

105, 1930

IN THE PRIVY COUNCIL.

No. 37 of 1930.

ON APPEAL FROM THE APPELLATE DIVISION OF THE
SUPREME COURT OF ONTARIO

BETWEEN:

CHARLES E. CAMPBELL

(Plaintiff) Appellant

—and—

NATIONAL TRUST COMPANY, LIMITED
Executor of the last will and testament of E. A.
Wallberg, deceased,

(Defendant) Respondent

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In the Privy Council

ON APPEAL FROM THE APPELLATE DIVISION OF THE
SUPREME COURT OF ONTARIO

RECORD

In the
Supreme
Court of
Ontario

No. 1

Statement
of Case

BETWEEN:—

CHARLES E. CAMPBELL

(Plaintiff) Appellant

—and—

NATIONAL TRUST COMPANY, LIMITED
executors of the last will and testament of E. A.
Wallberg, deceased

(Defendant) Respondent

10

STATEMENT OF CASE

This is an Appeal by the Plaintiff from the judgment of the First Appellate Division of the Supreme Court of Ontario, delivered on the twenty-third day of April 1929, allowing in part, an appeal by the late E. A. Wallberg (then defendant) from the judgment of the Hon. Mr. Justice McEvoy, delivered the twentieth day of July 1928, and directing that the Plaintiff recover from the Defendant, National Trust Company Limited, as Executor of the last Will and Testament of E. A. Wallberg, deceased,
20 out of his property coming into its hands, the sum of (\$10,000.00) ten thousand dollars, without costs.

In the Supreme Court of Ontario

Writ issued the 5th day of April, 1927

BETWEEN:—

CHARLES E. CAMPBELL,

Plaintiff.

—and—

E. A. WALLBERG and LAKE ST. JOHN

POWER & PAPER CO. LIMITED,

Defendants.

RECORD

In the
Supreme
Court of
Ontario

No. 2

Statement
of Claim
9th May,
1927

1. The Plaintiff is a newspaper proprietor, and resides at Vancouver in the Province of British Columbia. 10

2. The Defendant, E. A. Wallberg, is an engineer, and resides in Toronto, in the Province of Ontario, and is President of the Defendant the Lake St. John Power & Paper Co. Limited.

3. The Defendant, Lake St. John Power & Paper Co. Limited, is a body politic and corporate duly incorporated and having its head office in the village of Mistassini, in the District of Lake St. John, in the Province of Quebec.

4. On or about the 17th day of April, 1926, the Defendant, E. A. Wallberg, did cause to be incorporated, or was about to cause to be incorporated, the Defendant, Lake St. John Power & Paper Co. Limited, having for its object, among other objects, the manufacture and sale of newsprint paper. 20

5. On or about the 17th day of April, 1926, the Defendant, E. A. Wallberg, verbally agreed to and with the Plaintiff that if the Plaintiff should introduce to the Defendant Wallberg a party, or parties, interested in the purchase of newsprint paper, that he, the Defendant, E. A. Wallberg and/or the Defendant Lake St. John Power and Paper Co. Limited, should pay to the Plaintiff a commission, at the prevailing and customary rate of commissions upon the sale of newsprint paper, upon such quantity of newsprint paper as such party, or parties, so introduced by said Plaintiff should purchase from the Defendant, E. A. Wallberg and/or the Defendant Lake St. John Power & Paper Co. Limited. 30

6. In reliance upon, and in pursuance of said verbal agreement so made by said Defendant Wallberg, the plaintiff introduced to the De-

defendant Wallberg, as a prospective purchaser for newsprint paper to be manufactured by the Defendant, Lake St. John Power & Paper Co. Limited, the Newspaper & Magazine Paper Corporation of the City and State of New York, in the United States of America, represented at said introduction by its President, Lester J. Clarke.

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No. 2
—

7. Subsequent to said introduction, said Wallberg entered into negotiations with said Lester J. Clarke, and as a result of said introduction and said negotiations a contract was entered into between the Defendant, Lake St. John Power & Paper Co. Limited and said Newspaper & Magazine Paper Corporation, on the 29th day of December, 1926, whereby the Defendant, Lake St. John Power & Paper Co. Limited undertook to manufacture, sell and deliver to the Newspaper & Magazine Paper Corporation sixty thousand (60,000) tons of newsprint paper per year for the period of ten (10) years at a price or prices which will more fully appear from said agreement.

Statement
of Claim
9th May,
1927
Continued

8. The Plaintiff says that the price and value of newsprint paper so contracted to be manufactured, sold and delivered to the Newspaper & Magazine Paper Corporation as established by said contract is not less than Forty million (\$40,000,000.) dollars.

9. The Plaintiff further says that the regular and customary rate of commission upon the sale of newsprint paper is three per centum (3%) on the sale price thereof.

10. Plaintiff further says that the Defendant, E. A. Wallberg, was at the time of the incorporation of the Defendant, Lake St. John Power & Paper Co. Limited, and at the time of the making of the contract referred to in Paragraph 7 of this Statement of Claim, and at all times material to this action, the President and duly authorized agent of the Lake St. John Power & Paper Co. Limited.

11. The Defendant, Lake St. John Power and Paper Co. Limited had notice through its President and duly authorized agent, the Defendant, E. A. Wallberg, that any contract entered into between the Defendant, Lake St. John Power & Paper Co. Limited, and any party or parties, who should be introduced by the Plaintiff to said Company, or its officers, with a view to the purchase of any portion of its output of newsprint paper, were made subject to the right of the Plaintiff to receive, and to the liability of the Defendant Wallberg and Company to pay to the Plaintiff a commission at the usual, customary and prevailing rate upon sales of newsprint paper.

12. The Defendant, Lake St. John Power & Paper Co. Limited, with such notice, made and entered into the contract referred to in paragraph 7, whereby the Defendant Company became liable to pay to the Plaintiff the commission due in respect of the sale of newsprint paper represented by said contract.

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No. 2

Statement
of Claim
9th May,
1927
Continued

In the alternative and without prejudice to the foregoing:

13. The Plaintiff says that the Defendant, Wallberg, on or about the 17th day of April, 1926, at the City of Toronto aforesaid, verbally agreed that if the Defendant Wallberg or the Defendant, Lake St. John Power & Paper Co. Limited, should sell or contract to sell all or any portion of the output of the Defendant, Lake St. John Power & Paper Co. Limited to any party or parties seeking to purchase newsprint paper, who should be introduced to Defendant Wallberg, by plaintiff that he, the Defendant Wallberg would pay to the Plaintiff a reasonable remuneration for his services in effecting such introduction.

10

14. Plaintiff repeats Paragraphs 6 and 7, and says that said contract was effected by the Defendant, Lake St. John Power & Paper Co. Limited with said Newspaper & Magazine Paper Corporation, as a result of the introduction of said Clarke to the Defendant Wallberg.

15. The Defendant, Lake St. John Power & Paper Co. Limited, had notice through its President and duly authorized agent, the Defendant, E. A. Wallberg, that any contract entered into between the Defendant, Lake St. John Power & Paper Co. Limited, and any party or parties, who should be introduced by the Plaintiff to said Company, or its officers, with a view to the purchase of any portion of its output of newsprint paper, were made subject to the right of the Plaintiff to receive, and to the liability of the Company to pay to the Plaintiff a reasonable remuneration.

20

16. The Plaintiff claims:—

(a) Judgment against the Defendant Wallberg for the sum of One million two hundred thousand dollars (\$1,200,000), being three per cent (3%) commission on Forty million dollars (\$40,000,000) newsprint paper sold by the Defendant, Lake St. John Power & Paper Co. Limited under the contract referred to in Paragraph 7.

(b) Judgment against the Defendant, Lake St. John Power & Paper Co. Limited for the sum of One million two hundred thousand dollars (\$1,200,000), being three per cent (3%) commission on Forty million dollars (\$40,000,000) newsprint paper sold by the Defendant, Lake St. John Power and Paper Co. Limited under the contract referred to in Paragraph 7.

30

In the alternative and without prejudice to the foregoing:—

(c) Judgment against the Defendant, E. A. Wallberg, for the sum of One million two hundred thousand dollars (\$1,200,000) or such other sum as this Honourable Court may decide as being a reasonable and proper remuneration for the services of the Plaintiff in effecting the sale of said newsprint paper by Defendant, Lake St. John Power & Paper Co. Limited to Newspaper & Magazine Paper Corporation.

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(d) Judgment against the Defendant, Lake St. John Power & Paper

Co. Limited, for the sum of One million two hundred thousand dollars (\$1,200,000) or such other sum as this Honourable Court may decide as being a reasonable and proper remuneration for the services of the Plaintiff in effecting the sale of said newsprint paper by Defendant, Lake St. John Power & Paper Co. Limited to Newspaper & Magazine Paper Corporation.

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(e) Such further and other relief whether by way of declaration of the right of the Plaintiff to be paid commission from time to time as newsprint is sold and delivered under the contract referred to in paragraph 7 hereof or by way of accounting or otherwise as to this Honourable Court may seem just.

10

Statement
of Claim
9th May,
1927
Concluded

(f) Costs of this action.

DELIVERED at Toronto this 9th day of May, 1927]

LONG & DALY,
38 King Street West, Toronto,
Solicitors for Plaintiff.

STATEMENT OF DEFENCE OF DEFENDANT,
E. A. WALLBERG

1 This Defendant admits the allegations contained in paragraphs one and two of the Plaintiff's Statement of Claim and denies all the other allegations, except as hereinafter specifically admitted.

2. This Defendant denies that on or about the 17th day of April, 1926, he caused or was about to cause to be incorporated the Defendant, Lake St. John Power and Paper Company, Limited.

3. This Defendant denies that on or about the 17th day of April, 1926, he verbally agreed with the Plaintiff that if the Plaintiff should introduce this Defendant to a party or parties interested in the purchase of Newsprint paper that he, this Defendant and/or the Lake St. John Power and Paper Company, Limited, should pay to the Plaintiff a commission as alleged in paragraph five of the Plaintiff's Statement of Claim or any commission whatever, but on the contrary says that the Plaintiff, with whom this Defendant was entirely unacquainted, called at the office of this Defendant in Toronto, some day during the month of April, 1926, and requested this Defendant to accompany him to the King Edward Hotel, where he introduced him to one, Lester J. Clarke, and that no conversation or suggestion in regard to remuneration of the Plaintiff for such introduction to the said Clarke was made at any time nor was commission or payment of any kind indicated by the Plaintiff or promised or suggested by this Defendant and this Defendant believed that the Plaintiff was acting on behalf of and in the interests of the said Clarke, or some person or Corporation that the said Clarke represented.

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No. 3
—
Statement
of Defence
of
Defendant
Wallberg
10th June,
1927

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Supreme
Court of
Ontario

No. 3

Statement
of Defence
of
Defendant
Wallberg
10th June,
1927*Continued*

5. This Defendant says, in answer to paragraph six of the Plaintiff's Statement of Claim, that he entered into no verbal contract with the Plaintiff.

6. In answer to paragraph seven of the Plaintiff's Statement of Claim this Defendant says that the contract entered into between the Defendant, Lake St. John Power and Paper Company, Limited and Newspaper and Magazine Paper Corporation on or about the 29th day of December, 1926, was not a result of the introduction of this Defendant to the said Clarke by the Plaintiff, as alleged in paragraph seven of the Plaintiff's Statement of Claim.

10

7. This Defendant says that the Contract referred to in paragraph eight of the Plaintiff's Statement of Claim is subject to certain conditions as to termination and otherwise, by reason of which it is impossible to say that \$40,000,000 will be earned thereunder.

8. This Defendant denies that the regular and customary rate of commission upon the sale of Newsprint paper on the sale price thereof is three per cent (3%), as alleged in paragraph nine of the Plaintiff's Statement of Claim, but this Defendant says such commission is subject to such terms as may be agreed upon between the parties.

9. This Defendant further says in answer to paragraph ten of the Plaintiff's Statement of Claim that he never was authorized by the Defendant, Lake St. John Power and Paper Company, Limited, to enter into any agreement with the Plaintiff or any one else to pay a commission on any sale of Newsprint paper or contract for sale of Newsprint paper that might be made by the said Lake St. John Power and Paper Company, Limited.

20

10. This Defendant, in answer to paragraph eleven of the Plaintiff's Statement of Claim, repeats that he never entered into any agreement, verbal or otherwise, to pay the Plaintiff a commission and that the Defendant, Lake St. John Power and Paper Company, Limited, never had any notice of any claim by the Plaintiff from this Defendant, until shortly before the institution of this action.

30

11. In answer to paragraph twelve of the Plaintiff's Statement of Claim the Defendant, Wallberg, denies, that the said Lake St. John Power and Paper Company, Limited, made and entered into the contract mentioned in paragraph seven of the Plaintiff's Statement of Claim with any such notice as alleged in said paragraph twelve of the Plaintiff's Statement of Claim.

12. In answer to paragraph thirteen of the Plaintiff's Statement of Claim this Defendant denies that he verbally agreed to pay to the Plaintiff a reasonable remuneration for his services as alleged in said paragraph thirteen of the Plaintiff's Statement of Claim.

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13. In answer to paragraph fourteen of the Plaintiff's Statement of RECORD
 Claim this Defendant denies that the contract between the said Lake St. ^{In the}
 John Power and Paper Company, Limited and Newspaper and Magazine ^{Supreme}
 Paper Corporation, was a result of the introduction by the Plaintiff of ^{Court of}
 the said Clarke to this Defendant. ^{Ontario}

14. In answer to paragraph fifteen this Defendant says that the Defend- ^{No. 3}
 ant, Lake St. John Power and Paper Company, Limited, had no notice ^{Statement}
 through this Defendant as President or otherwise that any contract en- ^{of Defence}
 10 ¹⁰ Plaintiff to said Company or its officers would be made subject to the ^{of}
 right of the Plaintiff to receive and to the liability of the said Company ^{Defendant}
 to pay, to the Plaintiff, a reasonable remuneration for his services in ef- ^{Wallberg}
 fecting the introduction hereinbefore referred to. ^{10th June}
^{1927.}
^{Concluded}

15. This Defendant pleads the provisions of the Statute of Frauds, R.S.O. 1914, Chapter 102 Section 5.

16. This Defendant submits that this action be dismissed against him with costs.

DELIVERED this tenth day of June 1927 by Bicknell & O'Brien, McKinnon Building, Toronto, Solicitors for the Defendant, Wallberg.

JOINDER OF ISSUE

The Plaintiff joins issue herein.

DATED at Toronto this 29th day of June, 1927.

LONG & DALY,
 38 King St. West, Toronto,
 Solicitors for the Plaintiff.

[—]
 No. 4
[—]

Joinder of
 Issue
 29th June,
 1927

RECORD

In the
Supreme
Court of
Ontario

—
No. 5
—

Evidence at
Trial

Statement
of Counsel
14th
November
1927

Trial before THE HONOURABLE MR. JUSTICE McEVOY
at Toronto Non-Jury Sittings.

D. L. McCarthy, K. C. and H. E. Manning, Counsel
for the Plaintiff.

I. F. Hellmuth, K. C. and J. W. Bicknell, Counsel
for the Defendant Wallberg.

Alfred Bicknell, Counsel for the Defendant Company.
November 14, 1927.

HIS LORDSHIP: Will you explain the nature of the case to me, Mr. McCarthy? 10

MR. McCARTHY: This is an action, my Lord, brought by Mr. Campbell to recover a commission as a result of an introduction which he gave to Mr. Wallberg by means of which Mr. Wallberg was able to float and establish a very valuable paper industry, and as the result of which he was able to sell the entire output of the industry for a period of ten years. Shortly stated, the facts, as I am instructed, are these: Mr. Wallberg had in the name of a company in whose name he frequently transacts business, purchased certain valuable pulpwood and timber leases from the Quebec Government. Mr. Campbell, who is a newspaper man in Edmonton, learned of the acquisition by Wallberg of these leases when in Montreal in April of 1926. When there he met an old friend of his, Mr. Lester J. Clarke, who is probably the largest newsprint buyer in the world—certainly on this continent anyway. They had been friends for many years. Mr. Campbell mentioned to Mr. Clarke the fact that Mr. Wallberg had recently acquired these leases and was contemplating putting up a mill for the manufacture of newsprint. Clarke was on the lookout for newsprint, and Campbell said to him, "Now, if this man is going to go through with this project, would you be interested in buying the output of his mill?" Clarke told him he was on the lookout for long-term contracts. As a result of the interview they came to Toronto, having first telephoned Mr. Wallberg for an appointment. Mr. Campbell then goes over and sees Mr. Wallberg, asks him if it is true that he has bought these leases and is putting up a mill, and Mr. Wallberg says it is true. Then Mr. Campbell says, "Would you be interested in selling the output?" Mr. Wallberg says, "Yes," and wants to know who it is. Mr. Campbell fences with him a long time until he is assured that if he does give him the introduction which he proposes to give him a commission will be paid to Campbell. Having got the promise from Mr. Wallberg that a commission will be paid, he then discloses to him who the man is. Mr. Wallberg had neither heard of Campbell nor Clarke before, but as the result of the interview he was taken across to the King Edward Hotel, introduced to 20 30 40

Mr. Clarke, and to make a long story short, as a result of the interview RECORD
 Mr. Clarke finally contracted to buy the entire output of the mill for ten years.

The value of that introduction will be disclosed in the evidence. Shortly it is this: At the time the contract was made there was an over-producing in newsprint. The mills were reduced to about 80% or 75% of their output. As a result of this introduction this man has sold his entire output for a period of ten years at the price of sixty-five dollars a ton, and I think he contemplates producing about 220 tons a day.

10 Your Lordship will therefore see that the introduction was a most valuable one. There are other items which I will not go into with any more detail.

HIS LORDSHIP: Mr. Hellmuth, I would like to get your point of view, if you care to say anything.

MR. HELLMUTH: In the first place, my Lord, the property which was acquired was acquired by the Leaside Engineering Company, which it is quite true was a company largely, practically entirely controlled by Mr. Wallberg, in fact, you could almost call him the entire owner, except for qualifying shares. The Leaside Engineering Company transferred or sold their property to another company, which was first of all called the St. Anne Company, and then it became the Mistassini Company, and then became the Lake St. John. That was a mere change of name. At the time this alleged conversation took place between Campbell and Wallberg in Toronto, the St John Company had not been incorporated. The evidence will show whether it was then the Mistassini Company or the St. Anne. At all events, the St. John Company who are sued here had not even been organized. It is quite true that a contract was made between the St. John Company and the Newspaper and Magazine Paper Corporation for the output of the mill, subject to a number of conditions which your Lordship will see may mean that the contract may be not only subject to burdens, but may be cancelled. I mean it is not a firm ten-year contract free from any cancellation at all, and the Newspaper and Magazine Company with whom the contract was made were represented during the negotiations by this Mr. Clarke, Lester J. Clarke. The Newspaper and Magazine Company is not a company which itself publishes anything. It is merely a company that sells or disposes of its output, mainly to the Hearst series of newspapers, as well as some others. My friend is quite right in saying they are probably the largest purchasers of newsprint on this continent. I think they are the sole suppliers of the Hearst newspapers and some others.

Mr. Wallberg's statement in regard to the matter is that he never knew Mr. Campbell. He got a telephone message from Ottawa asking him if he would be in his office the next morning, and the next morning Mr. Campbell walked in and introduced himself. The conversation lasted only a few minutes. It was that he wanted to introduce him to somebody and would take him over to the King Edward. Mr. Wallberg says commission was never mentioned at all. He was not at that time in a

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 Evidence at
 Trial

Statement
 of Counsel
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Continued

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No. 5

Evidence at
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14th
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Concluded

position to make any contract whatever, although he hoped that no doubt in the future this thing would eventuate. So there is a straight denial of any promise of any kind to pay a commission for an introduction. I do not understand the claim to be anything but a claim for an introduction to Clarke.

HIS LORDSHIP: It could be inferred I suppose under proper circumstances, could it not?

MR. HELLMUTH: Oh, yes, but what I want to bring before Your Lordship is this, there is no claim that Mr. Campbell made a sale of this paper in the way that a jobber would. There was nothing of that sort. 10
The modest claim is made here of one million, two hundred thousand dollars for this introduction, and according to Mr. Campbell nothing was done by him in regard to the matter, except take Mr. Wallberg over to Mr. Clarke who represented this newspaper company, a company which would be known to anybody as a purchaser of newsprint. It would not be a thing that was concealed at all. If anybody wanted to sell newsprint on this continent they would be about the first people they would go to.

Plaintiff's
EvidenceCharles
Edwin
Campbell
Examinat'n
14th Nov.,
1927

CHARLES EDWIN CAMPBELL, Sworn, Examined BY MR. Mc-CARTHY. 20

Q. You are the plaintiff in this action, Mr. Campbell? A. I am.

Q. I believe you are in the newspaper business yourself in Edmonton? A. Yes.

Q. With what papers are you concerned?

A. With the Edmonton Bulletin.

Q. You were in Montreal in April 1926 I think? A. Yes sir.

Q. And you got some information down there in reference to a recent purchase by Mr. Wallberg? A. Yes sir.

Q. What was the information you gleaned?

A. That he had acquired these limits in the Lake St. John region, 30
and that he was putting up a paper mill.

Q. Within a few days of gleaning that information I believe you met Mr. Clarke? A. I did.

Q. What is Mr. Clarke's full name? A. Lester J. Clarke.

Q. Will you tell his Lordship who Mr. Clarke is?

A. He is the President and Managing Director of the Newspaper and Magazine Paper Corporation of New York City.

Q. What is Mr. Clarke's principal business? A. He is a buyer of newsprint.

Q. What do you say as to the quantity of newsprint that Mr. 40
Clarke buys? A. He buys I understand about twenty-five to thirty million dollars worth of newsprint in Canada per year.

HIS LORDSHIP: Q. Why do you say you understand? Do you know about it? A. Yes, through talk with Mr. Clarke.

MR. McCARTHY: Q. How long had you known Mr. Clarke?

A. It would be a matter of seven or eight years.

Q. Had you known him intimately? A. Very.

Q. Then I understand within a few days after learning of this purchase by Mr. Wallberg you met Mr. Clarke? A. I did.

Q. I do not think you can tell us what took place between you and Mr. Clarke, but as a result of the conversation which you had with Mr. Clarke, what if anything was done? Perhaps I had better put it this way, Mr. Campbell: Did you inform Mr. Clarke of what you had learned with regard to Mr. Wallberg? A. I did.

Q. Did Mr. Clarke show any inclination to do business?

MR. HELLMUTH: That I submit is not evidence at all. That is simply giving what took place between this man and Mr. Clarke. If he could not tell what took place between himself and Mr. Clarke, I submit he could not in effect give the conversation.

HIS LORDSHIP: I think that is the rule.

MR. McCARTHY: I do not seek to give the conversation. I only want to know that as the result of the conversation—

HIS LORDSHIP: He did something.

MR. McCARTHY: He did something.

HIS LORDSHIP: He can tell us what he did.

MR. McCARTHY: Q. What did you do as the result of the conversation with Mr. Clarke? A. I went to Ottawa with Mr. Clarke, and telephoned Mr. Wallberg from Ottawa for an appointment, and I made that appointment.

Q. Can you fix the day? A. It was about the middle of April.

Q. You cannot fix the exact time? A. No.

Q. You say you went with Mr. Clarke to Ottawa, and while in Ottawa you called up Mr. Wallberg and made an appointment? A. Yes.

Q. For the next day? A. For the next day or the day following.

Q. You say you came to Toronto with Mr. Clarke then? A. I did.

Q. And I believe registered at the King Edward Hotel? A. Yes.

Q. Have you been able to look up the register? A. I have not looked it up.

Q. To ascertain the exact date. Then on arriving in Toronto what did you do first? A. I saw Mr. W. D. Ross.

MR. HELLMUTH: Now—

MR. McCARTHY: Q. What you said to Mr. Ross is not evidence. Mr. Campbell. That is the first thing you did; you interviewed Mr. Ross? A. Yes.

Q. Then when did you see Mr. Wallberg? A. About eleven o'clock or half-past.

Q. Where? A. At his office in the Royal Bank building.

Q. Was it his office or the Leaside Engineering Company's office?

A. It was his office.

Q. Had you ever met Mr. Wallberg before? A. No.

Q. Ever heard of him? A. No, only in Montreal. The first time

RECORD

In the
Supreme
Court of
Ontario

No. 5

Plaintiff's
Evidence

Charles
Edwin
Campbell
Examinat'n
14th Nov.,
1927

Continued

RECORD

In the
Supreme
Court of
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—
No. 5

—
Plaintiff's
Evidence

Charles
Edwin
Campbell
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1927

Continued

I heard of Mr. Wallberg was in Montreal.

Q. Tell us with as much detail as you can, Mr. Campbell, what took place between you and Mr. Wallberg on the occasion of this meeting?

A. I went into his office, introduced myself to him, told him who I was, and told him that I was the man who made the appointment over the telephone.

Q. Did you tell him what your business was? A. Yes, I told him who I was, and what business I was in.

Q. And that you were the man who made the appointment over the telephone? A. Yes sir. Then I spoke to Mr. Wallberg about the limits he had acquired. I asked him if he had acquired these limits in the Lake St. John region and he said he had. I asked him was he putting up a mill, and he said yes, he was putting up a mill. I asked him would he be interested in selling the output of the mill, and he was very much interested in that. 10

Q. What did he say to that? A. He said he was interested.

Q. And what was said then? A. And then I asked Mr. Wallberg would he pay me a commission if I could put him in touch with a party who was capable of buying the output. He wanted to know who the party was, and I refrained from giving him the name at that point. 20

Q. Why? A. Because I wanted to be sure that I was going to get the commission if it resulted in a contract.

Q. Had you already spoken to Mr. Clarke in regard to this matter?

A. Yes.

Q. What was the reason of Mr. Clarke's coming with you to Toronto? A. My idea was—

MR. HELLMUTH Oh, now!

MR. McCARTHY: Q. Never mind your idea. What was Mr. Clarke's reason for coming to Toronto with you?

A. To meet Mr. Wallberg if I could make the arrangement there. 30

Q. Had you already told Mr. Clarke that you proposed to make this arrangement? A. I had.

MR. HELLMUTH: I object.

HIS LORDSHIP: That would not be evidence.

MR. McCARTHY: Q. Go on with the story. You say that Mr. Wallberg appeared interested?

A. Yes.

Q. And that he wanted to know the man's name, and what did you say in connection with that?

A. I wanted to have it very clearly understood with Mr. Wallberg that he would pay me a commission before I disclosed the name to him. 40

Q. Did you say anything to him in regard to making money out of the transaction?

MR. HELLMUTH: Very leading, my Lord.

HIS LORDSHIP: It is better to ask him what he did say.

MR. McCARTHY: Q. As far as you can remember tell me everything you said? A. I said, "Mr. Wallberg, I am out to make some

money. If I introduce you to this party, and it results in a sale or contract, will you pay me a commission?" And he said, "I will."

Q. Did he say that at once, or were there any negotiations or fencing? A. Yes.

Q. Please tell me, because we were not there? A. Mr. Wallberg was anxious to know—I pointed out that this party was quite capable of buying the entire output. He wanted to know who the party was, and I made it very plain to Mr. Wallberg.

HIS LORDSHIP: Q. If you would tell me what was said during that negotiation period—you say there was a period of negotiation?

A. About fifteen minutes, my Lord.

Q. You said more than that in fifteen minutes. Tell us what it was?

MR. McCARTHY: Q. What we want to get, Mr. Campbell, is as much as you can remember of the conversation that passed across the table between you and Wallberg—not your idea of it, or his idea. We want to get what we can of the conversation, as much as you can remember? A. I said to Mr. Wallberg that this party was quite capable of buying the output and would he pay me a commission if I would introduce him to this party and it resulted in a sale or contract, and Mr. Wallberg wanted to know who the party was.

Q. What did he say? A. He said, "Well, who is this party?" At that time I kept pressing him on the point of a commission.

Q. What did you say when he said to you "Who is this party?"

A. I said, "Mr. Wallberg, this party is quite capable of buying this output. Now, will you pay me a commission if I introduce you to this party and it results in a sale or contract for the paper?" That was the words I used to Mr. Wallberg, and Mr. Wallberg in reply said, "I will."

Q. Having failed in his effort to get the man's name? A. That is true.

Q. After he had said that, tell me what next was said between you?

A. He asked me who was the party. I said Mr. Lester J. Clarke of New York City.

Q. Had Mr. Wallberg ever heard of him before? A. No.

Q. What? A. No.

Q. Do you know that? A. Yes.

Q. How? A. Mr. Wallberg didn't know Mr. Clarke.

Q. How do you know that? A. He said he didn't know him.

MR. HELLMUTH: (objects)

MR. McCARTHY: Q. Had he ever heard of him that you know?

A. Not that I know.

HIS LORDSHIP: Q. Was anything said as to whether he had heard of him or not? A. Just simply that he didn't know the party.

MR. McCARTHY: Q. What was said? Let us know what was said about it. What did he say to make you think that? A. Well, he didn't say anything. Just simply that he didn't know him.

Q. That is what I want to find out. That is what he said, that he

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didn't know him. Did he make any inquiries about him then?

A. I think I mentioned at that time that Mr. Clarke bought about twenty-five to thirty million dollars worth of newsprint in Canada, and that he was the largest purchaser of newsprint. Mr. Wallberg says, "Where is Mr. Clarke?" or "Where is your party?" I said, "He is here in the city. He is at the King Edward Hotel," and I offered to take Mr. Wallberg over to Mr. Clarke at this time. He got up and got his hat, and we went across the Street. It is just about a block from the King Edward, or from the Royal Bank Building. I took Mr. Wallberg up to Mr. Clarke's room, and I said, "Mr. Clarke, this is Mr. Wallberg who has limits in the Province of Quebec. He is putting up a mill;" and, "Mr. Wallberg, this is Mr. Lester J. Clarke of the Newspaper and Magazine Paper Corporation." I said, "I will leave you gentlemen to talk over this business." 10

Q. And did you then retire?

A. I did.

Q. Did you see Mr. Wallberg again in connection with the matter?

A. No, I didn't see Mr. Wallberg again that day, and I didn't see him until some time the following February.

HIS LORDSHIP: Q. About ten months after? A. Yes, it was 20 the following year, my Lord.

MR. McCARTHY: Q. That would be February, 1927? A. Yes.

Q. When did you learn for the first time that Mr. Wallberg and Mr. Clarke had made a contract?

A. It would be the latter part of January or the first week in February.

Q. How did you learn of it? A. I heard from Mr. Clarke.

Q. Had Mr. Clarke spoken of any negotiations that were proceeding at all? A. Oh, yes.

MR. HELLMUTH: I submit that conversations—

30

MR. McCARTHY: I am not asking the conversation.

MR. HELLMUTH: You are asking whether he had spoken.

MR. McCARTHY: Whether he had spoken.

HIS LORDSHIP: The answer to that is "Yes" if he did speak; and "no" if he did not.

MR. McCARTHY: That is as far as I intend to go. That much can do no harm.

Q. Did you see the contract which was made? A. I saw a copy of it.

Q. At the time you learned that the contract had been made? 40

A. A few days later.

MR. McCARTHY: I ask my friend to produce the contract which was made between Mr. Clarke's company and the defendant's company.

MR. HELLMUTH: I submit, my Lord, that until the plaintiff has established to your Lordship's satisfaction that he is entitled to some commission, he has no right to look into our affairs at all; that our contracts

with other people are not matters that can be spread upon the record un-
 til it is shown that he is entitled to go into them.

HIS LORDSHIP: I do not want to decide now that he has shown
 that he has established a contract absolutely. I think he has gone far
 enough that he is entitled to see the contract.

MR. HELLMUTH: Your Lordship will receive that subject to ob-
 jection?

HIS LORDSHIP: Yes.

MR. HELLMUTH: I would ask your Lordship—I have no doubt my
 10 friend will agree—that the original may be taken out afterwards and a
 copy substituted, because that is a rather important document.

MR. ALFRED BICKNELL: My learned friend has a copy.

MR. HELLMUTH: If you have a copy, why not use that?

HIS LORDSHIP: Copy may be substituted. If both parties agree,
 the Registrar will make the substitution.

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MR. McCARTHY: Q. This is an agreement of the 29th of Decem-
 ber, 1926. Is that the contract which you have reference to, Mr. Camp-
 bell?

A. Yes, that is the contract.

20 EXHIBIT 1 Contract—29th December, 1926.

MR. McCARTHY: For your Lordship's information, this is an agree-
 ment made between the Lake St. John Power and Paper Company, Limit-
 ed, and the Newspaper and Magazine Paper Corporation of the United
 States, and provides for an agreement between the parties, the term of
 the agreement to be ten years, beginning on the 1st of January, 1928, and
 ending on the 31st of December, 1937. The seller, that is the Power
 Company, warrants and agrees that it will manufacture and deliver to
 the purchaser, from and after July 1, 1928, not less than four thousand
 tons of newsprint paper in each month up to and including December,
 30 1929, and not less than five thousand tons of newsprint in each month of
 the balance of the term. Your Lordship will see it is a very substantial
 contract.

Then the specifications in regard to the paper, I needn't go into; that
 is, the diameter of the rolls and the width of the rolls, and so on.

The price of the paper is set forth in Article V. "The price of news-
 print paper to be delivered... in any calendar year of the term here-
 of... shall be the price fixed by the following paper manufacturers,
 and their successors or assigns:

40 "The Canadian International Paper Company, Limited

"Price Brothers & Company, Limited, and

"St. Maurice Valley Corporation, Limited.

"for a majority of their aggregate combined production of standard
 newsprint paper in rolls to be delivered or shipped from their mills in the
 Province of Quebec."

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I do not know that there is very much more that I need refer to at the present time.

HIS LORDSHIP: How much would a month's purchase of paper amount to?

MR. McCARTHY: At the present price of \$65. a ton, and 4,000 tons a month up to 1929, and then it goes up to 5,000 tons a month.

HIS LORDSHIP: About \$65. a ton, and there is means provided in the contract for arriving at the price by reference to these three other companies.

MR. McCARTHY: Yes, my Lord, Mr. Clarke will explain that. 10

Q. Then, Mr. Campbell, I believe you made at that time, when you learned of the contract, a claim for commission? A. I did.

MR. McCARTHY: The first letter, the original of which I produce is dated Feb. 14, 1927, and is written on the paper of the Mount Royal Hotel.

Q. Perhaps you can identify that, Mr. Campbell, as your letter of the 14th of February, 1927. Is that right? A. Yes, that is my letter.

Q. It was registered, and I am putting in the registration, acknowledgment of receipt, together with the envelope and Mr. Campbell's card which was enclosed. The letter is as follows: 20

"February 14, 1927.

"Registered

"E. A. Wallberg Esq.

"Royal Bank Building,

"Toronto, Ont.

"Dear Sir,—

"You will remember that in April 1926, after a conversation in your Office, you agreed that if a sale of newsprint paper from your proposed mill was made to the Company represented by "Mr. Lester J. Clarke, I would be remunerated for my services in "bringing you and Mr. Clarke together, I then introduced you to Mr. "Clarke at the King Edward Hotel. 30

"I am now informed that you have completed an arrangement by which the output of the mill you are building at Lake "St. John is sold to Mr. Clarke's Company and I am, of course, now "entitled to be remunerated for my services as agreed.

"It so happens that my present arrangements will keep "me in Montreal and Ottawa for a few days, after which I expect to "return to the West and it would be very convenient for me to settle "this matter finally while I am in the East. 40

"I should be glad to take this matter up with you personally or by letter. If an interview is desired I could arrange to go

"to Toronto at any date within the next few days if you will advise me care of the Mount Royal Hotel, Montreal.

"My view is that the matter should be definitely settled before I return to the west and I shall be obliged if you will deal with it accordingly, letting me hear from you by return mail.

Yours very truly,
 (signed) Chas. E. Campbell,
 Publisher 'Edmonton Bulletin' and
 'Calgary Albertan'."

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10 Attached is your card which I think you put in at the time.

EXHIBIT 2, Letter Feb. 14, 1927 Plaintiff to Defendant Wallberg, with registration certificate, acknowledgment of receipt, and business card of plaintiff attached.

Q. Did you receive any reply to that letter? A. I did not.

Q. I understand then that your solicitors, Messrs. Brown, Montgomery and McMichael, took the matter up with Mr. Wallberg?

A. Yes sir.

Q. I think you said you received no reply? A. I received no reply.

MR. McCARTHY: This is a telegram, my Lord, which will be Exhibit 3, from Messrs. Brown, Montgomery and McMichael to Mr. Wallberg, as follows:

"1927, Feb. 17 P.M. 5;45. Montreal, Que. 17 542P E. A. Wallberg, 909 Royal Bank Building, Toronto, Ont. Charles E. Campbell requests us inform you he must return Edmonton Saturday night and wants you wire us whether you have answered his letter fourteenth instant."

"Brown Montgomery and McMichael."

EXHIBIT 3, Telegram, Brown, Montgomery and McMichael to E. A. Wallberg, dated Feb. 17, 1927.

30 A reply was received to that, my Lord, on the 18th,

"1927 Feb. 18 P.M. 12;40, Toronto, Ont. 12;31 P.

"Brown Montgomery and McMichael,

"Montreal, Que.

"Mr. Wallberg absent from Toronto since ninth instant expected back next week he will reply Campbells letter fourteenth on his return.

"H. Horsfall."

EXHIBIT 4, Telegram, Feb. 18, 1927, H. Horsfall to Brown Montgomery and McMichael.

40 Exhibit 5 will be a letter from Brown, Montgomery & McMichael to

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Wallberg of the 18th February, 1927.

"Montreal, 18th February, 1927.

"E. A. Wallberg, Esq.,
"Royal Bank Building,
"Toronto, Ont.

Dear Sir:

"We confirm our telegram of yesterday's date as follows:

'Charles E. Campbell requests us inform you he must re-
'turn Edmonton Saturday night and wants you wire us whether you
'have answered his letter fourteenth instant.'

"and acknowledge receipt of telegram signed by "H. Horsfall" as fol- 10
lows:

'Mr. Wallberg absent from Toronto since ninth instant expected
'back next week he will reply Campbells letter fourteenth on his re-
'turn.'

"We communicated the contents of this telegram to Mr. Campbell,
"who has asked us to point out to you that he is obliged to leave for
"the west tomorrow evening, but that he will be expecting your reply
"and will be able to return to the east in about three weeks' time.

Yours very truly,

(signed) Brown, Montgomery &
McMichael." 20

EXHIBIT 5, Letter, Brown, Montgomery & McMichael to E. A. Wall-
berg, dated Feb. 18, 1927.

Then the next letter of the 23rd of March from Messrs. Brown,
Montgomery and McMichael was I think written without prejudice.

MR. HELLMUTH: Yes.

MR. McCARTHY: So I will not seek to put that in.

MR. HELLMUTH: There is another telegram.

MR. McCARTHY: Is there? What date? 30

MR. HELLMUTH: Of the 12th of March or 13th, from Edmonton,
which does not seem to be without prejudice.

MR. McCARTHY: There is a telegram to Mr. Wallberg from Mr.
Campbell dated at Edmonton on the 12th of March. Is it a telegram or
a night letter? Can you identify that?

WITNESS: It is a night letter.

MR. McCARTHY: Q. You sent that, did you? A. Yes.

MR. McCARTHY: It is addressed to E. A. Wallberg, Chateau Fron- 40
tenac, Quebec,

"Edmonton Alta March 12, 1927 via Toronto, Ont. 13/27 E. A. Wall-
"berg, Chateau Frontenac, Que. Not having received a reply to my
"registered letter to you from the Mount Royal Hotel Montreal I
"turned the matter over to my solicitors Brown Montgomery and Mc-
"Michael to take the matter up with you stop solicitors advise me to-

“day you have done nothing in the matter stop I would like to reach
 “an amicable settlement with you as to my remuneration and would
 “thank you to wire me here care of the Edmonton Bulletin if you de-
 “sire to do so otherwise it will be necessary for me to take the neces-
 “sary steps without further delay.”

Chas. E. Campbell.”

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EXHIBIT 6, Telegram Plaintiff to Defendant Wallberg, March 12, 1927

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Q. Did you receive any reply to that? A. I did not.

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10 MR. McCARTHY: Then apparently the first letter from Mr. Wall-
 berg to Messrs. Brown, Montgomery and McMichael—

MR. HELLMUTH: I object, my Lord. This is a letter written in
 answer to a letter without prejudice.

MR. McCARTHY: It does not say so.

MR. HELLMUTH: Its contents show it. Answers to letters writ-
 ten without prejudice fall within the rule. It starts, “I have your letter
 re this matter.”

MR. McCARTHY: There have been several letters.

MR. HELLMUTH: Not from Brown, Montgomery & McMichael.

20 MR. McCARTHY: We have put in three already.

MR. HELLMUTH: It is quite clear, because the next letter says, “I
 have your letter of the 23rd inst,” and so on. Mr. Wallberg got this let-
 ter. It is really a very innocuous letter, but I want to take that position.

HIS LORDSHIP: Let me see the letter.

MR. McCARTHY: (handing letter) That is the one I seek to put in
 now.

HIS LORDSHIP: Show me the letter you say this is an answer to.

MR. HELLMUTH: The 23rd of March. It is not in because it is
 written without prejudice.

30 HIS LORDSHIP: That is the one I have marked here, “Letter not
 put in because without prejudice.”

MR. McCARTHY: Yes, my Lord. Whether that is an answer to
 one without prejudice or not I don't know.

HIS LORDSHIP: I suppose you agree, Mr. McCarthy, if it is, it is
 within the rule?

MR. McCARTHY: I don't know any rule that says because I choose
 to write without prejudice it obligates the other man to do so.

HIS LORDSHIP: I think the answer is without prejudice.

MR. McCARTHY: However, it is no answer to the letter at all.

40 HIS LORDSHIP: That is what I would like to see, whether I have
 anything here to show. Does this draw any other correspondence after-
 wards?

MR. McCARTHY: No, my Lord.

HIS LORDSHIP: Mr. Hellmuth, I think it may go in subject to ob-
 jection. There is nothing in the letter.

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MR. HELLMUTH: I said, my Lord, it was innocuous, but I didn't want to let that in and perhaps something else.

HIS LORDSHIP: Mr. McCarthy says it is not going to draw other correspondence afterwards.

MR. McCARTHY: That is a letter from Mr. Wallberg, my Lord, to Messrs. Brown, Montgomery & McMichael, dated the 26th of March, 1927.

"Montreal, March 26th, 1927.

"Messrs. Brown, Montgomery & McMichael,

"145 St. James Street,

"Montreal,

"Dear Sirs:—

Charles E. Campbell Claim—

"I have your letter re this matter, but as I am leaving for the Lake
"St. John construction work to-day I was unable to see you about it.
"I expect to return by next Tuesday, or Wednesday when I will call
"in to see you.

"Yours very truly,

(signed) E. A. Wallberg."

EXHIBIT 7, Letter E. A. Wallberg to Brown, Montgomery & McMichael, March 26, 1927.

MR. McCARTHY: Have you got the letters of April 1st, Mr. Hellmuth? One was written to Toronto and the other to Montreal. One was written to his Montreal Office and one was written to his Toronto office.

MR. HELLMUTH: These were written, of course, following up the without prejudice letter.

MR. McCARTHY: I don't think so.

MR. HELLMUTH: I submit they are all without prejudice. Your Lordship will see they start a letter without prejudice, and there is a certain suggestion necessarily in that.

HIS LORDSHIP: That is, the solicitors write a letter without prejudice?

MR. HELLMUTH: And then they follow it up by further letters.

MR. McCARTHY: These are distinctly not without prejudice. These are written with a very sane object, I would say, and purpose.

MR. HELLMUTH: I submit all letters that follow are without prejudice.

MR. McCARTHY: This is a letter threatening action. There is no question of prejudice or without prejudice.

MR. HELLMUTH: A letter is written without prejudice in regard to the matter. It is followed by subsequent letters from the solicitors to the defendant himself, not to his solicitors at all. Now I submit that all those letters unless they are clearly stated to be free from the prejudice,

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cannot be used at all. I think again they are innocuous, but at the same time I want to take that position, that such letters are not admissible, once the solicitors have been in negotiation without prejudice.

MR McCARTHY: There are no solicitors in this case. You had none.

MR. HELLMUTH: We had none. I say once the solicitors enter into negotiations—

HIS LORDSHIP: As between solicitors.

MR. HELLMUTH: I will carry it further. If a solicitor writes me and says, "I have a claim against you," and heads his letter "without prejudice" and goes on writing until he says it is entirely free from the "without prejudice" negotiations we are carrying on —

HIS LORDSHIP: Have you any authority for that, Mr. Hellmuth?

MR. McCARTHY: I don't know how you open up again, once having written a letter without prejudice. Have you got to say that your prejudice is withdrawn?

HIS LORDSHIP: There are some cases about negotiations between solicitors. Once the correspondence starts without prejudice perhaps the whole series is without prejudice.

MR. McCARTHY: Your Lordship can understand the letter of the 23rd of March was in reference to a proposition of settlement, for instance, and then the solicitors take the matter up and say, "We can't wait any longer unless you do something;" surely, because we had written one letter without prejudice two months before, the letters which we wrote in April in which nothing was said—

HIS LORDSHIP: If it did not go further than that; if there is no other correspondence to follow— I do not want to let this in and have something I will have to rule on in the end.

MR. McCARTHY: My friend says they are perfectly harmless. I want to bring the matter up to the issue of the writ.

HIS LORDSHIP: You want to show you kept doing something?

MR. McCARTHY: Yes.

HIS LORDSHIP: I will receive them subject to objection, Mr. Hellmuth, and I will be obliged if you can get me authority. If I make up my mind that they ought not to be read, of course I will not read them.

MR. McCARTHY: The first letter is a letter of the 1st of April, 1927, written by Brown, Montgomery & McMichael to Mr. Wallberg.

MR. HELLMUTH: You had better take the first one, Mr. McCarthy, first.

MR. McCARTHY: Is this not the first one?

MR. HELLMUTH: No. They are both the 1st of April an unfortunate date.

MR. McCARTHY: This is the explanation, my Lord. The letter which I am now about to read of the 1st of April was a letter written to Mr. Wallberg at his Montreal address, Drummond Building, 511 St. Catherine Street, Montreal. This letter is:

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"Montreal, 1st April, 1927.
"E. A. Wallberg, Esq.,
"Lake St. John Pulp & Paper Company,
"Drummond Building,
"511 St. Catherine Street,
"Montreal.

"Dear Sir:

"Upon the writer's return to the office he finds that you have called
"in connection with Mr. Campbell's claim.
"Mr. Campbell has now been east for some ten days and is insist- 10
"ing that some immediate steps be taken to bring this matter to a con-
"clusion. Unless this matter is satisfactorily arranged tomorrow,
"proceedings will be instituted.
"It is unfortunate that our Mr. Forsyth has not been able to see you
"in the meantime, but instructions from our client leave us no alterna-
"tive but to proceed as above advised. We have been trying to get
"you on the telephone this afternoon, but so far without success, but
"we thought that it was only fitting to let you know the present status
"of the matter so that you might take the matter up tomorrow if you
"thought it advisable. 20

"Yours very truly,

(signed) Brown, Montgomery &
McMichael."

EXHIBIT 8, Letter, Brown, Montgomery & McMichael, to E. A. Wall-
berg, dated 1st April, 1927, (written to Montreal office)

A copy of that letter Exhibit 8, was sent the same day to Toronto
in this letter:

"Montreal, 1st April, 1927.
"E. A. Wallberg, Esq., 909 Royal Bank Building,
"Toronto, Ont. 30

"Dear Sir,—

"We enclose herewith copy of letter written to your Montreal office
"today. When we called your office they told us that you were out,
"and we assumed that you were in town, later, however, we discovered
"that you were in Toronto. If you wish to take this matter up with
"our Mr. Forsyth he will be at the office of Messrs. Long & Daly, in
"Toronto, at ten o'clock on Monday the 3rd instant.

"Yours very truly,

(signed Brown, Montgomery &
McMichael." 40

EXHIBIT 9, Letter, Brown, Montgomery & McMichael to E. A. Wall-
berg, dated April 1st, 1927. (written to Toronto office)

That I think concluded the correspondence, my Lord.

MR. HELLMUTH: Your Lordship asked me for authority. Your Lordship will find in Phipson on Evidence, 4th Edition, page 211,—

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“Offers without Prejudice. Offers of compromise, made expressly or impliedly without prejudice cannot be given in evidence against

“a party as admissions, the law on grounds of public policy protecting

“negotiations bona fide entered into for the settlement of disputes.

“Thus a letter marked without prejudice protects subsequent and

“even (the cases are given) previous letters in the same correspon-

“dence. Moreover, it is now settled that such letters cannot without

“consent of both parties be read on a question of costs in order to

“show willingness to settle, although the mere fact and date of such

“letters or negotiations as distinguished from their contents may

“sometimes be received to explain delay. Such letters, however, are

“only protected when there was a dispute or negotiation depending

“between the parties and the letters were bona fide written with a

“view to its compromise. Thus a letter without prejudice which con-

“tains a threat against the recipient if the offer be not accepted is

“admissible to prove such threat.”

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HIS LORDSHIP: Mr. McCarthy, I think, has said that the only object of these letters was to show that they kept on pressing. There is nothing in them to make or break any contract?

MR. McCARTHY: No.

HIS LORDSHIP: They are filed and I think I will leave them that way, Mr. Hellmuth .

MR. McCARTHY: Q. Now then, Mr. Campbell, there are one or two questions I want to ask you. Do you know what the condition of the paper market was at the time this contract was made in December,

30 1926? A. Yes.

Q. What was it? A. It was common knowledge, overproduction.

Q. Do you know?

HIS LORDSHIP: He says he knows it was common knowledge it was over-production.

MR. McCARTHY: Q. I am not asking for common knowledge. I am asking for what you know?

A. Only what I read in the newspapers.

Q. That is not evidence.

WITNESS CROSS-EXAMINED BY MR. HELLMUTH:

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Q. Mr. Campbell, did you learn when you were in Montreal that the limits in question had been purchased by the Leaside Engineering Com-

pany? A. I did not.

Q. Do you now know, as a matter of fact, that they were the people who purchased these limits and got the leases from the Quebec Government? A. I do not. I don't know yet that that is true.

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Q. And nothing of that kind ever came to your knowledge. Is that right? A. Mr. Wallberg is the man that I thought had got the limits.

Q. Where did you see that Mr. Wallberg had purchased them?

A. I didn't see that at all. I was told that by Mr. Robinson.

Q. Somebody told you. So you had nothing in reference to who the actual purchasers of these limits were? A. I did not.

Q. I think you told us you knew that the Newspaper and Magazine Paper Company were the largest purchasers of paper on this continent?

A. Yes sir.

Q. You knew that? A. Yes.

Q. We might say that was pretty well common knowledge? 10

A. Well, I am in the newspaper business.

Q. It was known to all newspaper men. Is that right? A. Yes.

Q. Any mill man would know that, that they were the largest purchasers of newsprint, they being the company that supplied the Hearst series of papers? A. Yes sir.

Q. Now have you discovered since you were examined for discovery the matters that occurred in the conversation that you allege took place with Mr. Wallberg that you did not mention there at all?

A. I don't think so. 20

Q. You think you told everything on that examination?

A. I expressed myself to the best of my knowledge—

Q. Do you think you told everything on that examination when you were asked as to what the conversation was, that you have told here?

A. I think so.

Q. You think you have? A. Yes.

Q. And did you ever mention in that examination that Mr. Wallberg said he did not know Mr. Clarke? Did you ever mention that when you were being examined? That is a statement you have made here today. Did you mention that when you were being examined? 30

A. I don't recollect.

Q. I will just read to you what you said on that examination in regard to this: I am commencing at Question 14.

MR. McCARTHY: Are you putting in the examination as an exhibit?

MR. HELLMUTH: I am going to put these questions in, beginning at 14 :

"Q. Then when did you first meet Mr. E. A. Wallberg? A. I met him in Toronto.

"15. Q. When? A. In April of last year.

"16. Q. April 1926 that would be? A. Yes. 40

"17. Q. Had you known him before?

"A. No, I had never met him.

"18. Q. How did you come to meet him on that occasion that you say was in April?

"A. I called him up on the telephone from Ottawa.

"19. Q. I mean what induced you to call him up?

"A. I was informed that Mr. Wallberg had taken over some very

- “valuable limits in the Province of Quebec, in the Lake St. John region,
 “and was putting up a mill.
- “20. Q. So you called him up on the telephone? A. Yes.
- “21. Q. What was the conversation over the telephone?
 “A. I wanted to know if he would be in Toronto as I wanted to see
 “him.
- “22. Q. That was your first conversation of any kind with Mr. Wall-
 “berg? A. Yes, the first time.
- “23. Q. And what was Mr. Wallberg’s reply?
 10 “A. He said he would be in at that time.
- “24. Q. Was it in the afternoon or the evening you called him?
 “A. The afternoon.
- “25. Q. And you wanted to see him the next morning; was that it?
 “A. I think it was either the next morning or the following morning
- “26. Q. Then you came on, we may take it for granted, from Otta-
 “wa to Toronto? A. Yes.
- “27. Q. Alone? A. No, with Mr. Clarke.
- “28. Q. Who was Mr. Clarke? A. He is the President and Man-
 “aging Director of the Newspaper and Magazine Paper Corporation
 20 “of New York.
- “29. Q. Can you tell me who is interested in that paper?
 “A. In what paper?
- “30. Q. The Newspaper and Magazine Paper Corporation? Who is
 “the proprietor or who are the interested parties in that paper, do you
 “know? A. Well, I have always understood that Mr. Clarke had
 “all the shares in the company.
- “31. Q. You didn’t know of anybody but Mr. Clarke? A. They
 “supply all the newsprint to the Hearst newspapers.
- “32. Q. Then this Newspaper and Magazine Paper Corporation is
 30 “not a publishing corporation? A. No.
- “33. Q. It supplies all the paper to Hearst? A. And I understand
 “the John Perry newspapers and Florida and other newspapers.
- “34. Q. To the Hearst series of papers? A. Yes.
- “35. Q. Did you know that at the time? A. Yes.
- “36. Q. Had you met Mr. Clarke before?
 “A. Many times.
- “37. Q. You knew him quite well?
 “A. I knew him out on the Pacific Coast; I knew him for years.
- “38. Q. Then you came on with Mr. Clarke to Toronto? A. Yes.
- 40 “39. Q. Where did you see Mr. Wallberg?
 “A. In his office.
- “40. Q. Who was with you? A. No one.
- “41. Q. Who was present at the interview?
 “A. Mr. Wallberg and I alone.
- “42. Q. You two alone? A. Yes.
- “43. Q. Then just tell me what occurred when you met Mr. Wall-

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"berg? How long, first of all, were you with him in his office?

"A. I would say about 15 minutes—not any more than that.

"44. Q. Just tell me what occurred when you went in? Tell me

"exactly what took place?

"A. Well, I introduced myself.

"45. Q. How did you introduce yourself?

"A. As Charles E. Campbell, publisher of the Edmonton Bulletin
"and in the newspaper business, and I asked Mr. Wallberg if it was
"true he had these limits and was putting up a mill.

"46. Q. You asked Mr. Wallberg if it was true that he had—you 10
"didn't say 'these limits'?

"A. Had acquired limits in the Lake St. John region.

"47. Q. Yes? A. And was putting up a paper mill.

"48. Q. And what did he say? A. He said he was. I asked him
"would he be interested in selling the output of the mill, and he said
"he would.

"49. Q. Yes? A. I told Mr. Wallberg I was out to make some
"money and I knew of a party that was capable——

"50. Q. Let us go along slowly. You told Mr. Wallberg you were
"out to make some money? 20

"A. Yes, and I knew a party that would buy the output of the mill.

"51. Q. Yes? A. And he asked me who it was, and I asked him
"would he pay me a commission if a sale was effected.

"52. Q. Just tell me how you put that?

"A. I asked Mr. Wallberg would he pay me a commission if he made
"a deal with this party, and he spoke several times wanting to know
"who the party was and said he would pay me a commission if it re-
"sulted in a sale or contract, and he wanted to know where the party
"was, and I said the party was in town.

"53. Q. He said he would pay you a commission if it resulted in a 30
"contract? A. Yes, in a sale. In other words——

"54. Q. I want the language, please, Mr. Campbell, not the inferen-
"ces you would draw?

"A. That is not inference, but it is the general trend of the con-
"versation."

"55. Q. I want the words used as far as you can recollect them,
"please. What were they now?

"A. That I was out to make some money.

"56. Q. You said, 'I am out to make some money'?

"A. And I know of a party who is capable of buying the output of 40
"the mill. He wanted to know who the party was, and I asked him
"would he pay me a commission if it resulted in a deal. He said he
"would. He asked me again who the party was and I said the party
"was in town. He then asked me who the party was and I said, Mr.
"Lester J. Clarke, and he wanted to know where he was from and I
"told him he was from New York City.

"57. Q. Yes? A. And Mr. Wallberg got his hat and coat and we went over to the hotel.

"58. Q. Now, have you told me the whole conversation? A. That is the general conversation.

"59. Q. I mean have you told me all that took place? A. I think that is all the conversation. It wasn't more than 15 minutes at the outside.

"60. Q. It wouldn't take 15 minutes to say that? A. No.

10

"61. Q. Then what happened? A. I took Mr. Wallberg across to the hotel.

"62. Q. To the King Edward? A. Yes.

"63. Q. You walked across with him?

"A. Yes, walked across to the hotel and I took him upstairs and introduced him to Mr. Clarke.

"64. Q. Was Mr. Clarke in his room upstairs?

"A. Yes.

"65. Q. You introduced him to Mr. Clarke, and what then?

"A. I was only there for about three or four minutes. I introduced them and I left. It was for them to talk over their business.

20

"66. Q. Did you see Mr. Wallberg again? A. No.

"67. Q. At any time? A. No, not to speak to. I saw him but not to speak to.

"68. Q. Now, that is the whole conversation—no names or anything that Mr. Clarke represented certain companies—nothing of that kind mentioned. A. No.

"69. Q. Am I correct when I put it this way, that Mr. Wallberg's answer to you when you said 'I am out to make some money and I want to know if you will pay me a commission,'—that his answer was, 'If a deal is made I will pay you a commission.'? A. That is true.

30

"70. Q. Is that exactly what was said as far as you can recollect?

"A. Not in so many words but that was the exact understanding.

"71. Q. I don't care a rap Mr. Campbell, if you will pardon me, about understandings?

"A. He said he would pay me a commission.

"72. Q. Did he say, 'I will pay you a commission' or 'Somebody will pay you a commission' or what? A. No, that he would.

"73. Q. He spoke in the first person, I take it? A. Yes.

"74. Q. And said 'I will pay you a commission'?

40

"A. He agreed to pay me a commission.

"75. Q. I didn't ask you that. I ask you what was the word he used, which is very simple? "Did he say 'I will pay you a commission'.

"A. No, in answer to the question he agreed to pay me a commission.

"76. Q. How did he do it? A. He said he would.

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"77. Q. What were his words? A man does not speak himself and "say 'he'. Did he say 'I will pay you a commission'? A. I asked "Mr. Wallberg would he pay me a commission if this resulted in a "deal for the sale of this paper and he said he would.

"78. Q. What were his words? A. 'I will'.

"79. Q. Then no further communication was had with Mr. Wall- "berg at any time until a letter written him on February 14, 1927?

"A. I wouldn't be sure of the date but I wrote him from Montreal.

"80. Q. I show you a letter. Is this it?

"A. Yes.

"81. Q. That was the first communication you had with him, Feb- "ruary 14, 1927? A. Yes.

10

Q. Why did you say a minute ago, as I understood you, that you had told him who this Mr. Lester J. Clarke was? You specifically say on your examination for discovery no names were mentioned? A. You mean Mr. Clarke's name mentioned?

Q. "Now, that is the whole conversation—no names or anything that Mr. Clark represented certain Companies—nothing of that kind mentioned? A. No."

20

A. I didn't say that Mr. Clark represented the Newspaper and Magazine Paper Corporation at that time.

Q. What have you said here in chief? A. Ask me the question please.

Q. Didn't you say Mr. Clarke represented companies that bought the largest supply of paper?

A. Yes. That was not in answer to that.

HIS LORDSHIP: Not that it was said in the conversation.

MR. HELLMUTH: Yes, my lord.

Q. You did not say anything to Mr. Wallberg in the conversation 30 with him, that Mr. Clarke represented any company at all? A. I didn't say anything of the kind at that time, about who Mr. Clarke was or anything else.

Q. So Mr. Wallberg had no idea from any conversation with you who Mr. Clarke represented? A. Previous to the arrangement in regard to the commission. Is that what you are referring to?

Q. I am speaking of the only time you had a conversation with him?

A. We had our conversation in his office, and back on the way over to the hotel.

Q. I am speaking now of the conversation you had with Mr. Wall- 40 berg in his office? A. Yes sir.

Q. Did you say anything there that gave Mr. Wallberg any idea who this Mr. Clarke was?

A. Excepting that he was the largest buyer of newsprint in the world.

Q. You told him that in his office? A. Yes. I didn't say he was

connected with the Newspaper and Magazine Paper Co.

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Q. You didn't mention that at all in your examination for discovery, that you told Mr. Wallberg that Mr. Clarke was the largest buyer of newsprint in America, not a word of it? A. I didn't mention any company.

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10 Q. I say that in your examination for discovery when you were asked for the entire conversation you never mentioned that you had told Mr. Wallberg that Mr. Clarke was the largest buyer of newsprint in America. Do you say now you did say that to him? A. You have the question there.

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Q. Do you say that you did say that to him?

A. I say yes, that I did say it.

Q. You say now you did tell him that. You said, as I understood you, to my friend Mr. McCarthy, that Mr. Wallberg told you he did not know him. Did Mr. Wallberg tell you that in the conversation? A. He didn't know the party.

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Q. Did he tell you he didn't know him?

A. I am trying to give you my answers to the best of my ability.

20 Q. I want to know whether Mr. Wallberg said, "I don't know Mr. Clarke." A. I couldn't use the exact words.

Q. Did he by what he said lead you to believe he didn't know him?

A. Yes, and more than that—

Q. You did not state that on your examination for discovery? A. I don't think I was asked that.

Q. You were asked to tell the whole conversation?

MR. McCARTHY: I don't think that is a fair statement, because on two occasions he said he introduced him to him. If he knew him he would not have to introduce him, surely.

MR. HELLMUTH: Not at all—know of him. I put it that way.

30 MR. McCARTHY: Look at 56 please.

"He then asked me who the party was and I said Mr. Lester J. Clarke, and he wanted to know where he was from and I told him "he was from New York City."

HIS LORDSHIP: That is exactly the same thing.

MR. HELLMUTH: Q. Was it at that time you told him he was the largest buyer? A. I wouldn't say it was just at that time.

Q. It is quite clear the only work you performed in this matter was an introduction by you of Wallberg to Clarke?

A. Bringing Mr. Clarke—

40 Q. Just answer my question. The only thing that you did in regard to this matter so far as Mr. Wallberg was concerned, was to introduce him to Mr. Clarke?

A. I am telling you I brought Mr. Clarke down from Montreal—

Q. I didn't say you didn't bring him down?

A. I interested Mr. Clarke in the proposition in Montreal. He was sufficiently interested to come to Toronto with me, because Mr. Clarke has

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many many propositions put up to him all the time. He wanted to know if Mr. Wallberg was responsible. These fly-by-night things are coming up all the time in the newspaper business.

Q. Do you mean this was a fly-by-night thing?

A. No, quite the reverse. I said I would make inquiries and would he be interested if I could get Mr. Wallberg interested. He is an old friend of mine. I induced him to come down here. Before I saw Mr. Wallberg I made inquiries whether he was a responsible party or not, and I was assured Mr. Wallberg was a responsible citizen and responsible party.

Q. As far as Mr. Wallberg was concerned, all you did was to introduce Mr. Wallberg to Mr. Clarke. You hadn't anything to do with the contract, or the making of it, or the sale of the paper? A. As far as Mr. Wallberg was concerned, I simply introduced him to Mr. Clarke. As far as he knows, that is all I ever did for him.

Q. Mr. Clarke was the representative of the largest firm of purchasers of newsprint on the whole of the continent? A. I understand that is true.

Q. That is right? A. Yes.

Q. Do you sell newsprint yourself? A. I do not.

Q. Have you been in that business at any time?

A. No sir.

Q. You have been carrying on a newspaper business; that is, the publishing of newspapers? A. Yes sir.

Q. For a number of years? A. Yes.

—RE-EXAMINED BY MR. McCARTHY:

Q. My friend asked you whether you knew the limits were purchased by the Leaside Company?

A. I had never heard of the Leaside Company.

Q. Was the Leaside Company's name ever mentioned to you at all during your conversation with Mr. Wallberg?

A. Never at any time.

Q. And you never heard of them at that time?

A. No, I did not.

Q. That is all, thank you, Mr. Campbell.

LESTER J. CLARKE, Sworn, Examined

BY MR. McCARTHY:

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Q. Mr. Clarke, you live in New York City I believe?

A. Yes sir.

Q. What is your business? A. Newsprint business.

Q. With what company are you connected?

A. Newspaper and Magazine Paper Corporation.

Q. Is that a publication or a purchasing—

A. Principally commission business.

Q. To what extent have you been engaged in the purchase of newsprint in Canada? A. You mean in volume?

Q. I don't want to go into the volume. Speaking generally in the last few years? A. I buy considerable newsprint in Canada. The greater part of it comes from Canada.

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HIS LORDSHIP: Q. Do you buy the greater part that comes from Canada? A. No. The greater part of the newsprint that I buy comes from Canada.

MR. McCARTHY: Q. And about what volume do you buy?

A. Oh, between two and three million dollars a month.

MR. HELLMUTH: Q. Is that a year? A. A month.

MR. McCARTHY: Q. Now then, Mr. Clarke, do you know the plaintiff, Mr. Campbell?

A. I do.

Q. How long have you known him? A. About seven or eight years.

Q. Known him intimately? A. Yes.

Q. I believe in April of 1926 you met Mr. Campbell in Montreal?

A. Yes sir.

Q. Did you have a conversation with him in regard to the Lake St. John limits recently purchased by Mr. Wallberg? A. I talked to him about some limits that Mr. Wallberg had purchased in the Province of Quebec—or rather, he talked to me about it.

Q. Were you in the market for newsprint at that time? A. Yes, I am always in the market.

Q. We cannot repeat the conversation because Mr. Walberg was not there. As a result of what Mr. Campbell told you, I believe you went with Mr. Campbell to Toronto? A. Yes sir.

Q. And shortly after your arrival in Toronto you met Mr. Wallberg? A. Yes sir.

Q. By whom were you introduced? A. By Mr. Campbell.

Q. Had you ever heard of Mr. Wallberg before?

A. I had not, not until in Montreal that trip.

Q. Nor had you heard of his Company nor his project? A. I didn't know anything about him, except I heard from Mr. Campbell he had bought these limits.

Q. Where did the introduction take place in Toronto? A. In the King Edward Hotel.

Q. Well, tell us as nearly as you can, Mr. Clarke, what took place on that occasion? A. Mr. Campbell came up with Mr. Wallberg. He introduced him, and very soon, within a few minutes, left. There was very little conversation when Mr. Campbell was there.

Q. After Mr. Campbell left what was said?

A. Mr. Wallberg told me he had these limits, and that he was going

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to build a paper mill. And then we discussed the newsprint business in general, principally regarding supply and demand. That was most of the conversation.

Q. He told you he had bought these limits; he was going to build a paper mill, and then you say you discussed the newsprint business, principally the question of supply and demand? A. Yes.

Q. What was the condition of the newsprint business just at that time? A. It was pretty soft. There was an awful lot of tonnage coming in. The production was growing much larger than the consumption, and I discussed that with Mr. Wallberg.

Q. Was anything said between you and Mr. Wallberg in reference to making a deal? A. Yes, I talked to him about buying his paper when he built the mill.

Q. And what if anything was said to him?

A. He told me that Mr. John Stadler was his engineer, and would build the mill, and would be the General Manager.

Q. What did you say to that? A. I told him I knew Mr. Stadler very well.

Q. Was any definite conclusion reached at that interview? A. No sir.

Q. Any arrangement to meet again? A. No definite arrangement.

Q. What was said in regard to it?

A. Well, when Mr. Wallberg left I think that he just said, "I will see you again later." Something of that kind. There wasn't anything definite at all.

Q. At that time, of course, there was no mill erected? A. No mill.

Q. He had just purchased the limits?

A. That is correct.

Q. Did you see him again? A. Many times after that.

Q. How did the next interview come about?

A. I saw Mr. Wallberg and Mr. Stadler together and separately, probably a dozen times during the balance of that year.

Q. You saw them together a dozen times during the balance of that year? A. Together and separately, much more than a dozen times; in fact, when the negotiations were being carried on it was a daily meeting between Mr. Wallberg and myself.

Q. Before we get to the actual negotiations in regard to the written document, had you some interviews with them before that? A. Yes, I think it started probably in June or July and went through the summer.

Q. How did they start, do you remember?

A. Now, I met them so many times I can't tell you where the different meetings took place. They took place both in Montreal at the Ritz Carlton Hotel and in my office in New York City.

Q. What was the outcome of these dozen or more meetings between you, Mr. Wallberg and Mr. Stadler?

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A. Well, we finally got a basis on which we were going to start drawing up a contract. RECORD

Q. And when did the actual contract start to be drawn up? In the
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A. The contract that was signed—of course, there were many false starts—the contract that was actually signed was started, I would say, about the first of December, may be in November. —
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Q. Of 1926? A. Yes, that is correct. Plaintiff's
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Q. And who carried on those negotiations? Lester J.
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A. First, they were carried on by Mr. Stadler and Mr. Wallberg jointly, and a little later on Mr. Stadler withdrew from the negotiations, and they were carried on by Mr. Wallberg alone. Examina't'n
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Q. How long did those negotiations last which led up to the ultimate signing of the document? Continued

A. The actual preparation of this contract and the signing of it took daily meetings for about three weeks.

Q. Where were those meetings held? A. Most of them at No. 9, East 40th Street, at the law office of William DeFord.

Q. Was he your attorney? A. Yes—well, he represented Mr. Hearst. This contract had to be suitable to Mr. Hearst before he would agree to take the paper under it. 20

Q. I was just going to ask you about that, Mr. Clarke. I notice in this document, Exhibit 1, that there is a guaranty signed by William Randolph Hearst, and dated the 12th of January, 1927. What was the purpose of getting Mr. Hearst's endorsement or guaranty?

A. Well, that was one of the conditions of the contract.

Q. Between— A. Mr. Wallberg and myself, that it should be guaranteed by Mr. Hearst as to performance.

Q. Was Mr. Hearst taking the paper?

A. Yes. That was why he guaranteed the contract. He was to take the paper under the conditions set forth in the contract for his use, from our company. We would sell it to him. 30

Q. And therefore, he also took an interest in the contract itself, did he? A. Yes.

Q. Before he attached his guaranty? A. Yes.

Q. So the contract as it appears today is this Exhibit 1, is it, and that is Mr. Hearst's signature to the guaranty? A. Yes.

Q. Then I think you sign it, do you not, on behalf of your company?

A. Yes sir.

HIS LORDSHIP: How does he sign it?

MR. McCARTHY: "Lester J. Clarke, President, Newspaper and Magazine Paper Corporation." 40

Q. Then that contract was concluded on the 29th of December, 1926?

A. Yes.

Q. And, of course, you have received no newsprint under that contract as yet? A. No sir.

Q. What was the condition of the paper market at the time that con-

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tract was made? A. It was very soft.

Q. What was the production of the mills at that time? A. I think they were running—there were none of them running six days a week I don't think. Most of them were running from four to five and quite a few machines were down entirely.

Q. A provision is made in regard to the price in that contract, Article V,

"The price of newsprint paper . . . in any calendar year . . . shall be the price fixed by the following paper manufacturers, and their successors or assigns; 10

"The Canadian International Paper Company, Limited.

"Price Brothers & Company, Limited, and St. Maurice Valley Corporation, Limited."

What would the price be under those conditions?

A. It has not been fixed yet.

Q. What is the price this year? A. \$65.

Q. And the price would have to be fixed, according to the provisions of this contract, by these three companies next year? A. Yes.

HIS LORDSHIP: Q. \$65 per ton? A. \$65. per ton.

MR. McCARTHY: Q. What do you say, Mr. Clarke, as to the value of a contract such as yours, for ten years, under the paper conditions as they exist today? 20

MR. HELLMUTH: I submit that is not evidence, my Lord.

HIS LORDSHIP: Suppose I should find that there was a contract to pay a commission upon this contract; how would I arrive at what was a fair commission if I did not know something about the quantity of material that would be handled under the contract?

MR. HELLMUTH: I submit, my Lord, there could not be any commission fixed except in regard to moneys that were paid. Suppose the contract were cancelled. 30

HIS LORDSHIP: Suppose it were cancelled before anything was earned; that would be one situation. But if the matter were to stand the way it stands now without any defence at all, how could I possibly arrive at—

MR. HELLMUTH: I don't think your Lordship could fix anything. Of course, I am anticipating argument now.

HIS LORDSHIP: Mr. McCarthy I think is right in giving me an idea of this at this time.

MR. HELLMUTH: Your Lordship has my objection.

HIS LORDSHIP: Yes. 40

MR. McCARTHY: Q. What do you say to that?

A. That is a hard question to answer. That is probably the largest paper contract that was ever made. I couldn't tell you what that contract is worth. It will probably run into forty million dollars. I don't know what that is going to be worth to Mr. Wallberg. It depends on conditions as they arise from year to year.

Q. Under the conditions at the present time, what do you say as to the value of the contract, having in view the fact that you have undertaken to buy his entire output at a price? A. I might tell you something of the value of it for next year. That is as much as I could do. It is a very valuable contract for next year.

Q. Why? A. On account of the condition the industry is in. He will be able to run the mill full. I don't know whether the next year will be valuable for that reason or not. I mean the year afterwards. I can't tell.

10 Q. What is the condition of the other mills as to running full at the present time? A. I think the paper industry now is running about 80%.

Q. Is there a combine in Canada now? A. There is a pool in Canada, which most of the mills are in.

Q. What is the condition of the industry so far as the pool is concerned? A. I would say the pool next year will run between 75% and 80%.

Q. In your conversation with Mr. Wallberg was anything ever said in regard to the Leaside Engineering Company? A. No.

20 Q. And during the negotiations between you was anything said in regard to the Leaside Engineering Company? A. Nothing, except when Mr. Wallberg gave me his card, it had Leaside Engineering Company on. That is the only thing I knew.

Q. When the contract came to be made, how did it come to be made between the Lake St. John Power and Paper Company? A. That was the corporate name Mr. Wallberg wanted to use.

30 Q. Would you be in a position to say, Mr. Clarke, what that contract is worth in dollars and cents next year, having in mind the condition of the industry insofar as it affects the pool? A. I don't think I can tell you that.

Q. You can't? A. No, I don't think so.

Q. I suppose that would be a matter of calculation. If he only sold 80% of his output it would be so much less than if he sold it all?

A. That is right.

Q. Then during the negotiations between you and Mr. Wallberg did the bonding company take a hand at all, or their solicitors? A. No.

Q. They didn't appear on the scene? A. No.

Q. Either in regard to the Hearst guaranty or anything of that kind? A. I didn't meet them, any of them.

40 Q. Would you tell me what is the recognized commission in the trade on the sale of newsprint?

A. The regular commission on domestic paper is 3%, and 4% on foreign. By Foreign I don't mean Canadian or Newfoundland paper. I mean Swedish, Norwegian or Finnish.

HIS LORDSHIP: Q. What do you mean by that? On the quantity sold? A. Yes, on the gross.

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Q. That would mean the actual sale of paper for delivery—so many tons of paper? A. That is right.

MR. McCARTHY: Q. Just to go back to the negotiations which you spoke of taking place in Mr. De Ford's office. Was Mr. Wallberg present throughout the entire time? A. Yes.

Q. Could you say from the time that you first met him to the conclusion, of the negotiations, was Mr. Wallberg present on every occasion?

A. No.

Q. On what occasions was he not present? A. Well, there was once 10 or twice at least that I met Mr. Stadler alone in my rooms at the Ritz Carlton Hotel in Montreal.

Q. But after Mr. Stadler dropped out of the negotiations Mr. Wallberg was present, as I understand it, entirely? A. Yes, that is right.

CROSS-EXAMINED BY MR. HELLMUTH:

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Q. I think, Mr. Clarke, you said that the Newspaper and Magazine Corporation—pardon me if I don't get its full name—is a very large purchaser of newsprint in Canada? A. Yes.

Q. That is right, is it not? A. Yes.

Q. And I suppose it would be quite fair to say that all the various 20 mill owners are aware of its existence in Canada? A. I presume so.

Q. I mean you buy from them all practically? A. Well, I don't buy from them all.

Q. But you buy from a number? A. A large number.

Q. I think you said your purchases ran to as much as two and three million dollars a month? A. Yes.

Q. Would I be right in saying that there is no other concern whose purchases run as high in Canada as yours? A. Yes, that is true.

Q. You are easily the first in that respect? A. Yes.

Q. And you have said as I understand you that on Canadian or Amer- 30 can paper a commission of 3% is not unusual in the sale of paper. Is that right? A. That is correct.

Q. There are certain people—shall we call them jobbers—who interest themselves in the sale of paper, and when these jobbers make a sale they get 3%.

A. No, jobbers get 5% usually because they carry stocks you see. They get more—five and up.

Q. Who are the people who get the 3%.

A. People that don't carry stocks, that don't ever see the paper.

Q. Are they brokers? A. Brokers, or commission men, I would say. 40

Q. Brokers or commission men, and they negotiate the sales; is that it? A. Yes.

Q. Am I right in that? A. That is correct.

Q. In a sense they are not very different from brokers who negotiate the sales of other stocks. I mean they get their commission, and these men get their commission. They are just on that line. Would that be a fair way of putting it? They are brokers who are in the business of selling paper?

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A. You mean exclusively in that business?

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Q. Yes? A. Yes, there is a number that are.

Q. Are there some that take up other lines besides paper? A. Yes.

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Q. But who are doing a brokerage business of some kind? A. Yes.

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10 Q. I suppose it is perfectly obvious, Mr. Clarke, that the value of any newspaper contract, where the price has to be fixed as here by certain specified corporations—you have seen this contract? A. Yes.

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Q. —must depend very largely upon what the price is that is fixed—I mean the value to the mill supplying—is that not so? I think you have said you would find it practically impossible to say what that would be another year? A. Yes, I can't tell what prices they are going to fix. If I knew that we could have had it in the contract.

Continued

20 Q. You also I suppose are aware that there are certain clauses in regard to possible cancellation of the contract, in the contract; or are you not aware of those? A. I think the cancellation clause in the contract depends on Mr. Stadler getting his mill started at a certain date. That is he only clause regarding cancellation.

HIS LORDSHIP: Q. Were you one of the main negotiators at that time? A. I drew up the contract on our side, for my company.

HIS LORDSHIP: He drew the terms of this contract himself and only submitted it to his lawyer, DeFord.

WITNESS: Yes.

HIS LORDSHIP: He drew the terms. He surely knows them.

30 MR. HELLMUTH: I am not saying he does not, my Lord. I see this in Article XVI about cancellation.

40 "If the Seller fails to complete and operate its mill and to make deliveries of newsprint paper as herein provided by July 1, 1928, or if the Seller at any time during the term hereof shall abandon such mill or fail continuously to operate the same and/or to make the minimum deliveries of paper required to be made hereunder for a period of three consecutive months, (unless such failure shall have been caused by the contingencies specified in Article XIII hereof) the Purchaser may give the Seller sixty (60) days' notice of its intention to cancel this contract, and upon the expiration of such notice, this contract shall be deemed to be cancelled and terminated as to the balance of the term hereof. The failure of the Purchaser, however to cancel this contract at any time when entitled hereunder to do so shall not be construed as a waiver of any right subsequently to cancel the same, because of any subsequent default.

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The rights of cancellation hereinabove accorded to the Parties shall not be deemed to be exclusive or in derogation of any other legal rights or remedies of the Parties hereto."

Q. Mr. Clarke, a contract such as this may under certain circumstances be very profitable and under other circumstances may not be profitable. Is that not so? A. It would depend. If there wasn't any money at all in the manufacture of newsprint this would not be profitable.

Q. There have been times, haven't there, when mills have practically been making no money? A. Yes, about 1910 or 1911 there was a period when there was not much money made.

Q. If there is a very large over-production that would bring down the price, would it not, until they would be running almost at cost? I mean in the case of a very large over-production? A. Well, it would either bring down the cost of newsprint, or a curtailment by the manufacturers in the manufacture of newsprint, one or the other.

Q. And it is quite impossible I suppose to say what moneys will be earned under that contract over this period of ten years, if it continues that long? I mean what actual moneys will be earned. You could not do that without knowing the price. You could not do it without a number of other circumstances, could you? A. I couldn't.

Q. I understood you to say, Mr. Clarke, that you had never met Mr. Wallberg before you met him that time in Toronto? A. That is the first time I had ever known him.

Q. But you had known Mr. Stadler, his chief engineer, for some time, had you not? A. Yes, I had known him when he was at the Belgo-Canadian.

Q. How long ago would that be? A. Five years ago.

Q. Would it be correct to say that you, first of all, in Montreal took this up with Mr. Stadler? A. I couldn't say that.

Q. You could not say whether it was Mr. Stadler or — A. My recollection is it was jointly.

Q. Mr. Stadler, of course, when you knew him five years ago knew what you represented, who you were? A. At that time I was buying Hearst paper. I have only had this company for less than two years.

Q. You were buying paper for the Hearst publications? A. Yes, I was just a buyer then working for Hearst.

HIS LORDSHIP: Q. On commission?

A. No, I was working on a salary for Hearst at that time. Then I started this business subsequently.

MR. HELLMUTH: Q. Did you stay with Mr. Stadler at any time at his house if you were in Hornibrook? A. No. I stayed at the hotel in Hornibrook.

Q. You say Mr. Wallberg told you Mr. Stadler was his Chief Engineer? A. At the interview at the hotel here? Yes.

10

20

30

40

Q. Did you tell Mr. Wallberg then you knew Mr. Stadler? A. Yes. RECORD

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Q. Mr. Clarke, could you tell from year to year how much this sale of paper would be worth? A. I can tell you next year because the prices are pretty well fixed. Most of the contracts are now made at \$65 for next year the same as now. —

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Q. You could tell what it would be worth for the coming year?

A. Yes.

Q. At the end of the other year would you be able to tell them?

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Q. And so on from year to year? A. That is correct.

Q. So while you cannot tell now, there will come a time when the amount can be fairly well determined? A. Yes sir.

CHARLES P. FELL, Sworn, Examined

BY MR. McCARTHY:

Charles P.
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Q. Mr. Fell, you are connected with the Dominion Securities Corporation? A. Yes sir.

Q. You have been asked to produce two documents; one, a letter written by Mr. Wallberg to your company? A. Yes sir.

20

Q. Dated A. Feb. 3, 1927.

Q. And also

MR. HELMUTH: I just want to renew my objection in regard to these letters which were written in reference to the contract, that they are not matters relevant to this action until it is shown what the contract practically was.

HIS LORDSHIP: This is a letter—

MR. McCARTHY: From Mr. Wallberg to the Dominion Securities Corporation on the 3rd of February, 1927, in connection with the bond issue, in which the fact of the contract for the output is referred to as an inducing matter.

30

HIS LORDSHIP: Mr. Wallberg wrote that letter?

MR. McCARTHY: Yes, my Lord.

HIS LORDSHIP: I think I will receive it, Mr. Hellmuth.

MR. McCARTHY: Your Lordship will allow me to put in the copy I presume, because I have no doubt the Dominion Securities Company want the original back.

HIS LORDSHIP: Will Mr. Hellmuth agree to a copy?

MR. HELLMUTH: My objection is to the letter. It is not to a copy.

40 to let it in.

HIS LORDSHIP: I have some doubt about it but I think it is better

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MR. McCARTHY: A copy of the letter is to be found in a circular issued by the Dominion Securities Co. in regard to the first mortgage sinking fund, 20 year bonds.

MR. HELLMUTH: I object to that, my Lord, very strenuously. A circular put out by the Dominion Securities Company cannot bind us in any way. I am appearing for Mr. Wallberg as an individual, and I submit that a circular put out by the Dominion Securities Company, even if Mr. Wallberg's own letter to them is good evidence, their inferences or conclusions drawn from that letter cannot be evidence in this matter. What the Securities Company think will happen, or what value they may attach to this contract, cannot be evidence against us I submit. 10

HIS LORDSHIP: I will receive it.

MR. McCARTHY: Instead of putting in the original letter, he has been kind enough to hand me a copy of a circular which includes the letter dated the 4th of February, 1927

WITNESS: Is that the 4th? The circular is dated the 18th and the letter is dated the third.

MR. McCARTHY: The one you gave me is the 4th isn't it?

WITNESS: I beg your pardon, you are right.

HIS LORDSHIP: What is the date on the letter? 20

MR. McCARTHY: The letter is dated the 3rd of February, 1927. Would you put them both in as one exhibit my Lord.

HIS LORDSHIP: No, I would not, because I may conclude that the other is not evidence before I get through.

MR. McCARTHY: May I return the letter then to them?

HIS LORDSHIP: Yes. If you can agree on what is a copy the Registrar will substitute it.

MR. HELLMUTH: I have not the slightest doubt my learned friend has filed a copy.

MR. McCARTHY: Then I return that to you, because what will be Exhibit 11 is an exact copy of Exhibit 10. 30

EXHIBIT 10, Letter E. A. Wallberg to Dominion Securities Corporation, Limited, dated Feb. 3, 1927.

EXHIBIT 11, Circular issued by Dominion Securities Corporation, Limited, containing copy of letter filed as Exhibit 10.

MR. McCARTHY: Q. Were these documents circulated?

A. Yes sir.

Q. On whose instructions? A. The Dominion Securities Corporation. 40

MR. HELLMUTH: That, my Lord, cannot, surely, be evidence.

HIS LORDSHIP: It is only to show that Mr. Wallberg did consider that having the product sold was an important matter.

Court adjourned at one until 2.20 p.m.

ON RESUMING at 2.20 p.m.

MR. McCARTHY: I propose, my Lord, to read certain portions of RECORD
the examination of Mr. Wallberg taken on the 26th of August, 1927.

MR. HELLMUTH: That would be only as against Mr. Wallberg him-
self, not as against the St. John Company. Your Lordship rules I under-
stand that it is not admissible against the company?

HIS LORDSHIP: It cannot be read against the company, of course.
It can be read against the man himself.

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The following questions and answers from the examination for discovery
of the Defendant Wallberg were then read

10 BY MR. McCARTHY:

- “1. Q. You are the individual defendant in the action, Mr. Wall-
“berg? A. Yes. Examinat'n
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- “2. Q. And you reside in Toronto? A. Yes.
- “3. Q. Your business is what? A. Engineering and manufactur-
“ing.
- “4. Q. And generally making money? A. And other things akin to
“engineering industries.
- “5. Q. And among other things the exploitation of natural resources
“wherever you can find them; is that it? A. Yes.
- 20 “6. Q. You did at one time own a substantial interest in some tim-
“ber limits in the Province of Quebec, in the Lake St. John region, did
“you not? A. Personally I never owned any interest in them.
- “7. Q. Any share in any interest in timber limits in Quebec?
“A. I had shares in the Leaside Engineering Company, Limited, and
“they owned the lease of a timber limit in Lake St. John.
- “8. Q. Was that a Limited Company you had shares in? A. Yes.
- “9. Q. So that you were not personally interested as the owner of the
“timber limits acquired by the Lake St. John Company? Is that what
“I am to infer? A. Not personally interested, only through that
- 30 “Company, the Leaside Engineering Company.
- “10. Q. Your interest came through the Engineering Company?
“A. Yes.
- “11. Q. When were the leases acquired? First of all were they ac-
“quired from the Government of the Province of Quebec? A. From
“the Government under lease dated April 6th, 1926.
- “12. Q. Prior to that time you had not any interest in the limits ac-
“quired by the Lake St. John Company? A. The Leaside Engineer-
“ing Company, Limited, was the owner of the lease.
- “13. Q. Are you speaking of the ones that were subsequently acquir-
“ed by the Lake St. John Company? A. The same limits.
- 40 “14. Q. Who negotiated the granting of those limits to the Leaside

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"Company? A. The Government of Quebec put it up for public auc-
"tion and I represented the Leaside Engineering Company at the bid-
"ding.

"15. Q. You bid them in? A. I bid them in. I did the bidding for
"the Leaside Engineering Company, Limited.

"16. Q. That was in April of 1926? A. That was in March 27th,
"1926, the actual auction.

"17. Q. Then the lease was extended subsequently as of the same
"date, was it? A. No, the lease bears the date of April 6th.

"18. Q. What percentage of the stock of the Leaside Company do you 10
"own? A. Oh, I own most of it, a controlling interest.

"19. Q. When you say that what do you mean? Do you mean fifty-
"one per cent? A. No, I mean most of the stock.

"20. Q. You own all the stock except the qualifying shares of the Di-
"rectors? A. Yes.

"21. Q. So that as far as the Company can be yours it is yours?
"That is a proper way of putting it, isn't it? A. I told you what I
"owned.

"22. Q. How many shares are there in the Company outstanding
"that you do not own? A. A few shares for qualifying the Directors. 20

"23. Q. One share for each of several directors?

"A. One share, yes, for each.

"24. Q. How many directors are there?

"A. The Board is five, I believe.

"25. Q. How many shares did the Company issue for those limits?
"I suppose the company paid for the limits with stock, did it, or how
"was the stock of the Company issued—for what consideration?

"A. Of the Leaside? Oh, the Leaside Engineering Company is a
"Company that has been in existence since 1919.

"26. Q. It was not formed merely for the purpose of acquiring these 30
"limits? A. Oh no.

"27. Q. Do you do all your business through the Leaside Company?

"A. A large part of the business, yes.

"28. Q. And this was one of the speculations it engaged in?

"A. The purchase of this limit, yes.

"31. Q. Shortly after this, then, you met Mr. Campbell, I take it?

"A. Yes.

"32. Q. How did you come to meet him?

"A. In April, 1926, there was a telephone conversation from Ottawa
"and the gentleman said that he was Mr. Campbell. I didn't know him, 40
"but he wanted to know if I would be in Toronto the following day.

I replied to him I would be in my office the following day. That was
"all the conversation that day.

33. Q. Had you met Mr. Campbell before?

"A. Never heard of him.

"34. Q. Then when did you next get in touch with Mr. Campbell?

- "A. The next day Mr. Campbell called in my office in Toronto. RECORD
- "49. Q. Did you know who Mr. Clarke was? In the
- "A. No, but he said it was Mr. Clarke from New York who was in the Supreme
- "paper business. Court of
- "53. Q. Simply he brought Mr. Clarke's name up and you didn't know Ontario
- "who Mr. Clarke was and you were going to see him in the King Ed- —
- "ward Hotel? A. He said Mr. Clarke from New York who was in the No. 5
- "paper business. —
- "67. Q. Now, you say the Lake St. John Company was then organi- Plaintiff's
- "ized. When was the Lake St. John Company incorporated? Evidence
- "A. At that particular time it was operating as the Mistassini Power Examina't'n
- "and Paper Co., and the Lake St. John name was obtained through sup- for
- "plementary letters patent on December 29th, 1926. Discovery
- "of
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- "68. Q. When was the Mistassini Paper Company incorporated? Continued
- "MR. HELLMUTH: I can give you these dates if you do not mind so
- "as not to rely on Mr. Wallberg's memory for dates. The first Com-
- "pany was the St. Anne Paper Company, Limited, whose charter was
- "obtained on May 9th, 1925. Its name was changed to the Mistassini
- "Power & Paper Company on June 5th, 1926, by special charter, and
- "20 "the name of the Mistassini Power & Paper Company was changed to
- "that of the Lake St. John Power & Paper Company on December
- "29th, 1926. They are all Limited Companies.
- "69. Q. Now, how did the Lake St. John Company acquire these lim-
- "its from your Leaside Company? A. By purchase.
- "70. Q. When? A. The actual sale by the Leaside was on May 31st,
- "1926.
- "71. Q. Was that the date of the contract or when the arrangement
- "was consummated or when the transaction was actually concluded?
- "A. Just how do you mean?
- "30 "72. Q. I mean was there a preliminary contract and some negotia-
- "tions extending over a period of time? A. No.
- "73. Q. Simply a straight sale? A. It was a straight sale on that
- "date.
- "74. Q. You have a controlling interest, I suppose, in the Lake St.
- "John Company, have you?
- "MR. HELLMUTH: The transfer, of course, had to be made and it
- "couldn't be made to either the Mistassini or the St. John. It was
- "made to the St. Anne Paper Company on the 31st May.
- "MR. MANNING: At any rate it is the same Company. The term
- "40 "'Defendant Company' will do to describe it by all its names.
- "75. Q. There has never been any break in this existence? A. No.
- "MR. BICKNELL: It was the name changed from time to time.
- "76. Q. Are you one of the main stockholders in the 'Defendant
- "Company, Limited? A. The Leaside Engineering Company, Limit-
- "ed is.
- "77. Q. How much of the stock of the Defendant Company does the
- "Leaside Engineering Company own?

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- "A. Oh, something over a majority.
- "78. Q. How many classes or stock are there in the Defendant Com-
pany? A. Preferred and common.
- "79. Q. How much preferred—how much authorized?
A. Authorized, four million, I believe.
- "80. Q. And how much issued outstanding? A. Two million.
- "81. Q. And how much of that does the Leaside Company own?
A. All of the preferred.
- "82. Q. How much common is authorized?
A. One hundred thousand shares, no par. 10
- "83. Q. I suppose all of that has been used up by giving it away, has
it? A. No. There are a great many shareholders.
- "84. Q. I do not want to ask any impertinent questions, but did the
Defendant Company own any limits before it became interested in
this limit that the Leaside Company had? A. No, it never owned
any other limits.
- "85. Q. It was just a soul without a body, so to speak? It hadn't
any property; its organization had never been completed? A. No.
- "86. Q. And when its organization was completed it was designed to
take over and operate the particular limit that the Leaside Company 20
bid in in April, 1926? A. No, that is not correct. The St. Anne
Paper Company was not chartered to take over this limit.
- "87. Q. I do not think I made myself clear?
A. It was chartered nearly a year before.
- "88. Q. Did the St. Anne Company, which I have called the Defend-
ant Company here, own and operate any limits at all before it acquir-
ed the limits that is in question here? A. No.
- "89. Q. It was merely a charter belonging to some people and
nothing had been done with its organization? A. That is right.
- "90. Q. Then it buys this limit from the Leaside Company shortly af- 30
ter this limit is acquired by your Leaside Company. What consid-
eration did it pay?
A. The consideration was stock in the defendant Company, and cash
in addition.
- "91. Q. Stock and cash? A. Yes.
- "92. Q. Any other consideration? A. No.
- "93. Q. Then how was that consideration provided for? I mean was
there any formal written contract relating to it? A. Yes, a written
contract.
- "94. Q. Dated the same day as the date you have already given me, 40
was it? A. Yes.
- "95. Q. That provided the Leaside Company would do what?
A. Assign its lease with the Quebec Government to the defendant
company.
- "96. Q. Is that all the Leaside Company was to do?

"A. There were certain minor charges one way or the other but I don't
 "remember the details of them; but that was substantially all they
 "were to do, and the Leaside Company after that were not in the trans-
 "action.

"97. Q. Then what was the Defendant Company to do in exchange
 "for what the Leaside Company did?"

"A. Assume the obligations of the lease.

"98. Q. What else? A. That is all."

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MR. McCARTHY: 113. The only reason I read that is because I
 10 propose to read to your Lordship a letter which they afterwards wrote us
 to supplement the information that Mr. Wallberg was frightened he would
 not give accurately.

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"113. Q. Well, who did the negotiating? You were the principal
 "shareholder. In fact for all practical purposes you were the sole
 "shareholder of the Leaside Company and you ought to know the ven-
 "dors' end of it, and you are president of the defendant company and
 "you ought to know the purchaser's end of it pretty well?"

"MR. HELLMUTH: If you are entitled to it you ought to get the accu-
 "rate information. We will get it from the books and give it to you.
 20 "There won't be the slightest difficulty about it but Mr. Wallberg does
 "not want to make any mistake. A. We can get it, of course.

"167. Q. And what did you estimate, you and Mr. Stadler between
 "you, would be the profits to the Company out of this contract?"

"A. The profits I think are set forth in our prospectus. Our estimat-
 "ed profits for the year were something between a million and a million
 "and a half dollars."

"168. Q. Gross or net? A. They are profits available for both bonds
 "and dividends.

"169. Q. That is what you might call a net operating revenue as dis-
 30 "tinct from revenue applicable to fixed charges? A. Yes.

"170. Q. How large an issue of bonds have you got outstanding?"

"A. We have got five millions of first mortgage.

"171. Q. At what rate of interest? A. Six and a half percent, and
 "three millions of debentures at six and a half percent.

"172. Q. Then you copied the results of your estimates in a letter to
 "the purchasers of the bonds, did you not? A. Yes.

"173. Q. And you signed it yourself? A. Yes.

"174. Q. As President of the Defendant Company? A. Yes."

MR. McCARTHY: So that in a sense links up both the prospectus
 40 and the letter which are already in. Now, the letter which my friends
 wrote, and which I would like to file as an Exhibit is a letter addressed to
 Messrs. Long & Daly, a letter from Messrs. Bain, Bicknell, White & Bris-
 tol, dated November 4, 1927.

Concluded

(Mr. McCARTHY: Reads letter: Exhibit No. 12.)

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MR. McCARTHY: That is the case, my Lord.

MR. HELLMUTH: I submit, my Lord, that no case has been made out whatever against either of the defendants here, but I am quite prepared to give evidence on the merits. I want to preserve my position, however.

HIS LORDSHIP: Yes.

DEFENCE

EMIL ANDREW WALLBERG, Sworn, Examined

BY MR. HELLMUTH:

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Q. Mr. Wallberg, you have heard the date that was mentioned for the incorporation of the Leaside Engineering Company—you have heard that mentioned. A. Yes sir. 10

Q. And also that you were the principal stock-holder with the exception of the qualifying shares? A. Yes sir.

Q. Then, may I ask you what interest, if any, the Leaside Engineering Company have now in the Lake St. John Company—what stock or shares. A. At the present time the Leaside Engineering Company own 71,250 shares of the common stock, no par value; and two million dollars of the preferred, for which they had paid one million dollars.

Q. That is the 20,000 preferred shares? A. Yes sir. 20

Q. That is the position at present. Then how were these limits that are in question here acquired, so far as you know, by any company with which you were connected? A. They were acquired at auction of the Government of the Province of Quebec by Leaside Engineering Company.

Q. I don't suppose I need go over the dates in that memorandum. Have you seen the memorandum that went in as Exhibit 12? You were familiar with the statement contained in that? A. That was handed me yesterday by Mr. Bicknell. I believe it is correct.

Q. Then will you tell me when you first heard of the plaintiff, Mr. Campbell? A. When he phoned me from Ottawa. 30

Q. He phoned you from Ottawa some time in April?

A. Some time in April, yes sir.

Q. What was his phone message? A. He merely asked me if I would be in Toronto the following day, and I replied I would be in my office the following day.

Q. Did you see Mr. Campbell on the following day? A. I did. He called at my office in the Royal Bank Building, Toronto.

Q. Will you tell me what took place when he called? A. He introduced himself, told me his name was Mr. Campbell, who had phoned me from Ottawa the day before, and then he told me that Mr. Clarke from New York who was in the paper business was at the King Edward Hotel, and would like to know if I would go over and see him. 40

Q. What did you say to that? A. We immediately went over together.

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Q. How long did the conversation last?

A. Inside of two or three minutes.

Q. You have been here and heard Mr. Campbell's evidence?

A. Yes sir.

Q. What do you say as to the conversation that Mr. Campbell states, as to his asking you for a commission, and your saying you would pay one—what do you say to that? A. I say that there was never a word or syllable or intimation of any kind that he was looking for or asking for a commission or gain, in any way, from me.

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10 Q. Did you go over to Mr. Clarke? Did you go over to the King Edward? A. We went over together.

Q. And what took place while Mr. Campbell was there, because can't ask you— A. We walked into the room together, and Mr. Campbell said to Mr. Clarke, "This is Mr. Wallberg." And then Mr. Campbell said, "I will leave you now, and walked out, and I never saw him any more.

Q. Had you any written communication with him before this Exhibit 2, a letter of the 14th of February, 1927? Had you any communication with him prior to this Exhibit 2? A. No sir.

Q. Then did you ever see him? A. Never saw him any more.

20 Q. By the way, who was your manager and engineer?

A. John Stadler.

Q. And when did you next see Mr. Clarke?

A. In the office of Lake St. John Power and Paper Co. in Montreal.

Q. About when would that be? A. Oh, I should say in July.

Q. What, if any, negotiations had taken place up to that time when you saw him in July?

MR. McCARTHY: That would only be hear-say.

30 MR. HELLMUTH: Q. Had you had any negotiations with him yourself? A. I never had any communication with him or negotiations between the time that I met him at the King Edward Hotel, and the time I met him in Montreal Office.

Q. There were negotiations after that? A. There were, yes.

Q. Which eventuated in December, 1926, in a contract between the Lake St. John Power and Paper Company and the Newspaper and Magazine Paper Corporation? A. Yes sir.

Q. That resulted in that contract then.

HIS LORDSHIP: That is this contract that is put in?

MR. HELLMUTH: Yes, my Lord.

40 Q. What paper has the Lake St. John Paper Co. turned out as yet?

A. No paper.

Q. It has not turned out any? A. No sir.

Q. Let me ask you this, Mr. Wallberg: What limits are you personally interested in, or what contracts have you personally as to any limits?

A. I haven't any.

Q. Now, Mr. Campbell has stated that he said to you—I am paraphrasing but I am not doing him any injustice in this—that you had ac-

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quired certain limits. I ask you, did you tell him that? A. I did not. I hadn't acquired any limits personally.

Q. Was it the Leaside, or had they been transferred to the St. Anne? I want to see what company was in existence. This conversation took place in April. Apparently it was not until May that there was any transfer to the St. Anne Company? A. No. The Leaside Engineering Co. owned the lease at that time.

Q. The Leaside Engineering Company at the time of this conversation that took place with Mr. Campbell—the St. Anne and St. John Paper Company had not been brought into existence—or, at least, the St. Anne Company had been incorporated in 1925? A. Yes. 10

Q. But it had no interest at that time in this limit? A. No sir.

Q. Just the Leaside? A. Yes sir.

MR. HELLMUTH: Will your Lordship permit me to examine subject to my objection on the letter, Exhibit 10? I don't know whether I can.

HIS LORDSHIP: Let me see what 10 is.

MR. HELLMUTH: It is the letter contained in that circular.

HIS LORDSHIP: You want to cross-examine without losing the benefit of your objection?

MR. HELLMUTH: I don't know whether I can. I think I will let it go. 20

Q. Mr. Wallberg, can you tell me in dollars and cents what the result of that contract will be to the company over those ten years?

A. No sir.

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CROSS-EXAMINED BY MR. McCARTHY:

Q. You have been operating as the Leaside Engineering Company for some years, have you not, Mr. Wallberg? A. Yes sir.

Q. And when you go into transactions, instead of dealing in your own name, you deal in the name of the Leaside Company, don't you?

A. Not always, but in a great many transactions I have done so. 30

Q. Can you mention any transaction in which you have dealt under your own name? A. Yes, I dealt in Keith Refrigerator Co. and patents a short time ago. It is entirely my own name.

Q. Some patents? A. Involving a manufacturing company.

Q. How long ago was that? A. Less than a year.

Q. I mean before this time? A. Oh, I think most of the transactions. I can't remember of one now.

Q. Would it be fair to say that when we speak of the Leaside Engineering Company we mean Mr. Wallberg, and vice versa?

A. Why, I think so. 40

Q. You have an office in the Royal Bank Building under your own name? A. Yes sir.

Q. And in the telephone book it appears under your own name?

A. Yes.

Q. And the office of the Leaside Engineering Co. is where?

A. At Leaside.

Q. You had not been in any paper enterprise before this, or news-print enterprise, had you? A. No sir,

Q. And you tell us that you went to the Province of Quebec for the purpose of bidding for these particular limits? A. Yes sir.

Q. Had you previously arranged to have them put up for auction?

10 A. Yes sir.

Q. You had previously arranged to have them put up for auction, and you yourself had done the negotiation between whatever Minister of the Crown was interested in that Department and yourself? A. Yes sir.

Q. And on a day fixed they were put up for auction? A. Yes. When I speak of myself, they knew that I represented Leaside Engineering Company.

Q. They knew you were Leaside Engineering Co., the same people?

A. I don't know whether they knew that I owned all the stock of the Leaside Engineering Company, because that never came up.

20 Q. Did you disclose to them your relations to the Leaside Company?

A. Yes sir.

Q. In other words, that you were the owner of all the shares except the qualifying shares?

A. No, that was never disclosed to them.

Q. But you did tell them you were representing the Leaside Company, and whatever you did was binding on the Leaside Company?

A. Yes.

Q. You arranged with them that whatever bid was made by you should be made in the name of the Leaside Engineering Co. A. Yes.

30 Q. And you also arranged what the deposit should be that you or the Leaside Company would have to put up, which was \$50,000 in Government Bonds, wasn't it? A. No, \$200,000. The deposit to enable the Leaside Company to bid was \$200,000. The guaranty for fulfilment of conditions, put up after the limit had been bid in was fifty thousand.

Q. So the original amount you had to put up to allow you to bid was \$200,000, and the \$50,000 was a guaranty after the bid was put in and the offer accepted? A. Yes.

Q. Then the cheque that was put up, whose cheque was it?

A. Leaside Engineering Company's.

40 Q. And signed by you as President? A. I think so.

Q. The situation was perfectly well known so far as you and the Engineering Company were concerned to the authorities in the Province of Quebec? A. Yes.

HIS LORDSHIP: Q. That is, that you and the Leaside Company were practically the same thing? A. I don't believe that the Government of the Province of Quebec knew that I owned substantially all of the

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stock, but they knew I could speak for the Leaside Company. I wouldn't go further than that because it was never discussed.

Q. You won't say you were the same entity, you and the company were exactly the same thing, but you did own practically all the stock?

A. I did, yes sir.

MR. HELLMUTH: The other is a legal question.

WITNESS: I don't believe that the Government of Quebec knew that I owned all the stock.

MR. McCARTHY: Q. They knew you were in control?

A. I think so.

Q. Then did you control the St. Anne Paper Company at that time? 10

A. The St. Anne Paper Company was an unorganized company, merely a charter at that time.

Q. Was it your charter? A. Yes.

Q. Had you acquired the St. Anne Paper Co. charter before you put in your bid? A. That charter was acquired about a year before that for another proposed enterprise.

Q. That charter was acquired by you about a year before for another proposed enterprise? A. Yes.

Q. Now then when you acquired these leases from the Quebec Government, were they issued in the name of the St. Anne Paper Company or the Leaside Engineering Company? A. The Leaside Engineering Company. 20

Q. Are you sure about that? A. Yes.

Q. The leases were actually issued in the name of the Leaside Engineering Company? A. Yes.

Q. And held by them until the transfer was made between the Leaside Company and the St. Anne Company? A. And the Mistassini.

Q. Did the St. Anne Company never acquire them? A. Not under that name. 30

Q. It was not until the St. Anne Company had changed its name to the Mistassini that the leases were acquired? A. That is right.

Q. You will remember at the time you made this purchase it received some considerable notoriety in the Press in Quebec and Montreal?

A. There were many press notices about that bidding.

Q. And in the press notices you were advertised or stated to have been the purchaser of these limits, were you? A. I may have been in some of them; I don't know.

Q. And it was common gossip among the newspaper men and newsprint men that Mr. Wallberg had purchased these limits, and was putting up a mill? A. I think that was mentioned, yes. 40

Q. And it was, of course, your intention to put up a mill?

A. It was unless we sold the concession.

Q. Unless you sold the concession it was your intention to put up a mill? A. Yes.

Q. And had you studied the conditions of the newsprint market at that time? A. Fairly so, yes.

Q. What was the condition as observed by you at that time?

A. I would say it was good compared to—

Q. Were the mills producing to capacity at that time?

A. Not exactly but that never bothers any big industries for any long time.

Q. That, of course, is where the profit is made, is it not, when you are producing to capacity in big industries? A. The most profit, yes.

Q. The most profit is made in the newsprint business anyway out of the last ten or twenty thousand tons, isn't it, if you are operating to 10 capacity? A. The more you manufacture, the more you make.

Q. You say at the time that Mr. Campbell telephoned you, you had not then decided whether you would put up a mill or not. Did you say that? A. I don't know just exactly when the final decision was reached to build a mill.

Q. You don't know just when the final decision was reached to build a mill. When did you retain Mr. Sadler? A. Some time in April.

Q. When? A. April 5th I believe.

Q. Did you make a contract with him at that time? A. Yes sir.

Q. And Mr. Stadler was to be your engineer of construction?

20 A. Yes sir.

Q. And also to be your Manager? A. Yes sir.

Q. And what was the term of his engagement? A. Three years.

Q. So it is fair to say that on April 5th you had determined to put up a mill, hadn't you?

A. Well, I would say so.

Q. I cannot conceive of your engaging Mr. Sadler for any other purpose? A. If I had sold the concession he could have built a mill for the new owners.

30 Q. If you had sold the concession he could have built a mill for somebody else, if they wanted to take over the contract with you? A. Yes.

Q. Was Mr. Stadler not to get a considerable block of the common stock of any company that was to be formed? A. No.

Q. Do you say that? A. I do.

Q. Positively? A. Yes.

Q. At the time Mr. Campbell phoned you, you had acquired the leases in the name of the Engineering Co., and you had engaged Mr. Stadler as your engineer and manager under a three-year contract? A. Yes.

Q. Was that not also announced in the Press? A. I believe it was.

40 Q. So that you were at once, or would shortly be, in the market for the sale of your products? A. After a time, yes.

Q. Then what time did you contemplate it would take to erect the mill? A. My understanding with the Quebec Government was three years from the date of the lease, which was April, 1926.

Q. I didn't know there was an undertaking. At the time of the purchase was there the usual undertaking that you would erect a mill?

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HIS LORDSHIP: The maximum time was three years.

MR. McCARTHY: Q. There was an undertaking that you would erect a mill within three years?

A. The one that controlled the lease.

Q. So you immediately engaged Mr. Stadler. In fact, before the lease was signed you engaged Mr. Stadler because the lease was not signed until the 6th of April, was it? A. That is true, but the auction determined that, and that was on the 27th of March.

Q. The lease was actually signed on the 6th of April, and Mr. Stadler was tied up for three years on the 5th? A. Yes. 10

Q. Mr. Stadler, as I understand, is a very prominent newsprint engineer and mill builder?

A. Mill builder and manager.

Q. And with you still? A. Yes.

Q. Still engaged under that contract? A. Yes.

Q. Is he here? A. No.

Q. Then you would shortly be in the market as a producer of newsprint? A. After a time.

Q. Within what time did you contemplate you would have your mill erected? A. We set out to begin making paper the first half of this year, 1928. 20

Q. That is what you had in mind? A. Yes.

Q. And were the plans completed by the time Mr. Campbell telephoned you, the plans of the mill building?

A. No sir.

Q. In any case, you had been advertised as a prospective newsprint producer in the Press of Montreal and Quebec? A. I believe so.

Q. And that was the situation as far as you were concerned, when you received this telephone communication from Mr. Campbell? A. Yes.

Q. Mr. Campbell was a man you had never met before? A. That is true. 30

Q. And he telephoned you from Ottawa, and subsequently came to see you in your office the morning of the day after he telephoned? A. Yes.

Q. Introducing himself as Mr. Campbell, the man who had telephoned you the day previously? A. Yes.

Q. And what did you think Mr. Campbell came for—his health?

A. I took Mr. Campbell to be the secretary or associate of Mr. Clarke.

Q. Mr. Campbell told you who he was, didn't he? 40

A. No, he did not.

Q. Didn't he tell you he came from Edmonton?

A. No sir, the first I knew of that was when I got his business card attached to a letter claiming commission.

Q. You never knew who he was? A. No, never asked.

Q. He just said, "I am Campbell." Didn't tell you he was Mr. Campbell of Edmonton, who was the Editor-owner of the Edmonton paper? A. No.

Q. And you didn't ask him? A. No, I didn't. Mr. Clarke was the man I was to meet.

Q. Mr. Clarke you had never heard of either?

A. No, I had never heard of Mr. Clarke.

Q. Here was an unknown gentleman named Campbell, going to introduce another unknown gentleman named Clarke whom you had never heard of either. Is that so?

A. I had never heard of either of them before.

Q. Well, without making any further inquiries who Mr. Clarke is, or who Mr. Campbell is, you put on your hat and go across to the King Edward Hotel?

A. He told me Mr. Clarke was from New York, and was in the paper business.

Q. Neither of the names are very uncommon?

A. Not very.

Q. You made no further inquiries, and you thought that Mr. Campbell was the Secretary of Mr. Clarke?

A. Or Assistant or Associate.

Q. Then you took Mr. Campbell to be a purchaser, did you? A. I didn't think anything about Mr. Campbell. He merely asked me to meet Mr. Clarke.

Q. Did he tell you what you were to meet Mr. Clarke about?

A. No.

Q. So when you went over to the King Edward Hotel you didn't know whether you were going to talk about beef-steak or paper?

A. Yes, I have stated that he told me that Mr. Clarke was in the paper business.

Q. What end of the paper business he didn't tell you? A. No.

Q. Without making any further inquiry you say you went over?

A. Yes.

Q. What had you in mind in going over?

A. I couldn't have done less.

Q. Why? A. Just across the street.

Q. Why should you turn out to go and see a man whom you never heard of or knew anything whatever about? The natural thing for you to say would be, "If Mr. Clarke wants to see me, let him come and see me."

A. I didn't think there was anything extraordinary about that at all.

Q. You did not think there was anything extraordinary about an unheard of gentleman you had never seen or known at all, asking you to go and meet an equally unknown person; and you without any further ceremony put on your hat and coat and run across the street? A. That is what we did.

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Q. What took place when you met Mr. Clarke then?

A. Mr. Campbell made us acquainted.

Q. What introduction did you get? A. He said, "Mr. Clarke, here is Mr. Wallberg."

Q. Is that all he said? Didn't he tell him who you were? A. No, he did not.

Q. Weren't you curious to find out why Mr. Campbell was interviewing you? A. I didn't get that question.

Q. Weren't you curious to understand why Campbell was interviewing you? A. Merely a message to ask me to go and meet Mr. Clarke. 10

Q. How did he know you were interested in paper or newsprint?

A. Mr. Campbell?

Q. Yes? A. I didn't know what he knew at that time.

Q. Just think of the situation, because it seems so ludicrous to me. Here a man you never knew comes to you, and you don't know how he knew you, or why he knew you were interested in paper; he does not ask any questions about you, whether you have any interest in newsprint or not; doesn't ask whether you are Mr. Wallberg who bought the limit in Quebec. According to your story he simply says, "I am Mr. Campbell; I telephoned you yesterday; there is a man named Clarke interested in newsprint over in the hotel; come over and see him?" A. I thought it was plenty of time to talk when I met the principal. 20

Q. How did you know that Campbell or Clarke knew anything about your having bought those limits?

A. I didn't know what they were going to talk about, but I thought it was fair to go over and meet him. He was in the paper business.

Q. You would like his Lordship to believe that if any unknown gentleman comes into your office and says, "Come over to the hotel and meet Mr. Jones, and talk to him about this, that or the other thing," that you will put on your hat and coat, and run over and do it? 30

A. That is what we did in this case.

Q. You heard Mr. Clarke's evidence? A. Yes sir.

Q. Does that correctly represent what took place afterwards? A. I think in a general way it does. We didn't discuss the sale by me of any paper.

Q. Eh? A. We didn't discuss the sale by me of any paper.

Q. I would like to know how the conversation opened between you and Mr. Clarke. You had not divulged to Mr. Campbell you were the man who bought the limits in Quebec. Did you tell Mr. Campbell that, or did Mr. Campbell ask you that? A. Mr. Clarke told me that he was a large buyer of paper, and that he was connected with Mr. Hearst. 40

Q. What interest was that to you?

MR. HELLMUTH: I think the witness might finish.

MR. McCARTHY: I didn't know he hadn't finished. I have no doubt he might.

WITNESS: He told me that he had learned that I was interested in a limit, and asked me if I was going to build a mill.

MR. McCARTHY: Q. He told you he was interested in newsprint, heard you were interested in a limit, and asked you if you were going to build a mill. Is that right? A. That was it.

Q. That was the first time you knew what the subject of discussion was to be? A. From either of them, yes.

Q. From either of those gentlemen?

A. Yes.

10 Q. It was not till you got over to the King Edward Hotel into Mr. Clarke's room that either of them knew that you were interested in the limits?

A. I think it was a fair thing for me to go over.

Q. I didn't say whether it was fair or unfair?

A. When a man is in the paper business, and I had been thinking mills and paper all the time. He evidently wanted to see me about the paper business.

Q. You didn't know he knew you in connection with the paper business. A. No.

20 Q. Didn't it strike you as funny that Mr. Clarke, who is described to be a large operator in newsprint, should come to Toronto to see you, if he did not know that you were interested in the building of a mill? That was the only interest Mr. Clarke or Mr. Campbell could possibly have in you, wasn't it?

A. Yes.

Q. Do you remember Mr. Campbell after introducing you gentlemen, saying, "Now I will let you discuss your business between each other."

A. Mr. Campbell left us immediately.

30 Q. Do you remember after he introduced you, his saying, "Now I have introduced you, you can sit down and discuss your business and I will retire."

A. Positively he did not say that.

Q. What did he say? A. He didn't say anything. He said, "Now I will leave you."

Q. He introduced you both, and said, "Now I will leave you."

A. Yes.

Q. Is that all that was said?

A. That is all that was said.

Q. He introduced you, described who you were?

40 A. He mentioned my name.

Q. Did he tell him what your business was? Did he say, "This is Mr. Wallberg who has bought the Quebec limits?" A. No, he didn't say one word about that.

Q. He just said, "This is Mr. Wallberg," leaving Mr. Clarke to guess who and what you were?

A. That is all he said at that time.

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Q. How did he describe Mr. Clarke to you, "Mr. Wallberg, meet Mr. Clarke, and now I have introduced you I will leave the room?" A. He just said, "I will leave you now."

Q. "Mr. Wallberg meet Mr. Clarke. I will leave you now. Good-bye!" Is that it?

A. That is it.

HIS LORDSHIP: Q. Then you said he said he had learned that you were interested in limits and was about to build a mill. That is the first thing Clarke said to you, according to your account? A. Yes, they had travelled together from Montreal.

Q. You did not know that? A. No, I didn't know that, but I take that for being his reason for knowing a good deal about me at the time.

Q. "He said he had learned that I was interested in limits and would build a mill." Didn't he tell you how he learned that, or anything about it at all?

A. I believe that is substantially what he said.

Q. That is what you told me was the very first thing he said to you, "I learned that you were interestd in a limit, and that you are going to build a mill."

A. Yes sir. That was in all the newspapers, and these two gentlemen had evidently discussed that before hand, so I think it was fair to take it that he knew that.

Q. He told you he had learned it?

A. Yes.

Q. You have no explanation as to why there was nothing said as to how he had learned it. Apparently Mr. Campbell just came in and introduced you to this man in the shortest kind of form? A. Yes.

Q. And the first thing the man said to you was, "I have learned you are interested in a limit and that you are going to build a mill."

A. Yes.

Q. Is that why you thought he must be the Secretary or something?

A. I didn't consider that Mr. Campbell was any principal in the matter in any way, that he merely came over to get me to go to the hotel to meet Mr. Clarke.

Q. Sort of a messenger? A. Or an associate, or assistant, but that Clarke was the principal that I was to meet.

MR. McCARTHY: Q. Then you never learned from Mr. Clarke, and you have no suggestion at all as to why Mr. Campbell intervned in this matter at all?

A. Mr. Clarke didn't say anything about Mr. Campbell.

Q. Your curiosity was not sufficiently aroused to find out how Mr. Clarke came to Toronto, if he didn't know you were in the business, and didn't know you were going to build a mill? A. Well, he was in Toronto at that time.

Q. You don't know why he came to Toronto if it was not to see you?

A. I assumed that he came to see me because he asked to see me.

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Q. And if he came off his own bat, why the intervention of Mr. Campbell at all? A. I didn't know the relation of Mr. Campbell and Mr. Clarke.

Q. What I am trying to find out is why Mr. Campbell was injected into this transaction at all, if it was not for the purpose of making a deal, or having a deal made between you and Mr. Clarke. Why didn't Mr. Clarke telephone you himself? Why didn't he write you, or why didn't he come up to Toronto and see you himself? Why Mr. Campbell?

A. I don't know the circumstances.

10 Q. In any case, you discussed matters with Mr. Clarke on this occasion? A. Yes, we had a little conversation.

Q. Very much as outlined by Mr. Clarke in his evidence? A. Very much the same. We talked about the supply and demand of the paper business.

Q. And was it after your conversation with Mr. Clarke that you determined to go on and build your mill? A. Well, we went right on.

Q. It may have been a coincidence but you went right on. And when you next met Mr. Clarke your construction was well under way, was it?

20 A. No, it was not, but some progress had been made.

Q. And when next you met Mr. Clarke you were in a position to tell him that the mill was under way, and that you were prepared to talk business?

A. Oh, yes, we had decided when I met Mr. Clarke in Montreal—we had definitely decided and we were making progress.

Q. When you next met Mr. Clarke you were in a position to tell him you were making progress with your construction work, and you were now in a position to talk business? A. Yes.

30 Q. And Mr. Clarke's evidence is correct when he says that he met you a dozen times with Mr. Stadler before you reached a basis of agreement?

A. Yes.

Q. And after that, when it came to preparing the written document which is Exhibit No. 1, you yourself conducted those negotiations with Mr. Clarke and his attorney in New York? A. Yes sir. Mr. Stadler assisted me up to a certain point, and after that I carried through alone.

Q. Did Mr. Stadler assist you at all in New York when the written document came to be prepared?

A. Yes, he was there.

40 Q. Mr. Clarke said he was not? A. He was there. He came down at my request to discuss various points with me, but he was very busy in Montreal and couldn't stay very long.

HIS LORDSHIP: Q. Was he not at the lawyer's office at all?

A. Mr. Stadler, yes sir, he was.

Q. Just on the practical end of the work I suppose; what an engineer would know about it?

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A. Yes.

MR. McCARTHY: Q. And then the contract was made which is Exhibit No. 1, and that is your signature to it, isn't it? A. Yes sir.

Q. Having made that contract with Mr. Clarke, was it you who insisted upon getting Mr. Hearst's guaranty? A. That was always understood, that if a contract was made, it would also carry the guaranty of Mr. Hearst.

Q. Was that a stipulation made by the bond house who were to float the bonds, or you?

A. That was by me. 10

Q. And the bond house who were to float the bonds, did they have any part in these negotiations?

A. No sir.

Q. Or the wording of the contract?

A. Just before the contract was signed, perhaps a week before, they asked me to have it read by a lawyer in New York. That was all the interest they had in it.

Q. So that you had already discussed with the bond house the issuing of the bonds before the contract was actually completed? A. Oh, yes, the price of the bonds were fixed long before that. 20

Q. Then this letter, a copy of which has been put in, was written by you on the 3rd of February, 1927, and it is attached to the circular?

A. Yes sir.

Q. That was written by you, and the circulars that were got out, were they approved of by you?

A. Yes.

Q. And do they correctly state the situation as it was then?

A. Yes sir.

Q. I see you mention in your letter, Exhibit 10,

"Sale of Paper Output. The Company has contracted with one 30
"of the largest and financially strongest publishing interests in the
"United States for the sale for the term of ten years of the entire
"capacity output of the newsprint paper mill now under construction."

A. Yes sir.

Q. That was an important point in your letter to the bond company, was it not? A. Yes sir.

Q. And later on in the same letter you state under the head of "Earnings."

"The management estimate that the annual net earnings of the
"Company based upon the present price of newsprint paper, available 40
"for interest on these debentures, depreciation and income tax, after
"payment of interest on the First Mortgage Bonds, Series 'A', will be
"not less than \$1,025,000. Interest charges on these debentures will
"amount to \$195,000 per annum."

That is correct? A. Yes.

HIS LORDSHIP: Q. That was your honest estimate with the best information you could get at the time? RECORD

A. It was.

MR. McCARTHY: Q. According to this circular you issued five million dollars worth of first mortgage bonds, and three million dollars worth of mortgage debentures? A. Yes.

Q. That is, the under-lying securities amounted to \$8,000,000.

A. Yes.

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10 Q. How much money did it cost to put up the mill? A. Well, the estimated cost of the mill—the mill is not completed yet.

Q. What is the contract? A. There is no contract.

Q. What is the estimated cost? A. The estimated cost is about \$7,600,000, including the limits and other matters.

Q. Who are the contractors? A. There are no contractors except machinery builders.

Q. Who is building the mill? A. The Lake St. John Company, building its own mill.

20 Q. The Lake St. John Company building its own mill, and you say the estimated cost is somewhere in the neighborhood of \$7,600,000, including the limits. Is that right? A. Yes sir, that is right.

Q. How much money did either you or the Leaside Engineering Company ever put into it? A. Put in a million dollars.

Q. For what? A. For two million preferred stock.

Q. Who owns the Lake St. John Company? A. The shareholders, of which there are quite a number, quite a large number.

Q. Who has the controlling interest in the St. John Company?

A. The Leaside Engineering Company.

30 Q. To what extent? A. Including the stock that they have accumulated since the time of the sale of the securities, they own 71% approximately.

Q. So that when the Leaside Engineering Company who own 71% of the Lake St. John Company paid the Lake St. John Company a million dollars for two million dollars worth of 7% cumulative preferred stock, it was purely a book-keeping transaction between the two companies, was it?

A. No, I wouldn't say that. The other shareholders holding the other 29% had a very large say because they included the financial interests.

Q. Who are the other shareholders?

A. Oh, there are many shareholders, but a large shareholder is the Dominion Securities Corporation.

40 Q. Common or preferred? A. Common.

Q. I mean who are the preferred share-holders?

A. The Leaside Engineering Company.

Q. Leaside own all the preferred shares, don't they? A. Yes.

Q. And the common shares were some 71% owned by Leaside; other shares were given to the bond house, were they not, Dominion Securities?

A. Yes.

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Q. And shares were given to different people who had earned them in different ways. Is that right? A. Yes.

Q. Whether they paid cash for them or not we don't know. Weren't they given for services rendered? A. Yes, they were given for services rendered.

Q. The only money Leaside ever put into it was the million dollars they put in when they got the two million dollars worth of preferred stock? A. Yes.

HIS LORDSHIP: Q. They did put in an actual million dollars? 10

A. Actually, yes, in cash.

MR. McCARTHY: Q. What struck me as curious was this, why did they do that after they got their shares, because originally two million shares were issued to Leaside without consideration at all, weren't they?

MR. HELLMUTH: I submit that the transactions between these companies is a matter into which my friend is not entitled to go at all. It can have no bearing whether the Leaside or St. John Company have the greater number of shares or what moneys they put up for it. How can that bear on what this plaintiff is entitled to, if entitled to anything?

HIS LORDSHIP: Might it bear upon his credit as a witness?

MR. HELLMUTH: Oh, well, if it is going to credit I will stop as to 20 that.

HIS LORDSHIP: I assume that is what it is for.

MR. McCARTHY: Partly for that, and partly I want to show what this man got out of this deal.

MR. HELLMUTH: That I submit is not in question, what he got out of it, or what the Leaside Engineering Co. did.

MR. McCARTHY: It may be.

MR. HELLMUTH: I make my submission that that is not evidence properly tendered against us at all. You might as well go into any other transactions which we had in our history. 30

MR. McCARTHY: If at a certain date for some unexplained reason Leaside suddenly pays two million dollars for shares they already had in their pocket, I think it requires some explanation.

HIS LORDSHIP: They paid one million actual cash.

MR. McCARTHY: Q. From this letter Exhibit 12 which was put in, Mr. Wallberg, we find that Leaside originally got 30,000 shares of fully paid up, non-assessable cumulative stock of the St. John (St. Anne) Paper Company? A. Yes.

Q. Then we find the name was changed to the Mistassini Power and Paper Company, and the capital increased from three million to four million? A. Yes. 40

Q. And Leaside then got the four million dollars worth of preferred shares? A. Yes.

Q. And then for some reason or other on the 27th of January, 1927, or in January, 1927, you surrender 20,000 shares? A. Yes.

Q. Which were subsequently cancelled. What was the reason of that transaction? A. The reason for the subsequent changes were all on account of the demands of the financiers.

Q. In other words, the financiers thought you were getting a little too much? A. Well, the arrangement was recast at their demand.

Q. So that the four million of preferred shares which you originally got was taken from you because of the objection of the financiers?

A. Yes.

Q. In other words, you were getting too much? A. There wasn't any clash. The financing of the company had not been concluded then and when the financial people came in they pointed out to us that if we surrendered the preferred our equity in the common would be correspondingly larger, and it was as broad as it was long; and for a better financial set-up they demanded that we keep outstanding only two million of preferred, for which we should pay a million cash, and that we should get a percentage of common for our leases which was all we got, just a percentage of the common.

Q. It did not look very well, when you were issuing eight million dollars of under-lying securities for the promoters of the scheme to put four million dollars of preferred stock in their pockets for nothing?

A. No, I agree with you .

Q. And you were subsequently cut down to two million by the surrender of 20,000 shares? A. Yes.

Q. And then by a subsequent arrangement—how was that subsequent arrangement come to, and what was the date of it—by which the Leaside Engineering Company agreed to pay a million dollars for the 20,000 shares they already had? What was the reason of that transaction and what was the date of it, and how was it carried out? A. That was I believe in January, 1927.

Q. No, it was after February of 1927. It must have been after the prospectus was out, or after you wrote your letter. Between whom was that arrangement made? A. It was made between the Leaside Engineering Co. and the Dominion Securities Corporation.

Q. Was there any document which you got in connection with it?

A. Yes, there are documents in connection with it.

Q. Could you find them for me, because I can't understand when you had 20,000 shares in your pocket, why you went afterwards and paid, or said you paid, a million dollars for it? A. That was because the financial set-up was changed. They would buy the senior securities provided the preferred was held at a certain figure, and that we should pay a million dollars for that, and that we should divide the common in certain proportions.

Q. So what you got out of that , according to that story, is that Leaside gave St. John a million dollars and got two million dollars worth of preferred stock? A. Yes sir.

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Q. And in addition you got 71% of the common? A. No, we got less than that. We got 67,250 shares.

Q. 67,250 shares of common which you are trying to list at fifty today? A. Never heard of it.

Q. Is there any dividend contemplated being paid on the common?

A. No sir. The mill is not completed yet.

Q. And you are not trying to list it? A. I have never heard of it.

Q. Take these estimated earnings; \$350,000 is sufficient to pay the interest on the underlying securities, and the balance goes to pay the dividends on the preferred and common stock, doesn't it, if these earnings are justified? A. And debentures, yes. 10

Q. And debentures. If your anticipations are realized there is no reason why the common stock should not pay a dividend? A. If those estimates hold and there are no contingencies that swallow part of those earnings, there would be something to pay on the common.

Q. So that you as a holder of two million preferred and at present 71% of the common, would reap at least, you, through the Leaside people would reap a very large profit on the transaction? A. We could.

Q. Now tell me about the mill. Is there any reason to suggest that you are going to fall down on your estimate of being able to produce paper next year? A. Well, we don't expect to fall down. 20

Q. Your pulpwood is all cut and piled I suppose? A. Yes, but there are very many contingencies that might delay seriously; floods, and wash-outs and fires and those things.

Q. I mean, barring floods and fires, you have overcome all the other obstacles, and you are well on your way now? A. Well, we have a lot of work yet to do.

Q. There is no reason to anticipate that you are going to be behind in your deliveries, is there? A. I don't believe we are.

HIS LORDSHIP: Q. You anticipate being able to start deliveries at that time? A. Yes, we do. 30

MR. McCARTHY: Q. You told me just now that your estimated cost of the mill was \$7,600,000, I think you said. In this prospectus or letter you wrote your estimated cost was \$6,250,000? A. That does not include the cost of the timber limits and some other costs in connection with the proposition.

Q. It is said to include a complete pulp, sulphite and paper mills at estimated cash cost, mill site, town site, staff hotel, dwellings, river improvements and woods equipment, \$6,250,000; and now you say \$7,600,000. A. That figure \$6,250,000 does not include anything in connection with timber limits. 40

Q. What was there in connection with the timber limits? A. The purchase price and various other charges of developing, and ground rent and surveys.

Q. The ground rent would be a current expenditure wouldn't it; that is an annual payment? A. Some of them accrue.

Q. Nothing came out of your pocket for these timber limits, did it? RECORD
 You didn't put up a copper? A. Leaside Engineering Company.

Q. When they bought that stock, that was the only money they ever
 put up, wasn't it? A. No, they put up \$1,800,000. In the
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Q. What for? A. For purchase of timber limits.

Q. You only got leases, did you not? A. I know, but the upset
 price of the leases in the first place was \$500,000, and then they put up
 money to carry on the construction for a long period; so that they put up
 over \$1,800,000 for Lake St. John Company. No. 5
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10 Q. Over and above the million they put in? A. No, not over and
 above, altogether. Emil
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Q. When did they actually put that million in? A. They continu-
 ed to advance money from time to time for a number of months, until the
 final financing was completed, and altogether there was \$1,850,000 I be-
 lieve, or very close to it. When the financing was done there was \$850,-
 000 reimbursed to them, and the remainder remained in the treasury of
 the Lake St. John Company in payment for two million preferred. 14th Nov.,
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Q. That is the way it was worked out?

A. Yes sir.

20 Q. You state the purpose; "The proceeds of this issue and of the sale
 of the Series 'A' First Mortgage Bonds will be used entirely for construc-
 tion of the mill, payment for properties and for working capital." Did
 Leaside have to put up anything at all really, or was the proceeds of the
 issue sufficient to provide for the construction, for payment of the proper-
 ties and the working capital? A. Leaside put up a million cash.

Q. Weren't the proceeds of the issue sufficient to meet all those ex-
 penses? A. No, less a million. It took the million with the proceeds.

Q. What I can't understand is, when you say the proceeds of the
 issue is going to be sufficient for all these purposes, why wasn't it?

30 A. Because there was a million in the treasury already.

Q. The million didn't get to the treasury all at one time, did it?

A. Not all at one time, but on a number of times it did.

Q. Wasn't the issue sufficient to wipe out all the expenditures for
 construction, payment for properties and working capital—wasn't the
 proceeds of the issue sufficient for it all? A. No sir, it lacked a million
 dollars.

Q. That million dollars you say is in the treasury still? A. With
 that million in the treasury it was sufficient, yes sir.

40 Q. Do you mean to tell me that the issue of these securities amount-
 ing to \$8,000,000 was not sufficient to pay for all the construction, cost of
 the properties and the working capital? A. No, it was not.

Q. You are pledging your oath to that? A. Yes, it took that mil-
 lion dollars in addition to it.

Q. That ~~the~~ million dollars is still lying in the treasury? A. No,
 it is in general fund. The money has not all been spent yet.

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Q. Will it be necessary to spend it once you realize on the sale of these securities? A. I beg your pardon?

Q. Will it be necessary to spend it once you realize on the sale of these securities. A. Yes, it will.

Q. Won't that remain there as an asset of the company, the million dollars? A. Most of the million will remain as working capital.

Q. And wasn't the putting of the million there only to make the scheme look a little better in the eyes of the financiers? A. Well, I assume so.

Q. I assume so too.

—Defence closed.

—Argument adjourned sine die.

REASONS FOR JUDGMENT OF McEVOY, J.,

DELIVERED 20th JULY, 1928.

RECORDIn the
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OntarioS. C. O.
CAMPBELL

v.

WALBERG & ST. JOHN
P. AND P. CO. LTD.D. L. McCarthy, K. C., for plaintiff,
I. F. Hellmuth, K. C., and Alfred
Bicknell, for St. John Company.
J. W. Bicknell, for Walberg.

No. 6

Reasons for
Judgment
of
McEVOY, J.,
Trial Judge
20th July,
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10 This is an action brought by the plaintiff, a newspaper proprietor and editor residing in Vancouver, British Columbia, to collect "a commission" from the defendants Mr. Walberg, who resides in the city of Toronto, and from the Lake St. John Power and Paper Company, Limited, a corporation created under the laws of the Province of Quebec, where this company and Mr. Walberg have large pulpwood concessions and an extensive mill and plant for making news print.

The commission is claimed upon a verbal contract by the plaintiff, alleged to have been made by Mr. Campbell, the plaintiff, with Mr. Walberg and his company at the King Edward Hotel about the middle of April 1926.

20 Before considering the interview at which this contract is alleged to have been made and the immediate circumstances attending the interview at which the contract is claimed to have been made, I propose to set down what I find to be the facts concerning the history of Mr. Walberg and his companies in the developing of their enormous enterprise. It is true that this history is not very vital in the final decision of the case, but an understanding of it is useful at arriving at a proper conclusion.

30 Before any of the matters in dispute in this action arose (1919), Mr. Walberg had caused to be organized an incorporated company known as the Leaside Engineering Company, Limited. So far as I have been informed by the evidence and exhibits, this company (which I shall hereafter refer to as the Leaside) had no substantial physical assets. The whole issued stock of the Leaside with the exception of four or five qualifying shares for directors, was held by Mr. Walberg, and Mr. Walberg conducted his business under the name of the Leaside Engineering Company for several years before entering upon the transactions out of which this litigation arises.

40 On the 27th March, 1926, Mr. Walberg, acting for the Leaside, had already arranged to have a block of a thousand square miles of pulpwood and timber lands put up for auction by the Government of the Province of Quebec, and on that date he, acting for the Leaside, was the successful bidder, and the Leaside, for Mr. Walberg, became the beneficial purchaser of these timber limits under the ordinary conditions prevailing in that Province for the alienation by the Crown of this kind of property.

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In order to become a bidder at a Provincial auction of this kind, each bidder must qualify as a bidder by depositing with the government a certified cheque,—for a certain amount, in this case \$200,000.00. This cheque, or security for it, was provided by the Leaside or Mr. Walberg. The actual purchasing lease from the government is dated April 6th 1926.

On May 9th, 1925, and before this sale and leasing of timber lands to the Leaside, a charter had been obtained by Mr. Walberg's instigation for a company known as the St. Anne Paper Company, Limited. It was a mere incorporated entity without assets or organization, but the charter was not obtained for the particular purpose of taking over this 1000 square miles of property. Its shares, too, were largely owned by Mr. Walberg. I shall hereafter call this incorporated company the St. Anne. 10

The St. Anne had no substantial physical assets. On the 31st May, 1926, the St. Anne purchased from the Leaside the lease from the Quebec Government dated the 6th April 1926 for the allotment and issue to the Leaside of 30,000 fully paid and unassessable, cumulative, seven per cent. preferred shares in the capital stock of the St. Anne, and 199,995 fully paid non-assessable common shares of nominally no par value of the capital stock of the St. Anne. The St. Anne agreed to assume all the burdens exacted by the Quebec Government under these leases with certain important exceptions which the Leaside undertook to discharge. The Leaside undertook to pay the Quebec Government what is called the 'adjudication' at the rate of \$500 per square mile. The number of square miles in the block is determined accurately only after the survey is completed. This payment would amount to about \$500,000; and it was further agreed that the Leaside should ultimately get back the \$200,000 of guarantee money for qualifying as bidder and which was placed with the Quebec Government and which was actually represented by Canadian war bonds owned by the Leaside or Walberg. It was also a part of this arrangement on the sale agreement from the Leaside to the St. Anne that the name of the St. Anne should be changed to "Mistassini" Power and Paper Company, Limited, and that its capital stock should be increased so that instead of having a preferred capital stock of \$3,000,000 it should have a preferred capital of \$4,000,000. Then, further, under the terms of this transfer from the Leaside to the St. Anne, it was arranged that certain power leases were to be transferred to the St. Anne and the St. Anne undertook to discharge all the burdens exacted by the Quebec Government under these leases except that the Leaside agreed to pay the "adjudication" amounting to \$10,000 and to pay the ground rent due up to April 6, 1927. 20 30

By amendment of the Charter dated the 5th June 1926, the increase in the capital of the St. Anne was made and the St. Anne's name was changed to "Mistassini Power Paper Company, Limited," which I shall hereafter speak of as the "Mistassini." 40

Two days before (and on the 3rd of June 1926), the St. Anne issued to the Leaside the 30,000 preferred shares pursuant to the agreement before

mentioned. On the 24th June 1926, the other 10,000 shares were allotted to the Leaside. On the 27th of December 1926, the name of the Mistassini was changed to Lake St. John Power and Paper Company, Limited, the corporate defendant in this action, hereinafter referred to by me as the St. John.

Upon the evidence I hold that the St. Anne, the Mistassini and the Lake St. John Power and Paper Company, Limited, were one and the same entity in reality throughout the whole history and that they were always under the direction and control of the individual defendant E. A. Walberg.

On the 27th of January 1927, the Leaside surrendered to the St. John 20,000 shares of the preferred shares of the St. John and 20,000 shares of the common stock of the same company. Any substantial consideration for this surrender does not appear except it may be like the changing of money from the left hand pocket to the right hand pocket of the same trousers, and if the change is made by the owner of the trousers who is also the owner of the money, no one should be able to complain. There is however, a further operation; On the 8th February 1927, by supplementary letters patent, the capital stock of the St. John was reduced by the cancellation of 20,000 fully paid seven per cent. cumulative preferred shares of \$100 each and 20,000 fully paid shares having no nominal par value, leaving the authorized capital of the St. John at 20,000 seven per cent. cumulative preferred shares of the par value of \$100 each and 10,000 common shares having no nominal share value; and the Leaside is said to have paid the St. John \$1,000,000 for 20,000 of St. John preferred seven per cent. cumulative shares.

The plaintiff pleads that "on or about the 17th day of April 1926 the defendant E. A. Walberg verbally agreed to and with the plaintiff that, if the plaintiff should introduce to the defendant Walberg a party or parties, interested in the purchase of newsprint paper, he, the defendant E. A. Walberg, and for the defendant Lake St. John Power Co. Limited, should pay to the plaintiff a commission, at the prevailing and customary rate of commission upon the sale of newsprint paper as such party, or parties, so introduced by the plaintiff should purchase from the defendant E. A. Walberg and for the defendant Lake St. John Power & Paper Co., Limited," and the plaintiff pleads that he did introduce Mr. Lester J. Clarke to the defendant Walberg, and that a contract, exhibit 1, flowed from the introduction; and that the plaintiff has earned the commission bargained for by the defendants.

The defence of the defendant Walberg is a flat denial that he made any such contract or any contract to pay the plaintiff a commission, and an allegation that he was not authorized by the St. John Company to enter into any contract with the plaintiff.

The defence of St. John Power and Paper Co. Limited is that it is an incorporated company, incorporated under the laws of the Province of

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Quebec, with its head office at Mistassini in the district of St. John in that Province; that it has no knowledge of the contract sued upon by the plaintiff; that the contract, exhibit 1, did not flow from the introduction by the Plaintiff Walberg to Lester J. Clarke; that the contract, exhibit 1, is "subject to conditions as to termination and otherwise" which makes it impossible to say what quantity of newsprint, if any, was sold under the contract; that the defendant Walberg had no authority to enter into such contract as the plaintiff pleads, and relies upon in this action; that the St. John Company had no knowledge of any alleged contract with the plaintiff for commission until shortly before the bringing of this action.

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The evidence of the plaintiff as to the making of the alleged contract consists mainly of two kinds; firstly, the circumstance leading up to the meeting of Walberg and Campbell and the admitted conduct of the parties at that meeting, and, secondly, the sworn statement of Campbell that he made the contract sued upon with Walberg.

The evidence for the defence consists mainly of two kinds: firstly, the point-blank denial of Walberg that he made the contract sued upon, and, secondly, Walberg's explanation of how he came to go to the King Edward Hotel to be introduced by the plaintiff to Lester J. Clarke. He says he went there because he thought Campbell was a secretary to or an associate of Lester J. Clarke.

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Campbell swears he first heard of or knew of Walberg while he (Campbell) was in Montreal a few days before the interview in Walberg's office in Toronto, to be related presently. That he learned there in Montreal that Walberg had by himself or his companies become the owner of a large acreage of pulpwood lands in the St. John district in the Province of Quebec. Campbell swears he knew Lester J. Clarke well for a long time—ten or twelve years. That he was at this time in Montreal with Clarke; that he knew he (Clarke) was a purchaser of enormous quantities of newsprint paper and that he was substantial and capable of paying for large quantities of newsprint paper. Campbell says he had a conversation with Clarke, and in consequence of that conversation he induced Clarke to go from Montreal to Toronto via Ottawa; that at Ottawa he, with Clarke's knowledge, telephoned Walberg at Toronto, and made an appointment with Walberg for a meeting to be held the next day; that he then proceeded with Clarke from Ottawa to Toronto and had the interview with Walberg pursuant to the telephone message from Ottawa to Toronto. Thus far there is no dispute between Campbell and Walberg as to what occurred, and Clarke corroborates Campbell in a general way as to his account thus far. Then the interview occurred in Walberg's office.

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At this interview Campbell says he saw Walberg in his office in the Royal Bank Building at Toronto; that he went into his office and introduced himself to Walberg and told him that he (Campbell) was the man who 'phoned from Ottawa and made the appointment; that he told Walberg what his (Campbell's) business was; that he (Campbell) spoke to Wal-

berg about the limits he (Walberg) had acquired in the Lake St. John dis-
 trict; that he asked Walberg if he had acquired these limits, and if he was
 putting up a mill, and that Walberg said he had acquired the limits and
 that he was putting up a mill; then he asked Walberg if he would be inter-
 ested in selling the output of the mill; that Walberg was very much inter-
 ested in that; that he (Campbell) asked him (Walberg) if he would pay him
 (Campbell) a commission if he would put him (Walberg) in touch with a
 party who was capable of buying the output; that Walberg wanted to
 know the name of the party; that he (Campbell) refrained from giving
 10 the name until he (Walberg) agreed that he (Campbell) would get a com-
 mission if the introduction of the party resulted in a contract. Campbell
 says he said to Walberg: "I am out to make some money; and if I intro-
 duce you to this party, and it results in a sale or contract will you pay me a
 commission?" and he said "I will." He says the negotiations lasted about
 fifteen minutes. Campbell says he told Walberg that Clarke bought
 about twenty-five or thirty million dollars worth of newsprint in Can-
 ada; that he was the largest purchaser of newsprint; that Walberg said,
 "Where is Mr. Clarke?" and he (Campbell) told him he was in the city
 and that he (Campbell) would take him (Walberg) over to the Kind Ed-
 20 ward Hotel and introduce him; that he took Mr. Walberg up to Mr. Clarke's
 room at the hotel and said, "Mr. Clarke, this is Mr. Walberg who has
 limits in the Province of Quebec; he is putting up a mill;" and, "Mr. Wal-
 berg, this is Mr. Lester J. Clarke of the Newsprint and Magazine Paper
 Corporation." I said, "I will leave you gentlemen to talk over this busi-
 ness," and that Campbell then left the room.

Walberg, the defendant, swears that the conversation in his (Wal-
 berg's) office was completed within two minutes; that Campbell told his
 name, and it was he who had 'phoned from Ottawa the day before, "then
 he told me that Mr. Clarke from New York, who was in the paper business,
 30 was at the King Edward Hotel and would like to know if I would go over
 and see him. We immediately went over together. I say that there never
 was a word or syllable or intimation of any kind that he was looking
 for a commission or gain in any way from me." "We went to the hotel to-
 gether, walked into the room together, and Mr. Campbell said to Mr.
 Clarke, 'This is Mr. Walberg,' and then Mr. Campbell said, 'I will leave
 you now' and walked out and I never saw him any more." Walberg
 swears, "I did not tell Campbell I had acquired certain limits; I had not
 acquired any limits personally;" and in cross examination Mr. Walberg
 says that when Campbell came to his (Walberg's) office and said he was
 40 the man who 'phoned and made the appointment, "I took Mr. Campbell to
 be the secretary or associate of Mr. Clarke." There is no dispute that fur-
 ther negotiations followed between Clarke and Walberg, and after much
 discussion and effort Walberg and Clarke entered into a contract for the
 sale of the output of the mill which contract is placed in evidence as exhibit
 1, and I find as a fact that this contract flowed from Campbell's introduc-
 tion of Clarke to Walberg.

RECORD

In the
Supreme
Court of
Ontario—
No. 6
—Reasons for
Judgmentof
McEvoy, J.,
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20th July,
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Continued

RECORD

In the
Supreme
Court of
Ontario

—
No. 6
—

Reasons for
Judgment
of
McEvoy, J.,
Trial Judge
20th July,
1928

Continued

*The transaction is a large one,—as it has turned out a very large one. The paper contracted to be sold under the contract (exhibit 1) ultimately made between the Clarke Company and the Walberg company would be worth thirty or forty millions of dollars. The only rate of commission sworn upon the trial as being the usual rate upon the sale of newsprint was three per cent. but this rate was paid to brokers who made the sale to the purchaser themselves and not to a person who merely found a prospective purchaser and introduced him. If the parties had contemplated a forty million dollar transaction, one would expect some written contract would be made.

10

Upon the whole evidence I have come to the conclusion that the conversation sworn to by Campbell as having occurred in Walberg's office in the middle of April 1926, did occur there at that time, and that the account of the conversation given by Walberg omits the main matters discussed in that conversation. I find as a fact that Walberg agreed to pay Campbell a commission for introducing to him (Walberg) a man (Clarke) who was able to buy the output of Walberg's plant, if the introduction led to the making of a sale or contract for sale, and the details of the contract of sale were necessarily and by common assent left open.

I find in favor of Campbell's account of this conversation, among other reasons, because I consider Walberg's account not probable or reasonable. It is beyond controversy that Campbell, because of information he had obtained concerning Walberg's prospects, was able to interest Clarke while still in Montreal in the possibility of buying newsprint from Walberg's concern at an advantageous price. The conversation between Clarke and Campbell by which this state of mind was brought about is not in evidence. There was a gesture made (page 8 of the Evidence) by the plaintiff's counsel that had the defendant's counsel desired they would have allowed the exploration of this matter, but both counsel seemed (and properly enough) not to desire any investigation as to how Clarke and Campbell arrived at a determination to go to Toronto to see Walberg, but the fact that they, Clarke and Campbell, did arrive at that state of mind is common ground. There seems to be no reason for Campbell's long distance telephoning Walberg from Ottawa to Toronto if he had nothing more than a friendly interest in the purchase of newsprint by his friend Clarke. Why should Clarke not telephone? Campbell and Clarke, upon Campbell securing an appointment from Walberg, travel 350 miles to Toronto, and they both say for the purpose of keeping this appointment. It is highly improbable that Campbell would go to that trouble and expense to do nothing more than what Walberg says is all he did do when he arrived in Toronto.

40

When Campbell and Clarke were at the King Edward Hotel in Toronto it is difficult to understand why if there was nothing in way of commission in Campbell's mind he would go to Walberg's office to bring Walberg to the Hotel to interview Clarke, if all he had to communicate to Walberg is what Walberg says he did communicate to him. It is not reasonable

that he would go to Walberg's office for that purpose and leave Clarke resting in the Hotel. What Walberg says is all that Campbell communicated is not reasonably such information as would induce a serious business man to leave his office and go to an hotel to see a stranger, while if the further information that Campbell says he gave was imparted, namely, a discussion about the limits, about the mill, about selling the output of the mill, about a person capable of buying the output, then a reasonable situation emerges that fits in with Walberg's going to the hotel and bargaining. If there was an agreement for a commission, then the abrupt, unwordy introduction that is described by all concerned, Campbell, Clarke and Walberg, is understandable, and without such an agreement to my mind the picture of the introduction is probable and unreasonable. The explanation made by Walberg,—that he thought Campbell was an associate or assistant,—has some force, but why should he (Campbell) abruptly withdraw if that were so? That he was merely a "messenger" may have some force, but Mr. Campbell does not look to me like a "messenger" sent from an hotel; and if he were, and said no more than Walberg says he did, it is not probable or reasonable that Walberg would go with a messenger to a stranger's room upon such a story. The way in which the conversation proceeded between Clarke and Walberg is much more consistent with Campbell's account than it is with Walberg's.

Then on the 14th of February, 1927, Campbell wrote to Walberg (Ex. 2) and said: "When I introduced you to Clarke you agreed to pay me if you made a sale to Clarke." If the interview between Walberg and Campbell had been like what Walberg now describes it to be, one would say that Walberg would have answered at once, "You are an impudent rascal, I never agreed to pay you anything; such a thing never was mentioned." Instead, there is no early answer. On the 17th of February Campbell's solicitors wire as to an answer, and a Mr. Horsfall answered on the 18th (exhibit 4) and said Mr. Walberg has been absent from Toronto since February 9th. On February 18th, Campbell's solicitors write another letter (exhibit 5). Then a letter of March 23rd written (without prejudice) by Campbell's solicitors (and its production was objected to by Mr. Hellmuth), more than a month having elapsed, and on the 18th of March a telegram was sent by Campbell to Walberg, and privilege was claimed for this. In the end, however, on the 26th of March, almost six weeks after the letter of February 14th, Walberg writes to Campbell's solicitors (exhibit 27): "I have your letter in this matter, but as I am leaving for the Lake St. John Construction works to-day I was unable to see you about it. I expect to return by next Tuesday or Wednesday when I will call in to see you. Yours very truly, E. A. Walberg."

There is later correspondence, the admissibility of which is disputed. I do not regard this later correspondence but I allow it in and I do not say it is inadmissible.

Upon the whole, including the demeanour of the two witnesses, I pre-

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Continued

fer Campbell's evidence and account of the interview in Walberg's office to the account of Walberg.

Upon the evidence as to the rate of commission, I conclude that a commission of one per cent. upon the actual newsprint sold and delivered by Walberg and the St. John Company to the Newspaper and Magazine Paper Corporation under the contract (exhibit 1) ought to be paid to the plaintiff by the defendants.

In this connection it is worthy of note that the flotation of the main securities by which the whole enterprise was financed to the extent of about eight million dollars was undoubtedly greatly forwarded by the procuring of this contract, exhibit 1. The value of this contract in the mind of Mr. Walberg is indicated by the part of his letter which was printed with the propaganda put forth to induce the sale of the overriding securities; see exhibit 10 where Mr. Walberg points out over his signature that "The company has contracted with one of the largest and financially strongest publishing interests in the United States for the sale for the term of ten years of the entire capacity output of the newsprint paper mill now under construction." 10

I refer it to the Master to take an account or accounts from time to time, at the requests of the plaintiff, to ascertain the amount of commission due the plaintiff upon this rate and basis at all such times as a commission shall be due and owing, unless the parties can agree as to the amount of the commission. 20

If by any default or connivance of the defendants the proper deliveries under the contract (exhibit 1) are not made under the contract, the plaintiff then shall have damages to be calculated and fixed by the Master from time to time at the rate of one per cent. upon all the sums which would have been the amount of the price of the newsprint delivered but for the default or connivance of the defendants or either of them.

If there be any dispute between the parties as to whether any failure to make the proper amount of deliveries under the contract, exhibit 1, I direct that the Master upon the application of either party determine the question as to whether or not the failure to deliver the proper amount from time to time is due to the default or connivance of the defendants or one of them. 30

I give judgment in these terms because the contract that flowed (exhibit 1) out of the introduction of Clarke to Walberg is a complicated one. It may, and I think will, work out in such a way as to effectuate sales from year to year of enormous quantities of newsprint. This was the intention of the contract, and if the defendants do their duty I have no doubt that this will be the result. If, however, the defendants fail to do their duty in the premises, or if they do their duty, on account of the large sums 40

involved it would not be equitable to allow the defendants to avoid the payment of the commission which the plaintiff has earned and the amount of which can with precision and simplicity be ascertained from year to year as the price and quantity shipped are ascertained by the application of the terms of the contract (exhibit 1) to each year's business.

There will be judgment accordingly with costs.

RECORD
In the
Supreme
Court of
Ontario
No. 6

Reasons for
Judgment
of
McEvoy, J.,
Trial Judge
20th July,
1928
Concluded

RECORD

In the
Supreme
Court of
Ontario**In the Supreme Court of Ontario**

No. 7

The Honourable Mr. Justice
McEvoyFriday, the 20th day
of July, A.D. 1928Formal
Judgment
At Trial
20th July,
1928

BETWEEN:—

CHARLES E. CAMPBELL,

Plaintiff.

—and—

E. A. WALLBERG and LAKE ST. JOHN
POWER & PAPER CO. LIMITED,

Defendants. 10

This action coming on for trial on the 14th day of November, 1927, and the 23rd day of January, 1928, at the Sittings holden at Toronto for trial of actions without a Jury in presence of counsel for all parties, upon hearing read the pleadings and hearing the evidence adduced and what was alleged by counsel aforesaid, this Court was pleased to direct this action to stand over for judgment, and the same coming on this day for judgment,

1. THIS COURT DOTH DECLARE that the plaintiff is entitled to a commission at the rate of one per centum upon the purchase price of news print sold and delivered under the contract dated the 29th day of December 1926 and made between the defendant Lake St. John Power and Paper Company Limited and Newspaper and Magazine Paper Corporation at the price fixed by the terms of the said contract and doth order and adjudge the same accordingly. 20

2. AND THIS COURT DOTH FURTHER DECLARE that if by any default or connivance of the defendants or either of them the proper deliveries of news print are not made pursuant to the said contract the plaintiff is entitled to damages for loss of commission at the rate of one per centum upon the sums which would have been the price of such news print had it been delivered and doth order and adjudge the same accordingly. 30

3. THIS COURT DOTH FURTHER ORDER and adjudge that it be referred to the Master of this Court at Toronto from time to time at the plaintiff's request to take an account and state what amount at the

time of the taking of the said account is due and owing the plaintiff from the defendants as commission under the said contract and if default or connivance of the defendants or either of them is found by the said Master to ascertain and state what amount if any the plaintiff is entitled to receive from the defendant as damages for loss of commission which the plaintiff would have been entitled to recover from the defendants but for the default or connivance of the defendants or either of them.

4. AND THIS COURT DOTH FURTHER ORDER and adjudge that the plaintiff do recover from the defendants the amount found due from time to time by the said Master forthwith after the confirmation of the said Master's report or reports.

5. AND THIS COURT DOTH FURTHER ORDER AND adjudge that the defendants do pay the plaintiff his costs of this action forthwith after taxation thereof.

Settled November 9/28

"E. HARLEY"

Senior Registrar S.C.O.

RECORD
In the
Supreme
Court of
Ontario
No. 7

Formal
Judgment
at Trial
20th July,
1928
Concluded

RECORD

In the
Supreme
Court of
Ontario

In the Supreme Court of Ontario

No. 8

BETWEEN:—

Notice of
Appeal of
Defendant
Wallberg
to Appellate
Division
14th Sept.,
1928

CHARLES E. CAMPBELL,

Plaintiff.

—and—

E. A. WALLBERG and LAKE ST. JOHN
POWER & PAPER CO. LIMITED,

Defendants.

TAKE NOTICE that the Defendant, E. A. Wallberg, appeals to a Divisional Court from the Judgment pronounced by Mr. Justice McEvoy 10 on the 20th day of July, 1928, upon the following amongst other grounds,—

1. That the Judgment is against law and evidence and the weight of evidence.
2. That evidence was wrongfully admitted and rejected as appears by the notes of evidence.
3. That the Learned Judge erred in drawing improper inferences from the evidence.
4. That the Statute of Frauds was applicable to the contract in question and there was no agreement in writing. 20
5. The action should have been dismissed.
6. In any event the amount allowed to the Plaintiff is excessive.
7. This Defendant relies upon any Reasons urged by his co-defendant.

DATED at Toronto this fourteenth day of September, 1928.

BICKNELL & O'BRIEN
McKinnon Building
TORONTO

Solicitors for Defendant, E. A. Wallberg

To.
Messrs. Long & Daly,
Solicitors for Plaintiff

In the Supreme Court of Ontario

BETWEEN:—

CHARLES E. CAMPBELL,

Plaintiff.

—and—

E. A. WALLBERG and LAKE ST. JOHN
POWER & PAPER CO. LIMITED,

Defendants.

RECORDIn the
Supreme
Court of
Ontario

No. 9

Notice of
Cross
Appeal
of
Plaintiff
to
Appellate
Division
15th Sept.,
1928

TAKE NOTICE that the Plaintiff appeals to a Divisional Court
10 from the judgment pronounced by the Honourable Mr. Justice McEvoy
on the 20th day of July, 1928, upon the following grounds:—

That the Learned Trial Judge erred in not holding that the Plaintiff,
having become entitled to commission from the Defendants by reason of
the facts found in the said judgment was entitled to commission at the
rate of 3% of the price of newsprint from time to time sold and deliver-
ed under the contract in question in this action.

DATED at Toronto this 15th day of September, 1928.

LONG & DALY

38 King Street West, Toronto
Solicitors for the Plaintiff

20

TO

Messrs. Bain, Bicknell, White & Bristol,
Solicitors for Defendant Company

TO

Messrs. Bicknell & O'Brien
Solicitors for Defendant Wallberg

IN THE SUPREME COURT OF ONTARIO

RECORD BETWEEN:—In the
Supreme
Court of
Ontario

CHARLES E. CAMPBELL,

Plaintiff.
(respondent)—
No. 10
—

—and—

E. A. WALLBERG and LAKE ST. JOHN
POWER & PAPER CO. LIMITED,Defendants.
(appellants) 10Notice of
Motion by
Defendants
to
Appellate
Division
for New
trial
20th Nov.,
1928.

TAKE NOTICE that upon the appeal herein being called for hearing, a motion will be made on behalf of the appellants for leave to adduce further evidence discovered since the trial of this action and for a new trial and take further notice that at the same time application be made for an order directing the issue of letters of request addressed to the Courts of the State of New York and other States in the United States of America to compel the attendance of witnesses to give evidence on behalf of the appellants in support of the said motion;

AND TAKE FURTHER NOTICE that upon and in support of the said motion and application will be read the pleadings and proceedings 20 herein, the notes of the evidence and the argument at the trial, the affidavit of the defendant Wallberg filed and such further and other materials as counsel may advise.

Dated at Toronto this 30th day of November, 1928.

BAIN BICKNELL, WHITE & BRISTOL

Lumsden Bldg.,
Solicitors for the Appellants

TO:

the above named Respondent
and to Messrs. Long & Daly
his solicitors.

30

IN THE SUPREME COURT OF ONTARIO

BETWEEN:—

CHARLES E. CAMPBELL,

Plaintiff.

—and—

E. A. WALLBERG and LAKE ST. JOHN
POWER & PAPER CO. LIMITED,

Defendants.

RECORD

In the
Supreme
Court of
Ontario

No. 11

Affidavit of
Emil
Andrew
Wallberg
30th Nov.,
1928

I, EMIL ANDREW WALLBERG of the City of Toronto in the
10 County of York, Manufacturer, make oath and say:—

1. I am one of the above named defendants and I am President of the defendant Company.
2. Exhibits "A" and "B" to this affidavit are copies of the evidence and argument at the trial certified by the Court Reporter. I was present at the trial but I was not present at the argument and a transcript of the notes of said argument only came to my attention about the time of the service of the Notice of Appeal herein and I then saw for the first time the discussion at page 19 of the notes of argument as to Mr. Clarke's relation to Newspaper and Magazine Paper Corporation.
- 20 3. After reading the notes of argument I went to New York and made enquiries from various sources and I interviewed the said Lester J. Clarke and one Alfred C. Battersby who, contemporaneously with the said Clarke, was also an officer of the said Corporation, and they informed me and I verily believe the fact to be, that the inferences drawn by Counsel as indicated in the said discussion were not warranted by the facts and that the said Clarke was not at any time the owner or chief owner of the said corporation but was merely a salaried employee thereof and had no real interest in the said corporation apart from his salary as an officer thereof.
- 30 4. I endeavoured to obtain affidavits from the said Clarke and the said Battersby setting forth the facts as to Clarke's relationship to said Corporation but they refused to make affidavits.
5. I was not prior to the trial aware of Clarke's relationship to the said Corporation.

RECORD

In the
Supreme
Court of
Ontario

—
No. 11

—
Affidavit of
Emil
Andrew
Wallberg
30th Nov.,
1928
Concluded

6. After I had read the notes of the argument I received an unsigned letter postmarked from Vancouver stating that the said Clarke was by agreement with the plaintiff Campbell to share in any commission received by Campbell and subsequently in one of my conversations with the said Clarke I questioned him about this and while he did not admit he had any understanding with Campbell that he was to share in it, neither did he deny it, his remark being that he had no agreement in writing to that effect. Until I received the aforementioned letter I had no suspicion that Clarke and Campbell were in any way associated in this claim for commission.

10

7. I desire letters of request to issue out of this Court addressed to the Courts of the State of New York or of such other State in the United States of America where the said Clarke and Battersby and other witnesses who can speak to the facts, can or may be found, to compel them to attend and give evidence for use on this motion and to produce such books, documents or records as may be relevant.

SWORN before me at the City)
of Toronto in the County of)
York this 30th day of November)
1928.)

(Sgd.) E. A. Wallberg

20

(Sgd.) J. E. Corcoran)
A Comm'r &c.

COPY OF REASONS FOR JUDGMENT OF APPELLATE DIVISION RECORD

DELIVERED 23rd APRIL, 1929

Hellmuth, K. C. and E. Bristol for defendants

Appellants

—and—

D. L. McCarthy, K. C. and H. E. Manning;

Contra.

Argued 6th, 7th and 19th December, 1928

In the
Supreme
Court of
Ontario

No. 12

Reasons for
Judgment
of
Appellate
DivisionMulock,
C.J.O.
23rd April,
1929

MULOCK, C. J. O.: This is an action to recover from the two de-
 10 fendants moneys claimed to be owing to the plaintiff as commission on the
 price of newsprint sold by the defendant company to the Newspaper &
 Magazine Paper Corporation.

The case was tried by McEvoy, J. who held the plaintiff entitled to a
 commission at the rate of 1% of the purchase price of such newsprint and
 from his decision the defendants appeal.

The plaintiff rests his claim on an alleged express agreement with
 the defendant Wallberg, his account thereof being to the following effect:
 He knew a person who might purchase newsprint, the product of a paper
 mill which Wallberg contemplated erecting or causing to be erected and so
 20 informed Wallberg at an interview with him and after some discussion be-
 tween them the plaintiff said "Mr. Wallberg, this party is quite capable of
 buying this output. Now will you pay me a commission if I introduce you
 to this party and it results in a sale or contract for the paper". "That was
 the words I used to Mr. Wallberg and Mr. Wallberg in reply said 'I will' ".
 Whereupon the plaintiff gave the name of the party, namely, Lester J.
 Clarke and conducted Wallberg from his office to the King Edward Ho-
 tel where Clarke was and there introduced them to each other with the re-
 sult that after lengthy negotiations between the defendant company and
 Mr. Clarke on behalf of the Newspaper & Magazine Paper Corporation a
 30 contract was entered into between the two companies for the sale of paper
 from the defendant company's mill to the Newspaper & Magazine Paper
 Company. The defendant Wallberg denies the making of the agreement.

During the argument Mr. McCarthy elected to claim against Wall-
 berg alone and therefore the action against the defendant company should
 be dismissed. For the reasons mentioned in the judgment of my brother
 Middleton, I am of opinion that the plaintiff is entitled to remuneration
 for his services but on a quantum meruit and not on a commission basis
 and the amount thereof remains to be determined.

An element in such determination is the value of the plaintiff's ser-
 40 vices to Wallberg on the contract being entered into by the defendant com-
 pany and the Newspaper & Magazine Paper Corporation. If of no value
 to the defendant Wallberg, the plaintiff is not entitled to remuneration.
 If of some value, then he is entitled to a reasonable sum having regard

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Concluded

to their value to Wallberg and the question is whether Wallberg was, and if so to what extent, benefitted by the contract. This question involves a consideration of what interest Wallberg had in the Company. He had owned practically all the stock in the Leaside Engineering Company when it became lessees of the limits. Later that Company assigned the leases of the limits to the Mistassini Company and later the latter company assigned the leases to the defendant company. The defendant was president of each of these companies at the time of these assignments and was president of the defendant company when the contract with the Newspaper & Magazine Paper Corporation was entered into.

10

After the making of the contract the Dominion Securities Corporation issued a Prospectus offering for sale to the public \$3,000,000. of debentures issued by the defendant company covering the limits in question. That Prospectus, on the authority of a letter from the defendant Wallberg then the President of the Company, set forth the capitalization of the Company and Wallberg swore that the statements in his letter were correct. The capitalization in the Prospectus is given as follows:

CAPITALIZATION

(Upon completion of present financing)

	Authorized	To be presently outstanding.	20
First Mortgage Bonds	\$15,000,000	\$5,000,000	
Mortgage Debentures (this issue)	7,500,000	3,000,000	
7% Preferred Stock (\$100. par value, cumulative from July 1, 1928)	2,000,000	2,000,000	
Common Stock (no par value)	100,000	100,000	
		shares.	shares.

As President of the Company Wallberg must have held some stock in it and I think it is reasonable to infer from the evidence that he had in the defendant company other pecuniary interests which were affected beneficially or otherwise by reason of the contract for sale of the newsprint. He may also in other ways have been benefitted by the contract but evidence of this nature was not given at the trial because the plaintiff's claim was for commission on the output. Thus there is no evidence which enables the Court to determine the amount of remuneration, if any, to which under all the circumstances the plaintiff is entitled, and I therefore think that it should be referred to a Jury to find the amount and that the costs of this appeal and of the new trial should be costs in the cause.

30

MAGEE, J. A. :

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Supreme
Court of
Ontario—
No. 12—
Reasons for
Judgment
of Appellate
DivisionMagee, J. A.
23rd April,
1929.

In this case where the Plaintiff and defendant directly contradict each other and each is of good standing I would have thought that the plaintiff should fail who had not taken the precaution of having so important a transaction evidenced. Whether his alleged demand of commission was with or without the knowledge of his friend Clarke it was I think conduct not conducive to credibility to increase the outlay and therefore the demands of the person with whom his friend expected to deal whether for himself or others. But conceding that the trial judge was right in finding an agreement for remuneration the amount involved by the judgment seems to me to be far beyond what would be reasonable or in contemplation of the parties. It is conceded by plaintiff's counsel that the plaintiff cannot have judgment against both the defendant Wallberg and the defendant Company and that he can only succeed against the former. Wallberg was only the agent of the company though shareholder therein and yet the large commission is allowed not on the basis of the agent's own remuneration but of his principal's transaction. It would thus make a broker for a benefit to himself pay not a commission on his commission but on his principal's sale. The actual benefit derived by Wallberg from the plaintiff was in my view nothing. His friend Clarke had come to Toronto for the express purpose of interviewing Wallberg and would in all probability have called on him in half an hour. The plaintiff forestalled him and went to bring Wallberg to him.

The amount which my brothers Middleton and Grant are willing to allow to plaintiff is in my opinion ample remuneration to the plaintiff under the circumstances and I concur therein.

MIDDLETON, J. A.: Appeal by the defendants from the judgment of the Honourable Mr. Justice McEvoy pronounced on the 20th day of July, 1928, after the trial of the action before him on the 14th day of November, 1927, and the 23rd day of January, 1928, without a jury and a motion by the defendants for leave to adduce further evidence discovered since the trial of the action, and for a new trial and for a direction for the issue of a commission and Letters Rogatory for the taking of evidence in support of this application.

The plaintiff, a newspaper proprietor, resident at Edmonton in this action seeks to recover from Walburg an engineer residing in Toronto, and the Lake St. John Power & Paper Co. Ltd. an incorporated company having its head office in the Province of Quebec, \$1,200,000. being a commission of three per cent upon \$40,000,000. the price of newsprint sold by the defendant company under a contract to be mentioned, or in the alterna-

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Continued

tive the same sum as a reasonable remuneration for the service of the plaintiff in effecting the sale of the said newsprint under the said contract.

The foundation for this claim is the allegation on the part of the plaintiff that on or about the 17th of April 1926, Walburg verbally agreed with him that if he should introduce to Walburg a party interested in the purchase of newsprint, that he, Walburg and or the defendant company, Lake St. John Power & Paper Company, would pay him a commission. In reliance upon and in pursuance of this verbal agreement the plaintiff introduced Walburg to the Newspaper and Magazine Paper Corporation 10 represented by its President, Lester J. Clarke. Subsequently negotiations were entered into between Walburg and Clarke resulting in a contract between the defendant company and Clarke's company whereby the defendant company undertook to manufacture and deliver to Clarke's company sixty thousand tons of newsprint paper per year for a period of ten years at a price stipulated in the contract which the plaintiff alleges will not be less than \$40,000,000. According to the plaintiff three per cent is the regular and customary commission upon the sale of newsprint paper. The plaintiff further alleges that the defendant company is liable upon the contract because Walburg was its president and duly authorized agent. 20

As an alternative claim the plaintiff alleges that if Walburg did not agree, as already set out, he did agree to pay the plaintiff a reasonable remuneration for his services in effecting the introduction of Clarke and that promise bound not only Walburg but the defendant company of which he was president and the duly authorized agent.

There is no contract in writing evidencing the alleged contract and its existence depends altogether upon the oral evidence of the plaintiff contradicted by the evidence of Walburg. There is no doubt that Campbell introduced Walburg to Clarke and there is no doubt that the contract *resulted* ~~dated~~ from negotiations carried on between Walburg and Clarke as the 30 direct result of this introduction. The whole contest centres about the vital question 'was there a promise to pay Campbell any commission'.

Campbell and Clarke had been friends for many years. Campbell had nothing whatever to do with the purchasing and sale of newsprint save in connection with his own newspaper in Edmonton. When in Montreal, in April, 1926, he saw a casual reference in a newspaper to the effect that Mr. Walburg, who was an entire stranger to him, had acquired extensive pulp limits in the province of Quebec and contemplated erecting a mill for the manufacture of newsprint. Within a few days, by chance he met his friend Clarke whom he knew as the purchasing agent for the Newspaper 40 & Magazine Paper Corporation, a company requiring some \$30,000,000 worth of newsprint per annum, it being the purchasing agent for the Hearst Newspaper & Magazine Publications. In the course of conversation Campbell mentioned to Mr. Clarke the information he had acquired concerning Walburg and when in Ottawa on his way to Toronto with Mr.

Clarke he telephoned to Mr. Walburg asking for an appointment for the next day. He called upon Walburg and introduced himself as the one who had asked the appointment. He then sought confirmation from Mr. Walburg of the fact that he had purchased limits and contemplated erecting a mill, and then asked if he would be interested in selling the output of his projected mill and told him that he could put him in communication with a party who was capable of buying the output. He then says that Mr. Walburg desired to know who this party was but that he refrained from giving the name until he had arrived at an understanding as to his remuneration. To use his own words "I said, Mr. Walburg, I am out to make some money. If I introduce you to this party and it results in a sale or contract, will you pay me a comission, and he said 'I will'. Thereupon he named Mr. Clarke and told him that he was then at the King Edward Hotel and they two went over to see Mr. Clarke, and to continue in Campbell's own words "I took Mr. Walburg up to Mr. Clarke's room and I said, Mr. Clarke, this is Mr. Walburg who has limits in the Province of Quebec who is putting up a mill, and Mr. Walburg, this is Mr. Lester J. Clarke of the Newspaper & Magazine Paper Corporation, I said, I will leave you gentlemen to talk over this business and I retired." Naturally this simple story is not shaken upon cross examination.

Walburg's version is equally simple: When Campbell called upon him in pursuance of the telephone appointment "he introduced himself, told me his name was Campbell who had phoned me from Ottawa the day before. He then told me that Mr. Clarke from New York, who was in the newspaper business was in the King Edward Hotel and would like to know if I would go over and see him. We immediately went over together." There was never a word or syllable or intimation of any kind that he was looking for or asking for a commission or gain in any way from me. We walked into the room together and Mr. Campbell said to Mr. Clarke, this is Mr. Walburg and then Mr. Campbell said I will leave you now and walked out and I never saw him any more."

The trial judge thus deals with the matter: "Upon the whole evidence I have come to the conclusion that the conversation sworn to by Campbell as having occurred in Walburg's office did occur and that the account of the conversation given by Walburg omits the main matters discussed in that conversation. I find as a fact that Walburg agreed to pay Campbell a commission for introducing him, Walburg, to Clarke, who was able to buy the output of Walburg's plant. If the introduction led to the making of a sale or a contract of sale and the details of the contract of sale were necessary and by common assent left open."

Upon the strength of this finding of fact, the learned judge pronounced a judgment declaring "that the plaintiff is entitled to a commission at any rate of one per centum upon the purchase price of newsprint sold and delivered under the contract of the 29th of December, 1926, and made between the defendant Lake St. John Power & Paper Co. Ltd. and Newspap-

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In the
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No. 12

Reasons for
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of Appellate
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23rd April,
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of Appellate
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23rd April,
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Continued

er & Magazine Corporation at the price fixed by the terms of the said contract". The learned judge then, without any foundation laid either in the pleadings or evidence, adds this further declaration: "that if by any default or connivance of the defendants or either of them the paper deliveries of newsprint are not made pursuant to the said contract, the plaintiff is entitled to damages for loss of commission at the rate of one per centum on the sums that would have been the price for such newsprint had it been delivered" and adjudges "that it be referred to the Master of this Court at Toronto from time to time, at the plaintiff's request, to take an account and state what amount at the time of the taking of the said account is due and owing the said plaintiff from the defendants as commission under the said contract, and if default or connivance of defendants or either of them is found by the said Master, to ascertain and state what amount, if any, the plaintiff is entitled to receive from the defendant as damages for loss of commission which the plaintiff would have been entitled to recover from the defendants but for the default or connivance of the defendants or either of them." This is followed by an adjudication that the plaintiff do recover from the defendants the amount found to be due from time to time by the Master and also his costs of the action. 10

The reason for this peculiar form of judgment arises from the fact that if the commission was to be paid upon the amount of paper delivered the action was apparently prematurely brought, as, under the terms of the contract no paper had actually been delivered much less paid for.

Two preliminary matters plainly call for consideration. If Walburg was in fact the agent for the company, then any arrangement for payment of commission made by him as such agent would be prima facie impose liability upon the company and not upon him individually, and no matter what circumstances existed the plaintiff could not be entitled to judgment against both Walburg and the defendant company, he must elect. Upon being confronted with this situation Mr. McCarthy admitted that the judgment could not be sustained as against both the principal and the agent, and elected to hold Walburg liable abandoning all claim against the company. 30

The propriety of the declaratory judgment such as that pronounced was discussed but I do not think it necessary to here determine this question in view of the opinion that I have formed. I am not aware of any case which has upheld the propriety of a declaratory judgment where the plaintiff's claim is a common law demand for money payable under a contract. An action at common law would not lie for this until the money was due and payable, and I am at present inclined to think that the judgment pronounced is, on this aspect of the case, improper. 40

The declaration of the invalidity of any scheme entered into by the defendants to avoid payment of the commission by some suggested default or connivance, and the reference to the Master to enquire into the futility of

any such scheme, appears to me clearly erroneous. No scheme has yet been suggested or hinted at. No cause of action in respect of it has yet arisen and I think it is a plainly improper thing to now declare the invalidity of anything not yet done and to refer to the Master the trial of an action to set aside a transaction not yet entered into or thought of.

This, however, leaves untouched the main question as to what the right of Campbell is as against Walburg as an individual.

Had I been dealing with the matter in the first instance, I should have had very great difficulty in upholding any claim on the part of the plaintiff on this alleged agreement. The plaintiff did not reduce the bargain that he says he made to writing. After the making, as he says, of a verbal bargain he did not do what any prudent individual would have done, seek to confirm it by a letter reciting the agreement. Nothing was heard from him indicating the existence of any claim until February 14th, 1927, almost ten months after the date of the contract and some two months after the bargain between the two companies had been arrived at. This letter is, I think, quite inconsistent with the bargain that is now sworn to by the plaintiff. He then writes Walburg: "You will remember that in April, 1926, after a conversation in your office you agreed that if a sale of newsprint paper from your proposed mill was made to the company represented by Mr. Lester J. Clarke I would be remunerated for my services in bringing you and Mr. Clarke together. I then introduced you to Mr. Clarke at the King Edward Hotel." He then says that he had learned that an arrangement had been completed "and I am of course now entitled to be remunerated for my services as agreed". He then says that his arrangements will keep him in Montreal and Ottawa for few days after he expects to go to the West, and it will be convenient to have the matter settled before this and he will be glad to have an interview if desired by Mr. Walburg,—“my view is that the matter should be definitely settled before I return to the West.”

The learned trial judge had the great advantage of seeing these gentlemen in the witness box and, incredible as the plaintiff's story would have been to me, he has believed it. Keeping ever in mind the principle laid down by the Privy Council in McDonald vs. Latimer, 63 O.L.R. 43, "no one doubts that where an appeal on fact lies, it is within the jurisdiction of an Appellate Court to reverse a finding of fact, but it is well established that such a course is only to be adopted upon very clear proof of error where the case depends upon the credibility of witnesses whom the trial judge has seen and believed", I find myself unable to say that there has been in this case such clear proof of error as to justify reversal.

This, however, is far from disposing of the appeal, and even if credit is to be given to Campbell, he cannot complain if I prefer to accept, as I do, his own statement in his letter of February 14th, 1927, to his self serving evidence at the trial. In the letter he sets up no such bargain as that sworn to at the hearing or as that found by the judge. In it all that is

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Reasons for
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No. 12

Reasons for
Judgment
of Appellate
Division

Middleton,
J.A.
23rd April,
1929
Continued

alleged is "you agreed that if a sale of newsprint paper from your proposed mill was made to the company represented by Mr. Lester J. Clarke, I would be remunerated for my services in bringing you and Mr. Clarke together. I then introduced you to Mr. Clarke at the King Edward Hotel".

I would not go to the extent of suggesting that the remuneration was to be mere remuneration for the trouble of bringing about the introduction. It would, I think, be a suitable financial reward for introducing a person with whom a contract might thereafter be made or through whom it might be negotiated. The contract actually negotiated was a valuable and satisfactory contract, but it must be borne in mind that it was not brought about by negotiations conducted by the plaintiff. He did not sell the output of the mill. It is altogether out of place to suggest that he is to be paid a commission calculated at a percentage rate upon the total paper that may be supplied under the contract. In view of the large nature of the transaction, I propose to err upon the side of generosity and I think that an award of \$10,000. is an exceedingly generous remuneration for the services rendered by Campbell in introducing a prospective purchaser. 10

Walburg is by no means identical with the defendant company. He no doubt made an individual profit arising from the fact that the company was able to secure a purchaser of its entire output at a satisfactory price. It is not illogical to condemn him in a substantial sum if he made a bargain to remunerate Campbell. But it would be quite illogical to make him pay a commission based upon the amount of paper sold by a company in which he is merely a shareholder. 20

In the result I think the appeal of the defendant company should be allowed with costs and the action as against the defendant company should be dismissed with costs. The appeal by the defendant Walburg should be allowed to the extent that I have indicated. The judgment should be vacated and there will be substituted for it a recovery against Wallberg of \$10,000. I would not give the plaintiff costs against him either here or below because of the extravagant nature of the claim put forward and because of the very partial success having regard to the demand made. 30

What has been said with reference to the main appeal renders it unnecessary to discuss the plaintiff's cross-appeal by which he sought to increase the recovery to the rate of three per cent. instead of at the rate of one per cent. This appeal should be dismissed also without costs.

The motion to admit further evidence was disposed of at the hearing. It was based upon information received in an anonymous letter and it was sought to examine with the view of showing that Campbell and Clarke had agreed to divide the spoils. I cannot see that this would constitute a defence to the action as in the services rendered Campbell did not occupy a fiduciary relationship to either Walburg or the defendant company. The fact, if it be a fact, that there was had any preliminary discussion between 40

Campbell and Clarke into commission or remuneration, would go to make RECORD
 it more probable that Campbell, when he interviewed Wallberg, would In the
 stipulate for a commission and would go to show that he was not acting Supreme
 gratuitously or merely as a friend of Clarke. Court of
Ontario

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GRANT, J. A.: I agree.

Grant, J. A.
 23rd April
 1929.

IN THE SUPREME COURT OF ONTARIO

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 Formal
 Judgment
 of
 Appellate
 Division
 23rd April,
 1929

THE RIGHT HONOURABLE, THE)
 CHIEF JUSTICE OF ONTARIO) TUESDAY, the 23rd day of
 THE HONOURABLE MR. JUS-) April, 1929.
 TICE MAGEE)
 THE HONOURABLE MR. JUS-)
 TICE MIDDLETON)
 THE HONOURABLE MR. JUS-)
 TICE GRANT)

BETWEEN:—

10

CHARLES E. CAMPBELL,

Plaintiff.
 (Respondent)

—and—

E. A. WALLBERG and LAKE ST. JOHN
 POWER & PAPER CO. LIMITED,
 (By Original action)

Defendants.
 (Appellants)

AND BETWEEN

0

CHARLES E. CAMPBELL,

Plaintiff.
 (Respondent)

—and—

NATIONAL TRUST COMPANY, LIMITED, Executor of the last Will
 and Testament of the said E. A. Wallberg, deceased and LAKE ST. JOHN

POWER AND PAPER COMPANY, LIMITED
 (By Order to Continue Proceedings)

Defendants.
 (Appellants) 30

UPON MOTION made unto this Court on the 6th, 7th, 17th and 19th
 days of December 1928 by counsel on behalf of the defendant E. A. Wall-
 berg and on behalf of the defendant Lake St. John Power and Paper
 Company, Limited by way of appeal from the Judgment of the Honour-
 able Mr. Justice McEvoy, dated the 20th day of July, 1928, and by coun-
 sel by the plaintiff by way of cross-appeal from the said judgment and up-

on motion by the defendants for leave to adduce further evidence discovered since the trial of this action and for a new trial, upon hearing read the pleadings and proceedings in the action and the evidence adduced at the trial and the affidavit of the defendant E. A. Wallberg filed and the said Judgment and upon hearing what was alleged by counsel for all parties.

RECORD
In the
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Ontario
—
No. 13
—

1. THIS COURT DOTH ORDER that the motion by the defendants for leave to adduce further evidence discovered since the trial of this action and for a new trial be and the same is hereby dismissed.

Formal
Judgment
of
Appellate
Division
—
23rd April,
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Concluded

10 2. AND THIS COURT DOTH FURTHER ORDER that the appeal of the defendant Lake St. John Power and Paper Company Limited, and the appeal of the defendant, E. A. Wallberg, should be and the same are allowed and that the cross-appeal of the plaintiff should be and the same is dismissed and that the said Judgment be varied and as varied be as follows:—

20 1. This Court doth order and adjudge that the plaintiff do recover from the defendant the National Trust Company, Limited as executor of the estate and effects of E. A. Wallberg, deceased, the sum of \$10,000, such sum to be levied out of the property which was of the said E. A. Wallberg at the time of his death in the hands of the said defendant the National Trust Company, Limited as his executor as aforesaid, to be administered.

2. And this Court doth further order and adjudge that this action as against the defendant Lake St. John Power and Paper Company, Limited be and the same is dismissed.

3. And this Court doth further order and adjudge that the defendant Lake St. John Power and Paper Company, Limited do recover from the plaintiff its costs of this action.

30 4. And this Court doth further order that there be no costs of this action to the plaintiff or to the defendant the National Trust Company, Limited, executor of the estate of E. A. Wallberg, deceased.

3. AND THIS COURT DOTH FURTHER ORDER that there be no costs of this appeal to the plaintiff or to the defendant the National Trust Company, Limited, executor of the Estate of E. A. Wallberg, deceased.

4. AND THIS COURT DOTH FURTHER ORDER AND ADJUDGE that the defendant the Lake St. John Power and Paper Company, Limited do recover from the plaintiff its costs of this appeal and of the plaintiff's cross-appeal forthwith after taxation thereof.

40 Entered O.B. 109 Pages 13-14-15
October 10th 1929
L. G.

E. Harley
Senior Registrar, S.C.O.

IN THE SUPREME COURT OF ONTARIO

Tuesday the 18th day of June A.D. 1929

RECORDIn the
Supreme
Court of
Ontario

BETWEEN:—

CHARLES E. CAMPBELL,

Plaintiff.

—
No. 14
—

—and—

E. A. WALLBERG and LAKE ST. JOHN

POWER & PAPER CO. LIMITED,

Defendants.

Order to
continue
Proceedings
18th June,
1929

UPON the application of the solicitors for the plaintiff, alleging that 10
since the issuing of the writ of summons in this action and on or about
the 30th day of March A.D., 1929, the above named E. A. Wallberg, de-
parted this life, having first made and published his last Will and Testa-
ment, probate of which was granted by the Surrogate Court of the Coun-
ty of York, being the proper Surrogate Court in that behalf, on the 11th
day of June 1929, to The National Trust Company, Limited, Executors
of the last Will and Testament of the said E. A. Wallberg, deceased,
who are now the legal personal representatives of the said E. A. Wallberg,
deceased, and further alleging that it is desirable or necessary that this 20
action should be continued at the suit of Charles E. Campbell as party
plaintiff thereto against The National Trust Company Limited, Executors
of the Last Will and Testament of the said E. A. Wallberg, deceased,
and Lake St. John Power & Paper Co. Limited, as parties Defendants
thereto.

IT IS THEREFORE ORDERED that this cause do continue at the suit of
Charles E. Campbell, as party Plaintiff thereto against The National
Trust Company, Limited, Executors of the Last Will and Testament of
the said E. A. Wallberg, deceased, and Lake St. John Power & Paper Co.
Limited, as parties Defendants thereto.

BY ORDER TO PROCEED and that the same and all proceedings there- 30
in do stand in the same plight and condition as they were in at the time of
the death of the said E. A. Wallberg as aforesaid.

(sgd) "E. Harley".
Senior Registrar, S.C.O.

IN THE SUPREME COURT OF ONTARIO

THE HONOURABLE MR. JUSTICE MIDDLETON in CHAMBERS) Friday the 4th day of
) October, 1929.

BETWEEN:—

RECORD
 In the
 Supreme
 Court of
 Ontario

CHARLES E. CAMPBELL,

No. 15

Plaintiff. Order
 admitting
 Appeal
 4th October,
 1929

—and—

E. A. WALLBERG and LAKE ST. JOHN
 POWER & PAPER CO. LIMITED,

10

(By Original action)

Defendants.

AND BETWEEN

CHARLES E. CAMPBELL,

Plaintiff.

—and—

NATIONAL TRUST COMPANY, LIMITED, Executor of the last Will
 and Testament of the said E. A. Wallberg, Deceased, and LAKE ST.

JOHN POWER AND PAPER COMPANY, LIMITED,

(By Order to Continue Proceedings)

20

Defendants.

1. UPON the application of the above named Plaintiff made this day for leave to appeal to His Majesty in his Privy Council from a Judgment pronounced herein by the Appellate Division of the Supreme Court of Ontario on the 23rd day of April 1929 and for an Order allowing the security given by the Plaintiff in regard to the said proposed appeal, and it appearing that the Plaintiff has paid into Court by way of security upon the said appeal the sum of Two Thousand Dollars (\$2,000), and upon hearing what was alleged by Counsel for all parties.

2. IT IS ORDERED that the above named Plaintiff be at liberty and he is hereby given leave to appeal from the said Judgment of the Appellate Division of the Supreme Court of Ontario to His Majesty in his Privy Council in respect of so much of the said Judgment as deals with the Plaintiff's claim against the Defendant National Trust Company, Limited as Executor of the last Will and Testament of E. A. Wallberg, deceased.

30

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Court of
Ontario—
No. 15
—Order
Admitting
Appeal
4th October
1929
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3. AND IT IS FURTHER ORDERED that the sum of Two Thousand Dollars (\$2,000) paid into Court, as appears by the certificate of the Accountant of the Supreme Court of Ontario filed as security that the Plaintiff will effectually prosecute his said appeal from the Judgment of the Appellate Division of the Supreme Court of Ontario dated the 23rd day of April 1929 and will pay such costs as may be awarded against him on such appeal, be and the same is hereby approved and allowed as good and sufficient security.

4. AND IT IS FURTHER ORDERED that the costs of this application be costs to the successful party in the said appeal. 10

Entered O.B. 108 Pages 156-7

(Sgd.)

E. Harley

October 5th 1929

Senior Registrar, S.C.O.

L. G.

Exhibits

EXHIBIT NO. 1

RECORD

In the
Supreme
Court of
Ontario

Exhibit
No. 1

Contract
between
Lake
St. John
Power and
Paper
Company
and
Newspaper
and
Magazine
Paper
Corporation
29th Dec.,
1926

MEMORANDUM OF AGREEMENT, made this 29th. day of Dec-
ember, Nineteen Hundred and Twenty-six, between LAKE ST. JOHN
POWER AND PAPER COMPANY, LIMITED, a corporation organiz-
ed under the laws of the province of Quebec, Dominion of Canada, hav-
ing its Head Office in the Village of Mistassini, District of Lake St. John,
Province of Quebec, (hereinafter called the "Seller"), Party of the First
Part, and NEWSPAPER AND MAGAZINE PAPER CORPORATION,
10 a corporation organized under the laws of the State of New York, United
States of America, having its Head Office in the City of New York,
(hereinafter called the "Purchaser"). Party of the Second Part.

WITNESSETH.

WHEREAS, the Seller is now constructing a Pulp and Paper Mill
near the Village of Mistassini, Province of Quebec, to manufacture news-
print paper, with the intention of having said mill operating and deliv-
ering paper on or before the first day of January, Nineteen Hundred and
Twenty-eight; and

WHEREAS, the Seller desires to sell, and the Purchaser desires to
20 purchase, newsprint paper for use in publications in New York City and
elsewhere, under the terms and conditions hereinafter set forth;

NOW, THEREFORE, in consideration of the premises and the cov-
enants hereinafter set forth, the Parties hereto agree as follows;

ARTICLE I.

DURATION OF AGREEMENT;

The term of this Agreement shall be ten (10) years, beginning on
the first day of January, Nineteen Hundred and Twenty-eight, and end-
ing on the Thirty-first day of December, Nineteen Hundred and Thirty-
seven, both dates inclusive.

30 **ARTICLE II.**

CONTRACT AMOUNT OF PAPER;

The Seller agrees to manufacture at its mill at Mistassini, Quebec,
and to sell and deliver to the Purchaser, and the Purchaser agrees to pur-
chase and pay for, during the term and pursuant to the provisions of
this Agreement, an estimated quantity of approximately sixty thousand
(60,000) tons of newsprint paper per annum, (except that for the first
year, the quantity may be less) in rolls of such width as may be specified
by the Purchaser in the manner hereinafter provided.

40 The Seller agrees to install at said mill with due diligence two (2)
paper machines, and promptly to commence and thereafter to continue

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 Supreme
 Court of
 Ontario
 —
 Exhibit
 No. 1
 —
 Contract
 between
 Lake
 St. John
 Power and
 Paper
 Company
 and
 Newspaper
 and
 Magazine
 Paper
 Corporation
 29th Dec.,
 1926
 Continued

the manufacture of newsprint paper exclusively, with such machines to their capacity, of the quality and in the quantities herein provided, and the Seller further agrees that the entire output of the two (2) paper machines first installed at its said plant will be devoted exclusively to furnishing newsprint paper deliverable to the Purchaser hereunder during the term of this Agreement. It is understood that in the event that the output of said two paper machines of newsprint paper in rolls of such width as may be specified by the Purchaser in the manner hereinafter provided, shall exceed sixty thousand tons per annum, the Purchaser shall nevertheless purchase and accept delivery of such excess hereunder.

10

The Seller agrees that each of said machines will have the capacity to manufacture paper which will trim at least two hundred and thirty-one (231) inches wide.

The Seller warrants and agrees that it will manufacture and deliver to the Purchaser hereunder, from and after July 1, 1928, not less than four thousand (4,000) tons of newsprint paper in each month of the term hereof up to and including the month of December, 1929, and not less than five thousand (5,000) tons of newsprint paper in each month of the balance of the term hereof.

ARTICLE III.

20

SPECIFICATIONS;

(a) The Seller agrees to deliver newsprint paper with a good formation, a high finish, reasonably clear from mechanical defects, and reasonably clean and free from bark and dirt. The Purchaser, in entering into this Agreement, does so with the understanding that the newsprint paper to be furnished hereunder will be first-class in every respect; and should the Seller deliver newsprint paper hereunder inferior to the grade agreed upon, the Purchaser shall have the right to reject all such inferior newsprint paper, and the Seller agrees to refund the freight paid thereon and any other expense which has been incurred by the Purchaser on account of the delivery thereof, but the Seller shall not be liable for consequential damages.

30

The color shall be the same as the sample furnished by the Purchaser from time to time as its standard white color, or that of its customers.

The basic weight of paper to be delivered hereunder shall be thirty-two (32) pounds to five hundred (500) sheets, twenty-four (24) inches by thirty-six (36) inches, without reference to production basis. Five per cent. (5%) over or under the contract basic weight shall be considered good delivery on any carload shipment; but if the average weight of paper delivered hereunder during any calendar month shall exceed the contract basic weight, the Seller agrees to credit the Purchaser on the bill for paper delivered during that month, at the contract price thereof

40

plus freight to destination, with the total weight of the paper so delivered in excess of the contract basic weight; delivered, however, that the Seller may, at its option, absorb the excess weight (within the limits of variation above specified) of paper delivered hereunder in any month in the production of the next succeeding month to the extent permitted by a variation from the basic weight not exceeding one per cent. (1%) thereof.

RECORD
In the
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Court of
Ontario
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No. 1

The Purchaser however, shall have the privilege of ordering paper hereunder having a basic weight up to thirty-five (35) pounds, determined as aforesaid, and as to such paper the foregoing provisions shall apply except that the contract basic weight in such event shall be deemed to be the basic weight actually ordered instead of thirty-two (32) pounds.

Contract
between
Lake
St. John
Power and
Paper
Company
and

The Purchaser through its representative shall have access at all times to the Seller's Mill for the purpose of inspecting and testing the paper to be delivered hereunder as it is made, to take samples thereof, to test the quality thereof, to take the weight thereof and to test the accuracy of the scales used by the Seller in weighing such paper; but neither the making of such inspection or tests nor the failure so to do shall be deemed in any respect whatsoever to relieve the Seller of any of its obligations hereunder nor to affect or modify the same nor to affect in any way the Purchaser's right to insist on the performance by the Seller of its obligations hereunder in strict accordance with the provisions of this Agreement.

Newspaper
and
Magazine
Paper
Corporation
29th Dec.,
1926
Continued

(b) Diameter of Rolls;

The diameter of the rolls of paper delivered hereunder shall be as specified by the Purchaser; but not less than thirty-two (32) inches and not more than thirty-six (36) inches.

(c) Width of Rolls;

The width of rolls of paper to be furnished to the Purchaser hereunder shall be from sixty-eight (68) to seventy-seven (77) inches, from fifty-one (51) to fifty-seven and three-quarters ($57\frac{3}{4}$) inches, and from thirty-four (34) to thirty-eight and one-half ($38\frac{1}{2}$) inches, also sixty-six (66) inches, forty-nine and one-half ($49\frac{1}{2}$) inches, and thirty-three (33) inches, all as specified by the Purchaser.

The Purchaser in furnishing specifications for the paper to be delivered hereunder, agrees as far as consistent with the requirements of its customers, to specify roll widths that will best fit the width capacity of the Seller's machines. The Purchaser will in any event enable the Seller to have a trim of not less than 204 inches wide.

(d) Monthly Orders for Sizes.

The Purchaser shall furnish to the Seller, on or before the Twenty-fifth day of each month, specifications as to the diameter and width sizes of the rolls (and as to any change in the basic weights of paper) for the

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shipments to be made in the succeeding month, and in case the Purchaser fails to furnish such specifications within said time, the Seller shall manufacture and deliver paper hereunder in accordance with the specifications last received.

**PURCHASE OF PAPER
IN OPEN MARKET;**

If in any month of the term hereof the Seller shall fail to make deliveries to the Purchaser of the minimum quantities of newsprint paper required to be delivered hereunder, or to devote the entire output of said two paper machines, above mentioned, exclusively to furnishing news- 10
print paper to the Purchaser hereunder, or if in any month by reason of rejections by the Purchaser of paper inferior in quality to that specified hereunder, the deliveries of newsprint paper in such month shall fall short of such minimum requirements, the Purchaser shall have the right forthwith to purchase in the open market such quantities of newsprint paper as will supply the deficiency in newsprint paper between the mini-
mum amount required to be delivered and the amount actually delivered in such month, or as will make good any diversion from the Purchaser of the output of said two paper machines, and the Seller shall pay to the Purchaser an amount equal to the difference between the price payable 20
for such quantities of newsprint paper hereunder (after making the allowances and deductions herein provided for) and the price which the Purchaser pays therefor in the open market, plus the reasonable and necessary cost incident to the purchase and delivery thereof. Any amounts payable by the Seller to the Purchaser under this Article IV may be deducted by the Purchaser from any payments required to be made by the Purchaser to the Seller in accordance with the provisions of this Agreement.

The right to so purchase paper in the open market shall not be deemed to be exclusive nor in derogation of any other legal right or remedy that 30
the Purchaser may have hereunder on account of such failure by the Seller to perform the provisions hereof.

Any rejection of paper by the Purchaser hereunder, if disputed by the Seller, may be referred to arbitration as hereinafter provided.

ARTICLE V.

PRICE OF NEWSPRINT PAPER;

(1) The price of newsprint paper to be delivered hereunder (hereinafter referred to as the "Contract price of paper") in any calendar year of the term hereof (subject to the limitations hereinafter imposed) shall be the price fixed by the following paper manufacturers, and their 40
successors or assigns;

The Canadian International Paper Company, Limited,

Price Brothers & Company, Limited, and
St. Maurice Valley Corporation, Limited.

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for a majority of their aggregate combined production of standard news-
print paper in rolls to be delivered or shipped from their mills in the
Province of Quebec during such year, on yearly contracts, to publishers
of daily newspapers, or for use in the publication of daily newspapers, in
the United States (whether sold directly or indirectly by or through
some intermediate person, firm or corporation, to such publishers or for
use in such publication); but if said Companies above named shall not
10 fix a uniform price on yearly contracts for a majority of their said pro-
duction of paper of the character, destination and use in this subdivision
(1) described for any year of the term hereof, then the contract price of
paper for such year shall be the average price on yearly contracts fixed
by said Companies for paper of the character, destination and use in this
subdivision (1) described for such year; it being understood that the "av-
erage" shall be determined on a tonnage basis.

If the Parties hereto are unable to ascertain all the prices on yearly
contracts fixed by said Companies for paper of the character, destination
and use in this subdivision (1) described, for any year of the term hereof,
20 then the contract price of paper for such year shall be determined on the
basis of such of said prices as the Parties hereto are able to ascertain.

If for any reason, either because of cessation of operations or other-
wise, there shall be less than three Companies available for the purpose of
price determination hereunder as aforesaid, then there shall be added to
the Companies above listed and for the purposes hereinabove expressed,
The Laurentide Co., Limited.

Whenever used in this Agreement, the term "Yearly Contracts" shall
include any contract covering at least one calendar year, but not more
than three calendar years, it being understood that for purposes of price
30 determination for any calendar year hereunder, only the corresponding
calendar year covered by such contract shall be taken into account, but in
no event shall any contract for less than a calendar year or that portion
of a contract covering only a fractional part of a calendar year be taken
into account in any such price determination hereunder. In no event
shall the provisions of any contract with respect to any calendar year
be taken into account in any such price determination hereunder unless
such provisions shall fix a definite price for newsprint paper deliverable
thereunder in such year without reference to contingencies (other than
those involved in the determination of freight allowances and changes in
40 stumpage and or other timber rates or dues).

The contract price of paper, to be determined as aforesaid, shall be
the price of paper sold f.o.b. mills, and if any prices which are to be taken
into account in determining the contract price of paper are prices on a
"delivered" basis such prices "delivered" shall, for the purposes of such

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determination, be adjusted to an f.o.b. mill price; such adjustment to be limited to and based on the price of paper contracted to be delivered in Ohio, Michigan, Pennsylvania, New York and the New England States.

(2) The Parties further agree that if a dispute shall arise as to the contract price of paper for any such year and shall remain undetermined on January Tenth of that year, then the determination of such price shall be submitted for arbitration as herein provided.

(3) The contract price of paper determined as aforesaid shall, however, be subject to the following limitations;

(a) During each of the first five (5) years of the term of This Agreement, (or from January First, Nineteen Hundred and Twenty-eight, to December Thirty-first, Nineteen Hundred and Thirty-two, inclusive) the contract price of paper shall not exceed Three Dollars and Twenty-five Cents (\$3.25) per hundred pounds f.o.b. Seller's mill, less the allowance and deductions for which specific provision is hereinafter made; 10

(b) Should the contract price of paper established as hereinabove provided for any one or more of said last five (5) years of the term of this Agreement, (or from January First, Nineteen Hundred and Thirty-three to December Thirty-first, Nineteen Hundred and Thirty-seven, inclusive), exceed Three Dollars and Twenty-five Cents (\$3.25) per hundred pounds f.o.b. Seller's mill, the Purchaser shall pay to the Seller during any such year or years Three Dollars and Twenty-five Cents (\$3.25) per hundred pounds of newsprint paper f.o.b. Seller's mill, plus one-half (1/2) of the amount by which the contract price of paper, established as aforesaid, shall exceed Three Dollars and Twenty-five Cents (\$3.25) per hundred pounds f.o.b. Seller's mill, less the adjustment, allowances and deductions for which specific provision is hereinafter made. Before making the computation provided in this subdivision (b) and for the purposes 30 of such computation there shall be deducted from the contract price in excess of Three Dollars and Twenty-five Cents (\$3.25) per hundred pounds, the amount by which stumpage and/or other timber rates or dues shall have been increased since the date of this Agreement.

Should the Parties hereto fail to determine the price of paper to be delivered hereunder in any year of the term hereof, by January Tenth in such year, then the paper deliverable hereunder in such year shall be invoiced and paid for at the price of paper for the last preceding year for which the contract price of paper was established hereunder, (or if the 40 Parties shall so fail to determine the price of paper to be delivered hereunder in the first year of the term hereof, at the price of Three Dollars and Twenty-five Cents (\$3.25) per hundred pounds of newsprint paper f.o.b. Seller's mill) until the price of paper to be delivered in the cur-

rent year shall have been determined by agreement or arbitration as aforesaid, whereupon proper adjustment and payment shall be made pursuant thereto within thirty (30) days thereafter.

WEIGHT OF ROLLS;

The price for the paper delivered hereunder shall be based on the gross weight of the rolls, including the weight of the wrapper, but excluding that of the cores.

ARTICLE VI.

CORES;

10 The cores used shall be standard paper cores, of a three (3) inch inside diameter, with metal tips.

The Purchaser shall promptly return all cores to the Seller, freight prepaid.

The Parties shall have an accounting between January First and April First in each year for the cores used in the previous year's shipments, and cores lost during such preceding year shall be paid for by the Purchaser, when such accounting shall have been stated and agreed to, at ninety-per cent. (90%) of the cost price thereof.

20 The Purchaser shall pay the Seller for all cores not returned or paid for as herein provided, within four (4) months after the termination of this Agreement.

ARTICLE VII.

FREIGHT ALLOWANCES;

(a) Differential;

30 From the price of paper deliverable hereunder, established as aforesaid, the Seller will allow the Purchaser the difference between the railway freight rate from Mistassini to New York City, and the railway freight rate from Three Rivers, Province of Quebec, to New York City, which allowance is to be made irrespective of the place to which the paper is shipped.

(b) Special Freight Allowance;

Should any of the paper Companies named in Article V hereof (which shall at the time be used for the purposes of price determination thereunder) make a special freight allowance for any year or years on shipments on yearly contracts to New York City and vicinity (where the New York City commodity freight rate applies), the Seller shall make a further freight allowance to the Purchaser on all paper shipped under this contract for such year or years, (irrespective of the place to which

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such paper is shipped) to be determined as follows;

The total amount in dollars of the freight allowance or allowances so made in any year by the Companies named in Article V hereof shall, for the purposes of price determination for such year provided for in said Article V, be deducted from the aggregate total amount in dollars of the prices used in such price determination.

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ARTICLE VIII.

INCREASE OR
 DECREASE IN TAXES;

If the Seller should, in any year during the term of this Agreement, pay to the Dominion Government, or to that of the Province of Quebec, higher rates of stumpage and / or other timber dues, than were payable at the date of this Agreement, then the Purchaser shall reimburse the Seller in an amount equal to the increase caused thereby in the cost of newsprint paper delivered under this Agreement. 10

If the Seller should, in any such year, pay to either such Governments a lower rate of stumpage and / or other timber dues than were payable at the date of this Agreement, then the Seller shall reimburse the Purchaser in an amount equal to the decrease caused thereby in the cost of newsprint paper delivered under this Agreement. 20

The obligation of the Purchaser to reimburse the Seller on account of any such increase in rates of stumpage and / or other timber dues under this Article VIII shall be limited in the following respect, namely; that if all or any part of such increase shall have been included (meaning thereby that no special or separate charge therefor is made to the consumer over and above the prices used in the determination provided for in Article V hereof) in the prices of newsprint paper which under Article V hereof are used in determining the price of newsprint paper deliverable hereunder, the Purchaser shall not be obligated to reimburse the Seller under this Article VIII for such increase (or so much thereof as may have been included in the prices used in such determination as aforesaid) unless the price of newsprint paper so determined under Article V hereof is more than \$65. per ton, in which event the Purchaser shall reimburse the Seller for such increase (or so much thereof as may have been included in the prices used in such determination as aforesaid) to the extent of the excess of such price (determined under Article V hereof) over \$65. per ton, such reimbursement, however, in no event to be greater than such increase, (or so much thereof as may have been included in the prices used in such determination as aforesaid). 30

In the event that the prices of newsprint paper which under Article V hereof are used in determining the price of newsprint paper deliverable hereunder shall indicate that in some instances such increase in 40

rates of stumpage and / or other timber dues has been included therein and in some instances has not been included therein, the fact as to a majority of the tonnage of newsprint paper used in such price determination shall be controlling in the interpretation of the preceding paragraph of this Article VIII. In other words, if the prices of a majority in tonnage of the newsprint paper used in the determination of price under Article V shall have included such increase in rates of stumpage and / or other timber dues, then, for the purposes of this Article VIII, such increase shall be deemed to have been included in the prices of the entire tonnage so used, and vice versa.

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ARTICLE IX.

PAYMENTS;

All payments provided for hereunder shall be made in current New York exchange.

Payments for paper delivered each month shall be made, after the receipt of proper invoices and bills of lading therefor, between the First and Twenty-fifth days of the succeeding month, less three per cent. (3%) discount to the Purchaser on the net f.o.b. mill price, exclusive of freight allowances and payments or reimbursements on account of stumpage and / or timber rates or dues.

ARTICLE X.

INTEREST ON OVERDUE ACCOUNTS;

The Purchaser agrees to pay interest at the rate of six per cent. (6%) per annum, on all amounts that may become overdue under the terms of this Agreement.

ARTICLE XI.

POINT OF DELIVERY
AND ROUTING;

The delivery point is on board railroad cars at Seller's Paper Mill, or railway shipping point, the Purchaser to pay the freight.

The Purchaser shall have the right to direct the routing, whenever it so desires.

The Seller shall pack the paper for shipment, as directed by the Purchaser, using such amount and quality of wrapper thereon as the Purchaser may direct, and shall properly prepare the cars for its shipment.

ARTICLE XII.

CLAIMS;

(a) No allowance shall be made by the Seller for waste of paper left on cores.

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(b) No claim for consequential damages shall be made or allowed.

(c) In case of claims for damages in transit, caused by any fault on the part of the Seller, arising on any shipment under this Agreement, the Purchaser shall notify the Seller thereof in writing as soon as possible, but in any event within sixty (60) days after the receipt of such shipment; and in case of failure to do so, the Purchaser shall be deemed to have waived any such claim.

ARTICLE XIII.

CONTINGENCIES;

In case the Seller shall be unable and fail at any time to make and supply, or the Purchaser and / or the Purchaser's customers, the New York American and / or the New York Evening Journal, shall be able to take said paper, in consequence of strikes, fire, explosion, lockouts, combinations of workmen, floods, droughts, embargoes, war, acts of God, earthquake, the public enemy, or any cause beyond the control of either Party hereto the Seller shall not be obligated to the Purchaser to supply such paper, nor shall the Purchaser be obligated to the Seller to take such paper, or either be liable for their failure in such respect, during the period of such disability. 10

GENERAL ARBITRATION;

This Agreement, as to its execution, interpretation, performance and enforcement, is to be governed by the laws of the State of New York. 20

All disputes and differences arising out of or under this Agreement shall be arbitrated, and as arbitrated, finally determined, within the City of New York, as provided by the laws of the State of New York, in the following manner;

Either Party may give written notice to the other that it desires to arbitrate any dispute arising hereunder, and shall at the same time nominate in writing an arbitrator and accompany the notice with a written acceptance by the arbitrator of the nomination. 30

Within ten (10) days after the receipt of such notice, the Party receiving the same shall give written notice to the other Party of the nomination of its arbitrator, the notice to be accompanied by a written acceptance by the arbitrator of the nomination.

If the Party to which notice of arbitration is first given shall not so nominate an arbitrator who shall so accept, then the arbitrator nominated by the Party giving the first notice shall be the sole arbitrator.

The two arbitrators so nominated, in the event that they cannot agree, shall select a third arbitrator, but if they fail to agree upon such third arbitrator within ten (10) days after the nomination of the second ar- 40

bitrator nominated as aforesaid, the third arbitrator shall be nominated by the presiding Justice of Appellate Division of the Supreme Court of the State of New York, First Department.

Either Party may, upon five (5) days' written notice to the other, bring on the subjects of dispute for hearing by the arbitrators. The arbitrators shall make their determination in writing in duplicate, one copy of which is to be delivered to each Party hereto.

The withdrawal, incapacity or refusal to act, or death of any arbitrator shall not terminate the arbitration, but in such event the Party whose arbitrator is so eliminated from the arbitration shall, within ten (10) days after such elimination, give written notice to the other Party of the nomination of a substitute arbitrator, such notice to be accompanied by a written acceptance by the arbitrator of the nomination, or if the third arbitrator shall have been eliminated steps shall be taken in the manner hereinabove provided for the nomination of a new third arbitrator.

Any determination by a majority of the arbitrators or by the sole arbitrator if but one be named, or by the two remaining arbitrators, if a substitute arbitrator shall not be named as hereinabove provided, shall be final and conclusive.

A judgment of the Supreme Court of the State of New York may be entered upon any award made pursuant to the provisions hereof.

It is further agreed that there shall be only one arbitration in each calendar year of any dispute with respect to the price of paper deliverable hereunder, which arbitration shall be had in the month of March of the year to which the disputed price relates, and that all other disputes to be arbitrated hereunder (with the exception of disputes as to the rejection by the Purchaser because of inferior quality of paper delivered by the Seller hereunder) shall be arbitrated only once a year, and that in the month of March succeeding in point of time any such dispute or disputes. Any dispute as to the rejection by the Purchaser because of inferior quality of paper delivered by the Seller hereunder may be arbitrated at any time.

The expense of any arbitration hereunder shall be borne by the Parties hereto in such manner as the decision as the arbitrators may direct, but if the arbitrators shall fail to incorporate in their decision a distribution of the expense of arbitration between the Parties hereto, then such expense shall be borne equally by the Parties hereto.

In the event of any dispute whatsoever between the Parties, whether referred to arbitration or not, paper shall nevertheless be delivered by the Seller to the Purchaser continuously, and shall be received and paid for by the Purchaser, all in accordance with the terms of this Agreement.

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ARTICLE XV.

ABSORPTION OF PRODUCT

BEFORE JANUARY FIRST, 1928;

The Purchaser agrees that if the Seller shall be able, at any time prior to January First, Nineteen Hundred and Twenty-eight, to manufacture and make deliveries of newsprint paper, as herein provided, the Purchaser will receive the same at the price and subject, in all respects, to the covenants and conditions herein provided with respect to the delivery of newsprint paper by the Seller to the Purchaser during the first year of the contract term.

10

ARTICLE XVI.

CANCELLATION;

If the Purchaser shall fail to pay any amounts when due under this contract, or fail to make any settlements as provided herein, the Seller may give the Purchaser thirty (30) days' notice of the intention to cancel this contract.

In the event that the Purchaser fails to pay the amounts due, with interest at the rate of six per cent. (6%) per annum from the date said amount was due hereunder within said thirty (30) days, after the receipt of said notice, the Seller may, at its option, cancel this contract at the end of said thirty (30) days, and refuse to furnish any more paper hereunder, and declare the purchase price for all paper furnished hereunder, forthwith due and payable to the Purchaser, together with any other sums in which the Purchaser may be then indebted to the Seller, notwithstanding anything to the contrary herein contained, but the Purchaser shall remain liable to the Seller for all loss and damage sustained by reason of such failure on the part of the Purchaser; provided, however, that failure of the Seller to cancel this contract at any time when entitled hereunder so to do, shall not be construed as a waiver of any right subsequently to cancel the same, because of any subsequent default.

30

In case a dispute shall arise with respect to the price of paper deliverable hereunder and either Party shall give notice to the other of its desire to arbitrate said dispute, as in Article XIV hereof provided, the decision of the arbitrator or arbitrators (as the case may be) rendered thereon in accordance with said Article XIV shall be deemed conclusively to determine for the purpose of this Article XVI such price of paper and (subject to the deductions, allowances and adjustments hereinabove provided for) the amounts due therefor under this contract; and payment by the Purchaser when due of the amounts so determined shall in no event be deemed a breach or default by the Purchaser hereunder.

40

If the Seller fails to complete and operate its mill and to make deliveries of newsprint paper as herein provided by July 1, 1928, or if the Seller at any time during the term hereof shall abandon such mill or fail continuously to operate the same and / or to make the minimum deliveries of paper required to be made hereunder for a period of three consecutive months, (unless such failure shall have been caused by the contingencies specified in Article XIII hereof) the Purchaser may give the Seller sixty (60) days' notice of its intention to cancel this contract, and upon the expiration of such notice, this contract shall be deemed to be cancelled and terminated as to the balance of the term hereof. The failure of the Purchaser, however, to cancel this contract at any time when entitled hereunder so to do shall not be construed as a waiver of any right subsequently to cancel the same, because of any subsequent default.

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The rights of cancellation hereinabove accorded to the Parties shall not be deemed to be exclusive or in derogation of any other legal rights or remedies of the Parties hereto.

ARTICLE XVII.

SUCCESSORS AND ASSIGNS

NON-ASSIGNABLE;

20 The benefits and obligations of this Agreement shall inure to and be binding upon the successors and assigns of the Parties hereto for the full term of this Agreement.

This Agreement shall not be assignable, except with the written consent of both Parties.

ARTICLE XVIII.

GUARANTEE;

30 It is further agreed that this Agreement is not to become effective until William Randolph Hearst shall have delivered to the Seller his written Agreement that the Purchaser will duly and faithfully perform the conditions of this Agreement upon its part to be performed, in the form annexed hereto, marked "Exhibit "A", and if said William Randolph Hearst shall fail to sign and deliver said Agreement on or before January 20, 1927, this Agreement shall be null and void and of no effect whatsoever.

IN WITNESS WHEREOF, the Parties hereto have caused these presents to be executed by their respective officers thereunto duly authorized, and have caused their corporate seals to be hereto affixed, at Montreal, Canada, the day and year first above written.

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LAKE ST. JOHN POWER AND PAPER COMPANY, LIMITED,

seal

“E. A. Wallberg”, PRESIDENT.

NEWSPAPER AND MAGAZINE PAPER CORPORATION,

seal

“Lester J. Clarke” PRESIDENT.

STATE OF NEW YORK)
) ; ss;
COUNTY OF NEW YORK)

On the 30th, day of December, 1926, before me personally came E. A. WALLBERG, to me known, who, being by me duly sworn, did depose and say that he resides at Toronto, Ontario, Canada; that he is the President of LAKE ST. JOHN POWER AND PAPER COMPANY, LIMITED, the corporation described in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order. 10

seal

“Helen E. Fitzgerald”

Notary Public

20

STATE OF NEW YORK)
) ; ss;
COUNTY OF NEW YORK)

On the 10th, day of January, 1926, before me personally came LESTER J. CLARKE, to me known, who, being by me duly sworn, did depose and say that he resides at Borough of Manhattan; that he is the President of NEWSPAPER AND MAGAZINE PAPER CORPORATION, the corporation described in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order. 30

seal

“Helen E. Fitzgerald”

Notary Public

EXHIBIT A.

For the purpose of inducing LAKE ST. JOHN POWER AND PAPER COMPANY, LIMITED, to enter into the foregoing Agreement 40

with NEWSPAPER AND MAGAZINE PAPER CORPORATION, dated ^{RECORD} December 29, Nineteen Hundred and Twenty-six, for the sale and purchase of newsprint paper for a period of ten (10) years, and for other valuable consideration, the receipt of which is hereby acknowledged, I, WILLIAM RANDOLPH HEARST, of the Borough of Manhattan, City and State of New York, do hereby agree with LAKE ST. JOHN POWER AND PAPER COMPANY, LIMITED, its successors and assigns, that Newspaper and Magazine Paper Corporation will duly and faithfully perform the terms and conditions of the foregoing Agreement upon its part to be performed, and that in the event of any default being made by Newspaper and Magazine Paper Corporation, and such default continuing for a period of thirty (30) days after notice as in said Agreement provided, I will duly and faithfully perform the said terms and conditions of the foregoing Agreement.

10

20

In the event of default being made by Newspaper and Magazine Paper Corporation, and such default continuing for a period of thirty (30) days after notice as in said Agreement provided, Lake St. John Power and Paper Company, Limited, agrees that before taking any proceedings on this guarantee or on said Agreement, it will give me ten (10) day's written notice of said default, by registered letter addressed to me at No. 137 Riverside Drive, New York City, N.Y. and an opportunity during said period of making good such default.

This guarantee shall bind my heirs, executors and administrators.

DATED; NEW YORK,
January 12, 1927.

“WILLIAM RANDOLPH HEARST”

STATE OF NEW YORK)

; ss;

COUNTY OF NEW YORK)

on this 12th, day of January, 1927, before me personally came WILLIAM RANDOLPH HEARST, to me known and known to me to be the individual described in and who executed the foregoing instrument, and he thereupon duly acknowledged to me that he executed the same for the purposes therein mentioned.

30

“C. H. Schrader”
Notary Public

seal



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EXHIBIT NO. 2

MOUNT ROYAL HOTEL

— Montreal, February 14, 1927

Exhibit
No. 2

— E. A. Wallberg, Esq,
Royal Bank Building,
TORONTO, Ont.

Registered

Letter
Charles E.
Campbell
to E. A.
Wallberg
14th Feb.
1927

Dear Sir:—

You will remember that in April 1926, after a conversation in your Office, you agreed that if a sale of newsprint paper from your proposed mill was made to the Company represented by Mr. Lester J. Clarke, I would be remunerated for my services in bringing you and Mr. Clarke together, I then introduced you to Mr. Clarke at the King Edward Hotel. 10

I am now informed that you have completed an arrangement by which the output of the mill you are building at Lake St. John is sold to Mr. Clarke's Company and I am, of course, now entitled to be remunerated for my services as agreed.

It so happens that my present arrangements will keep me in Montreal and Ottawa for a few days, after which I expect to return to the West and it would be very convenient for me to settle this matter finally while I am in the East. 20

I should be glad to take this matter up with you personally or by letter. If an interview is desired I could arrange to go to Toronto at any date within the next few days if you will advise me care of the Mount Royal Hotel, Montreal.

My view is that the matter should be definitely settled before I return to the west and I shall be obliged if you will deal with it accordingly, letting me hear from you by return mail.

Yours very truly,

Chas. E. Campbell,
Publisher "Edmonton Bulletin" and
"Calgary Albertan" 30

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EXHIBIT NO. 3

CANADIAN NATIONAL TELEGRAM

1927 FEB 17 PM 5 45

A771 26 XU

MONTREAL QUE 17 542P

E A WALLBERG

Royal Bank Building Toronto Ont

Charles E. Campbell requests us inform you he must return Edmonton
Saturday night and wants you wire us whether you have answered his
10 letter Fourteenth instant.

Brown Montgomery and McMichael.

RECORD

In the
Supreme
Court of
Ontario

—
Exhibit
No. 3

—
Telegram
Brown
Montgomery
&
McMichael
to E. A.
Wallberg
17th Feb.
1927

EXHIBIT NO. 4

CANADIAN NATIONAL TELEGRAM

1927 FEB 18 PM 12 40

RB165 21

TORONTO ONT 18 1231P

Brown Montgomery and McMichael MONTREAL QUE
Mr. Wallberg absent from Toronto since ninth instant expected back next
week he will reply Campbells letter fourteenth on his return

20 H Horsfall.

—
Exhibit
No. 4

—
Telegram
H. Horsfall
to Brown
Montgomery
&
McMichael
18th Feb.
1927

EXHIBIT NO. 5

RECORD

In the
Supreme
Court of
Ontario

—
Exhibit
No. 5
—

Letter
Brown
Montgomery
&
McMichael
to E. A.
Wallberg
18th Feb.
1927

Brown, Montgomery & McMichael
Advocates, Barristers Etc.

Dominion Express Building

Montreal 18th February, 1927.

E. A. Wallberg, Esq.,
Royal Bank Building,
TORONTO, Ont.

Dear Sir:

We confirm our telegram of yesterday's date, as follows:

10

"Charles E. Campbell requests us inform you he must return Ed-
"monton Saturday night and wants you wire us whether you have an-
"swered his letter fourteenth instant."

and acknowledge receipt of telegram signed by H. Horsfall as follows:

"M. Wallberg absent from Toronto since ninth instant expected
"back next week he will reply Campbells letter fourteenth on his re-
"turn."

We communicated the contents of this telegram to Mr. Campbell,
who has asked us to point out to you that he is obliged to leave for the
west tomorrow evening, but that he will be expecting your reply and will
be able to return to the east in about three week's time.

Yours very truly,

Brown, Montgomery & McMichael.

20

EXHIBIT NO. 11.

\$3,000,000

LAKE ST. JOHN POWER AND PAPER COMPANY
(Quebec Company) Limited

6½% 15-year Mortgage Debentures

Series "A"

(With Common Stock Bonus)

To be dated February 1, 1927.

To be due February 1, 1942.

RECORDIn the
Supreme
Court of
Ontario—
Exhibit
No. 11—
Circular
issued by
Dominion
Securities
Corporation
Limited
(includes
Ex. No. 10)
13th Feb.
1927

- Principal and semi-annual interest (February 1 and August 1) payable at the holder's option in Canadian currency at the Imperial Bank of Canada in Toronto and Montreal, Canada, or in New York in United States gold coin of the present standard of weight and fineness, or in London in Sterling at the fixed rate of \$4.862/3 to the Pound. Redeemable as a whole or in part, for sinking fund or otherwise on any interest date on 60 days' notice at 106 and accrued interest to and including February 1, 1935, thereafter at 104 and accrued interest to and including February 1, 1940, and thereafter and before maturity at 102 and accrued interest. Fully registered debentures and coupon debentures registerable as to principal only, in the denomination of \$1,000.
- 20 Interest payable without deduction for United States Federal Normal Income Tax not in excess of 2%, which the Company may be required or permitted to pay thereon or retain therefrom under an present or future laws of the United States.

Trustee: National Trust Company, Limited, Toronto.

CAPITALIZATION

(Upon completion of present financing)

	Authorized	To be Presently Outstanding
30 First Mortgage Bonds	\$15,000,000	\$5,000,000*
Mortgage Debentures (this issue) . . .	7,500,000	3,000,000
7% Preferred Stock (\$100 par value, cumulative from July 1, 1928)	2,000,000	2,000,000
Common Stock (no par value)	100,000 shares	100,000 shares

*Series "A"

The Trust Deed will provide that the balance of the authorized debentures may be issued from time to time in such series, may be payable in such currencies and places, mature on such dates not earlier than February 1, 1942, bear such rates of interest and carry such sinking fund, con-

RECORDIn the
Supreme
Court of
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Exhibit
No. 11
—Circular
issued by
Dominion
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Corporation
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(includes
Ex. No. 10,
18th Feb.
1927)*Continued*

version and redemption provisions as the directors may determine at the time of issue. Such additional debentures may be issued (a) to the extent of 25% of the cost or fair value, whichever is less, of additional fixed properties and plant, including timber leaseholds, acquired by the Company; (b) to refund debentures issued under this mortgage, par for par, or (c) to the extent of 25% of the cost or fair value, whichever is less, of properties of subsidiaries which are either directly charged under the Trust Deed or are indirectly charged through the issue of securities of the subsidiary, all of such securities being specifically charged to secure these debentures; all as will be more fully set out and defined in the Trust Deed securing this issue. 10

From the within letter of Mr. E. A. Wallberg, President of the Company, we summarize as follows:—

THE COMPANY—The Lake St. John Power and Paper Company, Limited, has had in course of construction since July last, at Mistassini on the Mistassini River, near Lake St. John, Quebec, a complete pulp and newsprint paper mill, having a rated capacity of 220 tons of newsprint paper per day. It is expected that this mill will be in operation by December, 1927. The Company contemplates extending the present development from 220 tons of newsprint paper per day to 440 tons per day. 20

The Company holds under lease from the Government of the Province of Quebec extensive timber limits on the Mistassibi and Aux Rats Rivers, north of Lake St. John. These limits cover about 1,000 square miles, and it has been conservatively estimated by two experienced timber cruisers that they contain not less than 6,000,000 cords of pulpwood, thus ensuring an adequate supply of low-cost wood for over 60 years for the mill now in course of construction. The Company is ideally situated in relation to its wood supply.

The Company has a favorable power contract with Duke-Price Power Company, Limited, ample for its requirements and extending beyond the term of the debentures. It also holds under lease from the Quebec Government water-power sites on the Mistassini and Mistassibi Rivers, estimated to be capable of developing 20,000 horse power at a low cost. 30

On account of its exceedingly low-cost wood and power, and its thoroughly modern mill, the Company will be one of the lowest-cost paper producers in Canada.

Satisfactory assurances have been obtained as to the construction this year of a connecting railway line between Mistassini and the Canadian National Railway System, which will give the Company excellent communication with its newsprint markets. 40

SALE OF PAPER OUTPUT—The Company has contracted with one of the largest and financially strongest publishing interests in the United States for the sale for the term of ten years of the entire capacity output of the newsprint paper mill now under construction.

MANAGEMENT—Construction of the plant and operation of the mill will be under the supervision of the general manager of the Company, Mr. John Stadler, one of the most experienced and best-known engineers and paper manufacturers in the industry.

RECORD
In the
Supreme
Court of
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PURPOSE OF ISSUE—The proceeds of this issue and of the sale of the Series "A" first mortgage bonds will be used entirely for construction of the mill, payment for properties and for working capital.

Exhibit
No. 11

SECURITY—These debentures will be secured (subject only to the first mortgage bonds) by (a) a specific charge on real and immovable property of Lake St. John Power and Paper Company, Limited, including the mill, timber leases, and power sites, and (b) a floating charge on all other assets of the Company, now owned or hereafter acquired, all as will be more fully defined and set out in the Trust Deed securing this issue. The company will covenant to pay no dividends on its capital stock which would reduce the net current assets of the Company below \$800,000.

Circular
issued by
Dominion
Securities
Corporation
Limited
(includes
Ex. No. 10)
18th Feb.
1927
Continued

The first mortgage bonds, Series "A" ((\$5,000,000)) are now being issued and the Trust Deed securing the bonds will provide that the balance of the authorized first mortgage bonds may be issued from time to time in such series, may be payable in such currencies and places, mature on such dates not earlier than February 1, 1947, bear such rates of interest, and carry such sinking fund, conversion and redemption provisions as the directors may determine at the time of issue. Such additional bonds may be issued (a) to the extent of 75% of the cost or fair value, whichever is less, of additional fixed properties and plant, including timber leaseholds, acquired by the Company; (b) to refund bonds issued under the Trust Deed securing the first mortgage bonds, par for par, or (c) to the extent of 75% of the cost or fair value, whichever is less, of properties of subsidiaries which are either directly charged under the Trust Deed securing the first mortgage bonds, or are indirectly charged through the issue of securities of the subsidiary, all of such securities being specifically charged to secure the first mortgage bonds; all as will be more fully set out and defined in the Trust Deed securing the first mortgage bonds.

SINKING FUND—The Trust Deed will provide an annual Sinking Fund for the Series "A" debentures sufficient to redeem seventy per cent. of these Debentures by maturity. The first payment under this Sinking Fund is due February 1, 1931.

ASSETS—The value of net tangible assets of the Company, over and above the amount of first mortgage bonds Series "A", available for the security of these debentures upon the completion of the plant has been conservatively estimated at \$8,250,000.

EARNINGS—The management estimate that the annual net earnings of the Company based upon the present price of newsprint paper available for interest on these debentures, depreciation and income tax, after payment of interest on the first mortgage bonds, Series "A," will be not less

RECORD
In the
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Ontario

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Ex. No. 10)
18th Feb.
1927
Continued

than \$1,025,000. Interest charges on these debentures will amount to \$195,000 annually.

PRICE: 98 and accrued interest, to yield 6.70%.
Each \$1,000 Debenture will carry a bonus of 2½ shares of Common Stock. We offer these debentures for sale, when, as and if issued and received by us and subject to the approval of all legal details by Messrs. Blake, Lash, Anglin and Cassels, Toronto, for the bankers, and Messrs. Bain, Bicknell, White & Gordon, for the Company.

[Exhibit No. 10 begins here]

DOMINION SECURITIES CORPORATION
LIMITED
TORONTO 2

10

February 18, 1927.

Letterhead of Lake St. John Power and Paper Company, Limited

Toronto, February 3, 1927.

The Dominion Securities Corporation, Limited,
26 King Street East,
Toronto 2, Ontario.

Dear Sirs:

20

With reference to your purchase of \$3,000,000 15-year 6½% Mortgage Debentures, Series "A," of the Lake St. John Power and Paper Company, Limited, I am pleased to give you the following information:

The Debentures will be dated February 1, 1927, and will be due February 1, 1942. Principal and semi-annual interest (February 1 and August 1) will be payable at the holder's option in Canadian currency at the Imperial Bank of Canada in Toronto and Montreal, Canada, or at the Bank of the Manhattan Company, in New York, in United States gold coin of the present standard of weight and fineness, or at Lloyd's Bank, Limited, in London, in Sterling at the fixed rate of \$4.86 2/3 to the Pound. They will be redeemable as a whole or in part for sinking fund or otherwise on any interest date on sixty days' notice at 106 and accrued interest to and including February 1, 1935; thereafter at 104 and accrued interest to and including February 1, 1940; and thereafter and before maturity at 102 and accrued interest. The debentures will be fully registered, or in coupon form registerable as to principal only, and in the denomination of \$1,000.

Interest on these debentures will be payable without deduction for United States Federal Normal Income Tax not in excess of 2%, which the Company may be required or permitted to pay thereon or retain therefrom under any present or future laws of the United States. The Trustee will be National Trust Company, Limited, Toronto.

CAPITALIZATION

(Upon completion of present financing)

	Authorized	To be Presently Outstanding
First Mortgage Bonds	\$15,000,000	\$5,000,000*
Mortgage Debentures (this issue)	7,500,000	3,000,000
7% Preferred Stock (\$100 par value, cumulative from July 1, 1928)	2,000,000	2,000,000
Common Stock (no par value)	100,000 shares	100,000 shares *Series "A"

RECORD

In the
Supreme
Court of
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Exhibit
No. 11

Circular
issued by
Dominion
Securities
Corporation
Limited
(includes
Ex. No. 10)
18th Feb.
1927
Continued

10

The Trust Deed will provide that the balance of the authorized debentures may be issued from time to time in such series, may be payable in such currencies and places, mature on such dates not earlier than February 1, 1942, bear such rates of interest and carry such sinking fund conversion and redemption provisions as the directors may determine at the time of issue.

Such additional debentures may be issued (a) to the extent of 25% of the cost or fair value, whichever is less, of additional fixed properties and plant, including timber leaseholds acquired by the Company; (b) to refund debentures issued under this mortgage par for par; or (c) to the extent of 25% of the cost or fair value, whichever is less, of properties of subsidiaries which are either directly charged under the Trust Deed or are indirectly charged through the issue of securities of the subsidiary, all of such securities being specifically charged to secure these debentures; all as will be more fully set out and defined in the Trust Deed securing this issue.

20

THE COMPANY

The Lake St. John Power and Paper Company, Limited, incorporated under the laws of the Province of Quebec, has had in course of construction since July last, at Mistassini, on the west side of the Mistassini River, a few miles north of Lake St. John, Quebec, a complete pulp and newsprint paper mill having a rated capacity of 220 tons of newsprint paper per day. It is expected that this will be in operation by December, 1927.

30

The Company contemplates extending the present development from 220 tons of newsprint paper per day to 440 tons per day.

40

The Company holds under lease from the Government of the Province of Quebec extensive timber limits north of Lake St. John on the Mistassibi and Aux Rats Rivers, which join the Mistassini River just above the mill site. These limits cover 1,000 square miles and it has been conservatively estimated by two experienced timber cruisers that they contain not less than 6,000,000 cords of pulpwood, thus ensuring an ade-

RECORD
In the
Supreme
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Ontario

—
Exhibit
No. 11

—
Circular
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Dominion
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(includes
Ex. No. 10)
18th Feb.
1927
Continued

quate supply of low-cost wood for over sixty years for the mill now in course of construction. This wood is readily accessible and favorably located on the rivers above the mill so that it can be floated directly to the mill at a low cost.

The Company has a favorable power contract with the Duke-Price Power Company, Limited, ample for its requirements for the present mill, and extending beyond the term of the debentures. In addition, it has an option on further power on the same conditions under the same contract, which will be ample for the development ultimately contemplated.

The Company also holds under a 75-year lease from the Quebec Government two water-power sites, one on the Mistassini and the other on the Mistassibi River, both sites located not more than one mile from its mill. These are estimated to be capable of developing 20,000 horse-power at a low cost. 10

On account of its exceedingly low-cost wood and power and its thoroughly modern mill the Company will be one of the lowest-cost paper producers in Canada.

Satisfactory assurances have been obtained as to the construction this year of a connecting railway between Mistassini and the Canadian National Railway System, which will give the company excellent communication with the newsprint paper markets. 20

SALE OF PAPER OUTPUT

The Company has contracted with one of the largest and financially strongest publishing interests in the United States for the sale for the term of ten years of the entire capacity output of the newsprint paper mill now under construction.

MANAGEMENT

Construction of the plant and operation of the mill will be under the supervision of the general manager of the Company, Mr. John Stadler, one of the most-experienced and best-known engineers and paper manufacturers in the industry. 30

PURPOSE OF ISSUE

The proceeds of this issue and of the sale of the Series "A" First Mortgage Bonds will be used entirely for construction of the mill, payment for properties and for working capital.

SECURITY

These debentures will be secured (subject only to the First Mortgage Bonds) by (a) a specific charge on real and immovable property of Lake St. John Power and Paper Company, Limited, including the mill, timber

leases and power sites, and (b) a floating charge on all other assets of the Company now owned or hereafter acquired, all as will be more fully defined and set out in the Trust Deed securing this issue.

The Company will covenant to pay no dividends on its capital stock, which would reduce its net current assets, as defined in the Trust Deed, below \$800,000.

RECORD
In the
Supreme
Court of
Ontario
—
Exhibit
No. 11

10 The first mortgage bonds, Series "A" (\$5,000,000) are now being issued and the Trust Deed securing the bonds will provide that the balance of the authorized first mortgage bonds may be issued from time to time in such series, may be payable in such currencies and places, mature on such dates not earlier than February 1, 1947, bear such rates of interest, and carry such sinking fund, conversion and redemption provisions as the directors may determine at the time of issue. Such additional bonds may be issued (a) to the extent of 75% of the cost or fair value, whichever is less, of additional fixed properties and plant, including timber leaseholds, acquired by the Company; (b) to refund bonds issued under the Trust Deed securing the first mortgage bonds, par for par; or (c) to the extent of 75% of the cost or fair value, whichever is less, of properties of subsidiaries which are either directly charged under the Trust Deed securing the first mortgage bonds, or are indirectly charged through the issue of securities of the subsidiary, all of such securities being specifically charged to secure the first mortgage bonds, all as will be more fully set out and defined in the Trust Deed securing the first mortgage bonds.

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Circular
issued by
Dominion
Securities
Corporation
Limited
(Includes
Ex. No. 10)
18th Feb.
1927
Continued

SINKING FUND

The Trust Deed will provide an annual Sinking Fund for Series "A" debentures, sufficient to redeem seventy per cent. of these debentures by maturity. The first payment under this Sinking Fund is due February 1, 1931.

ASSETS

30 The value of net tangible assets of the Company, over and above the amount of First Mortgage Bonds, Series "A," available for the security of these debentures, upon completion of the plant has been conservatively estimated at \$8,250,000, made up as follows:

Crown timber limits and water powers	\$ 6,000,000
Complete pulp, sulphite and paper mills at estimated cash cost, mill site, town site, staff hotel, dwellings, river improvements and woods equipment	6,250,000
Working Capital	1,000,000
	<hr/>
	\$13,250,000
40 Deduct amount of First Mortgage Bonds, Series "A"	5,000,000
	<hr/>
	\$8,250,000

RECORD

In the
Supreme
Court of
Ontario

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Exhibit
No. 11
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Circular
issued by
Dominion
Securities
Corporation
Limited
(includes
Ex. No. 10)
18th Feb.
1927
Concluded

EARNINGS

The management estimate that the annual net earnings of the Company based upon the present price of newsprint paper, available for interest on these debentures, depreciation and income tax, after payment of interest on the First Mortgage Bonds, Series "A," will be not less than \$1,025,000. Interest charges on these debentures will amount to \$195,000 per annum.

SUMMARY

With our output sold for ten years as above indicated, our favorable power contract, our close proximity to our low-cost wood supply and the modern design of our mill and equipment, I am satisfied that our enterprise will be one of the lowest-cost producers of newsprint paper in Canada, and therefore recommend the securities of our Company as a thoroughly sound investment. 10

Yours very truly,

E. A. WALLBERG,
President.

EXHIBIT NO. 6CANADIAN NATIONAL TELEGRAM

—
Exhibit
No. 6
—

Telegram
Charles E. 33MO AG 102 5 EX N L
Campbell
to E. A.
Wallberg
12th March
1927

20

EDMONTON ALTA MCH 12 1927 VIA TORONTO ONT 13/27

E A WALBERG

Chateau Frontenac Quebec Que

Not having received a reply to my registered letter to you from the Mount Royal Hotel Montreal I turned the matter over to my solicitors Brown Montgomery and McMichael to take the matter up with you stop solicitors advise me today you have done nothing in the matter stop I would like to reach an amicable settlement with you as to my remuneration and would thank you to wire me here care of the Edmonton Bulletin if you desire to do so otherwise it will be necessary for me to take the necessary steps without further delay 30

715P

CHAS E CAMPBELL

EXHIBIT NO. 7

LAKE ST. JOHN POWER & PAPER CO. LIMITED

Montreal, March 26th, 1927.

Messrs. Brown, Montgomery & McMichael,
145 St. James Street,
Montreal.

Dear Sirs:—

— Charles E. Campbell Claim —

I have your letter re this matter, but as I am leaving for the
10 Lake St. John construction work to-day I was unable to see you about it.
I expect to return by next Tuesday, or Wednesday when I
will call in and see you.

Yours very truly,

(sgd.) E. A. Wallberg.

EXHIBIT NO. 8.

Brown, Montgomery & McMichael
Advocates, Barristers &c.

Montreal 1st April, 1927.

20 E. A. Wallberg, Esq.,
Lake St. John Pulp & Paper Company,
Drummond Building,
511 St. Catherine Street,
MONTREAL.

Dear Sir:

Upon the writer's return to the office he finds that you have called in connection with Mr. Campbell's claim.

Mr. Campbell has now been East for some ten days and is insisting that some immediate steps be taken to bring this matter to a conclusion. Unless this matter is satisfactorily arranged tomorrow, proceedings will be
30 instituted.

It is unfortunate that our Mr. Forsyth has not been able to see you in the meantime, but instructions from our client leave us no alternative but to proceed as above advised. We have been trying to get you on the telephone this afternoon, but so far without success, but we thought that it was only fitting to let you know the present status of the matter so that you might take the matter up tomorrow if you thought it advisable.

Yours very truly,

(Sgd.) BROWN, MONTGOMERY & McMICHAEL.

RECORDIn the
Supreme
Court of
Ontario—
Exhibit
No. 7
—Letter
E. A.
Wallberg
to Brown
&
McMichael
26th March
1927—
Exhibit
No. 8
—Letter
Brown
Montgomery
&
McMichael
to E. A.
Wallberg
1st April
1927

RECORD

In the
Supreme
Court of
Ontario

—
Exhibit
No. 9
—

Letter
Brown
Montgomery
&
McMichael
to E. A.
Wallberg
1st April
1927

EXHIBIT NO. 9

E. A. Wallberg, Esq.,
909 Royal Bank Building,
TORONTO, Ont.

Montreal 1st April, 1927.

Dear Sir:

We enclose herewith copy of letter written to your Montreal office to-day. When we called your office they told us that you were out, and we assumed that you were in town, later, however, we discovered that you were in Toronto. If you wish to take this matter up with our Mr. Forsyth, he will be at the office of Messrs Long & Daly, in Toronto, at ten o'clock on Monday the 3rd instant. 10

Yours very truly,

(Sgd.) BROWN MONTGOMERY & McMICHAEL.

Enc.

—
Exhibit
No. 12
—

Letter
Bain,
Bicknell,
White &
Bristol
to Long
& Daly
4th Nov.
1927

EXHIBIT NO. 12.

Bain, Bicknell, White & Bristol

Toronto, Canada.
4th November 1927

Messrs. Long & Daly,
Barristers, etc.,
38 King St., West,
TORONTO.

20

Dear Sirs,

CAMPBELL V WALLBERG

We are in receipt of your letter of the 28th ultimo.

We understand the information is as follows,—
May 31st, 1926—

Leaside Engineering Company, Limited, sold to St. Anne Paper Company, Limited, Lease and Agreement with the Quebec Government covering 1,000 square miles of Timber Limits.

At this time the Capital Stock of the Company was— 30
30,000 shares Preferred Stock—par value \$100 each
120,000 Common Shares of No Par Value
Five shares each of Preferred Stock and Common Stock (No Par Value) was allotted to the Directors to qualify them.

Consideration for transfer of above Lease and Agreement was— RECORD

Allotment and issue to the Vendor (Leaside Engineering Company, Limited) of THIRTY THOUSAND (30,000) fully paid and non-assessable Cumulative Seven Per Cent Preferred shares of the Purchaser (St. Anne Paper Company, Limited) and ONE HUNDRED AND NINETEEN THOUSAND NINE HUNDRED AND NINETY-FIVE (119,995) fully paid and non-assessable Common shares of No Par Value, of the Purchaser.

In the
Supreme
Court of
Ontario
—
Exhibit
No. 12
—

Letter
Bain,
Bicknell,
White &
Bristol
to Long
& Daly
4th Nov.
1927

Continued

10 Purchaser acknowledged having received payment in full of subscriptions for shares by the applicants for the incorporation of the Purchaser—being five shares Preferred and five shares of Common.

Purchaser assumes and agrees to carry out to the discharge of the Vendor all liabilities and undertakings and obligations of the Vendor as contained in said Lease and Agreement, except as therein mentioned.

20 The Vendor (Leaside Engineering) agreed to pay to the Quebec Government the total bonus of adjudication at the rate of \$500 per square mile of Timber Limit for the total number of square miles that will be finally determined by the surveys of the Limit and will also pay to total ground rent due under said Lease up to May 1st, 1927 and for the fire protection up to May 1st, 1927.

Deposit of \$50,000 (Guarantee) represented by Dominion of Canada 5½% Bonds maturing 1st November, 1934, then held by Finance Department of Quebec, under said Lease, to be repaid to Vendor. June 3rd, 1926:

Leaside Engineering Company, Limited, sold to St. Anne Paper Company, Limited, Emphyteutic Lease from the Government of the Province of Quebec, covering a certain Water Power.

30 It was recited in the Agreement that it was proposed to apply to have the name of the Company changed to Mistassini Power and Paper Company, Limited and to have the Capital Stock of the Company increased by increasing the Preferred Capital Stock from \$3,000,000 to \$4,000,000;

Consideration for transfer of Emphyteutic Lease was—

The allotment and issue to the Vendor (Leaside Engineering Company, Limited) TEN THOUSAND (10,000) fully paid and non-assessable Cumulative Seven Per Cent Preferred shares of the Purchaser (St. Anne Paper Company, Limited) such allotment and issue to be made upon Supplementary Letters Patent being issued increasing the Preferred Capital Stock to \$4,000,000.

40 Purchaser assumes and agrees to carry out to the discharge of the Vendor all liabilities and undertakings and obligations of the Vendor as contained in said Lease, except as therein mentioned.

The Vendor (Leaside Engineering) agreed to pay to the Quebec Government the total bonus of adjudication of \$10,000 and also the total ground rent due under said Lease up to 6th April, 1927.

RECORD
In the
Supreme
Court of
Ontario

—
Exhibit
No. 12
—

Letter
Bain,
Bicknell,
White &
Bristol
to Long
& Daly
4th Nov.
1927
Concluded

Deposit of \$50,000 (Guarantee) represented by Dominion of Canada $5\frac{1}{2}\%$ Bonds maturing 1st November, 1934, then held by the Finance Department of Quebec, under said Lease, (which also covers Lease of Timber Limits above mentioned) to be repaid to Vendor.

June 5th, 1926

Name of Company changed to MISTASSINI POWER AND PAPER COMPANY, LIMITED and

Preferred Capital Stock of the Company increased from \$3,000,000 to \$4,000,000

June 3rd, 1926—30,000 Preferred Stock allotted to Leaside Engineering Company, Limited; 119,995 Common shares (No Par Value); 10

June 24th, 1926—10,000 Preferred Stock allotted to Leaside Engineering Company, Limited.

December 27th, 1926—Name of the Company was changed from Mistassini Power and Paper Company, Limited to LAKE ST. JOHN POWER AND PAPER COMPANY, LIMITED.

January, 1927—Lake St. John Power and Paper Company, Limited, entered into an Agreement with Leaside Engineering Company, Limited, whereby Leaside Engineering Company, Limited, surrendered TWENTY THOUSAND (20,000) shares of Preferred Stock of Lake St. John Power and Paper Company, Limited and TWENTY THOUSAND (20,000) shares of Common Stock (No Par Value) of Lake St. John Power and Paper Company, Limited. 20

February 8th, 1927—

Supplementary Letters Patent issued decreasing the Capital Stock of the Company by the cancellation of 20,000 fully paid Seven Per Cent Cumulative Preferred shares of \$100 each and 20,000 fully paid shares having no nominal or par value, so that the said Capital shall be divided into—

TWENTY THOUSAND (20,000) Seven Per Cent Cumulative Preferred shares of the par value of \$100 each and 30
ONE HUNDRED THOUSAND (100,000) shares having no nominal or par value.

By a subsequent arrangement in connection with the financing of the Company, Leaside Engineering Company, Limited paid to Lake St. John Power and Paper Company, Limited, \$1,000,000 for 20,000 shares of Preferred Stock above mentioned.

Yours truly,

BAIN BICKNELL WHITE & BRISTOL,
(Sgd.) By ALFRED BICKNELL.

No. 37 of 1930.

In the Privy Council.

ON APPEAL

*From the Appellate Division of the
Supreme Court of Ontario.*

BETWEEN

CHARLES E. CAMPBELL (Plaintiff)

Appellant

AND

NATIONAL TRUST COMPANY LIMITED,
Executor of the last Will and Testament
of E. A. WALLBERG, deceased
(Defendant) - - - *Respondent.*

Record of Proceedings.
