

47, 1947

A J.F.S. Ryan

DOMINION OF CANADA

In the Supreme Court of Canada

(OTTAWA)

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

Angus William Robertson,

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

— APPELLANT.

— and —

Ethel Quinlan, & vir, & al,

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

— RESPONDENTS.

— and —

Capital Trust Corporation Limited,

(Defendant in the Superior Court),

— and —

Dame Catherine Ryan, & al,

— MIS-EN-CAUSE.

THE CASE

VOL. III. — PLAINTIFF'S EVIDENCE

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7-NOV 1958

CENTRE FOR ADVANCED

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DOMINION OF CANADA

In the Supreme Court of Canada
(OTTAWA)

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

10

Angus William Robertson,

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

APPELLANT.

20

— and —

Ethel Quinlan, & vir, & al,

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

RESPONDENTS.

30

— and —

Capital Trust Corporation Limited,

(Defendant in the Superior Court),

— and —

40

Dame Catherine Ryan, & al,

MIS-EN-CAUSE.

THE CASE

VOL. III. — PLAINTIFF'S EVIDENCE

E. L. PARENT (for Plaintiff's) Examination in Chief.

PLAINTIFF'S EVIDENCE

10

DEPOSITION OF EMMANUEL L. PARENT

A witness produced and examined on behalf of the plaintiffs.

On this seventeenth day of September, in the year of Our Lord one thousand nine hundred and thirty personally came and appeared Emmanuel L. Parent of the City of Ottawa, in the Province of Ontario, accountant, aged 50 years, a witness produced and examined on behalf of the Plaintiffs, who, being duly sworn, deposes as follows:—

Examined by Mr. Masson, K.C., of Counsel for Plaintiffs.

Q.—You are the Estates Manager of the Defendant, Capital Trust Corporation, Limited?

A.—Yes.

Q.—You have already been examined on Discovery by the Plaintiffs?

30 A.—Yes.

Q.—In the course of your examination you filed different documents which have been marked as Exhibits P-C-5 to P-C-48?

A.—We filed a number. I suppose your figures are correct, but I do not remember them all.

Q.—I understand that up to Exhibit P-C-34 the Exhibits were marked, and after your examination Exhibits P-C-35 to P-C-48 were marked?

A.—I could not remember them all, unless I see the list.

40 Mr. Campbell:—On behalf of the Defendant Capital Trust I admit that the Exhibits P-C-35 to P-C-48 mentioned on the list of Attorneys for Plaintiffs dated September 10th, 1930, are properly filed as part of the deposition on discovery of the witness now under examination.

(The parties admit that the copies of the documents filed as exhibits by either of the defendants in their examinations on dis-

E. L. PARENT (for Plaintiff's) Examination in Chief.

covery shall have the same effect in so far as the proof is concerned in this case as if the originals thereof were filed this day at the trial, and shall be common to both parties in the case).

10 By Mr. Masson, Continuing,

Q.—Did you bring with you the cash book of the Estate Hugh Quinlan?

A.—Yes. We call it the Estates ledger. It is the Cash Book as far as accounting is concerned.

Q.—Is that the same book you exhibited to us in your examination on discovery?

20 A.—I do not think you ever saw it. Mr. Desaulniers saw it.

Q.—Would you mind exhibiting the book to me?

A.—These are the original sheets, and I would not like to part with them, because we will have to make a Statement later on.

Q.—Will you file as Exhibit P-1 at enquete, an extract of the Cash Book which you have just exhibited to me?

30 A.—I will have to make one.

Q.—Did you bring with you the general Estate ledger?

A.—It is the same thing.

Q.—So, Exhibit P-1, from which an extract will be filed, is the Cash Book and the general Estate ledger to which you already referred in your examination on discovery?

A.—Yes.

40 And further deponent saith not.

J. H. Kenehan,
Official Court Reporter.

C. J. MALONE (for Plaintiff's) Examination in Chief.

DEPOSITION OF CLIFFORD J. MALONE

10 A witness produced and examined on behalf of the Plaintiffs.

On this seventeenth day of September, in the year of Our Lord one thousand nine hundred and thirty personally came and appeared Clifford J. Malone of the City of Outremont, in the District of Montreal, accountant, aged 35 years, a witness produced and examined on behalf of the Plaintiffs, who, being duly sworn, deposes as follows:—

20 Examined by Mr. Masson, K. C., of Counsel for Plaintiffs.

Q.—What is your occupation?

A.—I am accountant, also Secretary Treasurer, of Robertson, Janin, Limited.

Q.—You have been summoned to bring with you the Minute Book, the Stock Ledgers, and the Stock Certificate Book, and a few other documents, of Quinlan Robertson & Janin, Limited. Did you bring them?

A.—No.

Q.—Why not?

30 A.—Owing to the bulky nature of the documents I could not bring them. It would take several truck loads to bring them.

Q.—You received a Subpoena, with instructions to bring those papers with you?

A.—Yes.

Q.—You read it?

A.—Yes.

Q.—Your Subpoena states you are to bring with you the Minute Book of Quinlan, Robertson & Janin, Limited. Is that a very big book?

40 A.—It did not only specify the Minute Book: it specified all books.

Q.—If it was too much for you to bring them all, could you not have brought the Minute Book?

A.—Well, I did not want to go ahead and choose certain books. I did not know which ones you needed, and naturally I left it as it was. I could not very well bring all the books; it would take several truck loads.

C. J. MALONE (for Plaintiff's) Examination in Chief.

Q.—When can you bring them to Court?

A.—I do not know.

Q.—Will you bring the Minute Book, the Stock Transfer Book, and the Stock Certificate Book, of Quinlan Robertson & Janin, Limited?

A.—Provided I get instructions from my employer to bring them.

By the Court:—

Q.—And, provided the Court orders you to bring them.

A.—I understand Mr. Janin objects to my bringing the books.

By Mr. Masson, Continuing,

Q.—Have you anything to do with the Ontario Amiesite Company?

A.—No.

Q.—Robertson & Janin, Limited?

A.—Secretary.

Q.—You are Secretary of Robertson & Janin Building Limited?

A.—Yes.

Q.—Secretary of Robertson & Janin Paving Company?

A.—Yes.

Q.—Secretary of Robertson & Janin, London, England, Limited?

A.—No.

Q.—You have nothing to do with that Company??

A.—No.

Q.—Where are the books of that Company?

A.—I do not know.

Q.—You are connected with the Montreal Construction Supply & Equipment Company, Limited?

A.—Yes.

Q.—Who is the Secretary of the Ontario Amiesite, Limited?

A.—I am not just familiar with his name. I think it is Mr. Cooper, but I am not quite sure.

Q.—Will you file, as Exhibit P-2, an extract certified by you of those books to be determined later?

(This question is withdrawn).

And further deponent saith not.

J. H. Kenehan,
Official Court Reporter.

ALBAN JANIN (for Plaintiff's) Examination in Chief.

DEPOSITION OF ALBAN JANIN

10 A witness produced and examined on behalf of the Plaintiffs.

On this seventeenth day of September, in the year of Our Lord on thousand nine hundred and thirty personally came and appeared: Alban Janin of the City and District of Montreal, contractor, aged 49 years, a witness produced and examined on behalf of the Plaintiffs, who, being duly sworn, deposes as follows:

Examined by Mr. Masson, K. C., of Counsel for Plaintiffs:

20 Q.—You were served with a subpoena calling upon you to bring certain documents. Did you bring them?

A.—That subpoena was delivered to my house during the day yesterday, and I got it last night. I did not have time to get anything my cheque book and cheque stubs.

Most of what you asked for I have not or am not in a position to file.

30 Q.—Have you with you the Stock Certificate of Quinlan Robertson & Janin?

A.—No, sir.

Q.—Where is it?

A.—I have it in my box. They are at the Bank. I could not have got them this morning. I thought the Court should give me an Order to bring those. They are things I use continuously. I need them at the Bank against my loans, and they are not things I can deposit in Court. I can certify to the ownership of them, and where they are, and I can give you communication of them or let you see them, but I cannot deposit them in Court.

40 Q.—And, the same Order that applies to Mr. Malone, who was examined, could be applied to your case?

A.—Yes.

Q.—And the other documents mentioned in your Subpoena?

A.—I had given instructions to our accountant, Mr. Malone, not to bring anything here, in the first place, because we could not possibly bring them, and, in the second place, I thought the Court would decide what amongst the whole lot could be relevant to

ALBAN JANIN (for Plaintiff's) Examination in Chief.

the case. Then, again, those Minute Books, and all the accounting books, are in almost daily use. We are not a party to the case. We are willing to do anything we can to give information to the Court, but we are using those things all the time.

10

His Lordship:—Of course, that is not evidence.

Witness:—But, I just wanted to explain that we are not trying not to give you what you wanted.

By Mr. Masson, Continuing,

20 Q.—We demand acte of your offer to let us inspect those books and take extracts from them according to the demands that will be submitted to you.

A.—I understand you will make a list of what you want from us, and it will be discussed amongst the lawyers in the case. If you ask for everything you are asking for in your subpoena you will have to come to the office with a Commission, and take up our room and stop me from working.

His Lordship:—Then, you will have to stop working for a while.

30

Witness:—But, it will be a heavy loss.

His Lordship:—If it is necessary to the ends of justice that you should stop work, you will have to stop work, and I believe your lawyer will tell you the same thing.

Witness:—What I mean it is must be done giving me a chance to.....

40 Mr. Tanner:—(interrupting) We do not want any restrictions from you.

Witness:—And I am not going to give you any restrictions.

By Mr. Masson, Continuing,

Q.—Have you in your possession the Stock Book, the Share Certificate Book, the Stock Certificate Book, of Quinlan Robertson & Janin, Limited?

A.—No.

ALBAN JANIN (for Plaintiff's) Examination in Chief.

Q.—Who have them?

A.—The Company. Mr. Malone, the Secretary Treasurer.

Q.—I understand that upon your instructions he will exhibit them to us.

10 A.—Yes, absolutely.

Q.—Robertson & Janin Building Company, Limited?

A.—Absolutely. All the Companies I have anything to do in. Whatever has been decided, rules.

Q.—And, you are in a position to give instructions which will be obeyed, in regard to the inspection?

A.—Yes, I am.

By Mr. Beaudry:—

20 Q.—Are there some Companies mentioned in your Subpoena with which you have no connection at all?

A.—Yes.

Q.—Will you please name them?

A.—Amiesite Asphalt, Limited, I have nothing to do with.

Canadian Amiesite, Limited, I have nothing to do with, nor has Mr. Malone, or anyone in my staff. I have nothing to do with Maccurban Asphalt, Limited. I have absolutely no authority in Amiesite Asphalt Company of America. I am a shareholder. I cannot produce anything.

30

Robertson & Janin, Limited, England, has been wound up during the year. They are not in existence any more.

Q.—When was it liquidated?

A.—During the year.

By Mr. Masson:—

40 Q.—Who is the liquidator?

A.—Lawrence Jones & Company, London, are the Solicitors. I do not know who the liquidators are.

I am in charge of all the other Companies mentioned.

Q.—Have you any papers or any contracts, or any copies thereof, in reference to the Amiesite Asphalt, Limited?

A.—I have absolutely nothing.

ALBAN JANIN (for Plaintiff's) Examination in Chief.

Q.—I understand you were parties to certain transactions?

A.—But I am not now, and all those papers have left my possession.

10 Q.—You did not get any copies of the documents you signed at the time?

A.—I do not know what you mean. I have no documents.

Q.—And, no books?

A.—And, no books.

Q.—Did you receive any Statement with reference to Robertson & Janin, London, which is being liquidated?

20 A.—We have, yes.

Q.—Have you those Statements with you?

A.—All I have received, yes. I have them, but they are not here. Up to the beginning of the year, as long as they were in operation.

Q.—You have some papers?

A.—Yes, I have.

Q.—So, we will be able to see them?

30 A.—You will have them.

Of course, there are other things that you mention and which I have not. I suppose we will go over that with you in the office when you come.

And further deponent saith not.

J. H. Kenehan,
Official Court Reporter.

T. F. SPELLANE (for Plaintiff's) Examination in Chief.

DEPOSITION OF THOMAS F. SPELLANE

10 A witness produced and examined on behalf of the Plaintiffs.

On this seventeenth day of September, in the year of Our Lord one thousand nine hundred and thirty personally came and appeared Thomas F. Spellane of the City and District of Montreal, Secretary and Treasurer Amiesite Asphalt, Limited, and Macurban Asphalt, Limited, aged 50 years, a witness produced and examined on behalf of the Plaintiffs, who, being duly sworn, deposes as follows:—

20 Examined by Mr. Masson, K.C., of Counsel for Plaintiffs.

Q.—Did you bring with you the Minute Book, the Stock Certificate Book, and the Transfer Book of the Amiesite Asphalt, Limited?

A.—No, I did not bring any records with me.

Q.—Why did you not bring them?

30 A.—I did not think you would get to the case so quickly, because it had been up before and was postponed, and those records take up a large volume. I tried to get in touch with your office this morning, but there was not one there, so I just came down.

Q.—Have you any objection to letting us have extracts from those books, so that they may be filed as Exhibits in this case?

A.—No: anything the Court instructs.

Q.—Then, we will have a look at the books and records, and have extracts made, and file them afterwards.

A.—Yes.

40 And further deponent saith not.

J. H. Kenehan,
Official Court Reporter.

A. J. M. PETRIE (for Plaintiff's) Examination in Chief.

DEPOSITION OF ARCHIBALD J. M. PETRIE

10 A witness produced and examined on behalf of the Plaintiffs.

On this seventeenth day of September, in the year of Our Lord one thousand nine hundred and thirty personally came and appeared Archibald J. M. Petrie of the City and District of Montreal, Certified Public Accountant, aged 37 years, a witness produced and examined on behalf of the Plaintiffs, who, being duly sworn, deposes as follows:—

Examined by Mr. Masson, K.C., of Counsel for Plaintiffs.

20 Q.—You prepared some auditors' reports of the Quinlan, Robertson & Janin, Limited, Robertson & Janin, Limited, and the other Companies mentioned in your Subpoena duces tecum which was served upon you?

A.—Yes, I did.

Q.—Did you bring those Statements with you?

A.—No.

Q.—Why not?

30 A.—They are very voluminous. They are about two feet high. I am using them from day to day. If you give me an Order to have extracts made of certain Statements I will be glad to do so, or if you wish you may come to the office and see them.

Q.—So, you have no objection to letting us have communication of those documents to which your subpoena refers?

A.—The only documents I have are the originals, and I do not want to part with them. If you want extracts, I will be glad to let you have them.

40 You have asked for a lot of material which I did not think was really necessary. You have asked for papers which are very voluminous.

Q.—You have no objection to letting us go to your office and letting us have extracts taken so that they may be filed in Court?

A.—Absolutely none.

Q.—And, you will certify the copies we need?

A.—Yes, I will.

And further deponent saith not.

J. H. Kenehan,
Official Court Stenographer.

C. A. SHANNON (for Plaintiff's) Examination in Chief.

DEPOSITION OF CHARLES A. SHANNON

10 A witness produced and examined on behalf of the Plaintiffs.

On this seventeenth day of September, in the year of Our Lord one thousand nine hundred and thirty personally came and appeared Charles A. Shannon of the City and District of Montreal, Certified Public Accountant, aged 45 years, a witness produced and examined on behalf of the Plaintiffs, who, being duly sworn, deposes as follows:—

20 Examined by Mr. Masson, K.C., of counsel for Plaintiffs.

Q.—You are the liquidator of A. W. Robertson, Limited?

A.—Yes.

Q.—Did you bring with you the Stock Certificate Book, the Stock Ledger, the Stock Transfer Book, and the Minute Book of that Company?

A.—I have the honor to be one of the joint liquidators. We have all the books here in Court.

30 Q.—Have you any objection to letting us inspect those books out of Court, so that extracts may be prepared in order to be filed as Exhibits in this case?

A.—As long as the Judge is agreeable, we are agreeable.

By the Court:—

Q.—Will it inconvenience you in leaving the books?

A.—They are our original records, and of course we do not like to part with them.

By Mr. Masson, Continuing,

40 Q.—So, we may call at your office and inspect them?

A.—At any time.

Q.—I understand that in addition to being liquidator of A. W. Robertson, Limited, you have been the Auditors and Accountants of the Estate of the late Hugh Quinlan?

A.—Yes.

Q.—And, I understand you have prepared Statements with reference to that Estate?

A.—Yes, from the beginning.

C. A. SHANNON (for Plaintiff's) Examination in Chief.

Q.—On whose instructions did you prepare them?

A.—On the instructions of the Executors of the Estate, who had the right, I think, to give the instructions.

10 Q.—You include both Defendants?

A.—Yes.

Q.—Robertson, and the Capital Trust?

A.—I understood we had both their instructions.

Q.—Have you any objection to letting us inspect those Statements, so that exhibits may be prepared from them in the same way as for A. W. Robertson, Limited?

A.—We have no objection at all.

Q.—And, this will include all the documents referred to in your subpoena duces tecum?

20 A.—All that we have control of. There are one of two we have not control of.

His Lordship:—The witness will give access to all he has. He cannot do more than that.

And further deponent saith not.

J. H. Kenehan,
Official Court Reporter.

30

40

W. A. QUINLAN (*for Plaintiff's*) *Examination in Chief.*

DEPOSITION OF WILLIAM A. QUINLAN

10 A witness produced and examined on behalf of the Plaintiffs.

On this seventeenth day of September, in the year of Our lord one thousand nine hundred and thirty personally came and appeared William A. Quinlan residing at No. 357 Kensington Avenue, in the City of Westmount, District of Montreal, Manager, aged 42 years, a witness produced and examined on behalf of the Plaintiffs, who, being duly sworn, deposes as follows:—

20 Examined by Mr. Masson, K.C., of Counsel for Plaintiffs.

Q.—What do you say your occupation is?

A.—Manager.

Q.—Manager of what?

A.—I am Manager of General Motors, Montreal.

Q.—You have been served with a subpoena calling upon you to bring with you certain documents therein mentioned. Did you bring them?

A.—Yes.

30 Q.—I see you have two books before you. Are those all the documents you have?

A.—Those are all I have.

Q.—Nothing else?

A.—Nothing else.

Q.—Would you mind depositing these two books with the Court, so that extracts may be made from them if necessary?

A.—I have no objection.

By Mr. Campbell:—

40 Q.—What are they?

A.—One is a list of bonds of my late father, and the other is a list of household expenses, and some sheets of paper. The bonds and stocks.

And further deponent saith not.

J. H. Kenehan,
Official Court Reporter.

A. W. ROBERTSON (*for Plaintiff's*) Examination in Chief.

DEPOSITION OF ANGUS W. ROBERTSON

10 A witness produced and examined on behalf of the Plaintiffs.

On this seventeenth day of September, in the year of Our Lord one thousand nine hundred and thirty personally came and appeared Angus W. Robertson of the City and District of Montreal, Contractor, aged 55 years, a witness produced and examined on behalf of the Plaintiffs, who, being duly sworn, deposes as follows:—

20 Examined by Mr. Masson, K.C., of Counsel for Plaintiffs.

Q.—You are one of the Defendants?

A.—Yes.

Q.—You have been served with a subpoena instructing you to bring certain documents mentioned therein? Did you read the subpoena?

A.—I did.

Q.—Did you bring with you the documents therein referred to?

30 A.—Most of those documents I have no control over, and they are not in my possession.

Q.—Would you mind mentioning those which are not in your possession; or, if it is shorter, would you mention those which are in your possession?

A.—A. W. Robertson, Limited, are not in my possession.

Q.—Have you any documents in reference to Amiesite Asphalt, Limited?

A.—No.

Q.—Have you any contracts, notices, or any letters in reference to that Company?

40 A.—No.

Q.—Did you receive any in the past?

A.—There may be some in the office on Sherbrooke Street, but I have not them in my possession.

Q.—In whose possession are they?

A.—I do not know.

Q.—If they are in the office, there must be someone in control of that office?

A.—Mr. Janin. In the Sherbrooke Street office.

A. W. ROBERTSON (*for Plaintiff's*) Examination in Chief.

Q.—Your personal papers in reference to Amiesite Asphalt, Limited, if there are any, are on Sherbrooke Street under Mr. Janin's control?

10 A.—No, I do not say that. I have not them now. I do not know where they are.

Q.—Did you destroy them?

A.—No, I did not.

Q.—Then, they must be somewhere?

A.—Yes, they may be.

Q.—And, they are on Sherbrooke Street?

A.—That is where they likely would be.

Q.—Why did you not bring them with you this morning?

A.—Because I have not them.

20 Q.—If they are on Sherbrooke Street they are under your control?

A.—No, they are not mine.

Q.—Whose property are they?

A.—I have nothing to do with the Amiesite Asphalt Company.

Q.—What about Quinlan, Robertson & Janin, Limited?

A.—I have sold my stock in that.

Q.—Do you mean the originals of letters which you received in reference to Amiesite Asphalt have been left at the office of the Company?

30 A.—I do not know where they are, unless they were turned over to the people who own the Amiesite Asphalt, Company.

Q.—Is it your habit to return to the sender letters which you receive? If you received a letter in reference to Amiesite Asphalt, Limited, that letter would be your property?

A.—I do not remember having received any.

Q.—Did you sign any contracts in reference to that Company?

A.—Not that I know of.

40 Q.—Have you anything in reference to Quinlan, Robertson & Janin, Limited?

Witness:—What do you mean: In reference to Quinlan, Robertson & Janin, Limited?

Counsel:—Any share certificates.

A.—No, I have no share certificates.

Q.—You had some?

A.—I had.

A. W. ROBERTSON (*for Plaintiff's*) Examination in Chief.

Q.—They are not in your possession now?

A.—No.

Q.—Where are they?

A.—You will have to ask Mr. Janin.

10 Q.—Are they not yours?

A.—No.

Q.—Since when?

A.—Recently.

Q.—How long ago?

A.—Last week.

Q.—So, the week before they were in your possession?

A.—Quinlan, Robertson & Janin, Limited, yes.

20 Q.—And, if we had examined you then you could have had those papers in reference to Quinlan, Robertson & Janin, Limited?

A.—You had my stock certificates last fall. You examined them when I was examined on discovery.

Q.—Have you any other papers in reference to that Company?

A.—I would have to look and see. I do not know whether I have or not.

Q.—Did you look to see?

Witness:—When?

30 Counsel:—Since you received your subpoena?

A.—I only received it about two o'clock yesterday afternoon, and I have been busy trying to get other information for you which I have under my control.

Q.—How long will it take to look for those papers?

A.—I do not know. I would have to consult Mr. Janin and the office and find out.

40 Q.—So, Mr. Janin is the one who can find those papers and documents?

A.—I suppose he is. He is in charge of the Company.

Q.—Mr. Janin was heard as a witness a few minutes ago?

A.—Yes.

Q.—Have you any objection to Mr. Janin letting us look at those papers he has in his possession and which are supposed to be yours?

A.—It is none of my business. I have nothing to do with Mr. Janin's papers. He owns the stock.

A. W. ROBERTSON (for Plaintiff's) Examination in Chief.

Q.—If he has any papers that belong to you you have no objection to his letting us see them?

A.—Not in the least.

10 Q.—You have not any objection?

A.—Not in the least.

Q.—So, the offer which was made by Mr. Janin to let us inspect certain documents which are under his control can be applied to your papers so far as you are concerned?

A.—Surely.

Q.—What papers did you bring with you?

A.—I brought the stock certificates which you asked for. You remember I showed them to you last fall.

20 Q.—Would you mind depositing with the Court the documents you have brought, so that we may inspect them and prepare the exhibits which are to be filed, if any?

A.—Very well.

Q.—Where are the Ontario Amiesite Company share certificates of the late Hugh Quinlan?

A.—They were turned over to me to form part of my own.

Q.—How many did you receive from the Estate of the late Hugh Quinlan?

A.—I think there were 200.

Q.—I see there is one here for 200.

30 A.—Those are all I have in my possession now. Any others are in Toronto.

Q.—The one you exhibit to me is dated December 23rd, 1926. At the time you were not the owner of the 200 shares of Ontario Amiesite of the late Hugh Quinlan. Where are the 200 shares of the late Hugh Quinlan? I mean the certificates.

A.—I have taken over Mr. Janin's shares, and they are in Toronto. There are 99 other shares.

Q.—They are under your control? They are yours?

A.—Not mine personally.

Q.—You have transferred them?

40 A.—I have arranged to transfer them to a Limited Company.

Q.—They have not been transferred yet?

A.—I do not know. They were sent to Toronto for that purpose.

Q.—How long ago were they sent to Toronto?

A.—Mr. Petrie sent them.

Q.—A few days ago? Those certificates were sent to Toronto at the end of last week?

A.—Or the beginning of this week, yes.

A. W. ROBERTSON (*for Plaintiff's*) Examination in Chief.

Q.—Who is the person who can file the certificate of Ontario Amiesite to which I am referring?

A.—I can write for it.

10 Q.—Can you get it?

A.—Yes.

Q.—How long will it take to get it?

A.—If I go to Toronto I could be back by Monday morning.

Q.—So, in the course of next week it will be possible for us to have a look at it?

A.—Yes.

Q.—At your office?

A.—Yes.

Q.—Where?

20 A.—In the Keefer Building.

Q.—And, you will not have any objection to letting us inspect that document?

A.—No, not at all.

Q.—Did you bring with you the contracts or agreements, or copies of contracts or agreements, in reference to William Lyall?

A.—I have already shown them to you.

Q.—And, those are the only documents you have in your possession?

A.—Yes. I cannot find the originals, but these are the copies. There is one original there, but I cannot find the other.

30 Q.—Have you the contract that was entered into in reference to the sale of your shares of Amiesite Asphalt and Maccurban Asphalt?

A.—No.

Q.—Where is it?

A.—I do not know. Any contracts would be at the office on Sherbrooke Street, if they were anywhere. I have not them.

Q.—Under whose control would they be if they are on Sherbrooke Street?

A.—Mr. Janin's, I suppose. I have not the records.

40 Q.—I understand all the papers that are in Mr. Janin's possession or under his control at the Sherbrooke Street office will be inspected in the same way as the other documents, and you have no objection?

A.—I have no objection to it. I have nothing to do with it.

And further deponent saith not.

J. H. Kenehan,
Official Court Reporter.

A. M. HARNWELL (for Plaintiff's) Examination in Chief.

DEPOSITION OF ANDREW M. HARNWELL.

10 A witness produced and examined on behalf of the Plaintiffs.

On this seventeenth day of September, in the year of Our Lord one thousand nine hundred and thirty personally came and appeared Andrew M. Harnwell residing at No. 24 Rose Avenue in the City of Toronto, Province of Ontario, Accountant, aged 63 years, a witness produced and examined on behalf of the Plaintiffs, who, being duly sworn, deposes as follows:—

20 Examined by Mr. Masson, K.C., of Counsel for Plaintiffs:

Q.—What is your occupation?

A.—Accountant.

Q.—You have been served with a subpoena calling upon you to bring with you certain documents and books, most of which are Statutory Books, of the Fuller Gravel, Limited, the National Sand & Material Limited, and a few Statements in reference to those Companies. Did you bring them?

A.—Yes.

30 Q.—You are in possession of those documents?

A.—Yes.

Q.—Have you any objection to depositing with the Court the documents and books you have brought with you?

A.—None whatever, provided they are returned to us in a reasonable length of time.

Q.—Would you mind describing them?

A.—Consolidated Sand & Gravel, Limited, Minute Book No.

1.

40 By Mr. Campbell: —

Q.—Have you any other documents of the Consolidated Sand & Gravel, Limited?

A.—Yes. I might enlarge on that; the documents I have are not the property of the Consolidated Sand and Gravel, but are documents of the Stuart Scully Company, which are loaned. Copies can be made of them.

A. M. HARNWELL (*for Plaintiff's*) Examination in Chief.

By Mr. Masson, Continuing,

Q.—Will you enumerate those which refer to the Consolidated Sand & Gravel Company?

10 A.—There is one showing the liabilities of the Fuller Gravel over and above a certain amount.

Q.—Is there anything else of the Consolidated Sand & Gravel Company besides the Minute Book?

A.—No, there is nothing more. I have a letter of Stuart Scully handed to me, which bears on the Consolidated Sand & Gravel, and the rest of the Companies.

Q.—What is the date of the letter?

A.—May 26th, 1928.

Q.—Have you any objection to depositing this letter?

20 A.—They were loaned to me, to be returned to them.

Q.—They will be in charge of the Court, and they will be delivered back to you.

A.—I would prefer to have a copy substituted. I do not like to leave these, because they are only lent to me.

Mr. Campbell:—I think a certified copy will satisfy the parties.

30 Mr. Masson:—Very well. Therefore, a certified copy of the letter dated May 26th, 1928, will be considered as having the same effect for the purposes of proof as if the original were filed.

Mr. Campbell:—Yes.

Witness:—There is only one clause in this letter which has any bearing on the Fuller Gravel.

Mr. Campbell:—But, they want a copy of the letter, and then they will decide whether they need it or not.

40 Witness:—Very well.

That is all I have of the Consolidated Sand & Gravel Company.

By Mr. Masson, Continuing,

Q.—What other books have you?

A. M. HARNWELL (*for Plaintiff's*) *Examination in Chief.*

10 A.—National Sand & Material Company Minute Books Nos. 1 and 2, and 3 Preferred Stock Certificate Books from No. 1 to No. 115. The Stock Transfer Book of the National Sand & Material, showing the transfers of stock. The Common Stock Certificate Book from No. 101 — apparently there was none issued prior to 101. The first issued certificate is really 201, excepting the qualifying shares.

Those are all the books of the National Sand & Material.

20 I have two letters, one dated February 11th, 1929, written by Royal, Wright & McMillan, to J. F. M. Stuart, attaching a copy of a letter of February 11th, 1929, regarding the purchase of the stock of the National Sand & Material.

Q.—Addressed to whom?

A.—To John E. Russell.

Q.—Have you any objection to depositing this original and this copy with the Court?

A.—I would prefer to have certified copies made.

30 Mr. Masson:—So, copies duly certified by the witness of the letter and the copy attached thereto will avail for the purpose of evidence in this case to the same effect as if the originals were filed, with the consent of all parties.

Mr. Beaulieu:—They will avail as if originals were used.

Mr. Campbell:—They will be just as admissible as the originals.

40 Witness:—Fuller Gravel, Limited. The Minute Book, the Stock Certificate Book, Common stock from No. 01 and the Preferred Stock Certificate Book from No. 01, the Stock Certificate Record and the Stock Book.

Those are all the books.

By Mr. Campbell:—

Q.—Is that the stock certificate record of the Company?

A.—Of the Fuller Gravel.

A. M. HARNWELL (for Plaintiff's) Examination in Chief.

By Mr. Masson, Continuing,

Q.—Have you any other papers in reference to those Companies?

10 A.—I have a paper in connection with certain liabilities of the Fuller Gravel, Limited, at the time of the purchase.

Q.—Will you deposit it?

A.—I would prefer to have a copy made.

Q.—You will have a certified copy of that Statement made, which will avail, by consent of the parties, as if the original were filed?

A.—Yes.

20 By Mr Campbell:—

Q.—What is the date of the Statement?

A.—May 22nd, 1928.

I have a letter, undated, but there is a subsequent letter to this which I do not appear to have brought with me, although I know it is in existence. It is in connection with the purchase of the stock of the Fuller Gravel.

By Mr. Masson, Continuing,

30 Q.—Will you please file a certified copy of that letter?

A.—Yes.

Q.—And of the letter to which you have referred as not having brought with you?

A.—Yes. I know the letter is in existence because I saw it in Mr. Stuart's hands. I am not sure whether he gave it to me...

By Mr. Campbell:—

40 Q.—What is the date of that letter?

A.—There is not date on it. It is May 1928. The registration certificate attached to the letter is May 14th, 1928, so it must be just about that time.

Mr. Masson:—By consent of the parties copies of these letters, certified by the witness, will avail for the purposes of proof in this case as if the originals were deposited.

A. M. HARNWELL (*for Plaintiff's Examination in Chief.*)

By Mr. Masson, Continuing,

Q.—Did you bring with you the cheques or receipts signed in reference to the sale of the shares of Fuller Gravel?

10 A.—No.

Q.—Would you mind depositing with the Clerk of the Court the cheque which was given in payment for the shares of Fuller Gravel?

A.—If I can locate it. I have not the custody of them, but I think they are in existence in the office or the Company.

Q.—Would you mind depositing it?

A.—We will file it, if we can find it. I do not think it has been destroyed, because we do not destroy them.

Q.—To whose order was that cheque payable?

20 A.—I cannot tell you. I did not make out the cheque. I assume one was made out to A. W. Robertson and the other was made out to T. J. Dillon.

Q.—Do you know the amount of the cheque?

A.—No, I do not. I know what the amount should be, but I could not swear as to the exact amount.

Q.—In case you cannot find the cheque, and subject only to verification when the cheque is filed, can you tell me the amount of the cheque that was payable to Mr. Robertson for the purchase of the shares of Fuller Gravel?

30 Mr. Beaulieu, K.C., of Counsel for Defendants, objects to the question as illegal and as not calling for the best evidence.

The objection is reserved by the Court.

A.—Yes, I can.

Q.—What was the amount?

40 A.—Fuller Gravel, \$180,000. That was the purchase price of the property, and that should be the amount of it. There were no deductions that I know of, although there might be.

Q.—That is the amount of the cheque that was made payable to the Defendant Robertson?

A.—\$180,000, it may be. I believe that was what it was.

Q.—When you speak of the purchase of the property you mean the purchase of the shares?

A.—The purchase of the shares and the liquid assets, and the amounts receivable, and everything. Taking the concern over as it was.

A. M. HARNWELL (*for Plaintiff's*) Examination in Chief.

Q.—By taking the shares which were sold?

A.—The shares, and the Company.

By Mr. Tanner:—

10

Q.—Was that amount paid or handed over at the time in payment of all the outstanding capital stock of Fuller Gravel, Limited?

A.—I believe it was.

Q.—Including preferred and common?

A.—I believe it was.

By Mr. Campbell:—

20

Q.—And, all the assets of the Company?

A.—Yes.

By Mr. Masson, Continuing,

Q.—Have you in your files or under your control any correspondence or documents exchanged between Mr. W. E. Twomoon, George W. Reyner, George S. McCord, and A. W. Robertson and Angus W. Robertson in reference to the purchase of those shares?

A.—No, nothing more than you already have.

30

Q.—You have not any correspondence or telegrams?

A.—No.

Q.—That is, any correspondence between Mr. Robertson and others?

A.—No, not to my knowledge.

Q.—Would you mind making a search, and if you find anything will you deposit certified copies of those letters and documents, which will avail for the purposes of evidence in this case as if the originals were deposited, the whole by consent of the parties in the case?

40

A.—Yes.

Q.—You have not any contracts?

A.—No.

By Mr. Tanner:—

Q.—Did you bring with you a Statement of the Fuller Gravel Company for the years 1926, 1927, and 1928?

A.—No.

A. M. HARNWELL (*for Plaintiff's Examination in Chief.*)

Q.—Have you such a Statement?

A.—We would have 1928, because we operated in 1928. We owned the Company in 1928.

10 Q.—Have you the Statement that was submitted to you by the sellers of the Fuller Gravel Company prior to the time it was purchased?

A.—I never saw it. It might be in existence, but I never saw it.

Q.—Would you be good enough to enquire and find out if such a Statement is in your possession and, if so, will you please deposit a certified copy, which will avail as the original consent of the parties in this case?

20 A.—Yes.

By Mr. Masson, Continuing,

Q.—You have no objection to the lawyers in the case examining those documents at their office, with the consent of the Court?

30 A.—No; except in referring to the Minute Books I would ask that reference be made only to the items in question, because the Minute Books cover a lot of things subsequently to 1928 which are private. Anything bearing on this case is all right.

And further deponent saith not.

J. H. Kenehan,
Official Court Reporter.

F. W. COOPER (for Plaintiff's) Examination in Chief.

DEPOSITION OF FREDERICK W. COOPER

10 A witness produced and examined on behalf of the Plaintiffs.

On this twenty seventh day of October, in the year of Our Lord one thousand nine hundred and thirty personally came and appeared Frederick W. Cooper residing at No. 49 Castlefield Avenue, Toronto, aged 47 years, a witness produced and examined on behalf of the Plaintiffs, who, being duly sworn, deposes as follows:—

20 Examined by Mr. Masson, K.C., of Counsel for Plaintiffs.

Q.—You are Secretary Treasurer of the Ontario Amiesite Company, Limited?

A.—I am.

Q.—Did you bring with you the Share Certificate Book of that Company?

A.—I did.

Q.—Will you please exhibit to me the certificate of the late Hugh Quinlan for 200 shares?

30 (Witness exhibits to counsel the certificate in question).

Q.—I understand you cannot deposit this Certificate Book in Court?

A.—The Solicitors would have to say that.

Q.—Will you file, as Exhibit P-2, a certified copy of Certificate No. 26, for 200 shares, issued to the late H. Quinlan on December 23rd, 1926, together with the transfer appearing on the back thereof?

A.—Yes.

40 Q.—Will you also attach to that Exhibit a certified copy of the stub of Certificate No. 26?

A.—Yes.

Q.—You notice the stub appears beside the certificate?

A.—Yes.

His Lordship:—To whom were those shares transferred?

Mr. Masson:—A. W. Robertson, the Defendant.

F. W. COOPER (for Plaintiff's) Examination in Chief.

By Mr. Masson, Continuing,

Q.—You notice the transfer of Certificate No. 26 has not been signed by the late Mr. Quinlan, but by the Executors of the
10 Estate Hugh Quinlan, Capital Trust Company per G. T. B. Pennefather, Alphonse E. Prevost and A. W. Robertson?

A.—Yes.

Q.—Will you exhibit to me the certificate which was issued in place of this?

A.—I was not the Secretary Treasurer at that time. I can tell by the Transfer Book.

Q.—You notice from your Share Certificate Book that Certificate No. 27 was also issued to A. W. Robertson, the Defendant in this case, for 200 shares, on December 23rd, 1926?

20 A.—Yes.

Q.—The certificate which was issued under No. 27, is not in reference to the same shares as those mentioned on Certificate No. 26?

This question is withdrawn.

Q.—Will you exhibit to me the stub of the certificate that was issued to replace Certificate No. 26 — the certificate issued on November 16th, 1927, and will you file, as Exhibit P-3, a certified copy of the certificate and stub bearing No. 31, for 199 shares issued to A. W. Robertson?

30 A.—Yes.

Q.—Will you file, as Exhibit P-4, a certified copy of the certificate and the stub No. 32, for one share, issued to C. J. Malone on November 16th, 1927?

A.—Yes.

Q.—You notice from your book these two certificates, Nos. 31 and 32, were issued to replace Certificate No. 26 filed as Exhibit P-2?

40 A.—Yes.

Q.—Will you show me in your Transfer Book the page which refers to the shares belonging to A. W. Robertson?

Witness:—At what period?

Counsel:—From June, 1927, to the time of the Action.

A.—It is page 6 of the Transfer Book.

F. W. COOPER (for Plaintiff's) Examination in Chief.

Q.—Will you file, as Exhibit P-5, a certified copy of page 6 of the Transfer Book of your Company?

A.—Yes.

10 Q.—Will you exhibit to me the page of the transfers from Mr. Robertson for 99 shares to Roy Miller, dated 28th March, 1928, and for 100 shares to A. Janin, dated November 3rd, 1928?

Mr. Campbell:—I do not object to the information being given, but I do not see that it has any bearing on this case. It is common ground Mr. Robertson took over those shares from Mr. Quinlan, and I do not know what has been done since his material.

His Lordship:—I will take it under reserve.

20 By the Court:—

Q.—What became of those 99 shares transferred to Mr. Miller and the 100 shares transferred to Mr. A. Janin?

A.—Miller's shares were transferred to A. W. Robertson.

Q.—Re-transferred?

A.—Yes.

Q.—And, what became of the 100 shares transferred to Mr. Janin?

A.—Miller transferred 100 shares to Janin.

30 Miller transferred 99 shares to Robertson, and 100 to Janin, and 1 share to myself.

Q.—You first said Robertson had transferred 99 to Miller and 100 to Janin?

A.—Miller transferred 99 shares to A. W. Robertson, 100 to Janin, and 1 to myself. There were 200 shares.

Q.—200 shares in the name of Miller?

A.—Yes.

40 Mr. Campbell:—I think the explanation is Miller had other shares than those shares he obtained from Robertson.

By Mr. Masson, Continuing,

Q.—It appears from your book that on September 17th, 1930, Janin re-transferred 100 shares to A. W. Robertson?

A.—Yes.

F. W. COOPER (for Plaintiff's) Examination in Chief.

Q.—Did Robertson transfer all the shares he had in that Company?

This question is withdrawn.

10

By the Court:—

Q.—Am I to understand that the 199 shares which were transferred from Mr. Quinlan to Robertson now stand in the name of Mr. Janin?

A.—No, there are no shares at the present time in Mr. Janin's name. Mr. Janin has no shares.

Q.—He has transferred again?

20 A.—He has no shares whatever in the Ontario Amiesite Company.

By Mr. Masson, Continuing,

Q.—What happened to the shares he had in that Company?

A.—They were transferred.

Q.—I mean the original 199 shares transferred from Mr. Quinlan to Mr. Robertson, and which passed through Mr. Miller and Mr. Janin: they are now in the name of Mr. Robertson?

30 A.—It is pretty hard to identify those particular shares; but all those shares have either been transferred to Angus Robertson Limited, or Angus Robertson.

Q.—So, today Mr. Janin is no longer a shareholder in the Company?

A.—No.

Q.—Mr. A. W. Robertson, the Defendant, is no longer a shareholder either?

A.—Yes, Mr. A. W. Robertson is a shareholder.

Q.—How many shares?

A.—He has 99 shares.

40 Q.—You notice at page 6 of your Transfer Book those shares were transferred by A. W. Robertson to Mr. Miller and to Mr. Janin at their par value?

A.—That is what the transfer would be made for anyway. It would show here at the par value in any case. I do not know what the price was.

Q.—Have you anything in your books to show the price that was paid for those shares?

A.—I have not.

F. W. COOPER (for Plaintiff's) Examination in Chief.

His Lordship:—I do not believe that would be within the scope of the present enquiry.

10 By Mr. Masson, Continuing,

Q.—Have you with you any Statements of the Ontario Amiesite Company, Limited?

A.—Yes.

Q.—Would you mind exhibiting to me all the Statements of that Company up to and including 1928?

A.—I have not the Statements prior to 1925.

Q.—Have you those from 1925 to 1928?

A.—Yes.

20 Q.—What was the financial year?

A.—March 31st. I have 1926, 1927, and 1928.

Q.—You have not any for 1925?

A.—Just part. That was all I could find. Here is one for nine months.

Q.—Will you file, as Exhibit P-6, the Financial Statement of the Ontario Amiesite, Limited, for the nine months ending March 31st, 1925, and the Financial Statements of the same Company for each of the years ending March 31st, 1926, 1927, and 1928?

A.—Yes.

30 Mr. Beaulieu:—I object to the production of those Statements, inasmuch as there may be facts contained in them which are not pertinent to the case.

His Lordship:—Production is permitted only to the extent to which they are pertinent and covered by the Pleadings.

40 Mr. Campbell:—I would like to enter an objection generally to any evidence of facts which have arisen since the institution of the present proceedings. Insofar as those documents are subsequent to Action brought my submission is they are not admissible, and on behalf of the Defendant Capital Trust Corporation I object to the introduction of any evidence of any facts subsequent to service of proceedings in this case in October, 1928.

Mr. Beaulieu:—The same objection is made on behalf of the Defendant Robertson.

F. W. COOPER (for Plaintiff's) Examination in Chief.

By Mr. Masson, Continuing,

Q.—Have you in your possession the Minute Book of the Ontario Amiesite, Limited?

10 A.—I have.

In connection with the stock held by Mr. Robertson I want it to be understood he has more than 99 shares in his own name at the present time: he has 299.

By the Court:—

Q.—But, we are only interested in those original shares of Mr. Quinlan's.

20 A.—I understand.

By Mr. Masson, Continuing,

Q.—Have you any Minute of the Resolution passed in reference to the value of the shares of Ontario Amiesite which might result from the sale or the transfer of those shares?

A.—Not that I am aware of. I do not think there is anything.

Q.—Was there any contract entered into with reference to the bulk sale of those shares to any person, or company, or corporation?

30 A.—I am not aware of any. There may be, but I do not know anything about it.

Q.—Is there any Minute or Resolution in the Book in reference to the transfer by the Testamentary Executors of the Estate of the late Hugh Quinlan of the shares to A. W. Robertson, the Defendant?

A.—You are asking me question about something which took place before I had anything to do with those books.

40 Q.—Will you show me the pages of the book around the date November 16th, 1927?

(The witness does as requested).

Q.—Will you exhibit to me the Minutes of the Meeting of Board of Directors of the Company held May 17th 1927? You notice at the Meeting of Directors held on May 16th, 1927, the late Hugh Quinlan was not present?

A.—As far as that shows.

*F. W. COOPER (for Plaintiff's) Cross-examination.
for Capital Trust Company.*

Q.—And up to that time Mr. Quinlan had been a Director of the Company?

10 A.—I do notice he was not present at this other Meeting either.

Q.—Have you in the Minute Book, or in the books in your possession, any transfer of the 200 shares of the late Mr. Quinlan to Quinlan, Robertson & Janin, Limited?

A.—No, not that I know of.

Q.—Those shares which the late Mr. Quinlan had in the Ontario Amiesite, Limited, have never been transferred to Quinlan, Robertson & Janin, Limited?

A.—Not that I am aware of.

20 By the Court:—

Q.—Have you been asked for any of this information by Counsel for Plaintiff before today?

A.—Nobody has asked me for any information before.

Cross-examined by Mr. Campbell, K.C., of Counsel for Capital Trust Company.

30 Q.—You referred to a Mr. Miller. Apart from the 99 shares which were transferred to Mr. Roy Miller by Mr. Robertson did Mr. Miller have other shares in the Company?

His Lordship:—I do not think that would be relevant, Mr. Campbell. We are only interested in whether this transfer was legal or not, and to follow it to the end.

Mr. Campbell:—I simply wanted to show, your Lordship, that the shares he transferred subsequently were not necessarily those shares.

40 By Mr. Campbell, Continuing,

Q.—He had other shares?

A.—He had other shares, I am pretty certain.

And further deponent saith not.

J. H. Kenehan,
Official Court Stenographer.

T. F. SPELLANE (for Plaintiff's) Examination in Chief.

DEPOSITION OF THOMAS F. SPELLANE

10 A witness produced and examined on behalf of the Plaintiffs.

On this twenty seventh day of October, in the year of Our Lord one thousand nine hundred and thirty personally came and appeared Thomas F. Spellane of the City of Westmount, in the District of Montreal, Secretary Treasurer Amiesite Asphalt Company, Limited, and Maccurban Asphalt, Limited, aged 50 years, a witness produced and examined on behalf of the Plaintiffs, who, being duly sworn, deposes as follows:—

20 Examined by Mr. Masson, K.C., of Counsel for Plaintiffs.

Q.—Did you bring with you the Transfer Book of Amiesite Asphalt, Limited?

A.—Yes.

Q.—Will you exhibit to me the page which shows the stock account of the late Mr. Hugh Quinlan?

(Witness exhibits to counsel page 1 of the book in question).

30 Q.—It appears from page 1 of the stock book of the Amiesite Asphalt, Limited, that Mr. Hugh Quinlan was a shareholder?

A.—Yes.

Q.—How many shares?

A.—50 shares.

Q.—To whom were those shares transferred?

A.—To A. W. Robertson.

Q.—On what date?

A.—June 22nd, 1927.

40 Q.—Will you file, as Exhibit P-7, a copy of page 1 of your Stock Book, which is in the name of Hugh Quinlan?

A.—Yes.

Q.—Will you exhibit to me the Transfer Certificates of those shares?

A.—The transfer is on the back of the certificate.

Q.—There is no transfer in your Stock Book in reference to those 50 shares?

A.—I have not charge of Mr. Robertson's account. I assumed if you wanted to see the transfer you wanted to see the back of the Certificate.

T. F. SPELLANE. (for Plaintiff's) Examination in Chief.

Q.—Is there any other form of transfer which would show in the Stock Book in reference to those shares?

A.—There is a transfer, No. 3, for value received.

10 Q.—May I see it?

(Witness exhibits the transfer in question).

Q.—Will you file, as Exhibit P-8, a certified copy of transfer No. 3 of Amiesite Asphalt, Limited, as it appears in your book which you now show me?

A.—Yes.

Q.—Will you show me the certificate for 50 shares of the late Hugh Quinlan?

20 A.—It is in two certificates: Certificate No. 1, for 1 share; and Certificate No. 5, for 49 shares, both of which have been endorsed by Hugh Quinlan in favor of A. W. Robertson.

Q.—Will you please show those two certificates to me?

(Witness exhibits certificates Nos. 1 and 5).

Q.—Will you file, as Exhibit P-9, an exact copy of Certificate No.1, for 1 share, issued to Hugh Quinlan; with the stub in reference to that certificate?

A.—Yes.

30 By the Court:—

Q.—A true copy means all the blanks that appear on those certificates, if there are any.

A.—Front and back. There are no blanks.

Mr. Campbell:—I understand the witness will put in typewriting what is in typewriting, and in handwriting what is in handwriting.

40 His Lordship:—And if there are any blanks he will leave blanks.

By Mr. Masson, Continuing,

Q.—You notice on the transfer of Certificate No. 1 the signature "Hugh Quinlan" is in ink, and the signature "Verne L.

T. F. SPELLANE (for Plaintiff's) Examination in Chief.

Kerr" as a witness is in handwriting, and the name "A. W. Robertson", "one" and "June 22nd, 1927,, are in typewriting.

A.—Yes. Miss Kerr's signature is not in typewriting.

10 Q.—Will you file, as Exhibit P-10, an exact copy of Certificate No. 5, for 49 shares, issued to Hugh Quinlan, together with a copy of the Transfer which is also signed by Mr. Hugh Quinlan, and witnessed by Verne L. Kerr, these two signatures being in handwriting, and the Words "A. W. Robertson", and "Forty-nine" and "June 22nd. 1927, are in typewriting."

A.—Yes.

Q.—Will you exhibit to me the share certificate issued to J. H. Dunlop, for 200 shares of Amiesite Asphalt, Limited?

A.—It is cancelled certificate No. 9.

20 Q.—Will you file, as Exhibit P-11, a certified copy of Certificate No. 9, for 200 shares issued to J. H. Dunlop, together with the stub of that certificate; the certificate being endorsed by J. H. Dunlop in presence of L. N. Leamy, with the same handwriting and typewriting as in Exhibits P-9 and P-10?

A.—Yes.

Q.—Will you exhibit to me in your Transfer Book the transfer signed by Mr. Dunlop in reference to those 200 shares?

A.—The transfer is signed on the back of the certificate, but a record is made in the book: Transfer No. 2.

30 Q.—Will you file, as Exhibit P-12, a certified copy of page 2 of your Transfer Book, which purports to be a transfer of the 200 shares which originally stood in the name of Mr. Dunlop?

A.—Yes. It is a record of the transfer.

Q.—If it is a record of the transfer, you notice all the other transfers are not made in the same way, but have been signed by the transferer and the transferee?

A.—The fact that the transfer is signed on the back of the original certificate is sufficient: you do not need two.

Q.—Do those 250 shares which were transferred still stand in the name of A. W. Robertson?

40 A.—They do not.

Q.—In whose name do they stand?

A.—It is impossible for me to say that at the moment. I would have to follow it through.

Q.—Have those shares been sold?

A.—Those shares are now in the names of other people.

Q.—What are the names of those people?

T. F. SPELLANE (for Plaintiff's) Examination in Chief.

A.—I would have to submit to you a list of the present stockholders, and it would take me a few minutes to do it. Generally speaking, I would say it is owned and controlled by Messrs. William P. McDonald and his associates, John I. McDonald, Charles
10 A. Taylor, and, I think, Ruth L. McDonald. It is, generally speaking, that family and associates.

Q.—They have bought those shares?

A.—They have bought all the shares of Amiesite Asphalt Limited.

Q.—Were they bought verbally, by the transfer of the Amiesite Asphalt; or were they bought by and in virtue of a contract?

His Lordship:—I do not think that has anything to do with
20 the case at the present time.

By Mr. Masson, Continuing,

Q.—Will you exhibit to me the document which will establish to whom A. W. Robertson, the Defendant, transferred those 250 shares of Amiesite Asphalt which stood in the name of the late Hugh Quinlan?

His Lordship:—That is the same question in another form.

30 By Mr. Masson, Continuing,

Q.—Have you with you the Minute Book of Amiesite Asphalt, Limited?

A.—I have.

Q.—Will you exhibit to me the Minute of your Company in reference to the transfers of the shares of Mr. Quinlan and of Mr. Dunlop to Mr. Robertson?

(Witness exhibits minute of June 22nd, 1927)

40

A.—Pages 74 and 75 of the Minutes.

Q.—Will you file, as Exhibit P-13, a certified copy of the Minute of the Board of Directors of Amiesite Asphalt, Limited, dated June 22nd, 1927?

A.—Yes.

Q.—Does it not appear from the Minute Book, which you have in your possession, or from the Transfer Book, that some

T. F. SPELLANE (for Plaintiff's) Examination in Chief.

of the shares transferred by the late Hugh Quinlan and Mr. Dunlop to Mr. Robertson were transferred subsequently to people other than those you mentioned a moment ago?

10 Witness:—You want to know if those two certificates were transferred to someone else?

Counsel:—Yes.

Witness:—By Mr. Robertson?

Counsel:—Yes.

20 Witness:—I do not know that it is possible to answer that, because when you transfer shares to a party and he transfers other shares, then that certificate is cancelled, You cannot transfer the identical shares you get.

Q.—Does it not appear from the Stock Book, or the Stock Ledger, at the page bearing the name of the Defendant, Robertson, that some shares were transferred to someone else than Mc Donald in June, 1927, or around that time?

A.—No. On June 22nd, 1927, Mr. Quinlan and Mr. Dunlop transferred those shares to A. W. Robertson.

30 Q.—And, were those shares transferred after?

A.—No.

Q.—Was there any transfer made by Mr. Robertson about that time?

A.—There were no transfers made by Mr. Robertson after that date until February 2nd, 1928.

Q.—Will you please exhibit to me the Stock Book at the page of A. W. Robertson?

(Witness exhibits the page in question).

40 Q.—Will you file, as Exhibit P-14, a certified copy of the stock account of the Defendant A. W. Robertson?

A.—Yes.

Q.—You understand I want a copy of the stock account as it appears in the Stock Book?

A.—Yes.

T. F. SPELLANE (for Plaintiff's) Examination in Chief.

By Mr. Campbell:—

Q.—Of the Amiesite Asphalt Company?

A.—Yes.

10

By Mr. Masson, Continuing,

Q.—Will you please look in the Minute Book of the Company, and tell me if there is any Minute in reference to the acquisition of any patent rights?

Witness:—Patent rights on what?

20 Counsel:—On Amiesite, or any material, or product of that kind — around May, 1924.

A.—There is.

Q.—Will you exhibit the Minute to me?

(Witness exhibits pages 24, 25, 26, 27, 28 and 29 of the Minute Book: Meeting held May 22nd, 1924).

30 Q.—Will you file, as Exhibit P-15, a certified copy of the Minutes of the Meeting of the Company held May 22nd, 1924, including the memorandum mentioned in that Minute?

Mr. Campbell:—I do not see the relevancy of it. Surely we are not going into the entire history of how those companies issued their stock, how they got their patents, and so on, from their inception. I do not see how the question of the manner in which the Company issued its stock can have any possible bearing on the controversy before your Lordship.

Mr. Beaulieu:—I make the same objection.

40

The objection is reserved by the Court.

Q.—Have you a copy of the patents referred to in Exhibit P-15?

A.—I may have. I did not bring them with me.

Q.—Will you please make search and tell me whether you have copies of them or not?

A.—They can be procured at Ottawa.

T. F. SPELLANE (for Plaintiff's) Examination in Chief.

Q.—Will you exhibit to me the Minutes of your Company referring to dividends declared by that Company since June, 1927?

10 A.—It is page 77, Meeting held March 27th, 1928, and page 81, Meeting held August 30th, 1928. This was prior to September 14th, 1928, which I understand is the last date to which you want to go— in other words, you are not interested in anything after September 14th, 1928.

Q.—Who told you that?

A.—That is what your duces tecum said.

Q.—Who told you that?

A.—That is the way I read it. No one told me.

20 Q.—Will you file, as Exhibit P-16, certified copies of the Resolutions in reference to those dividends?

A.—Yes.

Q.—Did you bring with you the Financial Statements of Amiesite Asphalt, Limited?

Witness:—For what period?

Counsel:—From the Incorporation of the Company to and including 1928.

30 A.—No. I have no financial statements of the Company except the Financial Statement that was taken at the time the McDonalds purchased all the stock of the Company.

Q.—Will you exhibit that Statement to me?

A.—It is the Statement at the close of business August 31st, 1928.

Q.—Will you file, as Exhibit P-17, the Interim Financial Statement for the five months ending August 31st, 1928?

A.—Yes.

40 Q.—You say you have not the Statements for 1925, 1926 and 1927?

A.—No, I have not.

Mr. Beaulieu:—I object to the production of anything in those documents that may not be pertinent to the case.

The objection is reserved by the Court.

T. F. SPELLANE (for Plaintiff's) Examination in Chief.

By Mr. Masson, Continuing,

10 Q.—Did you bring with you the Minute Book of the Macurban Asphalt, Limited?

A.—I did.

Q.—Will you tell me if there is in that Minute Book any Minute in reference to the acquisition of certain patent rights?

A.—I believe there is: the same as the other one. There is a Minute about it, I believe. I have not looked at it, but there must be.

Q.—Will you exhibit to me, and if it is the same it may not be necessary to file it.

A.—It would not be the same.

20 (Witness exhibits page 24 of the Minute Book, Minute of Meeting held June 21st, 1927).

Q.—Will you file, as Exhibit P-18, a certified copy of the Minute of June 21st, 1927?

A.—Yes.

Q.—Will you please tell me the date of the incorporation of the Macurban Asphalt, Limited?

A.—The Charter was given on April 27th, 1927; recorded on April 28th, 1927.

30 Q.—What was the date of the first Meeting of the Provisional Directors?

A.—The date of the first Meeting of the Provisional Directors was April 30th, 1927.

Q.—Have you with you the Financial Statements of the Macurban Asphalt, Limited?

A.—I have the same as I have for the Amiesite Asphalt.

Q.—Will you please exhibit it to me?

A.—I do not find Hugh Quinlan had any certificates in the Macurban Asphalt.

40 Q.—But, I am not asking for the Financial Statements in order to ascertain whether Mr. Quinlan was a shareholder.

A.—But, are you interested, if he was not a shareholder?

By the Court:—

Q.—You are not asked that question at all. You are simply asked if there is a Financial Statement.

A.—Yes, there is.

T. F. SPELLANE (for Plaintiff's) Examination in Chief.

Q.—Then, just say so.

A.—He wishes it to be exhibited.

By Mr. Masson, Continuing,

10

Q.—Will you exhibit the Financial Statement to me?

A.—The reason I asked the question is because I was trying to conform to my duces tecum, which said to bring all papers related to this case.

Q.—Will you file, as Exhibit P-19, the Interim Financial Statement for the five months, of the Macurban Asphalt, Limited?

20 Mr. Campbell:—I object to the production of this document as irrelevant, and as not being in issue in the case.

Mr. Beaulieu:—I make the objection on behalf of the Defendant Robertson.

The objection is reserved by the Court.

A.—Yes.

By Mr. Masson, Continuing,

30

Q.—I understand in the Macurban Asphalt, Limited, the shares were subscribed for as in an ordinary company?

A.—Yes.

Q.—Are you in position to tell me if any cash consideration was given for the issuing of the shares of the Company, or was it for other consideration?

His Lordship:—That you will prove, if allowed, on the first of December.

40

By the Court:—

Q.—Have you been asked for any of this information before coming here, since the last time the case was called?

A.—When the case was called before it was understood I would show the Plaintiffs such records appertaining to this case as they wished to see, as directed.

Q.—Did they ask for it?

*T. F. SPELLANE (for Plaintiff's) Cross-examination
for Capital Trust Company.*

10 A.—They were not very specific. They asked for two or three things, which I showed them. They were not satisfied with them: they wanted to go through all my records, and, of course, I wanted a little more authority.

Cross examined by Mr. Campbell, K.C., of Counsel for Capital Trust Company.

20 Q.—Will you look at your Register of Transfers. Your attention was directed to the fact that Mr. Hugh Quinlan had not signed the form of transfer in your book, and that the transfer bore, instead, a reference to the numbers of his certificates on which the transfer was signed. As I recall it, you were asked whether other transfers had not been signed by the individual transferers. Will you verify whether, in fact, a great many of the transfers entered in your Transfer Book were signed in the same way by other than the transferer? Transfer No. 10, for instance, is a transfer from A. W. Robertson to S. W. Kendall. Is it signed by Mr. Robertson?

A.—No.

Q.—It is signed by Mr. Petrie, the Auditor?

30 A.—Yes: as Attorney.

Q.—As Attorney for the transferer?

A.—Yes. Power of Attorney.

Q.—Is the same thing true of Transfer No. 11?

A.—Yes.

Q.—No. 12?

A.—Yes.

Q.—No. 13: a transfer by Mr. Janin to Mr. McDonald?

A.—Signed by Mr. Petrie, in the same way.

Q.—No. 14: a transfer by Donald F. Robertson?

40 A.—Yes.

Q.—And, is the same thing true of No. 15?

A.—Yes, it is.

Q.—No. 16?

A.—Yes.

Q.—No. 17?

A.—Yes.

Q.—And, others.

A.—And, others.

C. A. SHANNON (for Plaintiff's) Examination in Chief.

Q.—In other words, practically all the transfers are signed by Mr. Petrie as attorney for the transferer, and the only transfers the transferer signed were on the backs of the certificates?

A.—Yes.

10

And further deponent saith not.

J. H. Kenehan,
Official Court Reporter.

DEPOSITION OF CHARLES A. SHANNON

20

A witness produced and examined on behalf of the Plaintiffs.

On this twenty seventh day of October, in the year of Our Lord one thousand nine hundred and thirty personally came and appeared: Charles A. Shannon of the City and District of Montreal, Public Accountant, aged 45 years, a witness produced and examined on behalf of the Plaintiffs, who, being duly sworn, deposes as follows:—

30

Examined by Mr. Masson, K.C., of Counsel for Plaintiffs.

Q.—You are the liquidator of A. W. Robertson, Limited?

A.—Joint Liquidator, with Mr. L. N. Leamy.

Q.—Will you please tell me the names of the Companies of which you are Auditor and which refer to the work generally done by Quinlan Robertson and Janin, Limited, or by A. W. Robertson, Limited?

A.—I do not know what you mean by that question.

40 Q.—Were you the Auditor of Fuller Gravel Company?

A.—Yes.

Q.—Of Quinlan & Robertson, Limited?

A.—Quinlan & Robertson before Quinlan & Robertson, Limited. That was the old firm. They were a partnership? P. C. Shannon & Company were the Auditors for that firm.

Q.—Crookston Quarries, Limited?

A.—Yes.

C. A. SHANNON (for Plaintiff's) Examination in Chief.

Q.—A. W. Robertson, Campbellford?

A.—Yes.

Q.—Did you bring with you the Financial Statement of Fuller Gravel Company?

10 A.—I have my subpoena, and this time it does not mention to bring it. I can bring it if necessary.

Q.—Annual Financial Statements are mentioned in your subpoena. In any event, you have in your possession the Financial Statement of the Fuller Gravel Company for the year 1928?

A.—We have all the Financial Statements in our possession, except when the Company was sold. We have not got them after that.

Q.—Will you file, as Exhibit P-20, the Financial Statement of Fuller Gravel Company, for the year 1928?

20 A.—Yes.

Q.—Will you file, as Exhibit P-21, the Statement for the same year of A. W. Robertson Limited?

A.—Yes, I will.

Mr. Campbell:—I understand my objection will be taken to apply to all evidence in relation to facts subsequent to Action brought?

30 Mr. Beaulieu:—And in the same sense on the part of the Defendant Robertson.

His Lordship:—Yes, that will be understood.

By Mr. Masson, Continuing,

Q.—Have you the Financial Statements for the Crookston Quarries, Limited?

A.—Yes: they are part of the A. W. Robertson, Limited, Statements. It was just a subsidiary.

40 Q.—So they are included in the A. W. Robertson, Limited, Statements?

A.—Yes.

Q.—Which will be filed as Exhibit P-21?

A.—Yes.

Q.—Is Quinlan & Robertson, Limited, still in existence?

A.—It is still in existence. It is in voluntary liquidation. It is still operating, through in voluntary liquidation.

Q.—Have you the Financial Statements of that Company?

A.—Yes, up to the first of September this year.

C. A. SHANNON (for Plaintiff's) Examination in Chief.

Q.—Will you file the Financial Statement of Quinlan & Robertson, Limited, for the years 1927 and 1928?

A.—It is A. W. Robertson, Limited. There is no Quinlan & Robertson, Limited, now. That was the partnership.

10 Q.—So, it is included in the Statements of A. W. Robertson, Limited?

A.—A. W. Robertson, Limited, succeeded A. W. Robertson—the same holdings — the same interests — under the name of A. W. Robertson, Limited.

Q.—All that took place was a change of name? Or, was there a new Charter?

A.—Quinlan & Robertson was a partnership. In 1921 Quinlan & Robertson, Limited, was formed.

20 Q.—So, Quinlan & Robertson was a partnership only?

A.—Just a partnership.

Q.—You have not any Financial Statements in reference to that partnership?

A.—Yes, we have all the Financial Statements at our office.

Q.—When was that partnership ended?

A.—As far as my recollection goes it ended in 1921, with the formation of A. W. Robertson, Limited.

Q.—So, that partnership has been wound up by the fact that A. W. Robertson, Limited, has been wound up?

A.—Yes.

30 Q.—All the assets of Quinlan & Robertson have been included in the assets of A. W. Robertson, Limited?

A.—Yes.

Q.—And, having the Financial Statements of A. W. Robertson, Limited, we will have the Financial Statements of Quinlan & Robertson?

A.—Exactly the same.

Q.—Is A. W. Robertson, Limited, Campbellford, still in existence?

A.—No, it was wound up about two years ago, I think.

40 Q.—After the death of the late Hugh Quinlan?

A.—After Mr. Quinlan's death. The Financial Statements are all in the file. I think it was wound up in 1928.

Q.—Were the Financial Statements of A. W. Robertson, Limited, Campbellford, included in the Statements of A. W. Robertson, Limited?

A.—Yes, sir, part of the Statements. It is just a branch.

Q.—Have you any contract entered into between A. W. Robertson, Limited, and A. W. Robertson in reference to the sale of the assets of A. W. Robertson, Limited?

*C. A. SHANNON (for Plaintiff's) Cross-examination
for Capital Trust Company.*

A.—We have the record of the liquidators: Mr. Leamy and I have the complete record of our meetings, and any sales of assets. We have that here.

10 Q.—Did the Defendant Robertson purchase any of the assets of A. W. Robertson, Limited?

A.—There were some assets divided in the Estate: Mr. Quinlan took some assets, and Mr. Robertson took some — after they had been advertised and we could not find another purchaser.

Q.—As I understand it, the Estate of the late Hugh Quinlan, and A. W. Robertson, divided part of the assets of A. W. Robertson, Limited?

A.—Yes.

Q.—Was that in writing?

20 A.—Yes, everything was in writing.

Q.—Will you exhibit to me the document which refers to that division of the assets of A. W. Robertson, Limited? Will you prepare a Statement of the manner the assets of A. W. Robertson, Limited, were divided, and file it as Exhibit P-22; this Statement to be certified to by yourself and Mr. Leamy?

A.—Yes.

Cross-examined by Mr. Campbell, K.C., of Counsel for Capital Trust Company.

30 Q.—Before this partition of assets in kind was made between the Estate Quinlan and Mr. A. W. Robertson did the liquidators make any effort to secure other purchasers?

A.—Yes, the plant was advertised, and any properties were advertised.

Q.—Will you file, as Exhibit D-C-1, copies of the newspaper notices covering the sale of those assets?

A.—Yes.

Q.—Was it only when you were unable to find outside purchasers for those assets a distribution in kind was made between the Estate and Mr. Robertson?

40 A.—Yes.

By the Court:—

Q.—Were you asked for all this information before coming here now?

A.—This is the first time, your Lordship.

And further deponent saith not.

J. H. Kenehan,
Official Court Reporter.

A. J. M. PETRIE (for Plaintiff's) Examination in Chief.

DEPOSITION OF ARCHIBALD J. M. PETRIE

10 A witness produced and examined on behalf of the Plaintiffs.

On this twenty seventh day of October, in the year of Our Lord one thousand nine hundred and thirty personally came and appeared Archibald J. M. Petrie of the City and District of Montreal, Certified Public Accountant, aged 37 years, a witness produced and examined on behalf of the Plaintiffs, who, being duly sworn, deposes as follows:—

20 Examined by Mr. Masson, K.C., of Counsel for Plaintiffs.

Q.—You are the Auditor for Quinlan Robertson & Janin, Limited, and for Robertson & Janin, Limited?

A.—Yes.

Q.—Have you copies of the Financial Statements of those Companies for the year 1928?

A.—I have.

Q.—Will you file, as Plaintiff's Exhibit P-23, the Financial Statement of Quinlan, Robertson & Janin Limited, for 1928?

A.—Yes.

30 Q.—Will you file, as Exhibit P-24, the Statement of Robertson & Janin, Limited, for the same year?

A.—Yes.

Mr. Beaulieu:—Of course, it is understood the objection already made applies equally to these Exhibits.

By Mr. Masson, Continuing,

Q.—Have you them with you?

40 A.—I have my own rough copies. I will have copies made for you.

Q.—Without delay?

A.—Yes, right away.

By Mr. Campbell:—

Q.—Was there a firm of Robertson & Janin, Limited, existing at the same time as Quinlan, Robertson & Janin?

A.—No, one succeeded to the other.

C. J. MALONE (for Plaintiff's) Examination in Chief.

Q.—Then, you could not have financial statements for the same period for the two?

A.—No.

10 By Mr. Masson:—

Q.—You have only one Financial Statement, then?

A.—There was only one Company.

Q.—Robertson & Janin was the continuation of Quinlan Robertson & Janin, Limited?

A.—Yes.

Q.—By Supplementary Letters Patent changing the name of the Company?

A.—Yes.

20

Mr. Masson:—So, there will be only one Exhibit. There will be no Exhibit P-24.

And further deponent saith not.

J. H. Kenehan,
Official Court Reporter.

30

DEPOSITION OF CLIFORD J. MALONE

A witness examined on behalf of the Plaintiffs.

On this twenty eighth day of October, in the year of Our Lord one thousand nine hundred and thirty personally came and appeared Clifford J. Malone of the City and District of Montreal, Accountant, aged 35 years, a witness produced and examined
40 on behalf of the Plaintiffs, who, being duly sworn, deposes as follows:—

Examined by Mr. Masson, K.C., of Counsel for Plaintiffs

Q.—You are Secretary Treasurer of Quinlan Robertson and Janin, Limited?

A.—Yes. It has been changed since to Robertson & Janin, Limited, and now it is Alban Construction, Limited.

C. J. MALONE (for Plaintiff's) Examination in Chief.

Q.—Will you file, as Exhibit P-24, a copy certified by the Prothonotary of the Superior Court of the Declaration filed in reference to Robertson & Janin, Limited?

A.—Yes.

10 Q.—Have you in your possession the Minute Book of Quinlan Robertson & Janin, Limited?

A.—Yes.

Q.—I understand the name of Robertson & Janin, Limited, has been changed to Alban Construction Limited?

A.—It was changed first to Robertson & Janin, Limited, then to Alban Construction, Limited.

Q.—Why were those changes made?

20 A.—Due to different owners of the Company. When Mr. Quinlan died the firm was changed to Robertson & Janin, Limited; then Mr. Janin purchased the Company and since then it has been changed to Alban Construction Limited.

By Mr. Campbell:—

Q.—“Alban” is Mr. Janin’s first name?

A.—Yes.

By Mr. Masson, Continuing,

30 Q.—Quinlan Robertson & Janin, Limited, or Robertson & Janin, Limited, were shareholders in other Companies?

A.—Yes.

Q.—Will you mention the names of the Companies in which they were shareholders?

Witness:—Robertson & Janin, Limited?

Counsel:—Yes.

40 A.—They had shares in Montreal Construction, Supply and Equipment, Limited; Robertson & Janin Paving Company, Limited; Robertson & Janin Building Company, Limited.

Q.—I understand they controlled the shares in those three Companies?

A.—Yes.

Q.—Have you the Minute Book of Robertson & Janin, Limited?

A.—I have.

C. J. MALONE (for Plaintiff's) Examination in Chief.

Q.—Will you exhibit it to me?

(Witness exhibits the Minute Book in question).

10 Q.—Will you show me the Minutes of a Meeting that took place on or about June 22nd, 1927?

(Witness exhibits page 75 of the Minute Book).

Witness:—It was Quinlan Robertson & Janin at that time.

Q.—Will you file, as Exhibit P-25, a certified copy of the Minutes of the Meeting of Board of Directors of Quinlan Robertson & Janin, Limited, held June 22nd, 1927?

20 A.—Yes.

Q.—Were you the Secretary Treasurer of the Company in June, 1927?

A.—No, sir, I was not.

Q.—Who was the Secretary Treasurer of the Company?

A.—I think Mr. Leamy was Secretary Treasurer at that time. Now, I am not positive of that. No, Mr. Janin was Secretary of the Company at the time.

Q.—Which Mr. Janin?

A.—Mr. Alban Janin.

30 Q.—Have you the Stock Certificate Book of the Company?

Witness:—Of Quinlan Robertson & Janin?

Counsel:—Yes.

A.—Yes, I have.

Q.—Would you mind showing it to me?

(Witness exhibits the Stock Certificate Book in question).

40 Q.—Will you exhibit to me the Share Certificate of Mr. Quinlan to which the Minutes of June 22nd, 1927, refer?

A.—It is certificate No. 8.

(Witness exhibits to Counsel the Certificate in question).

Q.—Will you file, as Exhibit P-26, a photostatic copy of Certificate No. 8 and of the stub attached thereto, for 1150 shares issued to the late Hugh Quinlan?

A.—Yes.

C. J. MALONE (for Plaintiff's) Examination in Chief.

Q.—You understand you are to file a photostatic copy of both sides?

A.—Yes.

10 Q.—The Minute refers to the transfer of 1151 shares, and the certificate is for 1150 shares. Will you please exhibit to me the other certificate for one share?

A.—I think it was Mr. Lalonde's share. I could find out from my Transfer Book.

Q.—Would you mind looking it up in your Transfer Book?

A.—That is right. It was Mr. J. A. Lalonde's share that was transferred.

Q.—Will you file, as Exhibit P-27, a photostatic copy of both sides of Certificate No. 4, with the stub attached thereto, issued to Hugh Quinlan, for one share?

20 A.—I will.

Q.—Will you show me the stock account of the late Hugh Quinlan in your Stock Book?

(Witness exhibits page 4 of the Stock Transfer Book).

Q.—Will you file, as Exhibit P-28, a list of all the dividends paid by the Company since June, 1927, with the date of each?

A.—I do not think there were any dividends declared since June, 1927.

30 Q.—How do you know no dividends have been paid?

A.—I am almost positive. I can refer to the Minute Book and make sure of it, but I am almost positive, from memory, no dividend has been declared. Of course, I am only speaking from memory.

Q.—Did you verify from the Minute Book whether dividends were paid or not?

40 A.—I know dividends were paid in the past, but I do not think any dividend has been paid since that date. I am not positive. I could refer to the Minute Book, if you wish, and let you know.

Q.—Will you please refer to the Minute Book, and file a Statement whether dividends have been paid or not; and if any have been paid will you mention the amounts thereof and the date each has been declared?

A.—I will do that.

Q.—So, Exhibit P-28 will be a Declaration that no dividends have been declared, or a list giving the amounts and the dates of the dividends which have been declared?

A.—Yes.

C. J. MALONE (for Plaintiff's) Examination in Chief.

Q.—Can you tell me what happened to those 1151 shares which stood in the name of the late Hugh Quinlan in June, 1927?

A.—They were transferred to A. W. Robertson.

Q.—And, after that?

10 A.—They were transferred to Mr. Janin, at the time of the sale of Robertson Janin, Limited, just lately.

Q.—Before that the shares always stood in the name of A. W. Robertson?

A.—That is right. There may have been an odd share.

Q.—Will you exhibit to me the stock account of A. W. Robertson?

A.—There may have been an old share of those 1,151 transferred to somebody else, as a qualifying share, as a Director. I am not quite sure of that.

20 Q.—Will you show me the stock account of Mr. Robertson?

(Witness exhibits page 6 of the Stock Transfer Book).

Q.—Has there been any consideration mentioned for the transfer of the shares of A. W. Robertson to Janin?

A.—I know of no consideration.

Q.—Will you exhibit to me the transfer corresponding to the shares transferred to Mr. Janin?

30 (Witness exhibits Transfer No. 10).

Mr. Beaulieu:—I object to this, as being posterior to the Action.

By Mr. Campbell:—

Q.—I did not quite understand the answer you gave a moment ago. Do you mean there was any consideration for the transfer of the shares from Mr. Robertson to Mr. Janin?

40 A.—I do not know of any consideration.

Q.—You mean you do not know whether there was consideration or not?

A.—That is right.

By Mr. Masson:—

Q.—Have any back dividends been paid on the shares of Quinlan Robertson & Janin, Limited, since June, 1927?

C. J. MALONE (for Plaintiff's) Examination in Chief.

A.—I believe there has been some, yes. Dividends already declared and not paid in full at the time of declaration — some of that dividend has been paid since.

10 Q.—Will you exhibit to me, or will you tell me, the amount of the back dividends that have been paid subsequently to June, 1927?

A.—I would have to refer to my ledger for that, and I have not the ledger here at the present time.

Q.—Will you file, as Exhibit P-29, a Statement of all the back dividends paid on the shares of Quinlan Robertson & Janin, Limited, after the first of June, 1927, which statement will include the dates and the persons to whom the dividends have been paid?

20 Witness:—Up to the present?

Counsel:—Yes.

Mr. Beaulieu:—Not after the institution of the Action.

By Mr. Masson, Continuing,

Q.—I understand no dividends were declared after June, 1927?

30 A.—I do not think any have been declared.

Q.—But previous to June, 1927, dividends were declared which were not paid?

A.—Yes.

Q.—Will you make a complete list of the back dividends not paid on June 1st, 1927?

A.—I will do that.

Q.—And will you also mention in the Statement you are to produce as Exhibit P-29 the date of the Minute which declared the dividend?

40 A.—I will.

Q.—And, the total amount of the dividend?

A.—Yes.

Q.—I think I understood you to say you have not your ledger with you?

A.—No, I have not.

Q.—I understand the shares which Quinlan Robertson & Janin, Limited, hold in the three other Companies you mentioned

C. J. MALONE (for Plaintiff's) Examination in Chief.

were acquired in consideration of certain Resolutions which are contained in the Minute Book of Quinlan Robertson & Janin, Limited?

- 10 A.—That is right.
Q.—Will you file, as Exhibit P-30, the Resolutions which refer to the acquisition by Quinlan Robertson & Janin, Limited, of shares in other Companies?

Witness:—You mean the subsidiary Companies?

Counsel:—Yes.

A.—Yes, I will.

- 20 Mr. Campbell:—Are they posterior in date to the Action?

Mr. Desaulniers:—No, before. It was in the spring of 1928.

Mr. Masson:—If they are subsequent, they will be subject to your objection.

By Mr. Campbell:—

- 30 Q.—Will you please file, as Exhibit D-C-2, a copy of the stock account of the late Hugh Quinlan as it appears on page 4 of your Stock Ledger of Quinlan Robertson & Janin, Limited?

A.—Yes.

Q.—Have you with you the Record of the dates of the formation of those various subsidiary companies the names of which you have given?

A.—I have the Minute Book, yes.

Q.—Can you tell me the dates of the formation of those Companies?

A.—Yes, I can.

- 40 Robertson & Janin Building Company, Limited, was incorporated — at least, recorded — on the 23rd March, 1928, by Letters Patent of the Province of Quebec.

Montreal Construction Supply & Equipment, Limited, was registered on the 18th June, 1928.

Robertson & Janin Paving Company, Limited, was recorded on the 23rd March, 1928.

C. J. MALONE (*for Plaintiff's*) *Examination in Chief.*

I wish to correct myself on the Montreal Construction Supply & Equipment Company: it was originally recorded on the 22nd March, 1928, under the name of Construction Supply & Equipment, Limited; and Supplementary Letters Patent changed
10 the name to Montreal Construction Supply & Equipment, Limited, on June 18th, 1928.

Mr. Masson:—I wish to enter an objection to the production of Exhibit D-C-2, as illegal.

The objection is reserved by the Court.

By Mr. Masson:—

20 Q.—Do the Financial Statements for those three Companies you have just mentioned appear in the Financial Statements of Quinlan Robertson & Janin, Limited, or are they separate?

A.—They are separate.

Q.—Will you file, as Exhibit P-31, Financial Statement for each of the three Companies to which you have just referred (three Financial Statements in all) for 1928-29?

A.—Yes.

Q.—These would be the first Financial Statements of the Company after its incorporation?

30 A.—The first one.

Q.—How long will it take you to prepare those Exhibits?

A.—A matter of a few days.

Q.—Would eight days be sufficient?

A.—Oh, yes.

His Lordship:—We will give you ten. The same will apply to all other Exhibits, and I would suggest that Counsel communicate with the other witnesses instructing them to have the Exhibits ready within ten days.

40 And further deponent saith not.

J. H. Kenehan,
Official Court Reporter.

L. N. LEAMY (for Plaintiff's) Examination in Chief.

DEPOSITION OF LOUIS N. LEAMY

10 A witness produced and examined on behalf of the Plaintiffs.

On this twenty eighth day of October, in the year of Our Lord one thousand nine hundred and thirty personally came and appeared Louis N. Leamy of the City and District of Montreal, Bookkeeper, aged 54 years, a witness produced and examined on behalf of the Plaintiffs, who, being duly sworn, deposes as follows:—

20 Examined by Mr. Masson, K.C., of Counsel for Plaintiffs.

Q.—You are Joint Liquidator, with Mr. Janin, of A. W. Robertson, Limited?

A.—Yes, sir.

Q.—In your quality as such you are in possession or have control of the Minute Book of A. W. Robertson, Limited?

A.—Yes.

30 Q.—Will you file, as Exhibit P-32, certified copies of the Minute of the Board of Directors' Meeting held May 19th, 1924; of the Meeting held February 5th, 1926; of the Meeting held August 8th, 1927; of the Meeting held May 3rd, 1928; of the Meeting held December 10th, 1928; of the Meeting held March 11th, 1929; and of the Meeting held October 9th, 1929?

Mr. Campbell, K.C., of Counsel for Capital Trust Company; and Mr. Beaulieu, K.C., of Counsel for Defendant Robertson, object to the production of the documents in question as illegal.

The objection is reserved by the Court.

40 A.—Yes.

Q.—I exhibit copies of these Minutes to you, attached together. Will you please verify them from your Minute Book, and if they are correct will you please affix your signature to them, and have Mr. Janin affix his?

Witness:—You want me to verify these with the Minute Book, and file them?

E. L. PARENT (for Plaintiff's) Examination in Chief.

Counsel:—Yes.

Mr. Campbell:—There is, of course, the general objection as to relevancy on behalf of the Capital Trust Company.

10 Mr. Beaulieu:—And the same objection on behalf of the Defendant Robertson.

Witness:—Yes, I will.

And further deponent saith not.

J. H. Kenehan,
Official Court Reporter.

20

DEPOSITION OF EMMANUEL L. PARENT

A witness produced and examined on behalf of the Plaintiffs.

30 On this twenty eighth day of October, in the year of Our Lord one thousand nine hundred and thirty personally came and appeared Emmanuel L. Parent of the City of Ottawa, in the Province of Ontario, Accountant, aged 50 years, a witness produced and examined on behalf of the Plaintiffs, who, being duly sworn, deposes as follows:—

Examined by Mr. Masson, K.C., of Counsel for Plaintiff.

Q.—Will you exhibit to me the original page 5 of the Cash Book of the late Hugh Quinlan?

(Witness exhibits the page, as requested).

40

Q.—You notice that what is written between the lines on Sheet 5 of Exhibit P-1 is exactly the same as on the original?

A.—Yes.

Q.—Will you look at the entry on Sheet No. 5, which reads: "From A. W. Robertson, being 50% of sale of Estate's share interest in Quinlan & Janin, Limited", and between the lines "And Amiesite Companies". When were the words "And Amiesite Companies" written?

A.—I do not remember.

E. L. PARENT (for Plaintiff's) Examination in Chief.

Q.—They were not written at the same time as the words written on the lines of that page, but were written subsequently?

A.—I could not tell, because sometimes we make many corrections in the book. I do not remember the date. It may have
10 been the same day, or it may have been a few days after.

Q.—Was it you who made that entry?

A.—No.

Q.—Can you tell me if those words “And Amiesite Companies” were written by the same person who wrote the rest of the page?

A.—It does not look to be the same writing.

Q.—So, the words “And Amiesite Companies” appear to have been written by a different person from the one who wrote
20 the rest of the sheet?

A.—Apparently by a different clerk.

Q.—And, naturally, on a different date?

A.—It might have been on a different date.

Q.—Will you file, as Exhibit P-33, the original inventory which was taken at the beginning, and all the subsequent inventories?

A.—We have already supplied copies.

Q.—But, I would like to have the original, if you do not mind.

30 Mr. Campbell:—The originals have already been exhibited, and I think there are copies in the record. I do not think the witness should be asked to part with his originals, particularly in view of the fact that the Plaintiffs have already examined them.

Witness:—I have no more copies. I have only this working copy. I used this as a working copy to change the figures.

By Mr. Masson, Continuing,

40 Q.—When you proceeded to the inventory of the assets and the liabilities of the Estate there was an original inventory prepared?

Witness:—In ink?

Counsel:—Was the original inventory signed?

E. L. PARENT (for Plaintiff's) Examination in Chief.

His Lordship:—What do you call the original inventory?

Mr. Masson:—The inventory that was taken of the assets of the Estate after the testamentary executors accepted to act as
10 executors.

Witness:—Do you refer to the inventory that was sent to the Succession Duties Office?

By Mr. Masson, Continuing,

Q.—You proceeded to make an inventory when you accepted to act as testamentary executors of the Estate?

20 A.—Yes.

Q.—And, you proceeded, with other persons, to make that inventory?

A.—Yes.

Q.—Since there were two testamentary executors?

A.—Yes.

Q.—And, that inventory was signed when it was closed?

A.—I do not think so. It was not signed, as far as I remember. We sent a copy, or mailed a copy, to Mr. Robertson and one to Mr. Perron.

30 Q.—The Attorney for the Estate?

A.—The Attorney for the Estate.

Q.—So, it was only a draft inventory you sent to Mr. Robertson and to Mr. Perron at the time?

A.—I do not know that you would call it a draft. It was a Statement of the Assets.

Q.—And, this Statement was never signed either by yourself or the other Testamentary Executor?

A.—Not that I know of.

40 Q.—You have not any inventory in your possession, signed by the testamentary executors showing the assets and liabilities of the Estate?

A.—I have a signed document of what we found in the safety deposit box, but there are other securities that were found somewhere else after. The list of the securities found in the safety deposit box was signed by the parties who were present at the time.

Q.—And that is the only list in reference to the inventory of the assets of the Estate signed by the testamentary executors?

A.—Yes.

E. L. PARENT (for Plaintiff's) Examination in Chief.

Q.—There is no other inventory signed?

A.—No.

10 Mr. Masson:— Therefore, there will be no Exhibit P-33 as called for by my question.

By Mr. Masson, Continuing,

Q.—Will you exhibit to me the Estate Ledger of the Estate, and more especially the pages which have been rewritten and put at the back of the book?

(Witness Exhibits the ledger in question)

20 Q.—How many pages are there?

A.—Three, I think.

Q.—Will you file, as Exhibit P-33, photostatic copies of the pages which have been changed in the Estate Ledger of the Estate Hugh Quinlan?

A.—Yes.

Q.—And will you also attach to the Exhibit the original pages as they stand today?

A.—Yes.

30 By Mr. Campbell:—

Q.—That will be photostatic copies of accounts 23, Sheet 3; and 24, Sheet 4?

A.—Yes.

By Mr. Masson:—

40 Q.—Have those pages, accounts 23 and 24, been changed more than once?

A.—No.

Q.—These are the only changes that were made?

A.—These are the only changes that were made.

Q.—Will you please put on the Exhibit a note showing the original page, and the amended page, of the Estate Ledger?

A.—Yes, I will do that.

E. L. PARENT (for Plaintiff's) Examination in Chief.

By Mr. Campbell:—

10 Q.—Will you look at the sheets of your original Cash Book re Estate Hugh Quinlan, and verify whether this interlineation under date December 1st, 1927, to which your attention has been drawn, is the only interlineation or correction that appears in your Cash Book?

A.—Oh, no, there are others.

Q.—Was there any particular reason for that interlineation, as against others?

A.—No. I do that often. I go through the books, and order corrections to be made, so as to show the proper information.

20 Q.—To make the entry correspond more accurately with the facts?

A.—Yes. I do that often.

Q.—How does that Statement of Assets and Liabilities or inventory to which you have referred, compare with the Statement that was filed with the Succession Duties Office under oath? Is it different from the original Succession Duties Statement?

A.—No, they are both the same.

30 Q.—So, what was filed with the Succession Duties Office under oath was a copy of what you called your original inventory or Statement of Assets and Liabilities?

A.—Yes.

And further deponent saith not.

J. H. Kenehan,
Official Court Reporter.

J. PERRAULT (for Plaintiff's) Examination in Chief.

DEPOSITION OF JULIEN PERRAULT

10 On this twenty-seventh day of November, nineteen hundred and thirty, personally came and appeared : Jean Julien Perrault architect, aged 36 years, of the City and District of Montreal, a witness examined on behalf of the Plaintiffs. Who, after being duly sworn on the Holy Evangelists, doth depose and say:

Examined by Mr. Masson, attorney for Plaintiffs:—

Q.—Have you been working for Quinlan, Robertson & Janin Limited, Mr. Perrault?

20 A.—No.

M. Campbell:—Quels sont les noms des compagnies que vous avez ajoutées par amendement?

M. Desaulniers:—Quinlan, Robertson & Janin et Ontario Amiesite.

By Mr. Masson attorney for Plaintiffs:—

30 Q.—You have never been connected in any way with the staff of Quinlan, Robertson & Janin Limited?

A.—No.

Mr. Beaudry:— Voulez-vous s'il vous plait me dire sur quels allégués vous bâsez votre examen?

Mr. Masson:—Paragrapes 20 et 21 de la déclaration.

By Mr. Masson attorney for Plaintiffs:—

40 Q.—You have never been connected in any way with the staff of Quinlan, Robertson & Janin, Limited?

Mr. Beaudry:— I object to this question as illegal.

Objection taken under reserve.

A.—No, not with the staff of Quinlan, Robertson & Janin, Limited, but with a subsidiary.

J. PERRAULT (for Plaintiff's) Examination in Chief.

Q.—What subsidiary?

A.—Quinlan, Robertson & Janin Building Company Limited.

10 Q.—You know Mr. Robertson, the defendant in this case?

A.—I presume this is Mr. A. W. Robertson? Yes I do know him.

Q.—Since how long do you know him?

A.—Since I have been with this firm, probably around 1925.

Q.—Did you know him before that time?

A.—No, not at all.

Q.—So that you knew him for the first time in 1925?

A.—Yes.

Q.—Under what circumstances did you know him?

20 A.—I met Mr. Robertson after I had been employed by the firm.

Q.—After you had been employed with what firm?

A.—Quinlan, Robertson & Janin Building Company.

Q.—Were you a shareholder in that Company?

A.—No.

Q.—In what capacity were you connected with Quinlan Robertson & Janin Building Company, Limited?

30 A.—I went into the firm to look after the interests of the firm, without any official capacity. When they took the contract of the Montreal City Hall, that is shortly after being with them, I became manager of all their building activities, of all their building companies.

Q.—I understand that there were several companies which were all managed at the same place as that of Quinlan Robertson & Janin Building Company?

A.—At the same place?

Q.—At its principal place of business?

40 A.—I know of that only through seeing the name plates at the door; I had nothing to do with any company other than that I was employed; I was not employed or had nothing to do with any other company, but I knew other companies existed through their name plates on the door.

Q.—You mean to say you have not been connected in any way with any subsidiary in which Mr. Robertson was interested in his business as contractor?

A.—I want to reply to your question rightly. I was employed by the Building company, and my activities as Manager of the firm were limited to the building company.

J. PERRAULT (for Plaintiff's) Examination in Chief.

Q.—You know that Mr. Robertson, Mr. Quinlan at the time and Mr. Janin were interested in contracting business?

A.—Yes.

10 Q.—And that the contracting business into which they were connected were not exclusively in reference to building, but also in reference to gates, canals and roads?

A.—Yes.

Q.—Bridges etc?

A.—Yes.

Q.—They were general contractors?

A.—That is right.

Q.—And they were equipped to fulfill any kind of contracts in reference to construction or excavation?

20 A.—Yes, to the best of my knowledge, but I was employed only for the Building company.

Q.—Have you ever been interested with Mr. Robertson in any other company into which they had some activities?

A.—In what way do you mean? working with him?

Q.—You know in what way we were interested, being an officer of the Company.

A.—I was never an officer of any company except being manager of the Building Company.

Q.—Have you been a shareholder?

A.—Yes, I was a shareholder.

30 Q.—In the same company as the one into which Mr. Robertson was a shareholder?

A.—I have no actual knowledge of Mr. Robertson being a shareholder of these companies; I had shares, I held shares for Mr. Janin in two companies, the Macurban Company Limited and the Amiesite Asphalt Limited.

Q.—Those were the two companies into which you were interested as shareholder with Mr. Robertson and Mr. Janin?

40 was A.—I do not know if they were a shareholder, but I know I was holding some shares for Mr. Janin in those two companies.

Q.—You do not know if Mr. Robertson was a shareholder?

A.—I cannot say that, I have no knowledge of it.

Q.—Did you assist to any shareholders, meeting of these companies?

A.—No, never.

Q.—How long have you been a shareholder into those companies?

J. PERRAULT (for Plaintiff's) Examination in Chief.

A.—I do not remember; all I know is that I held them during a certain year; as to when it started and when it finished, I do not know. . . . during 1928, and they are only included into my report for 1928. So, I did not hold them in 1927 and I did not
10 hold them in 1929.

Q.—What happened to the shares you had with these two companies?

A.—I returned them to Mr. Janin.

Q.—When?

A.—Some time during 1928.

Q.—Did you return back those shares to Mr. Janin at the same time, in both companies?

A.—I think so, I am not positive, but to the best of my knowledge, I did.
20

Q.—At what place did you make the transfer of those shares?

A.—At the office of the Building Company, whether it is the office of the other Company, I do not know, at the corner of Sherbrooke & McKay, which is the office of the Company.

Q.—Is this the same office as that of Quinlan, Robertson & Janin and the other companies?

A.—It was the office of the holding company, yes.

Q.—All those companies had their office in the same building, in the same place?

A.—I have no actual knowledge of that, except that the name plates was on the door. I might say for your information that the companies of Robertson and Janin were administered absolutely separate.
30

Q.—How do you know that if, as you say, you were only connected with the Building company?

A.—I had nothing to do with the other companies; the manager of the other companies never interfered with my company. I had full management of the Building Company. I did whatever I wanted to do, except at times for big questions which I submitted to Mr. Janin or to Mr. Robertson, but the ordinary routine of administration was done by myself.
40

Q.—Only with that particular company?

A.—Yes.

Q.—For the administration of the Company.

A.—You mean of the Building Company ?

J. PERRAULT (for Plaintiff's) Examination in Chief.

Q.—The administration of the Company.

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

10 Objection taken under reserve.

(The questions are read)

Q.—You mean that you were administrating practically everything, except the important questions which were submitted to Mr. Robertson & Janin, as to the Quinlan Robertson Building Company?

20 A.—Yes, the building company which later on came to be the Robertson & Janin Building Company.

Q.—You mean to say that you were holding the shares in the Macurban Asphalt Company for Mr. Janin?

A.—Yes.

Q.—How many shares were you holding?

A.—I cannot remember.

Q.—Surely you ought to remember?

A.—I am sorry not to be able to answer to your question, but frankly, I do not remember. The only record that I have got is my record for my Income Tax. I have no remembrance at all of the number of shares.

30 Q.—How many people were interested in that Company as shareholders, I mean the Macurban Asphalt?

A.—I have no idea.

Q.—Did you ever assist to any shareholders meeting?

A.—No.

Q.—You never had anything to do with those companies except to give your name to be “prete-nom” for Mr. Janin?

40 A.—I have no idea as to what you mean by “prete-nom”, Mr. Janin asked me to hold some shares for him and transfer back those shares to him on his demand.

Q.—So Mr. Janin, at a certain time, asked you if you would accept to hold a certain number of shares for him?

A.—He asked me if he could transfer some shares to me.

Q.—As a matter of fact he transferred those shares to you, and you were keeping those shares for him?

A.—Yes, because I presumed that I would transfer them back to him.

J. PERRAULT (for Plaintiff's) Examination in Chief.

Q.—And this happened in that way in the Macurban Asphalt and in the Amiesite Asphalt Company?

A.—In both companies.

10 Q.—So that the only shares that you got in those two companies, you got them from Mr. Janin who told you to hold those shares for him?

A.—He asked me to have those shares transferred to me and asked me to transfer them back to him upon demand.

Q.—Did you ever sign anything in reference to those shares?

A.—I did not sign any document to that effect.

Q.—Never?

A.—Not to the best of my knowledge.

20 Q.—You never signed anything or disposed of them first of all, did that company pay any dividends?

A.—Yes.

Q.—Did you ever sign a cheque voucher for dividends?

A.—Yes.

Q.—How did you sign or endorse those documents of dividends?

A.—.....

Q.—How were those dividends made payable, by cheque?

A.—I do not remember if it was by cheque or otherwise.

Q.—What do you mean by “otherwise”?

30 A.—All I know is I do not remember. It must have been by cheque and I must have endorsed the cheque.

Q.—To whom?

A.—Mr. Janin.

Q.—To the best of your recollection, of your memory, the dividends were paid by cheque and which you have endorsed probably to Mr. Janin?

A.—I think so, only I must admit that my memory is very weak about it. I know dividends were paid and I know that I endorsed them over to Mr. Janin in some form or other.

40 Q.—If those dividends were paid by cheque, naturally the cheques are probably in possession of those companies.

A.—I presume, although I do not know anything about it.

Q.—Did it ever happen that you received dividends in cash?

A.—No.

Q.—Never?

A.—Never.

Q.—So that the only possible way for you to get those dividends was to receive them by cheque?

A.—In some form of paper, on some kind, yes.

J. PERRAULT (for Plaintiff's) Examination in Chief.

Q.—You are positive that those dividends have not been paid in cash?

A.—That, I am positive.

Q.—You are positive?

10 A.—Oh, yes, absolutely.

Q.—If they were paid in cash, you must necessarily have signed a voucher for those dividends?

A.—I am positive that they were not paid in cash.

Q.—But at all events you received the payments of those dividends yourself?

20 A.—I will go right back; a document was handed to me, whether that was a cheque or something else, I do not remember. It was a document purported to be dividends, which was coming to me on the stock which I was holding, and I remember endorsing that over to Mr. Janin. I am giving you what I remember clearly.

Q.—You are positive about that?

A.—I am positive that a document of some kind was handed to me and which was supposed to be dividends, the dividends in question, and which I endorsed over to Mr. Janin. I do not remember what it was, because I was not very much interested in the matter as it was not my own.

Q.—You know that you have signed on the back the endorsement?

30 A.—I know that I have signed some paper

Q.—To Mr. Janin, endorsing that to Mr. Janin?

A.—To the best of my knowledge.

Q.—You are not sure?

A.—No, I am not sure, I was transacting with Mr. Janin.

Q.—Do you mean to say that when you signed the paper in question, in reference to those dividends, that you have written Mr. Janin's name and then that you have put your own name on the bottom, after?

40 A.—Yes, Mr. Janin..... but I am not positive.

Q.—Are you sure that at any time, when you signed or that you have written something in reference to the transfer of those dividends, whether you have written or not the name of Mr. Janin?

A.—I am not sure, but I am positive that if I did not write Mr. Janin's name, I did not write anything at all.

Q.—How could you say that those dividends were going to Mr. Janin?

J. PERRAULT (for Plaintiff's) Examination in Chief.

A.—I handed them to him personally.

Q.—You handed what?

A.—The document which I signed.

10 Q.—Where did you hand that signed document to Mr. Janin?

A.—In the office, corner of Sherbrooke & MacKay.

Q.—And you have signed your name in the stationery books of the company, in reference to the transfer of those shares I refer to both companies, the Macurban and the Amiesite Asphalt.

A.—If I say yes, I am assuming I must. I do not recollect, excepting the transfer of the shares, I must have signed, but I do not remember actually signing; I do not remember

Q.—Those shares are no longer in your name?

20 A.—I do not think so, I know that I endorsed them and turned them back to Mr. Janin.

Q.—You have never endorsed any of those shares to Mr. Robertson?

A.—No, not to my knowledge

Q.—Even when the sale to W. P. MacDonald took place?

A.—I know nothing of the sale to W. P. MacDonald, except hearsay.

Q.—You have signed the minutes?

A.—No.

30 Q.—In those companies?

A.—No.

Q.—Never?

A.—No.

Q.—To the best of your memory, the only thing that you have signed is the transfer of the dividends, but nothing else?

A.—And the transfer of the shares. I have never acted as a Director and I have never acted as a shareholder.

40 Q.—As you told me before, Mr. Janin gave you a certificate for a certain number of shares in those companies, the Amiesite Asphalt and the Macurban Asphalt Co. Limited, and then, with that certificate duly endorsed by Mr. Janin, you had those shares issued to your personal name with the understanding that you were to hold same for Mr. Janin?

A.—How they were issued, I do not know; the shares remained in the office over there. I did not even take possession of them.

Q.—You never knew who gave you those shares?

A.—Yes, Mr. Janin gave me the shares.

J. PERRAULT (for Plaintiff's) Examination in Chief.

Q.—He has given to you a kind of paper to evidence the number of shares you had?

A.—Correct.

10 Q.—And the kind of paper he gave to you was a certificate in your own name, which you gave back to Mr. Janin?

Mr. Beaulieu:—He did not say that.

A.—Mr. Janin asked me if he could transfer some shares to me with the understanding that I would retransfer them back to him.

Q.—Yes.

20 A.—That is all I know of the transaction; I did not even look at those shares, they were not going to remain to me, I did not go into the details of it.

Q.—You had a certain paper to evidence those shares, the number of shares?

A.—It may seem very foolish, but I did not even read what was on the paper.

Q.—You never had any shares from Mr. Mullen?

A.—No.

Q.—You swear to that?

30 A.—I swear, as a matter of fact I do not think I know Mr. Mullen.

Q.—Do you know Mr. Hepburn?

Mr. Beaudry:—I object to the question as illegal and leading?

Objection taken under reserve.

A.—I think I once met Mr. Hepburn, but I am not even sure of that.

40 Q.—Where did you meet him?

A.—I think one day I was going up the stairs there, and he happened to cross there.

Q.—The stairs where?

A.—Wait a minute please, I am mixing him with somebody else, I am alluding to a man who was connected with the Ready Mix Concrete in Toronto, but Mr. Hepburn, I do not remember the name at all, I do not even know with what company he is connected with.

J. PERRAULT (for Plaintiff's) Examination in Chief.

Q.—He never transferred any shares to you?

A.—Not at all, not to my knowledge.

10 Q.—You never had anything to do with any shareholder in the Amiesite Asphalt Company under the name of Mr. Hepburn?

A.—No.

Q.—So that if in the books of the company there appears to be a transfer from Mr. Hepburn to yourself of a certain number of shares, this never took place actually?

Mr. Beaudry objects to the question as illegal.

A.—I will answer that — I have no knowledge of it.

20 Q.—I understand that you have put these dividends in your income tax return, is it not?

A.—Yes.

Q.—I do not want to look into your personal affairs, I do not want to commit any indiscretion; I understand that in your Income Tax return you necessarily mentioned the fact that you had received dividends on the Amiesite Asphalt stock and on the Macurban stock?

Mr. Beaudry:—Objected to this as illegal.

30 Objection taken under reserve.

The same objection is made by Mr. Beaulieu on behalf of defendant A. W. Robertson.

Same reserve.

Q.—You paid your income tax on those dividends that you received on those companies?

40 Mr. Beaudry:—Same objection.

Mr. Beaulieu. Same objection.

Same reserve.

A.—Yes.

Q.—And you have been reimbursed the amount you have so paid for the Income Tax on those shares?

J. PERRAULT (for Plaintiff's) Examination in Chief.

Mr. Beaulieu:—Same objection.

A.—Yes.

10 Q.—In what way have you been reimbursed?

A.—By a cheque from Mr. Janin.

Q.—Will you give me the date of your report and the date that Mr. Janin gave you that cheque, approximately?

A.—April 29th 1929; Mr. Janin's cheque was probably given to me within the week following.

Mr. Campbell:—Alors, c'est le rapport de 1928?

R.—Oui.

20 By Mr. Masson, Attorney for Plaintiffs:—

Q.—Could you give me the amount of the cheque that Mr. Janin gave to you?

Mr. Beaudry:—I object to this question as illegal.

Taken under reserve.

30 A.—To the best of my knowledge, according to the rough figures on my Income tax report, I think the amount is \$6,133.06.

M. Beaulieu:—

Q.—M. Janin vous a donné cela en remboursement?

R.—Oui.

M. Campbell:—

40 Q.—Which companies did that cover?

A.—That is the amount of the Income tax.

Q.—What dividends was he reimbursing?

A.—He was not reimbursing dividends.....

Q.—What tax?

A.—The excess Income tax which I had to pay on account of the dividends on the Macurban and on the Amiesite stocks.

Q.—Your tax on those dividends?

J. PERRAULT (for Plaintiff's) Examination in Chief.

A.—That is right; of course the tax is high because, naturally, I figured it on top of my income tax I charged Mr. Janin the rate above what I would have paid for myself.

Q.—You charged him the rate that you paid yourself?

10 A.—Yes, I figured what I had to pay for myself and I charged him the difference, so it was at a high percentage.

By Mr. Masson, Attorney for Plaintiffs:—

Q.—What dividends did you receive in the Amiesite Asphalt?

A.—\$10,989.00.

Q.—And in the Macurban?

20 A.—\$26,302.02.

Q.—I understand, Mr. Perrault, that none of the dividends that you received in those companies passed through your bank?

A.—No.

Q.—And you are not in possession of any document and you have never been in possession of any document to evidence your relationship of prête-nom of Mr. Janin in reference to those shares?

A.—No, I have not.

Q.—And you never had any?

A.—I never had any.

30 Q.—So that the owner of those shares never left in your hands any document to evidence the nature of your relations with him in reference to those shares?

A.—No.

Q.—He kept everything for himself?

A.—I do not quite understand.

Q.—You did not have anything to do with that sale of W. P. MacDonald Company, is it not?

A.—Nothing at all.

40 Q.—You never made any transfer in those to Mr. Robertson, of your shares in the Amiesite and Macurban?

A.—No.

Q.—You know Albert Janin?

A.—Yes, the brother of Alban Janin.

Q.—The brother of Alban Janin?

A.—To the best of my knowledge.

Q.—Was he a shareholder in the Macurban Asphalt and in the Amiesite Asphalt at the time as you were?

J. PERRAULT (for Plaintiff's) Examination in Chief.

A.—I have no knowledge of any of the shareholders of the Macurban or the Amiesite Asphalt.

Q.—Does your Income tax return show the number of shares you had in those companies?

10 A.—No.

Q.—And you never knew the number of shares you had?

A.—I do not think I ever knew and I certainly do not remember now.

Q.—Have you ever been the prete-nom of some one else in reference to those shares?

Mr. Beaulieu:—On sort pas mal des paragraphes 20 et 21.

20 A.—I will clear the question: I have never held any shares directly or indirectly in any other company or subsidiary companies connected directly or indirectly with Robert and Janin, Quinlan Robertson & Janin.

Q.—You had some in the Amiesite Asphalt and the Macurban?

A.—Yes, outside of what I have declared, I never had any shares in any of the companies connected directly or indirectly with Mr. Quinlan, Mr. Robertson or with Mr. Janin.

Q.—You never paid a cent for those transfers?

A.—No.

30 Q.—Did you ever receive any shares from Mr. Robertson in Amiesite Asphalt?

A.—No; that is the only transaction that has ever taken place.

Q.—Have you ever been a prete-nom outside of these two circumstances, the Macurban and the Amiesite, of some one interested in those companies or subsidiary companies, I mean Quinlan, Robertson & Janin?

40 A.—I have already stated that; I never as a prete-nom held shares directly or indirectly in any of the companies or owned directly or indirectly by Mr. Janin, Mr. Robertson or Mr. Quinlan. I can name all the companies.

Q.—Have you been a prete-nom for some other companies?

A.—I have held stock in other companies to allow me to act on the Board of Directors.

Q.—In what companies?

A.—I am Director of the Railway Exchange.....

Q.—I want you to remain in the companies concerned in the case.

J. PERRAULT (for Plaintiff's) Examination in Chief.

A.—In any of the companies in which you are interested I have never held any stock directly or indirectly or being a prete-nom.

10 Q.—Outside of the question of shares, have you been a prete-nom?

Mr. Campbell:—What do you mean by that?

Mr. Masson:—To hold something in your name bought for some one else.

Mr. Beaudry:—I object to this question as illegal.

20 Mr. Masson:—Some property, some goods.

Mr. Campbell:—I object to that question as illegal and irrelevant and not arising out of the pleadings.

Objection taken under reserve.

Q.—Did you ever have any property in your name which belonged to Mr. Robertson or to some one else?

A.—No, I never had.

30 Q.—You never signed a notarial deed into which Mr. Robertson and yourself were interested in reference to a certain property on Sherbrooke Street for \$17,500.00?

A.—I bought a property on Sherbrooke street.

Q.—It was your own?

A.—Yes, and I paid for it.

Q.—So that you were not a prete-nom in reference to that notarial act?

A.—No; I bought the property for myself and sold it again; I do not think I was a prete-nom, no.

40 Mr. Beaudry objects to this question as illegal.

Mr. Beaulieu:—Same objection on the part of Mr. Robertson.

Q.—That property when you purchased that property, it was for yourself and if it was really sold, it was sold for your own benefit?

JULIEN PERRAULT (for Plaintiff's)
Cross-examination for Capital Trust Company.

Mr. Beaudry renews his objection.

A.—I bought the property outright in my own name.

Q.—And you still have it in your name?

10 A.—No, I held it..... I do not remember for how long, six months I think.

Q.—To what property do you refer when you say that?

A.—The property on Sherbrooke Street, corner MacKay.

Q.—To whom did you retransfer that property?

A.—I did not transfer, I sold it.

Q.—To whom?

A.—I will have to look it up. I do not remember the name.

Q.—You must know it?

20 A.—.....

Q.—Was it to a company or to an individual?

A.—I do not even remember that.

Q.—How long ago did you sell it?

A.—To the best of my knowledge, somewhere around 1926 or 1927, I can obtain the exact date from the deed.

Q.—Now, Mr. Perrault, I think you can leave for California.

Cross examined by Mr. Campbell, K.C., attorney for defendant The Capital Trust Co. Ltd.

30 Q.—I am not clear whether I correctly understood that the certificates of these shares stood in your name but were left in your possession?

A.—Yes.

Q.—Did you endorse them in blank and hand them back right away?

A.—They never were in my possession.

Q.—Did you endorse them and hand them back to the party from whom you got them?

A.—Yes.

40 Q.—Are you aware that the late Hugh Quinlan had any interest in those shares at any time?

A.—I am not aware.

Mr. Beaulieu declines to cross-examine the witness.

Mr. Beaudry also declines to cross-examine the witness.

And further deponent saith not.

G. Chamberland,
Stenographer.

T. F. SPELLANE (for Plaintiff's) Examination in Chief.

DEPOSITION OF THOMAS F. SPELLANE

A witness examined on behalf of the Plaintiffs.

10

On this first day of December, in the year of Our Lord one thousand nine hundred and thirty personally came and appeared Thomas F. Spellane of the City and District of Montreal, a witness already sworn, who, reappearing on behalf of the Plaintiffs deposes as follows:—

20

Mr. Campbell:—Before the evidence of this witness is taken I would like to record an objection in general terms to the relevancy of a number of the Exhibits which have been put in since we adjourned. Your Lordship will remember during the adjournment some forty or fifty exhibits have been filed. I do not wish to argue the objection at this time, but I will ask your Lordship to note it and to have it noted in the deposition that we make an objection in general terms to the production of those Exhibits, as, in our view of the situation a great many of them are absolutely irrelevant, and when we argue we will ask your Lordship to reject them as irrelevant.

30

Mr. Beaulieu:—I wish to enter the same objection on behalf of the Defendant Robertson.

Mr. Masson:—I understand the objection applies only to the relevancy of the Exhibits.

Mr. Campbell:—Yes. Our objection is with respect to Exhibits P-1 to P-52.

Examined by Mr. Masson, K.C., of Counsel for Plaintiffs.

40

Q—You have already been examined as a witness in this case?

A.—Yes.

Q.—I understand you are Secretary Treasurer of the Macurban and the Amiesite Asphalt, Limited ?

A.—Yes.

Q.—What was the date of the Incorporation of Macurban Asphalt, Limited ?

A.—About April 27th, 1927.

T. F. SPELLANE (for Plaintiff's) Examination in Chief.

Q.—April 27th, 1927, was the date the Charter was registered at Quebec?

A.—That is the date it was approved by Mr. Simard.

10 Q.—You have verified that from the original Charter?

His Lordship:—The witness has told you it was April 27th, 1927.

By Mr. Masson, Continuing,

Q.—Did you bring with you the papers you had when you were here last?

A.—No. I furnished photostatic copies of them.

20 Q.—Will you file a Statement of the dividends paid by Macurban Asphalt, Limited, and Amiesite Asphalt, Limited, from the date of the death of the late Hugh Quinlan up to the time of the sale to the W. P. MacDonald Company?

Mr. Campbell:—May I suggest my learned friend divide his question, because our objection is different. We object to the relevancy of any of the Macurban evidence because Mr. Quinlan was never interested in the Macurban Company. He had at one time been interested in Amiesite. Therefore the situation may be different in regard to the two, and I would ask my learned
30 friend to divide his question.

By Mr. Masson, Continuing,

Q.—Will you file, as Exhibit P-53, a Statement of the dividends declared and paid by Macurban Asphalt, Limited, from June 26th, 1927, up to the date of the sale to the MacDonald Company of the control of Macurban Asphalt, Limited?

40 Mr. Campbell:—Under reserve of our objection.

A.—Yes.

By Mr. Masson, Continuing,

Q.—Will you file, as Exhibit P-54, a similar Statement in reference to the dividends paid during the same period by Amiesite Asphalt, Limited?

T. F. SPELLANE (for Plaintiff's) Examination in Chief.

Mr. Campbell:—Under reserve of our objection as to relevancy.

10 A.—Yes.

By Mr. Masson, Continuing,

Q.—Will you file, as Exhibit P-55, the Financial Statement of Amiesite Asphalt, Limited, for the year ending March 31st, 1927; As Exhibit P-56, the Financial Statement of the same Company for the year ending March 31st, 1926; and as Exhibit P-57, the Financial Statement for the Company for the year ending March 31st, 1925?

20 A.—I have no knowledge of those Statements.

Mr. Masson:—Then, we will file them subject to verification.

By Mr. Masson, Continuing,

Q.—Will you file, as Exhibit P-58, a photostatic copy of the page of the Stock Ledger of both those Companies in the name of Jean Julien Perrault?

A.—If I have them.

30 Q.—If you look in your Stock Ledger you will see a page in the name of Jean Julien Perrault. Will you file a copy of that page?

A.—If I have it.

Q.—In both Companies, the Macurban and the Amiesite Asphalt: Exhibit P-58 being a photostatic copy of the page of the Stock Ledger of Amiesite Asphalt, Limited, in the name of Jean Julien Perrault; and Exhibit P-59 being a photostatic copy of the page of the Stock Ledger of Macurban Asphalt in the name of Jean Julien Perrault?

40 A.—If I have it.

Mr. Campbell:—This, of course, is under reserve of our objection as to relevancy.

(It is understood that all the documents filed and to be filed are subject to objection on the part of both defendants as to relevancy)

T. F. SPELLANE (for Plaintiff's) Examination in Chief.

By Mr. Masson, Continuing,

10 Q.—Will you file, as Exhibit P-60, a photostatic copy of the Stock Ledger of Amiesite Asphalt, Limited, in the name of Hugh Quinlan?

Will you make certified copies, instead of photostatic copies, of those documents?

Mr. Beaulieu:—The document my learned friend now asks for has already been produced as Exhibit P-7.

Mr. Masson:—Then I withdraw Exhibit P-60.

20 I understand Exhibit P-7 will make proof that Mr. Quinlan was a shareholder of the Company in September, 1923, and also in June, 1927.

Mr. Campbell:—We will admit that Exhibit P-7 correctly shows the facts according to the books of the Company.

30 Mr. Masson:—I want to establish the fact that on the dates mentioned in Exhibit P-7 Mr. Quinlan was a shareholder of the Company.

Mr. Campbell:—Defendants admit the late Hugh Quinlan was a shareholder of Amiesite Asphalt, Limited, up to on or about June 20th, 1927, when, according to Defendants' pretention, he sold to A. W. Robertson.

Mr. Masson:—I suppose the same Admission will apply to Quinlan, Robertson & Janin, Limited?

40 Mr. Campbell:—The same Admission.

And further deponent saith not.

J. H. Kenehan,
Official Court Reporter.

E. L. PARENT (for Plaintiff's) Examination in Chief.

DEPOSITION OF EMMANUEL L. PARENT

10 A witness produced and examined on behalf of the Plaintiffs.

On this first day of December, in the year of Our Lord one thousand nine hundred and thirty personally came and appeared Emmanuel L. Parent of the City of Ottawa, Accountant, aged 50 years, a witness produced and examined on behalf of the Plaintiffs, who, having been duly sworn, deposes as follows :—

Examined by Mr. Masson, K.C., of Counsel for Plaintiffs.

20

Q.—You have already been examined in this case?

A.—On Discovery, and at the Trial, yes.

Q.—You are in charge of the Estates Department of the Defendant Capital Trust Corporation?

A.—Yes.

Q.—You were connected with the transfer to Mr. Robertson of a certain number of shares in Quinlan, Robertson & Janin Limited?

30

Witness:—How do you mean?

Counsel:—For the endorsement of the certificates, for instance.

A.—They were endorsed. Which ones do you refer to?

Counsel:—Quinlan, Robertson & Janin, Limited?

Witness:—What certificates do you refer to in particular?

40

Counsel:—Is it to your knowledge that Mr. Robertson acquired a certain number of shares in Quinlan, Robertson & Janin, Limited, which at a certain time belonged to the late Mr. Quinlan?

A.—Yes.

Q.—Did you make any enquiries as to the dividends that were declared or paid with reference to those shares before the death of Mr. Quinlan?

E. L. PARENT (for Plaintiff's) Examination in Chief.

A.—I think I made one enquiry at one time about what the Statement would show as an item due to the Estate of the late Mr. Quinlan. I do not remember offhand what it was, but my file would show.

10 Q.—What was the amount?

A.—\$3,300.00. I think. I do not remember exactly. There was one item in one of the Statements. I could look up my book and let you know.

Q.—Did you or any member of your Corporation make any enquiry to know the exact amount of the back dividends that had been declared but had not been paid on the shares which were in the name of the late Hugh Quinlan?

A.—I looked at what appeared in the Financial Statement.

20 Q.—Have you been paid the back dividends which were declared before the death of Mr. Quinlan?

A.—According to the Financial Statement, yes. I think so. I do not remember. I would have to look at my files. I have the book here.

Q.—Would you mind telling His Lordship the exact amount of back dividends you received as Executors of the Estate of the late Hugh Quinlan?

Witness:—In which Company?

30 Counsel:—Quinlan, Robertson & Janin, Limited.

Mr. Beaulieu:—Of course, this is all under reserve of our objection.

Witness:—Our books show that on January 27th, 1928, I received the sum of \$2867.26, with this explanation: "Dividend accrued to the date of death, Quinlan, Robertson & Janin, Limited, \$2,867.26".

40 If I remember correctly, that is also according to the Financial Statement produced at the time.

Q.—Did you make any special enquiry in order to ascertain the correctness of the amount you had received?

A.—I had to rely on the Financial Statement.

Q.—Did you make any enquiry at the office of the Company, by way of correspondence or otherwise, in order to ascertain the exact amount of the back dividends that were due at the time?

E. L. PARENT (for Plaintiff's) Examination in Chief.

A.—I made enquiries about that one.

Q.—What kind of enquiries did you make?

A.—The Financial Statement, as far as I can remember
10 without having it before me, shows this amount was due at the
time of Mr. Quinlan's death, and I made application for it.

Q.—Apart from the Financial Statement, which you had
before you and which you consulted or read, did you do anything
else in order to ascertain or to verify the amount of accrued di-
vidends that were due?

A.—No.

Q.—Nothing at all?

A.—No.

Q.—And you were the gentleman in charge of that particu-
20 lar fact in reference to the Estate?

A.—Yes.

Q.—And, no one else in your Company did anything in or-
der to ascertain whether more money was due as accrued divi-
dends?

A.—I do not know about others.

Q.—But, you were the one in charge to attend to that?

A.—Yes.

I could not do anything else.

30 Q.—In Exhibit P-C-42 there is a letter dated July 22nd,
1927, which appears to have been signed by you, and which says:

“While in Montreal on Tuesday next it will be necessary for
us to go to the safety deposit box of the late Hugh Quinlan, in
order to complete the list of all the securities, and as Dr. Con-
nolly states he will not be able to be present we would like you to
have Mr. Leamy present. If this is agreeable to you will you
kindly arrange with Mr. Leamy.”

40 This letter was sent by you to Mr. Robertson under date Ju-
ly 22nd, 1927. Will you please take communication of this letter,
and say what you meant by completing the list of securities?

A.—We had first made a list on July 9th, 1927, which was
signed by those present at the time; and we typed this list and
checked it again on that date with the securities. That is what
I meant.

E. L. PARENT (for Plaintiff's) Examination in Chief.

Q.—But, was the list which was signed on July 9th, 1927, a complete list?

1) A.—It was a complete list. The only thing is it was a pencil copy. We could not type it there, and it was made in pencil.

Mr. Leamy was checking the securities with me, in the presence of Dr. Connolly, one of the Bank clerks, and Mr. Robertson for a while. After this list was made we typed one or two copies, and gave one to each of the Executors.

That was what I meant — to check it over again and see if the first list was correct, and to compare it.

20 Q.—By the word “complete” you meant you were to redraft the list which had been made on July 9th, in order to have it in a more proper form?

A.—Not to redraft it: to check it over again.

Q.—How did you proceed to check it over again?

A.—We took the securities again, and counted them, and checked them with the typed copy, which compared with the first pencil copy.

Q.—You know the Estate had some shares in Ontario Amiesite, Limited?

30 Witness:—At what date? At the date of death?

Counsel:—Yes, at date of death, and after.

A.—There were 200 shares that appeared in that letter.

Q.—But, those shares had not been endorsed?

A.—They had not been endorsed.

Q.—And, you endorsed those shares?

A.—As one of the Executors.

40 Q.—To whom did your Company endorse those shares? I understand, according to the correspondence already filed, it was to Quinlan, Robertson & Janin, Limited.

Mr. Beaulieu:—I object to this as tending to contradict documents already produced.

The question is allowed by the Court by Mr. Masson, continuing,

E. L. PARENT (for Plaintiff's) Examination in Chief.

10 Q.—Will you take communication of the letter I now show you, dated November 9th, 1927, signed by yourself in the name of the Capital Trust Corporation, and addressed by you to Mr. A. W. Robertson (Exhibit P-C-15). Having read this letter: when you wrote it, to whom were you transferring the 200 shares of Ontario Amiesite which were in the name of the Estate?

A.—According to that letter it was to Quinlan, Robertson & Janin, Limited.

Q.—You were not transferring them to Mr. Robertson, the Defendant?

20 A.—According to that letter, no. It was done on the request of the Solicitor of the Estate, I guess. There is a copy of his letter. I do not remember the way the certificate was, because I have not seen it since: but, on that date the Solicitor of the Estate, the Hon. Mr. Perron, advised us to transfer them to Quinlan, Robertson & Janin, — I do not know why, but that was his advice — instead of A. W. Robertson.

Q.—And, following that advice of Counsel of the Estate you transferred those shares to Quinlan, Robertson & Janin, Limited?

A.—I do not know. I have not seen the certificate since.

By the Court:—

30 Q.—Was it a sale of those shares?

A.—They formed part of that letter of June 20th. It is one of the items included in that letter.

Why Mr. Perron did not advise them to be transferred to Mr. Robertson, the same as the rest, I do not know.

By Mr. Masson, Continuing,

40 Q.—Do you not think the fact that the certificate was not already endorsed by the late Mr. Hugh Quinlan had something to do with that advice?

A.—I do not know. I cannot question his opinion. I have quoted Mr. Perron's letter in my own to Mr. Robertson.

By Mr. Campbell:—

Q.—Not the whole letter?

*E. L. PARENT (for Plaintiff's) Cross-examined for Defendant
Robertson and for Defendant Capital Trust Co.*

A.—No: just the paragraph which refers to this particular transaction.

10 By Mr. Masson, Continuing,

Q.—The letter of the late Mr. J. L. Perron, to whom you refer as being your Counsel, is the letter of October 4th, 1927, which has been filed as Exhibit P-C-18?

A.—I think that is the same thing I quoted. Of course, I will have to compare it to make sure. It seems to be the same.

Q.—It is the letter of October 4th, 1927, Exhibit P-C-18?

A.—Yes.

20 Cross examined by Mr. Beaulieu, K.C., of Counsel for Defendant Robertson.

Q.—Will you please take communication of Exhibit P-2, and state if the endorsement of the Executors of the Estate Hugh Quinlan, Capital Trust Corporation, Limited, is signed by officials of the Capital Trust Corporation?

A.—Yes: that is the proper signature.

Q.—Did you ever have communication of the resolution of Ontario Amiesite ratifying that transfer of those 200 shares?

30 A.—I do not think so.

Q.—You have not a copy of that resolution in your possession?

A.—Not that I know of.

Cross examined by Mr. Campbell, K.C., of Counsel for Defendant Capital Trust Co.

40 Q.—In your letter of November 9th, 1927, to Mr. Robertson, to which your attention has been called you quote a passage from Mr. Perron's letter of October 4th, 1927?

A.—Yes.

Q.—You only quote the last sentence?

A.—Yes.

Q.—In order to complete your answer, will you please quote the three preceding sentences from Mr. Perron's letter of October 4th, 1927?

A.—(reading)

E. L. PARENT (for Plaintiff's) Re-examination.

10 “Apparently the stocks belong to the individuals who are shareholders of the Quinlan, Robertson & Janin, Limited, but the money has been furnished by Quinlan, Robertson & Janin, Limited, and the Ontario Amiesite Company is heavily indebted to Quinlan, Robertson & Janin, Limited, and the Bank of Toronto.

 Quinlan, Robertson & Janin, Limited, will have to take care of the Bank of Toronto.

 At the present time not only the stock has no value, but it is even a liability”.

20 Q.—Then follows the sentence quoted in your letter ?

 A.—Yes.

 Q.—Apart from the dividend of \$2867.26 of which you obtained payment, did you know of the existence of any other dividends that were payable to the Estate of the late Hugh Quinlan ?

 Witness:—For the Company Quinlan Robertson & Janin only ?

 Counsel:—Yes.

30 A.—No.

 Q.—You referred to the Financial Statement. Can you between now and when I call you as my witness verify the date of the Financial Statement, so that you may be in a position to identify it? I mean the Financial Statement which showed that amount as payable ?

 A.—Yes.

 Q.—Was it a Statement prepared by the Company's Auditors ?

40 A.—Yes.

 Q.—Did you obtain payment of the only amount which appeared by the audited Statements to be payable to the Estate Hugh Quinlan ?

 A.—Yes.

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

 Q.—Was it you who wrote the name “A. W. Robertson” on the certificate ?

E. L. PARENT (for Plaintiff's) Re-examination.

A.—I do not remember.

Q.—When you were transferring, according to your letter, to Quinlan, Robertson & Janin, Limited, necessarily the name of A. W. Robertson was not on that transfer?

10 A.—I do not remember whether that was put in by us, or after.

Q.—It is impossible that the name of A. W. Robertson, which appears on the transfer of that certificate, was written by you; otherwise, you would not have mentioned the name of Quinlan, Robertson & Janin, Limited, in your letter?

A.—I do not remember that. I imagine it would be easy to ascertain by the type whether it was our office or somebody else.

20 Q.—How is it that in your letter of November 9th, 1927, you mention that the certificate was “endorsed by us to Quinlan, Robertson & Janin”?

A.—I might have given those instructions, and I might not have seen the certificate after it went out.

Q.—There is no doubt, according to your letter of November 9th, 1927, that you were sending that certificate as being endorsed to Quinlan, Robertson & Janin?

A.—No, I would not admit that it was endorsed before it left in the name of Quinlan, Robertson & Janin: it might have been sent out endorsed in blank.

30 Q.—But, with the instructions, as mentioned in your letter, to the effect that they were to be endorsed, according to your own intent, to Quinlan, Robertson & Janin, Limited?

A.—Yes.

Q.—As I take it, you verified the accrued dividends due to the Estate, not from the Financial Statement of Quinlan, Robertson & Janin, Limited, but from a certificate which was delivered to you by the Auditor of the Company?

A.—From the Financial Statement, certified by the Auditor — whether certified or not, I do not remember.

40 Q.—From the Financial Statement already filed in this case?

A.—I think so. I will have to look up the Financial Statement to make sure. It is one of the Financial Statements of the Company for a particular year.

And further deponent saith not.

J. H. Kenehan,
Official Court Reporter.

CHS. A. SHANNON (for Plaintiff's) Examination in chief.

DEPOSITION OF CHARLES A. SHANNON

10 A witness produced and examined on behalf of the Plaintiffs.

On this first day of December, in the year of Our Lord one thousand nine hundred and thirty personally came and appeared Charles A. Shannon, Accountant, who, having been already sworn, deposes as follows:—

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

20 Q.—You have already been heard as a witness in this matter?
A.—Yes.

Q.—You are co-liquidator, with Mr. Leamy, of A. W. Robertson, Limited?

A.—Yes.

Q.—Will you file, as Exhibit P-60, the inventories of the stock or plant of A. W. Robertson, Limited, which refer to the dredging plant, the scow, and the lots, which have been divided between Mr. Robertson and the Capital Trust Corporation?

A.—Yes, I will.

30 Q.—I understand an advertisement was published in the Montreal newspapers in reference to the sale of that plant and of those lots which have been divided?

A.—Yes.

Q.—What I want you to file as Exhibit P-60 is the inventories of the Company to show the value the Company put on those different items in your advertisement?

Witness:—The book values?

Counsel:—The book values.

40 A.—We have book value, as well as real physical value. The resolution of the Inspectors, in conjunction with the co-liquidator and myself, will show the details of the inventories and also the values the Company placed on the assets — the selling value at that date.

Q.—Does the resolution which you passed also show the value which appears in the inventories or in the books of the Company?

CHS. A. SHANNON (for Plaintiff's) Examination in chief.

10 A.—We tried to sell the plant by public sale. We advertised it, and had some offers, and some offers which were really not offers. Afterwards it was decided to offer one half of each of the different inventories to the two interested parties — the Estate Quinlan and also Mr. Robertson. When you are speaking of book values, it does not show the book values.

By the Court:—

Q.—There must have been some value placed upon those things in the last inventory before the sale?

A.—Yes. We have those values.

20 By Mr. Masson, Continuing:—

Q.—That is what I want you to file as Exhibit P-60.

A.—I will be pleased to file it.

Q.—Naturally every year there was some depreciation on the value of those goods, or stock, or plant?

A.—Absolutely. I will show the depreciation written off each year.

Q.—I understand the dredging plant, the scow, and those different items which appear in the advertisement you published in Montreal were located at Port Colborne?

30 A.—I understand so.

Q.—That is in Ontario?

A.—Yes.

Q.—That is the place the Company was operating with that dredging plant?

A.—Yes, the place where the plant was located.

Q.—So, they were operating there?

A.—I could not tell you that unless I consulted my records, because they had quite a few contracts at different times.

40 Q.—Did you advertise the sale of that dredging plant, scow, etc., any where else than in the Montreal Daily Star and La Presse?

A.—Yes: very extensively. It was done by the Capital Trust all through Ontario.

Q.—Have you copies of those advertisements?

A.—Yes, we have them.

Q.—Do you know in what papers those advertisements appeared?

*CHARLES A. SHANNON (for Plaintiff's) Cross-examination
for Defendant Capital Trust Co.*

A.—I could not tell you off hand. It was all done by the Capital Trust.

Q.—You have copies of the advertisement?

A.—Yes.

10 Q.—Will you please file a copy as Exhibit P-61?

A.—There were numerous advertisements — a great many advertisements.

Q.—Then, you will file copies of the advertisements as Exhibit P-61?

A.—Yes.

Q.—Can you tell me what was the rate of interest on the \$13,500 mortgage on the Villa La Salle property?

20 A.—I would have to consult my records. Either 5% or 6%. I would have to consult the books in order to be able to say what the exact rate was.

Q.—By whom was that interest due? A. W. Robertson, Limited, I understand?

A.—I would have to look up the records to be able to say.

Q.—Will you file a Statement covering this, as Exhibit P-62?

A.—Yes.

Q.—Which will be a Statement of the rate of interest, the amount of the mortgage, to whom it was due, and by whom it was due?

30 A.—Yes.

Cross-examined by Mr. Campbell, K.C., of counsel for Defendant Capital Trust Co.:—

Q.—You referred to certain resolutions of the liquidators in regard to this division of assets between the interested parties?

A.—Yes.

40 Q.—In order that we may identify it, will you please verify that the resolution to which you refer forms part of Exhibit P-22, being the Minutes of a Meeting of the Shareholders of A. W. Robertson, Limited, in voluntary liquidation, dated July 19th, 1930, at which this division of assets between the two interests was agreed upon??

A.—Yes, that is right.

Aud further deponent saith not.

J. H. Kenehan,
Official Court Reporter.

ALBERT JANIN (for Plaintiff's) Examination in chief.

DEPOSITION OF ALBERT JANIN,

10 A witness produced and examined on behalf of the Plain-
tiffs.

On this first day of December, in the year of Our Lord one thousand nine hundred and thirty personally came and appeared Albert Janin, of the City and District of Montreal, Comptroller, aged 38 years, a witness produced and examined on behalf of the Plaintiffs, who, being duly sworn, deposes as follows:

20 Examined by Mr. Masson, K.C., of Counsel for Plaintiffs:—

Q.—You were a shareholder in Amiesite Asphalt, Limited, and Macurban Asphalt, Limited?

A.—No, I was not.

Q.—You were a prête nom for your brother for a certain number of shares which were in your name?

A.—I understand I held the shares for him.

Q.—So the shares which you held in Macurban Asphalt, Limited, and Amiesite Asphalt, Limited, were for your brother?

A.—I had no shares in the Macurban.

30 Q.—But, in the Amiesite Asphalt, Limited?

A.—Yes.

Q.—You were, then, a prête nom for your brother, Mr. Alban Janin?

A.—If you wish to call it so.

Mr. Campbell, K.C., of counsel for Defendant Capital Trust Corporation, declares he has no cross examination to make of the witness.

40 Mr. Beaulieu, K.C., of counsel for Defendant Robertson, declares he has no cross examination to make of the witness.

And further deponent saith not.

J. H. Kenehan,
Official Court Reporter.

MAURICE JANIN (for Plaintiff's) Examination in chief.

DEPOSITION OF MAURICE JANIN,

10 A witness examined on behalf of the Plaintiffs.

On this first day of December, in the year of Our Lord one thousand nine hundred and thirty personally came and appeared Maurice Janin, of the City and District of Montreal, Estimator, aged 25 years, a witness produced and examined on behalf of the Plaintiffs, who, being duly sworn, deposes as follows:—

Examined by Mr. Masson, K.C., of counsel for Plaintiffs:—

20 Q.—You were a shareholder in Macurban Asphalt, Limited?

A.—Yes.

Q.—The shares which you held in that Company you were holding as prête nom for your father, Mr. Alban Janin?

A.—If you wish to call it that way.

Q.—Those shares were not yours: they were your father's?

A.—They were mine. I gave them back to my father.

Mr. Campbell, K.C., of counsel for Defendant Capital Trust Corporation, declares he has no cross examination to make of the witness.

30 Mr. Beaulieu, K.C., of counsel for Defendant Robertson, declares he has no cross examination to make of the witness.

And further deponent saith not.

J. H. Kenehan,
Official Court Reporter.

40

C. J. MALONE (for Plaintiff's) Examination in chief.

DEPOSITION OF CLIFFORD J. MALONE

A witness examined on behalf of the Plaintiff.

10

On this first day of December, in the year of Our Lord one thousand nine hundred and thirty personally came and appeared Clifford J. Malone, of the City and District of Montreal, Accountant, aged 35 years, a witness produced and examined on behalf of the Plaintiffs, who, having been duly sworn, deposes as follows:—

Examined by Mr. Masson, K.C., of counsel for Plaintiffs:—

20

Q.—You have already been heard as a witness in this case?

A.—Yes.

Q.—You are Secretary Treasurer of Quinlan, Robertson & Janin, Limited?

A.—Yes.

Q.—The name of that Company has been changed?

A.—Several times.

Q.—Will you file, as Exhibit P-63, the Financial Statement of Quinlan, Robertson & Janin, Limited, or Robertson & Janin, Limited, for the year ending March 31st, 1929?

30

A.—I will ask my principals first whether I can file it or not.

Mr. Campbell:—Of course, there is our general objection as to the relevancy of all facts since Action brought.

Witness:—I can consult with Mr. Janin.

By Mr. Masson, continuing:—

40 Q.—Will you look at the Statement filed as Exhibit P-29, which shows that at the time of the death of the late Hugh Quinlan there were \$52,447.54 of accrued dividends or back dividends not paid at the time of death?

A.—There was more at that time not paid. This \$52,000 odd is the present balance of the account.

Q.—Presently the balance of the dividends not paid is \$52,447.54?

A.—That is right.

C. J. MALONE (recalled for Plaintiff's) Examination in chief.

Q.—At the time of the death of the late Hugh Quinlan what was the amount of the accrued dividends declared and unpaid?

A.—I would have to calculate that from the Statement. I have not the figures in my mind at the present time.

10 Q.—Will you look and see if the figures I have put at the bottom of the Statement show that at the time of the death of the late Hugh Quinlan the accrued unpaid dividends due by Quinlan Robertson & Janin, Limited, were \$79,947.54?

A.—No, sir, your figures are not correct.

Q.—Then, will you please tell me the correct figures?

And it being 4.15 o'clock, the further examination of the witness is continued until tuesday, December 2d, 1930, at 10.30 o'clock in the forenoon.

20

And further for the present deponent saith not.

J. H. Kenehan,
Official Court Reporter.

DEPOSITION OF CLIFFORD J. MALONE

30

And on this second day of December, in the year of our Lord one thousand nine hundred and thirty personally came and re-appeared the said witness: Clifford J. Malone, and his examination was continued as follows:—

By Mr. Masson, K.C.:—

40 Q.—The last question I asked you yesterday was in reference to the amount of the dividends accrued at the time of the death of the late Mr. Quinlan, as it appears from the Statement filed as Exhibit P-29. Will you please tell His Lordship the amount of the accrued dividends that were due on the 26th June, 1927?

A.—\$75,000.00.

Q.—Not \$84,497.00?

A.—No. The accrued and paid to Mr. Quinlan, you said.

Q.—What was the amount of the dividend not paid at the time of his death?

C. J. MALONE (recalled for Plaintiff's) Examination in chief.

Witness:—To Mr. Quinlan?

10 Counsel:—I mean the gross amount of the dividends due on the 26th June, 1927, which had been declared and not paid.

A.—There was dividend declared, payable at the option of the Directors. The dividend declared was \$159,947.54.

Q.—How much of that amount was due on the 26th June, 1927?

A.—\$75,000 of this amount was paid.

By the Court:—

20 Q.—But that is not the question you are asked.

By Mr. Masson, continuing:—

Q.—How much was due at the time of Mr. Quinlan's death?

A.—\$84,947.54, was not paid.

By Mr. Beaulieu:—

Q.—Was that due to the Estate Quinlan entirely?

30 Mr. Masson:—That is a question of law.

Witness:—Just a part of it.

By Mr. Masson, continuing:—

Q.—So, the amount of \$84,947.54 which was not paid out of the dividends declared in April, 1925, was due to all the shareholders of the Company?

A.—All the shareholders of the Company.

40 Q.—In proportion to their holdings in the Company?

A.—Yes, at the time of the declaration of the dividend.

By the Court:—

Q.—What was the date of the dividend?

A.—One dividend was declared March 31st, 1925, payable at the option of the Directors at stipulated dates. They were paid in six instalments. At the present time there is still a balan-

C. J. MALONE (recalled for Plaintiff's) Examination in chief.

ce of \$52,047.54 to be paid of that one dividend, but at the time of the declaration of the dividend no stated date was mentioned just when that dividend was to be paid. It was left to the option of the Directors.

10

By Mr. Masson, continuing:—

Q.—Will you file, as Exhibit P-64, a certified copy of the resolution of the Board of Directors or of the Shareholders passed on March 31st, 1925, declaring that dividend of \$159,947.54 in Quinlan, Robertson & Janin, Limited?

A.—Yes, I will.

20 Q.—And, will you file, as Exhibit P-65, certified copies of all the resolutions passed in reference to the payment of that dividend declared on March 31st, 1925?

A.—I will.

Q.—That will be six resolutions?

A.—Yes.

Q.—Were the amounts mentioned on your statement filed as Exhibit P-29 as having been paid out of that dividend of \$159,947.54 paid to the Shareholders?

A.—Yes, they have all been paid.

Q.—To whom were those dividends paid?

A.—I can read it from the list, if you wish.

30 Q.—That names are mentioned on Exhibit P-29?

A.—Yes.

Q.—So, the amounts were paid to the persons mentioned in Exhibit P-29, and the amount mentioned opposite each name was the amount each shareholder received?

A.—That is right.

Q.—And, those amounts were paid on the dates mentioned in the Exhibit?

A.—Yes.

40 Q.—Will you look at the Statement filed by the Capital Trust Corporation on Discovery as Exhibit P-C-10, which includes the Financial Statement of Quinlan Robertson & Janin, Limited, for the year ending March 31st, 1927, and will you give us an explanation as to the item appearing in the column of assets of that Statement which reads: "Macurban Asphalt, Limited, \$4,386.67." Can you tell me what the consideration was of that indebtedness by Macurban Asphalt to Quinlan, Robertson & Janin, Limited?

*CLIFFORD J. MALONE (recalled for Plaintiff's)
Cross-examination for Defendant Robertson.*

A.—It would be pretty hard for me at the present to look at a Statement like that and give you a correct answer. I would naturally have to go to my ledger and follow it up thoroughly.

10 Q.—Have you any vouchers in reference to that item?

A.—No doubt I have, yes.

Q.—Would you mind bringing with you the particulars and vouchers in reference to that item?

A.—I will do so.

Cross-examined by Mr. Beaulieu, K.C., of counsel for Defendant Robertson:—

20 Q.—As to the unpaid balance of \$52,447.54, I understand there was no date of payment fixed by the Directors? There is no resolution?

A.—No, not at the present time.

By Mr. Masson:—

Q.—And you will find all the resolutions in reference to the payment of that dividend?

A.—Yes, I will.

30 And further for the present deponent saith not.

J. H. Kenehan,
Official Court Reporter.

JEAN McARTHUR (for Plaintiff's) Examination in chief.

DEPOSITION OF JEAN McARTHUR

10 A witness produced and examined on behalf of the Plaintiffs.

On this second day of December, in the year of Our Lord one thousand nine hundred and thirty personally came and appeared: Jean McArthur of the City of Westmount, in the District of Montreal, Professional nurse, a witness produced and examined on behalf of the Plaintiffs, who, being duly sworn, deposes as follows:—

20 Examined by Mr. Masson, K.C., of counsel for Plaintiffs:—

Q.—What is your occupation?

A.—Professional nurse.

Q.—Did you know the late Mr. Hugh Quinlan?

A.—I did.

Q.—Did you have anything to do with nursing him??

A.—I nursed Mr. Quinlan for thirteen months.

Q.—When did you start nursing him?

A.—In April, 1926.

Q.—Up to what time did you nurse him?

30 A.—Until his death: June 26th.

Q.—He died on June 26th, 1927?

A.—Yes.

Q.—Did you attend to him regularly from the time you were appointed up to the time of his death?

A.—With the exception of a few holidays.

Q.—How many nurses were nursing the late Mr. Quinlan during that time?

A.—Always two; and at the end four, for one week almost.

40 Q.—Were you working during the day or during the night, or did you have any special hours?

A.—For one year I did night, and the last year was alternate.

Q.—With whom did you alternate during the last year?

A.—With Miss Kerr. With several others occasionally, but mostly with Miss Kerr.

Q.—Why were there so many nurses nursing Mr. Quinlan?

A.—Mr. Quinlan was a very sick man.

JEAN McARTHUR (for Plaintiff's) Examination in chief.

Q.—When did you start to alternate in nursing Mr. Quinlan?

A.—I did night duty from April until January 3rd following, then we started to alternate, when Miss Kerr came on.

10 Q.—When did Miss Kerr come on?

A.—On January 3rd, 1927.

Q.—How long did she nurse Mr. Quinlan?

A.—Until he died.

Q.—What was the nature of Mr. Quinlan's illness?

A.—A doctor would be better able to tell you that.

Q.—It was well known to the nurses that he was suffering from heart disease?

A.—Yes, it was known.

20 Q.—Would you mind mentioning the condition of health of Mr. Quinlan during the different months you had been engaged as nurse for him?

A.—Mr. Quinlan was always a very sick man, and at times he was more seriously ill. He took heart attacks, and he was always in a serious condition.

Q.—Could he walk?

A.—Yes, but not far.

Q.—During the time of his illness was he always able to walk?

30 A.—There were weeks when he was in bed. To the best of my memory there were several weeks. During heart attacks he was not able to get out of bed.

Q.—During one month was he kept in bed like that?

A.—Yes, I think so, in January, 1927 — the first of the year.

Q.—What was his condition in January, 1927?

A.—As well as I know, hypostatic pneumonia from a heart attack.

Q.—Was he suffering very much?

A.—Yes.

40 Q.—During the month of February was he worse, or better?

A.—He improved in February?

Q.—And, during the month of March?

A.—His condition remained about the same, off and on. He was never very comfortable.

Q.—Did you expect at a certain time he would die from that illness, and that death was not very far off?

A.—I did not think his recovery was at all likely.

JEAN McARTHUR (for Plaintiff's) Examination in chief.

Q.—When for the first time did you notice he was not recovering from his illness? ?

A.—My opinion might not be worth very much. Do you want my own opinion?

10

Counsel:—Yes.

A.—I did not think he would recover.

Q.—The condition of his illness was not always the same?

A.—No.

Q.—He was more ill at certain times than at others?

A.—There were times when he was fairly comfortable and his condition almost would denote recovery.

20

Q.—Can you mention periods in 1927 during which he was comfortable, as you say? The months, for instance.

A.—Probably in February he was more comfortable than any other time, after his illness in January. I think that is correct.

Q.—And, during the other months following the month of February, in what condition was he?

A.—He had days when he was comfortable, and days when he was not. The length of the times he was well were very short.

Q.—In what condition was he during the month of May?

30 A.—He was recovering from an illness then. He had been very ill in March, and he was improving gradually.

Q.—In what condition was he during the month of March?

A.—He was very ill in March.

Q.—Did he at any time receive the last rites of the Church?

A.—Not while I was on, but I have the impression he did.

Q.—Were you on night duty during March?

A.—Yes, I was on night in March.

Q.—And, during April?

A.—I was on day in April.

Q.—And, during the month of May?

40

A.—I was on night duty in May.

Q.—And, during the month of June?

A.—I was on day duty all June.

Q.—And, Miss Kerr was on day duty during the months you were on night duty?

A.—Yes.

Q.—And, she was on night duty during the months you were on day duty?

A.—Yes.

JEAN McARTHUR (for Plaintiff's) Examination in chief.

Q.—So, Miss Kerr was on night duty during the month of June, 1927?

A.—Yes.

10 Q.—And, she was on day duty during the month of May, 1927?

A.—She was on day duty in the month of May.

Q.—Would you mind telling His Lordship in what condition the late Mr. Quinlan was during the week which preceded June 26th, 1927?

A.—He was in a very serious condition.

Q.—Could he speak?

A.—The first part of the week, he could.

Q.—What week?

20 A.—The week from the Sunday until the following Sunday when he died, he was very ill. Towards the end of the week he could not speak.

Q.—We were told by Mr. Robertson that Mr. Quinlan went out on June 18th, 1927.

A.—He did, driving, in his car.

Q.—In what condition was he then?

A.—In a very very serious condition, but he was able to go out in the car with help.

Q.—What help did he have to go in his car?

30 A.—He had help of the chauffeur, and his son, and myself. The 18th would be a Saturday.

Q.—Did you accompany Mr. Quinlan on those rides?

A.—Always.

Q.—And, on Saturday, the 18th, you accompanied him?

A.—Yes.

Q.—Did you receive any instructions to do anything to stimulate him during the day, or while he was driving like that?

A.—We had the doctor's orders to use our own judgment about that.

40 Q.—In what way did you use your own judgment, when you made that drive on the 18th, for instance?

A.—If he was not able we were allowed to give him something that would help him.

Q.—What did you give him?

A.—Morphine.

Q.—Before making the drive on the 18th did you give him any morphine?

A.—Yes.

JEAN McARTHUR (for Plaintiff's) Examination in chief.

Q.—Did you give him any during the drive?

A.—No.

Q.—Did you give him any when he came back?

A.—I could not say that. I do not remember. I think so.

10 Q.—Generally after a drive like that did you give him any morphine?

A.—We sometimes had to.

Q.—In what condition were Mr. Quinlan's feet when he came back from that drive on the 18th?

A.—They were very often swollen. I do not remember that day.

Q.—Was that the last time he went out?

A.—That was the last time he went out.

20 Q.—In what condition was he from that time?

A.—He was in a very serious condition.

Q.—On the 18th, after he came back from that drive?

A.—He was very tired, and very weak.

Q.—In what condition was he on the 19th?

A.—His condition was worse on Sunday, the 19th.

Q.—In what condition was he on Monday, the 20th?

A.—His condition continued to be worse.

Q.—And, the same thing on the 21st?

A.—Yes.

Q.—And, on the 22nd? And the following days?

30 A.—Yes.

Q.—When did he become unconscious?

A.—His mind was becoming befogged on Tuesday and Wednesday and it increased until the end.

Q.—What date was Tuesday? The 21st, I think?

A.—The 21st.

Q.—So you swear, and you remember very well, that from June 18th up to June 22nd or 23rd the late Mr. Quinlan got worse from day to day?

A.—Yes.

40 Q.—You remember very well about that?

A.—Yes.

Q.—When did he fall into coma?

A.—He did not fall in at once: it was gradual.

Q.—When did it start to be gradual like that?

A.—I think it was starting from Monday.

Q.—The 20th?

A.—Yes: gradually from that. He was still conscious, and able to reason, and his mind was clear, but his mind was becoming weaker.

*JEAN McARTHUR (for Plaintiff's) Cross-examination for
Defendant Robertson.*

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

10 Q.—I understand you were on duty during the month of June?

A.—Yes.

Q.—During the month of June did Mr. Quinlan receive any visitors?

A.—He did, occasionally.

Q.—Do you know the Honorable Mr. J. L. Perron, or did you know him at the time?

A.—No, I did not.

Q.—Do you know Mr. A. W. Robertson?

2) A.—Yes.

Q.—Did Mr. Robertson visit Mr. Hugh Quinlan during the month of June?

A.—I think it is likely he did. He came quite often.

Q.—Did you know Mr. Leamy?

A.—Yes.

Q.—Did he also visit Mr. Quinlan during that period?

A.—Yes, quite often.

Q.—You spoke of Miss Kerr being on night duty when you were on day duty?

A.—Yes.

30 Q.—At what hour of the day would Miss Kerr arrive usually?

A.—Duty was from eight to eight.

Q.—From eight in the morning until eight at night?

A.—Yes.

Q.—And, from eight at night until eight in the morning?

A.—Yes.

Q.—And during those thirteen months you were nursing Mr. Quinlan, you stated you took some holidays?

40 A.—I was away in July, 1926, and for two weeks in September of that fall.

Q.—No holidays besides that?

A.—That was all in that year.

Mr. Campbell, K.C., of Counsel for Defendant Capital Trust Corporation, declares he has no cross examination to make of the witness.

And further for the present deponent saith not.

J. H. Kenehan,
Official Court Reporter.

VERNIE L. KERR (for Plaintiff's) Examination in chief.

DEPOSITION OF VERNIE LOUISE KERR

10 A witness produced and examined on behalf of the Plaintiffs.

On this second day of December, in the year of Our Lord one thousand nine hundred and thirty personally came and appeared; Vernie Louise Kerr of the City and District of Montreal, Graduate Nurse, a witness produced and examined on behalf of the Plaintiffs, who, being duly sworn, deposes as follows:—

Examined by Mr. Masson, K.C., of Counsel for Plaintiffs.

20 Q.—What is your occupation?

A.—Graduate nurse.

Q.—Miss McArthur just told us you had been nursing the late Mr. Hugh Quinlan?

A.—Yes.

Q.—During what time did you nurse him?

A.—I started on January 3rd, and was there until Mr. Quinlan's death on June 26th, 1927.

Q.—I understand you were alternating with Miss McArthur?

A.—Yes.

30 Q.—How many nurses were nursing Mr. Quinlan during the time you were there?

A.—Miss McArthur was there, and when she went on her holidays there was another nurse, a Miss Martin. Then, in March, when Mr. Quinlan was quite ill, I had another nurse on with me, Mrs. Boker, for three or four nights. Then when Mr. Quinlan was very ill in June I had a nurse on with me at night, Miss Beauchamp.

Q.—So, there were two nurses during the day, and two during the night, at a certain time?

A.—Yes.

40 Q.—Would you mind telling His Lordship during what time that was?

A.—In March, 1927, I had a nurse on with me for two or three nights. Then, in June, 1927, starting the 22nd and until Mr. Quinlan's death on the 26th, I had a nurse on with me, Miss Beauchamp.

Q.—Can you mention month by month, to the best of your knowledge, in what condition of health Mr. Quinlan was during the time you were nursing him, starting from January?

VERNIE L. KERR (for Plaintiff's) Examination in chief.

10 A.—When I was on in January I went on night duty. When I went in Mr. Quinlan was seated in his chair. I went on duty at eight o'clock, and he would sit up for a little while, and then retire early. He was fairly comfortable. He had hypostatic pneumonia during January, and that cleared. His condition during January and February, after the pneumonia cleared, was very much the same.

In March he had a very bad turn, and that lasted for about a week, then it cleared. In March, April, and May his condition was, at times he would be fairly comfortable, and then not so comfortable.

20 Q.—And, what was his condition during the month of June?
A.—I was on night duty in the month of June. He would be very tired at night. His nights were not good. Gradually they became worse.

Q.—Did you notice at any time that he would not recover from his illness?

A.—I knew he was a very sick man, but I did not know how long he would live.

Q.—During the month of June, beginning with the 15th, for instance, in what condition of health was he?

30 A.—I was on night duty. He would be very tired at night. His nights were not good. Each night he became more restless. His breathing would not be good.

Q.—Was it brought to your knowledge that on or about June 18th, 1927, he went out for a drive?

A.—Yes: the day nurse would report to me, and I knew it.

Q.—In what condition of health was he that day?

A.—He went out that day, Miss McArthur told me. He was very very tired when I went on. He was not as well.

40 Q.—How was he on the following night, when you came on duty? Was he better, or the same?

A.—On Sunday night, no, he was not. His condition was not as good Sunday night.

Q.—And, on Monday night?

A.—It continued to be worse.

Q.—So, from the 18th he started to be worse every night during the time you were there?

A.—Yes. Saturday, Sunday and Monday he was worse. Tuesday night he was much worse.

VERNIE L. KERR (for Plaintiff's) Examination in chief.

Q.—Can you give me any particulars about his condition on the 18th and 19th — that was the Saturday he went out for the drive, and the Monday?

10 A.—On the 18th, Saturday, I went on. Mr. Quinlan had been out for a drive that day, and Miss McArthur said he was very tired. It seemed he was more tired that he had been yet.

On Sunday when I went on Miss McArthur said he had not been out in the car at all, and had rested very quietly at home. On Sunday night he was restless, and he did not rest well. His breathing was not good.

Q.—Did you give him anything in order to stimulate him?

20 A.—Dr. Hackett ordered us to use our discretion, and if Mr. Quinlan had a heart attack we were allowed to give morphine sulphate, one quarter grain, hypodermically, at night; and if that did not rest him, and if he was not comfortable, we were allowed to repeat it early on in the morning.

Q.—Was he suffering very much?

A.—At times he would be. His breathing was not good. When he would have labored breathing, and have a heart attack, he did suffer.

Q.—When did he start to be in a comatose state?

30 A.—Monday and Tuesday his condition was not good. Tuesday night his condition was not good: I could see he was becoming worse. Tuesday morning he had a very bad attack — no, that was Wednesday morning — he had a bad attack about 5 o'clock.

Q.—Did you notice at any time he received the Last Rites of the Church?

A.—I know he used to take Communion very often. The Last Rites were in the last week. There was another nurse on with me when he had the Last Rites. That was Thursday night, if I remember correctly.

40 Q.—Could he walk?

A.—Not when he had the Last Rites: he was a patient in bed.

Q.—During the last week, starting from the 18th, could he walk? After he came back from that drive?

A.—I was on night duty, and every night when I went on Mr. Quinlan was in bed.

Q.—At what time did you start your duty?

A.—From eight o'clock at night until eight o'clock in the morning.

VERNIE L. KERR (for Plaintiff's) Examination in chief.

Q.—And, when you came on at eight o'clock he was in bed?

A.—Yes.

Q.—And, he always was in bed during the time you were there?

10 A.—Starting Saturday: from the Saturday on.

Q.—When you say Mr. Quinlan was getting worse from the Monday, or even the Saturday, in what way was he getting worse?

A.—His breathing was not good. His breathing all along was not good. He seemed very tired. He had more frequent heart attacks, and he did not rest at night. He was in pain too when he would have his heart attacks.

Q.—Were you speaking to him from the 18th?

20 Witness:—With Mr. Quinlan?

Counsel:—Yes.

A.—Oh, yes.

Q.—Was he answering?

A.—Yes.

Q.—What were you asking him? What kind of conversation did you hold with him?

30 A.—Just general conversation. I would ask him what kind of a day he had, and what I could do for him to make him comfortable.

Q.—Would he answer you?

A.—Yes. Mr. Quinlan never did talk much. He would talk, but I never went into long conversations with him.

By the Court:—

Q.—Even if it was a very short conversation, did you speak on general topics outside of his illness?

40 Witness:—You mean things going on outside in the City?

His Lordship:—Yes: such as news, for instance.

A.—Yes, I would: Saturday, and Sunday.

Q.—Will you give an example of those ordinary conversations?

VERNIE L. KERR (for Plaintiff's) Examination in chief.

10 A.—It is over three years ago now, and it is very hard to remember, of course. I would come in at night, and tell him, perhaps, what I had done during the day. It was June, and the weather was nice. They would be just general conversations. Of course, from Monday night on Mr. Quinlan was very ill, and I did not do any talking any more than was necessary.

By Mr. Masson, Continuing,

Q.—At any time after the Sunday or the Monday before his death did you ask him any question which he did not seem to understand or to which he did not give you answers?

20 A.—Not Saturday and Sunday. As I say, I went on at night, and he would be very tired, and I would fix him up. It was night, and everything was quietened down a little after nine o'clock. I might give him a little stimulant, such as hot milk or broth during the night, and in the morning he would have a cup of tea, and I would fix him up for the day nurse.

Q.—At any time during that week did he begin to show signs that he did not understand what you were saying to him, and, if so, when?

A.—Monday night when I came on he was very restless and tired. I gave him a hypodermic early that night, and after that he would go into a light sleep.

30 Q.—Was he irrational at times?

Mr. Beaulieu:—I object to this question as leading.

By Mr. Masson, Continuing,

Q.—The questions which were put to you by the learned Judge were in reference to Sunday and Monday. What about Tuesday? Was he still worse?

40 A.—Tuesday night he was worse. His condition was worse. He was weaker. His breathing was not so good. I remember that was a very bad night he had.

Q.—Did you speak to him that night?

A.—Yes, I would always speak to him when I would go in, and up until Tuesday night he would know me.

Q.—Up to Tuesday night he knew you?

A.—Tuesday night, when I went on duty.

Q.—And, after that?

A.—At times I think he would.

VERNIE L. KERR (for Plaintiff's) Examination in chief.

Wednesday morning, when he was so ill — he had a bad attack — I do not know whether he knew me then or not. He never mentioned my name.

10

Q.—Was he in the habit of mentioning your name?

A.—He would speak to me, and ask me for things.

Q.—When did he start not speaking to you and asking you for things as he had done before?

A.—Wednesday morning.

Q.—He ceased speaking to you from Wednesday morning?

A.—Yes.

Q.—Did you notice at a certain time that he was not understanding what you were telling him?

20

Mr. Beaulieu:—I object to this question as suggestive.

A.—In March, when Mr. Quinlan had a very bad attack, he did not understand.

Do you mean in June?

By the Court:—

Q.—The last week in June.

30

A.—On Monday and Tuesday nights after I would give him the quarter grain hypodermic of morphine sulphate, in about half an hour he would go into a light sleep, and may be he would waken and I would ask him something, and he would be very drowsy from that, but up till Wednesday morning early he always seemed to understand what I would say to him, or ask him.

By Mr. Masson, Continuing,

40

Q.—Will you look at Exhibit P-27, which is a certificate for shares in Quinlan, Robertson & Janin, Limited, on the back of which appears a photostatic copy of the signature "Vernie L. Kerr", and will you tell us if that signature is yours?

A.—Yes, that is mine, but the date is not the same as I signed it.

Q.—On what date did you sign it?

A.—I do not remember the date, but I remember it was in the month of May, when I was on day duty.

VERNIE L. KERR (for Plaintiff's) Examination in chief.

Q.—So, this certificate was signed by you as a witness to the signature of Mr. Hugh Quinlan in May, while you were on day duty?

A.—I was on day duty in May.

10 Q.—Have you any particular reason to remember it was not in June, but in May, that you signed as a witness on this certificate Exhibit P-27?

A.—I was on day duty. I can remember when Mr. Quinlan signed that, and I witnessed Mr. Quinlan's signature.

Q.—Who were present when you witnessed that signature?

A.—Mr. A. W. Robertson.

Q.—Where was that?

A.—Mr. Quinlan's residence in his room.

20 Q.—Was there anyone else present at the time?

A.—Just Mr. Quinlan, Mr. Robertson, and myself. There may have been others in the house.

By the Court:—

Q.—What was said prior to the signing by Mr. Quinlan and your signing as a witness?

A.—Mr. Robertson asked me if I would come in and witness Mr. Quinlan's signature, which I did.

30 Q.—So, Mr. Robertson had been alone with Mr. Quinlan before you were asked to act as a witness?

A.—I think so. I was on day duty. It was right after lunch, if I remember correctly. I think I went out of the room, and Mr. Robertson saw me in the hall. I had just stepped out. He asked me, and I went in and witnessed it. That was in May.

By Mr. Masson, Continuing,

40 Q.—Did Mr. Quinlan or Mr. Robertson tell you anything in reference to that signature?

A.—Mr. Quinlan did not tell me anything. Mr. Robertson asked me if I would witness Mr. Quinlan's signature, and if I remember correctly he said they were shares of the Company — business papers.

Q.—Did he say anything else?

A.—I do not remember anything else.

VERNIE L. KERR (for Plaintiff's) Examination in chief.

By the Court:—

Q.—Did Mr. Quinlan sign in your presence?

A.—Yes, your Lordship.

10 Q.—And, you signed after him?

A.—Yes.

By Mr. Masson, Continuing,

Q.—Was there any typewriter in the room?

A.—I did not see any. There was not any.

Q.—What did you do after having signed as a witness?

A.—I went out of the room.

20 Q.—Did you go out alone?

A.—Yes.

Q.—Mr. Robertson remained in the room with Mr. Quinlan after you went out?

A.—I left him in the room. He was in for a little while: not very long.

Q.—How long was he there after you went out?

A.—Not very long. I do not remember exactly how long — a few minutes.

Q.—When he went out did he speak to you?

30 A.—He just saw me in the hall, and spoke to me, and went downstairs.

Q.—When he went out did he say anything to you about those share certificates?

A.—I cannot remember it correctly. I cannot remember. I do not think he did. If he did, he just said they were shares of the Company. He did make some remark — shares of the Company, that they were selling, and that was why he would like my signature to witness Mr. Quinlan's.

40 Q.—Was the name of anyone else besides Mr. Robertson, Mr. Quinlan, and yourself, mentioned to you when Mr. Robertson came out?

A.—I am not clear on that. It seems to me he mentioned Mr. Janin. I am not clear on what he said, something about Mr. Janin, Mr. Robertson, and Mr. Quinlan - the Company. I do not remember.

Q.—What did he say in reference to Mr. Janin?

A.—It was something about the business — the selling of the shares. I understood it was Amiesite.

VERNIE L. KERR (for Plaintiff's) Examination in chief.

Q.—How did the name of Mr. Janin come into that conversation?

A.—Mr. Robertson brought it up.

Q.—What did he say about Mr. Janin?

10 A.—It was a very short conversation, and I cannot remember the details of it. It was just mentioned as he was going downstairs, that they were selling those shares of the Company — that Mr. Quinlan was selling them, and Mr. Janin was in the Company.

Q.—This was not in the presence of Mr. Quinlan?

A.—No, it was out of the room. Just as Mr. Robertson was going down the stairs.

Q.—Was there any question of any trouble between Mr. Robertson or anyone else and anyone else?

20 A.—I am not clear on that. I cannot express myself, because I do not know enough about it to know.

Q.—To the best of your knowledge, what do you remember about that?

A.—As I understand it — I may have it incorrectly — I do not know. Mr. Robertson just made the remark, and then went downstairs. I think it was to the effect that they were selling those shares, or the Amiesite, forming another Company, and that Mr. Janin — I cannot remember it correctly.

Q.—To the best of your knowledge, what do you remember

30 A.—There was something about Mr. Janin and his personal home affairs — and Mr. Quinlan was selling those shares to Mr. Robertson. That is as nearly as I understand it, if I understand it correctly.

Q.—What did you understand when he spoke to you about the personal affairs of Mr. Janin.

A.—I did not ask him.

Q.—What did he say about the personal affairs of Mr. Janin?

A.—He did not say very much.

40 Q.—What relation was there between the signature to that certificate and Mr. Janin's personal affairs?

A.—I do not understand you.

Q.—Did Mr. Robertson mention anything to you which would justify him in speaking about Mr. Janin and Mr. Janin's personal affairs in reference to the signature of that share certificate?

A.—I did not understand it at the time when he made the remark, and I did not ask him. I would tell you, but I did not understand it, and I did not go any further than that.

VERNIE L. KERR (for Plaintiff's) Examination in chief.

10 Q.—Will you look at Exhibit P-26, which is a certificate issued to the late Hugh Quinlan for 1150 shares in Quinlan, Robertson & Janin, Limited, and will you tell us if the signature “Vernie L. Kerr” which appears on the blank transfer of that certificate is your signature?

A.—That is the way I always make my “K”.

I signed two.

Q.—When you say that is the way you make your “K”, you refer to Exhibit P-27?

A.—Yes.

20 Q.—Will you look at Exhibit P-9, which is a share certificate in Amiesite Asphalt Company, Limited, for one share, in the name of Hugh Quinlan; and at Exhibit P-10, which is a share certificate in the name of Hugh Quinlan for 49 shares, and will you tell us if the signature “Vernie L. Kerr” which appears on the blank transfer form of those certificates is your signature?

A.—I signed two.

By the Court:—

Q.—And, that was all?

30 A.—Yes, your Lordship.

Q.—You are sure?

A.—Yes. I witnessed Mr. Quinlan's two.

Q.—And, you signed twice?

A.—I signed twice, in May.

By Mr. Masson, Continuing,

Q.—You did not sign four?

A.—No, I signed two.

40 Q.—Will you look at these Exhibits, and tell us which are the ones you signed?

A.—That is fairly hard.

Mr. Campbell:—I think the witness should be shown the originals, before she is asked to testify on this.

Witness:—I do not see where they get four. I would like to see the originals.

J. McARTHUR (recalled for Plaintiff's) Examination in chief.

Mr. Masson:—Then, we will suspend her examination on this until two o'clock.

10 His Lordship:—(to the witness) If you are coming back at two o'clock, I wish you would not speak to anyone, or let anyone speak to you, about this case, without any exception whatever. No one should approach you to make you remember better, or anything of the kind. Keep aloof from anybody.

Witness:—Yes, your Lordship.

And further for the present deponent saith not.

20

J. H. Kenehan,
Official Court Reporter.

DEPOSITION OF JEAN McARTHUR

A witness recalled on behalf of the Plaintiffs.

30 On this second day of December, in the year of Our Lord one thousand nine hundred and thirty personally came and appeared; Jean McArthur already sworn, who being recalled on behalf of the Plaintiffs, deposes as follows:—

Examined by Mr. Masson, K.C.:—

Q.—You told us you went out for a drive with Mr. Quinlan on June 18th, 1927?

40 A.—Yes, I did.

Q.—Can you give us any particulars about his condition of health when you came back? In what condition was he?

A.—Mr. Quinlan was worse when he returned on that day than he had ever been.

Q.—Was that due to the trip he had made on that day?

A.—I think not. He had had many, and they had not affected him in that way.

Q.—How was he on that day when he came back?

A.—He was very much more tired than usual.

J. McARTHUR (recalled for Plaintiff's) Examination in chief.

Q.—Could he speak?

A.—Oh, yes.

Q.—Did you speak to him?

A.—Yes, I did.

10

Q.—What kind of conversation did you hold with him?

A.—Mostly to help him along and sort of make him feel a little better. Sometimes on general things to take his mind off his illness. That night he did not speak much; he was too tired.

Q.—What about Sunday?

A.—When I came on Sunday morning I found him much worse.

Q.—What time did you come on Sunday morning?

A.—Eight o'clock.

20

Q.—And, he was much worse?

A.—Yes.

Q.—Did you speak to him that day?

A.—Yes, quite often.

Q.—Was he suffering more?

A.—I think he was, but he did not seem conscious that he was, so much so that he wanted to go out, and I telephoned Dr. Hackett to prevent him.

Q.—And, Dr. Hackett prevented him from driving that Sunday?

30

A.—I telephoned Dr. Hackett, and he came over and advised Mr. Quinlan not to go out.

Q.—Under what circumstances did he make that drive on Saturday? Did he ask for it?

A.—He went out almost every day in June. It was usual for him to go out in the afternoon, or some time in the morning.

Q.—And, he was prevented from taking the drive on the Sunday?

A.—He was not able to go on Sunday.

Q.—What kind of a drive did he have on Saturday?

40

A.—We took quite a long drive. He always liked to be in the car, and he liked to go long distances.

Q.—What do you mean by quite a long drive?

A.—I think we went out to Ahuntsic, and back.

Q.—How long did that take?

A.—We were out an hour, I should think.

Q.—Was he worse on Monday than he was on Sunday?

A.—Yes, he was gradually getting worse. I found him worse on Monday morning.

J. McARTHUR (recalled for Plaintiff's) Examination in chief.

Q.—Did you speak to him?

A.—Yes.

Q.—Did he understand what you were saying to him?

A.—Yes, he did. His mind was clear.

10 Q.—On what matters did you speak to him?

A.—I generally spoke to him on almost everything that occurred, and he generally told me how he felt when I went on in the morning. I very seldom spoke to him about his health, because I wanted to keep his mind off himself as much as possible.

Q.—Did he always understand what you were telling him during the week previous to this death?

A.—Yes, when I asked him a direct question he understood me, until Wednesday.

20 Q.—From Wednesday he did not understand?

A.—No; it did not convey much to him unless I spoke.

Q.—Was there any particular time on which he started not to understand what you were saying to him?

A.—He became worse on Wednesday afternoon.

Q.—I suppose the conversation you were holding with Mr. Quinlan was the usual conversation of a nurse with her patient?

A.—Yes.

Q.—Which would be only for the benefit of his health and for his recovery?

30 Mr. Beaulieu, K.C., of Counsel for Defendant Robertson, objects to the question as suggestive.

The question is withdrawn.

Q.—I understood you said in your testimony that Mr. Quinlan's mind began to be befogged on Monday?

40 Mr. Beaulieu:—That is not a correct statement of the testimony of the witness.

By Mr. Masson, Continuing,

Q.—Did you use the word "befogged" in your testimony?

A.—Yes, I did.

Q.—What did you say?

A.—Mr. Quinlan's illness was such at the end that it would affect his brain gradually, very gradually from then until the end.

C. J. MALONE (recalled for Plaintiff's) Examination in chief.

Q.—From when?

A.—From Sunday until he died. The nature of his disease would do that.

10 Q.—From Sunday, the 19th?

A.—It would not be as much: it would come gradually.

And further deponent saith not.

J. H. Kenehan,
Official Court Reporter.

20

DEPOSITION OF CLIFFORD J. MALONE

A witness recalled on behalf of the Plaintiffs.

On this second day of December, in the year of Our Lord one thousand nine hundred and thirty personally came and reappeared; Clifford J. Malone, already sworn, who being recalled on behalf of the Plaintiffs, deposes as follows:—

30 Examined by Mr. Masson, K.C., of Counsel for Plaintiffs.

Q.—You are Secretary Treasurer of Quinlan, Robertson & Janin, Limited?

A.—Yes.

Q.—Have you brought with you the Share Certificate Book of that Company?

A.—Yes, I have.

Q.—Will you exhibit it please?

40 (Witness exhibits to Counsel the Book in question).

Q.—You notice in this Share Certificate Book there is Certificate No. 4, issued in the name of Mr. Hugh Quinlan, for 1 share; and Certificate No. 8, issued in the name of Mr. Quinlan, for 1150 shares?

A.—Yes.

Q.—Will you file this book at Exhibit P-66?

Mr. Beaulieu:—I do not think the book should be produced. It may be exhibited.

MARG. QUINLAN (for Plaintiff's) Examination in chief.

His Lordship:—I do not see the necessity of producing it for the moment. It may be left with the Court, to be exhibited to the witness Miss Kerr.

10 And further deponent saith not.

J. H. Kenehan,
Official Court Reporter.

DEPOSITION OF MARGARET QUINLAN

20 A witness produced and examined on behalf of the Plaintiffs.

On this second day of December, in the year of Our Lord one thousand nine hundred and thirty personally came and appeared; Margaret Quinlan, of the City and District of Montreal, wife of Jacques Desaulniers, a witness produced and examined on behalf of the plaintiffs, who, being duly sworn, deposes as follows:—

Examined by Mr. Masson, K. C., of Counsel for Plaintiffs.

30 Q.—You are one of the Plaintiffs in this action?

A.—Yes.

Q.—You are a daughter of the late Hugh Quinlan?

A.—Yes.

Q.—Where were you living up to the time of your father's death?

A.—I was living at home until January. I was married in January.

Q.—What year?

A.—1927.

40 Q.—From January, 1927, did you go to your father's house?

A.—Frequently.

Q.—What do you mean by frequently?

A.—Possibly four or five times a week, sometimes more frequently.

Q.—Did you have an opportunity of seeing your father every time you went there?

A.—Always.

MARG. QUINLAN, (for Plaintiff's) Examination in chief.

Q.—Your father was ill at the time?

A.—Very.

10 Q.—Can you give the Court any explanation as to the nature of his illness, and to what extent it affected his health?

A.—I know he had very severe heart trouble, as far as the doctor and the nurses said.

By Mr. Beaulieu:—

Q.—What doctor?

A.—Dr. Hackett, and Dr. Lafleur.

20 We had gone to see him at the Hospital a year before he died, and he was very ill then.

By Mr. Masson, Continuing:—

Q.—From when was he confined to his house?

A.—He did not go back to work after Christmas, 1925.

Q.—I understand there were nurses attending to him?

A.—Yes.

Q.—From when?

A.—From April until the next June a year.

Q.—How many nurses were there?

30 A.—Sometimes two, sometimes four.

Q.—Miss Kerr, and Miss McArthur, who were here this morning were there?

A.—Yes, and Miss McLennan, who was dismissed; and Mrs. Boker, and Miss Beauchamp.

Q.—Did you have an opportunity of seeing your father during the last month of his illness?

A.—Yes, nearly every day.

Q.—How was your father during the month of June?

40 A.—Very ill, as far as I could judge.

Q.—Was it to your knowledge that on or about June 18th, 1927, he went out for a drive?

A.—Yes. I happened to be at the house in the morning, and I knew he was going out in the afternoon, and I heard about it the next day.

Q.—How was he when he went out?

A.—I could not say. I was not there. I do know, however, he was very sick in the morning, but he insisted on going out.

MARG. QUINLAN (for Plaintiff's) Examination in chief.

Q.—Did you see him when he came back?

A.—No.

Q.—Did you speak to him on the 18th?

A.—In the morning when I was at the house, yes.

10 Q.—What was the subject matter of your conversation with him?

A.—Nothing very important, as far as I remember.

Q.—Did you see him on the Sunday?

A.—Yes, I did. That was the last time I spoke to him.

Q.—How was he that day?

A.—He was very ill. I went to the house for dinner with my husband, and he said he was too sick to see my husband and also my brother in law who was also invited for dinner.

20 There was some little business he promised to settle for me, but he told me to come back the next day and it would be settled. I went back the next day, and he was too ill, and I could not even speak to him. That was on the Monday. My mother told me he could not possibly settle the business he had to settle for me.

Q.—Did you see him on the Monday?

A.—Yes, but he did not speak to me. He was lying in bed very ill.

Q.—Did you enquire whether you could speak to him?

30 A.—I did.

Mother was having her lunch in his room, with the nurse, Miss McArthur, and she said: "Your father is too ill today. He cannot see you on business".

Q.—Did you see him on the following day?

40 A.—No, I did not. I telephoned the house, and mother told me he was not very much better. On Wednesday I went in, but no one was allowed in his room. Mother telephoned that my father was dying and to come down to the house. That was about ten o'clock in the morning.

Q.—That was on June 22nd, 1927?

A.—Yes.

Q.—Did anyone try to see your late father that day?

A.—Yes. I was speaking to mother, and Dr. Hackett had gone in to see him. Mother asked Dr. Hackett how my father

MARG. QUINLAN (for Plaintiff's) Examination in chief.

was, and if he could get better, and Dr. Hackett said no, and that he feared very much if he got better his mind or his sight were gone.

10 As mother was speaking, Mr. Robertson came to the room, and asked to see father on business, and Dr. Hackett said no, that no could see him and that he could not be disturbed. Mr. Robertson telephoned to Mr. Perron not to come to the house, that father could not be disturbed that day.

Q.—That is Mr. J. L. Perron?

A.—Yes.

20 That was about eleven o'clock or half past eleven in the morning.

Q.—Did anyone see your father that day?

A.—Not to my knowledge. Mother went into the room a couple of times.

By Mr. Beaulieu:—

Q.—That was on Wednesday, the 22nd?

A.—Yes.

30 From that time on father never spoke to me, or I do not think to any of the family as far as I know.

By Mr. Masson, Continuing,

Q.—Mr. Robertson did not see your father on the 22nd?

A.—No, not to my knowledge, because Dr. Hackett refused to let him into the room, saying father was too ill to be disturbed.

Q.—How do you know he telephoned Mr. Perron?

40 A.—Because I was in the room. Mother was speaking to Dr. Hackett, and Mr. Robertson asked him if he could see father: Dr. Hackett said no, then Mr. Robertson telephoned Mr. Perron, saying that he could not come up to the house that day.

Q.—That who could not come?

A.—Mr. Perron.

Q.—Were you there the following day?

A.—Yes, every day until father died. I slept at the house: I did not go to my own house.

MARG. QUINLAN (for Plaintiff's) Examination in chief.

Q.—Did anyone go to the house to see your father?

A.—People came and enquired, but no one saw him.

Q.—Did Mr. Robertson come?

10 A.—He enquired, but he did not see father, or if he did it was not to my knowledge.

Q.—Were you there the whole day Wednesday, the 22nd?

A.—Yes, all day. I went home to get some things at night, and came back and stayed all night.

Q.—How long were you away?

A.—Not more than an hour at the most: long enough to get some night clothes and that was all.

Q.—Did you notice that anyone came in?

A.—Frequently, yes. I was downstairs.

20 Q.—Where was your father's room? On the first floor, or upstairs?

A.—Upstairs, on the first or second floor.

Q.—If anyone had come to the house to see your father in his room would you have seen him?

A.—I suppose so. I was there all the time, and the house is very open.

Q.—And all that day no one saw your father?

A.—Not to my knowledge, no.

Q.—Except the doctor and the nurses?

A.—No.

30 Q.—When did you learn for the first time your father's shares in Quinlan, Robertson & Janin, Limited, Amiesite Asphalt, Limited, and Ontario Amiesite, had been sold?

A.—We got some sort of Statement, I think, from the Capital Trust Company: incidentally, they marked it on the foot of the page, I think — I am not quite certain.

40 Q.—Will you look at Exhibit P-3, which is a Financial Statement of the Estate of your late father for the period from June 26th, 1927, to December 31st, 1927, and will you tell the Court if that is the Statement to which you have just referred?

A.—I do not know. Is this the one which is marked at the bottom of the page — the sale of the shares? Yes, this is the one.

Q.—Do you remember the date you received that Statement?

A.—I could not say I do.

Q.—The month?

A.—It seems to me it was in September, before we took this Action, — a month or so before. I am not sure, really.

MARG. QUINLAN (for Plaintiff's) Examination in chief.

Q.—But, it was in 1928?

A.—Yes.

10 Q.—Will you look at the Statement filed as Exhibit P-4, and will you tell me if you have ever seen it before? Did your sister see any Statement like yours?

Mr. Campbell:—I suppose Mrs. Desaulnier's sister will testify for herself.

Witness:—I think I saw this one.

By Mr. Masson, Continuing,

20 Q.—Did you ever see the Statement your sister Ethel received?

A.—No, I do not think so. I am quite sure I did not.

Q.—So, you learned for the first time those shares your father had before he died were sold when you received that Statement?

A.—Yes.

Q.—You did not know it before?

A.—No. We knew nothing of father's affairs, as a matter of fact.

30 Q.—When were you informed for the first time about the administration of the Estate of your late father?

A.—When I asked Mr. Biron once to send us a copy of the Will. It had neither been read to us or given to us until I asked for it. My husband went to his office to get a copy.

Q.—When was that?

A.—I should say three weeks after father's death — may be less.

Q.—You had the Will at that time?

A.—When we asked for it from Mr. Biron, yes.

40 Q.—When were you informed for the first time about the administration by the Testamentary Executors?

A.—When I got that Statement.

Q.—Were you present when the inventory was made?

A.—I never saw any. No, we were not present.

Q.—Were you ever notified about the Testamentary Executors proceeding to the inventory of the assets of the Estate of your Father?

A.—No.

*MARGARET QUINLAN (for Plaintiff's) Cross-examination
for Defendant Robertson.*

Q.—Did you ever accept that Statement filed as Exhibit P-3?

A.—No: I wrote refusing it.

Q.—You refused in writing?

10 A.—Yes, and they answered me they had referred the matter to the solicitor of the Estate, the Hon. Mr. Perron.

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

Q.—I understand Dr. Hackett was the physician attending your father?

A.—Yes.

20 Q.—Did he attend your father during his whole illness?

A.—As far as I know, he did.

Q.—Did you ever see Mr. Robertson at your father's place?

A.—Very often.

Q.—During the months of May and June?

A.—I did not see him every time he went, because he often went at noon hour and I was at home.

Q.—But, he was a frequent visitor?

A.—Yes.

Q.—Did you ever see Mr. Perron at your father's house?

30 A.—Never, but I know he went because my Mother told me he did. I never saw him, however.

Mr. Campbell, K.C., of Counsel for Defendant Capital Trust Corporation, declares he has no cross examination to make of the witness.

And further deponent saith not.

J. H. Kenehan,
Official Court Reporter.

ANNE QUINLAN (for Plaintiff's) Examination in chief.

DEPOSITION OF ANNE QUINLAN

10 A witness produced and examined on behalf of the Plaintiffs.

On this second day of December, in the year of Our Lord one thousand nine hundred and thirty personally came and appeared Anne Quinlan, of the City and District of Montreal, a witness produced and examined on behalf of the Plaintiffs' who, being sworn, deposes as follows:—

Examined by Mr. Masson, K.C., of Counsel for Plaintiffs.

20 Q.—You are a daughter of the late Hugh Quinlan?

A.—Yes.

Q.—You know your father was ill in 1927?

A.—Yes.

Q.—When was he confined to his room for the first time?

A.—In April, I think. I do not know the exact date, but it was April.

Q.—What year?

A.—1926. Not to bed all the time, but he was sick. He was confined to the house.

Q.—He was not attending to his work?

30 A.—No.

Q.—He became worse in 1927, I suppose?

A.—Yes.

Q.—Did you attend to him?

A.—I did night duty in September, for about two weeks. That was in 1926; and also in December, 1926.

Q.—You were nursing your father?

A.—Yes, I did night duty when Miss McArthur was off duty.

Q.—Did you nurse your father apart from that?

40 A.—I used to help the nurses, but I did not nurse him.

Q.—In what condition was he?

His Lordship:—Is not that already proved sufficiently Mr. Masson? Unless the witness can give some special instances.

By Mr. Masson, Continuing,

Q.—Did you see your father from June 18th, 1927, up to the time of his death?

A.—Yes.

KATHERINE CLARK (for Plaintiff's) Examination in chief.

Q.—In what condition was he on June 19th, 1927?

A.—He was pretty sick. As a matter of fact, he was very ill.

Q.—Do you know any particular fact about his illness?

10 A.—Only that he had heart trouble: except what the doctor
said.

Q.—Were you speaking to him?

A.—Yes.

Mr. Beaulieu, K.C., of Counsel for Defendant Robertson, declares he has no cross examination to make of the witness.

Mr. Campbell, K. C., of Counsel for Defendant Capital Trust Corporation, declares he has no cross examination to make to the
20 witness.

And further deponent saith not.

J. H. Kenehan,
Official Court Reporter.

DEPOSITION OF KATHERINE CLARK

30

A witness produced and examined on behalf of the Plaintiffs.

On this second day of December, in the year of Our Lord one thousand nine hundred and thirty personally came and appeared; Katherine Clark, of the City and District of Montreal, Registered Nurse, a witness produced and examined on behalf of the Plaintiffs, who, being duly sworn, deposes as follows:—

40

Examined by Mr. Masson, K.C., of Counsel for Plaintiffs.

Q.—What is your occupation ?

A.—Registered nurse.

Q.—Did you nurse the late Mr. Hugh Quinlan in 1927?

A.—Yes.

Q.—When did you start nursing him?

A.—I am not quite sure if I was with him three or four days before his death.

KATHERINE CLARK (for Plaintiff's) Examination in chief.

Q.—Were you on day duty, or night duty?

A.—Day duty.

10 Q.—Did you speak to him during the time you were nursing him?

A.—No, he was too ill.

Q.—You did not speak to him at all?

A.—Not any more than one would speak to a baby who was unconscious.

Q.—Can you tell His Lordship on what day you went there for the first time?

A.—I am not sure if I came on Thursday or Friday, but I was with him until he died.

Q.—Thursday morning?

20 A.—I think in the morning.

By the Court:—

Q.—What day did he die?

A.—Sunday.

By Mr. Masson, Continuing,

Q.—He died on June 26th, 1927?

30 A.—Yes.

Q.—Do you remember at what hour?

A.—I am not sure, but I fancy it was around two o'clock.

Q.—Two o'clock in the afternoon?

A.—Yes, in the afternoon.

Mr. Beaulieu, K.C., of Counsel for Defendant Robertson, declares he has no cross examination to make of the witness.

40 Mr. Campbell, K.C., of Counsel for Defendant Capital Trust Corporation, declares he has no cross examination to make of the witness.

And further deponent saith not.

J. H. Kenehan,
Official Court Reporter.

WM. A. QUINLAN (for Plaintiff's) Examination in chief.

DEPOSITION OF WILLIAM A. QUINLAN

A witness produced and examined on behalf of the Plaintiffs.

10

On this second day of December, in the year of Our Lord one thousand nine hundred and thirty personally came and appeared; William A. Quinlan, of the City and District of Montreal, General Manager, General Motors Company, aged 44 years, a witness produced and examined on behalf of the Plaintiffs, who, being duly sworn, deposes as follows:—

Examined by Mr. Masson, K.C., of Counsel for Plaintiffs.

20

Q.—You have already been heard as a witness?

A.—Yes.

Q.—You remember the last time you were here you deposited the book I now show you?

A.—Yes.

Q.—I found in this book the little sheet of paper I now hand you. Will you please tell me if this is in your handwriting?

A.—Yes, I think so.

Q.—Do you say it is your handwriting?

A.—It looks like it. I think it is.

30

Q.—Will you file this paper as Exhibit P-66?

A.—Yes.

Q.—For what purpose did you write that paper?

A.—I cannot tell you. I do not even know what it all means now, to tell you the truth.

Q.—Does that paper bear any date?

A.—There is a date on it.

Q.—What is the date?

A.—May 21st, 1927.

Q.—How does the first line read?

40

A.—(reading) “No. 9, Amiesite, Dunlop, 200

No. 5, “ H.Q. 49

No. 1, “ “ 1

(Deposited.....

I cannot read the next word.

“A.W.R.....

And there is another word.

“QR & J, H.Q. 1

“ ” 1150

“Deposited AWR box, May 21, 1927.”

WM. A. QUINLAN (*for Plaintiff's*) *Examination in chief.*

Q.—Is not the little word which you could not read after the word “deposited” the word “in”?

A.—Yes, I guess it is.

Q.—So, it reads: “Deposited in AWR box”?

10 A.—Yes.

Q.—Is that a note you took yourself?

A.—Naturally, if it is in my handwriting it must be.

Q.—How is it that you wrote that note.

A.—I do not even remember writing it, but there must have been some reason.

Q.—How does it happen it was in the book you brought to Court?

20 A.—I brought here everything I had when you asked me to deposit it with my evidence.

Q.—What kind of books were those you brought to Court?

A.—They are right here now.

Q.—I understand this book contains certain entries in reference to.....

A.—(Interrupting) Household expenses, and one thing or another.

Q.—Of your late father?

A.—Yes.

Q.—While he was living?

A.—Yes: for a certain period.

30 Q.—How is it that book is not in the possession of the Testamentary Executors?

A.—Do you think there is anything in it that should be? You will notice it finished years before my father died. I stopped keeping it.

Q.—You are living with your mother?

A.—Yes.

Q.—In the house where your father died?

A.—Yes.

40 Q.—And, that book was in your possession?

A.—It was in the house.

Q.—You are not a Plaintiff in this case?

A.—As far as I know, I do not know what I am in this case.

Q.—You are one of the Mis en Cause?

A.—That is the right term, I suppose.

WM. A. QUINLAN (for Plaintiff's) Examination in chief.

By the Court:—

10 Q.—Were you aware in May that your father was the owner of a very large number of shares in the Quinlan & Robertson Company?

A.—I knew very little about it.

20 This notation (Exhibit P-66) I cannot recall why I ever made it. There may have been some reason because I used to keep track of my father's affairs for a while, then I stopped because he had his own Secretary, Mr. Leamy, who looked after his affairs, and I had some other work to do, and I was sick at the time, so I stopped looking after them. I do not know where this scribbled note came from.

By Mr. Masson, Continuing,

Q.—At the time you wrote that paper you were attending to your father's business?

A.—I only did it as a pastime.

Q.—Still, you were attending to his business?

A.—When he told me something.

30 Q.—So, when you wrote that paper you were attending to your father's business as a pastime?

A.—Yes.

Q.—And, in attending to your father's business you wrote those notes on Exhibit P-66?

A.—I must have, if it is in my writing.

Q.—To your knowledge the number of shares which appear on that paper were the shares which your father was holding in the Companies mentioned on it?

A.—No, sir.

40 Q.—How is it that?

A.—I do not know.

Q.—You did not know Mr. Dunlop had certain shares in Amiesite, Limited?

A.—No.

Q.—You did not know your father had shares in Amiesite Asphalt, Limited?

A.—I had a vague knowledge he was interested in it. I never knew.

WM. A. QUINLAN (for Plaintiff's) Examination in chief.

Q.—Did you know your father was interested in Quinlan, Robertson & Janin, Limited?

A.—Only his name was connected with it.

10 Q.—You did not know the number of shares he had in that Company?

A.—No, I never knew.

By the Court:—

Q.—When did you learn that at the time of your father's death he had no more shares in that Company?

20 A.—I never learned it, your Lordship. I had no business with my father, and I knew nothing about it until the Will was read. That was the first knowledge I had.

By Mr. Masson, Continuing,

Q.—Did you ever work for Quinlan, Robertson & Janin, Limited?

A.—Yes.

Q.—In what capacity?

A.—I suppose you would say as bookkeeper, and one thing or another.

30 Q.—Up to what time did you work as bookkeeper for that Company?

A.—It must have been ten years ago.

Q.—When did you stop so working?

A.—I cannot tell you the date.

Q.—About ten years ago?

A.—Nine or ten years ago, probably. I am not sure.

Q.—You knew at the time your father was a shareholder in that Company?

A.—The Company then was a very small company.

40 Q.—But, your father was interested in it ?

A.—Yes, and there were other parties interested too.

Q.—You did not know how many shares your father had in that Company at the time?

A.—No.

Q.—Where did you get the information which is contained on this paper Exhibit P-66?

A.—Naturally, I probably got it from my father. Probably he came home some night and told me before dinner. That is where I got it.

*W. A. QUINLAN (for Plaintiff's) Cross-examination for
Defendant Robertson and for Defendant Capital Trust Co.*

Q.—So, the probabilities are your father gave you the information contained on this paper Exhibit P-66?

10 A.—Yes, he must have, because I would have no other way of getting it.

Q.—What do the letters “AWR” represent?

A.—Mr. A. W. Robertson.

Q.—The Defendant in this case?

A.—I suppose so.

Q.—Have you any doubt Mr. A. W. Robertson is the Defendant?

A.—No.

20 Cross examined by Mr. Beaulieu, K.C., of Counsel for Defendant Robertson.

Q.—Can you fix the date upon which you took those notes?

A.—No, I cannot, outside of the date on the paper.

Q.—Is the whole document in your own handwriting?

A.—Yes.

Cross examined by Mr. Campbell, K.C., of Counsel for Defendant Capital Trust Corporation.

30 Q.—You referred to the fact that the entries in this book which you exhibited stopped some time before your father's death. Will you please verify the date of the last entry?

A.—May, 1925.

Q.—As far as you know, was there any information in that book that the Executors ought to have had?

A.—I think if you look it over you will find it is mostly household expenses.

40

J. H. Kenehan,
Official Court Reporter.

E. L. PARENT (recalled for Plaintiffs Examination in chief.

DEPOSITION OF EMMANUEL L. PARENT

10 A witness recalled on behalf of the Plaintiffs.

On this second day of December, in the year of Our Lord one thousand and thirty, personally came and re-appeared, Emmanuel L. Parent, already sworn, who, being recalled on behalf of the Plaintiffs, deposes as follows:—

Examined by Mr. Tanner, K.C., of Counsel for Plaintiff:—

20 Q.—Shortly after the death of Mr. Quinlan did you have in your possession the Statements of Quinlan, Robertson and Janin from the year 1922 up to the 31st March, 1927?

A.—They all came together. I do not know exactly on what date. I do not remember on what date they were sent to us, but I know we had them.

Q.—Was it shortly after the death of Mr. Quinlan? Within a few weeks?

A.—To make sure of the date I would have to look at my file.

Q.—Did you have those Statements before you when you prepared your Inventory?

30 Witness:—For the Succession, Duties?

Counsel:—Yes.

A.—Yes.

40 Q.—Will you please look at the Statement of Quinlan, Robertson and Janin which forms part of Exhibit P-C-10, being the Balance Sheet as at March 31st, 1927, and, particularly will you please state if you see an item there “Dividend declared \$84, 947.54”?

A.—Yes, \$84, 947.54.

Q.—Did you include a part of that dividend as an asset of the Estate of the late Mr. Quinlan in your Inventory as well as in the Statement which you sent to the Government?

A.—No, the Statement does not show Mr. Quinlan had any shares in that, so I do not know. The Statement does not show Mr. Quinlan’s name.

E. L. PARENT (recalled for Plaintiffs Examination in chief.

Q.—Do you mean to say when you made your Declaration for the Succession Duties office at Quebec that you did not know Mr. Quinlan was a shareholder in Quinlan, Robertson and Janin Limited, to the extent of 1151 shares?

10 A.—I knew they were sold on the terms of that letter.

Q.—Is it not a fact that in your Declaration to the Department at Quebec you included as a part of the assets of the Estate of the late Mr. Quinlan 1151 shares of Quinlan, Robertson and Janin?

A.—Yes, they do appear in that Statement.

Q.—And, your Statement was sworn to?

A.—Yes.

Q.—And, your Statement was filed in the month of September, 1927?

20 A.—I do not remember the date. Whatever date is shown on the Statement.

Q.—Seeing that you declared Mr. Quinlan was a shareholder in Quinlan, Robertson & Janin Limited for 1151, will you please state to the Court why you did not include as a part of his assets the proportion to which he was entitled in the dividends declared by Quinlan, Robertson and Janin Limited, and which appears as a liability of the Company in their Statement of March 31st, 1927?

A.—I do not know yet whether he is entitled to that share or not.

30 Q.—But, that is not what I asked you.

A.—That is my reply.

By the Court:—

Q.—Having declared in your report to the Government for Succession Duties that the Estate Quinlan was the owner of some 1151 shares in Quinlan, Robertson and Janin Company, how is it you did not also declare they were entitled to a proportion of the dividends declared by the same Company?

40 A.—This Statement is dated March 31st, 1927, not the date of death. There was nothing to tell me this dividend had not been paid in the period which extends from the 31st March.

Q.—Did you enquire whether it was paid or not?

A.—I made enquiries in January 1928.

Q.—After receiving this report which showed that certain dividends had been declared by the Quinlan, Robertson and Janin Company, did you enquire before making your report to the Government whether those dividends had been paid or not?

E. L. PARENT (recalled for Plaintiffs Examination in chief.

A.—I do not remember. There were enquiries made about the dividend due to Mr. Quinlan about the time we received that cheque I mentioned yesterday afternoon.

10 By Mr. Tanner, (continuing)

Q.—Did you afterwards have any correspondence with the Government in respect to the shares of Quinlan, Robertson and Janin?

A.—Several times, I think. Several exchanges of letters took place, as far as I can remember.

20 Q.—Did the Capital Trust Corporation, in its quality as Executor of the Estate of the late Hugh Quinlan, pay the Succession Duties on the shares of Quinlan, Robertson and Janin?

A.—We paid on everything that was included in the Statement.

Q.—Did you not receive a Certificate from the Department to the effect that the Succession Duties were paid on the shares of Quinlan, Robertson and Janin?

A.—I think we did.

Q.—Did you at any time communicate to Mr. Robertson the Inventory which had been prepared?

A.—I mailed him a copy.

30 Q.—Is it not a fact that not only does the Estate appear as owner of those shares in a Statement which you sent to the Government, but also in the Inventory which you prepared as of the date of the death of Mr. Quinlan, which Inventory is filed as exhibit P-2?

A.—I would have to see the Statement.

Counsel exhibits the document exhibit P-2 to the witness.

40 Q.—Will you please look at page 4 of the Exhibit, and state if you do not note there the words: "Shares in the Province of Quebec, continued — H. Quinlan, Quinlan, Robertson and Janin, Montreal, 1151 Common shares."

A.—Yes.

Q.—Was this Inventory prepared by the Capital Trust Corporation jointly with Mr. Robertson?

A.—It was prepared by us, and I think we forwarded a copy to Mr. Robertson.

E. L. PARENT (recalled for Plaintiffs Examination in chief.)

Q.—How long after it was completed did you forward a copy?

A.—Right after, I think.

10 Q.—This inventory was prepared long before you sent the Declaration of the Assets of the Estate to the Quebec Government, was it not?

A.—Not very long. It was not finished very long before, because it took a long time to get some of the information.

Q.—But, some time before?

A.—I do not remember exactly.

By the Court:—

Q.—If it was not some time, it was before, in any event?

20 A.—Oh, yes, before.

By Mr. Tanner, Continuing:

Q.—Did Mr. Robertson ever complain to you at that time that you should not have included the 1151 shares of Quinlan, Robertson and Janin in that Inventory?

A.—Nobody ever complained to me. I showed it to Mr. Perron also. We showed the same Inventory to Mr. Perron before I sent it.

Q.—And.....

30 A.—(Interrupting) Nobody ever mentioned it.

Q.—Will you look at exhibit P-C-5, and will you state if the Statement in the blue cover, being Statement of assets at the date of death, June 26th, 1927, is the Statement which you sent to the Succession Duties Department, Quebec?

A.—This is the revised Statement, not the first one.

Q.—Will you please file a copy of the original Statement which you sent to the Succession Duties Office, Quebec, in the Fall of 1927?

40 A.—There was none filed in Quebec, as far as I know. It was in Montreal.

Q.—Then, in Montreal?

A.—I have no objection to filing it.

Q.—And, this will be exhibit P-67?

A.—Yes.

Q.—You say the Statement which forms part of Exhibit P-C-5, in the blue cover, is a revised Statement?

A.—Yes.

E. L. PARENT (recalled for Plaintiffs Examination in chief.

Q.—What was the date of the revised Statement? How long after June 26th, 1927, was it revised?

A.—Is there no date on the Statement?

10 Mr. Campbell:—Would there not be a letter in the file?

By Mr. Tanner, Continuing,

Q.—Was it revised a few months after?

A.—It was after we had agreed with the Succession Duties office on what value we should give to those shares. The dispute was mostly in regard to those big items. It must have been at least pretty nearly a year after. I think it was the next year: 1928.

20 Q.—You note that in this revised Statement, which was made nearly a year after Mr. Quinlan's death, there also appears 1151 shares of Quinlan, Robertson and Janin as forming part of the assets of the Estate — item 24?

A.—Yes: the same item appears.

Q.—Did you show this revised Statement to Mr. Robertson?

A.—I presume I sent him a copy. As a rule I used to send him a copy of everything we made — everything important.

30 Q.—Do you say that in accordance with your general custom and habit you did send him a copy, or are you sure of it?

His Lordship:—The witness has already answered that, Mr. Tanner.

By the Court:—

Q.—Were you the only one to discuss the values of those shares with the Provincial Authorities, or were you accompanied by some one else: either Mr. Robertson or Mr. Perron?

40 A.—We had several interviews. The first interviews I think I had alone, and at the last interviews Mr. Robertson and Mr. Perron were present, and I think Dr. Connolly was present.

By Mr. Tanner, Continuing:—

Q.—Will you please take communication of the copy of letter I now show you dated December 31st, 1927, signed by the Capital

E. L. PARENT (recalled for Plaintiffs Examination in chief.

Trust Corporation, per yourself, and addressed to Mr. Lazure (which forms part of Exhibit P-C-5), and will you please state if you sent that letter to Mr. Lazure of the Quebec Succession office?

10 A.—That seems to be an exact copy of my letter.

Q.—In this letter you say you enclose a copy of a letter which you have “received from Mr. A. W. Robertson, our co-executor, who is quite familiar with the value of the shares of A. W. Robertson Limited, and Quinlan and Janin, Limited,” Will you please take communication of a copy of letter dated December 29th, 1927, (which forms part of Exhibit P-C-5) which is apparently signed by A. W. Robertson, addressed to the Capital Trust Corporation, and will you state if that is the letter to which you refer in your letter of December 31st, 1927?

20 A.—This is a certified copy made by two of our employees.

Q.—You note in this letter of Mr. Robertson the words: “So far as Quinlan, Robertson and Janin Limited is concerned, you know neither you nor I can get any one to buy it and pay any reasonable sum for it”. Did you discuss with Mr. Robertson the value of those shares of Quinlan, Robertson and Janin?

A.—Oh, yes.

Q.—Was there any discussion between you and him as to the finding of a purchaser for those shares, after he had written you this letter?

30 A.—I do not think I had much to do about the sale of the shares.

Q.—He says: “So far as Quinlan, Robertson and Janin, Limited, is concerned, you know neither you nor I can get any one to buy it.” Did the Capital Trust Corporation, to your knowledge, try to sell those shares, or to find a buyer, prior to December 29th, 1927?

A.—No, not to my knowledge.

Q.—Did they try to find a buyer subsequently?

A.—Not to my knowledge.

40 Q.—You note this letter is dated December 29th, 1927. Will you please look at your cash book and say if on December 29th, 1927, you received a cheque for \$125,000., and will you please say of the cash book shows from whom this payment of \$125,000 was received?

A.—The first cheque was received December 31st, 1927.

Q.—Will you please tell the Court whether your cash book shows from whom the money was received?

E. L. PARENT (recalled for Plaintiffs Examination in chief.

A.—On December 31st the book shows the following entry:
“Cheque from A. W. Robertson, being 50% of sale of Estate shares interest in Quinlan, Janin, Limited and Amiesite Companies, No. 24 (that is the ledger folio \$125,000.”

10 Q.—When you received that cheque did you know Mr. Robertson sent it in payment for shares which he claimed to have purchased at that time?

A.—I am not quite clear on the question.

By the Court:—

20 Q.—When you received this very considerable cheque, \$125,000., being only 50% of a transaction for part of the shares in Quinlan, Robertson & Company, did you ask yourself how it was that those shares which so far had belonged to the Estate had been sold without your knowledge?

A.—No. I knew about that letter of June 20th, and we had discussed it several times. That is the letter of June 20th, 1927, whereby Mr. Robertson agreed to buy or to find a buyer. I came to the conclusion, naturally, that he either decided to buy or found a buyer.

By Mr. Tanner, Continuing: —

30 Q.—If your last answer is correct, will you please tell the Court how it happens that on December 31st, 1927, there is the following Statement from the Capital Trust Corporation:—

“Quinlan, Robertson and Janin, Limited, Montreal, in account with Capital Trust Corporation. December 31st, 1927: Re sale of H. Quinlan Estate shares in Quinlan, Robertson and Janin, six months interest on \$125,000, at 6%”.

40 Q.—Why did you send a Statement to Quinlan, Robertson and Janin, Limited, if you knew the shares were purchased personally from you, as you allege, by Mr. Robertson?

A.—I did not make this account myself.

Q.—The Statement I have just read to you forms part of exhibit P-C-15, and the heading is “Quinlan, Robertson and Janin, Limited, in account with Capital Trust Corporation.” The words “Capital Trust Corporation” are printed, and this is an exhibit certified to by your concern.

*E. L. PARENT (recalled for Plaintiff's) Cross-examination for
Defendant Capital Trust Co.*

10 A.—The Statement appears to have made in the name of
Quinlan, Robertson and Janin. I did not make the Statement
myself: one of my employees did. May be I did not pay much
attention to the name.

My letter claims the amount from Mr. Angus W. Robertson.

By Mr. Campbell:—

Q.—What is the date of the letter?

20 A.—December 31st. Both are the same date. Apparently
I did not pay much attention to the name. I looked at the amount
more than the name.

By Mr. Tanner, Continuing,

Q.—You state you claimed this sum of money from Mr. A.
W. Robertson. Will you please take communication of an extract
of a letter from A. W. Robertson, dated January 4th, 1928, filed
by the Capital Trust Corporation as part of Exhibit P-C-15, which
reads:

30 “I shall endeavour to collect the \$3,750 interest account
“with which you have billed me for Hugh Quinlan Estate.”

A.—That is Mr. Robertson's letter.

By the Court:—

Q.—In answer to your account?

A.—In answer to my account.

40 Cross examined by Mr. Campbell, K.C., of Counsel for Defen-
dant Capital Trust.

Q.—Your attention was called to an entry in the Balance
Sheet of Quinlan, Robertson and Janin, Limited, as at March
31st, 1927, forming part of Exhibit P-C-10, in which an item ap-
pears in reference to dividend declared \$84,947.54. Will you
please look at that Balance Sheet and state whether there is any
entry on it referring particularly to dividends payable to Mr.
Quinlan?

A.—There is one.

*E. L. PARENT (recalled for Plaintiff's) Cross-examination for
Defendant Capital Trust Co.*

Q.—What is the amount?

A.—\$2,867.46.

Q.—Did you claim that amount?

A.—I claimed that amount.

10 Q.—Did you receive payment of it?

A.—Yes.

Q.—When you received payment of that, did you enquire if there were any other amounts payable to Mr. Quinlan's Estate?

A.—I think I did, twice: at least once in writing.

Q.—Have you a copy of your letter?

A.—Yes, I have.

Q.—Will you refer to Exhibit P-C-15, and verify if it contains a copy of your letter to which you have referred, and the Statement that went with it?

20 A.—Yes, it does.

Q.—What is the date of the letter?

A.—September 21st, 1928.

Q.—And, accompanying that letter was the Statement, which is the next document on the file Exhibit P-C-15?

A.—Yes.

Q.—Did you ever get any additional information that there was any other dividend payable to Hugh Quinlan, until this matter first cropped up in the course of this trial?

A.—No.

30 By Mr. Tanner:—

Q.—Where do you see in that letter that you enquired if there were any other dividends due? You speak of a balance of dividend which you received, but I fail to see that you enquired if there were other dividends due. How do you make it out?

A.—That is the way I read it.

40 Q.—You say in the letter: "You will also notice by the memo at the foot of the Statement we have received cheque for \$2,867.26, which is, we understand, in payment of balance of dividend due the late Hugh Quinlan at the time of his death."

His Lordship:—Which means that they made some enquiries.

By Mr. Tanner: —

Q.—From whom did you enquire as to whether there were other dividends due?

A.—Mr. A. W. Robertson.

C. J. MALONE (recalled for Plaintiff's) Examination in chief.

Q.—What answer did you get?

A.—I got no reply.

Q.—And, you were satisfied with that?

A.—Yes. He was our co-executor.

10

By Mr. Masson:—

Q.—You are a Chartered Accountant ?

A.—Not a Chartered Accountant. We do not call them Chartered Accountants in Ontario. I am a Licensed Accountant — L.A.

Q.—You are an Auditor ?

A.—Yes. It is the same as a Chartered Accountant here.

And further deponent saith not.

20

J. H. Kenehan,
Official Court Reporter.

DEPOSITION OF CLIFFORD J. MALONE

A witness recalled on behalf of the Plaintiffs.

On this Second day of December, in the year of Our Lord
30 One thousand nine hundred and thirty, personally came and re-appeared, Clifford J. Malone, already sworn, who being recalled on behalf of the Plaintiffs, deposes as follows:—

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

Q.—Did you look up the information you were asked for this morning in reference to an item of \$4,836.67, which appears in the Statement of Quinlan, Robertson and Janin, Limited?

40 A.—After the Court adjourned this morning I only had an hour and a half to get you the copies you required, and I had to get you other records as well. I have not had time as yet to get the Macurban information you required, but I will get it later on in the day.

Q.—Or, for tomorrow morning?

A.—Yes, I will have it for tomorrow morning.

And further for the present deponent saith not.

J. H. Kenehan,
Official Court Reporter.

ROBERT SCHURMAN (for Plaintiff's) Examination in chief.

DEPOSITION OF ROBERT SCHURMAN

10 A witness examined on behalf of the Plaintiffs.

On this Second day of December, in the year of Our Lord One thousand nine hundred and thirty, personally came and appeared, Robert Schurman, of the City and District of Montreal, Chartered Accountant, aged fifty-three years, a witness produced and examined on behalf of the plaintiffs, who, being duly sworn, deposes as follows:—

Examined by Mr. Masson, K.C., of Counsel for Plaintiffs.

20 Q.—What is your occupation?

A.—Chartered Accountant.

Q.—How many years' experience have you had as such?

A.—Since 1902.

Q.—You are carrying on your profession in Montreal?

A.—Yes.

Q.—Under what name?

A.—R. Schurman & Company.

30 Q.—Have you had an opportunity of looking at the financial statements of Macurban Asphalt Limited, Amiesite Asphalt Limited, and Quinlan, Robertson and Janin, Limited, which have been filed in this case?

Witness:—For what years?

Counsel:—1925, 1926, 1927 and 1928.

40 A.—Yes. For Macurban I think you are quoting too many years. For Quinlan, Robertson and Janin I went back to 1922; for the other companies, for the whole period during which the records have been filed in Court.

Q.—Let us take, first, Quinlan, Robertson and Janin, Limited: You have looked at the statements which have been filed in reference to that Company?

A.—I have.

Q.—Did you ascertain from those Statements if there was any possibility of valuing the shares of that Company?

ROBERT SCHURMAN (for Plaintiff's) Examination in chief.

A.—Yes, in so far as the items which appear on the Statements are concerned: That is, taking what we call the book value of those Statements, less depreciation, and taking your values as they stand on the books of the Company.

10 Q.—Will you please give the Court the result of your valuation of the shares of Quinlan, Robertson and Janin, Limited?

A.—Quinlan, Robertson and Janin, as at 1927, showed total net assets of \$714,860.99. I might say by way of explanation that any figures I quote have been figures extracted from the Balance Sheets, with no figures of my own put in, and when I refer to net figures I mean figures less depreciation or any reserves. I am giving full allowance for that.

20 By Mr. Campbell:—

Q.—All as shown?

A.—All as shown. There are no outside figures on anything which I will give. They are exactly from the Balance Sheets.

By Mr. Masson, Continuing:—

Q.—Filed in this case?

A.—Yes.

30 Quinlan, Robertson and Janin, as at March 31st, 1927, the date preceding the death of the late Mr. Quinlan, gave total net assets of \$714,860.99, and 3452 shares outstanding, which gives a value of \$208.07 per share.

For the equity of the Estate in that, 1151 shares.....

By Mr. Campbell, interrupting:—

40 Q.—Have you reduced your testimony to statement form, and can you furnish us with copies so that we may follow it?

A.—Yes, I would be glad to give you copies.

I may say I just had access to the Court Records here yesterday morning.

If you will give me one of their accountants to check the figures we can have the whole thing done at one time.

ROBERT SCHURMAN (for Plaintiff's) Examination in chief.

I admit my figures are dry — figures always are — but if I might cut down the question I was asked, I was merely going to give you the average price per share in those different companies. I could confine myself to that, without quoting any of the other
10 figures. I assure the Court anything in my deposition will be the same figures as will be supplied to your accountants.

By Mr. Masson, Continuing:—

Q.—Did you make any figures for 1928?

A.—I did.

Q.—Will you please give us the result of your figures?

A.—The equivalent value per share in 1928 was \$249. I am
20 speaking now of Robertson and Janin, not Quinlan, Robertson and Janin; the name is changed.

Q.—Only the name of the Company was changed?

A.—Yes.

Q.—But, it was the same company?

A.—Yes.

Q.—What were the total assets of that Company in 1928?

A.—Net total assets, \$859,575.35.

Q.—Did you take into consideration, or did you make any
division between, the cash assets and the tangible assets of the
Company?

A.—I did.

Q.—What was the result?

A.—In 1927, the net liquid assets, consisting of cash, bonds,
stocks, accounts receivable, securities on deposits, stocks, material
and tools, estimates, and drawbacks, less reserve for maintenance,
was \$564,589.57; and in 1928, \$460,737.36. The fixed assets, con-
sisting of plant and property, less depreciation written off, net,
for 1927, \$150,271.42; and, for 1928, \$398,837.99.

Q.—That is the valuation of the shares according to the assets
of the Company. Did you make any valuation based on the income
40 of the company?

Witness:—For earnings?

Counsel:—Yes.

A.—Yes, I have that.

ROBERT SCHURMAN (for Plaintiff's) Examination in chief.

Q.—What is the valuation of the shares?

A.—They were in excess of \$200,000, for the last five years.
For 1927 the profit and loss account was \$369,660.99.

10 Q.—Appearing in the Profit column as a profit?

A.—Yes: Balance to Profit and Loss.

Q.—Did you value the shares according to that income?

A.—Not according to the income for the figures which I have given you, but as a matter of estimated profit, yes. If you take on the basis of \$200,000 a year, then you have to arrive at a figure by guess, like we did on the Stock Exchange prior to the break.

Q.—And, what would be the result obtained?

A.—They ought to be worth about \$1,000,000.

20 By Mr. Campbell:—

Q.—On the basis of what guess?

A.—Say five to one.

By Mr. Masson, Continuing:—

Q.—Did you consider good will in reference to the valuation of those shares?

A.—Not in those figures. No good will is taken.

30 Q.—Is there anything in the statements which would permit you to put a value on the good will of that Company?

A.—No. Good will in this Company was not taken into consideration. There is nothing written off. You can only arrive at that as a matter of earnings, and a basis of earnings. If I might say, by way of explanation, take the Lyall Company, much in the same line of business: They placed a bond issue of over \$1,000,000 on their plant, and were apparently not doing any more business. This Company, in point of earnings, would stand that.

40 By Mr. Campbell:—

Q.—What happened to Lyall's?

A.—I understand the management was not quite as good as it should have been.

His Lordship:—There can be no good will in such companies, whose success depends entirely upon the owners of the Company. The moment they go the company goes.

ROBERT SCHURMAN (for Plaintiff's) Examination in chief.

Mr. Campbell:—The skill of a dead contractor is not easily capitalized.

10 Witness:—A number of the items in the way of fixed assets have been written down very materially, for instance, they had a very large concrete plant, which stands on the books at a net value of about \$1800. — which is about the price of one machine. This net figure of \$1800., or thereabouts, appears as the net value of the whole concrete plant.

By Mr. Masson, Continuing:—

20 Q.—Have you anything before you which would enable you to determine the value of that concrete plant?

A.—I have not it in my figures here at the moment, but if you will take the Statement in the record it will show it.

And it being 4.15 o'clock, the further examination of the witness is continued until Wednesday, December 3rd, at 10.30 o'clock in the forenoon.

And further for the present deponent saith not.

30

J. H. Kenehan,
Official Court Reporter.

40

B. G. CONNOLLY (for Plaintiff's) Examination in chief.

DEPOSITION OF BERNARD GERVASE CONNOLLY

10 A witness examined on behalf of the Plaintiff.

On this second day of December, in the year of Our Lord, One thousand nine hundred and thirty, personally came and appeared; Bernard Gervase Connolly, of the City and District of Montreal, Physician, aged sixty-four years, a witness produced and examined on behalf of the Plaintiff, who being duly sworn, deposes and says as follows:—

Examined by Mr. Masson, K.C., of Counsel for Plaintiff.

20 Q.—What is your occupation, Dr. Connolly?

A.—I am Managing-Director of the Capital Trust Corporation, Limited.

Q.—Do you know Mr. A. W. Robertson, the Defendant in this case?

A.—I do.

Q.—Since how long?

A.—About sixteen years.

Q.—Do you know Mr. Pennyfather?

A.—Yes.

30 Q.—What is his occupation?

A.—My assistant; — Assistant General Manager of the Capital Trust Corporation, Limited.

Q.—He is your assistant in that Company?

A.—Yes.

Q.—Do you remember that Mr. Robertson, the Defendant in this case, has shown you a certain contract in reference to steel gates, which was given to Lyall & Company?

40 A.—I think there was such a contract. I never saw it. I may say that in my position my duties are more or less advisory. I do not attend to the details. I am consulted and make decisions and advise; but I do not do the book-keeping and so on.

Q.—I understand. Will you take communication of a letter, dated July twenty-first, nineteen hundred and twenty-seven, which has been filed in this case by Mr. Parent, the Estate Manager of the Capital Trust Corporation Limited, as Exhibit P-C-16?

A.—Yes.

B. G. CONNOLLY (for Plaintiff's) Examination in chief.

By Mr. Campbell:—Read the letter, Dr. Connolly. Did you read the letter?

10 A.—Yes, I read it.

By Mr. Masson:—

Q.—Do you notice in the second paragraph of the letter Mr. Robertson says that “the twenty-five thousand dollar Lyall note I referred to in my conversation with Mr. Pennyfather, is a transaction with which your Doctor Connolly is familiar, that is Dr. Connolly knows of the transaction because of a document I showed him; but he does not know I accepted a note instead of cash”? Is it true that you were familiar with the steel gate transaction?

20 A.—Mr. Robertson and I had several consultations. He showed me something of these documents. I do not recall this particular document, although I know now just what was the result of it eventually.

Q.—Is it true, as Mr. Robertson says, that you were familiar with this transaction?

A.—It has just escaped my memory. Mr. Robertson showed me so many documents.

30 Q.—At the time he showed you that contract, or made you familiar with the transaction, you became familiar with the transaction?

A.—I have no doubt what he says is true; but I do not recall.

Q.—You remember he spoke to you about that transaction?

A.—Yes, I think so.

Q.—When Mr. Robertson says you were familiar with the transaction of July twenty-first, nineteen hundred and twenty-seven, he says the truth?

A.—I would assume so; but I do not recall.

40 Q.—At the time you were familiar with it? Is that what you mean?

A.—I know I might have spoken of it, although I do not recall it.

Q.—Is it true that Mr. Robertson says in his letter of July twenty-first, nineteen hundred and twenty-seven that at that time you were familiar with that transaction?

A.—I have no doubt that I was, although I cannot recall it now. He would not say that if he had not shown it to me. I do not recall it, because he showed me so many documents, and so many other transactions. It has escaped me.

B. G. CONNOLLY (for Plaintiff's) Cross-examination.

Q.—Answer this, yes, or no. Was Mr. Robertson saying the truth on July twenty-first, nineteen hundred and twenty-seven, when he wrote to the Capital Trust Corporation Limited, that you were familiar with the transaction to which that letter refers?

10 A.—I would say, yes.

Q.—Is it the truth?

A.—I would say so, yes.

Q.—In your capacity as Managing-Director of the Capital Trust Corporation Limited, you are made acquainted with any fact which concerned the Estate with which you are charged. I understand you give the proper instructions to your employees?

A.—Yes.

20 Q.—And at the time, Doctor, if Mr. Robertson made you acquainted with that transaction, you gave the proper instructions with reference to same?

A.—The instructions would be in the form of a memorandum or a letter.

Q.—You never gave instructions verbally, except in writing in the form of a letter?

A.—Yes, I do; but usually it is in the form of a memorandum, so there is no question about it then. It cannot be misunderstood.

Q.—When Mr. Robertson spoke to you about that transaction did you make any inquiries or get them to get more details about that transaction?

30 A.—No, as I say, I do not recall the incident at all. If he showed it to me it was in the form of a letter, and it was embodied in the letter or contract which eventually reached us.

Cross-examined by Mr. Campbell, K.C., of Counsel for Defendant:—

Q.—Doctor Connolly, you have, I think, been ill for some time, have you not?

40 A.—Yes.

Q.—When did your illness begin?

A.—I was in a railway accident on the fourteenth of December, nineteen hundred and twenty-eight, and before I had fully recovered some nervous affection settled in my throat, and I can talk only a limited amount. I am all right now, and will be for a half an hour, and then have to rest.

Q.—This illness did affect your throat quite seriously for a long time?

A.—For several months.

R. SCHURMAN (recalled for Plaintiff's) Examination in chief

Q.—You were away from your office, laid up, for several months?

A.—Yes, I was in bed for several months.

10 By Mr. Masson:—

Q.—How old are you?

A.—I will be sixty-five this month. I am sixty-four now.

By Mr. Campbell:—

Q.—You said that you had known Mr. Robertson for sixteen years, Doctor Connolly?

20 A.—Yes.

And further the deponent saith not.

Char F. Larkin,
Official Stenographer.

DEPOSITION OF ROBERT SCHURMAN

30

And on this third day of December, in the year of Our Lord One thousand nine hundred and thirty personally came and reappeared the said witness Robert Schurman and his evidence was continued as follows:—

By Mr. Tanner:—

40 Q.—Did you examine year by year the earnings of Quinlan, Robertson & Janin, Limited, since 1924 and up to date?

A.—I did.

Q.—Will you please state to His Lordship the result of your study of the Balance Sheets as to earnings from year to year, and state the years.

Mr. Campbell:—All those Balance Sheets are before the Court. I do not know if it will greatly enlighten your Lordship to have Mr. Schurman repeat the figures, and I object to the evi-

R. SCHURMAN (recalled for Plaintiff's) Examination in chief

10 dence as being irrelevant. I also object on the further ground that this evidence is all before the Court now, and your Lordship can construe the figures as you see fit. Mr. Schurman's figures as you see fit. Mr. Schurman's figures are already in the Record.

Mr. Beaulieu:— I imagine the same objection we have already taken as to relevancy will apply.

The objection is reserved by the Court.

20 A.—For 1924, \$168,335.01;
For 1925, \$120,753.81;
For 1926, \$163,639.71;
For 1927, \$206,021.28;
For 1928, \$233,248.04;
A total of \$891,997.85.

May I say I took the first figures from the Statements submitted to the Succession Duties Office, for a portion of those figures. So far as I know they are not filed in Court, except in that way.

By Mr. Masson:—

30 Q.—All the figures you are quoting are from the Record?

A.—Yes, every one of them.

By Mr. Tanner, Continuing:—

Q.—Have you anything further to say as to the earnings?

A.—No.

Q.—Are the figures you have given the net earnings?

A.—Yes.

40 Q.—By taking as a basis the earnings of Quinlan, Robertson & Janin, Limited, during this number of years, what would be the value of the shares, based on the earning capacity — on a five years basis?

Mr. Campbell:—I object to the testimony as illegal, and not the best evidence of the facts sought to be proved. If it is a calculation, I am prepared to admit Mr. Schurman's capacity to testify in matters of accountancy, but to draw deductions from

R. SCHURMAN (recalled for Plaintiff's) Examination in chief

those figures as to value, in my submission, my learned friend has not qualified the witness as an expert to testify.

10 The question is allowed by the Court.

A.—The average profit for five years was within a few dollars of \$180,000 per year.

By Mr. Tanner, Continuing,

Q.—What would be the average value of the shares based on those earnings for five years?

20 A.—That would be equal to 9% on a capitalization of \$2,000,000.

Q.—How did you reach that figure?

A.—By dividing the average profit by the percent; or, if you take an estimate, of, say, ten times earnings, it is equal to \$1,800,000.

Q.—I presume your calculations are based on the principle of the capital which it would take at so much per cent to yield that average income?

A.—Exactly.

Q.—What is the rate of interest you took in the account?

30 A.—I took into account, say, 9%, on a \$2,000,000 capitalization.

Q.—I understood you to say yesterday that according to the Balance Sheet of Quinlan, Robertson & Janin, Limited, ending March 31st, 1927, the average value of the shares, based on the current and fixed assets was \$208.00. Mr. Quinlan owned 1151 shares, so the total value of 1151 shares, according to the fixed and current assets of the Company, would be \$239,488.57?

A.—Yes.

40 Q.—In arriving at the value of \$208.07 per share for the year 1927, based on the current and fixed assets, did you take into account that according to the Balance Sheet on that year the shareholders of record were entitled to receive a certain dividend?

Mr. Beaulieu:—I object to this as a question of law.

The objection is reserved by the Court.

A.—Yes, sir, that is one of the liabilities which is provided for in those figures.

R. SCHURMAN (recalled for Plaintiff's) Examination in chief

By Mr. Tanner, Continuing,

Q.—Would the dividend due increase the value of the shares from \$208.07 to another value?

10 A.—You mean by that, that had that dividend not been taken in; or, do you mean if they were set up in the books of Quinlan, Robertson & Janin that there would have been that much more coming to the Quinlan Estate?

Counsel:—Both ways.

A.—I mean by that, that the dividend declared, had it been set up as a credit to the shareholders, would have shown \$28,314.60 as the proportion to Hugh Quinlan, shareholder.

20 Q.—And, would the value of the shares have been increased from \$208.00 to another figure?

A.—Not the value of the shares as I have given them here, but the interest of the Estate would have been that much more.

Q.—What would be the total amount of the increase to the Estate?

A.—The equity would be the figure I have given as the value, \$267,803.17.

By Mr. Campbell:—

30

Q.—Is that adding the \$239,488.57 and the \$28,314.60?

A.—Yes.

By Mr. Tanner, Continuing,

40 Q.—Am I right then in taking that the result of your testimony is that at the death of the late Mr. Quinlan the value of 1151 shares of Quinlan, Robertson & Janin, based on the current fixed assets plus the proportion of dividend to be received by him, amounted to a total of \$267,803.17?

A.—Yes. That is on March 31st, 1927, the last Statement preceding his death.

Q.—Did you examine the Statement of Quinlan, Robertson & Janin, Limited, for March 31st, 1928?

A.—I did.

Q.—What was the average value of the shares according to that Statement?

A.—\$249.00.

R. SCHURMAN (recalled for Plaintiff's) Examination in chief

Q.—What would be the value of the shares by adding the proportion of the dividend that would be payable to the Quinlan Estate?

A.—\$314,913.60.

10 Mr. Campbell:—Of course, this would be subject to the further special objection that it has reference to a state of affairs nearly a year after Mr. Quinlan's death.

His Lordship:—But, including a few months before his death.

Mr. Campbell:—And, it would be difficult to say what proportion of the value is attributable.

20 Mr. Beaulieu:—I understand this is covered by my general objection, and it is not necessary to repeat it.

The objection is reserved by the Court.

By Mr. Tanner, Continuing:—

Q.—Will you tell His Lordship what would be the value of the shares, according to the Statement of March 31st, 1927, based on the net liquid assets only — leaving aside the fixed properties, and just taking into account the cash and the liquid assets?

30 A.—The net result of the cash assets, less the liabilities, is \$564,589.57.

Q.—How does it work out on an average per share?

A.—\$163.55.

Q.—Did you examine the Statements ending March 31st, 1927, March 31st, 1928, and August 31st, 1928, of the Amiesite Asphalt, Limited?

A.—Yes, sir.

40 Q.—Will you please state to His Lordship the result of your examination, leading to a determination of the average values of the shares of Amiesite Asphalt, based, first, on the current and fixed assets of the Company?

Witness:—Do you wish the current assets first, or shall I state both?

Counsel:—You might divide them.

A.—I have it both ways.

R. SCHURMAN (recalled for Plaintiff's) Examination in chief

Q.—Then, give it both ways.

A.—The net current, or net liquid assets, as at March 31st, 1927, were \$134,584.26; and including the fixed assets, \$265,680.24 — or an average value on the 1000 shares of \$265.68.

10 Q.—What have you to say as regards the Statement of March 31st, 1928?

A.—The average value per share is \$434.25.

Q.—What was the amount of the net liquid assets on March 31st, 1928?

A.—\$313,110.41.

Q.—What was the amount of the fixed assets as at March 31st, 1928?

A.—I think I gave you that: \$434,252.09.

20 Q.—Did you examine the earnings of the Amiesite Asphalt, Limited, per year?

A.—Yes.

Q.—Beginning with what year? 1925?

A.—I have no record for 1925. I think the Company was not under way at that time. I have the figures for 1926.

Q.—Ending what month?

A.—March 31st.

I have merely a credit balance for the year. Apparently the figures are not all in for the whole period. I think it is a partial period. However, it shows for that period, \$64,299.37.

30 Q.—Net profit?

A.—That is a credit at the Profit and Loss Account.

By Mr. Campbell:—

Q.—Did you take this from something in the Record?

A.—Yes, they are all in the record.

Q.—Do you know what file?

40 A.—I have no qualifying figures, or no extra figures at all. This figure I give you is a credit in the Profit and Loss Account. I am not giving that as an earning for the year, because I did not have the Profit and Loss Account for the whole period. I think it is a partial period.

Q.—That would be a year and some other period?

A.—It is probably a partial period only.

I have 1927, for the whole year: \$191,380.87. For 1928, \$195,571.85 — making a total, for the two years, of \$386,952.72, and an average profit for those two years of \$193,400.

R. SCHURMAN (recalled for Plaintiff's) Examination in chief

By Mr. Tanner, Continuing,

10 Q.—What would be the value per share, based on those average earnings?

A.—On the same basis you were speaking of before?

Q.—Yes. The same basis as you spoke of before in connection with Quinlan, Robertson & Janin?

A.—If you take a capitalization, it would be a little in excess of \$2,000,000, on the same basis of 9%.

20 Q.—Coming back to the Statements of Quinlan, Robertson & Janin, I omitted to ask you a question. Would you compare the Statements of March 31st, 1927, and March 31st, 1928, as to respective net liquid assets of the Company, from a comparative point of view, and if you see a difference will you please explain how this difference comes about?

A.—The net liquid assets in 1927 were \$564,589.57.

Q.—Being equal to how much per share?

A.—\$163.55.

In 1928 the net liquid assets were \$460,737.36; with an average value of \$133.48.

30 Q.—How do you explain that difference as to the net liquid position?

A.—It is less.

When I examine the fixed assets I see that apparently in 1928 there was a very large addition to the property value, which showed in 1927 as \$894.50, and in 1928 as \$229,374.53. That is accounted for by the purchase of two properties, one in Rosemount and one on Sherbrooke Street, for which apparently cash was paid, therefore, deleting the cash position and adding to the fixed assets position.

40 Q.—Did you examine the Statement of the Amiesite Asphalt Company from March 31st, 1928, to August 31st, 1928?

A.—Yes, I did.

Q.—What is the result of your examination as to the Statement ending August 31st, 1928, as to the current assets and value of the shares?

A.—The net liquid assets on August 31st, 1928, were \$487,253.76; or an average value of \$487.25.

R. SCHURMAN (recalled for Plaintiff's) Examination in chief

Q.—And, as to the fixed assets, according to the Statement ending August 31st, 1928?

A.—The fixed assets were \$121, 141.68.

10 Q.—By adding the current assets to the fixed assets, what would be the average value per share?

A.—\$608.39.

Q.—Did you take into account the profits realized during that period, from March 31st, 1928, to August 31st, 1928, and can you say what they are?

A.—I have not that profit. It is in the Record. I examined it from the Statement.

Q.—Have you the figures?

A.—I have not the Statement here.

20 Q.—Did you examine the Statement of the Macurban Company ending August 31st, 1928, to determine the value of the assets?

A.—Yes, I did, but I have not it among my papers.

Q.—Will you take communication of Exhibit P-19, being the Financial Statement of the Macurban Asphalt Company, Limited, ending August 31st, 1928; will you please examine it, and will you tell His Lordship what is the total value of the assets of Macurban after deducting the liabilities?

A.—If you allow for all the assets, less the liabilities and reserves, the net balance would be \$158,518.70.

30 Q.—This figure is the total value of the net assets of the Company at that time?

A.—Yes. You can call it present worth.

Q.—I understand you prepared a Comparative Statement as to current and fixed assets of Quinlan, Robertson & Janin, Limited, for the years 1927 and 1928, and you did the same thing for Amiesite Asphalt, Limited, for the years 1927 and 1928 to August 31st, 1928?

A.—Yes.

40 Q.—Will you please file this Statement as Exhibit P-68?

A.—Yes.

Q.—In determining the net liquid assets of Quinlan Robertson & Janin, did you take into account the drawbacks, and, if so, will you please explain what the drawbacks are, and state the result?

A.—I took one of the figures on the Balance Sheet, showing items due by concerns or corporations for what would appear to be work in progress and charges made against that. I took an

ROBERT SCHURMAN (recalled for Plaintiff's)
Cross-examination for Defendant Capital Trust.

10 item from the credit side of the Balance Sheet as representing a reserve for maintenance, which I understand is a sum set up as an eventual reserve against cost or expenses of keeping certain work guaranteed in repair. My figure is the difference between the two. If this estimate is sufficient, then the net figure is the amount which would eventually go into the Treasury of the Company.

Cross examined by Mr. Campbell, K.C., of Counsel for Defendant Capital Trust Co.

Q.—You are a Chartered Accountant of experience, you have told us?

20 A.—Yes.

Q.—Have you acted as Chartered Accountant for a number of contracting companies?

A.—For some; not a great many.

Q.—Have you had substantial experience with the books of contracting companies?

A.—Yes.

Q.—As the result of that experience have you learned that the contracting business is what one might call hazardous in character?

30 A.—It depends on the management.

Q.—Some contracting companies make hand some profits some years, and equally hand some losses other years?

A.—Occasionally.

Q.—In other words, it is not an exaggeration to say that any company engaged in the contracting business is engaged in a hazardous enterprise?

A.—All manufacturing or contracting is hazardous in that respect.

Q.—Is not contracting particularly hazardous?

40 A.—I would not like to say so altogether.

His Lordship:—Unless with Governments or Municipalities.

By Mr. Campbell, Continuing,

Q.—With the qualification the Court has made: if you are competing in the open market against other contractors, bidding for the job, you have to make your figure or your bid sufficiently close to have a chance of getting the business?

*ROBERT SCHURMAN (recalled for Plaintiff's)
Cross-examination for Defendant Capital Trust.*

A.—I have not found it different from any other manufacturing concern which goes out to bid for contracts for manufactured goods.

10 Q.—You do not think it is more hazardous than other industrial enterprises?

A.—I have not found it so.

Q.—You understand Quinlan, Robertson & Janin, Limited, were engaged in the contracting business?

A.—Yes.

Q.—And Amiesite Asphalt, Limited, the other company to which you referred, is also engaged in the road contracting business — the paving of roads?

A.—Yes.

20 Q.—Will you look at the Statement you filed as Exhibit P-68 in reference to the figures of Quinlan, Robertson & Janin, Limited. On the assets side you have an item of accounts receivable, \$127,266.08. Is that the book value of the accounts according to the Balance Sheet?

A.—Yes.

Q.—In other words, you have taken as good all the accounts receivable in that item?

A.—If my memory serves me right, I believe there is a reserve included in that item, of \$16,915.82, which covers an amount for the City of Montreal. At any rate I took that as being good.

30 Q.—I understand you took as good all the receivables shown on the Balance Sheet?

A.—Yes.

Q.—Will you look at the Balance Sheet of Quinlan Robertson & Janin, Limited, as at March 31st, 1927, and will you observe whether there is among the details of those receivables an item for Ontario Amiesite, Limited, of \$52,868.07?

A.—Yes, there is.

Q.—Did you take that at its face value?

40 A.—I did.

Q.—And, the same way for all the others? You took them at book or face value irrespective of what the actual value might prove to be on investigation?

A.—The management and the Directors having passed those as being good, I accepted them.

Q.—And, the same way in reference to the item of plant? In making your calculations as to the book value of those shares you also took the plant at book value, of \$304,850.02, less the depreciation set up on the books of \$155,473.10?

A.—Yes.

*ROBERT SCHURMAN (recalled for Plaintiff's)
Cross-examination for Defendant Capital Trust.*

Q.—Have you had any experience in disposing of contractors' plant?

A.—A little, yes.

10 Q.—Has your experience led you to the conclusion that a contractor's plant operating is a good asset, but a contractor's plant being liquidated is liable not to produce very much?

Mr. Tanner, K.C., of Counsel for Plaintiffs, objects to the last part of the question, inasmuch as it is not a matter of determining the value of a Corporation liquidating, but of determining the value of an operating Corporation.

20 By Mr. Campbell, Continuing,

Q.—Is that your position, Mr. Schurman?

A.—I was going to say this: this was a going concern, and in no books of account which we take for a Statement would we consider break-up values in any case.

Q.—Of course, the break-up values would be greatly less?

A.—Frequently. It depends on the liquidator.

Q.—That brings me to the point my learned friend Mr. Tanner has made for me. The basis of your valuation is a valuation on a going concern continuing in business?

30 A.—Yes.

Q.—What percentage of the total issued shares was represented by the interest of the Estate Quinlan?

A.—1151 shares out of 3452 shares.

Q.—A third interest?

A.—About a third.

Q.—So, it was a minority interest, as compared with the other two, obviously?

A.—In that respect, yes.

40 Q.—Anybody purchasing the Estate Quinlan interest, unless he was already the proprietor of some other interest in the Company, would be purchasing a minority position, would he not?

A.—Yes.

Q.—Does that affect the value of the shares?

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

*ROBERT SCHURMAN (recalled for Plaintiff's)
Cross-examination for Defendant Capital Trust.*

The objection is reserved by the Court.

A.—Not the book value, no.

10 Q.—The book value is a matter of arithmetic according to the Statements, is it not?

A.—Yes.

Q.—And you, or I (if I was good enough at arithmetic) or an office boy (if he was good enough at arithmetic) could work out the book value?

A.—He should.

Q.—But the actual value is materially affected by the fact that it would be a minority interest?

A.—I do not consider it so, no.

20 Q.—If I were your client and was consulting you about the advisability of purchasing a third interest in a contracting company for \$250,000, do you think you would caution me about my minority position?

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

The objection is maintained by the Court.

30 Q.—Is it fair to say — and I do not want to exaggerate — that on a price per share basis a person purchasing a minority position is getting something less valuable than the price per share if the number of shares purchased represent the control of the Company?

A.—No, he is not. His equity is exactly the same as every other shareholder.

Q.—That is on the basis of the books?

A.—Yes, and equally so if the management is honest.

40 Q.—Is the controlling interest in any company always worth more than the minority interest?

A.—Only in respect to management and what they may do, not otherwise.

By the Court:—

Q.—If one is the owner of the majority of the stock, and cannot manage the Company himself, and it is managed by somebody else, he takes a risk in buying the shares, but when the majority is buying the minority, they do not take much risk.

*ROBERT SCHURMAN (recalled for Plaintiff's)
Cross-examination for Defendant Capital Trust.*

Mr. Campbell:—I am not discussing the transaction that took place, your Lordship: I am discussing an outsider purchasing those shares.

10 By Mr. Campbell, Continuing:—

Q.—In other words, the majority interest in a contracting Company is in a position to dominate the management, and if the management which it dominates is inefficient that fact will obviously affect the value of all the shares, including the minority shares?

A.—The majority shareholders have the right to elect their own Directors.

20 Q.—And, thereby dominate the management ?

By the Court:—

Q.—And pay themselves whatever salary they like, in order that there may be no dividends?

A.—Yes.

By Mr. Campbell, Continuing:—

30 Q.—Or take business at unprofitable prices, if that is their judgment, or lack of judgment?

A.—I referred to that in regard to honesty of management.

Q.—But, it is not always a question of honesty. It may be a question of judgment. There are many honest men who lose money in their business?

A.—Yes, there are.

Q.—In other words, it is not necessarily a question of dishonesty, because a contracting company may lose money on its contracts without any dishonesty?

40 A.—I am not prepared to say.

Q.—Is it not a question of having taken contracts at too low a price?

A.—Occasionally.

Q.—Is not that the usual explanation?

A.—Accident, and God excluded.

Q.—Your result of a calculation on Exhibit P-68 was to show that the book value, taking all the assets as good at the value shown, less depreciation in each case, gave a result of \$208.07?

A.—Yes.

*ROBERT SCHURMAN (recalled for Plaintiff's)
Cross-examination for Defendant Capital Trust.*

Q.—You arrived at that result by dividing 3452 shares into \$714,860.99?

A.—Yes.

10 Q.—Will you please check your division? I know you are a much better arithmetician than I am, but my figures do not check with yours.

A.—There is about a dollar's difference.

Q.—In other words, you are a little out?

A.—About \$1.00.

Q.—Your division was not quite accurate?

A.—Well, as establishing the value of a share, I would say yes.

Q.—But, in fact, it does not divide that way?

20 A.—It is one dollar out.

Q.—This was one case where my arithmetic was better than yours?

A.—Thank you.

Q.—Do you keep in general touch with the quoted values of shares which are dealt with on the Stock Exchange? I mean, of course, in a general way.

A.—Not extensively.

Q.—Do you keep sufficiently in touch with them to be familiar with the fact that there are a great many shares sold every day at vastly less than book value?

30 A.—That all depends on the Company.

Q.—Is it not a commonplace thing that selling value has no necessary reference to book value?

A.—No, I would not like to say that.

Q.—Not long ago I was interested in a company which received some publicity. I do not suppose you followed the figures, but it was a case where market value today is less than 25% of the rated book value. That would strike you as being an extraordinary situation.

40 A.—It would.

His Lordship:—What was the value a year or two before?

Mr. Campbell:—It was double the book value, your Lordship.

By Mr. Campbell, Continuing:—

Q.—Is it not true many shares sell above book value, and many shares sell below book value?

A.—Very true.

*ROBERT SCHURMAN (recalled for Plaintiff's)
Cross-examination for Defendant Capital Trust.*

Q.—There is no necessary relation between market value and book value of shares, is there? In the ordinary experience of the Stock Exchange?

10 A.—There is, when a large proportion of the assets in the Company are cash or the equivalent.

Q.—It all depends on the particular company?

A.—On the particular Company, yes.

Q.—But, I am speaking as an abstract general proposition. There is no necessary relation between the market value and the book value of shares, is there? I mean in the ordinary experience of the Stock Exchange?

20 A.—I cannot say that. because the market value, in my opinion, follows reasonably closely the book value.

Q.—You mentioned the name of Lyalls yesterday?

A.—I did.

Q.—Did you have occasion to look at the Balance Sheet of the Lyall Company?

A.—Not recently, but I have examined it in the past.

Q.—Did you look at it at the end of 1928?

A.—No, sir, I did not.

Q.—Do you know enough about it to know that the book value of the Lyall shares on the eve of insolvency was quite substantial? Do you know when the insolvency occurred?

30 A.—No, I do not.

Q.—Are you familiar with Houston's Blue Book?

A.—I am.

Q.—It publishes every year the Balance Sheets of the different Companies whose stocks are listed on the Stock Exchange?

A.—Yes.

Q.—Did the shares have a substantial book value according to the Balance Sheet?

A.—I should say not.

40 Q.—What was the Shareholders' equity?

A.—That would take a little time to figure out. Their Bank loans were very heavy, and they also owed on bonds.

Q.—What is carried as the capitalization on the liability side?

His Lordship:—I have no objection to letting you go for a few questions, but I do not think you should go very fully into the Lyall situation.

*ROBERT SCHURMAN (recalled for Plaintiff's)
Cross-examination for Defendant Capital Trust.*

By Mr. Campbell, Continuing,

10 Q.—The total assets shown according to this Balance Sheet, at page 661 of Houston, for 1928, was \$5,025,250.69, on the assets side?

A.—That is true, but that include nearly \$1,000,000 for patent rights and goodwill.

Q.—But, I am asking you to take the book value only: not actual value.

His Lordship:—If this Company went into insolvency the day after or the month after this Balance Sheet was issued, it shows something was wrong in the Balance Sheet.

20 Mr. Campbell:—And, it goes to show my point that the book value is a very uncertain basis.

His Lordship:—Not necessarily. It might show that those who managed the Company in one way forged a Balance Sheet for their own purpose.

By Mr. Campbell, Continuing,

30 Q.—Does not the Balance Sheet of the Lyall Company, at the date to which I have called your attention, show a credit surplus of \$546,920.76, as at March 31st, 1928?

A.—It does.

Q.—That Company was engaged in the contracting business?

A.—Yes.

Q.—Relatively the same business Quinlan, Robertson & Janin were in?

A.—Yes.

Q.—And it came to grief probably within a year of that date?

40 A.—I understand so.

By the Court:—

Q.—But those who succeeded to Quinlan, Robertson & Janin did not come to grief, because they made some \$200,000?

A.—Yes. your Lordship.

Mr. Campbell:—But, that is a matter of personally and prospects.

*ROBERT SCHURMAN (recalled for Plaintiff's)
Cross-examination for Defendant Capital Trust.*

By Mr. Campbell, Continuing,

10 Q.—You produced a Statement of the Amiesite Asphalt Company, on which you showed a value per share, based on net liquid assets, of \$134,58?

A.—Yes.

Q.—And a total value of \$265.68 per share?

A.—Yes.

Q.—May I go back for a moment to Quinlan, Robertson & Janin. You took those figures you gave us from the material filed in this case for Succession Duty purposes — I mean, your figures as to earnings?

20 A.—That is for 1925 and 1926, yes.

Q.—As a matter of fact, you examined that file, did you not?

A.—Yes.

Q.—Did you observe all those Financial Statements for those six or seven years were filed with the Succession Duties Office?

A.—I examined, I think, four of them.

Q.—Did you verify the figure at which the Succession Duties Office valued those shares after having had communication of those Statements?

A.—No, I did not. I was only interested in the amount of profit earned.

30 Q.—Will you take communication of the file Exhibit P-C-5, and verify what was the revised valuation of the Succession Duties Office in their account dated May 3rd, 1928? What did they assess those shares at after the discussion shown by the file?

A.—The Succession Duties Office placed a value on the 1151 shares of Quinlan & Janin.....

Q.—(interrupting) That is the same Company, is it not?

A.—No, sir, not at that date.

40 Q.—It is the continuation of the same Company, with the change of name?

A.—It is the continuation of the Company.

Q.—It is the Company whose figures you gave us?

A.—I cannot say. I have nothing to check this by. I was admitting it is intended to be the same thing.

The value of the 1151 shares is taken at \$185.00 per share.

Q.—In Amiesite Asphalt, Limited, you gave your valuation per share based on book value, including fixed assets. How

*ROBERT SCHURMAN (recalled for Plaintiff's)
Cross-examination for Defendant Capital Trust.*

much was included in your calculation for the item of patents and processes?

A.—\$100,000.00

10 Q.—Have you any knowledge at all of the actual value of those patents?

A.—They were estimated at \$100,000 by the Directors of the Company when they incorporated.

Q.—That is, they were capitalized at \$100,000.00?

A.—Yes.

Q.—Do you know when the patents expired?

A.—No, I do not.

20 Q.—My instructions are they expired in 1928. If that be the fact, do you think it is a fair item to take into account at par in calculating book value?

A.—Based on the opinion of the Directors and the Company's Auditors, yes, sir, I do.

Q.—That is what you are basing yourself on?

A.—Yes.

Q.—You are not suggesting an expired patent has an actual value of \$100,000.?

A.—I know nothing about it.

30 Q.—You valued Amiesite Asphalt, Limited, on the basis of a going concern in the paving business?

A.—Yes.

Q.—Did you look into the figures of Ontario Amiesite Asphalt, Limited?

A.—I did.

Q.—Was it equally profitable?

Mr. Tanner, K.C., of Counsel for Plaintiffs, objects to the question as irrelevant and as not arising out of the examination in chief.

40 The objection is maintained by the Court.

Mr. Campbell, K.C., of Counsel for Defendants respectfully excepts to the ruling of the Court.

Q.—Did you calculate the book value of Ontario Amiesite Limited?

ROBERT SCHURMAN (recalled for Plaintiff's)
Cross-examination for Defendant Capital Trust.

10 Mr. Tanner, K.C., of Counsel for Plaintiffs, objects to the question as irrelevant and illegal, and as not arising from the examination in chief.

The objection is maintained by the Court.

Mr. Campbell, K.C., respectfully excepts to the ruling of the Court.

Q.—Did you observe in your examination of the Statements of Ontario Amiesite, Limited, that the Company lost money every year of its existence during its operations?

20 Mr. Tanner, K.C., of Counsel for Plaintiffs, objects to the question as irrelevant and as not arising out of the examination in chief.

The objection is maintained by the Court.

Mr. Campbell, K.C., respectfully excepts to the ruling of the Court.

30 Q.—Did you observe according to the Statements filed that Ontario Amiesite, Limited, lost money on 95% of the contracts they took and fulfilled?

Mr. Tanner, K.C., of Counsel for Plaintiffs, objects to the question as irrelevant and as not arising out of the examination in chief.

The objection is maintained by the Court.

40 Mr. Campbell, K.C., respectfully excepts to the ruling of the Court.

Q.—Did you make a calculation of the Macurban value on the basis of earnings for the period shown and to which you testified? Capitalizing it on the earnings for the periods you have shown?

A.—I have no figures on that, but I think I did quote the result based on it.

Q.—Exhibit P-19 shows net profit for five months of \$24,069.17. Supposing that is a legitimate average, and you bring

*ROBERT SCHURMAN (recalled for Plaintiff's)
Cross-examination for Defendant Capital Trust.*

it up to an annual profit on the same basis as you used before, at what would you capitalize the profit on the Macurban shares?

10 A.—There are 1000 shares, and the net profit for five months is shown as \$24,069.17.

Q.—Working it out on the same basis as you used in the other, where would it lead you?

A.—I should say approximately \$500,000 as a matter of capitalization.

Q.—Roughly \$500,000?

A.—Approximately.

20 In regard to your arithmetic, I may say I have done this very hurriedly, and you might check me up closely.

Q.—Am I wrong, and are you right?

A.—I am not sure.

Q.—I am taking it just in round figures, on the basis of earnings, as a rough calculation, it would be \$2,000,000 for Amiesite Asphalt, Limited? I think that was the figure you gave?

A.—Yes.

Q.—And, \$500,000 for Macurban?

30 A.—Yes. I would, however, like to make this qualification that I do not like to make estimates based merely on five months earnings: I think it is hardly fair.

Q.—It is in evidence in this case that Messrs. Robertson and Janin, as at August 31st, 1928, sold out those two Companies for \$750,000?

A.—Yes.

Q.—Does that look as if there was any necessary relation between your calculation based on earnings and actual selling value, or did they make a bad sale in your judgment?

40 A.—The figure we took as \$500,000 is merely an amount which you might say invested would give an income such as that, based on — I used the rate of 9%.

Q.—And, you did the same thing in Amiesite?

A.—I did the same thing in Amiesite.

I would not like to say, however, that a Company in which \$100,000 was put, and which sold out for \$158,000, was making a bad sale.

ROBERT SCHURMAN (recalled for Plaintiff's)
Cross-examination for Defendant Capital Trust.

10 Q.—But, if the shares were worth two and a half million dollars, taking the two Companies together, based on earning power, and were sold for \$750,000, the sellers did not make a very good bargain, did they?

A.—I would not like to say that.

20 You asked me a question in regard to average value per share. If you take the average value per share of those Companies, and take the selling price, then the figure we were discussing as book value being lower, has been enhanced in this case, because the sale was made for very much more than the book value; showing that something additional was given for — if you will — the goodwill or the patents or something.

Q.—For the going concern?

A.—Yes.

Q.—But, I was calling your attention to the fact that there is no necessary relation between a calculation based on five years earnings and actual selling price? You took five years as a basis?

A.—If you mean average capitalization based on an equity, there is no very direct relationship.

30 Mr. Beaulieu, K.C., of Counsel for Defendant Robertson declares he has no cross examination to make of the witness.

And further deponent saith not.

J. H. Kenehan,
Official Court Reporter.

C. J. MALONE (recalled for Plaintiff's) Examination in chief.

DEPOSITION OF CLIFFORD J. MALONE

10 A witness recalled on behalf of the Plaintiffs.

On this third day of December, in the year of Our Lord one thousand nine hundred and thirty personally came and appeared; Clifford J. Malone, already sworn, who being recalled on behalf of the Plaintiffs, deposes as follows:—

Examined by Mr. Masson, K.C., of Counsel for Plaintiffs.

20 Q.—Have you looked for the documents I asked you for yesterday?

A.—I did.

Q.—Will you please file, as Exhibit P-69, seven extracts from the Minute Book of Quinlan, Robertson & Janin, Limited, which refer to the dividends declared by the Company from March 31st, 1925, to August 30th, 1928?

A.—I will.

30 Q.—I notice on two of the extracts, one of the Meeting held February 6th, 1930, and another of the Meeting held August 30th, 1928, that there are marginal notes which read as follows:—“This payment applies on dividend declared March 31st, 1925”?

A.—That is right. I put those notes there myself.

Q.—They appear in that way on the originals, do they not?

A.—Yes.

Q.—Do you keep the Minutes of the Meetings of Robertson & Janin, Limited?

A.—Yes, I am Secretary of the Company.

Q.—You are present at every Meeting the Company holds, whether it is a Meeting of the Directors or a Meeting of Shareholders?

40 A.—Yes, I am.

Q.—And, it was you who drafted the original Minutes of those Meetings of August 30th, 1928, and February 6th, 1930?

A.—Yes.

Q.—Is the Minute drafted as the Meeting is being held, or is it drafted after.

A.—It is drafted after.

C. J. MALONE (recalled for Plaintiff's) Examination in chief.

Q.—How long after?

A.—The same day practically, or the next morning. If the Meeting is held in the afternoon, or if I am taken up with some other business in the afternoon I will do it the next morning.

10 Q.—And, it is signed immediately?

A.—Yes.

Q.—Is there a draft form of the Minute made on the day the Meeting is held?

A.—Notes are taken, no doubt.

Q.—How do you explain those marginal notes in the Minutes of the Meetings of February 6th, 1930, and August 30th, 1928?

A.—They were opened from the original Minutes that were put in the Minute Book.

20 Q.—How long afterwards did you notice they were opened?

A.—Those amendments were only put there within the last month.

Q.—So, about a month ago the Minute of the Meeting held on August 30th, 1928, did not contain that marginal note?

A.—That is right.

Q.—It is more than a month ago since you were examined as a witness for the first time in this case?

A.—I think so, yes.

Q.—So, this amendment was put in the margin of the Minutes after you appeared here as a witness in this case?

30 A.—I think so.

Q.—You know some people went to the office of Quinlan, Robertson & Janin, Limited, in order to examine the Minute Book of the Company?

A.—I am aware of that.

Q.—You remember the first time you came as a witness in Court you received instructions to give the Plaintiffs the proper information with reference to the Minutes of the Company?

A.—Yes.

40 Q.—And, you know the Attorneys for the Plaintiffs went to the Company, where they examined the Minute Book of the Company?

A.—I know they were in the office, yes.

Q.—After they went to the office, and after the instructions you received when you were here first, you made the marginal notes in the Minute Book which appear on the Minutes of the Meetings held February 6th, 1930, and August 30th, 1928?

C. J. MALONE (recalled for Plaintiff's) Examination in chief.

A.—In examining the Minutes I noticed we did not refer back to that Minute of March 31st, 1925, and naturally I noticed I was in error by not doing that, so I immediately put that marginal note.

10 Q.—And, you took it upon yourself to make those marginal notes?

A.—I am Secretary of the Company, and had instructions to do it.

Q.—From whom did you receive instructions to do so?

A.—Naturally it was discussed with the President of the Company.

Q.—Who is the President of the Company?

A.—Mr. Janin.

20 Q.—Did you discuss it with him alone?

A.—I mentioned that I had forgotten this marginal note, and he told me it was quite in order to put it in.

Q.—And, it was you who first drew the attention of the President of the Company to it?

A.—Yes.

Q.—Have you the notes you took at those Meetings which were held?

A.—No, I have not.

Q.—How is it you only remembered after you come here the last time that you had omitted something?

30 A.—I was asked to make copies of those Minutes, and while making the copies naturally I noticed then and there they were omitted.

Q.—How many Minutes of the Company did you keep since February 6th, 1930?

A.—I cannot really state.

Q.—A few?

A.—Yes, no doubt a few.

Q.—Lots of them?

40 A.—I will not say lots of them.

Q.—There have been several changes, and incorporations of other Companies, and so on?

A.—I should say four or five Minutes a year.

Q.—Did you ask Mr. Janin's permission to make that change?

A.—When I noticed it did not refer back to that Minute, I naturally took it up with Mr. Janin. I did not want to do it on my own authority.

C. J. MALONE (recalled for Plaintiff's) Examination in chief.

Q.—What did you do about the other Director of the Company? You did not even ask for his advice?

A.—That was not up to me, I do not imagine. I took it up with the President of the Company.

10 Q.—That is, with the President of the Meeting?

A.—No, the President of the Company. I took it up with Mr. Janin.

Q.—If you took it up with the President of the Company, will you read the extract and tell me who was the President and Chairman of the Company at the time of those Minutes?

A.—Mr. Robertson was President and chairman at the time of those Minutes, but he was not President or Chairman when I made the marginal note.

20 Q.—Did you bring the papers in regard to the item of \$4386.67 which refers to Macurban Asphalt, Limited?

A.—I did.

Q.—Will you file this Statement as Exhibit P-70?

A.—Yes.

Q.—You have in your possession all the vouchers which justify the different items contained in Exhibit P-70?

A.—I have.

Q.—And, you have verified that everything on this paper conforms to the vouchers which you have?

30 A.—There is one voucher missing, a freight voucher which had to be returned to the C.P.R. for a refund. I have not that at the present time.

Q.—And, those vouchers are available for the purposes of verification, if necessary?

A.—I have them right here with me now.

Mr. Campbell, K.C., of Counsel for Defendant Capital Trust Corporation, declares he has no cross examination to make of the witness.

40 Mr. Beaulieu, K.C., of Counsel for Defendant Robertson, declares he has no cross examination to make of the witness.

And further deponent saith not.

J. H. Kenehan
Official Court Reporter.

E. L. PARENT (recalled for Plaintiff's) Examination in chief.

DEPOSITION OF EMMANUEL L. PARENT

A witness recalled on behalf of the Plaintiffs.

10

On this third day of December, in the year of Our Lord one thousand nine hundred and thirty personally came and reappeared: Emmanuel Parent, already sworn, who, being recalled on behalf of the Plaintiffs, deposes as follows:—

Examined by Mr. Tanner, K.C., of Counsel for Plaintiffs.

20

Q.—I asked you yesterday to be prepared this morning to file a copy of the Declaration you filed with the Succession Duties Office in Montreal. Have you it with you?

A.—My file shows this has already been filed.

Q.—After a careful search of the Exhibits I cannot find it.

A.—I will make another, if you are sure it has not been filed. I will have to get it down. It is the first page that goes on the top of the Statement.

Q.—I have here Plaintiffs' Exhibit P-2. Was that incorporated in your Declaration to the Succession Duties Office as containing the assets of the Estate?

A.—Yes, I think so.

30

Q.—Do you find among the assets of the Estate the Declaration that the Quinlan Estate owned a mortgage on the Lasalle property in Montreal, which mortgage or hypothec was due by A. W. Robertson, Limited?

A.—Not on this one. It was filed afterwards. I did not know it at the time.

Q.—You had in your possession at that time, had you not, the Statements of A. W. Robertson, Limited, for the years 1926 and 1927?

A.—I think so, yes.

40

Q.—Is it not a fact that among the liabilities of A. W. Robertson, Limited, on the Statement Exhibit P-C-31, ending December 31st, 1926, there appears as a part of the liability that a mortgage is due by A. W. Robertson, Limited, amounting to \$18,315.10?

A.—Yes.

Q.—The same amount also appears in the Statement ending December 31st, 1927, Exhibit P-C-32, does it not?

A.—Yes.

E. L. PARENT (recalled for Plaintiff's) Examination in chief.

Q.—Did you make any enquiry as to this mortgage of \$18,315.10, to find out what was the interest of the Estate in it?

A.—No. It belonged to the Limited Company. It is a liability of the Limited Company. A. W. Robertson: just showing
10 “Mortgage”, without explanation; so, naturally, I did not know it was a mortgage due to the Shareholders, who were Hugh Quinlan and Mr. Robertson. That was discovered afterwards, and we made a Supplementary Declaration to the Succession Duties — money due to themselves.

Q.—Did you not enquire from Mr. Robertson to disclose to you all he knew about the assets of the Estate? He was your co-Executor.

A.—We had several meetings in regard to the different items.

Q.—Did you ask him to disclose to you all the assets of the
20 Estate, as far as he knew them at that time?

A.—I do not remember the exact words, but I was under the impression always that they disclosed everything they knew.

By the Court:—

Q.—How did you come to know that part of this mortgage belonged to the Estate of Mr. Quinlan?

A.—I do not remember exactly. It was told to me. I was informed of that mortgage after either by Mr. Robertson or Mr.
30 Leamy.

By Mr. Tanner, Continuing,

Q.—After the institution of this Action?

A.—I do not remember the exact date. I could tell you if I had my file.

Q.—Will you please look it up during the adjournment, so that you may be able to answer this afternoon?

A.—Yes, I will

Q.—I want to know clearly from you if Mr. Robertson dis-
40 closed it to you at any time prior to the institution of this Action?

A.—I will give you the exact date this afternoon, as soon as I see my file.

Q.—You never discussed with Mr. Robertson, in a general way, in order to have him disclose to you all the assets of the Estate? Or, do you say the contrary?

A.—I would not say that.

E. L. PARENT (recalled for Plaintiff's) Examination in chief.

Q.—What do you say about it?

10 A.—We had several meetings with Mr. Robertson and Mr. Leamy. Naturally they were more informed about the affairs of the late Hugh Quinlan than we were, and we had to rely on our co-Executor and Mr. Quinlan's accountant, or Secretary, Mr. Leamy, to furnish some of the information; outside of those we found ourselves from the contents of the safety deposit box.

Q.—Am I right in saying that you did not include that mortgage item as a part of the assets of Mr. Hugh Quinlan because at the time you filed that Statement Mr. Robertson had not disclosed it to you?

A.—I did not know it, as far as I can remember.

20 Q.—You filed an additional Declaration with the Succession Duties Office on June 15th, 1929, with reference to this mortgage, did you not? I now show you a photostatic copy of it.

A.—This appears to be a copy of the document we filed. I recognize the name of one of our clerks.

Q.—It reads: "Mortgage held jointly by Hugh Quinlan and A. W. Robertson on lots 1000 and 1001, Ville La Salle, Montreal, \$6750"?

A.—That is Mr. Quinlan's interest in the principal.

Q.—Will you file this Declaration as Exhibit P-71?

A.—Yes.

30 Q.—You declare Mr. Quinlan had a half interest. Will you please explain how it happens that you filed a Statement for half of \$13,000 or thereabouts, instead of filing a Statement for half interest in \$18,000, in view of the fact that the Statement of A. W. Robertson showed the amount of the mortgage due, with interest, as being \$18,000, and this appears in two Statements. Why did you not file a Statement for \$9000 odd?

40 A.—That mortgage is payable to Robertson & Quinlan, the two partners of A. W. Robertson, Limited. If I remember correctly they agreed amongst themselves not to collect interest from themselves. It would come to the same thing exactly.

By the Court:—

Q.—Does the amount of \$18,000 include interest?

A.—Yes, your Lordship. It would go in the same pocket.

E. L. PARENT (recalled for Plaintiff's) Examination in chief.

By Mr. Tanner, Continuing:—

10 Q.—Was there any document signed by Mr. Quinlan shown to you by Mr. Robertson to the effect that he waived interest on that mortgage at any time?

A.—No.

Q.—Whose word did you take not to make a Declaration of the half amount due on the interest to the Succession Duties Office?

A.—I understood it was perfectly agreed, because it was just a change of money from one pocket to the other.

By the Court: —

20 Q.—Not necessarily. Mr. Robertson could renounce the interest to which he was entitled from Robertson & Company, Limited, while the Estate Quinlan might not do so.

A.—They were both partners in the same proportion.

By Mr. Tanner, Continuing:—

Q.—Is it not true that this question of wiping out the interest was suggested to you by Mr. Robertson in a letter to the Capital Trust Corporation dated February 21st, 1929?

30 A.—I do not know whether this was the first time. My file might show another. I would have to see my own file to see the date Mr. Robertson disclosed it to me first.

Q.—You received this letter of February 21st, 1929?

A.—Yes.

Q.—Do you not notice in this letter Mr. Robertson says the interest will be wiped out?

A.—I see that.

Q.—Did you subsequently decide to pay the interest on that mortgage, notwithstanding your Declaration?

40 A.—I do not remember. They may have agreed to pay a few years, after discussing the matter with the legal adviser of the Estate, as far as I can remember. It does not change the result very much.

Q.—But, you paid it only to July 1st, 1927, and you made a distribution of the interest up to that date, but not subsequently?

A.—On July 17th, 1930, A. W. Robertson, Limited, sent a cheque for one half the interest on the La Salle property, which

E. L. PARENT (recalled for Plaintiff's) Examination in chief.

covers interest from the 1st of July, 1922, to the 1st of July, 1927. The amount of the cheque was \$2315.61. This was about the date of the death of Mr. Quinlan.

10 Q.—You know the mortgage started in 1922?

A.—I do not remember.

Q.—Is that mortgage paid now?

A.—Yes, it is paid in full, as far as I remember.

Q.—Was any interest paid from July 1st, 1927?

A.—I have replied to that already, that it was agreed not to collect interest, and after a discussion with the legal adviser I believe they made an agreement to pay to the date of death.

By Mr. Geoffrion:—

20 Q.—Who was the legal adviser?

A.—Mr. Perron at the time.

We discussed the matter, and they said they would pay to the date of death, and forego the rest, because it was coming to the same thing.

By Mr. Tanner, Continuing,

30 Q.—So, you did not pay any interest from the first of July?

A.—I did not receive any interest.

Q.—In the inventory filed in the present case, as well as in your Declaration to the Succession Duties Office in Quebec, you did not include as a part of the assets 200 shares of Ontario Amiesite Company belonging to the Hugh Quinlan Estate?

A.—No.

40 Q.—You became aware, did you not, of the existence of a certificate for 200 shares of Ontario Amiesite, Limited, standing in the name of Mr. Hugh Quinlan, bearing No. 26, a photostatic copy of which is filed as Exhibit P-2 of Plaintiffs at enquete, dated December 23rd, 1926?

A.—Yes, that seems to be the same certificate.

Q.—You note that the signature of Mr. H. Quinlan does not appear on the back?

A.—No, it does not.

Q.—When did you become aware of the existence of those 200 shares standing in the name of Mr. Quinlan on the books of Ontario Amiesite, Limited?

E. L. PARENT (recalled for Plaintiff's) Examination in chief.

A.—Not on the books. On July 9th, 1927, when I saw the letter of June 20th, 1927.

Q.—You came into possession of this Stock Certificate?

A.—Yes.

10 Q.—Why did you not include this among the assets of the Estate, in your inventory or in your additional Declaration to the Government?

A.—I have already replied to that on Discovery, and I give you the same reply now. I thought they were forming part of that sale on the strength of the letter of June 20th, 1927.

Q.—If that is your answer, how is it you included in your Declaration to the Department the 1150 shares of Quinlan Robertson & Janin which were in the same position as the Ontario Amiesite?

20 A.—I have already said it was an error. I have already admitted that, if I am not mistaken.

Q.—What is an error?

Mr. Campbell:—This has already been covered on Discovery, and I do not see there is any necessity of going any further into it or having the witness repeat what he has already said.

By Mr. Tanner, Continuing,

30 Q.—And, you never included those 200 shares as part of assets?

A.—No.

Q.—In your inventory, and in your Declaration to the Government, is it not a fact that you omitted to include a sum of \$16,000 due by Peter Lyall?

A.—I did not know of it at the time. It was corrected after we knew about it.

By the Court:—

40 Q.—Will you state the circumstances which induced you to make the correction?

A.—We made a few corrections.

Q.—But, for this particular item?

A.—That was the same thing. I was informed, I do not know exactly when probably days after — about this particular item.

*E. L. PARENT (recalled for Plaintiff's) Cross-examination for
Defendant Capital Trust.*

Q.—By whom were you informed?

10 A.—By Mr. Robertson, I think, by letter. As soon as he received the information we just followed the usual procedure, and reported the matter to the Succession Duties Office. I did that as soon as I was informed of it. I do not remember the exact date.

Cross examined by Mr. Campbell, K.C., of Counsel for Defendant Capital Trust Co.

20 Q.—Your attention was called in examination in chief to an entry in the Balance Sheet of A. W. Robertson, Limited, as at December 31st, 1926, where among the liabilities an item of mortgage appears, amounting to \$18,315.10. Will you look at the Balance Sheet and state whether there is any indication on it to show to whom the mortgage was payable?

A.—No, it does not show. Just the word “mortgage” appears.

Q.—There was nothing there to caution you it was payable to Messrs. Robertson and Quinlan?

A.—No.

Q.—Is the same thing true of the Balance Sheet of 1927?

A.—Yes, the same word appears.

30 Q.—When you considered the question of foregoing interest on this mortgage for a portion of the time, did you take any advice on the subject?

A.—We took the advice of the Hon. Mr. Perron.

Q.—Did he advise you that the course you proposed to follow was correct?

A.—Yes.

Q.—Have you his letter?

A.—Yes.

Q.—What is the date of it?

40 A.—It is dated April 17th, 1930.

Q.—Will you please exhibit the original, and file a copy as Exhibit D-C-6?

A.—Yes.

Q.—In order that we may understand this letter, will you file, as Exhibit D-C-7, your letter to Mr. Perron, in which you put the questions answered by the letter D-C-6?

A.—Yes.

Q.—Your letter is dated March 12th, 1930?

A.—Yes.

*E. L. PARENT (recalled for Plaintiff's) Cross-examination for
Defendant Capital Trust.*

10 Q.—You were questioned about the omission of 200 shares of Ontario Amiesite, Limited, in the declared assets of the Estate of the late Hugh Quinlan which you declared for Succession Duty purposes, and you made the explanation which you did make in regard to that omission. I would like to ask you if you had any information as to what was the asset value of those 200 shares?

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

The objection is maintained by the Court.

20 Q.—Was there any difference in the interest of Messrs. Quinlan & Robertson in the La Salle mortgage you spoke of and the interest they had in A. W. Robertson, Limited, by which that mortgage was owing?

A.—No, they were both the same.

Q.—They were half owners of both?

A.—Half. Fifty-fifty.

And further deponent saith not.

30

J. H. Kenehan,
Official Court Reporter.

40

JOHN I. McDONALD (for Plaintiff's) Examination in chief.

DEPOSITION OF JOHN I. McDONALD

10 A witness produced and examined on behalf of the Plaintiffs.

On this third day of December, in the year of Our Lord one thousand nine hundred and thirty personally came and appeared; John I. McDonald, of the City and District of Montreal, contractor, aged 42 years, a witness produced and examined on behalf of the Plaintiffs, who, being duly sworn, deposes as follows:—

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

20 Q.—What is your occupation?

A.—I am President of Amiesite Asphalt, Limited.

Q.—In your quality as such did you bring with you the Share Certificate Book of Amiesite Asphalt, Limited?

A.—Yes, sir.

Q.—The book you now show me is the original?

A.—Yes.

Q.—Will you deposit it before the Court, until such time as we can dispose of it?

A.—Yes.

30 No Cross examination.

And further deponent saith not.

J. H. Kenchan,
Official Court Reporter.

40

V. L. KERR (recalled for Plaintiff's) Examination in chief.

DEPOSITION OF VERNIE L. KERR

10 A witness recalled on behalf of Plaintiffs.

On this third day of December, in the year of Our Lord One thousand nine hundred and thirty, personally came and re-appeared, Vernie L. Kerr, already sworn, who being recalled as a witness on behalf of Plaintiffs, deposes as follows:—

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

20 Q.—When you were examined yesterday, you referred to your signature as a witness to the signature of Mr. Quinlan on certain share certificate. I now exhibit to you the originals of the four certificates photostatic copies of which were exhibited to you when you were under examination yesterday. Will you please verify if your signature appears on those certificates? Did you sign those four share certificates as a witness?

Witness:—When?

By the Court:—

30 Q.—At any time?

A.—I signed two. I witnessed two. That is all I know I signed.

Q.—Will you look at the four certificates now before you, and say whether you signed them all, or only two of them?

A.—I know I only signed two.

By Mr. Beaulieu:—

40 Q.—Which of the four?

A.—That is a very hard question.

By Mr. Masson, Continuing:—

Q.—To the best of your knowledge, naturally?

A.—I did not sign any on the date marked on them. And, I only signed two.

V. L. KERR (recalled for Plaintiff's) Examination in chief.

By the Court:—

Q.—Which two of the four did you sign? If you cannot say, just tell me.

10 A.—I sometimes write my signature like this, (certificate No. 5 Amiesite Asphalt Limited). I have papers here. I sometimes signed like that, but it is not my signature at the present time.

Q.—Can you deny any one of those four signatures are yours, and, if you can, which do you think is not yours?

A.—It is very hard to say right here. This certificate, No. 4, for one share of Quinlan, Robertson and Janin. is more like my signature now. That is the way I write my signature now, and have for some time back.

20 Q.—What about the two share certificates of Amiesite?

A.—I said I have written my signature like that. My “K” that is on certificate No. 5 of Amiesite Asphalt Limited.

I am not sure of certificate No. 8, for 1150 shares Quinlan, Robertson and Janin Limited.

I only signed two. That is to my knowledge presently.

Q.—You are positive you signed only two share certificates?

30 A.—I signed two in the month of May. I witnessed Mr. Quinlan's signature.

Q.—Did you ever sign any after that?

A.—Never, or before that. When I was on day duty I signed two.

By Mr. Masson, Continuing:—

Q.—Were you present when Mr. Quinlan signed those share certificates?

40

Witness:—The two in the month of May?

Counsel:—Yes.

A.—Yes, I was present.

Q.—How many documents did Mr. Quinlan sign at the time in your presence?

A.—I witnessed two. I signed two.

*VERNIE L. KERR (recalled for Plaintiff's) Cross-examination
for Defendant Robertson.*

Q.—Did Mr. Quinlan sign more than two papers in May when you were witness?

10 A.—I did not see him sign more than two.

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

Q.—You notice those four signatures are very much alike, are they not?

A.—Not necessarily. These two I recognize are; the other two are not as much alike. I have signed my name that way, that I recognize those two.

20 Q.—Will you look at the document I now show and say if you recognize this signature as yours, or do you deny it under oath?

A.—It looks like mine.

(The signature referred to is the signature "Vernie L. Kerr" on share certificate No. 1, Amiesite Asphalt Limited for one share).

Q.—Do you recognize your signature on this document?

A.—Not as much. No, I do not.

30 (The signature referred to is the signature "Vernie L. Kerr" on share certificate No. 8, Quinlan, Robertson and Janin, Limited, 1150 shares).

Q.—Do you recognize your signature on this document?

A.—It is very much like the first one you showed me.

40 (The signature referred to is the signature "Vernie L. Kerr" on share certificate No. 1, Amiesite Asphalt Limited, for one share).

Q.—Do you recognize your signature on this document?

A.—I have written like that.

(The signature referred to is the signature "Vernie L. Kerr", on share certificate No. 4, Quinlan, Robertson and Janin, Limited, for one share).

Witness (Continuing):—I signed two.

*VERNIE L. KERR (recalled for Plaintiff's) Cross-examination
for Defendant Robertson.*

Q.—Can you fix the date upon which you put your signatures to those documents?

10 A.—No, I cannot. It was in the month of May, when I was on day duty. As nearly as I can fix it at the present time it would be the second or third week. I know it was not the last week, because Mr. Quinlan used to go out in the afternoons.

Q.—Have you any memorandum to refresh your memory?

A.—No, I never made any memo of it, and after it was done I did not think any more about it.

Q.—I quite understand it was no part of your official duty to sign documents.

A.—No, it was not. I just did it to accommodate.

20 Q.—After the signature was given you did not think of it any more?

A.—No, I never thought of it again.

Q.—I suppose your memory was refreshed lately?

A.—Yes.

Q.—Who refreshed your memory?

A.—When I was subpoenaed, in April.

Q.—Then you met somebody who spoke to you about those share certificates?

A.—No.

30 Q.—Did you meet any one, or did you discuss the matter with any one, before giving your evidence?

Witness:—When?

Counsel:—I do not know. At any time.

A.—I did not discuss the matter with any one.

Q.—Did you mention the matter?

40 A.—I had no one to mention it to. I did not discuss it with any one.

Q.—Did anybody ask you if you had signed share certificates as a witness, and how many you had so signed?

Q.—When I was subpoenaed I did not know what it was for, and I naturally asked.

Q.—Of course, there was no harm done if you did ask, and I certainly am not criticising you. It would be absolutely in order that you should ask. I am simply trying to ascertain the facts. Did you enquire why you were subpoenaed?

A.—Yes, I did.

*VERNIE L. KERR (recalled for Plaintiff's) Cross-examination
for Defendant Robertson.*

Q.—Whom did you ask?

A.—I asked Miss McArthur.

Q.—Did she tell you?

10 A.—She told me it was in connection with the shares — Mr. Quinlan's business. I said I did not know anything about it. All I knew was some papers of the business. She said they were some papers of the business. She said they were some papers that had been signed in June, and I said I knew nothing about it, because I did not sign any in June.

Q.—Was she the only person with whom you discussed the matter?

20 A.—No: I saw Mr. Desaulniers just before we were called to Court here a month ago. I saw him one afternoon. That was the first time I saw him. He is the only person I spoke to at all outside of Miss McArthur.

Q.—So, you spoke to Mr. Desaulniers about it a month ago?

A.—I asked him a little more why I was subpoenaed.

Q.—And, you were perfectly right in doing so.

By the Court:—

Q.—There is perhaps more harm in not telling exactly all that took place rather than in telling it.

30 A.—I saw Mr. Desaulniers once.

Q.—What did he tell you, and what did you say to him?

A.—I asked him why I was subpoenaed, and he told me it was in connection with the business — the shares of the Company that Mr. Quinlan signed and that I witnessed. That was all. I told him I signed two in the month of May.

By Mr. Masson:—

40 Q.—Did you see any one else besides Miss McArthur and Mr. Jacques Desaulniers?

A.—I telephoned Dr. Hackett in April, when I was talking with Miss McArthur. I asked him if Miss McArthur and I could go down to see him and he said yes. We were in his office for about ten minutes one afternoon. That was in April. We told him we had been subpoenaed, and it was about the business — about the signing of the papers. He asked us if we had any bedside notes, or anything we had kept during Mr. Quinlan's illness. We had them, but they had been mislaid or something during the sum-

*VERNIE L. KERR (recalled for Plaintiff's) Cross-examination
for Defendant Robertson.*

mer. We did not consider they were of any value. Dr. Hackett said "Just go up there and answer the questions just as you know how." There was no other talk.

10 Q.—Did you see any of the parties in this case?

Witness:—Whom do you mean?

Counsel:—The Defendants: the Capital Trust or Mr. Robertson?

A.—No, I did not see any of them, or talk to them.

Q.—Did you ever speak to Mr. Robertson about this case?

20 A.—No, I never did. I have not seen him to speak to since the Fall when I nursed Mrs. Quinlan. I saw him then. That was in September of 1927. I never saw him again to speak to until the other day, when I saw him at the elevator and he came up and spoke to me.

Q.—What was the subject of your conversation?

A.—He said he had not seen me for some time.

Q.—Did he speak to you about your testimony, or the share certificates?

30 A.—He just asked me if I knew the date I signed the papers, and I said I was not sure. Then he said "I have the date." That was all that was said. I told him I was not sure of the date. There was no month mentioned, or anything further.

Q.—Did you see Dr. Hackett in the corridor here?

This question is withdrawn.

By Mr. Beaulieu:—

40 Q.—I understand you were on day duty in May, and on night duty in June?

A.—Yes, I was on day duty in May.

Q.—While you were on day duty did you see the Honorable Mr. Perron come in?

A.—I saw him once.

Q.—In May?

A.—In May.

Q.—Do you remember approximately in what part of the month of May that would be?

A. W. ROBERTSON (*recalled for Plaintiff's*) Exam. in chief.

A.—I would not be sure. It was not the last week in May I know, because Mr. Quinlan went out in his car. It was between the first and the last week.

10 By the Court:—

Q.—Was it before, or after, you signed those documents?

A.—I tried to think of that today, but I cannot seem to remember. It may have been before. I could not say. Or around then.

And further deponent saith not.

20 J. H. Kenehan,
Official Court Reporter.

DEPOSITION OF ANGUS W. ROBERTSON

A witness examined on behalf of the Plaintiffs.

30 On this third day of December in the year of Our Lord One thousand nine hundred and thirty, personally came and reappeared; Angus W. Robertson, already sworn, who reappearing as a witness on behalf of the Plaintiffs, deposes as follows:—

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

Q.—The last time you were examined you brought with you the papers I now show you?

A.—Yes, I think these are the papers.

40 Q.—Will you file, as Exhibit P-72, a document signed by yourself and William Lyall, and the Honorable J. L. Perron as witness, dated November 20th, 1925?

A.—Yes.

Q.—Will you file, as Exhibit P-73, a memorandum of Agreement signed July 2nd, 1926, by yourself and by Mr. Quinlan, and Mr. Leamy as witness?

A.—Yes.

Q.—Will you file, as Exhibit P-74, copy of a letter by yourself to Mr. Lyall, dated February 24th, 1926?

A.—Yes: I think this is my letter.

A. W. ROBERTSON (*recalled for Plaintiff's*) Exam. in chief.

Q.—Does this letter Exhibit P-74 contain all the Agreement between yourself and Mr. Lyall? You notice Exhibit P-73 is an agreement between yourself and Mr. Quinlan?

A.—Yes.

10 Q.—You also notice Exhibit P-72 is only a temporary agreement between yourself and Mr. Lyall in reference to the Steel gates?

A.—Yes.

Q.—Later on there was a more definite agreement between yourself and Mr. Lyall, which was in the lines of Exhibit P-72, and that agreement is contained in Exhibit P-74?

A.—Yes, I think that is right.

20 Q.—Exhibit P-74 is a more definite agreement than exhibit P-72, but they refer to the same transaction?

A.—Yes, they are all in reference to the steel gates contract.

Q.—Exhibit P-74 is more complete than Exhibit P-72, is it not?

A.—In what way? Exhibit P-72 was made about the time we tendered, and Exhibit P-74 was made when Lyall was about to get the work.

Q.—Does Exhibit P-74 contain all the clauses of the agreement between yourself and Mr. Lyall?

A.—I am not clear as to that. It contains all the money or any other remuneration or emolument I am to get out of it.

30 Q.—Can you tell me the date of the first payment that became due by Lyall to yourself?

A.—Mr. Leamy would have that. You would have to get the books to ascertain that.

Q.—Mr. Leamy can supply that information?

A.—Yes.

Q.—Will you file, as Exhibit P-75, a letter signed by yourself and by Mr. J. L. Perron, as witness, addressed to William Lyall, and dated March 8th, 1926?

A.—Yes. I think that is right.

40 Q.—This is your signature, and this is the signature of Mr. Lyall on the second page?

A.—Yes.

Q.—Will you look at Exhibit P-45, which is a photostat of a cheque for \$180,000, and will you tell me if you are the beneficiary of that cheque, and if the photostat of the endorsement bears your signature?

A.—Yes.

ANGUS W. ROBERTSON (recalled for Plaintiff's)
Cross-examination for Defendant Robertson.

Q.—You received that cheque on the day it was made?

A.—I think so. That is my signature.

Q.—For what purpose did you receive that cheque?

A.—The stock of the Fuller Gravel Company.

10 Q.—This cheque bears date May 22nd, 1928?

A.—Yes.

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

Q.—Did you receive the amount of that cheque for yourself only?

A.—No.

20 Q.—Did you receive it in trust for yourself and somebody else?

Mr. Masson, K.C., of Counsel for Plaintiffs, objects to the question as not being the proper method of proving a distribution, inasmuch as if there was a distribution it must have been by writing which should be produced.

The objection is reserved by the Court.

30 Q.—Did you keep the \$180,000 for yourself?

A.—No.

Q.—Did you distribute it?

A.—Yes.

Q.—To whom?

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

The objection is reserved by the Court.

40 A.—George Rayner, George S. McCord, and W. E. Tuoman.

Q.—Were those gentlemen shareholders in the Fuller Gravel Company?

A.—Yes.

Q.—Was the Fuller Gravel Company a company in which originally you were interested with the late Mr. Hugh Quinlan?

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

*ANGUS W. ROBERTSON (recalled for Plaintiff's)
Cross-examination for Defendant Robertson.*

The objection is reserved by the Court.

A.—Yes.

10 Q.—Was the share of Mr. Hugh Quinlan's Estate in that Fuller Gravel Company sold?

A.—Yes.

Q.—About what date?

A.—I would have to look up the records to tell you that.

Q.—Was that sale of the share belonging to the Estate Hugh Quinlan made with the approval of Mr. Perron?

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

Q.—Just explain the whole transaction.

Same objection.

Q.—You have stated you divided the amount you received between the three gentlemen you mentioned?

A.—I gave them their respective shares in it.

Q.—You gave them an amount equivalent to the shares they held?

30 A.—Yes; that they held at that time.

Q.—And, you kept the balance as the owner or pretending to be the owner of the stock?

A.—Yes.

Mr. Masson:—I object to this evidence as illegal, and as not being the best proof. If the witness paid by cheque, or has receipts the documents should be produced.

40 And further deponent saith not.

J. H. Kenehan,
Official Court Reporter.

LOUIS N. LEAMY (for Plaintiff's) Examination in chief.

DEPOSITION OF LOUIS N. LEAMY

A witness examined on behalf of the Plaintiff.

10

On this third day of December in the year of Our Lord One thousand nine hundred and thirty, personally came and appeared, Louis N. Leamy, of the City and District of Montreal, Book-keeper, aged fifty-four years, a witness produced and examined on behalf of the Plaintiffs, who being duly sworn deposes as follows:

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

20

Q.—Mr. Robertson just told us that you could give us some information about the dates on which the different amounts became due under the Lyall steel gates deal.

A.—I think I can, yes.

Q.—When was the first payment due?

A.—The first payment was made April 28th, 1926.

Q.—How much?

A.—\$8300. The next was May 20th, 1927.

Q.—How much?

A.—\$8236.

Q.—And, the next?

30

A.—The next was paid to the Capital Trust. I have not the information. They were paid directly by Mr. Robertson.

Q.—Can you give me the dates when those different payments became due?

A.—No, I have not that information.

Q.—You could get it for the Court?

A.—I do not know if I could. The information I have is the dates of those two payments I just mentioned. The subsequent payments you could get from the Capital Trust.

40

Q.—But, we have no evidence as to the dates on which those payments became due.

A.—Offhand, I cannot give it to you.

Q.—Is there any possibility of getting the information and helping the Court on it?

A.—I will try, but I am not sure if I have it in any way that will enlighten the Court.

Q.—Will you look at Exhibit P-73, and tell His Lordship if your signature and your initials appear on that paper?

A.—Yes.

*LOUIS N. LEAMY (for Plaintiff's) Cross-examination for
Defendant Robertson.*

Q.—You notice there is an interlineation of the words “then due” written in ink, and near that line or at the bottom of it there are the initials “A.W.R.” and “L.N.L.” “L.N.L.” are your initials?

10 A.—They are.

Q.—Will you explain how it is Mr. Quinlan did not initial that particular part?

A.—Offhand, I cannot. The change “then due” was made, and no doubt was drawn to Mr. Quinlan’s attention at the time.

Q.—How can you say that?

A.—Because we discussed it with Mr. Quinlan.

Q.—Why did you not have him put his initials there?

A.—I do not know. I cannot just say now.

20 Q.—Naturally, it was not written at the same time as the paper was written? These words “then due” were not written at the same time as the paper was drafted?

A.—They were likely written that very day.

Q.—Then, how is it you did not have Mr. Quinlan put his initials on the paper, verifying those words?

A.—It may have been an omission on our part.

Q.—Without importance, from your point of view?

A.—In view of the fact that Mr. Quinlan.....

30 Q.—(Interrupting) Did you attach any importance to the words “then due”?

A.—I did not, just then.

Q.—Who asked you to put your initials there?

A.—Mr. Robertson and myself, as to those added words.

Q.—Will you try to get the information I asked you for in regard to the dates the payments became due?

A.—I am afraid I cannot get you the information.

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

40 Q.—I understand you were the confidential employee of the late Hugh Quinlan?

A.—Yes.

Q.—Were you working for him for many years?

A.—Up to the day he died: twenty years.

By Mr. Masson:—

Q.—You were working for Mr. Robertson at the same time?

A.—Yes.

ANATOLE LAZURE (for Plaintiff's) Examination in chief.

By Mr. Beaulieu:—

Q.—You had the confidence of both?

10

A.—Yes.

By Mr. Masson:—

Q.—You are still working for Mr. Robertson?

A.—Yes.

By Mr. Beaulieu:—

20 dead? Q.—And you are not working for Mr. Hugh Quinlan, who is

A.—No, sir.

And further deponent saith not.

J. H. Kenehan,
Official Court Reporter.

30

DEPOSITION OF ANATOLE LAZURE

A witness examined on behalf of the Plaintiffs.

40 On this third day of December in the year of Our Lord, One thousand nine hundred and thirty personally came and appeared, Anatole Lazure, of the City and District of Montreal, officer in charge of Succession Duties, aged forty-four years, a witness produced and examined on behalf of the Plaintiffs, who, being duly sworn, deposes as follows:—

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

Q.—Have you in your possession the original Declaration which was made by the Executors of the Estate of the late Hugh Quinlan in respect to the assets of the Estate?

A.—Yes, I have.

Q.—Will you please exhibit it to the Court and file a copy?

A.—I have the original here.

ANATOLE LAZURE (for Plaintiff's) Examination in chief.

Q.—Will you please show me the original?

(Witness exhibits to counsel the document in question).

10 Q.—I draw your attention to page 4 of the Declaration. Is
it not a fact that opposite the figures “\$150,000” there is to be
found the following: “Hugh Quinlan and Janin Company, Li-
20 mited, Montreal, 1151 shares common; Quinlan, Robertson and
Janin, Limited” then follows “250 shares common Amiesite As-
phalt Limited.” Then follows “250 ditto shares ditto (under the
word “common”) “ditto” under the word “Amiesite”, “ditto”
under the word “Asphalt” — and that there is a stroke of the
pen run across the words “250 shares common Amiesite Asphalt
Limited,” and also a stroke of the pen run across the words “250
Shares Common Amiesite Asphalt Limited,” on the two lines?

A.—Yes, there is. There is a stroke on the shares of the
Amiesite.

Q.—And also under the figures “250” and the “dittoes”.

A.—Yes.

Q.—You note there are no initials in respect to this?

A.—No, there are no initials here.

Q.—Do you also note there is a bracket, which apparently
includes all the said shares, and opposite the bracket there are the
figures “\$150,000”?

30 A.—The amount is mentioned, \$150,000.

Q.—And opposite the bracket is written in pen “valeur fixe
\$185.00”?

A.—Yes.

Q.—And, that is followed by the figures.....

A.—(Interrupting) 9th November, 1927. And, these are
my initials.

Q.—When was the stroke made across those words and fi-
gures?

40 A.—They were like this when the Declaration was brought in.
When we received the Declaration the stroke was there.

Q.—Are you positive of that?

A.—Yes.

Q.—Did any one draw your attention to it?

A.—No. Later I did to Mr, Parent.

Q.—Was there any correspondence exchanged to ascertain
how it happened that those words were struck?

A.—I do not remember. I do not think so.

ANATOLE LAZURE (for Plaintiff's) Cross-examination.

Q.—Will you produce a photostatic copy of this page 4, as Exhibit P-76?

A.—Yes.

10 Cross examined by Mr. Campbell, K.C., of Counsel for Defendants:—

Q.—That was the original declaration filed by the Quinlan Executors?

A.—Yes.

Q.—How many supplementary Declarations did you receive?

A.—There is one of the 29th May, 1929.

20 Q.—Covering the one item in regard to the interest in the Peter Lyall & Son contract, \$16,666?

A.—Yes.

Q.—Will you file, as Exhibit D-C-8, certified copies of all the supplementary Declarations filed by the Quinlan Executors in connection with the Hugh Quinlan Estate?

A.—Yes.

By Mr. Tanner:—

30 Q.—Can you tell us the dates on which the Succession Duties were paid to the Department in respect to the shares of Quinlan, Robertson and Janin?

A.—August 3rd, 1927, on account,	\$10,000.
August 16th, 1927, on account,	20,000.
September 9th, 1927,	2,500.
September 21st, 1927,	7,500.
November 29th, 1927,	30,000.
May 14th, 1928,	11,167.26

Making a total, with the interest, of \$81,167.26

40 ties Q.—Did that sum include the payment of the Succession Duties on the 1151 shares of Quinlan, Robertson and Janin?

A.—Yes, sir, it is included in the amount mentioned.

Q.—Was there ever an application made for a refund?

A.—No, I do not think so. I do not remember any.

And further deponent saith not.

J. H. Kenchan,
Official Court Reporter.

HARRY E. ANDISON (for Plaintiff's) Examination in chief.

DEPOSITION OF HARRY E. ANDISON

10 A witness examined on behalf of the Plaintiffs.

On this fourth day of December, in the year of Our Lord One thousand nine hundred and thirty, personally came and appeared, Harry E. Andison, of the City and District of Montreal, Accountant, aged thirty-eight years, a witness produced and examined on behalf of the Plaintiffs, who being duly sworn doth depose and say as follows:—

20 Examined by Mr. Masson, K.C., of Counsel for Plaintiffs:—

Q.—You are here on behalf of Mr. Lyall?

A.—Yes.

Q.—Can you tell us the date when the instalments became due of the amount of \$100,000 that were supposed to be paid by the Lyall Company to Messrs Robertson and Quinlan?

A.—The first one, April 27th, 1926, \$25,000; October 3rd, 1927, \$25,267.15, including interest; July 11th, 1928, \$25,513.70; July 19th, 1929, \$25,386.30.

30 Q.—Those are the dates of the payments, but can you tell us at what time those different payments became due?

A.—All I know is the first one was paid on April 27th, 1926; It was due then.

Q.—You know some payments were late ?

A.—The first one was O.K., April 27th, paid by cash.

Q.—That was when it became due?

A.—Yes.

Q.—You are sure about that?

40 A.—From the information I have. The cheque went through on April 27th. I have no record of any contract or agreement.

Q.—I show you a memorandum of agreement bearing date March 8th, 1926, which is filed in this case as Exhibit P-75, and in reference to which the different payments you have just mentioned were paid. Will you kindly make search and let me know the dates on which those different payments became due? There is a paragraph in this agreement which reads:—

HARRY E. ANDISON (for Plaintiff's) Examination in chief.

10 “When the securities have been returned to me my interest in the contract will cease, save and except that you will pay me in settlement of my rights the sum of \$100,000, payable as follows: \$25,000 on the day I receive my securities, and \$25,000 yearly thereafter for three years.”

 Will you please tell me the date on which those securities were given to Mr. Robertson, and bring any receipts there may be in reference to it?

 A.—I can try to bring those down. I never saw this agreement before. Of course, you understand Peter Lyall and Sons are in liquidation.

20 And further for the present deponent saith not.

 J. H. Kenehan,
 Official Court Reporter.

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DOMINION OF CANADA

IN THE SUPREME COURT OF CANADA

(OTTAWA)

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

Angus William Robertson,

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

APPELLANT.

— and —

Ethel Quinlan, & vir, & al.

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

RESPONDENTS.

— and —

Capital Trust Corporation Limited,

(Defendant in the Superior Court),

— and —

Dame Catherine Ryan, & al.

MIS-EN-CAUSE.

THE CASE

VOL. III. — PLAINTIFF'S EVIDENCE

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