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J.F.S. Inc.

DOMINION OF CANADA

In the Supreme Court of Canada

(OTTAWA)

On appeal from a Judgment of the Court of King's Bench, in appeal.

Angus William Robertson,

(Defendant in the Superior Court and Appellant
in the Court of King's Bench, in appeal),

APPELLANT.

— and —

Ethel Quinlan, & vir, & al,

(Plaintiff's in the Superior Court and Respondents
in the Court of King's Bench, in appeal),

RESPONDENTS.

— and —

Capital Trust Corporation Limited,

(Defendant in the Superior Court),

— and —

Dame Catherine Ryan, & al,

MIS-EN-CAUSE.

THE CASE

VOL. IV. — DEFENDANT'S EVIDENCE

BEAULIEU, GOUIN, MERCIER & TELLIER,
Attorneys for Appellant.

AUGUSTE LEMIEUX, K.C.,
Ottawa Agent.

TANNER & DESAULNIERS,
Attorneys for Respondents.

UNIVERSITY OF LONDON
W.C.1

7 - NOV 1955

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DOMINION OF CANADA

In the Supreme Court of Canada
(OTTAWA)

On appeal from a Judgment of the Court of King's Bench, in appeal.

10

Angus William Robertson,

(Defendant in the Superior Court and Appellant
in the Court of King's Bench, in appeal),

APPELLANT.

20

— and —

Ethel Quinlan, & vir, & al,

(Plaintiff's in the Superior Court and Respondents
in the Court of King's Bench, in appeal),

RESPONDENTS.

30

— and —

Capital Trust Corporation Limited,

(Defendant in the Superior Court),

— and —

40

Dame Catherine Ryan, & al,

MIS-EN-CAUSE.

THE CASE

VOL. IV. — DEFENDANT'S EVIDENCE

Doctor F. J. HACKETT (for Defendant Robertson) Ex. in Chief

DEFENDANT'S EVIDENCE

10

DEPOSITION OF DOCTOR FRANCIS J. HACKETT

A witness examined on behalf of Defendant Robertson.

On this third day of December, in the year of Our Lord One thousand nine hundred and thirty, personally came and appeared, Francis J. Hackett, of the City and District of Montreal, Physician, aged sixty-seven years, a witness produced on behalf of the
20 Defendant Robertson who, being duly sworn deposes as follows:

Examined by Mr. Beaulieu, K.C., of Counsel for Defendant.

Q.—I understand you were attending the late Hugh Quinlan during his last illness?

A.—I was.

Q.—How long were you his attending Physician during his last illness?

A.—During all his last illness.

Q.—Which lasted for weeks, or months?

30 A.—For a long time, I first attended Mr. Quinlan in 1913, and I was in charge of all his illnesses up to the last. I called in consultants as the occasion arose.

Q.—When was he confined to his room?

A.—He was occasionally confined to his room at the end of 1925, but he was in and out. He would be in bed ten days, and he would be up three weeks, and so on.

Q.—Am I to understand his illness was sometimes progressing, and sometimes improving?

40 A.—Yes.

Q.—What was the nature of his illness?

A.—The first trouble with Mr. Quinlan was his heart. There were symptoms of that in 1925. As the case evolved, the next organs involved were the kidneys, and two or three intermittent attacks of lung involvement — high blood pressure, and the ordinary evolution of a case of that nature.

Q.—During, say, the last two months, May and June, 1926, were your visits very frequent?

Doctor F. J. HACKETT (for Defendant Robertson) Ex. in Chief

A.—Yes, very often. I think I saw him every day in June.

Q.—And, in May?

A.—I have a record of my visits, if I might refer to it.

10 I made nineteen visits in May. I found him more comfortable, and some days quite well.

Q.—Can you mention on what days you found he was rather comfortable, or well?

A.—I think that is the general note in May. I know at the end of May, or about the beginning of June, he wished to see the work on the new bridge, and I said I would go with him on a Sunday morning, which we did.

20 Q.—You accompanied him?

A.—Yes.

Q.—Were you alone with him?

A.—No. Mr. Marcotte, the Superintendent of the works was with us, and also Mr. Quinlan's son Edward.

Q.—The four of you?

A.—And the chauffeur.

Q.—Can you fix the date of that visit?

A.—Not exactly, but I know it was the end of May or the beginning of June.

30 Q.—Was the nature of his disease such as to affect his mental capacity and soundness?

A.—No.

Q.—As a matter of fact, can you tell us what was his mental condition during the whole month of May?

A.—Very good.

Q.—And, in the month of June?

A.—It was good, up to about the 22nd.

Q.—What occurred on the 22nd?

40 A.—He then began to show signs of the termination of his disease, which terminated with uremia. When the kidneys ceased functioning he was poisoned, and he began to get very dull.

I saw him early on the morning of the 22nd, and he had had a bad night, and towards the afternoon he was quite dull. On the 23rd he was beginning to get more dull and was more excitable. On the 24th, 25th and 26th he was practically unconscious.

Q.—How would you describe his mental condition up to the morning of the 22nd of June?

Doctor F. J. HACKETT (for Defendant Robertson) Ex. in Chief

A.—I saw him on the Sunday, the Monday and the Tuesday, that would be the 19th, 20th and 21st. He was very sick, but his mind was all right. He was excitable, but he knew what he was doing. I conversed with him.

10 Q.—In your opinion, during the whole month of May was he able to transact business?

A.—Yes.

Q.—Would the same answer apply to the first part of June, up to, but excluding the 22nd?

A.—Yes.

By the Court:—

20 Q.—Even on the Sunday, the Monday and the Tuesday?
A.—He began to get quite dull on the Tuesday afternoon.

By Mr. Beaulieu, Continuing:—

Q.—On the afternoon of the 22nd?

A.—Yes.

By the Court:—

30 Q.—During the two or three days previous to the 22nd, was he in a state of mind to transaction business of real importance?

A.—He had his judgment perfectly clear. He would not do anything that he did not want to do. I may say I told him on or about the 21st, when I learned that some business had been transacted — he spoke to me about it. I did not enquire as to the nature of the business, and I did not enquire with whom it was, but a report was made to me of any incident of that kind that would happen.

40 Mr. Masson, K.C., of Counsel for Plaintiffs, objects to this evidence as illegal.

By Mr. Beaulieu, Continuing:—

Q.—Does that apply to June 22nd?

A.—On the 22nd he was beginning to be pretty dull. Towards the end of the afternoon he was quite dull.

Doctor F. J. HACKETT (for Defendant Robertson) Ex. in Chief

Q.—You mentioned the date June 21st. Was it on June 21st you spoke about some business, or some transaction?

10 A.—It was after it occurred in any event. Whether it was the 21st or the night of the 20th I do not remember. He told me he had transacted some business. It arose in this way: I found it my duty to enquire if he had arranged his affairs, and he told me when he made his Will and so forth. I had known there was something unfinished within two weeks of his death, and I told him “If there is anything else, you had better get it attended to and get it off your mind.” He said there was something else that they were trying to ascertain, to make valuations or something, but it was a little difficult. I said “Hurry up, and get it through.”

20 Q.—Did he seem to know the nature of the business he was speaking about?

Mr. Masson, K.C. of Counsel for Plaintiff, objects to the question as illegal.

The question is withdrawn.

Q.—During the month of May did he speak to you about any business matter?

30 A.—I do not recall that he did, no.

Q.—Did you know the Honorable Mr. Perron?

A.—No, I did not know him.

Mr. Masson, K.C., of Counsel for Plaintiffs, declares he has no cross-examination to make of the witness.

And further deponent saith not.

L. N. LEAMY (for Defendant Robertson) Exam. in Chief.

DEPOSITION OF LOUIS N. LEAMY

10 A witness produced and examined on behalf of the Defendant Robertson.

On this third day of December, in the year of Our Lord One thousand nine hundred and thirty, personally came and appeared, Louis N. Leamy, of the City and District of Montreal, already sworn and examined on behalf of the Plaintiffs, who being now examined on behalf of the Defendant Robertson, deposes as follows:—

20 Examined by Mr. Beaulieu, K.C., of Counsel for Defendant Robertson:—

Q.—You have already been examined on behalf of the Plaintiffs?

A.—Yes.

Q.—Do you remember having visited the late Mr. Quinlan in company with Mr. Robertson?

A.—Yes.

30 Q.—Do you remember having read to Mr. Quinlan the letter bearing date June 20th, 1927?

Mr. Masson, K.C., of Counsel for Plaintiffs, objects to the question as illegal, and as not being pleaded.

The objection is reserved by the Court.

A.—Yes.

40 Q.—Will you please take communication of the letter signed “A. W. Robertson” addressed to Hugh Quinlan, and bearing date June 20th, 1927, and will you please state if that is the document you read to Mr. Quinlan?

Same objection.

Objection reserved.

L. N. LEAMY (for Defendant Robertson) Exam. in Chief.

By the Court:—

Q.—The same document — not a similar document?

10

A.—To my recollection, yes.

Q.—You understand the distinction between a copy and the very document itself?

A.—The document, yes.

By Mr. Beaulieu, Continuing:—

Q.—At the time you were Mr. Robertson's secretary?

A.—Of the firm.

Q.—Was the letter typewritten by yourself?

20

A.—Yes.

Q.—Who was present when the letter was read to Mr. Hugh Quinlan?

A.—Mr. Robertson.

Q.—Any one else?

A.—No.

Q.—I note the letter bears date June 20th, 1927. Was it prepared that day?

A.—That day.

Q.—Was it read on that day?

A.—That day.

30

Q.—Will you please file this letter as exhibit D-R-1?

Mr. Masson, K.C., of Counsel for Plaintiffs, objects to the production of the letter as illegal.

The objection is reserved by the Court.

A.—Yes.

40

And the further examination of the witness is suspended.

And further for the present deponent saith not.

J. H. Kenehan,
Official Court Reporter.

H. KING (for Defendant Robertson) Examination in Chief.

DEPOSITION OF HELEN KING

10 A witness examined on behalf of Defendant Robertson.

On this third day of December in the year of Our Lord One thousand nine hundred and thirty personally came and appeared, Helen King, of the City and District of Montreal, a witness produced and examined on behalf of defendant Robertson, who being duly sworn doth depose and say as follows:—

Examined by Mr. Beaulieu, K.C., of Counsel for Defendant Robertson:—

20 Q.—I understand you were Secretary to the late Honorable J. L. Perron?

A.—Yes.

Q.—For many years?

A.—Ten years.

Q.—Do you remember having written a letter under the dictation of the Honorable Mr. Perron, relating to certain shares of the Quinlan Estate, and other shares?

30 Mr. Masson, K.C., of Counsel for Plaintiff, objects to the question as illegal, inasmuch as this is not the proper method of proving the alleged letter.

(And the testimony of the witness is suspended to permit of the examination of the witness, Louis N. Leamy).

(And upon the said witness, Helen King, re-appearing, her testimony was continued as follows:—

40 By Mr. Beaulieu:—

Q.—Have you in your possession a duplicate signed by Mr. Robertson of the letter exhibit D-R-1 which I now show you, and if so, will you please state where you found it?

Mr. Masson, K.C., of Counsel for Plaintiffs, objects to the question as illegal.

II. KING (for Defendant Robertson) Examination in Chief.

The objection is reserved by the Court.

A.—I have here the letter I found.

10 Q.—Will you please state where you found it?

Mr. Masson, K.C., of Counsel for Plaintiffs, objects to the question as irrelevant and illegal, and makes a general objection to this evidence as illegal.

The objection is reserved by the Court.

A.—I found this letter in Mr. Perron's safe in the office, where he told me he deposited it at the time.

20 Q.—Will you file this duplicate as Exhibit D-R-2?

Same objection.

Same reserve.

A.—Yes.

Q.—Were there any other documents in the same envelope?

30 A.—There is a draft of a letter that I remember distinctly making out myself. It does not bear any date, because it was subject to modifications.

Mr. Masson, K.C., of Counsel for Plaintiffs, renews his objection to the evidence.

Q.—Was that dictated to you by Mr. Perron?

Mr. Masson, K.C., of Counsel for Plaintiffs, objects to the question as irrelevant and illegal.

40 The objection is maintained by the Court.

Q.—Were there any other documents in the same envelope?

Same objection.

A.—I discovered this memorandum of agreement.

Q.—Was it relating also to the Estate?

Same objection.

H. KING (for Defendant Robertson) Examination in Chief.

A.—That I really could not tell you. I did not read over the document.

Q.—Have you the document with you?

A.—Yes.

10 Q.—Will you please file this document, dated June 11th, 1925 as exhibit D-R-3?

Mr. Masson, K.C., of Counsel for Plaintiffs, objects to the production of the document as illegal.

Q.—Were those three documents, one of which is not allowed to be filed, found in the same envelope?

A.—Yes, in the same envelope.

20 (Exhibit D-R-3 is the same as the document exhibit C-4 filed with the return of the action).

Q.—Have you the envelope?

A.—Yes.

Q.—In whose handwriting is the writing on this envelope?

A.—Mine. It is just a reference.

Q.—Will you please explain how you happened to find that envelope?

30 A.—There was a memorandum in a record, I think of the Quinlan case, in which there was reference to this particular document No. 369 in the safe, and that was where I found it in an envelope.

Q.—The memorandum was in the private record of the Honorable Mr. Perron?

A.—No, the memorandum and the two documents were in that envelope, but there was a slip of paper in the record.

Q.—Have you the record here?

A.—I have the whole record here, yes.

40 Q.—And this indication was in the private record of the Honorable Mr. Perron?

A.—Yes.

Q.—And that was the way you found the record?

A.—Yes, that was the way I found it.

Mr. Masson:—I object to all this evidence as illegal.

By Mr. Beaulieu, Continuing:—

H. KING (for Defendant Robertson) Examination in Chief.

10 Q.—Will you please look through the private files of Honorable Mr. Perron relating to the Quinlan, Estate, and file all the letters there are relating to that Estate written by Honorable Mr. Perron to Mr. Robertson or to the Capital Trust?

Mr. Masson:—I object to the question as illegal, and premature, inasmuch as plaintiffs and their counsel have the right to see the letters first.

By Mr. Beaulieu, Continuing:—

Q.—Will you please find those letters, and we will show them to my learned friends?

20 A.—Yes, I will.

Q.—Of course, you know the signature of the late Mr. Perron very well?

A.—I do.

Q.—Will you please file, as one exhibit, D-R-4, the letters I now show you, all of which relate to the Fuller Gravel Company, and which constitute the correspondence between Honorable Mr. Perron and Mr. Robertson?

Mr. Masson:—That is the same objection.

30 And it being 4.15 o'clock, the further examination of the witness is continued until Thursday, December 4th, at 10.30 o'clock in the forenoon.

And further for the present deponent saith not.

J. H. Kenehan,
Official Court Reporter.

H. KING (for Defendant Robertson) Examination in Chief.

DEPOSITION OF HELEN KING

10 And on this fourth day of December, in the year of Our Lord one thousand nine hundred and thirty personally came and reappeared; Helen King, and her testimony was continued as follows:—

(The last question before adjournment being read to the witness, she answers as follows:—

A.—Yes.

20 Mr. Masson:—We object generally to the filing of all documents in so far as they are irrelevant or illegal or for any other reason.

By Mr. Beaulieu, Continuing:—

Q.—Is it to your knowledge that the Hon. J. L. Perron paid a visit to the late Hugh Quinlan some time before his death?

A.—Yes.

Q.—Will you please state what you know about it?

30 By Mr. Masson:—

Q.—Do you know it personally?

A.—I know it personally. Mr. Perron asked me to get him Mr. Quinlan's address on Kensington Avenue at the time, and asked me to call for a taxi at the same time.

By Mr. Beaulieu, Continuing,

40 Q.—Did he tell you he was going to see Mr. Quinlan?

A.—He was going to see Mr. Quinlan, because he wanted his address on Kensington Avenue.

Mr. Masson:—I object to this evidence as illegal.

By Mr. Beaulieu, Continuing:—

Q.—Can you fix the approximate date?

A.—I am quite sure it was certainly not in the winter time.

H. KING (for Defendant Robertson) Cross-examination.

It was either in the spring or the beginning of the summer.

Q.—Approximately how long before Mr. Quinlan's death?

10 A.—That I could not say exactly. As I say it was either in the spring or the beginning of the summer: that is all I remember distinctly.

Q.—As a matter of record, will you please fix the date of the death of Hon. Mr. Perron?

A.—November 20th, 1930.

Cross examined by Mr. Masson, K.C., of Counsel for Plaintiffs.

20 (Under reserve of objections)

Q.—I understand you found the papers you have filed in this case in the Record bearing No. Q 79?

A.—Yes.

Q.—And, that Record is Ethel Quinlan et al, Plaintiffs, vs A. W. Robertson et al, Defendants, and William Quinlan et al, Mis en Cause?

A.—Yes.

Q.—This is the Record in this case?

A.—Yes.

30 Q.—What is the date of the oldest proceeding in this record?

His Lordship:—That appears in the Record, Mr. Masson.

By Mr. Masson, Continuing:—

Q.—The first document that was filed in the Record bears the date October 25th, 1928, and is the Declaration in this case?

A.—Yes.

40 Q.—Will you file, as Exhibit P-77, a copy of a letter dated November 2nd, 1928, written to Mr. Beaulieu the attorney for Mr. Robertson in this case?

A.—Yes.

Q.—Was it you who took that letter under dictation?

A.—Yes, sir, my initials are on it.

Q.—It was to your knowledge that at that time Mr. Perron was acting for Mr. Robertson?

A.—Oh, yes.

G. S. McCORD (for Defendant Robertson) Exam. in Chief.

By Mr. Beaulieu:—

Q.—Were the documents you have filed found in the Record
now exhibited, or in the safe?

10 A.—They were found in the safe.

Q.—And you were referred to the safe by the note, as you
have already mentioned?

A.—Yes.

Q.—Wherein it is written “Safe 369, Quinlan & Robertson
and Capital Trust”?

A.—Yes.

Mr. Masson:—Plaintiffs reserve their right of further cross
20 examination of the witness.

And further for the present deponent saith not.

J. H. Kenehan,
Official Court Reporter.

DEPOSITION OF GEORGE S. McCORD

30 A witness produced and examined on behalf of the defendant
Robertson.

On this fourth day of December, in the year of Our Lord
one thousand nine hundred and thirty personally came and ap-
peared; George S. McCord, of the City of Toronto, Builders Sup-
ply Dealer, aged 38 years, a witness produced and examined on
behalf of the Defendant Robertson, who, being duly sworn, de-
40 poses as follows:—

Examined by Mr. Beaulieu, K.C., of Counsel for Defendant
Robertson: —

Q.—Did you acquire certain shares in the Fuller Gravel,
Limited?

A.—Yes.

G. S. McCORD (for Defendant Robertson) Exam. in Chief.

Q.—Will you please look at the photostatic copies of certificates of shares I now exhibit to you, and will you state if you are the Mr. George S. McCord mentioned on these certificates?

A.—Yes.

10 Q.—How many shares did you acquire in all?

A.—200 preferred, and 100 common.

Q.—Will you please state if you paid for those shares, and to whom?

A.—When I bought those shares I paid 25% in cash. I was not called upon to pay the balance.

Q.—In what way did you pay that 25%?

A.—By cheque.

Q.—Have you your cheque?

20 A.—I have.

By the Court:—

Q.—It was not 25 cents a share?

A.—No, your Lordship; 25% —\$2500.00.

By Mr. Beaulieu, Continuing:—

Q.—What was the total price of your 200 shares?

A.—It was to be \$10,000.

30 Q.—So, 25% was \$2500?

A.—Yes.

Q.—Will you please file, as Exhibit D-R-5, the cheque you now show me, bearing date September 27th, 1927?

A.—Yes.

Q.—You notice this cheque is to the order of Mr. Robertson, and is endorsed “Pay Order of Capital Trust Company”?

A.—Yes.

40 Q.—To this cheque is attached a copy of a letter bearing date October 5th, 1927? Does the letter refer to the cheque attached to it?

A.—Yes.

Q.—As to the payment of the balance, the 75% remaining due, was there any agreement as to the way you were to pay it?

A.—We were to have paid that, or taken it up, within three years.

Q.—With interest?

A.—We had to pay the interest on the unpaid balance.

G. S. McCORD (for Defendant Robertson) Exam. in Chief.

By Mr. Masson:—

Q.—Was that verbally, or in writing?

A.—The agreement was verbal, but the understanding was we were to take it up in three years.

10

Mr. Masson, K.C., of Counsel for Plaintiffs, objects to this evidence as illegal.

Witness (continuing):—I have the cheque here paying the interest on the unpaid balance.

By Mr. Beaulieu, Continuing:—

20

Q.—Will you please file, as Exhibit D-R-6, a cheque to the order of Capital Trust Corporation, for \$213,27, attached to a statement sent by the Capital Trust, and with a letter bearing date May 25th, 1928, from the Capital Trust, and will you say if they all refer to the payment of the interest?

A.—Yes.

Q.—Did those shares remain your property until they were sold with the whole capital stock of the Fuller Gravel, Limited?

30

Mr. Masson, K.C., of Counsel for Plaintiffs, objects to the question as illegal, inasmuch as the contrary is pretended in the defence.

The objection is reserved by the Court.

A.—They remained my property in this way: I had not paid the total amount.

Q.—They were kept as security for the payment?

A.—They were held as a guarantee.

40 Q.—Did you transfer those shares to anybody else until they were sold with the total capital stock of the Fuller Gravel, Limited?

A.—Not until the sale of the pit was made.

Mr. Masson, K.C., of Counsel for Plaintiffs, objects to this evidence as not being covered by the pleadings.

Q.—The entire capital stock of the Fuller Gravel, Limited, was sold later on?

A.—Yes.

G. S. McCORD (for Defendant Robertson) Exam. in Chief.

Q.—About May, 1928?

A.—Yes.

Q.—Were you consulted about the sale of your shares?

A.—Yes.

10 Q.—By whom?

A.—Mr. Rayner.

Q.—Did you discuss the matter with him?

Mr. Masson, of Counsel for Plaintiffs, objects to the question as illegal.

The objection is reserved by the Court.

A.—Yes.

20 Q.—As a matter of fact, you know a sale was made of the whole stock?

A.—Yes.

Q.—To what Company?

A.—To the Consolidated Sand & Gravel Company.

Q.—Am I to understand it was a merger that was being formed?

A.—The Consolidated Sand & Gravel Company was a merger of six companies shipping on to the Toronto market.

30 Q.—It was stated yesterday that the price of sale was \$180,000, and the cheque was filed. Did you receive your share of the proceeds of that sale?

A.—I did.

Q.—What amount did you receive?

A.—I received a cheque for \$7500.00, and I received a cheque for \$3000.00.

Q.—That was the whole amount coming to you according to the number of shares you were holding?

A.—Yes, the number of shares I was holding.

40 Q.—Can you state who paid you the amount you have mentioned?

A.—Mr. Robertson.

Q.—By cheque, or otherwise?

A.—By cheque.

Q.—Have you any correspondence relating to that matter?

A.—I have a letter from the Bank showing the date of the deposit of those amounts.

G. S. McCORD (for Defendant Robertson) Exam. in Chief.

10 Q.—Will you please file, as Exhibit D-R-7, the letter you now show me, bearing date December 1st, 1930, and purporting to be a certificate from the Manager of the Bank to the effect that two cheques, of \$7500 and \$3000, were deposited on the dates mentioned in the letter?

Mr. Masson, K.C., of Counsel for Plaintiffs, objects to the production of the letter in question as illegal.

The objection is reserved by the Court.

20 Q.—At the time the sale took place upon which you received those two cheques, were your shares entirely paid for?

A.—I had not paid more than the \$2500.00.

Q.—And, what occurred after the sale took place?

A.—I got the difference.

Q.—The unpaid part of your shares was sent to whom, or detained by whom?

A.—Detained by Mr. Robertson.

Q.—And, you received the balance?

A.—I received the balance between the purchase price and what it was sold at.

30 Q.—Am I to understand the balance was the entire price coming to you, with a deduction of what you were then owing on your shares?

A.—Yes.

Q.—As a matter of fact, you paid \$2500, on \$10,000?

A.—Yes.

Q.—For what price per share were the shares sold?

A.—I never figured that out. I just figured I got my one tenth of the sale price.

Q.—And, the sale price was \$180,000?

A.—Yes, around that figure.

40 not Q.—Out of \$18,000 deduction was made for what you had paid upon your shares?

A.—Yes.

Mr. Masson:—I object to all this evidence, inasmuch as it is contrary to what is pleaded.

Mr. Campbell:—It agrees entirely with my Plea.

G. S. McCORD (for Defendant Robertson) Cross-examination.

Of course, it is understood I avail myself of all this evidence that is now being made.

10 His Lordship:—Yes, that is understood.

(The parties agree that the evidence offered for either plaintiffs or defendants is available to all parties in the case and on all issues).

Cross examined by Mr. Tanner, K.C., of Counsel for Plaintiffs:—

20 Q.—There is in the record a letter dated September 26th, 1927, signed by Mr. Robertson, addressed to the Capital Trust, to the effect that Mr. McCord does not wish to assume any obligation for purchase of stock, and that Mr. McCord's entry appears to be conditional on Mr. Miller's coming in. Do you remember anything about that? Did you ever make such a condition to become a shareholder of Fuller Gravel, Limited?

A.—Mr. Miller came down with Mr. Rayner and discussed this matter with me. That was the first I heard of it. When Mr. Miller left, he was just going into it. There was not any condition — and I said I would go in.

30 Q.—Conditional upon his going in?

A.—It was not conditional. He was going in. That was the way he left me.

Q.—So that if Mr. Miller did not go in as a shareholder it would imply you would not become a shareholder?

A.—No, it would not. I did not make any condition.

Q.—Your cheque was paid on October 12th, 1927, for \$2500?

A.—Yes.

40 Q.—Is it not a fact that it was only on May 25th, 1928, after the sale of the shares of the Fuller Gravel, Limited, to the Consolidated Sand & Gravel Company for \$180,000, that you received an account for the Capital Trust for \$7500?

A.—I received an account from the Capital Trust to pay the interest on my unpaid balance.

Q.—You received the account only for the interest?

A.—Yes.

Q.—Do you know who paid for your shares to the Capital Trust?

G. S. McCORD (for Defendant Robertson) Cross-examination.

A.—Mr. Robertson may have paid them, but he had to guarantee them to the Capital Trust.

Q.—You say Mr. Robertson paid?

A.—I do not know whether he paid or not.

10 Q.—At all events, you never paid more than \$2500 from the beginning?

A.—My down payment of \$2500: but I had the obligation to take care of the balance.

Q.—On May 24th or May 25th did you send your cheque to the Capital Trust for the balance, \$7500?

A.—No: I sent a cheque for the interest.

Q.—Who paid the difference to the Capital Trust? That is the difference of \$7500 which you apparently owed?

20 A.—I do not know. Mr. Robertson either had guaranteed it to the Capital Trust, or had paid it: I do not know which.

Q.—So, you do not know who freed you from your obligation to Capital Trust in reference to the payment of \$7,500 the balance due on those shares? Do you know, as a matter of fact, who paid the Capital Trust the balance of your obligation for those shares?

A.—I believe Mr. Robertson.

Q.—But, you are not sure?

A.—I feel he did. I think he told me different times that he did.

30 Q.—And, who received the profit between \$10,000, the value of the original purchase price of the 200 shares, and the resale price of those 200 shares?

A.—I did.

Q.—Did you get the profit?

A.—I did.

Q.—Who gave you the cheque?

A.—Mr. Robertson.

Q.—You never returned any back?

A.—Absolutely not.

40 Q.—You did not use those profits, however, to pay the debt to the Capital Trust?

Witness:—Did I use the profits?

Counsel:—Yes.

A.—No, I did not use those profits to pay any debt to the Capital Trust.

G. S. McCORD (for Defendant Robertson) Cross-examination.

Q.—You owed \$7500 to the Capital Trust. As I understand it, you received and had placed to your credit \$7500, and that money was never used to pay the Capital Trust?

10 A.—I received the profit.

By Mr. Beaulieu:—

Q.—At the time you bought the shares was there any intimation that the whole Fuller Gravel, Limited, was to be sold to a Trust? Was there any anticipation of that?

Witness:—When I bought the shares?

20 Counsel:—Yes.

A.—No.

By Mr. Masson:—

Q.—In what line of business are you?

A.—Builders supplies.

And further deponent saith not.

30

J. H. Keneehan,
Official Court Reporter.

40

G. W. RAYNER (for Defendant Robertson) Exam. in Chief.

DEPOSITION OF GEORGE WILLIAM RAYNER

A witness produced and examined on behalf of the Defen-
10 dant Robertson.

On this fourth day of December, in the year of Our Lord one thousand nine hundred and thirty personally came and appeared; George William Rayner, of the City of Toronto, in the Province of Ontario, contractor and engineer, aged 47 years, a witness produced and examined on behalf of the Defendant Robertson, who, being duly sworn, deposes as follows:—

20 Examined by Mr. Beaulieu, K.C., of Counsel for Defendant Robertson:—

Q.—Do you remember having acquired some shares in the Fuller Gravel, Limited?

A.—Yes.

Q.—On or about September 8th, 1927?

A.—Yes.

Q.—Will you look at the two photostatic copies of certificate scrips bearing Nos. 6 and 19, one for 200 preferred shares, and the other for 100 common shares, and will you state if those
30 are the shares you acquired in the Fuller Gravel, Limited?

A.—Yes.

Q.—Will you also refer to a transfer forming part of Exhibit P-50, and will you state if the signature “George W. Rayner” thereon is your signature?

A.—Yes, it is.

Q.—What was the price of those shares?

A.—\$10,000.

Q.—Did you pay that price, in whole, or in part?

40 A.—I paid 25% in cash, and the balance I agreed to pay in three years, with interest, I think at 6%.

Q.—Have you your cheque for the amount of \$2500, part payment of those shares?

A.—Yes.

Q.—Will you file, as Exhibit D.R.8, the cheque you now show me, bearing date September 7th, 1927, to the order of Mr. Robertson, and endorsed to the Capital Trust Corporation?

A.—Yes.

G. W. RAYNER (for Defendant Robertson) Exam. in Chief.

Q.—You know the Fuller Gravel, Limited, was sold to a merger some time later?

A.—Yes.

Q.—Were you consulted about that sale?

10 A.—Yes, sir, I was consulted about the sale. I was consulted by Mr. Robertson, I believe it was some time in May, 1928. The thing was considered. I remember the time was about the opening of the Stadium.

Q.—That fixes it in your memory?

A.—Yes. I was at the opening ball game here.

Q.—Do you know at what price the whole capital stock was sold?

20 A.—The whole capital stock was sold for \$150,000, plus an adjustment on the assets and the stock piles, and so on, that were existing at the plant at the time, and on which the value had to be arbitrated.

Q.—The whole thing came to \$180,000?

A.—The final settlement was \$180,000.

Q.—When that resale took place had you paid the balance on the shares you had acquired on September 7th, 1927?

A.—I had an obligation to the Capital Trust Company, yes.

Q.—You owed a balance of \$7500?

A.—With interest, yes.

30 Q.—Did you receive your full share of the resale price, on the basis of \$180,000 for the whole, deduction being made of what you were still owing on your shares?

A.—I have a duplicate deposit slip, of May 26th, which shows what I received, \$7500.

40 The original settlement was made on the basis of \$150,000, and the adjustments were to be made during the year, later; so I received the difference between what I had paid, and with the deduction made by the Capital Trust Company of \$7500, it left me a net amount of \$7500. In other words, I was to have received \$15,000, and I received the difference between what I had paid and that, making \$7500.

Q.—Will you file this deposit slip as Exhibit D-R-9?

A.—Yes.

Q.—Did you later on receive a further cheque to complete the balance coming to you?

G. W. RAYNER (for Defendant Robertson) Cross-examination.

A.—Yes. I have here a duplicate deposit slip, made out by the Imperial Bank, dated November 14th, showing a deposit of \$3000.

10 Q.—And, the \$3000, plus the \$7500, formed the whole amount coming to you?

A.—Yes.

Q.—Deduction being made of what you owed on the balance?

A.—Yes.

I had to send to the Capital Trust Company a cheque for the interest which I owed them.

Q.—Will you file this second slip as Exhibit D-R-10?

20 A.—Yes.

Mr. Masson, K.C., of Counsel for Plaintiffs, objects to the production of Exhibit D-R-10, as being subsequently to the institution of the action.

The objection is reserved by the Court.

Q.—You have spoken about interest. Were you called upon to pay the interest on the balance due on your shares?

30 A.—Yes, sir. I can fix the date by a letter I received from the Trust Company.

Q.—Will you file the letter you received from the Capital Trust Company requesting you to pay the interest?

A.—I have not that letter with me.

Q.—Have you the cheque for the payment of the interest?

A.—No, I have not the cheque for the interest either with me.

Q.—Have you any correspondence showing you did pay the interest?

40 A.—I have the correspondance, but I have not it with me. I paid the interest.

Mr. Campbell:—Defendant Capital Trust files as Exhibits D-C-8 and D-C-9, copies of the entries of transfer from the books of the Fuller Gravel Company exhibited by the witness A. M. Harnwell.

Cross examined by Mr. Masson, K.C., of Counsel for Plaintiffs.

G. W. RAYNER (for Defendant Robertson) Cross-examination.

Q.—In what line of business are you?

A.—I am in the contracting business.

Q.—Do you carry on business in your own name?

A.—Yes.

10 Q.—Where do you carry on business?

A.—In Toronto, and the Province of Ontario.

Q.—Have you known Mr. Robertson for a long time?

A.—I have known Mr. Robertson all my life, practically, except for about seven years.

Q.—You are personal friends, I understand?

A.—If he will have me for a personal friend, I am a personal friend, yes.

Q.—Do you keep all your cheques?

20 A.—Yes.

Q.—Did you bring with you all the cheques you gave Mr. Robertson since 1926?

A.—Yes.

Q.—Will you exhibit them to me?

A.—I have not any except what you have here. I have never given him any other cheques. I never gave him any personal cheques at all.

Q.—Did you ever give him any cash?

A.—No, sir.

Q.—You never had any business transactions with him?

30 A.—I have been dealing in business transactions with him, but I never gave him any cash.

Q.—Or any cheques?

A.—No.

Q.—Did anyone give him any cheques for you?

Witness:—What do you mean?

Counsel:—Or money, or cash.

40 Witness:—In what way do you mean?

Counsel:—The Company in which you were interested, for instance; or someone on your behalf.

Witness:—In what way do you mean give him money?

IV. E. TUMMON (*for Defendant Robertson*) Exam. in Chief.

By the Court:—

10 Q.—Did you share with him, directly or indirectly, the profits you made in this transaction, whether personally or by some other Company in which you are interested, or in some other way which the Court does not know but which financial men seem to know?

A.—No, sir.

Q.—So, you kept all the profit you made for yourself?

A.—Yes, sir.

And further deponent saith not.

20

J. H. Kenehan,
Official Court Reporter.

DEPOSITION OF WILLIAM E. TUMMON

A witness produced and examined on behalf of the Defendant Robertson.

30 On this fourth day of December, in the year of Our Lord one thousand nine hundred and thirty personally came and appeared; William E. Tummon, of the City of Tweed, in the Province of Ontario, aged 51 years, a witness produced and examined on behalf of the Defendant Robertson, who, being duly sworn, deposes as follows:—

Examined by Mr. Beaulieu, K.C., of Counsel for Defendant Robertson:—

40 Q.—Were you connected with the Fuller Gravel, Limited, in 1927?

A.—Yes, sir, I was Manager, operating.

Q.—You were living in the locality where the Fuller Gravel, Limited, was operating?

A.—Yes.

Q.—How long had you been connected with the Fuller Gravel, Limited?

W. E. TUMMON (for Defendant Robertson) Exam. in Chief.

A.—Ever since its beginning. I erected the plant.

Q.—Will you please take communication of the photostatic copies of certificates of shares I now show you, forming part of Exhibits P-50 and P-51, and will you state if you are the Mr.
10 Tummon whose name appears on those certificates?

A.—Yes, I am.

Q.—Will you look at the other documents I show you, forming part of Exhibit P-50, purporting to be stubs of certificates and transfers, and will you state if the signature “W. E. Tummon” is your signature?

A.—Yes, sir, it is.

Q.—How many shares did you acquire at that time, on the dates mentioned on the certificates?

20 A.—My recollection is that at first there were to be 600 of the preferred shares transferred to me.

Q.—And, how many common?

A.—Half the amount in common, I think.

Q.—And, later on some other shares were transferred to you?

A.—No.

Q.—That was the full amount?

A.—That was the full amount that was to be transferred to me at that time.

30 Q.—Did you keep all those shares up to the resale of the Fuller Gravel, Limited?

A.—I did not.

Q.—Will you explain why?

A.—Of the 600 shares, I was to keep 200 myself.

Mr. Masson, K.C., of Counsel for Plaintiffs, objects to this evidence as being illegal.

The objection is reserved by the Court.

40 Witness (continuing answer) 200 were to stand in my name, and I had a friend whom I was to try to induce to take the 200 shares and become a shareholder in the Fuller Gravel.

The other 200 shares of the preferred stock were to stand in my name until Mr. Miller, a contractor, was to take the shares.

Q.—So, there were 200 that were destined to be yours?

W. E. TUMMON (for Defendant Robertson) Exam. in Chief.

A.—Yes, 200 of the preferred shares were to be mine; 200 were to stand in my name, and to go to this friend of mine if I could persuade him to take those shares.

10 Q.—Had you any great interest in the success of the Fuller Gravel, Limited?

A.—I bought all the properties. I bought the property in about 1915 or 1916, and I was there through the building of the plant, and I was Manager of it, and it was my business and my home, and naturally I was interested in the success of the plant.

Q.—What finally happened to those 600 shares?

20 A.—First, in regard to the 200 shares I was to take myself: at the time I could not finance them. Mr. Robertson was to assist me in the financing, but I was to assume the full obligation for the 200 shares. The first conversation Mr. Robertson and I had concerning that matter I would fix about the latter part of July or the first part of August.

Q.—1927?

A.—1927.

30 Perhaps two weeks after that conversation, and after my agreeing to take the 200 shares as my own, my health at that time was not good. I had been to several doctors, and I was told my trouble was likely one of two things, either of which was very serious. I had a wife and six small children. I immediately went back to Mr. Robertson, and told him my circumstances. Mr. Robertson agreed that I should keep whatever portion of the 200 shares I felt like keeping then and could pay for, and that he would take the balance and hold them, and if my health improved, and I wished any portion of those shares, or the whole of them, I was to have them from him at the same price, whenever it was.

Q.—How many shares did you keep?

40 A.—50 preferred shares.

Q.—Did you pay for those 50 preferred shares?

A.—I did.

Q.—In full?

A.—I did.

Q.—Have you your cheques?

A.—I have not. I did not bring them, but I could get them.

W. E. TUMMON (for Defendant Robertson) Exam. in Chief.

Q.—Will you please file all the cheques you gave to Mr. Robertson?

A.—They are in my Bank at Tweed. I will file them.

10 Q.—I understand you got 50 preferred shares?

A.—50 preferred shares, and 25 common shares.

Q.—Will you file, as Exhibit D-R-11, all the cheques you gave in payment of your shares?

A.—Yes.

Q.—I understand those cheques were to the order of Mr. Robertson?

A.—To the order of Mr. Robertson, yes.

I feel satisfied the cheques are in the Bank.

20 Q.—You will look for them, in any event?

A.—Yes.

Q.—Have you any correspondence in the matter?

A.—I am not sure.

Q.—You mentioned a moment ago that you were holding 200 of those shares for a friend. Irrespective of the name, will you state whether or not that friend was Mr. Robertson?

A.—It was not. I am prepared to give his name, if it is necessary, although I would prefer not to do so.

30 Q.—Will you please take communication of a letter which was addressed to you on May 24th, 1928, and will you state if you received it, and if you replied to it by another letter which I will communicate to you?

Mr. Masson, K.C., of Counsel for Plaintiffs, objects to the filing of the letter in question as irrelevant and illegal.

The objection is reserved by the Court.

40 Q.—Is this the letter you received, and the letter you sent?

A.—Yes.

Q.—Do you notice a mistake in the date of the letter you sent?

A.—Yes.

Q.—Will you please explain it?

A.—I notice the date of my letter is May 20th, but in the body of the letter I say I acknowledge "Receipt of your cheque

W. E. TUMMON (for Defendant Robertson) Exam. in Chief.

of May 24th". I cannot explain it any more than it is a slip or a mistake, or the stenographer made the mistake and I did not notice it when I signed it.

10 Q.—You see the letter of May 24th, 1928, bears the initials "A.W.R."?

A.—Yes.

Q.—Do you remember who signed that letter?

A.—A. W. Robertson.

Q.—You have told us you kept only 50 shares out of the 600 shares?

A.—Yes.

Q.—You know the Fuller Gravel, Limited, was sold to a merger in May, 1928?

20 A.—Yes.

Q.—Will you please state if you received your share of the resale price, in proportion to the 50 shares you kept?

A.—I did.

Q.—What was the amount coming to you on those 50 shares?

A.—The total amount, less perhaps some little cost, was \$4500.00, as I remember it.

(The letters referred to in the previous questions are filed as Exhibit D-R-12).

30 Q.—Your letter acknowledges the receipt of \$4250.00?

A.—Yes, and the balance came later.

Q.—Do you remember when the balance came?

A.—I could not say at the moment.

Q.—Will you please refer to your bank, and file a copy of your bank book showing those different entries?

A.—I will file my bank book. The deposit of the \$4250. was made in the Bank of Montreal, Tweed, on May 30th, as I received it from Mr. Robertson on May 24th.

40 Mr. Masson, K.C., of Counsel for Plaintiffs, objects to this evidence as illegal.

Q.—Where was the further amount you received later on deposited? In the same Bank?

A.—I would not say whether it was deposited in the Bank of Montreal, or deposited in the Royal Bank. I have a small

W. E. TUMMON (for Defendant Robertson) Exam. in Chief.

account in both Banks. However, I will have no trouble in locating the \$4250.00. I may have some difficulty in locating the smaller sum.

10 (The Bank books referred to in the previous testimony will be filed as exhibit D-R-13).

Q.—Did you keep the full amount you received from Mr. Robertson?

A.—Absolutely.

Q.—For yourself?

A.—Yes.

20 Q.—Did you give it back directly or indirectly to Mr. Robertson?

A.—Mr. Robertson never got a dollar of it, good, bad, or indifferent.

Q.—When you bought your shares, in September, 1927, for part, and in November for the balance, had you any hope of reselling the whole Fuller Gravel stock to that merger?

A.—No.

By the Court:—

30 Q.—When did the question of the merger first come up?

A.—I would think on in March, perhaps some time late in March.

By Mr. Campbell:—

Q.—Of the following year?

A.—Yes.

By the Court:—

40 Q.—1928?

A.—Yes.

Q.—For the very first time?

A.—For the very first time.

By Mr. Beaulieu, Continuing:—

Q.—Can you explain the conditions which brought about the formation of that merger?

W. E. TUMMON (for Defendant Robertson) Exam. in Chief.

10 A.—Competition in the sand and gravel business in Ontario was very keen. Toronto is the main market in the whole Province of Ontario: all sand and gravel plants in Ontario count upon Toronto as their central market. During the fall of 1927 and the winter of 1928 another large plant was constructed, and was coming into the market in 1928, and outside of those who were in the gravel business feeling that the business was going to be very poor in the coming year, nobody had any idea of the consolidation until Mr. Russell, who owned a couple of the plants in Ontario, together with a broker, set out to amalgamate five or six of the largest plants.

Q.—And, the first time you heard of that was in March, 1928?

20 A.—I would say in March, yes.

By the Court:—

Q.—Had Mr. Robertson anything to do with the idea of the merger?

A.—No, sir.

By Mr. Beaulieu, Continuing:—

30 Q.—We have the full story of the 50 shares you got?

A.—Yes.

Q.—Will you please explain what happened to the other shares?

40 A.—As I previously mentioned, the 200 shares, or one block of the 200 preferred shares which stood in my name, I was to endeavor to get this friend of mine (that is the gentleman whose name I told you I would prefer not to mention, but I will mention it if it is necessary). In any event, he did not buy it. I endeavored to get some other people to take those shares. There was only one man who would take that block of shares, and he was a particular friend of mine. He asked me if I would recommend them as being able to pay dividends, and it was only on that ground he would take them. I did not feel like doing that, and, therefore, he did not buy.

After they were kept about six months in my name, Mr. Robertson, who had financed them in the first place, took them over — that is as far as I know.

W. E. TUMMON (for Defendant Robertson) Cross-examination

Q.—That is for the 200 shares?

A.—Yes.

Q.—And, what about the other 200?

10 A.—The other 200 were for Mr. Miller, or some contractor in Toronto who we thought could contribute something towards the success of the Fuller Gravel Company. I was Manager of the Fuller Gravel plant: in 1927 Mr. Rayner was our Toronto salesman in charge of our Toronto Office, and Mr. McCord was a builders supply man in the City of Toronto, who had handled considerable of our stuff before, and the previous year had handled 43% of all the gravel sold in the City of Toronto. It was to bring about a combination of all contributing something towards the plant we thought perhaps we might make it a success.

20 Q.—Were the shares which were destined for Mr. Miller taken by him after that?

A.—No.

Q.—Did you see him about it?

A.—No, I never had any conversation with Mr. Miller in regard to those shares.

Q.—What finally happened to those shares?

A.—Those shares I think went back to Mr. Robertson. He had paid for them, and they were being held in my name for Mr. Miller to take up. I believe he had undertaken or had agreed to take them up.

30

Cross examined by Mr. Tanner, K.C., of Counsel for Plaintiffs:—

Q.—I have before me a copy of a transfer dated March 26th, 1928, whereby Mr. W. E. Tummon transfers to Mr. A. W. Robertson 550 preferred shares of the Capital Stock held by him of the Fuller Gravel Limited. This is transfer No. 15. Are you the same Mr. Tummon therein mentioned?

40

A.—Yes.

Q.—So, you did transfer 550 preferred shares to Mr. A. W. Robertson on that date?

A.—Yes.

Q.—I also have a copy of a transfer dated March 26th, 1928, which purports to transfer 275 common shares in the Fuller Gra-

A. J. M. PETRIE (for Defendant Robertson) Exam. in Chief.

vel, Limited, to Mr. A. W. Robertson. The name of the transferer appears to be Mr. W. E. Tummon. Is that yourself?

A.—Yes.

10 And further deponent saith not.

J. H. Kenehan,
Official Court Reporter.

DEPOSITION OF ARCHIBALD J. M. PETRIE

20 A witness examined on behalf of the Defendant Robertson.

On this fourth day of December, in the year of Our Lord One thousand nine hundred and thirty, personally came and appeared, Archibald J. M. Petrie, of the City and District of Montreal, Certified Public Accountant, aged thirty-seven years, a witness produced and examined on behalf of Defendant Robertson, who, being duly sworn, deposes as follows:—

30 Examined by Mr. Beaulieu, K.C., of Counsel for Defendant Robertson:—

Q.—Will you take communication of Exhibit P-25, which purports to be a minute of Quinlan, Robertson and Janin Limited, of June 22nd, 1927, and will you state if that minute was prepared by you?

A.—It was.

Q.—At the time were you the auditor of Quinlan, Robertson and Janin?

40 A.—I was. I had been since the inception of the Company.

Q.—And you still are?

A.—Yes.

Q.—Are you also the auditor of some other companies in which Mr. Robertson was or is interested?

A.—I am.

Q.—What are those companies?

A.—Various companies.

A. J. M. PETRIE (for Defendant Robertson) Exam. in Chief.

Q.—Are you the auditors of Amiesite Asphalt Limited?

A.—We are.

Q.—Ontario Amiesite?

A.—Yes.

10 Q.—A. W. Robertson, Limited?

A.—No.

Q.—You note this resolution was adopted by the Board on June 22nd, 1927?

A.—It was.

Q.—Can you state if that is the date you prepared it?

A.—It is.

Q.—Have you any special memorandum to refresh your memory with regard to that date?

20 A.—I have.

Q.—What memorandum have you?

A.—In our line of business we keep a time sheet, which is automatically posted to the time ledger, for cost purposes; and on June 22nd, I spent four hours at the office of Quinlan, Robertson and Janin.

30 Q.—Will you take communication of Exhibits P-26 and P-27, which are certificates of shares in Quinlan, Robertson and Janin Limited, with transfers on the backs thereof, and will you state who filled the blanks which are now filled in typewriting and which purpose to bear the name of A. W. Robertson, and the date June 22nd, 1927?

A.—It is very difficult at the moment to say who did the typewriting, but I understand it would have been done.....

Mr. Masson, K.C., of Counsel for Plaintiff, objects to the latter part of the answer of the witness.

Witness (Continuing answer). I cannot state at the moment who did the typewriting.

40 Q.—Was it done under your instructions?

A.—Yes, it was done at the office, previous to the meeting. I do not run a typewriter myself.

Q.—But, you know it was done under your instructions?

A.—It was.

Q.—And it was previous to the meeting?

A.—Yes.

A. J. M. PETRIE (for Defendant Robertson) Exam. in Chief.

Q.—Will you take communication of a resolution of Amiesite Asphalt Limited, Exhibit P-13, and will you state if you also prepared it, and when it was prepared?

A.—That was also prepared by me.

10 Q.—Was it prepared on the date it bears?

A.—Yes, as dated.

Q.—Will you take communication of exhibit P-8, being a copy of a transfer by Hugh Quinlan to A. W. Robertson, and will you state if the signature “A. J. M. Petrie” which appears as witnessing the document is your signature?

A.—Yes, sir, it is.

20 Q.—This transfer refers to certificates Nos. 1 and 5. Will you take communication of exhibit P-9, being a share certificate in Amiesite Asphalt, Limited, with a form of transfer on the back thereof, and will you state who put or gave instructions to put the date “June 22nd, 1927” and the words “A. W. Robertson” and the number “One” thereon?

A.—That was done in accordance with the decision of the meeting.

Q.—Was it done under your instructions?

A.—It was.

Q.—Before the resolution was adopted, or after?

30 A.—The discussion came up at the meeting, and it was done immediately. Everything was signed as soon as complete.

Q.—Would the same answer apply to Exhibit P-10, which is share Certificate No. 5 with a form of transfer on the back?

A.—It would, yes.

Q.—Will you look at the signature “A. J. M. Petrie” which appears as witnessing Exhibit P-12, and will you say if it is your signature?

A.—Yes, it is.

Q.—You note the date, June 22nd, is the same as on the back of the transfer?

40 A.—Everything was done on the same day.

Q.—Would that also apply to Exhibit P-11, which is a share certificate in the name of J. H. Dunlop, for 200 shares, with a transfer on the back?

A.—The same answer applies.

Q.—You told me a moment ago that you were also the auditor of Ontario Amiesite?

A.—I am.

A. J. M. PETRIE (for Defendant Robertson) Exam. in Chief.

Q.—Will you take communication of the resolution I show you, which I will file as Exhibit D-R-4, purporting to be the minutes of meeting of the Ontario Amiesite Company for the purpose of accepting a transfer by the Estate Hugh Quinlan,
10 and will you state if you prepared that resolution?

A.—The same answer applies. It was prepared by me, or under my direction.

Q.—Will you take communication of Exhibit P-2, being a certificate of Ontario Amiesite Limited for 200 shares, with a transfer signed by the Executors of the Estate Hugh Quinlan, Capital Trust and A. W. Robertson, and will you state if you filled in the blank by putting in the name of Mr. Robertson?

A.—I did.

20 By Mr. Masson:—

Q.—Did you do it yourself, or was it done under your instructions?

A.—As I have already stated, I do not run a typewriter, and it was done under my instructions. You will, however, notice “Attorney A. J. M. Petrie”: this is in my own handwriting.

By Mr. Beaulieu, Continuing:—

30 Q.—You acted as attorney there?

A.—Yes.

Q.—Were the blanks filled in on the date the resolution was adopted?

A.—Absolutely.

By Mr. Masson:—

Q.—There is no date on the transfer?

40 A.—No, but if you will refer to the minutes you will find it corresponds, and it is the only 200 shares of stock.

By Mr. Beaulieu, Continuing:—

Q.—You know it was filled in on the date the minutes were adopted?

A.—I do. I do not hesitate to say so.

Q.—Can you explain how it happened the transfer of this certificate of Ontario Amiesite was so long delayed?

A. J. M. PETRIE (*for Defendant Robertson*) Exam. in Chief.

Mr. Masson, K.C., of Counsel for Plaintiffs, objects to the question as illegal.

10 The objection is reserved by the Court.

Q.—Just state what you know personally?

A.—Offhand, no, I do not. I do remember at the time that certificate was delayed in being transferred, but for what reason I do not know. I know part of the delay was due to myself, because I made various trips at various times to Toronto, and it was held up for a certain period of time until I was there personally and saw that it was done.

Q.—You intended to be present at that meeting?

20 A.—That accounts for part of the delay. But, that stock was to come trough with all other stock at the same time.

By Mr. Masson:—

Q.—It was supposed to be done on June 22nd, 1927?

A.—The stock was all acquired at the same time.

By Mr. Beaulieu, Continuing:—

30 Q.—When did you come into possession of the certificate Exhibit P-2? I understand you had it when the transfer was made?

A.—Yes, and possibly for some time before the transfer was made.

By Mr. Masson:—

Q.—How long before?

40 A.—I cannot state. Sometimes those documents would come to me, and I would go out of town. It should have been in my possession several days or several weeks.

By Mr. Beaulieu, Continuing:—

Q.—You have no particular recollection about it?

A.—No.

A. J. M. PETRIE (for Defendant Robertson) Exam. in Chief.

Q.—Will you please take communication of Exhibit P-29 and state if you notice it is a list of resolutions referring to the various declarations of dividends by Quinlan, Robertson and Janin, Limited?

10

A.—Yes.

Q.—Was it according to your instructions those various resolutions were adopted before and after the death of Mr. Hugh Quinlan?

Mr. Tanner:—I object to this question as illegal. An accountant cannot give any instructions to the Board of Directors as to what they should or should not do.

20 By Mr. Beaulieu, Continuing:—

Q.—Did you prepare the resolutions?

A.—Several of them, if not all, were prepared under my supervision.

Q.—Did you advise, or did you give your opinion, as to the proper wording in which those resolutions should be adopted?

Mr. Masson, K.C., of Counsel for Plaintiffs, objects to the question as illegal.

30

A.—I did.

Q.—Did you consult with somebody, and more particularly with the legal adviser of the Company, as to the wording of those resolutions?

Mr. Masson, K.C., of Counsel for Plaintiffs, objects to the question as illegal, and as not being covered by the pleadings.

The question is withdrawn.

40

Q.—When you gave your opinion as to the wording of the resolutions did you state you had consulted with the legal adviser of the Company?

A.—I think I will have to go back of that a little. This dividend, I think, was originally suggested by me to the Directors.

Q.—I am not interested in the whole story for the moment. What I want to know is was the wording your work or the personal work of the Directors?

A. J. M. PETRIE (*for Defendant Robertson*) Exam. in Chief.

Mr. Masson, K.C., of Counsel for Plaintiffs, objects to the question as illegal.

By the Court:—

10

Q.—Did you advise the Directors when drafting the resolution in the way it was drafted, that it was with the advise of their legal advisers?

A.—It was.

Q.—Did you tell them that?

A.—I asked permission to see the legal adviser on the wording, which the Directors authorized me to do.

20 Q.—Did you inform the Directors of the advice of the legal adviser?

A.—I did.

By Mr. Beaulieu, Continuing:—

30 Q.—Will you take communication of the summaries of Financial Statements I now show you, one being a summary of Quinlan, Robertson and Janin, Limited, to March 31st, 1927, the second being a summary of Amiesite Asphalt Limited to the same date, and the third being a summary of Financial Statements of Ontario Amiesite, for the same date, and will you state if those summaries were prepared by you?

A.—They were all prepared by me.

Q.—Will you please file these three statements as Exhibits D-R-15, D-R-16 and D-R-17?

A.—Yes.

Q.—You notice the book value of those three companies is mentioned in these statements?

A.—Yes.

40 Q.—Will you please tell his Lordship what was the purpose of preparing these statements?

A.—The purpose was to arrive at the book value of the various companies at that time.

Q.—To your knowledge were the statements submitted to the Honorable Mr. Perron?

A.—I know he was acquainted with those statements: He had seen them.

Mr. Masson, K.C., of Counsel for Plaintiffs, objects to the answer of the witness as illegal.

A. J. M. PETRIE (for Defendant Robertson) Exam. in Chief.

Q.—How do you know that?

A.—At a Directors' meeting I cannot give you the date....

Q.—(Interrupting) What took place at that Directors' meeting?

10 A.—A general discussion in relation to the business. Mr. Perron was there as legal adviser, and I was there as the auditor.

Q.—You say the Honorable Mr. Perron was present at that meeting?

A.—He was.

Q.—And these summaries were submitted and were discussed at that meeting?

Q.—Will you please ascertain if there is in the minutes any mention of the discussion of those Financial Statements?

20 A.—There is not.

(Plaintiffs file, as Exhibit P-78, extracts from Record Q-79 of Messrs, Perron, Vallée & Perron).

And it being 12.30 o'clock the further examination of the witness is continued until 2 o'clock in the afternoon.

And further for the present deponent saith not.

30

DEPOSITION OF ARCHIBALD J. M. PETRIE

And at two o'clock personally came and reappeared the said witness, Archibald J. M. Petrie, and his examination was continued as follows:—

By Mr. Beaulieu:—

40 Q.—You have been for many years the auditors of Quinlan, Robertson and Janin, Limited, Amiesite Asphalt and Ontario Amiesite?

A.—We have.

Q.—In view of your personal knowledge of those companies, would you state if the price of \$250,000 which was paid in June 1927 was a fair valuation of those shares?

A. J. M. PETRIE (for Defendant Robertson) Exam. in Chief.

Mr. Masson:—I object to the question as illegal. If there is any statement, or any document that should be before the Court, there might be no objection, but the opinion of the witness is of no value or assistance in valuing the shares.

10 Mr. Tanner:—We object to the form of the question also, on the ground that it is not in evidence that there was any payment made in June 1927.

Mr. Baulieu:—Then we will change the word “paid” to “transferred”.

The objection is reserved by the Court.

20 A.—Yes.

Q.—Will you please explain your answer? What are the elements you take into consideration in coming to that conclusion?

A.—The book value arrives at a certain figure, and taking into consideration the guarantees that the shareholder transferring or selling was being released from, which amounted to considerable money.....

30 Mr. Masson, K.C., of Counsel for Plaintiffs, objects to this evidence as illegal, inasmuch as there is no proof of any guarantee from which the defendants or the Estate was released.

Q.—Do you remember what was the amount of the guarantees?

A.—Offhand, no. I would say collectively several hundred thousand dollars.

Q.—Can you verify what those guarantees were?

A.—I could, if given time.

40 Q.—You could give us the exact figure?

A.—I could.

Q.—I understand there were guarantees to the Bank, and certain bonds guaranteed?

A.—Maintenance bonds put up with the Government, or Municipalities, from whom the contracts were obtained. Those bonds would run usually for a period of five years.

Q.—Will you prepare a statement setting forth all those guarantees in which the late Hugh Quinlan was personally interested, and whereof he was discharged?

A. J. M. PETRIE (for Defendant Robertson) Cross-exam.

Mr. Masson, K.C., of Counsel for Plaintiffs, objects to the question as irrelevant and illegal.

10 A.—Yes, I could do that.

Cross examined by Mr. Tanner, K.C., of Counsel for Plaintiffs:—

Q.—Did I understand you to say you prepared this minute of Quinlan, Robertson and Janin, Limited, bearing date June 22nd, 1927?

A.—I did.

Q.—Did you dictate that minute to a stenographer?

20 A.—I did.

Q.—How long after the meeting?

A.—The same day.

Q.—On June 22nd?

A.—Yes.

Q.—Did you prepare the notice calling the meeting?

A.—I may have caused it to be prepared.

Q.—Who prepared it under your instructions?

A.—The secretary.

Q.—Mr. A. Janin.

A.—Whoever was the Secretary at that time.

30 Q.—Do you know if the notice was ever mailed to Mr. Quinlan, who was a Director of the Company at that time?

A.—I understand it was.

Q.—Do you know, as a matter of fact, or do you not?

A.—I do not.

Q.—Did you know the purpose of the meeting prior to June 22nd, 1927?

A.—I must have been informed beforehand to be present at that meeting.

40 Q.—But, that is a very general answer. Who informed you?

A.—The Management of the Company.

Q.—Will you please be a little more specific. "The Management of the Company" is very abstract. Who informed you?

A.—The President, or the Secretary.

Q.—Who was the President?

A.—I cannot tell you from memory. If you show me the minute I will tell you.

A. J. M. PETRIE (for Defendant Robertson) Cross-exam.

Q.—But, I want to know who informed you?

By the Court:—

10 Q.—It seems to me impossible that you should not know who was the President of the Company at the time?

A.—I presume it was Mr. Robertson at the time.

Q.—Then, why do you not say so? I must tell you the least reticence of your part makes me doubt your testimony.

A.—But, we happen to be the auditors for twenty odd contracting Companies, and the Directors are changing continually, and it is rather difficult to remember.

20 By Mr. Tanner, Continuing:—

Q.—I asked you if prior to June 22nd, you knew what was the purpose of the meeting that was being called for June 22nd, and you said you understood it from the Management?

A.—Yes.

Q.—Will you please tell me who among the Management gave you information as to the purpose of the meeting?

A.—It would be the President, Mr. Robertson.

Q.—Are you sure now it was Mr. Robertson?

A.—Yes.

30 Q.—You are sure now?

A.—Yes. He was President at that time.

Q.—Are you sure now it was Mr. Robertson who told you the purpose of the meeting?

A.—Yes.

Q.—What information did he convey to you as to the purpose of that meeting?

A.—That there was to be a Directors' meeting held on that date, and the shares of the Company were to be transferred.

40 Q.—How long prior to the meeting did he convey this information to you?

A.—It is very difficult to say at this time. Possibly a few days.

Q.—I see the notice which is incorporated in this Minute is dated June 18th, 1927, calling a meeting for June 22nd, 1927, at the hour of eleven o'clock. Would it be fair to conclude that you were so informed prior to the time the notice is purported to have been made?

A. J. M. PETRIE (for Defendant Robertson) Cross-exam.

A.—I would say I received my instructions the day the notice was going out.

Q.—And, what were those instructions on the date of the notice?

10 A.—There was to be a meeting held, and I was requested to be there.

Q.—What else? To transfer the shares?

A.—Yes.

Q.—I note in the resolution: “Mr. Hugh Quinlan submitted to the meeting his resignation as Vice-President and Director of the Company, which was duly accepted.” Was Mr. Quinlan present at that meeting?

A.—No, he was not present.

20 Q.—Then, why did you incorporate in the Minutes the statement that Mr. Quinlan submitted his resignation?

By the Court:—

Q.—Had you his resignation in writing: and, if not, what made you state in the Minutes that he submitted his resignation?

A.—I do not remember having his resignation in writing.

By Mr. Tanner, Continuing,

30 Q.—As a matter of fact, you did not have it?

A.—No, not to my knowledge.

Q.—Who instructed you to incorporate in the Minutes the statement with regard to the resignation of Mr. Hugh Quinlan as Vice-President and a Director of the Company?

A.—It must have been notes I obtained at the meeting of Directors.

Q.—Did the Directors actually meet at the hour of eleven o'clock in the forenoon on June 22nd, 1927?

40 A.—Yes, because I could not have written the minutes without my information.

Q.—As a matter of fact, do you swear they met together at that hour?

A.—I cannot state it now.

By the Court:—

Q.—In many instances, and with the most perfect good faith, resolutions are entered in minutes when there has been no real

A. J. M. PETRIE (for Defendant Robertson) Cross-exam.

gathering of the Directors, and afterwards they all sign as if they had been present. As a matter of fact, was there a real meeting of the Directors.

10 A.—As far as I know, there was. I may be wrong.

By Mr. Tanner, Continuing:—

Q.—Who were the directors present?

A.—There would be Mr. Janin, and Mr. Robertson and Mr. Malone.

Q.—I want to be fair to you, Mr. Petrie. The Minutes say the only ones present were Mr. Robertson and Mr. Janin.

A.—I could not say.

20 Q.—I wish to make this point clear: On whose instructions did you incorporate in the Minutes the statement that Mr. Hugh Quinlan submitted his resignation to the meeting?

A.—I stated before I would have obtained that information from the Directors.

Q.—From which Director?

A.—The President.

Q.—Mr. A. W. Robertson?

A.—Yes, sir.

30 Q.—On June 22nd, 1927, there also appears to have been passed a minute by the Board of Directors of Amiesite Asphalt calling a meeting of the Directors for June 22nd, 1927, at the hour of twelve o'clock noon. There appear to have been present M. Alban Janin and Mr. A. W. Robertson. Would the answers you have given in respect to the Minute of Quinlan, Robertson and Janin of the meeting held June 22nd, 1927, also apply to the resolutions passed by the Board of Directors of Amiesite Asphalt on June 22nd, 1927?

A.—Yes.

40 Q.—With the exception that in this instance Mr. Janin appears to have been the President of the Company?

A.—That is what I explained before. There were so many companies, and the Presidents were not always the same.

Q.—It is stated in this resolution: "Mr. Hugh Quinlan submitted to the meeting his resignation as director of the Company, which was duly accepted." Who instructed you to incorporate that statement in the Minutes?

A.—My instructions would be the same for both meetings. They were both held the same day.

A. J. M. PETRIE (for Defendant Robertson) Cross-exam.

Q.—At the same place?

A.—Yes.

Q.—So, your answer would be Mr. Robertson gave you those instructions?

10 A.—I would say so.

By the Court:—

Q.—Instructions or information?

A.—Yes, your Lordship.

By Mr. Tanner, Continuing:—

20 Q.—Did he give you those instructions, or did he inform you, that Mr. Quinlan had resigned?

A.—I would receive the instructions.

Q.—In respect of Amiesite Asphalt Limited, did you actually see the written resignation of Mr. Quinlan?

A.—No.

Q.—To your knowledge was that resignation ever signed by Mr. Quinlan?

A.—I cannot say whether it was or not. It was never in my hands.

30 Q.—Do you know anything about the mailing of those notices.

A.—No, other than they would have been mailed in the regular course of events.

Q.—Personally you know nothing about it?

A.—No, I was not the secretary.

Q.—This Minute does not state who made the motion proposing the acceptance of Mr. Quinlan's resignation as a Director. Do you know who did it?

A.—Yes.

40 Q.—If I understood you correctly you stated in your examination in chief that the transfer of 200 shares of Ontario Amiesite standing in the name of Mr. Hugh Quinlan was delayed on your account. Is that correct?

A.—I did not make that statement at all. I said it might have been delayed several days or two or three weeks, on my account.

Q.—As a matter of fact, was it delayed on your account?

A. J. M. PETRIE (for Defendant Robertson) Cross-exam.

His Lordship:—The witness said part of the delay was due to himself.

By Mr. Tanner, Continuing:—

10

Q.—As a matter of fact, was a part of the delay due to you?

A.—Yes.

Q.—How long was due to you?

A.—It might have been several days, or two or three weeks.

Q.—What was the reason?

A.—Until such time as I would decide to go to Toronto.

Q.—You know the transfer made to Mr. A. W. Robertson is dated November 16th 1927?

20

A.—Yes.

Q.—Was that the day you were in Toronto?

A.—I can verify the date, if you desire.

Q.—Did you go to Toronto for the purpose of attending a meeting where this transfer is purported to have been made?

A.—I was in Toronto, and I made the transfer myself.

Q.—Who had possession of the stock certificate prior to this transfer to Mr. Robertson?

A.—The stock certificate in question would have been given to me by Mr. Robertson.

Q.—Are you positive of that?

30

A.—I am.

Q.—How long prior to November 16th?

A.—I cannot state definitely.

Q.—You note that the signature of Mr. Hugh Quinlan is not to be found on the back of this certificate?

A.—Yes.

Q.—Who instructed you to fill in the blank with the name of A. W. Robertson?

A.—Any instructions I received in connection with those stock certificates were all received from Mr. Robertson.

40

Q.—And, this answer applies to the certificates in the other companies filled in by you?

A.—It does.

Q.—At the time you filled in the name of Mr. A. W. Robertson were you aware of the fact that the Honorable Mr. Perron had given his legal advice to the effect that this blank was to be filled in in favour of Quinlan, Robertson and Janin, Limited?

A. J. M. PETRIE (for Defendant Robertson) Cross-exam.

A.—I knew of those discussions, but my instructions were to transfer to A. W. Robertson.

10 Q.—Did you prepare the Resolution of March 31st, 1925, in Quinlan, Robertson and Janin, Limited, in respect of the declaration of a dividend of \$159,947.54.

A.—No.

Q.—Did you prepare the Resolution of December 24th, 1925, in Quinlan, Robertson and Janin, in reference to the payment of \$13,500 on the Dividends declared on March 31st, 1925?

Witness:—Is that the first dividend after the original one?

Counsel:—Yes.

20

A.—No, I did not prepare that.

Q.—The second dividend after the original one was on January 15th, 1926, and the amount was \$31,500. Did you prepare the resolution?

A.—That would be prepared under me.

Q.—Are you sure of that?

A.—Positive. The first declaration was made by the Company's legal advisers, and so was the first payment.

Q.—Was this advice in writing?

A.—Yes. The legal advisers dictated the Resolution.

30

Q.—Is it not a fact that nothing appears in the Minutes to the effect that it was done under legal advice?

A.—There is no mention to that effect in the minutes.

Q.—Can you file any letter or document from the legal adviser to that effect?

A.—No, I cannot.

Q.—You are the auditor of Quinlan, Robertson and Janin?

A.—Yes.

40 Q.—With reference to this declaration of dividend of \$159,947.54, were the dividends properly set up in the books to the credit of the shareholders?

A.—They were not.

Q.—What took place?

A.—Credited to dividend account.

Q.—In a general way?

A.—In a general way.

Q.—I understand you prepared a summary of Financial Statement of Quinlan, Robertson and Janin as at March 31st, 1927?

A.—Yes, I did.

A. J. M. PETRIE (for Defendant Robertson) Cross-exam.

Q.—In your examination in chief you spoke of guarantees. Is it to your knowledge that at any time since the death of the late Hugh Quinlan, Mr. Robertson has been personally called upon to pay any of the purported guarantees he may have given jointly with Mr. Quinlan in favor of different parties, with his own money, on behalf of Quinlan, Robertson and Janin?

A.—No.

Q.—I ask you the same question in reference to Amiesite Asphalt Limited?

A.—No.

Q.—What about Ontario Amiesite?

A.—The same answer applies.

Q.—Is it not a fact that the Balance Sheet of Quinlan, Robertson and Janin, and Amiesite Asphalt Limited, set up special reserves in view of the maintenance guarantees?

A.—Yes, the reserves were set up there.

Q.—Is it to your knowledge that at any time the Board of Directors had to use some of those reserves in order to pay third parties in reference to those guarantees?

A.—Many times.

Q.—Since the death of Mr. Quinlan?

A.—Almost every year: or, I should say every year without exception.

30 By the Court:—

Q.—Were the reserves fixed overdrawn?

A.—No.

And the further testimony of the witness is suspended.

And further for the present deponent saith not.

40

J. H. Kenehan,
Official Court Reporter.

M. NANTEL (for Defendant's) Examination in Chief.

DEPOSITION OF MARECHAL NANTEL

A witness examined on behalf of the Defendants.

10

On this fourth day of December in the year of Our Lord One thousand nine hundred and thirty personally came and appeared, Marechal Nantel, of the City and District of Montreal, Librarian and Assistant Secretary Treasurer of the Bar of Montreal, a witness produced and examined on behalf of the Defendants, who, being duly sworn, deposes as follows:—

20 Examined by Mr. Campbell, K.C., of Counsel for Defendants:—

Q.—You are Librarian and Assistant Secretary Treasurer of the Bar of Montreal?

A.—Yes.

Q.—As such are you custodian of the Records of the Bar of Montreal?

A.—Yes.

Q.—Will you please refer to your records and tell us the date Honorable J. L. Perron was admitted to the Bar of Montreal?

30 Mr. Masson, K.C., of Counsel for Plaintiffs, objects to the question as irrelevant and illegal.

The objection is maintained by the Court.

Q.—Was Honorable Mr. Perron created a King's Counsel in a certain year.

Same objection.

40

Same ruling.

Q.—Was he Batonnier of the Bar of Montreal?

Same objection.

Same ruling.

C. A. SHANNON (for Defendant Robertson) Exam. in Chief.

Q.—Was he Batonnier General of the Bar of the Province of Quebec?

10 Same objection.

Same ruling.

Mr. Masson, K.C., of Counsel for Plaintiffs declares he has no cross examination to make of the witness.

And further deponent saith not.

20 J. H. Kenehan,
Official Court Reporter.

DEPOSITION OF CHARLES A. SHANNON

A witness produced and examined on behalf of the Defendant Robertson.

30 On this fourth day of December, in the year of Our Lord one hundred and thirty personally came and appeared, Charles A. Shannon, of the City and District of Montreal, already sworn, who, being called as a witness on behalf of the Defendant Robertson, deposes as follows:—

Examined by Mr. Beaulieu, K.C., of Counsel for Defendant Robertson:—

40 Q.—You have been the Auditor of the Fuller Gravel Company, Limited?

A.—Yes, sir, in the years 1926 and 1927.

Q.—Were you also the Auditor of A. W. Robertson, Limited?

A.—Yes, sir, we were.

Q.—For how many years?

A.—Since 1903. It was a different firm then. We have been their Auditors since their inception, in 1920.

C. A. SHANNON (for Defendant Robertson) Exam. in Chief.

Q.—Will you please file, as Exhibit D-R-19, the Financial Statement of Fuller Gravel, Limited, for the year ending December 21st, 1927?

A.—Yes.

10 Q.—Will you also file the Statement relating to the Lachine property mortgage?

A.—That has already been filed as Exhibit P-62.

Q.—Is the Lachine property matter and the Villa La Salle property matter the same thing?

A.—The same property — the same mortgage.

20 Q.—Will you please take communication of a resolution which has been filed as part of Exhibit P-32, and which was adopted on December 10th, 1928, and will you state if you are familiar with the matter of the M. J. O'Brien, Limited, interest which is mentioned in that document?

A.—Yes, I am.

Q.—Will you please explain what was that M. J. O'Brien, Limited, interest?

Mr. Masson, K.C., of Counsel for Plaintiffs, objects to the question as illegal, inasmuch as the resolution speaks for itself.

The objection is reserved by the Court.

30 A.—One quarter interest in the profits of Section 8 of the Welland Ship Canal.

Q.—Is there any entry in the books of A. W. Robertson, Limited, of the payments made under this agreement?

Mr. Masson, K.C., of Counsel for Plaintiffs, objects to the question as illegal.

A.—Yes, we have the entries in the books.

Q.—On what date was the first payment made?

40 A.—I would have to consult the ledger. I have not it before me. I would have to look it up in order to be able to tell you.

Q.—Will you please look through the records, and prepare a statement showing on what dates the various payments were made to the M. J. O'Brien Company in conformity with that resolution or under that resolution?

A.—Yes, I will.

C. A. SHANNON (for Defendant Robertson) Exam. in Chief.

Q.—Were there any payments made while Mr. Quinlan was alive?

10 A.—Yes, to the best of my recollection the first payment was made in 1926. I would have to consult the ledger in order to be able to tell you the exact date.

Q.—Would it appear in the Financial Statement for 1926?

A.—The exact date would not appear, but the amount would appear. I would have to consult the ledger to see the exact date.

Q.—Will you please verify the facts, and be in a position to give us the information tomorrow, if it appears?

A.—Yes, I will.

Q.—Was that Financial Statement of 1926 sent to Mr. Quinlan?

20 A.—Mr. Quinlan had cognizance of every Statement that was made during his lifetime, as far as we know.

Q.—Will you please file an extract of the Financial Statement in which the first payment appears?

Mr. Campbell:—All Statements up to the time Mr. Quinlan died.

A.—Yes, we will do that.

30 By Mr. Beaulieu, Continuing:—

Q.—Did you personally discuss with Mr. Quinlan the question of the O'Brien interests?

A.—Yes, as far as I recollect in the spring of 1927 Mr. Quinlan used to come down to the office and sit while we were working on the Financial Statements, and the question of the O'Brien interest in the contract would be discussed while we were making the Statement. That is the best of my recollection. Of course, it is quite a few years ago.

40 Q.—As an Auditor did you ask Mr. Quinlan for any explanation about the payments made to the O'Brien Company?

A.—I must explain that very often among contractors private agreements are made, or agreements of a confidential nature are made.....

Mr. Masson, K.C., of Counsel for Plaintiffs, objects to this evidence as illegal, inasmuch as the witness is not a contractor.

C. A. SHANNON (for Defendant Robertson) Exam. in Chief.

Witness:—But, I have had a long association with contractors, and I know a lot about it.

That was the case in this instance.

10

By Mr. Beaulieu, Continuing:—

Q.—It is understood you will file a Statement showing all the payments made during the lifetime of Mr. Quinlan?

A.—Yes: the dates, and the amounts.

(The Statement in question will be filed as Exhibit D-R-20).

20 Q.—As Auditor of A. W. Robertson, Limited, do you know the Company owned some shares of Standard Paving & Materials, Limited?

A.—I know they owned some shares of the National Sand & Materials. I do not recognize the name “Standard”. I think it is the National Sand & Materials.

Q.—Are you aware those shares were sold?

A.—Yes, I am.

Q.—Can you find trace of the payment that was made in the books?

A.—Yes, I have it before me.

30 Q.—Will you please mention it?

A.—February 4th, 1929, \$145,301.22. February 7th, 1929, \$96.00.

Q.—Those figures appear in the books?

A.—Yes, sir: they appear in the Annual Statements, and they are also in the books, and in the Bank Account.

Q.—Coming back to the O’Brien interest, is it the fact that there were two separate sets of books kept by A. W. Robertson, Limited?

40 A.—We had a set of books for Section 8, and a separate ledger, a separate cash book, and a separate journal.

Q.—What was the purpose of having that separate set of books?

A.—In order to keep the profits or losses on the contract separate, also to keep separate the moneys invested.

Q.—In that way was the O’Brien interest able to find out the profits made on that particular contract?

A.—Absolutely.

C. A. SHANNON (for Defendant Robertson) Exam. in Chief.

Q.—Was that the object?

A.—That was the object originally, yes.

10 Q.—In the resolution I have already mentioned there is some question of correspondence. Did you see the correspondence relating to that matter?

A.—No, I did not.

20 Q.—There was some enquiry in the Examination on Discovery about the payments of dividends declared by A. W. Robertson, Limited. Will you please prepare for tomorrow morning a Statement showing the dates of the various dividends declared by the Company, and the dates they were transferred to the account or the credit of the Estate Quinlan, or to the late Hugh Quinlan, giving the amount of the declaration, the date, and the date of payment — to be Exhibit D-R-21.

A.—Yes.

Q.—Do you know anything about the steel gate contract?

A.—No, sir, I do not, except I saw the payments were being received by the firm. That was the only intimation I had such existed.

By Mr. Masson:—

Q.—What firm?

30 A.—I think I must be in error: it must have been the Estate Quinlan. When they received some payments I saw the name. That is the only thing I know about the steel gates contract.

By Mr. Beaulieu, Continuing:—

Q.—That was a contract given to what Company?

A.—I have no knowledge, except certain moneys were received by the Estate.

40 By Mr. Campbell:—

Q.—Is it to your knowledge whether M. J. O'Brien, Limited, sent in an Auditor of their own to check, and that they examined the books of A. W. Robertson, Limited, in reference to the Welland Canal contract in which they were interested?

A.—Yes, they sent their own Auditor, who was there to make their own Statements.

C. A. SHANNON (for Defendant Robertson) Exam. in Chief.

Q.—And, you gave him access to the books?

A.—Yes.

Q.—During the life of the contract?

10 last A.—I know he came each year, and took off the profit on the Statement, and the Balance Sheet of the contract.

Q.—That was Mr. Clerke?

A.—Yes, Mr. Clerke, C.A.

Q.—Who is now here present in Court?

A.—Yes.

By Mr. Masson:—

Q.—Do you know Mr. O'Brien?

20 A.—Yes.

Q.—What was he doing?

A.—He was a Senator. Now, I understand he is a contractor.

By Mr. Campbell: —

Q.—He was a contractor long before he was a Senator?

A.—Yes.

By Mr. Masson:—

30 Q.—Is he the father of Mr. O'Brien of the Capital Trust Corporation?

A.—He is the father of Mr. J. A. O'Brien.

Q.—Of the Capital Trust Corporation?

A.—I think they are both connected with the Capital Trust, as far as I know.

By Mr. Beaulieu:—

40 Q.—Do you know if Mr. O'Brien was a contractor before he was a Senator?

A.—Yes, sir: I audited some sets of books in which he was interested many years previous.

Q.—Was he not carrying on an important business as contractor?

A.—Yes: Macdonald & O'Brien, Limited, contractors.

C. A. SHANNON (for Defendant Robertson) Exam. in Chief.

Q.—Is it not a fact he was associated with Mr. Hugh Quinlan before this O'Brien matter?

A.—Absolutely, for many years.

10 Q.—He was in business, and Mr. Quinlan was associated with him?

A.—Yes.

Q.—In various undertakings?

A.—Yes, in very large undertakings.

Q.—So, it was nothing unfamiliar that he should have an interest in the contract?

A.—Nothing.

Q.—As a matter of fact, do you know he was one of the most prominent contractors in the country?

20 A.—To the best of my knowledge, he was.

Q.—Is it to your personal knowledge he was assuming a share of the losses, if any?

A.—In undertaking to assume a share of the profits he must necessarily also have undertaken to assume a share of the losses, if there should be a loss.

Q.—Is it to your knowledge that was part of the agreement?

A.—I cannot say exactly, but I assume he would be also responsible for the losses.

30 Mr. Masson, K.C., of Counsel for Plaintiffs, objects to this evidence as illegal.

Q.—Will you please take communication of the letter I show you, bearing date November 17th, 1925, addressed to A. W. Robertson, Limited, signed by M. J. O'Brien, and will you state if you know the signature of Mr. O'Brien?

A.—I have not seen Mr. O'Brien's signature for many years. I assume this is his signature, but I do not see it very often.

40 Q.—You were joint liquidator, with Mr. Leamy, in the winding up of A. W. Robertson, Limited?

A.—Yes.

Q.—Will you please file, as Exhibit D-R-22, a Statement which will complete the partition of the assets up to that date?

Mr. Masson, K.C., of Counsel for plaintiffs, objects to the question as illegal, as relating to a matter subsequently to the institution of the action.

C. A. SHANNON (for Defendant Robertson) Exam. in Chief.

The objection is reserved by the Court.

A.—Yes.

10 Q.—This is correct?

A.—Yes, it is correct, as far as I know.

By Mr. Tanner:—

Q.—As Auditor of Fuller Gravel, Limited, did you include as a part of the assets of that Company the sale of a property to the Fuller Gravel made by A. W. Robertson, Limited, on October 5th, 1927, of 80 acres of the east half of lot No. 8 in the Fourth Concession of the Township of Huntingdon, Ontario?

20 A.—Not to my knowledge. It does not show there.

Q.—Did you include as a part of the assets of the Fuller Gravel Company a sale on the same day, October 5th, 1927, by Crockston Quarries, for \$1.00, to the Fuller Gravel Company, Limited, consisting of an acre from lot 11 in the Ninth Concession in the Township of Huntingdon, and also a part of the east half of lot 10 in the Eighth Concession of the said Township?

30 A.—That might arise in this way: it might be completing the real estate transaction. We had real estate on hand to the amount of \$30,746.10, and this might be completing the Deeds which had not been completed at the formation of the Company, which was in the first part of 1926.

Q.—I want to know if, as a matter of fact, those properties mentioned formed part of the assets of Fuller Gravel Company in your Balance Sheet?

A.—We have an item in real estate of \$30,746.10. I am not able to give you the details of that now: I do not know what it consists of at the moment.

Q.—Can you find out for tomorrow morning?

40 A.—I will do my best. Of course, that Company was sold.

By Mr. Campbell:—

Q.—Have you the books?

A.—No.

Q.—Have you the information?

A.—I will try to obtain it.

C. A. SHANNON (for Defendant Robertson) Exam. in Chief.

By Mr. Tanner, Continuing:—

Q.—Did you include as a part of the assets of Fuller Gravel
Company another property sold by Crookston Quarries to Fuller
10 Gravel, Limited, for \$1.00, consisting of 80 acres, being the west
half of lot No. 8 of the Fourth Concession, and 100 acres, being
the east half of lot No. 9 in the Fourth Concession, and part of
lot 10 in the Fourth Concession, in the Township of Huntingdon?

A.—Only if it is part of this item of real estate, \$30,746.10;
otherwise, I have no knowledge of it.

Q.—Will you please consult your working papers as Au-
ditor, and find out if you have any paper or slip which refers to
20 the sale of those assets to the Fuller Gravel, Limited, at that
time?

A.— Yes, sir, I will. The only papers we would have would
be the details of the incorporation of the Company, and the as-
sets they took over, which would be that item of \$30,746.10.

(Exhibit D-R-19 is withdrawn, having already been produc-
ed as Exhibit P-20).

And the further testimony of the witness is suspended.

30

J. H. Kenehan,
Official Court Reporter.

40

A. S. CLERKE (*for Defendant's Examination in Chief.*)

DEPOSITION OF ALFRED S. CLERKE

10 A witness examined on behalf of defendants.

On this fourth day of December in the year of Our Lord One thousand nine hundred and thirty, personally came and appeared, Alfred S. Clerke, of the City of Ottawa, Province of Ontario, Accountant, a witness produced and examined on behalf of the defendants, who being duly sworn, deposes as follows:—

Examined by Mr. Campbell, K.C., of Counsel for Defendants:—

20 Q.—You are a chartered Accountant?

A.—Yes.

Q.—As such you do the auditing for M. J. O'Brien, Limited, Ottawa?

A.—Yes.

Q.—Are you familiar with the handwriting of Mr. M. J. O'Brien?

A.—Yes.

30 Q.—Will you take communication of the document I now exhibit to you, dated Renfrew, November 7th, 1925, and will you state whether you recognize it as having been signed by M. J. O'Brien?

A.—Yes, this is his signature.

Q.—And, he is President of M. J. O'Brien, Limited ?

A.—Yes, he is President.

Q.—Will you please make a certified copy of this document and file it as Exhibit D-R-23?

40 Mr. Masson, K.C., of Counsel for Plaintiffs, objects to the filing of the document in question.

A.—Yes.

Q.—As auditor of M. J. O'Brien, Limited, did you verify any payments received by that Company from A. W. Robertson Limited in reference to this Welland Canal Contract previous to and up to the time of the death of the late Mr. Hugh Quinlan,

A. S. CLERKE (for Defendant's) Cross-examination.

in June, 1927, and if so, will you please give us the record of those payments from your books? Giving the dates of all payments received up to the month of June, 1927?

10 A.—According to the books of M. J. O'Brien Limited: On July 2nd, 1926 there was received an amount of \$2,500; on October 7th, 1926, \$8500; on November 15th, 1926, \$5000; on November 27th, 1926, \$10,000; on January 2nd, 1927, \$10,000; on January 31st, 1927, \$5000; on May 31st, 1927, \$40,000.

Cross examined by Mr. Masson, K.C., of Counsel for Plaintiffs:—

20 Q.—Would you mind mentioning the amounts paid after the death of Mr. Quinlan.

Mr. Campbell, K.C., of Counsel for Defendants, objects to the question as irrelevant and illegal.

The objection is reserved by the Court.

30 A.—September 27th, 1928, \$39,945.29; May 13th, 1929, \$41,082.19; June 5th, 1929, \$6000; April 10th, 1929 (I have this entered up in three items, because of its distribution, but it is one payment), \$643.80, \$41,893.01, and \$44,136.82. These last three items were one payment, but for certain reasons they were distributed in our books.

By Mr. Tanner:—

Q.—Are you aware that the firm of A. W. Robertson Limited had to put up a deposit of \$500,000 guarantee with the Government re this Welland Canal contract?

40 A.—Yes, there was a bond deposit made with the Department of Railways and Canals.

Q.—Did M. J. O'Brien Limited become liable towards the Dominion Government for any part of that deposit?

A.—I do not quite understand your question.

Q.—I think it is very clear. Did M. J. O'Brien Limited become liable towards the Dominion Government for any part of that deposit?

A.—The deposit was a bond deposit.

A. S. CLERKE (for Defendant's) Cross-examination.

10 Q.—There was a bond deposit made by Mr. Quinlan and Mr. Robertson, according to the evidence in this record. I want to know from you now if M. J. O'Brien Limited entered into any agreement with the Government, or deposited any money or any bond or any guarantee with the Government to guarantee the whole or part of that contract?

A.—To the best of my knowledge there was no agreement with the Government on behalf of M. J. O'Brien Limited.

Q.—Was any deposit made with the Government by M. J. O'Brien Limited in respect of that guarantee to the Government in re the Welland Canal contract?

A.—No, they did not make any deposit.

20 Q.—Will you please state if there is any entry in the books of M. J. O'Brien Limited, and particularly any journal entry, showing the consideration given by M. J. O'Brien Limited for the receipt from A. W. Robertson Limited of the different sums of money just mentioned by you?

A.—No, there is no journal entry. It was purely a cash receipt.

Q.—There is no journal entry of any kind?

A.—No.

Q.—Only a cash receipt?

A.—Yes.

30 Q.—Does the cash receipt show it was received from A. W. Robertson Limited?

A.—Yes, it does.

Q.—Is there any resolution of any kind showing the consideration to be given by your company to A. W. Robertson Limited?

A.—I cannot answer that definitely at the moment.

Q.—Is there any written agreement between A. W. Robertson Limited and M. J. O'Brien Limited in regard to sharing a part of the loss in that contract in case there should be a loss?

A.—I have never seen any.

40 Q.—If such existed, as the auditor of the company you would have seen it, would you not?

His Lordship:—Of course that is not cross-examination, Mr. Tanner.

By Mr. Beaulieu:—

Q.—There is the letter, is there not?

A.—There is the letter filed here.

A. JANIN (*for Defendant Robertson*) Examination in Chief.

By Mr. Campbell:—

Q.—Signed by Mr. M. J. O'Brien?

10 A.—Yes. The question I was asked was in regard to a record.

And further deponent saith not.

J. H. Kenehan,
Official Court Reporter.

20

DEPOSITION OF ALBAN JANIN

A witness produced and examined on behalf of Defendant Robertson.

On this fourth day of December, in the year of Our Lord one thousand nine hundred and thirty personally came and appeared, Alban Janin, of the City and District of Montreal, already sworn, who, being recalled as a witness on behalf of the Defendant Robertson, deposes as follows:—

30

Examined by Mr. Beaulieu, K.C., of Counsel for Defendant Robertson.

Q.—I understand that in June, 1927, you were interested with the late Mr. Hugh Quinlan and Mr. A. W. Robertson in certain companies?

A.—Yes.

40 Q.—Will you please mention the Companies in which you were jointly interested, and the extent of your interest?

A.—Quinlan, Robertson & Janin: Amiesite Asphalt, Limited; Ontario Amiesite, Limited.

Q.—Have you any objection to stating the extent of your interest in Quinlan, Robertson & Janin, Limited?

A.—In Quinlan, Robertson & Janin I had one third interest.

Q.—And, Ontario Amiesite?

A.—20% — on fifth.

A. JANIN (*for Defendant Robertson*) Examination in Chief.

Q.—And, Amiesite Asphalt, Limited?

A.—I had one half.

Q.—Am I right in stating you took an active part in the management of those various companies?

10 A.—Yes, I did.

Q.—What were your special duties?

A.—I was Managing Director of Quinlan, Robertson & Janin, and I was Managing Director of Amiesite Asphalt, Limited, and also, for a while, of Ontario Amiesite.

Q.—You were acquainted with the letter that was sent by Mr. Robertson to the late Hugh Quinlan, stating that a transfer had been made of certain shares in those three Companies for the price of \$250,000. Will you please state if, in view of your
20 personal knowledge of the values of those three Companies, this amount was a fair value for those shares as at June, 1927?

Mr. Masson, K.C., of Counsel for Plaintiffs, objects to the question as illegal.

The question is withdrawn.

Q.—Will you please state if, in your opinion, as at June, 1927, the sum of \$250,000 was a fair value of the shares owned
30 by the late Hugh Quinlan in the three Companies you have just mentioned?

Mr. Masson, K.C., of Counsel for Plaintiffs, objects to the question as illegal, inasmuch as it is a matter for the Court to determine.

This objection is reserved by the Court.

A.—It is my opinion it was a fair value.

40 Q.—Will you please explain your answer, and state why, according to you, it was a fair valuation?

A.—Mr. Robertson and I had discussions, and Mr. Robertson came several times to my office and told me that we were to consider the purchase of the shares of Mr. Quinlan, and I first told Mr. Robertson that he being the senior partner should examine the situation and place a valuation on the shares of Mr. Quinlan, and that I as the junior would be glad to approve whatever he did.

A. JANIN (for Defendant Robertson) Examination in Chief.

Mr. Robertson thought over it, and examined the situation, and mentioned figures to me, which we discussed from time to time. Finally, in the spring of 1927, in one conversation, he asked me if I thought \$250,000 was a fair value for the one third
10 share which Mr. Quinlan had in the Company.

By Mr. Masson:—

Q.—In the spring of 1927?

A.—Yes.

By Mr. Beaulieu, Continuing:—

Q.—Did that \$250,000 cover more than Quinlan, Robertson
20 & Janin?

A.—Yes: the interests we had together.

I must explain here that the way I considered this valuation fair was that in 1925 Mr. Quinlan, Mr. Robertson and I had signed an agreement or contract, by which.....

Mr. Masson, K.C., of Counsel for Plaintiffs, objects to this evidence as illegal, inasmuch as the contract has been filed and speaks for itself.

30

Witness (continuing answer) We had signed a document by which the three of us agreed that in case of the death of one of us, or one desiring to withdraw, if I remember well, the two others were to have an option on his shares at a certain price fixed every year, and at that time we had set a valuation for Quinlan, Robertson & Janin stock at 85% of the book value, and for the Amiesite Asphalt, Limited, which was then in the beginning, we had simply mentioned a nominal figure, 25%.

40

Q.—And, was any figure mentioned for Ontario Amiesite?

A.—No, Ontario Amiesite was not functioning then, or had just started. There was no mention of Ontario Amiesite.

In 1927, when this valuation of \$250,000 was made, in coming to the book value as supplied to me by our Auditor, Mr. Petrie, and taking 85% of that, and giving the same proportion to Amiesite Asphalt, Limited — because between 1925 and that time

A. JANIN (for Defendant Robertson) Examination in Chief.

Amiesite Asphalt had made progress and was in a better position — and deducting from that the deficit of Ontario Amiesite, Limited, it gave a valuation of \$245,000.

10 I reasoned that if in 1925, when the three of us were active and in good health, we were willing to take such a valuation, if Mr. Quinlan had been there to decide for himself in 1927 he would not have changed his mind.

Q.—Am I clear on the point: the figures mentioned in the document which has already been filed as the agreement of June, 1925, correspond to that proportion of 85% of the book value, less the deficit for Ontario Amiesite?

20 A.—Yes.

Q.—And, the same proportion, in 1927, would have amounted to \$245,000?

A.—Yes.

Q.—And, you added \$5000, to make a lump sum?

A.—Yes.

Q.—Was that valuation discussed several times between you and Mr. Robertson?

30 A.—Yes, the question came up several times after that. Mr. Robertson had not taken up the matter with Mr. Quinlan, although he had discussed it with me: that is, he had not told Mr. Quinlan we had come to the decision that his share was worth that much.

Q.—He was trying to fix a value between you and him before speaking to Mr. Quinlan?

A.—Yes.

Q.—Can you mention approximately in what months those discussions took place?

40 A.—No, really I cannot. It was in the last year of Mr. Quinlan's life, but to tell you exactly in what month it was, I cannot fix it. We talked about it quite a little while before Mr. Quinlan died — three or four months — and we kept talking about it. There was nothing done. Of course, we did not expect Mr. Quinlan to die so soon, and there was a certain reluctance on the part of Mr. Robertson — at least, that is what he told me — to go to Mr. Quinlan and start that discussion.

Mr. Masson, K.C., of Counsel for Plaintiffs, objects to this evidence as illegal.

A. JANIN (for Defendant Robertson) Examination in Chief.

Q.—Do you remember if the Hon. Mr. J. L. Perron was ever present at any of those discussions about the valuation of those shares?

10 A.—Yes. I spoke to him about it myself.

Mr. Masson, K.C., of Counsel for Plaintiffs, objects to any evidence of any interviews between the witness and Mr. J. L. Perron, as irrelevant.

Q.—Will you please state if Mr. Perron, although a lawyer, was a good financial man and knew very well the values of those Companies?

20 Mr. Masson, K.C., of Counsel for Plaintiffs, objects to the question as illegal.

Q.—Did you speak to him several times, or only once?

A.—I saw him very often, and discussed my business with him, and I must have discussed this with him more than once.

Q.—I understand Mr. Perron was your legal adviser?

A.—For thirty years.

Q.—And, I perhaps may add, a personal friend also?

A.—A very great friend.

30 Q.—Will you explain why that discussion about the valuation of those shares occurred? What was the reason of those discussions between you and Mr. Robertson and Mr. Perron?

A.—That was objected to a while ago. It was because Mr. Robertson told me that Mr. Quinlan wanted.....

Mr. Masson, K.C., of Counsel for Plaintiffs, objects to the evidence as illegal.

40 Q.—Irrespective of what Mr. Robertson told you, do you know, as a matter of fact, personally, that at that time Mr. Quinlan was ill?

A.—Yes, he had been ill for some time — for more than a year — and he had not been active in the business for about at least two years, and he was not anxious to proceed with the business, and more than once.....

Mr. Masson, K.C., of Counsel for Plaintiffs, objects to this evidence as illegal.

A. JANIN (for Defendant Robertson) Examination in Chief.

Witness (continuing answer) This is my personal knowledge of my conversation with Mr. Quinlan.

10 Mr. Masson, K.C., of Counsel for Plaintiffs, objects to this evidence as illegal.

The objection is reserved by the Court.

Q.—Will you please continue? You say he was not anxious to proceed with the business. That was the reason?

20 A.—Yes. Of course, I want to qualify that by saying it was not that he was not taking a great interest in what we did. I want to qualify it in this way also: that Mr. Quinlan was useful to the firm. I do not mean to say he was a burden to us by any means. It was simply that he was not as active as he had been: he was not following the work, and sometimes he was making objection when we wanted to place a tender for new work — particularly, of the Amiesite and in the Building Department.

Q.—Did you have personal interviews with Mr. Quinlan, say, during the month of May or June, 1927?

A.—I saw Mr. Quinlan, I think, during the month of May, some weeks before his death.

Q.—Once, or several times?

30 A.—Just once. Of course, I saw him more than that before that spring, when he was going out and I could see him often. You mentioned May: I saw him only once in May, and that must have been early in May.

Q.—Did he talk business with you?

A.—Yes, we talked business. We talked about the business and the work that was going on.

Q.—Was that the only business topic you had with him? Talking of business generally?

A.—Yes.

40 Q.—At the beginning of May was there any mention of his intention to sell his share?

Mr. Masson, K.C., of Counsel for Plaintiffs, objects to the question as illegal.

The objection is maintained by the Court.

A. JANIN (*for Defendant Robertson*) *Examination in Chief.*

Mr. Beaulieu, K.C., of Counsel for Defendant Robertson, respectfully excepts from the ruling of the Court.

10 Q.—During this conversation you had with Mr. Quinlan in the month of May was there any mention of the intention of the late Hugh Quinlan to sell his shares to Mr. Robertson or to one of his associates or partners?

Mr. Masson, K.C., of Counsel for Plaintiffs, objects to the question as illegal.

The objection is maintained by the Court.

20 Mr. Beaulieu, K.C., of Counsel for Defendant Robertson, respectfully excepts to the ruling of the Court.

Q.—You have already mentioned I think, incidentally, that during the last part of Mr. Quinlan's life he was rather timid to go into new undertakings? Will you please tell me if after the death of Mr. Hugh Quinlan the Companies in which you were interested were greatly expanded?

A.—I think I said that in the last years he was reluctant to go into new business, particularly the work of the Ontario Amiesite and the Building Department.

30 Q.—After his death did those Companies increase their operations?

A.—Oh, yes, we then started very aggressively after the business in the Building Department particularly, and the Building Department particularly secured contract after contract. The Ontario Amiesite was reorganized, and then proceeded with the work and made great progress. As to Quinlan, Robertson & Janin itself we especially made rapid progress and great expansion, in forming new companies out of departments.

40 Q.—After Mr. Robertson had in his possession, at all events, the shares of the late Hugh Quinlan in Quinlan, Robertson & Janin and in Amiesite Asphalt, did you acquire part of those shares?

A.—Not in Quinlan, Robertson & Janin.

Q.—In what Company?

A.—In Amiesite Asphalt, Limited, and Ontario Asphalt, Limited.

A. JANIN (for Defendant Robertson) Examination in Chief.

Q.—Will you state what consideration you paid Mr. Robertson for the shares you acquired in those two Companies?

10 Mr. Masson, K.C., of Counsel for Plaintiffs, objects to the question as irrelevant and illegal.

The objection is reserved by the Court.

A.—It was an exchange of shares. Mr. Robertson transferred to me a part of his holdings in Amiesite Asphalt, Limited, and at the same time one fifth of the holdings of the Ontario Amiesite, for my replacing Mr. Quinlan on the guarantees of the Ontario Amiesite, Limited, both for the maintenance and at the Bank, and for my taking charge actively of the Ontario Amiesite.

20 Q.—Am I to understand you had the Amiesite Asphalt shares in consideration of the fact that you took the liabilities attached to the Amiesite shares?

A.—Yes.

By Mr. Masson:—

Q.—Did you get the Ontario Amiesite shares, or the Amiesite Asphalt, Limited, shares?

A.—I got both.

30 Q.—One was a liability, and the other was an asset?

A.—Yes.

I got the good ones to pay for the bad ones.

By Mr. Beaulieu, Continuing:—

Q.—I understand you organized the Macurban Asphalt Company in the spring of 1928?

40 A.—In 1927.

Q.—What amount of interest did you have in the Macurban Asphalt Company?

A.—Two thirds.

Q.—Was Mr. Robertson interested in it?

A.—Yes, for the other third.

Q.—What was the nature of the business of Macurban Asphalt Company?

A. JANIN (for Defendant Robertson) Examination in Chief.

A.—It was an Asphalt Paving Company laying a patented cold laid pavement.

Q.—And, Amiesite Asphalt Company was also a paving company?

10 A.—Yes, also laying a patented cold laid process.

Q.—Were the processes of the two Companies the same, or were they different?

A.—Different.

Mr. Masson, K.C., of Counsel for Plaintiffs, objects to this evidence as illegal, inasmuch as the documents should be filed.

Q.—In 1928 you sold the Macurban Asphalt Company together with the Amiesite Asphalt Company?

20 A.—Yes, we did.

Q.—Who made the sale?

A.—Mr. Robertson and I.

Q.—Are you the party who found the buyer?

A.—No, it was the buyer who found me.

Q.—Will you please explain that?

A.—A gentleman by the name of Kendall came to my office one day — we had had several offers before that from other parties — and asked me if we would sell our interest in the Amiesite Company and the Macurban. I told him no. He went away. I may say I did not take him seriously. I was not then prepared to sell the Companies. Then he came back with an American representing a large paving company, Mr. W. P. McDonald, and they wanted very earnestly to go into the matter. I discussed the matter with Mr. Robertson, and it seemed to appear to us that the time was ripe for a transaction of that kind, if we could get our price. I started to discuss with this man, and showed him what we had, how we did the work, our records, our methods of working, cost, and so on, and it began to come to the point where we would get a price. I asked him \$800,000 for the two Companies, and after some time he made an offer of \$750,000, which was accepted.

Q.—When did you anticipate for the first time there was a possibility of selling those two Companies, Macurban Asphalt and Amiesite Asphalt, to those gentlemen?

A.—In the summer of 1928. I should say the end of July.

Q.—That was the first intimation you had?

A.—Yes.

A. JANIN (*for Defendant Robertson*) Examination in Chief.

By Mr. Masson:—

Q.—From Mr. Kendall?

A.—Yes.

10

By Mr. Beaulieu, Continuing:—

Q.—I understand, and it appears in the Record, that in March, 1928, you organized three Companies: Robertson & Janin Paving Company, Robertson & Janin Building Company, and Montreal Equipment & Supply Company?

A.—Yes.

20

Q.—What was the purpose of the organization of those three new Companies?

And it being 4.30 o'clock, the further examination of the witness is continued until Friday, December 5th, at 10.15 o'clock in the forenoon.

And further for the present deponent saith not.

J. H. Kenehan,
Official Court Reporter.

30

DEPOSITION OF ALBAN JANIN

And on this fifth day of December, in the year of Our Lord One thousand nine hundred and thirty personally came and re-appeared the said witness, Alban Janin, and his examination was continued as follows:—

40

By Mr. Beaulieu, K.C.:—

Q.—What was the purpose of the organization of those three new companies?

A.—Quinlan Robertson & Janin were dividing their contracts into various departments: we had a paving department, and we had a building department in operation, and we had a shop and stores department. In order to give an opportunity

A. JANIN (for Defendant Robertson) Examination in Chief.

10 to each of those departments to expand and to be independent from the one organisation, I thought it would be good to form an entirely independent organization in each department, with its manager and its whole organization to take care of its own
20 work and to be aggressive in its own line, under the supervision of the main body of Quinlan, Robertson & Janin, Limited, and we formed the Paving Company, the Building Company, and the Montreal Contractors' Supply & Equipment Company — this Company taking all the plant and all the machinery which Quinlan, Robertson & Janin Company owned, and their stores, and supplying to the other branches or other Companies as they required them, any plant, machinery or stores they required, making them pay for it, or charging rental for equipment or machinery, so that there would not be any waste, and we would have our cost well kept by the transaction between the various Companies.

By the Court:—

Q.—So, Quinlan, Robertson & Janin became in reality a kind of holding Company?

A.—In a way. Quinlan, Robertson & Janin were also, at times, taking some work.

30 Q.—Outside of the work taken by those three Companies?

A.—Not after the organization. With our Departments.

Q.—After the organization of the three Companies?

A.—Quinlan, Robertson & Janin continued doing public works which they had on hand, when the organization was done.

Q.—Paving is a public work?

A.—I mean by public works, wharf construction, bridge construction, and so on.

Q.—So you had four big features: public works, private building, paving, and supplies?

40 A.—Yes.

By Mr. Beaulieu, Continuing:—

Q.—But, Robertson & Janin Paving Company was doing all the paving after the organization of those companies?

A.—Yes.

A. JANIN (*for Defendant Robertson*) Examination in Chief.

Q.—That was the principal business of Robertson & Janin Paving Company?

A.—Yes. At times they also did other municipal work than paving, such as sidewalk or sewer work.

10 Q.—What kind of work was the Robertson & Janin Building Company doing?

A.—Building and construction. Putting up buildings.

Q.—Any kind of construction?

A.—Any kind of building construction. We were a Building Company.

Q.—Doing business as a contractor?

A.—Absolutely.

Q.—And, the Montreal Equipment & Supply Company?

20 A.—Was really a Builders Supply Company, for Contractors' Supply Company. They owned the stores, and plant and equipment, and bought everything for the other Companies.

Q.—And, sold everything to the other Companies?

A.—Yes.

Q.—So, they were dealers in supplies?

A.—Yes.

Q.—Prior to the organization of those Companies all that was done by them was done by Quinlan, Robertson & Janin, Limited?

A.—Yes.

30 Q.—All the same kind of business ?

A.—Yes.

Q.—They were all Commercial Companies?

Mr. Tanner, K.C., of Counsel for Plaintiffs, objects to the question as being a matter of law.

The question is withdrawn.

40 Q.—They were all doing business in the various undertakings you have already mentioned, in the operation you have mentioned?

A.—Yes.

Q.—All those various businesses were done by Quinlan, Robertson & Janin, Limited?

A.—Yes.

Q.—So, there was only a change of personality?

A.—It was a decentralization.

A. JANIN (for Defendant Robertson) Examination in Chief.

Q.—As a result did your business expand on account of this new organization?

A.—Extraordinarily so.

10 Q.—Would you consider that kind of business — the contractors' business — as a particularly hazardous business? The business of a contractor, or builder, or paving company?

Mr. Masson, K.C., of Counsel for Plaintiffs, objects to the question as illegal and irrelevant.

The objection is reserved by the Court.

20 A.—I surely do. I do not think there is a business more hazardous than the contractors' business.

Q.—Would that apply to Quinlan, Robertson & Janin, Limited, and to the subsidiaries?

A.—It would apply to every one of the Companies.

By the Court:—

Q.—But, not so hazardous as to prevent Companies from paying amounts of from \$100,000 to \$200,000 as their share of contracts?

30 Witness:—You mean as profit?

His Lordship:—Yes.

A.—Oh, yes. If we did not do that at times we could not stand for \$200,000 of losses we have sometimes.

By Mr. Beaulieu, Continuing:—

40 Q.—So, there are big profits, and big losses?

A.—Yes.

Q.—It all goes together?

A.—Yes.

Q.—I suppose you do not always make profits in those Companies?

A.—I have in mind that in 1922 we had a loss of \$160,000, and before that a larger one. May I add that this amount of profit, whatever it may be, shown at the end of the year is the

A. JANIN (for Defendant Robertson) Examination in Chief.

result of all the operations, and consequently showed the balance as on the right side. If you go into the details, however, you will find many of the contracts of that year have been a losing proposition. It may be we knew just how to figure, or that we
10 ran our business well, or that we could make more of the contracts paying than losing; but, we had losing contracts every year.

Q.—After this reorganization, Quinlan, Robertson & Janin Company, Limited, became the parent Company or the holding Company?

A.—Yes.

Q.—It owned all the stocks of the three other Companies?

A.—Yes.

20 By the Court:—

Q.—Which stock was held one half by you and one half by Mr. Robertson?

A.—At that time it was held one third by me, and two thirds by Mr. Robertson. That was after the organization.

Q.—I mean, outside of the shares in dispute in the case.

A.—In the subsidiaries we only had one share, to qualify us on the Board. All the rest of the stock was in Quinlan, Robertson & Janin, Limited, which stock was held two thirds by Mr.

30 Robertson and one third by me.

By Mr. Beaulieu, Continuing:—

Q.—I think you have already state that during Mr. Quinlan's lifetime you each had one share?

A.—Yes, that is what I stated.

By the Court:—

40 Q.—What shares of the Company did you sell for the sum of \$750,000?

A.—The shares of the Amiesite Asphalt, Limited, and the Macurban Asphalt, Limited.

Q.—None of the shares of those subsidiaries of Quinlan, Robertson & Janin?

A.—No.

A. JANIN (*for Defendant Robertson*) Examination in Chief.

By Mr. Beaulieu, Continuing:—

Q.—You state the shares you sold were shares of Amiesite Asphalt, Limited, and Macurban Asphalt, Limited?

10 A.—Yes.

Q.—Is it to your knowledge that the patents of Amiesite Asphalt were then expiring?

A.—Oh, yes.

Mr. Masson, K.C., of Counsel for Plaintiffs, objects to this evidence as illegal, inasmuch as the patents should be produced.

By the Court:—

20 Q.—How long were they expiring? I ask you because some years ago I saw a rather big suit, or injunction, or something of the kind, to prevent the use of the name. Was it since then?

A.—It has expired after that. We had several lawsuits, and we lost the last one. We could not sustain the patent, but it was not yet expired. It was only expiring the next year.

Q.—I am not speaking of the value of the patent: I am only trying to fix the date.

A.—The patent expired in August, 1928.

30 By Mr. Beaulieu, Continuing:—

Q.—It was much contested before it expired?

A.—Very much.

By the Court:—

Q.—What was contested: the name, or the process?

A.—The process.

40 By Mr. Beaulieu, Continuing:—

Q.—On the other hand, the Macurban patents were all in good condition?

A.—I do not know that they were contested.

Q.—And, they were in existence?

A.—Yes, and they are still.

A. JANIN (for Defendant Robertson) Cross-examination.

By the Court:—

10 Q.—I see by the Balance Sheet of Amiesite Asphalt, Limited, which is one of the Companies you sold, that the financial statement shows a value considerably less than \$750,000 for the year ending March 31st, 1927.

A.—Yes. I do not know what is covered by the current assets there. At any rate, I can tell your Lordship it was sold for more than the Statement would show in liquid assets, because there was work on the way, contracts on hand that were being executed.

By Mr. Beaulieu, Continuing:—

20 Q.—The contracts that were executed were executed by Macurban, or Amiesite?

A.—Some Macurban too. I do not know if you have the combined statement.

His Lordship:—Only the Amiesite.

Cross examined by Mr. Tanner, K.C., of Counsel for Plaintiffs.

30 Q.—Is it not a fact the sale of the shares of Amiesite Asphalt, Limited, was based on the Statement ending August 31st, 1928, and that according to that Statement the assets of Amiesite show a value of over \$500,000?

A.—That is the figure shown there, and if it is our Statement, it is true. That is correct.

Mr. Campbell:—What is the Exhibit number, Mr. Tanner?

40 Mr. Tanner:—P-17.

By Mr. Tanner, Continuing:—

Q.—You stated that according to your opinion \$250,000 was a fair price for 1151 shares of Quinlan Robertson & Janin, 250 shares of Amiesite Asphalt, and 200 shares of Ontario Amiesite?

A.—Yes.

A. JANIN (for Defendant Robertson) Cross-examination.

Q.—You said you based your valuation according to a principle which you claim was established between Mr. Quinlan, Mr. Robertson and your self in an agreement dated June 11th, 1925?

A.—Yes.

10 Q.—To wit, 85% of the value?

A.—Yes.

Q.—When this agreement of June 11th, 1925, was made, I presume you had before you the Statement of Quinlan, Robertson & Janin, Limited, ending March 31st, 1925?

A.—I had it in my possession, yes.

Q.—And this valuation at the time, of \$125 per share, was, I presume, based on that Statement, which was the last one you had then in your possession?

20 A.—Yes.

Q.—You state the basis was 85%, but there is nothing of the kind mentioned in the contract. What is mentioned is a fixed value at the time, of \$125 for the shares of Quinlan, Robertson & Janin?

A.—Yes.

Q.—Also \$25 a share for the Amiesite Asphalt, Limited?

A.—Yes.

I have not seen the contract since that time. May I look at it?

30

(Counsel exhibits to witness the contract in question).

A.—(continuing) Mr. Quinlan, Mr. Robertson and I had discussed the making of this agreement and coming to a decision of what valuation we were going to agree upon when the shares would go to the surviving members. We discussed the value, and came to the decision, knowing what it was and discussing what we had on hand, that \$125 would be satisfactory. I may say we went into the detail of that.

40

By the Court:—

Q.—Because it represented about 85%?

A.—No, we did not say that. I was going to add that we agreed that was going to be less than the value of the Company.

A. JANIN (for Defendant Robertson) Cross-examination.

Mr. Tanner, K.C., of Counsel for Plaintiffs' objects to this evidence as illegal, as being contradictory to the written Statement already filed.

10 The objection is reserved by the Court.

Witness (continuing answer) We discussed it between our
selves, and we agreed that in the case of the death of one of the
three the two remaining partners were left with the load or charge — not all good profits. We might be left at that time with
contracts and things that were hard to carry — deposits with the
Government or the Municipalities, and guarantees at the Bank
which might be hard for the two others to carry all at once, and
consequently the partner who was going agreed that he must help
20 the two others to carry on. We had perfectly agreed on that,
and the proof of that is the valuation of Amiesite; we simply put
in a nominal value on Amiesite because there was not anything
there that was worth more than what we said surely; but, the
three of us agreed to that.

By Mr. Tanner, Continuing:—

Q.—You note by this agreement of June 11th, 1925, it was
“To remain in force only until the next Annual Meeting of the
30 above mentioned Companies”?

A.—Yes.

Q.—Do you know the dates of the Annual Meetings of your
Company?

A.—The last of March.

Q.—In the month of March every year?

A.—Yes.

40 May I correct that: the financial year terminates the last
of March.

Q.—And, the Annual Meeting?

A.—Is immediately after that.

Q.—You note in this agreement: “The price for each sub-
sequent year during the life of the agreement shall be fixed by
the shareholders of said Companies at their yearly Annual Meet-
ing”?

A.—Yes.

A. JANIN (for Defendant Robertson) Cross-examination.

Q.—I would like to know if at any of the Annual Meetings subsequently to that agreement the price and the value of the shares of those Companies was fixed?

A.—It was not changed.

10 Q.—I want to know if the Minutes of the subsequent Annual Meetings following the year 1925 show that the price of those shares was fixed?

A.—No, sir, they do not.

Q.—When this price was fixed at \$250,000, as you say, between yourself and Mr. Robertson, did you base your value of 85% on the Statement of Quinlan, Robertson & Janin dated March 31st, 1927?

A.—Yes.

20 Q.—Did you take into account the proportionate profits that were made during the year 1928 — that is, the three months from the month of March to the 30th of June?

A.—We took the situation into consideration as it was when we discussed that price. That price was not fixed in June.

Q.—I understood you said it was fixed some time in the spring of 1927. So, the price in question does not take into account the one quarter of the profits of the year 1928 as far as Quinlan, Robertson & Janin is concerned — that is to say, three months in the year 1928?

30 A.—Surely not. As I said it was not fixed at June.

Q.—If the sale had taken place on December 31st, 1928 (the date on which the first payment was made for the shares, according to the Cash Book of the Capital Trust) it would also follow that the profits of the year 1928, from March 31st, to December 31st, would not have been taken into account? That is clear, is it not?

40 A.—At the time we did not have the advantage of the Statement of 1928, and we did not know what it was going to be. But, on the basis I have said, that we took a certain valuation based on the first valuation made in 1925, that valuation would have counted from the last Financial Year, March, 1927, and anything during 1927 should be based on the valuation of March, 1927, until the next period.

Q.—There is nothing of that kind in the contract?

A.—Oh, no. That is my interpretation of the spirit of the convention between ourselves.

A. JANIN (for Defendant Robertson) Cross-examination.

Q.—Between Mr. Robertson and yourself?

A.—Between Mr. Quinlan, Mr. Robertson and myself.

10 Mr. Masson, K.C., of Counsel for Plaintiffs, objects to this evidence as illegal.

Q.—You are referring to the contract of 1925?

A.—Yes.

Q.—In reference to the shares of Amiesite Asphalt, Limited, is it not a fact that the Company made very rapid progress from the year 1925 to the year 1928?

20 A.—From 1925 to 1928 it made very good progress: not very rapid progress from 1925 to 1928, because 1925 and 1926 were pretty arduous years.

Q.—Is it not a fact that on March 31st, 1927, the net liquid assets of Amiesite Asphalt amounted to \$134,584?

A.—Well, I do not remember that. If you show me the Statement I will be able to tell you. Whatever the Statement shows is the fact. This is our Statement. I do not know years. I do not doubt the exactness of what you say, but it is not my Statement.

30 Q.—Without repeating the same questions, would this be fair: do the answers you gave in respect to the Statement of Quinlan, Robertson & Janin also apply to Amiesite Asphalt in reference to the profits shown from year to year, March 31st, 1927, and March 31st, 1928?

Witness:—Do you mean in respect to the convention?

Counsel:—No, I mean in respect to the values. You state you took as a basis 85% to determine the value of the Amiesite, and that showed a value of \$25 per share in 1925?

40 A.—Yes.

Q.—In determining the price of \$250,000, do I understand you to say you took as a basis 85% of the surplus value as shown in the Statement of Amiesite Asphalt dated March 31st, 1927?

A.—I figure that the valuation of the Amiesite is based on 85% of the book value at March, 1927.

Q.—And, you did not, of course, take into account any of the subsequent profits as shown by the Balance Sheet, or part

A. JANIN (*for Defendant Robertson*) *Cross-examination.*

of the profits realized during the year from March 31st, 1927, to March, 1928?

A.—There was no way by which I could do that.

10 By the Court:—

Q.—Unless there would have been a very very big contract executed?

A.—If it was a large contract it would take the season to get it through.

Q.—You would have just finished during those three months?

20 A.—If it had finished during those three months the proportion would have been taken to March previous.

By Mr. Campbell:—

Q.—Could you tell in June whether you going to have a profit or a loss for the current year?

A.—Oh, no.

By Mr. Tanner, Continuing:—

30 Q.—Do you swear that the sum of \$250,000 is 85% of the value of the shares of Quinlan, Robertson & Janin and of the shares of Amiesite Asphalt, Limited, as they appeared on the Statement, say, of March 31st, 1927?

By the Court:—

Q.—Less the losses of Ontario Amiesite Company?

A.—Yes.

40 By Mr. Tanner, Continuing:—

Q.—You will note that the contract of June 11th, 1925, does not refer in any way to the Ontario Amiesite?

A.—I do note that. I do not think Ontario Amiesite existed then.

Q.—You also note there is no proviso made that if a company should have a deficit that the value of the shares of the other Company would be arrived at by deducting the deficit of that Company?

A. JANIN (*for Defendant Robertson*) *Cross-examination.*

His Lordship:—That is a matter of argument.

By Mr. Tanner, Continuing:—

10 Q.—What is the amount of the alleged deficit you deducted from the value of the shares of the other two Companies? In a word, what was the alleged deficit of the Ontario Amiesite which you took into account?

A.—That can be verified by the Statement. I am quite sure it shows a deficit of \$75,000 in round figures. I do not carry the sum in my memory.

Q.—Those apparent deficits in Ontario Amiesite were accumulated from the year 1925? If I understand it, the operations covered nine months of 1925: and also the alleged deficit in 1926?

20 A.—Yes, it covers that time, approximately. From the time of the organization to March, 1927.

Q.—Had you anything to do with the organization of Ontario Amiesite?

A.—Yes.

Q.—I understand you were the General Manager?

A.—I may have been in title: I was in fact, anyway.

Q.—Do you know what was the approximate volume per year of business of Ontario Amiesite?

A.—No, I could not tell you that. I would have to refer to
30 figures.

Q.—Is it not a fact that the year ending March 31st, 1927, showed contract sales amounting to \$93,000?

This question is withdrawn.

Q.—Is it not a fact that Ontario Amiesite, Limited, began its business practically without any paid up capital in cash?

40 His Lordship:—I will not allow you to go into those details, Mr. Tanner, unless later on I see it may be necessary. At this stage I will not allow it.

By Mr. Tanner, Continuing:—

Q.—To conclude on this point the value of the shares: am I do understand that if there had been no deficit in Ontario Amie-

A. JANIN (for Defendant Robertson) Cross-examination.

site the value of the shares of Quinlan, Robertson & Janin and Amiesite Asphalt would have been increased by the sum of \$74,000?

10 A.—Oh, no. I do not deduct \$75,000 from Mr. Quinlan's shares for this: I only deduct his proportion — a proportion of his share to that deficit — \$15,000.

Q.—He owned one fifth of the shares in Ontario Amiesite?

A.—Yes: 20%.

Q.—And, your statement is you took into account 20% of the losses of Ontario Amiesite?

A.—Yes.

By the Court:—

20 Q.—I suppose this deficit at the end would consist of debts or claims against the Company, which the other partners taking the whole thing would have to pay?

A.—That is what we would have to do. We would have to take it all over. Not only that, but the maintenance and guarantees, and they were not shown on the Statement.

By Mr. Tanner, Continuing:—

30 Q.—Is it not a fact that the largest indebtedness of the Ontario Amiesite was a sum of \$52,000 to Quinlan, Robertson & Janin, Limited?

A.—It was.

Q.—And, also a further amount of indebtedness of \$26,419.22 to Amiesite Asphalt, Limited?

A.—Yes.

Q.—Is it not a fact that your indebtedness to the Bank, up to the end of the year 1926, was a very small one indeed, as appears by the Statement?

40 A.—Because Quinlan, Robertson & Janin and the Amiesite Company helped the Ontario Amiesite to carry on without the Bank.

By the Court:—

Q.—Did the Ontario Amiesite pay this \$52,000 to Quinlan, Robertson & Janin?

A. JANIN (for Defendant Robertson) Cross-examination.

A.—It was figured in Quinlan, Robertson & Janin's Statement as an asset, and the same thing with Amiesite Asphalt, Limited. If it had not been there, the deficit would have been that much more on the other side.

10

By Mr. Tanner, Continuing:—

Q.—Finally those sums were paid?

A.—They were subsequently paid.

Q.—By Ontario Amiesite?

A.—By Ontario Amiesite.

Q.—In respect to the Ontario Amiesite, Limited, did I understand you to say that those shares were a liability?

20

A.—I did not say it, but I will say it now.

Q.—How do you explain that?

A.—If a firm owes \$75,000, the stock which covers that is truly a liability.

Q.—Is it not a fact that the Statement of the Ontario Amiesite shows, by taking into account the deficit in question, a value of \$14 per share net — taking everything into account?

A.—That is not my understanding, nor the report of our Auditors.

30 Q.—But, if the Statement of Ontario Amiesite shows that result, you are not prepared to deny it, are you?

A.—I have no opinion to express on that until I have seen the Statement.

Q.—You referred to some construction bonds or guarantees that were given by yourself and others in respect of Ontario Amiesite?

40 A.—The Ontario Amiesite Company not having any financial status was unable to obtain from bonding companies the guarantees necessary, not only to tender on work but to obtain and to be awarded work, so Mr. Quinlan, Mr. Robertson and myself, later on, went and guaranteed personally the bonding companies for the Ontario Amiesite Limited, for large amounts.

Q.—I will be specific. I understand on August 6th, 1925, you entered into a guarantee bond with the Fidelity Insurance Company of Canada, in conjunction with Mr. Quinlan, Mr. Robertson, Mr. Kilmer, and Mr. Miller?

A.—I do not remember who signed it. The shareholders would have to sign it.

A. JANIN (*for Defendant Robertson*) *Cross-examination.*

Mr. Campbell:—Mr. Kilmer is not on the bond.

By Mr. Tanner, Continuing:—

10

Q.—There were five on the Guarantee Bond?

A.—We were five shareholders at that time.

Q.—Is it not a fact that the release of the guarantee given by Mr. Quinlan was only made by the Fidelity Insurance on November 16th, 1928?

A.—I cannot tell you that. I do not know. May I explain that it takes a long time to get a release of that sort from the Companies. We have many examples of that. It takes months before it goes through.

20

Q.—As a matter of fact, neither you nor Mr. Robertson were called upon at any time to pay anyone in respect of the guarantees which had been given in connection with Ontario Amiesite?

A.—But we were bound in honor to consider that as a debt. we took it over. It was ours. We certainly would not have claimed it from Mr. Quinlan — we could not have done that.

Q.—But, you are not answering my question. I presume your answer is “No”?

By the Court:—

30

Q.—Were you called upon to pay any of those guarantees?

A.—No, we were not. May I qualify it by saying this: we have not been called upon to pay any of it, because the Company kept on operating, and it has progressed better, and was in a condition to take care of the maintenance and repairs that were necessary on the contracts previous to 1927, one of which has been very expensive in maintenance, almost renewed from one end to the other, I think, five or six miles.

40

By Mr. Tanner, Continuing:—

Q.—Will you please tell me if, as a matter of fact, at the present time you and Mr. Robertson are released in reference to those guarantee bonds of the Ontario Amiesite? You have your personal release?

A.—I have mine. I do not know about Mr. Robertson. I have mine, because I am not a shareholder of Ontario Amiesite any more.

A. JANIN (for Defendant Robertson) Cross-examination.

Q.—Is it not a fact you had your release before you ceased to be a shareholder?

A.—No. As a matter of fact, I have not it officially yet.

10 By Mr. Beaulieu:—

Q.—You have not the document yet?

A.—No.

By Mr. Tanner, Continuing:—

20 Q.—You referred to three Companies that were organized recently, and, if I understood you well, you said that now Quinlan, Robertson & Janin, Limited, is a holding company, which held the shares of those other Companies you mentioned: Robertson & Janin Paving Company, and so on?

A.—Yes, Quinlan, Robertson & Janin holds the shares of the subsidiary companies.

Q.—Did you put any value on the goodwill of Quinlan, Robertson & Janin at any time?

A.—We did, when we organized those three Companies.

30 Q.—Will you please tell the Court what was the aggregate value of the goodwill which you placed on Quinlan, Robertson & Janin, and which was subsequently transferred to those three Companies?

40 A.—It was a matter of internal policy. As I said before, we organized those Companies as an expansion of the existing departments. We sold to those Companies whatever physical assets they used — each individual Company. Everything that could be used by the Companies was sold to the one Company, the Supply & Equipment Company, and in order to retain the stock in the Treasury of Quinlan, Robertson & Janin we arbitrarily said: “We will buy all the stock of the Paving Company for the goodwill of Quinlan, Robertson & Janin, and all the stock of the Building Company for the same thing”. Those Companies were capitalized at \$500,000, so we put an imaginary value of goodwill on those Companies of half a million dollars.

By the Court:—

Q.—Each?

A.—Each.

A. JANIN (for Defendant Robertson) Cross-examination.

By Mr. Tanner, Continuing:—

Q.—The issued capital stock of Robertson & Janin Paving Company, Limited, is 5000 shares, at a par value of \$100 each?

10 A.—Yes.

Q.—You used the word “imaginary”. Do I understand the Robertson & Janin Paving Company made no profit, to such an extent that it could not and cannot pay any dividend on its issued capital stock of 5000 shares?

A.—The shareholders of Quinlan & Robertson are also the shareholders of Robertson & Janin Paving Company.

Q.—You said the value was imaginary. Is it not a fact that the Robertson & Janin Paving Company, Limited, (which includes the goodwill of Quinlan, Robertson & Janin to the extent of \$500,000, and against which 5000 shares were issued) shows a profit ending March 31st, 1929, of \$77,000?

A.—That is probably right, yes.

Q.—So, if a company earns a profit of \$77,000, out of which it can pay a dividend on 5000 shares, surely you would not call those shares of imaginary value, would you?

His Lordship:—The value may be imaginary, but the profits are not.

30 By Mr. Tanner, Continuing:—

Q.—I understand the name of Quinlan, Robertson & Janin, Limited, was changed shortly after Mr. Quinlan’s death, to Robertson & Janin, Limited?

A.—Yes.

By the Court:—

40 Q.—Was it simply a change, or was there a sale?

A.—Just a change of name.

By Mr. Tanner, Continuing:—

Q.—Is it not a fact that the Statement of Robertson & Janin, Limited, which is in fact Quinlan, Robertson & Janin, Limited, of March 31st, 1929, shows a profit of \$584,000?

A.—It shows a surplus of \$584,000: which is not a profit for that period, but is an accumulation of previous years.

A. JANIN (for Defendant Robertson) Cross-examination.

Q.—The profit and loss account shows \$584,000?

A.—That is what the Statement shows.

10 Q.—Was the authorized capital of Quinlan, Robertson & Janin, or Robertson & Janin, Limited, changed or modified, or did it remain the same?

A.—It remained the same.

By the Court:—

Q.—I understand the profits of the three Companies that were subsequently formed went into the Treasury of Robertson & Janin?

A.—To the holder of the shares.

20

By Mr. Beaulieu:—

Q.—His Lordship is speaking of the profits of the three Companies. Did the three Companies profits? The Construction Company, for instance?

A.—Oh, no. I mean the aggregate profits of the three Companies.

By the Court:—

30

Q.—Whatever profits any of the three Companies made were paid to Robertson & Janin, Limited?

A.—They have not been paid: they are in the Treasury. They are in the hands of Robertson & Janin, but they are not paid until there is a dividend paid. They have accrued to the owners of the shares.

Q.—When any of the Companies will declare a dividend...

A.—(interrupting) That dividend will accrue to Robertson & Janin.

40

By Mr. Beaulieu:—

Q.—Were there profits in the three Companies, or only in two?

A.—There were profits in the Paving Company. I do not remember any profits in the Supply Company. The Supply Company has had a large debt to pay to Quinlan, Robertson & Janin.

A. JANIN (*for Defendant Robertson*) *Cross-examination.*

Q.—And, it has not been able to pay it yet?

A.—No. I do not believe the Building Company has shown any profit yet.

10

By Mr. Tanner:—

Q.—Were any dividends declared by the subsidiary companies since their organization. Robertson & Janin Paving Company; Robertson & Janin Building Company, and Montreal Equipment Company?

A.—No, sir.

20 Q.—So that the profits realized by each of those Companies still forms part of.....

A.—(Interrupting) Of their working capital. That is what they need to do their work.

Q.—And, consequently those profits do not appear in the Balance Sheet of Quinlan, Robertson & Janin or Robertson & Janin?

30 A.—They appear in the consolidated balance sheet of Quinlan, Robertson & Janin, or Robertson & Janin, according to the time.

And further deponent saith not.

J. H. Kenehan,
Official Court Reporter.

40

C. A. SHANNON (recalled for Defend. Robertson) Ex. in Chief

DEPOSITION OF CHARLES A SHANNON

10 A witness recalled on behalf of defendant Robertson.

On this fifth day of December, in the year of Our Lord one thousand nine hundred and thirty personally came and appeared, Charles A. Shannon, already sworn, who, being recalled on behalf of the Defendant Robertson, deposes as follows:—

Examined by Mr. Beaulieu, K.C., of Counsel for Defendant Robertson:—

20 Q.—During the course of your examination yesterday you promised to file certain documents. Are they ready?

A.—Yes, sir, they are.

The first was the inventory values as at date of liquidation, October 9th, 1929.

Q.—What is the document you now exhibit to me?

A.—It is a document that was withdrawn yesterday, but which is now reinstated. The figures were not entered on it yesterday.

30

By Mr. Masson:—

Q.—This is not the document I was asking for. I wanted the value at the time of the death of Mr. Quinlan.

A.—I will have it this afternoon. This is the value at the date of liquidation, October 9th, 1929. I will get the other values for you this afternoon.

40

By Mr. Beaulieu:—

Q.—Have you any documents to file, and, if so, will you please file them?

A.—I have the details showing payments to M. J. O'Brien, Limited.

Q.—Will you please file, as Exhibit D-R-24, a Statement showing payments to M. J. O'Brien, Limited, with the date and the amount of each payment?

A.—Yes.

C. A. SHANNON (recalled for Defend. Robertson) Ex. in Chief

Q.—What other documents have you?

A.—I have the details of dividends from February 6th, 1926, to June 2nd, 1929: that was before the Company was wound up.

10 Q.—Will you please file the details of dividends from February 6th, 1926, to June 2nd, 1929, as Exhibit D-R-25?

A.—Yes.

In 1926-27 there was a drawing account of Mr. Quinlan, which was charged to those dividends. There were different amounts. We have all the vouchers for those two years.

Q.—Have you any other documents to file?

20 A.—I have filed everything now, except the inventory as of date of Mr. Quinlan's death.

By Mr. Tanner:—

Q.—Did you bring the Statement showing the properties of the Fuller Gravel Company?

30 A.—I made enquiries at the former office of the Fuller Gravel, and I was told that as far as could be learned Mr. A. B. Holland, of Belleville, Ontario, had for a period of about ten years been endeavoring to straighten out the different properties in connection with the Fuller Gravel Company, and the Crookston Quarries, and as far as I could learn this particular transfer must have been one of those transfers in connection with the Fuller Gravel of the Crookston Quarries; I cannot tell exactly which one it was.

Q.—But, the ten years would have nothing to do with the transfers of properties dated October 5th, 1927, to Fuller Gravel, Limited; and I want to know if in your Statement of December 31st, 1927, you included all those properties that were transferred to Fuller Gravel Company for \$1.00 per property?

40 A.—The total amount of real estate of Fuller Gravel in 1927 was \$30,746.10. I am unable to supply the details of those properties.

Q.—Have you any paper among your working papers which you used in preparing your Balance Sheet, showing you took those properties into consideration as part of the assets of Fuller Gravel, Limited?

A.—I have no papers.

C. A. SHANNON (recalled for Defend. Robertson) Ex. in Chief

Q.—Did you see any Deeds passed before Notary Poirier in this connection?

A.—No, I did not.

10 Q.—Or, before others?

A.—No.

Q.—Did you know, as a matter of fact, that several properties — gravel pits — were transferred to the Fuller Gravel Company for \$1.00 on October 5th, 1927, from A. W. Robertson, Limited, and also from Crookston Quarries, Limited?

A.—That would be in connection with the incorporation of the Fuller Gravel Company, which Company started in the year 1926.

20 Q.—But, you are not answering my question. My question was very clear. I am referring to October 5th, 1927.

A.—I have no knowledge of the transaction.

By Mr. Campbell:—

Q.—In the course of your testimony yesterday you referred in an incidental way to Mr. M. J. O'Brien having been a Senator. As a matter of fact, do you know he resigned from the Senate several years ago?

A.—Yes, sir.

30 And further deponent saith not.

J. H. Kenehan,
Official Court Reporter.

D. G. PETERS (for Defend. Capital Trust Co.) Exam. in Chief

DEPOSITION OF DARYL G. PETERS

10 A witness produced and examined on behalf of Defendant
Capital Trust Co.

On this fifth day of December, in the year of Our Lord one thousand nine hundred and thirty personally came and appeared, Daryl G. Peters, of the City and District of Montreal, Manager Fidelity Insurance Company of Canada, aged 34 years, a witness produced and examined on behalf of the Defendant Capital Trust Corporation, who, being duly sworn, deposes as follows:—

20 Examined by Mr. Campbell, K.C., of Counsel for Defendant
Capital Trust Corporation.

Q.—You are the Montreal Manager of the Fidelity Insurance Company of Canada?

A.—Yes.

Q.—On August 6th, 1925, a general indemnity agreement was entered into between your Company, Fidelity Insurance Company, and Messrs. Quinlan, Robertson and others. Have you the original of that indemnity agreement with you?

A.—Yes.

30 Q.—It is in reference to the indemnity bonds given for the execution of contracts by the Ontario Amiesite Limited?

A.—Yes.

Q.—Will you please exhibit the original of that bond, and file a copy as Exhibit D-C-10?

A.—Yes.

Q.—That indemnity is signed by Mr. Hugh Quinlan, and A. W. Robertson, and Mr. Janin?

A.—Yes.

40 Q.—It is also signed by Mr. Roy Miller?

A.—Yes.

Q.—Have you in your office files the original of the agreement in reference to the cancellation of the previous agreement, dated 23rd October, 1928, between your Company and Messrs. Robertson & Janin?

A.—Yes.

D. G. PETERS (for Defend. Capital Trust Co.) Cross-exam.

Q.—Will you please exhibit the original of that agreement, and file a copy as Exhibit D-C-11?

A.—Yes.

10 Q.—Will you file, as Exhibit D-C-12, a list of the bonds which your Company went on for the Ontario Amiesite, Limited?

A.—Yes.

Q.—Will you please verify the date of the letter of release addressed by Fidelity Insurance Company to the Executors of the Estate of the late Hugh Quinlan, at Montreal?

A.—Yes, it was the same date.

20 Q.—What is the date?

A.—November 16th, 1928.

Q.—Filed as part of Exhibit P-C-18?

A.—Yes.

Cross examined by Mr. Tanner, K.C., of Counsel for Plaintiffs:—

Q.—Those bonds can only apply for specific work?

30 A.—The bonds were issued, but not the guarantees.

Q.—The bonds?

A.—Yes.

Q.—And, this was some contracting work?

A.—Yes.

And further deponent saith not.

40

J. H. Kenehan,
Official Court Reporter.

W. MILLER (for Defendant Robertson) Examination in Chief.

DEPOSITION OF WALTER MILLER

10 A witness produced and examined on behalf of the Defendant Robertson.

On this fifth day of December, in the year of Our Lord one thousand nine hundred and thirty personally came and appeared, Walter Miller, of the City of Montreal, Assistant Accountant, Bank of Toronto, aged 29 years, a witness produced and examined on behalf of the Defendant Robertson, who, being duly sworn, deposes as follows:—

20 Examined by Mr. Beaulieu, K.C., of Counsel for Defendant Robertson:—

Q.—You are in the employ of the Bank of Toronto?

A.—Yes.

Q.—Will you please take communication of the documents I now exhibit to you, and will you state if you can verify the signatures as being signatures of officials of the Bank of Toronto?

A.—Yes.

30 Q.—Will you file, as Exhibit D-R-26, two receipts, one of July 26th; and the other of June 22nd, 1926; and as Exhibit D-R-27, a letter bearing date November 28th, 1930, addressed to L. N. Leamy, signed by Mr. Lauer?

Mr. Masson, K.C., of Counsel for Plaintiffs, objects to the production of the letter offered as Exhibit D-R-27.

40 Q.—You notice the letter of November 28th, 1930, refers to an authorization signed by Mr. Hugh Quinlan. Will you please file a copy of that authorization which you have on the files of the Bank?

A.—It will take some time, because the letters are all filed at one of our Branches.

(Exhibit D-R-27, to be copy of Authorization signed by Hugh Quinlan to the Bank of Toronto).

Q.—Will you please bring the original, so that we may show it to the Court?

W. MILLER (for Defendant Robertson) Examination in Chief.

His Lordship:—And, if you have any necessity of keeping the original you may file a copy.

10 A.—Very well, Your Lordship.

By Mr. Beaulieu, Continuing:—

Q.—Will you also file, as Exhibit D-R-28, a list of the bonds, with the correspondence attached thereto, and state if this correspondence comes from your Bank and bears the signatures or initials of officials of the Bank?

A.—Yes.

20 Q.—Will you please take communication of the letter of September 27th, 1928, and state if it signed by an officer of the Bank of Toronto?

A.—Yes, it is.

Q.—Will you file a copy of this as Exhibit D-R-29?

A.—Yes.

Q.—Will you file, as Exhibit D-R-30, a copy of another letter dated March 28th, 1929, purporting to be signed by Mr. G. W. Kennedy, and will you state if Mr. Kennedy is one of the officials of your Bank?

30 Mr. Masson, K.C., of Counsel for Plaintiffs, objects to the production of the copy in question, inasmuch as the releases themselves should be produced.

The objection is reserved by the Court.

Q.—You notice these letters refer to a release, or state that Mr. Hugh Quinlan was released. Was there any formal release, apart from these letters, or do the letters constitute the releases?

40 A.—There must have been some form of release.

Q.—Will you please ascertain if there is some form of release, and, if there is, will you file copies as Exhibit D-R-31?

A.—Yes.

Q.—You notice the date of the release is mentioned in the letter, one being March 12th, 1928?

A.—Yes.

W. MILLER (for Defendant Robertson) Cross-examination.

Q.—As to the guarantee which was given to the Bank by the late Hugh Quinlan and by some other party, will you please state under what form that guarantee was? A note?

A.—No, it would be on our regular guarantee form.

10 Q.—Will you file, as Exhibit D-R-32, copies of this guarantee?

A.—Yes, I will.

Q.—Do your records show that two cheques of \$125,000 each were paid by Mr. A. W. Robertson and charged to his account at your Bank?

A.—Yes, two.

Q.—Have you the record with you?

A.—I have the drafts here.

20 (Witness exhibits to Counsel the drafts referred to).

Q.—You notice the first of those drafts is dated December 29th, 1927, and is to the order of Capital Trust Corporation, for the amount of \$125,000; and the second is dated January 28th, 1928, to the order of Capital Trust Corporation, for the same amount, \$125,000?

A.—Yes.

Q.—Will you file copies of these drafts as Exhibits D-R-33 and D-R-34?

30 A.—Yes.

Q.—Can you tell from your record on what date those two drafts were debited to the account of A. W. Robertson?

A.—Yes.

Q.—Will you please mention the date?

A.—They were charged in the account the same dates as the two drafts.

Q.—You find that in your record?

A.—I have seen it already.

40 Cross examined by Mr. Masson, K.C., of Counsel for Plaintiffs.

Q.—The date the draft was signed, or the date appearing on the stamp?

A.—The date the draft was issued.

L. N. LEAMY (for Defendant Robertson) Examination in Chief

Q.—When did you pay the money back to the beneficiary?

A.—The drafts were paid by us on January 4th and January 31st.

10 Q.—Have you any writing or any paper showing that those drafts were issued on the demand of Mr. Robertson?

A.—We can show the charge in his account. The vouchers are returned to the customer every month.

Q.—Did Mr. Robertson sign anything in reference to this draft dated December 29th, 1929, for \$125,000?

A.—I imagine he must have signed a draft requisition.

Q.—Would you mind bringing that draft requisition?

A.—I have no objection.

20 And further deponent saith not.

J. H. Kenehan,
Official Court Reporter.

DEPOSITION OF LOUIS N. LEAMY

30 A witness produced and examined on behalf of the Defendant Robertson.

On this fifth day of December, in the year of Our Lord one thousand nine hundred and thirty personally came and appeared, Louis N. Leamy, of the City and District of Montreal, already sworn, who appearing as a witness on behalf of the Defendant Robertson, deposes as follows:—

40 Examined by Mr. Beaulieu, K.C., of Counsel for Defendant Robertson:—

Q.—Were you in the employ of the late Hugh Quinlan and Mr. Robertson for some time?

A.—Yes.

Q.—For how many years?

A.—Up to the year Mr. Quinlan died, twenty or twenty one years.

L. N. LEAMY (for Defendant Robertson) Examination in Chief

Q.—Will you state, as nearly as possible, the last day the late Hugh Quinlan was at his office, to your knowledge?

A.—In 1926.

Q.—Would it be at the beginning of 1926?

10 A.—No, in the latter part of the year: I should say September, or October, or around those months.

Q.—After he ceased going to the office did you pay him frequent visits at his house?

A.—Daily.

Q.—For how long?

A.—From 1926 to 1927. From the summer of 1926 to June, 1927.

20 Q.—Do you remember having paid a special visit to Mr. Hugh Quinlan in April, 1927?

A.—I do.

Q.—Do you remember if at that time Mr. Robertson was absent from the City?

A.—He was in Egypt, or on the Mediterranean somewhere, for his health.

Q.—During that special visit to which you have referred was there any talk between you and Mr. Quinlan about Mr. Robertson?

A.—There was.

30 Q.—Was there any talk about business?

A.—Yes there was.

Q.—Did Mr. Quinlan mention to you what he intended to do with his shares?

Mr. Masson K.C., of Counsel for Plaintiffs, objects to the question as illegal.

The objection is maintained by the Court.

40 Q.—Was there mention made of particular shares he wanted to dispose of?

Same objection.

Same ruling.

Q.—Was the name of Mr. Robertson mentioned by Mr. Hugh Quinlan in connection with the sale of his shares?

L. N. LEAMY (for Defendant Robertson) Examination in Chief

Same objection.

Same ruling.

10 Q.—In order to be more explicit, will you please state if during that conversation with Mr. Quinlan special mention was made of his intention to dispose of 1151 shares of Quinlan, Robertson & Janin, Limited, 250 shares of Amiesite Asphalt, Limited, and 200 shares of Ontario Amiesite, Limited?

Same objection.

Same ruling.

20 Mr. Beaulieu, K.C., of Counsel for Defendant Robertson, respectfully excepts to the ruling of the Court.

Q.—Will you take communication of the letter D-R-1, and state if you typed that letter yourself?

A.—Yes, sir, I did.

Q.—Whose initials are those which appear in the margin of Exhibit D-R-1?

30 Mr. Masson:—Same objection to all these questions, in reference to the letter, which speaks for itself.

The objection is reserved by the Court.

A.—A. W. Robertson, and L. N. Leamy.

Q.—L. N. Leamy is yourself?

A.—Yes.

Q.—Will you please tell me if you wrote that letter from another document which was submitted to you?

40 Mr. Masson, K.C., of Counsel for Plaintiffs, objects to the question as illegal.

A.—Yes.

Q.—Will you please state from what document you wrote that letter?

L. N. LEAMY (for Defendant Robertson) Examination in Chief

Mr. Masson, K.C., of Counsel for Plaintiffs, objects to the question as illegal, inasmuch as there is a final agreement, and any evidence referring to a previous document, drafted would
10 be illegal.

His Lordship:—The Court cannot allow or disallow the question without knowing the nature of the document referred to.

By Mr. Beaulieu, Continuing:—

Q.—Was that letter Exhibit D-R-1 copied in part or in whole upon a document prepared by the Hon. Mr. J. L. Perron, which
20 you had in your possession?

Mr. Masson, K.C., of Counsel for Plaintiffs, objects to the question as illegal.

The objection is maintained by the Court.

Q.—Is it to your knowledge that after receiving the document from the Hon. Mr. J. L. Perron Mr. Robertson communicated with Mr. Perron by telephone as to the tenor of the letter
30 he wanted the draft to follow?

Mr. Masson, K.C., of Counsel for Plaintiffs, objects to the question as illegal.

The objection is maintained by the Court.

Q.—Were there slight modifications made to the draft prepared by Mr. Perron and submitted by Mr. Robertson by telephone to Mr. Perron, to your knowledge?
40

Same objection.

Same ruling.

Q.—Will you please state if you were at the house of the late Hugh Quinlan on June 20th, 1927, that is to say, on the date mentioned in your letter?

A.—I was.

L. N. LEAMY (for Defendant Robertson) Examination in Chief

Q.—Are you in a position to say that letter was prepared on the date it bears, June 20th, 1927?

A.—Yes.

10 Q.—Did you see Mr. Hugh Quinlan at his house on June 20th, 1927?

A.—I did.

Q.—Were you alone?

A.—I was with Mr. Robertson.

Q.—Was there anyone else with Mr. Hugh Quinlan when you were there? Did you meet anyone else?

Witness:—In the house?

20 Counsel:—Yes, in the house, first.

A.—Yes, I met Mrs. Quinlan.

Q.—Did you go into Mr. Hugh Quinlan's bedroom?

A.—Yes.

Q.—With Mr. Robertson?

A.—Yes.

Q.—And, then, were you left alone with Mr. Hugh Quinlan in the room?

A.—We were.

30 Q.—You spoke to Mrs. Quinlan before seeing Mr. Quinlan?

A.—Yes.

Q.—Will you please state if you read the letter Exhibit D-R-1 to the late Hugh Quinlan, in the presence of Mr. Robertson?

Mr. Masson, K.C., of Counsel for Plaintiffs, objects to the question as illegal, inasmuch as there is nothing alleged as to the letter having been read to the late Hugh Quinlan.

The objection is reserved by the Court.

40 Q.—Did you read that letter to Mr. Hugh Quinlan in the presence of Mr. Robertson?

Same objection.

Same reserve.

A.—Yes.

C. R. HAZEN (for Defendant Robertson) Exam. in Chief.

Q.—Did Mr. Hugh Quinlan appear to understand what you were reading?

10 Mr. Masson, K.C., of Counsel for Plaintiffs, objects to the question as illegal.

The objection is maintained by the Court.

Q.—Did Mr. Quinlan seem to be of a sound mind and able to understand a business proposition?

Same objection.

20 The objection is maintained, inasmuch as the question may tend to prove a contract.

And further for the present deponent saith not.

J. H. Kenchan,
Official Court Reporter.

30 DEPOSITION OF CHARLES R. HAZEN

A witness produced and examined on behalf of Defendant Robertson.

40 On this fifth day of December, in the year of Our Lord one thousand nine hundred and thirty personally came and appeared, Charles R. Hazen, of the City and District of Montreal, Vice President Milton Hersey Company and Handwriting Expert, aged 57 years, a witness produced and examined on behalf of the Defendant Robertson, who, being duly sworn deposes as follows:

Examined by Mr. Beaulieu, K.C., of Counsel for Defendant Robertson:—

Q.—You describe yourself as a handwriting expert?

A.—Yes.

C. R. HAZEN (for Defendant Robertson) Exam. in Chief.

Q.—Have you made a study of handwriting, and, if so, for how many years?

A.—For the last fifteen or sixteen years.

10 Q.—Have you had experience in cases involving handwriting?

A.—Yes, I have had considerable experience in cases of examining hand writing that was not in cases also.

Q.—Will you mention some of the more important of those cases?

A.—The Brodeur case, at Sweetsburg; the perhaps noted trial of Delorme here; a will case in St. John; the Hill will case in Toronto; and numerous cases in Cornwall, St. Hyacinthe, and so on.

20 Q.—Besides the cases in which you came before the Courts, have you been consulted outside the Court in many instances?

A.—Of course, if my opinion happens to be against the clients' attitude, why, I stay out. If our opinion happens to be against the attitude of the clients, they do not want us.

Q.—I think you are sufficiently qualified now.

His Lordship:—So far as I am concerned, Mr. Hazen is one of the most competent handwriting experts. Of course, that does not mean he is infallible.

30 By Mr. Beaulieu, Continuing:—

40 Q.—Were you requested to make a special examination of the signature purporting to be the signature of Vernie L. Kerr on four documents, to wit, a certificate of the Amiesite Asphalt, Limited, bearing No. 1 for one share, in the name of Hugh Quinlan, and endorsed on the back by Hugh Quinlan, with the signature which is now disputed; secondly, another certificate of shares in the same Company, bearing No. 5, for 49 shares, in the name of Hugh Quinlan, endorsed on the back by Hugh Quinlan and apparently witnessed by the same Vernie L. Kerr; thirdly a share certificate in Quinlan, Robertson & Janin, Limited, bearing No. 4, for one share, in the name of Hugh Quinlan, and also bearing in the transfer on the back the apparent signature of Vernie L. Kerr as a witness; and, fourth, another share certificate in the same Company, bearing No. 8, for 1150 shares, in the name of Hugh Quinlan, and again bearing on the transfer on the back what is apparently the signature of Vernie L. Kerr?

C. R. HAZEN (*for Defendant Robertson*) Exam. in Chief.

A.—I examined those signatures.

Q.—The question is as to whether those four signatures
“Vernie L. Kerr” were affixed by the same person. Will you
10 please state your conclusion upon that point?

A.—Yes. I examined those signatures, and came to the con-
clusion they were all written by the same person.

In those signatures, the only point of difference that would
cause a handwriting man to pause lies in the “K” in the signa-
ture of Vernie L. Kerr on Certificate No. 4, for 1 share, in the
Amiesite Company. That is the first signature on the page.

Q.—Will you file the page to which you refer as Exhibit
20 D-R-35?

A.—Yes.

In this particular signature the curved part of the “K”
crosses the first vertical stroke with a little loop, and the bottom
part of this “K” is curved, whereas in all the other signatures
there is no loop and the bottom part of the curved portion of the
“K” is straight.

That is the only point I could find that would give one any
30 question with regard to those signatures, and if any of those si-
gnatures is in doubt, it is the first one. In my mind, however,
there is little doubt about this.

The signature gives one a feeling that it has been written
easily and freely, without hesitation to follow copy or trace copy,
or to do anything but simply write one’s name.

The little details that are personal in character are the same
in every signature, for instance, note the way the period, which
40 is invariably a round dot, follows the “L” and the word “Kerr”
in every signature. They are placed exactly in the same rela-
tionship to the capital letter or the end of the word “Kerr”.

The beginning and the last stroke of a word are always the
most significant, because they are usually made in the most ab-
sentminded automatic manner.

C. R. HAZEN (for Defendant Robertson) Exam. in Chief.

10 We find the letter "e" at the beginning of the word "Vernie" starts from below the line in this signature, and it does in every signature we have. The slants are the same. The pen pressure is exactly the same in each, that is to say the pen line is of the same width, and shows the same amount of shade, or lack of shade.

The way the lower part of the "L" is suppressed in part — shortened.

The peculiar formation of the letter "K", which is most unusual. I never saw a "K" made just as this is in the last three signatures.

20 These are the little characteristics of writing common to all the signatures.

30 Another thing one would hardly notice at first is a pen lift in the last stroke of the letter "n" in "Vernie". It is scarcely a pen lift — it is more a hesitation, which causes a little angular side movement in the downward stroke of the last part of the letter "n" — most noticeable in the signature on certificate 5, but equally noticeable almost on certificates Nos. 1 and 8. On No. 9, the ink line is heavier on the last part. There it looks as though the one had been actually lifted.

This is internal evidence one would not notice at first, especially in the unmagnified signature: It does not appear, unless one examines very critically.

Then the way the letter "r" is suppressed in "Kerr". The upper part of it lacks form. We know what the writer had in mind in the way of a pattern, but it was followed rather badly.

40 There is also the way the last letter in both the words "Vernie" and "Kerr" has a tendency to lift from the line of writing. It is a little above it.

Notice the "r" in "Kerr" and the end. It is away from the line. The "e's" are away from the line in the same manner, especially the last one.

C. R. HAZEN (for Defendant Robertson) Cross-examination.

10 Notice the spacing between the word "Vernie" and the "L", and the same spacing between the "L" and the "K", and the way the last stroke of the word "Kerr" ends in a blunt line rather than a tapered one.

These are all things that show pretty conclusively that these signatures were all made by the same person.

Cross examined by Mr. Masson, K.C., of Counsel for Plaintiffs:—

20 Q.—I understand every time you have been called as a witness or as an expert it was in reference to signatures which had been imitated?

A.—No, where did you get that idea.

Q.—If you have been called in cases it was because the writing that was submitted to you was doubtful as to its authenticity, otherwise you would not have been called?

A.—Because the client wished to know whether the signatures were genuine or otherwise.

Q.—Have you ever noticed certain imitations of signatures which were exactly the same or practically the same as the one written by the person himself?

30 A.—I do not just get the drift of that. I have seen signatures that were forged which closely resembled genuine signatures, if that is what you mean.

Q.—Is it possible that a signature may be imitated in such a way that there is no difference between the genuine signature and the imitating signature?

A.—I suppose it is possible. I have certainly seen signatures, and been asked to give an opinion on signatures, regarding which I found myself in doubt and refused to give an opinion.

40 Q.—So, it is quite possible for some one to imitate the signature of another in such a way that you cannot detect whether there is an imitation?

A.—I suppose it is possible, but I should properly add that it is a most difficult matter, which I have never seen accomplished to entire satisfaction.

Q.—Notwithstanding the fact that it is a most difficult matter yet it is possible to imitate the signature of a person in such a way that there is no way of differentiating the signatures?

A.—I would not say that.

C. R. HAZEN (for Defendant Robertson) Cross-examination.

Q.—You just said it was possible?

10 A.—In answer to that question I say no, it is not. It is possible to imitate a signature so well that one may be in doubt about the suspected signature.

Q.—If a signature which is an imitation which might give rise to certain doubts, and an authentic signature are submitted to you without your being notified which signature is the authentic one and which is the imitation, would you be in a position to say which is the authentic signature and which is the imitation?

A.—I would not let anybody notify me. I do not know which of these is suspected.

20 Q.—You saw the certificates?

A.—Yes.

Q.—You had those signatures photographed from the certificates which were exhibited to you?

A.—Yes.

Q.—You knew the signature which was in doubt was in reference to those certificates?

A.—I did not. I knew one of them was in doubt.

Q.—Which one?

A.—I do not know.

30 Q.—Is it the signature of Mr. Quinlan, or the signature of Mr. Robertson, or the signature of Miss Kerr?

A.—Naturally it is one of those signatures of Miss Kerr.

Q.—So, they went to you saying there was a doubt about the signature of Miss Kerr?

A.—About one of them.

Q.—They told you about one of them?

A.—Yes.

By the Court:—

40 Q.—One of the four signatures of Miss Kerr? Not one of the signatures of either Mr. Quinlan or Mr. Robertson?

A.—I would not let them tell me anything about it.

By Mr. Masson, Continuing:—

Q.—They told you there was a doubt about one of the signatures of Miss Vernie L. Kerr?

A.—Yes.

C. R. HAZEN (for Defendant Robertson) Cross-examination.

Q.—They did not speak to you about two?

A.—No.

10 Q.—They only mentioned to you one signature that was doubtful?

A.—That was what I understood.

Q.—And, they mentioned to you as the doubtful signature the signature which appears on certificate No. 4?

A.—No, they did not.

Q.—Is that the one you thought doubtful?

A.—I did not say any such thing. I said the only point that would raise a question that I could find in those signatures occurred in the first signature on the page, then I pointed it out.

20 Q.—Let us suppose for a moment the signature of Vernie L. Kerr which appears on certificate No. 4 was not written by the same person who wrote the signature on certificates Nos. 1, 5 and 8. Would you be in a position to say whether Miss Kerr signed one certificate, or whether she signed three?

A.—She signed four.

Q.—I am not asking you that. Let us suppose the first one is doubtful, as you said?

A.—Those signatures are all hers. There is no doubt in my mind about any of them.

30 Q.—But that is not what you said a moment ago. You said there was a doubt about the signature on certificate No. 4?

A.—No, I did not say that.

Q.—You did not notice anything about the “V” in the word “Vernie”?

A.—Only that they are all written undoubtedly by the same hand. They have the same pattern — the same make up. The shading is the same and in the same place.

Q.—What about the beginning of the letter “V”?

40 A.—The beginning of the letter “V” in No. 4 is made the same as the beginning of the letter “V” in No. 1. The beginning of the letter “V” in No. 5 resembles most that in No. 8. The latter two start with a very light pen line: the other two start with a heavier pen line.

By the Court:—

Q.—In No. 1 and No. 3, is there not a curve at the beginning of the “V”?

A.—Yes.

C. R. HAZEN (for Defendant Robertson) Cross-examination.

Q.—Which is not in No. 2 and No. 4?

A.—Yes, that is quite correct. They differ from the other two in that regard.

10 Q.—But, I notice they are the same at the finish of the “V” with a little dot?

A.—Yes, your Lordship.

Q.—And the first part of the “V” is heavily made in the four?

A.—Yes. There are little differences between those various signatures, but they are the differences of the signature of one person. For instance, my signature is not always exactly the same by any means.

20 The point is they are not the differences of two different writers.

By Mr. Masson:—

Q.—I understand when you are called upon to say whether a signature is an imitation or not, you look at the document, and the way it is drafted, and the way it is signed by the other parties whose signatures appear on it, and this is a very great help to you?

30 A.—I know nothing about the document.

Q.—If you had one signature photographed you certainly saw those share certificates?

A.—I saw the share certificates.

Q.—When you are called upon to say whether or not one signature is an imitation, I understand you generally consider the whole document, and the other signatures which appear on it, and that this is a help to you?

40 Q.—Somebody misinformed you. I have considered nothing in those documents except the signatures of Vernie L. Kerr.

Q.—Would it not have been of help to you if you had considered the whole document at the same time?

A.—I do not know.

Q.—You did not try that?

A.—I did not.

Q.—Do you not think if you had examined the whole document, and the signatures of the other parties, at the same time as you examined the signature of Miss Vernie L. Kerr, it would probably have helped you in giving your testimony?

C. R. HAZEN (for Defendant Robertson) Cross-examination.

A.—It might have, but those things were not in question. I assure you I have not studied anything but the signature of Vernie L. Kerr.

10 Q.—You did not look at the other signatures?

A.—Absolutely not. I could not tell you anything about them. Do you mean the signature of Mr. Quinlan?

Counsel:—Yes.

A.—I have not studied it.

Q.—Or the signature of Mr. Robertson?

A.—I have not studied it either. I did not know it was at issue.

20 Q.—If you had noticed the signature of Mr. Quinlan which appears on certificate No. 4 was an imitation as compared with the signature of Mr. Quinlan on the other certificates, would it not have helped you in order to be able to say whether or not the signature of Miss Vernie L. Kerr on certificate No. 4 is an imitation?

Mr. Beaulieu, K.C., of Counsel for Defendant Robertson, objects to the question as irrelevant, and illegal, and as not arising out of the examination in chief of the witness.

30 The question is withdrawn.

And further deponent saith not.

J. H. Kenehan,
Official Court Reporter.

E. L. PARENT (recalled for Defend. Capital Trust) Ex. in Chief

DEPOSITION OF EMMANUEL L. PARENT

10 A witness examined on behalf of the Defendant Capital Trust.

On this fifth day of December in the year of Our Lord One thousand nine hundred and thirty, personally came and appeared, Emmanuel L. Parent, of the City of Ottawa, in the Province of Ontario, already sworn, who re-appearing as a witness on behalf of the defendant, Capital Trust Corporation, deposes as follows:—

20 Examined by Mr. Campbell, K.C., of Counsel for Defendant Capital Trust:—

Q.—You have already been examined at great length on discovery on behalf of the Plaintiffs, as representative of the Capital Trust Corporation, one of the Defendants?

A.—Yes.

Q.—You have already testified your position with the Capital Trust Corporation is that of Manager of the Estates Department?

30 A.—Yes.

Q.—Have you with you the ledger which you kept in connection with the affairs of the Estate Quinlan, of which your Company was one of the executors?

A.—Yes.

Q.—Did you have a special ledger for that Estate?

A.—Yes.

Q.—Will you please explain it to the Court, and explain the system you followed in keeping track of the different assets of the Estate Hugh Quinlan?

40 A.—The book is divided into five parts: First, it takes care of assets; second, liabilities, third, income or revenue; and fourth, expenses, sundries, bequests, or anything else that would not come under the other items.

Q.—You have a special ledger for every asset you found in the Estate Quinlan — that is a special sheet in the ledger?

A.—Yes.

E. L. PARENT (recalled for Defend. Capital Trust) Ex. in Chief

Q.—During one of your examinations by the plaintiff you filed, as Exhibit P-33, photographic copies of two pages of the ledger which is now before you?

10 A.—Yes.

Q.—You kept both pages of the ledger?

A.—Yes.

Q.—Taking, first, the account Quinlan, Robertson and Janin, Limited, (account No. 24), what was the occasion of having that page in your ledger re-written?

A.—I had to make a correction of the value given for Succession Duty purposes.

Q.—Of the value that had originally been entered?

A.—Yes.

20 Q.—What value had been originally entered?

A.—\$150,000.

Q.—What was the corrected value?

A.—\$62,935. additional.

By the Court:—

Q.—For what item?

A.—Quinlan, Robertson, Janin, Company, Limited.

Q.—For what stock?

30 A.—Quinlan, Robertson and Janin, Limited.

By Mr. Campbell, Continuing:—

Q.—Those were the shares which were declared, and which you discussed with the Succession Duties Office as you have explained?

A.—Yes.

40 Q.—Apart from the entry of that additional valuation put upon those shares as the result of your discussion with the Succession Duties Office is there any other difference in your two accounts?

A.—No.

Q.—Coming to the other page that was re-written, account No. 23, in reference to A. W. Robertson Limited, what is the change between the original page and the re-written page?

Witness:—The increase in valuation?

E. L. PARENT (recalled for Defend. Capital Trust) Ex. in Chief

Counsel:—What was the change?

A.—The change was for the same purpose: To put this increase of valuation in its proper place.

10 Q.—So, there again, this refers to an increase in valuation between the valuation you had already entered on your books and the valuation as agreed with the Succession Duties department?

A.—Yes.

Q.—That is the item of \$118,427.50?

A.—Yes.

Q.—That was an increase in valuation imposed by the Succession Duties Office, after your discussion, as against your original valuation?

20 A.—Yes.

Q.—And, that is A. W. Robertson, Limited?

A.—Yes.

Q.—Apart from those two entries (which in each case was a write-up in value as the result of your discussion with the Succession with the Succession Duties Department) is there any other change in those two pages?

A.—No, not that I know of.

Q.—I put the question to you because I find the figures extremely difficult, if not impossible, to read on the copy I have.

30 When you were examined on discovery you exhibited to the attorneys for the plaintiffs an agreement which in the copy handed to me appeared to be incomplete. This was an agreement dated December 30th, 1913, between Mr. Robertson and Mr. Quinlan. Have you the original of that agreement?

A.—I have a document here dated December 30th, 1913, which I presume must be the same.

40 Q.—Will you exhibit the original, and file a copy as Exhibit D-C-13.

Mr. Masson, K.C., of Counsel for Plaintiffs, objects to the filing of the document in question as illegal.

The objection is maintained by the Court.

Q.—I think you have already stated you were in charge of the keeping of the Records, as an officer of Capital Trust Cor-

E. L. PARENT (recalled for Defend. Capital Trust) Ex. in Chief

poration, of this Estate Quinlan. You were charged with the general supervision of the administration?

A.—Yes.

10 Q.—To whom did you send the inventory you prepared for submission to the Succession Duties Office?

Witness:—You mean the first one — the unrevised copy?

Counsel:—Yes.

A.—I sent a copy to our co-executor, Mr. Robertson; and a copy to the Honorable Mr. Perron, so that he could deposit it.

Q.—Who sent the copy to the Succession Duties Office?

20 A.—Mr. Perron.

Q.—Did you ever receive any advice or instruction from Mr. Perron to prepare a different form of inventory?

A.—No.

Q.—When were you first shown the original of the letter which has since been filed in this case by Mr. Robertson addressed to Mr. Quinlan, dated June 20th, 1927 (Exhibit D-R-1)?

A.—As far as I remember, on July 9th, 1927.

Q.—Where?

A.—At the office, 1680 St. Patrick street.

Q.—That was the office of A. W. Robertson, Limited?

30 A.—I think so. Both offices, I think.

Q.—So that there may be no misunderstanding on the point, this label on the back, which says “Copy made for Quinlan case, given on” does not indicate this document is a copy, but means that a copy has been prepared?

A.—This was put on by ourselves, to know that we had made copies for the plaintiffs.

Q.—But, it does not indicate that this particular document is a copy?

40 A.—No.

Q.—But, rather, that copies of it have been made?

A.—Yes.

Q.—When this letter of June 20th was shown to you, or at any other time, were you shown the certificates for the shares mentioned in this letter, or more particularly, for the 1151 shares of Quinlan, Robertson and Janin, Limited, and the shares of Amiesite Asphalt?

E. L. PARENT (recalled for Defend. Capital Trust) Ex. in Chief

A.—I am not so clear about the certificates, but I am pretty well sure they were shown the same day.

Q.—Were they shown to you either that day or about that time?

10 A.—I saw them before. I think it was on the 9th of July too.

Q.—Did they purport to bear the name that is endorsed on them now as being the signature of Mr. Quinlan? Did they purport to be signed by Mr. Quinlan.

By the Court:—

Q.—Were they in the same state as they are now?

20 A.—As far as I can remember. I must say I did not pay much attention.

By Mr. Campbell:—

Q.—But they were endorsed?

A.—Oh, I think so.

By Mr. Masson:—

Q.—You are not sure about that?

30 A.—No, I am not sure about it, because I did not pay much attention.

By Mr. Campbell, Continuing:—

Q.—Did you ever see them with the name of Mr. Quinlan, or what purported to be his signature, on the back?

A.—I said I was not sure about the signature, because I did not pay much attention.

Q.—Were you show the certificates?

40 A.—Yes.

Q.—By whom were they shown to you?

A.—By Mr. Robertson.

Q.—Did the Capital Trust Corporation ever have those certificates of Quinlan, Robertson, Janin, Limited, in its keeping?

A.—No.

Q.—Did the Capital Trust Corporation ever have the Amie-site Asphalt, Limited certificates in its keeping?

A.—No.

E. L. PARENT (recalled for Defend. Capital Trust) Ex. in Chief

Q.—Apart from the time they were sent to you for endorsement did the Capital Trust Corporation ever have in its possession the certificate for the 200 shares of Ontario Amiesite?

A.—No.

10 Q.—Apart from the exchange of correspondence with the Honorable Mr. Perron did you personally ever have occasion to discuss the affairs of the Estate Hugh Quinlan with him?

A.—Several times.

Q.—More particularly did you ever discuss the contract or alleged contract of June 20th, 1927, exhibit D-R-1 with Mr. Perron?

20 Mr. Masson, K.C., of Counsel for Plaintiffs, objects to the question as illegal.

Q.—When you consulted Honorable Mr. Perron did he advise you, as an officer of the Capital Trust Corporation, that the executors of the Estate Quinlan, including the Capital Trust Corporation, were bound to give effect to that contract or so-called contract?

Mr. Masson, K.C., or Counsel for Plaintiffs, objects to the question as illegal.

30 By the Court:—

Q.—You first endorsed those 1151 shares of the Quinlan, Robertson and Janin Company in the name of the Estate Quinlan for the purpose of the inventory and the return to the Government?

A.—Yes.

40 Q.—It appears from your evidence and from the evidence of other witnesses, that you subsequently received a sum of \$250,000 for those shares. Why did you receive that, and how did you receive it?

A.—I do not need to repeat the date, I suppose.

Q.—Was it on the advice of some one, or on your own responsibility?

A.—We discussed this matter several times with Mr. Perron, and as far as I remember, at one time, when there was question of Mr. Robertson taking the shares himself instead of somebody else, he stated we had nothing else to do than to carry out the contract — meaning that letter.

E. L. PARENT (recalled for Defend. Capital Trust) Ex. in Chief

By Mr. Campbell, Continuing:—

10 Q.—When you accepted those payments of \$250,000 in the two cheques of \$125,000 each, in accepting that money did you obtain Mr. Perron's advice?

A.—Yes.

Q.—Was the advice to the effect that you should accept or that you should not accept? Did Mr. Perron advise you to accept the money, or not to accept it?

A.—He had sent his reply before that we had to carry out the contract, and I took it for granted, naturally, that we had to take the money.

20 Mr. Masson, K.C., of Counsel for Plaintiffs, objects to this evidence as illegal, insofar as it would tend to prove a contract.

Q.—Did you at any time receive advice from Mr. Perron, or any other legal adviser, about the necessity of any further inventory than the one you prepared in view of the terms of the Will of the late Hugh Quinlan? I mean as to the form?

30 Mr. Masson, K.C., of Counsel for Plaintiffs, objects to the question as illegal, inasmuch as if there was any such advice it would be in writing, and should be produced.

The objection is reserved by the Court.

A.—No.

Q.—Did you send the Honorable Mr. Perron a copy of the Inventory you prepared?

A.—Yes.

40 Q.—In regard to the sale of the shares of the Fuller Gravel Company, I think you have already filed the correspondence exchanged between the Capital Trust Corporation and Mr. Perron on that subject?

A.—Yes. I think it is Exhibit P-C-26.

Q.—Will you refer to this file, and tell me the date of the letter you received from the Honorable Mr. Perron advising you in regard to the completing of the proposed sale of the Fuller Gravel shares?

A.—It is not in this file, I think. I believe there was a special file for Mr. Perron's letters.

E. L. PARENT (recalled for Defend. Capital Trust) Ex. in Chief

Q.—Will you take communication of exhibit P-C-25, and tell me the date of the letter?

A.—August 22nd, 1927.

10 Q.—Is that the letter to which you refer?

A.—Yes.

Q.—At the time you made that sale of the Fuller Gravel shares had you any knowledge of any contemplated merger of the Gravel Companies, or Companies engaged in a similar line of business, in the Province of Ontario?

A.—No.

Q.—At the time you made the sale of those Fuller Gravel shares to Mr. McCord, Mr. Rayner, and Mr. Tummon, did you know of any interest of the defendant A. W. Robertson as a purchaser in that sale?

20 A.—No.

Q.—Will you please turn up the Fuller Gravel Company entry in the ledger, and state from whom you received the first payment in each case?

A.—The first cheque came on September 6th, 1927.

Q.—From whom?

A.—The book says from W. A. Tummon, for 200 shares, \$10,000.

30 Q.—And, when were the first cheques from the others?

A.—The next cheque came on September 9th. It is marked "Cheque, George W. Rayner, first instalment purchase 200 shares preferred and 100 shares common \$2,500."

Q.—And, the next?

A.—October 13th. It is entered "S. McCord: Cheque for payment stock, 200 shares (in pencil) and 100 shares (in pencil) \$2,500."

40 Q.—Did you at any time submit this ledger to the examination of the plaintiffs and their accountant, Mr. Schurman?

A.—Yes.

Q.—Did they have access to it in detail?

A.—Yes.

Q.—Did they have an opportunity of going through the whole ledger?

A.—Yes.

E. L. PARENT (recalled for Def. Capital Trust) Cross-exam.

Cross-examined by Mr. Masson, K.C., of Counsel for Plaintiffs:—

10 Q.—When did the plaintiffs have an opportunity of looking at the books? Before or after the Action?

A.—After the Action. They did not ask before.

Q.—You said the letter of June 20th, 1927 was shown to you at No. 1680 St. Patrick street. Who showed that letter to you?

A.—Mr. Robertson.

Q.—Mr. Robertson had the letter in his possession on July 9th, 1927?

A.—Yes.

20 Q.—Are you sure the letter which was shown to you on July 9th, 1927, is exactly the letter filed here as Exhibit D-R-1? Examine the letter very carefully?

A.—As far as I know. As far as I can remember. I took but I noticed those two initials on July 9th.

Q.—I understand on July 9th, 1927 you were proceeding to the Inventory of the different securities and assets of the Estate?

A.—Yes.

30 Q.—And, you took possession of all the titles and documents which belonged to the Estate, because, I understand, according to the Will you were supposed to be the Manager as testamentary executors?

A.—Everything we could find.

Q.—You took possession of every thing you could find?

A.—Yes.

Q.—Did you get possession of this document, exhibit D-R-1 on July 9th, 1927?

A.—No.

Q.—Who kept it?

A.—Mr. Robertson.

40 Q.—So, if I understand you correctly, Mr. Robertson showed you Exhibit D-R-1 on July 9th, and after having shown it to you he kept it for himself?

A.—Yes.

Q.—And, that was at Mr. Robertson's office?

A.—Yes.

Q.—You said certain certificates were exhibited to you on July 9th, but you were not sure of the date?

A.—I am sure of the date, but I am not sure of the signatures.

E. L. PARENT (recalled for Def. Capital Trust) Cross-exam.

His Lordship:—The witness stated he was not sure of the state of the certificates.

By Mr. Masson, Continuing:—

10

Q.—You will notice on the last page of Exhibit P-3 there is a list of the stocks and investments as at December 31st, 1927. I understand the last page contains a list of all the stocks and securities of the Estate, the Capital Trust had in its possession in its quality as Executors? Let me put it this way: I understand the last page of this Exhibit contains a list of all the stocks and bonds which the Capital Trust Corporation had in its possession as Testamentary Executors?

20

A.—I do not know about that.

Q.—Who made that last sheet?

A.—This is not my Statement.

Q.—Will you look at the financial statement filed as exhibit P-3, and will you tell His Lordship if page 6 is a list of all the securities the Capital Trust had in its possession?

Witness:—On December 31st, 1927?

Counsel:—On the date it bears.

30

A.—It must be. But, there is a foot note: “Re Quinlan, Robertson and Janin, sold in 1928 for \$250,000.”

Q.—Is that foot note exact?

A.—This is Mr. Shannon’s Statement, not mine.

Q.—That is the Statement which was sent by your Company, as Testamentary Executors, to Mrs. Kelly — Ethel Quinlan? This is your own report?

A.—No. Here is Mr. Shannon’s Statement.

40 Q.—A letter was sent to the Capital Trust Corporation asking for a Statement of the affairs of the Estate?

A.—Yes.

Q.—You remember you answered that letter?

A.—Yes.

Q.—And, you remember you sent a statement to the Plaintiffs, who were asking for one?

A.—Yes.

E. L. PARENT (recalled for Def. Capital Trust) Cross-exam.

Q.—Do you deny that Exhibit P-3 is the statement that was sent by the Capital Trust Corporation?

A.—I do not understand what you mean.

10 Q.—You said you never had the certificates in your possession. Did you ask for them?

A.—I do not remember.

Q.—Did any one from the Capital Trust Corporation ask for those certificates?

A.—Not that I know of.

Q.—Was it the Capital Trust that made the suggestion to Mr. Robertson to take possession of the share certificates?

A.—He had possession at the time.

Q.—Was it you who asked for the payment of the \$250,000?

20 A.—I do not remember if we asked for the payment, or if he sent the cheque.

(Under reserve of objections).

Q.—When did you first begin to discuss this matter with Mr. Perron?

A.—I could not remember the date. I know it was before December 31st, 1927.

Q.—I suppose it would be in the Fall of 1927?

30 A.—Between the time of Mr. Quinlan's death and December 31st, 1927. I cannot remember the date.

Q.—How did you come to discuss this matter with Mr. Perron?

A.—The amount involved was large enough, I suppose, it was a large transaction.

Q.—Were you called upon by Mr. Robertson to receive a certain amount of money, \$125,000, or to give any share certificates, or anything of the kind? You did not go to Mr. Perron without having a demand from some one to go to see him?

40 A.—I did not go alone. I did not say I was alone.

Q.—With whom did you go?

A.—Most of the conferences were between Dr. Connolly, our Managing Director, Mr. Robertson, Mr. Perron, and myself. I was not present at all the conferences. Sometimes I was not there.

Q.—Mr. Robertson was present at every conference at which you were present, or most of them, in any event?

A.—Most of them, yes.

E. L. PARENT (recalled for Def. Capital Trust) Cross-exam.

By Mr. Campbell:—

10 Q.—Have you the original of the certificate filed as Exhibit C-1? The Certificate from the Bank of Toronto.

His Lordship:—That has already been admitted, Mr. Campbell.

By Mr. Beaulieu:—

20 Q.—Will you please take communication of the letter I show you, signed by you, and addressed to Mr. A. W. Robertson, bearing date September 25th, 1928, and will you state if you sent it to Mr. Robertson?

A.—Yes.

Q.—Will you file this letter as exhibit D-R-36?

A.—Yes.

Q.—Will you take communication of Exhibit D-R-1, which purports to be the original referred to in the letter D-R-36, and will you state if this document D-R-1 was taken from your files and given to us for the purpose of being produced in this case?

30 Mr. Masson, K.C., of Counsel for Plaintiffs, objects to the question as illegal, inasmuch as the witness has already stated he did not have the document but that Mr. Robertson kept it.

The objection is reserved by the Court.

Q.—Did you have possession of the original, according to the letter you sent Mr. Robertson asking for it?

A.—I have already given the exact date, or practically the exact date. I cannot say exactly now. In the month of December, I think.

40

By Mr. Masson:—

Q.—December 6th, 1928?

A.—I think so.

By Mr. Beaulieu, Continuing:—

E. L. PARENT (recalled for Def. Capital Trust) Cross-exam.

Q.—So, it is a fact you had this original in your files, according to the request you made to Mr. Robertson?

10 Witness:—On what date?

Counsel:—Irrespective of the date.

A.—We had the original.

By Mr. Masson:—

Q.—When did you have the original?

20 A.—I have already said I cannot tell you the date. I think it was in the month of December, 1928.

Q.—You had asked Mr. Robertson to give you the original before that date?

A.—I think my letter is there. I do not know the date.

September 25th, 1928, was the date I asked for it.

And further deponent saith not.

30

J. H. Kenehan,
Official Court Reporter.

40

B. G. CONNOLLY (for Def. Capital Trust) Exam. in Chief.

DEPOSITION OF DR. BERNARD GERVASE CONNOLLY

10 A witness examined on behalf of Defendant Capital Trust.

On this fifth day of December, in the year of Our Lord One thousand nine hundred and thirty, personally came and appeared, Bernard Gervase Connolly, of the City of Ottawa, already sworn and examined on behalf of the Plaintiffs, who being called as a witness on behalf of the Defendant, Capital Trust Corporation, deposes as follows:—

20 Examined by Mr. Campbell, K.C., of Counsel for Defendant Capital Trust.

Q.—You are the Managing Director of the Capital Trust Corporation, one of the Defendants in this Action?

A.—Yes.

Q.—Until your recent serious illness did you personally take an active interest in the administration of the affairs of the Estate Hugh Quinlan?

A.—Yes.

Q.—What was the date of your illness?

30 A.—I was in a railway accident on December 14th, 1928.

Q.—Did your illness follow soon after that?

A.—I was recovering from that, and about a month afterwards, I think, this nervous trouble set in.

Q.—Up to December 14th, 1928, did you take an active interest in the affairs of the Estate Quinlan?

A.—Yes.

40 Q.—Apart from the correspondence which your Company exchanged with the Honorable Mr. Perron, did you have any personal interviews with him in reference to the Estate Hugh Quinlan?

A.—Several.

Q.—Whenever you were in doubt in regard to a matter referred to the Estate Hugh Quinlan, whose advice did you seek?

Mr. Masson, K.C., of Counsel for Plaintiffs, objects to the form of the question as suggestive.

The objection is reserved.

B. G. CONNOLLY (for Def. Capital Trust) Exam. in Chief.

Q.—If you had any question of law affecting the Estate Hugh Quinlan, whose advice did you take?

A.—Mr. Perron's.

10 Q.—How long had you known the late Hugh Quinlan?

A.—About sixteen years.

Q.—How long had you known Mr. Robertson?

A.—About sixteen years.

Q.—Had you known them with some degree of intimacy?

A.—Oh, yes.

Q.—Do you know what were their relations with each other?

A.—Yes.

Q.—What were they?

A.—They were partners and friends.

20 Q.—They were partners, and they were friends, and Mr. Robertson was named in the Will as your co-executor?

A.—Yes.

Q.—Do you recall an interview with Mr. Robertson, in the month of July, 1927 to which Mr. Parent your Estates' Manager has testified?

A.—Yes.

Q.—Were you present at that interview?

30 A.—Yes, I was at one of them. I was the whole afternoon with them. We were with Mr. Robertson and Mr. Leamy for the whole afternoon.

Q.—That was on July 9th, 1927?

A.—Yes.

Q.—On that occasion were you shown this original letter Exhibit D-R-1, which your Company recently had in its possession?

Mr. Masson, K.C., of Counsel for Plaintiffs, objects to the form of the question as illegal.

40 The objection is reserved.

A.—Yes.

Q.—By whom were you shown the letter?

A.—Mr. Robertson.

Q.—Did the Capital Trust Corporation ever have in its possession the certificates for the 1151 shares of stock of Quinlan, Robertson and Janin, Limited?

A.—I do not think so, no.

B. G. CONNOLLY (for Def. Capital Trust) Exam. in Chief.

Q.—Do you say you do not think so, or is your answer “No”?

A.—I say no. I should be positive.

10 Q.—Did you ever have in your possession the certificate for the shares of Amiesite Asphalt Limited? And, by “you” I mean the Capital Trust Corporation?

Witness:—Is that the one that was transferred?

Counsel I am referring to the one apparently signed by Mr. Hugh Quinlan.

Mr. Masson, K.C., of Counsel for Plaintiffs, objects to the question as illegal.

20 The objection is reserved.

A.—Not that I know of.

Q.—Did you ever have the certificate for the shares of the Ontario Amiesite in your possession, apart from the time they were sent to you for signature?

A.—No.

30 Q.—You have told us you had a number of conferences from time to time with the Honourable J. L. Perron, K.C. At any of those interviews with Mr. Perron advise you of the necessity of making any other and different Inventory from the one you had prepared, and which Mr. Parent has told us was sent to Mr. Perron?

Mr. Masson, K.C., of Counsel for Plaintiffs, objects to the question as illegal.

The objection is reserved.

40 A.—No.

Q.—Did you have occasion to consider the proposed sale of the Fuller Gravel Shares belonging to the late Hugh Quinlan?

A.—Yes.

Q.—And, the correspondence shows you consulted Mr. Perron, and obtained some advice upon it?

Mr. Masson, K.C., of Counsel for Plaintiffs, objects to the question inasmuch as the correspondence speaks for itself.

B. G. CONNOLLY (for Def. Capital Trust) Exam. in Chief.

Q.—Apart from what Mr. Perron advised you, what was your own judgment as to the propriety of the sale at the price indicated, \$50,000.

10 Mr. Masson, K.C., of Counsel for Plaintiffs, objects to the question as illegal.

The objection is reserved.

A.—I thought it was a fair price.

Q.—Did you know something about the character of the property?

A.—I knew something about gravel pits.

20 Q.—Had you had some experience in dealing with gravel pits, or trying to sell them?

A.—Yes.

Q.—In the light of your experience and knowledge what did you think of the suggestion that the Estate should sell its holdings at \$50,000?

A.—I thought it was a proper thing to do.

30 Q.—At the time you consented to that sale had you knowledge of any suggestion of a possible merger of other companies in Ontario in the gravel business, such as subsequently happened?

Mr. Masson, K.C., of Counsel for Plaintiffs, objects to the question as leading.

The objection is reserved.

A.—No.

40 Q.—At the time this sale went through to Messrs. McCord, Rayner and Tummon, had you knowledge of any interest of the Defendant Robertson in the transaction as a purchaser?

A.—No,

Q.—Did you personally have occasion to consult the Honourable Mr. Perron in regard to this question of the alleged sale and/or transfer of shares of Quinlan, Robertson and Janin, Limited, to Mr. Robertson — the transaction referred to in this letter of June 20th, 1927, Exhibit D-R-1?

A.—It came up a couple of times at least.

B. G. CONNOLLY (for Def. Capital Trust) Exam. in Chief.

Q.—Upon whose advice did the Capital Trust Corporation do what it subsequently did in reference to that transaction, in regard to accepting the money sent to it?

10 Mr. Masson, K.C., of Counsel for Plaintiffs, objects to the question as illegal.

The objection is reserved.

A.—Mr. Perron was the one who said it was a contract and we had to live up to it.

Q.—Is the Mr. Perron to whom you refer the Honorable Mr. J. L. Perron referred to in Mr. Quinlan's Will?

20 Mr. Masson, K.C., of Counsel for plaintiffs, objects to the question as illegal.

The objection is reserved.

A.—Yes.

Q.—Apart from any question of personal character, as far as your knowledge goes, what is the general standing of Mr. A. W. Robertson from the point of view of financial responsibility?

30 Mr. Masson, K.C., of Counsel for Plaintiffs, objects to the question as irrelevant and illegal.

The objection is reserved.

A.—I think he is highly regarded.

Q.—But, apart from that? I mean from the point of view of his financial responsibility. Is he reputed to be a man of means?

40 Same objection.

Same reserve.

A.—Certainly.

B. G. CONNOLLY (for Defendant Capital Trust) Cross-exam.

Cross examined by Mr. Masson, K.C., of Counsel for Plaintiffs.

10 Q.—From the time you started to act as Testamentary Executors, to December 14th, 1928, you were not acting alone in the administration of the affairs of the Estate. Mr. Parent was acting with you?

A.—The bulk of it fell to Mr. Parent. My duties were more advisory. Mr. Parent did the work. I had a number of departments to see to. Mr. Parent had the Trust Department staff. I was always consulted when matters of importance had to be decided.

20 Q.—So, you were merely advising Mr. Parent during the period you mentioned, insofar as the administration of the affairs of the estate were concerned?

A.—I was, along with others. I was there, and Mr. Perron was also advising, and Mr. Robertson was also an adviser.

Q.—Mr. Parent was your Estates' Manager?

A.—Yes.

Q.—You said you had experience in gravel pits?

A.—Yes.

Q.—Extending over how long a period?

30 A.—We have an Estate at St. Catharines, the Thomas Conlon Estate. At the time it was left they wanted \$70,000.00 for it. We never get an offer of more than \$5,000, although we are willing to sell at \$10,000.

Q.—When was the interest of the Estate in the Fuller Gravel Company brought to your knowledge for the first time?

A.—I knew Mr. Quinlan used to spend a good deal of time when the company was first formed. Then I knew, of course, after he died, he still had the company.

40 Q.—So, at the time you began to act as testamentary executors you were fully acquainted with the affairs of the Fuller Gravel Company?

A.—I knew something of it. I did not know the particulars.

Q.—You had a fair idea of the value of the property?

A.—Some idea.

Q.—When you started to act as testamentary executors in the month of June, 1927, you had a fair idea of the value of the Fuller Gravel Limited?

B. G. CONNOLLY (for Defendant Capital Trust) Cross-exam.

A.—I had a Statement. I had some knowledge of the country, and the location, and I knew something of the company's business, and how it had lost certain contracts. I had all those things before me.

10 Q.—You were quite well posted in regard to the company?

A.—Fairly well.

Q.—That being so, how is it you valued all the shares of the Estate at \$1.00 in the Inventory which you made?

A.—That is a method. If you do not want to be positive you put down \$1.00, so that the matter can be brought up for further consideration.

Q.—Did you do the same thing with any other part of the assets of the Estate on which you were not positive?

20 A.—I would have to refer to Mr. Parent. He has the books.

Q.—You know, for instance, you had a great deal of discussion with the Succession Duties Department in reference to the valuation of the shares of Quinlan, Robertson and Janin, Limited, A. W. Robertson, Limited, and so on?

A.—Yes.

Q.—So, you were not positive about the value of those shares?

A.—The thing was open for discussion.

30 Q.—Why did you not put one dollar as the value of those shares, if you put one dollar as the value of the shares of the Fuller Gravel Limited?

A.—The other was so obvious that we could not put down one dollar; but in the case of the Fuller Gravel things were not so obvious, and required further consideration.

Q.—Was it not obvious to you that the Fuller Gravel shares were worth more than one dollar?

A.—Oh yes, there is no doubt of that.

Q.—Yet, you put one dollar?

A.—It was Mr. Parent who did that.

40 Q.—Not yourself?

A.—I did not do the book-keeping at all.

Q.—And, you had nothing to do so far as Fuller Gravel was concerned?

A.—Only, as I said, I knew what it meant.

Q.—Were you consulted about it?

A.—I was consulted on them all.

B. G. CONNOLLY (for Defendant Capital Trust) Cross-exam.

Q.—I understand when Mr. Perron was consulted on any important matters, he gave his advice in writing?

A.—I do not think all.

Q.—Mostly?

10 A.—I would not like to say positively about that. I think he often gave advice verbally.

Q.—But, he never gave you any advice which was contrary to the written advice he gave the Executors?

A.—Not that I know of.

Q.—Did you ever ask for the shares the Estate had in the different companies in which Mr. Quinlan was interested?

Witness:—To what shares do you refer.

20 Counsel:—Any share certificates: Quinlan, Robertson and Janin, Limited, Ontario Amiesite, or Amiesite Asphalt Limited?

A.—We never had them.

Q.—Did you ever ask for those share certificates?

A.—I do not think so.

By Mr. Campbell:—

30 Q.—Were you personally present when the Safety Deposit Box in the Bank of Toronto was opened the first time and a list of the contents made?

A.—Yes.

Q.—Who made the list of the contents?

A.—Mr. Parent and Mr. Leamy.

By Mr. Masson:—

40 Q.—You went back later to the same box in order to complete your inventory?

A.—The securities were all taken out, and listed, and put back in the box, and I think we signed a Statement showing what there were. Then, after we got, I suppose, administration of the Will Mr. Parent went back with Mr. Leamy.

By Mr. Campbell:—

A. W. ROBERTSON (*for Defendant*) *Examination in Chief.*

Q.—Do not speak about anything which may have happened when you were not personally present?

A.—I was not present.

10 And further deponent saith not.

J. H. Kenchan,
Official Court Reporter.

DEPOSITION OF A. W. ROBERTSON

20 A witness produced on the part of the Defendant.

On this ninth day of December in the year of Our Lord nineteen hundred and thirty, personally came and appeared; A. W. Robertson, of the City of Montreal, one of the Defendants in this case, Contractor, aged fifty-five years, a witness produced on the part of the Defendant, who being duly sworn doth depose and say as follows:—

Examined by Mr. Beaulieu, K.C., of Counsel for the Defendant:—

30 Q.—Will you please take communication of the various certificates of shares which have already been filed as Exhibits P-26, P-9, P-10 and P-27, and state if you were present or if Mr. Hugh Quinlan, whose signature appears in those documents, signed those documents in your presence?

A.—Yes.

Q.—Will you tell us when the signature was affixed on the document?

By Plaintiff's Counsel:—Objected to.

40 By the Court:—Reserved.

A.—As near as I can recollect, it was about the last week in May, 1927.

No cross-examination.

And further Deponent saith not.

A. A. Urquhart,
Official stenographer.

LOUIS N. LEAMY (for Defendant) Examination in Chief.

DEPOSITION OF LOUIS N. LEAMY

10 A witness produced on the part of the Defendant.

On this ninth day of December in the year of Our Lord nineteen hundred and thirty, personally came and appeared: Louis N. Leamy, of the City of Montreal, Book-keeper, aged fifty-four years, a witness produced on the part of the Defendant, who being duly sworn doth depose and say as follows:—

Examined by Mr. Beaulieu, K.C., of Counsel for the Defendant.

20 Q.—Mr. Leamy, you have already stated that you visited the late Hugh Quinlan in the course of April, 1927?

A.—Yes.

Q.—Did Mr. Hugh Quinlan speak about his business at the time?

A.—Yes.

Q.—Did he speak about his intention to transfer to Mr. Robertson the shares he was then holding in the Quinlan, Robertson & Janin Limited, in the Amiesite Limited, and Ontario Amiesite?

30 By Plaintiff's Counsel:—Objected to.

By the Court:—Maintained.

Q.—Did you report that conversation to Mr. Robertson?

By Plaintiff's Counsel:—Objected to this evidence.

By the Court:—Maintained.

40 Q.—You have already stated, Mr. Leamy, that you typewrote that document, being a letter bearing date 20th of June, 1927?

A.—Yes.

Q.—Did you take the wording of that letter from another document, coming from Mr. J. L. Perron?

By Plaintiff's Counsel:—Objected to as being illegal.

LOUIS N. LEAMY (for Defendant) Examination in Chief.

By the Court:—Maintained.

10 Q.—I notice this letter bears date 20th of June, 1927; are you prepared to state that it was prepared on that very same day?

A.—Yes.

Q.—After having prepared the letter, did you go to Mr. Quinlan's place on the same day?

A.—Yes.

Q.—Were you alone or with anybody else?

A.—With Mr. Robertson.

Q.—Did you see the late Hugh Quinlan on that date?

A.—Yes.

20 Q.—Where you then in possession of the document already filed as Exhibit D-R-1?

A.—Yes.

Q.—Have you special reasons to ascertain the date when you were at Mr. Quinlan's place, as being the 20th of June, 1927?

A.—Yes.

Q.—Will you state what reasons you had to fix that date?

A.—Two cheques signed by Mrs. Hugh Quinlan on that day.

Q.—Signed in Mr. Quinlan's home?

A.—Yes, and by Mr. Robertson.

30 Q.—When you met Mr. Quinlan with Mr. Robertson, what did you do with the letter in question, D-R-1? Did you read it to him?

By Plaintiff's Counsel:—Objected to.

Q.—Did you read the letter to the late Hugh Quinlan?

A.—Yes.

Q.—In the presence of Mr. Robertson?

A.—Yes.

40 Q.—Did he appear to understand what you were reading?

By Plaintiff's Counsel:—Objected to.

By the Court:—Reserved.

A.—Yes.

Q.—Did Mr. Hugh Quinlan express his approval or disapproval of the contents of that letter?

LOUIS N. LEAMY (for Defendant) Examination in Chief.

By Plaintiff's Counsel:—Objected to.

By the Court:—Maintained.

10 Q.—Did he say anything after having heard the reading of that letter?

By Plaintiff's Counsel:—Objected to.

By the Court:—Objection maintained.

Q.—Was the document D-R-I handed to or in the hands of the late Hugh Quinlan after or before you read it to him?

20 By Plaintiff's Counsel:—Objected to.

By the Court:—Reserved.

A.—No, sir, I read it to him.

Q.—Now, Mr. Leamy, leaving aside that question, I understand you are the joint liquidator of A. W. Robertson Limited?

A.—Yes.

Q.—You are in possession of the Minute Books?

A.—Yes.

30 Q.—Will you file as Exhibit D-R-37 copy of the minute relating to the organization of the company, that is the purchase by the A. W. Robertson Limited?

A.—Yes, I gave them to you.

Q.—Are those the minutes you are referring to?

A.—Yes.

Q.—What was the date of the organization of the Company? (You have the Letters Patent there).

A.—The 14th of October, 1919.

40 Q.—I want you to file as Exhibit D-R-37 the minutes of the 4th of November, 1919, or rather an extract of those minutes from Page 23 to Page 28, and that will be Exhibit D-R-37?

A.—Yes.

Q.—Will you file as Exhibit D-R-38 the minutes of the 3rd day of August, 1925?

A.—Yes.

Q.—Will you please file as Exhibit D-R-39 copy of the Minutes of a meeting of Directors of the 11th of March, 1929?

LOUIS N. LEAMY (for Defendant) Examination in Chief,

By Plaintiff's Counsel:—Objected to the production of this document as illegal.

By the Court:—Reserved.

10

A.—Yes.

Q.—Now it is to your knowledge that the A. W. Robertson Limited was the owner of a certain number of shares in the National Sand & Material Company?

A.—Yes.

Q.—It is also to your knowledge that those shares were sold?

A.—Yes.

20 Q.—Will you take communication of a letter bearing date the 4th of February, 1929, and state if this letter refers to the price which was obtained for the shares belonging to A. W. Robertson Limited, in the National Sand & Material Company?

Do you know the name of the merger who bought the Fuller Gravel Company?

A.—The Consolidated Sand & Material Company.

Q.—Do you know the company who bought the shares which belonged to the A. W. Robertson Company in the National?

A.—The same merger.

30 Q.—Will you take communication of a letter bearing date the 4th of February, 1929, and state if this letter refers to the price which was obtained for the shares belonging to A. W. Robertson Limited, in the National Sand & Material Company?

A.—Yes.

Q.—I see that there is annexed to that letter a little memo establishing the amount, \$145,301.22; was that memo attached to the letter when you received it?

A.—Yes.

40 Q.—Does that show the total amount coming to A. W. Robertson for the whole of the shares they had?

A.—Yes, that is correct.

Q.—Can you state if this amount of \$145,301.22 and \$96.00 were placed to the credit of A. W. Robertson Limited?

A.—Yes.

Q.—Have you a statement showing that?

LOUIS N. LEAMY (for Defendant) Examination in Chief.

A.—The Bank of Toronto statement for the month of February, 1929, deposit on February 4th, \$145,301.22, and on February 6th, \$96.00, to the credit of A. W. Robertson, Section 8, Welland Ship Canal.

10 Q.—And from that date it formed part of the assets of A. W. Robertson Limited?

A.—Yes.

Q.—Am I right in stating it was the full amount coming to A. W. Robertson for the shares?

A.—Yes.

Q.—Will you file that letter of February 4th, 1929, as Exhibit D-R-40?

A.—Yes.

20 Q.—There was some question about the O'Brien Interests in the Welland Ship Canal; it was stated the O'Brien Company did not put their shares or bonds as a deposit with the Government; is it to your knowledge, Mr. O'Brien offered his share of bonds to be used as a deposit in that contract?

By Plaintiff's Counsel:—Objected to this evidence; if there was an offer it should be in writing.

By the Court:—Reserved.

30 A.—Yes.

Q.—How do you know that fact?

A.—Mr. J. O. O'Brien had called Mr. Quinlan on the telephone from Ottawa.

Q.—In your presence?

A.—Yes.

By Plaintiff's Counsel:—

40 Q.—Did he speak to you?

A.—Mr. O'Brien spoke to me and asked me, or told me that he wanted to talk to Mr. Quinlan.

Q.—Quinlan or Robertson?

A.—Mr. Quinlan.

By Defendant's Counsel (Continuing):—

Q.—Mr. Quinlan was there present?

LOUIS N. LEAMY (for Defendant) Examination in chief.

10 A.—Yes, only he and I. Mr. Robertson was away that winter down south, and Mr. O'Brien offered to send him his one-third share of the \$550,000.00 worth of bonds down to here, for his one-third share, and Mr. Quinlan replied that he had not got them now, but should he get them later he would call on him.

By Plaintiff's Counsel:—Objected to.

By the Court:—Reserved.

20 Q.—About those bonds, amounting to \$550,000.00; I understand they were deposited partly from bonds belonging to the late Hugh Quinlan and partly from bonds belonging to A. W. Robertson?

A.—Yes.

Q.—Are you in a position to state all the bonds belonging to the Estate Hugh Quinlan have been remitted to the estate?

A.—Yes, I am.

Q.—How do you make that statement?

30 A.—A statement from the Bank of Toronto giving the official numbers of the bonds deposited, or sent by them to the Department at Ottawa, afterwards returned to Mr. Quinlan, then sent back by the Bank of Toronto to the Capital Trust, who in turn sent them to the Finance Department, the Finance Department gave us a list of the numbers of those very bonds, which corresponded with the list sent up to Ottawa in the beginning.

Q.—Is the list I am now exhibiting to you as forming D-R-28, the lists you have just referred to?

A.—Yes.

Q.—Did you do the checking of the list in order to see all the bonds which had come from the late Hugh Quinlan were remitted to his estate?

A.—Yes.

40 Q.—You have known Mr. Robertson and the late Hugh Quinlan for many years?

A.—Twenty-six years.

Q.—Do you know those two gentlemen have been related in business together for many years?

A.—Yes, for the past thirty-three.

Q.—Besides being associated in business, were they personal friends, to your knowledge?

A.—Yes.

LOUIS N. LEAMY (for Defendant) Cross-examination.

Q.—Am I right in stating that they were intimate friends?

A.—Yes, intimate friends.

10 Q.—Is it to your knowledge the late J. L. Perron was the
adviser of the late Hugh Quinlan?

A.—Yes.

Q.—For many years?

A.—Twenty years.

Q.—Was he to your knowledge consulted very often about
the Quinlan, Robertson & Janin, Amiesite Limited, and the On-
tario Amiesite Companies?

By Plaintiff's Counsel:—Objected to this evidence as illegal.

20 By the Court:—Reserved.

A.—Yes.

Q.—Mr. Leamy, will you take communication of this docu-
ment, which bears date the 30th day of December, 1913, being a
memo of agreement between Robertson & Quinlan, in connection
with the old company, Quinlan, Robertson Limited, to establish
what was to happen in the case of the death of one of the two
partners, and state if you have found a copy of this agreement in
your files?

30 By Plaintiff's Counsel:—Objected to.

By the Court:—Maintained.

Q.—Will you tell me if the other document I am now exhibit-
ing to you is the original of this same document you found on
your files?

By Plaintiff's Counsel:—Same objection.

40 By the Court:—Maintained.

Cross-examined by Mr. Masson, of Counsel for the Plain-
tiff:—

Q.—What time was it on the 20th of June, that you went
to the house of the late Mr. Quinlan?

A. B. COLLINS (*for Defendant*) *Examination in chief.*

A.—Between 11 and 12.

Q.—You rang the bell?

A.—Yes.

10 And further Deponent saith not.

A. A. Urquhart,
Official sténographer.

DEPOSITION OF A. B. COLLINS

20 A witness produced on the part of the Defendant.

On this ninth day of December in the year of Our Lord nineteen hundred and thirty, personally came and appeared: A. B. Collins, of the City of Belleville, Province of Ontario, Barrister and Sollicitor, aged forty-eight years, a witness produced on the part of the Defendant, who being duly sworn doth depose and say as follows:—

30 Examined by Mr. Beaulieu, K.C., of Counsel for the Defendant:—

Q.—Are you related to Mr. A. W. Robertson?

A.—I am a brother-in-law of Mr. Robertson.

Q.—Will you take communication of the Minute Books of the Fuller Gravel Company, and state on what date the Fuller Gravel Company was incorporated?

A.—The 18th of November, 1925.

40 Q.—It appears from By-Law No. 47 of the Fuller Gravel Company, Limited, which was adopted at a meeting of the Board of Directors, on January 27th, 1926, that the Company issued Preferred and Common shares of the Company to A. W. Robertson, to Hugh Quinlan, and F. D. Robertson, for and in consideration of the sale by A. W. Robertson and Hugh Quinlan to the Company, and the purchase of same by the Company, of all plants, tools, machinery, sidings, rights, equipment now erected in operation at the Fuller gravel pit, and all its real estate, consisting of farm lands, and gravel properties, with all rights, and to be paid for in shares of the Company, as follows:.....

A. B. COLLINS (for Defendant) Examination in chief.

10 Will you state if it is to your knowledge that the property described in that By-Law comprised all the properties which are now possessed by the Fuller Gravel Company, Limited in concessions 3, 4 and 5, of the Township of Huntingdon, in the County of Hastings?

By Plaintiff's Counsel:—Objected to.

By the Court:—Reserved.

A.—The By-Law does not specifically describe the real estate.

20 Q.—But at the time of the By-Law, was the Fuller Gravel Company in possession of some real estate in those concessions, Numbers 3, 4 and 5?

A.—It was in possession of real estate in Concessions 3 and 4.

Q.—Is the Fuller Gravel Company actually in possession of the same extent of property now as it was under that By-Law?

A.—The successor to the Fuller Gravel Company is.

Q.—So there has been no change in the possession, or as to the extent of the possession?

A.—No change as to the extent of the possessions.

30 Q.—Will you explain the difference between the Fuller Gravel property and the Crookston Quarry property? Are they located in the same locality as one piece of land?

A.—The Fuller Gravel Company consisted of parts of lots 8, 9 and 10 in the Fourth Concession of the Township of Huntingdon, and a small parcel of Lot No. 8 in the Third Concession, all of which is intact with the exception of the Township road passing between that which is in the third and that which is in the fourth.

40 Crookston Quarry property consists of certain parcels of land in the Eighth and Ninth Concessions of the Township of Huntingdon, and the properties are approximately four miles apart, or by travelled road, about six miles apart.

Q.—Am I to understand what is called the Fuller Gravel pit or Fuller Gravel property is one exploitation?

A.—Yes, absolutely.

A. B. COLLINS (for Defendant) Examination in chief.

Q.—It forms a whole?

A.—Yes.

Q.—And it is now as it was in 1927?

10

A.—Yes.

Q.—And as it was in 1926?

A.—The same property.

Q.—On the 8th of August, 1927, there was passed a resolution by A. W. Robertson Limited, purporting to sell to the Fuller Gravel Limited all lands and premises and other immoveable property of the Company, situated on the Third, Fourth and Fifth Concessions in the Township of Huntingdon, County of Hastings, Province of Ontario, and on the same date the Fuller Gravel Company appears to have bought the same property.

20

Will you tell me if after this date, the 8th of August, 1927, there was any change in the extent of the possessions of the Fuller Gravel Company?

A.—No change whatever.

Q.—So what was apparently sold there was already in possession of the Fuller Gravel Company?

A.—Yes.

30 Q.—Have you been instructed as solicitor to look over the titles of these various pieces of property?

A.—Yes.

Q.—Will you file the correspondence which you had with Mr. Robertson, or A. W. Robertson, Limited, in relation to these titles?

A.—Yes.

Q.—Will you file the correspondence as D-R-41?

A.—Yes.

40 Q.—Will you take communication of the Deed of Conveyance by Quinlan, Robertson Limited to A. W. Robertson Limited bearing date the 5th of October, 1927, and state if this deed has been registered according to the laws of Ontario?

A.—Yes, registration was effected through my office.

Q.—Did you at the same time effect the registration of two other deeds bearing the same date, the 5th of October 1927, and being a conveyance by the Crookston Quarries Limited to A. W. Robertson Limited, and by A. W. Robertson Limited to the Fuller Gravel Company, Limited?

A. B. COLLINS (*for Defendant*) *Examination in chief.*

A.—Without the documents before me I could not say it was the same time, but those registrations were effected.

10 Q.—In view of the correspondence that has been exchanged, am I right in stating that the resolution of the 8th of August, 1927, whereby the A. W. Robertson Limited purported to sell to the Fuller Gravel Limited certain pieces of property, was only for the purpose of rectifying titles which had been omitted?

A.—That would be correct.

Q.—It was not a new sale but a rectification of the previous sale wherein certain pieces of property were omitted through error?

A.—Yes, and owing to the fact the titles were not complete.

Q.—You have not got a plan of those various properties?

20 A.—I have a sketch here which will show the complete properties.

Q.—Will you file that sketch as Exhibit D-R-42?

A.—Yes.

Q.—Will you point out on the sketch you have already filed as Exhibit D-R-42, to what piece of property the resolution refers to, of the 8th of August, 1927, wherein it is said that A. W. Robertson Limited do sell to Fuller Gravel Limited all lands and premises and immoveable properties, situate on the Third, Fourth and Fifth Concessions, and draw it by a red line.

30 By Plaintiff's Counsel:—We make a general objection to this evidence.

By the Court:—Reserved.

A.—Yes.

By the Court:—

40 Q.—That is the whole property?

A.—Yes. It was referable to the whole property, although part of it had been previously transferred.

By Defendant's Counsel:—

Q.—What part was previously transferred?

A. B. COLLINS (*for Defendant*) *Examination in chief.*

By Plaintiff's Counsel:—Objected to as not being the best proof, and as being irrelevant.

10 By the Court:—Reserved.

A.—Speaking from recollection at the moment.....

By Plaintiff's Counsel:—I think that is insufficient.

By the Court:—Reserved.

20 Witness:—Speaking from recollection at the moment, I think it had all been transferred previous to that date, with the exception of the "V" shaped parcel, marked as "8 Acres".

Q.—Can you have a surveyor's plan prepared showing what is actually in possession of the Fuller Gravel Limited as it now stands, giving the lot numbers and all the description necessary to identify those various lots?

A.—Yes.

30 Q.—And then showing the same plan what was in possession of the Fuller Gravel Limited, prior to the 8th of August, 1927, to see if there is any difference between the lots then possessed and now possessed?

A.—Yes, I understand you.

Q.—Will you have that plan prepared as quick as possible?

A.—Yes.

Q.—How long will it take?

A.—It might be possible to have it by the end of the week.

Q.—If that plan needs any explanation, will you make a report in writing, under your oath, giving the explanation if necessary?

A.—Yes.

40 Q.—Will you file the plan as D-R-43?

A.—Yes.

Q.—Will you file as D-R-44, sketch showing the Crookston properties?

By Plaintiff's Counsel:—Objected to the filing of this exhibit as not being the best proof.

A. B. COLLINS (for Defendant) Cross-examination.

Cross-examined by Mr. Tanner, K.C., of Counsel for Plaintiff:—

10 Q.—Are you aware of the existence of any title giving the right to the Fuller Gravel Company to have possession prior to August 5th, 1927, of the various properties which are mentioned in the deeds of that date — deeds passed before Notary Poirier, Notary Public of the Province of Quebec, by A. W. Robertson Limited, and by Crookston Quarries to the Fuller Gravel Company?

20 A.—Fuller Gravel Limited were in possession of the properties prior to that date; at the moment I am not in a position to say at the exact date, when they obtained the legal title by transfer.

Q.—Was there an official plan in existence at the time showing the full extent of the properties in possession of the Fuller Gravel Company?

A.—Not to my knowledge.

Q.—Let us take a specific instance.

30 Is it to your knowledge that the Fuller Gravel Company dug in sand or gravel, let us say, out of part of Lot No. 10 in the Nineteenth Concession of the Township of Huntingdon, County of Hastings, which formerly belonged to Mr. Blue?

A.—I think I can correctly state it is to my knowledge we never owned any such property, and therefore did not operate upon it. There is no Nineteenth Concession.

Q.—Pardon, me, the Ninth Concession; that is the Crookston property known as Quarry.

A.—So far as I know, the Fuller Gravel Company did not operate in the Ninth Concession; that is the Crookston property known as Quarry.

40 Q.—When you say that the Fuller Gravel Company was in possession, can you state under your oath that the Fuller Gravel Company, prior to October 5th, 1927, actually dug sand or gravel out of half of Lot No. 8 in the Fourth Concession of the Township of Huntingdon, which was the south 80 acres of the east half of that lot?

A.—No, sir, I could not state specifically the exact location where operations were carried on; they were carried on upon the hill which those properties complete, and form the location.

A. B. COLLINS (for Defendant) Cross-examination.

Q.—I ask you the same question in respect to the south 80 acres of the west half of Lot No. 9 in the Fourth Concession of the said Township of Huntingdon?

10 A.—No, sir, I am not a surveyor and I do not know the exact location, except on the properties.

Q.—Is it to your knowledge that any gravel or sand were taken off by the Fuller Gravel Company from that particular piece of property?

A.—Which particular piece?

Q.—The two pieces just described.

A.—No, I must say I cannot tell you the exact location on which the operation are carried on, and no one can tell without a survey of the exact location.

20 Q.—I ask you the same question, in reference to 80 acres, being west one-half of Lot No. 8, in the Fourth Concession, and of 100 acres being east half of lot No. 9, in the Fourth Concession and part of Lot 10 in the Fourth Concession of the Township of Huntingdon; is your answer the same?

A.—My answer will be the same, that is I cannot give you the exact location where the operations are carried on.

Q.—Can you swear positively that prior to October 5th, 1927, the Fuller Gravel Company was in possession of the particular lots which I have just described to you?

30 A.—It was.

Q.—On what facts do you base yourself to justify that possession?

A.—The Fuller Gravel Company, Limited, was organized I think in the latter part of the year 1925, for the express purpose of operating that particular plant.

Q.—But you admitted a little while ago that By-Law No. 47 of the Fuller Gravel Company did not describe in a specific manner the properties taken over by the Fuller Gravel Company at the time?

40 A.—That is correct.

Q.—And you also said a little while ago that you could not identify any particular piece of property out of which the Fuller Gravel Company may have dug some sand or gravel, and particularly the properties which I mentioned to you, is that correct?

A.—Yes.

Q.—Well then how can you swear positively that Fuller Gravel Company was in possession of the lots described to you a few seconds ago by myself, seeing that you have no title to file and

A. B. COLLINS (for Defendant) Cross-examination.

also seeing that you cannot show any specific act of possession on those particular parcels of land by the Fuller Gravel Company?

10 A.—The only qualification I make to my answer is that I know from the actual knowledge of location, that the Fuller Gravel Company was operating on the lots described, concessions 3 and 4 of the Township of Huntingdon.

Q.—Was it operating on Lot 10 in the 9th Concession?

By the Court:—He has answered that.

By Plaintiff's Counsel:—

20 Q.—Will you file an Official Plan of the properties of the Fuller Gravel Company prior to October 5th, 1927, and also subsequently?

By Defendant's Counsel:—Objected to.

By Defendant's Counsel:—You cannot file an official plan.

A.—No, I am not the Registrar.

By Plaintiff's Counsel:—

30 Q.—Will you undertake to have an Official Plan certified by the Officer in charge?

A.—I will get a Registrar's abstract certified by him, and will show it at any time.

Q.—Are you aware of the Deed of Sale by Thomas Blue to A. W. Robertson Limited, passed June 6th, 1925, for \$2,000.00; 14 acres composed of part of Lot 10, in the 9th Concession, Township of Huntingdon, County of Hastings?

A.—I have seen the deed.

40 Q.—Did that form part of the properties of the Fuller Gravel Company prior to October 5th, 1927?

A.—No.

Q.—Did it form part of it subsequently?

A.—No, it never formed part.

Q.—Are you aware of a sale by a certain Mr. Wickens to A. W. Robertson, Limited, July 21st, 1927, for \$250.00?

A.—Yes, I was in charge of that.

A. B. COLLINS (*for Defendant*) *Cross-examination.*

Q.—Does that property form part today of the assets of the Fuller Gravel Company Limited?

A.—No.

Q.—You have the Torrance System in Ontario?

10 A.—Not in the County of Hastings; we have a registry office, not the Land Title System, but it will show at any given time the ownership.

Q.—All the titles in reference to the property are registered at length in the books of that Registry Office?

A.—Yes.

Q.—You can obtain abstracts from those books?

A.—Yes.

20 Q.—Would you mind to have prepared a Search Certificate in reference to these properties of the Fuller Gravel Company, about which we have been speaking a moment ago?

By Defendant's Counsel:—Is that under the Land Titles Act?

A.—No, it is the same as here, as they have a Registry Office.

I think I have already promised to secure a certificate for you.

30 By Plaintiff's Counsel:—

Q.—I understand it was a copy of the plan — the first one is a copy of the plan?

A.—Also Certificate of Search.

And further Deponent saith not.

40

A. A. Urquhart,
Official stenographer.

J. F. M. STEWART (for Defendant) Examination in chief.

DEPOSITION OF JAMES F. M. STEWART

10 A witness produced on the part of the Defendants.

On this ninth day of December in the year of Our Lord nineteen hundred and thirty, personally came and appeared: James F. M. Stewart, of the City of Toronto, Province of Ontario, Investment Banker, aged fifty-one years, a witness produced on the part of the Defendants, who being duly sworn doth depose and say as follows:—

20 Examined by Mr. Beaulieu, K.C., of Counsel for the Defendants:—

Q.—Mr. Stewart, I understand you are the President of the Stewart-Scully Company, Limited?

A.—Yes.

Q.—Have you been instrumental in putting through the sale of the outstanding capital of the Fuller Gravel Company, Limited, to a merger or consolidation, some time in May, 1928?

A.—Yes.

30 Q.—Will you take communication of these various letters and state if they are the letters received by you or sent by you in connection with that deal, to or from Mr. Robertson?

A.—I either received or wrote them.

Q.—Will you file all those letters as one exhibit, D-R-45, including eight pages?

A.—Yes.

Q.—I note the first letter you are now filing bears date 27th of April 1928, will you state if the negotiations began much earlier than that date?

A.—Probably ten days earlier; I would say around the middle of April.

40 Q.—That was the beginning?

A.—Yes.

Q.—Before that date, was there any intimation to Mr. Robertson that the formation of that merger which bought the Fuller Gravel Company was in progress or contemplated?

A.—Not from me.

Q.—Am I right in stating the Fuller Gravel Company was sold for the purpose of consolidating the various companies doing the same kind of business?

J. F. M. STEWART (for Defendant) Cross-examination.

A.—Our company purchased five plants at the same time, and consolidated them under the name of the Consolidated Sand & Gravel Company Limited.

10 Q.—In view of the consolidation, did you pay for the Fuller Gravel shares more than you would have paid without any consolidation in view?

A.—I would not have bought it at all without consolidation in view.

Q.—Is it a fact the formation of a merger was a reason to increase the price?

By Plaintiff's Counsel:—Objected to.

20 By the Court:—Reserved.

Q.—(Continued).....of the special shares of the Fuller Gravel Limited?

A.—The shares were worth more as part of the merger.

Q.—Whom did you negotiate with for the purchase of the Fuller Gravel shares?

A.—Only with Mr. Robertson.

Q.—Does that explain why you sent him the cheque personally?

30 A.—Not necessarily, but Mr. Robertson delivered all the stock.

Cross-examined by Mr. Masson, of Counsel for the Plaintiff:—

Q.—All the transactions in reference to the merger of five or six companies, last pretty long?

A.—It depends; this probably lasted thirty days.

Q.—You are the party who attended to that merger?

A.—Yes.

40 Q.—I understand that in order to make up that merger, that you had to see the different plants which were involved?

A.—No, I did not see them.

Q.—You received certain reports from somebody who went to see them?

A.—Yes.

Q.—I understand those plants were situated in different parts of Ontario?

A.—Yes.

Cross-examination
J. F. M. STEWART (for Defendant) ~~Examination in chief~~

Q.—And different people made different valuations from the point of view of assets or of income, and reports were made to you?

A.—Yes.

10 Q.—How long did that last, the valuations, visiting the plants, inquiring about the owners of the shares, and whether they were willing to sell and so on — how long did that last?

A.—I would say four or five weeks.

Q.—Is it not true it generally takes six months to make up a merger of that kind?

A.—This was not a complicated situation; I have taken years for some.

20 Q.—When did you acquire the first plant for the purposes of the merger?

A.—I acquired them all at once; we could not afford to own a gravel plant unless we owned them all.

Q.—I understand you proceeded by way of option given to you?

A.—Yes.

Q.—What was the date of the first option that you received?

A.—I cannot say now.

Q.—Could you give us the date?

A.—It is available.

Q.—Have you got copies of the options?

30 A.—In Mr. Robertson's case I had only his word for it.

Q.—You had written options?

A.—On some of them.

Q.—What was the first option you received?

A.—The first arrangement I made was with the Durham Sand and the Waterford Sand Companies; the arrangement was made with John E. Russell of Toronto, but was not put into writing.

Q.—What was the first one you put into writing?

40 A.—We had a writing in connection with the Paris Sand & Gravel, and the Superior Sand, but I cannot tell you each; they were within a week.

Q.—How long before the first written option did you get that option of the Durham Pit? You said that was the first you had?

A.—The Durham and Waterford were arranged between myself and John E. Russell.

Q.—Verbally?

A.—Yes.

J. F. M. STEWART (for Defendant) Cross-examination.

Q.—And it was before those put into writing, in reference to the Paris pit?

A.—Yes, and before Mr. Robertson's.

10 Q.—How long before the Paris Option did you get the Durham option?

A.—I would say we had them all inside of a week or ten days after Mr. Russell and myself had decided that there was a chance for a transaction.

Q.—I understand the Financial Statement of the National Sand & Gravel Company was submitted to you before purchasing the different companies that were merged — the Consolidated Sand rather.

20 Q.—Was the merger existing before the five companies were merged into the Consolidated Sand & Gravel Company?

Was the Consolidated Gravel & Sand Company existing?

A.—No; that charter was taken out for the purpose of taking in those five companies.

Q.—What is the date of the incorporation of the company?

A.—I think it is in the record here. Mr. Harnwell, the Secretary of the Company, brought them down here.

30 Q.—Were you interested in the incorporation of the company?

A.—Yes.

Q.—Was it incorporated under the laws of Ontario, or was it a Federal charter?

A.—I think it is a Provincial charter.

Q.—I understand a petition was drafted for the purpose of that incorporation?

A.—Yes.

Q.—Have you got a copy of it?

A.—It will be all in the charter.

40 Q.—Not the petition itself. You first sent a petition and then got the charter afterwards?

A.—I never signed one yet that did not come through the charter.

By Plaintiff's Counsel:—Plaintiff files as P-80 a certified copy of the Charter of the Consolidated Sand & Gravel.

ALBAN JANIN (for Defendant) Examination in chief.

And as Exhibit P-81 copy of the Petition or document that was issued for the purpose of obtaining the Letters Patent.

10 And further Deponent saith not.

A. A. Urquhart,
Official Stenographer.

DEPOSITION OF ALBAN JANIN

20 A witness produced on the part of the Defendant.

On this ninth day of December in the year of Our Lord nineteen hundred and thirty, personally came and appeared: Alban Janin, of the City of Montreal, Contractor, aged forty-nine years, a witness produced on the part of the Defendant, who being duly sworn doth depose and say as follows:—

Examined by Mr. Beaulieu, K.C., of Counsel for the Defendant:—

30 Q.—You have already stated that at various times you had conferences with the late Honourable J. L. Perron and Mr A. W. Robertson, for the purpose of valuing the shares which are now described in the letter of the 20th of June, 1927; do you recollect that after one of those conferences the late Honourable Mr. Perron telephoned to have an interview with Mr. Quinlan?

A.—Yes, I do.

Q.—Do you remember about what date it was?

A.—Yes, I do not remember the date, but it was in May.

Q.—In the latter or the first part of May?

40 A.—In the latter part of May, after I saw Mr. Quinlan.

Q.—When did you see him before that?

A.—In May, and earlier in the month.

Q.—In the early part of the month?

A.—Yes.

Q.—When you saw him in the early part of the month, was there any kind of transaction between Mr. Quinlan and Robertson?

ALBAN JANIN (for Defendant) Cross-examination.

By Plaintiff's Counsel:—Objected to.

By the Court:—Maintained.

10 Q.—Will you state what took place when the late Honourable Mr. Perron telephoned for an interview?

A.—We discussed between Mr. Perron, Mr. Robertson and myself the sum of the valuation which we had made for those various stocks, which Mr. Quinlan had expressed.....

By Plaintiff's Counsel:—Objected to.

By the Court:—Strike that part of the answer out.

20 Witness:—It was decided there that Mr. Perron would go himself and see Mr. Quinlan, and lay the proposition before him, and in our presence he called up Mr. Quinlan's house, and made an appointment next day to see him.

Q.—That is the only conversation to your knowledge ?

A.—Yes.

Q.—Which took place about that question?

30 Cross-examined by Mr. Masson, of Counsel for the Plaintiff:—

Q.—You did not listen over the telephone?

A.—I was in the room.

Q.—You did not heard what was said by the other party?

By the Court:—That is understood.

And further Deponent saith not.

40

A. A. Urquhart,
Official Stenographer.

E. PARENT (for Defendant) Examination in chief.

DEPOSITION OF EMMANUEL PARENT

10 A witness produced on the part of the Defendant.

On this ninth day of December in the year of Our Lord nineteen hundred and thirty, personally came and appeared: Emmanuel Parent, of the City of Ottawa, Accountant, aged fifty years, a witness produced on the part of the Defendant, who being duly sworn doth depose and say as follows:—

Examined by Mr. Beaulieu, K.C., of Counsel for the Defendant:—

20 Q.—You have already been examined several times; will you take communication of these various letters and copies of letters relating to the Hugh Quinlan Estate, and the Fuller Gravel Company and file those various letters as one exhibit, D-R-46?

A.—Yes.

Q.—I want to file the following letters, first, 19th of September, 1928, letter by A. W. Robertson to the Capital Trust Company.

30 By Defendant's Counsel:—If my learned friend will hand the witness a copy with the subject of the letter, he will get the originals.

Q.—(Continued) Letter of the 19th of September, 1928, A. W. Robertson to the Capital Trust.

Letter of the 3rd of April, 1929, from A. W. Robertson to the Capital Trust Company.

40 Letter of the 16th of April, 1929, same to same.

Letter of the 17th of June, 1930, from Honourable J. L. Peron to the Capital Trust Company.

Letter of the 29th of April, 1930, A. W. Robertson to the Capital Trust.

And letter of the 31st of March, 1930, from A. W. Robertson to the Capital Trust.

E. PARENT (for Defendant) Examination in chief.

By Plaintiff's Counsel:—Objected to as irrelevant.

By the Court:—Reserved.

10 A.—Yes, six letters to be filed.

By the Parties:—Under reserve of objections to the relevancy, the parties admit that the Honourable J. L. Perron, K.C., was admitted to the Bar of the Province of Quebec, in July 1895.

Was appointed a K.C. in 1903.

20 Was elected Batonnier of the Bar of Montreal on the 1st of May, 1922, for the year then beginning.

Was elected Batonnier General of the Province of Quebec on the 2nd of June, 1922, for the year then current.

Was appointed a member of the Legislative Council on the 13th of April, 1916.

A Minister in the Provincial Government, without portfolio, in 1920.

30 Minister of Roads in 1921.

Minister of Agriculture in 1929.

And that he was a member of the Legislative Assembly first for Gaspé in 1910, and subsequently for Vercheres in 1912, and a member of the Board of Public Instructions in 1909.

And this is the same Mr. Perron as mentioned in the will of the late Hugh Quinlan.

40 And further deponent saith not.

A. A. Urquhart,
Official Stenographrr.

HELEN KING (for Defendant) Examination in chief.

DEPOSITION OF HELEN KING

A witness produced on the part of the Defendant.

10 On this ninth day of December in the year of Our Lord nineteen hundred and thirty, personally came and appeared: Helen King, of the City of Montreal, Stenographer, aged forty years, a witness produced on the part of the Defendant, who being duly sworn doth depose and say as follows: —

Examined by Mr. Beaulieu, K.C., of Counsel for the Defendant:—

Q.—You have already stated you had been the Secretary of the late Honourable Mr. Perron?

20 A.—Yes.

Q.—In that quality, are you in the possession of the files of the Estate Hugh Quinlan?

A.—Yes.

Q.—Will you kindly file the various letters I will now mention to you, and which I have read into the files, that is to say, first,

A letter of Mr. Robertson to the Honourable J. L. Perron of date the 16th of August, 1927.

30 Secondly, a letter of the Honourable J. L. Perron to A. W. Robertson of date the 29th of August, 1927.

Thirdly, a letter from Mr. Robertson to Roy Miller, of date the 31st of October, 1927.

Fourthly, a letter from the Honourable J. L. Perron to Mr. Robertson, of date the 15th of July, 1930.

Fifthly, a letter of the Capital Trust to the Honourable J. L. Perron of date the 2nd of April, 1929.

40 And finally, a letter from Mr. A. W. Robertson to the Honourable J. L. Perron, of date the 4th of June, 1929?

A.—Yes.

Q.—Will you file same as D-R-48, six letters?

A.—Yes.

No Cross-examination.

And further Deponent saith not.

A. A. Urquhart,
Official Stenographer.

A. W. ROBERTSON (*for Defendant*) *Examination in chief.*

DEPOSITION OF A. W. ROBERTSON

10 A witness produced on the part of the Defendant.

On this ninth day of December in the year of Our Lord nineteen hundred and thirty, personally came and appeared: A. W. Robertson, of the City of Montreal, one of the Defendants in this case, Contractor, aged about fifty years, a witness produced on the part of the Defendant, who being duly sworn doth depose and say as follows:—

20 Examined by Mr. Beaulieu, K.C., of Counsel for the Defendant:—

Q.—Mr. Robertson, I have already exhibited to you the four certificates P-9, P-10, P-26 and P-27, and you have already stated that they were endorsed by the late Hugh Quinlan?

A.—Yes.

Q.—I think you have also stated that they were endorsed in your presence?

A.—Yes.

Q.—Will you state about what date they were endorsed?

A.—The latter part of May, 1927.

30 Q.—Will you explain under what circumstances these transfers were endorsed by Mr. Quinlan?

By Plaintiff's Counsel:—Same objection.

By the Court:—Objection maintained.

Q.—Will you state what was the reason of the endorsement on these certificates?

40 By Plaintiff's Counsel:—Objected to.

By the Court:—Maintained.

Q.—Will you state if at the time of the endorsement there was already an agreement between Mr. Quinlan and yourself as to the taking over of those shares?

By Plaintiff's Counsel:—Objected to.

A. W. ROBERTSON (*for Defendant*) *Examination in chief.*

By the Court:—Maintained.

10 Q.—Is it not a fact there was only one point left in abeyance at the time, that is to say the fixation of the value of them, and all the rest of the agreement was completed between yourself and Mr. Quinlan?

By Plaintiff's Counsel:—Same objection.

By the Court:—Maintained.

20 Q.—In the letter D-R-1 of date June 20th, 1927, reference is made of the shares of the Quinlan, Robertson & Janin Amiesite Asphalt, and Ontario Amiesite; will you state if you have acquired or purchased or obtained the shares of the Amiesite Asphalt Limited by any other agreements than the agreement mentioned in the letter D-R-1?

By Plaintiff's Counsel:—Objected to as not pleaded.

By the Court:—Maintained.

Q.—Is it to your knowledge that this letter D-R-1 has been read to the late Hugh Quinlan?

30 By Plaintiff's Counsel:—Same objection.

By the Court:—Reserved.

Q.—Will you take communication of it and state if it was read in your presence to the late Hugh Quinlan?

A.—Yes, it was.

Q.—Who read it?

A.—Mr. Leamy.

40 By Plaintiff's Counsel:—Same objection.

Q.—Where was it read?

By Plaintiff's Counsel:—Same objection.

By the Court:—Reserved.

A. W. ROBERTSON (*for Defendant*) *Examination in chief.*

A.—In Mr. Quinlan's room.

Q.—Was Mr. Quinlan in his bed at the time?

10 By Plaintiff's Counsel:—Same objection.

By the Court:—Reserved.

A.—Yes.

Q.—Was it read to Mr. Quinlan?

By Plaintiff's Counsel:—Same objection.

By the Court:—Reserved.

20 A.—Yes.

Q.—Did Mr. Quinlan express his approval or disapproval of the contents of this letter?

By Plaintiff's Counsel:—Objected to.

By the Court:—Maintained.

Q.—Did Mr. Quinlan say anything after the reading of that letter?

30 By Plaintiff's Counsel:—Objected to.

By the Court:—Maintained.

Q.—Did he make any signs at the reading of that letter?

By Plaintiff's Counsel:—Same objection.

By the Court:—Maintained.

40 Q.—At the time the letter was read to Mr. Quinlan, are you in a position to state what was his mental condition?

By Plaintiff's Counsel:—Same objection.

By the Court:—Reserved.

A.—He thoroughly understood what the letter was.

A. W. ROBERTSON (*for Defendant*) *Examination in chief.*

By Plaintiff's Counsel:—Objected to; he says he clearly understood what the letter was, and we object to that.

10 Q.—This letter bears date 20th of June, 1927, I am now referring to letter D-R-1; are you in a position to state at what date the letter was read to the late Hugh Quinlan?

A.—The 20th of June.

Q.—Have you any means of ascertaining the date when this letter was read in Mr. Quinlan's house?

A.—I know from the date and in addition to that I went over to fill in two cheques with Mrs. Quinlan on that date.

Q.—Have you got those two cheques in your possession?

A.—Yes.

20 Q.—Will you file those two cheques, both bearing date the 20th of June, 1927, both signed "Kate Quinlan", "A. W. Robertson", one made payable to McDonald & Wilson Co. Ltd., for an amount of \$395.02, and the other made payable to G. A. Ethier, M. Hamelin, A. Brosseau, for an amount of \$110.10., and file same as D-R-49 and D-R-50?

By Plaintiff's Counsel:—Objected.

By the Court:—Reserved.

30 A.—Yes.

Q.—Were those two cheques signed in the house by Mrs. Quinlan on the same date they bear, to wit, the 20th of June, 1927?

A.—Yes.

Q.—I notice in a letter from the Hon. J. L. Perron, there was a question of a letter which the late Hugh Quinlan is supposed to have addressed to you; was there any other letter besides the letter of June 20th, 1927, which is addressed to you to the late Hugh Quinlan?

40 A.—No.

Q.—Will you please take communication of a letter of September 26th, 1928, addressed to you and to the Capital Trust, by the Honourable J. L. Perron, which is already filed, and state if according to you it is by mistake that reference is made to a letter of the 20th of June, 1927, from the late Mr. Quinlan to Mr. A. W. Robertson?

A. W. ROBERTSON (*for Defendant*) Examination in chief.

By Plaintiff's Counsel:—Objected to as illegal.

Q.—Will you state if there exists or if there ever existed to
your knowledge a letter bearing date the 20th of June, 1927, by
10 Mr. Hugh Quinlan to yourself?

A.—No, I never received any letter or communication from
him on that date, written by him.

Q.—In this letter of the 20th of June, 1927, Exhibit D-R-1,
the shares therein mentioned are valued at the sum of \$250,000.;
will you state to the Court how this valuation was put upon those
various shares?

By Plaintiff's Counsel:—Objected to the answer of the wit-
ness to this question insofar as it tends to prove the contents of
20 this letter.

By the Court:—I will see whether it is legal or not.

A.—For some time Mr. Quinlan had been.....

Q.—We want to know the fixing of the value; how is it you
came to put a value of \$250,000.00 on the shares?

A.—After discussing with Mr. J. L. Perron and Mr. Janin.

Q.—Will you explain those discussions when they took pla-
ce, and what occurred during the discussions as to the fixing of
30 the value?

A.—They extended over several weeks, the discussions. I
came back from a trip the latter part of April, and immediately
after that.....

By the Court:—

Q.—We want to know how you arrived at \$250,000.00 instead
of \$275,000.00 or \$200,000.00?

A.—We had an agreement previously for the value of those
40 shares, and we took the same ratio of value to determine this.

By the Court:—

Q.—The agreement you refer to is the one of June 1925, C-4
with the return?

A.—Yes.

A. W. ROBERTSON (*for Defendant*) *Examination in chief.*

By Defendant's Counsel:—

10 Q.—Did you have several conferenc^es with Mr. Perron and Mr. Janin for the fixing of that value? [†]

A.—Yes.

Q.—How long did it take to fix the value?

A.—Well, it was not fixed until shortly before this letter of the 20th of June.

Q.—When did you begin your conferences for the fixing of the value between Mr. Perron and Mr. Janin?

A.—In the beginning of May.

20 Q.—Always referring to the discussions of the value between yourself and Mr. Janin and the Honourable J. L. Perron, leaving aside Mr. Quinlan, will you state what was the argument in connection with that valuation? How did you come to that?

By Plaintiff's Counsel:—Objected to, as it is conversation between third parties outside of the presence of the Plaintiff.

By the Court:—It is too general.

By Defendant's Counsel:—

30 Q.—You already mentioned that you took as a basis of valuation the previous arrangement of June, 1925; did you take into consideration other elements of value or other basis of valuation during those various conferences with the Honourable J. L. Perron and Mr. Janin?

A.—In Ontario Amiesite.....

By the Court:—

40 Q.—The discussion about fixing the value as per the agreement of the 25th of June, could not take weeks? It may take weeks to adopt it, or it may not, but to choose it as the basis, it could not take very long; did you discuss other basis to arrive at that figure, whatever it may have been?

A.—Yes, because one of the companies, the Ontario Amiesite, had never been considered previously, and it was a losing proposition, and in discussing that we had to offset the other prices by that much, whatever we thought was a fair basis.

A. W. ROBERTSON (*for Defendant*) *Examination in chief.*

By the Court:—

Q.—Always taking into consideration the basis of 85%?

10

A.—Approximately.

By the Court:—

Q.—What other basis besides the 85% did you take?

A.—We had the statements of the companies.

By the Court:—

Q.—You decided to offer about 85%?

20

A.—We decided, from what we knew, that that would be a fair basis, knowing what we did about the statements.

By Defendant's Counsel:—

Q.—Were the statements submitted to the Honourable J. L. Perron?

A.—Yes.

Q.—The statement of the three companies?

A.—Yes.

30

Q.—For various years?

A.—Yes, Mr. Perron had all the statements.

Q.—Did he know about the value of those various companies, or was he familiar with them?

A.—He would know as much as anybody could know from having discussed our affairs with us.

Q.—And finally the price of \$250,000.00, was it fixed by common agreement between the three of you?

A.—Mr. Perron was the deciding voice in it.

40 Q.—If the Honourable J. L. Perron had decided the value of \$250,000.00, were you of the opinion it was the full value of those shares that was put into the agreement?

By Plaintiff's Counsel:—Objected to.

By the Court:—Reserved.

A.—Yes.

Q.—You were in the contracting business for many years?

A.—Yes.

A. W. ROBERTSON (*for Defendant*) *Examination in chief.*

Q.—From your personal experience, do you consider the contracting business is what we might call a hazardous line of business?

A.—I do.

10 Q.—Is that according to your own experience?

A.—Yes.

Q.—There were many incidents of gains quoted before the Court; were there cases where you made heavy losses also?

A.—Yes.

Q.—Can you mention some of those losses you suffered in the course of your career?

By the Court:—More than once?

20 A.—Yes, on two occasions more than one-quarter of a million dollars loss.

By Plaintiff's Counsel:—

Q.—Will you explain how you came to sell the Fuller Gravel shares? Will you explain that transaction from the beginning to the end? Give your own version of it?

A.—How I came to sell the Fuller Gravel shares, or how I acquired them, do you mean?

30 Q.—First of all, you decided in your quality of co-executor to sell the shares of the Estate in the Fuller Gravel Limited. Did you consult with the adviser of the Estate before taking that step?

40 A.—Yes. I knew that the business was very competitive, and that there were features associated with it that made it undesirable that anybody would have to do with it, except somebody was operating it and willing to take a chance, and in the summer of 1927, after I came home, I was advised by our Toronto representative that conditions were very bad, and something had to be done to enable us to get business better than the prices then obtaining, and we worked along in 1927, by arrangement, and despite that fact, at the end of the year the business was still unfavourable, and when Mr. Stewart — Mr. J. L. Perron got the statements and he went over them, and he said that there was not any question but the estate should be out of the transaction entirely, and I told him the only one who would buy it, or at least I thought so, who would buy an interest in promoting the business, and we discussed it with Mr. Tooman, and decided on

A. W. ROBERTSON (*for Defendant*) *Examination in chief.*

taking in Mr. Miller, Mr. Rayner, Mr. McCord, Mr. Tooman and a friend of Mr. Tooman's, and we operated this until Mr. Stewart approached me first in the latter part of April, 1928, and in a few days I sold him the property.

10

By the Court:—

Q.—In the meantime you were still shareholders?

A.—Yes.

By the Court:—

Q.—May I ask you why you did not sell your share at the same time as the shares of the estate?

20

A.—If I tried to sell my shares, nobody would buy any of it; I had to agree to help finance and remain in the company; somewhere there is evidence to that effect; I had to finance those men to get them in; I told the Capital Trust and Mr. Perron and they discussed it with me several times, those men would not have come into the proposition, — I could not say we have made any money, except one summer, on a particular contract and so we had nothing but a very competitive business.

Q.—And the gentlemen you referred to were in a position to push the business with you?

30

A.—Tooman was the local manager, and the man who brought the proposition to us originally.

Mr. Rayner was the Toronto selling agent.

Mr. McCord ran a building supply company.

And Mr. Miller, who was to go in, was a contractor and user of the material.

40

Q.—When the shares of the Quinlan Estate were sold to those gentlemen, did you anticipate then the formation of the merger to which you later on sold the same company?

A.—Certainly not.

Q.—Did you ask Mr. Janin to go into the Fuller Gravel business?

A.—Yes, in the beginning.

Q.—What did he say?

A.—He would not have anything to do with it.

A. W. ROBERTSON (*for Defendant*) *Examination in chief.*

By Plaintiff's Counsel:—Objected to this evidence.

Q.—You finally sold all the outstanding capital of the company to a firm represented by Mr. Stewart, did you not?

10 A.—Yes.

Q.—You received the full amount of the price by a cheque to your order, \$180,000.00?

A.—Yes.

Q.—What did you do with the amount of that cheque?

A.—I distributed it amongst the other shareholders prorata for their respective holdings.

Q.—Was that distribution made by you absolutely without any agreement whatever, to the effect that you might get part of it back?

20 A.—No understanding directly or indirectly was I to get anything out of it.

Q.—You got your share and that was all?

A.—Yes, what I was entitled to, and they got their respective shares, and they kept it so far as I know.

Q.—They did not give it back to you?

A.—No, or anyone for me.

Q.—As to the O'Brien interest; will you state who made the agreement with O'Brien, as to their quarter interest? Was it you or Hugh Quinlan?

30 A.—Mr. Hugh Quinlan was the first man who discussed the proposition with the O'Brien interests. The situation was that from 1913 the O'Briens and ourselves had been interested in contracts together, and even at that time we had still a little interest together, and Mr. O'Brien and Mr. Quinlan, so far as my recollection serves me, went out for a drive and they made an arrangement that subsequently they discussed with me, and that was the beginning of that venture, that was Section 8 venture.

40 Q.—Were you in any other undertakings with Mr. O'Brien before that?

A.—Yes, in 1913 we had Section 3 of the Welland Ship Canal the same canal.

Q.—And Mr. O'Brien had an interest in that?

A.—Yes, a quarter interest, the same as Mr. Quinlan, Mr. Doheny and myself.

By Plaintiff's Counsel:—We object to all that proof about O'Brien.

A. W. ROBERTSON (*for Defendant*) *Examination in chief.*

By the Court:—Reserved.

By Defendant's Counsel:—

10 Q.—What was the result of that contract?

A.—It was abandoned by the Government during the war, and we received a settlement, — did not finish the work.

Q.—Did Mr. O'Brien have his share in that settlement?

A.—Yes.

Q.—To the knowledge of Mr. Quinlan?

A.—Yes. We were there from 1913 to 1918 before we got settled.

Q.—Was there any formal contract for Section 3, or was there nothing else but what you found in Section 8?

20 A.—Section 3 was an entity in itself, and I think Mr. Campbell drew the agreement for that work, but we had other contracts in Section 3 with Mr. O'Brien. Quinlan, Robertson Company Limited had a big bridge in Toronto.

By Plaintiff's Counsel:—Objected to.

Q.—You had several contracts of the same nature with the O'Brien people?

A.—Yes.

30 Q.—Were they negotiated in the same manner?

A.—For instance, in the Toronto work Quinlan & Robertson Limited took the work in their name; O'Brien and Doheny's names did not appear at all; when the loss was made O'Brien and Doheny paid their one-half and we paid the other.

Q.—And there was no writing?

A.—I do not remember of any writing. Mr. Campbell might know.

By Mr. Campbell, K.C.:—I am not going to testify.

40 Witness:—I do not remember of any writing.

By Defendant's Counsel:—

Q.—Will you file, in order to complete the record, letters relating to the Ontario Amiesite, that is to say the four letters relating to the Ontario Amiesite, as Exhibit D-R-51?

A.—Yes.

A. W. Robertson (for Defendant) Cross-examination.

Q.—Will you file as D-R-52 a letter addressed by you to Mr. Roy Miller, and state if you sent that letter to Mr. Miller?

A.—Yes, dated 19th of September, 1927.

10 Q.—Will you file as D-R-52, and D-R-53 two letters from A. W. Robertson Limited, in connection with the Fuller Gravel transaction of September 8th, 1927, and November 2nd, 1927?

A.—Yes.

Q.—Will you file as D-R-54 a letter by you to the Honourable Mr. J. L. Perron, of date the 29th of October, 1927, and an answer by the Honourable J. L. Perron to yourself of date the 31st of October, 1927, and state if you sent the first letter and received the second one?

A.—Yes.

20 Q.—You notice by these letters you consulted the Honourable J. L. Perron as to the writing off of a certain amount, \$98,000.00 for the McA'Nulty stock; will you state if it was your practice, as co-executor of the estate, to consult the Honourable J. L. Perron in all matters appertaining to the Estate?

A.—Yes.

Q.—How long have you been in business with the late Hugh Quinlan?

A.—We began operating together in 1897.

Q.—Did you operate with him continually?

A.—From 1897 up to 1927 — thirty years about.

30 Q.—Without any interruption?

A.—We were always doing the same work together in that time.

Q.—Were you also a personal friend of the late Hugh Quinlan?

A.—Yes.

Cross-examined by Mr. Tanner, K.C., of Counsel for the Plaintiff:—

40 Q.—Mr. Robertson, in respect to the Fuller Gravel shares, is it not a fact that when the shares of the Fuller Gravel Company were sold during the course of the month of May, 1928, that you appeared on the books of the Fuller Gravel Company as the owner of 1550 preferred shares?

A.—The book records will show that, I have just forgotten.

Q.—Is it not a fact at the time of Mr. Quinlan's death, you were the owner of only 1,000 shares, preferred, in the Fuller Gravel Company?

A.—Yes, I think that is approximately correct.

A. W. Robertson (for Defendant) Cross-examination.

Q.—And that at the time of the sale of the shares of the Fuller Gravel Company, you were then, according to the books of the Company, the owner of 1550 preferred shares?

10 A.—It is a fact that I was compelled to take over the Miller and Tooman, and two new shares, and thereby had to increase my holdings in the company, as they refused to take them.

Q.—You mean to say they could not pay to the Estate Quinlan the amount, which, according to you they had originally agreed to pay?

A.—I do not say they could not, I say they would not keep the stock.

Q.—Then did you return to the Quinlan Estate the proportionate profit on those shares which Mr. Tooman and the others did not keep?

20 A.—I did not.

Q.—You referred to \$98,000.00 of a claim against McNulty, which was written off; is it not a fact that shortly after, the next year, this amount was reinstated in the balance sheet?

A.—My recollection is that the Income Tax Department raised some objection to it, but I have forgotten the details; it was worthless anyway, and even if they objected to it, it was no reason why we should not write it off.

By the Court:—

30 Q.—They were worthless when they were struck from the books, and still worthless when you entered them back?

A.—Yes.

By Plaintiff's Counsel:—

40 Q.—Is it not a fact that the payments due to the Quinlan Estate in reference to the shares purchased by Mr. Rayner and Mr. McCord, that the payments were made subsequently to the time you received the cheque from the Consolidated Sand Company?

A.—What money do you mean, or what payments?

Q.—I understand that Mr. Rayner and Mr. McCord had not paid in full the Quinlan Estate up to the month of May 1928, for the shares which they had purchased, is not that right?

A.—By agreement they had not paid them in full.

A. W. ROBERTSON (*for Defendant*) *Re-examination.*

Q.—And is it not a fact those shares were finally paid to the Estate subsequently, to the sale of the shares made to the Consolidated Sand & Gravel Company?

10 By the Court:—That is explained.

By Plaintiff's Counsel:—Question withdrawn.

Re-examined by Mr. Beaulieu, K.C., of Counsel for the Defendant:—

Q.—I notice in your examination on Discovery you stated as follows:—

20 “Q.—I understand the share certificates that were handed over to you by Mr. Leamy were endorsed on the day mentioned on the books of the share certificates, that is to say on the 22nd of June, 1927.”

And you answered:—

“Yes.”

Do you wish to correct that statement?

30 A.—Yes, that was the date of the transfer.

By Plaintiff's Counsel:—Objected to this evidence.

By Defendant's Counsel:—Will you explain that answer in you discovery.

By Plaintiff's Counsel:—Same objection.

Q.—Will you read that and give your explanation, if you have any to give?

40 A.—The question asked was, “I understand the share certificates that were over to you by Mr. Leamy, were endorsed on the day mentioned on the books of the share certificates”.

I thought that word “endorsed” was “transferred”; that was the day these certificates were transferred, the day that Mr. Petrie filled it in.

And further Deponent saith not.

A. A. Urquhart,
Official Stenographer.

E. L. PARENT (for Defendant) Examination in chief.

DEPOSITION OF E. L. PARENT

10 A witness produced on the part of the Defendant.

On this ninth day of December in the year of Our Lord nineteen hundred and thirty, personally came and appeared: E. L. Parent, of the City of Ottawa, Accountant, aged fifty years, a witness produced on the part of the Defendants, who being duly sworn doth depose and say as follows:—

Examined by Mr. Campbell, K.C., of Counsel for the Defendants:—

20 Q.—Mr. Parent, have you got before you the original letter from the Honourable Mr. Perron, addressed to the Capital Trust and Mr. A. W. Robertson, dated the 26th of September, 1928, of which you filed an extract as Exhibit P-C-23?

A.—Yes.

Q.—Mr. Perron in that letter deals with various items.

Look at the item bearing No. 1, referring to a letter from the late Mr. Quinlan to Mr. A. W. Robertson, dated the 20th of June, 1927; did you ever find in the files of the Estate such a letter?

30 A.—No.

Q.—Immediately before that paragraph, there is a reference to a conference of yesterday morning, did you attend that conference?

A.—Yes.

Q.—What letter, if any, was discussed at that conference?

A.—Mr. Robertson's letter of the 20th of June, 1927.

No Cross-examination.

40 And further Deponent saith not.

A. A. Urquhart,
Official Stenographer.

F. AYLESWORTH (for Defendant) Examination in chief.

DEPOSITION OF FRASER AYLESWORTH

10 A witness produced on the part of the Defendant.

On this twenty-ninth day of December in the year of Our Lord nineteen hundred and thirty, personally came and appeared: Fraser Aylesworth, of the Town of Madoc, in the Province of Ontario, Land Surveyor, and Dominion Land Surveyor, aged fifty-eight years, a witness produced on the part of the Defendant, who being duly sworn doth depose and say as follows:—

20 Examined by Mr. Beaulieu, K.C., of Counsel for the Defendant:—

Q.—For how many years have you been practising?

A.—Since 1886.

Q.—Always in Ontario?

A.—Twenty years for the Dominion Government in the North-West.

Q.—How many years in Ontario?

A.—The balance.

Q.—Do you know particularly the property of the Fuller Gravel Company?

30 A.—Yes, I have been over it.

Q.—Have you prepared a plan of that property?

A.—Yes.

Q.—Will you please exhibit the plan, explain it and file it?

A.—This is the plan showing Lots 8 and 9, in the Fourth Concession of the Township of Huntingdon in the County of Hastings.

40 It shows the West half of Lot 8, except portions to Post and the Railway. Post owns ten acres of the north end, and then the Canadian National Railways runs through it, leaving a balance of 88 acres, more or less.

Q.—Will you explain what can be found on that property? What is the nature of the plan?

A.—The gravel pit hill extends all through this south-east corner of the hill, which is on the east half of Lot 8, and on the west half of Lot 9, and on the east half of Lot 9, that is the gravel

F. AYLESWORTH (for Defendant) Examination in chief.

pit, and the rest is farm land, but that hill down at the south-east corner is supposed to be gravel, so far as they have tested.

Q.—The boundaries of that property are mentioned on your plan?

10 A.—Yes.

Q.—Mentioned in red, that is the limits of the property?

A.—Yes; I measured the north end, but I have forgotten to put them on; I measured the south end so as to check up, and measured up between 8 and 9.

Q.—So that land comprises the whole Fuller Gravel property?

A.—Yes.

20 Q.—What is the distance between that property and the Crookston Quarry property?

A.—Three miles and a half.

Q.—So there is no connection at all between the two properties?

A.—None whatever; I surveyed the Crookston property on December 17th, 1896, and it was a very cold day too.

Q.—Would you please take communication first of the deed of sale by A. W. Robertson Limited, to the Fuller Gravel Limited, read the description of the strips of land, which were supposed to be transferred, and mention those strips of land on the plan?

A.—They are there.

30 Q.—Give them a number or letter.

A.—Firstly; the south eighty acres of the east half of Lot No. 8 in the Fourth Concession; I have that on there.

Q.—Where is it marked?

A.—Right there.

Q.—What letter?

A.—I have Number 1.

Q.—So Number 1 is the strip of land described in the first paragraph of the Deed of Sale of Robertson to the Fuller Gravel Company?

40 A.—Yes.

Q.—Being part of Exhibit P-C-37?

A.—Yes.

Q.—Will you proceed and state how you mention on your plan the property described in the same Deed of Sale, in the second paragraph?

A.—The south 80 acres of the west half of Lot Number 9.

F. AYLESWORTH (for Defendant) Examination in chief.

Q.—Where is that mentioned on your plan? Is there a number upon it?

A.—I have Number 9 on the plan.

Q.—Mark it with a letter so as we can verify it.

10 A.—I have Number 9, but I will put Number 2.

Q.—Will you take communication of another Deed of Sale, forming part of the same exhibit, and appearing to be a sale by Crookston Quarry Limited to the Fuller Gravel Limited, and state where appears on the plan various strips of land therein described?

A.—That is same as we had before; I have that down here as Number 3, being the west half of Lot Number 8, excepting there those portions heretofore conveyed to.....

20 I have that down here as Number 3.

Q.—Will you proceed with the others?

A.—Secondly; the east half of Lot Number 9 in the Fourth Concession, etc. etc.

I have that down here, marked Number 4.

Thirdly; that part of Lot 10 in the Fourth Concession of the said Township of Huntingdon.....

30 That is in the same deed as Number 4, all from the same party.

Q.—Is it mentioned as Number 4 on your plan?

A.—No, I have it Number 5.—

Q.—Turn over the page, and there are other strips of land, and complete the marking of those various pieces of land.

A.—Thirdly; that part of Lot 19 in the Fourth Concession in the said Township of Huntingdon; etc.

40 Q.—Will you mark that strip of land as Number 5?

A.—Yes, I have it Number 5, but I will mark it as 5-A.

Q.—Then fourthly?

A.—That part of the east lot Number 8 in the Third Concession of said Township of Huntingdon.

Q.—Can you identify that strip of land?

A.—Yes, as Number 6.

W. E. TUMMON (for Defendant) Examination in chief.

Q.—There is no other strip of land described in that property?

A.—No,

10 By Defendant's Counsel:—It is already mentioned as D-R-
43.

No Cross-examination.

And further Deponent saith not.

A. A. Urquhart,
Official Stenographer.

20

DEPOSITION OF WILLIAM E. TUMMON

A witness produced on the part of the Defendant.

On this twenty-ninth day of December in the year of Our Lord nineteen hundred and thirty, personally came and appeared: William E. Tummon, of the City of Tweed, Ontario, Contractor, aged fifty-one years, a witness produced on the part of
30 the Defendant, who being duly sworn doth depose and say as follows:—

Examined by Mr. Beaulieu, K.C., of Counsel for the Defendant:—

Mr. Tummon, are you familiar with the property of the Fuller Gravel?

40 A.—Yes.

Q.—How long have you been familiar with that property?

A.—All my lifetime.

By Plaintiff's Counsel:—Objected to.

By Defendant's Counsel:—

WILLIAM E. TUMMON (for Defendant) Cross-examination.

10 Q.—Will you take communication of the plan already filed as D-R-43, look at the various pieces of land, which have been marked by Mr. Aylesworth as Numbers 1, 2, 3, 4, 5, 5-A and 6, and state if those various strips of land have formed part of the property of the Fuller Gravel Company for many years?

By Plaintiff's Counsel:—Objected to as illegal.

By the Court:—

Q.—Look at this plan and state if it includes, or if all the property included in that plan, has always been in the possession of the Fuller Gravel Company?

20 A.—You want me to look at this without the description you have?

By Defendant's Counsel:—

Q.—Yes, as it is already marked by Mr. Aylesworth, according to the description.

A.—Yes, sir, all the properties on this plan circles by the dotted red line were in the possession of the Fuller Gravel Company, and have been ever since the beginning.

30 Cross-examined by Mr. Masson, of Counsel for the Plaintiff:—

Q.—What do you mean by possession?

A.—Used for the purposes of the Gravel Company's operations there.

Q.—I understand on that plan, as it was explained by Mr. Aylesworth, that there is a charge for farming purposes only?

A.—No, sir.

40 Q.—Do you mean to say that all the lots described on this plan filed as D-R-43, are good for gravel and none of it is good for farming?

A.—No, sir.

Q.—So all the lots mentioned on that plan, according to you, are not farm lands, — none of them?

By the Court:—That is not necessary to ask.

WILLIAM E. TUMMON (for Defendant) Cross-examination.

By Defendant's Counsel:—

10 Q.—I understand since your last examination you found another cheque relating to the acquisition by yourself of the shares of the Fuller Gravel Company?

A.—Yes.

11? Q.—Will you file that cheque to form part of Exhibit D-R-11?

A.—Yes.

By Plaintiff's Counsel:—

20 Q.—Why did you not bring that cheque the last time you came to Court?

A.—I had none of the cheques with me the last time I was here.

Q.—Why did you send it to your lawyer?

A.—The Bank could not locate it; the other two cheques forming part of \$2500.00, I gave on the Royal Bank at Tweed, the banker found those two cheques, and by telephone I called the Standard Bank, or the accountant there, now the Bank of Commerce at Belleville, and asked him to try and locate the cheque; he made a search but did not find it, and I again asked the manager to make a search, and he found that cheque.

30 Q.—Are you sure this is the only cheque with the two cheques you have already filed with that one, are the only ones you gave with reference to those shares?

A.—In reference to the shares of the Fuller Gravel Company; I gave a cheque of \$10,000.00 in the first place that I borrowed, in order to pay for the 200 shares; then Mr. Robertson took them when I could not carry them.

Q.—Where is that cheque?

A.—I have not got it with me.

Q.—Why did you not bring it with you?

40 A.—I was not asked to file it.

Q.—All the cheques given in reference to the Fuller Gravel shares, you were summoned to bring here with you the last time you came to Court?

A.—No, sir, I was just asked to file certain shares by Mr. Beaulieu, and I filed them.

Q.—From whom did you borrow the money for the \$10,000?

A.—From Mr. Robertson.

WILLIAM E. TUMMON (for Defendant) Cross-examination.

Q.—To whom did you pay it back?

A.—To Mr. Robertson.

Q.—When did you pay it back?

10 A.—It was paid back in this way, Mr. Robertson loaned me the money; I bought the 200 shares with that cheque; I then owed Mr. Robertson personally for the \$10,000.00, and was to pay him the \$10,000.00, and as I gave my evidence before, my health was not well, I went to Mr. Robertson and explained to him that if anything should happen to me, that those shares would be a liability to my wife and family instead of an asset, and Mr. Robertson agreed I should keep only the shares I could pay for.

20 Q.—So those shares for which \$10,000.00 were paid to the Capital Trust Company by a cheque from you, were shares that stood in the name of Robertson?

A.—No, sir; they were shares that came to me, but which Robertson took in payment of \$7,500.00 of the \$10,000.00 I owed him, as I had already paid him in cash \$2500.00.

Q.—Did you keep those shares for the \$2500.00?

A.—Yes, until I went to Mr. Robertson and explained the condition of my health, and he personally agreed to take those shares in payment of the money.

Q.—How long did you keep those shares in your possession?

A.—For some weeks or a month.

Q.—You were the owner of them.

30 A.—Yes.

And further Deponent saith not.

A. A. Urquhart,
Official Stenographer.

A. B. COLLINS (recalled for Defendant) Cross-examination.

DEPOSITION OF A. B. COLLINS

A witness produced on the part of the Defendant.

10 On this twenty-ninth day of December in the year of Our Lord nineteen hundred and thirty, personally came and appeared: A. B. Collins, of the City of Belleville, Province of Ontario, Barrister at Law, aged forty-eight years, a witness re-called on the part of the Defendant, but Cross-examined by Plaintiff's Counsel, who being duly sworn, doth depose and say as follows:—

Cross-examined by Mr. Masson, of Counsel for the Plaintiff:—

20 Q.—The last time you came to Court you were asked to bring with you a plan of the Fuller Gravel property, and at the same time a Certificate of Search; did you bring them with you?

A.—Yes. I had Mr. Aylesworth produce the plan, and I have the abstracts showing the title.

Q.—Will you file that, that is the certificate from the Registrar's Office, of the County of Hastings, as Exhibit P-82.

A.—Yes.

30 By Mr. Campbell, K.C.:—In the testimony of Dr. Connolly, at page 213 of Defendant's testimony, Line 15, the amount "\$20,000.00" should read "\$70,000.00".

Deposition of Dr. Connolly for the Plaintiff, Page 275 of the Plaintiff's testimony, at line 8 — "Two consultations", should read "Several consultations".

40 I also find that I made a mistake in the numbering of my exhibits, Exhibits 3, 4 and 5 at enquete, so that there are in fact no exhibits D-C-3, 4 and 5 produced. It is just a duplication of the numbering.

By Mr. Beaulieu, K.C.:—And also in Mr. Robertson's evidence, Page 284, Testimony of Mr. Robertson, twelfth line, should read "loss" instead of "list".

And further Deponent saith not.

A. A. Urquhart,
Official Stenographer.

ADMISSION OF PARTIES.

The Parties admit that all the documents filed or to be filed
by Plaintiffs or Defendants in this case have been duly signed
10 by those whose names appear thereon, and they have been re-
ceived by those to whom they were addressed, subject to veri-
fication and contrary proof in particular cases.

The parties further agree that all the copies filed shall avail
if without objection in that respect for the purposes of proof as
if the originals were filed.

J. H. Kenehan,
Official Court Reporter.

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DOMINION OF CANADA

IN THE SUPREME COURT OF CANADA

(OTTAWA)

On appeal from a Judgment of the Court of King's Bench, in appeal.

Angus William Robertson,

(Defendant in the Superior Court and Appellant in the Court of King's Bench, in appeal),

APPELLANT.

— and —

Ethel Quinlan, & vir, & al.

(Plaintiff's in the Superior Court and Respondents in the Court of King's Bench, in appeal),

RESPONDENTS.

— and —

Capital Trust Corporation Limited,

(Defendant in the Superior Court),

— and —

Dame Catherine Ryan, & al.

MIS-EN-CAUSE.

THE CASE

VOL. IV. — DEFENDANT'S EVIDENCE

BEAULIEU, GOVIN, MERCIER & TELLIER,
Attorneys for Appellant.

AUGUSTE LEMIEUX, K.C.,
Ottawa Agent.

TANNER & DESAULNIERS,
Attorneys for Respondents.