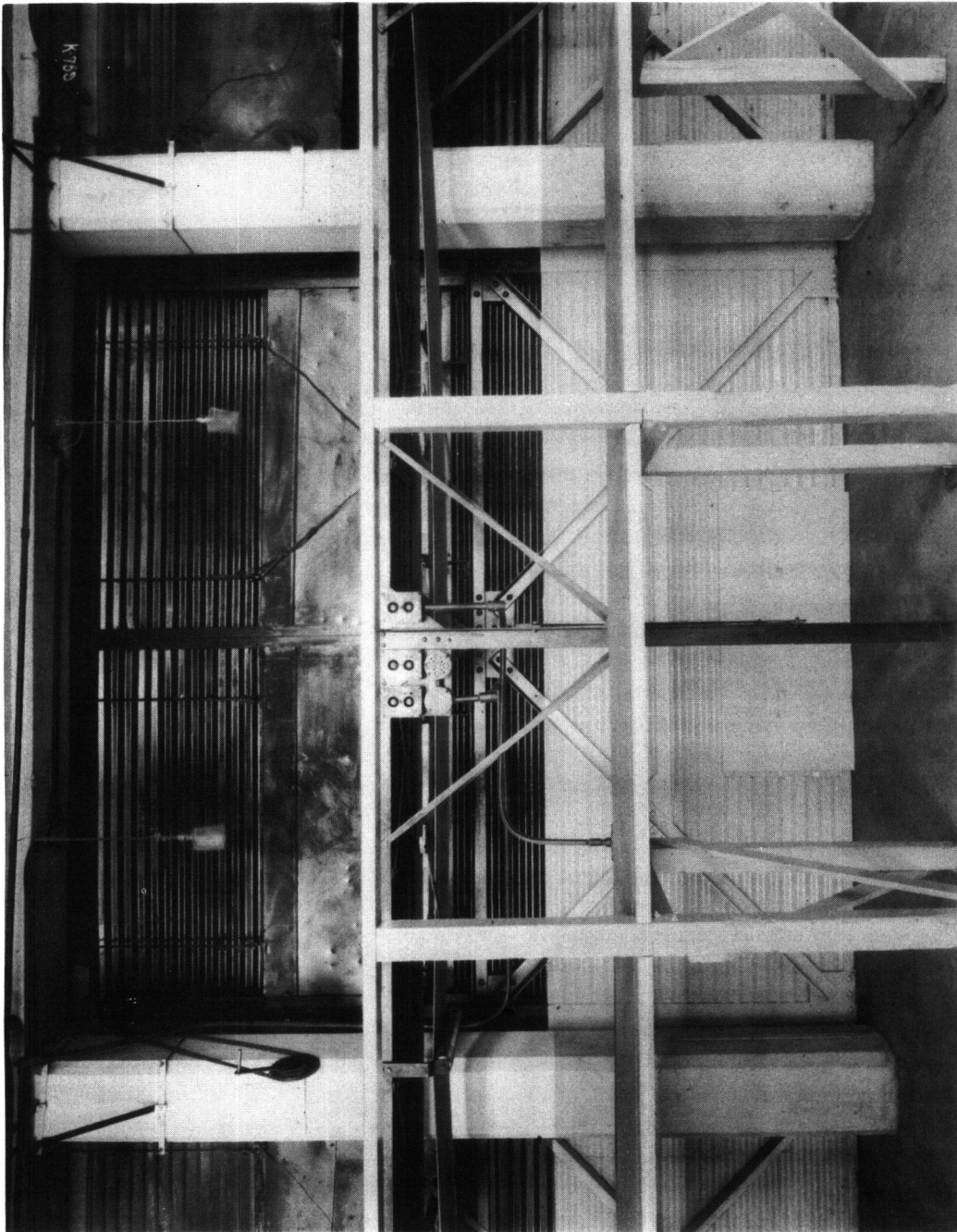
Exhibits

Exhibit No. 39
Binder containing
12 photographs of
various apparatus
in Defendant's
plant.

(Undated).

(Filed by
Defendants).

—continued



#6 - A Photograph
showing the front of
one of our ovens; the
doors are closed.

*In the
Supreme Court
of Ontario*

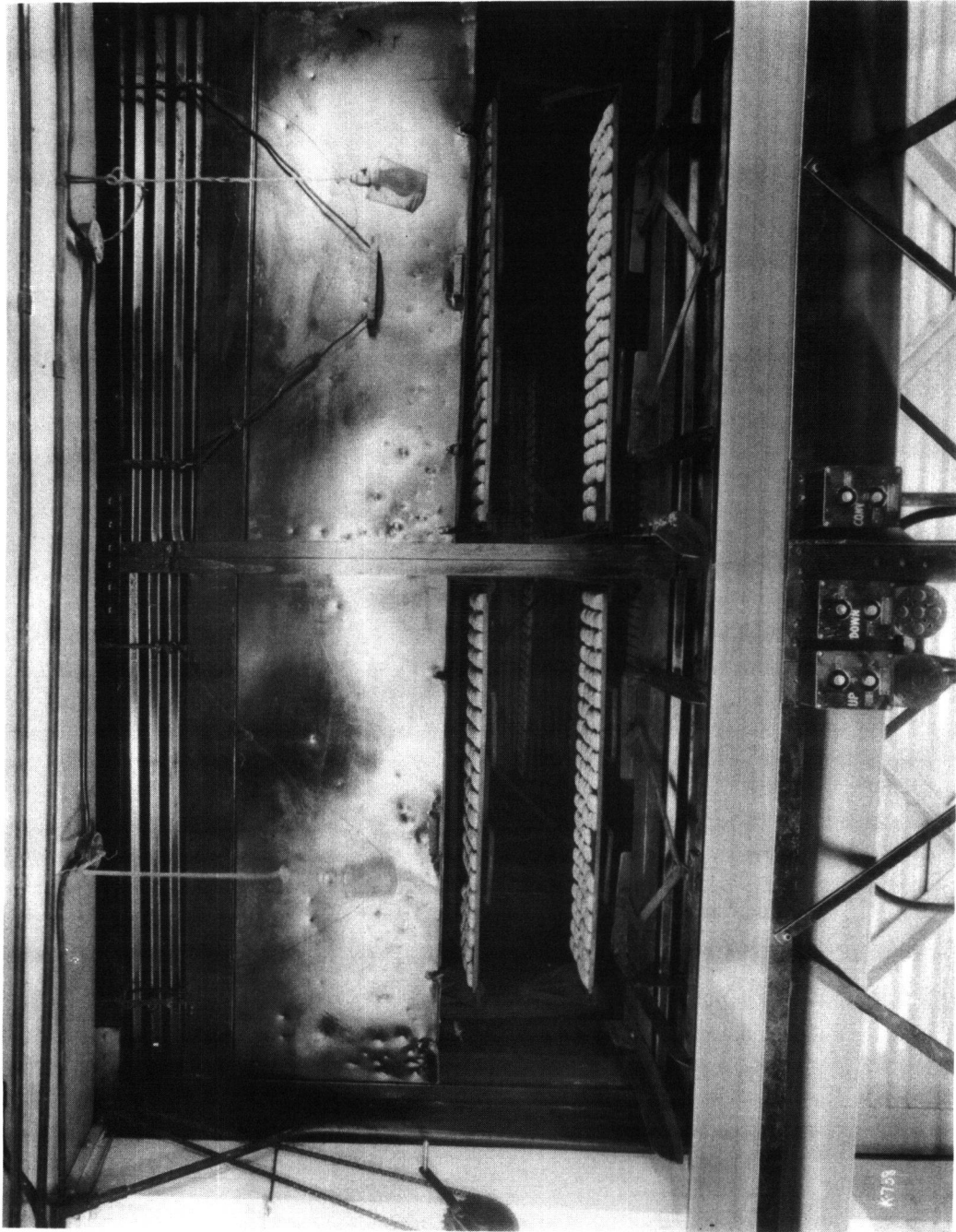
Exhibits

Exhibit No. 39
Binder containing
12 photographs of
various apparatus
in Defendant's
plant.

(Undated).

(Filed by
Defendants).

—continued



#7 - A Photo-
graph showing the
perforated steel
Biscuit Pan loaded
with Shredded Whole
Biscuits being
Placed in oven.

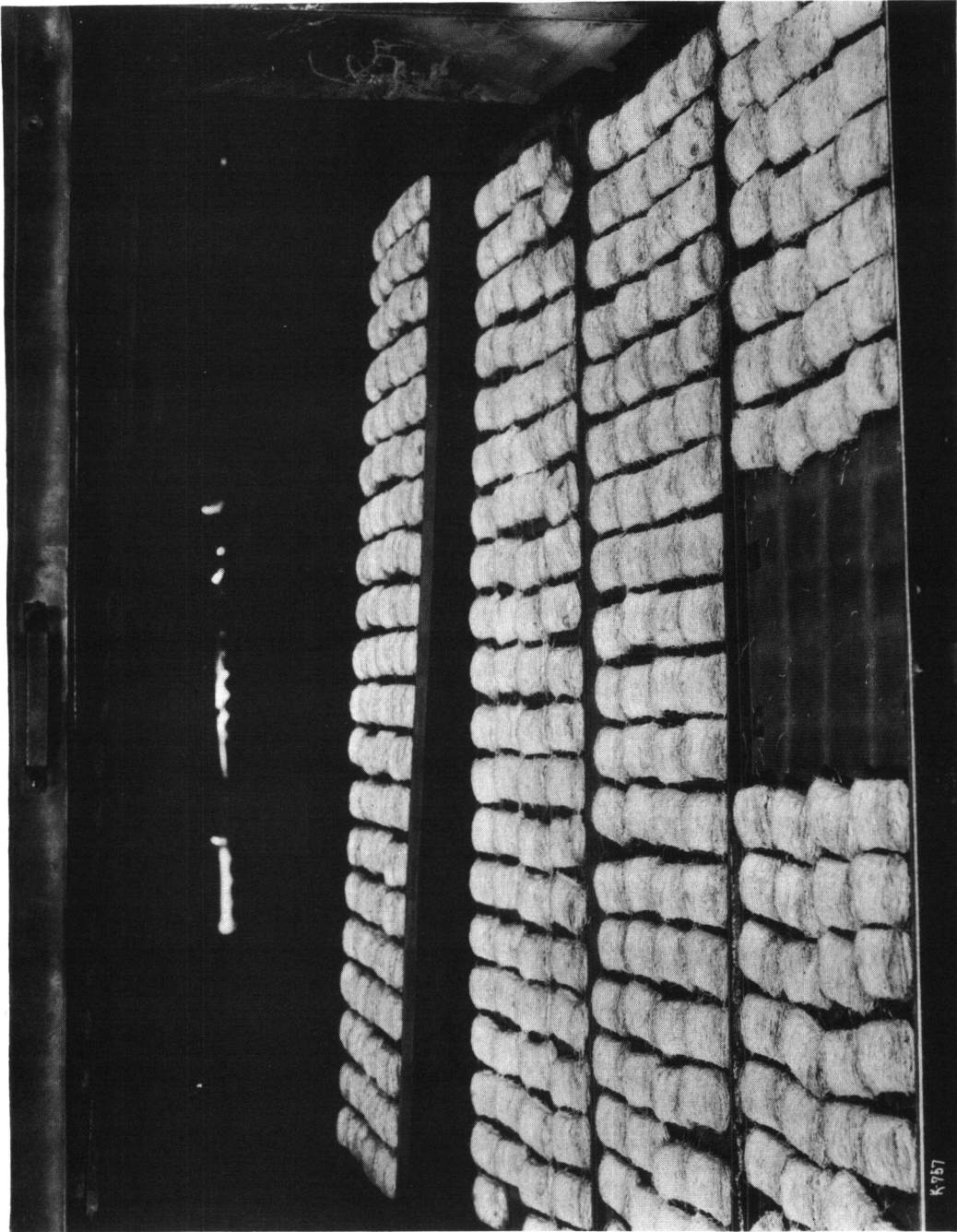
*In the
Supreme Court
of Ontario*

Exhibits

Exhibit No. 39
Binder containing
12 photographs of
various apparatus
in Defendant's
plant.

(Undated).
(Filed by
Defendants).

—continued



#6 - A Photo-
graph showing a
close up of Biscuits
on perforated pans
as they leave the
ovens.

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*In the
Supreme Court
of Ontario*

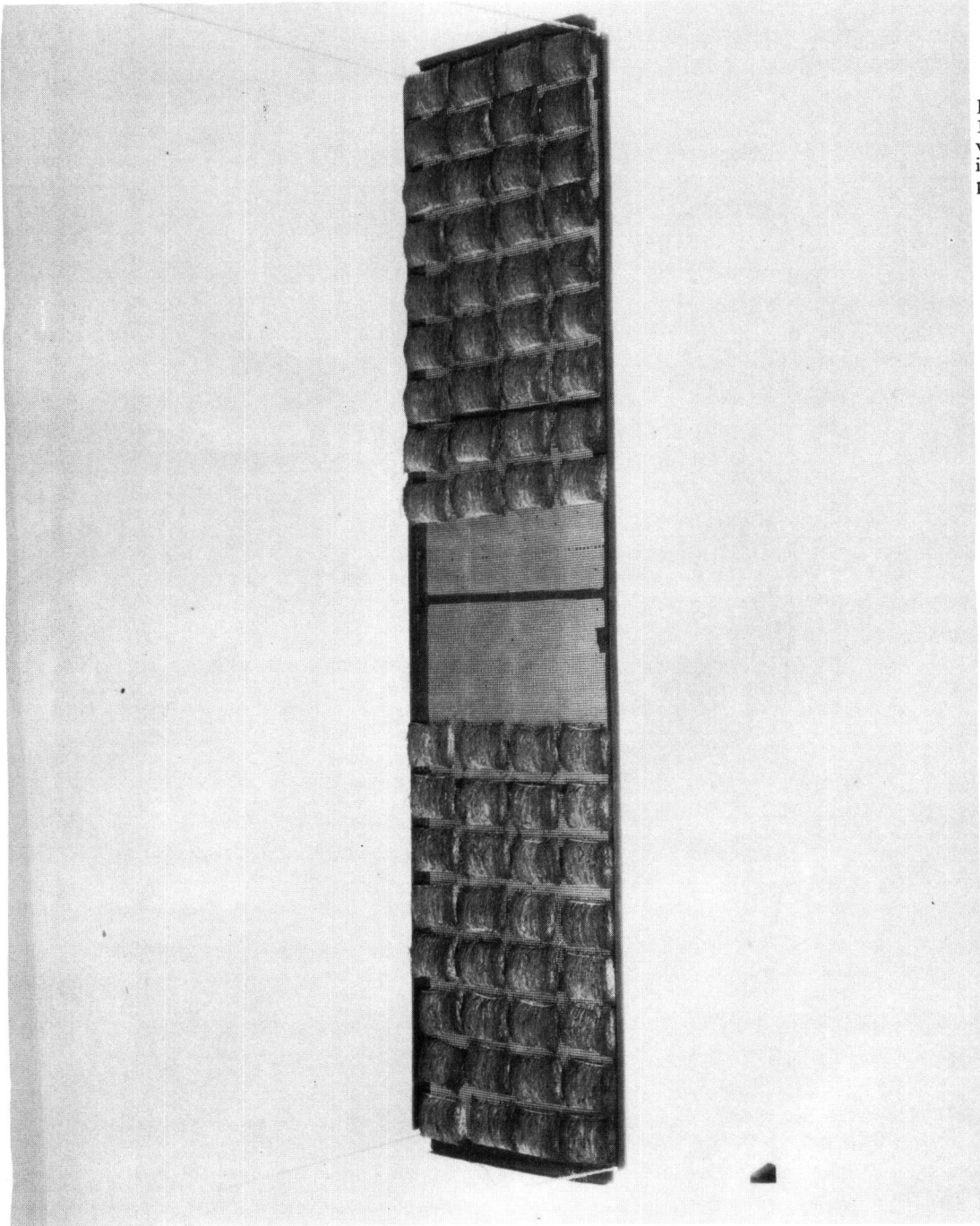
Exhibits

Exhibit No. 39
Binder containing
12 photographs of
various apparatus
in Defendant's
plant.

(Undated).

(Filed by
Defendants).

—continued



#9 - A Photo-
graph showing our
Shredded Whole
Wheat Biscuit on
the perforated pan
which allows the
heat to penetrate
through so as to
toast the bottom
of Biscuit as well
as the top.

*In the
Supreme Court
of Ontario*

Exhibits

Exhibit No. 39
Binder containing
12 photographs of
various apparatus
in Defendant's
plant.

(Undated).
(Filed by
Defendants).
—continued



#10 - A Photograph which shows our biscuit Packing line, also showing our Semi-Automatic Packing Machine.

*In the
Supreme Court
of Ontario*

Exhibits

Exhibit No. 39
Binder containing
12 photographs of
various apparatus
in Defendant's
plant.

(Undated).
(Filed by
Defendants).

—continued



#11 - A Photograph showing a close up view of our packing line, also shows the carton being placed with laps open over the packing block containing the 15 biscuits.

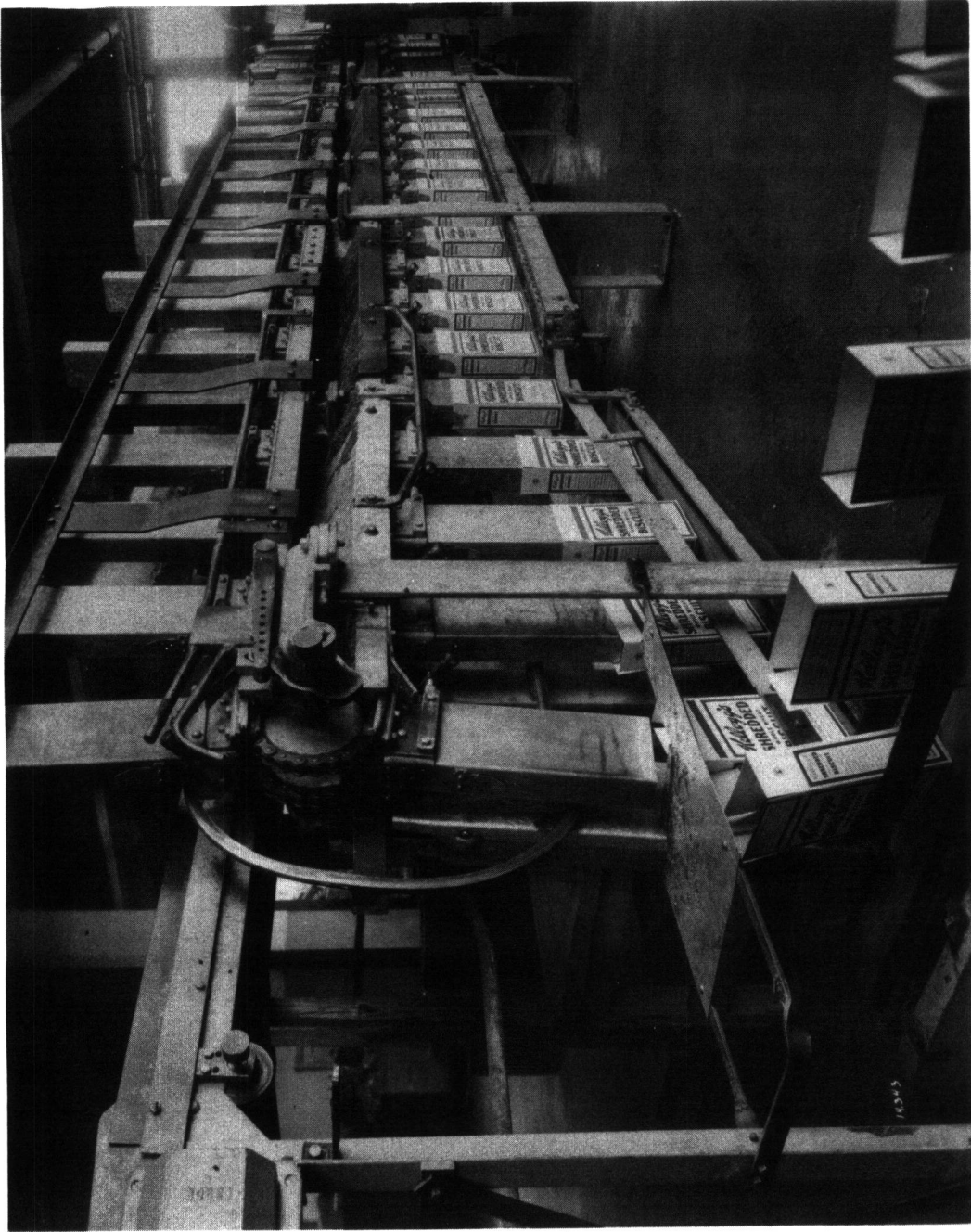
*In the
Supreme Court
of Ontario*

Exhibits

Exhibit No. 39
Binder containing
12 photographs of
various apparatus
in Defendant's
plant.

(Undated).
(Filed by
Defendants).

—continued



#12 - A Photo-
graph showing the
bisuits being dis-
charged from the
Packing Blocks into
the cartons.

EXHIBIT No. 36.
CHAMBERS'S JOURNAL
SIXTH SERIES

THE ADVENT OF SHREDDED WHEAT BISCUIT

By Samuel Vyle.

*In the
Supreme Court
of Ontario*

Exhibits

Exhibit No. 36
Copy of
Chambers's Journal
Sixth Series: "The
Advent of Shredded
Wheat Biscuit"
(2 sheets)
27th January, 1900.
(Filed by
Defendants).

The article in CHAMBERS'S JOURNAL for November last on 'The Decline of Oatmeal Porridge,' which attracted considerable attention, may perhaps appropriately be followed by one on shredded wheat biscuit, a recent achievement of Mr. Henry D. Perky, an American.

- 10 The new preparation is bread without flour—that is, the production of an unfermented biscuit, which is light and airy, without reducing the wheat to flour. The grain is first washed and cleansed, then finely shaved or shred—not ground or rolled, as heretofore, in a mill. Special care is taken to first remove all gritty substances from the wheat; then it is submitted to a thorough soaking in cold water. Next it is immersed in boiling water in monster kettles or pans, there undergoing its first cooking process; and, being continuously agitated by what are termed 'tumblers,' the grains are constantly rubbed against each other, this friction loosening the woody fibre and fungi on the surface, and removing the minute insect-life and eggs of
- 20 insects which adhere to the wheat. This thorough purification appears to be a very important process, securing the cleanliness of the food-stuff. The hot water has rendered the wheat soft enough for the shredding which follows; and during that rapid and interesting process showers of fine threads of wheat fall upon a moving carriage. Sharp knives now quickly cut up the accumulated shreds into four-inch lengths, the size determined upon for the biscuits, which are three inches across and half an inch deep, weighing a little over an ounce each. Being now formed into shapes of the desired size, the biscuits are lifted on to wire trays by wooden spoons, and so passed to the first oven, where they are subjected to a baking heat of no less than five
- 30 hundred and sixty degrees! Only thirty minutes of this high temperature are required, when they are withdrawn, and the second cooking has been completed. The biscuits are then transferred to a second oven of much lower temperature, and baked steadily for six hours, which is the third and last process of cooking. Thus the starch in the wheat has been made soluble, and is easily digested by the weakest stomach. The three cookings, however, do not destroy any of the nutritive qualities of the wheat. From the following table it will be seen how little change has taken place, and also how pure an article of diet the shredded wheat biscuit has become:

<i>In the Supreme Court of Ontario</i>		Raw Wheat	Shredded Wheat Biscuit	
Exhibits	Moisture	10.60	10.57	
Exhibit No. 36	Ether extract	1.75	1.03	
Copy of	Fibre	2.40	2.58	
Chambers's Journal	Ash	1.75	2.65	
Sixth Series: "The	Proteins	12.25	12.06	
Advent of Shredded	Soluble starch and other			
Wheat Biscuit"	carbohydrates	71.25	71.11	10
(2 sheets)				
27th January, 1900.				
(Filed by				
Defendants).				
—continued				

The slight difference in certain parts is due largely to the action of the great heat used in its preparation.

Previous to becoming acquainted with the merits of shredded wheat biscuit, the writer, during a visit to the south of England, met a gentleman who related a unique and most interesting experience in dietetics. It was that for the last three years he had lived on one meal a day, and that meal was composed chiefly of apples! Further astonishment was evoked by his reply to my question as to what he drank, when he stated that the juices of the apples supplied him with all the moisture or drink he needed; this, he claimed, was of the purest kind, being in reality water distilled by nature, and flavoured with the pleasant aroma of the apple. He partook of his one meal about three o'clock in the afternoon, eating what he felt satisfied him, the meal occupying him from twenty minutes to half-an-hour. He looked the picture of healthful manhood, and is engaged daily in literary work. Further conversation led to his offer of a scholarly work upon the subject, which was gladly accepted. It stated that man's first and natural food was similar to that which Adam found ready to his hand both in and outside of Eden—namely, the produce of the garden and field, fruits, and nuts, upon which man **should** and **could** live and be well and nourished. 20

Such a radical alteration in diet as was suggested by the author of that work called for very thoughtful consideration, for it was felt that to do without bread or its substitute was scarcely possible, however fond one might be of fruit. White bread was strongly condemned as being nearly all starch, inducing ossification; the nutrient quality being removed from the wheat with the bran by the miller. 30

It was while he was trying to solve this problem that shredded wheat biscuit was first brought under the writer's notice; and, after a trial of the preparation for two months continuously, it was found to fill the gap—nay, more than fill it.

To the athlete, its muscle-forming qualities and sustaining power are of marked benefit, and it is very highly spoken of by some trainers, whose pupils can train on the biscuit better than on any other food. For the healthful and 40

the strong it is beneficial, as walking exercise can be more largely indulged in and enjoyed with less fatigue. In the home it is the foundation of many appetising dishes, both savoury and sweet, as is evidenced by four hundred and sixty-two recipes published and circulated at the lectures demonstrating its use. It is a boon to invalids, not only because of its easy digestion and its nutriment, but because it is capable of being made up into so many attractive and temptingly dainty dishes. The aged, by reason of the shredding, are peculiarly helped and benefited, as they do not suffer for their inability to properly masticate their food. Thus they enjoy the blessing of food with easy
 10 digesting properties, which must tend to promote 'length of days even to old age;' and at life's eventide have a prospect of calm, joyous strength to the last.

Baby life, at the other extreme, will also be greatly benefited by the use of this food-stuff, the system being built up in its earliest days. Some doctors describe it as an ideal baby-food, and prescribe it freely for adults; and, what is more wonderful, some of the eminent amongst them take and enjoy their own medicine themselves! Dentists, too, speak highly of its great value as a bone-forming food, and hence beneficial to the teething generation.

Like oatmeal, the shredded wheat biscuit has a dual character, yielding
 20 both 'meat and drink.' Half a biscuit placed in a muslin bag and boiled for five minutes makes a delicious drink, the slight taste of the baked corn being most agreeable, while the liquid is nutritious.

In England the use of oatmeal porridge is rather on the increase amongst the upper-middle classes. Vegetarians and temperance folk use it largely, chiefly for breakfast. The writer has enjoyed this very nourishing food for nearly forty years, it having been first introduced to him (or was it not he to "them," rather?) the morning after his first arrival in Edinburgh from the west of England in 1862; and he has had it as an item of breakfast fare ever since—in Glasgow, the Western Highlands, England; also, during a ten years' residence, with hard, exhausting work, physical and mental, in the West Indies,
 30 where, however, many Scotsmen declined its use because they averred it was too heating for the tropical climate, with a normal temperature of eighty-seven degrees, rising to a hundred and ten degrees. From experience that is proved to be a matter of opinion, as it depends so largely upon the cooking and the quantity partaken of. But oatmeal porridge and shredded wheat biscuit will form a splendid basis for meals all through the day, whilst the question of economy will, with many, not be without its influence. Certain it is that if the hard toilers within the British Empire—and that is now a large market!—used oatmeal and shredded wheat biscuit they would be far better nourished, and their children both healthier and stronger, and the many diseases which an
 40 excessive meat diet is responsible for would disappear.

Oatmeal porridge as a breakfast food cannot be surpassed; and with the shredded wheat biscuit, and the fruits, nuts, and jams, now so greatly used as

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Exhibits

Exhibit No. 36
 Copy of
 Chambers's Journal
 Sixth Series: "The
 Advent of Shredded
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 27th January, 1900.
 (Filed by
 Defendants).
 ---continued

*In the
Supreme Court
of Ontario*

Exhibits

Exhibit No. 36
Copy of

Chambers's Journal
Sixth Series: "The
Advent of Shredded
Wheat Biscuit"
(2 sheets)

27th January, 1900.
(Filed by
Defendants).

—continued

the diet of many thoughtful humanitarian folk, it may effect a quiet and beneficial revolution; as with the use of the wheat biscuit for fish-cakes, meat rissoles, and nicely creamed fruit compotes, the appetite is tempted with a really sustaining diet, which will not greatly add to the domestic outlay. However, the greatest beneficiaries will be the children, invalids, and the aged.

Milk and honey and shredded wheat
Is a dainty meal a king might eat.

No. 113—Vol. III. (All Rights Reserved). Jan. 27, 1900.