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8, 1952

IN THE PRIVY COUNCIL

No. 29 of 1951

ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO

B E T W E E N

ROBERT J. McMASTER and JAMES McMASTER, Executors of the Estate of Harry J. McMaster (Plaintiffs)

Appellants

- and -

NORMAN W. BYRNE (Defendant)

Respondent

RECORD OF PROCEEDINGS

Blake & Redden,
17, Victoria Street,
Westminster,

for the Appellants.

Charles Russell & Co.,
37, Norfolk Street,
Strand, W.C.2.

for the Respondent.

IN THE PRIVY COUNCIL — No. 29 of 1951

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B E T W E E N

ROBERT McMASTER and
JAMES McMASTER, Executors of
the Estate of Harry J. McMaster
(Plaintiffs) — Appellants

- and -

NORMAN W. BYRNE
(Defendant) — Respondent

RECORD OF PROCEEDINGS

INDEX OF REFERENCE

E X H I B I T S

IN THE PRIVY COUNCIL No. 29 of 1951

ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO.

B E T W E E N : ROBERT McMASTER and JAMES McMASTER, Executors of the Estate of Harry J. McMaster deceased ... Plaintiffs Appellants

- and -

NORMAN W. BYRNE Defendant Respondent

RECORD OF PROCEEDINGS

No. 1

ENDORSEMENT OF WRIT

In the Supreme Court of Ontario.

No. 1

Endorsement of Writ.

15th Sept.1947

IN THE SUPREME COURT OF ONTARIO

B E T W E E N : HARRY J. McMASTER Plaintiff

- and -

NORMAN W. BYRNE Defendant

The plaintiff's claim against the Defendant is for an accounting in respect of the sum of $97,000.00 and interest thereon at 5% per annum from the 28th day of June, 1947, in relation of the sale and transfer by the Plaintiff to the Defendant of certain shares in Carleton Securities, Limited, and, in the alternative, for the said amount by way of damages for representations made by the Defendant to the Plaintiff in connection with the sale of the shares.

No. 2

STATEMENT OF CLAIM

No. 2

Statement of Claim.

13th May, 1948.

1. The plaintiff is a manufacturer, resident in the Town of Dundas in the County of Wentworth.

2. The defendant is a Barrister and Solicitor, practising in the City of Hamilton, in the County

In the Supreme Court of Ontario.

No. 2.

Statement of Claim, 13th May 1948 - continued.

of Wentworth, and at all material times has acted as solicitor for the Plaintiff.

3. The plaintiff was the owner of certain shares in the capital stock of Carleton Securities Limited, which held a substantial share interest in Sovereign Potters Limited, a Corporation carrying on business in the City of Hamilton, in the County of Wentworth, and of which Company the plaintiff had at one time been the Plant Superintendent and Engineer.

4. The defendant was the intimate friend, the confidential adviser and the solicitor for the plaintiff for many years, and the plaintiff, at all material times, had the utmost trust and confidence in the defendant, and acted upon his advice as such adviser and solicitor.

5. On the 8th day of April, 1947, the plaintiff sold to the defendant, and the defendant purchased from the plaintiff, the shares aforesaid in Carleton Securities Limited for the sum of Thirty Thousand ($30,000) cash, which the defendant paid to the plaintiff.

6. Soon after the purchase by the defendant from the plaintiff of the shares aforesaid, the defendant re-sold the said shares so acquired by the defendant from the plaintiff, to Johnson Brothers (Hanley, England) Limited, for the sum of One Hundred and Twenty-Seven Thousand Dollars ($127,000), thereby realizing a profit of approximately Ninety-seven Thousand Dollars ($97,000) on the transaction.

7. The purchase by the defendant from the plaintiff of the shares in question was in breach of the fiduciary duty which the defendant then owed to the plaintiff by reason of the confidential relationship, as solicitor and client, and as the trusted friend and adviser of the plaintiff, that existed between the plaintiff and the defendant in that -

(a) The defendant had information regarding the probable sale to Johnson Brothers (Hanley, England) Limited of the shares in the capital stock in Sovereign Potters Limited and in Carleton Securities Limited, on very advantageous terms, but did not disclose to, but withheld from the plaintiff,

this information, of which the plaintiff at the time was wholly ignorant, and which it was material for the plaintiff to know in connection with the sale of the shares aforesaid.

(b) The defendant did not disclose to the plaintiff fully and exactly and without reservation all the relevant facts material to be known by a vendor in connection with the said sale, and did not inform the plaintiff fully and completely of the factors material for the plaintiff to know, and which might properly have influenced the decision on his part whether or not to sell the shares aforesaid to the defendant, but concealed this information and suppressed from the plaintiff all the material information in connection with the proposed sale to Johnson Brothers (Hanley, England) Limited in the possession of the defendant.

(c) The defendant did not advise the plaintiff diligently, properly or at all, in connection with the transaction aforesaid.

(d) No competent independent advice to the plaintiff in connection with the said transaction was given to the plaintiff, or was advised or suggested by the defendant to the plaintiff.

(e) The transaction in question was not a fair one in all the circumstances, but was disadvantageous to the plaintiff.

8. Promptly upon discovery of some of the facts relating to the sale of the shares aforesaid to Johnson Brothers (Hanley, England) Limited, the plaintiff repudiated the said sale and demanded an accounting from the defendant of his profit in respect of the said transaction, which has been refused by the defendant.

9. The plaintiff therefore claims:

(a) An accounting by the defendant to the plaintiff of the defendant's profits in respect of the transaction aforesaid.

(b) Payment by the defendant to the plaintiff of the sum of Ninety-seven Thousand Dollars ($97,000), together with interest thereon at five per centum (5%) per annum, from the 5th day of July, 1947, until payment or judgment, less whatever stamp transfer tax has been paid by the defendant in connection

In the Supreme Court of Ontario.

No. 2.

Statement of Claim, 13th May 1948 - continued.

with the said transfer of the shares aforesaid to Johnson Brothers (Hanley, England) Limited.

(c) That for the purposes aforesaid, all necessary enquiries be made and accounts taken.

(d) Such further or other relief as to the nature of the case may require and as to this Honourable Court may seem proper.

(e) The costs of this action.

DELIVERED this 13th day of May, 1948, by H.A.F. Boyde, 314 Pigott Building, Hamilton, Ontario, Solicitor for the plaintiff.

No. 3.

Statement of Defence.

17th June 1948.

No. 3

STATEMENT OF DEFENCE

1. The defendant admits the allegations contained in paragraph 1 of the Statement of Claim and also admits that he is a barrister and Solicitor practising in the City of Hamilton, in the County of Wentworth, but, save as hereinbefore admitted, denies all other allegations contained in the Plaintiff's Statement of Claim and puts the Plaintiff to the strict proof thereof.

2. The Plaintiff was one of a group, composed of W.G. Pulkingham, A.G. Etherington and H. J. McMaster, who were the promoters and vendors under a vendors' contract at the time of the promotion and organization of Sovereign Potters, Ltd., an Ontario Company with head office and plant situated at Hamilton, and by said contract the said group acquired 2,500 shares out of a total of 5,000 common shares outstanding in the said company and the Plaintiff, without any cash outlay on his part, became entitled to 1,000 the said W.G. Pulkingham 1,000 and the said A. G. Etherington 500 of the said common shares.

3. At the instigation of the Plaintiff, a private holding company incorporated in 1934 under the laws of Ontario, the name of which was changed to Carleton Securities, Ltd., by which name the said company is still known, with restrictions on the sale and transfer of its shares, was used to hold the common shares of Sovereign Potters, Ltd. acquired by the said Vendors and the said vendors became Directors of Carleton Securities, Ltd. in 1935 and transferred their common shares in Sovereign Potters, Ltd., totalling 2,500, in the said holding company and, in consequence of such transfer, the Plaintiff became the holder of forty per cent and the said W.G. Pulkingham and A. G. Etherington became the holders between them of sixty per cent of the outstanding shares of the said holding company. The Plaintiff continued to hold personally the preference shares of Sovereign Potters, Ltd., which represented his cash outlay in the said transaction, but later sold said preference shares to reimburse himself for his personal cash outlay in connection with the promotion and organization of said Sovereign Potters, Ltd.

4. The Plaintiff, the said W.G. Pulkingham and the said A.G. Etherington were all in the employment of Sovereign Potters, Ltd. until November 1936, at which time the Plaintiff was forced to resign from his position as Production Superintendent and sever his employment with the said Sovereign Potters,Ltd. and the Plaintiff was never employed by the said company thereafter.

5. From the time the Plaintiff ceased to be employed by Sovereign Potters, Ltd., he made every effort to dispose of his minority interests in Carleton Securities, Ltd., but, being unsuccessful in doing so, endeavoured to have said company distribute its holdings in Sovereign Potters, Ltd., but the said W.G. Pulkingham and the said A. G. Etherington refused to consent to such distribution.

6. In the fall of 1946, a pool of the rest of the outstanding common shares of Sovereign Potters,Ltd., totalling 2,500, held by shareholders other than the Plaintiff, the said W.G. Pulkingham and the said A.G. Etherington, was in the course of being formed which, when consummated, would result in two consolidated voting units each owing or controlling fifty per cent of the outstanding common shares of Sovereign Potters, Ltd., carrying the voting rights of the said company, and at the same time a scheme

In the Supreme Court of Ontario.

No. 3.

Statement of Defence, 17th June 1948 - continued.

of reorganization of the said company was being proposed by some of the shareholders by which the preference shares outstanding would be converted to common shares and thereby materially alter the voting balance of Sovereign Potters, Ltd., and mitigate against the voting power of Carleton Securities, Ltd., as holders of common shares only and also reduce the market value of the common shares of Sovereign Potters, Ltd.

7. The plaintiff was fully aware of the proposals mentioned in the next preceding paragraph and, realizing that he occupied a position of a minority shareholder in a private company the shares of which carried restrictions as to transfer, insisted upon W.G. Pulkingham and A. G. Etherington finding a purchaser of his minority holdings in Carleton Securities, Ltd., and, of his own volition and without the knowledge of the defendant, executed and delivered to the said W.G. Pulkingham and A.G. Etherington a document in writing agreeing to sell his holdings in Carleton Securities, Ltd. for the sum of $30,000 which sum was equivalent to $30.00 per common share of Sovereign Potters, Ltd. although the company's book value at the time was $10.27 per share.

8. The said document between the plaintiff and the said W.G. Pulkingham and A. G. Etherington was renewed and extended from time to time and the last renewal extended the right to purchase the shares of the plaintiff to Sunday, the 23rd day of March, 1947, and the defendant alleges that he was not consulted with respect to the plaintiff executing and delivering the said document and that he had no knowledge whatsoever with respect to the same until some time thereafter.

9. On Friday, the 21st day of March, 1947, the defendant was advised by the said W.G.Pulkingham and A.G. Etherington that they did not intend to exercise the right to purchase the plaintiff's shares pursuant to the said document and the said document was thereupon assigned by the said W.G. Pulkingham and A.G. Etherington to the defendant and on the following day the defendant notified the plaintiff that he would purchase the plaintiff's shares and offered to the plaintiff the sum of $30,000, being the purchase price requested

by the plaintiff for his shares in Carleton Securities, Ltd., but the plaintiff, being unable to deliver the said shares at the time, gave to the defendant a further document extending the time for purchase at the price aforesaid and subsequently, on the 8th day of April, 1947, the transaction between the plaintiff and defendant was completed by the defendant paying to the plaintiff the sum of $30,000 and receiving therefor the transfer of the plaintiff's shares in Carleton Securities, Ltd.

10. The plaintiff alleges that the negotiations for the sale to Johnson Bros. (Hanley, England) Ltd. of the shares in the capital stock of Sovereign Potters, Ltd. commenced in or about the month of November, 1946, and shortly thereafter such negotiations were a matter of common knowledge among the shareholders of Sovereign Potters, Ltd. and Carleton Securities, Ltd., the plaintiff included, and on the 22nd day of March, 1947, and the 8th day of April, 1947, when the defendant purchased the plaintiff's shares in Carleton Securities, Ltd., the defendant thoroughly discussed with the plaintiff, among other matters, the proposed sale to Johnson Bros. (Hanley, England) Ltd. and the defendant fully and exactly and without reservation disclosed to the plaintiff all the relevant facts known to the defendant in connection with the sale to Johnson Bros. (Hanley, England) Ltd. and the plaintiff, with knowledge of all of the said relevant and pertinent facts known to the defendant and after full and sufficient deliberation and with all the information which it was material for him to have in order to guide his conduct with respect to the said sale, sold his shares to the defendant.

11. The plaintiff is exceedingly astute and experienced in business and financial matters and in selling his shares to the defendant the said sale was effected by the plaintiff in a free and independent exercise of his will and judgment and unaffected by any influence which the Defendant possessed or in law was deemed to possess.

12. The defendant denies that he was the intimate friend or the confidential adviser or the solicitor of the plaintiff for many years or that at all material times the plaintiff acted upon the Defendant's advice, but on the contrary the Defendant alleges that at no time did any fiduciary relationship

In the Supreme Court of Ontario.

No. 3

Statement of Defence, 17th June 1948 - continued.

or the relationship of solicitor and client exist between him and the Plaintiff with respect to Sovereign Potters, Ltd., Carleton Securities, Ltd., or any holding or interest of the Plaintiff in either of the said companies, and, although the Defendant had acted as solicitor for the Plaintiff on some other minor transactions, the Plaintiff had sought advice from and used the services of solicitors other than the Defendant on many occasions subsequent to the time the Defendant became acquainted with the Plaintiff.

13. The Defendant further alleges that up to the 27th day of June, 1947, at which time the sale to Johnson Bros. (Hanley, England) Ltd. was concluded, the said sale was at no time conclusive or beyond the stage of possible termination and, had the said sale not been concluded after the Defendant purchased the Plaintiff's shares, the Defendant would have occupied the unenviable position of a minority shareholder in a private company, as formerly occupied by the Plaintiff, with the highly speculative possibility of not realizing the amount he had paid the Plaintiff for his shares.

14. The transaction between the Plaintiff and the Defendant was a fair one and greatly to the advantage of the Plaintiff, having regard to all the circumstances and the fact that the shares held by the Plaintiff in Carleton Securities, Ltd. did not represent any cash outlay by the Plaintiff and that, prior to his transaction with the Defendant, he had used every endeavour to sell his said shares and had given to W. G. Pulkingham and A.G. Etherington the right to purchase his shares for the said sum of $30,000, which amount was in excess of the book value of said shares, and further that he assumed no risk of the sale to Johnson Bros. (Hanley, England) Ltd. not being concluded.

15. The Defendant therefore submits that the Plaintiff's action should be dismissed with costs.

DELIVERED at Hamilton this 17th day of June, 1948, by Messrs. Walsh & Evans, Barristers &c., 42 James Street South, Hamilton, Ontario, Solicitors for the Defendant.

No. 4.

EVIDENCE AT TRIAL

In the Supreme Court of Ontario.

No. 4.

Evidence at Trial.

Opening remarks of Counsel.

PLAINTIFFS' EVIDENCE

OPENING REMARKS OF COUNSEL

Before The Honourable Mr. Justice Smily, at Hamilton, Ontario, February 6, 7, 8 and 9, 1950.

C O U N S E L :

A.C. Heighington, K.C.) For the Plaintiffs.
S.G.M. Grange)

G.W. Mason, K.C. For the Defendant.

Monday, February 6, 1950, at 11.50 a.m.:

HIS LORDSHIP: McMaster v. Byrne.

MR. HEIGHINGTON: My Lord, I am appearing for the plaintiffs; Mr. Grange is with me. My learned friend Mr. Mason is for the defendant.

In this case, my lord, owing to the death of the plaintiff since the action was instituted, I think that I shall have to open a little more at length than is usual.

The action was started, my lord, by the late Mr. McMaster against the defendant, Mr. Byrne, who is a practising barrister and solicitor in Hamilton and whom the plaintiff alleged was his solicitor, and while in that capacity had purchased from Mr. McMaster some shares in a company known as the Carleton Securities Company, which was a holding company for the Sovereign Potters Limited, for the sum of $30,000, and shortly thereafter sold the same for $127,000, having purchased them, it is alleged, with knowledge of the negotiations going on for the very sale which afterwards eventuated.

My lord, then the action was continued by the usual order to continue after the death of the plaintiff, by his executors.

In the Supreme Court of Ontario

No. 4.

Evidence at Trial.

Opening remarks of Counsel - continued.

But I think it will save us some time, my lord, if I give your lordship a little bit of the background of the case, and in doing so I shall mention only matters which I deem to be undisputed or which I think the evidence will warrant me in stating.

The plaintiff, the late Mr. McMaster, was fairly well known in the pottery business, having had a substantial position in the State of Ohio with a large company there, and with him at that time in the same employment but in a different capacity was Mr. Pulkingham. Mr. Pulkingham had as an associate with him Mr. Etherington of Hamilton. Mr. Pulkingham and Mr. McMaster and this third gentleman decided to come to Canada and to start a new pottery plant here. They did that, and the name of the company was the Sovereign Potteries Limited, located in Hamilton. Mr.Byrne, the defendant, acted as the solicitor in the incorporation of that company, and became and remained at all material times the solicitor and secretary of that company.

The shares of that company, my lord --- it will save time, I think, if I tell your lordship now -- were in the end divided into two groups of fifty per cent each. Fifty per cent was held by independent persons who had put money into the company, and the other fifty per cent were divided between Mr. Pulkingham, Mr. McMaster and Mr. Etherington, in the proportions of forty per cent Mr. McMaster, forty per cent Mr. Pulkingham, and twenty per cent Mr. Etherington. That fifty per cent was ultimately placed by those three persons in a holding company known as Carleton Securities. There had been also some preferred shares issued to Mr. McMaster because he had put up collateral or money or both in buying equipment in the States, which he purchased and brought up here, which was the start of the plant.

It is contended that the plaintiff was anxious to have his holdings in Carleton Securities in a freer form than just as a stockholder, director and shareholder of the holding company, and that he consulted Mr. Byrne about that and in regard to other matters.

MR. MASON: I do not want to interrupt my friend, but I should not like that statement to go unchallenged, that Mr. McMaster consulted Mr. Byrne with regard to these shares.

In the Supreme Court of Ontario

No. 4.

Evidence at Trial.

Opening remarks of Counsel - continued.

MR. HEIGHINGTON: Your lordship will appreciate, I said it was alleged, and I am hoping, as I say, that anything that I say will be supported by the evidence; in the meantime it is just an allegation.

However, as we say, that was the situation, and then it came down to the time when an actual option on these shares had been given by Mr. McMaster to Mr. Pulkingham for $30,000. That option was never taken up by Mr. Pulkingham, and the defendant, Mr. Byrne, claimed that he had an assignment of the same, and anyway he got from the plaintiff a new option, which will be before your lordship, for $30,000 on the 22nd of March, 1947, at which time it is alleged that the ultimate sale to Johnson Brothers of England was progressing, and that Mr. Byrne did not fulfil his duties as a solicitor in respect of securing that option from his client. I think that perhaps will give enough outline at the moment.

First I put in, my lord, the probate, the original probate of the will of the late Mr. McMaster ---

HIS LORDSHIP: First, possibly, Mr. Mason, you might state in a few words what the position of the defendant is. I have not read the pleadings.

MR. HEIGHINGTON: Yes, I think I can do it. The defendant says that he acted in every way in a proper way, and that the plaintiff knew of the negotiations himself and made his own independent judgment in regard to the same. That is disputed. We say he had no knowledge of it at all, and that in any event the defendant did not fulfil the duty of a solicitor in purchasing from a client.

With your lordship's permission, I should like to put in a certified copy of the probate, to show that the executors are the ones entitled to continue the action.

HIS LORDSHIP: I suppose the action is continued by the usual ---

MR. HEIGHINGTON: The usual order is with the papers. I have the original here, but it is in the record.

HIS LORDSHIP: I did not notice the order.

In the Supreme Court of Ontario.

No. 4.

Evidence at Trial.

Opening remarks of Counsel - continued.

MR. HEIGHINGTON: Well, we have it here, my lord. Perhaps I might file the original order, my lord.

HIS LORDSHIP: Yes, there is a copy of the order in the record.

MR. HEIGHINGTON: Yes, but I will file the original order now as Exhibit 1: Order of the Supreme Court of Ontario, the 8th day of September, 1949:

> "UPON the application of Robert McMaster and James McMaster alleging that since the Statement of Claim in this action, and about the 30th November, 1948, the above named plaintiff departed this life having duly made his last Will and Testament probate of which was granted by the Surrogate Court of the County of Wentworth to the said Executors of the said deceased, namely: the said Robert McMaster and James McMaster who are now the legal representatives of the said plaintiff; and further alleging that it is desirable or necessary that this action should be continued at the suit of the said Executors as plaintiffs thereto against the said defendant thereto.
>
> It is therefore ordered that this cause may be continued at the suit of Robert McMaster and James McMaster Executors of the Estate of Harry J. McMaster, deceased, as parties plaintiff thereto against Norman W. Byrne as party defendant thereto and that the same and all proceedings therein do stand in the same plight and condition as they were at the time of the death as aforesaid."

Signed by Mr. Inch, the Local Registrar. Exhibit 1, my lord.

--- EXHIBIT 1: Order of S.C.O. authorizing continuation of action after decease of the original plaintiff - dated Sept. 8, 1949.

MR. HEIGHINGTON: Instead of putting in the original probate, my lord, I believe it is proper to secure a certified copy from the Registrar, which I have done: the probate of the will

appointing these two men, the executors, will be Exhibit 2. Their appointment is in a codicil to the will, on the last page. I need not read your lordship the contents of the will, but I do think it would be convenient at this point to call your attention to a very relevant matter, that in the original will, which was dated the 30th of December, 1944, the late Mr. McMaster appointed, by clause 2,

> "my wife, MARGARET CONVERSE McMASTER and my friend, NORMAN W. BYRNE, Hamilton, Ontario, to be the Executrix, Executor and Trustees of this my Will."

After the dispute arose between Mr. McMaster and Mr. Byrne he made a codicil to the will on the 16th of November, 1948, appointing his two sons in their place. That was the only change in the will. This will, it is admitted, was drawn by Mr. Byrne.

--- EXHIBIT 2: Certified copy of Letters Probate.

MR. HEIGHINGTON: I will call Mr. Robert McMaster.

PLAINTIFFS' EVIDENCE

No. 5.

EXAMINATION IN CHIEF OF R.K. McMASTER.

EXAMINED BY MR. HEIGHINGTON:

Q. Mr. McMaster, you are one of the executors of your father's estate? A. Yes, sir.

Q. And I believe that you were employed in the same pottery in Ohio for which your father was working? A. Yes, sir.

Q. At the time you came up to Canada? A. Yes, sir.

Q. I think that was 1933, was it not? A. 1933, yes.

In the Supreme Court of Ontario.

Plaintiffs' Evidence.

No. 5.

R.K. McMaster, Examination - continued.

Q. What was your father's position there and the name of the company? A. Plant Superintendent.

Q. What is the name of the --- A. Limoges China Company.

Q. Limoges China? A. Yes.

Q. Down there were you acquainted with a Mr. Pulkingham? A. I had met Mr. Pulkingham there.

Q. Down there at that time? A. Yes.

Q. Was he associated in any way with your father? A. Yes, he was in the same plant.

Q. He was in the same plant. Did they have any relationship between the two of them, any connection between the two of them? A. Yes, after starting planning on coming to Canada.

Q. In other words, they got together? A. Yes.

Q. Was anybody else associated with them in that proposal to come to Canada? A. Mr. Etherington came down.

Q. What were they going to do in Canada? A. Start a dinnerware plant.

Q. A dinner ware plant? A. Yes.

Q. What steps towards the formation of that company did your father take, in the States or in Canada? A. Well, he put up collateral for ----

Q. Put up collateral? A. Yes, and he brought machinery.

Q. Was the collateral for the purchase of the machinery? Are we to understand that? A. Yes, that would be for the purchase of the machinery.

Q. He put up collateral? A. Yes.

Q. He bought machinery, did he? A. Yes.

Q. And that was brought to Canada, was it ? A. That is right -- and moulds.

Q. Beg pardon? A. And moulds.

Q. And moulds? A. Yes.

Q. Well, shall we say plant and equipment ? A. Yes.

Q. And I think that in respect of that, ultimately he received some preferred shares, did he not? A. Yes, he received some preferred stock.

Q. Do you know what that group did after they came to Canada? A. Well, they formed the Sovereign Potters.

Q. Formed the Sovereign Potteries? A. Yes, in co-operation with some people from Hamilton.

Q. Beg pardon? A. Co-operation with some people from Hamilton.

Q. Yes, and the people from Hamilton were putting up capital? A. Yes.

Q. And whom did they employ, Mr. Etherington and Mr. Pulkingham and your father, to look after the business up here? A. Mr. Byrne.

Q. And the company was duly incorporated. May we have the date of that? Do you want to put that in, Mr. Mason, now? I have asked for the charter to be brought down; I have subpoenaed Mr. Pulkingham to bring the charter. I have the date here from the Provincial Secretary's office. Do you know it? Are you prepared to admit it, or do you want me to prove it?

MR. MASON: I don't know anything about it.

MR. HEIGHINGTON: All right.

Q. Anyway, it was incorporated? A. Yes.

Q. Who were the officers of that company, do you know? A. Mr. Pulkingham was President, Mr. Etherington was Treasurer.

Q. Yes? A. And Mr. Paulin was Vice-President at that time. They also were directors, and my father was a director.

Q. Your father was a director? A. Yes.

Q. Yes? A. That is all I know about.

Q. Who was the Secretary? A. Mr. Byrne.

Q. And were you employed by the new company too? A. Yes; I started ---

Q. And your father's position of employment was what? A. Plant Manager.

Q. Plant Manager? A. Yes.

Q. How long did your father continue with that company? A. Till '36, the latter part of '36.

Q. After the incorporation of the Sovereign Potteries in 1933 can you tell us anything about how the holdings in that company were distributed and how they were dealt with? A. Well, the money crowd, they had fifty per cent.

In the Supreme Court of Ontario.

Plaintiffs' Evidence.

No. 5.

R.K. McMaster, Examination - continued.

HIS LORDSHIP: Q. What crowd? A. The ones that put up the money.

MR. HEIGHINGTON: Those were the people from Hamilton, my lord, of whom he spoke.

Q. They had fifty per cent? A. Yes, and they had more preferred stock.

Q. Fifty per cent of the common, you are telling us? A. Yes. Mr.Pulkingham,Mr.Etherington and dad had fifty per cent of the common stock,and they also had some preferred.

Q. You told us your father had some preferred? A. Yes.

Q. For his advances, yes. What did Mr. Etherington and Mr. Pulkingham and your father do with their share, fifty per cent share, of the common stock? A. Put it into a holding company called the Carleton Securities.

Q. Carleton Securities? A. Yes.

Q. Who acted for them in that matter? A. Mr. Byrne.

Q. During the time that your father was in the employ of the Sovereign Potteries did he have any contact or any business with Mr. Byrne from '33 to '36 that you know of outside of what you have already told us? A. He acted for him on the Carleton Securities, and then after ---

MR. MASON: What did he say?

MR. HEIGHINGTON: He said he acted for his father in the Carleton Securities.

Q. I am showing you a document which was marked Exhibit 1 on the examination for discovery; do you recognize that document? A. This is formation of the Carleton Securities.

Q. Where did you get this paper from? A. From my father's effects.

Q. Do you recognize what purports to be the signature of H.J. McMaster on that document? A. Yes.

Q. Yes, you do. Do you know anything about the signatures of Mr. Etherington and Mr.Pulkingham? Do you recognize them? Do you know them?
A. Yes, I recognize their signatures.

MR. HEIGHINGTON: I think it might go in anyway, my lord, because it is common ground that it has

been marked as an exhibit, and the signatures are admitted by the defendant anyway. Exhibit 3, my lord.

HIS LORDSHIP: Very well.

--- EXHIBIT 3: Agreement (re formation of Carleton Securities Ltd.) between Harry J. McMaster, Alfred G. Etherington and William C. Pulkingham, Nov.29,1934.

MR. HEIGHINGTON: It is an agreement dated the 29th day of November, 1934, between Harry J. McMaster, Factory Manager, of the first part, Alfred G. Etherington, Treasurer, of the second part, and William G. Pulkingham, Manufacturer, of the third part. I might just say to your lordship here, without troubling with it all, the first recital is important:

> "WHEREAS the Parties hereto are jointly and severally holders of One Thousand shares of the preferred stock and Twenty-five Hundred shares of the common stock, no par value, of the Sovereign Potters, Limited to the following proportions, namely:- McMaster, forty percent (40%); Pulkingham, forty percent (40%) and Etherington twenty percent (20%)."

Going down further;

> "AND WHEREAS the Parties hereto, to further ensure the payment of the said obligations," --

that is, the ones that were incurred in connection with the original formation --

> "(1) The Parties hereto will forthwith incorporate a company under the Ontario Companies Act under such name with such powers and capital structure and for such purposes as a holding company, as the said Parties shall decide and all expenses in connection with the formation, incorporation, organization and promotion of such incorporated company shall be paid by the Parties hereto in proportion to their holdings in the said company" --

and they repeat again the holdings.

This document bears on its back the name of the firm of Byrne & Dixon, 201 Bruce Building, Hamilton.

Q. Perhaps I had better show you a bill of

In the Supreme Court of Ontario.

Plaintiffs' Evidence.

No. 5.

R.K. McMaster, Examination - continued.

costs which is made out by the firm of Byrne & Dixon and addressed to the McMaster Potters, Limited, Dundas. Do you recognize that document? A. Yes.

Q. Before I speak to you again about it, I think you should tell his lordship what was done by your father after he left the Sovereign Potteries? A. Well, the first thing, he gave Norm Byrnes a letter to edit for him to read at the meeting after he had resigned.

Q. Yes? A. I don't know whether that was ever done.

Q. He gave a letter to Mr. Byrne, a letter of resignation, you are telling us? A. No. This was for his side of the story, why he had to resign, forced to resign.

Q. Yes? A. And then after that he always went to see Mr. Byrne about trying to get his ---

MR. MASON: I don't know whether the witness, my lord, is speaking of what he thinks to be the fact that he has got from hearsay, or whether he is speaking of his personal knowledge; and I think, to save time, my friend had better ascertain from him whether he is now speaking of his personal knowledge or not.

MR. HEIGHINGTON: I think you might leave it to me.

MR. MASON: No, I don't want to get too far without knowing that.

MR. HEIGHINGTON: You won't.

Q. I asked you what your father was doing really after that? What business did he engage in, and when? That is all I want to ask at the moment. A. He did not engage in any business till 1939.

Q. In 1939, what did he do then? A. Started up McMaster Potteries.

Q. McMaster Potteries? A. Yes.

Q. Where is that located? A. In Dundas.

Q. What kind of corporate existence did that have? A. It was a proprietorship in my father's name at first.

Q. Your father's name first? A. Yes.

Q. Was it ultimately incorporated? A. It was incorporated, yes.

Q. Who incorporated it for your father? A. Mr. Byrne.

Q. Are you an officer of the new company? A. Yes.

Q. And still carrying on doing business? A. Yes, sir.

Q. By the time McMaster Potteries was formed, whether incorporated or just a partnership as at first, had your father then disposed of his preferred holdings, preferred stock holdings, in Sovereign Potteries, do you know? A. No.

Q. He had not? A. No.

Q. He eventually did sell them? A. Yes, sir.

Q. About when, can you tell us? A. 1945.

MR. HEIGHINGTON: Now, this bill has already been marked as an exhibit on an examination for discovery, but the first item on it I call your lordship's attention to is that it is dated the 6th of December, 1946.

Q. I am going to read the first item on the bill and ask you what you know personally in regard to it:

> "Discussions with you as to your personal estate and Succession Duty with respect to nature of organization to be carried on. Enquiries as to tax and other matters. $50.00."

Do you know anything yourself about this Succession Duty business, or have you got any correspondence or letters in regard to it? A. Yes, there are.

Q. Tell us what you know. While they are being produced, tell us what you know about it yourself? A. Dad wanted to get all his affairs straightened up, so he went to see Mr. Byrne, the best way to do it.

Q. What age was your father at that time, when he was finding out about this estate and succession duty? A. About seventy.

Q. Seventy? A. Seventy, yes.

Q. Seventy years of age.

MR. MASON: At what time?

MR. HEIGHINGTON: At the time, as I said, when he was inquiring about the succession duty, about his estate.

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Q. Had he retired actively from McMaster Potteries at that time? A. Well, say semi-retirement.

Q. Semi-retired? A. Yes. He still came to the shop.

MR. HEIGHINGTON: This account will be Exhibit 4.

--- EXHIBIT 4: Bill of Costs, Byrne & Dixon to McMaster Potters Ltd., Dec. 6, 1946.

MR. HEIGHINGTON: Q. Perhaps this will assist your memory. I am handing you what purports to be a letter to your father from Byrne & Dixon, July 4, 1944. A. I recognize that.

Q. Where did you get that letter? A. This is my father's.

Q. Your father's effects.

I do not know that I need trouble you with this, my lord. It is advising in regard to the deceased's holdings, listing his assets, and so on. There are attached to this letter, my lord, three sheets of figures dealing with the deceased's assets; I do not think we are concerned with them at the moment. It will just be marked Exhibit 5.

--- EXHIBIT 5: Letter, Byrne & Dixon to H. J. McMaster, July 4, 1944, and 3 sheets of figures attached.

MR. HEIGHINGTON: Q. The next item, Mr. McMaster, is:

"Instructions from you as to Will and drawing same. $15.00."

We already have the will, which was drawn on the 30th of December, 1944, and the bill is the 6th of December, 1946.

The next item:

"Drawing and engrossing Consents, undertakings, etc. prior to incorporation and attendances having same signed $15.00."

The same subject:

"Fee on incorporation; 150.00

Fee on organization 150.00."

I take it that refers to the organization of McMaster Potteries Limited? A. That is right.

Q. And when was it incorporated? A. '45.

MR. MASON: He said before '44; which is it?

MR. HEIGHINGTON: Well, we will tell you.

Q. Will you bring your charter this afternoon if you come back, please? A. I believe the charter is here.

Q. Have you got the charter here? A. It should be in the minute book.

Q. All right, we will find out. The actual charter is not, but the minute book contains a copy of it, which is the usual way it is done, apparently signed by the Provincial Secretary on the 24th of November, 1944. The next item on this bill, Exhibit 4:

> "Discussions with you and with Excise Dept. as to excess tax levied, complete negotiations, correspondence, attendances, etc. respecting same, preparation of exhibits appeal to Ottawa when whole amount of tax abandoned. 200.00."

Do you know about that item yourself? A. Yes; they assessed us ---

Q. Just tell us what it was, please? A. They assessed us on some ware which they claimed was ashtrays, and we differed with their agreement,and we engaged Mr. Byrne to go into the matter.

Q. And it had a happy outcome, I believe? A. Yes.

Q. The next item is the disbursements paid on incorporation to Provincial Secretary, and so on -- that is the $100.00 -- minute book, and so on --- with respect to your own company, is it not? A. Yes.

Q. Now, is there any correspondence? Have you got any correspondence in regard to that tax matter? Oh, yes; perhaps you can tell us if this is the correspondence with your father about the tax matter you have just been telling us about? A. That is it.

Q. Where did you find these papers? A. They were among my father's effects.

HIS LORDSHIP: Is there any need to put that in, Mr. Heighington?

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MR. HEIGHINGTON: I don't know. It is a letter addressed from Mr. Byrne to Mr. McMaster. The relationship of solicitor and client is disputed, my lord.

HIS LORDSHIP: Well, does that add anything to it apart from the bill itself, the reference in the bill itself?

MR. HEIGHINGTON: He did the work, and we were well satisfied with the work. I think I will have it marked, but I do not think I will bother read- them to your lordship.

HIS LORDSHIP: Very well.

MR. HEIGHINGTON: Exhibit 6 is correspondence with the Department with regard to assessment.

--- EXHIBIT 6: Correspondence with Dept. of National Revenue re assessment.

MR. HEIGHINGTON: Q. Now, that was in 1946. I am showing you an earlier letter from some counsellors at law in New York, addressed to Mr.Byrne, reading as follows ---

MR. MASON: Does the witness know anything about this?

MR. HEIGHINGTON: I am going to find out. I am going to ask him if he knows it and recognizes it, and I am just going to tell him what it is. May I do that?

MR. MASON: I suggest my friend show it to him first and then ask him if he knows about it.

MR. HEIGHINGTON: Q. Will you tell his lordship what that is about? A. This is about a wrench my father invented.

Q. What did he do about it? A. He went to Mr. Byrne to have him apply for the patent on it.

Q. Where did you find this document? A. That was in my father's effects.

Q. Exhibit 7, dated March 9, 1938. At that time your father had left Sovereign? A. Yes.

MR. HEIGHINGTON: This is from a firm -- Pennie & Company, we will call it, to abbreviate it -- of 165 Broadway, New York, Counsellors at Law. There are about twenty-five names on the paper. It is addressed to Norman W. Byrne, Byrne & Dixon, Bruce Building, Hamilton, Ontario:

"Dear Mr. Byrne,

I have considered your letter of March 7th and the drawings which you enclosed, describing and illustrating a tool invented by your client, Mr. H.J. McMaster."

Then he goes on and gives his opinion about its patentability, with which we are not concerned, my lord.

Q. Now, did you have any other patents obtained for you at the same time, at that time? Do you know anything about them? A. Any what?

Q. Well, I will show you. Can you tell us what these are?

MR. MASON: Is this matter that has been produced?

MR. HEIGHINGTON: No.

MR. MASON: Why not?

MR. HEIGHINGTON: I wrote and told my friend that the letter had only been found among the deceased's effects after my friend had concluded his examination, and I wrote and I gave him a copy of the letter and asked him to give me Mr. Byrne's reply to it, and he very kindly furnished me with it, and I would like to read it.

Mr. MASON: I am not objecting to that. I thought my friend was referring to something new.

MR. HEIGHINGTON: Nothing at all.

THE WITNESS: Well, this refers to that wrench, applied for a patent on.

MR. HEIGHINGTON: Q. These are copies of certain supposedly relevant patents? A. That is right.

Q. Well, we won't bother with that. Where did you find them? Among your father's effects? A. Yes.

MR. HEIGHINGTON: I think that goes in, just to show the extent ---

MR. MASON: May I see it, please?

HIS LORDSHIP: I was just wondering, Mr. Heighington, whether the extent of the business done by Mr. Byrne ---

MR. HEIGHINGTON: I suppose perhaps your lordship is right. I won't press that matter at all. I would ask my friend to please allow me to read

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the letter, Mr. Byrne's reply to the letter which I have just put in as the last exhibit.

MR. MASON: I have no objection.

MR. HEIGHINGTON: The reply, then, will be a new exhibit. My friend has kindly furnished me with Mr. Byrne's reply to that letter and I won't bother your lordship with it, except to put it in as an exhibit. It says:

> "H.J. McMaster, one of our clients, has brought in an invention" --

It is not a reply; it was a letter which evoked the last letter. It is dated March 7, 1938, and addressed to this firm in New York, signed by Mr. Byrne, and in it ---

HIS LORDSHIP: Excuse me, Mr. Heighington. That letter about the wrench, is that what you are talking about?

MR. HEIGHINGTON: Yes.

HIS LORDSHIP: Yes; I thought you said March 1948.

MR. HEIGHINGTON: No, my lord, it is March 1938, and this is the letter from Mr. Byrne which evoked that reply. The only importance is that it says in the first line:

> "Mr. H.J. McMaster, one of our clients, has brought in an invention in the nature of a tool which he has made up in the form of a wrench, asking us for comments as to its patent ability and usefulness. We told him that in our opinion,"

and so on. I won't read it.

HIS LORDSHIP: Might that not be made part of Exhibit 7?

MR. HEIGHINGTON: Yes, part of Exhibit 7, my lord, letter and reply.

--- EXHIBIT 7: Letter, Byrne & Dixon to Pennie, Davis, Marvin & Edmonds, March 7, 1938, and reply dated March 9,1938.

MR. HEIGHINGTON: Q. Now, I have here also some correspondence with your father from Mr.Byrne in 1945, with several letters attached. Will you just take a look at that document, that letter? Where did you come across that? A. That was among the same effects.

Q. Your father's effects? A. Yes.

Q. To what does it refer, do you know yourself? A. It refers to the buying of the Sydenham property.

Q. The buying of? A. The Sydenham property.

Q. Sydenham Street? A. Yes.

Q. Sydenham Street property? A. Yes.

Q. Is that where you live now? A. That is right.

Q. That is where you live now? A. And also about the adjustments of rents.

Q. All this correspondence refers to that one matter? A. Yes.

MR. HEIGHINGTON: My lord, I put it in this way, if I may: a letter from Byrne & Dixon to Mr.Harry J. McMaster, August 29, 1945:

> "I have this morning received the enclosed letter from D'Arcy R. Lee with a statement of adjustments,"

and so on. I won't bother your lordship with it. The letter itself is accompanied by other details in regard to the tenancies and things of that kind.

There is also a second letter attached to it, September 27, 1945, addressed to Mr. McMaster, from the firm of Byrne & Dixon, and signed by H. Dean, who I believe was employed in the office of ---

HIS LORDSHIP: What is the date of the first letter?

MR. HEIGHINGTON: The first letter, my lord, is August 29, 1945 .. It is the purchase of their home in Dundas. That will be Exhibit 8.

--- EXHIBIT 8: Correspondence between Byrne & Dixon and H.J. McMaster, etc., re purchase of home.

MR. HEIGHINGTON: Q. I am showing you another document, which was marked as Exhibit 3 on the examination of Mr. Byrne for discovery; do you recognize that yourself? Do you know what it is? A. Yes; this was the drawing that was ---

Q. Wait just a minute. Had you seen that document before your father died at all? A. Yes.

Q. You had seen it? A. Yes, I saw this.

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Q. Would that be contemporaneously with the time when the letter arrived or not? A. Well, I would see it right after.

Q. You would see it right after; about when was that? It is not dated, I see. About when was it? A. About '46.

Q. About in '46? A. Yes.

Q. I see it is just signed "Norm"? A. I know it was in the new plant.

Q. Do you recognize that signature? A. Yes.

Q. Do you know whose it is? A. Yes.

Q. Whose is it? A. Mr. Byrne's.

Q. Who was "Dear Scratch"? A. That was a nickname my father had.

Q. Yes? A. There is only two persons ever called him that in Canada.

Q. Who was that? A. That was Mr. Pulkingham and Mr. Byrne.

Q. Well, they were associated with him, anyway.

There is nothing of importance in this except to show the friendly relationship, my lord. Mr. Byrne writes that he had been at a wedding, and was good enough to remark on a vase that he had seen at the wedding which he thought might be suitable for production by McMaster Potteries -- a gratuitous act. There is no date -- 1946.

MR. MASON: Can you place it any more accurately than that?

MR. HEIGHINGTON: I don't know; I can't.

Q. Can you? A. No.

--- EXHIBIT 9: Letter from "Norm" to "Dear Scratch", undated.

MR. HEIGHINGTON: I said it was a gratuitous act; perhaps Mr. Byrne will reciprocate by telling us about when it was.

MR. BYRNE: I can't remember just when it was.

MR. HEIGHINGTON: Q. The only other correspondence I see is a letter dated April 9, 1947, to your father, and that was the day after the shares were purchased. Do you recognise that letter? Where did it come from?

A. This came from Mr. Byrne, about the transfer stamps.

Q. Did you see it? A. Yes.

Q. In your father's lifetime? A. I saw it as soon as it came in.

Q. Right away? A. Yes.

Q. Do you recognize that cheque? What is that?

A. That would be for the transfer stamps.

Q. Is that your father's handwriting? A. Yes, that is my father's signature.

HIS LORDSHIP: The letter is signed by whom and addressed to whom?

MR. HEIGHINGTON: The letter, my lord, is addressed to Mr. McMaster, on Byrne & Dixon paper, April 9, 1947, "Dear Harry".

HIS LORDSHIP: Signed by whom?

MR. HEIGHINGTON: "Signed "Norm", but underneath is "Norman W. Byrne" in typing, but he just signs it "Norm". In that he says:

> "One thing I forgot yesterday was stock transfer stamps."

And then he asks for $38, and attached is Mr. McMaster's cheque for that amount. That will be Exhibit 10.

--- EXHIBIT 10: Letter, Norman W. Byrne to H. J. McMaster, April 9, 1947, with cheque attached.

MR. HEIGHINGTON: Q. Now we have seen some of the matters in respect to which your father consulted Mr. Byrne; what do you say about the Carleton Securities situation? A. Well, my father went to see Mr. Byrne very often after he was out of the Sovereign to see if he could have Carleton Securities broken up.

Q. What was the object of that? A. Well, to get his stock out of Carleton Securities and have Sovereign Potteries Stock.

MR. MASON: I want to suggest to my friend that the witness should indicate when he is speaking of these things whether it is a matter of his personal knowledge or not.

MR. HEIGHINGTON: Well, as a matter of fact,

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I do not have to, because if it is a matter of the deceased's knowledge I am entitled to give it anyway.

MR. MASON: I don't know why.

HIS LORDSHIP: I think the witness should say something as to whether he knows this.

MR. HEIGHINGTON: Yes, my lord.

Q. Are you speaking or can you speak of any particular definite occasions that your father consulted Mr. Byrne on this matter, from your own knowledge, or are you relying on information from your father? A. Well, mostly the information was from my father, but when he was in our plant my father asked him about the Carleton Securities.

Q. Were you there? Did you hear him do it?

A. Yes.

Q. Beg pardon? A. Yes.

Q. What occasion was that? Mr. Byrne you say was at your plant, was he? A. Mr. Byrne was at our plant twice that I know of.

Q. On which of these two occasions was it that he spoke about Carleton Securities to your father in your presence? A. That would be the second time.

Q. When would that be in date? A. That would be around '46. That was in the new plant.

Q. Were you present during it all, or did you hear part about it, did you just hear part of it, or what? A. No, I was not with him all the time. I heard him asking about Carleton Securities.

Q. You heard him asking about it? A. Yes.

HIS LORDSHIP: Q. Heard who ask whom? A. Heard my father ask Mr. Byrne if he could do anything about Carleton Securities.

MR. HEIGHINGTON: Q. Do you know if he had any other communications with Mr. Byrne about this matter by telephone or by letter or messenger? A. Well, he was -- he often went to see Mr.Byrne; I was not present.

Q. He often went to see him? A. Yes; he would come home and tell us different things.

Q. Yes: A. What he could do.

Q. About what? A. About getting on with the Carleton Securities.

Q. Your father reported to you after interviewing Mr. Byrne. Your father resigned from Sovereign Potteries in 1936, terminated his employment there? A. Yes.

Q. '36? A. The latter part.

Q. Did he have any connection at all with that company after his retirement or after the time he sold his preferred? A. No, not after he sold his preferred stock.

Q. When did he sell his preferred? A. In it would be '45 he would sell.

Q. In '45? A. Yes.

Q. Then after that did he have any association at all in any way with Sovereign? A. You mean did he visit the plant?

Q. Yes, or anything? A. Perhaps --- I couldn't say that, whether he went to the Sovereign or not. The latter years, no.

Q. The latter years, no? A. Yes.

Q. What would you call the latter years? A. Well, say '47, '48.

Q. '47-'48? A. No; '46-'47.

Q. '46-'47 you say he never went near it; is that what you are telling us? A. That is right.

Q. I was going to ask you, to be quite candid, did your father ever employ any other lawyer in regard to his affairs? A. He didn't directly, no, but I ---

Q. He didn't directly, is what you are saying? A. Yes.

Q. All right, what about indirectly, then? A. One time in '39.

Q. One time in '39? A. Yes, when we were trying to get the plant in Dundas.

Q. You were trying -- that is, McMaster Potteries? A. Well, there was no McMaster Potteries then; we were just starting, trying to get hold of this equipment.

Q. Yes? A. And through a friend of mine, Dr. Braden, I got -- he advised me to get Harry Braden to see if he could help us, because ---

Q. Was there any special reason for that? A. Yes, because of his influence with certain people in Dundas.

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Q. That was when you were buying your plant? A. Yes; I took that on my own.

Q. You took that on your own? A. Yes. And one other time there was a lawyer brought in, that was through my sister, through a friend of my sister.

Q. Well, perhaps she will tell us about that one? A. Yes.

Q. Perhaps she will tell us about that. A. And then the only other time was when Mr. Shaver acted for both parties in the purchase of the Hatt Street property.

HIS LORDSHIP: Q. How do you spell that? A. H-a-t-t.

Q. The Hatt Street property? A. Yes; that is where our pottery is.

MR. HEIGHINGTON: Q. Mr. Shaver practices in Dundas, as we all know? A. Yes.

Q. You say he was acting for the vendor; and was that being bought by McMaster Potteries Limited? A. Yes. That charter, it took some little time to ---

Q. Oh, well, anyway, it was bought for McMaster Potteries, incorporated or unincorporated; it was bought for the business? A. That is right.

Q. And you say that Mr. Shaver was allowed to act for both? A. Both parties.

Q. I believe a small fee was paid. You discovered some evidence of that, did you not? A. Yes, I discovered a stub, cheque stub.

Q. How much was it for, do you know, approximately? A. I imagine around $30.

MR. HEIGHINGTON: Just a small matter, my lord.

Q. When did you buy the Hatt Street property? A. '45, first part of '45.

Q. The first part of '45? A. Yes.

Q. Now, perhaps we will come down to the more definite matter of the direct negotiations between your father and Mr. Byrne about these shares in Carleton Securities. It has been pleaded that an option had been given by your father to Mr. Pulkingham -- my friend pleads this -- $30,000. What do you know personally about that? A. I know there had been an option given to Mr. Pulkingham.

Q. That is your information? A. Yes.

Q. It comes from your father? A. Yes.

Q. You were not present? A. No, I was not present.

Q. But you knew about it? A. Yes.

Q. You knew about it. Do you know about when it was given? A. No.

Q. You don't remember that. Do you know whether the option ran out or whether it ever expired or was renewed or anything about that yourself? A. Only what my father told me.

Q. Yes? A. He told me there was one renewal.

Q. He told you there was one renewal; all right.

Would my friend be good enough to let me have the option of March 22nd? My friend's production, my lord, but it will be identified and put in by the witness.

I am showing you a document dated March 22,1947; it appears to be signed by your father and witnessed by you; is that right? A. Yes.

Q. Did you see your father sign it? Is that your signature? A. That is my signature and that is my father's.

MR. HEIGHINGTON: Now, I am going to read that to your lordship and then ask some questions about it.

Q. In whose handwriting is it? A. Mr.Byrne's.

MR. HEIGHINGTON: It reads:

"March 22nd 1947.

In consideration of the sum of $5.00 the receipt and adequacy whereof is hereby acknowledged I hereby give Norman W. Byrne the option to buy all my shares of Carleton Securities Limited" ---

MR. MASON: If my friend will pardon me a moment, we thought it would be convenient to have photostat copies of these made for your lordship's use, so that it could be followed.

HIS LORDSHIP: Yes; very well.

MR. MASON: And when we get to the conclusion of what we have we will have them put in a binder. In the meantime if my friend will ---

MR. HEIGHINGTON: Have that marked instead of the original?

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MR. MASON: No; I would like his lordship to have it so that he can follow it.

MR. HEIGHINGTON: Oh, yes.

-- "namely 40% of the company and believed to be 101 shares for the sum of $30,000.00 cash."

And then there are certain terms set out; I do not need to read them, I think, my lord.

--- EXHIBIT 11. Option, H.J. McMaster to Norman W. Byrne, March 22, 1947.

MR. HEIGHINGTON: Q. Now, I just want you to tell his lordship what you know about how that document came into existence? A. Well, Norm or Mr. Byrne came out to the house on March 22nd.

Q. Yes? A. My father and I and Norm were in the room, and Norm, after we greeted each other, he had this document in his hand and he said, "These sons of b's gave me this document or gave me this after it had been expired three days."

HIS LORDSHIP: Q. Who said this? A. Mr. Byrne.

MR. HEIGHINGTON: Q. Just tell it again, now: he had something in his hand, you say? A. Yes, he had this paper.

Q. He had a paper? A. Yes, a paper. I wouldn't say -- I didn't see, didn't get close to it.

Q. It was a paper? A. Yes.

HIS LORDSHIP: Q. He had it in his hand? A. Yes.

Q. What did he say about it? A. He said, "Those sons of b's gave me this after it had expired three days," and then he tore it up.

Q. Then he tore it up. A. Then he said, "Harry, do you know Etherington is building a new home?" and dad said he had heard that, and he said, "Well, Etherington has his stock in hock for six thousand dollars," and that he, Byrne, was the only one that knew how to get it or could get it, and he asked dad if he would give him an option on his stock. Dad agreed to the option, and then Mr. Byrne asked dad what he wanted for his stock, and dad said $30,000. Byrne said it was too much, and I said I thought it would be worth more, it should be worth at least $50,000, and Norm said that the book value was low and that they had a terrific bank loan, and he mentioned a price around $400,000.

MR. HEIGHINGTON: Q. The size of the loan? A. Yes. And then Mr. Byrne, he wrote out the option and my father signed it and I witnessed it, and he told my father not to tell even the family about this transaction, because he didn't want it to get back. My father would not agree to not telling the family, but he said other than that it would be kept quiet, which it was.

Q. And was there some other document signed that day too? A. Yes, there was another document.

Q. How did that come about? Why was that?

A. Mr. Byrne asked dad if he knew that he was supposed to get a cut in the original shares when incorporated.

Q. That is, the incorporation of Sovereign Potteries? A. That is the incorporation of Sovereign.

Q. Yes? A. Dad said that he had heard that, that he had heard it from Mr. Etherington.

Q. That Byrne was supposed to get a cut on the original incorporation of Sovereign Potteries? A. Yes.

Q. Had he got it? A. No; and he was always quite sore about it.

Q. Yes? A. And he asked dad if he would sign a document relating to that, and dad said he was not present that time, if Norm said it was so that he would sign it. Norm wrote it out and dad signed it.

Q. Any discussion about your father's position in regard to the alleged cut on the original incorporation?

A. Dad always told Norm that he considered would give him any part -- I don't know how to put this. He said if dad would give -- dad said that he would give him any part of his that Norm thought that he should have, but there was nothing ever came from that.

Q. You mean in proportion to the ---

MR. MASON: That is not what he said.

THE WITNESS: Oh, yes, it would be in proportion to what Mr. Pulkingham and Etherington ---

MR. HEIGHINGTON: The three of them.

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MR. MASON: My friend should not suggest anything about this to this witness.

MR. HEIGHINGTON: Q. Just tell us what your father said, then? A. He told him he would give him any share of his Mr. Byrne wanted, in proportion to what Mr. Etherington and Pulkingham gave.

MR. HEIGHINGTON: I think the witness told you that before.

HIS LORDSHIP: Well, you were interpreting the answer; that is what Mr. Mason was referring to. You interpreted the effect of the answer.

MR. HEIGHINGTON: Well, he has already said so on discovery.

MR. MASON: On my friend's suggestion.

MR. HEIGHINGTON: Where is that other document, please, then, the one that was signed, the second one?

Q. Is that the second document that you refer to? A. Yes.

Q. That is your father's signature, is it? That is your father's signature? A. Yes.

HIS LORDSHIP: I think this would be a good time to adjourn.

MR. HEIGHINGTON: Just as soon as I put this in, my lord -- Exhibit 12.

--- EXHIBIT 12: Handwritten statement addressed "To whom it may concern", signed H.J. McMaster, March 22, 1947.

HIS LORDSHIP: Adjourn till two-thirty.

--- Whereupon the Court adjourned at 1.03 p.m. until 2.30 p.m.

--- Upon resuming at 2.30 p.m.:

ROBERT KOCH McMASTER, recalled.

EXAMINATION CONT'D BY MR. HEIGHINGTON:

Q. Mr. McMaster, at the adjournment I was asking you the conversation which you heard between your father and Mr. Byrne about Carleton Securities; have you anything further to add? A. Well, the object of ---

Q. Pardon me; just simply tell us what was said.

A. Mr. Byrne wanted to get a hold of dad's stock, and then getting hold of Etherington's stock he would have control of Carleton Securities, and then he could get more legal fees, because he always held Al responsible not getting that first cut when they organized Sovereign.

Q. Who is Al? A. Mr. Etherington.

Q. Now I am going to ask you a question; I don't want you to answer it for a minute till his lordship rules on it.

I am going to ask this question, my lord: What, if anything, was said about any negotiations going on with regard to the purchase of the Sovereign by anybody?

MR. MASON: I don't think there is any objection to the question, except that it is a leading question.

MR. HEIGHINGTON: That is one.

MR. MASON: That is the only objection I have.

HIS LORDSHIP: I don't think there is any objection to its materiality. I don't know whether it should have been differently framed or not.

MR. HEIGHINGTON: I was a little careful about it, my lord. I am simply asking what, if anything, was said. I am not suggesting the answer in any way, and as a matter of fact it is very relevant, because my friend's plea in his own statement of defence is that it was thoroughly discussed. I am asking the witness who was there and what was said about it, if anything.

Q. What is the answer? A. Nothing was said.

Q. When next did you see Mr. Byrne? A. You mean following March 22nd?

Q. Yes, following March 22nd? A. April 8th.

Q. April 8th? A. Yes, sir.

Q. And what took place on that day? A. Well, the same three was in the den.

Q. The same three? A. Yes.

Q. Who were the same three? A. My father and I and Mr. Byrne.

Q. All right, what was said? A. He came in, he asked dad if he had the certificates, dad said

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yes, and Mr. Byrne took out three bundles of bills. Two of the bundles were done up in a paper wrapper, that is, just a paper band around them. He said, "I know these two are right," he said, "but this other one I will have to count." He started to count it, and then he said to dad, "You count it," and he threw it into my father's lap. The one package being opened, it went all over my father's lap.

Q. Yes: A. And he ---

Q. Who is "he"? A. My father gathered it up and handed it to me and told me to count it and I counted it, and then it was during this Mr.Byrne wrote on the back, transfer the stock -- that is, on the back of the Carleton Securities certificates.

Q. What? A. He wrote on the back of the Carleton Securities certificates.

Q. Yes? A. And my father signed, Then my father gave him a receipt for the $30,000, and after ---

MR. HEIGHINGTON: Have you got that receipt, Mr. Mason, please?

Q. By the way, I was going to say that in the first option on the 22nd I see it says that five dollars was paid; what do you say about that? A. Mr. Byrne offered the five dollars to dad to make it legal. I don't know whether dad finally accepted it or not. I knew he put it in his lap.

Q. Is that your father's signature on that receipt? A. Yes, sir.

MR. HEIGHINGTON: Exhibit 13:

"Recd from N W Byrne
Thirty Thousand Dollars $30,000
For all my shares of
Carleton Securities

(Sgd) H. J. McMaster."

--- EXHIBIT 13: Receipt, H.J. McMaster to N. W. Byrne, $30,000, April 8, 1947.

MR. HEIGHINGTON: Q. Just go on and tell us all that took place then? A. And he told dad he was doing all right to get $30,000.

Q. Beg pardon? A. He told my father he was doing all right to get $30,000 for the stock, and after my father handed the bills to him he told

me, he said, "Bob, take it down and deposit it in the bank."

Q. Your father told you that? A. Yes; and Norm jumped up and he said, "For God's sake don't do that. There might be a leak in the bank."

Q. Yes? A. And dad asked him, he said, "What should I do with it?" He said, "Put it in your safety deposit box."

Q. What did your father say to that?
A. Well, he finally agreed. He didn't like it at first, but ---

Q. Why didn't he like it, do you know?
A. Well, nervous about it, and right at that time there was a lot of robberies.

Q. Anyway, he agreed to it, and what did you do then? A. Well, some other things came up before that.

Q. Well, just tell us, please? A. Norm said, "You know, I am taking a gamble on this," and dad told him, he said, "I don't want you to take any gamble on my account." He said, "I will take any share of the gamble," Norm said, "When I gamble I gamble alone." And after that I was getting ready to go; then my mother came in just as we were about ready to leave, and she spoke to Mr. Byrne.

Q. She spoke to Mr. Byrne? A. Yes.

Q. Anybody else present during the interview at all? A. Well, my sister was in and out.

Q. Your sister was in and out of the room?

A. Yes.

Q. What room were you in when the three of you were discussing this matter? A. What we call the den.

Q. Where was your sister? A. She was in the next room, that would be the dining room.

Q. Is there any door on that room? A. No; there is an open doorway.

Q. Just an open doorway. That is all you want to add about the conversation, is it? A. Well, he stressed about keeping it secret again.

Q. And what did you do then? A. I took the money to the bank, and our one deposit box was too small, so I had to acquire a new deposit box to put it in.

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Q. Now, when did you first learn yourself about any negotiations for a sale or a suggested or proposed sale of Sovereign to anybody?

HIS LORDSHIP: Proposed sale of what?

MR. HEIGHINGTON: Sale of the Sovereign shares.

THE WITNESS: The first I heard any rumours was the second week of May.

MR. HEIGHINGTON: Q. The second week of May; you are telling us that is the first you ever heard of it at all, are you? A. Yes, sir.

Q. The second week in May? A. Yes.

Q. And where was it you heard that? A. It was in the Sovereign.

Q. Did you have occasion to go to the Sovereign sometimes in your business? A. Yes, sir. We acquire all of our clay supplies there.

Q. And what did you do, having heard that? A. I went home and told my father, and he did not --

Q. What was his reaction? A. He was ---

MR. MASON: Just a moment, please, My lord, I have not been objecting to this witness telling things that were told by his father to him,and I probably have not been quite accurate in doing that, but I submit that it is not evidence what the father said to his son unless Mr. Byrne were present.

HIS LORDSHIP: Well, what do you say,Mr.Heighington?

MR. MASON: I thought it only fair to let some in up to date, but ---

MR. HEIGHINGTON: I am doing this deliberately, my lord, because I think it shows the state of mind. It is said that this man knew about these negotiations, and I am always entitled at least, if not to say what he said -- which I shall argue I am -- but anyway I can ask his obvious physical reactions which were observed.

HIS LORDSHIP: I thought possibly your question was directed to ---

MR. HEIGHINGTON: So it is.

HIS LORDSHIP: I suppose that is something that could be given in evidence.

MR. HEIGHINGTON: Yes; I will ask him what the physical reaction was ---

MR. MASON: It is not a bit easier to examine or cross-examine on a physical reaction than words.

MR. HEIGHINGTON: He can say how he appeared and ---

HIS LORDSHIP: Oh, I suppose for what it is worth he can give his evidence as to what he observed.

MR. HEIGHINGTON: Q. Shall we pass that, then, and just tell how your father appeared when he heard this? A. He was surprised when he heard it.

MR. HEIGHINGTON: Now, my lord, if you will permit me to ask your lordship to consider exactly what he said on this and other occasions, as showing the state of mind, bearing in mind, my lord, that it is alleged that he knew about these negotiations; and I am showing from the state of mind that he did not.

HIS LORDSHIP: What do you say about that, Mr. Mason? Not as to evidence of what was said, but as to evidence of his state of mind.

MR. MASON: I do not know of any basis on which it is properly admissible, my lord. As I have said, when the witness was detailing the transactions that he has spoken about, I was not raising objection, but I do not want the thing to go too far.

MR. HEIGHINGTON: May I cite authority, my lord?

HIS LORDSHIP: Yes, Mr. Heighington.

MR. HEIGHINGTON: I am referring, my lord, to Phipson on Evidence, the eighth edition, at page 134, chapter 10. The heading is "Facts Relevant to prove States of Mind":

> "When the state of mind of a party with reference to a transaction is material, all acts and declarations from which it may be inferred, whether previous or subsequent to the transaction are, in general, evidence either for or against him."

HIS LORDSHIP: What do you mean by states of mind, Mr. Heighington?

MR. HEIGHINGTON: To show from his actions and words that he was obviously ignorant entirely of the negotiations.

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HIS LORDSHIP: Is that what that is directed to?

MR. HEIGHINGTON: I think so, my lord.

HIS LORDSHIP: That his knowledge or his ---

MR. HEIGHINGTON: They plead not only that they told him, but that he was well aware from independent sources of the negotiations which were then pending. That is pleaded. The man is not here to deny the thing, and I do not want any advantage to be taken of that. I have looked it up carefully, and I find that we can show, I think, his state of mind by his acts and declarations previous and subsequent, that he obviously did not know anything about it at all.

For instance, may I quote one remark from the same book at page 318. The famous case of Sugden v. St. Leonards is quoted there, the judgment of Lord Justice Mellish; it is about the testator's statements:

> "I cannot . . . find any distinction between the statement of a testator as to the contents of his will and any other statement of a deceased person as to any fact peculiarly within his knowledge, which beyond all question, as the law now stands, we are not as a general rule entitled to receive . . . The declarations which are made before the will are not . . . to be taken as evidence of the contents of the will which is subsequently made -- they obviously do not prove it; and wherever it is material to prove the state of a person's mind, or what was passing in it there, you may prove what he said, because it is the only means by which you can find out what his intentions were."

The exact case, my lord, is quoted in Probate Division, volume 1 -- that is the St. Leonards case -- at page 154, and the part that I just read is from Lord Justice Mellish's judgment, which appears at page 251.

Then, coming to a leading American authority, Wigmore, we find the same thing. Wigmore on Evidence, third edition, at page 88, section 266 -- he cites a case there, my lord:

> "Plaintiff's intestate was killed by a dust explosion and fire in defendant's grain elevator where he was employed. The action

was predicated on defendant's negligence in allowing the dust to accumulate and that the deceased was killed in encountering an extraordinary risk which he did not assume and without his fault. Plaintiff had to meet the burden not only that the decedent lost his life because of defendant's negligence and because of an extraordinary risk, but also that the plaintiff had to show that decedent did not assume the extraordinary risk. The only way in which plaintiff's counsel could prove nonassumption of risk was the difficult matter of proof that the decedent did not have that knowledge which is an essential ingredient of assumption of risk. Now it might seem almost an impossibility to prove what knowledge a dead man lacked, but it succeeded by the introduction of the following evidence whose admission was upheld by the Court of last resort:

> A minor son of the deceased, a school boy, was allowed to testify that his father was fond of his children and always anxious and careful as to their safety; that he advised the boy to work in the elevators on Saturday and during vacations; that his father cautioned him to keep away from moving machinery and not to climb ladders; but that he never said anything to him about the danger from dust.
>
> The widow of the decedent was allowed to testify that her husband was very anxious about the welfare of his children; that he confided in her a great deal about his business, particularly if anything worried or troubled him; that he was a careful and anxious man; but that he never said anything to her about danger from elevator dust",

and so on. The superintendent of the factory and others, to the same effect. So here he never said anything about this thing, and I submit that the evidence is admissible.

There is one case in our own courts, my lord, at least in a Canadian Court, to which I might refer: Shanklin, Executor v. Smith, 5 Maritime Province Reports, at page 204, where Mr. Justice Baxter in giving judgment at the trial said, at page 220:

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"Objection was made on the trial to the admission of several conversations between the deceased and other persons. I admitted all the evidence tendered, as the case was one alleging fraud, and it was not at the moment apparent that they might not have some relevancy. In forming my judgment, I have disregarded all the evidence tendered in which an express assertion was offered to prove the fact asserted. Even to this rule there are certain exceptions indicated in Lloyd v. Powell (1914) 83 L.J.K.B. 1054 and in Mutual Life v. Hillman, 145 U.S. 285, but I do not think it is necessary to invoke these authorities. In Wigmore on Evidence, secs. 1715, 1788 and 1790, distinction is drawn between the testimonial and the circumstantial use of a person's declarations. They are not evidence of the fact asserted, but they may be evidence of the state of mind of the person making them. Here we have an alleged transaction between the deceased and the defendant. If it took place in fact, it must have left upon the minds of each of the parties the knowledge that one had ceased to be and the other had become the owner of 308."

That was confirmed by the Supreme Court, Mr. Justice Grimmer, at page 233.

"Under the authorities cited by the learned trial Judge, in a very studied and able judgment, as set forth therein, I am of the opinion the evidence upon which he based his judgment was properly received, and under the evidence so admitted, it is to me very difficult to see or understand how any other conclusion could have been reached or any other judgment rendered than that which is now appealed from."

HIS LORDSHIP: What are the last few words you read from Mr. Justice Baxter's judgment?

MR. HEIGHINGTON: "Here we have an alleged transaction between the deceased and the defendant. If it took place in fact, it must have left upon the minds of each of the parties the knowledge that one had ceased to be and the other had become the owner of 308,"

whatever that was.

HIS LORDSHIP: I am not sure, Mr. Heighington, in my mind that in any of those authorities it is laid down that the evidence or the declarations of a deceased person may be put in as evidence of the fact contained in the declaration. The state of mind is one thing, but whether a declaration can be put in as evidence as to the truth of that fact is something else.

MR. HEIGHINGTON: For instance, my lord, you remember in cases of identity under a will you do not alter the will, but you give evidence as to what he said about it and what he knew, the family that he knew, and to whom he referred and how he referred to them, and that kind of thing; in other words, that is just showing his state of mind.

HIS LORDSHIP: I do not know whether it is parallel; that is the difficulty.

MR. HEIGHINGTON: Well, you see, the Wigmore case is very strong, my lord. In that case ---

HIS LORDSHIP: Well, that was a sort of negative evidence, that he had not referred to any dust or warning about dust.

MR. HEIGHINGTON: Yes; that he had not assumed it.

HIS LORDSHIP: For instance, by analogy, this witness might say whether his father had ever said anything about negotiations; he might do that, but saying what he did say as being proof of it is something different, I think.

MR. HEIGHINGTON: Well, I will put it that way, my lord, for the time being.

MR. MASON: My lord, I have not the last edition of Phipson, but what my friend is discussing is usefully dealt with in the fifth edition at page 157. Your lordship will recall that there is a class of exceptions to hearsay -- they are set out on page 129 -- declarations against interest, declarations in the course of duty, declarations as to public rights, as to pedigree, as to homicide, and declarations by testators as to their wills; that is the group. Now, at page 157 the author says:

> "When, however, as most commonly happens, such declarations are tendered, not to prove the truth of the facts stated, but to show the knowledge, intention, sanity, or other mental state of the testator, it is misleading to consider them as exceptions to the

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hearsay rule. Their admissibility does not depend on all or any of the conditions above mentioned. They are originally evidence receivable either (1) as part of the res gestae . . .; in which case they must have been made contemporaneously with the testamentary act . . .; or, more usually . . .; (2) as presumptive evidence of the mental condition which they evince, . . . in which case, it is, in general, immaterial to admissibility as distinguished from weight, whether they were made before, at, or after such act . . .

On the other hand, declarations by testators, when tendered to prove the testamentary facts asserted, have, with the one well-known exception mentioned below, been uniformly excluded as hearsay . . .

In Sugden v. St. Leonards . . . the majority of the C. A. held that post-testamentary declarations were admissible to prove the contents of a lost will," --

that is what that case turned on --

"as exceptions to the hearsay rule, i.e. as statements by a deceased person with peculiar means of knowledge, and without interest to misrepresent. This ruling, which was dissented from by Mellish, L.J., and seriously doubted in Woodward v. Goulstone, 11 App. Cas. 469 and by the C.A. in Atkinson v. Morris, appears to be contrary to principle; though it is conceived that had such declarations been tendered, not as hearsay proof of the contents of the will, but merely as original evidence of a continuous intention on the part of the testator, they might have been received . . . Sugden v. St. Leonards is criticized by Professor Thayer as a case 'remarkable for many ill-considered dicta as to the hearsay exceptions and as to the rules of evidence in general'."

My submission is that, within the scope of what I have just read, evidence might be put in for certain purposes, but nothing that my friend is now asking is within the scope of any of that.

HIS LORDSHIP: I think, subject to your objection, Mr. Mason, that I will admit the question as to whether he heard his father say anything about negotiations, but I think that is probably as far as it should go. I do not think the evidence of what he did say ---

MR. HEIGHINGTON: It would not be evidence, my lord, of the truth of what he said, but it is actual evidence of the state of his mind, and the state of a man's mind is as much a matter of fact as the state of his digestion, as the old saying goes. It is like the dust case ---

HIS LORDSHIP: Well, it is in that way, in the way I have indicated, but I do not see how it adds anything to it if you cannot use the words that were said.

MR. HEIGHINGTON: Q. Did your father then ever make any reference before March 22nd or before April 8th about negotiations -- that he knew about negotiations going on for the sale of Sovereign to anybody?

MR. MASON: That is not a question directed to his state of mind.

MR. HEIGHINGTON: I thought that is what your lordship indicated?

HIS LORDSHIP: What was the last part of the question?

THE REPORTER: "Did your father then ever make any reference before March 22nd or before April 8th about negotiations -- that he knew about negotiations going on for the sale of Sovereign to anybody?"

HIS LORDSHIP: I think that is a little confusing, that last part -- read the question again, please.

THE REPORTER: (Reads the same question again).

HIS LORDSHIP: Any reference that he knew about negotiations -- is that what you mean?

MR. HEIGHINGTON: Any statement that he was aware of any negotiations going on.

HIS LORDSHIP: Well, just leave it there.

MR. MASON: I submit, my lord, that does not refer to any state of mind. My friend is asking that as a fact.

MR. HEIGHINGTON: His lordship has given permission for that one question.

THE WITNESS: He never knew.

MR. HEIGHINGTON: He never did.

HIS LORDSHIP: Q. Well, that is not the answer. It is whether he made any reference, witness, not

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what he knew. You don't know what was in his mind. A. That is true.

MR. HEIGHINGTON: Q. You know that he did not make any statement about it, about negotiations, before he sold the stock? A. Well, let's have that question over again.

HIS LORDSHIP: Read the last question, please.

MR. MASON: I want to object to that, my lord.

MR. HEIGHINGTON: Well, strike out the last question, then.

Q. Did you ever hear your father make any reference or statement about his knowledge of negotiations being then pending or going on for the sale of Sovereign before he sold his stock? A. No.

Q. And you have told us about his reaction. Now, when did you yourself next learn anything about any negotiations for the sale of Sovereign? You have told us this instance. Now, when did you next learn about it? A. Well, it was when my father went to a ceramic meeting; that was in May.

Q. In May? A. Yes.

Q. Where was the meeting? A. The first one was in Hamilton, or at least they met in Hamilton.

Q. Did you learn from anybody then about it?

A. I was not there. My father told me when he came home.

Q. Well, we will just have to ask his lordship about that.

Trying to show, my lord, the state of a man's mind, and when he was advised I think is important.

HIS LORDSHIP: When he was advised what?

MR. HEIGHINGTON: Well, we can only go by what his report of it was. It seems to me when it is alleged that the man knew that I have to show by his statement that he did not know. It is a clear parallel to the dust case.

HIS LORDSHIP: That is practically, Mr. Heighington, saying that the hearsay statement of the father is evidence.

MR. HEIGHINGTON: No, I am not offering to say that he said, "I didn't know." I am just saying, what did he say?

HIS LORDSHIP: I know, but surely, "What did he say?" -- that is the declaration. That is the statement, a hearsay statement, what he said.

MR. HEIGHINGTON: Well, we can only judge his knowledge by what he says and does, these cases say. Perhaps I won't press that question at the moment, then, my lord. I will ask another thing.

Q. What did he do after he got back from the ceramic meeting? A. Well, I just don't know how long it was, but one day he called up Norm ---

Q. Were you there? A. Yes, I was there.

Q. You heard him call up Mr. Byrne? A. I got the number for him.

Q. You heard one end of a conversation, did you? A. Yes.

Q. What? A. I heard one end of a conversation; my father was there.

Q. Well, what was it he said to Mr. Byrne? A. He said, "Norm, is there any truth about these negotiations going on about the sale of Sovereign Potteries to Johnson Brothers?"

Q. You heard him say that? A. Yes.

Q. You could not hear the reply? A. And then ---

Q. Just a minute, please. I am going to ask his lordship if the witness may now say what his father said the reply was. It is not unfair to Mr. Byrne; he is here.

HIS LORDSHIP: I think that is still hearsay.

MR. HEIGHINGTON: All right. It was put up to him, anyway. That is all right, then.

Q. Later on, after that, did your father get any definite knowledge as far as you know about the sale actually going through? A. Not until it came out in the paper.

Q. It came out in the paper; what paper?

A. The Hamilton Spectator; and that was June 27th.

Q. June 27th. The Spectator has furnished me with a copy of the paper. I suppose that will do for my friend. Otherwise I will have to go across the street and get the original. Will you look at this transcript of this paper and show his lordship the article to which you refer?

MR. MASON: I am quite willing to take the witness's statement that it appeared in the paper without putting the paper in, unless my friend wants it. I have no desire to cumber the record up.

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HIS LORDSHIP: Do you want the paper in, or is it sufficient that it did appear in the paper?

MR. HEIGHINGTON: It appeared in the paper. Well, I will just ask him one thing.

Q. Does the paper account mention any amount which was received, for which the business was sold?

A. No, there is no amounts mentioned.

Q. It just says it has been sold, does it?
A. Yes.

MR. HEIGHINGTON: We won't bother your lordship with it, then. The fact of the sale was in there.

Q. Now, I would ask the same question then: What was his physical reaction then? How did he appear?

MR. MASON: I object to that.

THE WITNESS: He was shocked about that.

MR. HEIGHINGTON: Do you object to the question, "Did he appear to be shocked?"

HIS LORDSHIP: Allowed subject to objection.

MR. MASON: I have not withdrawn my objection.

MR. HEIGHINGTON: Q. Did your father take any action after that that you know of? A. After he heard about the figures and ---

Q. Well, we haven't got to hearing about the figures yet. Perhaps you will tell us that first. You have not mentioned that before. He heard about figures, you say?

HIS LORDSHIP: Before you go on -- June 27th, what year was that?

MR. HEIGHINGTON: 1947, my lord.

Q. The last thing we had -- I don't want to worry you too much, but the last thing we heard was, you saw it in the Spectator on the 27th of June; is that right? A. Yes.

Q. And it did not mention a price. Then your next statement was when he learned about the figures. Now, tell us what you know yourself about learning about the figures? A. Well, I was not present when he heard about the figures. He told me approximately what they got for it, over a million dollars.

Q. He heard about figures received; and what was his reaction to that, physically first? A. Well, he was quite shocked, and he started to worry.

MR. MASON: The same objection, my lord.

MR. HEIGHINGTON: Q. He started to worry? A. Yes.

MR. HEIGHINGTON: My lord -- don't answer for a moment, please -- I do not see any objection to saying if a thing is on a man's mind and he is worrying, why it cannot be told.

HIS LORDSHIP: I don't know that it helps very much in any event, Mr. Heighington.

MR. HEIGHINGTON: Well, it shows, we submit, that he felt that he had been done, as it were.

HIS LORDSHIP: He might have worried over that; he might have worried, too, because of the difference in the price.

MR. HEIGHINGTON: Well, I suppose it is equivocal.

Q. Anyway, what action did he take after that, do you know? A. He went to a solicitor.

Q. Went to a solicitor? A. And started suit.

Q. When was that? A. That would be in July 1947.

MR. HEIGHINGTON: And I think, Mr. Mason, you have a letter from the late Mr. Boyde. Mr. Boyde started the case, my lord, and he died, as your lordship will remember, and, strange to say, Mr. Walsh, who was on the other side, also died, and the plaintiff died. I have a carbon copy furnished me by Mr. Boyde's office; will that do?

MR. MASON: There was a letter written by Mr Boyde to Mr. Byrne on July 5, 1947.

MR. HEIGHINGTON: That is the one I am referring to. Then I may put a copy of it in, my lord.

MR. MASON: This of course is not proof of the contents; it is merely proof that a letter was communicated.

MR. HEIGHINGTON: Quite. His lordship and I won't make any mistake about that. A demand was made fairly promptly, my lord, July 5th. We shall just have it down, shall we, that my friend admits -- well, I will put it in as Exhibit 14.

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HIS LORDSHIP: Have you any objection to the copy going in?

MR. MASON: No objection.

MR. HEIGHINGTON: There is another one ---

HIS LORDSHIP: That is from Mr. Boyde to whom?

MR. HEIGHINGTON: Mr. Boyde to the defendant, July 5, 1947. And at the same time I might put in Mr. Byrne's office acknowledgment, on July 11th, Mr. Byrne being out of town. Mr. Boyde wrote again on the 12th, and again on the 23rd of July, and again on the 30th of July, urging attention, and making a demand, repeating it, my lord. It will all be one exhibit.

--- EXHIBIT 14: Correspondence between H.A.F.Boyde, K.C., and Norman W. Byrne in July 1947.

MR. MASON: If my friend puts that in, he should put the letter of reply in, after referring to it, indicating there is not any. There is a letter from Walsh & Evans to Mr. Boyde, August 2, 1947.

MR. HEIGHINGTON: I do not think I have to put that in, my lord.

MR. MASON: I do not think my friend should have suggested there was no reply.

MR. HEIGHINGTON: I am not suggesting that; I said there was a reply.

HIS LORDSHIP: The reply is in August?

MR. MASON: Yes, my lord, August 2nd.

HIS LORDSHIP: I do not think it is suggested there was no reply.

MR. MASON: I understood that.

MR. HEIGHINGTON: Oh, no; no insinuation at all.

MR. MASON: This is vacation time, as your lordship will recall.

MR. HEIGHINGTON: We know the calendar.

The situation is, my lord, I want to prove that his acts were to immediately make a demand in respect of the matter, that is all. No time was wasted.

HIS LORDSHIP: To show that Mr. Boyde was very prompt in following up.

MR. HEIGHINGTON: Yes. Then the writ, of course,

was issued in September, my lord, after the August letter.

Q. You said you went down to get clay, got your clay supplies for the McMaster Potteries from Sovereign; that is right, isn't it? A. That is right.

Q. Did you have any conversation with Mr. Byrne about that aspect of the matter at any time?

A. Yes; that was at the April 8th meeting. I asked him ---

Q. That is the 8th of April you are referring to? A. Yes.

HIS LORDSHIP: What year?

MR. HEIGHINGTON: 1947.

THE WITNESS: 1947.

MR. HEIGHINGTON: Q. Yes? A. I asked him if that would in any way affect us getting supplies at the Sovereign.

Q. And what did he say? A. Norm said, "No."

Q. That is all, thank you.

Your witness.

PLAINTIFFS' EVIDENCE

No. 6.

CROSS-EXAMINATION OF R. K. McMASTER.

CROSS-EXAMINED BY MR. MASON:

Q. How old are you, Mr. McMaster? A. Thirty-five.

Q. And up to what time did you reside at your father's home?

HIS LORDSHIP: Just a moment; I did not get the answer.

MR. MASON: He said thirty-five, my lord.

THE WITNESS: Thirty-five. Up until 1942. Then there was -- that is right, '42.

MR. MASON: Q. And did you reside with your father since that time? A. No.

In the Supreme Court of Ontario.

Plaintiffs' Evidence.

No. 6.

R.K. McMaster, Cross-examination - continued.

Q. Now, you have said that your father with some other gentlemen formed Sovereign Potteries, if I understood you rightly? A. Yes, sir.

Q. Who did Sovereign Potteries? A. You mean the men that was in it ?

Q. Yes; who formed it, I mean? A. I don't know what you mean, whether you mean the solicitor or the ---

Q. Well, don't you know the men who were responsible for --- A. Yes.

Q. --- having Sovereign Potteries come as a business concern? A. Yes.

Q. Who were they? A. There was Mr. Pulkingham, Mr. Etherington, my father, on one side, and there was Mr. Russell, Mr. MacKay and Mr. McGee and Mr. Marsales and Mr. Robinson.

Q. Now, who employed Mr. Byrne in connection with Sovereign Potteries? A. I wouldn't say that.

Q. Your father did not, did he? A. No, I guess not.

Q. Then you said that these three gentlemen, your father and the two others, Mr. Pulkingham and Mr. Etherington, put their shares into a holding company and employed Mr. Byrne; do you know that? A. Yes, sir.

Q. What did Mr. Byrne do? A. He drew up the charter; he made arrangements for the Carleton Securities.

Q. You know, then, I suppose, that a charter that had been got for another company was used for the purpose of the incorporation of this holding company? A. Yes.

Q. And you have referred to a document, Exhibit 3, and that document says in part that the shares were to be transferred to Mr. Byrne? A. Yes.

Q. You know that?

MR. HEIGHINGTON: In trust, please; in trust, it says.

MR. MASON: Well, certainly.

MR. HEIGHINGTON: Yes, but you did not say so.

MR. MASON: Well, I will add it.

Q. In trust? A. Yes.

Q. Was that done in fact, or do you know? A. I guess it was.

Q. What? A. I guess it was.

Q. Don't say, "I guess it was." Do you know whether it was done or not? A. No, I haven't looked at ---

Q. What? A. No.

Q. You don't know. Then you said that Mr. Byrne acted for your father in connection with Carleton Securities? A. Well, Mr. Byrne said it was my father that wanted the Carleton Securities, and he drew it ---

Q. I am not asking you that now. Please answer the question. What did Mr. Byrne do at any time for your father in connection with Carleton Securities?

MR. HEIGHINGTON: May I interpose? I think the witness's answer is very correct, my lord. He said that Mr. Byrne himself says that Mr.McMaster was the one that asked him to do it, and Mr. Byrne has already sworn to that. I think the witness is quite right; he heard him say it.

MR. MASON: That is not my question, with deference to my friend.

MR. HEIGHINGTON: I beg your pardon.

MR. MASON: The witness said on my friend's examination that Mr. Byrne acted for his father in Carleton, which I am attacking at the moment.

Q. Tell me one thing that Mr. Byrne did for your father in connection with Carleton Securities?

A. That, and trying to break up the Carleton Security, what he admitted in ---

Q. Never mind what he admitted; tell me what you know? A. That is all I know.

Q. Are you speaking of something that Mr.Byrne said on his examination for discovery? A. That is where I found that out, yes.

Q. Well, that is what you are talking about? A. Yes.

Q. Now, apart from what Mr. Byrne said -- we will hear about that later -- are you suggesting to his lordship that Mr. Byrne acted for your father in connection with Carleton Securities, in any one way?

In the Supreme Court of Ontario.

Plaintiffs' Evidence.

No. 6.

R.K. McMaster, Cross-examination - continued.

MR. HEIGHINGTON: May I object, my lord? The written agreement speaks for itself. It says they are to share the expenses of it and it is to be performed, and Mr. Byrne drew the agreement that is in now. The agreement speaks for itself. I don't care what this witness says; I don't think it will help you, my lord.

HIS LORDSHIP: The expression may be ambiguous; I do not know myself what Mr. Mason has in mind.

MR. MASON: I will divide it in two parts.

Q. Apart from this agreement, Exhibit 3, can you tell me one thing that Mr. Byrne did for your father, acting for him, in connection with Carleton? A. Well, at that time when he was supposed to read a paper for dad.

Q. When he what? A. When he was supposed to read a paper for dad, that dad had given him. He was going to edit it and read it at the stockholders' meeting.

Q. What do you mean? I haven't heard of this before.

HIS LORDSHIP: That is that letter of resignation.

MR. MASON: Q. Are you speaking of the letter of resignation? A. Yes.

Q. I will come to that, then. Now, is there anything else that you say Mr. Byrne acted for your father in in connection with Carleton? A. Not that I know of.

Q. Were you present when Mr. Byrne went over this letter with your father? A. No, sir.

Q. Is it the fact that the only thing you have told us about that is some information received from your father? A. Yes.

Q. Now, was Mr. Byrne a shareholder in Carleton Securities? A. I don't believe so.

Q. Was he solicitor for Carleton Securities? A. Yes.

Q. Now, why do you say that? A. Well, had a qualifying share.

Q. What? A. What do you mean, why?

Q. Why do you say that Mr. Byrne was solicitor for Carleton Securities Limited? A. Because I was told he was solicitor.

Q. Who told you? A. Well, through the conversation between Mr. Etherington, Pulkingham and dad.

Q. What? A. Conversation between Mr. Pulkingham Etherington and dad, I understood that Mr. Byrne was solicitor.

Q. For Carleton Securities? A. Yes, sir.

Q. When? A. Oh, it is years ago.

Q. Do you mean at the time of this agreement or afterwards? A. I always thought he was solicitor all the time.

Q. You always thought? I am trying to get at why you thought it. A. I was told that.

Q. And that is all you know about it, is it? A. Yes, sir.

Q. Well, now, who told you? A. Well, conversation --

Q. Who told you? Somebody told you, you said; who told you? A. Well, then I have to name three of them, my father and Mr. Pulkingham ---

Q. No, don't name the three of them unless the three of them told you.

MR. HEIGHINGTON: He says he overheard the conversation.

THE WITNESS: I would hear the conversation when they would be discussing.

MR. MASON: Q. Tell me what the conversation was?

A. Oh, I couldn't say that; that is years ago.

Q. Could you remember anything about it at all?

A. There used to be a lot of conversations that I would hear.

Q. And that is your only reason for saying that Mr. Byrne acted as solicitor for Carleton Securities? A. Yes, sir.

Q. Now, you knew that the three, your father and Mr. Pulkingham and Mr. Etherington, had 2,500 shares -- no, that is wrong; they had holdings in Carleton Securities, didn't they? A. Yes.

Q. Just the three of them? A. Yes.

Q. And then Carleton Securities had 2,500 Common shares of Sovereign Potteries? A. Yes.

In the Supreme Court of Ontario.

Plaintiffs' Evidence.

No. 6.

R.K. McMaster, Cross-examination - continued.

Q. And then there was another 2,500 shares of Sovereign ---

HIS LORDSHIP: Just a minute. What was the one before that?

MR. MASON: The Carleton Securities held 2,500 common shares of Sovereign Potteries.

Q. Then another group held 2,500 shares of common of Sovereign Potteries? A. Yes, sir.

Q. We will call that the financial group. A. Yes.

Q. Making 5,000 common shares in all. Now, what preferred shares were held, do you know, in Sovereign Potteries, by Carleton Securities? A. Well, there were not too many. I don't know exact figures; I would say about 250.

Q. Do you know? A. Yes.

Q. Well, how many? A. About 250.

Q. 250? A. I wouldn't say exact, no.I would say around 250.

Q. Approximately 250 preferred shares of Sovereign Potteries were held by Carleton Securities Limited; is that right? A. That is what I believe.

Q. And then you know that a larger number of shares, preferred, was held by the financial group? A. Yes.

Q. Do you know how many? A. No, sir.

Q. Do you know whether anything was paid by your father for the shares which he held in Carleton Securities? A. The only way I can answer that is ---

Q. Well, do you know? A. I know how they got them.

Q. I am asking you a simple question. I will let you make any explanation you like, but I would suggest that you could answer it very easily.

MR. HEIGHINGTON: Not going to make any answers at all. I never heard such roughness.

THE WITNESS: I know they put up certain things for their share of the stock, and the other put up money.

MR. MASON: Q. And your father got preferred shares for what he put up, didn't he?

HIS LORDSHIP: Mr. Mason, you did not distinguish between the preferred and the other shares.

MR. MASON: I thought I had, my lord.

HIS LORDSHIP: You just said shares.

MR. MASON: I beg your lordship's pardon.

Q. Your father got preferred shares for what you mentioned as the collateral and the machinery he brought in? A. Well, got their common stock too for that.

Q. Did he get the preferred shares for the money and the machinery that he brought in? A. I don't know how that was.

Q. You don't know how that was? A. No.

MR. HEIGHINGTON: He has told you he got them both.

MR. MASON: Please, now!

HIS LORDSHIP: Mr. Heighington, this is cross-examination.

MR. HEIGHINGTON: I am sorry, my lord.

MR. MASON: I am trying to get the witness down to something definite, and I think I should be assisted rather than otherwise.

Q. Now, Mr. Master, the question I want you to answer is, whether you know whether or not your father paid anything for the common shares that he had in Carleton Securities? A. Yes, sir.

Q. What did he pay for them? A. He put up collateral, bought the machinery, and the three of them pooled their certain amount to bring up the machinery and things like that, and they got so much stock for it.

Q. How do you know that? A. Because I have seen the notes and things.

Q. What? A. I have seen the notes and the collateral.

Q. Well, have you seen any document that said that your father was entitled to so many shares for that? A. I have seen the Carleton Securities -- no.

Q. You haven't seen that? A. No.

Q. Then I am asking you a simple question: how do you know that your father got both common and

In the Supreme Court of Ontario.

Plaintiffs' Evidence.

No. 6.

R.K. McMaster, Cross-examination - continued.

preferred shares for the collateral and the machinery, or do you know? A. I don't know the workings of it, but I know what they got and what they put up.

Q. How do you know? A. Because I have seen the certificates, Carleton Securities, and I know that they controlled fifty per cent of the common stock.

Q. Well, you see, that is not what I am asking you. A. Well, I don't know how to answer your-- 10

Q. Do you know whether or not your father paid anything for his part of the shares of Carleton Securities that were common? A. The only way I can answer that is, he put up money, and how it was worked I don't know.

Q. Well, we will leave it at that. Then you said that his preferred shares were sold. I don't know that it makes much difference. Do you know whether they were sold or whether they were redeemed by the company? A. No, they were sold. 20

Q. Were they? A. Yes.

Q. How do you know that? A. Well, sold them, made a payment on the house.

Q. Who sold them? A. My father.

Q. To whom? A. To a real-estate agent.

Q. Who was that? A. Someone that works for Buzza.

Q. For what? A. Buzza. That was when we were buying the Sydenham property.

Q. What did your father sell at that time? 30
A. How?

Q. What? What did he sell? A. Preferred stock of Sovereign Potteries.

Q. How much? A. About $3,500.

Q. $3,500? A. Yes.

Q. You say it was not redeemed? A. Well, Byrne said that Bill got them.

Q. What? A. Mr. Byrne said that Mr. Pulkingham got them finally.

Q. Well, at all events, you say they were not 40
redeemed, they were sold? A. They were sold, yes.

Q. Now, I want you to give me some information about Exhibit 4. Referring to Exhibit No. 4 ---

which is the account, my lord, dated December 6, 1946 -- the first item is, discussions with you as to your personal estate and Succession Duty, $50.00. When were those services performed? A. In '44.

Q. Nineteen --- A. Forty-four.

Q. Then instructions as to the will and the drawing of it, when? A. That was in '44, the latter part of the year.

Q. The latter part of '44. And then drawing consents prior to incorporation, and fee on incorporation, and so on; that had to do with the incorporation of McMaster Potteries? A. Yes, sir.

Q. And that was in what year? A. That would be the latter part of '44 or '45, first part of '45. It took quite a while, this ---

Q. Well, wait a moment. Your counsel says that the charter was on December 30, 1944? A. Yes.

Q. Do you agree with that? A. Yes.

Q. Then the next was discussions with the Excise Department, which I think you said was over something you manufactured? A. That is right.

Q. Or imported -- which was it? A. They classified some of our ware as ashtrays, and they wanted an excise tax on them.

Q. Now, will you tell me precisely when that was in 1946? A. Precisely? That went over a period too. It would be around July ---

Q. Can you tell me when it ended? A. Around July '46.

Q. It ended in July 1946. Did you put in any material with reference to that?

MR. HEIGHINGTON: All the letters from the Department.

HIS LORDSHIP: Exhibit 6.

MR. MASON: Thank you, my lord.

Q. I see the file put in in that matter as Exhibit 6 ran from July 29, 1946, to September 25, 1946. Do you agree with that? A. Yes.

Q. Now, apart from the matters that are mentioned here, will you tell me any other matter, if any, in which Mr. Byrne acted for your father? A. You mean outside of the ones already exhibited?

In the Supreme Court of Ontario.

Plaintiffs' Evidence.

No. 6.

R.K. McMaster, Cross-examination - continued.

Q. Yes. A. Well, he would call up Norm from day to day, anything that arose in the shop.

Q. Any bill for it? A. Not that I can find, no.

Q. You never knew of any account being sent for any other matter? A. No, sir; but there is one thing I would like to point out.

Q. Yes? A. Norm used to tell my father, he said my father got a raw deal, and he said he was going to make sure that you don't, and he always felt that that had something to do with it.

Q. When was that? A. Well, that was -- it was at the Sovereign.

Q. When was that? A. It would be '34 and '35; '34 and '35.

Q. Now I ask you the question I asked you before, and if you can answer it please tell me? Do you know of any work that was done by Mr.Byrne for your father as a solicitor except the work that is mentioned in this Exhibit No. 4 and the house matter which you said transpired I think in 1945? A. Yes; on this sale. He was advising there.

Q. Well, we will leave that for the moment. We will come to that. Now, apart from that what do you say? A. Not that I can recollect right now.

Q. Not that you can recollect. You say right now. You were asked that question previously, weren't you, and didn't you say that you could not think of anything else? A. I have brought something up since, though.

Q. Didn't you say previously that you could not think of anything else? A. Yes.

Q. You did. Now, have you thought of anything else? A. No.

Q. Now, you say that your father gave Mr.Byrne a letter of resignation to revise on his behalf; if I have not put that rightly, you put it right for me?

A. No, it was not a letter of resignation. It was his side of the story after he resigned, and he was going to read it at the stockholders' meeting.

Q. What was it that Mr. Byrne did? I want to understand you. You said something about a letter?

A. He was supposed to edit it and present it to the stockholders.

Q. What letter? A. The letter my father gave to Mr. Byrne.

Q. What about? A. About his side of why he had to resign from the Sovereign.

Q. Was it a letter of resignation? A. No, no; it would not go to Mr. Byrne.

Q. Then please tell me what it was, because I don't know what you are talking about. A. Well, he gave him a letter stating his side of the controversy that they had in the Sovereign.

Q. This was away back in 1936, was it? A. It would be about '37.

Q. Well, '36 or '37? A. Yes.

Q. Your father left Sovereign Potteries? A. Yes.

Q. Whether he left of his own accord or was requested to leave we are not very much concerned about. Now, what about this letter? Do you say that your father wanted to have a letter put before the stockholders of Sovereign Potteries? A. Yes, sir.

Q. To represent his side? A. Yes, sir.

Q. Side of what? A. Well, the argument.

Q. What argument? A. Well, there was some friction there, and he didn't think he was entirely wrong, and he stated certain facts.

Q. Was your father asked by the directors to resign? A. I couldn't say that.

Q. What? A. I couldn't say that.

Q. You don't know? A. I know there was pressure brought upon him.

Q. Well, we will see what you have to say about it. Do you mean to say that you don't know whether or not the directors asked your father to resign?

A. Well, there was pressure brought on him to resign. Probably he did have to resign.

Q. By whom? By whom was the pressure brought?

A. Well, it would be the other side.

Q. Well, who were the other side? The directors?

A. Well, Mr. Pulkingham being president, that would be the -- probably be the one.

In the Supreme Court of Ontario.

Plaintiffs' Evidence.

No. 6.

R.K. McMaster, Cross-examination - continued.

Q. Let us not waste too much time. Was pressure brought by the directors on your father to resign? A. That is right.

Q. It was. Well, why didn't you say so quickly? Then you say that he wanted to put his side, as you say, in a letter -- to the shareholders, was it? A. Yes, sir.

Q. Then what happened? A. Well, that is as far as I know. He gave it to Mr. Byrne.

Q. Did you see the letter? A. I saw the letter, yes.

Q. Were you present when it was given to Mr. Byrne? A. No, sir.

Q. You were not; so that all you know about that was what you have been told? A. That is right.

Q. Now, is it the fact that your father was very anxious to dispose of his shareholdings in Carleton? A. He wanted to get them out of Carleton Securities.

Q. Yes? A. I wouldn't say he would be anxious to get them out of Sovereign Potteries.

Q. I am asking about Carleton? A. He was anxious to get them out of Carleton, yes.

Q. Why? A. Well, being a minority stockholder, he couldn't do anything with them.

Q. And what efforts did he make? A. He went to see Mr. Byrne different times.

Q. Were you there? A. No, I was not there.

Q. Do you know when it was? A. Well, ever since the time he got out, from '37 right on to --

Q. How do you know that? A. Well, that is from my father.

Q. Were you ever present yourself? A. Only when Norm was down at the shop, that is the only time, when he inquired about his holdings in Carleton Securities.

Q. Well, we will come to that. Apart from that, were you ever present? A. No, sir.

Q. And do you know whether or not your father had ever discussed the matter of getting his stock free in Carleton Securities with Mr. Pulkingham and Mr. Etherington? A. He told me so.

Q. But you do not know apart from that? A. No, sir.

Q. Did he try to sell his shares? A. To whom?

Q. To anybody? A. Not that I know of. If he did it would have been to Mr. Pulkingham and Etherington.

Q. On your examination for discovery:

"98. Q. Had your father ever endeavoured, to your knowledge, to sell his Carleton Securities holdings? A. Yes. He tried to sell before.

99. Q. At various times? A. I wouldn't say various. I would say the odd time."

Was that right or wrong? A. I said if he did it would be to Mr. Pulkingham ---

Q. I am asking you, is what I have read right or wrong? A. I guess it is right.

Q. Right? A. It is right.

Q. Then he did try to sell it. Do you know to whom he tried to sell? A. Just from -- no.

Q. You do not? A. No.

Q. Had he been unable to sell? A. He had been unable, yes; he couldn't get his ---

Q. Now, you told us, I think, about some sketch that was drawn in connection with a wedding; do you know the sketch I mean without looking it up? A. Yes, sir.

Q. Do you know whose wedding it was? A. No, sir.

Q. Have you any means of fixing the date?

A. Only general. It was in the new plant, and it was before '47 and after '45, so it would be around '46.

Q. That is the only means you have of fixing the date with reference to the new plant? A. That is right.

Q. When was your new plant finished and occupied? A. In '45.

Q. What time? A. Well, some of us were up there, we worked in both plants.

Q. I am not asking you about that; I am asking you when your new plant was --- A. Was finished, you mean?

In the Supreme Court of Ontario.

Plaintiffs' Evidence.

No. 6.

R.K. McMaster, Cross-examination - continued.

Q. When was it in use? A. Well, some of us was up there right away.

Q. What do you mean by right away? A. Just as soon as we bought it.

Q. Well, when? A. Well, about April.

Q. Of what year? A. '45.

Q. So that this incident might have taken place at any time after April 1945, might it? A. It could.

Q. It could, yes. Now, you say Mr.Byrne was at your plant twice; were you present on both occasions? A. I saw him there twice.

Q. Were you present on both occasions?
A. Yes, sir.

Q. You were? A. Yes, sir.

Q. Did he have a discussion with your father on both occasions? A. Yes, sir.

Q. Were you there on both discussions? A. Not all the time, no.

Q. Well, you were not there all the time on either occasion, were you? A. I mean I was not with them; I was in the plant.

Q. What I mean to say is, on neither occasion were you with them all the time they were having their discussion? A. No, sir.

Q. What? A. No, sir.

Q. Now, at what times was Mr. Byrne there?

A. Well, the second time was in the spring; that would be '46.

Q. What time? A. You mean the day time?

Q. Do you know the month?

A. In the spring, I said. That is as close as I can ---

Q. That is as close as you can get to it, Yes?

A. And the other was before that.

Q. When was the other? A. That would be in the fall.

Q. Of '45? A. '45.

Q. And what did your father say on that occasion to Mr. Byrne that you heard? A. He asked him about the Carleton Securities, if he could do anything about that yet.

Q. Anything else? A. No.

Q. Nothing else? A. I can remember the second time, because we had a jam in the kiln.

Q. I didn't catch what you said. A. I can remember the second time, because we had a jam in the kiln.

Q. You cannot remember what was said the first time; is that right? A. That is right.

Q. And the second time all that your father said to him was what? A. Well, what I heard was, he asked him about the Carleton Securities.

Q. What did he ask him? What did he say?

A. Well, if he could get out.

Q. Is that what he said, the way he put it?

A. I don't know the exact words. I can't remember his exact words on that.

Q. And what did Mr. Byrne say? A. Because I was working on the kiln.

Q. What did Mr. Byrne say? A. Can't do anything about it.

Q. What? A. Can't do anything about it.

Q. Is that what he said? A. Words to that effect.

Q. Well, there was nothing new about that? A. That is right.

Q. To either you or your father; was there? A. That is right.

Q. That had been the position right along for a long time? A. Yes, sir.

Q. Right back to 1936? A. Yes, sir.

Q. Then you said your father did not go near Sovereign Potteries in the years '46, '7 and '8? A. To my knowledge he didn't.

Q. What? A. To my knowledge he didn't.

Q. He didn't. Now, you told my friend next about certain solicitors your father had from time to time. You mentioned Mr. Braden; that was in 1939. Then you mentioned another solicitor, I don't think you gave the name, subsequently, something you said in connection with a friend of your sister's? A. That is right.

Q. Who was that? A. The sister?

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R.K. McMaster, Cross-examination - continued.

Q. No; the lawyer? A. Lampard.

Q. Mr. Lampard? A. Yes.

Q. And then you also mentioned Mr. Shaver? A. Yes, sir.

Q. And you said he acted in a sale for both parties, and you think that was when the new plant was purchased? A. Yes, sir.

Q. Was that the only occasion? A. Yes, sir.

Q. Now, when did you first know anything about an option being given by your father to Mr. Pulkingham?

A. I would say around the first part of '47.

Q. The first part of '47; how did you learn it then? A. Well, probably hearing him talk with my sister.

Q. Did you see it? A. No, sir.

Q. Never? A. Never.

Q. Didn't know anything about its preparation?

A. No, sir. I know -- oh, yes, there is one point; Father told me that there was an option given and there was one renewal, and that is as much as I know about it.

Q. Well, I would like to know first what you know about the option itself; you say you have never seen it? A. No, sir.

Q. Did you ever see a copy of it? A. No, sir.

Q. Have you made diligent search for it? A. Yes, sir.

Q. And I suppose if you never saw the option you never saw the renewal? A. That is right.

Q. Now, who were present when you say Mr. Byrne made this remark about the sons of b's? A. My father and I.

Q. And you said there was an open door? A. Yes, sir.

Q. Doorway. Your sister and your mother, were they in the vicinity? A. They would be in the next room.

Q. In the next room; with an open door?

A. That is right.

Q. Mr. Byrne knew that, I suppose? A. Yes.

Q. And you are suggesting that Mr. Byrne made this remark that you have mentioned; is there any doubt about it? A. Not a doubt in the world.

Q. Not a doubt in the world. And you say that he said that they had given this to him three days after it expired? A. That is right.

Q. Did you see what it was? A. A piece of paper.

Q. You never read it? A. No, sir.

Q. So that you cannot say yourself when it expired? A. That is right.

Q. All you know is what you told us what Mr. Byrne said? A. Yes, sir.

Q. Now, didn't you tell me previously something about the preparation of this document? A. Of what document?

Q. This option; do you know who typed the option? A. Yes, I know who typed it.

Q. Beg pardon? A. I know who typed it -- I don't know whether it is the option or the renewal. My sister done that.

Q. Which sister? A. Dorothea.

MR. HEIGHINGTON: We are calling her.

MR. MASON: Q. Do you say you don't know whether she typed the option or the renewal? A. I didn't say ---

HIS LORDSHIP: He said she did type it.

MR. MASON: I meant, my lord, whether it was the option or the renewal that the sister had typed.

Q. What do you say? A. I believe she typed the option and the renewal. I might have got this since the examination.

Q. Yes -- because I was looking to see what you said then. My impression was then that you were not clear which she had typed. So that -- A. I am not positive now.

Q. Beg pardon? A. I am not positive now.

Q. You are not positive now. Well, if your sister is to be called, then we will probably learn more about it. Then tell me what took place immediately after Mr. Byrne made this remark that you attribute to him about the sons of b's?

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A. Then he went on to say about it, Mr. Etherington building a new home, and my father said yes, he had heard.

Q. Well, what became of the option itself?

A. He tore it up right after that.

Q. Who tore it up? A. Norm.

Q. Did your father have it in his hands at all? A. No, sir.

Q. Did your father make any remark when it was torn up? A. No, sir.

Q. And then you said that he said that Etherington was building a home and had his stock in hock? A. That is right.

Q. For $6,000? A. Yes, sir.

Q. Who fixed the price? A. What price?

Q. $30,000. A. I thought it was Mr. Pulkingham; that is what I said the last time.

Q. That is, in the option that had been given to Mr. Pulkingham? A. Yes, sir.

Q. You thought who had fixed it? A. Mr. Pulkingham.

Q. Did you know that? A. No.

Q. You did not know that. Do you know whether or not your father had ever had any lower price?

A. No, sir.

Q. Now, you said that Mr. Byrne said that the book value was low? A. Yes, sir.

Q. What did he say about it? A. Painted a dark picture.

Q. Tell me what he said about the book value of the stock? A. I am just trying to figure whether he mentioned the book value then. I think he did mention the book value then.

Q. But you are not sure? A. He did mention the book value then.

Q. What was said about it? A. It was ten or fourteen dollars.

Q. What? A. Said it was worth ten or fourteen dollars a share.

Q. Which? A. The book value of the stock.

Q. Did he say the book value was worth ten or fourteen dollara a share, name two figures?

A. Ten or fourteen, like that.

Q. Ten or fourteen; he mentioned both figures?

A. Yes, sir.

Q. Well, the book value could not be both, you know. A. No, but you ask any outsider and they can't tell you exactly the -- I was talking to Mr Marsales and he said it was ---

Q. Never mind what somebody else has done. You and I are discussing this at the moment. I am suggesting to you that the book value could not be both ten dollars and fourteen dollars? A. That is true.

Q. And I am asking you whether Mr. Byrne said the book value is ten dollars or fourteen dollars; is that what he said? A. That is the way I put it.

Q. What? A. Ten or fourteen dollars.

Q. Fourteen dollars now, is it? A. No; I said ten or fourteen dollars.

Q. Well, that may seem strange. However, that is what you say. Now, do you remember reading the statement of defence when it came in? A. I read part of it.

Q. And do you remember that it said something about the book value? A. No. I have heard two or three values on it.

Q. I am asking you, did you --- A. No, sir.

Q. --- know that the statement of defence said something about the book value? A. If I had I didn't pay any attention to it.

Q. At paragraph 7 of the statement of defence the concluding words were:

" . . . although the company's book value at the time was $10.27 per share."

You learned that from the statement of defence, didn't you? A. No, sir.

Q. What? A. No, sir.

Q. You didn't? Then you went on to say that he said there was a terrific bank loan; what was the terrific bank loan? A. $400,000.

Q. How much? A. $400,000.

Q. Are you sure? A. Now I am, yes, sir.

Q. You are sure? A. I remember what I said there too.

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Q. Well, what did you say previously about it?

A. I just was not sure when I told you; I said 250 or 400,000.

Q. But since you have found that it was, you say, 400,000? A. Yes.

Q. And therefore you are willing to say that was what Mr. Byrne said at the time? A. That is right.

Q. Now, who said that Mr. Etherington was building a new house? A. Norm Byrne.

Q. Norman Byrne said that, did he? A. Yes, sir.

Q. Was he the first one who mentioned the new house of Etherington's? A. Yes, sir.

Q. Then I want to know what you meant by question 266, the second line of it:

"He said, that is my father, he said, you know Etherington is building a new house. He said he understood that he was."

MR. HEIGHINGTON: He obviously refers ---

MR. MASON: Q. "267. Q. Who said that? A. My father. 268. Q. Yes? A. Norm said Etherington has his stock in hock for $6,000."

Is that a correct answer -- questions 266 to 268 inclusive? A. Yes.

Q. That is right, is it? A. Yes.

Q. Now, will you please tell me next just what took place with regard to what you have described as the cut?

A. Well, from what I understand, when they incorporated Sovereign, Byrne doing the work for Bill and Al and dad, that they agreed to have or to give him a small amount of stock ---

Q. Did he say a small amount? A. This is what I am ---

Q. What? A. This is my impression about that.

Q. I see; well, who said the small amount? The first time we have heard it, you know. A. I better start over again.

Q. All right. A. What was the question?

Q. I asked you what was said about the cut?

A. You mean when?

Q. At this conversation in March, on the 22nd, 1947? A. That is different. I was talking about before that. He asked dad, he said, "You know, I suppose, I got a cut on that, on that stock," and my father said, yes, he had heard Mr. Etherington say that, that he was supposed to get some stock, and dad offered him any part of his that was agreeable with what Mr. Etherington and Pulkingham would give.

Q. Just say that again, will you please?

A. Norm told dad, he said, you know that he was supposed to get a cut in the stock.

Q. Yes? A. And dad said he understood that he was.

Q. Go ahead? A. And then he asked him to sign this note that he wrote out.

Q. Wasn't there any more said about the cut in the stock? A. Oh, dad offered him his, yes.

Q. Well, tell me what was said? A. I wouldn't say that was right at that time. Dad said he had heard Mr. Etherington -- or he was in Mr. Etherington's presence when he heard him say that they were supposed to give Norm a cut.

Q. Any amount mentioned? A. No, sir.

Q. Then what did your father say that he, your father, was willing to do? A. Oh, he would give him any proportion of his equal to what the others would give.

Q. Did you say this on your examination at question 278.

"Q. What did your father say? A. He said he had heard that he was supposed to have gotten a cut, and he had offered his numerous times."

A. Yes, sir.

Q. Did your father say that? A. Yes, sir.

Q. Right in your presence, did he? A. Yes, sir.

Q. "279. Q. He offered his? A. He offered Norm Byrne any part that he thought was his from his stock."

A. I wouldn't say any part.

Q. Well, I am reading what you said:

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"He offered Norm Byrne any part that he thought was his from his stock."

Did you say that? A. Yes, sir.

Q. You said that; was it true? A. Yes, the way it is ---

Q. That is true? A. I don't know how you interpret it; the way I said it ---

Q. "280. Q. Your father said he had offered Mr. Byrne from his own stock, your father's stock, what amount he should give?

MR. HEIGHINGTON: Proportionately with the others."

A. Yes.

Q. Yes? A. I don't know what he was supposed to get.

Q. You don't know what he was supposed to get?

A. No, sir.

MR. HEIGHINGTON: 279 -- the part he thought.

HIS LORDSHIP: Mr. Mason, would this be a convenient time to recess?

MR. MASON: Yes, my lord.

(Interval from 4.10 p.m. until 4.20 p.m.)

MR. MASON: I want to interject a question or two before following the question about the cut, my lord.

Q. Mr. McMaster, will you just tell me now in your words your knowledge about the typing of the options and the typing of the renewal? A. I don't know very much about the typing of the option or the renewal.

Q. Well, I would like you to explain these answers, then, if you will. Question 183, you were asked:

"Q. Who drew that option up? A. My sister. Well, my sister typed it.

184. Q. Who prepared it? A. Well, I don't get what you mean - who prepared it.

185. Q. There was an option got into existence some way, and I want you to tell me how? Did

your sister draw it, or merely type it?

A. Typed it.

186. Q. What is her name? A. Dorothea.

187. Q. Who told her what to write or type?

MR. HEIGHINGTON: Ask him if he knows.

MR. MASON: The question is proper, Mr. Heighington.

A. Well, between my father and sister.

188. Q. You mean they worked it out between themselves? A. As far as I know.

189. Q. Were you present? A. No sir."

You were not present on that occasion at all?

A. No, sir.

Q. But yet you said your sister typed it. Then at question 204:

"Q. Then who drew that first option? A. I don't know.

205. Q. Was it typed or written, or in longhand?

A. I don't know. I don't know unless I have some notes, to see about the option."

What notes were you referring to? A. Well, when I was -- if there was anything had been said by my father or my sister.

Q. Well, what notes were they? A. The notes I kept, when I marked something down, wanted to remember.

Q. Do you mean to say that you had written them after these events happened, these notes? A. No, sir.

Q. Eh? A. No, but I had to look up any correspondence or anything like that that I had down.

Q. Do you know what notes you were talking about here:

"I don't know unless I have some notes, to see about the option."

Have you any notes? A. That is, if I had anything written down pertaining to the option.

Q. And did you find you had? A. No, sir.

Q. Then to go on:

"206. Q. Look that up, please. And did your

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sister have anything to do with typing that one, do you know? A. I don't know.

207. Q. Well then, did I understand you to say that when the renewal was prepared that your father and your sister worked it out together, and then your sister typed it. Is that right?

A. My sister typed the renewal."

Then at 360, after you have said what I have just read, that your sister typed the renewal:

"360. Q. And then did you tell me that the renewal was typed by your sister too? A. I couldn't say that."

A. The thing is, I told you as much as I knew about it, and then you keep asking other questions that I can't explain. I knew that my sister typed the renewal and she typed the option, or one option.

Q. Wouldn't it be fair to say that you were telling me more than you knew about it when you made that contradictory statement? A. I wouldn't say that.

Q. Well, we will go on. I want to come back to the matter of the cut. Please tell me anything more that was said about the cut, if there was any more?

A. I told you all about the cut that I know.

Q. Nothing more happened? A. Outside of that document being signed.

Q. That is the document, Exhibit -- A. Two.

Q. That would be Exhibit 12 here, I think. We will come to that. Now, is it true that your father had offered Mr. Byrne his part of the stock for years?

HIS LORDSHIP: What question? Were you reading?

MR. MASON: Not yet, my lord.

THE WITNESS: Part of the stock pertaining to what?

MR. MASON: Q. Is it true that your father had offered Mr. Byrne his part of the stock for years?

A. Pertaining to that cut?

Q. Yes. A. Yes.

Q. It is. And what was said about taking a gamble? A. Well, Norm said he was taking a gamble on that stock.

Q. What gamble was he taking? A. He didn't have Etherington's yet, and he was saying the $30,000 was too much for dad's stock, so he was taking a gamble on getting Etherington's, control the Carleton Securities.

Q. Did he say that? A. Yes, sir.

Q. You haven't told us that before. Let us have it now, please? A. I have told you that.

Q. Tell me just what he said about the gamble?

A. He said he was taking a gamble on that stock, and dad said he would take -- he didn't want him to take any gamble on his account, and he would take any share or any proportion of it -- he would take his proportional share.

Q. You haven't told me now anything about Etherington's? A. Etherington's stock?

Q. Yes. A. The whole deal swung on Etherington's stock.

Q. What do you mean? A. He was going to get Etherington's stock, and it was the whole thing, was to control the Carleton Securities.

Q. I want to read you what you said before, and tell me if this is correct:

"657. Q. Was anything said either by your father or Mr. Byrne about that as affecting the price of 30,000? A. No sir. There was - dad always offered him his share. He offered Norman his part of the stock for years, and as far as the $30,000. that was the price of the stock when he sold it. There was one part you mentioned about getting hold of Etherington's stock and dad's, and he said he was taking a gamble, and dad said he didn't want Mr.Byrne to take a gamble on his account, and he wouldn't take any share of it."

A. He wouldn't? That is wrong. He would take any share of it. That was a typing error there.

Q. Didn't your father say that he, your father, wouldn't take any share of it? A. No, sir.

Q. What? A. That he would take any share of the gamble.

Q. Well, just tell me what was said about that, then? A. That was what I just told you about. Norm said he was taking a gamble, and dad told him he didn't want him to take any gamble on his account,

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and he would take any part of it. Norm said,"When I gamble I gamble alone."

Q. So you think this is a clerical error here? A. Yes, sir, part of it is.

Q. Was anything else said about it? A. About the gamble?

Q. Yes. A. No, sir.

Q. Was any remark made by your father that he would go fifty-fifty on anything? A. On the gamble?

Q. On anything? A. I can't remember fifty-fifty -- he would take any share of the gamble.

Q. What was said about what the gamble was?

A. Well, he was going to get Etherington's stock.

Q. I suggest to you that Mr. Byrne was not referring to a gamble on Etherington's stock at all, but was referring to a gamble on the possibility of selling this stock? A. There was never any sale mentioned.

Q. No sale mentioned, so you say; all right. Now we go on: On March 22nd did your father say to Mr. Byrne that he, your father, would give his part any time Norm wanted it? A. Of the cut.

Q. What? A. Of the cut?

Q. Yes. A. Yes, sir.

Q. He did. A. Let us get this cut square.That would only be a nominal share or something like that.

Q. How do you know what the share would be?

A. How do I know?

Q. Yes. A. Just from the way my dad spoke.

Q. But your dad did not tell you what proportion the cut was, did he? A. No; I don't think he knew himself.

Q. Then he couldn't tell you it was a nominal one. Now, don't argue with me; I want you to tell me what the facts are. Was anything said to you at any time by anybody as to what the share of the cut was? A. No, not ---

Q. All right. Now, you have indicated here that Mr. Byrne said that if he got your father's shares and Etherington's shares he would control Carleton Securities?

A. That is right.

Q. Now, why do you say that? A. It would be sixty per cent of the stock.

Q. Yes, but if your father wanted to dispose of his stock or to realize upon it it would be necessary to sell the asset, wouldn't it, to sell the stock? A. Yes.

Q. You know, I suppose, that the Carleton Securities assets could not be sold without sixty-six and two thirds per cent -- or is that new to you? A. I knew there was an agreement.

Q. Well, didn't you know that apart from the agreement it would take two thirds of the stock?

A. Yes, I knew it would take dad and Pulkingham to break up the company.

Q. That was forty and forty per cent, making eighty per cent? A. Yes.

Q. Don't you see, if your father gave his or sold his to Mr. Byrne, then Mr. Byrne got Mr. Etherington's, that would make only sixty per cent? You would be still short of your two thirds? A. He would control the Carleton Securities.

Q. What good would it do him? A. I don't know.

MR. HEIGHINGTON: That is a matter of law, isn't it?

THE WITNESS: Well, he was always complaining about solicitor fees and things like that, solicitor fees of Sovereign.

MR. MASON: Q. I don't understand you.

A. He would get more solicitor's fees from the Sovereign if he was in a position to -- sixty per cent would control the Carleton Securities.

Q. Well, we will argue that out later, then. And did he say anything more than that he would control Carleton? A. Yes.

Q. What else did he say? A. Get even with Etherington.

Q. Now, did he say for what reason he would get even with Etherington? A. Well, he thought Etherington was the reason he didn't get his cut in the original shares.

Q. When did he say that? March 22nd or April 8th?

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A. Probably mentioned it both times. He mentioned it April 8th.

Q. When did he say it? A. April 8th.

Q. He said it April 8th; you are sure of that?

A. I believe it came up both times.

Q. Are you sure about either time? A. I know it came up once, yes, but as far as ---

Q. You don't know which time it came up? A. Not right now.

Q. But you think it came up April 8th. A. Yes.

Q. Now I ask you a question that I touched upon before: Did your father, as far as your knowledge is concerned, ever consult Mr. Byrne in any matter relating to Sovereign Potteries? A. Well, he went to see Norm always, but I can't tell you when.

Q. I read your answer:

"679. Q. Now, did your father to your knowledge ever consult Mr. Byrne in any matter relating to Sovereign Potters?"

That should be "Potteries".

"A. I would have no way of knowing."

Is that a correct answer? A. Yes, but you are --

Q. Is that a correct answer? A. Yes.

Q. Then I read 685, where we come back to the same question again:

"Q. I won't trouble you to go back that far." That was to 1936.

"Apart from that do you know of your father ever consulting Mr. Byrne in any matter relating to Sovereign Potters? A. I don't know --

686. Q. Either you know or you don't know; which do you want to say? A. I guess I don't know."

Is that a correct answer? A. That is what I said.

Q. Then do you know whether your father ever consulted Mr. Byrne with regard to any matter relating to Carleton Securities Limited? A. He was a partner in drawing up that Carleton Securities and he ---

Q. Now you are speaking of the document Exhibit 3, are you? A. That is, the agreement between the three?

Q. Yes. A. That is right.

Q. Now, apart from that, what do you say?

A. He consulted him about getting the stock out.

Q. You told us about that; anything else? A. No.

Q. Then is it a fact that even on your own statement your father did not consult Mr. Byrne about Carleton Securities Limited after 1945? A. What's that?

Q. I say is it a fact that your father did not consult Mr. Byrne about Carleton Securities Limited or anything about Carleton Securities Limited after 1945? A. Yes.

Q. What? A. Yes; he consulted him about his stock.

Q. I will read what you said before --- 687 to 692:

"687. Q. Then I go on to the next question. Do you know whether your father ever consulted Mr. Byrne with regard to any matter relating to Carleton Securities Limited? A. Yes, about this stock.

688. Q. What stock? A. He was trying to get his stock out ---

689. Q. I am not talking about March 22 or April 8. Any previous time? A. Oh yes. When he used to go down to see Norm about trying to break up the holding company.

690. Q. He had been trying to do that for a great many years, hadn't he? A. Well, I guess he had, yes.

Q. 691. Well, then, do you know what the occasion was for you going to see Mr. Byrne about it?

A. Most of it would be pertaining to that.

692. Q. Do you actually know when your father consulted Mr. Byrne about that after say 1945?

A. Not after 1945."

Was that a correct answer? A. Other places there I ---

Q. Was that a correct answer, witness?

I. I don't know.

Q. You don't know. Now we come to the document Exhibit No. 12. Tell me how Exhibit 12 --- that is the letter signed by your father of March 22, 1947 -- came into being; what led to it? A. That is the same one about the cut?

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Q. Yes. A. Norm asked for it.

Q. Tell me what was said as far as you can recall, what he said and what your father said?

HIS LORDSHIP: That is not the one about the cut, is it?

MR. MASON: I am sorry, my lord. Yes, it is 12. It starts, my lord:

"I was one of the original group . . ."

HIS LORDSHIP: Oh, yes. I was thinking they were both the same date. That is right.

MR. MASON: Q. Just tell me how the document was prepared? A. Norm wrote it out in longhand.

Q. I know, but what conversation was there which indicated what was to be written? A. Oh, the same as I gave you before. Norm said, "You know, I was supposed to get a cut at the beginning," and dad said, yes, he had heard that was so, and Norm asked him if he would write out, or if he would sign it if he would write it out, and dad said, well, he was not there when that agreement was made, but if Norm said it was true he would sign it, and that is what happened.

Q. Then can you explain the third paragraph:

"I knew at the commencement" —

this is your father's document --

"I knew at the commencement that Norman Byrne was supposed to share in the 2500 vendors shares"?

A. Norm wrote that.

Q. Didn't your father say that? A. He knew about it, yes.

Q. Didn't your father say in that conversation with Mr. Byrne that he knew at the commencement that Mr. Byrne was supposed to share in the 2,500 vendors' shares? A. No, sir.

Q. What? A. He pointed out to Norm that he was not there, that he had heard it later, and Norm put down there about the commencement.

Q. You mean to say your father signed this without realizing what it meant? A. He went on Norm's word.

Q. What? A. He went on Norm's word. He told Norm, he said, "If you say it is true I will sign it," and that is what happened, because he verified it.

Q. You were there when it took place? A. I was there.

Q. And you read the document? A. No, sir.

Q. Did you hear it read? A. I don't believe I heard it read, no.

Q. Well, will you say you did not? A. Pardon?

Q. Will you say you did not hear it read?

A. No, I wouldn't say.

Q. Did you raise any objection to it? A. No, sir.

Q. Now we come to April 8th, I think. Did you know that your father and Mr. Pulkingham and Mr. Etherington had parted with 500 shares of Carleton Securities Limited, except that they reserved the voting rights on it? A. I knew at one time they had to give up some stock when more money came in, and that was a long time ago, and that is all I knew about it.

Q. Did you ever know of their getting the 500 shares back again? A. Well, only that -- dad still had his forty per cent; that is the only way I would know.

Q. Do you know anything about whether before April 8, 1947, the three men had ever got back their interest in these 500 shares?

MR. HEIGHINGTON: You have not told him that they always retained the voting rights, have you?

MR. MASON: Yes, I did.

THE WITNESS: No, to be sure, no.

MR. MASON: Q. What? A. No, I couldn't.

Q. Don't you know that at the time of the transaction of March 22nd your father and his two associates still had these 500 shares outstanding in other people except as to the voting rights? A. No, I didn't know that.

Q. You didn't know that. You didn't know that when you suggested that your father's shares in Carleton were worth $50,000? A. They were worth $50,000, would be worth more than that if someone got control.

Q. You didn't know that; when you suggested $50,000 you didn't know that? A. They would still be worth $50,000.

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Q. But you didn't know that, I say? A. No, that is right.

Q. What? A. I didn't know about the stock, no; but even half of it, it would still be worth ---

Q. Did you have any basis for arriving at $50,000? A. No, sir.

Q. What? A. No, sir.

Q. That was just a jump in the dark, was it? A. I guess you can call it that.

Q. Now, what conversation, if any, took place between Mr. Byrne and your father on April 8th, apart from what you have told me as to counting the money? A. About the share certificates.

Q. The endorsement on the back of the share certificates? A. Yes.

Q. Anything else? A. Then there was a conversation. It was -- he brought up about Etherington persecuting Mr. Pulkingham. He didn't give any examples.

Q. Well, who talked about that? A. Byrne.

Q. What? A. Byrne.

MR. MASON: Will your lordship pardon me a moment while I look up this reference? I must not keep your lordship. I will go on with another question in the meantime, and have that looked up.

Q. I have got your statement; you said that Mr. Byrne said that? A. Said -- would you read it back? Talking about Mr. Etherington ---

HIS LORDSHIP: Persecuting Mr. Pulkingham.

THE WITNESS: Mr. Pulkingham, yes.

MR. MASON: The transcript says, when we find it, "prosecuting", but I suppose it meant "persecuting".

Q. What conversation, if any, took place about any possible sale of the property on April 8th?

A. There was nothing said about ---

Q. Anything on March 22nd? A. No, sir.

Q. Had there been any previous suggestions from time to time about disposing of the property of Sovereign Potteries? A. No, sir; not that I know of, no, sir.

Q. You never heard of it. Well, did any further conversation take place than you have told me on April 8th, or have you exhausted it? A. I told about speaking to my mother; you have that down, haven't you?

Q. No, I don't know what you are referring to. What was that? A. I don't know.

Q. What? A. He spoke to my mother.

Q. Who? A. Mr. Byrne, on the 8th.

Q. Anything about this? A. No, I know nothing about it.

Q. Then we are not concerned. You don't blame him for speaking to your mother, do you? A. No, but you wanted to know ---

Q. Then you say that you took this $30,000 in bills and at Mr. Byrne's request you put it in a deposit place instead of putting it in the bank? A. Yes, sir.

Q. How long did you leave it there? A. Oh, months.

Q. What? A. Months.

Q. A month, was it? A. Yes, more than a month.

Q. And then what did you do with it?

MR. HEIGHINGTON: Is that relevant, my lord?

MR. MASON: Well, perhaps it is, in one aspect.

MR. HEIGHINGTON: Just mere impertinence.

HIS LORDSHIP: Can't say yet, Mr.Heighington. It was brought out that it was put there, and I suppose ---

MR. HEIGHINGTON: Left there for months,and what did they do with it? I mean, that is their own business.

MR. MASON: Q. I don't know what you spent it for. Was it put in a bank then? A. Yes,finally it was deposited.

Q. When was it put in the bank? A. Oh, I don't know.

Q. What? A. I don't know that.

Q. Didn't you do that? A. Yes, I done it, but I can't say the date.

In the Supreme Court of Ontario.

Plaintiffs' Evidence.

No. 6.

R.K. McMaster, Cross-examination - continued.

Q. You can't say whether it was two weeks or a month, can you? A. Oh, it was over a month.

Q. Over a month? A. Yes.

Q. Now, something came out about clay. I understand that you had been accustomed to getting your clay -- when I speak of you, I mean McMaster Potteries -- getting their clay from Sovereign Potteries? A. Yes, sir.

Q. Notwithstanding the fact that your father had had friction with the directorate of Sovereign Potteries, they still continued to let him have the clay? A. Yes, sir.

Q. Which I suppose was a great advantage to your company? A. Yes, sir.

Q. And just what was said about that?

A. I asked Norm if it would interfere in any way with us getting supplies, or clay, from Sovereign.

Q. Yes? A. Norm said, "No."

Q. Now, if Mr. Byrne says that that remark was with reference to the projected sale of the property, what do you say? A. If what?

Q. If that remark was made by you, that question was made by you, with reference to a projected sale of Sovereign Potteries, what do you say? A. It was not made; it was made just the way I made it, after we sold the stock, whether we would still be able to get clay there.

Q. Why did you ask Mr. Byrne that question?

A. Well, there might be friction down there too.

Q. I have found the reference to the 22nd of March. Question 296, the answer says:

"Well, Etherington seemed to be on the pan that day more than Pulkingham. Byrne told dad how Etherington was prosecuting Pulkingham."

Did you mean persecuting? A. Persecuting.

Q. What was said about it? A. He gave no examples.

Q. No? A. No.

Q. Nothing at all said of any kind which would make you understand what he had contemplated by that? A. No.

Q. Did you know any foundation for such a suggestion, yourself? A. No, I don't know what he was getting at.

Q. You did not know of any reason why Mr. Etherington should be persecuting Mr. Pulkingham? A. No, sir.

Q. Or vice versa, did you? A. No, sir.

Q. Can you suggest any reason why that statement was made here? A. That is just what he said, that is all I know.

Q. Now, my friend put in the will of your father, which I think was Exhibit 2, and there was a codicil? A. Yes, sir.

Q. Who prepared the codicil? A. Bowlby; Bowlby and Griffin.

MR. MASON: My lord, I think I can finish in about five or ten minutes, but I have to go over my notes.

HIS LORDSHIP: Well, Mr. Mason, you don't need to hurry. I don't mind sitting later. We were a little late starting.

MR. MASON: Well, I am afraid I would delay you, my lord. I think if I had a few minutes this evening I might probably finish in five minutes in the morning.

HIS LORDSHIP: Well, whichever you would rather do.

MR. MASON: Well, I think I would rather do that, because it is important that I should exhaust this.

HIS LORDSHIP: Well, if that is going to expedite it, all right. We will adjourn till ten o'clock tomorrow morning.

--- Whereupon the Court adjourned at 5.05 p.m., until 10.00 a.m. on Tuesday, February 7, 1950.

In the Supreme Court of Ontario.

Plaintiffs' Evidence.

No. 6.

R.K. McMaster Cross-examination - continued.

TUESDAY, FEBRUARY 7, 1950.

--- Upon resuming at 10.00 a.m.:

ROBERT KOCH McMASTER, Recalled.

CROSS-EXAMINATION CONT'D BY MR. MASON:

Q. Mr. McMaster, did you learn that the financial group holding the 2,500 shares of common on Sovereign Potteries had formed a pool? A. No, sir.

Q. Did you ever hear that? A. No, sir.

Q. You never heard that those 2,500 shares other than the Carleton shares were held in a pool? A. This is before the sale?

Q. At any time? A. At any time? Yes, afterwards I had.

Q. When? A. That would be after July.

Q. In July or after July? A. July or after in '47.

Q. And did you learn whether a reorganization of the share structure of Sovereign Potteries was also being proposed? A. No, sir.

Q. At any time? A. I don't recollect that, no.

Q. Well, you said on your examination -- I will refresh your memory.

"Q. Did you know that anybody was proposing reorganizing the share structure of Sovereign Potters? A. That is again at what time?

161. Q. At any time? A. Around the same time, yes, as this other, I heard."

What do you say about that? A. I could have heard it.

Q. What? A. I am not sure right now.

Q. You are not sure? A. No.

HIS LORDSHIP: What question was that, Mr. Mason?

MR. MASON: That is 160 and 161.

Q. Do you know whether your father ever asked anybody to find a buyer for his shares in Carleton?

A. I had heard he had asked Mr. Pulkingham.

Q. Anybody else? A. Mr. Byrne.

Q. Anybody else? A. That is all I know of.

Q. Then you were telling me yesterday about a conversation when this matter of the cut, as you call it, came up, and after your father said that he was willing to give some proportion of the cut, what happened? A. Nothing happened.

Q. Was there any further discussion? A. Not on that, no.

Q. Your father said nothing more about it?

A. No, sir.

Q. When your father made that statement, that terminated it as far as he was concerned for the time being? A. Yes.

Q. And nothing more was said? A. This being so definite -- I told you how it happened.

Q. You what? A. I told you how everything happened on that and what he said.

Q. Well, let me shorten it for you. At question 283 you said:

"Q. We will help you. You told us now your father was willing to give his proportion of the cut?

A. Yes.

284. Q. What did Mr. Byrne say? A. Well, that sort of terminated it with dad for the time being."

Was that a correct answer? A. Yes.

Q. When your father had signed the option when you were present on March 22, 1947, did your father say, "This is the end of my dealings with Pulkingham and Etherington"? A. No, sir.

Q. Did he say anything like that? A. No, sir.

Q. Was anything said on the 22nd of March about how the $30,000 would be paid? A. No, sir.

Q. Did you pay attention to what the document said? A. I read it.

Q. I thought the document said that it would be in cash? A. Cheque or anything like that is cash.

Q. Oh, I see; that is your interpretation of it. The document did say $30,000 payable in cash, didn't it?

In the Supreme Court of Ontario.

Plaintiffs' Evidence.

No. 6.

R.K. McMaster, Cross-examination - continued.

A. Norm wrote that out. There was no instruction given to Norm about how to write it.

Q. Well, that is what the document said, wasn't it?

A. It said cash, yes.

Q. Payable in cash, yes. Do you remember that Mr. Byrne was one of the incorporators of McMaster Potteries? A. Yes, sir.

Q. And is it a fact that Mr. Bryne resigned on the 18th of December, 1944? A. I said yes to that yesterday.

Q. I beg your pardon? A. Yes.

Q. That is right, is it? And with regard to something said in your statement of claim, is it the fact that Mr. Byrne and your father never visited back and forth at each other's homes? A. He was in our home on the 22nd and on the 8th, but no, they didn't -- were in each other's homes.

Q. Well, is it a fact that --- A. That is right.

Q. --- they never visited each other's homes?

A. As far as I know.

Q. That is all I want to know. Then you make complaint in your statement of claim that Mr. Byrne did not disclose certain matters to your father; may I sum it up in saying that your complaint is that Mr. Byrne did not say anything about negotiations going on?

A. Yes, sir.

Q. And that is the whole complaint, isn't it?

A. Well ---

MR. HEIGHINGTON: I will have something to say about that.

THE WITNESS: I don't know about that.

MR. MASON: Q. Well, I want to know the fact, if there is any further complaint? A. I mean, I am no legal mind.

Q. Well, I will put these questions to you, then, and we will see. Question 644 -- I will go back to 642:

"Q. He knew there were negotiations on foot, and he didn't tell your father. Is that right? A. Yes.

643. Q. Anything else? A. That is all.

644. Q. And in 'b' you say the defendant hadn't disclosed to your father fully and exactly and without reservation all the relevant facts. Are you able to tell me what relevant facts he didn't disclose? A. He didn't say anything about these negotiations going on.

645. Q. Anything more you know? A. No, that is the whole thing."

Now, is that correct? A. Well ---

MR. HEIGHINGTON: I do not think the witness can answer what the solicitor's duty was.

MR. MASON: The witness can answer what he said before.

MR. HEIGHINGTON: Oh, yes, but may I just ask to speak to his lordship for a moment?

HIS LORDSHIP: Yes, Mr. Heighington.

MR. HEIGHINGTON: I say I do not want this witness to attempt in any way to define what the solicitor's duty is to his client. He may say that that is all that he complains of, or that is all that he knows, nothing was said about negotiations, that is the complaint, but it cannot be limited to what this witness says.

HIS LORDSHIP: Well, that question of law would not be affected.

MR. HEIGHINGTON: No, quite.

MR. MASON: Q. Now, are those answers you made correct? A. Well, he didn't tell us anything about the negotiations or anything, if that explains it ---

In the Supreme Court of Ontario.

Plaintiffs' Evidence.

No. 6.

R.K. McMaster, Cross-examination - continued.

Q. You heard what I read, witness. Is what you stated correct or not? A. Yes, sir.

Q. It is. Now, going back to what I asked you a few moments ago, was anything said at the meeting on March 22nd or on April 8th to indicate why your father did not make some allowance to Mr. Byrne in connection with the $30,000? A. That is the price he wanted.

Q. But he was entitled to a cut? A. Yes, and he never asked for it.

Q. That is what I am asking you. Was anything said by anybody to indicate why an allowance was not made by your father in respect of the $30,000?

A. No, sir.

Q. Now, your father was, I suppose, until his death the active man in McMaster Potteries?

A. Well, it just depends ---

HIS LORDSHIP: In what potteries?

MR. MASON: McMaster Potteries.

THE WITNESS: He could not do a lot of the physical things that I had to do; he was the head of it.

MR. MASON: Q. Beg pardon? A. He was the head of it, yes.

Q. He was a man of considerable business experience?

A. Yes, sir -- no, I wouldn't say that.

Q. Been superintendent of the plant for many years?

A. Yes.

Q. And as superintendent of the plant he was directing people under him? A. Yes.

Q. And he made a success of his own business, of McMaster Potteries? A. Yes.

Q. Yes? A. Yes.

Q. That is all, thank you.

In the Supreme Court of Ontario.

Plaintiffs' Evidence.

No. 6.

R.K. McMaster, Cross-examination - continued.

PLAINTIFFS' EVIDENCE

No. 7.

No. 7

RE-EXAMINATION OF R.K. McMASTER.

R.K. McMaster Re-examination.

RE-EXAMINED BY MR. HEIGHINGTON:

Q. Made a success of Sovereign Potteries too?

A. Yes, sir.

Q. I suppose -- it has been stated that that is the outstanding manufacturer of dinnerware in Canada -- Sovereign? A. Yes ---

MR. MASON: I don't know whether my friend wants to make an argument now, but that does not arise out of my cross-examination.

MR. HEIGHINGTON: You were asking if the man made a success of something, and I am saying he made a success of the other one, very much so.

HIS LORDSHIP: It may be added to what you had in mind.

MR. HEIGHINGTON: A very fine practical man; I don't care how much it is emphasized.

Q. I just wanted to ask you one question, Mr. McMaster. Your attention was brought yesterday

In the Supreme Court of Ontario.

Plaintiffs' Evidence.

No. 7.

R.K. McMaster, Re-examination - continued.

to question 692, in which you were asked:

"Q. Do you actually know when your father consulted Mr. Byrne about that after say 1945?"

And your answer then was:

"A. Not after 1945."

Do you want to say anything about that now?

A. Just one other time in 1946 when Mr. Byrne was at our shop. I had already told about that.

Q. Yes, about the same matter? A. Yes.

Q. Carleton Securities? A. Carleton Securities, yes, sir.

Q. That is all, thank you.

My lord, yesterday I did not have the charter of the McMaster Potteries; I would like to put it in now. It has been sent down.

--- EXHIBIT 15: Charter of McMaster Pottery,Limited.

Plaintiffs' Evidence

No. 8

EXAMINATION IN CHIEF OF MRS. D.WALTER

In the Supreme Court of Ontario.

Plaintiffs' Evidence No. 8

Mrs. D.Walter examination.

MRS DOROTHEA WALTER, Sworn.

EXAMINED BY MR HEIGHINGTON:

Q. Mrs. Walter, you were Dorothea McMaster before you were married? A. Yes, sir.

Q. And have been associated in business with your father in the office of McMaster Potteries? A. That is right.

Q. And as such is it fair to say you were fairly familiar with his affairs? A. Yes, I feel I was very familiar.

Q. You feel you were very familiar with his affairs? A. Yes.

Q. Can you tell us anything about your father's knowledge of what was going on at Sovereign Potteries after he had left? A. After he had left we got, or he got, rather, an annual statement.

Q. I beg your pardon? A. He received an annual statement.

Q. As long as he was a shareholder? A. Yes.

Q. After he had sold his preferred? A. We had no official contact at all.

Q. No official contact. Do you know of any actual contact that he had? A. Only through Mr. Byrne.

Q. Only through Mr. Byrne? A. And occasionally he had talked with Mr. Paulin and Mr. Marsales.

MR. MASON: Could you speak a little louder, please? I can't hear a word you are saying.

MR HEIGHINGTON: The only contact he had was through Mr. Byrne, and occasionally he might see Mr. Pulkinham or Mr. Paulin.

HIS LORDSHIP: Q. Mr. who? A. Paulin.

In the Supreme Court of Ontario.

Plaintiffs' Evidence No. 8

Mrs. D.Walter examination continued.

MR HEIGHINGTON: Q. Can you tell us whether he was or was not familiar with what was going on at Sovereign? A. No, he was not familiar. When he would have contact concerning our own affairs with Mr. Byrne he was always eager to find out how things were going at the Sovereign.

Q. Do you know anything about his contact with Mr. Byrne about any matters at all? A. Yes, that was quite frequent. We actually did not need much legal -- we did not have affairs that required much for a lawyer to do, but my father would call just for general advice.

Q. You were aware of that yourself? A. Yes, I would hear his conversations.

Q. And do you remember any calls about any specific matters at all? A. Well, the only thing that required help from a lawyer was this occasion when we were given an assessment from the Excise Department.

Q. Yes? A. And my father immediately turned it over to Mr. Byrne.

Q. That was in the pottery business? A. Yes.

Q. I was referring more now to the time before the potteries were started. A. Oh, well---

Q. And his contact then with Mr. Byrne, if it took place at all. A. That was very constant.

Q. That was very constant? A. Yes.

Q. What was it about? A. Well, about his trying to be released from the Carleton Securities.

Q. Yes? A. When he was at the Sovereign, shortly after, there were these groups, and there was internal dissatisfaction and trouble amongst the stockholders, and when my father went into this Carleton Securities of course he expected it was going to be a happy and a prosperous venture, but it did not develop that way, so then when he left the Sovereign he was the minority end of it.

Q. Yes? A. Sovereign was not making money so that there was not any income, and he had assets there, and there was---

Q. Now, what can you tell his lordship from your own personal knowledge about that matter being discussed, if it was discussed, with Mr.Byrne? A. Well, he would call very frequently to find if there couldn't be some sort of a technicality whereby he could be released.

Q. Did you hear at least one end of such conversations? A. Oh, yes, I have heard these things many times; and occasionally he would call Mr. Pulkingham or Mr. Etherington and kind of plead with them, and then if they couldn't do anything for him he would call Mr. Byrne and report. At one time I think one of them did offer him $10,000.

MR MASON: Of course, this witness, my lord, is obviously speaking of something she doesn't know anything about, unless she got it from her father, which would not be evidence, in my submission. I think my friend should get from the witness what she knows personally.

MR HEIGHINGTON: I thought my question was directed to what she had personally heard as to one end of the conversation and nothing else, my lord.

MR MASON: Well, she went beyond that.

HIS LORDSHIP: It was not probably emphasized to the witness.

MR HEIGHINGTON: She went beyond it, but I would have corrected that in a moment. There is no need for my friend to get alarmed.

Q. You can tell, Mrs. Walter -- we have legal rules, you know -- you can tell what you heard your father say after a purported call to Mr.Byrne, one end of a conversation, but not what anybody else told you; but you could say, for instance, that after a conversation with someone about the matter, as a result of that he called up Mr.Byrne. A. Yes, that is exactly what it was.

Q. That is true, is it? A. Yes. Then at one time---

Q. Called up Mr. Byrne? A. At one time, it would have been about 1938, he discussed about being released with Mr. Byrne over the phone.

MR MASON: I can't hear the witness.

MR HEIGHINGTON: Q. We can't hear very well, Mrs. Walter. A. I am sorry. He discussed with Mr. Byrne about Mr. Byrne trying to help him to get his stock from the Carleton Securities, and Mr. Byrne was to look up some law angle and report to him.

In the Supreme Court of Ontario.

Plaintiffs' Evidence No. 8

Mrs. D.Walter examination continued.

Q. Thank you. Now, after your father ceased to be a shareholder in Sovereign Potteries, his only source of information was through those people that you have mentioned? A. That is true, yes.

Q. Do you know as a fact whether he was aware of things that were going on in the factory? A.No, I am sure he was not.

Q.. I mean, can you give any specific instances? A. Well, he would call Mr. Byrne after they would have their yearly meeting and ask how things went, did they make any money.

Q. Yes, I understand that. I am not talking now so much about Mr. Byrne; I just want to know, things that happened, were happening in the factory, was your father aware of them -- little things or anything? A. Well, one time I remember my son came home from high school and told us about a film that he had seen that was made by the National Film Board, and he was quite impressed with it.

Q. Where at? A. At Westdale High School.

Q. Where was the film made? A. Made at the Sovereign Pottery.

Q. Did your father know about that? A. No.

Q. Your own son was there? A. Yes.

Q. Now, I want you to tell his lordship all you can about what took place in regard to an option which is said to have been given to Mr. Pulkingham-- just your own knowledge and what you heard said either to Mr. Byrne or in his presence? A. Well, at that time there were quite frequent telephone conversations taking place with regard to something else, the excise thing, and then my father wanted to make some inquiries about export details, and always when he would talk to Mr.Byrne he was eager, as I said, to ask questions about the Sovereign.

Q. Yes? A. So he was talking this day to Mr. Byrne, and I heard my father say -- he said, "Do you think I have any chance to get out?" And he said, "Well, with the performance of the past few years, it should be worth more than that."

Q. Your father said that? A. Yes.

Q. Yes? A. And I believe that is about all.

Q. Now, tell his lordship about the option, because we are told that you drew the option. A.Well, following the conversation my father came to me and he said---

Q. You said following a conversation? A.Following his telephone conversation with Mr. Byrne.

Q. Oh, yes. A. My father came to me and said that ---

Q. Now, wait a minute. It is difficult to get these answers in a way that will be satisfactory to the Court. I want to speak to his lordship about that again.

The instructions that were given, my lord, about the drawing of the option, the first option, which is said to have been renewed.

HIS LORDSHIP: I do not think that is evidence. What she did is evidence, but not what she was told.

MR HEIGHINGTON: If your lordship would permit me to mention it, I gave you a case yesterday, the Shanklin case, on the question of statements to be made. I just wanted to tell your lordship, which I did not yesterday, that that case went to the Supreme Court, and is reported in 1933 Supreme Court Reports at page 340, but it was dismissed just with this short statement?

> "On the appeal to the Court, after hearing argument of counsel, the Court reserved judgment; and, on a subsequent day, delivered judgment dismissing the appeal with costs. Written reasons were delivered by Lamont J. for the court, in which the learned judge, after making a complete review of all the facts of the case, concluded in saying, that 'under these circumstances and in view of the evidence, it cannot be said that the Appellate Division was wrong in affirming the judgment of the trial judge'."

That is where they allowed the statements, my lord. That is all that was said.

But there has been another more recent reference to the Shankling case which I would like also to mention to you at the time when your lordship is considering whether these statements showing a state of mind may be admissible, and that is a case of---

In the Supreme Court of Ontario.

Plaintiffs' Evidence No. 8

Mrs. D.Walter examination continued.

HIS LORDSHIP: Well, I was rather with you, Mr. Heighington, as to showing a state of mind, but probably had a different view of what was meant by showing a state of mind.

MR HEIGHINGTON: On that point your Lordship won't mind my saying that Lord Justice Mellish did say that is the only way we can tell, by what the man said and what he did.

However, I just wanted to call your attention to this one case, my lord: Calmusky v. Karaloff, 1947 Supreme Court Reports, at page 110. Mr. Justice Estey in giving his judgment, at page 117, referred very shortly to the Shanklin case, and I would like to read it:

> "The statements made by the deceased, Sam W. Karaloff, in this conversation were admitted in evidence by the learned trial judge but rejected in the Court of Appeal. Counsel for the appellants submitted the statements were admissible upon the authority of Shanklin v. Smith. In that case in the Courts below the statements were not admitted as evidence of the facts asserted but only evidence as to the deceased's state of mind. An appeal to this Court was dismissed, but the reception of this evidence was not discussed. Nor is it necessary to decide the question of its admissibility here because even if the statements of Sam W. Karaloff are admitted on this limited basis as in Shanklin v. Smith, they do not more than evidence his state of mind in 1937 and perhaps provide a basis for an inference of his state of mind in 1934."

So it seems, my lord, that the statements are, I submit with respect, admissible to show his state of mind, and therefore I am asking again to be allowed to say what instructions this witness received in regard to the preparation of the option.

HIS LORDSHIP: Well, what do you say, Mr. Mason? Have you any objection to that?

MR MASON: Well, of course, if my friend's broad proposition were to be the law then every statement that could possibly be made could be put in evidence to show a man's state of mind. The law cannot be that. Where something is

dependent upon the man's mind that might be so, but my friend is seeking to use that in this case to get what the man said to his daughter. Now, that cannot be evidence of his state of mind. My friend wants to get what actually he said to her about drawing the document. That is not his state of mind; that is a statement of fact that she is trying to make. On my friend's theory, my lord, you could not exclude anything.

HIS LORDSHIP: That was my view. I did not want---

MR HEIGHINGTON: My friend's point is quite right in regard to this statement, but not in regard to those statements which I endeavoured to put in yesterday, about what he said and what his condition was after he learned of the sale. That was evidence directly of his state of mind, and I think there is a good deal of force in what he says about the instructions given by the deceased in regard to the preparation of this document. Those instructions are very much like the statements in regard to a will. You cannot make the document the same, but you can show what he was dealing with.

However, my lord, I will pass that, but I would ask your lordship to perhaps be good enough to consider that I shall be offering some more evidence as to his state of mind, with a direct view to showing, as my friend says, on a specific point, that he knew anything of these negotiations, and I think that is, with respect, directly relevant. It may not be proof, but, as the case in the Supreme Court says, it may give your lordship a right to draw an inference that he did not know, from what he said and what he did and how he looked. That is all I am going to tender it on. I withdraw that question now as to asking this witness what her father said on this special occasion.

Q. I will just ask you, what did you do? A. I wrote out an option; I typed it.

Q. You drew an option? A. Offering---

Q. Would it be permissible to say, on your father's instructions? A. Yes, sir.

Q. Yes? A. Offering his common stock to Mr. Pulkingham for the amount of $30,000.

In the Supreme Court of Ontario.

Plaintiffs' Evidence No. 8

Mrs. D.Walter examination continued.

MR HEIGHINGTON: That option, as we know, my lord, as far as the evidence goes now, has been destroyed, and no copy seems to be available, so I am going to ask this witness to give us the best of her recollection as to what the contents of it were.

THE WITNESS: Something to the effect---

MR HEIGHINGTON: Just a minute, please, till his lordship rules.

HIS LORDSHIP: I have just forgotten the evidence as to that, Mr. Heighington.

MR HEIGHINGTON: That he had the paper in his hand and tore it up, and no one saw it on the 22nd.

HIS LORDSHIP: Yes.

MR HEIGHINGTON: Q. You actually typed the document? A. Yes, sir.

Q. I want you to tell his lordship the best you can as to its terms? A. Something---

Q. Just your own recollection of what you are sure about. A. Something to the effect that this offered 2,500 common shares of Sovereign Potteries---

MR MASON: Please raise your voice. We can't hear you at all -- just hear a murmur.

MR HEIGHINGTON: 2,500 shares ---

HIS LORDSHIP: 2,500 common shares.

THE WITNESS: Common shares, to Mr.Pulkingham, for the amount of $30,000.

MR HEIGHINGTON: Q. Have you any recollection, definite recollection, of the length of time of the option? A. I believe it was thirty days, but it could have been ninety.

Q. All right, that is first rate. A. I did not make a copy.

Q. You did not make a copy? A. No.

Q. Just the one? A. Because we were always instructed to be very quiet about what concerned us at the Sovereign, and our office is intimate -- I did not feel that our bookkeeper should have any knowledge like that.

Q. So you made no office copy? A. No.

Q. Just the one; and what did you do with the one after it was typed? Was it signed? A. My father signed it.

Q. And what happened to it? A. I mailed it.

Q. You mailed it? A. Yes.

Q. To Mr. Pulkingham? A. Yes, sir.

Q. Now, at that time can you tell us whether there was any communication between your father and Mr. Byrne, at the time of the giving of this option, when you were doing it? Do you remember? A. Well, my father had previously just spoken to Mr. Byrne on the phone.

Q. On the same day? A. Yes, sir, just a few minutes before, and said that Norm advised him that if he would give Bill an option---

Q. Well, I am afraid that that is against the rule, Mrs. Walter. However, he had spoken to him about it, and you can tell---

MR MASON: She did not say spoken to him about it. As I heard her -- of course, I don't hear very much.

HIS LORDSHIP: Simply said a telephone conversation.

MR HEIGHINGTON: Q. At this time are you telling us, Mrs. Walter, that there was a conversation with Mr. Byrne by your father? A. Yes, sir.

Q. At the time of the giving of this first option to Mr. Pulkingham? A. Yes, sir.

Q. What did your father say on that telephone conversation?

HIS LORDSHIP: She has told us that. She said that he was talking to Mr.Byrne. He said, "Do you think I have any chance to get out?" Father said, "On the performance of the past two years it should be worth more than that." Then she said following this telephone conversation she wrote out the option.

MR HEIGHINGTON: Q. Was that the time that you were saying that some legal point was to be looked up? A. Yes; they were discussing the excise thing before.

Q. Was the legal point in connection with the excise or was it in connection with the Carleton

In the Supreme Court of Ontario.

Plaintiffs' Evidence No. 8

Mrs. D.Walter examination continued.

Securities situation? A.The time the first option was sent it was just inadvertent, the conversation that my father called Mr. Byrne about.

Q. Yes? A. And then during the conversation--

HIS LORDSHIP: You mean incidental.

MR HEIGHINGTON: Q. Incidental, yes, not inadvertent; incidental, as his lordship says? A.Yes.

Q. Incidental to the main thing, he discussed something about Carleton, did he? A. That is it.

Q. And what was that, on the phone with Mr. Byrne? A. At the end of the conversation my father made that---

Q. But you said that he was to look up some legal point, and I did not know whether that legal point was in connection with the excise matter or with the Carleton matter. A. Well, that legal point I mentioned before happened years ago.

HIS LORDSHIP: Yes, that was sometime before.

MR HEIGHINGTON: Q. Yes, that was my mistake. Don't bother, Mrs. Walter. A. I guess I am not a very good witness.

Q. You also, it has been said, drew a renewal of this option at one time? A. Yes.

Q. Now, will you just tell us the facts yourself, without saying what your father said unless he was talking to Mr. Byrne on the telephone or unless Mr. Byrne was actually down there? A. Mr. Pulkingham called the pottery.

Q. Yes? A. I answered the phone. I went out into the shop and told my father that Mr. Pulkingham was calling him.

Q. Yes; that doesn't do any harm. A. So he came in and answered it, and he said, "Hello, Bill, how are you?" and they had -- just sounded friendly, I mean it was just -- and then my father hesitated, and he said, "Well, Bill, I don't know what to do," he said, "I will have to speak to Norm."

Q. Yes? A. Then my father said, "Well, hello, Norm."

Q. On the same phone? A. On the same phone.

Q. The same wire, yes. "Hello, Norm" -- then what took place? A. And he said, "Well, whatever you say, Norm."

Q. Yes? A. Then on my father's instructions I wrote an option as he had dictated to me from what he apparently heard on the phone.

Q. Well, was it an option or a renewal of the existing option? A. Made out another option.

Q. Another option? A. For the same thing, for the same amount of money, for a period of one hundred days.

Q. For one hundred days. You are sure of the time on this occasion? A. Yes, sir; it impressed me very much, because I had never heard of it before.

Q. Well, about what time was this call? I mean, what day did you draw this document with the hundred days in it? A. I can't remember.

Q. Can you give us the approximate time?

MR MASON: She says, "I don't remember."

MR HEIGHINGTON: Then I asked the approximate time; is that all right?

Q. Are you able to give us the approximate time? A. I am sorry.

Q. All right. Now, did you type that document too? A. Yes, sir.

Q. Did you make more than one copy? A. No, for the same reason I did not make a copy of the other.

Q. And what did you do with it when it was drawn? A. My father signed it and I mailed it.

Q. You mailed it? A. I mailed it, yes,sir.

HIS LORDSHIP: Q. Was this before or after the other one? A. This was after. We had forgotten about the first option, and Mr. Pulkingham called my father and asked for a renewal; the other one had expired.

Q. You are not supposed to say what Mr. Pulkingham said unless---

MR HEIGHINGTON: As a result of a telephone call from Mr. Pulkingham, a renewal was drawn; that is really what it amounts to. I am not asking for anything else, my lord, but I am of course pointing out and reminding your lordship that Byrne was spoken to on the same wire at the same time about it.

In the Supreme Court of Ontario.

Plaintiffs' Evidence No. 8

Mrs. D.Walter examination continued.

HIS LORDSHIP: Yes, I appreciate that, Mr. Heighington, but we do not know whether he was in the same room or not.

THE WITNESS: I can't tell what he told me?

HIS LORDSHIP: No.

MR HEIGHINGTON: No, you can't tell what he told you.

MR MASON: Strictly speaking, my lord, it has been held repeatedly that a person is not able to give a recitation of what has happened between two people on a wire, unless she heard both. I have not raised the objection, but I submit the objection is there. She cannot be heard to say where Mr. Byrne was or whether he was there at all or not.

MR HEIGHINGTON: Of course she can't say that. One end of a telephone conversation was heard, that was all.

MR MASON: It has been held, I think, even that one end of it is not good evidence.

HIS LORDSHIP: Well, as to one end of a conversation with some person other than the defendant, I do not suppose it is evidence.

MR HEIGHINGTON: Well, it is some evidence. It is some evidence, but it is not of course conclusive. One cannot see through the telephone.

MR MASON: I submit it is not evidence at all, my lord.

THE WITNESS: If they hadn't killed him he would be here to tell it himself.

HIS LORDSHIP: Well, that doesn't help us either, Mrs. Walter.

MR HEIGHINGTON: No. Now we pass on to another aspect of the matter, about which I was speaking to your lordship a minute ago.

Q. I want to find out from you, Mrs. Walter, about your father's condition when he heard of this sale at this price. Do you know anything about that at all yourself? You were at home, were you? A. Yes, sir.

Q. Yes? A. Well, he was all right until Mr. Byrne told him the figures following the sale, and then he just went off his head.

Q. Mr. Byrne told him the figures of the sale? A. Yes, sir.

Q. Following the sale. What was his physical re-action?

MR MASON: Just a moment.

Q. Was Mr. Paulin present with you? A. Yes, sir.

HIS LORDSHIP: Q. Mr. who? A. Paulin.

MR HEIGHINGTON: Mr. Paulin was with him.

HIS LORDSHIP: With whom?

MR HEIGHINGTON: Mr. McMaster.

Q. Is that right? A. Yes. This was following this---

Q. Following that? A. When we knew about the sale.

Q. Knew about the sale, and the figures, you say?

A. Yes.

HIS LORDSHIP: Q. What sale? A. of the Sovereign.

HIS LORDSHIP: What sale?

MR HEIGHINGTON: Q. The sale by Mr.Byrne, and the price the shares had realized? A. Yes.

Q. The sale by Sovereign, a million and a half; is that what you are referring to? A. Well, Mr. Paulin told him the amount of the shares that was realized on---

Q. What was realized for the shares? A. Yes.

Q. And what was your father's physical reaction to that information?

MR MASON: My lord, I do not want to keep making the same objection, if your lordship will note my objection to all such questions.

HIS LORDSHIP: Yes.

THE WITNESS: What was his reaction?

MR HEIGHINGTON: Q. Yes. A. He just went off his head.

In the Supreme Court of Ontario.

Plaintiffs' Evidence No. 8

Mrs. D. Walter examination continued.

Q. Off his head? A. Yes. Following that he collapsed physically and morally until he died.

Q. Now, being in the office with your father, can you tell us anything further about any actual business transactions of any kind between your father and Mr. Byrne or the potteries, personalor otherwise? A. Well, I was with my father and Mr. Byrne the last time Mr. Byrne came out to the pottery.

Q. Yes; what was that about? A. That was in connection with that excise thing too.

Q. Yes, you have told us about that. Do you know of any other matters that he conducted either for your father personally or for the McMaster Potteries, yourself, that you know of? A. Mr. Byrne handled everything that we had. As I say, we did not need much. And during that visit I stayed on with Mr. Byrne and my father after my brother had left.

Q. Yes? A. And my father was asking about an the Sovereign and at that time he told them about an awful fight they had in the directors, and it was so bad that Mr. MacKay passed out and they had to carry him out.

Q. I see; when was that? A. 1946, around this time.

Q. Mr. Byrne was right in the plant, was he? A. Yes, sir.

Q. With your father? A. Yes, sir.

Q. And you heard that, did you? A. Yes.

Q. All right, thank you, that is all.

My lord, may I ask one question as a matter of form? I want to tender the evidence as to what your father said when he heard the actual sale price. Don't answer till his lordship says. I am tendering the question, my lord, just as a matter of form. A. Well, after he knew---

MR HEIGHINGTON: No, don't answer, please.

HIS LORDSHIP: I make the same ruling, Mr. Heighington.

MR HEIGHINGTON: All right, my lord.

Plaintiffs' Evidence

No. 9

CROSS EXAMINATION OF MRS. D. WALTER

In the Supreme Court of Ontario.

Plaintiffs' Evidence No. 9

Mrs. D.Walter Cross-examination continued

CROSS-EXAMINED BY MR MASON:

Q. Where has your home been, Mrs. Walter? A. With my father.

Q. Throughout? A. Pardon?

Q. From what period? I mean, was there any period during which you were away from home? A.No, from the time we came to Canada.

Q. And before McMaster Potteries was founded what was your relationship as to your father's affairs? A. Well, we just were interested in the same things and discussed---

Q. Did you have any particular thing to do? A. Well, I was married, and then my husband died and I came home.

Q. When was that? A. 1935.

Q. What I am asking you is this: Before McMaster Potteries was founded? A. I lived at home, and just was---

Q. Yes, but did you have any particular duty in respect of your father's business at that time? A. No, I did not, no.

Q. You were just one of the family? A. Sure.

Q. Then we know that the McMaster Potteries was organized in late 1944?

MR HEIGHINGTON: Incorporated.

THE WITNESS: Incorporated.

MR MASON: Incorporated in late 1944.

MR HEIGHINGTON: That is different, though.We have told you about the partnership before that.

MR MASON: Yes, I know that.

MR HEIGHINGTON: You didn't say so.

MR MASON: Q. Did you have any business to do for your father before the company was incorporated? A. Yes, sir; we started the McMaster Pottery in February 1939.

In the Supreme Court of Ontario.

Plaintiffs' Evidence No. 9

Mrs. D.Walter Cross-examination continued

Q. And what were your duties in connection with the potteries? A. I looked after production, some of the help, some of the office work, up until we appointed the bookkeepers.

Q. And do I take it that you continued the same work after the incorporation in '44? A. Yes, sir.

Q. Then you said your father got the annual statements of Sovereign Potteries until he sold his preferred shares? A. Yes, sir.

Q. When was that? A. 1945, I believe.

Q. Do you know whether he sold them or whether they were redeemed? A. They were sold to Gairdner Company in Toronto, and Mr. Byrne told my father that Mr. Pulkingham had bought them.

Q. Were you there? A. Yes, sir.

Q. You were there when he told your father that? A. Yes, I was.

Q. Can you tell me what part of 1945 that was? A. Well, it would have been early. We had a fire in October 1944, and it would probably have been around February or March of 1945.

Q. Now, you said in answer to my friend -- you had said that your father would ask for general advice, and then you said the only thing was, when my friend asked you to be particular, when the excise matter came up; that was sometime in '46, wasn't it? A. Yes, sir.

Q. Now, are you able to tell us anything prior to 1946 and after 1944, say, when your father asked Mr. Byrne for advice about anything? A. Well, always in the connection of getting out of the Carleton Security; kept in touch, tried to keep in touch with the Sovereign through Mr. Byrne, and that wrench---

Q. I am asking you about advice, Mrs.Walter. Now, just tell me anything with respect to which your father asked for advice from Mr. Byrne as his solicitor? A. Why, yes, he would even ask him about export advice instead of going to the bank.

Q. Well, when was that? A. That was about '45, I guess.

Q. About '45; what did he ask? A. The rulings.

Q. What? A. Rulings.

Q. What rulings? A. Government rulings.

Q. Well, what? Can you tell us something? A. What restrictions there might be or what the-- how you would go about exporting.

Q. Go about what?

HIS LORDSHIP: Exporting, she said.

THE WITNESS: You asked for any advice; well, I am just saying that--

MR MASON: Q. Advice about what, please? A.Well, was the idea not that my father asked Mr. Byrne for advice on everything? Is that the idea?

Q. No, no. I want to know, on what he asked for advice, not on everything? A. Well, that is one thing.

Q. Well, now, what was that? A. What could he tell him about export.

Q. Export of what? A. Of pottery.

Q. Of his glassware? A. No; it is pottery.

Q. Of his pottery; all right. When did that take place? A. About 1945 or '46, early '46 maybe.

Q. Was that in connection with the excise matter? A. No.

Q. Was there anything else? A. Well, he took that wrench to him.

Q. Yes, we know about that; I won't trouble you about it. Anything else? A. I can't think of anything, specific thing.

Q. You can't think of anything else? A. They were just in conversation all the time on the phone.

Q. But apparently the chief thing was that your father wanted to be relieved from Carleton? A. Yes, sir.

Q. Well, that position had gone on a long time ? A. Yes, it had.

Q. Since--- A. Am I privileged to enlarge a little bit on that?

Q. Well, just answer my question first. Since when had that gone on? A. Since my father left the Sovereign.

Q. And that was in '36? A. Yes.

In the Supreme Court of Ontario.

Plaintiffs' Evidence No. 9

Mrs. D.Walter Cross-examination continued

Q. And that had been the constant desire of your father ever since 1936? A. The reason is, you see, the Sovereign didn't make money, and we had our livelihood to consider, and we were hindered, because it costs money to build potteries, and we -- there the stock was, it wasn't making any money, and so father was nearly sixty but he was willing to start over again. We went out to Dundas and built this plant out there. We had to build the kind of plant to suit our pocketbook. Potentially there should have been a lot more money made at the Sovereign through earnings than through the sale of the factory.

Q. Now, to get down to the fine point, your father would have liked the money that came from the sale of the Carleton Securities shares,wouldn't he? A. Yes.

Q. He could have used it, but he couldn't get it, and it was a constant theme of complaint onhis part, was it not, that he couldn't get it? A.This last time when we gave these options he told me that Norm had him all---

Q. Wait a minute; I am not asking you that.

MR HEIGHINGTON: But she is giving an explanation now.

MR MASON: Q. Pardon me, I am not asking what your father told you at all; I am saying this had been a constant theme of complaint? A. Yes,and toward the last my father wanted to have his affairs straightened up so that they would be all right for the family in the event anything should happen to him.

Q. Now, you say that on one occasion he asked Mr. Byrne to help him; Mr. Byrne was to look up some law angle? A. Yes.

Q. When was that? A. That was about 1938.

Q. Then you say that at some time you heard your father say on the telephone, you thought it was to Mr. Byrne, "Do you think I have a chance to get out?" Were you on the telephone yourself? A. No; I was in the same room.

Q. And the only reason you have for thinking that Mr. Byrne was at the other end of the line was what was stated by your father? A. Well, I got Mr. Byrne on the phone. Q. What? A. My father would have the family usually make his phone calls.

Q. Well, on this occasion you are going to swear to the Court that you made the call to Mr. Byrne? A. Yes, sir.

Q. You are. When was that? A. At the time of this excise.

Q. Beg pardon? A. At the time of the discussion of this excise matter.

Q. Well, that would be somewhere in '36? A. '46.

Q. '46, I mean, yes. All right. Then you say you drew an option, and you say you made only one copy of it? A. Yes, sir.

Q. I think we have heard -- if not, we shall— that the one that was placed in your father's hands on March 22nd was a carbon copy? A. No.

Q. What do you say? A. I say no.

Q. You say no. A. I wrote it on a letter-head.

Q. Was there any renewal -- at least, when the renewal was made -- well, you say there was no renewal? A. No.

Q. You say there was a further option? A. A further option, yes, sir.

Q. Was there a renewal at any time? A. No, sir.

Q. Was there ever any renewal endorsed upon the original option in either case? A.Not that I know of.

Q. What A. Not that I know of.

Q. But you don't know. The only times you had anything to do with an option were the two occasions you have mentioned? A. That is right.

Q. Now, you stated on a subsequent occasion you were home and Mr. Paulin was with your father; when was that? A. That was following when we saw about the sale in the Spectator.

Q. Can you tell me when? A. It was on a week-end; it was---

Q. When you saw it in the Spectator? A. It was the Dundas Centennial, July 1st, I believe.

Q. Well, it was after something had appeared in the Spectator? A. That is right.

In the Supreme Court of Ontario.

Plaintiffs' Evidence No. 9

Mrs. D.Walter Cross-examination continued

Q. That would be, then, in July of '47? A. Yes.

Q. And you say that your father collapsed physically and morally until he died? A. Well, when Mr. Paulin told him the actual circumstances of the sale, following that my father just, as I say, he went off his head; that is the best way I can say it; and then he would grieve to us.

Q. Would what? A. Grieve.

Q. Grieve? A. It hurt him so. He didn't mention the money part of it, but it hurt him so that his lawyer would do that to him. He would keep saying, "If you can't trust your minister and your lawyer and your doctor, what is life?" and that sort of thing.

Q. Well, again you are telling me what your father said, which I have not asked you, and which is not evidence, as you know now from your counsel.

MR HEIGHINGTON: You asked a moment ago about complaint. You asked if he complained. He had made a complaint by word of mouth.

MR MASON: Q. Then you proceeded to say that Mr. Byrne had handled everything that you had; are you able to tell me anything except the excise matter in respect of which your father asked advice from Mr. Byrne after the year 1945? A. Well, that option thing.

Q. What do you mean, that option thing? A.Mr. Byrne told him the amount of the option, and he told him to renew the option to Mr.Pulkingham or to make another option.

Q. How do you know that? A. Because I heard it on the telephone.

Q. You did not hear Mr. Byrne? A. Well, I know what my father told me, and I know his---

Q. Now, let us stick to what you know, please. I am asking you whether you know anything after the year 1945 except the excise matter in which your father received advice from Mr. Byrne as his solicitor; do you know of any? A. Well, the action that followed the telephone conversation was that.

Q. I am asking you whether you know of any advice that was given to your father by Mr. Byrne as a solicitor after the year 1945 except as to

excise; now, do you know of any or not? A.If I can't speak what I know, I don't know how to phrase anything else.

Q. If there is anything you know personally, not from what you were told, give the answer? A. May I say a question that I asked my father?

Q. What? A. Can I tell you a question that I asked him and his answer?

Q. No, not his answer. I want to know what you know personally, apart from what you were told by your father or anybody else; what do you say? A. Well, after 1945 I heard Mr. Byrne and my father discuss in the office about the Sovereign and about---

Q. Discussing what? A. When he was at our plant the last time they sat down in this little office. My father was asking about what went on at the Sovereign, were they making any money, and did he think he could get out of the Carleton, and then Mr. Byrne told him about this terrific fight that they had had at the last meeting.

Q. You have told us that; anything more? A. That is all, I believe.

Q. That is all you know. Now, when was that? A. It would be in 1946.

Q. When? A. The time that excise tax business was up.

Q. That is all, thank you.

MR HEIGHINGTON: That is all, thank you, Mrs. Walter.

Plaintiffs' Evidence

No. 10

EXAMINATION IN CHIEF OF G. G. ROBINSON

GEORGE GATES ROBINSON, Sworn.

EXAMINED BY MR GRANGE:

Q. Mr. Robinson, what is your occupation? A. I am Executive Vice-President of Standard Paving and Materials Limited.

Q. And were you at any time associated with Sovereign Potteries? A. I was a director from

In the Supreme Court of Ontario.

Plaintiffs' Evidence No. 10

G.G. Robinson Examination continued

about 1937 up to the time the company was -- the shares of the company were disposed of.

Q. Disposed of to Johnson? A. To Johnson Brothers.

Q. Mr. Robinson, evidence has been given that there were certain shareholders in Sovereign Potteries who had formed a holding company by the name of Carleton Securities Limited;were you among that group? A. No, sir.

Q. Were you aware of what position the shares of the late Mr. McMaster were in? A. That was common knowledge to the other shareholders.

Q. And what was that situation? A. That his holdings were in a minority position of Carleton Securities.

Q. Did you ever have any discussion with anyone about this situation of Mr. McMaster's shares? Before you answer, Mr. Robinson, I must advise you that you cannot say what anyone said to you, but you can answer if you did have any discussion with anyone. A. Yes, I discussed the matter with Mr. Pulkingham.

Q. And did anything ever come of this discussion? A. No.

HIS LORDSHIP: Discussion about what?

MR GRANGE: About Mr. McMaster's shares in Sovereign Potteries, my lord.

Q. Did you ever speak to Mr. McMaster directly about purchasing his shares? A. No, sir.

Q. Now, Mr. Robinson, when did you first hear any mention of the name Johnson Brothers in connection with Sovereign Potteries? A. I believe it was in the latter part of October or early November of 1946.

Q. And what were the circumstances of that information to you? A. Well, I was consulted by the General Manager of the company.

HIS LORDSHIP: Q. What company? A. Of Sovereign Potteries Limited; and advised that an indirect approach had been made, that Johnson Brothers might be interested in acquiring an interest in Sovereign Potteries.

MR GRANGE: Q. As a result of that information, Mr. Robinson, did you say or do anything?

A. My own opinion was that there had been so many false approaches to a sale of interest in Sovereign Potteries that there was not sufficient indication at that moment of a serious intent to become greatly exercised.

Q. Did you advise anyone about this information?

MR MASON: Of course that, my lord, is not evidence.

MR GRANGE: Any shareholders.

MR MASON: That is not evidence.

MR HEIGHINGTON: He is an officer of the company.

MR MASON: Whether he advised somebody about it cannot be evidence here, surely, my lord. Suppose he goes to John Brown, a shareholder, and gives him some advice, that cannot affect us, in my submission.

HIS LORDSHIP: Not unless he advised one of the parties. Unless it has something to do with one of the parties, I do not see how it helps us any, how it is relevant.

MR GRANGE: Actually, my lord, the point I am striving for is not with respect to information to anyone, but with respect further to what the witness has said about his opinion of the negotiations at that stage, and it would be further evidence as regards his opinion as to the prospects of the negotiations going through, whether or not he advised anyone of this information he had received.

MR MASON: My lord, if he advised Mr.McMaster, I would take the evidence. Even then, I am afraid it would not be admissible except as against Mr. McMaster, but certainly what he advises anybody not a party here, in my submission, has not the slightest thing to do with this litigation.

HIS LORDSHIP: Well, of course, it may save time -- whether he did or not advise anybody.

MR GRANGE: Q. Did you advise anyone, Mr. Robinson? A. Yes; I advised Mr. Pulkingham that unless---

HIS LORDSHIP: Not what you advised him. You say you advised Mr. Pulkingham.

In the Supreme Court of Ontario

Plaintiffs' Evidence No. 10

G.G. Robinson Examination Continued

MR GRANGE: Q. What I really want to know, Mr. Robinson, is, after you had received this information did you advise anyone of having received this information? A. No.

Q. You did not? A. No, sir.

Q. Now, Mr. Robinson, when did you next hear anything about Johnson Brothers? A. It would be on or after the 1st of April of 1947.

Q. And what were the circumstances on that occasion? A. Well, I had just returned from a month's absence, and received a phone call from Hamilton advising me that the company was being sold out.

Q. As a result of this information and this discussion did you make any suggestion as to how this matter should be discussed? A. I was asked to---

MR MASON: Again, my lord, surely that is not evidence.

HIS LORDSHIP: No.

MR MASON: The witness might have gone to anyone of a thousand people and given them some information, but that does not affect us here, in my submission.

MR GRANGE: Q. As an officer of the company, Mr. Robinson, what action did you take, as a director of the company what action did you take? A. I took the position that unless an officially called directors' meeting or shareholders' meeting was called I would not attend any meeting to discuss the matter.

Q. And was such a meeting as you recommended held? A. Yes, sir.

Q. And approximately when was that meeting held? A. I would say that it was about the second week in April.

Q. Was the defendant present at this meeting? A. Yes, sir.

Q. The defendant is Mr. Byrne. A. Yes.

Q. And did you say anything at this meeting? A. I wanted to clear one point in connection with my own position. It had come to me that I was conversant with what had taken place, and I

asked Mr. Pulkingham to state to the meeting just what information I had received in connection with the transaction.

Q. And what were you told? A. I was told, or the meeting was told -- I was told -- that the only information that I had received was that that came to me in the previous October or November.

Q. Did Mr. Byrne, the defendant, say anything at this meeting? A. Well, the solicitor, Mr. Byrnes, the solicitor of the company, advised the shareholders that the negotiations on this pending deal had reached a status that he had taken the position with Mr. Pulkingham that the negotiations must be disclosed.

Q. Then what action was taken with respect to that? A. At that meeting?

Q. At that meeting. A. A counter proposition was prepared.

Q. Well, I mean what position was taken with respect to disclosing the information as to the negotiations? A. Well, Mr. Pulkingham then developed the negotiations to the directors and those present, made us familiar with what had taken place.

Q. Mr. Robinson, I am going to show you the photostatic copy of letter dated March 27th, addressed to the directors, Sovereign Potters Limited. It is a production of the defendant, my lord. Mr. Robinson, did you ever receive that letter? A. No, sir.

HIS LORDSHIP: March 27th of what year?

MR GRANGE: 1947, my lord.

Q. What was the first occasion on which you saw that letter? A. The first time that I had any knowledge of that letter having been written was when it was shown to me by you a few days ago.

Q. Was Mr. McMaster present at this meeting to which we have been referring? A. I believe not.

Q. Did you speak to Mr. McMaster---

HIS LORDSHIP: Mr. Grange, I do not know what is the purpose of those questions about a certain letter. I do not know what letter is referred to. There might be several letters of March 27, 1947.

In the Supreme Court of Ontario.

Plaintiffs' Evidence No. 10

G.G. Robinson Examination continued

MR HEIGHINGTON: Put it in.

MR GRANGE: My lord, this is a letter from the defendant, addressed to the directors of Sovereign Potters, Limited.

---EXHIBIT 16: Letter, Norman W. Byrne, K.C.,to the Directors, Sovereign Potters Ltd., March 27, 1947.

MR GRANGE: My lord, I do not wish to deal with the letter. Mr. Heighington will deal with it at a later date. I merely have the evidence of the witness that he never saw the letter.

HIS LORDSHIP: Well, we have a little identification of it now. It is a letter from Mr.McMaster to the directors of Sovereign Potters.

MR GRANGE: From Mr. Byrne, dated March 27,1947, and it is a letter outlining the negotiations which had taken place up to that.

Q. Now, Mr. Robinson, did you see Mr.McMaster at any time after these negotiations. A. No, sir.

Q. Now, Mr. Robinson, were any arrangements made to your knowledge about the shares of those shareholders other than Carleton Securities with respect to their shares? A. Yes; we had a pooling agreement.

Q. And when was that pooling agreement formed? A. That was developed in the very latter part of 1946, and I believe finally concluded in February of '47.

Q. Did you advise the defendant or anyone in the Carleton Securities group about this pooling agreement? A. Yes. One of the signatories to the pooling agreement had failed to deposit his common shares, and in consequence notification was forwarded to the secretary of Sovereign Potters advising them of the situation.

Q. Mr. Robinson, I show you a letter dated April 25th; is that the letter to which you are referring -- April 25, 1947? A. Yes, sir.

MR GRANGE: Addressed to Mr. Norman W. Byrne, my lord, Sovereign Potters Limited, care of Byrne & Dixon, and it is a letter from the witness, entitled "Re Pooling Agreement".

---EXHIBIT 17: Letter, G.G.Robinson to Norman W. Byrne, April 25, 1947.

MR GRANGE: Q. Had you given any previous information about this pooling agreement to the defendant or to the Carleton Securities group? A. No, sir, not that I recall.

Q. Now, Mr. Robinson, were you aware of any representative of Mr. Johnson being sent to visit the plant in January of 1947? A. I was advised of that at the meeting in early April.

Q. That is all, thank you.

Plaintiffs' Evidence

No. 11

CROSS EXAMINATION OF G. G. ROBINSON

CROSS-EXAMINED BY MR MASON:

Q. Mr. Robinson, you are also identified in your business, I suppose, with Concrete Pipe Limited? A. Yes, I am.

Q. What is your office there? A. I am president of the company.

Q. And your company, that company, was formerly a substantial shareholder of Sovereign Potters? A. Yes, sir.

Q. And I understand that you at one time were a close business associate of the late Mr. John Russell? A. That is right.

Q. Who had very broad interests industrially? A. Yes.

Q. And he was one of the original group who financed Sovereign Potters? A. Only through his interest in Concrete Pipe Limited.

Q. You have had considerable experience in corporate enterprise and finance? A. Some, yes.

Q. And you knew, of course, upon becoming interested in Sovereign Potters, that fifty per cent of the common stock was held by the Carleton group? A. Yes.

Q. And fifty per cent was held by what we might call your group, the financial group? A.That is right.

In the Supreme Court of Ontario.

Plaintiffs' Evidence No. 11

G.G. Robinson Cross-examination continued

Q. Is that a fair way to put it? A. I think so.

Q. And the financial group were the people who had been responsible for the original financing of the company? A. That is right.

Q. And you told us already you knew about the holding company, Carleton Securities? A. Yes.

Q. Did you know Mr. McMaster? A. Yes.

Q. Personally? A. Yes.

Q. And do you know that he left the employment of Sovereign Potters in 1936? A. Yes, I believe about that time.

Q. And did you know the circumstances of his leaving? I don't want to go into them in detail. A. I was not on the board at that time, but I had just general information about them, yes.

Q. He had not been getting on with the directors, and his resignation was asked for; I suppose you knew that? A. I did not know the details of how it came about. I knew that his services were---

Q. Dispensed with? A. Dispensed with.

Q. And then he went to Dundas and we are told that he conducted a pottery business there as an individual for a time, and then he incorporated a company known as McMaster Potteries: I suppose you are familiar with all that? A. Yes.

Q. You knew that in his business, McMaster Potteries, both unincorporated and later incorporated, he was conducting it alone, with his family? A. I never knew the details of that; I knew they were carrying on there. The details I was not aware---

Q. You knew that he was the active spirit in it, I take it? A. Yes.

Q. The directing mind of the enterprise? A. That is right.

Q. And met with a pretty substantial measure of success? A. I would have no information on that.

Q. Wouldn't you know whether or not McMaster Potteries had been reasonably successful? A. Only by way of their growth.

Q. Well, that is what I mean. A. M'hm.

Q. They grew and developed reasonably well? A. I would think so.

Q. Were you familiar -- I should not put it that way to you. Did you know whether or not Mr. McMaster was endeavouring to free his stock in Carleton Securities? A. Yes, he had so stated at at least one or more shareholders' meetings that he attended.

Q. That is, of Sovereign Potters? A. Yes, of Sovereign Potters.

Q. And did you know what obstacle was in his way? A. Yes.

Q. What was it? A. The fact that he was a minority shareholder in a holding company.

Q. And the majority were not---

HIS LORDSHIP: I do not know whether I have this note right, Mr. Mason. Free his stock -- what stock were referring to? -- trying to free his stock.

MR MASON: In Carleton Securities, my lord.

HIS LORDSHIP: I get confused between the two. Carleton and Sovereign sound so much alike, sometimes I don't catch them.

MR MASON: Well, we will just clarify that again.

Q. The Carleton Securities Limited was a holding company that held 2,500 shares of common stock of Sovereign Potters? A. Yes.

Q. Now, what can you tell us about the preferred shares? How were the preferred shares of Sovereign Potters held? A. The preferred shares were all held by what you call the financial group with the exception, I believe, of, my recollection is, $4,000 worth, which were held by Mr. McMaster originally.

Q. What became of those? A. I believe that the company acquired them; whether they did direct from Mr.McMaster or not I could not say.

Q. But they came into the company? A. I believe so.

Q. They were redeemed in some form by the company, I take it? A. I think so, yes.

In the Supreme Court of Ontario.

Plaintiffs' Evidence No. 11

G.G. Robinson Cross-examination continued

Q. Gairdner, who was mentioned by the previous witness, was a broker, and apparently it was handled through him, or do you recall that? A. I see.

Q. Beg pardon? A. No, I did not know that.

Q. Then do you know why his associates in Carleton, Mr. Pulkingham and Mr. Etherington, were unwilling to free those shares of McMaster's? A. Would you mind repeating that? I did not get the first of that question.

Q. Do you know why or whether Mr. Pulkingham and Mr. Etherington were willing to accede to Mr. McMaster's wish that his shares should be freed from Carleton? A. Well, I believe that they were reluctant to free them, yes.

Q. Well, as a business man, do you know why? A. Well, certainly.

Q. What is it? A. Well, it would throw the control of the company with wherever the majority of the common shares rested, of course.

Q. Yes; that is, Carleton Securities would become a minority shareholder of Sovereign Potters? A. That is right.

Q. And I suppose as a business man you would not criticize that attitude? A. Well, it is an important matter, of course.

Q. Did you yourself ever consider buying all or any part of Mr. McMaster's holdings? A. I discussed that matter with Mr. Pulkingham, yes.

Q. Did you ever discuss it with Mr. McMaster? A. No, sir.

Q. And what became of the matter as a result of your discussion with Mr. Pulkingham? A. It was dropped.

Q. When was that? A. I believe that was in the early fall of '46, or possibly in the summer.

Q. Do you remember what occasion led to that at the time? A. Well, it was simply that as a financial investment it did not appeal to me, on the basis that was suggested.

Q. Was that a suggestion that you should take over Mr. Pulkingham's interest? A. Oh, no; no, it was entirely pertaining to Mr.McMaster's interest in Carleton Securities.

Q. Had it any relation to any option held by Mr. Pulkingham? A. I was unaware that he held any option.

Q. And you think that was in the early part of '46? A. Yes -- no, I think it was---

Q. I am sorry, I may have misled you. A. That was certainly before these negotiations, I would say, with Johnson developed. My impression is it was during the summer or fall of '46. It might have been earlier than that. I really can't place it.

Q. Then we will leave it at that. Whatever took place between you and Mr. Pulkingham, you were unwilling to buy Mr. McMaster's shares? A. That is right.

Q. That would place you in the position of being a minority shareholder in Carleton Securities? A. It would have.

Q. Then you were a director of Sovereign Potters in '47? A. Yes.

Q. When did you become a director? A. I believe it was upon Mr. Russell's death in '37. I would not place that accurately there, but it was about that time.

Q. And you were also a trustee for a pool of the common shares? A. Yes, sir.

Q. When was that pool formed? A. Well, that pool was negotiated during the latter part of '46, and, as I have stated earlier, I believe it was finally concluded in February of '47.

Q. What was the purpose of the organization of the pool? A. The purpose of the organization of the pool on the part of the financial interests was not to lose, not exactly control of the company, because they did not have that, but at least not to place themselves in any worse position.

Q. To protect the interests of the financial group? A. That is right.

Q. Was there a proposal at that time to make a reorganization of the share structure? A. Well, not necessarily at that time. That had been discussed for the previous four or five years.

Q. Well, was it still under discussion in 1947 or 1946? A. The matter was still open.

In the Supreme Court of Ontario.

Plaintiffs' Evidence No. 11

G.G. Robinson Cross-examination continued

Q. The matter was still open. Was the intention then to have the preferred shares that were still existing converted into common? A. That was one of several suggestions that were made.

Q. Well, the result of that, I suppose, if it had materialized, would have been that the financial group would have more than 2,500 shares of common; that was the purpose, wasn't it? A. No, I don't believe that would have resulted. Of course, we were discussing something that was conjecture. We never reached any -- even approached final stages of any negotiations.

Q. Well, I am asking you a rather simple question, I think, for a financial man. There were certain share-holders, preferred shareholders, in the financial group, and if these preferred shares were converted by some means into common shares the natural result would have been that the financial group would hold a majority of the shares and control Sovereign Potters? A. If the preferred were converted into common that would have to develop, I would think.

Q. Well, that was one of the things in mind, wasn't it? A. No, I wouldn't say that.

Q. No? A. I think the prime motive at that time was to try to develop something that was going to enable the three original promoters, if I may call them that, of this company to get some real cash out of it or get themselves in at least a position where they could realize cash out of it.

Q. Who were those three? A. That was Mr. Pulkingham, Mr. McMaster and Mr. Etherington.

Q. Do you mean that this was an action on the part of the financial group to assist the other group? A. That is right.

Q. By getting some money for them? A. By making it possible.

Q. To sell their shares? A. Just to turn our minds back, during the war the profits, as you know, were frozen, and the boys felt that it was going to be a substantial time before they could-- under the Excess Profits Act and so forth and so on -- before they were going to be put in the position to realize dividends on their common holdings, and we were doing expansion at that time,

which was taking a great deal of the liquid capital, working capital and that was -- our thoughts inmind at that time, that was one of the objectives, was to give them a little more scope in which to operate.

Q. By enabling them to get rid of their shares? A. If they so desired.

Q. If they so desired. Were they co-operating with you in that? A. Yes, sir.

Q. Who were? A. Well, I think they all were. I mean, it was a co-operative idea, and naturally it had to meet the approval of all of us.

Q. Did you discuss that matter with Mr. McMaster? A. I do not recall ever discussing it with Mr. McMaster.

Q. Then you wrote to Mr. Byrne as Secretary-Treasurer of Sovereign Potters -- your lordship will pardon me a moment. I was rebuked before for calling it Sovereign Potters; I was told it was Potteries. It is "Sovereign Potters" here. Do you know which is right? A. Potters, P-o-t-t-e-r-s.

Q. That is right, is it?

HIS LORDSHIP: It is McMaster Potteries, I believe.

MR GRANGE: McMaster Pottery, my lord, I think -- singular.

MR MASON: At all events, we have got this one now.

Q. And the purpose of this letter, I take it from it, was to merely advise Mr. Byrne as Secretary-Treasurer that certain persons here named had agreed to assign to you their shares, subject to the terms of an agreement of the 15th of February, 1947, and that you were going to apply for the transfer of these shares into your name, and to advise him that none of the parties whose names are mentioned had any right to assign or transfer to anybody other than yourself? A. That is right.

Q. Did the persons whose names were mentioned there -- including in that companies, if any, when I say persons -- comprise the whole of the fifty per cent of the shares held by the financial group? A. Yes; the fifty per cent were all in the pool, yes, in the common share interests.

In the Supreme Court of Ontario.

Plaintiffs' Evidence No. 11

G.G. Robinson Cross-examination continued

Q. I suppose that would be less qualifying shares for the directors? A. Yes.

Q. We are not concerned with that particularly. Now, when did the proposal to pool all the common shares except those held by Carleton originate? A. I believe that originally developed about October or November of '46, and the reason that brought it about was that the Concrete Pipe Limited, that were the largest shareholder of common shares, were going to distribute the shares of Sovereign Potters among its shareholders, and on account of that diversification it was felt advisable to create this pool.

Q. And you say that was the first origin of the pool? A. Of that one that you are referring to there, yes, sir. There was a -- there had been a previous pooling agreement that had been effective, which this superseded.

Q. When had the previous agreement been originated? A. I cannot place that. I imagine it was back about perhaps 1940.

Q. Well, some years back? A. Some years back, yes.

Q. But, at any rate, after the year 1945, for instance, this was the only pooling agreement--- A. That is right, yes.

Q. ---that you had anything to do with? A.That is right.

Q. Now, did you ever hear of a proposal that the arrears of dividends on the preference shares of Sovereign Potters would be consolidated into a debt with the company, and that preference shares would be issued therefor?

HIS LORDSHIP: That what would be consolidated?

MR MASON: Preference shares into a debt.

Q. May I put that again? I am afraid I put it awkwardly. I ask you, did you ever hear of a proposal that the arrears of dividends on the preference shares of Sovereign Potters should be consolidated into a debt of the company, and that that debt would be discharged by the issue of common shares? That is substantially what I was asking you a little while ago. A. I do not recall any proposal whereby only the arrears of dividends would be wiped out by the issuance of common shares.

Q. You say "only"; is that part--- A. If I get your question properly; maybe I don't.

Q. Was that part of the proposal? A. Well, the one proposal I recall, which you referred to some time back, was the conversion of all preferred shares into common shares.

Q. Yes? A. Now, I do not recall any suggestion at any time of liquidating the accrual of arrears or the arrears into common shares; I do not recall any suggestion of that at any time.

Q. Would you say that that did not take place? A. Certainly not to my memory.

Q. Not to your memory. Did you ever hear of any proposal that would result in more common shares of Sovereign Potters being issued to the holders of preference shares? A. Only by conversion, that I remember.

Q. Well, there was a proposition that they should be converted? A. That was one thought, yes.

Q. Now, you have said that you first heard of the Johnson matter in late '46; what time was it? Will you please help me again? A. Well, I would say late October or early November, in that vicinity.

Q. When did you go away? You said you were away for about a month. A. I went away the latter part of February.

Q. And returned? A. Either the 31st of March or the 1st of April.

Q. How did you come to hear of this Johnson matter first? A. I received a call from Mr. Paulin in Hamilton.

Q. Mr. Paulin? A. Yes.

Q. Of Hamilton. Then did you hear anything further about it? A. I was asked to attend an informal meeting for discussing the proposal.

Q. Yes? A. Which I refused to do.

Q. From whom did that invitation come? A. Well, it was extended to me by Mr. Paulin.

Q. About what date was that, Mr. Robinson? A. That was a very few days after I came back.

Q. You came back about the 1st of April? A. Yes.

In the Supreme Court of Ontario.

Plaintiffs' Evidence No. 11

G.G. Robinson Cross-examination continued

Q. Well, you first heard about this matter, you said, late in October of '46; did you mean that you heard nothing of it in the interval? A. Absolutely nothing.

Q. Until you got this invitation in early April '47? A. That is right.

Q. Now, we have Exhibit No. 16, which was a letter from Mason, Foulds & Company to Byrne & Dixon of March 27th, enclosing a letter to the directors of Sovereign Potters Limited; you say that did not come to your attention? A. No, sir.

Q. I suppose, that may have been on account of your absence? A. Well, I believe it is dated the 27th of March, is it not?

Q. Yes.

MR HEIGHINGTON: That is not quite correct. Mason & Foulds there does not refer to anything about this directors' letter. I do not know why it is attached at all.

MR MASON: It says:

"I enclose a letter I brought back today from Toronto",

and this is the letter.

MR HEIGHINGTON: But that is not Mason Foulds' letter, that is Mr. Byrne's letter.

MR MASON: Mr. Byrne says he brought back a letter from Toronto, and I say this is the letter.

MR HEIGHINGTON: I say it is not, because the exhibit as marked on the discovery is quite another document altogether.

MR MASON: Then let us straighten it away. I don't want to be proceeding on any wrong hypothesis.

HIS LORDSHIP: Well, I think it might be a good time to recess now.

(Interval from 11.55 a.m. until 12.10 p.m.)

MR MASON: Q. Mr. Robinson, I want to go back just a moment with you. You said that sometime late in October or in November you learned of this

English suggestion; would you amplify that for me and just tell me what happened at that time? A. To my recollection, the conversation took place in my office, and I believe that Mr.Pulkingham and Mr. Etherington were both present, and they had received either by phone or letter from an employee or an official possibly of the Simpson Company, intimation that Johnson Brothers might be interested in the acquiring of a controlling interest of Sovereign Potters Limited, and my suggestion to them at the time was to the effect that we had had so many false approaches to sale or reorganization and one thing and another, speaking on behalf of the directors of the company, that I felt that until we had some definite evidence of their sincerity there was not justification to bring the matter before the board.

Q. Was any price, possible price, mentioned at that time? A. Yes, at that time it was suggested that we go back with a letter that unless Johnson Brothers had in mind a figure in the vicinity of a million and a half dollars that it was useless to pursue the matter further.

Q. And were you all agreed on that? A. Yes.

Q. Then, Mr. Robinson, I come to March 27th, and you said you were away and that you did not see this letter of March 27th until just recently? A. That is right.

Q. You did say a moment ago that there had been so many false approaches -- I don't want you to amplify it at any length, but do you mean that there had been suggestions from time to time previously as to disposing of the business to others? A. Yes, in substance you might say that,although perhaps it is a little broader than that, in that the question of reorganization and obtaining additional funds to amplify our working capital position by the disposal of some shares and -- there had been numerous suggestions made of that nature.

Q. Had there been any suggestions as to sale of the concern or its stock? A. Yes, I would say that there had.

Q. Well, I don't want to trouble you about going into the details. Now, after you returned about the 1st of April, 1947, when did you next have anything to do with the matter? A. It was at the directors' meeting; I believe it was a directors' meeting -- I am not certain whether

In the Supreme Court of Ontario.

Plaintiffs' Evidence No. 11

G.G. Robinson Cross-examination continued

it was a directors' meeting or a shareholders' meeting, but I think a directors' meeting, at which possibly some shareholders were invited.

Q. Well, it was not a formal meeting? A. Yes, it was a formal meeting.

Q. I would like you to be a little clearer on that, whether the meeting to which you refer was an informal meeting or whether it was a meeting that was formally called, or what it was? A. My recollection is that it was a formally called meeting, but I do recall bringing with me -- while I was a director of the company, I brought one or two other parties who were indirectly shareholders of Sovereign Potters to that meeting.

Q. Well, do you know how the meeting was called? A. I couldn't say now. I am presuming it was by mail, by letter, it was called for.

Q. Well, I just want you to tell from your recollection as closely as you can whether or not you received the formal notice of the meeting, because I did not want any confusion coming up between what might be a formal and an informal meeting. Then, to continue, will you please let me know what happened at that meeting? A. Well, at that meeting, as I mentioned before, I wanted to clear the point, in connection with myself, because the statement had been made that I was familiar with what had been taking place, and that was clarified first of all, I believe, at that meeting; and then Mr. Pulkingham related the developments that had taken place in connection with this matter of sale, and I myself and I believe there were some others were critical of the fact that the records of the company had been made available to outsiders and that they had been permitted of course to inspect the plant, which was not necessarily so serious as perhaps disclosing the records of the company. However, I believe that the general -- for the main part most of them preferred to pursue the matter further, and that they had made up their minds they would dispose of their shares in the company.

Q. Was there any official action taken or was it purely discussion? A. Official action, yes, there was action taken, in that we at that meeting determined on a counter proposal.

Q. On a counter proposal? A. Yes.

Q. Mr. Robinson, we have the minutes of the meeting of May 13, 1947, at which you were present, and I just want to be sure whether you are right in your recollection that the meeting you refer to was in April. If you looked at it could you tell us? A. It would be the first meeting after the 1st of April; I am sure of that.

Q. Well, yes, but when was it? Would you look at these minutes and tell us whether that is the meeting to which you refer? A. No, that is not the meeting.

Q. That is not the meeting? A. No, sir.

Q. Thank you. Were you present at any meeting of shareholders formally called? A. Well, as I have already said, I am not sure whether that was a directors' or a shareholders' meeting that was called in April.

Q. I am going to show you two other documents and see if these help you to recall, Mr. Robinson. Would you glance at those two documents? A. This first letter would have been addressed to whom?

Q. The shareholders. A. To the shareholders?

Q. Yes -- shareholders or directors, I am not sure at the moment. A. What did you want me to say about this?

Q. I wanted to ask you whether the perusal of these two documents enables you to identify that this was the meeting to which you had referred? A. The meeting on the 20th -- what was it of April? I don't know anything about this document.

Q. The 29th of April. A. The 29th of April? Yes, that would be the meeting.

Q. That would be the meeting? A. That is right.

Q. I will come back to that in a moment. Do you remember getting a similar letter to this letter of April 17th? This one is addressed to Mr. Cameron. A. I do not recall it, sir. I may have, but I do not recall it.

Q. Then you recall receiving a letter of the form of April 25, 1947, that I just showed you, which refers to a meeting to be held on April 29th? A. Yes.

MR MASON: I put this in at this stage as an exhibit.

In the Supreme Court of Ontario.

Plaintiffs' Evidence No. 11

G.G. Robinson Cross-examination continued

---EXHIBIT 18: Copy of form letter, not addressed, from Byrne & Dixon, April 25, 1947.

MR MASON: Q. This states, Mr. Robinson:

"To enable a complete discussion by all the shareholders, both common and preferred, a meeting will be held at the head office of the Company, on Tuesday, April 29th, at 11 a.m. All the shareholders, both common and preferred, are urged to attend this meeting.

"To cover those shareholders who are not able to attend on Tuesday, we enclose a new form of option embodying changes suggested by some of the shareholders."

I need not read the rest of it at the moment. Do you recall anything about the form of option that was enclosed? A. No, I do not.

Q. You are not prepared to say whether or not the form of option was received by you? A. You are speaking now of the one with the three signatures on?

Q. Yes. A. I never received a copy of that. I have never seen a copy of that.

Q. I don't blame you. I am sorry, I showed you the wrong document. I am showing you one now signed by Mr. Paulin; I ask you whether you got the same enclosure with Exhibit 18? A. Yes, that was it -- with the corrections of the inked-in price.

Q. With the exception of the ink written in, this is the form--- A. Well, the option as originally drawn, and the date on which it was drawn, had a price that has been inked in, and the inked-in price is the correct one that the directors and shareholders decided on at their meeting.

Q. So that with the ink here it is as the directors decided upon it? A. That is right.

Q. Without the ink it was as it was presented first? A. I believe so.

MR MASON: Then we had better mark this one Exhibit 19, my lord.

---EXHIBIT 19: Option, signed F.W.Paulin, to E. James Johnson, May 6, 1947.

MR MASON: Q. Now, did you attend any further meetings, formal or informal, at which this

English proposition was discussed? A. Yes.

Q. Do you recall when the next one was? A. I do not recall the date of the next one, but the proposition that had been submitted as a result of the shareholders' meeting, that had been submitted to Johnson Brothers, was not acceptable to them, and so another meeting was called to discuss further action.

Q. And that meeting, I take it, was the meeting of May 14, 1947, which I showed you previously?

A. Yes, I believe that is right.

Q. What was determined at that meeting? A. Well, it was determined, I believe, to cable, or at least to contact Johnson Brothers and set forth again the revised price. It was a question, of course -- Johnsons were prepared to pay a certain amount of money, and it was division of those moneys between the preferred and the common shareholder, which was internal.

Q. That shifted from time to time, did it not, the amount? A. Yes; and at that meeting I believe the final figures were pretty well set by the meeting that would be acceptable.

Q. And do you recall this, to avoid reading it all, after mentioning the price:

"That this price is final and conclusive and unless the offer is made by June 1st 1947 the whole matter may be deemed concluded . . ."

A. That is right.

Q. And the provision:

"The offer shall be subject only to Mr. Johnson finding some undisclosed liability of serious amount upon inspection of the financial records of the company."

A. That is right.

Q. "Resolved further that if the offer is made it will be accepted and the proceeds will be distributed to the shareholders on the basis of $127.00 per share for the common shares and $227.00 per share for the preference shares, the same to be applicable to Carleton Securities Limited shares as based on its portfolio of 2500 common shares and 2 preference shares."

In the Supreme Court of Ontario.

Plaintiffs' Evidence No. 11

G.G. Robinson Cross-examination continued

Do you recall that as the price at that time? A. I do not recall that reservation.

Q. "Resolved further that unless the price is offered as required all negotiations will be deemed definitely concluded".

A. Yes, I know we were getting pretty well to the end of the rope.

MR MASON: That will be Exhibit 20.

---EXHIBIT 20: Handwritten minutes of meeting of May 14, 1947.

MR MASON: Q. Oh, yes, I had forgotten: A committee was appointed, was it not, at that meeting to deal with the matter further? A. I think that the committee was appointed to conclude arrangements on that basis -- with authority to conclude arrangements.

Q. And the committee, I see, consisted of G.G. Robinson, Francis Hollinrake and N.W. Byrne, and they were to have the authority to accept the same and deliver the certificates? A. That is right.

HIS LORDSHIP: Is that supposed to be mentioned in this minute?

MR MASON: Yes, my lord. If your lordship will look right after the list of names, there is a resolution, "Resolved that a communication be sent", and if you get down about seven or eight lines you will see Mr. Robinson, Mr.Hollinrake and N.W.Byrne mentioned.

Q. Without taking you into all these details, Mr. Robinson, is it fair to say that there was quite a change in prices and terms from time to time during the negotiations? A. Well, they were low to start with, and then they went high and went higher, and then they came back lower again.

Q. They kept shifting? A. Well, there was just that one cycle in this deal that I know of.

Q. Higher and then lower? A. That is right.

Q. And were you familiar with the difficulties -- I don't want to take you into this at great length -- were you familiar with the difficulties that arose by reason of the action of the English Board of Trade? A. Relative to the---

Q. Payment. A. Sending of money over to Canada?

Q. Yes. A. Yes, I knew there were some difficulties there.

Q. Do you know whether there was a final ultmatum sent, that unless the matter was closed on a specific day it was all off?

HIS LORDSHIP: Sent by whom?

MR MASON: By the company here.

THE WITNESS: I recollect something of that nature. The particulars of it I did not have anything to do with.

MR MASON: Well, I don't want to go into the detail.

HIS LORDSHIP: What is Exhibit 20?

THE CLERK OF THE COURT: Minutes of meeting of May 14th.

MR HEIGHINGTON: My lord, they are only the notes of a meeting; they are not the minutes from the minute book. I don't know that they were ever transcribed or anything of that kind. Some notes that were made at the time, that is all they are.

HIS LORDSHIP: Well, that might be just as much minutes as anything else.

MR HEIGHINGTON: Oh, quite.

MR MASON: Q. I show you now a carbon copy of letter from Byrne & Dixon to Mr. Foulds, dated May 14, 1947, and a letter from you to Mr. Byrne, May 16, 1947.

HIS LORDSHIP: What is the date of the first letter?

MR MASON: May 14, 1947, and the other is May 16.

Q. I want to ask you, is the carbon copy the letter of which you approve in your letter of May 16th? A. Yes, that is right.

MR MASON: May I put these in as one exhibit, my lord? A letter from Byrne & Dixon, carbon copy, May 14, 1947, and the reply from Mr. Robinson of May 16, 1947.

---EXHIBIT 21: Copy of letter, Byrne & Dixon to A Foulds, May 14, 1947; and letter, G.G.Robinson to Norman Byrne, May 16, 1947.

In the Supreme Court of Ontario.

Plaintiffs' Evidence No. 11

G.G.Robinson Cross-examination continued

MR MASON: Q. Did you ever visit the McMaster plant? A. Yes, I was out there twice, I think.

Q. At what times, roughly? A. I would say that the first time I was out was perhaps a year after he started his operations out there, and I couldn't tell you what year that would be.

Q. You mean when he first commenced? A. Yes.

Q. Well, away back in '39 or '40? A. Somewhere around that.

Q. I need not bother you about that. A. And I was in there again about one Christmastime or shortly before Christmastime, as a matter of fact, because I know I bought some of his ware, and I couldn't just place that visit.

Q. You made a remark in your evidence that Mr. Byrne advised the shareholders that the matter had reached the status where negotiations must be disclosed? A. That is right.

Q. What were you referring to there? A.Well, the criticism that took place at what was the shareholders' meeting was levelled at the management for not making the shareholders or at least the directors conversant with what had been taking place during the previous three months, and Mr. Byrne made the statement to the shareholders that he had -- he really insisted that the meeting be called and the shareholders be made conversant with what had taken place, that these negotiations had gone as far as they could without being tabled.

Q. And do you know when that was? A. Well, that was at this first shareholders' meeting in April.

Q. The one that was identified as April 29th? A. That is right.

Q. Thank you.

MR GRANGE: No questions, my lord.

Thank you, Mr. Robinson.

Plaintiffs' Evidence

No. 12

EXAMINATION IN CHIEF OF F. W. PAULIN

FRED W. PAULIN, Sworn.

EXAMINED BY MR GRANGE:

Q. Mr. Paulin, what is your occupation? A. President of Canadian Engineering Contracting Company.

Q. Were you associated with Sovereign Potters at any time? A. From the commencement.

Q. And what was your position with them? A. I was Vice-President at the time that the negotiations took place.

Q. Now, Mr. Paulin, what information did you have with respect to Johnson Brothers? When did you first hear about Johnson Brothers in association with Sovereign Potters? A. It would be the end of March, at the directors' meeting which was held then; the 28th of March, as I recall.

Q. And what was that information that you received? A. It was a letter that was read by Mr. Byrne, the secretary.

Q. You were here at the evidence produced by Mr. Robinson; did you attend the meeting to which he refers?

MR MASON: Which one?

THE WITNESS: That is the one in April? I was at the meeting in March at which Mr. Robinson was not present, and I was at the meeting in April at which Mr. Robinson was present.

MR GRANGE: Q. Mr. Byrne, the defendant, was present at these meetings, I take it? A. Yes, he was there.

Q. And what statement did Mr. Byrne make with respect to these negotiations at either meeting? A. Well, as I recall it, Mr. Byrne made the statement that he had---

HIS LORDSHIP: Q. Which meeting are you referring to now? A. I beg your pardon?

In the Supreme Court of Ontario.

Plaintiffs' Evidence No. 12

F. W. Paulin Examination continued

HIS LORDSHIP: To which meeting is reference made now? Mr. Grange, could you identify the meeting?

THE WITNESS: My recollection is that it was the 28th of March that Mr. Byrne made the statement that he had withheld this information as long as he thought it should be withheld, and that it should come before the directors. Now, I may be mistaken in that; that may not have been until April.

MR GRANGE: Q. Was anything said by anyone else at this meeting that you remember?

MR MASON: Which one are you referring to?

MR GRANGE: Q. Was anything said, first of all at the meeting on the 28th of March, with respect to Mr. McMaster's shares by anyone? A. Not at that meeting.

Q. Was anything said at the meeting in April with respect to Mr. McMaster's shares? A. Not as I recall. It was later on when the negotiations had progressed considerably that Mr.Byrne told us then, in answer to a question from Mr. Fraser, as to what about Mr. McMaster's stock, he told us that he had that stock. Now, at what meeting that was I would not be able to say.

Q. Mr. Paulin, did you see Mr. McMaster during the period of these negotiations? A. I did not.

Q. When did you first see Mr. McMaster -- that is, not the first time in your life, but the first time--- A. I called up Mr. McMaster on the first day of July just out of curiosity to see how he was and how he felt, and he couldn't talk to me. His daughter Dorothy talked to me and asked me if I would come out to see him, which I did; I went out to see him.

Q. And did you give him any information with respect to the price? A. He asked me what the price was, and I told him.

MR MASON: I object, my lord, to this conversation.

MR GRANGE: Q. Mr. Paulin, could you tell me the reaction of---

MR MASON: Well, just a moment.

MR GRANGE: Q. As a result of what conversation you had, could you tell me, Mr. Paulin, of Mr. McMaster's reaction?

HIS LORDSHIP: Not what he said.

MR GRANGE: Q. His physical reaction? A. He was astounded, and so much so that they called the doctor and put him to bed.

Q. Those are all my questions, thank you.

Plaintiffs' Evidence

No. 13

CROSS EXAMINATION OF F. W. PAULIN

CROSS-EXAMINED BY MR MASON:

Q. Who was the doctor? A. I couldn't tell you, sir.

Q. That is all.

MR GRANGE: Thank you very much.

MR HEIGHINGTON: I have a short witness, my lord, I can put in if your lordship wishes. I have two, possibly three, short witnesses after lunch anyway.

HIS LORDSHIP: Well, possibly we might adjourn now.

MR HEIGHINGTON: Yes, I think so, my lord.

---Whereupon the Court adjourned at 12.50 p.m. until 2.30 p.m.

Plaintiffs' Evidence

No. 14

EXAMINATION IN CHIEF OF MRS. MENGER

---Upon resuming at 2.30 p.m.

EXAMINED BY MR HEIGHINGTON:

Q. We won't be very long, Mrs. Menger, but if you do feel tired just simply say so. You are Mr. McMaster's daughter? A. Yes, sir.

In the Supreme Court of Ontario

Plaintiffs' Evidence No. 14

Mrs. Menger Examination continued

Q. You were living at home in what years around--- A. I have lived at home up until 1939, and then I was away for a few years, but I came back again -- I have come back again, rather.

Q. And you are a school teacher by profession, are you? A. Yes.

Q. At what school? A. Hill Fields, a private school for boys.

Q. At the times when you were home did you have any close association with your father? A. Always.

Q. In a business way? A. Yes.

Q. And will you tell his lordship what you know yourself about his meetings with Mr. Byrne? A. Yes. My father did not drive the car, and I had a car, and it was at his convenience, so I was the logical one while living at home to drive him to appointments, and they were to Mr. Byrne's office. Usually I parked the car and waited outside for dad's return, but I have been in the waiting room several times.

Q. You do not know what was said, but you know he went there? A. I know what my father told me afterwards when I would drive home.

Q. We are not allowed to have you say that; but anyway you took him there? A. That is right.

Q. How often might that be? A. A month or like a year?

Q. Well, either; anyway you like to say -- how often you took him there? A. Well, I would say on an average of the year that it would have been at least twenty times.

Q. Were you yourself ever present when they were discussing any matters? A. No, I was not. I was present in the waiting room and I could see through the glass.

Q. Your brother when he was giving evidence mentioned some occasion when a Mr. Lampard was consulted? A. Yes.

Q. And your name was mentioned in that? A. Yes.

Q. Would you just tell his lordship how that came about? A. Yes. I was responsible for that, because Mr. Lampard, the barrister, is Mr. Jeff Lampard, and I was engaged to his brother Perce. Dad was worried after he left the Sovereign Pottery, and there was no means of livelihood so, having great friendship with the Lampard family, I asked dad if he would drive down to St. Catharines with me and talk it over with Jeff, and he did, but at that time he was not able to contact Jeff, but whether -- I believe, in fact I am positive, that Perce evidently took the message and made an appointment for my father, but the conversation, I understand, because I left for the States then, was in Mr. Byrne's presence.

Q. Well, an appointment was arranged? A. Yes.

Q. And have you learned whether that appointment was ever kept? A. Yes, it was.

Q. You were not here at the time of the actual appointment? A. No, I was not.

Q. All right. Now, something has been said about an occasion when Mr. Byrne acted in regard to some excise matters; some letters were written by Mr. Byrne. Do you know anything about those letters? A. I know just as far as family conversation in relation to the rest of the family.

Q. You were not in Mr. Byrne's office about that? A. No.

Q. I think it was your sister; that is right. Now, you were at home in--- A. During the war years.

Q. In 1947? A. Yes.

Q. All of it? A. Yes.

Q. Were you there on an occasion which has been spoken of, I think it was the 27th of June, when something about this sale to Johnson Brothers appeared in the Spectator? A. Yes, I was.

Q. What do you say about your father's reaction at that time? A. After the announcement— I mean, when we saw it in the paper?

Q. Yes, when he saw it in the paper just how did he appear? A. He was confused.

In the Supreme Court of Ontario.

Plaintiffs' Evidence No. 14

Mrs. Menger Examination Continued

Q. He was confused? A. And it was more or less wonderment at that time, and I think -- I had the feeling that he was expecting Mr. Byrne to call him.

Q. Anyway, were you there at or about the time when Mr. Paulin -- he told us this morning he called on your father, and he told us about giving him certain information; were you there at that time? A. Yes.

Q. And what do you say about your father's reaction and condition after Mr. Paulin had a talk with him? A. He was terribly shocked and upset, and he had a nervous upset, and his skin became irritated and itchy, and he was not able to sleep at nights, and he did not go up to his bedroom from there on in, I can actually almost say except for a couple of nights that we asked him to please go upstairs to bed so he wouldn't catch cold, and he became so irritated that he didn't use his radio any more, and for the first time the grandchildren bothered him, and the lights were out in the den at nighttime, and he didn't want to have any contact with the public. It was one terrible disappointment.

MR:MASON: Is this, my lord, evidence within my friend's suggestion as to the---

MR HEIGHINGTON: His condition after this.

MR MASON: As to his mental condition?

HIS LORDSHIP: Well, possibly---

MR HEIGHINGTON: I won't pursue it any further, my lord.

HIS LORDSHIP: You have finished anyway?

MR HEIGHINGTON: Yes, on that.

Your witness.

No. 15 Mrs. Menger Cross-examination

Plaintiffs' Evidence

No. 15

CROSS EXAMINATION OF MRS. MENGER

CROSS-EXAMINED BY MR MASON:

Q. Where did you teach, do you say? A. I teach school, yes, sir.

Q. Whereabouts? A. Hill Field.

Q. Where is that? A. It is outside of Hamilton.

Q. And how long have you been living at your father's home? A. All my life with the exception of two and a half years.

Q. What years were those? A. It was '43 -- no, '41, '42, and probably the latter part of -- the first part of '43.

Q. And when did you commence to drive your father? A. I have always driven him from the time I was thirteen.

Q. Did you keep any record of the number of times on which you drove him? A. No. I was not asked -- no, sir, I did not keep a record, only mentally.

Q. You are relying purely on your memory? A. Yes.

Q. And in what year? A. '36, '37, '38.

Q. Yes? A. Then I had a child, so I took time out; and then '44.

Q. That is all, thank you.

MR HEIGHINGTON: That is all, thank you.

HIS LORDSHIP: Q. You spoke of one year, twenty times in a year; were you referring to any particular year then? A. No, I was not, sir.

Q. You don't know which year that would be? A. It seems more logical that it was the years of '36 and '37.

Q. I see; one of those years? A. Yes.

Q. Thank you.

Plaintiffs' Evidence

No. 16

EXAMINATION IN CHIEF OF MRS.M.L.McMASTER

MRS. MONA LEWAINE McMASTER, Sworn.

EXAMINED BY MR HEIGHINGTON:

Q. Mrs. McMaster, you are a daughter-in-law of the late R. J. McMaster? A. I am, sir.

Q. You did not live at the home, I understand? A. Not in the latter years, no, I did not.

In the Supreme Court of Ontario.

Plaintiffs' Evidence No. 16 Mrs.M.L.McMaster Examination continued

Q. After your marriage? A. I did.

Q. Up till you were married you lived at home? A. I lived in my own home.

Q. In your own home? A. Yes, sir.

Q. But after you were married would you be around your father-in-law's house? A. Yes, I was, quite frequently.

Q. Can you say you were visiting there in the year 1947? A. Yes, sir.

Q. Do you remember any occasion when something about the sale of the shares of Sovereign appeared in the Hamilton Spectator? A. Yes, sir, I do.

Q. Were you there on that occasion? A. I was there shortly after.

Q. Shortly afterwards. What was your father-in-law's reaction to that then, do you know? A. Very much surprised.

Q. Mr. Paulin told us this morning that he visited there on the 1st day of July, 1947: were you there at or about that time? A. I was there shortly after Mr. Paulin was there.

Q. In hours or number of days after? A. I would say it would be that evening or the following evening.

Q. How did you find your father-in-law then? A. Most upset.

Q. Most upset. I think that is all, thank you.

MR MASON: No questions.

No. 17 Mrs.M.McMaster Examination.

Plaintiffs' Evidence

No. 17

EXAMINATION IN CHIEF OF MRS.M.McMASTER

MRS MARY McMASTER, Sworn.

EXAMINED BY MR HEIGHINGTON:

Q. Mrs. McMaster, I understand you are engaged in business, business activities, yourself, or professional employment? A. Yes; I hold an executive position at the Canadian Sterling Electric.

Q. Since your marriage have you been at your father-in-law's house frequently, or did you live there? A. Oh, yes, we live very close by, and we have been there -- we visited practically every day, and for the last year we have been living there.

Q. On what terms of friendship or relationship were you with your father-in-law, Mr.McMaster?

A. Well, we were very friendly. We discussed practically everything. Having been in business, he felt we could talk the same language.

Q. Do you know anything at all yourself about any conferences with Mr. Byrne about any business matters? Can you tell us? A. Well, I know there were several, just from hearing him tell it in the family. However, there was one occasion where I did play a small part.

Q. Yes? A. When this excise matter came up he did tell me this one day that---

MR MASON: Q. Who told you? A. My father-in-law.

MR HEIGHINGTON: Q. As a result of what your father (sic) told you, what did you do? A. Well, I went up to Mr. Byrne's office to read the letter he had written to Ottawa about the excise matter.

Q. Yes? A. I was given the impression that it was a very clever letter, and that is the reason I went up to read it.

Q. Anyway, you did go there, and see it? A. Yes, I did go there one day at noon.

Q. Do you know yourself of any other occasions when Mr. Byrne was consulted or when he went to Mr. Byrne's office? A. Well, just from hearsay afterwards.

Q. Just from hearsay? A. Yes.

Q. All right; then we won't press you on that point, Mrs. McMaster; but you were living at home in the early part of -- at the house in 1947, were you? A. Not in 1947, no.

HIS LORDSHIP: Just the last year, I think she said.

MR. HEIGHINGTON: Q. The last year? A. I have lived at the house there since pop passed away.

In the Supreme Court of Ontario.

Plaintiffs' Evidence No. 17

Mrs.M.McMaster Examination Continued

Q. Before that--- A. We lived close by.

Q. And, as you say, you were in practically every day? A. Yes, that is right.

Q. And do you remember any occasion when the announcement about the sale appeared in the Spectator? A. I was at the house at the time. We all read the paper, passed it around to each other.

Q. What was his reaction on that occasion? A. Well, to me he seemed bewildered, very quiet. Very thoughtful. There was not very much said or done at the time.

Q. Do you know anything about the visit that Mr. Paulin told us about this morning on July 1st? A. Yes.

Q. When he gave him certain--- A. I was there in the same room with Mr. Paulin and pop during the whole conversation.

Q. Did you observe the effect on your father of his talk with Mr. Paulin? A. Oh, yes; he was absolutely stunned.

Q. That is all, thank you.

No. 18 Mrs.M.McMaster Cross-examination

Plaintiffs' Evidence

No. 18

CROSS-EXAMINATION OF MRS. M. McMASTER

CROSS-EXAMINED BY MR MASON:

Q. Just a moment, please. You referred to the Spectator in your evidence? A. Yes.

Q. Is this a copy of what you are referring to? A. Yes.

Q. And the articles that apparently appear--- A. Yes.

Q. ---are at the lower left-hand corner? A. Yes.

Q. Under the heading "Local Firm"--- A. Yes.

Q. -- "Amalgamated With British Potteries"? A. That is right.

Q. And in the lower right-hand corner there is a photograph of several of the persons? A. That is right.

Q. That is all that you saw? A. That is all I saw.

Q. And all that your father-in-law saw. I will put this in, then. That is all, thank you.

---EXHIBIT 22: Photostatic copy of a page of The Hamilton Spectator of June 27,1947.

MR HEIGHINGTON: That is all, thank you, Mrs. McMaster.

Plaintiffs' Evidence

No. 19

EXAMINATION IN CHIEF OF MISS.R.E.McMASTER

EXAMINED BY MR HEIGHINGTON:

Q. You are a daughter of R.J.McMaster? A. I am, sir.

Q. Trained nurse by profession, I believe? A. Yes, sir.

Q. But you have been living at home the last four or five years, have you? A. Yes, sir.

Q. Do you yourself know anything about your father's contacts with Mr. Byrne at all in a business way? A. Well, I was never affiliated with dad in a real business sense, but I had made -- dad would often ask me to get in touch with Mr. Byrne at his office by way of the phone; I would place the call and that is about all, sir.

Q. Now, were you present in the home on April 8th? A. Yes, I was.

Q. 1947, when Mr. Byrne came down? A. Yes, sir.

Q. We were told they were in the den? A. Yes, sir.

HIS LORDSHIP: What is that date?

MR HEIGHINGTON: April 8th; that is the day the money was paid over, my lord.

Q. We were told that Mr. Byrne and your father and Bob were in the den? A. Yes, sir.

In the Supreme Court of Ontario.

Plaintiffs' Evidence No. 19

Miss R.E.McMaster Examination continued

Q. What room opens off the den? A. The living room.

Q. The living room? A. Yes.

Q. It has been stated that--- A. The dining room opens off the den, I am sorry, sir.

Q. The dining room opens off the den? A.Yes.

Q. There is no door, we were told? A. No.

Q. On that occasion when that conversation between Mr.Byrne and your father was going on, and Bob was in the den with them, where were you? A. When Mr. Byrne first came I was in the living room, then I came on out to the dining room, and they had been talking for some time. Then I went to the doorway of the den, that is, between the---

Q. Yes? A. Or in the doorway, really.

Q. Did you hear any part of the conversation when you did that? A. Yes, I did.

Q. What was it? A. I heard one remark Mr. Byrne made, was, "Harry, the only reason I want this stock is to get back at Etherington," that was all. There was one other remark later on.

Q. Did you hear it yourself? A. Yes.

Q. Just tell us, please? A. Mr.Byrne was--

MR MASON: Q. Would you please raise your voice a little? A. I am sorry. Mr. Byrne was on his way out, and I heard him say, "Keep this under your hat," and that is all, sir.

MR HEIGHINGTON: Q. Do you know if he met your mother, if Mr. Byrne met your mother? A. Yes.

Q. On that occasion? A. Yes, mother came in too.

Q. Did she converse with him, do you know? A. For a short time, yes.

Q. Now, perhaps you will be able to tell us better than anybody about the matter I am going to ask you now. Were you at home when this Spectator paper was received and read out? A. Yes, I was.

Q. Were you there at the time? A. Yes.

Q. And did you observe the effect upon your father, physical effect? A. At that time he was more quiet and thoughtful.

Q. Do you know about the occasion that Mr. Paulin told us about, when he went down to see your father and gave him certain particulars? A. Yes, sir, I was home.

Q. Can you tell us what your father's reaction to that conversation was? A. Yes, it was complete shock, stunned.

Q. Quite a shock? A. Yes, sir; and shortly after that he became quite ill.

Q. Beg pardon? A. shortly after that he became quite ill.

Q. Well, we won't go any further than that. I think that is all, thank you, Miss McMaster.

Plaintiffs' Evidence

No. 20

CROSS EXAMINATION OF MISS R. E. McMASTER

CROSS-EXAMINED BY MR MASON:

Q. Where were you when you state that Mr.Byrne said, "Harry, the only reason I want this is to get back at Etherington"? A. There is an open doorway between the dining room and the den.

Q. Yes? A. And I had stepped inside the doorway.

Q. Yes: A. And that is when I heard the remark.

Q. You heard that single remark? A. Yes; I heard previous -- I knew there were people talking, but I had not---

Q. But you had not heard what was said? A. I happened to stop at that time in the doorway.

Q. But you had not heard what was said previously? A. No, not in any continuity.

Q. So you don't know what more led up to this remark? A. No.

Q. Then you say that as Mr. Byrne went out he said, "Keep this under your hat"? A. Yes, sir.

Q. You don't know what more led up to that? A. No, sir.

In the Supreme Court of Ontario.

Plaintiffs' Evidence No. 20

Miss R. E. McMaster Cross-examination continued

Q. You just heard the one remark? A. I heard those remarks, that is all.

Q. Then you said something to my friend about your father's reaction to reading or having read -- was it read or did he read it in the Spectator? A. Well, at that time it is difficult for me to say. We just get the one paper; who read it first or anything like that I---

Q. There seems to have been a family gathering? A. We are all pretty much at home. I live at home, and I would usually be out in the kitchen, probably helping with dinner, that sort of thing.

Q. You don't know who read it? A. Not at the moment, I couldn't say.

Q. Did you read it? A. Yes, I did.

Q. Well, would you tell us what there was there that would shock anybody?

MR HEIGHINGTON: Bewildered, is what she said.

THE WITNESS: I said thoughtful.

MR HEIGHINGTON: Not shocked at that stage.

MR MASON: Q. Well, you look at the paper now and tell me what there was in it that caused your father to be bewildered, as you say? A. Well -- I am sorry, I can't see without my glasses, my reading glasses. I can only see the large type.

Q. Yes? A. I didn't know I would be asked to read. I can't read it all.

Q. Have you any glasses here that you can get? A. I have them in my purse.

Q. Well, just get them, will you, please? A. Well, I don't quite know -- I just do know that dad was thoughtful after he had read this.

Q. You said bewildered before.

HIS LORDSHIP: No, I don't think she said bewildered.

MR MASON: That is what my friend said.

MR HEIGHINGTON: Maybe I am wrong.

HIS LORDSHIP: I think she said more quiet and thoughtful.

MR MASON: Wasn't that the previous witness? The previous witness said that, my lord.

HIS LORDSHIP: This witness said that too. The previous witness said bewildered.

MR MASON: Pardon me, my lord; I had taken down Mrs. Robert McMaster said he was bewildered, very quiet, very thoughtful.

HIS LORDSHIP: Yes, that is what Mrs. Robert McMaster said. This witness said quiet and thoughtful. More quiet and thoughtful, is what this witness said.

MR MASON: Q. Then may we change that? You do not say he was bewildered when he read it? A. No, sir.

Q. What? A. My impression was that dad was more quiet and thoughtful right at that time.

Q. Do you see anything in the Spectator article to make anyone bewildered? A. No.

Q. No? A. I had not even thought of it that way, sir.

Q. What? A. I had not even thought of it that way.

Q. All right, thank you.

MR HEIGHINGTON: That is all, thank you, Miss McMaster.

Plaintiffs' Evidence

No. 21

EXAMINATION IN CHIEF OF MRS.M.C.MCMASTER

EXAMINED BY MR HEIGHINGTON:

Q. Mrs. McMaster, you are the widow of the late Harry J. McMaster? A. Yes, sir.

Q. I am not going to bother you with very much, but we have just been told that you were present on an occasion--- A. Yes, sir.

Q. ---when Mr. Byrne was at the house on April 8th? A. Yes, sir.

Q. And you were introduced to him, and it is said had a short talk with him? A. Yes.

Q. Will you just tell his lordship what was said? A. Can I go---

Q. Just exactly as Mr. Byrne said it? A. Just as it was done. I went in the den, and Mr. McMaster introduced me to Mr. Byrne.

In the Supreme Court of Ontario.

Plaintiffs' Evidence No. 21

Mrs. M. C. McMaster Examination continued

Q. Yes? A. And he went right off and said, "You might be glad Mr. McMaster is out of that crooked crowd," and he turned to Mr. McMaster, who was standing by the fireplace, and he said -- he didn't say "Mr.", he said, "Etherington is a dirty rat."

MR MASON: Q. What's that? A. "Etherington is a dirty rat" -- but he was speaking to Mr. McMaster instead of me.

MR MASON: A what?

MR HEIGHINGTON: A dirty rat.

MR MASON: Q. A rat? A. Yes.

MR HEIGHINGTON: That is all, thank you.

No. 22 Mrs. M. C. McMaster Cross-examination.

Plaintiffs' Evidence

No. 22

CROSS EXAMINATION OF MRS. M.C. McMASTER

CROSS EXAMINED BY MR MASON:

Q. Anything else said? A. That is all.

Q. That is all, thank you.

THE WITNESS: Can I have a drink of this water?

MR HEIGHINGTON: Oh, yes, certainly.

---(Witness retires).

No. 23 Readings from examination of Defendant on Discovery.

Plaintiffs' Evidence

No. 23

READINGS FROM EXAMINATION OF DEFENDANT ON DISCOVERY

MR HEIGHINGTON: That is all the witnesses, my lord, but I desire to put in one or two productions and read some discovery.

HIS LORDSHIP: Very well.

MR HEIGHINGTON: She has not been very well. I tried to spare her as much as possible.

The first production I ask for is a letter of March 6th, written by Mr. Byrne, marked on the discovery. This will be Exhibit 23.

My lord, I am putting in a letter marked Exhibit 12 on my discovery, but now 23, dated March 6, 1947, to Mr.G.A.Gale of Mason Foulds, now His Lordship Mr. Justice Gale:

"Dear Mr. Gale:

Mr. Johnston of the Johnston Bros. Potteries in England has asked a friend to suggest a firm of solicitors.

We have written him as per enclosed."

That is Mr. Byrne's letter, and the enclosed letter which he wrote to Mr. Pulkingham on the same date is as follows :

"All things being considered our answer to your request for a suggestion as to a firm of solicitors to look after your friend's interests would be Messrs. Mason, Foulds, Davidson & Gale,"

and so on, and all the nice things he goes on to say about the firm, at least I can concur in that part of it, anyway, my lord.

---EXHIBIT 23: Copy of letter, Byrne & Dixon to G.A.Gale, March 6, 1947.
Copy of letter, Byrne & Dixon to W. G.Pulkingham, March 6, 1947.

MR HEIGHINGTON: The next exhibit I wanted was Exhibit 19 on the discovery, dated April 14th. This is a letter written by Mr. Byrne to Mason Foulds on April 14th:

"On the telephone the other day Mr.Johnson suggested that Mr. Pulkingham give him some sort of assurance that if the other shareholders were agreeable to sell enough shares to satisfy Mr. Johnson and he came out to this country the Carleton Securities group would be willing to deal.

We have drawn the enclosed for that purpose",

and so on.

"I believe that Mr. Pulkingham sent Mr. Johnson a copy of this option when I sent it down to him for approval."

However, I am not going to bother your lordship with the terms of it, except to call your attention to the first clause:

"To Mr. James E. Johnson,

In consideration of the premises and certain other valuable consideration, the receipt and sufficiency whereof is hereby acknowledged,

In the Supreme Court of Ontario.

Plaintiffs' Evidence No. 23

Readings from examination of Defendant on Discovery continued.

we the undersigned, being all the shareholders of Carleton Securities Limited each for himself doth hereby option to E. James Johnson the right to purchase all our respective shares of Carleton Securities Limited on a price per share basis of ten times the price basis for Sovereign Potters shares set out in the first line of the second page of your letter of February 27th, 1947 (there being 2500 Sovereign Potters shares held by Carleton Securities and 250 outstanding shares of Carleton Securities plus 3 qualifying shares to be transferred gratuitously."

That is signed, my lord, by three people, and the evidence on that point as to signature is contained in my discovery at question---

MR MASON: It is not disputed, Mr.Heighington.

MR HEIGHINGTON: That it is signed by the three people? It was not disputed, but I have to prove it.

MR MASON: Well, you can take it as proven.

MR HEIGHINGTON: All right.

---EXHIBIT 24: Copy of letter, Norman W. Byrne to Mason, Foulds, Davidson & Gale, April 14, 1947, enclosing draft option.

MR HEIGHINGTON: Some of these that I had listed may be in, but I want to turn, my lord, to question 31:

"31. Q. Was there any agreement made with McMaster and Pulkington and Etherington and McMaster whereby they got their common stock paid up? A. Vendor's contract.

32. Q. The agreement by which Messrs. Pulkingham and Etherington and the late Mr. McMaster got their common stock? A. Vendor's contract.

33. Q. That is the correct way to describe it. But you haven't got a copy of that agreement in your files? A. No, nowhere in my files that I know of.

34. Q. You drew it, I suppose? A. I imagine I drew it."

In the Supreme Court of Ontario.

Plaintiffs' Evidence No. 23

Readings from examination of Defendant on Discovery continued.

"37. Q. Then they started operations? A. Yes.

38. Q. Bought or leased a plant? A. Yes.

39. Q. Which was it, do you know? A. I think they bought it. They kept on buying anyway.

40. Q. You would have done that business. A. That is right."

"43. Q. Then I understand that there was some holding company formed in regard to the 2500 shares held by Pulkingham, Etherington and McMaster? A. That is right.

44. Q. You drew that up, did you? You had to do with it? A. I had to do with it. My father-in-law had told me to incorporate a company for him to put his holdings in. That is W. H. Bunting in St. Catharines. He had a farm that he called Carleton Fruit Farms. I incorporated the company as a holding company. These lads wanted a holding company. It was McMaster's idea, because he had still $12,000 invested in the thing, he wasn't going to have anybody dissipate those holdings. They didn't have any money. They changed the name from Carleton Fruit Farms, to Carleton Securities.

45. Q. They took over the charter, and you had the name changed to Carleton Securities, as a holding company? A. That is right."

Then at 89 Byrne admits he is the secretary:

"89. Q. You were the secretary?"

That is, of Sovereign Potters.

"A. That is the fact."

"100. Q. What was that? A. He came to see me as to how much he would be hooked for succession duty. I took his facts, figured them out, and wrote Toronto, and they said my figures were right. It is on the letter, I think. You will find you have got the original letter from Toronto. That is the start of it right there."

In the Supreme Court of Ontario.

Plaintiffs' Evidence No. 23

Readings from examination of Defendant on Discovery continued.

"129. Q. How did you address him? A. Harry.

130. Q. And how did he address you? A.Norm."

"144. Q. Apparently he bought some property in August, 1945, in which you acted for him? A.Yes, that is right. I think that was his house he was living in."

"150. Q. I am showing you several letters passing between your firm and the Minister of National Revenue and Mr. McMaster in regard to some tax question arising in the pottery business. I don't want to go into it, if you will just identify the work done in that connection. What is the date of that? A. November.

151. Q. Exhibit 6 represents some correspondence you had with the Department of National Revenue in connection with the business of the late Mr. McMaster and McMaster Potteries? A. Yes."

I think we had that correspondence put in this morning.

MR MASON: Yes.

HIS LORDSHIP: Yes.

MR HEIGHINGTON: Yes; I need not call for it now.

168, that is just that he drew Mr.McMaster's will.

539 is just dealing with the price:

"539. Q. You actually received $127,000. for them, didn't you? A. Yes.

540. Q. You paid $30,000. for them? A. Yes."

MR MASON: You haven't read quite all of it -- 538.

MR HEIGHINGTON: 538?

MR MASON: Yes.

MR HEIGHINGTON: "538. Q. $127,000? A. Subject to whatever claim there was.

539. Q. You actually received $127,000. for them, didn't you? A. Yes.

540. Q. You paid $30,000. for them? A. Yes."

I am not concerned with anything else.

545, the total price paid:

"545. Q. The price was $1,034,520? A. Yes."

"548. Q. That is a matter of calculation anyway. It says here, 'Resolved further that if the offer is made will be accepted, and the proceeds will be distributed to the shareholders on the basis of $127 per share for common shares, and $227. per share for the preference shares, the same to be applicable to Carleton Securities Limited shares, as based on its portfolio of 2500 common and 2 preference shares.'"

101 apparently I did not read, my lord:

"101. Q. This is in regard to the McMaster Potteries, Limited, on July 4th, 1944, and his assets apart from that. Did you incorporate McMaster Potteries, Limited? A. That is right.

That is the case, my lord.

DEFENDANT'S EVIDENCE

No. 24

EXAMINATION IN CHIEF OF NORMAN W.BYRNE K.C.

EXAMINED BY MR MASON:

Q. Mr. Byrne, you are a barrister by profession? A. Yes, sir.

Q. Practising in Hamilton? A. Yes, sir.

Q. For how many years? A. Since 1924.

HIS LORDSHIP: And solicitor.

MR MASON: Barrister and solicitor.

Q. And you have given considerable attention to matters of company work? A. That has been my particular course.

Q. Now, will you please start in with Carleton Securities Limited and tell me what you know about that? I want you to follow through the history of this matter with some care, so that we

In the Supreme Court of Ontario.

Defendant's Evidence No. 24

N.W.Byrne Examination continued

shall have the whole story. I take it that your first connection with Mr. McMaster was in connection with Carleton Securities? A. I am not absolutely sure of that. The first recollection I remember was with regard to Carleton Securities, but, mind, I had known that they were bringing Mr. McMaster into the situation before that. I cannot recollect clearly whether I had met him, but I would say that my first discussion with him was with regard to Carleton Securities.

Q. Now, don't go too fast, please, and just tell us what took place? A. Well, that was initiated by Mr. Pulkingham. Mr. Pulkingham and Mr. Etherington were the men I knew in the transaction in the first instance. They brought Mr. McMaster in. Mr. Pulkingham told me that they had bought some machinery, which I knew from the vendor's contract, and Mr. McMaster wanted to make sure that nobody would dissipate his holdings until the liability that still existed was liquidated. That meant a holding company. Mr. Pulkingham also mentioned that I knew that they had no spare money, they had been under very heavy expense in promoting Sovereign Potters for a long time, and there was the suggestion that there was no spare money. My father-in-law had left me with this holding company, which he gave me instructions to get in enthusiasm and then forgot about it, so I turned it over to them, and from then on that was theirs. I took no part in it, and when I say no part I mean no part.

Q. Now, we have had an exhibit here, No. 3; I think you prepared this document, Exhibit 3? A.It would seem so.

Q. And that exhibit provides, among other things, that the shares that are mentioned were to be transferred to you in trust; was that ever done? A. No sir, I don't think that ever was. There was a vendor's account set up in Sovereign Potters, and all the vendor's shares -- you appreciate that the people that put the money up got preference stock for their money and then they got common stock as a bonus. Half the common stock that went out under the vendor's contract, as I recollect it, went to the people who put the money up, but in that it was simply set up on the share books as a credit, and it did not go through the course of this; it actually went from the credit of the company to Carleton Securities,

because Carleton Securities was incorporated in the meantime.

Q. Carleton Securities having become incorporated, the transfer was direct? A. Well, the purpose was achieved without that intermediate step.

Q. Then, to make it short, those shares were never transferred to you in trust? A. No, sir.

Q. They went direct from the Sovereign Potters? A. That is right.

Q. Then I think it says something also here about liability for your account? A. They did.

Q. And what happened with regard to that? A. Well, don't blame them, blame me; I did not try to collect it under the circumstances.

Q. You received nothing for your work? A. It was Sovereign Potters I was looking to.

Q. Now, from that time until 1947, when you secured an option from Mr. McMaster, did you have any shareholding in Carleton Securities Limited? A. No, sir.

Q. Were you an officer of it? A. No, sir.

Q. Or associated with it in any way? A. That is very broad, Mr. Mason.

Q. Yes? A. Intimately associated, no. I was the secretary of Carleton Securities. That company was a shareholder, so if you want---

Q. You don't mean you were the secretary of Carleton Securities? A. I was the secretary of Sovereign Potters. That company was associated, so if you want to be broad, I was associated. It was a shareholder of the company of which I was secretary.

Q. Quite so. A. But as far as the interior economy of Carleton Securities, I had no part of it.

Q. That situation continued right through till 1947? A. Yes, sir.

Q. Now, there has been some talk in the evidence of Mr. Robert McMaster of a cut; you might as well explain that to us now? A. Well, Mr. Etherington was co-member of the Kinsmen Club with me, and on occasion he brought Mr. Pulkingham to see me, who had spent some time, his idea being, he was married to a Hamilton girl and wanted to get

In the Supreme Court of Ontario.

Defendant's Evidence No. 24

N.W. Byrne Examination continued

back home. He was down in a confidential and responsible position in the pottery industry in the United States and had learned the economics of it thoroughly, and he believed that he could originate a pottery successfully in this country. Others had tried and failed. He had written the thing up very, very carefully. Mr. Etherington brought it to me as to why it didn't work, and it was my opinion that as an exposition of pottery for a potter it was excellent, but for selling stock it lacked. They frankly admitted neither of them had money to spend on that kind of work, and, briefly, if you like, I said, "All right, we will go three ways as originators." That was agreeable. I prepared---

Q. That is colloquial language -- going three ways. What did that mean? A. I got a third of the vendor's stock.

Q. All right. A. I prepared the re-write of the proposition. As I understand it, Mr. Etherington contacted Mr. Marsales, who in turn introduced him to the Walton McGee group.

Q. Is that what we call the financial group? A. The financial group.

HIS LORDSHIP: What was the first you said, Mr. Byrnes, before you said about the Walton McGee group? A. Mr. Marsales, who was a mutual friend of Mr. Etherington and mine and a very good friend of Mr. McGee, introduced him there, and Mr. Etherington was successful in getting them to come in on the proposition. While he was doing that Mr. Pulkingham was putting the other side of the practical operating organization through. I was not there, but the result was that he got Mr. McMaster to come to be superintendent of the shop, and as I understood it they got preference shares for machinery that they contributed to the enterprise. Mr. McMaster used collateral in that picture. The money was originally, I think, borrowed down in the States and then I think it was transferred to Hamilton. That is my recollection of it; it is a long time ago. And that was the start of Sovereign Potters and that was the foundation, if you like, of this cut. In bringing Mr. McMaster into the thing Mr. Pulkingham had no choice. Mr. McMaster demanded an interest and it was promised to him. There was two promises then; one was to me and one was to Mr. McMaster. Mr. McMaster was on the job; it was fulfilled so far as he was

concerned. I had no other basic equity. I worked in Carleton Securities all those years; I had no stock; I still was looking for my basic equity.

MR MASON: Q. When you say you were working for Carleton Securities--- A. I mean Sovereign Potters, all those years.

Q. For Sovereign Potters? A. Right; at a very small retainer, although on occasion Mr. Pulkingham did come through with a nice cheque at the end of a year, any year that they had a good year.

Q. Well, we don't need to go into that. A. I was still looking for that. It was out, an outstanding matter between us, but it did not affect our relationship any. I had my claim, and that was that.

Q. Now, what was Mr. McMaster's attitude with regard to that? A. It had always been up to the day that I took the option out to his place that he knew nothing about it -- just that, just that.

HIS LORDSHIP: Q. What is that you say?

A. That he knew nothing about it. He would not subscribe to it in any manner, shape or form.

Q. Who would not? A. Mr. McMaster.

MR MASON: Q. Now, will you briefly describe your relationship, as you have already indicated, with Sovereign Potters? A. I am sorry, I did not catch that, Mr. Mason.

Q. Will you describe your relationship with Sovereign Potters? A. I was the secretary and solicitor of the company from the inception. I was put in that office by the financial group, from whom I took the instructions, and who paid the bill.

Q. And you remained as such until sometime after April of 1947? A. Yes, sir, until Johnsons had consolidated the company.

Q. Now, will you tell me the circumstances under which you had obtained an option from Mr. McMaster on the 22nd of March, 1947? A. Do you want the long way ahead, or just that part of it?

Q. Well, I would like you to develop it. Perhaps it would be more speedy in any way you see fit. I want to get the complete story. A. As to that part?

In the Supreme Court of Ontario.

Defendant's Evidence No. 24

N. W. Byrne examination continued

Q. Well, or go back if you want to, to pick up anything. A. Well, there had been before that the talk about the pool being formed up, the pool that Mr. Robinson spoke of this morning. There were some shareholders who, while they subscribed to the idea, were a bit restless about it.

Q. You mean about the pool? A. About tying their stock up for ten years.

Q. Well, we haven't heard about that yet. A. Well, the duration of the pool was for ten years.

Q. I see. A. And I had spoken to Mr. Marsales, among others, whether he wanted to sell his stock, and he was acquiescent, subject to a gentlemen's agreement about not---

MR HEIGHINGTON: Are we concerned about what some other shareholder is doing, my lord?

MR MASON: Well, you are not unless it leads to something that relates to this.

THE WITNESS: And during the course of that Mr. Pulkingham had told me that there was talk of this English deal, just that, that there was talk of this English deal. I also retailed that to Mr. Marsales; I told him.

MR MASON: Q. Yes? A. Then in March Mr. Pulkingham came in of a Friday---

HIS LORDSHIP: Q. Just a minute. Go a little slowly, please. A. I might say that when it came out that the pool was going to be a pool we all acquiesced in the idea of a pool. In other words, I desisted from any effort to buy stock then.

MR MASON: Q. You don't mean that you agreed with the pool; you mean that you did not attempt to buy any stock? A. Well, I acquiesced with the idea of the pool if they wanted to pool it. I did not want to split the pool or disturb the pool. All the way through Sovereign Potters I was in the middle; that was my function.

Q. I don't know that his lordship will understand that; you said you were in the middle? A. Well, I had no shares in the company, Mr.Mason.

Q. Wait a minute, now. You were in the middle. There was the financial group holding 2500 common shares? A. That is right.

Q. And there was the Carleton group holding 2500 shares? A. That is right.

Q. Now, you say you were in the middle? A.I had no stock.

Q. Yes? A. My leanings were neither way.I was the secretary of the company doing the best I could, that is all.

HIS LORDSHIP: Q. When you say, "We all acquiesced in the idea of a pool," why "we"? A. Well, Mr.---

Q. You did not have any stock? A. Yes, but that discussion about getting Mr. Marsales' stock or buying Mr. Marsales' stock, I had discussed that with Mr. Pulkingham and Mr. Etherington.

MR HEIGHINGTON: We are not concerned with that.

MR MASON: Q. I don't care very much about your attitude towards the pool, anyway, but what I wanted to get at, you were saying you were in the middle, that is, you were not associated, tied up, to either of these two groups? A. That is right.

Q. You were secretary of the company? A.Then come this Friday, Mr. Pulkingham came in, and I can't say the words he said or that sort of thing, but the idea was that---

MR HEIGHINGTON: Well, we are having these statements all the time, what other people said, Mr. Marsales and Mr. MacKay and Mr. McGee and Mr. Pulkingham; it is not any evidence, my lord, I submit. If he had an interview with Mr.Pulkingham, as a result of that interview did he do anything himself?

THE WITNESS: Well, what Mr. Pulkingham did as a result of the interview was turn over to me an option that Mr. McMaster had given him in the preceding fall, to buy Mr. McMaster's stock in Carleton Securities for $30,000.

Q. Now, you say you got that from Mr. Pulkingham on a Friday? A. On a Friday.

Q. When did that option mature? A. On a Sunday, next Sunday, on the 23rd.

HIS LORDSHIP: Q. This is Friday the--- A.The 21st of March.

MR MASON: Q. March 21st. Did you say the option matured on March 23rd? A. Yes, sir.

In the Supreme Court of Ontario.

Defendant's Evidence No. 24

N.W. Byrne Examination continued

Q. The Sunday? A. Yes, sir.

Q. Then what happened? A. Well, I was faced with either doing or not doing. The first thing I did was, I phoned the bank, whether they had $30,000 in legal tender. They ordered it up, and I have a letter from the Bank of Toronto there confirming the fact that I ordered up thirty thousand in legal tender on March 21st. And I phoned Mr. McMaster and gave him the general premise and made arrangements to go and see him the next morning, which I did.

Q. Then you went out on March 22nd, and who were there? A. His son and Mr. McMaster and me.

Q. That is, his son Bob, who gave evidence here? A. That is right.

Q. Tell me now as closely as you can, and please go slowly, what took place during that interview; in the first place, did you have a document with you? A. I had the option with me.

Q. Will you describe the option? You have told me already that the option matured on the 23rd of March, which was a Sunday, but did you notice anything about the paper itself? A. My recollection was that it was on Mr. McMaster's stationery. It started off with a request to find a buyer for the stock, and then an option to take it up at $30,000.

Q. What I am trying to get at, I am thinking at the moment of the paper; was it an original copy or what was it. A. The one that was there, it was an original but it was a carbon copy. I mean, the carbon copy had been made into an original document.

Q. It bore signatures? A. Yes, sir.

Q. Now, from that point on tell me what took place? A. Well, I turned up. There was general discussion. Mr. McMaster gave me a new option to replace that one, the same price, for thirty days.

Q. Was there any discussion about that? A. There was discussion, and not particularly with regard to the new option. I wanted a new option, to see what -- I was caught very short. I knew very little about this Johnson deal. I wanted to inform myself a little bit, to see whether I wanted to go on with the Johnson deal or whether I didn't. It was premised that very shortly we

would have a meeting with Mr. Foulds. I wanted just a little bit of leeway, if it was all right with Mr. McMaster to have a look at the thing, to see whether I would go at it. As it was, I jumped too soon.

Q. Now, please tell me what conversation took place between you, as closely as you can? A. That is pretty hard, Mr. Mason. It started off with Mr. McMaster -- it was back to me again, see, that the other two fellows had done nothing, and he thought it was too bad if I had to pay that kind of money. That was his price, however. And he suggested that Etherington and Pulkingham should help me out in that. Brought up the question of the cut, that was discussed a bit, then he said that he had always known there was a cut. That was the first time he had ever taken that attitude. I asked him if he would write that down, and he said he would. I had my notebook there; I wrote it down with he and his son standing over my shoulder; I wrote down what his acknowledgment was, just that.

Q. What do you mean by that -- you wrote down what his acknowledgment was? A. It has been said here, Mr. Mason, that Mr. McMaster then volunteered at that meeting to give me my cut if the others would. He made no such offer. If it had been it would have been written down on that piece of paper, I assure you. There was no such offer.

Q. You were doing the writing, and what part was Mr. McMaster taking? A. He was making the statements that would go down on it.

Q. And did you put down the substance of what he said? A. Yes, sir.

Q. That appears in the exhibit? A. That appeared in the exhibit.

Q. The statement, yes. A. But he made no statement that morning that he was -- nor had he before, that he was always going to give me my cut. He never had, and did not that morning, nor did I raise the question of the cut. It was not on my mind when I went up to Mr. McMaster's house. It was said in extenuation of the price that they should help me pay for it.

Q. What conversation, if any, took place about what you have just mentioned a moment ago, that you wanted to ascertain what chance there was

In the Supreme Court of Ontario.

Defendant's Evidence No. 24

N.W. Byrne Examination continued

of being able to deal with these shares? A. I don't just follow you.

MR HEIGHINGTON: Well, you are giving him a pretty good hint, I think, myself.

MR MASON: Q. I want to know what conversation if any, took place with regard to the proposals that subsequently eventuated with regard to Johnson? A. Oh, the Johnson deal? Well, he knew practically as much about the Johnson deal as I did, which was not a lot. I was to find out very quickly after that.

Q. Well, never mind that; just stick to this. What conversation, if any, did you and he have about it? A. Well, we discussed its possibility.

Q. On what basis?

MR HEIGHINGTON: Just ask him what was said, please.

MR MASON: I am trying to ask him what was said.

Q. What was said about it? A. Well, there was quite a lot said about it, Mr. Mason. It was on the basis that all I knew at that time was that there had been with Mr. Johnson for a million and a half, and that I had recommended Mason Foulds, and that I was going to go and see him soon.

Q. That is substantially what you knew about it at the time? A. That is substantially what I knew about it at the time.

Q. Was that or was that not discussed with Mr. McMaster? A. Yes, sir.

Q. And what was his view of it? A. He thought that it was not very probable. He thought it was fantastic, a million and a half.

Q. Was the word "fantastic" his or your word? A. Probably my word.

Q. Then was anything said by you with respect to the book value of the company? A. No, sir. The first time I mentioned book value was when I was doing some work for Mr. Walsh on the statement of defence in this action, and I went and asked Mr. Chagnon what the book value was.

Q. Mr. Who? A. Mr. Chagnon, the auditor of the company; and I have the slip down there that Mr. Chagnon prepared for me, and those are the figures I used in the statement of defence.

Q. And that showed? A. $10.27 per share, I think. Get this clear, Mr. Mason: We did not chisel about the price that morning. May I look at that yellow sheet just to check that figure? That is right, $10.27. Those are Mr. Chagnon's figures.

Q. And you say you did not say anything about the book value in that interview? A. No, sir. I was willing if I had to to take up the stock that morning. What I wanted was a little bit of time to have a look at the Johnson deal to find out something about it, instead of buying it entirely in the dark. May I point out that at the time I did buy it the circumstance had never occurred to me that in Carleton Securities, that Mr. Johnson wanted to buy from Carleton Securities its holding in Sovereign Potters. He did not want to buy Carleton Securities stock, he wanted to buy the holdings of Sovereign Potters. And if they had sold, if Carleton Securities had sold its holdings, it would have been all income tax. That made a very, very decided block to the deal, that Mr. Foulds would have nothing to do with.

Q. Well, that occurred later? A. Yes, sir.

Q. I will get you to tell me that in due course. At the moment I want to stick strictly to this conversation that took place between you and Mr. McMaster and the son on the 22nd of March. A. All right.

Q. Now, can you recall whether anything was said other than you have told me with reference to the cut and to the price and to the Johnson transaction? A. Well, I have condensed a lot of conversation into about four sentences.

Q. Yes? A. I have given you the effect of it.

Q. Well, as I recollect, Mr. Bob McMaster said that you made certain references to Mr.Etherington? A. I made no such references; that is stupid.

Q. Well, never mind whether it is stupid or not; did you make any such reference? A. No, sir.

Q. Did you say anything at the time the slightest degree derogatory either of Mr.Etherington or Mr. Pulkingham? A. I did not.

MR HEIGHINGTON: Aren't you cross-examining the witness? Just ask him what was said. I think it would have more weight, anyway.

In the Supreme Court of Ontario.

Defendant's Evidence No. 24

N.W. Byrne Examination continued

MR MASON: Q. I should have asked you earlier, Mr. Byrne, what position had arisen between those who were holding the shares in Carleton Securities, about Mr. McMaster's interest, his forty per cent, whether he was satisfied to leave it there or what happened with regard to that? A. Well, of course, he wanted it liquidated as soon as he was out of Sovereign Potters.

Q. That was in the year 1936? A. I think so.

Q. Perhaps you might tell the Court just a little more fully what it was he wanted and why he wanted it? A. Well, he wanted to liquidate his Carleton Securities holdings, get his money.

Q. Well, what was the difficulty? A. He had forty per cent, and the rest didn't want to. You see, it took sixty-six -- it took a two-thirds vote.

Q. To do--- A. For distribution under the Companies Act. Well, he couldn't get a two-thirds vote.

Q. So his position was that he was tied up? A. That is right.

Q. In that way; and he wanted to get it loose? A. That is right.

Q. Did he make any efforts to do that with Pulkingham and Etherington, as far as you personally know? A. Well, I have had it reported.

MR HEIGHINGTON: He has told us nothing else but reports.

MR MASON: Would my friend please let me examine the witness?

MR HEIGHINGTON: I think I have been very patient, my lord, but we have heard very little from this witness about his own statements, not more than two or three lines, except in answer to questions directly in a very leading way to a specific point.

MR MASON: Would you read the last question, please?

THE REPORTER: "Did he make any efforts to do that with Pulkingham, and Etherington, as far as you personally know?

THE WITNESS: Yes, he did.

MR MASON: Q. Now, I had better ask you this question first: Did you occupy any position of solicitor with respect to Mr. McMaster at any time after the incorporation of the company as to Carleton Securities?

MR HEIGHINGTON: Isn't that a very leading question?

MR MASON: It is a question of fact.

MR HEIGHINGTON: I don't know of one more leading.

THE WITNESS: The only times I ever acted for Mr. McMaster as his solicitor is evidenced in the bill that was rendered and paid. Those were the only times that I acted for Mr. McMaster as his solicitor.

MR MASON: Q. I think we had one exception mentioned as to acting in the purchase of a house or something? A. Well, that is covered in it.

Q. Well, that is covered in it. Q. Is it? A. Yes.

Q. I had forgotten that.

MR HEIGHINGTON: There is another interjection which should hever have been made.

MR MASON: Are you through?

MR HEIGHINGTON: Quite.

MR MASON: Q. You have said that except for the matters mentioned in the bill, what you have already stated, you had never acted for Mr. McMaster in connection with Carleton Securities Limited? A. Yes, sir.

Q. It has been said in evidence here that you were called up -- I don't know that there was any time after 1945, but that Mr. McMaster called you up from time to time with regard to Carleton Securities. My question is directed to this--- A. I deny that.

HIS LORDSHIP: Let me see the bill of costs.

MR MASON: It is Exhibit 4, my lord.

Q. You have told me that the position was that Mr. McMaster's attitude toward what has been called the cut was that he had not any responsibility for it? A. That is right.

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N. W. Byrne Examination continued

Q. Up to March 1947? A. Up to that particular Saturday morning.

Q. And you say that the relationship of solicitor and client with regard to Carleton Securities Limited had not existed since the time of the incorporation? A. I do.

Q. Now, was anything said in the conversation of the 22nd of March, 1947, about a bank loan of Sovereign Potters? A. I don't think so. We were not -- there was no argument about price.

MR HEIGHINGTON: Just answer the question.

THE WITNESS: I don't think it came up. I cannot recollect any argument about price or detraction from price. I think it was a high price, but we were not arguing about price.

MR MASON: Q. Any attempt made by you to get the price down? A. No, sir.

Q. And in the document that you had, that is, the option, what price was mentioned? A. $30,000.

Q. Now, the option was, you have told me, prepared by you and signed by Mr. McMaster? A. That is right.

Q. Witnessed by his son? A. That is right.

Q. And five dollars was the consideration for the--- A. I paid him five dollars as the consideration for it.

Q. That was actually paid? A. He laughed at that, and I told him that would make it legal. He took it.

Q. Then when did the question about the statement arise? Was it before the preparation of the option or after it? A. I am not sure. I think it was before. The question of the pool came up right as soon as I got in -- I mean the cut came up as soon as I got in.

Q. Then tell me, please, what happened on the subsequent occasion on April 8th? A. I took the money out. He had the stock there that morning by arrangement, and I gave him the money and I took the stock. There was some small conversation, and I went my way and he went his.

Q. Was any remark made by him either at the meeting of March 22nd or the meeting of April 8th?

MR HEIGHINGTON: My lord, I hate to be interpolating like this, but they are very direct leading questions, and a series of them.

MR MASON: My lord, when the witness has got in the box, and if there were certain specific statements, I have got to ask the witness with regard to those specific things, because otherwise I cannot put any denial on the record.

MR HEIGHINGTON: You can ask him what he says, of course, but not "What did you say about this or about that?" or "Did you deny it"---

MR MASON: I have to direct his attention to the subject matter. I must not direct his attention to the answer. Now, I am sorry, I will have to come back again and have the question read, please.

THE REPORTER: "Was any remark made by him either at the meeting of March 22nd or the meeting of April 8th?"

MR MASON: Q. With respect to his relations to Etherington and Pulkingham? A. With respect to his relations?

Q. Yes. A. Well, except---

Q. His business relations with them? A. Well, except the aside -- after I had got the new option, been given to me, the other one when I took it out was set on a little table at the side of the room, and he took it up and said, "Well, that is the end of my dealings with Pulkingham and Etherington," tore it up, chucked it in the waste paper basket. That is the old option; it was no good.

HIS LORDSHIP: Q. When was this? A. On March 22nd.

Q. Well, when on March 22nd? A. At the end of the session. He had given me -- I had my new option and paid him the five dollars, and the other one was sitting on the table, and he tore it up and said, "That is the end of my dealings with Pulkingham and Etherington," and it was.

MR MASON: Q. Now, on April 8th -- oh, wait a moment, wait a moment; I want to bring you back to March 22nd further still. Mr. Bob McMaster has made the statement about your having said that either Pulkingham or Etherington or both of them were S.B.'s. A. I made no such comment. I do not make those kind of comments, thank you. I deny it absolutely and flatly. There was no

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N. W. Byrne Examination continued

reason for making it, and I did not make it, definitely.

Q. Then on April 8th -- I come back to that -- what was said, if anything, about what was to be done with the money, the thirty thousand you had paid over? A. There was nothing said to be done with the money.

Q. Well, you have heard Mr. Bob McMaster say that you asked him not to deposit it in the bank? A. That is not true. I had no interest why -- an hour after I was there, Pulkingham and Etherington knew I had the option. I had to make an appointment with Mr. Foulds to go and see him. Mr. Pulkingham had to go. Mr. Etherington was a shareholder of the company. There was neither point nor reason for it. I made no such comment.

MR HEIGHINGTON: My lord, can't we have the witness confine himself to the answers? He argues why he would not have done a thing. Every question that is asked, he argues why he would not have done it or why he did it, and does not tell us what he did or what he did not do. He is just arguing with himself to---

MR MASON: Certainly he has a right to tell his lordship why he would not do it, why he did not do it.

MR HEIGHINGTON: Arguing as to the probabilities of this and the probabilities of that.

THE WITNESS: Mr. McMaster, by the way, also gave a wrong impression as to the remark about clay.

MR MASON: Q. Yes? A. When I paid off on April 8th I passed a remark, well, something to the extent, "Well, I am in for it, I have got to put this English deal through." His comment was, there was only one thing worried him about the English deal, or words to that effect, and that was, would they still be able to get clay. I did not know at that time that they got clay from Sovereign Potters, but I turned and I said, "Pulkingham and Etherington will still be there, you will still get your clay." He gave the impression that it was me that was going to cut him off. It was not. The comment was brought about by my reference to having to put the English deal through.

Q. Then the remark was made by somebody that

you used some language, for God's sake not to deposit this money. A. That is not true.

Q. Because Etherington or somebody would know about it? A. That is not true.

MR HEIGHINGTON: Not because Etherington would know about it at all. Ask him what he says about the allegation which was made, please.

MR MASON: All right.

Q. An allegation was made that you asked that the money should not be deposited in the bank, but it should be dealt with otherwise. A. That is not true.

Q. Did you at any time make any suggestion as to the use that should be made of the money? A. I did not.

Q. Or the way in which it should be dealt with? A. I did not.

Q. Then we are told that as you left the house on April 8th you made a statement with reference to Mr. Etherington, that he was a dirty rat. A. I did not.

Q. Did you make any such statement? A. I did not.

Q. Did you make anything like it? A. No, sir.

Q. Did that represent your attitude towards Mr. Etherington? A. No, sir.

Q. And then we are told also that you said to Mrs. McMaster that you might be glad Mr. McMaster was out of a crooked crowd? A. I did not catch that at all, but if she said that, that is not true. I had never seen Mrs. McMaster before to my knowledge in my life. I was never in McMaster's house in my life until March 22nd, nor had I ever gone anywhere with him or done anything with him. He was the superintendent in Sovereign Potters, that is how I knew him, only.

HIS LORDSHIP: Q. Did you meet Mrs. McMaster on that occasion? A. I cannot recollect that, sir. I think she did come into the room just as I was going out.

HIS LORDSHIP: Well, I don't know what your explanation would have to do with the matter.

I think we will recess now.

(Interval from 4.10 p.m. until 4.22 p.m.)

In the Supreme Court of Ontario.

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N. W. Byrne Examination continued

MR MASON: Q. Mr. McMaster said something in his evidence about a reference to taking a gamble; did anything take place with regard to that, and if so what? A. It was developed that I was taking a gamble. I think his father did say that he did not want me to take it on his behalf.

Q. What, if anything, was said to indicate what the gamble was? A. We were discussing the English deal.

Q. I want to take you back for a moment to the conversation of March 22nd. Did you or did you not say anything about the original option, I mean the option you had acquired from Mr. Pulkingham, having expired? A. No, sir.

Q. Had it in fact expired? A. No, sir.

Q. Was anything said about Mr. Etherington's stock? A. No, sir.

Q. Being in hock? A. No, sir, not by me.

Q. Well, was it said by anybody that you know of? A. I cannot recollect it even being brought up.

Q. But you yourself made no statement about it? A. No, sir.

Q. Was there any foundation for it as far as you know? A. No, sir.

Q. Now, Mr. Byrne, I would like you to tell me -- and I don't want you to go too rapidly, please, but tell us in order so that we will be able to get a true picture of it -- exactly when you first learned of a possible English transaction and the development of the negotiations until they finally resulted in a sale to the English firm of Johnson? A. I first heard of the possibility of an English transaction I think in January, but without detail. The first real detail that I heard of it was immediately prior to Mr. Pulkingham and I going to Mr. Foulds' office.

Q. Yes? A. At that time -- may I have the letter from Mr. Foulds?

Q. Yes. A. I think it is an exhibit, Mr. Mason.

Q. You had better take your own book of exhibits -- if these are not the Judge's copy; I am

not sure; which are these? A. I think it is an exhibit, the one on top.

Q. Well, it would be more convenient if you take whatever memorandum you want and follow it through. Have you got a copy of this letter of March 27th, Exhibit 16? A. I have; I have a copy of them all.

Q. Have you got it in front of you? A. Annexed to that letter of mine--

Q. Exhibit 16? A. Annexed to that letter of mine to the directors of Sovereign Potters dated March 27th is a letter from Mr. Foulds to Messrs. Byrne & Dixon.

Q. Yes? A. That was pursuant to the visit that Mr. Pulkingham and I made to Mr. Foulds.

Q. Do you mean that you and Mr. Pulkingham had made a visit to Mr. Foulds before March 27th? A. On March 27th.

Q. On March 27th. Yes? A. It was my proposition, I wanted to get something then. I deemed that this matter ought to come before the directors. I asked Mr. -- I had a proposition for Mr. Foulds to write. He wouldn't do it. What he wrote was, on March 27th:

> "We have received instructions to act for Johnson Brothers (Hanley) Limited of Hanley, Stoke-on-Trent, England, who would be interested in purchasing control of Sovereign Potters Limited. Our instructions are that their willingness to purchase would be dependant on their being able to secure the services of the present chief executives of the company.
>
> In order to assist us in advising our clients, we should be obliged if you could arrange with the company for us to be furnished with copies of recent balance sheets and other pertinent information relating to the company's affairs, including examination of the company's books of account and other records to whatever extent may be necessary."

That was the whole extent that Mr. Foulds as solicitor for Johnson Brothers would commit himself to the English deal at that time.

MR HEIGHINGTON: The letter speaks for itself, please.

In the Supreme Court of Ontario.

Defendant's Evidence No. 24

N. W. Byrne Examination continued

MR MASON: Q. Then on the same date, March 27th, you wrote a letter to the directors? A. Under the same date, March 27th, I wrote to the directors giving them what I knew about it as related to me by Mr. Pulkingham, wrote it in conference with Mr. Pulkingham, and from my visit to Mr. Foulds, the situation as I saw it then for the information of the directors.

Q. And were you setting out in this letter for the directors all you knew about it? A. Yes, sir.

MR HEIGHINGTON: That is very leading again.

MR MASON: Q. And had you and Mr. Pulkingham been together to see Mr. Foulds? A. Yes, sir.

Q. And who took the lead in that conversation with Mr. Foulds? A. Well, Mr. Pulkingham.

Q. I see in the second paragraph it says:

> "After discussion Mr. Pulkingham wrote Mr. Johnson to the effect that he doubted if the Board would be inclined to recommend the sale of the total shares of the Company for less than $1,500,000.00."

And then you give some information as to what subsequently took place? A. That is right.

Q. And then I want you to refer to the second page of the letter, which says:

> "The agreement sent out by Mr. Johnson was impossible so far as Carleton Securities were concerned and Mr. Foulds agreed."

In what sense was it impossible? A. Well, it called for the sale of the portfolio, that is, Carleton Securities, which brought on the question of tax. There would have been nothing left.

Q. Now, please amplify that, because I do not know as much about tax as you do. A. Well, here was a company, a holding company, that got in 2,500 shares of common stock, carried them on their books -- I don't know -- at probably a dollar. If they sold them for $127,000, there was $127,000 profit, and taxable as such. They had no basic profits; it was all taxable. Well, that just made it impossible.

Q. And that is what you referred to there?

HIS LORDSHIP: What paragraph is that:

THE WITNESS: The second page, sir.

MR MASON: The second page, my lord, the first complete paragraph on the second page.

Q. Then you say in the next paragraph:

"It developed in the conversation, however, that the price mentioned was still agreeable to Mr. Johnson, and that he would, if the shareholders so desired, buy all of the shares offered at that price except the Carleton Securities."
A. That is right.

Q. Well, that would give him only the 2,500 common shares of the financial group? A. Let me be sure about that.

Q. Wouldn't that give Mr. Johnson only the 2,500 shares of the financial group? A. Oh, yes, but there were arrangements to be made with Carleton Securities. That is why right after that, Mr. Mason, I had to make a commitment, at least we had to make a commitment to Mr. Johnson and I had to take up Mr. McMaster's stock. You will notice there is an option to Mr. Johnson.

Q. Well, where is that? Don't let us get too far ahead. Where are you speaking of the option to Mr. Johnson? A. On April 14th.

Q. But not in this letter? A. No, sir.

Q. Well, just let us go a step at a time, because I can't make these jumps. Now, on March 27th you had this letter to the directors, and what followed as a result of this letter to the directors? A. They authorized giving Johnson figures.

Q. Up to that time there was no authority, I take it, to give him figures? A. There was no authority from the directors to give them figures.

Q. But then the directors gave that authority? A. Yes, sir.

Q. And then what happened? A. Well, negotiations proceeded.

Q. Will you start at March 27th, please, then, and tell me exactly, slowly, what was done? A. Well, after that authority there was a letter to Mason Foulds on March 31st, saying:

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N. W. Byrne Examination continued.

"The directors of Sovereign Potters have passed an authority to give you sufficient information to answer Mr. Johnson's enquiries at the discretion of the President and Secretary, and to communicate any price offer made by Mr. Johnson or Mr. Foulds to the shareholders."

Then I discuss a form of option that Mr. Foulds had sent to me, made a slight change in it in the tail end, and I---

Q. Now, wait a moment. The form of option that Mr. Foulds sent to you was with a letter of March 29th? A. Yes, sir.

Q. 1947? A. Yes, sir.

Q. And the option itself was dated March 28, 1947? A. I think so.

Q. Then I want to put those in, please. Is this the letter you received from Mr. Foulds, and is the form of option that he prepared attached to it? A. That is it, I believe.

Q. Well, be certain about it. A. Yes, sir.

Q. There is a handwritten memorandum at the foot of the option. A. That is my handwriting and my amendment as explained in my letter in reply to Mr. Foulds.

Q. Well, just do one thing at a time.

May I put these two in, my lord, the letter and the option, as one exhibit?

---EXHIBIT 25: Letter, Mason Foulds Davidson & Gale to Byrne & Dixon, March 29, 1947, enclosing draft option.

MR MASON: Q. What next happened? A. Chronologically, I wrote on April 9th to McMaster for stock transfer---

Q. Well, I don't care about that; we will come to that later. A. Well, then chronologically, I wrote on April 10th to Mr. Marsales, who was one of four of the early shareholders of Sovereign Potters, who at a time of advancing further money had received all the rights with respect to a block of stock except the voting rights. There was some question as to whether that was outstanding or not. It had to be cleared up, from Mr. Foulds' point of view. I wrote those parties as to

getting that in, and they came in. Those portions were surrendered, I believe, by Mr. Robinson in closing with Mr. Foulds, and we closed the deal.

Q. Is that what is referred to in the evidence of Mr. Robinson as the 500 shares in respect of which Carleton Securities retained the voting rights? A. Yes, sir.

Q. But were not entitled to dividends? A.Yes, sir.

Q. And you wrote this letter to Mr. Marsales as one of the persons with the purpose of trying to get these rights relinquished? A. That is right.

Q. In favour of Carleton Securities? A.Yes, that is right.

Q. So as to assist the transaction going through? A. That is right. Then you have that letter of April 14th which is an exhibit.

Q. Wait a moment, please. This is the letter to Mr. Marsales, which will be Exhibit 26. Is this the letter? A. That is it; that is the copy of my letter.

Q. Copy of letter, yes.

---EXHIBIT 26: Copy of letter, Norman W. Byrne to B.R. Marsales, April 10, 1947.

Q . Now, please let me interrupt you for a moment. On March 29th Mr. Foulds had sent you a draft form of option, it being dated March 28th. That is already in. Then what did you do with regard to that? Have you a letter of March 31st? A. That is right; I already referred to that letter.

Q. Well, I am sorry, but I did not get it. You did reply to Mr. Foulds' letter? A. That is right.

Q. Of March 29th? A. That is right, with my letter of March 31st.

Q. March 31st. We haven't that in yet. Is this the copy of letter to which you refer? A.That is it.

---EXHIBIT 27: Copy of letter, Norman W. Byrne to Mason Foulds Davidson & Gale, March 31, 1947.

Q. I want to ask you something about this before we go on. You say in the fourth paragraph of this letter:

In the Supreme Court of Ontario.

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N. W. Byrne Examination continued

"It is of course, for you to decide the form of any option or in fact whether a form of option will be used. I would point out, however, that in my opinion the last clause of the draft option presents an erroneous impression.

You say,

'I give this option knowing that negotiations are being carried on by you with a view to purchasing other common shares of Sovereign Potters Limited, which are now owned by Carleton Securities Limited, at a price and on terms different from those of this option'.

I would say that as a result of our interview with you it should be clear that there are no negotiations and can be no negotiations for purchasing shares of Sovereign Potters which are now owned by Carleton Securities. It seemed to me also that you had neither adequate instructions nor authority on which you might properly undertake negotiation of the Carleton Securities situation, and that the whole situation might better be left until Mr. Johnson came out here at which time it could be initiated."

Do you recall that? A. Yes, sir.

Q. Now, will you just clarify that for us a bit? A. That is what I was saying, that if -- in Mr. Foulds' option, for instance, it gave the impression that they were buying Sovereign Potter shares in Carleton Securities. In the discussion with Mr. Foulds it had come up that if they did buy Sovereign Potters shares from Carleton Securities there would be an enormous tax burden that would make the deal not worth while, and therefore I deemed that we had agreed with Mr. Foulds that there could be no discussion, there never would be, the purchase of Sovereign Potter shares from Carleton Securities, and there never was. They bought Carleton Security shares.

Q. Now, let me get that clear. Do you mean that Johnson eventually bought--- A. Carleton Security shares.

Q. ---Carleton Security shares, not Carleton Securities shares in Sovereign Potters? A. No.

HIS LORDSHIP: Bought shares of Carleton Securities, not shares of Sovereign Potters.

THE WITNESS: That is right. And I deemed that this option that Mr. Foulds drew gave an erroneous

impression on that situation, and I made my suggestion to correct that.

MR MASON: Q. Now, there is another thing I want to ask you about. In the second paragraph on the second page of this letter of March 31st you say:

> "It seemed to me that you were really dealing with each individual shareholder on the purchase of his shares, although we both recognized that there would be an aspect of group action on their part, this in turn being modified by the individual re-actions and opinions of the parties."

What was the reason for that? A. Mr. Mason, Sovereign Potters was not selling anyting. Johnsons were going to buy from the shareholders of Sovereign Potters their shares. Sovereign Potters was not selling anything. Sovereign Potters, however, had to give the consent to look at their books, which it did on behalf of the shareholders who were interested in selling their shares. For instance, it was suggested, the word was thrown out a couple of times, "You are the solicitor in charge, what do you say about that?" I was not acting for Sovereign Potters in this deal except the disclosure of evidence. No one hired me with regard to the sale of these shares, nor no one paid me. It was put forward, this proposition was put forward. Basically it looked like a good deal for the shareholders. For one reason, it was avoiding a conflict that might come up on account of the new pool that had just been created. Very often when you find two sharp factions, sharply defined, dissension comes up.

Q. Well, you have answered the question that I had in mind primarily, and that is that this was really a dealing by individual shareholders of Sovereign Potters with Johnson? A. Yes, sir.

Q. And not a corporate dealing of Sovereign Potters Limited? A. That is right.

Q. Because it could not be, because it could not sell its own shares? A. That is right, that is right.

Q. And in this transaction you say you were not acting for Sovereign Potters as a company? A. Except with regard to disclosure of information.

In the Supreme Court of Ontario.

Defendant's Evidence No. 24

N. W. Byrne Examination continued

Q. Quite so. Now, another thing that I asked Mr. Robinson and I want you to clear up for me: There was a meeting of directors, as I understand it, that authorized giving them access to certain financial information? A. That is right.

Q. Apart from that, was there any official action of Sovereign Potters Limited? A. I don't think so.

Q. Well, Mr. Robinson, for instance, referred to a meeting of shareholders and so on; was that what you might call a corporate meeting, or was it a meeting of certain persons who were shareholders? A. I am going ahead, Mr. Mason.

Q. Well, all right; you mean to say, I am going ahead? A. Well, the letter that was -- I think it was produced this morning, of April 17th-

Q. Well, we will come to that, then. Just let it rest. I want to take it in sequence. A. All right.

Q. Now, following March 31st -- before I leave that letter, one thing more. In the fourth last paragraph of the letter you say:

> "If we can get enough shares lined up to justify Mr. Johnson coming out to Canada it will expedite and simplify the whole affair, and to me the best way to intrigue Mr. Johnson in coming to Canada is to get as many shares in the bank as possible,"

and so on. That was your view? A. Yes, sir.

Q. Now, there followed March 31st the letter of April 10th you have put in to Mr. Marsales. Then what next do we come to in the process? A. Chronologically it is the letter of April 14th, which is Exhibit 24 as I have it recorded.

Q. Do you mean it is in already? A. Yes. that has got to do with the option from which Mr. Heighington read the piece about February 27,1947.

Q. Yes, that is in already; then I won't trouble you with that. Then what followed that? A. You will note that that was --

> "On the telephone the other day Mr.Johnson suggested that Mr. Pulkingham give him some sort of assurance that if the other shareholders were agreeable to sell enough shares to

satisfy Mr. Johnson and he came out to this country the Carleton Securities group would be willing to deal".

That was an assurance. That covers the other half, and that assurance was signed and delivered to Mr. Foulds.

Q. And you say:

"We have drawn the enclosed for that purpose."

And the enclosed was the document addressed to Mr. Johnson and signed by Messrs. Pulkingham, Etherington and yourself, giving him this assurance? A. That is right.

Q. All right; now, what is next? A. Well, now we are coming to what you were at just a minute ago, about corporate action.

Q. Yes? A. The next, there is a copy in there of a letter to Mr. Cameron, dated April 17th. Now, the same letter was sent out to all shareholders. That letter was sent to all shareholders, with a copy of Mr. Foulds' suggested option, and that happened to be that Mr. Kirk Cameron's letter I selected as a sample. I did not want to clutter the file with a great big thick lot of them; I selected that as a sample.

Q. Then in the second paragraph of this letter you say:

"Mr. Johnson has stated definitely that he would pay $160.00 per share for the preference shares and $150.00 per share for the common shares, all subject of course to his being satisfied with the corporate and financial records and position, treasury consents and his ability to secure the services of the executives"

and so on. A. That is right.

HIS LORDSHIP: What are you reading from?

MR MASON: April 17th, my lord, the letter to Mr. Cameron, in the second paragraph.

HIS LORDSHIP: Is that in?

THE WITNESS: I am afraid it is not. Is that an exhibit, Mr. Mason?

MR MASON: Well, it will be the next exhibit.

In the Supreme Court of Ontario.

Defendant's Evidence No. 24

N. W. Byrne Examination continued

---EXHIBIT 28: Copy of letter, Byrne & Dixon to A.K. Cameron, April 17, 1947.

MR MASON: Q. Then you say:

"Mr. Johnson's lawyer has suggested the enclosed form of option."

And you sent that form of option to each of the shareholders? A. That is right. The next one is a comparative form of option accompanied by a letter of mine of April 17, 1947. That brought the thing before Mr. Pulkingham and Mr.Etherington and I as a parallel to what I had sent out to the other shareholders. You will find there is a letter there of April 17th---

Q. Because this letter went to the financial group? A. That letter went to Kirk Cameron and the financial group.

Q. Then this letter--- A. This is the other side of that, the same assurance.

Q. Taking care of the other group? A. There is a letter there of April 17th with an option appended.

Q. I don't think this is in. I see this accompanied a letter to Mr. Pulkingham of April 17th, which is merely -- you said:

"You and Al should complete this option and send the original on to Mr. Foulds."

I take it that the date of the option sentwith the letter to shareholders is the 17th of April or thereabouts? A. Yes, sir.

MR MASON: My lord, to identify the date, I am going to attach to it the letter to Mr.Pulkingham, which is merely the covering letter. That will be the next exhibit.

---EXHIBIT 29:Letter, Norman W. Byrne to W.G.Pulkingham, April 17, 1947, enclosing option.

MR MASON: Q. Now, at this time, Mr. Byrne the position is, if I may summarize it, that you were forwarding to Mr. Johnson the document signed by Messrs. Pulkingham, Etherington and yourself, and you had sent this option out to all the individual shareholders in the financial group? A. Yes, sir.

Q. Now, proceeding from that point, what is the next step? A. Well, chronologically, in my

file it is a letter from Mr. Johnson of April 18, 1947; in fact, there are two letters from Mr. Johnson.

Q. Well, I think we will put in both these letters. I think we can put them in as one exhibit.

---EXHIBIT 30: Letter, E.James Johnson to Mr.Byrne, April 18, 1947.
Letter,Johnson Bros (Hanley) Ltd.to Mr. Byrne, April 18, 1947.

Q. Mr. Byrne, I am looking at the shorter letter; Mr. Johnson says that in order to satisfy the holders of common and preference shares on which he wishes to obtain options, he wants to set out his intentions, and these intentions are three in number: First, that you are within a month to obtain options on a sufficient number of shares at $150 common and $160 preferred to enable Johnson to acquire control to such an extent as he deems necessary; secondly, upon his being satisfied as to the financial position of Sovereign Potters;and thirdly, upon his being satisfied that he can make suitable arrangements to continue the business? A. Yes.

Q. Well, that will speak for itself, then. A. That letter is the meat which is explained by the accompanying letter of April 18th.

Q.. And then in that letter he sets out a letter received from his Canadian lawyers? A. A wire, a cable.

Q. A cable from his Canadian Lawyers, yes.A.I might point out that back there it says:

> "Having regard to previous cables I am not sure whether the accompanying letter ought to be sent to you or to Mr. Pulkingham. I have therefore written letters in similar terms to this and the accompanying letter to Mr.Pulkingham."

We both got one.

Q. Then proceeding from there? A. Then there is a letter from Mr. Foulds of April 18th enclosing a draft form of option and furthering the matter to that extent.

Q. He encloses a draft of an option; that is April 18th. This will be Exhibit 31.

In the Supreme Court of Ontario.

Defendant's Evidence No. 24

N. W. Byrne Examination continued

---EXHIBIT 31: Letter, Mason Foulds Davidson & Gale to Byrne & Dixon, April 18, 1947.

Q. This letter, without reading it, refers particularly to the option? A. That is right, sir.

Q. Then the next apparently is a cable? A. That is right.

Q. From Mr. Johnson to you? A. That is right, of April 19th.

Q. Of April 19th, which will be Exhibit 32.

---EXHIBIT 32: Cable, James Johnson to Norman Byrne, April 19, 1947.

MR MASON: If your lordship will leave this tab on it will be useful when we put it together later.

Q. The price here, I note, is 160 preferred and 150 common? A. That is right.

Q. Provided, Mr. Johnson says, they are satisfied in all matters? A. That is right.

Q. A good safe provision. A. Now, chronologically, the next thing I have is that letter which was put in as Exhibit 17 this morning, from Mr. Robinson, announcing the completion of the pooling agreement.

Q. Well, we need not dwell upon that. A. That is right.

Q. That is not a part of the progress of the negotiation with Johnson. Now, what do we come to next? A. Then there was a letter of mine of April 25th; that was the one I tried to refer to just a minute ago. It is already Exhibit 18.

Q. Yes? A. It was referring to this morning.

Q. Yes? A. The reason I mentioned that was, you characterized corporate action. "Under date April 17th, we wrote you" -- you notice this is signed by Byrne & Dixon, not Sovereign Potters or Secretary Sovereign Potters:

> "Under date April 17th, 1947 we wrote you as to a proposed purchase of Sovereign Potters, Limited shares by Johnson Brothers (Hanley) Limited.
>
> At the time of writing we had nothing more conclusive than a statement from Mr. Johnson and

his lawyer. After writing the letter a cable came in which was enclosed and there has now come to hand a letter of confirmation as per enclosed copy."

I had photostats made of those and sent them out.

"To enable a complete discussion by all the shareholders, both common and preferred, a meeting will be held at the head office of the Company, on Tuesday, April 29, at eleven a.m."

You will notice it was not a meeting of shareholders, it was a meeting.

"All the shareholders, both common and preferred, are urged to attend this meeting.

To cover those shareholders who are not able to attend on Tuesday, we enclose a newform of option" --

the one mentioned by Mr. Foulds --

"embodying changes suggested by some of the shareholders.

If you are coming to the meeting"

and so on. Now, I mention that, Mr. Mason; it was maybe confusing to some of these folks, that these shareholders' meetings were not shareholders' meetings.

Q. They were meetings of persons who were shareholders? A. That is right. And then appended to that is a typical form; it happened to be the one that Mr. Paulin filed.

Q. Mr. Who? A. It happened to be the one that Mr. Paulin filed, but it is a typical option form under date April 25th that was sent out at Mr. Foulds' suggestion, and got in from the shareholders, and as Mr.---

Q. Now, wait a moment. I am lost for a minute. You refer to Mr. Paulin; what document are you referring to now? A. It is Exhibit 19.

Q. What is Exhibit 19? A. It is an option.

Q. I see; is that the one signed by the three men? A. No, that is the one signed by F.W.Paulin, April 25, 1947:

"In consideration of the sum of five dollars paid by you to me"--

In the Supreme Court of Ontario.

Defendant's Evidence No. 24

N. W. Byrne Examination continued

and, incidentally, it was paid by me.

Q. Is that paid in? A. I paid them.

Q. I should not say paid in; is that filed? A. Sir?

Q. Was this an exhibit, do you say? A. Yes, sir, Exhibit 19.

Q. Well, you are not making any claim here for the five dollars, I suppose? A. No; it was not a recoverable disbursement.

Q. We will not bother about that. Now, what is your next? Apparently you are still struggling with Mr. Foulds as to a form of option? A. That is right. And then as typical I put in a receipt to Mr. Christianson for what were turned in. We gave all the shareholders as they turned stuff in to be held receipts. I don't know whether that is necessary or not; I just put it in because it was there.

Q. I think probably not. A. Then we will leave it out.

Q. Now what date are you at? A. Then April 28, 1947, a letter to Mr. Foulds.

Q. In this letter you are enclosing an option as to Carleton which Mr. Foulds had suggested? A. Yes, sir.

Q. This was the second or third attempt at this, wasn't it? A. That is right.

Q. Well, we had better put this in. This will be Exhibit 33. Then Mr. Foulds acknowledged your letter; I don't think we need bother with that. A. Are you not putting that in?

Q. Well, wait a minute; he says:

> "I have to-day written to the English solicitors . . . advising them that I have this option . . ."

I suppose we had better put it in, having regard to that. That will be Exhibit 34. Then what is your next letter?

HIS LORDSHIP: Mr. Mason, are you making that a separate exhibit? That might as well be made part of Exhibit 33, might it not?

MR MASON: Yes, my lord, the 28th and 29th; one is the answer to the other. Make them one exhibit.

---EXHIBIT 33: Copy of letter, Norman W. Byrne to A. Foulds, April 28, 1947.
Letter, A. Foulds to Norman W. Byrne April 29, 1947.

MR MASON: Q. Then your next? A. The next thing I have in mine, Mr. Mason, is May 2nd. It is a letter to Mr. Foulds. I don't think it is material. It is just that Mrs.Bruce got confused in her option. You see this option that we referred to, Mr. Robinson referred to this morning, that had been rewritten in; we referred to it this afternoon, Mr. Paulin's option. It was originally made out, I think, for $160 a share in conformity with that wire; that is, it was typed at $160 a share, and then the shareholders' meeting upped that to 250, and Mrs. Bruce had not done that on hers, so the option that she had filed was not going to give her as much money as the rest.

Q. And she was objecting? A. Well, we caught it before the thing, and I mentioned it to---

Q. I don't think we need bother with that.

A. All right, I will mark that one out.

Q. Go to the next one, if you please,May 10th? A. The next is a letter, a circular letter, that I sent to all the shareholders under date May 10th;

> "Yesterday the solicitor for Mr. Johnson reported that he had received a cable as follows:
>
> 'Not prepared to pay more than 160. for preferred unless common reduce their price proportionately'.
>
> It is the opinion of some of the larger shareholders that under the circumstances it would be futile to file options till June 10th, when we already have an answer and that the matter requires further consideration.
>
> For that purpose there will be a meeting for those persons who are shareholders, at the head office of the Company on Wednesday, May 14th, 1947 at 11 a.m."

It is not a company proposition, it is---

Q. This was something new now, as I understand it. The Englishman said that he was not prepared

In the Supreme Court of Ontario.

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N. W. Byrne Examination continued

to pay more than $160 for preferred unless the common made a reduction in price? A. That is right.

---EXHIBIT 34: Circular letter signed Norman W. Byrne, May 10, 1947.

Q. Then on May 12th--- A. Mr. Foulds wrote me under date May 12th:

"The following is a copy of the cable" --

he confirms that --

"Further our cable ninth Stop Bank of England state our offer for Sovereign Potters shares excessive" --

get this:

"after intensive Canadian investigation Stop Bank definitely refuse further increase on our total liability Stop Please advise Byrne."

Q. There are several stops there, and it looked like a full stop, didn't it? A. Yes, sir.

MR MASON: That will be Exhibit 35.

---EXHIBIT 35: Letter, A. Foulds to Norman W.Byrne, May 12, 1947.

MR MASON: Q. Now, what did this lead to? You have sent out now a letter to the persons who were shareholders? A. The next thing chronologically are my notes on that meeting of May 14, 1947.

Q. Which are in. A. I believe they are in as Exhibit 20.

Q. Yes. And are those notes correctly written? A. To the best of my knowledge, sir. They were changed and reviewed. I think that that is definitely---

Q. Now, you have the notes in for May 14th, and then there are some letters there that I want to draw your attention to. A. Those are -- that meeting decided what is in the notes there, in the memorandum.

Q. Yes? A. Then pursuant to that I wrote Mr. Foulds under date May 14th, and unfortunately in my copies I think you will find there are two copies of the same letter. Apparently I got the letter back as well as the---

MR MASON: That will be Exhibit 36.

---EXHIBIT 36: Copy of letter, Byrne & Dixon to A. Foulds, May 14, 1947.

MR MASON: Q. I want to go over this letter a bit with you. You say in this letter, a representative gathering of shareholders had appointed a committee consisting of Mr. Robinson, Frances Hollinrake and yourself to act on behalf of the shareholders at large. Then you point out in the next paragraph that Mr. Johnson has advised that the worth of the enterprise has already been the subject of intensive Canadian investigation by or for the benefit of Mr. Johnson, and you say that the shareholders have instructed the committee that any further move will have to come from Mr.Johnson as a tangible offer of such nature that it can be accepted or refused as a finality. Then you say that the committee have instructions to accept an offer of $1,034,520? A. Or better.

Q. Or better, for all the outstanding shares, with the possible exception of 20 preference shares, and on the other hand the committee have instructions to refuse as a finality any other proposition? A. Yes, sir.

Q. And then the next paragraph:

". . . it will be deemed . . . that the delivery of shares as to 2500 common shares and 2 preference shares will be made by the purchase and delivery of all the outstanding shares of Carleton Securities Limited accompanied as appurtenant thereto the portfolio of Carleton Securities Limited, consisting of 2500 common shares of Sovereign Potters, Limited and 2 preference shares of said Company.

This offer may also provide a pro tanto deduction from the purchase price at the rate of $227.00 for any preference shares . . . and . . . $127.00 for any common shares" -- A. "Not delivered".

Q. That was the eventual price, wasn't it? A. Yes.

Q. Then you say in the second last paragraph:

"If the offer is made and accepted, consummation and payment of the purchase price and delivery of shares must be concluded by June 30th, 1947."

A. Yes, sir.

In the Supreme Court of Ontario.

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N. W. Byrne Examination continued

Q. Then apparently you sent out to the---A. I circularized my other committee members before I sent the letter to see what they said.

Q. Yes? A. There is a copy there of the letter I sent to Mrs. Hollinrake -- I don't know whether it is important or not -- May 14th.

MR MASON: Well, perhaps we had better put it in.

---EXHIBIT 37: Copy of letter, Norman W. Byrne to Mrs. Frances Hollinrake, May 14, 1947.

MR MASON: Q. Then what was the purpose of the letter of May 15, 1947, to the shareholders? They had had a meeting on the 14th. I see you are notifying the shareholders who were not there? A. That is right.

Q. As to what took place in the meeting of May 14th? A. That is right.

Q. I don't think we need put that in. A.Well, it tells them that the cable influenced the adjustment of prices as per enclosed resolution. I don't know whether it is necessary or whether it is not.

Q. Well, let us not have any doubt about it. That will be Exhibit 38.

---EXHIBIT 38: Circular Letter, Norman W. Byrne to "Dear Shareholder", May 15, 1947.

HIS LORDSHIP: What is that letter, Mr. Mason?

THE WITNESS: Circular letter to the shareholders, my lord.

MR MASON: Now, we have another of May 15th, which is important. It is a cable to Mr.Johnson. This is one that was called an ultimatum, as I remember it:

> "Confirming telephone advice today stop meeting yesterday approved acceptance of one million thirty four thousand five hundred and twenty dollars ... provided you make firm offer subject only to undisclosed liabilities on or before June first to be closed on or before June thirtieth Stop Committee appointed to accept offer and make delivery. This authority and price conclusive none other entertained."

---EXHIBIT 39: Copy of Cable, Byrne to E. James Johnson, May 15, 1947.

HIS LORDSHIP: Which is this cablegram?

MR MASON: That is 39, my lord.

THE WITNESS: I think he has misinformed you,my lord; that is not the one he was reading.

HIS LORDSHIP: No, this is not what he was reading. The one I have is not what you read, Mr. Mason.

MR MASON: My lord, I am afraid I have handed you the wrong one.

THE CLERK OF THE COURT: 39 that I have is a cable.

THE WITNESS: I think he gave you the wrong one, Mr. Inch.

MR MASON: I think I gave you the wrong cable. If your lordship has a cable commencing---

HIS LORDSHIP: You gave me a copy of this, but it is not what you were reading.

MR MASON: My lord, one cable starts "Confirming telephone advice".

HIS LORDSHIP: This is "Confirming telephone conversation".

MR MASON: Yes, my lord; that is the next exhibit.

THE CLERK OF THE COURT: This is already in as 39: "Confirming telephone conversation and cable".

MR MASON: Well, that should not be 39. 39 should be "Confirming telephone advice".

MR HEIGHINGTON: The only one I appear to have is the "advice" one.

THE WITNESS: Mr. Mason, it is in this form,the production.

MR MASON: Yes, this is it.

MR HEIGHINGTON: Are you putting them both in?

MR MASON: Yes, but I am trying to find the original. Perhaps a place may just be left for that. Your Lordship has it, and we will mark that Exhibit 40, the one that we are coming to now, "Confirming telephone conversation". Your lordship has not got that.

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N. W. Byrne Examination continued

HIS LORDSHIP: Yes, I have that; I got that first. What is the one, "telephone advice"?

MR MASON: That should be the previous one, my lord.

THE CLERK OF THE COURT: That is 39.

MR MASON: Now your lordship has got one also, "Confirming telephone conversation". Will you please add this to it?

THE WITNESS: Mr. Mason, that is two pages.

MR MASON: Yes, I know. This will be Exhibit 40.

---EXHIBIT 40: Cable, James Johnson to Byrne & Dickson, May 21, 1947.

MR MASON: Q. This is the reply to the ultimatum of the shareholders? A. That is right.

Q. "CONFIRMING TELEPHONE CONVERSATION AND CABLE MAY SIXTEENTH STOP JOHNSON BROTHERS ACCEPT OFFER AT ONE HUNDRED AND TWENTY SEVEN DOLLARS FOR COMMON AND TWOHUNDREDANDTWENTYSEVEN DOLLARS FOR PREFERRED TOTALLING 1034520 DOLLARS IN ALL SUBJECT AVAILABILITY OF DOLLARS AND GUARANTEE THAT NO UNDISCLOSED LIABILITIES EXIST ALSO THAT NO DIVIDENDS EXCEPT NORMAL QUARTERLY PREFERRED DIVIDENDS HAVE BEEN PAID SINCE DECEMBER THIRTY FIRST 1946 STOP ALSO THAT NO TRANSACTIONS HAVE TAKEN PLACE EXCEPT IN ORDINARY COURSE OF BUSINESS STOP PLEASE CONFIRM IF OFFER IS SATISFACTORY."

A. Did not comply.

Q. Beg pardon? A. That did not comply with the shareholders' authority.

Q. That is right. Now, what followed that? A. May 22, 1947.

Q. Yes? A. A copy of letter here that I wrote to Mr. Robinson.

Q. Wait till I see if I can find that. Yes, May 22nd. A. I also wrote Mrs. Hollinrake.

Q. Well, let us deal with Mr. Robinson first. That is the next exhibit. A. Well, there is only the copy of Mr. Robinson's here.

---EXHIBIT 41: Copy of letter, Norman W. Byrne to G.G.Robinson, May 22, 1947.

MR MASON: Q. Now, I need not repeat all of this. In this letter to Mr. Robinson you say, "Confirming our telephone conversation", and then you set out this cable received from Johnson, which you said did not meet the conditions proposed by the sha reholders? A. You can make it very brief, Mr. Mason:

"Committee regard foreign exchange reservations in cable as outside their authority in an otherwise satisfactory offer Stop" --

got nowhere.

Q. That is May 22nd? A. Yes, sir.

Q. Where do you go on from there? A. Then there is a letter from Mr. Foulds, May 22nd, tome, which says:

"I enclose copy of the form of offer which I have sent to Messrs. Kent and Jones and a copy of my covering letter."

MR MASON: That will be Exhibit 42.

---EXHIBIT 42: Copy of letter, Norman W. Byrne to A. Foulds, May 23, 1947.

THE WITNESS: That is not the one I am talking about Mr. Mason. This one that you have got out is May 23rd. The one I am talking about is a letter from Mr. Foulds enclosing a copy of letter to Kent & Jones. It precedes that letter of the 23rd that you have got out.

Q. Well, just a moment. That is just setting out the exchange of cables, isn't it? A. Yes, sir.

Q. I don't think that we need bother with that. A. Not important? All right.

Q. Then go on, please, with your letter to Mr. Foulds, Exhibit 42. First you set out to Mr. Foulds the cable that came from Mr. Johnson. Then you say that the Carleton group had arranged for $500,000 for him at the Bank of Toronto, backing it up with $300,000 from Carleton Securities, so that he would only have to raise about $240,000.

"Apparently he is even blocked on this item.

The deal as it is now arranged as to the financing will be the same as to taking up shares or dealing with the committee, but the back-

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N. W. Byrne Examination continued

ground will of necessity have to be modified in view of the advances of the Bank and the Carleton group to Mr. Johnson",

and so on. A. That is right. You see, he had sent a cable:

"Your cable May Twenty Second received Stop Bank of England informed regarding dollars Stop Pending their further information from High Commissioner of Canada Bank can only suggest an extension of time limit beyond June First Stop Every pressure exercised hereto obtain required dollars Stop Please secure extension of time limit as matter outside our control."

Well, the matter was also outside our control. If it went past June 1st the deal was off.

MR MASON: I put that cable in as Exhibit 43.

---EXHIBIT 43: Cable, James Johnson to Byrne and Dickson, May 23, 1947.

MR MASON: Q. In short, Johnson was trying to get the dollars, and he wanted an extension of time? A. That is right.

Q. Then there is a letter from Kent & Jones; I don't think we need put that in. Now, what is the next step? A. Well, that was pretty bad, because there was nothing we could do, so Mr. Pulkingham come up that evening and we telephoned Mr. Johnson, and because only one could be on the phone we made a record of the conversation, and he said definitely that the Canadian High Commissioner had spoiled it. It was a week-end or about that, and I got a hold of Tom Ross. He heard the cable -- he heard the telephone conversation and saw the cable; he got a hold of the Honourable Colin Gibson, and he suggested we go to Ottawa that night, which we did. Next day the Honourable Colin Gibson---

Q. Just a moment. What day are we dealing with now? A. Well, that may not be easy to---

Q. Because there is a cable here from Johnson:

"CABLE TWENTYSEVENTH RECEIVED STOP CONTENTS PASSED TO BOARD OF TRADE AND BANK WHO RESENTED OUR INTRUSION"---

A. Now, wait a minute; you are ahead of me. Went to Ottawa, and the Honourable Colin Gibson got us

over to see Lester Pearson, who telephoned the Canadian High Commissioner in London. He said he had nothing to do with it but he would find out. In a couple of hours it came back that it was the British High Commissioner in Ottawa who had done this thing. Mr. Pearson got us an appointment with the British High Commissioner, Mr.Pulkingham and I, and we went over and saw him. We can shorten that down to saying that he said that he was only a transmittal agency, he had nothing to do with it. We asked him who did, and he said that would be Department of Trade and Commerce, that is, the British Department of Trade and Commerce. We got an introduction and an appointment made by him with them, and went over and saw them. Again they said that they were only a transmittal agency, and that it was the Hamilton Branch that had done the thing. We jumped on the train that night and went to Toronto, and the next morning we saw him. Mr. Pulkingham developed the thing in discussion with this chap, that the inquiries that had been made had been made in entirely the wrong field, inother words he was making his inquiries of fine dinnerware, china people, not dinnerware, and as Mr.Pulkingham explained this thing to him and he began to see what it was, his aspect began to change, at least we thought, I thought it did. Then Mr.Pulkingham went in to patent machinery, that is,automatic dish-making machinery. There is a chap, I think his name is Miller, in the United States---

Q. I don't want too much detail about it.
A. Well, all those things had a bearing on it, Mr. Mason.

Q. I see. A. And don't forget this was May 29th. We were through on June 1st.

Q. That is according to the ultimatum of the shareholders? A. Right. Well, to make the story short, by the time we got home there was a call for Mr. Pulkingham, and the chap had told Mr. Pulkingham that they were getting enough money. Now, true enough, at that stage neither Pulkingham nor Etherington nor I expected we would get our money out immediately, but we were satisfied to have missed the just completely out part of it.The last day of the thing Mr. Johnson, when he came here, because we figured that our obligation to the Bank of Toronto would tie us up with that money -- we had to raise half a million dollars,about, for them -- the last day they decided that they

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N. W. Byrne Examination continued

could let me have all my money, and they gave it to me, and they let Mr. Etherington have part of his, and they didn't let -- then the next one was that letter from Tom Ross at Ottawa enclosing---

Q. Well, I won't put that in. A. Well, he enclosed a cable from Johnson that he had received, because it had been sent to me, "Cable twentyseventh received stop".

MR MASON: That is the one I want to put in, please.

---EXHIBIT 44: Cable, James Johnson to Byrne (no date).

MR MASON: "CABLE TWENTYSEVENTH RECEIVED STOP CONTENTS PASSED TO BOARD OF TRADE AND BANK WHO RESENTED OUR INTRUSION INTENDING US KEEP THIS INFORMATION CONFIDENTIAL CONSEQUENTLY WE UNABLE TO ACT FURTHER."

A. Right.

Q. And then the next day--- A. Well, now, let's see. That was received the 29th while Mr. Pulkingham and I were in Toronto, and the 30th there is a cable from Mr. Johnson direct to me at Byrne & Dixon.

Q. There is a cable to you.

---EXHIBIT 45: Cable, James Johnson to Norman Byrne, May 30, 1947.

THE WITNESS: Shall I read it Sir?

MR MASON: Q. "BANK OF ENGLAND HAS AGREED TO REMIT 453300 (FOURHUNDREDFIFTYTHREETHOUSANDTHREE HUNDRED) DOLLARS CONDITIONALLY AND PROVIDED SIMILAR AMOUNT FOUND BY BANK OF TORONTO WHO ARE NOT COMMITTED TO HAVE ANY CHARGE OR LIEN ON OUR ENGLISH ASSETS BUT SECURITY FOR THEIR LOAN TO CONSIST OF JOHNSON BROTHERS HOLDING OF SOVEREIGN POTTERS SHARES STOP BANK OF ENGLAND PROHIBIT ANY FURTHER LOAN STOP SUGGEST PULKINGHAM AND ETHERINGTON PURCHASE 1250 (ONETHOUSANDTWOHUNDREDAND FIFTY) COMMON SHARES AT 127 DOLLARS COSTING158750 (ONE HUNDREDANDFIFTYEIGHTTHOUSANDSEVENHUNDREDAND FIFTY) DOLLARS AS PART OF SERVICE AGREEMENT BUT WE MAY NOT BE ALLOWED TO PURCHASE THESE SHARES WITHIN ANY SPECIFIED TIME LIMIT STOP SUBJECT TO ABOVE BEING SATISFACTORY TO YOU JOHNSON BROTHERS HEREBY OFFER FOR SOVEREIGN POTTERY SHARES 227 FOR PREFERRED 127 FOR COMMON SUBJECT TO GUARANTEE THAT NO UNDISCLOSED LIABILITIES EXIST ALSO

THAT NO DIVIDENDS EXCEPT NORMAL QUARTERLY PREFERRED DIVIDENDS HAVE BEEN PAID SINCE 31st DECEMBER 1946 ALSO THAT NO TRANSACTIONS HAVE TAKEN PLACE EXCEPT IN ORDINARY COURSE OF BUSINESS STOP PLEASE CABLE ACCEPTANCE STOP."

I suppose those terms were not objectionable? A. That is right, sir.

Q. And then the next was that on behalf of the committee you cabled an acceptance? A. Yes, sir, on June 2nd.

Q. June 2nd. That will be Exhibit 46.

---EXHIBIT 46: Cable, N.W.Byrne to E.James Johnson, June 2, 1947.

Q. Now, what happened subsequently? A. Well, Mr. Johnson came over and we gathered in the stock, and I think Mr. Robinson helped me at that time. We swapped the stock for the money, distributed it.

Q. To put it in short, the transaction was closed? A. Yes, sir.

MR MASON: I hope I have not been detaining your lordship unnecessarily, but it is pretty late.

HIS LORDSHIP: Well, you remember I suggested we might sit late last night to compensate a little for a late start, so we have done that tonight. Would this be a good time to stop?

MR MASON: Yes, quite.

---Whereupon the Court adjourned at 5.38 p.m.until 10.00 a.m., Wednesday, February 8, 1950.

WEDNESDAY, FEBRUARY 8, 1950

---Upon resuming at 10.30 a.m.:

NORMAN W. BYRNE, Recalled.

EXAMINATION CONTINUED BY MR MASON:

Q. Mr. Byrne, you have told us that in 1934 or 1935, I have forgotten which, the Carleton Securities Limited was organized? A. Do you mean organized or turned over? It was turned over to these chaps.

Q. What you said was that Carleton Fruit---- A. Carleton Fruit Farms was turned over to these lads.

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N. W. Byrne Examination continued

Q. The name was changed in 1935? A. That is right.

Q. After that was completed -- I take it that would be in the year 1935? A. I am not just sure, sir; somewhere there.

Q. After that was completed did you ever act as solicitor for Mr. McMaster in any matter whatsoever relating to Carleton Securities Limited? A. No, sir.

Q. I think I did not ask you yesterday how the holding company, Carleton Securities Limited, came to be in form; that is, why was it formed? Why was there a holding company? A. Basically I think you produced -- somebody produced a document that explains that. Mr. McMaster had collateral out. The three had bought machinery as a joint endeavour that was to be sold to Sovereign Potters, vested in Sovereign Potters, as it was formed. They were the vendors under the vendors' contract. In that there were obligations that had been taken on, I believe, in the first place in the United States, and then I think those obligations were transferred up here, and with respect to that Mr. McMaster had collateral. As a matter of fact, I think he got -- I think the document is right, that he got some of the collateral from his sister, borrowed it to use at the bank.

Q. Well, I don't want to go into that. What I want to know is, at whose instance was it a holding company? A. He did not want Mr. Pulkingham or Etherington dissipating their holdings or pulling out of the thing or selling out until he was clear. He wanted to consolidate the three and make the three responsible for what was the indebtedness. That is as related to me by Mr. Pulkingham, who had charge of the transaction.

Q. Then I think I have not had you make it clear yet what happened with respect to the 500 shares as to which the voting rights were retained but the right to dividends was transferred? A. I canvassed the party with the proposition. My recollection is that they vested that with Mr. Robinson, and when we came to close out the deal with the Bank of Toronto---

Q. Pardon me, I don't mean how did you deal with it later; I want to know how the thing originated. A. Well, the original investors when

they put money in Sovereign Potters got bonus stock for their preferred. Then they were called on for more money, and they thought they ought to have more bonus stock. Carleton Securities put forward their position, that they originally had half the voting rights. They said, "All right, keep half the voting rights. Give us the dollar part of those shares, on 500 of those shares." That was acquiesced in.

Q. It was the financial group asked that? A. The original financial group.

Q. The original financial group? A. I think there were only four in that, Mr. Mason.

Q. And that was done? A. Yes, sir. It was a bonus for extra financing that the group were called on to do.

HIS LORDSHIP: Q. Which group? A. The original financing group.

MR MASON: Q. While we are on that, eventually what became of that after you had acquired Mr.McMaster's shares? A. It was relinquished at the time of closing the sale.

Q. I want to ask you also something about the shares that---

HIS LORDSHIP: I don't know whether it is very important, but there still seems to be some mystery as to the form which this disposition of the 500 shares took. There are no documents -- at least, I do not recall a document -- indicating any disposition of those 500 shares. It has been referred to, but I do not know how it was put into written form or documentary form.

MR MASON: Q. Can you help on that? A. May I look at my files? I might have something on that.

HIS LORDSHIP: It may not be very important, but it has been referred to, and it just seems to be something in the air so far -- some 500 shares with some rights attached to it, whether legal rights or not.

MR MASON: Well, as far as we know at the moment, my lord, I take it that what he calls the original group, the original financial group, had insisted upon having 500 more shares.

In the Supreme Court of Ontario.

Defendant's Evidence No. 24

N. W. Byrne Examination continued

HIS LORDSHIP: How did they get them? What was done?

THE WITNESS: May I look in my bag, Mr. Mason?

MR MASON: Yes.

HIS LORDSHIP: How did they have any control over them?

THE WITNESS: Your lordship, it seems -- I am not absolutely sure of it, but it seems that what happened was that the original confirmation of that interest was simply relinquished by turning over the original confirmation in this form.

HIS LORDSHIP: That sort of seems to cut it down so far as any earnings are concerned to 100 shares.

MR MASON: Well, my lord, there were others; this is just one.

HIS LORDSHIP: Q. Oh, one for each, is it? A. Yes, sir.

HIS LORDSHIP: 5 of 100, or some proportion.

MR MASON: This one I now have is another entry, Walton and McGee. I think your lordship's is some pipe company.

THE WITNESS: Concrete Pipe, perhaps.

HIS LORDSHIP: Q. Rather than transferring those 500 shares, what was done was to transfer the profit, cash profit, by way of distribution or distribution of principal or capital respecting those shares? A. I was not familiar with the transaction, sir.

Q. You had nothing to do with this? A. I think I just picked those up at the bank when we closed the deal. They were papers left over that I picked up at the bank.

Q. It would seem somebody had prepared these? A. Yes, sir.

HIS LORDSHIP: Have you them all, Mr. Mason?

MR MASON: I have only some, I think.

HIS LORDSHIP: Well, possibly this one can be put in, if they are all the same.

MR MASON: I would think so, my lord.

HIS LORDSHIP: With the notation that similar documents -- what is this? This will be 47 -- similar documents to the extent of 500 shares altogether were made out to other shareholders of the original financial group. Is that correct, Mr. Mason?

MR MASON: Yes. Mr. Robinson spoke of this.

HIS LORDSHIP: Yes, I know he did, but it was never very clear how it was put into some form.

MR MASON: As your lordship said, this looks like the transfer of all the cash profits by way of dividends or distribution of principal or capital, reserving voting rights.

HIS LORDSHIP: Yes. It does not seem to be an actual transfer of the shares; rather an informal ---

MR HEIGHINGTON: We know what the receipt says, but we do not know what the document was, as your lordship has pointed out.

MR MASON: This is the document.

MR HEIGHINGTON: I thought that was the release that you were putting in.

MR MASON: Oh, no.

HIS LORDSHIP: No, this is the document.

MR MASON: My lord, since I haven't a complete file, there is not much object in putting any more in.

HIS LORDSHIP: No; one will be enough to indicate how it was done. That will be Exhibit 47. This one relates to Canadian Engineering & Contracting Company.

---EXHIBIT 47: Document of transfer, Carleton Securities Ltd. to Canadian Engineering & Contracting Co. Ltd., Feb. 1, 1935.

MR MASON: Q. Then, just to complete that, you said these rights, whatever they were, created by this exhibit and the similar exhibits, were relinquished at the time of closing the sale so that the title could be made to Johnson? A. That is my recollection, sir.

Q. Now, what do you say as to whether anything was paid by Mr. McMaster for his forty per cent common shares?

In the Supreme Court of Ontario.

Defendant's Evidence No. 24

N. W. Byrne Examination continued

MR HEIGHINGTON: Well, we haven't got the vendors' agreement. We have been told it is a vendors' agreement. I don't want any evidence given, my lord, unless the vendors' agreement is produced.

HIS LORDSHIP: Well, is the vendors' agreement available?

MR MASON: Is there any vendors' agreement except this one?

MR HEIGHINGTON: We are told that on the original incorporation of Sovereign Potteries the vendors got an agreement, Pulkingham, Etherington and McMaster, whereby they got fifty per cent common stock fully paid up and I think two shares of preferred, in addition, of course -- not in the vendors' contract at all -- some individual preferred were given to Mr. McMaster for specific advances, but the vendors' agreement comprised simply the 500 shares. That is what we are told.

MR MASON: 500?

MR HEIGHINGTON: Fifty per cent, fifty per cent of the capital, of the common shares. Now, we have not got the agreement. Somebody is trying to tell us---

MR MASON: Q. Will you tell his lordship what you know about it personally? Then we will see what there is. A. I have to take it that in the conventional formation of the company, my recollection was there was a vendors' agreement and the common stock went out on the vendors' agreement for the usual consideration, I think very much like Mr. Heighington has summarized.

Q. Well, what, if anything, do you know was paid by Mr. McMaster for the forty per cent interest? A. I don't think he paid anything for the forty per cent -- of the common stock.

Q. That is what I mean. A. He got preferred stock for his money the same as everybody else did, but for the common stock, which did not cost him anything in dollars, the same as anybody' else's; that is my recollection.

MR HEIGHINGTON: My lord, I do not think we can receive any evidence of what was the consideration for the vendors' stock until we have the agreement.

HIS LORDSHIP: If there is an agreement.

MR HEIGHINGTON: Yes. I cannot accept the witness's statement.

MR MASON: We haven't any custody of the agreement.

MR HEIGHINGTON: I am not saying you have. I am simply saying it is too bad; then you can't give any evidence as to what it contains.

MR MASON: Q. Do you know anything that would assist us in determining whether that agreement can be seen? A. I think Mr. Pulkingham was subpoenaed by Mr. Heighington; he told me he was.

HIS LORDSHIP: At any rate, he said that Mr. McMaster did not pay any cash for the common stock.

MR MASON: Yes.

Q. Or did he give any consideration for it, as far as your knowledge goes? A. So far as my knowledge is concerned, no.

MR MASON: Well, we will see if we can get the other later.

MR HEIGHINGTON: My lord, the consideration no doubt will be expressed in the agreement. I am afraid I will have to object to any evidence of what this witness says about it. Your lordship is familiar enough with corporate matters to know that the people who form the company and put up collateral and bring up machinery and everything would get the stock, and it was agreed to be divided fifty per cent. Even if they have got actual preferred shares for the exact amount of money, which we do not know at all, still there would be a consideration in doing it, and the witness has already said that the shares were fully paid up.

HIS LORDSHIP: I don't know that it makes a great deal of difference anyway.

MR HEIGHINGTON: No doubt they earned it.

MR MASON: Q. Have you any personal knowledge Mr. Byrne, of what became of Mr. McMaster's preferred stock? A. My recollection is that the directors authorized Mr. Pulkingham to buy it rather than have it go on the market, and I think he did, and I think you will find in your exhibit to Mr. McMaster where I sent him the cheque.

In the Supreme Court of Ontario.

Defendant's Evidence No. 24

N. W. Byrne Examination continued

MR HEIGHINGTON: We haven't seen it.

THE WITNESS: I rather think it is in your exhibit.

MR MASON: Q. When Mr. Robert McMaster was in the box he said something about his father speaking to you about some letter or statement that he wanted to make on his behalf, to show his side, as Mr. McMaster put it, at the time apparently of his dismissal from the company? A. My recollection is rather vague, but to the best of my ability, he turned the letter in that he wanted on record as to his side of the story. Mr. Pulkingham objected to some of the material. He handed it to me as the secretary of the company to make it so that he could acquiesce in Mr. McMaster's request. I made those suggestions, and I think they were adopted, to the best of my knowledge, and I think if you look at the minute book, Mr. Mason, you will find I was able to persuade the directors to put Mr. McMaster's version of the story in, and it is in the minute book.

Q. Were you acting for Mr. McMaster in that? A. No, sir.

MR HEIGHINGTON: Well, that is a leading question.

MR MASON: Q. For whom were you acting? A. I was acting as secretary of Sovereign Potters.

Q. Now, Mr. McMaster says that you were out at the plant of McMaster Potteries on two occasions; what do you say as to that? A. To the best of my recollection, Mr. Mason, I was at McMaster's plant once to pick up exhibits for that excise thing. The thing of the excise was categorizing certain what he makes as little objets d'art -- am I right in that quotation?

Q. Yes, that is good French. A. For instance, the thing that was basically in question was the semblance of an armchair. There was a hollow cushion in the armchair, if you like.

Q. Well, don't go into the details. A. It is essential. The department said that was an ashtray. It was not an ashtray. What I did was go and get the various things that he made. Some of them were ashtrays, they were typical ashtrays; some of them were not ashtrays, they could be used as ashtrays; and what I went out for was to get

typical samples, select typical samples from his range of objects, to show that some were ashtrays and that some were not ashtrays, and it was not necessary for officers of the Department to be so vigilant in collecting excise. We included some pop bottle caps when we sent in the exhibits as examples of what had been used for ashtrays, and tops off tin cans, as well as the other things out of Mr. McMaster's line, but that is what I went out for, was to select.

Q. Samples? A. Out of his line, samples that would go into this exhibit.

Q. Did you at that time advise him in any way as to Carleton Securities? A. No, sir.

Q. You say that was one occasion. Was that the occasion when there was the jam that Robert McMaster--- A. My recollection is, I went and selected the -- the side of the plant on the east side is the sample room, and we made our selection there. I had never been in the plant. Mr. McMaster asked me if I wouldn't like to go and look through. We looked through. As we went through the plant we came on young Mr. McMaster at the dinner kiln. He had a jam. Somebody had carelessly let ware slip off the side of the tray. We stopped and talked to him for a minute and went on and saw the plant. I came home; I had something to do.

Q. You say there was no conversation about Carleton Securities on that occasion?

MR HEIGHINGTON: He did not say that. He said he did not give him any advice about it.

MR MASON: All right, put it the other way.

Q. Was there any conversation about Carleton Securities on that occasion? A. No, sir.

MR HEIGHINGTON: Now you get the answer.

MR MASON: Q. Now, were you at the plant on any other occasion? A. My recollection, I was at the plant once just.

Q. Did Mr. McMaster -- I am speaking of Mr. McMaster the deceased -- ever communicate with you and raise any objection to the transaction? A. No, sir -- that is, if you are talking about the sale to Johnson Brothers.

In the Supreme Court of Ontario.

Defendant's Evidence No. 24

N. W. Byrne Examination continued

Q. Yes, quite so. Now I want to carry you back for a moment again to certain matters with respect to which you did act for Mc. McMaster. You said you had had to do something, I think with a house in either '44 or '45? A. Yes, sir.

Q. And then apparently Mr. McMaster said that Mr. Shaver had been acting for Mr. McMaster in some transaction? A. I knew that.

Q. You were aware of that, were you? A. Yes, sir.

Q. After that time in '45 when you last acted, did you act for Mr. McMaster in any transaction of any kind except the one you told me about with regard to -- I forget those articles? A. The excise tax?

Q. Yes. A. No, sir; that is all.

Q. That was the only occasion? A. Yes. Mr. Mason, may I point out that when Mr. McMaster brought me, for instance, the house deal, it was an offer accepted. I did the title on it. Some clients come in and you go and see the house and you do the negotiating, you do everything for them. That was not Mr. McMaster; he did his own business. I did the legal end of it, when I was acting for him.

Q. That is, you were not doing the negotiating? A. No, sir.

Q. I suppose you did some negotiating with the Department in the case of the exise? A. I presented just facts.

Q. All right. Now, another thing: At the time when the Johnson transaction was being negotiated, were there any arrears in respect of preferred shares of Sovereign Potters? A. Yes, sir.

Q. Substantial, or do you recall? A. Well, they were substantial, that is true. That was the thing. One proposition was that they were going to convert those arrears into common stock.

Q. That is, the financial group, do you mean? A. Well, I am not saying the financial group. I do not say it was an effort of the financial group. It was advocated by someone, not the founders, because they did not hold preferred stock.

Q. What's that? A. It was advocated by some of the preferred stockholders. The chances are, Mr. Mason, you see, there was two groups of the financial group; there was the original group that got the bonus of common stock, there was also the secondary group like Timmins and those people, they did not have common stock.

Q. They had only preferred? A. They had only preferred. The chances was, that was originated by some of those folks to get some common stock.

Q. Now, it has been said here that you saw Mr. McMaster in certain years on very numerous occasions, I think it was put at twenty times a year; what do you say about that? A. Grossly exaggerated.

Q. Now, I want to ask you a few questions specifically as to matters that have been raised by my friend's witnesses. On any occasion when you were dealing with Mr. McMaster, either on March 22nd or on April 8th, did you say or did you ask him not to tell his family or not to tell anyone, but to keep the matter secret? A. No, sir, there was no aspect of keeping it secret.

Q. Then the daughter, Dorothea, suggested in her evidence that on some occasion -- she did not specify the time -- you and Mr. Pulkingham must have been on the telephone together, and that in the course of what she heard she heard her father say, "Hello, Norm, whatever you say, Norm." Were you ever on any occasion speaking to Mr. McMaster on the same telephone connection with Mr.Pulkingham? A. With respect to this option?

Q. Yes. A. No, sir.

Q. She was speaking here of the--- A. She was speaking of when the option was granted, as I recollect it.

Q. To Mr. Pulkingham? A. That is right.

Q. Were you consulted by---

MR HEIGHINGTON: I think that is actually incorrect. I think the witness was speaking of the renewal occasion.

THE WITNESS: All right---

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N. W. Byrne Examination continued.

MR HEIGHINGTON: You can change it, no doubt,as quickly as anybody.

THE WITNESS: With either---

MR MASON: Please don't make remarks like that.

MR HEIGHINGTON: Well, address his lordship; I don't want any answer. He made a misstatement and I wanted to correct,it, that is all.

THE WITNESS: With either, Mr. Mason, whether it was the renewal or -- I knew nothing of the option until Mr. Pulkingham brought it in to me the day before -- that is, the option from McMaster to Mr. Pulkingham. I knew nothing about it until March 21st, when he brought it in.

MR MASON: Q. Then the daughter Dorothea made some remark -- I cannot locate it in time for you -- suggesting that her father had said to you over the telephone, "Do you think I have a chance to get out?" A. No, sir.

Q. Did that happen? A. No, sir.

Q. Then it is stated that you said on April 8, 1947, "I want this to get back at Etherington". A. Absolutely not.

Q. And it is said also that you said as you went out, "Keep this under your hat". A. I did not -- or the other terminology that was used for the same expression.

Q. That is, to keep it dark? A. That is right.

Q. Then it is said that On April 8th you suggested that there would be leaks in the bank and it would get back to Etherington; what do you say as to that? A. That is not true.

Q. Had you any reason in the world for not having this known to Mr. Etherington? A. No, sir.

MR HEIGHINGTON: That is a leading question, my lord of the worst kind.

MR MASON: Q. Bob McMaster says that in a conversation with you and his father on March 22nd he said the stock was worth at least $50,000; what do you say as to that? A. I cannot recollect

him saying any such thing. He participated very little in the conversation. He knew nothing about it.

Q. What was the position of Mr. Paulin, who was in the witness box? A. How do you mean?

Q. In connection with the company? A. He was Vice-President. Well, he was of the Walton McGee connection.

Q. That was in the financial group? A. Yes, sir.

Q. And do you know who acted as his solicitor? A. Harold Boyde; that is, when he sued the Walton and McGee group or Mr. McGee.

MR HEIGHINGTON: Is that relevant, my lord? I would not think so.

HIS LORDSHIP: I don't know.

MR HEIGHINGTON: Sometimes we employ one counsel or one solicitor, sometimes we employ another. I think it was very gratuitous and uncalled for.

HIS LORDSHIP: Well, I don't know. One cannot always say at any particular stage what may be relevant or what may not.

MR HEIGHINGTON: Quite. I am asking your lordship's consideration on that.

MR MASON: Q. I think you have already probably told me this, but whom did you act for in connection with the Johnson negotiations? A. I did not act for anybody except my -- well, now wait a minute. I was acting as secretary of the company with regard to disclosure of data and that sort of thing. The rest of it, I was acting for me.

Q. That is, you were not retained by the company except in your capacity as secretary? A. That is right.

Q. As you have told me? A. That is right.

Q. And you received no remuneration? A. From

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N. W. Byrne Examination continued

anyone.

Q. From anyone? A. Nor recoverable disbursements. They were not recoverable.

Q. I don't want to go into it at length. You have told me a good deal about, but did you devote considerable time to it, or what do you say as to that? A. I think that is obvious on the record, sir. It was not the time, it was the worry of the thing.

Q. If the transaction had not gone through what position would you have been in? A. I would have been left just like McMaster was, holding the bag, and certainly worse than he was, because I would have been in there for another ten years certain.

Q. Why? A. Well, because Carleton Securities was faced with a ten-year pool. They certainly would never let me out any more than they would have let McMaster out.

Q. Now, you have told me previously, and I want you to make it perfectly clear, that when you saw Mr. McMaster in these meetings about his stock you had certain knowledge about the proposed transaction with Johnson. You told me that on March 27th you and Mr. Pulkingham went to Toronto and had an interview with Mr. Foulds? A. Yes, I think that was right.

Q. Did you have any previous interview with Mr. Pulkingham between the 22nd and the 27th? A. Well, we prepared -- he discussed with me shortly going to Mr. Foulds and what the aspect of the deal was. It was all in a state of flux, what we would do. Mr. Pulkingham was in charge of that. I went along; I was interested; I had gone with him to get the thing through. Mr. Mason, may I point out something?

Q. Yes. A. Stop me if I am inappropriate. In this deal there was McMaster, who had been tied up for a good many years -- hopeless situation. Etherington and Pulkingham, who were the beginners, all they wanted was their job in security.

MR HEIGHINGTON: My lord, is this evidence or just a plea?

HIS LORDSHIP: Well, I don't know.

THE WITNESS: Well, stop me if I am wrong, but--

HIS LORDSHIP: He is not speaking, I suppose, for Mr. Pulkingham and Mr. Etherington. It is more or less argument.

THE WITNESS: All right, sir, I apologize.

MR MASON: Well, my lord, I want to argue it, but I would like some substratum on which to argue it. The witness knows the facts; that was the reason I wanted to get it.

MR HEIGHINGTON: He is drawing conclusions from the facts that may be entirely different from his lordship's or mine.

THE WITNESS: Well, there is a fact I do know, Mr. Mason: Of all the kind friends, Byrne was the one that took the gamble; nobody else did.

MR MASON: Q. Well, all right. A. And McMaster got exactly what he asked for.

Q. Now, I had started a question but I did not get it finished. I had said that you had talked to Mr. McMaster, that you had certain information, such as it was, about the Johnson matter, and that subsequently you and Mr. Pulkingham went to Toronto and discussed the matter with Mr. Foulds? A. That is right.

Q. And that in an exhibit that is in, on March 27th you wrote the directors a letter? A. I insisted that the directors should know.

Q. And did you in that letter set out all that you knew about the matter at that time? A. What had developed.

MR HEIGHINGTON: That is another very leading question, my lord.

MR MASON: Well, what is wrong with that question, my lord? I cannot possibly see anything wrong with it.

HIS LORDSHIP: Well, there is a suggestion in it, Mr. Mason.

MR HEIGHINGTON: Very definitely.

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N. W. Byrne Examination continued

HIS LORDSHIP: I suppose you probably would arrive at the same thing, but it might be a little less leading if you asked him if there was anything else, if there was anything he knew about it that did not appear in the letter, rather than say that that was all.

MR MASON: Of course, my lord, it amounts to the same thing, with deference.

HIS LORDSHIP: It probably would but it does not carry the suggestion.

MR MASON: Q. Well, was there anything known to you about the proposed English transaction that you did not disclose in that letter to the directors? A. No, sir.

Q. Had you or had you not acquired some of that information after the 22nd of March? A. Yes, sir.

HIS LORDSHIP: What's that again? What is the last question?

THE WITNESS: Had I acquired some of the information in the letter after the 22nd of March.

MR HEIGHINGTON: May I suggest, my lord, with a great deal of deference, the proper question would be, "When did you learn?", not "Did you know on the 26th or the 25th or whatever it was?" I think it is very objectionable.

MR MASON: Q. Now, I think there is only one further question I want to ask you about. My friend put in a letter of April 9, 1947; without looking at it, can you tell us what it was? A. With regard to stock transfer tax?

Q. Yes. A. Just that. I explained to Mr. McMaster, gave him the -- he was liable for stock transfer tax; I gave him the particulars and asked him to send it and he did; asked him to send the stock transfer tax and he did.

Q. It is all set out in the letter? A. Yes.

Q. That is all, thank you.

DEFENDANT'S EVIDENCE

No. 25

CROSS-EXAMINATION OF NORMAN W.BYRNE, K.C.:

In the Supreme Court of Ontario.

Defendant's Evidence.

No. 25

N. W. Byrne.

Cross-examination.

Q. Mr.Byrne, the first thing I was going to ask you was to get a little clearer idea of the inception of Sovereign Potters Limited. The first contact, I understand, that you knew anything about it at all, was with Mr.Etherington, was it? A. I think Mr.Etherington and Mr.Pulkingham came into my office together.

Q. And you knew Mr.Etherington before? A. Yes sir.

Q. I want you to be definite about that. The first time -- you are sure, are you? A. That is the best of my recollection.

Q. They came together to your office?

A. I think that is right, sir.

Q. And then I think it is common ground that they had been making some effort at that time to form a pottery here? A. Yes, sir.

Q. They had been doing something? A. Well, I think Mr. Pulkingham had been. I think he had another associate in that first effort, sir.

Q. Mr. Pulkingham had been endeavouring, shall we say, to form a pottery company in Canada. A. Yes, sir.

Q. And he enlisted the assistance of Mr.Etherington? A. I think that is right, sir.

Q. And they came to you? A. That is right.

Q. They came to you. When was the first time that you knew they became associated with Mr. McMaster? A. Well, the one end, sir, kind of went along, and Mr.Pulkingham had gone back to the States, and the other end came by itself.

Q. Now, when he went back to the States did you know he was going to get in touch with Mr.McMaster, who was in the same plot, or did you not? A. No, I did not.

Q. You had not heard? A. I think that developed later.

Q. You had not heard when Mr. Pulkingham went back to the States that he was going to get the assistance of a practical man? A. Oh, he may have had arrangements all made with him, sir; I don't know that.

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No. 25

N. W. Byrne.

Cross-examination. - continued.

Q. You say you did not know that? A. I am not saying that.

Q. But you were going to help them in the formation of the company, were you not? A. I was in the financial end, sir.

Q. That is what they came to you for, to help them? A. Yes, sir.

Q. In the financial end? A. Yes, sir.

Q. Well, eventually Mr. Pulkingham got in touch with Mr. McMaster and brought him up here? A. That is right.

Q. They brought machinery with them? A. That is right.

Q. And plant and equipment? A. That is right.

Q. And they started? A. That is right.

Q. In the meantime --- A. Now, wait a minute. You put one word in there I can't agree with -- stock.

Q. Beg pardon? A. Stock.

Q. Did I say stock? A. I am afraid you did.

Q. I thought I said plant and equipment.

A. I thought you said, and stock.

Q. I did not think so -- however, I will eliminate that. In the meantime had anything been done by you in regard to getting the money that you were talking about? A. I revamped the -- what do you want to call it? Prospectus, brochure?

Q. They had something to submit to prospective subscribers, had they? A. That is right.

Q. And you looked over that? A. I rewrote it.

Q. And then you went to Mr. Marsales, did you?

A. No, sir.

Q. Did he come to you, rather? A. Oh, no.

Q. Or Mr. Etherington go to him, or what?

A. Mr. Etherington was doing that kind of stuff.

Q. He was getting the money? A. He was not -- I prepared his material for him.

Q. To get the money? A. That is right.

Q. All right. Then we have it clear, I think, that in the end money was subscribed by various people?

A. At the inception, sir.

Q. Yes? A. And then it progressed.

Q. Yes, money was subscribed, and kept on being subscribed? A. That is right.

Q. In other words, it took some time, did it?

A. Yes, sir.

Q. To get all the money? A. Sir?

Q To get the money together took some time?

A. That is true.

Q. Was the company incorporated? A. Yes, sir.

Q. Before all the money was obtained? A. Well, when you say all the money, what I was referring to was some years later they got more money.

Q. Yes, but at the original time, do you know how much was subscribed? A. I think it was something like $150,000. It was all assured; they were financially responsible people.

Q. They had that much money? A. Yes, sir.

Q. And then I think we can take it that the vendors' contract came up then? A. That is right.

Q. And that the people who had put up the money were to have fifty per cent of the common?

A. That is right, sir.

Q. And the other three were to have fifty per cent for their efforts and what they did?

A. As you said, plus a little preferred for their cash part.

Q. But at least some of the capital? A. Generally speaking I think you have summarized it, Mr. Heighington, when you said that the cash people got cash, got preferred for their cash.

Q. And you were quite candid with me, and you told me that there was no doubt about it that Mr. Etherington's stock and Mr. Pulkingham's stock and Mr. McMaster's stock was fully paid up, because you did not buy shares unless they were fully paid up; is that right? A. Quite right, sir, quite right, sir.

HIS LORDSHIP: Q. You said the cash people got preferred; you mean the cash people got common, Mr. Byrne? A. Yes, sir, they got a bonus of common. They got preferred for their cash and they got common as a bonus, which came out under the vendors' contract, so that if the preferred was ultimately -- it was a redeemable preferred; then they would

each sit with their final equity.

MR. HEIGHINGTON: Q. Now, you were saying a moment ago to his lordship that you acted for the financial group only in the incorporation of Sovereign Potteries Limited? A. No, I did not: I do not recollect that, sir.

HIS LORDSHIP: Not to me, Mr. Heighington.

MR. MASON: I did not hear it.

MR HEIGHINGTON: Q. Well, perhaps this document that you got on March 22nd from Mr. McMaster sets it out correctly. I will just read it to you:

"To whom it may concern.

I was one of the original group who formed Sovereign Potters Limited and were the vendors under the agreement at the time of incorporation."

A. Yes.

Q. Was Mr. McMaster--- A. I probably was not one of the vendors' contract for all that.

Q. Mr. McMaster signs this:

"I was one of the original group who formed Sovereign Potters".

You wrote that out yourself? A. Yes, sir.

Q. So in that sense at least you were acting for him when you incorporated the company, were you not?

MR. MASON: That is a matter of law, my lord.

MR. HEIGHINGTON: Is it?

MR. MASON: Certainly.

HIS LORDSHIP: Well, it may be a matter of law or it may be a proper question to put on cross-examination.

MR. HEIGHINGTON: I think so.

Q. He says here, when they incorporated the company -- this is the document signed by Mr. McMaster on the 22nd, at the same time as the first option was signed? A. Mr. Heighington, your reference going back to examination for discovery as to acting for these parties -- when I said that the financial group gave me my instructions, I was looking to the financial group for payment, and ordinarily you act for who pays for you. I certainly was looking after these chaps as vendors and myself, if you like.

Q. All right, I think that is quite fair; I am quite satisfied with that statement. Exhibit 12 I was referring to. You see, the importance of that, Mr. Byrne, is that you told his lordship a few moments ago that you never acted in any way for Mr. McMaster before the incorporation of Carleton Securities, and we have your other evidence now.

HIS LORDSHIP: Well, I do not recall---

THE WITNESS: I do not remember saying that, Mr. Heighington.

MR. HEIGHINGTON: We have it so noted.

HIS LORDSHIP: No, he never acted for McMaster after the formation of Carleton Securities.

THE WITNESS: I think that is right.

HIS LORDSHIP: That is what I have.

THE WITNESS: I do not remember saying that, Mr. Heighington.

MR. HEIGHINGTON: Well, all right, if you didn't. We have it down here, first acting for McMaster was re Carleton Securities. We have a note down. But now, anyway, we have the facts; we need not elaborate it any further. The notes may be wrong, or Mr. Byrne's recollection may be wrong, or even Mr. Mason's, but we have the facts, anyway, now.

HIS LORDSHIP: I have in my notes, after Carleton Securities, 1935, never acted as solicitor for Carleton Securities.

MR. HEIGHINGTON: That is latterly he said that, yes.

Q. Now, in regard to the organization of Carleton, we have that agreement that you drew up at the time; I suppose we may take it that that sets out the matter fairly correctly: A. Well, it certainly set out what they told me, at least to the best of my ability.

Q. And that was Exhibit 3. Between Mr. McMaster, Mr. Etherington and Mr. Pulkingham:

> "WHEREAS the Parties hereto are jointly and severally holders of One Thousand shares of the preferred stock and Twenty-five Hundred shares of the common stock, no par value, of the Sovereign Potters, Limited in the following proportions, Namely:- McMaster, forty per cent (40%); Pulkingham, forty per cent (40%) and Etherington twenty per cent (20%)."

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N. W. Byrne.

Cross-examination. - continued.

That is correct, is it not? That is correct?

A. I think that is right, sir.

Q. And then:

"The Parties hereto will forthwith incorporate a company under the Ontario Companies Act . . . "

Well, as you explained, it was not quite necessary to do that, because you had one handy? A. Incidentally, I got criticized at the company's office for doing it.

Q. Well, anyway, you changed the name?

A. Well, they didn't have any name.

Q. Well, all right, answer you did not incorporate a new company, you just had an existing company's name changed to Carleton Securities? A. That is right.

Q. And they agreed to pay your expenses in certain proportions, but you say you never got it?

A. That is right.

Q. Now, after all, there is a fee to be paid, you know, for supplementary letters patent changing name?

A. I think I absorbed that too.

Q. Well, I want you to look that up for me and find out about that. A. I have tried to, sir.

Q. I don't want to accept your recollection.

A. I tried on examination to find out what I could about it, and I couldn't find anything about it.

Q. I don't think I asked you about that; however---

A. It may have been that one of them put up the cheque to change the name. It was only twenty dollars.

Q. I would think so. We don't usually pay out disbursements like a hundred dollars for that sort of thing. I want to know definitely what your books show, and I want you to tell us exactly what it is.

A. I looked for it and I couldn't find it. You asked me to look for that before and I couldn't find it.

Q. I think it was something else I asked you; but I am asking you again now. A. All right, sir.

Q. However, I am told that was in 1935, August 31, 1935, it was changed, according to the records of the--- A. I would not dispute that.

Q. You would not dispute that. And you said yesterday and again this morning to my friend that you were not an officer of that company and never acted for that company in any way? A. Yes, sir.

Q. Well, it is only fair to tell you that I am instructed that a search at the Parliament Buildings reveals that in the 1935 return you are shown as the secretary. A. Well, that is not my fault.

Q. Beg pardon? A. That is not my fault.

Q. You say you were not? A. They never told me about it, as far as I can recollect. I might have been, just as you often are to start a company up, but so far as the operation of that company is concerned I never was inveighed in it.

Q. Are you going to dispute that in the 1935 return you are shown as secretary? A. I will say it has no significance.

Q. All right, we will be the judges of that.

A. All right.

Q. I also call to your attention that I am instructed that the returns from 1943 to 1947 inclusive show you still as secretary -- in 1947 -- all those years. A. Well, I never was at a meeting; I never even knew about it.

Q. Did you ever sign the company returns as the secretary of the company? A. Not to my recollection.

Q. Not to your recollection? A. I certainly was not active in Carleton Securities, never was at a meeting, and never had any connection with it at all.

Q. I am just telling you what the files show.

A. All right, but I certainly was not into it.

Q. Are you willing to admit that the returns are so filed? A. No, no, no.

Q. You are not admitting it? A. No, I have no knowledge of it.

Q. I am asking you if you are prepared to admit now whether the 1905 company returns for Carleton Securities Limited show you as secretary or not?

A. I didn't think it was existing in 1905.

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N. W. Byrne.

Cross-examination. - continued.

MR. MASON: You made a mistake -- 1935.

MR. HEIGHINGTON: Q. 1935. A. No, sir.

Q. I am just asking you the question, do you admit it? A. No, sir.

Q. Or do you not? A. No, sir. If it is a public record it is a public record. I am not admitting it at all.

Q. I am asking you if you are prepared---

A. I will admit that I am amazed.

HIS LORDSHIP: He says he does not admit it.

THE WITNESS: I will admit I am amazed.

HIS LORDSHIP: Well, you are not asked that, Mr. Byrnes; you are asked if the return shows that you are secretary.

MR. HEIGHINGTON: He denies that, then.

HIS LORDSHIP: Yes -- at least, he does not admit it; he does not deny it.

THE WITNESS: I do not deny it. It is a public record.

MR. HEIGHINGTON: Q. You do not admit it? A. I do not admit it.

Q. Then it is for me to prove it. What do you say about the returns from 1943 to 1947? A. The same.

Q. Then did you take any action to have your name taken from the records as the secretary of the company? Did you take any action about it? A. I didn't know I was secretary of the company, as a matter of fact, never was conscious of it.

Q. I am told that they have a letter from you -- this may assist you -- on April 2, 1948, stating that no further action -- taking no further action with the company, and asking the Provincial Secretary to change the address of the company to Mr. Pulkingham, care of Sovereign Potters. A. Well, you can prove that, sir; I am not stopping you.

Q. Do you know about your letter or don't you?

A I don't recollect it.

Q. You don't know about that letter? A. That was after the Johnson deal.

Q. I am not saying what it was: I am just

asking you if you wrote that letter and remember doing so -- that you have now no further connection with Carleton Securities? A. Well, you said that was in '48, didn't you?

Q. Yes. A. Well, that is after the Johnson deal.

Q. I am not concerned with--- A. Well, I may have been cleaning it up after the Johnson deal.

Q. I am asking your recollection. Did you write in on April 2, 1948, that you had no further ---

A. Show me the letter.

Q. Well, I think we will, yes. We will. I wanted to be a little clearer -- perhaps his lordship does too -- about the cut, the cut you were supposed to get. Just tell us exactly what that was and who promised you. Go right ahead.
A. Well, my version of it, as I said, when Mr. Pulkingham and Mr. Etherington came to see me they wanted this rewritten. He had been to considerable expenditure and hadn't money available. I said I would do it. It was arranged I would get a third of the vendors' picture.

Q. You say that both Mr. Etherington and Mr. Pulkingham promised you in your office on that day that they came to see you that you would have a third interest in any company that was formed as a result of that consultation? A. I am not just sure about that.

Q. I guess not. A. I think Mr. Etherington promised it and had it confirmed by Mr. Pulkingham.

Q. Were they together? A. They came in together in the first place.

Q. And did Mr. Etherington make the promise while Mr. Pulkingham was there or didn't he?
A. No, I rather think that Mr. Etherington made that promise and had it confirmed by Mr.Pulkingham.

Q. Yes, when they were there together---

A. Oh, they were together in the office.

Q. I know; I am simply saying when they were together did they discuss that feature or did they not?

A. No, I don't think so.

Q. You don't think so? A. I think that came on later.

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No. 25

N. W. Byrne.

Cross-examination. - continued.

Q. Does it amount to this, that Mr. Etherington then told you sometime later that you would have that cut? A. I think we kind of agreed to it and then he had it confirmed by Mr. Pulkingham.

Q. In some conversation with Mr. Etherington alone he agreed, did he, to that? A. I think that is right.

Q. You think that is; well, do you know it?

A. Well, it is a long time ago, sir.

Q. That is why I am pressing it.

A. I am on oath.

Q. That is why I am pressing it. A. Well---

Q. What is it? A. I am only human. That certainly is my distinct recollection.

Q. That Mr. Etherington sometime later, after the first interview when Mr. Pulkingham was present, came to you and told you, agreed with you that you should have a cut? A. Yes, sir.

Q. And then did he tell you then at that same time that Mr. Pulkingham had so agreed? A. I think it was later, that it was confirmed by Mr. Pulkingham.

Q. Was it confirmed by Mr. Pulkingham to you personally? A. I would imagine that---

Q. I don't want any imagination. A. Well, I don't know, then.

Q. I don't think you do. A. I am trying to do the best I can, Mr. Heighington.

Q. I am just asking you a simple question. You set up a contract, and I am asking you who, when, where, and how it was made? A. Well, get Mr. Pulkingham to see what his idea is.

Q. Well, I want to know what Mr. Pulkingham said and what promise he gave to you that you have told us about? A. Well, of course, he did not figure he had; that is why I didn't get it.

Q. Well, what were you told by Mr. Etherington that he had agreed to and had confirmed, and when was it?

A. Well, they had to change later or they would have given it to me, wouldn't they?

Q. I am simply asking you the question. You told us Mr. Etherington promised you a third and

that he had it confirmed by Mr. Pulkingham later and that he so informed you; is that right? A. Right.

Q. He told you that he had got Mr.Pulkingham's consent? A. Right.

Q. To give you a third? A. Right.

Q. Of the vendors' shares? A. Right; and then they had to revamp it.

Q. I am not talking about any revamp now. Mr. Etherington told you that Mr. Pulkingham had agreed to that? A. Right.

Q. Beg pardon? A. Right.

Q. When was that? A. I cannot state day or hour, sir.

Q. Oh, no; approximately? A. It was early in the game.

Q. Early in the game. Well--- A. When I was rewriting---

Q. Later in the game, you have seen Mr. Pulkingham a great many times, haven't you? A. Yes, sir.

Q. And the first time you saw him after the confirmation had been given, did you have him confirm it in proper persona? A. No, sir.

Q. You did not? A. The first time it was mentioned it came out that McMaster had the forty per cent, and I was amazed and said so.

Q. You protested to Mr. Pulkingham about it then?

A. I protested to the three of them.

Q. Beg pardon? A. I brought it up in front of the three of them.

Q. You brought it up in front of the three of them?

A. Yes. McMaster said he had no part of it.

Q. He had no part of it? A. Right.

Q. What did that mean? A. He would have no part of it; he didn't know anything about it.

Q. Did the others deny it? A. No; they just didn't do anything about it.

Q. They just didn't do anything about it; and you had that as a sort of grievance, didn't you?

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N. W. Byrne.

Cross-examination. - continued.

A. Not a grievance; it is a fact.

Q. Well, the fact rankles, shall we say?

A. No, sir; I don't wrangle.

Q. You don't wrangle. Well, you had it in mind all the time, did you? A. I did.

Q. You had it in mind all the time; in fact, you spoke to Mr. McMaster quite often about it, didn't you?

A. To who?

Q. You told McMaster about it several times? 10

A. I think it was discussed with McMaster, yes.

Q. Beg pardon? A. I think it was discussed with McMaster, but I didn't bring it up this last day.

Q. I am not saying that you did: I am saying you discussed with Mr. McMaster the fact that you had not got your cut; is that right? A. I think so.

Q. On more than one occasion? A. I think so. 20

Q. Now, you told us a few minutes ago, at least yesterday, as a matter of fact, about some interview with Mr. Marsales, didn't you? Do you remember testifying about Mr. Marsales yesterday? A. I haven't got it just crystallized right now, sir.

Q. Well, did you at any time meet with Mr. Marsales in connection with the formation of this Sovereign Potteries Company? A. Oh, yes -- now, wait a minute. Mr. Marsales was the introductory medium, as I had it related to me, between Mr. Etherington and the group. 30

Q. Yes, you have told me about that. The other thing I want, I have a note here that you spoke to him at some time about the purchase of some shares of his.

A. You mean the early part of 1947?

Q. I don't care when it was; did you at any time speak to Mr. Marsales about a proposed purchase of any shares of his in Sovereign Potteries? 40 A. Yes.

Q. When was it? A. My recollection was it was in January or maybe February.

Q. What year? A. '47.

Q. January or February '47? A. Yes.

Q. Is that the best you can give us? A. Yes, sir.

Q. That is the best you can give us. And what was the conversation? A. Well, to the effect that he was not too happy about tying the stock up for ten years. I said I would buy it.

Q. The pool, you say, had not then been completed?

A. Not crystallized.

Q. Well, completed is a simpler word for me.

A. Well---

Q. He was not then definitely tied up in the pool?

A. I am not so sure but what he was.

Q. Well, all right, then: it makes a difference.

A. He said subject to a gentlemen's agreement, that he would speak to the others.

Q. Well, what would be your object in purchasing Mr. Marsales' shares? A. I told him.

Q. What was it? A. To get a piece of Sovereign, in view of this English deal coming.

Q. I see. So if Sovereign had any of Mr.Marsales' shares they would be in control of the company, would they not? A. No, sir.

Q. Fifty per cent on one side--- A. No, sir. because if I took Mr. Marsales' shares I would have to vote them right with the financial group. I am not playing sides in this game.

Q. You would not have to--- A. And I resent the inference, Mr. Heighington.

Q. I am simply saying that it constitutes virtual control of the situation; I am not saying what you would do with it. A. No, sir, it would not give me virtual control as such.

Q. In association with--- A. Mr. Marsales' shares were tied in with the financial group.

Q. I am not going to labour the thing, Mr.Byrne.

A. All right. There is an inference there.

Q. You mentioned just a moment ago something about the English sale being discussed with Mr.

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Cross-examination. - continued.

Marsales on that occasion? A. What I knew about it, yes.

Q. What was it? A. Well, simply that there was such a thing being promoted, being talked of.

Q. There was such a thing being talked of?

A. Right.

Q. Did you give him any specific facts?

A. Not very much.

Q. Well, what was the "much"? A. Well, I didn't know very much.

Q. I didn't say you did. I am just asking you, what was the "much" that you told him? A. Well, I told him the possibility of the sale to the English crowd. I don't know that it was even identified by name to me at that time.

Q. You said the Johnson deal was discussed; you have told us that two or three times. A. Well, I identified it maybe to you by the name Johnson, Johnson deal, but I am not sure that their name was known to me at that time.

Q. Well, can you tell me any definite thing whatsoever that you told him in regard to the proposed purchase, whether the name was mentioned or whether it was not? A. No, I cannot.

Q. You can't tell us one thing, one fact you told him? A. I told you that I told him about it.

Q. You told me that you told him very much, and that is all we want now. A. All right.

Q. I was going to ask you to be a little more definite -- or at least perhaps I should not put it that way -- to make your statement again in regard to the fact that it has been alleged that you were speaking on the telephone at the same time as Mr. Pulkingham in regard to some option or some renewal? A. Too vague.

Q. There seemed to be some doubt about it; and then I take it that your statement is that at no time did you speak either about the original option given to Mr. Pulkingham for 30,000 or any renewal?

A. At the time it was being given.

Q. At the time it was being given? A. That is right, sir.

Q. Or at the time that a new option or a

renewal of the other one, whichever you like to call it, was being given to Mr. Pulkingham, you were not there with Mr. Pulkingham when that was done? A. No, sir, not on the telephone there with him.

Q. Were you in the room? A. I had no knowledge of the option until it came home from Mr. Pulkingham in March.

Q. So you were not there at all; you couldn't have been? A. Well, that is the inference, isn't it, sir?

Q. Well, now, I want you to tell me in detail about the interview with Mr. Pulkingham when you took over his interest or got whatever you got; you say Mr. Pulkingham had an option; you made some arrangement with him about it1 what was it? A. As I said, he came in---

Q. Came in where? A. To my office.

Q. He came into your office? A. My office.

Q. Yes? A. And the first part of it that I recollect, he said he couldn't do anything more on account of the pool having come, that if he went on with the English deal he was going to be misinterpreted, and that he figured he just couldn't go on with it, and he didn't have the money and he figured I might, and---

Q. The English deal was discussed again at that time, then? A. When he brought the option in. This was the Johnson option he brought in, sir.

Q. I am not talking about the Johnson option, I am talking about the handing to--- A. It was as to the Johnson thing that he was discussing, that he couldn't put forward the Johnson deal on account -- he felt. I don't think he was right, because I don't think there was any feeling behind the pool, but he did feel that on account of the pool he couldn't go forward with the English deal.

Q. I am simply saying the English deal was discussed on the occasion that you received whatever you did receive? A. Yes, sir.

Q. From Mr. Pulkingham? A. Yes, sir.

Q. In your own office? A. Yes, sir.

Q. And when was that? A. On March 22nd.

Q. March 22nd? A. That is right, sir.

Q. And what was the discussion? A. It was not very long.

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N. W. Byrne.

Cross-examination. - continued.

Q. I think it was the 21st, to be exact?

A. Oh, I am sorry, Mr. Heighington: I thank you for that. I got drifting. March 22nd was the day I went to see Mr.---

Q. I would like you to tell me a little more about the discussion of the English deal that went on that day, if there was anything further?

A. Well; there was not a great deal.

Q. Well, what was there? A. Mr. Pulkingham had decided to abandon the option, did I want it?

Q. Yes, you told us that. A. Well, that was it, just about the situation.

Q. What did he say about the English deal?

A. Well, that he could not go on with it.

Q. He could not go on with it. Any details of the English deal discussed at all? A. No, sir, very little.

Q. Well, what was the very little? A. Well, I mean, he didn't disclose practically any more than I knew, that there was -- a letter had been exchanged.

Q. What was the addition to what you did know, if it was very little? I want to know what it was.

A. My recollection, it was very little, that I found out most I knew about the English deal before I went to see Mr. Foulds.

Q. You have just told us--- A. I knew that he had been requested to nominate -- I had nominated Mason Foulds, but that was not really information about the deal.

Q. Of course, that was not giving you something more than you already knew? A. That is right, sir, that is right, sir.

Q. What was it that he gave you, something that you already did not know, then? A. Very little, sir.

Q. Well, what was the little? A. I don't know.

Q. All right. Now, Mr. Pulkingham had the option with him at the time? A. Yes, sir.

Q. Was it on one piece of paper? A. Yes, sir.

Q. Or two pieces? A. That is my recollection,

it was on one piece of paper.

Q. How good is your recollection? A. Well, I can visualize things fairly well.

Q. All right. Was it one piece of paper?

A. Yes, sir, quarto size.

Q. One piece of paper? A. With a letterhead at the top; I think it was McMaster Potteries.

Q. And was it given to Messrs. Pulkingham and Etherington or to Mr. Pulkingham alone? A. I was under the impression that it was to Pulkingham and Etherington, but I think it was just to Pulkingham. My recollection is, it started off with a request to find a buyer.

Q. Just tell us whether it was Mr.Pulkingham's option or an option to the two of them; you got it.

A. I was not as interested in that as I was in the fact of the option. It was an adequate option for $30,000.

Q. To someone? A. It was assigned to me to the extent that I ordered up legal tender from the bank to exercise it.

Q. Well, we will give you every chance, you know. I am trying to find out what the document was that was handed to you. A. It was a legal document effective as an option; that is what I satisfied myself of.

Q. That does not help us very much.

A. Well, I am sorry I can't help you any more.

Q. I am asking you, in whose favour the option was made? A. All right, if I go beyond that, then I am guessing. I satisfied myself, Mr. Heighington, that it was an adequate document.

Q. I am not concerned about that. I just want to know who held the option that you got, that Mr. Pulkingham had in his hand that day? A. Well, Pulkingham had it, sir, and I am quite sure that it was to Pulkingham.

Q. Pulkingham alone? A. I am not going to -- I looked it over, and it was an adequate document; that was the impression it made on me.

Q. I am not concerned with your impression of it. We want to know to whom it was made. A. All right, then, you are going to ask me to guess.

Q. You cannot tell us, in other words, then?

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Cross-examination. - continued.

A. I am quite sure it was made to Mr. Pulkingham.

Q. Was it made to Mr. Pulkingham and to Mr. Etherington as well or not? A. Well, he might have been on it. I was under the impression originally that he was on it and that he had signed it.

Q. But you don't know? A. Well, it certainly was -- we will crystallize it that way; it was to either or both of them.

Q. That is the best you can give us? A. Yes, sir.

Q. Did you observe the expiry date of the original option? A. Yes, sir.

Q. When was it? A. March 23rd -- oh, the original option?

Q. Yes? A. No. I can't tell you that.

Q. You can't tell me that? A. Nor can the---

Q. How can you tell the expiry of the renewal if you cannot give me the date of the expiry of the original? A. Well, sir, to tell you the truth---

Q. Just tell me that? A. I know that it expired on Sunday. I know that I went to see McMaster on the Saturday before the Sunday. I know the document that was signed on the Saturday is dated March 22nd.

Q. Still we don't know the date of the original option nor how long it was for; and can you or can you not tell us? A. I do not consider it essential. I knew that the option was in force.

Q. I didn't ask you that, really. A. All right, sir; I am only just a human being.

HIS LORDSHIP: Q. Oh, Mr. Byrne, you can say whether you can say or not. Whether you consider it essential or not, can you tell? If you can't, just say so. A. I cannot, sir.

MR. HEIGHINGTON: Q. Then I am asking you---

A. I am doing my best.

HIS LORDSHIP: Well, that is all you are expected to do, Mr. Byrne. If you cannot recall, all you have to do is say so.

MR. HEIGHINGTON: Q. I am asking you if you

cannot tell us the date of the original option--- A. No, sir, I can't tell you.

MR. MASON: I don't want to interrupt my friend's cross-examination, but your lordship has heard---

MR. HEIGHINGTON: I don't care whether you do or not.

MR. MASON: Your Lordship has heard that there was an option. This is from the lady who said she typed it. Then she said that there was a further option, not a renewal. Now, I think we ought to have it clear, that my friend's questioning---

THE WITNESS: May I have a minute?

HIS LORDSHIP: Yes.

MR. MASON: He ought to refer to whether it is the first option that has been mentioned or whether it is the second part, because otherwise we are inextricably mixed. That is all I want.

HIS LORDSHIP: Well, I suppose all Mr. Byrne can say is what he recalls about it.

MR. MASON: Well, as long as my friend identifies the option that he is speaking about.

MR. HEIGHINGTON: I think I am, very definitely. Don't worry about it.

MR. MASON: I cannot follow it, I am frank to say.

MR. HEIGHINGTON: Well, that's too bad.

HIS LORDSHIP: I think we will have a recess.

(Interval from 11.50 a.m. until 12.05 p.m.)

MR. HEIGHINGTON: Q. Mr. Byrne, I was asking you a few moments ago about how it was that you were able to say that the option that Mr.Pulkingham or Etherington held had not expired when you did not know the date of the original option? A. I did not say that, sir.

Q. What was the date of the--- A. I said I don't know the date now.

Q. You don't know the date now? A. Yes, sir. I said that I satisfied myself that it was a good and sufficient option, to the extent that I ordered up legal tender.

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N. W. Byrne.

Cross-examination. - continued.

Q. But you were not able to tell us what the date was? A. I am not able to tell you now, sir.

Q. Did you ever know? A. Why, of course, sir; it was on the option.

Q. And you have no recollection of it?

A. I can't tell you that now, that is all, Mr. Heighington.

Q. All right; and how long was the renewal for?

A. I can't tell you that. I know that I looked at the option and it expired on the Sunday, but as to the details of it I am vague.

Q. And you are still vague whether it was to Pulkingham and Etherington or just to the one?

A. I am, sir.

Q. I will just read you a couple of questions that I asked you when you were being examined about that:

"226. Q. Was the option to the both of them?

A. Yes."

Was that true?

MR. MASON: My friend ought to read---

THE WITNESS: Please go on to the bottom.

MR. MASON: To be fair, 227 with it. Very unfair to do otherwise.

MR. HEIGHINGTON: May I present my views to his lordship on that question?

I think my friend, my lord, if I may say so with respect, is confused in regard to the use of discovery. If I were putting in as part of my case certain questions, then my friend could call your lordship's attention to any other question that he thought should go in with it; but when I am cross-examining I can ask a man about any statement that he has made and ask him if it was true.

HIS LORDSHIP: Except, Mr. Heighington, that if at that time he said something different qualifying it, then I think it is not fair to put it to him, "Is that true?"

MR. HEIGHINGTON: Q. Well, I will put it to him, you made that answer? A. All right, then, I back down: I was vague.

Q. Then I will go on at his lordship's

suggestion and read the other questions:

"227. Q. The both of them? A. I am not sure of that."

A. That is right.

Q. Then I asked you:

"228. Q. Anyway you are sure both signed, are you?"

A. Yes.

Q. Your answer to that was:

"I am sure it was adequately assigned over."

A. Yes, sir.

Q. You made that answer? A. Yes, sir.

Q. Then my next question was:

"229. Q. My question was whether it was signed by both of them or not? A. It was adequately assigned over. It might have been signed by both of them. You have the original I am quite sure."

You made those answers? A. Yes, sir.

Q. Who actually signed in the transfer of that to you? A. I can't tell you now, sir, but I looked at the document as to its adequacy and I was sure it was adequate.

Q. Who were present when you got it?

A. Mr. Pulkingham.

Q. And did he sign then and there or did he bring it to you already signed? A. I am not sure of that, sir.

Q. You are not sure of that? A. But I am sure that the option as I took it to Mr.McMaster on Saturday morning was an adequate option, adequately assigned over.

Q. It is nice to have your assurance, but it would be much better to have the facts. A. I am only saying that I assured myself, sir.

Q. All right; you have not assured us yet, if I may say so. A. That is true, sir.

Q. You don't know whether it was signed by Mr. Etherington as well or not? A. I am not going to swear to that now, sir.

Q. Well, look back at 224. I will just read

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it to you and then I will just ask you quite frankly if you have any other explanation to make:

"223. Q. Was there any formal assignment of that renewal in writing? A. On the face of the option?

224. Q. What did it say?"

HIS LORDSHIP: Just a moment. That was an answer, not a question.

MR. HEIGHINGTON: I beg your pardon?

HIS LORDSHIP: You read it as though it was a question.

MR. HEIGHINGTON: I went on, I am afraid, yes.

Q. Your answer was:

"On the face of the option."

And at 224:

"Q. What did it say?

A. 'We hereby personally assign and set over to Norman W. Byrne the option' or words to that effect."

A. Yes, sir.

Q. Was it "We hereby assign"? A. I think it was.

Q. You think it was? A. I am not sure.

Q. You are not sure; all right. What is your statement today as to book value being discussed or not -- just a minute, now; you don't know when yet, you know. A. All right, I am sorry.

Q. I am asking you particularly on the day of March 22nd when you saw the late Mr. McMaster, was the book value discussed that day? A. No, sir.

Q. You say no? A. I am quite sure it was not.

Q. I will refer you to another question:

"274. Q. Was the book value discussed then?

A. I don't think the book value was discussed as such."

A. That is right.

Q. You were not sure then at that time, apparently? A. I have been thinking about it.

Q. You have been thinking about it?

A. Mr. Heighington, may I put it this way---

Q. Any way you like. A. All right, sir, thank you. I was trying to help.

Q. On that same occasion was there any reference to Mr. Etherington of any kind? A. I think there was, because he brought up the cut, but not in that disparaging way that some of the examination went to.

Q. Well, I just want to know if you discussed the Etherington situation with Mr. McMaster or if you did not? A. Well, you are changing it, Mr. Heighington. You are saying did you discuss the Etherington situation now. For instance, on the examination, on Mr. McMaster's examination, he said that his father said that Etherington was building a new house. I have no recollection of that.

Q. You have no recollection of that?

A. I went out to Mr. McMaster's for one purpose.

Q. All right, now, never mind that. You have no recollection of that being discussed; is that the best statement you will give about it?
A. Etherington and Pulkingham came in because he brought that up.

Q. Just tell us exactly what was said about Etherington, if anything? A. Shall I say this: I originated nothing with regard to Pulkingham and Etherington.

Q. I am not interested in that, who originated it; I only want to know what was said. A. I don't recollect all that was said.

Q. You don't recollect. Do you recollect part of what was said, then? A. Well, if you will draw it to my attention I will confirm it, or whatever it is.

Q. I don't have to do that. You say you don't remember all that was said; I am asking you what part you do remember? A. I haven't it in my mind right now.

Q. You haven't it in your mind right now.

A. If you remind me I might help.

Q. What is your best recollection of it?

A. I haven't it in my mind right now, Mr. Heighington, I am sorry.

Q. You haven't it in your mind right now; that is the best you can tell us, is it? A. That is

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the best I can tell you.

Q. All right. I will read you 289:

"Q. Did you speak at all about the position you would be in in regard to Etherington and Pulkingham, if you had the option, if you took it up?

A. I would be a co-partner of theirs.

290. Q. We know the result, but did you speak of it?

A. I think so."

A. All right.

Q. You thought then that you did speak of your position; now you don't know? A. I am not going to argue on that.

Q. Well, which is it? A. Well, I am not arguing with it.

Q. All right, then, you accept that answer?

A. All right, yes.

Q. I will go on:

"291. Q. What did you say?"

You made this answer to me:

"A. To the effect that I was coming into their picture, that I could get along with them and he couldn't."

A. That is right.

Q. You did say that? A. Well, it is the truth, anyway.

Q. I am not asking you that. A. I certainly said it; it is in the examination.

Q. You did not recollect it just a little while ago? A. That is right, sir.

Q. All right. Now, was there anything further said about Mr. Etherington's stock on that day?

A. Well, to get out of there -- I don't know. What is in the examination is. I haven't charged my mind with the examination.

Q. We are not discussing the examination, witness; I am just asking you what was further, if anything, said about Mr. Etherington's stock? A. Well, I am not as omniscient as that, I am sorry.

Q. You don't know whether it was discussed or not?

A. On the examination?

Q. No, no; on the day when Mr. McMaster and you were face to face? A. As to me going out to buy Etherington's stock behind his back? No, sir, I never said any such thing, nor would I, nor had I the opportunity.

Q. I will just read you 292 and see if you want to make any different answer:

"292. Q. Did you say anything about your prospective acquisition of Etherington's stock?

A. It might have been.

293. Q. Did you? A. I can't recollect it."

A. All right, and then you go on in the examination to develop this thing.

MR. MASON: Just answer the questions, Mr.Byrne.

THE WITNESS: I am sorry, sir. He gets my goat.

MR. HEIGHINGTON: Q. You are saying positively to his lordship right now that you did not do it at all, and I read you the three questions. You say, "It might have been. I can't recollect." Those were your answers? A. I said that I had not gone out to get Mr. Etherington's stock behind his back.

Q. Did you go out in the open or any other way?

A. No, sir.

Q. Was it discussed about your getting it at all? What is your answer today? A. Not as to going out and getting his stock that way.

Q. Any way? A. No, nor anywhere.

Q. You made these answers I have just read to you, did you not? A. They are in the examination, sir.

Q. "Q. Did you say anything about your prospective acquisition of Etherington's stock?
A. It might have been."

A. Well, all right, it might have been. Then you develop the other piece, Mr. Heighington, and I certainly -- that was leading into this other piece, and I certainly had nothing to do with that.

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Q. I am just asking you if you made the answer to 292, "It might have been"? A. It might have been.

Q. You made the answer, that answer, then?

A. Yes, sir; it is in the examination.

Q. And then 293, I have it down here:

"Q. Did you? A. I can't recollect it."

A. That is true too.

Q. That is what you said then? A. That is true.

Q. All right, all right. I want to discuss with you a little bit some of the work that you did for the late Mr. McMaster. You say it was practically all confined to what is stated in your bill of costs?

A. And the house, which you will find is settled with the letter.

Q. Practically all: I said practically all?

A. Right.

Q. One of the other things that is not in there is the house; we all know about that? A. Let us go back. Just now you said that I did act for him as his solicitor?

Q. Yes. A. Yes; all right, I just wanted to make sure.

Q. And the other thing was the house, and I think it is common ground about the wrench; you acted in that too? A. Sir?

Q. You acted in the proposed patent for the wrench; we have the letter; it has gone in.

A. I didn't get to acting. I wrote a letter of inquiry and sent the letter to Mr. McMaster. He did not go on with it.

Q. Your letter says, "on behalf of our client"?

A. Our hoped-for client, if you like.

Q. Well, your letter is in. A. Well, I was hoping it was going to---

Q. "On behalf of our client" is what you said?

A. That is right, sir.

Q. All right. You were down at the factory on one occasion, you say. We have been told about two, but you have only admitted one; that is right, isn't it?

A. I think that is right.

Q. Mr. Bob McMaster saw you there? A. He was out at the furnace.

Q. He said he saw you there and heard you discussing Carleton Securities with his father.

A. Wait a minute; I don't think Bob said any such thing.

Q. Well, we will have it turned up.

A. I don't think Bob said any such thing.

Q. Well, anyway, did you have any discussion with him at that time about Carleton Securities when you were in the factory on that day? A. My recollection was that Bob said I talked to him about help. Now, I may be wrong.

Q. I am asking you as a fact, did you discuss it with Mr. McMaster? A. What?

Q. Anything about Carleton Securities?

A. With Robert?

Q. With the late Mr. McMaster? A. Not to my recollection, sir.

Q. Not to your recollection? A. No, sir.

Q. Now, we have been told about a great many visits to your office, as many as twenty times in one year.

A. I heard that.

Q. The year was 1945.

MR. MASON: Oh, no.

MR. HEIGHINGTON: Was it not? I withdraw it, then.

HIS LORDSHIP: No, I think she did not put it.

THE WITNESS: I don't think she put it just that way.

MR. HEIGHINGTON: Q. All right. What would those be about? A. I said that that was grossly exaggerated, Mr. Heighington.

Q. The number of times? A. Yes.

Q. Yes, you did; but he was there a certain number of times; on any of those occasions was Carleton Securities discussed? A. No, sir, I would not think so. If they were discussed they were discussed with me as secretary of Sovereign Potters.

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Q. I didn't ask you that. I think you told me on your examination -- I don't want to have to turn it up -- that you did have discussions with him about his position in Carleton Securities? A. That is right, as secretary of Sovereign Potters.

Q. I don't care in what capacity you care to ascribe it. A. Well, all right.

Q. You won't have to decide that, nor will I.

A. I am sorry, sir.

Q. He did discuss the Carleton Securities with you on several occasions? A. As secretary of Sovereign Potters.

Q. We had that before. I will put it this way: Did you discuss the affairs of McMaster Potteries with him, various matters at various times? A. He came in in the first place as to -- after he had been going out there for quite a-while, and was worried about how much his estate was going to pay in succession duty.

Q. Yes, we had that; that is all in your bill.

Q. All right, sir.

Q. I am asking you if you discussed other matters of the McMaster Potteries which are not recorded in your bill? A. There might have been a few.

Q. There might have been a few? A. Very few, and very inconsequential -- early in the game when he was just getting under way.

Q. We have been told, you know, that he turned to you quite often about things that came up at the factory; you are not denying it, are you? A. Early in the game, sure.

Q. You told me, as a matter of fact, on discovery right here--- A. That is right.

Q. ---that those things happened, you said?

A. That is right.

Q. He did call you up about various things?

A. They had happened. I am not going to stand here and say he never came in. I can't put my finger on them.

Q. We had a statement, I think, this morning only that on the occasion of the paying over of the money nothing whatever was said about keeping

the money in a safety deposit box and not depositing it in the bank?

A. No, sir.

Q. You are repeating that, are you? A. I have no recollection of any comment being made. My recollection was, I went out, paid him the stock; I was not there very long.

Q. We will deal with the matter of your recollection. If you don't recollect, are you prepared to contradict a witness who has said that it was done, was said?

A. Was said about what, sir?

Q. Just exactly what I said, that the money was not to be deposited but to be put in a safety deposit box? A. That is not true.

Q. That is not true? A. No, sir.

Q. When I asked you a moment ago you said you simply did not recollect; which is it? A. Well, I didn't get your question, I guess. You get me all excited, Mr. Heighington.

Q. Not at all, not at all; just follow, please. You are positive today, but I am going to call your attention to what you said before on the matter at question 344:

"Q. Was there any discussion about what should be done with the money? Did you make some request in how the money was to be dealt with by Mr. McMaster?

A. I don't recollect it. Bob took the money to the bank."

A. Right.

Q. You did not recollect then; is your recollection better today? A. Well, now, Mr. Heighington, if you will go on there and see what you were developing then, it gives a different complex altogether.

Q. Your counsel will be able to look after it, I should imagine. A. All right; maybe I am too much on the---

Q. You simply said you did not recollect it on that occasion. A. Bob took the money to the bank.

Q. We know that; but on the 31st of October, 1949, you did not recollect, you said. A. And I

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might say that that particular day I was eulogized to the high heavens as the only gentleman in the crowd and so on.

MR. MASON: Never mind. Answer the questions.

MR. HEIGHINGTON: Q. Your recollection now is positive that you did not say it? A. I certainly made no comment about hiding the transaction.

Q. Did you say the money was to be deposited in a safety deposit box? A. No, sir.

Q. And not put in the bank? A. I was not interested in McMaster's money.

Q. You did not say it. What makes your recollection better now than it was then? A. Well, you asked a broad vague question, and I said, "I don't recollect," but when you typified it down to something of telling him to hide the money, hide the deal from Etherington, I certainly knew I did not say that. Your first question there was a very broad question. You give no intimation at that time of what you were driving at, but when you brought up what you were driving at, and that was a concealment from Etherington, I certainly knew I did not do anything like that, and told you so.

Q. Well, we have heard you. We will just go on to another question, 346, which is a little more definite than the other:

"Q. Was there any discussion as to whether the money should be deposited, or what should be done with it? Was there a special record" --

that means "request" --

"by you in regard thereto?"

And again you say:

"I can't recollect it."

A. All right, in a big, broad, wide question like that, no, but when you come along in about five questions later that I wanted it concealed, I certainly did not want it concealed.

Q. I am just asking you whether there was any discussion about what was done with the money. I have given you the question; did you make the answer?

A. All right.

Q. You made the answer, "I can't recollect it," in answer to question 346? A. Well, I couldn't

recollect the broad general thing, but I certainly could recollect that no question---

Q. I will read it again, then:

"346. Q. Was there any discussion as to whether the money should be deposited," -- one -- "or what should be done with it?" -- two -- "Was there a special request by you in regard thereto?" -- three.

"A. I can't recollect it."

A. All right, then, you developed the thing about that I was hiding the money.

MR. MASON: Please don't argue. Just answer the question.

HIS LORDSHIP: Just answer the question, Mr. Byrne.

THE WITNESS: I am sorry.

MR. HEIGHINGTON: Q. What is your recollection about those three things now? A. Well, in connection with hiding the money. no.

Q. Just those three things.

MR. MASON: My friend should read 348, my lord, if he wants to be fair.

MR. HEIGHINGTON: I am coming right down to it. This I think stands fairly on its own basis, my lord, for the moment.

Q. You made that answer. "I can't recollect," in answer to that question, anyway? A. It is in the examination, sir.

Q. I know; you made it, then? A. Yes, sir. It is in the examination.

Q. Then I say at 347:

"347. Q. Perhaps I can help you. Do you remember what was said by you? The suggestion was made, I am told, it should not be deposited in a bank account. It should be kept in a safety deposit, or something of that kind. You didn't wish it in the bank, and you didn't wish it known? A." -- again -- "I can't recollect that."

A. Right.

Q. You made that answer. A. Yes. It is in the examination.

Q. 348 -- I thought I was very fair in developing it there. My friend has talked about 348. I asked you there:

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"Q. Can you say you made no request that the money should not be" --

Then you interrupted there and answered at once, saying:

"I don't see why I should make such a request. I can't recollect it at all. I simply took the money out, and took the stock, and Bob went on his way with the money, and I went on my way with the stock."

A. And that, Mr. Heighington, is the answer to the whole thing. I simply took the money and Bob went on his way. That is the answer.

Q. You see, Mr. Byrne, as a lawyer, you are arguing with yourself -- "I don't see why I should make such a request". A. Well, I didn't; and then when it became apparent why you were - what you were trying to slide in there, then I knew what you were talking about.

Q. I will turn to something else. Now, we have it down here that you said you got your first intimation about the proposed English sale in January?

A. I rather think so, yes, the time I was talking---

Q. We have it down positively as January. What was it? What was it, anyway? A. Just the fact that there was a possibility of an English sale, that is all.

Q. At what price? A. There wasn't a price. It was a million and a half that had been mentioned in the letter to Mr. Johnson, but in January there was no price fixed. The million and a half was fixed as Mr. Robinson said yesterday, suggested as a price, but there was no price fixed.

Q. We won't put it any more. You knew of the suggested price? A. All right.

Q. Had you had any details other than the suggested price? A. Well, if they were they were trivial.

Q. You knew who it was, though; you knew it was Johnson? A. I don't think I did in January. I am not sure of that either, but my recollection is that I didn't know.

Q. You wrote on March 6th that you had been asked to appoint a solicitor for them, so you must ---

A. That is right, I knew then.

Q. Did you know that Mr.Johnson had been out to the plant? A. No, sir.

Q. In the fall of 1946? A. No, sir.

Q. You did not know that? A. No, sir.

Q. And it appears from the exhibits that another representative came out in January; you knew about that, I suppose? A. No, sir.

Q. You did not know about that either?

A. Not at the time, no, sir. I knew that when Mr. Pulkingham and I were going to see Mr.---

Q. From whom did you hear---

HIS LORDSHIP: Q. Mr. Foulds? A. Mr. Foulds.

MR. HEIGHINGTON: Q. ---what you did hear the first time in January? A. Mr. Pulkingham.

Q. And what did he tell you? A. Just that. I was talking to Mr. Marsales, and I don't know whether he categorized it as a Johnson deal or an English deal.

Q. You were talking to Mr. Marsales? A. Yes, about buying his stock, somewhere early in the year there.

Q. That was the first time you had ever heard about the English deal at all? A. That is right, in connection with talking to Mr. Marsales.

Q. I thought you said Mr. Pulkingham told you just a moment ago? A. He did, he did.

Q. Was he there with you when you were interviewing Mr. Marsales? A. No.

Q. Which was the first that told you, then?

A. Well, I think I told Mr. Pulkingham that Barney didn't want to go into the pool, at least he would rather if he could sell his stock and everybody would be happy, and then he came out with -- I don't know whether he called it an English deal or mentioned the name Johnson. I always called it the English deal; I may have been wrong.

Q. I only want to know whether you got the information about the English deal when you were talking to Mr.Marsales or whether you already had it?

A. I think I told Mr.Marsales about the English deal.

Q. You told him about it? A. I think so.

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Q. In January is the best thing you can give us, is it? A. Yes, sir.

Q. My friend put in a sample form of some agreement that had been made in regard to the profits on the shares in Sovereign Potters owned by Carleton Securities.

A. You mean that secondary -- yes, I know what you are talking about.

Q. And you wrote a letter to Mr.Marsales about that too, didn't you? A. Yes, sir.

Q. I will just read it to you. It is Exhibit 26, April 10, 1947:

"Dear Mr.Marsales:

If the proposals under discussion with Mr. Johnson proceed to conclusion a purchase of Carleton Securities Limited shares by Mr.Johnson will be a part of the transaction."

That is right; you wrote that? That was your opinion?

A. Well, let me have my copy there: I can follow better.

Q. Well, I am reading to you.

MR. MASON: It would save a lot of time.

MR. HEIGHINGTON: Q. The first paragraph which I have just read, that was your statement; you believed it to be true? A. Yes.

Q. In fact, didn't you tell me, you always considered that was part of the deal? The acquisition of the shares of Carleton Securities was always part of the deal; they could not get control without it; you told me that yourself? A. Oh, yes.

Q. In fact, you were the one that cleared up the situation when Johnsons were asking to buy the actual shares which formed part of the portfolio, you were the one that pointed out that that could not be done because of the tax incidence, weren't you? A. I think Mr. Foulds was the one.

Q. Well, anyway, it was pointed out that that could not be done that way, but it was always understood that you had to get the Carleton shares themselves so as to have control by the company, otherwise they would--- A. Well, Carleton was a factor in the thing, certainly.

Q. In other words, they were not buying fifty per cent at any time from the pool? A. Oh, no; Carleton was a factor in it.

Q. They had to have them both, but they were trying to get it the wrong way? A. I don't just follow you there, but certainly Carleton was a factor in it. You see, they brought in two or three---

Q. It would always be part of the transaction; that is correct? A. Carleton would always be part of the transaction.

Q. All right. Then you go on to discuss this:

"Early in the history of Sovereign Potters, Limited upon the occasion of additional financing being provided to the Company, some of the subscribing shareholders obtained a commitment, either from Carleton Securities Limited or Messrs. Pulkingham, Etherington and McMaster whereby these shareholders namely,

Concrete Pipe Limited
Canadian Engineering & Contracting Co., Limited
Walton & Magee Limited
B. R. Marsales

would receive the dividends, etc. but not the voting rights on 500 shares of Sovereign Potters, Limited held by Carleton Securities Limited.

The writer was informed by the late John E. Russell" --

Were you informed in Mr.Russell's lifetime?

A. In his lifetime. It came up, after---

Q. Just tell me, did Mr. Russell inform you himself? A. Yes.

Q. He is dead now, isn't he? A. Yes, sir.

Q. He informed you in his lifetime? A. It was in a discussion, yes, and he said that they had handed those over, that he had seen that they handed them over.

Q. Mr. Russell told you that? A. Yes.

Q. I am just saying, that is a correct statement?

A. Yes.

Q. -- "that some of the shareholders voluntarily relinquished these rights and destroyed the documents and it is probable that no actual legal estate is outstanding under the procedure.

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The incident, however, is known and has been disclosed to Mr. Johnson and must be properly cleared before any transaction can be consummated."

When was that disclosed to Mr.Johnson, do you know?

A. Mr. Foulds.

Q. Mr. Foulds -- I suppose the same thing.

"A form of release has been drawn and is enclosed herewith. Will you please have it duly executed under seal so that if the transaction is closed there will be definite evidence of clearance?"

A. Yes, sir.

Q. Mr.Marsales gave that, did he not? A. Eh?

Q. Mr. Marsales gave it? A. Gave what?

Q. Gave the release that you asked for?

A. I don't think he gave it to me.

Q. But ultimately it was obtained? A. Yes, sir.

Q. And the other three gave theirs too?

A. Yes, sir.

Q. And no money was paid to any of them?

A. That is true.

Q. I want to ask another question about this last exhibit. I see you say in your letter to Mr. Marsales that it might be of doubtful legality whether it ever bound the company at all, and you may be correct. because I see---

MR MASON: That is not quite what he said.

HIS LORDSHIP: In the letter you are speaking of? However, the letter speaks for itself.

MR HEIGHINGTON: Yes, I think so. If I am paraphrasing it incorrectly I am very sorry.

Q. But, anyway, you made some reference in your letter. What you actually said was this:

" . . . and it is probable that no actual legal estate is outstanding under the procedure."

What were you basing that statement on?

A. Well, it was pretty vague.

HIS LORDSHIP: Q. You mean the document was pretty vague? A. Yes, sir. You see, it was not done -- they just did that -- I didn't know about it when they were doing it, and afterwards it was

criticized, and Mr.Russell criticized the idea.

MR HEIGHINGTON: Q. I see it is signed by Mr. Pulkingham and Mr.Etherington as President and Treasurer, but there is no corporate seal on it?

A. I think that is right.

Q. Do you know if they held that office at that time? You were the secretary then, according to the Parliament Buildings. A. According to the Parliament Buildings, and he was, according to what they were doing.

Q. Do you know if there was any meeting of the directors of Carleton Securities about it at all?

A. I don't know, sir.

Q. You don't know? A. I have told you honestly, Mr. Heighington, I never had anything to do with Carleton Securities.

Q. You simply don't know? A. Mr.Heighington, this was a cloud on title; that is why I brought it up.

Q. Well, I think you were quite proper to do that. A letter that you produced to Mason Foulds, March 31, 1947, I haven't got the exhibit number of it -- Exhibit 27. A. 27.

Q. You say:

"Dear Mr. Foulds:

The directors of Sovereign Potters have passed an authority to give you sufficient information to answer Mr.Johnson's enquiries at the discretion of the President and Secretary, and to communicate any price offer made by Mr. Johnson or Mr.Foulds to the shareholders."

When was that meeting held? A. I think that is the one that was held either the 27th or the 28th of March.

Q. And you were the solicitor and the secretary of Sovereign Potters Limited? A. Well, I was secretary, anyway.

Q. Well, you said you were the solicitor and prized the connection and all that to me several times?

A. I was acting as secretary.

Q. You said several times that you were the solicitor at all times of Sovereign Potters; do you want to take it back? A. All right, on this occasion let us say that I was acting as secretary.

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I don't know that that is necessary, but let us say it.

Q. No, I wouldn't think so. However, you were acting as the secretary. Have you got the notice calling the meeting? A. Don't forget, I did not write this letter as secretary. This is a letter from me.

Q. It is a letter from you; you are making a statement about the directors of Sovereign Potters having passed an authority? A. Right.

Q. I am asking you, as secretary of the company, for the notice calling the meeting? A. I haven't got it.

Q. Was there one? You were the secretary.

A. I don't know.

Q. You don't know whether there was or not?

A. I know there was a meeting.

Q. Were all the directors present? A. I don't know that either.

Q. You don't know that. Would it help you to make the statement that the directors passed?

A. Well, I knew when I wrote the letter what was going on. This is a long time since I wrote the letter.

Q. At that time you had satisfied yourself that it was a properly, regularly constituted meeting of directors? A. Yes, sir.

Q. Had you? A. Yes, sir.

Q. How did you satisfy yourself? A. Ordinary directors' meeting.

Q. Did you look up and see if the notices had been sent out calling the meeting in accordance with the by-laws? A. I don't think I did.

Q. I don't think so either. What directors actually were present? Can you tell us that? A. No.

Q. On what information are you making the statement, "The directors have passed"? Had you seen the minute book? A. Have I seen it?

Q. Had you seen it at that time, when you wrote that letter? A. Well, I doubt if the minutes would have been in on March 31st.

Q. Have you got any notes of the minutes of that meeting? A. No, sir.

Q. You haven't notes of the minutes of---

A. I knew what was going on; I was at the meeting.

Q. I am asking you, have you any notes of the minutes of that meeting? A. No, sir.

Q. And I am commenting that you have notes of minutes of other meetings, do you see? A. Now, wait a minute.

Q. You produced some? A. Wait a minute, Mr. Heighington. I have notes of -- it was not a shareholders' meeting, it was a meeting of people who were shareholders, and I was one of the people interested and I took my notes and kept them. Those are not company notes, those are my notes that I kept.

Q. And as secretary of the company do you take notes of the minutes of meetings? A. Yes.

Q. Which are held? A. They are probably in the minute book. You called Mr. Pulkingham to produce the minute book.

Q. I am just asking you if you took notes?

A. The minutes are very likely in the minute book.

Q. Very likely they are, but I am asking you about the notes that were taken by the secretary, as is usual, so that they can be later transcribed into a minute book? Q. And transcribed and then what?

Q. I am just asking for the notes, if the secretary made any notes at that time; did you or did you not? A. I don't even know whether I took notes. I wrote my minutes up, and they are probably in the minute book.

Q. You don't know whether you took any notes or not. Can you tell me what directors were---

A. I am not going to say whether I did or I didn't.

Q. All right. Can you tell me what directors were present, then? A. No.

Q. Then you have really no basis upon which you can make the statement today that the directors of Sovereign have passed an authority? A. I am not writing the letter today.

Q. Beg pardon? A. I am not writing the letter today.

Q. Well, we are acting on the information that you have. You cannot say today that it was a

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properly constituted directors' meeting? A. I suppose technically I can't. The letter is there. The deal is over.

Q. Yesterday I am told that you made a statement that the authority here referred to in the first paragraph of this letter was given by those who were interested in selling their shares. A. What's that?

Q. You said yesterday that this consent which you refer to in paragraph 1 of the letter of March 31st, "The directors of Sovereign Potters have passed an authority," -- you say that was given by those who were interested in selling the shares? A. I don't follow you.

MR MASON: I question the accuracy of my friend's suggestion.

THE WITNESS: I don't follow you at all.

MR HEIGHINGTON: I was just asking about it, Mr. Mason.

MR MASON: Well, let us be clear.

MR HEIGHINGTON: I have it down here, "Consent given for those interested in selling the shares." That note was made in connection with the permission to inspect the books and so on referred to in paragraph 1, as I understand it.

THE WITNESS: You will have to clarify that for me, sir.

MR HEIGHINGTON: Q. Did you make any statement at all? We are going to have it turned up if necessary.

A. Well, let us have it turned up, then.

Q. All right, then. Perhaps, my lord, it is of sufficient importance to find out if that permission was ever given. You remember Mr.Robinson complained that the books had been looked at without the permission of the directors, in his evidence, and I am trying to find out whether it was ever properly authorized.

MR MASON: That is not what you are saying to the witness now.

MR HEIGHINGTON: I am giving his lordship a reason for asking for permission to trouble Mr. Dickson to look up the matter, if we might adjourn.

HIS LORDSHIP: Well, I don't know whether it is important or not, but if you wish to have it---

MR HEIGHINGTON: I would like to have it cleared up if I might, my lord.

HIS LORDSHIP: He said, "Directors authorized to give Johnson figures; up to that time no authority from directors to give the figures." I do not know just what the exact words used were.

MR HEIGHINGTON: Just subsequent to that -- I don't know whether your lordship had a note about it; it is following that.

HIS LORDSHIP: His evidence was that after that authority the letter of March 31st to Mason & Company to give the information was written.

MR HEIGHINGTON: May I ask your lordship if I may have it looked up?

HIS LORDSHIP: Yes.

MR HEIGHINGTON: It is in Mr.Byrne's evidence just after the reference to the letter of March 31st, Exhibit 27, just after Exhibit 27. Might I break off now, my lord?

HIS LORDSHIP: Are you suggesting that we adjourn?

MR HEIGHINGTON: Yes. I do not want to break the sequence of it, and it may take Mr. Dickson a little time out of his usual allotted span to look it up -- if we might adjourn now.

HIS LORDSHIP: Very well, adjourn to two-thirty.
---Whereupon the Court adjourned at 12:55 p.m. until 2:30 p.m.

---Upon resuming at 2:30 p.m.:

NORMAN W. BYRNE, K.C., Recalled.

MR HEIGHINGTON: My lord, Mr. Dickson has kindly looked up the question to which I was referring and the answer of the witness. The statement was:

> "Sovereign Potters, however, had to give the consent to look at their books, which it did, on behalf of the shareholders who were interested in selling their shares."

CROSS-EXAMINATION Continued by MR HEIGHINGTON:

Q. That is very much as I put it to you this morning. Now, who were the shareholders who were interested in selling their shares? A. At that time Carleton Securities, I think Mr. Marsales would say that he was, I think Mr.MacKay, J.J.Mac Kay, would say that he was, and perhaps some more.

Q. Well, it was given on behalf of those who were interested in selling their shares, is what I was asking you this morning? A. Yes, sir.

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Q. Now, I was also asking you about your connection with Carleton Securities, of which you said you had never been the secretary? A. Not to my knowledge.

Q. Well, the witness is here from the Department who brought me the original returns. I am going to show them to you and see what you have to say. Now, just a minute, please. They will be shown to you one at a time. A. All right, sir.

Q. And your attention called to certain aspects of them. A. All right, sir.

Q. This is the return for the year 1942. You will see that your name is printed in type on the front there -- Secretary, N.W.Byrne? A. Yes.

Q. And you see the affidavit is sworn by Mr. Pulkingham at the City of Hamilton on the 19th of May before you; is that your signature? A. Yes, sir.

Q. So you swore a return on that day that you were the Secretary? A. No, I did not; Mr.Pulkingham swore a return that I was secretary.

Q. You signed it; you took his affidavit?

A. Yes, sir.

Q. You took his affidavit to that effect?

A. Yes, sir.

Q. Well, do you think Mr.Pulkingham would swear to something that was not true? A. I don't know.

Q. You don't know; all right. Then look at this return for 1941.

HIS LORDSHIP: What year was that, Mr.Heighington?

MR HEIGHINGTON: 1942.

Q. And 1941 again, you see your name appearing?

A. The same thing, sir.

Q. Also sworn before you by Mr. Pulkingham?

A. Yes, sir.

Q. And this time on the 21st of May, 1941?

A. Yes, sir.

Q. Then '40? A. That is right.

Q. And that is also sworn before you by Mr. Pulkingham, is it not? A. Yes, sir.

Q. And '38? A. The same thing.

Q. The same thing. You swore that too, on the 14th of June, 1938? A. Yes, sir.

Q. And here is '37? A. The same thing.

Q. Well, is that your handwriting, though? A. No.

Q. That is not your handwriting? A. No, sir.

Q. Your own name there? A. No, sir.

Q. Number two, secretary? A. No, sir.

Q. It is not. This is sworn by Mr. Etherington? A. Yes.

Q. Do you recognize his signature? A. I imagine it is.

Q. Well--- A. The affidavit was sworn by my partner, Mr. Dixon.

Q. Sworn by your partner, Mr. Dixon, in that case, yes. And '36? A. The same thing.

Q. And that is sworn by Mr. Dixon? A. Again sworn by Mr. Dixon.

Q. Before Mr. Dixon, by Mr.Etherington?

A. That is right.

Q. Mr. Etherington made that affidavit before E.M.Rice? A. I don't recognize that one.

Q. You don't recognize that one; but you recognize that it is a return? A. The same form.

Q. The same form? A. Yes, sir.

Q. I am not particular about the name of the commissioner. A. That is right.

Q. And in '44 you are still shown? A. That is right.

Q. That is Mr. Etherington's affidavit again?

A. That is Rice again.

Q. Yes, that is Rice again; the commissioner is Rice. And in '45? A. Yes, the same thing.

Q. The same thing; Mr. Etherington's affidavit? A. Again in front of Mr. Rice -- wait a minute. That may be Miss Rice down at the Parliament Buildings.

Q. Well, it is a commissioner, that is all?

A. Yes. There is a Miss Rice in the Parliament Buildings.

Q. I think you are correct. Well, she says she is a commissioner, anyway; no doubt she is; we are not going to dispute that, you or I. And '46 you are still shown? A. The same thing.

Q. Mr.Etherington's affidavit? A. That is right.

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Q. '47 the same? A. Yes, sir.

Q. And then here is the letter in '48 that I was speaking to you about this morning -- letter of Byrne & Dixon, April 2, 1948, to the Companies Branch, Provincial Building? A. Yes.

Q. "Will you please change Carleton Securities, Limited, c/o Byrne & Dixon, Bruce Building, Hamilton, to c/o W.J.Pulkingham, Sovereign Potters, Limited, 282 Sherman Ave. North, Hamilton Ontario, as we have no further connection with the said company."

A. That is after Johnsons had bought us.

Q. Now, I was asking you about the fee; did you look that up at noon? A. I didn't get a chance, sir.

Q. You didn't get a chance? A. Probably right in there.

Q. Well, there is a letter I will just ask you about. Perhaps it may help you to answer the question without any further trouble.

HIS LORDSHIP: Are you putting any of that in, Mr. Heighington?

MR HEIGHINGTON: I am afraid I can't, my lord. The Department official is here with the originals and he has to take them back, but we have sufficient admissions, I think, of the facts. I could formally have them produced, my lord; I do not think it is necessary. He has to take them back with him.

HIS LORDSHIP: I have not got a complete note of the letters.

MR HEIGHINGTON: Only one letter I have referred to, my lord.

HIS LORDSHIP: Well, you are going to refer to another?

MR HEIGHINGTON: One more, that is all. I am just looking at it.

Q. I am showing you what purports to be a letter from your firm. It looks like your signature to me; I am pretty familiar with it now. July 25, 1935? A. Yes, sir.

Q. Correct? A. Yes.

Q. "Provincial Secretary, Parliament Buildings, Toronto."

A. "We enclose herewith application for changing name of Carleton Fruit Farms, Limited, to

Carleton Securities, Limited, as mentioned to Miss Pridom some time ago. There has been some delay in getting funds in this matter and we now enclose our cheque for $25.00. N.W.Byrne."

Q. Can you tell us whether you paid that yourself? You said you had some trouble getting the funds; from whom did you get them? A. The suggestion is that the funds came in.

Q. Well, I would like to know who paid it.

A. I am afraid I can't answer that, sir.

Q. Well, you will try and find out for me, will you, and let your counsel know? A. I will find out for you.

Q. I think we will all be glad to accept whatever Mr.Mason says after you have reported on it to him. A. All right, sir.

Q. I see that actually before the name was changed at all Mr.McMaster was one of the directors of Carleton Fruit Farms too? A. That is it. I turned over the company to them and then they swapped it.

Q. W.G.Pulkingham -- may I just read this, and you tell me if it is correct:

"We the undersigned, being all the shareholders of Carleton Fruit Farms, Limited, hereby waive notice of a meeting of the shareholders of the said company to be held to confirm the foregoing by-law No.7,"

and so on; signatures, W.G.Pulkingham, H.J.McMaster, A.E.Etherington? A. That is right, sir. Do you want to add the date?

Q. The 1st of February, 1935.

HIS LORDSHIP: Who are those mentioned again, Mr.Heighington?

MR HEIGHINGTON: The names?

HIS LORDSHIP: Yes.

MR HEIGHINGTON: The original three, Mr. W. G. Pulkingham, H.J.McMaster and A.E.Etherington. I did not read all the waiver. It says "being all the shareholders of the Carleton Fruit Farms", and that was done on the 1st of February, 1935, and it is agreed between Mr.Byrne and myself that shortly thereafter he had the name changed to Carleton Securities.

THE WITNESS: That is right, sir.

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MR HEIGHINGTON: For the same people; and he is going to let me know who paid the fee.

THE WITNESS: Right.

MR HEIGHINGTON: Q. The late Mr.McMaster's will is an exhibit here, and we have it that you drew it; you retained possession of that up until about July 1st, 1948, did you not? A. I might very well have; I am not sure on that.

Q. I am instructed--- A. I am not in a position to argue with you on that.

Q. Well, I want an admission. I want you to ascertain that. I am instructed on or about that date or early in July 1947---

HIS LORDSHIP: '47 or '48?

MR HEIGHINGTON: '47, my lord.

Q. After the July 1st business somebody came--

A. They came and took the will away.

Q. They came and took the will away, and a receipt was given? A. I think so, sir.

Q. Now, will you get the date of that receipt for us, or are you willing to admit it was shortly after the 1st of July? A. I can't argue about that, sir. They did come and get it.

Q. We have that fact, but that does not tell his lordship when, and it may be important. If you are not prepared to admit it was very shortly after the 1st of July I will have to ask you to get your receipt. A. All right, sir, I will have to agree to that. You see, our records were in the Bruce Building fire.

Q. You say it was shortly after the 1st of July then, do you? A. I will agree with that.

Q. Thank you. There is a letter of April 15th ---

A. May I have my book, sir?

Q. Certainly. You turn it up, Mr. Byrne -- letter of April 15th. A. They are in here chronologically. I do not have one of April 15th, sir; there is April 14th. What was the nature of it?

Q. Well, let me see. This is Exhibit 29, Mr. Byrne; it consists of a letter from you to Mr. Pulkingham, dated April 17, 1947. A. Yes.

Q. "Dear Bill:

> You and Al should complete this option and send the original on to Mr.Foulds."

Signed by you? A. Yes, sir.

Q. And Al, you told me, is Mr. Etherington?

A. Mr. Etherington.

Q. And the option itself reads as follows, addressed to E.James Johnson, c/o Johnson Brothers (Hanley) Limited, Stoke on Trent, England:

"As a part of a transaction whereby you or your firm will acquire control of Sovereign Potters, Limited through purchase of preference shares at $160.00 per share and common shares at $150.00 per share" --

When did you first get the information as to those prices? A. I am not absolutely sure.

Q. Can you give us any idea? A. I rather think that it was when Mr.Pulkingham and I were preparing for Mr.Foulds, but it may have been that I knew that before I went to Mr.McMaster. I think you will find in my examination that I said that it might have been talked on. Now, I am not just sure.

Q. Are you going to tell us now when you first found out about those prices? A I am saying I am not---

Q. You say you don't know? A. I am not certain.

Q. I asked you about that before, you know. I asked you:

"463. Q. When did he state that, the earliest on that? A. That would be some time along in there. That was April 17th.

464. Q. When did he state it?"

This is referring to Mr.Pulkingham.

A. I didn't catch the first part of that, Mr. Heighington, I am sorry.

Q. You were speaking of some information given to you by Mr. Pulkingham, and I asked you at question 463, "When did he state that?" -- that is, about this information contained in this letter of April 17th. And I said at 463:

"When did he state that, the earliest on that?"

Your answer was:

"That would be some time along in there. That was April 17th."

Then I say at 464:

"Q. When did he state it? A. It would be some time after the directors' meeting and before that letter. I imagine in the next couple of preceding days."

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A. I think that is right, but I think you will also find in the part of the conversation at McMaster's house that I was dubious as to whether it was -- I was not sure whether it was mentioned out there or not.

Q. I am just asking you about this reference in this document which you drew on the 17th of April. You give the prices of the shares, and you are saying, "I imagine in the next couple of preceding days and after the directors' meeting."

A. I think that is right.

Q. Now, when was the directors' meeting?

A. March 28th, I think.

Q. So that would not be in the couple of preceding days, would it? A. Couple of preceding days to the directors' meeting.

Q. To the directors' meeting? A. Yes, sir.

Q. Not to your interview with Mr.Pulkingham, you were not referring, then? I rather take it that you were trying to tell me there that you had only heard that a couple of days preceding to April 17th? A. Oh, no, sir, I did not say that.

Q. You are not saying that. Perhaps you are right, because, after all, in the letter of March 27th, that letter to the directors, you know, in paragraph 5 on the first page--- A. That is right.

Q. you speak of the same prices? A. That is right.

Q. So at least on the 27th of March you knew of them? A. That is right. Now, I am not sure whether it was just a couple of days before that that he told me about that. He divulged a lot just before we were going to see Mr. Foulds.

Q. Well, if you say you spoke about it on the 22nd, then you knew about it on the 22nd?

A. On the 27th.

Q. The 22nd, I thought you said you spoke to Mr.McMaster? A. I think I said that I did not know whether I spoke to Mr.McMaster; I thought that I did speak to Mr.McMaster.

Q. You are not able to say, then, whether you knew or whether you did not know then, on the 22nd? A. I am not sure, sir.

Q. But you certainly knew prior to the 27th?

A. Yes, sir.

Q. And it was not a few days before April 17th,

in any event? A. Well, if I gave that impression I did not intend to.

Q. I want to ask you if this question was put to you and if you made this answer:

"395. Q. You say 'It was my opinion that a satisfactory arrangement could be made'. Is that right?

A. Yes. I would never have taken up the option if I hadn't."

A. That is right.

Q. Now, on the 22nd you told us, I think -- correct me if I am wrong -- that you had some inquiries --

MR MASON: If my friend will permit me, just before he goes to a new subject, a reference to the matter my friend was asking about before, as to the price per share, is at 403, if my friend wishes to refer to it.

MR HEIGHINGTON: What is the date of that letter? It is the letter of March 27th. The witness has just made the same answer; I accepted it.

"402. Q. I see that exhibit" --

that is the one I just read to you of the 27th, you know, to the directors --

-- "mentions for the first time, that I see, the price of $150 per share? A. Yes.

403. Q. I suppose it had been discussed before or it wouldn't be in your letter? A. Just prior to that meeting, yes."

A. That is right.

Q. "Now, wait a minute. It was divulged by Mr. Pulkingham to me just prior to that meeting. He may have discussed that with Mr.Johnson just prior to that. It was discussed"---

A. Not Mr. Johnson.

Q. It says so:

"He may have discussed that with Mr.Johnson just prior to that. It was discussed with me just prior to the meeting with Mr. Foulds."

A. So. That is my impression.

Q. Anyway, it was discussed with you just prior to your meeting with Mr.Foulds? A. That is my impression.

Q. That is the answer you made. You asked the bank if they had legal tender? A. Sir?

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Q. You said that on the 22nd before going to see Mr.McMaster you asked--- A. On the 21st.

Q. On the 21st? A. On the 21st I asked the bank if they had---

Q. Oh, you asked the bank; I didn't say you went out on the 21st. A. They didn't have $30,000 legal tender, and I asked them to get it up. There is a letter there confirming that.

Q. I am not doubting it. A. I didn't mean that, sir.

Q. Did you take it with you? Did you get the legal tender? A. Yes.

Q. Did you do anything about it? A. Sure; I paid it to McMaster.

Q. On the 22nd? A. Oh, no. no; April 8th.

Q. Yes, I know that, but on the 21st I got the impression that you -- at least, on the 21st you said you had inquired from your bank, on the 21st, before going out the first time at all? A. Yes, sir, I ordered up the legal tender.

Q. Yes, but you did not take it with you on the 22nd when you did go? A. I am not sure. I am tempted to say yes, because I ordered it up -- maybe I didn't -- I went out to McMaster to see -- there is this about it: I did have it, and if he said, "I won't give you" -- the only thing I went out to see Mr.McMaster about was, could I get a little bit of time to look into this English deal.

Q. I just want to know whether you took the cash? A. That is when I went out. Now, the money was there. If he said, "You either take it this morning or you drop it," I would have come back and got the money and I would have taken it this morning.

Q. You might have had trouble with the bank, at eleven o'clock Saturday morning; however---

A. Well, apparently Mr.McMaster thought the same thing. There was no friction between us that morning. His stock was in the bank. It was more convenient. He had no reservations.

Q. I am just trying to find out one thing---

A. He had no reservations about giving me an extension; I thought he might.

Q. Don't talk at cross purposes, please. I say I did not understand from your evidence that when you had ordered legal tender from the bank, whether you took it out, and it is a simple question I am

just asking you, and I am waiting for the answer still. A. I am sorry; all right.

Q. What is the answer? A. I rather think I took it with me; I am not sure, but if I did not take it it was right available.

Q. I am not asking you for any reasons; I am just asking for facts. A. I am giving you them.

Q. Well, you are not, if I may say so.

"648. Q. It wasn't because he couldn't get the shares for thirty days? A. No, but it was Saturday morning.

649. Q. And you took the money with you?

A. I am willing to swear I had the money with me."

A. I think I did.

Q. "650. Q. You had the money with you then?

A. Yes."

A. And then read the next one.

Q. "651. Q. And you could have paid it if he had his shares then? A. Yes. I said, I am willing to pay the $30,000. if I have to."

A. That is it.

Q. But did you have the money? A. I think I did.

Q. Well, you swore positively there that you had. A. All right, I still think I did.

Q. You are saying you think today; which is it? A. I think I did have it with me.

Q. That is the best of your recollection?

A. Yes, sir.

Q. You can't go any stronger than that?

A. And I will say that if I didn't have it with me it was available within twenty minutes.

Q. I was not asking you for that at all. Now I am going to read to you some extracts from a paper that I have here, which purports to be a statement by the Ontario Security Commissioner:

> "In the matter of The Securities Act and in the matter of Bidgood Kirkland Lake Gold Mines Limited, and in the matter of certain options given by the directors of the company to A. L. Herbert, President, and Norman W.Byrne, Secretary-Treasurer of the company."

A. Yes, sir.

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Q. I am going to read you statements and you can say whether you agree with them or not.

MR MASON: I don't know, my lord. No idea what it is: it is not a production of my friend's.

MR HEIGHINGTON: Certainly not. It goes to credibility.

MR MASON: I don't know to what he is referring, and at the moment I submit that it is not evidence.

MR HEIGHINGTON: I am submitting, my lord -- I hope your lordship will allow me in cross-examination to at least develop what I intend as evidence which will assist your lordship on the question of credibility.

HIS LORDSHIP: Well, can you go outside the matter of relevancy?

MR HEIGHINGTON: Anything that goes to credibility, my lord.

MR MASON: I would like to see my friend's authority for that statement.

MR HEIGHINGTON: I would have thought that---

HIS LORDSHIP: I am not saying that you cannot. I am just raising the question, Mr.Heighington.

MR MASON: My lord, my friend is allowing me to interject this so as to let this young gentleman get away with these records from the Provincial Secretary's Department in Toronto. If my friend will agree with me, I will make a statement; if not, I will have to ask the witness to examine this.

The letter of April 2, 1948, is a letter to the Companies Branch from Byrne & Dixon per L.M.Trayner, with NWB in the lower left-hand corner, and it requests that a change be made from Carleton Securities Limited, c/c Byrne & Dixon, to c/o W.G. Pulkingham, Sovereign Potters Limited, and so on. I do not want to ask the witness about it until later; I merely want to say what is in this.

MR HEIGHINGTON: I have read it.

HIS LORDSHIP: Q. Who is Trayner? A. My secretary, sir.

MR MASON: And then, my lord, the file produced contains no other letter of any kind or communication from or to Mr.Byrne after the year 1935.

Do you agree with that?

MR HEIGHINGTON: There are not any letters to him, but there is just the return.

MR MASON: The only thing after 1935 are the returns, in which Mr.Byrne's name is set opposite the word "Secretary".

HIS LORDSHIP: You say no other letter or communication?

MR MASON: Yes, my lord.

HIS LORDSHIP: To or from?

MR MASON: To or from Mr. Byrne after 1935.

HIS LORDSHIP: I have not got that clear, Mr. Mason. The letter of April 2nd is signed by whom?

MR MASON: It is signed Byrne & Dixon per Miss Trayner.

MR HEIGHINGTON: There is just one thing my friend, and I can probably agree on; it is right in front of us here. There is a receipt on June 19, 1947:

> "Received from Carleton Securities Limited, c/o Byrne & Dixon, Hamilton, $13.00, annual returns, '43, '44, '45, '46 and '47."

That is the only other communication after that date, that is all. I am not making anything of it.

MR MASON: We will have it exact, so we will not dispute about it later. There is a yellow slip on which is typed:

> "June 19, 1947. Received from Carleton Securities Limited, c/o Byrne & Dixon, $13.00, annual returns"

for four years named as my friend has said, '43 to '47. Subject to that, the file may go back, unless your lordship wishes it.

HIS LORDSHIP: What is the date of that, '43-'47? May I see the file?

MR MASON: I will give your lordship that in a moment. It is June 19, 1947.

MR HEIGHINGTON: My lord, I would like just briefly to refer to what I hope is a correct statement, that in cross-examination I can bring out anything which goes to credibility, to show the witness not worthy of belief. The Canadian Encyclopaedic Digest, volume 4, page 690, under the heading "Object and Scope":

> "The witness may be asked, not only as to facts which are relevant to any proposition material to the case, but also as to facts which, though irrelevant for that purpose, are relevant

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as tending to impeach his credit as a witness" -- and the note is Note "(c)", and it quotes from Wigmore --

> "The object may be said to be, (1) to develop and bring out the remaining and qualifying circumstances of the subject of testimony, as known to the witness, and (2) to bring out facts which diminish and impeach the personal trustworthiness of the witness."

Again, at page 695:

> "In cross-examination, however, the rule was settled the other way, viz., that, with a view to impeaching the character or credit of a witness, he may be asked questions with regard to any crime, or other improper conduct, on his part."

Then we have in Phipson, my lord, in the sixth edition, at page 475:

> "With the above view, the witness may be asked not only as to facts in issue, or directly relevant thereto, but all questions which, though otherwise irrelevant, tend to impeach his credit in the manner provided" --

And that refers to page 477, as to the manner provided, and I am reading from that now:

> "CREDIT. The credit of a witness is compounded of his knowledge of the facts -- his disinterestedness -- his integrity -- his veracity. Proportioned to these is the degree of credit his testimony deserves from the Court . . ."

At page 478, at the top of the page:

> "In addition to the above facts, and subject to the qualifications mentioned below, a witness may, upon cross-examination, be asked any question concerning his antecedents, associations, or mode of life, which, although irrelevant to the issue, would be likely to discredit his testimony or degrade his character."

Your lordship, I am quite willing to submit the parts that I propose to read to your lordship to look at before reading them in court, if your lordship would---

HIS LORDSHIP: What do you say, Mr. Mason?

MR MASON: I submit in the first place, my lord, that if what my friend proposes to do is in any manner relevant to this litigation, he should have

produced this so as to give one an opportunity of dealing with it. My friend, seeking to introduce it at this stage, introduces a matter of which I have not the slightest knowledge, and as to which I might have to make some considerable inquiry. I submit in the first place it is very unfair that it should be done without my having that privilege.

Secondly, I submit that the authorities do not go quite as far as my friend has indicated. If my friend will lend me Phipson for a minute---

MR HEIGHINGTON: It is a later edition than yours.

MR MASON: That is why I want it.

MR HEIGHINGTON: The only limitation that I know, my lord, is that I cannot call a witness to contradict the witness being examined if it is on an irrelevant matter. I do not think he will contradict it; that is why I am going to ask it.

May I just say, too, while my friend is perusing, I do not produce material which is not relevant to the issues in the action, even if I am going to use them on cross-examination. I am only bound by the rules to produce all the relevant documents in the case, but I am not bound to produce matters irrelevant to the case but which may affect his credit. That is a matter of cross-examination, and we always have perhaps something up our sleeves, as it were, but we do not have to produce anything that is not relevant, and we do not even know that the man will ever be a witness. After all, the integrity and veracity of a witness are matters to be judged by the credibility, and his actions throughout his life are a matter for investigation. He has the privilege of making the answer; if it is not relevant I cannot contradict him.

MR. MASON: I have not had an opportunity of perusing my friend's edition at length, but I have before me the previous edition of Phipson, the fifth edition, and at page 232 it is stated:

> "Credibility of a witness depends upon his knowledge of the facts, his disinterestedness, his integrity, his veracity. In proportion to these is the degree of credit his testimony deserves from the court or jury."
>
> "Under this head questions may be put to the witness in order generally to elicit his means of knowledge, opportunities of observation, reasons for recollection or belief, and in special circumstances affecting his ability to speak to the particular case, to expose the

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errors, omissions, inconsistencies or improbabilities in his story as well as to prove his character, antecedents, associations and mode of life, while in particular the following matters may also be shown? Previous contradictory statements, bias, previous conviction, reputation for untruthfulness."

That is the limitation.

MR HEIGHINGTON: In a later edition, right after what my friend has read, is what I gave your lordship a moment ago, headed in large black type, at page 478:

"Antecedents, associations, character, etc. matters admissible.

In addition to the above facts, and subject to the qualifications mentioned below, a witness may, upon cross-examination, be asked any question concerning his antecedents, associations, or mode of life, which, although irrelevant to the issue, would be likely to discredit his testimony or degrade his character."

MR MASON: That would entitle my friend to ask Mr. Byrne as to his antecedents or his associations or his character. If my friend wants to do that, apparently he is within the rule. But my friend does not intend to do that; my friend intends to read, apparently, from some observations of a body which is not a court, certain matters which I don't know anything about, which apparently are intended to reflect on the credibility of the witness.

MR HEIGHINGTON: Just going to ask him certain-

MR MASON: I submit, my lord, that it is entirely unfair, without any notice, that such a thing should be attempted, to put counsel in the position where he cannot know anything about the matter and cannot really examine his witness or make any observation that is of any value to the Court as to the matters that are raised, because apparently that would involve an inquiry as to what was before the tribunal and upon what evidence the tribunal came to the conclusion, and it might be right or it might be wrong.

MR HEIGHINGTON: I am just going to ask him whether it is right or wrong. I have to take his answer.

HIS LORDSHIP: I do not think, Mr.Heighington, that you can read any finding or conclusion.

MR HEIGHINGTON: I am not doing that. I am just

going to say certain facts are printed on this statement -- that purports to be a statement; I am not proving it -- and ask him if the statement of fact is correct, about his own conduct, and nothing else, not any animadversions of the Court or anything of that kind; just exactly what was done.

HIS LORDSHIP: Isn't there an inference there regarding the printed remarks that you propose to read?

MR HEIGHINGTON: My lord, may I say I am not reading it any more. It is just a recital of facts, and asking this witness if those facts are correct, that is all. I am not reading, as I say, any remarks.

HIS LORDSHIP: No, but I thought you were reciting something that purports to be facts.

MR HEIGHINGTON: I am asking this witness if he agrees that the facts are correct, no matter what he did.

HIS LORDSHIP: Facts are something that are shown to be true.

MR HEIGHINGTON: By admission, my lord.

HIS LORDSHIP: Otherwise they are not facts.

MR HEIGHINGTON: Your lordship of course is correct; but if the witness admits that those facts are true, then your lordship has the evidence.

HIS LORDSHIP: As I say, to read something purporting to come from some formal document as facts, it seems to me, would be improper. It might be that you could ask the witness as to whether certain facts are true or whether certain things are facts.

MR HEIGHINGTON: All right, I will proceed that way, then.

MR MASON: My lord, with deference, I should like to make objection, because I am placed in an absolutely impossible position, by reason of not having any knowledge of the matter, not having had it brought to my attention by my friend at any time whatsoever, so that one is absolutely and completely in the dark.

HIS LORDSHIP: Mr. Mason, in cross-examination questions can be asked about matters affecting character, which naturally counsel would not know about, but that does not prevent them from being asked.

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MR MASON: Well, as to certain questions of that type I quite agree with your lordship, but these are matters that are arising, as my friend has said, before some other tribunal.

MR HEIGHINGTON: I am not putting---

MR MASON: I know my friend says, "I am not putting them," but my friend is using that as the basis for his questions.

MR HEIGHINGTON: I am just asking certain facts.

HIS LORDSHIP: Because he uses something as a basis for questions, I don't know that that is a reason for ruling it out. I do not think that would necessarily rule it out, Mr. Mason.

MR MASON: My lord, I have not had the opportunity, of course, of knowing what my friend was going to do, and I have only on the spur of the moment been able to place before your lordship some authority, and all I can do is respectfully ask that this be excluded, and if it is to be included ask your lordship to take it subject to my objection.

HIS LORDSHIP: Yes, Mr. Mason.

MR HEIGHINGTON: Q. Mr. Byrne, were you the Secretary-Treasurer of the Bidgood Kirkland Gold Mines Limited? A. At one time.

Q. Were you in December 1934? A. You have got me at a bit of a disadvantage there; that is a long time ago.

Q. Do you remember calling on the Commissioner for the Ontario Securities Commission and informing him that the company had debts amounting to approximately sixty thousand, and that creditors were pressing their claims, and that the company was without finances to continue its development? A. I cannot remember that specifically. I remember the Bidgood incident.

Q. Did you not, as a matter of fact, make some application to the Court under the Creditors Arrangement Act? A. I believe there was.

Q. January 1945; is this correct: in January 1945---

MR MASON: Please! My friend is referring definitely to the announcement that he referred to originally. I submit my friend can put a question, but he should not refer to the document.

MR HEIGHINGTON: Q. In January 1935 did you make

a motion under the Creditors Arrangement Act?

A. I rather -- I don't know whether I made it or not, or whether Fred Parkinson made it, but I think there probably was a motion made.

Q. On your behalf if Parkinson made it, was it?

A. On behalf of the Company.

Q. Yes, yes; I am not quarrelling with that. Do you remember telephoning the Commissioner in regard to whether the Commissioner thought the shareholders would approve an option of 10,000 shares of the company's stock at five cents to be given to you and the same amount to Mr.Herbert as a recognition of services you had rendered in connection with the company?

A. I do not recollect that it was a telephone conversation. I think I saw him and got his letter saying that he heartily approved. I think I wrote him a letter and got a letter back that he heartily approved, and that others who had done very little had got more. I have the letter.

Q. I am asking you if you asked for the approval of an issue of 10,000 shares to you? A. I don't think it was 10,000 shares; I think it was 100,000 shares.

Q. Are you very definite about that?

A. Well, I could get you the letters if you will be patient, at least I can get photostats of them.

Q. Did you meet with Dr. Neelands at the Commissioner's office? A. Yes, and poked him in the nose for what he said.

Q. Beg pardon? A. And poked him in the nose for what he said.

Q. Would you say that was the first time the Commissioner had learned that the option for 100,000 shares at five cents had been given to you?

A. That is what he was inveighed into saying later. He was awfully sorry he said it, because I had his letter.

Q. That is what he thought at that meeting, though, anyway? A. Well, he said he thought it--

MR MASON: My friend must take the answer of the witness, under the authority, my lord.

THE WITNESS: You will also note that the Security Commissioner was not there very long after that incident.

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MR HEIGHINGTON: I am not querying it; I am just trying to make it plain.

MR MASON: But my friend must take the answer of the witness, on his own authority.

MR HEIGHINGTON: I am, but I can find out what the answer means. I cannot vary the answer. but I can at least have it made intelligible. That is all I am trying to do. I am strictly within the rule. I think the only restriction, my lord, as I said before, is that I cannot call any witness to contradict him on an irrelevant matter, but I can at least find out what he says. That is what I am trying to do.

Q. Now, is it a fact that the Commissioner learned for the first time at that meeting on the 21st of December that the directors had issued to you and to Mr.Herbert 100,000 shares with the alleged approval of the Commissioner? A. No, that is not right. You have got it twisted, I think, even in reading it. That is what Dr.Neelands said.

Q. What do you say? A. That I wrote the Commissioner about it and got his approval, took it up with the directors, and got the option.

Q. Aren't you running ahead of yourself? I am talking about a meeting in the Commissioner's office with Dr. Neelands; was there? A.That is right.

Q. Now, did the Commissioner at that meeting inform you to your face that the only option that he had expressed an opinion on was for 10,000 shares? A. He may have.

Q. He might have, yes; would you deny that he did? A. No, I wouldn't deny that he did. He had to take it back later.

Q. And the price of the shares at that time I believe was twenty or twenty-five cents?

A. The price of the shares in the option to the broker in the case were five cents.

Q. I know that. A. Now, mister, you are trying to get me going, and I am afraid that -- do you want this done fairly or don't you?

Q. I am doing the examining. A. Do you want it done fairly or don't you?

Q. I am doing the examining, I am doing the examining. I am asking you the market price of the shares at the time that you got the option for five cents? A. I think it was about ten cents.

Q. Would you contradict the statement that the

market at that time was twenty to twenty-five cents?

A. Well, maybe it was.

Q. Maybe it was, yes. A. That was not the issue.

Q. Would that be ten thousand dollars or twenty thousand dollars, or twenty-five thousand, wouldn't it? A. Yes. The broker had options at that time at five.

Q. I know. I say the market value of 100,000 would be ten thousand if it were ten cents, or twenty thousand if it were twenty cents, or twenty five thousand if it were twenty-five cents?

A. Whatever he paid for them.

Q. And you had lent certain money to the company? A. The company owed me quite a lot of money.

Q. Would it be $2,600? A. I think it was more than that.

Q. Well, I am asking you to give very careful consideration to that, $2,600? A. You bring it out in the dark, in nineteen -- when was it?

Q. At the time that you met in the Commissioner's office in 1935? A. Yes.

Q. $2,600; I am asking you if that is correct?

A. I don't know. I will dig it up for you.

Q. What was the amount? A. I don't know.

Q. You will be able to tell us, will you?

A. I will try to find out.

MR MASON: My lord, I am, with deference, going to object to my friend asking the witness to go and dig up things that happened in 1934 or 1935.

HIS LORDSHIP: Of course he is not obliged to.

ME HEIGHINGTON: He offered to get it. I cannot compel him to do anything. You may be able to persuade him not to.

MR MASON: I certainly think he should not be asked to do it.

MR HEIGHINGTON: I did not ask him to do it; I just asked him what his recollection was. He said he didn't know but he would look it up for me. I naturally accepted it.

HIS LORDSHIP: He knows now that he is not obliged to.

MR HEIGHINGTON: Q. Do you remember writing such

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a letter as this to the Commissioner:

"There is a meeting of directors on Saturday and at that time I want to propose that in consideration of the postponement by Mr. Herbert and myself the company will give us each an option of 100,000 shares at five cents for a year and a half, and that we may at any time before the company pays us what it owes us pay for any or all of the optioned shares by offset or contra account. Do you think this is fair and proper? I would very much appreciate your guidance in the matter, and your suggestion, whatever it is, will be acceptable."

Did you write that? A. I might easily have. I wanted to be right no matter what I did.

Q. I thought you would agree at least when it is favourable to you. A. All right.

Q. You will agree to that, will you?

A. I hope you have got his reply there too.

Q. I am just going to give you that. We are dealing with it. The Commissioner's reply for which you asked, in part---

MR MASON: My lord, there ought to be some limit to this.

MR HEIGHINGTON: He has asked for it.

MR MASON: Is my friend permitted to put in what some non-judicial tribunal states and ask whether that was said or not? Is that a matter that is within the contemplation of what my friend's authorities would seem to indicate?

HIS LORDSHIP: Well, I don't know that he can bring that in as evidence, Mr.Mason. If the witness wants the reply I suppose he is entitled to have it.

MR HEIGHINGTON: I just asked him, do you recognize this---

HIS LORDSHIP: At least Mr.Heighington would have to volunteer it or he might be considered to be unfair in not following it up in accordance with the witness's suggestion.

MR HEIGHINGTON: Q. Do you recognize this as being part of the reply of the Commissioner:

"I certainly think Bidgood Kirkland would never have pulled through without your persistent effort. I believe the suggestion of giving some cheap stock is a good one and under the circumstances justified."

Do you recognize that as the Commissioner's reply?

A. Very similar to the reply.

Q. Then is it a fact that the directors did meet and did vote you 100,000, and Mr.Herbert the same? A. Yes, sir -- an option, sir.

Q. An option, yes, I beg your pardon. A. Yes.

Q. At five cents? A. Yes, sir -- now, wait a minute. I am not sure it was five cents. Mr. Heighington. I think it was ten.

Q. You see your own letter which I just read to you said five? A. Well, I think when it came to the directors' meeting it was ten; I am not sure about that.

Q. Your letter which I read to you, which you admitted:

" . . . an option of 100,000 shares at five cents for a year and a half, and that we may at any time before the company pays us what it owes us pay for any or all of the optioned shares by offset or contra account."

That is your letter? A. Yes, I think so. I am not just sure of it. I can check it. I am not just sure of it. It sounds like it.

Q. Was Dr. Neelands at the directors' meeting which passed that? A. He came in late.

Q. He came in late? A. At the tail end of the meeting.

Q. And the resolution had been passed prior to his arrival; is that correct? A. That is right, sir.

Q. And you did not give him a copy of the minutes; is that correct? A. I don't think it was conventional. There were two Jewish boys on that board of directors that he was very nasty to always. They were nice fellows. They were the men that had the money in the company, and Dr. Neelands came in, he was ignored, simply because he had cheated--talked to these Jewish boys in a high hand, I didn't, and they ignored him, and then he had the temerity to go down and tell the Securities Commissioner that the resolution was never passed.

Q. I am asking you if it is true that you were instructed by the president after the meeting to withhold the written copy of the minutes from Dr. Neelands? A. It might have been.

Q. It might have been. Do you admit or deny it?

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A. Well, I don't know; it is a long time ago. I can check it. Probably did withhold them on his instructions.

Q. Then I want to ask you if you recognize a letter of yours of March 20th to the Commissioner, your own letter; see if you recognize it:

"I have been giving a good deal of consideration to the unfortunate mix-up in connection with the options on the Bidgood stock. It is clear that the options given on the 27th of December were the result of a misunderstanding. It was also understood by me that the options were not to be effective until approved by the shareholders, as is necessary in such cases, and in my opinion these options had to be approved by the shareholders."

Do you recognize that as a statement of yours?

A. I don't offhand.

Q. Would you deny writing such a statement?

A. How can I, sir?

Q. That is what I wonder. Will you admit it, then? A. No, I can't admit it. The facts are the facts, sir.

Q. Is that a fact? A. Is what a fact, sir?

Q. That you wrote such a letter? A. Well, if you please, Mr. Heighington, you confront me with something that I -- it is a long time ago; you couldn't answer questions like that either.

Q. I am just asking you if you recognize it?

A. I want to be fair, and I can't answer the thing just that way.

Q. Well, shall we come down to brass tacks and say that as a result you gave up your option, because the Commissioner objected and thought it should have been ten thousand, and you said, "There is a misunderstanding, and I give it back"? A. I wanted no misunderstanding. I gave up my option.

Q. But you referred to it as a misunderstanding, didn't you? Anyway, you gave up your option?

A. I had no misunderstanding until the question was raised.

Q. Well, I am asking you again, then, if this is a statement of yours

"I have been giving a good deal of consideration

to the unfortunate mix-up in connection with the options on the Bidgood stock. It is clear that the options given on the 27th of December were the result of a misunderstanding."

A. All right.

Q. Is that correct? Perhaps, in fairness to yourself, Mr. Byrne, would it be fair to say that you got an option for 100,000, you thought you should have it, it was a misunderstanding, but the Commissioner thought it was ten, and you gave it back? Is that right? A. All right, sir.

Q. All right. That is all, thank you.

DEFENDANT'S EVIDENCE

No. 26

RE-EXAMINATION OF NORMAN W.BYRNE, K.C.:

RE-EXAMINED BY MR MASON:

Q. Mr. Byrne, with reference to the returns from the Provincial Secretary's Department which were put in in the notes, you said that you took certain affidavits? A. Swore certain affidavits.

Q. You swore certain affidavits, yes.

A. Correct.

Q. Was it brought to your attention or was it not in respect of any of these that you were described in the documents as secretary? A. Oh, no. They knew I was not secretary. They knew I did nothing about the thing. I never was at a meeting in all those years or anything else.

Q. Then there is a letter of April 2, 1948, in which it is said, please change address to Mr.Pulkingham? A. We were cleaning it up for Mr.Johnson.

Q. I want you to tell his lordship, then. You see, we don't know what you mean by cleaning it up for Mr.Johnson, without explanation. A. Well, as I told you this morning, Mr.Mason, Mr.Johnson --- there was a question about Carleton Securities, whether you could distribute the portfolio. If you did you got taxed. Mr.Johnson wanted me to stay on after he got the business to clean things up. I did. In cleaning things up I co-ordinated them. That was one of them, was co-ordinating, getting everything cleaned up, Carleton Securities included,

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so I sent it down to Mr.Pulkingham.

MR MASON: Now, my lord, there was a reference made in Mr.Byrne's cross-examination to what was said about what was alleged to have taken place between him and Mr.McMaster, alleged by Bob McMaster, on two visits to the plant, and I want to put in now as part of the defence Mr.McMaster's examination for discovery at pages 700 to 708.

MR HEIGHINGTON: May I say that I do not think this is re-examination.

MR MASON: I am not re-examining now; I am putting this in.

THE WITNESS: Am I through, sir?

HIS LORDSHIP: Are you through with the witness?

MR MASON: I think I am through, but if your lordship will pardon me a moment I want to put this in while I think of it.

MR HEIGHINGTON: He has been in the box; it is unusual.

MR MASON: I would very much prefer to have noted it while he was in the box, in which case I would have drawn his attention to it.

MR HEIGHINGTON: I never heard of it being allowed, my lord.

MR MASON: It has been allowed, my lord. As a matter of fact, I submit I have the right to put any part of it in I see fit. I do not like the practice, because I think the witness should be examined as fully as possible when he is in the box, but he still has the opportunity to go into the box yet, and your lordship will remember that he said that the matter of Carleton Securities was discussed at one of these visits that he alleged Mr.Byrne had made to the plant. For that reason I want to draw your lordship's attention to these questions:

"700. Q. Are you sure he was there twice in '46?

MR HEIGHINGTON: You are cross-examining.

MR MASON: No, I am not. I am just asking is he sure he was there twice in '46.

A. I would say yes.

701. Q. Were you present on both occasions?

A. I would be there.

702. Q. Were you? A. Yes.

703. Q. What was said on the first occasion?

A. I can't remember the conversation. There was general conversation.

704. Q. Can you remember what was said on the general conversation? A. We talked about everything.

705. Q. Can you remember anything specific that was said on the second occasion? A. I know when I saw Norm the second time he had come up by the kiln, and we had just had a jam in the kiln.

706. Q. What conversation did you have then with him? A. About help then.

707. Q. Anything else? A. No."

Thank you, Mr.Byrne. I have no further questions.

HIS LORDSHIP: I think this would be a convenient time to recess.

(Interval from 4:45 to 4:55 p.m.)

MR HEIGHINGTON: My lord, before the next witness, I would just like to call your attention to the question which my learned friend just read to you:

"706. Q. What conversation did you have then with him? A. About help then."

That is the conversation that young McMaster had with Mr. Byrne, and the questions have nothing whatever to do with the alleged conversation that the son overheard between his father and Mr.Byrne on that occasion. My friend has simply overlooked the relevancy of that, "What conversation did you have?" It was only about help. I am not concerned at all in that. It is not on the point at all, and really should not be in.

DEFENDANT'S EVIDENCE

No. 27

EXAMINATION IN CHIEF OF W.G.PULKINGHAM.:

MR MASON: Before I examine Mr.Pulkingham, my lord, in view of what my friend has said, I think it well to have before your lordship all that the

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witness Robert McMaster said, and, without reading it at this time, I would ask your lordship to take as read in questions 692 to 700, where I commenced to read before.

MR HEIGHINGTON: No objection, my lord.

MR MASON: Then we have all that was said on that occasion by the son.

MR HEIGHINGTON: Quite all right. They talked about Sovereign. That is what he said before, and that is what he says now.

(Questions referred to are as follows):

"692. Q. Do you actually know when your father consulted Mr. Byrne about that after say 1945?

A. Not after 1945.

693. Q. What would be the last date you think there would be any consultation about getting the stock cut? A. There is the thing, whether you can put it down or not, they come and talk generally. They talked about everything. I can't give you the date. When Norm come down to the shop the talk was about the Sovereign.

694. Q. When? A. That was in 1946.

695. Q. What was that about? A. When he came to our shop?

696. Q. Yes? A. I told you. He was at our shop.

697. Q. What was the conversation about?

A. It was always the same. When Norm come out to our place he was discussing Etherington and Pulkingham.

698. Q. When was this? A. I give it to you; '46.

699. Q. How often was he to your shop in '46?

A. I wouldn't say often. I would say a couple of times he has been to our shop."

HIS LORDSHIP: What are your initials, Mr.Pulkingham? A. William Graham Pulkingham.

EXAMINED BY MR MASON:

Q. You have been a resident of Hamilton for how many years? A. All my life except eight years in the United States.

Q. What was your business there? A. The pottery business.

Q. In what capacity? A. I was assistant to the owner of three potteries in Sebring, Ohio, latterly; previous to that, other concerns.

Q. Then will you briefly say how you came back to Hamilton and what you engaged in? A. Well, I thought it might be a good idea to establish a plant in Hamilton or in Canada for making dinnerware, because at that time there were none here, and I came to Hamilton and with the help of Mr. Etherington we raised the money here.

Q. And then what company was formed?

A. Well, Sovereign Potters was formed first.

Q. Yes? A. In September or October 1933.

Q. And just briefly will you describe---

HIS LORDSHIP: Q. 1933, was it? A. 1933, my lord.

MR MASON: Q. Describe briefly who were the persons active in its formation? A. Yes. I knew Mr.McMaster in the United States, in Sebring, he was superintendent of one of the plants with which I was connected, and I talked to him about it and he was quite keen about the idea, and although he did not take a too active part in the raising of the funds he nevertheless was in the picture at that time, and he came up here at about the same time I did. After the funds had been raised I think we came up together in September 1933.

Q. And he occupied what position in connection with the plant? A. In Hamilton here?

Q. Yes. A. A director and plant superintendent.

Q. Now, will you also describe briefly what took place with regard to the company that became Carleton Securities Limited? A. Yes. The three shall I call them promoters, Etherington, McMaster and myself, acquired certain machinery in the United States from The Patterson Foundry and Machine Company earlier in that year after the negotiations had been completed, and we paid our share each, forty per cent by myself, forty per cent by McMaster and twenty by Etherington, out of our salaries for several months after this machinery had been acquired, and latterly the balance of the debt was transferred to the Bank of Commerce at the corner of Barton and Sherman, and the American balance was paid off, at which time some collateral

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that Mr.McMaster had placed in the hands of that company in the United States was returned to him. I think that took approximately a year and a half to complete the payment of that purchase.

Q. We have been told -- if my friend will let me lead to this extent -- that the charter of Carleton Securities was a previous charter that had been obtained by Carleton Fruit, and the name was changed? A. That is right.

Q. In 1935; and then this company was known as Carleton Securities Limited? A. By a change of name.

Q. Yes. A. I was going to complete what I was saying there, that the reason the company was formed was because Mr.McMaster particularly, since he had some collateral placed in the hands of the company in the States, wanted to be sure that all three parties were equally responsible for that debt, and therefore the only way that it could be done apparently was by the formation of a holding company. Insurance was talked of first, but I never had any insurance, never could get any, so it was impossible to take it out on me -- life insurance we were speaking of at that time.

Q. So it was at his instance that the holding company was formed? A. Mainly at his instance.

Q. And we have heard that the interests of the three were, forty per cent to him, forty per cent to yourself, and twenty per cent to Mr.Etherington? A. That is correct.

Q. Now, that company was a holding company; it never operated? A. Never operated as either a financial company nor a trading company in any sense of the word, except the small payment of taxes and very small payment of interest in its early stages, on a small bank loan.

Q. Now, we are told also that Carleton Securities held 2,500 common shares of Sovereign Potters, and other persons held 2,500 other common shares? A. That is quite right.

Q. And there were certain preferred shares held by the financial group, as we call them?

A. That is right.

Q. And there were some preferred shares held by Mr.McMaster? A. Originally those shares were in Carleton Securities. The preferred shares were allotted to the three promoters, I will call

them, at the first directors' meeting of Sovereign Potters after its formation, in the amount of $10,000, and it was divided between the three shareholders or prospective shareholders of Carleton Securities in the same ratio, forty, forty and twenty.

Q. And preferred shares issued for that?

A. No, they were not. No shares were issued in Sovereign Potters for at least twenty months, and the reason was that the subscribers put in first a certain amount of money, I have forgotten how much -- I think it was upward of twenty-five thousand -- and then twenty-five thousand more came, and we were always so busy and growing so fast that we never seemed to have enough, so that we eventually had to get more money, and it took us almost two years to settle down to the point where we knew what was happening, and at that time shares were issued, but in the meantime the preferred shares had been changed both as to their rights and as to their par value, before they were ever issued.

Q. That carries me back to something that I have overlooked. Do you remember an agreement that was prepared to which -- do you recall this agreement, Exhibit 3? A. That is right, I recall that.

Q. There was a provision in this agreement that the shares were to be transferred to Mr.Byrne in trust to be held by him as trustee for the parties; were those shares in fact ever transferred to him, or did they go directly to Carleton Securities Limited?

A. I won't be certain, but I am sure in my own mind that they never went to Mr.Byrne, that they were transferred directly to Carleton Securities, because at that time I do not believe the shares of Sovereign Potters had been issued. Our first fiscal year was twenty months; June 30, 1935, was the end of our first fiscal year, and I know that our shares had not been issued until shortly before that statement was brought down.

Q. Now may I take you back to what you were describing before? We have been told that Mr.McMaster had certain machinery or something of the kind that he brought here, and what did he receive for that? A. He received the equivalent of $4,000 in preferred stock for that machinery. which incidentally was purchased by all three of the promoters,

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from the Patterson Foundry & Machine Company, and there were some supplementary things brought up from the Sebring Pottery where Mr.McMaster was employed and where I was also employed which had some value -- not a great deal of value, but they had some value.

Q. When you say not a great deal, how much do you mean, roughly? A. Well, I say two or three hundred dollars, possibly, in that neighbourhood.

Q. So the substantial item was the $4,000? 10

A. That is right.

Q. And how did it come that Mr.McMaster got the preferred stock for the whole $4,000? A. He did not. I got four thousand, Mr.McMaster got four thousand, and Etherington got two thousand.

HIS LORDSHIP: Q. $10,000 altogether?

A. $10,000 altogether.

MR MASON: Thank you. I follow it now.

MR HEIGHINGTON: The three promoters, he said, got it. 20

MR MASON: Yes.

Q. Then so far as your common stock was concerned, what did that cost you? A. Common stock was issued -- I won't be absolutely certain about this. I could go back and look at the original stock certificate books. I believe the common stock was issued to me and I in turn by agreement allotted it to certain individuals, and in the case of the 2,500 that went to the promoters, the equivalent of forty per cent of it went to Mr.McMaster, twenty per cent to Etherington and forty to myself, making a total of 2,500 shares. 30

Q. Was there any monetary consideration for that? A. No.

Q. Or was the only monetary consideration in connection with the preferred? A. Only with the preferred stock. The common shares were issued at a nominal value on our statement of one dollar, and $5,000 was set up on the debit side of the ledger as organization expense. 40

Q. My friend asked this morning for something that you possibly may have. Was there an agreement between Sovereign Potters and others which governed the allotment of these shares? A. Not between Sovereign Potters and others. There was an agreement between the so-called promoters and

the so-called subscribers. I am sorry, I haven't a copy of that. I know I have looked for it before on several occasions but I can't find a copy, but I could tell you approximately what is in it: For the consideration of the advancing of some $50,000 or $60,000, I have forgotten which, that the subscribers agreed to so-and-so, and the promoters agree and divide the common shares, whatever they might be, into two equal parts for those two groups.

Q. Now, who actually put up the money?

A. The original money was put up by one Toronto company, two Hamilton companies and three Hamilton individuals, I believe.

Q. Mr. Byrne has spoken here of what he called the original incorporators and the subsequent financial group. A. Well, the original group was Mr.Paulin's company, the Canadian Engineering and Contracting, Mr. Robinson's company, the Concrete Pipe Limited of Toronto, Mr.Magee's company, Walton & Magee Limited, Mr.Marsales as an individual and a man named Christianson as an individual. I think that totalled $50,000 subscription.

Q. Now, having this holding company, Carleton Securities Limited, and these interests, two forties and twenty per cent, what position arose as far as Mr.McMaster was concerned with reference to his holdings in the Carleton Securities Limited?

A. I don't quite understand that, Mr. Mason.

Q. Well, I want you to tell us briefly what attitude Mr.McMaster took with regard to his holdings in Carleton Securities Limited. He had a forty per cent minority interest? A. That is right.

Q. Now, did he have any discussion with you as to that? What arose? A. Not while he was employed by Sovereign Potters, at that time.

Q. I am a little ahead of myself. Let us go back, then. In 1936 we are told Mr.McMaster left Sovereign Potteries? A. That is right.

Q. Now, without going into the details, in which we are not greatly interested, under what circumstances did he leave? A. Well, I wouldn't say it was too friendly.

Q. Well, I mean to say, did he go of his own accord or did the directors request it? A. He went for good and sufficient reason; let us put it that way. Is that a fair enough answer?

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Q. I don't want to know what the reasons were; I merely want to know who took the initiative.

A. Well, I would say that the directors took the initiative.

Q. I don't know whether you heard the evidence here, but there was some statement made that Mr. McMaster wanted to have some statement in writing justifying his position; do you know anything about that? A. I am sorry, I cannot recall it if there was any such. I presume there would have been such a move, but I cannot recall it, Mr.Mason.

Q. You cannot recall it? A. No.

Q. Then after he went out -- that is, Mr.McMaster went out -- of the Potteries Company, then what situation arose with respect to his holding in Carleton Securities? A. There was no change in the set-up of Carleton Securities. It remained exactly as it was when it was organized. He attended; we had a meeting at least once a year every year, and he attended every meeting that I know of, so our minute book would indicate, and those meetings were by and large not cordial but at least they were friendly anyway, no quarrelling or quibbling about them at all.

Q. And what attitude did he take with respect to his shares? A. At every meeting he brought up that subject and asked us if we could acquire a buyer for his shares, either in or out of Carleton Securities.

Q. What reason did he advance for that?

A. Well, he was no longer connected with Sovereign Potters, and his reason was that he thought that he should have his money out; if we could find a buyer he would like to have a buyer.

Q. And he took that position commencing about what year, roughly? A. Oh, I would say the first meeting after he severed his connection with the company, say nineteen -- what would it be? 1937, probably, or 1938.

Q. And that position continued year after year?

A. That is right, for ten years.

Q. At some stage we have been told that you acquired an option. A. That is right, I acquired one option. I am not certain, but I think I had one before that, three or four years prior to that.

Q. Are you clear now how many options there were altogether? A. The last one you are speaking of?

Q. Yes? A. Well, I have the dates fairly well set in my mind. You will have to bear with me for a moment till I tell you this. The Carleton Securities held a meeting every year about two weeks prior to the annual meeting of Sovereign Potters. Sovereign Potters' year ended in June each year, June 30th. That meeting was called for the specific purpose of alloting a proxy to vote at Sovereign Potters' meeting. Mr. Etherington I think was the proxy in every year. We held a meeting on September 19th -- I have it in the minute book here -- 1936, and after the usual business had been transacted and the meeting was ready for adjournment the question came up again, of finding a buyer for Mr. McMaster's shares. It was a very friendly request and sincere request, and it had been asked so many times that I think it was Mr.Etherington at the meeting -- there was nobody there but he and McMaster and myself -- suggested that if he wanted to find a buyer or wanted us to find a buyer that he put down his offer to sell in writing.

HIS LORDSHIP: Q. When do you say this was?

A. The meeting, your lordship, was on September 19, 1946. And in that meeting it was stated that it was moved by Mr.McMaster and seconded by Mr.Etherington, that Mr.Etherington, or failing him W.G.Pulkingham, act as proxy at the annual meeting of Sovereign Potters to be held on September 24, 1946. Now, that was September 19th, and Mr.McMaster went home and prepared a proxy, which I think I received within two days, so that it had to be dated at least September 19th, not earlier than that, possibly the 20th or the 21st.

MR MASON: Q. You said prepared a proxy.

A. Not a proxy; I should say an offer to sell.

MR HEIGHINGTON: An option.

THE WITNESS: And my recollection is that the first dating on that -- I may be wrong, but my recollection is it was ninety days, and then I believe it was renewed for a hundred days.

MR MASON: Q. Are you quite clear about the renewal or is that just your best recollection?

A. One renewal that I am sure of; I can't think that there was another one.

Q. Then there came a time when you turned over that option to Mr. Byrne? A. That is right.

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Q. And can you recall when that option that you turned over to Mr. Byrne expired? A. Well, it had not expired when it was turned over to Mr. Byrne; I am certain of that. Now, I couldn't swear to it, but I am certain that it had not.

Q. Now let me go back a moment. When this option was got, you said it was prepared by Mr.-- at least, it came to you from Mr.--- A. From Mr. McMaster.

Q. From Mr.McMaster; and what was the price? 10

A. $30,000 for 250 shares of Carleton Securities, or the equivalent of 1,000 shares of Sovereign Potters.

Q. And that price, you say -- first, I should ask you, had the price been discussed with him previously? A. You mean when that one was written or previous to that date?

Q. I want to know who suggested the price?

A. Oh, it was Mr.McMaster's suggestion, the price. It had been from year to year -- it went 20 up from 20,000 to 25,000, and then latterly up to 30,000, and I think that 30,000 figure was one that had been quoted for at least a year, probably longer.

Q. Now, you have told me that there was a meeting of the company, that is, Carleton, every year? A. Every year in this minute book from as far back as I go there, from nineteen---

Q. And who attended at the meetings?

A. Only three people; in every case McMaster, 30 Etherington and myself as the only three shareholders in the company, and incidentally three directors. I was the president, Mr.McMaster was vice-president, Etherington was treasurer and Mr. Byrne was secretary of the company but he was never there. I have no indication that he was ever at a meeting of this company since its formation when the charter was taken over from the Carleton Fruit Farms.

Q. Although apparently you continued still to 40 describe him as secretary? A. Well, it is like all those things, it was never changed. I don't know that anybody ever thought of changing it; possibly it would have been if the subject had come up.

Q. But at all events--- A. Etherington here, I see, has called himself secretary several times in the minutes.

Q. Did you have any meeting at which Mr.McMaster was present in the fall of '46? A. Yes, there was one other directors' meeting on December 10th, at which were present H.J.McMaster, W.G.Pulkingham and A.G.Etherington.

HIS LORDSHIP: Q. What date is that?

A. December 10, 1946.

Q. A meeting of what? A. A meeting of Carleton Securities. It was held at the office of Sovereign Potters, in my office, on December 10, 1946.

MR MASON: Q. Now, tell me what transpired at that meeting? A. Well, the meeting was mainly called to again allot a proxy at a special meeting of the shareholders of Sovereign Potters to approve the distribution of what surplus the company had in the year 1939. You will recall that law they had that allowed a company to distribute their surplus on a certain tax basis.

Q. What they call the Ives--- A. I guess that is it. That is what this meeting was called for, because there was a meeting of Sovereign Potters about ten days or twelve days later, and specifically that is what this meeting was called for. Other things were discussed but---

Q. What discussion, if any, took place with Mr. McMaster? A. Well, there was -- at this time there was one other discussion at some length. There was a proposal from some of these shareholders of the company, mainly one that lives in Montreal, that the company be reorganized.

HIS LORDSHIP: Q. What company? A. That Sovereign Potters be reorganized. In other words, the arrears of dividends---

Q. You have two companies here, and just to say "company" is not sufficiently descriptive.

A. Well, your lordship, then I will qualify that and say that the meeting was then -- this meeting here of Carleton Securities then went on to discuss this reorganization that had been proposed for reorganizing the capital stock of Sovereign Potters, and it was not to the liking of any of the three shareholders of Carleton Securities, and I have a minute written in here which reads this way:

"A discussion took place on the reorganization of Sovereign Potters Limited. It was moved by H.J.McMaster and seconded by A.G.Etherington,

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that no deal or deals be entered into by Carleton Securities Limited that does not leave Carleton Securities Limited in the same relative position as at present."

Meaning that there was to be no change in the capital structure insofar as Carleton Securities was concerned.

MR MASON: Q. Yes? A. So when that was brought up at Sovereign Potters meeting later informally they were informed that as far as Carleton Securities was concerned we would not go for any reorganization of stock.

Q. And what further discussion, if any, with Mr.McMaster took place at the meeting you have referred to? A. Then the next question that came up was the question of the stock.

Q. Yes? A. And I did not say this, but I distinctly remember Mr.Etherington saying, "Don't be in too big a hurry, Harry, to sell your stock, because there may be negotiations in the not too distant future to sell this company or the shares of this company." Now, I don't think a name was mentioned; I am sure it was not mentioned, because it was too nebulous at that time to even -- and the only man that knew anything about it aside from Etherington and myself was Mr. Robinson, and the three of us, all directors of Sovereign Potters, felt that there was no use of announcing something that we might have to retract later. It had happened so many times before that we just didn't want it to happen again. And I think after that the meeting was adjourned.

Q. That was in December 1946? A. That was December 10, 1946, and incidentally I believe that that was the date on which the option was renewed, at this meeting. I am not certain of that, but I am -- I recall that that was when it was renewed.

MR HEIGHINGTON: What was the date, please?

MR MASON: December 10th.

THE WITNESS: December 10th.

MR MASON: 1946.

Q. You spoke of a meeting with Mr.Robinson at which you and Mr.Etherington were present?

A. That is right. That was in -- that would be in November, I would say between the middle of November and the end of November 1946.

Q. Yes? A. There was nobody in the office

but Mr.Robinson and Mr.Etherington and myself, and at that---

MR HEIGHINGTON: I am afraid we cannot have that, then, my lord -- I am just taking a formal objection -- because the deceased was not present.

MR MASON: This was a meeting referred to by my friend's witness previously. I suppose I have a right to---

HIS LORDSHIP: I do not think you can say what was said. You might say there was a meeting and such-and-such was discussed, but I do not think you can tell what was said.

MR MASON: Well, Mr.Robinson was asked as to that and what took place, and the same objection could have been raised but it was not raised, and I would submit that in those circumstances if my friend's witness was permitted to be asked about it this witness should be asked also.

MR GRANGE: My lord, with great respect to my learned friend, I think I was very careful in questioning Mr.Robinson not to ask him about the conversation that took place at that time, but only what action was taken as a result of it. I do not suppose it is important, but I think that the point my learned friend is making, that we did bring it out, disregards the fact that we did not have the conversation taken at that time.

HIS LORDSHIP: What do you say, Mr. Mason?

MR MASON: Well, I know it was discussed, my lord. I may have been the culprit, but it certainly was discussed at length by Mr. Robinson.

HIS LORDSHIP: In his evidence, you mean?

MR MASON: Yes, my lord. He spoke, your lordship may remember, of a suggestion as to an English transaction and a price that was named at that time. It was 1,500,000 he mentioned. Your lordship may have it noted in that connection.

HIS LORDSHIP: He says that in October or November, conversation in my office, Mr. Pulkingham and Mr.Etherington both present, had received letter from Simpson Company, intimation that Johnson Brothers might be interested in obtaining controlling interest in Sovereign Potters. We had so many false approaches, until some evidence they were serious not worth attention of directors. At the time there was the suggestion to go back to this letter, that unless Johnson had in mind a

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figure of one and a half million dollars useless to consider matter further. Is that what you had in mind?

MR MASON: Yes; it is just the same conversation that was mentioned before.

HIS LORDSHIP: Does that add anything to it, Mr. Mason?

MR MASON: It is only that I would like to have the witness's confirmation.

HIS LORDSHIP: I suppose it cannot do any harm, Mr.Heighington.

MR HEIGHINGTON: No. Strictly speaking, the mere fact that it goes in without objection now does not prevent me from making objection on another occasion, but I am quite willing to have Mr. Pulkingham say it.

MR MASON: Q. Tell what happened.

A. Well, I would say that was put substantially the way I would, probably a little better than I would put it. That is about all the conversation was in that regard. It was sometime in November, as I recall it, and the letter was sent forthwith after this conversation.

MR MASON: Q. Then, Mr. Pulkingham, you took an active part in the negotiations which eventually led up to the sale to Johnson? A. I should say the most active part, Mr. Mason, yes.

Q. And who were associated with you in that?

A. Well, Mr. Byrne, and Mr. Etherington to some extent, and later on the members of a committee. I have forgotten just who they were; I could see it in the book here, but I think Mr. Robinson was one.

Q. And Mrs.Hollinrake? A. Mrs.Hollinrake was another, and Mr.Byrne was the other.

Q. And Mr.Byrne? A. And I guess myself, was four.

Q. Who conducted the correspondence after -- you remember first going with Mr.Byrne and Mr. -- yourself going with Mr.Byrne and having a meeting with Mr.Foulds? A. That is quite right.

Q. March 27, 1947? A. Approximately that date, it would be.

Q. And from that time on who conducted the correspondence? A. Well, without knowing exactly, I should say that Mr.Byrne conducted himself all

the correspondence from there on.

Q. Now, without taking you in great detail over the matter, I would like to get a picture from you as having been an active participant in the vicissitudes of the transaction, commencing on that March day when you went with Mr. Byrne to see Mr. Foulds. Just before I get that far, did you have an interview with Mr. Byrne before you saw Mr. Foulds? A. I think I did, yes.

Q. Give him certain information? A. It seems to me he was asked to recommend some firm of lawyers in this country to look after their interests if they commenced negotiations.

Q. And he recommended the firm of which Mr. Foulds was a member? A. That is right.

Q. Did you give him information as to what you knew about the transaction prior to going to Toronto to see Mr. Foulds?

MR HEIGHINGTON: That is a very suggestive question. Just the last word we heard was March 6th, about a letter about the solicitors. It would have been very fair, I would have thought, to have asked him when, if it was on that occasion or when was it that Mr.Pulkingham did communicate. I am quite satisfied with Mr.Pulkingham's answer, but I want it put properly.

MR MASON: I was wanting to save time, because we have had it before.

Q. I was asking you, and I cannot see any objection to it, unless his lordship rules to the contrary---

MR HEIGHINGTON: I would ask your lordship to rule.

HIS LORDSHIP: What was the question?

MR MASON: My question was whether he had a conference with Mr.Byrne before proceeding to Mr. Foulds' office on March 27th, and did he obtain certain information from him then?

HIS LORDSHIP: Did who?

MR MASON: Did Mr.Byrne obtain certain information from Mr.Pulkingham?

MR HEIGHINGTON: It is suggesting, I think, the answer, whether it was just prior to going to see Mr.Foulds or when it was.

MR MASON: I am sorry. I am perhaps tired at this time, but I cannot see what my friend is

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objecting to.

MR HEIGHINGTON: It is a leading question, that is all.

HIS LORDSHIP: All right, you may answer the question.

THE WITNESS: I went to see Mr.Byrne on March — I suspect it was March 21st; I am not sure, but I think it was on or about that date. Now, I will have to go back and say that the first letter that was written was written in November. The date of that I have forgotten; I don't know; it was after consulting with the buyer in Toronto, who was a great friend of Johnson's.

MR MASON: Q. Yes? A. Suggested that I write him a letter. Then I went to see Robinson. We have heard that. Then the letter was sent off, and at that time I don't think I knew too much about air mail, but it was sent ordinary mail, and as I recollect the letter did not reach England until after the turn of the year, and I had a letter back or a telegram from Johnson, I have forgotten which, in which he just simply -- a million and a half, he scoffed at it, just out of the question. I think some of his words were that the Bank of England thought it was much too excessive.

Q. I won't trouble you with that; I want to get to Mr.Byrne's association with it. A. Then I wrote to Johnsons and I suggested another figure, I think it was somewhere over a million. I did that on my own, and I had an answer back, and he said it was better, that that was more like it. Then I went to Mr.Byrne on March 21st, I believe, and told him that it looked as though these negotiations might come through, and I told him that I thought we had better have a directors' meeting and table the matter and see what the directors thought about it. And there was a meeting called for the 28th day of March, 1947, at ten-thirty a.m. pursuant to notice.

Q. What date, please? A. March 28, 1947, at ten-thirty a.m. pursuant to notice, at the head office of the company. Present were Pulkingham, Paulin, Beale, MacKay, Fraser and N.W.Byrne as secretary.

Q. Now, my friend was anxious for the previous witness to know who were there; you have told him?

A. Now, Mr. Robinson was not present, Mr. Etherington was not present, I don't know why, and

Mrs.Hollinrake was not present. I have found out since that Mr.Robinson was in the south and was not available. Why Mrs.Hollinrake was not there I don't know; probably she was away as well.

Q. Are you able to tell us whether notices were sent out of the meeting? A. Well, I presume I have copies of them in the office. I did have copies of all these things, but the mere fact that Mr.Fraser is here from Montreal would indicate that he got a notice all right. He was the Montreal director. And all that was said at that meeting -- there are two pages of it, but all this is ordinary business of the company, and down at the bottom it says that Mr. Byrne read to the board of directors a letter with respect to a proposal that Johnson Brothers, British potters, might buy all of the outstanding shares of the company. Authority was given by the directors to give Mason Foulds & Company sufficient information to answer the inquiries from Mr.Johnson at the discretion of the president and secretary and for them to communicate any price offer made to all the shareholders. Then the meeting was adjourned.

HIS LORDSHIP: Q. Authority was what?

A. Authority was given by the directors to Mason Foulds & Company.

Q. To what? A. By the directors, to give Mason Foulds & Company sufficient information to answer the inquiries from Mr. Johnson.

MR MASON: Q. I take it those were particulars as to the company's actions, assets, and so on?

A. That is right -- at the discretion of the president and secretary, and for them to communicate any price offer made to all the shareholders. As I recall it, after that there was a period of a week or ten days when an investigation took place by an auditor appointed by Mason Foulds, the name of which I have forgotten, or the company I have forgotten about, and it took a week or ten days to conduct that investigation. I saw it before it was sent to Mason Foulds, and I agreed that it was all right, that he had the right information.

Q. Now, have you the matter sufficiently in mind to be able to give us a short picture of what then transpired from time to time, or would you prefer to have the documents in front of you to do it? A. Well, I could tell you in a broad kind of way what happened from there on.

In the Supreme Court of Ontario.

Defendant's Evidence.

No. 27

W. G. Pulkingham.

Examination - continued.

Q. Well, do that; it would save time.

A. There was an informal meeting of shareholders called by I think Mr. Paulin, shortly after this. I think he got a bit excited, and he called Mr.Robinson two or three days later, and I think Mr.Robinson said that he was not going to attend any informal meeting of shareholders. Then I think it was pointed out to him probably by Mr.Paulin that this was not a company affair, that the shareholders were being asked to accept a price or reject a price on their shareholdings in the company. It therefore became a matter of individual shareholders rather than the shareholders of the company as a group.

Q. Yes? A. And then there was a meeting called for sometime in April; the date I don't know, because there is no minutes kept here, simply because it was not a business affair, not the company's affair, but it seems to me it was in the latter half of April.

Q. I think April 29th. A. Possibly.

Q. We settled on that with Mr.Robinson, didn't we?

MR HEIGHINGTON: I don't know.

THE WITNESS: It was the last half of April, anyway.

MR MASON: Q. All right, wait a moment and we will get it. I am afraid I cannot identify it at the moment. Will you just go on? A. Some time towards the end of April.

MR HEIGHINGTON: In the latter half, is what he says.

THE WITNESS: In the latter half. In the meantime there was a price set on the common and preferred shares of Sovereign Potters as such, based on a certain sum total. I will tell you how that price was set in a moment. This shareholders' meeting was called, or the meeting of shareholders was called, and I think they were all present but two very minor shareholdings. Mr.Robinson I know was there as the leader of that group, and at that time of course he announced that there had been a pool formed and that all that other group was subject to more or less dictation by him, and then the shareholders wanted to know what the division was in the value of the shares, and I quoted a figure -- I have just forgotten what it was; I think it was 160 and 150; I wouldn't be certain of

that -- and somebody in the meeting, I don't know who it was, wanted to know where or how I had arrived at those figures, and I said, well, I just simply wouldn't sell mine for any less, that is the only reason I arrived at that figure. Now then, that was not satisfactory, and after much discussion and much argument the meeting was adjourned and negotiations started all over again. Then I think there was a further meeting called after some correspondence and a telephone conversation possibly with England, and a new price was arrived at for the shares, which still was not satisfactory, as I recall it, but it was finally agreed that the shares would -- that the majority of the shareholders, anyway, would sell their shares for $227 for the preferred and $127 for the common. Now, at that time it did not concern me too much, because I bought most of my shares back again -- I bought three quarters of my shares back at the same price as they paid me for them. However, I believe at that meeting that there was -- no, the previous meeting the committee was formed, and the committee stated at that second meeting that they would give Johnson Brothers until the end of June to get in a firm offer without any strings attached to it with the exception of any undisclosed liabilities that they had failed to find in their audit by Mason Foulds, and that when that offer was in they had to produce the money by the end of June, and both of those things were accomplished on time, right at the end of May and right at the end of June.

Q. Then, just leading your mind to it, to save time, do you recall any difficulty arising through the attitude of the Bank of England? A. Oh, yes, yes. During the month of May the Bank of England turned it down flat. In the meantime Mr. Byrne and I had gone to the Bank of Toronto and had arranged to raise half the funds for Johnson Brothers, but the Bank of England turned the other half down flat, sometime during the month of May; they changed their minds before the end of May, I think pretty largely through pressure from this side through myself.

Q. You went to Ottawa with Mr. Byrne?

A. I went to Ottawa, yes.

Q. Do you remember when that was? A. That would be right towards the end of May; it was pretty close to it.

In the Supreme Court of Ontario.

Defendant's Evidence.

No. 27

W. G. Pulkingham.

Examination - continued.

Q. Well, we have had a good deal of correspondence put in about it, and I will not trouble you in detail about it. Just one question, though: Were you present at a meeting of the shareholders -- I am not speaking of a meeting of the company, I am speaking of a meeting of shareholders of Sovereign Potters when a committee was appointed?

A. Yes.

Q. Consisting of Messrs.Robinson and Byrne and Hollinrake? A. That is right.

Q. You were at that meeting? A. That is right.

Q. Which we have got identified as May 14th?

A. I am not sure whether that was the first or second meeting. I think it was the first meeting, in April.

Q. Well, this committee, we have the exhibits in to show, was appointed on the 14th of May.

A. Well, that was the second meeting of shareholders.

Q. Well, whatever it was. Now, you mentioned a little while ago a pool; I would like you to explain that. A. Well, I think that the first, the original shareholders of the company or the original subscribers had no doubt some kind of an agreement amongst themselves that their shares would be held between them and not sold to anybody outside that group. I have no absolute knowledge of that, but I think such a thing did exist, and why this second pool was formed, started towards the end of 1936 and completed -- 1946, I should say, and completed early in 1947, I really don't know, except to keep within one voting power, I suppose, half the voting shares of the company. I can't think of any other reason than that.

Q. That was the pool that Mr.Robinson had to do with? A. Mr. Robinson formed, yes. I think I knew about that at the turn of the year, sometime in January possibly.

Q. And do you remember the period of the pool?

A. It seems to me it was ten years, not having seen it, but I heard that it was ten years.

Q. What situation would have been faced by the people concerned in this company, Sovereign Potters, if a sale had not been made?

MR HEIGHINGTON: Receiving very nice dividends, I should say.

MR MASON: Wait till we find out.

THE WITNESS: No, I don't think the company would have been paying any dividends. It has not paid any dividends yet, and I think things would have gone on just about much as usual. I don't think there would have been any very great change, except that I was for the sale because I would much prefer to have somebody in there that knows something about potting than have a bunch of people that don't know about it, nice as they may be -- a happier situation, might I put it that way.

MR MASON: Q. At the time of these negotiations for the sale what was the position of the preferred stock of Sovereign Potters? A. The preferred stock was voting stock up until December 31 1936, at which time---

Q. 1936 or '46? A. '46, I should say.

Q. Yes? A. Simply because the preferred dividends were in arrears more than two years, but we distributed our 1939 surplus on December 31, 1946, which took them out of the voting class, and I suspect that had something to do with the voting pool.

Q. Then that took them out of the voting class because the preferred shares would not be in arrear more than some time, I suppose, mentioned under your by-law? A. Nine months, I think, then after that payment was made.

Q. Were there still some arrears on the preferred? A. Yes, a small amount.

Q. Have you any idea of the amount? A. I could probably find it here.

HIS LORDSHIP: This is about the time I was intending to adjourn, Mr. Mason, if there is no objection.

MR MASON: All right, my lord.

Look that up, will you, and we will go on from there in the morning.

---Whereupon the Court adjourned at 4:50 p.m. until 10:00 a.m., Thursday, February 9, 1950.

In the Supreme Court of Ontario.

Defendant's Evidence.

No. 27

W. G. Pulkingham.

Examination - continued.

THURSDAY, FEBRUARY 9, 1950

---Upon resuming at 10:00 a.m.:

WILLIAM GRAHAM PULKINGHAM, Recalled.

EXAMINED BY MR MASON:

Q. Mr. Pulkingham, I am not sure whether it is in evidence that Carleton Securities Limited was a private company; what is the fact? A. A private company.

Q. We have had some suggestion, some evidence, here with respect to 500 shares the financial benefit from which was transferred reserving voting rights? A. That is right, sir.

Q. Would you tell us what you know about that, briefly? A. The first lot of money put in by the financial group was $50,000, and at that time $10,000 was allotted to the promoters for their machinery, etc., and it did not take very long until more money was required. I think we called for 25,000 more; that figure I would not be sure of, but at that time there was an argument about the consideration for the extra money, preferred stock of course was given for it, and I finally got talked into giving up the earnings on twenty per cent of the holdings of the three promoters, which would be 500 shares, but not the voting rights, and as a consequence there was a document signed by the three shareholders of Carleton Securities assigning off the earnings on twenty per cent of their shares each.

Q. Aggregating in all 500? A. 500 shares each -- in toto.

Q. We had one put in evidence; perhaps you will identify it? A. I think that occurred early in 1935.

Q. Is this one of the documents to which you refer, Exhibit 47? A. That is right. The hundred shares would be the portion belonging to the Canadian Engineering.

Q. Then there were others making up the---

A. There were others making up the total of 500.

MR HEIGHINGTON: You refer to another document in your examination of him, 270 shares -- question 493.

THE WITNESS: I think that would be the Concrete Pipe Limited.

MR MASON: Well, I do not appear to have the Concrete Pipe One.

MR HEIGHINGTON: No, but you produced a document to the plaintiff when he was examined, produced a document which said 270 shares. I am not disputing the arrangement that was made; it is just a question of the number.

MR MASON: Well, I will have to take the witness's recollection as to that, because there are only three of the documents that I have.

Q. Then, Mr. Pulkingham, there has been some evidence given as to a proposal for capitalization of arrears on the preferred shares? A. That is right. On several occasions that was proposed by various shareholders and directors of the company, and in the latter part of 1946 there was such a proposal made and it was discussed at some length. It was not satisfactory to the shareholders of Carleton Securities or those three individuals.

Q. You read yesterday from a minute some statement that Mr.McMaster had made? A. That is right.

Q. I think it was in December 1946? A. That is right, sir.

Q. Unfortunately I did not get it down; would you mind reading it again? A. This is in a meeting held on December 10, 1946. Present, McMaster, Pulkingham and Etherington.

Q. Just give me---

A. "Discussion took place on the reorganization of Sovereign Potters Limited. It was moved by H.J.McMaster and seconded by A.G.Etherington, that no deal or deals be entered into by Carleton Securities Limited that does not leave Carleton Securities in the same relative position as to holdings and potential earnings."

That had to do with the--

Q. Just a moment, please. That does not leave Carleton what? A. In the same relative position as to holdings and potential earnings.

Q. What was under discussion at that meeting that led to this motion by Mr.McMaster? A. Well, there had been this proposal put forth by a group of the directors. I am merely stating from memory now. The preferred shareholders -- the preferred shares were to get one share of common for each of their preferred shares, they were to get one share of common for the participating rights, and they

In the Supreme Court of Ontario.

Defendant's Evidence.

No. 27

W. G. Pulkingham.

Examination - continued.

were to get a proportionate number of shares for the arrears of dividends, which would have meant about four-tenths of a share for each preferred share outstanding, intotal about 4,300 shares. That meant that Carleton Securities would have been a twenty-eight per cent holder in the potential common earnings rather than a fifty per cent holder -- approximately that figure.

Q. And was it with relation to that proposition that this motion was made by Mr.McMaster? A. That is right.

Q. I don't think we have had from you what became of Mr.Master's preferred shares? A. The company purchased Mr.McMaster's shares I think in 1945, sometime between June 30, 1945, and June 30, 1946, at par or possibly slightly more. The company redeemed them and cancelled them.

Q. There is evidently a little difference of phraseology as to what happened. Somebody said that you purchased them. A. Upon instructions from the directors, I purchased them on behalf of the company.

HIS LORDSHIP: Q. That was when did you say, Mr. Pulkingham? A. My lord, it was sometime between June 30, 1945, and June 30, 1946, those two fiscal period endings. It so appears on the statement I have here.

MR MASON: Q. Now, you made reference in your evidence yesterday to an option that you had obtained -- I think you said you had obtained more than one? A. That is right.

Q. But to option or options that you had obtained from Mr.McMaster. Was Mr.Byrne aware of your having got that option prior to the 21st of March? A. No.

Q. Then some suggestion was made that in some discussion with Mr.McMaster as to an option of yours, you and Mr.Byrne were on the telephone together talking to Mr.McMaster? A. I didn't quite get that.

Q. There was some suggestion that at some stage there was a discussion by you and Mr.McMaster with regard to your getting an option or some option you had, I am not sure which, and it was said that you and Mr.Byrne were on the telephone together talking to Mr.McMaster about this option?

A. Well, Mr.McMaster may have been called in March from Mr.Byrne's office, I wouldn't be sure

of that, but he may have been called at that time, the day I turned it over to him.

Q. Did you have any previous talks? A. Not previous talks to that.

Q. When there was any suggestion of your getting an option? A. None at all.

Q. Now, you said there may have been something previously; I don't know what you are referring to.

A. There was one option obtained from Mr. McMaster a few years before, an option in writing. I find it in the minutes here, that such an option had been given by Mr.McMaster, and I think at that time it was $20 a share. That is rather foggy in my memory, but the record is here.

Q. Did Mr.Byrne have anything to do with that?

A. Nothing at all.

Q. That is all, thank you.

DEFENDANT'S EVIDENCE

No. 28

CROSS-EXAMINATION OF W. G. PULKINGHAM.

CROSS-EXAMINED BY MR GRANGE:

Q. Mr.Pulkingham, you have or you haven't the books in which the resolution giving the common stock of Sovereign Potters to you was made?

A. No, it is not here yet; I have sent for it.

Q. Well, if it comes in time you may look at it. A. Right.

Q. Now, Mr. Pulkingham, there has been some reference to a letter of Mr.McMaster's with respect to setting out his side of the story in the dispute, whatever the dispute was, when he left Sovereign Potters; what is your information of that letter? A. Well, I haven't any information, Mr. Grange. There is certainly nothing in any of the minute books that has to do with it.

Q. Well, have you any recollection? A. No, I couldn't say that I have, because it is a long time ago. There may have been such a letter, but I could not confirm it.

Q. Have you any recollection of advising Mr. Byrne to amend that letter? A. No, I have not.

In the Supreme Court of Ontario.

Defendant's Evidence.

No. 28

W. G. Pulkingham.

Cross-examination. - continued.

There was a letter of resignation written; that is the only thing I know, that it was written.

Q. Now, Mr. Pulkingham, there has been a good deal of discussion -- I don't know whether you have heard it, but there has been a good deal of evidence given at this trial in connection with a cut in the original shares issued in Sovereign Potters which Mr. Byrne was supposed to have. Could you tell me what your information is in that regard?

A. Well, if there was officially such a thing proposed, I have no knowledge of it.

Q. You have no knowledge of it? A. I have no knowledge of it -- personal knowledge, that is to say.

Q. Have you any knowledge of confirming to Mr. Etherington or to Mr. Byrne the fact that such an arrangement had been made? A. No.

HIS LORDSHIP: What was that question again?

MR GRANGE: Confirming that the arrangement about the cut had been made; the witness's answer was, he had no recollection of it.

Q. Now, Mr. Pulkingham, you have been subpoenaed, I believe, to produce any correspondence which you have in your possession with Johnson Brothers; have you any correspondence other than the correspondence that has been produced? A. No, I haven't any correspondence. I think I was subpoenaed to bring the minute books and the original agreement between the subscribers and the promoters. That I cannot find, and I recall only with Johnsons the original letter in November and one other letter and a cable, and I attempted to obtain the copy of the cable last night, but apparently they destroy their records at the C.N.R. in six months, so it is not available.

Q. When approximately was this cable received?

A. It would be -- just from memory I should say it was in March, probably the end of March.

Q. About when? A. The middle of March or sometime around there.

Q. Well, perhaps I can assist you--- A. If there is a copy of it I could probably recognize it, or otherwise.

Q. What were the contents of that telegram, as well as you can remember? A. If it was the one that you and I are both thinking of, it was asking me, I am sure, to recommend a firm of lawyers to carry on negotiations, if any, with Johnson Brothers.

Q. And was there anything else in the telegram?

A. I don't remember, Mr. Grange.

Q. Well, there is in evidence a letter to you dated March 6th from the defendant, and I will just read it:

"All things being considered our answer to your request for a suggestion as to a firm of solicitors to look after your friend's interests would be Messrs. Mason, Foulds, . . ."

The telegram would have been prior to that?

A. I recall this letter, so it would have to be prior to that.

Q. The telegram would be prior to that?

A. Probably early in March.

Q. And do you remember any other information contained in that telegram? A. I do not, Mr. Grange.

Q. There is a letter from Mr. Byrne to the directors -- it is Exhibit 16, my lord -- dated March 27, which I believe is the letter that Mr. Byrne read to the directors at the meeting on March 28th. A. Without reading it, that is it. That was read at the meeting held the day after that letter.

Q. In this letter Mr. Byrne states, in the fourth paragraph:

"This was followed by a cable to Mr.Pulkingham intimating that a lower price named at $160.00 per share for the preference and $150.00 a share for the common shares excluding Carleton Securities would be acceptable, and requesting that a Canadian solicitor be recommended and intimating that a draft agreement would be sent."

With that to assist you, Mr. Pulkingham, do you think that information is correct and that the telegram contained that information? A. It may have contained that information. I know how it arose. The first letter that went out stated, as I recall it, that I did not think personally -- that was me in the first person -- I did not think that the shareholders of Sovereign Potters would be interested in disposing of all of their shares for a sum that would be less than one million and a half dollars. That was the first letter.

Q. That was the letter that was sent as a

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Defendant's Evidence.

No. 28

W. G. Pulkingham.

Cross-examination - continued.

result of your conference with Mr.Robinson?

A. That is right. Then I had an answer back, I should say it was February, that that was a ridiculous figure and that the Bank of England would not even consider it, and I think the suggestion was made in that letter that a million dollars would be nearer the figure that might go through from Johnson, and then I made up those figures myself, the value of the shares. I stated later that I would not sell mine for less when I was asked a question as to how those values arose, and I think that was my suggestion to Mr.Johnson, and then possibly the telegram came back with the same figures in it. He of course was not interested in the value of the two kinds of shares; he was interested in the whole over-all value.

Q. But the figures that you made up for $150 for the common shares and $160 for the preferred shares, when added up together amounted to approximately the same thing as the 227 preferred and 127 common eventually? A. Approximately the same figure.

Q. The actual price, Mr. Pulkingham, was somewhere in the neighbourhood of $1,030,000?

A. $1,034,000.

Q. $1,034,000. That is all, thank you very much, Mr. Pulkingham.

DEFENDANTS EVIDENCE

No. 29

No. 29

B.R.Marsales.

EXAMINATION IN CHIEF OF BERNARD REYNOLDS MARSALES,-

Examination.

MR MASON: My lord, Exhibit 39 has turned up. I put in a copy of it. I would like to put in the original copy so as to have it complete. Your lordship has it.

EXAMINED BY MR MASON:

Q. Mr. Marsales, where do you live? A. West Flamborough.

Q West Flamborough; that is in the vicinity of Hamilton? A. Eight miles.

Q. Will you please tell the Court just what your association was with Sovereign Potters Limited? A. I was a shareholder, and a director for one or two years at the beginning. I was really

the first contact that Pulkingham, McMaster and Etherington had in connection with financing it -- that was in 1933 -- and I continued on the board I think for two years until I was replaced.

Q. Are you familiar with the arrangements under which the stock was issued to what you might call the financial group and the promoter group? A. I believe so.

Q. Will you tell the Court just briefly what that was? A. The five original of the financial group put up all the money, and Pulkingham, Etherington and McMaster were to have half of the 5,000 common shares for their share in producing and installing the machinery and equipment which they secured in the States.

Q. Were any preferred shares given to them for that purpose? A. Yes, there were, but I just can't recall how many they got for that.

Q. Would you just consider for a moment, Mr. Marsales? I would like to get the picture as it was at the time. It is a long time ago, of course.

A. It is a long time. I can't recall whether they -- how they got their preferred shares. They had some preferred shares, but how they got them I don't know. We paid for ours, the financial group, but how the other side got their preferred shares I don't know, but I know they had some preferred shares, but whether they paid for them or were given to them I am not in a position to say.

Q. You are not clear for what consideration they got them, now? A. No.

Q. Well, as far as the common shares were concerned, have you any definite recollection of that, apart from the preferred? A. I know they got fifty per cent of the common stock.

Q. Did they pay money for the common stock?

A. Not as far as I know.

Q. What did they bring into the common pot in Sovereign Potters, as far as you knew? A. They brought the equipment in from the States.

Q. And in return for that equipment they got certain shares? A. That is right.

Q. You are not clear yet as to the situation between the common and the preference? A. No. I know they got the common; I am not sure about the preferred.

In the Supreme Court of Ontario.

Defendant's Evidence.

No. 29

B.R.Marsales

Examination - continued.

Q. Well, we will not task your memory further about that. Then did you know that Carleton Securities was a holding company? A. Yes, sir.

Q. And that these three men were holding shares in it? A. That is right.

Q. Did you know the proportions? A. Yes: forty, forty and twenty.

Q. Did you have any discussion at any time with Mr.McMaster after he left Sovereign Potters with regard to his holding in Carleton? A. Yes, several times.

Q. What happened? A. He felt very keenly that he could not get his money out or get his holdings cashed in so that he could have financial support for his Dundas pottery, but there was no way of him getting his shares out of there.

Q. And that continued over what period of time?

A. Well, I had not been talking to Mr.McMaster for possibly a year or a year and a half prior to this deal. We used to be very close, and he would drop in the office quite often, maybe once a month, and we would talk things over, even after he left the pottery, but just latterly we had not been seeing very much of one another, because we were both busy.

Q. When you say latterly what do you mean?

A. About the last year or year and a half, Mr. Mason.

Q. You mean back of now? A. No, back of the deal two years ago, back of the deal when we sold the Sovereign Potters.

Q. Oh, yes, I see. Were you familiar with the circumstances under which he left Sovereign Potters? A. Not clearly.

Q. We have been told that there were two groups here; we have been calling one the promoter group and the other the financial group; do you recognize the distinction? A. Yes, sir.

Q. And you belonged to the financial group?

A. Yes.

Q. Then was there a pooling agreement arranged by the common shareholders excluding the Carleton group? A. Yes.

Q. Just tell me briefly what was done with regard to the pool? A. Well, at the beginning we had a gentlemen's agreement that no one would sell

their shares without offering them to the others in the group, and I did not hear anything further until along in January I was in Mr.Byrne's office, I knew he had been wanting shares in the company for years and I was anxious to get out, had been for quite a long time, and he asked me if I would sell mine. I said, surely, I would be glad to get rid of mine, I had tried before, and I said if I could get them clear of the agreement that I had with the other gentlemen I would certainly sell them. I asked him what he thought they were worth. "Well" he said, "I will give you $25 a share for them." I said, "That's fine," because I had been inquiring just prior to that and I think it was Mr.Pulkingham told me they were worth about $16 on the books, so I would have been pleased to take $25, but I couldn't get clear of the other portion of the financial group.

Q. In the pool? A. And right after that the pool came on. We got notice of this pool, and I believe it was February 15th that the pool agreement was really signed.

Q. The trustee of the pool was Mr.---

A. Robinson.

Q. Mr. Robinson; and the shares were tied up for what period? A. For ten years.

Q. Now, what was the first you had to do with or know about with respect to what was afterwards known as the English deal? A. Well, there were a lot of rumours that I didn't really pay much attention to. They started, I believe, in December or January, December '46 or January '47, but we had had these flirtations before, and I really didn't think much about it; in fact, I didn't think that it would amount to anything either. I would have been glad to get out.

Q. By the way, had you had dividends on your shares? A. We had dividends for a portion of the time, and then the dividends were withheld for several years and piled up, accumulated in the company.

Q. Preference or common? A. Preference only.

Q. No dividends on common? A. No, sir.

Q. Then you say you heard these rumours, and at first in the early stages -- I have forgotten when you said, in November, December or January?

A. Along in January -- I know we talked about

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Defendant's Evidence.

No. 29

B.R.Marsales.

Examination - continued.

it in Mr.Byrne's office when I was up there on other business in January, when I was wanting him to take my stuff, and it was in the air but nobody seemed to have anything much, no certain knowledge of it at all; it was---

Q. Nebulous? A. Yes.

Q. Then when first was any official action taken that you know about? A. Well, it was around the first of April I heard of it first, where it really might come to something, and we had a meeting in April, about the middle of April, and we decided on a price eventually of 150 for common and 160 for preferred.

Q. Well, I don't suppose you have any definite recollection or memory as to when those various things took place? A. I made a statement to Orville Walsh two or three years ago, Mr.Mason, and I took a lot of time at that time to check up the dates and one thing and another, and I have a copy of it.

Q. Well, I am afraid we can't let you refer to it unless it was something you made yourself at the time. Do you remember the matter being discussed, the sale being discussed, by the members of the pool? A. Yes, and they could not get together on it at all. There was a great deal of discussion back and forth. Some wanted to sell, some didn't want to sell.

Q. And can you tell me how long that continued, roughly? A. Well, there was -- I believe there was another meeting around the end of March -- the end of April, when we changed the prices again, raised the preferred I remember to 250 from 160 and left the common at 150.

Q. And was there more unanimity at that meeting? A. Well, I believe at that meeting we asked Johnsons for something definite, some commitment that we could have something to work on, whether they would make any commitment or accept or refuse, one or the other. I believe that was the meeting.

Q. You said that was about the end of April?

A. I believe it was.

Q. Then did you have any conversation later with Mr.Byrne as to--- A. We were discussing the deal, I remember, and I was quite surprised when I learned after that meeting, when I was inquiring about Carleton Securities, if they would buy Carleton Securities' stock, and Byrne said, well, he had

purchased McMaster's shares and had already optioned them to Johnson.

Q. Then do you remember subsequently a committee of three shareholders being appointed to---

A. That was at a later meeting, Mr. Mason.

Q. A later meeting still? A. That was, I believe, on May 14th meeting, that we couldn't get anywhere, there was a stalemate, and we appointed a committee of three to have Johnsons either do one thing or the other, so we would know where we were at, and it was right after that meeting that I had a talk to Mr.McMaster. We had a conversation on the telephone, and, as I say, that was the first intimation I had that he had been able to get his stock out of Carleton Securities.

Q. When you say that was the first intimation --- A. When I heard it at that meeting of the 29th. We had this conversation, and I mentioned to him that I had heard about him selling his stock, and he laughed and said, yes, he says, he had, he had got rid of it at last. I said, "Well, if this deal should happen to go through" -- which I did not think it would, and neither did he -- I said, "Byrne will not make quite as much money as he would have last meeting, because we have pulled the price down to 127," and he said, "That is right, but," he said, "I got what I wanted, and I don't care if Byrne makes a million; I hope he does."

Q. And you say that was shortly after the meeting of April 29th? A. No; that was after the May 14th meeting. That was the meeting when the price of the stock was changed from 150 to 127 and the preferred from 250 to 227.

Q. Then can you tell me what happened with regard to the transaction later? I suppose you followed it with some interest? A. Yes. Well, Mr. Pulkingham and Mr. Etherington -- in fact, we got word from Johnsons that they could not buy this place because they could not get funds from the Bank of England, they would not allow any money to come out, and also that it was not worth the price, so Mr.Pulkingham and Mr.Etherington -- Mr.Byrne, went to Ottawa.

Q. You can tell us they went to Ottawa; they did certain things in Ottawa? A. That is right.

Q. And as a result? A. And as a result we got a firm offer from Johnson Brothers to be taken up by June 30th, and just a day or two days before the

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Defendant's Evidence.

No. 29

B.R.Marsales.

Examination - continued.

expiration they took up the stock.

Q. That was somewhere about the 30th of June?

A. Yes, the last week in June, I believe it was the 30th, the expiration date, and I think it was about the 26th or something that they took it up.

Q. We have had the evidence as to the precise day it was, so I won't tax your memory as to that. Have you ever perused the minutes of Sovereign Potteries? A. No.

Q. At all? A. No.

Q. Well, there has been some discussion here about a cut to which it was said Mr. Byrne was entitled; do you know anything about that? A. I know there was a great deal of discussion from the beginning that Mr. Byrne was supposed to have a certain percentage of Carleton's common stock for his efforts in promoting this company, but further than that it was only hearsay as far as I was concerned.

Q. Well, you only got it -- when you speak of discussions, discussions among whom? A. The directors of the Sovereign Potters. It came up one day, Mr. Mason, at a directors' meeting when I was on -- that would be the first year, I believe -- and Mr.McMaster got up in the meeting and said that he had never had any knowledge of it before, that he didn't know about it, and he was very much upset to think that this promise had been made by I believe Mr.Etherington and Mr.Pulkingham, or Mr. Etherington I think it was, he said, and he didn't know anything about it, but he said that he would go along with any percentage that might be given to Byrne. That is in the minutes of the Sovereign Potters, I believe.

Q. Well, that is what I would like to find. Do you know about when that would be? A. I believe it would be in 1934. We started in '33, and I believe it was the next year. I was only on the board -- was I on the board one or two years? Does anybody know?

MR MASON: Perhaps your lordship will give me a moment, and I will try to find what the witness wants to get at.

The minutes indicate that Mr.Marsales was elected a director on October 2, 1933. On the same date, October 2, 1933, the directors elected were Pulkingham, McMaster, Paulin, Marsales and Carnwath. I have not been able to exhaust all that is

in this book yet.

THE WITNESS: I was just thinking, that might not have appeared in it.

Q. But we still find you were a director in 1935 sometime. A. Two years.

Q. This book stops there, so that answers the matter; you were certainly a director from October 2, 1933, in 1934 and 1935, and after that we would have to go to a new book.

We find here, my lord, a statement that I would like to read in, because it clears up the matter we were discussing about the 500 shares. In the minute book of Sovereign Potters, under date December 31, 1934, there is a letter from Mr.Pulkingham to Mr.Byrne, stating that the 500 shares are not to be transferred, but our group are to sign an agreement tc be attached to the original subscription agreement to the effect that the parties who loaned the extra 25,000 are to receive all the profits from these shares either by way of dividend or capital. Then it sets out the proportion: Concrete Pipe 270; Canadian Engineering 100; Walton & Magee Limited 100; Mr. Marsales 30. Then it says:

"Would you please prepare the necessary documents",

and so on.

HIS LORDSHIP: They were to receive profits, you say?

MR MASON: Yes, my lord. The proportion in which such profits or capital would be distributed are on the basis of shares so much.

HIS LORDSHIP: But just before that.

MR MASON: To receive all the profits either by way of dividend or capital.

That is all, thank you, Mr. Marsales.

DEFENDANT'S EVIDENCE.

No. 30

CROSS-EXAMINATION OF B. R. MARSALES.-

Cross-examined by Mr.Heighington.

Q. Well, Mr. Marsales, I have not had much time to look at the book at all; it has just arrived here. However, I shan't keep you very long, in any

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No. 30

B.R.Marsales.

Cross-examination - continued.

event. I rather gathered that you have always been of the opinion that Mr.McMaster contributed a very valuable part in the practical point of view in starting this company in the way of his equipment and machinery and plant that he brought up; you always thought it was a very valuable contribution?

A. I did.

Q. Did you not? A. Very much, yes.

Q. That he had some very sound ideas? A. Very good.

Q. And plans? A. Yes.

Q. At the time you spoke to Mr.McMaster about the sale I gather you were treating it rather light-heartedly, rather jokingly -- it might go through and it might not -- in a joking sort of way? A. I did not think it would go through, but I certainly hoped it would, but I thought it would be like most of the others and fall through.

Q. But you were treating it in that way; that was your view at the time? A. That was my view at the time.

Q. Did you receive any payment at all for relinquishing your claim on these shares, 30 shares, of which you were to have the profits? A. No.

Q. You just gratuitously released, you signed off? A. Signed off. Nobody could -- in fact, I think we couldn't find the papers, a lot of them, but I had my paper.

Q. You received nothing, though? A. I received nothing.

Q. Neither did the others I understand?

MR MASON: There is no question about that. None of them received any directly.

MR HEIGHINGTON: That is all, thank you.

MR MASON: Of course, I shall be able to argue that they were all interested in the transaction going through.

THE WITNESS: That is right.

MR MASON: That is all, thank you.

DEFENDANT'S EVIDENCE

No. 31

EXAMINATION-IN-CHIEF OF ALFRED GEORGE ETHERINGTON:

EXAMINED BY MR MASON:

Q. Mr.Etherington, do you reside in Hamilton?

A. In the next county, Halton County.

Q. But your business life has been in Hamilton?

A. That is right, sir.

Q. For a long period? A. Yes, sir.

Q. And we have been told that you and Mr.Pulkingham and Mr.McMaster formed the Carleton Securities Limited? A. That is right.

Q. Shareholding body. Then I think it is common ground that the proportions that the stock was held in Carleton were forty, forty and twenty?

A. That is right.

Q. Were you engaged in the initiation of Sovereign Potters? A. Yes, I was.

Q. Will you tell the Court just briefly what happened? A. I had moved back to Hamilton and was looking for something to do. I had a part-time job at the time, and Mr.Pulkingham visited with me on one occasion and he mentioned that it would be a good idea to have a pottery in Canada, so I said, "Well, let's start one," and he said---

Q. I don't want the conversation between you at the moment; just what was done? A. Well, he prepared some data and sent it to me, and it took me quite a long time to get the drift of it, as I was not familiar with the pottery business at the time, and also it took me a while to figure out the best place to make a contact, and I discussed it with Mr.Marsales and he was interested to the extent that I was to get a little more information, and I got that, and he arranged a meeting with some financial friends as a preliminary skirmish, so to speak.

Q. I take it that you and Mr.Pulkingham at that time were anxious to found a pottery, but you had to get some financial support? A. Yes, sir.

Q. Then what happened? Got to Mr.McMaster's association with it. A. In a previous conversation I said, "In addition to money you will have to have the know-how," and he said, "Well, I have that lined up fairly well. I have a superintendent down here who is willing and interested the

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No. 31

A. G. Etherington.

Examination - continued.

same as I am to make a change." Up till that time he was a name to me, and Mr. Pulkingham and I proceeded on the financial structure, and I understand that back of the scenes Mr.McMaster was laying the manufacturing background, but I did not know anything about it in detail.

Q. Now, I don't want to go into the matter in too great detail; we have heard it several times. But just what was done with regard to the stock in Carleton? A. My first recollection of seeing any stock certificates was at about the time of our taking over Carleton Securities.

Q. I don't care about stock certificates. I did not want to get you off on anything, except that I am trying to have the story come as concisely as possible. What arrangement was made as to what stock the promoters got and what stock other persons got, if any, and what they got the stock for? A. Well, as you know, in the face of negotiations we divided the common stock fifty-fifty between the two groups, promoters and financials. We jointly purchased the equipment, furnished that to the company, for which we took preference shares.

Q. When you say "we jointly", you mean the three of you? A. The three of us, yes.

Q. And you got how much preferred stock for that? A. It was -- I don't know the number of shares. The value was $10,000 at the time of issue.

Q. And that was divided among the three of you? A. That is right.

Q. In the same proportions, forty, forty and twenty? A. That is right.

Q. So that what did you get preference shares for? A. Well, it was my understanding that we got it for our mechanical equipment and our organization work.

HIS LORDSHIP: What did you get what for?

MR MASON: The 10,000 preferred. He said for the mechanical equipment and organization work.

Q. Then in addition to the $10,000 worth of preferred the promoting group, the three of you, got 5,000 shares of common? A. No, sir; 2,500.

Q. I beg your pardon, 2,500 shares of common; the financial group getting another 2,500? A. Yes.

Q. Was anything paid by the promoters for the

2,500 shares? A. I did not pay anything for mine.

MR HEIGHINGTON: My lord, I have allowed this to go on, but I think I should intervene now to say that the vendors' contract is right before me now in the minute book.

MR MASON: Well, let us have it.

MR HEIGHINGTON: Whereby the whole thing is paid up, and what the witness said or thought is of course of absolutely no moment. In the minute book which has been produced---

HIS LORDSHIP: I do not think, Mr. Heighington, there is any dispute that the common shares were not paid up.

MR HEIGHINGTON: Well, here is the agreement.

MR MASON: We are not suggesting they were not paid up, my lord. All we are saying is that they did not put up any financial consideration for them.

MR HEIGHINGTON: I just don't want his lordship to listen to a lot of statements as to what people thought was done, when we have the agreement between the company in the minute book right here.

MR MASON: Well, let us put it in.

MR HEIGHINGTON: All right:

"THIS MEMORANDUM OF AGREEMENT made this 25th day of September, A.D. 1933.

B E T W E E N:

SOVEREIGN POTTERS, LIMITED,

herein called the Company,

OF THE FIRST PART:

A N D :

W. G. PULKINGHAM, R. J. McMASTER and A. G. ETHERINGTON, all of the City of Hamilton, in the County of Wentworth,

herein called the Originators.

OF THE SECOND PART:

WITNESSETH:

That in consideration of the premises" --

We will put in a copy by agreement, my lord.

HIS LORDSHIP: Yes. I do not suppose much turns on this.

MR HEIGHINGTON: Well, I want your lordship to hear it; I think it is important.

In the Supreme Court of Ontario.

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A. G. Etherington.

Examination - continued.

"That in consideration of the premises and the mutual benefits thereunder moving and certain other valuable consideration the receipt and sufficiency whereof are hereby by the several parties duly acknowledged,

FIRSTLY: The Originators hereby sell, transfer, set over and assign to the Company its successors and assigns, all benefit which they or any of them may have in to or out of a certain agreement to purchase land and premises in the City of Hamilton, which agreement is dated the 13th day of September, 1933 and is between A.G. Etherington, of the one part, and E.C.Atkins & Co., of the other, and is in the form annexed hereto as a schedule.

SECONDLY: The Originators hereby agree forthwith to supply to the Company as required to complete its program of plant construction, sufficient machinery and equipment, (not being built up apparatus or equipment) to operate a porcelain and tableware manufacturing plant of nine kiln capacity which goods, plant and equipment shall be supplied to the Company F.O.B. East Liverpool, Ohio, U.S.A. without claim or encumbrance of any kind.

THIRDLY: The Originators agree to forthwith reduce to writing for the benefit of the Company full particulars of the nature and kind of plant required for manufacturing porcelain tableware and kindred products, the formulae of material used, the particulars of processing and finishing and all other records deemed necessary by the Company from time to time to ensure the continuity of its manufacturing operations in such field of endeavour.

FOURTHLY: The Originators hereby transfer and assign to the Company all their right, title and interest to any formulae, secret process, designs, patents, trade marks or other appurtenances or conveniences that they now have or are entitled to in the field of the manufacturing or porcelain tableware.

FIFTHLY: The Originators jointly and severally agree that they will not directly or indirectly enter into competition with the company or directly or indirectly as employee or otherwise howsoever aid any other person or corporation in competition with the Company if and when for any reason they or any of them sever connection

with the Company and the term of such restriction shall be for three years after severing connection with the Company, the territory of such restriction shall be the territory now known as the Dominion of Canada and the penalty shall be all damages sustained by the Company directly or indirectly through such competition whether such Originator is wholly engaged therein or not.

SIXTHLY: The actual property in the several assets, rights, restrictions and privileges in the five foregoing paragraphs named are deemed to vest in the Company by this agreement but the Company and the Originators agree jointly and severally to execute and deliver forthwith on demand all further assurances and specific and separate conveyances, assignments, transfers or other documents as may from time to time be deemed requisite or desirable to more effectually or conveniently transfer or vest the same in the Company.

SEVENTHLY: The Company assumes the contract to purchase land in the paragraph firstly referred to and agrees to consummate said transaction according to the terms thereof and to indemnify the Originators jointly and severally against any loss, expense, payments or obligations of any kind arising therefrom.

EIGHTHLY: The Company agrees to allot to the Originators jointly or to such nominees as they shall jointly designate in writing as to the whole or any part thereof all the authorized common shares of the Company without par value now remaining in the Treasury of the Company and such shares shall be so issued as fully paid and non-assessable, and further to issue to said Originators jointly or to such nominees as they shall jointly designate in writing as to the whole or any part thereof 1,000 preference shares of the Company having a par value of $10.00 each fully paid and non-assessable.

IN WITNESS WHEREOF the Company has caused this document to be executed and delivered under its Corporate Seal by the hand of its proper Officers in that behalf and the Originators have executed and delivered same under their hands and seals the day and year first above written."

It is signed, my lord, by Sovereign Potters,

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Examination - continued.

Limited, Norman W. Byrne, President, Ewart G.Dixon, Secretary, then signed by Mr. McMaster, Mr. Etherington and Mr. Pulkingham.

And a by-law confirming the same is By-Law No. 5, which was passed on the same 25th of September, 1933, and the certified copy appears in the minute books under the hand of the president and secretary. Then we will put that in. At that time the only shares that had been issued -- I will read the by-law, my lord.

HIS LORDSHIP: Oh, you don't need to do that, Mr. Heighington. I have seen lots of agreements of that kind.

MR HEIGHINGTON: It is quite a good agreement,I thought.

HIS LORDSHIP: Yes, it is.

MR HEIGHINGTON: Well, we have it now. That is better than recollection.

MR MASON: Leave an exhibit number for that?

HIS LORDSHIP: Yes, that will be the next exhibit.

MR MASON: The by-law with it.

HIS LORDSHIP: Yes, the by-law can be attached.

---EXHIBIT 48: Copy of agreement between Sovereign Potters Ltd. of the first part and W.G.Pulkingham, R.J.McMaster and A. G.Etherington of the second part, Sept.25, 1933, and by-law attached.

MR MASON: Q. Part of this agreement in paragraph "Eighthly", says the company agrees to allot to the originators, the originators being the promoters, jointly or to such nominees as they shall designate, and so on, all the authorized common shares now remaining in the treasury; you did in fact get the 2,500? A. We got the 2,500 shares, yes, sir.

MR HEIGHINGTON: As a matter of fact, Mr. Pulkingham told us that they were all issued to him as a nominee and he divided them 2,500 to his group and---

THE WITNESS: Perhaps I should have said we got them eventually. I don't know the details, Mr. Heighington.

MR HEIGHINGTON: Mr. Pulkingham said they were delivered to him as the nominee and he divided them.

MR MASON: There is nothing between us as to that.

HIS LORDSHIP: There is no mystery as to that.

MR MASON: Not a bit, no.

MR HEIGHINGTON: I did not like the suggestion that they paid nothing for the common, my lord; I did not like that.

MR MASON: Well, we will have to argue that later.

MR HEIGHINGTON: Well, we have got an agreement now.

MR MASON: Q. At all events, you paid nothing for your common in dollars?

MR HEIGHINGTON: The consideration is in the agreement, my lord. I must say the agreement speaks for itself, I think.

MR MASON: We are all familiar with agreements.

MR HEIGHINGTON: Well, you want to add something to it.

MR MASON: Q. Then you had got going, and in 1936 we are told that Mr. McMaster's association with the Sovereign Potters was terminated? A. That is right.

Q. Do you know how that came about? I don't want to know any reasons, I merely want to know who took the action? A. Anything I would tell you would be hearsay. I was not a member of the board.

Q. Then don't tell me. However, he did retire? A. That is right, sir.

Q. And that was, we were told, in the year 1936? A. That is right, sir.

Q. After he retired, then he continued to hold this interest in Carleton Securities? A. That is right.

Q. Now, did you ever have any discussion with him about his interest, what he wanted to do with it or anything of the kind? A. We went into an informal discussion, Mr. Pulkingham, Mr. McMaster and I, at the close of each of our annual meetings which preceded the Sovereign Potters meeting.

In the Supreme Court of Ontario.

Defendant's Evidence No. 31

A. G. Etherington.

Examination - continued

Q. And just what was Mr. McMaster saying or wanting? A. Mr. McMaster was wanting to find a buyer.

Q. Did he say for what purpose? A. To get the money, I guess.

Q. And what was the difficulty? A. Well, from my point of view, the cost might have been much more than the gain to him.

Q. What do you mean by that? That is a little cryptic. A. Well, we had a holding company for our mutual protection, and that in my mind was an agreement until we all got out together.

Q. You told us that you had this meeting annually, the three of you; what was the main purpose of your meeting? A. We called the meeting each year for two reasons. One was to -- I am not versed in law, but I understood we had to have an annual meeting to comply with the law, and the second was to appoint a proxy to the shareholders' meeting of Sovereign Potters, which was always subsequent to ours.

Q. Appoint a proxy? A. Yes.

Q. And that proxy would vote your 2,500 shares? A. That is right, sir.

Q. Then you say this point was raised by Mr. McMaster at each of these meetings? A. That is right, sir.

Q. And with the same result? A. Yes, sir.

Q. Year after year. And did that continue practically from the year 1936 on? -- perhaps before; I don't know. A. Before 1936 there was not very much question of it that I can recall.

Q. It arose, as you recall it, after he retired from Sovereign Potters? A. Well---

Q. Particularly? A. Well, before he retired I do not recall the question coming up. After he retired it came up informally at each meeting.

Q. At each of these meetings. Now, did you become aware of any attempt to change the position of the relative groups prior to 1947 or thereabouts? A. You mean the formation of the last pool?

Q. Yes, or anything of that kind? A. I had no direct knowledge; I had suspicions only.

Q. You did not know all about the pool? A. I had a hunch but I had nothing to work on.

Q. Or about any proposed reorganization of the shares -- did you know anything about that? A. Oh, reorganization of the shares, that was another subject that came up I think twice in the ten years that I sat on the board; but it did not get very far.

Q. Beg pardon? A. It did not get very far.

Q. I want to ask you particularly now about some proposals that were made and were referred to by Mr. Pulkingham on the date, I think, December 10, 1946. On December 10, 1946, he referred to a minute in the book and a motion made by Mr.McMaster and I think seconded by you, that there should be no deal or deals that did not leave Carleton in the same relative position as to holdings and potential earnings that it had previously had. Do you recall that? A. I remember it very well.

Q. Now, what led to that motion? A. A proposal that was forthcoming or was mooted by some of the other shareholders or directors -- I am not certain -- and the proposal was, as I recall it -- and I must qualify this by saying that I am primarily a salesman and not a financial man; I must qualify it by saying that the arrears of dividends would become voting stock and place me in the position of a minority shareholder or place me within the bounds of Carleton Securities as a minority shareholder without any chance of getting out.

MR HEIGHINGTON: They were all against it; we all know that. We have had it two or three times, and I cannot see that it is even relevant, my lord, -- acting for their protection quite properly.

MR MASON: If my friend will let me go on I will try to get through.

MR HEIGHINGTON: I always have a right to object to evidence I do not think is relevant.

MR MASON: All I can say is, my friend takes full advantage of his rights.

Q. What did you mean by "without any chance of getting out"? A. Well, I could get out, I suppose, from that situation, but to get out advantageously.

Q. You mean without getting out to some advantage? A. That is right.

In the Supreme Court of Ontario.

Defendant's Evidence No. 31

A. G. Etherington.

Examination - continued

Q. Well, I think that is clear enough. Now, was there any further discussion with Mr.McMaster at that meeting of December 10th? A. Nothing during the meeting that was a company record.

Q. Then after that? A. After that we always had a few minutes informally, and on this particular occasion he brought the question up again of the sale of his stock, and I told him not to be in a hurry, that there was a deal in the offing.

Q. Yes? A. That is all I can recall that I said.

HIS LORDSHIP: Q. When was this again? A.This was at our meeting in December to deal with -- Well, it was a December meeting, I think.

HIS LORDSHIP: '46?

MR MASON: '46, yes.

Q. You have said -- I have not got your exact language -- that you told him not to be in a hurry? A. Not to be in a hurry, that there was a deal pending or a deal in the offing; it was not pending, it was in the offing.

Q. What had you in mind at that time? A. The Johnson deal, as a matter of fact.

Q. And did you mention---

MR HEIGHINGTON: I object. He said, "That was all I said."

MR MASON: Now, just a moment.

HIS LORDSHIP: No, he did not.

MR HEIGHINGTON: I thought the first answer was, "That is all I said."

HIS LORDSHIP: Yes, that is right.

MR HEIGHINGTON: Now he is asking if something else specifically was mentioned. I am objecting.

MR MASON: I want to know, was there any further conversation?

MR HEIGHINGTON: After he said that is all he said. I think it is objectionable.

HIS LORDSHIP: Well, that may be all Mr. Etherington said, but it does not mean that that was all the conversation.

MR HEIGHINGTON: Oh, no, no. I think it should be specified by Mr. McMaster or other persons.

MR MASON: Well, they were all there together. Anything said in Mr. McMaster's presence would be evidence. I don't know whether there was or not.

MR HEIGHINGTON: He said that is all he said. Find about the others, then.

MR MASON: Q. Was there anything said about a deal of any kind? A. I think that it was agreed amongst us that it would be a nice thing to be able to sell. I think we were in accord on that.

Q. Was anything further said? A. Not that I can recall at the moment.

Q. Now, what was your knowledge of any transaction or suggested transaction at that time? A. The letter of the month previous that went overseas, and the visit of a member of the Johnson family, a member of the Johnson firm.

Q. When was that? A. I am hazy on the dates; I wouldn't like to guess; I really fall down badly on my dates.

Q. Were you present at an interview with Mr. Robinson? A. I was present with Mr. Pulkingham in Mr. Robinson's office and looked on at the drafting of the first letter, I would say.

Q. And what was in that letter, as far as you can recollect? A. The only thing that I could recollect at the moment is $1,500,000; that stood out in my mind.

Q. You mean as an asking price? A. Yes, sir.

HIS LORDSHIP: Q. That was a letter to whom? A. To a member of the Johnson family, I think, sir, not to the firm.

HIS LORDSHIP: Is that letter in, Mr. Mason?

MR MASON: No. The contents of it were mentioned by Mr. Robinson and Mr. Pulkingham.

Q. Then was that your knowledge of the matter on December 10, 1946? I think you said you were not very specific as to the dates of some of the things you said. Then Mr. Etherington, tell me if you know about this -- if you don't, say so -- did you know anything about an option being given -- I will say option or options, being given by Mr. McMaster to Mr. Pulkingham? A. Yes.

In the Supreme Court of Ontario.

Defendant's Evidence No. 31

A. G. Etherington.

Examination - continued.

Q. You knew that? A. Yes.

Q. And have you any recollection of the details, whether it was one or two renewals, or anything else about it? A. Yes.

Q. What is your recollection? A. Well, I think I originated the idea of him putting an offer to sell in writing, coming out of one of our conversations regarding selling his stock, and I distinctly recall saying, "Well, Harry, we can't lead a buyer to your doorstep without having your commitment in writing." 10

Q. And was a commitment received? A. Mr. Pulkingham received it.

Q. Do you know the amount? A. It was $30,000.

Q. Do you recall whether or not there had been any previous prices, or is that the only one that is in your mind? A. There had been previous prices, sir.

Q. But the last one that you know of, I take it, was $30,000? A. Yes, sir. 20

Q. Do you know who fixed the price yourself? A. Mr. McMaster.

Q. And do you know when that option expired yourself? A. The last time I saw it it had not expired; that is all I can tell you.

Q. Have you any definite recollection yourself as to when it did expire, the expiry date? A. The expiry date of that first option was---

Q. I am not particular about the first option, unless my friend wants it. What I want to get at is, do you know anything about the expiry date of the option that was taken over by Mr. Byrne? A. Oh, yes; yes, I do. 30

Q. Well, what do you know about that? A. I know that Mr. Pulkingham had the option in his possession, and as it grew near its termination he said, "Well, we had better do something"---

Q. You can't tell me what he said. As it drew near the termination you had a conversation with him? A. That is right, sir; and we just concluded that we should do something, or I agreed with him that something should be done to---

MR HEIGHINGTON: Q. What did you do? What did you do? A. Get some action into the option, that the man was anxious to sell.

MR MASON: Q. What was done? No, I should not ask you that yet. What do you know about the expiry date? A. When that conversation came up it still had some days to go.

Q. And do you know when that was? A. No; I just know that approximately it was during the last week of the option.

Q. And at that time you say it had some days to go? A. That is right.

Q. That is as close as you can get to it, is it? A. Yes.

Q. All right, thanks, Then were you familiar with the various vicissitudes of the matter until it came to a termination in June? A. You mean of the---

Q.. The negotiations? A. Well, I was in touch with them at all times through Mr. Pulkingham, and we sometimes conferred privately, but most of the time I had to go on about my work as a salesman, and I depended pretty much on his doings.

Q. You were the sales manager, were you? A. Yes, sir.

Q. Of the pottery? A. Yes, sir.

Q. And that has been your business, I take it, for a long period? A. Yes, sir.

Q. The financial end of it was looked after by Mr. Pulkingham? A. Yes, I got most of my information about the thing as it developed from him.

Q. He was more closely in touch with the negotiations than you were? A. Yes, sir.

Q. We were shown here some material from the Department of the Provincial Secretary at Toronto, in which Mr. Byrne was mentioned as secretary over quite a number of years. Did Mr. Byrne after the year 1935 or thereabouts, at least in those

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Defendant's Evidence No. 31

A. G. Etherington.

Examination - continued

thirties, did he ever act as secretary of the company? A. That was a surprise to me, because I was under the impression that I was the secretary of the company, although I cannot recall the procedure by which I was appointed.

Q. At all events, did Mr. Byrne attend any meetings after that period? A. None.

Q. Or act as secretary in any way? A. None, to my knowledge.

Q. That is all, thank you.

MR HEIGHINGTON: Excuse me a minute. He actually did---

HIS LORDSHIP: Mr. Heighington, are you going to be any length of time? -- because I thought we might recess at this point.

MR HEIGHINGTON: I don't think I will be more than a few minutes -- five minutes, perhaps.

THE WITNESS: Your lordship, may I ask to get through as soon as possible? I have an engagement with Winnipeggers, and I have put it off three days.

HIS LORDSHIP: Well, all right.

MR HEIGHINGTON: I will be very short.

No. 32

A. G. Etherington

Cross-Examination

DEFENDANT'S EVIDENCE

No. 32

CROSS-EXAMINATION OF A. G. ETHERINGTON

CROSS-EXAMINED BY MR HEIGHINGTON:

Q. I was just saying, Mr. Etherington, you say he did not act as secretary, yet we have this fact, that he did send in and pay the fees for the annual returns, they were sworn in his office and apparently sent in by him; do you know that?

MR MASON: My friend should not say that, my lord. He can say they were sworn by Mr. Byrne, but not that they were apparently sent in by him.

MR HEIGHINGTON: Because there is a receipt there for the money which you read to his lordship

yesterday, Byrne & Dixon, a receipt for the---

MR MASON: That did not indicate that Mr. Byrne did it or knew anything about it.

MR HEIGHINGTON: We have in the file a letter saying that fees had been paid for some four or five years.

Q. Apparently returns had not been made -- do you remember that -- and there were a lot of them made at one time? A. Yes, I---

Q. That was an oversight; I am not blaming you. They were all done at one time, weren't they? A. Yes, I asked for assistance to get out of the mess I had got into, because I did not understand those things at all.

Q. And Mr. Byrne drew them up, did he? A. I don't know whether he drew them or whether I consulted with one of our auditors on their visits to the pottery, but I wanted somebody that knew something about this company business to get me out.

Q. Who sent them in to the Department? A. I don't remember.

Q. You don't remember that? A. No.

Q. All right. Now, there is just the one thing I wanted to ask you about -- the alleged cut, Mr. Byrne's cut. You have heard it mentioned, haven't you? You have been around the court? A. Yes, I have.

Q. Have you heard it said that Mr. Byrne was to have a third of your original vendors' contract? A. Yes.

Q. And that he said in the box -- I think I am correct -- that you had promised him that, and furthermore that on a later date you had come back and said that Mr. Pulkingham had confirmed your promise to Mr. Byrne that he should have a third of the vendors' -- your proportion of the vendors' stock; what do you say?

MR MASON: I do not think, with deference to my friend, that the latter part of the statement is

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A. G. Etherington. Cross Examination - continued

correct. You better divide it up.

MR HEIGHINGTON: All right.

Q. Did you make any promise to Mr. Byrne about any participation at all, in your proportion of shares, vendors' shares? A. I have been trying to refresh my memory on any arrangement I might have made, and I cannot recall having done it.

Q. And if you cannot recall having done it, I suppose you cannot recall having had Mr.Pulkingham confirm it at all? A. No, I can't.

Q. One follows the other, doesn't it? A.That is right, sir.

Q. You were at some meeting in Mr.Robinson's office with Mr. Pulkingham? A. Yes.

Q. What stage of the proceedings was that? Was anything definite? Was it still very vague? A. Very vague.

Q. That is all, thank you, Mr. Etherington.

---Whereupon, following an interval from 11.47 a.m. until 12.00 noon, the Court adjourned until 2.00 p.m.

Upon resuming at 2.00 p.m., argument proceeded until 4.35 p.m.

(JUDGMENT RESERVED)

No. 33

FORMAL JUDGMENT

In the Supreme Court of Ontario.

No. 33

Formal Judgment

27th April 1950.

The Honourable Mr. Justice Smily) Thursday, the 27th day of April, 1950.

BETWEEN

HARRY J. McMASTER,

Plaintiff:

- and -

NORMAN W. BYRNE,

Defendant:

and by Order of Revivor

BETWEEN ROBERT McMASTER and JAMES McMASTER, Executors of the Estate of Harry J. McMaster, deceased

Plaintiffs:

- and -

NORMAN W. BYRNE

Defendant:

This action coming on for trial on the 6th, 7th, 8th and 9th days of February, 1950, at the sittings holden at Hamilton for trial of actions without a jury, in the presence of Counsel for all parties, UPON HEARING read the pleadings and hearing the evidence adduced and what was alleged by Counsel aforesaid, this Court was pleased to direct this action to stand over for judgment, and the same coming on this day for judgment,

1. THIS COURT DOTH ORDER AND ADJUDGE that this action be and the same is hereby dismissed with costs to be paid by the plaintiffs to the defendant forthwith after taxation thereof.

JUDGMENT SIGNED this 7th day of July, 1950.

'G. T. Inch'

Local Registrar S. C. O.

Entered and compared in S.C.J.B. No. 13, Folio 332, this 8th day of July, 1950.

'E.I.M.'

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No. 34

REASONS FOR JUDGMENT

SMILY J.: The original plaintiff was the holder of 40% of the shares of a holding company known as Carleton Securities Limited, which company owned one-half of the issued common shares of a company named Sovereign Potters Limited. The defendant, who was solicitor for and secretary of the latter company but not a shareholder, and who had also acted as solicitor for the said plaintiff, purchased all the shares of the latter in Carleton Securities Limited, and later, when an English company, Johnson Brothers (Hanley) Limited, bought out Sovereign Potters Limited and in connection therewith purchased all the shares of Carleton Securities Limited, the defendant realized a substantial profit. This action was brought for an accounting of this profit and to recover same on the ground that the purchase by the defendant from the said plaintiff was in breach of the fiduciary duty which it is alleged the defendant then owed to the said plaintiff by reason of the confidential relationship, as solicitor and client, and as the trusted friend and adviser of the plaintiff, that existed between the said plaintiff and the defendant in that -

(a) The defendant had information regarding the probable sale to Johnson Brothers (Hanley, England) Limited of the shares in the capital stock in Sovereign Potters Limited and in Carleton Securities Limited, on very advantageous terms, but did not disclose to, but withheld from the plaintiff, this information, of which the plaintiff at the time was wholly ignorant, and which it was material for the plaintiff to know in connection with the sale of the shares aforesaid.

(b) The defendant did not disclose to the plaintiff fully and exactly and without reservation all the relevant facts material to be known by a vendor in connection with the said sale, and did not inform the plaintiff fully and completely of the factors material for the plaintiff to know, and which might properly have influenced the decision on his part whether or not to sell the shares aforesaid to the defendant, but concealed this information and suppressed from the plaintiff all

the material information in connection with the proposed sale of Johnson Brothers (Hanley,England) Limited in the possession of the defendant.

(c) The defendant did not advise the plaintiff diligently, properly or at all, in connection with the transaction aforesaid.

(d) No competent independent advice to the plaintiff in connection with the said transaction was given to the plaintiff, or was advised or suggested by the defendant to the plaintiff.

(e) The transaction in question was not a fair one in all the circumstances, but was disadvantageous to the plaintiff.

Sovereign Potters Limited was formed in 1933 by one W.G. Pulkingham, A.G. Etherington and the said original plaintiff H.J. McMaster, for the manufacture of porcelain tableware and kindred products, in the City of Hamilton. The venture was largely financed by other persons. The shares of the company consisted of both preferred and common. Preferred shares were issued to those who invested cash in the business, and 5,000 shares of common stock were issued to the said Pulkingham, Etherington and McMaster and the other persons mentioned, in the proportion of 2,500 shares to the first three and 2,500 shares to the others who are sometimes referred to as the financial group, while the first mentioned were referred to as the originators or promoters. It does not appear there was any cash consideration for these common shares, but certain consideration of formulae, secret process, patents, trade marks, etc., was provided for in an agreement between the company and the originators. (Exhibit 48).

Mr. McMaster, for reasons which are not material, was desirous that the holdings of the three originators should be tied up so that there could not be a majority interest in the company formed against any one of them. To accomplish this their shares were put into a holding company, the said Carleton Securities Limited, so that each of the originator's interest in Sovereign Potters Limited was represented by shares in the said Carleton Securities Limited. Their proportionate holding was 40% by the said Pulkingham, 40% by the said McMaster, and 20% by the said Etherington.

The defendant acted as solicitor in the formation of the said Sovereign Potters Limited, and

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also in the placing of the stock in the holding company, Carleton Securities Limited. He was also a secretary of both companies. He was not, however, active as secretary of Carleton Securities Limited, inasmuch as it was not an active company, only holding meetings to comply with statutory requirements, and to appoint a proxy to attend meetings of Sovereign Potters Limited. The defendant did not attend these meetings of Carleton Securities Limited, and in fact he says he had forgotten that he was the secretary of the company. The company's annual returns were sworn to by Mr. Pulkingham, the president, on some occasions, and by Mr. Etherington on other occasions. For some years they were sworn before the defendant, but not after 1942. For a few years returns were not filed, and when the arrears were made, the return appeared to be made by Mr. Etherington before an outside commissioner, possibly in the office of the Provincial Secretary. Mr. Etherington states that he was under the impression that he (Mr. Etherington) was the secretary. The evidence does not show by whom the returns were prepared, but apparently they were not prepared by the defendant and probably not in his office.

At the outset the three originators were directors of Sovereign Potters Limited, and Mr. Pulkingham, and Mr. McMaster were actively engaged in the business, Mr. McMaster being plant superintendent.

In 1939 Mr. McMaster retired from the business and formed a separate business of his own in the neighbouring town of Dundas. This latter business was incorporated in 1944. After Mr. McMaster retired from the business of Sovereign Potters Limited, he was desirous of disposing of his interest in such business, but, it being represented by his shares in the holding company, Carleton Securities Limited, the shares were not readily saleable. He enquired of the defendant whether the holding company could be broken up, but was apparently informed that it could not. He also endeavoured to have Mr. Pulkingham and Mr. Etherington find a purchaser for his stock, and this eventually resulted in his giving to Mr. Pulkingham in September 1946 an option to purchase his shares for $30,000.00. As a matter of fact, a few years before this he had given Mr. Pulkingham an option and on previous occasions had offered

his shares for small amounts of $25,000.00 and $20,000.00. Mr. Pulkingham had approached a Mr. Robinson, one of the directors of Sovereign Potters Limited, about his buying the shares, but Mr. Robinson says that as a financial investment it did not appeal to him. Following the giving of this option in September 1946, an intimation came from another source that Johnson Brothers (an English Company) might be interested in obtaining a controlling interest in Sovereign Potters Limited. An informal discussion took place between some of the members of the company, namely, Mr. Pulkingham, Mr. Etherington, and the said Mr. Robinson. It was then suggested that they might mention to the English company a price of $1,500,000.00 for all the stock of the company. Apparently there had been other approaches for and rumours regarding purchase of the company, and until there was some evidence the English company was serious it was not considered worth the attention of the directors.

On December 10th, 1946, a meeting of Carleton Securities Limited, consisting of the three gentlemen, Pulkingham, Etherington and McMaster, was being held for the purpose mainly of appointing a proxy for a meeting of Sovereign Potters Limited, and at that meeting a discussion took place as to a proposal by some of the shareholders of Sovereign Potters Limited for reorganization whereby preferred shares would be changed into common shares and arrears of interest on preferred shares would be taken up by common shares. These three gentlemen were opposed to such a change as it would affect the voting position of their holding company, and, of course, of themselves. The matter of Mr.McMaster's stock and of the option to sell had come up, and Mr. Etherington stated to Mr. McMaster, "Don't be in too big a hurry to sell your stock as there may be negotiations to sell Sovereign Potters Limited." About this time, and Mr. Pulkingham thinks it was at this meeting, the option given to him to purchase Mr. McMaster's stock was renewed. It was given on or about September 19th, 1946, and was for 90 days. The 90 days would not have run out by December 10th but it would be shortly expiring, and the renewal or new option was given for 100 days.

In January 1947 a representative of the English company, referred to, visited Sovereign Potters Limited.

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On or about March 6th, 1947, the defendant was asked by Mr. Pulkingham to give him the name of a firm of solicitors to look after the interests of the English company, which the defendant did. On the 21st March, Mr. Pulkingham asked the defendant to go with him to see this firm of solicitors, and on that date Mr. Pulkingham advised the defendant regarding the extent of the negotiations with the English firm, which consisted, for the most part. of the suggestion by Sovereign Potters Limited as to the price of $1,500,000.00 for the shares of the compamy; some communications on the matter, without much import; the visit of the representative of the English company, looking over the plant in January; and nothing much further until a telephone conversation in March when Mr. Johnson stated he was sincerely interested in buying control providing the present executives would continue the operations for at least some time. This was followed by a cable to Mr. Pulkingham intimating that a lower price of $160.00 for preferred and $150.00 for common, excluding Carleton Securities shares (of which Mr. McMaster's shares were a part,) would be acceptable, and requesting the recommendation of a Canadian solicitor. All of this is referred to in a letter addressed to the directors by the defendant under date of March 27th (Exhibit 16).

On this same date, the 21st March, the defendant obtained from Mr. Pulkingham an assignment of his option from Mr. McMaster to buy the latter's shares. Mr. Pulkingham, apparently, was not desirous of purchasing them, one explanation being that he did not have the money. The defendant advised Mr. McMaster that he had obtained the option from Mr. Pulkingham and was desirous of purchasing the shares. He arranged to see Mr. McMaster on the following day, March 22nd, to take up the option. He accordingly saw Mr. McMaster at his house on the said day, but instead of taking up the shares then, although he said he was ready to do so and had arranged for the money, he obtained a new option from Mr. McMaster for 30 days. He says he wished to have further time to enquire into the Johnson deal. There is some question as to whether the option to Mr. Pulkingham had expired at that time. Evidence was given on behalf of the plaintiffs to indicate it had. On the other hand, the defendant said it

had not and Mr. Pulkingham states that he is certain it had not expired. If the 100 days was from December 10th, the date Mr. Pulkingham thought it was given, the option would have expired. If, however, it was 100 days from the expiry of the first option, 90 days after September 10th, 1946, it would not have expired.

I am not satisfied on the evidence that it has been established the option had not expired. The evidence was somewhat unsatisfactory as to this. While I have no doubt Mr. Pulkingham, whose evidence throughout I am prepared to accept, was under the belief the option had not expired, he may have been mistaken about it. The document containing this option was not available, it having apparently been destroyed when the defendant was given his option, and the parties now, of course, are dependent on their recollections. However, in the view I take of the case I do not think it makes any difference whether this option had expired or not, and I shall deal with it on the basis that it had expired and that Mr. McMaster was entering into a fresh transaction with the defendant. I do not think the plaintiffs' case is, at least, any weaker on this basis, and is in line with the submission of their counsel.

Now to pursue this history of the events which led to the bringing of this action. Negotiations followed between Sovereign Potters Limited and the English Company, offers and counter offers were made, difficulties were encountered with financial arrangements, particularly with English foreign exchange restrictions, a time limit was put on by the Sovereign Potters Limited shareholders, both as to the giving of a satisfactory firm offer by the English company and the date for closing the transaction, and it was only at the last minute that these difficulties were resolved and an agreement for the sale and purchase of the Sovereign Potters Limited shares, which could be carried out, arrived at. This was not until the 1st June, 1947. While the negotiations were being carried on, Mr. McMaster was in conversation with one B. L. Marsales, a shareholder of Sovereign Potters Limited, and Mr. Marsales mentioned to Mr. McMaster, "Byrne would not get as much as the last (proposal) as we pulled the price down", and Mr. McMaster said, "I don't care if Byrne makes a million, I got what I

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wanted." The time of this was right after a meeting held on May 14th, 1947. On cross-examination, Mr. Marsales said that he thought it (the deal) would be like most of the others and fall trhough.

Under the sale to the English company mentioned, the defendant realized for the shares which he purchased from Mr. McMaster the sum of $127,000.00 or $97,000.00 more than he paid Mr. McMaster for same.

When Mr. McMaster learned from a newspaper report that the sale to the English company had been made, he was surprised, and when he later learned of the price, he was stunned and shocked, according to some of the witnesses, members of his family for the most part. This is probably not surprising. No doubt he, like other shareholders, never expected the sale would be consummated, that like other approaches for the purchase of the company it would fall through. Mr. McMaster then brought this action. After the action was commenced, Mr. McMaster died, and it was revived in the name of the executors of his estate.

The defendant had acted as solicitor for Mr. McMaster on a number of occasions until some time in 1946, including the incorporation of the company in 1944 to carry on the business of Mr.McMaster, drawing his will, the purchase of property, and matters arising out of the business of Mr.McMaster's company. Other solicitors also had acted for him for special reasons mentioned in the evidence, but the evidence indicates the defendant was his chief legal adviser. The last services rendered by the defendant to Mr. McMaster were some time in the early fall of 1946, and an account was rendered by the defendant on December 6th, 1946, for services in a number, if not most, of the matters in which the defendant acted as solicitor for Mr. McMaster.

Strictly speaking, the defendant was not Mr. McMaster's solicitor at the time of the option to him, but no doubt Mr. McMaster would regard the defendant as his solicitor and the defendant would regard him as his client. Certainly the defendant was not acting as solicitor for Mr. McMaster in the particular transaction in question. Nevertheless, while I think that at the time of the transaction in question between the defendant and

Mr. McMaster it must be said the relationship of solicitor and client in a strict sense had discontinued, I think it must also be said that the confidence naturally arising from such a relationship should be presumed to have continued, as was said by Parker J. Allison v. Clayhills, 97 L.T. Rep.709. And, as was also said by Parker J. in the same case, although the relationship of solicitor and client in its strict sense has been discontinued, the same principle, namely, that the onus of upholding the transaction would rest upon the solicitor, applies as long as the confidence naturally arising from such a relationship is proved or may be presumed to continue.

Assuming a relationship of confidence existed between Mr. McMaster and the defendant, I do not think such relationship affected any matters which Mr. McMaster might consider in deciding whether or not to sell his shares for the price which he had previously fixed. On the evidence I do not think there is any information or advice which the defendant could have given which would have had any bearing on his decision. Let us look at the situation then existing. I have already related the position of the negotiations. In addition, there are the following pertinent facts. A pool agreement, tying up the financial group's hands, was under consideration, and there was a possibility of capitalization of the arrears of interest on the preferred shares of Sovereign Potters Limited and the conversion of preferred shares into common while not likely in view of the position they had previously taken. Mr. Pulkingham and Mr. Etherington might vote their shares in Carleton Securities Limited to appoint a proxy who would vote to capitalize the preferred shares into common shares which would put Carleton Securities Limited in a minority position. All this would be prejudicial to the position of Mr. McMaster's shares. In fact it would appear that the defendant took a considerable chance in purchasing Mr. McMaster's shares at the price mentioned - a chance which I do not believe Mr. McMaster wished to be subject to. Moreover, I do not believe that if the defendant had not the incentive of his personal interest he would have put forth the efforts he did to bring about a consummation of the sale to the English company, and but for those efforts it is questionable if the sale would have gone through. It does not appear he was employed as

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a solicitor in the negotiations, and, even if he had been retained by the vendors, I doubt if it can be said his duties as a solicitor would have required him to go the lengths he did. Referring again to the facts known at the time of the option to the defendant, it would seem in order to note that at such time the proposal was not to buy the shares held by Carleton Securities Limited and, while the English company may not have been able to obtain control without these shares, the necessity of buying them might very well have caused them to abandon their intentions and drop the matter, or an alternative might have been to buy only a portion of such shares. One might almost read between the lines, from his remark to Mr. Marsales, that Mr. McMaster felt the interest shown by the English company was the thing that was needed to prompt someone such as the defendant to buy his stock and that it was a fortunate circumstance for him in enabling him to get rid of his stock after all his years of effort to do so.

The principle applicable to a transaction between two persons in a relationship of confidence is expressed in the leading case of Demerara Bauxite Co. v. Louida Hubbard (1923) A.C. 673 at p. 681, as follows:

"In the absence of competent independent advice, a transaction of the character involved in this (action), between persons in the relationship of solicitor and client, or in a confidential relationship of a similar character, cannot be upheld, unless the person claiming to enforce the contract can prove, affirmatively, that the person standing in such a confidential position has disclosed, without reservation, all the information in his possession, and can further show that the transaction was, in itself, a fair one, having regard to all the circumstances. In order that these conditions may be fulfilled it is incumbent to prove that the person who holds the confidential relationship advised his client as diligently as he should have done had the transaction been one between his client and a stranger, and that the transaction was as advantageous to the client, as it would have been, if he had been endeavouring to sell the property to a stranger.

Mr. McMaster did not have any independent advice at this time, although he did have what

might be said to be some independent advice some few months before, when he was giving a similar option, and which was "Don't be in too big a hurry to sell your stock as there may be negotiations to sell Sovereign Potters Limited." However, he was a successful business man and would be in as good a position to know what was in his interest in a business transaction such as this as was the defendant. He would not require the advice of a solicitor in such a transaction, and any advice that would be helpful would more likely come from a business man such as the one (namely, Mr.Etherington) who had made the remark to him just quoted. The situation here corresponded very largely to that in the case of Allison v. Clayhill (supra).

Now as to the defendant having disclosed, without reservation, all the information in his possession, this in my opinion means information which might assist or affect Mr. McMaster in deciding whether to enter into the transaction. As I have previously indicated, in my opinion there was no such information in the defendant's possession at that time. I do not believe any of the information mentioned in the letter of March 27th, previously referred to, would have made any difference to Mr. McMaster's desire to sell his stock at the price mentioned. He was aware there might be negotiations for a sale of Sovereign Potters Limited, and there is no information mentioned in the said letter which, in my view, would have affected his decision. The mere fact that it was mentioned that they should suggest a price of $1,500,000.00 is not, I think, very significant. It seems abundantly clear on all the evidence, and having regard to Mr. McMaster's offorts over the years to get rid of these shares, that there was nothing in the situation then existing which would have caused him to miss this opportunity. It must be remembered, as previously stated, that there had been many previous approaches which amounted to nothing, that Mr. Robinson was not impressed, that Mr. Pulkingham, who had the same opportunity to buy, did not do so, and that Mr. McMaster himself said he didn't care if the defendant made a million. Everything points to the conclusion that up until the time the sale of Sovereign Potters Limited was consummated Mr. McMaster was satisfied with his bargain, regardless of any proposal for sale of the said company. Moreover, the subsequent events up to the last minute of the negotiations appeared to justify his attitude.

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I am also of the opinion that, in the light of the facts then existing, the transaction was a fair one, having regard to all the circumstances. Further, on the question of advice to Mr.McMaster, the defendant was not acting as his solicitor in hac re nor in respect of any other matter at this time. But, in any event, there was no advice which the defendant, if acting as his solicitor and diligently advising his client, could have given which would have affected his decision. That the transaction was as advantageous to Mr.McMaster as it would have been if he had been endeavouring to sell his shares to a stranger is patent from the fact that he had already offered to sell his shares to "a stranger", namely, Mr. Pulkingham, on the same terms. The following quotation from the judgment in the said case of Demerara Bauxite Co. v. Louisa Hubbard (supra), at p. 681 would seem to be in order:

"There does not appear to have been, in the ordinary sense, a market for the properties in question, and the value therefore to a large extent depended upon the existence of probable competitive purchasers.

"The crucial date is January 30, 1919. It is not a question of honesty, but of a full disclosure and of a fair price. If, at this date, it could be shown that Humphrys had fulfilled all the duties which attached to his confidential relationship towards Mrs. Hubbard, the fact that he subsequently made a considerable profit on the transaction would not render it void and unenforceable."

The crucial date in the case at bar is March 22nd, 1947. There was not competitive purchasers, as in the Demerara Bauxite Company case, but only the fact that another company was interested in obtaining control; and, as I have said, all material information in the possession of the defendant was also known to Mr. McMaster. It might also be noted that in the Demerara Bauxite Company case the solicitor was acting in hac re.

Possibly I should make some further reference to the evidence. I do not think much reliance can be put on snatches of conversation heard by

members of the family. An example is the statement of Mr. McMaster's daughter, Ruth, that she heard the defendant say on the occasion when he completed his purchase of the shares, "Harry, "(Mr. McMaster), the only reason I want this stock is to get back at Etherington." This may have referred to a cut in the originators' stock which, it was suggested, Mr. Etherington had stood in the way of the defendant obtaining. Another remark, which it was said the defendant had made while he was leaving, was "Keep this under your hat." This might have referred to the fact that the English company was interested. While the defendant denied having made these remarks, this may simply mean that he did not recall them for the reason they were not impressed on his recollection and particularly in the connection suggested in the evidence. The same thing may be said about the remark said to have been made by the defendant as to wanting to get back at Etherington. Another instance is the evidence of Mrs. Walter, another daughter of the deceased McMaster and who was associated in his business, that Mr. McMaster spoke to the defendant on the telephone after having been approached by Mr. Pulkingham in regard to the option to him, and that following such conversation; in which the defendant said, "Whatever you say, Norm.", a renewal of the option or a new option was given to Mr. Pulkingham. I hardly think this establishes anything. The defendant denies this conversation, as he does many other statements or remarks he is said to have made. I think, however, in many instances this is because they are not within his recollection rather than that they were not said. This is readily understandable when they are removed from their context and may refer to some other matter or aspect. The fact that the deceased McMaster was surprised or astounded on hearing of the sale to the English company, or that he was profoundly shocked on learning of the price received for the stock, is not particularly helpful. It is easy to be wise after the event and to be remorseful over things that might have been different. The fact is that the defendant was a speculator or willing to take a gamble, and Mr. McMaster was not. Something

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Reasons for Judgment.

Smily J.

27th April 1950 - continued.

was said in the evidence as to the defendant having said to Mr. McMaster, "I am taking a gamble on this." If this were said, it referred, in my opinion, to the chance of the sale to the English company being consummated and the shares involved in the transaction in question being included in such sale, rather than to anything else.

On the whole, therefore, I am of the opinion that the evidence establishes that there has not been a breach of a fiduciary duty owing by the defendant to the deceased plaintiff, and that the plaintiff's action fails.

IN THE COURT OF APPEAL FOR ONTARIO

No.35

FORMAL JUDGMENT of Court of Appeal

In the Court of Appeal for Ontario

No.35

Formal Judgment

8th Nov. 1950.

THE HONOURABLE MR. JUSTICE HENDERSON,)
THE HONOURABLE MR. JUSTICE LAIDLAW,)
THE HONOURABLE MR. JUSTICE HOGG.)

Wednesday, the 8th day of November, 1950.

B E T W E E N :

(S) ROBERT J. McMASTER and JAMES McMASTER, executors of the Estate of Harry J. McMaster,

Plaintiffs:

- and -

NORMAN W. BYRNE,

Defendant:

UPON MOTION made unto this Court on the 2nd, 3rd, and 4th days of October, 1950, by counsel on behalf of the plaintiff by way of appeal from the judgment pronounced by the Honourable Mr. Justice Smily on the 27th day of April, 1950, herein, in the presence of counsel for all parties, and upon hearing read the pleadings, the evidence adduced at the trial and the judgment aforesaid, and upon hearing what was alleged by counsel aforesaid, and judgment upon the motion having been reserved until this day.

1. THIS COURT DOTH ORDER that this appeal be and the same is hereby dismissed with costs to be paid by the plaintiffs to the defendant forthwith after taxation thereof.

"CHAS. W. SMYTH"

Registrar S.C.O.

Entered O.B. 209 pages 450-451
November 16th, 1950.
"H.R."

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No.36

No.36

Reasons for Judgment.
(A) Henderson J.A.

8th Nov. 1950.

REASONS FOR JUDGMENT OF COURT OF APPEAL

(A) HENDERSON J.A.:- Appeal from the judgment of Smily J. dated April 27th, 1950.

I concur in the opinion of my brother Laidlaw. In my opinion it did not enter the minds of either the late Mr. McMaster or the respondent that in renewing the option for one month, which had first been given to Mr. Pulkingham for ninety days, and then renewed for one hundred days, and which was about to expire, the transaction between them was one between solicitor and client, and they did not, in fact, in my opinion, at that time stand to each other in that relation.

The evidence of six relatives of the late Mr. McMaster was taken. The purpose of it was to indicate that the late Mr. McMaster's illness and death were the result of this transaction. In my opinion it was not evidence and should not have been admitted. It is completely discredited to my mind by two things: first, there is nothing in the article in the Hamilton paper of June 27th, 1947, to shock Mr. McMaster and secondly, the evidence of Mr. Marsales, an independent and disinterested witness, whose credit nobody has assailed. It shows that in the latter part of May Mr. Marsales and the late Mr. McMaster were equally acquainted with the situation except that at that date Mr. McMaster may not have known until that conversation of the last figure which the vendors had put on the common stock, and it is clearly proved that Mr. McMaster was perfectly satisfied with the terms of his option to the respondent. It also corroborates the evidence of the respondent in all material matters. I think it is clear that no sale would have been made but for the work of the respondent, and particularly his action in inducing a Canadian Bank to advance half a million dollars, which is practically half the total purchase price on the undertaking and guarantee of himself and Mr. Pulkingham.

(B) Laidlaw J.A.

(B) LAIDLAW J.A. This is an appeal by the plaintiffs from a judgment of Smily J. dated the 27th day of April, 1950, dismissing with costs an action commenced on the 15th day of September, 1947, by the late Harry J. McMaster, and continued at the suit of the executors of his estate by order dated

the 8th day of September, 1949. The appellants ask that the judgment of Smily J. be reversed and judgment entered for them, or that there be a new trial.

The respondent is a barrister and solicitor and for many years has practised law in the City of Hamilton, Ontario. On the 8th day of April, 1947, he exercised an option, dated March 22nd, 1947, given to him by the late Harry J. McMaster, and in accordance with the provisions thereof purchased from Mr. McMaster all his shares of Carleton Securities Ltd. for the sum of $30,000.00. On or about the 27th day of June, 1947, the respondent sold those shares to Johnson Bros. (Hanley, England) Ltd. for the sum of $127,000.00. It is alleged in the statement of claim that, -

"The purchase by the defendant from the plaintiff of the shares in question was in breach of the fiduciary duty which the defendant then owed to the plaintiff by reason of the confidential relationship, as solicitor and client, and as the trusted friend and adviser of the plaintiff, that existed between the plaintiff and the defendant in that -

"(a) The defendant had information regarding the probable sale to Johnson Brothers (Hanley, England) Limited of the shares in the capital stock in Sovereign Potters Limited and in Carleton Securities Limited, on very advantageous terms, but did not disclose to, but withheld from the plaintiff, this information, of which the plaintiff at the time was wholly ignorant, and which it was material for the plaintiff to know in connection with the sale of the shares aforesaid.

"(b) The defendant did not disclose to the plaintiff fully and exactly and without reservation all the relevant facts material to be known by a vendor in connection with the said sale, and did not inform the plaintiff fully and completely of the factors material for the plaintiff to know, and which might properly have influenced the decision on his part whether or not to sell the shares aforesaid to the defendant, but concealed this information and suppressed from the plaintiff all the material information in connection with the proposed sale to Johnson Brothers (Hanley, England) Limited in the possession of the defendant.

"(c) The defendant did not advise the plaintiff diligently, properly or at all, in connection with the transaction aforesaid.

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Reasons for Judgment. (B) Laidlaw J.A. 8th Nov. 1950 - continued.

"(d) No competent independent advice to the plaintiff in connection with the said transaction was given to the plaintiff, or was advised or suggested by the defendant to the plaintiff.

"(e) The transaction in question was not a fair one in all the circumstances, but was disadvantageous to the plaintiff.

It is further alleged, -

"Promptly upon discovery of some of the facts relating to the sale of the shares aforesaid to Johnson Brothers (Hanley, England) Limited, the plaintiff repudiated the said sale and demanded an accounting from the defendant of his profit in respect of the said transaction, which has been refused by the defendant."

The plaintiffs claim, -

"(a) An accounting by the defendant to the plaintiff of the defendant's profits in respect of the transaction aforesaid.

"(b) Payment by the defendant to the plaintiff of the sum of Ninety-seven Thousand Dollars ($97,000), together with interest thereon at five per centum (5%) per annum, from the 5th day of July, 1947, until payment or judgment, less whatever stamp transfer tax has been paid by the defendant in connection with the said transfer of the shares aforesaid to Johnson Brothers (Hanley, England) Limited.

"(c) That for the purposes aforesaid, all necessary enquiries be made and accounts taken.

"(d) Such further or other relief as to the nature of the case may require and as to this Honourable Court may seem proper.

"(e) The costs of this action."

In his statement of defence, the respondent expressly denies that he was the intimate friend or the confidential adviser or the solicitor of the late Harry J. McMaster for many years or that "at all material times the plaintiff acted upon the defendant's advice" as alleged in the statement of claim. On the contrary, the respondent alleged "that at no time did any fiduciary relationship or the relationship of solicitor and client exist between him and the plaintiff with respect to Sovereign Potters, Ltd., Carleton Securities Ltd., or any holding or interest of the plaintiff in either

of the said companies." The respondent alleged, also in his statement of defence, that, -

"the negotiations for the sale to Johnson Bros. (Hanley, England) Ltd. of the shares in the capital stock of Sovereign Potters, Ltd. commenced in or about the month of November, 1946, and shortly thereafter such negotiations were a matter of common knowledge among the shareholders of Sovereign Potters, Ltd. and Carleton Securities, Ltd., the plaintiff included, and on the 22nd day of March, 1947, and the 8th day of April, 1947, when the defendant purchased the plaintiff's shares in Carleton Securities, Ltd., the defendant thoroughly discussed with the plaintiff, among other matters, the proposed sale to Johnson Bros. (Hanley, England) Ltd., and the defendant fully and exactly and without reservation disclosed to the plaintiff all the relevant facts known to the defendant in connection with the sale to Johnson Bros. (Hanley, England) Ltd., and the plaintiff, with knowledge of all of the said relevant and pertinent facts known to the defendant and after full and sufficient deliberation and with all the information which it was material for him to have in order to guide his conduct with respect to the said sale, sold his shares to the defendant."

The statement of defence contains a statement at length of the facts alleged by the respondent and upon which he relies, and to some of which I shall refer hereinafter

At this time it will be helpful to set forth plainly the principal questions in issue between the parties, as they appear to me from the pleadings and in the proceedings at trial. They are - (1) Was the relationship between the respondent and the late Harry J. McMaster on March 22nd, 1947, when the respondent obtained from Mr. McMaster an option to purchase his shares of Carleton Securities Ltd., of such a character as imposed on the respondent a special duty in respect of the transaction?

(2) If there was such a duty on the part of the respondent, was there a breach of it?

I examine first the relationship between the respondent and the late Harry J. McMaster. They met for the first time in 1933. The late Mr. McMaster was then engaged with two associates, Messrs. Pulkingham and Etherington, in the promotion

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of a company for the manufacture, in Hamilton, Ontario, of certain dinnerware and other clay products. The legal services of the respondent were employed in connection with the promotion and incorporation of the company under the name Sovereign Potters Ltd. The respondent became solicitor and secretary of that company. The late Mr. McMaster became the holder of 1,000 shares of common stock and certain shares of preferred stock. (The preferred shares are not the subject of controversy in the action). Pulkingham became the holder of 1,000 shares of common stock, and Etherington the holder of 500 shares, making a total of 2,500 shares of common stock held by those three persons. There was an equal number of shares of common stock of Sovereign Potters Ltd. distributed among various other owners. I cannot hold that the retainer of the respondent by Messrs. Pulkingham, McMaster and Etherington to incorporate Sovereign Potters Ltd., and the services rendered by the respondent in that connection, created a relationship of solicitor and client as between the respondent and the late Mr. McMaster, nor that the respondent was under any special duty to the late Mr. McMaster on March 22nd, 1947, by reason of his retainer and services performed in connection with the incorporation of Sovereign Potters Ltd.

In 1937, Messrs. Pulkingham, McMaster and Etherington agreed with one another to transfer their shares of common stock in Sovereign Potters Ltd. to a private holding company. In accordance with such an agreement, the shares of each of them were transferred to a company called Carleton Securities Ltd., and the shares of stock, in the total amount of 2,500 shares, so transferred were held by Carleton Securities Ltd. for the benefit of the parties in the proportions as follows: Pulkingham 40%, McMaster 40% and Etherington 20%. The respondent took some part in the carrying out of the agreement between Messrs. Pulkingham, McMaster and Etherington to transfer their shares in Sovereign Potters Ltd. to a private holding company. He made available for their use letters patent which had been issued previously to other persons and for other purposes, but which were not in use. He was also named by the parties as a trustee of their shares in Sovereign Potters Ltd. upon trust to transfer them to the holding company, but it is said that that procedure was not followed. It appears also that in the annual returns made yearly by Carleton Securities Ltd. the respondent was

named as secretary of the company, but in fact he did not act at any time in that capacity. It does not appear that the company appointed him as its solicitor, or that he was ever retained or acted in that capacity. He made it plain in his evidence that after he made the letterspatent available, he "took no part" in Carleton Securities Ltd. Again I hold that the facts and circumstances in connection with the agreement of Messrs. Pulkingham, McMaster and Etherington to transfer their shares to Carleton Securities Ltd., and the part, if any, of the respondent in carrying out that agreement, cannot be regarded as creating the relationship of solicitor and client as between the respondent and the late Mr. McMaster.

Mr. McMaster was production superintendent of Sovereign Potters Ltd. from the time of its formation until about November 1936, when he resigned his position. When he severed his employment, he prepared a letter for presentation to the board of directors of Sovereign Potters Ltd. It was said in evidence that the letter was submitted to the respondent for review and advice. The respondent denies that he was retained by Mr. McMaster in connection with that letter, and he denies that he rendered any legal services in respect of it. There is no evidence showing any advice from him or any charge made by him for any advice or services. The reason for sending the letter to the respondent is plain. He was secretary of Sovereign Potters Ltd. and was the proper person to receive it for presentation to the board of directors. This incident does not serve as evidence of the least weight that the relation between the respondent and the late Mr. McMaster was that of solicitor and client at that time or at any time thereafter.

In 1938, the late Mr. McMaster was interested in the matter of the patentability of a wrench which he had designed. The respondent submitted the matter to patent attorneys in the United States, and no doubt rendered some legal services for Mr. McMaster in this connection. The matter was not pursued to the issue of a patent, and the services rendered by the respondent in this matter were not extensive. I cannot regard this minor matter of any real consequence in connection with the question under consideration. No doubt the respondent acted in the matter as solicitor for the late Mr. McMaster, but the incident and circumstances do not alone warrant the Court in finding that there

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was any special duty owing by the respondent to the late Mr. McMaster in respect of the transaction between them on March 22nd, 1947.

In the year 1944, the respondent performed certain legal services on the instructions of the late Mr. McMaster, as appears from an itemized account dated Dedember 6th, 1946, (Exhibit 4). He discussed with Mr. McMaster the matter of Mr. McMaster's personal assets and estate and the matter of succession duties, with particular reference to a plan to incorporate a limited company to take over the business then being carried on by Mr. McMaster as a partnership in the name of McMaster Potteries. He acted as solicitor for the incorporation of such company called McMaster Potters Limited. He also prepared a will for Mr. McMaster and is named therein as one of two trustees and referred to by the testator as "my friend". Counsel for the appellants emphasizes that the will was retained in the possession of the respondent until after the transaction in question, and that no change was made in it by the late Mr. McMaster until after that time. The relationship between the respondent and the late Mr. McMaster in respect of these matters last mentioned was no doubt that of solicitor and client, but it does not follow that the Court must necessarily find that such relationship continued without interruption and existed on March 22nd, 1947, when the respondent obtained an option to purchase the shares of Carleton Securities Ltd. from the late Mr. McMaster. Moreover, the facts that the respondent kept the will of the late Mr. McMaster in his possession, and that no alteration was made in it during the period, do not conclude the question. It is necessary to consider all the circumstances of the particular case. In particular, it is of much importance to consider that the late Mr. McMaster retained other solicitors at various times when he required legal advice. It is also of importance to consider the time when the services were rendered and the nature of them. The services were not continuous but, on the contrary, were fully completed and ended when they were furnished in 1944. There was a lapse of more than two years between the time when the services were furnished and the transaction in question. In 1945 the respondent acted for the late Mr. McMaster as his solicitor in the matter of the purchase of a house, but, apart from that, there is no record of any kind of any legal services

performed after that time by the respondent for the late Mr. McMaster. The account dated December 6th, 1946, (Exhibit 4, supra) shows an item relating to "excess tax levied complete negotiations, correspondence, attendances, etc. respecting same, preparation of exhibits appeal to Ottawa when whole amount of tax abandoned." That item obviously refers to services rendered for McMaster Potters Limited, to whom the account is addressed. Counsel for the appellants refers to evidence of a daughter of the late Mr. McMaster in which she says "Mr. Byrne handled everything that we had .....", and to evidence of a son in which he stated, Mr. Byrne was "at our plant",and on a later occasion "around 1946" he heard his father "asking about Carleton Securities" and"if he could do anything about Carleton Securities." He stated also, "always when he (that is, his father) would talk to Mr. Byrne he was eager to ask questions about Sovereign." Opposed to that evidence is the testimony of the respondent that, with the exception of the matter of the purchase by the late Mr. McMaster of a house in 1945, the only times he ever acted for Mr. McMaster as his solicitor is evidenced in the bill (Exhibit 4, supra) that was rendered and paid - "Those were the only times that I acted for Mr. McMaster as his solicitor." There is no bill for any services of the respondent after 1946, and no record of any charge made or fee paid for services after that time. It is my opinion that when the respondent completed his last services for the late Mr. McMaster prior to the transaction in question and his charges for those services were paid, the relationship between the parties of solicitor and client was at an end: Duff v. Lane (1911), 48 S.C.R. 508. After that time he was free to accept a retainer from any person or persons opposed in interest to the late Mr. McMaster, and there was no tie or relationship with the late Mr. McMaster that would in any way prevent him from so doing. It is my view, and I find in this particular case, having due regard to all the circumstances, that the late Mr. McMaster and the respondent were not related to one another as client and solicitor and there was no confidential relationship of a similar character between them on March 22nd, 1947.

While the finding I have just stated makes it unnecessary for me to decide the second questionin controversy in this appeal, nevertheless I proceed

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to consider it and to express my views thereon because of the importance given to it in the course of argument and because of its particular importance to the respondent. If, contrary to my finding, the respondent and the late Mr. McMaster were in such relationship to one another as to impose a special duty on the respondent in respect of the transaction in question, the first matter for consideration is the nature and extent of that duty. Counsel for the appellants and for the respondent refer to Demerara Bauxite Company, Limited v. Louisa Hubbard and Others, (1923) A.C. 673, and accept the law as stated therein. I quote from the report of that case, at pp. 681 and 682, as follows:

"The principle has long been established that, in the absence of competent independent advice, a transaction of the character involved in this appeal, between persons in the relationship of solicitor and client, or in a confidential relationship of a similar character, cannot be upheld, unless the person claiming to enforce the contract can prove, affirmatively, that the person standing in such a confidential position has disclosed, without reservation, all the information in his possession, and can further show that the transaction was, in itself, a fair one, having regard to all the circumstances. In order that these conditions may be fulfilled it is incumbent to prove that the person who holds the confidential relationship advised his client as diligently as he should have done had the transaction been one between his client and a stranger, and that the transaction was as advantageous to the client, as it would have been, if he had been endeavouring to sell the property to a stranger. This principle is one of wide application, and must not be regarded as a technical rule of English law."

I now direct attention to certain important and material facts. After the late Mr. McMaster left his employment with Sovereign Potters Ltd., he was anxious to sell his shares in Carleton Securities Ltd. Mr. Pulkingham, the president of the company, stated in evidence that "at every meeting he brought up that subject and asked if we could acquire a buyer for his shares, either in or out of Carleton Securities." That position of the late Mr. McMaster continued year after year, commencing about 1937. Mr. McMaster gave

Mr. Pulkingham an option to purchase his shares in Carleton Securities Ltd. for $20,000.00, and at a later date an option to purchase the shares for $25,000.00, and lastly an option to purchase for $30,000.00, the price being fixed in each option by Mr. McMaster. The last option given by Mr. McMaster extended to March 23rd, 1947, but Mr. Pulkingham decided not to exercise his rights thereunder. He made that decision with full knowledge of all available information in respect of the matter of a possible sale of shares of Sovereign Potters Ltd. to Johnson Bros. On March 21st he assigned his rights under the option to the respondent. At that time Johnson Bros. had retained a firm of solicitors in Toronto, and that firm was one recommended by the respondent in a letter from him to Mr. Pulkingham on March 6th, 1947. It is my view, and I find as a fact, that at the time the option was assigned by Mr. Pulkingham to the respondent on March 21st, and on the following day when the late Mr. McMaster gave a new option to the respondent, the purchase by Johnson Bros. of shares of Sovereign Potters Ltd., either with or without the shares held by Carleton Securities Ltd, can only be regarded as a remote possibility. There was no firm offer from Johnson Bros. to purchase any shares. There was only an interest in the matter on the part of Johnson Bros., and it was pure speculation at that time as to the outcome of it. Mr. Pulkingham in evidence says that he told Mr. Byrne on March 21st that "it looked as though these negotiations might come through", but there had been prior negotiations which had amounted to little, if anything. It is also a fact of importance that in December 1946, Mr. Etherington (a director, with the late Mr. McMaster, of Carleton Securities Ltd.) advised Mr. McMaster when "he brought up again the question of the sale of his stock", and as appears in the evidence, "not to be in a hurry, that there was a deal pending or a deal in the offing; it was not pending, it was in the offing." He added in evidence, -

"I think that it was agreed amongst us that it would be a nice thing to be able to sell. I think we were in accord on that."

Mr. Pulkingham testifies that he heard Mr. Etherington saying to Mr. McMaster, -

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"Don't be in too big a hurry, Harry, to sell your stock, because there may be negotiations in the not too distant future to sell this company or the shares of this company."

The state of the matter at that time was described by Mr. Pulkingham as "nebulous", and in my opinion it was in the same state on March 22nd, 1947.

I see no reason whatever to discredit the evidence given by the respondent, and the learned trial Judge did not do so. I quote from his evidence as to what was disclosed by him to the late Mr. McMaster before he obtained the option:

"Q. What was said about it? A. Well, there was quite a lot said about it, Mr. Mason. It was on the basis that all I knew at that time was that there had been with Mr. Johnson for a million and a half, and that I had recommended Mason Foulds, and that I was going to go and see him soon.

Q. That is substantially what you knew about it at the time?

A. That is substantially what I knew about it at the time.

Q. Was that or was that not discussed with Mr. McMaster? A. Yes, sir."

I am satisfied, and I find, that before the late Mr. McMaster gave the respondent the option, the respondent disclosed without reservation all the information in his possession concerning the possible deal with Johnson Bros. I think there is some support for this view from the fact that on March 27th, after a meeting with Messrs. Pulkingham and Foulds, the solicitor for Johnson Bros., the respondent wrote a letter containing a full and frank statement of all the available information concerning the matter of a sale to Johnson Bros. and addressed that letter to the directors of Sovereign Potters Ltd. Some of those directors were friends of the late Mr. McMaster. It seems altogether unthinkable that the respondent would refrain from disclosing to Mr. McMaster all the

information in his possession on March 22nd and five days later, on March 27th, before exercising his option, disclose all the information then in his possession to persons who might reasonably be expected to communicate with Mr. McMaster. The fact that this letter was so complete, and sent with such promptness to the directors of Sovereign Potters Ltd., is to the credit of the respondent and is wholly inconsistent with any act of non-disclosure on his part.

I am satisfied, also, on the evidence that the transaction between the respondent and the late Mr. McMaster was a fair one, having regard to all the circumstances. I mentioned in particular some of the circumstances of importance. The late Mr. McMaster had not paid any money for his shares of common stock in Sovereign Potters Ltd. or for his shares in Carleton Securities Ltd. Certain shareholders of Sovereign Potters Ltd. had endeavoured to bring about changes that would result in Carleton Securities Ltd. becoming a minority shareholder in Sovereign Potters Ltd. The book value of the shares of Sovereign Potters Ltd. on March 22nd, 1947, or thereabouts, was 10.27 per share, and Mr. McMaster's holdings in Carleton Securities Ltd. were the equivalent of 1,000 shares of Sovereign Potters Ltd. Sovereign Potters Ltd. had never paid any dividends on common shares, and were in arrears on dividends as to preferred shares. The possibility of a sale to Johnson Bros. was "nebulous", and the price of $1,500,000.00 for shares of Sovereign Potters Ltd. was "fantastic". The late Mr. McMaster was anxious to sell his shares, and the sale price was fixed by him. After the option was exercised by the respondent and the shares were purchased by him, the negotiations with Johnson Bros. were in a most uncertain state. At times it appeared as though they were at an end and would amount to nothing, because of difficulties of one kind or another. The transaction was tottering and insecure to the very last moment, and, in my opinion, if it had not been for the ceaseless efforts of the respondent and the assumption by him of personal liabilities, the sale to Johnson Bros. would not have been made. The purchase by the respondent of Mr. McMaster's shares in Carleton Securities Ltd. was in fact a real gamble on his part and he might well have lost it. It is my view that, having regard to all the circumstances,

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the transaction between the late Mr. McMaster and the respondent was as advantageous to Mr. McMaster and as good as any that could have been obtained by due diligence from some other purchaser.

It remains only to mention one point raised by counsel for the appellants. It was contended that the evidence of the respondent "as to disclosure and advice (if any) cannot be accepted by the Court as there was no corroboration." Reference was made to The Evidence Act, R.S.O. 1937, c. 119, s.11, and to the following cases:

Elgin v. Stubbs, 62 O.L.R. 126 at p. 131; Haley v. The Trusts and Guarantee Company Limited, 66 O.L.R. 254 at p. 258; Follis v. Albemarle, (1941) O.R. 1 at p. 9; Cox v. Hourigan, (1941) S.C.R.251; Re Jackson, 64 O.L.R. 215 at p. 216; Nova Scotia Trust Company v. Beatty, (1944) 2 D.L.R. 784.

I need not discuss those cases nor the relevant principles. If, as counsel contends, it is necessary to have corroboration of the defendant's evidence, I find it with satisfaction to my mind. Before the sale to Johnson Bros., and when there was "a stalemate", Mr. Marsales mentioned to the late Mr. McMaster that he "had heard about him selling his stock." Mr. Marsales said Mr. McMaster laughed and said, "Yes, he had, he had got rid of it at last." The evidence of Mr. Marsales continues as follows:

"I said, 'Well, if this deal should happen to go through' -- which I did not think it would, and neither did he -- I said, 'Byrne will not make quite as much money as he would have last meeting, because we have pulled the price down to 127,' and he said, 'That is right, but,' he said, 'I got what I wanted, and I don't care if Byrne makes a million; I hope he does.'"

There is no suggestion by Mr. Marsales that Mr. McMaster did not have full knowledge of all information available at the time he gave the option to the respondent or at the later date, on April 7th, when the option was exercised by the respondent. There was no complaint about the selling price, and Mr. McMaster was satisfied with the transaction notwithstanding the information which

he then possessed about negotiations with Johnson Bros. There is some additional support of the defendant's evidence from the fact that on March 27th, five days after the date of the option, all the directors of Sovereign Potters Ltd. received a full report of all available information about the negotiations with Johnson Bros. and the possible sale to that company. The fact of publication of that information lends support to the view that the respondent did not refrain from disclosing all the information in his possession on March 22nd. It is also significant that Mr. Pulkingham, the president of Sovereign Potters Ltd., and who had all the information available on March 22nd, 1947, concerning the interest of Johnson Bros. and negotiations with that company, was called as a witness for the defendant and, although cross-examined at length, he does not say that he gave any information to the respondent which was not disclosed by the respondent to the late Mr. McMaster or then known to him. I add a reference to the evidence that the respondent told Mr. McMaster he was taking a gamble. Mr. McMaster's son said that his father told the respondent, "he didn't want him to take any gamble on his account". This evidence adds some material support to the respondent's evidence. I think the ground of appeal that there was no sufficient corroboration of the respondent's evidence cannot be given effect.

My opinion is that the appeal fails and should be dismissed with costs.

(C) Hogg J.A.

HOGG J.A.: I have had the privilege of reading the reasons for judgment of my brother Laidlaw, and I agree with him that on the 22nd March, 1947, and for some time before that date, the relationship of solicitor and client did not exist between the respondent and the late Mr. McMaster.

The circumstance that McMaster, possibly frequently, talked to the respondent about the Sovereign Company or the Carleton company, and requested information concerning those companies, does not signify that the relationship of solicitor and client had continued up to the month of March 1947. McMaster was interested in both of these companies and would naturally seek information concerning them from the respondent.

Court of Appeal for Ontario

No.36

Reasons for Judgment. (C) Hogg J.A. 8th Nov. 1950 - continued.

Because of the fact that, in my opinion the respondent was not on the 22nd March, 1947, subject to those special fiduciary obligations arising out of the status of solicitor and client, he was not under that strict and compelling duty imposed by law as to disclosure in the event of a purchase of the assets of the client by the solicitor.

I would have found it difficult to conclude that the respondent had placed before the late Mr. McMaster certain information which I think the respondent's own testimony and that of Mr. Pulkingham, given on the respondent's behalf, show was within the knowledge of the respondent as to the progress and the exact state of the negotiations between the Johnson company and the Sovereign company when the respondent secured the option on the shares in question from McMaster. If the respondent had then been Mr. McMaster's solicitor it would have been his duty at law to have imparted this information to his client.

It appears to me that the evidence of the respondent and of Mr. Pulkingham establishes that the facts set out in the letter of the 27th March 1947, written by the respondent to the Sovereign Company, were obtained by the respondent from Pulkingham on the 21st March 1947, that is, were communicated to the respondent the day before he secured the option from Mr. McMaster. These facts, or the most important of them, relating to and explaining the progress of the negotiations between the Johnson Company and the Sovereign Company, were not known to McMaster and were not placed before him by the respondent before the latter secured the option. If the relationship of solicitor and client had then existed between the respondent and McMaster, it would have been his duty at law to have imparted this information to his client. Upon this matter of disclosure, I regret that I find myself at variance with the opinion of Mr. Justice Laidlaw.

The result, as I see the matter, must turn upon whether there is evidence of a material character that supports or corroborates the case of the respondent that the relationship between himself and Mr. McMaster of solicitor and client did not exist at the time of the transaction in question.

The corroborating evidence must be such that it supports the case to be proved by the "opposite or interested party" in order to entitle him to "a verdict, judgment or decision".

Sec. 11 of The Evidence Act, R.S.O. 1937, c. 119, is as follows:

"In an action by or against the heirs, next of kin, executors, administrators or assigns of a deceased person, an opposite or interested party shall not obtain a verdict, judgment, or decision, on his own evidence, in respect of any matter occurring before the death of the deceased person, unless such evidence is corroborated by some other material evidence."

The dismissal of an action is a judgment or decision in favour of a defendant, and the provisions of the Act require corroboration in support of a defence set up to a claim made by the personal representative of a deceased person. In Franco v. Puccini, (1930) 37 O.W.N. 329, in the First Divisional Court, Grant J.A., who read the judgment of the Court, said at p. 331:

"the plaintiff, as administrator with the will annexed, relied chiefly, if not entirely, upon the provisions of the Evidence Act which require corroboration in support of a defence set up to a claim made by the personal representative of a deceased person".

Mr. Justice Grant then dealt with the question of the corroboration necessary to satisfy the statute and said:

"In this case it is the defence to the claim that must be strengthened".

In Follis v. The Township of Albemarle, (1941) O.R. 1, the Court of Appeal held that sec. 11 of The Evidence Act applies to the defence of a third party against the claim of an assignee of a deceased person as much as the claims of a third party against the assignee or against the executors or administrators of the deceased. In Cox v. Hourigan, (1941) S.C.R. 251, the Court found ample corroboration of the defendant's testimony in an action brought by the deceased and carried on by

Court of Appeal for Ontario

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Reasons for Judgment (C) Hogg J.A. 8th Nov. 1950 - continued.

his administrators against the defendant, that he had settled the claim which was the subject of the action. Toronto General Trusts Corporation v. Smith, (1945) O.W.N. 235, also considers this subject.

The corroboration required must be evidence of something essential to be shown before the party can, upon his own evidence, obtain a decision in his favour. It must be evidence of a material character supporting the case to be proved and may be afforded by circumstances; Thompson v. Coulter 34 S.C.R. 261; Cox v. Hourigan (supra); Olsen v. Fraser, (1945) O.R. 69; Smallman v. Moore, (1948) S.C.R. 295.

Lord Justice Scrutton in the frequently cited case of Thomas v. Jones (1921) 1 K.B. 22 said at p. 39:

"The evidence in corroboration must always be circumstantial evidence of the main fact, that is to say, evidence from which it may be inferred that the main fact happened".

The evidence furnished by the last bill for services of the respondent as solicitor acting for the late Mr. McMaster which was rendered on the 6th December 1946 is, I think, corroboration of the main fact advanced by the respondent by his own testimony on this branch of the case, that the relationship of solicitor and client between himself and McMaster did not exist in March, 1947, nor for some time before that month. This account is for work done in the year 1944. Subsequently, in 1945 the respondent acted as Mr. McMaster's solicitor in connection with the purchase of a house by the latter but such services as were performed then were apparently concluded in all respects, at the time, for no mention is made of them in the 1946 bill. No evidence was submitted that any later charges were found in the books of the respondent covering services performed after the year 1944 or that any further and later bill was rendered for any work the respondent had done for McMaster after 1944. In Elgin v. Stubbs, (1928) 62 O.L.R. 128, it was held that certain cheques, drafts or orders of the plaintiff were not sufficient corroboration of the plaintiff's testimony upon the ground that

No.36

Reasons for Judgment. (C) Hogg J.A. 8th Nov. 1950 - continued.

the cheques, drafts and orders produced by the plaintiff were consistent not only with the view that the deceased received the money claimed from the plaintiff in payment of the claim of the estate but that they were equally consistent with the contention that they were gifts or moneys to be used or applied by the deceased according to the plaintiff's directions.

I think the fact that no bill for services performed after 1944 was rendered to the deceased, is consistent with the defence of the respondent that he did not perform any services for Mr. McMaster as his solicitor after that date except those in 1945 in connection with the purchase of the house, and is not equally consistent with any other reasonable view of the matter.

In Cox v. Hourigan (supra) a circumstance that was held to corroborate the defendant's evidence that the claim made against him had been settled, was that neither the deceased or his administrators or the assignee of the claim had made any demand until after the lapse of many years.

For the reasons that, in my opinion, the relationship of solicitor and client did not exist between the respondent and the late Mr. McMaster at the time that is material, the respondent, therefore, did not become subject to the burden imposed by law upon a solicitor while acting for his client.

I concur in the dismissal of the appeal with costs.

No.37

No.37

ORDER OF HOPE J.A. Admitting appeal and Approving Securities.

Order admitting appeal and approving securities.

12th Jan. 1951.

THE HONOURABLE MR. JUSTICE HOPE IN CHAMBERS) Friday, the 12th day of January, 1951.

B E T W E E N

(SUPREME COURT SEAL of ONTARIO) ROBERT McMASTER and JAMES McMASTER Executors of the Estate of Harry J. McMaster, deceased, Plaintiffs,

and

NORMAN W. BYRNE, Defendant.

UPON the application of Counsel for the Plaintiffs, in the presence of Counsel for the Defendant,

Court of Appeal for Ontario

No.37

Order admitting appeal and approving securities. 12th Jan. 1951 - continued.

upon hearing read the Notice of Motion herein and a Bond of the Plaintiffs and the London Guarantee and Accident Company Limited jointly that the Plaintiffs will effectually prosecute an Appeal to His Majesty in His Privy Council from a Judgment of this Court herein dated the 8th day of November 1950, and pay such costs and damages as may be awarded in case the Judgment appealed from is confirmed; upon hearing read the Appeal Book and the other proceedings herein and upon hearing what was alleged by Counsel aforesaid and it further appearing that the case is one in which an Appeal would lie to His Majesty in His Privy Council:

1. IT IS ORDERED that an Appeal to His Majesty in His Privy Council from a Judgment of this Court herein dated the 8th day of November, 1950, be and the same is hereby admitted.

2. AND IT IS FURTHER ORDERED that the said Bond be and the same is hereby approved as good and sufficient security that the above-named Plaintiffs will eventually prosecute their Appeal and pay such costs and damages as may be awarded in case the Judgment appealed from is confirmed.

3. AND IT IS FURTHER ORDERED that the costs of this application be costs in the Appeal to be taxed by the Taxing Officer at Toronto.

"CHAS W. SMYTH"

Registrar S.C.O.

Entered: O.B. 211, page 32
January 17th, 1951

"H.R."

EXHIBITS

48

BY LAW NO. 6 OF SOVEREIGN POTTERS LIMITED AND AGREEMENT BETWEEN COMPANY, PULKINGHAM, McMASTER & ETHERINGTON.

Exhibits

48
By Law No. 6 of Sovereign Potters Limited and Agreement between company, Pulkingham McMaster and Etherington.

25th Sept. 1933.

BY-LAW NO. 6

BY-LAW OF SOVEREIGN POTTERS, LIMITED

WHEREAS by contract dated the 25th day of September, 1933, W.G. Pulkingham, R.J. McMaster and A.G. Etherington in consideration of certain advantages by them therein vested in the Company, became entitled to certain of the shares of the Company, namely common 4995 shares, without nominal or par value and 1000 preference shares having a par value of $10.00 each.

AND WHEREAS the Directors of the Company have authority under its Letters Patent to fix the consideration for which its shares without nominal or par value may be issued from time to time.

NOW THEREFORE IT IS HEREBY ENACTED that the consideration for the issue of 4995 of the common shares of the Company now remaining in the Treasury of the Company be set at the consideration in said contract recited and recorded in the Minutes of the Company, together with the price of 1000 of the preference shares of the Company having a par value of $10.00 each.

BE IT FURTHER ENACTED that 4995 of the Company's shares without nominal or par value and 1000 preference shares having a par value of $10.00 each are hereby allotted to W.G. Pulkingham, R.J. McMaster and A.G. Etherington jointly, or to such persons and in such numbers as they shall jointly nominate in writing and such shares are hereby directed to be issued as fully paid and non-assessable and certificates therefore delivered and the holders thereof duly entered on the books of the Company as shareholders.

FURTHER that pursuant to the subscription agreement of September, 1933 and as a part of the total subscription therein contemplated and on the

Exhibits

48
By Law No. 6 of Sovereign Potters Limited and agreement between company, Pulkingham McMaster and Etherington.

25th Sept. 1933, continued.

conditions therein expressed, Concrete Pipe Limited are hereby unconditionally allotted 2000 of the preference shares of the Company having a par value of $10.00 each and on the conditions of said subscription allotted 500 of the said preference shares of the Company, payment for same to be made as the money is required for the plant construction and operation program of the Company.

FURTHER that with respect to all allotments of shares and calls thereon made after the date hereof, it is hereby enacted that the directors of the Company in directors meeting duly constituted shall be empowered and authorized to allot shares and make calls thereon on such terms and conditions as they may legally direct by resolution of the directors and allotment of shares and calls so made shall be in every respect of the same force and effect as if made by by-law.

AS WITNESS the Corporate Seal of the Company this 25th day of September, A. D. 1933.

Norman W. Byrne
President

Ewart G. Dixon
Secretary

Compared and checked with original in Minute Book

R.M. Travner

THIS MEMORANDUM OF AGREEMENT made this 25th day of September, A. D. 1933.

B E T W E E N :

SOVEREIGN POTTERS, LIMITED

herein called the Company,

OF THE FIRST PART:

AND:

W.G. PULKINGHAM, R.J. McMASTER A. G. ETHERINGTON, all of the City of Hamilton, in the County of Wentworth,

herein called the Originators.

OF THE SECOND PART:

WITNESSETH:

That in consideration of the premises and the benefits thereunder moving and certain other

Exhibits

48

By Law No. 6 of Sovereign Potters Limited and agreement between company, Pulkingham McMaster and Etherington.

25th Sept. 1933, continued.

valuable consideration of the receipt and sufficiency whereof are hereby by the several parties duly acknowledged.

FIRSTLY: The Originators hereby sell, transfer, set over and assign to the Company its successors and assigns, all benefit which they or any of them may have in to or out of a certain agreement to purchase land and premises in the City of Hamilton, which agreement is dated the 13th day of September, 1933 and is between A.G. Etherington, of the one part, and E.C. Atkins & Co. of the other, and is in the form annexed hereto as a schedule.

SECONDLY: The Originators hereby agree forthwith to supply to the Company as required to complete its program of plant construction, sufficient machinery and equipment, (not being built up apparatus or equipment) to operate a porcelain and tableware manufacturing plant of nine kiln capacity which goods, plant and equipment shall be supplied to the Company F.O.B. East Liverpool, Ohio, U.S.A. without claim or encumbrance of any kind.

THIRDLY: The Originators agree to forthwith reduce to writing for the benefit of the Company full particulars of the nature and kind of plant required for manufacturing porcelain tableware and kindred products, the formulae of material used, the particulars of processing and finishing and all other records deemed necessary by the Company from time to time to ensure the continuity of its manufacturing operations in such field of endeavour.

FOURTHLY: The Originators hereby transfer and assign to the Company all their right, title and interest to any formulae, secret process, designs, patents, trade marks or other appurtenances or conveniences that they now have or are entitled to in the field of the manufacturing of porcelain tableware.

FIFTHLY: The Originators jointly and severally agree that they will not directly or indirectly enter into competition with the company or directly or indirectly as employee or otherwise howsoever aid any other person or corporation in competition with the Company if and when for any reason they or any of them sever connection with the Company and the term of such restriction shall be for three years after severing connection with the Company, the territory of such restriction shall be the territory now known as the Dominion of Canada and the penalty shall be all damages sustained by the Company directly or indirectly through such competition whether such Originator is wholly engaged therein or not.

Exhibits.

48

By Law No. 6 of Sovereign Potters Limited and agreement between company, Pulkingham McMaster and Etherington.

25th Sept. 1933, continued.

SIXTHLY: The actual property in the several assets, rights, restrictions and privileges in the five firegoing paragraphs named are deemed to vest in the Company by this agreement but the Company and the Originators agree jointly and severally to execute and deliver forthwith on demand all further assurances and specific and separate conveyances, assignments, transfers or other documents as may from time to time be deemed requisite or desirable to more effectually or conveniently transfer or vest same in the Company.

SEVENTHLY: The Company assumes the contract to purchase land in the paragraph firstly referred to and agrees to consummate said transaction according to the terms thereof and to indemnify the Originators jointly and severally against any loss, expense, payments or obligations of any kind arising therefrom.

EIGHTHLY: The Company agrees to allot to the Originators jointly or to such nominees as they shall jointly designate in writing as to the whole or any part thereof all the authorized common shares of the Company without par value now remaining in the Treasury of the Company and such shares shall be so issued as fully paid and non-assessable, and further to issue to said Originators jointly or to such nominees as they shall jointly designate in writing as to the whole or any part thereof 1000 preference shares of the Company having a par value of $10.00 each fully paid and non-assessable.

IN WITNESS WHEREOF the Company has caused this document to be executed and delivered under its Corporate Seal by the hand of its proper Officers in that behalf and the Originators have executed and delivered same under their hands and seals the day and year first above written

SIGNED, SEALED AND DELIVERED in the presence of

SOVEREIGN POTTERS, LIMITED,
"Norman W. Byrne" Pres.

"Ewart G. Dixon" Sec.

"HJ McMaster" Seal

"A G Etherington" Seal

" W G Pulkingham" Seal

Compared and checked with original in Minute Book

"L.M. Thayner
V.M. Senn"

3

Agreement between W.H. McMaster, A.G. Etherington and W.G. Pulkingham dated 29th November 1934.

Exhibits

3

Agreement between W.H. McMaster A.G. Etherington and W.G. Pulkingham dated 29th November 1934.

THIS AGREEMENT made in triplicate this 29th day of November, A.D. 1934,

B E T W E E N:

HARRY J. McMASTER, of the City of Hamilton, in the County of Wentworth, Factory Manager, hereinafter called the Party,

OF THE FIRST PART:

A N D:

ALFRED G. ETHERINGTON, Treasurer, of the same Place, hereinafter called the Party,

OF THE SECOND PART:

A N D:

WILLIAM G. PULKINGHAM, Manufacturer, of the same Place, hereinafter called the Party,

OF THE THIRD PART:

WHEREAS the Parties hereto are jointly and severally holders of One Thousand shares of the preferred stockand Twenty-five Hundred shares of the common stock, no par value, of the Sovereign Potters, Limited in the following proportions, namely:- McMaster, forty percent (40%), Pulkingham, forty percent (40%) and Etherington twenty per cent (20%).

AND WHEREAS the Parties hereto desire to ensure the payment of the joint and several obligations of the Parties hereto in respect to certain promissory notes given by the Parties hereto jointly and severally to the Patterson Foundry & Machine Co., and subsequently endorsed to the Potters Bank & Trust Company of East Liverpool, Ohio.

AND WHEREAS certain securities owned by Harry J. McMaster and his sister, Mrs. Knight, in the form of common stock of certain Companies have been deposited as collateral security for the payment of the said notes.

Exhibits.

3
Agreement between W.H. McMaster A.G.Etherington and W.G. Pulkingham dated 29th November 1934 continued.

AND WHEREAS the Parties hereto, to further ensure the payment of the said obligations, intend to apply for and if insurable, to take out insurance on their several lives, for such purpose.

NOW THIS INDENTURE WITNESSETH that in consideration of the premises and the mutual covenants herein contained the Parties hereto on behalf of themselves, their heirs, executors, administrators and assigns, mutually covenant and agree as follows:-

(1) The Parties hereto will forthwith incorporate a company under the Ontario Companies Act under such name with such powers and capitalstructure and for such purposes as a holding company, as the said Parties shall decide and all expenses in connection with the formation, incorporation, organization and promotion of such incorporated company shall be paid by the Parties hereto in proportion to their holdings in the said company namely, McMaster, forty percent (40%), Pulkingham, forty percent (40%), and Etherington, twenty percent (20%).

(2) All shares both preferred and common of the Sovereign Potters, Limited held or to be held by the Parties or their nominees or in trust for them shall be transferred and/or issued in the name of and delivered to Norman W. Byrne, in trust, to be held by him as Trustee for the Parties hereto upon the following trusts:-

(a) Immediately upon the formation of the Holding company the said Norman W.Byrne shall transfer or cause to be transferred the said shares of the Sovereign Potters, Limited held by him in trust, to the said holding company, which said stock so transferred shall be held by the said holding company for the benefit of the Parties hereto in the proportions hereinbefore set out in clause (1) above.

(3) Each of the Parties hereto will immediately protect and indemnify the others by insurance or otherwise in a form satisfactory to all Parties hereto, against default in payment by any of the Parties hereto of their proportion or their share of the obligations incurred in respect to the said notes, the said insurance premiums or the costs of such indemnification to be totalled or bulked and paid by the Parties hereto in the proportions set out in clause (1) above.

(4) This agreement shall enure to the benefit of and be binding upon the heirs, executors, admini-

strators and assigns of the Parties hereto

IN WITNESS WHEREOF the said parties hereto have hereunto set their hands and seals the day and year first above written.

SIGNED SEALED & DELIVERED in the presence of

"F.B. Condy"

"Harry J. McMaster

A.G. Etherington

W.G. Pulkingham"

Exhibits.
3
Agreement between W.H. McMaster A.G. Etherington and W.G. Pulkingham dated 29th November 1934 - continued.

47

AGREEMENT CARLETON SECURITIES LIMITED

47
Agreement Carleton Securities Limited. 1st February 1935.

CARLETON SECURITIES LIMITED, the registered owner of 500 Common shares of Sovereign Potters Limited, hereby transferes and sets over to and vests in Canadian Engineering & Contracting Co. Ltd. all the cash profit by way of dividends or distribution of principal or capital respecting or arising out of 100 Common shares of Sovereign Potters Limited, retaining, however, forever all and every voting right or rights on said shares and voting rights on any and all voting shares which may hereafter be distributed or declared or secured by way of dividend or distribution from or arising out of said 100 Common shares of Sovereign Potters Limited.

AS WITNESS the due execution hereof this 1st day of February, A.D. 1935.

CARLETON SECURITIES LIMITED

W.G. Pulkingham
President

A.G. Etherington
Treasurer

Exhibits.
5
Letter Byrne & Dixon to H.J. McMaster, 4th July 1944.

5

LETTER, BYRNE & DIXON to H.J. McMASTER, 4 JULY 1944

COPY

BYRNE & DIXON
BARRISTERS, SOLICITORS, ETC.
BRUCE BLDG.
KING & MCNAB STS.

Hamilton, Ont.
July 4, 1944.

Mr. H.J. McMaster,
Dundas, Ont.

Dear Harry:

As I read the figures you gave me yesterday the assets of McMaster Potteries are roughly as follows:

Plant & equipment	$20,000.00
Bank	10,000.00
Receivables	7,000.00
	$37,000.00

In addition you have the following personal assets.

Life Insurance	7,000.00
Special Bank account	3,500.00
Bonds	2,500.00
Sovereign Potters Pref.	4,000.00
Carleton Securities Com.	Nominal

McMaster Potteries is a partnership in which you have a half interest, Robert Koch McMaster has a 25% interest and Anna Dorothy McMaster has a 25% interest. You propose to organize this into a limited liability company the shares of which would be divided in the same proportion as the partnership interest.

Upon this being done your estate would consist of the above listed personal assets together with 50% of the shares of McMaster Potteries, and it is your intention to leave this estate, as to all the personal assets to your wife, as to your 50% interest in McMaster Potteries divided equally between your children, Ruth & Elizabeth, Grace Annable and James Henry.

Exhibits.

5

Letter Byrne & Dixon to H.J. McMaster, 4th July 1944 - continued.

That being the case I would size up your estate using the present value of assets of the Company at $29,000.00 which puts a value of $12,000.00 on the 50% interest of McMaster Potteries. Your whole estate would be going to lineal descent and my estimate of the Succession Duties is as per enclosed sheets.

Yours truly,

Norman W. Byrne (signed)

NWB:HD
Encs.

P.S. The tax estimates have been submitted to and approved by the Ontario and Dominion Succession Duty Offices.

DOMINION

ESTATE

McMaster Pottery Limited (In equal shares to 3 non dependent children)			$12,000.00
Life Insurance	)		7,000.00
Cash in Bank	)		3,500.00
Bonds	) to wife		2,500.00
Sovereign Potters Pfd.	)		4,000.00
Carleton Securities Ltd.	)		nil
			$29,000.00

Wife - Margaret Converse

Legacy	$17,000.00		
Exemption	20,000.00		
		no tax	

Child - Ruth Elizabeth

Legacy	4,000.00		
Initial Rate	0.6		
Additional rate	1.6		
	2.2	Duty $	88.00

Child - Grace Annabel

Same		Duty	88.00

Child - James Harry

Same		Duty	88.00
		Total Duty	$264.00

Exhibits.

5
Letter Byrne & Dixon to H.J. McMaster, 4th July, 1944 - continued.

ONTARIO.

ESTATE

McMaster Pottery Limited - shares (in equal shares to 3 non dependent children)			$12,000.00
Life Insurance	)		7,000.00
Cash in Bank	)		3,500.00
Bonds	)	to wife	2,500.00
Sovereign Potters Pfd.	)		4,000.00
Carleton Securities Ltd.	)		nil

DISTRIBUTION

Non dependent children specific bequests.

Ruth Elizabeth	$4,000.00		
Grace Annabel	4,000.00		
James Harry	4,000.00		
Wife - specific and residual	17,000.00		
	29,000.00 @ 1.24		$359.60
		15% sur-tax	53.94
		Duty	$413.54

15
Letters Patent of McMaster Pottery Ltd. 24th Nov. 1944.

15

LETTERS PATENT OF McMASTER POTTERY LIMITED

SEAL

PROVINCE OF ONTARIO

BY THE HONOURABLE

G E O R G E H A R R I S O N D U N B A R

PROVINCIAL SECRETARY

TO ALL TO WHOM THESE PRESENTS SHALL COME GREETING

WHEREAS THE COMPANIES ACT provides that with the exceptions therein mentioned the LIEUTENANT GOVERNOR may by LETTERS PATENT create and constitute

Exhibits.

15
Letters Patent of McMaster Pottery Ltd., 24th Nov., 1944 - continued.

bodies corporate and politic for any of the purposes to which the authority of the Legislature of Ontario extends:

AND WHEREAS by the said ACT it is further provided that the Provincial Secretary may under the Seal of his office have, use, exercise and enjoy any power, right or authority conferred by the said ACT on the LIEUTENANT GOVERNOR;

AND WHEREAS by their Petition in that behalf the persons herein mentioned have prayed for LETTERS PATENT constituting them a body corporate and politic for the due carrying out of the undertaking hereinafter set forth;

AND WHEREAS it has been made to appear that the said persons have complied with the conditions precedent to the grant of the desired LETTERS PATENT and that the said undertaking is within the scope of the said ACT;

NOW THEREFORE KNOW YE that under the authority of the hereinbefore in part recited ACT I DO BY THESE LETTERS PATENT CONSTITUTE the Persons hereinafter named that is to say:

NORMAN WARRINER BYRNE and CLARENCE EDWIN FERGUSON, Barristers; and HELEN DEAN, Secretary; all of the City of Hamilton, in the County of Wentworth and Province of Ontario; and any others who have become subscribers to the memorandum of agreement of the Company, and persons who hereafter become shareholders therein, a corporation under the name of

MCMASTER POTTERY LIMITED

for the following purposes and objects, that is to say:

TO manufacture, buy, sell and deal in the products of ceramic art and kindred or complementary products, materials or equipment including, without limiting the generality of the foregoing, pottery, earthen-ware, porcelain, china and glass and glassware of all kinds;

THE CAPITAL of the Company to be divided into Forty Thousand shares without any nominal or par value; provided, however, that the aggregate consideration for the issue of the said shares without any nominal or par value shall not exceed in amount or value the sum of Forty Thousand dollars or such greater amount as the board of directors of the

Exhibits.

15
Letters Patent of McMaster Pottery Ltd. 24th Nov. 1944, - continued.

Company deem expedient on payment to the Provincial Treasurer of the fees payable on such greater amount and the issuance by the Provincial Secretary of a certificate of such payment;

THE HEAD OFFICE of the Company to be situate at the Town of Dundas, in the said County of Wentworth; and

THE PROVISIONAL DIRECTORS of the Company to be Norman Warriner Byrne, Clarence Edwin Ferguson and Helen Dean, hereinbefore mentioned;

AND IT IS HEREBY ORDAINED AND DECLARED that the said Company shall be a PRIVATE COMPANY and that the following provisions shall apply thereto: (1) The Right to transfer shares of the capital stock of the Company shall be restricted in that no shares shall be transferred without the previous consent of the holder or holders of a majority of the issued shares of the Company; (2) The number of shareholders of the Company (exclusive of persons who are in the employment of the Company) is hereby limited to fifty, two or more persons holding one or more shares jointly being counted as a single shareholder; and (3) any invitation to the public to subscribe for any shares, debentures or debenture stock of the Company is hereby prohibited.

GIVEN under my hand and Seal of office at the City of Toronto in the said Province of Ontario this twenty-fourth day of November in the year of Our Lord one thousand nine hundred and forty-four.

SEAL

G.H. Dunbar
PROVINCIAL SECRETARY

8

8
Correspondence re Sydenham Street Property August & Sept. 1945.

CORRESPONDENCE RE SYDENHAM STREET PROPERTY

D'ARCY R. LEE, K.C.
Barrister, solicitor, etc.
Solicitor for
the Township of Beverly
The Canadian Bank of Commerce
DUNDAS, ONTARIO.

Aug. 28, 1945.

Mr. Norman W. Byrne,
Barrister &c.,
McNab Street S.
Hamilton.

Re: Sale 63-65 Sydenham St.
Lawrason to McMaster.

Dear Sir, -

I now enclose herewith, the Insurance Policies,

a statement of adjustments, a declaration of possession signed by Mrs. Lawrason, which I promised when the deal was closed, also Mrs. Lawrason's cheque payable to your order for $40.00 being the rent from Aug. 7th. to Sept. 7th. from Mr. Bloodsworth, who was a sub-tenant of Mr. Pagent, Mrs. Lawrason's son in law. Mr. Bloodsworth is to move out by Oct. 1st.

Yours sincerely,

Encl.

D'Arcy R. Lee

DRL/H

per L.L.H.

BYRNE & DIXON
Barristers, Solicitors etc.,

Bruce Building
King & McNab Streets

HAMILTON, ONT.

August 29, 1945.

Mr. Harry J. McMaster,
South St.,
DUNDAS, Ontario.

Dear Harry:

I have this morning received the enclosed letter from D'Arcy R. Lee with a statement of adjustments, an affidavit as to possession and four insurance policies, all of which have been endorsed over to you.

The one you will notice covers $2500.00 on household furniture, another is on the garage, and the balance of $7000.00 is coverage on the house. You may want to let these policies run to their maturity or you may went to re-arrange the insurance.

In the statement of adjustments you will notice that Harris at $33.00 is paid to July 31st, 1945 so there was no adjustment and you collect the rent from July 31st on. Mr. Bloodsworth a subtenant of Mr. Pagent, paid his rent up to September 7th at $40.00 a month so they enclosed a cheque for $40.00 to cover that rent and gave us an adjustment of $9.03 on the 1st seven days in August. Mr. Bloodsworth willbe paying you rent from September 7th to the time he vacates, and incidentally you had better collect the rent before you vacate.

Exhibits.

8

Correspondence re Sydenham Street Property August & Sept. 1945 - continued

I have endorsed Mrs. Lawrason's cheque for $40.00, and enclose it herewith, and if you like you can send it back as fees and disbursements in the deal and I will accept it in full.

Yours truly,

NWB:HD
Encs.

Norman W. Byrne.

BYRNE & DIXON
Barristers, Solicitors Etc.,

Bruce Building
King & McNab Streets

HAMILTON, ONT.

September 24, 1945.

Mr. Harris,
65 Sydenham St.,
DUNDAS, Ontario.

Dear Sir:

When Mr. McMaster purchased 63-65 Sydenham St. Mr. Lee made up a statement of adjustments to July 31st, 1945 in which he noted that your rent of $33.00 a month was paid to July 31st, 1945.

Mr. McMaster tells us that you paid him the September rent, but Mr. McMaster has not been paid the August rent.

If you have already paid this to Mr. Lee or Mrs. Lawrason please advise us. If you have not paid same will you please pay Mr. McMaster.

Yours truly,

BYRNE & DIXON,

Norman W. Byrne

NWB:HD

per

Dundas, Ont. Sept. 26, 1945
Rent $33. deposited August 1, 1945 to Credit of Mrs. Lawrason by Mr. Harris in the Canadian Bank of Commerce, Dundas, Ont.

September 24, 1945.

Exhibits.

8

Correspondence re Sydenham Street Property August & Sept. 1945 - continued.

Mr. Bloodsworth,
63 Sydenham St.,
DUNDAS, Ontario.

Dear Sir:

When Mr. McMaster purchased 63-65 Sydenham St. Mr. Lee made up a statement of adjustments to July 31st, 1945, showing that your rent was paid to September 7th, so there was rent due on September 7th to Mr. McMaster.

If you have already paid this rent to Mr. Lee or Mrs. Lawrason please advise. If not please pay it to Mr. McMaster.

Yours truly,

BYRNE & DIXON,

per

NWB:HD

The Harrises 65 Sydenham Street

Dundas, Ontario Canada

Byrne & Dixon,
Bruce Bldg.,
Hamilton, Ont.

Gentlemen:

Replying to your letter of 24th inst., I wish to advise my bank pass book showed cheque for $33.00 cashed on August 1st, said cheque in favour of Mrs. Lawrason. I also have had The Canadian Bank of Commerce verify this money has been deposited to credit of Mrs. Lawrason.

Trusting you can now adjust this matter with either Mr. Lee or Mrs. Lawrason, I am

Yours very truly,

I.T. Harris

Enc. Verification
from C.B. of C.

Exhibits.

8

Correspondence re Sydenham Street Property August & Sept. 1945 - continued

Byrne & Dixon

Barristers, Solicitors Etc.

Bruce Building
King & McNab Streets

Hamilton, Ont.

September 27, 1945.

Mr. H.J. McMaster,
South St.,
DUNDAS, Ontario.

Dear Sir:

We enclose herewith letter received from J.I. Harris saying that cheque for $33.00 was cashed on August 1st, said cheque in favor of Mrs. Lawrason. Also our letter to Mr. Harris with memo from Canadian Bank of Commerce typed on bottom.

Will you please put these two letters with the other letters in the file?

We have written to Mr. Harris acknowledging same.

Yours truly,

BYRNE & DIXON.

NWB:HD
Encs.

per: H. Dean.

9

Letter from Norman W. Byrne to H.J. McMaster

9

LETTER FROM NORMAN W. BYRNE TO H.J. McMASTER

BYRNE & DIXON
BARRISTERS, SOLICITORS, ETC.
BRUCE BUILDING
KING & MCNAB STREETS

HAMILTON, ONT.

Dear Scratch

I was at a wedding in Toronto the other day when one of the most commented on gifts was one of your vases like per enclosed sketch the centre panel of which had been built up to a spray of flowers with those little dyed Florida shells.

Exhibits.

9.

Letter from Norman W. Byrne to H.J.McMaster - continued.

The color was very nice indeed and I thought perhaps if it were not already known that some of your numbers lent themselves to this kind of decoration you might work up some extra business circularizing the art stores.

Yours

Norm

Sketch enclosed

6.

6.

Correspondence between Byrne & Dixon and H.J. McMaster re Tax assessment, July - Sept. 1946.

CORRESPONDENCE BETWEEN BYRNE & DIXON AND H.J. McMASTER re TAX ASSESSMENT.

July 23, 1946.

Department of National Revenue,
119 Dominion Public Bldg.
HAMILTON, Ontario.

Attn. Mr. E.H. Raymond.

Dear Sir:

re McMaster Pottery Limited

McMaster Pottery Limited have handed us your letter of July 19th, 1946 and have given us instructions in the matter.

Your designation of ware as ash trays is disputed and we suggest that the statement intimated as being forthcoming from the Collector of National Revenue should be deferred until the facts of the case are settled.

Toward a settlement of the facts will you please supply us with a definition or some other definite criterion you applied in designating the various products as ash trays, so that some disinterested person could follow through your procedure as a check.

Yours truly,

BYRNE & DIXON

NWB:HD

per:

Exhibits.

6

Correspondence between Byrne & Dixon & H.J. McMaster re Tax assessment, July - Sept. 1946 - continued.

NATIONAL REVENUE, CANADA
CUSTOMS AND EXCISE
REVENU NATIONAL DU CANADA
DOUANES ET ACCISE

Hamilton, Ontario.
July 29th, 1946.

Byrne & Dixon,
Bruce Building,
Hamilton, Ontario.

Gentlemen:

re McMaster Pottery Limited

With reference to your letter of the 23rd July regarding assessment made on the above company, I have noted herein, clauses in the Special War Revenue Act covering the items upon which the statement of arrears was complied.

Schedule I (Section 80, as 1)

12. Ash trays; tobacco pipes, cigar and cigarette holders; cigarette rolling devices and other smokers accessories not to include lighters matches or tobacco..... Thirty Five per cent.

13. Fountain pens; propelling pencils; desk sets and all other desk accessories..... Thirty Five per cent.

The ash trays assessed were those on which the company previously paid the above excise tax while the Life Raft Pin Tray, was ruled by the Department to come under desk accessories.

It is suggested that should the company desire any further confirmation of the above, that they write the Minister of National Revenue, Ottawa.

Yours truly,

E.H. Raymond
Excise Tax Auditor.

EHR

September 12th, 1946.

Mr. Norman W. Byrne,
Bruce Bldg.
Hamilton, Ont.

Dear Mr. Byrne:-

Enclosed please find letter from Customs and Excise Department, Ottawa, Ontario, which is self explanatory.

Sincerely,

MCMASTER POTTERY LIMITED

C O P Y

Exhibits.

ORIGINAL SENT TO MR. BYRNE

6

Ottawa September 11th, 1946.

Correspondence between Byrne & Dixon & H.J. McMaster re Tax assessment, July - Sept. 1946 - continued.

McMaster Pottery Limited,
122 Hatt St.
Dundas, Ontario.

Dear Sirs:

On the 19th of August the Collector of Customs and Excise in Hamilton forwarded you a request for payment of sales tax assessed when your records were audited recently by an Excise Tax Auditor of the Department, but the latest reports received indicates that the amount involved is still outstanding.

It is pointed out that this tax is properly due under the terms of the Special War Revenue Act and the Department must require that a certified cheque in full settlement of the amount owing $958.43 be forwarded without any further delay.

Yours truly,

WM. C. HAW,
Superintendent,
Excise Tax Collections

Per:- J.E. Roberts

September 18th, 1946.

Mr. N.W. Byrne,
Barrister,
10 McNab St., South,
Hamilton, Ontario.

Dear Sir:-

Enclosed please find Power of Attorney form, which I trust is completed correctly.

Yours very truly,

McMaster Pottery Limited

Exhibits.

6

Correspondence between Byrne & Dixon & H.J. McMaster re Tax assessment, July - Sept. 1946 - continued.

BYRNE & DIXON
BARRISTERS, SOLICITORS ETC.
BRUCE BLDG.
KING & MCNAB STS.

Hamilton, Ont.

September 25, 1946.

Mr. H. McMaster,
McMaster Pottery Limited,
DUNDAS, Ont.

Dear Mr. McMaster:

Enclosed herewith please find copy of letter received from the Department of National Revenue received in the last few days.

Yours truly,

BYRNE & DIXON

NWB:HD
Enc.

Per: Norman Byrne

REFER TO FILE
E.T.

DEPARTMENT OF NATIONAL REVENUE
CUSTOMS AND EXCISE

Ottawa,
September 19, 1946.

Messrs. Byrne & Dixon,
Barristers, Solicitors, etc.
Bruce Building,
King & McNab Streets,
HAMILTON, Ontario.

Gentlemen:

re McMaster Pottery Limited,
Dundas, Ontario.

Your letter of September 5th has been passed to me, and the Department will accept the statement that pottery novelties Nos. 127, 179, 180 and 252 were designed and manufactured for sale to florists, and will look to them for the retail purchase tax of 25% on their sales in excess of fifty cents (50¢) each.

Exhibits.

6

Correspondence between Byrne & Dixon & H.J. McMaster re Tax assessment, July - Sept. 1946 - continued.

Concerning the Goodyear pin trays, No. 27, the representations made to the effect that they were ordered and delivered as pin trays will also be accepted, and the Department will look to the vendor who sold them to Goodyear as premiums for the retail purchase tax of 25% on their selling price, if such selling price was in excess of fifty cents (50¢) each.

The Department does not entirely agree with your contention that the novelty life rafts were for use by service stations to hold cotter pins, but believes the object of the novelty was for distribution by Goodyear to their dealer organization, as premiums for customers or their wives, for advertising purposes. Whatever the object, they will be classed as pottery novelties, subject to the retail purchases tax when sold by the vendor to the consumer or user in excess of fifty cents (50¢) each, Goodyear being regarded as a consumer or user, purchasing them as premiums for their dealer organization. I may say it has been ascertained in the Department's investigation that some of the life rafts are being used as ash trays. No doubt you will remember a previous novelty, small rubber tire with glass receptacle, and its general use was as an ash tray.

It is not necessary that an ash tray have a lip or test to make it suitable for or adapted to an ash tray. It has been stated by manufacturers that they have discontinued using a lip or rest to prevent fire, hotels and other large purchasers using ash trays where the cigarette leans into the receptacle.

It is admitted it is difficult in many cases to determine the users of certain novelties, and the Department relies on manufacturers' price lists or advertising matter to indicate what the users are, but in the present case, there was some difficulty, and in view of the information obtained by the Auditor, I think you must admit he took the proper action.

As review will be made of the assessment, it is thought further comment on your letter is unnecessary.

Yours truly

AD

A.F. MacMillan
for Deputy Minister.

Exhibits.

4

Accounts of McMaster Potters Limited with Byrne & Dixon 6 Dec. 1946.

4

ACCOUNTS OF McMASTER POTTERS LIMITED
WITH BYRNE & DIXON

201 Bruce Building,
Hamilton, Ont.

December 6, 1946.

McMaster Potters Limited,
DUNDAS, Ontario.

IN ACCOUNT WITH
BYRNE & DIXON
BARRISTERS, SOLICITORS, etc.

Discussions with you as to your personal estate and Succession Duty with respect to nature of organization to be carried on Enquiries as to tax and other matters	$50.00	
Instructions from you as to Will and drawing same	15.00	
Drawing and engrossing Consents, undertakings, etc. prior to incorporation and attendances having same signed	15.00	
Fee on incorporation	150.00	
Fee on organization	150.00	
Discussions with you and with Excise Dept. as to excess tax levied, complete negotiations, correspondence, attendances etc. respecting same, preparation of exhibits appeal to Ottawa when whole amount of tax abandoned.	200.00	
DISBURSEMENTS		
Paid on corporation to Provincial Secretary		100.00
Paid for Minute Book		10.75
Paid Hamilton Stamp & Stencil for Seal		5.94
Paid calls to Dundas, etc.		.35
	580.00	117.04
	117.04	
	$697.04	

THIS IS OUR ACCOUNT
A. Byrne (signed)

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Exhibits.

23

Letter from Byrne & Dixon to G.A. Gale with copy enclosure. 6th March 1947.

LETTER FROM BYRNE & DIXON TO MR. G.A. GALE WITH COPY ENCLOSURE

Mr. G.A. Gale,
Mason, Foulds, Davidson & Gale,
Barristers, etc.
302 Bay St.
TORONTO, Ontario.

March 6th 1947

Dear Mr. Gale:

Mr. Johnston of the Johnston Bros. Potteries in England has asked a friend to suggest a firm of solicitors.

We have written him as per enclosed.

Yours truly,

BYRNE & DIXON.

NWB:HD
Encl. 1

per:

March 6, 1947.

Mr. W.G. Pulkingham,
Sovereign Potters Limited,
HAMILTON, Ontario.

Dear Mr. Pulkingham:

All things being considered our answer to your request for a suggestion as to a firm of solicitors to look after your friend's interests would be Messrs. Mason, Foulds, Davidson & Gale, Sterling Tower Building, 302 Bay Street, Toronto.

This is an old established firm, the personnel of which has contributed several distinguished jurists to the bench of the Supreme Court, and is well versed in commercial work.

They act, for instance, for the T.Eaton Co.Ltd. and many other prominent commercial organizations. Their standing and integrity is beyond any possible question and relatively their fees are modest.

Yours truly,

BYRNE & DIXON

NWB:HD

Exhibits.

11

Option given by H.J. McMaster to Norman W. Byrne. 22 March 1947.

11

OPTION GIVEN BY H.J. McMASTER to NORMAN W. BYRNE

March 22, 1947

In consideration of the sum of $5.00 the receipt and adequacy whereof is hereby acknowledged I, hereby give Norman W.Byrne the option to buy all my shares of Carleton Securities Limited namely 40% of the company and believed to be 101 shares for the sum of $30,000.00 cash.

This option is to be exercised within 30 days of the date hereof or to be null and void.

Any written notice of exercising this option accompanied by the evidence of intention and ability to pay shall be adequate.

Upon request, I will deposit the certificates for my shares in Carleton Securities Limited in the Bank of Commerce at Dundas with all endorsements duly made and with instructions to deliver the certificates to Mr. Byrne against payment of said $30,000.00 on or before close of business April 22nd, 1947.

Signed at Dundas this 22nd day of March 1947.

Witness

H.J. McMaster

R.K. McMaster

12

Statement signed by H.J.McMaster. 22nd March 1947.

12

STATEMENT SIGNED BY H.J. McMASTER

March 22nd 1947.

To whom it may concern:

I was one of the original group who formed Sovereign Potters Limited and were the vendors under the agreement at the time of incorporation.

The vendors who were A.G. Etherington, W.G. Pulkingham and myself got 2500 common shares of Sovereign Potters Limited as part of the deal.

I knew at the commencement that Norman Byrne was supposed to share in the 2500 vendors shares and I was told this by A.G. Etherington on several occasions.

On one occasion A.G. Etherington admitted in front of myself, W.G. Pulkingham and Norman Byrne that Etherington had promised Byrne a portion of the vendors shares.

H.J. McMaster.

16

Exhibits.

16

Letters N.W.Byrne to Directors Sovereign Potters Ltd. & Mason Foulds Davidson & Gale to Byrne & Dixon. 27th March 1947.

LETTERS NORMAN BYRNE TO DIRECTORS SOVEREIGN POTTERS LTD. & MASON FOULDS DAVIDSON & GALE TO BYRNE & DIXON

BYRNE & DIXON
BARRISTERS, SOLICITORS, ETC.
BRUCE BUILDING,
KING & MCNAB STREETS,

Hamilton, Ont.
Thursday, March 27, 1947.

To the Directors,
Sovereign Potters Limited,
Hamilton, Ontario.

Dear Sirs:

I enclose a letter I brought back today from Toronto where I interviewed with Mr. Pulkingham, Mason, Foulds & Co. on a matter arising out of a letter that you will recollect was written last Fall after a visit to the plant of Mr. Johnson of Johnson Brothers, at the suggestion of a mutual friend who suggested that Mr. Johnson after looking over the plant had expressed an opinion that he would be interested in buying control of our Company.

After discussion Mr. Pulkingham wrote Mr. Johnson to the effect that he doubted if the Board would be inclined to recommend the sale of the total shares of the Company for less than $1,500,000.00.

There has been some desultory communications on the matter without much import until a representative was sent by Mr. Johnson who looked over the plant in January, but again nothing tangible developed until in a telephone conversation from the old country in March, Mr. Johnson stated that he was sincerely interested in buying control provided that the present executive would continue the operations for at least some time.

This was followed by a cable to Mr. Pulkingham intimating that a lower price named at $160.00 per share for the preference and $150.00 a share for the common shares excluding Carleton Securities would be acceptable, and requesting that a Canadian solicitor be recommended and intimating that a draft agreement would be sent.

Exhibits.

16

Letters N.W.Byrne to Directors Sovereign Potters Ltd. & Mason Foulds Davidson & Gale to Byrne & Dixon, 27th March 1947 - continued.

The matter of Carleton Securities could not be settled as Mr. Johnson wanted some arrangement by which he would not have to buy all the shares of Carleton Securities, but would get a voting agreement with respect to them, tied in with an employment contract. This last week Mr. Foulds telephoned me that he had received a letter from the old country mentioning my name in the matter as having recommended their firm pursuant to the telegram, and asked me to come and see him.

The agreement sent out by Mr. Johnson was impossible so far as Carleton Securities were concerned and Mr. Foulds agreed.

Mr. Foulds, however, was very reluctant to make any commitment or even advise our Board as to Mr. Johnson's intention. It developed in the conversation, however, that the price mentioned was still agreeable to Mr. Johnson, and that he would, if the shareholders so desired, buy all of the shares offered at that price except the Carleton Securities.

I discussed the matter with Mr. Pulkingham who was loathe to initiate the matter and unprepared to make any commitment until the tax situation on a sale by Carleton Securities could be thoroughly explored.

It was my opinion that a satisfactory arrangement could be made and I deemed it of such interest to the shareholders at large that communication of the matter should not be withheld pending a satisfactory arrangement with Carleton Securities or the executives.

Mr. Pulkingham agreed to accompany me to Toronto and did so today.

Again Mr. Foulds was loathe to make any direct overture it seeming to me that not only was he taking all due precaution for the protection of his clients, but also wanted to lay down conditions for our shareholders.

Mr. Foulds considered that an agreement with Carleton Securities and the management was the first thing to be settled. On the other hand I deemed it provident that our shareholders should have the opportunity of expressing their opinion.

If our shareholders entertain the offer and Carleton Securities are agreeable to fall in line in some measure that will enable consummation of

the transaction, then it would be worth while for Mr. Johnson to come to this country to say for himself what he is prepared to do in the matter of Carleton Securities.

I am quite sure from my discussions with Mr. Foulds, that Mr. Foulds will take no responsibility on his part adequate for the consummation of an arrangement with Carleton Securities or the executives, but I am just as sure that if our shareholders want to sell at what seems to be an attractive price they could by the deposit of their shares with a Bank against payment of such price, expedite a first hand treatment of the matter by Mr. Johnson.

I may be out of place in taking over from Mr. Foulds the role of some positive action toward consideration of the matter by our shareholders, but I feel that unless I do so that the whole matter will stagnate although Mr. Johnson is apparently sincere in his interest.

A. Norman Byrne

MASON, FOULDS, DAVIDSON & GALE
BARRISTERS, SOLICITORS,

Sterling Tower Building,
372 Bay St.
Toronto 1, Canada

March 27, 1947.

Messrs. Byrne & Dixon,
Barristers etc.
Bruce Building,
Hamilton, Ontario.

Dear Sirs:

re- Sovereign Potters Limited

We have received instructions to act for Johnson Brothers (Hanley) Limited of Hanley, Stoke-on-Trent, England, who would be interested in purchasing control of Sovereign Potters Limited. Our instructions are that their willingness to purchase would be dependent on their being able to secure the services of the present chief executives of the company.

In order to assist us in advising our clients, we should be obliged if you could arrange with the company for us to be furnished with copies of recent balance sheets and other pertinent information relating to the company's affairs, including examination of the company's books of account and other records to whatever extent may be necessary.

Yours truly,

MASON, FOULDS, DAVIDSON & GALE

AF/F

per- A. Foulds

Exhibits.

25

LETTER MASON FOULDS DAVIDSON & GALE TO BYRNE & DIXON ENCLOSING OPTION

Letter from Mason Foulds Davidson & Gale to Byrne & Dixon enclosing option. 29th March 1947.

MASON, FOULDS, DAVIDSON & GALE
BARRISTERS, SOLICITORS, NOTARIES, ETC.

Telephone Elgin 2481

Sterling Tower Building,
372 Bay St.
Toronto 1, Canada

March 29, 1947.

Messrs. Byrne & Dixon,
Barristers, etc.
Bruce Building,
Hamilton, Ontario.

Dear Sirs:

re- Johnson Brothers and Sovereign Potters

We wrote yesterday by airmail to Messrs. Kent & Jones about the matters discussed the previous day with your Mr. Byrne and Mr. Pulkingham.

We now enclose a draft form of option for your consideration. We told Messrs. Kent & Jones that we would send them a copy of the option form when settled. We did not wish to delay the letter on that account, but we would like the form to follow the letter as soon as possible.

Yours truly,

MASON FOULDS DAVIDSON & GALE,

AF/F

per A. Foulds

ENCL.

March 28/47

To
Johnson Brothers (Hanley) Ltd.
Hanley, Stoke-on-Trent,
England.

In consideration of the sum of $5.00 paid by you to me (the receipt of which is hereby acknowledged) I hereby give you and your assigns, on the terms and conditions following, an option to purchase my.....common shares and.....preference shares of Sovereign Potters Limited for the price or sum of $.....being at the rate of $150. for each common share and $160. for each preference share.

Exhibits.

25

Letter from Mason Foulds Davidson & Gale to Byrne & Dixon enclosing option. 29th March 1947 - continued.

This option may be accepted at any time on or before the 5th day of June, 1947, and shall be irrevocable until then. If duly accepted by you, this option and the acceptance thereof shall together constitute a binding contract for the sale and purchase of the said shares.

This option may be accepted by written notice of acceptance sent by ordinary mail from Hamilton or Toronto and addressed to me at..... and, if accepted in this way, this option shall be deemed and taken to have been accepted on the day following the day on which such notice shall have been so mailed.

In the event of this option being accepted, the said purchase price of $..... shall be paid to me by marked cheque delivered to the Main Branch in the City of Hamilton of the Montreal Bank not more than 15 days after the date of acceptance of the option, against delivery of the stock certificates representing the said shares. In order to facilitate the completion of the purchase in the event aforesaid, I have deposited the said certificates, endorsed in blank, with the said branch bank with instructions to deliver the same to you or your assigns, on receipt of a marked cheque payable to me for the amount mentioned, at any time on or before the 20th day of June 1947.

~~I give this option knowing that negotiations are being carried on by you with a view to purchasing other common shares of Sovereign Potters Limited which are now owned by Carleton Securities Limited, at a price and on terms different from those of this option.~~

Dated the day of 1947.

WITNESS:

I give this option knowing that negotiations will be carried on by you with respect to the continued employment of the executives of the company and the purchase or acquisition of voting rights on their shares of Carleton Securities Limited or Sovereign Potters Limited as the case may be on an entirely separate basis from the purchase of the shares herein optioned.

Exhibits.

27

Letter Norman W. Byrne to Mason Foulds, Davidson & Gale 31st March 1947.

27

LETTER NORMAN W. BYRNE TO MASON FOULDS, DAVIDSON & GALE.

March 31, 1947.

Messrs. Mason, Foulds, Davidson & Gale,
Barristers, etc.
372 Bay St.
TORONTO, Ontario.

Attn. Mr. A. Foulds

Dear Mr. Foulds:

The directors of Sovereign Potters have passed an authority to give you sufficient information to answer Mr. Johnson's enquiries at the discretion of the President and Secretary, and to communicate any price offer made by Mr. Johnson or Mr. Foulds to the shareholders.

On this authority your auditor can immediately begin work with ours to satisfy Mr. Johnson as to the financial end of the business and your associates can work with us as to the corporate structure.

I beg to acknowledge your letter of March 29th and the option enclosed.

It is of course, for you to decide the form of any option or in fact whether a form of option will be used. I would point out, however, that in my opinion the last clause of the draft option presents an erroneous impression.

You say,

> "I give this option knowing that negotiations are being carried on by you with a view to purchasing other common shares of Sovereign Potters Limited which are now owned by Carleton Securities Limited, at a price and on terms different from those of this option".

Exhibits.

27

Letter Norman W. Byrne to Mason Foulds, Davidson & Gale 31st March 1947 - continued.

I would say that as a result of our interview with you it should be clear that there are no negotiations and can be no negotiations for purchasing shares of Sovereign Potters which are now owned by Carleton Securities. It seemed to me also that you had neither adequate instructions nor authority on which you might properly undertake negotiation of the Carleton Securities situation, and that the whole situation might better be left until Mr. Johnson came out here at which time it could be initiated.

In the meantime we think the basis that was originally discussed has nothing to do with a price per share of Sovereign Potters.

It seemed to me that you were really dealing with each individual shareholder on the purchase of his shares, although we both recognized that there would be an aspect of group action on their part. This in turn being modified by the individual reactions and opinions of the parties.

One party for instance, has already said he is willing to sell his holdings at this price and deliver the stock.

If we can get enough shares lined up to justify Mr. Johnson coming out to Canada it will expedite and simplify the whole affair, and to me the best way to intrigue Mr. Johnson in coming to Canada is to get as many shares in the bank as possible, and to get as many shares as possible in the bank the proceedings should be as simple as possible and not present any physycological hurdles.

I have no business making any objection to the form you have drawn, but to me it is a physycological obstacle and while it may be airtight I think it no more effective than depositing shares in the bank against a price which is a short simple form and contains no involved clauses inducing reluctance of signature.

Again the form allows these people to put the stock in any bank.

If I were doing the buying I would want it in a bank named by me because then they would not be able to take the stock out which might be accomplished if it were in their own bank.

Yours truly

NWB:HD

Norman W. Byrne

Exhibits.

13

Receipt signed by H.M. McMaster 8th April 1947.

13

RECEIPT SIGNED BY H.J. McMASTER

April 8, 1947.

Rec'd from N.W. Byrne

Thirty Thousand Dollars $30,000.00

For all my shares of Carleton Securities.

H.J. McMaster.

10

Letter Byrne & Dixon to H.J. McMaster and cancelled cheque. 9th April 1947.

10

LETTER BYRNE & DIXON TO H.J. McMASTER AND CANCELLED CHEQUE.

BYRNE & DIXON

Barristers, Solicitors etc.

Bruce Building
King & McNab Streets

Hamilton, Ont.

April 9, 1947.

Mr. H.J. McMaster,
McMaster Potteries, Limited,
DUNDAS, Ontario.

Dear Harry:

One thing I forgot yesterday was stock transfer stamps.

Both the Dominion and Ontario have stock transfer tax.

"On every sale or transfer of stocks of any association, company or corporation in the Province of Ontario transfer tax is payable by the seller to both the Dominion and Ontario Governments".

Exhibits.

10

Letter Byrne & Dixon to H.J. McMaster and cancelled cheque. 9th April, 1947 - continued.

over $150.00 per share 4¢ per share plus 1/10th of 1% of value in excess of $150.00.

The one share is a qualifying share so we do not count it in the deal. $30,000.00 for 100 shares is $300.00 per share.

Tax per share
for each is 4¢
Excess 15¢
19¢ x 2 = 38 x 100 = $38.00

10 Send me a cheque and I will buy the stamps. I would not mind doing it but the law says you have to and they are fussy.

Yours truly,

NWB:HD

Norman W. Byrne

Dundas, Ont. April 11, 1947 No. 120

To The Canadian Bank of Commerce
Dundas Branch

Pay to the order of

20 N. W. Byrne - - - - - - - - - - - - - - - $38.00

Thirty-eight - - - - - - - - - - - - - - 100 Dollars

H.J. McMaster

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Letter Norman W. Byrne to B.R. Marsales, 10 April 1947.

LETTER NORMAN W. BYRNE TO B.R. MARSALES

Mr. B.R. Marsales,
The Robert Soper Co. Ltd.
124 King St., E.
HAMILTON, Ontario.

Dear Mr. Marsales:

30 If the proposals under discussion with Mr. Johnson proceed to conclusion a purchase of Carleton Securities Limited shares by Mr. Johnson will be a part of the transaction.

Exhibits.

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Letter Norman W. Byrne to B.R. Marsales, 10 April 1947 - continued.

Early in the history of Sovereign Potters, Limited upon the occasion of additional financing being provided to the Company, some of the subscribing shareholders obtained a commitment, either from Carleton Securities Limited or Messrs. Pulkingham, Etherington and McMaster whereby these shareholders namely,

Concrete Pipe Limited
Canadian Engineering & Contracting Co.Limited
Walton & Magee Limited
B.R. Marsales

would receive the dividends, etc. but not the voting rights on 500 shares of Sovereign Potters Limited held by Carleton Securities Limited.

The writer was informed by the late John E. Russel that some of the shareholders voluntarily relinquished these rights and destroyed and it is probable that no actual legal estate is outstanding under the procedure.

The incident, however, is known and has been disclosed to Mr. Johnson and must be properly cleared before any transaction can be comsummated.

A form of release has been drawn and is enclosed herewith. Will you please have it duly executed under seal so that if the transaction is closed there will be definite evidence of clearance?

Yours truly,

NWB:HD
Enc.

Norman W. Byrne

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24.

LETTER NORMAN W. BYRNE TO MASON FOULDS DAVIDSON & GALE ENCLOSING OPTION OF 14th APRIL 1947.

Letter Norman W. Byrne to Mason Foulds Davidson & Gale enclosing option of 14th April 1947.

April 14, 1947

Messrs. Mason, Foulds, Davidson & Gale,
Barristers, etc.
372 Bay St.
TORONTO, Ontario. Attn. Mr. Foulds

Dear Mr. Foulds:

On the telephone the other day Mr. Johnson suggested that Mr. Pulkingham give him some sort of assurance that if the other shareholders were

Exhibits.

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Letter Norman W. Byrne to Mason Foulds Davidson & Gale enclosing option of 14th April 1947 - continued.

agreeable to sell enough shares to satisfy Mr. Johnson and he came out to this country the Carleton Securities grould would be willing to deal.

We have drawn the enclosed for that purpose. It cannot be specific because there is much to be said but it will perhaps evidence to Mr. Johnson's satisfaction the intention of the Carleton Securities group to make a deal.

I believe that Mr. Pulkingham sent Mr. Johnson a copy of this option when I sent it down to him for approval.

Yours truly,

NWB:HD
Enc.1

Norman W. Byrne

To Mr. James E. Johnson,

In consideration of the premises and certain other valuable consideration, the receipt and sufficiency whereof is hereby acknowledged, we the undersigned, being all the shareholders of Carleton Securities Limited each for himself doth hereby option to E. James Johnson the right to purchase all our respective shares of Carleton Securities Limited on a price per share basis of ten times the price basis for Sovereing Potters shares set out in the first line of the second page of your letter of February 27th, 1947 (there being 2500 Sovereign Potters shares held by Carleton Securities and 250 outstanding shares of Carleton Securities plus 3 qualifying shares to be transferred gratuitously).

This option shall be effective till noon May 15th, 1947 and shall be renewable at expiration if at that time said E. James Johnson is moving in bona fides toward the purchase of said shares by examination or investigation not yet completed.

We further agree at the option of E. James Johnson to enter into an arrangement with said E. James Johnson whereby we shall continue as operating executives of Sovereign Potters Limited, at remuneration heretofore agreed to by the parties or as may be agreed hereafter, selling to said E. James Johnson such shares of

Exhibits.

24

Letter Norman W. Byrne to Mason Foulds Davidson & Gale enclosing option of 14th April 1947 - continued.

Carleton Securities Limited as he shall deem requisite to assure him control of the said Company on the same basis as to price and for the same time and upon the same terms as aforesaid; voting the balance with him in corporate matters under agreement that upon termination of any of our services for any reason the balance of our individual holdings will be purchased on the same basis as to price, but with any added worth of the business of Sovereign Potters Limited up to the time of such purchase added to the said price, said increment in value to be determined by mutual agreement or arbitration based on the same formula or basis as that fixing the price above referred to.

Either of the options herein provided may be exercised at any time before expiry, and notice of exercising same shall be in writing sent by prepaid mail addressed care of Byrne & Dixon, 201 Bruce Building, 10 McNab St. South, Hamilton, Ontario, whereupon the transaction shall be consummated with all due dispatch consistent with bona fide effort of the parties to effect same, otherwise the same to be null and void.

This option is given to assure you that the undersigned are prepared to enter into arrangements with you upon your visit to this country and is to be construed as a general commitment to work out some mutually acceptable arrangement to effect the purposes in mind and if the specific wording falls short of your conception it is not because of deliberate limitation.

While the option is directed to you to enable a more flexible handling of the situation the transactions contemplated therein may be carried out through any media deemed appropriate when we review the matter first hand.

SIGNED, SEALED AND DELIVERED this 14th day of April, A.D. 1947.

W.G. Pulkingham

A.G. Etherington

Norman W. Byrne

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Exhibits.

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Letter Byrne & Dixon to A.K. Cameron.

17th April 1947.

LETTER BYRNE & DIXON TO A.K. CAMERON

April 17, 1947.

Mr. A.K. Cameron,
c/o Eastern Trust Co.
MONTREAL, P.Q.

Dear Sirs:

Pursuant to the authority given by the Board of Directors we communicate to you the material facts of the negotiations commenced by Johnson Brothers (Hanley) Limited of Stoke-on-Trent, England, to acquire control of Sovereign Potters, Limited by purchase and agreement.

Mr. Johnson has stated definitely that he would pay $160.00 per share for the preference shares and $150.00 per share for the common shares, all subject of course to his being satisfied with the corporate and financial records and position, treasury consents and his ability to secure the services of the executives for a period of time (the terms of which have been practically settled), etc.

The executives have filed an option on the Carleton Securities shares based on the above prices to assure Mr. Johnson that there will be no refusal by them to negotiate if he comes to this country. On the other hand, Mr. Johnson will not come out unless there are enough other shares committed to the deal to justify the trip.

Mr. Johnson's lawyer has suggested the enclosed form of option. If you care to use sameit should be sent to Mr. Foulds at Mason, Foulds, Davidson & Gale, Sterling Tower Bldg., 372 Bay St., Toronto, Ontario.

We are informed that Mr. Johnson has stipulated that the matter should proceed at once.

Yours truly,

BYRNE & DIXON

NWB:HD
Enc.1

per:

_____

Exhibits.

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Letter Norman W. Byrne to W.G. Pulkingham enclosing option signed by Pulkingham, Etherington & Byrne.

17th April 1947.

29

LETTER NORMAN W. BYRNE TO W.G. PULKINGHAM ENCLOSING OPTION SIGNED BY PULKINGHAM, ETHERINGTON AND BYRNE.

April 17, 1947.

Mr. W.G. Pulkingham,
Sovereign Potters Limited,
HAMILTON, Ontario.

Dear Bill:

You and Al should complete this option and send the original on to Mr. Foulds.

Yours truly,

NWB:HD
Enc.

Norman W. Byrne

TO

E. James Johnson,
c/o Johnson Brothers (Hanley) Limited,
Stoke on Trent,
ENGLAND.

As a part of a transaction whereby you or your firm will acquire control of Sovereign Potters, Limited through purchase of preference shares at $160.00 per share and common shares at $150.00 per share, and the shares herein referred to; and the present executives of the Company will continue in the service of the Company under arrangement with you, the undersigned being the owners of all the outstanding shares of Carleton Securities Limited, namely 253 shares, hereby option to you (each for himself) the right to purchase all the shares of Carleton Securities Limited owned by the respective parties at a total price of $375,000.00 net to the said parties without deduction or diminishment for any reason; the said price being based on the portfolio of said Carleton Securities Limited consisting of 2500 common shares and 2 preference shares of Sovereign Potters, Limited.

This option shall be effective till noon May 15th, 1947 and shall be renewable at expiration if at that time the said E. James Johnson is moving in bona fides toward the purchase of said shares.

Exhibits.

29

Letter Norman W. Byrne to W.G. Pulkingham enclosing option signed by Pulkingham, Etherington & Byrne. 17th April 1947 - continued.

This option may be exercised at any time before expiry and notice of exercising same shall be in writing sent by prepaid mail addressed care of Byrne & Dixon, 201 Bruce Building, 10 McNab St. South, Hamilton, Ontario, whereupon the transaction shall be consummated with all due dispatch consistent with conscientious and bona fide effort of the parties, otherwise to be null and void.

This option is given to assure you that the undersigned are prepared to enter into arrangements with you upon your visit to this country and is to be construed as a general commitment to work out some mutually acceptable arrangement to effect the purposes in mind and if the specific wording falls short of your conception it is not because of deliberate limitation.

While the option is directed to you to enable a more flexible handling of the situation the transactions contemplated therein may be carried out through any media deemed appropriate when we review the matter first hand.

SIGNED, SEALED AND DELIVERED this day of April, A.D. 1947.

W.G. Pulkingham
A.G. Etherington
Norman W. Byrne.

30

30

2 Letters from E. James Johnson to Norman W. Byrne.

2 LETTERS FROM E. JAMES JOHNSON TO NORMAN W. BYRNE.

18th April 1947.

JOHNSON BROTHERS (HANLEY) LTD.
HANLEY POTTERY
STOKE-ON-TRENT
ENGLAND

VIA AIR MAIL

18th April, 1947.

Mr. Byrne,
The Secretary,
Sovereign Potters Ltd.
Hamilton, Ont.
Canada.

Dear Mr. Byrne,

My lawyers here have today received a cable from my lawyers in Canada in which the latter say:-

Exhibits.

30

2 Letters from E. James Johnson to Norman W. Byrne. 18th April 1947 - continued.

"Byrne reports Pulkingham finding these options difficult to get without some indication of your clients' intentions and ask for letter to Pulkingham which he could show to these Shareholders saying your clients intend to buy at 150 common and 160 for preferred any Sovereign Shares offered within, say, one month by these shareholders provided your clients are able to obtain control of Sovereign to degree regarded by them as sufficient and subject to their being satisfied with Sovereign financial position and arrangements that could be made for continuing the business. If such letter agreeable to your clients please send by air mail".

I am accordingly enclosing with this letter another letter to you which you can show to the Shareholders concerned so that they may see what my intentions are in asking through Mr. Pulkingham for the options in question.

Having regard to previous cables I am not sure whether the accompanying letter ought to be sent to you or to Mr. Pulkingham. I have therefore written letters in similar terms to this and the accompanying letter to Mr. Pulkingham.

Yours faithfully,

E. James Johnson

JOHNSON BROTHERS (HANLEY) LTD.
HANLEY POTTERY,
STOKE-ON-TRENT,
ENGLAND

VIA AIR MAIL

18th April, 1947.

Mr. Byrne,
The Secretary,
Sovereign Potters Ltd.,
Hamilton, Ont.
Canada.

Dear Mr. Byrne,

For the satisfaction of those holders of common and preference shares in Sovereign Potters Ltd., on which we wish to obtain options on your behalf, you may perhaps wish to be able to explain to them our intentions. Those intentions are as follows:-

Exhibits.

30

2 Letters from E. James Johnson to Norman W. Byrne. 18th April 1947 - continued.

Subject to

1. You within one month from the date of this letter obtaining options on a sufficient number of the shares referred to above (at the price of one hundred and fifty dollars foreach common share and one hundred and sixty dollars for each preference share) as will enable us when we acquire them to control Sovereign Potters Ltd., to such an extent as we deem necessary.

2. Our being satisfied on investigation that the financial position of that company, and

3. Our being satisfied that we can make suitable arrangements for the continuance of the business of the Company.

We shall with all possible speed proceed to exercise the options you obtain.

Yours faithfully,

JOHNSON BROS. (HANLEY) LTD.

E. James Johnson Director.

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LETTER MASON FOULDS DAVIDSON & GALE TO BYRNE & DIXON.

Letter Mason Foulds Davidson & Gale to Byrne & Dixon.

18th April 1947.

MASON, FOULDS, DAVIDSON & GALE
BARRISTERS, SOLICITORS, NOTARIES, ETC.

Sterling Tower Building,
372 Bay Street,
Toronto 1,
Canada

April 18, 1947.

Messrs. Byrne & Dixon,
Barristers etc.
Bruce Bldg.
Hamilton, Ontario.

Dear Sirs:

re. Johnson Brothers and Sovereign Potters

In reply to a cable of ours stating that Mr. Pulkingham was finding it difficult to obtain options from other shareholders of Sovereign Potters

Exhibits.

31

Letter Mason Foulds Davidson & Gale to Byrne & Dixon. 18th April 1947 - continued.

Limited without some indication of the intentions of Johnson Brothers (Hanley) Limited, we have received a cable from Kent & Jones saying that a letter on this subject has been written to Mr. Pulkingham and sent direct to him by air-mail.

We now enclose a draft of an option on the shares of Carlton Securities for your consideration and approval.

The option form enclosed, as well as the form which we recently settled with you for use in obtaining options from the other shareholders of Sovereign, is a very simple one and contains no representations of the financial position of Sovereign or provisions relating to the employment of Mr. Pulkingham and Mr. Etherington. We think we were agreed before that it would be better to have the options in these simple forms and that, as soon as the option on the Carlton shares has been given and options obtained from several of the holders of Sovereign shares, you would enable us to look into the affairs of Sovereign and Carlton in so far as might be necessary, and our two firms would then see whether it was possible to work out an agreement in detail that would be satisfactory to Messrs. Johnson Brothers and the shareholders of Carlton. We shall be obliged if you will let us know whether your understanding is the same as ours with respect to the matters mentioned.

Yours truly,

MASON FOULDS DAVIDSON & GALE

AF/F
ENCL.

per-A Foulds

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32

TELEGRAM JAMES JOHNSON TO NORMAN BYRNE

Telegram James Johnson to Norman Byrne.

19th April 1947.

CANADIAN NATIONAL TELEGRAPHS

RA 24 INTL = MO HANLEY STAFFS 55 19 1020A

LC NORMAN BYRNE=

SECRETARY SOVEREIGN POTTERY HAMN=

THIS CONFIRMS JOHNSON BROS PRICE SOVEREIGN PREFERRED 160 COMMON 150 AND WILL TAKE UP OPTIONS FILED IN FORM AGREEABLE TO FOULDS PROVIDED WE ARE SATISFIED IN ALL MATTERS AND IF ENOUGH OPTIONS AT ABOVE PRICE FILED WILL COME OUT TO CONCLUDE STOP CONFIRMATION LETTER AIRMAILED=

JAMES JOHNSON DIRECTOR

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Exhibits

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Letter G.G. Robinson to Norman W. Byrne

25 April 1947.

LETTER G.G. ROBINSON TO NORMAN W. BYRNE.

CONCRETE PIPE LIMITED

Head Office - Woodstock, Ont.

Sales Offices
402 Harbour Administration Bldg., Toronto
Plants:- Woodstock and Toronto

REGISTERED Toronto, April 25, 1947

Mr. Norman W. Byrne, Secretary-Treasurer
Sovereign Potters Limited
c/o Byrne & Dixon
Bruce Building
Hamilton, Ontario

Dear Sir:

Re: Pooling Agreement

I beg to advise you that under an agreement in writing dated the 15th day of February, 1947, the following persons have agreed to assign to me all their common shares of the capital stock of Sovereign Potters Limited subject to the terms of the said agreement. At the next meeting of the Board of Directors of Sovereign Potters Limited I shall apply for the transfer into my name of all the common shares of Sovereign Potters Limited presently standing in the names of the following:

Canadian Engineering & Contracting Co. Ltd.
James Carnwath
W.D. Christianson
A.S. Fraser
Elma Gibb
Robert Gibb
Mrs. Frances Hollinrake
B.R. Marsales
J.J. MacKay
W.I. Newmarch
R.W. Paulin
Joan G. Robinson
John G. Robinson
G.G. Robinson (in trust for Meredith N. Robinson)
G.G. Robinson
A.J. Reid (in trust)

Exhibits.

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Letter G.G. Robinson to Norman W. Byrne 25 April 1947 - continued.

F.S. Vanstone
Stanley E. Wade
Walton Magee Limited

Please take notice, therefore, that none of the parties whose names have just been listed have any right to assign or transfer shares of the common capital stock of Sovereign Potters Limited or any interest therein to anyone other than myself.

Yours truly,

G.G. Robinson

Trustee

GGRobinson:JJ

18

Letter Norman W. Byrne to shareholders of Sovereign Potters Ltd.

25th April 1947.

18

LETTER, NORMAN W. BYRNE TO SHAREHOLDERS OF SOVEREIGN POTTERS LTD.

BYRNE & DIXON

Barristers, Solicitors Etc.

Bruce Building
King & McNab Streets

HAMILTON, ONT.

April 25, 1947.

Dear

Under date April 17th, 1947 we wrote you as to a proposed purchase of Sovereign Potters, Limited shares by Johnson Brothers (Hanley) Limited.

At the time of writing we had nothing more conclusive than a statement from Mr. Johnson and his lawyer. After writing the letter a cable came in which was enclosed and there has now come to hand a letter of confirmation as per enclosed copy.

To enable a complete discussion by all the shareholders, both common and preferred, a meeting

Exhibits.

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Letter Norman W. Byrne to shareholders of Sovereign Potters Ltd. 25th April 1947 - continued.

will be held at the head office of the Company, on Tuesday, April 29th, at 11 a.m. All the shareholders, both common and preferred, are urged to attend this meeting.

To cover those shareholders who are not able to attend on Tuesday, we enclose a new form of option embodying changes suggested by some of the shareholders.

If you are coming to the meeting please bring the enclosed option form with you.

If you cannot come to the meeting we suggest that you hold the options until the opinion of the meeting is sent to you, or if you are satisfied to sell at the prices named, i.e. $160.00 per share for the preference and $150.00 per share for the common, sign the option, have it witnessed and send it to us here upon which we will remit the option consideration of $5.00.

Yours truly,

BYRNE & DIXON,

NWB:HD
Encs.

per:

19

19

Option from F.M. Paulin to E. James Johnson. 25th April 1947.

OPTION FROM F.M. PAULIN TO E. JAMES JOHNSON

April 25, 1947.

To E. James, Johnson,
Hanley, Stoke-on-Trent,
ENGLAND.

In consideration of the sum of $5.00 paid by you to me (the receipt of which is hereby acknowledged) I hereby give you and you assigns, on the terms and conditions following an option to purchase my 301 common shares and 130 preference shares of Sovereign Potters, Limited for the price or sum of $ being at the rate of $150.00 for each common share and $250.00 for each preference share.

Exhibits.
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Option from F.M. Paulin to E. James Johnson. 25th April 1947 - continued.

This option may be accepted at any time on or before the 10th day of June, 1947 and shall be irrevocable until then. If duly accepted by you, this option and the acceptance thereof shall together constitute a binding contract for the sale and purchase of the said shares.

This option may be accepted by written notice of acceptance sent by ordinary mail from Hamilton or Toronto, Ontario and addressed to me at and, if accepted in this way, this option shall be deemed and taken to have been accepted on the day following the day on which such notice shall have been so mailed.

In the event of this option being accepted, the said purchase price of $ shall be paid to me by marked cheque delivered to the Branch in the City of of the Bank not more than 15 days after the date of acceptance of the option, against delivery of the stock certificates representing the said shares. In order to facilitate the completion of the purchase in the event aforesaid, I have deposited the said certificates, endorsed in blank, with the said branch bank with instructions to deliver the same to you or your assigns, on receipt of a marked cheque payable to me for the amount mentioned, at any time on or before the 20th day of June, 1947.

This option is given on the understanding that it cannot be exercised unless all similar options given within 15 days of the 29th day of April, 1947 are exercised.

DATED the 6th day of May 1947.

WITNESS:

Norman W. Byrne

F.M. Paulin.

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Exhibits.

LETTER NORMAN W. BYRNE TO Mr. A. FOULDS & REPLY

33

Letter Norman W. Byrne to Mr. A. Foulds & reply.

28th & 29th April 1947.

April 28, 1947.

Mr. A. Foulds,
Mason, Foulds, Davidson & Gale,
Barristers, etc.
372 Bay St.
TORONTO, Ontario.

Dear Mr. Foulds:

Pursuant to your telephone call this afternoon, I enclose option as to Carleton Securities shares as suggested by you.

I had to eliminate the clause as to deposit of certificates in the bank because they all hold their own, but they say they will bring them in here right away.

Yours truly,

NWB:HD

Norman W. Byrne

MASON, FOULDS, DAVIDSON & GALE
BARRISTERS, SOLICITORS NOTARIES, ETC.

STERLING TOWER BUILDING
372 BAY STREET,
TORONTO 1,
CANADA

April 29, 1947.

Dear Mr. Byrne:

re- Johnson Brothers (Hanley) Ltd. and Sovereign Potters Ltd.

I acknowledge receipt of your letter of the 28th instant enclosing option on the issued shares of Carleton Securities Limited signed by Mr. Pulkingham, Mr. Etherington and yourself. I have to-day written to the English solicitors of Messrs. Johnson Brothers advising them that I have this option and sending them a copy.

I enclose cheque for £5. payable to the order of your firm to pay for the option on Carleton shares.

Yours truly,

AF/F
Chq.

A. Foulds

Exhibits.

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Letter Norman W. Byrne to shareholders of Sovereign Potters.

10th May 1947.

34

LETTER NORMAN W. BYRNE TO SHAREHOLDERS OF SOVEREIGN POTTERS

BYRNE & DIXON

Barristers, Solicitors etc.

Bruce Building
King & McNab Streets

Hamilton, Ont.

May 10, 1947.

Dear Shareholder:

Yesterday the solicitor for Mr. Johnson reported that he had received a cable as follows:

"Not prepared to pay more than 160. for preferred unless common reduce their price proportionately".

It is the opinion of some of the larger shareholders that under the circumstances it would be futile to file options till June 10th, when we already have an answer and that the matter requires further consideration.

For that purpose there will be a meeting for those persons who are shareholders, at the head office of the Company on Wednesday, May 14th, 1947 at 11 a.m.

Yours truly,

NWB:MD

Norman W. Byrne.

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Exhibits.

LETTER A. FOULDS TO NORMAN W. BYRNE

35

Letter A. Foulds to Norman W. Byrne.

12th May 1947.

Sterling Tower Building
372 Bay Street
Toronto 1
Canada

May 12, 1947.

Norman W. Byrne, Esq., K.C.,
Messrs. Byrne & Dixon,
Bruce Building,
Hamilton, Ontario.

Dear Mr. Byrne:-

re- Sovereign Potters

The following is a copy of the cable from Messrs. Kent & Jones dated to-day which I read to you over the telephone this afternoon;

> Further our cable ninth Stop Bank of England state our offer for Sovereign Potters shares excessive after intensive Canadian investigation Stop Bank definitely refuse further increase on our total liability Stop Please advise Byrne.

Yours truly,

AT/F

A. Foulds

20

20

MINUTES OF A MEETING OF SHAREHOLDERS OF SOVEREIGN POTTERS

Minutes of a meeting of sharee holders of Sovereign Potters.

14th May 1947.

Wednesday May 14th, 1947

Meeting 11 A.M.
Jas. Carnwarth
W.G. Pullangham

Dr. Connell

Exhibits

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Minutes of a meeting of shareholders of Sovereign Potters. 14th May 1947 - continued.

F.W. Paulien
J.J. McKay
Bob Bail
Mr. Gibb
G.G. Robinson
W. Newmarch
Scott
Byrne
Jackson (Frances Hollinrake)
Birge
B.R. Marsales
Etherington
Read letter from Foulds
Read letter from Bert Fraser

Resolved that a communication be sent to Mr. Johnson that if he will make a definite and binding offer to purchase all the outstanding preference and common shares of Sovereign Potters Limited by the purchase of all Carleton Securities Limited shares as to 2500 common shares and two preference shares and the shareholders holdings as to the balance of the shares for a total of $1,034,520.00 Canadian Funds at Hamilton, Ontario, 99 Robinson, Francis Hollinrake and N.W. Byrne have the authority to accept same and deliver the certificates with the possible exception of twenty shares of preference, the owners of which have not indicated their wishes. Resolved further that this price is final and conclusive and unless the offer is made by June 1st, 1947, the whole matter may be deemed concluded and will not be reconsidered.

Resolved further the offer shall be subject only to Mr. Johnson finding some undisclosed liability of serious amount upon inspection of the financial records of the company. Payment must be made by June 30th, 1947.

Resolved further that if the offer is made it will be accepted and the proceeds will be distributed to the shareholders on the basis of $127.00 per share for the common shares and $227.00 per share for the preference shares, the same to be applicable to Carleton Securities Limited shares as based on its portfolio of 2500 common shares and two preference shares.

Resolved further that unless the price is offered as required all negotiations will be deemed definitely concluded.

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Exhibits.

LETTER BYRNE & DIXON TO MR. A. FOULDS

36

Letter Byrne & Dixon to A. Foulds.

14th May 1947.

May 14, 1947.

Mr. A. Foulds,
Mason, Foulds, Davidson & Gale,
Barristers, &c.,
372 Bay St.,
TORONTO, Ontario.

Dear Sir:

re Sovereign Potters, Limited

A representative gathering of shareholders of Sovereign Potters, Limited today appointed a committee composed of G.G. Robinson, Frances Hollinrake and N.W. Byrne, to act on behalf of the shareholders at large in this matter and arrived at unanimity in instructions to the committee.

In view of the absence of conventional negotiation in the matter and the lack of any semblance of finality in the communications and inasmuch as Mr. Johnson has advised that the worth of the enterprise has already been the subject of intensive Canadian investigation by or for the benefit of Mr. Johnson, the shareholders have instructed the committee that any further move will have to come from Mr. Johnson as a tangible offer of such nature that it can be accepted or refused as a finality.

If Mr. Johnson makes a definite offer of $1,034,520.00 or better for all the outstanding shares of Sovereign Potters, Limited on or before June 1st, 1947 the committee have instructions to accept same and proceed toward consummation and delivery of the shares (with the possible exception of 20 preference shares the owners of which have not yet indicated their wishes). On the other hand, the committee have instructions to refuse as a finality any other proposition.

In making the offer it will be deemed (and should be so expressed) that the delivery of shares as to 2500 common shares and 2 preference shares will be made by the purchase and delivery of all the outstanding shares of Carleton Securities Limited accompanied as appurtenant thereto the portfolio of Carleton Securities Limited, consisting of 2500 common shares of Sovereign Potters, Limited and 2 preference shares of said Company.

Exhibits.

36

Letter Byrne & Dixon to A. Foulds. 14th May 1947 - continued.

This offer may also provide a pro tanto deduction from the purchase price at the rate of $227.00 for any preference shares not delivered, and at the rate of $127.00 for any common shares not delivered.

The offer may also provide that Mr. Johnson may decline to consummate if examination of the books of Sovereign Potters, Limited discovers any substantial undisclosed liability but save as aforesaid shall be without condition.

If the offer is made and accepted, consummation and payment of the purchase price and delivery of shares must be concluded by June 30th, 1947.

In the matter Mr. Johnson will have to rely on the authority of the committee as herein stated and its undertaking to make delivery against payment as herein stated.

Communications may be addressed to the writer.

Yours truly,

BYRNE & DIXON

NWB:HD

per:

37

Letter Norman W. Byrne to Mrs. F. Hollinrake.

14th May 1947.

37

LETTER NORMAN W. BYRNE TO MRS. F. HOLLINRAKE

BYRNE & DIXON
BARRISTERS, SOLICITORS, ETC.
BRUCE BUILDING,
KING & MCNAB STREETS

Hamilton, Ont.
May 14, 1947.

Mrs. Frances Hollinrake,
Walton & Magee Limited,
Imperial Bldg.
HAMILTON, Ontario.

Dear Mrs. Hollinrake:

At the shareholders get together this morning a resolution as per enclosed copy, was passed.

Exhibits.

37

Letter Norman W. Byrne to Mrs. F. Hollinrake. 14th May 1947 - continued.

Pursuant to that resolution I have drafted a letter to go to Mr. Foulds, as per carbon copy enclosed, for your suggestions or approval.

For the protection of the committee in its duties I believe we should have a further confirmation from the shareholders and in that respect I submit a draft letter to be sent out to all shareholders.

I am sending Mr. Robinson copies too, and as soon as possible would like to have your release on the letter to Mr. Foulds, as we have clipped his available time rather closely.

Yours truly,

MWB:HD
Encs.

Norman W. Byrne

21

21

Letters Byrne & Dixon to Mr. A. Foulds and G.G. Robinson to Norman Byrne.

14 & 16 May 1947.

LETTERS BYRNE & DIXON TO MR. A. FOULDS AND G.G. ROBINSON TO NORMAN BYRNE.

BYRNE & DIXON
Barristers, Solicitors Etc.

Bruce Building
King & McNab Streets

HAMILTON, ONT.

May 14, 1947.

Mr. A. Foulds,
Mason, Foulds, Davidson & Gale,
Barristers, &c.,
372, Bay St.,
TORONTO, Ontario.

Dear Sir:

re Sovereign Potters, Limited

A representative gathering of shareholders of Sovereign Potters, Limited today appointed a committee composed of G.G. Robinson, Frances Hollinrake

Exhibits.

21

Letters Byrne & Dixon to Mr. A. Foulds and G.G. Robinson to Norman Byrne. 14 & 16 May 1947 - continued.

and N.W. Byrne, to act on behalf of the shareholders at large in this matter and arrived at unanimity in instructions to the committee.

In view of the absence of conventional negotiation in the matter and the lack of any semblance of finality in the communications and inasmuch as Mr. Johnson has advised that the worth of the enterprise has already been the subject of intensive Canadian investigation by or for the benefit of Mr. Johnson, the shareholders have instructed the committee that any further move will have to come from Mr. Johnson as a tangible offer of such nature that it can be accepted or refused as a finality.

If Mr. Johnson makes a definite offer of $1,034.520.00 or better for all the outstanding shares of Sovereign Potters, Limited on or before June 1st, 1947 the committee have instructions to accept same and proceed toward consummation and delivery of the shares (with the possible exception of 20 preference shares the owners of which have not yet indicated their wishes). On the otherhand the committee have instructions to refuse as a finality any other proposition.

In making the offer it will be deemed (and should be so expressed) that the delivery of shares as to 2500 common shares and 2 preference shares will be made by the purchase and delivery of all the outstanding shares of Carleton Securities Limited accompanied as appurtenant thereto the portfolio of Carleton Securities Limited, consisting of 2500 common shares of Sovereign Potters, Limited and 2 preference shares of said Company.

This offer may also provide a pro tanto deduction from the purchase price at the rate of $227.00 for any preference shares not delivered, and at the rate of $127. 00 for any common shares not delivered.

The offer may also provide that Mr. Johnson may decline to consummate if examination of the books of Sovereign Potters, Limited discovers any substantial undisclosed liability but save as aforesaid shall be without condition.

If the offer is made and accepted, consummation and payment of the purchase price and delivery of shares must be concluded by June 30th, 1947.

Exhibits.

21

Letters Byrne & Dixon to Mr. A. Foulds and G.G. Robinson to Norman Byrne. 14 & 16 May 1947 - continued.

In the matter Mr. Johnson will have to rely on the authority of the committee as herein stated and its undertaking to make delivery against payment as herein stated.

Communications may be addressed to the writer.

Yours truly,

BYRNE & DIXON,

NWB:HD

Per:

10 CONCRETE PIPE LIMITED

Head Office - Woodstock, Ont.

Sales Offices:
402 Harbour Administration Bldg., Toronto
Plants:- Woodstock and Toronto

Toronto, May 16, 1947

Mr. Norman Byrne
Byrne & Dixon
Bruce Building
Hamilton, Ontario

20 Dear Norman:

I heartily approve of your draft letter addressed to Mr. A. Foulds of Mason, Foulds, Davidson & Gale, and also of the copy of the resolution which you propose to have signed by the various shareholders.

I endeavoured to contact you by telephone earlier today but found you would not be in your office until tomorrow morning.

Yours truly,

GGRobinson:JJ

G.G. Robinson

Exhibits.

38

Letter Norman W. Byrne to Shareholders of Sovereign Potters.

15th May 1947.

38

LETTER NORMAN W. BYRNE TO SHAREHOLDERS OF SOVEREIGN POTTERS

BYRNE & DIXON
BARRISTERS, SOLICITORS, ETC.
BRUCE BUILDING
KING & MCNAB STREETS

Hamilton, Ont.

May 15, 1947.

Dear Shareholder:

Once again and for the last time the shareholders have met to discuss the transaction with Johnson Brothers for the sale of the shares of Sovereign Potters, Limited.

Since our last letter a further cable has come from England, purporting to have read,

> "Further our cable ninth stop Bank of England state our offer for Sovereign Potters shares excessive after intensive Canadian investigation stop Bank definitely refuse further increase on our total liability stop please advise Byrne."

This cable influenced an adjustment of prices as per enclosed resolution when was was passed.

The committee ask that you sign one copy of the resolution where indicated, and return it to them at this address.

Yours truly,

NWB:HD
Enc.

Norman W. Byrne

39

Exhibits.

TELEGRAM NORMAN W. BYRNE TO E. JAMES JOHNSON

39

Telegram Norman W. Byrne to E. James Johnson.

15th May 1947.

E. James Johnson,
Johnson Brothers (Hanley) Limited,
Potters
Stoke on Trent
England

Confirming telephone advice today stop meeting yesterday approved acceptance of one million thirty four thousand five hundred and twenty dollars Canadian funds at Hamilton for all outstanding Sovereign Potters shares provided you make firm offer subject only to undisclosed liabilities on or before June first to be closed on or before June thirtieth. Stop Committee appointed to accept offer and make delivery. This authority andprice conclusive none other entertained.

Byrne

40

40

CABLE JOHNSON TO BYRNE

Cable Johnson to Byrne.

21st May 1947.

CANADIAN NATIONAL TELEGRAPHS

RA 175 CABLE = R HANLEY 88/85 1/42/39 21 410P

LC BYRNE AND DICKSON=

BARRISTERS BRUCE BLDGS HAMN=

CONFIRMING TELEPHONE CONVERSATION AND CABLE MAY SIXTEENTH STOP JOHNSON BROTHERS ACCEPT OFFER AT ONE HUNDRED AND TWENTY SEVEN DOLLARS FOR COMMON AND TWO HUNDRED AND TWENTY SEVEN DOLLARS FOR PREFERRED TOTALLING 1034520 DOLLARS IN ALL SUBJECT AVAILABILITY OF DOLLARS AND GUARANTEE THAT NO UNDISCLOSED LIABILITIES EXIST ALSO THAT NO DIVIDENDS EXCEPT NORMAL QUARTERLY PREFERRED DIVIDENDS.HAVE BEEN PAID SINCE DECEMBER THIRTY FIRST 1946 STOP ALSO THAT NO TRANSACTIONS HAVE TAKEN PLACE EXCEPT IN ORDINARY COURSE OF BUSINESS STOP PLEASE CONFIRM IF OFFER IS SATISFACTORY

JAMES JOHNSON

Exhibits.

41

Letter Norman W. Byrne to G.G. Robinson.

22nd May 1947.

41

LETTER NORMAN W. BYRNE TO G.G. ROBINSON

May 22, 1947.

Mr. G.G. Robinson,
Concrete Pipe Limited,
Harbour Commission Bldg.
TORONTO, Ontario.

Dear Mr. Robinson:

Confirming our telephone conversation with respect to cable received reading.

"Confirming telephone conversation and cable May Sixteenth Stop Johnson Brothers accept offer at One Hundred and Twenty Seven Dollars for common and Two Hundred and Twenty Seven for Preferred totalling 1034520 dollars in all subject availability of dollars and guarantee that no undisclosed liabilities exist also that no dividends except normal quarterly preferred dividends have been paid since December Thirty First 1946 stop Also that no transactions have taken place except in the ordinary course of business Stop Please confirm if offer is satisfactory.

James Johnson".

I cabled Johnson,

"Committee regard foreign exchange reservations in cable as outside their authority in an otherwise satisfactory offer Stop Suggest you arrange foreign exchange and send new cable as soon as possible leaving out that condition and commencing Johnson Brothers offer for Sovereign shares One Hundred and Twenty Seven Dollars etc."

I was in Toronto yesterday to see Mr. Foulds who is worrying about proper constitution of the committee and whether it is properly documented and whether the shares have been deposited, etc. and he has again been on the telephone just now.

I told him that the committee was just as it was that we would deliver the stock against the money and he would have to take it just that way.

Yours truly,

Norman W. Byrne

NWB:HD
cc-Mrs. Frances Hollinrake
Hamilton, Ontario.

42

Exhibits.

42

Letter Norman W. Byrne to Mr. A. Foulds.

23rd May 1947.

LETTER NORMAN W. BYRNE TO MR. A. FOULDS

May 23, 1947.

Mr. A. Foulds,
Mason, Foulds, Davidson & Gale,
372 Bay St.
TORONTO, Ontario.

Dear Mr. Foulds:

I received a cable from Mr. Johnson this morning as follows:

"Your cable May Twenty Second received Stop Bank of England informed regarding dollars Stop Pending their further information from High Commissioners of Canada Bank can only suggest an extension of time limit beyond June First Stop Every pressure exercised here to obtain required dollars Stop Please secure extension of time limit as matter outside our control.

James Johnson".

I do not know just what the function of the High Commissioner of Canada is, but it looks as though Mr. Johnson was having difficulty with his foreign exchange.

I think I told you that the Carleton group had arranged for $500,000 for Mr. Johnson at the Bank of Toronto, backing it up with $300,000 from Carleton Securities, so that Mr. Johnson would only have to raise about $240,000. to cover payments and expenses, etc.

Apparently he is even blocked on this item.

The deal as it is now arranged as to the financing will be the same as to taking up shares or dealing with the committee, but the background will of necessity have to be modified in view of the advices of the Bank and the Carleton group to Mr. Johnson.

It may even be that we can dig up some further money to help him out and if we can we will.

Exhibits.

42

Letter Norman W. Byrne to Mr. A. Foulds. 23rd May 1947 - continued.

Under the present financing arrangements the Bank will naturally hold all the shares as collateral to their advances but that does not need to change the form or method of the author or taking up the shares. It is something between ourselves.

We already have one cable from Mr. Johnson that contained an offer deemed satisfactory by Mr. Robinson except the reservation as to availability of funds, so it would seem that Mr. Robinson is willing to act and abide by a cable communication.

I do think, however, that an offer actually made, something of the nature drafted by you and signed by the committee would be better and more conventional.

At the moment I have new authorities from all but

R.H. Beal	1 Com.	14 Pref.
Irene Caulkins		10 "
(This being delayed by her being on the Pacific Coast)		
Chagnon & MacGillivray		40 "
(Will be in the morning)		
W.S.T. Connell		56 "
(Can get any time)		
J.J. Mackay	276 "	179 "
(Will have to go down and get his)		

I have no doubt that I will have all these in the next few days.

I have made some pencil notes on the form of offer which I think are self explanatory, and as I said I think it would be a good idea to have this ready anyhow just in case Mr. Robinson wants to stand on formality.

Mr. Robinson has already said that a signature by you on behalf of Johnson was adequate.

Yours truly,

NWB:HD

Norman W. Byrne

Exhibits.

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TELEGRAM JAMES JOHNSON TO BYRNE & DIXON

Telegram James Johnson to Byrne & Dixon.

CANADIAN NATIONAL TELEGRAPHS

23rd May 1947.

R1 INTL= HANLEY STAFFS 65 23/1005A

LC BYRNE AND DICKSON=

BARRISTERS BRUCE BLDGS HAMN=

YOUR CABLE MAY TWENTY SECOND RECEIVED STOP BANK OF ENGLAND INFORMED REGARDING DOLLARS STOP PENDING THEIR FURTHER INFORMATION FROM HIGH COMMISSIONER
10 OF CANADA BANK CAN ONLY SUGGEST AN EXTENSION OF TIME LIMIT BEYOND JUNE FIRST STOP EVERY PRESSURE EXERCISED HERE TO OBTAIN REQUIRED DOLLARS STOP PEASE SECURE EXTENSION OF TIME LIMIT AS MATTER OUTSIDE OUR CONTROL=

JAMES JOHNSON.

44

44

TELEGRAM JAMES JOHNSON TO NORMAN BYRNE

Telegram James Johnson to Norman Byrne.

CANADIAN NATIONAL TELEGRAPHS

29th May 1947.

GA21 INTL= HANLEY STAFFS 35 29 450P

20 LC BYRNE=

CHATEAU LAURIER OTTAWA=

CABLE TWENTY SEVENTH RECEIVED STOP CONTENTS PASSED TO BOARD OF TRADE AND BANK WHO RESENTED OUR INTRUSION INTENDING US KEEP THIS INFORMATION CONFIDENTIAL CONSEQUENTLY WE UNABLE TO ACT FURTHER=

JAMES JOHNSON.

Exhibits.

45

Cable James Johnson to Norman Byrne.

30th May 1947.

45

CABLE JAMES JOHNSON TO NORMAN BYRNE

CANADIAN NATIONAL TELEGRAPH

RA 119 Cable= R HANLEY STAFFS 183/176 1/53/50 30 408P

LC NORMAN BYRNE=

BYRNE AND DIXON BRUCE BLDG KING AND MCNAB S HAMN=

BANK OF ENGLAND HAS AGREED TO REMIT 453300 (FOUR HUNDRED FIFTY THREE THOUSAND THREE HUNDRED) DOLLARS CONDITIONALLY AND PROVIDED SIMILAR AMOUNT FOUND BY BANK OF TORONTO WHO ARE NOT COMMITTED TO HAVE ANY CHARGE OR LIEN ON OUR ENGLISH ASSETS BUT SECURITY FOR THEIR LOAN TO CONSIST OF JOHNSON BROTHERS HOLDING OF SOVEREIGN POTTERS SHARES STOP BANK OF ENGLAND PROHIBIT ANY FURTHER LOAN STOP SUGGEST PULKINGHAM AND ETHERINGTON PURCHASE 1250 (ONE THOUSAND TWO HUNDRED AND FIFTY) COMMON SHARES AT 127 DOLLARS COSTING 158750)ONE HUNDRED AND FIFTY EIGHT THOUSAND AND SEVEN HUNDRED AND FIFTY) DOLLARS AS PART OF SERVICE AGREEMENT BUT WE MAY NOT BE ALLOWED TO PURCHASE THESE SHARES WITHIN ANY SPECIFIED TIME LIMIT STOP SUBJECT TO ABOVE BEING SATISFACTORY TO YOU / JOHNSON BROTHERS HEREBY OFFER FOR SOVEREIGN POTTERY SHARES 227 FOR PREFERRED 127 FOR COMMON SUBJECT TO GUARANTEE THAT NO UNDISCLOSED LIABILITIES EXIST ALSO THAT NO DIVIDENDS EXCEPT NORMAL QUARTERLY PREFERRED DIVIDENDS HAVE BEEN PAID SINCE 31ST DECEMBER 1946 ALSO THAT NO TRANSACTIONS HAVE TAKEN PLACE EXCEPT IN ORDINARY COURSE OF BUSINESS STOP PLEASE CABLE ACCEPTANCE STOP

JAMES JOHNSON.

46

Telegram Norman Byrne to E. James Johnson.

2nd June 1947.

46

TELEGRAM NORMAN BYRNE TO E. JAMES JOHNSON

CANADIAN NATIONAL TELEGRAPHS

Hamilton Ontario
June 2, 1947.

NLT Mr. E. James Johnson
Johnson Brothers (Hanley) Limited,
Stoke-on-Trent,
ENGLAND.

Committee unanimously accept your cabled offer of May Thirtieth for Sovereign Potters shares STOP

Charge Byrne & Dixon,
201 Bruce Bldg.,
Hamilton, Ontario.

N.W. BYRNE

22

Exhibits.

22

Extract from Hamilton Spectator.

27th June 1947.

EXTRACT FROM HAMILTON SPECTATOR

LOCAL FIRM AMALGAMATED WITH BRITISH POTTERIES

Services of Sovereign Executives And Employees Will Be Retained

The amalgamation was announced today of Sovereign Potters, Limited, Sherman Avenue North, the only firm in the Dominion producing quality semi-porcelain tableware and vitrified hotelware, with Johnson Brothers (Hanley), of England, largest manufacturers of quality tableware in the British Empire. The services of all executives and the 450 employees of the 14-year-old Hamilton firm will be retained, E. James Johnson, director of the British firm, who conducted the amalgamation negotiations here, disclosed.

Continues in Office

William G. Pulkingham, president and general manager of Sovereign Potters, will continue in that office, as will Alfred G. Etherington, assistant general manager and sales manager. Mr. Johnson, Mr. Pulkingham and R. Sheperd Johnson, another director of the British firm, will constitute the board of directors of the Hamilton Company.

The English directors will not be resident in Canada but will spend considerable periods of time at the factory here.

It was the intention of Johnson Brothers, Mr. John said to-day, to enlarge the Hamilton firm, at the same time maintaining it as a purely Canadian branch of the British company. While the principal markets of that firm are Canada and the United States, it exports considerable quantities of tableware to South American, Australia, South Africa, India and other countries. Two thousand workers are employed in its four factories in England.

Mr. Johnson and M. Harry Marsh, financial adviser of the British firm, said they had been "very impressed by the enthusiasm, keenness and

Exhibits.

22

Extract from Hamilton Spectator. 27th June 1947 - continued.

ability of the executive and employees of the Canadian company and by the great achievements and high quality of ware produced in the comparatively short period of 14 years since this company was started by Mr. Pulkingham and Mr. Etherington as the first undertaking to produce quality tableware in considerable quantities in Canada."

British Experience

The British representatives noted that many of the employees of the Hamilton firm had had experience in British potteries before coming to Canada.

"The combination of the considerable experience of this leading firm of English pottery manufacturers, whose experience extends well over 60 years, together with the 'know-how' of the Canadian company should be of considerable benefit to both," Mr. Johnson said.

14

Letters between H.A.F. Boyd K.C. and Byrne & Dixon.

July, 1947.

14

LETTERS BETWEEN H.A.F. BOYD K.C. & BYRNE & DIXON

Personal and Confidential

July 5th, 1947.

Mr. Norman W. Byrne,
Barrister, etc.,
City.

Dear Sir:-

Mr. Harry J.McMaster has consulted me with reference to a certain sale of his shares in the capital stock of Carleton Securities Limited. According to my instructions, you purchased these shares from Mr. McMaster on April 8th, 1947, for the sum of $30,000.00, and subsequently re-sold them, in the acquisition by Johnson Bros. (Hanley, England) of the shares in the capital stock in Sovereing Potters Limited. I am further informed that the price at which you sold these shares was $127,000.00, so that you realized a profit of $97,000.00 on the transaction. Since at the time

the relation of solicitor and client subsisted between you and Mr. McMaster, and full disclosure was not made to him, it seems evident that this transaction cannot stand. I therefore request that you send me your cheque, payable to the order of Mr. McMaster, for the sum of $97,000.00, together with interest at 5% per annum from the date when you received payment from Johnson Bros., less of course, the stamp transfer tax payable on the transfer of the shares to Johnson Bros.

Yours faithfully,

HAFB/EL

H.B.

BYRNE & DIXON

Barrister, Solicitors etc.

Bruce Building
King & McNab Streets

Hamilton, Ont.

July 11, 1947.

Mr. H.A.F. Boyde, K.C.,
Barrister, &c.,
Room 314, Pigott Bldg.,
HAMILTON, Ontario.

Dear Sir:

We acknowledge receipt of your letter of July 5th 1947 but regret to advise that Mr. Byrne is out of town and will be until the end of next week.

As soon as he returns this letter will be given his immediate attention.

Yours truly,

BYRNE & DIXON,

D:D

per: H. Dean.

Exhibits.

14

Letters between H.A.F. Boyd K.C. & Byrne & Dixon. July, 1947 - continued.

July 12th, 1947.

Messrs. Byrne & Dixon,
Bruce Building,
Hamilton.

Dear Sirs:-

I acknowledge the receipt of your letter of the 11th of July relating to my letter on behalf of Mr. McMaster, and note that Mr. Byrne will not return until the end of next week.

Yours faithfully,

HAFB/EL

H.B.

July 23rd, 1947.

Personal & Confidential

Norman Byrne, Esq.,
Barrister, etc.,
Bruce Building,
HAMILTON, Ontario.

re: McMaster and you

Dear Sir:

I understand that you have now returned to your office, so I should be glad to hear from you in reply to my letter to you of July 5.

Yours faithfully,

HAFB:IS

H.B.

July 30, 1947.

Exhibits.

14

Letters between H.A.F. Boyd K.C. & Byrne & Dixon. July, 1947 - continued.

Personal and Confidential

N.W. Byrne,Esq.,
Barrister, etc.,
Bruce Building,
Hamilton, Ontario.

Re: McMaster and You

Dear Sir:

My client is becoming importunate, so I would appreciate it if you would let me hear from you.

If you should prefer that a writ be issued, would you be good enough to let me know whether your preference is that it be served on you personally, or if not, would you furnish me with the names of the Solicitors who will accept service on your behalf.

I do not want to seem peremptory, but my client is becoming insistent.

Yours faithfully,

HAFB:IS

H.B.

1

1

ORDER OF REVIVOR IN ACTION DATED 8th SEPT. 1949.

Order of Revivor in action dated 8th Sept. 1949.

IN THE SUPREME COURT OF ONTARIO

B E T W E E N

HARRY J. McMASTER,

Plaintiff,

and

NORMAN W. BYRNE,

Defendant.

UPON the application of Robert McMaster and James McMaster alleging that since the Statement of Claim

Exhibits.

1

Order of Revivor in action dated 8th Sept. 1949 - continued.

in this action, and about the 30th November, 1948, the above named plaintiff departed this life having duly made his last Will and Testament probate of which was granted by the Surrogate Court of the County of Wentworth to the said Executors of the said deceased, namely: the said Robert McMaster and James McMaster who are now the legal representatives of the said plaintiff; and further alleging that it is desirable or necessary that this action should be continued at the suit of the said Executors as plaintiffs thereto against the said defendant thereto.

It is therefore ordered that this cause may be continued at the suit of Robert McMaster and James "G.T.1" McMaster "Executors of the Estate of Harry J. McMaster, deceased, as parties plaintiff thereto against Norman W. Byrne as party defendant thereto and that the same and all proceedings therein do stand in the same plight and condition as they were at the time of the death as aforesaid.

ORDER SIGNED this 8th day of SEPTEMBER A.D. 1949.

Approved
"Walsh & Evans"
Sol. for def.

"G.T. Inch"

7/9/49.

Local Registrar, S.C.O., Hamilton.

2

Certified copy of letters probate of Last will of Harry J. McMaster.

19th June 1950.

2

CERTIFIED COPY OF LETTERS PROBATE OF LAST WILL OF HARRY J. McMASTER

CANADA PROVINCE OF ONTARIO

IN HIS MAJESTY'S SURROGATE COURT

OF THE COUNTY OF WENTWORTH

IN THE MATTER of the Estate of Harry J. McMaster, late of the Town of Dundas, in the County of Wentworth, Manufacturer, deceased

I, G. T. INCH, Registrar of the Surrogate Court of the County of Wentworth, HERE BY CERTIFY

Exhibits.

2

Certified copy of letters probate of Last Will of Harry J. McMaster. 19th June 1950 - continued.

that attached hereto is a true and exact copy of the original Letters Probate of the last Will and Testament and One Codicil granted in the above Estate, said Original Letters Probate and One Codicil being a permanent record of this Court

I FURTHER CERTIFY that the aforesaid Letters Probate and One Codicil were duly granted by the Surrogate Court of the County of Wentworth, on the 7th day of March, A.D. 1949, to ROBERT McMASTER, Vice President, and JAMES McMASTER, Manager, both of the Town of Dundas, in the County of Wentworth, the Executors named in the said Codicil, and that according to the records of this Court such grant has not been revoked, and is therefore in full force and effect

GIVEN under my hand and the seal of the Court, this 19th day of January, A.D. 1950.

"G.T. Inch"

Registrar, Surrogate Court,
County of Wentworth.

CANADA COAT OF ARMS PROVINCE OF ONTARIO

IN HIS MAJESTY'S SURROGATE COURT

OF THE COUNTY OF WENTWORTH

BE IT KNOWN, that on the 7th day of March A.D.1949, the last Will and Testament and one Codicil of HARRY J. McMASTER, late of the Town of Dundas, in the County of Wentworth, Manufacturer, deceased, who died on or about the Thirtieth day of November, A.D. 1948, at the City of Hamilton, in the County of Wentworth and who at the time of his death had his fixed place of abode at the said Town of Dundas, was proved and registered in the said Surrogate Court, a true copy of which said last Will and Testament and one Codicil, is hereunto annexed, and THAT administration of all and singular the property of the said deceased, and in any way concerning his Will and Codicil was granted by the

Exhibits.

2

Certified copy of letters probate of Last Will of Harry J. McMaster. 19th June 1950 - continued.

aforesaid court to ROBERT McMASTER, Vice-President, and JAMES McMASTER,Manager, both of the Town of Dundas, in the County of Wentworth, the Executors named in the said Codicil, they having been first sworn well and faithfully ti adnubuster the same by paying the just debts of the deceased, and the legacies contained in his Will and Codicil so far as they are thereunto bound by law, and by distributing the residue (if any) of the property according to law and to exhibit under oath a true and perfect inventory of all and singular the said property, and to render a just and full account of their Executorship when thereunto lawfully required.

Witness His Honour WILLIAM F. SCHWENGER, Judge of the said Surrogate Court at the City of Hamilton, in the County of Wentworth, the day and year first above written. By the Court.

"G. T. Inch"

(SEAL
SURROGATE COURT
WENTWORTH)

(G. T. Inch)

Registrar

SURROGATE COURT COUNTY OF WENTWORTH

THIS IS THE LAST WILL AND TESTAMENT of me, HARRY J. McMASTER, of the Town of Dundas, in the County of Wentworth, Potter.

(1) I HEREBY REVOKE all former Wills and testamentary dispositions of every nature and kind whatsoever and wheresoever by me heretofore made and declare this to be my last Will and Testament.

(2) I NOMINATE, CONSTITUTE & APPOINT my wife, MARGARET CONVERSE McMASTER and my friend, NORMAN W. BYRNE, Hamilton, Ontario, to be the Executrix, Executor and Trustees of this my Will, and I hereinafter refer to my Executrix, Executor and Trustees as my "Trustees".

(3) I GIVE, DEVISE & BEQUEATH all my estate, both real and personal, of every nature and kind

WITNESSES: Helen Dean

Violet M Senn

H J McMaster
TESTATOR.

whatsoever and wheresoever situate, and including any property, both real and personal, over which I now or hereafter may have any power of appointment, unto my Trustees upon the following trusts, namely:-

(a) TO pay my just debts, funeral and testamentary expenses, and all Succession Duties, Inheritance and Death Taxes that may be payable in connection with any insurance or any other gift or benefit that may be given by me to any person either in my lifetime or by survivorship or by this my Will or any Codicil thereto.

(b) TO sell, call in and convert into money all my estate not consisting of money at such time or times, in such manner and upon such terms, and either for cash or credit or for part cash and part credit as my Trustees in their discretion may decide upon, with power and discretion to postpone such conversion of such estate or any part or parts thereof for such length of time as they may think best, and I hereby declare that my Trustees may retain any portion of my estate in the form that it may be in at the time of my death (notwithstanding that it may not be in the form of an investment that is an authorized investment for Trustees, and whether or not there is a liability attached to any such portion of my estate) for such length of time as my Trustees may in their discretion deem advisable, and my Trustees shall not be held responsible for any loss that may happen to my estate by reason of so doing.

(c) IT IS my Will that upon death my said wife shall enjoy a life interest in my shareholdings in McMaster Pottery and in that respect knowing my policies and ambitions that she should take an active part in the business if she so desires and for that active part draw a commensurate compensation to the compensation that I am now drawing from the business.

(d) UPON the death of my said wife my shareholdings in McMaster Potter, being 22,000 shares shall be divided, -

WITNESSES: Helen Dean

Violet M Senn

H J McMaster
TESTATOR.

Exhibits.

2

Certified copy of letters probate of Last Will of Harry J. McMaster. 19th June 1950 - continued.

2000 shares to my son, Robert Koch,

2000 shares to my daughter, Anna Dorothy,

and

6000 shares to each of my children, Ruth Elizabeth, Grace Annabel and James Harry.

(e) ALL the rest and residue of my estate I leave to my wife, Margaret Converse McMaster, absolutely.

(f) IT IS my Will that if my wife, Margaret Converse McMaster, should predecease me then upon my death my shares in McMaster Pottery, Limited shall be divided among my children in the proportion set out in paragraph (d) of Clause 3 of my Will and the rest of my estate shall be divided equally between my children.

IF any child of mine shall die before my Will becomes operative leaving children surviving, the share of the parent shall devolve to the children in equal shares otherwise the share of the parent shall revert to become part of the corpus of my estate.

IN TESTIMONY WHEREOF I have to this my last Will and Testament, written upon this and two preceding pages of paper, subscribed my name this 30th day of December A.D. 1944.

SIGNED, PUBLISHED & DECLARED by) the above-named Testator, Harry) J. McMaster, as and for his) last Will and Testament, in the) presence of us, both present at) the same time, who, at his re-) quest, and in his presence,) and in the presence of each) other, have hereunto subscribed) our names as witnesses.)

Harry J McMaster
Testator.

WITNESS: Helen Dean

ADDRESS: 201 Bruce Bldg., Hamilton, Ont.

OCCUPATION: Secretary

WITNESS: Violet M Senn

ADDRESS: 201 Bruce Bldg., Hamilton, Ont.

OCCUPATION: Secretary

"G.T.Inch"
Registrar

Exhibits.

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Certified copy of letters probate of Last Will of Harry J. McMaster. 19th June 1950 - continued.

SURROGATE COURT COUNTY OF WENTWORTH

THIS is a Codicil to the last Will and Testament of me Harry J. McMaster of the Town of Dundas, made by me on the thirtieth day of December, 1944.

I REVOKE Paragraph (2) of my said Will and substitute therefor the following:

"(2) I NOMINATE, CONSTITUTE AND APPOINT my sons Robert McMaster and James McMaster executors and trustees of this my Will and I hereinafter refer to them as my "Trustees"."

In all other respects I confirm my said last Will and Testament.

IN TESTIMONY WHEREOF I have subscribed my name this Sixteenth day of November, One thousand nine hundred and forty-eight.

Signed, Published and Declared by the Testator Harry J. McMaster as a Codicil to his last Will and Testament in the presence of us who at his request, in his presence and in the presence of each other have hereunto subscribed our names as witnesses.) H J McMaster

W E Griffin

Veronica M. Rodgers

26 Crooks St.

"G.T.Inch"

Registrar

Exhibits.

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Letter from Mason Foulds Arnup Walter & Weir to Symons Heighington & Symons enclosing correspondence. dated March 1938 re Patent.

1st February 1950.

7

LETTER FROM MASON FOULDS ARNUP WALTER & WEIR TO SYMONS HEIGHINGTON & SYMONS DATED 1ST FEBRUARY 1950 ENCLOSING CORRESPONDENCE DATED MARCH 1938 RE PATENT

Telephone Elgin 2481
Cable Address "Masemidon"

Mason, Foulds, Arnup, Walter & Weir
Barristers, Solicitors, Notaries, Etc.

Sterling Tower Building
372 Bay Street
Toronto 1
Canada

1st February, 1950.

Messrs. Symons, Heighington and Symons,
Barristers and Solicitors, etc.,
36 Toronto Street,
Toronto, Ontario.

Dear Mr. Heighington,

Re: McMaster & Byrne

You wrote me some time ago as to a letter and as to a cheque for $38.00. I enclose copy of letter from Byrne and Dixon to Mr. D.F. McCarthy , dated March 7th, 1938.

I understand that Mr. Byrne telephoned you and learned that the cheque referred to was dated April 11th 1947 and that the amount was the amount of stock transfer tax, which he explained to you.

Yours faithfully,

Gershom W. Mason

GWM:FW

March 7, 1938

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Letter from Mason Foulds Arnup Walter & Weir to Symons Heighington & Symons enclosing correspondence dated March 1938 re Patent. 1st February 1950 - continued.

Mr. Donal F. McCarthy,
c/o Pennie, Davis, Marvin & Edmonds,
165 Broadway,
NEW YORK, N. Y.

Dear Mr. McCarthy:

H.J. McMaster, one of our clients, has brought in an invention in the nature of a tool which he has made up in the form of a wrench, asking us for comments as to its patent ability and usefulness. We told him that in our opinion, its usefulness depended in the first place, on the soundness of the mechanical principles involved, and for that reason thought that an engineer should figure out its effectiveness and possibilities for practical use.

The invention is an application of the principle of the inclined plane and in applying it to the mechanism makes the top jaw of the wrench an integral part and set at right angles to the fixed part of the wrench. A movable jaw a lever is swung so that in operating position the lever is parallel with and close to the back of the wrench. Part way down the swinging lever is a profection which forms the inclined plane and when the swinging lever is compressed toward the fixed back of the wrench, the profecting inclined plane forces its way between steel rollers fixed in the back part of the wrench on a spring holding them normally together. The inclined plane thus acts on one of these rollers and forces the movable jaw up into contact, and inasmuch as there are quite a few of these small rollers it makes a readily adjustable jaw aperture.

What he wants to find out is the relative effectiveness of this scheme as compared with, for instance, pincers of similar size and wrenches of similar size, and the possibility of obtaining a patent on it. We told him we thought there was probably somebody in your organization particularly qualified to work these preliminary matters out, and perhaps suggest more effective design.

This being the case, would you please advise us and give us an idea what the preliminary research

Exhibits.
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Letter from Mason Foulds Arnup Walter & Weir to Symons Heighington & Symons enclosing correspondence dated March 1938 re Patent. 1st February 1950 - continued.

work would cost, and upon the invention being thought effective, what it would cost to patent it?

Yours truly,

BYRNE & DIXON,

NWB/HE
Enc.1

per:

Pennie, Davis, Marvin and Edmonds

Counsellors at Law

165 Broadway

New York

Washington Offices
National Press Building

March 9, 1938.

GC

Norman W. Byrne, Esq.,
Byrne & Dixon,
Bruce Building,
Hamilton, Ontario, Canada.

Dear Mr. Byrne:

I have considered your letter of March 7th and the drawings which you enclosed, describing and illustrating a tool invented by your client, Mr. H.J. McMaster. In my opinion, and in the opinion of several of my associates whom I consulted, the general design of the tool is based on sound mechanical principles. It should be possible to design strong and durable tools employing Mr. McMaster's principles which can compete in the market with tools of the types at present in use, and such new tools might be capable of more effective use than the tools at present in use. Wrenches for example, should be capable of more rapid and more accurate adjustment, and pincers should be capable of gripping more tightinly with less effort.

Many modified forms of tools suggest themselves, and probably experimentation would be necessary to

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Letter from Mason Foulds Arnup Walter & Weir to Symons Heighington & Symons enclosing correspondence dated March 1938 re Patent. 1st February 1950 - continued.

determine the form or forms most suitable for production and use. For example, simple slots may be substituted for the rollers for cheap forms: and a block set for sliding movement in the roller guides, instead of the rollers, and controlled by a screw might provide greater simplicity and adjustability. Also, it would seem that thin slidable plates or blocks with beveled outer endsmight be substituted for the rollers to provide greater adjustability. Means might be provided, also, for locking the tool in adjusted positions, and means such as a spring might be provided for forcing the lever away from the handle at suitable times.

The matter of the most desirable designsmight better be considered after completion of a patentability investigation and after a study of the probable market if the tool is found to be patentable.

In a situation of this type, we customarily recommend a preliminary investigation of the patented art to determine the patentability of the invention before spending any substantial amount of money for filing patent applications or designing suitable products. From such an investigation, we can determine with reasonable accuracy the probable scope of the patent protection whichmight be obtained, and, on the basis of such a determination, the advisability of incurring any further expense can be decided.

Usually, a search through the prior United States patented art is sufficient to enable one to gain a good idea as to the probable scope of patent protection which may be obtained by filing and prosecuting an application. The cost of such a preliminary search probably would be about ten to twenty ($10. to $20.) dollars, depending upon the time required.

A United States patent application covering this invention probably can be prepared and filed for about one hundred fifty to one hundred seventy-five ($150 to $175) dollars, the cost being distributed as follows: services $100 to $125; Government filing fee $30; drawings, typing, postage, etc. $20. Normal prosecution of such a United States application probably would require an expenditure of an additional one hundred fifty (150) dollars distributed over a period of a year or two. The cost of prosecution might be less or considerably

Exhibits.
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Letter from Mason Foulds Arnup Walter & Weir to Symons Heighington & Symons enclosing correspondence dated March 1938 re Patent. 1st February 1950- continued.

greater than this figure, depending upon possible complications which might or might not arise. The final Government fee of $30 must be added, also, to the total cost. Incidentally, the Government filing and final fees vary from a minimum of $30 each according to the number of claims filed and allowed. These fees are $30 for twenty claims or less and one dollar additional for each claim over twenty. Usually, fewer than twenty claims are adequate.

If you wish, I shall be very glad to have made a preliminary investigation of the pertinent patented art and advise you as to the probable patentability of the invention on the basis of the results of the search. I am retaining the drawings pending receipt of instructions from you.

Very truly yours,

Donal F. McCarthy.

IN THE PRIVY COUNCIL No. 29 of 1951

ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO

B E T W E E N

ROBERT J. McMASTER and JAMES McMASTER, Executors of the Estate of Harry J. McMaster (Plaintiffs)
Appellants

- and -

NORMAN W. BYRNE (Defendant)
Respondent

RECORD OF PROCEEDINGS

Blake & Redden,
17, Victoria Street,
Westminster,
for the Appellants.

Charles Russell & Co.,
37, Norfolk Street,
Strand, W.C.2.
for the Respondent.