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Nos 1916 - 1915 - 1935 - 1930

Canada
—
Province de Québec
—
District de Montréal

Cour du Banc du Roi

(EN APPEL)

En appel d'un Jugement de la Cour Supérieure, rendu par l'Honorable Juge Gibsone, le 26 avril 1940.

Cause No 1916

A. W. ROBERTSON,
((Défendeur en Cour Inférieure),
APPELANT,

— vs —

DAME ETHEL QUINLAN & vir,

Cause No 1915 INTIMÉS,

A. W. ROBERTSON,
(Défendeur sur l'action principale et contestant sur l'intervention),
APPELANT,

— et —

DAME CATHERINE KELLY & VIR,
(Intervenante en Cour inférieure),

Cause No 1935 INTIMÉE,

DAME ETHEL QUINLAN & vir,
(Demanderesse en Cour Inférieure),
APPELANTE,

— et —

A. W. ROBERTSON,
(Défendeur en Cour Inférieure),

Cause No 1930 INTIMÉ,

CAPITAL TRUST CORPORATION LIMITED & AL,
(Contestantes sur l'intervention en Cour Supérieure),
APPELANTES,

— et —

DAME CATHERINE KELLY & VIR,
(Intervenante par reprise d'instance en Cour Supérieure),
INTIMÉE,

ET AUTRES PARTIES

DOSSIER CONJOINT

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BEAULIEU & MONTPETIT,
Procureurs de l'Appelant.

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Nos 1916 - 1915 - 1935 - 1930

Canada
—
Province de Québec
—
District de Montréal

Cour du Banc du Roi

(EN APPEL)

En appel d'un Jugement de la Cour Supérieure, rendu par l'Honorable Juge Gibsone, le 26 avril 1940.

A. W. ROBERTSON,

entrepreneur général, de la cité de Westmount, district de Montréal,

((Défendeur en Cour Inférieure),

APPELANT,

— vs —

DAME ETHEL QUINLAN & vir,

de la cité de Westmount, district de Montréal, épouse commune en biens de John Thomas Kelly, gérant général, du même lieu, et le dit John Thomas Kelly, partie aux présentes pour autoriser sa dite épouse,

INTIMÉS,

— et —

CAPITAL TRUST CORPORATION LIMITED & al,

une corporation légalement constituée, ayant son principal bureau d'affaires dans la cité d'Ottawa, province d'Ontario tant personnellement qu'en sa qualité de fiduciaire et d'exécutrice testamentaire de feu Hugh Quinlan, en son vivant entrepreneur général, de la cité de Westmount, district de Montréal, aux termes du testament de ce dernier, passé devant Mtre Eugène Poirier, notaire, le 14 avril 1926,

MIS-EN-CAUSE,

— et —

WILLIAM QUINLAN et al,

gérant général, de la cité de Westmount, district de Montréal; **KATHLEEN QUINLAN**, de la cité de Westmount, district de Montréal, épouse séparée de biens de **ERNEST LEDOUX**, du même lieu, comptable, et le dit Ernest Ledoux, partie aux présentes pour autoriser son épouse; **ANN QUINLAN** fille majeure et usant de ses droits; **EDWARD QUINLAN**, entrepreneur général; **HELEN QUINLAN**, fille majeure et usant de ses droits; tous trois de la dite cité de Westmount, district de Montréal; **THERESE QUINLAN**, de la cité de Westmount, district de Montréal, épouse commune en biens, par contrat de mariage, de **HARRY DUNLOP**, courtier, du même lieu, et le dit Harry Dunlop, partie aux présentes, pour autoriser son épouse; **QUINLAN ROBERTSON & JANIN LIMITED** une corporation incorporée par lettres patentes, le 21 mars 1925, ayant son principal siège d'affaires en la cité de Montréal, district de Montréal, maintenant connue sous le nom de **ROBERTSON & JANIN LIMITED**, en vertu de lettres patentes supplémentaires émises le 18 février 1928; **ONTARIO AMIESITE LIMITED**, une corporation légalement constituée, ayant sa principale place d'affaires dans la cité de Toronto, province d'Ontario; **FULLER GRAVEL COMPANY LIMITED**, une corporation légalement constituée, ayant son principal bureau d'affaires dans la ville d'Ivanhoe, province d'Ontario;

(Mis-en-cause en Cour Inférieure),

MIS-EN-CAUSE,

— et —

CAPITAL TRUST CORPORATION LIMITED et al,

une corporation ci-dessus décrite, et **TRUST GENERAL DU CANADA**, une corporation ayant son principal siège d'affaires dans la cité de Montréal, district de Montréal, toutes deux agissant en leur qualité de fiduciaires (trustees) et d'exécutrices testamentaires, en vertu du testament de feu Hugh Quinlan, en son vivant entrepreneur général, de la cité de Westmount, district de Montréal,

(Intervenantes devant la Cour Suprême),

MISES-EN-CAUSE.

— et —

DAME MARGARET QUINLAN & vir et al,

de la cité et du district de Montréal, épouse séparée de biens de **JACQUES DESAULNIERS**, avocat et conseil du Roi, du même lieu, et le dit Jacques Desaulniers, tant personnellement que pour autoriser sa dite épouse aux présentes; — **WILLIAM A. QUINLAN**, gérant de la cité de Westmount, district

de Montréal; KATHLEEN VERONICA QUINLAN, épouse séparée de biens de ERNEST LEDOUX,, tous deux de la cité de Westmount, district de Montréal, et le dit Ernest Ledoux, partie aux présentes pour auto iser sa dite épouse à toutes fins que de droit; — ANNE AUGUSTA QUINLAN, fille majeure et usant de ses droits, de la cité de Montréal, district de Montréal; MARY THERESA QUINLAN, épouse commune en biens de JOHN HENRY DUNLOP, tous deux de la cité de Westmount, district de Montréal, et le dit John Henry Dunlop, comme chef de la communauté de biens et pour autoriser sa dite épouse, à toutes fins que de droit; — EDWARD HUGH QUINLAN de la cité de Montréal, district de Montréal; HELEN HILDA QUINLAN, de la cité de Montréal, dit district et le dit JOHN HENRY DUNLOP, en sa qualité de tuteur, à son enfant mineur, John Stuart Dunlop, et le dit ERNEST LEDOUX, en sa qualité de tuteur à ses enfants mineurs: Francis, David et Mary Thérésa Ledoux, et HUGH CHS LEDOUX, de la cité de Westmount, district de Montréal; — CAPITAL TRUST CORPORATION LIMITED, une corpo.ation ayant son principal siège d'affaires, pour la province de Québec, dans la cité de Montréal, district de Montréal, et TRUST GENERAL DU CANADA, une corporation ayant son principal siège d'affaires dans la dite cité de Montréal, dit district; ces deux dernières en leur qualité d'exécutrices testamentaires et de fiduciaires (trustees) en vertu du testament de feu Hugh Quinlan; — KATHERINE KELLY, de la cité de Montréal, district de Montréal, épouse séparée de biens de Raymond Shaughnessy, du même lieu, et ce dernier partie aux présentes, pour auto iser sa dite épouse; EDOUARD MASSON, avocat, de la cité et du district de Montréal — HENRI MASSON-LORANGER, avocat de la dite cité de Montréal; AGENOR H. TANNER, avocat et Conseil du Roi, de la cité de Montréal, district de Montréal; — et L'HONORABLE J. L. ST-JACQUES, de la cité d'Outremont, district de Montréal, l'un des honorables juges de la Cour du Banc du Roi, de la province de Québec,

(Défendeurs additionnels en Cour Inférieure),

MIS-EN-CAUSE.

A. W. ROBERTSON,

entrepreneur général, de la cité de Westmount, district de Montréal,

(Défendeur sur l'action principale et contestant sur l'intervention),

APPELANT,

— et —

DAME CATHERINE KELLY & VIR,

de la cité de Mont-éal-Ouest, district de Montréal, épouse séparée de biens de Raymond Shaughnessy, du mêmée lieu, et ce dernier partie aux présentes, pour autoriser sa dite épouse,

(Intervenante en Cour inférieure),

INTIMÉE,

— et —

DAME ETHEL QUINLAN & vir,

de la cité de Westmount, district de Montréal, épouse commune en biens de John Thomas Kelly, gérant général, du même lieu, et le dit John Thomas Kelly, partie aux présentes, pour autoriser sa dite épouse,

(Demanderesse en Cour inférieure),

MISE-EN-CAUSE,

— et —

CAPITAL TRUST CORPORATION LIMITED,

une corporation légalement constituée, ayant son principal bureau d'affaires tant personnellement qu'en sa qualité de fiduciaire et d'exécutrice testamentaire de feu Hugh Quinlan, en son vivant entrepreneur général, de la cité de Westmount, district de Montréal, aux termes du testament de ce dernier, passé devant Mtre Eugène Poirier, notaire, le 14 avril 1926,

(Défenderesses en Cour Inférieure),

MISES-EN-CAUSE,

— et —

WILLIAM QUINLAN et al,

gérant général, de la cité de Westmount, district de Montréal, KATHLEEN QUINLAN, des cité et district de Montréal, épouse séparée de biens de ERNEST LEDOUX, du même lieu, comptable, et le dit Ernest Ledoux, partie aux présentes, pour autoriser son épouse: ANN QUINLAN, fille majeure et usant de ses droits; EDWARD QUINLAN, entrepreneur général; HELEN QUINLAN, fille majeure et usant de ses droits; tous trois de la dite cité de Westmount, district de Montréal; THERESE QUINLAN, de la cité et du district de Montréal, épouse commune en biens par contrat de mariage, de HARRY DUNLOP, courtier, du même lieu et le dit Harry Dunlop, partie aux présentes, pour autoriser son épouse; QUINLAN ROBERTSON & JANIN LIMITED, une corporation incorporée par lettres patentes, le 21 mars 1925, ayant son principal siège d'affaires en la cité de Montréal, district de Montréal, maintenant connue sous le nom de ROBERTSON & JANIN LIMITED, en vertu de lettres patentes supplémentaires émises le 18 février 1928; ONTARIO AMIESITE LIMITED, une corporation légalement constituée, ayant sa principale place d'affaires dans la cité de Toronto, province d'Ontario; FULLER GRAVEL LIMITED, une corporation légalement constituée, ayant son principal bureau d'affaires dans la ville d'Ivanhoe, province d'Ontario,

(Mis-en-cause en Cour Inférieure),

MISE-EN-CAUSE,

— et —

CAPITAL TRUST CORPORATION LIMITED & al,

une corporation ci-dessus décrite et TRUST GENERAL DU CANADA, une corporation ayant son principal siège d'affaires dans la cité de Montréal, district de Montréal, toutes deux agissant en leur qualité de fiduciaires (trustees) et d'exécutrices testamentaires, en vertu du testament de feu Hugh Quinlan, *en son vivant entrepreneur général*, de la cité de Westmount, district de Montréal,

(Intervenantes devant la Cour Suprême),

MISES-EN-CAUSE,

— et —

DAME MARGARET QUINLAN & vir et al,

de la cité et du district de Montréal, épouse séparée de biens de JACQUES DESAULNIERS, avocat et Conseil du Roi, du même lieu, et le dit Jacques Desaulniers, tant personnellement que pour autoriser sa dite épouse aux présentes; WILLIAM A. QUINLAN, gérant, de la cité de Westmount, district de Montréal; KATHLEEN VERONICA QUINLAN, épouse séparée de biens de ERNEST LEDOUX, tous deux de la cité de Montréal, district de Montréal, et le dit Ernest Ledoux, partie aux présentes pour autoriser sa dite épouse à toutes fins que de droit; ANNE AUGUSTA QUINLAN, fille majeure et usant de ses droits, de la cité de Montréal, district de Montréal; MARY THERESA QUINLAN, épouse commune en biens de JOHN HENRY DUNLOP, tous deux de la cité de Westmount, district de Montréal, et le dit John Henry Dunlop comme chef de la communauté de biens et pour autoriser sa dite épouse, à toutes fins que de droit; EDWARD HUGH QUINLAN, de la cité de Montréal, district de Montréal; HELEN HILDA QUINLAN, de la cité de Montréal, dit district; et le dit JOHN HENRY DUNLOP, en sa qualité de tuteur, à son enfant mineur, John Stuart-Dunlop; et le dit ERNEST LEDOUX, en sa qualité de tuteur à ses enfants mineurs: Francis, David et Mary Theresa Ledoux, et HUGH CHS. LEDOUX, de la cité de Montréal, dit district; CAPITAL TRUST CORPORATION LIMITED, une corporation ayant son principal siège d'affaires pour la province de Québec, dans la cité de Montréal, district de Montréal, et TRUST GENERAL DU CANADA, une corporation aynat son principal siège d'affaires dans la dite cité de Montréal, dit district; ces deux dernieres en leur qualité d'exécutrices testamentaires et de fiduciaires (trustees) en vertu du testament de feu Hugh Quinlan; KATHERINE KELLY, de la cité de Montréal-Ouest, district de Montréal, épouse séparée de biens de Raymond Shaughnessy, du même lieu, et ce dernier partie aux présentes, pour autoriser sa dite épouse; EDOUARD MASSON, avocat, de la cité et du district de Montréal; HENRI MASSON-LORANGER, avocat, de la dite cité de Montréal; AGENOR H. TANNER, avocat et Conseil du Roi, de la cité de Montréal, district de Montréal; et L'HONORABLE JUGE J. L. ST-JACQUES, de la cité d'Outremont, district de Montréal, l'un des honorables juges de la Cour du Banc du Roi de la province de Québec,

(Défendeurs additionnels
en Cour Inférieure),

MIS-EN-CAUSE.

DAME ETHEL QUINLAN & vir,

of the City of Westmount, District of Montreal, wife common as to property of John Thomas Kelly, General Manager, of the same place, and the said JOHN THOMAS KELLY to authorize his said wife for all legal purposes,

(Demanderesse en Cour Inférieure),

APPELANTE,

— et —

A. W. ROBERTSON,

General Contractor of the City of Westmount, District of Montreal,

(Défendeur en Cour Inférieure),

INTIMÉ,

— et —

CAPITAL TRUST CORPORATION LIMITED,

a body politic and corporate, having its head office and chief place of business in the City of Ottawa, in the Province of Ontario, and also having its principal place of business for the Province of Quebec in the city of Montreal, and GENERAL TRUST OF CANADA, a body politic and corporate, having its head office and chief place of business in the City and District of Montreal, acting herein both personally as well as in their quality of testamentary executors and trustees under the Last Will and Testament of the late Hugh Quinlan, in his lifetime General Contractor, of the City of Westmount, in the District of Montreal, in accordance with the terms of the said Will received before Me. Eugene Poirier, N.P. and colleague on the 14th of April, 1926.

(Défenderesse en Cour Inférieure),

MISE-EN-CAUSE.

— et —

QUINLAN ROBERTSON & JANIN LIMITED & al,

a body politic and incorporated by Letters Patent of the 21st. of March, 1925, having its principal place of business in the City and District of Montreal, now known under the name ROBERTSON & JANIN LIMITED by virtue of Supplementary Letters Patent granted on the 18th. of February, 1928; ONTARIO AMIESITE LIMITED, a body politic and corporate having its principal place of business

in the City of Toronto, in the Province of Ontario; FULLER GRAVEL COMPANY, LIMITED, a body politic and corporate having its principal place of business in the Town of Ivanhoe, in the Province of Ontario; WILLIAM A. QUINLAN, Manager, of the City of Westmount, district of Montreal; KATHLEEN VERONICA QUINLAN, wife separate as to property of Ernest Ledoux, both of the City of Montreal, and the said ERNEST LEDOUX for the purpose of authorizing his said wife for all legal purposes; ANN AUGUSTA QUINLAN, Spinster, of the said City and District of Montreal; MARY THERESA QUINLAN, wife common as to property of JOHN HENRY DUNLOP, both of the city of Westmount, district of Montreal, and the said John Henry Dunlop as head of the said community of property and to authorize his said wife for all legal purposes; EDWARD HUGH QUINLAN, of the said City and District of Montreal; HELEN HILDA QUINLAN, of the said City and District of Montreal; and the said JOHN HENRY DUNLOP in his quality of tutor to his minor child John Stuart Dunlop; and the said ERNEST LEDOUX in his quality of tutor to his minor children Frances, David and Mary Theresa Ledoux, and HUGH CHARLES LEDOUX, of the City and District of Montreal,

MISES-EN-CAUSE,

— et —

DAME MARGARET QUINLAN & vir et al,

of the City and District of Montreal, wife separate as to property of JACQUES DESAULNIERS, Advocate and King's Counsel, of the same place, and the said Jacques Desaulniers as well personally as to authorize his said wife for all legal purposes; WILLIAM A. QUINLAN, Manager, of the City of Westmount, District of Montreal; KATHLEEN VERONICA QUINLAN, wife separate as to property of ERNEST LEDOUX both of the City of Montreal, and the said Ernest Ledoux for the purpose of authorizing his said wife for all legal purposes; ANN AUGUSTA QUINLAN, Spinster, of the said City and District of Montreal; MARY THERESA QUINLAN, wife common as to property of JOHN HENRY DUNLOP, both of the City of Westmount. District of Montreal, and the said John Henry Dunlop as head of the said community of property and to authorize his said wife for all legal purposes; EDWARD HUGH QUINLAN, of the said City asd District of Montreal; HELEN HILDA QUINLAN, of the said City and District of Montreal; and the said JOHN HENRY DUNLOP in his quality of tutor to his minor child John Stuart Dunlop; and the said ERNEST LEDOUX in his quality of tutor to his minor children Frances, David and Mary Theresa Ledoux; and HUGH CHARLES LEDOUX, of the City and District of Montreal; KATHERINE KELLY, of the City of Montreal West, District of Montreal, wife separate as to property of Raymond Shaughnessy, of the same place, and the latter to authorize his said wife to these presents; EDOUARD MASSON, Advocate of the City and District of Montreal; HENRI MASSON-LORANGER. Advocate. of the said City of Montreal; AGENOR H. TANNER. Advocate and King's Counsel, of the City of Montreal, District of Montreal, and the HONOURABLE J. L. SAINT-JACQUES, of the City of Montreal, District of Montreal, one of the Honourable Justices of the Court of King's Bench of the Province of Quebec,

(Parties additionnelles
en Cour Supérieure),

MIS-EN-CAUSE,

— et —

CAPITAL TRUST CORPORATION LIMITED & al,

a body politic and corporate. having its head office and chief place of business in the City of Ottawa, in the Province of Ontario. and also having its principal place of business for the Province of Quebec in the City of Montreal. acting herein personally as well as in its quality of testamentary executor and trustee under the Last Will and Testament of the late Hugh Quinlan, in his lifetime General Contractor. of the City of Westmount. in the district of Montreal. in accordance with the terms of the said Will received before Me. Eugene Poirier, N.P., and colleague on the 14th of April, 1926,

(Intervenantes devant la Cour Suprême
et défendeurs additionnels),

MISES-EN-CAUSE.

CAPITAL TRUST CORPORATION LIMITED & AL,

a body politic and corporate. having its head office and chief place of business in the City of Ottawa, in the Province of Ontario. and also having its principal place of business for the Province of Quebec in the City of Montreal. and GENERAL TRUST OF CANADA, a body politic and corporate, having its head office and chief place of business in the City and District of Montreal, acting herein both personally as well as in their quality of testamentary executors and trustees under the Last Will and Testament of the late Hugh Quinlan. in his lifetime Genreal Conractor. of the City of Westmount, in the district of Montreal. in accordance with the terms of the said Will received before Me. Eugene Poirier, N.P., and colleague on the 14th of April, 1926,

(Contestantes sur l'intervention
en Cour Supérieure),

APPELANTES,

— et —

DAME CATHERINE KELLY & VIR,

of the City of Montreal West, in the District of Montreal. wife separate as to property of RAYMOND SHAUGHNESSY, of the same place, and the latter to authorize his wife for all legal purposes,

(Intervenante par reprise d'instance
en Cour Supérieure),

INTIMÉE,

— et —

DAME ETHEL QUINLAN & VIR,

of the City of Westmount, District of Montreal, wife common as to property of JOHN THOMAS KELLY, General Manager, of the same place, and the said John Thomas Kelly to authorize his said wife for all legal purposes,

(Demanderesse et demanderesse incidente en Cour Supérieure),

MISE-EN-CAUSE,

— et —

A. W. ROBERTSON,

General Contractor of the City of Westmount, District of Montreal,

(Défendeur sur l'action principale et contestant sur l'intervention),

MIS-EN-CAUSE,

— et —

QUINLAN, ROBERTSON & JANIN LIMITED et al,

a body politic and incorporated by Letters Patent of the 21st. of March, 1925, having its principal place of business in the City and District of Montreal, now known under the name ROBERTSON & JANIN LIMITED by virtue of Supplementary Letters Patent granted on the 18th. of February, 1928; ONTARIO AMIESITE LIMITED, a body politic and corporate having its principal place of business in the City of Toronto, in the Province of Ontario; FULLER GRAVEL COMPANY, LIMITED, a body politic and corporate having its principal place of business in the Town of Ivanhoe, in the Province of Ontario,

(Mis-en-cause en Cour Supérieure),

MIS-EN-CAUSE,

— et —

DAME MARGARET QUINLAN & vir et al,

of tho City and District of Montreal, wife separate as to property of JACQUES DESAULNIERS, Advocate and King's Counsel, of the same place, and the said Jacques Desaulniers as well personally as to authorize his said wife for all legal purposes; WILLIAM A. QUINLAN, Manager, of the City of Westmount, District of Montreal; KATHLEEN VERONICA QUINLAN, wife separate as to property of ERNEST LEDOUX both of tho City of Montreal, and the said Ernest Ledoux for the purpose of authorizing his said wife for all legal purposes; ANN AUGUSTA QUINLAN, Spinster, of the said City and District of Montreal; MARY THERESA QUINLAN, wife common as to property of JOHN HENRY DUNLOP, both of the City of Westmount, District of Montreal, and the said John Henry Dunlop as head of the said community of property and to authorize his said wife for all legal purposes; EDWARD HUGH QUINLAN, of the said City asd District of Montreal; HELEN HILDA QUINLAN, of the said City and District of Montreal; and the said JOHN HENRY DUNLOP in his quality of tutor to his minor child John Stuart Dunlop; and the said ERNEST LEDOUX in his quality of tutor to his minor children Frances, David and Mary Theresa Ledoux; and HUGH CHARLES LEDOUX, of the City and District of Montreal; KATHERINE KELLY, of the City of Montreal West, District of Montreal, wife separate as to property of Raymond Shaughnessy, of the same place, and the latter to authorize his said wife to these presents; EDOUARD MASSON, Advocate of the City and District of Montreal; HENRY MASSON-LORANGER. Advocate. of the said City of Montreal; AGENOR H. TANNER, Advocate and King's Counsel, of the City of Montreal, District of Montreal, and the HONOURABLE J. L. SAINT-JACQUES, of the City of Montreal, District of Montreal, one of the Honourable Justices of the Court of King's Bench of the Province of Quebec,

(Parties additionnelles devant la Cour Supérieure),

MIS-EN-CAUSE.

DOSSIER CONJOINT

VOL. V — 2ème PARTIE

JUDGMENT IN THE SUPREME COURT OF CANADA
TUESDAY, THE 6th., DAY OF JUNE, A.D., 1934.

PRESENT:

THE RIGHT HONOURABLE SIR LYMAN P. DUFF, K.C.M.G., CHIEF JUSTICE.
THE HONOURABLE MR. JUSTICE LAMONT.
THE HONOURABLE MR. JUSTICE CANNON.
THE HONOURABLE MR. JUSTICE CROCKET.
THE HONOURABLE MR. JUSTICE HUGHES.
THE HONOURABLE MR. JUSTICE LAMONT being absent, his judgment was announced by the Right Honourable the Chief Justice pursuant to the Statute in that behalf.

BETWEEN:

ANGUS WILLIAM ROBERTSON,
APPELLANT,

—and—

ETHEL QUINLAN, et vir, et al.,
RESPONDENTS,

—and—

CAPITAL TRUST CORPORATION LIMITED & DAME CATHERINE RYAN, et al.,
MIS-EN-CAUSE,

—and—

CAPITAL TRUST CORPORATION LIMITED,
PETITIONERS IN INTERVENTION.

The appeal of the above named appellant from the judgment of the Court of King's Bench, for the Province of Quebec (Appeal Side) pronounced in the above cause on the 30th., day of December, in the year of Our Lord one thousand nine hundred and thirty-two, affirming with certain modifications the judgment of the Superior Court for the Province of Quebec sitting in and for the District of Montreal, rendered in the said cause on the sixth day of February, in the year of Our Lord one thousand

nine hundred and thirty-one, having come on to be heard before this Court on the 4th., and 5th., days of December A.D. 1933 and on the 6th., 7th., and 8th., days of February A.D., 1934, and on the 15th., and 26th., days of March A.D. 1934, in the presence of counsels as well for the appellant as the respondents, mis-en-cause and the petitioner in intervention, whereupon and upon hearing what was alleged by counsel aforesaid, this Court was pleased to direct that the said appeal should stand over for judgment, and the same coming on this day for judgment,

THIS COURT DID ORDER AND ADJUDGE:—

1. THAT the said appeal should be, and the same was, allowed, that the said judgment of the Court of King's Bench, for the Province of Quebec (appeal side) should be, and the same was, reversed and set aside;

2. THAT the judgment of the Superior Court be, and the same was, quashed in part as well as certain rulings made by the trial judge refusing the admission of oral evidence of the facts and circumstances hereinafter mentioned.

3. THAT, as to the proposed settlement (the agreement of settlement passed before R. Papineau-Couture, Notary Public, on the 31st day of January, 1934, and now part of the record of this case, this Court sees no reason why it should not declare that the said settlement forms part of the record of this case, and it grants *acte* thereof, without passing upon the validity, or the binding character of the agreement in question, nor deciding whether or not the intervenants acted within their powers and the officers of the intervenants within their authority,—and this Court accordingly does so declare within those limits.

4. THIS COURT DOTH FURTHER DECLARE, as a fact, that, as far as appellant Angus William Robertson and respondent Margaret Quinlan are concerned, they have settled their differences and have ended this litigation.

5. THIS COURT DOTH FURTHER DECLARE that, seeing the acquiescence of the respondent Ethel Quinlan thereto and the acceptance thereof by the testamentary executors and trustees, it does not, and cannot, disturb that part of the judgment of the Superior Court dismissing part of the respondent's conclusions, to wit:—

"1o—The prayer that the appellant A. W. Robertson and the Capital Trust Company be removed from office —

2o—The prayer that they be condemned to render an account—

3o—The prayer that the inventory be annulled:

4o—The various allegations of fraud against the appellant, as well as the allegation that the late Hugh Quinlan was not of sound mind when the letter of the 20th of June 1927 was read to him,—

and that the said judgment of the Superior Court in respect to the dismissal of the above mentioned conclusion, is now "res judicata" between the parties.

6.— AND THIS COURT DID FURTHER ORDER AND ADJUDGE that the remaining parties be sent back to the Superior Court to complete the evidence already taken by a further enquête, and then secured a new adjudication on the merits of the issues herein shown as remaining to be decided as between the respondent Dame Ethel Quinlan (Mrs. Kelly) and the appellant Robertson personally, and that oral evidence be admitted, as such further enquête, of the following facts and circumstances, to wit:—

A—The answer given by the late Hugh Quinlan when the letter of June 20th, 1927, was read to him: including, of course, the conduct, statements, communications and declarations of the persons present when the letter was so read, and of the late Hugh Quinlan himself, and generally, all relevant circumstances relating thereto;

B—All the facts, circumstances, statements and communications relating to the drafting of the said letter of June 20th, 1927, including the conduct of all those who shared in the drafting of the said letter; and the whereabouts and safekeeping of said letter;

C—All the facts, circumstances, statements and communications relating to the visits of the Honourable J. L. Perron and of the present appellant to the late Hugh Quinlan, during the month of May, 1927, or thereabout, and to the endorsement of the four certificates of shares filed as exhibits P-9, P-10, P-26 and P-27; also to the Memorandum of the 21st of May, 1927, P-66; including the conduct of all the participants in these various events;

D.—Generally, all facts, conditions and circumstances tending to show that the late Hugh Quinlan agreed, or disagreed, as the case may be, to the contents of the letter of June the 20th 1937—

The respondent would also bring new evidence of all facts, declarations and statements which might tend to rebut the evidence to be afforded as aforesaid by the appelant.—

7.— THIS COURT DOTH FURTHER DECLARE that respondent Ethel Quinlan, to the extent that she is entitled to a variable share in the net revenue of the estate of her father, has a sufficient interest and status'' to preserve intact the ''Corpus'' of the estate;

8.— AND THIS COURT DID FURTHER ORDER AND ADJUDGE that the said respondents should and do pay to the said appellant the costs incurred by the said appellant as well in the Court of King's Bench for the Province of Quebec as in this Court; reserving to the Superior Court the right to adjudge upon the costs incurred and to be incurred in the said Superior Court.

9.— AND THIS COURT DID FURTHER ORDER AND ADJUDGE that the costs of printing the Appeal Case be comprised in, and form part of, appellant's costs herein, in this Court.

(SGD) J. F. SMELLIE
Registrar.

MOTION DE L'APPELANT A. W. ROBERTSON

1o—ATTENDU que le présent appelant, A. W. Robertson, a interjeté appel devant cette Honorable Cour, à l'encontre du jugement final rendu le 26 avril 1940, par la Cour Supérieure, présidée par l'honorable juge Gibsone, et siégeant à Montréal, lequel jugement a maintenu l'action principale instituée par l'intimée Dame Ethel Quinlan, jusqu'à concurrence de la somme de $119,841.00, avec intérêts et dépens, et a maintenu, en même temps, la demande incidente produite par la même intimée;

2o—ATTENDU que l'intimée dame Ethel Quinlan a également interjeté appel, devant cette Honorable Cour, à l'encontre du même jugement, prétendant que la condamnation devrait être augmentée;

3o—ATTENDU que l'appelant, A. W. Robertson, a interjeté un autre appel à l'encontre du jugement rendu le même jour, par le même juge, lequel a maintenu une intervention produite par dame Katherine Kelly & vir;

4o—ATTENDU qu'un autre appel a été interjeté par "Capital Trust Corporation Limited", et "Trust Général du Canada", en leur qualité d'exécutrices testamentaires et fiduciaires de feu Hugh Quinlan, en son vivant entrepreneur général de la cité de Westmount, district de Montréal, à l'encontre du jugement rendu le même jour par le même juge, maintenant avec dépens une intervention produite par dame Catherine Kelly & vir;

5o—ATTENDU que les quatre instances ci-dessus faisant l'objet des appels sus-mentionnés, ont été instruites en même temps et jugées sur la même preuve, laquelle a été déclarée commune à toutes les parties;

6o—ATTENDU que la preuve ainsi faite en commun est extrêmement volumineuse;

7o—ATTENDU que, pour éviter à frais, il y aurait lieu de faire un seul dossier-conjoint, qui sera commun à tous les appelants;

8o—ATTENDU que les parties ont convenu qu'il serait fait 8 copies seulement du dossier-conjoint, pour la raison qu'il ne reste que ce nombre de copies d'un dossier-conjoint antérieur, contenant la plus grande partie de la preuve qui a été déclarée commune, comme susdit;

9o—ATTENDU que les frais à encourir, pour la préparation de ce dossier-conjoint devraient être répartis entre les trois appelants, en ayant égard au volume de la preuve que chacun des appelants devra invoquer, à l'appui de son appel;

10o—ATTENDU que l'appel des appelantes "Capital Trust Corporation Limited" et "Trust Général du Canada" reposent presque exclusivement sur la preuve documentaire;

11o—ATTENDU qu'au contraire, les deux appelants A. W. Robertson et dame Ethel Quinlan devront invoquer l'ensemble de la preuve, à l'appui de leur appel respectif;

12o—ATTENDU que, dans les circonstances, il parait équitable que les frais à encourir sur le dossier-conjoint soient répar-

tis dans la proportion suivante, savoir :—1/5 quant aux appelantes "Capital Trust Corporation Limited" et "Trust Général du Canada", et 2/5 quant à chacun des deux autres appelants ;

QU'IL PLAISE à cette Honorable Cour ordonner qu'il ne soit fait qu'un seul dossier-conjoint, lequel sera commun à tous les appels susdits ; et qu'il ne sera nécessaire de préparer que 8 copies de ce dossier-conjoint, dont 5 copies pour la Cour et une copie pour les procureurs respectifs des appelants A. W. Robertson, Dame Ethel Quinlan et "Capital Trust Corporation Limited" et al ; le tout aux conditions qui plairont à cette honorable Cour de fixer.

Montréal, le 10 octobre 1940.

Beaulieu, Gouin, Bourdon,
Beaulieu & Montpetit,
Procureurs de l'appelant.

JUGEMENT DE LA COUR DU BANC DU ROI, EN APPEL SUR LA MOTION

Montréal, 22 octobre 1940.

P. O. de consentement. Motion accordée frais à suivre.

J. M. Tellier,
J.C.P.Q.

P & L, G. (Tel - Riv - Walsh - St. Jac. - Francoeur

Note : La dernière partie de la motion a été retranchée à l'audience de consentement.

P & L, G.

INSCRIPTION EN APPEL (Cause No 1916)

L'appelant ci-dessus désigné inscrit, par les présentes, cette cause en appel, devant la Cour du Banc du Roi, siégeant en appel, à Montréal, du jugement final rendu par la Cour Supérieure, siégeant à Montréal, dans et pour le district de Montréal, le 26 avril 1940, tant sur la demande dite demande incidente que sur l'action principale et (a) maintenant la dite demande incidente et déclarant nul et sans effet, quant à la demanderesse-intimée, l'acte du 31 janvier 1934, avec dépens contre le défendeur-appelant ; et (b) déclarant nulles et illégales l'acquisition de certaines actions et la vente de certaines autres actions, faites par

le défendeur-appelant, et condamnant le défendeur-appelant à payer à la succession de feu Hugh Quinlan, représentée par les exécuteurs testamentaires ci-dessus mentionnés, mis-en-cause, la somme de $119,841.00, avec intérêts depuis la signification de l'action, sur une somme de $169,841.00, et avec intérêts sur la somme de $119,841.00, à partir du 19 décembre 1934; le tout avec dépens, tels que répartis au dit jugement, et l'appelant donne avis à Mtre Chs. Holdstock, procureur de l'intimée et des défendeurs additionnels Katherine Kelly et Raymond Shaughnessy; à Mtres Campbell, McMaster, Couture, Kerry et Bruneau, avocats de Capital Trust Corporation Limited et du Trust Général du Canada, intervenantes et défenderesses; à Mtre Jacques Désaulniers, avocat des défendeurs additionnels dame Margaret Quinlan et Jacques Désaulniers; à Mtres Hyde, Ahern, Perron, Puddicombe & Smith, avocats des défendeurs additionnels William A. Quinlan; Kathleen Veronica Quinlan et Ernest Ledoux; Augusta Quinlan; Mary Theresa Quinlan et John Henry Dunlop; Edward H. Quinlan et Helen Quinlan; — à Mtre Edouard Masson, avocat du défendeur additionnel Edouard Masson; à Mtre Agénor H. Tanner, avocat du défendeur additionel Agénor H. Tanner; — à Mtre Jacques P. St-Jacques, avocat du défendeur additionnel l'Honorable juge J. L. St-Jacques; — à Mtres Monty et Loranger, avocats du défendeur additionnel H. Masson-Loranger; — à Mtres Harold & Long, avocats du défendeur additionnel Hugh Chs. Ledoux; — et à Mtre Arthur Vallée, avocat du mis-en-cause Ontario Amiesite Limited; que la présente inscription a été produite ce jour, au greffe de la Cour Supérieure, et que le onzième jour de mai 1940, à 11 heures de l'avant-midi, devant le protonotaire de la dite Cour Supérieure, pour le district de Montréal, à son bureau, au palais de justice, à Montréal, le dit appelant donnera bonne et suffisante caution qu'il poursuivra effectivement le dit appel et qu'il satisfera à la condamnation et paiera tous dépens et dommages qui seront adjugés, au cas où le jugement, soit sur la dite demande incidente, soit sur la demande principale, serait confirmé, et que la caution qu'il offrira là et alors sera "Canadian General Insurance Company" une compagnie d'assurance ayant son principal bureau d'affaires pour la province de Québec, dans la cité de Montréal, district de Montréal, et autorisée à fournir tel cautionnement; le tout conformément à la loi.

Montréal, le 8 mai 1940.

Beaulieu, Gouin, Bourdon, Beaulieu & Montpetit,
Procureurs de l'Appelant.

INSCRIPTION EN APPEL (Cause No 1915)

L'appelant ci-dessus désigné inscrit, par les présentes cette cause en appel, devant la Cour du Banc du Roi, siégeant en appel, à Montréal, du jugement final rendu par la Cour Supérieure, siégeant à Montréal, dans et pour le district de Montréal, le 26 avril 1940, maintenant l'intervention de l'Intimée; déclarant nul et sans effet, quant à la succession Quinlan, et quant à l'Intimée, l'acte du 31 janvier 1934, et rejetant avec dépens la contestation de la dite intervention, par l'appelant; et l'appelant donne avis à Mtre Chs. Holdstock, procureur de l'Intimée, de Dame Ethel Quinlan et de leur mari respectif; àMtres Campbell, McMaster, Couture, Kerry & Bruneau, procureurs de Capital Trust Corporation Limited et du Trust Général du Canada, intervenantes et défenderesses et contestantes sur l'intervention; à Mtre Jacques Desaulniers, avocat de Dame Margaret Quinlan et de Jacques Désaulniers, défendeurs additionnels et contestants sur l'intervention; à Mtres Hyde Ahern, Perron, Puddicombe & Smith, avocats des défendeurs additionnels William A. Quinlan; Kathleen Veronica Quinlan et Ernest Ledoux; Augusta Quinlan; Mary Theresa Quinlan et John Henry Dunlop; Edward H. Quinlan et Helen Quinlan; à Mtre Edouard Masson, avocat du défendeur additionnel Edouard Masson; à Mtre Agénor H. Tanner, avocat du défendeur additionnel Agénor H. Tanner; à Mtre Jacques P. St. Jacques, avocat du défendeur additionnel l'Honorable Juge J. L. St. Jacques; à Mtres Monty & Loranger, avocats du défendeur additionnel H. Masson-Loranger; à Mtres Harold & Long, avocats du défendeur additionnel Hugh Chs. Ledoux; et à Mtre Arthur Vallée, avocat du mis-en-cause Ontario Amicsite Limited; que la présente inscription a été produite ce jour, au greffe de la Cour Supérieure, et que le onzième jour de mai 1940, à 11 heures de l'avant-midi, devant le protonotaire de la Cour Supérieure, pour le district de Montréal, à son bureau, au Palais de Justice, à Montréal, le dit appelant donnera bonne et suffisante caution qu'il poursuivra effectivement le dit appel et qu'il satisfera à la condamnation et paiera tous dépens et dommages qui seront adjugés, au cas où le jugement sur l'Intervention de l'Intimée serait confirmé, quant au défendeur-appelant, et que la caution qu'il offrira là et alors sera "Canadian General Insurance Company", une compagnie d'assurance ayant son principal bureau d'affaires, pour la province de Québec, dans la cité de Montréal, district de Montréal, et autorisée à fournir tel cautionnement; le tout conformément à la loi.

Montréal, le 8 mai 1940.

(Signé) Beaulieu, Gouin, Bourdon,
Beaulieu & Montpetit,
Procureurs de l'Appelant.

INSCRIPTION IN (CROSS) APPEAL (Cause No. 1935)

Appellant, as hereinabove described, hereby inscribe this case in appeal before the Court of King's Bench, sitting in appeal at Montreal, from the final judgment rendered by the Superior Court (Gibsone, J.), sitting at Montreal in and for the district of Montreal, on the 26th of April, 1940, on the main action which ordered the defendant to pay the sum of $169,841.00 to the estate Hugh Quinlan as and for certain shares of the estate, and appellant gives notice of the present inscription in (Cross) appeal to Messrs. Beaulieu, Gouin, Bourdon Beaulieu & Montpetit, and or Beaulieu, Gouin, Mercier & Tellier, attorneys for defendant and contestant Robertson; to Mr. Jacques Desaulniers, attorneys for Dame Margaret Quinlan, and Jacques Desaulniers, additional defendants; to Messrs. Hyde, Ahern, Perron, Puddicombe & Smith, attorneys for additional parties William A. Quinlan, Kathleen Veronica Quinlan and Ernest Ledoux; Augusta Quinlan, Mary Theresa Quinlan and John Henry Dunlop; Edward H. Quinlan and Helen Quinlan; To Mr. Edouard Masson, K.C., attorney for additional defendant Edouard Masson; to Mr. Agenor H. Tanner, K.C., attorney for additional defendant Agenor H. Tanner; to Mr. Jacques L. Saint-Jacques, attorney for the additional defendant the Honourable Mr. Justice J. L. Saint-Jacques; to Messrs. Monty & Loranger, attorneys for additional defendant H. Masson-Loranger; and to Messrs. Harold & Long, attorneys for additional defendant in continuance of suit Hugh Charles Ledoux; and to Mr. Arthur Vallée, K.C., attorney for Ontario Amiesite Limited, Robertson & Janin Limited and Fuller Gravel Limited; to Messrs. Campbell, McMaster, Couture, Kerry & Bruneau and or Campbell, Weldon, Kerry & Bruneau, attorneys for Capital Trust Corporation Limited and General Trust of Canada, intervenants and defendants; and to C. Holdstock atty. for Katherine Kelly & Raymond Shaughnessy, additional defendants.

And further gives notice that the present inscription in (Cross) Appeal has been filed this day in the Prothonotary's office of the Superior Court and that on the 29th day of May, 1940, at 11 o'clock in the forenoon, before the Prothonotary of the Superior Court for the District of Montreal at his office, the Court House, in Montreal, said appellant will give good and sufficient security that she will effectively prosecute the said appeal and will satisfy the condemnation and will pay all costs and damages which may be awarded in the event of judgment on that part of the judgment affected by said cross-appeal being confirmed, and that

appellant will then and there offer as surety Toronto General Insurance Company, an insurance company having its chief place of business for the Province of Quebec in the said City and District of Montreal, and authorized according to law to furnish such security.

Montreal, May 25th, 1940.

(Sgd) C. Holdstock,
Attorney for Appellant.

INSCRIPTION IN APPEAL (Cause No. 1930)

Appellants, as hereinabove described, hereby inscribe this case in appeal before the Court of King's Bench, sitting in appeal at Montreal, from the final judgment rendered by the Superior Court (Gibsone, J.), sitting at Montreal in and for the District of Montreal, on the 26th. of April, 1940, maintaining the intervention of Respondent, and dismissing with costs the contestation by Appellants of said intervention, with the said costs awarded against Appellants personally; and Appellants give notice of the present inscription in appeal to Me. C. Holdstock, attorney for Intervenant-Respondent and for Dame Ethel Quinlan and their respective husbands; to Mes. Beaulieu, Gouin, Bourdon, Beaulieu & Montpetit, attorneys for Defendant and Contestant Robertson; to Me. Jacques Desaulniers, attorney for Dame Margaret Quinlan, and Jacques Desaulniers, Additional Defendants and Contestants on intervention; to Mes. Hyde, Ahern, Perron, Puddicombe & Smith, attorneys for Additional Parties William A. Quinlan; Kathleen Veronica Quinlan and Ernest Ledoux; Angusta Quinlan; Mary Theresa Quinlan and John Henry Dunlop; Edward H. Quinlan and Helen Quinlan; to Me. Edouard Masson, K.C., attorney for Additional Defendant Edouard Masson; to Me. Agenor H. Tanner, K.C., attorney for Additional Defendant Agenor H. Tanner; to Me. Jacques P. Saint-Jacques, attorney for the Additional Defendant the Honourable Mr. Justice J. L. Saint-Jacques; to Mes. Monty & Loranger, attorneys for Additional Defendant H. Masson-Loranger; and to Mes. Harold & Long, attorneys for Additional Defendant in continuance of suit Hugh Charles Ledoux; and to Me. Arthur Vallée, K.C., attorney for Ontario Amiesite Limited, Robertson & Janin Limited and Fuller Gravel Limited.

And further give notice that the present inscription has been filed this day in the Prothonotary's office of the Superior

Court and that on the 27th day of May, 1940, at 11 o'clock in the forenoon, before the Prothonotary of the Superior Court for the District of Montreal at his office, the Court House, in Montreal, said Appellants will give good and sufficient security that they will effectively prosecute the said appeal and will satisfy the condemnation and will pay all costs and damages which may be awarded in the event of judgment on the Appellants' contestation of Respondent's intervention being confirmed, as regards Contestants-Appellants, and that Appellants will then and there offer as surety the United States Fidelity & Guaranty Co. an Insurance Company having its chief place of business at Baltimore in the State of Maryland, one of the United States of America, and a head office for the Province of Quebec, in the said City and District of Montreal, and authorized according to law to furnish such security.

Montreal, May 22nd, 1940.

(Sgd.) Campbell, Weldon, Kerry & Bruneau,
Attorneys for Appellants.

Part I — PLEADINGS &c.

MOTION OF THE DEFENDANT A. W. ROBERTSON, FOR LEAVE TO FYLE A SUPPLEMENTARY DEFENCE.

1o—WHEREAS the Plaintiff, dame Ethel Quinlan, by the present action, prays that the Defendant A. W. Robertson be condemned to return to the Estate of Hugh Quinlan, her father, certain shares of the Capital Stock of the following companies, to wit: Quinlan, Robertson & Janin Ltd, Ontario Amiesite Asphalt Ltd, Amiesite Asphalt Ltd, and Fuller Gravel Co. Ltd; or to pay the value thereof;

2o—WHEREAS since issue was joined, to wit: since the 31st of January 1934, by deed passed before Mtre R. Papineau-Couture, N.P. the said Defendant has, amongst other things, purchased and repurchased, so far as might be necessary, from the Estate of the late Hugh Quinlan, all the various shares above mentioned;

3o—WHEREAS, by judgment delivered on the 6th day of June 1934, the Supreme Court of Canada has declared that the above deed of agreement forms part of the record, in the present case and has granted acte thereof;

4o—WHEREAS the above facts are material facts which have arisen since issue was joined, in the present case;

WHEREFORE the said Defendant A. W. Robertson prays that he be allowed to set out the above facts by way of supplementary defence, or "puis darrein continuance" and to fyle to that effect the supplementary plea hereto annexed; the whole under such conditions as the court may think proper;

Montreal, 11th of January 1935.

Beaulieu, Gouin, Mercier & Tellier,
Attorneys for the Defendant A. W. Robertson.

AFFIDAVIT

I, Louis Emery Beaulieu, barrister, residing and domiciled at number 36 Roskilde avenue, Outremont, district of Montreal, being duly sworn before the Holy Evangelists, do declare and say:—

1o—I am one of the Defendant Angus W. Robertson's attorneys, in the above matter;

2o—That the facts mentioned in the motion are true, to my personal knowledge;

AND I HAVE SIGNED:

L. E. Beaulieu

Sworn before me, a Montreal,
district of Montreal, this 11th
day of January 1935.

Léo Limoges,
Commissioner for the Superior
Court for the district of Montreal.

SUPPLEMENTARY PLEA OF THE DEFENDANT A. W. ROBERTSON

For supplementary plea to the present action, the defendant A. W. Robertson says:—

1o—Since issue was joined, in the present case, to wit: on the 31st of January 1934, by deed of agreement passed before Mtre R. Papineau-Couture, N.P., the Defendant A. W. Robertson has purchased and re-purchased, so far as may be necessary, from the then testamentary executors and trustees of the Estate of the late Hugh Quinlan, to wit: The Capital Trust Corporation Ltd and the General Trust of Canada, all the shares which he was ordered to return to the Estate of the said late Hugh Quinlan, or whose value he was ordered to pay to the said estate, un-

der the judgments rendered in the present case, both by the Superior Court of this province and by the Court of King's Bench, appeal side;

2o—The shares which the Defendant now pleading has purchased and re-purchased, so far as may be necessary, from the said testamentary executors and trustees, are the following:—

1151 shares of Quinlan, Robertson & Janin Ltd—
250 " " Amiesite Asphalt Ltd—
200 " " Ontario Amiesite Asphalt Ltd—
and 400 " " Fuller Gravel Co. Ltd—

3o—Moreover, under the above deed of agreement, the said testamentary executors and trustees have desisted from the judgments delivered in the present case, both by the Superior Court of this province and by the Court of King's Bench, appeal side, and have abandonned all the rights, claims and pretensions of whatever nature or description, which might have belonged to them, under the said judgments, or which might be vested in them, under the same judgments;

4o—Always under the above agreement, the said testamentary executors and trustees have renounced to all and every right, claim, action and pretension of whatever nature or description, which may have belonged to them, or be vested in them, against the Defendant now pleading, and arising from any of the facts disclosed in the evidence adduced in the present case, or from the administration or management of the Estate of the late Hugh Quinlan, by the said A. W. Robertson, as testamentary executor or trustee, or from the dealings, connections or operations of the said A. W. Robertson, with the said late Hugh Quinlan, as co-partner, co-shareholder, co-associate or otherwise, or from the dealings, connections, or operations of the Defendant now pleading, acting jointly with the said late Hugh Quinlan, with third parties, or from the personal acts or deed of the Defendant now pleading, in whatever capacity, circumstances, or time;

5o—In connection with the foregoing, the Defendant A. W. Robertson agreed to pay, in addition to the sum of $270,000.00 which he had already paid, a sum of $50,000.00, and further all the taxable Court costs, extra-judicial costs, disbursements and counsels' fees, due to the various barristers, attorneys or solicitors who had represented the then Plaintiffs, including $4,025.00 to Mr. A. H. Tanner, K.C., of Montreal;

6o—The above mentioned agreement was entered into while the present case was pending before the Supreme Court of Canada, and its coming into force was subject to the conditions that the said Supreme Court of Canada should see no objection to the testamentary executors and trustees of the Estate of the late Hugh Quinlan carrying it into effect, or that the said Supreme Court of Canada should grant acte thereof;

7o—By a judgment delivered on the 6th of June 1934, the Supreme Court of Canada adjuged that it saw no reason why it should not declare that the above mentioned settlement should form part of the record, in the present case, and the said Supreme Court of Canada granted acte thereof;

8o—In fact, the Defendant now pleading has paid the full consideration stipulated in the said agreement of the 31st of January 1934, to wit: the sum of $50,000.00 — to the testamentary executors and trustees of the said estate and also all the costs, which he undertook to pay, under the said agreement;

9o—The testamentary executors and trustees of the Estate of the late Hugh Quinlan had full power and authority to sell and re-sell to the Defendant now pleading all the shares above mentioned, as well as to enter into all the agreements, renunciations and desistments and generally into all the covenants contained in the said deed of the 31st of January 1934;

10o—The said deed of the 31st of January 1934, as well as all the agreements, renunciations, desistments and covenants therein contained were and are binding upon the Estate of the late Hugh Quinlan, as well as upon all the heirs and legatees of the said Hugh Quinlan, including the present Plaintiff, dame Ethel Quinlan;

11o—The said agreement of the 31st of January 1934 was assented to, accepted, confirmed and ratified by all the heirs and legatees of the said late Hugh Quinlan, with the sole exception of the present Plaintiff, dame Ethel Quinlan;

12o—In view of the foregoing, and without prejudice to the plea already fyled, the present action is unfounded in fact and in law and should be dismissed;

WHEREFORE the Defendant A. W. Robertson, without prejudice to the plea already fyled, prays for the dismissal of the present action, so far as he is concerned; the whole with costs.

Montreal, the 11th of January 1935.

Beaulieu, Gouin, Mercier & Tellier,
Attorneys for the Defendant A. W. Robertson.

PLAINTIFFS' ANSWER TO SUPPLEMENTARY PLEA OF THE DEFENDANT A. W. ROBERTSON

For answer to the Supplementary Plea of the defendant, A. W. Robertson, the Plaintiff, Ethel Quinlan, duly authorised by her husband says:—

(1) As to paragraphs 1, 2, 3, 4 and 5 of the said Supplementary Plea, the Plaintiff admits the existence of the document therein mentioned, but denies that the defendant Robertson thereunder purchased or repurchased the shares which he was ordered to return to the Estate of the late Hugh Quinlan. The Plaintiff further denies the right, power and authority of Capital Trust Corporation Limited and General Trust of Canada and of the said A. W. Robertson to enter into the said agreement at the time the same was executed by the several parties thereto, and subject to the admission aforesaid of the existence of the said document, Plaintiff denies each, all and every the allegations of the said paragraphs.

(2) As to paragraph 6 of the said Supplementary Plea, Plaintiff admits that the said agreement was executed while the present case was pending before the Supreme Court of Canada, and also admits the existence of a clause in the said agreement subjecting the coming into force of the said agreement to the conditions mentioned in said paragraph 6, but the Plaintiff avers that the said clause was and is absolutely null and void, and Plaintiff also denies the allegations of the said paragraph insofar as the same are not herein specifically admitted.

(3) As to paragraph 7 of the said Supplementary Plea, the judgment of the Supreme Court therein referred to will speak for itself.

(4) Plaintiff is ignorant of the allegations of Paragraph 8 of the said plea and in any event, the facts alleged therein are irrelevant and even if true, are not binding upon nor can they affect in any way or prejudice the rights of the Plaintiff sought to be exercised by the present action.

(5) The allegations of paragraph 9 of the said supplementary plea are denied.

(6) The allegations of paragraphs 10, 11 and 12 of the Supplementary Plea are denied.

AND THE Plaintiff further says:

(7) All the rights, powers and authority of the testamentary executors and trustees of the Estate of the late Hugh Quinlan to sell or otherwise deal with the shares in question were suspended by the institution of the present action and remained suspended while the present suit is pending and were and are subject to such orders and directions of this Honourable ourt as shall be contained in the final judgment to be rendered in this cause.

(8) That the judgment of the Supreme Court of Canada referred to in the Supplementary Plea, although it granted acte of the said agreement and although it declared the said agreement formed part of the record in this case and the present litigation settled insofar as the defendant A W. Robertson and one of the original Plaintiffs, Margaret Quinlan, are concerned, the said Margaret Quinlan having become a party to the said agreement, the said judgment ordered the remaining parties, to wit, inter alia the Plaintiff, Ethel Quinlan, who had not become a party to the said agreement, to be sent back to this Honorable Court to complete the evidence already taken by a further enquete and to then secure a new adjudication on the merits of the issues shown in the said judgment of the Supreme Court of Canada as remaining to be decided between the Plaintiff, Ethel Quinlan and the defendant A. W. Robertson.

(9) That the judgment in this cause rendered by this Honorable Court on the 6th February 1931 was quashed by the Supreme Court in part only and the case was returned to this Honorable Court for the taking of further evidence in respect to certain matters only, which are specified in the judgment of the Supreme Court of Canada and the Supreme Court judgment did not permit of the trial of any other issue and more especially did not permit of the trial of any issue in respect to the validity effect, or otherwise, of the agreement alleged in paragraph 1 of the Supplementary Plea.

(10) That, moreover, the said judgment of the Supreme Court of Canada declared that the Plaintiff, Ethel Quinlan, has sufficient interest and status to preserve intact the corpus of the Estate of the late Hugh Quinlan.

(11) That it appears from the allegations of paragraphs 5 and 8 of the said Supplementary Plea that the price which the said Trustees of the Estate Hugh Quinlan were prepared to accept for the said shares was the sum of $320,000.

(12) That the value of the said shares was fixed by this Honorable Court in its judgment of the 6th February 1931, at $408,928. and by the Court of King's Bench at $415,956.25.

(13) That while the appeal in this cause to the Supreme Court of Canada was pending, the Trustees and executors of the Estate of the late Hugh Quinlan, Capital Trust Corporation Limited and General Trust of Canada, gave written notice under date of the 6th September 1933, to all parties interested in this litigation, in their quality of executors of the Estate of the late Hugh Quinlan, that insofar as may be useful or necessary, they have accepted on behalf of the Estate of the said late Hugh Quinlan all benefits and advantages accruing to the said Estate under the judgments rendered in this cause by this Honorable Court and by the Court of King's Bench sitting in appeal for the District of Montreal.

(14) That in addition to fixing the value of the said shares as hereinabove mentioned, the judgment of this Honorable Court and of the Court of King's Bench declared that all bonuses and dividends paid since the death of the late Hugh Quinlan in respect to the said shares, belonged to his succession and although no accounting has yet been had as to these bonuses and dividends, the Plaintiff avers without in any way limiting her right to establish a greater amount, that the said bonuses are at least $36,565.84.

(15) That, moreover, the consent of Dame Margaret Quinlan, who was originally a co-Plaintiff with the present Plaintiff, to the alleged agreement of the 31st January, 1934, which agreement is referred to in paragraph 1 of said Supplementary Plea was obtained on the payment to her husband of a sum of $27,500. which said sum and the payment thereof in no way benefited the estate of the late Hugh Quinlan, and the other heirs assenting to said agreement were constrained to give such assent hurriedly, without a proper opportunity of examining the document, communication whereof was denied to them and their assent was obtained by misrepresentation, that is it was represented to them that if the defendant Robertson returned the shares to the estate, the latter would be obliged to repay the $250,000. with interest and that no one would buy the shares except the defendant Ro-

bertson and there would be a reduction in income of one third, and at the same time concealed from the heirs the fact that defendant Robertson was unable to return the shares, having sold them.

(16) That, moreover, it appears by the evidence taken in this cause that the defendant Robertson, just prior to the institution of the present action, had sold all the issued capital stock of Amiesite Asphalt Limited, being one of the lot of shares mentioned in said paragraph 2 of the supplementary plea, for the sum of $750,000.

(17) That the interest of the Estate of the late Hugh Quinlan in the said Amiesite Asphalt shares was one quarter representing in money $187,500.

(18) That since the institution of the present action and prior to the judgment of this Honorable Court, which was rendered on the 6th of February, 1931, the defendant Robertson sold also all the other shares which he was ordered to return to the said Estate, to wit:—1151 shares of Quinlan, Robertson & Janin Ltd.

200 shares Ontario Amiesite Asphalt,
400 shares Fuller Gravel Company Limited

(19) That the defendant Robertson and Capital Trust Corporation Limited and General Trust of Canada, knew at the date of the alleged settlement agreement referred to in paragraph (1) of said Supplementary Plea, and long prior thereto, that the defendant Robertson was unable to return the shares mentioned in paragraph (2) of said Supplementary Plea, the defendant Robertson having sold and disposed of the same.

(20) That the defendant, Robertson, and the said Trustees knew also at the date of the alleged settlement agreement aforesaid, and long prior thereto, that the defendant Robertson had sold the shares of Amiesite Asphalt Limited belonging to the Estate of the late Hugh Quinlan and the shares of Fuller Gravel Limited belonging to the said Estate for the sums respectively of $187,500, and $36,000., and that the shares belonging to the said Estate of Quinlan, Robertson & Janin Limited were worth at the very least $275,000, and that there was at least $36,565.84 due to the Estate in the way of bonuses and dividends, in all a total of $535,065.84.

(21) That the defendant Robertson and the said Trustees knew at the said date and long prior thereto, that the Estate of the late Hugh Quinlan had various other claims against the defendant Robertson, all of which were made known to them in a notification and protest bearing date the 17th October, 1933, signified upon them by N. Picard, Notary Public of Montreal.

(22) That notwitstanding the foregoing facts, the alleged settlement agreement contains covenants which, if valid and binding would give the defendant Robertson a complete discharge of every claim and demand the estate of the late Hugh Quinlan might have upon or against him.

(23) That the execution of the alleged agreement of the 31st January, 1934, by the officers of the Trustees and executors of the Estate of the late Hugh Quinlan, to wit, the officers of the Capital Trust Corporation Limited and General Trust of Canada, was and is illegal, null and void, inasmuch as said officers were not authorised thereto by their respective companies and an agreement such as that of the 31st January, 1934, did not fall within the scope of their duties or powers as such officers.

(24) The Plaintiff, Ethel Quinlan, respectfully excepts to the judgment permitting the filing of defendant's supplementary plea and reserves her right to renew her objections thereto at the trial of this cause.

Wherefore the Plaintiff, Ethel Quinlan, prays that the allege settlement agreement set forth in paragraph (1) of said Supplementary plea be declared null and void and be set aside, at all events insofar as the said Plaintiff is concerned and that the said Supplementary plea be dismissed with costs.

Montreal, February 8th. 1935.

Sgd. Charles Holdstock,
Attorney for Plaintiff.

True Copy

Charles Holdstock,
Atty for Plaintiff.

EXCEPTION TO JUDGMENT

The Plaintiff, Ethel Quinlan, hereby respectfully excepts to the judgment rendered in this cause granting the motion of defendant Robertson to be allowed to file a supplementary plea, which judgment was rendered on the 30th of January, 1935.

Feb. 12th 1935.

Charles Holdstock,
Attorney for Plaintiff.

MOTION POUR DETAILS

1o—ATTENDU que la nature de cette action, intentée par la demanderesse, est une action en destitution des exécuteurs testamentaires de la succession de feu Hugh Quinlan, et pour l'annulation de transports de certaines parts et actions—;

2o—ATTENDU que, dans le 15ème paragraphe de la réponse au plaidoyer supplémentaire du défendeur A. W. Robertson, la demanderesse allègue:—

"... communication whereof was denied to them, and their "assent was obtained by misrepresentation, that is, it was repre- "sented to them that if the defendant Robertson returned the "shares to the estate, the latter would be obliged to repay the "$250,000, with interest and that no one would buy the shares "except the defendant Robertson and there would be a reduction "in income of one third, and at the same time concealed from "the heirs the fact that defendant Robertson was unable to re- "turn the shares, having sold them"—.

3o—ATTENDU que le défendeur A. W. Robertson ne saurait répliquer à cette dite réponse, sans s'exposer à la surprise, à moins que des détails ne soient fournis;

QU'IL SOIT ordonné à la demanderesse de fournir et produire, sous tel délai qu'il plaira à cette Honorable Cour de fixer, les détails suivants; à sa réponse, à savoir:— au paragraphe 15

de sa réponse, dire et préciser dans les détails quand les fausses représentations ont été faites et si ces fausses représentations ont été faites verbalement ou par écrit; si elles ont été faites par écrit,

la teneur de ces fausses représentations écrites, au cas échéant; où à quel endroit elles ont été faites et, si elles ont été faites en présence de certaines personnes, dire et préciser dans les détails en présence de qui elles ont été faites; et qu'à défaut par la demanderesse de produire les détails ordonnés dans les délais qui seront fixés par cette honorable Cour, qu'il soit ordonné que les allégations susdites, pour lesquelles tels détails seront ordonnés, soient retranchés de la réponse; le tout avec dépens.

Montréal, le 18 Février 1935.

Beaulieu, Gouin, Mercier & Tellier,
Procureurs du défendeur A. W. Robertson.

AFFIDAVIT

Je, Henri Beaulieu, avocat, demeurant au No 5787 rue Déom, dans la cité de Montréal, district de Montréal, étant assermenté sur les Saints Evangiles, dépose et dis:

1o—Je suis l'un des avocats du défendeur A. W. Robertson, en cette cause;

2o—Tous les faits mentionnés en la motion ci-dessus sont vrais;

ET J'AI SIGNE:

Henri Beaulieu.

Asserment devant moi,)
à Montréal, ce 18ème)
jour de février 1935.)

Léo Limoges,
Commissaire de la Cour Supérieure,
pour le disrict de Montréal.

JUGEMENT DE LA COUR SUPERIEURE
ACCORDANT MOTION.

Ce 25ième jour du mois de février 1935.

PRESENT: L'HONORABLE JUGE F. J. CURRAN

LA COUR, après avoir entendu les parties par procureur sur la motion du défendeur A. W. ROBERTSON pour détails; après avoir examiné la procédure et délibéré;

ACCORDE ladite motion; ORDONNE à la demanderesse de fournir auxdits défendeurs les détails demandés par sa motion dans un délai de quinze jours d'hui et, à défaut par la demanderesse de produire lesdits détails dans ledit délai; ORDONNE que les allégations pour lesquelles tels détails sont ordonnés, soient retranchés de la réponse; dépens à suivre.

F. J. CURRAN,
J. C. S. M.

RP/JG

PARTICULARS OF PARAGRAPH 15 OF THE ANSWER TO THE SUPPLEMENTARY PLEA FURNISHED BY THE PLAINTIFF ETHEL QUINLAN IN COMPLIANCE WITH JUDGMENT RENDERED ON THE 25h OF FEBRUARY, 1935.

The said Plaintiff says hat the misrepresentations alleged in paragraph 15 of her said answer to the Supplementary Plea were:—

(1) made on the 31st of January, 1934,

(2) verbally

(3) at the office of Messrs Campbell, McMaster, Couure, Kerry & Bruneau, 275 St. James St. W., Montreal.

(4) before Mr. and Mrs. Harry Dunlop; Mr. and Mrs. E. Ledoux, Mr. W. Quinlan; Mr. E. Quinlan, Mr. L. Desaulniers, Mr. H. Ledoux, Mr. René Morin, Mr. A. C. P. Couture, K.C., and Mr. R Couture, Notary.

Montreal, February 27th. 1935.

Charles Holdstock,
Attorney for Plaintiffs.

REPLIQUE

Pour réplique à la réponse produite par la demanderesse Ethel Quinlan, à l'encontre du plaidoyer supplémentaire du défendeur A. W. Robertson, le dit défendeur A. W. Robertson dit et allègue:—

1o—Il demande acte des admissions contenues aux paragraphes 1 et 2 de la dite réponse et nie les dits paragraphes, quant au surplus;

2o—Le défendeur A. W. Robertson nie les paragraphes 4 et 7 de la dite réponse;

3o—En réponse aux paragraphes 8, 9 et 10 de la dite réponse, le défendeur A. W. Robertson s'en rapporte à la teneur du jugement de la Cour Suprême auquel il réfère dans son plaidoyer supplémentaire; il nie les dits paragraphes, en autant qu'ils ne concordent pas avec la teneur de ce jugement;

4o—En réponse au paragraphe 11 de la dite réponse, le défendeur A. W. Robertson s'en rapporte aux allégations contenues dans les paragraphes de son plaidoyer supplémentaire, mais il nie le dit paragraphe 11 de la présente réponse en autant que ce paragraphe ne concorde pas avec les allégations de son plaidoyer supplémentaire;

5o—En réponse au paragraphe 12 de la dite réponse, le défendeur A. W. Robertson s'en rapporte à la teneur des jugements rendus, tant par la Cour Supérieure que par la Cour du Banc du Roi, et nie le dit paragraphe, quant au reste;

6o—Le défendeur A. W. Robertson nie le paragraphe 13 de la dite réponse, comme étant faux en fait et mal fondé en droit;

7o—En réponse au paragraphe 14 de la dite réponse, le défendeur A. W. Robertson déclare qu'il s'en rapporte à la teneur des jugements rendus tant par la Cour Supérieure que par la Cour du Banc du Roi, dans la présente instance; il nie le paragraphe 14 susdit, quant au reste;

8o—Le défendeur A. W. Robertson nie le paragraphe 15 de la dite réponse, comme étant faux en fait et mal fondé en droit;

9o—En réponse au paragraphe 16 de la dite réponse, le dit défendeur Robertson déclare qu'il s'en rapporte à la preuve déjà faite dans la présente cause; il nie le reste du dit paragraphe et nie spécialement que les actions de la Amiesite Asphalt Limited aient été vendus pour le prix de $750,000.00;

10o—Le défendeur A. W. Robertson nie les paragraphes 17, 18, 19, 20 et 21 de la dite réponse, comme étant faux en fait et mal fondés en droit;

11o—En réponse au paragraphe 22 de la dite réponse, le défendeur A. W. Robertson déclare qu'il s'en rapporte aux termes du contrat intervenu le 31 janvier 1934, devant Mtre R. Papineau-Couture, N.P., et il nie le dit paragraphe, quant au reste;

2o—Le défendeur A. W. Robertson nie les paragraphes 23 et 24 de la dite réponse, comme étant faux en fait et mal fondés en droit;

13o—Le dit défendeur A. W. Robertson nie particulièrement les détails fournis par la demanderesse E. Quinlan, en rapport avec le paragraphe 15 de sa réponse, comme étant faux en fait et mal fondés en droit;

POURQUOI le dit défendeur A. W. Robertson, persistant dans toutes et chacune des allégations de son plaidoyer supplémentaire, conclut au maintien de ce dit plaidoyer supplémentaire et au rejet de l'action, avec dépens.

Montréal, le 28 mai 1935.

Beaulieu, Gouin, Mercier & Tellier,
Procureurs du défendeur A. W. Robertson.

MOTION ON BEHALF OF PLAINTIFF, ETHEL QUINLAN, TO JOIN NEW DEFENDANTS IN THIS ACTION.

Whereas the present case has by judgment of the Supreme Court of Canada, rendered the 6th of June, 1934, been referred back to the Superior Court for the District of Montreal, to take evidence and to secure a new adjudication on issues therein specified.

Whereas on or about the 14th January 1935, the defendant A. W. Robertson, with the permission of this Honorable Court,

filed a supplementary plea to the Plaintiff's action setting up the deed of settlement of the present litigation.

Whereas the Plaintiff in her answer to such supplementary plea has prayed for reasons set forth in the said answer that the said deed of settlement be set aside, at all events in so far as the said Plaintiff is concerned.

Whereas the present cause was fixed for trial on the 4th of June, 1935, before his Lordship the Honorable Mr. Justice Philippe Demers, one of the Honorable Judges of this Court and after this case had been called and the issues partially explained to the Court by Counsel for the defendant Robertson, the Plaintiff, Margaret Quinlan, by attorney, raised an objection that the said Plaintiff, Margaret Quinlan, was no longer a party to this cause, inasmuch as the Supreme Court of Canada had declared that she had settled with the defendant Robertson and that the litigation, so far as she was concerned, was at an end, and the defendants, Capital Trust Corporation Limited and General Trust of Canada also appeared by attorneys and claimed that they were no longer parties to the suit, inasmuch as the action had been dismissed by the Superior Court in so far as they were concerned.

Whereas the Honorable Judge presiding expressed the view that the objections were well founded and thereupon the case was adjourned to the month of October to afford the present Plaintiff an opportunity of joining all the parties to the aforesaid deed of settlement in the present suit.

Whereas the said deed of settlement was made between the said Margaret Quinlan, Party of the First Part, William A. Quinlan, Kathleen Veronica Quinlan, Augusta Quinlan, Mary Theresa Quinlan, John Henry Dunlop, Edward Hugh Quinlan, Helen Hilda Quinlan, John Henry Dunlop in his quality of tutor to his minor child, Joan Stuart Dunlop, Ernest Ledoux in his quality of tutor to his minor children, Hugh, Francis, David and Mary Theresa Ledoux, the parties of the Second Part, and Capital Trust Corporation Limited and General Trust of Canada, in their quality of executors and Trustees of the Estate of the late Hugh Quinlan, parties of the third part and the defendant Angus William Robertson, Party of the Fourth Part.

Whereas certain stipulations as to the payment of moneys were made in the said deed of settlement in favor of Jacques Desaulniers, King's Counsel, Edouard Masson, advocate, Henri Masson Loranger, advocate, and Agenor H. Tanner, King's Counsel and the Honorable J. L. St. Jacques.

THAT the Plaintiff, Ethel Quinlan, be permitted and authorised to join in the present action the parties to the said deed of settlement and also the parties aforesaid who appear to have an interest therein and thereunder, to wit, Dame Margaret Quinlan of the City of Montreal, wife separate as to property of Jacques Desaulniers, advocate and King's Counsel, of the same place and the said Jacques Desaulniers as well personally as for the purpose of authorising his said wife for all legal purposes; William A. Quinlan, manager, of the City of Westmount, Kathleen Veronica Quinlan, wife separate as to property of Ernest Ledoux, both of the said City of Montreal, and the said Ernest Ledoux for the purpose of authorising his said wife for all legal purposes; Augusta Quinlan, spinster of the said City of Montreal, Mary Theresa Quinlan, wife common as to property of John Henry Dunlop of the City of Westmount and the said John Henry Dunlop as head of the said community of property and to authorise his said wife for all legal purposes; Edward Hugh Quinlan of the said City of Montreal, Helen Hilda Quinlan of the said City of Montreal, and the said John Henry Dunlop in his quality of tutor to his minor child John Stuart Dunlop, and the said Ernest Ledoux in his quality of tutor to his minor children, Hugh, Francis, David and Mary Theresa Ledoux; Capital Trust Corporation Limited, a body corporate having its principal place of business for the Province of Quebec, in the City of Montreal and General Trust of Canada a body corporate having its principal place of business in the said City of Montreal, said Capital Trust Corporation Limited and General Trust of Canada in their quality of Executors and Trustees under the last will and testament of the late Hugh Quinlan, — the whole with costs to follow the event of the suit.

Montreal, June 18th. 1935.

Charles Holdstock,
Attorney for Plaintiff Ethel Quinlan.

AFFIDAVIT

I, John T. Kelly, salesman, residing a Number 14 Hudson Avenue, in the City of Westmount, being duly sworn make oath and say:—

(1) That I am the husband of the Plaintiff in this cause, Dame Ethel Quinlan and have a knowledge of the matters and things

alleged in the foregoing motion and said matters and things are true.

And I have signed.

John T. Kelly.

Sworn to before me at)
Montreal, this 19th)
day of June, 1935.)

Rolland Langlois,
A commissioner of the
Superior Court for the
District of Montreal.

JUDGMENT GRANTING MOTION TO JOIN NEW DEFENDANTS IN THIS ACTION.
SUPERIOR COURT

On this 26th day of June 1935.

PRESENT: THE HON. MR. JUSTICE FOREST.

THE COURT, having heard the parties by counsel on the motion of Plaintiff Ethel Quinlan, praying, for the reasons therein set forth, that she be permitted to join in the present action the parties to the deed of settlement mentioned in the supplementary plea of Defendant A. W. Robertson and also the parties mentioned in the said motion who appear to have an interest therein and thereunder, to wit:–Dame Margaret Quinlan of the City of Montreal, wife separate as to property of Jacques Desaulniers, advocate and King's Counsel, of the same place and the said Jacques Desaulniers as well personally as for the purpose of authorizing his said wife for all legal purposes; William A. Quinlan, Manager, of the City of Westmount, Kathleen Veronica Quinlan, wife separate as to property of Ernest Ledoux, both of the City of Montreal, and the said Ernest Ledoux for the purpose of authorizing his said wife for all legal purposes; Augusta Quinlan, spinster of the said City of Montreal, Mary Theresa Quinlan, wife common as to property of John Henry Dunlop of the City of Westmount, and said John-Henry Dunlop as head of the said community of property and to authorize his said wife for all legal purposes; Edward Hugh Quinlan of the said City of Montreal, Helen Hilda Quinlan of the said City of Montreal, and the said John Henry Dunlop in his quality of tutor to his minor child John

Stewart Dunlop, and the said Ernest Ledoux in his quality of tutor to his minor children, Hugh, Francis, David and Mary Theresa Ledoux; Capital Trust Corporation Limited, a body corporate having its principal place of business for the Province of Quebec, in the City of Montreal and General Trust of Canada a body corporate having its principal place of business in the said City of Montreal, said Capital Trust Corporation Limited and General Trust of Canada in their quality of Executors and Trustees under the last will and testament of the late Hugh Quinlan;

DOTH GRANT the said motion, costs to follow; DOTH PERMIT and AUTHORIZE the said Plaintiff to, within a delay of ten days, join in the present action the said parties, as prayed.

Alfred Forest,
J. S. C. M.

JOM/TG

FIAT FOR ALIAS WRIT OF SUMMONS

I appear for the Plaintiff, Ethel Quinlan, and require on her behalf and alias writ of summons returnable within legal delays adressed to a bailiff of the Superior Court against defendants above mentioned joined to action by judgment of the Honorable Mr. Justice Forest under date of 26th June 1935 to answer the demand contained in the Answer of the Plaintiff, Ethel Quinla, to the Supplementary Plea of the defendant A. W. Robertson.

Montreal, July 3rd 1935.

C. Holdstock,
Attorney for Plaintiff Ethel Quinlan.

MOTION DE LA DEFENDERESSE ADDITIONNELLE DAME MARGARET QUINLAN, POUR FAIRE METTRE EN CAUSE KATHERINE KELLY

ATTENDU que les procédures signifiées à la dite défenderesse dame Margaret Quinlan, mettent en cause, pour en démontrer l'annulation, le règlement fait au nom de la succession et pour elle par ses exécuteurs-testamentaires et fiduciaires, ayant pour effet entre autres, de vendre un ensemble d'actions de ladite

succession Quinlan pour un prix total de trois cent vingt mille dollars ($320,000), lequel prix a été payé à la succession et appartient en conséquence à l'ensemble de tous les héritiers suivant leurs droits;

ATTENDU que la demanderesse ne saurait faire annuler ledit règlement comme elle demande, sans affecter les droits de tous les héritiers, et en conséquence, procéder à leur mise en cause;

ATTENDU que la fiducie créée audit testament n'est pas encore ouverte et que le corps de la succession doit être conservé comme un tout juqu'au décès du dernier des huit enfants du défunt;

ATTENDU que dans l'intervalle, les intérêts actifs de la succession ne peuvent être scindés, ni divisés, ni gouvernés de façon différente et que le maintien ou l'annulation de la dite vente desdites parts doit être prononcé pour tous les héritiers;

ATTENDU qu'une héritière, savoir: mademoiselle Katherine Kelly, fille mineure de la demanderesse, n'a pas été mise en cause et n'est pas représentée, et que c'est la seule à n'être pas ainsi représentée;

ATTENDU que la présente défenderesse additionnelle dame Margaret Quinlan a intérêt à ce qu'il ne soit pas prononcé un jugement sur la valeur dudit règlement, à moins que tous les intéressés, y compris ladite demoiselle Katherine Kelly, ne soient liés par tel jugement;

ATTENDU que c'est la demanderesse dame Ethel Quinlan qui procède présentement à démontrer l'annulation dudit jugement, et que la mise en cause de tous les intéressés doit être à sa charge;

QU'IL SOIT ORDONNE à la demanderesse Dame Ethel Quinlan de mettre en cause, suivant la loi, ladite demoiselle mineure Katherine Kelly, sa propre fille, dans les délais et aux conditions que cette cour déterminera; et que toutes procédures de ladite demanderesse contre la présente défenderesse soient suspendues jusqu'à ce que telle mise-en-cause ait été faite suivant la loi, le tout avec dépens.

Montréal, 27 août 1935.

Jacques Désaulniers,
Procureur de la défenderesse additionnelle
dame Margaret Quinlan.

AFFIDAVIT

Je soussigné, JACQUES DESAULNIERS, avocat au Barreau de Montréal, et conseil du Roi, demeurant au numéro 3490 Cote des Neiges, dans la cité de Montréal, étant dûment assermenté sur les Saints-Evangiles, dépose et dis:—

1o. Je suis l'époux et le procureur au dossier de la défenderesse dame Margaret Quinlan;

2o. Les faits allégués dans la motion ci-dessus sont vrais à ma connaissance;

ET J'AI SIGNE A MONTREAL, ce 27e JOUR DE AOUT 1935:—

Jacques Desaulniers

Assermenté devant moi
à Montréal, ce 27e jour
d'août 1935.

J. P. L. Brien,
Commissaire de la cour
supérieure pour le district
de Montréal.

MOTION DE LA DEFENDERESSE ADDITIONNELLE DAME MARGARET QUINLAN POUR PARTICULARITES

ATTENDU qu'au paragraphe quinze de la réponse de la demanderesse Ethel Quinlan au plaidoyer supplémentaire du défendeur A. W. Robertson, il est allégué que le consentement donné par les signataires de ladite transaction a été vicié et que ledit consentement n'a été obtenu que par de fausses représentations, ainsi que l'indiquent les mots suivants à ladite allégation quinze:—

> "..... were constrained to give such assent hurriedly, without a proper opportunity of examining the document, communication whereof was denied to them and their assent was obtained by misrepresentation, that is, it was represented to them that if the defendant Robertson returned the shares to the estate, the latter would be obliged to

repay the $250,000 with interest and that no one would buy the shares except the defendant Robertson and there would be a reduction in income of one third, and at the same time concealed from the heirs the fact that defendant Robertson was unable to return the shares, having sold them."

ATTENDU que la défenderesse dame Margaret Quinlan ne peut plaider sans que des détails lui soient fournis au sujet desdites manoeuvres frauduleuses;

QU'IL SOIT ORDONNE à la demanderesse de fournir et produire, sous tel délai qu'il plaira à cette honorable cour de fixer, les détails suivants sur lesdites représentations, savoir:—

1o. Quand elles ont été faites?

2o. Si elles ont été faites verbalement?

3o. Si elles ont été faites par écrit, la teneur desdits écrits?

o. Où elles ont été faites?

5o. En présence de qui elles ont été faites?

A DEFAUT par la demanderese de fournir et produire lesdites particularités dans le délai fixé par cette honorable cour, que les mots suivants:—

"..... were constrained to give such assent hurriedly, without a proper opportunity of examining the document, communication whereof was denied to them and their assent was obtained by misrepresentation, that is, it was represented to them that if the defendant Robertson returned the shares to the estate, the latter would be obliged to repay the $250,000 with interest and that no one would buy the shares except the defendant Robertson and there would be a reduction in income of one third, and at the same time concealed from the heirs the fact that defendant Robertson was unable to return the shares, having sold them."

du paragraphe quinze, soient retranchés du dossier, le tout avec dépens;

Montréal, 27 août 1935.

Jacques Désaulniers,
Procureur de la défenderesse-additionnelle
dame Margaret Quinlan.

AFFIDAVIT

Je soussigné, JACQUES DESAULNIERS, avocat du Barreau de Montréal, et conseil du Roi, demeurant au numéro 3490 Côte des Neiges, dans la cité de Montréal, étant dûment assermenté sur les Saints-Evangiles, dépose et dis:—

1o. Je suis l'époux et le procureur au dossier de la défenderesse dame Margaret Quinlan;

2o. Les faits allégués dans la motion ci-dessus sont vrais à ma connaissance;

ET J'AI SIGNE A MONTREAL, CE 27e JOUR D'AOUT 1935:

Jacques Désaulniers

Assermenté devant moi
à Montréal, ce 27e
jour d'août 1935.

J. P. L. Brien,
Commissaire de la cour
supérieure pour le
district de Montréal.

JUGEMENT DE LA COUR SUPERIEURE ORDONNANT A LA DEMANDERESSE DE FOURNIR PARTICULARITES

Le dixième jour de septembre 1935.

PRESENT: L'HON. JUGE FOREST.

LA COUR, ayant entendu les parties sur la motion de la demanderesse additionnelle, Margaret Quinlan, pour détails, après avoir examiné la procédure et délibéré;

ACCORDE la motion; ORDONNE à la demanderesse de fournir et produire les particularités demandées dans la motion, dans un délai de dix jours.

Alfred Forest,
J. C. S.

LP/RC

MOTION ON BEHALF OF PLAINTIFF, ETHEL QUINLAN

(1) WHEREAS, by Judgment rendered in this cause on the 26th of June 1935 by this Honourable Court, the plaintiff Ethel Quinlan was authorized to join in the present action the parties to the Deed of Settlement, mentioned in the Supplementary Plea of defendant, A. W. Robertson, made and filed in his cause, and also the parties, mentioned in the Motion of the said plaintiff, upon which the said Judgment of the 26th of June 1935 was rendered, who appeared to have an interest in the said deed of settlement;

(2) WHEREAS in the said Motion, after asking to be permitted to join the parties to the said Deed of Settlement, as well as the parties mentioned in the said Motion who appeared to have an interest therein, the parties to be added were named and described;

(3) WHEREAS the names and descriptions of the parties only to the Deed of Settlement were given and the names of the other parties, who appeared to be interested in the Deed of Settlement, were omitted by error;

(4) WHEREAS the names and description of the parties who were thus omitted by error are:

Edouard Masson, Advocate, of the City and District of Montreal; Henri-Masson-Loranger, Advocate of the City and District of Hull; Agenor H. Tanner, Advocate and King's Counsel of the said City of Montreal; and the Honorable J. L. St-Jacques of the City of Outremont, one of the Honorable Judges of the Court of King's Bench of the Province of Quebec.

THAT by judgment to be rendered hereon the Plaintiff, Ethel Quinlan, be permitted and authorized to add to the present action, within a delay of six days, the said Edouard Masson, Henri Masson-Loranger, Agenor H. Tanner and the Honorable J. L. St. Jacques, in addition to the parties named and described in the aforesaid judgment of the 26th June 1935.

Montreal, August 30th, 1935.

C. Holdstock,
Attorney for Plaintiff Ethel Quinlan.

AFFIDAVIT

I, JOHN T. KELLY, salesman, residing at number 14 Hudson Avenue, in the City of Westmount, being duly sworn, make oath and say:—

(1) That I am the husband of the plaintiff in this cause, Dame Ethel Quinlan, and have a knowledge of the matters and things alleged in the foregoing motion and the said matters and things are true.

AND I HAVE SIGNED.

J. T. Kelly.

Sworn to before me at the City of Montreal this 30th day of August 1935.

Rolland Langlois,
A Commissioner of the Superior Court, District of Montreal.

JUDGMENT OF THE SUPERIOR COURT GRANTING MOTION TO AMEND

Judgment this tenth day of September 1935.

PRESENT: THE HONORABLE JUSTICE FOREST

THE COURT, having heard the parties, by counsel, on the second motion of Plaintiff, Dame Ethel Quinlan to amend, by adding to the present action, within a delay of six days, the names of Edouard Masson, Henri Masson Loranger, Agenor H. Tanner and the Honorable J. L. St. Jacques in addition to the parties named and described in the judgment rendered in this cause on the 26th of June 1935, whereby the Plaintiff Ethel Quinlan was authorized to join in the present action the parties to the Deed of Settlement mentioned in the Supplementary Plea of the Defendant A. W. Robertson made and filed in this cause, and also the parties mentioned in the motion of the said Plaintiff upon which the said judgment of the 26th of June 1935 was rendered, who appeared to have an interest in the said Deed of Settlement, having examined the proceedings and deliberated:

SEEING the affidavit in support of said motion;

DOTH GRANT said motion and DOTH AUTHORIZE said Plaintiff, Ethel Quinlan, to add to the present action, within a delay of ten days, the said Edouard Masson, Henri Masson-Loranger, Agenor H. Tanner and the Honorable J. L. St. Jacques in addition to the parties named and described in the aforesaid judgment of the 26th of June 1935 the whole with costs to follow suit.

Alfred Forest,
J. S. C.

V.de C-N L.L.

FIAT FOR SECOND ALIAS WRIT OF SUMMONS.

I appear for the plaintiff, ETHEL QUINLAN, and require on her behalf a second alias writ of summons returnable within the legal delays, addressed to a bailiff of the Superior Court for the district of Montreal, against the defendants abovementioned joined to action by judgment of the Honorable Mr. Justice Forest under date of September 10th 1935, to answer the demand contained in the supplementary plea and answer and reply thereto.

Montreal, September 10th 1935.

C. Holdstock,
Attorney for Plaintiff Ethel Quinlan.

MOTION OF PLAINTIFF ETHEL QUINLAN TO BE RELIEVED OF DEFAULT TO ADD PARTY.

1o. On the 10th day of September 1935 judgment was rendered ordering plaintiff to place en cause her minor daughter Miss Katherine Kelly within a delay of fifteen days;

2o. Plaintiff took the necessary proceedings to have a tutor named and was not until the 26th day of September 1935, that the tutor was so named;

3o. That the plaintiff has made all diligence under the circumstances and should in the interest of justice be relieved from default;

4o. That she is now ready to immediately take such proceedings as is contemplated by the said judgment;

WHEREFORE plaintiff prays that she be relieved from default under the judgment of the 10th September 1935, and that she be allowed to take proceedings as contemplated by said judgment instanter, and she be allowed to amend by adding said party, the whole with costs to follow;

Montreal, 15th November 1935.

C. Holdstock,
Attorney for plaintiff Ethel Quinlan Kelly.

AFFIDAVIT

I, John T. Kelly, salesman, residing at number 14 Hudson Avenue, in the city of Westmount, being duly sworn, make oath and say:—

(1) That I am the husband of the plaintiff in this cause, Dame Ethel Quinlan, and have a knowledge of the matters and things alleged in the foregoing motion and the said matters and things are true.

AND I HAVE SIGNED.

J. T. Kelly.

Sworn to before me at the
City of Montreal, this 16th
day of November 1935.

Rolland Langlois,
Commissioner of the Superior Court
for the district of Montreal.

JUDGMENT OF THE SUPERIOR COURT GRANTING MOTION TO BE RELIEVED OF DEFAULT

On the 20th day of November 1935

PRESENT: THE HONOURABLE MR. JUSTICE CURRAN

THE COURT, having heard the parties on the motion of Plaintiff Ethel Quinlan Kelly praying, for the reasons therein

set forth, that she be relieved from default under the judgment of the 10th September 1935 and that she be allowed to take proceedings as contemplated by said judgment instanter, and she be allowed to amend by adding the tutor of her minor daughter;

DOTH GRANT the said motion as prayed, costs to follow.

F. J. Curran,
J. S. C.

M/GH

DEFENSE DES DEFENDEURS DAME MARGARET QUINLAN ET JACQUES DESAULNIERS, A L'ACTION ET INSTANCE PRISES CONTRE EUX PAR SUITE DE LA REPONSE DE LA DEMANDERESSE AU PLAIDOYER SUPPLEMENTAIRE DU DEFENDEUR ROBERTSON.

Pour défense à l'action et instance prises contre eux par la demanderesse par suite et en vertu de la réponse de la demanderesse au plaidoyer supplémentaire du défendeur Robertson, et en conséquence, comme défense aux moyens allégués contre eux par la demanderesse dans sadite réponse, les défendeurs Margaret Quinlan et Jacques Désaulniers, disent:—

1. Les défendeurs susdits sont assignés pour répondre à la demande de la demanderesse contenue dans sa réponse au plaidoyer supplémentaire du défendeur Robertson;

2. Comme il appert à ladite réponse, la demanderesse y attaque une convention de règlement en date du 31 janvier 1934, reçue par acte authentique par Me N. Papineau-Couture, N.P., et à laquelle lesdits présents défendeurs étaient parties;

3. Par cette convention de règlement, les exécuteurs-testamentaires de la succession Hugh Quinlan ont, en vertu des pouvoirs à eux conférés par le testament, vendu au défendeur Robertson toutes les actions provenant dudit Hugh Quinlan dans un certain nombre de compagnies industrielles et que ledit défendeur Robertson prétendait avoir acquises antérieurement du défunt lui-même en des circonstances qui ont fait l'objet en partie de l'action principale en cette cause;

4. Lesdites actions sont les suivantes:—

1151 actions de la compagnie Quinlan, Robertson et Janin Ltd;
250 actions de la compagnie Amiesite Asphalt Ltd;
200 actions de la compagnie Ontario Amiesite Ltd;
400 actions de la compagnie Fuller Gravel Co. Ltd;

5. Ledit défendeur Robertson avait déjà payé la somme de deux cent soixante-dix mille dollars ($270,000) à ladite succession Hugh Quinlan et pour son bénéfice, en vertu de l'achat qu'il prétendait avoir fait desdites actions du vivant même dudit Hugh Quinlan;

6. Par la convention de règlement ci-haut mentionnée du 31 janvier 1934, ledit défendeur Robertson consentit à payer, et les exécuteurs-testamentaires de ladite succession consentirent à vendre lesdites actions pour un prix total de trois cent vingt mille dollars ($320,000), soit cinquante mille dollars ($50,000) de plus que le prix porté dans la première prétendue vente alors attaquée devant les tribunaux, et ledit défendeur Robertson, par suite de cette convention de règlement ci-haut mentionnée, a payé le surplus de prix, savoir: la somme de cinquante mille dollars ($50,000) à la succession;

7. Cette convention de règlement du 31 janvier 1934 a été faite pendant que la présente action principale était mue en appel devant la cour suprême du Canada et alors que la présente défenderesse Margaret Quinlan était dans la cause demanderesse conjointe avec la présente demanderesse dame Ethel Quinlan et que le présent défendeur Jacques Désaulniers était dans la cause le procureur au dossier de ladite Margaret Quinlan;

8. La présente cause sur l'action principale était alors à la cour suprême en appel du jugement unanime de la cour du banc du roi à Montréal, lequel avait maintenu le jugement de la cour supérieure prononcé par l'honorable juge Martineau et qui avait pour effet, entre autres, de ne pas reconnaître et d'annuler le prétendu achat que le défendeur Robertson prétendait avoir fait desdites actions dudit Hugh Quinlan en son vivant;

9. Lors du procès devant la cour supérieure sur l'instance principale, ledit défendeur Robertson avait tenté de faire une preuve testimoniale de diverses circonstances à l'effet de prouver son prétendu achat desdites parts et, sur objection des demanderesses, ladite preuve testimoniale avait été empêchée et déclarée illégale et la même objection à la preuve testimoniale avait été maintenue par la cour du banc du roi;

10. Lorsque ladite convention de règlement du 31 janvier 1934 a été passée, l'appel devant la cour suprême avait été plaidé en partie oralement par les procureurs au dossier et, comme il arrive, au cours de l'argument, des honorables membres du

tribunal avaient eu l'occasion de faire des remarques et en particulier le juge en chef Sir Lyman Duff, avait fait des remarques qui étaient de nature à laisser prévoir qu'il était possible que la cour suprême permît la preuve testimoniale ci-haut mentionnée au sujet des circonstances du prétendu achat par le défendeur Robertson desdites parts, et qu'en conséquence, les demanderesses fussent renvoyées devant la cour supérieure pour que cette preuve fût reçue, ce qui en outre, pouvait laisser prévoir que la preuve une fois faite, le sentiment, à tout le moins de la cour suprême, pourrait être favorable à la reconnaissance de ladite vente si la preuve testimoniale apportée par le défendeur Robertson pouvait paraître suffisante;

11. C'est dans ces circonstances que la présente défenderesse, dame Margaret Quinlan, alors demanderesse sur l'instance principale, et son époux, le présent défendeur Jacques Désaulniers, alors le procureur de ladite Margaret Quinlan, décidèrent qu'ils avaient intérêt à concourir dans une transaction quant à eux au sujet du litige, et dans l'application quant à eux, d'une vente définitive et ferme qui serait faite par écrit audit défendeur Robertson desdites actions par les exécuteurs-testamentaires en vertu des pouvoirs à eux conférés et pour un prix qui a alors paru raisonnable;

12. Au reste, cette cause, sur l'instance principale qui était très sérieuse, n'avait pas manqué, même avant les remarques de la cour suprême, de provoquer des pourparlers de règlement de temps à autre, auxquels les présents défendeurs avaient pris part;

13. Lorsque ledit règlement fut définitivement consenti et que les présents défendeurs agréèrent la vente des parts aux conditions qui y sont déterminées, les présents défendeurs avaient envisagé en outre la situation qui serait faite à la succession dont la défenderesse Margaret Quinlan est l'une des légataires universelles, du fait que si même le prétendu achat du défendeur Robertson restait annulé définitivement et qu'il eût à retourner lesdites actions à la succession Hugh Quinlan, celle-ci serait restée, du fait de ces actions, actionnaire minoritaire dans toutes les compagnies intéressées, lesquelles étaient et avaient chance de demeurer contrôlées par ledit défendeur Robertson, seul ou avec le concours d'associés, ce qui aurait pu en pratique, contribuer à laisser auxdites actions des revenus plus que douteux parce que sujets à des déclarations de dividendes non-contrôlées par la succession, et, en définitive, à diminuer grandement au point de vue pratique la valeur desdites actions;

14. Sous les circonstances, les présents défendeurs Margaret Quinlan et Jacques Désaulniers ont cru qu'il était à la fois de l'intérêt de la succession, et dans tous les cas, de l'intérêt de ladite Margaret Quinlan, de mettre fin audit litige quant à elle, et d'approuver en outre la vente ferme desdites parts au prix de trois cent vingt mille dollars ($320,000) qui a été fixé, et en exigeant toutefois que les frais des divers avocats qui jusque-là avaient représenté la demande fussent payés, ce qui fut finalement consenti par ladite convention de règlement;

15. Il s'est trouvé que seule la demanderesse, dame Ethel Quinlan, a refusé, comme elle en avait le droit, de transiger sur le litige ou d'acquiescer à la vente desdites actions, et les présents défendeurs Margaret Quinlan et Jacques Désaulniers, tout en ne désirant pas entraver les recours que la demanderesse Ethel Quinlan, entend continuer, sont intéressés à demander au moins quant à eux, une déclaration de validité de ladite convention de règlement et le renvoi de la présente instance prise contre eux à cet égard;

16. La participation des présents défendeurs à ladite convention de règlements a été en outre approuvée et recommandée par les autres avocats et conseils que les présents défendeurs ont alors consultés;

17. Aux termes du testament dudit feu Hugh Quinlan, ses exécuteurs-testamentaires avaient toute autorité pour faire la vente desdites actions et consentir à tout ce à quoi ils ont consenti à ladite convention de règlement du 31 janvier 1934;

18. Le consentement desdits exécuteurs-testamentaires à la convention de règlement du 31 janvier 1934 a été fait de bonne foi et sans fraude et dans l'intérêt de la succession;

19. De même, le consentement des présents défendeurs à ladite convention de règlement a été fait de bonne foi et sans fraude et dans leur intérêt légitime, et en outre, ladite convention était dans l'intérêt de la succession;

20. En se rapportant aux allégations ci-dessus, les présents défendeurs Margaret Quinlan et Jacques Désaulniers nient en faits et en droit toutes les allégations de ladite réponse et des particularités fournies, qui ne seraient pas conformes aux allégations ci-dessus;

21. Les présents défendeurs demandent acte des admissions contenues aux articles 1 et 2 de ladite réponse;

POURQUOI, les défendeurs Margaret Quinlan et Jacques Désaulniers, se réservant tous recours à raison des allégations diffamatoires contenues dans la réponse de la demanderesse au plaidoyer supplémentaire du défendeur Robertson, concluent à ce que la convention de règlement intervenue le 31 janvier 1934, devant Me Papineau-Couture, N.P., et qui est attaquée par ladite réponse de la demanderesse au plaidoyer supplémentaire du défendeur Robertson, soit déclarée valide et légale à toutes fins que de droit, et, dans tous les cas, autant que lesdits défendeurs Margaret Quinlan et Jacques Désaulniers sont concernés, et à ce que ladite convention de règlement soit maintenue quant auxdits défendeurs Margaret Quinlan et Jacques Désaulniers, et à ce que, à leur égard, ladite réponse de la demanderesse au plaidoyer supplémentaire du défendeur Robertson, et l'action et instance prises par ladite demanderesse contre lesdits défendeurs Margaret Quinlan et Jacques Désaulniers, en vertu et par suite de ladite réponse, soient rejetées quant auxdits défendeurs Margaret Quinlan et Jacques Désaulniers, avec dépens distraits aux procureurs desdits défendeurs.

Montréal, 28 novembre 1935.

Jacques Désaulniers,
Procureur desdits défendeurs Dame Margaret Quinlan et Jacques Désaulniers.

JD/BC

ANSWER OF THE PLAINTIFFS TO THE DEFENCE OF DEFENDANTS DAME MARGARET QUINLAN AND JACQUES DESAULNIERS TO THE ACTION TAKEN AGAINST THEM FOLLOWING THE ANSWER OF PLAINTIFF TO THE SUPPLEMENTARY PLEA OF DEFENDANT ROBERTSON.

1. Paragraphs 1 and 2 are admitted;

2. Paragraph 3 is denied and for further answer plaintiffs re-iterate the allegations of the answer to the supplementary plea of defendant A. W. Robertson, attacking the validity of said agreement;

3. Paragraph 4 is denied as drawn said list does not refer to all the shares mentioned in the so-called agreement and especially were the Fuller Gravel shares not acquired from the late Hugh Quinlan as alleged;

4. The plaintiffs deny the allegations mentioned in paragraphs 5 and 6;

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5. As to paragraphs 7, 8 and 9 plaintiffs state that the record will speak for itself;

6 Paragraphs 10 and 11 are denied and are irrelevant;

7. The plaintiffs are ignorant of the allegations contained in paragraph 12 but if true plaintiffs had no part in same;

8. Paragraph 13 is denied, defendant A. W. Robertson
20 having sold and parted with said shares to the knowledge of defendants Dame Margaret Quinlan and Jacques Desaulniers, said A. W. Robertson could not return them to the estate and in any case the allegations of said paragraph do not constitute a defence to plaintiffs' demand;

9. Paragraph 14 is denied as drawn, plaintiffs say that the consent of the defendants Margaret Quinlan and Jacques Desaulniers was obtained through the sums paid to Jacques Desaul-
30 niers, mentioned in the supplementary plea;

10. Paragraphs 15, 16, 17, 18 and 19 are denied;

11. The plaintiffs join issue with the denials contained in paragraphs 20 and 21;

12. The defence of the defendants Dame Margaret Quinlan and Jacques Desaulniers is unfounded in law and in fact;

40 WHEREFORE the plaintiffs pray re-iterating the allegations and conclusions of the answer of plaintiffs to the supplementary plea of defendant Robertson, and the conclusions taken against said Margaret Quinlan and Jacques Desaulniers that same be maintained with costs and that the defence of the defendants Dame Margaret Quinlan and Jacques Desaulniers be dismissed with costs;

Montreal, October 5th, 1937.

C. Holdstock,
Attorney for Plaintiffs.

REPLIQUE DES DEFENDEURS MARGARET QUINLAN ET JACQUES DESAULNIERS A LA REPONSE DES DEMANDEURS.

1.—Ils demandent acte des admissions contenues au paragraphe 1 de ladite réponse.

2.—Ils lient contestation sur le paragraphe 2.

3.—Ils lient contestation sur le paragraphe 3.

4.—Ils lient contestation sur le paragraphe 4

5.—Ils lient contestation sur le paragraphe 5.

6.—Ils lient contestation sur le paragraphe 6.

7.—Ils lient contestation sur le paragraphe 7.

8.—Ils nient le paragraphe 8.

9.—Ils nient le paragraphe 9 et réitèrent les allégations et les conclusions de leur défense.

10.—Ils lient contestation sur le paragraphe 10.

11.—Ils lient contestation sur le paragraphe 11.

12.—Ils nient le paragraphe 12.

POURQUOI, les défendeurs, MARGARET QUINLAN et JACQUES DESAULNIERS, concluent à ce que ladite réponse et l'action et conclusions des demandeurs soient rejetées, le tout avec dépens.

Montréal, 14 avril 1938.

Jacques Désaulniers,
Procureur des défendeurs Margaret Quinlan et Jacques Désaulniers.

INTERVENTION BY JOHN THOMAS KELLY IN HIS QUALITY AS TUTOR TO HIS MINOR DAUGHTER KATHERINE KELLY

The intervenant John Thomas Kelly, in his said quality, having been summoned to appear in this case, hereby intervenes and declares, in his said quality:—

1.—That Katherine Kelly, a minor, for whom the intervenant appears in his quality as tutor, having been appointed as such by one of the Honorable Judges of the Superior Court in and for the District of Montreal, on the 26th September, 1935, is a grand-daugther of the late Hugh Quinlan who died at the City of Westmount on the 26th of June 1927, leaving a last will and testament in authentic form bearing date the 14th of April 1926, already produced in this cause as Plaintiff's Exhibit P-1, and one of the grand children referred to in sub-clause (e) Article V of the said last will and testament and one of the residuary legatees of the property bequeathed under the said Will.

2.—That he opposes in his said quality the Deed of Settlement of date the 31st of January 1934, passed before Mtre. R. Papineau Couture, notary, being the deed referred to in the Supplementary Plea filed in this cause by the defendant A. W. Robertson, and asks that the said Deed of Settlement be declared illegal, null and void and that it be cancelled, on the following grounds:—

a) That the said deed purports to record a sale, by the trustees and executors of the estate of the said late Hugh Quinlan to the defendant Robertson, of 1151 shares of Quinlan, Robertson & Janin Ltd., 250 shares of Amiesite Asphalt Ltd., 200 shares of Ontario Amiesite Asphalt Ltd., and 400 shares of Fuller Gravel Co., Ltd., for the sum of $320,000., that is to say, $50,000. in addition to $270,000. already paid, plus the costs of Margaret Quinlan who was one of the original plaintiffs in this case, notwithstanding that by the judgment of this honorable Court rendered on the 6th of February 1931, the value of the said shares was fixed at $408,928.00 and as a matter of fact are worth much more as will appear hereafter;

b) That it was stipulated in the deed, not only that the title to the shares aforesaid should be vested in the said defendant Robertson, but that the trustees and executors of the estate of the late Hugh Quinlan and the heirs thereof should renounce, give up and abandon all the rights, claims and pretentions of whatever nature or description, which might belong to them under the aforesaid judgment of the 6th of February 1931 and under the judgment of the Court of Appeals of the 30th of December 1932, which confirmed the Superior Court judgment, and to all and every right, claim, action, contention of whatever nature or description which might belong to the said trustees and heirs or be vested in them or in any one of them against the

said defendant Robertson, from whatever source, origin or cause now existing and especially from any and every right, claim, action, contention of whatever nature or description which might belong to them or be vested in them against the said defendant, arising from any of the facts disclosed in the evidence adduced in this present case, or from the administration or management of the estate of the late Hugh Quinlan by the said defendant as executor or trustee, or from the dealings, connections or operations of the said defendant with the late Hugh Quinlan as co-partner, co-shareholder, co-associate or otherwise, or from the dealings, connections or operations of the said Robertson acting jointly with the said late Hugh Quinlan with third parties, or form the personal acts or deeds of the said defendant in whatever capacity, circumstance or time;

c) That the present intervenant was not a party to the said deed of settlement nor was the said Katherine Kelly represented otherwise;

d) That the trustees and executors of the said late Hugh Quinlan and the heirs of the said estate, who were parties to the said agreement, knew, when they entered into the same, that the said defendant Robertson owed the estate of the late Hugh Quinlan and was accountable thereto for, among other things,

(1) At least the sum of $16,000. for the Fuller Gravel Co., Ltd., shares which were not included in the price of $250,000.

(2) At least the sum of $28,315.84 for dividends, together with interest thereon, in respect to the shares of Quinlan, Robertson & Janin Ltd.

(3) At least the sum of $8,250. with interest thereon as dividends on the said shares of Amiesite Asphalt Ltd.

(4) At least the sum of $19,746.26 with interest thereon as dividends upon the shares of Macurban Asphalt Ltd.

(5) At least the sum of $87,500. as the interest of the said estate in the sale, by the defendant Robertson, of the said Macurban & Amiesite Asphalt shares;

(6) One half of the sum of $25,000. with interest, which the defendant Robertson had received from P. Lyall & Sons Ltd., in October 1927;

(7) One half of $48,720.75 which accrued to A. W. Robertson Limited on the sale of 186¾ Preferred and 1308 Common shares of National Sand & Material Co., Ltd., in February

1929, said sum not having been carried to profit and loss account or to any other account from which the shareholders could benefit;

(8) One quatrer of 9,999 shares of Common stock of Canadian Amiesite Ltd., and one quarter of 1,000 shares of Common stock of Amiesite Asphalt Co., of America, which were retained by the defendant Robertson when he hold the shares of Amiesite Asphalt Ltd., and one third of all issued shares of International Amiesite, Limited;

(9) One third of all profits made by Quinlan, Robertson & Janin, Limited, out of the organization, operations and sale of Quinlan, Robertson & Janin (London).

e) That the said trustees and executors knew also at the said time, that there were very large claims against the said defendant Robertson in respect to —

1o. Certain plant and equipment belonging to A. W. Robertson Ltd., on which the late Hugh Quinlan was half owner, which plant and equipment was taken, used and retained in ownership by Quinlan, Robertson & Janin Ltd.;

2o. One third of the profits made by the said defendant and Alban Janin in a contract in connection with the construction of the Taschereau Boulevard between the Harbour Bridge and LaPrairie; and

3o. By way of damages for the loss suffered by the said Estate through the sale of the entire issued share capital of Amiesite Asphalt Ltd., and Macurban Asphalt, Ltd, negotiated and consumated by the defendant in the months of August or September 1928;

f) That the said trustees and executors knew also at the said time that there was a claim against the said defendant Robertson of at least $50,000. arising out of the division which took place about the 19th of July 1930, between the estate of the late Hugh Quinlan and defendant Robertson of certain assets of A. W. Robertson Ltd., in which said company, the defendant Robertson and the said late Hugh Quinlan were joint and equal owners; the particulars of this claim will appear hereafter;

g) Because the said Deed of Settlement deprives the heirs of the late Hugh Quinlan of all right to —

1o. Verify the legality or validity of a withdrawal by the said defendant of government bonds of a value of about $20,000. from the assets of said A. W. Robertson, Ltd., in the month of July 1927, to equalize, as the said defendant claimed, his position with that of the late Hugh Quinlan. The said Capital Trust Corp., consented to such withdrawal without verification and yet failed to include in the liabilities of the said Estate any sum whatever as a debt to said A. W. Robertson Ltd.;

2o. Recover from the said defendant any loss the said Estate may suffer by reason of the trustees and excutors while said defendant held such office investing funds of the said Estate, contrary to the terms of the Will of the late Hugh Quinlan, in hypothecs upon the real estate;

3o. Have from the defendant Robertson a true and proper inventory of the assets of the late Hugh Quinlan at the time of his death the necessity for same being amply demonstrated by the foregoing allegations;

4o. Verify a charge against the estate by the Trustees thereof, during the period while the defendant Robertson was a Trustee, of $9,635.08 for special repairs to the Quinlan home; it being apparent that no such sum was expended in repairing the house;

h) Because to the knowledge of the trustees and executors the consent of the Plaintiff, Margaret Quinlan, to the said agreement was obtained by payment to her husband by the said defendant of a sum of $27,500. which sum was part of a sum of $44,000 paid by the defendant to certain attorneys, but in respect to the husband of Margaret Quinlan, the amount paid to him was far beyond a fair compensation for his services;

i) Because the consent of the other heirs to the said agreement was obtained through the representation of the Trust Companies, the said Trustees to the said heirs, that if they refused their consent the revenue of the Estate would be diminished and consequently each of them would suffer. This representation was based on the further representation that the said defendant was in a position to return the said shares to the estate and demand from the Estate the return of $270,000. and that the shares in the hands of the Estate would be practically worthless. These representations were untrue because the Trustees knew that the said Defendant had resold all the said shares. The trustees further re-

presented that their legal attorney had approved the settlement but failed to inform the heirs that they, the Trustees, had not instructed their legal attorney that defendant Robertson was unable to return the shares or that such approval was based upon, among other things, the representation by the Trustees to their legal attorney that 7/8 of the heirs and the Trustees desired the settlement, or that the legal attorney had advised them that if Robertson was unable to return the shares and the judgment was confirmed, the settlement would be disanvantageous;

j) That under date of the 6th of September 1933, the said Trustees gave notice to all interested parties that they accepted, on behalf of the estate of the said late Hugh Quinlan, all benefits and advantages accruing to the said estate under the judgment rendered in this cause by this Honorable Court and by the Court of King's Bench sitting in and for the District of Montreal. This notice was given while the appeal of the defendant from the said judgments was pending before the Supreme Court of Canada, and the said judgments which the trustees thus accepted were the very judgments to which they purported to have renounced in the said agreement of the 31st of January 1934;

k) That the Capital Trust Corp., Ltd., who was the manager of the said estate and engaged to attend to all the details of the administration thereof including the keeping of the books of account knew or should have known the facts hereinbefore alleged and the other Trustee and Executor, General Trust of Canada, was informed of said facts together with the Capital Trust Corporation by notarial protest on the 29th of September 1933, and in consenting to the said agreement of the 31st of January 1934 violated the duties and trusts imposed upon them by the said Will;

l) That the said Capital Trust Corp., Ltd., has, throughout the administration of the said estate, favored the defendant Robertson, and has shown its willingness to acquiesce in all the said defendant's pretentions and has consistently failed and neglected to make any demand upon the said defendant in respect to any of the claims of the estate hereinabove set forth, or to protect the estate in any way in respect to the said claims;

m) That the learned trial judge, the late Hon. Justice Martineau, in rendering the judgment of the Superior Court on the principal action in this cause, on the 6th of February 1931, recommended that defendant Robertson, if he appealed from said judgment, should resign and appoint in his place an independent Trustee who would combat the defendant's claims;

n) That the defendant Robertson did resign before appealing, but he failed to comply with the other recommendation, in that he appointed as his substitute General Trust of Canada of which his attorney in this cause was a director and since its appointment as such Trustee, the General Trust of Canada has neglected to uphold the rights and pretentions of the Estate and joined in the settlement agreement under which the defendant Robertson was given a blanket release and confirmed in his ownership of the shares;

o) Because the execution of the alleged agreement of the 31st of January 1934, by the officers of the Trustees and executors of the Estate of the late Hugh Quinlan, to wit; the officers of the Capital Trust Corporation Limited and General Trust of Canada, was and is illegal, null and void, inasmuch as said officers were not authorized thereto by their respective companies and an agreement such as that of the 31st January 1934, did not fall within the scope of their ordinary duties or powers as such officers;

p) That if the aforesaid agreement of the 31st January 1934 were allowed to have effect, it would cause the estate of the late Hugh Quinlan great and irreparable injury;

q) That the said Capital Trust Corporation Ltd. was unable to exercise the power to compromise given in the Will of the late Hugh Quinlan to the Executors and Trustees of his estate, because it was personally involved in the alleged purchase by the defendant Robertson from the estate of the late Hugh Quinlan of the shares mentioned in the aforesaid letter of the 20th June 1927 (Exhibit D.R.1) in that, having ascertained on or about the 24th August 1927, that the document upon which the defendant Robertson relied as giving him a right to sell the shares mentioned in the aforesaid letter of the 20th of June 1927, (Exhibit D.R.1) did not emanate from the late Hugh Quinlan, but from Robertson himself, to wit: the said letter, D.R.1, without any apparent acceptance by the said Hugh Quinlan, the said corporation accepted the purchase price of $250,000. mentioned in the said letter, and it accepted said sum without informing itself of the name or identity of the purchaser or of the terms and conditions of the sale which defendant Robertson represented he had made and without obtaining a written legal opinion as to its rights in the premises, although it knew that the shares in question were worth a great deal more than $250,000.

r) That the validity of the said alleged purchase of the said shares by the defendant Robertson was, on and before the

31st January 1934, and still is before the Courts of law having jurisdiction in such matters and the Trustees and executors of the estate of the late Hugh Quinlan having submitted themselves to justice were unable to exercise the power given to them in the will of the late Hugh Quinlan to compromise claims of and against the said estate, in respect to the ownership of the said shares.

3.—That by reason of the foregoing premises, the said deed of the 31st of January 1934, was not made in good faith and the consideration was unlawful being contrary to good morals and public order.

AND THE INTERVENANT IN HIS AFORESAID QUALITY FURTHER DECLARES:—

4.—That the defendant Robertson alleged in his defence filed in this cause and in the particulars thereof that 1151 shares of Quinlan, Robertson & Janin Limited,

250 shares of Amiesite Asphalt Limited, and
200 shares of Ontario Amiesite Asphalt Limited,

the property of the late Hugh Quinlan were transferred and delivered to him on the 20th of June, 1927 under a written agreement signed by the defendant Robertson and delivered by him to the late Hugh Quinlan who in turn delivered to the said defendant Robertson in his certificate for the said shares endorsed in blank; that the written agreement in question was the letter bearing date Montreal, June 20th, 1927, already filed in this cause as Exhibit D.R.1 and that not being able to find a purchaser for the said shares he paid the purchase price to the estate of the late Hugh Quinlan as he was obliged and entitled to do and retained the said shares at the price of $250,000., which price he paid in two instalments of $125,000. each, one on the 31st December 1927, and the other on the 30th June 1928;

5. That the intervenant in his said quality denies and contests the allegations of the defendant Robertson in respect to the said shares and declares:—

(a) That the written agreement signed by the defendant Robertson being the letter of the 20th of June 1927, (D.R.1) was never delivered to the said late Hugh Quinlan.

(b) That the certificates for the said shares were not delivered to the defendant Robertson on the 20th of June 1927 in turn for the delivery to the said Hugh Quinlan, of the said letter Exhibit D.R.1.

(c) That as a matter of fact the said Hugh Quinlan on the 20th of June 1927 was incapable mentally and physically of transacting any business or of giving a valid consent to any agreement or contract.

(d) That as a matter of fact the defendant Robertson never saw or spoke to the said Hugh Quinlan on the 20th of June 1927, or any time thereafter prior to Hugh Quinlan's death.

(e) That the declaration of assets and liabilities of the estate of the late Hugh Quinlan made to the Succession Duty Department of the Government of the Province of Quebec, which declaration was made and filed while the defendant Robertson was a Trustee and an executor of the said Estate, listed the aforesaid 1151 shares of Quinlan, Robertson & Janin Limited among the assets of the said Estate.

(f) That the defendant Robertson assisted in the negotiations which took place with the officials of said succession duty department as a result of which the value of the said 1151 shares was fixed for succession duty purposes at $212,935.

(g) That even under the terms of the Exhibit D.R.1 the defendant Robertson did not acquire any right to purchase the said shares, either before or after the death of the said Hugh Quinlan;

(h) That at no time prior to the filing of his plea in this cause to the principal action did the defendant Robertson ever pretend that he had a right to purchase the said shares from the said estate, but on the contrary he pretended that he had, under the terms of the alleged letter of the 20th of June 1927 (D.R.1) a right to sell and did sell the said shares, and it only transpired when he filed this said plea that he was the purchaser.

(i) That the said Capital Trust Corporation Ltd., was induced to accept the said sums by the representations of the defendant Robertson, that he had a right to sell the shares for the price of $250,000., and that he had done so.

(j) That the defendant Robertson was a Trustee and Executor of the Estate of the late Hugh Quinlan on the 31st December 1927 and on the 30th June 1928 and as a matter of fact from the death of Hugh Quinlan until the month of February 1931, and any sale of the said shares to the said defendant Robertson, while he

held the office of Trustee and executor of the estate of the late Hugh Quinlan, was and is illegal null and void and should be so declared.

(k) That the defendant Robertson illegally and without right and to the loss and detriment of the said Estate and to his own great benefit, resold all the shares mentioned in the said alleged letter (Exhibit D.R.1) and is now unable to return the said shares to the said Estate and is bound to make good to the said Estate the loss and damage the estate has thereby suffered.

(l) That the said shares had increased steadily in value year by year since the year 1922.

(m) That such loss and damage consists in the value of the said shares, less the said sum of $250,000. and the value of the said shares is at least as follows:—

1151	shares of Quinlan, Robertson & Janin Ltd.	$575,000.
250	shares of Amiesite Asphalt Ltd.	$250,000.
200	shares of Ontario Amiesite Asphalt Ltd.,	$ 50,000.

6.—That prior to the death of the said late Hugh Quinlan, he and the defendant Robertson owned in equal shares, all the capital stock of a company known as Fuller Gravel Ltd., the issued capital of which consisted of 2,000 Preferred and 1,000 Common shares;

7.—That in the month of August 1927 the defendant Robertson recommended to his co-executor, Capital Trust Corp., the sale of the 1,000 preferred and 500 common shares of the said Fuller Gravel Ltd., owned by the estate of the late Hugh Quinlan for the sum of $50,000. if a purchaser or purchasers could be found;

8.—That the said Capital Trust Corp., agreed with this recommendation and the defendant Robertson was to find a purchaser or purchasers;

9.—That the defendant Robertson reported to his co-executor and co-trustee that he had found two purchasers of 200 shares of Preferred stock each, carrying a bonus of 100 Common each, and a third purchaser, one W. E. Tummon, of 600 shares of Preferred with a bonus of 300 Common, all at $50.00 per share for the Preferred;

10.—That it transpired that the said Tummon intended to buy only 50 of the said Preferred shares with a Common bonus of 25 shares and that he was a prete nom for the said defendant in respect of 550 Preferred with 275 Common;

11.—That in the month of May 1928, the defendant Robertso sold the entire capital stock of said Fuller Gravel Ltd., and received therefor $180,000. and it further transpired that the 550 Preferred with 275 Common which the said Tummon had agreed to purchase, had been transferred to the defendant Robertson who included them in the sale which he made in May 1928, and the defendant Robertson retained the price of $90.00 per share for the said 550 Preferred shares with a bonus of 275 Common, to wit; $49,500. and failed and neglected to advise his co-executor that he had received the said shares from Tummon or that he had sold them with his own shares;

12.—That the defendant Robertson is indebted to the estate of the late Hugh Quinlan in the said sum of $49,500. less $27,500. which he paid to the said estate at the rate of $50.00 per Preferred share;

13.—That the said defendant Robertson, with the late Hugh Quinlan and one, Alban Janin, were for some years prior to the year 1922, in partnership as contractors under the firm name of Quinlan, Robertson & Janin, one branch of the partnership business being the construction and repairing of roads; the business was originally started by Hugh Quinlan who later made Robertson and later still Janin, partners;

14.—That in or about the year 1922 the said parties converted the partnership into a joint stock Company under the name of Quinlan, Robertson & Janin Limited, in which each of the said parties owned an equal number of shares and were at all times the directors of the said Company;

15.—That during the year 1923, the said parties formed a joint stock Company under the name of Amiesite Asphalt Limited for the purpose of constructing and repairing roads under patent licenses, with an issued capital stock of one thousand (1000) shares of the par value of $100.00 each, whereof two hundred and fifty shares were owned by the late Hugh Quinlan and a like number by the said Robertson and a like number by Alban Janin and all three formed the board of directors of the Company;

16.—That thereafter the road repair and construction branch of Quinlan, Robertson & Janin Limited was carried on through and by the said Amiesite Asphalt Limited;

17.—That during the month of April 1927, while the said late Hugh Quinlan was ill in bed and unable to attend to his affairs or the affairs of the Companies in which he was interested, the defendant Robertson and the said Alban Janin caused to be incorporated a Company known as Macurban Asphalt Limited and appropriated to themselves the entire capital stock of said last named Company and thereafter the road construction and repair work which had been theretofore carried on by and through Amiesite Asphalt Limited was carried on by and through Macurban Asphalt Limited;

18.—That the late Hugh Quinlan took ill in or about the month of December 1926 and thereafter was unable to attend to his business or to the affairs of the Companies in which he was interested and the entire management of Amiesite Asphalt Limited was in the hands of the said defendant, Robertson, and the said Alban Janin, they being the two active directors of the said Company, and after the month of April 1927 and while they had complete control of the business of Amiesite Asphalt Limited they deliberately used their influence and position to divert for road construction and repair contracts from Amiesite Asphalt to Macurban Asphalt Limited;

19.—That the defendant Robertson and the said Alban Janin used the funds and moneys of Amiesite Asphalt Limited for the purpose of incorporating Macurban Asphalt Limited and for supplying the said last named Company with working capital and moreover used the plant and equipment of Amiesite Asphalt Limited for the purpose of carrying out the contracts which they had diverted from Amiesite Asphalt Limited to Macurban Asphalt Limited and thereby caused the said late Hugh Quinlan and his estate loss and damage;

20.—That in or about the months of September or October 1928, the defendant Robertson sold both Amiesite Asphalt Limited and Macurban Asphalt Limited for a lump sum of $750,000., which said sum was paid to the said defendant who failed to pay any part thereof to the estate of the late Hugh Quinlan;

21.—That the portion of the said price of $750,000. attributable to the business and assets of Macurban Asphalt Limited, was $350,000.;

22.—That during the operations of the Macurban Asphalt Limited prior to its sale in September or October 1928, the said Company paid in dividends a sum of $78,985.05;

23.—That the interest of the said Hugh Quinlan and his estate in the profits, business and assets of Macurban Asphalt Limited was one quarter, and the said defendant Robertson, by reason of his aforesaid acts in respect to the organization, operations and sale of said Macurban Asphalt Limited, has caused loss and damage to the estate of the late Hugh Quinlan in the sum of $107,-326.35;

24.—That after the death of the late Hugh Quinlan and prior to the sale of Amiesite Asphalt Ltd., by the defendant as aforesaid, the said company paid in dividends the sum of $33,000. which said sum was received by the said defendant to the loss and damage of the Estate of the late Hugh Quinlan;

25.—That prior to the death of the late Hugh Quinlan, to wit, on the 31st of March 1925, the said Quinlan, Robertson & Janin Ltd., declared a dividend amounting to $159,947.54 of which only $75,000. was actually paid prior to the death of Hugh Quinlan and, since his death, the said Company has paid the balance of the said dividend, to wit $84,947.54 of which the late Hugh Quinlan's share was $28,315.84 which said last mentioned sum was paid to and received by the said defendant Robertson to the loss and detriment of the estate of the late Hugh Quinlan;

26.—That on or about the 3rd of October 1927, the defendant Robertson received from P. Lyall & Sons Ltd., a sum of $25,000., half of which sum belonged to the estate of the late Hugh Quinlan in virtue of an agreement made between the said Defendant Robertson and the said late Hugh Quinlan, bearing date the 2nd of July 1926 already produced in this case as plaintiff's Exhibit P-73 at enquete;

27.—That the defendant Robertson retained the entire amount of $25,000, and failed and neglected to pay one half thereof to the said Hugh Quinlan or to his estate, and the trustee and executor the said Capital Trust Corp., has failed and neglected, although duly requested, to compel the said defendant Robertson to pay the said half to the said estate, and has failed to verify whether or not the late Hugh Quinlan received the said half before his death as pretended by the said defendant Robertson, although the said trust company has been in possession of the books of accounts, documents and papers of the late Hugh Quinlan from the time of his death;

28.—That as stated above, in the months of August or September 1928, the defendant Robertson sold the Amiesite Asphalt Ltd., together with the Macurban Asphalt Ltd., for $750,000. Among the assets of Amiesite Asphalt Ltd. at the time of said sale, there were 9,999 shares of a company known as Canadian Amiesite Ltd., and 1,000 common shares of a company known as Amiesite Asphalt Co., of America;

29.—That the shares, that is to say, 9,999 shares of Canadian Amiesite Ltd., and 1,000 common shares of Amiesite Asphalt Co., of America, were not delivered to the purchaser but were retained by the defendant Robertson and the latter failed and neglected to deliver to the estate of the late Hugh Quinlan any part or portion of the said shares, although the said estate was entitled to 2,499 shares of Canadian Amiesite Ltd., and 250 shares of the Amiesite Asphalt Company of America;

30.—That Quinlan, Robertson & Janin Ltd., caused to be incorporated a company known as Quinlan, Robertson & Janin (London) and by and through this company carried on a contracting business in England and, some time after the death of the late Hugh Quinlan, the defendant Robertson sold the business of Quinlan, Robertson & Janin (London) and has never accounted to the estate of the late Hugh Quinlan for the proceeds of such sale nor for the profits made by the company during its existence;

31.—That after the death of the late Hugh Quinlan certain plant and equipment belonging to A. W. Robertson Ltd., of which the defendant and the late Hugh Quinlan were joint equal owners, was taken, used and retained in ownership by Quinlan, Robertson & Janin Ltd., in which the late Hugh Quinlan was a one third owner;

32.—That the defendant Robertson never accounted to the estate of the late Hugh Quinlan for the plant and equipment thus taken from A. W. Robertson Ltd., or for the interest of the estate therein;

33.—That in the year 1930 a contract for the construction of the Taschereau Boulevard extending between the Harbour Bridge at Longueuil to the Village of La Prairie, was obtained by the defendant Robertson and the aforesaid Alban Janin by using their influence and position as Directors of and in full control of the affairs of Quinlan, Robertson & Janin, Ltd., and of Amiesite Asphalt Ltd., which said contract was thus illegally diverted from Quinlan, Robertson & Janin Ltd., or Amiesite Asphalt Ltd.;

34.—That considerable profits were made in carrying out the said contract for the construction of the said Taschereau Boulevard, which profits were retained by the defendant Robertson and the said Alban Janin without any payment in respect thereto being made to the said companies or to the estate of the late Hugh Quinlan;

35.—That a meeting of the shareholders of A. W. Robertson Ltd., held on the 19th of July 1930, certain property belonging to the said company was made up into two lots and divided between the estate of the late Hugh Quinlan an the defendant Robertson;

36.—That lot number "one" consisted of — certain properties known as Crookston Quarries which was valued at $4,500., two lots in Ville LaSalle valued at $8,000., vacant lots in Campbellford valued at $400. and cash $12,100. making a total for lot number "one" of $25,000;

37.—That in lot number "two" there was the Dredging Plant and equipment at Fort Stanley, Ontario, consisting of a Dredge King Edward, official registry No. 122482, Tug Ethel Q., official registry No. 134349, and one wooden dump scow. The total value given to lot number "two" is $25,000;

38.—That it appears by the minutes that instead of drawing the lots, the estate of the late Hugh Quinlan was given the first choice of the two lots and a representative of the trustee and executor, Capital Trust Corp., Ltd., chose lot number "one" for the estate of the late Hugh Quinlan and, thereupon, the assets of lot number "one" were transferred to the estate of the late Hugh Quinlan and the assets of lot number "two" were transferred to the defendant Robertson;

39.—That, as a matter of fact, the said Dredge known as King Edward was a very valuable dredge and was worth at least $100,000, and the Tug Ethel Q. was worth at least $25,000;

40.—That, as a matter of fact, the said Capital Trust Corp., Ltd., knew that the best offer that had been received for the Crookston Quarries properties was $2,500. and they had agreed with their co-executor the defendant Robertson, to sell the said quarries for $3,500. if this amount could be obtained, notwithstanding these facts the Crookston properties were valued in lot number "one" at $4,500;

41.—That the two lots in Ville LaSalle, which were valued in lot number "one" at $8,000., were not worth anything approaching that sum, were vacant and unsaleable to the knowledge of the said Capital Trust Corp,, and still remain unsold;

42.—That the Capital Trust Corp., knew or should have known the value of the Dredge King Edward and of the Tug Ethel Q.

43.—That the defendant Robertson knew the value of the said dredge and tug and also the value of the properties comprised in lot number "one", and as a co-executor with Capital Trust Corp., of the estate of the late Hugh Quinlan, he was obliged to protect the interest of the said estate;

44.—That, as a result of the division of the said properties comprised in the said lots numbers "one" and "two" which is reported in the minutes of the said A. W. Robertson Ltd., on the 19th of July 1930, the defendant Robertson benefited, at the expense of the estate of the late Hugh Quinlan, in at least the sum of $100,000., one half thereof rightfully belonging to the said estate;

45.—That the entire issued capital of the said A. W. Robertson Ltd., belongs in equal shares to the estate of the said Hugh Quinlan and to the said defendant Robertson, and this said company owned a block of shares in the capital stock of National Sand & Materials Co., Ltd., that is to say, 186¾ Preferred and 1308 Common shares;

46.—That on or about the 2nd of February 1929, the said defendant sold the said preferred and common shares to Standard Paving & Materials Ltd., for a price of $150,533.25 of which price of sum of $145,301.22 was paid to the defendant Robertson and was deposited in his account in the Head Office of the Bank of Toronto, at Toronto, on or about the 2nd of February 1929;

47.—That the defendant Robertson in turn paid to said A. W. Robertson Ltd., the sum of $96,580.47 being the value at which the said shares of National Sand & Materials Co., Ltd., were carried on the books of said A. W. Robertson Ltd., and the said defendant retained the difference, to wit :a sum of $48,720.75 and thus caused a loss to the estate of Hugh Quinlan of one half of the last mentioned sum, to wit: $24,360.37;

48.—That in virtue of the foregoing premises and by the acts of the defendant Robertson hereinbefore recited, the estate of the late Hugh Quinlan has suffered loss and damage and is entitled to have and receive from the said defendant the following sum forming together a total sum of $1,128,752.56 —

(a) $575,500.00 in respect to 1151 shares of Quinlan, Robertson & Janin Ltd.,

(b) $250,000,00 in respect to 250 shares of Amiesite Asphalt Ltd.,

(c) $ 50,000.00 in respect to 200 shares of Ontario Amiesite Asphalt Ltd.,

(d) $107,326.35 in respect to the profits, business and assets of Macurban Asphalt Ltd.,

(e) $ 22,500.00 in respect to the shares of Fuller Gravel Ltd.,

(f) $ 8,250.00 as the interests of the estate in the dividends of Amiesite Asphalt Ltd.,

(g) $ 28,315.84 as the interest of the estate in the dividends of Quinlan, Robertson & Janin Ltd.,

(h) $ 12,500.00 being the payment by Peter Lyall & Sons Ltd.,

(i) $ 50,000.00 as the loss of the estate in the division of certain property of A. W. Robertson Ltd.,

(j) $ 24,360.37 in respect to the sale of shares of National Sand & Materials Co., Ltd.,

and for the same reasons the Estate of the late Hugh Quinlan is entitled to receive from the said defendant two thousand six hundred and sixty six and one third (2,666⅓) shares of Canadian Amiesite Limited and two hundred and fifty (250) shares of Amiesite Asphalt Limited of America, or their value, to wit, the sum of $51,666.66;

49.—That the defendant Robertson is entitled to credit on the said sum of $1,128,752.56 of two payments made by him to the said estate, to wit:—

$250,000.00 in respect to the share of Quinlan, Robertson & Janin Limited, Amiesite Asphalt Limited and Ontario Amiesite Limited,
$ 50,000.00 in respect to the deed of settlement,

$300,000.00 leaving a balance due to the estate of $828,752.56;

WHEREFORE the Intervenant es qualite prays:—

(1) That the deed of settlement passed before Maitre R. Papineau Couture, N.P., on the 31st January 1934, and made between Dame Margaret Quinlan et vir of the First Part, William Quinlan et al of the second part, Capital Trust Corporation of the Third Part and Angus William Robertson of the Fourth Part, be declared illegal, null and void and that the said deed of settlemen be cancelled, annulled and set aside;

(2) That the said defendant Robertson be condemned to pay the Trustees and executors of the Estate of the late Hugh Quinlan the sum of $828,752.56;

(3) That the said defendant, Robertson, be condemned to deliver within fifteen days of the date of the judgment to be renderd herein, to the Trustees of the Estate of the late Hugh Quinlan. the aforesaid 2666⅔ shares of Canadian Amiesite Limited and 250 shares of Amiesite Asphalt Limited of America, or, in default of such delivery, to pay the value thereof to the said trustees, to wit: the sum of $51,666.66, and the intervenant reserves his rights in his quality as tutor to his minor daughter, Katherine Kelly, to demand an accounting of the said defendant Robertson and from all others whom it may concern of the profits accruing from the contract in connection with the construction of the Taschereau Boulevard, also of the plant and equipment taken by Quinlan, Robertson & Janin Ltd., from A. W. Robertson Ltd., one third of the shares of International Amiesite Limited, and of the profits from the operations of Quinlan, Robertson & Janin (London) and of the sale thereof, and under reserve of all other rights of the said minor including the right to recover any greater loss and damage which may be proved in this cause; with interest on the aforesaid sums from the date of service of the present intervention and costs against the defendant Robertson in any event and against any other party who may contest the present intervention.

Montreal, November 28th, 1935.

(Sgd) Charles Holdstock,
Attorney for Intervenant.

CONTESTATION OF INTERVENTION BY CAPITAL TRUST CORPORATION, LIMITED, ET AL., ES-QUAL.

The Mis-en-cause, Capital Trust Corporation, Limited, and General Trust of Canada, in their quality of Executors and Trustees of the Estate of the late Hugh Quinlan by virtue of his Last Will and Testament dated April 14th, 1926, executed before Edouard Biron & Colleague, Notaries, hereby declare that they contest the Intervention in this cause by John Thomas Kelly in his quality of tutor to his minor daughter, Katherine Kelly, and for reasons in support of their contestation, said Mis-en-cause say:—

1. They are ignorant of the truth of Paragraph 1.

2. The document referred to in Paragraphs 2 (a) and 2 (b) must be interpreted by its terms otherwise the allegations of said paragraphs are denied.

3. It is true, as alleged in Paragraph 2 (c), that the Intervenant was not a party to said Deed, nor was the said Katherine Kelly represented therein, but Contestants say that all other parties interested in the Estate of the late Hugh Quinlan were parties to and content with the terms of said Agreement of Settlement.

4. Paragraph 2 (d) and subdivisions thereof are denied.

5. Paragraphs 2 (e) and 2 (f) are denied.

6. Paragraph 2 (g) and the subdivisions thereof are denied.

7. Paragraph 2 (h) is denied.

8. The allegations of Paragraph 2 (i) are false and malicious, and are denied.

9. The document referred to in Paragraph 2 (j) must be interpreted by its terms; otherwise said paragraph is denied.

10. The notarial protest referred to in Paragraph 2 (k) must be interpreted by its terms; otherwise, the allegations of said paragraph are denied.

11. Paragraph 2 (l) is false and malicious, and is denied.

12. The judgment of the Honourable Mr. Justice Martineau referred to in Paragraph 2 (m) must be interpreted by its terms.

13. Paragraph 2 (n), as alleged, is false and malicious, and is denied.

14. Paragraph 2 (o) is denied. Moreover, the said Deed of Agreement was formally ratified and confirmed by the Directors of said Capital Trust Corporation, Limited, and General Trust of Canada, previous to effect being given to its terms, as appears from Exhibits C-1 and C-2 herewith produced.

15. Paragraphs 2 (p), (q) and (r) are denied.

16. Paragraph 3 is denied.

17. The documents referred to in Paragraph 4 must be interpreted by their terms; otherwise, the allegations of said paragraph are denied.

18. Paragraph 5 and its subdivisions are denied and the Contestants, in further answer, reiterate the allegations of the Defence originally filed in this cause by Capital Trust Corporation, Limited, then Defendant.

19. Paragraph 6 is admitted.

20. The documents referred to in Paragraphs 7, 8 and 9 must be interpreted by their terms.

21. Paragraphs 10 and 11 are ignored.

22. Paragraph 12 is denied.

23. Paragraphs 13, 14, 15, 16 and 17 are ignored.

24. Paragraphs 18 and 19 are denied.

25. Paragraphs 20, 21 and 22 are ignored.

26. Paragraph 23 is denied.

27. Paragraphs 24, 25 and 26 are ignored.

28. Paragraph 27 is denied.

29. Paragraphs 28, 29, 30, 31, 32, 33 and 34 are denied.

30. The Minutes of the Meeting of Shareholders referred to in Paragraphs 35, 36, 37 and 38 must be interpreted according to their terms.

31. Paragraphs 39, 40, 41 and 42 are denied.

32. Paragraph 43 is ignored.

33. Paragraph 44 is denied.

34. Paragraphs 45, 46 and 47 are ignored.

35. Paragraphs 48 and 49 are denied.

AND SAID CONTESTANTS FURTHER ANSWER:

36. The Agreement of Settlement dated January 31st, 1934, and passed before R. Papineau-Couture, Notary, referred to in Paragraph 2 of said Intervention, was executed by the present Contestants in good faith and in the honest belief and well-founded conviction that the settlement therein provided for, in view of all considerations, was in the interest of the Succession and Estate of the late Hugh Quinlan, and that view was shared and concurred in by all parties interested in said Estate other than the Intervenant and those whom he represents.

37. Moreover, the said Agreement, according to its terms, was only to come into effect and become binding after the same had been submitted to the Supreme Court of Canada and provided that said Court saw no objection to the present Contestants carrying it into effect or granting acte thereof and, in fact, said Court did so declare on or about the 6th of June, 1934, as appears on reference to the terms of the Judgment of said Supreme Court of Canada forming part of the record in this cause.

38. Contestants specially reserve their recourse against the Intervenant in respect of the false, libellous and defamatory allegations made by him in regard to the Contestants in the course of his Declaration of Intervention.

WHEREFORE Contestants pray that the first conclusion of the Intervenant's Intervention be dismissed, and as to the other conclusions, the present Contestants submit themselves to justice; the whole with costs against said Intervenant.

Montreal, March 27th, 1936.

Campbell, McMaster, Couture, Kerry & Bruneau,
Attorneys for Contestants.

ANSWER OF INTERVENANT TO CONTESTATION BY CAPITAL TRUST CORPORATION & ALS.

1. Intervenant joins issue with denials of paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 20, 21, 22. 23. 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35;

2. Intervenant prays acte of admission contained in paragraph 19;

3. Paragraph 14 is denied and it is especially denied that there was any legal confirmation of the acts of the officers of the companies who pretended to execute said documents, said pretended ratification not being done in useful time, nor within the powers of the contestants and at all events same cannot affect the issues in this case;

4. Paragraph 36 is denied;

5. Paragraph 37 is denied the contract and record will speak for themselves and the intervenant adds that the Supreme Court especially stated that it did not pass upon the validity or binding character of said deed nor upon the question whether the trust companies acted within their powers or the officers within their authority;

6. The conclusions of the contestation are contradictory and are unfounded in law;

7. Contestation is unfounded in law and in fact;

WHEREFORE intervenant prays for dismissal of contestation and the maintenance of his intervention with costs.

Montreal, October 5th, 1937.

C. Holdstock,
Attorney for Intervenant.

REPLICATION OF CONTESTANTS, CAPITAL TRUST CORPORATION, LIMITED ET AL TO ANSWER OF INTERVENANT.

1. The affirmative allegations of Paragraph 3 are denied in fact and in law; otherwise the issue is joined on said paragraph.

2. The affirmative allegations of Paragraph 5 are denied in fact and in law; otherwise issue is joined on said paragraph.

3 Paragraphs 6 and 7 are denied in fact and in law.

WHEREFORE Contestants pray for the dismissal of Intervenant's Answer and Intervention with costs.

Campbell, Kerry & Bruneau,
Attorneys for Contestants.

MOTION DE LA NATURE D'UNE EXCEPTION A LA FORME DE LA PART DU DEFENDEUR A. W. ROBERTSON

1. ATTENDU que John Thomas Kelly, en sa qualité de tuteur à son enfant mineure Katherine, déclare se porter intervenant et produit une prétendue intervention dans la présente action;

2. ATTENDU qu'à l'appui de sa prétendue intervention l'intervenant es-qualité allègue une série de faits nouveaux différents de ceux sur lesquels est basée la demande originaire, et étrangers à la contestation liée sur icelle;

3. ATTENDU que les conclusions de la dite prétendue intervention sont dans les termes suivants:

"WHEREFORE the Intervenant es-qualité prays:

"(1) That the deed of settlement passed before Maitre "R. Papineau Couture, N.P., on the 31st January 1934, and made "between Dame Margaret Quinlan et vir of the First Part, Wil-

"liam Quinlan et al of the Second Part, Capital Trust Corpo-
"ration of the Third Part and Angus William Robertson, of the
"Fourth Part, be declared illegal, null and void and that the said
"deed of settlement be cancelled, annulled and set aside;

"(2) That the said defendant Robertson be condemned
"to pay the Trustees and executors of the Estate of the late
"Hugh Quinlan the sum of $828,752.56;

"(3) That the said defendant, Robertson, be condemned
"to deliver within fifteen days of the date of the judgment to be
"rendered herein, to the Trustees of the Estate of the late Hugh
"Quinlan, the aforesaid 2666⅔ shares of Canadian Amiesite
"Limited and 250 shares of Amiesite Asphalt Limited of Ame-
"rica, or, in default of such delivery, to pay the value thereof
"to the said trustees, to wit: the sum of $51,666.66, and the in-
"tervenant reserves his rights in his quality as tutor to his minor
"daughter, Katherine Kelly, to demand an accounting of the
"said defendant Robertson and from all others whom it may con-
"cern of the profits accruing from the contract in connection
"with the construction of the Taschereau Boulevard, also of the
"plant and equipment taken by Quinlan, Robertson & Janin
"Ltd., from A. W. Robertson Ltd, one third of the shares of
"International Amiesite Limited, and of the profits from the
"operations of Quinlan, Robertson & Janin (London) and of the
"sale thereof, and under reserve of all other rights of the said
"minor including the right to recover any greater loss and damage
"which may be proved in this cause; with interest on the afore-
"said sums from the date of service of the present intervention
"and costs against the defendant Robertson in any event and
"against any other party who may contest the present inter-
"vention."

4. ATTENDU que les conclusions ci-dessus sont, elles aussi, nouvelles et différentes de celles que comporte la demande originaire et qu'elles sont même incompatibles et contradictoires avec les conclusions prises sur la demande originaire;

5. ATTENDU que l'intervenant es-qualité met de nouveau en question des choses qui ont déjà été décidées par jugement passé en force de chose jugée, quant aux parties, au procès originaire;

6. ATTENDU que la prétendue intervention produite par l'intervenant es-qualité est étrangère à l'objet de la demande

originaire; qu'elle tend à des fins autres que celles auxquelles tend la dite demande originaire, et qu'elle constitue une instance et une demande nouvelle, distincte de l'instance et de la demande originaire et d'une nature différente de cette dernière;

7. ATTENDU qu'un pareille demande ne peut se produire sous forme d'intervention au présent procès; mais qu'elle ne peut se produire que sous forme d'action principale;

8. ATTENDU que l'instance ou la demande que comporte la prétendue intervention de l'intervenant es-qualité ne peut être portée, exercée et poursuivie qu'au moyen d'un bref d'assignation au nom du Souverain;

9. ATTENDU que l'intervenant es-qualité n'a ni l'intérêt, ni le pouvoir, ni la capacité requise pour pouvoir exercer la demande contenue dans sa prétendue intervention;

10. ATTENDU que la dite prétendue intervention est irrégulière, illégale, irrégulièrement produite et nulle et que le défendeur A. W. Robertson en souffre préjudice;

QUE la dite prétendue intervention soit déclarée illégale, irrégulière, illégalement produite et nulle, et qu'elle soit rejetée et renvoyée, avec dépens, sauf à se pourvoir.

Montréal, le 5 décembre 1935.

(Signé) Beaulieu, Gouin, Mercier & Tellier,
Procureurs du défendeur A. W. Robertson.

CANADA
PROVINCE OF QUEBEC
No. 1190

JUDGMENT OF THE COURT OF KING'S BENCH
(Appeal Side)

MAINTAINING THE EXCEPTION

MONTREAL, Friday, the twenty-sixth day of June, one thousand nine hundred and thirty-six (1936) ;

PRESENT:

Sir MATHIAS TELLIER, Chief Justice of the Province of Quebec,
The Honourable Mr. Justice BERNIER,
" " " " HALL,
" " " " BOND,
" " " " GALIPEAULT.

ANGUS WILLIAM ROBERTSON,
(Petitioner in the Superior Court),
APPELLANT,

— & —

JOHN THOMAS KELLY, *es qualité*
(Mis-en-cause & Intervenant in the Superior Court),
RESPONDENT,

— & —

Dame ETHEL QUINLAN *et vir*
(Plaintiff in the Superior Court),
MIS-EN-CAUSE.

— & —

CAPITAL TRUST CORPORATION, *et al*
(Defendants in the Superior Court),
MIS-EN-CAUSE,

— & —

Dame CATHERINE RYAN *et al*
(Mise-en-cause in the Superior Court),
MIS-EN-CAUSE,

THE COURT having heard the parties by their respective Counsel upon the merits of the present appeal, examined the record and proceeding in the Court below, and deliberated:

WHEREAS Dame Ethel Quinlan and Dame Margaret Quinlan, two of the children of the late Hugh Quinlan, instituted proceedings against the appellant Robertson, and others, praying for the removal of the executors, trustees and administrators of the estate of the late Hugh Quinlan, that the executors be adjuged and condemned to render an account, that certain transactions that had occurred be declared null and void, that the inventory prepared by the executors of the said estate be set aside as false and fraudulent, together with a number of other conclusions, including a prayer for a pecuniary condemnation;

WHEREAS the defendants in the said action contested the same, which was heard in the Superior Court, and on appeal before this Court, and subsequently in the Supreme Court of Canada;

WHEREAS pending the appeal before the Supreme Court of Canada an agreement was entered into between the present appellant and the said Dame Margaret Quinlan settling the differences between the said parties;

WHEREAS by the judgment of the Supreme Court of Canada it was ordered and declared, in part, as follows:

"... this Court sees no reason why it should not declare that the said settlement forms part of the record of this case, and it grants *acte* thereof, without passing upon the validity, or the binding character of the agreement in question, nor deciding whether or not the intervenants acted within their powers and the officers of the intervenants within their authority, and this Court accordingly does so declare within those limits.

x x x x x x

5. THIS COURT DOTH FURTHER DECLARE that, seeing the acquiescense of the respondent ETHEL QUINLAN THERETO and the acceptance thereof by the testamentary executors and trustees, it does not, and cannot, disturb that part of the judgment of the Superior Court dismissing part of the respondent's conclusions, to wit:—

'1o. The prayer that the appellant A. W. Robertson and the Capital Trust Company be removed from office.

'2. The prayer that they be condemned to render an account.

'3. The prayer that the inventory be annulled.

'4. The various allegations of fraud against the appellant, as well as the allegation that the late Hugh Quinlan was not of sound mind when the letter of the 20th of June 1927 was read to him.'

and that the said judgment of the Superior Court in respect to the dismissal of the above mentioned conclusions, is now *"res judicata"* between the parties.

6. AND THIS COURT DID FURTHER ORDER AND ADJUDGE that the remaining parties be sent back to the Superior Court to complete the evidence already taken by a further enquête, and then secure a new adjudication on the merits of the issues herein shown as remaining to be decided as between the respondent Ethel Quinlan (Mrs. Kelly) and the appellant Robertson personally, and that oral evidence be admitted, at such further enquête, of the following facts and circumstances, to wit:—

A. The answer given by the late Hugh Quinlan when the letter of June 20th, 1927, was read to him, including, of course, the conduct, statements, communications and declarations of the persons present when the letter was so read and of the late Hugh Quinlan himself, and, generally, all relevant circumstances relating thereto;

B. All the facts, circumstances, statements and communications relating to the drafting of the said letter of June 20th 1927, including the conduct of all those who shared in the drafting of the said letter; and the whereabouts and safekeeping of said letter;

C. All the facts, circumstances, statements and communications relating to the visits of the Honourable J. L. Perron and of the present appellant to the late Hugh Quinlan, during the month of May 1927, or thereabout, and to the endorsements of the four certificates of shares filed as exhibits P-9, P-10, P-26 and P-27; also to the Memorandum of the 21st of May 1927, P-66; including the conduct of all the participants in these various events;

D. Generally, all facts, conditions and circumstances tending to show that the late Hugh Quinlan agreed, or disagreed, as the case may be, to the contents of the letter of June the 20th, 1927;

The respondent would also bring new evidence of all facts, declarations and statements which might tend to rebut the evidence to be afforded as aforesaid by the appellant."

WHEREAS the former defendant (now the appellant) invoked before the said Superior Court the terms of the said agreement by means of a supplementary Plea;

WHEREAS the plaintiff, Dame Ethel Quinlan, contesting the validity of the said agreement by a supplementary Answer to Plea, the former plaintiff, Dame Margaret Quinlan, being made an "additional defendant";

WHEREAS the said Dame Margaret Quinlan required that the minor child of the said Dame Ethel Quinlan should be called in and made a party to the case; and it was ordered that the said minor should be joined as a party (Mis-en-cause);

WHEREAS the said minor was duly made a party as a Mis-en-cause, and appeared by her tutor, the present respondent, and fyled an Intervention;

WHEREAS the appellant produced a Motion by way of Exception to the Form to the said Intervention, on the ground that the same was irregular and illegal, inasmuch as it attempted to revive issues already decided to be *res judicata* in the then existing proceedings, and also purported to introduce novel issues in part conflicting with the issues then joined;

CONSIDERING that by an Intervention the Intervenant intervenes in a pending case, as presently existing, and presented for adjudication, without the right to reopen points already decided, or to introduce new grounds foreign to the original demand. (GARSONNET—*Traité de Procédure* — vol. 3, sec. 931, p. 210, and also sec. 930 p. 208);

CONSIDERING that the present Intervention is, for the greater part, irregular and illegal as seeking to revive issues finally determined between the parties prior to such Intervention, and, moreover, seeks to introduce new issues which are not part of the cause in its present state;

CONSIDERING that while such issues may give rise to an independent action on the part of the Intervenant he cannot justify the present Intervention;

CONSIDERING that the said Intervention is irregular and illegal except as to the following paragraphs thereof, namely, paragraphs 1, 2, 2a, 2b, 2c, 2h, 2i, 2L, 2o, 2p, 2q, and 2r, paragraphs 3, 4, 5a, 5b, 5d, 5e, 5f, 5g, 5h, 5i, 5j, 5k, and 5L, and also the conclusions 1 and that part of paragraph 3 reading as follows: "costs against the defendant Robertson in any event and against any other party who may contest the present Intervention;"

CONSIDERING that there is error in the judgment of the Superior Court, to wit, that rendered on the twentieth day of March one thousand nine hundred and thirty-six (1936) dismissing the Exception to the Form;

CONSIDERING that such Exception to the Form should have been maintained except as to the paragraphs above mentioned, (Perlo & Roessel, & Co., 32 Q.P.R. 174);

DOTH MAINTAIN the present appeal, with costs;

DOTH CANCEL and ANNUL the said judgment of the Superior Court;

AND proceeding to render the judgment which should have been rendered by the said Superior Court,

DOTH MAINTAIN the said Exception to the Form except as to the following paragraphs of the said Intervention, namely, paragraphs 1, 2, 2a, 2b, 2c, 2h, 2i, 2L, 2o, 2p, 2q and 2r, paragraphs 3, 4, 5a, 5b, 5d, 5e, 5f, 5g, 5i, 5j, 5k, and 5L, and also the conclusions 1, and that part of paragraph 3 reading as follows: "costs against the defendant Robertson in any event and against any other party who may contest the present intervention", and,

DOTH CONDEMN the respondent to pay the costs on such Exception to the Form.

(Sir Mathias Tellier, C.J. dissenting).

(Signé) W. L. Bond,
J.K.B.

EXCEPTION TO JUDGMENT OF JUNE 26th, 1936.

The Intervenant respectfully excepts from the judgment of the Court of King's Bench under date of 26th of June 1936, striking out certain paragraphs of his Intervention.

Montreal, 15 October, 1936.

C. Holdstock,
Attorney for Intervenant.

CONTESTATION FYLED BY A. W ROBERTSON, OF THE INTERVENTION FYLED BY J. T. KELLY AND CONTINUED BY KATHERINE KELLY.

The Defendant A. W. Robertson hereby declares that he contests the intervention originally fyled by J. T. Kelly, in his capacity of tutor to his minor child, Katherine, and continued by the latter, by reprise d'instance; in respect of such portion of said intervention which was not dismissed under and in virtue of a judgment of the Court of King's Bench, appeal side, delivered on the 26th day of June 1936, and maintaining an exception to the form, fyled by the present defendant, except as to the paragraphs and conclusions now being contested.

And, in support of said contestation, the said Defendant A. W. Robertson alleges and says:—

1o—In answer to paragraph 1 of said intervention, the Defendant above mentioned admits that Katherine Kelly is a grand daughter of the late Hugh Quinlan he further adds that the will and testament of the late Hugh Quinlan speaks for itself and he denies all the other allegations contained in said paragraph;

2o—In answer to paragraphs 2, 2a, 2b, 2c, 2h, 2i, 2l, 2o, 2p, 2q, and 2r, the said Defendant says that the deed of settlement referred to in said paragraphs speaks for itself; otherwise, the said paragraphs are denied;

3o—The present Defendant denies paragraph 3 of the said intervention;

4o—In answer to paragraph 4 of the said intervention, the present Defendant says that his last amended plea, bearing date of the 14th of January 1931, and which is the only one con-

stituting the issues as joined, speaks for itself; otherwise, the said paragraph is denied;

5o—The said Defendant denies paragraphs 5a, 5b, 5d, 5e, 5f, 5g, 5h, 5i, 5j, 5k, 5l, as being false in fact and unfounded in law, and the said Defendant further adds that the said paragraphs have erroneously reproduced the allegations and statements of the Defendant now pleading, as they appear in the pleadings, as well as in the evidence;

WHEREFORE the Defendant A. W. Robertson prays that his present contestation be maintained and the intervention originally fyled by J. T. Kelly and continued by Katherine Kelly, be dismissed the whole with costs.

Montreal, 22nd of April 1938.

Beaulieu, Gouin & Tellier,
Attorneys for the Defendant A. W. Robertson.

ANSWER OF INTERVENANT TO CONTESTATION OF INTERVENTION FYLED BY A. W. ROBERTSON.

1. Intervenant respectfully excepts from the judgment of the Court of King's Bench mentioned in said contestation and reserves all rights concerning same;

2. Intervenant prays acte of the admission in paragraph 1; joins issue with the denial therein;

3.—Intervenant joins issue with the denials contained in paragraphs 2 3 4 and 5;

4. Further as to paragraphs 4 and 5 that the record will speak for itself;

5. Contestation of A. W. Robertson is unfounded in law and in fact;

WHEREFORE the intervenant prays for the dismissal of the contestation of A. W. Robertson with costs.

Montreal April 25th 1938

C. Holdstock,
Attorney for Intervenant.

CONTESTATION PAR LES DEFENDEURS, MARGARET QUINLAN ET JACQUES DESAULNIERS DE L'INTERVENTION DE DAME KATHERINE KELLY.

Pour contestation de l'Intervention de Dame KATHERINE KELLY, les Défendeurs susdits disent:

1.—Les Défendeurs, MARGARET QUINLAN et JACQUES DESAULNIERS. demandent acte du jugement de la Cour d'Appel, retranchant de ladite Intervention la majorité de ses allégations.

2.—Ils plaident comme suit aux allégations conservées par la Cour d'Appel.

3.—Les documents mentionnés dans le paragraphe No 1, parlent par eux-mêmes

4.—L'acte de règlement mentionné dans le paragraphe No 2, parle par lui-même. Ils nient le reste dudit paragraphe No 2 et de ses sous-paragraphes.

5.—Ils nient le paragraphe No 3.

6.—En réponse au paragraphe No 4, le dossier et la preuve parlent par eux-mêmes.

7.—En réponse au paragraphe No 5, ils disent que la preuve, les procédures, les documents et les jugements dans la cause, parlent par eux-mêmes et nient le reste dudit paragraphe No 5.

ET D'ABONDANT, LES DEFENDEURS AJOUTENT:

8.—Les défendeurs susdits sont assignés pour répondre à la demande de Dame KATHERINE KELLY, contenue dans son intervention.

9.—Comme il appert à ladite intervention, l'intervenante y attaque une convention de règlement en date du 31 janvier 1934, reçue par acte authentique devant Me N. Papineau Couture, N.P., et à laquelle les dits défendeurs étaient parties.

10.—Par cette convention de règlement, les exécuteurs-testamentaires de la succession Hugh Quinlan ont, en vertu des

pouvoirs à eux conférés par le testament, vendu au défendeur Robertson toutes les actions provenant dudit Hugh Quinlan dans un certain nombre de compagnies industrielles et que ledit défendeur Robertson prétendait avoir acquises antérieurement du défunt lui-même en des circonstances qui ont fait l'objet en partie de l'action principale en cette cause;

11.—Lesdites actions sont les suivantes:—

1151 actions de la Compagnie Quinlan, Robertson et Janin Ltd;
250 actions de la Compagnie Amiesite Asphalt Ltd.;
200 actions de la Compagnie Ontario Amiesite Ltd;
400 actions de la Compagnie Fuller Gravel Co. Ltd.;

12.—Ledit défendeur ROBERTSON avait déjà payé la somme de deux cent soixante-dix-mille dollars à la dite succession Hugh Quinlan ($270,000.00), et pour son bénéfice, en vertu de l'achat qu'il prétendait avoir fait desdites actions du vivant même dudit Hugh Quinlan.

13.—Par la convention de règlement ci-haut mentionnée du 31 janvier 1934, le dit défendeur ROBERTSON consentit à payer, et les exécuteurs-testamentaires de ladite succession consentirent à vendre lesdites actions pour un prix total de trois cent vingt mille dollars, ($320,000.00), soit cinquante mille dollars, ($50,000.00) de plus que le prix porté dans la première prétendue vente alors attaquée devant les tribunaux, et ledit défendeur ROBERTSON, par suite de cette convention de règlement ci-haut mentionnée, a payé le surplus de prix, savoir: la somme de ($50,000.00) cinquante mille dollars à la succession;

14.—Cette convention de règlement du 31 janvier 1934 a été faite pendant que la présente action principale était mue en Appel devant la Cour Suprême du Canada et alors que la présente défenderesse Margaret Quinlan était dans la cause demanderesse conjointe avec la présente demanderesse, Dame Ethel Quinlan et que le présent défendeur Jacques Désaulniers était dans la cause le procureur au dossier de ladite Margaret Quinlan;

15.—La présente cause sur l'action principale était alors à la Cour Suprême en Appel du jugement unanime de la Cour du banc du roi à Montréal, lequel avait maintenu le jugement de la Cour Supérieure prononcé par l'honorable Juge Martineau et qui avait pour effet, entre autres, de ne pas reconnaître et d'annuler le prétendu achat que le défendeur ROBERTSON prétendait avoir fait desdites actions dudit Hugh Quinlan en son vivant;

16.—Lors du procès devant la Cour Supérieure sur l'instance principale, ledit défendeur ROBERTSON avait tenté de faire une preuve testimoniale de diverses circonstances à l'effet de prouver son prétendu achat desdites parts et, sur objection des demanderesses, ladite preuve testimoniale avait été empêchée et déclarée illégale et la même objection à la preuve testimoniale avait été maintenue par la Cour du banc du roi;

17.—Lorsque ladite convention de règlement du 31 janvier 1934 a été passée, l'appel devant la Cour Suprême avait été plaidé en partie oralement par les procureurs au dossier, comme il arrive, au cours de l'argument, des honorables membres du tribunal avaient eu l'occasion de faire des remarques et en particulier, le juge en chef Sir Lyman Duff, avait fait des remarques qui étaient de nature à laisser prévoir qu'il était possible que la Cour Suprême permit la preuve testimoniale ci-haut mentionnée au sujet des circonstances du prétendu achat par le défendeur ROBERTSON desdites parts, et qu'en conséquence, les demanderesses fussent renvoyées devant la Cour Supérieure pour que cette preuve fut reçue, ce qui en outre, pouvait laisser prévoir que la preuve une fois faite, le sentiment, à tout le moins de la Cour Suprême, pourrait être favorable à la reconnaissance de ladite vente et la preuve testimoniale apportée par le Défendeur ROBERTSON pouvait paraître suffisante;

18.—C'est dans ces circonstances que la présente défenderesse, dame Margaret Quinlan, alors demanderesse sur l'instance principale, et son époux, le présent défendeur, Jacques Désaulniers, alors le procureur de ladite Margaret Quinlan, décidèrent qu'ils avaient intérêt à concourir dans une transaction quant à eux au sujet du litige, et dans l'application quant à eux, d'une vente définitive et ferme qui serait faite par écrit au dit défendeur ROBERTSON desdites actions par les exécuteurs-testamentaires en vertu des pouvoirs à eux conférés et pour un prix qui a alors paru raisonnable;

19.—Au reste, cette cause, sur l'instance principale qui était très sérieuse, n'avait pas manqué, même avant les remarque de la Cour Suprême, de provoquer des pourparlers de règlement de temps à autre, auxquels les présents défendeurs avaient pris part;

20.—Lorsque ledit règlement fut définitivement consenti et que les présents défendeurs agréèrent la vente des parts aux conditions qui y sont déterminées, les présents défendeurs avaient

envisagé en outre la situation qui serait faite à la succession dont la défenderesse Margaret Quinlan est l'une des légataires universelles, du fait que si même le prétendu achat du défendeur ROBERTSON restait annulé définitivement et qu'il eut à retourner lesdites actions à la succession Hugh Quinlan, celle-ci serait restée, du fait de ces actions, actionnaire minoritaire dans toutes les compagnies intéressées, lesquelles étaient et avaient chance de demeurer contrôlées par ledit défendeur ROBERTSON seul ou avec le concours d'associés, ce qui aurait pu en pratique, contribuer à laisser auxdites actions des revenus plus que douteux parce que sujets à des déclarations de dividendes non-contrôlées par la succession, et en définitive, à diminuer grandement au point de vue pratique la valeur desdites actions;

21.—Sous les circonstances, les présents défendeurs Margaret Quinlan et Jacques Désaulniers ont cru qu'il était à la fois de l'intérêt de la succession, et dans tous les cas, de l'intérêt de ladite Margaret Quinlan, de mettre fin audit litige quant à elle, et d'approuver en outre la vente ferme desdites parts au prix de trois cent vingt mille dollars ($320,000.00) qui a été fixé, et en exigeant toutefois que les frais des divers avocats qui jusque-là avaient représenté la demande fussent payés, et qui fut finalement consenti par ladite convention de règlement.

22.—Il s'est trouvé que seule la demanderesse, dame Ethel Quinlan, a refusé, comme elle en avait le droit, de transiger sur le litige ou d'acquiescer à la vente desdites actions, et les présents défendeurs Margaret Quinlan et Jacques Désaulniers, tout en ne désirant pas entraver les recours que la demanderesse Ethel Quinlan, entend continuer, sont intéressés à demander au moins quant à eux, une déclaration de validité de ladite convention de règlement et le renvoi de la présente instance prise contre eux à cet égard;

23—La participation des présents défendeurs à ladite convention de règlement a été en outre approuvée et recommandée par les autres avocats et conseils que les présents défendeurs ont alors consultés;

24.—Aux termes du testament dudit feu Hugh Quinlan, ses exécuteurs-testamentaires avaient toute autorité pour faire la vente des dites actions et consentir à tout ce à quoi ils ont consenti à ladite convention de règlement du 31 janvier 1934.

25.—Le consentement desdits exécuteurs testamentaires à la convention de règlement du 31 janvier 1934 a été fait de bonne foi et sans fraude et dans l'intérêt de la succession;

26.—De même, le consentement des présents défendeurs à ladite convention de règlement a été fait de bonne foi et sans fraude et dans leur intérêt légitime, et en outre, ladite convention était dans l'intérêt de la succession;

27.—En se rapportant aux allégations ci-dessus, les présents défendeurs Margaret Quinlan et Jacques Désaulniers, nient en fait et en droit, toutes les allégations de ladite intervention qui ne seraient pas conformes aux allégations ci-dessus.

POURQUOI, les défendeurs Margaret Quinlan et Jacques Désaulniers, se réservant tous recours à raison des allégations diffamatoires contenues dans l'Intervention de ladite Dame Katherine Kelly, concluent à ce que la convention de règlement intervenue le 31 janvier 1934, devant Me Papineau-Couture, N.P., qui est attaquée par ladite intervention, soit déclarée valide et légale à toutes fins que de droit, et dans tous les cas, autant que lesdits défendeurs Margaret Quinlan et Jacques Desaulniers, sont concernés, et à ce que ladite convention de règlement soit maintenue quant auxdits défendeurs Margaret Quinlan et Jacques Désaulniers, et à ce que leur égard, ladite intervention et ses conclusions soient rejetées avec dépens quant aux dits défendeurs Margaret Quinlan et Jacques Désaulniers.

Montréal, 13 avril 1938.

Jacques Désaulniers,
Procureur desdits défendeurs Dame Margaret
Quinlan et Jacques Désaulniers.

ANSWER OF THE INTERVENANT TO THE CONTESTATION OF DEFENDANTS DAME MARGARET QUINLAN AND JACQUES DESAULNIERS OF THE INTERVENTION.

1. Intervenant respectfully excepts from the judgment of the Court of King's Bench, mentioned in paragraphs 1 and 2 and reserves all rights concerning same.

2. Intervenant joins issues with denials of paragraphs 4, 5 and 7;

3. Paragraphs 8 and 9 are admitted;

4. Paragraph 10 is denied and for further answer intervenants reiterate the allegations of the Intervention attacking the validity of said agreement;

5. Paragraph 11 is denied as drawn said list does not refer to all the shares mentioned in the so-called agreement and especially were the Fuller Gravel shares not acquired from the late Hugh Quinlan as alleged

6. The Intervenant denies the allegations mentioned in paragraphs 12 and 13;

7. As to paragraphs 14, 15 and 16 intervenant states that the record will speak for itself;

8. Paragraphs 17 and 18 are denied and are irrelevant;

9. Intervenant is ignorant of the allegations contained in paragraph 19 but if true neither plaintiffs nor intervenant had any part in same;

10. Paragraph 20 is denied, defendant A. W. Robertson having sold and parted with said shares to the knowledge of Defendants Dame Margaret Quinlan and Jacques Desaulniers, said A. W. Robertson could not return them to the estate and in any case the allegations of said paragraph do not constitute a defense to intervenant's demand;

11. Paragraph 21 is denied as drawn, intervenant says that the consent of the defendants Margaret Quinlan and Jacques Desaulniers was obtained through the sums paid to Jacques Desaulniers mentioned in the intervention;

12. Paragraphs 22, 23, 24, 25 and 26 are denied;

13. The Intervenant joins issue with the denials contained in paragraph 27;

14. The Contestation of the defendants Dame Margaret Quinlan and Jacques Desaulniers is unfounded in law and in fact;

WHEREFORE the Intervenant prays, re-iterating the allegations and conclusions of the intervention and the conclu-

sions taken against said Margaret Quinlan and Jacques Desaulniers that same be maintained with costs and that the contestation of the defendants Dame Margaret Quinlan and Jacques Desaulniers be dismissed with costs;

Montreal, April 25th, 1938.

C. Holdstock,
Attorney for Intervenant.

REPLIQUE A LA REPONSE DE L'INTERVENANTE SUR LA CONTESTATION DES DEFENDEURS MARGARET QUINLAN ET JACQUES DESAULNIERS.

Les défendeurs MARGARET QUINLAN et JACQUES DESAULNIERS nient toutes et chacune des allégations contenues dans la réponse de l'intervenante.

POURQUOI les dits défendeurs concluent au rejet de ladite réponse avec dépens et se réservent leurs recours légaux quant aux allégations de diffamation contenues dans ladite réponse.

Montréal le 30 avril 1938.

Jacques Désaulniers,
Procureur des défendeurs Margaret Quinlan et Jacques Désaulniers.

PROCES-VERBAL D'AUDIENCE DANS LA CAUSE
No 36664

COUR SUPERIEURE
Enquêtes et Plaidoiries

Audience de 2 novembre 1938.

Présidence de l'Honorable Juge Gibsone

Procès-verbal des procédures faites à l'audience devant le tribunal.

Les parties comparaissent par leurs procureurs respectifs.

Suivant un jugement rendu d'une Cour Supérieure, les défendeurs continue leur enquête.

Sténo: Bush. pas de dépôt.

Hélène King, 49 ans, 4870 Côte des Neiges, ass. & ex. pr. déf.

Exh. D.R.-53 document produit par Mlle H. King.

Louis Nap. Leamy, 62 ans, Sec. Trés., 3483 Marlowe Ave., ass. & ex. pr. déf.

Exh. D.R-54 lettre de Leamy à Robertson, en date du 23 mai 1927.

Angus William Robertson, 63 ans, défendeur, Montebello, ass. & ex. pr. déf.

Enquête des défendeurs suspendue.

Ajournée à 2 h. 15 P.M.

Séance de 2 h. 15 P.M.

Les défendeurs cont. leur enquête.

Sténo: Bush.

Alban Janin, 58 ans, contracteur, 140 Pagnuelo, ass. & ex. pr. déf.

Exh. D.R-55 Copie photo. des minutes de l'assemblée des directeurs, en date du 22 juin 1927.

Exh. D.R-56: Copie Photo. des minutes de l'assemblée des directeurs en date du 22 juin 1927.

Exh. D.R-57: Copie photo. des minutes de l'assemblée des directeurs de Ontario Amiesite Ltd., en date du 16 nov. 1927.

Exh. D.R-58: Copie certifiée re-Dépôt de documents pour faire minute du notaire Roger Biron, 31 janvier 1935, par Angus Wm. Robertson.

Exh. D.R-59: Copie d'un Acte de autorisation au mineur John Henry Dunlop, en date du 2 fév. 1934.

Exh. D.R-60: Copie de l'acte de autorisation du mineur Ernest Ledoux, en date du 2 fév 1934.

Exh. D.R-61: Extract from the Minutes of a meeting of the Board of Directors of General Trust of Can., en date du 21 sept. 1934.

Exh. D.R-62: Agreement of Settlement Proposed to be entered into between executors Quinlan and Mr. A. W. Robertson en date du 22 oct. 1934.

Exh. D.R-63: Copie d'acte de "Final Acquittance and Discharge of Mr. Jacques Desaulniers, en date du 23 nov. 1934.

Exh. D.R-64: Copie d'acte de "Final Acquittance of Estate Hugh Quinlan, en date du 21 déc. 1934.

Admission

Les parties admettent que la somme de $10,000.00, payable à Mtre Edouard Masson pour ses frais, sous l'empire du règlement du 31 janvier 1934 a été effectué et payé.

Enquête des défendeurs close.

Le procureur de l'Intervenant demande à procéder avec l'action principale et l'intervention.

La Cour ordonne aux procureurs de procéder avec l'action principale et l'intervention après.

Contre-preuve des dem.

Sténo: Bush.

Jean McArthur, 52 ans, garde-malade, 306 Rockland, ass. & ex. pr. dem.

Vernise Karr, 49 ans, garde-malade, 2246 Oxford Ave., ass. & ex. pr. dem.

John G. Lannax, 72 ans, expert en documents, 1947 St-Luc, ass. & ex. pr. dem.

Sténo: Paul Cusson.

Henri Ledoux, 49 ans, agent d'ass., 6401 Christophe-Colomb, ass. et ex. pr. dem.

Ema. Ludger Parent, 58 ans, gérant général, 271 Bronson, Ottawa, Ont., ass. & ex. pr dem.

Exh. P.S-1-A et B protêt & Procès-verbal au Capital Trust Corporation en date du 29 sept. 1933 et 16 octobre 1933.

Exh. P.S-2 lettre de Capital Trust Corp., en date du 20 décembre 1933.

Exh. P.S-3 document fait par Mtre Geoffrion, en date du 7 décembre 1933.

Exh. PS-4 document, en date du 6 sept. 1933.

Exh. P.S-5 copie du factum des Intervenants en Cour Suprême.

Contre-preuve des dem. suspendue.

Ajournée au 3 nov. 1938 à 10 h. 30 A.M.

O.Mercure,
D. P. C. S.

Advenant 10.30 a.m. le 3 nov. 1938 la cour continue l'enquête.

Suite de la Contre-Preuve

Sténo. Henri MacKay.

Charles Fournier, 36 ans, ass. sec., Sun Trust, 3751 Kent, ass. et exam. pour dem.

P.S-6 Lettre du 14 sept. 1928 à Gen. Trust par W. P. McDonald Construction Co.

2 j. $4.00 Fare & ex. $20.65 $24.65 Em. Ludger-Parent, déjà assermenté continue son témoignage.

Exhibit D.R-65 Copie certifiée du règlement daté 31 janv. 1934. Notaire, Papineau-Couture. Entre Quinlan & al & Capital Trust Corp. Ltd. & Robertson.

La cour ajourne à 2.30 p.m. ce jour.

J. A. Cloutier,
D.P.C.S.

Advenant 2.30 p.m. ce jour, la cour continue à entendre la preuve dans cette cause.

Sténo. MacKay, Henri.

Sténo. Bush.

A. —Wm. Roberston, déjà assermenté, est exam. en c.p. pour dem.

P.S-7 Convention entre Janin & Robertson, 12 sepbre 1930.

Les demandeurs déclarent leur contre-preuve close, sauf à produire comme témoin A. Janin.

Re-Contre-Preuve

Sténo. Bush.

Louis Nap. Leamy, déjà assermenté est exam. en re-contre-preuve par défendeurs.

Angus Wm. Robertson, déjà ass. est interrogé en re-c-preuve par défendeurs.

Sténo. Henri MacKay.

Jacques Desaulniers, 45 ans, avocat du barreau de Montréal, ass. et exam. en re-c-preuve par déf.

Les défendeurs déclarent leur enquête close.

Suite de la contre-preuve Dem.

Sténo. Bush.

A. Janin, déjà assermenté, est interrogé par les demandeurs en c-preuve.

Preuve close de part et d'autres sur la preuve. Preuve close.

Enquête de l'intervenante.

Les parties déclarent produire au dossier un consentement, que la preuve faite sur l'action principale servira de preuve sur l'intervention et qu'il n'y aura pas d'autres preuves ni sur l'intervention ni sur la défense ni sur aucune contestation ni de la part d'aucune des parties.

Arguments remis sine die.

J. A. Cloutier,
D.P.C.S.

Témoins taxes et non entendus, assignés par demandeur.

Mrs. J. H. Dunlop	2 jours	$4.00
Mrs. Ernest Ledoux	2 jours	4.00
Mrs. Helene Quinlan	2 jours	4.00
Jacques Desaulniers	2 jours	4.00

J. A. Cloutier,
D.P.C.S.

Le 22 déc. /38

Advenant 10½ a.m. la cour entend les arguments dans cette cause.

La cour ajourne à 2½ p.m. ce jour.

J. A. Cloutier,
D.P.C.S.

Advenant 2½ p.m. ce jour la cour continue à entendre les arguments en cette cause.

La cour ajourne à 10 hrs a.m. le 23 Déc. 1938.

J. A. Cloutier,
D.P.C.S.

Audience de 23 décembre 1938

Advenant 10 hrs. a.m. le 23 déc. 1938 le tribunal continue à entendre les arguments des procureurs en cette cause.

La cour ajourne à 2.30 ce jour.

J. A. Cloutier,
D.P.C.S.

Advenant 2.30 ce jour, la cour continue à entendre les arguments des parties.

La cause sera continuée au 1er février ou à une date avant si possible. Date à être fixée.

J. A. Cloutier,
D.P.C.S.

Advenant 10¼ a.m. ce 27 février 1939 la cour continue à entendre les arguments des procureurs en cette cause.

La cour ajourne à 2 hrs. 30 p.m. ce jour.

J. A. Cloutier,
D.P.C.S.

Advenant 2.30 hrs. p.m. ce jour la cour continue à entendre les arguments des procureurs en cette cause.

La cour ajourne à 10 hrs. 30 a.m. le 28 février 1939.

J. A. Cloutier,
D.P.C.S.

Advenant 10 hrs. 30 a.m. le 28 février la cour continue à entendre les plaidoiries des procureurs en cette cause.

Maître Beaulieu qui argumentait, étant malade, n'a pu finir sa plaidoirie; du consentement des parties le tribunal, demande à entendre Maître Desaulniers, Maître Couture et Maître Geoffrion, et déclare qu'il entendra Maître Beaulieu avant que d'entendre de nouveau Maîtres Holdstock et Chauvin qui agissent pour les demandeurs en réponse aux arguments des autres procureurs.

Continuée sine die.

J. A. Cloutier,
D.P.C.S.

Audience de 1 mai 1939.

Advenant 11 hrs ce jour 1 Mai /39 la cour continue à entendre les procureurs des parties dans cette cause.

Arguments de Mtre Beaulieu.

Sténo. Chamberland.

La cour ajourne à p.m. ce jour.

J. A. Cloutier,
D.P.C.S.

Advenant 2 hrs 30 minutes ce jour la cour entend la plaidoirie de maître Chauvin.

Arguments — Suite.

Sténo. Chamberland.

P. O. C. A. V.

J. A. Cloutier,
D.P.C.S.

L'honorable Juge demande aux procureurs des parties de produire des factums dans le plus court délai.

J. A. Cloutier,
D.P.C.S.

Part II — WITNESSES

Plaintiffs' Evidence

Examination under order of Mr. Justice Curran of 22nd March, 1935.
Present: Mr. Henry N. Chauvin, K.C., of Counsel for the Plaintiffs.

DEPOSITION OF THOMAS F. SPELLANE

On this twenty-sixth of March, in the year of Our Lord, One thousand nine hundred and thirty-five personally came and appeared: Thomas F. Spellane, aged over 21 years Secretary-Treasurer of Amiesite Asphalt Limited; at number 2020 Union Avenue, in the City and District of Montreal: a witness produced and examined on behalf of the Plaintiff; who, being duly sworn, deposes and says as follows:—

Examined by Mr. Henry N. Chauvin, K.C., of counsel for the Plaintiff:—

Q.—You are the Secretary of the Amiesite Asphalt, Limited, Mr. Spellane?

A.—I am.

Q.—And will you be good enough to produce, at this examination, certificate number one of the Amiesite Asphalt, Limited; for one share of stock, in the name of Hugh Quinlan; dated September the third, 1923; and certificate number five for forty-nine (49) shares of the Amiesite Asphalt, Limited; in the name of Hugh Quinlan; dated the twenty-third of May, 1924; as required by the Subpoena Duces Tecum?

A.—Yes, sir.

Q.—The stock certificates appear to have been transferred by Hugh Quinlan, on the twenty-second of June, 1927, to A. W. Robertson?

A.—That is correct.

Q.—And will you produce them as Plaintiffs' exhibit RP-one, that is for certificate number one; and RP-two, for certificate number five?

A.—Yes, sir.

And further the deponent saith not.

Charles F. Larkin,
Official Stenographer.

Defendant's Evidence at Enquete

DEPOSITION OF HELEN KING

A witness produced on behalf of the Defendant Robertson.

On this second day of November, in the year of Our Lord, one thousand nine hundred and thirty-eight, personally came and appeared: Helen King, of the city of Montreal, aged 49 years, a witness produced on behalf of the Defendant Robertson, who being duly sworn doth depose and say as follows:—

Examined by Mr. L. E. Beaulieu, K.C., of counsel for Defendant Robertson:—

Q.—Miss King, you have already been heard as a witness in the present case?

A.—Yes.

Q.—Some years ago?

A.—Yes.

Q.—You stated at that time that you had been the private secretary of the late Honorable J. L. Perron for many years?

A.—Yes.

Q.—You also filed at that time as Exhibit D-R-2 the document which I now show you?

A.—Yes.

Q.—And you remember that you stated that this letter was found by you in the safe of Mr. Perron?

A.—Yes.

Q.—I put to you only the broad question which was objected to, and which objection was maintained, and I asked you the following verbatim question: "Were there any other documents in the same envelope?", and you answered that question, "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."

Now, will you please take communication of the document which I now exhibit to you and state if that is the document you were referring to in your testimony?

A.—Yes, I remember that distinctly.
Q.—Will you please file that document as Exhibit D-R-53?
A.—Yes.
Q.—Will you please state if that document D-R-53 was dictated to you by the late honorable Mr. Perron?
A.—Yes, it was dictated to me by the honorable Mr. Perron?
Q.—Do you remember what happened to that document after it was dictated to you?
A.—It was deposited in the vault.
Q.—It was found in the vault?
A.—Yes.
Q.—Do you remember if it was dictated to you before or after the letter of the 20th of June 1927?
A.—Well, a few days before. I remember that, yes.

Cross-examined by Mr. Henry Chauvin, K.C., of Counsel for Plaintiffs:—

Q.—When did you first see Exhibit D-R-2?
A.—When did I first see it?
Q.—Yes.
A.—Well, I made it out.
Q.—You made out D-R-2?
A.—Yes.
Q.—You mean you wrote it on the typewriter?
A.—Well, I mean I wrote the draft at the time.
Q.—But D-R-2 is not a draft?
A.—You mean the Exhibit?
Q.—I mean the letter D-R-2 I am showing to you now. I am asking you when did you see it?
A.—I do not know when I saw it exactly. I cannot tell you exactly when I saw it.
Q.—You cannot say when you first saw it?
A.—Not exactly, no. I do not remember at all.
Q.—You do not remember that?
A.—When I saw it? The date I mean. You are talking about the date?
Q.—I mean the circumstances, the time, under what circumstances did you first see D-R-2?
A.—I do not remember.
Q.—You do not remember?
A.—I do not remember.

H. KING (for Defendant at Enq.) Examination in chief.

Q.—You said that you found this letter in an envelope that was kept in the vault in Mr. Perron's office?

A.—Yes.

Q.—And this envelope formed part of one of the records of the office, did it not?

A.—Yes, sir.

Q.—What record did it form part of?

A.—I knew at the time. Mr. Perron told me at the time.

Q.—I am not asking you that. I am asking you what record it formed part of?

A.—I cannot remember the record. Of course, those instructions were given to me at the time, I deposited the letter at the time; I deposited the letter on Mr. Perron's instructions. I do not remember any other details about it, what record it formed part of. I put those letters where Mr. Perron wanted me to put them.

Q.—Let me see what you said at the last hearing. When you were examined at the trial, you were asked where the documents was, and you produced the envelope in which you found it. Do you remember that?

A.—Yes, Mr. Chauvin.

Q.—And you were asked how you happened to find the envelope, and you said; "There was a memorandum in the record, I think, of the Quinlan case, in which there was a reference to this particular document number 369 in the case, and that was where I found it in an envelope," is that right?

A.—Yes, Mr. Chauvin.

Q.—And then, you were asked again at page 369: "I understand that you found the papers you are filing in this case with record bearing number Q-79." You answered, "Yes," and then the next question: "And that record is Ethel Quinlan et al Plaintiffs vs A. W. Robertson et al Defendants and William Quinlan et al Mis-en-Cause" and you answered, "Yes," and you were asked; "This is the record in this case," and you said, "Yes," and you were asked: "What was the latest proceeding in the record?", and you said, "The latest proceeding was the declaration in this case."

Are those answers right?

A.—Yes.

Q.—You persist in them?

A.—Yes, I do.

Q.—Did you see this letter or this draft of letter at any time after you typed it, and the date when you found it in the envelope to which you referred to in your evidence?

A.—No, it was just put there at the time, and I had no occasion to refer to it.

Q.—You did not see it between the time you typed it and the time this present action was instituted?

A.—I deposited it in the safe, and that is all I remember.

Q.—What I want to be clear about is, whether you saw it between the time you typed it and the time you found it in the envelope in the record in this case?

A.—No.

Q.—You did not see it between those two dates?

A.—No.

Q.—And how do you recognize it as having been a letter typed by you?

A.—Well, that is my way of typing letters. I remember distinctly.

Q.—You can?

A.—I can recall that — those dots. That is one item the way I make those dots out.

Q.—You recognize the typing, do you?

A.—Yes.

Q.—Usually, do you not put your initials on the bottom of the letter and the initial of the party dictating it?

A.—It was a draft of the letter.

And further deponent saith not.

E. W. Bush,
Official Court Reporter.

DEPOSITION OF LOUIS NAPOLEON LEAMY

A witness produced on behalf of the Defendant Robertson.

On this second day of November, in the year of Our Lord, one thousand nine hundred and thirty-eight, personally came and appeared: Louis Napoleon Leamy of the city of Montreal, Secretary Treasurer, aged 62 years, a witness produced on behalf of the Defendant Robertson, who being duly sworn doth depose and say as follows:

Mr. Chauvin:—My Lord, before the witness is examined, I would like to enter an objection to verbal evidence being made

of a consent or assent of the late Mrs. Hugh Quinlan to the document D-R-1.

I realize, of course, that the Supreme Court has sent this record back with certain instructions, and these instructions, I assume, have got to be followed at the same time. This may not be the end of this case....

His Lordship:—You do not want to acquiesce. It is quite proper to enter an objection.

Mr. Chauvin:—I do not wish to have to make an objection to every question which arises, but I wish it to be understood that the Plaintiff objects to verbal evidence being taken on the assent, or the alleged assent of the late Hugh Quinlan, to the letter of June 20th 1927, D-R-1, and to add to verbal evidence that is made, in virtue of the present reference from Supreme Court.

My Lord, at the first trial the evidence was made by Mr. Leamy and Mr. Robertson, that they together went to Mr. Quinlan's room on the 20th of June, and that Mr. Leamy read the letter. The question that was then put to them was, what was Mr. Quinlan's reaction, and that question was disallowed. They stated they were alone with Mr. Quinlan at the time, and I am going to ask your Lordship and my learned friends, in making this evidence during Mr. Leamy's testimony, that Mr. Robertson be excluded or if Mr. Robertson testifies first that Mr. Leamy be excluded from the room. We realize this is a vital point of the case and it depends on the statements of these two gentlemen, and I submit for the sake of their own case they should be willing to feel that your Lordship is entitled to believe them absolutely.

His Lordship:—I do not think I have jurisdiction to give an order in the sense in which you ask, Mr. Chauvin. If you suggest it to Mr. Beaulieu, and he consents, he is at liberty to accept or not. I do not think I can exclude the witnesses. I do not think I have any jurisdiction.

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

Q.—Mr. Leamy, you have already been heard as a witness in the present case?

A.—Yes.

Q.—In 1927?
A.—Yes.
Q.—Will you please tell the Court what was your occupation?
A.—Secretary Treasurer.
Q.—Secretary Treasurer of what?
A.—A. W. Robertson, Limited.
Q.—You have already stated in your previous deposition at page 758 that in April 1927 you paid a visit to Mr. Hugh Quinlan?
A.—Yes.
Q.—Do you remember that statement?
A.—Yes.
Q.—Was that correct?
A.—Yes.
Q.—You also stated that it was at the time when Mr. Robertson was absent from the city?
A.—Yes.
Q.—When, you were asked, "Did Mr. Quinlan mention to you what he intended to do with his shares?" Objection was made, and the objection was maintained. Will you please state to the Court what took place during the conversation at that interview that you had with Mr. Quinlan, in April 1927?

Mr. Chauvin:—This question referred to the visit Mr. Leamy made in April 1927. I do not see that the order of the Supreme Court covers that.

His Lordship:—It covers May. I am not quite sure that it covers April. There is a great deal of distinction between April and May.

Mr. Chauvin:—If it is referring to the visit of the Honorable J. L. Perron and the present Appellant to the late Hugh Quinlan during the month of May or thereabouts, that is referring to something else altogether, and it was in May that the certificates were obtained by Mr. Robertson. This is a different matter altogether, and I submit it does not fall within the reference.

His Lordship:—I must reserve the objection.

A.—Mr. Quinlan said that day that he was anxious for Mr. Robertson to return from the South, or from his Mediterranean trip that he wanted to transfer to Mr. Robertson his shares in Quinlan, Robertson & Janin, Amiesite Asphalt and Ontario Amiesite Limited.

L. N. LEAMY (for Defendant at Enq.) Examination in chief.

By Mr. Beaulieu:—

Q.—Did you report that conversation to Mr. Robertson when he was back?

A.—Yes, I did.

Q.—Will you take communication of a letter bearing date the 23rd May 1927, signed by you and addressed to Mr. Robertson, and state if you wrote that letter?

A.—Yes, sir, I wrote that letter.

Q.—Will you file this letter as Exhibit D-R-54?

A.—Yes.

Q.—Did you, as a matter of fact, at a later date receive from Mr. Robertson the various certificates therein mentioned?

A.—I did.

Q.—For safekeeping?

A.—For safekeeping.

Q.—I notice in that letter, that certificate number 9 of the Amiesite Asphalt Limited for 200 shares, G. H. Dunlop, is also mentioned?

A.—Yes.

Q.—Will you also take communication of this Certificate, which has already been filed as Exhibit P-11, and state if you know the endorsement of Mr. Dunlop appearing on the back of it?

A.—Yes.

Q.—Do you know his signature?

A.—Well, I witnessed it.

Q.—And you were present when he signed?

A.—Yes.

Q.—Let us come back to the letter of the 20th of June 1927, the original of which has been filed as Exhibit D-R-1. You remember that letter, of course?

A.—Yes.

Q.—The letter of the 27th of June 1927?

A.—Yes.

Q.—You have already stated in your deposition that that letter was typewritten by yourself?

A.—Yes.

Q.—And you were then asked at page 760 also (reference is made for the convenience of my confrere but of course it does not form part of the record) — you were asked the following question: "Was that letter Exhibit D-R-1 copied in part, or was the whole of it prepared by the Honorable Mr. Perron, which

you had in your possession"? Will you please take communication of the document already filed by Miss King as Exhibit D-R-53 and state if this was the document prepared by Mr. Perron that you had in hand when you drafted D-R-1?

A.—No.

Q.—What was that?

A.—It was a draft made by Mr. Robertson from this draft handed to me, and which I wrote the letter.

Q.—You remember that D-R-53 that you have in your hand was given to Mr. Robertson?

A.—Yes, it was mailed to Mr. Robertson by the Honorable Mr. Perron.

Q.—Did you receive instructions from Mr. Robertson to draft or redraft the document as it is now, Exhibit D-R-1?

A.—He redrafted this himself.

Q.—To your knowledge?

A.—Yes sir.

Q.—And then you ....

A.—Then, I typed it.

Q.—You typewrote it as drafted by Mr. Robertson?

A.—That is right.

Q.—And made D-R-1?

A.—That is right.

Q.—You notice that two duplicates of that letter of the 20th of June 1927 were signed by Mr. Robertson, D-R-1 and D-R-2? You also notice that your initials appear on both these duplicates?

A.—Yes sir.

Q.—Will you state to the Court what you did with one of these duplicates?

A.—I mailed it to the Honorable Mr. Perron?

Q.—You mailed one of them?

A.—I mailed one of them.

Q.—And you kept the other?

A.—Yes.

Q.—When did you mail it to the Honorable Mr. J. L. Perron?

A.—I would say that day.

Q.—You have already stated that you were at Mr. Hugh Quinlan's house on the 20th of June 1927 with Mr. Robertson?

A.—Yes.

Q.—You have also stated that you read that letter D-R-1 to the late Hugh Quinlan?

A.—Yes sir.

L. N. LEAMY (for Defendant at Enq.) Cross-examination.

Q.—Will you now state what was the answer, if there was any answer, on the part of Mr. Hugh Quinlan after you read the letter?

A.—He said that was all right.

Q.—Who were present then?

A.—Mr. A. W. Robertson.

Q.—And yourself?

A.—Yes.

Q.—No other person?

A.—No.

Q.—Besides Mr. Hugh Quinlan?

A.—Yes.

Q.—Did you meet Mrs. Quinlan that day, the wife of the late Hugh Quinlan?

A.—I did.

Q.—You know that Mrs. Quinlan died since the first enquete in this case?

A.—Yes.

Q.—But she was alive at the time, in fact?

A.—Yes.

Q.—And you made the same statement at the enquete held before Mr. Justice Martineau, to wit, that you had met Mrs. Quinlan on that day?

A.—I did.

Cross-examined by Mr. Henry Chauvin, K.C., of counsel for Plaintiff:—

Q.—In regard to Exhibit P-11, when was it endorsed by Mr. Dunlop? Was the space for the transferee's name in blank?

A.—That was added after.

Q.—That is to say, the name of the transferee was filled in afterwards?

A.—Yes.

Q.—It was endorsed in blank?

A.—From my recollection.

Q.—It was endorsed in blank?

A.—Yes, from my memory it was endorsed in blank.

Q.—When did you find the letter D-R-54?

A.—I did not find it. It was not in my possession.

Q.—It was not in your possession?

A.—No.

Q.—Have you seen it since you wrote it before today?

A.—I saw it the last time I appeared in Court.

L. N. LEAMY (for Defendant at Enq.) Cross-examination.

Q.—You saw it the last time you appeared in Court?
A.—Some years ago, the last time we appeared in Court.
Q.—That is the last time we appeared before Mr. Justice Martineau?
A.—I think it was.
Q.—It was not produced then?
A.—Yes.
Q.—Well, I don't think it was.
A.—To my memory it was.
Q.—There is no indication that it was produced at that time?
A.—I was thinking of the other one.
Q.—I am referring to D-R-54: this D-R-54, the letter of May 23rd, 1927, was referred to?
A.—I don't know. I found it among our correspondence during the first trial.
Q.—You are not sure of that?
A.—That is a long time ago. I am not infallible.
Q.—What makes you think that you had it during the first trial, that is, the trial before Judge Martineau?
A.—I do not know, except we were looking through our letters, through files, looking for correspondence.
Q.—Have you any recollection of having had this letter during the first trial?
A.—Not from memory. I would not say so.
Q.—Not from memory?
A.—No.
Q.—Have you seen it since then? ?
A.—No.
Q.—Not until today?
A.—No. I saw it the other day in Mr. Beaulieu's office.
Q.—But prior to the preparation for this trial, you had not seen it, since this trial?
A.—That is right.
Q.—You stated in answer to a question by Mr. Beaulieu that Exhibit D-R-1, that is, the letter of June 20th 1927 was prepared by you, from the draft made by Mr. Robertson? ?
A.—Yes.
Q.—Have you Mr. Robertson's draft?
A.—No, I have not.
Q.—What became of it?
A.—It went into the waste paper basket.
Q.—Was it a handwritten draft?
A.—Yes, it was, a pencil draft.

Q.—In pencil?
A.—Yes.
Q.—Was Mr. Robertson present when you wrote D-R-1?
A.—Yes.
Q.—Where was it written?
A.—In the office, 1680 St. Patrick street.
Q.—That office had just one division?
A.—Two rooms, that is all.
Q.—You were in the outer office?
A.—Yes.
Q.—Was Mr. Robertson there when you wrote it?
A.—He wrote it on my desk in the office.
Q.—He wrote the draft on your desk?
A.—Yes sir.
Q.—Was Mr. Robertson present when you typed D-R-1?
A.—He was in my office, yes sir.
Q.—Was it the morning of the 20th of June 1927?
A.—In the forenoon, yes.
Q.—You said at the first trial that you went to Mr. Quinlan's house between eleven and twelve on the morning of June 20th?
A.—Yes sir.
Q.—Did you go right up to Mr. Quinlan's house as soon as this letter was typed?
A.—Shortly after.
Q.—What do you mean by shortly after?
A.—Well, I wrote a letter. I cannot tell you how long after we proceeded up to Mr. Quinlan's house.
Q.—How long were you in Mr. Quinlan's room that morning?
A.—A few minutes.
Q.—A few minutes?
A.—Yes.
Q.—What do you mean by a few minutes?
A.—I would say two or three.
Q.—Two or three minutes?
A.—Yes.
Q.—Was there any conversation besides reading this letter?
A.—No, not as far as I was concerned.
Q.—Was there any conversation between Mr. Robertson and Mr. Quinlan?
A.—Not after I left — I am wrong; I say I don't know, because I left.

L. N. LEAMY (for Defendant at Enq.) Cross-examination.

By Mr. Geoffrion:—

Q.—Not before you left??
A.—No.

By Mr. Chauvin:—

Q.—You left Mr. Robertson in the room?
A.—Yes.
Q.—You left Mr. Robertson with Mr. Quinlan?
A.—Yes sir, I did.
Q.—Did you go into the room with Mr. Robertson?
A.—I did.
Q.—Was there any conversation before you read the letter?
A.—Well, just the usual salutation. I asked him how he felt.
Q.—That was all?
A.—That was all.
Q.—There was no reference to what was in the letter?
A.—Not just then.
Q.—Then, you just simply read the letter?
A.—Yes. Mr. Robertson mentioned he had this letter and he wanted me to read it to him.
Q.—And you read the letter?
A.—I did.
Q.—And left the room?
A.—I did.
Q.—With the letter?
A.—No, I handed it back to Mr. Robertson.
Q.—Did you have the duplicate with you there at that time?
A.—No, I did not.
Q.—Where was the duplicate?
A.—In the office.
Q.—How long did Mr. Robertson stay with Mr. Quinlan after you left?
A.—Five or ten minutes.
Q.—Did you wait for him in the house?
A.—I did.
Q.—You went out together? You left the house together?
A.—Yes.

L. N. LEAMY (for Defendant at Enq.) Cross-examination.

Q.—When you wrote D-R-1, was it all done at one typing?
A.—Yes.
Q.—In duplicate, at the same time?
A.—At the same time.
Q.—The whole letter complete was done in one typing?
A.—From memory I would say so.
Q.—Well, I am asking you?
A.—I am saying from memory.
Q.—You typed the letter complete I suppose?
A.—Is that a carbon copy?
Q.—You know whether you took a carbon copy of it. There are both of them. D-R-1 and D-R-2.
A.—Exhibit D-R-2 is the carbon.
Q.—D-R-2 is a carbon copy of D-R-1?
A.—Yes, and these four items were inserted after this letter was written.
Q.—When you wrote the letter, the names of the stocks were not in?
A.—They were not in at the time. I mean they were not in here. That may have been added after. I do not remember.
Q.—You do not remember?
A.—No, but the carbon shows that the four insertions were added after the letter was written.
Q.—What about the original?
A.—I do not remember.
Q.—You do not remember?
A.—No.
Q.—You do not remember whether when you wrote the original, the names of the stocks and the number of shares were in the letter?
A.—No, I do not remember.
Q.—When did you put in the names of the stocks and the number of shares in the duplicate D-R-2?
A.—I presume that day.
Q.—You presume?
A.—Yes.
Q.—Do you know?
A.—I put them in there.
Q.—I am asking you when you put them in?
A.—Well, I say that day.
Q.—You are sure of that?
A.—From memory.

L. N. LEAMY (for Defendant at Enq.) Cross-examination.

Q.—And when did you mail the duplicate to Mr. Perron?
A.—That day.
Q.—Before or after you went to Mr. Quinlan's house?
A.—After.
Q.—Do you swear that D-R-2 is a carbon copy of D-R-1 made in the machine at the same time as D-R-1?
A.—Yes.
Q.—Do you remember that there was a time that the letter of June 20th 1927, D-R-1, could not be found?
A.—That is right.
Q.—Did you at that time tell Mr. Robertson that you had mailed the duplicate to Mr. Perron?
A.—The day we wrote that letter Mr. Robertson phoned Mr. Perron and read that letter to him before we went to Mr. Quinlan's house.
Q.—But I asked you if there was a time when the letter D-R-1 could not be found, and you say, yes?
A.—Well, it was not in my possession.
Q.—Did you tell Mr. Robertson then that you had mailed a duplicate to Mr. Perron?
A.—Well, he was familiar with it. It was mailed on his instructions.
Q.—Well, but if you had the duplicate, and Mr. Perron had a duplicate, would not a duplicate have answered just as well as the original?
A.—I don't know that. It is not for me to judge.
Q.—You knew Mr. Perron was enquiring for the letter, do you not?
A.—Yes.
Q.—And you were asking both the Capital Trust and Mr. Robertson to find it?
A.—Yes.
Q.—And all the time he had a duplicate according to you, in his possession?
A.—Yes, he had.
Q.—Is that right?
A.—That is right, as far as I know.
Q.—Well, that is right?
A.—That is right.
Q.—All the time he was looking for D-R-1, he had a signed duplicate in his possession?
A.—That is right.

And further deponent saith not.

E. W. Bush,
Official Court Reporter.

DEPOSITION OF ANGUS WILLIAM ROBERTSON

A witness produced on behalf of the Defendant Robertson.

On this second day of November, in the year of Our Lord, one thousand nine hundred and thirty-eight, personally came and appeared: Angus William Robertson, of Monte Bello, Quebec, Contractor, aged 63 years, a witness produced on behalf of the Defendant Robertson, who being duly sworn doth depose and say as follows:—

Examined by Mr. L. E. Beaulieu, K.C., of counsel for Defendant Robertson:—

Q.—Mr. Robertson, I understand you are the Defendant in the present case?

A.—Yes.

Q.—Will you please take communication of the four certificates which have already been filed as Exhibits P-9, P-10, P-26 and P-27, and state if the endorsements Hugh Quinlan on the back were put there by Mr. Hugh Quinlan himself, to your knowledge?

A.—Yes. These are his signatures.

Q.—Were you present when Mr. Quinlan signed these endorsements?

A.—I was.

Q.—Being transfers in blank?

A.—Yes.

Q.—For each one of these transfers you see the date 22nd of June 1927. Was that date there when Mr. Quinlan signed?

A.—No.

Q.—When was it put down, and by whom.

A.—It was put there I think by the auditor, when he made the transfer. At any rate it was done at that time the 22nd of June.

Q.—It was not done by you or under your instructions?

A.—No.

By the Court:—

Q.—What do you mean by the auditor?

A. W. ROBERTSON (for Defendant at Enq.) Exam. in chief.

By Mr. Beaulieu:—

Q.—You said it was put there by the auditor. What do you mean by the auditor?

A.—Either the auditor, or the Secretary, Mr. Malone, at the meeting of the transfer.

Q.—You remember that on the 22nd of June 1927 there were meetings of the two Companies?

A.—Yes.

Q.—A meeting of the Amiesite Asphalt Company and Quinlan, Robertson & Janin Limited held on the 22nd of June?

A.—Yes.

Q.—And according to the minutes which are already filed, it was during these meetings of the 22nd of June 1927 that the transfers by Mr. Hugh Quinlan were approved?

A.—Yes.

Q.—And it would be according to you, to the best of your recollection, the Secretary or the auditor of these two Companies who put the dates, being the same date as the date of the minutes?

A.—Yes.

Q.—The minutes whereby the transfers were approved?

A.—Yes.

Q.—Do you recognize the signature of Mr. Hugh Quinlan on the back of these four certificates?

A.—Yes.

Q.—Now Mr. Robertson, you have already stated that you paid a visit to Mr. Quinlan prior to the endorsements of these certificates, in May 1927.

A.—Yes.

Q.—After a trip you made abroad?

A.—Yes.

Q.—You remember that?

A.—Yes.

Q.—You were then prevented from stating what took place during that conference. Will you now state to the Court what took place during the conversation betwen yourself and Mr. Hugh Quinlan in May 1927 after your return from abroad?

A.—When I came back, he told me he had definitely decided to get out of those Companies and he wanted me to take over the stock.

Q.—Was there anything else to your recollection?

A.—That he would arrange with Mr. Perron as to the value of them.

Q.—That was all that was said at the time, so far as you can recollect?

A.—Yes.

Q.—Will you take communication of the letter bearing date the 23rd of May 1927 already filed as Exhibit D-R-54, and state if you remitted the four certificates which you have already examined, to Mr. Leamy at the time of that letter?

A.—Yes sir.

Q.—Besides the four certificates, P-9, P-10, P-26 and P-27 that you have already examined, there is a mention in this same letter of May 23rd of a certificate of Amiesite Asphalt Company, a certificate for 200 shares, G. H. Dunlop?

A.—Yes.

Q.—Will you state if this certificate, Exhibit P-11 is the certificate mentioned in that letter as being in the name of G. H. Dunlop?

A.—Yes, that is for the 200 shares.

Q.—Were you present when Mr. Leamy signed as a witness to the endorsements of Mr. Dunlop?

A.—I was.

Q.—On the 20th of June 1927 were you still in possession of these five certificates P-9, P-10, P-11, P-26 and P-27 which were then being kept by Mr. Leamy?

A.—Yes.

Q.—And had you been in possession through Mr. Leamy of these five certificates from the date of the 23rd of May 1927 till the date of the letter read to Mr. Quinlan, that is to say, on the 20th of June 1927?

A.—Yes.

Q.—Where were these certificates?

A.—In the vault, in the office.

Q.—The office of A. W. Robertson Limited?

A.—Yes.

Q.—You had your office there also?

A.—Yes.

Q.—And Mr. Leamy also had his office there?

A.—Yes.

Q.—Will you please take communication of this letter of June 20th 1927, which bears your signature and which is filed as Exhibit D-R-1, and state if you remember that letter?

A.—I do.

Q.—You have already said that this letter was read in

your presence by Mr. Leamy to the late Mr. Hugh Quinlan on the date it bears, 20th of June 1927?

A.—Yes.

Q.—Will you state to the Court what answer, if any, Mr. Hugh Quinlan gave after the letter was read to him?

A.—He said, "That is all right."

Cross-examined by Mr. Henry Chauvin, K.C., of counsel for Plaintiff:—

Q.—Mr. Robertson, did you hear the evidence given by Mr. Leamy?

A.—No, I cannot hear very well.

Q.—You did not hear what he said?

A.—No.

Q.—When you said to Mr. Beaulieu that the signatures of these certificates, Exhibits, P-9, P-10, P-26 and P-27 were the signature of Mr. Hugh Quinlan, do you mean to say that you remember Mr. Quinlan signing?

A.—I certainly do.

Q.—You say that you remember distinctly Mr. Quinlan signing those certificates?

A.—Signing the original certificates.

Q.—Signing the originals?

A.—These are photostatic copies.

Q.—Signing the originals of these Exhibits I have just mentioned, Exhibit P-9, P-10, P-26 and P-27?

A.—Yes.

Q.—You do?

A.—Yes.

Q.—You positively remember him saying that?

A.—I do.

Q.—Why did you not say so when you were examined on discovery?

A.—Well, I don't know. I do not recall having been asked that.

Q.—You do not recall having been asked that?

A.—No.

Q.—When was it that Mr. Quinlan told you that he would arrange with Mr. Perron as to values?

A.—Some time during the month of May.

Q.—You cannot be more precise than that, can you?

A.—I don't remember the date.

A. W. ROBERTSON (for Defendant at Enq.) Cross-examination.

Q.—Had you the letter D-R-54 in your possession when you were examined on discovery in October 1929?

A.—I don't know.

Q.—D-R-54 is a letter of the 23rd of May 1927 addressed to you, and signed by Mr. Leamy?

A.—It would be in the records in the office, some place I think.

Q.—Well, it was not addressed to the office, it was addressed to you personally?

A.—I know that all my letters are kept there.

Q.—I ask you Mr. Robertson, if you had this letter D-R-54 in October 1929 when you were examined on discovery?

A.—Well, it was in the office. I may not have had it, but it was there.

Q.—Did you know of it at that time?

A.—I did.

Q.—You knew that that letter existed at that time? Let me put the question this way. You knew when you were examined in October 1929, that this letter of May 23rd 1927 was in existence and that you had it?

A.—I know that I recognized this letter as a letter addressed to me on that date.

Q.—That is not what I have asked you Mr. Robertson. I want an answer.

A.—If it were presented to me I would have recognized it.

Q.—That is not what I am asking you. I asked you first of all if you had that letter in your possession when you were examined on discovery in October 1929?

A.—If I did not it was in the records in the office.

Q.—And you knew it was there?

A.—I do not recall that. I remember this letter.

Q.—And you would have remembered it just as well in October 1929 as today?

A.—Likely.

Q.—Don't you remember when you were examined on discovery that you said you got these shares from Mr. Quinlan three or four days before he died?

A.—The transfer was made a few days before he died.

Q.—But you got the share certificates from him?

A.—I do not recall having said that.

Q.—You do not recall having said that?

A.—No.

A. W. ROBERTSON (for Defendant at Enq.) Cross-examination.

Q.—What time do you say it was when you went to Mr. Quinlan's house on the 2nd of June 1927?
A.—Just before noon, I think.
Q.—Did you go right in to Mr. Quinlan's room?
A.—Yes.
Q.—Without seeing any one?
A.—I don't remember whether I saw any one or not.
Q.—You do not remember whether you saw any one before you went into the room?
A.—No.
Q.—Your mind is a blank on that, is it?
A.—Well, I do not recall now who was there.
Q.—Did you see the nurse?
A.—I do not recall.
Q.—You do not recall seeing the nurse?
A.—No.
Q.—How long were you in the room altogether?
A.—Probably five or ten minutes.
Q.—Did you and Mr. Leamy go in together?
A.—We went up together, yes.
Q.—Did you go in the room together?
A.—We went in at the same time.
Q.—You went in the room at the same time??
A.—Yes.
Q.—Did you leave the room at the same time? ?
A.—No. I stayed there a little while after Mr. Leamy went out and talked to Mrs. Quinlan.
Q.—Was Mrs. Quinlan in the room?
A.—No.
Q.—But I am asking you about the time you were in Mr. Quinlan's room, the sick room ,you said you and Mr. Leamy went in together?
A.—Yes.
Q.—I asked you if you left the room together?
A.—I said no.
Q.—The sick room?
A.—No.
Q.—And you said that you stayed and talked with Mrs. Quinlan?
A.—No, I did not.
Q.—Oh, you did not? What did you say?
A.—I said that Mr. Leamy left and I stayed there a few minutes.

A. W. ROBERTSON (for Defendant at Enq.) Cross-examination.

Q.—You stayed there a few minutes where?
A.—In Mr. Quinlan's room.
Q.—In the sick room?
A.—Yes.
Q.—And you did not say you talked to Mrs. Quinlan?
A.—Not in the sick room.
Q.—Was Mr. Quinlan lying in bed?
A.—Yes.
Q.—Was he sitting up, propped up in his bed or lying down?
A.—Propped up.
Q.—You are sure that was the morning of the 20th June, are you?
A.—I am.
Q.—What day of the week was it?
A.—I don't know.
Q.—You don't know?
A.—No.
Q.—How do you know it was the morning of the 20th of June?
A.—Because letters indicate that.
Q.—Did you know that a duplicate of Exhibit D-R-1 had been sent to Mr. Perron?
A.—I instructed Mr. Leamy to send it.
Q.—You remember there was a time when you could not find the letter D-R-1?
A.—I think there was. There was a question about it, but I do not remember the details.
Q.—Well, you remember that you were asked by Mr. Perron to find it. Do you remember that?
A.—Well, I don't know that he asked me to find it. He may have asked Mr. Leamy.
Q.—He did not send you a memorandum asking you to find the letter?
A.—He may have.
Q.—You do not remember that?
A.—No.
Q.—But you do not remember that you could not find it, that is ,you could not find D-R-1?
A.—When you refer to me, do you mean personally?
Q.—Yes, I mean you.
A.—I do not keep any of the records, and never have.
Q.—But you were asked for the letter by the Capital Trust?
A.—Yes.

Q.—They wrote to you and asked you for the letter?
A.—Yes.
Q.—And you wrote back and said you could not find it? Do you remember that?
A.—I remember something about it. Of course, I am hazy on it. Now, that is a long while ago.
Q.—What makes you say that you were present when Mr. Dunlop signed Exhibit P-11?
A.—Because I was there.
Q.—You remember that?
A.—I do.
Q.—That is quite a while ago too, is it not?
A.—Yes.
Q.—You remember that you were present when Dunlop signed Exhibit P-11?
A.—Yes.
Q.—When he signed the certificates of which P-11 is a photostat?
A.—Yes.
Q.—Do you ever remember saying that you did not know whether Dunlop had signed this or not?
A.—No, I do not recall that.
Q.—You do not recall that?
A.—No.
Q.—Were you present when the letters D-R-1 and D-R-2 were typed?
A.—I was in the office.
Q.—Can you say whether the number of shares were written in that letter when it was first typed?
A.—I did not type the letter.
Q.—I did not say you did, but you said you were present when it was typed?
A.—I was in the office most of the time.
Q.—Do you know whether the shares were typed in when the letter was first typed?
A.—I know those are the number of shares.
Q.—I did not ask you that either. I wish you would answer the question that was put to you?
A.—How would I, if I did not type the letter, know when they were put in, except I know they were in when I signed it.
Q.—You know there were in when you signed them?
A.—Yes.

A. W. ROBERTSON (for Defendant at Enq.) Cross-examination.

Q.—You never saw the letter with the blank where the names of the shares and the numbers of shares are now mentioned?
A.—No.
Q.—You never saw the letter with that blank?
A.—No.
Q.—Are you sure of that?
A.—I am sure of it.
Q.—You are positive you never saw the letter only with the blank where the shares are now mentioned ?
A.—I never recall having seen it any other way than that.
Q.—That it is at the present time?
A.—Yes.
Q.—Did you sign both the original and the carbon copy at the same sitting?
A.—I would not think so.
Q.—We do not want to know what you think. We want to know what you did?
A.—I am quite confident I did not.
Q.—When did you sign the original?
A.—At that moment.
Q.—As soon as it was typed?
A.—When it was presented to me.
Q.—And when did you sign the duplicate?
A.—When it was presented to me immediately after.
Q.—Then, you did sign them both at the same sitting?
A.—During the same few minutes.
Q.—Of course, you could not sign them both at the same moment. I did not ask you that. I asked you if you signed both at the same sitting and you say you did?
A.—I did at the same time. It might not have been in that sitting though.

And further deponent saith not.

E. W. Bush,
Official Court Reporter.

DEPOSITION OF ALBAN JANIN

A witness produced on behalf of the Defendant Robertson.

On this second day of November, in the year of Our Lord, one thousand nine hundred and thirty-eight, personally came and appeared: Alban Janin, of the City of Outremont, Contractor, aged 58 years, a witness produced on behalf of the Defendant Robertson, who being duly sworn doth depose and say as follows:—

Examined by Mr. L. E. Beaulieu, K.C., of counsel for Defendant Robertson:—

Q.—Mr. Janin, you have already been examined as a witnes in the present cause?

A.—Yes.

Q.—That was several years ago?

A.—Yes.

Q.—During your evidence you were asked if you had met the late Hugh Quinlan during the month of May 1927, some weeks before his death? I am not referring to pages 725 and 726 of the evidence, and you were further asked if there was any mention of the late Hugh Quinlan's intention to sell his shares. At that time objection was made to the evidence. The objection was maintained. Will you please state to the Court what took place during that interview you had with the late Hugh Quinlan in May 1927?

A.—I had occasion to visit Mr. Quinlan who had been ill for some time, and in the general conversation I reported to him what we were doing, what was going on, and in the course of that conversation Mr. Quinlan said, "Janin, cannot you arrange to pay me up. You can see I cannot be active any more, and I would like to retire," or something to that effect.

Q.—"To pay me out"?

A.—To buy his shares with Mr. Robertson, so that he could retire.

Q.—What shares was he referring to at the time?

A.—I do not remember if he mentioned specifically, but I understood it meant everything that he was in with us.

Q.—"With us" meaning Mr. Robertson and yourself?

A.—Yes.

Q.—Did you have any other conversation about the same matter? ?

A.—No, not with him.

A. JANIN (for Defendant at Enq.) Cross-examination.

Q.—Of course, you had further conversations with Mr. Robertson, but it is already mentioned in the evidence, and we do not want to repeat it. Now, Mr. Janin, you no doubt are aware of the tenor, or contents, of Exhibit D-R-1 which reads more particularly as follows:—

Mr. Robertson is writing to Hugh Quinlan and he says in that Exhibit D-R-1:—"I have agreed to obtain for you the sum of $250,000.00 for the above mentioned securities." Is it to your own knowledge that Mr. Robertson and yourself actually tried to find a purchaser who would pay the $250,000.00?

A.—Oh yes, Mr. Robertson and I discussed that several times. We even interviewed people we knew whom we thought might be interested in coming with us and several names were mentioned between ourselves, but it did not go any further, because we did not come to the point where we could make a proposition to any of the gentlemen we had in mind, realizing that it was pretty difficult to sell a minority share to somebody who was not in the business which we were in.

Q.—Now, a last question I want to put to you is this: I understand that on the 22nd of June 1927 you were the secretary of Quinlan, Robertson & Janin Limited. Will you please take communication of a photostat copy of a meeting of Quinlan, Robertson & Janin Limited held on the 22nd day of June 1927, and state if this is a correct photostat copy of the minutes of that meeting?

A.—It is a correct copy.

Q.—Will you file it as Exhibit D-R-55?

A.—Yes.

Q.—Will you file the minutes of the meeting of the Amiesite Asphalt Limited held on the 22nd of June 1927 as Exhibit D-R-56?

A.—Yes.

Q.—Will you also file the minutes of a meeting of the Ontario Amiesite Company held on the 16th of November 1927, as Exhibit D-R-57?

A.—Yes.

Cross-examined by Mr. Chauvin, K.C., of counsel for Plaintiff:—

Q.—Mr. Janin, you were the secretary of the meeting that is recorded in the minutes of the 22nd of June 1927, Exhibit D-R-55?

A.—Yes sir.

A. JANIN (for Defendant at Enq.) Re-examination.

Q.—These minutes record that the notice of the meeting was duly read and approved. Was that notice sent to the directors?

A.—I would think so.

Q.—That is a copy of the notice that was actually sent to the directors for the meeting?

A.—Yes. The notification must have been sent. I do not recall exactly.

Q.—The minutes also record Mr. Hugh Quinlan' submitted to the meeting his resignation as vice-president and director of the Company which was duly accepted. How was that resignation submitted?

A.—By Mr. Robertson.

Q.—Verbally?

A.—Verbally.

Q.—You stated that you had discussed with Mr. Robertson a possible buyer of the shares of Quinlan, Robertson & Janin Limited, and the Amiesite Asphalt that belonged to Mr. Quinlan. Do you remember if that was after Mr. Quinlan's death?

A.—It was after his death.

Q.—Did you at any time suggest to Mr. Robertson a purchaser??

A.—Yes, I did.

Q.—That is, you did not suggest any one?

A.—I did not suggest the one who would purchase. I suggested names.

Q.—Of possible prospects?

A.—Yes.

Q.—But you did not suggest any one who would purchase?

A.—No, because we never approached anybody.

Q.—You just talked the mater over yourselves?

A.—Yes. We thought it would be desirable to have somebody with us, not to remain, the two of us alone.

Q.—But you never actually aproached any one in connection with the purchase of the shares?

A.—No.

Re-examined by Mr. Beaulieu, K.C., of counsel for Defendant Robertson:—

Q.—When you discussed with Mr. Robertson the possibility of having a third party with you, what was the answer of Mr. Robertson? What was his view about it?

A. JANIN (for Defendant at Enq.) Re-examination.

A.—I do not remember who suggested the thing first, whether it was he or I. We were both of the same mind on that.

Mr. Beaulieu:—I produce, my Lord, as Exhibit D-R-58 Deed of Deposit in the record of Roger Biron, Notary.

I also produce Deed of Judicial Authorization to Mr. John Henry Dunlop, as Exhibit D-R-59 being a party to the agreement of the 2nd February 1934.

I also produce Judicial Authorization of the same date on behalf of Mr. Ernest Ledoux as Exhibit D-R-60.

I also produce as Exhibit D-R-61 certified extract of the Resolution of the General Trusts of Canada, authorizing the agreement.

I also produce as Exhibit D-R-62 Resolution of the Capital Trust Corporation Limited authorizing the same settlement.

I also produce as Exhibit D-R-63 final acquittance and discharge by Mr. Jacques Desaulniers, being for the amount which was agreed to be paid to them for their costs.

I also produce as Exhibit D-R-64 final agreement by the Estate of Hugh Quinlan for the amount of $50,000.00 which was payable to the Estate itself under the same agreement.

In order to complete that, I would ask my learned friends if they will admit that Mr. Edouard Masson, whose name does not appear in these various documents actually received the sum of $10,000.00, which he agreed to accept in full settlement, but the receipt from Mr. Masson we have not got.

Mr. Chauvin:—We will agree to that.

And further deponent saith not.

E. W. Bush,
Official Court Reporter.

Plaintiff's Evidence in Rebuttal on the Principal Action

DEPOSITION OF JEAN McARTHUR

A witness produced on behalf of the Plaintiff in Rebuttal on the principal action.

On this second day of November, in the year of Our Lord, one thousand nine hundred and thirty-eight, personally came and appeared :Jean McArthur, of the city of Westmount, Nurse, aged 52 years, a witness produced on behalf of the Plaintiff in Rebuttal on the principal Action, who being duly sworn doth depose and say as follows:—

Examined by Mr. Henry Chauvin, K.C., of counsel for Plaintiff:—

Q.—Miss McArthur, did you nurse the late Hugh Quinlan who estate is interested in this case?

A.—Yes.

Q.—Were you his nurse all during his entire sickness?

A.—Yes, I was.

Q.—I understand that was from December 1926 to the date of his death, June 26th, 1927?

A.—Thirteen months to be exact?

Q.—You were thirteen months?

A.—Yes, till the 26th of June, the following year, 1927.

Q.—In the month of June 1927, that is the month, in which Mr. Quinlan died, were you on day or night duty?

A.—I was on day duty.

Q.—And that would be from what hour to what hour?

A.—From eight to eight.

Q.—From eight in the morning to eight in the evening?

A.—Yes.

Q.—Do you know, and did you know at that time Mr. A. W. Robertson and Mr. L. N. Leamy?

A.—Yes, I did.

Q.—Both of whom were examined as witnesses here this morning?

A.—Yes.

Q.—I understand that the 26th of June 1927 was a Sunday?

A.—Yes,

J. McARTHUR (for Plaintiff on Rebuttal on the Principal Action) Examination in chief.

Q.—Mr. Quinlan died on the Sunday?
A.—Yes.
Q.—During the week before Mr. Quinlan's death, that is, from the Sunday morning, on the 19th, previous to his death and the balance of the week up to the day on which he died did Mr. A. W. Robertson and Mr. L. N. Leamy see Mr. Quinlan at any time during the day?

Mr. Beaulieu:—I object to this question as having been decided by the Supreme Court which held that it was res judicata.

The Court reserves the objection.

A.—To my knowledge they did not. Mr. Leamy did.

By Mr. Chauvin:—

Q.—When?
A.—On Monday.
Q.—That would be Monday the 20th?
A.—Yes.
Q.—Just tell his Lordship what happened?
A.—We were under instructions not to allow any one to see Mr. Quinlan. He was very very seriously ill, and I left the room long enough to go to the end of the hall and back. When I came back Mr. Leamy was in the room standing at the foot of Mr. Quinlan's bed, and I asked him if he did not understand that the instructions were that he was not to go into the room that morning. He did not answer me. As far as I remember he looked at me, and I still waited for him to leave and then he did leave.
Q.—What was Mr. Quinlan's position in bed? Was he lying down?
A.—He had a hospital bed which we kept up.
Q.—The head was raised up?
A.—From time to time we adjusted it, sometimes lower and sometimes higher.
Q.—When you came back and saw Mr. Leamy in the room, was Mr. Quinlan aware of Mr. Leamy's presence?
A.—I do not think so.

Mr. Beaulieu:—I object to this evidence for the same reason.

The Court reserves the objection.

J. McARTHUR (for Plaintiff on Rebuttal on the Principal Action) Cross-examination.

By Mr. Chauvin:—

Q.—Why do you say you do not think so?
A.—That morning he was not in a condition to talk to any one unless he was talked very directly to and then, I think all he would be able to do was to answer.
Q.—Were his eyes open when you went in the room?
A.—They might have been.
Q.—When you went in the room and found Mr. Leamy there?
A.—I could not remember then.
Q.—How long were you out of the room at that time?
A.—I should say not more than a minute and a half or two minutes, may be not that long.
Q.—Where did you go?
A.—I turned down to the bathroom at the head of the hall and back, just long enough to empty something and then go back again.
Q.—Mr. Robertson has stated in his evidence at the trial that he saw Mr. Quinlan on Wednesday or Thursday before he died. Did he see him during the day time?
A.—No, he did not. He could not have without my knowledge, because I was there all the time. He might have from the door.
Q.—That is, he might have looked in the door?
A.—Yes he might have done that.
Q.—But he did not go in the room?
A.—No.

Cross-examined by Mr. L. E. Beaulieu, K.C., of counsel for Defendant Robertson:—

Q.—You were heard as a witness on the 2nd of December 1930, were you not?
A.—Yes.
Q.—Probably you do not remember the date. It was some years ago?
A.—Yes, it was.
Q.—I presume at that time what you said was true?
A.—Yes, I would say it was.
Q.—And you do not intend now to correct your evidence?
A.—I certainly do not.

J. McARTHUR (for Plaintiff on Rebuttal on the Principal Action) Cross-examination.

Q.—Do you remember that you stated that during the month of June Mr. Robertson saw Mr. Hugh Quinlan very often?

A.—During the month of June I think very likely, yes.

Q.—"Q.—Did Mr. Leamy visit Mr. Quinlan during the month of June?

A.—I think Mr. Leamy did. He came quite often. That is true."

A.—Yes.

Q.—You were also asked if you knew Mr. Leamy and you you were asked, "Did he also visit Mr. Quinlan," and you said, "Quite often"?

A.—More often.

Q.—Can you give us the dates of the various visits made by Mr. Robertson or Mr. Leamy during the month of June?

A.—No, I could not.

Q.—You remember they were very frequent?

A.—Mr. Leamy came, I should say almost every day.

Q.—And Mr. Robertson came almost every day?

A.—Quite frequently, yes.

Q.—You stated a moment ago that you had to leave the room of Mr. Hugh Quinlan on the 20th of June for a few minutes?

A.—Yes.

Q.—To go into the bathroom?

A.—Yes.

Q.—Did you take any note of that particular date when you left Mr. Hugh Quinlan's room to go to the bathroom?

A.—The date?

Q.—Yes. Did you take a note of it somewhere? Did you write down a note, in order to remember that today? That is many years ago?

A.—It is a long time ago. What did my evidence say the last time? As far as I can remember now, it is a long time ago.

Q.—I am sure it is a very long time ago.

A.—It is a long time ago.

Q.—And not many people could answer?

A.—I distinctly remember, because I was annoyed when orders are disobeyed.

Q.—You remember that day that you were annoyed?

A.—Yes.

Q.—You were annoyed to see Mr. Leamy there?

A.—To see anybody there that was not allowed.

Q.—If you left Mr. Hugh Quinlan's room once to go to the

bathroom downstairs, is it not possible that you left the room more than once?

A.—To go downstairs?

Q.—Yes.

A.—I did not go downstairs. I just went to the end of the hall.

Q.—I am mistaken. You went to the end of the hall?

A.—Yes.

Q.—Well, I suppose you did not leave Mr. Quinlan's room only once to go to the end of the hall?

A.—If I had to leave Mr. Quinlan during that last week any longer, then I had to have some one come, the second nurse.

Q.—You are not in a position to say you did not leave Mr. Hugh Quinlan's room during the last week of June while he was alive — during the last week of his life?

A.—When it became necessary we had to have a second nurse or some member of the family. Some one would relieve me if it was necessary, because he certainly wanted to get out of bed and we were a little afraid of that. The bed was high, and we could not leave him.

Q.—But when you went to the end of the hall you did not think it was necessary to have some member of the family to replace you?

A.—Not for that length of time. I knew I was only going and coming back. Mr. Quinlan was resting quietly at the time. That I remember quite well.

Q.—Can you state if that was the only instance when you had to leave the room to go the end of the hall?

A.—That would be a big statement.

And further deponent saith not.

E. W. Bush,
Official Court Reporter.

V. L. KERR (for Plaintiff in Rebuttal on the Principal Action) Examination in chief.

DEPOSITION OF VERNIE LOUISE KERR

A witness produced on behalf of the Plaintiff in Rebuttal in the principal Action.

On this second day of November, in the year of Our Lord, one thousand nine hundred and thirty-eight, personally came and appeared: Vernie Louise Kerr, of the city of Montreal, Registered Nurse, aged 49 years, a witness produced on behalf of the Plaintiff in Rebuttal in the principal Action, who being duly sworn doth depose and say as follows:—

Examined by Mr. Henry Chauvin, K.C., of counsel for Plaintiff:—

Q.—Miss Kerr, did you assist in nursing the late Hugh Quinlan?

A.—Yes I did, for six months.

Q.—Were you on duty during the month of June 1927, the month in which Mr. Quinlan died?

A.—Yes, I was. I was on night duty in the month of June.

Q.—What were your hours?

A.—From eight at night until eight in the morning.

Q.—During the last week of Mr. Quinlan's life, the week beginning Sunday the 19th, did Mr. A. W. Robertson interview Mr. Quinlan at any time while you were on duty?

A.—Not to my knowledge, not while I was on duty. He may have been in the house; I don't know, but he was not in the room. He used to come and see Mr. Quinlan; I did not see him in the room during the last week.

Q.—Were you continuously with Mr. Quinlan when you were on duty?

A.—Yes, I was. I would never leave him for any length of time.

Q.—Was he allowed to see visitors during the last week of his illness?

A.—No, he was not, just his own family.

Q.—What do you mean by just his own family?

A.—Mrs. Quinlan at all times and the sons and daughters would come in and always speak to him, but they would not remain. They never stayed.

V. L. KERR (for Plaintiff in Rebuttal on the Principal Action) Cross-examination.
J. J. LOMAX (for Plaintiff in Rebuttal on the Principal Action) Examination in chief.

Cross-examined by Mr. Beaulieu, of counsel for Defendant Robertson:—

Q.—Did you happen to see Mr. Robertson or Mr. Leamy during the month of June, in the beginning of the month of June?

A.—I do not remember seeing Mr. Leamy at all during June, but I think Mr. Robertson — I could not say, because Mr. Quinlan in the early part of that month was feeling a little better, just towards the middle.

A.—And you saw Mr. Robertson at the time?

A.—I could not say. I would just say he used to come in but not very often at night.

And further deponent saith not.

E. W. Bush,
Official Court Reporter.

DEPOSITION OF JOHN J. LOMAX

A witness produced on behalf of the Plaintiff in Rebuttal in the principal action.

On this second day of November in the year of Our Lord, one thousand nine hundred and thirty-eight, personally came and appeared: John J. Lomax, of the city of Montreal, Examiner of questioned documents, aged 72 years, a witness produced on behalf of the Plaintiff in Rebuttal on the principal action, who being duly sworn doth depose and say as follows:—

Examined by Mr. Chauvin, K.C. of counsel for Plaintiff:—

Q.—You said your occupation was Examiner of questioned documents?

A.—Yes.

Q.—How long have you been engaged in that, Mr. Lomax?

A.—About thirty-five years.

Q.—Did you examine the original and duplicate of letters dated June 20th 1927 which were produced here in this case respectively as Exhibits D-R-1 and D-R-2?

A.—Yes.

J. J. LOMAX (for Plaintiff in Rebuttal on the Principal Action) Examination in chief.

Q.—Is D-R-2 a carbon copy of D-R-1?
A.—No.

Mr. Beaulieu:—I object, my Lord, to this evidence. There is no allegation in the pleadings to that effect. If my learned friend wants to prove that there is a forgery of some kind he should have alleged it specifically. I submit there is no allegation, and secondly it is against the ruling of the Supreme Court at this stage. Insofar as the reading of these documents were made to Mr. Quinlan they are not res judicata. They are against it. My learned friend is trying to reopen the case beyond the limits fixed by the Supreme Court, and is trying to prove a fact which is not even alleged.

Of course, if this evidence is permitted I will have to ask for postponement in order to rebut that evidence.

His Lordship:—I must reserve the objection.

By Mr. Chauvin:—

Q.—Will you please state your reason for your answer?
A.—The original typed letter was written leaving blank several lines in which space later on the four lines giving particular of shares in various Companies was typed. The space where these four lines now appear was left blank in both original and carbon.

The carbon copy bearing number 197 was made at the same time as the original 196, leaving the blank space for the four lines mentioned. This is easily proven by a superposing of the original and carbon 196 and 197, and then too, we find the same erasure made on both 196 and 197 under the letters "rn" in "return" in the fourth to last line; and the same correction made, and also another correction in the word "represented" in the first line of the second paragraph where the small letter "e" appears under the letter "t" in the word "represented", and then, "ed" has been crossed off.

After this typing was done the original and a carbon were taken from the machine and later on the four lines as to the shares were added, but in this case 196 and 197 were put in the machine separately, and both are original typing, and this is fur-

ther proven by the fact that the two copies 196 and 197, do not agree, there being differences on the first, second, third and fourth lines between the two documents, both in spelling and in spacing; and in 197 the perpendicular alignment of these four lines does not correspond with the other portions of the letter.

In 196 there is also an erasure under the letters "ar" in "shares" where the letter "h" appears under letter "a" and "e" under "a" and this does not appear in 197. There is no comma after "shares" in 196 such as appears in 197 and this makes this line in 197 one letter longer than on 196.

In 196 there is a ditto sign under the word "Shares" for the 50 Amiesite Asphalt Limited shares, while in 197 the word "shares" is repeated in 196. It states "200 shares Ontario Amiesite Limited" while in 197 it states "200 shares Ontario Asphalt Limited."

In 196 the last line reads "200 shares Amiesite Asphalt Limited, H. Dunlop," while in 197 it shows "200 shares Amiesite Asphalt Limited, H. Dunlop." The letters "h" and the "p" being reversed. The alignment of the added four lines is different in each of the two documents 196 and 197.

Cross-examined by Mr. Beaulieu, K.C., of counsel for Defendant Robertson.

Q.—I understand all you have said appears from the comparison of the two documents?

A.—Yes.

Q.—Does it happen sometimes to your knowledge that after a carbon copy is made, one of the two copies only is corrected instead of the two?

A.—If the carbon copy is made at the same time as the original, they are both alike.

Q.—We agree upon that, but does it not happen sometimes to your knowledge that you take the trouble of only correcting one carbon copy?

A.—This could not have been corrected because the words are not the same and they are not the same line.

Q.—That could not be corrected that way, acording to you?

A.—Yes, it could be corrected.

H. LEDOUX (pour les Dem. en contre-preuve) Examen en chef.

Q.—But it does happen sometimes that with two carbons you correct only one and will correct the other later on. You will not do it at the same time.

A.—It may be done in that way.

10

And further deponent saith not.

E. W. Bush,
Official Court Reporter.

DEPOSITION DE HENRI LEDOUX

20 L'an mil neuf cent trente-huit, le deux novembre, a comparu: Henri Ledoux, agent d'assurances, demeurant au 6401 rue Christophe-Colomb, à Montréal, âgé de quarante-neuf ans, témoin entendu de la part des demandeurs, lequel, après serment prêté sur les Saints Evangiles, dépose:

Interrogé par Me Charles Holdstock, avocat des demandeurs:—

30 D.—Vous êtes le frère de monsieur Ernest Ledoux, un des défendeurs en cette cause?

R.—Oui.

D.—Vous êtes aussi subrogé-tuteur à ses enfants, en vertu d'un acte de tutelle?

R.—Non.

D.—Vous n'êtes pas subrogé-tuteur?

R.—Non.

D.—Avez-vous assisté à une assemblée de parents au bureau de MM. Campbell et Couture?

40 R.—Oui.

D.—Vous rappelez-vous de la date?

R.—Je pense que c'est le trente-et-un (31) janvier mil neuf cent trente-quatre (1934).

D.—Vers quelle heure?

R.—Entre trois et quatre heures de l'après-midi.

D.—Qui était là?

R.—Il y avait beaucoup de personnes, il y avait monsieur Quinlan, William; monsieur Eddy Quinlan; il y avait monsieur et madame Dunlop; il y avait monsieur et madame Ernest Le-

doux; il y avait monsieur Couture, le notaire, je pense; monsieur Morin; monsieur Couture, l'avocat; monsieur Robertson.

Me Beaulieu, C.R.:—

D.—A l'assemblée, monsieur Robertson était là?
R.—Oui.
D.—Vous êtes sûr de cela?
R.—A l'assemblée, quand ils ont fait un règlement?
Q.—Oui.
R.—Absolument sûr.
V.—Vous ne vous rappelez pas de grand-chose?
R.—Il était là quand nous sommes arrivés. Il n'était pas dans l'assemblée même. Il m'a donné même la main en entrant. Il y avait monsieur Morin, je pense.

Me Holdstock:—

D.—Monsieur Masson?
R.—Oui.
D.—Monsieur Beaulieu et monsieur Couture, avocats?
R.—Oui.

Me Beaulieu, C.R.:—

D.—J'étais à l'assemblée, moi?
R.—Quand je suis arrivé là, vous étiez là.

Me Holdstock:—

D.—Monsieur Désaulniers?
R.—Non. Il y avait son frère.
D.—Lequel?
R.—Lucien, je crois.
D.—Alors, vous dites que monsieur Robertson vous a rencontré là, il vous a donné la main?
R.—Oui.
D.—Qu'est-ce qui s'est passé à cette assemblée-là?
R.—Nous sommes tous entrés, monsieur le notaire Couture a commencé à lire un document. Quand il eût fini de lire, monsieur Robertson et monsieur Beaulieu sont partis. Monsieur Masson est sorti.

H. LEDOUX (pour les Dem. en contre-preuve) Examen en chef.

D.—A-t-on commencé?

R.—Oui. Après cela, nous avons commencé à délibérer en famille. Monsieur Morin est resté là. Monsieur Masson est resté là aussi avec le notaire Couture.

D.—Et-ce que le notaire a commencé à lire quelque chose?

R.—Non. Les enfants ont commencé à discuter, ils ont...

D.—A-t-on expliqué le but de l'assemblée?

R.—Oui. Le but était de faire signer ce document-là. C'était un arrangement. Cétait une discussion avant de signer, pour voir si les héritiers signeraient ou non.

D.—Pouvez-vous vous rappeler un peu de la discussion entre les héritiers?

R.—Oui. Ils ont commencé à discuter...

Me Couture, C.R.:—Objecté à la preuve de la discussion entre les héritiers parce qu'elle ne nous intéresse pas du tout.

D.—Entre les héritiers et ceux qui assistaient, autres que les héritiers?

R.—Madame Ledoux...

Me Geoffrion, C.R.:—Objecté à cette question pour la raison qu'en supposant que les héritiers qui ont signé l'acte du trente-et-un (31) janvier mil neuf cent trente-quatre (1934), auraient été trompés, cela ne pourrait être invoqué par la demanderesse, Ethel Quinlan, parce qu'elle a refusé de signer et qu'apparamment elle n'a pas été trompée par les représentations ainsi faites.

L'objection est admise.

Me Holdstock; déclare exciper respectueusement du jugement.

D.—Est-ce que les représentants des compagnies de fiducie, la General Trust et la Capital Trust ont représenté aux héritiers qu'advenant le cas où monsieur Robertson gagnerait en Cour Suprême, que les revenus seraient diminués.

Me Geoffrion, C.R.:—Objecté à cette question pour les raisons données antérieurement et parce qu'elle est suggestive.

L'objection est admise

Me Holdstock; déclare exciper respectueusement du jugement.

Les avocats des défendeurs et mis-en-cause déclarent ne pas avoir de contre-interrogatoire à faire subir au témoin.

Et le témoin ne dit rien de plus.

Paul Cusson,
Sténographe judiciaire.

DEPOSITION DE EMMANUEL LUDGER PARENT

L'an mil neuf cent trente-huit, le deux novembre, a comparu: Emmanuel Ludger Parent, gérant-général du Capital Trust, d'Ottawa, âgé de cinquante-huit ans, témoin produit de la part des demandeurs, lequel, après serment prêté sur les Saints Evangiles, dépose:

Interrogé par Me Holdstock, avocat des demandeurs:—

D.—Vous êtes un des officiers du Capital Trust?
R.—Oui.
D.—Je vous ai assigné en vous demandant d'apporter avec vous les copies du protêt fait par madame Kelly à la compagnie Capital Trust; voulez-vous produire le protêt en date du seize (16) octobre mil neuf cent trente-trois (1933), comme pièce P, S, 1a et le procès-verbal comme pièce P, S, 1b?

Me Beaulieu, C.R.:—Objecté à la preuve de tout protêt autre que celui allégué.

R.—Oui.
D.—Je vous ai demandé d'apporter l'opinion de Me Geoffrion en date du sept (7) décembre mil neuf cent trente-trois (1933) est-ce que vous l'avez apporté?
R.—J'en ai apporté une copie mais la lettre de monsieur Geoffrion, je ne sais pas si je suis obligé de la donner sans son consentement.

Me Couture, C.R.:—J'appuie la réponse de monsieur Parent et je m'oppose à cette preuve parce qu'elle est illégale.

E. L. PARENT (pour les Dem. en contre-preuve) Examen en chef.

Me Beaulieu, C.R.:—Objecté à la production d'une opinion de monsieur Geoffrion, je crois que ce n'est pas un élément qui peut aider le tribunal.

Me Geoffrion, C.R.:—Je concours dans l'objection de Me Beaulieu.

L'objection est admise.

D.—Je vous montre l'original d'une lettre en date du vingt (20) décembre mil neuf cent trente-trois (1933), signée Capital Trust, General Trust, Executors Estate Quinlan, adressée à madame Kelly, et voulez-vous dire si elle a été envoyée en réponse au protêt?

Me Beaulieu, C.R.:—Objecté, la lettre elle-même, n'est aucunement pertinente et n'a rien à faire avec le dossier, elle n'est pas alléguée. Tout ce que j'ai dit pour m'objecter à la production de l'opinion de monsieur Geoffrion s'applique également à la production de cette lettre.

La preuve est prise sous réserve de l'objection.

R.—Oui, apparemment.

D.—Voulez-vous voir si dans la deuxième page il n'y a pas une référence à l'opinion de monsieur Geoffrion?

R.—Il y a ce paragraphe qui dit: "If you desire explanations or if you wish to see the opinion we have obtained from Messrs. Geoffrion et Prud'homme, you may call at the office of either of us. — Capital Trust, General Trust.

D.—Voulez-vous donner communication de cette opinion, maintenant?

Me Beaulieu, C.R.:—Objecté à cette question parce qu'elle est illégale.

L'objection est admise.

D.—Voulez-vous produire cette lettre comme pièce P,S,2?

Me Beaulieu, C.R.:—Objecté à cette question parce qu'elle est illégale.

E. L. PARENT (pour les Dem. en contre-preuve) Examen en chef.

La preuve est prise sous réserve de l'objection.

R.—Oui.

La Cour:—

D.—A ce moment-là, les deux Trusts étaient les exécuteurs-testamentaires?
R.—Oui, c'était le Trust Général et nous autres.

Me Holdstock:—

D.—Voulez-vous produire l'opinion que vous avez eue de monsieur Geoffrion, qui est mentionnée aux deuxième et troisième paragraphes de la pièce P,S,2?

Me Beaulieu, C.R.:—Objecté à cette question parce que ce document est étranger à la contestation.

La preuve est prise sous réserve de l'objection.

D.—Voulez-vous produire comme pièce P,S,3, l'opinion de monsieur Geoffrion en date du sept (7) décembre mil neuf cent trente-trois (1933)?

Me Beaulieu, C.R.:—Même objection.

La preuve est prise sous réserve de l'objection.

R.—Oui, j'en produis une copie certifiée par deux de mes employés.

Me Beaulieu, C.R.:—Le défendeur Robertson s'oppose, quant à lui, à la production tant du protêt qui vient d'être produit que de la réponse au protêt sous forme de lettre en date du vingt (20) décembre mil neuf cent trente-trois (1933) et de l'opinion de Me Aimé Geoffrion en date du sept (7) décembre mil neuf cent trente-trois (1933), parce que ces documents, quant à lui, sont "res inter alios acta", le défendeur Robertson n'ayant jamais connu ni le protêt, ni la réponse, ni l'opinion de monsieur Geoffrion.

La preuve est prise sous réserve de l'objection.

C. FOURNIER (pour la Dem. en contre-preuve) Examen en chef.

D.—Votre compagnie a signé un autre document pendant que la cause procédait en Cour Suprême, n'est-ce pas, et je vous exhibe un duplicata de ce document voulez-vous le produire comme pièce P-S-4?

R.—Oui.

D.—Voulez-vous produire, comme pièce P-S-5, une copie de votre factum en date du vingt-quatre (24) janvier mil neuf cent trente-quatre (1934), dans la cause en Cour Suprême dans lequel votre compagnie déclare s'en remettre à justice?

Me Beaulieu, C.R.:—Objecté à cette preuve parce qu'elle est étrangère à la contestation.

La preuve est prise sous réserve de l'objection.

Et le témoin ne dit rien de plus pour le moment.

Paul Cusson,
Sténographe judiciaire.

DEPOSITION DE CHARLES FOURNIER

Le trois novembre mil neuf cent trente-huit, a comparu: Charles Fournier, assistant-secrétaire du Sun Trust, âgé de trente-six ans, domicilié au No 3751, rue Kent, à Montréal, témoin entendu de la part de la demanderesse, en contre-preuve, lequel, après serment prêté sur les saints Evangiles, dépose et dit:

Interrogé par Me Charles Holdstock, avocat de la demanderesse:—

D.—Monsieur Fournier, je comprends que votre compagnie est dépositaire d'une lettre adressée à votre compagnie le 14 septembre 1928, signée par William P. McDonald Construction Company, par John I. McDonald, Vice-Président et ayant trait aux compagnies Amiesite Asphalt et Macurban Asphalt?

Me L. E. Beaulieu, C.R., avocat du défendeur A. W. Robertson:—Je m'oppose à cette preuve parce qu'elle tend à contredire la décision que Votre Seigneurie avez rendue hier sur l'admissibilité de la preuve des fausses représentations comme ayant

entaché le consentement des parties ou des héritiers qui ont signé la convention.

Même objection de la part de Me Aimé Geoffrion, C.R., Conseil pour la Capital Trust Corporation Limited.

L'objection est réservée par le Président du Tribunal.

R.—Oui, monsieur.

Me Holdstock:—

D.—Voulez-vous la produire comme pièce P-S-6?

Le témoin:—Avec la permission de la Cour, est-ce que je pourrais déposer une copie certifiée?

L'avocat:—Certainement.

(Le témoin produit comme pièce P-S-6, une copie certifiée de la lettre en question).

Et le témoin ne dit rien de plus.

Henri Mackay,
Sténographe.

DEPOSITION DE EMMANUEL LUDGER PARENT

Le trois novembre mil neuf cent trente-huit, a comparu: Emmanuel Ludger Parent, gérant général, âgé de cinquante-huit ans, domicilié au No 271 rue Bronson, à Ottawa, témoin entendu de la part de la demanderesse, en contre-preuve, pour continuer son témoignage; lequel, sous le serment qu'il a déjà prêté, dépose et dit:

Interrogé par Me Charles Holdstock, avocat de la demanderesse:—

D.—Je crois que nous étions à discuter votre réponse à Madame Kelly, pièce P-S-2. Je constate que, dans le protêt, il y avait demande aux exécuteurs-testamentaires de demander un

compte à M. Robertson, lors de sa démission comme exécuteur-testamentaire. Il y avait cette demande-là, dans le protêt?

Me Guy-C. Papineau-Couture, C.R., avocat de Capital Trust Corporation Limited:—Le protêt parle par lui-même.

Le témoin:—Je ne me rappelle pas. Il faudrait que je voie le protêt.

Me Holdstock:—

D.—Qu'avez-vous fait en rapport avec cette demande-là?

Me Beaulieu:—Je m'oppose à cette question. Il n'y a aucune allégation disant qu'on aurait dû demander une reddition de comptes à M. Robertson et qu'on ne lui en a pas demandé.

Me Holdstock:—

D.—Vous avez dit dans votre lettre que vous avez fait enquête sur tous les faits et circonstances en rapport avec cette demande-là et que vous avez jugé bon de ne pas agir dans ce cas-là?
R.—Autant que possible, on a fait enquête.
D.—Quelle enquête avez-vous faite?

Le témoin:—Sur quel point?

L'avocat:—Sur le point de savoir si vous deviez demander un compte à M. Robertson au sujet de son administration pendant qu'il était co-exécuteur avec vous.

Me Beaulieu:—Je m'oppose à cette preuve comme illégale. Ceci n'est ni dans le plaidoyer supplémentaire, ni dans les décisions du tribunal.

Me Couture:—Objecté à cette preuve de la part des exécuteurs-testamentaires pour les mêmes raisons que celles données par M. Beaulieu et pour la raison additionnelle que cela n'entre pas dans le cadre des allégations de la réponse supplémentaire.

Me Holdstock:—

D.—Alors, monsieur Parent, je vous demanderais de nous

dire, si, avant que le règlement du 31 janvier 1934 soit signé, vous avez eu de M. Robertson un compte de son administration?

R.—Non.

D.—Comme exécuteur-testamentaire?

R.—C'est la compagnie qui tenait les livres, ce n'est pas M. Robertson.

Me Beaulieu, C.R.:—

D.—Quelle compagnie? Capital Trust?

R.—Capital Trust.

D.—M. Robertson ne pouvait pas rendre compte, c'est vous qui aviez les livres?

R.—C'est nous qui avions les livres. C'est dans le testament, d'ailleurs, que c'est le Capital Trust qui fait la comptabilité.

Le Juge:—

D.—Suivant vous, vous n'aviez pas de comptes à lui demander?

R.—Nous n'avions pas de comptes à lui demander.

D.—C'est vous qui teniez les comptes?

R.—C'est nous qui tenions les comptes.

Me Holdstock:—

D.—Le 9ième item dans le protêt avait trait à des valeurs de la machinerie de Quinlan, Robertson & Janin, qui a été mentionnée dans une lettre, et cette machinerie-là appartenait à la A. W. Robertson Limited, et on vous a demandé de faire enquête sur la valeur de cette machinerie-là: Avez-vous fait une enquête sur cela?

Me Couture:—Même objection. Il n'y a absolument rien d'allégué dans la réponse en ce qui concerne les exécuteurs, quant à la valeur de la machinerie ou de quoi que ce soit.

Me Beaulieu:—Le défendeur Robertson se joint à cette objection.

L'objection est maintenue par le Président du tribunal.

E. L. PARENT (rap. pour la dem. en contre-preuve) Ex. en chef.

Me Holdstock:—

D.—Avant de signer le règlement du 31 janvier 1934, avez-vous fait une enquête sur la valeur de la machinerie que la compagnie Quinlan Robertson & Janin, avait prise de la compagnie A. W. Robertson, Limited?

Me Beaulieu:—Objecté à cette preuve comme ne relevant pas de la contestation.

Me Couture:—J'appuie cette objection.

L'objection est réservée par le Président du tribunal.

Me Holdstock:—

D.—Dans le règlement du 31 janvier 1934, qui est produit, il y a une clause, no 5, dans laquelle toutes les parties donnent quittance à M. Robertson de toutes les réclamations, — "all and every right, claim and action, etc,," — tel que reproduit dans le paragraphe 5. Quand vous avez signé ce règlement, est-ce que vous saviez qu'il existait une réclamation qui concernait la valeur de certaine machinerie, appartenant à la Quinlan, Robertson & Janin, qui était empruntée par A. W. Robertson Limited?

Me Couture:—Objecté à cette preuve pour les raisons déjà données, parce que cela ne relève pas de la contestation.

L'objection est réservée par le Président du tribunal.

Le Juge:—

D.—On vous demande si vous saviez qu'il y avait une réclamation bien fondée?

Me Holdstock:—

D.—Dans ce paragraphe 5, les parties de première part, de deuxième part, de troisième part et de quatrième part se donnent libération mutuelle "to all and every right...." (L'avocat donne lecture du paragraphe 5).

Cette clause, cette libération se trouve dans le règlement du 31 janvier 1934, que vous avez signé?

R.—Oui.

E. L. PARENT (rap. pour la dem. en contre-preuve) Ex. en chef.

D.—Saviez-vous, alors, quand vous avez signé cette quittance, que cette créance existait?

Le témoin:—Quelle créance? Pour la machinerie?

L'avocat:—Oui, sur la machinerie.

Même objection de la part de Me Beaulieu.

R.—A ma connaissance, cela avait été réglée entre les deux compagnies. J'ai pris le trouble de me rendre moi-même au bureau de M. Robertson. M. Leamy m'a montré les livres et les chèques qui avaient été échangées d'une compagnie à l'autre, qui avaient été payés.

D.—La compagnie A. W. Robertson a été payée par Quinlan, Robertson & Janin?

R.—Je ne me rappelle pas quelle compagnie, mais une compagnie avait payé l'autre.

Me Beaulieu, C.R.:—

D.—Et il n'y avait pas de réclamation?

R.—Il n'y avait pas de réclamation, à ma connaissance.

Me Holdstock:—

D.—Savez-vous quel montant avait été payé?

Même objection de la part de Me Couture, de Me Geoffrion et de Me Beaulieu.

La question est permise par le Président du tribunal.

Le Juge:—

D.—Le savez-vous, monsieur?

R.—Je ne me rappelle pas au juste. Je pense que c'est $4,000.00, autour de $4,000.00. Je ne me rappelle pas au juste.

Me Holdstock:—

D.—Avez-vous fait enquête pour savoir si la somme de $4,000.00 représentait la véritable valeur de cette machinerie?

E. L. PARENT (rap. pour la dem. en contre-preuve) Ex. en chef.

Même objection de la part de Me Beaulieu et de Me Couture.

La question est permise par le Président du tribunal.

R.—Non, je n'ai pas fait enquête.

Le Juge:—

D.—Vous avez accepté les chiffres que vous avez trouvés dans les livres des différentes compagnies?

R.—Je connais assez la valeur des machineries, des vieilles machineries, je sais qu'on ne peut pas les donner, les trois-quarts du temps.

Me Beaulieu, C.R.:—

D.—Vous ne pouvez pas donner les vieilles machineries? Personne n'en veut, même pour rien?

R.—Personne n'en veut.

Me Holdstock:—

D.—C'était de la vieille machinerie, vous dites? L'avez-vous vue?

R.—Je ne l'ai pas vue, mais c'est l'idée que je me fais de cette machinerie.

D.—Sans la voir?

R.—Sans la voir. Quand c'est de la machinerie usagée.

D.—A quelle époque avez-vous reçu la somme de $4000.00?

R.—Ce n'est pas moi qui l'ai reçue. Cela a été payé d'une compagnie à l'autre.

D.—A quelle époque avez-vous constaté le paiement entre les deux?

R.—Je ne me rappelle pas. Il faudrait que je verrais mes notes. Je ne me rappelle pas par coeur. Cela fait de dix à douze ans, je pense.

D.—Cela formait partie de votre comptabilité?

R.—Non. Cela, c'est un règlement entre les deux compagnies. Cela n'a pas été aux exécuteurs. Cela a été payé par une compagnie à l'autre.

D.—Vers quelle date, à peu près? Pouvez-vous le dire?

R.—Je ne peux pas me rappeler du tout. Il faudrait que je réfère à mes filières.

E. L. PARENT (rap. pour la dem. en contre-preuve) Ex. en chef.

D.—Avant de signer le règlement du 31 janvier 1934, est-ce que vous étiez au courant de certaine division de machinerie entre la succession Quinlan et A. W. Robertson?

Me Beaulieu s'oppose à cette preuve comme ne relevant pas de la contestation.

Même objection de la part de Me Couture.

L'objection est réservée par le Président du tribunal.

Le témoin:—Quelle machinerie?

L'avocat:—Le "dredging plant" et des lots, et autres choses.

R.—Oui, j'étais au courant de cela.
D.—De quelle façon avez-vous fait ces lots-là?

Le témoin:—Les lots?

L'avocat:—Oui?

R.—Il y avait quatre item, si je me rappelle bien, — quatre ou cinq item, — dans la compagnie A. W. Robertson Limited, en Liquidation. C'était difficile de vendre.

Me Couture:—Est-ce qu'on va entrer dans les affaires de la compagnie A. W. Robertson Limited en Liquidation?

Me Beaulieu s'oppose à cette preuve comme illégale.

L'objection est réservée par le Président du tribunal.

Le Témoin:—Quand cette division-là a été faite, M. Robertson m'a fait venir, — je ne sais pas si c'est à son bureau. J'étais avec le Docteur Kelly, le gérant général du temps. On a fait cinq lots. La "dredge" était d'un côté. Il y avait $12,000.00 de l'autre côté des lots à Lasalle, évalués à peu près à $9,000 ou $10,000. Je n'ai pas tous les faits je parle par coeur. Il y avait des lots et il y avait une "quarry" qui avait une valeur municipale de $4600.00. M. Kelly l'avait évaluée, un temps, à $1,000,000. Alors j'ai choisi les "quarries", en premier . . .

E. L. PARENT (rap. pour la dem. en contre-preuve) Ex. en chef.

Me Geoffrion:—

D.—Vous avez choisi, vous dites? Comment cela s'est-il fait? Qui choisissait?

10 R.—M. Robertson m'a donné le choix, m'a permis de faire mon choix en premier. Alors, j'ai demandé quelques jours pour y penser. Je suis revenu à Ottawa et après être arrivé à une décision, on lui a donné la "dredge" et on a pris le $12,000.00, le "quarry", et le reste, qui avait une valeur à peu près égale, $25,000.00 chacun, dans les livres.

Me Beaulieu:—

D.—Et c'est vous qui avez choisi le premier?

20 R.—C'est moi qui ai choisi le premier.

Me Holdstock:—

D.—Dans les livres de qui?
R.—Dans les livres de la succession.

Le Juge:—

30 D.—Vous, comme représentant la succession de feu...
R.—De feu M. Quinlan.

Me Holdstock:—

D.—Qui en avait fixé la valeur? Avez-vous eu un expert pour fixer la valeur?

Le Témoin:—De la "dredge"?

40 L'avocat:—Ou de ces choses-là?

R.—Il y avait la valeur municipale pour les terrains. L'argent avait sa valeur propre. Alors, il restait seulement la "dredge" à évaluer, et cela a été fait, aussi.

D.—Par qui?

R.—Je ne me rappelle pas, là. Je n'ai pas mes filières. Je n'étais pas préparé à répondre à toutes ces questions-là. On avait reçu une offre, je puis dire. On a essayé à la vendre, cette "dredge", et on a reçu seulement une offre dans les $12,000.00. On lui a donné une valeur de $25,000.

E. L. PARENT (rap. pour la dem. en contre-preuve) Ex. en chef.

Me Geoffrion:—

D.—C'est M. Robertson qui l'a prise?
R.—C'est M. Robertson qui l'a prise à $25,000.00.

Me Holdstock:—

D.—Et vous ne vous rappelez pas quel expert vous avez consulté?
R.—Non, je ne me rappelle pas par coeur.
D.—En avez-vous consulté un?
R.—Oui. A part cela, je me suis basé un peu sur les offres qu'on a reçues. Elle a été annoncée et on a reçu une offre seulement, de $10,000.00 ou de $12,000.00, — je ne me rappelle pas.

Le Juge:—

D.—Avez-vous annoncé dans les journaux?
R.—Oui, je le pense. Je ne me rappelle pas trop par coeur, parce que cela fait déjà une dizaine d'années.

Me Holdstock:—

D.—Lors du règlement, il y avait aussi un item qui concernait les intérêts de la succession dans la compagnie Peter Lyall?

Même objection de la part de Me Couture et de la part de Me Beaulieu.

R.—Il y avait une question douteuse, litigieuse. On y a référé au premier procès.
D.—Avez-vous vérifié les montants dûs à la succession Hugh Quinlan, dans cette chose-là, avant de signer le règlement?
R.—Cela nous a été payé, on a reçu l'argent, — excepté le montant douteux.
D.—Excepté le montant douteux?
R.—Oui, douteux.
D.—Quel était ce montant?
R.—Je ne me rappelle pas.
D.—Est-ce que c'était une moitié de $25,000.00?
R.—Non.
D.—Est-ce que c'était un tiers de $25,000.00?

E. L. PARENT (rap. pour la dem. en contre-preuve) Ex. en chef.

Me Couture:—Si vous ne vous rappelez pas, monsieur Parent...

Le Témoin:—Je ne me rappelle pas.

Me Holdstock:—

D.—Venant au règlement, monsieur Parent, pouvez-vous nous dire quand la succession a reçu l'argent, le $50,000.00, mentionné dans l'acte de règlement?

R.—Non. Je n'ai pas emporté mes livres, alors, je ne sais pas.

Me Beaulieu:—Un acte authentique a été produit au dossier. C'est la preuve absolue.

Me Holdstock:—

D.—Il n'est pas fait mention dans l'acte si l'argent avait été payé, et, de fait, il n'était pas payé dans le temps. Je voudrais savoir quand cela a été payé?

R.—Je ne peux pas le dire, parce que je n'ai pas mes livres ici.

D.—Vous rappelez-vous quand vous avez reçu l'argent?

R.—Je ne m'en rappelle pas la date. Je sais qu'on l'a reçu, mais je ne me rappelle pas la date par coeur.

D.—La résolution qui est produite, vous autorisant à signer le règlement, est datée du 29 janvier. Est-ce que cela vous donne l'idée quand vous avez reçu l'argent, est-ce que c'était avant la résolution ou après?

R.—Je ne me rappelle pas.

D.—Ou entre la date de la résolution et la date où vous avez signé le règlement?

R.—Je ne peux pas répondre quant à la date sans avoir mes livres.

D.—Une somme de $50,000.00 est une somme assez considérable. Pouvez-vous nous dire si vous avez le moindre souvenir sur la réception d'une somme de $50.000.00 de M. Robertson? Est-ce que vous pouvez nous dire que c'était un mois après le règlement ou trois mois, ou quatre mois, ou quand?

R.—Je ne me rappelle pas du tout.

D.—Vous ne vous rappelez pas non plus la date à laquelle vous avez signé?

E. L. PARENT (rap. pour la dem. en contre-preuve) Ex. en chef.

R.—C'est la date du document. Je pense qu'on a signé tous ensemble, le même jour.

D.—Au bureau de M. Campbell?

R.—Au bureau de M. Campbell.

D.—Je constate, dans le paragraphe premier, que le règlement devait se faire pour $50,000.00, à être payés à la succession, et pour d'autres sommes qui ne sont pas mentionnées, pour frais. Saviez-vous le montant de ces frais-là quand vous avez signé le document?

Me Beaulieu s'oppose à cette preuve comme illégale parce que dans les actes authentiques qui ont été produits, tous les montants sont mentionnés en détail.

L'objection est réservée par le Président du tribunal.

R.—Seulement les montants qu'il y a dans l'acte. Je ne connaissais rien autre chose, seulement ce à quoi il est référé dans l'acte lui-même. S'il y a eu d'autres montants payés, je ne le sais pas.

Me Holdstock:—

D.—Vous parlez de l'acte du 31 janvier 1934?

R.—La quittance.

D.—Je vous montre la pièce D-R-65. Voulez-vous lire le paragraphe premier, dans lequel les sommes sont mentionnées?

(Le témoin lit le paragraphe premier de la pièce D-R-65).

R.—Je l'ai lu.

D.—Est-ce que vous saviez le chiffre global des autres sommes qui devaient être payées?

R.—Non.

D.—L'avez-vous demandé?

R.—Je l'ai su plus tard, je pense. M. Beaulieu a dit tout à l'heure qu'il avait été payé $10,000.00 à M. Masson. Je ne savais pas cela.

Le Juge:—

D.—Les sommes dont il est question, ce sont les sommes que M. Robertson se serait engagé à payer comme frais de justice ou choses semblables?

R.—C'est cela.

E. L. PARENT (rap. pour la dem. en contre-preuve) Ex. en chef.

D.—Vous ne saviez pas les détails, ni la somme totale?
R.—Excepté les montants mentionnés dans l'acte lui-même.

Me Holdstock:—

D.—Vous ne le saviez pas?
R.—Non, je ne le savais pas.
D.—Avant quelle date, dites-vous?
R.—Je viens d'apprendre, j'ai appris lors de la procédure actuelle le cas de M. Masson.
D.—Alors, vous ne savez pas que c'était $44,000.00?
R.—Non.

Me Geoffrion:—

D.—Ce n'était pas vous qui payiez?
R.—Non.

Me Holdstock:—

D.—Je constate par le règlement produit comme pièce D-R-65, dans le troisième "whereas" avant le paragraphe premier, qui n'est pas numéroté, je constate dans ce "whereas" là que c'est là où on parle...

Le Témoin:—Page 6?

L'avocat:—Oui, les deux dernières lignes de la page 6.

(Le témoin examine la page 6 de la pièce D-R-65).

D.—Ce paragraphe, monsieur Parent, a trait à la possibilité que M. Robertson fasse remise des actions en question à la sucession?
R.—Oui.
D.—Qu'avez-vous fait pour vérifier cet état de choses-là, pour savoir s'il était capable, oui ou non de les remettre à la succession?

Me Beaulieu et Me Couture s'opposent à cette preuve comme illégale.

L'objection est réservée par le Président du tribunal.

E. L. PARENT (rap. pour la dem. en contre-preuve) Ex. en chef.

R.—J'ai toujours été sous l'impression qu'il pouvait les remettre s'il voulait payer le prix pour. Je n'ai pas fait d'enquête, je n'en ai pas parlé à M. Robertson, je ne lui ai jamais demandé. Il ne me l'aurait pas dit, d'ailleurs, tout probablement. Je puis en avoir parlé au Trust Général, aussi, je puis avoir discuté l'affaire avec le Trust Général avant de signer. J'ai probablement discuté l'affaire avec le Trust Général avant de signer.

D.—Vous avez assisté au procès devant l'honorable Juge Martineau?

R.—Oui.

D.—Vous rappelez-vous de la preuve faite par M. Robertson, à l'effet qu'il avait vendu ces actions-là?

Me Beaulieu s'oppose à cette question parce qu'on ne rapporte pas la preuve telle qu'elle a été faite et qu'on n'a pas le droit de demander au témoin de faire des commentaires sur la preuve.

L'objection est réservée par le Président du tribunal.

R.—Je m'en rappelle seulement vaguement. Je ne peux pas me rappeler tout ce qui a été dit. Cela a duré très longtemps, ce procès-là.

(Me L. E. Beaulieu, C.R., avocat du défendeur Robertson, déclare n'avoir pas de questions à poser au témoin.)

Et le témoin ne dit rien de plus.

Henri Mackay,
Sténographe.

A. W. ROBERTSON (for Plaintiff in Rebuttal in the Principal Action) Examination in chief.

DEPOSITION OF ANGUS WILLIAM ROBERTSON

A witness produced on behalf of the Plaintiff in Rebuttal in the principal action.

On this third day of November, in the year of Our Lord, one thousand nine hundred and thirty-eight, personally came and appeared: Angus William Robertson of the city of Montreal, Contractor, aged 63 years, a witness produced on behalf of the Plaintiff in Rebuttal in the Principal Action, who being duly sworn doth depose and say as follows:—

Examined by Mr. Chauvin, K.C., of counsel for Plaintiff:

Q.—Mr. Robertson, there was produced this morning by the representative of the Sun Trust Company Limited a certified copy of a letter written by the William P. McDonald Construction Company, to the Sun Trust Company Limited on the 14th September 1928, Exhibit P-S-6. Will you state if this letter refers to the sale of the shares of the Amiesite Asphalt Company Limited and the McUrban Asphalt Company Limited to the W. P. McDonald Construction Company?

A.—I think that is correct?

Q.—It does?

A.—Yes.

Q.—Did you have a written agreement covering the sale of these shares?

A.—I think that is the agreement.

Q.—This is the Agreement, Exhibit P-6?

A.—I have not the correspondence I don't know. I think that is the agreement?

Q.—You think that is the Agreement?

A.—Yes.

Q.—You were summoned, Mr. Robertson, to bring the Agreement under which you sold the Amiesite and the McUrban shares?

A.—Well, any records I have are here or, they are in their office. I have none.

Q.—You know, do you not, whether there was any agreement apart from this letter of September 14th 1928?

A.—I suppose there would be an agreement, although I cannot recall where it is.

A. W. ROBERTSON (for Plaintiff in Rebuttal in the Principal Action) Examination in chief.

Q.—If there was an agreement, apart from this, I wish you would produce it? ?

A.—Well, I have not got it. I don't know where it is.

Q.—First of all, is there an agreement apart from P-S-6?

A.—Well, I do not know that now. That appears to be a complete agreement here.

Q.—Have you got your subpoena with you?

A.—No, I have not.

Q.—You were asked to bring the agreement under which you sold Quinlan estate shares in Amiesite Asphalt Company Limited?

A.—I thought all the agreements were in the records here. I have not got any.

Q.—You have not any?

A.—No.

Q.—Surely you must know whether there was any agreement other than this letter of September 14th 1928. You were the man who made the deal, were you not?

A.—I was just the agent.

Q.—But you actually made the deal, did you not?

A.—Well, as the agent for the shareholders.

Q.—For yourself and the other shareholders?

A.—Well, I was a minority shareholder, of course.

Q.—But you made the deal?

A.—I was the agent.

Q.—I did not ask you whether you were the agent. I asked you if you made the deal. Do you understand that? It is quite understandable?

A.—I do not know what you mean by, made the deal?

Q.—You conducted the negotiations, you made the trade?

A.—Oh no, I did not.

Q.—Who did then?

A.—Mr. Janin, more than I.

Q.—Mr. Janin more than you?

A.—Yes.

Q.—I think that is different from what you said in your first examination?

A.—Well, I do not remember.

Q.—I understood you to say in your first examination that you made the trade, and that the money was paid to you in trust for the others?

A.—That is why I say I was the agent.

A. W. ROBERTSON (for Plaintiff in Rebuttal in the Principal Action) Examination in chief.

Q.—Well, we have not yet got a definite answer, whether this letter of September 14th 1928 is the only agreement or the only written evidence of the sale? ?

A.—I would have to consult Mr. Janin to recall just what took place.

Q.—Well, you were asked to bring the document?

A.—I have not got it.

Mr. Beaulieu:—The witness cannot bring what he has not got, he says he has not got any.

Witness:—I have no document in connection with it.

By Mr. Chauvin:—

Q.—Did you ever have one?

A.—If there was one, it was in the office of Quinlan, Robertson & Janin Limited, or the Asphalt office.

Q.—And you do not know whether the document exists or not?

A.—No, I do not know where it is, if it does exist.

Q.—But do you know whether it exists or not. That is what I want to know?

A.—I have just forgotten what document passed at the time.

Q.—Who would know apart from yourself?

A.—Mr. Janin I should think.

Q.—Have you the document under which you sold your shares of Quinlan, Robertson & Janin Limited?

A.—Well, it is in the records here.

Q.—Where is it in the records? Did you ever produce it. When you got the subpoena did you look for it?

A.—I have no document in my possession.

Q.—Did you look for it?

A.—I did not look for it because I knew I did not have it.

Q.—When you sold the Quinlan, Robertson & Janin shares was there an agreement in writing??

A.—Yes, there was.

Q.—Where is the agreement?

A.—Well, I think it is here in those records.

Q.—What do you mean by here in those records?

A.—That is it.

A. W. ROBERTSON (for Plaintiff in Rebuttal on the Principal Action) Cross-examination.

Q.—Will you file this document as Exhibit P-S-7 being an agreement of the 12th September 1930 between A. W. Robertson and Alban Janin?

A.—Yes.

Q.—In regard to the sale of the Fuller Gravel shares, Mr. Robertson, have you any writing in connection with the sale of those shares that has not been produced in this case?

A.—No.

Q.—You have not?

A.—No.

Cross-examined by Mr. Beaulieu, K.C., of counsel for Defendant Robertson:—

Q.—You transferred the shares of Quinlan, Robertson & Janin Limited while the case was pending.

A.—Yes.

Q.—As to the Fuller Gravel shares, it was stated this morning that were also sold while the case was pending. I think this was stated in the answer to the supplementary plea? Were the Fuller Gravel shares sold before or during the pendency of the case?

A.—I am not sure.

By Mr. Chauvin:—

Q.—Would you mind just stating what date you resigned as executor? Do you remember what date you resigned as Executor?

A.—No, I do not.

Q.—February 1931?

A.—It is in the records.

Mr. Beaulieu:—There is a notarial deed. Under the will Mr. Robertson was entitled to appoint his successor, under the notarial will. We can find it out. I don't remember it by heart, but I will undertake to give you the date, if it is not in the record. We can verify it.

And further deponent saith not.

E. W. Bush,
Official Court Reporter.

DEPOSITION OF ALBAN JANIN

A witness produced on behalf of the Plaintiff in the Main Action, in Rebuttal.

On this third day of November, in the year of Our Lord, one thousand nine hundred and thirty-eight, personally came and reappeared: Alban Janin, of the city of Montreal, Contractor, a witness produced on behalf of the Plaintiff on the Main Action, in Rebuttal, who being duly sworn doth depose and say as follows:—

Examined by Mr. Chauvin, K.C., of Counsel for Plaintiff:

Q.—Would you look at the Exhibit P-S-6 which is a letter dated 14th September, 1928, and say if you know of any other document establishing the sale of the Amiesite and McUrban shares to the McDonald Construction Company?

A.—I do not know of any other. I do not remember seeing this one.

No Cross-examination.

And further deponent saith no.

E. W. Bush,
Official Court Reporter.

Evidence in Sur Rebuttal on behalf of the Defendant Robertson

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DEPOSITION OF LOUIS N. LEAMY

A witness produced on behalf of Defendant Robertson in Sur Rebuttal.

On this third day of November, in the year of Our Lord, one thousand nine hundred and thirty-eight, personally came and appeared: Louis N. Leamy, of the city of Montreal, Secretary Treasurer, a witness already examined not recalled in Sur Rebuttal on behalf of the Defendant Robertson, who being duly sworn doth depose and say as follows:—

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

Q.—Now Mr. Leamy, you have been shown the two documents D-R-1 and D-R-2 very often. It was stated by Mr. Lomax that Exhibit D-R-2 was not a carbon copy of D-R-1. Will you look at that and give your answer?

A.—I might say that this is a part carbon copy of D-R-1.

Q.—Which part is not a carbon copy?

A.—The four items here.

Q.—That is to say, the names of the Companies and the numbers of the certificates?

A.—Yes.

Q.—Besides that enumeration is the document D-R-2 a copy of the other one?

A.—Yes, it is.

Q.—Do you remember how it happened, that so far as that part is concerned, the enumeration of the shares and the numbers of the certificates was not made on the carbon copy of D-R-1?

A.—I do not remember the incident of it.

Q.—Will you please state to the Court if the two copies, D-R-1 and D-R-2 were complete and filled up as they are now when they were signed by Mr. Robertson?

A.—Yes.

Q.—Does the same answer apply to when you showed these documents to Mr. Robertson for the first time?

A.—Yes.

Q.—I want to know, as a matter of fact, if the two copies D-R-1 and D-R-2 were complete when Mr. Robertson saw them for the first time?

A.—They were.

Q.—Were they also complete when you read D-R-1 to the late Hugh Quinlan?

A.—Yes sir.

Q.—And were they complete when you sent one of those duplicates, or copies, that is to say, D-R-2 to the Honourable Mr. Perron?

A.—Yes.

Q.—From the moment that these two documents were signed by Mr. Robertson, did you make any alterations or changes in any of these two documents?

A.—No.

Cross-examined by Mr. Chauvin, K.C., of Counsel for Plaintiff:—

Q.—It is quite evident Mr. Leamy that D-R-1 was not complete when you first took it out of the machine, is that right?

A.—It looks that way.

Q.—And you would say you do not remember why you did not fill in the names and the shares when you typed the letter in the first instance?

A.—No.

Q.—You do not remember that?

A.—No.

Q.—You do not remember filling in the names and the descriptions of the shares?

A.—I do.

Q.—You do?

A.—Yes.

Q.—Do you remember taking the letter out of the machine with the space in blank for the names and description of the shares?

A.—I must have taken it out.

Q.—But I am asking if you remember?

A.—I do.

Q.—You remember that?

A.—From memory I would say yes.

Q.—Or are you just saying that because it must have been so?

A.—Well, I did say in my previous testimony that I did not remember the incident, how it happened.

Q.—Do you remember filling in the blanks?

A.—Well, I must have filled them in.

Q.—Not that you must have, but I am asking you if you remember filling them in?

A.—No, I do not remember.

Q.—How then can you say that the blanks were filled in when you first showed it to Mr. Robertson?

A.—Because I am positive that they were in there when Mr. Robertson saw the letters and when he signed them.

Q.—What makes you positive?

A.—Well I am that sure of it any way.

Q.—It is not through any act of memory, is it?

A.—No, I think I am positive of it.

Q.—You are positive because, I suppose, it would be the only thing to do?

A.—Yes.

And further deponent saith not.

E. W. Bush,
Ofifcial Court Reporter.

DEPOSITION OF ANGUS W. ROBERTSON

A witness produced on behalf of the Defendant Robertson in Sur Rebuttal.

On this third day of November, in the year of Our Lord, one thousand nine hundred and thirty-eight, personally came and appeared: Angus W. Robertson, of the city of Montreal, Contractor, a witness recalled on behalf of the Defendant Robertson in Sur Rebuttal, who being duly sworn doth depose and say as follows:—

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

Q.—You have already been sworn, Mr. Robertson?

A.—Yes.

A. W. ROBERTSON (for Def. Robertson in sur reb.) Ex. in chief.

Q.—You have already filed in this case a document showing that you had reserved the right to repurchase the Quinlan, Robertson & Janin Limited shares?

A.—Yes.

Q.—Now, so far as the Ontario Amiesite are concerned, are you in a position to repurchase them?

A.—They are in my possession now.

Q.—You can deliver them now?

A.—Yes.

Q.—As to the Amiesite Asphalt Company, is there any reason why you should not repurchase them if it was necessary to repurchase them?

Mr. Chauvin:—I object to this question as illegal. I suppose it may be possible for Mr. Robertson or for any other man to go to the present owners and repurchase the shares. I do not think we need testimony as to that, but if there was any agreement under which he has the right to do it any more than any other individual, all right, but I submit we do not want proof that he has the same right as anybody else in the world to go and purchase or try to purchase the shares.

Mr. Beaulieu:—If my friend wants to admit that it is possible, and not impossible, for Mr. Robertson to repurchase these shares I am quite satisfied, because he has alleged that they were sold and that Mr. Robertson could not repurchase them. I must say frankly I am afraid if I simply leave in the record, the fact they were sold, there might be a presumption that they cannot be repurchased, and that is the presumption I want to rebut. I submit I am entitled to rebut it.

The Court reserves the objection.

A.—I have never tried to purchase them.

By Mr. Beaulieu:—

Q.—Do you think if you tried you could succeed?

A.—I suppose so, but I have never tried.

Q.—What is the actual condition of this Company? Is it active or inactive?

A.—Well, I have no knowledge of what they are doing. I never hear of them.

A. W. ROBERTSON (for Def. Robertson in sur reb.) Cross-ex.

Q.—Now, about the Fuller Gravel?

A.—I have never tried to repurchase any shares in it, but it has been very inactive ever since we sold it.

Q.—Have you any idea of the actual value of these shares?

A.—The only cue is what the Consolidated who bought it, what their shares are selling for on the market.

Q.—What are they selling for on the market?

A.—I don't know just at the present time, but the preferred shares sold down as low as seven dollars a share.

Q.—That was the Consolidated Gravel who purchased the Fuller Gravel?

A.—Yes.

Cross-examined by Mr. Chauvin, K.C., of Counsel for Plaintiff:—

Q.—Do you know the par value of the Consolidated Gravel Company's shares?

A.—The preferred, one hundred dollars.

Q.—And is it the value they are selling at, seven dollars?

A.—Not now. It was. I don't know what it is. I have not seen the quotation.

Q.—Do you know how many shares have been issued? What their issued share capital is?

A.—No, I do not.

Q.—The Consolidated Gravel Company made a merger of a number of Companies at the time you sold the Fuller Gravel to them, did it not?

A.—I believe so.

And further deponent saith not.

E. W. Bush,
Official Court Reporter.

J. DESAULNIERS (pour le déf. Robertson en sur contre-preuve) Examen en chef.

DEPOSITION DE JACQUES DESAULNIERS

Le trois novembre mil neuf cent trente-huit, a comparu: Jacques Désaulniers, avocat, Conseiller du Roi, témoin entendu de la part du défendeur Robertson, en sur-contre-preuve; lequel, après serment prêté sur les saints Evangiles, dépose et dit:

Interrogé par Me Aimé Geoffrion, C.R., Conseil pour le défendeur Robertson:—

D.—Monsieur Désaulniers, vous étiez à la fois le mari de la demanderesse, dans la cause dont il s'agit, et l'avocat au dossier?

Le Témoin:—Devant quelle Cour?

L'avocat:—Devant la Cour Suprême?

R.—Oui, monsieur.

D.—Vous étiez le mari de l'une des demanderesses et son avocat, devant la Cour Suprême, dans la cause dont il s'agit?

R.—Oui, monsieur.

D.—Je vois par les notes des juges que la plaidoirie s'est faite les 4 et 5 décembre 1933?

R.—Je le crois, oui, si je me rappelle bien.

D.—Le jugement le constate. Vous étiez là, n'est-ce pas?

R.—Oui, j'étais là à la première séance.

D.—Cela a duré deux jours?

R.—Oui.

D.—La question de l'admissibilité de la preuve par écrit s'est discutée, n'est-ce pas?

R.—Je ne sais pas si elle s'est discutée, mais il y a eu des remarques faites par certains membres du tribunal, je me souviens d'une, entr'autres.

Me Henry N. Chauvin, C.R., Conseil pour la demanderesse, s'oppose à cette preuve comme illégale.

D.—Des remarques sur ce sujet-là?

R.—Sur le sujet de la preuve testimoniale, oui.

D.—C'était l'une des grosses questions dans la cause, n'est-ce pas?

R.—Bien, c'était, je crois, la principale.

J. DESAULNIERS (pour le déf. Robertson en sur contre-preuve) Examen en chef.

D.—La principale question?
R.—Oui.
D.—Et dans une plaidoirie de deux jours, c'est difficile qu'on n'en ait pas parlé?
R.—Evidemment.
D.—Est-ce que ces remarques-là ont eu une influence quelconque sur votre décision quant au règlement ultérieur?

Me Chauvin s'oppose à cette question comme illégale.

L'objection est réservée par le Président du tribunal.

R.—Elles ont eu l'influence prépondérante.
D.—Comment cela?
R.—Parce que, si je me souviens bien, Me Beaulieu plaidait devant la Cour Suprême lorsqu'il a été interrompu, à un moment donné, par l'honorable juge en Chef Duff, qui lui a posé soudainement la question ou a fait soudainement la remarque suivante: "Mais on ne vous a pas laissé prouver, à la Cour supérieure, cette lettre? On ne vous a pas permis de faire cette preuve testimoniale, à la Cour supérieure?" Pour moi, cette remarque a été suffisante, quand je suis revenu à Montréal, — avec d'autres considérations, — pour me faire régler cette cause aussitôt que j'ai pu le faire, parce que je croyais que la Cour Suprême, si parfois la cause revenait devant elle, et peut-être même les cours inférieures, — supérieure et d'Appel, seraient influencées par ces remarques, — non pas seraient influencées, mais je croyais que le jugement de la Cour Suprême à l'issue de ces remarques, serait à l'effet que la preuve testimoniale serait permise.
D.—M. George Campbell, avocat des exécuteurs, était-il présent en Cour ce jour-là? Vous rappelez-vous cela?
R.—Je le crois.

Et le témoin ne dit rien de plus.

Henri Mackay,
Sténographe.

Part III — EXHIBITS

DEFENDANT'S EXHIBIT D-R-53 AT ENQUETE

Document filed by Helene King.

Montreal, etc.,

Hugh Quinlan Esq.,
Montreal,

My dear Hugh,

You have transferred to me.....shares in the capital stock of the company known as Quinlan, Robertson & Janin Limited, with.....shares in the capital stock of.....(insert here the number of shares and the names of the corporations) being all your holdings in the above mentioned companies.

I have agreed to obtain for you the sum of $250,000. for the holdings above mentioned, payable, one-half cash on the day of the sale, and the balance in one year, such balance bearing interest at the rate of 6% per annum.

Should your health permit you to attend to business as usual within a year from this date, I agree, upon the reimbursement of the amount then paid to you plus the interest at 6%, per annum, to retransfer for you the above mentioned shares.

Yours sincerely

DEFENDANT'S EXHIBIT D-R-54 AT ENQUETE

Letter from L. N. Leamy to Robertson.

A. W. ROBERTSON LIMITED
Engineers & Contractors

May 23rd 1927.

A. W. Robertson,
1690 St. Patrick St.,
Montreal, Que.

Dear Sir:—

This will acknowledge receipt from you, to be kept in the office here, the following stock certificates, the property of Mr. Hugh Quinlan,

No 1	Amiesite Asphalt Limited	1	share	
5	" " "	49	"	
9	" " "	200	"	J. H. Dunlop
4	Quinlan, Robertson & Janin Limited	1	share	
8	do	1150	"	

Yours truly,

A. W. Robertson, Limited
per L. N. Leamy.

L

DEFENDANT'S EXHIBIT D-R-55 AT ENQUETE

Minutes of a Meeting of Directors of Quinlan, Robertson Co.

QUINLAN, ROBERTSON AND JANIN, LIMITED

Minutes of a meeting of the Board of Directors of Quinlan, Robertson and Janin, Limited, held at the head office of the Company, 702 Sherbrooke Street West, Montreal, Canada, on the 22nd day of June, 1927, at the hour of eleven o'clock in the forenoon.

Were present:

Messrs. A. W. Robertson
Alban Janin

Mr. A. W. Robertson, President, acted as Chairman of the meeting, and Mr. Alban Janin, Secretary of the Company, acted as Secretary of the meeting.

Notice of the meeting as follows was duly read and approved:

Montreal, June 18, 1927.

Notice is hereby given that a meeting of the Board of Directors of Quinlan, Robertson and Janin, Limited, will be held at the head office of the Company, 702 Sherbrooke Street West, Montreal, Canada, on June 22, 1927, at the hour of eleven o'clock in the forenoon, for the transaction of any business that may come before the said meeting.

A. JANIN,
Secretary.

Minutes of Directors meeting held on May 2, 1927, were read and approved.

The Secretary submitted to the meeting a transfer by Mr. Hugh Quinlan of one thousand one hundred and fifty-one shares of the capital stock of the Company in favour of Mr. A. W. Robertson, Montreal.

On motion duly made, seconded and carried unanimously it was resolved that the said transfer be accepted.

Mr. Hugh Quinlan submitted to the meeting his resignation as Vice-President and Director of the Company, which was duly accepted.

Mr. Alban Janin submitted to the meeting his resignation as Secretary-Treasurer of the Company, which was duly accepted.

On motion duly made, seconded and carried unanimously it was resolved that Mr. Alban Janin, a qualified Shareholder, be appointed as Vice-President and Managing Director for the ensuing year.

The Secretary submitted to the meeting a transfer by Mr. A. W. Robertson of one share of the capital stock of the Company in favour of Mr. L. N. Leamy.

On motion duly made, seconded and carried unanimously it was resolved that the said transfer be accepted.

On motion duly made, seconded and carried unanimously it was resolved that Mr. L. N. Leamy, a qualified Shareholder, be named a Director and Secretary-Treasurer for the ensuing year.

There being no further business, adjournment was made.

A. W. Robertson,
Chairman.

A. Janin,
Secretary.

DEFENDANT'S EXHIBIT D-R-56 AT ENQUETE

Minutes of a meeting of the board of Directors of Amiesite Asphalt Ltd.

AMIESITE ASPHALT, LIMITED

Minutes of a meeting of the Board of Directors of Amiesite Asphalt, Limited, held at the head office of the Company, 702 Sherbrooke Street West, Montreal, Canada, on June 22, 1927, at the hour of twelve o'clock, noon.

Were present: Messrs. Alban Janin

A. W. Robertson

Mr. Alban Janin, President of the Company, acted as Chairman of the meeting, and Mr. C. J. Malone, Secretary-Treasurer, acted as Secretary of the meeting.

Notice of the meeting as follows was duly read and approved:

Montreal, June 18, 1927.

Notice is hereby given that a meeting of the Board of Directors of Amiesite Asphalt, Limited, will be held at the head office of the Company, 702 Sherbrooke Street West, Montreal, Canada, on June 22, 1927, at the hour of twelve o'clock, noon, for the transaction of any business that may come before the said meeting.

C. J. MALONE,
Secretary.

Minutes of Directors meeting held on May 5, 1927, were read and approved.

The Secretary submitted to the meeting a transfer of Mr. Hugh Quinlan of fifty shares of the capital stock of the Company in favour of Mr. A. W. Robertson, Montreal.

On motion duly made, seconded and carried unanimously it was resolved that the said transfer be accepted.

Mr. Hugh Quinlan submitted to the meeting his resignation as Director of the Company, which was duly accepted.

The Secretary submitted to the meeting a transfer of Mr. J. H. Dunlop of two hundred shares of the capital stock of the Company in favour of Mr. A. W. Robertson, Montreal.

On motion duly made, seconded and carried unanimously it was resolved that the said transfer be accepted.

The Secretary submitted to the meeting a transfer by Mr. A. W. Robertson of one share of the capital stock of the Company in favour of Mr. C. J. Malone, Montreal.

On motion duly made, seconded and carried unanimously it was resolved that the said transfer be accepted.

On motion duly made, seconded and carried unanimously it was resolved that Mr. C. J. Malone, a duly qualified Shareholder, be named a Director of the Company for the ensuing year.

There being no further business, adjournment was made.

A. Janin,
Chairman.

C. J. Malone,
Secretary.

A. W. Robertson.
Approved

DEFENDANT'S EXHIBIT D-R-57 AT ENQUETE

Minutes of a meeting of the Board of Directors of Ontario Amiesite Ltd.

ONTARIO AMIESITE LIMITED

Minutes of a meeting of the Board of Directors of Ontario Amiesite Limited, held at the head office of the Company, Fleet Street and Spadina Avenue, Toronto, Ont., Canada, on 16th day of November, 1927, at the hour of twelve o'clock, noon.

Were present: Messrs. A. W. Robertson,
R. Miller,
G. W. Rayner.

being all Directors of the Company.

Mr. A. W. Robertson, President of the Company, acted as Chairman of the meeting, and Mr. C. J. Malone, Secretary of the Company, acted as Secretary of the meeting.

Notice of meeting as follows was duly read and approved:

Toronto, Ont., November 10, 1927.

Notice is hereby given that a meeting of the Directors of Ontario Amiesite Limited will be held at the office of the Company, Fleet Street and Spadina Avenue, Toronto, Ont., on November 16, 1927, at the hour of twelve o'clock noon, for the transaction of such business as may come before the said meeting.

C. J. MALONE,
Secretary.

Minutes of Directors meeting held on 16th day of November 1927, were duly read and approved.

The Secretary submitted to the meeting a transfer by Estate Hugh Quinlan, of two hundred shares of the capital stock of the Company in favour of Mr. A. W. Robertson.

On motion duly made, seconded, and carried unanimously, it was resolved that the said transfer be accepted.

The Secretary submitted to the meeting a transfer by Mr. A. W. Robertson of one share of the capital stock of the Company in favour of Mr. C. J. Malone.

On motion duly made, seconded, and carried unanimously, it was resolved that the said transfer be accepted.

The President informed the meeting there was a vacancy on the Board of Directors of this Company, caused by the death of Mr. Hugh Quinlan, and that such vacancy should be filled for the balance of the ensuing year.

On motion duly made, seconded, and carried unanimously it was resolved that Mr. C. J. Malone, a qualified shareholder of the Company, be elected a Director for the balance of the ensuing year.

There being no further business, adjournment was made.

A. W. Robertson,
President.

C. J. Malone,
Secretary.

Approved:
A. Janin,
G. W. Rayner,
Ray Miller.

PLAINTIFF'S EXHIBIT P-S-6 AT ENQUETE

Letter from Wm. P. McDonald Construction to The Sun Trust Co., Ltd.

Montreal, September 14th 1928.

The Sun Trust Company Limited
Montreal.

Sirs:—

We are enclosing the following certificates:

Certificate No. 18 Amiesite Asphalt Limited, in favour of Sydney V. Kendall, for one share;

Certificate No. 19, Amiesite Asphalt Limited, in favour of Thomas F. Spellane, for one share;

Certificate No. 20, Amiesite Asphalt Limited, in favour of John I. McDonald for 998 shares;

Certificate No. 14 Macurban Asphalt Limited in favour of Sydney V. Kendall, for one share;

Certificate No. 15 Macurban Asphalt Limited in favour of Thomas F. Spellane, for one share;

Certificate No. 16 Macurban Asphalt Limited in favour of John I. McDonald. for 998 shares;

Those certificates are to be held in escrow for the benefit of Mr. A. W. Robertson to guarantee the payment to him of the following:

A draft for $100,000, dated September 14th 1928, at sight, drawn on Hackensack Trust Company, Hackensack, N.J., and payable to the order of the Bank of Toronto;

A note for $50,000 dated September 14th, 1928, payable at one month, from date, in favour of Mr. A. W. Robertson;

A note for $50,000 dated September 14th, 1928, payable at two months, in favour of Mr. A. W. Robertson;

A cheque of the Amiesite Asphalt Limited to the order of John I. McDonald, duly endorsed by the said John I. McDonald for the sum of $300,000.

A transfer for $75,000 of the Department of Highways of the Province of Quebec in favour of Mr. A. W. Robertson;

A transfer of $175,000 of the Department of Highways of the Province of Quebec in favour of Mr. A. W. Robertson.

You are to hold those certificates until the above have been discharged. Upon presentation to you of an order from Mr. A. W. Robertson, you will deliver those certificates to us, or if we do not produce such order, the production of the draft and notes above mentioned plus a certificate from the Department of Highways of the Province of Quebec that the sum of $250,000.00 has

been paid to Mr. Robertson, will be sufficient to compel you to return the certificates to us.

(signed) Wm. P. McDonald Const. Co.
John I. McDonald,
Vice-Pres.

Montreal, Dec. 4, 1928.

Received the certificates enumerated within the bracket, namely:
1000 shares Amiesite Asphalt Limited
1000 shares Macurban Asphalt Limited

for delivery to Mr. McDonald

(signed) Thos. F. Spellane
605 Keefer Bldg.

PLAINTIFF'S EXHIBIT P-S-7 AT ENQUETE

Agreement between A. Janin & Andrew Robertson.

COPY

MEMORANDUM OF AGREEMENT entered into at Montreal, on the twelfth day of September, Nineteen Hundred and Thirty; BETWEEN

ANGUS W. ROBERTSON, of the City of Westmount district of Montreal, Contractor hereinafter styled the

PARTY OF THE FIRST PART

AND

ALBAN JANIN of the City of Outremont, district of Montreal, Contractor, hereinafter styled the

PARTY OF THE SECOND PART

WHEREAS, the parties herein are shareholders in the following corporation:—

ALBAN CONSTRUCTIONS LIMITED
ROBERTSON & JANIN BUILDING CO., LIMITED
ROBERTSON & JANIN PAVING COMPANY, LIMITED

MONTREAL CONST. SUPPLY & EQUIPMENT LIMITED
ONTARIO AMIESITE LIMITED
RAYNER CONSTRUCTION LIMITED
ROBERTSON & JANIN OF ONTARIO LIMITED
TORONTO READY MIX CONCRETE LIMITED
SCOTSTOWN GRANITE COMPANY LIMITED
READY MIX CONCRETE LIMITED
ROBERTSON & JANIN CONTRACTING COMPANY, LTD.

WHEREAS, the party of the first part owns two thousand, three hundred and two shares (2,302) in the Alban Construction Limited valued at $538,000.00, one thousand, one hundred and fifty-one (1,151) shares of the above company being at present under litigation, in a case between two of the heirs of the late MR. HUGH QUINLAN, and the said party of the first part and others:

WHEREAS, the party of the second part owns and holds the following amount of shares in the hereinafter mentioned companies:—

ALBAN CONSTRUCTION LIMITED ..... 1150 shares
ROBERTSON & JANIN BUILDING CO., LTD.,
1 share property of ROBERTSON & JANIN LTD.
ROBERTSON & JANIN PAVING CO., LTD.,
1 share property of ROBERTSON & JANIN LTD.
MONTREAL CONSTRUCTION SUPPLY & EQUIPMENT LIMITED
1 share property of ROBERTSON & JANIN LTD.
ONTARIO AMIESITE LIMITED ..... 400 shares
RAYNER CONSTRUCTION LIMITED ..... 160 shares
ROBERTSON & JANIN OF ONTARIO LIMITED 50 shares
TORONTO READY MIX CONCRETE LIMITED 550 shares
SCOTSTOWN GRANITE COMPANY LTD. 128 prefer. shares
" " " " 250 common "
READY MIX CONCRETE LIMITED ..... 425 shares
ROBERTSON & JANIN CONTRACTING CO..... 1500 shares
WHEREAS The parties herein have come to an agreement as to their holdings in the several companies hereinabove mentioned.

NOW THESE PRESENTS WITNESSETH:—

1) The party of the first part has this day transferred to the party of the second part, one thousand one hundred and fifty-one (1,151) shares in the ALBAN CONSTRUCTION LIMITED.

2) The party of the first part has further transferred this day to the party of the second part one thousand one hundred and fifty-one shares (1,151) of the ALBAN CONSTRUCTION LIMITED being the shares presently under litigation and the party of the second part has this day endorsed, the new certificate for the said shares in blank, and has deposited the said certificate in escrow with the THE SUN TRUST COMPANY, LIMITED, with instructions to the said THE SUN TRUST COMPANY, LIMITED, that if the party of the first part is declared by a final judgment to be the owner of the said shares then the said, THE SUN TRUST COMPANY, LIMITED, will deliver the said certificate back to the party of the second part, and that if by final judgment of the Court it is declared that the said shares are the property of the Estate of the late Mr. Hugh Quinlan, the said THE SUN TRUST COMPANY, LIMITED, will have to abide by the said judgment, and will complete the endorsements in blank on the said certificate and transfer the said shares "A QUI DE DROIT" in conformity with the said judgment and in such event the party of the first part shall pay to the party of the second part, the sum of two hundred and sixty-nine thousand ($269,000.00) dollars, plus interest thereon at the rate of six percentum per annum, from the twenty-sixth day of June, nineteen hundred and thirty, in lieu of an in full of all claims in respect of said shares.

For the purpose of meeting such payment, the party of the first part has this day deposited with the THE SUN TRUST COMPANY, LIMITED, in escrow a demand note payable to the order of the party of the second part in the amount of two hundred and sixty nine thousand ($269,000.00) dollars, dated twenty sixth day of June, nineteen hundred and thirty, and bearing interest at six percentum per annum, which note shall be returned to the party of the first part by the THE SUN TRUST COMPANY, LIMITED, when it delivers back to the party of the second part the certificate for one thousand one hundred and fifty one shares (1,151) deposited with it in escrow, this day however, should the THE SUN TRUST COMPANY, LIMITED be required, by the final judgment hereinabove referred to, to deliver the said shares in litigation to the Estate Quinlan, then the said THE SUN TRUST COMPANY, LIMITED, shall deliver said demand note to the party of the second part in fulfillment of the foregoing obligation.

The party of the first part hereby bonds and obliges himself that he will continue to contest the action at present pending against

him bearing number 36664 of the records of the Superior Court of the District of Montreal, unless advised to make a settlement by the solicitors presently acting for him in the said action.

3) The transfer of the above mentioned shares in the ALBAN CONSTRUCTION LIMITED, by the party of the first part to the party of the second part, carries with it a transfer of all directors' qualifying shares of the subsidiary companies of the said ALBAN CONSTRUCTION LIMITED, now registered in the name of the party of the first part,

4) The party of the second part has transferred to the party of the first part all his shares in the hereinafter mentioned Companies, i.e.

ONTARIO AMIESITE LIMITED	400	shares
RAYNER CONSTRUCTION LIMITED	160	"
ROBERTSON & JANIN OF ONTARIO LTD.	50	"
TORONTO READY MIX CONCRETE LIMITED	550	"
SCOTSTOWN GRANITE COMPANY LIMITED	128	preferred shares
" " "	250	common shares
READY MIX CONCRETE LIMITED	425	shares
ROBERTSON & JANIN CONTRACTING COMPANY LIMITED	1,500	shares

and three hundred and sixty-six thousand ($366,000.00) dollars of bonds at par value deposited by the party of the second part as collateral security and enumerated in paragraph nine hereof.

5) The party of the first part hereby agrees and undertakes to release the party of the second part of all his obligations of whatsoever nature in connection with the companies, the shares of which party of the second part has transferred to the party of the first part, and the party of the second part likewise agrees and undertakes to release the party of the first part of all his obligations of whatsoever nature in connection with the companies, the shares of which the party of the first part has transferred to the party of the second part;

6) The party of the first part hereby agrees and undertakes to have, within a delay of sixty days, the name of the party of the second part, removed from the bond given for the Tunnel Division of the RAYNER CONSTRUCTION LIMITED, and release the party of the second part, of all his obligations with regards to the bonds and the contract covered by the said bonds.

7) The party of the first part agrees and undertakes to cause ROBERTSON & JANIN CONTRACTING COMPANY to transfer to ROBERTSON & JANIN PAVING COMPANY, LIMITED, the paving contracts which the ROBERTSON & JANIN CONTRACTING COMPANY LIMITED, are now executing for the cities of WESTMOUNT AND VERDUN. The party of the first part hereby renouncing all rights and claims in the said contracts and the party of the second part hereby agrees and undertakes to release the party of the first part and the said ROBERTSON & JANIN CONTRACTING COMPANY LIMITED of all liabilities and claims whatsoever in conjunction with the said contracts;

8) The consideration of the transfer by the party of the first part of the shares held by him in the ALBAN CONSTRUCTION LIMITED, (including the shares under litigation) is the sum of five hundred and thirty eight thousand ($538,000.00) dollars.

9) The sum of five hundred and eighty two thousand ($582,000.00) dollars is the consideration paid to the party of the second part for the following cash advance shares, bonds and interests;

ONTARIO AMIESITE LIMITED	400 shares
RAYNER CONSTRUCTION LIMITED	160 "
ROBERTSON & JANIN OF ONTARIO LIMITED	50 "
TORONTO READY MIX CONCRETE LIMITED	550 "
SCOTSTOWN GRANITE COMPANY LIMITED	128 preferred shares
SCOTSTOWN GRANITE COMPANY LIMITED	250 common shares
READY MIX CONCRETE LIMITED	425 "
ROBERTSON & JANIN CONTRACTING COMPANY LIMITED	1500 "
$166,000.00	in Bonds deposited in connection with the Tunnel contract at Toronto, Ontario.
$150,000.00	in Bonds deposited in connection with the ROBERTSON & JANIN CONTRACTING COMPANY LIMITED.
$ 25,000.00	in Bonds deposited in connection with the Bell Telephone Building in Toronto.
$ 25,000.00	in Bonds deposited in connection with TORONTO READY MIX CONCRETE LIMITED

$216,000.00 represented cash advances in the sum of $116,-000.00, by the party of the second part for the benefit of the various entreprises, and an additional sum of $100,000.00 in complete payment of the interest of the party of the second part in the above mentioned companies,

leaving a balance in favor of the second part of forty four thousand dollars ($44,000.) which the party of the second part acknowledges to have received this day from the party of the first part, each party giving to each other a complete and final discharge.

10) the ALBAN CONSTRUCTION LIMITED, is at present carrying on work in the Harbour of Montreal (Construction of cellular concrete cribs) for which it is using patent rights owned by ROBERTSON & JANIN CONTRACTING COMPANY, LIMITED, of which the party of the first part has absolute control, and the party of the first party hereby agrees and undertakes that the ALBAN CONSTRUCTION LIMITED, may continue to have the right to use the beforementioned patents for cellular concrete cribs in the Harbour of Montral, at the same rate of royalty as at present, it being clearly understood that the right to use the said patent rights is not in any way exclusive.

(signed) A. W. R. (SIGNED) A. J.

MADE IN DUPLICATE

Montreal, this 12th day of September
nineten hundred and thirty.

WITNESSES:
(signed) A. J. M. PETRIE
" E. C. MONK

(signed) A. W. ROBERTSON
" A. JANIN

Certifié conforme
ce 4 novembre 1938

Le SUN TRUST, Limitée
(signé) Chs. Therrien
Ass't. Sec.

PLAINTIFF'S EXHIBIT P.S-4 AT ENQUETE

Notice to A. W. Robertson & al., from Capital Trust Corporation Ltd.

TO:

Angus William Robertson, the Appellant herein,
and to
Messrs. Beaulieu, Gouin, Mercier & Tellier,
Attorneys for Appellant,
and to
Dame Ethel Quinlan, of the City of Westmount, wife common as to property of John Thomas Kelly and the said John Thomas Kelly for the purpose of authorizing his said wife,
and to
Dame Margaret Quinlan, of the said City of Westmount, wife separate as to property of Jacques Desaulniers, Advocate, and the said Jacques Desaulniers for the purpose of authorizing his said wife.
and to
Messrs. Tanner & Desaulniers,
Attorneys for Respondents.

Sirs and Mesdames:—

NOTICE IS HEREBY GIVEN to you by the undersigned in their quality of Executors of the Estate of the late Hugh Quinlan, in his lifetime of the City of Westmount, General Contractor that, insofar as may be useful or necessary, they have accepted and hereby accept on behalf of the said Estate Hugh Quinlan, all benefits and advantages accruing to the Estate of the said late Hugh Quinlan under the judgments rendered in this cause under No. A. 36664 of the records of the Superior Court for the District of Montreal, on or about the 6th day of February, 1931, by the Honourable Mr. Justice Martineau, and by the Court of King's Bench, sitting in Appeal, for the said District of Montreal (under No. 85 of the records of said Court) on or about the 30th day of December, 1932.

This notice is given under reserve of all other and further rights of the said Estate and of the undersigned in their said quality of Executors.

Montreal, September 6th, 1933.

General Trust of Canada
(signed) René Morin
General Manager

(signed) Ernest Guimond
Director

Capital Trust Corporation, Limited
(signed) John S. Lyons,
President.

" E. B. Pennefather,
General Manager

(SEAL)
Executors Estate Late Hugh Quinlan

Countersigned
(Signed) Campbell, McMaster, Couture,
Kerry & Bruneau,
Attorneys for Executors.

PLAINTIFF'S EXHIBIT P.S-1a AT ENQUETE

Protest served upon Capital Trust Corporation Ltd., at the request of Dame Ethel Quinlan.

(SEAL)

IN THE YEAR ONE THOUSAND NINE HUNDRED AND THIRTY-THREE, on the twenty-ninth day of the month of September, at the request of Dame ETHEL QUINLAN, wife common as to property of JOHN THOMAS KELLY and by him duly authorized, I NOEL PICARD, the undersigned Notary Public of the Province of Quebec, residing and practising in the city of Montreal, repaired to the head office of the CAPITAL TRUST CORPORATION LIMITED in the city of Ottawa in the Province of Ontario, and there being and speaking to Mr. E. T. B. Pennefather, general manager of the Capital Trust Corporation Limited,

DECLARED:

That the said Dame Ethel Quinlan is a daughter of the late Hugh Quinlan, and one of the beneficiaries under his last will and testament executed on the 14th day of April 1926 before Mtres Edouard Biron and Eugene Poirier;

That by his said will the said Hugh Quinlan appointed the said Capital Trust Corporation Limited and one Angus W. Robertson joint executors and trustees of his estate;

That upon the death of the said Hugh Quinlan, to wit, on the 26th day of June 1927, the said Capital Trust Corporation Limited and the said Angus W. Robertson accepted the said appointment as joint executors and trustees of the said estate, took possession of the assets thereof and continued to act as joint executors and trustees of the said estate until the 19th day of February 1931;

That on the said 19th day of February 1931 the said Angus W. Robertson resigned as one of the joint executors and trustees of the said estate and, exercising the power upon him conferred by the said will, appointed as his successor the General Trust of Canada, a body corporate and politic having its head office in the city of Montreal;

That since the said 19th day of February 1931 the said Capital Trust Corporation Limited and the said General Trust of Canada have been seized of the said estate as joint executors and trustees thereof, have administered and are now administering the said estate;

That no valid inventory of the said estate was ever made by the said Capital Trust Corporation Limited and the said Angus W. Robertson as joint executors and trustees thereof;

That the only inventory ever made by the said Capital Trust Corporation Limited and the said Angus W. Robertson as joint executors and trustees of the said estate was not signed by them, and that the said inventory was made in contravention of article 919 of the Civil Code of Lower Canada in that it was made by the said Capital Trust Corporation Limited and the said Angus W. Robertson without notice to the heirs, legatees and other interested persons to be present;

That the said inventory made by the said Capital Trust Corporation Limited and the said Angus W. Robertson as joint executors and trustees of the said estate was and is incomplete in that no mention is made therein of a number of the principal and most valuable assets of the said estate, in particular the following: 250 shares of the capital stock of Amiesite Asphalt Limited; 200 shares of the capital stock of Ontario Amiesite Limited; the sum of $84,314.60 declared as a dividend on the 31st day of March 1925 by a resolution of the Board of directors of Quinlan, Robertson & Janin Limited on 1,151 shares of the capital stock of the said Quinlan, Robertson & Janin Limited then owned by the said Hugh Quinlan and mentioned in the said inventory as an asset of the said estate; the interest of the said estate in certain monies payable to the said Angus W. Robertson by Peter Lyall & Sons Limited, the said interest having been established by a writing executed on the 2nd day of July 1926 by the said Angus W. Robertson and the said Hugh Quinlan;

That the said inventory made by the said Capital Trust Corporation Limited and the said Angus W. Robertson as joint executors and trustees of the said estate was replete with false appraisals of a number of the principal and most valuable assets of the said estate, and that, in particular, 1,000 preferred shares and 499 common shares of the capital stock of Fuller Gravel Limited, having a total value of $90,000.00, were appraised in the said inventory as having a total value of $1.00;

That the resignation of the said Angus W. Robertson on the said 19th day of February 1931 as one of the joint executors and trustees of the said estate was pursuant to a judgment rendered against him on the 5th day of February 1931 by the Honourable Mr. Justice Martineau, one of the judges of the Superior Court of the Province of Quebec, in an action bearing number A.36664 of the records of the said Superior Court, District of Montreal, instituted on the 25th day of October 1928 by the said Dame Ethel Quinlan and her sister, Dame Margaret Quinlan, by which judgment the purchase by the said Angus W. Robertson from the said estate of 1,151 shares of the capital stock of the said Quinlan, Robertson & Janin Limited, 250 shares of the capital stock of the said Amiesite Asphalt Limited, 200 shares of the capital stock of the said Ontario Amiesite Limited and 400 shares of the capital stock of the said Fuller Gravel Limited was annulled, and that in delivering the said judgment the said Honour-

able Mr. Justice Martineau declared that in the event of the said Angus W. Robertson appealing therefrom "comme c'est son droit de le faire s'il le croit mal fondé, il devrait, dans les cas où les demanderesses n'en appelleraient pas elle-mêmes, résigner ses fonctions et se nommer un successeur, comme le testament lui en donne le droit, en ayant le soin de choisir un homme qui lui est absolument étranger, afin que celui-là soit libre de combattre ses prétentions, et que les héritiers ne puissent douter de son impartialité".

That the resignation of the said Angus W. Robertson on the said 19th day of February 1931 as one of the joint executors and trustees of the said estate was made two days before the said Angus W. Robertson entered an appeal from the said judgment, but that in appointing the said General Trust of Canada to be his successor as one of the joint executors and trustees of the said estate the said Angus W. Robertson acted in total disregard of advice tendered him by the said Mr. Justice Martineau, to wit, that the said Angus W. Robertson should select and appoint as his successor one whose impartiality the heirs of the said Hugh Quinlan could not question;

That the said General Trust of Canada assumed its functions as one of the joint executors and trustees of the said estate without making any inventory in conformity with the provisions of article 919 of the Civil Code of Lower Canada, and that the said Dame Ethel Quinlan has never been informed by the said Capital Trust Corporation Limited or by the said General Trust of Canada and does not yet know whether any inventory, in conformity with the provisions of article 919 of the Civil Code of Lower Canada or not, has ever been made by the said Capital Trust Corporation Limited and the said General Trust of Canada;

That no account of his administration as one of the joint executors and trustees of the said estate has ever been rendered by the said Augus W. Robertson to the said Capital Trust Corporation Limited and the said General Trust of Canada as joint Executors and trustees of the said estate, and that no account of his administration has ever been required of him by the said Capital Trust Corporation Limited and the said General Trust of Canada since the said 19th day of February 1931

That by paragraph "j" of the fourth article of his said will the said Hugh Quinlan empowered his said executors and

trustees to employ the said Capital Trust Corporation Limited as "agent, accountant and manager" of the said estate, "with power to do and execute the detail work in connection with the administration" thereof, 'to keep the books of account, to make collections and execute minor acts of administration", and provided that for such services the Capital Trust Corporation Limited should be entitled to receive "its usual commission";

That since the death of the said Hugh Quinlan the said Capital Trust Corporation Limited has been employed for the purposes set out in the said paragraph "j" of the fourth article of the said will, but the services thus rendered were negligently and unfaithfully performed by the said Capital Trust Corporation Limited: in particular, the books of account were irregularly and inaccurately kept, the whole, as more fully appears hereunder, for the purpose of concealing from the said Dame Ethel Quinlan and the other beneficiaries under the said will various and numerous acts of maladministration and malversation from time to time committed by the said Capital Trust Corporation Limited and the said Angus W. Robertson as joint executors and trustees of the said estate;

That in furtherance of the said purpose of concealing the said acts of maladminstration and malversation from the said Dame Ethel Quinlan and the other beneficiaries under the said will the said Capital Trust Corporation Limited and the said Angus W. Robertson engaged P. C. Shannon, Son & Co. as auditors of the said estate, and that the said P. C. Shannon, Son & Co. never made a proper and regular audit of the affairs of the said estate, but accepted without verification or critical examination the statements of the said Capital Trust Corporation Limited and declared the accounting of the said Capital Trust Corporation Limited to have been carried out in an accurate manner;

That the further retention of the said P. C. Shannon, Son & Co. as auditors of the said estate constitutes a useless and unnecessary expenditure inasmuch as the statements of the said P. C. Shannon, Son & Co. can inspire no greater confidence than those of the said Capital Trust Corporation Limited;

That the said estate is a sharehaloder of A. W. Robertson Limited, a body corporate and politic having its head office in the city of Montreal, and is the owner of 1,586 shares of the capital stock thereof;

That at various dates prior to the 10th day of April 1929 divers sums of money, making a total of $254,701.11, were paid by the said A. W. Robertson Limited to M. J. O'Brien Limited, a body corporate and politic and having its head office in the city of Ottawa, and that subsequent to the said date divers further sums were paid to the said M. J. O'Brien Limited by the said A. W. Robertson Limited;

That the said sums paid to the said M. J. O'Brien Limited by the said A. W. Robertson Limited were paid without legal cause, and that the said A. W. Robertson Limited was under no obligation to pay them, or any of them, to the said M. J. O'Brien Limited;

That on the 27th day of February 1924 a contract for the construction of the eighth section of the Welland Ship Canal was concluded by the said A. W. Robertson Limited with the Government of the Dominion of Canada;

That the said sums paid to the said M. J. O'Brien Limited by the said A. W. Robertson Limited were paid in virtue of an agreement alleged to have intervened in or about the month of February 1924 between the said A. W. Robertson Limited, the said M. J. O'Brien Limited and one Michael J. O'Brien;

That by the said agreement alleged to have intervened between the said A. W. Robertson Limited, M. J. O'Brien Limited and Michael J. O'Brien the said A. W. Robertson Limited granted to the said M. J. O'Brien Limited one quarter interest in the said contract for the construction of the eighth section of the Welland Ship Canal, and the said Michael J. O'Brien became liable to the said A. W. Robertson Limited, jointly and severally with the said M. J. O'Brien Limited, for the performance of such obligations as were assumed by the said M. J. O'Brien Limited;

That at the time of the said agreement alleged to have intervened between the said A. W. Robertson Limited, M. J. O'Brien Limited and Michael J. O'Brien the said Michael J. O'Brien was a member of the Senate of Canada, and that the said agreement was in contravention of the Senate and House of Commons Act, Revised Statutes of Canada, 1906, chapter 10, and was null, void and of no legal effect;

That the said agreement alleged to have intervened between the said A. W. Robertson Limited, M. J. O'Brien Limited and Michael J. O'Brien was negotiated and verbally concluded on behalf of the said A. W. Robertson Limited by the said Angus W. Robertson, its then president, and on behalf of the said M. J. O'Brien Limited by the said Michael J. O'Brien and one J. Ambrose O'Brien, two of its directors and officers, and remained clandestine so long as the said Michael J. O'Brien continued to be a member of the Senate of Canada;

That the said Michael J. O'Brien ceased to be a member of the Senate of Canada on the 1st day of September 1925, and that on the 17th day of November 1925 the said Michael J. O'-Brien acknowledged in writing his participation in the said agreement alleged to have intervened between himself and the said A. W. Robertson Limited and M. J. O'Brien Limited

That on the 23rd day of November 1926 the said A. W. Robertson Limited, by its then president, the said Angus W. Robertson, wrote to the said J. Ambrose O'Brien as follows:

> "As requested in your letter of the 22nd instant, we herewith return the Undertaking which your father signed some time ago. It would be much better if the Undertaking were dated much earlier. All monies in our books will show as payments to M. J. O'Brien Limited, and the one-quarter interest in Section No. 8 of Welland Ship Canal is in the name of M. J. O'Brien Limited";

That it was only after the action hereinabove referred to had been instituted against the said Angus W. Robertson by the said Dame Ethel Quinlan and the said Dame Margaret Quinlan, to wit, on the 10th day of December 1928 that the board of directors of the said A. W. Robertson Limited first acknowledged the said agreement alleged to have intervened between the said A. W. Robertson Limited, M. J. O'Brien Limited and Michael J. O'Brien, the said acknowledgment being by a resolution in the following terms:

> "That, at the request of M. J. O'Brien Limited, this company does formally admit and confirm the acceptance of the undivided one quarter share and interest of M. J. O'Brien Limited in the Welland Ship Canal (Section No. 8) contract obtained by this company in February 1924, and in respect of which substantial payments have from time to time heretofore been made by this company to said M. J. O'Brien Limited"

That on the said 10th day of December 1928 the said board of directors of A. W. Robertson Limited was composed of the said Angus W. Robertson, one Louis N. Leamy and the late Dr. B. G. Connolly, then general manager of the said Capital Trust Corporation Limited, and that the said Angus W. Robertson, Louis N. Leamy and Dr. B. G. Connolly participated in the said resolution acknowledging the said agreement alleged to have in-

tervened between the said A. W. Robertson Limited, M. J. O'-Brien Limited and Michael J. O'Brien;

That on the said 10th day of December 1928 the said Michael J. O'Brien and the said J. Ambrose O'Brien were directors of the said Capital Trust Corporation Limited, and that the said Michael J. O'Brien is still a director and honorary president of the said Capital Trust Corporation Limited;

That the said resolution adopted on the 10th day of December 1928 by the Board of Directors of the said A. W. Robertson Limited acknowledging the said agreement alleged to have intervened between the said A. W. Robertson Limited, M. J. O'Brien Limited and Michael J. O'Brien was fraudulently contrived and manoeuvered by the said Angus W. Robertson, Louis N. Leamy, Dr. B. G. Connolly and J. Ambrose O'Brien for the purpose of assuring the continuation of the payments until then made from time to time by the said A. W. Robertson Limited to the said M. J. O'Brien Limited, and was in fraud of the rights of the shareholders of the said A. W. Robertson Limited;

That on the 9th day of October 1929 the board of directors of the said A. W. Robertson Limited unanimously adopted a resolution to the effect that the said company be wound up under the provisions of the Quebec Winding Up Act (Revised Statutes of Quebec, 1925, chapter 225) and that one Charles A. Shannon and the said Louis N. Leamy be appointed liquidators;

That on the said 9th day of October 1929 the Board of directors of the said A. W. Robertson Limited was composed of the said Angus W. Robertson, Louis N. Leamy, Dr. B. G. Connolly, J. Ambrose O'Brien, and the Honorable J. L. Perron, all of whom participated in the said resolution;

That for several years prior to the said 9th day of October 1929 the said Charles A. Shannon had been the auditor of the said A. W. Robertson Limited, and that, contrary to his duty as auditor, he had approved each and every of the payments until then made by the said A. W. Robertson Limited to the said M. J. O'Brien Limited;

That at a meeting of shareholders of the said A. W. Robertson Limited held on the said 9th day of October 1929 the said resolution of the board of directors to the effect that the said company be wound up and that the said Charles A. Shannon and

Louis N. Leamy be appointed liquidators was unanimously ratified and confirmed, and the said Angus W. Robertson and the said Dr. B. G. Connolly were appointed inspectors;

That at the said meeting of shareholders held on the 9th day of October 1929 the holders of 3,173 shares of the total issue of 3,175 shares were present in person, to wit: the said Angus W. Robertson, 1,584 shares; the said Louis N. Leamy, 1 share; the said Dr. B. G. Connolly, 1 share; the said J. Ambrose O'Brien, 1 share; the estate of the said Hugh Quinlan (represented by its joint executors, the said Angus W. Robertson and the said Capital Trust Corporation Limited, the latter acting by the said Dr. B. G. Connolly) 1,586 shares;

That the said resolution adopted on the 9th day of October 1929 by the board of directors of the said A. W. Robertson Limited and its ratification by the meeting of shareholders of the said company were fraudulently contrived and manoeuvered by the said Angus W. Robertson, Louis N. Leamy, Dr. B. G. Connolly and J. Ambrose O'Brien in furtherance of the aforesaid purpose of assuring the continuance of the payments until then made from time to time by the said A. W. Robertson Limited to the said M. J. O'Brien Limited, as well for the purpose of enabling the said Angus W. Robertson to achieve, to the detriment of the said A. W. Robertson Limited and the shareholders thereof, contrary to his duty as director and president of the said A. W. Robertson Limited, and for his own personal benefit and advantage, the creation of Angus Robertson Limited, a body corporate and politic having its head office in the City of Montreal, in order that, through the instrumentality of the said Angus Robertson Limited, he, the said Angus W. Robertson, might carry on the business theretofore engaged in by the said A. W. Robertson Limited and personally retain the entire profit thereof;

That the said Charles A. Shannon and Louis N. Leamy, both then fully conversant with all that had been done prior to the said 9th day of October 1929 and aware of the illegality of the said agreement alleged to have intervened between the said A. W. Robertson Limited, M. J. O'Brien Limited and Michael J. O'Brien, undertook and are presently engaged in the winding up of the said A. W. Robertson Limited and as liquidators of the said A. W. Robertson Limited have paid divers large sum of money to the said M. J. O'Brien Limited in virtue of the said alleged agreement;

That in the immediate future further sums, as yet neither determined nor determinable in amount but in any event in excess of $150,000.00, will become due and payable to the said M. J. O'Brien Limited in virtue of the said agreement alleged to have intervened between the said A. W. Robertson Limited, M. J. O'Brien Limited and Michael J. O'Brien, and that the said Charles A. Shannon and Louis N. Leamy as liquidators of the said A. W. Robertson Limited intend and propose to pay such further sums to the said M. J. O'Brien Limited with all possible dispatch upon receipt from the Government of the Dominion of Canada of the balance of the monies still to be paid by the said Government in virtue of the contract with it concluded on the 27th day of February 1924 by the said A. W. Robertson Limited;

That the payment of the said sums paid to the said M. J. O'Brien Limited by the said Charles A. Shannon and Louis N. Leamy as liquidators of the said A. W. Robertson Limited was approved by the inspectors appointed by the said resolution adopted by the said meeting of shareholders of A. W. Robertson Limited held on the said 9th day of October 1929, to wit, the said Angus W. Robertson and Dr. B. G. Connolly;

That all monies paid to the said M. J. O'Brien Limited by the said A. W. Robertson Limited or the liquidators thereof in virtue of the said agreement alleged to have intervened between the said A. W. Robertson Limited, M. J. O'Brien Limited and Michael J. O'Brien or the acknowledgment thereof contained in the said resolution adopted on the said 10th day of December 1928 by the board of directors of the said A. W. Robertson Limited are recoverable from the said M. J. O'Brien Limited by the liquidators of the said A. W. Robertson Limited, and that the said liquidators are under no duty to pay any further sum due or to become due in virtue of the said alleged agreement;

That the payments made to the said M. J. O'Brien Limited by the said A. W. Robertson Limited and the liquidators thereof in virtue of the said alleged agreement have diminished the value of the said 1,586 shares of the capital stock of the said A. W. Robertson Limited owned by the said estate by at least $200,000.00, and that any further payment made to the said M. J. O'Brien Limited will still further diminish the value of the said 1,586 shares;

That for the reasons hereinabove set out it has been the duty and now is the urgent duty of the said Capital Trust Cor-

poration Limited and of the said General Trust of Canada as executors and trustees of the said estate to cause to be recovered by the liquidators of the said A. W. Robertson Limited all the said monies paid to the said M. J. O'Brien Limited by the said A. W. Robertson Limited and the liquidators thereof, and to prevent the payment of any further sums due or to become due in virtue of the said alleged agreement;

That for the reasons hereinabove set out it has long been the duty and now is the urgent duty of the said Capital Trust Corporation Limited and of the said General Trust of Canada as executors and trustees of the said estate to cause the said Charles A. Shannon and Louis N. Leamy to be removed from and destituted of the office of liquidators of the said A. W. Robertson Limited;

That for the reasons hereinabove set out it has long been the duty and now is the urgent duty of the said Capital Trust Corporation Limited and of the said General Trust of Canada as executors and trustees of the said estate to cause the said agreement alleged to have intervened between the said A. W. Robertson Limited, M. J. O'Brien Limited and Michael J. O'Brien and the acknowledgment thereof contained in the said resolution adopted on the 10th day of December 1928 by the board of directors of the said A. W. Robertson Limited to be declared null, void and of no legal effect;

That for the reasons hereinabove set out it has long been the duty and now is the urgent duty of the said Capital Trust Corporation Limited and of the said General Trust of Canada as executors and trustees of the said estate to cause the said Angus W. Robertson to account to the liquidators of the said A. W. Robertson Limited for the profits, benefits and advantages by the said Angus W. Robertson derived from the creation and exploitation of the said Angus Robertson Limited and among other things to cause the said Angus W. Robertson to convey to the liquidators of the said A. W. Robertson Limited all of the shares of the capital stock of the said Angus Robertson Limited held by him, the said Angus W. Robertson;

That in the course of the winding up of the said A. W. Robertson Limited the liquidators of the said company, the said Charles A. Shannon and Louis N. Leamy divided certain of the assets of the said company into two portions declared by the said liquidators to be of equal value, conveying one of the said portions

to the said estate and the other to the said Angus W. Robertson, but that the division of the assets so conveyed was fraudulently made by the said liquidators at the instigation of the said Angus W. Robertson, with the result that the value of the portion conveyed to the said estate was only a small fraction of the value conveyed to the said Angus W. Robertson;

That as a result of the fraudulent concert of the said Angus W. Robertson and one Emmanuel Ludger Parent, manager of the estates department of the said Capital Trust Corporation Limited, the said Quinlan, Robertson & Janin Limited was enabled to remove and appropriate to itself, without paying or undertaking to pay therefor, considerable machinery belonging to the said A. W. Robertson Limited, and that for several years past the said machinery has been treated and is still being treated by the said Quinlan, Robertson & Janin Limited as its own property;

That by a written agreement made on the 2nd day of July 1926 the said Angus W. Robertson promised to pay to the said Hugh Quinlan one half of the sum of $75,000.00 then owing to the said Angus W. Robertson, stipulating, however, that in the event of the said Hugh Quinlan predeceasing him before the due date of the final or any other payment to be made by the said Peter Lyall & Sons Limited the estate of the said Hugh Quinlan should receive only one third of the payment or payments remaining due; that subsequent to the death of the said Hugh Quinlan the said Angus W. Robertson received from the said Peter Lyall & Sons Limited three payments of $25,000.00 each, but paid to the said estate its share of only two of the said payments and refused to pay its share of the third; and that although the said Angus W. Robertson should have paid the said estate's share of the said third payment of $25,000.00 several years ago the said Capital Trust Corporation Limited and the said General Trust of Canada have done nothing as joint executors and trustees of the said estate to recover the said share from the said Angus W. Robertson;

That at the death of the said Hugh Quinlan there was due him by the said Quinlan, Robertson & Janin Limited the sum of $84,314.60, balance of a dividend declared on the 31st day of March 1925 by the board of directors of the said company on the 1,151 shares of the capital stock thereof belonging to the said Hugh Quinlan, and that to the knowledge of the said Capital Trust Corporation Limited and the said General Trust of Canada the said

sum of $84,314.60 has been wrongfully and illegally paid to the said Angus W. Robertson since the death of the said Hugh Quinlan, but the said Capital Trust Corporation Limited and the said General Trust of Canada have done nothing as joint executors and trustees of the said estate to recover from the said Quinlan, Robertson & Janin Limited the amount of the said dividend, which should have been paid to the said estate;

That in the month of April 1927 the said Angus W. Robertson and one Alban Janin, then directors and officers of Quinlan, Robertson & Janin Limited and Amiesite Asphalt Limited and using the monies of the said companies therefor, caused Macurban Asphalt Limited, a body corporate and politic having its head office in the city of Montreal, to be organized in order that, through the instrumentality of the said Macurban Asphalt Limited, the said Angus W. Robertson and the said Alban Janin might engage, contrary to their plain duty as directors and officers of the said Quinlan, Robertson & Janin Limited and Amiesite Asphalt Limited, in the asphalt and paving business and divert to the said Macurban Asphalt Limited, the entire share issue of which was held by the said Angus W. Robertson and the said Alban Janin and their prête-noms, the profits which would otherwise have accrued to the said Quinlan, Robertson & Janin Limited and the said Amiesite Asphalt Limited, the whole to the great detriment of the said companies and the shareholders thereof;

That the said Angus W. Robertson and the said Alban Janin, then directors and officers of the said Quinlan, Robertson & Janin Limited and Amiesite Asphalt Limited, personally, to the exclusion of the said Quinlan, Robertson & Janin Limited and Amiesite Asphalt Limited and contrary to their duty as directors and officers of the said companies, contracted for divers works in connection with the construction of the road known as Tascherau Boulevard, and failed and neglected to account to the said Quinlan. Robertson & Janin Limited and the said Amiesite Asphalt Limited for the profits by them made in the execution of the works so contracted for;

That in the month of November 1927 the said Angus W. Robertson appropriated to himself without color of right 200 shares of the capital stock of Ontario Amiesite Limited neither paying nor undertaking to pay the value thereof;

That the said Angus W. Robertson then one of the joint executors and trustees of the said estate and as such unable leg-

ally to purchase from the said estate, purchased for himself through persons interposed 1,000 preferred shares and 499 common shares of the capital stock of the said Fuller Gravel Limited and resold the said shares at a profit of $40,000.00, but failed and neglected to account to the said estate for the profit thus illegally made;

That although for several years the said Capital Trust Corporation Limited has been cognizant or able to become cognizant of each and every of the facts hereinabove set out, it has neglected and failed, contrary to its duty as one of the joint executors and trustees of the said estate, to remedy or cause to be remedied any of the hereinabove declared wrongs, and that the said Capital Trust Corporation Limited still persists in its said neglect;

That although long before its appointment on the said 19th day of February 1931 by the said Angus W. Robertson as one of the joint executors and trustees of the said estate the General Trust of Canada had been cognizant or able to become cognizant of each and every of the facts hereinabove set out, it has neglected and failed, contrary to its duty as one of the joint executors and trustees of the said estate, to remedy any of the hereinabove declared wrongs, and that the said General Trust of Canada still persists in its said neglect;

That by reason of the persistent neglect and failure of the said Capital Trust Corporation Limited and the said General Trust of Canada as joint executors and trustees of the said estate to remedy or cause to be remedied any of the hereinabove declared wrongs the assets of the said estate have long been wasted and depleted and are presently exposed to serious further waste and depletion;

That by reason of her interest in the said estate the said Dame Ethel Quinlan is entitled to take all measures necessary or useful to prevent such further waste and depletion of the assets of the said estate and to recover insofar as such recovery may still be possible the assets lost, as well as to cause to be remedied each and every of the wrongs, by whomsoever committed, as a result of which the assets of the said estate have failed to be increased or are likely to fail to be increased;

WHEREFORE at the request aforesaid and speaking as aforesaid I required the said Capital Trust Corporation Limited

as one of the joint executors and trustees of the said estate to do within fifteen days hereof all things capable of being done in order;

THAT there be made a complete and faithful inventory of the said estate in conformity with article 919 of the Civil Code of Lower Canada;

THAT such action as the law provides be instituted against the said Angus W. Robertson for the purpose of compelling him to render an account of his administration as one of the joint executors and trustees of the said estate, unless within eight days hereof he shall have rendered such acount in the manner and form by law provided;

THAT the said P. C. Shannon, Son & Co. be dismissed as auditors of the said estate and that there be appointed as such auditors a chartered accountant, or firm of chartered acountants, of unquestioned and unquestionable competence, integrity and responsibility, any one of the following being acceptable to the said Dame Ethel Quinlan: Clarkson, McDonald, Currie & Co., Peat, Marwick, Mitchell & Co., Price, Waterhouse & Co. and R. Schurman & Co.;

THAT the said Charles A. Shannon and the said Louis N. Leamy be removed from and destituted of the office of liquidators of the said A. W. Robertson Limited and replaced by one or more persons of unquestioned and unquestionable competence integrity and responsibility;

THAT the inspectors of the said A. W. Robertson Limited be removed from and destituted of their office and replaced by persons of unquestioned and unquestionable competence integrity and responsibility;

THAT the monies paid as aforesaid to the said M. J. O'Brien Limited by the said A. W. Robertson Limited and the liquidators thereof be recovered and that the payment of any further sums due or to become due in virtue of the said agreement alleged to have intervened between the said A. W. Robertson Limited, M. J. O'Brien Limited and Michael J. O'Brien and the acknowledgment thereof contained in the said resolution adopted on the 10th day of December 1928 by the board of directors of the said A. W. Robertson Limited be prevented;

THAT the said agreement alleged to have intervened between the said A. W. Robertson Limited, M. J. O'Brien Limited and Michael J. O'Brien and the acknowledgment thereof contained in the said resolution adopted on the 10th day of December 1928 by the board of directors of the said A. W. Robertson Limited be declared null void and of no legal effect;

THAT the said Angus W. Robertson be compelled to account to the liquidators of the said A. W. Robertson Limited for the profits, benefits and advantages whatsoever by him derived from the creation and exploitation of the said Angus Robertson Limited, and that he be made to convey or cause to be conveyed to the liquidators of the said A. W. Robertson Limited all of the shares of the capital stock of the said Angus Robertson Limited held by himself, the said Angus W. Robertson, or by his prête-noms;

THAT the assets of the said A. W. Robertson Limited fraudulently conveyed as aforesaid to the said Angus W. Robertson by the said Charles A. Shannon and Louis N. Leamy as liquidators of the said A. W. Robertson Limited be annulled, and that the said assets or the value thereof be recovered from the said Angus W. Robertson by the liquidators of the said A. W. Robertson Limited;

THAT the said Quinlan, Robertson & Janin Limited be compelled to pay to the liquidators of the said A. W. Robertson Limited the value of the machinery belonging to the said A. W. Robertson Limited which as a result of the fraudulent concert between the said Angus W. Robertson and the said Emmanuel Ludger Parent the said Quinlan, Robertson & Janin Limited has removed and appropriated to itself;

THAT the monies due to the said estate from the said Angus W. Robertson in virtue of the said written agreement made on the 2nd day of July 1926 by the said Hugh Quinlan be recovered by the said estate from the said Angus W. Robertson;

THAT the monies due to the said estate by the said Quinlan, Robertson & Janin Limited in virtue of the dividend declared on the 31st day of March 1925 by the board of directors of the said company be recovered by the said estate from the said Quinlan, Robertson & Janin Limited;

THAT the said 200 shares of Ontario Amiesite Limited illegally apropriated by the said Angus W. Robertson, or their value, be recovered by the said estate;

THAT the said Angus W. Robertson be compelled to account to the said estate for the profits by him made as a result of his illegal purchase and subsequent resale of the said 1,000 preferred shares and 499 common shares of the said Fuller Gravel Limited;

THAT the said Angus W. Robertson and the said Alban Janin be compelled to account to the said Quinlan, Robertson & Janin Limited and the said Amiesite Asphalt Limited for the profits, benefits and advantages whatsoever by them illegally derived from the creation and exploitation of the said Macurban Asphalt Limited, and that they be compelled to convey or cause to be conveyed to the said Quinlan, Robertson & Janin Limited and the said Amiesite Asphalt Limited all of the shares of the capital stock of the said Macurban Asphalt Limited held by them, the said Angus W. Robertson and the said Alban Janin, or by their prête-noms;

THAT the said Angus W. Robertson and the said Alban Janin be compelled to account to the said Quinlan, Robertson & Janin Limited and the said Amiesite Asphalt Limited for all profits, benefits and advantages whatsoever by them illegally derived from the construction of the said road known as Taschereau Boulevard;

AND at the request aforesaid and speaking as aforesaid I further declared that the said Dame Ethel Quinlan is ready and willing to communicate to the said Capital Trust Corporation Limited and the said General Trust of Canada as joint executors and trustees of the said estate such further evidence as they may require in order the better to comply with the requests upon them hereinabove made.

DONE at Montreal under number three hundred and forty eight of my minutes on the day first above mentioned, an authentic copy hereof having been left with the said Capital Trust Corporation Limited, speaking as aforesaid, in order that the said Capital Trust Corporation Limited may not plead ignorance hereof.

(Signed) NOEL PICARD, Notary.

TRUE COPY of the original hereof remaining of record in my office. (Three words scratched are null).

Noel Picard, Notary.

PLAINTIFF'S EXHIBIT P-S-1B AT ENQUETE

Protest served upon Capital Trust Corporation Limited at the request of Dame Ethel Quinlan.

IN THE YEAR ONE THOUSAND NINE HUNDRED AND THIRTY-THREE, on the sixteenth day of the month of October, at the request of Dame ETHEL QUINLAN, wife common as to property of JOHN THOMAS KELLY and by him duly authorized, I, NOEL PICARD, the undersigned Notary Public of the Province of Quebec, residing and practising in the city of Montreal, repaired to the head office of the CAPITAL TRUST CORPORATION LIMITED in the city of Ottawa in the Province of Ontario, and there being and speaking to E. T. B. Pennefather, general manager of the Capital Trust Corporation Limited.

DECLARED:

THAT on the 29th day of September 1933, at the request of the said Dame Ethel Quinlan I repaired to the head office of the Capital Trust Corporation Limited in the city of Ottawa in the Province of Ontario, and there being and speaking to E. T. B. Pennefather, its general manager, declared:

"That the said Dame Ethel Quinlan is a daughter of the late Hugh Quinlan, and one of the beneficiaries under his last will and testament executed on the 14th day of April 1926 before Mtres. Edouard Biron and Eugene Poirier;

"That by his said will the said Hugh Quinlan appointed the said Capital Trust Corporation Limited and one Angus W. Robertson joint executors and trustees of his estate;

"That upon the death of the said Hugh Quinlan, to wit, on the 26th day of June 1927, the said Capital Trust Corporation Limited and the said Angus W. Robertson accepted the said appointment as joint executors and trustees of the said estate, took possession of the assets thereof and continued to act as joint executors and trustees of the said estate until the 19th day of February 1931;

"That on the said 19th day of February 1931 the said Angus W. Robertson resigned as one of the joint executors and trustees of the said estate and, exercising the power upon him conferred by the said will, appointed as his successor the General Trust of Canada, a body corporate and politic having its head office in the city of Montreal;

"That since the said 19th day of February 1931 the said Capital Trust Corporation Limited and the said General Trust of Canada have been seized of the said estate as joint executors and trustees thereof, have administered and are now administering the said estate;

"That no valid inventory of the said estate was ever made by the said Capital Trust Corporation Limited and the said Angus W. Robertson as joint executors and trustees thereof;

"That the only inventory ever made by the said Capital Trust Corporation Limited and the said Angus W. Robertson as joint executors and trustees of the said estate was not signed by them, and that the said inventory was made in contravention of article 919 of the Civil Code of Lower Canada in that it was made by the said Capital Trust Corporation Limited and the said Angus W. Robertson without notice to the heirs, legatees and other interested persons to be present;

"That the said inventory made by the said Capital Trust Corporation Limited and the said Angus W. Robertson as joint executors and trustees of the said estate was and is incomplete in that no mention is made therein of a number of the principal and most valuable assets of the said estate, in particular the following: 250 shares of the capital stock of Amiesite Asphalt Limited; 200 shares of the capital stock of Ontario Amiesite Limited; the sum of $84,314.60 declared as a dividend on the 31st day of March 1925 by a resolution of the board of directors of Quinlan, Robertson & Janin Limited on 1,151 shares of the capital stock of the said Quinlan, Robertson & Janin Limited then owned by the said Hugh Quinlan and mentioned in the said inventory as an asset of the said estate; the interest of the said estate in certain monies payable to the said Angus W. Robertson by Peter Lyall & Sons Limited, the said interest having been established by a writing executed on the 2nd day of July 1926 by the said Angus W. Robertson and the said Hugh Quinlan;

"That the said inventory made by the said Capital Trust Corporation Limited and the said Angus W. Robertson as joint executors and trustees of the said estate was replete with false appraisals of a number of the principal and most valuable assets of the said estate, and that, in particular, 1,000 preferred shares and 499 common shares of the capital stock of Fuller Gravel Limited, having a total value of $90,000.00, were appraised in the said inventory as having a total value of $1.00;

"That the resignation of the said Angus W. Robertson on the said 19th day of February 1931 as one of the joint executors and trustees of the said estate was pursuant to a judgment rendered against him on the 5th of February 1931 by the Honourable Mr. Justice Martineau one of the judges of the Superior Court of the Province of Quebec, in an action bearing number A-36664 of the records of the said Superior Court, District of Montreal, instituted on the 25th day of October 1928 by the said Dame Ethel Quinlan and her sister, Dame Margaret Quinlan, by which judgment the purchase by the said Angus W. Robertson from the said estate of 1,151 shares of the capital stock of the said Quinlan, Robertson & Janin Limited, 250 shares of the capital stock of the said Amiesite Asphalt Limited, 200 shares of the capital stock of the said Ontario Amiesite Limited and 400 shares of the capital stock of the said Fuller Gravel Limited was annulled, and that in delivering the said judgment the said Honourable Mr. Justice Martineau declared that in the event of the said Angus W. Robertson appealing therefrom "comme c'est son droit de le faire s'il le croit mal fondé, il devrait, dans les cas où les demanderesses n'en appelleraient pas elles-mêmes, résigner ses fonctions et se nommer un successeur, comme le testament lui en donne le droit, en ayant le soin de choisir un homme qui lui est absolument étranger, afin que celui-là soit libre de combattre ses prétentions, et que les héritiers ne puissent douter de son impartialité";

"That the resignation of the said Angus W. Robertson on the said 19th day of February 1931 as one of the joint executors and trustees of the said estate was made two days before the said Angus W. Robertson entered an appeal from the said judgment, but that in appointing the said General Trust of Canada to be his successor as one of the joint executors and trustees of the said estate the said Angus W. Robertson acted in total disregard of the advice tendered him by the said Mr. Justice Martineau, to wit, that the said Angus W. Robertson should select and appoint as his successor one whose impartiality the heirs of the said Hugh Quinlan could not question;

"That the said General Trust of Canada assumed its functions as one of the joint executors and trustees of the said estate without making any inventory in conformity with the provisions of article 919 of the Civil Code of Lower Canada, and that the said Dame Ethel Quinlan has never been informed by the said Capital Trust Corporation Limited or by the said General Trust of Canada and does not yet know whether any inventory, in conformity with the provisions of article 919 of the Civil Code of Lower Canada or not, has ever been made by the said Capital Trust Corporation Limited and the said General Trust of Canada;

"That no account of his administration as one of the joint executors and trustees of the said estate has ever been rendered by the said Angus W. Robertson to the said Capital Trust Corporation Limited and the said General Trust of Canada as joint executors and trustees of the said estate, and that no account of his administration has ever been required of him by the said Capital Trust Corporation Limited and the said General Trust of Canada since the said 19th day of February 1931;

"That by paragraph "j" of the fourth article of his said will the said Hugh Quinlan empowered his said executors and trustees to employ the said Capital Trust Corporation Limited as "agent, accountant and manager" of the said estate, "with power to do and execute the detail work in connection with the administration" thereof, "to keep the books of account, to make collections and execute minor acts of administration", and provided that for such services the Capital Trust Corporation Limited should be entitled to receive "its usual commission";

"That since the death of the said Hugh Quinlan the said Capital Trust Corporation Limited has been employed for the purposes set out in the said paragraph "j" of the fourth article of the said will, but the services thus rendered were negligently and unfaithfully performed by the said Capital Trust Corporation Limited: in particular, the books of account were irregularly and inaccurately kept, the whole, as more fully appears hereunder, for the purpose of concealing from the said Dame Ethel Quinlan and the other beneficiaries under the said will various and numerous acts of maladministration and malversation from time to time committed by the said Capital Trust Corporation Limited and the said Angus W. Robertson as joint executors and trustees of the said estate;

"That in furtherance of the said purpose of concealing the said acts of maladministration and malversation from the said Dame Ethel Quinlan and the other beneficiaries under the said will the said Capital Trust Corporation Limited and the said Angus W. Robertson engaged P. C. Shannon, Son & Co. as auditors of the said estate, and that the said P. C. Shannon, Son & Co. never made a proper and regular audit of the affairs of the said estate, but accepted without verification or critical examination the statements of the said Capital Trust Corporation Limited and declared the accounting of the said Capital Trust Corporation Limited to have been carried out in an accurate manner;

"That the further retention of the said P. C. Shannon, Son & Co. as auditors of the said estate constitutes a useless and unnecessary expenditure inasmuch as the statements of the said P. C. Shannon, Son & Co. can inspire no greater confidence than those of the said Capital Trust Corporation Limited;

"That the said estate is a shareholder of A. W. Robertson Limited, a body corporate and politic having its head office in the city of Montreal, and is the owner of 1,586 shares of the capital stock thereof;

"That at various dates prior to the 10th day of April 1929 divers sums of money, making a total of $254.701.11, were paid by the said A. W. Robertson Limited to M. J. O'Brien Limited, a body corporate and politic and having its head office in the city of Ottawa, and that subsequent to the said date divers further sums were paid to the said M. J. O'Brien Limited by the said A. W. Robertson Limited;

"That the said sums paid to the said M. J. O'Brien Limited by the said A. W. Robertson Limited were paid without legal cause, and that the said A. W. Robertson Limited was under no obligation to pay them, or any of them, to the said M. J. O'Brien Limited;

"That on the 27th day of February 1924 a contract for the construction of the eighth section of the Welland Ship Canal was concluded by the said A. W. Robertson Limited with the Government of the Dominion of Canada;

"That the said sums paid to the said M. J. O'Brien Limited by the said A. W. Robertson Limited were paid in virtue of an agreement alleged to have intervened in or about the month

of February 1924 between the said A. W. Robertson Limited, the said M. J. O'Brien Limited and one Michael J. O'Brien;

"That by the said agreement alleged to have intervened between the said A. W. Robertson Limited, M. J. O'Brien Limited and Michael J. O'Brien the said A. W. Robertson Limited granted to the said M. J. O'Brien Limited one quarter interest in the said contract for the construction of the eighth section of the Welland Ship Canal, and the said Michael J. O'Brien became liable to the said A. W. Robertson Limited, jointly and severally with the said M. J. O'Brien Limited, for the performance of such obligations as were assumed by the said M. J. O'Brien Limited;

"That at the time of the said agreement alleged to have intervened between the said A. W. Robertson Limited, M. J. O'Brien Limited and Michael J. O'Brien the said Michael J. O'Brien was a member of the Senate of Canada, and that the said agreement was in contravention of the Senate and House of Commons Act, Revised Statutes of Canada, 1906, chapter 10, and was null, void and of no legal effect;

"That the said agreement alleged to have intervened between the said A. W. Robertson Limited, M. J. O'Brien Limited and Michael J. O'Brien was negotiated and verbally concluded on behalf of the said A. W. Robertson Limited by the said Angus W. Robertson, its then president, and on behalf of the said M. J. O'Brien Limited by the said Michael J. O'Brien and one J. Ambrose O'Brien, two of its directors and officers, and remained clandestine so long as the said Michael J. O'Brien continued to be a member of the Senate of Canada;

"That the said Michael J. O'Brien ceased to be a member of the Senate of Canada on the 1st day of September 1925, and that on the 17th day of November 1925 the said Michael J. O'Brien acknowledged in writing his participation in the said agreement alleged to have intervened between himself and the said A. W. Robertson Limited and M. J. O'Brien Limited;

"That on the 23rd day of November 1926.the said A. W. Robertson Limited, by its then president the said Angus W. Robertson, wrote to the said J. Ambrose O'Brien as follows:

> "As requested in your letter of the 22nd instant, we herewith return the Undertaking which your father signed some time ago. It would be much better if the Undertaking were dated much earlier. All monies in our books

will show as payments to M. J. O'Brien Limited, and the one-quarter interest in Section No. 8 of Welland Ship Canal is in the name of M. J. O'Brien Limited";

"That it was only after the action hereinabove referred to had been instituted against the said Angus W. Robertson by the said Dame Ethel Quinlan and the said Dame Margaret Quinlan, to wit, on the 10th day of December 1928 that the board of directors of the said A. W. Robertson Limited first acknowledged the said agreement alleged to have intervened between the said A. W. Robertson Limited, M. J. O'Brien Limited and Michael J. O'Brien the said acknowledgment being by a resolution in the following terms:

"That, at the request of M. J. O'Brien Limited, this company does formally admit and confirm the acceptance of the undivided one quarter share and interest of M. J. O'Brien Limited in the Welland Ship Canal (Section No. 8) contract obtained by this company in February 1924, and in respect of which substantial payments have from time to time heretofore been made by this company to said M. J. O'Brien Limited";

"That on the said 10th of December 1928 the said board of directors of A. W. Robertson Limited was composed of the said Angus W. Robertson, one Louis N. Leamy and the late Dr. B. G. Connolly, then general manager of the said Capital Trust Corporation Limited, and that the said Angus W. Robertson, Louis N. Leamy and Dr. B. G. Connolly participated in the said resolution acknowledging the said agreement alleged to have intervened between the said A. W. Robertson Limited, M. J. O'Brien Limited and Michael J. O'Brien;

"That on the said 10th day of December 1928 the said Michael J. O'Brien and the said J. Ambrose O'Brien were directors of the said Capital Trust Corporation Limited, and that the said Michael J. O'Brien is still a director and honorary president of the said Capital Trust Corporation Limited;

"That the said resolution adopted on the 10th day of December 1928 by the board of directors of the said A. W. Robertson Limited acknowledging the said agreement alleged to have intervened between the said A. W. Robertson Limited, M. J. O'Brien Limited and Michael J. O'Brien was fraudulently contrived and manoeuvered by the said Angus W. Robertson, Louis N. Leamy,

Dr. B. G. Connolly and J. Ambrose O'Brien for the purpose of assuring the continuation of the payments until then made from time to time by the said A. W. Robertson Limited to the said M. J. O'Brien Limited, and was in fraud of the rights of the shareholders of the said A. W. Robertson Limited;

"That on the 9th day of October 1929 the board of directors of the said A. W. Robertson Limited unanimously adopted a resolution to the effect that the said company be wound up under the provisions of the Quebec Winding up Act (Revised Statutes of Quebec, 1925, chapter 225) and that one Charles A. Shannon and the said Louis N. Leamy be appointed liquidators;

"That on the said 9th day of October 1929 the board of directors of the said A. W. Robertson Limited was composed of the said Angus W. Robertson, Louis N. Leamy, Dr. B. G. Connolly, J. Ambrose O'Brien and the Honourable J. L. Perron, all of whom participated in the said resolution;

"That for several years prior to the said 9th day of October 1929 the said Charles A. Shannon had been the auditor of the said A. W. Robertson Limited, and that, contrary to his duty as auditor, he had approved each and every of the payments until then made by the said A. W. Robertson Limited to the said M. J. O'Brien Limited;

"That at a meeting of shareholders of the said A. W. Robertson Limited held on the said 9th day of October 1929 the said resolution of the board of directors to the effect that the said company be wound up and that the said Charles A. Shannon and Louis N. Leamy be appointed liquidators was unanimously ratified and confirmed, and the said Angus W. Robertson and the said Dr. B. G. Connolly were appointed inspectors;

"That at the said meeting of shareholders held on the 9th day of October 1929 the holders of 3,173 shares of the total issue of 3,175 shares were present in person, to wit: the said Angus W. Robertson, 1,584 shares; the said Louis N. Leamy, 1 share; the said Dr. B. G. Connolly, 1 share; the said J. Ambrose O'Brien, 1 share; the estate of the said Hugh Quinlan (represented by its joint executors, the said Angus W. Robertson and the said Capital Trust Corporation Limited, the latter acting by the said Dr. B. G. Connolly) 1,586 shares;

"That the said resolution adopted on the 9th day of October 1929 by the board of directors of the said A. W. Robertson Limited and its ratification by the meeting of shareholders of the said company were fraudulently contrived and manoeuvered by the said Angus W. Robertson, Louis N. Leamy, Dr. B. G. Connolly and J. Ambrose O'Brien in furtherance of the aforesaid purpose of assuring the continuance of the payments until then made from time to time by the said A. W. Robertson Limited to the said M. J. O'Brien Limited, as well for the purpose of enabling the said Angus W. Robertson to achieve, to the detriment of the said A. W. Robertson Limited and the shareholders thereof, contrary to his duty as director and president of the said A. W. Robertson Limited, and for his own personal benefit and advantage, the creation of Angus Robertson Limited, a body corporate and politic having its head office in the city of Montreal, in order that, through the instrumentality of the said Angus Robertson Limited, he, the said Angus W. Robertson, might carry on the business theretofore engaged in by the said A. W. Robertson Limited and personally retain the entire profit thereof;

"That the said Charles A. Shannon and Louis N. Leamy, both then fully conversant with all that had been done prior to the said 9th day of October 1929 and aware of the illegality of the said agreement alleged to have intervened between the said A. W. Robertson Limited, M. J. O'Brien Limited and Michael J. O'Brien, undertook and are presently engaged in the winding up of the said A. W. Robertson Limited and as liquidators of the said A. W. Robertson Limited have paid divers large sums of money to the said M. J. O'Brien Limited in virtue of the said alleged agreement;

"That in the immediate future further sums, as yet neither determined nor determinable in amount but in any event in excess of $150,000.00, will become due and payable to the said M. J. O'Brien Limited in virtue of the said agreement alleged to have intervened between the said A. W. Robertson Limited, M. J. O'Brien Limited and Michael J. O'Brien, and that the said Charles A. Shannon and Louis N. Leamy as liquidators of the said A. W. Robertson Limited intend and propose to pay such further sums to the said M. J. O'Brien Limited with all possible dispatch upon receipt from the Government of the Dominion of Canada of the balance of the monies still to be paid by the said Government in virtue of the contract with it concluded on the 27th day of February 1924 by the said A. W. Robertson Limited;

"That the payment of the said sums paid to the said M. J. O'Brien Limited by the said Charles A. Shannon and Louis N. Leamy as liquidators of the said A. W. Robertson Limited was approved by the inspectors appointed by the said resolution adopted by the said meeting of shareholders of A. W. Robertson Limited held on the said 9th day of October 1929, to wit, the said Angus W. Robertson and Dr. B. G. Connolly;

"That all monies paid to the said M. J. O'Brien Limited by the said A. W. Robertson Limited or the liquidators thereof in virtue of the said agreement alleged to have intervened between the said A. W. Robertson Limited, M. J. O'Brien Limited and Michael J. O'Brien or the acknowledgment thereof contained in the said resolution adopted on the said 10th day of December 1928 by the board of directors of the said A. W. Robertson Limited are recoverable from the said M. J. O'Brien Limited by the liquidators of the said A. W. Robertson Limited, and that the said liquidators are under no duty to pay any further sum due or to become due in virtue of the said alleged agreement;

"That the payments made to the said M. J. O'Brien Limited by the said A. W. Robertson Limited and the liquidators thereof in virtue of the said alleged agreement have diminished the value of the said 1,586 shares of the capital stock of the said A. W. Robertson Limited owned by the said estate by at least $200,000.00, and that any further payment made to the said M. J. O'Brien Limited will still further diminish the value of the said 1,586 shares;

"That for the reasons hereinabove set out it has long been the duty and now is the urgent duty of the said Capital Trust Corporation Limited and of the said General Trust of Canada as executors and trustees of the said estate to cause to be recovered by the liquidators of the said A. W. Robertson Limited all the said monies paid to the said M. J. O'Brien Limited by the said A. W. Robertson Limited and the liquidators thereof, and to prevent the payment of any further sums due or to become due in virtue of the said alleged agreement;

"That for the reasons hereinabove set out it has long been the duty and now is the urgent duty of the said Capital Trust Corporation Limited and of the said General Trust of Canada as executors and trustees of the said estate to cause the said Charles A. Shannon and Louis N. Leamy to be removed from and destituted of the office of liquidators of the said A. W. Robertson Limited;

"That for the reasons hereinabove set out it has long been the duty and now is the urgent duty of the said Capital Trust Corporation Limited and of the said General Trust of Canada as executors and trustees of the said estate to cause the said agreement alleged to have intervened between the said A. W. Robertson Limited, M. J. O'Brien Limited and Michael J. O'Brien and the acknowledgment thereof contained in the said resolution adopted on the 10th day of December 1928 by the board of directors of the said A. W. Robertson Limited to be declared null, void and of no legal effect;

"That for the reasons hereinabove set out it has long been the duty and now is the urgent duty of the said Capital Trust Corporation Limited and of the said General Trust of Canada as executors and trustees of the said estate to cause the said Angus W. Robertson to account to the liquidators of the said A. W. Robertson Limited for the profits, benefits and advantages by the said Angus W. Robertson derived from the creation and exploitation of the said Angus Robertson Limited and among other things to cause the said Angus W. Robertson to convey to the liquidators of the said A. W. Robertson Limited all of the shares of the capital stock of the said Angus Robertson Limited held by him, the said Angus W. Robertson;

"That in the course of the winding up of the said A. W. Robertson Limited the liquidators of the said company, the said Charles A. Shannon and Louis N. Leamy divided certain of the assets of the said company into two portions declared by the said liquidators to be of equal value, conveying one of the said portions to the said estate and the other to the said Angus W. Robertson, but that the division of the assets so conveyed was fraudulently made by the said liquidators at the instigation of the said Angus W. Robertson, with the result that the value of the portion conveyed to the said estate was only a small fraction of the value of the portion conveyed to the said Angus W. Robertson;

"That as a result of the fraudulent concert of the said Angus W. Robertson and one Emmanuel Ludger Parent, manager of the estates department of the said Capital Trust Corporation Limited, the said Quinlan, Robertson & Janin Limited was enabled to remove and appropriate to itself, without paying or undertaking to pay therefore, considerable machinery belonging to the said A. W. Robertson Limited, and that for several years past the said machinery has been treated and is still being treated by the said Quinlan, Robertson & Janin Limited as its own property;

"That by a written agreement made on the 2nd day of July 1926 the said Angus W. Robertson promised to pay to the said Hugh Quinlan one half of the sum of $75,000.00 then owing to the said Angus W. Robertson, stipulating, however, that in the event of the said Hugh Quinlan predeceasing him before the due date of the final or any other payment to be made by the said Peter Lyall & Sons Limited the estate of the said Hugh Quinlan should receive only one third of the payment or payments remaining due; that subsequent to the death of the said Hugh Quinlan the said Angus W. Robertson received from the said Peter Lyall & Sons Limited three payments of $25,000.00 each, but paid to the said estate its share of only two of the said payments and refused to pay its share of the third; and that although the said Angus W. Robertson should have paid the said estate's share of the said third payment of $25,000.00 several years ago the said Capital Trust Corporation Limited and the said General Trust of Canada have done nothing as joint executors and trustees of the said estate to recover the said share from the said Angus W. Robertson;

"That at the death of the said Hugh Quinlan there was due him by the said Quinlan, Robertson & Janin Limited the sum of $84,314.60, balance of a dividend declared on the 31st day of March 1925 by the board of directors of the said company on the 1,151 shares of the capital stock thereof belonging to the said Hugh Quinlan, and that to the knowledge of the said Capital Trust Corporation Limited and the said General Trust of Canada the said sum of $84,314.60 has been wrongfully and illegally paid to the said Angus W. Robertson since the death of the said Hugh Quinlan, but the said Capital Trust Corporation Limited and the said General Trust of Canada have done nothing as joint executors and trustees of the said estate to recover from the said Quinlan, Robertson & Janin Limited the amount of the said dividend, which should have been paid to the said estate;

"That in the month of April 1927 the said Angus W. Robertson and one Alban Janin, then directors and officers of Quinlan, Robertson & Janin Limited and Amiesite Asphalt Limited and using the monies of the said companies therefor, caused Macurban Asphalt Limited, a body corporate and politic having its head office in the city of Montreal, to be organized in order that, through the instrumentality of the said Macurban Asphalt Limited, the said Angus W. Robertson and the said Alban Janin might engage, contrary to their plain duty as directors and officers of the said Quinlan, Robertson & Janin Limited and Amie-

site Asphalt Limited, in the asphalt and paving business and divert to the said Macurban Asphalt Limited, the entire share issue of which was held by the said Angus W. Robertson and the said Alban Janin and their prête-noms, the profits which would otherwise have accrued to the said Quinlan, Robertson & Janin Limited and the said Amiesite Asphalt Limited, the whole to the great detriment of the said companies and the shareholders thereof;

"That the said Angus W. Robertson and the said Alban Janin, then directors and officers of the said Quinlan, Robertson & Janin Limited and Amiesite Asphalt Limited, personally, to the exclusion of the said Quinlan, Robertson & Janin Limited and Amiesite Asphalt Limited and contrary to their duty as directors and officers of the said companies, contracted for divers works in connection with the construction of the road known as Taschereau Boulevard, and failed and neglected to account to the said Quinlan. Robertson & Janin Limited and the said Amiesite Asphalt Limited for the profits by them made in the execution of the works so contracted for;

"That in the month of November 1927 the said Angus W. Robertson appropriated to himself without color of right 200 shares of the capital stock of Ontario Amiesite Limited, neither paying nor undertaking to pay the value thereof;

"That the said Angus W. Robertson, then one of the joint executors and trustees of the said estate and as such unable legally to purchase from the said estate, purchased for himself through persons interposed 1,000 preferred shares and 499 common shares of the capital stock of the said Fuller Gravel Limited and resold the said shares at a profit of $40,000.00 but failed and neglected to account to the said estate for the profit thus illegally made;

"That although for several years the said Capital Trust Corporation Limited has been cognizant or able to become cognizant of each and every of the facts hereinabove set out, it has neglected and failed, contrary to its duty as one of the joint executors and trustees of the said estate, to remedy or cause to be remedied any of the hereinabove declared wrongs, and that the said Capital Trust Corporation Limited still persists in its said neglect;

"That although long before its appointment on the said 19th day of February 1931 by the said Angus W. Robertson as

one of the joint executors and trustees of the said estate the General Trust of Canada had been cognizant or able to become cognizant of each and every of the facts hereinabove set out, it has neglected and failed, contrary to its duty as one of the joint executors and trustees of the said estate, to remedy any of the hereinabove declared wrongs, and that the said General Trust of Canada still persists in its said neglect;

"That by reason of the persistent neglect and failure of the said Capital Trust Corporation Limited and the said General Trust of Canada as joint executors and trustees of the said estate to remedy or cause to be remedied any of the hereinabove declared wrongs the assets of the said estate have long been wasted and depleted and are presently exposed to serious further waste and depletion;

"That by reason of her interest in the said estate the said Dame Ethel Quinlan is entitled to take all measures necessary or useful to prevent such further waste and depletion of the assets of the said estate and to recover insofar as such recovery may still be possible the assets lost, as well as to cause to be remedied each and every of the wrongs, by whomsoever committed, as a result of which the assets of the said estate have failed to be increased or are likely to fail to be increased";

THAT for the foregoing reasons at the request aforesaid and speaking as aforesaid I required the said Capital Trust Corporation Limited as one of the joint executors and trustees of the said estate to do within fifteen days thereof all things capable of being done in order;

"That there be made a complete and faithful inventory of the said estate in conformity with article 919 of the Civil Code of Lower Canada;

"That such action as the law provides be instituted against the said Angus W. Robertson for the purpose of compelling him to render an account of his administration as one of the joint executors and trustees of the said estate, unless within eight days hereof he shall have rendered such account in the manner and form by law provided;

"That the said P. C. Shannon, Son & Co. be dismissed as auditors of the said estate and that there be appointed as such auditors a chartered accountant, or firm of chartered acountants,

of unquestioned and unquestionable competence, integrity and responsibility, any one of the following being acceptable to the said Dame Ethel Quinlan: Clarkson, McDonald, Currie & Co., Peat, Marwick, Mitchell & Co., Price, Waterhouse & Co. and R. Schurman & Co.;

"That the said Charles A. Shannon and the said Louis N. Leamy be removed from and destituted of the office of liquidators of the said A. W. Robertson Limited and replaced by one or more persons of unquestioned and unquestionable competence, integrity and responsibility;

"That the inspectors of the said A. W. Robertson Limited be removed from and destituted of their office and replaced by persons of unquestioned and unquestionable competence, integrity and responsibility;

"That the monies paid as aforesaid to the said M. J. O'Brien Limited by the said A. W. Robertson Limited and the liquidators thereof be recovered, and that the payment of any further sum due or to become due in virtue of the said agreement alleged to have intervened between the said A. W. Robertson Limited, M. J. O'Brien Limited and Michael J. O'Brien and the acknowledgment thereof contained in the said resolution adopted on the 10th day of December 1928 by the board of directors of the said A. W. Robertson Limited be prevented;

"That the said agreement alleged to have intervened between the said A. W. Robertson Limited, M. J. O'Brien Limited and Michael J. O'Brien and the acknowledgment thereof contained in the said resolution adopted on the 10th day of December 1928 by the board of directors of the said A. W. Robertson Limited be declared null, void and of no legal effect;

"That the said Angus W. Robertson be compelled to account to the liquidators of the said A. W. Robertson Limited for the profits, benefits and advantages whatsoever by him derived from the creation and exploitation of the said Angus Robertson Limited ,and that he be made to convey or cause to be conveyed to the liquidators of the said A. W. Robertson Limited all of the shares of the capital stock of the said Angus Robertson Limited held by himself, the said Angus W. Robertson, or by his prête-noms;

"That the assets of the said A. W. Robertson Limited fraudulently conveyed as aforesaid to the said Angus W. Robertson by the said Charles A. Shannon and Louis N. Leamy as liquidators of the said A. W. Robertson Limited be annulled, and that the said assets or the value thereof be recovered from the said Angus W. Robertson by the liquidators of the said A. W. Robertson Limited;

"That the said Quinlan, Robertson & Janin Limited be compelled to pay to the liquidators of the said A. W. Robertson Limited the value of the machinery belonging to the said A. W. Robertson Limited which as a result of the fraudulent concert between the said Angus W. Robertson and the said Emmanuel Ludger Parent the said Quinlan, Robertson & Janin Limited has removed and appropriated to itself;

"That the monies due to the said estate from the said Angus W. Robertson in virtue of the said written agreement made on the 2nd day of July 1926 by the said Hugh Quinlan be recovered by the said estate from the said Angus W. Robertson;

"That the monies due to the said estate by the said Quinlan, Robertson & Janin Limited in virtue of the dividend declared on the 31st day of March 1925 by the board of directors of the said company be recovered by the said estate from the said Quinlan, Robertson & Janin Limited;

"That the said 200 shares of Ontario Amiesite Limited illegally appropriated by the said Angus W. Robertson, or their value, be recovered by the said estate;

"That the said Angus W. Robertson be compelled to account to the said estate for the profits by him made as a result of his illegal purchase and subsequent resale of the said 1,000 preferred shares and 499 common shares of the said Fuller Gravel Limited;

"That the said Angus W. Robertson and the said Alban Janin be compelled to account to the said Quinlan, Robertson & Janin Limited and the said Amiesite Asphalt Limited for the profits, benefits and advantages whatsoever by them illegally derived from the creation and exploitation of the said Macurban Asphalt Limited, and that they be compelled to convey or cause to be conveyed to the said Quinlan, Robertson & Janin Limited and the said Amiesite Asphalt imited all of the shares of the ca-

pital stock of the said Macurban Asphalt Limited held by them, the said Angus W. Robertson and the said Alban Janin, or by their prête-noms;

"That the said Angus W. Robertson and the said Alban Janin be compelled to acount to the said Quinlan, Robertson & Janin Limited and the said Amiesite Asphalt Limited for all profits, benefits and advantages whatsoever by them illegally derived from the construction of the said road known as Taschereau Boulevard"; the said Dame Ethel Quinlan being ready and willing to communicate to the said Capital Trust Corporation Limited and the said General Trust of Canada as joint executors and trustees of the said estate such further evidence as they might require in order the better to comply with the requests thus made upon them;

AND thereupon I required the said Capital Trust Corporation Limited to declare, what, if anything, it had done since the said 29th day of September 1933 in order that there be made a complete and faithful inventory of the said estate in conformity with article 919 of the Civil Code of Lower Canada; to which demand I received for answer: "We have referred the whole matter to our Solicitor Mr. Aimé Geoffrion and refer you to him for the particulars you require in the question you have put."

AND I further required the said Capital Trust Corporation Limited to declare what, if anything, it had done since the said 29th day of September 1933 in order that such action as the law provides be instituted against the said Angus W. Robertson for the purpose of compelling him to render an account of his administration as one of the joint executors and trustees of the said estate, unless within eight days of the said 29th day of September 1933 such acount was rendered by him in the manner and form by law provided; to which demand I received for answer: "We have referred the whole matter to our Solicitor Mr. Aimé Geoffrion and refer you to him for the particulars you require in the question you have put."

AND I further required the said Capital Trust Corporation Limited to declare what, if anything, it had done since the said 29th day of September 1933 in order that the said P. C. Shannon, Son & Co. be dismissed as auditors of the said estate and that there be appointed as such auditors a chartered acountant, or firm of chartered acountants, of unquestioned and unquestionable competence, integrity and responsibility; to which demand I received

for answer: "We have referred the whole matter to our Solicitor Mr. Aimé Geoffrion and refer you to him for the particulars you require in the question you have put.

AND I further required the said Capital Trust Corporation Limited to declare what, if anything, it had done since the said 29th day of September 1933 in order that the said Charles A. Shannon and the said Louis N. Leamy be removed from and destituted of the office of liquidators of the said A. W. Robertson Limited and replaced by one or more persons of unquestioned and unquestionable competence, integrity and responsibility; to which demand I received for answer: "We have referred the whole matter to our Solicitor Mr. Aimé Geoffrion and refer you to him for the particulars you require in the question you have put."

AND I further required the said Capital Trust Corporation Limited to declare what, if anything, it had done since the said 29th day of September 1933 in order that the inspectors of the said A. W. Robertson Limited be removed from and destituted of their office and replaced by persons of unquestioned and unquestionable competence, integrity and responsibility; to which demand I received for answer: "We have referred the whole matter to our Solicitor Mr. Aimé Geoffrion and refer you to him for the particulars you require in the question you have put."

AND I further required the said Capital Trust Corporation Limited to declare what, if anything, it had done since the said 29th day of September 1933 in order that the monies paid as aforesaid to the said M. J. O'Brien Limited by the said A. W. Robertson Limited and the liquidators thereof be recovered, and that the payment of any further sum due or to become due in virtue of the said agreement alleged to have intervened between the said A. W. Robertson Limited, M. J. O'Brien Limited and Michael J. O'Brien and the acknowledgment thereof contained in the said resolution adopted on the 10th day of December 1928 by the board of directors of the said A. W. Robertson Limited be prevented; to which demand I received for answer: "We have referred the whole matter to our Solicitor Mr. Aimé Geoffrion and refer you to him for the particulars you require in the question you have put."

AND I further required the said Capital Trust Corporation Limited to declare what, if anything, it had done since the said 29th day of September 1933 in order that the said agreement alleged to have intervened between the said A. W. Robertson Limited,

M. J. O'Brien Limited and Michael J. O'Brien and the acknowledgment thereof contained in the said resolution adopted on the 10th day of December 1928 by the board of directors of the said A. W. Robertson Limited be declared null, void and of no legal effect; to which demand I received for answer: "We have referred the whole matter to our Solicitor Mr. Aimé Geoffrion and refer you to him for the patriculars you require in the question you have put."

AND I further required the said Capital Trust Corporation Limited to declare what, if anything, it had done since the said 29th day of September 1933 in order that the said Angus W. Robertson be compelled to account to the liquidators of the said A. W. Robertson Limited for the profits, benefits and advantages whatsoever by him derived from the creation and exploitation of the said Angus Robertson Limited, and that he be made to convey or cause to be conveyed to the liquidators of the said A. W. Robertson Limited all of the shares of the capital stock of the said Angus Robertson Limited held by himself, the said Angus W. Robertson, or by his prête-noms; to which demand I received for answer: "We have referred the whole matter to our Solicitor Mr. Aimé Geoffrion, and refer you to him for the particulars you require in the question you have put."

AND I further required the said Capital Trust Corporation Limited to declare what, if anything, it had done since the said 29th day of September 1933 in order that the assets of the said A. W. Robertson Limited fraudulently conveyed as aforesaid to the said Angus W. Robertson by the said Charles A. Shannon and Louis N. Leamy as liquidators of the said A. W. Robertson Limited be annulled and that the said assets or the value thereof be recovered from the said Angus W. Robertson by the liquidators of the said A. W. Robertson Limited; to which demand I received for answer: "We have referred the whole matter to our Solicitor Mr. Aimé Geoffrion and refer you to him for the particular you require in the question you have put."

AND I further required the said Capital Trust Corporation Limited to declare what, if anything, it had done since the said 29th day of September 1933 in order that the said Quinlan, Robertson & Janin Limited be compelled to pay to the liquidators of the said A. W. Robertson Limited the value of the machinery belonging to the said A. W. Robertson Limited which as a result of the fraudulent concert between the said Angus W. Robertson and

the said Emmanuel Ludger Parent the said Quinlan, Robertson & Janin Limited has removed and appropriated to itself; to which demand I received for answer: "We have referred the whole matter to our Solicitor Mr. Aimé Geoffrion, and refer you to him for the particulars you require in the question you have put."

AND I further required the said Capital Trust Corporation Limited to declare what, if anything, it had done since the said 29th day of September 1933 in order that the monies due to the said estate from the said Angus W. Robertson in virtue of the said written agreement made on the 2nd day of July 1926 by the said Hugh Quinlan be recovered by the said estate from the said Angus W. Robertson; to which demand I received for answer: "We have referred the whole matter to our Solicitor Mr. Aimé Geoffrion and refer you to him for the particulars you require in the question you have put."

AND I further required the said Capital Trust Corporation Limited to declare what, if anything, it had done since the said 29th day of September 1933 in order that the monies due to the said estate by the said Quinlan, Robertson & Janin Limited in virtue of the dividend declared on the 31st day of March 1925 by the board of directors of the said company be recovered by the said estate from the said Quinlan, Robertson & Janin Limited; to which demand I received for answer: "We have referred the whole matter to our Solicitor Mr. Aimé Geoffrion and refer you to him for the particulars you require in the question you have put."

AND I further required the said Capital Trust Corporation Limited to declare what, if anything, it had done since the said 29th day of September 1933 in order that the said 200 shares of Ontario Amiesite Limited illegally appropriated by the said Angus W. Robertson, or their value, be recovered by the said estate; to which demand I received for answer: We have referred the whole matter to our Solicitor Mr. Aimé Geoffrion and refer you to him for the particulars you require in the question you have put."

AND I further required the said Capital Trust Corporation Limited to declare what, if anything, it had done since the said 29th day of September 1933 in order that the said Angus W. Robertson be compelled to account to the said estate for the profits by him made as a result of his illegal purchase and subsequent resale of the said 1,000 preferred shares and 499 common shares of the

said Fuller Gravel imited; to which demand I received for answer: "We have referred the whole matter to our Solicitor Mr. Aimé Geoffrion and refer you to him for the particulars you require in the question you have put."

AND I further required the said Capital Trust Corporation Limited to declare what, if anything, it had done since the said 29th day of September 1933 in order that the said Angus W. Robertson and the said Alban Janin be compelled to account to the said Quinlan, Robertson & Janin Limited and the said Amiesite Asphalt Limited for the profits, benefits and advantages whatsoever by them illegally derived from the creation and exploitation of the said Macurban Asphalt Limited, and that they be compelled to convey or cause to be conveyed to the said Quinlan, Robertson & Janin Limited and the said Amiesite Asphalt Limited all of the shares of the capital stock of the said Macurban Asphalt Limited held by them, the said Angus W. Robertson and the said Alban Janin, or by their prête-noms; to which demand I received for answer: "We have referred the whole matter to our Solicitor Mr. Aimé Geoffrion and refer you to him for the particulars you require in the question you have put."

AND I further required the said Capital Trust Corporation Limited to declare what, if anything, it had done since the said 29th day of September 1933 in order that the said Angus W. Robertson and the said Alban Janin be compelled to account to the said Quinlan, Robertson & Janin Limited and the said Amiesite Asphalt Limited for all profits, benefits and advantages whatsoever by them illegally derived from the construction of the said road known as Taschereau Boulevard; to which demand I received for answer: "We have referred the whole mater to our Solicitor Mr. Aimé Geoffrion and refer you to him for the particulars you require in the question you have put."

DONE at Montreal under number three hundred and fifty four of my minutes on the day first above mentioned, an authentic copy hereof having been left with the said Capital Trust Corporation Limited, speaking as aforesaid, in order that the said Capital Trust Corporation Limited may not plead ignorance hereof.

(Signed) NOEL PICARD,
Notary

True Copy of the original
hereof remaining of record
in my office.
Noel Picard,
Notary.

PLAINTIFF'S EXHIBIT P-S-3 AT ENQUETE

Document from Aimé Geoffrion to Capital Trust Corporation Ltd.

COPY

GEOFFRION & PRUD'HOMME,
Advocates, Barristers, etc.,
112 St. James Street, West,
Montreal.

December 7th, 1933.

Capital Trust Corporation, Limited,
10 Metcalfe Street,
Ottawa, Ont.

Dear Sirs:

re: Estate Hugh Quinlan — Fyle 614
Mrs. Kelly's Protests

I am taking the last protest of October 17th, 1933 and I follow the requests contained at the end thereof.

The first request is in respect of the inventory which is alleged to be insufficient.

In the suit now pending before the Supreme Court taken by the present complainant and another, against A. W. Robertson and the Capital Trust Corporation, both personally and as executors, demand is made, Vol. 1, page 14, paragraph E, that the inventory prepared by defendants be set aside as incorrect, false and fraudulent.

The judgment of the Superior Court, Vol. 8, pages 788, 789 and 790, dismisses that demand and expressly states that the inventory, though incomplete at first, is now complete.

It is therefore obviously unnecessary to make a new inventory.

As a general proposition, it is not necessary to make a new inventory, whenever new items, whether disputed or not, are discovered nor when there is a change in the executorship.

If new items are discovered, whether admitted or disputed, they should be added with the necessary qualification in that respect.

The next request is that an action to account be taken against A. W. Robertson who has resigned as an executor.

Under the will, the Capital Trust Corporation is to be the agent acting in the management of the estate with power to do and execute the detailed work in connection with its administration, to keep the books of account, etc.

The Capital Trust Corporation has attended exclusively to that work.

It is still an executor.

The account of the retiring executor on his being replaced is due to the next executor and not to the heirs.

The new executor will have to account to the heirs, when the time comes, both for his period of administration and for that of his predecessor.

It is for him to say if he needs an account from the predecessor.

In this case it seems to me that the request for such an account would be useless, the executor who kept the books alone being still in office.

I understand that the balance sheet was established by the remaining executor when A. W. Robertson resigned.

The third demand is that Messrs. P. C. Shannon Son & Co. be dismissed as useless and incompetent.

I understand they were the auditors for the late Mr. Quinlan's affairs.

It would seem to me that an auditor of the estate is far from useless.

These are chartered accountants I find no evidence of their incompetent; their fee is very small; it is, however, for the

executors to decide, in their uncontrolled discretion, if an auditor is useful, and if these auditors are competent. If so, they may be kept.

I will suspend the 4th and 5th questions.

The 6th and 7th questions deal with the O'Brien matter.

The O'Brien matter was dealt with by the Superior Court Judge in the above mentioned case, Vol. 8, page 803, and the way it was handled by the executors is approved.

The complainant in this case has not appealed from that judgment. She alleges no new facts except the charge that the contract was illegal when made because Mr. O'Brien was a Senator.

Without going into details, there are so many doubtful questions of law and of fact involved in such a suit as the executors are asked to take that they are quite entitled to exercise their discretion and refuse to take it, particularly in view of the fact that it will be a suit *by the Company* in liquidation and not by the estate and the Company has confirmed the agreement since Mr. Quinlan's death, on advice of the Solicitor who is mentioned in the will as the one to advise the executors, that such a suit would involve the charge that Messrs. Quinlan and O'Brien were guilty of a corrupt act, a charge which, apart from casting odium on Mr. Quinlan would, if not proved, involve the Company and through it the estate in heavy expense and probably heavy damages.

From this answer it follows that the payments under this agreement must be continued.

It follows, in respect of the suspended questions 4 and 5, that the principal reason given why the liquidator of the Company and its inspectors should be dismissed, disappears.

The other reason, namely, that A. W. Robertson has not been prevented from forming a new Company, under his own name, to carry on a similar business, is obviously untenable. How and for what reason could he be prevented from doing so.

The next request is based on the fact just mentioned that A. W. Robertson founded a new Company, under the name of Angus Robertson & Co. Ltd., to carry on the asphalt business.

The suggestion is that he should hand over all the profits he made in that business and all the shares in that Company because, being a director of A. W. Robertson & Co., his incorporating that new Company and it was a breach of trust.

The former Company was being wound up.

I can see no justification whatever for that view.

The moment Quinlan was dead Robertson was quite free to refuse to work for his estate, and to begin working for himself alone. He could, therefore, insist on the winding-up of the former Company which he shared with the late Mr. Quinlan, and organize a new Company alone.

The next complaint is in respect of the division of assets of A . W. Robertson Ltd., when being wound up, between the estate and Angus Robertson.

The information given me is that two shares were made, as equal as possible. The Capital Trust Corporation was allowed first choice for the estate and chose what it thought was the better share, Angus Robertson taking the other.

There is, therefore, nothing in that complaint.

The next request is in respect of machinery alleged to have been taken without payment by Quinlan, Robertson & Janin Ltd. from A. W. Robertson Ltd.

I am informed that this was old machinery which was paid for at its full value.

There is, therefore, nothing in that complaint.

The next request is in respect of the Peter Lyall payments.

The question here should be investigated. The question is: Was a payment for $25,000.00 by Lyall Company due to 8th March, 1927, paid on the 20th., May while Mr. Quinlan lived and divided equally between the two interested parties, or was it paid only on the 3rd October, after his death, in which case Robertson does owe one-third to the estate?

The next request is in respect of the $84,314.60 dividend declared on the 31st March, 1925.

This is also a debatable question but if Robertson loses his appeal in Supreme Court, it seems clear that he will have to return that amount.

If he wins, the question of his liability for its return will arise and it may very well be that he shall have to repay but the obvious thing to me seems to be to wait till the judgment is rendered as it may well settle the question.

The amount involved is only one-third of the above sum.

The question of the 200 shares of the Ontario Amiesite is at present in litigation in that suit; so is the question of the 1000 preferred shares and 499 common shares of the Fuller Gravel Ltd.

Those questions will be settled by that judgment.

The two last questions, namely, whether A. W. Robertson is liable towards Quinlan, Robertson & Janin Ltd. and Amiesite Asphalt Ltd. for the profits he made jointly with Janin personally, in connection with the Taschereau Boulevard and through the MacUrban Asphalt Co. for other works, because as director of the Quinlan, Robertson & Janin Ltd. he was not entitled to compete personally or through another Company with that Company, may be an interesting one but it will arise only if the judgment against Robertson is confirmed in the Supreme Court.

It will be time then to consider the question as well as many other questions that will result from that judgment.

Yours truly,

AG/MC "Aime Geoffrion"

P.S.—Copy of above opinion is forwarded to General Trust of Canada.
Copied: WH
Chk'd:LL
May 3/38

Certified true copy of the original remaining on file.

G. Bélanger
Lionel Lefebvre

PLAINTIFF'S EXHIBIT P-S-2 AT ENQUETE

Letter from Capital Trust Corporation Ltd., to Mrs. J. T. Kelly.

CAPITAL TRUST CORPORATION Limited
Incorporated by the Parliament of Canada

Ottawa, Can., December 20th, 1933.

REGISTERED
Mrs. J. T. Kelly,
(Mary Ethel Quinlan),
Place Viger Hotel,
Montreal, Que.

Dear Madam:—

Re: Estate of Hugh Quinlan.

We answer seriatim several requests contained in your notification and protest of the 17th of October, 1933, as it contains a series of questions and presumably supersedes or at least incorporates your previous notification and protest.

As to the first request respecting the inventory, the second respecting an action to account against Mr. A. W. Robertson, the third and fourth respecting Mr. Shannon as auditor and as liquidator of A. W. Robertson, Limited, the fifth respecting the inspectors of that liquidation, and the sixth and seventh respecting the O'Brien matter, the eighth respecting the incorporation of Angus Robertson Limited, the ninth respecting the division of assets of A. W. Robertson, Limited, and the tenth respecting the sale of machinery to Quinlan, Robertson & Janin, Limited, our answer is, in view of the facts and circumstances as we have been able to ascertain them after a careful investigation and in accordance with the opinion of our legal advisers, Messrs. Geoffrion & Prud'homme, nothing can or should be done in these respects.

If you desire explanations or if you wish to see the opinion we have obtained from Messrs. Geoffrion & Prud'homme, you may call at the office of either of us.

If you have any criticisms to make you may then do so, and we may submit them to these barristers for reconsideration, and

if you suggest new facts or mistakes in the facts we have, we will investigate to verify your statements.

With respect to the $25,000.00 payment from Peter Lyall and Company, we have already investigated this matter and it seems to us that Mr. Quinlan has received his share of the amount referred to. However, we have no objection to investigating this again. Mr. Robertson does not acknowledge responsibility.

Even if we come to the conclusion that he is liable after completing our investigation and, therefore, should be sued, we may, though the point is not definitely decided, deem it advisable to wait till after the judgment of the Supreme Court as we may very well have other demands to make against him before the Courts as a result of that judgment, and we would prefer to merge all our claims, in so far as possible, in the same suit.

As regards the demand in respect of the dividend of Quinlan, Robertson & Janin, we again think we should wait till after the judgment of the Supreme Court because if Mr. Robertson loses he must clearly return that dividend and probably will concede that. If he does not a suit may be necessary and the reasons for waiting apply also here.

As respects the Ontario Amiesite shares, the Fuller Gravel shares, Robertson & Janin's alleged liability to account respecting the MacUrban Asphalt Company activities and the Taschereau Boulevard contract, the two first questions will be settled by the Supreme Court judgment and whatever may be the merits of the two other claims they need only be considered if you are successful before the Supreme Court.

The merits of the two latter have, therefore, not been yet considered. The merits of the other two need not be considered as the court will pass on them in this suit and any action before that judgment would be premature or inadvisable.

Yours very truly,

Capital Trust Corporation Limited
G. Wa??????????
Assistant Manager.

Executors Estate Hugh Quinlan.
General Trust of Canada
Co. executor.

Louis Trottier,
Treasurer.

PLAINTIFF'S EXHIBIT P-S-5 AT ENQUETE

Copy of factum of Intervenants.

Dominion of Canada
IN THE SUPREME COURT OF CANADA
(Ottawa)

The Intervenants intervene in this Appeal in their quality of Trustees and Testamentary Executors under the Last Will and Testament of the late Hugh Quinlan, in his lifetime of the City of Westmount, in the District of Montreal, Province of Quebec, General Contractor, upon the suggestion of the Honourable the Supreme Court of Canada and upon being required so to do by the Appellant.

The Intervenants' Motion or Petition for Leave to Interneve was granted by Order of the Right Honourable the Chief Justice of Canada dated the 16th day of January, 1934.

The Intervenant, Capital Trust Corporation Limited, was one of the Defendants in these proceedings in the Superior Court for the District of Montreal, and filed a defence therein, which is printed in Volume 1, at pages 17 and following of the Case.

The Intervenant, General Trust of Canada, was appointed an Executor and Trustee of the Will of the said late Hugh Quinlan in replacement of and succession to the Appellant Robertson, who had resigned his office and appointment as such, subsequent to the rendering of the Judgment of the Superior Court in this cause on the 6th February, 1931, the said Intervenants having been appointed in succession to and replacement of Appellant Robertson by Deed of Appointment, passed before Roger Biron, Notary, on the 19th February, 1931.

The Intervenants took no part in the discussion of this cause before the Court of King's Bench (Appeal Side) of the Province of Quebec, and were not called upon to do so either by that Honourable Court or by any of the parties to these proceedings.

In the Judgment of the learned Trial Judge he found, as one of the reasons for his judgment, that the Intervenant, Capi-

tal Trust Corporation Limited, ought not to have sustained the validity of the sales of shares of stock to the Appellant, which are at issue in this cause, (Case, Vol. 8, p. 785, l. 31).

In his Notes of Judgment the learned Trial Judge expressed the opinion that in this regard the said Intervenant ought to have submitted itself to justice, (Case, Vol. 8, p. 806, l. 3).

In view of this finding, and these observations of the learned Trial Judge, the present Intervenants now declare that they "submit themselves to justice" herein, and ask that in any event the costs of this Intervention be costs in the cause.

OTTAWA, January 24th., 1934.

Campbell, McMaster, Couture, Kerry & Bruneau,
Attorneys for Intervenants.

EXHIBIT D-R-59 OF CONTESTANT AT ENQUETE

Copie d'un acte d'autorisation au mineur John Henry Dunlop.

L'AN MIL NEUF CENT TRENTE-QUATRE, le trente-un janvier.

DEVANT Mtre R. PAPINEAU-COUTURE, Notaire Public pour la Province de Québec, soussigné, résidant en la cité d'Outremont et pratiquant en les cité et district de Montréal.

A COMPARU:—

JOHN HENRY DUNLOP, de la cité de Westmount, vendeur de débentures.

LEQUEL aurait fait assembler par devant Nous Notaire soussigné, aux fins mentionnées en la déclaration ci-dessus faite devant nous, le trente et un janvier mil neuf cent trente-quatre: MARY THERESA QUINLAN, épouse de JOHN HENRY DUNLOP mère du mineur;

EDWARD HUGH QUINLAN, de la cité de Montréal, gentilhomme, oncle maternel;

WILLIAM A. QUINLAN, de la cité de Westmount oncle maternel;

KATHLEEN VERONICA QUINLAN, épouse d'ERNEST LEDOUX de la cité de Montréal, agent, tante maternelle;

ERNEST LEDOUX de la cité de Montréal, agent, oncle maternel;

LUCIEN DESAULNIERS, commis voyageur de la cité de Montréal, oncle maternel par alliance;

HELEN HILDA QUINLAN, fille majeure, tante maternelle;

LESQUELS, après serment prêté sur les Saints-Evangiles, après avoir pris communication de la déclaration sus-mentionnée et avoir mûrement délibéré entre eux, ont été unanimement d'avis que JOHN HENRY DUNLOP soit autorisé de signer et exécuter en sa qualité de tuteur la convention entre ESTATE HUGH QUINLAN et al., et ANGUS WILLIAM ROBERTON, acceptée par les autres parties et dont copie de la convention a été annexée aux présentes pour référence et signée par les membres du conseil de famille, avec et en présence du notaire soussigné.

DONT ACTE requis et octroyé en brevet.

FAIT ET PASSE à la cité de Montréal.

Et après lecture faite, les parties ont signé avec et en présence du notaire soussigné.

(SIGNE) J. H. DUNLOP
" HELEN QUINLAN
" W. A. QUINLAN
" KATHLEEN QUINLAN
" LUCIEN DESAULNIERS
" M. THERESA QUINLAN
" H. E. QUINLAN
" ERNEST LEDOUX
" R.-PAPINEAU COUTURE
N.P.

Province de Québec
District de Montréal

COUR SUPERIEURE

Vu la requête ci-annexée de John Henry Dunlop, de la cité de Westmount, vendeur de débentures en date du 31 Janvier 1934

demandant l'homologation de l'avis de parents de son enfant mineur John Stuart Dunlop y dénommé reçu le 31 janvier 1934 devant maître R. Papineau-Couture notaire, suivant les formalités voulues par la loi et annexé à ladite requête;

Vu ledit avis et la déclaration qui le précède, et le rapport fait par ledit notaire, aux termes de l'article 261 du Code civil, Nous, soussigné, député-protonotaire, dans et pour le district de Montréal, de la Cour supérieure de la province de Québec, homologuons ledit avis pour être suivi et exécuté selon sa forme et teneur; ordonnons en conséquence que le dit John Henry Dunlop soit et demeure autorisé de signer et exécuter en sa qualité de tuteur à son enfant mineur Joan Stuart Dunlop, une convention pour mettre fin au litige qui existe entre Estate Hugh Quinlan et al, vs Angus William Robertson et al. de la cité de Westmount entrepreneur, et le dit John Henry Dunlop et al. mis-en-cause et portant le No 36664 des dossiers de la dite Cour Supérieure, laquelle cause est actuellement pendante à la Cour Suprême, la dite convention acceptée par les autres parties et dont copie est annexée à l'original des présentes comme en faisant partie pour référence, et signée par les membres de l'avis de parents avec et en présence du notaire sus nommé.

Dont acte à Montréal, dans le district de Montréal, ce 2ième jour de février mil neuf cent trente-quatre.

(SIGNE) W. A. BAKER
Député-protonotaire de la Cour Supérieure.

Pour copie conforme à l'original demeuré au greffe de ladite Cour supérieure à Montréal.

J. A. Valiquette,
Député Protonotaire, C. S.

EXHIBIT D-R-60 OF CONTESTANT AT ENQUETE

Copie de l'acte d'autorisation du mineur Ernest Ledoux.

L'AN MIL NEUF CENT TRENTE-QUATRE, le trente et un janvier.

DEVANT Mtre R. PAPINEAU-COUTURE, Notaire Public pour la Province de Québec, soussigné, résidant en la cité d'Outremont et pratiquant dans les cité et district de Montréal.

A COMPARU:

ERNEST LEDOUX, de la cité de Montréal, agent.

LEQUEL aurait fait assembler par devant Nous Notaire soussigné, aux fins mentionnées en la déclaration ci-dessus faite devant nous, le trente et un janvier courant.

KATHLEEN VERONICA QUINLAN, épouse d'ERNEST LEDOUX, de la cité de Montréal, agent, mère des mineurs.

MARY THERESA QUINLAN, épouse de JOHN HENRY DUNLOP, tante maternelle;

EDWARD HUGH QUINLAN, de la cité de Montréal, gentilhomme, oncle maternel;

WILLIAM A. QUINLAN, de la cité de Westmount, oncle maternel;

JOHN HENRY DUNLOP, de la cité de Westmount, vendeur de débentures, oncle maternel;

LUCIEN DESAULNIERS, commis voyageur de la cité de Montéal, oncle maternel par alliance.

HENRI LEDOUX, de la cité de Montréal, agent manufacturier oncle paternel par alliance.

LESQUELS, après serment prêté sur les Saints-Evangiles, après avoir pris communication de la déclaration sus-mentionnée et avoir mûrement délibéré entre eux, ont été unanime-

ment d'avis que ERNEST LEDOUX soit autorisé de signer et exécuter en sa qualité de tuteur la convention entre ESTATE HUGH QUINLAN et al., et ANGUS WILLIAM ROBERTSON, acceptée par les autres parties et dont copie de la convention a été annexée aux présentes pour référence et signée par les membres du conseil de famille, avec et en présence du notaire soussigné.

DONT ACTE requis et octroyé en brevet.

FAIT ET PASSE à la cité de Montréal.

Et, après lecture faite, les parties ont signé avec et en présence du notaire soussigné, à l'exception d'Henri Ledoux qui a refusé d'accepter la convention.

(SIGNE) E. LEDOUX
" W. A. QUINLAN
" KATHLEEN QUINLAN
" M. THERESA QUINLAN
" H. E. QUINLAN
" LUCIEN DESAULNIERS
" J. H. DUNLOP
" R.-PAPINEAU COUTURE
N.P.

Province de Québec
District de Montréal

COUR SUPERIEURE

Vu la requête ci-annexée de Ernest Ledoux, de la cité de Montréal, agent, en date du 31 Janvier 1934, demandant l'homologation de l'avis de parents de Hugh, Francis, David et Mary Théresa Ledoux, ses enfants mineurs y dénommés reçu le 31 janvier 1934 devant maître R. Papineau-Couture notaire, suivant les formalités voulues par la loi et annexé à ladite requête;

Vu ledit avis et la déclaration qui le précède, et le rapport fait par ledit notaire, aux termes de l'article 261 du Code civil, Nous, soussigné, député-protonotaire, dans et pour le district de Montréal, de la Cour supérieure de la province de Québec, homologuons ledit avis pour être suivi et exécuté selon sa forme et teneur; ordonnons en conséquence que le dit Ernest Ledoux soit et demeure autorisé de signer et exécuter en sa qualité de tuteur à ses dits enfants mineurs, une convention pour mettre fin au

litige qui existe entre Estate Hugh Quinlan et al. vs Angus William Robertson et al, de la cité de Westmount, entrepreneur et le dit Ernest Ledoux et al, mis-en-cause et portant le No 36664 des dossiers de la dite Cour Supérieure, laquelle cause est actuellement pendante à la Cour Suprême, afin que le dit Ernest Ledoux en sa dite qualité de tuteur puisse intervenir et être partie à un acte de règlement et à être soumis, laquelle susdite convention acceptée par les autres parties dont copie est annexée à l'original des présentes pour en faire partie pour référence et signée par les membres du conseil de famille, avec et en présence du notaire soussigné.

Dont acte à Montréal, dans le district de Montréal, ce 2ième jour de février mil neuf cent trente-quatre.

(SIGNE) W. A. BAKER
Député-protonotaire de la Cour Supérieure.

Pour copie conforme à l'original demeuré au greffe de ladite Cour supérieure à Montréal.

J. A. Valiquette,
Député Protonotaire, C. S.

EXHIBIT D-R-65 OF CONTESTANT AT ENQUETE

Agreement between Estate Hugh Quinlan & al., & Angus W. Robertson.

BEFORE MTRE. R. PAPINEAU-COUTURE, Notary Public for the Province of Quebec, residing in the City of Outremont and practising in the City and District of Montreal,

APPEARED:—

DAME MARGARET QUINLAN, of the City of Montreal, wife separate as to property of Jacques Desaulniers, K.C., Barrister, of the same place, herein acting and represented by LUCIEN DESAULNIERS, Commercial Traveller, by virtue of Power of Attorney executed before J. H. Courtois, N.P. on the 25th day of January, 1934, and the said JACQUES DESAULNIERS, K.C., to authorize his said wife to these presents, also acting and represented by the

said Lucien Desaulniers, by virtue of Power of Attorney executed before J. H. Courtois, N.P. on the 25th day of January, 1934, being minute numbers 2119 and 2122,

PARTY OF THE FIRST PART

— and —

WILLIAM A. QUINLAN, Manager of the City of Westmount KATHLEEN VERONICA QUINLAN, wife separate as to property of ERNEST LEDOUX, agent of the City of Montreal and the said Ernest Ledoux to authorize his wife hereto; ANNE AUGUSTA QUINLAN, spinster of the City of Montreal, herein acting and represented by LUCIEN DESAULNIERS, Commercial Traveller, of the City of Montreal, by virtue of Power of Attorney executed by the said Anne Augusta Quinlan before J. H. Courtois, N.P. on the 25th day of January, 1934, under minute number 2123; MARY THERESA QUINLAN, wife common as to property of JOHN HENRY DUNLOP, Bond Saleman, of the City of Westmount, and the said JOHN HENRY DUNLOP personally and to authorize his wife to these presents; EDWARD HUGH QUINLAN, Gentleman, of the City of Montreal; HELEN HILDA QUINLAN, spinster, of the City of Montreal; and the said JOHN HENRY DUNLOP, hereinabove described, in his quality of Tutor to his minor child JOAN STUART DUNLOP; and the said ERNEST LEDOUX, hereinabove described, in his quality of Tutor to all his minor children, namely, HUGH, FRANCIS, DAVID, and MARY THERESA LEDOUX,

PARTY OF THE SECOND PART

— and —

CAPITAL TRUST CORPORATION, LIMITED, a body politic and corporate, having its principal place of business in the City of Ottawa, Province of Ontario, and having a place of business in the City of Montreal, District of Montreal, herein acting and represented by EMMANUEL LUDGER PARENT, Assistant General Manager, duly authorized to these presents under Power of Attorney dated at the City of Ottawa, Province of Ontario, on the twenty-ninth day of January instant (1934), duly issued under the authority of By-Law No. 47 of said Corporation and attached hereto and signed "ne varietur" by the parties to form

part hereof; and GENERAL TRUST OF CANADA, a body politic and corporate having its principal place of business in the City of Montreal, District of Montreal, herein acting and represented by BEAUDRY-LEMAN, one of its Directors and RENE MORIN, its Secretary and General Manager, duly authorized hereto in virtue of By-Law No. 41 of said Corporation, a certified copy whereof is attached hereto and signed "ne varietur" by the parties to form part hereof, said CAPITAL TRUST CORPORATION LIMITED, and GENERAL TRUST OF CANADA, herein acting in their quality of Executors and Trustees of the Estate of the late Hugh Quinlan, by virtue of his Last Will and Testament of the 14th day of April, 1926, executed before Edouard Biron, N.P. and Colleague, and duly registered at Montreal on the 24th day of March, 1928, under No. 173295,

PARTY OF THE THIRD PART

— and —

ANGUS WILLIAM ROBERTSON, Contractor of the City of Westmount in the District of Montreal,

PARTY OF THE FOURTH PART

The said parties declared before me as follows:

WHEREAS the party of the first part, acting jointly with her sister, Dame Ethel Quinlan, wife separate as to property of John Thomas Kelly, instituted an action against the then testamentary executors and trustees appointed under the will of her late father, Hugh Quinlan, to wit: The Capital Trust Corporation and A. W. Robertson, above described, whereby she prayed amongst other things:

(a) That the two testamentary executors and trustees, to wit: Capital Trust Corporation Limited, and A. W. Robertson, be dismissed and removed from office;

(b) That the said testamentary executors and trustees be condemned to render an account of their administration and, in default thereof to pay to herself and to her sister, Ethel Quinlan, each the sum of $500,000.00;

(c) That the inventory prepared by the testamentary executors and trustees be declared illegal, fraudulent and be annulled;

(d) That the transfer to A. W. Robertson of shares belonging to the late Hugh Quinlan in the three companies, to wit: "Quinlan, Robertson & Janin, Ltd.", "Amiesite Asphalt Ltd" and "Fuller Gravel Co. Ltd", be annulled and the said A. W. Robertson condemned to return these shares to the estate, or to pay the value thereof; namely one million three hundred thousand dollars ($1,300,000.00);

(e) That all the shares of the following companies, to wit: "Ontario Amiesite Asphalt Ltd," "McCurban Asphalt Ltd", "Quinlan, Robertson & Janin (London, Engl). "Crokston Quarries Ltd" and Canadian Amiesite Ltd" be declared to belong to the estate of the late Hugh Quinlan, and be returned to the said estate, failing which the testamentary executors and trustees be condemned to pay an additional sum of $1,000,000.00;

(f) And finally that all the profits made and dividends paid by all these companies, since the death of the late Hugh Quinlan be declared to be the property of the said estate;

WHEREAS by judgment delivered by Mr. Justice Martineau, on the 6th of February 1931, the above action was dismissed in toto, as regards the Capital Trust Corporation, Limited, save as to certain costs, and was maintained in part as to A. W. Robertson, in the manner hereafter explained, to wit:—

(a) The said judgment declared non existent or annulled the transfer to the said A. W. Robertson of the following shares: 1151 shares of "Quinlan, Robertson & Janin, Ltd", 250 shares of Amiesite Asphalt Ltd", 200 shares of "Ontario Amiesite Asphatl Ltd", and 400 shares of "Fuller Gravel Co. Ltd";

(b) The said judgment ordered the said A. W. Robertson to return the above shares to the said estate or to pay the value thereof, which was fixed as follows as to the shares of "Quinlan Robertson & Janin Ltd", the sum of $272.928.00; as to the shares of "Amiesite Asphalt Ltd", the sum of $100,000.00; as to the shares of "Ontario Amiesite Asphalt Ltd" no value; as to the shares of "Fuller Gravel Co. Ltd" the sum of $36,000.00;

(c) The said judgment declared that all the profits made and dividends declared since the death of the late Hugh Quinlan upon the above-mentioned shares, belonged to the estate;

(d) But authorized the said A. W. Robertson to retain these shares, profits and dividends, so long as he would not be reimbursed of the price he had actually paid for them to wit: $20,000.00 for the shares of "Fuller Gravel Co. Ltd", and $250,-000.00 for the other shares enumerated in the present paragraph;

WHEREAS the said A. W. Robertson, after the said judgment, availing himself of the right granted to him under the Will of the late Hugh Quinlan, resigned his office of testamentary executor and trustee and appointed as his successor the General Trust of Canada and then appealed, in his personal capacity, from the judgment above mentioned to the Court of King's Bench (Appeal Side) of the Province of Quebec;

WHEREAS the said testamentary executors and trustees were not parties to the said appeal, nor represented therein;

WHEREAS the said Court of Appeals, although confirming in substance the judgment of the trial Judge, modified said judgment on various points, to wit:

(a) It held the value of the shares, which the said A. W. Robertson was ordered to return, should be fixed as of the date of the action instead of as of the date of the month of December 1927;

(b) It held that the estate was only entitled to the dividends declared and paid during the period beginning at the death of the late Hugh Quinlan;

(c) And finally it held that all the shares of the three companies above mentioned, to wit: "Quinlan, Robertson & Janin, Ltd", "Amiesite Asphalt Ltd", and "Ontario Amiesite Ltd" should be considered as one unit and that the said A. W. Robertson had to deliver every one of these shares or pay the entire value of all of them;

WHEREAS the said judgment, however, again reserved to the said A. W. Robertson the right to satisfy the condemnation by returning the shares in question on being reimburesd the price, instead of paying the value thereof, and furthermore allowed the

said A. W. Robertson to retain all these shares together with the bonuses and dividends declared and paid thereon since the death of the late Hugh Quinlan until reimbursement, with interest, of the price he had actually paid, to wit; a total sum of $270,000.00.

WHEREAS the said A. W. Robertson has taken an appeal to the Supreme Court of Canada from the judgment of the Court of King's Bench, and that the said appeal is now pending;

WHEREAS the testamentary executors and trustees, to wit: Capital Trust Corporation, Limited, and the General Trust of Canada, upon the suggestion of the Court, have intervened in the appeal now pending before the Supreme Court of Canada, and are parties to said appeal;

WHEREAS all the parties to the present agreement realize that the ultimate outcome of the appeal now pending is uncertain, more particularly as to certain points now in issue;

WHEREAS the parties of the first part and of the second and third part realize that, should the judgment of the Court of King's Bench be confirmed, A. W. Robertson would still be entitled and might be able to return the shares in dispute to the estate and that these shares, being minority shares, would not, under the present circumstances, be worth the price which was paid for them by A. W. Robertson, to wit $270,000.00 which price would have to be reimbursed to said Robertson with interest, in order that the estate recover them;

WHEREAS all the parties are desirous to put an end, not only to the case which is now pending, but to all further litigation which might arise form the facts therein disclosed and generally from all causes whatsoever now existing;

WHEREAS under the Will of the late Hugh Quinlan, the party of the third part is vested with full power to sell, exchange, convey, hypothecate, pledge or otherwise alienate the whole or any part of the property or assets at any time forming part of his succession and is also vested with full power to compromise, settle and adjust or waive any and every claim and demand belonging to or against the succession and, as Trustees, is also empowered to act by virtue of the provisions of the Civil Code; IT IS NOW THEREFORE agreed, enacted and covenanted as follows:

1. The party of the fourth part hereby elects to keep all the shares mentioned in the judgments above mentioned and, with this end in view, the said party of the fourth part agrees to purchase, re-purchase and does hereby purchase and repurchase, so far as may be necessary, all the shares above mentioned, for and in consideration of an additional price of $50,000.00 to be paid upon the execution of these presents, and he further agrees to pay all such sums as may be necessary to pay and satisfy all claims for taxable Court costs and for all extra judicial costs, disbursements and Counsel fees due to the Honourable J. L. St. Jacques, now one of His Majesty's Judges of the Court of King's Bench, Mr. Jacques Desaulniers, K.C., Mr. Edouard Masson, Barrister, and Mr. Henri Masson-Loranger, Solicitor, being all the Counsel, attorneys and solicitors who have represented the Respondent, Margaret Quinlan, and an additional sum of $4,025.00 to Mr. Agénor H. Tanner, K.C., of the City of Montreal. Out of the said sum of $4,025.00, there shall be paid in full all the costs and disbursements which might be taxed against the said A. W. Robertson in favour of the said Agénor H. Tanner, K.C., in connection with the above case, and the balance shall be applied in satisfaction of the claims which the said Agénor H. Tanner K.C. may have for Court costs, disbursements and Counsel fees against Respondent, Margaret Quinlan. And said Respondent, Margaret Quinlan, hereby declares that the said Agénor Tanner, K.C., ceased to represent her and act for her after the judgment of the Superior Court of the 6th of February, 1931.

2. In consideration of the foregoing, the party of the third part agrees to sell, re-sell, transfer, re-transfer and retrocede to the said part of the fourth part, so far as may be necessary, in full ownership, all the shares above described together with all the profits, bonuses or dividends paid or declared in connection with and upon the said shares from the death of the late Hugh Quinlan; as well as all profits earned and accrued upon the said shares or on account of the said shares which have not been declared, whether as bonuses, dividends or otherwise.

3. The parties of the first and of the second part hereby concur in the said sale, re-sale, transfer, re-transfer or retrocession as far as may be necessary, ratifying and confirming the same without any reserve, exception or restriction whatsoever.

4. The parties of the first, second and third part, for the same consideration, further desist from the judgments above mentioned and renounce to, give up and abandon all the rights,

claims and pretensions of whatever nature or description which may belong to them under the said above mentioned judgments or which may be vested in them under the said judgments without any exception, reserve or restrictions;

5. The parties of the first, second, third and fourth part always, for the same consideration, further renounce to all and every right, claim, action, contention of whatever nature and description which may belong to them or be vested in them or in anyone of them against or in favour of the said A. W. Robertson and reciprocally form whatever source, origin or cause now existing. And without restricting the generality of the above terms, the said parties of the first, second, third and fourth part expressly renounce to all and every right, claim, action, contention of whatever nature or description which may belong to them or to be vested in them against or in favour of the said A. W. Robertson and reciprocally arising from any of the facts disclosed in the evidence adduced in the above case, or from the administration or management of the estate of the late Hugh Quinlan, by the said A. W. Robertson as testamentary executor or trustee, or from the dealings, connections or operations of the said A. W. Robertson with the said late Hugh Quinlan as co-partner, co-shareholder co-associate or otherwise, or from the dealings, connections or operations of the said A. W. Robertson acting jointly with the said late Hugh Quinlan with third parties, of from the personal acts or deeds of the said A. W. Robertson, in whatever capacity, circumstances or time;

6. The present agreement of settlement, transaction, renunciation, sale and discharge, notwithstanding the fact that the parties hereto have signed it this day, will only come into effect and become binding on the said parties after the same shall have been submitted to the Supreme Court of Canada as its February session, and provided the said Court, before which the litigation between the parties hereto is still pending, see no objection to the party of the third part carrying it into effect or grants acte thereof, and should the said Court decide otherwise, then the said agreement shall be null and void and deemed never to have been entered into.

WHEREOF ACTE:—

THUS DONE AND PASSED at the City of Montreal, on the thirty-first day of the month of January nineteen hundred and thitry-four and of record in the office of the undersigned

Notary under his minute number seven thousand eight hundred and twenty-seven.

AND AFTER DUE READING HEREOF the said parties have signed with and in the presence of the undersigned Notary.

(SIGNED) LUCIEN DESAULNIERS, Attorney
" W. A. QUINLAN
" KATHLEEN QUINLAN
" ERNEST LEDOUX
" MARY THERESA QUINLAN
" J. H. DUNLOP
" J. H. DUNLOP, Tutor
" H. E. QUINLAN
" A. W. ROBERTSON
" CAPITAL TRUST CORPORATION LTD.
" E. L. PARENT
Assistant General Manager

(PRINTED) GENERAL TRUST OF CANADA
(SIGNED) RENE MORIN
General Manager

" BEAUDRY-LEMAN
Director

" ERNEST LEDOUX Tutor
" HELEN QUINLAN
" R. PAPINEAU-COUTURE, N.P.,

A TRUE COPY of the original hereof remaining of record in my office (one marginal note good).

(Signed) R. Papineau-Couture, N.P.

KNOW ALL MEN BY THESE PRESENTS, that Capital Trust Corporation, Limited, a body politic and corporate, duly incorporated as such and having its Head Office and principal place of business in the City of Ottawa, in the Province of Ontario, one of the Provinces of the Dominion of Canada, herein acting and represented by JOHN J. LYONS, its President, and E. T. B. PENNEFATHER, its General Manager, and duly authorized for all purposes herein by virtue of By-Law No. 47 of the By-laws of the said Corporation, a certified copy of which

By-law is hereunto annexed to form part hereof, doth hereby make, nominate, and appoint, EMMANUEL LUDGER PARENT of the said City of Ottawa, the Assistant General Manager of the said Corporation, its true and lawful attorney, for it and in its name to appear before a Notary Public, in the City of Montreal, in the Province of Quebec, and to intervene on behalf of the said Capital Trust Corporation, Limited, and formally to execute a Notarial Deed of Settlement dated the 31st day of January 1934, between the Executors of the Last Will and Testament of Hugh Quinlan, late of the City of Montreal in the Province of Quebec, deceased, and Angus Robertson, of the said City of Montreal, of an action now before the Supreme Court of Canada for the sum of fifty thousand dollars ($50,000.00) and such other consideration mentioned therein;

The said Capital Trust Corporation, Limited, hereby ratifying and confirming, and agreeing to ratify and confirm, all and whatsoever its said Attorneys shall lawfully do or cause to be done by virtue hereof.

(SEAL)

IN TESTIMONY WHEREOF, the above named Officers of Capital Trust Corporation, Limited, have affixed their signatures and the seal of this Corporation at Ottawa in the Province of Ontario, this 29th day of January, 1934.

CAPITAL TRUST CORPORATION, LIMITED,
(SIGNED) JOHN J. LYONS
President

" E. T. B. PENNEFATHER
General-Manager.

WITNESSES: (SEAL)
J. A. SMITH
C. N. NOBERT
(SEAL)

CITY OF OTTAWA)
COUNTY OF CARLETON)
PROVINCE OF ONTARIO)
TO WIT:)

I, JOSEPH ALEXANDER SMITH, of the City of Ottawa in the County of Carleton and Province of Ontario, Estates Manager, make oath and say:

(1) THAT I am Manager of the Estate Department of Capital Trust Corporation, Limited, and have knowledge of the facts herein deposed to.

(2) THAT I was personally present and did see the annexed Power of Attorney duly executed by John J. Lyons and E. T. B. Pennefather, respectively, the President and General Manager of Capital Trust Corporation, Limited, and the Seal of the said Capital Trust Corporation, Limited, duly impressed thereon.

(3) THAT the signatures "JOHN J. LYONS" and "E. T. B. PENNEFATHER" are the signatures of the said John J. Lyons and E. T. B. Pennefather.

(4) THAT the said document was executed in my presence and in the presence of Cyril Noel Nobert the other attesting witness to the said execution.

SWORN BEFORE ME at the City of Ottawa, in the County of Carleton, this 29th day of January, 934,

(SEAL)

(SIGNED) JAS J. LYONS
A notary, etc.

(Signed) J. A. SMITH

CAPITAL TRUST CORPORATION, LIMITED
BY-LAW NO. 47

In so far as the Province of Quebec is concerned the President or one of the Vice-Presidents or a Director and the General Manager or Assistant General Manager or Secretary or an officer appointed from time to time for that purpose by the Board of Directors or by the Advisory Board at Ottawa, are hereby authorized and empowered to negotiate and enter into all contracts, undertakings and agreements on behalf of the Company, and to sign, seal, execute and deliver and deeds, documents or agreements whether notarial or otherwise, in the name and as the act and deed of the Company, and the said officers are further hereby specially authorized and empowered to delegate to one or more attorney or attorneys by Power of Attorney under their hands and Seal of this Company the power to sign and execute any

particular deeds, contracts or documents whether notarial or otherwise which it may be necessary for this Company to sign, execute or enter into in the said Province of Quebec.

I, JAMES J. LYONS, Secretary of Capital Trust Corporation, Limited, certify that the above By-law was duly passed at a duly constituted Meeting of the Board of Directors of Capital Trust Corporation, Limited, at which a legal quorum was present, held on the 19th day of December, 1922 and was unanimously sanctioned and confirmed by the Shareholders of the Company at a special General Meeting duly called for considering the same, held on February 13th, 1923 and as amended at the General Meeting February 9th, 1932.

(SEAL)

(SIGNED) JAS. J. LYONS
Secretary.

EXTRACT from the Minutes of a Meeting of the Board of Directors of CAPITAL TRUST CORPORATION, LIMITED, held at the Head Office of the CORPORATION, on Tuesday, February 14th, 1933.

"Upon resolution duly moved, seconded, and unanimously carried, Mr. John J. Lyons was elected President".

I herbey certify that the above is a Minute of the Meeting of the Board of Directors of CAPITAL TRUST CORPORATION, LIMITED, duly held on Tuesday, the 14th day of February, 1933, and that the said John J. Lyons is President of Capital Trust Corporation, Limited, Ottawa.

As witness, my hand and the Seal of the Corporation, this 29th day of January 1934 (SEAL)

(SIGNED) JAS J. LYONS,
Secretary.

EXTRACT from the Minutes of a Meeting of the Board of Directors of CAPITAL TRUST CORPORATION, LIMITED, held at the Head Office of the CORPORATION on Friday, January 16th 1931.

"It was moved by Colonel D. R. Street, seconded by J. J. Seitz and unanimously carried that Mr. E. T. B. Pennefather be appointed General Manager of the Corporation. . ."

I hereby certify that the above is a Minute of the Meeting of the Board of Directors of CAPITAL TRUST CORPORATION LIMITED, duly held on Friday, the 16th day of January 1931, and that the said E. T. B. PENNEFATHER is General Manager of Capital Trust Corporation, Limited, Ottawa.

As witness, by hand and the Seal of the Corporation, this 29th day of January, 1934 (SEAL)

(SIGNED) JAS J. LYONS,
Secretary.

This is the Power of Attorney dated at the City of Ottawa Province of Ontario, on the twenty-ninth day of January instant (1934) and duly issued under By-Law No. 47 of Capital Trust Corporation Limited, and referred to in a Deed of Agreement between Estate Hugh Quinlan et al and Angus William Robertson executed before Mtre R. Papineau-Couture, Notary Public, on the thirty-first day of January instant under his minute number seven thousand eight hundred and twenty-seven and annexed thereto after having been signed "ne varietur" by the parties thereto with and in the presence of the undersigned Notary.

"NE VARIETUR"
(SIGNED) LUCIEN DESAULNIERS, Attorney
" W. A. QUINLAN
" KATHLEEN QUINLAN
" ERNEST LEDOUX
" MARY THERESA QUINLAN
" J. H. DUNLOP
" J. H. DUNLOP, Tutor
" H. E. QUINLAN
" A. W. ROBERTSON
" CAPITAL TRUST CORPORATION LTD.
" E. L. PARENT
Assistant General Manager

(PRINTED) GENERAL TRUST OF CANADA
(SIGNED) RENE MORIN
General Manager
" BEAUDRY-LEMAN
Director
" ERNEST LEDOUX Tutor
" HELEN QUINLAN
" R. PAPINEAU-COUTURE, N.P.,

A TRUE COPY
(Signed) R. Papineau-Couture, N.P.

TRANSLATION

EXTRACTS FROM THE BY-LAWS OF
GENERAL TRUST OF CANADA
SIGNATURES -

Art. 41 The president or a vice-president or a director and the general manager, or the secretary or the assistant-secretary and all other officers appointed by the Board of Directors or the Executive Committee are authorized

1o: To make execute and sign, for and in the name of the company, all trust deeds, sales or purchases of movable or immovable property, purchases, sales, assignment or transfer of ordinary or hypothecary claims and other titles and securities whatsoever.

2o: To make, execute and sign in the name of the company all discharges of ordinary or hypothecary claims due and paid to the company either for itself or as trustees, attorney, administrator or in any other capacity for others, to give mainlevée of the hypothecs, pledges, privileges and mortgages resulting from the deeds creating such debts or from any other deed or documents in relation thereto, and to consent to the radiation thereof.

3o: To make, execute and sign all deeds of reduction or mainlevée of mortgages and all deeds of priority of mortgage, upon or without payment, as may be deemed advisable, and this in all cases where the company acts as trustees, administrator, testamentary executor, guardian, liquidator, trustee or agent.

4o: To make, execute and sign all inventories of properties of estates or communities, all balance sheets, statements and declarations in respect of the payment of succession duties, all declaration of death, inheritance, transmission of immovable property, bonds, debentures, stocks and other securities or movable property of any kind whatsoever in the exercise by this company of the administrations, charges, functions, mandates and agencies with which it may be entrusted.

5o: To manage and transact the banking operations of the company, to make, sign, accept, draw, endorse and execute for the company, and in its name, all cheques, receipts, bills of exchange, notes and other negotiable instruments, and other documents useful or necessary in respect of such banking operations. One of the above named officiers may however receive alone from the bank, cancelled cheques and other instruments charged to the company's account and certify as to all balances.

6o: Generally to make, execute and sign all acts, deeds and documents, whatever, in respect of the ordinary business transactions of the company and in the exercise of the charges, functions and administrations which it may be called upon to perform.

Upon a resolution of the Board of Directors or of the Executive Committee, the signature of one of the officers may be printed, engraved or lithographed.

CERTIFIED true translation of By-Law No. 41 of General Trust of Canada and to be in full force and effect.

Montreal January 31st 1934.

(SEAL)

(SIGNED) RENE MORIN
Secretary.

This is the certified copy of By-Law No. 41 of General Trust of Canada referred to in a Deed of Agreement between Estate Hugh Quinlan, et al and Angus William Robertson execued before Mtre. R. Papineau-Couture Notary Public, on the thirty-first day of January nineteen hundred and thirty-four under his minute number seven thousand eight hundred and twenty-seven and annexed thereto after having been signed "ne varietur" by the parties thereto with and in the presence of the undersigned Notary.

"NE VARIETUR"
(SIGNED) LUCIEN DESAULNIERS, Attorney
" W. A. QUINLAN
" KATHLEEN QUINLAN
" ERNEST LEDOUX
" MARY THERESA QUINLAN

(SIGNED) J. H. DUNLOP
" J. H. DUNLOP, Tutor
" H. E. QUINLAN
" A. W. ROBERTSON
" CAPITAL TRUST CORPORATION LTD.
" E. L. PARENT
Assistant General Manager
(PRINTED) GENERAL TRUST OF CANADA
(SIGNED) RENE MORIN
General Manager
" BEAUDRY-LEMAN
Director
" ERNEST LEDOUX Tutor
" HELEN QUINLAN
" R. PAPINEAU-COUTURE, N.P.,

A TRUE COPY
(Signed) R. Papineau-Couture, N.P.

EXHIBIT D-R-61 OF CONTESTANT AT ENQUETE

Extract from the minutes of a meeting of the Board of Directors of General Trust of Canada.

EXTRACT from the Minutes of a meeting of the Board of Directors of GENERAL TRUST OF CANADA, held at the Head Office of the company, at Montreal, on Friday, September 21st, 1934 at 12.30 a.m.

Authentic copy of the Deed of Agreement and Settlement received before R. Papineau-Couture Notary Public, at Montreal, on the 31st of January 1934, and bearing number 7827 of his Minutes, between Dame Margaret Quinlan and Jacques Desaulniers, of the First Part, and William A. Quinlan et al. of the Second Part, and Capital Trust Corporation Limited and General Trust of Canada, in their quality of testamentary executors and trustees of the Estate of the late Hugh Quinlan, of the Third Part, and Angus Wiliam Robertson, of the Fourth Part, was laid before the meeting for consideration.

After consideration, it was moved, seconded and unanimously resolved:

THAT the said Deed of Agreement and Settlement signed and executed on the said 31st day of January 1934, on its behalf by Beaudry Leman, one of its directors, and René Morin, its secretary and general manager, acting under the authority of by-law 41 of this corporation, be and the same is hereby ratified and confirmed for all legal intents and purposes by this corporation, in its quality of one of the testamentary executors and trustees of the Estate of the late Hugh Quinlan.

CERTIFIED true extract.

(Signed) René Morin,
Secretary.

(SEAL)

EXHIBIT D-R-62 OF CONTESTANTS AT ENQUETE

Agreement of Settlement proposed to be entered into between executors Quinlan and Mr. A. W. Robertson.

IN THE MATTER OF THE ESTATE OF HUGH QUINLAN, AND IN THE MATTER OF A CERTAIN AGREEMENT OF SETTLEMENT PROPOSED TO BE ENTERED INTO BETWEEN EXECUTORS QUINLAN AND MR. A. W. ROBERTSON

An authentic copy of the Deed of Agreement and Settlement received before R. Papineau-Couture, Notary Public, at Montreal, on the 31st of January, 1934, and bearing number 7827 of his Minutes, between Dame Margaret Quinlan and Jacques Desaulniers, of the First Part, and William A. Quinlan et al., of the Second Part, and Capital Trust Corporation, Limited, and General Trust of Canada, in their quality of testamentary executors and trustees of the Estate of the late Hugh Quinlan, of the Third Part, and Angus William Robertson, of the Fourth Part, was laid before the meeting for consideration.

Upon motion duly moved and seconded, it was therefore, unanimously resolved that the said Deed of Agreement and Settlement signed and executed on the said 31st day of January, 1934, by Emmanuel Ludger Parent, Assistant General Manager, under Power of Attorney of the 29th of January, 1934, issued under the authority of by-law forty-seven of this Corporation, be and the same is hereby ratified and confirmed for all legal intents and purposes by this Corporation in its quality of one of the testamentary executors and trustees of the Estate of the late Hugh Quinlan.

I, James J. Lyons, Secretary of Capital Trust Corporation, Limited, certify that the above resolution was duly passed at a duly constituted meeting of the Board of Directors of Capital Trust Corporation, Limited, held on the 18th day of October, 1934.

Given under my hand and the Seal of the Corporation this 22nd day of October, 1934.

(SEAL)

(Signed) James J. Lyons,
Secretary.

EXHIBIT D-R-63 OF CONTESTANTS AT ENQUETE

Final acquittance and discharge by Mr. Jacques Desaulniers, K.C. & al. in favour of Mr. Angus Robertson.

(SEAL)

IN THE YEAR ONE THOUSAND NINE HUNDRED AND THIRTY-FOUR, on this twenty-third day of the month of November.

Before Me ROGER BIRON, the undersigned Notary in and for the Province of Quebec, residing and having his place of business in the City of Montreal.

CAME AND APPEARED:—

1.—Mr. JACQUES DESAULNIERS, K.C., Advocate, residing in the City of Montreal, at civic number 3488 Laval avenue.

2.—Mr. AGENOR-H. TANNER, K.C., Advocate, residing in the City of Montreal, at civic number 1455 Drummond Street.

WHO hereby acknowledge having received from Mr. ANGUS WILLIAM ROBERTSON contractor, of the City of Montreal.

a).—The sum of TWENTY-SEVEN THOUSAND FIVE HUNDRED DOLLARS ($27,500.00) by three cheques to the order of the said Mr. JACQUES DESAULNIERS, all dated the twenty-third day of November instant (1934), and respectively

for the amounts of: FOUR HUNDRED AND FIFTY DOLLARS ($450.00),—THREE THOUSAND ONE HUNDRED DOLLARS ($3,100.00), and TWENTY-THREE THOUSAND NINE HUNDRED AND FIFTY DOLLARS ($23,950.00) and

b).—The sum of FOUR THOUSAND AND TWENTY-FIVE DOLLARS ($4,025.00) by a cheque to the order of the said Mr. AGENOR-H. TANNER, dated the twenty-third day of November 1934.

In satisfaction of all claims, for court costs and for all extra-judicial costs, disbursements and counsel fees, in connection with the case instituted under No. A-36664, of the records of the Superior Court for the District of Montreal, by Dame MARGARET QUINLAN, wife separate as to property of the said Mr. JACQUES DESAULNIERS and dame ETHEL QUINLAN, wife separate as to property of Mr. JOHN-THOMAS KELLY, both duly authorized by their respective husband, against the CAPITAL TRUST CORPORATION LIMITED and the said Mr. ANGUS WILLIAM ROBERTSON, as well personally, as in their capacity of Testamentary-Executors and Trustees, appointed under the Will of the late HUGH QUINLAN.

In the two above mentioned sums are included all judicial costs, disbursements and counsel fees taxable and non-taxable for all proceedings before the Superior Court, the Court of King's Bench and the Supreme Court of Canada, and generally for all professional services of whatever kind or nature, in connection with the case originaly instituted as aforesaid under No. A-36664 of the Record of the Superior Court for the District of Montreal, and with the matters therein mentioned, with the sole exception that Mr. AGENOR-H. TANNER, K.C., reserves all his rights against dame ETHEL QUINLAN, wife separate as to property of Mr. JOHN-THOMAS KELLY, for whatever balance might be due to him.

The said sums of TWENTY-SEVEN THOUSAND FIVE HUNDRED DOLLARS ($27,500.00) and of FOUR THOUSAND AND TWENTY-FIVE DOLLARS ($4,025.00) are paid in conformity with and in execution of a deed of agreement passed before Me R. P. COUTURE, Notary at Montreal, on the thirty-first day of January last (1934), between the Estate HUGH QUINLAN, ET AL and Mr. ANGUS-WILLIAM ROBERTSON, and bearing the No. 7837 of the minutes of the said Notary, as supplemented by a private writing bearing date of the twenty-

ninth day of January last (1934), signed by the said Mr. JACQUES DESAULNIERS, acting through Mr. LUCIEN DESAULNIERS, his Attorney, and by others, and fixing to the amount of TWENTY-SEVEN THOUSAND FIVE HUNDRED DOLLARS ($27,500.00) the sum payable to the said Mr. JACQUES DESAULNIERS, under the said agreement of the thirty-first day of January last (1934).

The said Messrs. JACQUES DESAULNIERS and AGENOR-H. TANNER declare that they have adjusted between themselves the two said sums of TWENTY-SEVEN THOUSAND FIVE HUNDRED DOLLARS ($27,500.00) and of FOUR THOUSAND AND TWENTY-FIVE DOLLARS ($4,025.00) to their mutual satisfaction, each one of them giving to the other a mutual and final discharge.

And in consideration of the two sums paid as aforesaid, the said Mr. JACQUES DESAULNIERS and Mr. AGENOR-H. TANNER, hereby grant to the said Mr. ANGUS-WILLIAM ROBERTSON a full, complete and final discharge of all claims, rights, pretensions or actions which they might have or be vested with, either personally or as members of the law firm of TANNER & DESAULNIERS, for whatever cause or from whatever source or origin, declaring that they retain no recourse either personally or as members of the said firm, or in whatever capacity, against the said Mr. ANGUS WILLIAM ROBERTSON.

The said Mr. AGENOR-H. TANNER hereby declares that he has already desisted with costs, from the two actions instituted under No. D-129935 and No. C-128938 of the records of the Superior Court for the District of Montreal, wherein he was plaintiff, the CAPITAL TRUST CORPORATION LIMITED ET AL were defendants and Mr. ANGUS WILLIAM ROBERTSON ET AL were mis-en-cause; that he has also desisted, without costs, with the Agreement of all interested parties, from two other actions to wit: an action bearing No. 137026, wherein he was the plaintiff, MR. JACQUES DESAULNIERS, K.C., was defendant, and Mr. ANGUS WILLIAM ROBERTSON was mis-en-cause, and an action bearing No. 137042, wherein he was plaintiff, dame MARGARET QUINLAN ET AL were defendants and MR. ANGUS WILLIAM ROBERTSON, ET AL, were mis-en-cause. And the said Mr. AGENOR-H. TANNER further declares that he has no other action pending which might affect the said Mr. ANGUS WILLIAM ROBERTSON.

INTERVENTION.—

To these presents is intevening:—

Mr. PERCY CARROLL RYAN, K.C., Advocate, residing in the City of Montreal, at civic number 1119 Anderson Street, the plaintiff in a case bearing the No. 126979, wherein dame MARGARET QUINLAN ET VIR ET AL, are defendants and Mr. ANGUS WILLIAM ROBERTSON is mis-en-cause;

WHO, after having taken communication of the present discharge and agreement, declares that he does not object to the said Mr. ANUGUS WILLIAM ROBERTSON paying to the said Mr. JACQUES DESAULNIERS and Mr. AGENOR-H. TANNOR the two above mentioned sums of TWENTY-SEVEN THOUSAND FIVE HUNDRED DOLLARS ($27,500.00) and of FOUR THOUSAND AND TWENTY-FIVE DOLLARS ($4,025.00) and that he will, in no way, trouble the said M. ANGUS WILLIAM ROBERTSON, on account of the said payment, renouncing as far as may be necessary to all recourses he might be entitled to exercise, against the said Mr. ANGUS-WILLIAM ROBERTSON, by the fact of the said payment.

WHEREOF ACTE:—

DONE AND PASSED in the said City of Montreal, on the date firstly above mentioned, under the number THREE THOUSAND EIGHT HUNDRED AND FIFTY-THREE of the original deeds of the undersigned Notary.

And, after due reading hereof, the appearers have signed with and in the presence of the Notary, the intervener requested to sign has declared not to be able to do so on account of his right hand being paralyzed, and Mr. ROLLAND LANGLOIS, Advocate of the City of Montreal, signed as witness with the other parties and the undersigned Notary.

(SIGNED) PERCY C. RYAN
per ROLLAND LANGLOIS, Witness
(") AGENOR HENRY TANNER
(") JACQUES DESAULNIERS
(") ROGER BIRON, Notary.

TRUE COPY of the original hereof, remaining of record in my office.

(Signed) Roger Biron, Notary.

EXHIBIT D-R-64 OF INTERVENANTS AT ENQUETE

Final Agreement, acquittance & discharge between Estate H. Quinlan & Angus Wm. Robertson, Esq.

(SEAL)

IN THE YEAR ONE THOUSAND NINE HUNDRED AND THIRTY- FOUR, on this twenty-first day of the month of December.

Before Me ROGER BIRON, the undersigned, Notary in and for the province of Quebec, residing and having his place of business in the City of Montreal,

APPEARED.—

CAPITAL TRUST CORPORATION LIMITED, a body politic and corporate, having its principal place of business in the City of Ottawa, Province of Ontario, and having a place of business in the City of Montreal, District of Montreal, herein acting and represented by Mr. RODRIGUE LAGIMODIERE, its Montreal Office Manager, duly authorized to these presents under Power of Attorney dated at the City of Ottawa, Province of Ontario, on the sixth day of December instant (1934) duly issued under the authority of By-Law No. 47 of the said Corporation and attached hereto and signed, NE VARIETUR, by the parties, with and in the presence of the undersigned Notary;

AND

GENERAL TRUST OF CANADA, a body politic and corporate having its principal place of business in the City of Montreal, District of Montreal, herein acting and represented by Mr. RENE MORIN, its General-Manager, and M. ERNEST GUIMONT, one of its Director, duly authorized hereto in virtue of By-Law No. 41 of the said Corporation, a certified copy whereof is attached hereto and signed NE VARIETUR by the parties with and in the presence of the undersigned Notary.

Both appearers acting in their quality of Executors and Trustees of the Estate of the late HUGH QUINLAN in his lifetime of the City of Westmount; having been appointed:

a).—The said CAPITAL TRUST CORPORATION LIMITED, by virtue of the Last Will and Testament of the said late HUGH QUINLAN, executed before Me EDOUARD BIRON, Notary at Montreal, and Colleague, on the fourteenth day of the month of April nineteen hunded and twenty-six, registered at Monteral on the twenty-fourth day of March nineteen hundred and twenty-eight, under No. 173295; and

b).—General Trust of Canada by virtue of a deed executed before Me ROGER BIRON, the undersigned Notary, on the nineteenth day of February nineteen hundred and thirty-one, registered at Montreal the twenty-second day of November nineteen hundred and thirty-three, under No. 343630.

WHICH, said appearers, have declared as follows:—

WHEREAS an action was instituted against the CAPITAL TRUST CORPORATION LIMITED and ANGUS-WILLIAM ROBERTSON, the then Testamentry-Executors and Trustees appointed under the aforesaid Last Will and Testament, the said action having been instituted by dame MARGARET QUINLAN, wife separate as to property of JACQUES DESAULNIERS, K.C., jointly with her sister, dame ETHEL QUINLAN, wife separate as to property of JOHN-THOMAS KELLY;

WHEREAS in the said action the plaintiffs prayed amongst other things:—

"a).—That the two Testamentary-Executors and Trustees, "to wit: CAPITAL TRUST CORPORATION LIMITED and "A. W. ROBERTSON, be dismissed and removed from office;

"b).—That the said Testamentary-Executors and Trustees "be condemned to render an account of their administration and, "in default thereof to pay to herself and to her sister, Ethel Quin-"lan, each the sum of $500,000.00;

"c).—That the inventory prepared by the Testamentary-"Executors and Trustees be declared illegal, fraudulent and be "annulled;

"d).—That the transfer to A. W. ROBERTSON of shares "belonging to the late HUGH QUINLAN in the three companies, "to wit: QUINLAN, ROBERTSON & JANIN LTD., AMIE-

"SITE ASPHALT LTD AND FULLER GRAVEL CO LTD.
"be annulled and the said A. W. ROBERTSON condemned to
"return these shares to the Estate, or to pay the value thereof;
"namely ONE MILLION THREE HUNDRED THOUSAND
"DOLLARS ($1,300,000.00);

"e).—That all the shares of the following companies, to "wit: ONTARIO AMIESITE ASPHALT LTD, McCURBAN "ASPHALT LTD., QUINLAN, ROBERTSON & JANIN (Lon- "don, Engl.), CROOKSTON QUARRIES LTD and CANADIAN "AMIESITE LTD, be declared to belong to the estate of the late "HUGH QUINLAN, and be returned to the said Estate, failing "which the Testamentary-Executors and Trustees be condemned "to pay an additional sum of $1,000,000.00;

"f).—And finally that all the profits made and dividends "paid by all these companies, since the death of the late HUGH "QUINLAN, be declared to be the property of the said Estate;"

WHEREAS by judgment delivered by M. Justice MARTINEAU, on the sixth day af February nineteen hundred and thirty-one, the above action was dismissed in toto; as regards the CAPITAL TRUST CORPORATION, LIMITED, save as to certain costs, and was maintained in part as to A. W. ROBERTSON, in the manner hereafter explained, to wit:

(a) The said judgment declared non existent or annulled the transfer to the said A. W. ROBERTSON of the following shares: ELEVEN HUNDRED AND FIFTY-ONE (1151) shares of "QUINLAN, ROBERTSON & JANIN, LTD", TWO HUNDRED AND FIFTY (250) shares of "AMIESITE ASPHALT LTD", TWO HUNDRED (200) shares of "ONTARIO AMIESITE ASPHALT LTD" and FOUR HUNDRED (400) shares of "FULLER GRAVEL CO. LTD";

(b) The said judgment ordered the said A. W. ROBERTSON to return the above shares to the said Estate or to pay the value thereof, which was fixed as follows as to the shares of "QUINLAN, ROBERTSON & JANIN LTD" the sum of TWO HUNDRED AND SEVENTY-TWO THOUSAND, NINE HUNDRED AND TWENTY-EIGHT DOLLARS ($272,928.00); as to the shares of "AMIESITE ASPHALT LTD" the sum of ONE HUNDRED THOUSAND DOLLARS ($100,000.00); as to the shares of "ONTARIO AMIESITE ASPHALT LTD" no value; as to the shares of "FULLER GRAVEL CO. LTD" the sum of THIRTY-SIX THOUSAND DOLLARS ($36,000.00);

(c) The said judgment declared that all the profits made and dividends declared since the death of the late HUGH QUINLAN upon the above mentioned shares, belonged to the Estate;

(d) But authorized the said A. W. ROBERTSON to retain these shares, profits and dividends, so long as he would not be reimbursed of the price he had actually paid for them to wit: TWENTY THOUSAND DOLLARS ($20,000.00) for the shares of "FULLER GRAVEL CO. LTD" and TWO HUNDRED AND FIFTY THOUSAND DOLLARS ($250,000.00) for the other shares enumerated in the present paragraph;

WHEREAS the said A. W. ROBERTSON, after the said judgment, availing himself of the right granted to him under the Will of the late HUGH QUINLAN, resigned his office as Testamentary-Executor and Trustee and appointed as his successor the GENERAL TRUST OF CANADA and then appealed, in his personal capacity, from the judgment above mentioned to the Court of King's Bench (Appeal Side) of the Province of Quebec;

WHEREAS the said Testamentary-Executors and Trustees were not parties to the said appeal, nor represented therein;

WHEREAS the said Court of Appeals, although confirming in substance the judgment of the trial Judge, modified said judgment on various points, to wit:

(a) It held the value of the shares, which the said A. W. ROBERTSON was ordered to return should be fixed as of the date of the action instead of as of the date of the month of December nineteen hundred and twenty-seven;

(b) It held that the Estate was only entitled to the dividends declared and paid during the period beginning at the death of the late HUGH QUINLAN;

(c) And finally it held that all the shares of the three companies above mentioned to wit: "QUINLAN ROBERTSON & JANIN LTD", "AMIESITE ASPHALT LTD", and "ONTARIO AMIESITE LTD should be considered as one unit and that the said A. W. ROBERTSON had to deliver every one of these shares or to pay the entire value of all of them;

WHEREAS the said judgment, however, again reserved to the said A. W. ROBERTSON the right to satisfy the condemnation by returning the shares in question on being reimbursed the price, instead of paying the value thereof, and furthermore allowed the said A. W. ROBERTSON to retain all these shares together with the bonuses and dividends declared and paid thereon since the death of the late HUGH QUINLAN until reimbursement, with interest of the price he had actually paid to wit: a total sum of TWO HUNDRED AND SEVENTY THOUSAND DOLLARS ($270,000.00);

WHEREAS the said A. W. ROBERTSON then took an appeal to the Supreme Court of Canada, from the judgment of the Court of King's Bench;

WHEREAS the testamentary-executors and trustees to wit: the CAPITAL TRUST CORPORATION LTD and the GENERAL TRUST OF CANADA upon the suggestion of the Court, intervened in the said appeal, before the Supreme Court of Canada;

WHEREAS, on the thirty-first of January last (1934), the appeal above mentioned was still pending before the Supreme Court of Canada;

WHEREAS on the said date of the thirty-first of January last (1934), all the parties interested in the said action and appeals, save and except dame ETHEL QUINLAN, wife separate as to property of JOHN-THOMAS KELLY, being desirous to put an end to the above case as well as to all further litigation which might arise from the facts therein disclosed and generally from all causes whatsoever signed a deed of agreement before Mtre R. Papineau-Couture Notary under No. 7827 of the minutes of the said Notary;

WHEREAS by the said deed of the thirty-first of January last (1934) it was agreed enacted and covenanted amongst other things that Mr. A. W. ROBERTSON would purchase and repurchase as far as may be necessary all the shares mentioned in the herein before mentioned judgments and would pay therefore and additional price of FIFTY THOUSAND DOLLARS ($50,000.00); the whole in accordance with the terms, clauses and stipulations and subject to the conditions contained in the said agreement;

WHEREAS it was specifically stipulated in the said agreement, as follows:—

"6.—The present agreement of settlement, transaction, "renunciation, sale and discharge, notwithstanding the fact that "the parties hereto have signed it this day, will only come into "effect and become binding on the said parties after the same "shall have been submitted to the Supreme Court of Canada at "its February session, and provided the said Court, before which "the litigation between the parties hereto is still pending, see no "objection to the party of the third part carrying it into effect "or grants acts thereof, and should the Court decide otherwise "then the said agreement shall be null and void and deemed never "to have been entered into."

WHEREAS on the sixth day of June last (1934), the said Supreme Court of Canada did grant acte of the foregoing Agreement in terms of said judgment

THESE DECLARATIONS being made the appearers, acting as aforesaid, acknowledged to have received, at the execution of these presents, the said sum of FIFTY THOUSAND DOLLARS ($50,000.00), being the consideration of the deed of agreement above related, dated the thirty-first of January last (1934), plus all interest accrued on the said sum from the sixteenth of November last (1934), up to the Nineteen of December instant (1934).

The appearers, in consideration of the payment of the said sum of FIFTY THOUSAND DOLLARS ($50,000.00) and interest, hereby agree to, and do hereby sell, re-sell, transfer, retransfer and retrocede to Mr. ANGUS WILLIAM ROBERTSON, so far as may be necessary, in full ownership, all the shares above described, together with all the profits, bonuses or dividends paid or declared in connection with and upon the said shares from the death of the said late HUGH QUINLAN, as well as all profits earned and accrued upon the said shares or on account of the said shares which have not been declared, whether as bonuses, dividends or otherwise.

And, for the same consideration, the appearers further desist from the judgment above mentioned and renounce to, give up and abandon all the rights, claim and pretensions of whatever nature or description which may belong to them under the said above mentioned judgments or which may be vested in them under the said judgments without any exception, reserve or restriction;

The appearers do also, always for the same consideration, further renounce to all and every right,, claim, action, conten-

tion of whatever nature and description which may belong to them or be vested in them or in any one of them against or in favour of the said Mr. ANGUS WILLIAM ROBERTSON, and reciprocally from whatever source, origin or cause now existing. And without restricting the generality of the above terms, the appearers expressly renounce to all and every right, claim, action contention of whatever nature or description which may belong to them or to be vested in them against or in favour of the said Mr. ANGUS-WILLIAM ROBERTSON and reciprocally arising from any of the facts disclosed in the evidence adduced in the above case, or from the administration or management of the Estate of the late HUGH QUINLAN, by the said Mr. ANGUS WILLIAM ROBERTSON as Testamentary-Executor or Trustee, or from the dealings, connections, or operations of the said Mr. ANGUS WILLIAM ROBERTSON with the said late HUGH QUINLAN as co-partner, co-shareholder, co-associate or otherwise, or from the dealings, connections or operations of the said Mr. ANGUS WILLIAM ROBERTSON, acting jointly with the said late HUGH QUINLAN with third parties, or from the personal acts or deeds of the said Mr. ANGUS WILLIAM ROBERTSON, in whatever capacity, circumstances or time.

The appearers further declared that under the Last Will and Testament of the late HUGH QUINLAN above related they are vested with full Power to sell, exchange, convey, hypothecate, pledge or otherwise alienate the whole or any part of the property or assets at any time forming part of his succession; and also that they are vested with full power to compromise, settle and adjust or waive any and every claim and demand belonging to or against the succession and, as Trustees are also empowered to act by virtue of the provisions of the Civil Code.

INTERVENTION.—

To these persents came and intervened:—

ANGUS WILLIAM ROBERTSON, Esquire, general-contractor, residing in the City of Westmount, at civic number 480 Roslyn avenue.

WHO, after due reading of the present deed, has declared to give his express consent to its execution and to accept the transfer in his favor of the shares described at length in the present deed.

The parties declare that the above sum of FIFTY THOUSAND DOLARS ($50,000.00) and interest, as aforesaid is paid by the said A. W. Robertson to the said testamentary executors and trustees, in compliance with and subject to the terms, clauses, stipulations and conditions of the said deed of agreement of the 31st of January 1934, and in full satisfaction of all obligations assumed by the said A. W. Robertson, under the deed aforesaid, a final discharge whereof is hereby granted to the said A. W. Robertson.

WHEREOF ACTE :—

DONE AND PASSED in the said City of Montreal, on the date firstly above mentioned, under the number THREE THOUSAND EIGHT HUNDRED AND EIGHTY-TWO of the original deeds of the undersigned Notary.

And, after due reading hereof the parties have signed with and in the presence of the Notay.

(SIGNED) A. W. ROBERTSON
(") GENERAL TRUST OF CANADA
RENE MORIN, General Manager
ERNEST GUIMONT, Director
(") R. LAGIMODIERE
(") ROGER BIRON, Notary.

TRUE COPY of the original hereof, remaining of record in my office.

(Signed) Roger Biron, N.P.

EXHIBIT D-R-58 OF INTERVENANTS AT ENQUETE

Deed of Deposit by Angus-Wm. Robertson.

(SEAL)

IN THE YEAR ONE THOUSAND NINE HUNDRED AND THIRTY-FIVE, on this thirty-first day of the month of January.

Before Me ROGER BIRON, the undersigned Notary Pu-

blic for the Province of Quebec, residing and having its place of business in the City of Montreal.

CAME AND APPEARED

ANGUS-WILLIAM ROBERTSON, Esquire, General-Contractor, residing in the City of Westmount, at civic Number 480 Roslyn Avenue.

WHO requested the undersigned Notary to receive and deposit, to be recorded as one of his minutes, the foregoing and annexed documents:

1o.—A written Agreement under private seal, sous seing privé, dated the twenty-ninth day of January Nineteen hundred and thirty-five, between the Honourable J. L. St-Jacques, one of the Judges of the Court of King's Bench; Jacques Desaulniers, K.C.; Edouard Masson, Barrister; and Henri Masson-Loranger, Solicitor, and signed by Jacques Desaulniers,—by Lucien Desaulniers, procureur,—Henri Masson Loranger,—and Edouard Masson, In Re Case No A-36664 S.C. Montreal;

2o.—A deed of Agreement between Estate Hugh Quinlan et al, and Angus-William Robertson, executed before Me R. Papineau Couture, Notary at Montreal, the thirty-first of January Nineteen hundred and thirty-four, bearing the Number 7827 of his Repertory.

3o—A Discharge In Re: No A-36660 Superior Court for the District of Montreal, Dame Margaret Quinlan et vir et al, Demandeurs, vs A. W. Robertson & al, Défendeurs, et Catherine Ryan et al, Mis en cause, dated the Twenty-seventh day of June Nineteen hundred and thirty-four, and signed by Justice J. L. St-Jacques.

4o.—A Discharge In Re: No. 436660 Superior Court for the District of Montreal, Dame M. Quinlan & Vir, et al, demandeurs, vs A. W. Robertson et al, Defendeurs, et C. Ryan & al, Mis en cause, dated the Third day of July Nineteen hundred and thirty-four, signed by Edouard Maseson.

5o.—A letter dated the Fifth of July last (1934), addressed to Mtre L. E. Beaulieu, K.C., and signed by Mtre Jacques Desaulniers.

6o.—A deed of Ratification of the Agreement executed before Mtre R. Papineau Couture, Notary, between Dame Mar-

garet Quinlan & Vir, William-A. Quinlan & al, Trust Corporation Ltd et al, and Augus William Robertson, signed by Mrs. Margaret Quinlan, and by Mtre Jacques Desaulniers, personally and to authorize his wife, the said Dame Margaret Quinlan, at Palma de Mallonca, Spain, and duly authenticated by George-Thomas Sawand, British Pro-Consul at Palma de Mallonca, Spain, on the Sixth day of July last (1934).

7o.—A discharge In Re: No A-36664 Superior Court for the District of Montreal, by Dame Margaret Quinlan, wife of Mr. Jacques Desaulniers, and Dame Ethel Quinlan, wife of Mr. John Thomas Kelly, both duly authorized by their respective husband, against the Capital Trust Corporation and Mr. Angus-William Robertson, for the sum of TWO HUNDRED AND FIFTY DOLLARS ($250.00) paid unto Mr. Henri Masson Loranger, Barrister, the twenty-ninth day of August Last (1934), and signed by the said Henri-Masson Loranger, in January instant 1935.

And the said Notary had deposited the said documents, in his said records, as one of his minutes, in order that authentic copies may be delivered thereof and for all purposes by law required; the said documents having been certified correct by the said Appearer and annexed as aforesaid, to the original hereto, after having been signed, NE VARIETUR, by the said Appearer, and the undersigned Notary.

WHEREOF ACTE:—

THUS DONE AND PASSED at the said City of Montreal, on the date firstly above written, under the Number THREE THOUSAND NINE HUNDRED AND EIGHT of the original deeds of the undersigned Notary.

And after due reading hereof, the appearer has signed with and in the presence of the Notary.

(SIGNED) A. W. ROBERTSON
(‘ ‘) ROGER BIRON, Notary.

TRUE COPY of the original hereof, remaining of record in my office.

(Signed) Roger Biron, Notary.

Montreal, 29th of January, 1934.

We, the undersigned: the Honourable J.-L. St-Jacques, one of the judges of the Court of King's Bench; Jacques Desaulniers, K.C.; Edouard Masson, Barrister; and Henri Masson-Loranger, Solicitor, hereby declare:—

1o.—We have taken communication of the deed of transaction and settlement executed this 29th day of January, 1934, between Dame Margaret Quinlan, William A. Quinlan et al, Capital Trust Corporation et al, and A. W. Robertson, whereby the parties have settled the case instituted under No. A-36664 of the records of the Superior Court for the district of Montreal, by Dame Margaret Quinlan and Ethel Quinlan against A. W. Robertson, and Capital Trust Corporation, and which is now pending before the Supreme Court of Canada, and, more particularly, of clause I relating to the payment of costs, disbursements and counsel's fees, due to the various barristers who have acted for the said Dame Margaret Quinlan, before the various courts.

2o.—We declare that the amounts coming to us, for costs, disbursements and fees, are as follows:—

The Hon. J.-L. St-Jacques	$ 2,225.
Mr. Edouard Deslauriers	$27,500.
Mr. Edouard Masson	$10,000.
Mr. Henri Masson Loranger	250.

3o.—We agree to give to the said A. W. Robertson, upon remittance of the sums coming to each of us, under the preceding clause, a full, complete and final discharge, for all claims, or recourses whatever which we may have, in connection with the said case, before all the courts.

AND WE HAVE SIGNED: (Signed) Jacques Desaulniers
par Lucien Desaulniers, procureur.

(Signed) Edouard Masson (Signed) Henri Masson Loranger

MONTREAL, 29th January, 1934.

I, the undersigned, A. W. Robertson hereby oblige and bind myself to pay upon the settlement of the said case of Margaret Quinlan et al, vs myself et al, bearing No. 36664 C.S.M. the aforesaid disbursemnts, costs and fees as follows:—

The Honourable J. L. St-Jacques	$ 2,225.
Mr. Jacques Desaulniers, K.C.	$27,500.
Mr. Edouard Masson, Lawyer	$10,000.
Mr. Henri Masson-Loranger, Solicitor	250.

AND I HAVE SIGNED.

Annexed to the original deed bearing the No. 3908 of the repertory of Me ROGER BIRON, Notary at Montreal, after having been signed, NE VARIETUR, by the parties to said deed, with and in the presence of the Notary.

At Montreal, on this thirty-first day of the month of January nineteen hundred and thirty-five.

(SIGNED) A. W. ROBERTSON
(") ROGER BIRON, Notary.

TRUE COPY

(Signed) Roger Biron, Notary.
(SEAL)

BEFORE Mtre R. PAPINEAU-COUTURE, Notary Public for the Province of Quebec, residing in the City of Outremont, and practising in the City and District of Montreal.

APPEARED.—

DAME MARGARET QUINLAN, of the City of Montreal, wife separate as to property of Jacques Desaulniers, K.C., Barrister, of the same place, hereinacting and represented by LUCIEN DESAULNIERS, Commercial Traveller, by virtue of Power of Attorney executed before J. H. Courtois, N. P., on the 25th day of January, 1934, and the said JACQUES DESAULNIERS, K.C., to authorize his said wife to these presents, also acting and represented by the said Lucien Desaulniers, by virtue of Power of Attorney executed before J. H. Courtois, N.P., on the 25th day of January, 1934, being minute numbers 2119 and 2122.

PARTY OF THE FIRST PART.

— AND —

WILLIAM A. QUINLAN, Manager of the City of Westmount: KATHLEEN VERONICA QUINLAN, wife separate as

to property of Ernest Ledoux, Agent, of the City of Montreal, and the said ERNEST LEDOUX to authorize his wife hereto; ANNE AUGUSTA QUINLAN, spinster, of the City of Montreal, herein acting and represented by LUCIEN DESAULNIERS, Commercial Traveller, of the City of Montreal, by virtue of Power of Attorney executed by the said Anne Augusta Quinlan before J. H. Courtois, N.P., on the 25th day of January, 1934, under minute number 2123; MARY THERESA QUINLAN, wife common as to property of JOHN HENRY DUNLOP, Bond Salesman, of the City of Westmount, and the said JOHN HENRY DUNLOP, personally and to authorize his wife to these presents; EDWARD HUGH QUINLAN, Gentleman, of the City of Montreal; HELEN HILDA QUINLAN, spinster, of the City of Montreal and the said JOHN HENRY DUNLOP, hereinabove described, in his quality of Tutor to his minor child JOHN STUART DUNLOP; and the said ERNEST LEDOUX, hereinabove described, in his quality of Tutor all his minor children, namely, HUGH, FRANCIS, DAVID and MARY THERESA LEDOUX,

PARTY OF THE SECOND PART.

AND

CAPITAL TRUST CORPORATION, LIMITED, a body politic and corporate, having its principal place of business in the City of Ottawa, Province of Ontario, and having a place of business in the City of Montreal, District of Montreal, hereinacting and represented by EMMANUEL LUDGER PARENT, Assistant General Manager, duly authorized to these presents under Power of Attorney dated at the City of Ottawa, Province of Ontario, on the twenty-ninth day of January instant (1934), duly issued under the authority of By-Law No. 47 of said Corporation and attached hereto and signed "NE VARIETUR" by the parties to form part hereof; and GENERAL TRUST OF CANADA, a body politic and corporate having its principal place of business in the City of Montreal, District of Montreal, herein acting and represented by BEAUDRY-LEMAN, one of its Directors and RENE MORIN, its Secretary and General Manager, duly authorized hereto in virtue of By-Law No. 41 of said Corporation, a certified copy whereof is attached hereto and signed "Ne VARIETUR" by the parties to form part hereof, said CAPITAL TRUST CORPORATION LIMITED, and GENERAL TRUST OF CANADA, herein acting in their quality of Executors and Trustees of the Estate of the late Hugh Quinlan, by virtue of his Last Will and Testament of the 14th day of April 1926, executed before Edouard

Biron, N.P., and Colleague, and duly registered at Montreal on the 24th day of March, 1928, under No. 173295,

PARTY OF THE THIRD PART

AND

ANGUS WILLIAM ROBERTSON, Contractor, of the City of Westmount in the District of Montreal,

PARTY OF THE FOURTH PART.

The said parties declared before me as follows:—

WHEREAS the party of the first part, acting jointly with her sister, Dame Ethel Quinlan, wife separate as to property of John Thomas Kelly, instituted an action against the then testamentary executors and trustees appointed under the Will of her late father, Hugh Quinlan to wit: The Capital Trust Corporation and A. W. Robertson above described whereby she prayed amongst other things;

(a) That the two testamentary-executors and trustees, to wit: Capital Trust Corporation Limited, and A. W. Robertson, be dismissed and removed from office;

(b) That the said testamentary executors and trustees be condemned to render an account of their administration and, in default thereof to pay to herself and to her sister, Ethel Quinlan, each the sum of $500,000.00;

(c) That the inventory prepared by the testamentary executors and trustees be declared illegal, fraudulent and be annulled;

(d) That the transfer to A. W. Robertson of shares belonging to the late Hugh Quinlan in the three companies, to wit: "Quinlan, Robertson & Janin, Ltd.", "Amiesite Asphalt Ltd." and "Fuller Gravel Co. Ltd.", be annulled and the said A. W. Robertson condemned to return these shares to the estate, or to pay the value thereof; namely ONE MILLION THREE HUNDRED THOUSAND DOLLARS ($1,300,000.00);

(e) That all the shares of the following companies, to wit: "Ontario Amiesite Asphalt Ltd", "McCurban Asphalt Ltd", "Quinlan, Robertson & Janin (London, Engl.)", "Crookston Quarries Ltd" and "Canadian Amiesite Ltd" be declared to be-

long to the estate of the late Hugh Quinlan, and be returned to the said estate, failing which the testamentary executors and trustees be condemned to pay an additional sum of $1,000,000.00;

(f) And finally that all the profits made and dividends paid by all these companies, since the death of the late Hugh Quinlan, be declared to be the property of the said estate;

WHEREAS by judgment delivered by Mr. Justice Martineau on the 6th of February 1931, the above action was dismissed in toto, as regards the Capital Trust Corporation Limited, save as to certain costs, and was maintained in part as to A. W. Robertson in the manner hereafter explained, to wit:—

(a) The said judgment declared non existent or annulled the transfer to the said A. W. Robertson of the folllowing shares: 1151 shares of "Quinlan, Robertson & Janin Ltd", 250 shares of "Amiesite Asphalt Ltd", 200 shares of "Ontario Amiesite Asphalt Ltd" and 400 shares of "Fuller Gravel Co. Ltd";

(b) The said judgment ordered the said A. W. Robertson to return the above shares to the said estate or to pay the value thereof, which was fixed as follows as to the shares of "Quinlan, Robertson & Janin Ltd", the sum of $272,928.00; as to the shares of "Amiesite Asphalt Ltd", the sum of $100,000.00; as to the shares of "Ontario Amiesite Asphalt Ltd" no value; as to the shares of "Fuller Gravel Co. Ltd" the sum of $36,000.00;

(c) The said judgment declared that all the profits made and dividends declared since the death of the late Hugh Quinlan, upon the above-mentioned shares, belonged to the estate;

(d) But authorized the said A. W. Robertson to retain these shares, profits and dividends, so long as he would not be reimbursed of the price he had actually paid for them to wit: $20,000.00 for the shares of "Fuller Gravel Co. Ltd", and $250,-000..00 for the other shares enumerated in the present paragraph;

WHEREAS the said A. W. Robertson, after the said judgment, availing himself of the right granted to him under the Will of the late Hugh Quinlan, resigned his office of testamentary-executor and trustee and appointed as his successor the General Trust of Canada and then appealed, in his personal capacity, from the judgment above mentioned to the Court of King's Bench (Appeal Side) of the Province of Quebec;

WHEREAS the said testamentary executors and trustees were not parties to the said appeal, nor represented therein;

WHEREAS the said Court of Appeals, although confirming in substance the judgment of the trial Judge, modified said judgment on various points, to wit:

(a) It held the value of the shares, which the said A. W. Robertson was ordered to return, should be fixed as of the date of the action instead of as of the date of the month of December 1927;

(b) It held that the estate was only entitled to the dividends declared and paid during the period beginning at the death of the late Hugh Quinlan;

(c) And finally it held that all the shares of the three companies above mentioned, to wit: "Quinlan, Robertson & Janin, Ltd", "Amiesite Asphalt Ltd", and "Ontario Amiesite Ltd", should be considered as one unit and that the said A. W. Robertson had to deliver every one of these shares or pay the entire value of all of them;

WHEREAS the said judgment, however, again reserved to the said A. W. Robertson the right to satisfy the condemnation by returning the shares in question on being reimbursed the price, instead of paying the value thereof, and furthermore allowed the said A. W. Robertson to retain all these shares together with the bonuses and dividends declared and paid thereon since the death of the late Hugh Quinlan until reimbursement, with interest, of the price he had actually paid, to wit: a total sum of $270,000.00.

WHEREAS the said A. W. Robertson has taken an appeal to the Supreme Court of Canada from the Judgment of the Court of King's Bench, and the said appeal is now pending;

WHEREAS the testamentary-executors and trustees, to wit: Capital Trust Corporation, Limited, and the General Trust of Canada, upon the suggestion of the Court, have intervened in the appeal now pending before the Supreme Court of Canada, and are parties to said appeal;

WHEREAS all the parties to the present agreement realize that the ultimate outcome of the appeal now pending is uncertain, more particularly as to certain points now in issue;

WHEREAS the parties of the first part and of the second and third part realize that, should the judgment of the Court of King's Bench be confirmed, A. W. Robertson would still be entitled and might be able to return the shares in dispute to the estate and that these shares, being minority shares, would not under the present circumstances, be worth the price which was paid for them by A. W. Robertson, to wit: $270,000.00 which price would have to be reimbursed to said Robertson with interest, in order that the estate recover them;

WHEREAS all the parties are desirous to put an end, not only to the case which is now pending, but to all further litigation which might arise from the facts therein disclosed and generally from all causes whatsoever now existing;

WHEREAS under the Will of the late Hugh Quinlan, the party of the third part is vested with full power to sell, exchange, convey, hypothecate, pledge or otherwise alienate the whole or any part of the property or assets at any time forming part of his succession; and is also vested with full power to compromise, settle and adjust or waive any and every claim and demand belonging to or against the succession and, as Trustees, is also empowered to act by virtue of the provisions of the Civil Code;

IT IS NOW THEREFORE agreed, enacted and covenanted as follows:—

1.—The party of the fourth part hereby elects to keep all the shares mentioned in the judgments above mentioned and, with this end in view, the said party of the fourth part agrees to purchase, re-purchase and does hereby purchase and re-purchase, so far as may be necessary, all the shares above mentioned, for and in consideration of an additional price of $50,000.00 to be paid upon the execution of these presents, and he further agrees to pay all such sums as may be necessary to pay and satisfy all claims for taxable Court costs and for all extra judicial costs, disbursements and Counsel fees due to the Honourable J. L. St. Jacques, now one of His Majesty's Judges of the Court of King's Bench, Mr. Jacques Desaulniers, K.C., Mr. Edouard Masson, Barrister, and Mr. Henri Masson-Loranger, Solicitors, being all the Counsel, attorneys and solicitors who have represented the Respondent, Margaret Quinlan, and an additional sum of $4,025.00 to Mr. Agénor H. Tanner, K.C., of the City of Montreal. Out of the said sum of $4.025.00, there shall be paid in full all the costs and disbursements which might be taxed against the said A. W. Robertson in favour

of the said Agénor H. Tanner, K.C., in connection with the above case, and the balance shall be applied in satisfaction of the claims which the said Agénor H. Tanner, K.C., may have for Court costs, disbursements and Counsel fees against Respondent, Margaret Quinlan. And said Respondent, Margaret Quinlan, hereby declares that the said Agenor H. Tanner, K.C., ceased to represent her and act for her after the judgment of the Superior Court of the 6th of February, 1931.

2.—In consideration of the foregoing, the party of the third part agrees to sell, re-sell, transfer, re-transfer and retrocede to the said party of the fourth part, so far as may be necessary, in full ownership, all the shares above described together with all the profits, bonuses or dividends paid or declared in connection with and upon the said shares from the death of the late Hugh Quinlan; as well as all profits earned and accrued upon the said shares or on account of the said shares which have not been declared, whether as bonuses, dividends or otherwise.

3.—The parties of the first and of the second part hereby concur in the said sale, re-sale, transfer, re-transfer or retrocession as far as may be necessary, ratifying and confirming the same without any reserve, exception or restriction whatsoever.

4. The parties of the first, second and third part, for the same consideration, further desist from the judgments above mentioned and renounce to, give up and abandon all the rights, claims and pretensions of whatever nature or description which may belong to them under the said above mentioned judgments or which may be vested in them under the said judgments without any exception, reserve or restrictions;

5.—The parties of the first, second, third and fourth part always, for the same consideration, further renounce to all and every right, claim, action, contention of whatever nature and description which may belong to them or be vested in them or in anyone of them against or in favour of the said A. W. Robertson and reciprocally from whatever source, origin or cause now existing. And without restriction the generality of the above terms, the said parties of the first, second, third and fourth part expressly renounce to all and every right, claim, action, contention of whatever nature or description which may belong to them or to be vested in them against or in favour of the said A. W. Robertson and reciprocadly arising from any of the facts disclosed in the evidence adduced in the above case, or from the administration

or management of the estate of the late Hugh Quinlan, by the said A. W. Robertson as testamentary-executor or trustee, or from the dealings, connections or operations of the said A. W. Robertson with the said late Hugh Quinlan as co-partner co-shareholder, co-associate or otherwise, or from the dealings, connections or operations of the said A. W. Robertson acting jointly with the said late Hugh Quinlan with third parties, or from the personal acts or deeds of the said A. W. Robertson, in whatever capacity, circumstances or time;

6.—The present agreement of settlement, transaction, renunciation, sale and discharge, notwithstanding the fact that the parties hereto have signed it this day, will only come into effect and become binding on the said parties after the same shall have been submitted to the Supreme Court of Canada at its February session, and provided the said Court, before which the litigation between the parties hereto is still pending, see no objection to the party of the third part carrying it into effect or grants acte thereof, and should the said Court decide otherwise, then the said agreement shall be null and void and deemed never to have been entered into.

WHEREOF ACTE:—

THUS DONE AND PASSED at the City of Montreal, on the thirty-first day of the month of January nineteen hundred and thirty-four and of record in the office of the undersigned Notary under his minute number SEVEN THOUSAND EIGHT HUNDRED AND TWENTY-SEVEN.

And atfer due reading herof the said parties have signed with and in the presence of the undersigned Notary.

(SIGNED) MARGARET QUINLAN
(") JACQUES DESAULNIERS
personellement et pour autoriser
la dite MARGARET QUINLAN

VRAIE COPIE, sauf les signatures qui ne sont pas rapportées.

(Signé) Beaulieu, Gouin, Mercier, Tellier
Avocats de A. W. Robertson

(L.S.)

I, George Thomas Sawand, British Pro-Consul, certify that the above signatures are those of Margaret Quinlan and Jacques Desaulniers & were made before me, this sixth day of July 1934 in the British Vice-Consulate, Palma de Mallonca, Spain.

(Signed) G. T. Sawand, Pro-Consul

Annexed to the original deed bearing the No. 3908 of the repertory of Me ROGER BIRON, Notary at Montreal, after having been signed, NE VARIETUR, by the parties to said deed, with and in the presence of the Notary.

At Montreal, on this thirty-first day of the month of January nineteen hundred and thirty-five.

(SIGNED) A. W. ROBERTSON
(") ROGER BIRON, Notary,

TRUE COPY
(Signed) Roger Biron, Notary.

PROVINCE DE QUEBEC)
DISTRICT DE MONTREAL) COUR SUPERIEURE
No. A-36660)

DAME MARGARET QUINLAN & VIR & al.,

— vs —

Demandeurs,

A. W. ROBERTSON & AL

Défendeurs,

— et —

CATHERINE RYAN & AL.,

Mis-en-cause.

Je, soussigné, reconnais avoir reçu de Monsieur A. W. Robertson, par chèque, à l'ordre de Mtre L. E. Beaulieu, et endossé par ce dernier à mon ordre, la somme de DEUX MILLE DEUX CENT VINGT-CINQ DOLLARS ($2,225.00), étant le montant intégral des frais et honoraires me revenant dans la cause susdite pour services professionnels rendus, tant en Cour Supérieure qu'en Cour d'Appel, et par les présentes, je donne quittance générale et finale de tout ce qui me revient pour les raisons susdites.

La somme de $2,225.00 m'est payée en vertu du contrat d'arrangement intervenu devant Mtre R. Papineau-Couture, N.P., le 31 janvier 1934, dans lequel Monsieur et Madame Jacques Desaulniers que je représentais dans la cause sus-mentionnée, ont comparu par leur procureur, Monsieur Lucien Desaulniers, en vertu de procurations passées devant Mtre J. H. Courtois, N.P., le 25 janvier 1934, et comportant, entr'autres clauses, un engagement exprès de la part de Monsieur et Madame Jacques Desaulniers de ratifier le contrat d'arrangement sus-mentionné.

En conséquence, je m'engage à remettre et restituer à Monsieur A. W. Robertson la somme reçue ce jour, advenant le cas où Monsieur et Madame Jacques Desaulniers refuseraient de signer un acte de ratification des actes faits par leur procureur Monsieur Lucien Desaulniers, en rapport avec le contrat d'arrangement ci-dessus.

MONTREAL, ce 27 juin, 1934.

(Signé) J. L. St-Jacques

Annexed to the original deed bearing the No. 3908 of the repertory of Me ROGER BIRON, Notary at Montreal, after having been signed, NE VARIETUR, by the parties to said deed, with and in the presence of the Notary.

At Montreal, on this thirty-first day of the month of January nineteen hundred and thirty-five.

(SIGNED) A. W. ROBERTSON
(") ROGER BIRON, Notary.

TRUE COPY

(Signed) Roger Biron, Notary.

(SEAL)

PROVINCE DE QUEBEC
DISTRICT DE MONTREAL
No. A-36660 COUR SUPERIEURE

DAME MARGARET QUINLAN & VIR & al.,
Demandeurs

— vs —

A. W. ROBERTSON et al,
défendeurs

— et —

CATHERINE RYAN & AL
mis-en-cause.

Je soussigné reconnais avoir reçu de Monsieur A. W. Robertson, par chèque, à l'ordre de Mtre L. E. Beaulieu, et endossé par ce dernier à mon ordre, la somme de DIX MILLE DOLLARS ($10,000.00), étant le montant intégral des déboursés, frais et honoraires me revenant dans la cause susdite, pour services professionnels devant la Cour Supérieure, la Cour d'Appel, et la Cour Suprême, et généralement pour tous services professionnels quelconques rendus en rapport avec l'affaire ci-dessus et, par les présentes, je donne quittance générale et finale de tout ce qui peut me revenir, et m'être dû, par la dit Monsieur A. W. Robertson;

La somme de DIX MILLE DOLLARS ($10,000.00) m'est payée en vertu du contrat d'arrangement intervenu devant Mtre R. Papineau-Couture, N.P. le 31 janvier 1934, et complété par l'écrit sous seing privé que j'ai signé le 29 du même mois. Dans l'affaire d'arrangement ci-dessus, Monsieur et Madame Jacques Desaulniers que je représentais dans la cause sus-mentionnée ont comparu par leur procureur, Monsieur Lucien Desaulniers, en vertu de procurations passées devant Mtre J. H. Courtois, N.P., le 25 janvier 1934, et comportant entr'autres clauses, un engagement exprès de la part de Monsieur et Madame Jacques Desaulniers de ratifier le contrat d'arrangement sus-mentionné;

En conséquence, je m'engage à remettre et restituer à Monsieur A. W. Robertson la somme reçue ce jour, advenant le cas où Monsieur et Madame Jacques Desaulniers refuseraient de signer un acte de ratification des actes faits par leur procureur Monsieur Lucien Desaulniers, en rapport avec le contrat d'arrangement ci-dessus.

FAIT EN DOUBLE A MONTREAL, ce 3 juillet 1934.

(Signé) EDOUARD MASSON

Annexed to the original deed bearing the No. 3908 of the repertory of Me ROGER BIRON, Notary at Montreal, after having been signed, NE VARIETUR, by the parties to said deed, with and in the presence of the Notary.

At Montreal, on this thirty-first day of the month of January nineteen hundred and thirty-five.

(SIGNED) A. W. ROBERTSON
(") ROGER BIRON, Notary.

TRUE COPY

(Signed) Roger Biron, Notary.

(SEAL)

Palma de Mallonca
5 juillet 1934.

Mtre L. E. Beaulieu, C.R.
511 Place d'Armes
Montréal.

Cher M. Beaulieu

R. Quinlan v. Robertson

J'accuse réception de votre lettre du 22 juin 1934 m'incluant une copie certifiée par vous même, de l'acte d'arrangement de cette affaire, ainsi que le projet d'acte de ratification.

Ma femme et moi, nous avons signé les deux en bonne et due forme, nos signatures étant naturellement sujettes au paiement des $44,000. de frais comme suit:—

$ 2225.00 à L'Hon. Juge St-Jacques
$27500.00 " Jacques Desaulniers
$10000.00 " Edouard Masson
$ 250.00 " Mtre Loranger
et $ 4025.00 pour le bénéfice de Mtre A. H. Tanner, C.R., suivant la teneur de l'acte d'arrangement.

Vous remerciant

Je demeure votre dévoué
(Signé) Jacques Desaulniers

Annexed to the original deed bearing the No. 3908 of the repertory of Me ROGER BIRON, Notary at Montreal, after having been signed, NE VARIETUR, by the parties to said deed, with and in the presence of the Notary.

At Montreal, on this thirty-first day of the month of January nineteen hundred and thirty-five.

(SIGNED) A. W. ROBERTSON
(") ROGER BIRON, Notary.

TRUE COPY

(Signed) Roger Biron, Notary.

(SEAL)

ACTE DE RATIFICATION DU CONTRAT INTERVENU DEVANT MTRE R. PAPINEAU-COUTURE NOTAIRE A MONTREAL ENTRE DAME MARGARET QUINLAN & VIR, WILLIAM A. QUINLAN & AL, CAPITAL TRUST CORPORATION LTD & AL, et ANGUS WILLIAM ROBERTSON.

Nous soussignés, dame Margaret Quinlan, épouse séparée de biens de Mtre Jacques Desaulniers, avocat, tous deux des cité et district de Montréal, et actuellement de passage à Palma de Mallonca, Espagne,— le dit Mtre Jacques Desaulniers agissant tant personnellement que pour autoriser sa dite épouse,—reconnaissons que nous avons pris connaissance du contrat passé devant Mtre R. Papineau-Couture, N.P., le 31 janvier 1934, et portant le numéro 7827 des minutes du notaire susdit, et auquel nous avons comparu, par l'intermédiaire de notre procureur, Mtre Lucien Desaulniers, et dont copie sous seing privé, dûment signée et paraphée par nous, est annexée au présent écrit, et, par les présentes, nous acceptons, confirmons et approuvons toues les conventions contenues dans l'acte sus-mentionné, suivant leur forme et teneur, sans réserves, ni restrictions, et nous ratifions, en autant que besoin peut être, ce qui a été fait en notre nom, par notre susdit procureur Mtre Lucien Dessaulniers, en vertu du susdit contrat.

EN FOI DE QUOI NOUS AVONS SIGNE:—

(Signé) MARGARET QUINLAN,
tant personnellement que pour autoriser la dite Margaret Quinlan

(L.S.) I, GEORGE THOMAS SAWAND, British Pro-Consul at Palma de Mallonca, certify that the above signatures are those of Margaret Quinlan and Jacques Desaulniers and were made before me this sixth day of July 1934, in the British Vice-Consulate, Palma de Mallonca, Spain.

(Signed) G. T. SAWAND, Pro. Consul

Annexed to the original deed bearing the No. 3908 of the repertory of Me ROGER BIRON, Notary at Montreal, after having been signed, NE VARIETUR, by the parties to said deed, with and in the presence of the Notary.

At Montreal, on this thirty-first day of the month of January nineteen hundred and thirty-five.

(SIGNED) A. W. ROBERTSON
(") ROGER BIRON, Notary.

TRUE COPY

(Signed) Roger Biron, Notary.

(SEAL)

MONTREAL, January 1935.

The undersigned, Mr. Henri-Masson Loranger, of the City of Montreal, hereby acknowledges having received from Mr. Angus William Robertson, contractor of the City of Montreal, the sum of $250.00 by cheque to the order of said Henri Masson Loranger, in satisfaction of all claims for Court costs and for all extra-judicial costs, disbursements and Counsel's fees in connection with the case instituted under number A-36664 of the record of the Superior Court, for the district of Montreal, by Dame Margaret Quinlan, wife separate as to property of the said Mr. Jacques Desaulniers, and Dame Ethel Quinlan, wife separate as to property of Mr. John Thomas Kelly, both duly authorized by their respective husband against the Capital Trust Corporation and the said Mr. Angus William Robertson, as well personally as in their capacity of testamentary executors and trustees, appointed under the will of the late Hugh Quinlan; said sum being for all proceedings before the Supreme Court of Canada.

The said sum of $250.00 is paid in conformity with and in execution of a deed of agreement passed before Mr. R. Papineau-Couture, N.P., on the 31st of January 1934, between the Estate Hugh Quinlan & al., and Mr. Angus William Robertson, and bearing No. 7837 of the minutes of said notary, as supplemented by a private writing bearing date of the 29th of January 1934, signed by the said Mr. Jacques Desaulniers, K.C., acting through Mr. Lucien Desaulniers, his attorney and by others, and fixing to the amount of $250.00, the sum payable to the said Mr. Henri Masson Loranger, under the said agreement of the 31st of January 1934.

Payé vers le 29 août 1934.

(Signed Henri Masson Loranger

Annexed to the original deed bearing the No. 3908 of the repertory of Me ROGER BIRON, Notary at Montreal, after having been signed, NE VARIETUR, by the parties to said deed, with and in the presence of the Notary.

At Montreal, on this thirty-first day of the month of January nineteen hundred and thirty-five.

(SIGNED) A. W. ROBERTSON
(") ROGER BIRON, Notary.

TRUE COPY

(Signed) Roger Biron, Notary.

(SEAL)

Part IV — JUDGMENTS, etc.

Superior Court
Ditrict of Montreal
No. 36,664

Dame Ethel Quinlan et vir,
Plaintiffs.

—vs—

A. W. Robertson et al.,
Defendants.

&

The Capital Trust Corporation et al.,
Intervenants in the Supreme Court.

&

The said Dame Ethel Quinlan Kelly et vir,
Plaintiffs on an Incidental Demand,

—vs—

The said A. W. Robertson et al.,
Defendants on Incidental Demand.

JUDGMENT OF THE SUPERIOR COURT UPON THE MERITS OF THE PRINCIPAL ACTION AND UPON THE MERITS OF THE INCIDENTAL DEMAND.

Montreal 26th, April 1940.

PRESENT: MR. JUSTICE GIBSONE.

THE COURT &c.,

SEEING that the Plaintiffs by their action as amended and re-amended, set out and allege to the effect following to wit:

That Hugh Quinlan, Contractor, in his lifetime of the City of Westmount, departed this life the 26th June, 1927, leaving his last Will and Testament passed before Mtre Edouard Biron and colleague Notaries of Montreal, the same of the date 14th April 1926;

That, by his said Will, the testator appointed the defendants Angus W. Robertson and the Capital Trust Corporation the Executors of his Will and the Trustees of his Estate, for the execution of the provisions of the said Will and of the trusts thereby created;

That, at his decease, the said decedent left surviving him: his widow, Dame Catherine Ryan, and eight children issue of his marriage with his said widow; and that the Plaintiffs Dame Ethel Quinlan Kelly and Dame Margaret Quinlan Desaulniers are two of such children;

That, as to the details and particulars of the Trusts created and the modes of realization and administration of the Estate, the Plaintiffs refer to the document itself, namely the said Will, but in general the dispositions were that the whole Estate was entrusted to the said Executor-Trustees with most ample powers for realization, administration and partition, their charge and powers to continue until the full and complete execution of the Trust; and that in general, the income and capital of the Estate were to be disposed of in the manner following namely: that during the lifetime of the widow the income of the Estate was to be applied to pay to her a named annuity and was to be applied also to pay certain annual allowances to some of the children, the balance of the income during his period was to be added to capital, and thereafter to form part thereof; that, from the death of the widow, the capital of the Estate was to be kept intact, and the net income was to be divided equally among the testator's children who should be either living or represented by children; then, upon the decease of the last surviving child of the testator, the capital be divided equally per capita among the then surviving grandchildren of the testator;

That the Defendants, the Executor-Trustees, accepted the office or charge, and took over the possession of the assets of the Estate;

AND Plaintiffs allege that the Defendants the Executor-Trustees, have been negligent wasteful and incompetent in the

conduct of their said charge that they have thereby incurred the penalty of ouster, or removal, from the said office and charge, the Plaintiffs allege different matters upon which are based their complaints and imputations of blame; the Plaintiffs pray that the said Defendants be ousted from their said office and charge, with costs against the said Executor-Trustees personally; and that they be condemned also to render to the Plaintiffs and other interested parties the account of their administration the whole as provided by law; the interested parties other than the Plaintiffs being the mis-en-cause or added Deefndants in the present action;

AND the Plaintiffs further allege that wrongfully, in contravention of law and for his own profit and advantage, the Defendant A. W. Robertson, one of the Trustees, himself, either alone or with the connivance of the other Trustee the Defendant the Capital Trust Corporation, contrived to have transferred to him, or to his name, divers shares and securities, the property of the said decedent or of his estate, to wit the shares which had belonged to the late Hugh Quinlan in the companies: Quinlan, Robertson & Janin Ltd., Amiesite Asphalt Co. Ltd., Ontario Amiesite Ltd., and Fuller Gravel Co. Ltd.; the Plaintiffs by their action demand that the transfers of the said shares to the Defendant Robertson be annulled and declared null, that he be condemned to return the same to the Estate as represented by those who are to be the Trustees thereof, and, in default of so doing, that he be condemned to pay the value thereof with issues and profits all of which estimated by Plaintiffs to be of the value of $1,350,000.;

AND the Plaintiffs make allegations also with respect to other securities and interests of the decedent, such as Crookston Quarries etc., but for the reason to be mentioned, such matters ceased to be an issue in the present suit, and do not call for exposition or adjudication in the present judgment;

The whole with costs against the Defendant Robertson personally, and with costs against other parties in case only of contestation by them;

SEEING that the Defendants appeared separately, and defended separately, but that the Defences were similar in practically all respects:

Each of these Defendants by Defence denied that there had been, on the part of the Trustees any neglect or mis-management,

that, on the contrary, all had been attended to with care and competency; that with respect to the Quinlan-Robertson-Janin the Amiesite-Asphalt the Ontario-Asphalt shares, these had been sold by the decedent during his lifetime to the Defendant Robertson, and the sale had been carried out by the Trustees; each alleged that the Trustees were and had always been ready to render account each denied the allegations of the action as to the other securities; each prayed for the dismissal of the action as to such Defendant with costs;

SEEING that the Plaintiffs, by their Answer to those Defences, denied specially that the shares mentioned had been sold and transferred by the decedent to the Defendant Robertson, and they persisted in the allegations and in the conclusions of their action;

SEEING that, after Proof and Hearing on the Merits before this Court, judgment was rendered herein on the 6th February 1931; and by the said judgment it was adjuged in substance as follows:

on the issue between the Plaintiffs and the Executor-Trustees cs-quality:

1.—That the allegations of neglect, mismanagement, incompetency, were not proved to an extent sufficient to justify removal from office; 2.—that these Defendants were not obliged then to render account, their turn of office not having expired; as to these two issues, the Plaintiffs' action was dismissed;
on the issue between the Plaintiffs and the Defendant Robertson personally, that such Defendant had not made proof that he had acquired the Quinlan-Robertson-Janin, the Amiesite-Asphalt and the Ontario-Asphalt shares from the decedent during his lifetime, that such shares in law formed part of the decedent' estate at the time of his decease, that the acquisition this Defendant had made of them had been made after the decease and at a time when himself was a trustee that such acquisition was illegal and void under C.C. 1484; also that the price he had paid for them was insufficient; he was condemend to return them, or, in default, to pay as the value thereof the sum of $372,928, less however the sum of $250,000. which he had already paid as for them, thus an additional sum in respect to these shares of $122,928.;

As to the Fuller-Gravel shares, that of the total of 1,000 of these shares which had belonged to the decedent, and after his

death to the Estate, this Defendant had, in contravention of C.C. 1484, acquired 400 of these shares at the price of $50. per share, that the value thereof was $90. per share, (this Defendant having sold them at that price) and he, being no longer able to return them, was condemned to pay to the Estate the difference between the price he should have paid and the price he did pay, namely on the 400 shares at $40. per share, the sum of $16,000.;

As to the costs, that judgment made division of them in the manner hereinafter to be mentioned;

It appears that, following the rendering of this judgment, the Defendant Robertson resigned as Executor-Trustee, and that the General Trust of Canada was appointed in his place; from this time therefore the Executor-Trustees of the Hugh Quinlan Estate were the Capital Trust Corporation and the General Trust of Canada;

SEEING that from this judgment appeal was instituted by the Defendant Robertson personally, but no other appeal having been instituted, such judgment remained final on the issue above related between the Plaintiffs and the Executor-Trustees es quality;

The Court of King's Bench, being seized of the above appeal, rendered judgment thereupon, on the 30th December 1932; by this judgment the judgment in first instance was varied in some respects namely as to the dividends or bonuses on the shares subsequent to the decease but otherwise the judgment in first instance was confirmed;

It appears that from the judgment of the Court of King's Bench of 30th December 1932 the Defendant Robertson appealed to the Supreme Court of Canada;

It appears that while the parties were in that Court, and after it had been part heard, a settlement was reached between the Defendant Robertson and one of the Plaintiffs to wit Dame Margaret Quinlan Desaulniers; by virtue of that agreement, Dame Margaret Desaulniers ceased to be a Respondent in that Court, or a plaintiff in the case; such agreement is set out in the deed of the 31st January 1934, before Papineau-Couture Notary;

The same deed record a settlement, declared to be of the whole issue raised by the action, namely the said deed sets out

an agreement between the Executor-Trustees acting as for the Estate, and Robertson, whereby, in consideration of payment by Robertson of some $45,000. in costs, and the payment of an additional sum of $50,000. toward the price of the shares in question (namely $50,000 in addition to the $250,000. already paid for the group of shares and the $20,000. paid for the 400 Fuller Gravel shares at the price $50. per share)—which amounts Robertson bound himself to pay—the Executor-Trustees by the said deed sold or re-sold (if that was the better term) all those shares to him;

This deed of agreement is of the date 31st January 1934; the Plaintiff Dame Ethel Quinlan was not a party to it; she persisted in the action, more particularly she persisted as Respondent to uphold the judgment of the Court of King's Bench of 30th December 1932; the deed in question did not as to her, put an end to the litigation; judgment on the appeal was rendered by the Supreme Court on the 6th June 1934;

The effect of that judgment was to say that the verbal evidence that Robertson had tendered to prove a sale to him by Quinlan of the group of shares for the price $250,000. should not have been refused admittance to the record; in consequence the appeal was allowed, with costs against Dame Ethel Kelly, and the case remitted back to this Court for retrial of the issues remaining to be decided;

It appears that after return of the record to this Court from the Supreme Court, on application being made therefor, leave was granted to the Defendant Robertson to file a Supplementary Defence to the action; by the Supplementary Defence the Defendant Robertson alleged the said deed of 31st January, alleged that record thereof had been granted by the Supreme Court, alleged that he had actually paid all that he had agreed and undertaken to pay under that deed, including the said sum of $50,000. as in full and complete payment of the said shares, and he alleged that, by reason thereof, the claims set up in the action were unfounded, that for these additional reasons, and without prejudice to his Defence already filed, he prayed for the dismissal of the action namely as to that part thereof which was directed against himself personally;

It appears that, in Answer to this Supplementary Defence, the Plaintiff contested the same, and also asked for the annulment and declaration of nullity of that deed; it appears that the Plaintiff made this demand by means of an Incidental Demand

(C.P. 215); and, for the purposes of that Incidental Demand, by writ of summons, called into the case all parties interested in the said deed of 31st January 1934;

It appears that of the parties summoned on this Incidental Demand one interest only, namely Dame Margaret Desaulniers et vir contested the demand of nullity, and the issue so raised must be the subject of a separate judgment; the issue of the Incidental Demand as between the Plaintiff Mrs. Kelly and the Defendant Robertson, will be dealt with in the present judgment;

It appears also that the Plaintiff being thereto ordered by this Court, summoned also, to the issue raised by her Incidental Demand, her daughter Katherine Kelly, then a minor, she being a grandchild of the testator, and a cestui que trust, and it appears that the tutor of the said minor, having been summoned as for her, he filed on her behalf an Intervention for the protection of his pupil's rights, including protection against the effects of the said deed of 31st December 1934;

It appears that the said Intervention was contested separately; by the Defendant Robertson, by the Executor-Trustees and by Dame Margaret Quinlan Desaulniers et vir, but the Intervention being a separate proceeding, judgment on those matters must be by a separate judgment;

It appears also that the parties to the Incidental Demand, other than the Plaintiff Dame Kelly and the Defendant Robertson, and Dame Desaulniers et vir, gave consent that the present, the enquête on the main case, namely the present enquête, be common to the issue of their contestation of the Incidental Demand; and thereto Dame Desaulniers et vir were represented throughout;

It appears also that the parties to the Intervention, namely the Intervenant, the Plaintiff, the Defendant, Dame Margaret Desaulniers et vir, and the Executor-Trustees gave consent that the enquête on the main case, namely the present enquête, be common to the issues on the Intervention, and, all such parties were represented throughout;

SEEING that, in accordance with the Order of Reference of the Supreme Court, the present case having come up for trial, (enquête) and hearing, and all the parties being present or represented, the Defendant Robertson did thereupon tender what evidence verbal or documentary which he desired to submit, or

which he desired to be taken into account, in the present litigation, in addition to what already formed part of the record, also that all what was so tendered, was heard and admitted to the record, (though a part thereof admitted under reserve of objection made thereto on behalf of the Plaintiff; and in answer, or rebuttal, to such evidence there was admitted also all tendered on behalf of the Plaintiff, (though some thereof under reserve of objection made thereto on behalf of the Defendant), and Counsel of all parties being heard, the matters now call for judgment;

ADJUDICATING UPON THE PLAINTIFF'S INCIDENTAL DEMAND:

SEEING that the Defendant by his Supplementary Defence alleges and sets up that by deed passed before R. Papineau-Couture, N.P., the 31st January 1934, and which he files of record, it was, by the parties thereto, agreed and determined as follows: that in consideration of the payment of $50,000. in cash to the Estate, and the payment of certain costs, the Executor-Trustees on behalf of the Estate declared to be paid for, and completely settled, all claims which the Estate might have against the Defendant Robertson in respect of the matters set out in the Plaintiffs action that the said agreement of the Executor-Trustees was, in the said deed, concurred in and agreed to by all of the children and by all of the then living grandchildren of the testator, —except only the Plaintiff Dame Ethel Quinlan Kelly—, and the said Defendant alleges in his said Supplementary Defence that the said deed became and was legal and binding upon the Estate and by reason thereof it became binding also upon the Plaintiff Dame Ethel Quinlan Kelly; that for this additional reason her action is now unfounded, and Defendant, for this additional reason, prays for the dismissal thereof;

SEEING that the Plaintiff, by her Incidental Demand, alleges that the deed so invoked by the Defendant is illegal, null and of no effect both as against the Estate Quinlan and against her, and she prays that it be so declared by this Court;

CONSIDERING that the Plaintiff's Incidental Demand is well founded for the following reasons to wit:

1.—The agreement contained in the deed being one in the nature of Transaction, is governed as to its legality, by the articles C.C. 1918, 1919, 1920; it is certain that the legality thereof is dependant upon whether those effecting it had the capacity to dispose of the things which were the objects of the Transaction; it

is certain that under the dispositions of the Will, neither the then living children, nor the then living grandchildren, of the testator, had the capacity to dispose of the things which the said deed purports to dispose of; it is certain that their consents are of no validating effect whatsoever, and that they themselves had and have no capacity to bind the Estate;

2.—The recourse being exercised by the Plaintiff, being a right proper to herself, was one which could not be diminished, or defeated, by any act of the Executor-Trustees, nor by any act of the other cestuis que trust under the Will; more particularly the Plaintiff's right to continue this action was expressly declared by the Supreme Court in its judgment of 6th June 1934;

CONSIDERING therefore that, as against the Estate Hugh Quinlan, and as against the Plaintiff Dame Ethel Quinlan, the said deed of 31st January 1934 is of no validity or effect;

DOTH MAINTAIN Plaintiff's Incidental Demand and doth declare to be null and of no effect against the Estate Quinlan and null and of no effect against he Plaintiff the said deed of 31st January 1934, with costs against the Defendant Robertson;

ADJUDICATING UPON THE MERITS OF THE ACTION:

SEEING that from and after the judgment of this Court of the 6th February 1931, and by reason thereof, all issues raised by the action which were directed against the Executor-Trustees in their quality as such, and which sought from them a rendering of an account, or which alleged in effect against them neglect in the protection of property belonging to the Estate, or neglect to collect amount due to the Estate, were excluded from the present action, and postponed until the Executor-Trustees come to render their account at the termination of their charge;

SEEING that the sole matters remaining thereafter in issue are those concerning certain company shares, which formed part of the Estate and which as it is alleged were wrongfully and illegally obtained or acquired by the Defendant Robertson, for his own profit and advantage, as also the return of the same, or the restitution to be made therefor, by Robertson to the Estate;

SEEING that, although mention was made both in the pleadings and also during the trial, of certain other shares or

securities nevertheless the issue became confined to the following specific items: *first* a group consisting of 1151 shares of Quinlan-Robertson & Janin Ltd., 250 shares of Amiesite Asphalt Ltd., and 200 shares of Ontario Amiesite Ltd. and *secondly* of 1000 shares of Fuller Gravel Co. Ltd;

As to the Quinlan-Robertson-Janin, the Amiesite-Asphalt and the Ontario-Amiesite shares, they are mentioned as a group because of the contention put forward by the Defendant, in his Defence, that he acquired them as a group and for a lump sum, from the decedent himself before his death namely he alleges that he acquired them on the 20th June 1927 for the block sum of $250,000.;

As to the Fuller-Gravel shares they were acquired by the said Defendant from the Estate some months after the death;

CONSIDERING that, as to the Quinlan-Robertson-Janin shares, it appears from the proof of record that for some time prior to his death Hugh Quinlan was the owner, and the registered owner of 1151 shares in this Company; that Quinlan departed this life on 26th June 1927; that on 18th July 1927, an inventory of his estate was made by and on behalf of the Executor-Trustees, and in that inventory the said 1151 shares were entered as belonging to the Estate; that in the Declarations to the Succession Duties Office of the Province, declarations made under oath by the officers of the Capital Trust Corporation (the other trustee) declarations dated the 29th July 1927 and the 17th September 1927, these shares were declared to constitute part of the Estate; that succession duties upon these shares were paid to the Province, — as part of the estate of the decedent—, the Defendant Robertson taking part not only in the payment of the succession duty but also in the discussion with the Succession Duties Office of the value which should be put upon those shares for succession duties purposes; that, as at the date 31st December 1927, (according to the examination and report of the Estate's Auditors) the books of the Estate showed these shares to be the property of the Estate, and the Estate's Auditors' report of 8th August 1928 was to the same effect;

It appears also that on 21st May 1927 the decedent entrusted to the Defendant Robertson the scrip representing these shares, such scrip being indorsed in blank by the said Quinlan, that the said scrip was handed by Robertson to Leamy the secretary of A. W. Robertson Ltd, (a company owned as to one half

thereof by Quinlan), and in the receipt given by Leamy to Robertson it was stated that the scrip was the property of Quinlan and it was being put in the company's vault for safekeeping;

It appears in a letter of 19th August 1927 that Robertson suggested to his co-executor the Capital Trust Co., the sale of these shares to a possible buyer of whom Mr. Janin knew;

It appears also that on 31st December 1927 the Capital Trust Co. received from their co-executor, the Defendant Robertson, the sum of $125,000. as 50% payment of the shares of the three companies Quinlan-Robertson-Janin, Amiesite-Asphalt and Ontario-Amiesite, on 21st January 1928 they received from him $3,750. as for six months interest on this $125,000., and on 28th January 1928 they received from him the sum of $125,000. as and for the remaining 50% of the price of these shares; There does not appear in the record any writing, or any exchange of correspondence, between Robertson and the Capital Trust Co. as to this sale — there is no explanation why the six months interest was claimed— but apparently was claimed and paid in order to give to the transaction the appearance of a sale six months earlier in date namely which brought it back to approximately the date of the decease;

It appears in a statement sent by the Capital Trust Co. to one of the Plaintiffs towards the end of August 1928 information to the effect that these Quinlan-Robertson-Janin shares were sold in 1928 for $250,000., the name of the buyer was not given; it appears that this was the first information the Plaintiffs had that the shares had been sold;

In the defence of the Defendant Robertson filed in the month of November 1928 the allegation that he had acquired the group—including these of Quinlan-Robertson-Janin—from the decedent himself, namely on the 20th June 1927, that he had been the owner thereof since that date, that the shares had not formed part of Quinlan's estate at the time of his death; the allegation particularized that Robertson on that date had presented to Quinlan a letter, and in exchange Quinlan had delivered the scrip to Robertson, that the exchange of scrip for letter was the proof and execution of the sale;

It appears also from the Minute Book of the Company that under the date 22nd June 1927 Robertson had had transferred into his name these shares; it appears certain that the trans-

fer he caused to be made was made in breach of trust and contrary to the terms on which he had received the scrip from Quinlan on the 21st May 1927; also that Quinlan could have had no knowledge of this transfer;

When the parties came to trial the evidence the Defendant Robertson tendered was the following namely that on the 20th June 1927 he, accompanied by Leamy, saw Quinlan who was then sick in bed, that only those three were present, that at Robertson's request Leamy read out to Quinlan the letter in question, and Quinlan having heard it read, said that is all right; neither Robertson nor Leamy say anything about the scrip having been then delivered to Robertson—although that act on Quinlan's part was specially pleaded—; The Plaintiffs deny that the alleged incident occurred, and they deny that the letter, according to its terms, would or could have the effect of transferring ownership in the shares to Robertson;

It appears from the evidence that the 'letter' in question was never delivered to Quinlan, but always remained in Robertson's possession; it emerged from Robertsons possession on the 6th December 1927; until that date its existence was somewhat uncertain; Parent of the Capital Trust is supposed to have seen a copy of it on the 9th or 18th July 1927, but this can hardly be so, for on the 29th July he declared under oath that these shares were part of the Estate; a copy is supposed to have been sent him about the 20th August, but, again on the 17th September his sworn declaration states that these shares are part of the Estate; the 'letter' in question was a matter of discussion on the 25th September 1927,—it had been mislaid and at that date had not been found—, those present being Robertson Parent and J. L. Perron K.C., and it appears from Perrons letter of 26th September that this 'letter' was represented to be a letter from Quinlan to Robertson—not as a letter from Robertson to Quinlan—;

CONSIDERING that the question, as to whether Robertson and Leamy actually visited the Quinlan house and saw Quinlan on the 20th June, is a question of fact. and that the testimony of Robertson and of Leamy is contradicted by testimony and also by circumstances and probabilities of fact; that in law it was incumbent upon Robertson to prove his allegation by reasonable and sufficient preponderance, that in the judgment of this Court he has not done so; this Court does now declare that the proof of such interview has not been made, and that for the purposes of this suit it is declared and decided that such interview did not take place as alleged;

CONSIDERING for those same reasons that it is now declared and decided that the 'letter' was not on that date or at any time read to Hugh Quinlan;

CONSIDERING that in law the reading of a paper memorandum or note, whatever the form, without delivery of the same, and the reader withholding and keeping the same in his own possession, is and remains a verbal act on his part, and such paper, whatever the form in which drafted, does not constitute a letter properly so-called to the other party;

CONSIDERING that even if true that the document was read to Quinlan in the manner above mentioned and that thereto he replied vica voce 'that is all right', the combination of the two acts would have constituted an oral understanding, or agreement, between the parties;

CONSIDERING that the document, which the Defendant Robertson cites as a title to the shares, on the true construction and meaning thereof, does not constitute a title or a transfer of title in the shares to Robertson;

CONSIDERING that it appears that he Defendant Robertson did not at any time during the lifetime of the decedent acquire these shares from him, but that it was solely from the Estate that he acquired them namely on or about 31st December 1927 as aforesaid;

CONSIDERING that by reason of C.C. 1484 the said acquisition was, and the same is by this judgment declared to have been, illegal null and of no effect, and it is declared that the Defendant Robertson is in law bound, either to return the said shares, or to make restitution therefor, according to what, in the circumstances now appearing, to justice may appertain;

CONSIDERING as to the shares of Amiesite-Asphalt, the contention of the Defendant Robertson that he acquired and became owner of those shares by reason of the 'letter' and the events said to have taken place on the 20th June 1927, and that, for the reasons hereinabove given, it is declared that Robertson did not at any time acquire title to these shares from the decedent;

These shares appear to have been omitted from the 'inventory' made about 18th July 1927, omitted also from the Succession Duties Declarations, and from the list of assets as on the

31st December 1927; it does not appear why they were omitted while the Quinlan-Robertson-Janin shares were there included;

It does appear that as of the date 22nd June 1927, Robertson caused to be entered in the Minute Book of the Company that these shares were transferred to him;

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And it does appear that the $250,000. paid in December 1927 and January 1928 were paid as the price of the group including these Amiesite-Asphalt shares;

CONSIDERING that it appears that the Defendant Robertson did not at any time during the lifetime of the decedent acquire these shares from him, but that it was solely from the Estate that he acquired them, namely on or about 31st December 1927 as aforesaid;

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CONSIDERING that by reason of C.C. 1484 the said acquisition was, and the same is by this judgment declared to have been illegal null and of no effect, and it is declared that the said Defendant Robertson is in law bound either to return the said shares, or to make restitution therefor, according to what, in the circumstances now appearing to justice may appertain;

CONSIDERING, as to the 1000 shares of Fuller Gravel
30 Co. Ltd., that it appears that these shares were in the name of the decedent at the time of his death; they were not included in the group alleged to have been sold by Quinlan himself to Robertson on the 20th June 1927;

It appears that about the month of August or September 1927, on the recommendation of Robertson, the Capital Trust Co. gave his consent that they be sold by the Estate at $50. per share;

It appears that shortly thereafter the Defendant Robert-
40 son reported to the Capital Trust Co. that he had sold these shares to persons whose names he gave, namely Tummon 600 shares, Rayner 200 shares and McCord 200 shares;

In the judgment of this Court it appears that none of the said reported sales were genuine and bona fide sales, but they were fictitious sales in the sense that the whole purpose was, by means of persons interposed, to have the said shares to become the property of the Defendant Robertson;

It appears that after reporting to the Capital Trust Co. the aforesaid sales, Robertson with ihs own moneys paid the price of all such shares, the amount being remitted to the Capital Trust Co. as far for the Estate; it appears that subsequenly Tummon, Rayner and McCord each received 50 of the shares (which that individual was supposed to have bought) and each repaid to Robertson the $50. per share which he had paid for them to the Estate, but all the rest of the 1,000 shares to wit 850 thereof remained in the hands of Robertson, as the owner thereof; it appears that subsequently Robertson sold these 850 shares, (along with other of these shares which he himself owned), for the price of $90. per share; and it appears sufficiently that at the time Robertson brought about the fictitous sales to Tummon, Rayner and McCord he foresaw a profitable re-sale of the shares;

CONSIDERING that it thus appears that of the 1000 shares sold to Tummon, Rayner and McCord, 850 were in reality sold to persons interposed for Robertson, and such sales were by reason of C.C. 1484 illegal null and of no effect, and this Court doth now so declare;

CONSIDERING therefore that to the extent of the said 850 shares the transfer into Robertson's name was illegal and null, and that the said Robertson is, in law, bound either to return the said shares to the Estate, or to make restitution thereof according to what, in the circumstances now appearing, to justice may appertain;

CONSIDERING therefore that by reason of a consent or an acquiescence induced by Robertson, and given on the date 31st December 1927, by the Capital Trust Co, Robertson became, as of that date, the acknowledged transferee and buyer of the shares: 1151 of Quinlan-Robertson-Janin, 250 Amiesite-Asphalt, and 200 Ontario-Amiesite; that the said transfer and sale is now declared to be illegal null and of no effect by reason of article 1484 C.C.; that Robertson is obliged in law to make return or restitution therefor;

CONSIDERING that it appears that, since the said date, 31st December 1927, the said Defendant Robertson has continuously refused to acknowledge any rights to the Estate; has continuously affirmed himself to be the owner of all such shares, and to have had the full and free disposal thereof at all times; more particularly in the case of the *Quinlan-Robertson-Janin Company;* it appears that, by reason of his possession of these shares, the said Robertson with the other shareholder was able to dispose of the assets and business of that company in the way they pleased, this

during the period of some twelve years, and in the opinion of this Court, it would not constitute a re-establishment of rights, which was practicable or equitable or juridical, now to condemn and order return of the said 1151 shares; in the opinion of this Court the juridical and proper re-establishment of the rights of the Quinlan Estate must consist in the valuation of the said shares as of that date 31st December 1927, and condemnation of the Defendant Robertson to pay that amount with interest from the service of the present action;

In the case of the *Amiesite-Asphalt* shares it appears that, about the month of September 1928, the Defendant Robertson sold those shares, and thereafter the same were entirely out of his control with impossibly that he could return them; but similarly and for similar reasons, in the opinion of this Court, the re-establishment of the rights, to which the Quinlan Estate is entitled, requires that the Defendant Robertson be condemned to pay to the Estate the value which those shares bore on the date 31st December 1927, together with interest from the date of the service of the action;

With respect to the shares of the *Ontario-Amiesite Co.* it is testified to, without contradiction, that the said shares are now in Robertson's possession with ability on his part to return them by actual delivery; and it is testified to, also without contradiction, that the said shares had no real value on the date 31st December 1927; the Defendant Robertson will be condemned to return them to the Estate in kind;

Coming to the valuation to be placed on the *Quinlan-Robertson-Janin* shares, this Court finds that the valuations, contained in the Balance Sheets of the Company, constitute a basis which cannot fairly be objected to by Robertson, as these valuations were made by the Company's own officers, found to be borne out in the Company's books by the Company's own Auditors, and approved by the Company's Directors of whom Robertson was the chief; the value of the assets as on the date 31st March 1927 show a net value per share of (approximately) $207.; the value of the assets as of the date 31st March 1928 show a net value per share of (approximately) $249. per share; in the circumstances shown this Court adopts as the fair valuation, as at the date 31st December, 1927, $227. per share, making the valuation of the 1151 shares $261,277.; it appears that these figures are reached after providing (entered as a liability on the Balance Sheet) for the payment of a dividend, declared but not yet paid, of $84,947.54, of which the portion payable to the Quinlan 1151

shares was to be $28,314.60; this Court therefore places upon the 1151 shares as the value, on the date 31st December 1927, the $261,277. plus the $28,314.60 namely the total value of $289,591.60;

As to the valuation to be placed upon the *Amiesite-Asphalt*: it appears, from the Balance Sheets of this Company, that the assets, as at the date 31st March 1927, showed a value per share of (approximately) $265. per share, similarly, as at the date 31st March 1928, the assets showed a value (approximately) $434. per share; it appears that in September 1928 Robertson sold all the shares, including these 250 Quinlan Estate shares, for approximately $608. per share, in the circumstances shown, this Court finds as the valuation, on the date 31st December 1927, $400. per share; thus a valuation of $100,000 for the 250 Quinlan Estate shares; this Court finds the re-tablishment of rights to the Quinlan Estate requires; that the Defendgant Robertson be condemned to pay to it for these Amiesite-Asphalt shares, the sum of $100,000. with interest from the date of service of the action;

With respect to the 850 Fuller-Gravel shares it appears that the Defendant Robertson, having paid to the Estate at different times as the price thereof $50. per share, on the 23rd May 1928 received payment for them at the price of $90. per share; thus from that date he had in hand the sum of $34,000. which he was not entitled to have at the expense of the Estate Quinlan, and he must be condemned to repay that sum to the Estate with interest from the date of the service of the action;

Under the terms of the deed of 31st January 1934 the Defendant Robertson bound himself to pay to the Estate the sum of $50,000. as part payment of above mentioned shares, and it appears, from the agreement of 21st December 1934, before R. Biron N.P., that the said Robertson actually paid the said sum to the Estate together with all interest thereon up to the 19th December 1934; the deed of 31st January 1934 is by the present judgment annulled and declared to be null and of no effect against the Estate, and if no other circumstances existed, there would be occasion for the return of the $50,000. thus paid, but, in the circumstances here, the Defendant Robertson, entitled to the reimbursement of that sum of $50,000., is declared to be and was on the date 21st December 1934, the debtor of the Estate of an amount much in excess of that $50,000. thus though entitled to reimbursement of the amount, he may only be credited for that amount in reduction of the larger amount which he then owed — the claim to factual reimbursement if made, being denied by reason of legal compensation under C.C. 1188;

CONSIDERING therefore that, as against the Defendant Robertson personaly the present action is well founded;

DOTH MAINTAIN the action against him;

DOTH DECLARE to be illegal null and of no effect the acquisition made by him from the Estate as above mentioned on the date 31st December 1927 of the 1151 shares of Quinlan, Robertson & Janin Limited, of the 250 shares of Amiesite Asphalt Limited, and of the 200 shares of Ontario Amiesite Limited; and doth declare the said Defendant to be bound and obliged to pay to the said Estate: in respect of the 1151 shares of Quinlan, Robertson & Janin Limited the sum of $289,591, and in respect of the 250 Amiesite Asphalt Limited shares the sum of $100,000. and to return to the Estate the scrip for the 200 Ontario Amiesite Limited shares;

DOTH DECLARE the sales of shares of Fuller Gravel Limited to Tummon, Rayner and McCord to have been—to the extent of 850 shares—made in contravention of article C.C. 1484; doth declare the said sales to that extent to be illegal and without effect as against the Estate; Doth declare that the sum of $34,000. received by this Defendant on the 23rd May, 1928, in part payment of these shares, to have been received for the account of the Estate, with obligation of his part to pay over that sum to the Estate;

DOTH DECLARE that from the above sums amounting as they do to $423,591., there is to be credited to this Defendant, and consequently deducted from that sum, the amounts which he paid to the Estate on account thereof to wit $125,000. on 31st December 1927, $3,750, on 21st January and $125,000. on 28th January 1928, a total of $253,750., and that the balance due by the Defendant at the date of the institution of the present action was the sum of $169,841.;

DOTH CONDEMN the Defendant A. W. Robertson to pay unto the Estate Hugh Quinlan, as represented by the Executor-Trustees thereof, the sum of ($169,841.) One Hundred and Sixty Nine Thousand Eight Hundred and Forty One Dollars, with interest from the date of the service of this action upon him, but credit to be given in reduction of this condemnation, as at the date 19th December 1934, for the sum of ($50,000) Fifty Thousand Dollars, paid on that date to the said Executor-Trustees;

DOTH AUTHORIZE ORDER AND CONDEMN the Executor-Trustees of the Estate, namely The Capital Trust Corporation and the General Trust of Canada, Defendants herein, to receive from the said Defendant the said amount so to be paid by him, the amounts so received thereafter to form part of the assets of the Estate;

DOTH CONDEMN the said Defendant Robertson to pay to the Plaintiff her costs upon the present retrial; and seeing that in the judgment of 6th February 1931 there was condemnation to costs as follows: the costs of the enquête as to one third part thereof were put at the charge of the Defendant Robertson personally, one other third part to the charge of the Capital Trust Corporation personally, and the remaining third part to the charge of the Estate, the Capital Trust's costs of contestation put at their own charge, and the Plaintiffs' costs as well his own costs put at the charge of the Defendant Robertson; and seeing that it appears that under the deed of 31st January 1934 provision was made for the payment of those costs, and that it further appears that they have since been paid, this Court doth now justify those payment and doth confirm and repeat those condemnations as they were made in the said judgment of 6th February 1931 .

(Signed) G. F. Gibsone,
Judge of the Superior Court.

JUDGMENT OF THE SUPERIOR COURT UPON THE MERITS OF THE INTERVENTION AND THIS CONTESTATION THEREOF.

Montreal 26th April 1940.

Present: Mr. Justice GIBSONE.

The Court & C.

Seeing that the present action, as originally instituted, was one whereby the Plaintiffs thereto brought suit against the Executor-Trustee under the will of the late Hugh Quinlan, and by the said action sought ouster against the said Executor-Trustees with rendering of an account, and sought also against one of those Executor-Trustees to wit A. W. Robertson, that for the reason, as it was alleged, that he had illegally and wrongfully procured for

his own personal profit and advantage the possession of certain assets of the Estate, that this Defendant be condemned to return such assets to the Estate, or to pay the true value thereof;

Seeing that, by judgment of this Court, upon the merits of the action, the same rendered on the 6th February 1931, the conclusions aforesaid against the Executor-Trustees es quality were refused, and the claims as to them dismissed no appeal having been instituted against this part of the judgment these adjudications remained res judicata as between the Plaintiffs and the Executor-Trustees es quality;

It appears that by the same judgment of the 6th February 1931, certain pretended acquisitions, of assets of the Estate by the defendant Robertson, were annulled and declared null, and the said Robertson condemned to make restitution to the Estate of the true value of those assets, deduction being made of what he had actually paid as purchase price for the same;

It appears that the said Robertson appealed against the said judgment to the Court of King's Bench, and to the Supreme Court of Canada;

It appears that, while the said appeal was pending before the Supreme Court as aforesaid, a settlement was made between different interested parties, the settlement was put in the form of a notarial deed passed before R. Papineau-Couture, N.P. under the date 31st January 1934, the parties to the deed being Dame Margaret Quinlan Desaulniers one of the Plaintiffs, the Defendant Robertson, the Executor-Trustees, and the then living members of the Quinlan family,—except only Dame Ethel Quinlan Kelly the present and remaining Plaintiffs;

It appears that one particular stipulation of the deed, and one to which all parties to it agreed, was that in consideration of the sum of $50,000. and of certain costs, all to be paid by the Defendant Robertson, the Executor-Trustees, with the consent and approval those of the Quinlan family thereto taking part, gave and granted on behalf of the Estate a full and complete discharge from all that was claimed from Robertson by the action, as well as other discharges not here in question;

It appears that the Plaintiffs Dame Ethel Quinlan Kelly, not being a party to that agreement, or to the deed, continued the litigation against Robertson, and in due course judgment was rendered by the Supreme Court upon the appeal;

It appears that the appeal of Robertson was maintained, and the case sent back to this Court for re-trial;

It appears that on reaching this Court, the said Robertson filed a Supplementary Defence, whereby he invoked the deed of 31st January aforesaid, as a juridical act which finally discharged him from all the charges and liabilities set up against him in the action as instituted, and for this additional reason he asked for the dismissal of the action, which as above stated was being continued by Dame Ethel Quinlan Kelly as sole remaining Plaintiff;

It appears that, by her answer to this Supplementary Defence, the said Dame Ethel Quinlan Kelly pleaded that the said deed was illegal and null, and she prayed that it be annulled and declared null and of no effect either as against her or as against the Estate Hugh Quinlan;

It appears that, in order to pursue that demand before the Court, the Plaintiff was obliged by way of an Incidental Demand C.P. 215, and to summon on that issue all those who were parties to the said deed, and it appears that the Plaintiff did summon such parties;

It appears also that, on demand made thereto by one of the interests to wit by Dame Margaret Quinlan Desaulniers, the Plaintiff was required to summon, also, her own daughter Katherine Kelly, a minor, Katherine Kelly being a granddaughter of the testator, and a beneficiary under the will;

It appears that the said Katherine Kelly was duly summoned though her Tutor J. T. Kelly; it appears that the said Tutor did not plead to the Incidental Demand, but filed an Intervention in the case, and by that Intervention alleged not only many matters which were in the action as originally instituted, but also new matters all with conclusions against the Defendant Robertson personally, and the Intervention also concluded that the deed of 31st January be declared to be null and of no effect;

It appears that the Defendant Robertson made contestation of this Intervention *first* by an Exception to the form, the effect of which was to ask excision from the Intervention of all what was outside of the scope of the original action; it appears that, by its judgment of the 26th June 1936, the Court of King's Bench struck out from that Intervention the allegations complained of, and in the result the only conclusion left remaining in the Inter-

vention was that which asked that the deed of 31st January 1934 be annulled and be declared to be null and of no effect;

It appears that the Defendant Robertson, then contested on the merits the said Intervention as so reduced, and, alleging in effect that the deed was in all respects legal and binding upon the Estate, he prayed for the dismissal of the Intervention with costs;

CONSIDERING that in consequence of the judgment of the Court of King's Bench, rendered the 26th June 1936 upon the Exception to the Form filed by the said Defendant Robertson, the sole conclusion left remaining in the said Intervention was one which prayed that the deed of 31st january 1934 be annulled, and declared null and of no effect against the Estate Quinlan;

CONSIDERING that the validity of the said deed as against the Estate Quinlan, as a settlement of the matters claimed by the action, and as a bar to further proceedings therein, is dependant upon the powers and capacity of those upon whose consents it is based, namely it is based upon the consents of: 1o—children and grandchildren of the testator namely of those who were the living representative of seven of the eight stirpes of his descendants, and 2o—upon the consent of the Executor-Trustees of the Estate;

CONSIDERING that the agreement and settlement set out in that deed being in the nature of a transaction C.C. 1918 it is essential to the validity of such contract that the parties consenting thereto have capacity to dispose of the things which are the objects of it, and considering that, under the terms of the Will, neither the children of the testator nor either at the time of that deed, nor even yet, any of the grandchildren, had or have any rights of ownership in the assets of the Estate, and that at the date of the said deed none of those parties had capacity to dispose of the things which were the objects of the transaction, such participation as any or all of them may have assumed to take, in disposing of the matters and rights claimed for the estate by the action, was without legal effects thereto. in no way bound the estate Quinlan and in no way bound the said Katherine Kelly;

CONSIDERING therefore that the said deed was and is invalid and of no effect as against the Estate Quinlan, or as against the Intervenant es quality or as against the said Katherine Kelly whom he represented;

As to the consent to the said deed by the Executor-Trustees, considering that the rights being exercised by the Plaintiffs in the institution of the action and the right being exercised by Dame Ethel Quinlan Kelly, in continuing the action were rights proper to such parties, rights which could not be taken from them, or from either of them, by the Executor-Trustees, even by acts performed by such Executor-Trustees in good faith and without collusion—, that for that reason such consents as the said Executor-Trustees may have given in the said deed were unauthorized illegal and did not bind the Estate or the minor Katherine Kelly;

CONSIDERING also that by the final judgment of the Supreme Court the said deed was in effect considered, and disposed of, as of no binding effect against the Estate or against the Plaintiff Dame Ethel Quinlan Kelly;

DOTH maintain the Intervention of the Intervenant J. T. Kelly, as continued by her with the authorization and assistance of her husband Raymond Shaughnessy;

DOTH DECLARE to be null and of no effect as against the Estate Quinlan and as against the said Katherine Kelly the said deed of 31st January 1934: and

As to the Contestation of the said Intervention by the Defendant Robertson, doth dismiss such Contestation with costs.

(Signed) G. F. Gibsone,
Judge of the Superior Court.

JUDGMENT OF THE SUPERIOR COURT UPON THE MERITS OF THE INTERVENTION AND THE CONTESTATION OF CAPITAL TRUST CORP. et al.

Montreal, 26th April 1940.

PRESENT: Mr. Justice GIBSONE.

The Court &c.,

Seeing that the present action, as originally instituted, was one whereby the Plaintiffs thereto brought suit against the Executor-Trustees under the will of the late Hugh Quinlan, and by

the said action sought ouster against the said Executor-Trustees with rendering of an account, and sought also against one of those Executor-Trustees, to wit A. W. Robertson, that for the reason, as it was alleged, that he had illegally and wrongfully procured for his own personal profit and advantage possession of certain assets of the Estate, that this Defendant be condemned to return such assets to the Estate or to pay the true value thereof;

Seeing that by judgment of this Court, upon the merits of the action, the same rendered on the 6th February 1931, the conclusions aforesaid against the Executor-Trustees es quality were refused and the claims as to them dismissed; no appeal having been instituted against this part of the judgment, these adjudications remained res judicata between the Plaintiffs and the Executor Trustees es quality;

It appears that, by the same judgment of the 6th February 1931, certain prestended acquisitions of assets of the Estate, by the Defendant Robertson, were annuled and declared null, and the said Robertson condemned to make restitution to the Estate of the true value of those assets, deduction being made of what he had actually paid as purchase price for the same;

It appears that the said Robertson appealed against the said judgment, to the Court of King's Bench and to the Supreme Court of Canada;

It appears that while the said appeal was pending before the Supreme Court as aforesaid, a settlement was made between different interested parties, the settlement was put in the form of a notarial deed passed before R. Papineau Couture N.P. under the date 31st January 1934, the parties to the deed being Dame Margaret Quinlan Desaulniers one of the Plaintiffs, the Defendant Robertson, the Executor-Trustees, and the then living members of the Quinlan family, except only Dame Ethel Quinlan Kelly the present and remaining Plaintiff;

It appears that one particular stipulation of the deed, and one to which all parties to it agreed, was that in consideration of the sum of $50,000. and of certain costs, all to be paid by the Defendant Robertson, the Executor-Trustees, with the consent and approval those of the Quinlan family thereto taking part, gave and granted, on behalf of the Estate, a full and complete discharge from all that was claimed from Robertson by the action, as well as other discharges not here in question;

It appears that the Plaintiff Dame Ethel Quinlan Kelly, one being a party to that agreement or to the deed, continued the litigation against Robertson, and in due course judgment was rendered by the Supreme Court upon the appeal;

It appears that the appeal of Robertson was maintained, and the case sent back to this Court for re-trial;

It appears that on reaching this Court, the said Robertson filed a Supplementary Defence whereby he invoked the deed of 31st January 1934, aforesaid, as a juridical act which finally discharged him form all the charges and liabilities set up against him in the action as instituted and, for this additionl reason, he asked for the dismissal of the action, which as above stated, was being continued by Dame Ethel Quinlan Kelly as sole remaining Plaintiff;

It appears that by her answer to this Supplementary Defence the said Dame Ethel Quinlan Kelly pleaded that the said deed was illegal and null, and she prayed that it be annulled and declared null and of no effect either as against her or as against the Estate Hugh Quinlan;

It appears that, in order to pursue that demand before the Court, the Plaintiff was obliged to proceed by way of an Incidental Demand C.P. 215, and to summon on that issue all those who were parties to the said deed, and it appears that the Plaintiff did summon such parties;

It appears also that, on demand made thereto by one of the interests to wit by Dame Margaret Quinlan Desaulniers, the Plaintiff was required to summon, also her own daughter Katherine Kelly, a minor,—Katherine Kelly being a granddaughter of the testator and a beneficiary under the will;

It appears that the said Katherine Kelly was duly summoned through her Tutor J. T. Kelly; it appears that the said Tutor did not plead to the Incidental Demand, but filed an Intervention in the case, and by that Intervention alleged, not only many matters which were in the action as originally instituted, but also new matters, all with conclusions against the Defendant Robertson personally, and the Intervention also concluded that the deed of 31st January 1934 be declared to be null and of no effect.

It appears that the Defendant Robertson made contestation of this Intervention *first* by an Exception to the Form, the effect

of which was to ask excision from the Intervention of all what was outside of the scope of the original action;

It appears that, by its judgment of 26th June 1936, the Court of King's Bench struck out from that Intervention the allegations complained of, and in the result the only conclusion left remaining was that which asked that the deed of 31st January 1934 be annulled and be declared to be null and of no effect;

But it appears that prior to the judgment of 26th June 1936 the Capital Trust Corporation and the General Trust of Canada in their quality of Executors and Trustees of the Estate Quinlan contested the said Intervention, they pleaded to and joined issue with all of the allegations of the intervention, and prayed for the dismissal thereof;

It appears that the conclusions and demands contained in the said Intervention were three only namely:

1. That the deed of 31st January 1934 be declared illegal, null and of no effect;

2. That the Defendant Robertson, for the reasons set out in the Intervention, be condemned to the Estate the sum of some $828,750.

3. That the Defendant Robertson be condemned to deliver to the Estate certain shares in the company Amiesite Asphalt of America, or pay the value thereof, with reserve of all other recourses in the way of accounting etc against the Defendant Robertson; as to costs the conclusion was with costs against the Defendant Robertson, and against any other party who might contest the Intervention;

Thus it appears that there were no conclusion against the Executor-Trustees; themselves were not in any way put in jeopardy, only the interests of the Estate would be affected if the conclusions of the Intervention were granted, even in entirety;

It appears that imputations of blame made against them with the view of showing that the agreement contained in the deed of 31st January 1934 was an improvident one for the Estate;

It appears that it is in the declared quality of Executors and Trustees that they contest the Intervention, and with the intention of pleading at the charge and risk of the Estate;

CONSIDERING that, to the extent to which their contestation consists of a defence of the Defendant Robertson and an attempt to protect him from the conclusions of the Intervention, this Contestation filed by the Executor-Trustees, as in that quality, is made without right they are not authorized to use their quality to further the interests of the Defendant Robertson;

CONSIDERING that, to the extent that this Contestation is made and put forward, in quality of representants of the Estate, and at the risk and charge of the Estate, for the purpose of defending these contestants form imputations of blame against themselves personally, the same is not the authorized recourse, for their own protection is other that such a contestation, and is to be undertaken at their own charge; To the extent that their Contestation is in defence of the validity of the deed which they signed on behalf of the Estate, they have quality to plead in that quality, and as to this feature of their Contestation, the following considerations apply namely:

CONSIDERING that the agreement and settlement set out in that deed were of the nature of transaction C.C. 1918 . . . and that it was essential to the validity of such contract that the parties hereto had capacity to dispose of the things which were the objects of it; and considering that under the terms of the will neither the children of the testator, nor any of the grandchildren had then, or have now, rights of ownerships in the Estate or capacity to dispose of the things which were the objects of that transaction, it follows that such participation as any, or all of them, may have assumed to take, in disposing of the matters and rights claimed for the Estate by the action, was without legal effect thereto, in no way bound the Estate as such, and in no way prevented continuation of the action;

CONSIDERING that, for these reasons the said deed was unauthorized, null and of no effect as against the Estate, (though such effect as it may have, if any, among those who were parties to it, is not a question on this Intervention).

CONSIDERING also that the Supreme Court by its judgment of 6th June 1934 virtually declared that the said deed was not binding nor effective against the Estate;

CONSIDERING therefore that the Contestation made by the aforesaid Executors and Trustees is unfounded;

DOTH DISMISS the said Contestation with costs, and condemn the said Capital Trust Corporation Limited and the General Trust of Canada themselves to those costs.

(Signed) G. F. Gibsone,
Judge of the Superior Court.

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JUDGMENT OF THE SUPERIOR COURT UPON THE MERITS OF THE INTERVENTION AND THE CONTESTATION THEREOF BY DE DESAULNIERS

Montreal, 26th April 1940.

PRESENT: Mr. Justice Gibsone.

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Seeing that the present action, as originally instituted, was one whereby the Plaintiffs thereto brought suit against the Executor-Trustees under the will of the late Hugh Quinlan, and, by the said action, sought ouster against the said Executor-Trustees with rendering of an account, and sought also against one of those Executor-Trustees, to wit A. W. Robertson, that for the reason, as it was alleged, that he had illegally and wrongfully procured, for his own personal profit and advantage, possession of certain assets
30 of the Estate, that this Defendant be condemned to return such assets to the Estate or to pay the true value thereof;

Seeing that, by judgment of this Court, upon the merits of the action, the same rendered on the 6th February 1931, the conclusions aforesaid against the Executor-Trustees es quality were refused and the claims as to them dismissed; no appeal having been instituted against this part of the judgment these adjudications remained res judicata between the Plaintiffs and the Executor-Trustees es quality;

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It appears that, by the same judgment of the 6th February 1931, certain pretended acquisitions of assets of the Estate, by the Defendant Robertson, were annulled and declared null, and the said Robertson condemned to make restitution to the Estate of the true value of those assets, deduction being made of what he had actually paid as purchase price for the same;

It appears that the said Robertson appealed against the said judgment to the Court of King's Bench and to the Superme Court of Canada;

It appears that while the said appeal was pending before the Suprem eCourt as aforesaid, a settlement was made beween different interested parties, the settlement was put in the form of a notarial deed passed before R. Papineau Couture N.P., under the date 31st January 1934, the parties to the deed being Dame Margaret Quinlan Desaulniers one of the Plaintiffs, the Defendant Robertson, the Executor Trustees, and the then living members of the Quinlan family, except only Dame Ethel Quinlan Kelly the present and remaining Plaintiff;

It appears that one particular stipulation of the deed, and one to which all parties to it agreed, was that in consideration of the sum of $50,000. and of certain costs, all to be paid by the Defendant Robertson, the Executor-Trustees, with the consent and approval those of the Quinlan family thereto taking part, gave and granted, on behalf of the Estate, a full and complete discharge from all that was claimed from Robertson by the action, as well as other discharges not here in question;

It appears that the Plaintiff Dame Ethel Quinlan Kelly, not being a party to that agreement, or to the deed, continued the litigation against Robertson, and in due course judgment was rendered by the Supreme Court upon the appeal;

It appears that the appeal of Robertson was maintained, and the case sent back to this Court for re-trial;

It appears that on reaching this Court, the said Robertson filed a Supplementary Defence, whereby he invoked the deed of 31st January 1934 as aforesaid, as a juridical act which finally discharged him from all the charges and liabilities set up against him in the action as instituted, and, for this additional reason, he asked for the dismissal of the action, which as above stated was being continued by Dame Ethel Quinlan Kelly as sole remaining Plaintiff

It appears that by her answer to this Supplementary Defence the said Dame Ethel Quinlan Kelly pleaded that the said deed was illegal and null, and she prayed that it be annulled and declared null and of no effect either as against her or as against the Estate Hugh Quinlan;

It appears that, in order to pursue that demand before the Court, the plaintiff was obliged to proceed by way of an Incidental Demand C.P. 215, and to summon on that issue all those who were parties to the said deed, and it appears that the Plaintiff did summon such parties;

It appears also that, on demand made thereto by one of the interests to wit by Dame Margaret Quinlan Desaulniers, the Plaintiff was required to summon, also, her own daughter Katherine Kelly, a minor, Katherine Kelly being a granddaughter of the testator and a beneficiary under the will;

It appears that the said Katherine Kelly was duly summoned through her tutor J. T. Kelly; it appears that the said tutor did not plead to the Incidental Demand, but filed an Intervention in the case, and by that intervention alleged not only many matters which were in the action as originally instituted, but also new matters all with conclusions against the Defendant Robertson personally, and the Intervention also concluded that the deed of 31st January 1934 be declared to be null and of no effect;

It appears that the Defendant Robertson made contestation of this Intervention *first* by an Exception to the Form, the effect of which was to ask excision from the Intervention of all what was outside of the scope of the original action;

It appears that, by its judgment of 26th June 1936, The Court of King's Bench struck out from that Intervention the allegations complained of, and in the result the only conclusion left remaining was that which asked that the deed of 31st January 1934 be annulled and be declared to be null and of no effect;

It appears that subsequent to the judgment of the Court of King's Bench of 26th June 1936, Dame Margaret Quinlan Desaulniers filed contestation to the said Intervention, and by her contestation alleged in substance that the said deed was regular and valid in all respects, that it was in the interest and to the advantage of the Estate, and she prayed that it be declared to be valid and binding as well with regard to the Estate as to herself;

CONSIDERING that the conclusion that the deed be declared valid and binding in so far as concerned the said Dame Margaret Quinlan Desaulniers was not an issue raised by the Intervention, and is a matter for discussion between herself and the other signatories of the deed in question, it is not a matter for adjudication between her and the Intervenant;

CONSIDERING as to her demand that the said deed be declared valid and binding with regard to the Estate Quinlan, as a settlement of the matters claimed by the action, and as a bar to further proceedings therein, the said deed is dependant for its

validity upon the powers and capacity of those upon whose consents it is based; the said deed is based upon the consents of 1. the children and grandchildren of the testator namely those who were the living representatives of seven of the eight stirpes of his descendants, and 2. the consent of the Executor-Trustees of the Estate;

CONSIDERING that the agreement and settlement set out in that deed being in the nature of a transaction C.C. 1918... It is essential to the validity of such contract that the parties consenting thereto have capacity to dispose of the things which are the objects of it; and Considering that, under the terms of the will, neither the children of the testator, nor, (either at the time of that deed, or even yet), any of the grandchildren had, or have, any rights of ownership in the assets of the Estate and that, at that date, none of these parties had capacity to dispose of the things which were the objects of the transactions, such participation as, any or all of them, may have assumed to take, in disposing of the matters and rights claimed for the Estate by the action, was without legal effect thereto, in no way bound the Estate as such, and in no way prevented continuation of the action;

CONSIDERING that the rights being exercised by the Plaintiffs in the institution of the action, and the rights being exercised by Dame Ethel Quinlan Kelly as continuing Plaintiff, were and are rights personal to her; rights which could not be taken from her by the acts of the Executor-Trustees, even acts performed by such Executor-Trustees in good faith and without collusion, and that the declaration of settlement, contained in the said deed, of a nature to terminate the matters claimed for in the action, were unauthorized, illegal and of no effect against the Intervenant as representing the minor Katherine Kelly;

CONSIDERING therefore that the said deed is invalid and of no effect as against the Intervenant, and that the Intervention is well founded;

DOTH MAINTAIN the Intervention, and doth as to the contestation thereof by Dame Margaret Quinlan Desaulniers, dismiss the said Contestation with costs.

(Signed) G. F. Gibsone,
Judge of the Superior Court.

JUDGMENT OF THE SUPERIOR COURT UPON THE MERITS OF THE CONTESTATION OF THE INCIDENTAL DEMAND BY DAME MARGARET QUINLAN DESAULNIERS ET VIR.

Montreal, 26th April 1940.

PRESENT: Mr. Justice GIBSONE.

The Court &c.,

Seeing that the present action, as originally instituted was one whereby the Plaintiffs thereto, Dame Ethel Quinlan Kelly and Dame Margaret Quinlan Desaulniers both of them daughters of the late Hugh Quinlan and beneficiaries under his will, instituted suit against the two Executor-Trustees under his will, and as to them asked that on account of blameworthy: acts and neglect of duty on the part of those executor trustees in the administration of the Estate, they be outsed from their charge and be condemned to render account, and by the said action asked also that for the reason, as it was alleged, that he had wrongfully and illegally procured possession, for his own personal profit and advantage of, divers assets of the Estate that the Defendant Robertson be condemned to return such assets to the Estate or pay the true value thereof

Seeing that, by judgment of this Court upon the merits of this action, the same rendered on the 6th February 1931, the conclusions aforesaid against the Executor-Trustees es quality, were refused, and the claims as to them dismissed, and no appeal having been instituted against this part of the judgment such adjudications remained res judicata between the Plaintiffs and the Executor-Trustees es quality;

It appears that, by that same judgment of 6th February 1931, certain pretended acquisitions of assets of the Estate, by the Defendant Robertson, were annulled and declared null, and the said Robertson condemned to make restitution of the Estate of the real value of those assets, deduction being made of what he had actually paid as purchase price for the same;

It appears that the said Robertson appealed against this judgment to the Court of King's Bench, and later to the Supreme Court of Canada;

It appears that while the said appeal was pending before the Supreme Court as aforesaid, a settlement was made between different interested parties, and the settlement or agreement was put in the form of a notarial deed, passed before R. Papineau Couture, N.P. under the date 31st January 1934 the parties to the deed being Dame Margaret Quinlan Desaulniers one of the Plaintiffs, the Defendant Robertson, the Executor-Trustees, and the then living members of the Quinlan family — except only the Plaintiff Dame Ethel Quinlan Kelly, the present, and only remaining Plaintiff;

It appears that one particular stipulation of the deed, and one to which all parties to it agreed, was that in consideration of sum of $50,000. and of certain costs all to be paid by the Defendant Robertson, the Executor-Trustees, with the consent and approval of those of the Quinlan Family thereto taking part, gave and granted on behalf of the Estate a full and complete discharge from all that was claimed from Robertson by the action, as well as other discharges not here in question;

It appears that the Plaintiff Dame Ethel Quinlan Kelly, not being a party to the agreement or to that deed, continued the litigation against the said Robertson, and in due course judgment was rendered by the Supreme Court upon the appeal;

It appears that the appeal, of Robertson was maintained and the case sent back to this Court for re-trial;

It appears that on reaching this court the said Robertson filed an additional or Supplementary Defence, and, in this Supplementary Defence, he invoked the deed of 31st January 1934 aforesaid, as a juridical act which finally discharged him from all the charges and liabilities set up against him in the action as instituted, and for this additional reason he asked for the dismissal of the action, which as above stated, was being continued by Dame Ethel Quinlan Kelly as sole remaining Plaintiff;

It appears that by her Answer to this Supplementary Defence the said Dame Ethel Quinlan pleaded that the said deed was illegal and null, and she prayed that it be annulled and declared null and of no effect either as against her or as against the Estate Hugh Quinlan;

It appears that in order to be able to pursue the said demand before the Court it was obligatory upon the Plaintiff that

she institute an Incidental Demand to that end C.P. 215, and to summon on that issue all those who were parties to that deed, namely among others the aforesaid Dame Margaret Quinlan Desaulniers;

It appears that the said Dame Margaret Desaulniers being duly summoned upon that issue, appeared and pleaded thereto by a Contestation and, by the same, alleged in substance as follows:

That the agreement or settlement was one within the powers of the Executor-Trustees, that it was advantageous to the Estate, that all interested parties, with the sole exception of the remaining Plaintiff Dame Ethel Quinlan Kelly, had agreed to the terms thereof, and the Contestant prayed that the said deed be declared to be valid and binding upon the Estate, and more particularly that it be declared valid insofar as the Contestant was concerned;

It appears that the Plaintiff denied the allegations of the Contestation and prayed for the dismissal thereof with costs;

CONSIDERING that the said deed in so far as it purported to effect a settlement of the Plaintiff's present action, was a contract in the nature of a transaction it was governed by the provisions of law more particularly by the articles C.C. 1918 1919 1920;

CONSIDERING that an essential to the validity of a contract of transaction is that the parties to it have the capacity to dispose of the things which are the objects of it;

CONSIDERING that neither the children of Hugh Quinlan nor those of his grandchildren who were parties to that deed had capacity under the will to dispose of any of the property of the Estate and therefore of any of the things which were the objects of the transaction; the assent of such parties gave no validitating effect to it;

CONSIDERING that with knowledge of this deed. the Supreme Court by its judgment of the 6th June 1934, expressly recognized and declared Plaintiff's right to continue her present action against the Defendant Robertson, and therefore the contention that the deed of 31st January 1934 is binding upon the Plaintiff is unfounded;

CONSIDERING that the Contestation of Dame Margaret Quinlan to this Incidental Demand is unfounded;

DOTH DISMISS the Contestation of Dame Margaret Quinlan Desaulniers with costs.

(Signed) G. F. Gibsone,
Judge of the Superior Court.

JUDGMENT OF THE SUPERIOR COURT

REASONS FOR JUDGMENT. GIBSONE JUDGE

Montreal 26th April 1940.

The case is now before this court for re-trial; It has been referred back here by a judgment of the Supreme Court of Canada.

The action was instituted in 1928; it came to trial before Martineau J., and judgment was rendered by him on 6th February, 1931. The plaintiffs were two of the legatees under the Will of the late Hugh Quinlan, and the action was directed as to some of its issues against the Executor-trustees under the Will, and as to other of the issues against A. W. Robertson, personally, he being one of these Trustees. On the issue against Robertson personally, the Executor-trustees were parties in order that such judgment as would be rendered on that issue would be carried out in so far as it would devolve upon those Trustees to carry it out. From the judgment of the Superior Court of 6th February, 1931, Robertson, personally, appealed to the Court of King's Bench, and judgment was rendered on that appeal on the 30th December 1932. The effect of this judgment was to modify in some details the judgment of the Superior Court but otherwise to confirm it, and the appeal was dismissed. Robertson appealed to the Supreme Court; its judgment was rendered on 6th June 1934, and by this judgment: the judgment of the Court of King's Bench was "reversed and set aside", the judgment of the Superior Court was "quashed in part as well as certain rulings made by the trial judge refusing the admission of oral evidence of the facts and circumstances hereinafter mentioned . ."; one of the respondents in the Supreme Court, Mrs. Desaulniers, with the approval of that Court, withdraw from the case; and then it was: "ordered and adjudged that the remaining parties be sent "back to the Superior Court to complete the evidence already "taken by a further enquête and then secure a new adjudication "on the merits of the issues herein shown as remaining to be "decided between the respondent Ethel Quinlan (Mrs. Kelly) and "the appellant Robertson. . ."

I shall be obliged infra to deal in some detail with the different relevant matters, but, as an introductory note, it is

probably sufficient to say that the nature and purpose of the action, *as against the trustees,* was to charge maladministration against them, in consequence to ask that they be ousted from their charge, that they be condemned to render an account, and that the inventory which, they had prepared be annulled. I would think, though, that the principal purpose of the action was the issue directed *against the defendant Robertson personally* (with the trustees parties to this issue in order that the judgment to be rendered would be carried out by these trustees in so far as their participation in this was needed). This issue was to charge that Robertson had, in fact, had transferred into his personal name a number of company shares which had belonged to the testator Hugh Quinlan, that the means used to have the transfers made were illegal and fraudulent, and secondly and in any event those transfers were prohibited under C.C. 1484 and were illegal. The action sought to have Robertson condemned to return those shares to the estate, and in the event of his failure to return the shares, that he be condemned to pay the value of the same, alleged to be some $1,350,000.

The shares, theretofore the property of Quinlan, which Robertson had transferred into his name were these:
this group:

1151 shares in Quinlan, Robertson & Janin Limited
250 shares in Amiesite Asphalt Limited, and
200 shares in Ontario Amiesite Asphalt Limited

a group for which Robertson paid to the estate $250,000., *and secondly*: 1,000 preferred shares (carrying with them a bonus of 499 shares of common — as to which there will be no special mention hereafter, as they are included with the preferred shares) in the Fuller Gravel Company Limited for which Robertson paid to the estate $50,000.

The Plaintiffs allege the illegality of the transactions on the grounds stated, and they say also that the amounts paid by Robertson, as for those shares, were away below the value that the shares bore at the time. The Superior Court, by its judgment of 6th February 1931, declared the transfers to Robertson to have been illegal by reason of C.C. 1484, it condemned him to return them to the estate. In his default to return the group first mentioned supra he to pay the value thereof which value the Court estimated to be $372,928. (less however the $250,000, that Robertson had already paid to the estate as for them) thus an additional

sum of $122,928. for them; as to the shares in the Fuller Gravel Company, that judgment declared to be illegal under C.C. 1484 the acquisition by Robertson of 400 of these shares, and, as it was undoubted that he was then unable to return the shares, it condemned him to pay to the estate the amount for which he had sold them namely $90. per share, $36,000, for the 400 shares, (less however the price he had aready paid to the estate for them $50, per share: $20,000) thus an additional sum in respect of them of $16,000. The result of the judgment of the Superior Court judgment, upon the issue against Robertson personally, was to condemn him to pay sums aggregating $138,928., plus certain dividends, in addition to the $270,000. which he had already paid as for them.

On the issue against the Trustees, the Superior Court refused Plaintiffs' demand for their ouster; it refused the demand for an accounting; and it refused the demand for the annulment of the inventory of the Estate which they had made. On this issue, with regard to Robertson, the Superior Court accepted his representation that whatever he had done in the way of getting transfer of the shares he had done after getting the advice of Mr. Perron K.C., therefore that he should be considered to have been in good faith and not to have incurred destitution from office. After this judgment, Robertson resigned his office, and appointed in his place the General Trust of Canada, Thenceforth the Trustees are the Capital Trust Corporation and the General Trust of Canada.

The Court of King's Bench, by its judgment rendered 30th December 1932, was unanimous that the acquisiton of the said shares by Robertson was illegal by reason of C.C. 1484, that Robertson had rightly been condemned to return them or the value thereof; the valuation of the Fuller Gravel shares was easy to calculate as supra, but, in the case of the group first mentioned, the companies concerned were all commercial undertakings the sum value of the assets of each fluctuated from time to time, therefore the intrinsic value of the shares fluctuated similarly, and the exact amount which Robertson should be condemned to pay, if he defaulted to return the shares, depended, in that measure, upon the date of the valuation.

The date adopted by the Superior Court for this valuation — brought out the figure $372,928; the Court of King's Bench was of the opinion that the date so decided upon was not the date that should have been adopted,—that a certain other date was the proper one for this valuation. A valuation, however, made on this

other date would have increased the figure $372,928; there had been no appeal or cross appeal by the Plaintiffs against that figure and the Court of Appeal was therefore without jurisdiction to change the date or increase the valuation, so the figure $372,928., remained.

The Court of Appeal made some verbal changes in the adjudications of the Superior Court—for the purpose of clarification, all intended to conserve the essential meaning—but it made one important modification with respect to Robertson's obligation to return dividends and such like distributions on the shares. Apparently this last mentioned modification was looked upon as Robertson's sole success in appeal, but it was considered sufficient to justify refusal of costs to the respondents, The Superior Court judgment was amended and modified as above, in other respects it was confirmed, and the appeal as above, in other respects it was confirmed, and the appeal was dismissed without costs.

As stated supra, this judgment of the Court of King's Bench was "reversed and set aside". On the present re-trial, therefore, it may not be taken into account as an adjudication, nor even as a part-adjudication of the rights of the parties.

In the Supreme Court the adversaries at first were Robertson the Appellant, and the two Plaintfifs (Mrs. Kelly and Mrs. Desaulniers) Respondents. While the case was still before that court, and prior to judgment rendered there, Mrs. Desaulniers, upon terms agreed upon between herself and Robertson, withdraw from the case. In that court's judgment Mrs. Desaulniers' withdrawal is specially mentioned This settlement between Robertson and Mrs. Desaulniers will be referred to in some detail infra; for the moment all that is necessary to say is that Mrs. Kelly had no part in it. Mrs. Kelly continued the case alone as Respondent; when judgment was rendered in the Supreme Court it was a judgment as between Robertson and Mrs. Kelly only; and Mrs. Kelly's right, as sole remaining Plaintiff, to continue the case was declared in the judgment.

Hugh Quinlan's will had bequeathed an annuity to his widow, and, during her lifetime, certain allowances to children. After the death of the widow, the income of the estate was to be divided in equal shares among all the testator's children, the share in the income of children dying, to be taken by their children by representation, per stirpes. At the testator's death he had eight children, and all were surviving at the time of the institution of the present

action. The action was institued by two only of these eight, namely as above stated, by Mrs. Kelly and Mrs. Desaulniers. To this action Robertson pleaded (inter alia), and he contended throughout, that in law these two plaintiffs did not possess the quality or status which would permit them to institute a demand of the nature of the present. The chief ground for this contention was that the Pilaintiff's individual rights under the Will, consisting only of a share in the income, and for each during her lifetime only, without ownership by either Plaintiff of any portion of the capital of the estate, could not institute this action which essentially concerns the capital as such. In all the courts, this contention of Robertson was negatived; thus in the formal judgment of the Supreme Court:

> "7.—This Court doth further declare that Respondent Ethel Quinlan, to the extent that she is entitled to a variable share in the net revenue of the estate of her father, has a sufficient interest and "status" to preserve intact the " "corpus" of the estate".

There can be no doubt, I think, as to the meaning of the words"preserve intact the "corpus" of the estate"; they are not restricted or qualified in any way, and it is not permissible to add any restriction to them now, and the Supreme Court must be supposed to have intende what was so clearly expressed. The word "corpus" used alone would have referred to the totality of the estate, and when the additional qualifying word "intact" is added, the certainty becames even greater. The meaning of the words can only be, so it seems to me, that Mrs. Kelly, now by this action, in which she is the sole Plaintiff and in the exercise of her own right, has the "status" which enables her to demand, and if the facts to be proved justify it, to have performed that the totality of the shares in question be returned to the estate.

The introductory words "to the extent that" should therefore be given the meaning, and the equivalent to "by reason of the fact that", and this for the following reasons: 1.—The purely grammatical reason that they are introductive or conjunctive of the words that follow,—these latter being the ones used to give the reason why the right exists; the introductive words are separable from and separate from the sentence which declares the right; 2.—The rule of legal construction, for the right declared is of its nature an indivisible right; 3.— When the right is declared it is declared in unrestricted terms; and 4.—the situation of Mrs. Kelly was, and is, that she might, and may, become titular of the total

net income of the estate, namely if she were to survive the testator's other children and their issue. Mrs. Kelly is then from the date of the judgment of the Supreme Court the sole Plaintiff in the case, and with the status above declared.

The next matter, I think, is to ascertain the exact scope of the present re-trial. The point of departure must, of course be the excerpt from the judgment of the Supreme Court:

> "6. And this Court did further order and adjudge that the remaining parties be sent back to the Superior Court *to complete the evidence already taken* by a further enquête, and then secure a *new adjudication* on the merits of the issues *herein shown as remaining to be decided* as between the respondent Dame Ethel Quinlan (Mrs. Kelly) and the appellant Robertson personally . . ." (the remaining part of this paragraph enumerates certain topics as to which it is declared that oral evidence is legally admissible. Mention of these enumerated topics will be made infra)

The Supreme Court judgment does not state, in any explicit way, what are "the issues remaining to be decided" between the parties. The judgment does, as noted supra, declare what is Mrs. Kelly's Status, and, in its adjudication numbered 5, it specifies certain matters which it declares have become res judicata as against her, thus:

> "5. This Court doth further declare that, seeing the acquiescence of the respondent Ethel Quinlan thereto and the acceptance thereof by the testamentary executors and trustees, it does not, and cannot, disturb that part of judgment of the Superior Court dismissing part of *respondent's conclusions to wit*:
>
> 1.—The prayer that the appellant A. W. Robertson and the Capital Trust Company be removed from office;
>
> 2.—The prayer that they be condemned to render an account;
>
> 3.—The prayer that the inventory be annulled;
>
> 4.—The various allegations of fraud against the appellant, as well as the allegation that the late Hugh

> Quinlan was not of sound mind when the letter of the 20th of June 1927 was read to him; and that the said judgment of the Superior Cour, in respect to the dismissal of the above mentioned *conclusions,* is now *res judicata* between the parties"

This adjudication numbered 5 combined with the adjudication numbered 2:

> "2. That the judgment of the Superior Court be, and the same was quashed in part as well as certain rulings made by the trial judge refusing the admission of oral evidence of the facts and circumstances hereinafter mentioned. . ."

would indicate, I think, that the "part" of the judgment of the Superior Court which is quashed is the judgment *in toto,* saving only those points which are so declared to have become *res judicata* against the Respondent Mrs. Kelly. (I do not see how it could be possible to contend now that the judgment of the 6th February 1931 is still *in esse* as an authoritative and binding valuation of the shares at the $372,928 and the $36,000., nor still to constitute a condemnation of Robertson to pay to the Estate the sum of $138,928, with order to the Trustees to receive this amount from Robertson. I think that all those adjudications of the Superior Court are now quashed and set aside; a new adjudication on all these matters is called for on this re-trial)

It becomes necessary to advert to these matters of *res judicata.* In approaching this question I mention that what res judicata is, and to what exactly it applies, is with a matter of positive law and is set out in the Civil Code:

> "1241. The authority of a final judgment (res judicata) is a presumption *juris et de jure*: it applies only to that *which has been the object* of the judgment. . . "

The present action, as instituted, called for the adjudication of a number of issues, but there were two principal ones, clear and distinct independant of each other namely: *first* an issue between the Plaintiffs against the Trustees as such, which, on the allegations of mismanagement, neglect, incompetence it was sought that they be ousted, their inventory be declared illegal and of no effect, and that they be condemend to render an account: *second* an issue between the Plaintiffs and Robertson

personally, which sought condemnation against him to return certain shares to the estate or pay the value.

The items, 1, 2 and 3 of the Supreme Court adjudication numbered 5 were matters on the issue between the Plaintiffs and the Trustees as such. They were demands made in the conclusions of the action, they were demands definitely made, and, in the adjudications of the Superior Court judgment, they were definitely refused. The Plaintiffs did not appeal against these refusals, and since they were "objects" of the action and of the judgment, they have become res judicata between the Plaintiffs and the Trustees esquality, as is decreed by art. C.C. 1241.

But the two matters in the item 4 do not come at all in the same way. Neither the one nor the other was in the sense of C.C. 1241. an "object of the judgment"; indeed neither was an "object" of the action, but each was only a means of proof of alleged illegality.

The Supreme Court was misinformed or it is by oversight that adjudication 5 states that they were "part of respondent's conclusions", it is sufficient to refer to the conclusions of the action to see that they were not.

With respect to Robertson's good faith the following occurs in the Superior Court judgment:

> "Considérant que le défendeur a agi dans ces diverses circonstances de bonne foi, et sur l'avis de M. Perron qu'il avait le droit d'agir ainsi;
>
> Considérant, pour cette raison, que ces achats et transferts d'actions ne sont pas une cause de destitution;

The above is the only mention in the judgment with respect to Robertson's good faith, it is inserted there as a reason for not ousting him from his trusteeship, and it appears to concern only the issue between the Plaintiffs and the Trustees as such. The Plaintiffs did not institute an appeal in order to have those paragraphs reversed, and for these reasons I would think: that, in so far as those paragraphs were part of the refusal of ouster, the Plaintiffs were decided to leave that issue as it was determined by the first judgment; in so far as those paragraphs might be said to affect the claim for reimbursement of the shares, the Plaintiffs had judgment in their favour, namely, as above men-

tioned for some $139,000. They had asked for that condemnation for cumulative reasons, judgment was granted for one of those reasons. They could not complain, they had no juridical interest to appeal, and, if not, they had no right to appeal C.P. 113. Declaration of bad faith against Robertson was not an object "of their action, and it could not be a ground of appeal.

As to the mental condition of Hugh Quinlan on the date June 20th 1927, there is no mention of this either in the conclusions of the action or in the adjudications of the judgment with respect to it. There was no occasion to mention the topic in the judgment, for the trial judge had refused admission of evidence as to what Hugh Quinlan may have said or done in response to the alleged reading of that "letter" to him on that date.

Another reason, also peremptory in nature, suggests the same conclusion. It is this that by the action, and by the whole conduct of the case so far, it is indisputable that the good or bad faith of Robertson, his faithfulness or breach of trust, are alleged to have, and must have, a direct and certain bearing upon the legality or illegality of those acts of his which are attacked, as also upon the measure of restitution to which he must be condemned, if he is to be condemned. It is not an end or purpose to convict him of these faults; the end and purpose is to have illegality declared and restitution made; his bad faith is an element to prove illegality for *fraus omnia corrompit*. The Supreme Court sends the case back here for the evidence to be *completed* and for there to be a *new adjudication* of the issues remaining to be decided between these parties. At the date of the Supreme Court judgment 6th June 1934, it was impossible to foresee what evidence the record would finally contain on these issues between Mrs. Kelly and Robertson. It is impossible to suppose that the Supreme Court could, on that date, have intended to direct that, regardless of what evidence might finally constitute the record, the conclusion of the Superior Court must always be that Robertson had been in good faith throughout the issues being re-tried.

If I am wrong in considering that on this re-trial it is open to Mrs. Kelly to adduce evidence and to address argument on the matters mentioned in the item 4, the remedy will be applied by some higher court.

Another question to be dealt with now is this that by the adjudication numbered 6 of the Supreme Court that court:

" . . did further order and adjudge that the remaining parties be sent back to the Superior Court to complete the evidence already taken by a further enquête, and then to secure a new adjudication on the merits of the issues herein shown as remaining to be decided between the respondent Dame Ethel Quinlan (Mrs. Kelly) and the appellant Robertson personally . . ."

In adjudication No. 4 that Court had just stated:

". . . that this Court doth further declare, as a fact, that as far as the appellant Angus William Robertson and respondent Margaret Quinlan are concerned, they have settled their differences and have ended this litigation".

Who constitute the "remaining parties" referred to in the adjudication No. 6? I think it must be said they are the original parties to the action *minus* only Margaret Quinlan; more particularly, and this is the matter of importance, that the Trustees under Hugh Quinlan's Will continue to be parties. They continue to be Defendants, and continue to be subject to jurisdiction in the judgment which will be rendered on the re-trial. The issue directed against themselves, as Trustes, has been decided in their favour, and has become *resjudicata.* As to that issue, they need have no concern, but the issue against Robertson personally in still *in esse,* as to it the need of the Trustees in the case is, that there be jurisdiction to adjudge them to receive from Robertson, as part of the Estate, whatever Robertson may be condemned to pay to the Estate as compensation or restitution in respect of the issue against him personally. If they were not Defendants for the purposes of that issue, the judgment rendered upon it, if adverse to Robertson, would not in strictness be executory. I cannot think that the Supreme Court could have intended that situation to occur, and I conclude that the Trustees continue to be Defendants for the needs of the adjudication of the issue of Mrs. Kelly against Robertson personally.

The Supreme Court adjudication no. 6 continues:

". . . and that oral evidence be admitted, at such further enquête of the following facts and circumstances to wit: A. the answer given by the late Hugh Quinlan when the letter of June 20th 1927, was read to him; including, of course, the conduct, statements, communications and directions of the persons present when the letter was so read, and of the late Hugh Quinlan himself, and generally all relevant circumstances relating thereto;

B.—All the facts, circumstances, statements, and communications relating to the drafting of the said letter of June 20th 1927 including the conduct of all those who shared in the drafting of the said letter; and the whereabouts and safekeeping of the said letter;

C.—All the facts, circumstances, statements and communications relating to the visits of the Honourable J. L. Perron and of the present appelant to the late Hugh Quinlan, during the month of May, 1937, or thereabout, and to the endorsement of the four certificates of shares filed as exhibits P9, P10, P-26, and P-27; also to the Memorandum of the 21st May 1927, P-66; including the conduct of all the participants in these various events;

D.—Generally all facts, conditions and circumstances tending to show that the late Hugh Quinlan agreed, or disagreed, as the case may be, to the contents of the letter of June the 20th 1927;

The respondent would also bring new evidence of all facts, declarations and statements which might tend to rebut the evidence to be afforded as aforesaid by the appellant."

What precedes in these notes is intended to indicate what matters came here from the Supreme Court, and with regard to them, what the task of this Court is.

I summarize the preceding pages:

1.—The record that comes here is the record as it became constituted at the first trial before this court;

2.—The judgment of the Court of King's Bench has been reversed and set aside;

3.—The judgment of the Superior Court of 6th February 1931, except the items 1, 2, and 3 of adjudication numbered 5 of the judgment of the Supreme Court, is quashed and set aside;

4.—The adjudications of the Superior Court, namely the items 1, 2, 3, supra, are now *res judicata;* they terminate the issue directed against the Trustees esquality;

5.—The Trustees remain parties to the case as Defendants in res-

pect of the issue between the Plaintiff and the Defendant Robertson pesonally;

6.—By reason of the withdrawal of Mrs. Desaulniers, Mrs. Ethel Quinlan remains alone the Plaintiff in the case; and she acting alone, and in the exercise of her own right, possesses status which permits her in law to demand and to secure the conservation intact of the corpus, namely of the totality, of her father's estate;

7.—Oral evidence as to the matters enumerated in the Supreme Court adjudication number 6 is to be admitted;

8.—The issues to be tried anew are those of the original pleadings less however those items 1, 2, and 3, which are now *res judicata;*

After the record reached this Court, there was a delay during some months, and then the first proceeding was an application from Robertson for leave to file a Supplementary Plea. This being granted, he, on 11th January 1935, filed a Supplementary Plea which was to the following effect:

> That since issue joined (i.e. prior to the judgment of 6th February 1931) the Defendant Robertson, by deed passed before R. Papineau-Couture, N.P., the 31st January 1934, has purchased or re-purchased from the testamentary executors and trustees of the estate Quinlan all the shares which he was ordered to return or which he was order to pay to the estate, by the judgments herein of 6th February 1931 and 30th December 1932;
>
> That by the said deed the said testamentary executors and trustees desisted form the said judgments, discontinued all proceedings, and renounced and abandoned all rights and recourses of any kind whatsoever which resulted to them esquality by reason of the said judgment, as well as of all other claims they might have or pretend against the said defendant Robertson; That in consideration of the aforementioned discontinuances and renunciations, and as it is set out in the said deed of 31st January 1934, the Defendant Robertson agreed to pay, and actually did pay, to the said testamentary executors and trustees the sum of $50,000., in addition to the sum of $270,000. already paid, this as full and complete payment of the renunciations and discharges

granted him in the said deed; and this Defendant also says that he therein undertook to pay certain law costs, and that he has in fact paid and discharged the same;

That the testamentary executors and trustees possessed in law the capacity and authority to sell or re-sell the said shares, and to discontinue discharge and renounce as set out in the said deed, and that in addition thereto, all the stipulations in the said deed were approved ratified and confirmed by all the heirs and legatees of the late Hugh Quinlan, save only the present plaintiff dame Ethel Quinlan Kelly; that, in consequence, all of the said stipulations are valid, and are binding upon the estate Quinlan as also upon all interested therein, including the said Dame Ethel Quinlan Kelly;

This Defendant says that the agreement of the 31st January 1934 was by its terms made dependant upon *acte* thereof being granted by the Supreme Court, that in fact the Supreme Court by its judgment of 6th June 1934, admitted the said deed to form part of the record, and granted *acte* thereof;

The Defendant Robertson by this Supplementary Plea says that for the reasons above given, and without prejudice to the Defence already filed, the Plaintiff's action (the original action) is unfounded, and he prays for the dismissal thereof with costs;

The answer of the Plaintiff Mrs. Kelly to this Supplementary Plea was as follows:

The fact of the deed of 31st January 1934, as also of its production before the Supreme Court, and the mention of it made in the judgment of 6th June, 1934 is admitted; It is denied that the testamentary executors and trustees had capacity or authority to make the covenants set out in the said deed;

It is asserted, in respect of the matters included in the action, that such authority as the testamentary executors and trustees might have had under the Will was suspended, and that it was not within their power to exercise the same pending the final judgment of the courts; that, moreover, while the case was in appeal before the Supreme Court, to wit under date 6th September 1933, the said testamentary

executors and trustees esquality gave formal written notice to all the parties concerned in the litigation, that on behalf of the Estate they accepted the benefit and advantages accruing to the Estate from the judgments of 6th February 1931 and 30th December 1932;

That although the judgment of the Supreme Court did declare that, as between the plaintiff Dame Margaret Quinlan Desaulniers and the Defendant Robertson, the litigation was at an end, it recogniezd, and thus declared, the right of Dame Ethel Quinlan to continue the action as instituted, namely by referring the case back to the Superior Court to be tried anew;

That that which is referred back to the Superior Court does not include and may not include any issue as to the validity or effect of the said deed of 31st January 1934; that whereas the shares in question were valued by the judgment of the Superior Court at $408,928; and in the opinion of the Court of King's Bench, the value thereof was $415,956.25, with in each case an additional amount to equal the dividends and bonuses, (such dividends and bonuses so plaintiffs say being of the amount $36,565.84) the executors and trustees, by the said deed declare acceptance of the sum of $320,000. as the price therefor;

The plaintiff says that her late co-plaintiff, Dame Margaret Quinlan Desaulniers, was induced to give her consent to the deed and to withdraw from the case by reason of a payment to her husband, Mtre Jacques Desaulniers, of the sum of $27,500.; that the consent of the other heirs was obtained in circumstances which would negative the legality of their consent namely: they were required to give a consent without time for reflection, they were refused communication of the deed unless and until they signed it; it was by a representation which was false that they were induced to consent, namely the representation that if Robertson continued to be condemned to return the shares, he would in fact return them, and he would thereby become entitled to receive back from the estate the $250,000. he had already paid, that what the estate would then have would be the shares, such shares representing a minority interest at the mercy of the majority interest—and the consequence would be the diminution of the Estate income by one third; that this representation was false because the executors and

trustees knew that Robertson could not return the shares, seeing that he had sold them; that this fact was concealed from the heirs; That in respect of the shares now being referred to, the Defendant Robertson was indebted to the Estate in the sum of $535,065.84, and that he was indebted to it for divers other sums as brought to the attention and responsibility of the executors and trustees by this plaintiff, by a protest of the 17th October, 1933, Mtre N. Picard, N.P.; That the said deed of 31st January 1934 is illegal, null and void also for the reason that the officers who signed as on behalf of the trust companies, in so signing, were acting outside of the scope of their duties and powers, and in fact were without authority and without representative capacity;

And the Plaintiff Dame Ethel Quinlan prays that the deed of 31st January, 1934 and the settlement agreement therein contained be declared null and void and be set aside, at all events in so far as she Dame Ethel Kelly is concerned, and that the Supplementary Plea of the Defendant Robertson be dismissed with costs;

The Defendant Robertson's reply to this was a denial.

Robertson's Supplementary Plea having invoked this deed of 31st January 1934 against the plaintiff, and having urged it as an additional reason,—even as a peremptory reason—for the dismissal of the action as originally instituted, it was of course permissible for the plaintiff to attack the legality of that deed; she did so by her above Answer to the Supplemntary Plea. Properly to accomplish such an annulment, necessitated the summoning into the case of the other parties to the deed. On leave granted, the plaintiff summoned all the other parties to that deed on the issue of its nullity.

A number of these new Defendants appeared. Only one interest pleaded, namely Dame Margaret Quinlan Desaulniers and her husband (Mtre Jacques Desaulniers), their joint defence being in substance as follows: THAT by the deed in question the testamentary executors and trustees, acting in virtue of the powers granted them by the Will, sold to the Defendant Robertson the shares in the different companies mentioned,—shares which Robertson contended that he had purchased from Hugh Quinlan during his lifetime—and for which Robertson had paid $270,000. to the Estate, this being, as Robertson alleged, the price agreed upon be-

tween himself and Quinlan; that by the deed in question Robertson agreed to pay an additional sum of $50,000. for those shares, making the total to be paid for the same $320,000.; that the settlement was made while the case was before the Supreme Court, and after it had been part heard; that during the part hearing some of the judges, more particularly the Chief Justice, had expressed views which seemed to indicate that the judgment to be rendered might declare oral evidence to be legally admissible to prove the alleged sale by Quinlan to Robertson; that if a sale from Quinlan to Robertson were to be proved, the price would not exceed the $270,000. already paid, that it was in these circumstances that Dame Margaret Quinlan and her husband gave their approval to a settlement which would fix the price definitely at $320,000.;

And these Defendants said also that if, by the judgment to be rendered by the Supreme Court, the sale of the shares to Robertson were declared null and that he returned these shares to the estate, the Estate would have found itself the holder of a minority interest, of which Robertson held the majority interest, with the result that the revenue from the shares would be uncertain in amount, and the value of the shares belonging to the minority interest would be much depreciated; That the Plaintiff Dame Ethel Quinlan, alone of all the interested parties, refused concurrence in the said settlement;

These Defendants say that, under the terms of the Will, the testamentary executors and trustees were fully authorized to agree to the terms of the said deed, and that they, and also these Defendants did assent thereto in good faith; That these Defendants are entitled, at least as to themselves to have it declared that the said deed is valid and effective according to the terms thereof;

By their conclusions they ask that the deed of 31st Janaury 1934 be declared valid and legal in all respects, that in any case it be declared valid and legal in so far as these Defendants are concerned, and that the present summons to them be dismissed with costs;

The Plaintiff Mrs. Kelly answered the Desaulniers' Defence as follows:

By denial of all allegations of such defence which were incompatible with the allegations of Plaintiff's Answer to the Supplementary Plea of the Defendant Robertson (this being the issue upon which these defendants were summoned); By affirmation

that it was to the knowledge of the said two Defendants that the Defendant Robertson had parted with all the shares in question, and that he would not have been able to return them in kind to the Estate;

By affirming that the consent of the Defendants the Desaulniers consorts, was obtained from them in reality by means of the payments to Mtre Desaulniers, as is alleged in the Plaintiff's Answer to Robertson's Supplementary Plea; And the Plaintiff prays for the dismissal of the Desaulniers's Defence with costs.

The issue raised by the Supplementary Plea must dealt with before proceeding any further, because if it be well founded, all the grounds upon which the original action was based are made inexistent, namely by the consents and by the discharge which the executors and trustees assume to give to Robertson in that deed.

The situation immediately preceding the deed was that the action had sought return or accounting to the Estate of a number of shares which, as it was alleged, Robertson had wrongfully had put in his name from the name of the decedent; the grounds of the action were that the transfer to Robertson's name was illegal and wrongful *both* by reason of the fact, as it was alleged, that the transfer had been brought about by deceit and misrepresentation on Robertson's part, *and also* because of C.C. 1484 which prohibits that a trustee acquire personally property from the trust. The Superior Court, for the reason of the prohibition of C.C. 1484, declared to be illegal and null these transfers of shares into Robertson's name, and ordered restitution. The Court of King's Bench unanimously confirmed, and Robertson appealed to the Supreme Court, The Executor-Trustees had taken no part in the hearing of the case in the Court of King's Bench. They were taking no part in the hearing before the Supreme Court, but after argument had commenced there, the Court suggested that they intervene leave thereto was granted on 16th January 1934; under date 24th January 1934 they declared that "they submitted themselves to justice"; the deed in question was executed on 31st January 1934.

The deed purports to be an agreement between the Executor-Trustees of the Estate and Robertson; by way of introduction to the agreement the nature of the action is explained, the Superior Court and Court of Appeal judgments are related, then is declared the agreement arrived at namely; that in consideration of $50,000. which Robertson binds himself to pay in addition

to the $270,000. already paid, the Executor-Trustees sell or re-sell, in so far as may be necessary, the shares in question to Robertson; appear as parties to the deed seven of the children of the testator (Mrs. Kelly is the eight), and these seven "for the same consideration" as that agreed upon between the Executor-trustees and Robertson, renounce to all claims of every kind whatsoever that as legatees, or as representatives otherwise of Hugh Quinlan, they might have or pretend to have against Robertson arising out of the business associations which Quinlan and Robertson may have had together. Two of these had children of their own (such being grandchildren of the testator) and the tutors representing the Dunlop child and the Ledoux children, in each case thereto authorized by a homologated deliberation of a family council, joined with the seven children to renounce all claims against Robertson.

What contractual obligations this deed may have created between Robertson and the children or grandchildren who were signatories, is not a question which comes under Robertson's Supplementary Plea. Such matters may come up later on for debate between Robertson and these individuals; they are not relevant here and now.

The essential matter raised by that plea, and now calling for consideration, is as to whether the contents of this deed operate a settlement of the issues of the action,—issues which, but for that deed, would remain to be adjudicated between the Plaintiff Mrs. Kelly and the Defendant Robertson; in other words does this deed operate as a bar to all further proceedings upon the action.

There are only two sources from which such a setlement or bar could come: either from the consents given by the Trustees, or from the consents given by the children and grandchildren as set out in the deed.

First: as to the consents given by the children and grandchildren: there can, I think, be no doubt but that the nature of the contract set out in the deed is that of transaction as known in our law, and that articles 1918-1920 of the Civil Code govern it:

1918: Transaction is a contract by which the parties terminate a law suit already begun, or prevent future litigation by means of concessions or reservations made by one or both of them.

1919. Those persons only can enter into the contract of transaction who have legal capacity to dispose of the things which are the object of it.

1920.—Transaction has between the parties to it the authority of a final judgment (res judicata).

Reference to the terms of the Will makes quite evident that neither the children of the testator, nor his grandchildren, signatories of the deed had legal capacity to dispose of the things which are dealt with in the deed. Under the Will the Estate is to be kept under administration by the Trustees until the death of the last surviving child of the testator; the division will take place only then. Until that date the revenue is to be divided among the children or grandchildren as stated supra, the legatees in ownership are to be those grandchidren or great grand children who will be alive at the date of the death of the last surviving child of the testator. It must be evident, I think, that under the will the testator's seven children who signed the deed had not, and apparently never would have ownership, nor capacity to dispose of any part of the capital of the estate; evident also that the grandchildren who signed (by the intermediary of their tutors) had no rights ownership, nor of disposition and that they will never have any, unless they are surviving at the date of the death of the last of the testator's children. (Vide also IX of the Will). Those granchildren or great grandchildren who are alive on that date will inherit in ownership a share in the estate, but what fraction of the estate the share will be, will depend upon the number of them who will be then surviving.

All these different individuals had capacity to enter into contractual relations with Robertson, each for himself or herself, but they had not, either individually or collectively, capacity to make a transaction of this lawsuit, nor to validate a transaction of it, purported to have been made by the Executor-trustees.

Next as to the consents given by the Trustees: It is certain, I think, that according to the terms of the will the Trustees are invested with the most ample powers of disposal, of settlement, of compromise, or renunciation,—all powers necessary to make the settlement set out in the deed. This being so, the inquiry is narrowed to the question as to whether, in the circumstances, they had the full exercise of those powers or whether they were for some reason estopped or inhibited from the exercise of them. The situation at the time of the deed was that in a suit instituted by

two legatees against the Defendant Robertson, it had been declared that Robertson had illegally obtained possession of certain assets of the estate, and he had been condemned to return them or the value thereof. In the Court of King's Bench, and in the Supreme Court, the Trustees were in the case, to be parties to the judgment, to the extent only of being obliged to take notice of the judgment to be rendered, and to receive from Robertson whatever he might be condemned to hand over to the Estate. They were not then participants in the litigation except in the passive way just mentioned. The litigation was between the Plaintiffs and Robertson. Did the powers that the Trustees possess under the will authorize them to step in between the Plaintiffs and the Defendant, authorize them to agree with Robertson upon a compromise of the Plaintiffs' claims, thereby make the compromise obligatory upon the Plaintiffs, and did it authorize them to deprive the Plaintiffs of the right to proceed further?

I would say that the right of the Trustees to act in that way would depend upon whether the action was the exercise of a right appertaining to the Plaintiffs themselves, or was the exercise of a right appertaining to the Trustees, the Plaintiffs acting in a mandatary or representative capacity for the Trustee. I believe the correct juridical answer to that question is that the Plaintiffs were acting undoubtedly in the exervice of a right appertaining to themselves and to each of them, and that it was beyond the powers of the Trustees to hinder or obstruct them. It is not necessary to elaborate further, for the full and complete answer is set out in formal words in the judgment of the Supreme Court. This deed was before that Court long before its judgment was rendered. it was debated there, but the judgment declares definitely and finally that the:

> "respondent Ethel Quinlan has a sufficient interest and status to preserve intact the corpus of the estate".

This provision in the judgment makes it quite certain that the deed of 31st January 1934 does not operate a settlement of the suit, nor prevent the Plaintiff Mrs. Kelly from continuing the proceedings.

The Defendant's Supplementary Plea must therefore be dismissed.

Coming now to the Defence filed by the consorts Desaulniers, their conclusions are that the deed of 31st January 1934:

1. be declared legal and valid "à toutes fins que de droit", which of course is tantamount to saying that it constitute a settlement of the case, and a bar to further proceedings. For the reasons I have just given in dealing with the Defendant's Supplementary Plea, that demand must be dismissed. Secondly they ask that it be declared valid binding in so far as concerns themselves. This conclusion concerns only what reciprocal undertakings may have been agreed to between the Desaulniers and Robertson; it does not enter into the present controversy and it must be left to those parties to settle between themselves if occasion arise.

The Desaulnier's Defence must be dismissed.

The matter next in order calling for attention is the Intervention filed on behalf of the Plaintiff's daughter Katherine Kelly. I mentioned supra that he Dunlop grandchild and the Ledoux grandchildren of the testator were parties to the deed of 31st January 1934; Their tutors were among those summoned by the Plaintiff on the issue of the validity of that deed. It was at the request of Dame Desaulniers that the Plaintiff was required to summon also her own daughter into the case and thus have as parties in the case all the presently existing grandchildren of the testator. Katherine Kelly was then a minor; a tutor was appointed to her, and he on her behalf filed an Intervention. Later, when she became of age, she herself continued the Intervention, and later still when she married, her husband joined with her in continuing it.

The occasion of the Intervention was the Plaintiff's Answer to Robertson's Supplementary Plea. The issue raised by that Supplementary Plea was as to whether the deed of 31st January 1934, settled and put an end to the action. Katherine Kelly was summoned on that issue, but her tutor did not merely file a pleading to that issue, he filed an Intervention, and by it he assumed on her behalf a role which was equivalent to that of an additional Plaintiff in the original action. The Intervention in its original form included mostly all the grounds set out in the original action, but it included also a considerable amount of new matter: it included some new claims against Robertson, namely new matters in respect of which it was alleged he was indebted to the Estate, and as to which reimbursement was, by the Intervention, demanded against him.

I am inclined to think that his latter material was incorporated into the Intervention because the deed of 31st January

1934, by its terms, declared that it was to operate as a settlement not only of that lawsuit, but also of all other matters as to which the Estate might have any claim against Robertson. The new matter incorporated into the Intervention alleged in detail a number of claims which were not mentioned in the action; they were discovered only later; they amounted to hundreds of thousand of dollars. If the deed of 31st January 1934 was to be declared valid, as was asked for by Robertson, these claims, all of them, would have been wiped out and renounced to without discussion or even inquiry. The Intervenant evidently judged this new matter to be pertinent to her demand that the deed be declared to be inoperative and null as against the Estate.

The Intervention was contested separately by Robertson by the Executor-Trustees, and by the consorts Desaulniers.

Robertson's contestation of it began by an Exception to the Form the chief complaints of which were; the incorporation of this new matter, and the reiteration in the Intervention of matters which at the date of its filing had, as it was alleged, become *res-judicata* as between the parties to the original action. By judgment of the Court of King's Bench of 26th June 1936 this Exception to the Form was maintained, much the greater part of the Intervention, and all the conclusions of it except one, were struck out. The sole conclusion that the judgment of 26th June 1936 permitted to remain in the Intervention, was that which asked that "the deed of . . . 31st January 1934 be declared illegal null and void . . . and be cancelled annulled and set aside . . . costs against the defendant Robertson in any event and against any other party who may contest the present intervention."

Before leaving this judgment of 26th June 1936, I must expressly say that it did not pass in any way upon the merits of the allegations which it deleted from the Intervention, but it deleted them because, if left there, they would have made the scope of the Intervention more extensive than the scope of the action,—a situation which our law of procedure does not permit, as is stated by that judgment:

> CONSIDERING that the present Intervention is, for the greater part, irregular and illegal as seeking to revive issues finally determined between the parties prior to such Intervention, and, moreover, seeks to introduce new issued which are not part of the cause in its present state;

Considering that while such issued may give rise to an independant action on the part of the Intervenant, he cannot justify the present Intervention;

Subsequently to this judgment of 26th June 1936, and as a consequence of it, the Intervention, whatever may have been its original form and its original purposes, now became solely and exclusively an Intervention on the issue raised by Robertson's Supplementary Plea, namely as to the validity and effectiveness of the deed of 31st January 1934, as a settlement of all claims existing or which might exist against Robertson by the Estate. The sole question, as to which adjudication is asked, and therefore the sole question as to which the Court derives jurisdiction from this Intervention, is the nullification or declaration of nullity of the deed.

After his Exception to the Form had been maintained by the judgment of the 26th June 1936, Robertson pleaded to the merits of the Intervention in its reduced form. His pleading was in effect a denial of the allegations still remaining in the Intervention, and his prayer was that it be dismissed. I do not think it necessary to indicate here what were these issues of fact between the Intervenant and Robertson; all or practically all form part of the issues between the parties to the main action, and will be dealt with there. But the considerations of law applicable, and which would negative the validity and effectiveness of the deed of 31st January 1934, (and therefore would maintain the prayer of the Intervention) are the same as those urged against that deed in the contestation of defendant's Supplementary Plea. I have dealt with them supra. Those reasons of law are equally applicable here; the intervenant by reason of her interest in the estate is equally entitled to invoke them, and she has invoked them. The conclusion to be reached must be the same namely that that, in the circumstances in which they were with respect to those matters, the Executor-Trustees were without authority to make the settlements and renunciations which they purported to make by the said deed.

The (sole remaining) conclusion of the Intervention must therefore be granted, and the contestation of it by Robertson must be dismissed.

The consorts Desaulniers also contested this Intervention; their contestation was made after the judgment of 26th June 1936, and therefore had reference solely to the demand of nullity of the

deed. This is exactly the same question as met with in the adjudication of the contestaiton by these consorts of Plaintiff's Answer to Robertson's Supplementary Plea. The contestation here is word for word the same as their contestation of defendant's Answer to Robertson's Supplementary Plea. I must deal with the matter in the same way for the same reasons apply. The contestation of the consorts Desaulniers must be dismissed.

The Executor-trustees also contested the Intervention. They did so, however, before the judgment of 26th June 1936 was rendered, and their contestation was to the Intervention in its original form. In its original form the Intervention was a lengthy document and its conclusions consisted in three demands. Much the greater part of it consisted of allegations of indebtedness on Robertson's part toward the Estate. There were a number of items. As to some of the items the allegation was that Robertson became indebted toward the Estate in sums of money; as to other items that he became bound to divide with the Estate certain holdings of company shares. Two of the demands in the conclusions concerned these allegations: one demand was that Robertson be condemned to pay to the Estate the sum of $828,752., the other demand was that the transfer or account for certain shares of Canadian Amiesite Limited and of Amiesite Asphalt Limited of America.

I would think that in so far as allegations which concerned and affected Robertson alone,—indebtedness due by him to the Estate—the Executor-trustees were not called upon to plead or to defend. I would think that the correct attitude on their part would have been a readiness to allow the Intervenant to prove that Robertson owed to the Estate, and a readiness to accept from Robertson, and as part of the Estate, whatever Robertson might be condemned to pay to them as representing it. But an oddity of their contestation of the intervention is that they take Robertson's side,—they contest and deny allegation which in no way concern themselves. It is partiality of this kind on their part which is a complaint of the plaintiff in another part of the case. A similar proceeding by them had been expressly disapproved of in the judgment of 6th February 1931.

The third demand in the conclusions of the Intervention is for the annulment or declaration of nullity of the deed of 31st January, 1934. Among the allegations of fact concerning this matter are imputations of blame against the Executor-trustees; neglect, carelessness or other fault, and there are also allegations of reprehensible conduct such as the communication of incorrect

information, the withholding of information etc. In their quality of Executor-trustees they were undoubtedly, I think, entitled to defend the validity of a deed that they had signed. In so far as the propriety of their own conduct was an element of proof of the validity or non-validity of the deed, it was, I would think, a legitimate part of the inquiry, and one upon which the Executor-trustees would be entitled to join issue and make proof, provided of course that the issue being fought was the validity or non-validity of the deed. If, for some reason, the validity of the deed was out of the question, I would say that the Executor-trustees were not entitled to engage the Estate in a contestation, the sole purpose of which was their own personal disculpation. For their personal disculpation their recourse was other than that. Now the situation was exactly that just mentioned, namely the validity of the deed of 31st January 1934, as against the Estate, was not an open question, either at the time of Robertson's Supplementary Plea, or at the time of the Intervention, or at the time of the Executor-trustees' contestation of the Intervention. The invalidity of that deed as against the Estate had been clearly indicated, if indeed not positively declared, by the judgment of the Supreme Court of 6th June 1934. The Supreme Court has granted *acte*, namely record, that the deed had been signed by the parties to it, the Court had assented that it be filled in the case, but with the express *caveat* as to its validity, and later in the judgment there is the declaration that the Plaintiff was entitled to continue the original action, declaration of a right which could not have been made if the deed had been considered as valid against the estate. (Valid as between certain parties to it was a different matter).

The conclusion then to which I must come with respect to the Executor-trustees contestation is this; that in so far as it contests the allegations and conclusions against Robertson personally their contestation is without right; in so far as their contestation seeks to support the validity as against the Estate, of the deed of 31st January 1934, their contestation goes counter to the judgment of the Supreme Court, and is therefore unfounded; in so far as it may seek to disculpate themselves personally they are without right to engage the Estate in a contestation for their personal interest. Their contestation must be dismissed, and they they must themselves bear the costs.

The Supplementary Plea and the Intervention — the two proceedings added to the record after its return to this Court from the Supreme Court—are disposed of as supra. The task before

this Court, thereafter was, "to complete the evidence already taken by a further enquête, and then" make "a new adjudication on the merits of the issues . . . remaining to be decided as between" Mrs. Kelly the remaining Plaintiff and the Defendant Robertson.

This further enquête has been made, evidence has been adduced and exhibits filed by both parties, and the issues fully argued.

The issues raised by the action are the demands made, and expressly asked for in its conclusions. It is a Plaintiff's right to have adjudication upon the matters he submits, and it is his demand which confers upon the Court jurisdiction to adjudicate them. I will inquire in a moment what the issues between the Plaintiff and the Defendant are but I think I may begin by some introductory matter as to which there is no contestation.

Hugh Quinlan died on 26th June 1927; he had been a contractor for a number of years, his business associates in latter years had been A. W. Robertson the Defendant, and Alban Janin; their business had been carried on by means of incorporated companies, of which there were a number,—all of them were private companies, in each case the sole shareholders, directors and officers were the three business associates themselves,—(except an occasional share here and there being held temporarily in the name of an employee in order to qualify him to serve on the Board of Directors). Some of the principal companies were: Quinlan Robertson & Janin Limited in which, Quinlan owned 1151 shares out of a total of 3452 shares, Robertson and Janin each owned one half of the remainder; A. W. Robertson Limited of which Quinlan and Robertson each owned one half the shares; Amiesite Asphalt Limited of which Quinlan owned 50 shares in his own name and he held 200 shares in the name of his son in law Dunlop, thus in all 250 shares, Robertson also owned 250 shares and Janin owned 500 shares; Fuller Gravel Co. Ltd, in which Quinlan and Robertson each owned one half of the shares; each owned 1000 preferred and 500 common;

Hugh Quinlan's health failed him about December 1925; after that date he did not attend his office, though he seems to have kept in touch with his parners until about May 1927: it was in June of that year that the worst crisis came, and the end.

He had made his Will in April 1926; its terms are clear, and there are, I think, no differences of opinion as to its purport

and effect. At the date of his death his immediate family consisted of his widow and eight children; some of them unmarried and still living at home, others married and living elsewhere. After some particular legacies in favor of his widow, he left his entire estate to Executor-trustees for administration, by them or their successors, until the death of the last to survive of his children; then the capital to be divided in ownership among his grandchildren or great grand-children who would be in existence on that date. He directed his Executor-trustees to pay to his widow during her lifetime an annuity of $24,000. payable monthly, also to pay a certain annuity to each child living away from the Mother's house; the balance of revenue to be capitalized until the death of the widow. From the death of the widow, the net revenue of the estate to be divided equally among all the children, those dying becoming represented by their children, and on the death of the testator's last surviving child, the partition of the capital to take place as just stated.

The Executor-trustees named in the Will were A. W. Robertson and the Capital Trust Company. Certain dispositions of the Will have a special bearing upon this litigation are these namely:

> VI.—It is my desire that no inventory be made before Notary and that the inventory of my estate shall be made in the form of commercial inventories . . .
>
> IX . . . . I further stipulate that none of my legatees or beneficiaries shall have the right to cede, sell, pledge or transfer his respective share or right title and interest in my Estate in whole or in part until after the final division "partage" of the Estate has taken place, and then only as to such portion as has been remitted to him under the terms of this my present last Will and Testament.

Under disposition IV the fullest powers were granted to the Executor-trustees to enable them to administer, to realize upon, and generally to settle up the Estate and also all transactions, contracts or matters pending at the time of his decease. With respect to investments they were expressly restricted to trustee investments as limited by C.C. 981(o), but there was this special disposition with regard to: "any joint stock company or corporation in which my Estate may hold stock"; as to these, the Executor-trustees were authorized to represent the Estate as shareholder in these companies, to join in increasing the capital and to subscribe for additional shares, to join in reducing the capital or in the amalgamation, reorganization &c of any such company.

(In parenthesis I make this remark that the situation in which Hugh Quinlan was at the time the Will was made, April, 1926, a situation which was allowed to continue up to the time of his death, namely the joint ownership of the above companies by the three associates, rather strongly suggests that the testator entertained the expectation that the same situation would continue after his death, and for such an eventuality he provided the Executor-trustees with the special powers which they would in such case need.)

On Hugh Quinlan's death, which occurred on 26th June, 1927, the Executor-trustees accepted their appointment. As appears from the evidence in the record they proceeded thereupon in the exercise of their powers. The way they exercised these powers, as well as many of their acts, are the subjects of the present controversy; they will call for mention or comment later on, but the incidents which immediately preceded the action were these:

On 24th July 1928, Mrs. Ethel Kelly a daughter of the decedent, wrote to the Capital Trust Corpn. that "although it is now over a year since my father died, I have not been given any information regarding his estate". In her letter she asked for a copy of his Will and of the Inventory of the Estate. After some correspondence and delay, the Trust Company sent her, first an office copy, and then an authentic copy of the Will, and a document which was said to be a copy of the Inventory of the Estate, Mrs. Kelly at once wrote back to say that she refused to accept the document sent her as the Inventory of her father's Estate, and she asked for a detail accounting from the date of the death to the 3rd September 1928. In reply to this the Trust company sent to her copy of a report made by P. C. Shannon & Co. said to be the auditors of the Estate, the report dated 8th August, 1928, and addressed to the Trustees. Annexed to this report, and forming part of it was a list of assets to be those of the Estate as of the date 31st December, 1927, according to the books of the Estate. The Trust company in their covering letter advised Mrs. Kelly that each year a similar report would be sent to her. Mrs. Kelly wrote at once to refuse the documents as an accounting.

On receipt of Mrs. Kelly's request, the Capital Trust Company consulted Mr. J. L. Perron K.C. (whom in their letter to her they call the Solicitor of the Estate) as to what their course of action should be. Mr. Perron wrote in reply: "You are not obliged to furnish a copy of the Will to Mrs. Kelly, nor are you compelled to

supply her with a copy of the Inventory. The heirs have the right to obtain such copies from the notary at their own expense". A copy of Mrs. Kelly's letter, in which she refused to recognize as the inventory of the Estate the document sent her, was submitted to Perron for advice, and the advice he wrote back was: "I would advise you to completely ignore Mrs. Kelly's letter". A few days later the Capital Trust Company again wrote for advice and in reply Perron wrote: "I do not think you need bother about her. The shortest way is to ignore her entirely."

At about the same date the Capital Trust company sent another copy of the Shannon report to Mrs. Desaulniers, who also was a daughter of the decedent. Mrs. Desaulniers answered at once that she did not accept it as a statement of the assets of her father's estate, nor as an accounting. This letter being referred to Mr. Perron, he wrote to the Trust Company: "You must expect to receive several of those, and they need not alarm you".

Mrs. Kelly wrote to the same effect to Robertson the other trustee. The Capital Trust company communicated to him what Perron's advice was; it become adopted as their attitude toward Mrs. Kelly and Mrs. Desaulniers. Mrs. Kelly and Mrs. Desaulniers then as joint Plaintiffs took suit. The action was instituted in October 1928; it was directed against the Capital Trust Company and Robertson. They appeared separately the Trust Company by Messrs Campbell & Co., Robertson by Messrs. Beaulieu & Co.; they defended separately; both Defences were filed in November 1928. There followed different motions which had to do with pleadings etc., and these caused delays; beginning 21st October 1929 Robertson was examined on Discovery, the examination lasting until 18th December. The action was amended twice first on 28th February 1930, finally on 10th January 1931, the amendments made seem to have been chiefly in details of the conclusions, and to have affected Robertson alone. In each case he filed an Amended Defence; the Trust Company did not, its Defence as filed in November 1928 remained its Defence throughout. The set of pleadings Declarations, Defence, Answer and Reply all dated January 1931 constituted the issue between the Plaintiffs and Robertson.

I mentioned in an earlier part of these notes that the action consisted of two distinct issues, the one directed against he Executor-trustees, the other against Robertson personally. What was sought against the Executor-trustees was their ouster from the charge on the ground of culpable disregard for and sacrifice of the

interests of the Estate; what was sought from Robertson was the return to the Estate of certain of its assets, which he had obtained possession of, and in his default to return, payment of the value. Those were the two issues which the Defendants were called upon to meet in November 1928.

I think it must be quite evident that everything sought by the action—assuming that the allegations were well founded—was something that it was very much in the interest of the Estate to obtain: removal from office of custodians who were said to be negligent, disloyal, and even unfaithful, and the return and conservation of all the values belonging to the Estate. Every benefit that the action could bring was for the benefit of the Estate; if, on the contrary, the action was insufficiently proved or unfounded, the ill consequences, costs, &c., would fall upon the Plaintiffs personally, and not upon the Estate.

As I say the Defendants defended separately; each sought to repel the action and deny to the Estate all what the action sought in its interest.

The Capital Trust Company did not confine its Defence to matters which concerned either itself alone, or the Executor-trustees as such; it went out of its way and joined in all of the issues for the defence of Robertson personally. On account of its obtrusion into these latter matters, the judgment of 6th February 1931 refused to it the costs of its Defense. Also some of its allegations were open to other criticism. As one example of these latter, there is that in para. 68 of its Defence where it affirms: "that it "has at all times been willing, and is now willing, to render ac- "counts of its administration as Executor of the Estate Hugh "Quinlan to the Plaintiffs and/or other parties entitled thereto "at the expense of those parties and at all reasonable times". In view of the correspondence upon this subject immediately prior to the action, to the legal direction from Perron which was adopted by the Executor-trustees, the affirmation in para. 68 was knowingly false. To a Court or judge reading the para. 68, and being uninformed of the above cited correspondence, the affirmation was clearly of a nature to deceive. Known to be false, as indeed it was, for what purpose was it inserted in the Defence, if not for the purpose of deceiving the Court?

I say that each Defendant defended separately, and by different law firms, but the correspondence exchanged between the law offices concerned, printed pp. 686-697, shows this that it was

really J. L. Perron K.C. who was Counsel for both these Defendants against the Estate. It was he, as Counsel for Robertson, who commissioned Beaulieu & Co. to appear for Robertson, vide: his letter of 2nd November 1928; Mr. Beaulieu K.C., in his letter p. 694 expressly says ". . . vu que M. Robertson est, en définitive, votre client. . ." vide: also letter Perron to Robertson p. 691. It does not appear from the file from which these letters are culled that Campbell & Co. were commissioned by Perron to defend for the Capital Trust Company, but it does appear that they submitted to him the defence they had prepared and made the changes in it that he suggested. After approving a draft for the Capital Trust Company's Defence, Perron, in his letter of 13th November, sends a copy of it to Beaulieu & Co. and in this letter suggests that Mr. Beaulieu and he should meet on the following day when "nous pourrions peut-être préparer le nôtre" "le nôtre" is of course Robertson's Defence to the action. On a number of other matters of pleading Beaulieu & Co. write to Perron for instructions or advice, clearly indicating Perron to be Robertson's real Counsel and themselves to be acting under his instructions.

J. L. Perron K.C. was thus taking an active professional part as Counsel for Robertson; he was not less acting as Counsel for the Trust Company; his efforts and Counsel were directed to defeat all that the action was seeking for the benefit of the Estate. He never appeared in Court for the Defendant, his name was not mentioned in that connection but he was the veritable Counsel of both. I am obliged to mention this circumstance, and I will be obliged to refer to others later on, because one of the contentions of the Defendant Robertson is that the interest in which Perron was acting, throughout the matters to be here dealt with, was the Estate, and only the Estate. In the defence against the present action it is certain that the interest he was acting for and actively working for was Robertson's. Other occasions will be met with later on.

It is admitted that the issue against the Executor-trustees has been disposed of so far as the present action is concerned; that it has become *res judicata* namely: that on the present proceedings the Executor-trustees may not be ousted, that they may not be condemned to render an account, that the 'inventory' they made may not be annulled. At the same time it must be said that on the first hearing, as on the present one, the evidence tendered, by whatever interest, was tendered, not with respect to one issue or to another, but to the issues generally; all what was admitted became part of the general mass of evidence in the case; I would say

therefore that the whole or any part of that mass may be referred to for the elucidation of any of the relevant matters.

The action was instituted in order to remedy a state of affairs which, in the opinion of the Plaintiffs, imperilled the interests of the Estate. What had caused their distrust and their anxiey came partly from the three documents sent to them in August and September by the Trust Company, and partly from the facts, then finally made clear to them, that they were to be completely ignored in all matters relative to the settlement or the administration of the Estate, and the sole information they would be permitted to receive would be, each year, a copy of the report of the Auditors of the Estate.

The three documents they had received were:

1.—A copy of the 'Inventory' printed at pp. 309-315 said to be as of the date of death 26th June 1927. Features of this document which in the opinion of the Plaintiffs cast doubt upon it were: that it was merely a list of assets without mention of liabilities, although undoubtedly there were liabilities; it contained no mention as to who had prepared it, there was no indication that anyone had signed it, there was no indication of the sources whence taken; but above all it represented the gross value of the Estate to be $1,170,000. (round numbers) whereas their knowledge of their father's affairs (superficial knowledge perhaps) made them estimate the value of his Estate at four million dollars.

2.—The report mentioned supra dated 8th August 1928 by P. C. Shannon Son & Co., the Auditors of the Estate, the report addressed to the Executor-trustees, and purporting to be an audit of the books and accounts of the Estate for the period 26 June–31 December, 1927. The statement of income during that period and how it was expended is doubtless correct, it is not a question in the case; but what is of interest is that attached to this report and forming part of it is a list of the assets of the Estate as of the date 31st December 1927. On the copy of this report sent to Mrs. Kelly on 29th August, 1928 (p. 647) the Estate appears as owner of 1151 shares of Quinlan Robertson & Janin Ltd.

3.—Another copy of this Shannon report with the list of assets annexed all exactly the same as that sent to Mrs. Kelly on the 29th August, this second copy having been sent to Mrs. Desaulniers on 5th September (p. 647), But on this second copy was added a most significant note with respect to the 1151 shares of

Quinlan, Robertson & Janin Limited; the note was not on the copy sent to Mrs. Kelly; the note was: "Quinlan, Robertson & Janin Limited sold in 1928 for $250,000."

The action

I have mentioned supra that the contracting business of Hugh Quinlan and his associates was carried on by means of incorporated companies,—all of them private companies, the three associates being the sole shareholders. For a number of years preceding Hugh Quinlan's death the business had been extensive, successful, and supposedly very profitable. The exact or even the approximate worth of the companies, whether individually or in combination was not ascertainable by an outsider,—not even by Hugh Quinlan's heirs—and, perhaps naturally, these latter attributed a very high valuation to each and to all of them.

The companies referred to in the action are:

Amiesite Asphalt Co. Ltd.,
Quinlan, Robertson & Janin Limited,
Fuller Gravel Co. Limited,
A. W. Robertson Limited,
Ontario Amiesite Limited,
Macurban Asphalt Limited,
Quinlan, Robertson & Janin (England) Limited.
Crookson Quarries Limtied,
Canadian Amiesite Limited.

Amiesite Asphalt shares.

Information had come to the Plaintiffs (it does not appear, and it is not material, how it came) to the effect that on 22nd June 1927, which was four days before Hugh Quinlan's death, Robertson had somehow acquired from him, supposedly for $100. per share, the 250 shares which Quinlan owned in the Amiesite Asphalt company. It was quite certain to the Plaintiffs when they instituted the action, and it is quite certain now, that on *22nd* June 1927, Hugh Quinlan was non compos mentis.

They therefore alleged in para. 11 . . .:

> that on or about 22nd June, three days before the testator died, the said Angus William Robertson, one of the Defendants personally and for his own benefit, acquired a num-

ber of shares the property of the testator to wit 250 shares of Amiesite Asphalt Limited. . that the said transfer was due to fraud on the part of the said Robertson, . . . the transfer was fraudulently operated when the said testator was fatally ill with a malady wherefrom he died three days later . . . when he was unable and forbidden, to the knowledge of everyone, to attend to any business whatever . . . when the said testator was under the care of two day nurses and two night nurses, as well as of the doctors in attendance. . . when he was in a physical and mental state which rendered him capable of giving a valid consent. That the shares were transferred to Robertson at an under-valuation inasmuch as they were worth $1,000. per share and they were improvidently sold to him at $100. per share. That the sale was made secretly and clandestinely without the knowledge of the heirs; . . . that in order to conceal the true character of the transfer Robertson had the transfer made to other persons, these latter being only prete-noms for him Robertson.

Quinlan, Robertson & Janin Limited shares.

Unquestionably up to immediately before his death Hugh Quinlan was the owner of 1151 of these shares. The first and only information which the Plaintiffs received as to them was what appeared in the three documents which they received in Angust and September 1928. According to the 'inventory' Quinlan was the owner of these shares at the time of his death, and the 'inventory' put a valuation upon them of $150,000.

The Shannon report of 8th August 1928 with its list of assets, as these were on 31st December 1927, included these shares, but according to this list the valuation was put at $25,000. This is what was sent to Mrs. Kelly on 29th August.

The same Shannon report sent to Mrs. Desaulniers on 5th Sesptember had had added to it a note that these shares had been sold in 1928 for $250,000.

I would think that the literal meaning of the Shannon report (including the list annexed to it) was that according to the Estate books these 1151 shares were the property of the Estate on the 31st December 1927, and were likewise so on the 8th August. It was the trust company that had possession of and made the entries in the books of the Estate, so the fact that it, the Trust

Company, on 29th August sent the Shannon report in its original form to Mrs. Kelly would indicate that on that date the shares were still carried on their books as belonging to the Estate. The note added to the copy of the Shannon report sent to Mrs. Desaulniers on the 5th September would indicate that the note had reference to a transaction which took place between 29th August and 5th September.

As to these Quinlan, Robertson & Janin shares, here in substance is what the action alleges:

> That in the course of the year 1928 the said 1151 shares were sold by the Executor-trustees to the Defendant Robertson, he being one of the Executor-trustees, such sale being evidenced by the statement sent by the Defendants to Mrs. Desaulniers; that up to the spring of 1928, the Executor-trustees always treated the Estate as the sole owner of these shares;
>
> That the sale of the shares is illegal and null on its face, and is the result of the fraud of the Defendants;
>
> That the said shares are worth the sum of $700. each, and the sale was collusively contrived by the Defendants as part of a scheme, and that the full value of the shares was not realized.

Fuller Gravel Company Limited There is no dispute but that at the time of his death Hugh Quinlan owned 1,000 preferred and 499 common shares in this company. They are listed in the inventory (p. 313); there they appear to be considered as worthless, and are given the nominal value of $1.00. They do not appear in the Shannon list of assets of 31st December 1927, but, in that list, there is mention that an additional sum of $24,999.00 had been received in respect of them. This entry was understood by the Plaintiffs to mean that, at the date 31st December 1927, these Fuller Gravel shares had been sold for $25,000.00. It is admitted that what was meant by the latter entry, was that at the date 31st December 1927 an additional $24,999.00 had been received in respect of them. Here in substance is what the Plaintiffs in their action allege with respect to these shares:

> That the said shares were fraudulently and collusively sold by the Executor-trustees to Robertson, himself an Executor-trustee, at a nominal figure and not at their real

value and thereby the said Robertson became the purchaser of all those shares either himself of in the names of persons interposed who in reality were acting for him;

That this collusive sale is illegal null and void as against the Plaintiffs.

A. W. Robertson Limited. At the date of his death, Hugh Quinlan owned 1587½ of these shares; his holding was exactly one half of the capitalization of the company. The Plaintiffs make certain complaints as to the undervaluation of these shares & c. I anticipate and mention that apparently no issue as to them was pursued in the case, as the company was put into voluntary liquidation.

Shares in other companies. The Plaintiffs allege that the decedent was the owner of shares in the following companies:

Ontario Amiesite Limited,

Macurban Asphalt Limited,

Quinlan, Robertson & Janin Limited (London, England),

Crookson Quarries Limited,

and in other companies also, these latter being unknown to the Plaintiffs, but well known to the Defendant Robertson; and the Plaintiffs call upon Robertson to disclose the names of these companies. They also allege that the 'inventory' does not show that the Estate was the owner of shares in any of the above companies, and that this is due to the manipulations of the Defendant Robertson.

Allegation of a general nature against the Defendant Robertson:

The Plaintiffs say that since the death of Hugh Quinlan the Defendant Robertson has pursued in dealing with the assets and good will of the companies in which the Estate was interested a system whereby such assets have been merged into other companies without the consent or even knowledge of the Quinlan heirs: in disregard of the interest of the Estate, in violation of his duties as trustee, and solely to serve his personal ends; That he has caused to be incorporated a number of companies for such purpose; That in abuse of his duties he has caused such transfers to be made in order to enrich himself, and leave the companies in which the Estate is interested without any tangible assets or good will.

Conclusions affecting the Defendant Robertson: The Plaintiffs say that they are entitled to have it established that the three transfers of the shares of the Amiesite Asphalt Limited, of Quinlan, Robertson & Janin, Limited, and of the Fuller Gravel Limited be declared illegal null and void, and they pray that they be so declared both with respect to the Defendant Robertson and with respect to his nominees or prêtenoms; that the Defendants be condemned to return the said shares to the Estate, and in their default so to do to pay the value thereof to wit the sum of $1,350,000.00 with adjustment however of what may have been (i.e. the $250,000.00 mentioned in the Shannon report) and interest or dividends &c to which the Estate may be entitled;

That the Estate be declared to be the owner of the shares of which the decedent owned in Ontario Ameisite Limited, in Macurban Asphalt Limited, in Quinlan, Robertson & Janin Limited (London, England), and in Crookson Quarries Limited; That the Defendants be condemned to return the said shares to the Estate, and in default of so doing condemned to pay as the value thereof the sum of $1,000,000.00.

DEFENCE OF THE DEFENDANT ROBERTSON.

By his Defence this Defendant denies all the allegations which impute wrongdoing to him.

As to the Shares in Fuller Gravel Company, he says:

> That the valuation $1.00 and the subsequent acknowledgement of receipt of $24,999.00 were mere book-keeping entries; that the total holding of these shares was in fact sold for $50,000. which was a fair and reasonable price; that it was not to this Defendant that the sale was made, but to others, and that it was only after certain purchasers refused to take and pay for them, that the Defendant Robertson, to help the Estate, paid for the shares at the price at which they had been sold.

As to the shares: Quinlan, Robertson & Janin Limited, Amiesite Asphalt Limited, and Ontario Amiesite Limited, this Defendant says:

> That the shares of these companies were not listed on any stock exchange, the value was not easily ascertainable, such value was at all times variable as dependant largely upon the efforts of the officers and shareholders;

That "in or about the month of June 1927, and some time before his death, the said H. Quinlan transferred and delivered all his holdings of stock in the said companies" to his partner and associate, defendant Robertson, under an agreement with said Robertson, the terms of which were as stated in a letter addressed by said Robertson to said Quinlan, dated June 20th 1927";

That "the said letter reads as follows:

Montreal, June 20th 1927.

Mr. Hugh Quinlan,
357 Kensington Ave.,
Westmount, Que.

Dear Hugh,

This will acknowledge your transfer of the following stocks to me:

1,151 shares Quinlan, Robertson & Janin Limited,
50 " Amiesite Asphalt Limited,
200 " Ontario Amiesite Asphalt, Limited
200 " Amiesite Asphalt Limited, in the name of H. Dunlop

which stock represented all your holdings in the above companies. I have agreed to obtain for you the sum of two hundred and fifty thousand dollars ($250,000). for the above mentioned securities, payable one half cash on the day of the sale, and one-half within one year from this date, which latter half will bear interest at 6%. Should your health permit you to attend to business within one year from this date I agree to return all of the above mentioned stocks to you on the return to me of the monies I have paid you thereon including interest at 6%.

Yours Truly,

A. W. Robertson.

""At the time the contract and agreement evidenced by the above letter was entered into, the said H. Quinlan was in the full and complete possession of his faculties and thoroughly capable in all respects, of passing upon the property and sufficiency of the

said transaction; and the Defendant Robertson agreed to send the above letter only after he had been repeatedly and urgently requested to do so by and on behalf of the said late H. Quinlan. After the death of the late H. Quinlan, the Defendant Robertson endeavoured strenously to find some buyers, for said shares, at the price mentioned in the above letter, but was unable to do so, and finally he paid himself to the Estate of the said late H. Quinlan, in fulfilment of his obligations, $250,000. as agreed upon between himself and the said late H. Quinlan;"

"At the time the agreement evidenced by the letter of the 20th June 1927 was entered into, the shares of the Ontario Amiesite Asphalt Limited were of little or no value and the price fixed between the said late H. Quinlan and the Defendant Robertson, as per the letter of June 20th 1927 for the shares therein mentioned, was a fair and reasonable price and was fabourable to said Quinlan;"

"Moreover, in connection with the transfer of the said shares of Ontario Amiesite Asphalt Limited, the Estate of the said Hugh Quinlan was, in consideration thereof, released by the Bank of Toronto, from a serious obligation to said Bank as guaranter of said company and was also released from other obligations on various maintenance and guarantee bonds of the said company, which said obligations greatly exceeded the value of said shares. The shares mentioned in the above letter of June 20th 1927 were not assets of the estate of the said late Hugh Quinlan at the time of his death; but they were (in effect, sold and transferred by the said H. Quinlan himself either to Defendant Robertson, or to some other buyer, whom the latter agreed to obtain and, failing the obtaining of whom, said Defendant Robertson was obliged and entitled to retain said shares at the price of $250,000. agreed to be paid therefor;" That "it was an error on the part of a subordinate employee of the Capital Trust Corporation Ltd who helped prepare the statement of assets and liabilities constituting the estate of the late H. Quinlan" (referred to in the action as the 'inventory') "that the 1,151 shares of Quinlan, Robertson & Janin Ltd. were entered as an asset of the said estate, the said shares being at the time of the death of the said Hugh Quinlan transferred and delivered to the defendant Robertson with said other shares on terms of the agreement aforesaid, and all that should have been entered as an asset of the estate of the said H. Quinlan was the claim against the said Robertson and or others to obtain payment of the price of the said shares as and when it became payable in terms of said agreement;

This Defendant says also that he has actually paid to the Estate the $250,000. above mentioned namely $125,000. in December 1927, and $125,000. in January 1928; the whole in accordance with the letter of 20th June 1927";

As to the Shannon report this Defendant says that it was prepared by the Shannon firm at the request of the Executor-Trustees, and copies of it were sent to the heirs for their information; he says that the Shannon firm "were the trusted auditors of the said late H. Quinlan in his lifetime and were selected by defendants to make the audit of the books and accounts of the said estate in consequence';

As to the part of this Defendant in the administration of the Estate, he says: The Defendant now pleading has at all times administered the affairs of the estate of the said late Hugh Quinlon, in good faith, diligently, completely and in accordance with the provisions of the last will and testament of the said late H. Quinlan, and he has been guided in all legal question by the legal adviser and advocate of the estate named in the will, as said defendant was bound and entitled to do, and said defendant believes that the said advice was sound, beneficial and given in the best interests of the estate.

Other matters pleaded are: That the Plaintiffs have not the status to institute the present action; That Plaintiffs cannot ask for the annulment of the transfers of shares without tendering back the purchase price paid for them, and that Plaintiffs have no right to make tender from the assets of the Estate; and this Defendant says that he has at all times been willing and is now willing to render accounts of the administration as executor of the Estate;

And he prays for the dismissal of the action in so far as concerns him.

On demand being made, the Defendant Robertson furnished the following Particulars:

That the Sales of the Fuller Gravel Shares were verbal.

The sales were made in September 1927, the original purchasers being:

Tummon	600	preferred,	299	common
Rayner	200	"	100	"
McCord	200	"	100	"

That payment to the Estate for the shares was made by Robertson in different payments between 6th September 1927 and 26th May 1928 total amount $50,000;

The most important part of the Particulars furnished were those with respect to the events of 20th June 1927 and the particulars given were these:

A. The said transfer of said shares from the said Hugh Quinlan to Defendant A. W. Robertson, took place on or about the 20th of June 1927;

B. The Agreement was in writing;

C. The said agreement was dated the 20th of June 1927;

D. The said agreement was signed by A. W. Robertson, the defendant, *and by him delivered to Hugh Quinlan, who in turn, delivered to the said defendant Robertson his certificate for said shares, endorsed in blank;*

E. The document was a private writing under the form of a letter addressed to the late Hugh Quinlan, and signed by the defendant A. W. Robertson.

(I have reproduced verbatim the Particulars furnished by Robertson with respect to the 20th June 1927. These contentions of Robertson were entirely unknown to the Plaintiffs prior to the delivery of his Defence in November 1928. I have underlined the words which I think are of the very essence of the title which Robertson contends for. It is particularly with respect to the title claimed by Robertson as resulting to him from the events he alleges to have taken place on the 20th June, that the reference comes here from the Supreme Court).

By their Answer to Robertson's Defence and the Particulars to it which he furnished, the Plaintiffs say:

They deny that in or about the month of June 1927 or at any other time any valid transfer was made or executed by the late Hugh Quinlan of all his holdings of stock in the said companies to the Defendant Robertson, and the Plaintiffs deny that the terms of any such pretended transfer are to be bound in the alleged letter of the date 20th June 1927; They deny the Particulars, and say that if any

pretended transfer of shares, as set out in A of the Particulars, was ever purported to be made, the same was illegal unauthorized null and void; and, as to B. C. D. and E, they deny that any agreement was ever concluded; as to the alleged letter of the 20th June 1927, they say that they now see a copy for the first time, and they are without knowledge as to the existence of an original thereof; they deny that any such letter was ever assented to by the late Hugh Quinlan, or was ever communicated to him; they say that at the date in question he was not in the full and complete possession of his faculties nor capable of passing judgment upon the said transaction, but that by reason of bodily-weakness and illness he was not able to comprehend the terms of the said alleged contract or to give a valid assent thereto;

And they join issue with or deny the other allegations of the Defence.

(I should insert here, I think, a word of the explanation with respect to the two dates 20th June and 22nd June 1927. More will be said later on, for the present I will say that *20th June* is the date on which, according to Robertson, he and his bookkeeper Leamy went into Quinlan's sick room, and there made the agreement for the acquisition of the shares; bearing the date *22nd June* are entries in the Minute Books of certain of these companies, entries the purpose of which is to record transfers of shares from Quinlan to Robertson. The entries were made on Robertson's verbal order to bear that date: 22nd June. I mention also that, according to the Plaintiffs, Quinlan was certainly non compos mentis on the 22nd June. They contend that he was non compos on the 20th June also.)

The above were the written pleadings at the first trial; the pleadings are the same now. The issues remain unchanged.

Before proceeding to deal with the whole record from the point of view of the re-trial, I think I should give some account of the proceedings at the first trial, and of the judgments rendered with respect to it. There, the only personal condemnations against Robertson which were pressed and persisted in, were those with respect to the following shares, namely of Amiesite Asphalt, Quinlan, Robertson & Janin, Fuller Gravel ,Ontario Amiesite and Macurban Asphalt. There is mention in the action of other claims, but, as they are not given the form of express demands in the conclusions of the action, they may not constitute issues, nor give rise to condemnations against him.

The following were the grounds upon which, in their action, the Plaintiffs asserted that Robertson personally was obliged to make reparation to the Estate, as to the Amiesite Asphalt shares, because Robertson had had these shares transferred into his name on 22nd June 1927, a date on which Hugh Quinlan was non compos, and for an insufficient price; as to the Quinlan-Robertson-Janin shares because Robertson a Trustee, in 1928, apparently between the 29th August and 5th September, had acquired them for his own personal account from his co-trustee and himself in contravention of C.C. 1484; and also at a total insufficient price; as to the *Fuller Gravel* shares because, as it was charged, the Trustees hold these shares to Robertson or to pretenoms for him at a totally insufficient price, and in contravention of C.C. 1484; as to Ontario Amiesite and Macurban Asphalt because Hugh Quinlan had owned some of these shares, and they were not listed in the "inventory" nor in the Shannon report.

The prohibition of C.C. 1484 was, of course, an obstacle absolute to the acquisition of property belonging to the Estate either by Robertson, he being a Trustee, or by any pretenom for him. Any title which Robertson might invoke of a date subsequent to the 26th June 1927 would necessarily be derived from the Trustees, and would come under the effect of C.C. 1484. Now, the matter Robertson pleaded in his Defence was of a nature to negative the applicability of C.C. 1484, for he pleaded as to Quinlan-Robertson-Janin, as to the Amiesite Asphalt and as to the Ontario Amiesite shares that he had acquired them from Hugh Quinlan himself in his lifetime, namely on 20th June 1927, As to the Fuller Gravel shares he pleaded that they had been sold by the Trustees for a full and fair price to different buyers that, after having made the purchases, these buyers refused to take delivery and pay; and that in order to render service to the Estate, he Robertson took over the purchases himself, and paid for them to the Estate.

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As to the group of companies the title which Robertson verbatim claims, he sets out in his Defence:

> C.P. 90 ". . H. Quinlan transferred and delivered all his holdings of stock in the said companies. . . to defendant Robertson, under an agreement with the said Robertson, the terms of which were stated in a letter, addressed by said Robertson to said Quinlan dated June 20th 1927 . . ." CP. 56 "The said agreement was signed by A. W. Robertson the de-

fendant, and by him delivered to Hugh Quinlan, who in turn, delivered to the said defendant Robertson his certificate for the shares endorsed in blank."

This is very clear and definite statement of when and how the alleged agreement was made, of what it consisted, and where the exact terms of it are to be found, What its exact effect is alleged to be, is in para. 43 of Robertson's Defence:

> C.P. 92 "The shares mentioned in the above letter of June 20th 1927 were not assets of the estate of the late Hugh Quinlan, at the time of his death; but were, in effect, sold and transferred by the said H. Quinlan himself either to defendant Robertson, or to some other buyer, whom the latter agreed to obtain and, failing the obtaining of whom, said defendant Robertson was obliged and entitled to retain said shares at the price of $250,000 agreed to be paid therefor:"

Unquestionably, I think the affirmation is that on the 20th June Quinlan handed to Robertson the scrip for these shares, the scrip being indorsed in blank, and Robertson in return handed to Quinlan a document by which he acknowledged receipt of the scrip, and in the document embodied upon what terms and for what purpose the scrip was put into Robertson's possession.

Every detail of these affirmations is denied strenuously by the Plaintiffs; a considerable amount of evidence was heard upon the mater, and I will be obliged to relate it infra. But leaving aside those denials for the moment, the question which must be met within in limine is this: what juridical situation would the document according to its terms and coupled with the delivery of the scrip, have created between the parties Quinlan and Robertson?

(The scrip admittedly indorsed in blank — which permitted the insertion of any name as the buyer) Secondly, assuming that the consent of both parties was given on the 20th June, did it then create the bilateral contract which we call sale? Did Quinlan thereupon cease to be owner of the shares, and Robertson thereupon become the owner of them? Did Robertson by his consent to the terms of the document thereupon become the debtor of Quinlan in the sum of $250,000.?

The answer to those questions, I would say, is in the negative. By the very terms of the document, it is certain that an

actual sale did not take place on the 20th June, for *payable one half cash on the day of the sale* cannot refer to a sale then made, but only to a sale to be made, or expected to be made at some future date.

I am quite mindful of Robertson's words "I have agreed to obtain for you the sum of $250,000. for those securities". If those words had been: I have agreed to pay you $250,000. for those securities, the agreement would undoubtedly have expressed a purchase by Robertson. But the words used do not express an agreement on Robertson's part to buy the shares. Now, sale is a consensual contract, and, without consent on his part, Robertson could not, in law, be considered a buyer. What those words do in fact clearly contemplate is that some one else is to become the buyer, — not Robertson, so there cannot have been intended a sale to Robertson.

The immediate question I am considering is as to whether the reciprocal delivery of scrip and document, as Robertson alleges, would have constituted a sale by Quinlan to Robertson on that date. Definitely, for the reasons given, the answer is in the negative.

Counsel for Robertson — realizing the difficulty in the way of contending for a sale, complete and operative, Quinlan to Robertson, on the date 20th June — took as an alternative ground that these matters of the 20th June produced, in law, these effects namely: that a sale actually took place and was completed on that day: that the seller was Quinlan, and the buyer was the person who was later to be found by Robertson. That when such person was found and he having expressed to Robertson his consent to buy on the terms mentioned, he thereby became the buyer, with retroactive effect to the 20th June.

(It was explained that Quinlan's consent to such an arrangement would be easily presumed, because Robertson personally undertook to find a buyer, and Robertson was well able, financially, to support the consequence if he were to fail to find one.

The essential feature of this contention from the point of view of Robertson's interest, in fact the only one that could be of help to him, was that the sale, made to this subsequently found buyer, have a retroactive date, namely that it have the date of Quinlan's consent on the 20th June.

It is clear to me that the buyer's consent would not by sole operation of law date back his rights and his obligations to the date of the seller's consent or authorization.

In our law, the contract of sale is formed by the reciprocally accepted consents of the seller to sell and of the buyer to buy. The contract is not formed until there is a seller who has sold, and a buyer who has bought. It is perfectly licit for a prospective seller, when commissionning some agent to find a buyer for him, to obligate himself to sell on named conditions to whomsoever the agent may find as a buyer; it is equally licit for him to authorize such agent, in dealing with the prospective buyer, to express the seller's consent and thereby, then and there, make complete the contract of sale. But, until there has been a buyer who has bought, there has not come into existence a contract of sale. In the example just mentioned the sale would become completed only on the latter date, namely when there had come to be a buyer; prior to that there was only one party—the prospective seller.

No sale took place on the 20th June; on that date there was according to Defendant's contention a party willing to sell, but there was no buyer. Robertson did not buy. The party who it was expected would buy was not yet found. Robertson undertook to find such a person, that was all. That by itself did not constitute a sale.

Counsel for Robertson advance still another contention as to the juridical consequences of the events of 20th June. They say that those events are to be given this meaning and effect namely: that those events effected a real and complete sale of the shares; that positively and definitely Quinlan then sold the shares that positively and definitely a buyer then bought them, though on that date such buyer was not a person certain; nevertheless that the date of the sale was 20th June.

According to this contention: would become buyer, the person whom Robertson would name later on, thus Robertson, after finding a buyer, would report to Quinlan who this person was, and this person would, in law, be the buyer as at the date 20th June. This is the contention.

The whole purpose, of course, is to have it established that when Robertson found the buyer, the sale would be one directly from Quinlan to that buyer, and the date it would bear would be the 20th June 1927, a date when Quinlan was still alive.

It must be admitted on Robertson's side, and it is admitted, that, owing to the fact that he was a trustee, Robertson could not legally acquire any of the property of the Estate after Quinlan's death; hence the absolute necessity for him to have the sale bear, by effect of law, the date 20th June 1927.

The contention is not: 1.—that there was a joint purchase by Robertson and another, for it is certain from the document, (which he says contains the terms agreed upon on that date), that he did not himself become a buyer. Nor is it 2.—that there was an undertaking on Quinlan's part to accept as buyer whomsoever Robertson might present as such, for that would amount to a mandate to Robertson to effect a sale, and the date of the sale in such case would be the date on which Robertson came to terms with the buyer; (it would be perfectly allowable to these parties to agree that as between themselves the effect of the sale would be the same as if it had been made on the earlier date, but such an agreement would not change the date when, legally, the contract of sale as such became formed). Nor is it 3. that Quinlan having accepted Robertson as the buyer, agreed that Robertson would have the right later on to substitute another in his place, and himself cease to be the buyer, for again this would have required that Robertson have himself been buyer on 20th June,— which was not the case.

It is said on behalf of Robertson that what this contention really asks for is that it be recognized that the agreement, which as it is alleged was made between Quinlan and Robertson on the 20th June, included what is known to the law of France as the "réserve de déclaration de commande" (the words "commande" meaning "veritable buyer"). As its designation implies, it is a "réserve" namely an express stipulation in the contract of sale; its scope is this; that the buyer having subscribed in the contract to all the obligations of a buyer as for himself personally, expressly and with the consent of the seller, reserves the right to declare, later, that another person is the real buyer, and not himself. If, later, he does make this declaration, the substitute becomes the buyer exactly as if he had been the buyer in the original contract with the seller, and he who was the original buyer ceases to be so, retroactively. If the original buyer who has stipulated the "réserve" does not make the declaration. he remains the buyer.

This stipulation is expressly authorized in France,—not by the Code Napoléon, but by fiscal laws, more particularly by those

of the 22 frimaire an VII and of the 28 April 1816. The important point is that it is authorized there by legislative enactment. The enactments there recognize and admit that, when the stipulation has been agreed to in the manner above mentioned, and the declaration subsequently made, it is to be considered that there has been only one sale made, and that only one transfer tax is payable. Those fiscal laws of France are not in force here, and there are no similar provisions in our fiscal legislation. We are governed in respect to the matter by the provisions of our Civil Code. Our code makes no provision that the title of a later found substitute for the buyer, may *de jure* be dated back to the date when his seller acquired the object sold. Parties under the general law are free to agree upon such adjustments as they please, but they cannot by their agreements vary the principles of the law. Its essential rules continue to apply, and, there being no legislative enactment to effect it here as there is in France, the substitute buyer above referred to, cannot be admitted to have acquired directly from the original seller, unless that original seller was alive and compos and consenting in the sale where, he, the substitute, is the buyer:— and the date of the sale cannot be other than the date when the consents to buy and to sell were exchanged.

There is no diversity of opinion among the writers on the law of France as to the following: 1.—that this "réserve" may be stipulated for only by one who has, in all respects, himself taken on the quality of buyer; 2.—the stipulation for the right must have been in express terms and have been in the contract of sale itself; 3.—the exercise of the right, namely the declaration of who the real buyer is, may be exercised only within the delay agreed upon by the parties as stated in the contract of sale; 4.—that delay according to French fiscal law may not exceed 24 hours; 5.—within the same delay the registrar of deeds must be notified of it. (vide Colin & Capitant vol. 2. p. 430) It must be evident, I think, that Robertson is not in any of these conditions, and, if in France, he could not pretend to the right. In this Province no legislative sanction has been given, either directly or indirectly to the modality to the contract of sale, which exists in France under the name "réserve de déclaration de commande", and a fortiori Robertson cannot pretend to such a right here.

(Note that he seeks to make the declaration more than six months after the 20th June.)

Robertson's contention to the effect that the "réserve de "déclaration de commande", as understood in the law of France, exists in this Province, and his contention that that "réserve"

may be invoked by him, in support of a title in his favour to the Quinlan-Robertson-Janin shares, must be declared to be unfounded.

What then would be the legal effect of the 'letter' of 20th June, if it were proved to have been a valid agreement between Quinlan and Robertson? Simply this: a receipt for the scrip; an undertaking to find a buyer for the scrip at a price of $250,000.; an authorization by Quinlan to do so, namely a mandate from Quinlan to Robertson. The mandate terminate, of course, on Quinlan's death 26th June 1927, (C.C. 1755) and thereafter Robertson was no longer a mandatary. The note in the Shannon report was that the Trustees had sold the Quinlan-Robertson-Janin shares in 1928. Evidently, by reason of the date, if for no other reason, such sale could not have been made under a mandate from Quinlan, and hence Robertson's interests to have it declared that these shares came to him by virtue of the "réserve de déclaration de commande".

One other question arising out of the text of the document dated 20th June; it is with respect to Robertson's contention that the shares in the three companies:

> "were, in effect, sold and transferred by the said late H. Quinlan himself either to defendant Robertson, or to some other buyer, whom the latter agreed to obtain and, *failing the obtaining of whom, said defendant Robertson was obliged and entitled to retain said shares at the price of* $250,000. *agreed to be paid therefor.*" (para. 43)

The contestation I wish now to refer to is, as underlined, that by reason of his having undertaken to find a purchaser at the price named, he was *obliged* and *entitled* to retain the shares at the named price, in the event of his failure to find another buyer for them.

First the question as to whether he was 'entitled' to buy. As to this, it will be admitted, I think, that an agent with authority to sell, may constitute himself the buyer on the terms authorized, unless, in the special circumstances, there be reason to the contrary. If authority was given to Robertson, on the 20th June, to sell the shares, then he could sell, and could himself become the buyer, so long as the authority to sell remained effective; but any authority to sell which may have been given by Quinlan, terminated on the 26th June, and it is certain that Robertson did not constitute himself the buyer in that interval.

Next: to what extent was he 'obliged' to retain the shares if he failed to find a buyer? The answer must be, I think, that if he failed to execute a valid contractual obligation, he would be liable to damages as set out in arts. 1070 and following C.C. But, as C.C. 1070 provides, he would not be liable to pay damages unless and until he was put in default to execute the obligation in question, and Robertson was never put in default by anyone. The authority to sell, according to the document he invokes, lasted only six days.

Was not the undertaking to find a buyer integrate with, and inseparable from, the authority to sell at the price as fixed? What was the extent of his liability for damages, for not having found a buyer in the six days? How could he have been put in default after Quinlan's death to execute a mandate that had ceased to exist, i.e. when there was no longer authority to sell, and no price fixed? If the heirs had known of this document (and they did not), and they had instituted an action against Robertson to claim $250,000. from him, would Robertson have had no defence to it. It seems to me very clear that according to its terms the document alleged did not oblige Robertson to himself buy the shares in the event of his failure to find a buyer.

The failure to execute a valid contractual obligation will give rise to the obligation to pay damages. The words valid contractual are not surplusage; it is not every promise or undertaking which is a contract; one of the essentials of a contract is that there have been a lawful consideration stipulated. When there has not been stipulated a lawful consideration for the execution of the promise or undertaking, the agreement is merely a *nudum pact*. That is the case here. In this 'letter' Robertson says: "I have agreed to obtain for you the sum of $250,000. for the above mentioned securities . . ." Robertson makes that promise or undertaking without any remuneration to himself, there is no consideration for the undertaking, therefore he did not obligate himself in law. (C.C. 984) and did not lay himself open to damages if he did not carry out, or if he failed to carry out, the undertaking. If an action, claiming damages from him for failure to find a buyer at $250,000.00 had been instituted against him, I have no doubt what one of the defences would have been, and I have no doubt as to what the judgment on that defence would have been.

Robertson's contention that he was obliged and entitled to retain the said shares is declared to be unfounded.

In the above remarks, I have been inquiring as to the intrinsic value and effectiveness of the events which, according to the allegations of Robertson's Defence, occurred on the 20th June 1927, (allegations reproduced verbatim at p. supra). For the purpose of that injuiry, but for the purpose of inquiry only, I assumed those allegations to have been truthful and to have been proved. I have declared my findings to be: 1.—that on 20th June 1927, Robertson did not buy the shares from Quinlan; 2.—that if it were proved that, on 20th June 1927, Quinlan had delivered to Robertson the scrip, indorsed in blank in exchange for Robertson's 'letter' of that date, both parties consenting, the juridical situation thereby created would have been: an acknowledgment by Robertson of receipt of the scrip, for the purpose of carrying out a mandate then received from Quinlan; a mandate from Quinlan authorizing Robertson to sell the shares represented by that scrip for $250,000,—the scrip being indorsed in blank, to permit the name of the buyer, whoever he might prove to be, to be inserted there; 3.—that this mandate was inexecued during Quinlan's lifetime, and therefore, on his death, it became terminated and inoperative.

If the conclusions of my inquiry are juridically correct, it is a matter of no consequence whether the facts as alleged are proved or not, because, even on the assumption that they are proved they do not, and cannot constitute a title in Robertson to the shares.

Those findings, however, are based upon construction and upon law; as such as they would come to have their application in the adjudication of the case upon the merits; under our system they did not constitute an obstacle of a nature to prevent Robertson from making at the trial, proof of his allegations; it would be in the judgment that the juridical situation would be declared. Robertson's allegations were matters for inquiry at the trial, and my next task must be to refer to the evidence made and to the effect of it.

Robertson's allegations as to the events of 20th June 1927 are in his Defence C. at p. 38 or 90, as further detailed in his Particulars C. at p. 56:

> "some time before his death, the said Hugh Quinlan transferred and delivered all his holdings of stock in the said companies to. . . the defendant Robertson under an agreement with the said Robertson, the terms of which were as

stated in a letter addressed by said Robertson to said Quinlan, dated 20th June 1927. . .'' . . . The said agreement was signed by said Robertson the defendant and *by him delivered to Hugh Quinlan, who in turn, delivered to him said defendant Robertson* his certificate for said shares,, endorsed in blank.''

The Plaintiffs denials were:

1.—that there had been any interview between Robertson and Quinlan on the 20th June 1927;

2.—That there had been on that date any delivery of scrip by Quinlan to Robertson;

3.—That there had been on that date the delivery of any letter (or purchase agreement) by Robertson to Quinlan;

4.—that in any case the document invoked by Robertson (the 'letter' of 20th June), by its very terms, was not a purchase agreement; it was merely a mandate;

5.—that on that date (or indeed on any other) there had been any sale of these shares by Quinlan to Robertson;

6.—that, on tlie date, by reason of his physical and mental condition, Quinlan was not capable of giving a valid consent to such a sale.

These were the issued between the parties on this branch of the case when they came to the first trial (before Martineau J.) The situation being that Robertson was claiming title to shares by reason of a sale which he alleged was made to him by Quinlan, the burthen of proof to prove that sale lay upon Robertson. It is not unfair to add that the claim being made against heirs of the alleged seller, parties who had no knowledge of the alleged sale, it being made only long after the death of the alleged seller, and the amount involved being very considerable, these heirs would be particularly entitled to require that clear and definite legal proof of the alleged sale be made, for them to be bound by it.

The trial began before Martineau J. on the 17th September 1930. On that day William Quinlan, a son of the testator, was heard as a witness he still lived in the family house with his mother; he was summoned to produce any papers found in the

house which might have a bearing on Estate matters, and he produced among other papers the exhibit P-66. (It is reproduced by photography C. p. 282) the interest attaching to it was not realized until later, and he was examined respecting it on 2nd December 1930, C. p. 584. This exhibit P-66 is an informal note made by William Quinlan at his father's request, on the date 21st May 1927, and it states that the share-certificates for Hugh Quinlan's shares in the companies: Quinlan-Robertson-Janin and Amiesite Asphalt were deposited in A. W. Robertson's box. This is admitted by Robertson; the box is in the vault belonging to the office of A. W. Robertson Limited, — where both Quinlan and Robertson had their offices.

The five share certificates mentioned in William Quinlan's memorandum have been produced as exhibits; four of them are in Hugh Quinlan's name; all four appear to have been indorsed by Hugh Quinlan, and each of the signatures appears to have been witnesses by a Miss Kerr. Miss Kerr was one of the nurses attending Hugh Quinlan; she was examined as a witness; she remembered witnessing Hugh Quinlan's signature to two such documents; she remembers she was called into Hugh Quinlan's room, by Robertson, in order that she sign as a witness, and she did so; the only other persons present at the time being Quinlan and the Defendant Robertson. Leaving aside other matters, what is important now in her testimony, is that this occurred in the month of May 1927, not in the last week of that month, but in the second or third week. Her evidence in fact confirms the date 21st May of P-66. Neither Robertson nor anyone else, has contested, nor attempted to deny the date 21st day 1927 of P-66, nor Miss Kerr's evidence as to the date; in fact Robertson in his evidence—given on the 9th December namely after the production of P-66 and after the evidence of Miss Kerr—says that the date on which Quinlan indorsed these certificates was, as nearly as he could recollect, about the last week in May 1927. The five certificates mentioned in P-66 were the scrip for Quinlan 1151 shares in Quinlan-Robertson-Janin (a certificate for 1 share and a certificate for 1150 shares), and for his 250 shares in Amiesite Asphalt (a certificate for 1 share and another certificate for 49 shares both in Quinlan's name, and a certificate for 200 shares in Dunlop's name. (Dunlop a son in law, the shares admitted to be Quinlan's).)

If it appears from the evidence, as it does, and uncontradicted, that it was on 21st May that Robertson came into possession of the share certificates for the Quinlan-Robertson-Janin

and the Amiesite-Asphalt shares, it must be certain that the allegation in the Defence: that, in execution of an agreement then made between them, on the 20th June 2927, Robertson delivered his letter to Quinlan, "who in turn, delivered to him said defendant Robertson his certificate for said shares, endorsed in blank" is untrue. Robertson was examined as a witness as to what occurred on the 20th June he did not pretend that the share certificates were handed to him on that date; not only did he not make any such statement, but he was not asked by his Counsel any question which would have opened the way for him to make that statement. It was on the 9th December that Robertson was giving his evidence, and his Counsel knew both from Robertson's acknowledgement that the date of Quinlan's indorsement of the scrip was in May, and the evidence of William Quinlan and Miss Kerr, given by them on the 2nd and 3rd December, that it was on 21st May that Robertson came into possession of them. In the hearing before me, Leamy testifies as to this and that this scrip was then (he says 23rd May) received "for safekeeping".

I think there is no room for doubt as to this, and after receiving the scrip from Quinlan on 21st May, Robertson handed them to Leamy, the Secretary of A. W. Robertson Limited. In return Leamy gave him the following receipt for them. It is Exhibit D.R-54:

Montreal, May 23rd 1927.

A. W. Robertson,
1680 St. Patrick Street,
Montreal, P.Que.

Dear Sir,

This will acknowledge receipt from you, to be kept in the office here, the following stock certificates, the property of Mr. Hugh Quinlan.

No. 1	Amiesite Asphalt Limited	1	share	
5	" "	49	"	
9	" "	200	"	J. H. Dunlop
4	Quinlan, Robertson & Janin Ltd.	1	"	
8	" "	1150	"	

Yours Truly,

A. W. Robertson, Limited,
per: L. N. Leamy.

So much for the date of receipt by Robertson of the scrip. It is certain that that date was 21st May, and that it was received by him "for safekeeping". It is equally certain that no letter was, either on 20th June or on any other date, handed by Robertson or on his behalf, to Quinlan. In no part of Robertson's evidence, either at the first trial or before me, does Robertson say or pretend that the so-called letter of 20th June was delivered to Quinlan. Those said to have been present on 20th June were Quinlan, Robertson and Leamy; both Robertson and Leamy have given evidence. Before Martineau J. they were not allowed to testify as to a verbal sale of the shares, though they were allowed to testify as to all acts during that supposed interview; before me, they were allowed to testify as to anything that happened on that date, without restriction, yet, neither before Martineau J. nor before me, did either Robertson or Leamy say, or suggest, or in any way indicate that this 'letter' was delivered to Quinlan. What both of them say, in their evidence before me, is that Leamy read the letter to Quinlan, and Quinlan then said "That is all right". Leamy, continuing, says that he handed the letter to Robertson; that he then withdrew from the room, leaving Quinlan and Robertson there together. It is certain from other evidence, which I will refer to infra, that this supposed letter remained in Robertson's possession for many months after Quinlan's death. I will be obliged also to deal with the suggestion that the 'letter' came into existence only at a considerably later date, but, for the moment, I point out merely the fact that no letter having reference to the alleged transaction was, on 20th June, delivered to Quinlan.

It seems clear to me that the reading of a letter, the reader retaining possession of it, is not at all equivalent to delivery of a letter to the person addressed. I think that when we speak of a letter as a communication to a person, we have in mind a signed document completed by delivery of it to that person. Without delivery there was no letter and no writing,—not in the sense in which we use the word 'writing' or 'written' in our law of evidence. What Robertson and Leamy testify to is merely a reading, itself merely a spoken word — seeing that there was no delivery of the paper on which the writing was. In my opinion and I so declare, the communication testified to by these witnesses was a purely verbal communication to Quinlan. The answer he gave according to their testimony was also purely verbal. Such agreement as may have been made between Quinlan and Robertson by these spoken words of each, was, I would say, a verbal agreement. If such agreement amounted to a contract, it was a purely verbal one.

It is not a digression here to say this: that if, in his Defence, Robertson had set up a title to the shares which was merely verbal, it is certain, that under our law, such contract could not have been proved by testimony, C.C. 1233. It would have been quite hopeless for Robertson to have based a title upon such an allegation, It is quite certain, also, under our law, that the actual delivery of scrip, in exchange for a written acknowledgement of purchase with undertaking to pay, would constitute a sale, and would be provable.

We know for certain now, from the testimony of both Robertson and Leamy, that on 20th June, no scrip was delivered by Quinlan to Robertson, and no letter delivered by Robertson to Quinlan; and we know also from the fact that no questions towards proving such matters were put to them by their Counsel, that these Counsel knew that those witnesses could not testify to the truth of those veritably crucial allegations.

What can be the explanation, when these allegations in the Defence are diametrically at variance with both Robertson's and Leamy's evidence? Can it be that these allegations contained in the Defence (which was prepared and filed in November 1928) were in accordance with the information then given by Robertson to his legal adviser Mr. Perron, K.C., or to his Attorney ad litem Mr. Beaulieu, or to Mr. Campbell the Attorney ad litem of the Capital Trust? If so, the information he so gave was deliberately untruthful, as we now know from his own testimony, and that of his witness Leamy. Or can it be that Robertson in November 1928, told his legal advisers exactly what he has testified to in Court, and that, in disregard of what he told them, they, of their own motion, inserted these untrutfhul allegations in the Defences, Defences to which they affixed their signatures, thereby themselves certifying that these were veritably the contentions of Robertson.

I fear no contradiction when I say that, in pleading, good faith and truthfulness have an honoured place; when I say that the insertion in a pleading of allegations known to be false, allegations designed to mislead for the advantage of the party pleading, constitute mala fides and when I say that such conduct is a circumstance pertinent to the question of the good or bad faith of that party,—to the validity of an act when good faith is an essential to its validity—, and that it is pertinent also in the appraisal of the credibility and value of the testimony of the individual who was a party to the deceit.

I am not called upon to decide what is the explanation; it is not part of the case. But it is due to Mr. Robertson personally to say this: that, outside of the fact that these false affirmations in his Defence are over the signature of his authorized attorney ad litem, there is nothing in the record; that I have met with, which would connect him, in any way, with them; his own testimony is clear and definite, and it is to the contrary effect. The responsibility would seem to rest entirely upon Robertson's legal adviser Perron, for as shown above, it was he who directed the defences of both defendant, it was he who revised and decide upon the terms of the Defences to be filed, and it was he who instructed Mr. Beaulieu, (who acted really for Perron, as Robertson's Attorney ad litem). I have no doubt, of course, that both Beaulieu &Co. and Campbell & Co. — had no knowledge of the falsity of those allegations, when they signed and filed those Defences to the action.

This is perhaps the convenient place to deal with a question as to the admissibility of testimony,—a question which was a matter of debate at the first trial. Testimony as to certain matters was tendered by Robertson; Martineau J. held it to be inadmissible; his holding was unanimously concurred in by the Court of King's Bench; the Supreme Court reversed these holdings, and ordered that on the present retrial such testimony be admitted.

The way in which it occurred that this testimony was not admitted, was that: on a question being asked, objection to it was made by the Plaintiffs, and the trial judge maintaining the objection, disallowed the question. Throughout the trial of course, a number of questions from both sides were disallowed and the rulings acquiesced in. But the rulings which Robertson as Appellant made a matter of special complaint when before the Supreme Court, and concerning which that Court made special provision in its judgment, were those which disallowed certain questions put to Robertson and to Leamy, and a question put to Miss King when they were testifying as witnesses for the Defendant Robertson.

Here are the questions which were disallowed as to Leamy: *Leamy, C. vol.* 4 *p.* 758 *et seq.*:

After these preliminary questions: 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.

then this series of questions:

Q.—Did Mr. Quinlan mentioned to you what he intended to do with his shares? Objected to: objection maintained.

Q.—Was there mention made of particular shares he wanted to dispose of? Objected to: objection maintained.

Q.—Was the name of Mr. Robertson mentioned by Mr. Hugh Quinlan in connection with the sale of his shares? Objected to; objection maintained.

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?

Objected to; objection maintained.

The reasons of the trial judge for maintaining these objections do not appear in the transcribed depositions, but this much is undeniable that the matter in controversy being a sale between Quinlan and Robertson on 20th June a conversation between Quinlan and an employee of his office in April was, I would think, prima facie irrelevant and inadmissible. It could be said,—and from my knowledge of procedure at trials I have no doubt that it was said,— that the matters referred to in these questions were not an issue between the parties, neither in the action nor in the Defence, and therefore that Defendant was not entitled to introduce them. (With reference to this: our Code of Procedure at art. 339 "Witnesses are examined by the party producing them, or by his counsel, *but only touching the facts in issue*").

In the course of the trial, the 'letter' of 20th June came in, I have no doubt, for a good deal of adverse comment from the Plaintiffs' side, and for the purpose, I suppose, of confirming the fact of its existence, and also of defending the draftmanship of it, the defence sought to show that it had been drafted by Mr. Perron, Robertson's lawyer, or, at least, that it was a modified form of what Perron had drafted, and the following questions were put to this witness Leamy: (p. 760)

Q.—Was the letter Exhibit D.R.-1 copied in part or in whole upon a document prepared by the Hon. Mr. J. L. Perron, which you had in your possession?

Objected to; objection maintained.

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 he wanted the draft to follow?

Objected to; objection maintained.

Q.—Were there slight modifications made to the draft prepared by Mr. Perron and submitted to Mr. Robertson by the phone to Mr. Perron, to your knowledge?

Objected to; objection maintained.

The reason for maintaining these objections is not given, but the issue between the parties being the plain one above stated, this Exhibit D.R.-1 being, according to the express pleading in the Defence, the embodiment of the agreement made between the parties on the 20th June, with no mention whatever of participation by Perron or by anyone else in the matter, the source whence Robertson may have procured the form, or part of the form, for his letter, would seem to be irrelevant to the question, whether Quinlan had, on 20th June, agreed to the proposal contained in the letter, and what the effects of such an agreement on his part would have been. Evidently, I would think, that was the reason for the disallowance of the questions by Martineau J.

On the present reference, however, the answers to those questions are to be received, and Leamy has given them. As to his conversation with Quinlan in April, he says: "Mr. Quinlan said that he was anxious for Mr. Robertson to return from the South or from his Mediterranean trip, that he wanted to transfer to Mr. Robertson his shares in Quinlan, Robertson & Janin. Amiesite Asphalt and Ontario Amiesite Limited". Asked "Did you report that conversation to Mr. Robertson" he answers "Yes I did".

As to the drafting of the letter of 20th June, he says in effect this: that Robertson asked Perron for a draft, and Perron sent one; that Robertson modified the draft so received; that, as so modified, Leamy struck it off on the typewriter, and what Leamy had this struck off on the typewriter, was what was read to Quinlan when they saw him later that day. Also after making those modifications to the draft he had received from Perron, Robertson, by telephone, informed Perron of the modifications he had made.

What does, I think, appear clearly form Leamy's account (and Robertson's evidence is much to the same effect) is that Perron, in the matter, was acting as Robertson legal adviser; Ro-

bertson, contemplating an agreement with Quinlan for the purchase (so Robertson says) of Quinlan's shares, Robertson asks his lawyer to draft the letter for him. It is noticeable that the situation was not, that Perron was called in by both to draw up an agreement for them; the circumstance has some bearing on Robertson's contention that, throughout, Perron acted as Quinlan's designated and authorized legal adviser.

Here are the questions disallowed as to Robertson:

Robertson, C. vol 4 *p.* 818 *et seq.*:

After the preliminary questions: 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 what date they were endorsed? A.—The latter part of May 1927.

He is asked this series of questions:

Q.—Will you explain under what circumstances these transfers were endorsed by Mr. Quinlan?

Objected to; objection maintained.

Q.—Will you state what was the reason of the endorsement on these certificates?

Objected to; objection 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?

Objected to; objection maintained.

Q.—Is it not a fact that 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?

Objected to; objection maintained.

Q.—In the letter D.R.-1 of the date June 20th 1927, reference is made to 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?

Objected to as not pleaded. Objection maintained.

Saving as to the last question, there is no indication in the transcribed depositions as to why these questions were disallowed, but according to the rules of our practice, the reason (or at least one sufficient reason) is very obvious. Namely it was because the questions were aimed to prove 1.—matters which had not been pleaded, and 2. matters which themselves were in contradiction to what had been formally and definitely pleaded in Robertson's Defence. Unequivocally, according to his Defence, Robertson's title was alleged to result from the exchange, of the indorsed scrip for the letter on 20th June, both parties consenting. That is the Defence he filed in November 1928; he was examined on discovery, and at length, in the autumn of 1929, with plenty of opportunity to refresh his memory and if necessary amend his Defence, to make it conform to the facts theretofore left out of account. Yet when the trial started in September 1930, the above affirmation remained intact in his Defence.

William Quinlan's Exhibit P-66 was filed in September 1930 thence forward it was known for certain that the scrip in question had been handed to Robertson,—not in exchange for a letter from Robertson,—not as the execution of a contract of sale between the two,—not on 20th June as alleged, on the contrary it was certain that this scrip was deposited in Robertson's box on 21st May. Miss Kerr whom it was that Robertson called into the room to serve as witness to Quinlan's indorsements on the scrip, says as to Robertson that then "He did made some remark—shares of the Company, *that they were selling,* and that was why he would like my signature to witness Mr. Quinlan's". Note that it was shares that "they were selling" and not that Robertson was buying the shares from Quinlan. (Now after the evidence heard before me on this re-trial, we know, especially from Leamy's letter to Robertson of the 23rd May 1927, that from that date 23rd May 1927, the scrip was in the vault in the A. W. Robertson Limited office;—that it was there for "safekeeping", and that it was there as "the property of Mr. Hugh Quinlan". This letter of 23rd May 1927 was not in the record at the first trial.)

After William Quinlan had been heard on the 2nd December, Robertson went into the box (on the 9th) and the above questions were put to him. They were put to him evidently in the endeavour to prove something different from the allegation that the scrip was handed to him on the 20th June, and evidently in the endeavour to prove something different from the allegation that the transaction was made between him and Quinlan on that date 20th June. It would have been open of course, to Robertson to amend

his Defence in any way he chose, but if so, then subject to the ordinary conditions namely opportunity to the opposite party to reply, and delay to enable that party to prepare himself for the new situation. But no amendment was made; the questions were put as being admissible upon the issues set out in the original Defence, they were objected to and disallowed.

As I say, the trial Judge disallowed those questions and his rulings were concurred in by the Court of Appeal. On the present re-trial, the answers to those questions are to be received into the record.

At this re-trial, those identical questions were not put to Robertson, but (instead?) the following questions were: (p. 28).

Q.—Do you recognize the signatures of Mr. Hugh Quinlan on the back of these four certificates?

A.—Yes.

Q.—Now Mr. Robertson, you have already stated that you paid a visit to Mr. Quinlan prior to the endorsements of these certificates?

A.—Yes.

Q.—After a trip you made abroad?

A.—Yes.

Q.—You remember that?

A.—Yes.

Q.—You were then prevented from stating what took place during that conference. Will you now state to the Court what took place during the conversation between yourself and Mr. Hugh Quinlan in May 1927 after your return from abroad?

A.—When I came back, he told me he had definitely decided to get out of those Companies and he wanted me to take over the stock.

Q.—Was there anything else to your recollection?

A.—That he would arrange with Mr. Perron as to the value of them.

Q.—That was all what was said at the time, so far as you can recollect?

A.—Yes.

The questions put to Robertson *as to the occurrences of the 20th June,* which were disallowed at the first trial, and which were a ground of complaint on his part were these: after he had testified that he and Leamy had on that date seen Quinlan in his

sick room, and that Leamy had read the letter to Quinlan, Robertson is asked:

Q.—Did Mr. Quinlan express his approval or disapproval of the contents of this letter?

Objected to; objection maintained.

Q.—Did Mr. Quinlan say anything atfer the reading of that letter?

Objected to; objection maintained.

Q.—Did he make any signs at the reading of that letter?

Objected to; objection maintained.

The reason for the ruling is not stated, but quite evidently it is because in our law testimony is not admissible as the proof of a contract the amount of which exceeds $50. (This rule is not drawn from the Statute of Frauds, but is a provision in our Civil law applicable to civil law contracts.)

At the present trial, Robertson's answers to those questions is to be admitted, and the questions put to him were:

Q.—Will you please take communication of this letter of June 20th 1927, which bears your signature, and which is filed as Exhibit D.R.-1, and state if you remember that letter?

A.—I do.

Q.—You have already said that this letter was read in your presence by Mr. Leamy to the late Mr. Hugh Quinlan on the date it bears, 20th of June 1927?

A.—Yes.

Q.—Will you state to the Court what answer, if any,

Mr. Hugh Quinlan gave after the letter was read to him?

A.—He said, "That is all right".

Next as to Miss King. Miss King's evidence is not with respect to anything that occurred on the 20th June; she had no knowledge of what events may have happened on that date. If I interpret the course of the trial correctly, the development which took place was this: that when it became certain that there had not been reciprocal exchange of scrip for letter on the 20th June, (as was alleged in the Defence), the defence decided upon other means in order to fortify their allegation that a sale of the shares had, on that date been veritably made between the parties the means

adopted were these: to contend and make proof that in May Quinlan had asked Robertson to take over these shares; that he then delivered the scrip into Robertson's custody; that the price which Robertson would be called upon to pay would be the price which would be fixed by Perron, Quinlan's lawyer; that Perron did fix the price, and at $250,000.; that the letter of 20th June was really drafted by Perron for the purpose of the sale; that some time in May, Perron went and saw Quinlan at his home—presumably to agree with him upon the price to be fixed. What I think is evident about this new representation of what occurred, is that it differs noticeably from what Robertson's Defence says. To be admissible, it should have been specially pleaded (C.P. 110). At the same time it is certain that what it seeks is just this that the letter of the 20h June be found to be the contract between the parties.

Miss King was the first witness toward proving this new line of defence. She was heard on 3rd and 4th December 1930. She had been secretary to Mr. Perron for ten years; he had just died, namely on 20th November 1930.

First, Miss King produces, and it is filed as an Exhibit, a document found by her in Mr. Perron's records; it is a duplicate of Robertson's 'letter' to Quinlan of 20th June, and it bears Robertson's signature; as to it, she says (p. 665) "I found this letter in Mr. Perron's safe in the office, *where he told me he deposited it at the time*".

Next, Miss King produces the draft of a letter which, as it is contended, Robertson had from Perron and which served as the form for his 'letter' of 20th June; it also comes from Perron's safe. As to it she says that it is: "a draft of a letter that I remember distinctly making out myelf. It does not bear any date, because it was subject to modifications".

As to this draft she was asked "What that dictated to you by Mr. Perron?; the question was objected to and the objection maintained by the Court. By direction of the Supreme Court her answer to that question is now to be admitted, and, when put to her at the re-trial, she answered it in the affirmative, she says also that the date of the dictation of this draft was a few days prior to the letter of the 20th June.

Then (at the first trial) the following in Miss King's evidence is tendered as proof that Perron had an interview with Quinlan some time in May:

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.—Wil you please state what you know about it? 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.

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.*

Q.—Can you fix the approximate date?

A.—I am quite sure it was certainly not in the winter time. It was either in the spring or in the beginning of the summer.

The Plaintiffs very strongly took the ground that these answers of Miss King do not constitute proof that Perron actually saw Quinlan upon the matter of the sale of these shares, and certainly do not prove that any such interview had contributed to the events which the Defence alleges to have occurred on the date 20th June.

In my opinion those two contentions of Plaintiffs are well founded in law and in fact.

I have endeavoured to give an account of the questions disallowed at the first trial, to which the answers must be admitted at this re-trial. Whatever view be adopted as to legal admissibility, there is one point as to which, I think, there can be no disagreement, and that is that all the evidence so tendered was directed towards establishing that there was: either completely made on 20th June, or consumated on that date after negotiations preceding it, a contract or agreement between Quinlan and Robertson "*the terms of which were as stated in a letter, adressed by said Robertson to said Quinlan, dated 20th June* 1927 (para 37 of Robertson's Defence).

Robertson's claim is that by reason of a contract or agreement between himself and Quinlan, the terms of which were as set out in that letter, he became on 20th June the owner of the shares in question. The Plaintiffs deny, both that such agreement was made between the parties, and also, that, if made, it would have had the effect of making Robertson owner.

The investigation of such a controversy might begin either by *first* ascertaining if the contract or agreement was really made between the parties, and in the event of that being found to be the case, *then,* the interpretation of the agreement, to ascertain if it is to be given the effect claimed. *Or* the investigation might commence by assuming for the purposes of inquiry that a contract or agreement was made in exact accordance with the letter, and ascertaining, from its very terms, if it would have the effects claimed for it. If the finding be that an agreement in the terms set out in the letter did not, and could not, render Robertson owner of the shares, inquiry as to whether the parties had agreed to the terms of the letter would be academic and purposeless.

The method of inquiry apparently preferred for this re-trial is the former of the above two, accordingly all evidence, which the Defendant Robertson has tendered, has been admitted without restriction. The most that all Robertson's evidence can effect is to have it be declared that the 'letter' of 20th June contains and expresses the actual and exact agreement between Quinlan and Robertson on that date. That is the issue which his Defence raises. Under our system, it is the parties themselves who, by their pleadings, says what the issues are; it is from the submissions as so made that the our Courts derive jurisdiction to decide those issues. The jurisdiction is confined to those issues (C.P. 113,541); the Courts are obliged to decide them C. C. 11)

Supra, I have supposed the said 'letter' to be all that Robertson represented it to be, and, as carefully as I could, I have construed it according to its terms. I have set out my conclusions there namely: that the letter does not constitute a sale to Robertson; that at most it is a mandate, which necessarily terminated on Quinlan's death. In my judgment, those conclusions are not, in any way, disoledged by the evidence added at this re-trial.

If Robertson did not become owner of the shares by reason of the events of 20th June, it must be obvious, I think, that no act of his, subsequent to Quinlan's death, could have created such a title for him. Prima facie, his conduct subsequent to Quinlan's death is irrelevant to the question of his title. Nevertheless this conduct has some bearing as to other points in the case. The circumstances attending the drafting of Robertson's Defence have been mentioned supra. Robertson is made to plead that he, in person, acquired the shares from Quinlan in person, on 20th June, and that these shares did not form part of Quinlan's Estate at the time of his death. Well, it appears from the record that on

18th July 1927 an inventory was made as by the Executor-Trustees, of whom Robertson was one it bears the heading "Inventory at date of death June 26 1927"; a copy of it was sent to one of the Plaintiffs on the 7th August 1928; it was sent to her by the Capital Trust Corporation to which, as Executor, she had applied for the information; on 29th August the Capital Trust sent her also a copy of the Estate Auditors' Reports, which was dated 8th August 1928, and with it the Auditors' list of the asests of the Estate as on the date 31st December 1927; in this list of assets there appeared as belonging to the Estate (p. 296-e) "Quinlan, Robertson & Janin Ltd. 1151 shares Com." On 5th September 1928 the Capital Trust Corporation, always acting as Executor, sent to another of the Plaintiffs other copies of those same documents, but with respect to the 1151 shares of Quinlan Robertson & Janin Ltd., there was the note (p. 301) "Quinlan, Robertson & Janin Ltd. sold in 1928 for $250,000."

Not only did these 1151 shares of Quinlan, Robertson & Janin Ltd. appear, as belonging to the Estate, in the inventory made by the Executor-trustees on the 18th July 1927, and in the list of assets of the date 31st December 1927, but in all their dealings with the Succession Duties Office for the payment of succession duties to the Province, the shares were represented as being owned by the Estate. The Declaration to that office, sworn to by Mr. Parent, the Estates Manager of the Capital Trust, dated 17th September 1927 (C. vol. 7 p. 413) list among the assets: "1151 shares Common; Quinlan, Robertson & Janin Ltd." Some of the valuations in Mr. Parent's Declaration were not accepted by the Succession Duties Office, and negotiations followed; the final Declaration was made by Mr. Paul Mackay, Assistant Estates Officer of the Capital Trust Corporation on 6th July 1929 (C. vol. 7 p. 430-42) in which at p. 438 item 24 "24. Quinlan, Robertson & Janin Co. Ltd, 1151 shares, Common, valued at $185." are among the sworn assets.

In the Declaration for Succession Duties purposes of 17th September 1927, the valuation of the 1151 shares of Quinlan, Robertson & Janin Ltd was put at $150,000. The Collector of Provincial Revenue refused that valuation as being insufficient, he fixed the valuation of these shares at $185. per share, making a total of $212,935. thus an increase of $62,935, and the Capital Trust was notified of this by letter of the 22nd November 1927 (C. vol. 7 p. 477). The Capital Trust advised Robertson of this in their letter of 28th December 1927 (ib. p. 478) "Quinlan & Janin is also increased by $62,935". Robertson on 29th December acknowledges

receipt of this letter, and says ". . .So far as Quinlan Robertson & Janin Ltd is concerned, you know neither you nor I can get anyone to buy it. . ." On 31st December 1927 the Trust Company write Robertson that, with the information given in his letter, they will take up "the matter of the A. W. Robertson Ltd. and Quinlan & Janin Ltd. stocks with the Succession Duty Office, and see if we can succeed in having the Succession Duty Office revise their valuation". On 2nd January 1928 Robertson replies thus: "My opinion is that if you would elecit the co-operation of Hon. J. L. Perron you would obtain a reduction in the succession duties". The Trust Company did have Mr. Perron negotiate for a reduction. Perron did so, and he succeeded in having a reduction made in the valuation of the A. W. Robertson Ltd. shares, but not of the Quinlan, Robertson & Janin Ltd. shares.

What is undoubted from the above is that Robertson, personally, knew that these Quinlan, Robertson & Janin Ltd shares were reported to the Succession Duties Office as belonging to the Estate, and that the Estate paid the succesison duties upon them as owner thereof. That conduct is in direct contradiction to the contention that he became owner on 20th June 1927. It is undoubted also that Perron knew of all this, and yet the Defences, as he had prepared them, certainly as he had approved them, contained these allegations:

> *Capital Trust's* para. "57. Defendant now pleading never had possession of said shares in said Companies referred to in the foregoing letter and *did not consider that they were assets of the Estate of the late Hugh Quinlan at the time of his death. . .*"
>
> 59.—It was an error on the part of a subordinate employee of the Defendant now pleading. . . that the said shares of Quinlan, Robertson & Janin Limited . . . were entered as an asset of the said Estate. . . the said shares being at the time of the death of the said Hugh Quinlan transferred and delivered to Defendant Robertson. . ."

It is evident from the sworn declarations of Parent of 17th September 1927, and of Mackay of 6th July 1929, and from the actual payment by the Estate of succession duties upon these shares, that these affirmations were false,—to the knowledge both of Perron and of the Trust Company. Yet Perron and the Trust Company inserted them in this Defence. (If it was not Perron who inserted these affirmations, it was necessarily Campbell &

Co., with Perron's approval). In any case they were walse, and were deliberately inserted there.

Robertson's Defence para. 44. "44. It was an error on the part of a subordinate employee of Defendant Capital Trust Corporation Ltd. . . that the said 1151 shares of Quinlan, Robertson & Janin Ltd. . . were entered as an asset of the said estate. . .

This affirmation also, knowingly false both to Perron and to Robertson, was inserted in the Robertson's Defence by Perron. It does not appear that Robertson had knowledge that it was inserted there.

Misrepresentations of fact, which are known to be misrepresentations at the time they are made, are of a nature to throw doubt upon the good faith of the party making them. I feel obliged to refer to matter such as the above, because of the affirmation which is pleaded, and which is repeated again and again throughout the conduct of the Defendants case, to the effect that everything that the Defendants did, certainly everything that the Plaintiffs complain of, was done with the concurrence and approval of Perron, woh is represented ac acting always for, and in the interest of the Estate. In my judgment, the record shows the contrary to be the case, and that throughout he acted as Robertson's adviser and helper, and in Robertson's sole interest.

I mentioned supra that the so-called letter, Robertson to Quinlan 20th June 1927, was never delivered to Quinlan. That is clear from the record. The Plaintiffs in their pleadings deny both the sum, and all the details, of the events alleged to have taken place on the 20th June; there is the allegation in Robertson's evidence that the letter was delivered to Quinlan; neither Robertson nor Leamy pretend that it was; neither is asked any question which would call for the answer that it was delivered. Leamy just says that, after reading it, he handed it to Robertson, and he then left the room. If delivery of it was a part of Robertson's contention, it was incumbant upon him to prove it, and he has not done so. Robertson remained in possession of it (that is to say of the original) until 6th December 1927, on which date it was that the Trust Company received it from him (the Company's letter acknowledging receipt C. vol. 8. p. 699).

At times, in the period during which Robertson was retaining possession of the original of the 'letter' of 20th June, he seems to have mis-informed even the Trust Company as to what

the nature and the terms of the 'letter' were, as an example of this, Parent, in his evidence, (C. vol. 4, p. 774) says that he saw a copy of the letter of 20th June 1927 on the 9th July 1927; at the time he was giving this evidence, 5th December 1930, he evidently was assuming that what he saw was a copy of the 'letter' as now filed. But he must have been mistaken in that assumption, as appears from the letter he wrote to Robertson on the 23rd August 1927 (C. vol. 6 p. 374) thus: Robertson, by a letter of 19th August, had broached to the Trust Company the question of selling the shares belonging to the Estate in Quinlan, Robertson & Janin Ltd. and the paving companies; he suggested the price $250,000. In reply Parent wrote on the 23rd August to say:

> "Yours of the 19th instant has been duly received, in which you state that Mr. Janin suggested a purchaser for the shares the late Hugh Quinlan held in Quinlan, Robertson & Janin for the price of $250,000. The price stated is we recollect in accordance with *the arrangement made with you by the late Hugh Quinlan himself, prior to his death, and that you have a written agreement or letter to that effect;* . . . We would appreciate it if you would let us have *the letter or written agreement by Mr. Quinlan* to complete our files in this matter."

The words I have underlined indicate what representation had been made theretofore by Robertson to the Trust Company as to the letter of 20th June; at the least they indicate what Parent understood, and Parent could not have got any such impression from reading on 9th July, a correct copy of the 'letter' now filed.

Another incident which indicates what representations were being made between 20th June 1927 and 6th December 1927, —during which Robertson was keeping possession of the original of his 'letter' of 20th June 1927—is the following: On 25th September 1927, a conference was held between Perron and the two Executor-Trustees. Under date 26th September 1928 Perron wrote to them as follows:

> "Following our conference of yesterday morning, I beg to remind you of the decisions which were adpoted at that conference:
>
> 1.—Try, if possible, to find the original of the letter of the 20th June 1927 from the late Mr. Quinlan to Mr. A. W. Robertson.". .

It would be next to impossible to believe that on the 25th September, when this letter was a subject of consultation and discussion between them, Perron had made confusion between a letter from Quinlan to Robertson and one from Robertson to Quinlan; and it would be next to impossible to believe that Perron's memory was so defective, as to make him confuse the two converse case, twenty four hours after the consultation had taken place. Nevertheless, Robertson testifies that Perron's letter is erroneous: that the letter, which was discussed during the consultation on 25th September, was none other than Robertson's 'letter' to Quinlan of the 20th June 1927. If Robertson is right in this affirmation, then there was omething wrong with Perron's mental processes at the time. If Robertson is right, then apparently the anxiety on the 25th September was that they did not have the text of the letter of the 20th June—the original by reason of it being an original was not of importance seeing that it had not been delivered — what was required was certainty as to what had been read to Quinlan. If that were the nature of the discussion on the 25th September, what becomes of the pretention that Perron had drafted it, that a signed duplicate had been sent to Perron, and that, as Miss King says, Perron told her *at the time* approximately, 20th June 1927 that he had deposited that duplicate in the safe in his office. If true, all these latter facts must have been in the minds of Perron and of Robertson on the 25th September. I am afraid there is mis-information somewhere; it is with respect to matters the onus of which is upon Robertson, and the lack of veri-similarity must weigh against his version.

The next point to which I must give attention is with respect to the happenings alleged to have occurred on 20th June 1927. It is because of the fact that Robertson has alleged them that they are a matter of inquiry here. What he alleges is that an interview took place on that date between him and Quinlan, and then and there an agreement as to certain shares was made between them. The Plaintiffs expressly and positively denied both that any agreement was made, and even that an interview took place on that date.

The onus is of course upon Robertson to prove both that the interview took place, and also to prove the agreement that he alleges was then and there made. The visit to the Quinlan house and the sick-room is itself a fact, and proof of it may be made by evidence which is admissible for the proof of facts. Proof, however, of matters alleged to constitute a civil contract is governed

by special rules; and to be acceptable as proof of the agreement that Robertson alleges, the proof that he tenders must be in conformity with those rules.

On the question whether the occurrences alleged by Robertson to have taken place on 20th June 1927 did take place, the witnesses on Robertson's side are two only, namely himself and Leamy.

At the hearing before me the Plaintiffs applied for an order to exclude the one who was to be heard second, while the first of the two was giving his testimony. I had to say that I had not jurisdiction to order that Robertson be heard first, with Leamy excluded during the examination, and to say that I had not jurisdiction to exclude Robertson during any part of the trial, he being a party. I suggested that the Defendant might consent. The defence refused consent, and Leamy testified first, Robertson being present.

In the main, they give the same account of what happened, namely: that on that morning at between eleven and noon, together, they went to the Quinlan Residence; they rang the door bell; they were admitted and went directly to Quinlan's bed-room; they entered his room; no one was there but Quinlan; he was propped up in bed; only the three were in the room, Quinlan, Robertson and Leamy; after salutations, Leamy asked Quinlan how he felt, then Robertson said in effect that there was a letter which Leamy would read; Leamy read it; Quinlan understood it, and said That is all right, Leamy then handed the 'letter' to Robertson and went out of the room, he had been in the room for two or three minutes only; Robertson remained there with Quinlan for five or ten minutes; (no attempt was made to have information as to what these two may have said to each other when they remained alone in the room). Leamy says that he saw Mrs. Quinlan, and spoke to her, before he went into Quinlan's room; apparently Robertson did not see anyone, but he says that, when Leamy left Quinlan's room, it was to go and speak to Mrs. Quinlan; they both left the Quinlan house together; the total time, from when they arrived to when they left, was about ten minutes.

Each in turn was pressed to give his reasons for affirming that the date of that declared visit was the 20th June. Each refers to the date on the 'letter', as being proof that that was really the date. Each, as additional proof of this date, refer to two cheques which they say were signed on that same date by Robertson and

Mrs. Quinlan. The cheques are filed; they are printed in C. vol. 6 p. 288. It is not pretended that these cheques were signed during the visit in question; it is evident from the detailed account from arrival to departure given by both Robertson and Leamy that it was not during this visit; it must have been at some other time, if at all, on that day. The cheques bear the date 20th June, but that of itself does not prove that they were signed on that day; the Bank stamps on them show that they were negotiated to the payees' banks the one on the 22nd, and the other on the 23rd June; —dates which do not necessarily confirm that they were issued by the drawers on the 20th. In my judgment, neither the date on the 'letter', nor the date on these cheques, can constitute an independent confirmation of the testimony of these two witnesses on his contested point.

The conclusion to which I must come is that proof of the interview comes only from the testimony of these two: Robertson a much interested witness, and Leamy his employee. The inherent improbabilities of their account are strong. Thus into this well ordered house they say they made a visit, yet apparently no one saw them come or go. Leamy says that he saw Mrs. Quinlan, but she was not called upon to testify to that fact if it was a fact. Since they rang, some maid or other must have opened the door, yet no attempt was made to hear any such person. Then there was Quinlan's physical condition; he was a very sick man on that day; the orders were that no one was to see him; he had had a day nurse and a night nurse for over a year; on Saturday, 18th June, he had been for a motor drive; on his return, he was nigh exhausted and took to his bed; he did not leave it again, and he died on the 26th. From the 18th, he kept getting worse until the 26th. Miss McArthur was the day nurse during that last week, the 19th to the 26th; she remembers his condition during those days; she was on duty on the 20th, a Monday; she went on duty at 8 a.m.; she was certainly on duty at the time of the visit Robertson alleges; between eleven and noon on that day. As a witness in rebuttal at the re-trial, she testifies: (p. 3).

> Q.—During the week before Mr. Quinlan's death, that is from the Sunday morning on the 19th previous to his death and the balance of the week up to the day on which he died did Mr. A. W. Robertson and Mr. L. N. Leamy see Mr. Quinlan during the day?
>
> A.—To my knowledge they did not, Mr. Leamy did.
>
> Q.—When?
>
> A.—On Monday.

Q.—That would be Monday the 20th?

A.—Yes.

Q.—Just tell his Lordship what happened?

A.—We were under instructions not to allow any one to see Mr. Quinlan. He was very very seriously ill, and I left room long enough to go to the end of the hall and back. When I came back Mr. Leamy was in the room standing at the foot of Mr. Quinlan's bed, and I asked him if he did not understand that the instructions were that he was not to go into the room that morning. He did not answer me. As far as I remember he looked at me, and I still waited for him to leave and then he did leave.

Q.—What was Mr. Quinlan's position in bed? Was he lying down?

A.—He had a hospital bed which we kept up.

Q.—The head was raised up?

A.—From time to time we adjusted it, sometimes lower and sometimes higher.

Q.—When you came back and saw Mr. Leamy in the room, was Mr. Quinlan aware of Mr. Leamy's presence?

A.—I do not think so.

Q.—Why do you say you do not think so?

A.—That morning he was not in a condition to talk to any one unless he was talked very directly to and then I think all he would be able to do was to answer.

Q.—Were his eyes open when you went into the room?

A.—They might have been.

Q.—When you went into the room and found Mr. Leamy there?

A.—I could not remember then.

Q.—How long were you out of the room at that time?

A.—I should say not more than a minute and a half or two minutes, may be not so long.

Q.—Where did you go?

A.—I turned down to the bath-room at the head of the hall and back, just long enough to empty something and then go back again.

Q.—Mr. Robertson has stated in his evidence at the trial that he saw Mr. Quinlan on Wednesday or Thursday before he died. Did he see him during the daytime?

A.—No he did not. He could not have without my knowledge, because I was there all the time. He might have from the door.

Q.—That is he might have looked in the door?

A.—Yes he might have done that.

Q.—But he did not go into the room?
A.—No.

and at p. 8:

Q.—But when you went to the end of the hall you did not think it necessary to have some member of the family to replace you?

10 A.—Not for that length of time. I knew I was only going and coming back. Mr. Quinlan was resting quietly at the time. That I remember quite well.

Miss Kerr the night nurse testifies: (p. 11)

Q.—Were you on duty during the month of June 1927, the month in which Mr. Quinlan died?

A.—Yes, I was. I was on night duty in the month of June.

Q.—What were your hours?

A.—From eight at night until eight in the morning.

20 Q.—During the last week of Mr. Quinlan's life, the week beginning Sunday the 19th, did Mr. A. W. Robertson interview Mr. Quinlan at any time while you were on duty?

A.—Not to my knowledge, not while I was on duty. He may have been in the house; I do not know, but he was not in the room. He used to come and see Mrs. Quinlan; I did not see him in the room during the last week.

Q.—Were you continuously with Mr. Quinlan when you were on duty?

30 A.—Yes, I was. I would never leave him for any length of time.

Q.—Was he allowed to see visitors during the last week of his illness?

A.—No, he was not, just his own family.

Q.—What do you mean by just, his own family?

A.—Mrs. Quinlan at all times and the sons and daughters would come in and always speak to him, but they would not remain. They never stayed.

There is also the evidence of Mrs. Desaulniers (Margaret Quinlan)

40 (C. Vol. 3. p. 576)

Q.—Did you see him on the Sunday? (i.e. the 19th)

A.—Yes I did. That was the last time I spoke to him.

Q.—How was he that day?

A.—He was very ill. I went to the house for dinner with my husband, and he was too sick to see my husband and also my brother in law who was also invited for dinner. There was some little business he promised to settle for me, he told me to come back the next day and it would be settled.

I went back the next day, and he was too ill, and I could not even speak to him. That was on the Monday. My mother told me he could not possibly settle the business he had to settle for me.

Q.—Did you see him on the Monday?

A.—Yes, but he did not speak to me. He was lying in bed very ill.

Q.—Did you inquire if you could speak to him?

A.—I did. Mother was having her lunch in his room with the nurse, Miss McArthur, and she said: "Your father is to ill today. He cannot see you on business".

The time this last incident occurred, was very close to the time when Robertson and Leamy say that they saw him.

Questions to Mrs. Desaulniers continue:

Q.—Did you see him on the following day?

A.—No I did not. I telephoned the house, and mother told me he was not very much better. On Wednesday I went in, but no one was allowed in his room. Mother telephoned that my father was dying and to come down to the house. That was about ten o'clock in the morning.

Q.—That was on June 22nd, 1927?

A.—Yes.

Q.—Did any one try to see your father that day?

A.—Yes. I was speaking to mother, and Dr. Hackett had gone in to see him. Mother asked Dr. Hackett how my father was, and if he could get better, and Dr. Hackett said No, and that he feared very much if he got better his mind or his sight were gone.

As mother was speaking, Mr. Robertson came to the room and asked to see father on business, and Dr. Hackett said No, that no one could see him and that he could not be disturbed. Mr. Robertson telephoned to Mr. Perron not to come to the house, that father could not be disturbed that day.

Q.—That was Mr. J. L. Perron?

A.—Yes. That was about eleven o'clock or half past eleven in the morning.

According to Robertson's account, already in April and May Quinlan was anxious to sell these shares; if such was the case, the likelihood would be that Mrs. Quinlan also was aware of his anxiety. If so. it would have been but natural that on the sale (as Robertson alleges) having been made on the 20th. Robertson would have told her of it. But he told nobody, neither Mrs. Quinlan nor any of the heirs, for their knowledge was derived from the papers sent them in August and September 1928.

I am called upon, from the above and from other indicia, (these latter less positive and direct than the above) to decide whether my reasonable preponderance, Robertson has proved that the interview he alleges actually took place. I formally declare the opinion that the evidence above quoted of Miss McArthur and of Miss Kerr both of whom testified before me, to be veracious and reliable. I accept it is true. I accept as true the above quoted testimony of Mrs. Desaulnier; I mention, perhaps unnecessarily, that her above testimony was not given before me. I take into consideration the improbabilities, which as I think, strongly indicate that the story is not reliable nor true; I formally declare that it has not been proved, and that for the present litigation it mus be considered that it did not take place.

If this case were now being dealt with as one in the ordinary course, is in such case one of the questions in debate was as to whether a certain interview had taken place, and that the conclusion reached was that the interview as a fact had not been proved by preponderance of evidence, that conclusion would of itself dispense from examination in detail as to what events had taken place at that interview. Supra, I have set out what I find to be the juridical construction and interpretation of the document said to have been agreed upon at that interview. I need not return to the document. My finding was that according to its very terms it could not have the effect contended for by Robertson. In such case, in an action being dealt with as in the ordinary course, it would not be necessary to make further inquiry, more particularly there would not be occasion to consider disputed questions as to the legal admissibility of some or all of the evidence which had been tendered as proof of the document. But the case having come back here for re-trial by reason of a reference, it may be desirable that such matters also be dealt with, de bene esse.

The matter sought to be proved is that, on the occasion in question, a sale was made by Quinlan to Robertson of certain shares for the price $250,000. That is what Robertson's allegation is. The onus is upon him to prove it. I have declared it to be my finding that, as alleged, the contract is a civil contract,—not a commercial one—and I mention, what of course is not a matter of contestation, that there are respects, as to which our rules of evidence vary, according as the juridical relation in controversy concerns a commercial, or a non-commercial matter. As to the presently alleged contract, the rules of evidence applicable are those laid down for non-commercial matters.

The rules are in C.C. 1233, it being especially ss (7) which is applicable here, namely that "proof must be made by writing or by the oath of the adverse party" except "in cases in which there is a commencement of proof in writing". And C.C. 316 adds: "A party may be examined by the opposite party and his evidence may be used as a commencement of proof in writing". The admissibility of the evidence which Robertson tendered to prove his allegation is to be determined by these rules. What constitutes a 'commencement of proof in writing' is, I think, clearly understood. Whether the concise definiton contained in the art. C.N. 1347, or the more lengthy one in Pothier Obl. Bugn. n. 801, be referred to, the result is the same, namely that there must be a writing which has emanated from the party against whom the vinculum juris is being set up. Once that writing has been produced, testimony is admissible to complete the proof of the vinculum juris. Admission in evidence, given by the party in question, are the equivalent of a writing emanating from him; but extra judicial declarations or admissions are not. It is not a matter of controversy now, I think,—if ever it was—, that once the vinculum has been proved, testimony, and other methods of proof, are admissible to prove the details of the agreement or contract between the parties. Those are the rules of evidence which Robertson must comply with.

Now it seems clear to me that: to allege that a contract was formed between two parties by the reading by one of them to the other, of a proposal, and the verbal declaration by that other that he agreed to what was read, the party reading retaining in his possession the paper that he has read, is to allege a contract formed by spoken word. I do not ask what the legal consequence would have been, if the writing had been delivered to, and accepted by, the party read to, for that admittedly was not the case here. Where there has been a reading, a listening, a verbal approval of what has been read, the party reading retaining in his possession the paper read from, I cannot see how possibly it could be said that the written matter in question emanated from the party who heard it read. By the law, as above quoted: unless the writing can be said to have emanated from a party, it cannot constitute a 'commencement of proof in writing' against him. The case here is that Robertson having himself prepared a paper, which was in the form of a letter addressed to Quinlan, and having had it read to Quinlan, and Quinlan having said to it 'That is all right', the paper throughout and thereafter remaining in Robertson's possession, I would find it impossible to say that what was alleged was other than a verbal contract, and I would find it impossible to say that the 'letter' which was read emanated from Quinlan. By what mental process could it be said that a letter, written and addressed by A to B, was a writing which emanated from B?

Part of Robertson's allegation was that the scrip for the shares, the same indorsed in blank, had been delivered to him at that meeting on 20th June. The significance would have been that the delivery constituted a completion of the sale. The allegation was false, and Robertson knew it to be false; it is now proved to be false. It is unquestionable now, that on 21st May Quinlan indorsed the scrip, and handed it to Robertson for safe-keeping; on 23rd May, Robertson handed it to Leamy to be put in the office safe. Leamy put it in the office safe, namely in the office safe of A. W. Robertson Limited, a company of which Quinlan was half owner. Leamy then gave to Robertson a receipt, in the form of a letter addressed to Robertson, which stated that the scrip was put in the safe, that it was the property of Quinlan, and that it was there for safe-keeping. It is certain, I think, that Quinlan's indorsement on the scrip on 21st May cannot constitute a 'commencement of proof in writing' toward proving that Quinlan sold the shares to Robertson on the 20th June.

There being no writing to prove the sale, and no commencement of proof in writing to admit testimonial proof of it, Robertson invoked, as proof, the probability of it, this by reason of a number of circumstances some of which he proves (under reserve of objections), others, hinted at, rather than proved. The first remark to make is, of course, that the law does not permit a contract, such as this, to be proved otherwise than as set out in the articles of the Codes cited supra.

Among the circumstances relied upon, perhaps the principal ones, are these: that in April, Robertson being then travelling on the Meditarranean, Quinlan, in conversation with Leamy, said in effect that he was awaiting Robertson's return as he would like to sell his shares in different companies to Robertson; that when Robertson, aftter his return, saw Quinlan, Quinlan told him he would like to sell his shares and suggested Robertson might buy them; it is half affirmed in Robertson's evidence, that a sale to Robertson was approved between them in principle, the price to be fixed by J. L. Perron; it is said that Perron went to see Quinlan about this, the only proof as to this being Miss King's evidence that on an occasion—not in the winter, but in the spring or early summer,—Perron had asked for Quinlan's home address and that a taxi be called for him,—this is looked upon as sufficient proof that Perron saw Quinlan and fixed the price of $250,000.; then the endorsement and delivery of the scrip and the meeting on 20th June.

In my view, circumstances such as the above are not admissible as proof of the sale alleged. In my judgment the above circumstances, if admissible, and if true, would not be sufficient to establish as a fact that a sale was made. I add this: what is contended is that these circumstances were the preliminaries of a sale, Quinlan to Robertson; Perron was called in to complete and give form to a sale; he is said to have prepared the document which culminated the whole matter; that document is the 'letter' of 20th June; it is sufficient to read it to see that it does not express nor constitute a sale from Quinlan to Robertson. If it does not do that, it must follow that the supposed conversations in April or May, between any of the parties named, were not intentioned toward a sale.

There is another matter which, I think, I should mention here;—it is with respect to transfers, made in company books, of Quinlan's shares into Robertson's name. As mentioned supra, Robertson received from Quinlan, on 21st May, the scrip representing Quinlan's 1151 shares in Quinlan, Robertson & Janin Ltd, and his 250 shares of Amiesite Asphalt Ltd, all of which indorsed in blank. The circumstances also are mentioned supra.

In the Minute Book of the Quinlan-Robertson-Janin company, there is a minute of a meeting of the Board of Directors of that company which, it is stated, was held on the 22nd June 1927 at eleven o'clock a.m.; the minute states that notice for the meeting was given on the 18th June; the minute states that those present at the meeting were A. W. Robertson and A. Janin; A. Janin was the secretary of the company; the minute contains this entry: (C. vol. 6 p. 277).

> The Secretary submitted to the meeting a transfer by Mr. Hugh Quinlan of One thousand one hundred and fifty one shares of the capital stock of the Company in favour of Mr. A. W. Robertson, Montreal.
>
> On motion duly made, seconded and carried unanimously It was resolved that the said transfer be accepted.

In the Minute Book of the Amiesite Asphalt Ltd. there is a minute of a meeting of its Board of Directors stated to have been held on the 22nd June 1927 at noon; the minute states that notice for the meeting was given on 18th June; it states that those present were Alban Janin and A. W. Robertson; C. J. Malone was

the secretary of the company; (ib. pp. 279-280) in this minute are two resolutions, identical in terms to the above, for the transfer into Robertson's name of the 50 shares which were in Quinlan's name, and the 200 shares which were in Dunlop's name.

According to Robertson's evidence it was the auditor of the Companies who drew up these minutes. The auditor was a Mr. Petrie. Petrie testifies as to these matters (C. vol. 4 p. 690). He tells us pp. 700-2 that it was upon Robertson's instructions that he prepared the notices, which he believes were sent out on that date 18th June; that Robertson told him then that the purpose of the meeting was to transfer shares; He says that the minute as entered was prepared by him, in accordance with Robertson's instructions. His evidence is the same as to both Companies.

The 'transfers' mentioned in those minutes were the transfer indorsements printed on the back of the scrip, which Quinlan had signed in blank, and into which, on Robertson's order, Petrie had inserted Robertson's name as transferee.

Thus it appears, from the information and instructions given by Robertson to Petrie on the 18th June, and the notices of meeting sent out on that date, that on 18th June Robertson had decided to have put in his name the scrip that Quinlan had handed to him. In the circumstances recounted, on the 21st May.

There is quite room for doubt as to whether Directors' meetings of the companies were held on the date mentioned, the minute may have been entered and afterwards approved, as is frequently done in the case of private companies (Petrie pp. 701-2), and according to Mrs. Desaulniers' evidence it was just at those hours of that day that Robertson was at the Quinlan house. But that is not the point; the real point is that Quinlan had no part nor knowledge of these transfers, and that the transfers were in violation of the purpose for which the scrip was handed to Robertson on 21st May, which was "safe-keeping".

In some way, it had come to the knowledge of the Plaintiffs that Robertson had had made, in the company books, transfers of the Quinlan shares to himself (Robertson); although without particulars, they alleged the matter in their action, paras. 11 to 16;

> 11.—That on or about the 22nd day of June 1927, . . . the said Robertson . . . personally and for his own benefit, acquired a number of shares, the property of the said testator, in different companies. . .

12.—The said transfer of said shares to said. . . Robertson is due to fraud on the part of the said Robertson. . . .

13.—That the said transfer of shares was thus fraudulently operated when the said Testator was fatally ill . . .

14.—That the said transfer of shares was contrived at a stage of the Testator's last illness when he was unable and forbidden, to the knowledge of everyone, to transact any business whatsoever; and his attending physician had given strict orders to that effect;

15.—That the said transfer of shares was made at a moment when the said testator was continuously under the care of two day nurses and two night nurses, as well as of doctors in attendance;

16.—That the said testator at the time of the said transfer of shares was in a physical and mental state which rendered him incapable of giving a valid consent;

We know from the testimony of the nurses, of Mrs. Desaulniers, of Dr. Hackett &c. in what condition Quinlan was on the 22nd June; it coming to the knowledge of the Plaintiffs that transfers as of the date 22nd June were set up by Robertson, it was natural enough that they should have referred to them in the way they did in their action. Now, the contention has been put forward, on behalf of Robertson, that these allegations in paras. 11 to 16 are to be interpreted as being admissions by the Plaintiffs that real and consensual transfers of the shares were made by Quinlan to Robertson on the date 22nd June; that, such being the admission,—the formation of the vinculum juris being admitted—the sole question remaining is as to whether there is any illegality attaching to those voluntary transfers. I declare the contentions to be unfounded; it is based upon a misinterpretation of the allegations; it leaves out of account the circumstances in which the Plaintiffs were when the allegations were made; it leaves out of account the proof subsequently made of the complete circumstances; and it is incompatible with the Defence, which is that the shares were sold to Robertson on the 20th.

I do not require to say that the whole proceeding of 22nd June, being due to Robertson's orders, has no more legal effect than Robertson's orders could create. The proceeding on the 22nd June remained secret until shortly before the action was instituted.

The conclusions to which the matters above related all lead are:

1.—That Robertson did not at any time, during Quinlan's lifetime and by reason of a purchase made by him from Quinlan, become the owner of the shares Quinlan - Robertson - Janin, Amiesite - Asphalt, and Ontario-Amiesite;

2.—It was a breach of the terms, upon which he received possession of the scrip on 21st May 1927, that Robertson had the shares represented by that scrip transferred into his name; (it was by reason only of his authority over the employees of the companies in question, that he was able to have these transfers entered in the companies books);

3.—As between Robertson and Quinlan at the time of Quinlan's death, and as between Robertson and the Estate Quinlan thereafter, the said shares were the property of the Estate and formed part of the corpus thereof;

4.—By reason of her right to have conserved intact the corpus that Estate, the Plaintiff is entitled now, in this action, to demand the restitution to that Estate of those shares, or of the value thereof, as may be found proper;

Those shares, having formed part of the Estate, and Robertson being an Executor-trustee, the article 1484 C.C. prohibited him from becoming buyer of them, either openly in his own name, or through some other person for his advantage or account.

1484. The following persons cannot become buyers, either by themselves or by parties interposed, that is to say: . . . Administrators or trustees, of the property in their charge . . .

I mentioned, supra, that one of the condemnations, sought by the action, was that he Executor-trustees be condemned to render an account of their administration; I mentioned also, that the Defendants, in their Defences, affirmed that they were then, and had always been, willing and ready to render an account; I then made some comment as to the untruthfulness of this affirmation; my comment was justified also by the fact that these De-

fendants persisted in their refusal to render an account, and that the judgment of 6th February 1931 declared that they were not obliged to render one. The Supreme Court has declared that issue to be res judicata; namely that the Plaintiffs are not obliged to render an account now. The reason, of course, is that the Executor-trustees are still in office, and it will be when their trusteeship ends, that they will be called upon to render it.

Such being the circumstances, it seems clear to me; by reason of the declaration in the judgment of this Court of the 6th February 1931, supplemented by the declarations in the judgment of the Supreme Court, that questions of the nature of contestations of a trustee's account have been relegated from this action. Claims of that nature, which Plaintiffs put forward in their notarial protest, and which Intervenant sought to bring into the case by his Intervention, amount to hundreds of thousands of dollars. As mentioned supra, Robertson had them struck out by the judgment of the Court of Appeal of 26th June 1936. The claims in question were not thereby lost to the Plaintiffs, nor to the Estate, but the adjudication of them is left to litigation, other than the present, if they are to be persisted in.

The significance of the finding, just expressed, is that the present action is to be confined to what is relevant to preserving "intact the corpus of the estate" as against Robertson, namely in having restitution from him, personally, of what he may, without legal right, have possessed himself of, from the assets of the Estate.

The assets as to which restitution is claimed are these:

The group 1151 shares Quinlan-Robertson-Janin,
250 " Amiesite-Asphalt
200 " Ontario-Amiesite

1000 shares preferred Fuller Gravel Co. (atttached to which are 499 shares of common).

Before coming to the consideration of each of those assets, I probably should recount, succintly, the administration of the Estate from the date of the death to the institution of the action. Hugh Quinlan died on 26th June 1927. On 9th July, the Safety Deposit Box, which he had at the Bank of Toronto, was opened, and a list made of the contents. Those present were the Managing Director of the Capital Trust Co., the Estates Officers of that

company, and L. N. Leamy accountant of the Quinlan-Robertson-Janin Company.

On 18th July, a document bearing the caption 'Inventory at date of death June 26th 1927' was composed, partly from the Safety Deposit Box list, partly from elsewhere; it purports to be a list of assets, without mention of any liabilities, and it does not appear by whom it was made; it is unsigned.

Under the law of this Province C.C. 919, testamentary executors are obliged to cause an inventory of the estate to be made, *after notifying heirs legatees and other interested parties to be present.* No notification of any kind was given to the Quinlan heirs or legatees; none of them had any knowledge either of the opening of the Deposit Box, or of the preparation of this 'inventory,. This is one of the complaints in the action. The answer which the Defendants individually make to this complaint is that "there was no necessity in fact or in law of giving notice to" the heirs. They rely, as justification for the omission of notice to the heirs and the incompleteness of the 'inventory', upon the article 6 of the Will: 'It is my desire that no inventory be made before Notary and that the inventory of my Estate shall be made in the form of commercial inventories'. I am unable to admit that dispensation from the notarial character, dispensed from notice to the interested parties, or from the observance of C.C. 919, or deprived the interested parties of the safeguard of an inventory in which they took part.

I am unable to admit that the words of the Will: "give and bequeath the residue or balance of my estate without any exception, in trust jointly . . . appointing them jointly my Trustees and Testamentary-Executors, with the seizin and possession of all the said residue or balance. . . immediately after my decease. . ." made these trustees the absolute masters of the Estate, with the right to completely ignore the heirs in the determining of the composition of the Estate (the inventory); to leave the heirs in complete ignorance of the trustees' administration; to deny to the heirs information, except what they might glean ex post facto from the annual report of the Auditors of the Estate; (The Audit of the years 1927 was sent to the heirs only in August and September 1928); to consult the heirs as to nothing. After all, these Defendants were not owners but merely Trustees, and in addition to the words which invested them into that office, the Will continued: "for the purpose of carrying into effect the provisions of this my present will. . . "

It is quite evident, however, that that is the way these trustees assumed to act, and acted. The explanation is not difficult to find; it is indicated in the correspondance of August and September 1928, where, in effect, Perron directs that the heirs are to be ignored. The representation from Robertson's side is repeated, and repeated again, that everything that was done throughout, was done with the approval of Perron. That affirmation is to this extent borne out in the record, that throughout, Perron was acting in and for Robertson's interest, as Robertson's adviser and helper; nominally he was consulted as the legal adviser of the Estate, but really the advise given was in the sense sought to Robertson.

It is next to impossible to suppose that the Capital Trust Corporation, an experienced and high-class Trust Company, would, if left to itself, have assumed to act in the arbitrary, inconsiderate and discourteous way in which these Trustees acted. The explanation must be that the Trust Company felt obliged to follow Robertson, and the conduct was directed by Perron.

Their contestation of the demand in the present action namely the demand that Robertson return what it was alleged he wrongfully took, a contestation which was directed—perhaps instigated — by Perron is but one example of their ill-advised acts. Martineau J. felt obliged to put certain costs to their personal charge on account of that unjustifiable contestation, and I have felt obliged to do similarly. I am sure this Trust Company know from their experience,—and I am equally sure that it is their invariable practice when left to themselves—, that the duties of a trustee can be carried out just as efficiently when the attitude toward the cestuis que trust is one of impartiality, frankness and courtesy.

To continue the account during the administration: *Group of shares*: Quinlan-Robertson-Janin, Amiesite-Asphalt, Ontario-Asphalt;

On 22nd July 1927, Robertson wrote to the Trust Company and said that "all Quinlan-Robertson-Janin stock as well as all Amiesite stock that once stood in Hugh Quinlan's name were transferred to me before his death. . . These shares constituted *what I was to endeavour to obtain* $250,000. *for. . .*"

On 19th August 1927 Robertson wrote to the Capital Trust to say that Janin had suggested a purchaser for the Quinlan-Robertson-Janin shares at the price $250,000., one half cash, the other half payable in one year with interest at 6%, the shares to

remain in escrow until paid for, and he adds "If this proposition meets with your approval, kindly write to me, and I shall consummate the transaction at once."

On 26th August 1927 the Trust Company sent to Perron a copy of the 'letter of 20th June 1927 with information of Robertson's letter, and continued: "If you do not see anything that would present the executors from making a sale of the late Hugh Quinlan's interest in the following companies: . . .

will you kindly get in touch with Mr. Robertson at the first opportunity and arrange to prepare the said document, so as to enable the executors to complete the transaction as soon as possible".

Evidently the Trust Company were advised later that the Trustees could make the sale, and on 29th December 1927 Robertson sent them a draft for $125,000. "on account of the purchase of the late Hugh Quinlan's shares in Quinlan, Robertson & Janin Limited and the Paving Companies. This represents 50% of the total amount to be paid for the stocks in question".

Robertson sent another $125,000. on 28th January 1928. It is by these payments amounting to $250,000, that Robertson paid for, and supposedly became owner of, the Quinlan shares in Quinlan-Robertson-Janin, Amiesite-Asphalt and Ontario-Asphalt companies. Such purchase by him was, by reason of C.C. 1484, illegal, null and of no effect.

Fuller Gravel Co. shares: This was a company with a capitalization of 2,000 preferred shares and 1,000 common shares.

Quinlan owned one half of each class of shares.

On 16th August 1927 Robertson wrote to Perron asking him to arrange to meet himself (Robertson) and Dr. Connolly of the Capital Trust Company in order to discuss the sale of the shares of Quinlan Estate in this company. In this letter Robertson adds "I, personally, do not want to buy any of the stock, except two or three shares each of the common and preferred so that I shall have 51% of the stocks".

Apparently the meeting took place, for on 20th August the Capital Trust, per Parent the Estate Manager, wrote to Perron asking to be advised "if it will be in order to accept the offer of $50,000. for Mr. Quinlan's interest in the Fuller Gravel Company Limited."

On 22nd August Perron wrote: "I have examined the statements of the Fuller Gravel Company Limited and have carefully considered the matter. *I agree with Mr. Robertson* that if the Estate can get $50,000. for its interest in this corporation, it should dispose of it."

It may be noted that the name of the party offering the price $50,000. is not mentioned. From the correspondence I think we may take it as certain that Robertson represented to the Trust Company that he had a firm offer of $50,000. for the shares. From receipt of Perron's letter of 22nd August Robertson looked upon himself as authorized to sell it at the price named $50,000. which is $50. per share for the Preferred — the common as a bonus. (The sequel was that he had 850 of the shares transferred to himself at that price). Some correspondence followed, and later he reported that he had sold the total number, namely as follows:

To W. E. Tummon	600	Preferred with	bonus of common
G. W. Rayner	200	do	do
G. S. McCord	200	do	do

It is stated in Robertson's Particulars (C. vol. 1, p. 55) that Tummon refused to take and pay for the 600 shares said to have been sold to him; this is not borne out by the evidence at the trial —not entirely. What appears there is that Tummon did eventually keep 50 shares, and the other 550 shares were transferred to Robertson. Much the same happened with respect to the 'sales' to Rayner and McCord; in each case, the nominal buyer kept 50 shares, and the remainder were transferred to Robertson. Robertson thus got 550 of the 'Tummon' shares, 150 of the 'Rayner' shares and 150 of the 'McCord' shares in all 850 of the Quinlan 1000 shares. It is admitted in the same Particulars, and is proved in the record that it was Robertson who paid the total $50,000. for the 1,000 shares, Subsequently, and between Robertson and each of Tummon, Rayner and McCord, he received back from each $2,500. Some months later Robertson sold the total 2,000 shares namely his own original 1,000 shares, the 50 of Tummon, the 50 of Rayner, the 50 of McCord, and the 850 that he acquired through Tummon, Rayner and McCord for $180,000. namely at $90. per share. He had paid the Quinlan Estate $50. per share for them.

The question to which these transactions give rise is as to whether the sales, which Robertson reported he had made to Tummon, Rayner and McCord were genuine and bona fide transactions, or were they colorable transactions, those parties being

merely interposed, and with the intention on Robertson's part to get title to those shares for himself? Martineau J. came to the conclusion that illegality affected acquisition by Robertson of 400 shares only; Martineau J. was willing to suppose that the three transactions Tummon, Rayner and McCord should be considered valid each for 200 shares, and he found by the judgment of 6th February 1931 that it had been illegaly—as in contravention of C.C. 1484—that Robertson had acquired the other 400 shares. Martineau J. reached this conclusion, although he finds that Robertson was acting in good faith.

Since there was no cross-appeal, the Court of Appeal was unable to increase Martineau J's award—which as just stated was limited to the 400 shares—and the Court of Appeal left the condemnation as it was.

In my judgment, it appears amply from the record that all three transactions were colorable transactions, that all three Tummon, Rayner and Mc Cord were persons interposed, for the purpose on Robertson's part of himself eventually acquiring title to the shares.

Quite possibly these persons were not aware of the role they were playing but Robertson knew all along. It is equally certain that Robertson acquired the shares for the purpose of making the profit which he actually did make, and that under our law he was forbidden thus to traffic in the assets of the Trust for his own personal profit. He must be condemned to make restitution to the Estate of the profit he personally made, namely $40. per share on the 850 shares, to wit: $34,000.

Perron's above letter was of the 22nd August 1927; both in Robertson's and in the Capital Trust Company's Particulars it is stated that the sales to Tummon, Rayner and McCord were made "during the month of August 1927"; this statement is not quite right, according to the correspondence filed; according to this latter the dates would be in September 1927; the payments extended over the period 6th Sepember 1927 to 28 May 1928.

It is recounted, supra, that Quinlan's shares in Quinlan-Robertson-Janin and in Amiesite-Asphalt were transferred into Robertson's name on 22nd June 1927. At a meeting of the Board of Directors of the Ontario Amiesite Company, held on the 16th November 1927, resolutions identical to those passed on 22nd June were passed for the transfer into Robertson's name of the 200

shares theretofore in Quinlan's name. (C. vol. 6 p. 280) Thus, it is from the 16th November, that all the shares of the 'group' were in Robertson's name. In August he had advised the Capital Trust of a buyer suggested by Janin for these shares at the price of $250,000. and Perron was consulted as to whether the Estate might sell them for that price. The conclusion arrived at was evidently in the affirmative, for as above stated Robertson remitted the money. The purchase was made by and for himself. The date of it was the 29th or 31st December 1927.

From the record it seems to me to be undoubtedly clear, that, up to that date say 31st December 1927, the Executor-trustees, and all concerned, never thought otherwise than that the shares in this 'group' belonged to the Estate,—although they were in the companies' books registered in Robertson's name. Robertson's letters—including especially that of the 19th August 1927—make it certain that that was his view the report to the Succession Duties Office of the 18th July 1927, sworn to by Mr. Parent on the 17 September, 1927 (declares the Quinlan-Robertson-Janin shares to be the property of the Estate. (There is no mention in this report of the Amiesite-Asphalt or the Ontario-Asphalt shares, but they were in the same 'group', and I would think the omission was due to inadvertence.) It is impossible to believe and I do not believe that Mr. Parent swore otherwise than what he believed to be true, namely: that these shares were the property of the Estate; as at the date 31st December 1927, these shares, according to the Auditors' examination of the books and their report, were still borne as assets of the Estate, and, when that report was sent to the Plaintiffs in Angust 1928, the same state of affairs was indicated. In September 1928 a correction was made, and the statement then made that the Q-R-J shares were sold in 1928, — apparently giving to the sale the date of Robertson's final payment which was 28th January 1928.

The conclusion to be drawn from these facts is that the date when Robertson really assumed to be, and became, the purchaser of these shares was 31st December 1927.

It is, as of that date, that the valuation of the shares is to be made. (With much respect I mention that in the Court of King's Bench, the view was expressed that the date should be the date of the institution of the action, but, since then, the matter has been further clarified, and the date I have given seems to be the one to be adopted.—in any case the difference in valuation was not large, and it was in the Plaintiffs' favour.)

It was only after the action was instituted, and when the matter came into the hands of counsel as above mentioned, that the affirmation was made that there had been a sale on the 20th June 1927—an affirmation which proved to be entirely without foundation from all the circumstances proved, and more particularly from the evidence of Robertson and of Leamy, both at the first trial, and as unrestrictedly allowed at the trial before me. The explanation of this also has been indicated supra.

The conclusion to which I must come is that date of the sale was 31st December 1927, for that was the date when the Capital Trust Company received the first payment and gave its consent to the sale. The sale must be annulled, and declared to be null and illegal, by reason of the purchaser being a trustee, this under C.C. 1484

The sale to himself, which Robertson brought about, being annulled, what must the consequences be? In normal circumstances, the return to the rightful owner of the articles wrongfully possessed together with natural or civil fruits, together with indemnity for deteriorations if any, together also with damages according to circumstances, this against re-payment of the price paid. The result, that must be brought about by the adjudicating authority, is that the rightful owner is re-established in a monetary way so that he will not suffer loss. If the articles cannot be returned, or if their return would not bring about the result above mentioned, justice may require that the wrongful possessor be condemned to pay the value on the date of the sale plus interest and plus also damages if the case require it.

The shares included in the sale of the 31st December 1927 were those composing the 'group' already noted:

1151	shares	Quinlan-Robertson-Janin,
250	"	Amiesite-Asphalt,
200	"	Ontario-Amiesite.

As to the Amiesite-Asphalt shares, Robertson sold them together with the other 750 shares in that company to the W. P. McDonald Company;—this in September 1928, so when the action was instituted, he was no longer in possession of them.

As to the Ontario-Amiesite shares they were in Robertson's possession when he gave evidence at this re-trial.

As to the Quinlan-Robertson-Janin shares, it appears by a written agreement which Robertson filed that he sold these 1151 shares to Mr. Janin on 26th June 1930, and that by that agreement it was provided that these 1151 shares should be held in escrow by the Sun Trust Company, and in the event that by the final judgment to be rendered in the present suit it is declared that those shares are the property of the Quinlan Estate, then the Trust Company is authorized to abide by the judgment and deliver the shares, in which event Robertson is to reimburse Janin the buyer the sum of $269,000. with interest thereon at 6% from 26th June 1930. (In this agreement the shares are called shares of the Alban Construction Company,—that being the new name of the Q-R-J Company.)

As stated supra, the sale to Robertson of the shares in Quinlan-Robertson-Janin, Amiesite-Asphalt and Ontario-Asphalt must be declared illegal and null. The date of this sale was 31st December 1927, which is the date on which the Capital Trust accepted the initial payment of $125,000. and gave formal indication of its consent to this sale (C. 6, 280). The sale being annulled, what must be the restitution that Robertson must make? Counsel on his behalf suggest that no more can be ordered that return in kind of the Ontario-Amiesite and of the Quinlan-Robertson-Janin shares, together with the value at the date of the sale of the Amiesite-Asphalt shares. Opposing counsel say that these shares having been sold as a group, the only tender admissible — even at the commencement of the suit—would have been of everything included in the group; they say that, even then, if the totality was not returned, the alternative was monetary compensation for the lot.

In my opinion, the juridical situation, and the requirements of substantial justice require that the restitution consist of the fair value of the shares at the date of the sale, with interest from the date of the default, (C.C. 1077-a.2) but without allowances for appreciations or depreciations in value which may have occurred thereafter. It is such compensation which I propose to allow in the judgment.

In connection with this, I may say that it is now more than twelve years since Robertson took possession of these shares; since possession taken he has done with them what he pleased; when required, in October 1928, to return them, he refused, and he has refused continuously ever since; the Plaintiff, and the Estate, have no knowledge of what he may have done with the assets of the companies, or in what condition they are; if taken back at the present date, they would be taken back blindly.

For the Estate to take back these shares today, there would be cast upon it, in its interest, the obligation to investigate the last twelve years, and then seek to exercise such recourses as may have become attached to the shares during that period. These, and other considerations equally pertinent, juridical and equitable, make it certain, I think, that it is monetary compensation to which the Estate is entitled.

I am called upon therefore to fix valuation for the shares as at the date 31st December 1927. In coming to this task, there are I think, these two considerations which should be given effect to: *first* that the shares were taken without the consent, and without even consultation with, those who had the proprietary interest in them, I mean the Quinlan family; the buyer's co-executor was deceived into giving its consent; the price paid he says was a price which the buyer himself fixed,—he in consultation with his lawyer Perron;

second: that after twelve years of possession, of uncontrolled possession, of evidently illegal possession the spoliator cannot beg for favours, he cannot ask for ultra-precise and niggardly valuations. There is a rule of conduct in the Civil law, one meant for application in situations to which the present one bears much analogy, and the rule is *spoliatus ante omnia restituendus.* The figures which I feel called upon to adopt are figures which may fairly be said to be Robertson's own, for I will go by the Balance Sheets of the Companies. I will take however these figures as they appear there, they are the figures which were declared by the companies' auditors unquestionably they were adopted by the Directors, of whom Robertson was certainly the chief. Dodgings away from those figures do not appear to me to be permissible or even straight forward.

The figures which I adopt and follow are those of Mr. Schurman, a chartered accountant, called in for the purpose of analysing the balance sheets,—not to reform or re-explain them—, himself unconnected with the controversies. I find his evidence more acceptable than that of Petrie for obvious reasons.

To arrive at the valuation which Robertson should pay for the *Quinlan-Robertson-Janin shares,* I am given that the assets shown on the Balance Sheet of the date 31st March 1927 work out to represent a value of (approx.) $207. per share; the Balance Sheet of the date 31st March 1928 shows assets which work out to represent a value of $249. per share. The increase in value was,

I would think, due, at least chiefly, to profitable business in the interval between the two Balance Sheets and it is not said or contended that any new capital, as such, was put into the company during that interval. The date 31st December 1927 is between these two Balance Sheets, the exact figures of values for the date 31st December 1927, are not in the record, probably they were never made up. But I am obliged to find a figure, and I think I may, without risk of any error to Robertson's disadvantage take as the value on 31st December 1927, a figure about half way between those two. I do so, and put the value per share on that date as $227. per share. This gives to the Quinlan 1151 shares a value of $261,277. (This figure seems to be a fair one when it is borne in mind that Robertson sold these same shares to Janin on 26th June 1930 for $269,000.) (Exhibit P.-S.-7 filed at the re-trial). The values of $207. and $249. per share are arrived at after providing among the liabilities for a dividend, declared but not yet paid, amounting to $84,947.; of this the amount payable on the 1151 Quinlan shares was $28,315. This $28,315 being added to the $261,-277., brings to the Quinlan shares, on the date 31st December, 1927, a valuation of $289,592. It is at that figure that I must fix their value, and the price that Robertson must pay.

To arrive at the valuation which Robertson should pay for the *Amiesite Asphalt* shares, I am given that the assets shown on this company's Balance Sheet of 31st March 1927 work out to represent a value of (approx.) $265. per share; its Balance Sheet of the 31st March 1928 shows assets which work out to represent a value of (approx.) $434. per share. The company was in a very prosperous way, for the assets on 31st August 1928 showed a value on that date of $608. per share. In September 1928 Robertson sold these shares for approximately that figure $608. per share. Martineau J. estimated the value of these 250 shares of Quinlan to be $400. each, thus $100,000. for the lot; I agree with his opinion that the matters proved justify that valuation of these shares. I adopt the valuation of these shares at $100,000.

Robertson says in his evidence that the shares of *Ontario-Amiesite* are, and all along were, valueless. No evidence was made to contradict that statement, and I accept it. He will not therefore be condemned to pay anything as for the value of those shares.

The conclusion then is that Robertson must be condemned to pay $289,592. as for the Quinlan-Robertson-Janin shares, and $100,000. as for the Amiesite-Asphalt shares and he must be condemned to pay as for the difference on the Fuller Gravel shares $34,000. The debits must bear interest at the legal rate, from the

date of the institution of the action, credit must be given on the same basis for the amount since paid, and the account made up accordingly.

Before proceeding to make up the account, on the basis just stated, and proceeding to deal with the question of costs, there are a few remarks that I think I should make.

The first is that so far as the record shows, Mr. Janin took no participating part in bringing about the transfer of the shares from the name Quinlan to the name Robertson; he did not do anything to oppose what Robertson was engaged in, and it could not be expected of him. Mr. Janin at some time or times may have assented that $250,000. was a fair price for the shares, but in his evidence at the re-trial p. 45-6, he corrects that he had proposed a buyer as Robertson had said in his letter of 19th August 1927 to the Trust Company.

Second: I think that the record is to the effect that the intentions and attitude of the Trust Company were to act in compliance with legal requirements (in the preparation of the inventory &c) to act with consideration and courtesy toward the cestuis que trust, and otherwise conduct the realization and administration of the Estate in a normal business way, not with secrecy and arbitrariness. I cannot explain, and no more than Martineau J., I cannot pass without comment their active espousal,—against the interests of the Estate,—of Robertson's contestation of the present action, nor the consequences which they thereby brought upon themselves.

Third: For my own part, I would be willing to believe that Robertson personally believed he was within his right throughout, but if that were so, the error in which he was, was due to the bad advice he had received: the bad advice that a testamentary executor's inventory could legally (or even with a semblance of fairness) be made without notice to the heirs: the bad advice that while being a trustee he could acquire property forming part of the trust, that he could buy it in order to re-sell at a profit; the bad advice that cestuis que trust may be refused all information as to the composition, realization and administration of the trust property, except what they may find in a belated audit report the bad advice that it is permissible, or even sensible to ignore them "entirely"; the bad advice that the 'letter' even according to its terms constituted a sale to him of the shares (a contention which began only after the action was instituted, Robertson himself did not, until then, contend any such thing; then the affirmation in the Defence that on the 20th June there had been simultaneous exchange of 'letter' for scrip; the affirmation that the Defendants were and had, at all times, been willing to render account.

It is evident I think that having adopted the advice given him, and having acted upon it, the consequences must be borne by himself. It seemed to me for a time, on general irenic grounds, that there might be room for a settlement of this matter between the parties, and I asked them if that might be so. After some delays, it became certain that no agreement could be arrived at, and that a judgment must intervene.

Fourth: There is in the Will this provision: "I wish and desire that the Honourable J. L. Perron be and should continue to be the legal Adviser and Advocate of my Estate". Those words are clear and definite the functions of a legal adviser and advocate are well known; since the testator did not grant more or other, not more or other authority was possessed. It is urged, on behalf of the Defendants, that anything that Perron may have approved of is to be considered as binding upon the Estate. As a matter of law that proposition is erroneous; the general principles of the law of Mandate, and more particularly of the mandate of the Advocate, deny it. But there is another reason, and a potent one, namely that, throughout, Perron was the advocate and legal adviser of Robertson pearsonally, he was therefore debarred from acting as legal adviser to the Estate in its dealings with Robertson personally, such matters, the dealings between the Estate and Robertson personally, are the sole matters at issue in the present suit.

Fifth: The record is voluminous, there is much matter in it, some parts of more direct bearing than others, and the issues have been very fully argued; it is certain that not all points made, or argued for, can be dealt with in these notes, though they have reached somewhat inordinate lenght I can say, though, that I think I have given careful consideration to all what was before me, even if there be not mention of it herein.

Sixth: in the adjudication which must be made against the Defendant Robertson, the item of interest wil be a very large amount. It is unfortunate, but all the delay is imputable to himself and he may not complain of it. When all the parties were in the Supreme Court apparently a settlement was sought for, but, oddly enough, the Plaintiff Mrs. Kelly was not brought into it. The omission was patent enough, I would say, but it seems to have been persisted in from the date of the deed with the other interested parties (31st January 1934) until the Supreme Court judgment of 6th June 1934. There being no settlement made with Mrs. Kelly by the latter date, the Supreme Court, in its judgment, affirmed her right to continue the suit in order to preserve intact the corpus of the Estate.

The formal judgment will not contain a computation of interest, but the condemnation will work out much as follows:

31st December 1927

Quinlan-Robertson-Janin shares	289,592.
Amiesite Asphat shares	100,000.
	389,592.
Less payment on account	125,000.
	264,592.

21st January 1928

Payment 'as for interest' but as in execution of a transaction declared to be illegal and null, and therefore the payment is to be credited generally on account of the purchase price	3,750.
	260,842.

28th January 1928

Payment on account	125,000.
	135,842.

23rd May 1928

Profit on 850 shares of Fuller Gravel Co. Ltd., due to the Estate	34,000.
	169,842.

This $169,842 was the amount due by Robertson to the Estate at the date of the institution of the action.

The date of the service of the action does not appear from the record as before me, and I am assuming the date to have been the 31st October 1928.

Interest on the above amount commenced to run from the date of service, at 5%, and calculated up to 21st December 1934 6 years and 51 days.	52,140.22
Amount due on that date 21st December 1934	221,982.22

On which date the Defendant Robertson paid to the Estate the sum of:	50,000.00	
and there remained due a total of:	$171,982.22	
of which $169,842. was capital, and $2,140.22 was interest	Capital $169,842.	Interest 2,140.22
On the capital interest runs; and, calculated up to the expected date of the present judgment, 21st April, 1940, there will be added that interest 5 years and 5 months, at 5%		45,953.66
	$169,842.	$48,093.88

At the date 21st April 1940, the balance due would be:

In capital:	$169,842.00
and in Interest:	48,093.88
Thus a total of:	$217,935.88

The judgment must be to condemn the Defendant Robertson to pay to the Estate Quinlan the above amount of capital together with interest calculated according to the indications hereinabove. The Judgment must also authorize and direct the Executor-Trustees to accept, as belonging to the Estate and from the said Defendant, the above amounts, as they may be paid by or collected from that Defendant. It may not be necessary to add that the Plaintiff, entitled as she is expressly declared by the formal judgment of the Supreme Court of 6th June 1934 to be, to institute the present suit for the preservation intact of the corpus of the Estate, will be declared entitled to execute the judgment in due course of law, and to take the legal measures necessary for its execution.

As to the credit given for the $50,000. paid to the Executor-Trustees on the 21st December 1934, I should make an explanation. That amount was paid to the Executors as in execution of the agreement contained in the deed of 31st January 1934; that deed, by the present judgment, is being declared null and void as against the Estate, so, in the ordinary course, the Defendant would

be entitled to return to him of the money so paid together with legal interest. But, if the demand for the return were made, the answer from the Executors would be that, by this same judgment, the party entitled to re-imbursement was condemned to pay a larger sum to the debtors of the re-imbursement, and by operation of law compensation would extinguish the claim to re-imbursement as also pro tanto the larger claim of the debtors of the re-imbursement. The result would in fact be as above set out.

Next, is the question of costs. I mentioned supra, that the judgment of the Supreme Court, of 6th June 1934, had quashed "in part" the judgment of this Court of the 6th February 1931, and I mentioned, for the reasons I then gave, that the interpretation to be given to this is, that, saving the exceptions mentioned in the Supreme Court judgment itself, the judgment of 6th February 1931 is quashed in toto. That would mean that the condemnations to costs, contained in that judgment, ceased to be of effect, and that costs of that trial became one "of the issues remaining to be decided" between the remaining Plaintiff and the Defendant Robertson. I mentioned, supra that the action as instituted was a composite one namely *as to one part* it was directed against Trustees alleging neglect of duty &c. and asking for their ouster and for a rendering of account; *as to the other part* it was directed against Robertson personally (he one of the Trustees) to have him return property to the Estate with the Trustees parties to this issue to ensure acceptance and receipt by them of whatever Robertson might be condemned to return. The part of the action, which sought ouster of the Trustees and an account, was dismissed, and that dismissal was acquiesced in by the Plaintiffs. It is completely ended, and no part of it comes up on this re-trial. The other part of the action, namely that against Robertson personally, was maintained by the first judgment; it went by appeal to the Supreme Court, and is back here for re-trial. The jurisdiction being exercised now is with respect to this part, and this part only, of the original action.

By the judgment of the 6th February 1931, the costs were adjudicated as follows: 1.—The costs of the trial proper, namely the enquête: enquête, counsel fees witnesses stenography of all the parties to be bulked together, then that aggregate to be divided into thirds one third payable by Robertson personally, one third payable by the Capital Trust personally, and one third payable by the Estate; 2.—The Capital Trust Co. to pay their own costs of defence, but not condemned to pay any part of the Plaintiffs' costs;

3.—The Defendant Robertson condemned to pay Plaintiffs' costs of action other than the costs of enquête which were adjudicated as above.

Those adjudications have been quashed; it is my duty to adjudicate upon the costs of the first trial; but I must not trespass upon the issue which is declared terminated, namely that between Plaintiffs and the Trustees for ouster and account. It is not the easiest thing to decide where the line between the two lies, in this matter of costs. I know from the deed of 31st January 1934, and the discharges subsequently given, that all of these costs have been paid in accordance with the terms of that judgment of 6th February 1931. The proper thing for me to do, I think, is to leave those matters rest as they are now.

I will therefore, as to the costs of the first trial, repeat the adjudications made by Martineau J. in his judgment. As to the costs of the re-trial of the issues between Plaintiff and him, they will be adjudicated against Robertson. The costs in the other proceedings such as the Intervention et., they will be adjudged in the manner mentioned hereinabove in these notes.

(signed) G. F. Gibsone.